START

Title: FEDERAL REGISTER.

Volume: 68 Issues: 160-174
PAGES 49683-53280

Date: AUGUST 19 - SEPTEMBER 9, 2003

UMI Number: 2575.00

Notes: REEL NO: 4 OF 11

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Federal Register

8–19–03 Tuesday
Vol. 68 No. 160 Aug. 19, 2003

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Federal Register

8–19–03 Tuesday
Vol. 68 No. 160 Aug. 19, 2003

Pages 49683–50038

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Federal Register
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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AH26

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, and –61BT Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations revising the Transnuclear, Inc. (TN) Standardized NUHOMS®–24P, –52B, and –61BT cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 5 to Certificate of Compliance (CoC) Number 1004. Amendment No. 5 will add another dry shielded canister (DSC), designated NUHOMS®–32PT DSC, to the authorized contents of the Standardized NUHOMS®–24P, –52B, and –61BT cask system. This canister is designed to accommodate 32 pressurized water reactor assemblies with or without Burnable Poison Rod assemblies. It is designed for use with the existing NUHOMS® Horizontal Storage Module and NUHOMS® Transfer Cask under a general license.

DATES: The final rule is effective November 3, 2003, unless significant adverse comments are received by September 18, 2003. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. If the rule is withdrawn, timely notice will be published in the **Federal Register**.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH26) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking website. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@ nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov*. Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov*.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov*.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. An electronic copy of the proposed CoC and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML031820427.

CoC Number 1004, the revised Technical Specifications (TS), the underlying SER for Amendment No. 5, and the Environmental Assessment (EA), are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of these documents may be obtained from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail *jmm2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of the Department of Energy (DOE)] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear power reactor sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, that "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license by publishing a final rule in 10 CFR Part 72 entitled, "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72, entitled "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of spent fuel storage cask designs. The NRC subsequently issued a final rule on December 22, 1994 (59 FR 65920), that

approved the Standardized NUHOMS®–24P and –52B cask design and added it to the list of NRC-approved cask designs in § 72.214 as Certificate of Compliance Number (CoC No.) 1004. Amendment No. 3 added the –61BT DSC to the system.

Discussion

On June 29, 2001, the certificate holder (Transnuclear, Inc.) submitted an application to the NRC to amend CoC No. 1004 to add another dry shielded canister, designated NUHOMS®–32PT DSC, to the authorized contents of the Standardized NUHOMS®–24P, –52B, and –61BT cask system. This canister is designed to accommodate 32 pressurized water reactor (PWR) assemblies with or without Burnable Poison Rod Assemblies. It is designed for use with the existing NUHOMS® Horizontal Storage Module and NUHOMS® Transfer Cask. No other changes to the Standardized NUHOMS®–24P, –52B, and –61BT cask system design were requested in this application. The NRC staff performed a detailed safety evaluation of the proposed CoC amendment request and found that an acceptable safety margin is maintained. In addition, the NRC staff has determined that there is still reasonable assurance that public health and safety and the environment will be adequately protected.

This direct final rule revises the Standardized NUHOMS®–24P, –52B, and –61BT cask system design listing in § 72.214 by adding Amendment No. 5 to CoC No. 1004. The particular TS which are changed are identified in the NRC Staff's SER for Amendment No. 5.

The amended Standardized NUHOMS®–24P, –52B, and –61BT cask system, when used in accordance with the conditions specified in the CoC, the TS, and NRC regulations, will meet the requirements of Part 72; thus, adequate protection of public health and safety will continue to be ensured.

Discussion of Amendments by Section

Section 72.214 List of Approved Spent Fuel Storage Casks

Certificate No. 1004 is revised by adding the effective date of Amendment Number 5 and adding Model Number NUHOMS®–32PT.

Procedural Background

This rule is limited to the changes contained in Amendment 5 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS®–24P, –52B, and –61BT cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured. The amendment to the rule will become effective on November 3, 2003. However, if the NRC receives significant adverse comments by September 18, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or TS.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action. However, if the NRC receives significant adverse comments by September 18, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC would revise the Standardized NUHOMS®–24P, –52B, and –61BT cask system design listed in § 72.214 (List of NRC-approved spent fuel storage cask designs). This action does not constitute the establishment of a standard that establishes generally applicable requirements.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA) or the provisions of the Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled "Plain Language in Government Writing," directed that the Government's writing be in plain language. The NRC requests comments on this direct final rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed under the heading **ADDRESSES** above.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the NRC regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. The rule would amend the CoC for the Standardized NUHOMS®–24P, –52B, and –61BT cask system within the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites under a general license. The amendment will modify the present cask system design to add another dry shielded canister, designated NUHOMS®–32PT DSC, to the authorized contents of the Standardized

NUHOMS®–24P, –52B, and –61BT cask system. This canister is designed to accommodate 32 PWR assemblies with or without Burnable Poison Rod assemblies. It is designed for use with the existing NUHOMS® Horizontal Storage Module and NUHOMS® Transfer Cask. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Single copies of the environmental assessment and finding of no significant impact are available from Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6219, e-mail *jmm2@nrc.gov*.

Paperwork Reduction Act Statement

This direct final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, Approval Number 3150–0132.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the NRC issued an amendment to 10 CFR Part 72 to provide for the storage of spent nuclear fuel under a general license in cask designs approved by the NRC. Any nuclear power reactor licensee can use NRC-approved cask designs to store spent nuclear fuel if it notifies the NRC in advance, spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. A list of NRC-approved cask designs is contained in § 72.214. On December 22, 1994 (59 FR 65920), the NRC issued an amendment to Part 72 that approved the Standardized NUHOMS®–24P and –52B cask system design by adding it to the list of NRC-approved cask designs in § 72.214. Amendment No. 3 added the –61BT DSC to the system. On June 29, 2001, Transnuclear, Inc., submitted an application to the NRC to amend CoC No. 1004 to permit a Part 72 licensee to add another DSC, designated NUHOMS®–32PT DSC, to the authorized contents of the Standardized NUHOMS®–24P, –52B, and –61BT cask system. This canister is designed to accommodate 32 PWR assemblies with or without Burnable Poison Rod assemblies. It is designed for use with the existing NUHOMS® Horizontal Storage Module and NUHOMS® Transfer Cask.

The alternative to this action is to withhold approval of this amended cask system design and issue an exemption to each general license. This alternative would cost both the NRC and the utilities more time and money because each utility would have to pursue an exemption.

Approval of the direct final rule will eliminate this problem and is consistent with previous NRC actions. Further, the direct final rule will have no adverse effect on public health and safety. This direct final rule has no significant identifiable impact or benefit on other Government agencies. Based on this discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the direct final rule are commensurate with the NRC's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the NRC certifies that this rule will not, if issued, have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear, Inc. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this direct final rule because this amendment does not involve any provisions that would impose backfits as defined. Therefore, a backfit analysis is not required.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

■ For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

■ 1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs, 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

■ 2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.
Initial Certificate Effective Date: January 23, 1995.
Amendment Number 1 Effective Date: April 27, 2000.
Amendment Number 2 Effective Date: September 5, 2000.
Amendment Number 3 Effective Date: September 12, 2001.
Amendment Number 4 Effective Date: February 12, 2002.
Amendment Number 5 Effective Date: November 3, 2003.
SAR Submitted by: Transnuclear, Inc.
SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.
Docket Number: 72–1004.
Certificate Expiration Date: January 23, 2015.
Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, and NUHOMS®–32PT.

* * * * *

Dated at Rockville, Maryland, this 1st day of August, 2003.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Acting Executive Director for Operations.

[FR Doc. 03–21148 Filed 8–18–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–34–AD; Amendment 39–13257; AD 2003–16–04]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney Canada Turboprop Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–16–04 that applies to Pratt & Whitney Canada (PWC) engine models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines that was published in the **Federal Register** on August 6, 2003. Certain engine models were incorrectly included in the preamble section, under Summary and Supplementary Information, and in the regulatory section under Applicability. In addition, airplanes on which these engines are installed were incorrectly included in the regulatory section, under Applicability. This document corrects these items. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc 03–19840, that applies to Pratt & Whitney Canada (PWC) engine models PW118, PW118A, PW118B, PW119B, PW119C, PW120, PW120A, PW121, PW121A, PW123, PW123B, PW123C, PW123D, PW123E, PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines, was published in the **Federal Register** on August 6, 2003 (68 FR 46441). The following corrections are needed:

On page 46441, in the third column, in the preamble section, under **SUMMARY**, in the first paragraph, in the first, second, third, and fourth lines, "PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines" is corrected to read "PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines".

On page 46441, in the third column, in the preamble section, under **SUPPLEMENTARY INFORMATION**, in the first paragraph, in the ninth, tenth, eleventh, and twelfth lines, "PW123AF, PW124B, PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines" is corrected to read " PW123AF, PW124B, PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines".

§ 39.13 [Corrected]

■ On page 46442, in the third column, in the regulatory section, under Applicability, in the first paragraph, in the seventh, eighth, and ninth lines, "PW125B, PW126, PW126A, PW127, PW127B, PW127E, PW127F, PW127G, PW127H, and PW127J turboprop engines." is corrected to read "PW125B, PW126A, PW127, PW127E, PW127F, and PW127G turboprop engines.".

■ On page 46442, in the third column, in the regulatory section, under Applicability, in the first paragraph, in the sixteenth, seventeenth, and eighteenth lines, "EMB–120; Fairchild Dornier 328, Fokker 50 and 60; Ilyushin IL–114–100; BAE Systems (Operations) Ltd. ATP; and XIAN MA–60." is corrected to read "EMB–120; Fairchild Dornier 328, Fokker 50; and BAE Sysems (Operations) Ltd. ATP.".

Issued in Burlington, MA, on August 13, 2003.

Marc J. Bouthillier,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–21153 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–325–AD; Amendment 39–13274; AD 2003–17–01]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model 717–200 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model 717–200 airplanes, that requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new removal limits for certain components of the flap system and to reduce the interval of inspections for fatigue cracking of certain principal structural elements (PSEs). This action is necessary to detect and correct fatigue cracking of certain safe-life structure and certain PSEs, which could adversely affect the structural integrity of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 23, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 23, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A

(D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model 717–200 airplanes was published in the **Federal Register** on June 4, 2003 (68 FR 33418). That action proposed to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness to incorporate new removal limits for certain components of the flap system and to reduce the interval of inspections for fatigue cracking of certain principal structural elements (PSEs).

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997), July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 133 Model 717–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 108 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $7,020, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significnat regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria fo the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–17–01 McDonnell Douglas: Amendment 39–13274. Docket 2001–NM–325–AD.

Applicability: All Model 717–200 airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of certain safe-life structure and certain principal structural elements, which could adversely affect the structural integrity of the airplane; accomplish the following:

Revising Airworthiness Limitations Section

(a) Within 180 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness, Airworthiness Limitations Instructions (ALI), in accordance with Boeing Report No. MDC–96K9063, Revision 3, dated August 2002.

(b) Except as provided by paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative inspection intervals or removal times may be approved for the safe-life limited parts specified in Boeing Report No. MDC–96K9063, Revision 3, dated August 2002.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(d) The actions shall be done in accordance with Boeing Report No. MDC–96K8063, Revision 3, dated August 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(e) This amendment becomes effective on September 23, 2003.

Issued in Renton, Washington, on August 11, 2003.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20833 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–14–AD; Amendment 39–13275; AD 2003–17–02]

RIN 2120–AA64

Airworthiness Directives; EXTRA Flugzeugbau GmbH Models EA–300/200, EA–300L, and EA–300S Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all EXTRA Flugzeugbau GmbH (EXTRA) Models EA–300/200, EA–300L, and EA–300S airplanes. This AD requires you to inspect the fuel selector valve for leakage and the wing for structural damage and correct any damage or leakage. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect and correct fuel leakage in the wings, which could lead to structural damage of the wings and possible reduced structural margins. Reduced structural margins could lead to eventual structural failure.

DATES: This AD becomes effective on October 10, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 10, 2003.

ADDRESSES: You may get the service information referenced in this AD from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hunxe, Federal Republic of Germany; telephone: (0 28 58) 91 37–00; facsimile: (0 28 58) 91 37–30. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–14–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on all EXTRA Models EA–300/200, EA–300L, and EA–300S airplanes. The LBA reports several occurrences where the fuel selector valve did not operate correctly. When the wing tanks are selected, the acro/center tank is not completely shut-off. The result is fuel draining into the wing tanks that must be empty for aerobatics. This failure of the fuel selector valve to correctly operate is caused by the deterioration of the "O"-ring in the valve.

What is the potential impact if FAA took no action? Aerobatic operation with fuel in the wings could lead to structural damage of the wings and possibly reduced structural margins. Reduced structural margins could lead to eventual structural failure.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all EXTRA Flugzeugbau GmbH (EXTRA) Models EA–300/200, EA–300L, and EA–300S airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 2, 2003 (68 FR 23427). The NPRM proposed to require you to inspect the fuel selector valve for leakage and the wing for structural damage and correct any damage or leakage.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comment received on the proposal and FAA's response to the comment:

Comment Issue: Condition Only Evident in Airplanes With Installed Long-Range Fuel Tanks

What is the commenter's concern? One commenter states that the condition is only evident in airplanes with long-range fuel tanks installed because of the unique physical configuration of the tanks and does not affect the fuel selector valve. Further, the problem does not exist on the affected airplane model that does not have selectable tanks. The commenter also states that there have been no known structural failures; only a few fuel leaks and paint cracks. The FAA infers that the commenter wants the NPRM withdrawn. Further, we infer that if the AD is issued, the commenter wants the AD to apply only to airplanes with long-range fuel tanks installed.

What is FAA's response to the concern? The FAA disagrees that the NPRM should be withdrawn or that the AD should apply only to airplanes with long-range fuel tanks installed. While FAA agrees that the structural cracks have only been found on some airplanes with long-range fuel tanks installed, FAA has determined that the condition should be addressed on all airplanes listed on the German AD that are type certificated for operation in the United States. The leaking fuel selector is not the main problem; the primary concern is the consequent structural damage done by the presence of fuel in the wing tanks that must be empty during aerobatics.

We are not changing the final rule AD action as a result of this comment.

FAA's Determination

What is FAA's final determination on this issue? We carefully reviewed all available information related to the subject presented above and determined that air safety and the public interest require the adoption of the rule as proposed except for the changes discussed above and minor editorial corrections. We have determined that these changes and minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 184 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? We estimate the following costs to accomplish the inspection of the fuel selector valve:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 workhours × $60 per hour = $240	Not Applicable	$240	$240 × 184 = $44,160

We estimate the following costs to accomplish any necessary valve repair that would be required based on the results of this inspection. We have no way of determining the number of airplanes that may need such repair:

Labor cost	Parts cost	Total cost per airplane
5 workhours × $60 per hour = $300	$122.50	$422.50

We estimate the following costs to accomplish the external inspection of the wings:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	Not applicable	$60	$60 × 184 = $11,040

We are unable to estimate the costs to accomplish any necessary wing repair that would be required based on the results of this inspection. EXTRA will evaluate the damage of each affected airplane and develop an appropriate repair scheme.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–17–02 Extra Flugzeugbau GmbH: Amendment 39–13275; Docket No. 2003–CE–14–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models EA–300/200, EA–300L, and EA–300S airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct fuel leakage in the wings, which could lead to structural damage of the wings and possible reduced structural margins. Reduced structural margins could lead to eventual structural failure.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) For all affected airplanes, inspect the fuel selector valve for leakage.	Within the next 100 hours time-in-service (TIS) after October 10, 2003 (the effective date of this AD), unless already accomplished.	In accordance with EXTRA Flugzeugbau GmbH Service Letter No. 300–09–02, Issue: A, dated September 19, 2002, and the applicable airplane maintenance manual.
(2) For all affected airplanes, if any leakage is found during the inspection required by this AD, repair the damage.	Prior to further flight after the inspection required in paragraph (d)(1) of this AD, unless already accomplished.	In accordance with the applicable airplane maintenance manual.
(3) For all affected airplanes, inspect the external wing for structural damage: (i) Cracks (ii) Delamination (iii) Fuel leakage	Within the next 100 hours time-in-service (TIS) after October 10, 2003 (the effective date of this AD), unless already accomplished.	In accordance with the applicable airplane maintenance manual.
(4) For all affected airplanes, if any cracks, delamination, or fuel leakage is found during the inspection required by this AD, accomplish the following: (i) obtain a repair scheme from the manufacturer; (ii) incorporate this repair scheme; and (iii) accomplish any follow-up actions as directed by the FAA.	Prior to further flight after the inspection required in paragraph (d)(3) of this AD, unless already accomplished.	In accordance with a repair scheme obtained from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Federal Republic of Germany; telephone: (0 28 58) 91 37–00; facsimile: (0 28 58) 91 37–30. Obtain this repair scheme through the FAA at the address specified in paragraph (e) of this AD.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with EXTRA Flugzeugbau GmbH Service Letter No. 300–09–02, Issue: A, dated September 19, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from EXTRA Flugzeugbau GmbH, Flugplatz Dinslaken, D–46569 Hünxe, Federal Republic of Germany; telephone: (0 28 58) 91 37–00; facsimile: (0 28 58) 91 37–30. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *When does this amendment become effective?* This amendment becomes effective on October 10, 2003.

Issued in Kansas City, Missouri, on August 11, 2003.

Diane K. Malone,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20832 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15720; Airspace Docket No. 03–ACE–62]

Modification of Class E Airspace; Maryville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: Maryville Memorial Airport, Maryville, MO, has been renamed Northwest Missouri Regional Airport. An examination of controlled airspace for Maryville, MO indicates it does not comply with criteria set forth in FAA Orders. This action corrects the discrepancies by modifying the Maryville, MO Class E airspace area, replaces "Maryville Memorial Airport" in the legal description of Maryville, MO Class E airspace area with "Northwest Missouri Regional Airport" and brings the legal description into compliance with FAA Orders.

EFFECTIVE DATE: This direct final rule is effective on 0901 UTC, December 25, 2003. Comments for inclusion in the Rules Docket must be received on or before September 29, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15720/Airspace Docket No. 03–ACE–62, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Maryville, MO. It replaces "Maryville Memorial Municipal Airport," the former name of the airport, with "Northwest Missouri Regional Airport," the new name of the airport, in the legal description. A review of controlled airspace at Maryville, MO indicates 700 feet Above Ground Level (AGL) airspace required for diverse departures, as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters, for Northwest Missouri Regional Airport does not comply with the Order. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a

mile. The area is enlarged to conform to the criteria in FAA Order 7400.2E. This action also expands the northwest extension of the Maryville, MO Class E airspace area an additional 2.6 miles to provide appropriate controlled airspace for aircraft executing the NDB or Global Positioning System (GPS) Runway (RWY) 14 Standard Instrument Approach Procedure (SIAP) to Northwest Missouri Regional Airport. It also modifies this extension by defining it with the 334° bearing from the Emville NDB versus the current 333° bearing. It brings the legal description of this airspace area into compliance with FAA Order 7400.2E. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15720/Airspace Docket No. 03–ACE–62." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant, regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Maryville, MO

Maryville, Northwest Missouri Regional Airport, MO
(Lat. 40°21′09″ N., long. 94°54′56″ W.)
Emville NDB
(Lat. 40°20′54″ N., long. 94°54′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Northwest Missouri Regional Airport and within 2.6 miles each side of the 334° bearing from the Emville NDB extending from the 6.5-mile radius of the airport to 10 miles northwest of the NDB.

* * * * *

Issued in Kansas City, MO on August 1, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–21079 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15724; Airspace Docket No. 03–ACE–66]

Modification of Class E Airspace; Centerville, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Centerville, IA. A review of controlled airspace for Centerville Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E. The area is enlarged to conform to the criteria in FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, December 25, 2003. Comments for inclusion in the Rules Docket must be received on or before October 2, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW.,

Washington, DC 20590–0001. You must identify the docket number FAA–2003–15724/Airspace Docket No. 03–ACE–66, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dog.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Centerville, IA. An examination of controlled airspace for Centerville Municipal Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment brings the legal description of the Centerville, IA Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15724/Airspace Docket No. 03–ACE–66." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 · Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Centerville, IA

Centerville Municipal Airport, IA
(Lat. 40°41′02″ N., long. 92°54′00″ W.)
Centerville NDB
(Lat. 40°41′14″ N., 92°54′00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Centerville Municipal Airport and within 2.6 miles each of the 164° bearing from the Centerville NDB extending from the 6.5-mile radius to 7.4 miles southeast of the airport and within 2.6 miles each side of the 319° bearing from the Centerville NDB extending from the 6.5-mile radius northwest of the airport.

* * * * *

Issued in Kansas City, MO, on July 31, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–21076 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 030519127–3190–02; I.D. 042403A]

RIN 0648–AO10

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Skate Complex (Skate) Fisheries; Skate Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement approved measures contained in the Skate Fishery Management Plan (FMP). These regulations implement the following measures: A possession limit for skate wings; a bait-only exemption to the wing possession limit restrictions; a procedure for the development, revision, and/or review of management measures on an annual, biennial, and interannual basis, including a framework adjustment process; open access permitting requirements for fishing vessels, operators, and dealers; new species-level reporting requirements for skate vessels and dealers; new discard reporting requirements for Federal vessels; and prohibitions on possessing smooth skates in the Gulf of Maine (GOM) Regulated Mesh Area (RMA), and thorny skates and barndoor skates throughout the management unit. This final rule also implements other measures for administration and enforcement. The intended effect of this final rule is to implement permanent management measures for the Northeast (NE) skate fisheries pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and the FMP and to prevent overfishing of skate resources. Also, NMFS informs the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in this final rule and publishes the OMB control numbers for these collections.

DATES: This rule is effective September 18, 2003.

ADDRESSES: Copies of the FMP, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Final Environmental Impact Statement (FEIS), as prepared by the New England Fishery Management Council (Council), are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery - Mill 2, Newburyport, MA 01950.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Bonnie Van Pelt, Fishery Policy Analyst, 978–281–9244.

SUPPLEMENTARY INFORMATION: This final rule implements approved measures contained in the FMP, which was approved by NMFS on behalf of the Secretary of Commerce (Secretary) on July 28, 2003. A notice of availability for the FMP invited comments on the approvability of the FMP. The comment period ending date was June 30, 2003.

Details concerning the justification for and development of the FMP and the implementing regulations were provided in the preamble to the proposed rule (68 FR 33432, June 4, 2003) and are not repeated here.

Status of Stock Complex

There are no direct estimates of biomass available for the seven individual skate species in the complex, so biomass indices from the NMFS Northeast Fisheries Science Center (NEFSC) trawl surveys have been used to characterize stock size. More specifically, for each species in the complex, information on the weight of the catch per tow (kg/tow) from the most representative trawl survey series over the longest possible time span was assembled. The data in the selected series were then used to characterize the distribution of biomass over the examined time period. Finally, candidate reference points were selected from the distribution so as to provide proxies for biomass targets that have a high probability of correctly characterizing the stock level that produces maximum sustainable yield (MSY).

For the aggregate skate complex, the NEFSC spring survey index of biomass was relatively constant from 1968 to 1980, then increased significantly to peak levels in the mid to late 1980s. The biomass of large-sized skates (barndoor, winter, and thorny) has declined steadily since the mid–1980s, while the recent increase in aggregate skate biomass has been attributed to an increase in little skates.

Overfishing Definitions

Overfishing definitions are provided for each of the seven skate species in the complex, in accordance with the national standards of the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act (SFA) of 1996. Additional background information relating to difficulties in determining overfishing definitions for the skate stocks is contained in the proposed rule and is not repeated here.

Winter and Thorny Skates

Winter and thorny skates are considered to be in an overfished condition when the 3–year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing is considered to be occurring when the 3–year moving average of the autumn survey mean weight per tow declines by 20 percent or more, or when the autumn survey mean weight per tow declines for 3 consecutive years.

Smooth and Clearnose Skates

Smooth and clearnose skates are considered to be in an condition when the 3–year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing is considered to be occurring when the 3–year moving average of the autumn survey mean weight per tow declines by 30 percent or more, or when the autumn survey mean weight per tow declines for 3 consecutive years.

Barndoor Skate

Barndoor skate is considered to be in an overfished condition when the 3–year moving average of the autumn survey mean weight per tow is less than one-half of the mean weight per tow observed in the autumn trawl survey from 1963–1966 (currently 0.81 kg/tow). Overfishing is considered to be occurring when the 3–year moving average of the autumn survey mean weight per tow declines by 30 percent or more, or when the autumn survey

mean weight per tow declines for 3 consecutive years.

Little Skate

Little skate is considered to be in an overfished condition when the 3–year moving average of the spring mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the spring trawl survey from the selected reference time series. Overfishing is considered to be occurring when the 3–year moving average of the spring survey mean weight per tow declines by 20 percent or more, or when the spring survey mean weight per tow declines for 3 consecutive years.

Rosette Skate

Rosette skate is considered to be in an overfished condition when the 3–year moving average of the autumn survey mean weight per tow is less than one-half of the 75th percentile of the mean weight per tow observed in the autumn trawl survey from the selected reference time series. Overfishing is considered to be occurring when the 3–year moving average of the autumn survey mean weight per tow declines by 60 percent or more, or when the autumn survey mean weight per tow declines for 3 consecutive years.

These overfishing definitions incorporate the biomass targets and thresholds that were developed at SAW 30. The FMP contains additional discussion of the rationale for the biomass reference points for each skate species.

Optimum Yield (OY)

The following OY specifications for each species in the NE skate complex are based on the management measures that the Council included in the FMP. Consistent with the NSGs, the Council intends that OY cannot exceed MSY or the allowable portion of MSY necessary to be consistent with the MSY-based control rule. As better fishery information becomes available, these OY specifications may be revised and/or refined. Additional background information relating to difficulties in determining MSY and OY for the skate stocks are contained in the proposed rule and is not repeated here.

Winter Skate

Because fishery data are lacking, there is currently no time series of catch or landings of winter skate on which to base an absolute specification of OY. The OY for winter skate is therefore defined as the amount of winter skates that are harvested legally under the provisions of the FMP and the yield that results from the management measures in other fisheries, to the extent that these measures further impact (and likely reduce) the harvest of winter skates.

Little Skate

Since abundance of the little skate resource has increased considerably over a time period that coincides with the operation of the bait fishery, it can be assumed that the resource is being harvested at an F that is below FMSY. The OY for little skate is therefore defined as the amount of little skates that are harvested for bait legally under the provisions of the FMP.

Smooth, Thorny, and Barndoor Skates

The interaction of skate fishing and multispecies fishing suggests that even more benefits will be afforded to smooth, thorny, and barndoor skates as fishing effort is reduced further in the NE multispecies fishery. Moreover, the year-round groundfish closed areas in the GOM, as they are currently defined, provide a great deal of protection to smooth, thorny, and barndoor skates. Because barndoor and thorny skates are currently in an condition, the Council is proposing management action to rebuild these resources to their long-term sustainable level. Smooth skate is not overfished, but it has not yet rebuilt to its long-term biomass target. Therefore, to be as precautionary as possible, the Council set the OY for smooth, thorny, and barndoor skates at zero.

Clearnose and Rosette Skates

Since abundance of clearnose and rosette skates have increased considerably over a time period and in an area that coincides with the operation of many fisheries, it can be assumed that the resources are being harvested at an F that is below FMSY. Therefore, the OY for clearnose and rosette skates is defined as the amount of clearnose and rosette skates that are harvested legally under the provisions of the FMP.

Management Area

The boundaries of the management area, also called the management unit, are limited to the waters north of 35° 15.3' N. lat., bounded by the coastline of the continental United States in the west and north, and the Hague Line and the seaward extent of the U.S. Exclusive Economic Zone (EEZ) in the east. These boundaries for the management unit are consistent with other relevant NE FMPs.

Fishing Year

The skate fishing year is the same as the NE multispecies fishing year, currently May 1 April 30. If the NE multispecies fishing year changes in the future, the skate fishing year would change automatically to remain consistent with the NE multispecies fishing year.

Essential Fish Habitat (EFH)

Relative abundance data are used to identify EFH for the seven species of skates. EFH for skates includes those areas of the inshore and offshore waters (out to the offshore U.S. boundary of the EEZ), as described in section 4.6.2 of the FMP.

The range of the fishing activity under the FMP occurs across the designated EFH of 11 species managed by the New England, Mid-Atlantic, and South Atlantic Fishery Management Councils. As discussed in section 6.2.9.2 of the FMP, no adverse impacts relative to the baseline conditions established under Amendments 11 and 12 to the NE Multispecies FMP are expected on the EFH of these species and no further mitigation is practicable or necessary. Potential impacts to EFH associated with the skate fishery are expected to remain essentially the same as a result of this action. The FMP measures designed to protect barndoor, thorny, and smooth skates under the incidental catch skate wing fishery, and to control fishing effort in the directed skate wing fishery, are unlikely to change the overall fishing effort in the region that is attributed primarily to the NE Multispecies FMP.

Permitting Requirements

The owners of any commercial vessel who intend to fish for, catch, possess, transport, land, sell, trade, or barter skates in or from the skate management unit are required to obtain an annual Federal skate permit (open-access).

Dealers who purchase or receive skates or skate parts from any vessel are required to obtain a Federal dealer permit on an annual basis. Skates harvested from the skate management unit may only be sold to federally permitted dealers.

Operators of vessels issued a Federal skate vessel permit are required to obtain a Federal operator permit. An individual who already holds an operator permit for another federally managed fishery does not need to reapply, since there is no qualification or test for this permit.

Vessel and Dealer Reporting Requirements

Vessels holding skate permits, and dealers authorized to purchase skates, are required to report species-level information on skates in existing Vessel

Trip Reports. Vessels holding Federal permits (regardless of the fishery) are required to report skate discards by size category only (i.e., large and small skates).

Skate Wing Possession Restrictions

The retention and landing of skate wings is limited to 10,000 lb (4,536 kg) per trip of less than or equal to 24 hours duration (and a limit of one trip per day) and 20,000 lb (9,072 kg) per trip exceeding 24 hours. The days-at-sea (DAS) call-in programs (groundfish, scallop, and monkfish) will be used to determine whether a vessel's trip is less than or greater than 24 hours.

By discouraging large-scale directed fishing for skate wings, the possession limit is expected to reduce overall fishing mortality on winter skates. However, the benefits of a wing possession limit include not only fishing mortality reductions for winter skate, but also long-term benefits to the wing species if the possession limit can discourage expansion of the fishery and/or an influx of new entrants into the fishery.

Bait-only Letter of Authorization (LOA)

This measure allows vessel owners and operators that fish for skates as bait, only, to be exempt from the wing possession limits, provided they obtain an LOA from the Regional Administrator. Vessel owners/operators that fish for a combination of bait and wings and vessels that do not obtain the LOA are subject to the wing possession limits.

Skate Possession Prohibitions

Barndoor and thorny skates are in an overfished condition, so, in addition to the benefits that are likely to accrue to these species as a result of the NE multispecies regulations (closed areas, DAS reductions, mesh increases), this action prohibits the possession of thorny skates and barndoor skates on all vessels fishing from, and all dealers who purchase skates caught in, the EEZ portion of the Skate Management Unit. Although no longer considered to be in an overfished condition, the smooth skate resource is depleted and still well below its target biomass level. Therefore, in addition to the benefits that are likely to accrue to this species as a result of the NE multispecies regulations, this action prohibits the possession of smooth skates in the GOM RMA to conserve the smooth skate resource and promote the rebuilding of its biomass to target levels.

Annual Monitoring and Framework Adjustment Measures

The skate fishery will be monitored on at least an annual basis starting one year after the implementation of the FMP. The status of the resource and the fishery will be reviewed by the Council, its Skate Oversight Committee and Advisory Panel, and the Skate PDT. The Council will prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate complex. If the Council determines that an adjustment to the measures is needed, it will implement either a framework adjustment or an amendment to the FMP.

The framework adjustment process is similar to that used in other NE Region fisheries. This process allows changes to measures below, as appropriate, to be made to the FMP or regulations in a timely manner, without going through the plan amendment process. The framework adjustment process may not be appropriate when it is determined that a proposed change would not be within the scope of the FMP, or the amendment process would be better suited to implement the proposed change. The framework process provides opportunity for public comment to supplement the public comment period provided by publishing a proposed rule. If changes to the management measures were contemplated in the FMP, NMFS could bypass the proposed rule stage and publish a final rule in the **Federal Register**, provided such rule complies with the requirements of the Administrative Procedure Act. The management measures and/or changes to them that could be implemented and adjusted through the framework process include the following: (1) Skate permitting and reporting requirements; (2) overfishing definitions and related targets and thresholds; (3) prohibitions on possession and/or landing of individual skate species; (4) skate possession limits; (5) skate closed areas (and consideration of exempted gears and fisheries); (6) seasonal skate fishery restrictions and specifications; (7) target TACs for individual skate species; (8) hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or bycatch quotas for non-directed fisheries; (9) establishing a mechanism for TAC set-asides to mitigate bycatch, conduct scientific research, or for other reasons; (10) onboard observer requirements; (11) gear modifications, requirements, restrictions, and/or prohibitions; (12) minimum and/or maximum sizes for skates; (13) adjustments to exemption area requirements, area coordinates, and/or management lines established by the FMP; (14) measures to address protected species issues, if necessary; (15) description and identification of EFH; (16) description and identification of habitat areas of particular concern; (17) measures to protect EFH; (18) adjustments and or/resetting of the "baseline" of management measures in other fisheries; (19) OY and/or MSY specifications; and (20) any other measures contained in the FMP.

Baseline Trigger and Review

The FMP identifies and characterizes a "baseline" of management measures in other fisheries that provide conservation benefits to skate species. The FMP also establishes a process for reviewing changes to the management measures included in this baseline, particularly changes that make the existing measures less restrictive. This approach allows adjustments to management measures in other fisheries while ensuring that skate rebuilding is not compromised. The baseline measures and review process are described in detail in the FMP and Classification section of this rule.

The baseline review is intended to address potential significant impacts to skate mortality. Total skate mortality will be considered, including mortality resulting in increased directed fishing effort on skates and mortality resulting from the bycatch of skates. Therefore, this approach addresses National Standard 9, as considerations of bycatch and bycatch mortality are incorporated into the assessment of whether or not changes to the baseline measures will result in significant changes to skate mortality.

The lack of fishery-specific data precludes a quantitative assessment of the impacts of current baseline measures on skates and is likely to preclude such an assessment of the impacts of changes to these measures, at least in the near future. Over time, as data are collected through the FMP permit and reporting requirements, increased observer coverage, study fleets, and efforts to collect better information in other fisheries, the Skate PDT's ability to quantify the impacts of management measures on skates should improve greatly. However, qualitative assessments must suffice in the short-term, as quantitative assessments cannot be completed at this time.

This final rule also revises the definitions of "Council," and "Fishing year," to reflect the approval of the FMP, and establishes new definitions for "NE skate complex (skates)," and "Skate Management Unit."

Comments and Responses

The deadlines for receiving comments on the FMP and proposed rule were June 30, 2003, and July 7, 2003, respectively. Five comment letters were received on the FMP and proposed rule prior to the close of the comment periods.

Comment 1: One commenter recommended that the FMP include additional requirements for vessel strike avoidance, as well as marine trash and debris elimination and awareness similar to those that are imposed upon the offshore gas and oil industry by the U.S. Minerals Management Service.

Response: Magnuson-Stevens Act provisions are being implemented under the FMP to prevent overfishing of the skate fisheries. This rule implements the measures that are required to meet the goals and objectives of the FMP. While NOAA Fisheries acknowledges the importance of these issues raised by the commenter, this rule is not the proper mechanism to address vessel strike avoidance, or marine trash/debris elimination and awareness requirements.

Comment 2: Two commenters requested that NMFS reduce the wing fishery possession limits by 50 percent.

Response: The Council proposed 3 initial alternatives regarding a wing fishery possession limit: 10,000 lb (4,536 kg) per trip; 20,000 lb (9,072 kg) per trip; and 30,000 lb (13,608 kg) per trip. For the purposes of public hearings on the draft FMP, the Council proposed a 20,000–lb (9,072–kg) per trip possession limit for all vessels participating in the wing fishery. During public hearings, the Council received testimony that the proposed possession limit may have been too high. The Council also received testimony that two types of vessels actively participate in the wing fishery: Vessels that make frequent fishing trips of less than 24 hours in duration ("day boats"), and vessels that make extended fishing trips lasting multiple days ("trip boats"). The Council considered this testimony and proposed that the wing possession limit be reduced to 10,000 lb (4,536 kg) for vessels making fishing trips 24 hours or less in duration, and remain at 20,000 lb (9,072 kg) for vessels making fishing trips more than 24 hours in duration. The analysis in the FMP supports the Council's recommendation that these wing possession limits provide sufficient conservation benefit for skates.

Comment 3: One commenter expressed concern that the measures proposed in the FMP will not be sufficient to protect and rebuild skate species.

Response: NMFS disagrees that the measures in the Skate FMP will not be sufficient to protect and rebuild skates. Several very restrictive management measures are being implemented under this FMP: The possession of barndoor and thorny skates is completely prohibited, as is the possession of smooth skates in the GOM RMA; and possession limits have been established in the skate wing fishery where none previously existed, restricting the amount of skate wings that may legally be landed on any fishing trip. The FMP recognizes that most conservation and management of the skate resources will come from the management measures and controls on fishing effort implemented for the fisheries that harvest skates incidental to their normal fishing operations--the NE multispecies, scallop, and monkfish fisheries. The FMP implements a formal review process to ensure that future proposed changes to the management measures implemented in these fisheries do not threaten the conservation of skates or undermine the skate rebuilding programs implemented under the FMP.

Comment 4: One commenter expressed concern that the FMP fails to propose clear mechanisms to avoid and minimize skate bycatch and discard mortality.

Response: NMFS disagrees that the FMP fails to adequately address bycatch. Prohibitions on possession of the three most depleted skate species are being implemented through this final rule as are controls on the harvest of skates for the wing fishery. In addition, these three prohibited species of skates are considered bycatch species of both the wing fishery, which catches primarily winter skates, and the bait fishery, which catches primarily little skates. The prohibition is intended to eliminate landings of these three species, and also to encourage fishermen to return any barndoor, thorny, or smooth skates to the sea as soon as possible. By prohibiting possession, as opposed to prohibiting landing or sale only, there is an incentive to return skates to the sea as quickly as possible. The quicker skates are returned to the sea, the better their expected chance of survival remains.

Unfortunately, there remains a distinct lack of data regarding bycatch rates and discard mortality of skates, so there is no way to determine what those rates are, or to conclude that the existing rates are too high. The reporting requirements included in the FMP will provide previously unavailable species-level catch data, discard data by size class of skate, and detailed catch and discard data as a result of study fleets. This information, once available, will provide a mechanism for the Council and NMFS to evaluate bycatch and discard mortality rates and to determine whether alternative and/or additional action is necessary. In the meantime, the FMP's prohibition on possessing certain skate species and the wing possession limits, in concert with measures in the Northeast Multispecies FMP (e.g., closure of areas to gear capable of catching groundfish and, by extension, skates), will offer the best overall protection to skates and serve to minimize to the extent practicable, and avoid potential bycatch of those species of skates that are incidental catch in the primary skate fisheries (i.e., the wing and bait fisheries).

Changes From the Proposed Rule

In § 648.321, paragraph (a)(1) is revised to refer the reader to the appropriate section: § 648.321(b) instead of § 648.312(b).

In § 648.7, paragraph (a)(1)(iii) is revised to refer the reader to the appropriate paragraph of this section: (a)(1)(i) instead of paragraph (i).

In § 648.14(ee), the language describing possession of whole skates less than the specified maximum size is clarified to characterize lobster vessels that possess skate for bait as the receiving vessel in a transfer at sea while being exempt from Federal permitting requirements for skates. Lobster vessels are responsible for ensuring that the skates they receive and possess on board from the Skate Management Unit are not the prohibited species specified at § 648.322(c). An additional prohibition, § 648.13(gg), is added to further clarify this point regarding lobster vessels that are exempt from the skate permitting requirements, where previously § 648.13(ff)(7) and (8) referred to vessels holding only valid Federal skate permits.

In § 648.6, paragraph (a)(1) is revised to include skates as species for which persons receiving aboard vessels for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit.

In § 648.320, paragraph (a)(3) is revised to include language requiring the Council to take action, if such action is required, under the skate rebuilding program identified in section 4.5.6 of the FMP. This change is intended to clarify the FMP review and monitoring procedures.

NOAA codifies its OMB control numbers for information collection in 15 CFR part 902. Part 902 collects and

displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648–0481 for § 648.13, and OMB control number 0648–0480 for § 648.322. Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere, NOAA, has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

The Administrator, Northeast Region, NMFS, determined that the FMP implemented by this rule is necessary for the conservation and management of the NE skate fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an FEIS for this FMP; a notice of availability was published on May 23, 2003 (68 FR 28213). NMFS determined, upon review of the FMP/FEIS and public comments, that approval and implementation of the FMP is environmentally preferable to the status quo. The FEIS demonstrates that it contains management measures able to mitigate, to the extent practicable, all possible social and economic adverse effects while minimizing risks to the resource and its environment; and will have significant positive effects on the skate fisheries resource relative to the no action alternative.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (*see* **ADDRESSES**).

The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

Final Regulatory Flexibility Analysis

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

Comments received prior to the close of the comment period for the proposed rule focused exclusively on conservation of the skate resources, without reference to the analysis contained in the IRFA. For a summary of the comments received, refer to the section above titled "Comments and Responses."

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

The number of small entities to which the rule applies is the same as that identified in the IRFA. The measures for addressing management of the NE skate fisheries could affect any commercial vessel holding an active Federal NE fishing permit. Data from the NE permit application database show that 4,828 vessels are currently permitted to fish in Federal waters, with 1,722 vessels permitted to fish for NE multispecies, monkfish, and/or sea scallops. Of these vessels, the Council considered the economic impacts on 775 vessels that have reported landings of skate or skate parts at least once in the last 3 years. These 895 vessels are considered the universe of vessels most likely to be directly affected by the proposed action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

The projected reporting, recordkeeping, and other compliance requirements to which this rule will apply were identified in the IFRA and remain the same. A description of the projected reporting, recordkeeping, and other compliance requirements is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is not repeated here. No professional skills are necessary for preparation of the reports or records specified above.

Steps Taken to Minimize Economic Impacts on Small Entities Prohibitions for Barndoor, Thorny, and Smooth Skates

This rule establishes prohibitions on the possession of barndoor and thorny skates throughout the Skate Management Unit, and a prohibition on the possession of smooth skate throughout the GOM RMA. The potential economic impacts of these measures are described in detail in the IRFA and IRFA summary contained in the Classification section of the proposed rule. Results of the analysis indicate that there will be minimal negative economic impact to affected vessels as a result of these measures. The FMP also considered alternatives to prohibit the landing and/or sale of these three species of skates, rather than prohibitions on possession. Because all of these alternatives would result in an inability of vessels to sell any catch of barndoor, thorny, or smooth skates, and of dealers to purchase these species, there are no substantive differences between landing, sale, and possession prohibitions relative to the expected economic impacts on small entities. The no action alternative would have resulted in no prohibitions on the possession, landing, and/or sale of these three skate species. Because there would have been no action taken to restrict the ability of small entities to derive revenue from the catch of barndoor, thorny, or smooth skates, the adverse economic impacts associated with these prohibitions would have been mitigated. This alternative was not selected, however, because it would have been inconsistent with the objectives of the FMP to protect overfished species of skates, prevent overfishing on skates, rebuild depleted species of skates, and minimize bycatch and discard mortality rates for skates. This alternative also would not have complied with National Standard 1 of the Magnuson-Stevens Act, which requires that action be taken to prevent overfishing and rebuild overfished stocks.

Possession Limit for Skate Wing Fishery

This rule establishes a skate wing possession limit of 10,000 lb (4,536 kg) per day and 20,000 lb (9,072 kg) per trip. The potential economic impacts of this measure are described in the IRFA and are not repeated here. The Council considered three additional options for a wing possession limit--10,000 lb (4,536 kg) for all fishing trips, 20,000 lb (9,072 kg) for all fishing trips, and 30,000 lb (13,608 kg) for all fishing trips--as well as the option to take no action regarding a wing possession limit.

The option to restrict possession of skate wings to 10,000 lb (4,536 kg) per fishing trip would have resulted in more significant adverse economic impacts on small entities than the action being implemented. The options to restrict possession of skate wings to either 20,000 lb (9,072 kg) or 30,000 lb (13,608 kg) per fishing trip would have been expected to result in less significant economic impacts on small entities than the action being implemented. The analysis supporting this statement is provided in the IRFA and is not repeated here. These options were not selected, however, because they would

not have provided sufficient conservation benefit to winter skates (the primary target of the wing fishery) to be fully consistent with the objectives of the FMP, which include to "reduce fishing mortality on winter skate." Winter skate, although not overfished, is not yet fully rebuilt, and the Magnuson-Stevens Act requires that conservation measures be implemented to reduce fishing mortality on species under these conditions.

The no action alternative, to implement no restrictions on the possession of winter skate wings, would have minimized, to the greatest extent, the potential adverse economic impacts on small entities associated with this action by allowing fishing vessels to land and sell as much skate wings as was possible, given their vessel and fishing operations. However, for the same reasons described above for the 20,000–lb (9,072–kg) and 30,000–lb (13,608–kg) options, this alternative was not selected due to inconsistencies with the objectives of the FMP and the requirements of the Magnuson-Stevens Act.

Skate Wing Possession Limit Exemption Program

This rule implements a provision to allow vessels that fish for skates as bait only to obtain an LOA from NMFS to be exempt from the skate wing possession limits, but requires these vessels to land skates smaller than 23 inches (58.42 cm) total length in whole condition. This measure is not expected to have economic impacts on small entities because the majority of the skates caught (> 90 percent) in the bait fishery are little skates that reach maturity at less than 19.7 inches (50 cm). In addition, as described in the IRFA, this measure is not expected to have an adverse economic impact on small entities, as it relieves a restriction (i.e., vessels would not have to abide by the skate wing possession limits) that would otherwise constrain fishing-related revenues. The only alternative to this measure considered by the Council was the no action alternative to not implement the LOA program. This would have resulted in adverse economic impacts because bait-only vessels would have been subject to the potentially restrictive skate wing possession limit.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of NE Federal commercial fishing vessel or dealer permits. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (*see* **ADDRESSES**) and at the following web site: *http://www.nmfs.gov/ro/doc/nero.html*.

This final rule contains nine collection-of-information requirements subject to the PRA. The collection of this information has been approved by OMB. The public's reporting burden for the collection-of-information requirements includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information requirements.

The new reporting requirements and the estimated time for a response are as follows:

Vessel trip reports, OMB control number 0648–0212 (8 minutes per response for a new respondent, an additional 3 minutes per response for skate permit holders already completing a vessel trip report for other fisheries, and 1 minute per response for all other permit holders reporting discards of skates by size class).

Dealer purchase reports, OMB control number 0648–0229 (1 additional minute/response for species identification).

Vessel permits, OMB control number 0648–0202 (15 minutes/response for an initial permit, and 1 minute/response for existing permit holders).

Dealer permits, OMB control number 0648–0202 (5 minutes/response for an initial permit, and 1 minute/response for existing permit holders).

Operator permits, OMB control number 0648–0202 (60 minutes/response).

Observer deployments, OMB control number 0648–0202 (2 minutes/response).

Bait-only fishing exemption notification, OMB control number 0648–0480 (2 minutes/response to enroll or withdraw from exemption).

Bait transfer-at-sea documentation, OMB control number 0648–0481 (2 minutes/response to prepare).

Send comments on these or any other aspects of the collection of information to NMFS (*see* **ADDRESSES**) and to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attn: NOAA Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 14, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 15 CFR chapter IX, part 902, and 50 CFR chapter VI, part 648, are amended as follows:

PART— 902 NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT: OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 350 *et seq.*

■ 2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by revising the entry for 648.13, and adding an entry for 648.322, in numerical order, to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection requirement is located	Current OMB control number the information (All numbers begin with 0648–)
* * * *	*
50 CFR	
* * * *	*
648.13	–0391 and –0481
648.322	–0480
* * * *	*

50 CFR Chapter VI

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.1, the first sentence of paragraph (a) is revised to read as follows:

§ 648.1 Purpose and scope.

(a) This part implements the fishery management plans (FMPs) for the Atlantic mackerel, squid, and butterfish fisheries (Atlantic Mackerel, Squid, and Butterfish FMP); Atlantic salmon (Atlantic Salmon FMP); the Atlantic sea scallop fishery (Scallop FMP); the Atlantic surf clam and ocean quahog fisheries (Atlantic Surf Clam and Ocean Quahog FMP); the NE multispecies and monkfish fisheries ((NE Multispecies FMP) and (Monkfish FMP)); the summer flounder, scup, and black sea bass fisheries (Summer Flounder, Scup, and Black Sea Bass FMP); the Atlantic bluefish fishery (Atlantic Bluefish FMP); the Atlantic herring fishery (Atlantic Herring FMP); the spiny dogfish fishery (Spiny Dogfish FMP); the Atlantic deep-sea red crab fishery (Deep-Sea Red Crab FMP); the tilefish fishery (Tilefish FMP); and the NE skate complex fisheries (Skate FMP). * * *

* * * * *

■ 3. In § 648.2, the definitions of "Council", "Fishing year", and "Skate" are revised, and new definitions for "NE skate complex (skates)" and "Skate Management Unit" are added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Council means the New England Fishery Management Council (NEFMC) for the Atlantic herring; Atlantic sea scallop, Atlantic deep-sea red crab, NE multispecies, monkfish, and NE skate fisheries; or the Mid-Atlantic Fishery Management Council (MAFMC) for the Atlantic mackerel, squid, and butterfish; Atlantic surf clam and ocean quahog; summer flounder, scup, and black sea bass; spiny dogfish; Atlantic bluefish; and tilefish fisheries.

* * * * *

Fishing year means:

(1) For the Atlantic sea scallop and Atlantic deep-sea red crab fisheries, from March 1 through the last day of February of the following year.

(2) For the NE multispecies, monkfish and skate fisheries, from May 1 through April 30 of the following year.

(3) For all other fisheries in this part, from January 1 through December 31.

* * * * *

NE Skate Complex (skates) means *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea*(little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

* * * * *

Skate means members of the Family Rajidae, including: *Leucoraja ocellata* (winter skate); *Dipturis laevis* (barndoor skate); *Amblyraja radiata* (thorny skate); *Malacoraja senta* (smooth skate); *Leucoraja erinacea* (little skate); *Raja eglanteria* (clearnose skate); and *Leucoraja garmani* (rosette skate).

* * * * *

Skate Management Unit means an area of the Atlantic Ocean from 35° 15.3' N. lat., the approximate latitude of Cape Hatteras Light, NC, northward to the U.S.-Canada border, extending eastward from the shore to the outer boundary of the EEZ and northward to the U.S.-Canada border in which the United States exercises exclusive jurisdiction over all skates fished for, possessed, caught, or retained in or from such area.

* * * * *

■ 4. In § 648.4, paragraph (a)(14) is added to read as follows:

§ 648.4 Vessel permits.

(a) * * *

(14) *Skate vessels.* Any vessel of the United States must have been issued and have on board a valid skate vessel permit to fish for, possess, transport, sell, or land skates in or from the EEZ portion of the Skate Management Unit.

■ 5. In § 648.5, the first sentence in paragraph (a) is revised to read as follows:

§ 648.5 Operator permits.

(a) * * * Any operator of a vessel fishing for or possessing Atlantic sea scallops in excess of 40 lb (18.1 kg), NE multispecies, spiny dogfish, monkfish, Atlantic herring, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, black sea bass, or bluefish, harvested in or from the EEZ; tilefish harvested in or from the EEZ portion of the Tilefish Management Unit; skates harvested in or from the EEZ portion of the Skate Management Unit; or Atlantic deep-sea red crab harvested in or from the EEZ portion of the Red Crab Management Unit, issued a permit, including carrier and processing permits, for these species under this part, must have been issued under this section, and carry on board, a valid operator permit. * * *

* * * * *

■ 6. In § 648.6, paragraph (a)(1) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) * * *

(1) All dealers of NE multispecies, monkfish, skates, Atlantic herring, Atlantic sea scallop, Atlantic deep-sea red crab, spiny dogfish, summer flounder, Atlantic surf clam, ocean quahog, Atlantic mackerel, squid, butterfish, scup, bluefish, tilefish, and black sea bass; Atlantic surf clam and ocean quahog processors; and Atlantic herring processors or dealers, as described in § 648.2; must have been issued under this section, and have in their possession, a valid permit or permits for these species. A person who meets the requirements of both the dealer and processor definitions of any of the aforementioned species' fishery regulations may need to obtain both a dealer and a processor permit, consistent with the requirements of that particular species' fishery regulations. Persons aboard vessels receiving small-mesh multispecies, skates, and/or Atlantic herring at sea for their own use exclusively as bait are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving such small-mesh multispecies, skates, and/or Atlantic herring, provided the vessel complies with the provisions of § 648.13.

* * * * *

■ 7. In 648.7, paragraphs (a)(1)(iii) and (b)(1)(iii) are added, and the last sentence of paragraph (b)(1)(i) is revised to read as follows:

§ 648.7 Recordkeeping and reporting requirements.

* * * * *

(a) * * *

(1) * * *

(iii) *Dealer reporting requirements for skates.* In addition to the requirements under paragraph (a)(1)(i) of this section, dealers shall report the species of skates received. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. NOAA Fisheries will provide dealers with a skate species identification guide.

* * * * *

(b) * * *

(1) * * *

(i) * * * With the exception of those vessel owners or operators fishing under

a surfclam or ocean quahog permit, at least the following information and any other information required by the Regional Administrator must be provided: Vessel name; USCG documentation number (or state registration number, if undocumented); permit number; date/time sailed; date/time landed; trip type; number of crew; number of anglers (if a charter or party boat); gear fished; quantity and size of gear; mesh/ring size; chart area fished; average depth; latitude/longitude (or loran station and bearings); total hauls per area fished; average tow time duration; hail weight, in pounds (or count of individual fish, if a party or charter vessel), by species, of all species, or parts of species, such as monkfish livers, landed or discarded; and, in the case of skate discards, "small" (i.e., less than 23 inches (58.42 cm), total length) or "large" (i.e., 23 inches (58.42 cm) or greater, total length) skates; dealer permit number; dealer name; date sold, port and state landed; and vessel operator's name, signature, and operator's permit number (if applicable).

* * * * *

(iii) *Vessel reporting requirements for skates.* In addition to the requirements under paragraph (b)(1)(i) of this section, the owner or operator of any vessel issued a skate permit shall report the species of all skates landed. Species of skates shall be identified according to the following categories: Winter skate, little skate, little/winter skate, barndoor skate, smooth skate, thorny skate, clearnose skate, rosette skate, and unclassified skate. Discards of skates shall be reported according to two size classes, large skates (greater than or equal to 23 inches (58.42 cm) in total length) and small skates (less than 23 inches (58.42 cm) in total length). All other vessel reporting requirements remain unchanged. NOAA Fisheries will provide vessel owners or operators that intend to land skates with a skate identification guide to assist in this data collection program.

* * * * *

■ 8. In § 648.11, paragraphs (a) and (e) are revised to read as follows:

§ 648.11 At-sea sampler/observer coverage.

(a) The Regional Administrator may request any vessel holding a permit for Atlantic sea scallops, NE multispecies, monkfish, skates, Atlantic mackerel, squid, butterfish, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, tilefish, or Atlantic deep-sea red crab; or a moratorium permit for summer flounder; to carry a NMFS-approved sea sampler/observer.

* * * * *

(e) The owner or operator of a vessel issued a summer flounder moratorium permit, a scup moratorium permit, a black sea bass moratorium permit, a bluefish permit, a spiny dogfish permit, an Atlantic herring permit, an Atlantic deep-sea red crab permit, a skate permit, or a tilefish permit, if requested by the sea sampler/observer, also must:

(1) Notify the sea sampler/observer of any sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, tilefish, skates (including discards) or other specimens taken by the vessel.

(2) Provide the sea sampler/observer with sea turtles, marine mammals, summer flounder, scup, black sea bass, bluefish, spiny dogfish, Atlantic herring, Atlantic deep-sea red crab, skates, tilefish, or other specimens taken by the vessel.

* * * * *

■ 9. In § 648.12, the introductory text is revised to read as follows:

§ 648.12 Experimental fishing.

The Regional Administrator may exempt any person or vessel from the requirements of subparts A (General provisions), B (Atlantic mackerel, squid, and butterfish), D (Atlantic sea scallop), E (Atlantic surf clam and ocean quahog), F (NE multispecies and monkfish), G (summer flounder), H (scup), I (black sea bass), J (Atlantic bluefish), K (Atlantic herring), L (spiny dogfish), M (Atlantic deep-sea red crab), N (tilefish), and O (skates) of this part for the conduct of experimental fishing beneficial to the management of the resources or fishery managed under that subpart. The Regional Administrator shall consult with the Executive Director of the MAFMC regarding such exemptions for the Atlantic mackerel, squid, butterfish, summer flounder, scup, black sea bass, spiny dogfish, bluefish, and tilefish fisheries.

* * * * *

■ 10. In § 648.13, paragraph (h) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(h) *Skates.* (1) Except as provided in paragraph (h)(2) of this section, all persons or vessels issued a Federal skate permit are prohibited from transferring, or attempting to transfer, at sea any skates to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, at sea to any vessel any skates while in the EEZ, or skates taken in or from the EEZ portion of the Skate Management Unit.

(2) Vessels and vessel owners or operators issued Federal skate permits under § 648.4(a)(14) may transfer at sea skates taken in or from the EEZ portion of the Skate Management Unit provided:

(i) The transferring vessel possesses on board a letter of authorization issued by the Regional Administrator as specified under § 648.322(b);

(ii) The vessel and vessel owner or operator comply with the requirements specified at § 648.322(b);

(iii) The transferring vessel maintains a record of the quantity of skates transferred according to the requirements at § 648.7; and

(iv) The transferring vessel provides the receiving vessel documentation showing the date and the amount of skates transferred, whether or not a monetary exchange is involved in the transfer, and the transferring vessel maintains onboard, for a minimum of 1 year from the date of the transfer, a copy of said documentation.

■ 11. In § 648.14, paragraphs (x)(13), (ee),(ff), and (gg) are added to read as follows:

§ 648.14 Prohibitions.

* * * * *

(x) * * *

(13) *Skates.* All skates retained or possessed on a vessel are deemed to have been harvested in or from the Skate Management Unit, unless the preponderance of all submitted evidence demonstrates that such skates were harvested by a vessel, that has not been issued a Federal skate permit, fishing exclusively outside of the EEZ portion of the Skate Management Unit or only in state waters.

* * * * *

(ee) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person to fish for, possess, or land skates in or from the EEZ portion of the Skate Management Unit, unless in possession of a valid Federal skate vessel permit or onboard a federally permitted lobster vessel (i.e., transfer at sea recipient) while in possession of whole skates as bait only less than the maximum size specified at § 648.322(b)(2) and in accordance with § 648.322(c).

(ff) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid Federal skate permit to do any of the following:

(1) Fail to comply with the conditions of the skate wing possession and

landing limits for winter skates specified at § 648.322, unless holding a letter of authorization to fish for and land skates as bait only at § 648.322(b).

(2) Fail to comply with the recordkeeping and reporting requirements of § 648.7(a)(1)(iii) and (b)(1)(iii).

(3) Transfer at sea or attempt to transfer at sea to any vessel, any skates taken in or from the EEZ portion of the Skate Management Unit, unless in compliance with the provisions of §§ 648.13(b) and 648.322(b).

(4) Purchase, possess, trade, barter or receive skates caught in the EEZ portion of the Skate Management Unit by a vessel that has not been issued a valid Federal skate permit under this part.

(5) Fail to comply with the provisions of the DAS notification program specified in §§ 648.53, 648.82, and 648.92, for the Atlantic sea scallop, NE multispecies, and monkfish fisheries, respectively, when issued a valid skate permit and fishing under the skate wing possession limits at § 648.322.

(6) Fish for, catch, possess, transport, land, sell, trade, or barter whole skates and skate wings in excess of the possession limits specified at § 648.322.

(7) Fail to comply with the restrictions under the SNE Trawl and Gillnet Exemption areas for the NE skate fisheries at §§ 648.80(b)(5)(i)(B) and 648.80(b)(6)(i)(B).

(gg) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid Federal permit to do any of the following:

(1) Retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit specified at § 648.2.

(2) Retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

■ 12. In § 648.80, paragraphs (b)(5)(i)(C) and (b)(6)(i)(D) are added and paragraphs (b)(5) introductory text, (b)(5)(i)(A), (b)(6) introductory text, (b)(6)(i)(A), and (h)(2)(i)(8) are revised to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(b) * * *

(5) *SNE Monkfish and Skate Trawl Exemption Area.* Unless otherwise required or prohibited by monkfish or skate regulations under this part, a vessel may fish with trawl gear in the SNE Monkfish and Skate Trawl Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(5)(i) of this section and the monkfish and skate regulations, as applicable under this part. The SNE Monkfish and Skate Trawl Fishery Exemption Area is defined as the area bounded on the north by a line extending eastward along 40°10' N. lat., and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) * * *

(A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

* * * * *

(C) A vessel not operating under a multispecies DAS may fish for, possess on board, or land skates, provided:

(1) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322; or

(2) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(3) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at § 648.80(b)(3).

* * * * *

(6) *SNE Monkfish and Skate Gillnet Exemption Area.* Unless otherwise required by monkfish regulations under this part, a vessel may fish with gillnet gear in the SNE Monkfish and Skate Gillnet Fishery Exemption Area when not operating under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (b)(6)(i) of this section, the monkfish regulations, as applicable under §§ 648.91 through 648.94, and the skate regulations, as applicable under §§ 648.4 and 648.322. The SNE Monkfish and Skate Gillnet Fishery Exemption Area is defined by a line running from the Massachusetts shoreline at 41°35' N. lat. and 70°00' W. long., south to its intersection with the outer boundary of the EEZ, southwesterly along the outer boundary of the EEZ, and bounded on the west by the western boundary of the SNE Exemption Area as defined in paragraph (b)(10)(ii) of this section.

(i) * * *

(A) A vessel fishing under this exemption may only fish for, possess on board, or land monkfish and incidentally caught species up to the amounts specified in paragraph (b)(3) of this section.

* * * * *

(D) A vessel not operating under a NE multispecies DAS may fish for, possess on board, or land skates, provided:

(*1*) The vessel is called into the monkfish DAS program (§ 648.92) and complies with the skate possession limit restrictions at § 648.322; or

(*2*) The vessel has an LOA on board to fish for skates as bait only, and complies with the requirements specified at § 648.322(b); or

(*3*) The vessel possesses and/or lands skates or skate parts in an amount not to exceed 10 percent by weight of all other species on board as specified at § 648.80(b)(3).

* * * * *

(h) * * *

(2) * * *

(i) * * *

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small-mesh species specified under paragraphs (a)(5)(i), (a)(9)(i), (b)(3), and (c)(4) of this section when fishing in the areas specified under paragraphs (a)(5), (a)(9), (b)(10), and (c)(5) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters and permitted to fish for skates may also possess and land skates in amounts not to exceed 10 percent by weight of all other species on board.

■ 13. Subpart O is added to read as follows:

Subpart O—Management Measures for the NE Skate Complex Fisheries

Sec.

648.320 Skate FMP review and monitoring.
648.321 Framework adjustment process.
648.322 Skate possession and landing restrictions.

Subpart O—Management Measures for the NE Skate Complex Fisheries

§ 648.320 Skate FMP review and monitoring.

(a) *Annual review.* The Council, its Skate Plan Development Team (), and its Skate Advisory Panel shall monitor the status of the fishery and the skate resources following implementation of the Skate FMP.

(1) Starting 1 year after implementation of the Skate FMP, the Skate PDT shall meet at least annually to review the status of the species in the skate complex. At a minimum, this review shall include annual updates to survey indices and a re-evaluation of stock status based on the updated

survey indices and the FMP's overfishing.

(2) If new and/or additional information becomes available, the Skate PDT shall consider it during this annual review. Based on this review, the shall provide guidance to the Skate Committee and the Council regarding the need to adjust measures in the Skate FMP to better achieve the FMP's objectives. Any suggested revisions to management measures may be implemented through the framework process specified in § 648.321, or through an amendment to the FMP.

(3) For overfished skate species, the Skate PDT and the Council will monitor the trawl survey index as a proxy for stock biomass. As long as the 3–year average of the appropriate weight per tow increases above the average for the previous 3 years, it is assumed that the stock is rebuilding to target levels. If the 3–year average of the appropriate survey mean weight per tow declines below the average for the previous 3 years, then the Council is required to take management action to ensure that stock rebuilding will continue to target levels.

(b) *Biennial review.* The Skate shall prepare a biennial Stock Assessment and Fishery Evaluation (SAFE) Report for the NE skate. The SAFE shall be the primary vehicle for the presentation of all updated biological and socio-economic information regarding the NE skate complex and its associated fisheries. The SAFE report shall provide source data for any adjustments to the management measures that may be needed to continue to meet the goals and objectives of the FMP.

(c) *Baseline review*—(1) *Baseline review process.* If the Council initiates an action in another FMP that may make less restrictive one or more of the baseline measures described in paragraph (c)(2) of this section and as identified in the Skate FMP, or that may change one or more of the baseline measures such that the change is likely to have an effect on the overall mortality for a species of skate subject to a formal rebuilding program, the Skate PDT shall take the following action prior to the Council's final decision on the initiating action:

(i) Evaluate the potential impacts of the proposed changes on rebuilding skate populations and overall mortality for the skate species subject to a formal rebuilding program, and develop, if the action would be inconsistent with the rebuilding plans, management measures (or modifications to the proposed action) to mitigate the impacts of the changes to the baseline measure(s) on rebuilding skates.

(ii) If the Skate PDT recommends management measures to mitigate impacts, the Council shall include in the initiating action management measures to offset the changes to the baseline measures. The management measures recommended by the Council may be one or more of the measures recommended by the Skate PDT, or other suitable measures developed by the Council.

(iii) If the Council fails to include in the initiating action management measures to offset the changes to the baseline measures when the Skate PDT recommends action, and cannot justify this lack of action, the Regional Administrator may implement one or more of the measures recommended by the Skate PDT through rulemaking consistent with the Administrative Procedure Act.

(2) *Baseline measures.* The baseline review process, as described in paragraph (c)(1) of this section, is initiated by changes to any of the following management measures:

(i) NE Multispecies year-round closed areas (§ 648.81);

(ii) NE Multispecies DAS restrictions (§ 648.82);

(iii) Gillnet gear restrictions (§ 648.82(k));

(iv) Lobster restricted gear areas (§ 697.23);

(v) Gear restrictions for small mesh fisheries (§ 648.80(a)(5), (a)(9), and (a)(15));

(vi) Monkfish DAS restrictions for Monkfish-Only permit holders (§ 648.92); or

(vii) Scallop DAS restrictions (§ 648.53).

§ 648.321 Framework adjustment process.

(a) *Adjustment process.* To implement a framework adjustment for the Skate FMP, the Council shall develop and analyze proposed actions over the span of at least two Council meetings (the initial meeting agenda must include notification of the impending proposal for a framework adjustment) and provide advance public notice of the availability of both the proposals and the analyses. Opportunity to provide written and oral comments shall be provided throughout the process before the Council submits its recommendations to the Regional Administrator.

(1) *Council review and analyses.* In response to the annual review, or at any other time, the Council may initiate action to add or adjust management measures if it finds that action is necessary to meet or be consistent with the goals and objectives of the Skate FMP. After a framework action has been initiated, the Council will develop and analyze appropriate management actions within the scope of measures specified at § 648.321(b). The Council will publish notice of its intent to take action and provide the public with any relevant analyses and opportunity to comment on any possible actions. Documentation and analyses for the framework adjustment shall be available at least 1 week before the final meeting.

(2) *Council recommendation.* After developing management actions and receiving public testimony, the Council may make a recommendation to the Regional Administrator. The Council's recommendation shall include supporting rationale, an analysis of impacts required under paragraph (a)(1) of this section and a recommendation to the Regional Administrator on whether to issue the management measures as a final rule. If the Council recommends that the management measures should be issued directly as a final rule, the Council shall consider at least the following factors and provide support and analysis for each factor considered:

(i) Whether the availability of data on which the recommended management measures are based allows for adequate time to publish a proposed rule, and whether regulations have to be in place for an entire harvest/fishing season;

(ii) Whether there has been adequate notice and opportunity for participation by the public and members of the affected industry in the development of the Council's recommended management measures;

(iii) Whether there is an immediate need to protect the resource or to impose management measures to resolve gear conflicts; and

(iv) Whether there will be a continuing evaluation of management measures adopted following their implementation as a final rule.

(3) If the Regional Administrator concurs with the Council's recommended management measures, they shall be published in the **Federal Register**. If the Council's recommendation is first published as a proposed rule and the Regional Administrator concurs with the Council's recommendation after receiving additional public comment, the measures shall then be published as a final rule in the **Federal Register**.

(4) If the Regional Administrator approves the Council's recommendations, the Secretary may, for good cause found under the standard of the Administrative Procedure Act, waive the requirement for a proposed rule and opportunity for public comment in the **Federal Register**. The Secretary, in so doing, shall publish

only the final rule. Submission of recommendations does not preclude the Secretary from deciding to provide additional opportunity for prior notice and comment in the **Federal Register**.

(5) The Regional Administrator may approve, disapprove, or partially approve the Council's recommendation. If the Regional Administrator does not approve the Council's specific recommendation, the Regional Administrator must notify the Council in writing of the reasons for the action prior to the first Council meeting following publication of such decision.

(b) *Possible framework adjustment measures.* Measures that may be changed or implemented through framework action, provided that any corresponding management adjustments can also be implemented through a framework adjustment, include:

(1) Skate permitting and reporting;

(2) Skate overfishing definitions and related targets and thresholds;

(3) Prohibitions on possession and/or landing of individual skate species;

(4) Skate possession;

(5) Skate closed areas (and consideration of exempted gears and fisheries);

(6) Seasonal skate fishery restrictions and specifications;

(7) Target TACs for individual skate species;

(8) Hard TACs/quotas for skates, including species-specific quotas, fishery quotas, and/or quotas for non-directed fisheries;

(9) Establishing a mechanism for TAC set-asides to mitigate , conduct scientific research, or for other reasons;

(10) Onboard observer requirements;

(11) Gear modifications, requirements, restrictions, and/or prohibitions;

(12) Minimum and/or maximum sizes for skates;

(13) Adjustments to exemption area requirements, area coordinates and/or management lines established by the FMP;

(14) Measures to address protected species issues, if necessary;

(15) Description and identification of EFH;

(16) Description and identification of habitat areas of particular concern;

(17) Measures to protect EFH;

(18) Adjustments and or/resetting of the "baseline" of management measures in other, described in § 648.320(c);

(19) OY and/or MSY specifications; and

(20) Any other measures contained in the FMP.

(c) Emergency action. Nothing in this section is meant to derogate from the authority of the Secretary to take emergency action under section 305(c) of the Magnuson-Stevens Act.

§ 648.322 Skate possession and landing restrictions.

(a) *Skate wing possession and landing limit.* A vessel or operator of a vessel that has been issued a valid Federal skate permit under this part, provided the vessel fishes under an Atlantic sea scallop, NE multispecies, or monkfish DAS as specified at §§ 648.53, 648.82, and 648.92, respectively, unless otherwise exempted under paragraph (b) of this section, may fish for, possess, and/or land up to the allowable daily and per trip limits specified as follows:

(1) Possess up to 20,000 lb (9,072 kg) of skate wings (45,400 lb (20,593 kg) whole weight) per trip of greater than 24 hours in duration; or

(2) Land up to 10,000 lb (4,536 kg) of skate wings (22,700 lb (10,296 kg) whole weight) per trip of 24 hours or less in duration.

(b) *Bait Letter of Authorization (LOA).* A skate vessel owner or operator under this part may request and receive from the Regional Administrator an exemption from the skate wing possession limit restrictions, provided that the following requirements and conditions are met:

(1) The vessel owner or operator obtains an LOA. LOAs are available upon request from the Regional Administrator.

(2) The vessel owner/operator possesses and/or lands only whole skates less than 23 inches (58.42 cm) total length.

(3) The vessel owner or operator fishes for, possesses, or lands skates only for use as bait.

(4) Vessels that fish for, possess, and/or land any combination of skate wings and whole skates less than 23 inches (58.42 cm) total length must comply with the possession limit restrictions under paragraph (a) of this section for all skates or skate parts on board.

(5) Any vessel owner/operator meets the requirements at § 648.13(h).

(6) The vessel owner or operator possesses and lands skates in compliance with this subpart for a minimum of 1 month.

(c) *Prohibitions on possession of skates.* All vessels fishing in the EEZ portion of the Skate Management Unit are subject to the following prohibitions:

(1) A vessel may not retain, possess, or land barndoor or thorny skates taken in or from the EEZ portion of the Skate Management Unit.(2) A vessel may not retain, possess, or land smooth skates taken in or from the GOM RMA described at § 648.80(a)(1)(i).

[FR Doc. 03–21205 Filed 8–18–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Injectable or Implantable Dosage Form New Animal Drugs; Estradiol Benzoate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two new animal drug applications (NADAs) filed by PR Pharmaceuticals, Inc. The NADAs provide for subcutaneous injection, in the ear only, of a suspension implant of estradiol benzoate microspheres for increased rate of weight gain in suckling beef calves, and for increased rate of weight gain and improved feed efficiency in steers and heifers fed in confinement for slaughter.

DATES: This rule is effective August 19, 2003.

FOR FURTHER INFORMATION CONTACT: Eric S. Dubbin, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0232, e-mail: *edubbin@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: PR Pharmaceuticals, Inc., 1716 Heath Pkwy., Fort Collins, CO 80524, filed NADA 141–040 that provides for use of CELERIN (estradiol benzoate), microspheres for constitution into a suspension, by subcutaneous injection in the ear only for increased rate of weight gain and improved feed efficiency in steers and heifers fed in confinement for slaughter. PR Pharmaceuticals, Inc., also filed NADA 141–041 that provides for use of CELERIN C (estradiol benzoate), also microspheres for constitution, by subcutaneous injection in the ear only for increased rate of weight gain in suckling beef calves. The NADAs are approved as of June 25, 2003, and the regulations are amended in 21 CFR part 522 by adding new § 522.841 to reflect the approvals. The basis of approval is discussed in the freedom of information summaries.

In addition, PR Pharmaceuticals, Inc., has not been previously listed in the animal drug regulations as a sponsor of an approved application. At this time, 21 CFR 510.600(c) is being amended to add entries for the firm.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii),

summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(ii)), these approvals qualify for 3 years of marketing exclusivity beginning June 25, 2003.

The agency has determined under 21 CFR 25.33(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding an entry for "PR Pharmaceuticals, Inc." and in the table in paragraph (c)(2) by numerically adding an entry for "067210" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * * * *	
PR Pharmaceuticals, Inc., 1716 Heath Pkwy., Fort Collins, CO 80524.	067210
* * * * *	

(2) * * *

Drug labeler code	Firm name and address
* * * * *	
067210	PR Pharmaceuticals, Inc., 1716 Heath Pkwy., Fort Collins, CO 80524.
* * * * *	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 4. Section 522.841 is added to read as follows:

§ 522.841 Estradiol benzoate.

(a) *Specifications.* The product consists of a vial of estradiol benzoate microspheres and a vial of diluent.

(1) Each milliliter (mL) of constituted suspension contains 10 milligrams (mg) estradiol benzoate.

(2) Each mL of constituted suspension contains 20 mg estradiol benzoate.

(b) *Sponsor.* See No. 067210 in § 510.600(c) of this chapter.

(c) *Tolerances.* See § 556.240 of this chapter.

(d) *Conditions of use.* It is used by subcutaneous injection as follows:

(1) *Suckling beef calves*—(i) *Amount.* 10 mg; 1 mL of the product described in paragraph (a)(1) of this section.

(ii) *Indications for use.* For increased rate of weight gain.

(iii) *Limitations.* For subcutaneous injection in the ear only. Do not use in calves intended for reproduction or calves less than 30 days old. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(2) *Steers fed in confinement for slaughter*—(i) *Amount*—(A) 20 mg; 1 mL of the product described in paragraph (a)(2) of this section for use in paragraph (d)(2)(ii)(A) of this section.

(B) 10 mg; 0.5 mL of the product described 1n paragraph (a)(2) of this section for use in paragraph (d)(2)(ii)(B) of this section.

(ii) *Indications for use*—(A) For improved feed efficiency.

(B) For increased rate of weight gain.

(iii) *Limitations.* For subcutaneous injection in the ear only. The use of 20 mg (1 mL) in steers does not provide additional rate of gain improvement over 10 mg (0.5 mL). Do not use in calves intended for reproduction or calves less than 30 days old. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

(3) *Heifers fed in confinement for slaughter*—(i) *Amount.* One mL (20 mg) of product described in paragraph (a)(2) of this section.

(ii) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

(iii) *Limitations.* For subcutaneous injection in the ear only. Do not use in calves intended for reproduction or calves less than 30 days old. A withdrawal period has not been established for this product in preruminating calves. Do not use in calves to be processed for veal.

Dated: July 25, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–21113 Filed 8–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–258]

RIN 1625–AE11

Regulated Navigation Area; 2003 Gravity Games, Cleveland Harbor, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard will establish a temporary Regulated Navigation Area (RNA) during the 2003 Gravity Games in the Port of Cleveland, Ohio. This regulation is necessary to manage vessel traffic in a portion of Cleveland Harbor. This regulation is intended to restrict vessel traffic from a portion of Lake Erie.

DATES: This rule is effective from 12 p.m. on Saturday, September 6, 2003 until 12 p.m. on Monday, September 15, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD09–03–258 and are available for inspection or copying at Coast Guard MSO Cleveland

between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Allen Turner, Chief, Port Operations Department, Coast Guard MSO Cleveland at (216) 937–0128.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

During the 2003 Gravity Games, the Wakeboard Competition will take place in Cleveland Harbor north of Voinovich Park. A regulated navigation area (RNA) will be established inside Cleveland's break wall to protect competitors and course obstacles (jumps, rails, etc.) from excessive speed and wakes, and to prevent interference with the competition.

Discussion of Rule

The RNA will be established from 12 p.m. on Saturday, September 6, 2003 until 12 p.m. on Monday, September 15, 2003. The RNA will encompass Cleveland Harbor, between Dock 28 of Cleveland Port Authority and the western edge of Burke Lake Front Airport, to include the Rock and Roll Museum Inner Harbor. No vessel shall exceed 5 mph nor produce a wake within the RNA. Any vessel within the RNA shall not pass within 50 feet of a moored obstacle. Any vessel within the RNA shall not enter the Rock and Roll Museum inner harbor. Any vessel within the RNA must adhere to the direction of the Patrol Commander or other official patrol craft. No vessel shall transit the RNA during the Wakeboard Competition without permission from the Patrol Commander.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DHS is unnecessary.

This determination was based on the actual location of the RNA within the waterways, since vessels can transit north of the harbor break wall to reach the Main Entrance Channel or easternmost entrance channel. Vessels will also be allowed to transit through the RNA with permission from the Patrol Commander.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of the RNA.

This RNA would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic can safely pass north of the break wall, outside the RNA, during the competitions. In cases where recreational boat traffic congestion is greater than expected and consequently obstructs shipping channels, commercial traffic may be allowed to pass through the RNA under Coast Guard escort with the permission of the Patrol Commander. Before the effective period, the Coast Guard will issue maritime advisories to users who might be impacted through notification in the **Federal Register**, the Ninth Coast Guard District Local Notice to Mariners, and through Marine Information Broadcasts. Additionally, the Coast Guard has not received any reports from small entities negatively affected during previous similar events.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Cleveland (*see* **ADDRESSES**).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule under Commandant Instruction M16475.1C, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded under Figure 2–1, paragraph 35(a) of the Instruction, from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add temporary § 165.T09–258 to read as follows:

§ 165.T09–258 Regulated Navigation Area; 2003 Gravity Games, Cleveland, Ohio.

(a) *Regulated navigation area.* All waters of Cleveland Harbor, including the Inner Harbor, encompassed by a line starting at 41°30′49″ N, 081°41′37″ W (northwest corner of Burke Lakefront Airport); then northwest to 41°31′02″ N, 081°41′49″ W; then southwesterly following the break wall to 41°30′41″ N, 081°42′26″ W; then southeasterly to 41°30′27″ N, 081°42′13″ W (extending directly across the harbor from the northwestern corner of Dock 28 of the Cleveland Port Authority to the break wall); then following the contours of the waterfront back to the point of origin including all portions of the Rock and Roll Museum inner harbor. These coordinates are based upon North American Datum 1983 (NAD 83).

(b) *Effective period.* This section will be in effect from 12 p.m. EST on Saturday, September 6, 2003 through 12 p.m. EST on Monday, September 15, 2003.

(c) *Special regulations.* (1) Vessels within the regulated navigation area (RNA) shall not exceed 5 miles per hour or shall proceed at no-wake speed, which ever is slower; and maintain headway conditions permitting.

(2) Vessels within the RNA shall not pass within 50 feet of a moored obstacle.

(3) Vessels within the RNA shall not enter the Rock and Roll Museum inner harbor.

(4) Vessels within the RNA must adhere to the direction of the Patrol Commander or other official patrol craft.

(5) No vessel shall transit the RNA during the Wakeboard Competition without permission from the Patrol Commander.

(6) Permission to deviate from the above rules must be obtained from the Captain of the Port or the Patrol Commander via VHF/FM radio, Channel 6 or by telephone at (216) 937–0111.

Dated: August 8, 2003.

Ronald F. Silva,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 03–21086 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 124–4079a; FRL–7545–4]

Approval and Promulgation of State Air Quality Plans for Designated Facilities and Pollutants, Commonwealth of Pennsylvania; Withdrawal of Direct Final Rule; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to our receipt of adverse written public comments, EPA is withdrawing the direct final rule to approve Pennsylvania's section 111(d) plan for the Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills. In the direct final rule published on June 24, 2003 (68 FR 37421), EPA stated that if we received adverse written public comment by July 24, 2003, the rule would be withdrawn and would not take effect. EPA subsequently received a letter of adverse comments. EPA will address the comments received in a subsequent final action based upon the proposed action also published on June 24, 2003 (68 FR 37449). EPA will not institute a second comment period on this action.

DATE: The Direct final rule is withdrawn as of August 19, 2003.

FOR FURTHER INFORMATION CONTACT: James B. Topsale, via mail at: Air Quality Analysis Branch, Mail Code 3AP22, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; or via telephone at: (215) 814–2190; or via e-mail at: *topsale.jim@epa.gov.*

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Aluminum, Fertilizers, Fluoride, Intergovernmental relations, Paper and paper products industry, Phosphate, Reporting and recordkeeping requirements, Sulfur oxides, Sulfur acid plants, Waste treatment and disposal.

Accordingly, the addition of §§ 62.9635, 62.9636, and 62.9637 is withdrawn as of August 19, 2003.

Dated: August 11, 2003.

Judith Katz,

Acting Regional Administrator, Region III.

[FR Doc. 03–21053 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45, FCC 03–170]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: In this document, the Commission denies the petitions for reconsideration of the Fourth Order on Reconsideration filed by North Dakota Public Service Commission, South Dakota Public Utilities Commission and Washington Utilities and Transportation Commission. Petitioners sought to redefine the definition of voice grade access to the public switched telephone network (PSTN) as 300 to 3,500 Hertz.

FOR FURTHER INFORMATION CONTACT: Elizabeth Yockus, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration*, 67 FR 41862 (6/20/02) in CC Docket No. 96–45 released on July 14, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554.

I. Introduction

The Commission found that in the *Universal Service First Report and Order*, 67 FR 41862 (6/20/02), voice grade access to the PSTN should occur within the frequency range of 500 Hertz and 4,000 Hertz. In the *Fourth Order on Reconsideration*, 67 FR 70702 (November 26, 2002), the Commission reconsidered this definition because it found it would require ETCs to comply with a voice grade access standard more exacting than current industry standards. The Commission redefined the minimum bandwidth for voice grade access as 300 to 3,000 Hertz.

II. Discussion

1. The Commission denies the petitions for reconsideration of the *Fourth Order on Reconsideration* filed by North Dakota Public Service Commission, South Dakota Public Utilities Commission and Washington Utilities and Transportation Commission. As noted in the companion order released on July 14, 2003, in this docket, the Federal-State Joint Board on Universal Service expressly sought comment on this issue in this proceeding and recommended that the Commission not modify its standard for voice grade access. Moreover, no commenter in this proceeding submitted arguments in favor of modifying this definition. Accordingly, we retain the existing definition of voice grade access to the PSTN and deny the petitions for reconsideration of the *Fourth Order on Reconsideration*.

III. Ordering Clauses

2. Pursuant to the authority contained in sections 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, this order on reconsideration is adopted.

3. Pursuant to the authority contained in section 405 of the Communications Act of 1934, as amended, and § 1.429 of the Commission's rules, the petitions for reconsideration of the *Fourth Order on Reconsideration* filed by the North Dakota Public Service Commission, South Dakota Public Utilities Commission, and the Washington Utilities and Transportation Commission are denied.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21164 Filed 8–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45, FCC 03–170]

Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts the Federal-State Joint Board on Universal Service (Joint Board) recommendation to retain the existing list of services supported by federal universal service. The Commission agrees with the Joint Board that, with the possible exception of equal access, no new service satisfies the statutory criteria contained in section 254(c) of the Communications Act of 1934, as amended ("Act") or should be added to the list of core services.

DATES: Effective September 18, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Yockus, Attorney, Telecommunications Access Policy Division, Wireline Competition Bureau, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order and Order on Reconsideration in CC Docket No. 96–45 released on July 14, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. The Commission adopts the Federal-State Joint Board on Universal Service (Joint Board) recommendation to retain the existing list of services supported by federal universal service. The Commission agrees with the Joint Board that, with the possible exception of equal access, no new service satisfies the statutory criteria contained in section 254(c) of the Communications Act of 1934, as amended ("Act") or should be added to the list of core services. The Joint Board was unable to reach agreement on whether equal access should be added to the list of supported services and made no recommendation regarding this service. Because critical arguments in favor of adding equal access are related to the eligible telecommunications carrier (ETC) process and calculation of support for competitive ETCs, both of which are within the scope of the *Portability Proceeding*, 68 FR 10429 (March 5, 2003), the Commission makes no decision regarding equal access at this time.

II. Discussion

2. The Commission adopts the Joint Board's recommendation to retain the existing list of services supported by universal service. The Commission also agrees with the Joint Board's general conclusion that no new service satisfies the statutory criteria contained in

section 254(c) and that the public interest would not be served by expanding the list of supported services at this time. The Commission agrees with the Joint Board that the current list of supported services strikes the right balance between ensuring the availability of fundamental telecommunications services to all Americans and maintaining a sustainable universal service fund. In its *Recommended Decision*, the Joint Board discussed several specific services and proposals—advanced or high-speed services, unlimited local usage, soft dial tone or warm line services, prepaid calling plans, payphone lines, Braille TTY and two line voice carry over, N11 codes, toll or expanded area service, modifying voice grade access bandwidth, transport costs, rural wireless ETC category, and technical and service quality. The Joint Board was unable to reach agreement, however, on whether to recommend including equal access in the list of core services. The Commission makes no decision regarding equal access at this time and will address it in the context of the *Portability Proceeding*, 68 FR 10429 (March 5, 2003).

A. Advanced or High-Speed Services

3. Consistent with the Joint Board's *Recommended Decision*, the Commission declines to expand the definition of supported services to include advanced or high-speed services at this time. Although the Commission agrees with commenters, such as the National Telecommunications Cooperative (NTCA) and Valor Communications, that broadband services are becoming increasingly important for consumers in all regions of the nation, we also agree with the Joint Board and the vast majority of commenters that high-speed and advanced services currently do not meet the Act's criteria for inclusion on the list of supported services.

4. Like the Joint Board, the Commission recognizes that high-speed and advanced services may enable subscribers to access Internet resources used for educational, public health, or public safety purposes. At this time, however, the Commission does not find that advanced or high-speed services are essential to reaching these resources. The Commission agrees with the Joint Board and most commenters that although advanced and high speed services are useful for educational, public health and public safety purposes, they are not essential for these purposes as set out by section 254(c).

5. Although telecommunications carriers increasingly are deploying infrastructure capable of providing advanced and high-speed services, the Commission agrees with the Joint Board and commenters that advanced services are not subscribed to by a substantial majority of residential consumers. In fact, the Commission's own data shows that as of December 31, 2002, there were approximately 17.4 million high-speed lines serving residential and small business subscribers, which represents 16 percent of all U.S. households. Additionally, according to another study, only 56.5 percent of all households as of September 2001 had computers and could even benefit from advanced service offerings. Furthermore, the Florida Public Service Commission (PSC) states that there were 18.6 million broadband subscribers at the end of 2002 and, assuming all of these subscribers are residential, this would represent only 17 percent of American households.

6. In addition, comments in response to the *Notice of Proposed Rulemaking*, 68 FR 12020 (March 13, 2003), like those in response to the Joint Board's *Public Notice*, 66 FR 46461 (September 5, 2001), suggest that adding advanced or high-speed services to the definition of supported services would be contrary to the public interest due to the high cost of requiring the deployment of such services. If advanced or high-speed services were added to the list of supported services, it could drastically increase the financial burden placed on carriers and, ultimately, consumers because all eligible telecommunications carriers would be required to offer such services in order to receive support. The Commission agrees with the Joint Board that the public interest would not be served by substantially increasing the support burden by expanding the definition of universal service to include these services.

7. Moreover, the Commission agrees with the Joint Board that adding advanced or high-speed services to the list could jeopardize support currently provided to some carriers. While many small rural carriers have made significant progress in deploying broadband infrastructure, they do not yet offer advanced or high speed services ubiquitously throughout their service area. This would reduce the number of providers eligible for universal service support and might reduce consumer choice in rural and high-cost areas.

8. Although the Commission concludes that advanced or high-speed services do not satisfy the statutory criteria necessary for inclusion in the definition of supported services at this time, the Commission maintains its commitment to ensuring that appropriate policies are in place to encourage the successful deployment of infrastructure capable of delivering advanced and high-speed services. Indeed, section 254(b) of the Act provides that the Joint Board and the Commission shall base policies for the preservation and advancement of universal service on several principles, including the ability to access advanced telecommunications and information services in all regions of the nation. Accordingly, the Commission continues to support the Commission's prior conclusion that "our universal service policies should not inadvertently create barriers to the provision or access to advanced services, and * * * that our current universal service system does not create such barriers." Thus, even though advanced services are not directly supported by federal universal service, "[Commission] policies do not impede the deployment of modern plant capable of providing access to advanced services." The Commission recognizes that the network is an integrated facility that may be used to provide both supported and non-supported services. The Commission believe that the our policy of not impeding the deployment of plant capable of providing access to advanced or high-speed services is fully consistent with the Congressional goal of ensuring access to advanced telecommunications and information services throughout the nation.

B. Unlimited Local Usage

9. The Commission adopts the Joint Board recommendation that unlimited local usage should not be added to the list of supported services. The Commission agrees with the Joint Board and the vast majority of the commenters that unlimited local usage is not essential to education, public health or public safety. The Commission also agrees with the Joint Board that adding it to the list would not serve the public interest because it could hinder states' ability to require local metered pricing for local service. As the Joint Board noted, states may require or encourage local metered service because it may, for example, encourage subscribership among low-income or low-volume users. Adding a national local usage requirement, however, would preclude this type of experimentation by the states. The Commission agrees with AT&T that states are in a better position to determine whether unlimited local usage offerings are beneficial in particular circumstances. Finally, the Commission note that the Joint Board found the record to be inadequate to determine whether adoption of such a

requirement would provide a competitive advantage to wireline carriers, due to the different cost structures of wireless and wireline technologies. No party provided additional information to address this issue in response to the *Notice of Proposed Rulemaking*. Accordingly, the Commission concurs with the Joint Board's recommendation regarding unlimited local usage.

10. The Commission is not persuaded by comments filed by the National Association of State Utility Consumer Advocates (NASUCA) and the Montana Universal Service Task Force (MUST) that unlimited local usage should be added to the list. NASUCA and MUST assert unlimited local usage should be included in the definition of supported services simply because it is widely available and subscribed to by a majority of residential consumers when offered. They believe that concerns regarding the competitive neutrality of such a requirement should not outweigh the fact that it is provided to many, if not most, residential consumers. Both parties, however, fail to consider all of the statutory criteria. MUST does not consider, much less rebut, the Joint Board's finding that unlimited local usage is not essential to education, public health and public safety. Moreover, both NASUCA and MUST fail to consider that the Joint Board concluded it would preclude state experimentation with calling plans and, therefore, not serve the public interest. Based on our consideration of all of the factors, specifically that it is not essential, that it would not serve the public interest, and that the Commission have no basis to determine whether it is competitively neutral, we find that unlimited local usage should not be added to the list of core services at this time.

C. Soft Dial Tone/Warm Line Service

11. The Commission agrees with the Joint Board that the definition of the services supported by universal service should not be expanded to include soft dial tone/warm line service. Soft dial tone/warm line service enables a consumer without local service to utilize an otherwise disconnected line to contact emergency services and the local exchange carrier's central business office. Such services, however, are not subscribed to by any residential consumers. Additionally, the Commission finds the record does not contain sufficient information to indicate that adding soft dial tone/warm line service to the list of supported services would serve the public interest. In response to the *Notice of Proposed Rulemaking*, no commenter provided estimates of the cost of adding soft dial tone or warm line service to the list of supported services or addressed in detail the implementation and administration of such a requirement.

12. Although the Commission agrees with USCCB *et al.* that soft dial tone/warm line service can improve the ability of certain low-income consumers to reach emergency services, we also agree with the Joint Board that states are in a better position to establish these programs because states maintain closer ties to local public safety organizations. The vast majority of commenters support the Joint Board's recommendation and believe the establishment of soft dial tone or warm line programs would be better left to the individual states. In fact, the New York Department of Public Service stated that a national solution, and the commitment costs that would be incurred, would conflict with its state program and eliminate the flexibility required to meet local needs. Accordingly, we adopt the Joint Board's recommendation that these services not be added to the list of supported services at this time. However, given the importance of such services, we do agree with NASUCA that we should continue to monitor the development of state soft dial tone and warm line programs.

D. Prepaid Calling

13. The Commission agrees with the Joint Board that the services supported by universal service should not be expanded to include prepaid services. In response to the *Notice of Proposed Rulemaking*, USCCB *et al.* proposes to add prepaid services generally to the list of supported services. It argued its proposal—which encompasses wireline and wireless technologies—meets the section 254(c) criteria and is competitively neutral.

14. Based on the record before us, USCCB *et al.*'s proposal does not appear to meet three of the statutory criteria. First, the record does not indicate that a substantial majority of residential consumers subscribe to prepaid services. Although the Commission agree with USCCB *et al.* that consumers receive the same telecommunications functionalities, *i.e.* voice grade access to the public switched network, regardless of when they pay for services, pre- and postpaid services utilize different billing practices. USCCB *et al.* has failed to provide any information regarding the number of consumers who select the prepaid billing option. Second, no party has submitted information in the record regarding the extent to which wireline and wireless carriers have billing systems capable of providing prepaid services, so the record is insufficient to determine whether carriers have deployed prepaid service billing equipment in their networks.

15. Third, the Commission question whether adding prepaid services to the list of supported services would be in the public interest. The record does not contain information about how much it would cost for carriers that do not already have prepaid functionalities to acquire such capabilities. Therefore, it is difficult to balance implementation costs with the potential benefits of increased subscribership. In addition, NASUCA asserts that because the requirement would apply to all ETCs, it would require some carriers that serve areas with high penetration rates to implement billing changes without any significant benefit. Because the record does not indicate whether wireline carriers have systems equipped for prepaid plans, the Commission also are concerned that USCCB *et al.*'s proposal may place wireline carriers at a competitive disadvantage vis-à-vis wireless carriers that may already offer prepaid plans. NASUCA also points out that prepaid pricing plans today are often significantly higher than those for post-paid services, and, therefore, may not be within the financial reach of some consumers. For these reasons, the Commission conclude that prepaid services should not be added to the list of supported services.

E. Payphone Lines

16. The Commission agrees with the Joint Board that payphone lines should not be included in the definition of supported services at this time. Although payphones play an important role in the public communications network, the Commission are persuaded by the Joint Board's finding that payphone lines are not subscribed to by a substantial majority of residential consumers. In addition, the Commission agrees with the Joint Board that the record is insufficient to determine whether adding payphone lines to the list of supported services would serve the public interest. There is no evidence in the record that additional federal support for payphone lines in high cost areas is needed for all payphone lines or would be necessary to ensure the continued availability of particular payphones. Moreover, including payphones in the list of core services could reduce the number of potential competitive providers of the core services because many competitive LECs and CMRS carriers do not offer payphone service throughout their

service areas and would be ineligible for ETC designations. No party filed comments in response to the *Notice of Proposed Rulemaking* in favor of adding payphone lines to the definition of supported services or supplemented the record analyzed by the Joint Board. Therefore, the Commission finds the record is insufficient to support the addition of payphone lines to the list of core services.

F. Braille TTY and Two Line Voice Carry Over

17. The Commission agrees with the Joint Board that the list of core services should not be expanded to include Braille TTYs and two line voice carry over (2LVCO). Braille TTYs are equipment used to print text messages in Braille for people who are deaf-blind, and 2LVCO allows hearing impaired consumers to read text messages and respond verbally to a relay operator. 2LVCO is a service that hearing-impaired consumers provide for themselves by purchasing a special TTY and combining it with a second line and conference calling. No commenter in response to the Commission's *Notice of Proposed Rulemaking* argued in favor of adding either to the list of supported services.

18. Like the Joint Board, the Commission finds that Braille TTYs, which are customer premises equipment, are ineligible for universal service support because section 254(c) expressly limits the definition of universal service to "telecommunications services." Moreover, given the lack of information on the costs of implementing the proposal to make 2LVCO a supported service, the Commission agree with the Joint Board and finds the record insufficient to add this service to the list of supported services at this time. The Commission remains committed to exploring alternative mechanisms to ensure the accessibility of telecommunications services for persons with disabilities.

G. N11 Codes

19. The Commission adopts the Joint Board's recommendation that N11 codes, with the exception of 911 services, do not meet the statutory criteria and, therefore, should not be added to the definition of supported services. N11 codes are abbreviated dialing arrangements of which the first digit may be any digit other than 0 or 1, and the last two digits are both 1. These codes are used to enable callers to complete telephone calls to various services that require the dialing of a seven or ten digit telephone number. In order for consumers to access these services using the N11 code, the telephone network must be pre-programmed to translate the three-digit code into the appropriate seven or ten-digit telephone number to route the call. The Joint Board found that N11 codes are not subscribed to by a substantial majority of residential consumers and are not essential for education, public health, or public safety because consumers may reach the services by dialing the seven or ten digit number. In response to the Commission's *Notice of Proposed Rulemaking*, no commenter argued in favor of adding N11 services to the list of supported services. Therefore, the Commission agree with the Joint Board's recommendation and finds that N11 services should not be added to the list of supported services.

H. Toll or Expanded Area Service

20. The Commission agrees with the Joint Board that the definition of supported services should not be expanded to include toll or expanded area services. The Joint Board found the record insufficient to warrant addition of toll or expanded area services. Specifically, the record failed to identify the extent to which limited local calling areas pose a barrier for certain consumers to reach essential services, the cost of the remedy and what critical services if any should be supported. No commenter argued that these services should be added to the list in response to the Commission's *Notice of Proposed Rulemaking* or supplemented the record analyzed by the Joint Board. Therefore, like the Joint Board, we find the record insufficient to add these services to the list of supported services at this time.

I. Modifying Voice Grade Access Bandwidth

21. The Commission agrees with the Joint Board that the existing definition of voice grade access to the Public Switched Telephone Network (PSTN), which provides for a minimum bandwidth of 300 to 3,000 Hertz, should be retained. Several commenters representing small and rural LECs, in response to the Joint Board *Public Notice*, proposed to modify the definition to 300 to 3,500 Hertz, with the goal of improving dial-up modem speeds in rural areas. However, the record before the Joint Board was insufficient to demonstrate that the proposed modification would actually increase dial-up modem speeds in any areas. No commenter in response to the *Notice of Proposed Rulemaking* argued in favor of this modification or augmented the record on this issue. The Commission are persuaded by the Joint Board's conclusion that carriers should not be required to invest additional funds in mature narrowband technologies, particularly when such access would not be necessarily result in improved dial-up connection speeds. Moreover, because it is unclear, based on the record before us, whether carriers have deployed loops that meet the proposed voice grade bandwidth, the Commission, like the Joint Board, are concerned that redefining the definition of voice grade access in this manner could render existing wireline ETCs ineligible for support and preclude wireless carriers from being designated ETCs. The Commission agrees with the Joint Board that redefining voice grade access in this manner would not serve the public interest.

J. Transport Costs

22. The Commission agrees with the Joint Board that the list of supported services should not be expanded to include transport costs at this time. "Transport costs" refer to two proposals raised in response to the Joint Board's *Public Notice:* first, to modify the definition of "access to interexchange service" to include the use of transport facilities in insular areas and second, to provide universal service funding to IXCs in Alaska for transport costs needed to support 56kbps data transmissions. No commenter in response to the *Notice of Proposed Rulemaking* argued for the addition of transport costs to the list of supported services or supplemented the record analyzed by the Joint Board. Accordingly, the Commission agrees with the Joint Board and finds that the record is inadequate to determine whether there is need for such support and what the cost of providing such support would be. The Commission also agrees with the Joint Board that allowing funding for transport to enable 56 kbps transmissions would be inappropriate given the decision not to expand or modify the definition of voice grade access as described above.

K. Rural Wireless ETC Category

23. The Commission agrees with the Joint Board recommendation that a new rural wireless ETC category should not be created to enable wireless carriers to receive support for the implementation of CALEA and E911 solutions. The Joint Board found that creating different criteria for a subset of ETCs would be contrary to the intent of section 214 and may not be competitively neutral. No commenters in response to the *Notice of Proposed Rulemaking* disagreed with the Joint Board's conclusion. Accordingly, the Commission agrees

with the Joint Board that we should not create a subcategory of ETC for rural wireless carriers.

L. Technical and Service Quality Standards

24. The Commission agrees with the Joint Board and the vast majority of commenters that we should not impose technical or service quality standards as a condition to receive universal service support. The Commission is not persuaded that there is a need to adopt federal technical and service quality standards at this time. In response to the *Notice of Proposed Rulemaking*, no commenter provided specific examples of states that lack jurisdiction over certain carriers or service quality problems that would necessitate a federal standard. Based on the record before us in this proceeding, the Commission finds no reason to supplant the states' role of implementing and enforcing technical and service quality standards.

M. Equal Access

25. The Joint Board was unable to reach agreement on whether equal access should be added to the list of supported services. Consequently, the *Recommended Decision* presented the arguments of the Joint Board members in favor of and opposed to adding equal access to the definition of supported services. Comments received in response to the *Notice of Proposed Rulemaking* were similarly split.

26. Parties in favor of adding equal access argue all ETCs that receive high cost support in a particular area should be required to provide comparable services. Specifically, they argue regulatory parity requires wireless ETCs to provide equal access, because the majority of incumbent LEC/ETCs offer it. Additionally, these parties assert that the current definition of supported services, when combined with the Commission's policies for calculating competitive ETC high-cost support, provides advantages to wireless ETCs. Specifically, they allege wireless ETCs receive a windfall when they receive support based on the incumbent ETC's costs, as these costs include the cost of providing equal access, a service not provided by wireless ETCs. The parties also argue that competition in high-cost areas will be enhanced with equal access requirements for universal service support, and that consumers will benefit. Furthermore, they assert that when considering the totality of the circumstances and the four section 254 criteria for determining what services should be supported, equal access should be added to the list of supported services. Finally, they argue that section 332(c)(8) of the Act does not prevent the Commission from requiring CMRS carriers to provide equal access in order to receive universal service funds. They contend this provision only prevents the Commission from requiring CMRS carriers to provide equal access as a general condition of mobile service.

27. Parties in opposition to adding equal access to the list of supported services assert that the costs of adding equal access to the list of supported services would hinder competitive ETCs from entering or continuing to serve some geographic areas. These parties also claim that the addition to the list of supported services would be inconsistent with the congressional intent of section 332(c)(8) of the Act, and would not further the competitive goals of the Act. Finally, they argue that equal access fails to meet the section 254(c) statutory criteria.

28. Because critical arguments in favor of adding equal access are related to the ETC designation process and the calculation of support for competitive ETCs, both of which are within the scope of the *Portability Proceeding*, the Commission makes no decision regarding equal access at this time. The Commission agrees with commenters like Verizon Wireless and T-Mobile that some of the arguments raised in favor of adding equal access are directly related to the methodology for calculating universal service support provided to competitive ETCs.

Given the scope of the *Portability Proceeding*, the Commission believe that a determination regarding equal access would be premature at this time. For example, if the Commission were to determine that competitive ETCs' support should be based on their own costs, as opposed to incumbents', many of the arguments for adding equal access could be moot. Accordingly, the Commission defers consideration of this issue pending resolution of the *Portability Proceeding*.

29. We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost universal service support in competitive areas could potentially impact, among other things, the support that competitive ETCs may receive in the future. As such, the Commission recognizes that any grant of competitive ETC status pending completion of that proceeding will be subject to whatever rules are established in the future. The Commission intends to proceed as expeditiously as possible to address the important and comprehensive issues that are being raised.

III. Procedural Issues

A. Final Regulatory Flexibility Act Analysis

1. Need for, and Objectives of, the Report and Order

30. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking*. The Commission sought written public comment on the proposals in the *Notice of Proposed Rulemaking*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

31. In this Order, the Commission adopts the Joint Board's recommendations to retain the existing list of services supported by universal service. Accordingly, the Commission do not adopt any changes to our universal service rules or reporting burdens.

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

32. The Commission did not receive any comments in response to the IRFA.

3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

33. The Commission did not adopt or modify any rules in this Order.

4. Description of Reporting, Recordkeeping, and Other Compliance Requirements

34. There are no new or changed reporting requirements adopted in this Order.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternative Considered

35. Because no rules are adopted or modified in this Order, there are no economic impacts created by this Order.

6. Report to Congress

36. The Commission will send a copy of this Order, including the FRFA analysis, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this Order, including this FRFA analysis, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this Order and FRFA analysis (or summaries thereof) also will be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

37. The action contained herein has been analyzed with respect to the

Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

IV. Ordering Clauses

38. Pursuant to the authority contained in sections 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, this order is adopted.

List of Subjects in 47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21163 Filed 8–18–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[Docket No. OST–2003–15945]

RIN 2105–AD32

Establishment of the Chamorro Standard Time Zone

AGENCY: Office of the Secretary (OST), (DOT).

ACTION: Final rule.

SUMMARY: By statute, Congress established the Chamorro standard time zone. Geographically this time zone includes Guam and the Commonwealth of the Northern Mariana Islands. This final rule revises the Department of Transportation's regulations to reference the new time zone.

DATES: This rule is effective on August 19, 2003.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9315.

SUPPLEMENTARY INFORMATION:

Electronic Access

You can view and download this document by going to the web page of the Department's Docket Management System (*http://dms.dot.gov/*). On that page, click on "search." On the next page, type in the last five digits of the docket number shown on the first page of this document. Then click on "search." An electronic copy of this document also may be downloaded by using a computer, modem, and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara/index.html.*

Background

On January 24, 2000, Congress passed the Guam and the Northern Mariana Islands Standard Time Zone Act [Pub. L. 106–564, 114 Stat. 2811], which amended title 15 of the United States Code. The Act established the Chamorro standard time zone for Guam and the Commonwealth of the Northern Mariana Islands. The term Chamorro refers to the culture and people of that area.

This final rule is ministerial in nature and is meant to incorporate the statutory change into the Department's regulations for reader convenience. As such, notice and comment are unnecessary and contrary to the public interest. Further, because this rule does not impose substantive requirements on the public, the Department finds that there is good cause to make this rule effective on the date of publication in the **Federal Register** because it is merely referencing a statutory change that is already in effect.

Regulatory Analysis and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. Similarly, the rule is not significant under the criteria of the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). There are no costs associated with this rule.

B. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999. This final rule does not have a substantial direct effect on States.

C. Indian Tribal Governments

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084 ("Consultation with Indian Tribal Governments"). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13084 do not apply.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The Department of Transportation hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

F. Unfunded Mandates Reform Act

The Department has determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) do not apply to this rulemaking.

G. Environment

We considered the environmental impact of this final rule and have determined that this rule has no environmental implications.

Final Rule

List of Subjects in 49 CFR Part 71

Time zones.

■ For the reasons discussed in the preamble, the Department of Transportation amends 49 CFR part 71 as follows:

PART 71—STANDARD TIME ZONE BOUNDARIES

■ 1. The authority citation for part 71 is revised to read as follows:

Authority: Secs. 1–4, 40 Stat. 450, as amended; sec. 1, 41 Stat. 1446, as amended; secs. 2–7, 80 Stat. 107, as amended; 100 Stat. 764; Act of Mar. 19, 1918, as amended by the Uniform Time Act of 1966 and Pub. L. 97–449, 15 U.S.C. 260–267; Pub. L. 99–359; Pub. L. 106–564, 15 U.S.C. 263, 114 Stat. 2811; 49 CFR 1.59(a), unless otherwise noted.

■ 2. Add § 71.14 to read as follows:

§ 71.14 Chamorro Zone.

The ninth zone, the Chamorro standard time zone, includes the Island of Guam and the Commonwealth of the Northern Mariana Islands.

Issued in Washington, DC on June 24, 2003.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–21222 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 229

[Docket No. FRA–2003–14217; Notice No. 1]

RIN 2130–AB58

Railroad Locomotive Safety Standards: Clarifying Amendments; Headlights and Auxiliary Lights

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This rulemaking action makes a technical clarification to certain locomotive headlight and auxiliary light provisions. The purpose of this modification is to codify FRA's longstanding acceptance of lamps used in locomotive headlights and auxiliary lights. FRA believes that the clarifications being made in this document are consistent with both FRA's intent when issuing the requirements related to locomotive headlights and auxiliary lights and FRA's enforcement policies related to those provisions. FRA also believes that the clarifications contained in this document further FRA's goal of facilitating the use of advanced technologies and enhance FRA's safety enforcement program by recognizing specific types of lamps it considers acceptable for use in headlights and auxiliary lights.

DATES: This interim final rule is effective August 19, 2003; written comments must be received on or before September 18, 2003. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: *Comments:* Any comments or petitions for reconsideration related to Docket No. FRA–2003–14217, may be submitted by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW, Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information. Please see the General Information heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Public Hearing: Due to the extremely limited scope of this interim final rule, FRA does not believe that a public hearing is necessary at this time. However, FRA will consider any request for an opportunity to make an oral presentation that is filed as noted above by the deadline for written comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW, Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Charles L. Bielitz, Mechanical Engineer, FRA Office of Safety, RRS–14, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590 (telephone: 202–493–6314), or Thomas J. Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Stop 10, Washington, DC 20590 (telephone: 202–493–6036).

SUPPLEMENTARY INFORMATION:

Background

Based on new technologies and designs related to the lamps utilized in road locomotive headlights and auxiliary lights over the last decade, FRA believes the federal regulations governing these components need to be modified to be consistent with FRA's intent when it issued those regulations and to incorporate FRA's enforcement policies developed over the intervening years. Currently, there are two types of lamps primarily utilized in locomotive headlight and auxiliary light fixtures. These include a Parabolic Allumination Reflection (PAR)–56, 200-watt, 30-volt lamp (200-watt lamp) and a PAR–56, 350-watt, 75-volt lamp (350-watt lamp).

Prior to the mid-1990s, the primary lamp used in road locomotive headlights throughout the industry was the 200-watt lamp, which produces a mean luminous intensity that is well in excess of 200,000 candela at the center of its beam, with all production samples having a minimum luminous intensity of 200,000 candela. In the early to mid-1990s, with the advent of auxiliary lights, the industry began using the 350-watt lamp in both headlight and auxiliary light fixtures. Controlled testing of auxiliary lights performed for FRA by the Volpe National Transportation Systems Center (Volpe) in 1995 used regular production 350-watt lamps. A single 350-watt lamp tested by the U.S. Coast Guard for the Volpe test, as well as data supplied by the lamp vendor, showed a center beam luminous intensity well in excess of 250,000 candela, but it has since been determined that this data was not representative of typical lamp production. At present, most new locomotives are equipped with the 350-watt lamps in both the headlight and auxiliary light fixture. Due to normal variations in production processes, the vast majority of 350-watt lamps produced since 1994 do not produce 200,000 candela. The current production (2001 through mid-2003) of the 350-watt lamps is centered at approximately 160,000 candela. Although most 350-watt lamps do not meet the 200,000 candela requirements related to headlights and auxiliary lights contained in 49 CFR 229.125(a) and (d), FRA has accepted and will continue to accept their use in both headlight and auxiliary light fixtures for the reasons discussed below. Hence forth, reference to a section or numbered part are to sections and numbered parts in title 49 of the CFR. In order to clarify FRA's continued acceptance of the use of these lamps and to incorporate existing enforcement guidance, FRA is amending the regulatory provisions contained in part 229 to specifically address the use of these types of lamps in both headlight and auxiliary light locations.

Section Analysis

A. Headlights: § 229.125(a)

The regulatory provisions related to locomotive headlights are contained at § 229.125(a) through (c). These requirements were included in the regulations when part 229 was added to the Code of Federal Regulations in 1980.

See 45 FR 21109 (March 31, 1980). Part 229 was added in order to modernize the federal regulations previously contained in part 230 related to all types of locomotives by separating and amending the requirements related to diesel and electric locomotives from those related to steam locomotives. The provisions contained in § 229.125(a)–(c) were intended to be a modified and condensed version of the requirements previously contained in § 230.231 prior to 1980. *See* 44 FR 29618 (May 21, 1979).

In the 1979 Notice of Proposed Rulemaking (NPRM) and the 1980 final rule, FRA explained that the approach contained in § 230.231 for determining intensity was imprecise and unscientific. Section 230.231 used a vague performance standard to describe the intensity which read as follows:

A headlight which shall afford sufficient illumination to enable a person in the cab of such locomotive who possesses the usual visual capacity required of locomotive enginemen, to see in a clear atmosphere, a dark object as large as a man of average size standing erect at a distance of at least 800 feet ahead and in front of such headlight. * * *

See § 230.231 in pre-1980 CFR. In order to make this vague performance standard more precise and scientific, FRA specified that a locomotive headlight must produce a luminous intensity of at least 200,000 candela. *See* 44 FR 29618 and 45 FR 21109. In the preamble to the final rule, FRA stated that the more scientific 200,000-candela standard could be met by the headlights used in the existing locomotive fleet and that the use of the more modern standard should not be viewed as a change in FRA's enforcement approach. *Id.* At the time the final rule was issued, virtually all locomotive headlights were equipped with the 200-watt lamps which are capable of producing in excess of 200,000 candela. Thus, FRA was merely attempting to describe, in scientific terms, the type of lamps being used by the industry in locomotive headlight fixtures at that time.

Subsequent to the issuance of the final rule, FRA developed informal enforcement guidance for its field inspectors related to when a locomotive's headlight should be considered inoperative. The guidance was eventually included in FRA's Motive Power and Equipment (MP&E) Enforcement Manual distributed in July of 1992. *See* MP&E Enforcement Manual at 8–79. This guidance instructed FRA inspectors to consider a locomotive's headlight to be operative when the locomotive is equipped with a sealed two-beam (two-lamp) headlight fixture and only one of the lamps is illuminated. The rationale for this guidance was based on the fact that virtually all locomotives were equipped with a dual-lamp headlight fixture and prior to the early 1990s the lamps used in these fixtures were the 200-watt lamps, each independently capable of producing at least 200,000 candela. Because the regulation only requires the headlight to produce 200,000 candela, FRA determined that it would not consider a dual-lamp headlight inoperative if it is equipped with at least one operative lamp capable of producing 200,000 candela. *Id.*

As noted above, in the early to mid-1990s, the industry began widespread use of the 350-watt lamps in both headlight and auxiliary light fixtures. Due to normal variations in production processes, the vast majority of 350-watt lamps produced since 1994 do not produce 200,000 candela. The current production of the 350-watt lamps is centered at approximately 160,000 candela. Furthermore, data provided to FRA do not definitively establish that an individual 350-watt lamp meets the underlying performance standard, discussed above, on which the 200,000-candela requirement was based. Moreover, FRA is not comfortable applying an old and somewhat subjective performance standard in place of the more precise and scientific standard that was adopted several decades ago. Therefore, because most 350-watt lamps do not individually produce the luminous intensity specified in the existing regulation, FRA believes it is necessary to clarify its existing enforcement guidance and specifically modify the regulation to reflect its position regarding the use of 350-watt lamps in locomotive headlight fixtures.

Consistent with FRA's existing enforcement guidance related to the headlight provisions contained in § 229.125(a), FRA will continue to interpret the term "headlight," as used in this provision, to mean the entire headlight fixture whether it is comprised of either one or more lamps. Thus, the requirement contained in this provision to produce 200,000 candela is to be determined by the luminous intensity of the entire headlight fixture. Although a single 350-watt lamp, as described above, generally does not produce 200,000 candela, data clearly establish that the beams of two 350-watt lamps in a dual-lamp headlight easily produce well in excess of 200,000 candela once the two beams overlap sufficiently, which occurs within a few feet in front of the fixture.

In light of the above, FRA will consider a locomotive with a dual-lamp headlight fixture that is equipped with two PAR–56, 350-watt, 75-volt lamps to meet the 200,000-candela requirement contained in § 229.125(a), provided both lamps are operative. If either lamp in such a configuration becomes inoperative, the locomotive is to be handled in accordance with the movement-for-repair provisions contained in § 229.9. Similarly, FRA will continue to consider a headlight fixture equipped with a single operative PAR–56, 200-watt, 30-volt lamp to meet the candela requirements of § 229.125(a) as such lamps are capable of individually producing 200,000 candela. FRA is amending the regulatory language contained in § 229.125(a) to specifically include the interpretation and clarification discussed above. It should be noted that FRA expects railroads to have some method or procedure in place which notifies the operating crew and mechanical employees of the type of lamps being utilized in the locomotive headlight fixture in order that the locomotive can be properly handled for repairs, if necessary.

B. Auxiliary Lights: § 229.125(d)(2)

The regulatory provisions related to locomotive auxiliary lights are found at § 229.125(d) through (h) and § 229.133. These requirements were added to the regulations between 1993 and 1996 and were established through a rulemaking that began with a 1993 interim final rule, containing interim provision related to auxiliary lights, and then proceeded to a 1995 NPRM proposing many of the auxiliary light provisions that were ultimately issued in the 1996 final rule. *See* 58 FR 6899 (February 3, 1993), 60 FR 44457 (August 28, 1995), and 61 FR 8881 (March 6, 1996). At this time, the provisions relating to auxiliary lights contained in § 229.133 are for the most part superseded by similar provisions contained at § 229.125, except to the extent that certain types of auxiliary lights were "super-grandfathered" as meeting the requirements of § 229.125. *See* 61 FR 8885–86 and § 229.133(c). Although these documents require that each prescribed auxiliary light produce 200,000 candela, none of them directly discusses FRA's rationale for including the specified luminous intensity. It can be assumed that the 200,000-candela requirement was based on the headlight provision discussed above. Moreover, at the time the auxiliary light provisions were added to the regulations, both the

200-watt and 350-watt lamps were believed to be capable of producing 200,000 candela. Consequently, when FRA incorporated the 200,000-candela requirement into the auxiliary light provisions, it is clear that FRA was merely attempting to describe the locomotive lamps being used by the industry at that time.

As part of the auxiliary light rulemaking, FRA's Office of Research and Development, through the Volpe National Transportation Systems Center (Volpe), studied the impact of auxiliary lights as alerting devices to improve locomotive conspicuity. The final report on this study was issued in July of 1995 under Report Number DOT/FRA/ORD–95–13 (Volpe report). The report is part of FRA Docket Number RSGC–2 and is available online at: *www.fra.dot.gov/rdv30/reports/index.htm*. As part of this study, FRA evaluated various lighting systems. Four alerting light systems were evaluated for compliance with FRA's interim advisory standards, for costs, and for reliability. Field tests were also conducted on these lighting systems to determine their ability to increase an approaching train's visibility. These four alerting light systems included: standard locomotive headlights, crossing, ditch, and strobe lights. FRA utilized the data developed in this study as the basis for the auxiliary light provisions currently contained in § 229.125(d) through (h). *See* 60 FR 44457; and 61 FR 8881.

Based on FRA's review of the Volpe Report and its supporting data and in light of data subsequently provided by General Electric Company (GE), FRA believes that use of either a 350-watt lamp or a 200-watt lamp in locomotive auxiliary lights meets FRA's intent when issuing the regulations pertaining to such fixtures. A review of the Volpe Report establishes that the lamps tested in the headlight, ditch light, and crossing light systems were all PAR–56, 350-watt, 75-volt lamps. *See* Volpe Report at Appendix D–4. Although the report notes that two 350-watt lamps sampled for luminous intensity produced peak intensity reading in excess of 200,000 candela, there is no indication in the report that those specific lamps were ever used in any of the subsequent testing. One of these measurements was on an isocandela plot supplied to Volpe by Quest Corporation, the lamp vendor, based on data supplied by General Electric Company (GE), the lamp manufacturer, and the second was from a test conducted by the U.S. Coast Guard for the Volpe Center. *See* Volpe Report at Table 4–5 and Appendix C. Based on information recently provided by GE, FRA believes that the intensity readings on these two lamps were an anomaly in terms of peak intensity for 350-watt lamps. The data supplied by GE shows that only one of 93 samples of the 350-watt lamp tested from 1994 to present produced a maximum beam candle power above 250,000 candela. This leads FRA to suspect that the lamp data supplied by Quest Corporation and the lamp tested by the Coast Guard in relation with the Volpe Report was potentially the same lamp, which was not representative of the lamps actually used in the Volpe tests. In fact, the lamps used in the Volpe field tests (which validated the benefits of using auxiliary lights) were 350 watt lamps. A large proportion of the lamps used in the tests in all probability did not meet the luminous intensity requirement because they were from normal production runs which included a high proportion of lamps with a peak luminous intensity below 200,000 candela.

In addition to the fact that the 350-watt lamp was used in the Volpe tests, FRA also believes that the 350-watt lamp currently being used in the industry provides equal, if not greater, benefits when used in auxiliary light fixtures than a 200-watt lamp capable of producing 200,000 candela. The primary purpose of locomotive auxiliary lights is to enhance the visibility of the front-end locomotive of a train from the perspective of a driver of a motor vehicle approaching a grade crossing. *See* 61 FR 8881. With this purpose in mind, FRA believes that, due to the design of 350-watt lamps, they provide equal, if not greater, visibility to motorists approaching grade crossings. Although FRA used peak candela to describe the type of lamps to be used in auxiliary light fixtures, FRA believes that a more appropriate measure is the intensity of the light at an angle from the head of the locomotive. The Volpe Report indicates that the point of first detection of a train's auxiliary lights for a motorist approaching a grade crossing (205 feet from centerline of the tracks) occurred at approximately 1,550 feet, a point that is 7.5 degrees from the centerline of the locomotive. *See* Volpe Report at Section 5. The Volpe Report also indicates that the point at which the separation of the lamps in the headlight and auxiliary lights became detectable to an approaching motorist was at a distance of approximately 570 feet, a point that is 20 degrees from the centerline of the locomotive. *Id.* Based on this information, it is evident that the key intensity figure for an auxiliary light is the intensity of the light at angles of between 7.5 degrees and 20 degrees from the centerline of the locomotive.

Although a 350-watt lamp does not generally produce a maximum beam candle power (MBCP) in excess of 200,000 candela, these lamps do produce a greater luminous intensity over a broader angle off of the beam centerline than the traditional 200-watt lamp capable of producing a MBCP in excess of 200,000 candela. In fact, the available data clearly establish that the currently produced 350-watt lamp has a higher light intensity at any angle greater than 3.5 degrees off the centerline when compared to the more traditional 200-watt lamp used on older locomotives. Thus, the 350-watt lamps are particularly well suited for use in auxiliary light locations, which are primarily intended to be seen by motorists well away from an approaching grade crossing. Consequently, FRA believes that available data support a determination that the 350-watt lamp currently being produced and which has been permitted to be used in most newer locomotive auxiliary light fixtures since the mid-1990s actually enhances the ability of a motorist to detect an on-coming train.

In addition to the supporting data, FRA also notes that it has accepted the use of both 200-watt and 350-watt lamps since they began being used in auxiliary light fixtures beginning in the early to mid-1990s. It should also be noted that grade crossing accidents, deaths, and injuries have dropped sharply since the introduction of the 350-watt auxiliary lights in the mid-1990s. Furthermore, FRA is not aware of any complaints by operating crews or any deficiencies being noted by its field inspectors related to the luminous intensity produced by the 350-watt lamps since they began being used in locomotives. Moreover, FRA is not aware of any private litigation where the intensity of the light produced by a locomotive's auxiliary lights was brought into question.

In order to reflect FRA's intent when issuing the regulations related to auxiliary lights and to incorporate FRA's existing enforcement posture with regard to the use of 350-watt lamps, FRA is amending the auxiliary light provisions currently contained at § 229.125(d)(2) to specifically permit the continued use of 350-watt lamps. FRA believes this modification is necessary to ensure that there is no misunderstanding by either the regulated community or its field inspectors with regard to FRA's position. The modification makes clear that FRA will accept the use of either a lamp capable of producing 200,000

candela (a PAR–56, 200-watt, 30-volt lamp) or a lamp capable of producing 3,000 candela at 7.5 degrees and 400 candela at 20 degrees from the centerline of the locomotive when the lamp is aimed parallel to the tracks (either a PAR–56, 200-watt, 30-volt lamp or a PAR–56, 350-watt, 75-volt lamp). The light intensities being specified in the regulation are based on the luminous intensity produced at those angles by a PAR–56, 200-watt, 30-volt lamp (according to data supplied by GE) when such a lamp is aimed parallel to the tracks. FRA believes this is the most appropriate measure because the agency has interpreted the regulations as permitting this light intensity since their inception. Thus, acceptance of a lamp that produces an equivalent or greater intensity at these critical angles is consistent with the intent and purpose of the auxiliary light provisions when originally prescribed and is consistent with FRA's goal of promoting and facilitating new technologies. In furtherance of this goal, FRA also notes that although the modification being made to the regulation identifies specific lamps as meeting the specified criteria, the modification also acknowledges that lamps of equivalent design and capable of producing equivalent light intensities would be considered acceptable by FRA.

Related Provisions

Although there are provisions contained in §§ 229.133 and 238.443 that reference the use of lamps producing 200,000 candela, FRA does not intend to change any of the language contained in those provisions at this time. Section 229.133 contains interim locomotive conspicuity measures that were incorporated into the regulations in 1993 while the final provisions related to locomotive auxiliary lights were being developed. *See* 58 FR 6899; 60 FR 44457; and 61 FR 8881. Although locomotives equipped with one of the specified conspicuity measures were grandfathered as being compliant with the auxiliary light provisions included in § 229.125, that grandfathering expired as of March 6, 2000. *See* 61 FR 8885 and § 229.125(d). When issuing the final rule related to locomotive auxiliary lights in 1996, FRA did "super-grandfather" certain locomotives if equipped with some of the auxiliary conspicuity measures specified in § 229.133, which included: oscillating lights; strobe lights; and auxiliary lights if spaced at least 44 inches apart. *See* 61 FR 8885 and § 229.133(c). Of the three types of measures "super-grandfathered," only the provision related to oscillating lights specifies the use of a lamp capable of producing 200,000 candela. *See* § 229.133(c)(1) through (c)(3). As there are very few locomotives currently being operated that are equipped with oscillating lights and because FRA has no data related to the impact of utilizing 350-watt lamps in single-lamp oscillating light fixtures, FRA is not in a position to accept the use of such lamps in these devices at this time. However, FRA will continue to accept the use of 350-watt lamps in those circumstances where an oscillating light is used in conjunction with the auxiliary lights described in § 229.125, and in circumstances where an oscillating light under § 229.133(b)(4)(i)(A) consists of a dual-lamp fixture equipped with two operative 350-watt lamps.

The requirements related to Tier II passenger equipment also contain a requirement that Tier II power cars be equipped with headlights that produce at least 200,000 candela. *See* § 238.443. However, contrary to the headlight provisions in part 229, which require that a locomotive be equipped with a single headlight, the provision in § 238.443 requires each Tier II power car to be equipped with at least two headlights and that each headlight produce no less than 200,000 candela. *Id.* Moreover, the present design of the headlights on Tier II power cars utilizes a single lamp in each of the two required headlight fixtures. Thus, the preceding discussion related to FRA's acceptance of the use of 350-watt lamps in traditional locomotives covered under the provisions of § 229.125(a), is not applicable to the headlights on Tier II power cars which are separately addressed in part 238.

General Information

As the modifications contained in this document are intended to merely clarify FRA's intent when issuing the final rule related to auxiliary lights and incorporate existing FRA enforcement policies related to locomotive headlights and auxiliary lights, FRA is issuing this document as an interim final rule with a request for comments. Moreover, this document addresses FRA's continued acceptance of locomotive lamps which have been used throughout the industry for nearly a decade. Thus, FRA views the amendments contained in this document as technical clarifications of the existing regulations. Consequently, pursuant to 5 U.S.C. 553(b)(3)(B), FRA believes that good cause exists for finding that prior public notice of this action is both impracticable and unnecessary. However, FRA is requesting written comments on the content of this interim final rule and, if any are received, FRA will address them when issuing the final rule.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This interim final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. The modifications contained in this interim final rule are not considered significant because they are intended merely to clarify FRA's intent when issuing the final rule related to auxiliary lights and to incorporate existing FRA enforcement policies related to locomotive headlights and auxiliary lights. The economic impact of the modifications and clarifications contained in this interim final rule will not generally affect the cost of compliance with the existing regulations.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities. FRA certifies that this interim final rule does not have a significant impact on a substantial number of small entities. Because the modifications contained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, FRA has concluded that there are no substantial economic impacts on small units of government, businesses, or other organizations.

Paperwork Reduction Act

This interim final rule does not change any of the information collection requirements contained in the original regulatory provisions being amended.

Environmental Impact

FRA has evaluated this interim final rule in accordance with its "Procedures for Considering Environmental Impacts" (FRA's Procedures) (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental

statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c) of FRA's Procedures.

Federalism Implications

FRA believes it is in compliance with Executive Order 13132. Because the modifications contained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, this document will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This interim final rule will not have federalism implications that impose any direct compliance costs on State and local governments.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Section 202 of the Act (2 U.S.C. 1532) further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement" detailing the effect on State, local, and tribal governments and the private sector. Because the modifications contained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, this document will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any "significant energy action." 66 FR 28355 (May 22, 2001). Under the Executive Order, a "significant energy action" is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) that is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated interim final rule in accordance with Executive Order 13211. Because the modifications contained in this document either clarify existing regulatory requirements, codify existing enforcement policy, or are consistent with FRA's intent when issuing the original regulatory provisions, FRA has determined that this document will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a "significant energy action" within the meaning of Executive Order 13211.

List of Subjects in 49 CFR Part 229

Auxiliary lights, Headlights, Locomotives, Railroad safety.

Adoption of the Amendment

■ In consideration of the foregoing, Part 229 of Chapter II of Title 49 of the Code of Federal Regulations is amended to read as follows:

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

■ 1. The authority citation for Part 229 continues to read as follows:

Authority: 49 U.S.C. 20102–03, 20107, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 49 CFR 1.49(c), (m).

■ 2. Section 229.125 is amended by revising paragraphs (a) and (d)(2) to read as follows:

§ 229.125 Headlights and auxiliary lights.

(a) Each lead locomotive used in road service shall have a headlight that produces a peak intensity of at least 200,000 candela. If a locomotive or locomotive consist in road service is regularly required to run backward for any portion of its trip other than to pick up a detached portion of its train or to make terminal movements, it shall also have on its rear a headlight that produces at least 200,000 candela. Each headlight shall be arranged to illuminate a person at least 800 feet ahead and in front of the headlight. For purposes of this section, a headlight shall be comprised of either one or two lamps.

(1) If a locomotive is equipped with a single lamp headlight, the single lamp shall produce a peak intensity of at least 200,000 candela. The following meet the standard set forth in this paragraph (a)(1): a single PAR–56, 200-watt, 30-volt lamp; or a lamp of equivalent design and intensity.

(2) If a locomotive is equipped with a dual-lamp headlight, a peak intensity of 200,000 candela shall be produced by the headlight based either on a single lamp capable of individually producing the required peak intensity or on the candela produced by the headlight with both lamps illuminated. If both lamps are needed to produce the required peak intensity, then both lamps in the headlight shall be operational. The following meet the standard set forth in this paragraph (a)(2): a single PAR–56, 200-watt, 30-volt lamp; two operative PAR–56, 350-watt, 75-volt lamps; or a lamp(s) of equivalent design and intensity.

* * * * *

(d) * * *

(2) Each auxiliary light shall produce a peak intensity of at least 200,000 candela or shall produce at least 3,000 candela at an angle of 7.5 degrees and 400 candela at an angle of 20 degrees from the centerline of the locomotive when the light is aimed parallel to the tracks. Any of the following meet the standard set forth in this paragraph (d)(2): a PAR–56, 200-watt, 30-volt lamp; a PAR–56, 350-watt, 75-volt lamp; or a lamp of equivalent design and intensity.

* * * * *

Issued in Washington, DC on August 12, 2003.

Allan Rutter,

Federal Railroad Administrator.

[FR Doc. 03–21136 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Parts 1500, 1502, 1503, 1510, 1511, 1540, 1542, 1544, 1546, 1548, and 1550

[Docket No. TSA–2003–14702; Amendment Nos. 1500–1, 1502–1, 1503–1, 1510–3, 1511–2, 1540–5, 1542–1, 1544–4, 1546–1, 1548–1, and 1550–1]

RIN 1652–AA20

Transportation Security Administration Transition to Department of Homeland Security; Technical Amendments Reflecting Organizational Changes

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Final rule.

SUMMARY: The Homeland Security Act of 2002 transferred the Transportation Security Administration from the Department of Transportation to the newly created Department of Homeland Security. This rule makes conforming technical changes to various parts of the Transportation Security Regulations, chapter XII of title 49, Transportation, of the Code of Federal Regulations, revising, where appropriate, all references to the titles, abbreviations, and acronyms of the "Department of Transportation" and the "Under Secretary of Transportation for Security." This regulation also makes conforming changes to the general definitions sections and revises TSA's address because of TSA Headquarters' physical move to Arlington, Virginia. Because this rule revises existing regulations to reflect organizational changes, it has no substantive effect on the public.

DATES: Effective August 19, 2003.

FOR FURTHER INFORMATION CONTACT: Marisa Mullen, Office of the Chief Counsel, TSA–2, Transportation Security Administration, West Building, Floor 8, 601 South 12th Street, Arlington, VA 22202–4220; telephone (571) 227–2706; e-mail *marisa.mullen@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*);

(2) Accessing the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*; or

(3) Visiting the TSA's Law and Policy web page at *http://www.tsa.dot.gov/public/index.jsp*.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within the TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's web page at *http://www.sba.gov/advo/laws/law_lib.html*.

Background

The rule makes technical changes to various provisions of chapter XII, title 49 (Transportation) of the Code of Federal Regulations (CFR), mainly in response to enactment of the Homeland Security Act of 2002 (HSA), Public Law 107–296, 116 Stat. 2135 (2002). Pursuant to the HSA, Congress established the Department of Homeland Security (DHS) (section 101 of HSA) and directed the transfer of the Transportation Security Administration (TSA) (section 403 of HSA) from the Department of Transportation (DOT) to DHS. As indicated in the Department of Homeland Security Reorganization Plan submitted on November 25, 2002, by the President to Congress (under section 1502 of the HSA), TSA transferred to DHS on March 1, 2003.

In addition, by March 1, TSA completed the physical move of its headquarters facilities and personnel from Washington, DC, to Arlington, Virginia. This rule revises any references to our location address or mailing address, as necessary.

Justification for Immediate Adoption

This rule relates only to agency organization, procedure, and practice. Therefore, under 5 U.S.C. 553(b)(3)(A), this rule is exempt from notice and comment rulemaking requirements. The changes made by the rule will have no substantive effect on the public; therefore, under 5 U.S.C. 553(d), this rule may become effective less than 30 days after publication in the **Federal Register**.

Provisions of the Final Rule

In 49 CFR, chapter XII, all references to the titles, abbreviations, and acronyms of the "Department of Transportation" and the "Under Secretary of Transportation for Security" are revised, where appropriate, to read "Department of Homeland Security" and "Administrator," respectively. In conjunction with the transfer of TSA to DHS, the head of TSA has adopted the new title of Administrator and has implemented conforming changes to the titles of other senior management officials at TSA. Other organizational changes have been made as well. Consequently, for purposes of the Transportation Security Regulations (TSRs), the official formerly referred to as the Under Secretary of Transportation for Security will be referred to as the Administrator, and the official formerly referred to as the Deputy Administrator/Chief Operating Officer will be referred to as the Deputy Administrator. In addition, officials previously referred to as Associate Under Secretaries will be known as Assistant Administrators and the official previously referred to as the Deputy Chief Counsel for Enforcement will be known as the Deputy Chief Counsel for Civil Enforcement. The final rule makes conforming changes to the TSRs to reflect these changes and adds a new definition of "Administrator" to the general definitions sections.

This rule also revises TSA's address because of TSA Headquarters' physical move from Washington, DC, to Arlington, Virginia. Our U.S. mailing address will no longer be routed to TSA through the DOT Headquarters' address at 400 Seventh Street, SW., Washington, DC. The official address for all TSA mail (both U.S. Postal System and all overnight mail) now is: Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

Although most references to DOT have been revised to DHS, in some instances, most notably in §§ 1510.19 and 1511.11, references to DOT remain to allow DOT access to books and records related to TSA's Civil Aviation Security Fees in order to facilitate DOT's enforcement of its consumer protection and economic authority.

In addition, the authority citations in 49 CFR parts 1500 through 1511 and 1540 through 1550 were amended to add 49 U.S.C. 114 and 40113, as appropriate. These citations include general agency authorities to conduct rulemaking and issue orders that had inadvertently been left out of previous rulemakings.

Collection of Information

This rule does not impose any new information collection and recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) requiring approval by the Office of Management and Budget.

Regulatory Impact Analyses

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review, directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation.)

Executive Order 12866 Assessment

In conducting these analyses, TSA has determined this rulemaking is not a "significant regulatory action" as defined in section 3(f) of the Executive Order as this rule involves internal agency practices and procedures and non-substantive changes to rules of procedure and will not impose any costs on the public. Therefore, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order, nor does it require a review by the Office of Management and Budget.

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act (RFA) of 1980 requires that agencies perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA. For purposes of the RFA, small entities include small businesses, not-for-profit organizations, and small governmental jurisdictions. Individuals and States are not included in the definition of a small entity.

The RFA does not apply to this rule and we are not preparing an analysis for the Act, since under 5 U.S.C. 553, TSA is not required to publish an NPRM for a rule that relates to agency management, procedures, and practice. However, because this rule will not impose any costs on the public, we have determined and certify that this rule does not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The TSA has assessed the potential effect of this rulemaking and has determined that it will have no effect on any trade-sensitive activity and will not constitute a barrier to international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and the TSA has not prepared a statement under the Act.

Executive Order 13132, Federalism

The TSA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and therefore would not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Review Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that this rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

49 CFR Part 1500

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1502

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies).

49 CFR Part 1503

Administrative practice and procedure, Investigations, Law enforcement, Penalties, Transportation.

49 CFR Part 1510

Accounting, Auditing, Air carriers, Air transportation, Enforcement, Federal oversight, Foreign air carriers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1511

Accounting, Auditing, Air carriers, Air transportation, Enforcement, Federal oversight, Foreign air carriers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1540

Air carriers, Aircraft, Airports, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1542

Air carriers, Aircraft, Aviation safety, Security measures.

49 CFR Part 1544

Air carriers, Aircraft, Aviation safety, Freight forwarders, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1546

Aircraft, Aviation safety, Foreign air carriers, Incorporation by reference, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1548

Air transportation, Reporting and recordkeeping requirements, Security measures.

49 CFR Part 1550

Aircraft, Security measures.

The Amendment

■ In consideration of the foregoing, the Transportation Security Administration amends Chapter XII of Title 49, Code of Federal Regulations, as follows:

■ 1. Revise the heading for chapter XII to read as follows:

CHAPTER XII—TRANSPORTATION SECURITY ADMINISTRATION, DEPARTMENT OF HOMELAND SECURITY

■ 2. In 49 CFR chapter XII, revise all references to "Under Secretary of Transportation for Security" to read "Administrator"; revise all references to "Under Secretary of Transportation for Security's" to read "Administrator's"; revise all references to "Under Secretary" to read "Administrator"; revise all references to "Under Secretary's" to read "Administrator's"; and revise all references to "Deputy Under Secretary of Transportation for Security/Chief Operating Officer" to read "Deputy Administrator".

SUBCHAPTER A—ADMINISTRATIVE AND PROCEDURAL RULES

PART 1500—APPLICABILITY, TERMS, AND ABBREVIATIONS

■ 3. In part 1500, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

■ 4. In § 1500.3, remove the redesignated definition of "Administrator", and add a new definition of "Administrator" in alphabetical order to read as follows:

§ 1500.3 Terms and abbreviations used in this chapter.

* * * * *

Administrator means the Under Secretary of Transportation for Security identified in 49 U.S.C. 114(b) who serves as the Administrator of the Transportation Security Administration.

* * * * *

PART 1502—ORGANIZATION, FUNCTIONS, AND PROCEDURES

■ 5. In part 1502, revise the authority citation to read as follows:

Authority: 5 U.S.C. 3345, 49 U.S.C. 114, 40113, 44901–44907, 44913–44914, 44916–44920, 44935–44936, 44942, 46101–46105, 45107, 46110.

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 6. In part 1503, revise the authority citation to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 40113–40114, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314.

■ 7. In part 1503, revise all references to "Deputy Chief Counsel for Enforcement" to read "Deputy Chief Counsel for Civil Enforcement".

§ 1503.3 [Amended]

■ 8. In § 1503.3(b), remove the word "Associate" from wherever it appears in the paragraph, and add in its place, the word "Assistant".

§§ 1503.5, 1503.16, 1503.209, 1503.210, 1503.230, and 1503.233 [Amended]

■ 9. In §§ 1503.5(b)(2), 1503.16(f), 1503.209(b), 1503.210(a), and 1503.233(a), remove the words "Department of Transportation" and add in their place, the words "Department of Homeland Security".

■ 10. In §§ 1503.5(k), 1503.5(k)(2)(C)(ii), 1503.209(b), 1503.210(a), and 1503.230(b)(2)(C)(ii), remove the words "GSA Building, Room 5008, 301 Seventh Street SW., Washington, DC 20407", and add in their place, the words "TSA Headquarters, Visitor Center, 701 South 12th Street, Arlington, Virginia 22202".

■ 11. In §§ 1503.209(b), and 1503.233(a), remove the question mark symbol "?", from wherever it appears in the paragraph.

PART 1510—PASSENGER CIVIL AVIATION SECURITY SERVICE FEES

■ 12. In part 1510, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 40113, and 44940.

■ 13. In § 1510.3, remove the redesignated definition of "Administrator", and add a new definition of "Administrator" in alphabetical order to read as follows:

§ 1510.3 Definitions.

* * * * *

Administrator means the Administrator of the Transportation Security Administration or the Administrator's designee.

* * * * *

■ 14. In § 1510.19, revise the text to read as follows:

§ 1510.19 Federal oversight.

Direct air carriers and foreign air carriers must allow any authorized representative of the Administrator, the Secretary of Transportation, the Secretary of Homeland Security, the Inspector General of the Department of Transportation, the Inspector General of the Department of Homeland Security, or the Comptroller General of the United States to audit or review any of its books and records and provide any other information necessary to verify that the security service fees were properly collected and remitted consistent with this part.

PART 1511—AVIATION SECURITY INFRASTRUCTURE FEE

■ 15. In part 1511, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 40113, 44901, and 44940.

■ 16. In § 1511.3, remove the redesignated definition of "Administrator", and add a new definition of "Administrator" in alphabetical order to read as follows:

§ 1511.3 Definitions.

* * * * *

Administrator means the Administrator of the Transportation Security Administration or the Administrator's designee.

* * * * *

■ 17. In § 1511.11, revise paragraph (a) introductory text to read as follows:

§ 1511.11 Federal oversight.

(a) Upon request, air carriers and foreign air carriers must allow any authorized representative of the Administrator, the Secretary of Transportation, the Secretary of Homeland Security, the Inspector General of the Department of Transportation, the Inspector General of the Department of Homeland Security, or the Comptroller General of the United States to audit or review any of the books and records and provide any other information necessary to verify that:

* * * * *

SUBCHAPTER C—CIVIL AVIATION SECURITY

PART 1540—CIVIL AVIATION SECURITY: GENERAL RULES

■ 18. In part 1540, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

■ 19. In § 1540.115(b), remove the redesignated definition of "Administrator", and add a new definition of "Administrator" in alphabetical order to read as follows:

§ 1540.115 Threat assessments regarding citizens of the United States holding or applying for FAA certificates, ratings, or authorizations.

* * * * *

(b) * * *

Administrator means the Administrator of the Transportation Security Administration.

* * * * *

PART 1542—AIRPORT SECURITY

■ 20. In part 1542, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44917, 44935–44936, 44942, 46105.

PART 1544—AIRCRAFT OPERATOR SECURITY: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 21. In part 1544, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44913–44914, 44916–44918, 44932, 44935–44936, 44942, 46105.

PART 1546—FOREIGN AIR CARRIER SECURITY

■ 22. In part 1546, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44907, 44914, 44916–44917, 44935–44936, 44942, 46105.

PART 1548—INDIRECT AIR CARRIER SECURITY

■ 23. In part 1548, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44905, 44913–44914, 44916–44917, 44932, 44935–44936, 46105.

PART 1550—AIRCRAFT SECURITY UNDER GENERAL AVIATION OPERATING AND FLIGHT RULES

■ 24. In part 1550, revise the authority citation to read as follows:

Authority: 49 U.S.C. 114, 5103, 40113, 44901–44907, 44913–44914, 44916–44918, 44935–44936, 44942, 46105.

Issued in Arlington, Virginia, on August 11, 2003.

James M. Loy,

Administrator.

[FR Doc. 03–20927 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 080503B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Action #2 - Adjustment of the Recreational Fishery from the Queets River to Cape Falcon, Oregon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment; request for comments.

SUMMARY: NMFS announces that the recreational fishery in the area from the Queets River to Cape Falcon, Oregon, was modified to open 7 days per week effective on Friday, July 26, 2003. On July 18, 2003, the Northwest Regional Administrator, NMFS (Regional Administrator), determined that available catch and effort data indicated that increasing the days open was warranted. This action was necessary to conform to the 2003 management goals.

DATES: Adjustment in the area from the Queets River to Cape Falcon, Oregon, effective 0001 hours local time (l.t.), July 26, 2003 through September 30, 2003. Comments will be accepted through September 3, 2003.

ADDRESSES: Comments on this action must be mailed to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way N.E., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: Christopher Wright, 206–526–6140.

SUPPLEMENTARY INFORMATION: The Regional Administrator modified the season for the recreational fishery in the area from the Queets River to Cape Falcon to be open 7 days per week effective Friday, July 26, 2003. On July 18 the Regional Administrator determined that available catch and effort data indicated that increasing the days open was warranted. Modification of recreational fishing days per calendar week are authorized by regulations at 50 CFR 660.409(b)(1)(iii).

In the 2003 annual management measures for ocean salmon fisheries (68 FR 23913, May 6, 2003), NMFS announced the recreational fishery in the area from the Queets River to Leadbetter Point, WA (Westport Area) would open June 22 through the earlier of September 14 or a 83,250 coho subarea quota with a subarea guideline of 40,600 chinook, and the area from Leadbetter Point, WA to Cape Falcon (Columbia River Area) would open June 29 through the earlier of September 30 or a 112,500 coho subarea quota with a subarea guideline of 12,700 chinook. Both the Westport and Columbia subareas were scheduled to open Sunday through Thursday during each calendar week.

On July 18, 2003, the Regional Administrator consulted with representatives of the Pacific Fishery Management Council, Washington Department of Fish and Wildlife, and Oregon Department of Fish and Wildlife by conference call. Information related to catch to date, the chinook and coho catch rate, and effort data indicated that it was unlikely that the coho quotas or the overall recreational chinook quota north of Cape Falcon would be met. As a result, the states recommended, and the Regional Administrator concurred, that both the Westport and Columbia recreational fishery subareas, which include the area from the Queets River to Cape Falcon, be modified to be open 7 days per week effective Friday, July 26, 2003. All other restrictions that apply to this fishery remain in effect as announced in the 2003 annual management measures.

The Regional Administrator determined that the best available information indicated that the catch and effort data, and projections, supported the above inseason action recommended by the states. The states manage the fisheries in state waters adjacent to the areas of the U.S. exclusive economic zone in accordance with this Federal

action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishers of the above described action was given prior to the effective date by telephone hotline number 206–526–6667 and 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

This action does not apply to other fisheries that may be operating in other areas.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists for this notification to be issued without affording prior notice and opportunity for public comment under 5 U.S.C. 553(b)(B) because such notification would be impracticable. As previously noted, actual notice of this action was provided to fishers through telephone hotline and radio notification. This action complies with the requirements of the annual management measures for ocean salmon fisheries (68 FR 23913, May 6, 2003), the West Coast Salmon Plan, and regulations implementing the West Coast Salmon Plan (50 CFR 660.409 and 660.411). Prior notice and opportunity for public comment was impracticable because NMFS and the state agencies have insufficient time to provide for prior notice and the opportunity for public comment between the time the fishery catch and effort data are collected to determine the extent of the fisheries, and the time the fishery modification must be implemented in order to allow fishers access to the available fish at the time the fish are available. For the same reasons, the AA also finds good cause to waive the 30–day delay in effectiveness required under U.S.C. 553(d)(3). A delay in effectiveness of this action would unnecessarily limit fishers appropriately controlled access to available fish during the scheduled fishing season. The AA also determines that sufficient evidence exists to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(1) as this action relieves a restriction. It relieves a restriction because it expands the recreational fishery from 5 days per week to 7 days per week, and thus provides fishermen with two additional days per week to fish for salmon.

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 12, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21045 Filed 8–18–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 160
Tuesday, August 19, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 762

RIN 0560–AG53

Guaranteed Loans—Rescheduling Terms and Loan Subordinations

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: This action proposes to revise the regulations governing the Farm Service Agency (FSA) guaranteed farm loan program. This rule proposes to allow guaranteed loans to be rescheduled with a balloon payment under certain circumstances. Proposed also are provisions to allow low-risk subordinations to be approved by the appropriate Agency personnel at the field level rather than the National Office, allow lenders to make debt installment payments in accordance with lien priorities, payment due dates and cash flow projections, correct a wording error, clarify that packager and consultant fees for servicing of guaranteed loans are not covered by the guarantee, and clarify the amount a lender can bid at a foreclosure sale. The Agency is proposing these changes as a result of input from program participants and problems in administering current provisions. The changes proposed will improve Agency regulations without increasing risk to the Government.

DATES: Comments concerning this proposed rule must be submitted by October 20, 2003 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Address all comments on the rule to Craig Nehls, Branch Chief, Guaranteed Loan Servicing and Inventory Property Branch, Loan Servicing and Property Management Division, FSA, USDA, 1400 Independence Avenue, STOP 0523, Washington, DC 20250–0523; Fax: (202) 690–1196. Comments should reference the volume, date and page number of this issue of the **Federal Register**. You may submit comments via electronic mail to *Joseph_Pruss@wdc.usda.gov*, or at *http://www.regulations.gov*. Public inspection of this rule and all comments are available during regular business hours by contacting the Branch Chief at (202) 720–1984.

FOR FURTHER INFORMATION CONTACT: Joseph Pruss, Senior Loan Officer, Farm Service Agency; telephone: (202) 690–2854; Facsimile: (202) 690–1196; e-mail: *Joseph_Pruss@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

The Agency certifies that this rule will not have a significant economic effect on a substantial number of small entities, because it does not require any specific actions on the part of the borrower or the lenders. The Agency, therefore, is not required to perform a Regulatory Flexibility Analysis as required by the Regulatory Flexibility Act, Public Law 96–534, as amended (5 U.S.C. 601).

Environmental Evaluation

The environmental impacts of this proposed rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA completed an environmental evaluation and concluded that the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with that Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except that lender servicing under this rule will apply to loans guaranteed prior to the effective date of the rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before requesting judicial review.

Executive Order 12372

For reasons contained in the Notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with state and local officials.

Unfunded Mandates

This rule contains no Federal mandates, as defined by title II of Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

Paperwork Reduction Act

The amendments to 7 CFR part 762 contained in this rule require no revisions to the information collection requirements that were previously approved by OMB under control number 0560–0155.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.406 Farm Operating Loans
10.407 Farm Ownership Loans

Discussion of the Proposed Rule

The first proposed change is in section 762.140(d), regarding payment of loan installments. Currently, the regulations require that guaranteed loan installments always be paid before unguaranteed loans held by the same lender. The Agency has found that this requirement is very difficult to implement. In practice the only way the FSA guaranteed loan payment can be made first is if all the payments come due at the same time. A typical farming operation may have payments coming due from several different creditors throughout the year. It is virtually impossible to get all payments structured so that they come due at the same time. The Agency recognizes that in the normal course of business, lien priority, payment due dates and cash flow are the determining factors in deciding the order in which loans are paid. The Agency's original intent was to assure that lenders were not paying non-guaranteed loans at the expense of the guaranteed loan. However, this risk only occurs at liquidation where proceeds will be applied in accordance with lien priority. Outside of a liquidation scenario, all installments would be paid since the loan would usually be in a current status. FSA proposes to change the wording in this section, to allow loan installments to be paid in accordance with lien priority, the due date, and the cash flow projection, in the normal course of business, which is in accordance with actual commercial lending practices. Therefore, the proposed rule states that when it becomes evident that a borrower will be unable to make all installments, the lender will be required to apply payments to the guaranteed loan before unguaranteed loans held by the same lender. The effect will be to maximize collection on the guaranteed loan, and minimize any loss claim. Lenders are responsible for servicing the entire loan in a reasonable manner.

The second proposed change is section 762.142(c)(3)(ii), regarding the Agency's approval requirements for certain subordinations. Currently, the regulations allow the lender to subordinate its interest in crops, feeder livestock, livestock offspring, or livestock products when no funds have been advanced from the guaranteed loan for their production, so another lender can make a loan for annual production expenses. Approval of subordinations for real estate, machinery, and other basic security can only be granted by the Agency's National Office, if such action is in the Agency's best interest. However, there are situations where devolution of this approval authority is justified and would lead to more prompt service to Agency borrowers and lenders. The Agency proposes to place the approval authority at the local level for situations when a lender is simply refinancing existing indebtedness secured by a lien superior to the guaranteed loan, and no additional debt is being incurred. This is often done to allow a borrower to obtain better rates and/or terms on the loan, which in turn helps the borrower meet all of the borrower's loan obligations. There is no additional risk to the guaranteed loan, which remains in the same exact lien and security position after the subordination as it was before the subordination. It is not necessary for subordination requests of this nature to be routed to the Agency's national office, which may result in a time lag for approval or rejection.

The third proposed change is in section 762.144(c)(3)(iii), which discusses the payment of interest on loans which the Agency has repurchased. The proposed change will correct the second sentence where the words "holder" and "lender" were inadvertently reversed. The holder, not the lender would be requesting the Agency to repurchase the loan, after requesting the lender to repurchase the loan.

The fourth change proposed would allow balloon payments in restructuring guaranteed loans. Section 762.145 governs the restructuring of guaranteed loans, and paragraph (b)(4) of this section specifically prohibits the use of balloon payments in the restructuring process. FSA is proposing to lift this restriction and allow a lender to restructure a guaranteed loan with a balloon payment. This is standard practice in the lending industry, and lenders participating in the guaranteed program have requested the ability to use balloon payments in restructuring. FSA has made numerous administrative policy changes to enable lenders to service guaranteed loans in the same manner they service their non-guaranteed loans. This proposed change would provide lenders with another tool to use in servicing loans guaranteed by FSA, consistent with tools utilized for non-guaranteed loans.

Current regulations allow lenders to use balloon payments when originating loans, but not in loan servicing. Unequal installments can be used in both loan making and loan servicing, and lenders can use both unequal installments and balloon payments in originating a new loan. These tools are used primarily when establishing new enterprises or building facilities, situations where cash flow would be inadequate to support full amortization of the loan for some period of time. These same tools would be helpful, and may be necessary in a rescheduling situation such as recovering from a natural disaster, or a barn fire or other calamity, for instance. Definitions of unequal installments and balloon payments will be added in the FSA Handbook 2–FLP upon publication of the final rule.

To insure that this proposal would not result in additional exposure or loss to the Government, a provision requiring adequate security to be available at the time the balloon payment comes due will be included, in 7 CFR 762.145(b)(4). For real estate security a current appraisal would be required, with depreciation projected to the time the balloon payment is due for depreciable property such as buildings and improvements. Also, for equipment security, a current appraisal will be required. The lender will be required to project the security value of the equipment at the time the balloon payment is due, based on the remaining life of the equipment, or using the depreciation schedule on the borrower's Federal income tax return. Under no circumstances may livestock or crops alone be used as security for a guaranteed loan that is to be rescheduled using a balloon payment.

Allowing the restructuring of loans using a balloon payment schedule does not unduly increase the Government's risk. This change will allow more delinquent borrowers to achieve a feasible plan and ultimately be successful in paying their loans in full. FSA estimates that less than 200 loans per year will be rescheduled with a balloon payment. Currently, when a borrower becomes delinquent, a lender may choose to not continue with the loan since a balloon payment schedule is prohibited. Therefore, a viable operation may have to be liquidated due to limited loan servicing alternatives. Use of a balloon payment under those circumstances will reduce the likelihood that FSA will pay a loss under the guarantee and allow the lender to retain the guarantee. As in the current rule, 7 CFR 762.145(b)(4) permits the lender to allow unequal installments so long as a feasible plan can be projected when the installments are scheduled to increase.

As to the fifth change, FSA proposes to revise the security requirements in section 762.145(b)(7) for loans restructured with balloon payments. This change is necessary to prevent undue risk to the Government from adding balloon payment options as a loan servicing tool. Revising the rule to

permit balloon payments, but retaining the not fully secured position (or no security as long as the lender's security position is not diminished) of the current rule would increase FSA's exposure on loss claims and would be inconsistent with Government policy as expressed in Office of Management and Budget Circular A–129, November 29, 2000, Appendix A, II 3 (OMB Circular A–129). OMB Circular A–129 requires that agencies control the risk and cost of their credit programs and follow sound financial practices which include requiring lenders to have a substantial stake in full repayment in accordance with the loan. See 65 FR 71215. Therefore, FSA proposes to require loans restructured with balloon payments to be fully secured when the balloon payment becomes due.

The sixth proposed change would clarify § 762.149(d) and (i), to provide that packager fees and outside consultant fees for servicing guaranteed loans are not covered by the guarantee, and will not be paid in either the estimated or final loss claim.

Lenders should note that §§ 762.105 and 762.106 contain eligibility requirements for lenders participating in the guaranteed loan program, as well as a description of the classifications of lenders, and specific requirements for lenders in each classification. Under these sections, all lenders are required to have experience in making and servicing agricultural loans and have the capability to make and service the loan for which a guarantee is requested. A lender participating in the guaranteed loan program, therefore, should have adequately trained loan officers and analysts on staff to make and service guaranteed loans and should not usually have to rely on outside or contracted individuals to service their loans. Therefore, FSA will not pay any packager or servicing fees for guaranteed loans. At times, a lender may find it necessary to hire outside help to service its loan portfolio, or may find it financially advantageous to have someone from outside the lender analyze the loan portfolio; however the cost of these services will not be passed on to the Government in the event of a loss. It was never the intent of the Agency to cover such fees, and if the Agency were to cover such fees it would be tantamount to paying the lender's labor costs. The Lender's Agreement specifies that liquidation costs do not include the lender's in-house expenses.

The seventh proposed change would clarify § 762.149(h)(3) to specify that if a lender bids at a foreclosure sale, their bid will be either the net recovery value plus the prior lien amount, or the unpaid balance of the loan plus the prior lien amount, whichever is less. Under current regulations the lender has the authority to determine the amount it will bid at the foreclosure sale, starting at the amount which is the lesser between the net recovery value or the unpaid loan balance. Because the lender eventually could bid more than the net recovery value of the property, other potential bidders are discouraged from bidding, thus increasing the probability that the lender will take title to the property. If a lender is then unable to sell the security for at least the net recovery value, plus the expenses of holding and selling the property, under current regulations the lender's loss claim increases accordingly. After this excess bid amount is applied to the borrower's account, the loss claim amount is negotiated, which discourages the lender from taking responsibility for the excess bid.

The proposed rule, which limits the bid amount to the lesser of the net recovery value plus the prior lien or the unpaid loan balance plus the prior lien, will result in decreasing the Government's losses. Decreasing the bid amount will encourage potential bidders to bid on the property, thus increasing the likelihood of reducing the lender's loss claim. In situations where the lender bids an amount more than the lesser of the net recovery plus the prior lien, or the unpaid balance of the debt plus the prior lien, this action may be considered negligent servicing. To the extent that negligent servicing reduces the recovery on the loan, the resulting loss claim will be reduced. The Agency believes that the proposed rule will give lenders the incentive to maximize recovery, thus decreasing Government losses.

List of Subjects in 7 CFR Part 762

Agriculture, Loan programs—agriculture, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 762 is proposed to be amended as follows:

PART 762—GUARANTEED FARM LOANS

1. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989.

2. Amend § 762.140 by revising paragraph (d) to read as follows:

§ 762.140 General servicing responsibilities.

* * * * *

(d) *Loan installments.* In the normal course of business, loan installments may be paid according to lien priority, payment due date, and where applicable, in accordance with an approved cash flow projection. When it becomes evident that a borrower will be unable to make all installments, guaranteed loan installments will be paid before unguaranteed loans held by the same lender.

3. Amend § 762.142 by designating paragraph (c)(3)(ii) as (c)(3)(iii) and adding a new paragraph (c)(3)(ii) to read as follows:

§ 762.142 Servicing related to collateral.

* * * * *

(c) * * *

(3) * * *

(ii) The lender may, with written Agency approval, subordinate its interest in basic security in cases where the subordination is required to allow another lender to refinance an existing prior lien, no additional debt is being incurred, and the lender's security position will not be adversely affected by the subordination.

* * * * *

4. Amend § 762.144 by revising paragraph (c)(3)(iii) to read as follows:

§ 762.144 Repurchase of guaranteed portion from a secondary market holder.

* * * * *

(c) * * *

(3) * * *

(iii) In the case of a request for Agency purchase, the government will only pay interest that accrues for up to 90 days from the date of the demand letter to the lender requesting the repurchase. However, if the holder requested repurchase from the Agency within 60 days of the request to the lender and for any reason not attributable to the holder and the lender, the Agency cannot make payment within 30 days of the holder's demand to the Agency, the holder will be entitled to interest to the date of payment.

* * * * *

5. Amend § 762.145 by revising paragraphs (b)(4) and (b)(7) to read as follows:

§ 762.145 Restructuring guaranteed loans.

* * * * *

(b) * * *

(4) Loans secured by real estate and/or equipment can be restructured using a balloon payment, equal installments, or unequal installments. Under no circumstances may livestock or crops alone be used as security for a loan to be rescheduled using a balloon payment. If a balloon payment is used, the projected value of security must indicate that the loan will be fully secured when the balloon payment becomes due. The projected value will

be derived from a current appraisal adjusted for depreciation that occurs until the balloon payment is due. If the loan is rescheduled with unequal installments, a feasible plan, as defined in § 762.102(b), must be projected for when installments are scheduled to increase.

* * * * *

(7) The lender's security position will not be adversely affected because of the restructuring. New security instruments may be taken if needed, but a loan does not have to be fully secured in order to be restructured, unless it is restructured with a balloon payment. A loan restructured with a balloon payment must be projected to be fully secured at the time the balloon payment becomes due, in accordance with paragraph (b)(4) of this section.

* * * * *

6. Amend § 762.149 by adding paragraph (d)(3), revising paragraph (h)(3) and amending paragraph (i)(2) by adding a sentence as follows:

§ 762.149 Liquidation.

* * * * *

(d) * * *

(3) Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in an estimated loss claim.

* * * * *

(h) * * *

(3) When it is necessary to enter a bid at a foreclosure sale, the lender will bid the lesser of the net recovery value plus the prior lien or the unpaid guaranteed loan balance plus the prior lien. A lender bid for other than the lesser of the net recovery value plus the prior lien or the unpaid balance of the debt plus the prior lien may be considered negligent servicing, and the resulting loss claim may be reduced to the extent that the negligent servicing reduced the recovery on the loan.

(i) * * *

(2) * * * Packager fees and outside consultant fees for servicing of guaranteed loans are not covered by the guarantee, and will not be paid in a final loss claim.

* * * * *

Signed at Washington, DC on August 5, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–21040 Filed 8–18–03; 8:45 am]

BILLING CODE 3410-05-P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150—AH26

List of Approved Spent Fuel Storage Casks: Standardized NUHOMS®–24P, –52B, and –61BT Revision

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations revising the Transnuclear, Inc., Standardized NUHOMS®–24P, –52B, and –61BT cask system listing within the "List of Approved Spent Fuel Storage Casks" to include Amendment No. 5 to the Certificate of Compliance. Amendment No. 5 would modify the present cask system design to add another dry shielded canister (DSC), designated NUHOMS®–32PT DSC, to the authorized contents of the Standardized NUHOMS®–24P, –52B, and –61BT cask system. This canister is designed to accommodate 32 pressurized water reactor assemblies with or without Burnable Poison Rod assemblies. It is designed for use with the existing NUHOMS® Horizontal Storage Module and NUHOMS® Transfer Cask under a general license.

DATES: Comments on the proposed rule must be received on or before September 18, 2003.

ADDRESSES: You may submit comments by any one of the following methods. Please include the following number (RIN 3150–AH26) in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available to the public in their entirety on the NRC rulemaking website. Personal information will not be removed from your comments.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: *SECY@ nrc.gov.* If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966. You may also submit comments via the NRC's rulemaking web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking website to Carol Gallagher (301) 415–5905; e-mail *cag@nrc.gov.*

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays (telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be examined and copied for a fee at the NRC's Public Document Room (PDR), Public File Area O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking website at *http://ruleforum.llnl.gov.*

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.* From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* An electronic copy of the proposed Certificate of Compliance (CoC) and preliminary safety evaluation report (SER) can be found under ADAMS Accession No. ML031820427.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, telephone (301) 415–6219, e-mail, *jmm2@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 5 to CoC No. 1004 and does not include other aspects of the Standardized NUHOMS®–24P, –52B, and –61BT cask system design. The NRC is using the "direct final rule procedure" to issue this amendment because it represents a limited and routine change to an existing CoC that is expected to be noncontroversial. Adequate protection of public health and safety continues to be ensured.

Because NRC considers this action noncontroversial and routine, the proposed rule is being published concurrently as a direct final rule. The direct final rule will become effective on November 3, 2003. However, if the NRC

receives significant adverse comments by September 18, 2003, then the NRC will publish a document that withdraws this action and will address the comments received in response to the proposed amendments published elsewhere in this issue of the **Federal Register**. A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, in a substantive response:

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the CoC or Technical Specifications.

These comments will be addressed in a subsequent final rule. The NRC will not initiate a second comment period on this action.

List of Subjects In 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004.

Initial Certificate Effective Date: January 23, 1995.

Amendment Number 1 Effective Date: April 27, 2000.

Amendment Number 2 Effective Date: September 5, 2000.

Amendment Number 3 Effective Date: September 12, 2001.

Amendment Number 4 Effective Date: February 12, 2002.

Amendment Number 5 Effective Date: November 3, 2003.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the Standardized NUHOMS® Horizontal Modular Storage System for Irradiated Nuclear Fuel.

Docket Number: 72–1004.

Certificate Expiration Date: January 23, 2015.

Model Number: Standardized NUHOMS®–24P, NUHOMS®–52B, NUHOMS®–61BT, and NUHOMS®–32PT.

* * * * *

Dated at Rockville, Maryland, this 1st day of August, 2003.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Acting Executive Director for Operations.

[FR Doc. 03–21149 Filed 8–18–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15695; Airspace Docket No. 03–AAL–17]

Proposed Establishment of Class E Airspace; Kivilina, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Kivilina, AK. Two new Standard Instrument Approach Procedures (SIAP) are being published for the Kivilina Airport. There is no existing Class E airspace to contain aircraft executing the new instrument approaches at Kivilina, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Kivilina, AK.

DATES: Comments must be received on or before October 3, 2003.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15695/ Airspace Docket No. 03–AAL–17, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Manager, Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–531, Federal Aviation Administration, 222 West 7th Avenue,

Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; email: *Derril.Bergt@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15695/Airspace Docket No. 03–AAL–17." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71) by establishing new Class E airspace at Kivilina, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Kivilina, AK.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed two new SIAPs for the Kivilina Airport. The new approaches are (1) Area Navigation (Global Positioning System) (RNAV GPS) Runway (RWY) 30, original; and (2) RNAV (GPS) Runway 12, original. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Kivilina, Alaska area would be created by this action. The proposed airspace is sufficient to contain aircraft executing the new instrument procedures for the Kivilina Airport.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, *Airspace Designations and Reporting Points*, dated August 30, 2002, and effective September 16, 2002, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kivilina, AK [New]

Kivilina Airport, AK
(lat. 67°44′10″ N., long. 164°33′49″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Kivilina Airport and that airspace extending upward from 1,200 feet above the surface within an area bounded by 67°16′50″ N 163°46′00″ W, to 67°12′50″ N 163°53′00″ W, to 67°30′00″ N 164°30′00″ W, to point of beginning and that airspace extending upward from 1,200 feet above the surface between Federal Colored Airway Blue 2 and Victor Airway V531 south of a line at 68°10′00″ N to the point at which B2 and V531 join at 67°19′50″ N, 163°28′00″ W, excluding that airspace designated for federal airways.

* * * * *

Issued in Anchorage, AK, on August 11, 2003.

Judith G. Heckl,

Acting Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–21224 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–140378–01]

RIN 1545–BA22

Property Exempt From Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to regulations relating to property exempt from levy, currently published under Internal Revenue Code section 6334. The regulation has been revised to provide guidance with respect to the following items and reflect changes made by the IRS Restructuring and Reform Act of 1998 (RRA 98): procedures for obtaining prior judicial approval of certain principal residence levies; exemption from levy for certain residences in small deficiency cases and for certain business assets in the absence of administrative approval or jeopardy; applicable dollar amounts for certain exemptions and the relevant dates for calculating the inflation adjustment for certain exemptions; and changes in titles of certain employees as a result of the reorganization of the IRS mandated by that Act. The proposed regulations also permit levy on certain specified payments with the prior approval of the Secretary, reflecting changes made by the Taxpayer Relief Act of 1997.

DATES: Written comments and requests for a public hearing must be received by November 17, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG–140378–01), Room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to CC:PA:RU (REG–140378–01), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Robin Ferguson at (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) under section 6334 of the Internal Revenue Code of 1986. The proposed regulations provide guidance on the amendments to section 6334 made by the IRS Restructuring and Reform Act of 1998 (Public Law 105–206)(RRA 98), and the Taxpayer Relief Act of 1997 (Public Law 105–34)(TRA 97).

Explanation of Provisions

Overview

Section 6334 enumerates items of property exempt from levy and provides special rules for levies. In RRA 98, Congress amended section 6334 and created new requirements for levy upon certain residential property and business assets. Specifically, section 6334 was amended to provide for an exemption, in small deficiency cases, from levy for certain real property used as a residence by any individual; to require judicial approval of the levy of certain principal residences; to require administrative approval of the levy of certain business assets; to increase certain exemption amounts; and to make certain conforming amendments. RRA 98 also mandated an IRS reorganization, which changed or eliminated certain position titles. TRA 97 amended section 6334 to provide that certain payments shall not be exempt from levy if the Secretary approves. The proposed regulations provide guidance on each of these provisions.

Levy Exemption for Residences in Small Deficiency Cases

As amended, section 6334(a)(13) provides an exemption from levy for any real property used as a residence by the taxpayer or any other individual (except for real property that is rented) if the amount of the levy does not exceed $5,000. The proposed regulations provide guidance on this exemption.

Judicial Approval for Levies of Certain Principal Residences

Prior to RRA 98, section 6334(a)(13) provided that the principal residence of the taxpayer, within the meaning of section 121, was exempt from levy in the absence of jeopardy or certain approval. Section 6334(e) permitted levy if an IRS district director or assistant district director personally approved, in writing, the levy of property, or the Secretary determined that the collection of tax was in jeopardy.

As amended, section 6334(a)(13)(B)(i) provides that the principal residence of the taxpayer, within the meaning of section 121, is exempt from levy except to the extent provided in section 6334(e). Section 6334(e)(1)(A) provides that a principal residence shall not be exempt from levy if a judge or magistrate of a district court of the United States approves, in writing, the levy of such residence. Section 6334(e)(1)(B) provides that the district courts of the United States shall have exclusive jurisdiction to approve such levy. Accordingly, judicial approval is required prior to levy of a taxpayer's principal residence (hereinafter referred to as the section 6334(e)(1) proceeding).

The Conference Report for RRA 98 states that no seizure of a dwelling that is the principal residence of the taxpayer or the taxpayer's spouse, former spouse, or minor child will be allowed without prior judicial approval. The Conference Report further provides that notice of the judicial hearing must be provided to the taxpayer and family members residing in the property. The Conference Report also states that at the judicial hearing, the Secretary will be required to demonstrate (1) that the requirements of any applicable law or administrative procedures relevant to the levy have been met, (2) that the liability is owed, and (3) that no reasonable alternative for the collection of the taxpayer's debt exists. IRS Restructuring and Reform Act of 1998, Conference Report to Accompany H.R. 2676, H.R. Conf. Rep. No. 105–599, 105th Cong., 2d Sess., at 267.

With respect to whether a liability is owed, these proposed regulations interpret the legislative history to require the IRS to demonstrate only that an assessed liability has not been satisfied. The proposed regulations specifically do not require the IRS to demonstrate the merits of the underlying liability. Treasury and the IRS have concluded that the purpose of a section 6334(e)(1) proceeding is to determine whether the proposed seizure is appropriate rather than to afford the taxpayer with an additional opportunity to contest the merits of the underlying tax liability. As discussed below, a section 6334(e)(1) proceeding, therefore, looks to whether the IRS has followed applicable law and procedural rules relating to the levy and the existence of reasonable collection alternatives, in addition to whether an unsatisfied liability exists. Other provisions of the Code, such as the deficiency procedures for income taxes, provide taxpayers with the opportunity to challenge the merits of an asserted liability. In the levy context, section 6330 gives taxpayers the right to request a hearing prior to levy, including levies that also are the subject of a section 6334(e)(1) proceeding. Section 6330(c)(2)(B) specifically gives the taxpayer the right

to challenge the merits of the underlying liability if the taxpayer did not receive the statutory notice of deficiency or did not otherwise have an opportunity to dispute the tax liability. In contrast, nothing in section 6334(e)(1) indicates that Congress intended to provide a taxpayer with a further opportunity to contest the merits of the underlying tax liability.

Consistent with the language of section 6334(e)(1) and the legislative history, the proposed regulations provide that judicial approval is required prior to levy of the principal residence of the taxpayer, taxpayer's spouse, taxpayer's former spouse, or taxpayer's minor child. Also in accordance with this legislative history, the proposed regulations provide that the Government will request that the taxpayer be given notice and an opportunity to participate in the section 6334(e)(1) proceeding.

The Government will initiate the section 6334(e)(1) proceeding by filing with a district court of the United States a petition seeking judicial approval of a principal residence levy. In its petition, the Government will set forth its prima facie case by demonstrating that (1) The underlying tax liability has not been satisfied, (2) the requirements of any applicable law or administrative procedure relevant to the levy have been met, and (3) no reasonable alternative for collection of the taxpayer's debt exists. The petition will ask the court to issue to the taxpayer an order to show cause why the principal residence property should not be levied and a notice of hearing.

The taxpayer will be granted a hearing to rebut the Government's prima facie case if the taxpayer files an objection within the time period required by the court raising a genuine issue of material fact demonstrating that (1) The assessed tax liability has been satisfied, (2) the taxpayer has other assets from which the liability can be satisfied, or (3) the IRS did not follow the applicable laws or procedures pertaining to the levy. The taxpayer is not permitted to challenge the merits underlying the tax liability in the proceeding. Unless the taxpayer makes a timely and appropriate showing, the court would be expected to enter an order approving the levy of the principal residence property.

If the property to be levied is the principal residence of the taxpayer's spouse, former spouse, or minor child, the Government will send each such person a letter providing notice of the commencement of the proceeding. The letter will be addressed in the name of the taxpayer's spouse or ex-spouse, individually or on behalf of any minor children. If it is unclear who is living in the principal residence and/or what such person's relationship is to the taxpayer, a letter will be addressed to "Occupant". The purpose of the letter is to make the family members aware that their living arrangements may be placed in jeopardy if the court approves levy of the principal residence property.

The proposed regulations provide that family members who receive notice of the commencement of a section 6334(e)(1) proceeding may not be joined as parties to the proceeding. As noted above, Treasury and the IRS believe that the purpose of such notification is to ensure that family members living at the residence that is the subject of the proposed levy understand that their living arrangements may be placed in jeopardy. A levy by the IRS, however, can reach only the taxpayer's interest in property. The property rights (if any) of family members living at the residence are outside of the scope of that levy and are not at issue when an order approving the levy is sought from the court. Accordingly, because only the taxpayer's property rights are at issue in a section 6334(e)(1) proceeding, the proposed regulations do not permit other family members to contest a request for judicial approval of a principal residence levy. This rule is similar to those for actions by the IRS to foreclose on tax liens on property under section 7403. In those actions, the Government names as defendants all individuals who may claim an interest in the property; residents who do not otherwise have a legal interest in property, such as by co-tenancy, are not named as defendants.

The proposed regulations incorporate the procedures for obtaining judicial approval of a principal residence levy.

Prior Approval of Levies of Certain Business Assets

In enacting RRA 98, Congress created new approval requirements for levies of certain business assets. Specifically, Congress enacted new section 6334(a)(13)(B)(ii), which provides that, except to the extent provided in section 6334(e), tangible personal property or real property (other than real property that is rented) used in the trade or business of an individual taxpayer shall be exempt from levy. Section 6334(e) was amended to provide that such property shall not be exempt from levy if a district director or assistant district director of the IRS personally approves (in writing) the levy of such property, or the Secretary finds that the collection of tax is in jeopardy. Section 6334(e)(2) of the Internal Revenue Code (Code). Section 6334(e) was further amended to provide that an official may not approve such levy unless the official determines that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceedings.

RRA 98 section 3445(c)(1) clarifies that, with respect to permits issued by a State and required under State law for the harvest of fish or wildlife in the trade or business of an individual taxpayer, the term other assets as used in section 6334(e)(2) includes future income that may be derived by such taxpayer from the commercial sale of fish or wildlife under such permit. RRA 98 section 3445(c)(2) provides that section 3445(c)(1) shall not be construed to invalidate or in any way prejudice any assertion that the privilege embodied in such permits is not property or a right to property under the Code.

The proposed regulations provide guidance on the current requirements of section 6334(e) relating to the procedures for approval of the levy of certain business assets.

Exemption Amounts and Conforming Amendments

In RRA 98, Congress amended section 6334(a)(2) and (a)(3) to increase the applicable exemption dollar amounts (which are indexed for inflation). Congress also enacted a conforming amendment to section 6334(g)(1) to revise the dates to be used in calculating the inflation adjustment to the section 6334(a)(2) and (a)(3) exemptions. The proposed regulations provide guidance on these provisions.

IRS Reorganization

Pursuant to the reorganization of the IRS after RRA 98, the titles of district director and assistant district director cited in section 6334(e)(2)(A) no longer exist. The proposed regulations replace these titles with the current title, which is Area Director.

Levy on Certain Payments

In TRA 97, Congress amended section 6334 by adding new section 6334(f) and redesignating former section 6334(f) as section 6334(g). Section 6334(f) provides that any payment described in section 6331(h)(2)(B) or (h)(2)(C) (certain payments upon which continuous levy may be authorized) shall not be exempt from levy if the Secretary approves the levy thereon under section 6331(h). The proposed regulations provide guidance on this provision.

Proposed Effective Dates

The proposed regulations will apply on the date corresponding final regulations are published in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of the proposed regulations is Robin Ferguson of the Office of Associate Chief Counsel, Procedure and Administration (Collection, Bankruptcy and Summonses Division).

Lists of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. Section 301.6334–1 is amended as follows:

1. Paragraphs (a)(2), (a)(3), (a)(8), (a)(13), (d), (e), and (f) are revised.

2. Paragraphs (g) and (h) are added.

The revisions and additions read as follows:

§ 301.6334–1 Property exempt from levy.

(a) * * *

(2) *Fuel, provisions, furniture, and personal effects.* So much of the fuel, provisions, furniture, and personal effects in the taxpayer's household, and of the arms for personal use, livestock, and poultry of the taxpayer, that does not exceed $6,250 in value.

(3) *Books and tools of a trade, business or profession.* So many of the books and tools necessary for the trade, business, or profession of an individual taxpayer as do not exceed in the aggregate $3,125 in value.

* * * * *

(8) *Judgments for support of minor children.* If the taxpayer is required under any type of order or decree (including an interlocutory decree or a decree of support pendente lite) of a court of competent jurisdiction, entered prior to the date of levy, to contribute to the support of that taxpayer's minor children, so much of that taxpayer's salary, wages, or other income as is necessary to comply with such order or decree. The taxpayer must establish the amount necessary to comply with the order or decree. The Service is not required to release a levy until such time as it is established that the amount to be released from levy actually will be applied in satisfaction of the support obligation. The Service may make arrangements with a delinquent taxpayer to establish a specific amount of such taxpayer's salary, wage, or other income for each pay period that shall be exempt from levy, for purposes of complying with a support obligation. If the taxpayer has more than one source of income sufficient to satisfy the support obligation imposed by the order or decree, the amount exempt from levy, at the discretion of the Service, may be allocated entirely to one salary, wage or source of other income or be apportioned between the several salaries, wages, or other sources of income.

* * * * *

(13) *Residences exempt in small deficiency cases and principal residences and certain business assets exempt in absence of certain approval or jeopardy*—(i) Residences in small deficiency cases. If the amount of the levy does not exceed $5,000, any real property used as a residence of the taxpayer or any real property of the taxpayer (other than real property which is rented) used by any other individual as a residence.

(ii) *Principal residences and certain business assets.* Except to the extent provided in section 6334(e), the principal residence (within the meaning of section 121) of the taxpayer and tangible personal property or real property (other than real property which is rented) used in the trade or business of an individual taxpayer.

* * * * *

(d) *Levy allowed on principal residence.* The Service will seek approval, in writing, by a judge or magistrate of a district court of the United States prior to levy of property that is owned by the taxpayer and used as the principal residence of the taxpayer, the taxpayer's spouse, the taxpayer's former spouse, or the taxpayer's minor child.

(1) *Nature of judicial proceeding.* The Government will initiate a proceeding for judicial approval of levy on a principal residence by filing a petition with the appropriate United States District Court demonstrating that the underlying liability has not been satisfied, the requirements of any applicable law or administrative procedure relevant to the levy have been met, and no reasonable alternative for collection of the taxpayer's debt exists. The petition will ask the court to issue to the taxpayer an order to show cause why the principal residence property should not be levied and will also ask the court to issue a notice of hearing.

(2) The taxpayer will be granted a hearing to rebut the Government's prima facie case if the taxpayer files an objection within the time period required by the court raising a genuine issue of material fact demonstrating that the underlying tax liability has been satisfied, that the taxpayer has other assets from which the liability can be satisfied, or that the Service did not follow the applicable laws or procedures pertaining to the levy. The taxpayer is not permitted to challenge the merits underlying the tax liability in the proceeding. Unless the taxpayer files a timely and appropriate objection, the court would be expected to enter an order approving the levy of the principal residence property.

(3) *Notice letter to be issued to certain family members.* If the property to be

levied is owned by the taxpayer but is used as the principal residence of the taxpayer's spouse, the taxpayer's former spouse, or the taxpayer's minor child, the Government will send a letter to each such person providing notice of the commencement of the proceeding. The letter will be addressed in the name of the taxpayer's spouse or ex-spouse, individually or on behalf of any minor children. If it is unclear who is living in the principal residence property and/or what such person's relationship is to the taxpayer, a letter will be addressed to "Occupant". The purpose of the letter is to provide notice to the family members that the property may be levied. The family members may not be joined as parties to the judicial proceeding because the levy attaches only to the taxpayer's legal interest in the subject property and the family members have no legal standing to contest the proposed levy.

(e) *Levy allowed on certain business assets.* The property described in section 6334(a)(13)(B)(ii) shall not be exempt from levy if—

(1) An Area Director of the Service personally approves (in writing) the levy of such property; or

(2) The Secretary finds that the collection of tax is in jeopardy. An Area Director may not approve a levy under paragraph (e)(1) of this section unless the Area Director determines that the taxpayer's other assets subject to collection are insufficient to pay the amount due, together with expenses of the proceeding. When other assets of an individual taxpayer include permits issued by a State and required under State law for the harvest of fish or wildlife in the taxpayer's trade or business, the taxpayer's other assets also include future income that may be derived by such taxpayer from the commercial sale of fish or wildlife under such permit.

(f) *Levy allowed on certain specified payments.* Any payment described in section 6331(h)(2)(B) or (C) shall not be exempt from levy if the Secretary approves the levy thereon under section 6331(h).

(g) *Inflation adjustment.* For any calendar year beginning after 1999, each dollar amount referred to in paragraphs (a)(2) and (3) of this section will be increased by an amount equal to the dollar amount multiplied by the cost-of-living adjustment determined under section 1(f)(3) for the calendar year (using the language "calendar year 1998" instead of "calendar year 1992" in section 1(f)(3)(B)). If any dollar amount as adjusted is not a multiple of $10, the dollar amount will be rounded to the nearest multiple of $10 (rounding up if the amount is a multiple of $5).

(h) *Effective date.* This section will apply as of the date final regulations are published in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–20473 Filed 8–18–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8–R

RIN 0720–AA86

TRICARE Program; Coordination of Benefits Between TRICARE and the Department of Veterans Affairs

AGENCY: Office of the Secretary, DoD.

ACTION: Proposed rule.

SUMMARY: Under current rules, beneficiaries who are eligible for both TRICARE and Department of Veterans Affairs (VA) benefits may use only one program for care but cannot use both at the same time. This proposed rule changes that policy to establish VA benefits as double coverage under TRICARE, so that beneficiaries may use TRICARE benefits to augment or replace services being provided through the VA.

DATES: Public comments must be received by October 20, 2003.

ADDRESSES: Forward comments to: TRICARE Management Activity (TMA), Medical Benefits and Reimbursement Systems, 16401 East Centretech Parkway, Aurora, CO 80011–9043.

FOR FURTHER INFORMATION CONTACT: Stephen E. Isaacson, Medical Benefits and Reimbursement Systems, TMA, (303) 676–3572.

SUPPLEMENTARY INFORMATION:

Coordination of TRICARE and the Department of Veterans Affairs Benefits

According to 10 USC 1086(g) TRICARE is to ensure "that no person eligible for health benefits under this section may be denied benefits under this section with respect to care or treatment for any service connected disability which is compensable under chapter 11 of title 38 solely on the basis that such person is entitled to care or treatment for such disability in facilities of the Department of Veterans Affairs".

In applying this statutory provision, TRICARE has established a policy that would ensure free access to care under either program and continuity of care for beneficiaries while also ensuring that TRICARE and the Department of Veterans Affairs (VA) do not duplicate benefits. This policy allows beneficiaries to use either TRICARE or the VA for any episode of care, but they cannot use both. Often beneficiaries make the choice of which program to use, not by any definitive action, but simply by going first to either TRICARE or the VA for care. Once that is done, the other program cannot be involved. For example, if a beneficiary experiences back pain and goes to the VA for care, the beneficiary must then receive all care related to that back pain from the VA. If the beneficiary subsequently goes to a civilian physician for the back pain and submits a claim to TRICARE, TRICARE will deny the claim.

This limitation on care has been based on "episodes of care" which has never been fully defined under TRICARE, in either the regulation or any TRICARE manual. It is generally accepted to be all care related to a single injury or illness, but it has been left to the TRICARE managed care support contractors to actually determine what constitutes an episode of care when a claim is received that might be subject to this limitation. There has also not been any universal policy as to when an episode of care ends. Using the previous example of the beneficiary with back pain, if the beneficiary goes for thirty days without receiving any care for the back pain, does that end the episode of care? Should it be sixty days? Or ninety days? The end of the episode of care is important, because the limitation on using only TRICARE or the VA applies only to episodes of care. That is, if the beneficiary has elected to use the VA for one episode of care, the beneficiary can elect to use TRICARE for a different episode of care. That episode of care can overlap the initial episode of care if it is for a totally different injury or illness. If it is for the same injury of illness, an appropriate amount of time must have passed without the beneficiary receiving any care.

As noted above, this policy was established in order to ensure continuity of care for our beneficiaries and to ensure there was no duplication of care or payments between TRICARE and the VA. If a beneficiary is receiving care from the VA for an injury or illness, a plan of care will have been established by the VA provider, and subsequently receiving care from a different provider under TRICARE, who might decide on a different course of treatment, may actually negatively impact the beneficiary's progress. At the very least

the services from the second provider would probably be duplicative and result in unnecessary expenditures by TRICARE.

This policy has caused few problems, but there have been cases where a beneficiary has been dissatisfied with the care he/she was receiving from either TRICARE or the VA and has wanted to switch to the other program to receive services for the same episode of care. They have been unable to do so.

Section 708 of the National Defense Authorization Act for FY 2003 (Pub. L. 107–314) addresses this issue. Although it makes no change to the statutes that govern TRICARE (10 U.S.C. Chapter 55), it directs the Secretary of Defense to (1) take actions to establish a process for coordinating care between TRICARE and the VA that ensures patient safety and continuity of care while preventing diminution of access to health care from either source, and (2) prescribe a clear definition of an episode of care for use in the process of coordinating care between TRICARE and the VA.

In analyzing how best to establish this process, we have decided to change our basic policy rather than defining episode of care. By changing our policy we will ensure that no one is inadvertently denied access to care under TRICARE for which they also can receive treatment in a VA facility.

Any attempt to establish a workable definition of episode of care would require some specific and arbitrary end date which undoubtedly would be detrimental to some individual case. We also believe that there are few cases that actually are affected by this policy. For the vast majority of cases, beneficiaries decide to use either TRICARE or the VA for reasons that are important to them, and they are satisfied with continuing to receive their care from the same source.

Therefore, we propose to change our policy to include care from VA medical care facilities under the definition of double coverage for TRICARE. In support of the policy explained above, the TRICARE regulation (32 CFR Part 199) currently states that TRICARE double coverage plans do not include entitlement to receive care from VA medical care facilities. Most other coverages (insurance, medical service or health plans) are considered double coverage, which means that a beneficiary simply must submit a claim for services or supplies to the double coverage plan first. After the double coverage makes payment, TRICARE will process the claim and usually will pay the remaining liability on the claim.

The effect of our proposed change will be to enable individuals who are receiving care from the VA to change to care under TRICARE for the same episode of care. Under this policy the VA will be responsible for payment for the services they provide, either directly through their medical care facilities or through a basic ordering agreement with a civilian provider. A claim can then be submitted to TRICARE for reimbursement of any VA cost-shares. At the same time, the beneficiary may choose to receive care from a civilian provider for the episode of care that has not been arranged by the VA. Claims for this care, so long as it is medically necessary, can be submitted to TRICARE, and they will be reimbursed.

This policy eliminates the need for an arbitrary definition of an episode of care, and it ensures full freedom of choice for beneficiaries who have entitlement to both TRICARE and VA benefits. While there may be some remaining issue regarding continuity of care and duplicative care for a very few cases, this is largely mitigated by the fact that many TRICARE beneficiaries are enrolled in TRICARE Prime. Under Prime, all care is coordinated by an assigned Primary Care Manager who can ensure that any care received under TRICARE does not interfere with or duplicate care being provided by the VA.

Regulatory Procedures

Executive Order (EO) 12866 requires that a comprehensive regulatory impact analysis be performed on any economically significant regulatory action, defined as one which would result in an annual effect of $100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This rule has been designated as significant and has been reviewed by the Office Management and Budget as required under the provisions of E.O. 12866. In addition, we certify that this proposed rule will not significantly affect a substantial number of small entities.

Paperwork Reduction Act

This rule imposes no burden as defined by the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 199

Claims, handicapped, health insurance, and military personnel.

Accordingly, 32 CFR part 199 is proposed to be amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. Chapter 55.

2. Section 199.2 is proposed to be amended by revising the definition *double coverage plan* as follows.

§ 199.2 Definitions.

* * * * *

(b) * * *

* * * * *

Double coverage plan. The specific insurance, medical service or health plan under which a CHAMPUS beneficiary has entitlement to medical benefits that duplicate CHAMPUS benefits in whole or in part. Double coverage plans do not include;

(i) Medicaid.

(ii) Coverage specifically designed to supplement CHAMPUS benefits.

(iii) Entitlement to receive care from the Uniformed Services medical facilities;

(iv) Part C of the Individuals with Disabilities Education Act for services and terms provided in accordance with Part C of the IDEA that are medically or psychologically necessary in accordance with the Individualized Family Service plan and that are otherwise allowable under the CHAMPUS Basic Program or the Program for Persons with Disabilities.

* * * * *

3. Section 199.8 is proposed to be amended by redesignating existing paragraphs (b)(3) and (b)(4) as (b)(4) and (b)(5) respectively, and adding a new paragraph (b)(3) to read as follows:

§ 199.8 Double coverage plan.

* * * * *

(b) * * *

(3) Entitlement to receive care from VA medical care facilities.

* * * * *

Dated: August 12, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–21012 Filed 8–18–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AJ25

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2004–2005 Subsistence Taking of Wildlife Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 2004–2005 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking would replace the wildlife taking regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—2003–2004 Subsistence Taking of Fish and Wildlife Regulations," which expire on June 30, 2004. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board and the General Regulations related to the taking of wildlife.

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than October 24, 2003. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change this proposed rule on several dates starting from September 9, 2003–October 14, 2003. See **SUPPLEMENTARY INFORMATION** for additional information on the public meetings including dates.

ADDRESSES: You may submit proposals electronically to *Subsistence@fws.gov*. See **SUPPLEMENTARY INFORMATION** for file formats and other information about electronic filing. You may also submit written comments and proposals to the Office of Subsistence Management, 3601 C Street, Suite 1030, Anchorage, Alaska 99503. The public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Public Review Process—Regulation Comments, Proposals, and Public Meetings

The Federal Subsistence Board (Board), through the Regional Councils, will hold meetings on this proposed rule at the following locations and on the following dates in Alaska:

Region 1—Southeast Regional Council	Craig	October 5, 2003.
Region 2—Southcentral Regional Council	Talkeetna	October 7, 2003.
Region 3—Kodiak/Aleutians Regional Council	King Cove	September 18, 2003.
Region 4—Bristol Bay Regional Council	Dillingham	September 29, 2003.
Region 5—Yukon-Kuskokwim Delta Regional Council	Wasilla	October 12, 2003.
Region 6—Western Interior Regional Council	Wasilla	October 12, 2003.
Region 7—Seward Peninsula Regional Council	Nome	September 25, 2003.
Region 8—Northwest Arctic Regional Council	Kotzebue	October 2, 2003.
Region 9—Eastern Interior Regional Council	Wasilla	October 14, 2003.
Region 10—North Slope Regional Council	Barrow	September 9, 2003.

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings. The agenda of each Regional Council meeting will include a review of wildlife issues in the Region, discussion and development of recommendations on fishery proposals for the Region, and staff briefings on matters of interest to the Council.

Electronic filing of comments (preferred method): You may submit electronic comments (proposals) and other data to *Subsistence@fws.gov*. Please submit as either WordPerfect or MS Word files, avoiding the use of any special characters and any form of encryption.

During November 2003, we will compile the written proposals to change Subpart D hunting and trapping regulations and customary and traditional use determinations in Subpart C and distribute them for additional public review. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period, which is presently scheduled to end on January 5, 2004.

We will hold a second series of Regional Council meetings in February and March 2004, to assist the Regional Councils in developing recommendations to the Board. You may also present comments on published proposals to change hunting and trapping and customary and traditional use determination regulations to the Regional Councils at those winter meetings.

The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage in May 2004. You may provide additional oral testimony on specific proposals before the Board at that time. At that public meeting, the Board will then deliberate and take final action on proposals received that request changes to this proposed rule.

Please Note: The Board will not consider proposals for changes relating to fish or shellfish regulations at this time. The Board will be calling for proposed changes to those regulations in January 2004.

The Board's review of your comments and wildlife proposals will be facilitated by you providing the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which you are suggesting changes; (c) A statement explaining why the change is necessary; (d) The proposed wording change; (e) Any additional

information you believe will help the Board in evaluating your proposal. Proposals that fail to include the above information, or proposals that are beyond the scope of authorities in §_____.24, Subpart C and §§_____.25 or _____.26, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members, and on the basis of least harm to the subsistence user and the resource involved. Proposals should be specific to customary and traditional use determinations or to subsistence hunting and trapping seasons, harvest limits, and/or methods and means.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, as revised February 18, 2003 (68 FR 7703), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, and the annual Subpart D regulations.

All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR 100.1 to 100.23 and 36 CFR 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR 100.4 and 36 CFR 242.4 would apply to regulations found in this subpart.

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (2003) and 50 CFR 100.11 (2003), and for the purposes identified therein, we divide Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in May 2004.

Proposed Changes from 2003–2004 Seasons and Bag Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations (§_____.24 of Subpart C) are also subject to an annual review process providing for modification each year. The text of the 2003–2004 Subparts C and D final rule, without modification, served as the foundation for the 2004–2005 Subparts C and D proposed rule. The regulations contained in this proposed rule would take effect on July 1, 2004, unless elements are changed by subsequent Board action following the public review process outlined herein.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance: A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments, and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations

for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940; May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment was prepared in 1997 on the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with the concurrence of the Secretary of Agriculture, determined that the expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and has therefore signed a Finding of No Significant Impact.

Compliance with Section 810 of ANILCA: A Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final Section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the rule will not reach the "may significantly restrict" threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act: This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. The information collection requirements are approved by OMB under 44 U.S.C. 3501 and have been assigned control number 1018–0075, which expires July 31, 2003. On July 3, 2003, we submitted our request for OMB renewal of 3-year approval of this information collection (68 FR 2347). We will not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Economic Effects: This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands, and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; however, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, would equate to about $6 million in food value Statewide.

Regulatory Flexibility Act: The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments certify based on the above figures that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630: Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act: The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988: The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132: In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Government-to-Government Relations with Native American Tribal Governments: In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Energy Effects: On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information: William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Dennis Tol, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife

Service; and Ken Thompson, USDA-Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2004–05 regulatory year. The text of the amendments would be the same as the final rule for the 2003–04 regulatory year published in the **Federal Register** of 68 FR 38464, June 27, 2003.

Dated: July 28, 2003.

Peggy Fox,

Acting Chair, Federal Subsistence Board.

Dated: July 23, 2003.

Steve Kessler,

Subsistence Program Manager, USDA-Forest Service.

[FR Doc. 03–21121 Filed 8–18–03; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 390, and 397

[Docket No. FMCSA–97–2180; formerly FHWA–97–2180]

RIN 2126–AA07

Federal Motor Carrier Safety Regulations: Hazardous Materials Safety Permits

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Supplemental Notice of Proposed Rulemaking (SNPRM).

SUMMARY: The FMCSA proposes to establish a safety permit program for motor carriers that transport any of the following hazardous materials in interstate or intrastate commerce: a highway route-controlled quantity of a Class 7 (radioactive) material; more than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material; more than one liter (1.08 quarts) per package of a material in Division 2.3, Packing Group I, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A; and a shipment of compressed or refrigerated liquid methane or natural gas in a packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases. As part of this safety permit program, FMCSA proposes to consider additional "acute" and "critical" regulations relevant to its determination of a carrier's safety fitness rating and, accordingly, the issuance of a safety permit.

This rulemaking would implement requirements in Federal hazardous material transportation law that DOT must establish a safety permit program and a motor carrier must hold a safety permit in order to transport certain hazardous materials in commerce. This rulemaking would also carry out a statutory provision to issue regulations requiring a pre-trip inspection and certification of a motor vehicle used to transport a highway route controlled quantity of a Class 7 (radioactive) material.

This rulemaking would also announce the agency's decision to not prescribe a uniform permitting system for intrastate transportation of hazardous materials, as proposed in the 1993 notice of proposed rulemaking to this action. Specifically, FMCSA would not require States that issue permits for the intrastate transportation of hazardous materials to use uniform forms and procedures, or to require each State to register all persons who transport hazardous materials—or cause hazardous materials to be transported—intrastate by motor vehicle. FMCSA believes that it is not possible to devise a uniform system that would satisfactorily anticipate, address and resolve the myriad of permitting challenges and concerns that are unique to individual States.

This proposed rule, if promulgated, will promote the safe and secure transportation of the designated hazardous materials and enhance motor carrier safety.

DATES: Comments must be received on or before October 20, 2003.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Dockets Management Facility, United States Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, FAX (202) 493–2251, on-line at *http://dmses.dot.gov/submit*. You must include the docket number that appears in the heading of this document in your comments. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., *e.t.*, Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at *http://dms.dot.gov/search.htm* by typing the last four digits of the docket number appearing in the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Comments received after the closing date will be included in the docket, and FMCSA will consider late-filed comments to the extent practicable. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. James Simmons, (202) 493–0496, Hazardous Materials Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Statutory Background

Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, was enacted "to provide adequate protection against the risks to life and property inherent in the transportation of hazardous material in commerce * * *". Certain provisions of this law, including sections 5105(e), 5109, and 5119, apply only to the transportation of hazardous material by motor vehicle. The authority for implementing these provisions (except section 5109(f)) has been delegated to FMCSA under 49 CFR 1.73(d)(2)). (This authority was transferred from the Federal Highway Administration (FHWA) to a separate Office of Motor Carrier Safety, 64 FR 56270 (Oct. 19, 1999), which became FMCSA on January 1, 2000. *See* 64 FR 72959 (Dec. 29, 1999), and 65 FR 220 (Jan. 4, 2000)).

Section 5105(e) provides that DOT "shall require by regulation that before each use of a motor vehicle to transport a highway-route-controlled quantity of radioactive material in commerce, the vehicle shall be inspected and certified as complying with this chapter and applicable United States motor carrier safety laws and regulations." This section also provides that DOT "may require that the inspection be carried out by an authorized United States Government inspector or according to appropriate State procedures." The definition of a "highway route controlled quantity" of a Class 7 (radioactive) material is set forth at 49 CFR 173.403, in terms of the activity level of the radioactive material in a single package. In general, this is a quantity that emits high levels of radioactivity and, accordingly, the packaging, hazard communication, and operating requirements that apply to a shipment of a highway route controlled quantity of a Class 7 material are intended to both adequately identify the presence of this material and ensure that the packaging will withstand normal transportation conditions and foreseeable accidents, without a breach of containment integrity.

Section 5109 requires DOT to issue regulations for safety permits for transporting certain hazardous materials. A motor carrier must hold a safety permit issued by DOT, and keep a copy of the permit or other proof of its existence in the vehicle, in order to transport certain hazardous materials in commerce or cause such materials to be transported in commerce by motor vehicle. 49 U.S.C. 5109(a). A person may not offer such hazardous materials for motor vehicle transportation in commerce unless the motor carrier has a safety permit. 49 U.S.C. 5109(f).

Under section 5109(b), a safety permit is required for the following four hazardous materials, above threshold amounts established by DOT, but DOT may also prescribe additional hazardous materials, and the amount of each, to be subject to the safety permit requirement:

1. A Class A or B explosive (now Division 1.1, 1.2, or 1.3 explosive);
2. Liquefied natural gas;
3. Hazardous material designated as extremely toxic by inhalation; and
4. A highway route controlled quantity of radioactive material.

Other provisions in section 5109 require DOT to issue regulations for issuing safety permits, including application procedures; the duration, term, and limitations of a safety permit; other conditions needed to protect public safety; and procedures to amend, suspend, or revoke a safety permit. In order to issue a safety permit, DOT must find that the motor carrier is fit, willing, and able to (1) Provide the transportation to be authorized by the safety permit; (2) comply with Federal hazardous material transportation law and DOT's regulations under that law; and (3) comply with applicable Federal motor carrier safety laws and applicable minimum financial responsibility laws and regulations. 49 U.S.C. 5109(a).

Section 5119 directed DOT to establish a working group of State and local government officials to make recommendations to DOT with respect to uniform forms and procedures for a State "to register persons that transport or cause to be transported hazardous material by motor vehicle in the State" and "to allow the transportation of hazardous material in the State," including "whether to limit the filing of any State registration and permit forms and collection of filing fees to the State in which the person resides or has its principal place of business." After receiving a final report from the working group, DOT "shall prescribe regulations to carry out the recommendations contained in the [final] report * * * with which the Secretary agrees."

Prior Proceedings

On June 17, 1993, the Federal Highway Administration (FHWA) published in the **Federal Register** a notice of proposed rulemaking to establish a safety permit program covering the four hazardous materials specified in 49 U.S.C. 5109(b), including the requirement for a pre-trip inspection of a motor vehicle to be used to transport a highway route controlled quantity of Class 7 (radioactive) material. 58 FR 33418. In response to that notice, FHWA received more than 50 written comments, and these comments have been considered in the preparation of this SNPRM, as discussed below.

On November 17, 1993, the Alliance for Uniform HazMat Transportation Procedures (Alliance), established under 49 U.S.C. 5119, transmitted its recommendations to DOT, and it submitted its final report to DOT on March 15, 1996. According to the Alliance, "[a]ll but nine states have some type of permitting and/or registration program for hazardous materials transportation." November 17, 1993 Report, p. 2–7. The Alliance recommended that DOT:

1. Explore options for consolidating State registration programs with the Federal registration program (applicable to shippers and carriers by all modes and administered by DOT's Research and Special Programs Administration (RSPA), under 49 U.S.C. 5108);
2. Consider waiving the Federal requirement for a safety permit for a motor carrier that obtains a permit under a uniform State permit program; and
3. Promote a one-stop repository for up-to-date information on hazardous materials routing designations.

In its final report, the Alliance described a two-year pilot project carried out in four States (Minnesota, Nevada, Ohio, and West Virginia) of a "base-state" system for registration and collection of fees and reciprocity between States that require permits.

FHWA decided not to proceed with further rulemaking action to implement the requirements in 49 U.S.C. 5109 and 5105(e) until it had considered the final report and recommendations of the Alliance. In its July 9, 1996 notice published in the **Federal Register** (61 FR 36016), FHWA (1) summarized the Federal permit and registration requirements in the Federal hazardous material transportation law, (2) discussed the activities and recommendations of the Alliance, and (3) invited comments on the Alliance's final report and recommendations. In a supplemental notice published in the **Federal Register** on March 31, 1998 (63 FR 15362), FHWA discussed the comments received in response to its July 9, 1996 notice and directed a series of additional questions to State agencies and motor carriers. Only 11 States responded to the notice, and they did not reach a clear consensus on the direction FHWA should take. State designations and restrictions of highway routes for transporting hazardous materials have been published in the **Federal Register** on June 9, 1998 (63 FR 31549), and Dec. 4, 2000 (65 FR 75771), and are maintained on FMCSA's Internet Web site at *http://hazmat.fmcsa.dot.gov*.

DOT has asked Congress to amend or repeal 49 U.S.C. 5109 three times since 1997, because "many States have different permit requirements" for carriers of hazardous materials and because the agency believed it had appropriate safety monitoring systems in place to address unsafe carriers transporting these materials. In addition, the pilot project under 49 U.S.C. 5119 revealed that a uniform permit system will not likely resolve different States' concerns that their needs will be met, and raises additional concerns related to unnecessary preemption and expenses of a parallel Federal permitting system. In place of a Federal safety permit, DOT proposed that it should be authorized to continue

its safety monitoring of carriers transporting hazardous materials and consider alternative means of enhancing safety in motor carrier transportation of hazardous materials, by such means as additional monitoring of the safety performance of carriers and performing a safety review of "new entrants" within 18 months of the date when the carrier begins operations. (On May 13, 2002, FMCSA published an interim final rule in the **Federal Register** establishing minimum requirements for new entrant motor carriers. The rulemaking seeks to ensure that they are knowledgeable about the applicable Federal regulations and advises that FMCSA will conduct a safety audit as soon as the new entrant has been in operation for enough time (generally, at least three months) to have sufficient records to evaluate the carrier's basic safety management controls. 67 FR 31978.)

The SNPRM

Congress has not eliminated the statutory requirement for a Federal safety permit. Accordingly, the FMCSA is issuing a revised proposal in this SNPRM. The FMCSA invites all interested persons to comment on this revised proposal and hopes to issue a final rule that will phase in the requirement for a safety permit over the 2005–2006 time period as motor carriers submit or update their Motor Carrier Identification Report (Form MCS–150) (according to the schedule set forth in 49 CFR 390.19(a)).

Hazardous Materials for Which a Safety Permit Would Be Required

In the 1993 NPRM, FHWA proposed that a motor carrier would be required to hold a safety permit in order to transport in commerce any of the four hazardous materials specified in 49 U.S.C. 5109(b), in the same threshold quantities for which the carrier must submit a registration statement and pay a registration fee under 49 U.S.C. 5108(a)(1)(A)–(D):

1. A highway route-controlled quantity of a Class 7 (radioactive) material;

2. more than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material;

3. more than one liter (1.08 quarts) per package of a poisonous-by-inhalation (PIH) material in Division 2.3, Packing Group I, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A; and

4. a shipment of compressed or refrigerated liquid methane or natural gas in bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases.

Accordingly, the motor carriers required to hold a safety permit would be a subset of the carriers required to register and pay a registration fee, and no carrier that did not have to register would be required to hold a safety permit. In this SNPRM, FMCSA is proposing the same scope of the safety permit requirement, with the following modifications from the proposals in the NPRM:

—For motor carriers already transporting these materials in interstate or intrastate commerce, there would be a two-year phase-in period to obtain a safety permit based on the schedule in 49 CFR 390.19(a) for submitting or updating the Motor Carrier Identification Report (Form MCS–150). Also, there would not be a separate three-year phase-in period for motor carriers who transport explosives, based on the amount of explosives transported in a single shipment, as proposed in the 1993 NPRM.

—Liquefied natural gas would include all liquefied gases having a methane content of at least 85%.

In response to the 1993 NPRM, several commenters supported limiting the scope of the safety permit requirement to the materials specified in the statute. The Edison Electric Institute (EEI) stated that the requirement to hold a safety permit should not be extended to additional classes and quantities of hazardous materials "unless and until DOT gathers substantial evidence that such extension would significantly enhance transportation safety," based on its view that this requirement "would impose additional administrative burdens on affected motor carriers and on FHWA." EEI quoted the statement from DOT's comments on H.R. 3520, which became the Hazardous Materials Transportation Uniform Safety Act of 1990, Public Law 101–615, 104 Stat. 3244 (Nov. 16, 1990), that "it is essential to begin with a limited permitting program that is administratively practicable, and then consider expanding the program, as determined necessary." House Report No. 101–444, Committee on Energy and Commerce, 101st Cong., 2d Sess., pp. 66–67 (April 3, 1990).

The Chemical Waste Transportation Institute (CWTI) recommended that the requirement for a safety permit be broadened to cover all motor carriers required to register and pay a registration fee under 49 U.S.C. 5108. CWTI stated that any motor carrier that transports a quantity of hazardous material for which a placard is required "should have a safety rating to demonstrate that [its] safety rating is above "unsatisfactory,'" and the "only 'new' administrative burden would be that created by the requirement to 'review' each subject motor carrier's rating every three years."

Two commenters, Tri-State Motor Transport Co. (Tri-State) and the International Brotherhood of Teamsters, suggested that a safety permit should be required for motor carriers that transport any hazardous materials, without specifying any threshold amounts. According to Tri-State, "the sooner the program is expanded to cover all hazardous materials the more effect it will have in reaching this goal." The Teamsters noted that "all classes of hazmat" are involved in hazardous materials incidents.

Additional comments addressed the specific hazardous materials for which a safety permit would be required. With respect to explosives, a construction industry association stated that a safety permit should be required only for a carrier that transports large quantities of explosives "from manufacturer to the supplier," and that "[e]xisting OSHA regulations can cover the transportation" by a contractor who used explosives at a specific jobsite, because the 25 kg threshold "is often transported in a small 'pick-up' type truck." The American Pyrotechnics Association (APA) stated that requiring a safety permit to transport more than 25 kg of Division 1.3 G explosives (including "display" fireworks) would present "unnecessary burdens" for this industry. APA referred to the seasonal nature of this industry (around July 4), its "excellent safety record" as reflected in the few incidents in RSPA's Hazardous Materials Information System, and other requirements such as: (1) provisions in the Hazardous Materials Regulations (HMRs, 49 CFR parts 171–180) on training of hazmat employees, and (2) the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399) for the driver to have a commercial driver's license with a hazmat endorsement. APA stated that a requirement for a safety permit "will do nothing to enhance public safety beyond that which will be achieved through the [hazmat] training," and it expressed concerns that States will develop separate programs "with duplicative permit requirements and unnecessary, burdensome paperwork." APA asked for a delay in the effective date of the safety permit program for carriers of explosives, while the Idaho State Police opposed any extension of the three-year phase-in period. Tri-State also recommended reducing the three-year phase-in period.

In the NPRM, FHWA proposed to limit the poisonous inhalation (PIH) materials for which a safety permit would be required to those Packing Group I materials in Hazard Zone A. However, it asked for information on materials in Hazard Zone B and whether the safety permit requirement "should be expanded to include the transportation of [PIH] Hazard Zone B hazardous materials," which "include such widely distributed chemicals as chlorine, hydrogen sulfide, ethylene oxide, and nitric oxide, to name a few." (58 FR at 33420). Two State police forces recommended including Hazard Zone B materials (California) or giving further consideration to Hazard Zone B materials (Idaho); with Idaho suggesting that "safety is a greater concern under the safety permit program than under the registration program," so that the reasons for not requiring registration by carriers of smaller amounts of Hazard Zone B materials (in a bulk container with a capacity less than 3,500 gallons) should not apply to the requirement for a safety permit. Three other commenters opposed expanding the safety permit requirement to Hazard Zone B materials, including the Oregon Public Utilities Commission, which stated that safety would not be increased by requiring a safety permit for "all movements of chlorine" and "many pesticide movements."

Many comments addressed the proposal to require a safety permit to transport "liquefied natural gas," including the gases covered by that term. Several persons said that the NPRM was ambiguous and could be read to cover all Division 2.1 materials that can be a "liquid natural gas" and all liquid fuels derived from natural gas. Air Products and Chemicals, Inc. stated that "liquefied petroleum gases and natural gas liquids represent at least comparable safety risks and require at least comparable carrier expertise," while the National Propane Gas Association (NPGA) opined that "propane, also known as liquefied petroleum gas or LP-gas, was not included in the statute as a product to be regulated through a permit," based on "the historical safety of the propane gas transportation system under the existing comprehensive DOT regulatory system." NPGA stated that there is no basis in legislative history or experience to require a safety permit for all Division 2.1 hazardous materials. The American Petroleum Institute recommended that the proper shipping name(s) of the specific materials be set forth in the regulations, rather than references to Division 2.1 materials. Three commenters stated that the use of the term 'in bulk' to refer to a container with a capacity of 3,500 gallons or more would be confusing, because a "bulk packaging" is defined in 49 CFR 171.8 to include a container having a "maximum capacity greater than 450 L (119 gallons) as a receptacle for a liquid" and a "water capacity greater than 454 kg (1000 pounds) as a receptacle for a gas." Yellow Freight System, Inc. supported the 3,500-gallon capacity threshold for liquefied natural gas, because "[l]ess than 'in bulk' quantities generally are less likely to pose an immediate danger to public safety while in transit compared to 'in bulk' shipments."

In the preliminary cost-benefit analysis of this rulemaking (a copy of which has been placed in the docket), the agency considered three different lists of hazardous materials for which a safety permit would be required:

Option No. 1 is the "statutory" list of the four categories of hazardous materials in 49 U.S.C. 5109(b), at the same threshold quantities for which registration is required. Under this option, almost 2,500 motor carriers (including about 800 intrastate carriers) would be required to obtain a safety permit.

Option No. 2 includes an "expanded" list of the following hazardous materials, which would make approximately 6,500 motor carriers (including about 1,830 intrastate carriers) subject to the safety permit requirement:

—*Explosive materials:* any quantity of Division 1.1 and 1.2 materials; more than 25 kg (55 pounds) of Division 1.3 materials; and more than 454 kg (1,000 pounds) of Division 1.5 materials.

—*PIH materials (in Divisions 2.3 and 6.1):* Hazard Zone A materials in any quantity; a shipment of Hazard Zone B materials in a bulk packaging (capacity greater than 450 L [119 gallons]); a shipment of Hazard Zone C or D materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

—Flammable gases (Division 2.1), anhydrous ammonia (Division 2.2), and poisons (Division 6.1, Packing Group I, other than PIH materials): a shipment in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

—*Organic peroxides:* any quantity of a Type B, temperature controlled organic peroxide (Division 5.2) material.

—*Infectious substances (Division 6.2):* any quantity of a select agent or toxin regulated by the Centers for Disease Control and Prevention (CDC) under 42 CFR part 73, except for laboratory samples.

—Radioactive (Class 7) materials: any "exclusive use" shipment of Class 7 materials transported in accordance with 49 CFR 427(a) as well as any highway route controlled quantity.

Option No. 3 would apply the requirement for a safety permit to all motor carriers subject to the security plan requirements in 49 CFR 172.800, adopted in the final rule published by RSPA under docket No. RSPA–02–12064 (HM–232) on March 25, 2003 (67 FR 14521). This would be more than 16,250 motor carriers (including about 4,600 intrastate carriers) that are required to register with RSPA and pay a registration fee or transport a select agent or toxin regulated by the CDC under 42 CFR part 73.

FMCSA continues to believe that the initial requirements for a safety permit should apply to only those motor carriers that transport the materials mandated by Congress (option No. 1). However, expanding the existing statutory list to require a safety permit for motor carriers that transport other hazardous materials (covered by option Nos. 2 or 3) should provide the public with additional safety measures, and FMCSA invites comments on whether the agency should, in the future, apply the requirement for a safety permit to motor carriers that transport the hazardous materials in the "expanded" or "HM–232" lists above.

Intrastate and Foreign Motor Carriers

The requirement to hold a safety permit in 49 U.S.C. 5109 applies to both interstate and intrastate motor carrier operations within the United States. In the 1993 NPRM, FHWA proposed to require that intrastate motor carriers must comply with "all applicable parts of the FMCSRs" in order "to use the provisions of part 385, 'Safety Fitness Procedures,' in making determinations to issue, or deny, a request for a safety permit for either interstate or intrastate motor carriers" (58 FR at 33421). Several commenters raised concerns about applying the financial responsibility requirements in 49 CFR part 387 to intrastate carriers that are subject only to State requirements when they use a smaller vehicle (having a gross vehicle weight rating of less than 10,000 pounds) to transport the hazardous materials for which a safety permit would be required.

As discussed below under "Conditions for issuing a safety permit," FMCSA is still proposing to require that a motor carrier have a "satisfactory"

safety rating in order to obtain a safety permit. Accordingly, an intrastate carrier would be required to apply for a U.S. DOT number as a "new entrant" and subject itself to a compliance review. The safety rating issued by FMCSA to an intrastate carrier would be used only for purposes of issuing a safety permit; the safety rating issued to an intrastate carrier would not be posted on FMCSA's Web site nor would it be used by FMCSA for any purpose other than determining whether the carrier is entitled to a safety permit.

FMCSA does not consider that section 5109 is a mandate to make all intrastate motor carriers subject to provisions in the FMCSRs that do not already apply to them, including the financial responsibility requirements in 49 CFR part 387. Except for the requirement to hold a safety permit, in order to transport any of the designated hazardous materials, and to undergo a compliance review in order to demonstrate its fitness to hold a safety permit, an intrastate carrier would not become subject to other requirements in the FMCSRs that do not already apply.

The definition of "interstate commerce" includes foreign commerce. Therefore, Canadian and Mexico-domiciled motor carriers transporting HM permitted materials in the United States would be subject to the requirements proposed in this SNPRM.

Application Procedures

Each motor carrier that conducts operations in interstate commerce must submit to FMCSA a Motor Carrier Identification Report, Form MCS–150, before it begins operations and on a two-year cycle thereafter (the month and year of submission are based on the last two digits of the carrier's U.S. DOT number). 49 CFR 390.19(a). Effective January 1, 2003, a "new entrant" motor carrier must also submit Form MCS–150A, Safety Certification for Application for a U.S. DOT Number, and other forms to obtain operating authority. 49 CFR 385.305.

In the 1993 NPRM, FHWA proposed to use a revised Form MCS–150 as the application for a safety permit. Two commenters supported the use of the MCS–150 form (with revisions) for applying for a safety permit. Other commenters suggested combining the safety permit and registration programs, in terms of a single application form, registration and permit number, and expiration dates.

FMCSA believes that the safety permit program can best be coordinated with the biennial report filed on Form MCS–150 (and Form MCS–150A for a new entrant). Rather than revising the Form MCS–150, however, FMCSA proposes to create a new Form MCS–150B for a motor carrier to provide the limited additional information required for issuance of a safety permit. FMCSA believes that keeping the safety permit program part of the motor carrier identification and safety fitness program with the same schedule for renewal will be more efficient than attempting to combine the safety permit application with the registration program (which applies to offerors and carriers by all modes of transportation, allows registration for one, two, or three years at the registrant's option, and operates on a mid-year basis [July 1 to June 30] rather than a staggered cycle throughout a two-year period).

Implementation of the safety permit requirement would be phased in beginning January 1, 2005. The actual date of compliance would depend on whether the motor carrier is already involved in the transportation of a permitted material. A motor carrier that is not involved in the transportation of a permitted material on January 1, 2005, would need to apply for and receive a safety permit before it may transport any of the hazardous materials for which a safety permit would be required. However, a "new entrant" motor carrier that applies for a U.S. DOT number after January 1, 2005, would be required to apply for a safety permit (by submitting Form MCS–150B) during 2005 or 2006. Thus, until the motor carrier that is already operating is required to renew its U.S. DOT number during 2005 or 2006, it need not apply for a safety permit. In all cases, a safety permit will be valid until the next date for filing Form MCS–150 (in accordance with the schedule set forth in 49 CFR 390.19(a)(2) and (3)).

A draft of Form MCS–150B is available in the docket (at the DMS Web site *http://dms.dot.gov*), and interested persons are invited to submit comments on that draft. As indicated on that draft, FMCSA proposes to require that an official of the motor carrier must certify "under penalties of perjury," but not to require notarization. As in the 1993 NPRM, FMCSA is not proposing to charge a fee for applying for a safety permit, but it may consider the need to assess an application fee in the future, especially if the safety permit program is expanded to apply to motor carriers of additional types and quantities of hazardous materials.

Conditions for Issuing a Safety Permit

In the 1993 NPRM, FHWA proposed that its determination on an application for a safety permit would be based "upon a safety fitness finding made pursuant to 49 CFR part 385." 58 FR at 33421. FHWA also proposed authority to issue a temporary safety permit to an unrated motor carrier, pending a safety fitness determination, when the carrier has certified in its application that it is operating in full compliance with the FMCSRs and HMRs, or comparable State regulations (including financial responsibility requirements in part 387 or State regulations, whichever is applicable). Under the 1993 proposal, a temporary safety permit would remain in effect for no more than 120 days "or until a safety rating is assigned, whichever occurs first" (58 FR at 33424).

As in the 1993 NPRM, FMCSA proposes to require that a motor carrier have a "satisfactory" safety rating in order to obtain a safety permit. Appendix B to 49 CFR part 385 contains an explanation of the safety rating process including a list of the regulations that FMCSA considers "acute" (where noncompliance is so severe as to require immediate compliance) and "critical" (where noncompliance relates to management and/or operational controls). This SNPRM also proposes additions to the list of "acute" and "critical" regulations in Section VII of Appendix B to part 385.

FMCSA is also proposing to add two further conditions for issuing a safety permit: (1) the motor carrier must show that it has a satisfactory security program, and (2) the motor carrier must be registered with RSPA (and remain registered). A satisfactory security program would apply to motor carriers transporting hazardous materials in commerce listed in this Supplemental Notice of Proposed Rulemaking (SNPRM). A satisfactory security program must include: (1) A security plan as prescribed in subpart I of Part 172 of this title, (2) means of communication that will enable the vehicle operator to immediately contact the motor carrier during the course of transportation as required in this SNPRM, and (3) means of providing its hazardous materials employees with security training for hazardous materials employees. FMCSA is also proposing to issue a temporary safety permit, valid for up to 270 days, to a motor carrier that does not have a safety rating but certifies that it has a satisfactory security program and is operating in full compliance with the HMRs, the FMCSRs or comparable State regulations, and minimum financial responsibility requirements in 49 CFR part 387 or State regulations (whichever are applicable). However, FMCSA would not issue a temporary safety

permit to a motor carrier that, as indicated in the Motor Carrier Management Information System (MCMIS), has a crash rate in the top 30% of the national average; has a driver, vehicle, hazardous material, or total out-of-service rate in the top 30% of the national average; or is listed on FMCSA's SafeStat A, B, C, or D lists.

Comments to the 1993 NPRM supported use of the safety rating to determine a motor carrier's fitness to hold a safety permit, but raised questions about the manner in which a safety rating is assigned and whether the 120 day limitation for a temporary safety permit was sufficient, especially to cover all intrastate carriers that have not previously been required to submit Form MCS–150 and obtain a U.S. DOT number. The California Highway Patrol (CHP) recommended that a safety rating be assigned only after a "compliance review," with greater emphasis on "the mechanical condition of the carrier's vehicles," and not a lesser "safety review" which it considered not to be "sufficient to determine a carrier's actual safety compliance." CHP also recommended that the compliance review be performed at the principal location where hazardous materials operations take place, rather than at its main office or headquarters which may be "far removed from the actual working locations."

The Oregon Public Utilities Commission expressed concern that the safety "rating system is difficult to decipher and appears * * * to be somewhat arbitrary" with variations among different regions. Baker Performance Chemicals, Inc. suggested that there be more discussion on how the safety rating is determined. CWTI recommended that a written notification of an "unsatisfactory" or "conditional" safety rating include written notice that the carrier is prohibited from transporting any of the hazardous materials for which a safety permit is required.

FMCSA believes that most, if not all, of the concerns expressed about the safety rating system itself have been addressed in the 1997 revisions to 49 CFR part 385, including the addition of Appendix B to that part ("Explanation of Safety Rating Process"). See the final rules published May 28, 1997 (62 FR 28807), and November 6, 1997 (62 FR 60035). At present, FMCSA bases a safety rating only on a full compliance review, and it retains the discretion to perform that review at any of the motor carrier's facilities. FMCSA shares the concerns that 120 days may not be sufficient time to perform a compliance review for a motor carrier that does not have a safety rating, and the agency proposes to allow a temporary safety permit to remain in effect for up to 270 days, providing that the applicant satisfies all the conditions for issuance of a temporary safety permit.

Permit Number and Evidence in the Vehicle

In the 1993 NPRM, FHWA proposed that its written notification of a "satisfactory" safety rating would "serve as the safety permit and shall include the safety permit number assigned." (59 FR at 33424) It also proposed that the safety permit number must be "clearly displayed on shipping papers or the appropriate transportation document," in order to meet the statutory requirement for the motor carrier to keep "a copy of the permit, or other proof of its existence, in the vehicle." 49 U.S.C. 5109(a). FHWA noted the prohibition in § 5109(f) against a person offering a designated hazardous material for transportation by motor vehicle unless the carrier holds a safety permit, and it indicated that "RSPA will subsequently initiate rulemaking which will address shipper responsibility." (58 CR at 33419)

The National Motor Freight Traffic Association (NMFTA) supported the use of a carrier's U.S. DOT number as the safety permit number and stated that "use of this number would minimize paperwork, inasmuch as the assigned safety permit number would be displayed on the carriers' transportation documents." It also stated that, since FHWA intended to add a "permit" database to its existing information systems, "safety fitness and permit information would be readily available to federal and state officials and enforcement personnel." CHP questioned whether use of the U.S. DOT identification number would be sufficient because "all private interstate motor carriers must obtain and display" this number. The Idaho State Police stated that "there is no way for an enforcement officer [to] know that the carrier has met the requirements for having a safety permit," and it recommended the creation of an approach providing "adequate measures for ensuring that safety permit numbers are legitimate and verifiable."

Some commenters suggested that the same number should be used for both registration and the safety permit, to cover the same period of time, and that DOT should use information from the registration program to issue safety permits to carriers with a U.S. DOT identification number. CWTI suggested that the safety permit number should be included on the registration certificate or another document carried on the vehicle, rather than the shipping paper prepared by the shipper (or offeror).

Other commenters objected to the proposed requirement that the safety permit number must be on the shipping paper or stated that the specific location and manner of displaying the safety permit number needed to be addressed. Yellow Freight stated that law enforcement officers should be able to determine "through another source" whether a carrier holds a safety permit, and adding additional information to shipping papers "that is not essential to immediate safety concerns will not enhance the transportation of hazardous materials." The Institute of Makers of Explosives (IME) and the International Society of Explosive Engineers (ISEE) stated that requiring the shipper to put the carrier's safety permit number on the shipping paper would result in more errors, as well as increase the time and effort of preparing shipping papers. 3M suggested that the carrier (rather than the shipper) should be responsible for putting the safety permit number on shipping papers.

Associations of motor carriers endorsed the statutory requirement that a shipper (or offeror) must verify that the carrier holds a safety permit before offering a designated hazardous material for transportation. 3M objected and Mobil stated that access to FMCSA's Motor Carrier Management Information System (MCMIS) would be necessary for a shipper to verify that it has a permit, and that there would be no need to have the permit number on shipping papers if a carrier were required to provide "proof of fitness and safety permit issuance" to shippers. In addition, ISEE raised a concern about "the availability of explosives information to the public through the inclusion of carrier permit information in MCMIS."

In this SNPRM, FMCSA is no longer proposing that the carrier's safety permit number must appear on the shipping paper, but the carrier would be required to maintain a copy of the safety permit or another document showing the permit number in the vehicle transporting a designated hazardous material. A State or local law enforcement officer would be able to confirm the validity of this number through real-time or close to real-time information made readily accessible by FMCSA.

Section 5109(f) provides that a person may offer a designated hazardous material to a motor carrier for transportation in commerce "only if the carrier has a safety permit." The authority for implementing this

provision has been delegated to RSPA. See 49 CFR 1.53(b)(2), 1.73(d)(2).

Written Route Plan and Communication

The 1993 NPRM included a proposal to require compliance with the routing and route plan requirements then set forth in 49 CFR 177.825 (with regard to radioactive materials) and 397.9 (with regard to Class A and B explosives). These requirements (now contained in 49 CFR 397.67 and 397.101) specify that the carrier must provide its driver with a written route plan when the motor vehicle contains a highway route controlled quantity of a Class 7 (radioactive) material or any quantity of a Division 1.1, 1.2, or 1.3 (explosive) material.

FMCSA considers that preparation of and adherence to a written route plan will improve the safety and security of transportation of all materials for which a safety permit is required. Accordingly, in this SNPRM, FMCSA is proposing to revise 49 CFR 397.67(d) to require the carrier or its agent to prepare and provide its driver with a written route plan covering any shipment of a PIH material or liquefied natural gas for which a safety permit is required, in addition, to all shipments of Division 1.1, 1.2, and 1.3 materials. We are also proposing to require (in proposed § 385.415) that the written route plan be carried in the vehicle and followed, unless an alternate route is required by a law enforcement officer or emergency conditions. The written route plan when carried in the vehicle, must be maintained in such a manner that ensures security requirements set forth in Subpart I of part 172 of this title are met. The driver would no longer be allowed to prepare the written route plan for the carrier, but the driver would be required to amend the written route plan to show any deviation. In addition, the driver would be required to communicate with the carrier at least once every two hours and any time there is a deviation from the written route plan, and the motor carrier would be required to contact law enforcement officials in the event that there has been no communication from its driver for more than three hours.

FMCSA is also proposing to require that the vehicle driver must have in the vehicle, and make available to law enforcement officials upon request, the telephone number of an employee of the motor carrier who has a copy of the written route plan and is able to determine whether the motor vehicle is on the route specified in that route plan. Furthermore, FMCSA is proposing to require the motor carrier to maintain a record of all communications with the vehicle driver during transportation of a hazardous material for which a safety permit is required, containing the name of the driver, identification of the vehicle, the hazardous material(s) being transported, the date and time of each communication, and each period of more than two hours without a communication with the driver including a statement of the facts or conditions that prevented communication for more than two hours.

Pre-Trip Inspections

To implement the pre-trip inspection requirement in 49 U.S.C. 5105(e), FHWA proposed in the 1993 NPRM to require an inspection of a vehicle transporting a highway route controlled quantity of a Class 7 (radioactive) material, before each trip, in accordance with Appendix G to the FMCSRs. FHWA also proposed that the inspector must have the qualifications specified in 49 CFR 396.19 and that written certification including certain information must be prepared and retained by the carrier for one year. It invited comments on its proposed inspection criteria and "whether radiological monitoring should be included."

The comments on this topic addressed who should perform these inspections, the inspection criteria, and whether or not the inspection should include radiological monitoring. The Department of Energy (DOE) and EEI expressed concern that a requirement for radiological monitoring would duplicate the requirement in 49 CFR 173.441 to ensure that a package containing radioactive material is checked before shipment, but several other commenters supported a requirement for monitoring as part of the pre-trip inspection. To the extent that monitoring is performed, some commenters, including Tri-State, stated that only the shipper has monitoring equipment and trained personnel so that it (rather than the carrier) should perform the pre-trip inspection. DOE endorsed "the flexibility of allowing inspections to be performed by inspectors from organizations other than the carrier itself," and other persons (besides a motor carrier official) should be allowed to sign the inspection certification. DOE also stated that in any case, radiological monitoring should not be done by "a qualified vehicle inspector" unless that person was also a qualified health physicist.

Tri-State and CHP supported use of the proposed inspection criteria and inspector qualifications in the FMCSRs. Others stated that the criteria in Appendix G are not sufficient and suggested using standards then under development by the Commercial Vehicle Safety Alliance (CVSA). The Idaho State Police also recommended that "in order to pass the inspection, the vehicle must be defect free." CHP and Montana DOT recommended that the inspection document or certification must be carried on the vehicle.

In this SNPRM, FMCSA is proposing inspection standards similar to those contained in the CVSA Level VI Inspection Program for Radioactive Shipments. The pre-trip inspection would have to be performed by a government inspector, (*i.e.*, one employed by or under contract to a Federal, State or local government). The inspector must have completed an appropriate training program of at least 104 hours, including at least 24 hours of training in conducting radiological surveys and inspecting vehicles transporting highway route controlled quantity (HRCQ) radioactive materials. The inspection must cover all applicable requirements in the HMRs and FMCSRs, or compatible State regulations, including 49 CFR parts 383 (commercial driver's license), 391 (driver qualifications), 395 (hours of service), parts 393 and 396 (vehicle condition), provisions in the HMRs on the transportation of radioactive materials (49 CFR parts 171, 172, 173, and 178), and registration (49 CFR part 107, subpart G).

Denial, Suspension, or Revocation of a Safety Permit

As discussed above, in order to be issued a safety permit, a motor carrier would have to be registered with RSPA and have a "satisfactory" safety rating and a satisfactory security program. A temporary safety permit could be issued to a carrier that does not have a safety rating, valid for up to 270 days; if the carrier receives a "satisfactory" safety rating, it would receive a safety permit, but the temporary permit would be revoked if the carrier receives a safety rating that is less than "satisfactory." FMCSA is also proposing that a safety permit will be subject to suspension or revocation if a carrier fails to maintain its "satisfactory" safety rating or under other specified circumstances, including the failure to submit a renewal application or providing any false or misleading information on a required application form; failure to maintain a satisfactory security plan; failure to comply with an out-of-service order; failure to comply with the FMCSRs, HMRs, or compatible State requirements, or an order issued under any of these, in a manner that shows the

carrier is not fit to transport the hazardous materials for which a safety permit is required; loss of its operating rights; and suspension of its registration for failure to pay a civil penalty or abide by a payment plan.

The SNPRM contains procedures for administrative review of a denial, suspension, or revocation of a safety permit. A motor carrier's rights to administrative review would depend on the ground for denial, suspension, or revocation of the safety permit. In summary, where there already exists a right to administrative review of the underlying basis for denial, suspension, or revocation, the carrier must pursue its existing rights to review. Accordingly, if the basis for denial, suspension, or revocation of a safety permit is the carrier's failure to receive or maintain a "satisfactory" safety rating, its review rights are limited to those set forth in 49 CFR 385.15 (administrative review of a proposed safety rating) and 385.17 (change to safety rating based on corrective actions). If the basis for denial, suspension, or revocation of a safety permit is the carrier's failure to pay a civil penalty or abide by a payment plan, its review rights are limited to the show cause proceedings set forth in 49 CFR 386.83(b) and 386.84(b).

When a denial, suspension, or revocation of a safety permit is based on another ground, the SNPRM proposes that the carrier may submit a written request for administrative review within 30 days after service of a written notification that FMCSA has (1) denied a safety permit, (2) immediately suspended or revoked a safety permit (when an imminent hazard exists), or (3) proposed to suspend or revoke a safety permit. The specific procedures that would apply to a request for administrative review are contained in proposed § 385.423(d).

State Permits

The 1993 NPRM contemplated that many States would continue to require carriers to obtain a permit in order to transport hazardous materials within the State. In the SNPRM, FMCSA proposes that the Federal safety permit would be in addition to any required State permit, but that FMCSA would issue a safety permit to a carrier without further inspection or investigation when FMCSA is able to verify that the carrier holds a safety permit issued by a State under a program that is equivalent to the Federal safety permit program.

As stated in the 1993 NPRM, a State permit requirement would be preempted "if compliance with both the State and Federal permit requirements is not possible, or if the State requirement creates an obstacle to the accomplishment" of Federal hazardous material transportation law and the regulations." (58 FR at 33419) In addition to these general preemption criteria now set forth in 49 U.S.C. 5125(a), a State may impose a fee for a permit to transport hazardous materials, "only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response." (49 U.S.C. 5125(g)(1)).

RSPA has stated that "[a] permit may serve several legitimate State police power purposes, and the bare requirement * * * that a permit be applied for and obtained is not inconsistent with Federal requirements. However, a permit itself is inextricably tied to what is required in order to get it" so that a permit requirement "must be considered together with the application requirements." Inconsistency Ruling (IR) No. 2 (Rhode Island), 44 FR75566, 75570–71 (Dec. 20, 1979). Accordingly, a State and local permit for hazardous materials transportation is not preempted in all cases, but only when the underlying requirements that must be fulfilled in order to obtain the permit conflict with Federal hazardous materials law or the HMR. *Id.*; Preemption Determination (PD) No. 14 (Houston), 63 FR 67506, 67510 (Dec. 7, 1998), 64 FR 949, 33952 (June 24, 1999); IR–28 (San Jose, California), 55 FR 8884, 8890 (Mar. 8, 1990); IR–20 (Triborough Bridge and Tunnel Authority), 52 FR 24396, 24397–98 (June 30, 1987); IR–3 (Boston), 46 FR 18918, 18923 (Mar. 26, 1981).

The November 17, 1993 report of the Alliance discussed the two primary reasons that States carry out their own permit and registration programs: (1) The issuance of a permit provides an enforcement mechanism (suspension or revocation of the permit) if a carrier acts irresponsibly or violates State transportation or environmental laws, and (2) the registration or permit process provides a State information about the business activities of persons who operate within the State but are not based within the State. In its letter transmitting that report, the Alliance stated that its members had operated under the assumption that Federal hazardous material transportation law "authorized a dual system for registering and permitting motor carriers," and that a 1992 technical amendment to the law made this explicit. The Alliance stated that the language in the two separate sections of the law on a Federal safety permit and State permits (now §§ 5109 and 5119) does not restrict "the types of hazardous materials" that may be covered under a State permit, and expressed opposition to finding that a Federal safety permit program "would preempt state permitting of carriers of hazardous materials covered under the federal program."

CWTI concurred that a uniform State permit system proposed by the Alliance and implemented under Federal regulations would not be subject to preemption under the dual compliance and obstacle criteria, contained in 49 U.S.C. 5125(a). It recommended that the applicability of these criteria to State permits should be clarified in several respects by placing the preemption standard in the regulations (rather than just in the preamble) and explicitly stating that "a motor carrier holding a valid federal safety permit would be exempt from all non-federal permit requirements."

The Public Utilities Commission of Ohio stated that it would be "against the public interest" to establish a Federal program under which a State permit program would be preempted with respect to the hazardous materials for which a safety permit would be required, but not with respect to other, "lower risk" materials. CHP asked for further clarification of the preemption standard to be applied to State permits, in light of the statement in the 1993 NPRM that a State permit covering the "same hazardous materials * * * based on a demonstration of safety fitness" would be preempted after implementation of a Federal safety permit program. (58 FR at 33423)

Other persons submitting comments on the 1993 NPRM urged alignment of the Federal and State programs, suggesting that States "accept the FHWA program" (IME), "closely align this permit program with the work of the Alliance" (Yellow Freight), "see if one program could be established" under the Alliance proposal (Montana DOT), or "consider waiving the FHWA permitting requirement" if a uniform State program contained requirements that "duplicate or exceed those contained in the NPRM" (DuPont).

FMCSA agrees that Federal hazardous materials transportation law allows States to continue their permit requirements after the implementation of a Federal safety permit requirement, and that, if a State has a safety permit program that is equivalent to the requirements in 49 U.S.C. 5109, FMCSA may properly accept the findings of the State that a motor carrier is "fit, willing, and able" to transport the designated

hazardous materials and to comply with the applicable laws, regulations, and financial responsibility requirements. Section 5109 requires DOT to issue a Federal safety permit to a motor carrier that meets these requirements, rather than simply allow the carrier to operate under an equivalent State permit, so FMCSA proposes to issue a Federal permit, without further inspection or investigation, when it can verify that this condition exists. FMCSA encourages States to have or implement a HM Permit program equivalent to a Federal permit that will ultimately prevent duplication of a State and Federal requirement.

To the extent that a State permit program is equivalent to the Federal requirements, no preemption issues would arise. It is only differences between Federal and non-Federal requirements that should raise issues of preemption. In this regard, FMCSA and RSPA consider that the preemption criteria set forth in 49 U.S.C. 5125 will continue to apply to non-Federal permit requirements, just as those criteria have applied in the past, and that the impact on States of a Federal permit program should be "minimal." (58 FR at 33423)

Preemption would not necessarily arise simply if a State applies its permit requirements to a smaller, larger, or different group of hazardous materials, than those to be covered by a Federal safety permit. In a recent determination, RSPA noted that it "has considered numerous challenges to non-Federal requirements without finding that the specific requirements were preempted because they did not apply to all hazard classes and all materials listed in the Hazardous Materials Table in 49 CFR 172.101," although there are circumstances in which "a specific non-Federal requirement that applies only to one hazardous material may, indeed, be an obstacle to accomplishing and carrying out Federal hazardous material transportation law or the HMR." PD–13(R) (Nassau County), decision on petition for reconsideration, 65 FR 60238, 60241 (Oct. 10, 2000). As already discussed, in assessing a differing State (or local) permit requirement, the issue will be whether the underlying requirements that must be fulfilled in order to obtain the permit conflict with Federal hazardous materials law or the HMR. The preemption criteria set forth in 49 U.S.C. 5125 will continue to apply to State permits, and it is not considered necessary to repeat those criteria in the regulatory text of this final rule.

Related Regulations and Rulemaking Projects

As discussed above, in this SNPRM, we are proposing to require an applicant for a safety permit to certify compliance with the HMR security plan and training requirements adopted in a final rule published by the Research and Special Programs Administration (RSPA) on March 25, 2003 (68 FR 14509). That final rule, published under RSPA's docket HM–232, requires persons who offer for transportation or transport certain hazardous materials in commerce to develop and implement security plans. The security plan requirement, codified in a new subpart I of part 172 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180), applies to shipments of the following classes and quantities of hazardous materials:

(1) A highway route-controlled quantity of a Class 7 (radioactive) material in a motor vehicle, rail car, or freight container;

(2) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material in a motor vehicle, rail car, or freight container;

(3) More than one L (1.06 qt) per package of a material poisonous by inhalation that meets the criteria for Hazard Zone A;

(4) A shipment of a quantity of hazardous materials in a bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) A shipment in other than a bulk packaging of 2,268 kg (5,000 pounds) gross weight or more of one class of hazardous materials for which placarding of a vehicle, rail car, or freight container is required;

(6) A select agent or toxin regulated by the Centers for Disease Control and Prevention; and

(7) A quantity of hazardous material that requires placarding.

A security plan must include an assessment of possible transportation security risks for shipments of the hazardous materials listed above and appropriate measures to address the assessed risks. Specific measures put into place by the plan may vary commensurate with the level of threat at a particular time. At a minimum, a security plan must cover personnel security, unauthorized access to shipments, and en route security.

In addition, the HM–232 final rule requires all hazmat employees (as defined in § 171.8 of the HMR) to receive security awareness training that provides an awareness of security risks associated with hazardous materials transportation and methods to enhance transportation security. This training must also include a component covering how to recognize and respond to possible security threats.

As part of DOT's effort comprehensively to enhance hazardous materials transportation security, FMCSA is conducting a field operational test (FOT) to quantify the security costs and benefits of an operational concept that applies technology and improved enforcement procedures to hazardous materials transportation by motor carriers. The FOT will demonstrate an approach that enhances the safety and security of hazardous materials shipments from origin to destination by examining possible vulnerabilities in the transportation system. In parallel with the FOT, FMCSA will also conduct an independent evaluation to ascertain whether the FOT met the objective of ensuring the safety and security of hazardous materials shipments. This evaluation will also include a benefit-cost analysis on the security technologies tested, including remote vehicle tracking systems, remote vehicle disabling systems, off-route alert systems, and electronic ignition locks. We expect to begin the FOT in the fall of 2003 and complete the FOT and evaluation by September 2004.

In a related action, on July 16, 2002, RSPA and FMCSA jointly published an advance notice of proposed rulemaking (ANPRM) under docket HM–232A to examine the need for enhanced security requirements for hazardous materials transportation that would be in addition to the security requirements adopted under HM–232 (67 FR 46622). The ANPRM sought comments on the feasibility of specific security enhancements and the potential costs and benefits of deploying such enhancements. Security measures under consideration include escorts, vehicle tracking and monitoring systems, emergency warning systems, remote shut-offs, direct short-range communications, and pre-notification of shipments to state and local authorities.

RSPA is currently evaluating comments received in response to the HM–232A ANPRM to determine if additional security rulemaking is necessary. This evaluation will include an examination of the security threats posed by specific classes and quantities of hazardous materials and an assessment of the effectiveness of specific operational or technological measures in reducing security threats. Persons who may be affected by the proposals in this NPRM should be aware that the ongoing research and rulemaking projects described above may result in modifications to the proposals in this NPRM.

Transportation Security Administration/Department of Homeland Security will continue to evaluate security issues, and in the future, may issue additional standards relating to security issues raised in this rulemaking.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this rulemaking is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of the Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) because of significant public interest in the issues relating to hazardous material permitting. The FMCSA has estimated costs and benefits for three policy/regulatory options. These estimates are discussed in detail in the full regulatory evaluation contained in the docket. Option 1, the statutory option, is the one preferred by FMCSA. It is an option involving a limited listing of HM included by Congress in earlier rulemaking considerations. It is anticipated that the economic impact of this rule, implementing option 1, would be $0.6 million in the first year and $10.5 million in each subsequent year. The total discounted cost estimates are $74.5 million over 10 years. The costs and benefits for this NPRM are discussed below.

Permit Applications. Industry costs directly tied to obtaining a permit include obtaining an application form, completing the information requested on the form, and submitting the form to FMCSA. Using data from RSPA on carriers that are registered with DOT under the provisions of 49 CFR Part 107 (FY 2002, most recent year available), FMCSA estimates that 2,434 carriers will be subject to this proposed rule. FMCSA estimates that it will take carriers 2 hours to obtain and complete the initial permit application at a total cost per carrier of $42 ($15 per hour plus fringe benefits). There are no permit application fees under the proposed program. The industry would thus incur an estimated $102,228 in permit application costs. This is a one time non-recurring cost.

Permit renewal applications would be required every two years. The estimated burden to complete a renewal application is 15 minutes per carrier per year. This involves gathering some information and checking off a few additional boxes on the MCS–150 Form. Using the same unit cost of $15 per hour plus fringe benefits, the annual costs to industry are estimated at $12,789.

Safety Record Standards Compliance. FMCSA data show that 1,865 motor carriers subject to the requirements proposed in this rule do not currently possess a satisfactory safety rating and will need to obtain one as part of the permit process. This includes carriers without a current safety rating and those whose most recent safety ratings were unsatisfactory or conditional. Carriers who transport HRCQ or radioactive materials (RAM) are assumed to have met the safety record requirements of this rule through their compliance with regulations imposed by the Department of Energy and the Nuclear Regulatory Commission. FMCSA assumes that a typical carrier will spend $182 preparing for the compliance review necessary to obtain a new safety rating. This includes 2 hours for the carrier's safety director and 6 hours for a clerk to gather and process the necessary information. The total one-time non-recurring permit application and safety compliance costs to industry are, therefore, estimated to be $339,430.

Operational Costs. The proposed rule imposes four requirements on carriers that will result in increased costs, most of which will recur annually. The rule requires that drivers must be able to contact the carrier and/or law enforcement in emergencies. While many carriers employ sophisticated satellite communication systems, FMCSA assumes that cell-phone type service will meet these requirements and that 90 percent of the vehicles in service already have such a device. The service life of the communications equipment is assumed to be 10 years. Utilizing data from the 1997 Vehicle Inventory and Use Survey (VIUS), FMCSA estimates the total number of vehicles affected by the proposed regulations to be 12,500. Ten percent of these vehicles will require new equipment, estimated at $100 per vehicle, as well as a communications service plan, estimated at $60 per month. The one-time non-recurring communication requirement cost to industry is expected to be $125,000 (1,250 vehicles × $100/vehicle) and $900,000 annual cost in subsequent years (1,250 vehicles × $60/month × 12 months).

Under current requirements for the Commercial Vehicle Safety Alliance (CVSA) Level VI inspections, point of origin inspections are conducted on all shipments of HRCQ or radioactive materials (RAM). Carriers of these HM are required to have route plans and satisfy conditions for expeditious delivery. As such, HM carriers would not incur extra costs under the proposed permit program to satisfy point-of-origin inspections and route plan requirements.

The proposed rule requires carriers to develop and maintain route plans and ensure that route verification contact numbers are carried on the vehicle so that law enforcement could verify the correct location of the shipment. It is believed that the carrier's representative responsible for developing the route plans would be the one to ensure the numbers are placed in the vehicles and available for inspection. It was also assumed that the same individual would ensure that the permit verification number is placed in the vehicle. A unit cost of $5.25 per shipment was based on an hourly rate of $21 (including fringe benefits) for a clerk and 15 minutes to complete the task and was derived from comments to the joint FMCSA/RSPA ANPRM entitled "Security Requirements for Motor Carriers Transporting Hazardous Materials," published July 16, 2002 (67 FR 46622) (FMCSA Docket No. 2002–11650). FMCSA realizes that some shipments are moved along the same routes repeatedly between given origins and destinations and new route plans would not need to be generated each year for these shipments. Further, the HM permits would be valid for two years and the carrier contact numbers are not expected to change frequently, if at all. Therefore, developing route plans and providing verification contact numbers and permit numbers in the vehicles are assumed to be repeated for only 50 percent of the shipments in a given year. The annual number of shipments, 1,221,144, were estimated with FMCSA data and VIUS data on the number of vehicles transporting different HM and assumptions regarding the anticipated number of trips per vehicle per year. Class 1.1, 1.2, and 1.3 and HRCQ RAM shipments were excluded as they already meet the proposed requirements. The estimated annual costs for industry compliance is $3,205,503 ([1,221,144 annual shipments] × [½of shipments requiring action] × [$5.25/shipment]).

The cost to a carrier to document and maintain written communication records between itself and its drivers assumes 15 minutes of a clerk's time per shipment. All shipments are considered to require this documentation. The estimated annual cost for this requirement is $6,411,006 ([1,221,144 annual shipments] × [$5.25/shipment]).

Benefits. The benefits of the proposed HM permit program include improved

safety due to reductions in accidental and intentional HM releases. Secondary benefits were also considered. Among the secondary benefits is the reduction in incident delays, evacuations, product losses, property damages, environmental damages and cleanups. For accidental releases, incident cost estimates for specific hazard classes from a prior FMCSA risk study were combined with estimates of the number of crashes expected to occur annually in each hazard class among the permitted shipments. FMCSA assumes that the safety elements of the proposed permitting program will reduce the number of HM incidents among permitted shipments by 25 percent. Therefore, the expected annual benefit from reducing accidental HM releases is $2,025,000.

The potential benefits of reducing intentional releases due to increased security measures are consistent with those analyzed in the NPRM for HM–232. The security measures under the HM–232 NPRM are consistent with, and applicable to, the proposed permitting program. Therefore, a separate analysis of the benefits of security was not conducted.

It is difficult to accurately ascertain the direct benefit of this proposal insofar as its impact upon reducing the malicious use of hazardous materials in transportation. To begin with, the actual costs that an averted terrorist attack of this nature would have imposed, and its probability of success with and without these measures, is unknowable. Terrorism is a fairly new phenomenon, and we have little notion of a likelihood function under the current conditions for HM transportation or under this proposal regarding hazardous materials permitting procedures. Similarly, we have little idea of the expected cost of a terrorist attack, given that one occurs. So although the theory for calculating the benefit is straightforward and simple, finding actual data for a future attack is not possible.

For purposes of this analysis and given the lack of data in this area, FMCSA has assigned 1/1000 as the probability that this proposal would be decisive in stopping an incident involving the malicious use of hazardous materials. FMCSA interprets this to mean that this proposal would result, over the next 1,000 years, in one additional year that is free from a malicious hazardous materials incident than would have occurred without these procedures. Interpreted differently, FMCSA estimates that this proposal would completely foil one of the next 1,000 attempted malicious hazardous materials incidents. FMCSA interprets this to mean that this proposal would make each attempted malicious hazardous materials incident less likely to inflict its intended damage. Alternately, one could interpret this to mean that these procedures will completely foil one of the next 1,000 attempted malicious hazardous materials incidents.

Next, FMCSA derived a scaled estimate of $25 billion as the cost of a malicious hazardous materials incident (This figure is based upon the lowest estimate reported of the most costly terrorist attack ever—the September 11th attacks and the costs of other recent terrorist attacks occurring in the past ten years. Please refer to the regulatory evaluation for this rulemaking, Hazardous Materials Carrier Permitting Program; Benefit-Cost Analysis of Permitting Options, for a more detailed discussion of how the scaled estimate was derived).

Finally, we multiplied the scaled estimate of the cost of a malicious hazardous materials incident by the probability estimate as follows: $25 billion × .001 =$25 million. Therefore, FMCSA estimates that this proposal would result in a direct benefit of $25 million each year for the ten-year planning horizon, insofar as it relates to a malicious hazardous materials incident. When calculating total benefits, these should be discounted using a standard 7% rate. We limit the analysis to ten years to conform to FMCSA analytical standards. (FMCSA uses a 10-year time frame for all its regulatory analyses to allow comparability from one rule to another.) There is no reason to believe that the benefits would stop unless the policy underlying this proposed rulemaking was to be changed.

Therefore, the combined annual direct benefit of this proposal would be $27 million ($2 million (rounded) + $25 million). FMCSA invites comments from the public to assess any potential costs or burdens that may be associated with this proposal.

Executive Order 13175 (Tribal Consultation)

The FMCSA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that the proposed rule would not have substantial direct effects on one or more Indian tribes; would not impose substantial direct compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use." FMCSA has preliminarily determined that this action would not be a significant energy action under that Executive Order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects under Executive Order 13211 is not required.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532, *et seq.*) requires each agency to assess the effects of its regulatory actions on State, local, tribal governments, and the private sector. Any agency promulgating a final rule that is likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FMCSA has determined that the changes proposed in this rulemaking would not have an impact of $100 million or more in any one year.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. Based on the assessment in the accompanying regulatory evaluation, and the absence of contradictory information submitted to the docket during the public comment period, FMCSA certifies that the proposals in this rulemaking are not applicable to a substantial number of small businesses.

The definition of "small businesses" has the same meaning as under the Small Business Act, established by the Small Business Administration (SBA), Office of Size Standards and codified in 13 CFR 121.201 . The FMCSA evaluated the effects of this proposed rule on small business entities, including as applicable small businesses, small non-profit organizations, and small governmental entities with populations under 50,000. Many of these small business entities operate as motor carriers of property in interstate or intrastate commerce.

Goal of the SNPRM. FMCSA is required by the Hazardous Materials Transportation Uniform Safety Act (HMTUSA) of 1990 to develop and implement a new motor carrier safety permit program. The safety permit program is intended to enhance the safety and security of certain hazardous materials shipments that, if released either accidentally or intentionally during transportation, have the potential to kill or injure large numbers of people and damage property and the environment.

Description of Actions. This SNPRM identifies specific fitness, financial and regulatory criteria for interstate and intrastate motor carriers to qualify and obtain a safety permit from FMCSA. Criteria include imposing operational security requirements, setting minimum safety and security standards, and making safety and security assessments of carriers to ensure compliance with operational, safety, and security standards. The specific hazardous materials covered by this permit program are: highway route-controlled quantities of a Class 7 radioactive material; more than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material; more than one liter (1.08 quarts) per package of extremely toxic-by-inhalation hazardous material; and compressed or refrigerated liquid methane or natural gas in bulk packaging of 13,248 liters (3,500 water gallons) or more.

Identification of potentially affected small entities. The proposed rule would affect intrastate and interstate carriers of hazardous materials. The number of small carriers is determined based on the Small Business Administration (SBA) definition used for the RSPA registration file. RSPA flags the small carriers in their registration system based on the number of employees or annual revenue. Of the 2,434 total carriers expected to be affected by this proposed rule, 1,816 have been estimated to be small entities.

In addition to small carriers, other small businesses and small entities potentially could be affected by the proposed permit system. Small businesses that provide services to small carriers, offer hazardous materials for transportation, or receive shipments could also be affected by the proposed rule. The customers and suppliers of small carriers could be adversely affected if a carrier were prohibited from shipping certain hazardous materials because a permit was denied or revoked. Similarly, local government entities such as police could be affected by the proposed hazardous materials permitting requirements. Local police would be notified anytime three or more hours elapsed after the last time that a communication was received from the driver of a hazardous materials vehicle covered by the permit. This probably would require the expenditure of law enforcement resources to investigate the communication lapse. The number of local police entities that would be involved is difficult to estimate before the permit program is implemented. It has been determined that 1,816 small motor carriers will be affected by the statutory requirements of this rule. Based on an expert judgment, the number of small businesses affected by this rule, excluding small motor carriers, was determined by doubling the number of small carriers affected by the statutory requirements. The application of expert judgment suggests that there could easily be two or more of these entities for each of the small carriers affected. Therefore, it is estimated that as many as approximately 4,000 small businesses could potentially be affected by the rule.

Reporting and recordkeeping requirements. This SNPRM proposes several new or modified recordkeeping requirements. While they have not been fully defined, they are detailed in the section of this preamble entitled "Paperwork Reduction Act." FMCSA has built flexibility into the proposed requirements, so that entities can choose the method by which they comply with the proposals. For example, there is no prescribed method of communication between the driver and the carrier. Carriers are permitted to use any system which meets the performance criteria specified. Similarly, there are no specifications for the manner in which carriers develop and maintain route plans, allowing either electronic or paper-based approaches to be used. Entities can assess their own situations and tailor the requirements to fit them.

Related Federal rules and regulations. If this rule is adopted as proposed, FMCSA will eliminate possible conflict with two pieces of legislation: 49 U.S.C 5119 and U.S.C. 5105(e). 49 U.S.C. 5119 authorizes states to participate in the Alliance. The FMCSA intends to automatically issue a Federal permit to a carrier that obtains a permit from a State that is part of the Alliance program or another state that has a program equivalent to the Federal permit program in operation. Therefore, a comparable state program will be deemed equivalent to the Federal HM Permit Program and no statutory conflict will exist. The other area is the Point of Origin Inspections for Highway Route Controlled Quantities (HRCQ) shipments that are required by 49 U.S.C. 5105(e). These inspections are currently being conducted via the CVSA Level VI Enhanced Radioactive Materials Inspection Program. This current program would fulfill the requirements of this proposed rule and thus prevent any statutory conflict.

Alternate proposals for small businesses. The Regulatory Flexibility Act directs agencies to establish exceptions and differing compliance standards for small businesses, where it is possible to do so and still meet the objectives of applicable regulatory statutes. There are no significant alternatives to the proposed rule that would accomplish the stated proposed HM permitting rule and which would minimize any significant economic impact of the proposed rule on small entities. Alternative permitting systems, such as that of the Alliance program, could address national permitting needs if expanded to include all states, but the effects on small entities would be the same as under the proposed rule because the same requirements and provisions would be in effect.

We developed this SNPRM under the assumption that small businesses make up the majority of entities that will be subject to its provisions. Thus, we considered how to minimize the expected compliance costs as we developed this SNPRM.

Based on the discussion of the potential costs of this SNPRM in the section of this preamble entitled "Executive Order 12866 and DOT Regulatory Policies and Procedures," FMCSA certifies that although this rulemaking would impose a significant economic impact on those small business entities, these small entities do not represent a substantial number of small businesses within the trucking industry. The Research and Special Programs Administration (RSPA) identifies the small carriers in their registration system based on the number of employees or annual revenue, consistent with the Small Business Administration's Small Business Size Standards, which are matched to the North American Industry Classification System (NAICS). FMCSA estimates the costs to a small carrier to comply with this proposed rule to be $4,512 in the initial year, and $4,093 in subsequent years. A summary and breakdown of these first-year and annual costs is shown in Table 1. Note that the number of shipments was determined by using data provided by FMCSA in conjunction with U.S. Census Bureau Vehicle Inventory and Use Survey (VIUS) data for the number of trucks transporting particular HM, and assumptions regarding the anticipated number of

trips per vehicle per year. Communication requirements were assumed to be satisfied with a cell-phone-type service. Costs were calculated based on the assumption that 90 percent of the vehicles already have such a device and only 10 percent of the total vehicles will need new devices. Additionally, the table shows that the cost for route plans, route verification contact numbers, and permit verification is only half that of communication recordkeeping requirements. This is because the route planning activities are applied to only one half of shipments. Divisions 1.1 and 1.2 and HRCQ of RAM were excluded because all shipments of these materials have routing requirements under current DOT regulations. Finally, the unit cost is assumed to be a clerk's hourly pay of $15/hour plus fringe benefits (40%) for a total of $21/hour. A unit cost of $5.25 represents fifteen minutes of a clerk's labor.

TABLE 1.—COST SUMMARY PER SMALL CARRIER

Permit related activity	Unit cost	Cost per carrier for first year	Cost per carrier for successive years
Permit application	$21/hour	$42.00	N/A
Permit renewal	21/hour	N/A	$5.25
Safety record compliance	182/carrier	182	N/A
Communication requirements	100/vehicle, 60/month service.	1,640	1,440
Route plans; route verification contact numbers; permit verification	5.25/shipment	883	883
Communication record keeping requirements	5.25/shipment	1,765	1,765
Total Cost per Small Carrier		4,512	4,093

Paperwork Reduction Act

We submitted the information collection and recordkeeping requirements contained in this SNPRM to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995, Section 1320.8(d). Title 5, Code of Federal Regulations requires FMCSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. Under the Paperwork Reduction Act, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number.

FMCSA currently has an approved information collection under OMB Control No. 2126–0013, "Motor Carrier Identification Report" with 74,250 burden hours and $0 cost. There will be an increase in the burden for OMB Control No. 2126–0013 due to extension of the data collection requirements to intrastate motor carriers that transport the permitted hazardous materials. Using RSPA registration data, it is estimated that 797 intrastate motor carriers will be required to comply with this current data collection, with an annual burden per carrier of 2 hours. In addition, there will be a new information collection burden for the new requirement to submit initial and renewal permit applications. This new information collection, "Hazardous Materials Safety Permits," will be assigned an OMB control number after review and approval by OMB.

The new information collection requires that the carriers provide estimates of the anticipated annual shipments. It is assumed that this information would be readily available for large carriers, which would apply an inflationary estimate to the prior year's number from their database. Small carriers would either have a ready estimate (due to a limited number of shipments) or, more likely, could determine their prior year shipment totals from data they are required to maintain to support their reporting under the International Fuel Tax Agreement (IFTA) and International Registration Plan (IRP).

The burden to provide estimates of anticipated shipments are as follows: small carriers—30 minutes and large carriers—15 minutes. It is estimated that an additional 0.25 burden hours (15 minutes) per carrier will be required to complete the permit application form, including information, such as, carrier name and address, DOT number, etc. This results in a total burden of 1,671 hours as follows: [1,816 small carriers (596 intrastate + 1,220 interstate) × 0.75 hours per carrier = 1,362 hours] + [618 large carriers (201 intrastate + 417 interstate) × 0.50 hours = 309 hours].

Permit renewal will require carriers only to check-off a few additional boxes on the new MCS–150B Form as well as providing estimates of the annual shipments. The burden hours to check-off the additional boxes on MC–150B Form are considered negligible. The time required to gather the required information for the permit renewal is considered to be part of the time in estimating the number of shipments.

The proposed permitting program requires that carriers develop and maintain route plans and ensure that route verification contact numbers are carried in the vehicle. These provisions would add an average burden of 0.25 hour per day per carrier. The total burden hours were estimated assuming 260 working days in a year, based on an average of five working days per week—and one shipment per day on average. FMCSA realizes that some shipments are moved along the same routes repeatedly between given origins and destinations and new route plans would not need to be generated each year for these shipments. Further, the HM permits would be valid for two years and the carrier contact numbers are not expected to change frequently, if at all. Therefore, in estimating the burden hours involved in developing route plans and providing verification contact numbers and permit numbers on the vehicles, it was assumed that this activity will be repeated for only 50 percent of the shipments in a given year or 130 days per year [*i.e.*, 0.5 × 260 = 130 days]. Thus, the burden hours for this activity is estimated as 79,105 hours [*i.e.*, 2,434 (797 intrastate + 1,637 interstate) × 32.5 hours (0.25 hours per day × 130 days per year) = 79,105 hours].

The proposed permitting program also requires carriers to maintain written records of the communication between drivers and the carriers. The types of information required includes time of communication, HM transported, vehicle, and reasons for any communication lapses. While drivers and carriers are required under the

proposed permitting program to be in frequent contact, this requirement places an additional reporting burden on the carriers. It is assumed that recording and maintaining these communications between the driver and carrier adds a burden of 0.25 hour per day on average per carrier. The total burden hours were similarly estimated assuming 260 working days in a year to be 158,210 hours as follows: [2,434 (797 intrastate + 1,637 interstate) × 65 hours (0.25 hours per day × 260 days per year) = 158,210 hours].

The total burden hours for the proposed rule are summarized in Table 2.

TABLE 2.—FIRST-YEAR BURDEN HOURS

	Carriers			Burden hours	
	Intrastate	Interstate	Total	Per carrier	Total
Increased reporting under OMB Control No. 2126–0013 ...	797	N/A	797	2	1,594
Annual shipment estimates:					
Small carriers	596	1,220	1,816	0.75	1,362
Large carriers	201	417	618	0.50	309
Written route plans, verification number details, copy of permits	797	1,637	2,434	32.5	79,105
Maintaining communications records	797	1,637	2,434	65	158,201
Total					240,580

In subsequent years, we estimate that burden hours would include the permit renewal application and the time to provide shipment estimates, route plans, and communication records as indicated above. Given the biennial renewal process, the burden hours for application renewal and shipment estimates would be half as many in subsequent years. However, the burden hours for maintaining route plans and communication records will be the same for all years. Subsequent-year burden hour estimates are shown in Table 3.

TABLE 3.—SUBSEQUENT-YEAR BURDEN HOURS

	Carriers			Burden hours	
	Intrastate	Interstate	Total	Per carrier	Total
Increased reporting under OMB Control No. 2126–0013 ...	797	N/A	797	1	797
Annual shipment estimates:					
Small carriers	596	1,220	1,816	0.375	681
Large carriers	201	417	618	0.25	154.5
Written route plans, verification number details, copy of permit:	797	1,637	2,434	32.5	79,105
Maintaining communications records	797	1,637	2,434	65	158,210
Total					238,151

We estimate that the new total information collection and recordkeeping burden resulting from the additional Motor Carrier Identification Reports and permit applications under this rule are as follows.

Motor Carrier Identification Report

[OMB No. 2126–0013]

Total Annual Number of Respondents: 275,297.
Total Annual Responses: 275,297.
Total Annual Burden Hours: 75,844.
Total Annual Burden Cost: $0.

Hazardous Materials Permit

[OMB No. 2126–xxxx]

First Year Annual Burden:
Total Annual Number of Respondents: 2,434.
Total Annual Responses: 1,835,367.
Total Annual Burden Hours: 240,580.
Total Annual Burden Cost: $0.
Subsequent Year Burden:
Total Annual Number of Respondents: 2,434.
Total Annual Responses: 1,835,367.
Total Annual Burden Hours: 238,151.
Total Annual Burden Cost: $0.

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* DOT Desk Officer. We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet its goals of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms on information technology.

National Environmental Policy Act

FMCSA has performed an Environmental Assessment that is available for review in the public docket on the DMS Web site, *http://dms.dot.gov*. Based on the assessment, FMCSA has determined that this SNPRM rule does not have any significant negative impacts to the environment and may result in a net benefit from increased protection and monitoring of hazardous materials shipments. Therefore, we find that there are no significant environmental impacts associated with this SNPRM. The agency solicits comments on this issue.

Executive Order 12988 (Civil Justice Reform)

This action would meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 12612 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, as discussed under "State permits," above, where the applicable law and the concerns previously expressed by State officials are set forth.

Federal hazardous material transportation law allows States, political subdivisions, and Indian tribes to continue their permit requirements after the implementation of a Federal safety permit program. To the extent that a State permit program is equivalent to the Federal requirements, no preemption issues would arise. To the extent that there are differences between Federal and non-Federal requirements, the preemption provisions in 49 U.S.C. 5125 will continue to apply to non-Federal permit requirements, just as those criteria have applied in the past.

For these reasons, FMCSA believes that nothing in this proposed rule, if adopted, will directly preempt any State law or regulation or have a substantial direct effect or sufficient federalism implications that would limit the policymaking discretion of the States. FMCSA invites States and other interested parties to comment on whether they believe any State permit requirement would be affected by the adoption of this proposed rule.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997, 62 FR 1985). This proposed rule is not an economically significant rule because the FMCSA has determined that the proposed rule, if adopted, will not present an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217 Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Executive Order 13166 (Limited English Proficiency)

Executive Order 13166, "Improving Access to Services for Persons With Limited English Proficiency" (LEP), requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons seeking government services but limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency.

Its purpose is to clarify for Federal-fund recipients the steps those recipients can take to avoid administering programs in a way that results in discrimination on the basis of national origin. Thus, we believe that this proposed action complies with the principles enunciated in the Executive Order.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements; Safety fitness procedures.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 397

Administrative practice and procedure, Highway safety, Intergovernmental relations, Motor carriers, Parking, Radioactive materials, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, the Federal Motor Carrier Safety Administration proposes to amend 49 CFR chapter III as set forth below:

PART 385—SAFETY FITNESS PROCEDURES [AMENDED]

1. Revise the authority citation for part 385 to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(c), 5109, 5113, 13901–13905, 31136, 31144, 31148, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

2. Amend § 385.1 by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to read as follows:

§ 385.1 Purpose and scope.

* * * * *

(c) This part establishes the safety permit program for a motor carrier to transport the types and quantities of hazardous materials listed in § 385.403 of this part.

* * * * *

3. Add a new subpart E to this part 385 to read as follows:

Subpart E—Hazardous Materials Safety Permits

Sec.

385.401 What are the definitions of terms used in this subpart?
385.403 Who must hold a safety permit?
385.405 How does a motor carrier apply for a safety permit?
385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?
385.409 When may a temporary safety permit be issued to a motor carrier?
385.411 Must a motor carrier obtain a safety permit if it has a State permit?
385.413 What happens if a motor carrier receives a proposed safety rating that is less than satisfactory?
385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?
385.417 Is a motor carrier's safety permit number available to others?
385.419 How long is a safety permit effective?
385.421 Under what circumstances will a safety permit be subject to revocation or suspension by the FMCSA?
385.423 Does a motor carrier have a right to an administrative review of a denial, suspension, or revocation of a safety permit?

Subpart E—Hazardous Materials Safety Permits

§ 385.401 What are the definitions of terms used in this subpart?

(a) The definitions in parts 390 and 385 of this subchapter apply to this subpart, except where otherwise specifically noted.

(b) As used in this part,

Hazardous material has the same meaning as under § 171.8 of this title, a substance or material that the Secretary of Transportation has determined as capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and has designated as hazardous under section 5103 of Federal hazardous materials

transportation law (439 U.S.C. 5103). The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials, materials designated as hazardous in the Hazardous Materials Table (see 49 CFR 172.101), and materials that meet the defining criteria for hazard classes and divisions in part 173 of subchapter C of this chapter.

Hazmat employee has the same meaning as under § 171.8 of this title, a person who is employed by a hazmat employer as defined under § 171.8 of this title, and who in the course of employment directly affects hazardous materials transportation safety. This term includes an owner-operator of a motor vehicle which transports hazardous materials in commerce. This term includes an individual, including a self-employed individual, employed by a hazmat employer who, during the course of employment:

(1) Loads, unloads, or handles hazardous materials;

(2) Manufactures, tests, reconditions, repairs, modifies, marks, or otherwise represents containers, drums, or packaging as qualified for use in the transportation of hazardous materials;

(3) Prepares hazardous materials for transportation;

(4) Is responsible for safety of transporting hazardous materials; or

(5) Operates a vehicle used to transport hazardous materials.

Liquefied natural gas (LNG) means a Division 2.1 liquefied natural gas material that is transported in a liquid state with a methane content of 85% or more.

Safety permit means a document issued by FMCSA that contains a permit number and confers authority to transport in commerce the hazardous materials listed in § 385.403(a) of this subpart.

Shipment means the offering or loading of hazardous material at one loading facility using one transport vehicle, or the transport of that transport vehicle.

§ 385.403 Who must hold a safety permit?

After the date following January 1, 2005 that a motor carrier is required to file a Motor Carrier Identification Report (Form MCS–150) according to the schedule set forth in § 390.19(a) of this subchapter, the motor carrier may not transport in interstate or intrastate commerce any of the following hazardous materials, in the quantity indicated for each, unless the motor carrier holds a safety permit:

(a) A highway route-controlled quantity of a Class 7 (radioactive) material, as defined in § 173.403 of this title;

(b) More than 25 kg (55 pounds) of a Division 1.1, 1.2, or 1.3 (explosive) material;

(c) More than one liter (1.08 quarts) per package of a "material poisonous by inhalation," as defined in § 171.8 of this title, that meets the criteria for "hazard zone A," as specified in §§ 173.116(a) or 173.133(a) of this title; or

(d) A shipment of liquefied natural gas in a packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

§ 385.405 How does a motor carrier apply for a safety permit?

(a) *Application form(s).* To apply for a new safety permit or renewal of the safety permit, a motor carrier must complete and submit Form MCS–150B, HM Permit Application. If the motor carrier does not have a current U.S. DOT identification number, it must also submit Form MCS–150, Motor Carrier Identification Report (*see* § 390.19 of this subchapter). A new entrant must also submit Form MCS–150A, Safety Certification for Application for U.S. DOT Number (see subpart D of this part).

(b) *Where to get forms and instructions.* The forms listed in paragraph (a) of this section and instructions for completing them, may be obtained on the Internet at *http://www.fmcsa.dot.gov* or by contacting FMCSA at Federal Motor Carrier Safety Administration, MC–RIS, Room 8214, 400 7th St. SW., Washington, DC 20590, Telephone: 1–800–802–5668.

(c) *Signature and certification.* An official of the motor carrier must sign each of these forms and certify that the information is correct.

(d) *Updating information on Form MCS–150B.* A motor carrier that holds a safety permit must report to the FMCSA in writing any change in the information on its Form MCS–150B, within 30 days of the change, using the contact information in paragraph (b) of this section.

§ 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

(a) *Satisfactory safety rating.* The motor carrier must have a "satisfactory" safety rating assigned by either FMCSA, pursuant to the Safety Fitness Procedures of part 385 of this subchapter, or the State in which the motor carrier has its principal place of business, if the State has adopted and implemented safety fitness procedures that are equivalent to the procedures in subpart A of part 385 of this subchapter.

(b) *Satisfactory security program.* The motor carrier must establish that it has a satisfactory security program, including:

(1) A security plan meeting the requirements of part 172, subpart I of this title. The security plan must address how the carrier will ensure the security of the written route plan required by this part;

(2) A communications system installed on each motor vehicle used to transport a hazardous material listed in § 385.403(a) of this subpart that enables the vehicle operator to immediately contact the motor carrier during the course of transportation of the hazardous material, and each operator must be trained in the use of the communications system; and

(3) Hazmat employees who have all successfully completed the security training required in § 172.704(a)(4) of this title.

(c) *Registration with RSPA*: The motor carrier must be registered with RSPA in accordance with subpart G of part 107 of this title.

§ 385.409 When may a temporary safety permit be issued to a motor carrier?

(a) *Temporary safety permit.* If a motor carrier does not have a safety fitness rating, FMCSA may issue a temporary safety permit. To obtain a temporary safety permit a motor carrier must certify on Form MCS–150B that it is operating in full compliance with the HMRs, the FMCSRs, or comparable State regulations, and the minimum financial responsibility requirements in part 387 of this subchapter or State regulations, whichever is applicable.

(b) FMCSA will not issue a temporary safety permit to a motor carrier that meets any of the following conditions. The motor carrier:

(1) Does not certify that it has a satisfactory security program as required in § 385.407(b) of this subpart;

(2) Has a crash rate in the top 30% of the national average as found in the FMCSA Motor Carrier Management Information System (MCMIS);

(3) Has a driver, vehicle, hazardous material, or total out-of-service rate in the top 30% of the national average as found in the FMCSA MCMIS; or

(4) Is on the FMCSA SafeStat List A, B, C, or D.

(c) A temporary safety permit shall be valid for 270 days after the date of issuance or until the motor carrier is assigned a safety rating, whichever occurs first.

(1) A motor carrier that receives a satisfactory safety rating will be issued a safety permit.

(2) A motor carrier that receives a less than satisfactory safety rating, is

ineligible for a safety permit and will be subject to revocation of its temporary safety permit.

(d) If a motor carrier has not received a safety rating within the 270-day time period, the FMCSA will extend the effective date of the temporary safety permit for an additional 60 days, provided the motor carrier demonstrates that it is continuing to operate in full compliance with the FMCSRs and HMRs.

§ 385.411 Must a motor carrier obtain a safety permit if it has a State permit?

Yes. However, if FMCSA is able to verify that a motor carrier has a safety permit issued by a State under a program that FMCSA has determined is equivalent to the provisions of this subpart, FMCSA will immediately issue a safety permit to the motor carrier upon receipt of an application in accordance with § 385.405 of this subpart, without further inspection or investigation.

§ 385.413 What happens if a motor carrier receives a proposed safety rating that is less than satisfactory?

(a) If a motor carrier does not already have a safety permit, it will not be issued a safety permit unless and until a satisfactory safety rating is issued to the motor carrier.

(b) If a motor carrier holds a safety permit (including a temporary safety permit), the safety permit will be subject to revocation or suspension (*see* § 385.421 of this subpart).

§ 385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?

(a) *Information that must be carried in the vehicle.* During transportation, the following must be maintained in each motor vehicle that transports a hazardous material listed in § 385.403(a) of this subpart and, upon request, made available to an authorized official of a Federal, State, or local government agency:

(1) A copy of the safety permit or another document showing the permit number;

(2) A written route plan that meets the requirements of § 397.101 of this subchapter (for Class 7 (radioactive) materials) or § 397.67 of this subchapter (for non-radioactive materials); and

(3) The telephone number of an employee of the motor carrier who has a copy of the route plan required in paragraph (a)(2) of this section and is able to determine whether the motor vehicle is on the route specified in that route plan. This phone number must be monitored by the motor carrier at all times the vehicle is in transit.

(b) *Inspection of vehicle transporting Class 7 (radioactive) materials.* Before a motor carrier may transport a highway route controlled quantity of a Class 7 (radioactive) material, the motor carrier must have a pre-trip inspection performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the following requirements:

(1) The inspection must be performed by a inspector who—

(i) Is employed by or under contract to a Federal, State, or local government, and

(ii) Has completed a commercial vehicle inspection-training program of at least 104 hours in duration, including 24 hours on the inspection of vehicles transporting HRCQ of Class 7 (radioactive) materials and conducting radiological surveys.

(2) The inspection must determine whether the motor carrier, driver(s) and the motor vehicle are in compliance with requirements governing:

(i) Commercial driver's licenses, in part 383 of this subchapter;

(ii) Qualifications and hours of service of drivers, in parts 391 and 395 of this subchapter, or compatible State requirements that are applicable;

(iii) The mechanical condition of the vehicle, in parts 393 and 396 of this subchapter, or compatible State requirements that are applicable;

(iv) The requirements in the Hazardous Materials Regulations (49 CFR parts 171 through 180) and compatible State requirements applicable to the acceptance and transportation of a highway route controlled quantity of a Class 7 (radioactive) material, including the limits for external radiation, heat, and contamination specified in §§ 173.441, 173.442, and 173.443 of this title;

(v) Registration and payment of the registration fee, in subpart G of part 107 of this title; and

(vi) Requirements for motor carriers and drivers, in subpart D of part 397 of this title.

(3) If any violation of the requirements in paragraph (b)(2) of this section is discovered, the vehicle may not begin transportation until the violation has been corrected. If any violation of the requirements in paragraph (b)(2)(iii) of this section is discovered, the vehicle must be placed "out of service" and may not be moved until completion of all repairs necessary for compliance with the requirements in paragraph (b)(2)(iii) of this section.

(4) If the inspector determines that the driver(s) and vehicle are in compliance with all the requirements set forth in paragraph (b)(2) of this section, the inspector shall affix to the vehicle a decal indicating the nature of the inspection and containing the date of the inspection. This decal must be removed upon delivery of the shipment to the consignee.

(c) *Additional requirements.* (1) The operator of a motor vehicle used to transport a hazardous material listed in § 385.403(a) of this subpart must:

(i) Follow the written route plan required by paragraph (a)(2) of this section, unless an alternate route is required by a law enforcement official or emergency conditions (in which case the operator must amend the written route plan to show the deviation); and

(ii) At least once each two hours during transportation of a hazardous material for which a safety permit is required, and any time there is a deviation from the written route plan required by paragraph (b) of this section, communicate with the motor carrier by means of the communications system required by § 385.407(b)(2) of this subpart.

(2) The motor carrier must contact law enforcement authorities at any time more than three hours have elapsed since the last communication from the operator of a motor vehicle used to transport a hazardous material listed in § 385.403(a) of this subpart. The motor carrier must maintain a record for 6 months after the initial acceptance of a shipment of hazardous material for which a safety permit is required, containing the name of the operator, identification of the vehicle, hazardous material(s) being transported, the date and time of each communication, and each period of more than two hours without a communication with the operator including a statement of the facts or conditions that prevented communication for more than two hours.

§ 385.417 Is a motor carrier's safety permit number available to others?

Upon request, a motor carrier must provide the number of its safety permit to a person who offers a hazardous material listed in § 385.403(a) of this subpart for transportation in commerce. A motor carrier's permit number will also be available to the public on the FMCSA Safety and Fitness Electronic Records System at *http://www.safersys.org.*

§ 385.419 How long is a safety permit effective?

Unless suspended or revoked, a safety permit (other than a temporary safety permit) is effective for two years, except that:

(a) a safety permit will be subject to revocation if a motor carrier fails to submit a renewal application (Form MCS–150B) in accordance with the schedule set forth for filing Form MCS–150 in § 390.19(a)(2) and (3) of this subchapter; and

(b) a safety permit will remain in effect pending FMCSA's processing of an application for renewal if a motor carrier submits the required application (Form MS–150B) in accordance with the schedule set forth in § 390.19(a)(2) and (3) of this subchapter.

§ 385.421 Under what circumstances will a safety permit be subject to revocation or suspension by the FMCSA?

(a) *Grounds.* A safety permit will be subject to revocation or suspension by the FMCSA for the following reasons:

(1) A motor carrier fails to submit a renewal application (Form MCS–150B) in accordance with the schedule set forth in § 390.19(a)(2) and (3) of this subchapter;

(2) A motor carrier provides any false or misleading information on its application (Form MCS–150B), Form MCS–150A (when required), or an update of information on its Form MCS–150B (see § 385.405(e) of this subpart);

(3) A motor carrier is issued a final safety rating that is less than satisfactory;

(4) A motor carrier fails to maintain a satisfactory security plan as set forth in § 385.407(b) of this subpart;

(5) A motor carrier fails to comply with applicable requirements in the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner that shows that the motor carrier is not fit to transport or offer for transportation the hazardous materials listed in § 385.403(a) of this subpart;

(6) A motor carrier fails to comply with an out-of-service order;

(7) A motor carrier fails to comply with any other order issued under the FMCSRs, the HMRs, or compatible State requirements governing the transportation of hazardous materials, in a manner that shows that the motor carrier is not fit to transport or offer for transportation the hazardous materials listed in § 385.403(a) of this subpart;

(8) A motor carrier fails to maintain the minimum financial responsibility required by § 387.9 or an applicable State requirement;

(9) A motor carrier fails to maintain current hazardous materials registration with the Research and Special Programs Administration; or

(10) A motor carrier loses its operating rights or has its registration suspended in accordance with § 386.83 or § 386.84 of this subchapter for failure to pay a civil penalty or abide by a payment plan.

(b) *Effective date of suspension or revocation.* A suspension or revocation of a safety permit is effective:

(1) immediately when FMCSA determines that an imminent hazard exists, when FMCSA issues a final safety rating that is less than satisfactory, or when a motor carrier loses its operating rights or has its registration suspended for failure to pay a civil penalty or abide by a payment plan;

(2) 30 days after service of a written notification that FMCSA proposes to suspend or revoke a safety permit, if the motor carrier does not submit a written request for administrative review within that time period; or

(3) as specified in § 385.423(c) of this subpart, when the motor carrier submits a written request for administrative review of FMCSA's proposal to suspend or revoke a safety permit.

§ 385.423 Does a motor carrier have a right to an administrative review of a denial, suspension, or revocation of a safety permit?

A motor carrier has a right to an administrative review pursuant to the following procedures and conditions:

(a) *Less than satisfactory safety rating.* If a motor carrier is issued a proposed safety rating that is less than satisfactory, it has the right to request (1) an administrative review of a proposed safety rating, as set forth in § 385.15 of this part, and (2) a change to a proposed safety rating based on corrective action, as set forth in § 385.17 of this part. After a motor carrier has had an opportunity for administrative review of, or change to, a proposed safety rating, FMCSA's issuance of a final safety rating constitutes final agency action, and a motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit when the motor carrier has been issued a final safety rating that is less than satisfactory.

(b) *Failure to pay civil penalty or abide by payment plan.* If a motor carrier is notified that failure to pay a civil penalty will result in suspension or termination of its operating rights, it has the right to an administrative review of that proposed action in a show cause proceeding, as set forth in § 386.83(b) or § 386.84(b) of this subchapter. The decision by FMCSA's Chief Safety Officer in the show cause proceeding constitutes final agency action, and a motor carrier has no right to further administrative review of FMCSA's denial, suspension, or revocation of a safety permit when the motor carrier has lost its operating rights or had its registration suspended for failure to pay a civil penalty or abide by a payment plan.

(c) *Other grounds.* Under circumstances other than those set forth in paragraphs (a) and (b) of this section, a motor carrier may submit a written request for administrative review within 30 days after service of a written notification that FMCSA has denied a safety permit, that FMCSA has immediately suspended or revoked a safety permit or that FMCSA has proposed to suspend or revoke a safety permit. The rules for computing time limits for service and requests for extension of time in §§ 386.31 and 386.33 apply to the proceedings on a request for administrative review under this section.

(1) The motor carrier must send or deliver its written request for administrative review to FMCSA Chief Safety Officer, with a copy to FMCSA Chief Counsel, at the following addresses:

FMCSA Chief Safety Officer, Federal Motor Carrier Safety Administration, c/o Adjudications Counsel (Room 8302A), 400 Seventh Street, SW., Washington, DC 20590.

FMCSA Chief Counsel, Federal Motor Carrier Safety Administration, Office of the Chief Counsel, Room 8125, 400 Seventh Street, SW., Washington, DC 20590.

(2) A request for administrative review must state the specific grounds for review and include all information, evidence, and arguments upon which the motor carrier relies to support its request for administrative review.

(3) Within 30 days after service of a written request for administrative review, the Office of the Chief Counsel shall submit to the Chief Safety Officer a written response to the request for administrative review. The Office of the Chief Counsel must serve a copy of its written response on the motor carrier requesting administrative review.

(4) The Chief Safety Officer may decide a motor carrier's request for administrative review on the written submissions, hold a hearing personally, or refer the request to an administrative law judge for a hearing and recommended decision. The Chief Safety Officer or administrative law judge is authorized to specify, and must notify the parties of, specific procedural rules to be followed in the proceeding (which may include the procedural rules in Part 386 of this subchapter that are considered appropriate).

(5) If a request for administrative review is referred to an administrative law judge, the recommended decision of the administrative law judge becomes the final decision of the Chief Safety Officer 45 days after service of the recommended decision is served, unless either the motor carrier or the Office of the Chief Counsel submits a petition for review to the Chief Safety Officer (and serves a copy of its petition on the other party) within 15 days after service of the recommended decision. In response to a petition for review of a recommended decision of an administrative law judge:

(i) The other party may submit a written reply within 15 days of service of the petition for review.

(ii) The Chief Safety Officer may adopt, modify, or set aside the recommended decision of an administrative law judge, and may also remand the petition for review to the administrative law judge for further proceedings.

(6) The Chief Safety Officer will issue a final decision on any request for administrative review when:

(i) The request for administrative review has not been referred to an administrative law judge;

(ii) A petition for review of a recommended decision by an administrative law judge has not been remanded to the administrative law judge for further proceedings; or

(iii) An administrative law judge has held further proceedings on a petition for review and issued a supplementary recommended decision.

(7) The decision of the Chief Safety Officer (including a recommended decision of an administrative law judge that becomes the decision of the Chief Safety Officer under paragraph (c)(5) of this section) constitutes final agency action, and there is no right to further administrative reconsideration or review.

(8) Any appeal of a final agency action under this section must be taken to an appropriate United States Court of Appeals. Unless the Court of Appeals issues a stay pending appeal, the final agency action shall not be suspended while the appeal is pending.

4. Appendix B to Part 385 is amended by adding to the List of Acute and Critical Regulations under Paragraph VII the following information in numerical order between §§ 171.16 and 177.800:

APPENDIX B TO PART 385—EXPLANATION OF SAFETY RATING PROCESS

* * * * *

VII. List of Acute and Critical Regulations

§ 172.313(a) Accepting for transportation or transporting a package containing a poisonous-by-inhalation material that is not marked with the words "Inhalation Hazard" (acute).

§ 172.704(a)(4) Failing to provide security awareness training (critical).

§ 172.704(a)(5) Failing to provide in-depth security awareness training (critical).

§ 172.800(b) Offering or transporting HM without a security plan that conforms to Subpart I requirements (acute).

§ 172.800(b) Failure to adhere to a required security plan (acute).

§ 172.802(b) Failure to make copies of security plan available to hazmat employees (critical).

§ 173.24(b)(1) Accepting for transportation or transporting a package that has an identifiable release of a hazardous material to the environment (acute).

§ 173.421(a) Accepting for transportation or transporting a Class 7 (radioactive) material described, marked, and packaged as a limited quantity when the radiation level on the surface of the package exceeds 0.005mSv/hour (0.5 mrem/hour) (acute).

§ 173.431(a) Accepting for transportation or transporting in a Type A packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).

§ 173.431(b) Accepting for transportation or transporting in a Type B packaging a greater quantity of Class 7 (radioactive) material than authorized (acute).

§ 173.441 Accepting for transportation or transporting a package containing Class 7 (radioactive) material with external radiation exceeding allowable limits (acute).

§ 173.442(b) Accepting for transportation or transporting a package containing Class 7 (radioactive) material when the temperature of the accessible external surface of the loaded package exceeds 50°C (122°F) in other than an exclusive use shipment, or 85°C (185°F) in an exclusive use shipment (acute).

§ 173.443 Accepting for transportation or transporting a package containing Class 7 (radioactive) material with removable contamination on the external surfaces of the package in excess of permissible limits (acute).

4a. Appendix B to to Part 385 is amended by adding to the List of Acute and Critical Regulations under Paragraph VII the following information in numerical order after § 177.800(c):

§ 177.801 Accepting for transportation or transporting a forbidden material (acute).

4b. Appendix B to Part 385 is amended by adding to the List of Acute and Critical Regulations under Paragraph VII the following information in numberical order after § 177.823(a):

§ 177.835(a) Loading or unloading a Class 1 (explosive) material with the engine running (acute).

§ 177.835(c) Accepting for transportation or transporting Division 1.1 or 1.2 (explosive) materials in a motor vehicle or combination of vehicles that is not permitted (acute).

§ 177.835(j) Transferring Division 1.1, 1.2, or 1.3 (explosive) materials between containers or motor vehicles when not permitted (acute).

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

5. The authority citation for Part 390 continues to read as follows:

Authority: 49 U.S.C. 13301; 13902, 31131, 31133, 31502, and 31504, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.73.

§ 390.3 General applicability.

* * * * *

(g) *Motor carriers that transport hazardous materials in intrastate commerce.* The rules in the following provisions of subchapter B of this chapter apply to motor carriers that transport hazardous materials in intrastate commerce and to the motor vehicles that transport hazardous materials in intrastate commerce:

(1) Subparts A, C, and E of Part 385, for carriers subject to the requirements of § 385.403(a) of this subchapter.

(2) Part 386, Rules of practice for motor carrier, broker, freight forwarder, and hazardous materials proceedings.

(3) Part 387, Minimum Levels of Financial Responsibility for Motor Carriers, to the extent provided in § 387.3 of this subchapter.

(4) Section 390.19, Motor carrier identification report, and § 390.21, Marking of CMVs, for carriers subject to the requirements of § 385.403(a) of this subchapter. Intrastate motor carriers operating prior to January 1, 2005, are excepted from § 390.19(a)(1).

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES [AMENDED]

7. The authority citation for Part 397 continues to read as follows:

Authority: 49 U.S.C. 322, 5112; 49 CFR 1.73. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.53. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

8. Amend § 397.67 to revise paragraph (d) to read as follows:

§ 397.67 Motor carrier responsibility for routing.

* * * * *

(d) Before a motor carrier requires or permits the operation of a motor vehicle containing any of the following hazardous materials, the carrier or its agent shall prepare and furnish to the vehicle operator a written route plan that complies with this section:

(1) A Division 1.1, 1.2, or 1.3 (explosive) material (*see* § 173.50 of this title);

(2) More than one liter (1.08 quarts) per package of a "material poisonous by inhalation," as defined in § 171.8 of this title, that meets the criteria for "hazard zone A," as specified in §§ 173.116(a) or 173.133(a) of this title); or

(3) A shipment of liquefied natural gas in a bulk packaging (*see* § 171.8 of this title) having a capacity equal to or greater than 13,248 L (3,500 gallons) for liquids or gases.

Issued on: August 11, 2003.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 03–20887 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 03–15097; Notice 1]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition.

SUMMARY: This notice denies a petition for rulemaking from DaimlerChrysler Corporation requesting that the agency amend Federal Motor Vehicle Safety Standard (FMVSS) No. 208, "Occupant crash protection," to allow for the deactivation of passenger air bags through the use of certain features of the child restraint lower anchorages described in FMVSS No. 225, "Child restraint anchorage systems." This was proposed both in lieu of, and in addition to, a manual passenger air bag on-off switch. The agency has analyzed the main issues surrounding the petitioner's request in the context of current and future air bag requirements. This notice completes agency rulemaking on that petition.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Lori Summers, Office of Crashworthiness Standards. Telephone: (202) 366–4917, Facsimile: (202) 493–2739.

For legal issues, you may contact Rebecca MacPherson, Office of the Chief Counsel. Telephone: (202) 366–2992, Facsimile: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

In 1995, vehicle manufacturers were beginning to install, and would soon be required to install, right front passenger air bags in all passenger cars and light trucks. At that time, the National Highway Traffic Safety Administration (NHTSA) believed that placing a rear facing child safety system (RFCSS) in the front seat of passenger air bag-equipped vehicles would have the potential for producing harmful effects. The agency's laboratory tests had shown that when RFCSSs were placed in the front seat of a passenger air bag-equipped vehicle, they extended forward to a point near the instrument panel where they could be struck by a deploying air bag and have the potential to cause serious injury to infants. This possibility was particularly acute when caregivers had no other choice because the rear seats of the vehicle were too small to accommodate the RFCSS or because the vehicle was not equipped with a rear seat.

As a countermeasure to this potential safety problem, the agency amended FMVSS No. 208, "Occupant crash protection," on May 23, 1995 (60 FR 27333) to allow manufacturers the option of installing an on-off switch that motorists could use to deactivate the front passenger-side air bag in vehicles that have no rear seat or a rear seat too small to accommodate a RFCSS. A yellow telltale light was also required to indicate when the passenger air bag was deactivated. On January 6, 1997, the agency published a Final Rule (62 FR 798) extending the allowance for on-off switches until September 1, 2000, and this was further extended to September 1, 2012 in the May 12, 2000 Final Rule regarding advanced air bag requirements (65 FR 30680).

In addition to the manual on-off switch extension, the FMVSS No. 208 Final Rule regarding advanced air bags added requirements for minimizing air bag risk to infants in RFCSS and car beds, and children in forward-facing child safety seats. The requirements allow manufacturers to meet one of two options: Option 1—Automatic Suppression Feature, or Option 2—Low Risk Deployment.[1] Advanced air bag systems designed to meet the requirements are expected to work automatically. Once installed, the device should require no action on the part of the occupant. For example, if an automatic suppression system recognizes the presence of a RFCSS in the right front passenger seat, the air bag should automatically not deploy. We note that vehicle manufacturers are not restricted in their choice of technology. Unlike the earlier on-off switch requirements, there are no restrictions limiting installation of suppression systems to vehicles that have no rear seat or have rear seats that are too small to accommodate a RFCSS.

Currently FMVSS No. 225, "Child restraint anchorage systems," mandates that if a vehicle does not have an air bag on-off switch meeting the requirements of S4.5.4 of FMVSS No. 208, it shall not have a child restraint anchorage system installed at a front designated seating position. The on-off switch requirements in S4.5.4 of FMVSS No. 208 specify, among other things, that the on-off device be operable by means of the ignition key for the vehicle.

II. DaimlerChrysler's Petition

On November 16, 1999, DaimlerChrysler Corporation (DaimlerChrysler) petitioned NHTSA to amend FMVSS No. 208, to allow for the deactivation of passenger air bags through the use of certain features of the child restraint lower anchorages described in FMVSS No. 225. DaimlerChrysler believes the attachment should be permitted as a substitute for, or in addition to, a manual on-off switch.

DaimlerChrysler stated they were considering the development of a system that would sense the presence of a RFCSS held in place with components (identified in FMVSS No. 213, "Child restraint systems") for attaching to the child restraint lower anchorages described in FMVSS No. 225. In addition to sensing RFCSSs, the system would also deactivate the passenger air bag when forward facing child safety systems equipped with similar components are installed in the front seat. According to DaimlerChrysler, air bag deactivation would be accomplished and assured by the act of installing the child safety system attachment components onto the anchorages described in FMVSS No. 225. The attachment components would be detected by a switch actuator that is

[1] **NOTE:** Manufacturers are required to pick a certification option for each of the three child occupant categories: 12-month-old infant, 3-year-old and 6-year-old child. The 3-year-old and 6-year-old child categories also have a third option for dynamic automatic suppression.

integral with the lower anchorages. The telltale light of S4.5.4.3 of FMVSS No. 208 would still be required, and would be illuminated whenever the passenger air bag is turned off by means of the proposed system.

III. Analysis of Petition

Both of the proposed amendments included in DaimlerChrysler's petition for rulemaking are being denied. First, DaimlerChrysler petitioned that FMVSS No. 208 be amended to allow the child restraint anchorage system attachment be permitted as a means of turning off the right front passenger air bag in lieu of a manual air bag on-off switch. However, NHTSA believes that the child restraint anchorage system technology proposed by DaimlerChrysler would limit the target population of children that may benefit from a manual air bag on-off switch. Using this technology, children not in child seats, or in child seats without appropriate child seat anchorage hardware, will not be able to have their air bag manually turned off, in vehicles with no rear seat or a rear seat too small to accommodate a RFCSS. Currently, air bag on-off switches have the potential for suppressing the passenger air bag for all children (whether they are using a child restraint anchorage system or not).

DaimlerChrysler commented on the tragic circumstances that can occur when a caregiver neglects to manually turn "off" the right front passenger air bag. NHTSA has studied how manual passenger air bag on-off switches are being used and misused in the field and is developing new strategies on how to improve information and educational efforts regarding on-off switch use in current vehicles. For new vehicles, certified with advanced air bag technology in conjunction with an on-off switch, the on-off switch is largely a system redundancy for children. These vehicles will be able to provide the option for caregivers to manually turn off the passenger air bag in the presence of children, or, alternatively, allow the system to work in an automatic mode. The "automatic" mode would be required to minimize the risk of air bags to all children either through air bag suppression or providing a low risk deployment (depending upon a vehicle's certification methods), while maintaining moderate to high speed crash protection for adult occupants.

Adopting DaimlerChrysler's petition could also lead to conditioning caregivers into assuming that once a child seat is connected to the child restraint anchorage system in the right front passenger seat, no further action is necessary on their part to suppress passenger air bag deployment in vehicles that are not equipped with advanced air bags. For example, if that other vehicle has child restraint lower anchorages and a manual air bag on-off switch for the right front passenger seat, the caregiver may not know that the air bag will not be suppressed unless they use the manual, key-operated on-off switch.

DaimlerChrysler's petition acknowledged the argument that their system could encourage the placement of toddlers in child restraint systems equipped with FMVSS No. 225 lower anchorage attachments in the front rather than appropriate rear seating positions. However, they dismissed its significance by stating they believe the toddler has the advantage of the improved child restraint system. However, as previously discussed, this improved child restraint system would only apply to children in child seats equipped with lower anchorage attachments, not other children. Additionally, this system could be susceptible to mis-use if the lower anchorages are only partially engaged. DaimlerChrysler's petition did not address risks associated with partial engagement.

More recently, DaimlerChrysler demonstrated a new stowable/foldable lower anchorage deactivation system that is also applicable to this petition.[2] In this design, the lower anchorages, and air bag deactivation feature, would only be accessible for child restraint attachment when the vehicle seat was placed in a certain seat track position. For example, the vehicle manufacturer could designate the most rearward seat track position to be the sole location where the stowable/foldable lower anchorages are made available. However, NHTSA believes that this technology, like the non-stowable/foldable type previously discussed, would not be applicable to the same target population as an on-off switch. Furthermore, even for the sub-population of children in child seats with lower anchorage hardware, we believe the stowable/foldable lower anchorage deactivation system provides little advantage over a switch since it still requires two actions by the caregiver. First, it requires activation of a switch to position the vehicle seat and make the anchorages accessible, followed by a second action of attaching the child restraint system to the lower anchorage. In addition, the stowable/foldable lower anchorage deactivation system has the potential of being defeated if the single seat track position, which provides the lower anchorages, is obstructed from use (*i.e.*, due to cargo in the rear).

DaimlerChrysler alternatively proposed that NHTSA could consider their child restraint anchorage technology in conjunction with an air bag on-off switch system. NHTSA notes that FMVSS No. 208 does not prohibit the use of such technologies. While this technology alone will not be enough for certification with the advanced air bag requirements, it can be used to supplement the technologies that will be used for certification. For the interim fleet of vehicles that are being produced between now and the completion of the advanced air bag phase-in, NHTSA has never prohibited such systems. Furthermore, DaimlerChrysler's petition is very technology-specific to the child restraint lower anchorages, and would not encompass the broad range of other advanced technologies that could likely demonstrate the same air bag suppression capabilities and seek the same interim classification as an on-off switch. Therefore, NHTSA is denying DaimlerChrysler's petition for a rulemaking proceeding addressing vehicles produced in the interim.

IV. Conclusion

NHTSA's educational campaigns have strongly encouraged caregivers to place children in the rear seat of vehicles, and FMVSS No. 225 currently prohibits the installation of child restraint anchorage systems in the front seat of vehicles unless an on-off switch is present. NHTSA believes that the child restraint anchorage system technology proposed by DaimlerChrysler would limit the target population of children that may benefit from a manual air bag on-off switch. Using this technology, children not in child seats, or in child seats without appropriate child seat anchorage hardware, will not be able to have their air bag manually turned off, in vehicles with no rear seat or a rear seat too small to accommodate a RFCSS. Consequently, NHTSA is denying this petition for rulemaking. We are also denying DaimlerChrysler's alternative proposal to consider their child restraint anchorage technology in conjunction with an air bag on-off switch system since FMVSS No. 208 does not prohibit the use of such technologies.

In accordance with 49 CFR Part 552, this completes the agency's review of the petition for rulemaking. The agency has concluded that there is no reasonable possibility that the amendments requested by the petitioner would be issued at the conclusion of the rulemaking proceeding. Accordingly,

[2] Exparte meeting with DaimlerChrysler, NHTSA–03–15097.

rulemaking on the petition is completed.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8

Issued on: August 13, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–21218 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 081103D]

New England Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings; request for comments.

SUMMARY: The New England Fishery Management Council (Council) will hold a series of public hearings to solicit comments on proposals to be included in Amendment 13 of the Northeast Multispecies Fishery Management Plan (FMP).

DATES: Written comments on the proposals will be accepted through October 15, 2003. The public hearings will begin September 9, 2003 and end on September 30, 2003. See Public Hearings for specific hearing dates.

ADDRESSES: To obtain copies of the public hearing document or to submit comments, contact Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Identify correspondence as "Comments on Groundfish Amendment 13." Hearings will be held in New Jersey, New York, Rhode Island, Massachusetts, New Hampshire and Maine. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950; telephone: (978) 465–0492. For specific locations, see PUBLIC HEARINGS.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Council proposes to take action to address the revised requirements of the Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996. The Council will consider comments from fishermen, interested parties, and the general public on the proposals and alternatives described in the public hearing document for the Northeast Multispecies FMP. Once it has considered public comments, the Council will approve final management measures and prepare a submission package to NMFS. There will be an additional opportunity for public comment when the proposed rule for this action is published in the **Federal Register**.

The primary purpose of this Amendment is to develop a program to rebuild overfished stocks. Major elements of the proposals in this public hearing document include: (1) management options to reduce fishing mortality that include reductions in the number of days-at-sea (DAS), additional gear requirements, trip/possession limits, and the use of "hard" Total Allowable Catch systems; (2) options that define and clarify the status determination criteria used to guide management actions; (3) measures designed to minimize, to the extent practicable, adverse effects of fishing on essential fish habitat; (4) measures to reduce or control excess harvesting capacity in the fishery; (5) measures to address a wide range of administrative issues, including but not limited to the development of special access programs, changes to the fishing year, and a DAS leasing proposal; (6) revisions to the northern shrimp fishery exemption area, restrictions on tuna purse seine vessel access to groundfish closed areas, and a proposal for a general category scallop exemption area in southern New England. The Council will consider all comments received on these proposals until the end of the comment period on October 15, 2003.

Public Hearings

The dates, times, locations, and telephone numbers of the hearings are as follows:

Tuesday, September 9, 2003, at 5 p.m.—Holiday Inn, 290 Highway, 37 East, Tom's River, NJ 08753; telephone: (732)244–4000;

Wednesday, September 10, 2003, at 5 p.m.—Best Western East End, 1830 Route 25, Riverhead, NY 11901; telephone: (631) 369–2200;

Thursday, September 11, 2003, at 4 p.m.—Holiday Inn South Kingston, 3009 Tower Hill Road, South Kingston, RI 02674; telephone: (401) 789–1051;

Monday, September 15, 2003, at 2 p.m. (Recreational issues to begin at 7:00 p.m.)—Ramada Inn, 1127 Route 132, Hyannis, MA; telephone: (508) 775–1153;

Monday, September 22, 2003, at 4 p.m.—Tavern on the Harbor, 30 Western Avenue, Gloucester, MA 01930; telephone (978) 283–4200;

Tuesday, September 23, 2003, at 2 p.m. (Recreational Issues to begin at 7:00 p.m.)—Yoken's Comfort Inn, 1390 Lafayette Road, Portsmouth, NH 03801; telephone: (603) 433–3338;

Wednesday, September 24, 2003, at 5 p.m.—Holiday Inn Ellsworth, 215 High Street, Ellsworth, ME 04505; telephone (207) 667–9341;

Thursday, September 25, 2003, at 4 p.m.—DoubleTree Hotel, 1230 Congress Street, Portland, ME 04102; telephone: (207) 774–5611;

Tuesday, September 30, 2003, at 4 p.m.—Holiday Inn Express, 110 Middle Street, Fairhaven, MA 02719; telephone (508) 997–1281.

Special Accommodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 13, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21206 Filed 8–18–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 160
Tuesday, August 19, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nevada Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Nevada State Advisory Committee in the Western Region will convene at 10 a.m. (PDT) and adjourn at 11 a.m., Friday, August 22, 2003. The purpose of the conference call is to discuss regional resolutions and plan Committee activities.

This conference call is available to the public through the following call-in number: 1–800–659–8290, access code number 18318270. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez of the Western Regional Office, (213) 894–3437, by 3 p.m. on Thursday, August 21, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 31, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–21169 Filed 8–14–03; 12:16 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Texas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Texas State Advisory Committee in the Western Region will convene at 1 p.m. (PDT) and adjourn at 2 p.m., Friday, August 15, 2003. The purpose of the conference call is to discuss the Patriot Act.

This conference call is available to the public through the following call-in number: 1–800–659–8290, access code number 18267616. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez of the Western Regional Office, (213) 894–3437, by 3 p.m. on Thursday, August 14, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 31, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–21168 Filed 8–14–03; 12:16 pm]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Washington State Advisory Committee in the Western Region will convene at 10 a.m. (PDT) and adjourn at 11 a.m., Wednesday, August 27, 2003. The purpose of the conference call is to discuss regional resolutions and plan Committee activities.

This conference call is available to the public through the following call-in number: 1–800–659–1025, access code number 18318272. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez of the Western Regional Office, (213) 894–3437, by 3 p.m. on Tuesday, August 26, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, July 31, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–21170 Filed 8–14–03; 12:16 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2003 Report of Organization (Company Organization Survey).

Form Number(s): NC–99001.

Agency Approval Number: 0607–0444.

Type of Request: Revision of a currently approved collection.

Burden: 133,917 hours.

Number of Respondents: 55,000.

Avg Hours Per Response: 2 hours and 26 minutes.

Needs and Uses: The Census Bureau is requesting a revision of the currently approved Company Organization Survey (COS) data collection for the 2003 survey year. We will include questions on research and development activities performed by the company. We are also requesting an extension of the current expiration date to November 2004 (the existing date is November 2003) in order to complete the data collection for the 2003 COS.

The Census Bureau conducts the annual COS in order to update and maintain a central, multipurpose Business Register (BR). In particular, the COS supplies critical information on the composition, organizational structure, and operating characteristics of multi-establishment enterprises. The BR provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. The BR also provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, the District of Columbia, Puerto Rico, counties, and county-equivalents.

COS inquiries to each of the 55,000 multi-establishment enterprises will include questions on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates. Additional COS inquiries will apply to approximately 1.2 million establishments operated by these 55,000 enterprises. These additional inquiries will list an inventory of establishments and request updates to the inventory, including additions, deletions, and changes to Federal Employer Identification number, name and address, and industrial classification. Further, the additional inquiries will collect the following basic operating data for each listed establishment: end-of-year operating status, mid-March employment, first quarter payroll, and annual payroll.

Affected Public: Business or other for-profit; not-for-profit institutions; farms; state, local or tribal government.

Frequency: Annually.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C. 182, 195, 224, and 225.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: August 13, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–21142 Filed 8–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee of Professional Associations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463 as amended by Pub. L. 94–409), the U.S. Census Bureau (Census Bureau) is giving notice of a meeting of the Census Advisory Committee of Professional Associations (The Committee). The Committee will address issues regarding Census Bureau programs and activities related to their areas of expertise. Members will address policy, research, and technical issues related to the 2010 decennial census, including the American Community Survey and related programs. The Committee also will discuss the 2002 Economic Census and other economic initiatives, as well as issues pertaining to marketing services, language, and data products. Last-minute changes to the agenda are possible, which could prevent giving advance notice of schedule adjustments.

DATES: The meeting will convene on October 23–24, 2003. On October 23, the meeting will begin at approximately 9 a.m. and adjourn at approximately 5 p.m. On October 24, the meeting will begin at approximately 9 a.m. and adjourn at approximately 12:15 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Building 3, Washington, DC 20233. Her telephone number is (301) 763–2070, TDD (301)–457–2540.

SUPPLEMENTARY INFORMATION: The Census Advisory Committee of Professional Associations is composed of 36 members, appointed by the presidents of the American Economic Association, the American Statistical Association, and the Population Association of America, and the chairperson of the Board of the American Marketing Association. The Committee addresses issues regarding Census Bureau programs and activities related to their respective areas of expertise.

The meeting is open to the public, and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing, at least three days before the meeting, to the Committee Liaison Officer named above in the **FOR FURTHER INFORMATION CONTACT** heading. Seating is available to the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Committee Liaison Officer.

Dated: August 13, 2003.

Hermann Habermann,

Deputy Director, Bureau of the Census.

[FR Doc. 03–21123 Filed 8–18–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Islander East Pipeline Company From an Objection by the Connecticut Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of recommencement of appeal proceedings; reopening of public comment period.

SUMMARY: This notice: (1) Announces the resumption of processing of Islander East's administrative appeal (Consistency Appeal of Islander East Pipeline Company, L.L.C.) by the Department of Commerce; (2) reopens the period for the public to comment on

Islander East's administrative appeal; and (3) provides information about other procedural aspects of the appeal.

DATES: Processing of the Islander East appeal by the Department of Commerce resumed on August 8, 2003. The public comment period for the appeal will run through November 20, 2003. The deadline for federal agencies to submit comments on the appeal is October 27, 2003. Information concerning a public hearing on the appeal to be held in Connecticut will be available approximately 30 days prior to the hearing.

ADDRESSES: All e-mail comments on issues relevant to the Secretary of Commerce's (Secretary) decision in this appeal may be submitted to *IslanderEast.comments@noaa.gov*. Comments may also be sent by mail to the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910. Materials from the appeal record are available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services. Also, public filings made by the parties to the appeal are to be available for review at the Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, CT.

FOR ADDITIONAL INFORMATION CONTACT: Branden Blum, Senior Counselor, NOAA Office of the General Counsel, via e-mail at *GCOS.inquiries@noaa.gov*, or at 301–713–2967, extension 186.

SUPPLEMENTARY INFORMATION:

I. Recommencement of Appeal Proceedings

In November 2002, the Islander East Pipeline Company, L.L.C. (Islander East) filed a notice of appeal with the Department of Commerce (Department) pursuant to the Coastal Zone Management Act of 1972 (CZMA), as amended, asking that the Secretary of Commerce override the State of Connecticut's (State) objection to Islander East's proposed natural gas pipeline. The pipeline would extend from near North Haven, Connecticut, across the Long Island Sound to a terminus in Suffolk County (Long Island), New York. Connecticut's objection is based on the project's potential effects on the natural resources or land and water uses of Connecticut's coastal zone.

Appeal proceedings before the Department have been stayed since March 17, 2003. The initial stay and an extension were granted at the request of both parties to allow for settlement negotiations. A subsequent stay was granted in order to accommodate Islander East's request that the appeal be remanded to the Connecticut Department of Environmental Protection (Connecticut) for reconsideration of its objection to the proposed natural gas pipeline project. On July 29, 2003, Connecticut reiterated its continuing objection to the proposed pipeline. Connecticut's determination requires the Department of Commerce to resume processing the Islander East appeal. 15 CFR 930.129(d). Consequently, the Department provided notice to the parties on August 8, 2003 that it was recommencing processing of Islander East's appeal. Information on scheduled filings by the parties is available at the Department's Coastal Zone Management Act Appeals Web site, *http://www.ogc.doc.gov/czma.htm*.

II. Public Comments

In connection with the resumption of appeal proceedings, the public comment period has been reopened through November 20, 2003. During this period, the public may submit comments to the Department of Commerce (see address section above) on issues to be considered in the appeal. A summary of the grounds for which Islander East requested an override of the State's objection appears in the **Federal Register** at 68 FR 3513. Comments received between July 31, 2003, the close of the earlier public comment period, and before the publication of this notice, will be considered to be timely filed.

III. Other Procedural Matters

This portion of the **Federal Register** notice provides information concerning other aspects of the Islander East appeal that are affected by the resumption of proceedings. The federal agency comment period has been reopened and letters announcing this action were sent to agencies whose views had been previously solicited but not yet received, although timely comments will be accepted from all agencies. The Department will also schedule a public hearing on the appeal in the State of Connecticut. A hearing, to occur prior to the close of the public comment period, had been previously announced in the **Federal Register**. 68 FR 5620. A notice concerning the date, location and related information will be provided at least 30 days prior to the hearing.

Please visit the Department of Commerce CZMA Appeals Web site (*http://www.ogc.doc.gov/czma.htm*) for further information concerning the CZMA administrative appeal process or to review documents from the Islander East appeal record.

Questions about the resumption of the Islander East appeal may be sent to the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, via e-mail (*GCOS.inquiries@noaa.gov*) or made by telephone (301 713–2967, extension 186).

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.]

Dated: August 13, 2003.

James R. Walpole,

General Counsel.

[FR Doc. 03–21207 Filed 8–18–03; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Environmental Assessment and Finding of No Significant Impact Related to the Pulsed Fast Neutron Analysis Cargo Inspection System Test Facility at the Ysleta Port of Entry Commercial Cargo Facility, El Paso, Texas

AGENCY: Counterdrug Technology Development Program Office (CTDPO), Department of Defense (DoD).

ACTION: Notice of Environmental Assessment and Finding of No Significant Impact.

SUMMARY: The Counterdrug Technology Development Program Office (CTDPO) is considering the construction of a Pulsed Fast Neutron Analysis (PENA) Cargo Inspection System Test Facility at the Ysleta Port of Entry Commercial Cargo Facility, El Paso, Texas and has prepared an Environmental Assessment in support of this action. Based upon the Environmental Assessment, the Department of Defense has concluded that a Finding of No Significant Impact is appropriate, and therefore an Environmental Impact Statement is unnecessary.

FOR FURTHER INFORMATION CONTACT: Dr. Stephen Haimbach, Department of Defense, Counterdrug Technology Development Program Office, Naval Surface Warfare Center, 17320 Dahlgren Road, Dahlgren, Virginia 22448–5100; telephone (540) 653–2374 or e-mail *PFNAmail@dodcounterdrug.com*.

SUPPLEMENTARY INFORMATION: In its counter-terrorism and counter-drug efforts, the Federal Government has invested considerable resources into developing technologies for detecting explosives, narcotics or other

contraband hidden among the freight imported into the United States. Radiation-based, non-intrusive inspection systems, such as X-ray and gamma ray, have been in use for several years by Federal Government agencies. A related technology, called Pulsed Fast Neutron Analysis (PFNA), was developed several years ago for cargo inspection. PFNA is designed to directly and automatically detect and measure the presence of specific materials, such as cocaine or explosives, which may have been hidden within the vehicle. PFNA technology uses pulses of neutrons as the radiation source to non-intrusively examine packages and containers for suspect materials. While PFNA has been successfully demonstrated in a laboratory setting, it has yet to be tested in an operational environment.

The Department of Defense in cooperation with the United States Bureau of Customs and Border Protection and the Transportation Security Administration plans to conduct a six-month operational test of a PFNA system at the Ysleta/Zaragosa Border Station in Ysleta, Texas. Ysleta is next to the Rio Grande River just southeast of the city of El Paso. Ysleta was selected as the test location principally because it had space available (no additional land purchase was required) and sufficient commercial traffic.

The test facility will consist of an inspection building (approximately 220 feet by 60 feet) housing the PFNA equipment and several smaller structures for electronic equipment and operators.

The Environmental Assessment is available for public viewing by accessing the following Internet address: *http://www.scainc.biz/EA*.

Dated: August 12, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–21161 Filed 8–18–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council (FICC) Meeting

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in policy discussions related to health services for young children with disabilities and their families. The meeting will be open and accessible to the general public.

DATE AND TIME: FICC Meeting: Thursday, September 18, 2003 from 9 a.m. to 4:30 p.m.

ADDRESSES: American Institutes for Research, 1000 Thomas Jefferson Street, NW, Conference Rooms B & C, 2nd Floor, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Obral Vance, U.S. Department of Education, 330 C Street, SW, Room 3090, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

SUPPLEMENTARY INFORMATION: The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1444). The FICC is established to: (1) Minimize duplication across Federal, State, and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

Individuals who need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, material in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW, Room 3090, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–21195 Filed 8–18–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–284]

Sempra Energy Solutions

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Sempra Energy Solutions (SES) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before September 2, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–2793).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 6, 2003, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from SES to transmit electric energy from the United States to Mexico. SES is incorporated in the State of California and has its principal place of business in San Diego, California. SES is a wholly-owned subsidiary of Sempra Energy Global Enterprises, which, in turn, is a wholly-owned subsidiary of Sempra Energy. Sempra Energy owns 100% of San Diego Gas & Electric Company(SDG&E). SES does not have a franchised utility service area. The electric energy which the applicant proposes to export to Mexico would be surplus generation from utilities and

Federal power marketing agencies within the United States.

The applicant proposes to arrange for the delivery of electric energy to Mexico over the international transmission facilities owned by SDG&E. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by the applicant, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

SES has requested an expedited notice and comment period in order to be able to respond to a solicitation to deliver electric energy to Mexico in the first week of September, 2003. DOE has granted the request and shortened the public comment period to 14 days.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with sections 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the SES application to export electric energy to Mexico should be clearly marked with Docket EA–284. Additional copies are to be filed directly with Kelly Morton, Esq., Sempra Energy, 101 Ash Street, HQ13D, San Diego, CA 92101.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA), and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on August 13, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–21173 Filed 8–18–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0091; FRL–7546–4]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Automobile and Light Duty Truck Surface Coating Operations (40 CFR Part 60, Subpart MM), EPA ICR Number 1064.10, OMB Control Number 2060–0034

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0091, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, EPA West, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leonard Lazarus, Office of Compliance, 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0091, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May

31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NSPS for Automobile and Light Duty Truck Surface Coating Operations, (40 CFR part 60, subpart MM).

Abstract: The New Source Performance Standards (NSPS) for automobile and light duty truck surface coating operations were proposed on October 5, 1979 and promulgated on December 24, 1980 (45 FR 85415). These standards apply to the following automobile and light duty truck assembly plant lines: each prime coat operation, guide coat operation, and top coat operation commencing construction, modification or reconstruction after October 5, 1979. Volatile organic compounds (VOC) are the pollutants regulated under the standards.

Owners or operators of the affected facilities described must make the following one time-only reports: Notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of the date of the initial performance test (not required under section 60.393(a)); and the results of the initial performance test. Responses to the collection of information are mandatory (40 CFR part 60, subpart MM, Automobile and Light Duty Truck Surface Coating Operations). The required information has been determined not to be confidential. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 745 (rounded) hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Automobile and light duty truck surface coating plants.

Estimated Number of Respondents: 54.

Frequency of Response: Initial, Quarterly.

Estimated Total Annual Hour Burden: 156,362 hours.

Estimated Total Annual Cost: $92,700, which includes $1,700 annualized capital/startup costs and $91,000 annual O&M costs.

Changes in the Estimates: There is an increase of 10,763 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to more accurate estimates of existing and anticipated new sources and the correction of a mathematical error in the previous ICR.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21179 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0049; FRL–7546–3]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NESHAP for the Printing and Publishing Industry (40 CFR Part 63, Subpart KK), EPA ICR Number 1739.04, OMB Number 2060–0335

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0049, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Enforcement and Compliance Docket and Information Center, EPA Docket Center, Environmental Protection Agency, Mail Code: 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, (Mail Code 2223A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2003–0049, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those

documents in the public docket that is available electronically. When in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket.*

Title: NESHAP for the Printing and Publishing Industry (40 CFR part 63, subpart KK), OMB Control Number 2060–0335, EPA ICR Number 1739.04.

Abstract: The Maximum Achievable Control Technology (NESHAP) for the Printing and Publishing Industry were promulgated on May 30, 1996 (61 FR 27131). These standards apply to the following facilities in 40 CFR part 63, subpart KK: publication rotogravure, product and packaging rotogravure, and wide-web flexographic printing presses at major sources. The effective date was May 30, 1999, for sources existing on May 30, 1996. For new sources or reconstructed sources after May 30, 1996, the effective date of startup is May 30, 1996, whichever is later.

These standards of performance for this category of major sources and area sources of hazardous air pollutants are required by section 112 of the Clean Air Act. Facilities may meet the standards by materials' substitution, by installing control devices, or by a combination of both. The information that is required to be submitted to the Agency or kept at the facility is needed to insure compliance with the regulation. These include initial one time notifications, performance test plans and reports and records of maintenance and shutdown, startup, and malfunctions. The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated, leaks are being detected and repaired and the standard is being met. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. For facilities that install continuous monitoring systems (CMS) there are performance test, and maintenance reports. Excess emissions reports are submitted semiannually. Responses to the information collection are mandatory under Clean Air Act section 112 and 40 CFR part 63, subpart KK. The responses are not anticipated to be kept confidential due to the nature of the information collected; however, any information submitted to the Agency for which claim of confidentiality is made will be safeguarded according to the Agency policy set forth in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 163 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of publication rotogravure, product and packaging rotogravure, or wide-web flexographic printing presses.

Estimated Number of Respondents: 151.

Frequency of Response: One time notification, semiannual reports, and on occasion.

Estimated Total Annual Hour Burden: 49,548 hours.

Estimated Total Annual Capital and Operations and Maintenance Costs: $412,000, which includes $7,000 annualized capital/startup costs and $405,000 annual O&M costs.

Changes in the Estimates: There is a decrease of 2,947 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Even though there is a decrease of hours in the total estimated burden from the most recently approved ICR, there was an increase in the number of new or modified sources, and an increase in the annual cost, which is due to a revised hourly rate from the United States Department of Labor.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21180 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0050; FRL–7546–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR Part 63, Subpart M), EPA ICR Number 1415.05, OMB Control Number 2060–0234

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0050, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; e-mail address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On September 26, 2002 (67 FR 60672), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0050, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: NESHAP for Perchloroethylene Dry Cleaning Facilities (40 CFR part 63, subpart M).

Abstract: These standards apply to owners or operators of dry cleaning facilities that use perchloroethylene (PCE). Owners or operators of such facilities must provide EPA, or the delegated State regulatory authority, with the one-time notifications and reports. The owners or operators must also perform weekly monitoring (or biweekly for the smaller facilities), and must keep records for five years. The notification and reports enable EPA or the delegated State regulatory authority to determine whether the appropriate control technology is installed and properly operated and maintained, and to schedule inspections and/or compliance assistance activities. The responses to this information collection are mandatory under Clean Air Act section 112 and 40 CFR part 63, subpart M. The responses are not anticipated to be kept confidential due to the nature of the information collected; however, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average approximately 1 hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Perchloroethylene Dry Cleaning Facilities.

Estimated Number of Respondents: 34,240.

Frequency of Response: Occasionally.

Estimated Total Annual Hour Burden: 1,537,784 hours.

Estimated Total Capital and Operations & Maintenance (O & M) Annual Costs: $53,000, which includes zero annualized capital/startup costs and $53,000 annual O&M costs.

Changes in the Estimates: There is an increase of 325,655 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase in burden is due to a more accurate estimate of existing and anticipated new sources. In addition, a revised hourly labor rate from the United States Department of Labor, resulted in an increase over the three-year period from the previous ICR. Since the active ICR indicated that there were 25,090 existing respondents subject to the rule over the three-year period, we conducted additional research by contacting a number of Trade Associations, and subsequently determined that the number of respondents subject to the rules addressed by this ICR is 34,240. In addition, a math error in the previous ICR was corrected.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21181 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2003–0036; FRL–7546–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for the Secondary Lead Smelter Industry (40 CFR Part 63, Subpart X), EPA ICR Number 1686.05, OMB Control Number 2060–0296

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2003–0036, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: María Malavé, Compliance Assessment and Media Programs Division, Mail Code 2223A, Office of Compliance, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7027; fax number: (202) 564–0050; e-mail address: *malave.maria@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 19, 2003 (68 FR 27059), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID Number OECA–2003–0036, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is (202) 566–1514. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to www.epa.gov/edocket.

Title: NESHAP for the Secondary Lead Smelter Industry (40 CFR part 63, subpart X).

Abstract: The National Emission Standards for Hazardous Air Pollutants (NESHAP) for the Secondary Lead Smelter Industry (40 CFR part 63, subpart X) were proposed on June 9, 1994 (59 FR 29750) and promulgated on June 23, 1995 (60 FR 32587). In response to industry petitions to reconsider, the final rule was amended on June 13, 1997 (62 FR 32209). Entities potentially affected by this rule are owners or operators of secondary lead smelters that operate furnaces to reduce scrap lead metal and lead compounds to elemental lead. The rule applies to secondary lead smelters that use blast, reverberatory, rotary, or electric smelting furnaces to recover lead metal from scrap lead, primarily from used lead-acid automotive-type batteries. These sources are emitters of several chemicals identified as hazardous air pollutants, including but not limited to lead compounds, arsenic compounds, and 1,3-butadiene. The rule provides protection to the public by requiring all secondary lead smelters to meet emission standards reflecting the application of the maximum achievable control technology (MACT). This information is being collected to assure compliance with 40 CFR part 63, subpart X.

Owners or operators of the affected facilities described must make one-time-only notifications including: notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of the initial performance test, including information necessary to determine the conditions of the performance test, and performance test measurements and results. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Owners or operators must maintain records of initial and subsequent compliance tests for lead compounds, and identify the date, time, cause and corrective actions taken for all bag leak detection alarms. Records of continuous monitoring devices, including parametric monitoring, must be maintained and reported semiannually. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the records for at least five years following the date of such measurements and records. At a minimum, records of the previous two years must be maintained on site.

Industry and EPA records indicate that 23 sources are subject to the standard, and no additional sources are expected to become subject to the

standard over the next three years. However, we have assumed that one furnace will be rebuilt per year and that each facility will make a major adjustment once per year which will require revising its operational plan.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 229 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of secondary lead smelters.

Estimated Number of Respondents: 23.

Frequency of Response: Semiannual and initially.

Estimated Total Annual Hour Burden: 16,034 hours.

Estimated Total Capital and Operations & Maintenance (O & M) Annual Costs: $150,000 which includes zero annualized capital/startup costs and $150,000 annual O&M costs.

Changes in the Estimates: There is an increase of one hour in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens due to the rounding-off of the mathematical calculations. There was no increase in the number of new or modified sources. The increase in the annual cost, is due to the use of an updated revised hourly pay rate from the United States Department of Labor.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21182 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7545–9]

Agency Information Collection Activities OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or e-mail at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 2088.01; Reporting and Recordkeeping Requirements under EPA's Hospitals for a Healthy Environment (H2E) Program; was approved 07/14/2003; OMB Number 2070–0166; expires 07/31/2006.

Dated: August 7, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21183 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0008; FRL–7545–8]

Agency Information Collection Activities; Submission of EPA ICR No. 1381.07 (OMB No. 2050–0122) to OMB for Review and Approval; Comment Request; Recordkeeping and Reporting for 40 CFR Part 258—Solid Waste Disposal Facilities and Practices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Recordkeeping and Reporting for 40 CFR Part 258—Solid Waste Disposal Facilities and Practices (OMB Control No. 2050–0122, EPA ICR No. 1381.07) This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Follow the detailed instructions in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Craig Dufficy, Municipal Information and Analysis Branch, Office of solid Waste, mailcode 5306W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9037; fax number: (703) 308–8686; e-mail address: *dufficy.craig@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 19, 2003 (53 FR 13299), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. RCRA–2003–0008, which is available for public viewing at the Resource Conservation and Recovery Act (RCRA) Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA

Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice, and according to the following detailed instructions: (1) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *rcra-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Recordkeeping and Reporting for 40 CFR Part 258—Solid Waste Disposal Facilities and Practices (OMB Control No. 2050–0122, EPA ICR Number 1381.07). This is a request to renew an existing approved collection that is scheduled to expire on August 31, 2003.

Under the OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: In order to effectively implement and enforce final changes to 40 CFR part 258 on a State level, owners/operators of municipal solid waste landfills have to comply with the final reporting and recordkeeping requirements. Respondents include owners or operators of new municipal solid waste landfills (MSWLFs), existing MSWLFs, and lateral expansions of existing MSWLFs. The respondents, in complying with 40 CFR part 258, are required to record information in the facility operating record, pursuant to § 258.29, as it becomes available. The operating record must be supplied to the State as requested until the end of the post-closure care period of the MSWLF. The information collected will be used by the State Director to confirm owner or operator compliance with the regulations under part 258. These owners or operators could include Federal, State, and local governments, and private waste management companies. Facilities in SIC codes 922, 495, 282, 281, and 287 may be affected by this rule.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 101 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Municipal Solid Waste Landfills.

Estimated Number of Respondents: 1900.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 191,028 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $2,210,853.

Changes in the Estimates: There is a decrease of 48,830 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is a result of decreasing numbers (approximately 17%) of MSWLFs.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21184 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0027; FRL–7545–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; State Water Quality Program Management Resource (Gap) Analysis, EPA ICR Number 1945.02, OMB Control Number 2040–0216

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0027, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *ow-docket@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Water Docket, Mail Code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB),

Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jane Ephremides, Resources Management and Evaluation Staff, Office of Wastewater Management, Office of Water, Mail Code: 4201M , Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0643; fax number: (202) 301–2399; e-mail address: *ephremides.jane@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 8, 2003 (68 FR 24374), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0027, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: State Water Quality Program Management Resource (Gap) Analysis.

Abstract: The Environmental Protection Agency (EPA), in partnership with States, is conducting this voluntary State Water Quality Management Resource Analysis (Gap Analysis) to help enumerate current and future funding needs and to help identify innovative strategies for reducing resource gaps. To gather preliminary information in a short time frame, the Gap Analysis was originally divided into two phases. Phase I consisted of the development of an initial, national estimate of the resource gap faced by water quality management programs to provide a general idea of the magnitude of the resource gap faced by States.

Phase II of the Gap Analysis involved developing a detailed, activity-based workload model to provide a common framework and consistent methodology for States and EPA to estimate the cost to the States to meet the objectives of the Clean Water Act (CWA) over the next five years. In order to complete the model, EPA's Office of Wastewater Management (OWM) gathered data from 21 States on current and future resources needed for water quality management activities.

Phase III of the Gap Analysis will build upon the information collected in Phase II, which used an estimate of current State expenditures on water quality activities. Under Phase III, States will complete a portion of the Phase II modules to update the needs numbers to reflect regulatory changes or changes to their programs. In addition, States will be asked to complete an activity-based model for current expenditures that mirrors the model for needs. This baseline spending data will allow the States and EPA to more accurately estimate the gap between expenditures and needed resources.

Phase III of the Gap Analysis is a one-time collection effort by OWM, and responses to this information collection request (ICR) are voluntary. The collection is necessary to develop an estimate of the gap in resources facing water quality management programs, both for individual States and the nation.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: EPA estimates the burden to be 61 hours per respondent for each respondent that chooses to submit information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State water quality management programs.

Estimated Number of Respondents: 20.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 1207.

Estimated Total Annual Cost: $37,648, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 2396 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is a result of a different phase of a voluntary, one-time information collection and is due to changes in program requirements and an adjustment to the original estimates.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21185 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0011, FRL–7546–6]

Agency Information Collection Activities; Submission of EPA ICR No. 0222.07 (OMB No. 2060–0086) to OMB for Review and Approval; Comment Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Investigation into Possible Noncompliance of Motor Vehicles with Federal Emissions Standards. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Follow the detailed instructions in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Richard W Nash, Certification and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood Dr, Ann Arbor MI 48105, (734) 214–4412, *nash.dick@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On 21 March 2003 (68 FR 13909) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0011, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to OMB and EPA within 30 days of this notice, and according to the following detailed instructions: (1) Mail your comments to OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503, and (2) Submit your comments to EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket, Mailcode 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to www.epa.gov/edocket.

Title: Investigation into Possible Noncompliance of Motor Vehicles with Federal Emissions Standards (OMB Control Number 2060–0086, EPA ICR Number 0222.07). This is a request to renew an existing approved collection that is scheduled to expire on 31 August 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: As part of an integrated compliance program, EPA occasionally needs to evaluate the emission performance of in-use motor vehicles. In order to perform this function, EPA must solicit certain information from the vehicle owner/lessee. Participation in the information survey, as well as the vehicle evaluation, is strictly voluntary. Typically, a group of 25 potential participants is identified. They are asked to return a postcard indicating their willingness to participate and if so, to verify some limited vehicle information. They are also asked when it would be suitable to contact them. Those willing to participate are called and asked about a half dozen questions concerning vehicle condition, operation and maintenance. Depending on owner/lessee response, additional groups of potential participants may be contacted until a sufficient number of vehicles has been obtained.

Information collected is used to assure that vehicles procured meet certain criteria. For example, since a manufacturer's responsibility to recall passenger cars is limited to 10 years of age or 100,000 miles of use, vehicles tested to establish potential recall liability must also meet those criteria. Other testing programs and vehicle types have different criteria. All information is publicly available.

The previous description generally describes how EPA obtains information on in-use passenger cars and light trucks from individual owners and lessees. Heavy duty trucks, those commonly referred to as over "¾ ton" capacity, are usually employed commercially; typically they are part of a "fleet" of identical (or very similar) vehicles. Consequently, EPA employs a slightly different method to obtain them. Potential owners/lessees can be found in registration lists; engine manufacturers will also supply identities of their customers. Occasionally, a fleet operator will contact EPA and volunteer to participate. Once potential sources are identified, EPA will make a brief telephone call to the fleet managers to ascertain if they wish to participate. If the response is positive, EPA will visit the fleet to inspect vehicles and review maintenance records. (Fleets typically keep very good records on each vehicle; EPA can quickly determine if a particular unit is acceptable.) A single fleet can supply multiple vehicles and, typically, is quite willing to participate. Therefore, EPA makes far fewer inquiries than with individual owners of light vehicles. Based on comments, EPA may decide to address light and heavy duty vehicles separately.

EPA uses several techniques in selecting the class or category of motor vehicles to be evaluated. First, if based on other information (*e.g.*, defect reports, service bulletins) there is a suspicion that a problem exists; EPA may target a particular group. Second, groups with a large number of vehicles have potential for significant air quality effects; they may be selected for that reason. New emission control technology without a proven history is another factor in making selections. Finally, some vehicle classes are selected on a random basis.

An agency may not conduct or sponsor, and a person is not required to

respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 20 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Vehicle owners/lessees.

Estimated Number of Respondents: 1800

Frequency of Response: Once

Estimated Total Annual Hour Burden: 600 hours

Estimated Total Annual Cost: None

Changes in the Estimates: There is no change in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21186 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0058; FRL–7545–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Environmental Radiation Ambient Monitoring System (ERAMS), EPA ICR Number 0877.08, OMB Control Number 2060–0015

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before September 18, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0058, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Charles M. Petko, Office of Radiation and Indoor Air, National Air and Radiation Environmental Laboratory, 540 South Morris Avenue, Montgomery, AL 36115–2601; telephone number: (334) 270–3411; fax number: (334) 270–3454; e-mail address: *petko.charles@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 4, 2003 (68 FR 16505), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0058, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Environmental Radiation Ambient Monitoring System (ERAMS).

Abstract: The Environmental Radiation Ambient Monitoring System (ERAMS) is a national network of stations collecting sampling media that include air, precipitation, drinking water, surface water, and milk. Samples are sent to EPA's National Air and Radiation Environmental Laboratory (NAREL) in Montgomery, AL, where they are analyzed for radioactivity. ERAMS provides emergency response and ambient monitoring information regarding levels of environmental radiation across the nation. All stations, usually manned by state and local personnel, participate in ERAMS voluntarily. Station operators complete information forms that accompany the samples. The forms request descriptive information related to sample collection, *e.g.*, sample type, sample location, length of sampling period, and volume represented.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB

control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about a half hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: sample collectors.

Estimated Number of Respondents: 249.

Frequency of Response: quarterly.

Estimated Total Annual Hour Burden: 5,727.

Estimated Total Annual Cost: $254,891, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 2,636 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is a result of adjustments to the estimates.

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–21187 Filed 8–18–03; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Proposed Related Services; Farm Management and Agricultural Trust

AGENCY: Farm Credit Administration.

ACTION: Notice; Request for public comment.

SUMMARY: The Farm Credit Administration (FCA or we) requests public comment on an inquiry by a Farm Credit System (System or FCS) institution for approval to offer farm management and agricultural trust services as authorized "Related Services." The requested services are being published for a 60-day public comment period prior to the FCA acting on the request to offer such services.

DATES: Please send your comments to the FCA by October 20, 2003.

ADDRESSES: You may send comments by electronic mail to *reg-comm@fca.gov*, through the Pending Regulations section of the FCA's interactive Web site at *www.fca.gov*, or through the government-wide *www.regulations.gov* portal. You may also send written comments to Robert Coleman, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by facsimile to (703) 734–5784. Copies of all comments we receive can be reviewed at FCA's office in McLean, Virginia.

FOR FURTHER INFORMATION CONTACT:

Lori Markowitz, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434;

or

Joy Strickland, Senior Counsel, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

Consistent with law and safety and soundness principles, the objective of this notice is to request public comment on a request from a FCS institution to offer farm management and agricultural trust services as authorized "Related Services."

II. Background

Related services, as defined in 12 CFR 618.8000(b) means "any service or type of activity provided by a System bank or association that is appropriate to the recipient's on-farm, aquatic, or cooperative operations, including control of related financial matters." Any new service not previously authorized and placed on the Related Services List in 12 CFR part 618 requires a prior determination that the service is legally authorized. The FCA also must evaluate whether the service presents excessive risk to the requesting institution or the System as a whole, including whether the service could result in significant conflicts of interest or expose the institution or the System as a whole to significant liability.

III. Proposed Related Services

Under the proposal, the following services would be provided to persons eligible to receive such services from Farm Credit institutions under 12 CFR 618.8005.

1. *Farm Management Services:* Professionals familiar with the market would provide management of agricultural properties for real estate owners in the service area. Farm management includes defining ownership goals, identifying problems, analyzing alternatives, and making recommendations for achieving business goals. Farm managers would present the customer with a full spectrum of lease or custom farming alternatives and help the owner decide how to ultimately get the best return on assets. Key factors of the service would include developing a comprehensive farm operating plan, securing operators and negotiating leases, providing property reporting, including annual budgets and projections, analyzing government programs, formulating and implementing capital improvements and repairs, and handling commodity sales.

2. *Agricultural Trust Services:* The applicant would assist customers in creating a trust and managing the assets of the trust. As the trustee, the applicant would handle the responsibilities involved in settling the estate, including record keeping, asset management, asset disposition, tax filings, and income distributions.

IV. Requesting Comments

In its evaluation of the proposed services, the FCA will focus on systemic issues rather than on institution or program-specific factors. If we authorize the above related services, any System bank or association may develop a program and subsequently offer the same related service(s) to eligible recipients, subject to any special conditions or limitations imposed by the FCA. We may, at the time of approval, impose such special conditions or limitations on any approved service to ensure safety and soundness or compliance with law or regulation. These programs would be subject to review during the examination process.

Because of the complex nature of these proposed services, the FCA solicits public comment prior to acting on the request, in accordance with 12 CFR 618.8010(b)(3). We believe that evaluation of the proposal will be aided by public comment. Specifically, we request comments on the risks inherent in offering these services, such as the

potential for conflicts of interest and liability or environmental concerns, particularly in regard to providing such services to borrowers who may be having financial difficulty or who may be missing loan payments. We request commenters propose how they believe these identified risks might be mitigated, keeping in mind that some of the risks could be addressed by licensing requirements, requiring pertinent disclosure for certain services, and adopting internal controls. We also request comments on the potential benefits to farmers, the impact of such services on the lending function, and any other pertinent issues. In addition, we request comments on what Systemwide issues might be raised by a decision to authorize such services.

Dated: August 13, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–21112 Filed 8–18–03; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 7, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 18, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0307.

Title: Amendment of Part 90 of the Commission's Rules to Facilitate Development of SMR Systems in the 800 MHz Frequency Band.

Form No: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, and state, local, and tribal government.

Number of Respondents: 685.

Estimated Time Per Response: .5–5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 864 hours.

Total Annual Cost: $43,000.

Needs and Uses: The Commission adopted a Memorandum Opinion and Order (MO&O) on Remand. This action was taken pursuant to an order issued by the United States Court of Appeals for the District of Columbia in *Fresno Mobile Radio, Inc., et al.* v. *Federal Communications Commission ("Fresno"),* 165 F. 3d 965 (DC Cir. 1999), wherein the Court remanded for further consideration the Commission's prior decision maintaining the requirement that incumbent wide-area Specialized Mobile Radio (SMR) licensees, licensees who had received "extended implementation" authorizations, must construct and operate all sites and frequencies by the construction deadline. Upon further reconsideration, the Commission allowed incumbent wide-area 800 MHz SMR licensees who were within their construction periods at the time *Fresno* was decided, to satisfy construction requirements similar to those given to Economic Area (EA) licensees in the 800 MHz band, and required that they may choose to apply the existing site-by-site, frequency-by-frequency construction requirements, or the EA construction requirements. Those who choose the latter were required to certify in a filing with the Commission their compliance with the requirements within the later of 15 days from their applicable construction benchmarks or 60 days from the effective date of the MO&O on Remand. The information will be used by the Commission for the following purposes: (1) To update the Commission's licensing database and thereby facilitate the successful coexistence of EA licensees and incumbents in the 800 MHz SMR band; and (2) to determine whether an applicant is eligible for special provisions for small businesses provided for applicants in the 800 MHz service.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21165 Filed 8–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 13, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated

collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 18, 2003. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0917.

Title: CORES Registration Form.

Form No.: FCC Form 160.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 134,500.

Estimated Time Per Response: .166 hours (ten minutes).

Frequency of Response: One time reporting requirement.

Total Annual Burden: 22,327 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 160 is used for the manual registration of the Commission's Registration System (CORES). This form will collect data that pertains to entity name, address, contact representative, telephone number, e-mail address and fax number. The information will be used by the FCC for the purpose of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government. The FCC Registration Number (FRN) is issued by the Commission as a unique business account number for identification purposes only. The Commission is submitting this information collection as an extension (no change) to the Office of Management and Budget for the full three-year clearance.

OMB Control No.: 3060–0918.

Title: CORES Update/Change Form.

Form No.: FCC Form 161.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 21,000.

Estimated Time Per Response: .166 hours (ten minutes).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 3,486 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 161 is used or the Commission's Registration System (CORES). This form will be used to update/change entity name, address, contact representative, telephone number, e-mail address and fax number. The information will be used by the FCC for the purpose of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government. It will also be used to update/change information in the Commission's database. The FCC Registration Number (FRN) is issued by the Commission as a unique business account number for identification purposes only. The Commission is submitting this information collection as an extension (no change) to the Office of Management and Budget for the full three-year clearance.

OMB Control No.: 3060–0919.

Title: CORES Certification Form.

Form No.: FCC Form 162.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 200.

Estimated Time Per Response: .084 hours (five minutes).

Frequency of Response: One time reporting requirement.

Total Annual Burden: 17 hours.

Total Annual Cost: N/A.

Needs and Uses: The FCC Form 162 is a form that must accompany any non-feeable manual application form submitted to the Commission. It is used to service public inquiries and comply with the Debt Collection Improvement Act of 1996. It is also used during the transition period to implement the CORES system to certify entities FCC Registration Number (FRN). Finally, the FRN has affected approximately 60 application forms and will require these forms to change to include the FRN. During the transition period, the FCC Form 162 is used until all the forms have been updated. As the forms come up for extension or revision, the FRN will be added on the form(s). The information will be used by the FCC for the purpose of collecting and reporting on any delinquent amounts arising out of such person's relationship with the Government. The FCC Registration Number (FRN) is issued by the Commission as a unique business account number for identification purposes only. The Commission is submitting this information collection as an extension (no change) to the Office of Management and Budget for the full three-year clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21166 Filed 8–18–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P5–03]

Petition of National Customs Brokers and Forwarders Association of America, Inc., for Limited Exemption from Certain Tariff Requirements of the Shipping Act of 1984; Notice of Filing

Notice is hereby given that National Customs Brokers and Forwarders Association of America, Inc., ("Petitioner") has petitioned, pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715, 46 CFR 502.67, and 502.69, for an exemption from the provisions of Section 8 and 10 of the Shipping of 1984, which require non-vessel ocean common carriers ("NVOCCs") to establish, publish, maintain and enforce tariffs setting forth ocean freight rates. Alternatively, the Petitioner requests that the Commission consider a more limited exemption and rulemaking that would allow NVOCCs to establish "range rates."

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than September 5, 2003. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsels, Edward D. Greenberg, Esq., and David K. Monroe, Esq., Galland Kharasch Greenberg Fellman & Swirsky, P.C., 1054 Thirty-First Street, NW., Washington, DC 20037–4492. It is also requested that a copy of the reply be submitted in electronic form (WordPerfect, Word or ASCII) on diskette or e-mailed to *Secretary@fmc.gov*. Copies of the petition are available at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW., Room 1046. A copy may also be obtained by sending a request to secretary@fmc.gov or by calling (202) 523–5725. Parties participating in this proceeding may elect to receive service of the

Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made. Such request may be directed to *secretary@fmc.gov*.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–21124 Filed 8–18–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P6–03]

Petition of Sinotrans Container Lines Co., Ltd., (Sinolines) for Full Exemption from the First Sentence of Section 9(C) of the Shipping Act of 1984, as Amended; Notice of Filing

Notice is hereby given that Sinotrans Container Lines Co., Ltd., (Sinolines)("Petitioner") has petitioned, pursuant to Section 16 of the Shipping Act of 1984, 46 U.S.C. app. 1715, and 46 CFR 502.69, for a full exemption from the first sentence of Section 9(c) of the 1984 Act, 46 U.S.C. app. 1708(c). Petitioner seeks an exemption so that it can lawfully publish rate decreases effective upon publication, regardless of whether those rates meet, exceed or are lower than the rates of competing carriers' rates.

In order for the Commission to make a thorough evaluation of the Petition, interested persons are requested to submit views or arguments in reply to the Petition no later than September 5, 2003. Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, and be served on Petitioner's counsel, Robert B. Yoshitomi, Esq., Nixon Peabody LLP, 2040 Main Street, Suite 850, Irvine, California 92614. It is also requested that a copy of the reply be submitted in electronic form (WordPerfect, Word or ASCII) on diskette or e-mailed to *Secretary@fmc.gov*. Copies of the petition are available at the Office of the Secretary of the Commission, 800 N. Capitol Street, NW, Room 1046. A copy may also be obtained by sending a request to *secretary@fmc.gov* or by calling (202) 523–5725. Parties participating in this proceeding may elect to receive service of the Commission's issuances in this proceeding through e-mail in lieu of service by U.S. mail. A party opting for electronic service shall advise the Office of the Secretary in writing and provide an e-mail address where service can be made. Such request may be directed to *secretary@fmc.gov*.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–21125 Filed 8–18–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P2–03]

Petition of Sinotrans Container Lines Co., Ltd. (Sinolines) for a Limited Exemption From Section 9(c) of the Shipping Act of 1984, as Amended; Notice of Discontinuance

The Commission has received notice that the Petitioner in this matter is withdrawing its Petition due to changed circumstances. Therefore this proceeding is discontinued.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–21126 Filed 8–18–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Submission For OMB Review; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board)

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the "agencies"), may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

On May 29, 2003, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), requested public comment for 60 days on the extension, without revision, of the currently approved information collection: the Country Exposure Report for U.S. Branches and Agencies of Foreign Banks (FFIEC 019). The Board, which published the request for comment on behalf of the agencies, did not receive any comments.

DATES: Comments must be submitted on or before September 18, 2003.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments will be shared among the agencies.

Written comments, which should refer to "Country Exposure Report for U.S. Branches and Agencies of Foreign Banks, 7100–0213," may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e–mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to section 261.12, except as provided in section 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the agencies:

Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 or electronic mail to *jlackeyj@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from Cindy Ayouch, Federal Reserve Board Clearance Officer, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users may call (202) 263–4869, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

Proposal to extend for three years without revision the following currently approved information collection:

Report title: Country Exposure Report for U.S. Branches and Agencies of Foreign Banks

Form number: FFIEC 019.

OMB number: 7100–0213.

Frequency of response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Number of respondents: 185.

Estimated average hours per response: 10 hours.

Estimated Annual reporting hours: 7,400 hours.

General Description of Report: This information collection is mandatory: 12 U.S.C. 3906 for all agencies; 12 U.S.C. 3105 and 3108 for the Board of Governors of the Federal Reserve System; sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1820) for the Federal Deposit Insurance Corporation; and the National Bank Act (12 U.S.C. 161) for the Office of the Comptroller of the Currency. This information collection is given confidential treatment. (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

Abstract: All individual U.S. branches and agencies of foreign banks that have more than $30 million in direct claims on residents of foreign countries must file the FFIEC 019 report quarterly. Currently, all respondents report adjusted exposure amounts to the five largest countries having at least $20 million in total adjusted exposure. The Agencies collect this data to monitor the extent to which such branches and agencies are pursuing prudent country risk diversification policies and limiting potential liquidity pressures. No changes are proposed to the FFIEC 019 reporting form or instructions.

Request for Comment

Comments are invited on:

a. Whether the information collection is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, August 13, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–21188 Filed 8–18–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 2, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Clarence R. Wright, Jr. 2003 Family Trusts and its trustees, Clarence Rankin ("Randy") Wright, III, Yukon, Oklahoma, and Roger Dean Rinehart, El Reno, Oklahoma; to acquire voting control of International Bancshares of Oklahoma, Inc., Yukon, Oklahoma, and thereby indirectly acquire voting shares of The Yukon National Bank, Yukon, Oklahoma.

Board of Governors of the Federal Reserve System, August 13, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21135 Filed 8–18–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 12, 2003.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Trustcompany Bancorp, Jersey City, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of The Trust Company of New Jersey, Jersey City, New Jersey.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Capitol Bancorp Ltd., Lansing, Michigan; to acquire 51 percent of the voting shares of First California Southern Bancorp, Escondido, California, and thereby indirectly acquire Bank of Escondido (in organization), Escondido, California, and by First California Southern Bancorp, Escondido, California, to become a bank holding company through the acquisition of 51 percent of the voting shares of Bank of Escondido (in organization), Escondido, California.

Board of Governors of the Federal Reserve System, August 13, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21134 Filed 8–18–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for Colorado, New York, Texas, and Utah

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 03–3, revised continental United States (CONUS) per diem rates.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate should be adjusted to provide for the reimbursement of Federal employees' lodging expenses covered by the per diem. This notice announces the new per diem rates for Colorado, New York, Texas, and Utah.

DATES: This notice is effective August 19, 2003.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Joddy P. Garner, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–4857. Please cite Notice of Per Diem Bulletin 03–3.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP will enhance the Government's ability to better meet its overall room night demand, and allow travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amount published in the **Federal Register** at 67 FR 56160, August 30, 2002 and amended at 67 FR 69634, November 18, 2002, 68 FR 25034, May 9, 2003, and 68 FR 31706, May 28, 2003, is being changed in the following locations:

State of Colorado

- City of Colorado Springs, including El Paso County.

State of New York

- Borough of Brooklyn.

State of Texas

- City of Austin, including Travis County.
- City of Houston, including Harris County.

State of Utah

- City of Salt Lake City, including Salt Lake County.

B. Change in Standard Procedure

Since per diem rates frequently change, effective April 28, 2003 (68 FR 22314), the Office of Governmentwide Policy (OGP), GSA, will issue/publish the CONUS per diem rates, formerly published in Appendix A to 41 CFR Chapter 301, solely on the Internet at *http://www.gsa.gov/perdiem*. This new process will ensure more timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. This notice advises agencies of revisions in per diem rates prescribed by OGP for CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: August 8, 2003.

G. Martin Wagner,

Associate Administrator.

[FR Doc. 03–21167 Filed 8–18–03; 8:45 am]

BILLING CODE 6820–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS/OMH/CSS–0990–NEW]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection;

Title of Information Collection: Evaluation of the Office of Minority Health Resource Center;

Form/OMB No.: OS–0990–NEW;

Use: The evaluation will assess the extent to which programmatic improvements made after the previous evaulation have improved service delivery and the impacts that services like HIV/AIDS technical assistance have on monitity communities.

Frequency: On occasion;

Affected Public: Individuals or households, business or other for-profit, State, local or tribal government;

Annual Number of Respondents: 1352;

Total Annual Responses: 1352;

Average Burden Per Response: 10 minutes;

Total Annual Hours: 286.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access the HHS Web site address at *http://www.hhs.gov/oirm/infocollect/pending/* or e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *John.Burke@hhs.gov*, or call the Reports Clearance Office on (202) 690–8356. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the OS Paperwork Clearance Officer designated at the following address:

Department of Health and Human Services, Office of the Secretary, Assistant Secretary for Budget, Technology, and Finance, Office of Information and Resource Management, Attention: John Burke (OS/OMH/CSS–0990–New), Room 531–H, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: August 8, 2003.

John P. Burke, III,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 03–21127 Filed 8–18–03; 8:45 am]

BILLING CODE 4168–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–110]

Agency for Toxic Substances and Disease Registry; Proposed Data Collections Submitted for

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Collection of Publication Assessment Information—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

This project will collect information from Internet users after they order or download a publication from the Web site of the Department of Health and Human Services/Centers for Disease Control and Prevention/National Center for Injury Prevention and Control. NCIPC produces a variety of publications about injury prevention for a range of audiences, from public health professionals to the general public. Publications include reports to Congress, fact books, brochures, research articles, tool kits, and books. Most of these publications are available to the general public, and the chief distribution method is through the NCIPC Web site, *http://www.cdc.gov/ncipc*. On the Web site, people can order print copies or view electronic copies of the publications.

It is critical for NCIPC to obtain feedback from users of their publications so it can better understand who uses them and how. This will help guide the development of future publications, revisions of current ones, as well as distribution of publications. As part of the effort to gain understanding about the audiences of NCIPC publications, we will collect information through a Web-based form. NCIPC Web site users will have the opportunity to fill out the form after ordering, downloading, or reading online publications through the Web site. The form contains questions about the demographic background of the users, how they found the Web site, how they plan to use the publication, their need for publications in other languages, the degree to which the publication offerings were useful to them, and space for their general comments. The results of the forms will be compiled and studied so NCIPC can better consider the needs of people who use the publications in future publication development, revisions, and distribution plans. There are no costs to respondents.

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
NCIPC Web site users who access or order publications	360,000	1	5/60	30,000

Dated: August 13, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–21159 Filed 8–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–64–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Information Collection Procedures for Requesting Public Health Assessments—(0923–0002)—Extension—The Agency for Toxic Substances and Disease Registry (ATSDR).

ATSDR is announcing the request for extension of the OMB-approved Information Collection Procedures for Requesting Public Health Assessments. ATSDR is authorized to consider petitions from the public that request public health assessments of sites where there is a threat of exposure to hazardous substances (42 U.S.C. 9604(i)(6)(B)). The Agency may conduct public health assessments of releases or facilities for which individuals provide information that people have been exposed to a hazardous substance, and for which the source of such exposure is a release, as defined under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). The general administrative procedures for conducting public health assessments, including the information that must be submitted with each request, is described at 42 CFR 90.3, 90.4, and 90.5. Procedures for responding to petitions, decision criteria, and methodology for determining priorities may be found at 57 FR 37382–89. There are no costs to the respondents other than the time required for preparing a letter and for postage.

ATSDR anticipates approximately 34 requests will be received each year. This estimate is based on the number of requests received in the past five years

and the expressions of interest (via telephone, letter, etc.) from members of the public, attorneys, and industry representatives. The annual burden hours are estimated to be 17.

Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hrs.)
General public	34	1	30/60

Dated: August 13, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–21156 Filed 8–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–108]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: NIOSH Training Grants, 42 CFR part 86, Application and Regulations (OMB NO. 0920–0261)—Extension—National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Public Law 91–596 requires CDC/NIOSH to provide an adequate supply of professionals to carry out the purposes of the Act to assure a safe and healthful work environment. NIOSH supports educational programs through training grant awards to academic institutions for the training of industrial hygienists, occupational physicians, occupational health nurses, safety professionals and other professionals in related disciplines, such as occupational epidemiologists. Grants are provided to 16 Education and Research Centers (ERCs) which provide multidisciplinary graduate academic and research training for professionals, continuing education for practicing professionals and outreach programs in the Region. There are also 40 Training Project Grants (TPGs), which provide single discipline academic and technical training throughout the country. 42 CFR part 86, "Grants for Education Programs in Occupational Safety and Health, subpart B—Occupational Safety and Health Training," provides guidelines for implementing Public Law 91–596.

The training grant application form (CDC2.145.A) is used by NIOSH to collect information from applicants submitting new competing applications and from existing applicants for submitting competing renewal grants. The information is used to determine the eligibility of applicants for grant review and by peer reviewers during the peer review process to evaluate the merit of the proposed training project. CDC Form 2.145B is used for non-competing awards to judge the annual progress of the applicant during the approved project period.

Extramural training grant awards are made annually following an extramural review process of the training grant applications including a Special Emphasis Panel, review by an internal Training Grants Council, and an internal review of non-competing applicants. The estimated annualized burden is 10,631 hours.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Universities	77	1	8,284/60	10,631

Dated: August 13, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–21157 Filed 8–18–03; 8:45 am]

BILLING CODE 4163–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–109]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: An Evaluation Survey on the Use and Effectiveness of Internet SAMMEC—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Since 1987, the Centers for Disease Control and Prevention (CDC) has used the Smoking-Attributable Mortality, Morbidity, and Economic Costs (SAMMEC) software to estimate the disease impact of smoking for the nation, states, and large populations. The Internet version of the SAMMEC software was released in 2002, and it contains two distinct computational programs, Adult SAMMEC and MCH SAMMEC, which can be used to estimate the adverse health outcomes and disease impact of smoking on adults and infants.

Since the release of Internet SAMMEC, more than 1230 tobacco control professionals in the State health departments and other tobacco control institutions in the country have used SAMMEC to generate the data they need for their projects. Some of them have provided comments and sent requests for assistance. The purpose of this survey is to evaluate the use and effectiveness of the SAMMEC software and identify ways to improve the system so that it will better meet the needs of the users in tobacco control and prevention.

There are no costs to the respondents except for their time in completing the questionnaire.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Tobacco Control Professionals/Internet SAMMEC users	1000	1	15/60	250

Dated: August 13, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation Centers for Disease Control and Prevention.

[FR Doc. 03–21158 Filed 8–18–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0025]

Guidance for Industry and FDA Staff on the Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6." This document deals with testing of a mammography unit's Automatic Exposure Control (AEC) component and is intended to provide guidance to mammography facilities and their personnel. It represents FDA's current thinking on this aspect of the final regulations implementing the Mammography Quality Standards Act.

DATES: Submit written or electronic comments on this guidance at any time. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance document entitled "The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Divison of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Charles Finder, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–0009.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 19, 2003 (68 FR 8030), FDA published a document entitled "Medical Devices: Draft Guidance for Industry and FDA;

The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6; Availability" for public comment. Before the public comment period closed on May 20, 2003, 2 respondents submitted a total of 14 comments. In addition, the National Mammography Quality Assurance Advisory Committee reviewed the draft guidance during its April 28, 2003, meeting and provided additional comments. In response to those comments, FDA has modified the guidance as follows by:

1. Further clarifying the term "equipment configuration,"
2. Adding different image receptor sizes as separate equipment configurations,
3. Not recommending that target-filter combinations be tested as separate equipment configurations, and
4. Emphasizing the need to minimize non-AEC component variability when conducting the AEC performance test.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on testing of a mammography unit's AEC component. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

To receive "The Mammography Quality Standards Act Final Regulations Modifications and Additions to Policy Guidance Help System #6" by FAX, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number 1435 followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

IV. Comments

Interested persons may submit written or electronic comments to the Division of Dockets Management (see **ADDRESSES**) at any time. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday-through Friday.

Dated: August 4, 2003.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 03–21114 Filed 8–18–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Advisory Council on Minority Health and Health Disparities meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health Disparities.

Date: September 16–17, 2003.

Open: September 16, 2003, 8:30 a.m. to 5:30 p.m.

Agenda: The agenda will include Opening Remarks, Administrative Matters, Director's Report, NCMHD, Presentations include The Role of the Advisory Council, Cancer Health Disparities Report, NIH Committee on Minority Health and Health Disparities Research Definitions and Application Methodology Status Report, Update on the Sullivan Commission, and other Council business.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Closed: September 17, 2003, 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Lisa Evans, JD, Senior Advisor for Policy, National Center on Minority Health and Health Disparities, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301–402–1366, *evansl@ncmhd.nih.gov*.

Dated: August 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21213 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Supplement.

Date: September 30, 2003.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS/National Institutes of Health; Building 4401, East Campus, 79 T.W. Alexander Drive, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: Sally Eckert-Tilotta, Phd, National Inst. of Environmental Health Sciences, Office of Program Operations, Scientific Review Branch, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–1446, *eckertt1@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training: 93.143. NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21214 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel IADL.

Date: September 24, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Merlyn Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21211 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: September 17–18, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: Protocol review, data management, a review and discussion of the RAC informed Consent Working Group (ICWG) draft Guidance Document, and a presentation by Dr. Shawn Burgess, Head of the Developmental Genomics Section, Genome Technology Branch, NHGRI, NIH, on "Integration Sites of Retroviral Vectors in the Human Genome."

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Stephen M. Rose, PhD., Executive Secretary, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892, 301–496–9838, *sr8j@nih.gov.*

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/,* where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21215 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Radiological Emergency Preparedness: Planning and Preparing for a Fast-Breaking Event

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice with request for comments.

SUMMARY: Pursuant to completion of the Radiological Emergency Preparedness (REP) Program exercise evaluation criteria, the Federal Emergency Management Agency (FEMA) is proposing a means to evaluate the capability of Offsite Response Organizations (ORO) to respond to a fast-breaking event at a commercial nuclear power plant.

DATES: FEMA must receive comments on or before October 20, 2003.

ADDRESSES: You may submit your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, DC 20472, or send them by e-mail to

rules@fema.gov. Please reference "REP: Planning and Preparing for a Fast-Breaking Event" in the subject line of your e-mail or comment letter.

FOR FURTHER INFORMATION CONTACT: Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Technological Services Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; (202) 646–3664; *vanessa.quinn@dhs.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to completion of the REP Program exercise evaluation criteria, FEMA is proposing a means to evaluate the capability of OROs to respond to a fast-breaking event at a commercial nuclear power plant. The subject notice contains I. background information, II. the regulatory basis with a chart illustrating the alert and notification timeline, III. considerations when preparing a response to a fast-breaking event, IV. Evaluation Criterion 5.a.2 with the associated extent of play, and V. frequency of evaluation.

I. Background

FEMA published a **Federal Register** notice entitled "Radiological Emergency Preparedness: Exercise Evaluation Methodology" at 66 FR 47526, September 12, 2001, containing the REP exercise evaluation areas and associated criteria, effective as of October 1, 2001, for use when evaluating REP exercises. After publication, FEMA clarified some of the information in the September notice and published a notice of correction in the **Federal Register** at 67 FR 20580, April 25, 2002.

In both notices, FEMA deferred publication of proposed Criterion 5.a.2, which would evaluate an ORO's capability for urgent notification of the public in the event of a fast-breaking incident at the plant. FEMA is now going forward with publication of the draft criterion for comment.

II. Regulatory Basis

The aforementioned emergency preparedness-related Nuclear Regulatory Commission (NRC) and FEMA regulations and case law (Atomic Safety and Licensing Appeal Board ALAB–935) provide the regulatory bases for judging the adequacy of the offsite planning and preparedness for a response to a situation requiring urgent action.

Appendix E to 10 CFR Part 50 states:

> [t]he licensee shall demonstrate that the State/local officials have the capability to make a public notification decision promptly on being informed by the licensee of an emergency condition.

It further states:

> [t]he design objective of the prompt public notification system shall be to have the capability to essentially complete the initial notification of the public within the plume exposure pathway EPZ [emergency planning zone] within about 15 minutes. The use of this notification capability will range from immediate notification of the public (within 15 minutes of the time that State and local officials are notified that a situation exists requiring urgent action) to the more likely events where there is substantial time available for the State and local government officials to make a judgment whether or not to activate the public notification system.

The Atomic Safety and Licensing Appeal Board characterizes the timing requirement in Appendix E as about 15 minutes from the time offsite official(s) are notified and specifies that the "about 15 minutes" timeframe concludes when the notification message begins. *Public Service Company of New Hampshire* (Seabrook Station, Units 1 and 2) ALAB–935, 32 NRC 57 (1990).

FEMA regulation 44 CFR Part 350.5(a)(5) states, in part:

> [p]rocedures have been established for notification, by the licensee, of State and local response organizations * * * and means to provide early notification and clear instruction to the populace within the plume exposure pathway Emergency Planning Zone have been established.

In order to fulfill the intent of the regulations and case law, that is, to ensure the ability to provide a rapid offsite response in the event of a severe nuclear power plant incident, we believe it is necessary to specify a timeframe for notification of the offsite official(s). Therefore, we have established an approximately 5-minute timeframe between the licensee's notification of the offsite communications point or, if in the plan, the communications point's verification of the notification, and the communications point's notification of offsite official(s).

The chart below illustrates the timeframes, as discussed above and as explained below in Evaluation Criterion 5.a.2, for demonstration of an offsite response to a fast-breaking event:

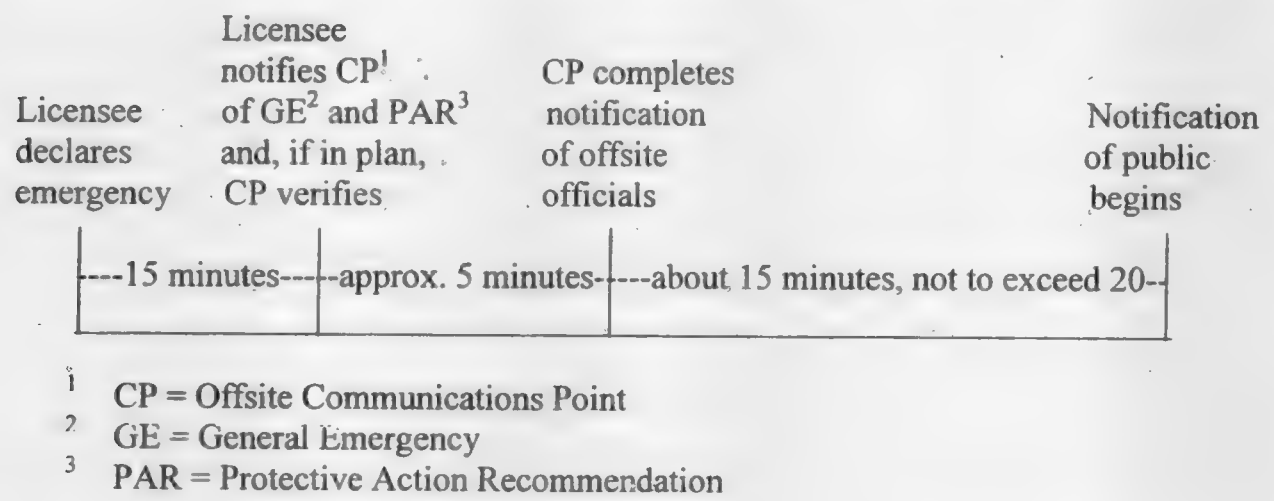

1 CP = Offsite Communications Point
2 GE = General Emergency
3 PAR = Protective Action Recommendation

III. Considerations When Planning a Response to a Fast-Breaking Event

The licensee's notification will include a Protective Action Recommendation (PAR). The ORO is responsible for considering the recommendation and deciding whether to include a protective action in the initial Emergency Alert System (EAS) message and, if so, what the protective action should be. Some OROs may choose to implement the utility's PAR or a default protective action, pending an independent evaluation by responsible offsite officials. Other OROs—in light of the potential need to modify utility recommendations in

cases of bad weather or other concurrent emergencies—have delegated such decision making authority to appropriate on-call ORO officials.

OROs may also choose to not include a protective action in the initial message. FEMA guidance at 66 FR 47546, September 12, 2001, permits an initial EAS message that does not contain a protective action but notifies the public of the need to stand by for further information. However, in light of the urgency of a fast-breaking event and the need for immediate response, OROs are strongly encouraged to include a protective action in the initial message. In most fast-breaking events the preferred initial protective action—as described in Supplement 3, "Criteria for Protective Action Recommendations," to NUREG–0654/FEMA–REP–1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants"—is to evacuate immediately about two miles around the plant and about five miles downwind. The exception is a situation where there are other conditions, such as severe weather, that would make evacuation dangerous. In that instance the protective action would be to shelter-in-place.

IV. Evaluation Criterion 5.a.2

A. *Criterion 5.a.2:* In a situation that requires urgent action, responsible OROs demonstrate the capability to initiate public alerting and notification within the plume exposure EPZ within the following timeframes: (1) Notifying State and local officials within approximately 5 minutes of licensee's notification of the offsite communications point or, if in the plan, within approximately 5 minutes of the communication point's verification of the notification and (2) alerting the public and beginning notification of the public within about 15 minutes, but not to exceed 20 minutes, from notification of the State and local official(s). The initial instructional message to the public must include, at a minimum, the elements required by current FEMA REP guidance. (10 CFR part 50, Appendix E.IV.D.3, 44 CFR 350.5(a)(5), and NUREG–0654/FEMA–REP–1, E.5, 6, 7).

B. *Demonstration of Fast-breaking Event:* Demonstration of the process can be through a biennial exercise or an unannounced drill, separate from the biennial exercises, and will be scheduled within a seven-day window. Responsible parties may be told of the demonstration schedule window, but will not be told of a specific time for the demonstration. Real-life emergencies may preempt the demonstration, and these interruptions will not adversely affect the evaluation. The Extent of Play, shown below, generally establishes the type and level of detail to be demonstrated in the exercise that FEMA will be evaluating for Criterion 5.a.2.

C. *Extent of Play:* The criterion should be demonstrated using the staff, procedures, and equipment identified in the ORO's plan (for example, the plant notification line, the decision maker's notification system, the actual communications point, and personnel normally assigned to responsible duty locations). Actual activation of the public alerting system or notification system is not necessary. Appropriate simulations may be submitted by the ORO for FEMA's review and approval.

The evaluation begins when the ORO communications point receives the notification in accordance with approved procedures and, if specified in the plan, immediately verifies the notification. The first (approximately 5 minutes) time limit begins. Notification of responsible offsite official(s) should be performed in accordance with approved procedures and evaluated as to its completion within approximately 5 minutes. FEMA will time this period in order to support a judgment as to whether the performance achieved the desired result. The ORO must maintain a duty list showing that appropriate offsite official(s) who are authorized to approve the alerting of the public and broadcast of the EAS message are available at all times. Evaluation as to compliance with the timeframe (about 15 minutes, but no more than 20) begins when the ORO's communications point has completed its notification of the offsite official(s).

Decision making may involve conferring with staff or others, but the amount of time involved must be consistent with achieving the design criterion of about 15 minutes, but not more than 20. The decision making process should result in a decision to alert and notify the public. Activation of the public alerting system and performance of the first sounding cycle should be accomplished in accordance with approved procedures. Completion of the sounding cycle and the beginning of the notification message marks the end of the about 15 minute, but not more than 20, time period. FEMA will time this period in order to support a judgment as to whether the performance achieved the desired result. The information transmitted should be accurate and in accordance with current FEMA guidance.

All activities associated with the response to a fast-breaking event must be based on the ORO's plans and procedures and completed as they would be in an actual emergency, unless noted above or otherwise noted above or indicated in the extent of play agreement.

V. Frequency of Evaluation

FEMA will evaluate the initial demonstration of the process, using Evaluation Criterion 5.a.2, at every nuclear power plant site over the two years following final publication of this Criterion in the **Federal Register**. FEMA will assess a Deficiency if the applicable timeframes in the Criterion are not met. FEMA will then evaluate the ORO's capability a minimum of once every two years using Evaluation Criterion 5.a.2. FEMA will assess a Deficiency if the applicable timeframes are not met. In addition, the ORO should conduct a monthly fast-breaker communications drill and provide an annual summary in the Annual Letter of Certification.

Dated: August 12, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–21200 Filed 8–18–03; 8:45 am]

BILLING CODE 6718–06–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel Mycoplasma.

Date: August 20, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7848, Bethesda, MD 20892, (301) 435–1147, *henry@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Epithelial Protein Review.

Date: August 25, 2003.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Surgery and Bioengineering Study Section.

Date: October 6–7, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Surgery and Bioengineering Study Section, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1174, *dhindsad@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group Medicinal Chemistry Study Section.

Date: October 8–9, 2003.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Robert Lees, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7806, Bethesda, MD 20892, (301) 435–2684, *leesro@csr.nih.gov.*

Name of Committee: Oncological Sciences Integrated Review Group Tumor Progression and Metastasis Study Section.

Date: October 8–10, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Martin L. Padarathsingh, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717, *padaratm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fogarty International Clinical Research.

Date: October 9–10, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Omni Shoreham Hotel, 2500 Calvert Street, NW, Washington, DC 20008.

Contact Person: Hilary Sigmon, PHD, RN, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–594–6377, *sigmonh@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Neurodegeneration and Biology of Glia Study Section.

Date: October 9–10, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW, Washington, DC 20007.

Contact Person: Gillian Einstein, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20817, (301) 435–4433, *einsteig@csr.nih.gov.*

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group Biochemical Endocrinology Study Section.

Date: October 9, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael Knecht, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group Metallobiochemistry Study Section.

Date: October 9–10, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW, Washington, DC 20009.

Contact Person: Janet Nelson, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, 301–435–1723, *nelsonja@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93,846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 12, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21212 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Consensus Development Conference on Total Knee Replacement

Notice is hereby given of the National Institutes of Health (NIH) Consensus Development Conference on "Total Knee Replacement" to be held December 8–10, 2003, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8:30 a.m. on December 8 and 9, and at 9 a.m. on December 10, and will be open to the public.

Total knee replacement (TKR) has shown increasing success in relieving knee pain and improving joint function for patients suffering from knee problems due to injury, degenerative disease, and inflammation. Each year, approximately 300,000 TKR surgeries are performed in the United States for end-stage arthritis of the knee joint. As the number of TKR surgeries performed each year increases and the indications for TKR extend to younger patients, a review of available scientific information is necessary to enhance clinical decision making and stimulate further research.

Despite the increased success of TKR, questions remain concerning which materials and implant designs are most effective for specific patient populations and which surgical approach is optimal for a successful outcome. Physical, social, and psychological issues may influence the success of TKR, and understanding patient differences could facilitate the decision making process before, during, and after surgery, thereby achieving the greatest benefit from TKR. Particular attention also must be given to the treatment and timing options related to the revision of failed TKR surgery.

This two-and-a-half-day conference will examine the current state of knowledge regarding total knee replacement and identify directions for future research.

During the first day-and-a-half of the conference, experts will present the latest research findings on total knee replacement to an independent panel. After weighing all of the scientific

evidence, the panel will draft a statement, addressing the following key questions:

—What are the current indications and outcomes for primary TKR?

—How do specific characteristics of the patient, material and design of the prosthesis, and surgical factors affect the short-term and long-term outcomes of primary TKR?

—Are there important perioperative interventions that influence outcomes?

—What are the indications, approaches, and outcomes for revision TKR?

—What factors explain disparities in the utilization of TKR in different populations?

—What are the directions for future research?

On the final day of the conference, the panel chairperson will read the draft statement to the conference audience and invite comments and questions. A press conference will follow, to allow the panel and chairperson to respond to questions from the media.

The primary sponsors of this meeting are the National Institute of Arthritis and Musculoskeletal and Skin Diseases and the NIH Office of Medical Applications of Research. The cosponsors of the meeting are: The National Institute of Child Health and Human Development, the U.S. Food and Drug Administration, the National Institute of Standards and Technology, and the NIH Office of Research on Women's Health.

Advance information about the conference and conference registration materials may be obtained from IQ Solutions of Rockville, Maryland, by calling 301–984–1473 or by sending e-mail to *totalknee@iqsolutions.com*. IQ Solutions' mailing address is 11300 Rockville Pike, Suite 801, Rockville, MD, 20852. Registration information is also available on the NIH Consensus Program Web site at *http://consensus.nih.gov*.

Please Note: The NIH has recently instituted new security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the new security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorssecurity.htm*.

Dated: August 12, 2003.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 03–21216 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15731]

Great Lakes Pilotage Advisory Committee; Meeting Cancellation

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting cancellation.

SUMMARY: The Great Lakes Pilotage Advisory Committee (GLPAC) meeting scheduled for August 19 and 20, 2003, and announced in the **Federal Register** on August 1, 2003 (68 FR 45264), is cancelled. A notice will be published in the **Federal Register** when the meeting is rescheduled.

FOR FURTHER INFORMATION CONTACT: Margie Hegy, Executive Director of GLPAC, telephone 202–267–0415, fax 202–267–4700 or e-mail: *Mhegy@comdt.uscg.mil*.

Dated: August 12, 2003.

T.H. Gilmour,

Rear Admiral, Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–21223 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Yeast Filamentation.

Date: August 19, 2003.

Time: 3 PM to 4 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Neal B. West, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892–7808, (301) 435–2514, *westnea@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuronal Development.

Date: August 20, 2003.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neuronal Plasticity.

Date: August 21, 2003.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chromosome.

Date: August 25, 2003.

Time: 12 PM to 1 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul K. Strudler, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6186, MSC 7804, Bethesda, MD 20892, (301) 435–1716, *strudlep@csr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 8, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21210 Filed 8–18–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Open Meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS)

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of open meeting.

SUMMARY: FEMA announces the following open meeting.

Name: Federal Interagency Committee on Emergency Medical Services (FICEMS).

Date of Meeting: September 4, 2003.

Place: Building S, Room 113, National Emergency Training Center (NETC), 16825 South Seton Avenue, Emmitsburg, Maryland 21727.

Times: 9 a.m.—FICEMS Ambulance Safety Subcommittee; 10:30 a.m.—Main FICEMS Meeting; 1 p.m.—FICEMS Counter-Terrorism Subcommittee.

Proposed Agenda: Review and submission for approval of previous FICEMS Committee Meeting Minutes; Ambulance Safety Subcommittee and Counter-terrorism Subcommittee report; Action Items review; presentation of member agency reports; and reports of other interested parties. There will be an optional briefing following the afternoon meeting.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public with limited seating available on a first-come, first-served basis. See the Response and Security Procedures below.

Response Procedures: Committee Members and members of the general public who plan to attend the meeting should contact Ms. Patti Roman, on or before Tuesday, September 2, 2003, via mail at NATEK Incorporated, 21355 Ridgetop Circle, Suite 200, Dulles, Virginia 20166–8503, or by telephone at (703) 674–0190, or via facsimile at (703) 674–0195, or via e-mail at *proman@natekinc.com*. This is necessary to be able to create and provide a current roster of visitors to NETC Security per directives.

Security Procedures: Increased security controls and surveillance are in effect at the National Emergency Training Center. All visitors must have a valid picture identification card and their vehicles will be subject to search by Security personnel. All visitors will be issued a visitor pass, which must be worn at all times while on campus. Please allow adequate time before the meeting to complete the security process.

Conference Call Capabilities: If you are not able to attend in person, a toll free number has been set up for teleconferencing. The toll free number will be available from 9 a.m. until 4 p.m. Members should call in around 9 a.m. The number is 1–800–320–4330. The FICEMS conference code is "10." If you plan to call in, you should just enter the number "10"—no need to hit any other buttons, such as the star or pound keys.

FICEMS Meeting Minutes: Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved at the next FICEMS Committee Meeting on December 4, 2003. The minutes will also be posted on the United States Fire Administration Web site at *http://www.usfa.fema.gov/ems/ficems.htm* within 30 days after their approval at the December 4, 2003 FICEMS Committee Meeting.

Dated: August 12, 2003.

R. David Paulison,

U.S. Fire Administrator.

[FR Doc. 03–21150 Filed 8–18–03; 8:45 am]

BILLING CODE 6718–08–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Issuance of Final Determination Concerning Fiber Optic Cable Products

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that the Bureau of Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain fiber optic cable products to be offered to the United States Government under an undesignated government procurement contract. The final determination found that based upon the facts presented, the countries of origin of products referred to as Glass, Glass Polymer patch cords, Fiber Interconnect Product cable assemblies and Multimode (ST MM) epoxy connectors are the United States, the United States, and Japan, respectively.

DATES: The final determination was issued on August 11, 2003. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of August 19, 2003.

FOR FURTHER INFORMATION CONTACT: Craig Walker, Special Classification and Marking Branch, Office of Regulations and Rulings (202–572–8836).

SUPPLEMENTARY INFORMATION: Notice is hereby given that on August 11, 2003, pursuant to Subpart B of Part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of certain fiber optic cable products to be offered to the United States Government under an undesignated government procurement contract. The CBP ruling number is HQ 562754. This final determination was issued at the request of 3M Company under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18).

The final determination concluded that, based upon the facts presented, the assembly in China of U.S.-origin fiber optic cable and Chinese-origin connectors to create Glass, Glass Polymer ("GGP") patch cords does not result in a substantial transformation of the components into a product of China. Therefore, the country of origin of the product is the United States. The final determination also concluded that neither the assembly in China of a Japanese-origin ceramic ferrule with U.S.-origin components to create connectors nor the subsequent assembly in China of the connectors with U.S.-origin fiber optic cable to produce Fiber Interconnect Product ("FIP") cable assemblies results in a substantial transformation of the components into products of China. Accordingly, the origin of the FIB cable assemblies is the United States. Finally, the final determination concluded that the assembly in China of a Japanese-origin ceramic ferrule with U.S., Canadian and Chinese components to produce Multimode (ST MM) epoxy connectors does not result in a substantial

transformation of the components into products of China. Therefore, the country of origin of the ST MM epoxy connectors is Japan.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, Customs Regulations (19 CFR 177.30), states that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within 30 days of August 19, 2003.

Dated: August 13, 2003.

Myles B. Harmon for Michael T. Schmitz,

Assistant Commissioner, Office of Regulations and Rulings.

MAR–2 RR:CR:SM 562754 CW
CATEGORY: Marking

Mr. Robert E. Burke
Counsel, Barnes, Richardson & Colburn, 303 East Wacker Drive, Suite 1100, Chicago, Illinois 60601

Re: Country of Origin of fiber optic cable products; government procurement; final determination

Dear Mr. Burke: This is in response to your letter dated May 9, 2003, on behalf of your client 3M Company ("3M") requesting a ruling on fiber optic cable products. 3M requests a country of origin determination for the fiber optic cable products in order to comply with the Federal Acquisition Regulations, 48 CFR 25.000 *et seq.*, and the "Trade Agreements Act," 19 U.S.C. 2501 *et seq.* Specifically, this ruling concerns the following three products: Glass, Glass Polymer ("GGP") patch cords; Fiber Interconnect Product ("FIP") cable assemblies (also referred to as "FIP patch cords"); and Multimode (ST MM) epoxy connectors. In accordance with your request, this response constitutes a final determination issued in accordance with 19 CFR 177.22(c).

FACTS

GGP Patch Cord

3M manufactures optical fiber, and further manufactures the fiber into optical fiber cable. These processes, all of which take place in the United States, begin with an imported fiber optic "seed," which 3M uses as raw material in manufacturing the optical fiber. The optical fibers, in turn, are made into optical fiber cable in the United States. Once the optical fiber cable is completed, 3M expects to send the cable to China, where it is to be cut and fitted with connectors. A description of the steps in the production process, beginning with the imported "seed," is as follows:

1. 3M produces optical fiber in the United States from an optic core, called a "seed," which is imported into the U.S. from the Netherlands. The seed is a multi-layered glass rod. The rings, or layers, or glass that comprise the seed are melded together and light travels through the layers of glass, all of which have different refractive indexes.

2. After importation, 3M adds a glass "sleeve" to the core. This process is known as "cladding." The seed and the sleeve comprise an optical fiber "preform," measuring approximately 2½ inches in diameter by one meter.

3. 3M then draws the preform, via a drawing tower, into an extremely thin o ptical glass fiber. The resulting diameter of the optical fiber is 0.004 inches. The drawing also melds the core and glass sleeve into one integrated product, giving the optical fibers required optical properties. 3M refers to this optical fiber as "glass, glass, polymer," or "GGP". 3M owns a patent, in the U.S. and in several other countries, on the GGP process.

4. 3M then sends the optical fiber to another U.S. company, which adds a thermoplastic jacket and aramid fibers to the final optical fiber. The jacket and the fibers are added solely for the protection of the delicate optical fiber. After jacketing, this company winds the finished optical fiber cable onto spools and sends it to China.

5. In China, the U.S. optical fiber cable in spools is cut to length and molded plastic connectors made in China are applied to the optical fiber cable using the following steps:

a. The spooled cable is cut to length;

b. Each end of the cut cable is threaded through a plastic holder where about two inches of sheathing are removed from each end of the cable and any exposed Kevlar fiber is cut away and the plastic jacketing of the optical fiber is removed;

c. The exposed fiber is cleaned with alcohol and measured;

d. The fiber is threaded through a connector, glued to the connector and excess fiber is trimmed;

e. The connectors are placed into a finishing machine, where the fiber ends are automatically beveled and polished;

f. The metal springs, sourced from the United States, are inserted into a connector and ultrasonically welded into place;

g. The connectors are ultrasonically cleaned and tested and a protective plastic shroud is snapped onto the connector.

FIP Cable Assembly

1. 3M purchases optical fiber cable from an unrelated company in the U.S. This cable is a standard fiber optic cable, and consists of one or more fiber optic fibers, aramid (Kevlar™) for strength, and a thermoplastic coating that provides protection for the very thin fiber(s).

2. 3M purchases a ceramic ferrule in Japan. This ferrule, a hollow cylinder, is used to align the ends of the optical fibers as the fibers are inserted into the connectors. The hollow center of the ferrule contains one channel that is designed to fit the optical fiber and to align the fiber ends, enabling light to pass through the connection.

3. 3M purchases or self-produces plastic parts to be used in the cable connectors. All self-produced parts are molded in the United States.

4. 3M sends the spooled fiber optic cable and plastic parts, along with a small metal ring from the U.S., and the ferrule from Japan, to China.

5. In China, the ceramic ferrule, the metal ring, and the plastic parts are assembled into a connector for the ends of the cable assemblies. The fiber optic cable is also cut-to-length and assembled with the connectors. Specifically, the steps involved in the assembly process are as follows:

a. The spooled cable is cut to length;

b. Each end of the cut cable is threaded through a respective plastic boot and the metal ring;

c. After removing about two inches of sheathing, Kevlar™ fiber, and plastic jacketing of the cable, the exposed fiber is cleaned with alcohol and measured;

d. The fiber is threaded through the ferrule and fastened by adhesive;

e. The metal ring is attached, by crimping, and the fiber is trimmed;

f. The exposed ends of the fiber are scored, machine-polished, and cleaned;

g. The unit is inspected and tested, and a plastic protective dust cap is placed on it.

ST MM Epoxy Connector

3M also separately imports a connector, called an "ST MM Epoxy Connector" from China. This connector is similar to the connector used on the FIP Cable Assemblies described above, and the component source and assembly process is also substantially similar. In this case, the assembly consists of the following components:

1. 3M purchases a Japanese made ceramic ferrule which it provides to the assembler. This ferrule is a hollow cylinder, used to align the ends of the optical fibers as the fibers are inserted into the connectors. The hollow center of the ferrule contains one channel that is highly engineered to fit the optical fibers exactly and to provide a precise alignment of the optical fiber ends to minimize the loss of light in the connection.

2. 3M supplies the assembler with an epoxy ring, a spring, a c-clip and tygon tubes from the United States. 3M also supplies the assembler with a small, metal "backbone" and a metal "bayonet" from Canada. Packing materials and labels are from China.

3. 3M supplies the assembler with a plastic dust cap and a boot, made in China.

The assembly process is as follows:

1. The backbone and epoxy ring are assembled and glued with the ceramic ferrule, bayonet, spring and c-clip to form the ST MM Epoxy Connector.

2. The dust cap is then put over the assembly. This cap is only used for protection of the connector during transit; it is removed before final use.

3. The capped connector is put into the plastic bag, along with the tygon tube and the boot. The boot and tygon tubing is added to the connector by the final user to provide strain relief. (The Tygon tubing is used to protect the fiber when the connector is terminated onto 900um fiber. It is not used 100% of the time). The end user determines if the assembly needs the tygon tubing.

ISSUES

For purposes of government procurement, what is the country of origin of the patch

cords, FIP Cable Assembly and ST MM Epoxy Connector processed as described above?

LAW AND ANALYSIS:

Under Subpart B of Part 177, 19 CFR 177.21 *et seq.*, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*), the Bureau of Customs and Border Protection (CBP) issues country of origin advisory rulings and final determinations on whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

In regard to determining the country of origin of goods intended for government procurement, section 177.22(a), Customs Regulations (19 CFR 177.22(a)), provides, in pertinent part, as follows:

For the purpose of this subpart, an article is a product of a country or instrumentality only if (1) it is wholly the growth, product, or manufacture of that country or instrumentality, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

19 CFR 177.22(a)(1) does not apply in the instant case because the fiber optic cable products are not wholly produced in the United States. Therefore, 19 CFR 177.22(a)(2) is applicable.

An article that consists in whole or in part of materials from more than one country is a product of the last country in which it has been substantially transformed into a new and different article of commerce with a name, character, and use distinct from that of the article or articles from which it was so transformed. See *United States* v. *Gibson-Thomsen*, 27 C.C.P.A. 267 (1940); *Uniroyal Inc.* v. *United States*, 542 F. Supp. 1026 (Ct. Int'l Trade 1982), *aff'd*, 702 F.2d 1022 (Fed. Cir. 1983); *Koru North America* v. *United States*, 701 F. Supp 229 (Ct. Int'l Trade 1988); *National Juice Products Ass'n* v. *United States*, 628 F. Supp. 978 (Ct. Int'l Trade 1986); *Coastal States Marketing Inc.* v. *United States*, 646 F. Supp. 255 (Ct. Int'l Trade 1986), *aff'd*, 818 F.2d 860 (Fed. Cir. 1987); *Ferrostaal Metals Corp.* v. *United States*, 664 F. Supp. 535 (Ct. Int'l Trade 1987).

If the manufacturing or combining process is a minor one which leaves the identity of the imported article intact, a substantial transformation has not occurred. See *Uniroyal Inc.* v. *United States*, 3 CIT 220, 542 F. Supp. 1026 (CIT 1982). Assembly operations which are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. See C.S.D. 80–111, C.S.D. 85–25, and C.S.D. 90–97.

GGP Patch Cords

In the case of the patch cords, a foreign "seed" is used in the U.S. in the manufacture of optical fiber cable. The first issue is whether the processing in the United States performed on this imported "seed" results in a substantial transformation. In Headquarters' Ruling Letter ("HRL") 561774 dated January 29, 2001, Customs addressed a similar situation. In HRL 561774, the issue involved the country of origin marking of imported glass rod ("cane") used in the production of optical fiber preforms in the U.S. The imported cane was subjected to a "overcladding" process to create the fiber preform. According to the facts in HRL 561774, [t]he fiber itself consists of two different types of glass—one making up the "core" [of the preform, *i.e.*, cane], and the other making up the "cladding" surrounded by a protective acrylate coating. The core is the light-guiding region of the fiber, while the cladding, which has a different index of refraction than the core, ensures that the light signal remains within the core as it is carried along the fiber's length.

Customs held that, as the optical properties are imparted at the preform stage of production, the "essence" or character of the preform does not derive from the cane, but from the added cladding and its interaction with the core (cane). Therefore, we found that the production of the fiber preform resulted in a substantial transformation of the imported cane.

In the present case, an imported multi-layered glass rod (referred to as a "seed") is subjected to a "cladding" process in the U.S., involving the addition of a glass "sleeve" to the core. The preform is then drawn into optical glass fiber which, in turn, is made into optical fiber cable. Consistent with the holding in HRL 561774, we find that the above processing in the U.S. (specifically, the operations resulting in the preform) substantially transforms the foreign-origin "seed" into a "product of" the United States.

The second issue involving this first product is whether the operations performed in China result in a substantial transformation of the U.S.-origin optical fiber cable into a "product of" China. The U.S.-origin optical fiber cables are sent to China. In China, the optical fiber cable is cut-to-length, two inches of sheathing is removed from each end of the cable, and plastic connectors of Chinese origin are attached to each end of the cable.

In C.S.D. 85–25 (HRL 561392) dated September 25, 1984, Customs held that an assembly does not constitute a substantial transformation unless the operation is "complex and meaningful." The Bureau of Customs and Border Protection (CBP) criteria for determining whether an operation is "complex and meaningful" depends upon the nature of the operation, including the number of components assembled and number of different operations involved. Prior CBP rulings raise additional considerations such as processing time, costs, visibility of the imported article after processing, and skill required by the assembly operation.

In HRL 561392 dated June 21, 1999, Customs considered the country of origin marking requirements of an insulated electric conductor which is an electrical cable with pin connectors at each end used to connect computers to printers or other peripheral devices. The cable and connectors were made in Taiwan. In China, the cable was cut to length and connectors were attached to the cable. Customs held that the cutting of the cable to length and assembly of the cable to the connectors in China did not result in a substantial transformation. In HRL 560214 dated September 3, 1997, Customs held that where wire rope cable was cut to length, sliding hooks were put on the rope, and end ferrules were swaged on in the U.S., the wire rope cable was not substantially transformed. Customs concluded that the wire rope maintained its character and did not lose its identity and become an integral part of a new article when attached with the hardware. In HRL 555774 dated December 10, 1990, Customs held that Japanese wire cut to length and electrical connectors crimped onto the ends of the wire was not a substantial transformation.

In the case of the GGP patch cords in this case, it is our opinion that the cutting of the cable to length and assembly of the cable to the Chinese-origin connectors in China does not result in a substantial transformation of the cable. Therefore, as the connectors lose their separate identity when combined with the fiber optic cable, the country of origin of the imported optical fiber cable is the United States.

FIP Cable Assemblies

In the case of the FIP cable assembly, a Japanese-origin ceramic ferrule and fiber optic cable (purchased from an unrelated company in the U.S.), metal ring (purchased in the U.S.), and plastic parts (purchased in the U.S. or self-produced by 3M in the U.S.) are used during the assembly operation in China. First, the connectors are assembled using the ferrule, adhesive, plastic covers, and a metal ring. The ferrule gives the connector its form and function. The connectors are then attached to each end of the fiber optic cable. For purposes of this ruling, we are assuming that those components said to be purchased in the U.S. for use in making the FIP cable assembly are of U.S. origin.

In your submission, you state that the assembly operation for the FIP cable assembly is substantially similar to that described above for the GGP patch cord. You mention that the only major difference is that the FIP connectors include the Japanese-origin ferrule, which provides the structure and the enclosure for the cable at the point of connectivity. According to your submission, the ceramic ferrule is precisely designed to allow the joining of hair-thin fiber optic cables. The other parts of the connector are simply a means of affixing the ferrule in place. You assert that the assembly operation performed in China does not result in a substantial transformation of either the ferrule or the fiber optic cable. Therefore, you contend that the country of origin of the imported FIP cable assembly is the U.S. as the fiber optic cable imparts the essential character to the cable assembly or, alternatively, that the country of origin of the fiber optic portion of the assembly is the U.S. and the origin of the connector portion is Japan.

In HRL 556020 dated July 1, 1991, Customs addressed the issue of whether electrical

connectors produced in a designated beneficiary developing country under the Generalized System of Preferences (GSP) qualified as substantially transformed constituent materials of the electrical cable to which they were attached for purposes of the 35% value-content requirement under the GSP. The production of the connectors involved machining brass rod into contact pins and then joining the contact pins with plastic connector housings. Customs held that, while the initial fabrication of the contact pins from brass rod resulted in a substantial transformation, neither the subsequent assembly of the contact pins with connector housings to create the electrical connectors nor the later assembly of the electrical connectors with the cable resulted in a second substantial transformation. We stated that these are considered simple assembly operations which will not result in a substantial transformation, as they involve a small number of components and do not appear to require a considerable amount of time, skill, attention-to-detail, or quality control.

Similarly, in the instant case, we find that neither the U.S.-origin fiber optic cable nor the Japanese-origin ferrule undergoes a substantial transformation in China as a result of the assembly operations performed there to create the FIP cable assemblies. These are considered simple assembly operations involving only a small number of components. In considering the last country in which the FIP cable assembly underwent a substantial transformation, it is our opinion that the cable assembly's characteristics are primarily imparted at the time that the fiber optic cable is manufactured in the U.S. The fibers making up the cable serve as the transmission medium through which light signals travel. Therefore, the country of origin of the imported FIP cable assemblies is the U.S.

ST MM Epoxy Connector

In your submission, you state that the assembly operation for the ST MM Epoxy Connector is substantially similar to that described above for the FIP cable assembly connector. Based on the reasoning cited above and as found in HRL 556020, it is our opinion that the assembly is relatively simple and only involves a small number of components. Therefore, in considering the last country in which the connectors underwent a substantial transformation, we believe that the connector's characteristics are primarily imparted by the ferrule which provides the structure and enclosure for the fiber optical cable at the point of connectivity. Therefore, the country of origin of the MM Epoxy Connector is Japan.

HOLDING

Based on the facts presented, joining the Chinese-origin connectors to the U.S.-origin fiber optic cable in China to create the GGP patch cords does not constitute a substantial transformation. As a result, the imported GGP patch cord is a product of the United States for government procurement purposes under 19 CFR Part 177, Subpart B.

Based on the facts presented, the assembly of the connectors and the subsequent assembly of the connectors to the fiber optic cable in China to produce the FIP cable assembly does not result in a substantial transformation. Therefore, as the very essence of the cable is imparted by the fiber optical cable, the FIP cable assembly is a product of the United States for government procurement purposes.

Based on the facts presented, the assembly of the ST MM epoxy connector in China does not result in a substantial transformation. Therefore, as the very essence of the connector is imparted by the ferrule, the connector is a product of Japan for government procurement purposes.

Notice of this final determination will be given in the **Federal Register** as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination.

Any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Michael T. Schmitz,
Assistant Commissioner, Office of Regulations and Rulings

[FR Doc. 03–21010 Filed 8–18–03; 8:45 am]

BILLING CODE 4820–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–457]

Economywide Simulation Modeling: Technical Analysis of the Free Trade Area of the Americas

AGENCY: International Trade Commission.

ACTION: Institution of investigation.

SUMMARY: Following receipt on July 21, 2003, of a request from the United States Trade Representative (USTR) under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332 (g)), the Commission instituted investigation No. 332–457, *Economywide Simulation Modeling: Technical Analysis of the Free Trade Area of the Americas.*

Background: The USTR stated that the purpose of the investigation and report is to assist the Administration in examining the economic impacts that might result from the Free Trade Area of the Americas (FTAA) by attempting to link large-scale models. As requested by the USTR, the Commission will provide a report to the USTR containing the following:

(1) Changes in production, trade, and prices that may be associated with implementation of the Free Trade Area of the Americas (FTAA) with specified regional and sectoral aggregations, as estimated using the Commission's U.S. CGE (computable general equilibrium) Model, and

(2) trade policy changes to be used with specified regional and sectoral aggregations, as employed in the Global Trade Analysis Project (GTAP) CGE Model.

As requested by the USTR, the Commission will provide its report no later than 6 months from the date of receipt of the letter. The USTR stated that the Commission's analytical products and working papers in this investigation are to be classified as confidential and that the USTR considers the Commission's analytical products to be inter-agency memoranda that will contain pre-decisional advice subject to the deliberative process privilege. Accordingly, the Commission does not plan to issue a public report.

By way of background, the USTR noted the ongoing FTAA negotiations and that the Administration is conducting an environmental review of the proposed trade agreement. The USTR also referenced efforts connected to this review involving the Commission, the Environmental Protection Agency, and the U.S. Department of Agriculture, Economic Research Service, to link large-scale models, on an experimental basis, in order to estimate and examine aspects of the environmental effects of the trade agreement. Additional information on this review process can be found on USTR's Web site *(http://www.ustr.gov/environment/analysis.pdf).*

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT:

(1) Project Manager, William Donnelly (202–205–3225 or *wdonnelly@usitc.gov*)

(2) Deputy Project Manager, David Ingersoll (202–205–2218 or *ingersoll@usitc.gov*)

Mr. Donnelly is in the Commission's Office of Economics and Mr. Ingersoll is in the Commission's Office of Industries. For information on legal aspects of the investigation, contact William Gearhart of the Commission's Office of the General Counsel at 202–205–3091 or *wgearhart@usitc.gov.*

Written Submissions: The Commission does not plan to hold a public hearing in this investigation. However, interested persons are invited to submit written statements concerning the investigation. Written statements should be received by the close of business on October 1, 2003. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at

the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. The Commission may include such confidential business information in the report it sends to USTR. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.18) (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*). Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–1810.

Issued: August 13, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21201 Filed 8–18–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–1014 and 1017 (Final)]

Polyvinyl Alcohol From China and Korea

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigations.

DATES: August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server *(http://www.usitc.gov)*. The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On March 20, 2003, the Department of Commerce (Commerce) made its preliminary determinations for China (68 FR 13674) and Korea (68 FR 13681). On April 14, 2003, the Commission accordingly established a schedule for the conduct of the final phase of the subject investigations (68 FR 17964). On August 11, 2003, Commerce made its final determinations for China (68 FR 47538) and Korea (68 FR 47540). The Commission, therefore, is revising its schedule to conform with the statutory deadlines established by the date of publication in the **Federal Register** of Commerce's final determinations.

The Commission's new schedule for the investigations is as follows: A supplemental staff report will be placed in the nonpublic record on August 27, 2003, and party comments on the supplemental staff report and on Commerce's final determinations are due on September 4, 2003. Party comments may not exceed 20 pages of textual material, double-spaced and single-sided, on stationery measuring 8½ x 11 inches, and shall otherwise satisfy the requirements of section 207.30(b) of the Commission's rules.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: August 13, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21202 Filed 8–18–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption (PTE) 2003–26, Exemption Application Numbers D–11137, 11138, and 11139]

Northwest Airlines Pension Plan for Salaried Employees (Salaried Plan), the Northwest Airlines Pension Plan for Pilot Employees (Pilot Plan), and the Northwest Airlines Pension Plan for Contract Employees (Contract Plan) (Collectively, the Plans), Located in Eagan, MN

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This document contains a final exemption issued by the Department of Labor (the Department) from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code).

The exemption permits: (1) The in-kind contribution(s) of the common stock of Pinnacle Airlines Corp.[1] (Pinnacle Stock) to the Plans by Northwest Airlines, Inc. (Northwest), a party in interest with respect to such Plans; (2) the holding of the Pinnacle Stock by the Plans; (3) the sale of the Pinnacle Stock by the Plans to Northwest; (4) the acquisition, holding, and exercise by the Plans of a put option (the Put Option) granted to the Plans by Northwest; and (5) the guaranty to the Plans by Northwest Airlines Corporation (NWA Corp.) of Northwest's obligation to honor the Put Option (the Exemption Transactions). The exemption affects participants and beneficiaries of, and fiduciaries with respect to, the Plans.

DATES: This exemption is effective as of January 15, 2003.

FOR FURTHER INFORMATION CONTACT: Wendy M. McColough of the Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693–8540. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 17, 2003, the Department published a notice in the **Federal Register** (68 FR 2578) of a proposed individual exemption (the Proposed Exemption). The Proposed Exemption was requested in an application filed on

[1] Pinnacle Airlines Corp. is the holding company of Pinnacle Airlines, Inc.

behalf of Northwest pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1, 1995) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Accordingly, this final exemption is issued solely by the Department.

The notice set forth a summary of the facts and representations contained in Northwest's November 6, 2002 application for exemptive relief (Application) and referred interested persons to the Application for a complete statement of the facts and representations. The Application has been available for public inspection at the Department in Washington, DC.

The notice also invited interested persons to submit comments on the proposed exemption and/or to request that a public hearing be held. In response to the solicitation of comments from interested persons, the Department received over 1,700 letters, e-mails, faxes and phone calls, of which more than 1,000 requested that a public hearing be held on the Proposed Exemption. Many of the commenters expressed concern about the effect of the Proposed Exemption on the Plans. The concerns expressed generally related to the proposed contribution of Pinnacle Stock instead of a cash contribution to the Plans; the value and method of valuation of the Pinnacle Stock; the effects of the proposed transactions on the Plans; and the adequacy of the proposed safeguards that are intended to protect the Plans' interests. In view of the comments requesting a hearing, on March 11, 2003, the Department published in the **Federal Register** (68 FR 11589) a notice of hearing on the Proposed Exemption. The hearing on the Proposed Exemption was held on May 5 and 6, 2003 at the Department of Labor (the Hearing). Upon consideration of all of the comments received and testimony offered at the Hearing, the Department has determined to grant the proposed exemption subject to certain modifications. These modifications and the major comments are discussed below.

Discussion of the Comments

Northwest March 3, 2003 Comment

By letter dated March 3, 2003, Northwest described the Northwest contribution of Pinnacle Stock made to the Contract Plan on January 15, 2003 (the March 3 Comment). Northwest represents that the contribution was effected after the date on which the Department had completed work on the Proposed Exemption. The details of the Pinnacle Stock contribution were provided in the March 3, 2003 letter. Northwest also provided more detail about the final terms of the transactions as agreed to by Northwest and the Plans' independent fiduciary, Aon Fiduciary Counselors, Inc. (Fiduciary Counselors or Independent Fiduciary). Northwest states that, in this regard, some refinements were made to the provisions of the "Term Sheet" when the parties negotiated and entered into the final "Omnibus Agreement" (executed on January 15, 2003). The changes incorporated into the Omnibus Agreement were requested and approved by Fiduciary Counselors. In this regard, Northwest believes that this provided even more favorable terms for the Plans than those reflected in the Term Sheet.[2]

Contribution of Pinnacle Stock

Northwest reported that the Omnibus Agreement was executed between Pinnacle Airlines Corporation (Pinnacle), Northwest Airlines, Inc. (Northwest), Northwest Airlines Corporation (NWA Corp.) and Aon Fiduciary Counselors, Inc (Fiduciary Counselors). Pursuant to the terms of the Omnibus Agreement, Northwest contributed Pinnacle Stock to the Contract Plan. The Omnibus Agreement provided for two contributions to be made to the Contract Plan on January 15, 2003. An "Initial Contribution" was made in the amount of $41,149,911. The Initial Contribution was comprised of 1,819,833 shares valued at $22.61 per share.[3] The amount of the Initial Contribution is equal to the amount that was required to meet the quarterly funding requirements under ERISA section 302 and Code section 412(l) for the Contract Plan due on January 15, 2003. The Omnibus Agreement also provided for an "Additional Initial Contribution" to the Contract Plan in the amount of $2,671,983 (118,167 shares valued at $22.61 per share).

The Term Sheet did not provide for the Additional Initial Contribution. This additional contribution was agreed upon as a result of a technical concern raised by Fiduciary Counselors regarding covenants in Northwest's $1.125 billion Credit and Guarantee Agreement dated October 24, 2000, as amended under which Northwest is the borrower (the Credit Agreement), with Northwest's bank lenders. The Additional Initial Contribution served to provide the Plans with added protection until Northwest obtained written assurances from the bank lenders that the Put Option does not violate the Credit Agreement. On February 14, 2003, Northwest obtained formal written confirmation from the bank lenders that none of the rights afforded to the Plans in the Omnibus Agreement nor the exercise of such rights would violate the Credit Agreement. Accordingly, Northwest notes that, consistent with the Omnibus Agreement's terms, the Additional Initial Contribution will be treated as a credit balance and be applied toward future contributions to the Contract Plan.

The total value of the Initial Contribution and Additional Initial Contributions made to the Contract Plan was $43,821,894. Pinnacle Stock in that amount was transferred to State Street Bank, the trustee for the Northwest Master Trust for Defined Benefit Plans that holds the assets of all of the Northwest Plans (the Master Trust). Northwest instructed State Street Bank to establish an "Investment Fund" in connection with the Plans' Master Trust. The Investment Fund holds Pinnacle Stock on behalf of the Contract Plan and the Salaried Plan. As a result of instructions given to State Street, after the contribution was made to the Investment Fund, the Contract Plan owns 83.5% of the Investment Fund, while the Salaried Plan owns 16.5% of the Investment Fund. Each Plan's percentage ownership reflects the relative size of each Plan to each other. At that time, the Pilot Plan did not participate in the Pinnacle Stock Investment Fund.[4]

[2] Northwest notes that the Omnibus Agreement, while consistent with the Term Sheet, provides specific terms for: the contribution transactions; transferability of Pinnacle Stock; corporate governance; voting rights; the Put Option; representations and warranties; and a number of other matters.

[3] Northwest represents that the amount of shares necessary to satisfy the required contribution was based upon a final valuation of Pinnacle by Fiduciary Counselors, relying on a valuation report prepared by Eclat Consulting. Northwest notes that, while Fiduciary Counselors received and reviewed valuation information provided by Morgan Stanley & Co. Inc. (Morgan Stanley), Fiduciary Counselors retained Eclat to provide valuation services.

[4] Northwest states, as noted in the Proposed Exemption, that the Master Trust is established in a manner such that all Plans hold an undivided and commingled interest in the assets of the Trust. Since Northwest was prohibited from investing the Pilot Plan's assets in employer stock, the Pilot Plan at that time, did not participate in the investment fund. However, Northwest notes that it has received the consent of the Air Line Pilots Association (ALPA), the union representing Northwest pilots, to permit the Pilot Plan to hold Pinnacle Stock (see

Continued

Description of the Put Option

Northwest noted that the description of the Put Option in the first and second columns at 68 FR 2580 of the **Federal Register** notice accurately describes the structure of the Put Option as described in Northwest's Application. However, as noted in Northwest's Application, the final terms of the Put Option were subject to negotiation with Fiduciary Counselors. Northwest believes that the final terms for the Put Option, which are more favorable to the Plans, are more completely and accurately stated in the description of the Put Option contained in the description of the Term Sheet as set forth at 68 FR 2587.

Fair Market Value of Pinnacle Stock

Northwest noted that, as reflected in the Term Sheet, Fiduciary Counselors will determine the fair market value of the Pinnacle Stock contributed to the Plans on an annual basis and in advance of each contribution to the Plans. Fiduciary Counselors will also determine fair market value at the time it exercises the Put Option so long as the shares of Pinnacle Stock are not publicly traded. Accordingly, the reference in the first column at 68 FR 2585 to quarterly valuations is no longer correct. Northwest notes that quarterly valuations were contemplated in the Application, but a change to annual valuations was made when Northwest and Fiduciary Counselors agreed to the Term Sheet.

Corporate Governance Rights

Northwest explained that the Omnibus Agreement granted the Plans additional rights in order to protect their interest in the Pinnacle Stock. Omnibus Agreement at section 7.2, Certain Approval Rights. In this regard, beginning at such time as the Plans hold more than 50% of the issued and outstanding Pinnacle Stock, and until the earlier of (i) the date the Plans hold less than 25% of such shares or (ii) the Put Option with respect to such shares has terminated, the affirmative vote of the Plan s director will be required to (1) approve the election, appointment and compensation of any new Chief Executive Officer (CEO), (2) approve any modification or other changes to the Note Pinnacle has issued to Northwest (3) approve any amendment to Pinnacle s bylaws that affects the Plans shares of Pinnacle Stock in a manner different from other shares of Pinnacle Stock or otherwise amends the Series A Preferred Stock, and (4) unless Pinnacle is publicly traded, approve the issuance of shares of capital stock of Pinnacle or otherwise effect changes in the capital structure of Pinnacle. Thus, the fourth bullet point in the second column at 68 FR 2585 (describing certain voting rights) should be modified accordingly.

The requirement (detailed in the last bullet point in the second column of the Proposed Exemption at 68 FR 2585) that Plan shares of Pinnacle Stock be voted in favor of certain corporate actions is now set to expire upon the occurrence of an Early Termination Event. *See* Omnibus Agreement at section 7.3.

Independent Directors

Northwest noted that the second bullet point in the third column at 68 FR 2585 (respecting the obtainment of fairness opinions) has been revised. In this regard, section 11.3(b) of the Omnibus Agreement now provides that at the request of a majority of Pinnacle's independent directors, a fairness opinion will be obtained from an investment bank respecting certain Affiliate Transactions. The Term Sheet originally placed the right to request this fairness opinion solely on the Plans' director, who asked that this duty be placed on the independent directors of which the Plans' director is a member.

Valuation in Connection With the Right of First Refusal

Northwest noted that the Omnibus Agreement added certain valuation details that expand the discussion of the Right of First Refusal at 68 FR 2586. The description of Northwest's right of first refusal with respect to Pinnacle Stock is accurate; however, if the Plans negotiate the sale of Pinnacle Stock to a third party for non-cash consideration, the Omnibus Agreement includes a specific valuation mechanism with respect to such consideration. *See* Omnibus Agreement at section 6.2. First, the Plans must provide Northwest with an "Offer Notice" which shall contain an independent valuation of the consideration by a nationally recognized valuation expert acceptable to Fiduciary Counselors and Northwest. If Fiduciary Counselors and Northwest are unable to agree on the valuation expert, the Omnibus Agreement sets forth a dispute mechanism to arrive at a final determination. In this process, Northwest and Fiduciary Counselors each select their own nationally recognized valuation expert (Principals' Experts), which experts submit their appraisals to a third expert chosen by the Principals' Experts. The third expert then determines which of the two assessed values should be assigned to such non-cash consideration.

Modification of Final Deferral Rule

Northwest observed that the Term Sheet, as reflected in the Proposed Exemption, allows Northwest to defer the closing date with respect to Pinnacle Stock repurchased pursuant to the Put Option (such delay, a "Deferral"). The length of the Deferral varies based upon a function of (1) the "liquidity" of Northwest (as defined in the Omnibus Agreement) and (2) the value of Pinnacle Stock contributed to the Plans. In the Proposed Exemption, it was noted that the length of the Deferral would be shortened if Pinnacle Stock was publicly traded at the time that the Put Option is exercised. As with the Term Sheet, the final Omnibus Agreement provides that the Deferral shall be shortened if Pinnacle Stock is publicly traded. However, the Omnibus Agreement revises this provision to provide that, if Pinnacle Stock is publicly traded, the Deferral will be reduced, in each case, by thirty days except that in no event shall Northwest have less than a 30 day Deferral in which to close the transactions contemplated by the Put Option. This change generally reduces the length of the available Deferral when the Plans hold more than $325 million in Pinnacle Stock (measured as of the date of each contribution). *See* Omnibus Agreement at section 8.2.

Fiduciary Counselors March 5, 2003 Comment

On March 5, 2003, Jones Day submitted comments on behalf of Fiduciary Counselors, the Independent Fiduciary (the March 5 Comment).

Restrictions on Transfer and Voting

The Independent Fiduciary notes that the Proposed Exemption, in the first column of 68 FR 2580 (first full paragraph), makes reference to voting restrictions and limits on the ability of the Plans to dispose of the Pinnacle Stock, except pursuant to an initial public offering (IPO) initiated by Northwest or by exercise of the Put Option. In addition, as reflected in the Omnibus Agreement, the Independent Fiduciary has negotiated a lapse of all transfer restrictions on the Pinnacle Stock held by the Plans on July 1, 2006, and upon an "Early Termination Event" (including a breach of the Omnibus Agreement by Northwest or Pinnacle or Northwest's failure to honor its Put Option obligations, but excluding violations of the "scope clause" limitations in certain of Northwest's collective bargaining agreements [5]). A

below for discussion of the Northwest and ALPA Letter Agreement).

[5] Section 1C of the Northwest Pilots Agreement, the Collective Bargaining Agreement between

breach of the Omnibus Agreement by Pinnacle constitutes an Early Termination Event if such breach continues because Northwest fails to exercise its rights as a stockholder to cause the Pinnacle directors to cure the breach or to replace such directors. *See* Omnibus Agreement, Definition of "Early Termination Event" at section 1.1.

Eclat Consulting Valuation

The Independent Fiduciary represents that the description of the valuation by Eclat Consulting (Eclat) of Pinnacle in the Proposed Exemption commencing in the second column of 68 FR 2580 (the Eclat Report) should be updated to reflect Eclat's valuation of Pinnacle as of January 15, 2003. The January 15, 2003 Eclat valuation report (January 15, 2003 Valuation) was attached to the Independent Fiduciary's report submitted to the Department on April 25, 2003 (*see* below for a discussion of these documents).

Put Option

As previously mentioned in the March 3 Comment, the changes to the description of the Put Option in the Proposed Exemption are noted by the Independent Fiduciary who adds that the Proposed Exemption should be revised in accordance with the definition of "Market Value" in section 1.1 and the language of section 8.3 of the Omnibus Agreement. In particular, subparagraph (i) at 68 FR 2580 of the Proposed Exemption should reflect that, prior to an IPO, the Plans will be entitled to the greatest of (1) the value of the stock when contributed, (2) the fair market value of the stock on the date that the determination of fair market value is made (*e.g.*, with respect to the Put Option, the date the Put Option is exercised), or, if greater, (3) the value as of the closing date of the Put Option.

Similarly, subparagraph (iii) at 68 FR 2580 should reflect that, after an IPO, the Plans will be entitled to the greatest of the value of the stock at the time of the contribution, or the average of the closing price for the Pinnacle Stock on the public market for the 10 trading days (or such other number if fewer than 10) preceding the exercise date, or as of the last trading day before the closing date of the Put Option.

In addition, in the paragraph immediately following subparagraph (iii) in the second column of 68 FR 2580, the reference to the price of Pinnacle Stock being determined as of the exercise date should be expanded to reflect these concepts. Similarly, in the second column of 68 FR 2588 (third full paragraph), the reference in subclause (II) to the closing price of Pinnacle shares on the closing date should refer to the last trading day before the closing date.

Plan Director

As also mentioned in the March 3 Comment, the Independent Fiduciary notes that at the fifth paragraph of the "Voting Provisions" section in the Proposed Exemption at column 2 of 68 FR 2585, the description of the required affirmative vote of the director designated by the Plans should be expanded to include the approval of: amending the Note, amending Pinnacle's charter or by-laws in certain respects, implementing certain changes in Pinnacle's capital structure, or issuing capital stock prior to an IPO, as set forth in the Omnibus Agreement. *See* Omnibus Agreement at section 7.2. Additionally, the Independent Fiduciary corrects language in the fifth paragraph of the "Voting Provisions" of the Proposed Exemption that states a majority of Pinnacle's board is needed for the approval of compensation of Pinnacle's CEO. Section 7.2(b) of the Omnibus Agreement requires only that the appointment of a new CEO be approved by a majority of Pinnacle's board (excluding the Northwest Director), and does not make reference to the compensation of Pinnacle's CEO.

Additional Comments

The Independent Fiduciary reports that it negotiated the following additional requirements.

1. A comprehensive set of representations and warranties relating to both Pinnacle, Northwest and its affiliates. *See* Omnibus Agreement at sections 5.1 and 5.2.

2. An additional provision that would prohibit Northwest from using its rights under the Series A Preferred Share to block a Transfer of Pinnacle Stock following an Early Termination Event. *See* Omnibus Agreement at section 6.3.

3. Northwest Airlines Corporation (NWA Corp.) will guarantee Northwest's obligations under the Omnibus Agreement, including the Put Option. *See* Omnibus Agreement at section 8.8.

4. The right to engage an investment banker on behalf of the Plans in an IPO, at Northwest's expense. *See* Omnibus Agreement at section 9.1(d).

5. A provision providing that the exercise price of any options on Pinnacle Stock granted to its executive employees under its stock incentive plan at the time of an IPO would be at the greater of the value of the stock at the time it was contributed to the Plans or the IPO price. *See* Omnibus Agreement at section 11.2.

Finally, Fiduciary Counselors requests that in Section III. Definitions at (a) of the Proposed Exemption in column 1 of 68 FR 2590, the reference to "5 percent (5%) of such fiduciary's gross income, for Federal income tax purposes, in its prior tax year, will be paid by Northwest" should read "5 percent (5%) of such fiduciary's annual gross revenue in the year of its engagement, will be paid by Northwest."

The Department has determined that it would be appropriate to modify the definition of independent fiduciary as follows:

"(3) the annual gross revenue received by such fiduciary, during any year of its engagement, from Northwest and its affiliates exceeds 5 percent (5%) of the independent fiduciary's annual gross revenue from all sources for its prior tax year."

Fiduciary Counselors and Eclat April 25, 2003 Submissions

On April 25, 2003, Fiduciary Counselors provided to the Department the Independent Fiduciary Report on Contribution of Pinnacle Airlines Corp. Stock to the Northwest Airlines Pension Plan For Contract Employees dated March 16, 2003 (the IF Report), the January 15, 2003 Eclat valuation of Pinnacle (the January 15, 2003 Valuation), and an explanation of the valuation of the Put Option.

The Independent Fiduciary Report

The Independent Fiduciary represents that after extensive negotiations during November and December, 2002, and January, 2003, Fiduciary Counselors and Northwest, along with Pinnacle and NWA Corp., Northwest's ultimate parent company, entered into an Omnibus Agreement, dated January 15, 2003, which sets forth the terms and conditions pursuant to which Fiduciary Counselors will accept the Pinnacle Stock (the Contribution).[6]

Northwest and the Air Line Pilots Association dated as of September 13, 1998, as amended, or any successor agreement. This Section requires that all "revenue flying" for Northwest and its affiliates must be performed by pilots on the integrated Pilots System Seniority List in accordance with the collective bargaining agreement, except for revenue flying by an airline that at all times operates only aircraft that are certified with a maximum passenger capacity of 60, and a maximum gross takeoff weight of less than 70,000 pounds.

[6] Fiduciary Counselors notes that immediately prior to the transaction, NWA Inc. (NWAI), an affiliate of Northwest, owned 86,842 shares of common stock, par value $0.01 per share, of Pinnacle Airlines, Inc., a Georgia corporation, constituting all of the issued and outstanding

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The IF Report states that on January 15, 2003, Fiduciary Counselors determined that the Master Trust could accept a contribution by Northwest of 1,938,000 shares of Pinnacle Stock, valued at $43,821,894.00, on behalf of the Contract Plan on terms and conditions set forth in the Omnibus Agreement. Pursuant to its engagement letter with Northwest, the scope of Fiduciary Counselors' engagement includes determining whether to accept the Contribution on behalf of the Plans, and if so, to value the Pinnacle Stock for Plan funding purposes. Fiduciary Counselors' duties also include the discretionary authority to manage the Pinnacle Stock as investment manager.

The IF Report notes that the Independent Fiduciary drew upon the resources of its affiliate, Aon Investment Counseling, Inc. (AIC), to assist it in its financial analysis and valuation of the Pinnacle Stock. The Independent Fiduciary also engaged the law firm of Jones Day as legal counsel to advise it in connection with its negotiations with Northwest regarding its engagement and Eclat, to provide financial expertise and to value the Pinnacle Stock. Eclat furnished to the Independent Fiduciary its report and opinion as to the value of the contributed Pinnacle Stock at the time of the Initial Contribution on January 15, 2003 (January 15, 2003 Valuation). Eclat will furnish a similar valuation report with respect to each subsequent contribution. In negotiating the terms of the Contributions and determining whether to accept the Initial Contribution, the Independent Fiduciary, with its financial advisors and legal counsel, reviewed those documents that it deemed relevant, participated in meetings and telephone conferences with officers and other representatives of Northwest, and considered aspects of the Contribution that it deemed pertinent to its engagement, including without limitation Northwest's current and future ability to honor the Put Option. Because the value of the Pinnacle Stock is based on the financial performance of Pinnacle, the Independent Fiduciary reviewed and considered the business of Pinnacle, and the contractual relationship between Pinnacle and Northwest. The Independent Fiduciary and its advisors also met with the senior officers of Pinnacle.

The Independent Fiduciary and its advisors reviewed various documents relevant to the Contribution, including without limitation, Northwest's certificate of incorporation; Northwest's corporate bylaws; the certificate of incorporation of Pinnacle; the Master Trust agreement pursuant to which the Plan assets are currently held and managed; audited financial statements of the Plans for 2000 and 2001; the current Plan documents; the Plans' annual reports on Forms 5500 for 2000 and 2001; other information provided by Northwest regarding the Plans' assets (including the Plans' investment guidelines and portfolio composition); a statement prepared by the Plans' actuaries of the Plans' liquidity needs to pay benefits and administrative expenses in the near future and the sources of funds (other than the Pinnacle Stock) available to satisfy such liquidity needs; and certain of Pinnacle's collective bargaining agreements. In addition, the Independent Fiduciary reviewed a number of other documents, including SEC Form S–1 filed with the Securities Exchange Commission on February 25, 2002 registering shares of Pinnacle Stock for an IPO and the Airline Services Agreement dated March 1, 2002. As a result of its review, certain changes were incorporated in the new Airline Services Agreement entered into on January 14, 2003 (ASA).

The IF Report provides that the Independent Fiduciary and its advisors participated in numerous telephone conferences with representatives of Northwest and Pinnacle through November, December and early January concerning the Independent Fiduciary's engagement, the proposed Contribution, the status of Northwest's minimum funding waiver applications to the Internal Revenue Service and the Proposed Exemption. On January 11, 2003, the Independent Fiduciary and its advisors conducted a telephone interview with Pinnacle's chief executive officer and chief financial officer as part of its due diligence.

The Independent Fiduciary and its advisors analyzed the voting, transfer and put right features of the Pinnacle Stock and engaged in significant negotiations on those features with Northwest. The Independent Fiduciary was also advised on the requirements of the U.S. Department of Transportation regarding restrictions on directors of airlines. In its determinations, the Independent Fiduciary has also taken into account Northwest's request for a minimum funding waiver with respect to Plan contributions in 2003 and 2004, and considered the likelihood that such waiver will be granted.

The IF Report states that under the ASA, Northwest has committed 95 regional jet aircraft financed by Bombardier to be delivered to Pinnacle by December 31, 2004. As of December 31, 2002, the carrier had taken possession of 51 regional jets. The addition of the regional jets has more than doubled the size of the airline. According to the IF Report, Eclat estimates that Pinnacle's value to the Northwest domestic system is between $520 million and $540 million annually as the carrier exists today. Pinnacle itself had revenues of approximately $345.2 million for 2002.

The IF Report explains that, because Pinnacle's operations are so entwined with Northwest's, Eclat evaluated Northwest as well as Pinnacle in its November 27, 2002 report to the PBGC (The Eclat Report). Despite the turmoil in the industry in recent years, Eclat felt that Northwest has emerged as, perhaps, the most stable airline in the industry. While all of the "Big 6" network airlines are losing money, Northwest has suffered the smallest loss of any carrier. Northwest reported a net loss of $46 million, with operating income of $8 million in the 3rd quarter of 2002. Northwest ended the 3rd quarter with over $2.5 billion in cash and short-term receivables.

The IF Report notes that Northwest is a global carrier through its alliance with KLM and its Amsterdam hub, and its own hub in Tokyo. While the U.S. market has suffered tremendous losses due to the slowdown in the U.S. economy and the terrorist attacks of 9/11, the global market has rebounded much quicker. Northwest's presence in international markets has helped offset the losses in the U.S. domestic market. As with all domestic U.S. carriers, Northwest has been hit by the drop in revenue due to lower overall yields and depressed passenger levels. The drop-off in premium passenger traffic, the weak U.S. economy, and the increased presence of low-cost carriers has impacted the ability of the network carriers to generate high yield revenue. Through reduced employment levels and other cost-cutting measures, Northwest has been able to minimize the ongoing impact of reduced revenue levels, which the Independent Fiduciary believes are likely a permanent change in the industry. The labor situation is

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capital stock of Pinnacle Airlines, Inc. Pursuant to the transaction, Pinnacle Airlines, Inc. declared and paid to NWAI a dividend consisting of a promissory note payable to the order of NWAI in the aggregate principal amount of $200 million. NWAI then transferred the shares of Pinnacle Airlines, Inc. to Pinnacle in exchange for its issuance to NWAI of (i) 15,000,000 shares of Pinnacle's common stock, par value $0.01 per share (Pinnacle Stock), and one share of Series A Preferred Stock, par value $0.01 per share, of Pinnacle (the "Series A Preferred Share"), which, upon issuance and together with the Pinnacle Stock, constitutes all of the issued and outstanding capital stock of Pinnacle. NWAI then transferred the Pinnacle Shares and the Series A Preferred Share to Northwest as a contribution to the capital of Northwest.

stable. One of the strengths of the Northwest network is that the airline has the least exposure of any major carrier to low-cost carriers in the industry. This is primarily due to the fact that Southwest Airlines does not serve 2 of the 3 Northwest hubs—Memphis (Pinnacle's largest market) and Minneapolis. Southwest has a small operation in Detroit with only 2 gates. The IF Report states that Eclat expects that low-cost carriers will expand and gain share in the future but feels that Northwest is in the best shape of any network carrier to compete.

The Eclat Report and the January 15, 2003 Valuation

Fiduciary Counselors and Eclat represent that Eclat was originally retained by PBGC to value Pinnacle and to evaluate the financial viability of Northwest. Eclat is an aviation-consulting firm that specializes in detailed analysis of the economic and financial issues that surround the industry. The IF Report states that Eclat's clients come from almost every sector of the aviation industry—airports, airlines, labor organizations and aerospace/aeronautics corporations. With PBGC's consent, Eclat was subsequently retained by the Independent Fiduciary to value the Pinnacle Common Stock.

Eclat states in the January 15, 2003 Valuation that the valuation includes competitive, operational and financial elements essential to validating Pinnacle's current market viability as a Northwest regional partner and as a stand-alone airline and that the valuation describes the state of the regional airline industry, delves into some of the more important issues surrounding Pinnacle specifically, provides a brief financial review of the carrier, explains the valuation methodology, compares Pinnacle to Continental Express, and comments on the stability of Northwest. Appendices were attached that illustrate the valuation model used and highlight some of the additional information used to conduct the analysis.

The IF Report summarizes that, in order to determine the value of Pinnacle, Eclat created a model based on the Three-Stage Free Cash Flow to Equity valuation technique. This model is designed to value firms, like Pinnacle, that are expected to go through three phases of growth—an initial phase of high growth, a transitional period where the growth rate declines, and a steady-state period where growth is stable. Once these growth assumptions are made, the present value of expected free cash flow is calculated.

The IF Report notes that in the Eclat Report, Eclat's valuation of the Pinnacle Common Stock was considerably lower than the value it ultimately determined for the Independent Fiduciary in the January 15, 2003 Valuation. Eclat's original valuation for PBGC was based on publicly available information, primarily a draft S–1 Registration Statement which contained financial information only for the first nine months of 2002. As a result of its engagement by the Independent Fiduciary, Eclat was given access to non-public information including the ASA, Pinnacle's full 2002 revenue figures and information concerning the delivery schedule for delivery of regional jets to Pinnacle. The IF Report represents that, in the January 15, 2003 Valuation, Eclat determined that the net equity value (before discounts) of Pinnacle was $412,923,928.00. Based on input from AIC, Eclat then applied a 15 percent liquidity discount and a 5 percent minority discount. AIC valued the Put Option at $20,680,684 using a Black-Scholes American option-pricing model. The value of the transaction was also adjusted for the period between the exercise of the put and the Plan's receipt of the funds. This period could range between 30 and 180 days depending on Northwest's liquidity position. The result was a net value of $339,178,820.00 for the purposes of determining the value of the stock contributed on January 15, 2003.

Negotiation of the Term Sheet and Omnibus Agreement

The Independent Fiduciary recognizes that all aspects of its engagement involved fiduciary actions, and, for that reason, representatives of the Independent Fiduciary and its financial and legal advisors actively participated in the negotiations relating to the Omnibus Agreement and in the evaluation of the decision of whether to accept the Contribution. From a fiduciary standpoint, Independent Fiduciary was required to determine whether the terms it negotiated in the Omnibus Agreement and its decision whether to accept the Contribution were prudent, for the benefit of, and in the interest of, Plan participants and their beneficiaries. In this regard, the Independent Fiduciary represented that it negotiated terms that it determined were no less favorable to the Plans than terms negotiated at arm's length with an unrelated third party under similar circumstances.

The terms of the transaction negotiated between the Independent Fiduciary and Northwest were embodied in a Term Sheet, which was provided to the Department on January 10, 2003. The Term Sheet formed the basis for the Omnibus Agreement, which was executed on January 15, 2003, after the Independent Fiduciary received confirmation from the Department that the Proposed Exemption had been issued.

Fiduciary Counselors states that the Omnibus Agreement provides:

- For purposes of the funding standard account of each Plan, the value of the shares of Pinnacle Stock contributed to each Plan will be determined by the Independent Fiduciary. In addition to determining the value of Pinnacle Stock at the time of a proposed contribution, the Independent Fiduciary will provide an annual written valuation of the per share value of all Pinnacle Stock held by the Plans as of each December 31 and at any time the Independent Fiduciary exercises the Put Option described below.
- Subject to the further conditions and restrictions set forth in the Omnibus Agreement, the Plans may transfer the Pinnacle Stock prior to July 1, 2006, (1) only in the event of an IPO or sale to a third party initiated by Northwest, (2) by exercise of the Put Option (as described below), or (3) because of an Early Termination Event (including a breach of the Omnibus Agreement by Northwest or Pinnacle which is not cured timely or Northwest's failure to honor the Put Option).
- The Plans will be granted a Put Option with respect to each share of Pinnacle Stock contributed to the Plans, which may be exercised by the Independent Fiduciary at any time. To exercise the Put Option, the Independent Fiduciary must provide written notice to Northwest of its election to put to Northwest any or all of the shares of Pinnacle Stock then held by the Plans. The closing date of the purchase and sale of shares with respect to which the Put Option has been exercised will be the 30th calendar day after such notice is given. However, if Pinnacle has not yet consummated the IPO by the date that would otherwise be the closing date, Northwest will have the right to defer such closing date for up to 150 days, depending on Northwest's liquidity. The closing date may be further deferred and deferred payments may be made by Northwest as agreed to by the Independent Fiduciary if Northwest posts collateral in an amount and on terms satisfactory to the Independent Fiduciary. Alternatively, Northwest may arrange for the stock to be purchased by a third party.
- If the Pinnacle Stock is not publicly traded, the Plans will receive the

greatest of (i) the initial contribution value (the "Floor Price"), (ii) the fair market value as determined by the Independent Fiduciary at the time of the exercise of the Put Option, or, if greater, at the closing date of the Put Option, and, (iii) if a third party sale is elected for the Plans (under the limited circumstances described above) and Northwest does not exercise its right of first refusal, the proceeds from the sale of Pinnacle Stock held by the Plans to such third party. If the Pinnacle Stock is publicly traded, the Plans will receive the greater of (i) the Floor Price, or (ii) the average closing price for the stock on the public market for the 10 trading days preceding the exercise date or, if greater, the closing price on the day before the Put Option closing date.

• Once Pinnacle Stock is publicly traded, the Put Option will be suspended if all of the remaining shares of Pinnacle Stock held by the Plans have a market value not less than 110% of the Floor Price and such shares are freely tradable. Fiduciary Counselors and its advisors negotiated with Northwest and Pinnacle concerning the ability of the Plans to transfer the Pinnacle Stock and the rights of the Plans to cause Northwest to register the shares of Pinnacle Stock under Federal and State securities laws for resale to third parties. In negotiating the rights and restrictions set forth in the transfer and registration rights provisions of the Omnibus Agreement, Fiduciary Counselors balanced the need of the Plans to achieve greater diversification in light of the anticipated holdings of shares of Pinnacle Stock with the need to maximize the value of the investment in such stock.

• In addition, the Independent Fiduciary negotiated that Northwest Airlines Corporation (NWA Corp), Northwest's ultimate parent company, will guarantee Northwest's obligations under the Omnibus Agreement, including the consummation of the Put Option.

• As a condition to any such contribution by Northwest, the Independent Fiduciary must determine on behalf of the Plans that the acceptance of the contributed shares is prudent and in the interests of the Plans' participants and beneficiaries and otherwise consistent with the fiduciary standards of ERISA. In addition, the Independent Fiduciary will monitor on an ongoing basis the prudence of the Plans' continued holding of Pinnacle Stock consistent with the fiduciary standards of ERISA. The appropriate fiduciary of the Plans (other than the Independent Fiduciary) will determine that such investment will not impair the liquidity of the Plans such that the Plans would not be able to pay benefits and expenses when due. If such appropriate Plan fiduciary determines the liquidity of the Plans is impaired, such fiduciary shall direct the Independent Fiduciary to dispose of all or a portion of the Pinnacle Stock consistent with the terms of the Omnibus Agreement to the extent commercially reasonable.

• All transactions involving the Plans in connection with the contribution of Pinnacle shares will be no less favorable to the Plans than arm's length transactions involving unrelated parties.

• No commissions, fees, costs, charges or other expenses will be borne by the Independent Fiduciary or the Plans in connection with any acquisition, holding or disposition of Pinnacle shares to or from the Plans, other than the underwriters' discount or other broker-dealer fees or commissions charged in any sale of such shares. In addition, the Independent Fiduciary negotiated the right to engage an investment banker on behalf of the Plans in an IPO, at Northwest's expense.

• Northwest will provide at least quarterly notice to the Independent Fiduciary of its cash liquidity. More frequent notice will be required based on Northwest's liquidity and the value of the Pinnacle Stock contributed to the Plans. In addition, Northwest will provide the Independent Fiduciary with the information required to be provided to its lenders under its credit agreement. In addition, Northwest shall provide it with copies of any amendments to the credit agreement.

• The Independent Fiduciary negotiated a comprehensive set of governance rights accorded to the Plans as a condition of acceptance of Pinnacle Stock. In this regard, as long as the Plans hold at least 5 percent of the Pinnacle Stock, the Plans will have the right to designate one nominee to Pinnacle's board of directors, and Northwest will vote the Series A Preferred Share held by it in favor of such designee. The director designated by the Plans will have the right to serve on Pinnacle's audit committee to the extent permitted under applicable SEC and stock exchange rules. Once the Plans hold more than 50 percent of the Pinnacle Stock, the affirmative vote of the director designated by the Plans shall be required to approve the appointment of any new CEO of Pinnacle and compensation of any CEO, any amendments to the $200 million Note of Pinnacle Airlines, Inc. held by Northwest, the amendment of Pinnacle's charter or by-laws in certain respects, or the implementation of certain changes in Pinnacle's capital structure or the issuance of capital stock prior to an IPO. The Independent Fiduciary negotiated further powers with respect to the Plan director, including the right to object to Business Combinations involving Northwest's affiliates.

• Any change to the ASA, including any early termination of the ASA by Pinnacle, must be approved by a majority of Pinnacle's independent directors, which majority must include the director designated by the Plans. Any transaction involving Northwest outside the ordinary course of business that involves more than $2 million and any ordinary course transaction that involves more than $5 million must be approved by a majority of the independent directors. In this event, a majority of the independent directors may require a fairness opinion from a nationally recognized investment banking firm.

• The Independent Fiduciary negotiated a comprehensive set of representations and warranties relating to both Pinnacle Corp. and Northwest and its affiliates relating to Northwest's ability to honor the Put Option and to the value of Pinnacle Corp. The representations and warranties must be true at the time of any Contribution. The Independent Fiduciary negotiated the survival of the representations and warranties in general for 24 months after the Closing Date and indefinitely with respect to those relating to Northwest's ownership of the Pinnacle Stock and Pinnacle's ownership of the outstanding shares of Pinnacle Airlines, Inc. prior to the Initial Contribution; Northwest's ownership of the Pinnacle Stock prior to any subsequent Contribution; and Northwest's and NWA's representation that the contemplated transactions do not violate or result in a default under any of their material contracts, including without limitation, the Credit Agreement.

Valuation of the Put Option

Fiduciary Counselors stated that, in conjunction with Northwest's contribution of Pinnacle stock to the Plans, Northwest has provided the Plans with a Put Option to protect them from a possible decline in Pinnacle's shares' value. The value of the transaction is enhanced due to the downside protection that this Put Option provides. In valuing the Pinnacle shares, it was necessary to assign a value, not only to Pinnacle, but also to the Put Option.

Prior to valuing the put option, Eclat's estimate of the value of Pinnacle was $333,436,072, after application of an illiquidity discount of 15% and a minority discount of 5%. This value was further discounted by 4.48%, to

$318,498,136, to reflect Northwest's ability to delay payment on the put for up to 6 months. Although the Plan's option is exercisable at anytime, unlike a normal option, Northwest does not have to immediately settle. Northwest has from 30 to 180 days to settle the option. The 4.48% discount represents what Eclat used for Pinnacle's pre-tax cost of debt (9.6%) adjusted for a six-month period. Fiduciary Counselors assumed that since Northwest could take up to 180 days to settle the option that it would. Although Eclat cannot know what market conditions might be like during this settlement period, this rate also exceeds the Plan's assumed asset earnings rate.

The value was then increased to reflect the value of the put. The Put Option is exercisable at any time by the Plan. Eclat used the Black-Scholes option-pricing model to determine the value of the Put Option. Using the Black-Scholes American option pricing model, Eclat determined the value of the Put Option to be $20,680,684.

The Independent Fiduciary's Determinations

Fiduciary Counselors notes that under section 404(a)(1) of ERISA, a fiduciary must discharge its duties with respect to a plan solely in the interest of plan participants and beneficiaries. In addition, a fiduciary must act for the exclusive purpose of providing benefits to participants and beneficiaries; must act prudently; and must diversify the investment of plan assets to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. For the reasons set forth below, the Independent Fiduciary has concluded that it is prudent for the Plans to accept the Contribution and that the Contribution is in the interest of the Plans and their participants and beneficiaries:

- Participants and beneficiaries of the Plans stand to benefit from an IPO of the Pinnacle Stock. The ASA provides a range of revenues to be paid by Northwest to Pinnacle, and Eclat valued the Company based on the minimum revenues, which would result from the ASA. If Pinnacle in fact achieves the maximum operating margin provided under the ASA, Eclat estimated that the value of Pinnacle would be approximately 20 percent greater than the value used for purposes of the contribution.
- In valuing Pinnacle Stock, the Independent Fiduciary specifically applied a 15% liquidity discount and a 5% discount to take into account that, for some period, the Plans would be a minority shareholder.
- The Independent Fiduciary negotiated the terms of the Put Option which provide downside protection by permitting the Plans to sell the Pinnacle Stock back to Northwest for the greater of the original value at which it was credited to the funding standard account or its fair market value at the time it is sold back to Northwest.

Transfer restrictions on Pinnacle Stock held by the Plans are reasonable in light of the Put Option. Specifically, the Independent Fiduciary negotiated a limited period for the transfer restrictions (until July 1, 2006) and the elimination of such restrictions upon the occurrence of an Early Termination Event.

- The Independent Fiduciary negotiated voting and governance rights to be accorded to the Plans that protect the interests of the Plans (*e.g.* protect the plans from adverse changes in the ASA, in Pinnacle's capital structure, *etc.*).
- Registration rights and Plan director's rights preserve the value of the Pinnacle Stock while held by the Plans.
- The Independent Fiduciary retained an independent, expert airlines valuation firm, Eclat, to provide valuation services. Eclat determined that Pinnacle and Northwest are healthy companies, even in light of current economic conditions in the airline industry.
- The terms of the ASA and related agreements are more favorable to Pinnacle than an arm's length transaction between unrelated parties, and substantially determine and enhance the value of Pinnacle. The requirement that the director nominated by the Plans approve any changes in the ASA will ensure that any modification of those terms is done only if the changes, taken as a whole, are favorable to Pinnacle and its shareholders, including the Plans.
- Participants and beneficiaries of the Plans benefit from Northwest's improved liquidity and continued viability and competitiveness in the current economic environment.
- The Independent Fiduciary considered, and determined, that the Plans' holding of Pinnacle Stock was consistent with the Plans' investment guidelines and would not impair the Plans' diversification. The Pension Investment Committee informed the Independent Fiduciary that the holding of Pinnacle Stock constituting the Initial Contribution to the Plans would not and was not expected in the foreseeable future to impair the liquidity of the Plans and that the Plans would be able to pay benefits and expenses when due.
- Based on the Eclat and AIC valuations, the Independent Fiduciary determined that the contribution of 1,938,000 shares of Pinnacle Stock should be valued at $43,821,894 as of January 15, 2003, the date the contribution occurred.

Duties of the Independent Fiduciary

The Department notes that the appointment of an independent fiduciary to represent the interests of the Plans with respect to the transactions that are the subject of the exemption request was a material factor in its determination to propose exemptive relief. In response to the commenters' concerns about the role of the independent fiduciary, the Department believes that it would be helpful to provide its views on the responsibilities of an independent fiduciary in connection with the in-kind contribution of property to an employee benefit plan.

As noted in the Department's Interpretive Bulletin, 29 CFR 2509.94–3(d) (59 FR 66736, December 28 1994), apart from consideration of the prohibited transaction provisions, plan fiduciaries must determine that acceptance of an in-kind contribution is consistent with ERISA's general standards of fiduciary conduct. It is the view of the Department that acceptance of an in-kind contribution is a fiduciary act subject to section 404 of ERISA. In this regard, section 404(a)(1)(A) and (B) of ERISA requires that fiduciaries discharge their duties to a plan solely in the interests of the participants and beneficiaries, for the exclusive purpose of providing benefits to participants and beneficiaries and defraying reasonable administrative expenses, and with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims. In addition, section 404(a)(1)(C) requires that fiduciaries diversify plan investments so as to minimize the risk of large losses, unless under the circumstances it is clearly prudent not to do so. Accordingly, the fiduciaries of a plan must act "prudently," "solely in the interest" of the plan's participants and beneficiaries, and with a view to the need to diversify plan assets when deciding whether to accept an in-kind contribution. If accepting an in-kind contribution is not "prudent," not "solely in the interest" of the participants and beneficiaries of the plan, or would result in an improper lack of diversification of plan assets, the responsible fiduciaries of the plan

would be liable for any losses resulting from such a breach of fiduciary responsibility, even if a contribution in kind does not constitute a prohibited transaction under section 406 of ERISA.

The selection of an independent qualified appraiser to determine the value of an in-kind contribution and the acceptance of the resulting valuation are fiduciary decisions governed by the provisions of Part 4 of Title I ERISA. In discharging its obligations under section 404(a)(1), the independent fiduciary must take steps calculated to obtain the most accurate valuation available. In addition, the fiduciary obligation to act prudently requires, at a minimum, that the independent fiduciary conduct an objective, thorough, and analytical critique of the valuation. In conducting such verification, the independent fiduciary must evaluate a number of factors relating to the accuracy and methodology of the valuation and the expertise of the independent qualified appraiser. Reliance solely on the valuation provided by the appraiser would not be sufficient to meet this prudence requirement.

In considering whether to accept an in-kind contribution, the Independent Fiduciary's responsibilities include the following:

1. The Independent Fiduciary must prudently determine the fair market value of the Pinnacle Stock as of the date it is contributed to the Plans. In determining the fair market value of the stock, the Independent Fiduciary must obtain an appraisal by a qualified independent appraiser, and must ensure that the appraisal is consistent with sound principles of valuation.

2. The Independent Fiduciary must ensure that each appraisal, at a minimum, includes the following elements:

(a) A summary of the appraiser's qualifications to evaluate Pinnacle Stock,

(b) A statement that the appraiser is independent of Pinnacle and Northwest, and that the appraiser has no interest in the securities issued by Pinnacle or Northwest,

(c) A statement that the appraisal is being conducted to determine the fair market value of Pinnacle Stock, which is defined as the price at which the stock would change hands between a willing buyer and a willing seller when the former is not under any compulsion to buy and the latter is not under any compulsion to sell, and both parties are able, as well as willing, to trade and are well informed about the stock and the market for the stock,

(d) A statement of the stock's value, the methodologies used in determining the value, the reasons for the valuation in light of the methodologies, and the reasons that the appraiser chose to apply particular valuation methods rather than others,

(e) A statement of the relevance or significance accorded to the valuation methodologies taken into account,

(f) The effective date of the valuation,

(g) a description of the nature of Pinnacle's business and history,

(h) A description of the economic outlook in general, and of the condition and outlook of Pinnacle's industry in particular,

(i) An analysis of Pinnacle's financial condition and earning capacity,

(j) A description of all of the factors taken into account in making the valuation, including any restrictions, understandings, agreements or obligations limiting the Plans' ability to dispose of the stock,

(k) A statement of past transactions involving Pinnacle Stock, including dates, amounts, price, and whether the transactions were at arms-length, as well as a description of any attempts to buy or sell Pinnacle Stock over the last five years, including a description of any previous plans for initial public offerings,

(l) An analysis of the market price of securities of corporations engaged in the same or similar lines of business as Pinnacle, which are actively traded on a recognized exchange or automated broker-dealer quotation system,

(m) An analysis of the marketability, or lack thereof of the Pinnacle Stock, with specific reference to any restrictions, understandings, agreements, or obligations limiting the Plans' ability to dispose of the Pinnacle Stock,

(n) An analysis of the degree to which actual control (both in form and in substance) will pass to any of the Plans as a result of any of the contemplated transactions,

(o) To the extent that Pinnacle's current or projected revenues and expenses are related to, or dependent upon, contracts, agreements, or understandings between Northwest and Pinnacle, an analysis of Northwest's financial condition, the likelihood of a Northwest bankruptcy, and the potential impact of a Northwest bankruptcy on those contracts, agreements, or understandings, and on the market value of Pinnacle Stock, and

(p) Any other factors necessary for a prudent determination of the market value of Pinnacle Stock.

3. The Independent Fiduciary must investigate the facts and assumptions underlying the appraisals to ensure that stock contributions are not valued at more than fair market value. The Independent Fiduciary must not simply defer to the conclusions reached by the appraiser, but rather will take appropriate action to ensure:

(a) That the appraisal is based upon complete, accurate, and current data;

(b) That the appraiser is appropriately qualified to conduct the valuation;

(c) That the valuation methodologies are appropriate and adequately explained and that the appraiser has adequately justified its decision not to use alternative methodologies;

(d) That any variables used in the valuation analysis such as projected revenues, expenses, operating margins, depreciation, discount rates, capitalization rates, and multipliers are adequately supported by market data;

(e) That the stock's value is calculated with appropriate discounts for lack of marketability and control after a reasoned evaluation of the relevant market data concerning such discounts, as well as of each Plan's actual ability to effectively dispose of its stock or to control Pinnacle;

(f) That the appraisal's reasoning and assumptions are consistent, logical, and supported by appropriate financial and economic data and that any calculations are accurate;

(g) That the valuation is based on complete, accurate, and audited financial statements, which have been properly analyzed;

(h) That the assumptions underpinning the valuation are properly identified, and a careful analysis is performed of the impact of changes in those assumptions on the value of Pinnacle Stock;

(i) That the valuation has appropriately considered Northwest's financial condition in valuing Pinnacle Stock, as well as the impact of a Northwest bankruptcy on the value of Pinnacle Stock; and

(j) That the fair market value of the stock has been determined by way of a prudent investigation.

4. The Independent Fiduciary must ensure that all of the conditions above are satisfied with respect to any past contributions of Pinnacle Stock, as well as any future contributions. If previous valuations or analyses do not comport with these conditions, the Independent Fiduciary must perform any additional work necessary to make the valuations and analyses consistent with the conditions of this exemption. In no circumstance, however, may the parties treat Pinnacle Stock previously contributed to the Plans as if it had a higher value than was attributed to it at the time of the original contribution.

Northwest represents that, if the Independent Fiduciary determines that the Pinnacle Stock previously contributed to the Plans was worth less at the time of the contribution than the amount attributed to it at the time of the contribution, Northwest shall contribute additional Pinnacle Stock or cash in amounts sufficient to make up the shortfall.

Lastly, the Department notes that the above described responsibilities to be undertaken by the Independent Fiduciary are material factors in the Department's determination to grant a final exemption.

Additional Comments and Submissions

Northwest April 10, 2003 Submission

On April 10, 2003, Northwest submitted additional documentation to the Department in connection with the January 15, 2003 contribution of Pinnacle Stock to the Contract Plan (April 10 Submission Documents). Northwest noted that the Pinnacle Stock is being held in an Investment Fund established in connection with the Master Trust, and the amounts were allocated to the Contract Plan and Salaried Plan consistent with the provisions of the Master Trust, as described in the Proposed Exemption. Northwest appointed Fiduciary Counselors investment manager of the Investment Fund and Fiduciary Counselors has accepted this appointment.

Northwest April 26, 2003 Comment

By letter dated April 26, 2003, Northwest responded to many of the comments the Department had received concerning the Proposed Exemption (April 26 Comment). Northwest observed that the comments submitted to the Department raised several concerns regarding the contribution of Pinnacle Stock to the Plans, as contemplated by the Proposed Exemption. Because many of the comments raise common concerns, Northwest organized its responses to address these common concerns.

Airline Industry and Northwest Financial Condition

Comment: A number of comments noted that the airline industry is experiencing significant financial troubles and that some other airlines are in bankruptcy. The comments expressed concern that Northwest is exposed to bankruptcy risk and that the Pinnacle Stock would have greatly reduced value if Northwest were to file for bankruptcy, because Pinnacle serves Northwest.

Northwest Response: Northwest responded that Northwest recognizes that it and the airline industry face significant financial challenges. Northwest sought the exemption to permit the Pinnacle Stock contribution as part of its overall strategy of managing the current economic uncertainty. By permitting the contribution of Pinnacle Stock, Northwest is able to preserve needed cash so that it can withstand several years of losses. Maintaining liquidity is key to Northwest's strategy for avoiding bankruptcy.

Northwest strongly believes that Pinnacle Stock has significant value and that the value of Pinnacle Stock will increase when the IPO market improves for regional airlines. Regional airlines play an indispensable role in providing major airlines with important access to passengers, largely from markets too small to be serviced by a major airline. Pinnacle contributed over $500 million in revenue to Northwest in 2002 and is expected to grow its regional jet flying approximately 30 percent per year through 2005. As Pinnacle grows to 95 aircraft, the number of passengers and revenue will more than double.

Northwest has entered into a 10-year ASA with Pinnacle through 2012 that provides substantial value. Pinnacle's compensation formula within the ASA contractually provides for a target operating margin of 14 percent from 2003 through 2007, with a guaranteed floor of 12 to 13 percent during this period. In 2008, the target operating margin will be reset to a market-based percentage, but it will be no less than 10 percent and no higher than 14 percent. Northwest will no longer guarantee a minimum operating margin in 2008. The target margin will be reset after 2008 based on historical and expected operating costs.

Northwest asserts that its beliefs in this regard have been independently verified. In connection with the Exemption Transactions, Northwest does not determine the value of Pinnacle Stock. The value of Pinnacle Stock is determined by an independent fiduciary, Fiduciary Counselors, based on the valuation provided by their independent valuation firm, Eclat. The valuation prepared by Eclat took into consideration current industry conditions. If the markets return, substantial upside will benefit the Plans. Future contributions of Pinnacle Stock will continue to be subject to independent review and valuation.

Northwest adds that under ERISA sections 406 and 407, Northwest could have contributed the stock of its parent company (traded under the symbol NWAC) to satisfy its funding obligations without seeking an exemption. However, Northwest has proposed to contribute Pinnacle Stock because it believes that it is a superior investment for the Plans. The stock has long term upside potential because of the planned IPO. Indeed, the January 15, 2003 Valuation indicates that the Plans could receive a 20 percent IPO premium in connection with the Pinnacle Stock investment.

Finally, Northwest notes that regional airline stocks have generally been less volatile and better performing than the stocks of major airlines. Since September 10, 2001, regional airlines have lost 48% of their value while the major airlines have lost 78% (excluding U.S. Airways and United that have filed for Chapter 11 bankruptcy protection). Northwest also believes that the value of Pinnacle Stock is less exposed to bankruptcy risk than Northwest stock. This is because a regional airline derives its value from the value of its ASA with the major carrier and the major carrier is unlikely to terminate the ASA in bankruptcy because it would severely disrupt the flow of high yield passengers. In the case of United Airlines, for example, the airline has not rejected the ASAs it has entered into with its regional airline partners Atlantic Coast Airlines, SkyWest and Air Wisconsin. Similarly, U.S. Airways did not reject its ASA with its regional airline partners Mesa and Chautauqua. In addition, U.S. Airways has recently signed an agreement with Mesa for more regional aircraft. Wall Street analysts also look favorably on ExpressJet, the Continental Airlines regional airline partner. However, Northwest understands that some of United's airline services agreements have been renegotiated and that it has been reported that the airline services agreement between United and Atlantic Coast Airlines is the subject of current negotiations. Moreover, in connection with the Omnibus Agreement entered into between Fiduciary Counselors and Northwest, Fiduciary Counselors negotiated for limitations on Northwest's ability to unilaterally amend or terminate the ASA.

Valuation of Pinnacle Stock

Comment: A number of comments expressed concerns that Pinnacle Stock is a risky and illiquid investment and hard to value because there is no established market for the security.

Northwest Response: Northwest represents that it did not value Pinnacle Airlines for purposes of the Exemption Transactions. As a condition of the Proposed Exemption, Fiduciary Counselors, using the services of its independent appraisal firm Eclat,

determined the value of Pinnacle Stock. In doing so, Fiduciary Counselors' legal obligations run exclusively to the Plans, not to Northwest. As the Plans' independent fiduciary, Fiduciary Counselors must act prudently and in the interests of the Plans and their participants.

Northwest asserts that in valuing Pinnacle Stock, there are well-established valuation methodologies available to the valuation experts to assess the value of non-public securities like Pinnacle Stock. Such techniques were employed by Fiduciary Counselors and Eclat in this circumstance. In particular, the risk and the liquidity of the Pinnacle Stock were taken into account and are explained in the reports issued by Fiduciary Counselors and Eclat. Equally important, Fiduciary Counselors negotiated for special rights associated with the Plans' acquisition of Pinnacle Stock that limit the risks associated with Pinnacle Stock. For example, the Plans obtained a Put Option, corporate governance rights, voting rights in Pinnacle and the right to initiate an IPO or sale of Pinnacle Stock.

Collateral for Pinnacle Stock Contribution

Comment: Some comments suggested that Northwest be required to post collateral in order to contribute Pinnacle Stock to the Plans.

Northwest Response: Northwest explains that, while the Proposed Exemption and the Omnibus Agreement negotiated with Fiduciary Counselors do not require collateral, the Proposed Exemption and the Omnibus Agreement include provisions designed to limit the need for collateral. The purpose of collateral would be to protect the Plans from declines in the value of Pinnacle Stock and secure the Put Option accorded to the Plans. In this case, the Omnibus Agreement provides the Plans with a Put Option that allows Fiduciary Counselors at any time to "put" Pinnacle Stock back to Northwest at the greater of the price at the time the stock was contributed or the price at the time of the put.[7] The Omnibus Agreement further requires that Northwest provide regular notice of its liquidity to Fiduciary Counselors. Thus, the Put Option serves to protect the Plans from declines in the value of Pinnacle Stock and the liquidity notice feature ensures that the Independent Fiduciary has sufficient notice so that it may exercise the Put Option at a time when Northwest has sufficient financial resources to meet its obligation under the Put Option.

Northwest asserts that, while the Department has required collateral for some similar exemptions in the past, it has not required collateral in all cases. Here, they assert, the purpose of the exemption, to provide the Plans with a valuable security while maintaining Northwest's liquidity, would be undermined if assets were required to be used as collateral in connection with contributions of Pinnacle Stock. Moreover, to the extent that Northwest has assets to secure the contributions, such assets will be used to maintain the liquidity necessary for Northwest to weather the ongoing economic challenges.

Conflicts of Interest

Comments: Commenters expressed a concern that the contribution of Pinnacle Stock involves a conflict of interest on the part of Northwest.

Northwest Response: Northwest states that, because there is a potential for a conflict of interest, the Proposed Exemption required that Northwest appoint an independent fiduciary who is vested with the discretion to determine whether the Plans should acquire, hold or dispose of Pinnacle Stock. The Proposed Exemption included specific conditions that ensure that the independent fiduciary is free from conflicts of interest. The Proposed Exemption further required that the independent fiduciary obtain expert valuation advice from an independent valuation firm. Thus, to eliminate the potential for a conflict of interest, two parties completely independent of Northwest—Fiduciary Counselors and Eclat—represented the interests of the Plans in connection with the transaction.

Northwest represents that the final terms of the Omnibus Agreement reflect the fact that Fiduciary Counselors has represented the Plans' interests. In this regard, the Plans acquired Pinnacle Stock at a favorable price and the Plans obtained voting and management rights, anti-dilution rights, limits on Northwest's ability to terminate the ASA, rights to sell the Pinnacle Stock or dispose of it in an IPO in a variety of circumstances, and a protective Put Option. In addition, Pinnacle has an independent Board of Directors with one member appointed by Fiduciary Counselors, and the Fiduciary Counselors-appointed Board member is entitled to special voting rights on certain matters.

Exposure to Future Underfunding

Comment: Several commenters expressed concern that the exemption would expose the Plans to increased underfunding in the future.

Northwest Response: Northwest notes that it has never before sought a prohibited transaction exemption and has never missed a pension funding payment. Indeed, during the 1990's, Northwest contributed to its pension plans millions of dollars more than the required amount of contributions. As Northwest's track record demonstrates, Northwest agrees that the Plans need to be soundly funded. The Proposed Exemption is part of Northwest's strategy to achieve that goal. Through the contribution of Pinnacle Stock, Northwest will be able to meet up to $330 million (based on the current valuation) in near term funding obligations while maintaining the airline's ability to weather difficult times, to the benefit of all concerned. Moreover, when the IPO of Pinnacle Stock occurs, the Plans may benefit from a potentially significant IPO premium with respect to their holdings of Pinnacle Stock. In the absence of the contribution of Pinnacle Stock, the Plans could suffer from increased underfunding. This is because a cash contribution is not a viable alternative given the company's liquidity needs.

Preference for Cash Contribution

Comment: A number of commenters expressed a preference that pension contributions be made with cash rather than Pinnacle Stock.

Northwest Response: Northwest notes that like other major airlines, Northwest is in a temporary period of extraordinary airline revenue weakness and volatility. In this environment, it is necessary to maintain high liquidity reserves to ensure the viability of the airline and protect the long-term interests of the pension plans and plan participants.

Northwest asserts that, if its current cash needs were not so great, Northwest would make its pension contributions in cash as it has in the past. However, because of its liquidity needs, a cash contribution is not a viable alternative.

[7] Northwest notes that specifically, if the Pinnacle Stock is not publicly traded, the Plans will receive the greatest of (i) the initial contribution value (the Floor Price), (ii) the fair market value as determined by the Independent Fiduciary at the time of the exercise of the Put Option, or, if greater, at the closing date of the Put Option, and, (iii) if a third party sale is elected by the Plans and Northwest does not exercise its right of first refusal, the proceeds from the sale of Pinnacle Stock held by the Plans to such third party. If the Pinnacle Stock is publicly traded, the Plans will receive the greater of (i) the Floor Price, or (ii) the average closing price for the stock on the public market for the 10 trading days preceding the exercise date or, if greater, the closing price on the day before the Put Option closing date.

Northwest stated "[i]n the absence of an exemption, Northwest would have to consider the contribution of NWA Corp. stock or an IRS waiver. Alternatively, Northwest could consider filing for bankruptcy, which would suspend most pension contributions, and could result in termination of some or all of the Plans."

The goal of the Pinnacle Stock contribution is to (1) provide the Plans with a valuable security, (2) meet near term pension funding obligations, and (3) allow Northwest to preserve cash to withstand the current economic environment. Northwest believes this is the best outcome for all Plan participants and beneficiaries.

Eclat May 16, 2003 Response

On May 16, 2003, Mr. William S. Swelbar, Managing Director of Eclat, responded to the Department concerning questions on the two valuations of Pinnacle. Eclat provided additional information in support of its view that the discount rates, and other factors used in determining the fair market value of the Pinnacle Stock were reasonable and theoretically sound.

Northwest May 20 and June 10, 2003 Comment Letters

On May 20 and June 10, 2003, Northwest responded to certain issues raised during the Hearing that were not responded to in the April 26 Comment.

1. During the Hearing, the Department asked Northwest to provide information concerning the funded status of the Pilot Plan, Contract Plan and Salaried Plan at the end of 2002. Northwest provided the funded status of each Plan as of 1/1/03 as shown in the following table.

NORTHWEST AIRLINES, INC.—CURRENT LIABILITY FUNDED STATUS AT JANUARY 1, 2003

	Pilots plan	Contract plan	Salaried plan
Current Liability using 6.65% interest rate (IRC § 412(l))	$3,665,896,686	$2,673,540,738	$425,037,585
Market Value of Assets (with PY02 accrued contributions)	2,253,513,119	[2] 1,385,832,156	[3] 254,670,253
Actuarial Value of Assets (with PY02 accrued contributions) [1]	2,704,215,743	[2] 1,662,998,587	[3] 305,604,304

[1] Actuarial value of assets smoothes investment gains and losses over a five-year period.
[2] Accrued contribution of $202,626,983 for PY02.
[3] Accrued contribution of $20,083,879 for PY02.

2. During the Hearing, employees of Northwest referenced an employee stock program that was established by the company in 1993. Northwest explained that, as part of labor agreements reached in 1993, Northwest's parent company, NWA Corp., issued to trusts for the benefit of participating employees 9.1 million shares of a new class of Series C cumulative, voting, convertible, redeemable preferred stock, par value of $.01 per share (the Series C Preferred Stock), and 17.5 million shares of Common Stock and provided the union groups with three positions on the Board of Directors. The Series C Preferred Stock ranks senior to Common Stock with respect to liquidation and certain dividend rights. As long as the Common Stock is publicly traded, no dividends accrue on the Series C Preferred Stock.

The Northwest Airlines Corporation Employee Stock Plan (Employee Stock Plan) was established in 1993. The Employee Stock Plan is a profit sharing plan that is tax qualified under section 401(a) of the Code and subject to ERISA.[8] The Employee Stock Plan was established through labor negotiations between Northwest and its unions in 1993 to hold contributions of Northwest Airlines Corporation Series C Preferred Stock. These negotiations resulted in agreements (Agreements) between Northwest and each of its unions under which Northwest would contribute to the Employee Stock Plan a newly created, special class of stock (the Series C Preferred Stock) in an amount that would equal the monetary value of certain wage and other concessions agreed to by the unions. Each of Northwest's three main unions at the time of the Agreements also was granted the right to appoint one director to the Northwest board of directors.

The Employee Stock Plan covers in general terms Northwest's employees employed from August 1, 1993 through 1996, including employees represented by Air Line Pilots Association (ALPA), International Association of Machinists and Aerospace Workers (IAM), International Brotherhood of Teamsters (IBT), Airline Technical Support Association (ATSA), Northwest Airlines Meteorologists Association (NAMA), Transport Workers Union of America (TWUA) and management employees. In 1994 through 1997, Northwest made annual contributions of Series C Preferred Stock to the Employee Stock Plan for the benefit of employees represented by the IAM and IBT (the other labor groups had converted their right to receive Series C Preferred Stock into Common Stock under the Special Conversion Option described below). The shares were then allocated to individual accounts established on behalf of each eligible employee. A total of 9.1 million shares of Series C Preferred Stock were contributed to the Employee Stock Plan.

Each share of the Series C Preferred Stock is convertible at any time into 1.364 shares of NWA Corp. Common Stock (Common Stock). At the time a participant exercises conversion rights, the Series C Preferred Stock is converted to Common Stock, the Common Stock is sold and cash is allocated to participant accounts. In addition, under the Agreements, the trustee of each plan was given a one time Special Conversion Option that, if elected, resulted in the relevant trusts receiving Common Stock at the rate of 1.9096 shares of Common Stock for each share of the Series C Preferred Stock that they would have otherwise received. The Special Conversion Option expired on February 9, 1994. On that day, ALPA, TWUA, NAMA, ATSA and the Company on behalf of its management and non-contract employees exercised the Special Conversion Option, with the IAM and IBT electing not to exercise the Special Conversion Option (63 shares are still owned by the ALPA trust). Thus, almost all of the Series C Preferred Stock that remains in the Employee Stock Plan is allocated to the accounts of employees represented by the IAM and IBT. As of December 31, 2002, 4.3 million shares of Series C Preferred Stock have been converted into Common Stock and the remaining

[8] The original Employee Stock Plan was established in 1993. On December 2, 2002, the Employee Stock Plan was divided into three components, which were then merged into the existing Northwest Airlines Retirement Savings Plan for Pilot Employees, Northwest Airlines Retirement Savings Plan for Contract Employees and Northwest Airlines Retirement Savings Plan for Salaried Employees. Each of these plans is a Code section 401(k) plan that is tax qualified under section 401(a) of the Code and subject to ERISA. For ease of reference, Northwest refers to the Employee Stock Plan, but the factual discussion of the Series C Preferred Stock remains accurate after the merger with the Northwest 401(k) plans.

4.8 million shares outstanding are convertible into 6.6 million shares of Common Stock.

The holders of outstanding Series C Preferred Stock have a "put right" in 2003 to require NWA Corp. to repurchase such shares for an amount equal to the actual wage savings achieved under the 1993 labor agreement (projected to be $226 million at the August 1, 2003 put date). NWA Corp. has the option to repurchase such shares in cash, by the issuance of additional Common Stock, or by the use of cash and stock. A decision to issue only additional Common Stock must be approved by a majority of the three directors elected by the holders of the Series C Preferred Stock. If NWA Corp. decides not to repurchase the Series C Preferred Stock, quarterly dividends will accrue beginning August 1, 2003, at 12% per annum and the employee unions will receive three additional Board of Directors positions. If, on August 1, 2003, NWA Corp. decides not to repurchase the Series C Preferred Stock, beginning on August 1, 2003 and on each succeeding quarter end date, NWA Corp. must use all "Available Cash" (a defined term in the Agreements) to effect partial repurchases of the Series C Preferred Stock, but only if and to the extent NWA Corp. is not prohibited from making such repurchases under applicable Delaware corporate law or any loan agreement to which NWA Corp. is a party. Any decision not to use all Available Cash to effect such partial purchases must be approved by a majority of the directors elected by the holders of the Series C Preferred Stock.

On August 1, 2003, Northwest issued a press release that announced its decision on the Series C Preferred Stock. The Northwest board of directors determined that at this time the company could not legally redeem the 4.8 million shares of its Series C Preferred Stock still outstanding and made the following statement:

> After a thorough review of the legal restrictions applicable to the company, the board concluded that Northwest was not able to buy back the Series C Preferred Stock, at this time. As a board, we recognize the valuable contributions our employees made to the company during the 1993–1996 wage reduction period and acknowledge the company's obligation to buy back the Series C Preferred Stock. We want to do so as soon as possible. We devoted substantial time and effort to this issue. We discussed the Series C Preferred Stock buy back at length in our regularly scheduled April and June board meetings, and held two special meetings in July devoted exclusively to the Series C issue * * *. At the conclusion of these deliberations, it was clear that the legal restrictions applicable to stock buy backs under Delaware Law did not permit Northwest to proceed at this time with the buy back of the Series C Preferred Stock.

The board noted that the company's obligation to the holders of the Series C Preferred Stock continues until Northwest has the ability to repurchase the Series C Preferred Stock. Until the Series C stock is repurchased, each share will accrue a 12% per year dividend on the $46.96 per share buy back price.

On August 1, 2003, in response to the Department's questions concerning the "legal restrictions" that prevented Northwest from repurchasing the Series C Preferred Stock and whether these legal restrictions were tied to Northwest's financial condition, Northwest explained that in making the Series C stock repurchase decision, the board of NWA Corp. was subject to a Delaware law that applies only to NWA Corp.'s repurchase of its own stock. The Delaware law does not apply to the repurchase of Pinnacle Stock, which is not treated as NWA Corp.'s own stock. The Delaware law applicable to the repurchase of the Series C stock requires the Board to make a finding that NWA Corp. has adequate surplus, defined as the net asset value of the corporation in excess of its capital. At the present time, the Board was unable to make this finding.

The Department also questioned whether such restrictions would similarly preclude Northwest from honoring the Put Option. Northwest responded that no similar legal restriction would apply to the repurchase of Pinnacle Stock pursuant to the exercise of the Put Option. Minnesota law would not restrict the repurchase of Pinnacle stock by Northwest, a Minnesota corporation, which issued the Put Option. In addition, Delaware law would not restrict NWA Corp., a Delaware corporation, from repurchasing the Pinnacle Stock as the guarantor of the Put Option. Both the Minnesota law and the Delaware law relate to the repurchase of the stock issued by Northwest Airlines, Inc. and NWA Corp., respectively, and would not apply to the repurchase of stock of Pinnacle (the Pinnacle Stock). Northwest notes that the board previously approved the Omnibus Agreement, which includes the Put Option, and no further action would be required of the board in the event that the Put Option is exercised by the Independent Fiduciary.

Northwest stated that the language at section 5.1(b) of the Omnibus Agreement contains a representation that Northwest has the corporate and legal authority to meet its obligations under the agreement, including the Put Option. Northwest asserts that it couldn't make this representation if there were restrictions that limited its ability to honor the Put Option or other aspects of the Omnibus Agreement and this representation was the product of the negotiations between the Independent Fiduciary and Northwest (as noted above).

Fiduciary Counselors' July 11, 2003 Submission

Additional Information

Fiduciary Counselors sent additional information to the Department on July 11, 2003. The information addressed, among other issues, how the possibility of a Northwest bankruptcy was factored into the valuation, how the valuation was "stress" tested for other assumptions contained in the valuation, and the reasons for the selection of a 15% liquidity discount.

Fiduciary Counselors, AIC and Eclat represent that the ASA between Northwest and Pinnacle provided the framework for the final valuation. There were significant changes made to the original valuation performed for the PBGC (the Eclat Report) based on this agreement that proved to be more conservative with respect to the ultimate valuation. Fiduciary Counselors, AIC and Eclat also noted that some of the information used by Eclat for the January 15, 2003 Valuation was not available during the initial valuation in the Eclat Report.

Additionally, by letter dated July 15, 2003, Fiduciary Counselors represents that in preparing the valuation for subsequent contributions, Eclat will reexamine the assumptions used in preparing the initial valuation and will continue to stress test the assumptions in its valuation model to reflect the credit-worthiness of Northwest and changing conditions in the regional jet market.

Change of Affiliation of Fiduciary Counselors

On July 11, 2003, Fiduciary Counselors informed the Department that Fiduciary Counselors Inc. (formerly Aon Fiduciary Counselors, Inc.) (Fiduciary Counselors) is no longer a subsidiary of Aon Corporation. As of June 30, 2003, Fiduciary Counselors was acquired by Fiduciary Group, Inc., in a management-led buyout.

Fiduciary Counselors notes that there will be no change in its providing objective and independent investment management. Ellen A. Hennessy will

continue as President of Fiduciary Counselors and, as majority shareholder of Fiduciary Group, will continue to control management decisions with respect to Fiduciary Counselors. Ellen A. Hennessy will continue to be the primary person at Fiduciary Counselors handling its responsibilities as independent fiduciary to the Northwest Airlines defined benefit plans.

Fiduciary Counselors adds that AIC, which remains a subsidiary of Aon, will continue to act as advisor in connection with this engagement. There will be no change in their personnel assigned to this engagement or in the manner in which the fees are split between the two organizations.

As described in the Fiduciary Counselors letter to the Department on January 6, 2003, Northwest has agreed to pay Fiduciary Counselors an annual fee that covers both the independent fiduciary and investment management services provided by Fiduciary Counselors and the investment advisory services provided by AIC. The initial fee was remitted directly to Aon Consulting, Inc., then a parent company of both Fiduciary Counselors and AIC. Aon Consulting internally allocated 25% of the fee to Fiduciary Counselors, which comprised less than 5% of its annual gross revenue in 2002. In connection with the change in ownership of Fiduciary Counselors, Fiduciary Counselors and AIC have agreed that future payments will be allocated in the same proportions. Payment will be made to Fiduciary Counselors, which will remit 75% to AIC. Based on current client engagements, Fiduciary Counselors anticipates that the portion retained by it will comprise less than 5% of Fiduciary Counselors' gross revenue for 2003.

Fiduciary Counselors asserts that the sale of Fiduciary Counselors will, if anything, increases their independence. As reflected in the Proposed Exemption, another Aon affiliate does provide non-plan services to Northwest, albeit services representing less than 1% of Aon's total annual revenue. In contrast, under its new ownership, neither Fiduciary Counselors nor any affiliate will accept any other engagement from Northwest while it is independent fiduciary for the Plans.

Termination of the Independent Fiduciary Agreement

The Department notes that the Preamble to the Proposed Exemption stated that either party may terminate the Independent Fiduciary Agreement for any reason upon 60 days notice and that the Agreement may be terminated immediately for cause. As further noted in the Preamble, the parties to the Agreement shall notify the Department within 30 days of any decision regarding the resignation, termination or change in control of the Independent Fiduciary. The Department wishes to clarify that any replacement Independent Fiduciary must be acceptable to the Department and must assume its responsibility prior to the effective date of the removal of the predecessor Independent Fiduciary.

Northwest and ALPA Agreement Regarding Pinnacle Stock

On June 27, 2003, ALPA and Northwest provided the Department with a Letter of Agreement between Northwest and the Northwest airline pilots represented by ALPA (the Letter Agreement) regarding the acquisition and holding of Pinnacle stock by the Northwest Pension Plan for Pilot Employees (the Pilot Plan). ALPA and Northwest informed the Department that the Letter Agreement will be executed by the parties in connection with a proposed voluntary contribution of Pinnacle Stock (described below).

The Letter Agreement provides that:

1. Northwest will make a voluntary contribution to the Pilot Plan on or before September 15, 2003 so that the funded current liability percentage for the Plan is at least 80% for the 2003 Plan Year. This voluntary contribution will eliminate the funding requirements under the Code and ERISA for the 2003 Plan Year that would otherwise be payable with respect to the Pilot Plan.

2. The voluntary contribution to the Pilot Plan will consist entirely of Pinnacle Stock. At the time the voluntary contribution is made to the Pilot Plan, Northwest also will contribute Pinnacle Stock to the Salaried Plan in an amount such that the amount of the Pinnacle Stock held by the Salaried Plan equals the required minimum funding contribution due under ERISA and the Code on September 15, 2003. Any remaining Pinnacle stock will then be contributed to the Contract Plan.

3. The Pinnacle Stock contributed to the Pilot Plan will be held in a separate, segregated subaccount of the Master Trust and held for the exclusive benefit of the Pilot Plan. Contributions of Pinnacle Stock to the Salaried Plan and the Contract Plan will likewise be held in a separate segregated subaccount of the Master Trust and held for the exclusive benefit of each respective plan.

4. Northwest will obtain an amendment of the Omnibus Agreement so that the Independent Fiduciary will have first priority to sell Pinnacle Stock in an initial public offering, if certain conditions exist.

5. The Contract Plan, the Salaried Plan and the Pilot Plan will have the same registration rights provided in the Omnibus Agreement dated January 15, 2003 between Pinnacle Airlines Corp., Northwest and Fiduciary Counselors.

6. Northwest may not terminate Fiduciary Counselors as the Independent Fiduciary without the consent of ALPA and may not appoint a new Independent Fiduciary without the consent of ALPA. The Independent Fiduciary will have the sole responsibility to determine whether to acquire, hold or dispose of Pinnacle Stock on behalf of the Plans and whether to exercise the Put Option with respect to Pinnacle Stock.

7. The monthly contributions required to be made to the Pilot Plan pursuant to the pilot collective bargaining agreement are waived for the 2004 and 2005 Plan Year.

As described in the Proposed Exemption, the current provisions of the Pilot Plan and the pilot collective bargaining agreement prohibit the Pilot Plan from acquiring or holding employer securities. Without modifications to the pilot collective bargaining agreement, the Proposed Exemption contemplated that the other two Plans would receive a contribution of Pinnacle Stock in an amount equal to the maximum amount permitted under section 407(a)(2) of ERISA, while the Pilot Plan would receive no contributions of Pinnacle Stock.

ALPA represents that it recognizes the need for Northwest to preserve liquidity so ALPA has agreed to modify the collective bargaining agreement and the Pilot Plan to permit the Pilot Plan to acquire and hold employer securities through a voluntary contribution to the Pilot Plan. The Proposed Exemption contemplates both voluntary and required contributions to the Northwest Plans, as did the Application filed by Northwest on November 6, 2002 and the Omnibus Agreement.

Northwest and ALPA assert that the voluntary contribution gives Northwest the liquidity it needs, and thereby the ability to maintain all of its Plans, by eliminating the funding requirement for the Pilot Plan for the 2003 Plan Year, possibly reducing the funding requirements for future plan years, and by waiving the monthly contribution requirement under the pilot collective bargaining agreement for the 2004 and 2005 Plan Years. The Pilot Plan and its participants benefit from the voluntary contribution by providing an early contribution of an asset with significant

value to more adequately fund the benefits promised under the Pilot Plan.

The allocation method made pursuant to the Letter Agreement will result in a modest change in the percentage of the Contract and Salaried Plans' assets invested in Pinnacle Stock compared to the ratable allocation contemplated by the Proposed Exemption. Without modification to the pilot collective bargaining agreement, the Proposed Exemption contemplated that the Salaried and Contract Plans could hold Pinnacle Stock equal up to 10% of each Plan's assets. Under the Letter Agreement, the Salaried and Contract Plans will instead hold Pinnacle Stock with a value equal to approximately 8% of their respective assets.

Northwest and ALPA believe that the Letter Agreement also enhances protections for participants in all three Plans by giving the Independent Fiduciary first priority to sell Pinnacle Stock in an IPO where the number of shares sought to be sold exceeds the number that can be sold.

The Department asked whether Northwest intends to contribute cash or some other asset to satisfy the balance of the calendar year 2003 funding requirements of the Salaried and Contract Plans that will not be met by the Pinnacle Stock contribution as a result of the Letter Agreement. Northwest represents that it will make any such contributions in cash. Additionally, Northwest will maintain a subaccount for each Plan within the Master Trust for so long as that Plan holds Pinnacle Stock. Once all of the Pinnacle Stock in such an account has been liquidated, that subaccount may be dissolved.

As noted in the June 27, 2003 letter from Northwest and ALPA to the Department, Northwest states that the Letter Agreement will be executed in connection with the voluntary contribution. Thus, the ALPA agreement will be formally entered into and effective on the date of the voluntary contribution.

August 6, 2003 Northwest and Independent Fiduciary Response

Audited Financial Statements

The Department asked the Independent Fiduciary if the January 15, 2003 Valuation was based on audited financial statements.

Fiduciary Counselors stated that Eclat's valuation took into account a variety of financial data. Eclat was provided with Pinnacle's audited financial statements for the years 2000 and 2001. Eclat was also provided with unaudited interim and full year financial information for 2002. However, audited 2002 financial statements were not available at the time of Eclat's valuation for the January 15, 2003 contribution.

Enhanced Communication with Plan Participants

Several commenters requested that Northwest provide for enhanced communication with the Plan participants concerning the Exemption Transactions. Additionally, ALPA requested that it be involved in the monitoring of the Independent Fiduciary.

In this regard, Fiduciary Counselors plans to hold periodic conference calls to report to the representatives of the participants covered by collective bargaining agreements on developments with respect to the Pinnacle Stock held by the plans. Additionally, Northwest notes that the Letter Agreement between Northwest and ALPA relating to a voluntary contribution of Pinnacle Stock would provide ALPA with a role in reviewing and approving the termination, and any replacement, of the independent fiduciary. This, together with the reporting planned by Fiduciary Counselors, will permit ALPA to monitor the Independent Fiduciary.

Plan Asset Investment Guidelines

A number of commenters asked, if Pinnacle Stock is contributed to the Plans, how would this affect the manner in which other Plan assets are invested?

Northwest noted that, as is the case for sponsors of defined benefit plans, Northwest has adopted investment guidelines and asset allocation strategies that guide the investment of the Plans' assets. These guidelines contemplate that a certain amount of assets will be allocated to securities with risk and return characteristics similar to Pinnacle Stock. Thus, Northwest notes that the holding of Pinnacle Stock by the Plans can fit within the overall investment strategy adopted for the Plans.

Fiduciary Counselors notes, as described in its report, in accepting the Pinnacle Stock contribution, Fiduciary Counselors determined that Pinnacle Stock fit within the Plans' investment guidelines and diversification needs. Fiduciary Counselors also obtained a determination from Northwest's Pension Investment Committee that the holding of Pinnacle Stock would not impair the liquidity of the Plans and that the Plans would be able to pay benefits and expenses when due. Similar considerations will be taken into account by Fiduciary Counselors in determining whether to accept any future contribution of Pinnacle Stock.

Minimum Rate of Return

Some commenters asked if Northwest would be willing to guarantee the Plans a minimum rate of return on the Pinnacle Stock such as a rate equal to the inflation rate.

Northwest stated that it would not. Northwest provided that the Omnibus Agreement guarantees that the Plans always receive the greater of the initial contribution value of Pinnacle Stock or the value of the stock at the time of an IPO or the exercise of the Put Option. Northwest guarantees the "principal" attributable to the investment in Pinnacle Stock. According to Northwest, the Omnibus Agreement provides the Plans substantial investment risk protection, protection that would not be available to the Plans when investing in securities with similar risk and return characteristics. Moreover, the Plans will receive all of any investment gains attributable to their shares of Pinnacle Stock at the time of an IPO. Northwest also noted that it assumes the investment risk associated with any investment by the Plans, including the investment in Pinnacle Stock, and must make up any investment losses through future contributions to the Plans.

The IPO

Several commenters asked whether the Plan trustees should decide when to initiate a public offering since the Plans will own a majority of Pinnacle Stock.

Northwest noted that under the terms of the Omnibus Agreement, Northwest is responsible for making up the difference, if any, between the IPO price and the original contribution value. As a result, Northwest has a strong interest in ensuring that maximum value is obtained in connection with an IPO and Northwest believes that it is appropriate for it to determine the timing of an IPO. Additionally, Fiduciary Counselors agreed only to a limited period during which Northwest has the exclusive right to cause an IPO. Under the Omnibus Agreement, Northwest controls the timing of the IPO until the earlier of July 1, 2006 or the occurrence of an early termination event. After that date, the Omnibus Agreement provides Fiduciary Counselors with the right to cause an IPO of Pinnacle Stock.

Pinnacle Management

Several commenters asked if Northwest would manage Pinnacle in a manner that maximizes its value.

Northwest replied that Northwest does not manage Pinnacle. Except for one director appointed by Northwest, Pinnacle's board is independent of Northwest. Northwest expects that the

board, like any board fulfilling its fiduciary duties, will seek to maximize the value of the enterprise. In addition, Fiduciary Counselors negotiated comprehensive voting and governance rights specifically for the Plans under the Omnibus Agreement. For example, Fiduciary Counselors appointed a director to Pinnacle's board who sits on the board's audit committee. Once the Plans own 50% of the Pinnacle Stock, the Plans' director will exercise additional approval rights relating to the company's bylaws and capital structure. In addition, changes to the ASA and other significant transactions must be approved by a majority of Pinnacle's directors, which majority must include the Plans' director.

Modifications to the ASA

On July 23, 2003, Northwest confirmed to the Department that the modifications to the ASA referred to in the Proposed Exemption have been made. The ASA was revised to provide that the acquisition or disposition of shares of Pinnacle Stock pursuant to the terms of the Omnibus Agreement does not constitute a Change of Control (as defined in the ASA). The ASA also was revised to eliminate the unilateral right of Northwest to terminate the ASA in the event of the bankruptcy of Northwest.

10% Limitation

In the March 5 Comment, Fiduciary Counselors corrected previous information provided to the Department in the Proposed Exemption with reference to "employer securities or employer real property" in the last sentence of paragraph 14 in column 1 of 68 FR 2584 (emphasis added) and each other place it occurs. This phrase should be changed to "employer securities and employer real property".

In this regard, the Department wishes to note that Northwest has not requested, and the Department is not providing, any relief for any contribution of Pinnacle Stock that, when aggregated with any employer securities and employer real property currently held by any of the Plans, represents more than 10 percent of the value of that Plan's assets.

Best Interest Standard

In the March 5 Comment, Fiduciary Counselors noted that, consistent with the statutory requirements of section 404(a) of ERISA, the reference in the Proposed Exemption to "the *best* interests of the Plans' participants and beneficiaries" (emphasis added) should be changed to "the interests of the Plans' participants and beneficiaries".

Entity References

In the March 3 Comment, Northwest observed that there are three references to NWA Inc. in the second column at 68 FR 2584 that should reference Northwest (Northwest Airlines, Inc.), the wholly-owned subsidiary corporation of NWA Inc. The references appear almost halfway down the column beginning in the fourth full paragraph, and in the last paragraph in the column.

Jones Day

The March 5 Comment noted that due to the firm's recent name change, the reference to "Jones, Day, Reavis & Pogue" in the first column of the Proposed Exemption at 68 FR 2584 should be changed to "Jones Day".

Determination of the Department

Accordingly, based upon the representations made by the Applicant, the written comments received in response to the Proposed Exemption, the record of the public hearing, and the analysis conducted by the Independent Fiduciary, the Department has determined to grant the exemption. The Department has, in transactions of this nature, placed emphasis on the need for an Independent Fiduciary and on such Independent Fiduciary's considered and objective evaluation of the transactions. In its deliberations, which included its analysis of all aspects of the transactions, the Independent Fiduciary has consistently represented for the record that no contribution of Pinnacle Stock will be accepted on behalf of the Plans unless such transactions are found by the Independent Fiduciary to be in the interests of the Plans. Finally, the Department notes that the Independent Fiduciary's satisfaction of its obligations in connection with the determination of the fair market value of the Pinnacle Stock as previously described by the Department in the Preamble to the final exemption is a critical factor in the Department's decision to grant a final exemption.

The Application pertaining to the exemption, the Proposed Exemption, the comments submitted to the Department and the responses to the comments, the transcript of the Hearing, and all other documents submitted to the Department concerning this exemption have been included as part of the public record of the Application. The complete Application file, including all supplemental submissions received by the Department, is available for public inspection in the Public Disclosure Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC 20210.

For a complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the January 17, 2003 Notice of Proposed Exemption at 68 FR 2578.

General Information

The attention of interested person is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that the plan operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The exemption will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department finds that the exemption is administratively feasible, in the interests of the plans and their participants and beneficiaries and protective of the rights of the participants and beneficiaries of the plans;

(4) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete and accurately describe all material terms of the transactions, which are the subjects of the exemption.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department finds that the exemption is:

(a) Administratively feasible;

(b) In the interests of the plans and their participants and beneficiaries; and

(c) Protective of the rights of the participants and beneficiaries of the plans.

Section I. Covered Transactions

The restrictions of sections 406(a), 406(b)(1) and (b)(2), and 407(a) of the Act and the sanctions resulting from the application of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to:

(1) The transfer of the common shares of Pinnacle Airlines Corp. (Pinnacle Stock) to the Northwest Airlines Pension Plan for Salaried Employees, the Northwest Airlines Pension Plan for Pilot Employees, and the Northwest Airlines Pension Plan for Contract Employees (the Plans) through the in-kind contribution(s) of such shares by Northwest Airlines, Inc. (Northwest), a party in interest with respect to such Plans;

(2) The holding of the Pinnacle Stock by the Plans;

(3) The sale of the Pinnacle Stock by the Plans to Northwest;

(4) The acquisition, holding, and exercise by the Plans of a put option (the Put Option) granted by Northwest which permits the Plans to sell the Pinnacle Stock to Northwest; and

(5) The guaranty to the Plans by Northwest Airlines Corporation of Northwest's obligation to honor the Put Option.

Section II. Conditions

This exemption is conditioned upon adherence to the material facts and representations described herein and upon satisfaction of the following requirements:

(a) The Plans acquire the Pinnacle Stock through one or more contributions by Northwest during the calendar years 2003 and 2004;

(b) An independent qualified fiduciary (the Independent Fiduciary), acting on behalf of the Plans, represents the Plans' interests for all purposes with respect to the Pinnacle Stock, and determines, prior to entering into any of the transactions described herein, that each such transaction, including the contribution of the Pinnacle Stock, is in the interests of the Plans;

(c) The Independent Fiduciary negotiates and approves the terms of any of the transactions between the Plans and Northwest that relate to the Pinnacle Stock;

(d) The Independent Fiduciary manages the holding and disposition of the Pinnacle Stock and takes whatever actions it deems necessary to protect the rights of the Plans with respect to the Pinnacle Stock;

(e) The terms of any transactions between the Plans and Northwest are no less favorable to the Plans than terms negotiated at arm's-length under similar circumstances between unrelated third parties;

(f) The Independent Fiduciary determines the fair market value of the Pinnacle Stock contributed to each plan as of the date of each such contribution. In determining the fair market value of the Pinnacle Stock, the Independent Fiduciary obtains an appraisal from an independent qualified appraiser selected by the Independent Fiduciary, and ensures that the appraisal and the Independent Fiduciary's analysis of the appraisal are consistent with sound principles of valuation and with the elements described by the Department in the Preamble to this final exemption in the section entitled Duties of the Independent Fiduciary;

(g) The terms of (1) the Put Option granted by Northwest; (2) any exercise of the Put Option by the Plans; and (3) any sale of the Pinnacle Stock by the Plans to Northwest other than through the exercise of the Put Option will be in accordance with the terms set forth in the Term Sheet and the Omnibus Agreement;

(h) Immediately after each contribution, employer securities and employer real property, including the Pinnacle Stock, will represent no more than 10 percent (10%) of the value of each Plan's assets. For purposes of this requirement, the term "employer real property" means real property leased to, and the term "employer securities" means securities issued by, an employer any of whose employees are covered by the Plans or by an affiliate of such employer; and

(i) The Plans incur no fees, costs or other charges as a result of their participation in any of the transactions described herein.

Section III. Definitions

(a) The term "independent fiduciary" means a fiduciary who is: (1) independent of and unrelated to Northwest and its affiliates, and (2) appointed to act on behalf of the Plans for all purposes related to, but not limited to, (A) the in-kind contribution of the Pinnacle Stock by Northwest to the Plans, (B) the holding of the Pinnacle Stock by the Plans; (C) the acquisition, holding, and exercise by the Plans of the Put Option, and (D) any sale of the Pinnacle Stock by the Plans. For purposes of this exemption, a fiduciary will not be deemed to be independent of and unrelated to Northwest if: (1) Such fiduciary directly or indirectly controls, is controlled by or is under common control with Northwest, (2) such fiduciary directly or indirectly receives any compensation or other consideration in connection with any transaction described in this exemption; except that an independent fiduciary may receive compensation for acting as an independent fiduciary from Northwest in connection with the transactions contemplated herein if the amount or payment of such compensation is not contingent upon or in any way affected by the independent fiduciary's ultimate decision, and (3) the annual gross revenue received by such fiduciary, during any year of its engagement, from Northwest and its affiliates exceeds 5 percent (5%) of the independent fiduciary's annual gross revenue from all sources for its prior tax year.

(b) The term "affiliate" means:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) any officer, director, employee, relative, or partner in any such person; and

(3) any corporation or partnership of which such person is an officer, director, partner, or employee.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Date: This exemption is effective as of January 15, 2003.

Signed at Washington, DC this 14th day of August 2003.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–21162 Filed 8–18–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Veterans' Employment and Training Service

Proposed Information Collection Request Submitted for Public Comment and Recommendations Eligibility Data Form: Uniformed Services Employment and Reemployment Rights Act and Veteran's Preference (USERRA/VP)

AGENCY: Veterans' Employment and Training Service (VETS), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with The Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 C (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Veterans' Employment and Training Service (VETS) is soliciting comments concerning the proposed information collection request for the VETS USERRA/VP Form 1010.

DATES: Comments are to be submitted by October 20, 2003.

ADDRESSES: Comments are to be submitted to the Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW., Washington, DC 20210, telephone (202) 693–4711. Written comments limited to 10 pages or fewer may also be transmitted by facsimile to (202) 693–4755. Receipt of submissions, whether by U.S. mail, e-mail or FAX transmittal, will not be acknowledged; however, the sender may request confirmation that a submission has been received, by telephoning VETS at (202) 693–4728.

FOR FURTHER INFORMATION CONTACT: Contact David Pafford, Division of Investigation and Compliance, Veterans' Employment and Training Service, U.S. Department of Labor, Room S–1316, 200 Constitution Ave., NW, Washington, DC 20210, telephone: (202) 693–4728 (Voice) or (800) 670–7008 (TTY/TDD). Copies of the referenced information collection request are available for inspection and copying through VETS and will be mailed to persons who request copies by telephoning Mr. David Pafford at (202) 693–4728.

SUPPLEMENTARY INFORMATION:

I. Background: The VETS/USERRA/VP Form 1010 is used to file complaints with the Department of Labor's Veterans' Employment and Training Service (VETS) under either the Uniformed Services Employment and Reemployment Rights Act (USERRA) or laws/regulations related to veterans' preference (VP) in Federal employment. The purposes of the Uniformed Services Employment and Reemployment Rights Act (USERRA) and this information collection requirement include: to protect and facilitate the prompt reemployment of members of the uniformed services (to include National Guard and Reserves); to minimize disruption to the lives of persons who perform service in the uniformed services and their employers; and to encourage individuals to participate in non-career uniformed service. Also, to prohibit discrimination in employment and acts of reprisal against persons because of their obligations in the uniformed services, prior service, intention to join the uniformed services, filing of a USERRA claim, seeking assistance concerning an alleged violation, testifying in a proceeding, or otherwise assisting in an investigation.

The purposes of Veterans' Preference laws and regulations and this information collection requirement include: to provide preference for certain veterans (preference eligibles) over others in Federal hiring from competitive lists of applicants; and to provide preference eligibles with preference over others in retention during reductions in force in Federal agencies.

II. Desired Focus of Comments: Currently VETS is soliciting comments concerning the proposed information collection request for the VETS/USERRA/VP Form 1010. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions: This notice requests an extension of the current Office of Management and Budget approval of the paperwork requirements for VETS/USERRA/VP Form 1010.

Type of Review: Extension.

Agency: Veterans' Employment and Training Service.

Title: VETS/USERRA/VP Form 1010.

OMB Number: 1293–0002.

Affected Public: Individuals or households.

Total Respondents: Approximately 1,500.

Average Time per Response: 15 minutes.

Total Burden Hours: 375 hours.

Total Annualized Capital/Startup costs: $0.

Total Initial Annual Costs: $0.

Comments submitted in response to this notice will be summarized and included in the request for the Office of Management and Budget approval of the information collection request. Comments will become a matter of public record.

Dated: August 11, 2003.

Charles S. Ciccolella,

Deputy Assistant Secretary, Veterans' Employment and Training.

[FR Doc. 03–21160 Filed 8–18–03; 8:45 am]

BILLING CODE 4510–79–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 18, 2003. This

application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. Applicant

[Permit Application No. 2004–011]

William Gilmore, Environmental Manager, Raytheon Polar Services Company, 7400 South Tucson, MS29, Centennial, CO 80112–3938.

Activity for Which Permit is Requested

Enter Antarctic Specially Protected Area. The applicant proposes to enter the Cape Crozier Antarctic Specially Protected Area (ASPA #124) to remove debris collected from the old campsite last season. In addition, the application plans annual visits to the campsite at Cape Crozier to conduct an Environmental Field Camp audit and document the camp's environmental footprint, as well as compliance with applicable waste and environmental, health and safety protocols. Each season audits are conducted to ensure that research activities comply with environmental impact assessment requirements.

Location

ASPA #124—Cape Crozier, Ross Island.

Dates

October 1, 2003 to February 28, 2007.

2. Applicant

[Permit Application No. 2004–012]

David Caron, 3616 Trousdale Parkway, AHF 301, Los Angeles, CA 90089–0371.

Activity for Which Permit is Requested

Introduction of a non-indigenous plant and importation into the U.S. The applicant proposes to introduce cultures of marine phytoplankton to Antarctica for use in various shipboard experiments to study the feeding rates of Antarctic protistan grazers. There will be no live release of any cultures into Antarctic waters or onto the continent. In addition, the applicant proposes to collect water samples containing marine phytoplankton and microscopic zooplankton for use in experiments, for preservation for future examination, and for developing new cultures. These samples will be transported back to the United States for further study.

Location

At sea in Antarctic waters.

Dates

October 20, 2003 to December 20, 2003.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–21128 Filed 8–18–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–06563]

Notice of Consideration of Amendment Request Mallinckrodt Inc., St. Louis, Missouri, and Opportunity for Providing Comments and Requesting a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for partial decommissioning and opportunity to provide comments and request a hearing.

FOR FURTHER INFORMATION CONTACT: John T. Buckley, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6607, fax number (301) 415–5398.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission is considering issuance of a license amendment to Possession Only License No. STB–401, issued to Mallinckrodt Inc., (Mallinckrodt or the licensee), to authorize Phase 2 decommissioning of its former Columbium-Tantalum (C-T) processing facility in St. Louis, Missouri.

On May 14, 2003, the licensee submitted the C-T Phase 2 Decommissioning Plan (DP) to NRC for review. The Phase 2 DP summarizes the decommissioning activities that will be undertaken to remediate the C-T process building slabs, sewerage, wastewater neutralization basins, and soil affected by C-T processing at the St. Louis, Missouri facility. Radioactive contamination in the soil and debris exists in the form of U–238, U–235, U–234 (and their progeny Th-230 and Ra-226 and others) and Th-232 (and its progeny Ra-228 and Th-228 and others) resulting from licensed operation that occurred from 1961 to 1985. The NRC will require the licensee to remediate the C-T processing facility to meet NRC's decommissioning criteria, and during the decommissioning activities, to maintain effluents and doses within NRC requirements and as low as reasonably achievable. An NRC administrative review, documented in a letter to Mallinckrodt dated July 29, 2003, found the DP acceptable to begin a technical review.

If the NRC approves the Phase 2 DP, the approval will be documented in an amendment to NRC License No. STB–401. However, before approving the proposed amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment.

II. Opportunity to Provide Comments

In accordance with 10 CFR 20.1405, the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of a DP, and will accept comments concerning this decommissioning proposal and its associated environmental impacts. Comments with respect to this action should be provided in writing within 30 days of this notice and addressed to John T. Buckley, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6607, fax number (301) 415–5398, e-mail: *JTB@NRC.gov*.

Comments received after 30 days will be considered if practicable to do so, but only those comments received on or before the due date can be assured consideration.

III. Opportunity to Request a Hearing

NRC also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of subpart L, "Informal Hearing Procedures for Adjudication in Material Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Whether or not a person has or intends to provide comments as set out in section II above, pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

2. By mail, telegram, or facsimile (301–415–1101) addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Mallinckrodt Inc., Mallinckrodt and Second Streets, P.O. Box 5439, St. Louis, MO 63147, Attention: Mr. Mark Puett, and;

2. The NRC staff, by delivery to the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 p.m., Federal workdays, or by mail, addressed to General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing be also transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in section 2.1205(h);

3. The requestor's area of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with section 2.1205(d).

IV. Further Information

The application for the license amendment and supporting documentation are available for inspection at NRC's Public Electronic reading Room at; *http://www.nrc.gov/NRC/ADAMS/index.html*. The ADAMS Accession No. for the license amendment request and DP is ML032110490.

Dated at Rockville, Maryland, this 8th day of August, 2003.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–21147 Filed 8–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on September 10, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, September 10, 2003—8:30 a.m.–10 a.m.

The Subcommittee will discuss proposed ACRS activities and related matters. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Dr. Richard P. Savio (telephone: 301–415–7363) between 7:30 a.m. and 4:15 p.m. (e.t.) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: August 12, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–21145 Filed 8–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Fire Protection; Notice of Meeting

The ACRS Subcommittee on Fire Protection will hold a meeting on September 9, 2003, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, September 9, 2003—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss 10 CFR 50.48 rulemaking to permit licensees to voluntarily adopt National Fire Protection Association (NFPA) Standard 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants, 2001 Edition," as an alternative to existing fire protection requirements; the staff's approach for resolution of issues related to post-fire safe shutdown circuit analysis; development of fire dynamics tools for inspectors; a proposed rulemaking plan for post-fire operator manual actions; and related matters. The Subcommittee will hear presentations by and hold discussions

with representatives of the NRC staff, the Nuclear Energy Institute (NEI), and other interested persons regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Michael R. Snodderly (Telephone: 301–415–6927) or the Cognizant Staff Engineer, Mr. Marvin D. Sykes (Telephone: 301–415–8716) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official or the Cognizant Staff Engineer between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact one of the above named individuals at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: August 13, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–21146 Filed 8–18–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

DATE: Weeks of August 18, 25, September 1, 8, 15, 22, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of August 18, 2003

There are no meetings scheduled for the Week of August 18, 2003.

Week of August 25, 2003—Tentative

Monday, August 25, 2003

9:30 a.m. Discussion of Investigatory and Enforcement Issues (Closed—Ex. 7 & 5)

Thursday, August 28, 2003

2 p.m. Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9)

Week of September 1, 2003—Tentative

There are no meetings scheduled for the Week of September 1, 2003.

Week of September 8, 2003—Tentative

Wednesday, September 10, 2003

1 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–410–2308)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*

3 p.m. Discussion of Security Issues (Closed—Ex. 1)

Thursday September 11, 2003

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1)

Week of September 15, 2003—Tentative

There are no meetings scheduled for the Week of September 15, 2003.

Week of September 22, 2003—Tentative

There are no meetings scheduled for the Week of September 22, 2003.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recoding)—(301) 415–1292. Contact person for more Information: David Louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

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This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 14, 2003.

D.L. Gamberoni,

Technical Coordinator, Office of the Secretary

[FR Doc. 03–21291 Filed 8–15–03; 11:09 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 25, 2003, through August 7, 2003. The last biweekly notice was published on August 5, 2003 (68 FR 46239).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 18, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions,

supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendments request: July 14, 2003.

Description of amendments request: The proposed amendment would revise the Technical Specifications to eliminate Surveillance Requirement (SR) 3.6.6.8. This SR is a 10-year flow test to verify that the containment spray nozzles are unobstructed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change eliminates the surveillance requirement to verify that the Containment Spray System spray nozzles are unobstructed every ten years. The spray nozzles are not initiators of any previously analyzed accident. Therefore, this proposed change does not increase the probability of any accident previously evaluated.

The spray nozzles are assumed in the accident analysis to mitigate design basis accidents. Calvert Cliffs' system design Foreign Material Exclusion practices during maintenance and material accountability following maintenance, and post-maintenance testing practices ensure that the system is free of foreign material that could significantly reduce its ability to perform its intended function. These controls are considered adequate to ensure continued operability of the spray system. Since the system will be able to perform its accident mitigation function, the consequences of accidents previously evaluated are not increased.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

The proposed change eliminates the surveillance requirement to verify that the Containment Spray System spray nozzles are unobstructed every ten years. The proposed change does not introduce a new method of plant operation, does not involve a physical modification to the plant, nor does it introduce any accident initiators.

Therefore, the proposed change does not create the possibility of a new or different [kind] of accident from any accident previously evaluated.

3. Would not involve a significant reduction in [a] margin of safety.

The margin of safety in this case is the assurance of operability of the Containment Spray System. Calvert Cliffs' system design, Foreign Material Exclusion practices during maintenance and material accountability following maintenance, and post-maintenance testing practices ensure that the system is free of foreign material that could significantly reduce its ability to perform its intended function. These requirements, along with the remote physical location and the simple construction of the spray nozzles, provide assurance that the nozzles will remain operable.

Therefore, this proposed change does not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: James M. Petro, Jr., Esquire, Counsel, Constellation Energy Group, Inc., 750 East Pratt Street, 5th floor, Baltimore, MD 21202.

NRC Section Chief: Richard J. Laufer.

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: May 29, 2003.

Description of amendments request: The proposed license amendments request approval to remove the current Brunswick Steam Electric Plant (BSEP) reactor material specimen surveillance schedule from the Updated Final Safety Analysis Report and specify that BSEP, Units 1 and 2, will participate in an integrated surveillance program (ISP) developed by the Boiling Water Reactor Vessel and Internals Project.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change adopts an integrated surveillance program (ISP) for reactor vessel material specimen surveillances. The ISP ensures that the reactor pressure vessel will continue to meet all applicable fracture toughness requirements. No physical changes to the facilities will result from the proposed change. The initial conditions and methodologies used in accident analyses remain unchanged. The proposed change does not revise the design assumptions for systems or components used to mitigate the consequences of accidents. The accident analyses results are not affected by this proposed change. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change adopts an integrated surveillance program (ISP) for reactor vessel material specimen surveillances. The ISP ensures that the reactor pressure vessel will continue to meet all applicable fracture toughness requirements. No physical changes to the facilities will result from the proposed change. The proposed change does not affect the design or operation of any system, structure, or component in the facilities. The safety functions of the related systems, structures, or components are not changed in any manner, nor is the reliability of any system, structure, or component reduced. The change does not affect the manner by which the facilities are operated and does not change any facility, structure, or component. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change has no impact on the margin of safety of any Technical Specification. There is no impact on safety limits or limiting safety system settings. The proposed change does not affect any plant safety parameters or setpoints. No physical or operational changes to the facilities will result from the proposed change. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Steven R. Carr, Associate General Counsel—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Allen G. Howe.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of amendment request: June 24, 2003.

Description of amendment request: The proposed amendment would revise Technical Specification 3.1.8, "Scram Discharge Volume (SDV) Vent and Drain Valves," to allow a vent or drain line with one inoperable valve to be isolated instead of requiring the valve to be restored to Operable status within 7 days.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on February 24, 2003 (68 FR 8637), on possible amendments to revise the action for one or more SDV vent or drain lines with an inoperable valve, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process (CLIIP). The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 15, 2003 (68 FR 18295). The licensee affirmed the applicability of the NSHC determination below in its application dated June 24, 2003.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

A change is proposed to allow the affected SDV vent and drain line to be isolated when there are one or more SDV vent or drain lines with one valve inoperable instead or requiring the valve to be restored to operable status within 7 days. With one SDV vent or drain valve inoperable in one or more lines, the isolation function would be maintained since the redundant valve in the affected line would perform its safety function of isolating the SDV. Following the completion of the required action, the isolation function is fulfilled since the associated line is isolated. The ability to vent and drain the SDVs is maintained and controlled through administrative controls. This requirement assures the reactor protection system is not adversely affected by the inoperable valves. With the safety functions of the valves being maintained, the probability or consequences of an accident previously evaluated are not significantly increased.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in the margin of safety.

The proposed change ensures that the safety functions of the SDV vent and drain valves are fulfilled. The isolation function is maintained by redundant valves and by the required action to isolate the affected line. The ability to vent and drain the SDVs is maintained through administrative controls. In addition, the reactor protection system will prevent filling of an SDV to the point that it has insufficient volume to accept a full scram. Maintaining the safety functions related to isolation of the SDV and insertion of control rods ensures that the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Peter Marquardt, Legal Department, 688 WCB, Detroit Edison Company, 2000 2nd Avenue, Detroit, Michigan 48226–1279.

NRC Section Chief: L. Raghavan.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: November 14, 2002.

Description of amendment request: Pursuant to Title 10 of the Code of Federal Regulations (10 CFR) § 50.90, Duke Energy Corporation requested an amendment to the McGuire Nuclear Station Facility Operating Licenses and Technical Specifications (TS). The proposed change would revise TS 3.3.2, Engineered Safety Features Actuation System Instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following discussion is a summary of the evaluation of the changes contained in this proposed license amendment against the three required standards of 10 CFR 50.92(c). A no significant hazards consideration is indicated if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated, or

2. Create the possibility of a new or different kind of accident from any accident previously evaluated, or

3. Involve a significant reduction in a margin of safety.

First Standard. Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Implementation of the changes contained in this amendment will have no effect on accident probabilities or consequences. The proposed changes apply to Technical Specifications 3.3.2, Engineered Safety Features Actuation System, and the equipment referenced in this Technical Specification are not accident initiating equipment. Therefore, there will be no impact on any accident probabilities caused by the NRC approval of this license amendment request. Additionally, since the design of the equipment is not being adversely modified by these proposed changes, there will be no impact on any accident consequences.

Second Standard. Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms will be created as a result of the NRC approval of this license amendment request. No changes are being made to the plant which will introduce any new accident causal mechanism. This amendment does not impact any plant systems that are accident initiators; therefore, no new accident types are being created.

Third Standard. Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this amendment. The equipment referenced in the proposed change to Technical Specification 3.3.2 will remain capable of performing as designed. No safety margins will be impacted.

Conclusion. Based upon the preceding discussion, Duke Energy Corporation has concluded that this proposed license amendment does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287; Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: July 10, 2003.

Description of amendment request: The proposed amendments would revise the Technical Specifications to eliminate requirements that are no longer applicable due to the completion of the automatic feedwater system modifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.91, Duke Energy Corporation (Duke) has made the determination that this amendment request involves a No Significant Hazards Consideration by applying the standards established by the NRC regulations in 10 CFR 50.92. This ensures that operation of the facility in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated: The proposed change to the Oconee Technical Specifications removes obsolete requirements associated with the Main Steam Line Break (MSLB) detection circuitry that are no longer necessary because of the completion of the Automatic Feedwater Isolation System (AFIS) modification on all three Oconee Units. AFIS replaced the MLSB detection system. As such, the proposed change is administrative. No actual plant equipment, operating practices, or accident analyses are affected by this change. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any kind of accident previously evaluated: The proposed change to the Oconee Technical Specifications removes obsolete requirements associated with the MSLB detection circuitry that are no longer necessary because of the completion of the AFIS modification on all three Oconee Units. AFIS replaced the MLSB detection system. As such, the proposed change is administrative. No actual plant equipment, operating practices, or accident analyses are affected by this change. No new accident causal mechanisms are created as a result of this change. The proposed change does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety: The proposed change does not adversely affect any plant safety limits, set points, or design parameters. The change also does not adversely affect the fuel, fuel cladding, Reactor Coolant System, or containment integrity. The proposed change eliminates obsolete requirements and is administrative in nature. Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois and Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendment request: October 10, 2002, as supplemented March 21 and March 28, 2003.

Description of amendment request: The proposed amendment revises the licensing bases and Technical Specifications by utilizing an alternative source term in the design-basis radiological analyses in accordance with 10 CFR 50.67, with the exception that Technical Information Document 14844 will continue to be used as the radiation dose basis for equipment qualification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The implementation of alternative source term (AST) assumptions has been evaluated in revisions to the analyses of the following limiting design basis accidents at Dresden Nuclear Power Station (DNPS) and Quad Cities Nuclear Power Station (QCNPS):

Loss-of-Coolant Accident,
Main Steam Line Break Accident,
Fuel Handling Accident, and
Control Rod Drop Accident.

Based upon the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these limiting events is within the regulatory guidance provided by the NRC for use with the AST. This guidance is presented in 10 CFR 50.67 and associated Regulatory Guide 1.183, and Standard Review Plan Section 15.0.1.

Requirements for secondary containment operability, secondary containment isolation valves, the Standby Gas Treatment (SGT) System, the Control Room Emergency Ventilation (CREV) System, and the Control Room Emergency Ventilation Air Conditioning (AC) System during movement of irradiated fuel assemblies that have decayed at least 24-hours and during core alterations are being eliminated. This is acceptable because, with the application of AST, none of these systems are credited in mitigating the consequences of a fuel handling accident after a 24-hour decay period.

The proposed change also increases the maximum allowable primary containment leakage and the maximum allowable main steam isolation valve leakage limits. This is acceptable due to the new assumptions, used in calculating control room and offsite dose following a design basis loss-of-coolant accident, related to application of AST.

The proposed changes do not affect the design or operation of the facility; rather, once the occurrence of an accident has been postulated, the new source term is an input to evaluate the consequence. The radiological consequences of the above design basis accidents have been evaluated with application of AST assumptions. The results conclude that the radiological consequences remain within applicable regulatory limits. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The application of AST does not affect the design, functional performance or operation of the facility. Similarly, it does not affect the design or operation of any structures, systems or components involved in the mitigation of any accidents, nor does it affect the design or operation of any component in the facility such that new equipment failure modes are created.

As such the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Approval of the basis change from the original source term developed in accordance with Technical Information Document (TID) 14844 to a new AST, as described in Regulatory Guide 1.183, is requested. The results of the accident analyses revised in support of the proposed changes, and the requested Technical Specification changes, are subject to revised acceptance criteria. These analyses have been performed using conservative methodologies.

Safety margins and analytical conservatisms have been evaluated and have been found acceptable. The analyzed events have been carefully selected and margin has been retained to ensure that the analyses adequately bound postulated event scenarios. The dose consequences due to design basis accidents comply with the requirements of 10 CFR 50.67 and the guidance of Regulatory Guide 1.183.

The margin of safety is considered to be that provided by meeting the applicable regulatory limits. Relaxation of these Technical Specification requirements results in an increase in dose following certain design basis accidents. However, since the doses following these design basis accidents remain within the regulatory limits, there is not a significant reduction in a margin of safety. The changes continue to ensure that the doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits.

Therefore, operation of DNPS and QCNPS in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Deputy General Counsel, Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: June 27, 2003.

Description of amendment request: The proposed amendments revise Technical Specification 4.0.5.f and associated Bases, and Bases Section 3/4.4.8, with regard to the commitment to perform piping inspections in accordance with Generic Letter 88–01, by adding the words "or in accordance with alternate measures approved by the NRC staff."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The U.S. Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below.

1. Do the proposed amendments involve a significant increase in the probability or consequences of an accident previously evaluated?

No physical changes to the facilities will result from the proposed changes. The initial conditions and methodologies used in accident analyses remain unchanged. The proposed changes do not revise or alter the design assumptions for systems or components used to mitigate the consequences of accidents. Thus, accident analyses results are not affected by these changes. Therefore, the proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed amendments create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the design or operation of any system, structure, or component in the plants. No new or different type of equipment will be installed by these proposed changes. Therefore, the proposed amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed amendments involve a significant reduction in a margin of safety?

The changes do not affect any plant safety parameters or setpoints. No physical or operational changes to the facility will result from the proposed changes. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on the NRC staff's review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Mr. Edward Cullen, Vice President & General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

Nuclear Management Company (NMC), LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of amendment request: February 11, 2003, as supplemented July 16, 2003.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 5.5.9, "Ventilation Filter Testing Program (VFTP)," by (1) incorporating filter test face velocity limits for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system, and shield building ventilation system; and (2) making editorial changes. The proposed amendments would also delete the additional conditions in Appendix B of the Operating Licenses which require the licensee to complete an evaluation of the maximum test face velocity for the ventilation systems in TS 5.5.9. The additional conditions would also require the licensee to submit a license amendment request for a TS amendment to specify the maximum test face velocity if the maximum actual face velocity is greater than 110 percent of 40 feet per minute.

In its July 16, 2003, supplemental letter, NMC withdrew the portion of its original request to revise the penetration and system bypass limit from 0.05 percent to 0.5 percent for the ventilation systems. The proposed amendments were previously noticed in the **Federal Register** on April 15, 2003 (68 FR 18279).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Addition of Filter Test Face velocities

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes to add filter test face velocity minimum values for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system and shield building ventilation system. These ventilation systems are included in the plant design to mitigate accident consequences and are not assumed accident initiators, thus, this change does not involve a significant increase in the probability of an accident. This change will assure that the subject ventilation systems will perform within their intended design ranges thus, this change assures that the consequences of an accident are not increased.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed Technical Specification change. No new failure mode has been created and no new equipment performance burdens are imposed. Therefore the possibility of a new

or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This license amendment request proposes to add filter test face velocity minimum values for the control room special ventilation system, auxiliary building special ventilation system, spent fuel pool special and inservice purge ventilation system and shield building ventilation system. These additional Technical Specification limits on system performance assures these ventilation systems are tested and maintained within their designed function limits and may increase the margin of safety for these systems. Therefore this change does not involve a significant reduction in the margin of safety.

Editorial and administrative changes

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This license amendment request proposes editorial changes to Technical Specification Section 5.5.9, including replacement of ventilation system names with abbreviations and miscellaneous changes associated with addition of a new paragraph to this section, and proposes an administrative change to delete the Operating License Additional Condition for each unit that relates to NRC Generic Letter 99–02. Since these changes are editorial or administrative, they do not change any plant operating limits or technical requirements. Therefore these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

This proposed change does not alter the design, function, or operation of any plant component and does not install any new or different equipment. The malfunction of safety related equipment, assumed to be operable in the accident analyses, would not be caused as a result of the proposed technical specification change. No new failure mode has been created and no new equipment performance burdens are imposed. Therefore, the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

This license amendment request proposes editorial changes to Technical Specification Section 5.5.9, including replacement of ventilation system names with abbreviations and miscellaneous changes associated with addition of a new paragraph to this section, and proposes an administrative change to delete the Operating License Additional Condition for each unit that relates to NRC Generic Letter 99–02. Since these changes are editorial or administrative, they do not change any plant operating limits or technical requirements. Therefore these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 25, 2003.

Description of amendment request: The proposed amendment modifies Technical Specification 2.1.4, "Reactor Coolant System (RCS) Leakage Limits." The proposed amendment will: (1) Add a requirement for no RCS pressure boundary leakage, (2) combine the existing RCS leakage limits into a format similar to the Improved Standard Technical Specification (ISTS), and (3) replace the existing basis associated with this specification with a basis similar in format and content of the ISTS. The proposed changes will assure that the design criteria of no RCS pressure boundary leakage is maintained and bring the Fort Calhoun Station, Unit 1 (FCS) RCS leakage specifications into alignment with the Improved Standard Technical Specifications. This amendment is modeled after the Improved Standard Technical Specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications 2.1.4 establish a limit on reactor coolant system pressure boundary leakage and provide an allowed outage time and actions required for restoring operability. The proposed Technical Specifications address the regulatory requirements for equipment required for FCS Design Criterion 16 (similar to 10 CFR 50 GDC [General Design Criterion] 30). The change will ensure that proper Limiting Conditions for Operation are entered for equipment or functional inoperability. There are no physical alterations being made to the reactor coolant system or related systems. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not result in any physical alterations to the reactor coolant system, any plant configuration, systems, equipment, or operational characteristics. There will be no changes in operating modes, or safety limits, or instrument limits. With the proposed changes in place, Technical Specifications will retain requirements for the reactor coolant system. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes clarify the regulatory requirements for the reactor coolant system as defined by FCS Design Criterion 16 (similar to 10 CFR 50 GDC 30). The times established are within those invoked by the present Technical Specifications or equal to those previously reviewed and approved for use by the NRC. The proposed changes will not alter any physical or operational characteristics of the reactor coolant system and associated systems and equipment. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: July 25, 2003.

Description of amendment request: The proposed amendment modifies Technical Specifications (TS) 3.0.2, Table 3–2, Table 3–5, 3.6, 3.7, 3.8, and the Definitions Section. This proposed change provides a risk-informed alternative to the existing surveillance interval for the integrated engineered safety features (ESF) and loss-of-offsite power (LOOP) testing required to be performed on each ESF equipment train each outage. The proposed change modifies the surveillance interval requirement for these refueling interval surveillance requirements to go to a staggered test-basis scheme. Using a staggered test basis, only one train would be tested each refueling outage. This amendment is modeled after the

Improved Standard Technical Specifications (ISTS) and is based on a study conducted by the Westinghouse Electric Company, on behalf of the Combustion Engineering Owners Group (CEOG) in Topical Report WCAP–15830–P, "Staggered Integrated ESF Testing," and Technical Specification Task Force (TSTF) 450.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects only the Frequency at which integrated ESF testing should be performed. This testing provides assurance that the integrated ESF response will occur as assumed in the accident analyses. Testing of the components will continue to be performed as currently specified in the Technical Specifications. The only change will be for the integrated test. This test will continue to be performed on each train of ESF equipment, however, it will be performed on a Staggered Test Basis. This means that the testing will be less frequent than currently required. However, testing seldom shows failure of the equipment to perform its safety function. Because of the complexity of performing the test, the test is most likely to be repeated for some discrepancy in the set up of the test. The detailed risk review and assessment of a longer test interval shows that the change in risk is low or unchanged for equipment covered by the topical report. Licensees will provide acceptable risk reviews for plant specific equipment.

This test does not increase the probability of an accident previously evaluated because it is not a precursor to an accident. In addition, the test is performed in a shutdown mode, where these types of accidents are not assumed to occur. The proposed change also does not increase the consequences of an accident previously evaluated because the equipment is still demonstrated to perform its safety function in an integrated manner. One complete train of equipment will be tested every refueling interval for each train. Successful completion of the test is still required.

Therefore, the proposed change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change affects only the Frequency at which integrated ESF testing should be performed. All more frequently performed testing is unaffected by this proposed change. No changes are being made to the equipment or to the method of equipment operation as a result of this change. No changes are being made to the tests addressed by this proposed change except the frequency.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change affects only the surveillance interval at which integrated ESF testing should be performed. It does not impact safety system design criteria; safety system setpoint calculations or assumptions made in the safety analyses. All of the affected systems will continue to perform their safety functions as designed.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362,, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: July 28, 2003.

Description of amendment requests: The proposed amendments would revise Technical Specification 3.3.1, "RPS Instrumentation—Operating," and 3.3.5, "ESFAS Instrumentation." Specifically, the proposed changes would replace the requirement for the Steam Generator Pressure—Low allowable value from its current value of 729 psia to a revised value of 717 psia.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Accidents evaluated in Chapter 15 of the Updated Final Safety Analysis Report use an analytical value of 675 psia for Steam Generator Pressure—Low and for the Main Steam Isolation Signal/Emergency Feedwater Actuation Signal, which is the basis for the proposed change to the allowable value. The current and proposed Allowable Values are 729 psia and 717 psia respectively, which means that a 12 psi reduction in margin between the Allowable Value and the Analytical Value is being proposed. Since the Trip Setpoint may not be below 717 psia (it would be at 725 psia as required by the supporting calculation), the proposed reduction in margin between the Allowable Value and the Analytical Value does not involve a significant increase in the consequences of an accident previously evaluated.

The proposed amendment has no effect on the probability of occurrence of accidents evaluated in Chapter 15 of the Updated Final Safety Analysis Report.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There will be no change to the design basis of the plant. There are no new anticipated operational occurrences, or design basis accidents. No changes to any other analytical limits are being made. The current Analytical Value for Steam Generator Pressure—Low is being retained, and no changes to any of the assumptions in the accident analyses are being proposed.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The change in allowable value will not adversely affect the design analysis. The plant would trip on Steam Generator Pressure—Low at values at, or above, the analysis limit. The proposed change in the Allowable Value does not involve any change to the Analytical Value, so that the design bases limit is maintained.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, Southern California Edison concludes that the proposed amendments present no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and, accordingly, a finding of "no significant hazards consideration" is justified.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: July 21, 2003.

Brief description of amendments: The proposed change would revise Technical Specification 5.5.9, "Steam Generator (SG) Tube Surveillance Program", to allow the use of Westinghouse Electric LLC (Westinghouse) leak limiting Alloy 800 sleeves to repair defective SG tubes as an alternative to plugging these tube.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the Code of Federal Regulations (10 CFR), Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The Westinghouse Alloy 800 leak limiting repair sleeves are designed using the applicable American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code [Code] and, therefore, meet the design objectives of the original steam generator tubing. The applied stresses and fatigue usage for the repair sleeves are bounded by the limits established in the ASME Code. Mechanical testing has shown that the structural strength of repair sleeves under normal, upset, emergency, and faulted conditions provides margin to the acceptance limits. These acceptance limits bound the most limiting (three times normal operating pressure differential) burst margin recommended by NRC's [U.S. Nuclear Regulatory Commission] Regulatory Guide 1.121, "Bases for Plugging Degraded PWR [Pressurized Water Reactor] Steam Generator Tubes." Burst testing of sleeve/tube assemblies has confirmed the analytical results and demonstrated that no unacceptable levels of primary-to-secondary leakage are expected during any plant condition.

The Alloy 800 repair sleeve depth-based structural limit is determined using NRC guidance and the pressure stress equation of ASME Code, Section III, with additional margin added to account for configuration of long axial cracks. A bounding detection threshold value has been conservatively identified and statistically established to account for growth and determine the repair sleeve/tube assembly plugging limit. A sleeved tube is plugged on detection of degradation in the sleeve/tube assembly.

Evaluation of the repaired steam generator tube testing and analysis indicates no detrimental effects on the sleeve or sleeved tube assembly from reactor system flow, primary or secondary coolant chemistries, thermal conditions or transients, or pressure conditions as may be experienced at Comanche Peak Steam Electric Station (CPSES), Unit 1 and Unit 2. Corrosion testing and historical performance of sleeve/tube assemblies indicates no evidence of sleeve or tube corrosion considered detrimental under anticipated service conditions.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant or the manner in which it is operated. The consequences of a hypothetical failure of the sleeve/tube assembly is bounded by the current steam generator tube rupture (SGTR) analysis described in CPSES Updated Final Safety Analysis Report. Due to the slight reduction in the inside diameter caused by the sleeve wall thickness, primary coolant release rates would be slightly less than assumed for the steam generator tube rupture analysis and, therefore, would result in a lower total primary fluid mass release to the secondary system. A main steam line break or feedwater line break will not cause a SGTR since the sleeves are analyzed for a maximum accident differential pressure greater than that predicted in the CPSES safety analysis. The minimal repair sleeve/tube assembly leakage that could occur during plant operation is well within the Technical Specification leakage limits when grouped with current alternate plugging criteria calculated leakage values.

Therefore, TXU Energy has concluded that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The Alloy 800 leak limiting repair sleeves are designed using the applicable ASME Code as guidance; therefore, it meets the objectives of the original steam generator tubing. As a result, the functions of the steam generators will not be significantly affected by the installation of the proposed sleeve. The proposed repair sleeves do not interact with any other plant systems. Any accident as a result of potential tube or sleeve degradation in the repaired portion of the tube is bounded by the existing SGTR accident analysis. The continued integrity of the installed sleeve/tube assembly is periodically verified by the Technical Specification requirements and the sleeved tube will be plugged on detection of degradation.

The implementation of the proposed amendment has no significant effect on either the configuration of the plant, or the manner in which it is operated. Therefore, TXU Energy concludes that this proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The repair of degraded steam generator tubes with Alloy 800 leak limiting repair sleeves restores the structural integrity of the degraded tube under normal operating and postulated accident conditions and thereby maintains current core cooling margin as opposed to plugging the tube and taking it out of service. The design safety factors utilized for the repair sleeves are consistent with the safety factors in the ASME Boiler and Pressure Vessel Code used in the original steam generator design. The portions of the installed sleeve/tube assembly that represent the reactor coolant pressure boundary can be monitored for the initiation of sleeve/tube wall degradation and the affected tube plugged on detection of degradation. Use of the previously identified design criteria and design verification testing assures that the margin of safety is not significantly different from the original steam generator tubes.

Therefore, TXU Energy concludes that the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 12, 2002, as supplemented on February 28, 2003.

Brief description of amendment: The amendment changes the surveillance requirements for the emergency diesel generators (EDGs) in Technical Specification (TS) 3/4.8.1.1, "Electrical Power Systems—A.C. Sources—Operating" and TS 3/4.8.1.2, "Electrical Power Systems—Shutdown." In addition, TS Section 6.0, "Administrative Controls," has been revised to add a new TS to define the program requirements for testing the EDG fuel oil.

Date of issuance: July 25, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 277.

Facility Operating License No. DPR–65: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** September 17, 2002 (67 FR 58639). The supplement dated February 28, 2003, provided additional information which clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2003.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 14, 2002, as supplemented on April 7, 2003.

Brief description of amendment: The amendment revises the Technical Specifications (TSs) related to Containment Systems. Specifically, the amendment: (1) Adds a new requirement for a Containment Tendon Surveillance Program to TS Section 6.0, "Administrative Controls;" (2) deletes TS 3/4.6.1.6, "Containment Structural Integrity;" (3) revises TS 3/4.6.1.1, "Containment Integrity," to add a new surveillance requirement that requires that containment structural integrity be verified in accordance with the Containment Tendon Surveillance Program; (4) revises TS 3/4.6.3.1, "Containment Isolation Valves," to add a new action statement that increases the allowed outage time from 4 hours to 72 hours for Containment Isolation Valves (CIVs) in closed systems; (5) makes other changes to the TSs for Containment Integrity and CIVs to provide clarity to the TSs; and (6) makes other administrative changes. In addition, the TS Bases have been revised to address the proposed changes.

Date of issuance: July 25, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 278.

Facility Operating License No. DPR–65: This amendment revised the TSs.

Date of initial notice in ***Federal Register:*** September 17, 2002 (67 FR 58640). The supplement dated April 7, 2003, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2003.

No significant hazards consideration comments received: No.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 12, 2002, as supplemented on October 21, 2002, and January 15, 2003.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.8.2.3, "Electrical Power Systems, D.C. Distribution—Operating;" TS 3.8.2.4, "Electrical Power Systems, D.C. Distribution—Shutdown;" and TS 3.8.2.5, "Electrical Power Systems, D.C. Distribution Systems (Turbine Battery)—Operating" to use standard TS terminology in order to provide enhanced readability and usability. The amendment also provides additional criteria for determining battery operability upon restoration from a recharge or equalizing charge.

Date of issuance: July 29, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 279.

Facility Operating License No. DPR–65: This amendment revises the TSs.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61677). The supplements dated October 21, 2002, and January 15, 2003, provided additional information which clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 29, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 20, 2002, as supplemented by letters dated January 21 and June 4, 2003.

Brief description of amendments: The amendments revised the Technical Specifications Required Actions requiring suspension of operations involving positive reactivity additions and various Notes that preclude reduction in boron concentration.

Date of issuance: July 29, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 207 & 201.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 15, 2003, (68 FR 18273). The supplement dated June 4, 2003, provided clarifying information that did not change the scope of the November 20, 2002, application and its supplement dated January 21, 2003, nor

the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket No. 50–370, McGuire Nuclear Station, Unit 2, Mecklenburg County, North Carolina

Date of application for amendments: January 31, as supplemented by letter dated May 1, 2003.

Brief description of amendments: The amendment authorizes a revision to the Updated Final Safety Analysis Report to allow the degassing and straightening of a bent Mark–BW irradiated fuel rod in the McGuire spent fuel pool.

Date of issuance: August 4, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 198.

Facility Operating License Nos. NPF–17: Amendment authorized revision of the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18274). The supplement dated May 1, 2003, provided clarifying information that did not change the scope of the January 31, 2003, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 4, 2003.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: November 20, 2002, as supplemented by letters dated January 21 and June 4, 2003.

Brief description of amendments: The amendments revise the Technical Specifications Required Actions requiring suspension of operations involving positive reactivity additions and various Notes that preclude reduction in boron concentration.

Date of issuance: July 29, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 216 & 197.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 15, 2003 (68 FR 18273). The supplement dated June 4, 2003, provided clarifying information that did not change the scope of the November 20, 2002, application and its supplement dated January 21, 2003, nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: June 24, 2002, as supplemented on June 23, 2003.

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement (SR) 3.7.7.2 to require all city water header isolation valves be open rather than only the one header supply isolation valve. On June 23, 2003, the licensee withdrew its request for changes to SR 3.7.7.1 pertaining to the city water tank volume.

Date of issuance: August 4, 2003.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 218.

Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 6, 2002 (67 FR 50952). The June 23, 2003, letter provided clarifying information that did not enlarge the scope of the original **Federal Register** notice or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 4, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of application for amendment: January 31, 2003.

Brief description of amendment: The amendment revises the Technical Specification allowable values for two isolation condenser system isolation functions, namely the Steam Flow—High and Return Flow—High, for Units 2 and 3.

Date of issuance: July 30, 2003.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment No.: 200.

Facility Operating License No. DPR–19: The amendment revised the Technical Specifications.

Amendment No.: 192.

Facility Operating License No. DPR–25: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 15, 2003.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 30, 2003.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: January 27, 2003.

Brief description of amendment: The amendment revised Technical Specifications (TS) 2.1.6, 3.2 (Table 3–5), and 5.9.1c as follows:

(1) TS 2.1.6(1), the "as-found" pressurizer safety valve (PSV) lift setting tolerance band of ±1% is increased to +1%/−3% to allow for normal setpoint variance for Modes 1 and 2. The Basis of TS 2.1.6 is revised to clarify that the PSVs are still operable and capable of performing their safety function with the wider tolerance band. The other revisions to TS 2.1.6 are administrative in nature to change defined terms to upper case text.

(2) TS 3.2, Table 3–5, Item 3 is revised to require an "as-left" PSV lift setting tolerance band of ±1%.

(3) TS 5.9.1c is revised to remove the requirement to provide a statement in the Monthly Operating Report (MOR) concerning failures or challenges to power operated relief valves or safety valves. Generic Letter 97–02, "Revised Contents of the Monthly Operating Report," does not require the MOR to provide this information.

Date of issuance: July 25, 2003.

Effective date: July 25, 2003, and shall be implemented within 30 days from the date of issuance.

Amendment No.: 129.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 18, 2003 (68 FR 12956).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 25, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: May 23, 2002.

Brief description of amendment: The proposed amendment revises the Unit 2 Operating License and several sections of Technical Specifications to delete information differentiating between Unit 1 and Unit 2 specific to Model E steam generators.

Date of issuance: July 21, 2003.

Effective date: As of the date of issuance and shall be implemented 120 days from the date of issuance.

Amendment Nos.: Unit 1–154; Unit 2–142.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 25, 2002 (67 FR 42831). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 21, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant (SQN), Unit 2, Hamilton County, Tennessee

Date of application for amendment: June 5, 2003.

Description of amendment: The amendment revised the reactor coolant system heatup and cooldown curves (pressure-temperature (P-T) limits). The revision replaced the P-T limits that were analyzed for 14.5 Effective Full Power Years (EFPYs) with new limits analyzed for 32 EFPYs. In addition, the amendment included corresponding changes to the Technical Specification (TS) figure associated with the Low Temperature Over Pressure Protection and the TS Bases.

Date of issuance: July 31, 2003.

Effective date: As of the date of issuance and shall be implemented within 15 days of issuance.

Amendment No.: 277.

Facility Operating License No. DPR–79: Amendment revises the TSs.

Date of initial notice in ***Federal Register:*** June 24, 2003 (68 FR 37583).

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Assess and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By September 18, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for

Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of the continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the petition for leave to intervene and request for hearing should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One (ANO), Units 1 and 2, Pope County, Arkansas

Date of amendment request: February 24, 2003, as supplemented by letters dated March 25, June 30, and July 21, 2003.

Description of amendment request: The amendments allow the licensee to use the spent fuel crane (L–3 crane) to lift heavy loads in excess of 100 tons. Specifically the licensee received approval to use the upgraded L–3 crane for loads up to 130 tons.

Date of issuance: July 25, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 220/248.

Facility Operating License Nos. (DPR–51 and NPF–6): Amendments allow use of the upgraded L–3 crane to lift loads up to 130 tons.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (68 FR 11157, dated March 7, 2003, and 68 FR 41020, dated July 9, 2003). The notices provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notices also provided an opportunity to request a hearing by April 7, 2003, and July 23, 2003, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The July 21, 2003, supplemental letter provided clarifying information that did not change the scope of the **Federal Register** notice or the NSHC determination published July 9, 2003 (68 FR 41020).

The Commission's related evaluation of the amendments, finding of exigent circumstances, state consultation, and final NSHC determination are contained in a Safety Evaluation dated July 25, 2003.

Attorney for licensee: Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Dated at Rockville, Maryland, this 11th day of August 2003.

For The Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–20839 Filed 8–18–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48319; File No. SR–Amex–2003–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Limitation of Liability under the Options Intermarket Linkage

August 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 30, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to add Amex Rule 945 for the purpose of limiting liability for the Options Clearing Corporation ("OCC") with respect to members' use of the Options Intermarket Linkage (the "Linkage").

The text of the proposed rule change is below. Proposed additions are in *italics.*

* * * * *

Rule 945. Liability for the Options Intermarket Linkage

Rule 945. (a) The Linkage as used to send orders and other information to or from the Exchange is a facility or service afforded by the Exchange for purposes of Article IV, Section 1(e) of the Amex Constitution. It is the responsibility of each member, member organization or associated person of such member or member organization to verify the accuracy of transactions sent and received through the Linkage.

(b) *The Options Clearing Corporation, its affiliates, officers, directors, shareholders, agents and employees (collectively, "OCC") shall not be liable to members, member organizations or associated persons of members or member organizations for any loss, damage, claim or expense arising out of the use, non-use, or inability to use the Linkage, including without limitation the content of orders, trades or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, the delays in transmission of orders, trades or otherwise.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to add a new rule, Amex Rule 945, for the purpose of limiting the liability of OCC with respect to member and member organization use of the Linkage. Proposed Amex Rule 945(a) provides that the Linkage, as used to send orders and option information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of Article IV, Section 1(e) of the Amex Constitution. In addition, the proposed Amex Rule 945(b) provides that OCC will have no liability to members of the Exchange or to persons associated with such members with respect to the use, non-use or inability to use the Linkage, including without limitation, the content of orders, trades or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage or otherwise.

2. Statutory Basis

The Amex believes that its proposal is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(5) of the Act[4] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Amex neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Amex consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Amex.

All submissions should refer to File No. SR-Amex-2003-54 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-21174 Filed 8-18-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48324; File No. SR-CBOE-2003-27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Representation of Orders by Floor Brokers

August 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 7, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend CBOE Rule 6.45A to permit floor brokers to represent as agent orders from unaffiliated broker-dealers. The text of the proposed rule change is set forth below.

Rule 6.45A Priority and Allocation of Trades for CBOE Hybrid System

(a)–(b) No change.

(c) Interaction of Market Participant's Quotes and/or Orders with Orders in Electronic Book

Market participants, as defined in Rule 6.45A(a)(i), may submit quotes or orders electronically to trade with orders in the electronic book. A floor broker market participant may only represent as agent customer orders *or orders from unaffiliated broker-dealers.* When a market participant's quote or order interacts with the order in the book, a trade occurs, CBOE will disseminate a last sale report, and the size of the book order will be decremented to reflect the execution. Allocation of the book order shall be as follows:

(i)–(iv) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 6.45A(c) governs the interaction of market participants' quotes/orders with orders in the electronic book.[3] In short, under the rule, multiple market participants submitting orders to access the book within a period of time not to exceed N-seconds (the "N-second group") are entitled to receive an allocation of the book order pursuant to an allocation algorithm.[4] CBOE Rule 6.45A(c) limits the orders that floor brokers may represent as agent to customer orders. In adopting this restriction, the Exchange recognized that allowing floor brokers to represent certain broker-dealer orders could raise issues under section 11(a) of the Act.[5]

The Exchange proposes to delete this restrictive language from the text of CBOE Rule 6.45A and instead allow floor brokers to represent as agent broker-dealer orders from unaffiliated parties (in addition to customer orders) as part of the N-second group. By limiting floor brokers' representation of broker-dealer orders to non-affiliated entities, the CBOE believes that the requirements of section 11(a) of the Act will be satisfied by reason of the exemption provided in Rule 11a2-2(T) under the Act.[6]

The Exchange believes that the proposed rule change is consistent with the manner in which "Electronic Book Executions" occur in PCX Plus.[7] Pursuant to PCX Rule 6.76(b)(4), when a market maker's quote interacts with a public customer order in the book, that market maker receives an allocation of the book order while the balance of that order is allocated on a size pro rata basis to all "crowd participants" who respond within a designated time. The term "crowd participants" includes floor brokers representing orders for both customers and broker-dealers.[8] Accordingly, the PCX rule allows floor brokers to submit orders to buy (sell) the book on behalf of public customers and broker-dealers, as proposed by the CBOE.

The CBOE believes that this proposal enhances the ability of floor brokers to represent unaffiliated broker-dealer orders, which will serve to increase depth and liquidity in those affected classes.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[10] requirements that the rules of an exchange be designed to promote just and equitable principles of

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] The Commission recently approved CBOE Rule 6.45A as part of the Hybrid filing. *See* Securities Exchange Act Release No. 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003).

[4] *See* CBOE Rule 6.45A(c)(ii).

[5] 15 U.S.C. 78k(a).

[6] 17 CFR 240.11a2-2(T).

[7] *See* Securities Exchange Act Release 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003).

[8] PCX Rule 6.1(b)(38) defines "crowd participants" as "market makers appointed to an option issue under Rule 6.35, and any Floor Brokers actively representing orders at the best bid or offer on the Exchange for a particular option series." It is the CBOE's understanding that Floor Brokers on PCX acting under this Rule are limited by section 11(a) to representing broker-dealer orders from non-affiliated entities.

[9] 15 U.S.C. 78(f)(b).

[10] 15 U.S.C. 78(f)(b)(5).

[5] 17 CFR 200.30-3(a)(12).

trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the CBOE consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR–CBOE–2003–27 and should be submitted by September 9, 2003.

[11] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21133 Filed 8–18–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48320; File No. SR–CBOE–2003–22]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the Chicago Board Options Exchange, Inc. Relating to Options Clearing Corporation Liability

August 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 22, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On August 11, 2003, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In connection with the implementation of the Intermarket Options Linkage (the "Linkage"), the CBOE hereby proposes to add an interpretation to CBOE Rule 6.7.

The text of the proposed rule change, as amended, is below.[4] Proposed additions are in *italics*.

Chicago Board Options Exchange, Incorporated Rules

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from David Doherty, Attorney, Legal Division, CBOE to Tim Fox, Attorney, Division of Market Regulation ("Division"), Commission, dated August 11, 2003 ("Amendment No. 1"). In Amendment No. 1, the CBOE replaced the phrase "persons associated therewith" with the phrase "associated persons."

[4] The text of the proposed rule change appearing below incorporates a technical correction to the rule text of CBOE Rule 6.7(a) that was filed with the Commission. Telephone conversation between David Doherty, Attorney, Legal Division, CBOE and Tim Fox, Attorney, Commission, on July 30, 2003.

Rule 6.7 Exchange Liability

(a) Except to the extent provided in paragraph (b) of this Rule, and except as otherwise expressly provided in the Rules, neither the Exchange nor its directors, officers, committee members, employees or agents shall be liable to the members of the Exchange or to persons associated therewith for any loss, expense, damages or claims that arise out of the use or enjoyment of the facilities or services afforded by the Exchange, any interruption in or failure or unavailability of any such facilities or services, or any action taken or omitted to be taken in respect to the business of the Exchange except to the extent such loss, expense, damages or claims are attributable to the willful misconduct, gross negligence, bad faith or fraudulent or criminal acts of the Exchange or its officers, employees or agents acting within the scope of their authority. Without limiting the generality of the foregoing and subject to the same exception, the Exchange shall have no liability to any person for any loss, expense, damages or claims that result from any error, omission or delay in calculating or disseminating any current or closing index value, any current or closing value of interest rate options, or any reports of transactions in or quotations for options or other securities, including underlying securities. The Exchange makes no warranty, express or implied, as to results to be obtained by any person or entity from the use of any data transmitted or disseminated by or on behalf of the Exchange or any reporting authority designated by the Exchange, including but not limited to reports of transactions in or quotations for securities traded on the Exchange or underlying securities, or reports of interest rate measures or index values or related data, and the Exchange makes no express or implied warranties of merchantability or fitness for a particular purpose or use with respect to any such data. The foregoing limitations of liability and disclaimers shall be in addition to, and not in limitation of, the provisions of Article Thirteenth of the Exchange's Certificate of Incorporation.

* * * * *

*** * * Interpretations and Policies**

.01–.03 (No change.)

.04 The Intermarket Options Linkage (the "Linkage"), as used to send orders and other information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of Rule 6.7, and the Clearing Corporation shall have no liability to members of the Exchange or to

associated persons with respect to the use, non-use or inability to use the Linkage, including, without limitation, the content of orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, or otherwise.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In connection with the implementation of the Linkage, the Exchange proposes to add an interpretation to CBOE Rule 6.7. The proposed Interpretation .04 would provide that the Linkage, as used to send orders and other information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of CBOE Rule 6.7, and that the Options Clearing Corporation ("Clearing Corporation") shall have no liability to members of the Exchange or to associated persons of the members with respect to the use, non-use or inability to use the Linkage, including, without limitation, the content of orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, or otherwise.

2. Statutory Basis

The CBOE believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that by limiting certain types of liability against the Exchange and Clearing Corporation with respect to the Linkage, Clearing Corporation will have the capability to continue to develop and enhance the Linkage, thereby facilitating transactions in securities, removing impediments to and perfecting the mechanism of a free and open market and a national market system and protecting investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The CBOE neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the CBOE consents, the Commission will:

(A) by order approve such proposed rule change, as amended; or

(B) institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–2003–22 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21175 Filed 8–18–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48327; File No. SR–CHX–2003–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Member Entry of Trade Information for Reporting and Dissemination

August 12, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2003, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the CHX has prepared. The CHX filed the proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(5) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend CHX Article XXI, Rule 3, which governs delivery of trade tickets for reporting and dissemination. The proposed rule change would modify the rule to give members the alternative of entering trade information directly, rather than having to deliver the trade tickets to CHX personnel. The text of the proposed rule change is available at the CHX and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(5).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of those statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CHX Article XXI, Rule 3 governs delivery of trade tickets for reporting and dissemination. The rule currently permits trades executed on the CHX floor to be reported in two ways: (1) Executions initiated through the CHX's MAX® system are automatically reported to the CHX for dissemination; and (2) other executions that occur on the trading floor must be written on a ticket and delivered to CHX personnel for entry into the CHX's systems. The proposed rule change would amend CHX Article XXI, Rule 3 to give members the alternative of entering trade information themselves, using technological enhancements that the CHX has approved, rather than delivering the trade tickets to CHX personnel for entry.

The CHX believes that the proposed rule change would modernize the rule by enabling a CHX member to report a transaction by inputting the trade information into a CHX-approved system. As an initial matter, this proposal would allow CHX floor brokers to enter trades themselves via the Brokerplex™ stations that the CHX has provided to them.[5] In the future, the CHX may develop additional technological enhancements that permit other CHX floor members to report transactions in a more automated manner.[6] In short, the proposed rule change makes it clear that CHX members may make use of this new technology to enter information about a transaction directly for dissemination to the market.

2. Statutory Basis

The CHX believes the proposal is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] The CHX believes the proposal is consistent with Section 6(b)(5) of the Act[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments Regarding the Proposed Rule Change Received From Members, Participants or Others

The CHX neither solicited nor received written comments with respect to this proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(5) thereunder[10] because it constitutes a change in an existing order-entry or trading system of a self-regulatory organization that (i) does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not have the effect of limiting access to or availability of the system. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2003–26 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21130 Filed 8–18–03; 8:45 am]

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[5] The Brokerplex system is a front-end system that allows a floor broker to keep an automated record of his or her orders. It is not an order execution system, although it can send orders to the CHX's MAX system for execution in accordance with applicable order execution rules.

[6] The CHX states that the development of these additional technologies is not currently a significant systems priority.

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48321; File No. SR–ISE–2003–15]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendment No. 1 Thereto, by the International Securities Exchange, Inc., Relating to Limitations on Liability

August 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On July 30, 2003, the ISE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mike Simon, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated July 30, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a technical correction to the rule text.

change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a rule disclaiming liability for The Options Clearing Corporation ("Clearing Corporation") with respect to the Options Intermarket Linkage ("Linkage").

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

* * * * *

Rule 1905. Limitation of Liability

The Clearing Corporation shall have no liability to Members with respect to the use, non-use or inability to use the Linkage, including without limitation the content of orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, or otherwise.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt a rule to limit the liability of the Clearing Corporation with respect to the Members' use of the Linkage. Pursuant to the Linkage Project and Facilities Management Agreement ("Agreement"),[4] the parties to the Agreement who are Participants in the Intermarket Option Linkage Plan, including the ISE, are required to file a proposed rule change with the Commission providing the Clearing Corporation with limited liability with respect to Participant Members' use of the Linkage within four months following the Linkage's effective date. Hence, the ISE proposes this rule change to fulfill its obligation under the Agreement.

2. Statutory Basis

The ISE believes that its proposal is consistent with Section 6(b) of the Act[5] in general, and furthers the objectives of Section 6(b)(5) of the Act[6] in particular, in that it seeks to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The ISE neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the ISE consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the ISE.

All submissions should refer to File No. SR-ISE–2003–15 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21176 Filed 8–18–03; 8:45 am]

BILLING CODE 8010–01–P

[4] Linkage Project and Facilities Management Agreement (January 30, 2003).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48317; File No. SR–PCX–2003–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. to Amend its Schedule of Fees and Charges for the Archipelago Exchange Facility

August 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2003, the Pacific Exchange, Inc. ("PCX") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX, through its wholly owned subsidiary PCX Equities, Inc. ("PCXE"), proposes to amend its fee schedule for services provided to ETP Holders[3] and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* PCXE Rule 1.1(n) (defining "ETP Holder").

Sponsored Participants[4] that use the PCX's equities trading facility, the Archipelago Exchange ("ArcaEx"), by: (1) Reducing the per-share transaction fee for NYSE-listed securities to zero; (2) reducing the per-share User Transaction Credit for NYSE-listed securities to zero; and (3) eliminating the Tape A rebate for all transactions in NYSE-listed securities with the exception of Cross Orders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposal. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of the statements. The text of the proposed rule change is available at the PCX and at the Commission.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX, through its wholly owned subsidiary PCXE, proposes to reduce the per-share round lot transaction fee for NYSE-listed securities charged to ETP Holders and Sponsored Participants (collectively, "Users") that execute trades on ArcaEx. The PCX currently charges all Users in NYSE-listed securities a transaction fee of $0.003 per share for orders executed in the ArcaEx limit order book. The PCX is proposing to reduce this transaction fee to zero but to leave unchanged its current odd-lot fee for NYSE-listed securities.[5] According to the PCX, the rationale for this change is to make the pricing for executions on the ArcaEx in NYSE-listed securities more competitive. The PCX evaluated the costs and the other changes proposed in this filing and determined that it was feasible to lower the transaction fee for NYSE-listed securities traded on the ArcaEx facility.

The PCX also proposes to reduce the per-share User Transaction Credit for NYSE-listed securities to zero from $.002 per share. With respect to the PCX's market data revenue credit for NYSE listed securities (or "Tape A Securities"), the PCX proposes to eliminate the Tape A rebate for all transactions but Cross Orders.[6] A Cross Order on the ArcaEx will continue to receive a 50% tape revenue credit per qualifying trade.

2. Basis

The PCX believes that the proposal is consistent with Section 6(b) of the Act,[7] particularly Section 6(b)(4) of the Act,[8] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The PCX neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii)[9] of the Act and Rule 19b–4(f)[10] thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days after the filing of this proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–40 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21131 Filed 8–18–03; 8:45 am]

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[4] A "Sponsored Participant" means "a person which has entered into a sponsorship arrangement with a Sponsoring ETP Holder pursuant to [PCXE] Rule 7.29." *See* PCXE Rule 1.1(tt).

[5] Odd-lot orders that are created as a result of a partial fill of a round lot would continue to be excluded from this fee.

[6] A Cross Order is defined in PCXE Rule 7.31(s).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48322; File No. SR–PCX–2003–20]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change, and Amendments No. 1 and 2 Thereto, by the Pacific Exchange, Inc. Relating to Limitation of Liability of the Options Intermarket Linkage

August 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 28, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. On August 4, 2003, the PCX submitted Amendment No. 1 to the proposed rule change.[3] On August 7, 2003, the PCX submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 1, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange submitted a new Form 19b–4, which replaced the original filing in its entirety. In Amendment No. 1, the PCX clarified in proposed PCX Rule 13.5(a) that Options Intermarket Linkage ("Linkage"), as used to send orders and other information to or from the Exchange, is a facility or service of the Exchange for the purpose of PCX Rule 13.2. In addition, the Exchange amended PCX Rule 13.2(b) to clarify that this Rule does not apply to Linkage.

[4] *See* letter from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Deborah L. Flynn,

Continued

this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to add PCX Rule 13.5 in order to establish a provision limiting liability for the Options Clearing Corporation ("OCC") with respect to Exchange members" use of the Linkage.

The text of the proposed rule change, as amended, is below. Proposed additions are in *italics*.

* * * * *

Rule 13 Liability of Governors and Exchange

* * * * *

Rule 13.2(a), Liability of Exchange

(a)—(No change.)

(b) Whenever custody of an unexecuted order is transmitted by a member to or through the Exchange's order routing systems, electronic book or automatic executions systems or to any other automated facility of the Exchange, *excluding the Options Intermarket Linkage system*, whereby the Exchange assumes responsibility for the transmission or execution of the order, provided that the Exchange has acknowledged receipt of such order, the Exchange's liability for the negligent acts or omissions of its employees or for the failure of its systems or facilities shall not exceed the limits provided in this paragraph, (b), and no assets of the Exchange shall be applied or shall be subject to such liability in excess of the following limits:

(i)–(iii)—(No change.)

(c)–(No change.)

* * * * *

13.5(a), Liability for Options Intermarket Linkage

(a) The Exchange operates the Options Intermarket Linkage ("Linkage") for its Members or persons associated therewith pursuant to Rules 6.92–6.96. It shall be the responsibility of each Member or person associated therewith to verify the accuracy of transactions sent and received through the Linkage. The Linkage, as used to send orders and other information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of Rule 13.2.

(b) The Options Clearing Corporation, its affiliates, officers, directors, shareholders, agents and employees (collectively "OCC"), shall not be liable to Members or persons associated therewith for any loss, damage, claim or expense arising out of the use, non-use, or inability to use the Linkage, including without limitation the content of orders, trades, or other business facilitated through the Linkage, the truth or accuracy of the content of messages or other information transmitted through the Linkage, the delays in transmission of orders, trades, or otherwise.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its liability rules by creating PCX Rule 13.5 in order to establish a provision limiting liability for the OCC with respect to PCX members' use of the Linkage. Pursuant to the Linkage Project and Facilities Management Agreement ("Agreement"),[5] the participating Self-Regulatory Organizations ("SROs"), including the Exchange, are required to file a proposed rule change with the Commission to provide the OCC with limited liability with respect to the Members' use of the Linkage. Under the Agreement, the SROs are required to file a proposed rule change with the Commission within four months following the Linkage's effective date of January 31, 2003. Hence, the Exchange filed this proposed rule change to fulfill its obligation under the Agreement.

The Exchange also proposes to add clarifying language in proposed PCX Rule 13.5(a) stating that the Linkage, as used to send orders and other information to or from the Exchange, is a facility or service afforded by the Exchange for purposes of PCX Rule 13.2. In addition to such clarifying language, the PCX proposes to carve out an exception for the Linkage system in existing PCX Rule 13.2(b), as the Exchange believes that this rule is not intended to apply to the Linkage system.

2. Statutory Basis

The PCX believes that its proposal is consistent with Section 6(b) of the Act[6] in general, and furthers the objectives of Section 6(b)(5) of the Act[7] in particular, in that it should promote just and equitable principles of trade; facilitate transactions in securities, remove impediments to and perfect the mechanisms of a free and open market and a national market system; and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the PCX consents, the Commission will:

(A) By order approve such proposed rule change, as amended; or

(B) Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth

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Assistant Director, Division, Commission, dated August 7, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange removed a disclaimer provision contained in the proposed rule text, PCX Rule 13.5(c).

[5] Linkage Project and Facilities Management Agreement (January 30, 2003).

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–20 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21177 Filed 8–18–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48313; File No. SR–Phlx–2003–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Member Voting

August 8, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 11, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its Certificate of Incorporation, Article Fifth (e) as well as Exchange By-Law Article III, Sections 3–7(a), 3–10(c), and 3–13; Article XII, Section 12–1(b); and Article XXII, Sections 22–1 and 22–2, to provide that for each matter submitted to a vote of the membership,[3] except as provided by Article Thirteenth of the Certificate of Incorporation, each regular member shall be entitled to one vote for each regular membership, the legal title[4] of which is registered in the name of such regular member. The text of the proposed rule change is below. Additions are *italicized;* deletions are in brackets.

* * * * *

Certificate of Incorporation of Philadelphia Stock Exchange

First–Fourth: No change.

Fifth (a)–(d): No change.

(e) Except as otherwise provided in Article Thirteenth hereof, on each matter submitted to a vote of the membership, each Regular Member shall be entitled to one vote for each Regular Membership the legal title of which is registered in the name of such Regular Member.

* * * * *

By-Laws of Philadelphia Stock Exchange

Article III—Nominations-Annual Election-Meetings

Sec. 3–1–3–6: No change.

Members May File Independent Nominations—Requirements

Sec. 3–7. (a) Independent nominations for the positions of On-Floor, and Off-Floor Governors on the Board of Governors may be made by a written petition filed with the Secretary of the Exchange in a sealed envelope within two (2) weeks after the posting of the report of the Nominating and Elections Committee. No such nomination shall be valid unless it is signed by [not less than fifty (50)] members *holding legal title to not less than fifty (50) regular memberships.* No member shall endorse more than one (1) nominee; provided, however, that [seventy-five (75)] members *holding legal title to seventy-five (75) regular memberships* may, by petition, propose an entire ticket, or any portion thereof, for the vacancies on the Board of Governors to be filled at the ensuing election. A person is not eligible for an independent nomination for a position on the Board of Governors if one (1) or more persons associated with his member or participant organization, as defined in By-Law Section 3–6(c), would be serving an unexpired term or terms on the Board upon the commencement of his term of office. No more than one (1) person associated with the same member or participant organization, as defined in Section 3–6(c), shall be certified by the Nominating and Elections Committee for independent nomination to a position on the Board of Governors. In the event more than one such nomination is received, the Nominating and Elections Committee shall not certify any such candidates. A person who has previously accepted nomination by the Nominating and Elections Committee for one (1) category of Governor (*e.g.* On-Floor or Off-Floor Governor) is not eligible to qualify as an independent candidate in any category. There may be no independent nominations of incumbent Governors whose terms do not expire following the next election. The Nominating and Elections Committee and the Secretary of the Exchange shall open such envelopes, and if found eligible for election, the persons nominated by petition conforming with the foregoing provisions shall be deemed nominees for such positions on the Board of Governors. The names of all nominees for membership on the Board of Governors, whose nominations conform with By-Law requirements, shall be sent to all members of the Exchange by the Secretary as promptly after the third Monday of February as is reasonably possible. The order of nominees' names on notices and on the ballot shall be determined through a drawing by lot conducted by the Nominating and Elections Committee.

Sec. 3–7 (b)–(c): No change.

Sec. 3–8–3–9: No change.

Special Meetings

Sec. 3–10. Except as otherwise specifically provided by law, special meetings of the members may be called at any time:

(a) By the Chairman of the Board of Governors; or

(b) By a majority of the Board of Governors; or

(c) By *members holding legal title to a* majority of all *regular* memberships entitled to vote.

Upon the written request of any person entitled to call a special meeting, which request shall set forth the purpose for which the meeting is desired, it shall be the duty of the Secretary to give prompt written notice of such meeting to be held at such time as the Secretary may fix, subject to the provisions of Section 3–11 hereof. If the Secretary shall fail to fix such date and give such notice within ten (10) days

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] For instance, members vote for industry governors. *See* Phlx By-Law Article 3–2.

[4] Legal title is registered in the name of a member pursuant to a lease agreement or under an A–B–C agreement (membership title and use agreement) pursuant to Phlx Rules 930 and 940.

after receipt of such request, the person or persons making such request may do so.

Sec. 3–11: No change.

Sec. 3–12: No change

Quorum

Sec. 3–13. At all meetings of the Exchange for the transaction of business other than dealings in securities, each member may vote in person or by proxy[; provided that no action shall become effective unless the number of members participating therein exceeds one-half of the number of voting memberships outstanding and any proposed action is approved]. *At any such meeting of the Exchange, the members holding legal title to a majority of the regular memberships entitled to vote at the meeting, present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number may be required by law, and all matters shall be determined* by a majority of the votes cast. The members present at a duly organized meeting can continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum. If a meeting cannot be organized because of the absence of a quorum, those present may, except as otherwise provided by law, adjourn the meeting to such time and place as they may determine. In the case of any meeting for the election of Governors, those members who attend the second of such adjourned meetings, although less than a quorum as fixed in this Section, shall nevertheless constitute a quorum for the purpose of electing Governors.

Article XII—Membership-Eligibility-Election-Initiation-Fee Membership

Membership

Sec. 12–1.

(a): No Change.

(b) A regular membership confers upon and subjects the holder to all the privileges and obligations of active membership. Only regular members shall be entitled to vote and to conduct business on the exchange facility conducted by the Exchange. *Except as otherwise provided in Article Thirteenth of the Certificate of Incorporation of the Exchange, on each matter submitted to a vote of the membership,* [E]each regular member shall be entitled to one vote [on] *for* each [matter submitted to a vote of the membership] *regular membership the legal title of which is registered in the name of such regular member.*

Sec. 12–1 (c)–(f): No change.

Sec. 12–2–12–11: No change.

Article XXII—Amending The By-Laws

Amendments to By-Laws

Sec. 22–1. Whenever [seventy-five] members *holding legal title to seventy-five regular memberships* [of the Exchange] shall offer, in writing, any amendment to the By-Laws, it shall be submitted to the Secretary of the Exchange, who shall submit it to the membership for vote thereon by ballot. The vote shall be conducted within four weeks of the date of such submission. The record date for determining members entitle to vote on such amendment shall be set as the date of the submission. Each member of the Exchange in good standing may vote in person or by proxy. If [the number of] members *holding legal title to a majority of the regular memberships entitled to vote thereon* participate[ing] in the balloting [exceeds one-half of the number of memberships then outstanding] and the proposed amendment is approved by the affirmative vote of a majority of the votes cast, it shall thereupon become a part of the By-Laws.

How Proposed

Sec. 22–2. Any amendment to the By-Laws originating in the Board of Governors shall be proposed at a regular or special meeting of the Board. If approved by twelve of the Governors, it shall be announced to the members of the Exchange forthwith by sending copies thereof to each member of the Exchange.

Special meeting

If, within a period of ten days, a written request of *members holding legal title to* not less than seventeen *regular* member*ships* of the Exchange is filed with the Secretary for a special meeting of the Exchange to consider the amendment, the Chairman of the Board shall call such meeting, at which meeting each member of the Exchange in good standing may vote in person or by proxy. If [the number of] members *holding legal title to a majority of the regular memberships entitled to vote thereon* participate[ing] in the balloting [exceeds one-half of the number of memberships then outstanding,] and the proposed amendment is approved by the affirmative vote of a majority of the votes cast, it shall thereupon become a part of the By-Laws.

Method of adoption

In the absence of such request for a special meeting of the Exchange, the Board of Governors, after the expiration of such period of ten days, may consider the proposed amendment at any regular or special meeting of the Board, and, if the proposed amendment is adopted by a vote of fifteen members of the Board, it shall thereupon become a part of the By-Laws.

All changes in the By-Laws shall be printed and posted for ten days, and copies thereof shall be sent to each member of the Exchange.

Sec. 22–3: No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to make the voting process more fair by entitling each member to cast one vote for each regular membership to which he or she holds legal title. The result of the proposed amendments would be that any one member would be entitled to cast multiple votes if he or she held legal title to more than one regular membership. Today, a regular member is permitted to cast only one vote, regardless of the number of memberships to which he or she holds legal title. This is due to the current language in the By-Laws and the Certificate of Incorporation, as well as the applicable provisions of the Delaware General Corporate Law.

The Exchange believes that the proposed amendment to Article Fifth of the Exchange's Certificate of Incorporation would better enfranchise all legal titleholders with respect to each regular membership to which they hold legal title, thereby allowing them the opportunity to participate fully in Exchange governance with respect to each such regular membership. The Exchange believes that this is a desirable result as the Exchange will allow all legal titleholders to cast ballots

and/or give proxies [5] for each and every membership. Additionally, the amendments would allow titleholders to sign multiple times representing each regular membership they hold legal title to with respect to independent nominations for industry governors, to be counted for quorum purposes, to be counted for purposes of calling a special membership meeting, and to be counted for purposes of offering any amendment to the By-Laws or requesting the calling of a special meeting of the membership to vote on a proposed By-Law amendment. Finally, the Exchange believes that these amendments would allow all legal titleholders to participate fully in Exchange governance opportunities whereas under current interpretation of the By-Laws legal titleholders with multiple legal titles to regular memberships registered in their name are allowed only one vote.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(3) of the Act [7] in particular, in that the rules of the Exchange assure a fair representation of its members in the selection of its directors and administration of its affairs by providing for legal titleholders that own more than one regular membership to participate more fully in Exchange governance.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to file number SR–Phlx–2003–49 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21132 Filed 8–18–03; 8:45 am]

BILLING CODE 8010–01–P

[5] Exchange By-Law Article III, Section 3–12 (Right to Vote) provides as follows: Each regular member of the Exchange in good standing shall be entitled to vote at any election of the Exchange. Each such member may vote in person or by proxy under such regulations as the Nominating and Elections Committee, with the approval of the Board of Governors, may direct.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(3).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48323; File No. SR–Phlx–2003–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to By-Law Article 12–11, Use of Facilities

August 12, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 2, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend its By-Laws to limit the liability of The Options Clearing Corporation ("OCC") to members and member organizations resulting from their use of the Intermarket Options Linkage ("Linkage").

The text of the proposed rule change is below. Proposed additions are in *italics*.

* * * * *

Sec. 12–11 Use of Facilities of Exchange

SEC. 12–11. The Exchange shall not be liable for any damages sustained by a member or a member organization growing out of the use or enjoyment by such member or member organization of the facilities afforded by the Exchange to members for the conduct of their business. *The Options Clearing Corporation shall not be liable to members and member organizations with respect to the use, non-use or inability to use the Intermarket Options Linkage, including without limitation the content of orders, trades, or other business facilitated through the Intermarket Options Linkage, the truth or accuracy of the content of messages or other information transmitted through the Intermarket Options Linkage, or otherwise.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to limit the liability of OCC to Phlx members and member organizations resulting from their use, non-use or inability to use the Linkage. The Phlx, along with the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., and the Pacific Exchange, Inc. (together with the Phlx, known as the "Exchanges"), entered into an agreement with OCC regarding the construction and on-going maintenance and operation of the Linkage (the "Agreement"). In the Agreement, the Exchanges consented to each file a proposed rule change with the Commission limiting OCC's liability to the respective Exchanges' members. The Phlx believes that the present proposed rule change satisfies its respective obligation.

The Phlx believes that the proposed rule change is a reasonable extension of the existing limitation of liability enjoyed by the Exchange in Phlx By-Law Article XII, Section 12–11 (the "By-Law") to OCC. Both the OCC and the Exchange are performing functions related to the on-going maintenance and operation of the Linkage, the benefits of which are enjoyed by the Exchange's members. While the Phlx believes that the By-Law would afford the Exchange protection from liability from members' and member organizations' use of Exchange facilities regarding Linkage, the By-Law, in its current form, does not extend similar protection to OCC. The proposed By-Law amendment would extend that protection to OCC, which should prevent OCC from being the target of liability claims made by members and member organizations who may look for satisfaction to an otherwise unprotected OCC. The Phlx believes that this protection should contribute to the efficient operation of the Linkage.

2. Statutory Basis

The Phlx believes that its proposal is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Section 6(b)(5) of the Act[4] in particular, in that it is intended to promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest by promoting efficient operation of the Linkage by extending liability protection to OCC, which provides functions related to the Linkage's on-going maintenance and operations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Phlx neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Phlx consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–43 and should be submitted by September 9, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21178 Filed 8–18–03; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4450]

Consular Affairs, Overseas Citizen Services, Office of Children's Issues; 30-Day Notice of Proposed Information Collection: Form DS–3013, Application for Assistance Under The Hague Convention on the Civil Aspects of International Child Abduction; OMB Control Number 1405–0076

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Extension of currently approved collection.

Originating Office: Bureau of Consular Affairs, Overseas Citizen Service, Office of Children's Issues, CA/OCS/CI

Title of Information Collection: Application for Assistance Under The Hague Convention on the Civil Aspects of International Child Abduction.

Frequency: On occasion.

Form Number: DS–3013.

Respondents: Individuals.

Estimated Number of Respondents: 500.

Average Hours Per Response: 1.

Total Estimated Burden: 500 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Office of Children's Issues, CA/OCS/CI, U.S. Department of State, Washington, DC 20520–4818, 202–312–9700. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: August 8, 2003.

Dianne M. Andruch,

Deputy Assistant Secretary, Bureau of Consular Affairs,

[FR Doc. 03–21204 Filed 8–18–03; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2003–2004 Allocations of the Tariff-rate Quotas for Raw Cane Sugar, Refined Sugar, and Sugar-Containing Products

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the country-by-country allocations of the in-quota quantity of the tariff-rate quotas for imported raw cane sugar, refined sugar, and sugar-containing products for the period that begins October 1, 2003 and ends September 30, 2004.

EFFECTIVE DATE: October 1, 2003.

ADDRESSES: Inquiries may be mailed or delivered to Sharon Sydow, Director of Agricultural Trade Policy, Office of Agricultural Affairs, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Sharon Sydow, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas for imports of raw cane and refined sugar. Pursuant to additional U.S. Note 8 to chapter 17 of the HTS, the United States also maintains a tariff-rate quota for certain sugar-containing products.

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade Representative under Presidential Proclamation 6763 (60 FR 1007).

The in-quota quantity of the tariff-rate quota for raw cane sugar for the period October 1, 2003–September 30, 2004, has been established by the Secretary of Agriculture at 1,117,195 metric tons, raw value (1,231,497 short tons), the minimum to which the United States is committed under the World Trade Organization Agreement. The quantity of 1,117,195 metric tons, raw value is being allocated to the following countries:

Country	FY 2004 allocation
Argentina	45,281
Australia	87,402
Barbados	7,371
Belize	11,583
Bolivia	8,424
Brazil	152,691
Colombia	25,273
Congo	7,258
Cote d'Ivoire	7,258
Costa Rica	15,796
Dominican Republic	185,335
Ecuador	11,583
El Salvador	27,379
Fiji	9,477
Gabon	7,258
Guatemala	50,546
Guyana	12,636
Haiti	7,258
Honduras	10,530
India	8,424
Jamaica	11,583
Madagascar	7,258
Malawi	10,530
Mauritius	12,636
Mexico	7,258
Mozambique	13,690
Nicaragua	22,114
Panama	30,538
Papua New Guinea	7,258
Paraguay	7,258
Peru	43,175
Philippines	142,160
South Africa	24,220
St. Kitts & Nevis	7,258
Swaziland	16,849
Taiwan	12,636
Thailand	14,743
Trinidad-Tobago	7,371
Uruguay	7,258
Zimbabwe	12,636

These allocations are based on the countries' historical shipments to the United States. The allocations of the raw cane sugar tariff-rate quota to countries that are net importers of sugar are conditioned on receipt of the appropriate verifications of origin.

This allocation includes the following minimum quota-holding countries: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay.

The in-quota quantity of the tariff-rate quota for refined sugar for the period October 1, 2003–September 30, 2004, has been established by the Secretary of Agriculture at 39,000 metric tons, raw value (42,990 short tons), of which the Secretary has reserved 18,656 metric tons (20,565 short tons) for specialty sugars. Of the quantity not reserved for specialty sugars, a total of 10,300 metric tons (11,354 short tons) is being allocated to Canada and 2,954 metric tons (3,256 short tons) is being allocated to Mexico. The remaining 7,090 metric tons (7,815 short tons) of the in-quota quantity not reserved for specialty sugars may be supplied by any country on a first-come, first-served basis, subject to any other provision of law. The 18,656 metric tons (18,360 short tons) reserved for specialty sugars is also not being allocated among supplying countries and is available on a first-come, first-served basis, subject to any other provision of law.

With respect to the tariff-rate quota of 64,709 metric tons (71,329 short tons) for certain sugar-containing products maintained pursuant to additional U.S. Note 8 to chapter 17 of the HTS, 59,250 metric tons (65,312 short tons) of sugar-containing products is being allocated to Canada. The remaining in-quota quantity for this tariff-rate quota is available to other countries on a first-come, first-served basis.

Conversion factor: 1 metric ton=1.10231125 short tons.

Allen F. Johnson,

Chief Agricultural Negotiator.

[FR Doc. 03–21129 Filed 8–18–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

FAA Approval of Noise Compatibility Program 14 CFR Part 150, Toledo Express Airport, Toledo, OH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Toledo-Lucas county Port Authority under the

provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as "the Act") and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 196–52 (1980). On January 24, 2003 the FAA determined that the noise exposure maps submitted by the Toledo-Lucas County Port Authority under Part 150 were in compliance with applicable requirements. On, July 18, 2003 the FAA approved the Toledo Express Airport noise compatibility program. All of the recommendations of the program were approved.

DATES: The effective date of the FAA's approval of the Toledo Express Airport noise compatibility program is July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Katherine Jones, Federal Aviation Administration, Great Lakes Region, Detroit Airports District Office, DET ADO–606, Metro Airport Center, 11677 S. Wayne Road, Ste. 107, Romulus, Michigan 48174, (734) 229–2958. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Toledo Express Airport, effective July 18, 2003.

Under Section 47504 of the Act, an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) Part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR Part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against all types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator as prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR Part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Romulus, Michigan.

Toledo-Lucas County Port Authority submitted to the FAA on January 21, 2003 the noise exposure maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 1999 through 2002. The Toledo Express Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on January 24, 2003. Notice of this determination was published in the **Federal Register** on February 14, 2003.

The Toledo Express Airport study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the 2002 to the year 2007. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in Section 47504 of the Act. The FAA began its review of the program on January 24, 2003 and was required by provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained ten proposed actions for noise mitigation on and/or off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR Part 150 have been satisfied. The overall program, therefore, was approved by the FAA effective July 18, 2003.

Outright approval was granted for all of the specific program elements. The approved measures were to Establish Runway 25 as preferred for departure by all aircraft, 24 hours per day; Establish Runway 7 as preferred for nighttime arrivals, 10 p.m. to 6:59 a.m.; Straight-in approaches to Runway 7/25 on final approach course beyond the outer marker; Runway heading departures from Runway 7/25 for aircraft to fly runway handing until 6 nautical miles from brake release; Install sound insulation improvements at Swanton Township Elementary School; Establish a noise program office; Establish a noise complaint system; Coordinate and communicate with key agencies; Monitor aircraft activity and evaluate the plan; and Update the plan on a regular basis, as needed.

These determinations are set forth in detail in a Record of Approval signed by the Associate Administrator for Airports on July 18, 2003. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Toledo-Lucas County Port Authority. The Record of Approval also will be available on-line at *http://www.faa.gov/arp/environmental/14cfr150/index14.cfm.*

Issued in Romulus, Michigan, July 21, 2003.

Irene R. Porter,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 03–21225 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

Environmental Impact Statement: City and County of Denver, CO

AGENCY: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), Deparmtent of Transportation (DOT).

ACTION: Notice of intent.

SUMMARY: FHWA and FTA are issuing this notice to advise the public that an environmental impact statement/ Section 4(f) Evaluation will be prepared for transportation improvements in the city and County of Denver, Adams County, and the City of Aurora, Colorado.

FOR FURTHER INFORMATION CONTACT: Shaun Cutting, Senior Operations Engineer, FHWA, Colorado Division, 555 Zang Street, Room 250, Lockwood, CO, 80228, Telephone: (303) 969–6730 extension 369. Dave Beckhouse, Community Planner, FTA, 216 16th Street, Suite 650, Denver, CO, 80202, Telephone: (303) 844–3242. Sharon Lipp, Colorado Department of Transportation, Region 6, 2000 South Holly Street, Denver, CO, 80222, Telephone: (303) 984–5260. Mike Turner, Regional Transportation District, 1600 Blake Street, Denver, CO, 80202, Telephone: (303) 299–2366.

SUPPLEMENTARY INFORMATION: The FHWA and FTA in cooperation with the Colorado Department of Transportation (CDOT), Regional Transportation District (RTD), and the City and County of Denver (Denver) will prepare an environmental impact statement (EIS)/ Section 4(f) Evaluation for transportation improvements on the Interstate 70 (I–70) Corridor (the Corridor) between Interstate 25 (I–25) and Pena Boulevard and a transit connection between downtown Denver and Denver International Airport (DIA).

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies. Project scoping will be accomplished through coordination with affected parties, stakeholders, organizations, Federal, State, and local agencies; agency scoping meetings; and through community outreach and public meetings in the project corridor. Agency scoping meetings will be conducted late summer, and public scoping meetings will be conducted this fall (2003). Information on the time and place of the public scoping meetings will be provided in the local newspapers. In advance of the corridor-wide public scoping meetings this fall (2003), a variety of grassroots outreach techniques will be used including a door-to-door campaign for some of the neighborhoods, flyers, block and neighborhood meetings, and business and community-organization outreach meetings. To be placed on the public mailing list to receive additional project information, contact either Sharon Lipp or Mike Turner at the addresses previously provided.

To ensure that a full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS/Section 4(f). Evaluation should be directed to Shaun Cutting or Dave Beckhouse at the addresses previously provided.

The EIS/Section 4(f) Evaluation will evaluate improvement alternatives and the No-Action alternative based on the Purpose and Need. Alternatives will be developed through an extensive agency and community outreach process. A full range of potential alignments and corridors will be considered for both highway and transit alternatives.

The I–70 East Corridor EIS will result in a decision about which transportation projects, if any, will be built to improve safety and address congestion in the Corridor. The purpose of the proposed action is to improve safety, access, and mobility and to decrease congestion. Currently, the I–70 East Corridor is one of the most heavily traveled and congested corridors in the region and State. Downtown Denver is the center for rail and bus transit in the region. DIA is a critical link in the regional and national transportation network. Safety issues revolve around the age and design features of the interchanges and roadway.

The alternatives evaluated in the Draft EIS (DEIS) and Section 4(f) Evaluation will include, but not be limited to, variations of the horizontal and vertical alignment of I–70 as well as capacity and safety improvements. Existing and future interchanges will also be evaluated. Transit alternatives will include, but not be limited to, bus and rail technologies as well as evaluating rail transit along the Union Pacific Railroad corridor from downtown Denver to DIA. As part of the transit evaluations, station locations will be studied and identified as appropriate. The DEIS/Section 4(f) Evaluation will also fully evaluate the No-Action alternative.

FHWA and FTA will evaluate social, economic, and environmental impacts of the various alternatives. A major concern is environmental justice. The Corridor passes through three older communities that have been affected by several actions on I–70 beginning with the initial construction of I–70 and subsequent actions including reconstruction of the I–70 viaduct and roadway widening on the western segment of the Corridor. Other major issues to be evaluated include air quality, noise, aesthetics, community cohesion impacts, and possible disruption of neighborhoods and business and commercial activities.

The DEIS will be available for public and agency review and comment. Information concerning the availability of the DEIS will be published.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Doug Bennett,

Assistant Division Administrator, Colorado Division, Federal Highway Administration, Lakewood, Colorado.

Lee O. Waddleton,

Regional Administrator, Federal Transit Administration, Denver, Colorado.

[FR Doc. 03–21122 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Long Island Rail Road

[Waiver Petition Docket Number FRA–2003–15638]

Long Island Rail Road (LIRR) seeks a waiver of compliance with the *Passenger Equipment Safety Standards*, 49 CFR 238.303 (e)(15)(i), for their fleet of "M–7–EMU" passenger locomotives, as it pertains to MU type locomotives equipped with dynamic brakes found not to be in operating condition during performance of the exterior calendar day inspection. LIRR states these EMU

locomotive braking systems operate differently than more traditional style MU equipment. The LIRR letter of request indicates that the braking system on this equipment utilizes axle mounted disk brakes which provide 80% of friction braking effort, tread brakes which provide 20% of friction braking effort, and additional dynamic braking effort to a speed of 3 mph. If the waiver is granted , LIRR would treat any failure of dynamic braking system on the EMU equipment as if it were a traditional locomotive with defective dynamic brakes [49 CFR 238.303(e)(15)(ii)].

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2003–15638) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on August 12, 2003.

Michael J. Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 03–21138 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

The Yreka Western Railroad Company

[Docket Number FRA–2003–15637]

The Yreka Western Railroad Company (YW) seeks a waiver of compliance from certain provisions of the Safety Glazing Standards, 49 CFR part 223, that require certified glazing for one locomotive. The YW is located in Yreka, California. The YW states that they operate over seven miles of track in extreme northern California. These seven miles of track have no exposure to any main highway and there is no record of vandalism or rock throwing. Furthermore, it hauls only wood chips and wood products and about eight to ten cars per trip.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–15637) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC, on August 12, 2003.

Michael J. Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 03–21139 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2003–15145]

Notice of Public Hearing; Burlington Northern and Santa Fe Railway

The Burlington Northern and Santa Fe Railway has petitioned the Federal Railroad Administration (FRA) seeking approval of the proposed discontinuance and removal of the automatic block signal system, between Hettinger, North Dakota, milepost 926.0 and Terry, Montana, milepost 1078.9, on the Montana Division, Hettinger Subdivision, a distance of approximately 153 miles, and govern train movements by Track Warrant Control.

This block signal application proceeding is identified as Docket No. FRA–2003–15145.

The FRA has issued a public notice seeking comments of interested parties and has conducted its own field investigation in this matter. After examining the carrier's proposal and letters of protest, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9 a.m. Mountain Daylight Time, on Thursday, September 18, 2003, in the Hettinger Research Extension Center, located at 102 Highway 12 West,

Hettinger, North Dakota 58639. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a non adversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, DC, on August 12, 2003.

Michael J. Logue,

Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 03–21137 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–15701; Notice 1]

Bridgestone/Firestone North America Tire, LLC; Receipt of Application for Decision of Inconsequential Noncompliance

Bridgestone/Firestone North America Tire, LLC (BFNT) has determined that approximately 1,228 P235/75R15 Peerless AMBASSADOR tires do not meet the labeling requirement mandated by Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), BFNT has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

Bridgestone/Firestone's Oklahoma City, Oklahoma plant produced approximately 1,228 tires with incorrect markings during the U,S. Department of Transportation's weeks of 17, 18, and 19 in 2003 (from April 20, 2003, through May 10, 2003). The tires were marked: "Tread Plies: 1 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies: 1 Polyester." The correct marking required by FMVSS No. 109 is "Tread Plies: 2 Polyester + 2 Steel + 1 Polyamide, Sidewall Plies: 2 Polyester."

The labeling requirements of FMVSS No. 109, *New Pneumatic Tires,* S4.3, paragraphs (d) and (e), mandate that each tire have permanently molded into or onto both sidewalls the actual number of plies in the sidewall, and the actual number of plies in the tread area, if different.

Bridgestone/Firestone argues that the noncompliance described herein is inconsequential to motor vehicle safety. The noncompliant subject tires were constructed with more tread plies than indicated on the sidewall marking (two instead of one). BFNT states that this noncompliance is unlikely to have an adverse impact on motor vehicle safety since the actual construction of the subject tires is more robust than that identified on the sidewall. The noncompliant tires meet or exceed all performance requirements of FMVSS No. 109 and, the noncompliance will have no impact on the operational performance or safety of vehicles on which these tires are mounted.

Interested persons are invited to submit written views, arguments, and data on the application described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods: Mail: Docket Management Facility; U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC, 20590–001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 18, 2003.

Authority: (49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 13, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–21220 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2003–15644; Notice 1]

Freightliner LLC; Receipt of Application for Determination of Inconsequential Noncompliance

Freightliner LLC (Freightliner), on behalf of Thomas Built Buses, Inc. (Thomas) of High Point, North Carolina, has applied to be exempted from the notification and remedy requirements of the 49 U.S.C. chapter 301 "Motor Vehicle Safety" for a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing Materials," on the basis that the noncompliance is inconsequential to motor vehicle safety. Freightliner has filed a report of noncompliance pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

This notice of receipt of the application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application. See 49 U.S.C. 30118 (d) and 30120 (h).

Freightliner submitted the following information in accordance with the requirements of 49 CFR part 556, "Exemption for Inconsequential Defect or Noncompliance."

Summary of the Petition

Freightliner has determined that approximately 700 Thomas Built Conventional, MPV–EF, and HDX buses manufactured between September 22, 2002, and February 24, 2003, do not meet the labeling requirements of Paragraph S6 of FMVSS No. 205, "Glazing Materials," specifically section 6 of ANSI Z26 as incorporated by reference. The driver side windows were not marked with the DOT symbol, manufacturer's number, and the AS 2

code mark. According to Freightliner, the glazing otherwise met all the material, performance, and marking requirements of FMVSS No. 205, and it supplied a supporting compliance test report.

Freightliner believes that there is no safety risk associated with the glazing. The buses containing this glazing are maintained by professional transportation facilities and personnel that would be expected to correctly replace this glazing because they have experience in such maintenance. Freightliner maintains that, although this failure to label the driver side windows with the DOT number and AS2 code constitutes a noncompliance with the marking requirements of FMVSS No. 205, it is inconsequential to motor vehicle safety. Therefore, Freightliner believes Thomas should be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act.

Availability of the Petition and Other Documents

The petition and other relevant information are available for public inspection in NHTSA Docket No. NHTSA–2003–15644. You may call the Docket at (202) 366–9324 or you may visit the Docket Management in Room PL–401, 400 7th Seventh Street, SW., Washington, DC 20590 (10 a.m. to 5 p.m., Monday through Friday). You may also view the petition and other relevant information on the internet. To do this, do the following:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).

(2) On that page, click on "Simple Search."

(3) On the next page (*http://dms.dot.gov/searchform.simple.cfm/*), type in the docket number, "15644." After typing the docket number, click on "Search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and other materials.

Comments: You may submit comments by DOT DMS Docket Number NHTSA 2003–15644, by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent practicable. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: September 18, 2003.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: August 13, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–21219 Filed 8–18–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34384]

The Railroad Co., Inc. and WV Southern Railway Co.—Acquisition and Operation Exemption—Rail Line of CSX Transportation, Inc.

The Railroad Co., Inc. (RRC) and its wholly owned subsidiary, WV Southern Railway Co. (WVSR), both noncarriers, have jointly filed a verified notice of exemption under 49 CFR 1150.31 to acquire and operate a 12-mile rail line owned by CSX Transportation, Inc. extending from milepost 0.0 at Thurmond, to milepost 12.0 at Mt. Hope, in Fayette County, WV.

RRC and WVSR certify that their projected annual revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.[1]

The transaction was scheduled to be consummated on or after August 1, 2003, the effective date of the exemption (7 days after the notice was filed).

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34384, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Marc A. Monteleone, Bowles Rice McDavid Graff & Love, PLLC, 600 Quarrier St., P.O. Box 1386, Charleston, WV 25301–1386.

Board decisions and notices are available on our Web site at *"http://www.stb.dot.gov.*

Decided: August 7, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–20760 Filed 8–18–03; 8:45 am]

BILLING CODE 4915–00–P

[1] WVSR will be the operator of the line.

Corrections

Federal Register
Vol. 68, No. 160
Tuesday, August 19, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons

Correction

In notice document 03–20179 beginning on page 47311 in the issue of Friday, August 8, 2003, make the following corrections:

1. On page 47311, in the second column, under the **SUMMARY** heading, in the last line, "January 6, 2004" should read "December 8, 2003".

2. On the same page, in the same column, under the **DATES** heading, in the third line, "January 6, 2004" should read "December 8, 2003".

[FR Doc. C3–20179 Filed 8–18–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA # 237R]

Controlled Substances; Proposed Revised Aggregate Production Quotas for 2003

Correction

In notice document 03–19954 beginning on page 46664 in the issue of Wednesday, August 6, 2003 make the following correction:

On page 46664, the table is corrected in part to read as set forth below.

Basic class	Previously established initial 2003 quotas	Proposed revised 2003 quotas
Schedule I		
2,5-Dimethoxyamphetamine	9,501,000	9,501,000
2,5-Dimethoxy-4-ethylamphetamine (DOET)	2	2
3-Methylfentanyl	4	4
3-Methylthiofentanyl	2	2
3,4-Methylenedioxyamphetamine (MDA)	15	15
3,4-Methylenedioxy-N-ethylamphetamine (MDEA)	10	10
3,4-Methylenedioxymethamphetamine (MDMA)	19	19
3,4,5-Trimethoxyamphetamine	2	2
4-Bromo-2,5-Dimethoxyamphetamine (DOB)	2	2
4-Bromo-2,5-Dimethoxyphenethylamine (2-CB)	2	2
4-Methoxyamphetamine	7	7
4-Methylaminorex	2	2
4-Methyl-2,5-Dimethoxyamphetamine (DOM)	2	2
5-Methoxy-3,4-Methylenedioxyamphetamine	2	2
Acetyl-alpha-methylfentanyl	2	2
Acetyldihydrocodeine	2	2
Acetylmethadol	2	3

* * * * *

[FR Doc. C3–19954 Filed 8–18–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
August 19, 2003

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Standardization of Generator Interconnection Agreements and Procedures; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–1–000; Order No. 2003]

Standardization of Generator Interconnection Agreements and Procedures

July 24, 2003.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power Act to require public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to file revised open access transmission tariffs containing standard generator interconnection procedures and a standard agreement that the Commission is adopting in this order and to provide interconnection service to devices used for the production of electricity having a capacity of more than 20 megawatts, under them. Any non-public utility that seeks voluntary compliance with the reciprocity condition of an open access transmission tariff may satisfy this condition by adopting these procedures and this agreement.

EFFECTIVE DATE: This final rule will become effective October 20, 2003.

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Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

I. Introduction

1. This Final Rule requires all public utilities that own, control or operate facilities used for transmitting electric energy in interstate commerce to have on file standard procedures and a standard agreement for interconnecting generators larger than 20 MW. The Commission expects that this Final Rule will prevent undue discrimination, preserve reliability, increase energy supply, and lower wholesale prices for customers by increasing the number and variety of new generation that will compete in the wholesale electricity market.

2. This Final Rule requires public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to file revised open access transmission tariffs (OATTs) to add Standard Large Generator Interconnection Procedures (Final Rule LGIP)[1] and a Standard Large Generator Interconnection Agreement (Final Rule LGIA).[2] Any non-public utility that seeks voluntary compliance with the reciprocity condition of an open access transmission tariff may satisfy this condition by adopting this Agreement and these procedures.

3. The Final Rule LGIP sets forth the procedures that Interconnection Customers and Transmission Providers are required to follow during the interconnection process.[3] The Final Rule LGIA sets forth the legal rights and obligations of each Party, addresses cost responsibility issues, and establishes a process for resolving disputes.

4. The Federal Energy Regulatory Commission's (Commission's) authority to require the addition of the Final Rule LGIA and Final Rule LGIP to the OATT derives from its findings of undue discrimination in the interstate electric transmission market that formed the basis for Order No. 888.[4] The Commission here adopts standard procedures and a standard agreement to be used by Transmission Providers with Interconnection Customers proposing to interconnect a generator of more than 20 MW to sell energy at wholesale in interstate commerce. The Final Rule LGIP and Final Rule LGIA apply to any new Interconnection Request to a Transmission Provider's Transmission System.[5] The Commission is not requiring any retroactive changes to individual (versus generic) interconnection agreements filed with the Commission prior to the effective date of this Final Rule.

A. Background

5. The electric power industry continues to be in transition. Where the industry once comprised mainly large, vertically integrated utilities providing bundled power at cost-based rates, companies selling unbundled wholesale power at rates set by competitive markets have now become common. Balanced market rules and sufficient infrastructure are essential for achieving power markets that will provide customers with reasonably priced and reliable service.

6. The Commission continues to work to encourage fully competitive bulk power markets. The effort took its first major step with Order No. 888, which required public utilities to provide other entities comparable access to their facilities for transmitting electricity in interstate commerce, and continued with Order No. 2000,[6] which encouraged the development of Regional Transmission Organizations (RTOs).

7. In this proceeding the Commission, pursuant to its responsibility under Sections 205 and 206 of the Federal Power Act (FPA) to remedy undue discrimination, requires all public utilities that own, control, or operate facilities for transmitting electric energy in interstate commerce to append to their OATTs a Final Rule LGIP and Final Rule LGIA. The Commission believes that these documents will provide just and reasonable terms and conditions of transmission service while ensuring that reliability is protected and that they will provide a reasonable balance between the competing goals of uniformity and flexibility.

1. Need for Standard Generator Interconnection Procedures and Agreement

8. In April 1996, in Order No. 888, the Commission established the foundation necessary to develop competitive bulk power markets in the United States: non-discriminatory open access transmission services by public utilities and stranded cost recovery rules to provide a fair transition to competitive markets. Order No. 888 did not directly address generator interconnection issues.

9. In *Tennessee Power Company*[7] (*Tennessee*) the Commission clarified that interconnection is a critical component of open access transmission service and thus is subject to the requirement that utilities offer comparable service under the OATT. In *Tennessee* the Commission encouraged, but did not require, each Transmission Provider to revise its OATT to include interconnection procedures, including a

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[1] Readers may note that provisions of the Final Rule LGIP are referred to as "Sections" whereas provisions of the Final Rule LGIA are referred to as "Articles."

[2] Such filings must be made within 60 days of publication of this Final Rule in the **Federal Register**.

[3] Unless otherwise defined in this Preamble, capitalized terms used in this Final Rule have the meanings specified in Section 1 of the Final Rule LGIP and Article 1 of the Final Rule LGIA. The term Generating Facility means the specific device for which the Interconnection Customer has requested interconnection. The owner of the Generating Facility is referred to as the Interconnection Customer. The entity (or entities) with which the Generating Facility is interconnecting is referred to as the Transmission Provider. The term Large Generator is intended to refer to any energy resource having a capacity of more than 20 megawatts, or the owner of such a resource.

[4] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (DC Cir. 2000), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

[5] New Interconnection Requests include those submitted after the effective date of this Final Rule and include requests to increase the capacity of, or modify the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

[6] Regional Transmission Organizations, Order No. 2000, 65 FR 810 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000–A, 65 FR 12,088 (Mar. 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Public Util. Dist. No. 1* v. *FERC*, 272 F.3d 607 (DC Cir. 2001).

[7] Tennessee Power Company, 90 FERC ¶ 61,238 (2002).

standard interconnection agreement and specific criteria, procedures, milestones, and time lines for evaluating Interconnection Requests.[8]

10. The Commission to date has addressed interconnection issues on a case-by-case basis. Although a number of Transmission Providers have filed interconnection procedures as part of their OATTs,[9] many industry participants remain dissatisfied with existing interconnection policy and procedures. With the increasing number of interconnection-related disputes, it has become apparent that the case-by-case approach is an inadequate and inefficient means to address interconnection issues.

11. Interconnection plays a crucial role in bringing much-needed generation into the market to meet the growing needs of electricity customers. Further, relatively unencumbered entry into the market is necessary for competitive markets. However, requests for interconnection frequently result in complex, time consuming technical disputes about interconnection feasibility, cost, and cost responsibility. This delay undermines the ability of generators to compete in the market and provides an unfair advantage to utilities that own both transmission and generation facilities. The Commission concludes that there is a pressing need for a single set of procedures for jurisdictional Transmission Providers and a single, uniformly applicable interconnection agreement for Large Generators.[10] A standard set of procedures as part of the OATT for all jurisdictional transmission facilities will minimize opportunities for undue discrimination and expedite the development of new generation, while protecting reliability and ensuring that rates are just and reasonable.

12. Interconnection is a critical component of open access transmission service, and standard interconnection procedures and a standard agreement applicable to Large Generators will serve several important functions: They will (1) Limit opportunities for Transmission Providers to favor their own generation, (2) facilitate market entry for generation competitors by reducing interconnection costs and time, and (3) encourage needed investment in generator and transmission infrastructure. The Commission expects that the Final Rule LGIP and Final Rule LGIA (as well as the documents that will be developed in the Small Generator Interconnection proceeding—*see* footnote 10, *supra*) will resolve most disputes, minimize opportunities for undue discrimination, foster increased development of economic generation, and protect system reliability. Therefore, the Commission adopts the Final Rule LGIP and Final Rule LGIA, which will be required as an amendment to the OATT of each public utility that owns, controls, or operates facilities for transmitting electric energy in interstate commerce. As discussed below, more flexibility is available to independent transmission entities in the procedures and agreement they must adopt as compared with the standard provisions adopted herein.

2. Interconnection ANOPR

13. The Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) regarding generator interconnection on October 25, 2001.[11] As a point of departure, the ANOPR presented the Standard Generator Interconnection Procedures and Standard Generation Interconnection Agreement of the Electric Reliability Council of Texas (ERCOT).[12] The Commission supplemented and modified the ERCOT documents with various "best practices" that were identified in Attachment A to the ANOPR. These "best practices" were based, in part, on generator interconnection procedures and agreements that had been approved by the Commission in past cases. The ANOPR instructed the commenters and parties to assume that the Commission's current pricing policy, as described in ANOPR Attachment B, would remain in effect.

14. The ANOPR initiated a consensus-making process in which members of various segments of the electric power industry, government, and the public had an opportunity to provide input. This effort resulted in two documents that largely shaped the Notice of Proposed Rulemaking (Large Generator Interconnection NOPR) that followed.[13] These two documents are referred to as the Consensus LGIP and Consensus LGIA (although a consensus was not reached on all issues). The Commission received numerous comments, primarily from Transmission Providers, Transmission Owners, generators (herein called Interconnection Customers), and state regulators, on the ANOPR and the Consensus LGIP and Consensus LGIA.

3. Interconnection NOPR

a. Overview of the NOPR

15. Although the negotiators did not reach consensus on every issue, the Consensus LGIP and LGIA reflect substantial agreement among diverse interests. The Commission used these documents and the comments on them to create the proposed standard LGIP and LGIA documents (NOPR LGIP and NOPR LGIA). Generally, the NOPR used the Consensus LGIP and LGIA provisions where there was agreement. Where the participants could not reach consensus on a particular issue and options were presented in the Consensus LGIP and LGIA, the Commission chose between those options guided by the principle of minimizing barriers to entry of new generation without increasing the risk of reliability problems. Where an issue remained unresolved and no option was presented, the Commission generally proposed the ERCOT provision.

b. Severing of Small Generator Issues From the NOPR

16. In their comments on the interconnection NOPR, supporters of Small Generators (which are defined herein as devices for the production of electricity having a capacity no more than 20 MW) requested that the Commission adopt separate rules and procedures for interconnecting Small Generators. They argued that use of a Final Rule LGIP and Final Rule LGIA

[8] *See, e.g.*, Commonwealth Edison Co., 91 FERC ¶ 61,083 (2000).

[9] *See, e.g.*, American Electric Power Service Corp., 91 FERC ¶ 61,308 (2000), *order denying reh'g and granting clarification*, 94 FERC ¶ 61,166, *order dismissing request for clarification*, 95 FERC ¶ 61,130 (2001), *appeal docketed sub nom. Tenaska, Inc.* v. *FERC*, No. 01–1194 (DC Cir. Apr. 23, 2001); Southwest Power Pool, Inc., 92 FERC ¶ 61,109 (2000); Carolina Power & Light Co., 93 FERC ¶ 61,032 (2000), *reh'g denied*, 94 FERC ¶ 61,165 (2001), *appeal docketed sub nom. Tenaska, Inc.* v. *FERC*, No. 01–1195 (DC Cir. Apr. 23, 2001); Virginia Electric & Power Co., 93 FERC ¶ 61,307 (2000), *order on clarification*, 94 FERC ¶ 61,045, *reh'g denied*, 94 FERC ¶ 61,164 (2001), *appeal docketed sub nom. Tenaska, Inc.* v. *FERC*, No. 01–1196 (DC Cir. Apr. 23, 2001); Consumers Energy Co., 93 FERC ¶ 61,339 (2000), *order on reh'g and clarification*, 94 FERC ¶ 61,230, *order on clarification and denying reh'g*, 95 FERC ¶ 61,131 (2001).

[10] In another rulemaking, the Commission proposes a separate set of procedures and an agreement applicable to Small Generators (any energy resource having a capacity of no larger than 20 MW, or the owner of such a resource) that seek to interconnect to jurisdictional Transmission Providers. *See* Standardization of Small Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, Docket No. RM02–12–000 (issued concurrently with this Final Rule). 104 FERC ¶ 61,104.

[11] Standardizing Generator Interconnection Agreements and Procedures, Advance Notice of Proposed Rulemaking, 66 FR 55140 (Nov. 1, 2001), FERC Stats. & Regs. ¶ 35,540 (2001).

[12] The ERCOT agreement and procedure were appended to the ANOPR as Appendix A.

[13] Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, 67 FR 22250 (May 2, 2002), FERC Stats. & Regs. ¶ 32,560 (2002).

designed for Large Generators would unduly hinder the development of Small Generators. They sought streamlined procedures and requirements that would allow an Interconnection Customer with a Small Generator to avoid delays caused by studying sequentially the effects of interconnecting its generator with the Transmission Provider's electric system.

17. Persuaded by this request, the Commission decided to propose separate Small Generator interconnection procedures and an agreement (SGIP and SGIA) to provide the right incentives for both Transmission Providers and Interconnection Customers with Small Generators.[14] To that end, the Commission severed the issues related to interconnecting generators no larger than 20 MW from this proceeding and initiated another rulemaking docket, RM02–12–000, for the former.[15]

B. Legal Authority

1. The Federal Power Act and Order No. 888

18. In fulfilling its responsibilities under Sections 205 and 206 of the Federal Power Act,[16] the Commission is required to address, and has the authority to remedy, undue discrimination. The Commission must ensure that the rates, contracts, and practices affecting jurisdictional transmission do not reflect an undue preference or advantage for non-independent Transmission Providers and are just and reasonable. Additionally, as discussed in Order No. 888, the Commission's regulatory authority under the Federal Power Act "clearly carries with it the responsibility to consider, in appropriate circumstances, the anticompetitive effects of regulated aspects of interstate utility operations pursuant to [FPA] Sections 202 and 203, and under like directives contained in Sections 205, 206, and 207."[17]

19. The record underlying Order No. 888 showed that public utilities owning or controlling jurisdictional transmission facilities had the incentive to engage in, and had engaged in, unduly discriminatory transmission practices.[18] The Commission in Order No. 888 also thoroughly discussed the legislative history and case law involving Sections 205 and 206, concluded that it had the authority and responsibility to remedy the undue discrimination it had found by requiring open access, and decided to do so through a rulemaking on a generic, industrywide basis.[19] The Supreme Court affirmed the Commission's decision to exercise this authority by requiring non-discriminatory (comparable) open access as a remedy for undue discrimination.[20]

20. The Commission has identified interconnection as an element of transmission service that is required to be provided under the OATT.[21] Thus, the Commission may order generic interconnection terms and procedures pursuant to its authority to remedy undue discrimination and preferences under Sections 205 and 206 of the Federal Power Act.

2. Commission Interconnection Case Law

21. Unless expressly changed in this Final Rule, the holdings in the Commission's existing interconnection precedents will remain a useful guide during the implementation of this Final Rule. The Commission's interconnection cases have drawn the distinction between Interconnection Facilities and Network Upgrades. Interconnection Facilities are found between the Interconnection Customer's Generating Facility and the Transmission Provider's Transmission System. The Commission has developed a simple test for distinguishing Interconnection Facilities from Network Upgrades: Network Upgrades include only facilities at or beyond the point where the Interconnection Customer's Generating Facility interconnects to the Transmission Provider's Transmission System.[22] The Commission has made clear that Interconnection Agreements are evaluated by the Commission according to the just and reasonable standard.[23] Most improvements to the Transmission System, including Network Upgrades, benefit all transmission customers, but the determination of who benefits from such Network Upgrades is often made by a non-independent transmission provider, who is an interested party. In such cases, the Commission has found that it is just and reasonable for the Interconnection Customer to pay for Interconnection Facilities but not for Network Upgrades. Agreements between the Parties to classify Interconnection Facilities as Network Upgrades, or to otherwise directly assign the costs of Network Upgrades to the Interconnection Customer, have not been found to be just and reasonable and have been rejected by the Commission.[24]

22. Regarding pricing for a non-independent Transmission Provider, the distinction between Interconnection Facilities and Network Upgrades is important because Interconnection Facilities will be paid for solely by the Interconnection Customer, and while Network Upgrades will be funded initially by the Interconnection Customer (unless the Transmission Provider elects to fund them), the Interconnection Customer would then be entitled to a cash equivalent refund (*i.e.*, credit) equal to the total amount paid for the Network Upgrades, including any tax gross-up or other tax-related payments. The refund would be paid to the Interconnection Customer on a dollar-for-dollar basis, as credits against the Interconnection Customer's payments for transmission services, with the full amount to be refunded, with interest within five years of the Commercial Operation Date. The Commission has clarified that transmission credits may be used whether or not a Generating Facility is being dispatched and that credits must be accepted for all network transmissions by the Interconnection Customer, regardless of whether the plant from which the credits originated is dispatched.[25] Credits are not tied to any particular Generating Facility.[26] The Commission has stated that peaking facilities, for instance, must be allowed to use credits even when the Generating

[14] The Small Generator Interconnection ANOPR proposed adopting two Small Generator Interconnection Procedures documents and two Small Generator Interconnection Agreements, with the distinction between the two sets of documents being the size of the Small Generator.

[15] *See* Standardization of Small Generator Interconnection Agreements and Procedures, Advance Notice of Proposed Rulemaking, 67 FR 54749 (Aug. 26, 2002), FERC Stats. & Regs. ¶ 35,544 (2002).

[16] 16 U.S.C. 824d, 824e (2000).

[17] *Gulf States Utils. Co.* v. *FPC*, 411 U.S. 747, 758–59 (1973); *see City of Huntingburg* v. *FPC*, 498 F.2d 776, 783–84 (D.C. Cir. 1974) (noting the Commission's duty to consider the potential anticompetitive effects of a proposed interconnection agreement).

[18] Order No. 888, FERC Stats. Regs ¶ 31,036 at 31,679–84; Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,209–10.

[19] Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,668–73, 31,676–79; Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,201–12; *TAPS* v. *FERC*, 225 F.3d 667, 687–88 (DC Cir. 2000).

[20] New York v. FERC, 535 U.S. 1 (2002).

[21] *See* Tennessee Power Co., 90 FERC ¶ 61,238 at 61,761, *reh'g dismissed*, 91 FERC ¶ 61,271 (2000).

[22] Entergy Gulf States, Inc., 98 FERC ¶ 61,014 at 61,023, *reh'g denied*, 99 FERC ¶ 61,095 (2002); *see* Public Service Co. of Colorado, 59 FERC ¶ 61,311 (1992), *reh'g denied*, 62 FERC ¶ 61,013 at 61,061 (1993).

[23] Pacific Gas & Electric Company, *et al.*, 102 FERC ¶ 61,070 (2003).

[24] *See, e.g.* Illinois Power Co., 103 FERC ¶ 61,032 (2003); American Electric Power Service Corp., 101 FERC ¶ 61,194 (2002).

[25] Entergy Services, Inc., 101 FERC ¶ 61,289 (2002).

[26] *Id.*

Facility is not dispatched.[27] The Commission has also allowed Transmission Providers to require several Interconnection Customers to share the costs of Network Upgrades, under certain circumstances.[28]

23. The Commission has also clarified that an Interconnection Customer need not enter into an agreement for the delivery component of transmission service to interconnect with a Transmission Providers' Transmission System.[29] At the same time, Interconnection Service or an interconnection by itself does not confer any delivery rights from the Generating facility to any points of delivery.[30]

24. The Commission has clarified that ownership of the Interconnection Facilities does not have a direct effect on reliability of the system. Therefore, as long as the Transmission Provider operates the Interconnection Facilities, the Commission will allow an Interconnection Customer to own part, or all, of those facilities.[31]

C. Differences Between the Proposed and Final Rules

25. The Final Rule LGIP and Final Rule LGIA largely track the proposed documents. Changes made in the Final Rule tend to be specific to an individual LGIP section or LGIA article, and do not require fundamental changes to the documents. That being said, there are a few significant issues, some substantive and others organizational, that the Commission summarizes here.

26. Most importantly, we note that the Final Rule applies to independent and non-independent Transmission Providers alike, but non-independent Transmission Providers are required to adopt the Final Rule LGIP and Final Rule LGIA into their OATTs, with deviations from the Final Rule justified using either the "regional differences" or "consistent with or superior to" standard. We also allow Regional Transmission Organizations (RTOs) and ISOs more flexibility to customize an LGIP and LGIA to meet their regional needs. This applies to terms and conditions as well as pricing. While RTOs and ISOs are required to submit compliance filings, they may submit LGIP and LGIA terms and conditions that meet an "independent entity variation" standard that is more flexible than the "consistent with or superior to" standard and the regional differences standard.

27. We are also including in the Final Rule LGIA an article addressing insurance requirements and limiting liability for consequential damages, both of which were absent from the NOPR. Provision for liquidated damages had been removed from the Final Rule LGIP but remains an option in the Final Rule LGIA. Also, in the Final Rule LGIP, when a Transmission Provider elects to study Interconnection Requests in Clusters, it would simultaneously study all Interconnections Requests received within a 180 day window, rather than a 90 day window as proposed.

28. On pricing, we clarify the approach set forth in the NOPR. We continue our current policy of requiring a Transmission Provider that is not an independent entity to provide transmission credits for the cost of Network Upgrades needed for a Generating Facility interconnection. For a Transmission Provider that is an independent entity, such as an RTO or ISO, we allow flexibility as to the specifics of the interconnection pricing policy. Also, an RTO or ISO may propose participant funding for Network Upgrades for a generator interconnection, and, for a transitional period not to exceed a year, a region may use participant funding as soon as an independent administrator has been approved by the Commission and the affected states.

29. Where the policy of transmission credits for upgrades required as a result of the interconnection applies, the Commission provides several clarifications in this Final Rule. For example, the Interconnection Customer should receive transmission credits only if its Generating Facility has achieved commercial operation. Transmission credits are to be paid to the Interconnection Customer when upgrades to an Affected System[32] are constructed and the Interconnection Customer has paid for them. Finally, the Transmission Provider may decline to award credits for only those transmission charges that are designed to recover out-of-pocket costs, such as the cost of line losses, associated with the delivery of the output of the Generating Facility.

II. Discussion

30. In part A of this discussion we address the Standard Large Generator Interconnection Procedures (Final Rule LGIP) that specify the details of the uniform process a prospective Interconnection Customer and its Transmission Provider shall use to initiate, evaluate, and implement an Interconnection Request pursuant to the Final Rule.

31. In part B we discuss the details of the Standard Large Generator Interconnection Agreement (Final Rule LGIA) to be executed by the prospective Interconnection Customer, the Transmission Provider and, where appropriate, the Transmission Owner. This document is incorporated as Appendix 6 to the Standard Large Generator Interconnection Procedures and covers the related rights and obligations of the Parties.[33]

32. In part C, we discuss a number of other significant policy issues in connection with this rulemaking, including pricing policies; the required Interconnection Services; the treatment of "Distribution" level interconnections; Qualifying Facility matters; variations from the Final Rule and accommodation of regional differences; the availability of waivers for small entities; OATT reciprocity implications for interconnection requests; assorted clarifications to the NOPR's proposals; insurance and liquidated damages matters; two- versus three-party interconnection agreements; and consequential damage issues.

33. In part D, we address Compliance Issues pertaining to the requirement for a Transmission Provider to file conforming amendments to its existing OATT; the treatment to be accorded existing interconnection agreements (grandfathering); and the method a Transmission Provider is to use to file executed and unexecuted interconnection agreements in accord with this Final Rule.

A. Issues Related to the Standard Large Generator Interconnection Procedures (LGIP)

1. Overview[34]

34. The Final Rule Standard Large Generator Interconnection Procedures (LGIP) document specifies the steps that must be followed and deadlines that must be met when an Interconnection

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[27] Colton Power, L.P., 101 FERC ¶ 61,150 (2002).

[28] *Id.*

[29] Entergy Services, Inc., 101 FERC ¶ 61,016 (2002); Southern Company Services, Inc., 95 FERC ¶ 61,307 at 62,049, *order dismissing reh'g*, 96 FERC ¶ 61,168 (2001); Tennessee Power Co., 90 FERC ¶ 61,238 at 61,761 (2000).

[30] *See* Arizona Public Service Co., 94 FERC ¶ 61,027 at 61,076, *order on reh'g*, 94 FERC ¶ 61,267 (2001).

[31] Arizona Public Service Company, 102 FERC ¶ 61,303 (2003).

[32] An Affected System is an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

[33] The Final Rule LGIP and Final Rule LGIA define Party or Parties as "Transmission Provider, Transmission Owner, Interconnection Customer, or any combination of the above."

[34] For the convenience of the reader, a flow chart depicting the interconnection process is appended to this preamble as Appendix A.

Customer requests interconnection of either a new Generating Facility or the expansion of an existing Generating Facility with the Transmission Provider's Transmission System.[35] The Commission directs each public utility to amend its OATT with a single compliance filing to incorporate the Final Rule LGIP and the Standard Large Generator Interconnection Agreement (LGIA) documents. RTOs and ISOs must also make compliance filings, but as discussed above, will have more flexibility to propose different procedures and a different agreement.

35. The Final Rule LGIP sets forth the following steps to secure an interconnection. First, the prospective Interconnection Customer will submit an Interconnection Request to the Transmission Provider along with a $10,000 deposit, preliminary site documentation, and the expected In-Service Date.[36] The Transmission Provider will acknowledge receipt of the request and promptly notify the Interconnection Customer if its request is deficient. When the Interconnection Request is complete, the Transmission Provider will place it in its interconnection queue with other pending requests. The Transmission Provider will assign a Queue Position to each completed Interconnection Request based on the date and time of its receipt.[37] Queue Position is used to determine the order of performing the various Interconnection Studies and the assignment of cost responsibility for the construction of facilities necessary to accommodate the Interconnection Request.[38] The Transmission Provider will also maintain a list of all Interconnection Requests[39] on its OASIS.[40]

36. The Parties will then schedule a Scoping Meeting to discuss possible Points of Interconnection and exchange technical information, including data that would reasonably be expected to affect such interconnection options.[41] The Scoping Meeting is followed by a series of Interconnection Studies to be performed by, or at the direction of, the Transmission Provider to evaluate the proposed interconnection in detail, identify any Adverse System Impacts on the Transmission Provider's Transmission System or Affected Systems, and specify the facility modifications that are needed to safely and reliably complete the interconnection.[42] These studies include:

(1) *Interconnection Feasibility Study* to evaluate on a preliminary basis the feasibility of the proposed interconnection, using power flow and short-circuit analyses (to be completed within 45 Calendar Days from the date of signing of an Interconnection Feasibility Study Agreement) (study requires a $10,000 deposit);

(2) *Interconnection System Impact Study* to evaluate on a comprehensive basis the impact of the proposed interconnection on the reliability of Transmission Provider's Transmission System and Affected Systems, using a stability analysis, power flow, and short-circuit analyses (to be completed within 60 Calendar Days from the date of signing of an Interconnection System Impact Study Agreement) (study requires a $50,000 deposit);[43]

(3) *Interconnection Facilities Study* to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System (to be completed within 90–180 Calendar Days from the date of signing of an Interconnection Facilities Study Agreement) (study requires a $100,000 deposit or an estimated monthly cost developed by the Transmission Provider for conducting the Interconnection Facilities Study); and

(4) *Optional Interconnection Study* or sensitivity analysis of various assumptions specified by the Interconnection Customer to identify any Network Upgrades that may be required to provide transmission delivery service over alternative transmission paths for the electricity produced by the Generating Facility and (study requires a $10,000 deposit).

37. The Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study must be performed in the above order, with completion of each study before the next begins.[44] An Interconnection Customer may also request a restudy of any of the above if a higher-queued project either drops out of the queue, is subjected to Material Modifications, or changes its Point of Interconnection.[45] The Interconnection Customer will pay the actual costs for performing each of the Interconnection Studies and restudies.

38. The Transmission Provider's Interconnection Facilities Study report[46] will include a best estimate of the costs to effect the requested interconnection which are to be funded up-front by the Interconnection Customer. At the same time as the report is issued, the Transmission Provider shall also give the Interconnection Customer a draft interconnection agreement completed to

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[35] Any Transmission Provider with an Interconnection Request outstanding at the time this Final Rule becomes effective shall transition to the Final Rule LGIP within a reasonable period of time. This is further described in Final Rule LGIP Section 5.1.

[36] The standard form of Interconnection Request is Appendix 1 of the LGIP document.

[37] For example, the first complete Interconnection Request, assigned an earlier Queue Position, is "higher-queued" relative to the second complete Interconnection Request that is assigned a later Queue Position and is "lower queued." The withdrawal of a complete Interconnection Request causes it to lose its Queue Position and all succeeding complete Interconnection Requests to advance, accordingly.

[38] Any Interconnection Customer assigned a Queue Position before the effective date of this Final Rule would retain that Queue Position.

[39] We emphasize that the Final Rule LGIP requires the Transmission Provider, the Transmission Owner, and such entities' officers, employees, and contractors to maintain proper procedures for Confidential Information provided by an Interconnection Customer related to the Interconnection Request, the disclosure of which could harm or prejudice the Interconnection Customer or its business.

[40] Open Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 at 31,590 (1996), *order on reh'g*, Order No. 889–A, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,049 (1997), *reh'g denied*, Order No. 889–B, 81 FERC ¶ 61,253 (1997), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (DC Cir. 2000), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

[41] The Scoping Meeting will address technical matters such as facility loadings, general instability issues, general short-circuit issues, general voltage issues, and general reliability issues that would affect the Interconnection Customer's designation of its Point of Interconnection.

[42] The standard forms of agreement for the Interconnection Feasibility Study, the Interconnection System Impact Study, the Interconnection Facilities Study, and the Optional Interconnection Study, are included at Appendices 2–4 to the Final Rule LGIP, respectively.

[43] At the Transmission Provider's option, Interconnection System Impact Studies for multiple Generating Facilities may be conducted serially or in clusters.

[44] These Interconnection Studies are typical of the kinds of studies undertaken by Transmission Providers to evaluate Interconnection Requests. The Interconnection Facilities Studies and Interconnection System Impact Studies also correspond to transmission service studies described in the *pro forma* open access tariff. *See* Order No. 888–A (Tariff Part II, 19 Additional Study Procedures for Firm Point-To-Point Transmission Service Requests; and Tariff Part III, 32 Additional Study Procedures for Network Integration Transmission Service Requests), FERC Stats. & Regs., Regulations Preambles (July 1996–December 2000), ¶ 31,048 at 30,524–26 and 30,535–36.

[45] An Interconnection Feasibility Restudy must be completed within 45 Calendar Days of such request. Similarly, the Transmission Provider has 60 Calendar Days to complete either an Interconnection System Impact Restudy or an Interconnection Facilities Restudy.

[46] Upon the completion of each of the Interconnection Studies, a report is prepared which presents the results of the analyses.

the extent practicable.[47] The Transmission Provider and the Interconnection Customer will then negotiate the schedule for constructing and completing any necessary Transmission Provider Interconnection Facilities and Network Upgrades, and incorporate this schedule into the interconnection agreement that is signed by the Parties.[48]

2. Section-by-Section Discussion of the Proposed LGIP

39. What follows is a discussion of the standard interconnection procedures the Commission proposed, the comments received, and the Commission's conclusion. The order of discussion follows the organization of the proposed LGIP, covering Sections 1–13. Only subsections for which issues are raised are presented. For example, we discuss Section 2.3, but not Sections 2.1 or 2.2 because no significant issues were raised regarding Sections 2.1 or 2.2. Readers should note that section numbers referred to in the following discussion are the numbers contained in the proposed LGIP. Some proposed sections are renumbered in the Final Rule; mention of that fact will be made in the Commission Conclusions discussion, where appropriate. Also, note that Proposed LGIP Section 14 is eliminated from the Final Rule in its entirety because provisions for interconnection procedures and an interconnection agreement for Small Generators have been severed from this proceeding, as discussed, *supra*.

40. *Section 1—Definitions*—Section 1 of the NOPR LGIP and Article 1 of the NOPR LGIA contained defined terms that appeared in the respective documents. For the sake of consistency, the Final Rule LGIP and Final Rule LGIA contain one common set of terms. Included in the list of defined terms are a number of new terms which were not included in the NOPR LGIP and NOPR LGIA. Comments relating to the definition of terms in both documents are discussed below.

41. *Ancillary Services* (In the NOPR: Ancillary and Other Services)—The NOPR proposed that Ancillary and Other Services would have the same meaning as defined in the Transmission Provider's OATT and include some other services such as generator balancing, black start, and automatic generation control.

Comments

42. Cinergy and Entergy claim that this term is not used in the LGIA and that its definition should be deleted.

Commission Conclusion

43. The Commission disagrees that the definition should be deleted. The term is used in Article 9 of the NOPR LGIA and elsewhere. However, to be consistent with the OATT, the Commission here adopts the definition of Ancillary Services in Order No. 888: "Those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice."

44. *Commercial Operation Date*—The NOPR proposed to define Commercial Operation Date as the date on which the Generating Facility commences commercial operation of a unit at the Generating Facility after Trial Operation of the unit is completed, as confirmed in writing, in accordance with proposed Appendix F to the NOPR LGIA.

Comments

45. Central Maine points out that when a Generating Facility consists of more than one generating unit, under the NOPR, the Commercial Operation Date depends on the operability of a generating unit after its testing. Central Maine requests that the Commission define the term Commercial Operation Date as the date on which the Generating Facility as a whole commences commercial operation, not the individual generating units.

Commission Conclusion

46. The Commission is not adopting Central Maine's proposal. The Generating Facility (referred to as the Facility in the NOPR LGIP and NOPR LGIA) could consist of multiple generating units with substantially different Commercial Operation Dates. Under Central Maine's proposal, all of the Generating Facilities at the complex would be required to undergo a pre-commercial Trial Operation each time a new generating unit at the Generating Facility is ready to commence commercial operation. Central Maine gives no reason why this should be required. Furthermore, revising the NOPR LGIP is unnecessary because Article 6.1 of the NOPR LGIA (Pre-Commercial Operation Date, Testing and Modifications) addresses testing of the Generating Facility and the Interconnection Customer's Interconnection Facilities to ensure their safe and reliable operation.

47. *Generating Facility* (In the NOPR: Facility)—The NOPR proposed to define the term Facility as the Interconnection Customer's generator, as identified in the Interconnection Request, but excluding the Interconnection Customer's Interconnection Facilities. In this Final Rule, the Commission has renamed Facility to Generating Facility to avoid confusion between other facilities and equipment.

Comments

48. Central Maine states that a full description of the Generating Facility should be attached to the interconnection agreement as an appendix.

Commission Conclusion

49. The Commission concludes that it is unnecessary to append a description of the Generating Facility to the interconnection agreement because Appendix 1 of the Final Rule LGIP (Interconnection Request) already provides detailed information about the Generating Facility. Accordingly, the Commission adopts the proposed definition but changes the defined term from Facility to Generating Facility.

50. *Generator*—In the NOPR, the Commission proposed to define the term Generator to mean any Generating Facility, regardless of ownership.

Comments

51. Dairyland Power points out that the term Generator is used in the NOPR LGIP to refer to the entity that owns the Generating Facility, as well as the facility itself. It asks for clarification.

Commission Conclusion

52. To clarify, we use the term Interconnection Customer in this preamble and the Final Rule to refer to the owner of the Generating Facility. The terms Small Generator and Large Generator refer to the class of energy producing devices no larger than 20 MW and larger than 20 MW, respectively.

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[47] The draft interconnection agreement shall include: Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades; Appendix B, Milestones; Appendix C, Interconnection Details; Appendix D, Security Arrangements Details; Appendix E, Commercial Operation Date; and Appendix F, Addresses for Delivery of Notices and Billings.

[48] In general, the In-Service Date of an Interconnection Customer's Generating Facility or Generating Facility expansion will determine the sequence of construction of Network Upgrades. An Interconnection Customer, in order to achieve its expected In-Service Date, may request that the Transmission Provider advance the completion of Network Upgrades necessary to support such In-Service Date that would otherwise not be completed pursuant to a contractual obligation of an entity other than the Interconnection Customer. The Transmission Provider will use Reasonable Efforts to advance the construction if the Interconnection Customer reimburses it for any associated expediting costs and the cost of such Network Upgrades. The Interconnection Customer is entitled to transmission credits for the expediting costs that it pays.

53. *Good Utility Practice*—In the NOPR, the Commission defined Good Utility Practice to mean any of the practices, methods and acts generally accepted in the region, including Applicable Reliability Standards and the National Electrical Code.

Comments

54. NERC states that although the terms Good Utility Practice and Applicable Reliability Standards have separate definitions, they have often been used interchangeably. It notes that the Commission has defined Applicable Reliability Standards to include NERC and regional reliability council requirements while Good Utility Practice is a broader term that includes Applicable Reliability Standards. NERC comments that it is important that these terms be used consistently.

55. Cinergy notes that Good Utility Practice is defined to include compliance with the National Electrical Code. It states that because it is not subject to the National Electrical Code, it would be improper to attempt to bind it to such compliance.

Commission Conclusion

56. The Commission agrees with NERC that there is some overlap in the proposed definitions of Good Utility Practice and Applicable Reliability Standards. To remove any misunderstanding in the definition of Good Utility Practice, the Commission is adopting in the Final Rule the Order No. 888 definition, which contains no references to Applicable Reliability Standards and National Electrical Code. This also addresses Cinergy's concern.

57. *Interconnection Guidelines*—The NOPR stated that the technical requirements to be followed by the Parties are set forth in the proposed Appendix G (Interconnection Guidelines).

Comments

58. Southern observes that proposed Appendix G is blank, inferring that the Interconnection Customer and Transmission Provider negotiate the technical and operational requirements. Southern believes that this is inappropriate because interconnection guidelines should be established by the Transmission Provider, not by negotiation. Southern contends that requiring a Transmission Provider to negotiate the technical and operational requirements with each Interconnection Customer is inconsistent with the goal of uniform interconnection procedures.

Commission Conclusion

59. Proposed Appendix G was intended to set forth uniform technical and operational requirements applicable to all Interconnection Customers established by the Transmission Provider, not to be a vehicle for the Parties to negotiate technical and operational requirements on a case-by-case basis. The Commission concludes, however, that most, if not all, of the generic technical and operational requirements are already set forth in the Final Rule LGIA. We are therefore not defining the term Interconnection Guidelines as well as not including proposed Appendix G in the Final Rule LGIA.[49]

60. *Joint Operating Committee*—The NOPR proposed to define Joint Operating Committee to mean a committee comprised of members of individual operating committees that addresses issues arising out of the duties, roles, and responsibilities of individual operating committees described in Article 29 of the NOPR LGIA.

Comments

61. FirstEnergy and PSNM state that the Joint Operating Committee would impose additional administrative costs on the Transmission Provider and is also unnecessary.

Commission Conclusion

62. The Commission is not deleting the term. As discussed later, the Final Rule does not require the Parties to form individual operating committees. Instead, the Final Rule requires a Joint Operating Committee comprising the Transmission Provider and all of its Interconnection Customers. Among other things, the committee will address issues arising out of the duties, roles, and responsibilities of the Parties under their interconnection agreements.

63. *Network Upgrades*—In the NOPR, Network Upgrades were defined as additions, modifications, and upgrades to the Transmission System required beyond the Point of Interconnection in order to accommodate the interconnection of the Generating Facility. Network Upgrades are identified by the Parties in Appendix A to the interconnection agreement (including any modifications, additions or upgrades made to such facilities). The NOPR also stated that Network Upgrades benefit all users of the Transmission System, without distinction or regard as to the purpose of the upgrade.

[49] *See, e.g.*, Article 7 (Metering), Article 8 (Communications) and Article 9 (Operations).

Comments

64. Several commenters, including Calpine and SoCal Water District, request that the definition of Network Upgrades be clarified and made as specific as possible. Calpine and Nevada Power propose that Network Upgrades should include only facilities shown to be "integrated" to the Transmission System, that is, likely to be used by entities other than the Interconnection Customer. Some commenters[50] contend that circuit breakers are not Network Upgrades, since they benefit only the new Interconnection Customer.

Commission Conclusion

65. The Final Rule revises the definition of Network Upgrade to include the phrase "at or beyond the Point of Interconnection," instead of "beyond the Point of Interconnection," to make it consistent with established Commission precedent. The network begins at the point where the Interconnection Customer connects to the Transmission System, not somewhere beyond that point.[51] Facilities beyond the Point of Interconnection are part of the Transmission Provider's Transmission System and benefit all users. We are also removing the concept of beneficiary from the definition so as to avoid implying a pricing policy in the definition.

66. We disagree with the comments stating that the term is not well defined. The Commission has defined Network Upgrades as those facilities "at or beyond the Point of Interconnection" partially in order to clarify to all entities exactly what is a Network Upgrade. We are removing references to beneficiaries from the definition, because our well-established precedent regarding what constitutes Network Upgrades does not require a case-specific determination that all users benefit from Network Upgrade; instead we look only as whether the upgrade is at or beyond the Point of Interconnection.[52]

67. *Reasonable Efforts*—The NOPR proposed to define Reasonable Efforts as actions that are timely and consistent with Good Utility Practice and are substantially equivalent to those a Party would use to protect its own interests.

[50] *E.g.*, Edison Mission, Georgia Transmission, MidAmerican, and SoCal Water District.

[51] *See* Entergy Gulf States, Inc., 99 FERC ¶ 61,095 (2002).

[52] *E.g., Entergy Services, Inc.* v. *FERC*, 319 F.3d 536 (DC Cir. 2003); Southern Company Services, Inc., 101 FERC ¶ 61,309 (2002); American Electric Power Service Corp., 101 FERC ¶ 61,194 (2002); Tampa Electric Company, 99 FERC ¶ 61,192 (2002).

Comments

68. Some commenters including Central Maine found this definition to be vague. They also contend that only Good Utility Practice should be required.

Commission Conclusion

69. The Commission adopts the proposed definition. The standard in the NOPR is necessary to ensure comparable treatment. If a Party normally exceeds Good Utility Practice when it protects its own interests, it must do so for others as well.

70. *System Protection Facilities*—The NOPR proposed to define System Protection Facilities as the equipment required to protect the Transmission System from faults and other electrical disturbances occurring at the Interconnection Customer's Generating Facility, and vice versa.

Comments

71. NERC proposes that the definition of System Protection Facilities should include "necessary protection signal communications equipment" in addition to the other equipment mentioned in the definition. It argues that such communications equipment is needed to coordinate and monitor the operation of protective devices.

Commission Conclusion

72. The Commission agrees with NERC and adopts the recommended language.

73. *Transmission Owner and Transmission Provider*—In the NOPR, the Commission proposed to define Transmission Owner to mean any entity that owns, leases or otherwise possesses an interest in the Transmission System at the Point of Interconnection. It proposed to define Transmission Provider to mean the entity that provides transmission service under its OATT:

Comments

74. EEI proposes that the definition of Transmission Provider be revised to include Transmission Owner. National Grid states that the proposed LGIA should clearly delineate the rights and responsibilities of Transmission Owners that are not Transmission Providers.

Commission Conclusion

75. We agree with EEI. Accordingly, the definition of Transmission Provider in the Final Rule includes the Transmission Owner as well. While we recognize that the Transmission Provider and the Transmission Owner may be distinct entities in some cases, throughout the Final Rule we will refer to both the Transmission Provider and the Transmission Owner generically as the Transmission Provider. There are a few instances in which the distinction between Transmission Owner and Transmission Provider becomes relevant and there we use the appropriate terms.

76. *Section 2—Scope and Application*—Section 2 of the NOPR LGIP provided that the Transmission Provider receive, process, and analyze all Interconnection Requests in the same manner as it does for itself, its subsidiaries or Affiliates.

77. *Section 2.3—Base Case Data*—Section 2.3 of the NOPR LGIP required the Transmission Provider to provide base case power flow, short-circuit and stability databases to the Interconnection Customer upon request so that the Interconnection Customer may independently study its Interconnection Request.

Comments

78. Mirant notes that certain of the language from the Consensus LGIP Section 2.3 concerning confidentiality provisions and the makeup of the Base Case data appears to have been unintentionally left out of the NOPR LGIP Section 2.3.[53]

79. Dominion Resources asks that the Commission revise LGIP Section 2.3 to state that Base Case data is subject to a confidentiality provision between the Parties. Sempra comments that the Transmission Provider should protect the confidentiality of other Interconnection Customers' information that is part of those databases. Entergy states that this Section should apply only to information that is not commercially sensitive, so as to avoid providing a competitive advantage to other Interconnection Customers.

80. Calpine argues that the Transmission Provider should provide, in addition to the stated databases, all underlying assumptions, data files and documents used to create the Base Case, because otherwise the provision could be interpreted as a narrow set of data files that are meaningless.

81. The Ohio PUC contends that the Commission should ensure that rules for handling critical energy infrastructure information (CEII) are not abused by utilities that seek to withhold from public disclosure commercial information that is not really CEII and that has historically been central to public regulatory proceedings. It believes that there must be procedures to ensure protection of critical public interests. The Ohio PUC recommends that the procedures be carried out by an entity, such as the newly formed Department of Homeland Security, that has specific experience in CEII and is qualified to review the Commission's CEII decisions.

Commission Conclusion

82. As Mirant correctly notes, segments of the Consensus LGIP Section 2.3 relating to confidentiality and the makeup of the Base Case data were inadvertently omitted from the NOPR; this text is included in the Final Rule. Both confidentiality and the Base Case data format were significant topics in the Commission Staff Queuing Technical Conference held on January 21, 2003. Most conference participants agreed that providing this Base Case data was reasonable in that it would help the Interconnection Customer and its subcontractor conduct Interconnection Studies independently, expedite the evaluation process, and free up the Transmission Provider's resources, and reduce the time that would otherwise be devoted to performing Interconnection Studies or acting as the Interconnection Customer's consultant. The Commission believes that adding the missing text addresses other commenters' concerns regarding the need for confidential treatment of the Base Case data and other commercially sensitive information that may be provided to the Interconnection Customer.

83. In response to Calpine, we clarify that Transmission Providers must provide all underlying assumptions and data files so that the Interconnection Customer or its subcontractor can independently conduct Interconnection Studies.

84. As to the concerns of the Ohio PUC and others regarding the security of critical energy infrastructure information, the security of the energy infrastructure is essential. The Commission expects that all Transmission Providers, market participants, and Interconnection Customers will comply with the recommendations of the President's Critical Infrastructure Protection Board, as well as any best practice recommendations or requirements that may be issued by NERC or any other electric reliability authorities. In particular, all public utilities are expected to meet basic standards for system infrastructure and operational

[53] Mirant states that the following language was left out of Section 2.3 of the NOPR LGIP: "and contingency lists upon request subject to confidentiality provisions. Such databases and lists, herein referred to as Base Cases, shall include all (1) generation projects and (ii) transmission projects, including merchant transmission projects that are proposed for a Transmission System for which a transmission expansion plan has been submitted and approved by the applicable authority."

security, including physical, operational, and cyber-security practices. However, they are not to abuse security requirements in an effort to withhold from public disclosure commercial information that lacks legitimate CEII status.

85. *Section 3—Interconnection Request*—In NOPR LGIP Section 3, the Commission proposed that each Interconnection Request include, among other things, a refundable deposit of $10,000 that would be applied toward the cost of the Interconnection Feasibility Study.

86. *Section 3.1—General*—NOPR LGIP Section 3.1 would have required that the Interconnection Customer submit to the Transmission Provider an Interconnection Request and a refundable deposit of $10,000 to be applied toward the cost of an Interconnection Feasibility Study. The Interconnection Customer would submit a separate Interconnection Request for each site to be studied and may submit multiple Interconnection Requests for a single site. At the Interconnection Customer's option, the Parties could identify alternative Points of Interconnection and configurations at the Scoping Meeting and attempt to eliminate alternatives from further consideration. The Interconnection Customer would be required to select the Point of Interconnection no later than the execution of the Interconnection Feasibility Study Agreement.

Comments

87. Some commenters, including Entergy and PJM, state that an initial evaluation of several alternative interconnection sites is inconsistent with regional planning and can be accomplished only at the expense of Transmission Providers and lower queued Interconnection Customers seeking swift interconnection.

88. Cal ISO raises several questions related to the possibility of multiple Interconnection Requests for a single site: (1) Do multiple Interconnection Requests refer only to routing and interconnection arrangements? (2) If so, how many alternatives are acceptable under one submittal? (3) Is an Interconnection Request for one site that is to be evaluated at two different voltage levels, one or two Interconnection Requests? and (4) Is the $10,000 deposit required for each Interconnection Request, resulting in multiple deposits for multiple requests at a single site?

89. ISO New England recommends revising this section to give an RTO or ISO authority to set reasonable interconnection deposit amounts, taking into account the requested study's complexity. It also states that concerns about discriminatory treatment of Interconnection Customers should be alleviated because the RTO or ISO is independent.

Commission Conclusion

90. Except as noted below, we are adopting Section 3.1 in the Final Rule as proposed. Allowing the Interconnection Customer the option to have the Parties evaluate alternative interconnection sites and configurations at the Scoping Meeting will greatly reduce the need to conduct detailed analyses of interconnection options that are found to have little merit. Providing the Interconnection Customer with more information prior to authorizing an Interconnection Feasibility Study should lead to more efficient use of the Transmission Provider's planning resources and higher quality Interconnection Studies.

91. With regard to Cal ISO's first question, multiple Interconnection Requests at a single site could involve more than just alternative routing and interconnection arrangements. For example, they could also involve substantially different Generating Facility designs. Regarding Cal ISO's second question, we do not set a generic limit on the number of Interconnection Requests that may be included in a single submittal, but leave it to the Parties to reach agreement at the Scoping Meeting, or, if they fail to agree, pursue dispute resolution. As to the third question, a request to evaluate one site at two different voltage levels would be two Interconnection Requests. With respect to Cal ISO's fourth question, the Interconnection Customer must submit a deposit with each Interconnection Request when more than one request is submitted for a single site. However, if an Interconnection Request is withdrawn before the execution of an Interconnection Feasibility Study Agreement, perhaps as a result of discussions at the Scoping Meeting, the Transmission Provider must promptly return the deposit to the Interconnection Customer. Finally, the Commission is clarifying Section 3.1 to eliminate the uncertainty underlying Cal ISO's questions 3 and 4.

92. The Commission is not revising proposed LGIP Section 3.1 to provide the flexibility that the New England ISO seeks. The proposed study deposit requirements appropriately balance the interests of the Transmission Provider and the Interconnection Customer. However, as explained elsewhere in this preamble, we will entertain proposals by an RTO or ISO to adopt alternative interconnection procedures that reflect regional differences.

93. *Section 3.2—Identification of Types of Interconnection Services*—Section 3.2 of the NOPR LGIP stated that, when the Interconnection Customer submits its Interconnection Request, it must identify the type of Interconnection Service it desires. The Final Rule provides for two service products: (1) Energy Resource Interconnection Service, which is a basic or minimal interconnection service, and (2) Network Resource Interconnection Service, which is a more flexible and comprehensive service. However, any Interconnection Customer requesting Network Resource Interconnection Service may request that it also be studied for the less comprehensive Energy Resource Interconnection Service up to the point when an Interconnection Facility Study Agreement is executed. Comments and conclusions relating to Section 3.2 of the NOPR LGIP are discussed in part II.C.2 (Interconnection Products and Scope of Service).

94. *Section 3.3.1—Initiating an Interconnection Request*—According to NOPR LGIP Section 3.3.1, in order to initiate an Interconnection Request, the Interconnection Customer would be required to submit a $10,000 deposit, a completed Interconnection Request, and either a demonstration of Site Control (*e.g.*, securing land rights, air permit, *etc.*) or an additional deposit of $10,000, with the deposits applied toward any required Interconnection Studies. The latter deposit would be refundable only if the Interconnection Customer demonstrates Site Control within the time period specified in the proposed LGIP Section 3.3.3.

95. Proposed LGIP Section 3.3.1 would allow the expected In-Service Date of the Generating Facility to be no later than the completion date of the relevant region's expansion planning period, not to exceed seven years from the date of the Interconnection Request, unless the Interconnection Customer can demonstrate that engineering, permitting and construction of the Generating Facility will take longer. Under the proposal, the In-Service Date may not exceed ten years from the date the Interconnection Request is received by the Transmission Provider.

Comments

96. Some commenters contend that an Interconnection Customer should be required to demonstrate Site Control when it submits an Interconnection

Request.[54] They disagree with the proposed LGIP Section 3.3.1 provision that allows for the posting of an additional $10,000 deposit in lieu of the demonstration of Site Control. For example, PJM states that Site Control is a strong indication of a serious project and is essential for establishing a queue that will consist of projects that are likely to be completed. PJM claims that this is not a burdensome requirement, and that every one of the 285 requests for generator interconnection that it has received since 1999 has included evidence of Site Control at the Interconnection Feasibility Study stage. Edison Mission believes that the Interconnection Customer must have uninterrupted Site Control throughout the interconnection process. It states that a $10,000 deposit is not sufficient to discourage Interconnection Customers from filing premature Interconnection Requests (in order to secure a favorable Queue Position) and only later find themselves to be unable to secure Site Control. Edison Mission further contends that such a minimal deposit requirement may encourage Interconnection Customers, not acting in good faith, to speculate in interconnection rights by placing deposits for Interconnection Requests at promising locations. It believes that such speculation will frustrate other Interconnection Customers that obtain a site but are locked out of interconnection due to the superior Queue Position of a Party that merely posted a deposit. Edison Mission predicts that this will become an even greater issue as market designs based on locational marginal pricing become the norm.

97. Cleco believes that the only deposit that should be refundable is the $10,000 deposit paid in lieu of demonstrating Site Control, not the original deposit initiating an Interconnection Request. Moreover, Cleco states that the Commission should make clear that the $10,000 deposited in lieu of Site Control should be refundable if the Interconnection Customer demonstrates Site Control within the time period specified in Section 3.3.3.

98. Central Maine takes exception to allowing an Interconnection Customer to remain in the queue for a period not to exceed ten years from the date of receipt of the Interconnection Request; it says this period is too long. FirstEnergy recommends replacing "Regional Expansion Planning Period" with "Transmission Provider Expansion Planning Period." Salt River Project seeks clarification as to how to reconcile a situation where the original In-Service Date is ten years out and there is then a three year extension.

99. Some commenters, including American Wind Energy, Edison Mission, NMA, Peabody, and WEPCO, contend that the development time for certain large scale coal, wind power, and other types of projects raise special issues. For example, they want the ten year restriction eliminated because their equipment is not "off-the-shelf," and siting and permitting can exceed ten years. Some commenters also want the Commission to revise Section 3.3.1 to allow them up to nine months after the Interconnection Request is made to submit final design specifications. They contend that because large non-gas-fired generators are unique and not "off-the-shelf," completion of the final design specifications requires nine or more months after the Interconnection Request is submitted.

Commission Conclusion

100. We retain the proposed text that requires a demonstration of Site Control or a posting of an additional deposit of $10,000. There may be instances when requiring Site Control could unduly delay the interconnection process.

101. We also share Edison Mission's concern that some participants may attempt to game the system by filing Interconnection Requests at multiple sites knowing that Site Control is unlikely to be obtainable at every site. However, under NOPR LGIP Section 11.3, the Interconnection Customer must provide reasonable evidence of Site Control within 15 Business Days after the receipt of the Final Interconnection Agreement or post additional security of $250,000, which will be applied toward future construction costs when the demonstration of Site Control is made. This is sufficient incentive for an Interconnection Customer to refrain from engaging in the speculative behavior suggested by Edison Mission.

102. With respect to the ten-year period for allowing an Interconnection Customer to remain in the queue, we believe that ten years should be adequate time to complete the siting, permitting and construction requirements for all plants unless major permitting delays are encountered. Large non-gas-fired projects (*e.g.*, coal or oil projects) generally take eight years or less to complete. Thus, a ten-year period gives large projects at least a two year buffer. Moreover, we note that numerous Interconnection Customers and Transmission Providers negotiated this time limit during the Consensus process. Finally, if an Interconnection Customer believes it needs additional time to complete its project, it should seek the approval of the Transmission Provider to extend the In-Service Date. Accordingly, the Commission clarifies that the term of the Final Rule LGIP Section 3.3.1 is ten years, or longer if the Parties agree, with such agreement not to be unreasonably withheld.

103. Regarding the need for additional time for some Interconnection Customers to complete design specifications, the Commission is not convinced that an exception should be made in the Final Rule LGIP to allow an Interconnection Customer proposing to construct a large non-gas-fired Generating Facility to submit final design specifications nine months after the Interconnection Request is made. The Interconnection Customer should have its design substantially completed prior to submitting its Interconnection Request so that it does not block or disrupt the queuing process. The Transmission Provider is not able to act on an Interconnection Request unless it includes all necessary information, and to give one class of Interconnection Customers extra time to submit design specifications would be unfair to other Interconnection Customers in the queue.

104. As to FirstEnergy's recommendation, the Commission clarifies that, in the absence of a regional expansion planning period, the appropriate expansion planning period would be that of the Transmission Provider.

105. *Section 3.3.4—Scoping Meeting* (In the NOPR: Initial Scoping Meeting)—Proposed LGIP Section 3.3.4 would have required the Transmission Provider to hold a Scoping Meeting with the Interconnection Customer no later than 30 Calendar Days from receipt of the Interconnection Request. The purpose of the Scoping Meeting would be to discuss alternative interconnection options, including potential feasible Points of Interconnection. The Interconnection Customer would designate its Point of Interconnection and one or more alternative Points of Interconnection on the basis of information gathered at the Scoping Meeting. Section 3.3.4 would also provide that the Interconnection Customer may forgo the Interconnection Feasibility Study and proceed directly to an Interconnection System Impact Study.

Comments

106. Several commenters, including El Paso, Entergy, FirstEnergy, and

[54] *E.g.*, BPA, Central Maine, Cleco, Edison Mission, Georgia Transmission, NYTO, PJM, PJMTO, and Salt River Project.

Georgia Transmission, state that the Parties should be able to agree to schedule a Scoping Meeting outside the 30-day window.

107. El Paso believes that the Interconnection Customer should not make the final decision on designation of the Point of Interconnection; instead, the Transmission Provider should designate the Point of Interconnection with the Interconnection Customer's consent. At a minimum, El Paso recommends that Section 3.3.4 be modified to state that the Transmission Provider must consent to the designation of Point of Interconnection and that such consent will not be unreasonably withheld. El Paso explains this is because the designation of Point of Interconnection has serious cost consequences for the Transmission Provider and its customers.

108. PJM states that the Interconnection Feasibility Study is an important first step in evaluating an Interconnection Request and that about one-third of the Interconnection Requests are withdrawn after the Interconnection Feasibility Study. PJM adds that the Interconnection Customer should not be allowed to skip the Interconnection Feasibility Study and go directly to the Interconnection System Impact Study because this omission would have serious implications for the Clustering of Interconnection of Studies and would create the need for a large number of restudies. PJM proposes that this provision be deleted from the Final Rule LGIP.

Commission Conclusion

109. In the Final Rule LGIP, the Commission is revising Section 3.3.4 to allow the Parties to hold the Scoping Meeting outside the 30 Calendar Day window upon agreement of the Parties, since either Party can object to the postponement. With respect to El Paso's concern regarding the designation of the Point of Interconnection, the purpose of the Scoping Meeting is to discuss alternative interconnection options, including potential Points of Interconnection. The Commission notes that the Transmission Provider will have an opportunity to voice its concerns at the Scoping Meeting and assess the likely cost consequences of interconnecting at various points. It is appropriate that the Interconnection Customer decide its Point of Interconnection based on input from the Transmission Provider because the former must consider its investment in the Generating Facility and its site selection criteria, as well as its initial funding of Network Upgrades. For these reasons, we adopt Section 3.3.4 as proposed.

110. Regarding PJM's concern about allowing the Interconnection Customer to skip the Interconnection Feasibility Study and proceed directly to the Interconnection System Impact Study, the Commission agrees with PJM that the Interconnection Feasibility Study is an important first step in evaluating an Interconnection Request and should not be skipped. The Commission is therefore deleting this text from the Final Rule LGIP Section 3.3.4.

111. *Section 3.4—OASIS Posting*—Proposed LGIP Section 3.4 required that the Transmission Provider post on its OASIS a list of all Interconnection Requests. It must post the following information for each Interconnection Request: the location by county and state; the station or transmission line or lines where the interconnection will be made; and the projected In-Service Date. The list will not disclose the identity of the Interconnection Customer until the Interconnection Customer executes an interconnection agreement or requests that the Transmission Provider file an unexecuted Agreement with the Commission. The Transmission Provider also must post deviations from the study time lines set forth in the interconnection procedures. Interconnection Study reports and Optional Interconnection Study reports also must be posted after the Parties meet to discuss the applicable study results.

Comments

112. Avista states that listing the location of a Generating Facility by county and state is not sufficient. The location should be specified in greater detail, because some counties cover hundreds of square miles. Mirant and NYTO state that the identity of the Interconnection Customer should be posted on the OASIS when the Interconnection Request is made because it will help identify Interconnection Customers that are unlikely to see their projects through completion and drop out of the queue. Mirant claims that the identity of the Interconnection Customer is important for conducting meaningful Optional Interconnection Studies.

113. NSTAR seeks clarification about whether entire studies consisting of base case data are to be posted on the OASIS, or just the interpretive analysis contained in the study reports. Salt River Project seeks clarification as to whether the posting of deviations refers to the study time lines in proposed LGIP Section 6.3 (Interconnection Feasibility Study Procedures) or the study time lines that were agreed to by the Parties in advance. MidAmerican recommends that changes in the Generating Facility's In-Service Date should also be posted on the OASIS.

Commission Conclusion

114. The Commission is not requiring that the location of a Generating Facility be specified in any greater detail than proposed because the OASIS posting also includes the substation or transmission line where the interconnection is to be made. We are also not requiring that the identity of the Interconnection Customer be posted when the Interconnection Request is made because disclosing the identity at that early stage may put the Interconnection Customer at a competitive disadvantage and its project at risk. With regard to Mirant's assertion that the identity of the Interconnection Customer is important in conducting meaningful Optional Interconnection Studies because it helps identify who may drop out of the queue, we note that the Optional Interconnection Studies are to be performed after the Interconnection System Impact Study, at which point only serious projects are likely to remain in the queue.

115. The Commission clarifies that the study reports are to be posted, not the actual studies. Regarding deviations from the study time lines, the Commission clarifies that the Transmission Provider is to post deviations from the study time lines as projected by the Transmission Provider for completing future Interconnection Studies. For example, Section 6.3 (Interconnection Feasibility Study Procedures) calls for the Interconnection Feasibility Study to be completed within 45 Calendar Days after the Transmission Provider receives the fully executed Interconnection Feasibility Study Agreement. If the Transmission Provider anticipates that it will not be able to complete the Interconnection Feasibility Study within 45 Calendar Days, it should post its deviation along with an explanation for the delay (*e.g.*, backlog). Finally, we adopt MidAmerican's recommendation, and Final Rule LGIP Section 3.4 requires the posting of any expected deviation from a Generating Facility's In-Service Date.

116. *Section 3.5—Coordination with Affected Systems*—Proposed LGIP Section 3.5 dealt with interconnections that may affect a Transmission System other than that of the Transmission Provider. A third party Transmission System was proposed to be defined in the NOPR LGIA as an Affected System. Section 3.5 also proposed obligations and rights of the Affected System, the

Transmission Provider, and the Interconnection Customer, including a requirement to coordinate Interconnection Studies.

Comments

117. Interconnection Customers including Duke Energy, Independent Producers, Norton Energy, and Peabody support requiring the Transmission Provider (rather than the Interconnection Customer) to coordinate and perform all necessary Interconnection Studies and Network Upgrades with an Affected System. Duke Energy agrees that the Affected System Operator should be required to cooperate with the Transmission Provider in completing necessary studies. Duke Energy also wants the Affected System Operator to enter into an agreement with the Interconnection Customer. Other commenters, predominately Transmission Providers, oppose placing these responsibilities on the Transmission Provider.[55] They contend that (1) a contract cannot bind a third party that is not a signatory to it, (2) it is unfair to impose liability for liquidated damages for an incomplete study on the Transmission Provider where the Transmission Provider has no control over the Affected System, (3) the Transmission Provider should be required to use only "reasonable efforts" to coordinate with an Affected System, (4) the Interconnection Customer should pay any costs of conducting Interconnection Studies on an Affected System, including all costs of delays caused by the studies, (5) the Interconnection Customer should be required to pay for the necessary upgrades on the Affected System and not be allowed to operate until such upgrades are completed, and (6) the Transmission Provider should not be responsible for actions (or inactions) of third parties either with regard to funding or construction of Network Upgrades.

Commission Conclusion

118. The Commission continues to treat interconnection and delivery as separate aspects of transmission service, and an Interconnection Customer may request Interconnection Service separately from transmission service (delivery of the Generating Facility's power output). In the majority of circumstances, interconnection alone is unlikely to affect the reliability of any neighboring Transmission System. However, in those rare instances in which the interconnection alone may cause a reliability problem on an Affected System, the Commission adopts the approach of Order No. 888 for Network Upgrades required to protect an Affected System from a reliability problem due to delivery service.[56] Under Order No. 888, the Transmission Provider is required to assist the Transmission Customer in coordinating with the Affected System on any Network Upgrades needed to protect the reliability of that system.[57] We will also allow the Transmission Provider to coordinate the timing of construction of Network Upgrades to its Transmission System with the construction required on the Affected System.[58] As provided in the OATT, the Commission's Dispute Resolution Service is available should the Interconnection Customer wish to challenge the Transmission Provider's decision to delay construction pending completion of the Affected System's upgrades.[59]

119. The Commission reiterates that under Order No. 888, economic losses from having to redispatch generation do not justify delaying the provision of the delivery component of transmission service.[60] The Commission adopts the same standard here for interconnections.

120. Thus, unless the interconnection alone will endanger the reliability of an Affected System, a Transmission Provider may not require an Interconnection Customer, as a condition of interconnection, to accept responsibility for Network Upgrades on other systems. To hold new Interconnection Customers responsible for upgrades to all interconnected systems, including not only the system to which the Generating Facility interconnects, but other, more distant systems as well would create an unreasonable obstacle to the construction of new generation.[61] We reiterate that requiring a Transmission Provider to coordinate intermediate studies and upgrades with other systems is just and reasonable.

121. Although the owner or operator of an Affected System is not bound by the provisions of the Final Rule LGIP or LGIA, the Transmission Provider must allow any Affected System to participate in the process when conducting the Interconnection Studies, and incorporate the legitimate safety and reliability needs of the Affected System. However, the Affected System is not required to participate in the interconnection of the Generating Facility, as proposed by Duke Energy. If the Affected System declines to work with the Transmission Provider, or fails to provide information in a timely manner, the Transmission Provider may proceed in the interconnection process without taking into account the information that could have been provided by the Affected System. Neither the Final Rule LGIP nor the Final Rule LGIA is intended to expose the Transmission Provider to liability as a result of delays by the Affected System.

122. In addition, we note that NERC Planning Standards require Transmission Providers to work together to minimize effects on each others' systems. When a Transmission Provider adds its own new generation to its system, this may have a reliability effect on other systems, requiring coordination among systems. Such coordination must extend to new generation of any Interconnection Customer because, as stated in this provision, a Transmission Provider must offer all generators service that is comparable to the service that it provides to its own generation or that of its Affiliates.

123. *Section 3.6—Withdrawal*—Proposed LGIP Section 3.6 provided that the Interconnection Customer would have the option to withdraw its Interconnection Request at any time with written notice to the Transmission Provider. If the Interconnection Customer fails to adhere to the requirements of the interconnection procedures, its request would be deemed withdrawn and the Transmission Provider would provide written notice of the deemed

[55] *E.g.*, AEP, Ameren, BPA, Cal ISO, Central Maine, Central Vermont PSC, Cleco, the Construction Issues Coalition, Dairyland Power, Dominion Resources, Entergy, Georgia Transmission, Imperial Irrigation, ISO New England, MidAmerican, the Midwest ISO, National Grid, Nevada Power, NYTO, PGE, PJM, Salt River Project, SoCal Edison, TANC, and TVA.

[56] *See* Section 21 of the OATT. *See also* Tampa Electric Co., 103 FERC ¶61,047 (2003), and Nevada Power, 97 FERC ¶61,227 (2001), *reh'g denied*, 99 FERC ¶61,347 (2002); *but see* American Electric Power Service Corporation, 102 FERC ¶61,336 (2003).

[57] Section 21.1 of the OATT states that: "The Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in obtaining such arrangements, including without limitation, provided any information or data required by such other Transmission System pursuant to Good Utility Practice."

[58] Section 21.2 of the OATT states that: "Transmission Provider shall have the right to coordinate construction on its own system with the construction required by others. The Transmission Provider, after consultation with the Transmission Customer and representatives of such other systems, may defer construction of its new transmission facilities, if the new transmission facilities on another system cannot be completed in a timely manner."

[59] *See* Section 21.2 of the OATT.

[60] *See* Section 13.2 of the OATT.

[61] Nevada Power, 97 FERC ¶61,227 (2001), *reh'g denied*, 99 FERC ¶61,347 at 62,294 (2002).

withdrawal along with a written explanation. In either instance, the Interconnection Customer would lose its Queue Position and pay all of the Transmission Provider's prudently incurred costs up to the withdrawal. The Transmission Provider would be required to update its OASIS queue posting and to refund the Interconnection Customer any portion of the Interconnection Customer's deposits or study costs that exceeds the costs that the Transmission Provider has incurred, including interest. In the event of a withdrawal, the Interconnection Customer would be able to request all information the Transmission Provider developed for any completed Interconnection Studies, up to the date of withdrawal of the Interconnection Request, subject to the confidentiality provisions of Section 13.1.

Comments

124. FirstEnergy and WEPCO assert that an Interconnection Customer should be given a reasonable amount of time to address purported deficiencies before a Transmission Provider deems a request withdrawn because the purported deficiency may not have been adequately communicated to the Interconnection Customer.

125. Cinergy requests that this section be modified to require that a Transmission Provider provide written notice to the Transmission Owner of any Interconnection Customer withdrawal notice it receives or, alternatively, that the Interconnection Customer provide notice to both the Transmission Provider and the Transmission Owner.

126. When an Interconnection Customer withdraws its application, NYTO supports having the Interconnection Customer pay the Transmission Provider all monies due to the Transmission Provider before it is allowed to obtain any Interconnection Study data or results. Duke Energy argues that an Interconnection Customer's responsibility for prudently incurred costs terminates either when the Transmission Provider receives the Interconnection Customer's notice of withdrawal or, in the event the Interconnection Customer is deemed to have withdrawn its application for interconnection, when the Transmission Provider provides notice of withdrawal.

127. PJM believes that the proposed language implies that if an Interconnection Customer disputes its loss of Queue Position, it would remain in the queue pending Dispute Resolution. PJM advocates instead the approach the Commission has accepted in the PJM Tariff, that is, when an Interconnection Customer is disqualified from the queue, it is eliminated from the queue unless and until a Dispute Resolution process restores its position.

Commission Conclusion

128. The Commission agrees with FirstEnergy and WEPCO that Interconnection Customers should be given an opportunity to address any deficiencies before their requests are deemed withdrawn by the Transmission Provider. Proposed LGIP Section 3.6 is revised in the Final Rule LGIP accordingly.

129. The Commission agrees with Duke Energy that an Interconnection Customer's responsibility for a Transmission Provider's prudently incurred cost terminates at the earlier of either when the Transmission Provider receives the Interconnection Customer's notice of withdrawal or when the Transmission Provider provides a notice of withdrawal after deeming an Interconnection Request to be withdrawn. The Commission also agrees with NYTO that when the Interconnection Customer withdraws its application, it must pay all monies due to the Transmission Provider before it is allowed to obtain any Interconnection Study data or results.

130. We agree with PJM that it is unreasonable for an Interconnection Customer to maintain its Queue Position pending Dispute Resolution. In most cases, Dispute Resolution and any related litigation would create delays, and it would be unfair to delay the projects of lower queued Interconnection Customers while a higher-queued Interconnection Customer's Queue Position is in dispute. The Commission clarifies this section in the Final Rule LGIP accordingly.

131. *Section 4—Queue Position*—Proposed LGIP Section 4 would establish the Interconnection Customer's Queue Position (*i.e.*, the chronological priority assigned to an Interconnection Request), which would be used to determine both the order in which studies are performed and the cost responsibility for the facilities necessary to accommodate the Interconnection Request. At the Transmission Provider's option, Interconnection System Impact Studies would be performed serially as Interconnection Requests are received or in clusters, as discussed below. Proposed LGIP Section 4 also described when a Queue Position can be transferred to another entity, and when an Interconnection Customer could modify its Interconnection Request without losing its Queue Position.

132. *Section 4.1*—General—Proposed LGIP Section 4.1 required the Transmission Provider to assign a Queue Position to the Generating Facility based on the date and time of receipt of a valid Interconnection Request. However, if the sole reason that an Interconnection Request is deemed invalid is lack of information required in the Interconnection Request, and if the Interconnection Customer provides such information in accordance with Section 3.3.3 of the proposed LGIP, the Transmission Provider would then be required to assign the Interconnection Customer a Queue Position based on the date and time that the Interconnection Request was initially filed. The Queue Position of each Interconnection Request would be used to determine the order of performing the Interconnection Studies, which would determine the cost responsibility for the facilities necessary to accommodate the Interconnection Request. This is because the facilities needed for one Interconnection Customer are affected by the facilities needed for other generators that come before it in the queue.

Comments

133. TVA observes that the level of commitment by Interconnection Customers to complete an interconnection varies. A change in the request of a higher queued Generating Facility will affect lower queued generators because it may require restudies. It states that the "first-come, first-served" method rewards an Interconnection Customer that simply is the first in line, even if it has not done the preparation to make a complete and legitimate Interconnection Request. According to TVA, this is costly and unfair to other Interconnection Customers. It also asserts that if an Interconnection Customer seeks to change its Point of Interconnection, it should be placed in a lower position in the queue. Ameren has similar concerns and states that it has a high withdrawal rate for Interconnection Requests. It claims that fewer restudies would be needed if a Transmission Provider could study only "serious" requests.

134. American Wind Energy believes that projects in the queue when the Final Rule takes effect should receive equal treatment under the new rule. It states that since summer 2000 several developers have accelerated their projects and have executed interconnection agreements. These developers should be able to have their

interconnection agreements revised to be consistent with the Final Rule LGIA.

135. PJM believes that the proposed procedures do not help eliminate projects that are not economically feasible. Accordingly, the Interconnection Customer should be required to meet milestones to show significant commitment to a project. The fixed schedule approach (which fixes a time period for completing an Interconnection Study after the receipt of an Interconnection Request) undermines integrated regional planning, since it forces planners to study each Interconnection Request independently of other Interconnection Requests that are located in close electrical proximity. PJM also notes that such projects could have related effects on the Transmission System and overall expansion alternatives.

136. PacifiCorp believes that there will be problems in the queuing and the Interconnection System Impact Study process if an Interconnection Customer is allowed to request an Interconnection Study when it does not expect to begin construction or operations for a long time. According to PacifiCorp, long lead times substantially increase the uncertainty that the project will be completed. An independent Transmission Provider should be given more flexibility in addressing these issues.

137. TECO Energy states that the Interconnection Request must provide a demonstration of Site Control for the Generating Facility at the time of the initial request before it may enter the queue. It states that it is inefficient to commit a Transmission Provider's resources to the study of a request until the project achieves a level of certainty and specificity that justifies the commitment of resources, even though the Interconnection Customer pays for the Interconnection Studies.

138. EEI, PSEG, and SoCal Edison all state that they generally support establishing a single integrated queue per RTO region.

139. EEI states that Interconnection Service and delivery service are separate and that there is no need to combine them. It believes that any combination of the two services requires a single Interconnection Feasibility Study for several generators, would likely overly complicate the queuing process, and subsequently delay study completions. It contends that the separation of interconnection and delivery services is critical to designing a queue that is appropriate for both non-Standard Market Design and Standard Market Design service.

140. Xcel observes that the "first-come, first-served" queue process does not take into account either the transmission planning requirements of RTOs or state integrated resource planning statutes and rules, which often require the use of a "portfolio approach" whereby state-regulated load-serving entities select between competing generation providers based on the total cost of generation and transmission.

141. Xcel supports a process similar to the periodic "open season" used for gas pipelines, in which the Transmission Provider or RTO would periodically solicit market interest in incremental transmission capacity and then develop a transmission plan that serves the various market needs at the lowest overall cost.

142. TXU wants the Final Rule to allow a Transmission Provider, RTO, or ISO to create queues that are periodically opened and closed, based on a predetermined time period. Proposed projects should be placed into a queue according to the date of the Interconnection Request.

143. American Wind Energy, NYISO, and Tenaska believe that Queue Position should not be used exclusively to determine the cost responsibility for the facilities necessary to accommodate the Interconnection Request. American Wind Energy states that the first wind project in the queue should not be required fund the Network Upgrades for what logically will be a long term large scale build-out of an entire wind resource area. NYISO also contends that the Commission's proposal is not workable in the NYISO system because its interconnection cost allocation rules are not based on Queue Position. Instead, Interconnection Facility costs are determined each year and allocated on the basis of pro-rata electrical impact among the members of a group of projects that have reached a specified point in the New York State project permitting process.

Commission Conclusion

144. The Commission understands Ameren's and PJM's concerns that uncertainty about project withdrawal creates difficulties for a Transmission Provider in planning for necessary Network Upgrades. Having an Interconnection Customer and a Transmission Provider establish agreed upon milestones at the Scoping Meeting should help to ensure that the Transmission Provider's planning process reflects only the interconnection of Generating Facilities that are making satisfactory progress toward completion. Also, a Transmission Provider facing difficulties of this sort may wish to consider conducting Interconnection Studies on a clustered basis (see discussion below). Factors other than Queue Position also must be considered in determining the cost responsibility of an Interconnection Customer, especially when a Transmission Provider conducts Interconnection Studies on a clustered basis. However, we believe that Queue Position must play a critical role in determining cost responsibility, and expect the Transmission Provider to give appropriate recognition to Queue Position when it develops its cost allocation rules.

145. We agree with TVA's comment that moving the proposed Point of Interconnection should lead to a lower Queue Position if it is a Material Modification under Final Rule LGIP Section 4.4.3. Section 4.1 is revised accordingly in the Final Rule.

146. With respect to TECO Energy's comments on the need to demonstrate Site Control in the initial application, the Commission notes that LGIP Section 3.3.1 and the definition of Site Control in the Final Rule already require early demonstration of Site Control or posting a deposit of $10,000. Section 7.2 of the Final Rule LGIP requires a demonstration of Site Control prior to executing the Interconnection System Impact Study Agreement. We conclude that these provisions adequately demonstrate Site Control.

147. There must be a single integrated queue per geographic region. We note that it was the method generally agreed upon during the Commission staff's Technical Conference on Queuing. However, we will afford an RTO or ISO the flexibility to propose queues and queuing rules designed to meet its regional needs.

148. Xcel's and TXU's comments are addressed in the Commission Conclusions discussion for Section 4.2 (Clustering), which follows.

149. *Section 4.2*—Clustering—For the purpose of the Interconnection System Impact Study, Section 4.2 of the NOPR LGIP permitted the Transmission Provider to study Interconnection Requests serially or in clusters. The Transmission Provider would be allowed to simultaneously study all Interconnection Requests received during a period not to exceed 90 Calendar Days ("the queue cluster window") except requests for Energy Resource Interconnection Service, which would be studied serially. The Transmission Provider would be permitted to study an Interconnection Request separately if warranted by Good Utility Practice based upon the

electrical remoteness of the proposed Generating Facility.

Comments

150. Various Transmission Providers including BPA, NYTO, and PJM recommend that the queue cluster window be extended from 90 to 180 days so that the study process may be fully integrated into the Transmission Provider's planning process, and to ensure that one set of Interconnection Studies can be completed before the next round begins. PJM states that a 180-day window reasonably balances the competing objectives of completing Interconnection Studies as rapidly as possible and ensuring that the study process produces meaningful regional expansion plans that induce economically efficient decisions by generation developers. PSEG sees merit in the clustering approach, but states that it should be tied to the planning process and have specified start and end dates. PJM opposes the requirement to study requests for Energy Resource Interconnection Service serially, arguing that most of the tests applied to Energy Resource Interconnection Service and Network Resource Interconnection Service are the same.

151. The Midwest ISO seeks clarification whether a cluster refers to a group of Interconnection Requests that were submitted during a specified time period, such as 90 Calendar Days, or to a group of Generating Facilities that are located in geographic proximity to one other, or both. The Midwest ISO seeks further clarification whether each Interconnection Request is to be studied serially within the cluster in order to determine the cost of Network Upgrades for each, or all of the Interconnection Requests are to be studied simultaneously, which will determine only the total cost of Network Upgrades. It argues that if the latter is the case, the Commission will need to prescribe a way to allocate the total cost of Network Upgrades to each Interconnection Customer within the cluster.

152. American Wind Energy states that clustering is the best method to interconnect both large and small generators in a balanced regional planning process, and also facilitates the coordinated completion of a useful Interconnection System Impact Study.

Commission Conclusion

153. In the Final Rule, we are setting the queue cluster window for conducting Interconnection System Impact Studies at 180 Calendar Days. As the commenters make clear, the principal benefit of studying Interconnection Requests in clusters is that it allows the Transmission Provider to better coordinate Interconnection Requests with its overall transmission planning process, and, as a result, achieve greater efficiency in both the design of needed Network Upgrades and in the use of its planning resources. We are persuaded by the arguments of PJM and others that the proposed 90-day cluster window is too short to achieve this result, and that a 180-day window is more appropriate.

154. We are also persuaded by PJM that if the Transmission Provider elects to study Interconnection Requests in clusters, requests for both Energy Resource Interconnection Service and Network Resource Interconnection Service should be included in the clustered Interconnection Studies. Requiring the Transmission Provider to perform System Impact Studies for Energy Resource Interconnection Service requests on a serial basis would mean that many of the efficiency benefits of clustering would be lost. When a Transmission Provider conducts Interconnection Studies on a clustered basis, the Interconnection Customer may have to wait longer to obtain study results than it would if its request were studied serially. However, some of the information that an Interconnection Customer needs is provided by the Interconnection Feasibility Study, which is conducted serially and early in the study process.

155. Clustering is strongly encouraged in queue management and the Interconnection Study process for all Transmission Providers. We vigorously support the use of queue windows to manage the Interconnection Study process. In response to the Midwest ISO's comments, Final Rule IP Section 4.2 has been modified to better explain the clustering process. Queue windows with regular, fixed opening and closing dates are essential to an orderly process. Once fixed, any changes to these dates should be announced with a posting on the Transmission Provider's OASIS at least 180 days in advance of the change. Cluster windows enable the Transmission Provider to evaluate all pending Interconnection Requests periodically and systematically in light of the Transmission Systems's capabilities at the time of each clustered Interconnection System Impact Study.

156. Clustering (by queue position and electrical location) ensures that the regional expansion plan considers all uses of the Transmission System and enables expansion of the system to be accomplished in the most efficient manner reasonably achievable. However, projects that are electrically isolated can still be studied independently. Additionally, allocation of cost responsibility for system upgrades and jointly used facilities is more readily managed by studying requests in clusters. Absent the ability to cluster interconnection requests, it is difficult to distinguish the Transmission Provider's cost responsibility for baseline reliability upgrades from the responsibility of Interconnection Customers and other developers for the costs of upgrades required to accommodate their Interconnection Requests since each request would have to be studied serially. Equally important, Interconnection Studies for smaller generators can be more easily expedited. These efficiencies are best obtained using clustered queue windows, not through the sequential processing of Interconnection Requests.

157. *Section 4.3—Transferability of Queue Position*—The Commission proposed in Section 4.3 of the NOPR LGIP that an Interconnection Customer may transfer its Queue Position to another entity if such entity acquires the Generating Facility identified in the Interconnection Request and the Point of Interconnection does not change.

Comments

158. National Grid states that the Commission should resist requests from those that propose to make Queue Position a tradable commodity to gain flexibility over the timing of their proposed projects. National Grid offers several arguments against allowing this: (1) It would create an unnecessary commodity that would encourage gaming in competitive markets, (2) it would render the interconnection queue process unmanageable because the trading of Queue Positions would make it impossible to build sets of assumptions on which to base studies, (3) it would add another layer of administrative burdens for Transmission Providers; and (4) the disputes over Queue Position that are likely to arise would divert the Transmission Provider's attention away from facilitating reasonably prompt interconnections. Instead, the Commission should adopt a subordinate application process like the one implemented in NEPOOL, which allows a project sponsor to accelerate the construction and operation of its facilities application ahead of other projects in the queue in return for the sponsor's assumption of the risks associated with building the facilities in a sequence different from the study order of the queue.

159. The CPUC believes that changes resulting from an Interconnection Customer selling its Queue Position

could harm subsequent Interconnection Customers in the queue, since it could affect the portfolio of technologies in the queue and the diversity of the Transmission System as a whole. According to the CPUC, an Interconnection Customer wishing to sell its position should be required to provide assurances that it will pay not only for any Interconnection Studies needed as a result of the change, but also for the costs to subsequent Interconnection Customers in the queue as a result of the change. The seller of the Queue Position should also be liable for any obligations that the buyer of the position is unable to fulfill in the event of a Default.

Commission Conclusion

160. While the commenters raise legitimate concerns with Queue Position trading in general, we conclude that the restrictions on transferability that are already contained in Section 4.3 address these concerns. Section 4.3 of the Final Rule LGIP permits an Interconnection Customer to transfer its Queue Position to another entity only if such entity acquires the specific Generating Facility identified in the Interconnection Request and the Point of Interconnection does not change. These limitations on transferability greatly reduce the potential impact on lower queued Interconnection Customers. The new Interconnection Customer would also be required to show, under Section 4.4.3 of the Final Rule LGIP, that any proposed change is not a Material Modification.

161. *Section 4.4—Modifications*—Proposed LGIP Section 4.4 would have required that the Interconnection Customer submit to the Transmission Provider, in writing, modifications to any information provided in the Interconnection Request. Either the Interconnection Customer or the Transmission Provider would be permitted to identify changes to the planned interconnection that may reduce the costs and increase the benefits (including reliability) resulting from the interconnection. If the changes are acceptable to the Transmission Provider and Interconnection Customer (such acceptance not to be unreasonably withheld), the Transmission Provider would make the necessary changes and proceed with interconnection restudies in accordance with Sections 6.4, 7.6 and 8.5 of the LGIP, as applicable. Accordingly, the Generating Facility would retain its Queue Position.

162. *Section 4.4.1*—Proposed LGIP Section 4.4.1 LGIP would allow an Interconnection Customer to make the following modifications to its Interconnection Request, provided that it makes them before returning the executed Interconnection System Impact Study Agreement to the Transmission Provider: (1) A reduction of as much as 60 percent in the megawatt output of the proposed project, (2) modification of the technical parameters associated with the Generating Facility technology or the step-up transformer impedance characteristics, (3) modification of the interconnection configuration, or (4) any other type of change except to the proposed Point of Interconnection. Any increase in the Generating Facility's megawatt output would be placed at the end of the queue.

Comments

163. Dynegy argues that item (4) is confusing, makes the other items in the list redundant, and does not belong in this section. Several commenters, including Duke Energy and WEPCO, advocate allowing an Interconnection Customer to increase the output of its Generating Facility by up to ten percent of the voltage level of the line to which it is interconnecting without affecting its Queue Position.

Commission Conclusion

164. We agree with Dynegy that item (4) does not belong in this section. The item more appropriately belongs in Section 4.4.3. Accordingly, Final Rule LGIP Section 4.4.3 includes the following sentence: "Any change to the Point of Interconnection shall constitute a Material Modification."

165. We reject the other commenters' proposal to allow an Interconnection Customer to increase the output of its Generating Facility by up to ten percent. The percentage by which the capacity of the proposed Generating Facility could be increased without substantially changing the size and configuration of necessary Network Upgrades needed to accommodate the change in output would depend on the size and location of the Generating Facility and the voltage level at the Point of Interconnection, among other things. This could vary significantly from case to case, and may well be less than ten percent.

166. *Section 4.4.3*—Proposed LGIP Section 4.4.3 would have required that, prior to making a modification other than one specifically permitted by Sections 4.4.1, 4.4.2, and 4.4.5, the Interconnection Customer may first ask the Transmission Provider to evaluate whether the modification is actually a Material Modification. A Material Modification would be a modification that has a material effect on the cost or timing of a lower queued Interconnection Customer. The Transmission Provider would be required to evaluate the proposed modification and inform the Interconnection Customer in writing whether the modification would considered be a Material Modification. The Interconnection Customer could then either withdraw the proposed modification or submit a new Interconnection Request for such modification.

Comments

167. SoCal Water District and Dynegy ask the Commission to clarify the definition of Material Modification to avoid disputes between the Parties regarding the Generating Facility's Queue Position. Ameren argues that a modification that is proposed as not being "material" may in fact be a Material Modification. FirstEnergy opposes giving the Transmission Provider the discretion to determine whether a request is a Material Modification. El Paso observes that reading proposed LGIP Sections 4.4.3 and 4.4.5 together implies that the Transmission Provider will be forced to judge whether an extension of three years or more is material and to determine if a cost effect or other project change is material. El Paso supports defining a Material Modification as: (1) A change greater than 12 months in Commercial Operation Date, (2) an increase of greater than $100,000 or 10 percent in the Transmission Provider's cost that a later queued Interconnection Customer would bear; or (3) a change greater than five miles in the location of, or any change in the voltage level at, the Point of Interconnection. Edison Mission believes that the Final Rule LGIP should clarify the effect of material improvements and modifications to existing Generating Facilities on the interconnection status and the rights of such Generating Facilities. The Bureau of Reclamation expresses concern that the NOPR does not define how or when an existing Interconnection Customer would be affected by Material Modifications. The Bureau of Reclamation is concerned because design and approval of its generator refurbishment is a federal responsibility and would be subject to the federal appropriation process.

Commission Conclusion

168. It is not necessary to revise proposed LGIP Section 4.4.3 to define precisely what constitutes a Material Modification. The impact of a modification depends in large part on the size, location, type of project and the

configuration of the Transmission Provider's Transmission System. The various Interconnection Studies will identify the modification's impact on other Interconnection Customers. This impact determines if the change is indeed a Material Modification. We leave it to the Transmission Provider to make that determination; however, it must do so on a reasonable basis.

169. *Section 4.4.4*—Proposed LGIP Section 4.4.4 in the NOPR LGIP provided that, upon receipt of an Interconnection Customer's request for modification permitted under Section 4.4, the Transmission Provider would perform any necessary additional Interconnection Studies as soon as practicable, but in no event later than 30 Calendar Days after receiving notice of the Interconnection Customer's request. Any additional Interconnection Studies resulting from such modification would be done at the Interconnection Customer's expense.

Comments

170. Exelon asserts that this section is not practical and is punitive to all lower queued Interconnection Customers. It contends that each time a modification is requested, a Transmission Provider or Transmission Owner must begin studying the modification within 30 Days and all work on the Interconnection Studies of all lower queued Interconnection Customers must be halted.

Commission Conclusion

171. We adopt Section 4.4.4 as proposed. While any modification that requires additional study can pose a challenge to the Transmission Provider's schedules and resources, the modifications that are permitted under Section 4.4 occur early enough in the study process that their effect on Interconnection Customers lower in the queue should be limited. Furthermore, since all Interconnection Requests are evaluated in the same restudy, this provision appropriately balances the Interconnection Customer's need for flexibility to change the project with the Transmission Provider's need for certainty in resource costs and schedules.

172. *Section 4.4.5*—Section 4.4.5 of the NOPR LGIP provided that an extension of less than three cumulative years in the Commercial Operation Date of the Generating Facility should not be considered a Material Modification and should be treated in the same manner as in Section 12.3 (Construction Sequencing).

Comments

173. Salt River Project seeks clarification on what to do when the original In-Service Date is at the maximum allowable ten years (under Proposed LGIP Section 3.3.1) and there is a request for a three year extension. Duke Energy supports allowing an Interconnection Customer to request an extension of all dates, including the In-Service Date, for periods of less than three cumulative years. Sempra believes that the Transmission Provider needs greater flexibility to manage and evaluate its Transmission System for delays of more than one year.

174. Westconnect RTO finds that two provisions in this Section contradict Western Electricity Coordinating Council (WECC) procedures. They are allowing the Interconnection Customer to decide to extend its Generating Facility's Commercial Operation Date for up to a total of three cumulative years and providing that such extensions are not material and should be handled through construction sequencing. Westconnect RTO asserts that regional practices concerning transmission planning and reliability should be honored.

175. SoCal PPA and El Paso believe that a three year period is an unreasonably long time to permit suspension of interconnection because it interferes with the Transmission Provider's ability to manage the queue and plan its system.

Commission Conclusion

176. With respect to Salt River Project's request, we clarify that the term contained in Final Rule LGIP Section 3.3.1 is ten years, or longer if the Transmission Provider agrees. Furthermore, such agreement shall not be unreasonably withheld. This clarification also addresses Duke Energy's and Sempra's concerns.

177. With respect to Westconnect RTO's assertion that this section contravenes WECC procedures, as stated above, we would permit modifications to the Final Rule LGIA and Final Rule LGIP where the Transmission Provider shows that there are legitimate regional differences, such as the WECC procedures, that would support such modifications. As to other arguments that three years is an unreasonably long time to permit extensions of the Commercial Operation Date, the Commission recognizes that such flexibility places a burden on the Transmission Provider's expansion planning process, but these extensions in most cases are well within the scope of other unforeseen changes that affect the planning process. The Final Rule therefore adopts Section 4.4.5 as proposed.

178. *Section 5—Procedures for Interconnection Requests Submitted Prior to Effective Date of Interconnection Procedures*—Section 5 of the proposed LGIP described the procedures for assigning a Queue Position prior to the effective date of the Final Rule LGIP. It also proposed a transition process for a Transmission Provider with an Interconnection Request that is outstanding when the Final Rule takes effect.

179. *Section 5.1—Queue Position for Pending Requests*—Proposed LGIP Section 5.1 provided that any Interconnection Customer assigned a Queue Position prior to the effective date of the Final Rule LGIP would retain that Queue Position. Also, if an Interconnection Study Agreement has not been executed as of the Final Rule effective date, then that Interconnection Study and subsequent Interconnection Studies would be processed in accordance with the Final Rule. However, an executed Interconnection Study Agreement would be completed in accordance with the terms in place at the time of execution of that agreement. The proposed section also provided that if an interconnection agreement has been tendered as of the Final Rule effective date, the Transmission Provider and Interconnection Customer would finalize its terms. To the extent necessary, outstanding requests would transition to the Final Rule procedures within a reasonable period of time, not to exceed 60 Calendar Days. Reasonable extensions would be granted.

Comments

180. The Midwest ISO recommends adding a subsection to the LGIP that permits Interconnection Requests in existing queues of non-RTO Transmission Providers to be merged into the queue of the RTO or ISO based on the original request dates at the time the Transmission Provider joins the RTO.

181. Central Maine supports the grandfathering of existing interconnection agreements that are filed with and accepted by the Commission as of the effective date of the Final Rule LGIP and Final Rule LGIA.

182. Sempra argues that it is inappropriate to mandate Parties to agree to an interconnection agreement tendered but not fully negotiated prior to the issuance of the Final Rule because, otherwise, the tendering Party could tender them on the eve of the Final Rule going into effect and the

other Party would be compelled to negotiate under the Final Rule's terms and conditions. Therefore, either Party should be permitted to set aside unexecuted but tendered interconnection agreements prior to the effective date of the Final Rule.

183. MidAmerican states that the proposed provision of Section 5.1.2, which established a transition period from the old queue processes to the new Final Rule provisions that should not exceed 60 days, is practical only for projects that are in their early stages. It proposes adding the phrase "provided that any existing interconnection agreement or Interconnection Study Agreement shall remain in full force and effect" for projects that have an executed interconnection agreement. MidAmerican also states that the Commission should clarify that this transition period is only for those outstanding requests for which Interconnection Studies Agreements and interconnection agreements have yet to be executed prior to the Final Rule going into effect. Similarly, Central Maine seeks clarification of the meaning of pending or outstanding requests.

184. BPA states that this provision should be clarified with regard to the circumstances under which an Interconnection Customer with an existing Interconnection Request may request an extension of applicable deadlines.

Commission Conclusion

185. The purpose of Proposed LGIP Section 5.1 was to ensure that a Generating Facility that has an established Queue Position prior to the Final Rule taking effect will continue to hold its position. This is also the case mentioned by the Midwest ISO for merging new members into the RTO's queue when the Transmission Provider joins an RTO. However, on compliance, discretion will be granted to RTOs or ISOs to propose queuing rules customized to their needs, in accordance with the "independent entity standard" (described in part II.C.5).

186. Under proposed LGIP Section 5.1.1, the Interconnection Studies for which the Parties have an executed Interconnection Study Agreement would be completed under the Interconnection Study Agreement's terms, but any remaining studies would be completed under the Final Rule LGIP study procedures. The Commission concludes that this situation may cause confusion and unnecessary complications in the event that the Transmission Provider's existing study procedures conflict with those in the Final Rule LGIP. To provide further clarification, and to prevent situations in which an Interconnection Customer may be forced to comply with conflicting or redundant study requirements, the Commission modifies this section to give the Interconnection Customer a choice. Under the Final Rule LGIP Section 5.1.1.2, if an Interconnection Customer has signed an Interconnection Study Agreement as of the effective date of the Final Rule, the Interconnection Customer will have the option to either continue with the rest of its Interconnection Studies under the Transmission Provider's existing study process or complete those remaining studies for which it does not have a signed Interconnection Study Agreement under the Final Rule LGIP.

187 .In response to Central Maine, we clarify that existing interconnection agreements that are filed with and accepted by the Commission prior to the effective date of this Final Rule will remain in effect. Regarding Sempra's request to allow the Parties to set aside interconnection agreements tendered but not executed before the issuance of the Final Rule, the Commission concludes that this decision is best left to the discretion of the Parties. If the Parties decide to continue their negotiations, they have until the Final Rule's effective date to submit their agreement to the Commission to qualify for grandfathering. Accordingly, Final Rule LGIP Section 5.1.1.3 states that an executed or unexecuted interconnection agreement submitted for approval by the Commission before the effective date of the Final Rule will be grandfathered and will not be rejected simply for failing to conform to the Final Rule LGIA.

188. With respect to Central Maine's and MidAmerican's requests for clarification of the term "outstanding requests" in Section 5.1.2, we clarify that the term refers to any request for interconnection that has been submitted to a Transmission Provider but has not yet been submitted to the Commission for approval prior to the effective date of this Final Rule.

189. There is no need to adopt MidAmerican's proposed language regarding the adequacy of a 60 day transition period in Section 5.1.2 since the Final Rule allows an Interconnection Customer to extend deadlines, and the 60 day period applies only to Interconnection Requests with outstanding studies for which an Interconnection Study Agreement has not been executed. We expect the Parties to work together during the transition period to ensure that no Interconnection Request is unreasonably delayed.

190. Finally, we deny BPA's request to explain the circumstances under which an Interconnection Customer may request an extension because these circumstances are likely to differ in each case. However, we expect that a Transmission Provider will grant an extension if it can be reasonably accommodated in a nondiscriminatory manner in the transition to the Final Rule LGIP.

191. *Section 5.2—New Transmission Provider*—Proposed LGIP Section 5.2 provided that if the Transmission Provider transfers control of its Transmission System to a successor Transmission Provider while an Interconnection Request is pending, the original Transmission Provider would also transfer to the successor any deposit or payment that exceeds the cost that it has incurred. The original Transmission Provider would be required to coordinate with the successor to complete any appropriate Interconnection Study. If an Interconnection Agreement has not been executed or if an unexecuted Interconnection Agreement has been filed with the Commission, the Interconnection Customer would have the option to complete negotiations with either the initial Transmission Provider or the successor.

Comments

192. Dairyland Power observes that the initial Transmission Provider should provide interest to the successor when the balance of deposits or payments is transferred. Also, if the study costs of the new Transmission Provider exceed the amount of the deposit, it is reasonable that the Interconnection Customer make up the difference.

193. Without explanation, NYTO states that the Interconnection Customer should not have the option of negotiating with a successor Transmission Provider.

Commission Conclusion

194. With respect to Dairyland Power's comment, the Commission clarifies that any additional costs incurred by the successor in excess of the deposit amounts must be treated in accordance with the Final Rule and paid upon completion of the Interconnection Studies. The Commission does not adopt NYTO's position and instead permits the Interconnection Customer to negotiate with the successor Transmission Provider.

195. Section 6—Interconnection Feasibility Study; Section 7—Interconnection System Impact Study; Section 8—Interconnection Facilities Study; Section 10—Optional

Interconnection Study—Proposed LGIP Sections 6, 7 and 8 describe (1) the analyses that would be conducted for each of the Feasibility, System Impact, and Facilities Studies, (2) the Interconnection Customer's responsibility regarding the actual cost of each study and of any restudies that may be required; and (3) the right an Interconnection Customer would have to maintain its Queue Position and substitute a Point of Interconnection, identified by either the Transmission Provider or the Interconnection Customer, if any of these Interconnection Studies uncovers a result that the Interconnection Customer and Transmission Provider did not contemplate during the Scoping Meeting. These sections would also allow an Interconnection Customer to direct that one of the alternative Points of Interconnection specified in the related Interconnection Feasibility Study Agreement and Scoping Meeting be used if the Transmission Provider cannot agree on a substitute Point of Interconnection.

196. Section 10 proposed that the Interconnection Customer may ask the Transmission Provider to perform a reasonable number of Optional Interconnection Studies. An Optional Interconnection Study would be a sensitivity analysis based on assumptions provided by the Interconnection Customer. The scope of the Optional Interconnection Study would be to identify the Interconnection Facilities, Network Upgrades and the costs that may be required to provide transmission service or Interconnection Service.

197. The following paragraphs group together discussions of Sections 6, 7, 8, and 10 because of the relationships among the topics and provisions.

General Comments Related to the Feasibility Study, the System Impact Study, the Facilities Study and the Optional Interconnection Study

198. A number of commenters, including El Paso, FirstEnergy, the Midwest ISO, National Grid, and PJM, are concerned that the proposed Interconnection Studies will take longer to complete than the Interconnection Studies that a Transmission Provider typically performs today, and will lead to delays in the development of new generation projects. TVA believes that the study deadlines are unrealistic, particularly for Transmission Providers with medium to large interconnection queues. It opposes having to study the Energy Resource Interconnection Service and Network Resource Interconnection Service during each phase of the Interconnection Study process. Instead, TVA proposes that the Interconnection Customer should be able to designate only one Interconnection Service for study purposes or adjusting the time lines in Sections 6, 7, 8, and 10 to reflect the increased scope of work required by giving the Interconnection Customer such alternatives. Imperial Irrigation opposes the NOPR's proposed Interconnection Studies because it does not have enough resources to conduct them. NYISO urges the Commission to allow for regional differences in the Final Rule.

199. Entergy opposes giving the Interconnection Customer the ability to continually modify its selected Point of Interconnection throughout the study process. TVA opposes an Interconnection Customer maintaining its position in the queue if the Interconnection Customer changes its Point of Interconnection in any of the Interconnection Studies. PJM believes that to allow the Interconnection Customer to require restudies throughout the Interconnection Study process is inconsistent with a workable regional planning process.

200. Sempra opposes setting a dollar figure for good faith estimates of Interconnection Study costs in the standardized study agreements that are attached as appendices to the Final Rule LGIA. It supports leaving the cost estimates blank in the appendices, with the expectation that the Transmission Provider would provide the timely good faith estimate later. Sempra also supports limiting the Transmission Provider's ability to pass on cost overruns to the Interconnection Customer.

201. Central Maine notes that the proposed Interconnection Study agreements would fix the "good faith estimated cost for performance" of each particular study. It argues that this is inappropriate because Interconnection Study costs vary greatly from one Generating Facility to another. It believes that Transmission Providers should be able to tailor each Interconnection Study agreement to the particular Generating Facility, and to include the good faith Interconnection Study cost estimate in each such agreement. If prepayment of Interconnection Study costs is not required, the deposit should be a percentage of the estimated total Interconnection Study cost, as opposed to a fixed dollar amount.

202. Several commenters seek additional requirements in assigning cost responsibility for Interconnection Studies to the Interconnection Customer. Central Maine notes that there are no proposed payment terms governing restudies, and supports clearly stating that the Interconnection Customer should bear full cost responsibility for a restudy. BPA supports requiring the Interconnection Customer to pay the estimated cost of the Interconnection Feasability Study in advance under Sections 6.1 and 7.2. National Grid's position is that the Interconnection Customer should prepay the costs of all Interconnection Studies because the Transmission Provider is exposed to the risk of nonpayment. Central Vermont PSC believes that the Interconnection Customer should bear study costs involving an Affected System.

203. Several entities seek clarification on the proper scope of, and standards for, the Interconnection Studies. Cal ISO believes that a study should encompass conditions that include off-peak scenarios and contingency conditions. Entergy and Westconnect RTO argue that the NOPR LGIP does not mention types of Interconnection Studies other than load flow, short circuit, and stability studies. They suggest that the scope of the Interconnection Studies not be limited to these named analyses, but be expanded to include additional Interconnection Studies conducted in accordance with Good Utility Practice. PSNM supports expanding the scope of Interconnection Studies to encompass any analyses dictated by Good Utility Practice and allow for additional time on specialized Interconnection Studies, if needed. PacifiCorp supports permitting the Transmission Provider to require additional Interconnection Studies recommended or required by a regional reliability council, including remedial action margin studies. Georgia Transmission believes that the Transmission Provider's obligation under Sections 6.2 and 6.3 is inconsistent with the limited scope of the Interconnection Feasibility Study, which is defined to consist only of a power flow study and a short circuit analysis.

204. Southern asks whether, if one Interconnection Request is required to be restudied by a date certain, all other lower queued requests would have to be restudied by that same date. Southern believes that this would be unworkable and unrealistic.

205. NYTO seeks details on specific study procedures for each of the Interconnection Studies.

Comments Related to Interconnection Feasibility Studies

206. SoCal Water District argues that an Interconnection Customer should

lose its position in the queue when the Interconnection Feasability Study uncovers a result that was not contemplated during the Scoping Meeting, instead of being allowed to designate a different site for the Point of Interconnection, as proposed. It says that this will encourage the Interconnection Customer to make the right choice at the beginning. It also comments that the Interconnection Customer should not be assigned a Queue Position until after the completion of the Interconnection Feasability Study.

207. NSTAR believes that Interconnection Feasibility and Interconnection Facilities Studies should be at the option of the Interconnection Customer.

208. The Midwest ISO points out that it is not always possible to determine accurately when an Interconnection Customer in a high Queue Position will actually come on line and that this could affect the accuracy of the Interconnection Feasability Study requested by a lower queued Interconnection Customer.

209. Sempra supports allowing a Transmission Provider or Transmission Owner to consider in its Interconnection Studies the In-Service Dates of all proposed generation projects, even those lower in the queue. This is so that the studies produce sound results for reliability purposes and consider all projects that will come on line at approximately the same time.

Comments Related to Interconnection System Impact Studies

210. FirstEnergy opposes as unreasonably short the proposed three day period of time during which a Transmission Provider must give an Interconnection Customer a non-binding good faith estimate of the cost and time frame for completing an Interconnection System Impact Study.

Comments Related to Optional Interconnection Studies

211. Proposed LGIP Section 10.1 would allow the Interconnection Customer to ask the Transmission Provider to perform a reasonable number of Optional Interconnection Studies on or after the date the Interconnection Customer receives the results of the Interconnection System Impact Study associated with its Interconnection Request. A Transmission Provider would have five days from the date it receives a request for an Optional Interconnection Study to give the Interconnection Customer an Optional Interconnection Study Agreement. Commenters raise concerns with the requirement to perform Optional Interconnection Studies, cost responsibilities for such studies, and the proposed deadlines.

212. Southern opposes allowing an Interconnection Customer to require that a Transmission Provider perform Optional Interconnection Studies. Southern believes that Optional Interconnection Studies will delay the process by tying up Transmission Provider resources that could be dedicated to performing the required studies. BPA contends that allowing the Interconnection Customer to require an unspecified number of Optional Interconnection Studies, while requiring that the standard Interconnection Studies be performed within the standard deadlines, places an unreasonable burden on the Transmission Provider.

213. Nevada Power opposes having to conduct Optional Interconnection Studies on the grounds that allowing changes to the original Interconnection Request violates the queue rights of other Interconnection Customers by giving additional study time and priority to the Optional Interconnection Study request. Dominion Resources makes a similar point.

214. SoCal Edison believes that the Final Rule should provide for Optional Interconnection Studies (1) that are performed outside the NOPR LGIP time line, (2) if it is understood by the Interconnection Customer who elects to implement a study that implements Material Changes, that it could impact the Generating Facility's Queue Position; and (3) may not exceed for each requester a maximum of two Optional Interconnection Studies. NYISO urges the Commission to delete Section 10.1 to reduce the number of studies that the Transmission Provider must perform. The Midwest ISO believes that the Interconnection Feasibility Study may be elected and can serve as the Optional Interconnection Study described in Section 10.

215. On the issue of cost responsibility, Central Vermont PSC supports having the Interconnection Customer compensate the Transmission Provider for the costs of an Optional Interconnection Study, including all charges incurred by an Affected System.

216. With respect to the deadlines associated with Optional Interconnection Studies, FirstEnergy believes that the five day turnaround period for the Transmission Provider to provide an Optional Interconnection Study Agreement, as called for in Section 10.1, is too short and that a ten day period would be better. Cal ISO also supports a ten day turnaround time.

Commission Conclusion—General Comments

217. The proposed time frames for completing Interconnection Studies are reasonable. For each of the studies, the NOPR LGIP allows for the possibility that the Transmission Provider will not be able to complete the study within the allotted time. In these cases, the NOPR LGIP provides that the Interconnection Customer and the Transmission Provider will come to an acceptable accommodation. As to Imperial Irrigation's concern that it lacks sufficient resources to conduct the Interconnection Studies, Section 13.4 gives the Parties the option of using a contractor to complete the required studies at the Interconnection Customer's expense and Section 4.2 allows the Transmission Provider to cluster Interconnection Studies, thereby saving time and money.

218. We believe that the proposed Interconnection Study deposit amounts are high enough to ensure that an Interconnection Customer is serious about its Interconnection Request. In the absence of standardized Interconnection Study cost estimates, a Transmission Provider could set the Interconnection Study costs at such high levels so as to discourage entry by competing generators.

219. Central Maine does not identify the benefits of making Interconnection Study deposits a percentage of the estimated Interconnection Study costs. Because the proposed dollar amounts are reasonable and are the result of the consensus process, the Commission adopts them for the Final Rule LGIP.

220. We find that the proposed provisions regarding the payment of study costs by the Interconnection Customer are adequate. The NOPR LGIP makes clear that the Interconnection Customer is responsible for the actual costs of all Interconnection Studies. We reject the proposal that the Interconnection Customer fully prepay the costs of Interconnection Studies because the advance payment would be based on Transmission Provider estimates rather than actual costs. The Commission recognizes that the costs of performing Interconnection Studies may vary by Interconnection Customer because each interconnection is unique. The unique features of each interconnection should be identified either in the Scoping Meeting or early in the Interconnection Study process so that the Transmission Provider can offer the Interconnection Customer a reasonable estimate of what the actual

study costs will be. However, we will require the Transmission Provider to provide a detailed and itemized accounting of the Interconnection Study costs in the relevant invoices. If the Interconnection Customer disputes the study cost, it may pursue dispute resolution procedures as described in Section 13.5 of the Final Rule LGIP.

221. With regard to commenters' various concerns about the proper scope of, and standards for, the Interconnection Studies, the Commission emphasizes that the Final Rule LGIP should not be interpreted as preventing the Transmission Provider from studying Interconnection Requests in accordance with Good Utility Practice and regional reliability requirements. The Transmission Provider may conduct necessary Interconnection Studies using any standards that are generally accepted within the region and consistently applied to all generation projects, including those of the Transmission Provider. If these standards differ from those specified in the LGIP, the Transmission Provider must include them in its compliance filing and may implement them only upon approval of the Commission. For this reason, we decline to specify detailed study procedures for each Interconnection Study beyond what is specified in the Final Rule LGIP.

Commission Conclusion—Interconnection Feasibility Studies

222. With regard to the concern that allowing changes to original Interconnection Requests would be unworkable and would violate the rights of lower queued Interconnection Customers due to the need to conduct numerous restudies, the Final Rule allows the Transmission Provider to take additional time to complete the necessary work. In addition, although lower queued Interconnection Customers may be harmed when their Interconnection Requests must be restudied due to actions of an Interconnection Customer higher in the queue, they also benefit from the flexibility to request that the Transmission Provider study a substitute Point of Interconnection. In this respect, the Commission finds that the NOPR LGIP strikes an appropriate balance and, accordingly, adopts it in the Final Rule.

223. Regarding Sempra's question about which projects within the queue should be considered when performing Interconnection Studies, the Commission requires the Transmission Provider to consider in its Interconnection Studies all generators with both higher and lower queued Interconnection Requests that could affect the Network Upgrades associated with integrating these generators with the Transmission System, as specified in the Final Rule LGIP.

Commission Conclusion—Interconnection System Impact Studies

224. In response to FirstEnergy's comment that there is insufficient time to provide cost and time estimates for completing an Interconnection System Impact Study, we find that three Business Days is reasonable. We note that prior to the Interconnection System Impact Study, the Transmission Provider will have conducted the Interconnection Feasibility Study and the Parties will have met to discuss the study results. Accordingly, through this ongoing process, the Transmission Provider will have had ample time to anticipate and prepare such estimates.

Commission Conclusion—Optional Interconnection Studies

225. The Commission finds that commenters' concerns about allowing an Interconnection Customer to request Optional Interconnection Studies are misplaced. Such studies are for informational purposes only and are to be completed within an agreed upon time period using Reasonable Efforts. If Optional Interconnection Studies place too great a burden on the resources of the Transmission Provider, the Final Rule permits the use of a contractor at the Interconnection Customer's expense. The Commission is neither eliminating these provisions nor, as SoCal Edison proposes, limiting the number of Optional Interconnection Studies an Interconnection Customer may request. These studies may provide information needed by the Interconnection Customer. Since the Interconnection Customer pays for the Optional Interconnection Study and a contractor may be used for this purposes, the impact on a Transmission Provider is minimal.

226. Section 9—Engineering & Procurement ("E&P") Agreement (In the NOPR: Agreements)—Proposed LGIP Section 9 provided a mechanism for the Transmission Provider and the Interconnection Customer to enter into an Engineering & Procurement Agreement prior to executing the LGIA. An Interconnection Customer may ask that the Transmission Provider begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection. The Transmission Provider is not obligated to offer an agreement if the Interconnection Customer is in Dispute Resolution as a result of an allegation that the Interconnection Customer has failed to meet any milestones or comply with any other sections of the LGIP. This section also specifies the cost and other obligations of the Interconnection Customer.

Comments

227. Calpine and Duke Energy propose that Section 9.1 be expanded to cover situations where the construction of certain Network Upgrades takes place prior to the execution of the LGIA. Duke Energy states that the Transmission Provider should be prohibited from refusing to enter into an interim Engineering & Procurement Agreement unless the Interconnection Customer's failure to meet milestones directly affects the Transmission Provider's ability to meet its obligation under the Engineering & Procurement Agreement. FirstEnergy states that it is inappropriate to enter into an Engineering & Procurement Agreement prior to the execution of an LGIA, or the filing of an unexecuted LGIA with the Commission.

Commission Conclusion

228. We disagree with Calpine and Duke Energy regarding construction. The Final Rule does not require the construction of Network Upgrades prior to the execution of the LGIA; nor do we see why the Transmission Provider should be placed at risk by committing to the construction of such Network Upgrades prior to the execution of an LGIA. Regarding FirstEnergy's comments, we conclude that it is reasonable to allow the Parties to enter into an Engineering & Procurement Agreement for long lead-time items necessary to accommodate the interconnection as long as the Interconnection Customer bears the cost risk. Likewise, in response to Duke Energy and consistent with the language in the NOPR, we conclude that it is reasonable to require a Transmission Provider to offer an Engineering & Procurement Agreement only if the Interconnection Customer has met its obligations under the Final Rule LGIP. Accordingly, we adopt Section 9 in the Final Rule as proposed.

229. *Section 11—Standard Large Generator Interconnection Agreement* (In the NOPR: Interconnection Agreement)—Proposed LGIP Section 11 includes procedures for tendering, negotiating, executing, and filing an interconnection agreement.

230. *Section 11.1—Tender*—Proposed LGIP Section 11.1 provided that the Transmission Provider simultaneously submit to the Interconnection Customer

the draft Interconnection Facilities Study Report and a draft LGIA, to the extent practicable, in the form of the *pro forma* LGIA. Within 30 Calendar Days after the issuance of the draft Interconnection Facilities Study report and a draft pro forma LGIA, the Transmission Provider shall submit the completed draft of the LGIA.

Comments

231. Central Maine believes that 30 days is an unreasonable time frame in which to prepare such technically detailed documents as the appendices to the interconnection agreement, and it should therefore be increased to 60 days.

Commission Conclusion

232. Central Maine has not convinced us of the difficulty of preparing the interconnection agreement appendices in 30 Calendar Days or shown a need to extend the time in which to prepare them to 60 Calendar Days. Accordingly, the Commission retains the proposed 30 Calendar Day requirement for the Transmission Provider to tender the completed interconnection agreement.

233. *Section 11.2—Negotiation*—Proposed LGIP Section 11.2 provided that the Transmission Provider and the Interconnection Customer be required to negotiate the terms contained in the appendices to the interconnection agreement for up to 60 Calendar Days after tender of the final Interconnection Facilities Report. If the Interconnection Customer determines that negotiations are at an impasse, it could either request termination of the negotiations and request submission of the unexecuted interconnection agreement to the Commission, or initiate Dispute Resolution procedures. If the Interconnection Customer requests termination of the negotiations, but within 60 Calendar Days thereafter fails to request either the filing of the unexecuted LGIA or initiate Dispute Resolution, it would be deemed to have withdrawn its Interconnection Request.

Comments

234. FirstEnergy contends that the provisions of this section unduly restrict the ability of the Parties to negotiate a resolution. It argues that proposed LGIP Section 11.2 provides no recourse for the Transmission Provider in circumstances where the negotiations are at an impasse and the Interconnection Customer neither terminates the Interconnection Request nor continues to negotiate in good-faith. FirstEnergy recommends that Section 11.2 of the NOPR IA be revised to include the following language: "Unless otherwise agreed to by the Parties, if the Interconnection Customer has not executed the Interconnection Agreement, requested the filing of an unexecuted [interconnection agreement], or initiated Dispute Resolution procedures within 60 days of the tender of the completed draft of the LGIA Appendices, the Interconnection Customer will have been deemed to have withdrawn its Interconnection Request.

Commission Conclusion

235. The Commission agrees with FirstEnergy that there could be circumstances where the Parties could be unduly restricted in their negotiations and therefore adopts the language proposed by FirstEnergy in the Final Rule LGIP.

236. *Section 11.3—Execution and Filing*—Proposed LGIP Section 11.3 would have the Interconnection Customer demonstrate Site Control to the Transmission Provider, and provides specific milestones as evidence of Site Control. It would also provide that the Transmission Provider file the LGIA as soon as practicable, but not later than ten Business Days after receiving either the two executed originals of the LGIA, or the request by the Interconnection Customer to file an unexecuted LGIA.

Comments

237. Mirant does not oppose requiring an Interconnection Customer to maintain Site Control and provide reasonable evidence that the Interconnection Customer has met some of the specified milestones. However, it asks the Commission to clarify what constitutes "reasonable evidence" of Site Control. Other commenters, including PJM and PJMTO, assert that the Commission should give the Interconnection Customer more milestones to meet.

238. PJM opposes letting an Interconnection Customer deposit $250,000 instead of demonstrating meaningful progress and believes that doing so can lead to clogging and gaming of the queue.

239. Central Maine requests that the Commission extend from ten to 30 days the obligation to file, as additional time is needed to prepare the filing. It claims that neither Party would be adversely affected by such an extension.

Commission Conclusion

240. We shall modify Proposed LGIP Section 11.3 to better reflect the Commission's unexecuted agreement procedure in the OATT.[62] Accordingly, the unexecuted agreement should contain terms and conditions deemed appropriate by the Transmission Provider for the Interconnection Request. But the LGIA approach differs from the OATT approach, since the Parties' obligations may be significantly different in the LGIA context. The OATT unexecuted agreement provision requires the Transmission Provider to commence providing service as long as the Transmission Customer agrees to compensate the Transmission Provider at the rate the Commission ultimately determined to be just and reasonable. Since the LGIA involves obligations different from those in the OATT, including facilities construction that may be undertaken by either Party, it is appropriate to give both Parties more flexibility to determine whether to proceed under the non-disputed terms of their unexecuted agreement. Once the unexecuted agreement is filed, if the Parties agree to proceed with design, procurement, and construction of facilities and upgrades under the agreed upon terms of the unexecuted agreement, they may proceed pending Commission action.

241. In response to Mirant's request to clarify what constitutes "reasonable evidence" of Site Control, the Commission notes that the Final Rule definition of the term specifically lists the types of documentation that reasonably demonstrates evidence of Site Control.

242. PJM proposes to eliminate the $250,000 additional deposit if the Interconnection Customer is unable to provide evidence of Site Control. It would also have the Generating Facility lose its place in the queue if the Interconnection Customer misses a milestone. We find that the deposit is a sufficient showing that the Interconnection Customer is serious about the project and will continue to work to meet the requirements of Site Control and other milestones. Finally, this section provides sufficient milestones and penalties to reasonably ensure that the Interconnection Customer is intent on completing the project.

243. Central Maine has not provided any support for its request to extend the time from ten to 30 days to meet the filing obligations. Accordingly, the Final Rule retains the ten Business Days requirement.

244. *Section 12—Construction of Transmission Provider's Interconnection Facilities and Network Upgrades*—Proposed LGIP Section 12 required the

[62] *See* Section 15.3 of the OATT.

Transmission Provider and the Interconnection Customer to agree to a schedule for the construction of Interconnection Facilities and Network Upgrades that are needed to accommodate the Interconnection Request. It also provided for an Interconnection Customer to request the acceleration of Network Upgrades that are needed for a higher-queued Interconnection Customer that would not have otherwise been completed in time to support the lower queued Interconnection Customer's In-Service Date as long as it commits to pay any costs associated with expediting the project, including the cost of any Network Upgrades assigned to the higher-queued Interconnection Customer.

245. *Section 12.1—Schedule*—Proposed LGIP Section 12.1 provided that the Transmission Provider and Interconnection Customer negotiate in good faith to develop a schedule for the construction of the Transmission Provider's Interconnection Facilities and Network Upgrades.

Comments

246. Duke Energy and FirstEnergy contend that this section should be deleted, since it is already covered in Article 5 of the NOPR LGIA.

Commission Conclusion

247. The Commission finds no reason to delete Section 12.1. It merely states that the Parties must negotiate a construction schedule in good faith. The fact that the negotiated construction schedule is in Appendix B (Milestones) of the LGIA does not require us to delete Section 12.1 from the Final Rule LGIP.

248. *Section 12.2—Permits*—Proposed LGIP Section 12.2 provided that the Parties specify in the LGIA each Party's responsibility for obtaining permits, licenses, and authorizations necessary to construct the Interconnection Facilities and Network Upgrades needed to accommodate the proposed interconnection in conformance with all Applicable Laws and Regulations.

Comments

249. Duke Energy states that the first sentence of Section 12.2 should be stricken because it duplicates NOPR LGIA Article 14.1. FirstEnergy contends that the entire section should be deleted because the topic is more properly addressed in the LGIA. Cinergy asks the Commission to clarify that nothing in the section requires the Transmission Provider to exercise its power of eminent domain. Central Maine argues that the phrase "nothing in this Section 12.2 shall be construed to waive any rights under Applicable Laws and Regulations" should be either deleted or applied to the entire Final Rule LGIP, because its inclusion in just one provision creates confusion.

Commission Conclusion

250. The Commission disagrees with Duke Energy. Proposed LGIP Section 12.2 merely requires the Parties to specify in the LGIA each Party's responsibility for obtaining permits, licenses, and authorizations necessary to construct the Interconnection Facilities and Network Upgrades. Article 14.1 of the NOPR LGIA, on the other hand, states that each Party's obligations under the LGIA are conditioned upon regulatory approval from relevant Governmental Authorities.

251. In response to Cinergy's assertion, while the Commission does not require that the Transmission Provider exercise its right of eminent domain in all instances, we do not prohibit it from doing so. Rather, in the Final Rule, consistent with the Commission's discussion of NOPR LGIA Article 5.11 (now Final Rule LGIA Article 5.13), Lands of Other Property Owners, we require that a Transmission Provider or Transmission Owner use efforts similar to those it typically undertakes on its own behalf (or on behalf of an Affiliate), which may include use of eminent domain rights, to secure permits for the Interconnection Customer, unless restricted from doing so by state law.

252. We agree with Central Maine's arguments and are therefore not incorporating into this section the proposed text dealing with the waiving of rights under Applicable Laws and Regulations.

253. Finally, the Commission agrees with FirstEnergy that the issues contained in this section are more appropriately discussed in the Final Rule LGIA. Accordingly, proposed LGIP Section 12.2 is being deleted from the Final Rule LGIP and is being incorporated into the Final Rule LGIA as Article 5.14.

254. *Section 12.3—Construction Sequencing* (In the Final Rule LGIP: Section 12.2)—Proposed LGIP Section 12.3 stated that an Interconnection Customer may ask the Transmission Provider to advance construction of Network Upgrades supporting other generators that were assumed to be completed in time to support the Interconnection Customer's Generating Facility's In-Service Date. The Transmission Provider would have to use Reasonable Efforts to advance the construction of such Network Upgrades, provided that the Interconnection Customer commits to pay the Transmission Provider the cost of the Network Upgrades and any associated expediting costs. The Transmission Provider must refund to the Interconnection Customer the costs of any expedited Network Upgrades after the Transmission Provider receives payment from the entity for which the Network Upgrades were to be originally constructed. Until such costs are refunded, the Transmission Provider must provide the Interconnection Customer with transmission credits for the costs of the expedited Network Upgrades.

Comments

255. Duke Energy seeks clarification that (1) the Interconnection Customer earlier in the queue is obligated to pay the Transmission Provider only the amount not refunded, through credits, to the Interconnection Customer requesting the acceleration (and thus is eligible for transmission credits only for that amount), (2) the Interconnection Customer requesting the accelerated construction is reimbursed for Network Upgrade costs only up to the amount of the transmission credits not received, (3) the Transmission Provider is not required to advance funds for construction or to pay total credits in excess of the cost of the Network Upgrades; and (4) the higher-queued Interconnection Customer must pay for the expedited Network Upgrades on the date that it would have been required to pay were it not for the request for acceleration. Duke Energy also notes that there may be circumstances when acceleration requires greater expenditures than would be required to meet a reasonable construction schedule. It therefore recommends that if a Transmission Provider believes that the Commission would not allow such expenditures to be included in the revenue requirement under traditional ratemaking principles, the Transmission Provider should have the opportunity to challenge the provision of credits for these costs.

Commission Conclusion

256. The Commission affirms that an Interconnection Customer higher in the queue is obligated to pay the Transmission Provider for only that portion of the costs of the expedited Network Upgrades not already paid to the Interconnection Customer that requested expedition through transmission credits. The Transmission Provider can then forward this amount to the expediting Interconnection Customer as a lump sum payment for

the balance of costs that the higher-queued Interconnection Customer is owed. At this point, the payment of credits will cease and the payment of credits to the higher-queued Interconnection Customer can begin. The latter credits will continue until the higher-queued Interconnection Customer has been reimbursed for the portion of the Network Upgrade costs that it has paid. The Transmission Provider is also not required to advance funds for construction or to pay total credits in excess of the cost of the Network Upgrades, including any interest that may be due. Finally, the higher-queued Interconnection Customer is responsible for paying the costs of the advanced Network Upgrade on the date that it would have been required to pay had there been no request for accelerated construction.

257. In response to Duke Energy's final concern, the Commission recognizes that there may be circumstances under which the Transmission Provider, in attempting to accommodate the Interconnection Customer's request to accelerate the project, may have to incur costs that would exceed what would normally be required to meet a reasonable construction schedule. However, we will consider such costs to have been prudently incurred unless it is demonstrated in a rate proceeding that the Transmission Provider could have met the Interconnection Customer's requested In-Service Date at a lower cost through the construction of alternative Network Upgrades, or by other means. Consequently, the Transmission Provider should have no reason to challenge the provision of credits for any costs that it prudently incurs.

258. Consistent with the above discussion, the Final Rule clarifies Section 12.3 and removes certain text that is largely redundant.

259. This section is designated Section 12.2 in the Final Rule LGIP.

260. *Section 13—Miscellaneous*—Proposed LGIP Section 13 included a variety of provisions, described below.

261. *Section 13.1—Confidentiality*—Proposed LGIP Section 13.1 would have required that the Transmission Provider afford confidential treatment to all information it receives from the Interconnection Customer to process its request for Interconnection Service except for information that is in the Interconnection Request and information that is or becomes generally available to the public. The Transmission Provider would be permitted to use this information only for the Interconnection Study and to share it only with those who need it for Interconnection Studies and actions to interconnect the Generating Facility. The Transmission Provider would not be permitted to share such information with the merchant generation or marketing functions of the Transmission Provider or its Affiliates' merchant functions or as otherwise prohibited by Order No. 889.

262. The Transmission Provider would be liable to the Interconnection Customer for any Breach of confidentiality caused by its agent or contractor. If requested by the Interconnection Customer, the Transmission Provider would be required to destroy or return to the Interconnection Customer information no longer needed. If the Transmission Provider is required to disclose the information to any regulatory body, it would be obligated to request confidential treatment of the information. The Transmission Provider must provide the Interconnection Customer with prompt written notice if it receives a request for the Confidential Information to allow the Interconnection Customer an opportunity to contest the disclosure. The confidentiality provisions would not require the Transmission Provider or Interconnection Customer to disclose information in violation of any confidentiality obligations to third parties.

Comments

263. Several commenters, including Central Maine and MidAmerican, argue that these confidentiality protections should be extended to the Transmission Provider as well. Central Maine seeks a clear policy about what information may be disclosed, what information must be disclosed, the manner of disclosure, and what information must remain confidential as part of the interconnection process.

264. Lakeland seeks reconciliation of the differences between the confidentiality provisions of the NOPR LGIA and the NOPR LGIP. Specifically, the Final Rule LGIP should accommodate compliance with state Open Records laws, including Florida's, as in the NOPR LGIA.

265. Entergy opposes requiring a Transmission Provider to provide Confidential Information, or disclose anything not public, to an Interconnection Customer. If that disclosure is required by the Final Rule, the confidentiality requirements should be reciprocal and a Party should be required to designate which materials warrant confidential treatment.

266. The Midwest ISO agrees with the proposal that Confidential Information only be shared among employees of the Transmission Provider (including Transmission Owners of Affected Systems) and third parties that need the information to perform or review Interconnection Studies. Moreover, in accordance with Order No. 889, the information should not be shared with individuals responsible for merchant or marketing functions. The Midwest ISO also requests that the Commission clarify what type of planning information should be kept confidential for security reasons and what information should be made available, perhaps under a non-disclosure agreement executed by the Parties. Proposed LGIP Section 13.1 would have required that the Transmission Provider keep confidential all information provided by the Interconnection Customer related to Interconnection Service that is not provided in the Interconnection Request; the Midwest ISO and NERC state that some information in the Interconnection Request may be commercially sensitive, such as unit-specific data, and should be kept confidential.

267. GE Power notes that developers generally prefer to look at alternative project scenarios before going "on the record" with their plans. GE Power requests that the Commission address the balance between commercial confidentiality or security-based secrecy and the need to make the data available so that studies and business forecasting can be completed.

268. NERC comments that the information provided by Interconnection Customers that may be considered confidential under Section 13.1 is needed to protect reliability because it generally is shared not only with directly affected neighboring systems, but also with regional and NERC study groups for modeling inter-regional and interconnection reliability effects. NERC states that this data is generally provided in a manner that masks ownership and other commercial terms and that NERC has standards of conduct for Reliability Coordination and a data confidentiality agreement. It requests that mechanisms remain in place to ensure the availability and confidentiality of such data so that Interconnection Customers will provide data needed for reliability assessment. NERC proposes that an Interconnection Customer identify specific information to be protected as confidential and that the Transmission Provider share this information only with parties to confidentiality agreements.

Commission Conclusion

269. In response to Central Maine's and several others' requests that the confidentiality provision in the NOPR LGIP be made more specific, the Commission is incorporating into Section 13.1 certain aspects of the confidentiality provisions in Article 22 of the LGIA. These include a definition of Confidential Information, procedures for the release of Confidential Information, and guidance regarding how Confidential Information should be treated when it is requested by the Commission as part of an investigation. Both Parties are eligible to use the protection afforded by the revised section as long as the information is identified as Confidential Information in accordance with the section. This revision should satisfy commenters that sought greater specificity regarding procedures for maintaining and disclosing information in the confidentiality provisions in the LGIP. It also eliminates any significant conflicts between the LGIP and LGIA confidentiality provisions. The Final Rule LGIP Section 13.1 differs from Final Rule LGIA Article 22 only with respect to the provisions in Article 22 that address the fact that the confidentiality obligations arise under a signed Interconnection Agreement.

270. This revision eliminates from the Section 13.1 the exception for information that appears in the Interconnection Request. Under the revised provision, it is the Interconnection Customer's responsibility to designate the information submitted in its Interconnection Request that should remain confidential.

271. Lakeland requests that the Commission adopt provisions that accommodate compliance with state open records laws. Public utilities also may be subject to information restrictions arising from national security concerns. As noted above, the Commission expects all public utilities to meet basic standards for system infrastructure and operational security. In addition, if state laws indeed conflict with the confidentiality and information sharing addressed in this provision, the Commission expects that public utilities will make conforming changes to these provisions in their compliance filings and explain the statutory basis for such changes.

272. The Commission agrees with the Midwest ISO and NERC that the Final Rule must allow information to be shared with Transmission Provider representatives of NERC and other regional planning groups, since to deny them this information may undermine Transmission System reliability and modeling efforts. Section 13.1 of the Final Rule allows the Parties to share Confidential Information with an independent transmission administrator or reliability organization as long as the disclosing party agrees to promptly notify the other Party in writing and to seek to protect the Confidential Information from public disclosure by separate confidentiality agreement or other reasonable measures. We do not, as the Midwest ISO requests, specify the planning information that may be made available, as it is likely that the data will vary by region.

273. Finally, GE Power proposes that this rulemaking address what information a Transmission Provider should make available to a would-be Interconnection Customer before the submission of an Interconnection Request. We decline to do so. This Final Rule addresses interconnection, not the general availability of information to all those who have not yet submitted an Interconnection Request.

274. *Section 13.3—Obligation for Study Costs*—Proposed LGIP Section 13.3 would have required the Interconnection Customer to pay the actual costs of the Interconnection Studies. If any deposit exceeds the actual cost of the study, that amount would be refunded to the Interconnection Customer or offset against the cost of any future Interconnection Studies associated with the Interconnection Request. Proposed LGIP Section 13.3 also stated that the Transmission Provider would not be obligated to perform or continue to perform any Interconnection Studies unless the Interconnection Customer has paid all undisputed amounts under this section.

Comments

275. PJM argues that the absence of significant milestones in Section 13.3 amplifies the opportunities for an Interconnection Customer to dispute its bill and string its project along at little cost. Any refusal to pay an invoiced study cost should be a Default that triggers withdrawal of the Interconnection Request.

276. The Midwest ISO believes that the Transmission Provider should be permitted to collect interest on any unpaid amounts not in dispute, and Duke Energy believes that deposits in excess of the actual study cost should be entitled to earn interest from the day a deposit is credited to an account.

277. Sempra would require the Interconnection Customer to pay for simple and inexpensive Interconnection Studies up front, and to pay for expensive and complicated studies through periodic payments.

Commission Conclusion

278. The Commission declines to adopt any of the proposed changes to Section 13.3 in the Final Rule. While an Interconnection Customer could delay the interconnection process merely by disputing its bill, the Commission is not convinced that a significant number of Interconnection Customers will to act in this manner, since most Interconnection Customers presumably will want to have their projects on line as soon as possible. Furthermore, requiring the Interconnection Customer to pay all invoiced amounts, no matter how unreasonable, or lose its Queue Position would invite abuse on the part of the Transmission Provider.

279. In response to the Midwest ISO and Duke Energy, the payment of interest on study deposits and unpaid study costs tend to offset one another over time. Moreover, the Commission is not persuaded that the interest costs would be large enough to warrant the additional administrative expense that the Transmission Provider would incur in tracking the amounts due. Also, the requirement to pay a deposit and then additional amounts as they come due will generally achieve the result that Sempra seeks.

280. Finally, to ensure that the Interconnection Customer is adequately informed regarding the actual costs of Interconnection Studies, we revise Section 13.3 to require the Transmission Provider to provide a detailed and itemized accounting of the Interconnection Study costs in the relevant invoices.

281. *Section 13.4—Third Parties Conducting Studies*—Proposed LGIP Section 13.4 provided that the Interconnection Customer be able to require the Transmission Provider, within 30 days of its notification, to use a consultant to complete the Interconnection Study at issue if (1) the Parties cannot agree to the timing of the completion of the Interconnection Study, or (2) the Interconnection Customer receives notice from the Transmission Provider that the Transmission Provider will not complete an Interconnection Study within the applicable time frame, or (3) the Interconnection Customer receives from the Transmission Provider neither the Interconnection Study nor a notice about not completing the Interconnection Study. In such situations, the Interconnection Study would be conducted at the Interconnection Customer's expense and

in the case of (3), the Interconnection Customer could submit a claim to Dispute Resolution to recover the costs of the third party study. The consultant would be required to follow the LGIP protocols and use the information it receives to do the Interconnection Study for the sole purpose of completing the study. The Transmission Provider would be required to cooperate with the consultant to complete and issue the Interconnection Study in the shortest reasonable time.

Comments

282. Some commenters, including Duke Energy, EPSA, NYISO, and Sunflower Electric, endorse the NOPR proposal to allow an Interconnection Customer to request a consultant to undertake or complete an Interconnection Study, while others advocate the Transmission Provider being allowed to initiate use of a consultant to accelerate completion of Interconnection Studies, as well. Sunflower Electric sees use of a consultant as a short-term means to alleviate a Transmission Provider's backlog. Central Maine seeks clarification of the process for selecting the consultant. It argues that a 30 day deadline for a Transmission Provider to issue an RFP and select a consultant is not realistic.

283. BPA, MidAmerican, and PJM question whether use of a consultant will speed up the study process, whether it will significantly reduce a Transmission Provider's overall study effort, and whether it will help a Transmission Provider to more efficiently study multiple Interconnection Requests. They are concerned that any benefits may be limited to situations in which Interconnection Customers' projects are studied individually, on a non-integrated basis, in isolation from other higher-queued Interconnection Requests and system improvements and expansions. Others recommend allowing a Transmission Provider to complete pending Interconnection Studies for higher-queued Interconnection Requests before turning its databases, workpapers, and study results over to the consultant to help it move forward with its study. In addition, PJM observes that an independent Transmission Provider, such as an RTO or ISO, has no incentive to delay completion of an Interconnection Study. NYISO would have the ISO direct and review any consultant Interconnection Studies.

284. BPA proposes allowing a Transmission Provider to ignore the consultant's study if it is not completed by the deadline. BPA also wants sufficient time for the Transmission Provider, as "the expert" in regard to its system, to review the study to ensure that it is adequate and to make necessary changes to it.

Commission Conclusion

285. Based on the foregoing comments and a balancing of the interests of an Interconnection Customer (to obtain the results of any necessary Interconnection Studies as soon as possible) and the responsibility of Transmission Provider (to efficiently and effectively plan its Transmission System), the Commission will permit use of a consultant upon the request of an Interconnection Customer at any time during the Interconnection Study process. This is subject to the Transmission Provider deciding that such use will (1) help maintain or accelerate the study process for the Interconnection Customer's pending Interconnection Request and (2) not interfere with the Transmission Provider's planning processes or hamper the Transmission Provider's progress on any other Interconnection Studies for pending Interconnection Requests. Moreover, a consultant hired to perform an Interconnection Study must follow the same rules and procedures as does a Transmission Provider that conducts the study in-house.

286. The Commission will not specify in Section 13.4 all the terms, conditions, and selection processes that would be applicable. Instead, the Final Rule leaves it up to the Parties to negotiate the details of the timing and process for selecting the consultant, the deadlines for the consultant's work, the Transmission Provider's direction and review of the consultant's work, the contingency rights and obligations of the Parties if the consultant fails to timely deliver a study of adequate quality, and any other relevant matters. This added flexibility may increase opportunities for the use of a consultant to accelerate the completion of necessary Interconnection Studies when it is feasible to do so.

287. *Section 13.6—Disputes*—Proposed LGIP Section 13.6 detailed requirements for the Dispute Resolution process. Upon written notice of a dispute arising out of the Interconnection and Operating Agreement or its performance, a senior representative or representatives of each Party would be required to try to resolve the dispute informally. Failing informal resolution within 30 Calendar days, by mutual agreement the dispute would be submitted to arbitration, or each Party would exercise its other legal or equitable rights. Section 13.6.2 specified external arbitration procedures, and Section 13.6.3 stated that unless otherwise agreed, the arbitrator would be required to render a decision within 90 Calendar Days of its appointment that shall be binding upon each Party. Final decision affecting jurisdictional rates, terms, and conditions would be filed with the Commission. Finally, Section 13.6.4 delineated responsibility for costs related to the resolution of disputes.

Comments

288. Central Maine believes that the Parties should be precluded from settling by binding arbitration matters that are under the Commission's jurisdiction.

Commission Conclusion

289. Although Section 13.6 proposed making Dispute Resolution available only for disputes arising under the LGIA, the Final Rule extends the procedures to disputes arising under the LGIP. This section is designated Section 13.5 in the Final Rule LGIP.

290. The Commission has long encouraged the use of alternative dispute resolution to resolve disagreements over Commission-jurisdictional contracts. The Commission's complaint rule, in fact, requires Parties to specify in a formal complaint whether they have attempted an informal resolution of contract-related disputes, and if they have not done so, to explain why not.[63] Final Rule LGIP Sections 13.5.1 through 13.5.3 reflect the Commission's policy of encouraging alternative dispute resolution without compromising the Commission's authority. Final Rule LGIP Section 13.5.3 prevents arbitrators from changing the provisions of the interconnection agreement in any manner. Arbitrators may only interpret and apply the provisions. Any such changes to the interconnection agreement could be made only pursuant to Sections 205 and 206 of the Federal Power Act, and would require Commission review. Although the arbitrator's decision is binding in so far as it is enforceable in any court having jurisdiction, an arbitrator's decision must be filed with the Commission if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades. Thus, the Commission retains the authority to review the arbitrator's decision. Nor do we agree that the provision circumscribes the Parties' right to avail themselves of the Commission's

[63] 18 CFR 385.206(b)(9) (2003).

complaint process because under Section 13.5.1, a Party that does not agree to arbitration may exercise its rights, including its right to bring a complaint to the Commission.

291. The Commission also adds language to Section 13.6.1 to emphasize that Parties should consider using informal dispute resolution as well as more formal options. The Commission encourages Parties to settle their disputes through other mechanisms (*e.g.*, mediation, assisted negotiations, settlement judge procedures) prior to commencing arbitration proceedings. Of course, at any point during the process the disputing Parties may have recourse to alternative methods of dispute resolution, provided that both Parties agree.[64]

292. *Appendices*—Proposed Appendix 1 is the application form for making an Interconnection Request. Proposed Appendices 2, 3, 4, and 5 set forth the terms for the Interconnection Feasibility Study Agreement, the Interconnection System Impact Study Agreement, the Interconnection Facilities Study Agreement, and the Optional Interconnection Study Agreement; and require a deposit of $10,000 for the Interconnection Feasibility Study, $50,000 for the Interconnection System Impact Study, $100,000 for the Interconnection Facilities Study, and $10,000 for the Optional Interconnection Study. The Final Rule LGIP retains these appendices. In addition, the Final Rule LGIP incorporates the Final Rule Standard Large Generator Interconnection Agreement at Appendix 6.

B. Issues Related to the Standard Large Generator Interconnection Agreement (LGIA)

1. Overview

293. The proposed LGIA contained the Parties' contractual Interconnection Service rights and obligations. It addressed matters such as the effective date and termination costs; regulatory filings; scope of service, including interconnection product options; generator provided services; Interconnection Facilities engineering, procurement and construction; testing and inspection, including start-up and synchronization, system protection and controls requirements; emergency, and disconnect obligations; metering and communications; operations and maintenance; Defaults and indemnifications; transmission crediting; audits; and Dispute Resolution.

294. The proposed LGIA also specified the allocation of the responsibilities among the Interconnection Customer, the Transmission Provider and Transmission Owner (where the latter is a Party other than the Transmission Provider that owns the facilities to which the interconnection is being made), in regard to obtaining all permits and authorizations necessary to accomplish the interconnection.

295. Under this Final Rule, if an Interconnection Customer agrees to pay for any modification to the Transmission Provider's facilities necessitated by the requested interconnection, the Transmission Provider is obligated to offer an executable form of LGIA to the Interconnection Customer. The interconnection agreement becomes effective upon execution by the Parties, subject to acceptance by the Commission. If the Interconnection Customer executes the LGIA, the Transmission Provider, the Interconnection Customer, and the Transmission Owner must perform their respective obligations in accordance with the terms of the executed interconnection agreement, subject to modification by the Commission.

296. If the Interconnection Customer determines that negotiations are at an impasse, it may initiate Dispute Resolution procedures and, if not successful, request submission of the unexecuted agreement to the Commission by the Transmission Provider in accordance with Final Rule LGIP Section 11. Pending Commission action, the Parties will comply with the unexecuted agreement to the extent they can proceed under the agreed upon terms.

2. Article-by-Article Discussion of the Proposed LGIA

297. What follows is a discussion of the proposed LGIA, the comments received, and the Commission's conclusion. The order of discussion follows the organization of the proposed LGIA, covering Articles 1 through 30. Similar to the section-by-section discussion of the proposed LGIP, only articles for which issues are raised are presented. Readers should note again that article numbers referred to in the following discussion are the numbers contained in the proposed LGIA. Some proposed articles are renumbered in the Final Rule; mention of that fact is made in the Commission Conclusions discussion, where appropriate.[65]

298. *Article 1—Definitions*—Proposed LGIA Article 1 contained the definitions of terms used throughout the NOPR LGIA. Many of these terms appear both in the NOPR LGIP as well as the NOPR LGIA and we have decided that a common list of all the defined terms should be included in both the Final Rule LGIA and Final Rule LGIP. However, for simplicity, discussion of commenters' concerns regarding defined terms are discussed in part II.A.2, Section 1 (Definitions).

299. *Article 2—Effective Date, Term and Termination*—Proposed LGIA Article 2 included the proposed effective date, the term of the proposed LGIA, and the procedures for its termination.

300. *Article 2.2—Term of Agreement*—Article 2.2 proposed that the LGIA remain in effect for ten years, or longer by request, and be automatically renewed for each successive one year period thereafter.

Comments

301. Exelon, NYTO and PG&E believe that automatic renewal is unreasonable because it allows the LGIA to remain in effect for an indefinite period. PG&E argues that the LGIA should be for a fixed term (20 years, for example), because the ten year initial term coupled with automatic renewals could make it last forever without giving the Transmission Provider an opportunity to terminate the LGIA except in the case of a Default by the Interconnection Customer. PG&E further argues that a longer fixed term without automatic renewal gives the Parties the flexibility to change the terms of the LGIA at the end of the term to reflect new market structures as they may develop.

Commission Conclusion

302. We adopt Article 2.2 as proposed. Automatic renewal is an efficient mechanism to renew the LGIA. It mitigates a non-independent Transmission Provider's market power by allowing the Interconnection Customer to renew without renegotiation. At the same time, the interests of the Transmission Provider

[64] Disputing parties may retain mediators from outside sources, or they may use the Commission's Dispute Resolution Service or the Commission's settlement judge process.

[65] For some of the LGIA provisions that the Commission is adopting here, few if any written comments were submitted. Commenters tended to use the 30 pages to which they were limited to explain what they would change. They made statements of support for the rule in general, but did not make article-by-article comments on parts that they supported. As a result, the only comments received on some articles were calls for change, even if a majority of commenters may have indicated general support for the proposed articles that they did not specifically comment on.

are adequately protected as it can terminate the LGIA in case of Default by the Interconnection Customer.

303. The Commission also notes that the LGIA, in addition to addressing the electrical connection of the Interconnection Customer to the Transmission Provider's Transmission System, also fixes the performance, operational, and financial obligations of the Parties even after the Generating Facility begins commercial operation. These obligations and responsibilities are of indefinite duration, existing as long as the Generating Facility is connected to the Transmission Provider's Transmission System. Therefore, it is appropriate for the term of the LGIA to be indefinite as well.

304. In addition, a ten year minimum term allows the Parties to avoid tax liability for the payments to the Transmission Provider under current Internal Revenue Service policy.[66]

305. *Article 2.3.1—Written Notice*—Proposed LGIA Article 2.3.1 provides that the Interconnection Customer may terminate the LGIA after giving the Transmission Provider 30 Calendar Days advance written notice.

Comments

306. MidAmerican proposes requiring an Interconnection Customer to provide three years' advance notice to terminate the LGIA. According to MidAmerican, the unexpected retirement of the Generating Facility may result in reduced system reliability due to decreased generation resources, and a Transmission Provider may need to construct or upgrade its own generating or transmission facilities if this occurs. MidAmerican notes that three years is the time customarily required to construct such facilities. Therefore, a three year termination provision would provide a Transmission Provider the opportunity to maintain reliability if the Generating Facility shuts down unexpectedly.

Commission Conclusion

307. We are not persuaded to increase the advance notice and termination period to three years as proposed by MidAmerican. MidAmerican's concern appears to be that the Generating Facility, due to several years of load growth and other changes, may be essential to system reliability. Utilities should not allow themselves to become critically dependent on one generator; however, if they do, they can enter into a "reliability must-run" contract before the Interconnection Customer exercises its right to terminate. While there may be a problem if many Interconnection Customers were to cancel concurrently, we do not believe that the LGIA is the best vehicle for addressing this problem, or that every Interconnection Customer in every circumstance should be constrained by a three year termination provision whether or not such a general problem exists.

308. However, we extend the notice period to 90 Calendar Days in order to conform with the Commission's Regulations, which provide that the Transmission Provider is required to notify the Commission of the proposed cancellation or termination of a contract at least 60 Calendar Days, but no more than 180 Calendar Days, before the cancellation or termination is proposed to take effect.[67]

309. *Article 2.3.2—No Commercial Operation*—Proposed LGIA Article 2.3.2 would have provided that the Transmission Provider be allowed to terminate the LGIA if the Interconnection Customer has not met its obligation to achieve commercial operation of its Generating Facility within five years of the scheduled Commercial Operation Date or fails to be available for operation for a period of five years unless a major Generating Facility upgrade is in progress.

Comments

310. Mirant favors deleting this provision. It asserts that there is no valid reason for a Transmission Provider to terminate the LGIA if the Interconnection Customer has paid for the necessary system upgrades and has met every other obligation under the LGIA. Others point out that PJM's interconnection agreement does not include such a provision. Mirant argues that the Transmission Provider should be able to terminate the LGIA only if the Interconnection Customer defaults under the terms and conditions of the LGIA. PSNM and Dairyland Power also favor deleting this provision altogether and claim that, at best, it should be left to the Parties to negotiate a reasonable period for not achieving commercial operation without risking termination of the LGIA.

311. Most Transmission Providers, on the other hand, object to the five year window for achieving commercial operation as being too long, claiming that one to three years is a more reasonable period of time.[68] They point out that the Interconnection Customer determines the Generating Facility's Commercial Operation Date without any input from the Transmission Provider and that the Interconnection Customer should not have an additional five years to achieve commercial operation.

312. Central Vermont PSC also advocates shortening the period from five to two years, and expresses concern that proposed LGIA Article 2.3.2, read with proposed Article 4.1.2, might require a Transmission Provider to reserve transmission capacity on its transmission system for an Interconnection Customer taking Network Resource Interconnection Service for up to five years if the Interconnection Customer fails to meet its scheduled Commercial Operation Date or fails to be operable for a consecutive five-year period.

Commission Conclusion

313. We agree with Mirant that the Transmission Provider should not be allowed to terminate the LGIA if the Interconnection Customer has paid all costs for which it is responsible and has met all of its other obligations under the LGIA. The Commission is removing this provision from the Final Rule LGIA because it contains other provisions for termination, such as failure to meet milestones and other obligations. Furthermore, we note that an Interconnection Customer cannot begin to receive credits for Network Upgrades until its Generating Facility has achieved commercial operation, thereby providing an incentive to the Interconnection Customer to perform.

314. *Article 2.4—Termination Costs*—Proposed LGIA Article 2.4 would have required a Party terminating the interconnection agreement to pay for all costs incurred by the other Party (including costs of cancellation orders or contracts for Interconnection Facilities and equipment).

Comments

315. Mirant argues that an Interconnection Customer should be held responsible only for the Network Upgrades that it has agreed to pay for. It and others are concerned that a higher-queued Interconnection Customer responsible for numerous Network Upgrades might terminate its LGIA and leave lower-queued Interconnection Customers to pay for the Network Upgrades that would otherwise have been assigned to the higher-queued Interconnection Customer. Dominion Resources argues that if a higher-queued Interconnection Customer suspends or terminates construction of its Generating Facility, the lower-queued Interconnection

[66] *See* part II.B.2 Article 5.14.1 (Interconnection Customer Payments Not Taxable).

[67] 18 CFR 35.15 (2003).

[68] *E.g.*, Central Vermont PSC, Cinergy, El Paso, Exelon, MidAmerican, and PG&E.

Customers must be made responsible for the costs of the Network Upgrades.

316. Some Transmission Providers argue that this provision does not make the Interconnection Customer responsible for all costs associated with the termination of an interconnection agreement. For example, Southern says that proposed LGIA Article 2.4.1 covers only that portion of the Transmission Provider's Interconnection Facilities not yet constructed or installed, and should be modified to include all Network Upgrades for which the Transmission Provider has incurred expenses. BPA argues that proposed LGIA Article 2.4.1 should be clear about which Party is responsible for the termination costs and allocate costs accordingly. Central Maine believes that the Transmission Provider and its other customers should not incur any costs associated with the termination of the LGIA, regardless of who is responsible for the termination. The Midwest ISO also states that the termination provision must ensure that the Transmission Provider is made whole for the costs it incurs.

Commission Conclusion

317. As for the obligations of the lower-queued Interconnection Customer with respect to the Network Upgrades that would have been paid for by the terminating Interconnection Customer, this issue is addressed in our discussion of Article 5.13 (Suspension).

318. We clarify that if an Interconnection Customer terminates the LGIA, it will be held responsible for all costs associated with that Interconnection Customer's interconnection, including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment, and any Network Upgrades for which the Transmission Provider has incurred expenses and has not been reimbursed by the Interconnection Customer. This clarification should resolve the Midwest ISO's and Mirant's concerns while ensuring that the Transmission Provider is made whole for the costs it incurs.

319. *Article 2.5*—Disconnection—Proposed LGIA Article 2.5 would have provided that the cost of disconnecting the Generating Facility from the Transmission Provider's Transmission System be borne by the terminating Party unless the disconnection is the result of Default by the other Party.

Comments

320. A number of commenters express concern that this article suggests that the Transmission Provider may somehow be responsible for certain disconnection costs. For example, PacifiCorp emphasizes that the Transmission Provider must be able to disconnect (and not reconnect) a Generating Facility if the Interconnection Customer materially Breaches its obligations to maintain electrical standards or operational requirements, or in the event of Default by the Interconnection Customer. In such a situation, PacifiCorp argues, the Transmission Provider should not be required to bear the costs of disconnecting the Generating Facility. Southern and Dairyland Power ask that this article be revised to make the Interconnection Customer responsible for all costs of disconnection under all circumstances.

Commission Conclusion

321. We agree with PacifiCorp that the Transmission Provider must be able to disconnect the Generating Facility from the Transmission System to protect its system if the Interconnection Customer fails to maintain electrical standards and operational requirements. Accordingly, the Final Rule clarifies that all disconnection costs are borne by the terminating Party, unless the termination results from the non-terminating Party's Default of the LGIA.

322. *Article 2.7—Reservation of Rights*—Proposed Article 2.7 would have reserved to each Party their rights to unilaterally seek modification to the executed LGIA pursuant to Sections 205 and 206 of the FPA, except as restricted by the other provisions of the executed LGIA.

Comments

323. Dynegy and Mirant note that this clause is redundant because another Reservation of Rights provision appears in proposed Article 30.11.

Commission Conclusion

324. We agree that this Article 2.7 is redundant, and we delete it from the Final Rule LGIA.

325. *Article 3—Regulatory Filings*—Proposed LGIA Article 3 would have provided that the Transmission Provider is responsible for filing the LGIA with the appropriate state and federal regulatory authorities (collectively "Governmental Authorities") having jurisdiction over the Parties. Article 3 also describes how Confidential Information should be treated. It also prohibits an Interconnection Customer from protesting the filing of an LGIA or an amendment to an LGIA that the Interconnection Customer has executed.

Comments

326. MidAmerican recommends that Article 3 be modified to make both Parties responsible for maintaining the confidentiality of information provided by the other Party. The DG Alliance states that an Interconnection Customer has the right to file unilaterally an unexecuted LGIA if the Transmission Provider declines to negotiate in good faith.

Commission Conclusion

327. MidAmerican's concerns are addressed in Article 22 of the Final Rule LGIA, which deals with the rights and responsibilities of each Party with respect to treatment of Confidential Information. The DG Alliance's comments are addressed in Section 10.3 of the Final Rule LGIP, which contains the procedure for filing an unexecuted agreement.

328. Regarding the prohibition against the Interconnection Customer protesting an executed and filed LGIA or amendment, the Commission concludes that this is contrary to the reservation of rights provision of the LGIA, which allows the parties to retain their respective rights to unilaterally amend their executed LGIA under Sections 205 and 206 of the FPA. Because this prohibition effectively negates the Interconnection Customer's Section 206 rights under the LGIA, this clause favors the Transmission Provider at the expense of the Interconnection Customer with respect to rights that, if present, should be mutual. Accordingly, we delete this prohibition from the Final Rule LGIA.

329. *Article 4—Scope of Service*—Proposed LGIA Article 4 identified two types of Interconnection Service from which the Interconnection Customer must choose: Energy Resource Interconnection Service, which is a basic or minimal service, and Network Resource Interconnection Service, which is a more flexible and comprehensive service. Because this topic generated so much controversy, and because the two services are addressed both in the NOPR LGIA and NOPR LGIP, discussion of proposed LGIA Articles 4.1 through 4.1.2.2 is included in part II.C.2 (Interconnection Products and Scope of Service).

330. *Article 4.3.1—Generator Balancing Service Arrangements*—Proposed LGIA Article 4.3.1 described certain requirements that the Interconnection Customer would have to satisfy before submitting a schedule for delivery service. In particular, the Interconnection Customer would have to ensure that the Generating Facility's actual output matches its scheduled delivery, on an integrated clock hour basis, including ramping into and out of its schedule. The Interconnection

Customer would have to arrange for the supply of energy when there is a difference between actual and scheduled output.

Comments

331. Some commenters, such as NERC, PacifiCorp and American Wind Energy, argue that the provision of energy imbalance service is not related to interconnection and should not be addressed in this rulemaking.

332. Cinergy and others object to the use of a clock hour basis to match Generating Facility output to delivery, indicating that a 10-minute interval basis may be more appropriate so that energy injections will be more consistent across the scheduled hour. NERC likewise has concerns about adopting an integrated clock hour specification, and notes that the Generating Facility's scheduling period may be something other than a clock hour, as specified in the Transmission Provider's Commission-approved Tariff or market structure. NERC recommends revising this provision to ensure consistency with the Tariff and market structure.

333. Cinergy argues that any balancing arrangement to be implemented by the Interconnection Customer should be determined to be technically feasible by the Transmission Provider and recommends that ramp time be excluded in the balancing arrangement because it may conflict with NERC scheduling requirements. Arkansas Coops notes that use of the clock hour may be inconsistent with operating procedures developed in RTOs.

Commission Conclusion

334. The Commission concludes that a provision for balancing service arrangements must be included in the Final Rule LGIA because it describes one of the important requirements that the Interconnection Customer must meet before it takes delivery service. Therefore, the Commission retains Article 4.3 in the Final Rule LGIA.

335. However, the Commission agrees with commenters that Article 4.3 of the NOPR LGIA is overly prescriptive. Accordingly, in the Final Rule; the Commission adopts NERC's proposal to revise NOPR LGIA Article 4.3.1 to omit the reference to an integrated clock hour basis, and to add the phrase, "consistent with the scheduling requirements of the Transmission Provider's Commission-approved Tariff and any applicable Commission-approved market structure."

336. *Article 5—Interconnection Facilities Engineering, Procurement, and Construction*—Proposed LGIA Article 5 described procedures for designing, procuring, and constructing the Transmission Provider's Interconnection Facilities and Network Upgrades and the Interconnection Customer's Interconnection Facilities. Construction options, rights, and responsibilities were also presented. This article would have provided that the Interconnection Customer will not be directly assigned the costs of modifications made to the Transmission Provider's Interconnection Facilities or the Transmission System to facilitate interconnection of a Generating Facility of another Interconnection Customer or to provide transmission service under the Transmission Provider's Tariff.

337. *Article 5.1*—Options—Proposed LGIA Article 5.1 specified the method for determining which Party is responsible for the construction of the Transmission Provider's Interconnection Facilities and Network Upgrades. The Interconnection Customer would specify various construction completion dates (such as the In-Service Date, the Initial Synchronization Date, and the Commercial Operation Date), and the Transmission Provider would then choose among three options: (1) *Option A* would have provided that the Transmission Provider construct the Transmission Provider's Interconnection Facilities and Network Upgrades using Reasonable Efforts to complete construction by the dates designated by the Interconnection Customer, but would not be responsible for any liquidated damages in case it fails to meet the construction completion dates established by the Interconnection Customer; (2) *Option B(i)a* would have provided that the Transmission Provider construct the Transmission Provider's Interconnection Facilities and Network Upgrades according to the construction completion dates established by the Interconnection Customer, and if it fails to meet those dates, it may be liable for liquidated damages; however, the Transmission Provider can opt out of this provision by notifying the Interconnection Customer of its intention to do so within 30 Calendar Days; and (3) *Option B(i)b* would have provided that, if the Transmission Provider notifies the Interconnection Customer that it cannot meet the dates established by the Interconnection Customer, the Interconnection Customer could assume responsibility for the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades.[69] This option would also provide that if the Interconnection Customer does not want to assume responsibility for construction, the Parties would negotiate in good faith to revise the construction completion dates and other provisions. Any agreement reached by the Parties during this negotiation shall be binding. However, if the Parties are unable to reach an agreement, the Transmission Provider would assume responsibility for construction of its Interconnection Facilities and Network Upgrades in accordance with Option A. Proposed LGIA Article 5.1 would establish standards for the Interconnection Customer to follow if it assumes responsibility for constructing the Transmission Provider's Interconnection Facilities and system upgrades that are not Stand Alone Network Upgrades. It does not grant any right to the Interconnection Customer to construct upgrades that are not Stand-Alone Network Upgrades.

Comments

338. Cinergy states that the distinction between Options A and B(i)a is not clear. Monongahela Power recommends that the Commission rename Option B(i)a as Option B and Option B(i)b as Option C.[70]

339. Cinergy and NSTAR seek clarification as to whether the Commission intended that the Interconnection Customer take the responsibility for the construction of upgrades that are not Stand-Alone Network Upgrades.

340. Several commenters, including Cinergy, NYTO, and SoCal PPA, argue that the Interconnection Customer may choose unrealistic construction completion dates and expose the Transmission Provider to liquidated damages. Cinergy states that if several Interconnection Customers choose their construction completion dates close to each other, the Transmission Provider may not be able to meet the dates due to limited construction staff. PacifiCorp recommends that any construction completion date should be treated as an estimate and that any delays on the part of the Interconnection Customer completing its Generating Facility should automatically extend the time for the Transmission Provider to complete its Interconnection Facilities and Network Upgrades.

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[69] Stand-Alone Network Upgrades are those Network Upgrades that the Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction.

[70] A typographical error in the NOPR added to the lack of clarity.

341. A number of Transmission Providers oppose giving the Interconnection Customer the option to build or have a contractor build the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades. TXU argues that this could threaten the reliability of the Transmission System. SoCal Edison argues that the Transmission Provider must retain adequate control of the engineering and construction of any Transmission Provider Interconnection Facilities and Stand Alone Network Upgrades because of its obligation to protect the safety of the public and maintain the reliability of the Transmission System. Cinergy and NYTO assert that if the Commission does not eliminate the Interconnection Customer's option to build, the Final Rule must provide that an Interconnection Customer exercising this right shall indemnify or hold harmless the Transmission Provider from any resulting liability.

342. Southern states that to ensure that construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades does not impair the reliability or safety of the Transmission System: (1) The Transmission Provider should be allowed to approve the Interconnection Customer's contractors and engineers, as well as the vendors from which equipment and materials are purchased; (2) the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades should be constructed, and equipment and materials purchased, pursuant to contracts that are reasonably acceptable to the Transmission Provider, including acceptable equipment warranty provisions; (3) the Transmission Provider should retain some level of supervision over the construction, with unrestricted access to construction sites to perform inspections; (4) the Interconnection Customer should provide a construction schedule to the Transmission Provider before construction begins; (5) the Interconnection Customer should be required to respond promptly to all requests for information from the Transmission Provider; and (6) the Transmission Provider should be able to require the Interconnection Customer or its contractors to remedy any situation that does not meet the Transmission Provider's specifications or standards.

343. Similarly, the Construction Issues Coalition argues that the Interconnection Customers' right to build the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades should be under specific conditions, such as: (1) The Transmission Provider must provide approval and oversight during design and construction; (2) the Transmission Provider must approve contractors in advance; (3) adequate time should be provided to the Transmission Provider for approval of engineering and construction activities; and (4) all equipment and construction must carry warranties to avoid risk exposure to the Transmission Provider. SoCal Edison argues that costs associated with the Transmission Provider's oversight of the construction should be borne by the Interconnection Customer.

344. NERC argues that if the Interconnection Customer assumes responsibility for construction, it should comply with Good Utility Practice and the Transmission Provider's safety and reliability criteria.

345. NYTO claims that several essential elements of the ERCOT model are absent from the Commission's proposal. It argues, for example, that the Commission should adopt ERCOT's 15 month minimum time period for completing construction after siting permits and land rights have been obtained.

346. American Transmission argues that the Transmission Provider must have the right to step in and assume construction responsibilities to protect the integrity of the system and rights of the third parties in case of serious lapses by an Interconnection Customer.

347. Southern argues that the Final Rule LGIA should require the Interconnection Customer to transfer the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the Transmission Provider for ownership and operation after it completes construction.

348. PJMTO asserts that Final Rule LGIA Article 5.1 should contain more explicit provisions addressing the Transmission Owner's role in: (1) Obtaining permits and authorizations, (2) obtaining land rights, (3) performing direct line attachment tie-in work, and (4) calibrating remote terminal unit settings.

349. American Transmission states that proposed LGIP Section 8 (Interconnection Facilities Study) requires the Transmission Provider to develop detailed cost estimates for constructing the Transmission Provider's Interconnection Facilities and Network Upgrades under the assumption that the Transmission Provider will perform all of the construction, yet the Interconnection Customer may assume the responsibility for part of the construction. It asks the Commission to clarify whether there is any relationship between the Transmission Provider's cost estimates and the actual cost of construction performed by the Interconnection Customer. It wants to require approval by the Transmission Provider of the Interconnection Customer's budget for the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades.

350. Dynegy asserts that the last sentence of Article 5.1.A(iv), which provides that the Interconnection Customer's selection of subcontractors is subject to the Transmission Provider's standards and specifications, is overly broad and conflicts with proposed LGIA Article 26.1 (Subcontractors—General), which states that "nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement."

Commission Conclusion

351. The Commission is revising Proposed LGIA Article 5.1 to distinguish the various options more clearly. NOPR *Option A* is now renamed *Standard Option*. Under the Standard Option, the Transmission Provider shall construct the Transmission Provider's Interconnection Facilities and Network Upgrades using Reasonable Efforts to complete the construction by the dates designated by the Interconnection Customer, but shall not be responsible for any liquidated damages if it fails to complete the construction by the designated dates. The Standard Option also serves as the default in the event the Parties are unable to reach an agreement under the Negotiated Option

352. *Option B(i)a* is renamed *Alternate Option*. Under the Alternate Option, the Transmission Provider shall construct the Transmission Provider's Interconnection Facilities and Network Upgrades according to the construction completion dates established by the Interconnection Customer, and if it fails to meet those dates, it may be liable for liquidated damages; however, the Transmission Provider can decline to use this option by notifying the Interconnection Customer of its intention to do so within 30 Calendar Days of executing the LGIA.

353. The last option—*Option B(i)b* in the NOPR—gives the Interconnection Customer two choices in the Final Rule LGIA: the *Option to Build* and the *Negotiated Option*. This is because the proposed Option B(i)b actually presented two options. Under the *Option to Build*, the Interconnection

Customer may assume responsibility for the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades if the Transmission Provider notifies the Interconnection Customer that it cannot meet the dates established by Interconnection Customer. However, as clarified in Final Rule LGIA Article 5.1.3, it does not grant any right to the Interconnection Customer to construct upgrades that are not Stand-Alone Network Upgrades. Furthermore, both the Transmission Provider and the Interconnection Customer must agree on which facilities are the Stand Alone Network Upgrades and identify them in Appendix A to the LGIA.

354. *The Negotiated Option* provides that, if the Transmission Provider notifies the Interconnection Customer that it cannot meet the dates established by Interconnection Customer, and the Interconnection Customer does not want to assume responsibility for construction, the Interconnection Customer may decide that the Parties shall negotiate in good faith to revise the construction completion dates and other provisions under which the Transmission Provider is responsible for the construction. If the Parties are unable to reach an agreement, the Transmission Provider shall assume responsibility for construction of the Transmission Provider's Interconnection Facilities and Network Upgrades in accordance with the Standard Option.

355. Regarding Cinergy, NYTO, and SoCal PPA's concerns about the selection of unrealistic construction completion dates by an Interconnection Customer, the Final Rule Alternate Option allows the Transmission Provider to avoid unrealistic construction completion dates by notifying the Interconnection Customer that it is unable to meet the established dates. We agree with PacifiCorp that any delay on the part of the Interconnection Customer in meeting its construction completion dates should grant an automatic extension to the Transmission Provider. We note that Final Rule LGIA Article 5.3 (Liquidated Damages) provides that no liquidated damages shall be paid to the Interconnection Customer if the Interconnection Customer is not ready to commence use of the Transmission Provider's Interconnection Facilities and Network Upgrades on the specified construction dates except if such delay is due to the Transmission Provider's delay.[71]

[71] Other comments on this issue are addressed in part II.C.8.b (Liquidated Damages).

356. With regard to the concern that giving the Interconnection Customer the right to construct the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades could threaten the safety and reliability of the Transmission System, Final Rule LGIA Article 5.2 (General Conditions Applicable to Options to Build) has several safeguards. For example, the Interconnection Customer is required to use Good Utility Practice and the standards and specifications provided in advance by the Transmission Provider. In addition, the Transmission Provider has the right to approve the engineering design, the equipment acceptance tests, and the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades.

357. In response to those comments seeking an indemnification or hold harmless provision to protect the Transmission Provider from liability arising out of the Interconnection Customer's exercising its right to build, the Commission adds an indemnification clause to Final Rule LGIA Article 5.2 (General Conditions Applicable to Options to Build).

358. With respect to various modifications that Southern and the Construction Issues Coalition seek, Final Rule LGIA Article 5.2 (General Conditions Applicable to Options to Build) adds several provisions proposed by these commenters, such as a requirement that the Interconnection Customer (1) provide a construction schedule in advance of the start of construction, (2) remedy deficiencies brought to its attention by the Transmission Provider, and (3) carry warranties for equipment similar to those carried by the Transmission Provider. However, the Commission declines to grant fully the high level of Transmission Provider control that Southern and the Construction Issues Coalition seek, such as approval of subcontractors and vendors. Such control would be overly broad, and the Transmission Provider's ability to seek remedy of any deficiencies should enable it to carry out its responsibilities. The Commission also will deny SoCal Edison's request that the Interconnection Customer bear the Transmission Provider's costs associated with the oversight of construction performed by the Interconnection Customer because such costs are *de minimus*.

359. With respect to NERC's comment that an Interconnection Customer should follow Good Utility Practice and the safety and reliability criteria of the Transmission Provider, such standards are in Final Rule LGIA Article 5.2 (General Conditions Applicable to Option to Build).

360. Regarding NYTO's argument that a minimum of 15 months is needed to complete construction of the Transmission Provider Interconnection Facilities and Network Upgrades, we conclude that specifying such a minimum period is unnecessary because under the Alternate Option, the Transmission Provider will be protected from incurring liquidated damages liability due to delays beyond its reasonable control or reasonable ability to cure.

361. The Commission rejects American Transmission's proposal that the Transmission Provider have a right to step in and assume construction responsibilities in case of lapses by an Interconnection Customer. Since Article 5.1 permits the construction of only Transmission Provider Interconnection Facilities and Stand Alone Network Upgrades, the Commission believes that any such lapses would affect only the Interconnection Customer. If it has the potential to affect anyone other than the Interconnection Customer, the Commission will address such concerns when brought to its attention.

362. The Final Rule does not require that the Interconnection Customer transfer ownership of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the Transmission Provider after the Interconnection Customer completes them; however, the Commission will require transfer of *control* of such facilities. Reliability does not require ownership, but it does require control by the Transmission Provider.[72]

363. With respect to PJMTO's request for provisions regarding the Transmission Owner's role in obtaining permits and land rights, Final Rule LGIA Articles 5.12 (Access Rights) and 5.13 (Lands of Other Property Owners) do not distinguish between the role of the Transmission Provider and the Transmission Owner in assisting the Interconnection Customer in obtaining land rights and permits. The Final Rule LGIA is not the appropriate place to set forth the nature of the relationship between the Transmission Owner and Transmission Provider. In addition, the Commission is stating in this Final Rule that it will give an independent transmission provider such as an RTO

[72] *See* Arizona Public Service Company, 102 FERC ¶ 61,303 (2003). We also note that the ownership of Stand Alone Network Upgrades by an Interconnection Customer is discussed further under "Rules Governing the Payment of Credits" in part C.1 of this Preamble.

or ISO the flexibility to propose different rules in its compliance filing.

364. The Commission denies American Transmission's request to include a provision in the Final Rule LGIA for the Transmission Provider to review and approve the Interconnection Customer's budget if an Interconnection Customer assumes the responsibility to construct the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades. The Interconnection Customer is likely to act in its best interests to keep the costs down because it initially funds the construction costs. In addition, allowing a Transmission Provider unfettered discretion to review the budget would encourage anticompetitive behavior.

365. With regard to Dynegy's concern regarding subcontractors, Article 26.1 provides that nothing in the LGIA prevents a Party from using the services of any subcontractor to perform its obligations under the LGIA and that it is up to the Party to ensure that the subcontractor complies with the LGIA. In addition, the hiring Party remains primarily liable to the other Party for the performance of the subcontractor. Thus, if the subcontractor fails to meet the Interconnection Customer's obligations under the LGIA or to the Transmission Provider, the Interconnection Customer is obligated to remedy any deficiencies. Accordingly, the Commission is removing the words "including selection of subcontractors" from Article 5.1 to ensure consistency between that article and Article 26.1.

366. *Article 5.2—Power System Stabilizers* (In the Final Rule LGIA: Article 5.4)—Proposed LGIA Article 5.2 would have required the Interconnection Customer to install, operate and maintain power system stabilizers, if required by the Interconnection System Impact Study. The Transmission Provider would establish minimal acceptable settings subject to the design and operating limitations of the Generating Facility.

Comments

367. Several commenters, including Cal ISO, Dairyland Power, Dominion Resources, and NSTAR, argue that the Transmission Provider's ability to require the installation of a power system stabilizer should not be limited to when required by the Interconnection System Impact Study because the Generating Facility may become a source of power system oscillations on the Transmission System many years after operations commence. Dominion Resources contends that a Transmission Provider should be able to require an Interconnection Customer to install a power system stabilizer any time it determines through its operating experience that a power system stabilizer is needed.

368. Cal ISO argues that the requirement to install a power system stabilizer should not be based on the "Interconnection System Impact Study," but should be based on the "guidelines and procedures of the Applicable Reliability Council." NERC points out that the Transmission System reliability criteria and use of power system stabilizers vary from one region to another, depending on the electrical characteristics of the system. NERC states that, as a result, it is important that the system operator be notified if a power system stabilizer is inoperable or removed from service.

Commission Conclusion

369. The Commission agrees with Cal ISO that an Interconnection Customer should be required to install a power system stabilizer in accordance with the standards of the Applicable Reliability Council. This also addresses Dominion Resources' concern that installation of a power system stabilizer on a Generating Facility may be needed at a later time; such a requirement should be covered in the guidelines of the Applicable Reliability Council. If the Applicable Reliability Council guidelines do not cover such matters, a Transmission Provider may justify its reasons for wishing to require a power system stabilizer despite the lack of such a requirement in the Applicable Reliability Council guidelines when it makes its compliance filing.

370. The Commission will adopt NERC's recommended language requiring notification when power system stabilizers are removed or are not available for automatic operation.

371. This article is designated Article 5.4 in the Final Rule LGIA.

372. *Article 5.8.1—Generator Specifications* (In the Final Rule LGIA: Article 5.10.1)—Proposed LGIA Article 5.8.1 would have required that the Interconnection Customer submit the final specifications for the Interconnection Customer's Interconnection Facilities, including System Protection Facilities, to the Transmission Provider for review at least 90 Calendar Days prior to the Initial Synchronization Date. It proposed to require the Transmission Provider to provide comments to the Interconnection Customer within 30 Calendar Days of the Interconnection Customer's submission.

Comments

373. Cleco and NYTO assert that the Interconnection Customer should have to submit initial specifications for the Interconnection Customer's Interconnection Facilities to the Transmission Provider at least 180 Calendar Days prior to the Initial Synchronization Date with the understanding that the initial specifications are subject to change. Such initial specifications would give them an opportunity to perform the planning required for the new facilities and upgrade.

Commission Conclusion

374. The Commission agrees with Cleco and NYTO and adopts their proposal in the Final Rule.

375. This article is designated Article 5.10.1 in the Final Rule LGIA.

376. *Article 5.8.2—Transmission Provider's Review* (In the Final Rule LGIA: Article 5.10.2)—Proposed LGIA Article 5.8.2 would have required that the Interconnection Customer to modify the Interconnection Customer's Interconnection Facilities as may be reasonably required by the Transmission Provider to ensure that they are compatible with the telemetry communications and safety requirements of the Transmission Provider.

Comments

377. NERC requests that the word "reasonably" be removed from the article and recommends referring to Good Utility Practice.

Commission Conclusion

378. The Final Rule revises this article to refer to Good Utility Practice, as requested by NERC, but it does not eliminate the term "reasonably." The Interconnection Customer's Interconnection Facilities are installed at the expense of the Interconnection Customer, but must be reviewed and meet the specifications and requirements established by the Transmission Provider. The term "reasonably" helps to ensure that the Transmission Provider does not require the installation of equipment beyond what is necessary for compatibility and reliability, or beyond the standards the Transmission Provider would apply to its own Interconnection Facilities.

379. This article is designated Article 5.10.2 in the Final Rule LGIA.

380. *Article 5.8.3—Interconnection Customer Interconnection Facilities Construction* (In the Final Rule LGIA: Article 5.10.3)—Proposed LGIA Article 5.8.3 would have required the Interconnection Customer to provide to

the Transmission Provider certain "as built" drawings, information, and documents pertaining to the construction of the Interconnection Customer's Interconnection Facilities.

Comments

381. NERC proposes that the Interconnection Customer also provide the Transmission Provider specifications for the excitation system, automatic voltage regulator, generator control and protection settings, transformer tap settings, and communications.

Commission Conclusion

382. The Commission adopts NERC's proposal and revises Proposed LGIA Article 5.8.3 to make clear that the list of information to be provided is not exhaustive.

383. This article is designated Article 5.10.3 in the Final Rule LGIA.

384. *Article 5.11—Lands of Other Property Owners* (In the Final Rule LGIA: Article 5.13)—Article 5.11 proposed that Transmission Providers would be required to use Reasonable Efforts, including use of its eminent domain authority if necessary, to facilitate the interconnection of Generating Facilities. The Interconnection Customer would be required to pay any expenses related to obtaining rights of use, rights of way, easements, or eminent domain costs that the Transmission Provider might incur, up to the fair market value of the land or "such other price as required by the applicable inter-affiliate transaction requirements."

Comments

385. EPSA and several Interconnection Customers, including Calpine, El Paso, and Reliant Energy, request that the Transmission Provider or Transmission Owner be required to use its eminent domain authority to facilitate the exercise of the Parties' rights and obligations under the LGIA to the extent it is permitted to do so. Numerous Transmission Provider commenters express concern that the eminent domain provisions of the NOPR are too broad, placing the Transmission Provider in an untenable situation. Specifically, several argue that the Commission's proposal conflicts with state limitations on their eminent domain authority.[73] Cleco, for example, states that in Louisiana, a utility cannot legally request eminent domain on behalf of another entity. National Grid and the Construction Issues Coalition argue that many states require that eminent domain authority be used only "to further a public need"—something that is lacking in the NOPR. Cinergy proposes deleting the entire eminent domain provision, arguing that it imposes an inappropriate burden on the Transmission Provider and reiterates that it conflicts with existing state laws. Similarly, El Paso requests that the use of eminent domain be at the sole discretion of the Transmission Provider or Transmission Owner, citing the numerous factors that must be considered in such an undertaking.

386. Duke Energy proposes that the Commission require a Transmission Provider to use eminent domain only when it reasonably determines that (1) other alternatives are not available and (2) use of eminent domain is permissible under state law. Duke Energy also asserts that the Transmission Provider should provide a written explanation of why other alternatives are appropriate or why the use of eminent domain would not be permitted under state law.

387. National Grid argues that the Commission should eliminate the eminent domain provision, citing the long delays and heavy litigation that often accompany the seizure of property. National Grid, the Construction Issues Coalition, and others argue that regulation of eminent domain differs from state to state, making the type of national contract clause envisaged by the Commission impossible.

388. PJMTO also opposes the eminent domain provision, arguing that eminent domain is an unpopular last resort and one that is rarely exercised even by a Transmission Provider or Transmission Owner on its own behalf. Instead, it proposes requiring that a Transmission Provider or Transmission Owner, upon receipt of a reasonable request, to assist an Interconnection Customer in acquiring land rights using efforts similar to those it typically undertakes on its own behalf.

389. PJMTO also argues for eliminating the cap on land value, noting that individual state laws already contain mechanisms for valuing property. The Commission may lack authority to require a price cap on property sold by an Affiliate of a Transmission Provider, according to National Grid and the Construction Issues Coalition.

390. Salt River Project also opposes the eminent domain language and instead proposes that the Commission work with federal land holding agencies to streamline the procurement of land rights. SoCal Edison adds that it does not believe the Commission has the authority to impose an eminent domain requirement. Instead, it proposes requiring Transmission Providers to exercise good faith efforts in using whatever eminent domain authority state law may allow on an Interconnection Customer's behalf.

Commission Conclusion

391. We agree that a mandatory eminent domain requirement can be difficult for a Transmission Provider or Transmission Owner. The Final Rule requires that a Transmission Provider or Transmission Owner use efforts similar to those it typically undertakes on its own behalf (or on behalf of an Affiliate) to secure land rights for the Interconnection Customer. We are also clarifying that the Transmission Provider or Transmission Owner's efforts must also comply with state law.

392. If the Transmission Provider is an independent entity, the Transmission Owner, the Transmission Provider, and the Interconnection Customer may all sign the LGIA. This allows a Transmission Owner and a Transmission Provider to jointly undertake efforts to secure land rights for the Interconnection Customer.

393. Regarding the cap on land value, while the Commission remains concerned that Affiliates of a Transmission Provider or Transmission Owner might request above-market compensation for land necessary to facilitate the interconnection, the Commission also recognizes that the valuation of property is a matter of state law. Therefore, we eliminate this cap in the Final Rule.

394. This article is designated Article 5.13 in the Final Rule LGIA.

395. *Article 5.12—Early Construction of Base Case Facilities*—Proposed LGIA Article 5.12 would have required that, at the Interconnection Customer's request, the Transmission Provider must construct, using Reasonable Efforts to accommodate the Interconnection Customer's In-Service Date, all or any portion of Network Upgrades reflected in the Base Case of the Interconnection Customer's Facilities Study that are necessary to accommodate the Interconnection Customer's In-Service Date. Construction of the Network Facilities would be required even if the Network Facilities are shared with other interconnecting generators that would not be completed in time to meet the Generating Facility's In-Service Date.

Comments

396. MidAmerican contends that this article is inconsistent with Section 12.3

[73] *E.g.*, Cinergy, Cleco, the Construction Issues Coalition, Duke Energy, National Grid, PJMTO, Salt River Project, SoCal Edison, and Southern.

of the NOPR LGIP (Construction Sequencing), which requires that the Transmission Provider use Reasonable Efforts to accommodate the Generating Facility's In-Service Date. Accordingly, it proposes that Article 5.12 be revised.

397. Cleco argues that the Party requesting early construction should pay all Network Upgrade costs associated with the early construction. FP&L argues that to avoid the need to continuously restudy and revise Network Upgrades, the LGIA should require the timely construction of Network Upgrades relied upon by lower-queued Interconnection Customers.

398. Entergy, Dairyland Power, and others state that the Final Rule should address which Interconnection Customer finances Network Upgrades in the event of a delay by the higher-queued Interconnection Customer to whom the Network Upgrades are assigned. Cal ISO states that language regarding milestones should be inserted between proposed LGIA Articles 5.12 and Article 5.13.

Commission Conclusion

399. In response to the concerns of Entergy and others, the Commission notes that a lower-queued Interconnection Customer always has the right under this article to accelerate its construction schedule by completing all required Network Upgrades on schedule despite any delays by higher-queued Interconnection Customers. This would require the lower-queued Interconnection Customer to fund those Network Upgrades at least initially; however, in the absence of participant funding, it would be reimbursed over time through credits, with interest. Article 5.12 does not need to be changed to allow this.

400. Regarding "best" versus "reasonable" efforts, the Commission agrees with MidAmerican that there was an inconsistency between proposed LGIA Article 5.12 and proposed LGIP Section 12.3, which requires the Transmission Provider to use Reasonable Efforts to accommodate the Interconnection Customer's requested In-Service Date. Article 5.12 is the more stringent of the two because it requires the Transmission Provider to construct facilities necessary to accommodate the Interconnection Customer's In-Service Date. The Commission's intent is to expedite the interconnection of new generators in a manner that does not undermine the reliability of a Transmission Provider's Transmission System. However, there may be circumstances beyond the Transmission Provider's control that would prevent it from meeting the construction deadline. To address this concern and to ensure consistency between this article and LGIP Section 12.3, the Commission agrees with MidAmerican's comment that the term "Reasonable Efforts" is appropriate. This article, which is designated Article 5.15 in the Final Rule LGIA, uses that term.

401. An additional article regarding milestones is not needed. By the time the LGIA is executed, the Parties will have already established under Article 5.1 the milestones Cal ISO refers to.

402. *Article 5.13—Suspension* (In the Final Rule LGIA: Article 5.16)—Proposed LGIA Article 5.13 would allow the Interconnection Customer, upon written notice to the Transmission Provider, to suspend work on Interconnection Facilities or Network Upgrades as long as the Interconnection Customer agrees to be responsible for all reasonable and necessary costs incurred by the Transmission Provider in suspending work. This article proposed that the LGIA be deemed terminated if the Interconnection Customer has not requested the Transmission Provider to recommence work within three years from the date of the suspension request.

Comments

403. Peabody supports allowing an Interconnection Customer to suspend work on the interconnection for up to three years because this offers the Interconnection Customer the flexibility that large-scale generation projects need to accommodate permitting and other delays. Other commenters, including BPA, Cinergy, and SoCal PPA, argue that a three year suspension period is unreasonably long. SoCal PPA further states that substantial changes to the Transmission System could occur during that time. Western believes that letting an Interconnection Customer contract with a Transmission Provider for an interconnection and then suspend operation for as long as three years could allow the Interconnection Customer to game the system. Consequently, Western and other commenters argue that the suspension period should be limited to six months, while Cinergy recommends limiting the suspension period to one year. NYTO believes the entire provision is unreasonable.

404. Cinergy requests that Article 5.13 make it clear that if an Interconnection Customer gives a Transmission Provider written notice of suspension of work, the Transmission Provider does not have to obtain written permission from the Interconnection Customer to cancel or suspend material, equipment and labor contracts associated with that work, and that the Commission clarify what is included in the definition of "suspension of work." Further, to prevent gaming the process, Cinergy proposes that an Interconnection Customer be allowed to provide written notice of suspension of work only once per Generating Facility.

405. Dominion Resources questions whether the responsibility for funding the cost of Network Upgrades would fall on the Interconnection Customer suspending or terminating construction or on other Interconnection Customers remaining in the queue. The Interconnection Customer actually using the Network Upgrades should be required to pay for them. Dominion Resources recognizes that this may shift costs from the Interconnection Customer requesting the suspension to Interconnection Customers further down the queue, which could mean that an Interconnection Customer will be subject to potential cost increases even after signing an LGIA. However, it views this as a more acceptable allocation of cost responsibility than requiring an Interconnection Customer that desires to suspend or terminate its project to bear the full cost of Network Upgrades it may never use. In order to avoid gaming of the interconnection queue, if the suspending Interconnection Customer later continues with its project, it should be required to reimburse any lower-queued Interconnection Customers for any Network Upgrade costs related to its suspension.

406. NERC and MidAmerican comment that there must be a requirement to leave the system in a safe and reliable condition, consistent with Good Utility Practice, if a project is suspended in a partially complete state.

407. The Midwest ISO requests that Article 5.13 make it clear that a suspending interconnection Customer must provide notice to the Transmission Owner and to any independent Transmission Provider.

408. The Midwest ISO and Georgia Transmission request clarification that the Transmission Provider will be reimbursed for any expenses related to the suspension.

Commission Conclusion

409. Many commenters express concern over the effect that a suspending Interconnection Customer might have on lower-queued Interconnection Customers. We agree with Dominion Resources that, in some cases, a subsequent (*i.e.*, lower queued) Interconnection Customer may be responsible for funding the costs of completing the Network Upgrades constructed for a higher-queued

Interconnection Customer that suspends or terminates construction of such Network Upgrades. However, the Commission is not obligating in this Final Rule a subsequent (*i.e.*, lower queued) Interconnection Customer to pay for these costs regardless of whether that Interconnection Customer benefits from the facilities, since this would subject that Interconnection Customer to significant financial risk. Prices quoted for interconnection in the LGIA are estimates based on the results of studies conducted during the LGIP phase of the interconnection process. If it is apparent to the Parties at the time they execute the LGIA that contingencies (such as other Interconnection Customers terminating their LGIAs) might affect the financial arrangements, the Parties should include such contingencies in their LGIA and address the effect of such contingencies on their financial obligations. If no such contingencies are accounted for in the executed LGIA, since the costs of Network Upgrades may influence an Interconnection Customer's decision whether it can enter into an Interconnection Agreement, we leave it to the subsequent Interconnection Customer and the Transmission Provider to revisit the negotiated terms of their executed Interconnection Agreement. We deny the requests to revise or delete Proposed LGIA Article 5.13 on these grounds.[74]

410. We also retain the three year period. The Commission agrees with Peabody that allowing the Interconnection Customer to have the Transmission Provider suspend work for up to three years allows generation projects the flexibility necessary to accommodate permitting and other delays that are particularly likely to affect large projects.

411. The Final Rule requires the Interconnection Customer to pay all reasonable costs that the Transmission Provider incurs in suspending work on its Interconnection Facilities, as well as costs that are reasonable and necessary to ensure the safety and integrity of the Transmission Provider's Transmission System during the suspension.

412. We reject Cinergy's proposal that an Interconnection Customer be limited to one suspension period per Generating Facility. The LGIA is designed to be a standard agreement that will operate in any number of situations, and to limit arbitrarily each Generating Facility to only one suspension period, regardless of circumstances, is unreasonable.

[74] An RTO or ISO with participant funding may propose an alternative policy for Commission approval.

413. We adopt NERC's proposal that Article 5.13 require a suspending Interconnection Customer to leave the system in a safe and reliable condition in accordance with Good Utility Practice and the Transmission Provider's safety and reliability criteria.

414. In response to Cinergy's request for clarification of the term "suspension of work," the Commission clarifies that a Transmission Provider, upon receiving written notice of suspension from the Interconnection Customer, is authorized to cancel or suspend material, equipment and labor contracts associated with that work. If reliability could be compromised by stopping construction, the Transmission Provider must continue construction until it reaches a stage where it can safely discontinue work. Any costs associated with suspension (or of completing a discrete Network Upgrade) shall be deducted from the Interconnection Customer's security deposit.

415. With respect to the Midwest ISO's request to require an Interconnection Customer to notify both the Transmission Owner and the Transmission Provider, we clarify that if both Parties are signatories to the LGIA, the Interconnection Customer is required to notify both the Transmission Owner and the Transmission Provider.

416. This article is designated Article 5.16 in the Final Rule LGIA.

417. *Article 5.14—Taxes*—Proposed LGIA Article 5.14 addressed the allocation of responsibilities that would apply with respect to the tax treatment of an Interconnection Customer's payments or property transfers to the Transmission Provider for the installation of the Transmission Provider's Interconnection Facilities and Network Upgrades.

418. Internal Revenue Service policy, as expressed in IRS Notice 2001–82 and IRS Notice 88–129, delineates the standards under which an Interconnection Customer's payments to build interconnections facilities will not create a current tax liability for a Transmission Provider. The "safe harbor" provisions described in these notices generally prevent the transaction from being considered a taxable transfer. If the IRS changes its policy, or if the transaction no longer qualifies for safe harbor protection and tax liability results, under the provisions in Article 5.14 the Interconnection Customer would indemnify the Transmission Provider for any tax liability that may arise from the payments to build the Transmission Provider's Interconnection Facilities and Network Upgrades.

Comments

419. Several entities argue that the IRS safe harbor does not eliminate all risk of these payments being treated as taxable income to the Transmission Provider because the IRS may revisit its policies in a manner that establishes tax liability for interconnections, including the credits provided against transmission service in exchange for the reimbursement of Network Upgrades.[75] These commenters argue that Article 5.14 should account for these risks.

420. Some commenters, including Duke, EPSA, NYTO, and PG&E, argue that the Commission should adopt Article 5.16.5 of the Consensus LGIA, which ensures that a Transmission Owner is made whole when a contribution from an Interconnection Customer is non-taxable when made, but the IRS later imposes tax liability. NYTO further suggests that the two revisions to Consensus LGIA Article 5.16.5 that were proposed by the Transmission Owners should be retained. These provisions would ensure that the Transmission Owner would be reimbursed for taxes imposed more than ten years after the date the Interconnections Facilities are placed in service and allow for security for such potential tax liability.

Commission Conclusion

421. The Commission finds that Article 5.14 as proposed appropriately addresses the risk that the contracting Parties face because of the uncertainties regarding IRS policy, because it requires the Interconnection Customer to indemnify the Transmission Provider in the event that the IRS changes or clarifies its policy.

422. The Commission concludes that a discussion of subsequent taxable events is appropriate for the Final Rule LGIA.[76] The two additions NYTO requests are unnecessary because Final Rule LGIA Article 5.17.3 addresses limitation of indemnification and the ability of the Transmission Provider to require security from the Interconnection Customer.

423. *Article 5.14.1—Interconnection Customer Payments Not Taxable* (In the Final Rule LGIA: Article 5.17.1)—Proposed LGIA Article 5.14.1 would have provided that, consistent with IRS Notice 2001–82 and IRS Notice 88–129 (discussing the IRS safe harbor provisions), all payments made by the Interconnection Customer to the

[75] *E.g.*, EEI, FP&L, MidAmerican, and TXU.

[76] Subsequent taxable events are discussed in Final Rule LGIA Article 5.17.6. This discussion retains the article numbers that appeared in the NOPR LGIA.

Transmission Provider for the installation of Transmission Provider's Interconnection Facilities and Network Upgrades are non-taxable, either as contributions to capital, or as advances.

Comments

424. Peabody endorses this proposed provision. It argues that it is in the best interest of Interconnection Customers, Transmission Providers and customers to take advantage of the tax exemption for payments that Interconnection Customers make to Transmission Providers for Network Upgrades made pursuant to an LGIA.

425. Progress Energy argues that an Interconnection Customer's right to terminate the LGIA on 30 Calendar Days' written notice may jeopardize the safe harbor treatment of Interconnection Customer contributions because the IRS safe harbor provisions apply only to interconnection agreements with a minimum term of ten years.

Commission Conclusion

426. In response to Progress Energy, the mere existence of the 30 day termination provision does not mean that the Interconnection Agreement conflicts with the IRS minimum term requirement of ten years. Nevertheless, if either Party in fact terminates the LGIA before ten years have passed, the IRS may then conclude that the Interconnection Customer's payments are indeed taxable. Accordingly, the Parties should consider these possible tax consequences when deciding whether to terminate an LGIA within ten years.

427. This article is designated Article 5.17.1 in the Final Rule LGIA.

428. *Article 5.14.2—Representations and Covenants* (In the Final Rule LGIA: Article 5.17.2)—Proposed LGIA Article 5.14.2 set forth the representations and covenants that would be agreed to by the Parties to conform to the requirements of the IRS safe harbor provisions set forth in the relevant IRS Notices.

Comments

429. FirstEnergy argues that in order for the Interconnection Customer's payments to the Transmission Provider to be deemed non-taxable under the IRS safe harbor provisions, ownership of the electricity generated at the Generating Facility must pass to another entity prior to the transmission of the electricity on the Transmission System. FirstEnergy asks the Commission to clarify the representations and proposed covenants in proposed LGIA Article 5.14.2 to refer to the Point of Interconnection or Point of Change of Ownership.

Commission Conclusion

430. We do not intend to interpret the IRS safe harbor provisions, and so we leave it to the Parties to ensure that their conduct, including the point at which the ownership of electric energy produced by the Generating Facility changes hands, conform to IRS policy.

431. This article is designated Article 5.17.2 in the Final Rule LGIA.

432. *Article 5.14.3—Indemnification for Taxes Imposed Upon Transmission Provider*—Proposed LGIA Article 5.14.3 would have required that the Interconnection Customer indemnify (hold harmless) the Transmission Provider from income taxes imposed against the Transmission Provider as a result of payments or property transfers made by Interconnection Customer to the Transmission Provider under the LGIA—that is, if the IRS safe harbor provisions do not keep the Transmission Provider from having to pay income taxes. The Transmission Provider would not include a gross-up[77] for income taxes unless either it has made a good faith determination that the payment or transfers should be recorded as income subject to taxation, or any Governmental Authority directs Transmission Provider to treat the payment or transfers as subject to taxation. As an alternative to the gross-up, the Transmission Provider would be able to require the Interconnection Customer to provide security in a form reasonably acceptable to the Transmission Provider and in an amount equal to the Interconnection Customer's estimated tax liability.

Comments

433. MidAmerican supports Article 5.14.3 and recommends that the Transmission Owner be added to this provision by changing Transmission Provider to Transmission Provider or Transmission Owner.

434. LADWP argues that although Section 5 of the Commission's OATT provides that the transmission customer must indemnify the Transmission Provider that owns facilities financed by tax-exempt debt, it is not clear whether that provision would apply to an Interconnection Customer. LADWP asks the Commission to clarify that an Interconnection Customer is liable for the cost of any adverse tax consequences visited on the public power Transmission Owner because of the interconnection.

435. SoCal PPA believes that the Interconnection Customer's obligation to reimburse the Transmission Provider for taxes should cover *ad valorem* property taxes and other taxes assessed against the Transmission Provider.

436. NE Utilities seeks an alternative method for a Transmission Provider to recover tax liability for which it is not reimbursed due to circumstances beyond its control—for example, if the security instrument provided by the Interconnection Customer does not cover the full tax liability or if the Interconnection Customer defaults on its obligation to indemnify the Transmission Provider. It argues that in these situations, the Commission should authorize the Transmission Provider to recover the remaining balance from customers.

437. TXU says that the Commission should provide comprehensive protection for a Transmission Provider if the IRS decides that Interconnection Customer payments are taxable. A letter of credit, as provided for in proposed LGIA Article 5.14.3, would provide some security for the Transmission Provider, but may limit the process of contesting IRS positions and may prove otherwise difficult to administer. Without elaborating, TXU requests that a more comprehensive security device be required until definitive guidance is received from the IRS.

438. SoCal Edison states that if a Transmission Provider or Transmission Owner is unable to recover from a generator any income tax incurred as a result of an interconnection arrangement, the Commission should provide Transmission Providers and Transmission Owners with a regulatory backstop that would guarantee the recovery of these income taxes in transmission rates. It adds that to the extent that a Transmission Provider or Transmission Owner is unable to include income taxes in transmission rates because of other regulatory restrictions (such as a rate freeze or the requirement to have state commission approval for such rates), the Transmission Provider or Transmission Owner should have discretion in determining the appropriate form and level of security required from the generator at the time the IA becomes effective, and a right to offset any tax liability against any transmission credit owed. Further, SoCal Edison says Article 5.14 must state that any future payment shall include interest and penalties, as well as any other costs imposed by the IRS.

[77] A gross-up for income taxes is a dollar amount calculated to determine the Interconnection Customer's estimated tax liability to the Transmission Owner.

439. Progress Energy advocates that Article 5.14.3 include certain requirements regarding the Interconnection Customer-provided financial guaranty, such as requiring that the guaranty be issued by a financial entity acceptable to the Transmission Provider and that it be non-revocable for the term of the LGIA.

440. Dynegy proposes that the Commission make the security obligation mutual. The Final Rule should state that, when the Transmission Provider requires the Interconnection Customer to pay a tax gross-up because the Transmission Provider has determined in good faith that the payments or property transfers made to Transmission Provider should be reported as income subject to taxation, the Transmission Provider must post security for the amount of the gross-up, plus interest. This will protect the Interconnection Customer from becoming an unsecured creditor in the event of a Transmission Provider insolvency before the issuance of a private letter ruling that could result in the refund of the tax gross-up payment and interest to the Interconnection Customer.

441. Calpine argues that the security requirement should bear a reasonable relationship to the risk to which a transmission owner is exposed. Instead of allowing the Transmission Provider to require an Interconnection Customer to meet a costly security requirement—using funds that the Interconnections Customer could put to better use developing generation and infrastructure—the Commission should authorize the Transmission Provider to recover in its rates any future tax liability. If the Commission is unwilling to expose ratepayers to this risk, it should modify the Final Rule to ensure that any residual security that the Interconnection Customer would be obligated to post be reasonably related to the actual risk to which the Transmission Provider is exposed.

442. EPSA argues that an Interconnection Customer should not be required to pay the taxes of a Transmission Owner unless the Interconnection Customer is entitled to a refund if it is ultimately determined that the amounts paid for Interconnection Facilities and Network Upgrades are not subject to tax. If the Transmission Owner in an Affected System is not a Party to the Interconnection Customer's LGIA, the Interconnection Customer will have no means to enforce its right to a refund of any amounts it has previously paid in taxes. A Transmission Owner is able to insist on security indefinitely, to protect against the remote possibility of a change in circumstances that might become a subsequent taxable event, the balance reflected in the Consensus Tax Provisions would be upset.

Commission Conclusion

443. In response to MidAmerican's request that proposed LGIA Article 5.14.3, which is designated Article 5.17.3 in the Final Rule LGIA, specify that the Transmission Owner as well as the Transmission Provider is indemnified, the term "Transmission Provider" in the LGIA includes the Transmission Owner, where applicable. Accordingly, there is no need to revise this provision.

444. SoCal PPA raises tax issues beyond the scope of Article 5.17, since this article addresses only federal tax liability. The Commission rejects the proposal that *ad valorem* property taxes be included in the Interconnection Customer's obligation to reimburse the Transmission Provider for taxes, since these expenses are annual and are more analogous to operating expenses that are not covered under the LGIA.

445. The Commission rejects requests that the Transmission Provider may recover any outstanding federal tax liability balance from customers. A Transmission Provider is to use the security option in Article 5.17.3 to protect itself from the risk that an Interconnection Customer will not pay the potential tax liability, so there should not be any outstanding liability. This, along with the ability to require security or, where appropriate, a gross-up, should sufficiently protect the Transmission Provider from potential tax liability. Should the Transmission Provider be unable for some reason to recover the full cost of its tax liability, it may propose to recover such costs in its rates, but the Commission is not pre-authorizing the recovery of these costs generically.

446. In response to SoCal Edison's request for a requirement that future payment include interest and penalties, as well as any other costs imposed by the IRS, this requirement is in Article 5.17.3.

447. The Commission rejects as unnecessary Progress Energy's request for greater specificity regarding the guaranty because Article 5.17.3 already gives the Transmission Provider the discretion to choose the security in a form "reasonably acceptable" to the Transmission Provider. Accordingly, the Transmission Provider has the discretion to require the Interconnection Customer to offer security that meets the criteria Progress Energy specifies.

448. The Commission agrees with Dynegy that the Interconnection Customer should receive security if a Transmission Provider determines that the payments or property transfers should be reported as income subject to taxation. It is reasonable to require the Transmission Provider to post security, since the gross-up puts the Interconnection Customer at risk in the event that it turns out that taxes do not have to be paid, but the Transmission Provider has become insolvent. Final Rule LGIA Article 5.17 gives the Interconnection Customer the option to request such security when the Transmission Provider has made an independent determination that taxes should be payable.[78]

449. Regarding EPSA's argument that an Interconnection Customer should not be required to pay a gross-up unless it is entitled to a refund if the amounts paid ultimately are not taxed, the Commission notes that the refund protection is already in Article 5.17.7. This protection, together with the ability to require security for a gross-up, should afford an Interconnection Customer sufficient protection against the risk of nonrecovery.

450. EPSA raises issues regarding tax liability and Network Upgrades on Affected Systems. Obligations regarding tax liability and related indemnification should be set forth in a separate agreement between the Interconnection Customer and the Affected System related to the Network Upgrade.[79]

451. Finally, in response to EPSA's argument that proposed LGIA Article 5.14.3 of the LGIA permits a Transmission Provider to insist on security indefinitely, the Final Rule has been revised to state that indemnification will terminate at the earlier of the expiration of the ten year testing period, as contemplated by the IRS safe harbor provisions, or the applicable statute of limitations, or the occurrence of a subsequent taxable event contemplated by this article and the payment of any related indemnification obligation. These are reasonable end points for the indemnification obligation because once the earlier of either of these events occurs, there is no further risk of new tax liability and, therefore, no further need for indemnification.

452. *Article 5.14.4—Tax Gross-Up Amount* (In the Final Rule LGIA: Article 5.17.4)—Proposed LGIA Article 5.14.4

[78] Security will not be available when a Governmental Authority directs a Transmission Provider to report payments of property as income subject to taxation.

[79] *See* Part II.A.2—Section 3.5 (Coordination with Affected Systems).

described how the Parties would calculate the Tax Gross-Up Amount.

Comments

453. FP&L argues that the tax gross-up methodology in proposed LGIA Article 5.14.4, when combined with the requirement that the Transmission Provider provide refunds in the form of transmission service credits for its full costs of Network Upgrades (including income taxes), will not allow the Transmission Provider to be made whole for the income tax payments for Network Upgrades. It states that Article 5.14.4 requires the Interconnection Customer to pay up front the net present value of the income taxes due on Network Upgrades, based on the assumption that the Transmission Provider will get income taxes back through the future stream of tax depreciation benefits. But if the Transmission Provider is also required to give back to the Interconnection Customer the net present value of income tax payments, plus interest, through refunds, then the Transmission Provider is paying the full cost of income taxes on assets that it is purchasing and it will not be made whole. FP&L further states that the Commission should authorize two alternatives for the tax gross-up methodology: (1) The Interconnection Customer pays the full amount of taxes up front, but then receives refunds for its tax payments; or (2) the Interconnection Customer pays a reduced amount for the taxes up front, which is the present value of the Transmission Provider's carrying costs, calculated at its current weighted average cost of capital, for its tax payment associated with the contribution in aid of construction until it receives the payment back over time through tax depreciation, but then does not receive refunds for the payment of taxes. Under either alternative, it is essential that the Interconnection Customer not receive interest from the Transmission Provider on tax payments actually made to the government because, if it does, the Transmission Provider will not be made whole.

454. Southern asks the Commission to modify this article so that the calculation of the tax gross-up for payments that entitle the Interconnection Customer to credits is not reduced by depreciation deductions available to the Transmission Provider. FirstEnergy says the method of calculating the Present Value Depreciation Amount, should be clarified by adding the phrase "used for Federal and state purposes" after "* * * Transmission Provider's anticipated tax deductions as * * *."

455. EPSA supports the tax gross-up calculation in Proposed LGIA Article 5.14.4. It argues that the calculation was drafted by tax professionals during the ANOPR process in an effort to ensure that the Transmission Provider is made whole. The drafting group determined that the most appropriate manner for calculating the tax gross-up is the methodology set forth in *Ozark Gas Transmission Corp.*, 56 FERC ¶ 61,349 (1991). EPSA also states that this formula has been approved by the Commission and many existing interconnection agreements use the *Ozark Gas* methodology to compute tax gross-ups for both interconnection facilities and network upgrades, without regard to whether the Interconnection Customer will receive transmission credits. EPSA further argues that the calculation takes into account a Transmission Provider's federal and state tax rate and the present value of all tax depreciation deductions to which the Transmission Provider is entitled over the life of the Interconnection Facilities and Network Upgrades. Finally, EPSA argues that the tax benefits associated with depreciation are not returned to the Interconnection Customer as transmission credits, as some commenters contend. Although the Transmission Provider will return the gross tax costs to the Interconnection Customer in the form of Transmission Credits, the Transmission Provider still benefits from being able to deduct the cost of the Interconnection Facilities and Network Upgrades.

Commission Conclusion

456. The Commission agrees with EPSA that Proposed LGIA Article 5.14.4 offers the appropriate methodology for ensuring that a Transmission Provider is fully compensated for tax consequences. FP&L and Southern have not sufficiently explained how the calculation fails to make the Parties whole, and we do not revise this article.

457. This article is designated Article 5.17.4 in the Final Rule LGIA.

458. *Article 5.14.5—Private Letter Ruling or Change or Clarification of Law* (In the Final Rule LGIA: Article 5.17.5)—Proposed LGIA Article 5.14.5 would have required that, at the Interconnection Customer's request and expense, a Transmission Provider file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid or to be paid by the Interconnection Customer to the Transmission Provider under the LGIA would be subject to federal income taxation. The point of obtaining such a ruling is to get a definitive answer up front as to whether taxes will be due. If a private letter ruling concludes that such sums are not taxable, the Interconnection Customer's obligations would be reduced accordingly.

Comments

459. Commenters criticize the proposed relationships between the Interconnection Customer and the Transmission Provider in seeking a private letter ruling. El Paso argues that the Transmission Provider should have sole discretion to decide how to minimize its taxes, including whether to seek a private letter ruling or to contest a tax determination. While the Interconnection Customer must indemnify the Transmission Provider for tax liability, El Paso argues that this does not justify allowing the Interconnection Customer to require the Transmission Provider to dedicate its taxpayer status, time, and resources to seeking a private letter ruling or contesting a tax determination. This inappropriately places the Interconnection Customer in the position of deciding how the Transmission Provider will meet its obligations to the Interconnection Customer. In addition, even if the Interconnection Customer pays filing and legal fees associated with a private letter ruling or contest, this does not compensate the Transmission Provider for its internal costs of prosecuting such proceedings.

460. Dynegy generally supports this provision but contends that it should be revised because it (1) fails to recognize that the Interconnection Customer is the Party at risk of paying a tax gross-up that turns out not to have actually been required by the tax laws, and (2) unduly restricts the Interconnection Customer's ability to make the arguments it wants made in pursuing a private letter ruling. For instance, Dynegy says, Article 5.14.5 allows the Interconnection Customer to prepare only the "initial draft" of the private letter ruling request, and Article 5.16.6 provides for only one level of judicial review for appeals of adverse rulings. Such restrictions should be removed because it is the Interconnection Customer, not the Transmission Provider, that is paying the gross-up and funding the efforts to obtain a private letter ruling.

461. Salt River Project notes that this provision would require a Transmission Provider to file a private letter ruling, at an Interconnection Customer's request and expense, but establishes that the Interconnection Customer would prepare the initial draft of the letter. This will give rise to disclosure and

confidentiality problems and is a bad business practice.

462. FP&L proposes, without elaboration, that the Commission modify proposed LGIA Article 5.14.5 to permit the Transmission Provider to require a jointly filed request for a private letter ruling.

463. FirstEnergy asks the Commission to clarify that the last sentence of this article refers to the need to maintain a parental guarantee or letter of credit as required by proposed LGIA Article 5.14.3, and not the Interconnection Customer's indemnification obligations under proposed LGIA Article 5.14 generally.

464. NYTO argues, without elaboration, that a provision is needed to ensure that a Transmission Owner can ask the Interconnection Customer to provide financial security to backstop its potential tax liability where the Transmission Owner has not asked for a gross-up payment from the Interconnection Customer pending any ruling from the IRS.

Commission Conclusion

465. The Commission rejects comments that seek to deny the Interconnection Customer the right to ask the Transmission Provider, at the Interconnection Customer's expense, to seek a private letter ruling from the IRS. The Interconnection Customer would otherwise be without recourse if it disagrees with the Transmission Provider's conclusion regarding either tax liability (and gross-up) or the need for security, and it is the Interconnection Customer that pays the taxes.

466. In response to Dynegy, we will not grant the Interconnection Customer greater latitude with respect to the Transmission Provider's request for a private letter ruling because the proposed provision already offers a fair balance between the interests of the Parties. While the Interconnection Customer funds the request for a private letter ruling, permitting it to submit an "initial draft" of the private letter ruling request, and to insist on a single appeal, allows the Interconnection Customer to have adequate participation in the effort to secure an IRS determination.

467. The Commission disagrees with Salt River Project's argument that allowing the Interconnection Customer to prepare the initial draft of the request for a private letter ruling from the IRS gives rise to disclosure and confidentiality problems. The Commission leaves it to the Parties to work within the confidentiality and other provisions of the LGIA to determine the most appropriate means for allowing the Interconnection Customer to draft the request.

468. FP&L offers no explanation for why the Transmission Provider should be permitted to require a jointly filed request for a private letter ruling. As a result, we reject FP&L's request.

469. The Commission agrees with FirstEnergy that the last sentence of Proposed LGIA Article 5.14.5 should be revised. This sentence refers to the Interconnection Customer's obligations if a private letter ruling concludes that the transfers or sums paid to the Transmission Provider are not subject to federal income taxation. In this event, the Interconnection Customer's obligations with respect to the guaranty or gross-up allowed under Final Rule LGIA Article 5.17.3 will be reduced or eliminated. The private letter ruling would not eliminate the Interconnection Customer's obligation to indemnify the Transmission Provider in the event that the IRS changes its ruling or policy or a subsequent taxable event occurs.

470. As for NYTO's argument that the Transmission Provider should be able to ask the Interconnection Customer to provide financial security when the Transmission Provider has foregone the gross-up, such authority is already in Final Rule LGIA Article 5.17.3. Under this article, the Transmission Provider may secure a guaranty from the Interconnection Customer in an amount equal to the Interconnection Customer's estimated tax liability. Since the article does not specify the timing of such a request, the request may be made at any time the Transmission Provider believes that it is appropriate.

471. This article is designated Article 5.17.5 in the Final Rule LGIA.

472. *Article 5.14.6—Contests*—Proposed LGIA Article 5.14.6 described the obligations that would apply if any Governmental Authority determines that the Transmission Provider's receipt of payments or property is income subject to taxation. At the Interconnection Customer's sole expense, the Transmission Provider would appeal or oppose such a determination. Proposed LGIA Article 5.14.6 also described the procedures for settling the contested ruling.

Comments

473. Southern proposes clarifying that the Interconnection Customer's obligation for the settlement amount is calculated on a basis that is fully grossed-up for taxes.

474. NYTO argues that the Transmission Owner's obligation to contest a determination by a Governmental Authority should be subject to the Interconnection Customer providing an opinion of tax counsel that there is high likelihood of success.

Commission Conclusion

475. The Commission rejects the commenters' requests. The Transmission Provider may determine if the settlement amount is appropriate under Article 5.14.6, which is designated Article 5.17.7 in the Final Rule, and, therefore, has the opportunity to ensure that the amount is calculated in an acceptable manner. The Commission will not require that the Interconnection Customer tender a tax counsel opinion. Under Article 5.17.7, the Interconnection Customer must pay all of the costs of an appeal of the ruling. The Commission believes that the prospect of paying for an appeal with a low likelihood of success should be a sufficient incentive not to pursue a weak case.

476. *Article 5.14.7—Refund* (In the Final Rule LGIA: Article 5.17.8)—Proposed LGIA Article 5.14.7 described the conditions under which a refund would be payable to the Interconnection Customer for any payments made related to income tax liability and the formula for calculating the refund.

Comments

477. The Florida PSC recommends that the indemnification treatment in the LGIA be subject to review by state commissions on a case-by-case basis since there are local consequences. In some instances, indemnification alone is insufficient and letters of credit, parental involvement or other forms of guarantees may be required to protect retail customers adequately from becoming the default responsible Party. The Transmission Provider should be able to petition the state commission for a more stringent indemnification standard.

Commission Conclusion

478. The Commission does not grant Florida PSC's request. When the Commission, under the authority of sections 201, 205 and 206 of the Federal Power Act [80] sets a rate, term or condition for such transmission, a state may not exercise its jurisdiction over a retail rate to review the reasonableness of the rate, term or condition set by the Commission.[81]

479. This article is designated Article 5.17.8 in the Final Rule LGIA.

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[80] 16 U.S.C. 824, 824d and 824e (2000).

[81] *See, e.g., Mississippi Power & Light* v. *Mississippi ex rel.* Moore, 487 U.S. 354, 371–72 (1988); *Nantahala Power & Light Co.* v. *Thornburg*, 476 U.S. 953, 970 (1986) (both applying the same principle to the Commission's jurisdiction over wholesale sales of electric energy).

480. *Article 5.14.8—Taxes Other Than Income Taxes* (In the Final Rule LGIA: Article 5.17.9)—Proposed LGIA Article 5.14.8 described the Parties' obligations if taxes other than federal or state income taxes, and for which the Interconnection Provider may be required to reimburse the Transmission Provider under the terms of the LGIA, are imposed. At the Interconnection Customer's expense, the Transmission Provider would appeal or oppose such a determination. Proposed LGIA Article 5.14.8 also described the procedures for settling the contested ruling.

Comments

481. FP&L asks the Commission to clarify Article 5.14.8 to require the Interconnection Customer to pay tax costs, other than income tax, related to interconnection payments.

Commission Conclusion

482. The Commission notes that Article 5.14 does not limit recovery to state or federal income taxes related to interconnection payments. This provision by itself does not create additional tax liability beyond income taxes. Because FP&L offered no justification for why additional tax protection is necessary, the Commission rejects its request.

483. This article is designated Article 5.17.9 in the Final Rule LGIA.

484. *Article 5.15—Tax Status* (In the Final Rule LGIA: Article 5.18)—Proposed LGIA Article 5.15 provided that each Party cooperate with the other to maintain the other Party's tax status. It also proposed that the LGIA would not be intended to adversely affect any Transmission Provider's tax exempt status with respect to the issuance of bonds.

Comments

485. NYTO proposes modifying the LGIA to be consistent with the tax-exempt bond provisions of the Transmission Owner's (or the ISO's) OATT. Thus, the LGIA would provide that the Transmission Owner is not obligated to take any action, and the Interconnection Customer is prohibited from taking any action, that would adversely affect the tax-exempt status of the Transmission Owner's (or the ISO's) local furnishing bonds.

486. Several commenters, including LADWP and TANC, are concerned about the effect that providing Interconnection Service will have on the tax-exempt status of their bond funding. TANC asks the Commission to provide flexibility for municipal utilities that adopt the Tariff additions. NRECA–APPA is concerned that contributions by an Interconnection Customer for construction of interconnection facilities and Network Upgrades may result in loss of its tax-exempt status. A tax-exempt cooperative must ensure that at least 85 percent of its income comes from members.

487. LPPC urges the Commission to give public power utilities the option to: (1) Refuse to provide an interconnection if doing so would jeopardize the tax-exempt status of the public power utility's financing; or (2) proceed with the interconnection with an indemnification provision that would require Interconnection Customers to reimburse public power entities if any aspect of compliance with the Final Rule causes the utility to lose the tax-exempt status of its bonds.

Commission Conclusion

488. The Commission concludes that the tax status of the Parties is sufficiently protected by Proposed LGIA Article 5.15.

489. As described more fully in the reciprocity discussion in this preamble, public power and other nonjurisdictional entities with "safe harbor" tariffs may add the Final Rule LGIP and Final Rule LGIA to their safe harbor tariffs if they wish to continue to have safe harbor protection.[82] The Commission limits reciprocity compliance to those services a nonjurisdictional entity is capable of providing on its system.[83] The Commission will consider the restrictions on nonjurisdictional and jurisdictional entities' conduct that would endanger the tax exempt status of their bond funding during compliance or upon submission of amended safe harbor tariffs, and we will act to ensure that they retain their tax-exempt status. Accordingly, the Commission need not address further here the argument raised by LPPC.

490. This article is designated Article 5.18 in the Final Rule LGIA.

491. *Article 6—Testing and Inspection*—Proposed LGIA Article 6 provided that, prior to the Commercial Operation of the Generating Facility, the Transmission Provider shall test the Transmission Provider Interconnection Facilities and Network Upgrades, and the Interconnection Customer shall test the Generating Facility and the Interconnection Customer's Interconnection Facilities to ensure their safe and reliable operation. The Interconnection Customer would bear the cost of these tests and any modifications. After the Commercial Operation Date, each Party shall conduct routine inspection and testing of its own facilities, at its own expense, in accordance with Good Utility Practice.

Comments

492. Entergy generally supports the testing and inspection provisions, but urges that Article 6.1 provide the Parties with additional scheduling flexibility if testing reveals the need for modifications to the Generating Facility. Entergy therefore proposes that the Parties' schedules for completing their respective obligations to construct and install facilities shall be extended to the extent reasonably necessary to complete any necessary modifications to the Generating Facility.

493. Arkansas Coops propose that Article 6.1 of the NOPR LGIA be modified to prohibit a Transmission Provider from preventing an Interconnection Customer sale of test energy to an entity other than the Control Area operator.

Commission Conclusion

494. The Commission does not believe that a change to the LGIA is required in order to satisfy Entergy's concern. The LGIA is premised on the idea that the Interconnection Customer and Transmission Provider will coordinate the interconnection of the Interconnection Customer's Interconnection Facilities on an ongoing basis. If the testing reveals a problem with the Interconnection Facilities or Network Upgrades, the LGIA contemplates that the Parties will work together to modify the schedule.

495. In response to Arkansas Coops, the Interconnection Customer may sell its energy to anyone; the LGIA does not need to address this matter, as it is not an interconnection matter.

496. *Article 7—Metering*—Proposed LGIA Article 7 would have required that, unless otherwise agreed to by the Parties, the Transmission Provider shall install, own, operate, and maintain Metering Equipment at the Point of Interconnection, with the Interconnection Customer bearing all reasonable documented costs.

497. *Article 7.2—Check Meters*—Proposed LGIA Article 7.2 provided that the Interconnection Customer, at its own expense, may install one or more meters on its side of the Point of Interconnection to check the accuracy of Transmission Provider's meters.

498. *Article 7.3—Standards*—Proposed LGIA Article 7.3 provided that if Article 7 conflicts with the manuals,

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[82] *See* part II.C.7 (OATT Reciprocity Requirements Applied to the Final Rule LGIP and Final Rule LGIA).

[83] Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,286.

standards or guidelines of the Applicable Reliability Council, the latter shall control.

499. *Article 7.4—Testing of Metering Equipment*—Proposed LGIA Article 7.4 provided that if at any time Metering Equipment fails to register or is found to be inaccurate by more than one percent, the Transmission Provider shall correct all measurements made by the inaccurate meter.

500. *Article 7.5—Metering Data*—Proposed LGIA Article 7.5 provided that the official measurement of the amount of energy delivered from the Generating Facility to the Point of Interconnection is the metered data, which would be telemetered to one or more locations designated by the Transmission Provider and one or more locations designated by the Interconnection Customer.

Comments

501. Cal ISO and SoCal Edison argue that, in California, it is the Cal ISO Tariff that governs metering provisions. They further argue that many provisions of proposed LGIA Article 7 appear to be at odds with Cal ISO's Tariff and WECC requirements. For example, Cal ISO points out that proposed Article 7.1 appears to require metering only at the Point of Interconnection which would mean "net metering," whereas WECC requires Cal ISO to meter a generator's gross output.

502. SoCal Edison and WEPCO argue that the Transmission Provider should not be required to own the meters because owning meters carries with it some liability associated with inaccurate meter readings.

503. Dynegy comments that meters should be installed at an agreed-upon location rather than at the Point of Interconnection, and metering information should be provided in analog and digital form to no more than two locations specified by the Transmission Provider. It also proposes that check meter measurements be used when the primary meter is inaccurate, and that the Final Rule specify in more detail the cost responsibility of the Transmission Provider if it does not properly maintain the metering equipment.

504. Baker & McKenzie and Dynegy argue that proposed LGIA Article 7.2 incorrectly references Article 7.3 and should refer instead to Article 7.4. Several commenters, including Baker & McKenzie, the Bureau of Reclamation, Dynegy, and Monongahela Power, propose that language should be added to Article 7.4 to use check meters to correct the measurements read by failed or inaccurate Metering Equipment. Baker & McKenzie proposes several editorial changes to clarify Article 7.4.

505. FirstEnergy argues that the one percent metering accuracy is very difficult to achieve and its current interconnection agreement as well as the industry standard allows for a two percent metering error. It asserts that the provision should be changed to allow for a metering error of two percent. Monongahela Power argues that the allowed metering error should be 1.5 percent.

506. Several commenters including EEI, FirstEnergy, and Southern argue that the last sentence of proposed LGIA Article 7.5 incorrectly states that "metering data [is] provided by the Interconnection Customer" because the metering data is being provided by the Transmission Provider to the Interconnection Customer.

Commission Conclusion

507. Cal ISO's concern with regard to metering being allowed only at the Point of Interconnection is misplaced. Proposed LGIA Article 7.1, which provides that "[u]nless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Point of Interconnection," clearly allows Metering Equipment to be placed at an agreed upon location different from the Point of Interconnection. However, in response to Cal ISO's and SoCal Edison's concern that their metering provisions are governed by WECC requirements, we are adding the following language to Article 7.1: "Each Party shall comply with the Applicable Reliability Council requirements." The Commission does not expect that Applicable Reliability Council requirements will conflict with our provisions in Final Rule LGIA Article 7. Accordingly, we find the following language to be unneeded and are deleting it from Article 7.3 (Standards): "To the extent this Article 7 conflicts with the manuals, standards, or guidelines of the Applicable Reliability Council regarding interchange metering and transactions, the manuals, standards and guidelines of such Applicable Reliability Council shall control."

508. In response to SoCal Edison and WEPCO, we are not revising proposed LGIA Article 7.1 because the Final Rule contains the phrase "[u]nless otherwise agreed by the Parties" which allows any Party to own the meters. In response to Dynegy and Baker & McKenzie we are changing the reference in Final Rule LGIA Article 7.2 to Article 7.4. We are also adding language in Final Rule LGIA Article 7.4 for the use of check meters to correct the measurements read by failed or inaccurate Metering Equipment. In response to FirstEnergy and Monongahela Power's argument, the Commission adopts a metering error of two percent because, as pointed out by FirstEnergy, two percent is the industry standard. Finally, we are correcting the error in the last sentence of proposed LGIA Article 7.5 noted by EEI, FirstEnergy and Southern.

509. *Article 8—Communication*—Proposed LGIA Article 8 described the operating communications and dedicated data circuits between the Parties that would be necessary and the cost and maintenance responsibility for such equipment.

510. *Article 8.1—Interconnection Customer Obligations*—Proposed LGIA Article 8.1 would have required the Interconnection Customer to maintain satisfactory operating communications with the Transmission Provider's Transmission System dispatcher or designated representatives.

Comments

511. NERC and Western recommend that a Transmission Provider be permitted to use a voice communications system that does not rely on the public telephone system.

512. Dairyland Power proposes that maintenance be performed by the Transmission Provider, in an agreed upon manner, at the Interconnection Customer's expense.

513. Cleco and FirstEnergy propose that the Interconnection Customer be responsible for the cost of maintaining any communications and computer equipment belonging to either Party, as well as the hardware and software necessary for the Transmission Provider to interface properly with the Interconnection Customer's system.

514. Progress Energy requests that the first sentence of proposed LGIA Article 8.2 be rewritten to read: "Prior to the Initial Synchronization Date of the [Generating] Facility, a remote terminal unit, or equivalent data collection and transfer equipment acceptable to both Parties shall be installed * * *"

515. The Bureau of Reclamation believes that cyber-security and data security issues should be addressed in the body of the LGIA, and not in an Appendix.

Commission Conclusion

516. The Commission concurs with the recommendations of NERC, Western and Progress Energy, and revises Proposed LGIA Articles 8.1 and 8.2 to allow greater flexibility.

517. In response to the Bureau of Reclamation, the Commission notes that

the Appendices are as binding as provisions within the body of the LGIA.

518. Articles 8.1 and 8.2 require that the Interconnection Customer transmit the data to a point specified by the Transmission Provider. Once the data has reached that point, it becomes the responsibility of the Transmission Provider to maintain its own hardware and software equipment. In response to Dairyland Power, the Commission notes that the Parties may enter into an agreement regarding which Party actually performs the data system maintenance, but the Interconnection Customer is ultimately responsible for paying for that maintenance.

519. *Article 9—Operations*—Proposed LGIA Article 9 would have required the Interconnection Customer and Transmission Provider to operate their facilities in a safe and reliable manner. It also proposed reactive power requirements and provided that the Interconnection Customer will be compensated for capital expenses incurred based on the use of the Interconnection Facilities by the Transmission Provider, all third party users, and the Interconnection Customer.

520. *Article 9.1—General*—Proposed LGIA Article 9.1 would have required the Parties to comply with LGIA Appendix G (Interconnection Guidelines). It would also require that each Party provide to the other Parties all information that may be required to comply with Applicable Laws and Regulations.

Comments

521. Southern, Lakeland, and FirstEnergy state that Article 9.1 should refer to Applicable Reliability Council requirements instead of Appendix G Interconnection Guidelines, which is blank. FirstEnergy states that each Party should be required to comply with the requirements of any RTO or ISO and any procedures agreed to by the Joint Operating Committee.

522. Exelon requests that proposed LGIA Article 9.1 be modified to include the following language: "To the extent interconnection requirements are inconsistent with ISO/RTO rules, the ISO/RTO rules shall govern."

Commission Conclusion

523. In the Final Rule, Article 9.1 refers to Applicable Reliability Council requirements. The Commission is deleting Appendix G (Interconnection Guidelines). With respect to FirstEnergy's request that Parties be required to comply with any procedures agreed to by the Joint Operating Committee, the Commission does not believe that any language changes are required. We clarify that the Parties are expected to comply with the procedures established by the Joint Operating Committee. We also clarify that the RTO or ISO rules, once approved by the Commission, shall govern the LGIA.

524. *Article 9.2—Control Area Notification*—Proposed LGIA Article 9.2 would have required the Interconnection Customer to notify the Transmission Provider in writing of the location of its Control Area at least three months before the Generating Facility's Initial Synchronization Date. The proposed article also provided that the Interconnection Customer has the right to change the Control Area after the Initial Synchronization Date.

Comments

525. Some commenters, including PG&E and Cal ISO, believe that the Generating Facility must be the Control Area to which it is electrically connected.

526. MidAmerican believes that the Interconnection Customer must provide the metering and communications necessary to be a part of a Control Area other than the Transmission Provider's Control Area. Cleco proposes that since switching Control Areas is labor-intensive for the employees of both Control Areas, the Interconnection Customer should be required to remain in a Control Area for at least 12 months before switching.

527. NERC asks that proposed LGIA Article 9.2 be clarified to ensure that the host Control Area (the Control Area to which the Interconnection Customer is physically connected, regardless of whether the Generating Facility is electrically telemetered to another Control Area through a dynamic transfer) can enforce an Interconnection Customer's power factor, voltage control, and other similar obligations. Others commenters, including WEPCO, MidAmerican, Avista, National Grid, Southern, express concerns that a separate agreement and control equipment modification should be required, and that if the Interconnection Customer designates a different Control Area, it should be required to follow the rules for all applicable Control Areas.

528. Duke Energy asks what the consequence would be if an Interconnection Customer fails to notify a Transmission Provider of its Control Area three months prior to its Commercial Operating Date. The Maine PSC requests that Article 9.2 permit waiver of Control Area notification in certain situations.

Commission Conclusion

529. In response to Cal ISO, PGE, and Cleco, the Commission does not prohibit dynamic scheduling of a Generating Facility physically connected in one Control Area but scheduled into another. Nor does it place restrictions on changing Control Areas and how long an Interconnection Customer must remain in a Control Area. Moreover, in Order No. 888 the Commission did not require that Transmission Providers offer dynamic scheduling.[84] However, we also agree with the concerns expressed by NERC and other commenters that the process of changing Control Areas and the attendant implementation brings about requirements for coordination, control equipment modification, and agreement on operational details. In such cases, the Commission confirms that the Transmission Provider's OATT shall apply.

530. We also confirm that the Interconnection Customer must notify the Transmission Provider at least three months before the Initial Synchronization Date of the Control Area in which it will be located. Failure of an Interconnection Customer to make the appropriate Control Area designation would be treated as a Breach of the Final Rule LGIA, subject to opportunity to cure. Similarly, while an Interconnection Customer could request that the Transmission Provider waive the three month notice requirement, we decline to make that a provision of the Final Rule LGIA.

531. *Article 9.3—Transmission Provider Obligations*—Proposed LGIA Article 9.3 would have required the Transmission Provider to operate and maintain its Transmission System in a safe and reliable manner and in accordance with the LGIA. It also proposed that the Interconnection Customer would not be obligated to follow the Transmission Provider's instructions if those instructions would undermine the safe and reliable operation of the Generating Facility.

Comments

532. NERC proposes deleting the proposed language allowing an Interconnection Customer to not follow the Transmission Provider's instructions if doing so would cause material damage to the Generating Facility. NERC is concerned that the language appears to grant the Interconnection Customer a blanket right not to follow operating instructions of the Transmission Provider.

[84] Order No. 888 at 31,709–10.

533. NYTO proposes revising Article 9.3 of the NOPR LGIA to remove any incentive for the Interconnection Customer to "create" circumstances (*e.g.*, emergencies) that would warrant noncompliance.

534. Southern asserts that it is inappropriate to impose broad obligations on a Transmission Provider's Transmission Systems in the LGIA. The LGIA should govern only the interconnection of an Interconnection Customer and the Interconnection Facilities necessary to achieve the interconnection, not the entire Transmission System.

535. Dynegy states that proposed LGIA Article 9.3 fails to consider the economic effect of operating instructions on the Interconnection Customer, which could be financially devastating, and that the article should make clear that the Transmission Provider must compensate the Interconnection Customer for responding to such operating instructions.

Commission Conclusion

536. We agree with NERC's concern that the proposed language appears to grant the Interconnection Customer a blanket right not to follow the operating instructions of the Transmission Provider during normal operating conditions and accordingly delete the proposed language in the Final Rule. We expect a Transmission Provider to follow NERC procedures and to take every precaution not to cause any material adverse impact on the safe and reliable operation of the Generating Facility. It is essential that the Interconnection Customer follow all orders given by the Transmission Provider, unless they would result in impairment to public health or safety, since otherwise the Transmission Provider would be unable to effectively manage its Transmission System.[85] Final Rule LGIA Article 13.6 (Interconnection Customer Authority) allows Interconnection Customers to take "actions or inactions" necessary to "preserve the reliability of the Interconnection Customer's Generating Facility" during an Emergency Condition.

537. In response to NYTO's comments, all Parties are obligated to follow Good Utility Practice and to abide by their obligations under the LGIA. If a Party were to manufacture an Emergency Condition, it would be a violation of the LGIA, as well as a serious Breach of NERC and other reliability rules.

538. Southern's concerns are misplaced. Proposed LGIA Article 9.3 simply stated that the Transmission Provider shall maintain its system in a safe manner and that the Interconnection Customer is required to follow the instructions of the Transmission Provider under normal circumstances.

539. Dynegy's comment also appears to be misplaced. Proposed LGIA Article 9.3 dealt with the obligations of the Transmission Provider, not the obligations of the Interconnection Customer. Assuming that Dynegy's comment applies to Article 9.4 instead, we clarify that a Party is not obligated to follow a Transmission Provider's instructions that would cause harm to its Generating Facility, unless public health and safety would be threatened by noncompliance.

540. *Article 9.6.1—Power Factor Design Criteria*—Proposed LGIA Article 9.6.1 would have required the Generating Facility to be designed so that at the continuous rated power output, its power factor would be within a range of 0.97 leading to 0.95 lagging, unless the Transmission Provider has established different requirements applicable to all Interconnection Customers in the Control Area on a comparable basis.

Comments

541. NERC proposes that the Commission require power factor capabilities to be "within a range required by Good Utility Practice," which incorporates NERC standards by reference. It cites its own Planning Standard, which allows a generator to be within the range of 0.95 leading to 0.90 lagging and argues that such a range provides more responsive reactive absorption and supply than the range proposed in Article 9.6.1. That Planning Standard also requires that if the Generating Facility does not meet the requirements, the Interconnection Customer must make alternate arrangements for supplying dynamic reactive power to meet the area's reactive power requirements. However, NERC concedes that a power factor requirement of 0.95 leading to 0.95 lagging is a common practice in some NERC regions.

Commission Conclusion

542. We adopt the power factor requirement of 0.95 leading to 0.95 lagging because it is a common practice in some NERC regions. If a Transmission Provider wants to adopt a different power factor requirement, Final Rule LGIA Article 9.6.1 permits it to do so as long as the power factor requirement applies to all generators on a comparable basis.

543. *Article 9.6.3—Payment for Reactive Power*—Proposed LGIA Article 9.6.3 would have provided that the Transmission Provider pay the Interconnection Customer for reactive power that the Generating Facility provides or absorbs. Such payment would be in accordance with the Interconnection Customer's rate schedule unless service is subject to a Commission-approved RTO or ISO rate schedule. If no rate schedule is in effect, the Transmission Provider would compensate the Interconnection Customer in an amount that would be due the Interconnection Customer had the rate schedule been in effect when the service commenced; provided, however, that the rate schedule must be filed with the Commission within 60 Calendar Days of the commencement of service.

Comments

544. El Paso and others maintain that the Interconnection Customer should not be compensated for reactive power provided or absorbed within the power factor range established in Article 9.6.1 (Power Factor Design Criteria) since it is only meeting its obligation to do so. MidAmerican, Cleco, El Paso, Nevada Power, PG&E, and Western state that the Interconnection Customer should be compensated for the reactive power it provides or absorbs when the Transmission Provider asks the Interconnection Customer to operate its Generating Facility outside the established power factor range. Cleco and Nevada Power also contend that if the Transmission Provider pays for reactive power, so should the Interconnection Customer, when it does not meet the Transmission Provider's voltage schedule that can be met by the established power factor range.

545. MidAmerican and Cleco argue that reactive power should be paid for only if the Interconnection Customer has filed a rate schedule with the Commission prior to the commencement of service. Duke argues that the last sentence of the NOPR LGIA Article 9.6.3 that provides for filing of a rate schedule within 60 Calendar Days of having provided reactive service without a rate schedule should be moved to Article 11.6 (Interconnection Customer Compensation) to cover a similar situation during an Emergency Condition. Cal ISO believes that the procurement of reactive power should be left to another proceeding (such as a Regional Market Design proceeding),

[85] Pacific Gas and Electric Company, *et al.*, 81 FERC ¶ 61,122 at 61,456 (1997).

and NYISO states that this issue is already being dealt with in its Market Administration and Control Area Services Tariff.

Commission Conclusion

546. We agree that the Interconnection Customer should not be compensated for reactive power when operating its Generating Facility within the established power factor range, since it is only meeting its obligation. Proposed Article 9.6.3 required payment for reactive power to an Interconnection Customer only when the Transmission Provider requests the Interconnection Customer to operate its Generating Facility outside the range established in Article 9.6.1 (Power Factor Design Criteria). In response to Cleco and Nevada Power, we agree that the Interconnection Customer should be penalized or otherwise compensate the Transmission Provider if the Interconnection Customer does not meet the Transmission Provider's voltage schedule requirements, so long as the voltage schedule requirements can be met by the established power factor range. The Commission is not including a standard penalty or compensation provision here, but will entertain reasonable requests to do so on compliance. We agree with Duke and move the last sentence of Article 9.6.3 to 11.6.

547. With respect to the argument that payment for reactive power should be required only if the Interconnection Customer has a rate schedule on file when service commences, we note that the Commission's Regulations allow an applicant to file a rate schedule within 60 days of the commencement of service.[86]

548. An RTO or ISO, at the time its compliance filing is made, may propose variations from this policy, as discussed below.[87] An RTO or ISO has different operating characteristics depending on its size and location and is less likely to act in a discriminatory manner than a Transmission Provider that is also a market participant. An RTO or ISO will have greater flexibility to customize its LGIP and LGIA to respond to regional needs.

549. *Article 9.7.1.2—Outage Schedule*—Proposed LGIA Article 9.7.1.2 would have a Transmission Provider post transmission facility outages on the Open Access Same-Time Information System (OASIS) and require an Interconnection Customer to schedule its maintenance on a rolling 24 month basis. It also stated that a Transmission Provider may ask the Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the Transmission System; however, the Transmission Provider will compensate the Interconnection Customer for any costs of rescheduling such maintenance.

Comments

550. Several commenters argue that the Transmission Provider should not be required to compensate the Interconnection Customer for the costs of rescheduling maintenance when the purpose of rescheduling the maintenance is to ensure the reliability of the Transmission System. For example, Cal ISO claims that the compensation issue should be resolved by deferring to the RTO or ISO outage coordination provisions in its Tariff. Southern contends that the Interconnection Customer benefits from a reliable Transmission System and should therefore maintain the reliability of the Transmission System without any compensation for rescheduling its outages. Southern also argues that the provision seems to require the Transmission Provider to compensate the Interconnection Customer for rescheduling maintenance even if such rescheduling is required to interconnect another Interconnection Customer. If the provision is adopted, Southern requests clarification that the Interconnection Customer, not the Transmission Provider, is required to pay the costs that other Interconnection Customers incur to reschedule their maintenance. Southern also requests clarification that the reimbursed costs are limited to direct costs and will not include consequential or indirect costs (such as lost profits).

551. Dairyland Power, PSNM, and Western assert that an Interconnection Customer may try to game the outage scheduling process. It could revise its maintenance schedule to coincide with a maintenance project (by listing it on the Transmission Provider's OASIS) and thus create congestion or reliability conditions on the Transmission System for the purpose of receiving compensation from the Transmission Provider. PSNM further states that while curtailment and redispatch costs under the OATT generally are shared on a pro rata basis when transmission service is not available, this article anticipates that the Transmission Provider will compensate an Interconnection Customer for changes in the Interconnection Customer's maintenance plan, with no reciprocal compensation if the Interconnection Customer changes its own plans.

552. Western believes that requiring the Transmission Provider to compensate for "any costs" leaves too much to interpretation. The provision should be limited to actual costs incurred by the Interconnection Customer, such as remobilization costs, to prevent gaming. AEP believes that compensation should be provided on rare occasions when maintenance must be rescheduled for reliability purposes. Cleco believes that the payment to the Interconnection Customer should occur only if the Transmission Provider is initially allowed to approve the maintenance schedule proposed by the Interconnection Customer.

Commission Conclusion

553. We agree that the proposed requirement to compensate Interconnection Customers for "any costs" incurred in rescheduling maintenance is overly broad. Compensation should be limited to the additional, direct costs that the Interconnection Customer incurs as a result of having to reschedule maintenance.

554. We also agree that this article, as proposed, could create an opportunity for gaming on the part of the Interconnection Customer, which might schedule its maintenance at a time when the Transmission Provider could be expected to ask it to reschedule. Therefore the proposed article is modified so that an Interconnection Customer will not receive compensation if it had modified its schedule of maintenance activities during the year before the date of the initially scheduled maintenance.

555. *Article 9.7.1.3—Outage Restoration*—Proposed LGIA Article 9.7.1.3 would have provided that if an outage on a Party's Interconnection Facilities or Network Upgrades harms the other Party's facilities, the Party owning or controlling the facility that is out of service will use Reasonable Efforts to promptly restore it to a normal operating condition.

Comments

556. NERC proposes to require the first Party to provide the other Party information on the nature of the Emergency Condition, including an estimated time of restoration, and on any corrective actions required, as soon as practical, followed by a written explanation of the nature of the outage. The clarification is necessary because the outage may affect outage clearances on other equipment, calculation of

[86] *See* 18 CFR 35.3 (2003).

[87] *See* Part II.C.5 (Variations from the Final Rule and Regional Differences).

transfer capabilities, system deratings, and so on.

Commission Conclusion

557. We incorporate NERC's proposed change. NERC's proposal recognizes not only the importance of restoration after an outage, but the necessity of coordinated restoration and information-sharing to make all affected Parties aware of the restoration, the corrective actions taken, and the time the restoration occurred, so that all Parties may determine whether the interconnected system has been returned to a normal operating condition.

558. *Article 9.7.2—Interruption of Service* (In the NOPR: Continuity of Service)—Proposed LGIA Article 9.7.2 would have provided that the Transmission Provider may require the Interconnection Customer to reduce or interrupt deliveries of electricity if such delivery of electricity would adversely affect the Transmission Provider's ability to perform activities that are necessary to safely and reliably operate and maintain the Transmission System. It also would require the Transmission Provider to schedule the reduction or interruption to either coincide with the scheduled outage of the Generating Facility or during periods of low demand.

Comments

559. Several commenters, mostly Transmission Providers such as Exelon, MidAmerican, PG&E and Southern, argue that the last sentence of proposed LGIA Article 9.7.2.4 that requires the Transmission Provider to schedule the reduction or interruption to either coincide with the scheduled outage of the Generating Facility or during periods of low demand unreasonably limits the Transmission Provider when it can perform maintenance and repair work. PG&E asserts that the periods of low demand either occur at night or during winter, and those times are not suitable for performing maintenance and repair work because it may jeopardize the safety of maintenance personnel. MidAmerican argues that the impact on both the Transmission Provider and Interconnection Customer should be considered when scheduling maintenance and repair work on the Transmission System. MidAmerican offers this alternative last sentence of proposed LGIA Article 9.7.2.4: "Transmission Provider shall coordinate with the Interconnection Customer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to the Interconnection Customer and the Transmission Provider."

560. Exelon argues that a separate provision should be added to require the Transmission Provider to notify the Interconnection Customer before the Transmission Provider undertakes any construction, repair or maintenance work on its Transmission System that may require the Interconnection Customer to reduce output from its Generating Facility.

Commission Conclusion

561. In response to MidAmerican and PG&E's concern, we adopt MidAmerican's proposed language because it balances the interests of both the Transmission Provider and the Interconnection Customer. With regard to Exelon's argument, we note that Article 9.7.2.4 of the Final Rule LGIA provides that: "Except during the existence of an Emergency Condition, when the interruption or reduction can be scheduled without advance notification, Transmission Provider shall notify Interconnection Customer in advance regarding the timing of such scheduling and further notify Interconnection Customer of the expected duration."

562. *Article 9.7.3—Under-Frequency and Over-Frequency Conditions* (In the NOPR: Under-Frequency Load Shed Event)—Proposed LGIA Article 9.7.3 stated that the Transmission System is designed to activate a load-shed program automatically in the event of an under-frequency system disturbance. It proposed that an Interconnection Customer shall implement an under-frequency relay set point for the Generating Facility to ensure "ride through"[88] capability of the Transmission System, to the extent allowed by equipment limitations or warranties.

Comments

563. NERC, MidAmerican, and SoCal Edison state that the scope of Article 9.7.3 should be expanded to include over-frequency conditions as well.

564. NERC, Florida RCC, and TECO Energy oppose relying on equipment limitations or warranties as an excuse for an Interconnection Customer to avoid following Applicable Reliability Council rules. They claim that in a limited number of instances where equipment limitations do exist, the Applicable Reliability Council's rules permit the Interconnection Customer to propose alternative load shedding procedures. They also express concern that should the Commission retain the language relating to equipment limitations or warranties, load shedding procedures may not be effective to prevent full collapse of an electrical "island," thereby threatening the reliability of the Transmission System.

565. NERC recommends that the Generating Facility's response to both under- and over-frequency conditions be studied and coordinated with the Transmission Provider's Transmission System in accordance with Good Utility Practice.

Commission Conclusion

566. We agree with many commenters that their proposed changes would better protect reliability. Therefore, we revise Article 9.7.3 to refer to Applicable Reliability Council requirements and to include over-frequency conditions. Equipment limitations or warranties should not be an excuse for not following Applicable Reliability Council rules; in case of genuine equipment limitations, Applicable Reliability Council rules permit the Interconnection Customer to offer alternative proposals. As such, the Commission eliminates the phrase "equipment limitations or warranties" in the Final Rule. In addition, the Commission is adopting NERC's proposed language regarding studies to determine the Generating Facility's response to frequency deviations because of its importance in stabilizing the power system during an electrical disturbance.

567. *Article 9.7.4.1—System Protection Facilities* (In the NOPR: Protection and System Quality)—Proposed LGIA Article 9.7.4.1 would have required that the Interconnection Customer, at its expense, install, operate and maintain System Protection Facilities.

Comments

568. NERC states that the title of proposed LGIA Article 9.7.4.1 should be changed from "Protection and System Quality" to "Protection Required by Study" because system quality issues are not addressed here.

Commission Conclusion

569. The title of Final Rule LGIA Article 9.7.4.1 is changed to "System Protection Facilities." This change addresses the NERC comment to eliminate reference to "System Quality."

570. *Article 9.7.4.2*—Proposed LGIA Article 9.7.4.2 would have required that

[88] "Ride through" means a Generating Facility staying connected to and synchronized with the Transmission System during system disturbances within a range of over- and under-frequency conditions, in accordance with Good Utility Practice.

each Party's facility be designed to isolate any fault or abnormality that would negatively affect the other Party or third parties connected to the Transmission Provider's Transmission System.

Comments

571. NERC notes that the term "negatively affect" is too vague. It proposes that proposed LGIA Article 9.7.4.2 be revised to state that each Party's protection facilities will be designed and coordinated with other systems in accordance with Good Utility Practice.

Commission Conclusion

572. The Commission adopts NERC's proposed change.

573. *Article 9.7.5—Requirements for Protection*—Proposed LGIA Article 9.7.5 would have required the Interconnection Customer, in compliance with Applicable Reliability Standards, to install, operate and maintain protective devices necessary to remove faults "promptly" and to protect the Generating Facility from other conditions, such as negative sequence currents and over- or under-frequency.

Comments

574. NERC comments that the term "promptly" is not useful when describing requirements for, or actions taken to preserve, system reliability. It also notes that the Generating Facility's fault protection must be coordinated with system protection. "Good Utility Practice" should replace "Applicable Reliability Standards," since Applicable Reliability Standards is a subset of Good Utility Practice.

Commission Conclusion

575. The Commission agrees with NERC and adopts its proposals.

576. *Article 9.9—Use of Transmission Provider's Interconnection Facilities by Third Parties*—Proposed LGIA Article 9.9 would have provided, among other things, that third parties may use the Transmission Provider's Interconnection Facilities if required by Applicable Laws and Regulations, or if the Parties agree.

Comments

577. APS believes that it is inappropriate to prohibit the use of Interconnection Facilities for other functions such as the housing of fiber optic circuits.

Commission Conclusion

578. Since proposed LGIA Article 9.9 specifically allows the Parties to agree to permit third party usage of the Interconnection Facilities, there is no need to revise it.

579. *Article 9.10—Disturbance Analysis Data Exchange* (In the NOPR: Data Exchange)—Proposed LGIA Article 9.10 would have provided that the Parties cooperate with one another in the analysis of disturbances to either the Generating Facility or the Transmission Provider's Transmission System by the gathering and sharing of any information related to any disturbance.

Comments

580. NERC states that since this article is limited to data exchange for disturbance analysis, the title should be "Disturbance Analysis Data Exchange." NERC also recommends covering "and any disturbance information required by Good Utility Practice."

Commission Conclusion

581. The Commission adopts NERC's proposals in the Final Rule.

582. *Article 10—Maintenance*—Proposed LGIA Article 10 would have made the Interconnection Customer responsible for all reasonable expenses of owning, operating and maintaining Interconnection Customer and Transmission Provider Interconnection Facilities (except for operations and maintenance expenses associated with modifications necessary for providing service to a third party that pays for such expenses). No significant comments were submitted on this article. Accordingly, the Commission adopts in the Final Rule LGIA Article 10 as proposed.

583. *Article 11—Performance Obligation*—Proposed LGIA Article 11 described the Transmission Provider's and the Interconnection Customer's obligations with respect to construction of Interconnection Facilities and Network Upgrades, security arrangements and deposits, refunds in the form of transmission credits with interest for amounts funded by the Interconnection Customer, and compensation to the Interconnection Customer for services the Transmission Provider requests.

584. Most of the issues in Proposed LGIA Article 11 relate to pricing. All pricing matters are discussed in part II.C.1 (Interconnection Pricing Policy).

585. *Article 11.5—Financial Security Arrangements*—Proposed LGIA Article 11.5 would have required the Interconnection Customer to provide the Transmission Provider with a form of security at least 90 Calendar Days before the procurement, installation, or construction of discrete Transmission Provider Interconnection Facilities or Network Upgrades begins. The security amount would have had to be sufficient to cover the costs of procuring, constructing, and installing the Transmission Provider's Interconnection Facilities or Network Upgrades, and it would have been reduced on a dollar-for-dollar basis as payments were made. Articles 11.5.1.1, 11.5.1.2 and 11.5.1.3 would have required that the issuer of the guarantee, letter of credit, surety bond or other form of security meet the creditworthiness requirements of, or be acceptable to, the Transmission Provider and that the security instrument contain specified provisions, such as a reasonable expiration date.[89]

Comments

586. Commenters identify three areas of concern with this provision. First, some commenters believe that 30 days is insufficient time for the Interconnection Customer to provide a reasonable form of security to the Transmission Provider. For example, Dairyland Power argues that 30 days is not enough time for delivery of the necessary equipment and materials. SoCal PPA maintains that the security should be provided 90 days in advance. Progress Energy argues that security should be provided when an interconnection agreement is executed, and FP&L requests that security should be provided within 30 days of either execution of the interconnection agreement or its acceptance by the Commission.

587. Exelon argues that the amount of the security should be allowed to increase (or decrease), based on any changes in the construction cost estimate. According to Progress Energy, the Interconnection Customer should offer security to cover the full cost of the Network Upgrades. EPSA contends that the Interconnection Customer should be allowed to provide security on a rolling six month basis based on the Transmission Provider's cost exposure at each six month interval to ensure that the security costs paid by the Interconnection Customer are reasonable at any given time and are consistent with the Transmission Provider's obligations. In the alternative, EPSA supports the 30 day period. Duke

[89] NOPR LGIA Article 11.5.1 is identical to Article 11.5 except that the former required the Interconnection Customer to provide the Transmission Provider with a form of security at least 30 Calendar Days prior to the commencement of the procurement, installation, or construction of discrete Transmission Provider Interconnection Facilities or Network Upgrades. The inclusion of both provisions in the NOPR LGIA was an error. As explained below, we are eliminating Article 11.5 in the Final Rule LGIA.

Energy also supports the 30 day requirement.

588. NMA and Peabody state that while a Transmission Provider should not be placed at risk financially if an Interconnection Customer either terminates its interconnection agreement or breaches its obligation to make monthly payments to the Transmission Provider, at no time will the Transmission Provider be exposed to the financial costs of all the amounts of Network Upgrades or additions as contemplated under the NOPR LGIA. Requiring an Interconnection Customer to guarantee the total cost of the Network Upgrades is unfair because it causes the Interconnection Customer seeking to interconnect a very large generator to incur significant interest costs that it will never be able to recover, and this does not represent the true financial exposure the Transmission Provider faces for Network Upgrades. Further, limiting the security requirement to an amount that reflects the Transmission Provider's cost exposure during a 120 day forward-looking period is more appropriate than requiring an Interconnection Customer with a very large generator to provide security for the total cost of the project. Calpine warns that unnecessary financial security would be a barrier to entry.

589. Several commenters, mostly Transmission Providers, believe that the Transmission Provider or Transmission Owner should determine the form of security to be provided by the Interconnection Customer,[90] since they bear the risk if an Interconnection Customer abandons a project. The Financial Security Issues Coalition argues that the specific reference to surety bonds should be deleted from proposed LGIA Article 11.5 because surety bonds are not in the OATT as an acceptable form of collateral. Also, to reduce bankruptcy and fraudulent conveyance issues, any proposed guaranty should be from a parent, and not merely an Affiliate, of the Interconnection Customer. Finally, any proposed guarantor should have a BBB+ bond rating or higher.

590. Sempra argues that proposed LGIA Article 11.5.1 should be revised to clarify that the decision whether to provide security is the option of the Interconnection Customer. The provision should require an Interconnection Customer to provide a substitute security if it suffers serious financial erosion and financial-ratings downgrades that could lead the Transmission Provider to require assurances of a guarantor's ability to perform its financial and performance obligations. Dominion Resources does not object to the NOPR provision, provided that a subsequent Interconnection Customer is responsible for the costs of completing Network Upgrades if a higher-queued Interconnection Customer chooses to suspend or terminate construction of the Interconnection Facilities.

591. Arkansas Coops argue that Article 11.5.1 should require the Transmission Provider to accept security from the National Rural Utilities Cooperative Finance Corporation (CFC), since this is critical for cooperatives that obtain financing from the CFR.

Commission Conclusion

592. We note at the outset that Article 11.5 and Article 11.5.1 are substantially identical, and the inclusion of both provisions in the NOPR was redundant. We are therefore deleting Article 11.5 in the Final Rule, and renumbering the remaining articles accordingly. The discussion that follows, however, will refer to article numbers contained in the NOPR LGIA.

593. With respect to commenters' concern that the 30 day window for providing a reasonable form of security is too short, the NOPR stated that the form of security must be provided by the Interconnection Customer at least 30 Calendar Days in advance of the procurement, installation, or construction of Interconnection Facilities or Network Upgrade projects. Parties, therefore, remain free to agree to an earlier deadline for the security if they foresee circumstances such as a long lead time for delivery of equipment. We expect that an Interconnection Customer will honor a reasonable request for an earlier deadline for providing a reasonable form of security. And, we will not require that the security be available at an earlier time, or at some specified period after execution of an interconnection agreement, because the purpose of the security is to fund procurement and construction. Since it is uncertain when procurement and construction will begin, it is reasonable to make such activity the trigger for tendering the security.

594. We are not persuaded that providing security on a 120 day or six month rolling basis is superior to the approach proposed in the NOPR. We retain the article as proposed for the following reasons. First, the Final Rule LGIA provides for the reduction of the security amount on a dollar-for-dollar basis as payments are made; this protects the Interconnection Customer against providing too much security and ensures that the Transmission Provider is always adequately protected against its cost exposure. Second, commenters provide inadequate support for their claim that they would be unduly burdened if the article remained unchanged, or that a Transmission Provider and its other customers would suffer no financial harm if the Commission adopted a rolling 120 Calendar Days or six month security period. Third, retaining the proposed language will help to ensure that only a financially sound generation project will advance to the point where a Transmission Provider must make an irreversible financial commitment on its behalf. Fourth, the approach proposed by the commenters could expose a Transmission Provider and its other customers to financial risk if the Interconnection Customer defaults before the construction of new facilities and Network Upgrades have advanced to the point where those facilities can be put to productive use.

595. In response to Exelon's concern that the amount of security be permitted to increase as well as decrease, Final Rule Article 11.5 does not prohibit the Parties from increasing the total amount of security required under an executed LGIA. The prices quoted for interconnection in the LGIA are estimates based on the results of studies conducted during the LGIP phase of the interconnection process. As a result, the final cost of Network Upgrades may rise or fall and with it, the security required under the LGIA.

596. We disagree with commenters' contention that the article requires the Interconnection Customer to guarantee the total cost of the Network Upgrades. Final Rule Article 11.5 requires the Interconnection Customer to provide security to the Transmission Provider for discrete portions of the Transmission Provider's Interconnection Facilities or Network Upgrades, not the total amount of the Network Upgrades. It also provides that the security amount is reduced on a dollar-for-dollar basis for payments made to the Transmission Provider, thereby protecting the Interconnection Customer from having to provide too much security.

597. With respect to commenters' arguments as to the form of security, the Final Rule states that the Interconnection Customer has the right to select a form of security that is acceptable to the Transmission Provider and that the Transmission Provider cannot unreasonably refuse to accept a

[90] *E.g.*, BPA, Central Maine, Duke Energy, Exelon, the Financial Security Issues Coalition, Georgia Transmission, NSTAR, and NYTO.

particular form. As the Commission has noted in recent orders, allowing the Interconnection Customer to provide an "irrevocable letter of credit * * * or an alternative form of security proposed by the Transmission Customer and acceptable to the Transmission Provider and consistent with commercial practices" is not unreasonable, and no commenter has convinced us otherwise.[91] Granting the Transmission Provider absolute discretion on what forms of security to allow would provide too great an opportunity to erect hurdles to new generation, by allowing it to act in an unduly discriminatory or preferential manner.[92] Moreover, Final Rule Article 11.5 grants the Transmission Provider the discretion to reject security from a financial institution that is not reasonably acceptable. As a result, the Commission rejects comments that would grant the Transmission Provider greater discretion with respect to the Interconnection Customer's chosen security or eliminate forms of credit specified in the article.

598. In response to Sempra, Final Rule Article 11.5 clearly states that the Interconnection Customer "shall provide" security to the Transmission Provider. It is only the *form* of that security that is the Interconnection Customer's option, within the restrictions specified. We are not adding language to the provision to establish requirements if an Interconnection Customer receives a financial downgrade that makes it difficult to secure a guaranty. The Interconnection Customer remains responsible for providing an acceptable form of guaranty under the existing terms of the article.

599. Regarding Dominion Resources' comment, this issue is addressed in our discussion of Article 5.13 (Suspension).

600. Regarding the Arkansas Coops' concern that a Transmission Provider would not accept security from the CFC, we would not consider such a rejection to be a reasonable decision on the part of the Transmission Provider under the existing terms of Article 11.5. Accordingly, we are not revising the provision.

601. *Article 12—Invoice*—Proposed LGIA Article 12 set out a monthly invoice and billing dispute procedure. The Transmission Provider would have been required to provide an invoice for the final cost of construction of the Transmission Provider's Interconnection Facilities and Network Upgrades within six months, in sufficient detail to enable the Interconnection Customer to compare actual costs with estimates. No significant comments were submitted on this article. Accordingly, the Commission adopts in the Final Rule LGIA Article 12 as proposed.

602. *Article 13—Emergencies*—Proposed LGIA Article 13 explained the Transmission Provider's and the Interconnection Customer's responsibilities when Emergency Conditions arise.

603. *Article 13.1—Definition*—Proposed LGIA Article 13.1 would define Emergency Condition as a condition or situation: (1) That in the judgment of the Party making the claim is imminently likely to endanger life or property, or (2) that, in the case of the Transmission Provider making the claim, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, the Transmission Provider Interconnection Facilities, or the Transmission Systems of others to which the Transmission System is directly connected, or (3) that, in the case of the Interconnection Customer making the claim, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or its Interconnection Facilities. Any condition or situation that results from a lack of sufficient generating capacity to meet load requirements and that results solely from economic conditions would not, on its own, be an Emergency Condition.

Comments

604. PG&E and Cal ISO believe that lack of sufficient generation to meet load requirements that results solely from economic conditions can be a genuine Emergency Condition. PG&E states that when insufficient generation occurs, regardless of the reason, the Transmission Provider is still responsible for maintaining system stability to the extent possible. It believes that taking away the tools necessary in such an emergency could harm the Transmission System. Cal ISO and Salt River Project make a similar point; they consider lack of generation, for any reason, to be an Emergency Condition that can endanger reliability and, at a minimum, warrants an emergency notification such as those provided for under the Cal ISO's procedures. According to Cal ISO, without a declaration of an Emergency Condition, the Transmission Provider will not be able to invoke its obligation under Article 13.5 of the NOPR LGIA to take actions necessary to preserve reliability.

605. El Paso seeks to revise both the proposed definition of the term Emergency Conditions and NOPR LGIA Article 13 to include a definition of an abnormal condition and to provide the Transmission Provider and Interconnection Customer the discretion to prevent an Emergency Condition (by taking action or inaction) during an abnormal condition.[93] El Paso notes that such action or inaction would require prompt oral notification to the other Party as well as compensation for changes in real power output and reactive power production.

Commission Conclusion

606. The Commission agrees with the comments concerning the potential harm to the Transmission Provider's Transmission System by reducing its flexibility to respond during Emergency Conditions. The Commission is removing from the Final Rule LGIA Article 13.1 definition of Emergency Condition the sentence that reads, "Any condition or situation that results from a lack of sufficient generating capacity to meet load requirements that results solely from economic conditions shall not, on its own, constitute an Emergency Condition." The Commission denies El Paso's request to add a definition of an abnormal condition and to provide the Transmission Provider and Interconnection Customer the discretion to take certain actions or inactions in the event of an Emergency Condition. The Commission would expect the Parties to treat any abnormal conditions appropriately, regardless of whether it is a defined term in the Final Rule.

607. *Article 13.5.1—Transmission Provider Authority—General*—Proposed LGIA Article 13.5.1 provided that the

[91] *See* Florida Power & Light Company, 98 FERC ¶ 61,226 at 61,893–94, *reh'g granted in part on other grounds*, 99 FERC ¶ 61,318 (2002); Florida Power & Light Company, 98 FERC ¶ 61,324 at 62,358–59 (noting that Florida Power & Light Company's practice of limiting interconnection customers to a letter of credit is unreasonable), *reh'g rejected as moot*, 100 FERC ¶ 61,094 (2002).

[92] Southwest Power Pool, Inc., 100 FERC ¶ 61,096 at P 12 (2002).

[93] El Paso would define Abnormal Condition as "any condition at the [Generating] Facility, on the Interconnection Facilities, on the Transmission System, or on the transmission system of other utilities which is outside normal operating parameters such that facilities are operating outside their normal ratings or reasonable operating limits have been exceeded and would result in an Emergency Condition if these conditions continue. Any condition or situation that results from lack of sufficient planned generating capacity to meet load requirements or that results solely from economic conditions will not, standing alone, constitute an Abnormal Condition."

Transmission Provider would be able to take whatever actions or inactions it deems necessary during an Emergency Condition to preserve the safety and reliability of the Transmission System or the Transmission Provider Interconnection Facilities.

Comments

608. Dynegy contends that during an Emergency Condition, the Transmission Provider should compensate the Interconnection Customer for starting up or shutting down a Generating Facility or increasing or decreasing its real or reactive output.

Commission Conclusion

609. Compensation during an Emergency Condition is appropriately addressed in Final Rule LGIA Article 11.6.1 (Generator Compensation for Actions During Emergency Conditions).

610. *Article 13.6—Interconnection Customer Authority*—Proposed LGIA Article 13.6 would allow the Interconnection Customer to take actions or inactions necessary to protect the integrity of its Generating Facility or Interconnection Facilities during an Emergency Condition.

Comments

611. NERC proposes that Article 13.6 be revised to read as follows: "Consistent with Good Utility Practice and the [LG]IA and [LG]IP, the Interconnection Customer may take actions or inactions with regard to the [Generating] Facility or the [Interconnection Customer's] Interconnection Facilities during an Emergency Condition in order to (1) preserve public health and safety, (2) preserve the reliability of the [Generating] Facility or the [Interconnection Customer's] Interconnection Facilities, (3) limit or prevent damage, and (4) expedite restoration of service." Central Maine requests that proposed LGIA Article 13.6 be revised to require that an Interconnection Customer exercise its rights in an Emergency Condition in accordance with Good Utility Practice.

Commission Conclusion

612. We adopt NERC's proposed language in Final Rule Article 13.6 because it provides greater specificity concerning the Interconnection Customer actions or inactions that may be taken during the course of an Emergency Condition.

613. *Article 14—Regulatory Requirements and Governing Law*—Proposed LGIA Article 14 described the regulatory requirements and governing law for each Party's obligations under the LGIA.

614. *Article 14.1—Regulatory Requirements & Article 14.2—Governing Law and Applicable Tariffs*—Article 14.1 of the NOPR LGIA proposed that each Party's obligations shall be subject to its receipt of any required approval or certificate from Governmental Authorities in a form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities. Article 14.1 also stated that nothing in the LGIA shall require an Interconnection Customer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 1935, as amended. Article 14.2 of the NOPR LGIA provided that the LGIA is governed by the laws of the state where the Point of Interconnection is located, without regard to conflicts of state law principles, and that the LGIA is subject to all Applicable Laws and Regulations.

Comments

615. The Bureau of Reclamation states that it does not have investors or shareholders, is not subject to the Commission's jurisdiction under sections 205 or 206 of the Federal Power Act, and is not subject to the jurisdiction of state public utility commissions. The Bureau of Reclamation has sovereign immunity except to the extent that immunity has been waived by Congress. It believes that proposed LGIA Article 14.2 does not reflect that, as a federal agency, it must comply with the Constitution of the United States and all applicable laws. It states that this includes statutory and regulatory limitations on its ability to submit disputes to arbitration. SoCal PPA requests that Parties have the option of selecting the laws of a state other than the state where the interconnection will occur as the governing law for the LGIA.

Commission Conclusion

616. The Bureau of Reclamation and SoCal PPA argue that public power entities cannot adopt Article 14 without variation. We will not require these entities to adopt provisions that they are legally forbidden to adopt in order to have their reciprocity tariffs approved. As described more fully in the reciprocity discussion,[94] nonjurisdictional entities with safe harbor status for their tariffs may add the Final Rule LGIP and Final Rule LGIA if they wish to continue to have safe harbor protection, but only need to provide services they are "capable" of providing.[95] We will consider the legal restrictions on nonjurisdictional entities when we evaluate their reciprocity compliance filings.

617. *Article 15—Notices*—Proposed LGIA Article 15 contained the addresses at which the Transmission Provider and Interconnection Customer will receive, among other things, notices, bills and payments. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

618. *Article 16—Force Majeure*—A Force Majeure clause excuses performance under a contract due to an event beyond a Party's control. Article 16 of the NOPR LGIA proposed to adopt the Force Majeure language of the OATT. It defined Force Majeure events as: "[A]ny act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm, or flood, explosion, breakage or accident to machinery or equipment, any curtailment order, regulation or restriction imposed by governmental military or lawfully established civilian authorities, or any other cause beyond a Party's control * * *." The NOPR provision would have required the Parties "to make all Reasonable Efforts" to comply with their obligations and resolve the Force Majeure condition.

Comments

619. Several commenters ask that the Commission establish a list of non-Force Majeure events.[96] More specifically, some commenters believe that Article 16 should exclude economic hardship from the definition of Force Majeure,[97] while the Coalition for Contract Terms and PSEG comment that the Commission should not treat "removable or remediable causes" as Force Majeure.

620. Some commenters request that the Commission establish a formal notice requirement that Parties must follow when claiming Force Majeure.[98] NYTO asks the Commission to require the Party claiming Force Majeure to notify those affected of what steps the

[94] See Part II.C.7 (OATT Reciprocity Requirements Applied to the Final Rule LGIP and Final Rule LGIA).

[95] Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,286.

[96] *E.g.*, The Coalition for Contract Terms, Monongahela Power, PJMTO, and PSEG.

[97] *E.g.*, The Coalition for Contract Terms, Entergy, Mirant, PJMTO, and PSEG.

[98] *E.g.*, The Coalition for Contract Terms, Dominion Resources, Mirant, Monongahela Power, and Progress Energy.

Party is taking to remedy the Force Majeure condition. Dominion Resources and Progress Energy request that the Commission clarify the obligations and responsibilities of each Party during a Force Majeure occurrence. Specifically, they ask the Commission to clarify how a Party invokes the Force Majeure provision.

621. A number of commenters ask the Commission to clarify that the Party claiming Force Majeure must return to complying with the LGIA as soon as the Force Majeure event ends and that the other Party's obligation to pay for services rendered is not suspended during the Force Majeure event.[99]

622. PacifiCorp argues that the Force Majeure clause should cover acts of negligence or intentional wrongdoing by someone other than the claimant, while MidAmerican requests the opposite. Cinergy comments that the NOPR does not define curtailment, and is concerned that this term might unnecessarily broaden the definition of Force Majeure.

Commission Conclusion

623. We agree that the contracting Parties would benefit from greater specificity in the Force Majeure provision, so the Final Rule LGIA sets forth the procedural obligations and responsibilities of the Parties during a Force Majeure event. We adopt a requirement that the Party experiencing a Force Majeure event formally notify the other Party and that it keep the other Party informed about its attempt to remedy the situation. A Party shall exercise due diligence to remove the disability with reasonable dispatch, and it will resume its duties under the LGIA as soon as reasonably possible. For instance, a fire that triggers a Force Majeure claim may be put out within hours, but it may take the Party days or weeks to resume normal operation. The Party would not be in Default of its obligations during that time. The Final rule article also clarifies that the obligation to pay money when due is not suspended by reason of Force Majeure.

624. We agree that it would be useful to identify economic hardship as a non-Force Majeure event. Economic hardship is not considered an event outside the control of the Party. However, it is unnecessary to specify that a "removable or remediable" cause does not qualify as Force Majeure event. Final Rule Article 16 defines a Force Majeure event as one that is "beyond a Party's control."

[99] *E.g.*, The Coalition for Contract Terms, Exelon, PSEG, and PJMTO.

625. NOPR Article 16.1 proposed to except from the list of Force Majeure events acts of "negligence or intentional wrongdoing." We clarify in the Final Rule LGIA that acts of negligence or intentional wrongdoing committed by an entity other than the Party claiming Force Majeure would qualify for Force Majeure protection. This is an event beyond a Party's reasonable control.

626. With respect to Cinergy's comments regarding use of the term "curtailment," we conclude that while the curtailments imposed by governmental military or lawfully established civilian authorities are considered Force Majeure events under Section 10.1 of the OATT, it is an inappropriate Force Majeure event in the Final Rule LGIA. Curtailments to transmission service should not serve as the cause for excusing performance under an interconnection contract. As a result, the Commission omits curtailment from the definition of Force Majeure in the Final Rule LGIA.

627. *Article 17—Default*—Proposed LGIA Article 17 defined Default as the failure of either Party to perform any obligation in the time or manner provided in this LGIA. No Default would exist as a result of Force Majeure or an act or omission of the other Party. Article 17 also described notice and cure procedures: the defaulting Party would have 30 Calendar Days from receipt of a Default notice to cure the Default; or, if the Default cannot be cured within 30 Calendar Days, the defaulting Party must begin the cure within 30 Calendar Days and must complete the cure within 90 Calendar Days. NOPR Article 17.1.2 provided the non-defaulting Party with the right to terminate the LGIA and recover damages if a Default is not cured, or is not capable of being cured, within the time provided in Article 17.1.1.

Comments

628. Calpine is concerned that not all Defaults are capable of being cured within 90 Calendar Days, especially if they involve the purchase, modification or installation of equipment. It therefore argues that it is sufficient to require that the cure begin in 30 Calendar Days, and that the defaulting Party "continuously and diligently complete such cure," as required under Article 17.1.1.

Commission Conclusion

629. The Commission declines to adopt Calpine's proposed change. The non-defaulting Party needs to be protected from lengthy Defaults by having the right to terminate, even if the Default cannot be cured within 90 Calendar Days through diligent action by the defaulting Party. The LGIA does not prevent the Parties from agreeing to an extension of the time permitted to cure a Default. Calpine's proposal would provide the non-defaulting Party with too little protection.

630. *Article 18—Indemnity*—Indemnification is defined as compensating another for a loss suffered due to a third party's act or Default.[100] In the NOPR, we proposed that the LGIA incorporate the indemnity provision currently found in the OATT. Thus, the indemnification provision in NOPR LGIA Section 18.1 would indemnify the Transmission Provider and Interconnection Customer for legal costs due to claims by third persons arising from performance of the Transmission Provider's or Interconnection Customer's obligations under the LGIA on behalf of the other contracting Party, and would not explicitly allow indemnification for disputes arising over enforcement of this provision. The Commission sought comments on this approach and the relative merits of the alternative provisions in the Consensus LGIA and ERCOT interconnection agreement. The Consensus LGIA does not extend indemnity protection to cases of ordinary negligence or willful misconduct, and the ERCOT provision does not extend indemnity protection to cases of gross negligence or intentional wrongdoing. Additionally, the Consensus LGIA, unlike the ERCOT interconnection agreement, sets forth detailed procedures for pursuing an indemnity claim and makes the recovery of legal costs available as part of an indemnity claim.

Comments

631. Commenters generally support the inclusion of an indemnification provision, but ask that the Final Rule cover other charges, such as attorneys' fees, and explain the process for invoking this protection.[101] Several commenters, including Duke Energy, Monongahela Power, PacifiCorp, and Sempra, point out a typographical error that would have excepted negligence or intentional wrongdoing by the indemnifying Party rather than the indemnified Party. Some commenters recommend extending the protection to ordinary negligence by the Transmission Provider, but denying

[100] Black's Law Dictionary 772 (7th ed. 1999).

[101] *E.g.*, Central Maine, Dominion Resources, Exelon, Monongahela Power, NYTO, and Progress Energy.

protection for gross negligence.[102] NYTO and Cinergy request that the provision cover an Interconnection Customer's performance of construction activities. PSEG requests that the provision be revised to offer specific limitations on the damages provision and a provision limiting liability arising from an emergency. El Paso requests that the Final rule specifically indemnify the Transmission Provider from penalties incurred due to the actions or inactions of the Interconnection Customer.

632. PJMTO argues that the OATT provision does not contain enough specific provisions and inadequately constrains the potential financial risk to each Party. Specifically, it argues that the provision should limit damages and set forth the proper standard for assessing liability (*i.e.*, gross negligence and willful misconduct). It also expresses concern that lending institutions would shy away from investing in new generation without liability limits.

633. Southern proposes to require that each Party indemnify and hold the other Party harmless from any liability resulting from activities on the indemnifying Party's own side of the Point of Change of Ownership, except in cases of gross negligence or intentional misconduct. Each Party should also indemnify the other Party for failure to adhere to operating requirements and Breaches of the LGIA. SoCal PPA notes that it applies a more stringent "willful action" standard. It warns that if the Commission retains the proposed standard, a Transmission Owner will have to procure insurance to cover this exposure, for which the Interconnection Customer should pay.

634. NYTO takes issue with the provision's bilateral effect, arguing that a Transmission Owner should not have to indemnify an Interconnection Customer, since the Interconnection Customer requests interconnection for its own benefit. Similarly, NYISO argues that the provision should protect the active Parties to an agreement, here the Transmission Owner or ISO, but not the Interconnection Customer.

635. Salt River Project notes that it is unclear whether the Commission intends to preempt the appropriate tribunal's consideration of whether liability should attach for injuries to third parties.[103] It also argues that compliance with an Interconnection Customer's request should not be required if it will result in violation of statutory restrictions, bond covenants, creditor agreements or private use restrictions.

Commission Conclusion

636. We are amending the proposed indemnity standard to match the customary legal standard of conduct and better address the potential for liability. Because risk exposure can increase interconnection costs, we are revising the indemnity standard to provide protection for acts of ordinary negligence, but not for acts of gross negligence or intentional wrongdoing. Similarly, commenters have convinced us that interconnection presents a greater risk of liability than exists for the provision of transmission service and that, therefore, the OATT indemnity provision is not suitable in the interconnection context. While several commenters request a dollar limit on liability, we conclude that the tightened standards serve as an acceptable limit on liability and that a monetary limitation on damages is not necessary to adequately protect the Parties.

637. Because construction of Interconnection Facilities may expose both a Transmission Provider and an Interconnection Customer to liability for acts taken on the other Party's behalf, we are retaining the bilateral nature of the provision. In response to the concern of some commenters, the indemnity provision of the Final Rule also describes the process for pursuing and securing indemnity from claims in more detail. Additionally, the Final Rule LGIA gives an indemnified Party the right to collect the legal costs of defending an indemnification claim if the indemnifying Party fails to adequately defend the claim on its own. We also adopt El Paso's proposal that indemnification be available because of action or inaction by the Interconnection Customer, and modify the provision accordingly.

638. In response to NYTO's request that the provision cover an Interconnection Customer's construction activities, the Final Rule provision covers construction activities as well as all other activities performed on behalf of the other Party. Where an Interconnection Customer constructs the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades under the Option to Build in Final Rule LGIA Article 5.1, a Transmission Provider will be protected by the indemnification clause that appears in that article. Indemnification applies to all work, regardless of the side of the Point of Interconnection on which the work occurs.

639. With regard to cost allocation, we clarify that each Party is responsible for paying its own insurance. This is equitable and helps keep the costs of interconnection low, which should encourage the construction of new generation resources. Additionally, we are eliminating indemnification for gross negligence or intentional wrongdoing, which will also reduce the Parties' risk exposure and cost of insurance.

640. It is not our intent to preempt the "appropriate tribunal's" assignment of liability for injuries to third parties, as proposed by Salt River Project. The indemnification provision is a common contractual risk-sharing provision and does not strip any court or other tribunal of jurisdiction. To the extent that this provision would cause a specific Transmission Provider to violate statutory or other restrictions, the issue should be raised on compliance in a filing explaining the special circumstances.

641. *Article 19—Assignment*—Proposed LGIA Article 19 provided the conditions for assigning the LGIA to another entity. It stated that any assignment under the LGIA shall not relieve a Party of its obligations, nor shall a Party's obligations be expanded.

642. *Article 19.1—Assignment*—Article 19.1 of the NOPR LGIA stated that written consent ordinarily would be required to assign the LGIA, but assignment may be secured without consent if the assignee is an Affiliate that meets certain qualifications. Article 19 also provided that no consent would be required if an Interconnection Customer assigns the LGIA for collateral security purposes to aid in financing.

Comments

643. The Bureau of Reclamation argues that there are limitations on its ability to comply with Article 19.1. It does not typically allow assignments without approval by both entities and assurance that assigns and successors are bound by the original terms of the interconnection agreement. It states that there are standard articles that it would be required to include that are not contained in the NOPR, such as "Officials Not to Benefit," "Use of Convict Labor," "Prompt Payment Provisions," and "Tort Claims."

Commission Conclusion

644. The Bureau of Reclamation's concerns are addressed in the reciprocity discussion at Article 14.1 (Regulatory Requirements) and Article

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[102] *E.g.*, Central Maine, the Coalition for Contract Terms, Midwest ISO TO, PSEG, Salt River Project, and Southern.

[103] *Citing* Avista Corp., 96 FERC ¶ 61,058 at 61,181 (2002).

14.2 (Governing Law and Applicable Tariffs).

645. *Article 20—Severability*—Article 20 of the NOPR LGIA explained that if a court or Governmental Authority determines that any provision of the LGIA is invalid, void, or unenforceable, such determination would not invalidate any other provision in the LGIA. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule LGIA as proposed.

646. *Article 21—Comparability*—Article 21 of the NOPR LGIA would have required that the Parties comply with all applicable comparability requirements and code of conduct laws, rules and regulations. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule LGIA as proposed.

647. *Article 22—Confidentiality*—Article 22 of the NOPR LGIA described what constitutes Confidential Information and the protection proposed for such information when shared between Parties. It set forth proposed procedures for the release of Confidential Information and guidelines regarding how Confidential Information should be treated when it is subject to a request from the Commission as part of an investigation. The information of both Parties is protected by this article as long as the information is identified as Confidential Information in accordance with the article.

Comments

648. Cal ISO argues that an RTO or ISO should have access to operational, performance and maintenance data.

649. The Bureau of Reclamation argues that it may not be able to conform to the proposed confidentiality provisions because it must adhere to the Freedom of Information Act (FOIA) [104] when addressing confidentiality. It further explains that FOIA requires federal agencies to release most documents in their possession upon request, except to the extent their contents meet certain exceptions. The Bureau of Reclamation also notes that Article 22 should be revised to reflect security concerns raised by the release of information.

Commission Conclusion

650. In the Final Rule, the Commission adopts NOPR Article 22, with minor modifications, as described below.

651. In response to Cal ISO, the Final Rule allows an RTO or ISO to have access to certain data. Final Rule Article 22.1.11 permits a Transmission Provider to make available information "necessary to fulfill its obligations * * * as a transmission service provider or a Control Area operator including disclosing the Confidential Information to the RTO/ISO." A Transmission Provider that is obliged to disclose information to an RTO or ISO must notify the other Party in writing, assert confidentiality, and cooperate in seeking to protect the Confidential Information from public disclosure "by confidentiality agreement, protective order or other reasonable measures." Thus a Transmission Provider may make available any required operational, performance or maintenance data as long as it maintains the confidentiality of the requested Confidential Information.

652. Regarding the Bureau of Reclamation's argument about its obligations under FOIA, the Commission recognizes that Parties may be subject to statutory or regulatory information restrictions, some of which may address security concerns. If state or federal laws indeed conflict with the Final Rule's confidentiality and information sharing provisions, the Commission expects that public utilities will make conforming changes to these provisions in their compliance filings and explain the statutory basis for such changes. This also applies to non-public utilities that plan to amend their safe harbor tariffs with a conforming Final Rule LGIP and Final Rule LGIA.

653. The Commission is also making several minor changes to NOPR LGIA Article 22.1.10 that addresses disclosure to the Commission or its staff. A Party must provide requested information to the Commission or its staff, even when the Party otherwise would be required by the LGIA to maintain this information in confidence. The Party receiving the request must ask the Commission to treat this information as confidential and non-public, consistent with Section 388.112 of the Commission's Regulations.[105] A Party must notify the other Party when it learns that the Commission has received a request that such information be made public pursuant to Section 388.112. Commission policy prohibits a contracting Party from revealing to a counter-Party that it has received a request for information from the Commission, when such request is made pursuant to an investigation or otherwise.[106] The Commission likewise prohibits a Party from notifying the other Party prior to the release of the Confidential Information to the Commission or its staff.[107]

654. The Commission is also revising Article 22.1.10 in the Final Rule LGIA to clarify that the Party receiving the request from the Commission or its staff will not contact the other Party before releasing the Confidential Information. In addition, because requests for information may be made under the investigation rules in Section 1b.20 of the Commission's Regulations, the Final Rule article includes this reference.

655. *Article 23—Environmental Releases*—Proposed LGIA Article 23 described the procedures that would be required for notifying the other Party of the release or remediation of Hazardous Substances. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

656. *Article 24—Information Requirements*—Proposed LGIA Article 24 described the proposed requirements for sharing information regarding the electrical characteristics of the Parties' respective facilities, including monthly status reports on construction and installation of the Transmission Provider's Interconnection Facilities and Network Upgrades.

657. *Article 24.4—Information Supplementation*—Proposed LGIA Article 24.4 required the Parties, before the Commercial Operation Date of the Interconnection Customer's Generating Facility, to provide either updated test and other technical information or written confirmation that the new technical data and the originally submitted data are consistent. It also describes the types of voltage tests that would be conducted by the Interconnection Customer and the type of recordings it is required to provide to the Transmission Provider. It provides that when there are multiple units at a Generating Facility, the Interconnection Customer would be required to provide recordings for only one generating unit if the other units have identical design and response characteristics.

Comments

658. NERC recommends that Article 24.4 be revised to require that tests conducted on the Generating Facility be consistent with Good Utility Practice. It also recommends requiring the Interconnection Customer to provide the Generating Facility's characteristics based on validated test recordings, as opposed to raw test data. It asks that the

[104] 5 U.S.C. 552(a) (2000).

[105] 18 CFR 388.112 (2003).

[106] American Electric Power Service Corp., 99 FERC ¶ 61,312 at PP 22–24 (2002).

[107] *Id.*

Commission not permit the test results for one generating unit to be allowed to represent the characteristics of all generating units, if there is more than one unit at the Generating Facility with the same design characteristics. NERC believes that it is necessary to verify modeling characteristics of each generating unit for system planning purposes and to verify the operational capabilities of each generating unit for operations purposes. NERC states that the electrical characteristics of each Generating Facility are unique.

Commission Conclusion

659. We concur with NERC's position and adopts its recommended revisions.

660. *Article 25—Information Access and Audit Rights*—Proposed LGIA Article 25 required that each Party make information available to the other Party necessary to verify costs for which the other Party is responsible under this LGIA and to carry out its obligations and responsibilities under the LGIA. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

661. *Article 26—Subcontractors*—Proposed LGIA Article 26 provided that the Parties would be able to use subcontractors to perform obligations under the LGIA if the subcontractors comply with the applicable terms and conditions of the LGIA and each Party remains liable to the other for the subcontractor's performance. The hiring Party would retain all of its obligations under this article. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

662. *Article 27—Disputes*—Proposed LGIA Article 27 explained the Dispute Resolution and arbitration procedures that would apply to the LGIA. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed with one change to emphasize that Parties should consider using informal dispute resolution as well as more formal options.

663. *Article 28—Representations, Warranties and Covenants*—Proposed LGIA Article 28 would have required that each Party be organized and qualified to do business in the relevant jurisdiction. Each Party would be required to have the authority to enter into this LGIA, and performance of its duties would not conflict with organizational or formation documents. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

664. *Article 29—Joint Operating Committee* (in the NOPR: Operating Committee)—Proposed LGIA Article 29 provided that the Transmission Provider shall set up: (1) An Operating Committee made up of a member from the Interconnection Customer and a member from the Transmission Provider, and (2) a Joint Operating Committee made up of members of all of its Operating Committees, in order to coordinate operating and technical considerations of Interconnection Service. The Operating Committee would meet when necessary, but not less than once each calendar year. The duties of the Operating Committee would include, among other things, establishing and maintaining control and operating procedures, data requirements and operating record requirements, reviewing outage forecasts, and coordinating outage schedules.

Comments

665. Avista and FirstEnergy oppose this requirement as unduly burdensome and unnecessary because it will impose additional costs on them. Moreover, some of the tasks envisioned for the Operating Committee are being performed either by NERC or an Applicable Reliability Council. For example, Avista argues that NERC is responsible for establishing standards for operating and control procedures for generators. Dynegy, on the other hand, would keep the Operating Committee and proposes some minor changes to the proposed language of this provision.

666. PJM and Cal ISO argue that ISOs should be exempt from this requirement because they already perform the tasks envisioned for Operating Committee in the normal course of their business.

Commission Conclusion

667. The Final Rule LGIA eliminates the requirement that the Transmission Provider constitute an Operating Committee for each Interconnection Customer. However, we are requiring a Joint Operating Committee because it provides Interconnection Customers and Transmission Providers a forum in which to discuss and coordinate operating and technical considerations of Interconnection Service. We are revising Final Rule LGIA to eliminate tasks that are already being performed by NERC, thereby responding to Avista's concern.

668. Finally, we agree with PJM and Cal ISO's proposal that the Final Rule article exempt an RTO or ISO from this requirement because an RTO or ISO performs Joint Operating Committee-type functions in their normal course of business.

669. *Article 30—Miscellaneous*—Proposed LGIA Article 30 addressed matters such as rules of interpretation, a prohibition on third party beneficiaries, and the right to amend the LGIA by mutual agreement. No significant comments were submitted on this article. Accordingly, the Commission adopts this article in the Final Rule as proposed.

670. *Article 30.11—Reservation of Rights*—Proposed Article 30.11 would have reserved to each Party their rights to unilaterally seek modification to the LGIA pursuant to sections 205 and 206 of the FPA, except as restricted by the other provisions of the executed LGIA.

Comments

671. Dynegy and Mirant note that this clause is redundant because another Reservation of Rights provision appears in Proposed Article 2.7.

Commission Conclusion

672. The Commission deletes proposed Article 2.7, and modifies proposed Article 30.11 in this Final Rule. As proposed, Article 30.11 contains a redundancy. The Commission deletes the second paragraph of this Article, because it repeats the reservation of rights set forth in the first paragraph of the Article.

673. *Appendices*—The NOPR LGIA contained appendices for Interconnection Facilities and Network Upgrades, time schedule, interconnection details, standard LGIA, security arrangement details, Commercial Operation Date, and interconnection guidelines. The Commission adopts these appendices in the Final Rule LGIA, with the exception of Appendix G (Interconnection Guidelines) since the Final Rule LGIA captures the provisions of that Appendix elsewhere.

C. Other Significant Policy Issues

674. A number of issues such as interconnection pricing policy, permitted variations in the terms of the Final Rule for independent transmission entities, and legal issues such as consequential damages and liquidated damages transcend individual sections in the Final Rule LGIP or articles in the Final Rule LGIA. Accordingly, they are addressed in the individual discussions that follow.

1. Interconnection Pricing Policy

675. In the NOPR, the Commission proposed to adopt its existing interconnection pricing policy for a

Transmission Provider that is not independent of market participants, and invited comments on whether it should depart from this policy for a Transmission Provider that is independent.

676. Since the NOPR was written to reflect the Commission's current pricing policy, NOPR LGIA Article 11 proposed that the Interconnection Customer be solely responsible for the costs of Interconnection Facilities, which are defined as all facilities and equipment between the Generating Facility and the Point of Interconnection with the Transmission System. Network Upgrades, which are defined as all facilities and equipment constructed at or beyond the Point of Interconnection for the purpose of accommodating the new Generating Facility,[108] would be funded initially by the Interconnection Customer unless the Transmission Provider elects to fund them. The Interconnection Customer would then be entitled to a cash equivalent refund (*i.e.*, credit) equal to the total amount paid for the Network Upgrades, including any tax gross-up or other tax-related payments. The refund would be paid to the Interconnection Customer on a dollar-for-dollar basis, as credits against the Interconnection Customer's payments for transmission services, with the full amount to be refunded, with interest calculated in accordance with 18 CFR 35.19a(a)(2)(ii), within five years of the date the Network Upgrades are placed in service, so long as the Transmission Provider continues to receive payments for transmission service with respect to the Generating Facility during this period. The NOPR proposed that the Interconnection Customer may assign its refund rights to any person.

677. Also, in the NOPR, the Commission asked for comments on appropriate interconnection pricing consistent with the use of the locational marginal pricing methodology. This method was proposed in the Standard Market Design proceeding that the Commission had previously announced.[109] The Commission noted that in a region that uses locational pricing, the RTO or ISO usually assigns to the Interconnection Customer the cost of any new network facilities that would not be in its transmission expansion plan but for the interconnecting Generating Facility. The Interconnection Customer then typically receives transmission rights in return for the capacity that is created. The Commission explained that this pricing method has been allowed only in regions where the Transmission Provider is independent of market participants, because certain aspects of this method can be subjective. These subjective aspects include the determination of congestion prices, rules for deciding which Interconnection Customer in the queue should be responsible for which facilities, the cost of the facilities, and the assumptions underlying the power flow analysis needed for system impact and facilities studies. The Commission noted that a Transmission Provider that is not an independent entity would have the ability and the incentive to exploit this subjectivity to its own or its affiliates advantage if it is able to allocate the costs of Network Upgrades between the Interconnection Customer and other transmission customers, where the Transmission Provider may be the principal other customer. The Commission invited comments on whether it should accept an approach that departs from the current Commission policy of providing transmission credits, and stated its willingness to consider alternative proposals as long as the cost causation determinations are made on an objective and non-discriminatory basis by an independent entity such as an RTO.

678. The Commission has traditionally favored a "rolled-in" transmission pricing policy of the type that formed the basis for the pricing proposal in the Interconnection NOPR. However, such a policy may limit economic expansions that would remove congestion and allow customers to reach more distant power supplies. This may occur at least in part because state siting authorities may have little interest in siting a transmission facility that benefits mainly a particular Interconnection Customer or customers in another state if doing so would require the retail sales customers on the constructing public utility's system to pay for the new facilities.

679. The Standard Market Design NOPR proposed that a policy of participant funding, where those who benefit from a particular project pay for it, may help to solve this problem. The Commission then reiterated its concern that certain functions that the Transmission Provider must perform to implement participant funding can be subjective. Also in this docket, the Commission encouraged the formation of Regional State Committees, which would allow states to work together to identify beneficiaries of expansion projects and make recommendations on pricing proposals and cost recovery that may include rolling in, assignment to beneficiaries, or some combination of the two.

680. Finally, the Commission also addressed in the NOPR the question of the appropriate rate treatment for the cost of Interconnection Facilities that the Transmission Provider constructs for its own Generating Facilities. The Commission noted that, in *Southern Company Services, Inc. (Southern)*, the company proposed to continue to treat the cost of Interconnection Facilities for its own Generating Facilities as part of the network while directly assigning the cost of the same type of facilities to its competitors' Generating Facilities. Southern raised the issue of how to ensure consistency between interconnection and transmission pricing. Recognizing the need to address this issue on a generic basis, the Commission made *Southern* subject to the outcome of this rulemaking. The Commission proposed in the NOPR to require all transmission rates to be designed in a manner that is consistent with whatever interconnection pricing policy is approved in the Final Rule. Thus, the Commission proposed that, to the extent its current interconnection pricing policy is adopted, each Transmission Provider must remove from its transmission rates the costs of all Interconnection Facilities, not just generator step-up transformers, constructed for the Transmission Provider's own Generating Facilities. The Commission proposed that the costs of these sole use facilities be directly assigned as generation-related costs. The Commission explained that this would be consistent with its current pricing of generator step-up transformers, and it would send a more accurate price signal by assigning the cost of Interconnection Facilities to the generation customers using them.

Comments

681. A large number of commenters argue that the Commission's proposed crediting policy provides an undesirable subsidy to the Interconnection Customer and thereby creates incentives for the Interconnection Customer to make poor siting and investment decisions. Many commenters express concerns about the relationship between this policy and the Commission's Standard Market Design

[108] The proposed definition also states that the "facilities and equipment are used by and benefit all users of the transmission grid, without distinction or regard as to the purpose of the upgrade (*e.g.*, to relieve overloads, to remedy stability and short circuit problems, to maintain reliability, or to provide protection and service restoration) including the fact that these facilities and equipment are being replaced or upgraded to accommodate the interconnection request."

[109] Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 FR 55542 (Aug. 29, 2002), FERC Stats. & Regs. ¶ 32,563 (2002).

proposal, and several provide recommendations on how the two rules could be made compatible. In addition, many commenters object to specific features of the proposed crediting policy. For example, several transmission owners cite problems (*e.g.*, regulatory lag, retail rate freezes) related to their ability to recover in transmission rates the costs of interconnections, including the credits that they pay to an Interconnection Customer. Many commenters object to the five year "sunset" date for refunding all amounts paid by the Interconnection Customer. They are concerned that transmission customers could be left with the financial burden and no offsetting benefits if the Interconnection Customer's Generating Facility ceases to operate. Some commenters argue that the Interconnection Customer's receipt of credits should not be limited to those occasions when the Interconnection Customer takes transmission service with respect to the output of the Generating Facility. Others argue that the payment of interest on unpaid credits is not appropriate or that the rate prescribed is either too high or too low.

682. The following is a summary of the comments received, organized according to the issues addressed. After each issue summary, the Commission presents its conclusions for that issue.[110]

Concerns About the Fairness and Efficiency of the Commission's Crediting Policy

683. Transmission Owners, such as Entergy, and others argue that the Commission's current crediting policy requires all transmission customers to subsidize the cost of facilities that would be unnecessary "but for" a particular Interconnection Customer's Generating Facility and that provide no benefits to the other transmission customers on the Transmission System. They also argue that this policy encourages inefficient siting decisions because the Interconnection Customer has no incentive to consider the full impact of its decision regarding where to locate its Generating Facility on the Transmission System. They claim that, when selecting a site, an Interconnection Customer will pay more attention to fuel supply and water availability than to its impact on the Transmission System.

684. The Alabama PSC argues that a pricing policy that spreads the costs of all interconnection-related facilities situated "at and beyond" the Point of Interconnection to all transmission customers results in a subsidy to the Interconnection Customer, causes inefficiencies in siting, and is inconsistent with longstanding cost causation principles. The Coalition for Pricing claims that the policy of assigning cost responsibility simply based on the physical location of the facilities (*i.e.*, relative to the Point of Interconnection) is contrary to the Commission's "system-wide benefit test" and violates the Energy Policy Act of 1992. It argues that certain facilities installed at and beyond the Point of Interconnection may not provide a system-wide benefit and, as such, should be directly assigned to the Interconnection Customer. Entergy argues that grave consequences can be avoided through the interim use of the system-wide benefit test, and the assignment of costs to those who benefit, prior to the establishment of participant funded expansion regimes in RTOs.

685. PSEG notes that in PJM the cost of any Network Upgrades that would not be required "but for" the interconnection of a Generating Facility to the Transmission System is assigned to the Interconnection Customer, and the Interconnection Customer receives financial transmission rights associated with the Network Upgrades that it pays for. PJM and others argue that an established RTO or ISO should be allowed to continue to use this policy, as the NOPR proposes. PJM states that its experience under its interconnection rules confirms that such pricing promotes economic efficiency including efficient use of the Transmission System. However, KeySpan cautions that the "but for" test can become meaningless if a fictitious transmission planning study can be used to identify the Transmission System needs required to meet load growth. It states that the independence of the Transmission Provider completing the study is the key to this process.

686. The Maine PUC contends that the Commission's reasoning for refusing to socialize system expansion costs in the natural gas pipeline context applies with equal force in the generator interconnection context. It states that, just as subsidization of gas pipeline expansion costs could lead to non-optimal or unnecessary capacity expansion, so too will subsidization of Network Upgrades associated with new generation projects. The Maine PUC also states that, just as rolled-in pricing gives an existing gas pipeline an unfair economic advantage over potential new entrants, subsidization of Network Upgrades for Generating Facility interconnections could interfere with price signals for alternatives to traditional congestion solutions, such as load response from customers or merchant transmission.

687. Many other commenters, including state commissions, are especially concerned about an Interconnection Customer that intends to sell its output off-system or out of state. These commenters claim that the current policy requires transmission customers of the local Transmission Provider to subsidize the cost of Network Upgrades that would, in the latter case, provide them with no benefits. NRECA-APPA recommends that, without a commitment by the Interconnection Customer to serve power customers within the Transmission Provider's footprint, the Commission should require the Interconnection Customer to pay for the Network Upgrades. Some commenters, such as the Midwest ISO, further claim that the law in some states may not allow Network Upgrade costs to be rolled into the base rates of the local customers that are not the beneficiaries of the upgrades.

688. Other commenters, including EPSA, voice strong support for the crediting approach. EPSA states that the crediting mechanism works well at this time and should not be adjusted until the Commission has put in place a specific market design that would require such an adjustment. American Transmission and SoCal Edison also support the crediting approach. Indeed, American Transmission supports the crediting approach even if the Transmission Provider is an independent entity. American Transmission states that it discounts the argument advanced by critics of this policy that the Interconnection Customer must receive stronger price signals through direct assignment of the costs of Network Upgrades to bring about efficient location of new generation. It believes that requiring participant funding for Network Upgrades is akin to moving backward to the vertically integrated industry structure that existed prior to open access.

689. Cleco supports participant funding that would eliminate the need for the costs of Network Upgrades being refunded through transmission crediting. In the absence of such an approach, Cleco recommends that an Interconnection Customer should be credited for only half of the transmission service it has subscribed to for the first five years. Under Cleco's

[110] Issues regarding the pricing of Network Resource Interconnection Service are addressed in part II.C.2 (Interconnection Products and Scope of Service).

proposal, there would be no interest paid, and after five years no additional payment to the Interconnection Customer would be made. Western also recommends that the Commission adopt a method to recover the costs of the Network Upgrades from the benefitting entities. It believes that current transmission customers should be held harmless from the cost impact of Network Upgrades that is not mitigated by increased transmission usage and associated revenues.

690. The North Carolina Commission recommends that the Commission modify its proposed rule to explicitly adopt the "but for" pricing policy for interconnection and transmission service in those states that have not yet unbundled retail electric service or implemented retail competition.

691. Several commenters, including National Grid, propose that the pricing issue can be resolved by analogy to the process of cost allocation for public roads. According to this analogy, the Interconnection Customer will have virtually sole use of the leads to the substation, just like the homeowner has sole use of his or her driveway. Thus, the cost of Interconnection Facilities, which are for the sole use of the Interconnection Customer, should be the responsibility of the Interconnection Customer. Next, the substation facilities needed to connect the sole-use facilities of the Interconnection Customer to the general delivery system are shared-use facilities, much like a local street. National Grid states that the cost of such facilities could be allocated partially to load and partially to the new Interconnection Customer. It explains that Network Upgrades that are remote from the Generating Facility typically allow movement of aggregate generation to aggregate load. National Grid contends that the benefits and use of such Network Upgrades are spread much more broadly and, like the highway system, could be rolled in and allocated to aggregate load within the market, or throughout an RTO if one exists. Finally, it argues that it may be appropriate to maintain an incremental charge for market-to-market transactions, but only where Network Upgrades in one market are needed by another market.

692. Peabody asserts that the NOPR contains certain provisions that are unjust and unreasonable as applied to large-scale base-load generation projects, especially coal-based projects. It urges the Commission to modify its interconnection pricing policy in such cases to require the Transmission Provider to roll the costs of Network Upgrades into its transmission rate base without requiring the Interconnection Customer to fund the costs in advance.

Commission Conclusion

693. For Transmission Providers that are not independent entities, the Commission will continue to apply its current interconnection pricing policy, with certain revisions that are discussed below.

694. The Commission recognizes that its policy of requiring refunds to be paid to an Interconnection Customer for the cost of Network Upgrades constructed on its behalf is a controversial one. However, the Commission instituted this policy to achieve a number of important goals. First, consistent with the Commission's long-held policy of prohibiting "and" pricing [111] for transmission service, the crediting policy ensures that the Interconnection Customer will not be charged twice for the use of the Transmission System. The Commission determined that it is appropriate for the Interconnection Customer to pay initially the full cost of Interconnection Facilities and Network Upgrades that would not be needed but for the interconnection, but once the Generating Facility commences operation and delivery service begins, it must receive transmission service credits for the cost of the Network Upgrades. This ensures that the Interconnection Customer will not ultimately have to pay both incremental costs and an average embedded cost rate for the use of the Transmission System. Second, the Commission's crediting policy helps to ensure that the Interconnection Customer's interconnection is treated comparably to the interconnections that a non-independent Transmission Provider completes for its own Generating Facilities. The Transmission Provider has traditionally rolled into its transmission rates the cost of Network Upgrades required for its own interconnections, and the Commission's crediting policy ensures that Network Upgrades constructed for others are treated the same way. Finally, the policy is intended to enhance competition in bulk power markets by promoting the construction of new generation, particularly in areas where entry barriers due to unduly discriminatory transmission practices may still be significant. The policy is therefore consistent with the Commission's long-held view that competitive wholesale markets provide the best means by which to meet its statutory responsibility to assure adequate and reliable supplies of electric energy at just and reasonable prices.[112]

695. While the Commission still finds these to be appropriate goals for an interconnection pricing policy, the commenters that object to the Commission's crediting policy make a number of valid points. Most importantly, as many point out, providing transmission service credits to an Interconnection Customer for the cost of Network Upgrades that would not be needed but for the interconnection of the new Generating Facility mutes somewhat the Interconnection Customer's incentive to make an efficient siting decision that takes new transmission costs into account, and it provides the Interconnection Customer with what many view as an improper subsidy, particularly when the Interconnection Customer chooses to sell its output off-system. In this regard, the Commission believes that, under the right circumstances, a well-designed and independently administered participant funding policy for Network Upgrades offers the potential to provide more efficient price signals and a more equitable allocation of costs than the crediting approach. The Commission notes that the transmission pricing policies that the Commission has permitted for an RTO or ISO with locational pricing, in which the Interconnection Customer bears the cost of all facilities and upgrades that would not be needed but for the interconnection of the new Generating Facility and receives valuable transmission rights in return, are acceptable forms of participant funding.

696. However, the Commission remains concerned that, when the Transmission Provider is not

[111] When a Transmission Provider must construct Network Upgrades to provide new or expanded transmission service, the Commission generally allows the Transmission Provider to charge the higher of the embedded costs of the Transmission System with expansion costs rolled in, or incremental expansion costs, but not the sum of the two. Hence, "and" pricing is not permitted.

[112] The Commission's crediting policy has also withstood judicial review. In an opinion issued February 18, 2003, the DC Circuit Court of Appeals affirmed Commission orders requiring a Transmission Provider to provide credits to Interconnection Customers for the cost of short-circuit and stability Network Upgrades. *Entergy Services, Inc.* v. *FERC*, 319 F.3d 536 (DC Cir. 2003). The court stated that "[t]he Commission's rationale for crediting network upgrades, based on a less cramped view of what constitutes a 'benefit,' reflects its policy determination that a competitive transmission system, with barriers to entry removed or reduced, is in the public interest." Id. at 543–44. The court concluded that "the Commission has reasonably explained that its crediting pricing policy avoids both gold plating and less favorable price signals such that the enlarged transmission system, which it views as a public good, can function reliably and continue to expand." *Id.* at 544.

independent and has an interest in frustrating rival generators, the implementation of participant funding, including the "but for" pricing approach, creates opportunities for undue discrimination. As the Commission stated in the NOPR, a number of aspects of the "but for" approach are subjective, and a Transmission Provider that is not an independent entity has the ability and the incentive to exploit this subjectivity to its own advantage. For example, such a Transmission Provider has an incentive to find that a disproportionate share of the costs of expansions needed to serve its own power customers is attributable to competing Interconnection Customers. The Commission would find any policy that creates opportunities for such discriminatory behavior to be unacceptable. Furthermore, none of the commenters in this proceeding has convinced the Commission that, in the absence of independence, it is possible to implement a "but for" pricing approach that avoids this inherent subjectivity. Therefore, the Commission continues in this Final Rule its current policy, as modified below, of requiring a Transmission Provider that is not an independent entity to provide transmission credits for the cost of Network Upgrades needed for a Generating Facility interconnection.

697. The Commission notes, however, that the current pricing policy does not explicitly address instances where the Generating Facility interconnects with a Transmission Provider's jurisdictional distribution facility and, as a result, upgrades are needed on the Distribution System to accommodate the interconnection. The Commission clarifies here that, if any such interconnection is jurisdictional, the cost of such upgrades must be directly assigned to the Interconnection Customer. This is because an upgrade to the Distribution System generally does not benefit all transmission customers. Distribution facilities typically deliver electricity to particular localities, and do not serve a bulk delivery service for the entire system as is the case for transmission facilities. Accordingly, it is not appropriate that all transmission customers share the cost of Distribution Upgrades.

698. For a Transmission Provider, such as an RTO or ISO, that is an independent entity, the Commission continues to allow flexibility regarding the interconnection pricing policy that each independent entity chooses to adopt, subject to Commission approval. We invite a Regional State Committee to establish criteria that an independent entity would use to determine which Transmission System upgrades, including those required for generator interconnections, should be participant funded and which should not.

699. The Commission will permit, for a period of transition to the start of RTO or ISO operations, not to exceed a year, participant funding to be used for Network Upgrades for generator interconnections as soon as an independent administrator has been approved by the Commission and the affected states. Allowing participant funding, *i.e.*, direct assignment of the cost of Network Upgrades is reasonable, if an independent administrator performs transmission planning and related cost allocation, as a transitional approach that may be used in anticipation of an RTO or ISO assuming operational control of the regional transmission grid within a year.[113] Based on the comments in this interconnection rulemaking, we find this approach to be appropriate here. Therefore, the Commission adopts this policy in this Final Rule.

700. However, the Commission wishes to emphasize that, by allowing an independent Transmission Provider to adopt a pricing policy, such as the "but for" approach, that differs from the crediting approach that the Commission is requiring for non-independent entities, the Commission is not abandoning the goals that the Commission has established for interconnection pricing, as described above. First, even though the "but for" approach allows the cost of certain Network Upgrades to be assigned to the Interconnection Customer, it is not "and" pricing if, for example, the Interconnection Customer is allowed to receive well-defined capacity rights that are created by the upgrades. For example, PJM, which uses locational pricing, gives Firm Transmission Rights (FTRs) and Capacity Interconnection Rights (CIRs) to the Interconnection Customer in exchange for a "but for" cost payment. These are rights that are created by the Network Upgrades for which the Interconnection Customer pays, and they are well-defined, long-term and tradeable. Moreover, the Commission concludes that, even if the Interconnection Customer (or its power sales customer) is also required to pay an embedded cost-based charge for transmission service, this is not "and" pricing. This is because the Interconnection Customer pays separate charges for separate services. It pays an access charge for transmission service that may involve an obligation to pay congestion charges, and in exchange for its "but for" payment, it receives these well-defined capacity rights, which provide some protection from having to actually pay the congestion charges.

701. Second, when the Transmission Provider is an independent entity, the Commission is much less concerned that all generation owners will not be treated comparably because independence ensures that the Transmission Provider has no incentive to treat Interconnection Customers differently.

702. Third, in this context, "but for" pricing is consistent with the Commission's policy of promoting competitive wholesale markets because it causes the Interconnection Customer to face the same marginal cost price signal that it would face in an efficient, competitive market. This means that, in a competitive market environment, market forces could act freely to achieve the desirable level of entry of new generating capacity.

703. Finally, participant funding of transmission upgrades may provide the pricing framework needed to overcome the reluctance of incumbent Transmission Owners in many parts of the country to build transmission, with the result that badly needed transmission infrastructure could be put in place quickly.

Interconnection Pricing and the Transition to Standard Market Design

704. Several commenters assert that certain proposed Standard Market Design policies, such as locational marginal pricing, congestion revenue rights, transmission expansion pricing, and transmission planning, could affect interconnection pricing, but that the full effect cannot be determined until the Standard Market Design Final Rule is issued. Nevertheless, many of these commenters propose that, until Standard Market Design is implemented, the Commission should continue to require the Interconnection Customer to pay for Network Upgrades in exchange for future transmission service credits. Duke Energy proposes that after Standard Market Design is implemented, the crediting policy could be replaced with one that provides the Interconnection Customer with financial transmission rights in exchange for funding Network Upgrades.

705. Exelon and Sithe recommend that, for the Transmission Provider that is not yet part of an RTO, and for an RTO that has not yet implemented LMP-based congestion pricing, the Commission continue its current policy

[113] *See* Cleco Power LLC, *et al.*, 103 FERC ¶ 61,272 (2003); Southern Company Services, Inc., 103 FERC ¶ 61,279 (2003), *reh'g pending.*

of requiring the Transmission Provider to provide an Interconnection Customer that funds Network Upgrades with credits against future transmission service. As a transition plan, Exelon and Sithe recommend that an Interconnection Customer that is receiving credits when Standard Market Design is implemented be awarded financial transmission rights in an amount based on the Interconnection Customer's remaining credits as a proportion of its total credits. Some commenters, such as Cleco Power and Monongahela Power, emphasize that a Transmission Provider should not be required to provide both transmission credits and congestion rights to the same Interconnection Customer. Mirant believes that the two practices can coexist and that the Interconnection Customer should have the option to elect either transmission credits or the equivalent firm transmission rights as comparable compensation for Network Upgrades.

706. Other commenters believe that attempting to resolve pricing issues in this rulemaking presents significant problems. New York Transmission Owners declares that the "Commission's [Standard Market Design and LMP] policies and this NOPR are regulatory ships traveling in the night on a collision course, each completely unaware of the other's existence." They propose that the Commission limit the interconnection rulemaking to non-price issues. EPSA proposes that the Commission need not resolve in this proceeding what, if any, changes in the crediting mechanism might be necessary to implement Standard Market Design and the formation of RTOs. Calpine submits that the transmission credit policy should not be abandoned in the transition to Standard Market Design. It states that relying on recovery of the costs of Network Upgrades solely through assignment of FTRs under Standard Market Design would ignore the network access aspect of Standard Market Design and would not provide a practical means of recovering all costs of Network Upgrades. Although a change in policy may be appropriate after the Standard Market Design is in place, Calpine recommends that such a change not be made in this proceeding.

Commission Conclusion

707. The timing and content of any Final Rule in the Standard Market Design proceeding will not be determined in this proceeding. In the meantime, it is important to include interconnection pricing rules in this Final Rule, based on the record of this proceeding.

The Inability of a Transmission Owner To Recover the Costs of Network Upgrades

708. A number of Transmission Owners express concern that they may not be able to recover in a timely fashion the costs that they will incur under the proposed pricing policy. Monongahela Power states that a Transmission Owner faces three problems in this regard. First, it notes that a Transmission Owner faces the expense, delay, and uncertainty of a full transmission rate case before the Commission to roll in the costs of system upgrades associated with new generation projects. Second, it claims that even if the Commission grants full cost recovery, costs may be "trapped" by an inability to pass them through to the majority of customers due to a state retail rate freeze. Third, a Transmission Owner may face lost revenues associated with a new generating project once transmission service begins because of the requirement to provide a financial credit to the Interconnection Customer. Monongahela Power asks that the Commission permit a Transmission Owner to make a limited Section 205 filing for the immediate roll in of these costs, and that it work with the States to accommodate the flow-through of these costs to retail customers. At a minimum, both Monongahela Power and Dominion Resources ask that the Commission provide for deferred accounting treatment with assurances of future cost recovery when the Transmission Owner must record a transmission revenue credit with no income to offset it.

Commission Conclusion

709. The Commission concludes that it is not necessary to provide for the Transmission Provider to make a limited Section 205 filing as proposed by Monongahela Power for the immediate roll in of the costs it will incur under the crediting policy. In the ordinary course of business, a public utility frequently incurs costs for which it has no immediate revenue offset, just as it routinely experiences revenue increases that are not accompanied by commensurate increases in costs. When a public utility believes that its revenues are not adequate, it is permitted by Section 205 of the FPA to make a rate filing. The commenters have provided no evidence to convince the Commission that the burden created by its crediting policy is so great that the Commission should change its regulations to permit a limited Section 205 transmission rate filing that addresses only credit-related cost increases, or deferred accounting treatment for transmission credits, as sought by Monongahela Power and Dominion Resources.

Responsibility for Line Outage Costs Resulting From Interconnection

710. The NOPR did not address the allocation of costs that may be incurred when a transmission line must be taken off-line in order to complete an interconnection. In an order issued November 20, 2001,[114] however, the Commission stated that it would consider in this rulemaking the question of who should bear these costs.

711. Commenters express a variety of views on this issue. The Coalition for Pricing states that these costs should be a component of the costs paid by generators for interconnection service under the Final Rule IA. It asserts that any other policy would result in all transmission customers unfairly subsidizing Generating Facility interconnections. The Coalition for Pricing proposes that the Parties to individual interconnection agreements be allowed to agree on the specific line outage costs for which the Interconnection Customer should be responsible. The Coalition for Pricing argues that, since the Parties' agreement would necessarily be filed with the Commission, it would retain its regulatory control over line outage cost allocations. However, Reliant states that the Commission has had a policy of not requiring that the Interconnection Customer pay for outage-related costs, and argues that the Coalition for Pricing has provided no justification for departing from this policy. Reliant recommends rejecting the modifications that the Coalition for Pricing proposes.

712. AEP recommends that the Interconnection Customer be required to reimburse all affected generation owners for outage-related costs that they incur, whether or not such generation owners are affiliated with the Transmission Provider. AEP believes that this can be done in a manner that properly identifies the costs, minimizes the Transmission Provider's discretion, and allows for adequate regulatory scrutiny. It recommends a method of compensation that it claims avoids the exercise of discretion. That is, the Interconnection Customer should replace the energy that would otherwise have been generated by the affected Generating Facility. AEP states that if the Interconnection Customer is unwilling to replace the lost energy, it would be up to the affected generation

[114] American Electric Power Service Corporation, 97 FERC ¶ 61,200 (2001) (*AEP*).

owner to file with the Commission a proposal to recover its costs. Further, AEP believes that the Interconnection Customer, the existing generation owner and the Transmission Provider should be obligated to use Reasonable Efforts to minimize the impact of any outage.

713. ATC states that dividing the costs between the Interconnection Customer and the Transmission Provider may provide the most equitable results. It believes that a reasonable approach might be to allocate up to the full costs of the line outage to the Interconnection Customer so long as the timing is primarily under the Interconnection Customer's control. However, if the Transmission Provider has substantial influence over the timing and engineering aspects of the outage, ATC recommends that all or a large percentage of the new facility costs may be appropriate for rolling into transmission rates.

Commission Conclusion

714. The Final Rule does not permit the Transmission Provider to allocate interconnection-related outage costs to the Interconnection Customer. The Commission recognizes that the Transmission Provider and the owners of other generators may incur costs as a result of having to take a transmission line out of service in order to complete an interconnection. Such costs may include generator shut-down and restart costs, redispatch and purchased power costs, lost opportunity costs on sales not made, costs of power to compensate for additional line losses, and possibly other costs. In prior orders,[115] the Commission has generally rejected, without prejudice, proposals by a Transmission Provider to allocate these costs to the Interconnection Customer. Among other things, the Commission has found that the proposals are vague, leave too much discretion to the Transmission Provider, and do not provide for adequate regulatory oversight by the Commission. For example, in NSTAR, the Commission stated that "determining how much cost responsibility to assign to an interconnecting generator, when other factors also may contribute to the need to redispatch contemporaneously, would be unacceptably arbitrary: for example, higher redispatch costs may be the result of a planned or unplanned outage, maintenance that requires a line to be taken out of service temporarily, or an unexpected shift in load." [116]

[115] *See, e.g., id.*; ISO New England, Inc., 91 FERC ¶ 61,311 (2000).

[116] Cambridge Electric Light Co., *et al.*, (*NSTAR*), 95 FERC ¶ 61,339 (2001).

Furthermore, while the Transmission Provider may be able to propose an objective method for determining its own outage-related costs, estimating the outage-related costs of unaffiliated generation owners could pose a significant problem. The Commission does not believe that AEP's proposal to have the Interconnection Customer replace the energy that would otherwise have been generated by the affected Generating Facility solves this problem in part because the value of the replacement energy may bear no relationship to the actual outage-related costs.

715. As the Commission concluded above, when the Transmission Provider asks the Interconnection Customer to reschedule a planned maintenance outage of the Generating Facility (per Article 9.7—Outages, Interruptions, and Disconnection), the Interconnection Customer should be compensated for only the direct costs that the Interconnection Customer incurs. It should not be compensated, for example, for lost opportunity costs. One reason is that outages of transmission and generation facilities for maintenance and other purposes are a routine part of electric system operations and, in fairness, these costs also should be considered a normal part of doing business. Moreover, the determination of the appropriate level of costs to be allocated involves a process that is inevitably arbitrary and contentious, particularly when the determination is made by a Transmission Provider that is not an independent entity. Therefore, in the Final Rule we are codifying our policy of not allowing interconnection-related outage costs to be allocated to the Interconnection Customer.

Issues Concerning the Five Year Refund Period and the Payment of Interest

716. Many commenters object to the proposal to require the Interconnection Customer to be reimbursed for the costs of Network Upgrades within a five year period. Several also object to the payment of interest on outstanding balances or to the formula for determining the rate of interest.

717. Duke Energy generally supports the provisions as proposed but, to be consistent with the Commission's policy of allowing the Transmission Provider to collect the higher of incremental or embedded costs for transmission service, it recommends elimination of the five year "sunset" provision in Section 11.4.1 of the NOPR LGIA. Cleco is concerned that a Transmission Provider may be liable for payment of refunds after a five year period has elapsed because the Interconnection Customer has not taken enough transmission service to be credited the full amount for upgrades originally paid for. Westconnect RTO submits that arbitrarily setting a five year term is unjustified and unreasonable. It proposes that a more appropriate approach would be to allow unused transmission credits to expire after a set term. However, Mirant argues that once the Network Upgrades are placed in service, every network customer receives some benefit from those facilities. Therefore, it sees no reason to limit the refund to the requirement in proposed LGIA Article 11.4.1 that the Transmission Provider continue to receive payment for transmission service from the Generating Facility.

718. Western states that if it has to return monies to an Interconnection Customer in less time than the service life of an upgrade, rates may have to be increased to ensure the timely repayment of other federal investments. It believes such a rate increase would be inequitable to existing customers. BPA states that the Interconnection Customer should not be entitled to a refund over an arbitrary five year period and argues that other customers should not have to bear the risk that the Interconnection Customer will cease taking transmission service. LADWP states that the five year requirement imposes an undue burden on public power customers. It requests that, if the Commission's generation interconnection pricing policy is applied to a non-jurisdictional transmission owner, that owner should have the flexibility to provide such refunds over the same period that it would use to amortize such facilities if constructed for the benefit of its own customers. WEPCO states that the Commission should recognize that sometimes both the Interconnection Customer and the Transmission Provider may desire a payback period of less than five years. Accordingly, it recommends that the Commission revise Article 11.4.1 of the NOPR LGIA to provide for repayment at such earlier time as the Parties may agree.

719. Mirant argues that, at a minimum, the Commission should require that interest on any Network Upgrades be calculated using the Transmission Provider's most recent Commission-approved rate of return in the Transmission Provider's OATT. For a non-public utility that does not have a rate of return, Mirant proposes that the Commission use the rate of return set forth in the most recent Commission order as a proxy for such entity. Peabody recommends that the Commission modify the proposed LGIA

to provide for a more flexible, incentive-based rate of interest for transmission credits. Also, if a Transmission Provider files for incentive pricing for transmission service, Peabody recommends that it be required to file simultaneously to amend the interest rate in LGIA Article 11.4.1 to match such incentive mechanism. Progress Energy disagrees with the requirement to pay an Interconnection Customer interest, arguing that the Transmission Provider cannot use the funds advanced by the Interconnection Customer for purposes other than constructing the Network Upgrades and that it should not be put in the position of being a bank for the Interconnection Customer. If interest must be paid, Progress Energy proposes using the Federal Fund Commercial Rate or a similar rate to ensure that the payment of interest is not a source of profit for the Interconnection Customer.

Commission Conclusion

720. Regarding the specific rules for the payment of credits, the Commission clarifies that the Interconnection Customer is entitled to a full refund of the payments it makes toward the cost of Network Upgrades within five years after the Commercial Operation Date, as long as the Generating Facility remains in operation through the five year period.[117] During the five year period, credits must be awarded on a dollar-for-dollar basis as payments are made for transmission services. However, the Commission is also permitting the payments to be made on any other basis that is mutually agreeable to the Interconnection Customer and the Transmission Provider. For example, if the Parties agree to a stream of uniform monthly payments designed to fully reimburse the Interconnection Customer over the five year period, that would be acceptable. In addition, as stated in Article 11.3 of the Final Rule LGIA, the Transmission Provider may elect to fund the Network Upgrades itself, with no advance payment by the Interconnection Customer, and thus no need for subsequent credits.

721. With regard to Cleco's concern about the Transmission Provider's liability at the end of the five year crediting period, the Commission clarifies that the Transmission Provider must make a lump-sum payment to the Interconnection Customer for any balance owed to the Interconnection Customer five years after the Interconnection Customer has begun commercial operation.

722. The Commission recognizes that the choice of the length of the repayment period is somewhat arbitrary. However, specifying five years as the maximum repayment period will promote the development of new generation by reducing the Interconnection Customer's risk, thereby facilitating project financing. Contrary to the views of LADWP and others, it would not be appropriate to extend repayment over a period that corresponds to the Transmission Provider's amortization period for similar facilities. As explained above, the Commission's policy for a non-independent Transmission Provider is to roll the costs of interconnection-related Network Upgrades into the Transmission Provider's transmission rate base. However, rather than require immediate roll-in, we have chosen a five year repayment period, in part to provide the Interconnection Customer with an incentive to make good faith requests for Network Upgrades.

723. With regard to the payment of interest on unpaid credits, the Commission adopts the policy proposed in the NOPR. The Commission continues to believe that the Interconnection Customer is entitled to a refund for all of the costs of the Network Upgrades for which it has paid, including a reasonable estimate of the carrying costs that it incurs in making the advance payments. The determination of an interest rate that accurately reflects this carrying cost cannot be reduced to a completely objective calculation. Interest calculated in accordance with 18 CFR § 35.19a(a)(2)(ii) provides a reasonable proxy for this carrying cost, and because it offers an objective calculation, the Commission retains this provision in Article 11.4.1 of the Final Rule LGIA.

Rules Governing the Payment of Credits

724. With regard to the payment of credits, Interconnection Customers generally are in favor of a flexible policy that allows credits to be paid under a wide range of circumstances, while Transmission Providers advocate a policy that places strict limits on when and how an Interconnection Customer may receive credits.

725. For example, Dynegy states that the Final Rule must ensure that the credits do not limit the Interconnection Customer to purchasing the delivery component of transmission service on the Transmission Provider's system with the Interconnection Customer's Generating Facility as the Point of Receipt. Instead, Dynegy believes that the credits should apply to transmission at any location on the Transmission Provider's system. Duke Energy believes that an Interconnection Customer's flexibility in obtaining refunds should be similar to the flexibility a Transmission Customer has to reassign transmission service under the OATT. Accordingly, it proposes to allow credits not only for the charges for transmitting power from the Generating Facility, but also for the charges for transmitting power from an Affiliated Generating Facility. Similarly, Peabody states that the Interconnection Customer should be allowed to receive credits for any transmission service that it purchases on the Transmission Provider's Transmission System. Both Calpine and EPSA offer modified language for Article 11 of the NOPR LGIA that would implement these recommendations. Cal Cogen and the Energy Producers and Users Coalition claims that a term-based credit mechanism (*i.e.*, one where the credits are paid out according to a fixed schedule) is preferable to the NOPR's proposed transmission-based mechanism.

726. Edison Mission states that Articles 2 and 11 of the NOPR LGIA should be modified so that if an Interconnection Customer pays for Network Upgrades but the interconnection agreement is then terminated or the Generating Facility not constructed, the Interconnection Customer nonetheless receives payments for the upgrades it paid for, with the payments coming from other users of the Transmission System.

727. Other commenters propose limiting the availability of credits. Dominion Resources argues that, if Network Upgrades funded by the Interconnection Customer are not used for output from the Generating Facility, a refund for such upgrades is inappropriate. Similarly, the Coalition for Pricing claims that proposed LGIP Section 11.4.2 can be read to suggest that the Interconnection Customer has some right to transmission credits as transmission service is taken anywhere on the Transmission Provider's system. It asks the Commission to clarify that this is not the case. The Alabama PSC argues that providing transmission credits only when transmission service is taken from an Interconnection Customer's Generating Facility would prevent the socialization of upgrade costs that do not benefit the network.

[117] Although Article 11.4.1 of the NOPR LGIA proposed to begin the five year period on the date that the Network Upgrades are placed in service, as the Commission explains below, the Commission concludes that the Interconnection Customer should not be entitled to receive a refund unless the Generating Facility achieves commercial operation. Therefore, the Commission is modifying Article 11.4.1 to specify that the five year period begins with the Generating Facility's Commercial Operation Date.

728. Westconnect RTO and others argue that the Transmission Provider should credit the Interconnection Customer only for the "demand" or "return" component of the otherwise applicable transmission charges, and not apply the credit to such costs as operations and maintenance, administrative and general, taxes, line losses, etc. Also, Westconnect RTO and BPA oppose the proposal in Section 12.3 of the NOPR LGIP that the Interconnection Customer receive transmission credits for expediting costs associated with constructing Network Upgrades out of sequence. TAPS states that the Interconnection Customer should receive a credit against its network transmission service bill based on the capacity of the Generating Facility, not the energy output of the unit. It argues that an energy output-based method of calculating the credit unfairly penalizes network customers and sends the wrong price signal, discouraging the construction of peaking units and the designation of such units as Network Resources.

729. WEPCO states that the Commission must continue to mandate, as proposed in Article 11.4 of the NOPR LGIA, that rights to receive credits are fully assignable. It believes that this is crucial because in many instances the Interconnection Customer is not the transmission customer.

Commission Conclusion

730. The Commission agrees with Dynegy and others that the Interconnection Customer should receive credits for transmission (delivery) service taken anywhere on the Transmission Provider's Transmission System and that credits should not be limited to service taken with respect to the Generating Facility at the point of receipt, as long as certain conditions are met. That is, as long as the Generating Facility has achieved commercial operation, continues to operate and there are unpaid credits outstanding, the Interconnection Customer should receive credits for all of the transmission charges that it pays, including charges for "through" transmission service. This is appropriate because it provides an additional vehicle by which the Transmission Provider can meet the requirement that the Interconnection Customer must receive a full refund of all amounts due within five years of the Commercial Operation Date. Accordingly, the Commission is removing from Article 11.4.1 of the Final Rule LGIA the following language: "so long as Transmission Provider continues to receive payments for transmission service with respect to the Generating Facility during such period."

731. Edison Mission asks that Articles 2 and 11 of the NOPR LGIA be modified to allow the Interconnection Customer to receive credits for Network Upgrades that it has paid for if the interconnection agreement is terminated or the Generating Facility is not constructed. The Commission disagrees. In order to achieve an appropriate balance between the Interconnection Customer's risks and incentives, the Commission believes that the Interconnection Customer should receive a refund of the costs of Network Upgrades only if the Generating Facility has achieved commercial operation. Allowing the Interconnection Customer to avoid any responsibility for the cost of Network Upgrades needed for a Generating Facility that is never completed would improperly shift all risk of cost recovery to the Transmission Provider and its other customers. In addition, it would greatly reduce the Interconnection Customer's incentives to make good faith requests for Network Upgrades. Therefore, the Commission concludes that the Transmission Provider must provide a refund to the Interconnection Customer only after commercial operation of the Generating Facility has been demonstrated. However, if the Generating Facility fails to achieve commercial operation, but it or another Generating Facility is later constructed and makes use of the Network Upgrades, the Interconnection Customer would at that time be entitled to a refund of the investment that it made in the Network Upgrades.

732. Westconnect RTO and others argue that the Transmission Provider should credit the Interconnection Customer only for the non-usage sensitive "demand" or "return" component of the applicable transmission charges, presumably on the basis that this is the component that relates most directly to the cost of the investment for which the Interconnection Customer is to receive credits. The Commission clarifies that the Transmission Provider may decline to award credits for those transmission charges that are designed to recover out-of-pocket costs, such as the cost of line losses, associated with the delivery of the Generating Facility's output. The Commission notes, however, that all amounts paid by the Interconnection Customer toward Network Upgrades must be refunded within five years of the Commercial Operation Date. Thus, any reduction in the level of credit payments will only increase the cost of interest and the magnitude of the final cash payment that may be required.

733. Westconnect RTO and BPA oppose the proposal in Section 12.3 of the NOPR LGIP that would provide the Interconnection Customer with a refund of the costs of expediting construction of Network Upgrades so that they can be placed in service out of sequence. The Commission is not changing this provision in the Final Rule LGIP. The sequence in which Network Upgrades would normally be constructed is based on the order in which requests are received. Although changing the order may increase or decrease the level of costs, the new level of costs is no less legitimate than the first. Thus, the Transmission Provider must refund to the Interconnection Customer the cost of constructing Network Upgrades regardless of the construction sequence.

734. In response to WEPCO's concern about the assignability of refund rights, the Commission confirms that Final Rule LGIA Article 11.4 provides that refund rights are fully assignable.

735. Finally, the Commission clarifies how the crediting policy will work when the Interconnection Customer elects to build and retain ownership of Stand-Alone Network Upgrades. In such case, the Interconnection Customer is not entitled to a refund of its investment in any facilities in which it elects to retain ownership. If the Interconnection Customer constructs Stand-Alone Network Upgrades, and chooses not to transfer ownership to the Transmission Provider, it will not receive a refund but may enter into a cost-based lease agreement with the Transmission Provider that places the upgrades under the Transmission Provider's operation and control. The rates, terms and conditions of any such lease agreement are subject to the approval of the Commission.

Responsibility for the Costs Incurred by Affected Systems

736. A number of commenters argue that the Final Rule should address directly the assignment of costs that may be incurred by Affected Systems when an Interconnection Customer obtains an interconnection.[118] Entergy contends that, even if the Final Rule LGIA could bind an Affected System, the Commission's current interconnection pricing policies fail to establish the allocation of the costs of Network Upgrades among the Interconnection Customer, the interconnecting Transmission Provider, and the Affected System. Dominion

[118] As discussed above, an Affected System is a system other than that of the Transmission Provider that may be affected by the proposed interconnection.

Resources recommends that Section 3.5 of the NOPR LGIP require the Interconnection Customer to be responsible for all costs incurred by the Transmission Provider in coordinating the interconnection request with the affected party, including all study costs. Reliant states that there is presently no mechanism that provides the Interconnection Customer with transmission credits for a contribution to the construction of Network Upgrades on third party systems. Reliant recommends that the Commission add to Section 3.5 of the NOPR LGIP language proposed by EPSA that addresses this omission. Mirant recommends that the Commission require the Transmission Provider to coordinate the provision of transmission credits associated with funding Network Upgrades on affected third party systems.

737. LADWP is concerned that the NOPR did not address how the Commission intends the financing and crediting to be implemented if the Interconnection Customer does not purchase transmission service on the Affected System.

Commission Conclusion

738. The NOPR LGIP and NOPR LGIA included no pricing provisions that specifically address situations where Network Upgrades must be constructed on Affected Systems to protect the reliability of those systems. However, the Commission concurs with the commenters that state that the NOPR LGIA should be modified to expressly allow for refunds to be provided to the Interconnection Customer when such Network Upgrades must be constructed and the Interconnection Customer is required to pay for them. Therefore, the Commission modifies Article 11.4 of the Final Rule LGIA to make it applicable to all jurisdictional Affected System Operators on whose systems Network Upgrades are constructed to accommodate the Interconnection Customer's Interconnection Request. This means that, prior to the Commercial Operation Date, an Affected System Operator may require the Interconnection Customer to pay for all Interconnection Facilities and Network Upgrades constructed to accommodate the Interconnection Customer's Interconnection Request. Then, upon commencement of commercial operation, any Affected System Operator that has received payments from the Interconnection Customer must begin to refund to the Interconnection Customer the costs of Network Upgrades that the Interconnection Customer has paid. Furthermore, refunds are to be provided without regard to whether the Interconnection Customer has contracted for delivery service on the Affected System Operator's Transmission System. If the Interconnection Customer has not contracted for delivery service, and in the absence of another mutually agreeable payment schedule, refunds shall be provided by means of a uniform stream of monthly payments designed to fully reimburse the Interconnection Customer, with interest, over a five year period commencing with the Generating Facility's Commercial Operation Date.

739. When the Interconnection Customer is required to pay for Network Upgrades on an Affected System, it must enter into an agreement with the Affected System Operator unless the payments are incorporated in the interconnection agreement that the Interconnection Customer signs with the Transmission Provider. Any agreement with an Affected System Operator must specify the terms governing payments to be made by the Interconnection Customer as well as the payment of refunds by the Affected System Operator. The Commission is revising proposed Article 11.4.1 to incorporate this new requirement.

Policies Regarding Previously Approved Cost Allocations and Pricing Arrangements

740. A number of commenters express their views regarding the NOPR's proposal to require that all Transmission Providers remove from their transmission rates the costs of Interconnection Facilities constructed for the Transmission Provider's own Generating Facilities, and to treat them, as directly assigned, generation-related costs. Commenters also address the possible retroactive application of the pricing policy adopted in the Final Rule. Calpine and Mirant request that the Commission require that all Transmission Owners make compliance filings to remove the costs of Interconnection Facilities from existing transmission rates. The Arkansas PSC states that it does not object in principle to the proposal to remove such costs from transmission rates, but notes that this could shift additional costs onto the retail customers of regulated generation-owning utilities. It proposes that, if the cost-shifting burden is judged to be significant, a phase-in or modification may be appropriate. PSNM believes that the Commission's proposal to require all Transmission Providers to remove sole use facilities from their transmission rates currently in place resolves the lack of pricing comparability alleged by Interconnection Customers.

741. PJMTO generally agrees with the NOPR's proposal to assign to the generator the costs of Interconnection Facilities, but requests that the Commission clarify that, to the extent this policy alters existing practices, it will apply prospectively and only affect interconnections that post-date the Final Rule. PJMTO states that, historically, transmission providers have used a variety of approaches to assign cost responsibility for Interconnection Facilities, claiming that some have rolled these costs into transmission rates while others have directly assigned the costs to the Interconnection Customer. PJMTO urges the Commission not to undercut the business assumptions of existing project sponsors or to require the Transmission Provider to refile transmission rates to remove any non-network costs that have been rolled in, and invoice Interconnection Customers for such removed costs. Exelon and Sithe express similar views and state that, since Order No. 888, numerous vertically integrated utilities have spun off their Generation Facilities to non-affiliated third parties. Exelon and Sithe believe that those parties would likely claim that their interconnection arrangements have been effectively grandfathered and that no interconnection costs that may have been rolled into base transmission rates are now recoverable from them. Exelon and Sithe argue this could lead to costly and time-consuming litigation.

742. Calpine requests that the Commission find here that any policy that requires the Interconnection Customer to pay for Network Upgrades is unjust and unreasonable, and unless otherwise barred by explicit contract language, any Interconnection Customer should be permitted to have the facility cost allocation provisions of any existing agreement modified pursuant to Section 206 of the FPA to reflect the current interconnection pricing policies. However, Exelon and Sithe, using arguments similar to those above, recommend that any historical allocation of the costs of Network Upgrades that was agreed to by the parties and accepted by the Commission should not be disturbed now. Exelon and Sithe recommend that those costs be rolled into the transmission rate base only for new Interconnection Requests.

Commission Conclusion

743. The Commission believes that, to ensure fully comparable treatment of all Generating Facilities, transmission rates should not include the costs of Interconnection Facilities. As stated in the NOPR, this policy is consistent with the Commission's current treatment of

generation step-up transformers, appropriately assigns the costs of Interconnection Facilities to the generation customers using them, and ensures that the Transmission Provider's own Generating Facilities and those of its competitors are treated comparably.

744. However, the Commission is sympathetic to the concern of PJMTO and Exelon and Sithe that the Transmission Provider may have difficulty recovering the costs associated with Generating Facilities that it does not own, including those that it once owned but has since divested. Also, the Commission is concerned that the Transmission Provider may have difficulty identifying the interconnection-related costs of older Generating Facilities given that, historically, the Transmission Provider may have had no reason to segregate these costs from other transmission costs in its books of account. Therefore, the Commission is not adopting the NOPR's proposal to require the Transmission Provider to remove from its existing transmission rates the costs of all Interconnection Facilities constructed for its own Generating Facilities and to directly assign them as generation-related costs. Rather, the Commission here is imposing a more limited requirement. The Commission is requiring that the Transmission Provider remove from transmission rates only the costs of Interconnection Facilities constructed by the Transmission Provider after a certain date to interconnect Generating Facilities owned by the Transmission Provider on the effective date of this Final Rule. That date certain is March 15, 2000, the date on which the Commission issued its order in *Tennessee* clarifying that interconnection is a separate component of transmission service, and that an Interconnection Customer may request interconnection separately from the delivery component of transmission service. That order effectively placed Transmission Providers on notice that the costs of Interconnection Facilities cannot be recovered in rates for transmission service. Thus, the Commission presumes that after March 15, 2000, any Interconnection Agreement signed by the Transmission Provider provides for the direct assignment of Interconnection Facility costs to the Interconnection Customer. The Commission also presumes that the Transmission Provider can identify the costs of any Interconnection Facilities constructed for its own Generating Facilities after March 15, 2000. In this Final Rule, the Commission is requiring the Transmission Provider, in its next filed transmission rate case, to remove such costs from transmission rates.

745. With regard to the Arkansas PSC's concern about the impact of any cost shifting that may result from the reallocation of Interconnection Facility costs, we do not believe that the impact will be so great as to warrant a phase-in. Because the requirement that we are adopting here applies only to costs incurred after March 15, 2000, we expect the cost impact, if any, to be small. Furthermore, any cost impact will not occur until the Transmission Provider's next filed rate case.

746. Finally, in response to Calpine, the Commission is not requiring in this Final Rule any changes to previously accepted interconnection agreements.

Miscellaneous Pricing Issues

747. Dynegy argues that Article 4.6 of the NOPR LGIA should be clarified to include a more comprehensive listing of the possible services that the Interconnection Customer might be called upon to provide to the Transmission Provider under the express provisions of the LGIA. Dynegy submits that the Interconnection Customer would be required to have a Tariff on file with the Commission pursuant to Section 205 of the Federal Power Act for any service for which it seeks to charge the Transmission Provider. In the alternative, it recommends that the Commission clarify that this provision does not require the Interconnection Customer to forego the right to seek compensation for any services beyond the two listed.

748. ACEEE states that it agrees with the Commission's general proposal on pricing, but identifies pricing issues faced by the Interconnection Customer that it believes can pose major barriers to interconnection. It claims that excessive standby charges, backup power rates, and insurance requirements have frequently been used to try to block an Interconnection Customer from interconnecting a new Generating Facility and competing on a comparable basis. It states that the Commission and others must address these pricing issues if electricity markets are to be fully accessible.

Commission Conclusion

749. In response to Dynegy, the Commission clarifies that, while Articles 4.6 and 11.6 of the Final Rule LGIA provide that the Transmission Provider must compensate the Interconnection Customer for certain specific services that the latter provides, no provision of the Final Rule LGIA limits the right of the Interconnection Customer to seek compensation for any other services that the Transmission Provider may from time to time request from the Interconnection Customer.

750. With regard to ACEEE's concerns about the rates for standby charges and backup power rates provided by the Transmission Provider to the Interconnection Customer, the rates for these services are a state jurisdictional retail rate issue. The Commission discusses insurance requirements in part II.C.8.a of this Preamble.

2. Interconnection Products and Scope of Service

751. Scope of service, including in particular the definition and study requirements for the two Interconnection Service products proposed to be made available to Interconnection Customers, was perhaps the most heavily debated topic during the ANOPR phase of this proceeding. In addition, the controversial nature of this topic is reflected in the many pages that commenters devoted to it. These comments are addressed below.

Definition of Interconnection Products

752. The LGIA NOPR provided for two Interconnection Service products from which the Interconnection Customer would have to choose: Energy Resource Interconnection Service, which is a basic or minimal interconnection service, and Network Resource Interconnection Service, which is a more flexible and comprehensive interconnection service.[119] Neither is a transmission delivery service. Article 4 (Scope of Service) of the NOPR LGIA defines these products and sets forth specific Interconnection Study requirements for each. This article also describes the relationship between delivery service and the Interconnection Services, as well as the rights and responsibilities that each Interconnection Service entails. In addition, Section 3.2 of the NOPR LGIP sets forth the procedure that the Interconnection Customer must use to select an Interconnection Service.

753. As proposed, Energy Resource Interconnection Service would allow the Interconnection Customer to connect its Generating Facility to the Transmission System and be eligible to deliver its output using the existing firm or non-firm capacity of the Transmission System on an "as available" basis. In an area with a bid-based energy market (*e.g.*, ISO New

[119] During the ANOPR negotiating sessions EPSA and other Interconnection Customers negotiated to secure these two forms of service.

England, NYISO, or PJM), Energy Resource Interconnection Service would allow the Interconnection Customer to place a bid to sell into the market and the Generating Facility would be dispatched if the bid is accepted. In all other areas, no transmission delivery service would be assured, but the Interconnection Customer may obtain point-to-point transmission service or gain access to secondary network transmission service, pursuant to the Transmission Provider's Tariff. The Interconnection Studies to be performed for Energy Resource Interconnection Service would identify the Interconnection Facilities required as well as the Network Upgrades needed to allow the proposed Generating Facility to operate at full output. In addition, the Interconnection Studies would identify the maximum allowed output of the Generating Facility without Network Upgrades.

754. In contrast, Network Resource Interconnection Service would require the Transmission Provider to undertake the Interconnection Studies and Network Upgrades needed to integrate the Generating Facility into the Transmission System in a manner comparable to that in which the Transmission Provider integrates its own generators to serve native load customers. If the Transmission Provider is an RTO or ISO with market-based congestion management, it would have to integrate the Generating Facility in the same manner as all other Network Resources.

755. The Transmission Provider would study the Transmission System at peak load, under a variety of severely stressed conditions, to determine whether, with the Generating Facility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load, consistent with the Transmission Provider's reliability criteria and procedures. Under this approach, the Transmission Provider would assume that some portion of the capacity of existing Network Resources is displaced by the output of the new Generating Facility.

756. Network Resource Interconnection Service provides for all of the Network Upgrades that would be needed to allow the Interconnection Customer to designate its Generating Facility as a Network Resource and obtain Network Integration Transmission Service. Thus, once an Interconnection Customer has obtained Network Resource Interconnection Service, any future transmission service request for delivery from the Generating Facility would not require additional studies or Network Upgrades. However, Network Resource Interconnection Service itself does not convey any delivery service and the Interconnection Customer would not be required to identify a specific buyer (or sink). If the Interconnection Customer wishes to obtain the delivery component of transmission service, it would have to do so pursuant to the Transmission Provider's Tariff.

757. Requests for long-term transmission service for deliveries outside the Transmission Provider's system may require additional Interconnection Studies and Network Upgrades. Network Resource Interconnection Service would allow the Generating Facility to be used to provide Ancillary Services and, should the Transmission System become congested, the Generating Facility would be subject to the same congestion management procedures that apply to all other Network Resources. Article 4.1.2.3 of the NOPR LGIA states that "[d]epending on how the cost allocation issue is resolved, the [Interconnection Customer] may be allocated congestion rights based on the construction of upgrades."

758. Proposed LGIA Article 4.3 also provides for generator balancing service arrangements and refers to other articles that address payment for certain services provided by the Interconnection Customer.

Comments

759. Several commenters, primarily Transmission Providers, object to the proposed requirement that Interconnection Customers be allowed to request Network Resource Interconnection Service. NRECA–APPA and others argue that, contrary to the Commission's assertion, Network Resource Interconnection Service would convey transmission delivery rights to the Interconnection Customer in the form of a permanent right to the future use of the Transmission System's delivery capacity. APS contends that Network Resource Interconnection Service would provide delivery service rights that are greater than any available under Order No. 888, and claims that Network Resource Interconnection Service may require a Transmission Provider to expand transmission capacity beyond any foreseeable needs of network load and to hold that capacity indefinitely. LG&E Energy believes that Network Resource Interconnection Service could result in substantial overbuilding of the Transmission System as a result of the requirement that transmission be upgraded to accommodate any Interconnection Customer taking Network Resource Interconnection Service to serve any load on the system. However, TAPS is concerned that Network Resource Interconnection Service does not provide for the capacity expansions that may be needed to allow network customers to access their Network Resources without congestion. It claims that the NOPR's treatment of Network Resource designation and network service is inconsistent with the OATT Network Integration Transmission Service, which requires a demonstration of load-specific deliverability from designated Network Resources. TAPS states that Network Resource Interconnection Service lacks such a deliverability test and, as a result, would be a service under which the Network Resource designation is meaningless from a load serving entity's point of view. It claims that while Network Resource Interconnection Service would grant some rights to the Interconnection Customer, it leaves the load serving entity to bear all the risk of congestion between its Network Resources and its load.

760. PSNM notes that for an Interconnection Customer to secure delivery rights using Network Integration Transmission Service under the OATT, the Generating Facility must be designated as a Network Resource. The Interconnection Customer also must pay separately for point-to-point service when not providing service as a Network Resource. PSNM claims that the language in the NOPR LGIA would undo that requirement. Western objects to the fact that Network Resource Interconnection Service would impose no obligation on an Interconnection Customer to serve network load or to meet network operating obligations, such as providing Ancillary Services, and would not require an Interconnection Customer to participate in regional planning processes. Dairyland Power states that Article 4.1.2 of the NOPR LGIA seems to presuppose that Network Resource Interconnection Service may be used only in conjunction with Network Integration Transmission Service under the OATT, but the LGIA is not explicit. It asks the Commission to clarify the purpose of Network Resource Interconnection Service and how it may actually be used.

761. Central Maine claims that the exact products or services required to be offered are not clearly defined. Industrial Energy asserts that the acknowledgment of potential congestion in the Network Resource Interconnection Service description seems to contradict the further

specifications in proposed LGIA Article 4.1.2.3, which appears to contemplate delivery from the Generating Facility within the Transmission Provider's Transmission System of any amount of capacity and/or energy up to the amount initially studied without additional studies or Network Upgrades. TANC recommends that the Commission replace the study provision requiring displacement of existing generation (NOPR LGIA Article 4.1.2.2) with appropriate technical guidelines and procedures for identifying resource displacement.

762. LG&E Energy claims that the proposal is inconsistent with the Commission's proposed approach to Standard Market Design. It notes that the market designs of certain ISOs permit customers to designate any resource as a Network Resource, but do not require the Transmission System to be upgraded to ensure physical delivery of all generation resources to all loads. Rather, according to LG&E Energy, the effect of transmission congestion is reflected in locational energy prices. Also, the Midwest ISO states that it is not clear how Network Resource Interconnection Service would evolve as Standard Market Design is implemented. It believes that Network Resource Interconnection Service is more appropriate for an Interconnection Customer that wishes to designate its Generating Facility as a capacity resource in a market design where there is a capacity market. If there is not such a market, the Midwest ISO would support Energy Resource Interconnection Service alone as sufficient to provide for reliable interconnections, and allow for market-based mechanisms to support expansion of the Transmission System beyond minimum reliability needs. Both the Wisconsin PSC and American Wind Energy advise the Commission to defer consideration of Network Resource Interconnection Service until it can be evaluated in the context of Standard Market Design. Dairyland Power states that it is not clear how Network Resource Interconnection Service would fit with the new Network Access Service contemplated in the Commission's Standard Market Design rulemaking.

763. Some commenters argue that there should be only one interconnection product and that product should define a minimum level of service. For example, ISO New England believes that its Minimum Interconnection Standard has resulted in equal treatment of new and incumbent generation owners and has resulted in a substantial number of new generators being interconnected onto the bulk power Transmission System in New England. It also states that the Minimum Interconnection Standard allows every generator owner, new and incumbent alike, the opportunity to participate in all markets.

764. PG&E notes that, while Network Resource Interconnection Service requires the Transmission Provider to interconnect new plants in a manner comparable with that of other Network Resources, in California there are no Network Resources. PG&E asks the Commission to explain how this Interconnection Service would apply in areas where no network transmission service is available. Central Maine argues that the definition of products and services should be left to regional practices.

765. Xcel states that the description of Network Resource Interconnection Service appears to assume the Transmission Provider's system is the same as its Control Area. However, with the development of large transmission networks subject to an RTO's OATT, it may not be possible to actually deliver the capacity and energy of any individual generator to a network load on a huge regional network. The Midwest ISO recommends that, if Network Resource Interconnection Service is retained as part of the Final Rule, an Interconnection Customer within a large footprint RTO like the Midwest ISO should be allowed to select specific zones (or Control Areas) in which it would be eligible to be a designated Network Resource.

Commission Conclusion

766. Article 4 of the NOPR LGIA did not adequately convey the Commission's intent, particularly with regard to the characteristics that distinguish the two proposed interconnection products and the rights and responsibilities that each entails. Many of the commenters' concerns can be addressed by improving the clarity and accuracy in the Final Rule provisions concerning scope of services and interconnection products. Therefore, as described below, the Commission modifies the text of proposed LGIA Article 4 and provides the following clarifications.

767. Both Energy Resource Interconnection Service and Network Resource Interconnection Service provide for the construction of Network Upgrades that would allow the Interconnection Customer to flow the output of its Generating Facility onto the Transmission Provider's Transmission System in a safe and reliable manner. However, contrary to the assertions of several commenters, neither Energy Resource Interconnection Service nor Network Resource Interconnection Service in and of itself conveys the right to do so. Moreover, neither type of Interconnection Service constitutes a reservation of transmission capacity. The Interconnection Customer, load or other market participant would have to request either point-to-point or Network Integration Transmission Service under the Transmission Provider's OATT in order to receive the delivery service that is a prerequisite to flowing power onto the system. When an Interconnection Customer that has chosen either Energy Resource Interconnection Service or Network Resource Interconnection Service later requests firm point-to-point delivery service, additional Network Upgrades may be required, depending on the availability of transmission capacity to deliver power to the delivery point.

768. Network Resource Interconnection Service is intended to provide the Interconnection Customer with an interconnection of sufficient quality to allow the Generating Facility to qualify as a designated Network Resource on the Transmission Provider's system without additional Network Upgrades. This means that Network Resource Interconnection Service entitles the Generating Facility to be treated in the same manner as the Transmission Provider's own resources for purposes of assessing whether aggregate supply is sufficient to meet aggregate load within the Transmission Provider's Control Area, or other area customarily used for generation capacity planning. Thus, with Network Resource Interconnection Service, the Interconnection Customer would be eligible to obtain Network Service under the Transmission Provider's OATT, or network access service under the Tariff of an RTO or ISO, without the need for additional Network Upgrades.

769. However, contrary to the views of some commenters, Network Resource Interconnection Service does not necessarily provide the Interconnection Customer with the capability to physically deliver the output of its Generating Facility to any particular load on the system without incurring congestion costs. Depending on the location of the load for which the Generating Facility serves as a designated Network Resource, it may be required to participate in a redispatch procedure, or other non-discriminatory congestion management process, such as locational marginal pricing. Network Upgrades required under Network Resource Interconnection Service integrate the Generating Facility into the

Transmission System in a manner that ensures that aggregate generation can meet aggregate load while satisfying regional reliability criteria and generation capacity planning requirements. However, these upgrades do not necessarily eliminate congestion.

770. In response to ISO New England and the Midwest ISO, the Commission is not limiting the Interconnection Customer's interconnection alternatives to a single option that meets only a minimum interconnection standard. In general, such a policy would not provide an interconnection that meets the standard that the Transmission Provider uses to interconnect its own generators. The Commission notes, however, that in regions where the Transmission System is operated by an independent entity, the Commission allows flexibility, as discussed in part II.C.1 (Interconnection Pricing Policy). For example, an independent entity may determine, subject to Commission approval, that the designation of Network Resources is not necessary (which, PG&E points out, is the case in California).

771. The Commission recognizes that the Transmission Provider's Transmission System may not comprise a single Control Area, as several commenters point out. If the Transmission Provider operates more than one Control Area, it may limit the network service that is available to an Interconnection Customer taking Network Resource Interconnection Service to the Control Area where the Generating Facility is located. If the Interconnection Customer wishes to serve load in another Control Area, it must submit a separate request for transmission service to that other area, and it would be subject to the pricing provisions of the Transmission Provider's OATT for that service.

772. The Commission further clarifies that, if the Generating Facility of an Interconnection Customer taking Network Resource Interconnection Service is selected by a load as a designated Network Resource, it will be required to meet all network operating obligations that the OATT imposes upon Network Resources generally. If an Interconnection Customer's Generating Facility has not been designated as a Network Resource by any load, it cannot be required to provide Ancillary Services except to the extent such requirements extend to all generators that are similarly situated.

773. Finally, in response to Dairyland Power and others, the Commission notes that an RTO or ISO may propose in its tariff filing to modify the definition and scope of the available interconnection products to accommodate its market.

Pricing of Network Resource Interconnection Service

774. Some commenters express concern over the application of the proposed interconnection pricing policy to Network Resource Interconnection Service. For example, Progress Energy and the Alabama PSC believe that an Interconnection Customer taking Network Resource Interconnection Service should pay a reservation charge for reserved but unused transmission capacity on the Transmission Provider's Transmission System. Progress Energy believes that such an approach would properly allocate the cost of the transmission capacity being reserved for the Interconnection Customer until a customer actually begins paying for transmission service for output from the Interconnection Customer's Generating Facility.

775. Entergy states that the requirement that a Transmission Provider offer Network Resource Interconnection Service should not be included in the Final Rule until the Commission has thoroughly analyzed the effects of providing such service. If this service is required, however, Entergy recommends that a Transmission Provider be compensated by any Interconnection Customer electing this service, as the service prevents a Transmission Provider from achieving the maximum use of its Transmission System due to the standing transmission reservation that it claims is granted to an Interconnection Customer under this service. The Coalition for Pricing recommends that the Interconnection Customer be required to commit to pay for Network Resource Interconnection Service for a specific term long enough to protect other customers from economic harm. It further recommends that, if the Interconnection Customer is not required to commit to a specific term of Network Resource Interconnection Service, it should at a minimum be required to pay some amount up front to cover ongoing expenses associated with the upgrades constructed if service is cancelled after a short time.

776. NRECA–APPA states that coupling Network Resource Interconnection Service with the Commission's current interconnection pricing policy will cause customers to bear much of the cost of Network Upgrades while having no right to use the resulting transmission delivery capability.

777. However, American Transmission opposes any special charges for Network Resource Interconnection Service and believes that commenters' criticisms that this service confers too great an advantage on the new Interconnection Customer are overstated. It believes the provision should be designed to put the independent generation owner on a competitive footing equal to that of incumbent owners. If the Commission is persuaded that the proposed policy provides an undue advantage to the new Interconnection Customer, the solution lies in adjusting the service description, not in imposing a surcharge.

Commission Conclusion

778. The Commission is not requiring the Interconnection Customer to pay a reservation fee for the delivery component of transmission service as a condition for receiving Network Resource Interconnection Service. As explained above, Network Resource Interconnection Service does not convey to the Interconnection Customer a reservation of transmission capacity or the right to begin taking firm or non-firm transmission service on the Transmission Provider's system. Rather, its purpose, as stated in proposed LGIA Article 4.1.2.1, is to provide the Network Upgrades needed to integrate the Interconnection Customer's Generating Facility into the Transmission System in a manner that is comparable to that in which the Transmission Provider integrates its own resources or other Network Resources. When the Interconnection Customer does take transmission service, it (or its power sales customer) will be required to pay appropriate rates, subject to the crediting provisions of Article 11.4 of the Final Rule LGIA. To charge the Interconnection Customer an additional reservation fee, as several commenters propose, would violate the Commission's prohibition against "and" pricing. Nevertheless, Network Resource Interconnection Service does not guarantee that the Interconnection Customer can physically deliver its output to any load. This means that, depending on the location of its power sales customer, the Interconnection Customer may be required to pay congestion or redispatch costs.

779. Finally, in response to NRECA–APPA, the Commission emphasizes that any capacity created by the Network Upgrades constructed on the Interconnection Customer's behalf is available for use by all customers on an equal basis. The Final Rule only requires that, once the Interconnection Customer has paid for the Network Upgrades needed to integrate its Generating Facility, it cannot be charged

again for any additional upgrades that may be needed to continue to qualify as a Network Resource.

Study Requirements for Network Resource Interconnection Service

780. Article 4.1.2.2 of the NOPR LGIA described the Interconnection Study procedures for Network Resource Interconnection Service. Among other things, they would require the Transmission Provider to study the Transmission System at peak load, under a variety of severely stressed conditions, to determine whether, with the Generating Facility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load, consistent with the Transmission Provider's reliability criteria and procedures.

Comments

781. PG&E states that it does not understand the difference between the study requirements for Energy Resource Interconnection Service and Network Resource Interconnection Service. For Network Resource Interconnection Service, the NOPR LGIA says that the study must be done with the system at peak load and under a variety of severely stressed conditions, but PG&E claims that it is not clear that any lesser study would be necessary for Energy Resource Interconnection Service.

782. Cal ISO states that it is essential that all studies consider off-peak operating periods with the Generating Facility at full output. It argues that, during light load periods, the energy generated is not consumed locally and has to be transmitted over longer distances, possibly causing overloads that would not be revealed by studying only on-peak periods. Therefore, Cal ISO recommends replacing "at peak load, under a variety" with "at peak load and under a variety." NERC recommends several changes in NOPR LGIA Article 4.1.2.2, including replacing "at peak load, under a variety of severely stressed conditions" with "under a set of reasonably expected limiting conditions." It states that studying interconnection impacts only under conditions of system peak load and the Generating Facility's peak output may overlook the study of other conditions that could be unsafe. NERC asserts that use of the term "limiting conditions" provides the flexibility to incorporate studies that are necessary to ensure reliability.

Commission Conclusion

783. The study requirements for Energy Resource Interconnection Service and Network Resource Interconnection Service are set forth in Sections 3.2.1 and 3.2.2 of the Final Rule LGIP.

784. In response to PG&E, the principal difference between the study requirements for Energy Resource Interconnection Service and Network Resource Interconnection Service is that the study for Network Resource Interconnection Service identifies the Network Upgrades that are needed to allow the Generating Facility to contribute to meeting the overall capacity needs of the Control Area or planning region whereas the study for Energy Resource Interconnection Service does not. The study for Energy Resource Interconnection Service includes short circuit/fault duty, steady state (thermal and voltage) and stability analyses to identify the Network Upgrades needed to allow the output of the Generating Facility to be injected into the Transmission System using capacity on an "as available" basis. By contrast, the study for Network Resource Interconnection Service includes similar analyses but also assumes that the output of the Generating Facility may displace the output of certain other Network Resources on the Transmission System. The study then identifies the Network Upgrades that would be required to allow the Generating Facility to be counted toward system capacity needs in the same manner as the displaced resources. However, the Interconnection Customer may request that Optional Studies be performed, and Section 3.2 of the Final Rule LGIP allows the Interconnection Customer then to proceed with Network Resource Interconnection Service or to request a lower level of interconnection service whereby only certain upgrades will be completed.

785. With regard to the changes to Article 4.1.2.2 of the LGIA recommended by NERC and Cal ISO, we note that this provision is intended to serve two purposes. First, it establishes the standards for conducting necessary studies to provide the requested service while ensuring that the reliability of the system is maintained. Second, it deters a Transmission Provider from delaying an interconnection by imposing on competing Interconnection Customers, in the name of reliability, more stringent Interconnection Study requirements than it would require of its own interconnections or those of its Affiliates. Because NERC's and Cal ISO's proposals satisfy only the reliability purpose, the Commission does not adopt them. Our requirement that the interconnection be studied with the Transmission Provider's Transmission System at peak load, under a variety of severely stressed conditions, is comparable, we believe, to the study requirement that the Transmission Provider applies to its own generation. However, we are sympathetic to NERC's and Cal ISO's concerns. Therefore, the Commission would entertain a request, in a non-independent Transmission Provider's compliance filing required by this Final Rule, to adopt a different requirement (*e.g.*, off-peak load in addition to peak load) if the non-independent Transmission Provider can demonstrate that the proposed requirement is consistent with or superior to the requirement of the Final Rule LGIP. At a minimum, the Transmission Provider must demonstrate that it consistently applies the proposed requirement in the studies it conducts for itself and its Affiliates. As discussed below in Part II.C.5 (Variations from the Final Rule), we will allow an RTO or ISO to seek an "independent entity variation" from the Final Rule LGIP if it wants to adopt a different study requirement.

Identification of Types of Interconnection Services To Be Studied

786. According to Section 3.2 of the NOPR LGIP, when the Interconnection Customer submits its Interconnection Request, it would be required to identify the type of Interconnection Service it wants. However, an Interconnection Customer requesting Network Resource Interconnection Service would have the option of requesting that its Interconnection Request also be studied for the less comprehensive Energy Resource Interconnection Service up to the point when an Interconnection Facilities Study Agreement is executed.

Comments

787. Several commenters state that allowing the Interconnection Customer to request that its Interconnection Request be studied for both Network Resource Interconnection Service and Energy Resource Interconnection Service concurrently will unnecessarily tax the Transmission Provider's resources and increase the burden of performing the studies. Entergy and BPA believe that this option will unnecessarily delay the conduct of studies for third party interconnections unless the Interconnection Customer is required to select the particular service under which it will interconnect prior to the execution of an Interconnection System Impact Study Agreement. Entergy states that such a limitation would not unduly disadvantage the Interconnection Customer, but would further ensure that a Transmission

Provider's limited transmission planning resources are used to perform studies for interconnections that are likely to be completed. NYTO believes that the additional study work required to conduct concurrent studies is not accounted for in the Interconnection Feasibility, System Impact or Facilities Study sections of the NOPR LGIP. It states that additional time would be required to conduct the concurrent studies if the Transmission Provider is required to offer this option. Also, Cal ISO asks whether two deposits will be required if an Interconnection Customer requests that the Interconnection Request be studied as both Network Resource Interconnection Service and Energy Resource Interconnection Service.

788. BPA observes that the NOPR LGIP included very strict timelines for completion of various studies and provided for no meaningful milestones or other means by which the Transmission Provider can ensure that only bonafide Interconnection Requests remain in the queue. It states that this places a Transmission Provider with a large number of Interconnection Requests in a very difficult position, and the more concurrent studies the Interconnection Customer can require the Transmission Provider to perform on a single request, the more difficult this position becomes. BPA believes that requiring concurrent studies is purely for the convenience of the Interconnection Customer, and that it is not unreasonable to require the Interconnection Customer to choose early in the process what kind of resource it intends to develop.

789. Georgia Transmission believes that it is appropriate to allow the Interconnection Customer to request concurrent studies throughout the Interconnection Feasibility Study stage, but allowing the parallel studies to continue beyond that point simply gives the Interconnection Customer more time to decide what type of Interconnection Service product to contract for, while greatly increasing the study burden on the Transmission Provider. Georgia Transmission claims that the Interconnection System Impact Study is a much more complex and involved study than the Interconnection Feasibility Study. Further, to accommodate the Interconnection Customer's desire to study multiple Interconnection Service products, Georgia Transmission claims that the Transmission Provider must conduct multiple studies not only for the first Interconnection Customer, but for all other Interconnection Customers proceeding through the interconnection process to reflect the multiple service characteristics of the first Interconnection Customer. If these other Interconnection Customers also request the Transmission Provider to concurrently study multiple service options, the Transmission Provider study burden "quickly snowballs out of control."[120] At this stage of the Interconnection Study process, the cost of studying the multiple service options greatly outweighs the benefits to the Interconnection Customer.

790. TVA argues that allowing an Interconnection Customer to request that the Transmission Provider study both types of Interconnection Services may double the work of the Transmission Provider at each stage up to the Interconnection Facilities Study stage. It finds this troubling in light of the NOPR's proposed milestones frames and the possibility of the Transmission Provider having to pay liquidated damages for failure to meet the deadlines.

791. Interconnection Customers, however, express very different views. For example, Tenaska states that the choice between Network Resource Interconnection Service and Energy Resource Interconnection Service will be dictated by the Interconnection Customer's wholesale power customer. It argues that marketing efforts for new generation projects are not completed until late in the development process, making it impossible for the Interconnection Customer to know with certainty which service it requires. Tenaska asks that the Interconnection Customer be afforded maximum flexibility to choose between the two interconnection Services and recommends that, instead of making the Interconnection Customer choose prior to executing the Interconnection Facilities Study Agreement, the Final Rule LGIP should allow the Interconnection Customer to defer its choice until the execution of the interconnection agreement.

Commission Conclusion

792. While conducting complex Interconnection Studies can be burdensome for the Transmission Provider, the Commission is not amending NOPR LGIP Section 3.2 to eliminate the Interconnection Customer's option to have its request studied as Energy Resource Interconnection Service as long as it has also requested to be studied as Network Resource Interconnection Service. This is a valuable option for the Interconnection Customer because it provides key information to support its investment decisions, and thus helps to meet the Commission's goal of encouraging the development of a new generation.

793. The Commission also recognizes that the Interconnection System Impact Study is more complex than the Interconnection Feasibility Study. However, the Commission does not believe that it would be reasonable to require the Interconnection Customer to choose between the two services prior to executing the Interconnection System Impact Study Agreement, as several commenters propose. Once the Interconnection Customer has asked to be studied for Network Resource Interconnection Service, a service that is far more comprehensive than Energy Resource Interconnection Service, the incremental burden created by also having to conduct an Interconnection System Impact Study for the simpler Energy Resource Interconnection Service should not be great. It is for this reason that the Commission disagrees with Georgia Transmission's contention that having to study multiple options will have a significant snowball effect on the overall study burden. Moreover, the Transmission Provider will be fully compensated for all of the costs that it incurs in conducting a more expansive study. As for the risk that the Transmission Provider faces by allowing the Interconnection Customer to make this choice, such risk is mitigated by the fact that the Commission is not making the Transmission Provider subject to liquidated damages under the Final Rule LGIP.[121]

Revisions to the Final Rule LGIP and Final Rule LGIA

794. In the Final Rule, the Commission is modifying various provisions of the NOPR LGIP and NOPR LGIA to provide greater clarity and to make other minor changes with respect to scope of service and interconnection products, as discussed above. In addition, the Commission is incorporating in the Final Rule LGIP certain provisions concerning product definitions and study requirements that were included in the NOPR LGIA but not the NOPR LGIP. These provisions are being added to the Final Rule LGIP because they directly relate to the process of obtaining an interconnection. They appear as new Sections 3.2.1 and 3.2.2 in the Final Rule LGIP.

[120] Comments of Georgia Transmission at 18.

[121] Liquidated damages in the LGIP are further discussed in part II.C.8.b(4).

3. "Distribution" Interconnections

795. We proposed in the NOPR [122] that we would assert authority to order interconnection when the Interconnection Customer wants to interconnect its Generating Facility with a jurisdictional transmission facility, or when it will make a wholesale sale of electric energy in interstate commerce using a public utility's "distribution" facilities.

Comments

796. Commenters objecting to the Commission's jurisdictional statement—chiefly Transmission Providers, public power providers, and state public utility commissions [123]—argue that "distribution" interconnection raises complex jurisdictional issues and that the Commission should leave this issue to the States, in part because they have experience regulating these kinds of interconnections. EEI notes that it is unclear if the Commission has authority over sales of power for resale using "distribution" facilities when the energy neither crosses state lines nor enters the interstate transmission system. The Public Power Council asks the Commission to recognize the jurisdiction of state commissions and local governing boards over the "distribution" systems of investor-owned and publicly owned utilities. SoCal Edison and PG&E ask the Commission to clarify that when a retail customer installs a generating facility that will never send energy over the Transmission System (*i.e.*, the energy will be consumed on site), this is a retail service arrangement beyond Commission jurisdiction.

797. The North Carolina Commission argues that, because it has not restructured its electric industry, any generating facility in North Carolina not owned by a vertically integrated utility would be required to sell its output at wholesale (because it cannot sell directly to retail consumers). As a result, the NOPR effectively eliminates state jurisdiction over the interconnection of generators involved in programs such as net metering or green power, which rely on simpler and less expensive interconnection procedures and agreements than those proposed by the Commission. These interconnection decisions are best left to the States.

798. APS notes that the NOPR does not address how Transmission Providers will handle their responsibilities over transmission facilities jointly owned by jurisdictional and non-jurisdictional entities. This is a particular concern in the Western United States. APS warns that the failure to examine this issue in a separate NOPR will result in a patchwork of transmission terms and conditions that the Commission sought to avoid in Order No. 888.[124]

799. EEI raises other objections, noting that Commission regulation of "distribution" interconnections may create new layers of regulatory costs that will not be recoverable in retail rates. It also warns that competing and possibly conflicting state and federal interconnection requirements may encourage forum-shopping by Interconnection Customers and create problems for "distribution" providers. To discourage this, National Grid proposes that an Interconnection Customer should state whether it will make sales for resale before the Scoping Meeting provided for in Section 3.3.4 of the proposed LGIP; this will determine how the Interconnection Studies will be performed. Once established, the designation could not be changed unilaterally by the Interconnection Customer.

800. NRECA-APPA argues that, because "distribution" systems do not operate like Transmission Systems, "distribution" interconnections will require provisions not in the NOPR LGIP and NOPR LGIA, including different Interconnection Study requirements. It argues that the physical differences and economic differences between interconnection at "distribution" and transmission levels—distribution is typically "low voltage" and transmission typically is "high voltage," and "distribution" providers may lack engineering personnel necessary to evaluate Interconnection Requests—would make a single rule completely inappropriate. WEPCO argues that the NOPR LGIP and NOPR LGIA are unworkable for interconnections to the "distribution" system because "distribution" companies serve load and "distribution" systems are not designed to accommodate large generation facilities seeking to move energy off the "distribution" system. Accordingly, the Commission should clarify that the principles underlying the Final Rule LGIP and Final Rule LGIA, *i.e.*, nondiscriminatory access and comparable treatment, will be applicable to both "distribution" and transmission, but that the documents will apply only to transmission level interconnections. State-approved tariffs should govern "distribution"-level interconnections. Nevertheless, an Interconnection Customer interconnecting to a "distribution" system still would be entitled to petition the Commission if it encountered undue discrimination.

801. Consumers see a useful analogy in the Commission's natural gas regulations. It argues that the Commission should consider adopting an approach like the blanket certificate program applied to natural gas pipelines for incidental jurisdictional uses of non-jurisdictional transportation facilities. The goal of the Commission's blanket certificate program [125] is to remove restraints on the flow of gas between the interstate and the intrastate market. It allows entities that are otherwise state-jurisdictional to perform incidental Commission-jurisdictional activities without subjecting them, or their incidental interstate activities, to full Commission regulation.

802. NARUC states that it "supports the Commission's statement that the NOPR [LG]IA and [LG]IP 'will apply only when a generator interconnects to the Transmission Provider's transmission system or makes wholesale sales in interstate commerce at either the transmission or distribution voltage level,'" but argues that the States "are best situated to ensure the efficient, reliable and safe interconnection of small generators to local distribution systems and should continue to have that authority, as the NOPR recognizes."[126] TAPS supports Commission jurisdiction over the interconnection of generators used for wholesale sales, whether the interconnection is made to transmission or "distribution," because such application is essential to prevent evasion of the intent of the NOPR to provide non-discriminatory interconnection service, and should encompass wholesale interconnections to the Distribution Systems of large jurisdictional utilities that have divested their transmission facilities to an independent transmission company or the like.

Commission Conclusion

803. At the outset, it is important to clarify several terms when discussing the question of jurisdiction. "Local distribution" is a legal term; under FPA Section 201(b)(1), the Commission lacks

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[122] See Large Generator Interconnection NOPR, FERC Stats. & Regs. ¶ 32,560 at 34,178 & n.22 (2002).

[123] *E.g.*, Consumers, EEI, LADWP, National Grid, the North Carolina Commission, NRECA–APPA, the Public Power Council, and the Wisconsin PSC.

[124] *Citing* Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,673.

[125] 18 CFR 284.224 (2003).

[126] NARUC comments at 5 (citation omitted) (emphasis added by NARUC).

jurisdiction over local distribution facilities.[127] "Distribution" is an unfortunately vague term, but it is usually used to refer to lower-voltage lines that are not networked and that carry power in one direction. Some lower-voltage facilities are "local distribution" facilities not under our jurisdiction, but some are used for jurisdictional service such as carrying power to a wholesale power customer for resale and are included in a public utility's OATT (although in some instances, there is a separate OATT rate for using them, sometimes called a Wholesale Distribution Rate).

804. This Final Rule applies to interconnections to the facilities of a public utility's Transmission System that, at the time the interconnection is requested, may be used either to transmit electric energy in interstate commerce or to sell electric energy at wholesale in interstate commerce pursuant to a Commission-filed OATT.[128] In other words, the standard interconnection procedures and contract terms adopted in this Final Rule apply when an Interconnection Customer that plans to engage in a sale for resale in interstate commerce or to transmit electric energy in interstate commerce requests interconnection to facilities owned, controlled, or operated by the Transmission Provider or the Transmission Owner, or both, that are used to provide transmission service under an OATT that is on file at the Commission at the time the Interconnection Request is made. Therefore, the Final Rule applies to a request to interconnect to a public utility's facilities used for transmission in interstate commerce. It also applies to a request to interconnect to a public utility's "distribution" facilities used to transmit electric energy in interstate commerce on behalf of a wholesale purchaser pursuant to a Commission-filed OATT. But where the "distribution" facilities have a dual use, *i.e.*, the facilities are used for both wholesale sales and retail sales, the Final Rule applies to interconnections to these facilities only for the purpose of making sales of electric energy for resale in interstate commerce.[129]

805. In response to SoCal Edison and PG&E, we clarify that we are not asserting jurisdiction over a hook-up between a retail customer and a Transmission Provider when a retail customer installs a generator that will produce electric energy to be consumed only on site.

806. Regarding the arguments that the NOPR LGIP and NOPR LGIA are designed for interconnection to a transmission system and not a "distribution" system, we expect that the majority of interconnections to jurisdictional "distribution" or other jurisdictional low-voltage facilities will be made by generators no larger than 20 MW. These Small Generators will be interconnected using the standard procedures and agreement adopted in the Small Generator rulemaking. We are proposing rules in that proceeding to accommodate the interconnection of Small Generators, mostly to jurisdictional "distribution" (not "local distribution") and low-voltage facilities. However, in response to WEPCO's argument, we conclude that under some circumstances (*e.g.*, interconnection to facilities below 69 kV) the Interconnection Studies in the Final Rule LGIP may be inappropriate to analyze some Large Generator Interconnection Requests. In such a case, we will allow the Transmission Provider to use modified Interconnection Studies, subject to Commission approval. The Commission expects that interconnection requests of this kind will be rare and, as a result, we do not at this time incorporate a standard study specifically designed for interconnections to low-voltage or "distribution" facilities into the Final Rule LGIP. Accordingly, a Transmission Provider may use the studies it deems appropriate to properly study the Interconnection Request, subject to Commission approval. The Commission therefore requires that a Transmission Provider, upon receipt of a request for jurisdictional interconnection to a jurisdictional "distribution" or low-voltage facility, file with the Commission an amendment to the LGIP in its OATT that describes the Interconnection Studies applicable to such requests.

807. APS raises concerns regarding joint ownership of transmission by jurisdictional and non-jurisdictional entities. In Order No. 888, the Commission required each public utility that owns an interstate transmission facility jointly with a non-jurisdictional entity to offer service over its share of the joint facility, even if the joint ownership contract prohibits service to third parties.[130] Applying the same principle here, joint ownership does not affect the Commission's authority to regulate the public utility. Accordingly, the Final Rule LGIP and Final Rule LGIA would apply to Interconnection Service provided by the public utility on its portion of a jointly owned facility.

808. Regarding EEI's comment about the Commission's authority over an interconnection for the purpose of making sales of electric energy for resale using "distribution" facilities when the energy neither crosses state lines nor enters the interstate transmission system, this question is moot because the Commission is not here extending its jurisdiction to any facility that is not already under its jurisdiction, pursuant to a Commission-filed OATT at the time the interconnection request is made.

809. Finally, regarding EEI's objection that Commission regulation of "distribution" interconnections may create new layers of regulatory costs not recoverable in retail rates, our jurisdiction discussion above clarifies that because this Final Rule applies only where the Commission already has jurisdiction at the time interconnection is requested, this should not result in any new unrecoverable regulatory costs to a Transmission Provider.

4. Issues Relating to Qualifying Facilities

810. The NOPR did not address interconnection issues related to qualifying facilities (QFs) under the Public Utility Regulatory Policies Act of 1978 (PURPA).[131] Nevertheless, several commenters bring QF-related issues to our attention.

Comments

811. Cal Cogen and ELCON recommend that the Commission allow a QF to request interconnection under state authority when it either sells the majority of its output under a PURPA-based power sales agreement, or does not sell power to the wholesale market.

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[127] 16 U.S.C. 824(b)(1) (2000).

[128] For purposes of this paragraph, the term "Commission-filed OATT" means a tariff that is on file at, and has been approved by, the Commission.

[129] The Commission will exercise exclusive jurisdiction only over the Commission-jurisdictional service. *See* Laguna Irrigation District, 95 FERC ¶ 61,305 at 62,039 (2001) *aff'd sub nom. Pacific Gas & Electric Co.* v. *FERC*, 44 Fed. Appx. 170 (9th Cir. 2002); Tex-La Electric Cooperative of Texas, Inc., 67 FERC ¶ 61,019 at 61,055–56; *final order*, 69 FERC ¶ 61,269 (1994) (both noting that the Commission asserts jurisdiction over the service when the facilities are not purely "transmission" facilities). Accordingly, the Commission will continue to exercise exclusive jurisdiction over the rates, terms, and conditions of the Commission-jurisdictional service provided over the dual use "distribution" facility, but the Commission will not assert jurisdiction over all uses of that facility, because the regulation of "local distribution" of electricity to end users is reserved to the States.

[130] *See* Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,692; Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,219 (urging such public utilities to seek mutually agreeable revisions to their agreements with non-jurisdictional entities to permit third-party access to all, or at least the public utility share, of the facilities, and to file proposed revisions to such contracts with the Commission).

[131] *See* 16 U.S.C. 2601 *et seq.*(2000).

If the QF primarily generates electricity for sale in wholesale markets under non-PURPA agreements, they argue, the Final Rule should apply. Cal Cogen argues that this approach is in keeping with the Commission's Regulations, which give the States the responsibility for QF interconnections,[132] and Commission precedent, which holds that an interconnection agreement in which an interconnected utility purchases a QF's total output falls under state authority.[133]

812. Similarly, SoCal Edison and PG&E request that the Commission clarify that the Final Rule LGIP and Final Rule LGIA will not apply to a QF selling to the interconnected utility or to on-site customers. Calpine requests that generating facilities currently interconnected to the Transmission System under non-FERC-jurisdictional arrangements, such as QFs, that subsequently become FERC-jurisdictional by terminating their QF status or deciding to sell power in the wholesale market, not be treated as "new" generating facilities or "new" Interconnection Customers under the interconnection procedures. While only the contractual arrangements have changed, the physical interconnection requirements remain unchanged, and as long as the Generating Facility's output will be substantially the same after conversion, no Interconnection Studies are necessary and the Interconnection Customer should not be placed in the Transmission Provider's interconnection queue with new Generation Facilities. Rather, the Interconnection Customer should only have to execute the Commission-jurisdictional interconnection agreement to become effective upon termination of the state-jurisdictional agreement. Independent Producers, which makes a similar argument, notes that treating a newly jurisdictional former QF as a new interconnection would be discriminatory since this would essentially require that facilities be interconnected twice. If an existing QF is already in the "base case" used to determine impacts of new generators, and this same base case is used to analyze the interconnection of the existing QF, there will be no effect.

Commission Conclusion

813. The Commission's Regulations govern a QF's interconnection with most electric utilities in the United States,[134] including normally nonjurisdictional utilities.[135] When an electric utility is obligated to interconnect under Section 292.303 of the Commission's Regulations, that is, when it purchases the QF's total output, the relevant state authority exercises authority over the interconnection and the allocation of interconnection costs.[136] But when an electric utility interconnecting with a QF does not purchase all of the QF's output and instead transmits the QF power in interstate commerce, the Commission exercises jurisdiction over the rates, terms, and conditions affecting or related to such service, such as interconnections.[137]

814. Thus, the Commission has jurisdiction over a QF's interconnection to a Transmission System if the QF's owner sells any of the QF's output to an entity other than the electric utility directly interconnected to the QF. Because the presence of *any* output sold to a third party determines Commission jurisdiction, we reject Cal Cogen and ELCON's requests that we establish jurisdiction over QF interconnections based on the amount of energy sold to a third party. Accordingly, this Final Rule applies when the owner of the QF seeks interconnection to a Transmission System to sell any of the output of the QF to a third party. This jurisdiction applies to a new QF that plans to sell its output to a third party, and to an existing QF interconnected to a Transmission System that historically sold its total output to an interconnected utility or on-site customer and now plans to sell output to a third party. Nevertheless, consistent with the Commission's Regulations, states will continue to exercise authority over QF interconnections when the owner of the QF sells the output of the QF only to an interconnected utility or to on-site customers.

815. Finally, regarding a former QF interconnected to a Transmission System that sells electric energy at wholesale in interstate commerce, we conclude that the owner of the QF need not submit an Interconnection Request if it represents that the output of the generating facility will be substantially the same as before. A QF, under the Commission's Regulations,[138] must provide electric energy to its interconnecting utility much like the interconnecting utility's other Network Resources, since the utility must purchase the QF's power to displace its own generation. When the owner of a QF that was formerly interconnected to a Transmission System seeks to sell energy at wholesale and represents that the output of its generator will be substantially the same after conversion, it would be unreasonable for a Transmission Provider to require the former QF to join the interconnection queue.

5. Variations From the Final Rule

816. In the NOPR, we proposed to allow a Transmission Provider to justify variations from the non-price terms and conditions of the interconnection provisions of the Final Rule using the approach taken in Order No. 888. Order No. 888 allows two types of variations. First, public utilities may seek to use regional differences to justify proposed changes to certain specifically identified OATT provisions when the proposed alternative provision is "reasonable, generally accepted in the region, and consistently adhered to by the [T]ransmission [P]rovider."[139] Second, public utilities may argue that proposed changes to any OATT provision are "consistent with or superior to" the terms of the OATT. In the NOPR, we also stated that if a legitimate need for regional variations in specific provisions in the Final Rule LGIP and Final Rule LGIA were identified, we would consider adopting specific provisions that permit regional variations.

Comments

817. While a few commenters, including Cinergy, Dynegy, and SoCal Edison, support the proposed provision, others seek greater flexibility to propose changes based on regional differences for provisions other than those the Commission identified as specific eligible provisions. For example, several commenters argue that the Commission should allow variations for regional

[132] *Citing* 18 CFR 292.306, 292.308 (2003).

[133] *Citing* Western Massachusetts Electric Co., 61 FERC ¶ 61,182 (1992), *aff'd sub nom. Western Massachusetts Electric Co.* v. *FERC*, 165 F.3d 922 (D.C. Cir. 1999).

[134] 18 CFR 292.303, 292.306 (2003).

[135] The absence of interstate commerce in Alaska, Hawaii, portions of Texas and Maine, and Puerto Rico is not germane to the Commission's jurisdiction over QF matters under PURPA. *See* 16 U.S.C. 2602 (2000).

[136] *See* Western Massachusetts Electric Co., 61 FERC ¶ 61,182 at 61,661–62 (1992) (*Western Massachusetts*), *aff'd sub nom. Western Massachusetts Electric Co.* v. *FERC*, 165 F.3d. 922, 926 (D.C. Cir. 1999).

[137] *See id.* at 61,661–62. The Commission further clarified that the use of facilities for non-jurisdictional services is not dispositive when determining jurisdiction: "The fact that the facilities used to support the jurisdictional service might also be used to provide various nonjurisdictional services, such as back-up and maintenance power for a QF, does not vest state regulatory authorities with authority to regulate matters subject to the Commission's exclusive jurisdiction." *Id.* at 61,662.

[138] 18 CFR 292.303 (2003).

[139] *See* Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,770.

differences based on the reliability needs of a particular region, which may be unique because of system configuration or generation prevalent in the region.[140]

818. Several commenters, including APS, the Connecticut PUC, and WestConnect RTO, request that the Commission allow specific regional interconnection standards or reliability requirements to be treated as regional differences. The Florida RCC proposes that the Commission require that the Parties comply with any standards and guidelines of the Applicable Reliability Council. It offers several specific provisions that should be revised to account for the requirements established by the Florida RCC and other regional reliability councils.

819. MidAmerican argues that the Final Rule should recognize regional differences particular to the Midwest. As an example, it offers the high potential for wind farms in the Midwest, and the resulting need to study voltage flicker, harmonics, dynamic voltage stability, stray voltage, and small signal stability. According to MidAmerican, these additional study options, which were not expressly proposed in the NOPR, should be included in the Final Rule to recognize regional differences. Entergy requests that the Commission consider extending the dates for completing Interconnection Studies in a region when there is a large number of Interconnection Requests.

820. Dairyland Power requests that during the compliance phase of this rulemaking the Commission allow a Transmission Provider greater flexibility to make changes using a regional differences rationale. Monongahela Power argues that regional differences should be accommodated, but only on a case-by-case basis through application for exemption rather than through changes to the Final Rule. In this way, the Final Rule serves as a baseline national standard. In contrast, Mirant requests that the Commission restrict the availability of variations based on regional differences to large, established ISOs that can show that the variations are consistent with or superior to what appears in the Final Rule.

821. NYISO recommends that the Commission revise the definition of Good Utility Practice, which was proposed to include "practices, methods or acts generally accepted in a region," and which is used repeatedly in the NOPR LGIP and NOPR LGIA to describe the standards that will be applied to certain obligations. It urges that the definition should include among eligible regions those administered by an RTO or ISO.

[140] *E.g.*, Florida RCC, NARUC, the North Carolina Commission, the Public Power Council, and WEPCO.

Commission Conclusion

822. We will apply a regional differences rationale to accommodate variations from the Final Rule during compliance, but with certain restrictions. We conclude that a non-independent transmission provider (such as a Transmission Provider that owns generators or has Affiliates that own generators) and an RTO or ISO should be treated differently because an independent RTO or ISO does not raise the same level of concern regarding undue discrimination. Accordingly, we will allow an RTO or ISO greater flexibility than that allowed under the regional differences rationale to propose variations from the Final Rule provisions, as further discussed below.

823. Although commenters generally did not identify provisions in the NOPR LGIP or NOPR LGIA that should be subject to variations based on "regional differences," when a commenter did provide specific provisions, the revisions were based on the reliability requirements of a given region. Because we intend to supplement rather than supplant the work that regional reliability groups already have undertaken regarding interconnection, we are permitting a Transmission Provider, on compliance, to offer variations based on existing regional reliability requirements. Accordingly, regional flexibility is included in the Final Rule definition of Good Utility Practice, which includes practices established by relevant reliability councils and local laws and regulations. We accommodate NYISO's proposal that the definition of Good Utility Practice be revised as requested by instead defining it to include "acceptable practices, methods, or acts generally accepted in the region." Thus, this definition includes by implication the Commission-approved practices of those regions administered by an RTO or ISO.

824. Nevertheless, there may be Final Rule provisions that do not include reference to Good Utility Practice that may be subject to or affected by regional reliability restrictions. Rather than identify all such provisions in the Final Rule, as the Florida RCC proposes, we leave it to the Transmission Provider to justify variations based on regional requirements. With this approach, we are permitting public utilities the flexibility necessary to ensure that reliability needs are met. Because we seek greater standardization of interconnection terms and conditions, we are not permitting a non-independent Transmission Provider to use the regional differences justification in the absence of established regional reliability standards.

825. For other proposed deviations from the Final Rule LGIP and Final Rule LGIA not made in response to established regional reliability requirements, we are requiring non-independent transmission providers to justify variations in non-price terms and conditions of the Final Rule LGIP and Final Rule LGIA using the approach taken in Order No. 888, which allows them to propose variations on compliance that are "consistent with or superior to" the OATT.

826. To clarify, if on compliance a non-RTO or ISO Transmission Provider offers a variation from the Final Rule LGIP and Final Rule LGIA and the variation is in response to established (*i.e.*, approved by the Applicable Reliability Council) reliability requirements, then it may seek to justify its variation using the regional difference rationale. If the variation is for any other reason, the non-RTO or ISO Transmission Provider must present its justification for the variation using the "consistent with or superior to" rationale that the Commission applies to variations from the OATT in Order No. 888.

827. With respect to an RTO or ISO, at the time its compliance filing is made, as discussed above, we will allow it to seek "independent entity variations" from the Final Rule pricing and non-pricing provisions. This is a balanced approach that recognizes that an RTO or ISO has different operating characteristics depending on its size and location and is less likely to act in an unduly discriminatory manner than a Transmission Provider that is a market participant. The RTO or ISO shall therefore have greater flexibility to customize its interconnection procedures and agreements to fit regional needs.

6. Waiver Availability for Small Entities

828. In the NOPR, we did not address whether special provisions are needed for small Transmission Providers for whom providing Interconnection Services might be overly burdensome.

Comments

829. Maine PSC asks the Commission to provide flexibility and waiver of the full requirements of the Final Rule LGIP and Final Rule LGIA for small transmission owners. Southwest Transmission requests that the current "small utility" exception for Order Nos. 888 and 889 should not only be

retained, but it should be expanded to apply to cooperatives with total electric energy dispositions that exceed four million MWh annually and with outside sales that do not exceed one million MWh annually. SoCal Water District also asks for a waiver for utilities with annual sales of less than four million MWh.

Commission Conclusion

830. We are sympathetic to the array of concerns raised by small Transmission Providers. Order Nos. 888 and 889 established guidelines for the granting of waivers to small entities, and this Final Rule adopts that approach and makes conforming changes to the regulatory text in Part 35 of the Commission's regulations.[141] We recognize, for example, that it might be a financial burden on a small Transmission Provider to perform Interconnection Studies or manage the construction of Interconnection Facilities in the same manner as a larger Transmission Provider. The small Transmission Provider may simply not have the staff or expertise to efficiently accommodate all Interconnection Requests.

831. Because the possible scenarios under which small entities may seek waivers from the Final Rule are diverse, they are not susceptible to resolution on a generic basis and we will require applications and fact-specific determinations in each instance. If the circumstances that give rise to the exemption change, the waiver may no longer be appropriate. In addition, we will apply the same standards to any entity seeking a waiver, including public utilities seeking waiver of some or all of the requirements of the Final Rule, as well as non-public utilities seeking waiver of the reciprocity provision. Each entity, however, will have to apply for this waiver and demonstrate that it qualifies for the waiver as required in Order No. 888.

7. OATT Reciprocity Requirements Applied to the Final Rule LGIP and Final Rule LGIA

832. In the NOPR, we proposed that the Final Rule LGIP and Final Rule LGIA be subject to the reciprocity provision of Order No. 888, as incorporated into the OATTs adopted by public utilities.[142] The reciprocity provision allows any public utility that provides open access transmission to a non-public utility to receive as a condition of service non-discriminatory access in return.[143] With the addition of the Final Rule LGIP and Final Rule LGIA to the OATT, in order to meet its reciprocity obligation, a non-public utility would have to provide Interconnection Service to the Transmission Provider and the Transmission Provider's Affiliates under the same terms and conditions under which it receives service.

Comments

833. Several public power commenters, including Lakeland, LPPC, Nebraska PPD, NRECA–APPA, and the Public Power Council, request that the Commission clarify that it indeed intends to apply, without modification, the reciprocity policy as expressed in Order No. 888 to the Final Rule LGIP and Final Rule LGIA. Other commenters such as LADWP and LIPA warn that any attempt to expand the reciprocity policy to allow a generator unaffiliated with a Commission-jurisdictional Transmission Provider to require a non-public utility to comply with the reciprocity condition would be an impermissible extension of Commission jurisdiction.

834. Mirant argues that the Commission should add additional reciprocity language to every Transmission Provider's OATT that conditions the continued provision of transmission service on a non-public utility Interconnection Customer offering comparable Interconnection Service on its own transmission facilities.

835. Nebraska PPD objects to any reciprocity with respect to the Final Rule LGIP and Final Rule LGIA. In the alternative, it seeks clarification that the jurisdictional Transmission Provider may waive reciprocity. It also joins LPPC in requesting that only terms and conditions, and not the rate provisions, be subject to the reciprocity condition.

836. Pinnacle West argues that the Commission should state that the reciprocity requirement cannot be satisfied if a non-public utility fails to provide credits against transmission service bills for Network Upgrades. Otherwise, Pinnacle West continues, the non-public utilities would be engaging in prohibited "and" pricing that charges customers twice for transmission service. It states that Commission precedent has made clear that to satisfy reciprocity, a non-public utility must charge rates comparable to the rates it charges itself.[144]

837. TAPS explains that the reciprocity condition should impose an obligation to interconnect on a basis that is reasonable under the circumstances and comparable to the way the non-public utility treats its own interconnections. It supports the availability of a Commission waiver of the reciprocity requirement for small transmission owners.

838. Certain public power entities, including the Bureau of Reclamation, LIPA; NYTO, Southwest Transmission, and TAPS, ask the Commission to consider the statutory or regulatory restrictions applicable to public power and other non-public utilities when the Commission evaluates their reciprocity compliance filings. They request that non-public utilities be afforded sufficient flexibility to include or modify certain provisions as required by law.

839. SoCal Edison expresses concern that an interconnection with a non-public utility may require Network Upgrades to a neighboring public utility's transmission facilities, and that the neighboring public utility would have no recourse should the owner of the generator and the non-public utility proceed with the interconnection without paying the neighboring public utility's upgrade costs. It proposes that the Commission, as part of the reciprocity provision, allow a jurisdictional utility to disconnect from its non-jurisdictional neighbor unless the neighbor ensures that the interconnecting generator mitigates the effects on the jurisdictional utility's system.

Commission Conclusion

840. Some commenters may have misunderstood our reciprocity statement in the NOPR as extending reciprocity rights to public utilities that do not own, control, or operate transmission either directly or through an Affiliate. The owners of many generators are public utilities that do not own, and are not affiliated with a public utility that owns, transmission. They are thus incapable of offering reciprocity service. We wish to make it clear that this Final Rule in no way alters the applicability of the reciprocity provision in the OATT and the reciprocity policy articulated in Order No. 888 and its progeny. The point of the reciprocity requirement is to permit a public utility that provides open access transmission service to require a

[141] *See* 18 CFR 35.28(d) (2003); Reg. Text 35.28(f)(3), *infra*.

[142] Large Generator Interconnection NOPR, FERC Stats. & Regs ¶ 32,560 at 34,184–185. *See also* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,755.

[143] *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,760.

[144] *Citing* Missouri Basin Municipal Power Authority, 99 FERC ¶ 61,062 at 61,296 (2002).

non-public utility that owns, controls, or operates transmission facilities to have available reciprocal transmission service from that non-public utility. The concept of reciprocity is simply irrelevant if the non-public utility does not own, control, or operate transmission facilities, as is the case with many Interconnection Customers. Because the Final Rule LGIP and Final Rule LGIA are to become a part of the OATT, the reciprocity provision in the OATT applies to interconnection as well. EEI—Alliance of Energy Suppliers, MidAmerican, and Nevada Power, among others, filed comments supporting this approach.

841. Under the reciprocity provision in Section 6 of the OATT, if the public utility seeks transmission service from a non-public utility to which it provides open access transmission service, the non-public utility that owns, controls, or operates transmission facilities must provide comparable transmission service that it is capable of providing on its own system. Under the OATT, a public utility may refuse to provide open access transmission service to a non-public utility if the non-public utility refuses to reciprocate. A non-public utility may satisfy the reciprocity condition in one of three ways: first, it may provide service under a Tariff that has been approved by the Commission under the voluntary "safe harbor" provision. A non-public utility using this alternative submits a reciprocity Tariff to the Commission seeking a declaratory order that the proposed reciprocity Tariff substantially conforms to or is superior to the OATT. The non-public utility then must offer service under its reciprocity Tariff to any public utility whose transmission service the non-public utility seeks to use. Second, the non-public utility may provide service to a public utility under a bilateral agreement that satisfies its reciprocity obligation. Finally, the non-public utility may seek a waiver of the reciprocity condition from the public utility.[145]

842. A non-public utility that has a "safe harbor" Tariff may add to its Tariff an interconnection agreement and interconnection procedures that substantially conform or are superior to the Final Rule LGIP and Final Rule LGIA if it wishes to continue to qualify for safe harbor treatment. A non-public utility that owns, controls, or operates transmission and that has not filed with the Commission a safe harbor Tariff and seeks transmission service from a public utility must either satisfy its reciprocity obligation under a bilateral agreement or seek a waiver of the OATT reciprocity condition from the public utility.

843. We do not require, as Pinnacle West proposes, that a non-public utility also provide transmission credits for Network Upgrade costs, to satisfy the Commission's reciprocity condition. With respect to a tariff filed under the "safe harbor" provision, our reciprocity policy requires that it contain rates comparable to the rates the non-public utility charges itself.[146] As for rates contained in a bilateral agreement, they are a fact-specific matter that will be subject to a case-by-case analysis.[147]

844. Regarding the applicability of the reciprocity requirement to public power and other nonjurisdictional entities, we shall limit reciprocity compliance to those services a nonjurisdictional entity is capable of providing on its system.[148] We likewise will consider the legal and regulatory restrictions on nonjurisdictional entities' contractual rights and tax-exempt status when we evaluate any "safe harbor" reciprocity filings.

845. Finally, since we did not propose to change the reciprocity condition articulated in the OATT in this Final Rule, SoCal Edison's concerns are more appropriately addressed in the discussion of effects on third party systems.

8. General Comments/Clarifications

a. Insurance

846. In the NOPR, we omitted the insurance requirements originally filed in the ANOPR Consensus LGIA. Those insurance requirements would have set out the minimum coverage types and amounts that each Party to the LGIA must maintain. The NOPR did not propose insurance requirements because insurance requirements are not contained in the OATT.

Comments

847. Many commenters, primarily Transmission Providers, ask the Commission to reconsider its proposal to omit the insurance requirements.[149] They argue that insurance provisions are common in individually negotiated interconnection agreements and are important for managing risks and containing liability costs. The magnitude of the costs and potential liability at issue necessitate the inclusion of insurance provisions, they claim. Entergy explains that since the indemnification provision in NOPR LGIA Article 18 likely will be inadequate to make the Transmission Provider whole, insurance is necessary to ensure that damaged Parties are made whole for a disturbance caused by a Generating Facility.

848. Several commenters, including PSNM, Southern, and Tenaska, argue that the Commission should not follow the OATT on this issue because Interconnection Service is different from transmission service in that the operation of generators poses safety and operational risks. PJMTO and PSEG note that a generation project is unlikely to obtain financing without appropriate insurance provisions within the Final Rule LGIA.

849. Some commenters, including Avista, Dynegy, FP&L, and National Grid, argue that the Commission should restore the insurance provision that appeared in the ANOPR LGIA, which included mandatory insurance types and coverage amounts. Others, including Dominion Resources, NYTO, and Progress Energy, argue that while state laws and local business practices should dictate the actual amount of coverage, the Final Rule LGIA should describe the types of insurance coverage each Party must carry. Some commenters including EEI—Alliance of Energy Suppliers state that while it is infeasible on a generic basis to stipulate the appropriate levels of insurance for all facilities, the Interconnection Customer and Transmission Provider should be required to maintain certain minimum levels of insurance as agreed by the Parties.

Commission Conclusion

850. We conclude that requiring certain minimum insurance in the Final Rule will benefit both the Transmission Provider and the Interconnection Customer and will help the Transmission Provider to avoid undue financial risk. Accordingly, we are restoring the insurance requirement in the Final Rule LGIA. The addition of this provision should help the Transmission Provider and the Interconnection Customer to manage the risks arising from Interconnection Service. The Final Rule requires that each Party, at its own expense, maintain certain minimum insurance coverages throughout the period of their interconnection agreement. These coverages include Employers' Liability and Workers' Compensation Insurance, Commercial General Liability Insurance,

[145] *See* Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,285–86.

[146] *See generally* Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,761; *see also* Long Island Power Authority, 84 FERC ¶ 61,280 at 62,333 (1998).

[147] Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,289.

[148] *Id.* at 30,286.

[149] *E.g.*, American Transmission, APS, Dominion Resources, Dynegy, Entergy, FP&L, National Grid, NiSource, NYTO, Oklahoma G&E, PSNM, and Tucson Electric.

Comprehensive Automobile Liability Insurance, and Excess Public Liability Insurance.

b. Liquidated Damages

851. Two liquidated damages provisions appeared in the NOPR, one in Article 5.1 of the LGIA and the other in Section 13.5 of the LGIP.

852. The liquidated damages provision in the NOPR LGIA would be applicable if an Interconnection Customer chooses the option described in Article 5.1.B. Under this option, if a Transmission Provider fails to complete construction of the Interconnection Facilities by the In-Service Date or the Network Upgrades by the Commercial Operation Date, the Transmission Provider would pay the Interconnection Customer liquidated damages. Liquidated damages would be limited to 0.5 percent per Calendar Day of the actual aggregate costs of the Interconnection Facilities or Network Upgrades for which the Transmission Provider remains responsible, not to exceed 20 percent of such costs.

853. The liquidated damages provision in Section 13.5 in the NOPR LGIP would have the Transmission Provider pay liquidated damages if it fails to meet its obligations in the LGIP and does not remedy the failure within 15 Business Days. Liquidated damages would be one percent of the actual costs of the applicable study cost per Calendar Day, with a cap at 50 percent. Also, upon expiration of the remedy period, the Transmission Provider would refund any deposit amount for the applicable study that the Interconnection Customer had paid beyond the actual reasonably incurred study costs.

Comments

854. Many commenters make similar arguments about these provisions, and since the provisions serve different functions, there may be different responses to the same argument. Nevertheless, there are a few issues that the Commission will address collectively; namely, legal authority to allow liquidated damages, and the applicability of liquidated damages to public power organizations and RTOs.

(1) Legal Authority To Require Liquidated Damages

855. Some commenters argue that liquidated damages are beyond the Commission's statutory authority inasmuch as they are penalties that are not fact-specific because they are not designed to remedy the actual damages experienced,[150] or are damages beyond the statutory authority of the Commission.[151] Others, including El Paso and WestConnect RTO, argue that liquidated damages are inconsistent with just and reasonable rates under the Federal Power Act. Southern questions whether the Commission has authority to require liquidated damage in private contracts. Idaho Power argues that the liquidated damages provisions violate the Federal Power Act by preventing a Transmission Provider from recovering costs prudently incurred in providing service to an Interconnection Customer. Maine PSC notes that the imposition of liquidated damages is at odds with the Commission's precedent on liability, which states that there should be no liability without fault and that liability should be unavoidable if caused by one's own gross negligence or intentional actions.[152] Other commenters, including Idaho Power and WestConnect RTO, argue that an Interconnection Customer should file a complaint if it believes that the rates, terms, and conditions of Interconnection Service are unjust or unreasonable.

Commission Conclusion

856. We are deleting the liquidated damages provisions from the Final Rule LGIP and retaining them, with modifications, in the Final Rule LGIA.

857. Liquidated damages provisions are within our statutory authority because, although we do not assess or award damages, we have jurisdiction under Section 205 over agreements from which damages may arise. Liquidated damages can help manage risk within a jurisdictional agreement.

858. In response to the comments questioning the imposition of liquidated damages by regulatory fiat, we clarify that the Final Rule, like the NOPR, does not require liquidated damages. A Transmission Provider has the option to agree to a liquidated damages provision after agreeing to the dates for designing, procuring and constructing the Interconnection Facilities and Network Upgrades designated by the Interconnection Customer.[153] If the Parties are unable to agree on an acceptable schedule, they may negotiate terms and conditions—including revisions to the liquidated damages provision—under the Negotiated Option in Article 5.1.4 of the Final Rule LGIA. So, rather than impose liquidated damages, the Final Rule LGIA provides liquidated damages as an option that may become a provision in the interconnection agreement signed by the Parties.

859. Because we are not including a liquidated damages provision in the Final Rule LGIP, we are not discussing that proposed provision here.

(2) Applicability of Liquidated Damages to Public Power, Cooperatives, and RTOs

860. Georgia Transmission argues that liquidated damages are particularly burdensome for cooperatives because of their inability to recover these costs except directly from the cooperative customers. For similar reasons, liquidated damages may make it financially prohibitive for some public power providers to handle Interconnection Requests from third party Interconnection Customers.[154] Western warns that it cannot agree to a contractual provision that would result in open-ended financial exposure when funds have not been appropriated for this purpose.

861. Midwest ISO TO argues that the liquidated damages provisions will not work in the RTO context, especially when the RTO is non-profit, for several reasons: (1) A Transmission Owner in an RTO should not be subject to liquidated damages because it will not be in charge of the interconnection process—the RTO will be, (2) an RTO should not pay liquidated damages since the costs will end up being spread over all customers who will pay the Interconnection Customer for the RTO's failure to meet the schedule, and (3) in an RTO context, with a neutral, non-profit RTO, there should be much less of a need for liquidated damages.

862. Cal ISO argues that since a Transmission Owner, rather than an RTO or ISO, will undertake many of these functions, the RTO or ISO should not be a guarantor for the Transmission Owner. For the RTO's responsibilities, Cal ISO continues, an Interconnection Customer is afforded recourse via Section 210 of the Federal Power Act.

863. PSEG and PJMTO similarly argue that the Final Rule should treat liquidated damages as a last resort remedy that would not apply where either the Interconnection Customer has an effective alternative backstop to protect itself against discriminatory conduct by the Transmission Provider or Transmission Owner, or the interconnection process is under the control of an independent third party

[150] *E.g.*, El Paso, Idaho Power, PacifiCorp, and WestConnect RTO.

[151] *E.g.*, Entergy and SoCal PPA.

[152] *See, e.g.*, ANR Pipeline Co., 98 FERC ¶ 61,128 at 61,862 (2002).

[153] LGIA Articles 5.1.2 and 5.1.3.

[154] *E.g.*, Imperial Irrigation, Lakeland, and LPPC.

unaffiliated with any market participant.

864. The Midwest ISO also argues that if an RTO or the Transmission Owner must pay liquidated damages, the Commission should limit their exposure by imposing liability only in cases of gross negligence and should require a Party to pay liquidated damages only if its action or inaction alone caused the damages.

Commission Conclusion

865. In response to commenters that question their ability to pay or recover liquidated damages, the Final Rule LGIA does not require that all executed interconnection agreements contain liquidated damages provision. As noted above in the discussion of proposed LGIA Article 5.1 (Options), a Transmission Provider may reject liquidated damages when the schedule proffered by the Interconnection Customer exposes it to too much risk.

866. Therefore, public power entities that have met a reciprocity obligation by filing a safe harbor Tariff will have the same opportunity to negotiate the liquidated damages provision as any other non-public power Transmission Provider. Entities with safe harbor tariffs that face unusual limitations, such as cooperatives financed by the Rural Utilities Service or federal power entities subject to contracting restrictions set by statute or regulation, may request waiver of the liquidated damages provision of the Final Rule LGIA when they comply with their reciprocity condition.

867. We agree with the Midwest ISO that liquidated damages may be unnecessary when an RTO or ISO administers the interconnection agreement and oversees the interconnection process. As noted above in part II.C.5 (Variations from the Final Rule), we will permit RTOs and ISOs to use an independent entity variation standard to justify variations from the Final Rule provisions. Accordingly, we will consider proposals to eliminate liquidated damages from the compliance filings of RTOs and ISOs.

(3) General Comments on the LGIA Liquidated Damages Provision

868. Many commenters, most of them Transmission Providers, ask the Commission to either eliminate [155] or modify [156] the liquidated damage provision in the NOPR LGIA. They argue that liquidated damages are inappropriate because the Transmission Owner recognizes no profit from the interconnection and has no means of recouping such costs.[157]

869. PG&E argues that the Commission should eliminate the liquidated damage clause and instead provide a rapid method for addressing Interconnection Customer complaints. PacifiCorp contends that this is not an appropriate context for liquidated damages because the Parties are not negotiating the terms. The Louisiana PSC argues that liquidated damages should be unavailable without a demonstration that harm was caused and that the Transmission Provider caused the harm. While FP&L argues that liquidated damages should not apply unless a Transmission Provider can recover these costs in rates, including retail rates, the Louisiana PSC argues that liquidated damages should not be recoverable in transmission charges.

870. Some commenters contend that, if the Parties agree to liquidated damages and liquidated damages are recoverable, it should be the exclusive remedy for failure to complete construction on time.[158] SoCal Edison argues that operating dates must be agreed upon between the Transmission Provider and the Interconnection Customer in order for liquidated damages to apply. Southern contends that liquidated damages should be available only for facilities that are not completed on time. If a Transmission Provider is subject to liquidated damages for failure to complete Interconnection Facilities being built by another Interconnection Customer, Dominion Resources argues, the Interconnection Customer constructing the Interconnection Facilities should indemnify the Transmission Owner for any liquidated damages resulting from the Interconnection Customer's failure to meet the designated date.

871. Others commenters, including Georgia Transmission and NRECA-APPA, argue that, in lieu of liquidated damages, the Commission should include a Good Utility Practice and best efforts standard that holds the Transmission Provider liable for actual damages. Several commenters ask the Commission to adopt a provision that would protect a Transmission Provider from liquidated damages if it meets a certain standard, such as a best efforts or Reasonable Efforts standard.[159] Some commenters, including Cleco and FP&L, argue that liquidated damages should be available only in cases of intentional wrongdoing or negligence.

872. Several Transmission Providers also argue alternatively that, if the liquidated damages provision remains in the Final Rule LGIA, it should be modified. Recommended modifications include not holding the Transmission Provider liable for Force Majeure events and circumstances beyond its control, such as permitting and regulatory delays, delays due to third parties, and delays due to the requesting Interconnection Customer or other Interconnection Customers.[160] Ameren argues that proposed LGIA Article 5.1.B(ii) might result in confusion, appeals, and litigation.

873. FP&L comments that the liquidated damages provision penalizes the Transmission Provider without a symmetrical opportunity for it to make a profit or recoup its costs and requests that the Transmission Provider have the opportunity to receive a financial benefit above its costs if a study is completed on time. Other commenters, including American Transmission, Cleco, MidAmerican, PG&E, and SoCal Edison, ask that the Commission make liquidated damages bilateral, thereby subjecting an Interconnection Customer to liquidated damages for missing its milestones. American Transmission further argues that an Interconnection Customer should be responsible for liquidated damages payable to the Transmission Provider at two levels of liability—a higher level when Generating Facilities lower in the queue are dependent on the Interconnection Customer's timely performance and a lower level when no third parties are harmed by the delay but the Transmission Provider deserves compensation.

874. Ameren argues that the NOPR LGIA does not address a situation in which multiple Interconnection Customers rely on the same Transmission Provider Interconnection Facilities and Network Upgrades. American Transmission proposes that total liability for a particular project should be the same regardless of the number of Interconnection Customers requesting the component. The Construction Issues Coalition

[155] *E.g.*, APS, Bridger Valley, Cinergy, El Paso, FP&L, Entergy, Idaho Power, LADWP, Monongahela Power, PacifiCorp, PG&E, Tucson Electric, and Western.

[156] *E.g.*, Ameren, American Transmission, Cal ISO, the Construction Issues Coalition, MidAmerican, Mirant, National Grid, NSTAR, NYTO, PSNM, Sempra, and SoCal Edison.

[157] *E.g.*, APS, Cinergy, Exelon, and Oklahoma G&E.

[158] *E.g.*, American Transmission, Construction Issues Coalition, NYTO, NSTAR, SoCal Edison, and WestConnect RTO.

[159] *E.g.*, Ameren, Cal ISO, Central Maine, El Paso, Exelon, and WestConnect RTO.

[160] *E.g.*, Ameren, the Construction Issues Coalition, Dominion Resources, FP&L, NE Utilities, NSTAR, PG&E, Sempra, SoCal PPA, and Southern.

recommends that the Commission modify proposed LGIA Article 5.1.B(ii) to specify a maximum of 20 percent of the project costs for all Interconnection Customers relying on the upgrade.

875. National Grid argues that the ERCOT LGIA provision, which has a compensatory approach, was better than the NOPR LGIA provision, which takes a punitive approach. The asymmetry between risk and reward may cause a Transmission Provider to avoid any obligation to perform Interconnection Services, says National Grid. Since a Transmission Provider can opt out of the liquidated damages provision in the interconnection agreement, an Interconnection Customer will likely be forced to find another builder.

876. PG&E requests that the Commission adopt a 15 month period for completing the work, which was in the ERCOT liquidated damages provision.

877. Cal ISO argues that damages must track the entity performing the work. In cases where there is an RTO or ISO, the Transmission Owner should be liable, and the RTO or ISO should not be a guarantor for the Transmission Owner.

878. Western argues that it is inequitable to allow the Interconnection Customer to extend the In-Service Date without penalty (Article 5.5) without also giving the Transmission Provider this option. Also, the Transmission Provider should be allowed to provide justification for not meeting unreasonable deadlines.

879. The Construction Issues Coalition argues that proposed LGIA Article 5.1.B:1.a should be modified to allow a Transmission Provider or a Transmission Owner not to enter into an interconnection agreement that includes liquidated damages for any reason, not just because of unacceptable dates. Because the limits on liquidated damages recovery may not be appropriate for every Interconnection Customer, Mirant argues, the proposed LGIA liquidated damages provision should be optional and left to the election of the Interconnection Customer.

880. American Forest expresses concern that the liquidated damages cap could be used by the Transmission Provider to delay or deny completion of Interconnection Studies or construction of facilities or upgrades simply by paying liquidated damages. The Commission should clarify that the cap should not be used by the Transmission Provider to impede the development of new generation. It proposes either deleting the cap or adding language to specify that the cap does not apply if the Transmission Provider intentionally delays or denies service. Also, Cal ISO notes that the penalty of 0.5 percent of the upgrade cost in proposed LGIA Article 5.1.A(ii) for each day the Transmission Provider fails to meet an agreed upon deadline for completing any portion of the Transmission Provider Interconnection Facilities or Network Upgrades does not really work as an incentive because there may be no incentive to meet a deadline if the cost of the upgrade is small because the penalty would be so low.

881. Several commenters, including Duke Energy, EPSA, and NE Utilities, support the liquidated damages provision in the NOPR LGIA but none provide detailed arguments explaining their support.

Commission Conclusion

882. As noted above, the proposed LGIA liquidated damages provision allows a Transmission Provider to refuse the Interconnection Customer's proffered construction schedule and perhaps even negotiate to revise the liquidated damages provision if the Parties end up negotiating over construction terms.[161] We are concerned that Transmission Providers will always negotiate to eliminate liquidated damages liability unless the provision is revised to further protect the Transmission Provider. For this reason, we are adopting the recommendations of several commenters to revise this provision.

883. In the Final Rule LGIA, liquidated damages would be recoverable if an Interconnection Customer chooses the Alternate Option in Final Rule LGIA Article 5.1.2. Under this option, if a Transmission Provider fails to complete the Interconnection Facility or the Network Upgrades by the dates designated by the Interconnection Customer and accepted by the Transmission Provider, the Transmission Provider would pay the Interconnection Customer liquidated damages. Liquidated damages would be limited to 0.5 percent per Calendar Day of the actual aggregate costs of the Interconnection Facilities or Network Upgrades for which the Transmission Provider remains responsible, and not to exceed 20 percent of the Transmission Provider's actual costs. They would not be recoverable under certain circumstances, such as when the Interconnection Customer is not ready to commence use of the Transmission Provider's Interconnection Facilities or Network Upgrades by the date specified (unless the Interconnection Customer was not ready due to delay on the part of the Transmission Provider) or if the delay is due to a cause beyond the reasonable control of the Transmission Provider.

884. Liquidated damages should not be payable if the delay is due to circumstances beyond the control of the Transmission Provider. As a result, liquidated damages will be available only due to the action or inaction of a Transmission Provider, and not when the delays are due to third parties or other circumstances beyond the Transmission Provider's control. For the purposes of this provision, the Transmission Provider's subcontractors will not be considered third parties, but delays due to the action or inaction of Interconnection Customers earlier in the queue will be considered delays due to third parties. This provision also will sufficiently protect a Transmission Provider that seeks to interconnect multiple Generating Facilities to the same interconnection, since liability to each of the Interconnection Customers for liquidated damages may be avoidable as long as the delay is not attributable to the Transmission Provider or its subcontractors. This will also counterbalance the Interconnection Customer's ability to adjust the schedule under Final Rule Article 5.7, since the Transmission Provider can avoid liability for the acts of third parties. Finally, because liquidated damages liability will not have to be paid unless the Transmission Provider is at fault, we conclude that these damages will not be considered just and reasonable costs of service and will not be recoverable in transmission rates.

885. Finally, if the Parties agree to liquidated damages and liquidated damages are payable, this will be the exclusive remedy for failure to complete construction on time. We are not making the liquidated damages provision bilateral, however, because the Final Rule LGIA provides a Transmission Provider the necessary protection from liquidated damages liability, as well as the ability to negotiate provisions of the interconnection agreement to better match its chosen level of risk.

(4) General Comments on the LGIP Liquidated Damages Provision

886. Many commenters, most of them Transmission Providers, ask the Commission to either eliminate[162] or

[161] In Final Rule LGIA Article 5.1.4, the Parties may negotiate terms under the Negotiated Option.

[162] *E.g.*, APS, Bridger Valley, El Paso, Entergy, FP&L, LADWP, LPPC, NYISO, PacifiCorp, PG&E, PGE, PJMTO, PSNM, Southern, WestConnect RTO, and Western.

modify [163] the liquidated damages provision in the LGIP.

887. Those opposed to the liquidated damages provision in the LGIP argue, among other things, that liquidated damages are inappropriate because the Transmission Owner recognizes no profit and has no means for recouping costs.[164] Entergy notes that liquidated damages are improper because the Commission traditionally rejected these payments in favor of the payments of identifiable and direct costs incurred. PacifiCorp contends that this is not an appropriate context for liquidated damages because the Parties are not bargaining on the terms. Southern complains that the liquidated damages are improper because the LGIP provides for an uncontrolled and lengthy process due to the many opportunities for the Interconnection Customer to change data and Generating Facility configuration.

888. The NYISO and PSNM argue that instead of liquidated damages, the Commission should use the OATT Section 19.4 study requirement, which requires due diligence to perform within a specified time period. Under this approach, if a Transmission Provider is unable to meet the deadline, it must notify the customer and provide an estimate of the additional time needed and explain why more time is necessary.

889. Among those commenters requesting modification, several Transmission Providers propose that liquidated damages be made bilateral, thereby subjecting Interconnection Customers to liquidated damages for failure to meet deadlines.[165] American Transmission argues that there should be separate levels of liability facing the Interconnection Customer depending on third party harm caused by the Interconnection Customer's delay. Some commenters, including National Grid and NE Utilities, recommend a reciprocal financial incentive to earn for superior performance to offset the risk of liquidated damages.

890. Several Transmission Providers, including AEP, Ameren, Idaho Power, LG&E Energy, and NE Utilities, recommend modifying the proposed LGIP to exempt the Transmission Provider from circumstances beyond its control, such as the action or inaction of third parties, the failure of the Interconnection Customer to provide all relevant data, failure of a third party contracted by the Interconnection Customer to provide timely studies, or permitting or other state regulatory prerequisites.

891. The Salt River Project contends that a Transmission Provider should be able to avoid liquidated damages in the LGIP as it can in the LGIA. NSTAR recommends that the LGIP adopt NEPOOL language that allows the Parties to agree upon a schedule with deadlines if money damages are at stake for non-completion.

892. Several commenters, including Dominion Resources, FP&L, and Progress Energy, argue that the liquidated damages provision should be revised so that it does not apply unless the failure to meet a deadline results from negligence or intentional wrongdoing by the Transmission Provider.

893. Duke Energy asks the Commission to clarify that the Reasonable Efforts standard also applies to restudies, and that liquidated damages apply only to the study obligations under the LGIP, and not all of the LGIP obligations. NE Utilities recommends that, to avoid overlap and ambiguity, the first sentence of proposed LGIP Section 13.5 should be revised to apply to "study-related" obligations.

894. American Transmission argues that the 50 percent cap on liquidated damages in the LGIP is excessive and it should be reduced to 25 percent.

895. American Forest proposes either deleting the cap or adding language to specify that the cap does not apply if the Transmission Provider intentionally delays or denies service.

896. Mirant argues that the liquidated damages provision in the LGIP should provide for liquidated damages of one percent per day starting on the date the Transmission Provider misses a deadline for completing the study, but after 30 days, the Transmission Provider should pay the Interconnection Customer liquidated damages equal to the remaining difference between the study cost and the amount already paid in liquidated damages. Also, the Transmission Provider should refund with interest any deposit amount in excess of the actual reasonably incurred study costs immediately upon expiration of the 15 day remedy period. These modifications provide a better incentive for Transmission Provider compliance.

897. Some commenters, including Calpine, EPSA, and KeySpan, argue in favor of the incentive that this proposed liquidated damages provision provides.

Commission Conclusion

898. We are eliminating liquidated damages from the Final Rule LGIP. While we understand the value of providing an incentive to complete Interconnection Studies, we are concerned that the availability of such a provision may undermine the Transmission Provider's ability to economically administer its study process.

899. Moreover, we question whether liquidated damages are appropriate during the study phase, since at that time it will be unclear whether a prospective Interconnection Customer intends to pursue its Interconnection Request. Because at this stage the prospective Interconnection Customer does not face a substantial risk of damages, we are not standardizing liquidated damages for Transmission Providers during the study phase (*i.e.*, in the Final Rule LGIP). Rather, we are requiring that a Transmission Provider use due diligence to perform within a specified time period. This approach, which has been applied to facilities studies in OATT Section 19.4, gives the Transmission Provider a deadline, and requires that the Interconnection Customer be kept apprised in writing of any difficulties encountered in meeting the deadline. In order to ensure that a Transmission Provider complies with its obligations, we urge the Interconnection Customer to bring any disputes to the Commission's Dispute Resolution Service, or if necessary, pursue claims of unduly discriminatory treatment under Section 206 of the Federal Power Act.

c. Consequential Damages

900. Consequential damages are losses that flow indirectly—rather than directly and immediately—from an injurious act.[166] In the NOPR, the Commission chose to maintain consistency with the OATT, and the NOPR LGIA did not limit liability for losses or costs for consequential damages. Instead, it relied on the statement in Order No. 888–A that Transmission Providers and customers can rely on any statutes or other laws to protect Parties from consequential or indirect damages.[167] The NOPR also stated that the OATT protects a Transmission Provider from consequential damages and indirect damages claims by third parties though indemnification except in cases of negligence or intentional wrongdoing by the Transmission Provider. The

[163] *E.g.*, AEP, American Forest, American Transmission, Cal ISO, Central Maine, Cleco, Duke Energy, National Grid, NE Utilities, NYTO, and Salt River Project.

[164] *E.g.*, APS, PG&E, and PGE.

[165] *E.g.*, American Transmission, Joint Consumer Advocates, and the Midwest ISO.

[166] Black's Law Dictionary 394 (7th ed. 1999).

[167] Order No. 888–A, FERC Stats. & Regs ¶ 31,048 at 30,302.

Commission sought comments on this approach and the relative merits of the alternative provisions in the consensus and ERCOT interconnection agreements.

Comments

901. Many commenters, mostly Transmission Providers, recommend that the Final Rule LGIA limit exposure to consequential damages, such as incidental, exemplary or indirect damages, lost profits, and other business interruption damages.[168] Without a provision limiting exposure, the Mississippi PSC explains, a Transmission Provider will be unable to contractually protect itself from these claims. The risk of exposure will impose significant additional costs, which will then be charged to all transmission customers. In this way, clauses that exclude liability for consequential damages reduce rates.

902. APS explains that, because statutes for liability vary from state to state, the LGIA must recognize these differences, and dictating specific terms should be avoided. FP&L notes that, contrary to the Commission's reliance on state statutes, not all states provide consequential damages protection. As an example, FP&L points to Florida, which allows exclusion of consequential damages, but the provision must be included in a contract. Progress Energy warns that a reliance on statutes or other laws dealing with consequential damages, as the Commission proposed in the NOPR, will only invite future disagreements and litigation.

903. Some commenters, including Duke Energy and Dynegy, request that, if language limiting liability for consequential damages is not inserted, the Commission should, at a minimum, provide Parties the option of mutually agreeing to include a limitation on liability, consistent with existing Commission policy.

904. Westconnect RTO notes that if liquidated damages are not available under the option in proposed LGIA Article 5.1B(i)(b), an Interconnection Customer may still sue the Transmission Provider for failing to meet the In-Service Date if there is no limitation of liability clause. It notes that without a clause limiting liability for consequential damages, an Interconnection Customer may still be able to secure damages akin to liquidated damages, even if the Parties do not expressly agree to liquidated damages in their executed interconnection agreement.

905. Central Maine takes issue with the NOPR position that a Transmission Provider is protected from consequential and indirect damage liability to third parties through indemnification. A Transmission Provider's obligation to indemnify the Interconnection Customer for third party claims against the Interconnection Customer may be viewed as a payment of consequential damages by the Transmission Provider.

Commission Conclusion

906. There are several factors that convince us that a provision limiting consequential damages should be added to the Final Rule LGIA. First, by standardizing the liability protection, rather than leaving the issue to state law, it should offer greater certainty to Transmission Providers and Interconnection Customers alike. Contrary to APS's argument, it is precisely because state liability statutes vary that we are prescribing a specific liability provision. Second, liability limitation provisions protect against excessive utility rates by capping damage awards.[169] Finally, a goal of this rulemaking is to reduce litigation arising from interconnection, and an express provision in the LGIA limiting liability will have this effect. For these reasons, we are including a provision limiting consequential damages. Final Rule LGIA Article 18.2 protects either Party from liability for any special, indirect, incidental, consequential, or punitive damages, including profit or revenue. The Parties remain liable for any liquidated damages payable, and any damages for which a Party may be liable to the other Party under another agreement.

d. Two vs. Three Party Agreements

907. In the NOPR, the Commission proposed that, along with the Interconnection Customer, the Transmission Provider, and, to the extent necessary, the Transmission Owner, must become signatories to the interconnection agreement. The intent was to require the Transmission Provider to sign the agreement, and if the Transmission Owner is a separate entity, to require it to sign as well. We reasoned that the Transmission Provider should sign the agreement because the Interconnection Service would be provided under the Transmission Provider's OATT. However, we noted that no one disputes that the Transmission Owner must also enter into an agreement with the Interconnection Customer, and it would be inefficient to require the Interconnection Customer to enter into separate agreements with the Transmission Owner and the Transmission Provider.

Comments

908. Interconnection Customers, such as Calpine, Dairyland Power, and PSEG, generally prefer a three party agreement because it facilitates "one-stop shopping." RTOs, ISOs, and some Transmission Owners, including Cal ISO, PJM, and PG&E believe that, when the Transmission Provider is not the Transmission Owner, the former's responsibilities can be fully addressed in the Tariff and it need not be a Party to the interconnection agreement. They argue that the main purpose of the agreement is to establish a property-based relationship between the Interconnection Customer and the Transmission Owner. Also, PJM states that the NOPR LGIA is not structured to accommodate its use as a three party agreement, and should be changed to clearly define the roles of Transmission Owners and Transmission Providers.

Commission Conclusion

909. We are replacing the proposed words "to the extent necessary" with the words "if the Transmission Owner is not the Transmission Provider" in the Final Rule provision. Thus, both must sign the interconnection agreement when the Transmission Owner is not also the Transmission Provider. We believe that this better defines the relationship among the Parties in one document, protects the Interconnection Customer and, therefore, facilitates the development of new generation resources. In an RTO or ISO where the Transmission Provider is not the Transmission Owner, the RTO or ISO's compliance filing may propose a modified interconnection agreement that provides different respective rights and obligations in the region. In other cases, we do not believe that the three party agreement should create an undue burden for either entity.

D. Compliance Issues

1. Amendments to Transmission Providers' OATTs

910. The Commission is requiring all public utilities that own, control, or operate interstate transmission facilities to adopt the Final Rule LGIP and Final Rule LGIA as an amendment to their

[168] *E.g.*, Ameren, American Transmission, APS, Avista, Central Maine, the Coalition for Contract Terms, Dominion Resources, Duke Energy, FP&L, Mississippi PSC, NYTO, PacifiCorp, Progress Energy, PSNM, RTO West Utilities, Tucson Electric, and WestConnect RTO.

[169] *See* Richard J. Pierce, Regional Transmission Organizations: Federal Limitations Needed for Tort Liability, 23 Energy L.J. 63, 67–72 (2002).

OATTs within 60 days after the publication of the Final Rule in the **Federal Register**. RTOs and ISOs are required to make a compliance filing by this same deadline, but their compliance filings will be assessed using the independent entity variation standard as described in Part II.C.5 of this preamble.

2. Grandfathering of Existing Interconnection Agreements (ISOs and Non-ISOs)

911. The Commission is not requiring retroactive changes to individual interconnection agreements filed with the Commission prior to the effective date of this Final Rule.[170] Non-generic agreements submitted for approval by the Commission before the effective date of the Final Rule are grandfathered and will not be rejected outright for failing to conform to the Final Rule LGIA. Generic interconnection procedures submitted for approval or approved by the Commission before the effective date of the Final Rule must be resubmitted after being revised to conform to this Final Rule. For previously accepted individual interconnection agreements, the Commission's interconnection case law and policies govern.

912. As for requests for interconnection pending when the Final Rule takes effect, Final Rule LGIP Section 5.1 ensures that an Interconnection Customer that has been assigned a Queue Position before the issuance of the Final Rule retains that Queue Position. If an Interconnection Customer has signed any Interconnection Study agreement as of the effective date of the Final Rule, it has the option to either continue with the remaining Interconnection Studies under the Transmission Provider's existing study process or complete the remaining studies for which it does not have a signed Interconnection Study agreement under the provisions of the Final Rule LGIP.

3. Order No. 2001 and the Filing of Interconnection Agreements

913. Order No. 2001[171] revised the format through which traditional public utilities and power marketers must satisfy their obligation, pursuant to Section 205 of the Federal Power Act and part 35 of the Commission's Regulations, to file agreements with the Commission.[172] Public utilities that have standard forms of agreement in their transmission tariffs, cost-based power sales tariffs, or tariffs for other generally applicable services no longer need to file conforming service agreements with the Commission. The filing requirement for conforming agreements is now satisfied by filing the standard form of agreement and an Electronic Quarterly Report.[173] Order No. 2001 also lifts the requirement that parties to an expiring conforming agreement file a notice of cancellation or a cancellation tariff sheet with the Commission. The public utility may simply remove the agreement from its Electric Quarterly Report in the quarter after it terminates.[174]

914. Non-conforming agreements, which are agreements for transmission, cost-based power sales and other generally applicable services that do not conform to an applicable standard form of agreement in a public utility's tariff, must continue to be filed with the Commission for approval before going into effect.[175] This category includes unexecuted agreements and agreements that do not precisely match the applicable standard form of service agreement.[176]

915. With respect to interconnection agreements, Order No. 2001 found that part 35 of the Commission's Regulations does not make a distinction between an interconnection agreement and other agreements for service that must be filed in conformance with this part of the Commission's Regulations.[177] Order No. 2001 therefore found that if an interconnection agreement conforms with a Commission-approved standard form of interconnection agreement, the utility does not have to file it but must report it in the Electric Quarterly Reports. Order No. 2001 also states that the requirement to file contract data and transaction data begins with the first Electric Quarterly Report filed after service commences under an agreement, and continues until the Electric Quarterly Report filed after it expires or by order of the Commission. However, an Interconnection Agreement that does not precisely match the Transmission Provider's approved standard LGIA or that is unexecuted must be filed in its entirety. The Transmission Provider should clearly indicate where the agreement does not conform to its standard Interconnection Agreement, preferably through red-lining and strike-out.

III. Information Collection Statement

916. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and record keeping (collections of information) imposed by an agency.[178] The information collection requirements in this Final Rule are identified under the Commission data collection, FERC–516 "Electric Rate Schedule Filings." In accordance with Section 3507(d) of the Paperwork Reduction Act of 1995,[179] the proposed reporting requirements in the subject rulemaking will be submitted to OMB for review. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415) or from the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285, e-mail *pamelabeverly.oirasubmission@omb.eop.gov*).

917. The regulated entities shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

918. *Public Reporting Burden:* The Commission did not receive specific comments concerning its burden estimates and uses the same estimates here in the Final Rule. Comments on the substantive issues raised in the NOPR are addressed elsewhere in the Final Rule.

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–516:				
LGIPs & LGIAs	95	1	4	380

[170] Section 5 of the Final Rule LGIP governs the treatment of Queue Positions established prior to the effective date of the Final Rule. It also provides a transition process for Transmission Providers with Interconnection Requests outstanding when the Final Rule takes effect.

[171] Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002); *reh'g denied*, Order 2001–A, 100 FERC ¶ 61,074 (2002); *reconsideration and clarification denied*, Order No. 2001–B, 100 FERC ¶ 61,342 (2002); *further order*, Order No. 2001–C, 101 FERC ¶ 61,314 (2002).

[172] *See* Order No. 2001 at P 12.

[173] *See id.* at P 18.

[174] *See id.* at P 249.

[175] *See id.* at P 19.

[176] *See id.* at P 196.

[177] *See id.* at P 200.

[178] 5 CFR 1320.11 (2003).

[179] 44 U.S.C. 3507(d) (2000).

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
LGIPs & LGIAs to be developed	81	1	6	486
	81	1	25	2,205
Recordkeeping	176	1	6	1,056
Totals				3,947

Total Annual Hours for Collection: (reporting (2,891) + recordkeeping (1,056) = 3,947 hours.

Information Collection Costs: The Commission sought comments about the time to comply with these requirements. No comments were received. Staffing requirements to review and modify existing LGIPs & LGIAs = $19,000 (95 respondents × $200 (4 hours @ $50 hourly rate)). To be added to this cost are the costs for review and preparation of new LGIPs and LGIAs or $125,550 (81 respondents × $1,550 (31 hours @ $50 hourly rate)) = $144,550. There are also the annualized costs for processing (operations) and maintenance (recordkeeping) of these documents = $70,752 (176 respondents × $402 ((6 hours @ $50 hourly rate) (for processing these documents) (operations) + (6 hours @$17 hourly rate) (recordkeeping/ maintenance)). The Commission believes there will be a one-time start up costs to comply with these requirements for the procedures and agreements and then an additional $70,752 to maintain them. Total annualized costs = $215,302.

Titles: FERC–516 "Electric Rate Schedule Filings."

Action: Revision of Currently Approved Collection of Information.

OMB Control Nos.: 1902–0096.

Respondents: Business or other for profit.

Frequency of Responses: One-time implementation.

Necessity of Information: The final rule revises the reporting requirements contained in 18 CFR part 35. The Commission promulgates a standard LGIP and standard LGIA that public utilities must adopt. As noted in the Final Rule, the adoption of these procedures and agreement will (1) reduce interconnection costs and time for generators and Transmission Providers alike; (2) limit opportunities for Transmission Providers to favor their own generation; (3) facilitate market entry for generation competitors; and (4) encourage needed investment in generator and transmission infrastructure.

919. Interconnection plays a growing crucial role in bringing much needed generation into the market to meet the needs of electricity customers. However, requests for interconnection frequently result in complex technical disputes about interconnection feasibility, cost and cost responsibility. The Commission expects that a standard LGIP and standard LGIA will reduce interconnection costs and time for Interconnection Customers and Transmission Providers, resolve most interconnection disputes, minimize opportunities for undue discrimination, foster increased development of economic generation, and improve system reliability.

920. For information on the requirements, submitting comments on the collection of information and the associated burden estimates including suggestions for reducing this burden, please send your comments to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415) or send comments to the Office of Management and Budget (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285, e-mail *pamelabeverly.oirasubmission@omb.eop.gov*).

IV. Environmental Impact Statement

921. Commission Regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[180] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural or does not substantially change the effect of legislation or regulations being amended,[181] and also for information gathering, analysis, and dissemination.[182] The Final Rule updates part 35 of the Commission's Regulations and does not substantially change the effect of the underlying legislation or the regulations being revised or eliminated. In addition, the Final Rule involves information gathering, analysis and dissemination. Therefore, this Final Rule falls within categorical exemptions provided in the Commission's Regulations. Consequently, neither an environmental impact statement nor an environmental assessment is required.

V. Regulatory Flexibility Act

922. The Regulatory Flexibility Act (RFA)[183] requires that a rulemaking contain either a description and analysis of the effect that the proposed rule will have on small entities or a certification that the rule will not have a significant economic impact on a substantial number of small entities. In the NOPR, the Commission stated that the proposed regulations would impose requirements only on interstate transmission providers, which are not small businesses. The Commission certified that the proposed regulations would not have a significant adverse impact on a substantial number of small entities.

Comments

923. NRECA–APPA argues that the Commission failed to adequately account for the limited resources of small service providers when drafting the NOPR's RFA compliance statement. According to NRECA–APPA, the NOPR inconsistently suggests that it would apply to wholesale sales through Distribution Systems, but the RFA compliance language states that the regulations impose requirements only on interstate Transmission Providers.

Commission Conclusion

924. As explained above, only facilities owned by public utilities that own, control, or operate interstate transmission facilities (Transmission Providers) are subject to the Final Rule. Thus the Final Rule applies to the same class of entities subject to Order No. 888. In Order No. 888, the Commission concluded that the number of affected small entities did not constitute a "substantial number" under the RFA and noted that small entities would be eligible for a waiver.[184] The Commission adopts the same reasoning here. The waiver available for

[180] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[181] 18 CFR 380.4(a)(2)(ii) (2003).

[182] 18 CFR 380.4(a)(5) (2003).

[183] 5 U.S.C. 601–612 (2000).

[184] Order No. 888, FERC Stats. & Regs ¶ 31,036 at 31,897.

compliance with the Commission's Order No. 888[185] is also available for this Final Rule.

The Regulatory Flexibility Act of 1980 (RFA)[186] generally requires a description and analysis of the effect of proposed or Final Rules that will have significant economic impact on a substantial number of small entities or a certification that the rule will not have such an economic effect. In this Final Rule, the Commission is requiring public utilities that own, control, or operate facilities used for transmitting electric energy in interstate commerce to modify their OATTs, first established under Order No. 888, to include a standard LGIP and standard LGIA. In Order Numbers 888 and 889, the Commission certified that its rules would not impose a significant economic impact on a substantial number of small entities.[187] In Order No. 888, the Commission found that just over one-tenth of the total number of public utilities constitute small entities.[188] And of that number, several had already filed OATTs, reducing this number even further. As the Commission noted in Order No. 888 and reemphasizes here, waiver provisions are applicable here.[189] This waiver policy follows the provisions of the Small Business Act (SBA) by acknowledging the definition of a small electric utility. The Small Business Size Standards component of the North American Industry Classification System defines a small electric utility as one that, including its affiliates, is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and whose total electric output for the preceding fiscal year did not exceed 4 million MWh.[190] Continuing to make the waiver process available should address the concerns of those entities that ask the Commission to extend the "small utility" exception.[191] This Final Rule will promote consistent reporting practices for all reporting companies. It will not be a significant burden to industry, since several Transmission Providers have already filed interconnection procedures as part of their OATTs and much of the information is already being supplied under interconnection agreements throughout the industry. Accordingly, the Commission certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities.

[185] *See* 18 CFR 35.28(d) (2003).

[186] 5 U.S.C. 601–612 (2000).

[187] Order No. 888, FERC Stats. & Regs. ¶ 31,036, at 31,898.

[188] 5 U.S.C. 601(3) (2000), citing to Section 3 of the Small Business Act, 15 U.S.C. 632 (2000). Section 3 of the Small Business Act defines a "small-business concern" as a business which is independently owned and operated and which is not dominate in its field of operation.

[189] *See* 18 CFR 35.28(d) (2003).

[190] 13 CFR 121.61 (Sector 22, Utilities, North American Industry Classification System, NAICS) (2003).

[191] Maine PSC, Southwest Transmission, and SoCal Water District.

VI. Document Availability

925. In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

926. From the Commission's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

927. User assistance is available for FERRIS and the Commission's Website during normal business hours from FERC Online Support (by phone at 1–866–208–3676 (toll free) or 202–502–6652, or by e-mail at *FERCOnlineSupport@ferc.gov*) or the Public Reference Room at (202) 502–8371, for TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*).

VII. Effective Date and Congressional Notification

928. This Final Rule will take effect on October 20, 2003. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[192] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.[193]

[192] 5 U.S.C. 804(2) (2000).

[193] 5 U.S.C. 801(a)(1)(A) (2000).

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission,

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends part 35, Chapter I, Title 18 of the Code of Federal Regulations, as follows.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. In § 35.28, the last sentence in the paragraph (d) introductory text is revised, and paragraph (f) is added to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(d) *Waivers.* * * * Except as provided in paragraph (f) of this section, an application for waiver must be filed either:

* * * * *

(f) *Standard generator interconnection procedures and agreement.* (1) Every public utility that is required to have on file a non-discriminatory open access transmission tariff under this section must amend such tariff by adding the standard interconnection procedures and agreement contained in Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection) or such other interconnection procedures and agreement as may be approved by the Commission consistent with Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection).

(i) The amendment required by paragraph (f)(1) of this section must be filed no later than October 20, 2003.

(ii) Any public utility that seeks a deviation from the standard interconnection procedures and agreement contained in Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection), must demonstrate that the deviation is consistent with the principles of Order No. 2003, FERC Stats. & Regs. ¶ 31,146 (Final Rule on Generator Interconnection).

(2) The non-public utility procedures for tariff reciprocity compliance described in paragraph (e) of this section are applicable to the standard

interconnection procedures and agreement.

(3) A public utility subject to the requirements of this paragraph may file a request for waiver of all or part of the requirements of this paragraph (f), for good cause shown. An application for waiver must be filed either:

(i) No later than October 20, 2003, or

(ii) No later than 60 days prior to the time the public utility would otherwise have to comply with the requirements of this paragraph (f).

Note: The following Appendices will not be published in the *Code of Federal Regulations.*

BILLING CODE 6717–01–P

Appendix A

Flow Chart of the Large Generating Facility Interconnection Process

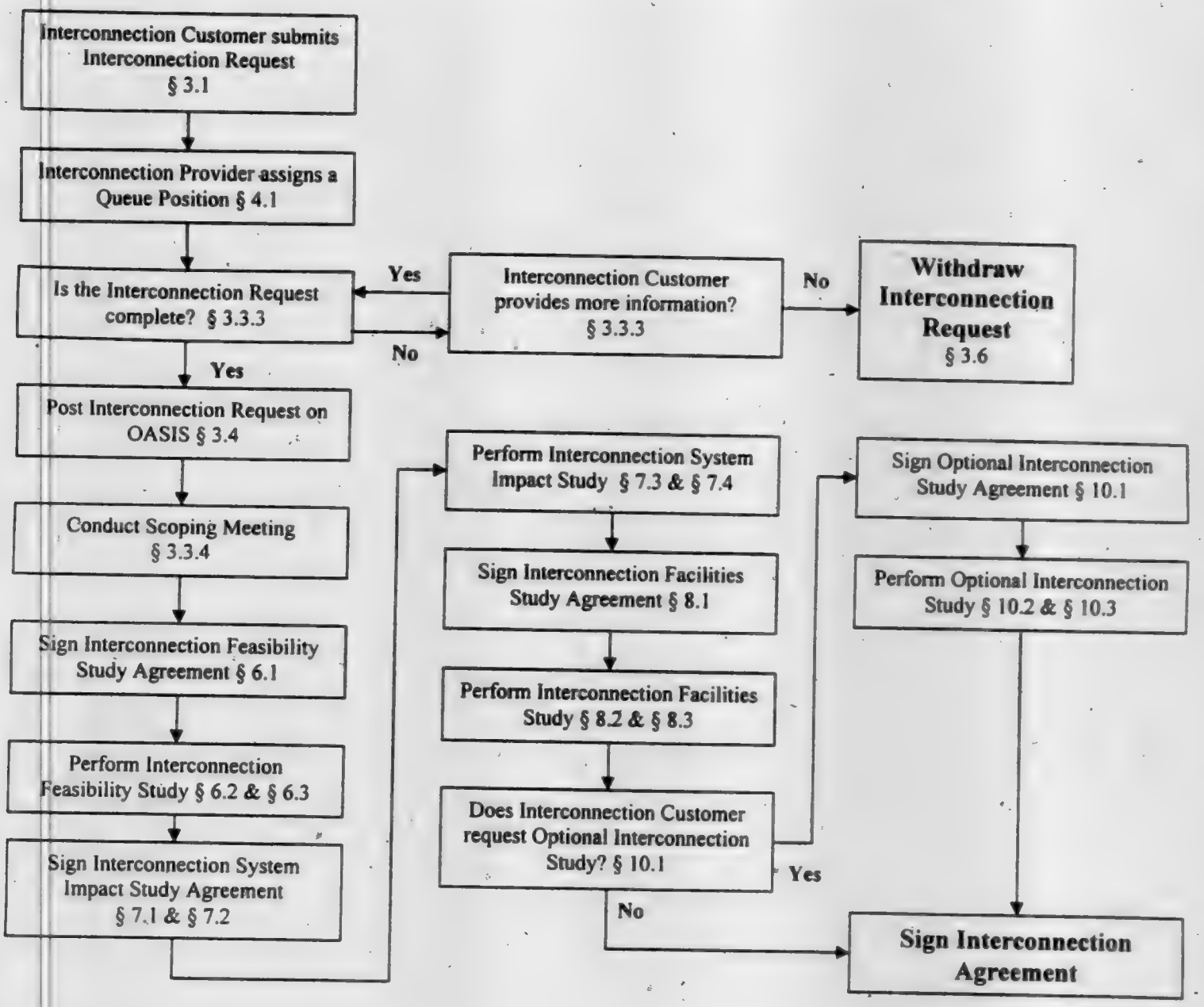

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Appendix B—Commenter Acronyms

ACEEE—American Council for an Energy Efficient Economy
AEP—American Electric Power System
Alabama MEA—Alabama Municipal Electric Authority
Alabama PSC—Alabama Public Service Commission
Ameren—Ameren Services Company
American Boiler—American Boiler Manufacturers Association
American Forest—American Forest & Paper Association
American National—American National Power, Inc.
American Superconductor—American Superconductor Corporation
American Transmission—American Transmission Company, LLC
American Wind Energy—American Wind Energy Association
APS—Arizona Public Service Company
Arkansas Coops—Arkansas Electric Cooperative Corporation
Arkansas PSC—Arkansas Public Service Commission
Avista—Avista Corporation
Baker & McKenzie—Baker & McKenzie
Basin Electric—Basin Electric Power Cooperative
Bergey Windpower—Bergey Windpower Company
BP Solar—BP Solar
BPA—Bonneville Power Administration
Bridger Valley—Bridger Valley Electric Association, Inc.
Bruder—Bruder, Gentile & Marcoux, L.L.P.
Bureau of Reclamation—Bureau of Reclamation, U.S. Department of Interior
Cal EOB—California Electricity Oversight Board
Cal Cogen—Cogeneration Association of California
Cal DWR—California Department of Water Resources
Cal ISO—California ISO
Calpine—Calpine Corporation
Central Maine—Central Maine Power Company, New York State Electric & Gas Corporation, and Rochester Gas & Electric Corporation
Central Vermont PSC—Central Vermont Public Service Corporation
Cinergy—Cinergy Services, Inc.
Cleco—Cleco Power, LLC
Coalition for Contract Terms—Coalition in Support of Retaining and/or Modifying Certain Commercial Contract Terms for the Standard Interconnection Agreement
Coalition for Pricing—Coalition for Equitable Transmission Pricing
Coalition for Services—Coalition for Appropriate Interconnection Services
Combined Heat & Power—U.S. Combined Heat and Power Association
Connecticut PUC—Connecticut Department of Public Utility Control
Construction Issues Coalition—Transmission Owner/Provider Construction Issues Coalition
Consumers—Consumers Energy Company
CPUC—California Public Utilities Commission
Cummins—Cummins, Inc.
Dairyland Power—Dairyland Power Cooperative
DG Alliance—Distributed Generation Alliance
Dominion Resources—Dominion Resources Services, Inc.
Duke Energy—Duke Energy Corporation
Dynegy—Dynegy Power Corporation
E3—The E Cubed Company, LLC
Edison Mission—Edison Mission Energy
EEI—Edison Electric Institute, Alliance of Energy Suppliers, EEI Transmission Group, EEI Distributed Generation Task Force and Tax Analysis Research Subcommittee
El Paso—El Paso Electric Company
ELCON—Electricity Consumers Resource Council
Encorp—Encorp, Inc.
Enercon—Enercon Engineering, Inc.
Energy Consortium—The Energy Consortium
Entergy—Entergy Services, Inc.
EPSA—The Electric Power Supply Association
EPUC—The Energy Producers and Users Coalition
Exelon—Exelon Corporation
Financial Security Issues Coalition—Transmission Owner/Provider Financial Security Issues Coalition
FirstEnergy—FirstEnergy Corporation
Florida PSC—Florida Public Service Commission
Florida RCC—Florida Reliability Coordinating Council
FP&L—Florida Power & Light Company
Georgia Transmission—Georgia Transmission Corporation
GE Power—GE Power Systems
Great Northern—Great Northern Power Development
Great River—Great River Energy
H Power—H Power
Idaho Power—Idaho Power Company
Ida Tech—Ida Tech
Imperial Irrigation—Imperial Irrigation District
Independent Market Operator—Independent Electricity Market Operator
Independent Producers—Independent Energy Producers Association
Industrial Energy—Industrial Energy Consumer Group
Interconnection Services Coalition—Transmission Owners Coalition for Appropriate Interconnection Services
International Paper—International Paper Company
ISO New England—ISO New England
Joint Consumer Advocates—Joint Consumer Advocates
Kentucky PSC—Public Service Commission of the Commonwealth of Kentucky
KeySpan—KeySpan-Glenwood Energy Center LLC, KeySpan-Port Jefferson Energy Center, LLC, and KeySpan-Ravenswood, Inc.
LADWP—Los Angeles Department of Water and Power
Lakeland—Lakeland Electric, Kissimmee Utility Authority, Gainesville Regional Utilities, and The City of Tallahassee, Florida
LPPC—Large Public Power Council
LG&E Energy—LG&E Energy Corp., Louisville Gas and Electric Company, and Kentucky Utilities Company
LIPA—Long Island Power Authority
Louisiana PSC—Louisiana Public Service Commission
Maine PSC—Maine Public Service Company
Maine Public Advocate—Maine Office of the Public Advocate
Maine PUC—Maine Public Utilities Commission
Maryland PSC—Public Service Commissions of Maryland, Delaware, and the District of Columbia
Memphis LG&W—Memphis Light, Gas and Water Division
MidAmerican—MidAmerican Energy Company
Midwest ISO—Midwest ISO
Midwest ISO TO—Midwest ISO Transmission Owners
Mirant—Mirant Americas, Inc.
Mississippi PSC—Mississippi Public Service Commission
Monongahela Power—Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, and Allegheny Energy Supply Company, LLC
NARUC—National Association of Regulatory Utility Commissioners
National Energy Marketers—National Energy Marketers Association
National Grid—National Grid USA
Nebraska PPD—Nebraska Public Power District
NEMA—National Electrical Manufacturers Association
NE PCC—Northeast Power Coordinating Council
NERC—North America Electric Reliability Council
NE Utilities—Northeast Utilities Service Company
Nevada Power—Nevada Power Company
New York PSC—New York State Public Service Commission
NiSource—NiSource, Inc.
NMA—National Mining Association
North Carolina Commission—North Carolina Utilities Commission
Norton Energy—Norton Energy Storage, L.L.C.
NRECA–APPA—National Rural Electric Cooperative Association and the American Public Power Association
NRG—NRG Energy, Inc.
NSTAR—NSTAR Electric and Gas Corporation
NTTRC—National Transmission Technical Research Center
NYISO—New York ISO
NYTO—New York Transmission Owners
Ohio PUC—Public Utilities Commission of Ohio
Oklahoma G&E—Oklahoma Gas and Electric Company
Old Dominion—Old Dominion Electric Cooperative
ONEOK—ONEOK Power Marketing Company
PacifiCorp—PacifiCorp
Peabody—Peabody Energy Corporation
PGE—Portland General Electric Company
PG&E—Pacific Gas and Electric Company
Pinnacle West—Pinnacle West Energy Company
PJM—PJM International LLC
PJMTO—PJM Transmissions Owners Group
Plug Power—Plug Power

Progress Energy—Progress Energy, Inc.
PSEG—The PSEG Companies
PSNM—Public Service Company of New Mexico
Public Interest Organizations—Public Interest Organizations
Public Power Council—Public Power Council
RealEnergy—RealEnergy, Inc.
Reliant—Reliant Resources, Inc.
Rhode Island Consortium—The Energy Consortium of Rhode Island
RTO West Utilities—Certain RTO West Filing Utilities
Salt River Project—Salt River Project Agricultural Improvement and Power District
Schott—Schott Applied Power Corporation
Seminole Electric—Seminole Electric Cooperative
Sempra—Sempra Energy
Sithe—Sithe Energies, Inc.
SMUD—Sacramento Municipal Utility District
SoCal Edison—Southern California Edison Company
SoCal Water District—The Metropolitan Water District of Southern California
SoCal PPA—Southern California Public Power Authority
Solar Energy—Solar Energy Industries Association
Solar Turbines—Solar Turbines, Inc.
South Carolina PSA—South Carolina Public Service Authority
Southern—Southern Company Services, Inc.
Southwest Transmission—Southwest Transmission Cooperative
Sunflower Electric—Sunflower Electric Power Corporation
TANC—Transmission Agency of Northern California
TAPS—Transmission Access Policy Study Group
TECO Energy—TECO Energy, Inc.
Tenaska—Tenaska, Inc.
Tennessee Valley PPA—Tennessee Valley Public Power Association
Third Party Issues Coalition—Transmission Owner/Provider Third Party Issues Coalition
TI—Texas Instruments
TransEnergie—TransEnergie U.S. Ltd.
Tucson Electric—Tucson Electric Power Company
TVA—Tennessee Valley Authority
TXU—TXU Operating Companies
United Technologies—United Technologies Corporation
Vermont DPS—Vermont Department of Public Service
Western—Western Area Power Administration
WEPCO—Wisconsin Electric Power Company, Madison Gas and Electric Company, and Alliant Energy Corporate Services, Inc.
Westar—Westar Energy, Inc.
Westconnect RTO—Westconnect RTO, LLC
Williams Energy—Williams Energy Marketing and Trading Company
Wisconsin PSC—Wisconsin Public Service Commission
Xcel—XCEL Energy Services, Inc.

Appendix C—Standard Large Generator Interconnection Procedures (LGIP) Including Standard Large Generator Interconnection Agreement (LGIA)

Standard Large Generator Interconnection Procedures (LGIP) (Applicable to Generating Facilities That Exceed 20 MWs)

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Section 1. Definitions

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affected System Operator shall mean the entity that operates an Affected System.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Ancillary Services shall mean those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Applicable Reliability Council shall mean the reliability council applicable to the Transmission System to which the Generating Facility is directly interconnected.

Applicable Reliability Standards shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, and the Control Area of the Transmission System to which the Generating Facility is directly interconnected.

Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by the Transmission Provider or Interconnection Customer.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the Standard Large Generator Interconnection Agreement.

Breaching Party shall mean a Party that is in Breach of the Standard Large Generator Interconnection Agreement.

Business Day shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Clustering shall mean the process whereby a group of Interconnection Requests is studied together, instead of serially, for the purpose of conducting the Interconnection System Impact Study.

Commercial Operation Date of a unit shall mean the date on which Interconnection Customer commences commercial operation of the unit at the Generating Facility after Trial Operation of such unit has been completed as confirmed in writing substantially in the form shown in Appendix E to the Standard Large Generator Interconnection Agreement.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by NERC.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 17 of the Standard Large Generator Interconnection Agreement.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean the Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the Standard Large Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

Emergency Condition shall mean a condition or situation: (1) That in the judgement of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected; or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided that Interconnection Customer is not obligated by the Standard Large Generator Interconnection Agreement to possess black start capability.

Energy Resource Interconnection Service (ER Interconnection Service) shall mean an Interconnection Service that allows the Interconnection Customer to connect its Generating Facility to the Transmission Provider's Transmission System to be eligible to deliver the Generating Facility's electric output using the existing firm or nonfirm capacity of the Transmission Provider's Transmission System on an as available basis. Energy Resource Interconnection Service in and of itself does not convey transmission service.

Engineering & Procurement (E&P) Agreement shall mean an agreement that authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. 791a *et seq.*

FERC shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing.

Generating Facility shall mean Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and

expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

Initial Synchronization Date shall mean the date upon which the Generating Facility is initially synchronized and upon which Trial Operation begins.

In-Service Date shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean any entity, including the Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with the Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment, as identified in Appendix A of the Standard Large Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean the Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by the Transmission Provider or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System. The scope of the study is defined in Section 8 of the Standard Large Generator Interconnection Procedures.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission Provider's Transmission System, the scope of which is described in Section 6 of the Standard Large Generator Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 2 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 1 to the Standard Large Generator Interconnection Procedures, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Large Generator Interconnection Agreement and, if applicable, the Transmission Provider's Tariff.

Interconnection Study shall mean any of the following studies: The Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study shall mean an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection System Impact Study.

IRS shall mean the Internal Revenue Service.

Joint Operating Committee shall be a group made up of representatives from Interconnection Customers and the Transmission Provider to coordinate operating and technical considerations of Interconnection Service.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Loss shall mean any and all losses relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under the Standard Large Generator Interconnection Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnifying Party.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Metering Equipment shall mean all metering equipment installed or to be installed at the Generating Facility pursuant to the Standard Large Geneator Interconnection Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

NERC shall mean the North American Electric Reliability Council or its successor organization.

Network Resource shall mean that portion of a Generating Facility that is integrated with the Transmission Provider's Transmission System, designated as a Network Resource pursuant to the terms of the Tariff, and subjected to redispatch directives as ordered by the Transmission Provider in accordance with the Tariff.

Network Resource Interconnection Service (NR Interconnection Service) shall mean an Interconnection Service that allows the Interconnection Customer to integrate its Large Generating Facility with the Transmission Provider's Transmission System (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the

same manner as all other Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with the Standard Large Generator Interconnection Agreement or its performance.

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by the Interconnection Customer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Large Generator Interconnection Procedures for conducting the Optional Interconnection Study.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

Point of Interconnection shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Large Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Scoping Meeting shall mean the meeting between representatives of the Interconnection Customer and Transmission Provider conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Site Control shall mean documentation reasonably demonstrating: (1) Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Interconnection Customer and the entity having the right to sell, lease or grant Interconnection Customer the right to possess or occupy a site for such purpose.

Small Generating Facility shall mean a Generating Facility that has a Generating Facility Capacity of no more than 20 MW.

Stand Alone Network Upgrades shall mean Network Upgrades that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction. Both the Transmission Provider and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement.

Standard Large Generator Interconnection Agreement (LGIA) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Large Generating Facility, that is included in the Transmission Provider's Tariff.

Standard Large Generator Interconnection Procedures (LGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility that are included in the Transmission Provider's Tariff.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.

Tariff shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Standard Large Generator Interconnection Agreement to the extent necessary.

Transmission Provider shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled, or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the Standard Large Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

Trial Operation shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Generating Facility prior to commercial operation.

Section 2. Scope and Application

2.1 Application of Standard Large Generator Interconnection Procedures

Sections 2 through 13 apply to processing an Interconnection Request pertaining to a Large Generating Facility.

2.2 Comparability

The Transmission Provider shall receive, process and analyze all Interconnection Requests in a timely manner as set forth in this LGIP. The Transmission Provider will use the same Reasonable Efforts in processing and analyzing Interconnection Requests from all Interconnection Customers, whether the Generating Facilities are owned by Transmission Provider, its subsidiaries or Affiliates or others.

2.3 Base Case Data

Transmission Provider shall provide base power flow, short circuit and stability databases, including all underlying assumptions, and contingency list upon request subject to confidentiality provisions. Such databases and lists, hereinafter referred to as Base Cases, shall include all (1) generation projects and (ii) transmission projects, including merchant transmission projects that are proposed for the Transmission System for which a transmission expansion plan has been submitted and approved by the applicable authority.

2.4 No Applicability to Transmission Service

Nothing in this LGIP shall constitute a request for transmission service or confer upon an Interconnection Customer any right to receive transmission service.

Section 3. Interconnection Requests

3.1 General

An Interconnection Customer shall submit to the Transmission Provider an Interconnection Request in the form of Appendix 1 to this LGIP and a refundable deposit of $10,000. The Transmission Provider shall apply the deposit toward the cost of an Interconnection Feasibility Study. The Interconnection Customer shall submit a separate Interconnection Request for each

site and may submit multiple Interconnection Requests for a single site. The Interconnection Customer must submit a deposit with each Interconnection Request even when more than one request is submitted for a single site. An Interconnection Request to evaluate one site at two different voltage levels shall be treated as two Interconnection Requests.

At Interconnection Customer's option, Transmission Provider and Interconnection Customer will identify alternative Point(s) of Interconnection and configurations at the Scoping Meeting to evaluate in this process and attempt to eliminate alternatives in a reasonable fashion given resources and information available. Interconnection Customer will select the definitive Point(s) of Interconnection to be studied no later than the execution of the Interconnection Feasibility Study Agreement.

3.2 Identification of Types of Interconnection Services

At the time the Interconnection Request is submitted, Interconnection Customer must request either ER Interconnection Service or NR Interconnection Service, as described; provided, however, any Interconnection Customer requesting NR Interconnection Service may also request that it be concurrently studied as an ER Interconnection Service, up to the point when an Interconnection Facility Study Agreement is executed. Interconnection Customer may then elect to proceed with NR Interconnection Service or to proceed under a lower level of interconnection service to the extent that only certain upgrades will be completed.

3.2.1 Energy Resource Interconnection Service (ER Interconnection Service)

3.2.1.1 *The Product.* ER Interconnection Service allows Interconnection Customer to connect the Large Generating Facility to the Transmission System and be eligible to deliver the Large Generating Facility's output using the existing firm or non-firm capacity of the Transmission System on an "as available" basis. ER Interconnection Service does not in and of itself convey any transmission service.

3.2.1.2 *The Study.* The study consists of short circuit/fault duty, steady state (thermal and voltage) and stability analyses. The short circuit/fault duty analysis would identify direct Interconnection Facilities required and the Network Upgrades necessary to address short circuit issues associated with the Interconnection Facilities. The stability and steady state studies would identify necessary upgrades to allow full output of the proposed Large Generating Facility and would also identify the maximum allowed output, at the time the study is performed, of the interconnecting Large Generating Facility without requiring additional Network Upgrades.

3.2.2 Network Resource Interconnection Service (NR Interconnection Service)

3.2.2.1 *The Product.* The Transmission Provider must conduct the necessary studies and construct the Network Upgrades needed to integrate the Large Generating Facility (1) in a manner comparable to that in which the Transmission Provider integrates its Generating Facilities to serve native load customers; or (2) in an ISO or RTO with market based congestion management, in the same manner as all other Network Resources. NR Interconnection Service Allows the Interconnection Customer 's Large Generating Facility to be designated as a Network Resource, up to the Large Generating Facility's full output; on the same basis as all other existing Network Resources interconnected to the Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur.

3.2.2.2 *The Study.* The Interconnection Study for NR Interconnection Service shall assure that the Interconnection Customer's Large Generating Facility meets the requirements for NR Interconnection Service and as a general matter, that such Large Generating Facility's interconnection is also studied with the Transmission Provider's Transmission System at peak load, under a variety of severely stressed conditions, to determine whether, with the Large Generating Facility at full output, the aggregate of generation in the local area can be delivered to the aggregate of load on the Transmission Provider's Transmission System, consistent with the Transmission Provider's reliability criteria and procedures. This approach assumes that some portion of existing Network Resources are displaced by the output of the Interconnection Customer's Large Generating Facility. NR Interconnection Service in and of itself does not convey any transmission service.

3.3 Valid Interconnection Request

3.3.1 Initiating an Interconnection Request

To initiate an Interconnection Request, Interconnection Customer must submit all of the following: (i) A $10,000 deposit, (ii) a completed application in the form of Appendix 1, and (iii) demonstration of Site Control or a posting of an additional deposit of $10,000. Such deposits shall be applied toward any Interconnection Studies pursuant to the Interconnection Request. If Interconnection Customer demonstrates Site Control within the cure period specified in Section 3.3.3 after submitting its Interconnection Request, the additional deposit shall be refundable; otherwise, all such deposit(s), additional and initial, become non-refundable.

The expected In-Service Date of the new Large Generating Facility or increase in capacity of the existing Generating Facility shall be no more than the process window for the regional expansion planning period (or in the absence of a regional planning process, the process window for the Transmission Provider's expansion planning period) not to exceed seven years from the date the Interconnection Request is received by the Transmission Provider, unless the Interconnection Customer demonstrates that engineering, permitting and construction of the new Large Generating Facility or increase in capacity of the existing Generating Facility will take longer than the regional expansion planning period. The In-Service Date may succeed the date the Interconnection Request is received by the Transmission Provider by a period up to ten years, or longer where the Interconnection Customer and Transmission Provider agree, such agreement not to be unreasonably withheld.

3.3.2 Acknowledgment of Interconnection Request

Transmission Provider shall acknowledge receipt of the Interconnection Request within five (5) Business Days of receipt of the request and attach a copy of the received Interconnection Request to the acknowledgement.

3.3.3 Deficiencies in Interconnection Request

An Interconnection Request will not be considered to be a valid request until all items in Section 3.3.1 have been received by the Transmission Provider. If an Interconnection Request fails to meet the requirements set forth in Section 3.3.1, the Transmission Provider shall notify the Interconnection Customer within five (5) Business Days of receipt of the initial Interconnection Request of the reasons for such failure and that the Interconnection Request does not constitute a valid request. Interconnection Customer shall provide the Transmission Provider the additional requested information needed to constitute a valid request within ten (10) Business Days after receipt of such notice. Failure by Interconnection Customer to comply with this Section 3.3.3 shall be treated in accordance with Section 3.6.

3.3.4 Scoping Meeting

Within ten (10) Business Days after receipt of a valid Interconnection Request, Transmission Provider shall establish a date agreeable to Interconnection Customer for the Scoping Meeting, and such date shall be no later than thirty (30) Calendar Days from receipt of the valid Interconnection Request, unless otherwise mutually agreed upon by the Parties.

The purpose of the Scoping Meeting shall be to discuss alternative interconnection options, to exchange information including any transmission data that would reasonably be expected to impact such interconnection options, to analyze such information and to determine the potential feasible Points of Interconnection. Transmission Provider and Interconnection Customer will bring to the meeting such technical data, including, but not limited to: (i) General facility loadings, (ii) general instability issues, (iii) general short circuit issues, (iv) general voltage issues, and (v) general reliability issues as may be reasonably required to accomplish the purpose of the meeting. Transmission Provider and Interconnection Customer will also bring to the meeting personnel and other resources as may be reasonably required to accomplish the purpose of the meeting in the time allocated for the meeting. On the basis of the meeting, Interconnection Customer shall designate its Point of Interconnection, pursuant to Section 6.1, and one or more available alternative Point(s) of Interconnection. The duration of the meeting shall be sufficient to accomplish its purpose.

3.4 OASIS Posting

The Transmission Provider will maintain on its OASIS a list of all Interconnection

Requests. The list will identify, for each Interconnection Request: (i) The maximum summer and winter megawatt electrical output; (ii) the location by county and state; (iii) the station or transmission line or lines where the interconnection will be made; (iv) the projected In-Service Date; (v) the status of the Interconnection Request, including Queue Position; (vi) the type of Interconnection Service being requested; and (vii) the availability of any studies related to the Interconnection Request; (viii) the date of the Interconnection Request; (ix) the type of Generating Facility to be constructed (combined cycle, base load or combustion turbine and fuel type); and (x) for Interconnection Requests that have not resulted in a completed interconnection, an explanation as to why it was not completed. The list will not disclose the identity of the Interconnection Customer until the Interconnection Customer executes an LGIA or requests that the Transmission Provider file an unexecuted LGIA with FERC. The Transmission Provider shall post to its OASIS site any deviations from the study timelines set forth herein. Interconnection Study reports and Optional Interconnection Study reports shall be posted to the Transmission Provider's OASIS site subsequent to the meeting between the Interconnection Customer and the Transmission Provider to discuss the applicable study results. The Transmission Provider shall also post any known deviations in the Large Generating Facility's In-Service Date.

3.5 Coordination with Affected Systems

The Transmission Provider will coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems with Affected System Operators and, if possible, include those results in its applicable Interconnection Study within the time frame specified in this LGIP. The Transmission Provider will include such Affected System Operators in all meetings held with the Interconnection Customer as required by this LGIP. The Interconnection Customer will cooperate with the Transmission Provider in all matters related to the conduct of studies and the determination of modifications to Affected Systems. A Transmission Provider which may be an Affected System shall cooperate with the Transmission Provider with whom interconnection has been requested in all matters related to the conduct of studies and the determination of modifications to Affected Systems.

3.6 Withdrawal

The Interconnection Customer may withdraw its Interconnection Request at any time by written notice of such withdrawal to the Transmission Provider. In addition, if the Interconnection Customer fails to adhere to all requirements of this LGIP, except as provided in Section 13.5 (Disputes), the Transmission Provider shall deem the Interconnection Request to be withdrawn and shall provide written notice to the Interconnection Customer of the deemed withdrawal and an explanation of the reasons for such deemed withdrawal. Upon receipt of such written notice, the Interconnection Customer shall have fifteen (15) Business Days in which to either respond with information or actions that cures the deficiency or to notify the Transmission Provider of its intent to pursue Dispute Resolution.

Withdrawal shall result in the loss of the Interconnection Customer's Queue Position. If an Interconnection Customer disputes the withdrawal and loss of its Queue Position, then during Dispute Resolution, the Interconnection Customer's Interconnection Request is eliminated from the queue until such time that the outcome of Dispute Resolution would restore its Queue Position. An Interconnection Customer that withdraws or is deemed to have withdrawn its Interconnection Request shall pay to the Transmission Provider all costs that the Transmission Provider prudently incurs with respect to that Interconnection Request prior to the Transmission Provider's receipt of notice described above. The Interconnection Customer must pay all monies due to the Transmission Provider before it is allowed to obtain any Interconnection Study data or results.

The Transmission Provider shall (i) update the OASIS Queue Position posting and (ii) refund to the Interconnection Customer any portion of the Interconnection Customer's's deposit or study payments that exceeds the costs that the Transmission Provider has incurred, including interest calculated in accordance with section 35.19a(a)(2) of FERC's regulations. In the event of such withdrawal, the Transmission Provider, subject to the confidentiality provisions of Section 13.1, shall provide, at Interconnection Customer's request, all information that the Transmission Provider developed for any completed study conducted up to the date of withdrawal of the Interconnection Request.

Section 4. Queue Position

4.1 General

The Transmission Provider shall assign a Queue Position based upon the date and time of receipt of the valid Interconnection Request; provided that, if the sole reason an Interconnection Request is not valid is the lack of required information on the application form, and the Interconnection Customer provides such information in accordance with Section 3.3.3, then the Transmission Provider shall assign the Interconnection Customer a Queue Position based on the date the application form was originally filed. Moving a Point of Interconnection shall result in a lowering of Queue Position if it is deemed a Material Modification under Section 4.4.3.

The Queue Position of each Interconnection Request will be used to determine the order of performing the Interconnection Studies and determination of cost responsibility for the facilities necessary to accommodate the Interconnection Request. A higher queued Interconnection Request is one that has been placed "earlier" in the queue in relation to another Interconnection Request that is lower queued.

4.2 Clustering

At Transmission Provider's option, Interconnection Requests may be studied serially or in clusters for the purpose of the Interconnection System Impact Study.

Clustering shall be implemented on the basis of Queue Position. If Transmission Provider elects to study Interconnection Requests using Clustering, all Interconnection Requests received within a period not to exceed one hundred and eighty (180) Calendar Days, hereinafter referred to as the "Queue Cluster Window" shall be studied together without regard to the nature of the underlying Interconnection Service, whether ER Interconnection Service or NR Interconnection Service. Deadline for completing all Interconnection System Impact Studies for which an Interconnection System Impact Study Agreement has been executed during a Queue Cluster Window shall be in accordance with Section 7.4, for all Interconnection Requests assigned to the same Queue Cluster Window. Transmission Provider may study an Interconnection Request separately to the extent warranted by Good Utility Practice based upon the electrical remoteness of the proposed Large Generating Facility.

Clustering Interconnection System Impact Studies shall be conducted in such a manner to ensure the efficient implementation of the applicable regional transmission expansion plan in light of the Transmission System's capabilities at the time of each study.

The Queue Cluster Window shall have a fixed time interval based on fixed annual opening and closing dates. Any changes to the established Queue Cluster Window interval and opening or closing dates shall be announced with a posting on the Transmission Provider's OASIS beginning at least one hundred and eighty (180) Calendar Days in advance of the change and continuing thereafter through the end date of the first Queue Cluster Window that is to be modified.

4.3 Transferability of Queue Position

An Interconnection Customer may transfer its Queue Position to another entity only if such entity acquires the specific Generating Facility identified in the Interconnection Request and the Point of Interconnection does not change.

4.4 Modifications

The Interconnection Customer shall submit to the Transmission Provider, in writing, modifications to any information provided in the Interconnection Request. The Interconnection Customer shall retain its Queue Position if the modifications are in accordance with Sections 4.4.1, 4.4.2 or 4.4.5, or are determined not to be Material Modifications pursuant to Section 4.4.3.

Notwithstanding the above, during the course of the Interconnection Studies, either the Interconnection Customer or Transmission Provider may identify changes to the planned interconnection that may improve the costs and benefits (including reliability) of the interconnection, and the ability of the proposed change to accommodate the Interconnection Request. To the extent the identified changes are

acceptable to the Transmission Provider and Interconnection Customer, such acceptance not to be unreasonably withheld, Transmission Provider shall modify the Point of Interconnection and/or configuration in accordance with such changes and proceed with any re-studies necessary to do so in accordance with Section 6.4, Section 7.6 and Section 8.5 as applicable and Interconnection Customer shall retain its Queue Position.

4.4.1 Prior to the return of the executed Interconnection System Impact Study Agreement to the Transmission Provider, modifications permitted under this Section shall include specifically: (a) A reduction up to 60 percent (MW) of electrical output of the proposed project; (b) modifying the technical parameters associated with the Large Generating Facility technology or the Large Generating Facility step-up transformer impedance characteristics; and (c) modifying the interconnection configuration. For plant increases, the incremental increase in plant output will go to the end of the queue for the purposes of cost allocation and study analysis.

4.4.2 Prior to the return of the executed Interconnection Facility Study Agreement to the Transmission Provider, the modifications permitted under this Section shall include specifically: (a) additional 15 percent decrease in plant size (MW), and (b) Large Generating Facility technical parameters associated with modifications to Large Generating Facility technology and transformer impedances; provided, however, the incremental costs associated with those modifications are the responsibility of the requesting Interconnection Customer.

4.4.3 Prior to making any modification other than those specifically permitted by Sections 4.4.1, 4.4.2, and 4.4.5, Interconnection Customer may first request that the Transmission Provider evaluate whether such modification is a Material Modification. In response to Interconnection Customer's request, the Transmission Provider shall evaluate the proposed modifications prior to making them and inform the Interconnection Customer in writing of whether the modifications would constitute a Material Modification. Any change to the Point of Interconnection shall constitute a Material Modification. The Interconnection Customer may then withdraw the proposed modification or proceed with a new Interconnection Request for such modification.

4.4.4 Upon receipt of Interconnection Customer's request for modification permitted under this Section 4.4, the Transmission Provider shall commence and perform any necessary additional studies as soon as practicable, but in no event shall the Transmission Provider commence such studies later than thirty (30) Calendar Days after receiving notice of Interconnection Customer's request. Any additional studies resulting from such modification shall be done at Interconnection Customer's cost.

4.4.5 Extensions of less than three (3) cumulative years in the Commercial Operation Date of the Large Generating Facility to which the Interconnection Request relates are not material and should be handled through construction sequencing.

Section 5. Procedures for Interconnection Requests Submitted Prior to Effective Date of Standard Large Generator Interconnection Procedures

5.1 Queue Position for Pending Requests

5.1.1 Any Interconnection Customer assigned a Queue Position prior to the effective date of this LGIP shall retain that Queue Position.

5.1.1.1 If an Interconnection Study Agreement has not been executed as of the effective date of this LGIP, then such Interconnection Study, and any subsequent Interconnection Studies, shall be processed in accordance with this LGIP.

5.1.1.2 If an Interconnection Study Agreement has been executed prior to the effective date of this LGIP, such Interconnection Study shall be completed in accordance with the terms of such agreement. With respect to any remaining studies for which an Interconnection Customer has not signed an Interconnection Study Agreement prior to the effective date of the LGIP, the Transmission Provider must offer the Interconnection Customer the option of either continuing under the Transmission Provider's existing interconnection study process or going forward with the completion of the necessary Interconnection Studies (for which it does not have a signed Interconnection Studies Agreement) in accordance with this LGIP.

5.1.1.3 If an LGIA has been submitted to the Commission for approval before the effective date of the LGIP, then the LGIA would be grandfathered.

5.1.2 Transition Period

To the extent necessary, the Transmission Provider and Interconnection Customers with an outstanding request (*i.e.*, an Interconnection Request for which an LGIA has not been submitted to the Commission for approval as of the effective date of this LGIP) shall transition to this LGIP within a reasonable period of time not to exceed sixty (60) Calendar Days. The use of the term "outstanding request" herein shall mean any Interconnection Request, on the effective date of this LGIP: (i) That has been submitted but not yet accepted by the Transmission Provider; (ii) where the related interconnection agreement has not yet been submitted to the Commission for approval in executed or unexecuted form, (iii) where the relevant Interconnection Study Agreements have not yet been executed, or (iv) where any of the relevant Interconnection Studies are in process but not yet completed. Any Interconnection Customer with an outstanding request as of the effective date of this LGIP may request a reasonable extension of any deadline, otherwise applicable, if necessary to avoid undue hardship or prejudice to its Interconnection Request. A reasonable extension shall be granted by the Transmission Provider to the extent consistent with the intent and process provided for under this LGIP.

5.2 New Transmission Provider

If the Transmission Provider transfers control of its Transmission System to a successor Transmission Provider during the period when an Interconnection Request is pending, the original Transmission Provider shall transfer to the successor Transmission Provider any amount of the deposit or payment with interest thereon that exceeds the cost that it incurred to evaluate the request for interconnection. Any difference between such net amount and the deposit or payment required by this LGIP shall be paid by or refunded to the Interconnection, as appropriate. The original Transmission Provider shall coordinate with the successor Transmission Provider to complete any Interconnection Study, as appropriate, that the original Transmission Provider has begun but has not completed. If the Transmission Provider has tendered a draft LGIA to the Interconnection Customer but the Interconnection Customer has not either executed the LGIA or requested the filing of an unexecuted LGIA with FERC, unless otherwise provided, the Interconnection Customer may elect to complete negotiations with the Transmission Provider or the successor Transmission Provider.

Section 6. Interconnection Feasibility Study

6.1 Interconnection Feasibility Study Agreement

Simultaneously with the acknowledgement of a valid Interconnection Request the Transmission Provider shall provide to Interconnection Customer an Interconnection Feasibility Study Agreement in the form of Appendix 2. The Interconnection Feasibility Study Agreement shall specify that Interconnection Customer is responsible for the actual cost of the Interconnection Feasibility Study. Within five (5) Business Days following the Scoping Meeting Interconnection Customer shall specify for inclusion in the attachment to the Interconnection Feasibility Study Agreement the Point(s) of Interconnection and any reasonable alternative Point(s) of Interconnection. Within five (5) Business Days following the Transmission Provider's receipt of such designation, Transmission Provider shall tender to Interconnection Customer the Interconnection Feasibility Study Agreement signed by Transmission Provider, which includes a good faith estimate of the cost for completing the Interconnection Feasibility Study. The Interconnection Customer shall execute and deliver to the Transmission Provider the Interconnection Feasibility Study Agreement along with a $10,000 deposit no later than thirty (30) Calendar Days after its receipt.

On or before the return of the executed Interconnection Feasibility Study Agreement to the Transmission Provider, the Interconnection Customer shall provide the technical data called for in Appendix 1, Attachment A.

If the Interconnection Feasibility Study uncovers any unexpected result(s) not contemplated during the Scoping Meeting, a substitute Point of Interconnection identified by either Interconnection Customer or Transmission Provider, and acceptable to the other, such acceptance not to be unreasonably withheld, will be substituted for the designated Point of Interconnection specified above without loss of Queue Position, and Re-studies shall be completed pursuant to Section 6.4 as applicable. For the

purpose of this Section 6.1, if the Transmission Provider and Interconnection Customer cannot agree on the substituted Point of Interconnection, then Interconnection Customer may direct that one of the alternatives as specified in the Interconnection Feasibility Study Agreement, as specified pursuant to Section 3.3.4, shall be the substitute.

6.2 Scope of Interconnection Feasibility Study

The Interconnection Feasibility Study shall preliminarily evaluate the feasibility of the proposed interconnection to the Transmission System.

The Interconnection Feasibility Study will consider the Base Case as well as all Generating Facilities (and with respect to (iii), any identified Network Upgrades) that, on the date the Interconnection Feasibility Study is commenced: (i) Are directly interconnected to the Transmission System; (ii) are interconnected to Affected Systems and may have an impact on the Interconnection Request; (iii) have a pending higher queued Interconnection Request to interconnect to the Transmission System; and (iv) have no Queue Position but have executed an LGIA or requested that an unexecuted LGIA be filed with FERC. The Interconnection Feasibility Study will consist of a power flow and short circuit analysis. The Interconnection Feasibility Study will provide a list of facilities and a non-binding good faith estimate of cost responsibility and a non-binding good faith estimated time to construct.

6.3 Interconnection Feasibility Study Procedures

The Transmission Provider shall utilize existing studies to the extent practicable when it performs the study. The Transmission Provider shall use Reasonable Efforts to complete the Interconnection Feasibility Study no later than forty-five (45) Calendar Days after the Transmission Provider receives the fully executed Interconnection Feasibility Study Agreement. At the request of the Interconnection Customer or at any time the Transmission Provider determines that it will not meet the required time frame for completing the Interconnection Feasibility Study, Transmission Provider shall notify the Interconnection Customer as to the schedule status of the Interconnection Feasibility Study. If the Transmission Provider is unable to complete the Interconnection Feasibility Study within that time period, it shall notify the Interconnection Customer and provide an estimated completion date with an explanation of the reasons why additional time is required. Upon request, the Transmission Provider shall provide the Interconnection Customer supporting documentation, workpapers and relevant power flow, short circuit and stability databases for the Interconnection Feasibility Study, subject to confidentiality arrangements consistent with Section 13.1.

6.3.1 Meeting With Transmission Provider

Within ten (10) Business Days of providing an Interconnection Feasibility Study report to Interconnection Customer, Transmission Provider and Interconnection Customer shall meet to discuss the results of the Interconnection Feasibility Study.

6.4 Re-Study

If Re-Study of the Interconnection Feasibility Study is required due to a higher queued project dropping out of the queue, or a modification of a higher queued project subject to Section 4.4, or re-designation of the Point of Interconnection pursuant to Section 6.1 Transmission Provider shall notify Interconnection Customer in writing. Such Re-Study shall take not longer than forty-five (45) Calendar Days from the date of the notice. Any cost of Re-Study shall be borne by the Interconnection Customer being re-studied.

Section 7. Interconnection System Impact Study

7.1 Interconnection System Impact Study Agreement

Unless otherwise agreed, pursuant to the Scoping Meeting provided in Section 3.3.4, simultaneously with the delivery of the Interconnection Feasibility Study to the Interconnection Customer, the Transmission Provider shall provide to the Interconnection Customer an Interconnection System Impact Study Agreement in the form of Appendix 3 to this LGIP. The Interconnection System Impact Study Agreement shall provide that the Interconnection Customer shall compensate the Transmission Provider for the actual cost of the Interconnection System Impact Study. Within three (3) Business Days following the Interconnection Feasibility Study results meeting, the Transmission Provider shall provide to Interconnection Customer a non-binding good faith estimate of the cost and timeframe for completing the Interconnection System Impact Study.

7.2 Execution of Interconnection System Impact Study Agreement

The Interconnection Customer shall execute the Interconnection System Impact Study Agreement and deliver the executed Interconnection System Impact Study Agreement to the Transmission Provider no later than thirty (30) Calendar Days after its receipt along with demonstration of Site Control, and a $50,000 deposit.

If the Interconnection Customer does not provide all such technical data when it delivers the Interconnection System Impact Study Agreement, the Transmission Provider shall notify the Interconnection Customer of the deficiency within five (5) Business Days of the receipt of the executed Interconnection System Impact Study Agreement and the Interconnection Customer shall cure the deficiency within ten (10) Business Days of receipt of the notice, provided, however, such deficiency does not include failure to deliver the executed Interconnection System Impact Study Agreement or deposit.

If the Interconnection System Impact Study uncovers any unexpected result(s) not contemplated during the Scoping Meeting and the Interconnection Feasibility Study, a substitute Point of Interconnection identified by either Interconnection Customer or Transmission Provider, and acceptable to the other, such acceptance not to be unreasonably withheld, will be substituted for the designated Point of Interconnection specified above without loss of Queue Position, and restudies shall be completed pursuant to Section 7.6 as applicable. For the purpose of this Section 7.6, if the Transmission Provider and Interconnection Customer cannot agree on the substituted Point of Interconnection, then Interconnection Customer may direct that one of the alternatives as specified in the Interconnection Feasibility Study Agreement, as specified pursuant to Section 3.3.4, shall be the substitute.

7.3 Scope of Interconnection System Impact Study

The Interconnection System Impact Study shall evaluate the impact of the proposed interconnection on the reliability of the Transmission System. The Interconnection System Impact Study will consider the Base Case as well as all Generating Facilities (and with respect to (iii) below, any identified Network Upgrades associated with such higher queued interconnection) that, on the date the Interconnection System Impact Study is commenced: (i) Are directly interconnected to the Transmission System; (ii) are interconnected to Affected Systems and may have an impact on the Interconnection Request; (iii) have a pending higher queued Interconnection Request to interconnect to the Transmission System; and (iv) have no Queue Position but have executed an LGIA or requested that an unexecuted LGIA be filed with FERC.

The Interconnection System Impact Study will consist of a short circuit analysis, a stability analysis, and a power flow analysis. The Interconnection System Impact Study will state the assumptions upon which it is based; state the results of the analyses; and provide the requirements or potential impediments to providing the requested interconnection service, including a preliminary indication of the cost and length of time that would be necessary to correct any problems identified in those analyses and implement the interconnection. The Interconnection System Impact Study will provide a list of facilities that are required as a result of the Interconnection Request and a non-binding good faith estimate of cost responsibility and a non-binding good faith estimated time to construct.

7.4 Interconnection System Impact Study Procedures

The Transmission Provider shall coordinate the Interconnection System Impact Study with any Affected System that is affected by the Interconnection Request pursuant to Section 3.5 above. The Transmission Provider shall utilize existing studies to the extent practicable when it performs the study. The Transmission Provider shall use Reasonable Efforts to complete the Interconnection System Impact Study within ninety (90) Calendar Days after the receipt of the Interconnection System Impact Study Agreement or notification to proceed, study payment, and technical data. If Transmission Provider uses Clustering, the Transmission Provider shall use Reasonable Efforts to deliver a completed

Interconnection System Impact Study within ninety (90) Calendar Days after the close of the Queue Cluster Window.

At the request of the Interconnection Customer or at any time the Transmission Provider determines that it will not meet the required time frame for completing the Interconnection System Impact Study, Transmission Provider shall notify the Interconnection Customer as to the schedule status of the Interconnection System Impact Study. If the Transmission Provider is unable to complete the Interconnection System Impact Study within the time period, it shall notify the Interconnection Customer and provide an estimated completion date with an explanation of the reasons why additional time is required. Upon request, the Transmission Provider shall provide the Interconnection Customer all supporting documentation, workpapers and relevant pre-Interconnection Request and post-Interconnection Request power flow, short circuit and stability databases for the Interconnection System Impact Study, subject to confidentiality arrangements consistent with Section 13.1.

7.5 Meeting with Transmission Provider

Within ten (10) Business Days of providing an Interconnection System Impact Study report to Interconnection Customer, Transmission Provider and Interconnection Customer shall meet to discuss the results of the Interconnection System Impact Study.

7.6 Re-Study

If Re-Study of the Interconnection System Impact Study is required due to a higher queued project dropping out of the queue, a modification of a higher queued project subject to 4.4, or re-designation of the Point of Interconnection pursuant to Section 6.1 Transmission Provider shall notify Interconnection Customer in writing. Such Re-Study shall take no longer than sixty (60) Calendar Days from the date of notice. Any cost of Re-Study shall be borne by the Interconnection Customer being re-studied.

Section 8. Interconnection Facilities Study

8.1 Interconnection Facilities Study Agreement

Simultaneously with the delivery of the Interconnection System Impact Study to the Interconnection Customer, the Transmission Provider shall provide to the Interconnection Customer an Interconnection Facilities Study Agreement in the form of Appendix 4 to this LGIP. The Interconnection Facilities Study Agreement shall provide that the Interconnection Customer shall compensate the Transmission Provider for the actual cost of the Interconnection Facilities Study. Within three (3) Business Days following the Interconnection System Impact Study results meeting, the Transmission Provider shall provide to Interconnection Customer a non-binding good faith estimate of the cost and timeframe for completing the Interconnection Facilities Study. The Interconnection Customer shall execute the Interconnection Facilities Study Agreement and deliver the executed Interconnection Facilities Study Agreement to the Transmission Provider within thirty (30) Calendar Days after its receipt, together with the required technical data and the greater of $100,000 or Interconnection Customer's portion of the estimated monthly cost of conducting the Interconnection Facilities Study.

8.1.1 Transmission Provider shall invoice Interconnection Customer on a monthly basis for the work to be conducted on the Interconnection Facilities Study each month. Interconnection Customer shall pay invoiced amounts within thirty (30) Calendar Days of receipt of invoice. Transmission Provider shall continue to hold the amounts on deposit until settlement of the final invoice.

8.2 Scope of Interconnection Facilities Study

The Interconnection Facilities Study shall specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Interconnection System Impact Study in accordance with Good Utility Practice to physically and electrically connect the Interconnection Facility to the Transmission System. The Interconnection Facilities Study shall also identify the electrical switching configuration of the connection equipment, including, without limitation: the transformer, switchgear, meters, and other station equipment; the nature and estimated cost of any Transmission Provider's Interconnection Facilities and Network Upgrades necessary to accomplish the interconnection; and an estimate of the time required to complete the construction and installation of such facilities.

8.3 Interconnection Facilities Study Procedures

The Transmission Provider shall coordinate the Interconnection Facilities Study with any Affected System pursuant to Section 3.5 above. The Transmission Provider shall utilize existing studies to the extent practicable in performing the Interconnection Facilities Study. The Transmission Provider shall use Reasonable Efforts to complete the study and issue a draft Interconnection Facilities Study report to the Interconnection Customer within the following number of days after receipt of an executed Interconnection Facilities Study Agreement: ninety (90) Calendar Days, with no more than a +/-20 percent cost estimate contained in the report; or one hundred eighty (180) Calendar Days, if the Interconnection Customer requests a +/-10 percent cost estimate.

At the request of the Interconnection Customer or at any time the Transmission Provider determines that it will not meet the required time frame for completing the Interconnection Facilities Study, Transmission Provider shall notify the Interconnection Customer as to the schedule status of the Interconnection Facilities Study. If the Transmission Provider is unable to complete the Interconnection Facilities Study and issue a draft Interconnection Facilities Study report within the time required, it shall notify the Interconnection Customer and provide an estimated completion date and an explanation of the reasons why additional time is required.

The Interconnection Customer may, within thirty (30) Calendar Days after receipt of the draft report, provide written comments to the Transmission Provider, which the Transmission Provider shall include in the final report. The Transmission Provider shall issue the final Interconnection Facilities Study report within fifteen (15) Business Days of receiving the Interconnection Customer's comments or promptly upon receiving Interconnection Customer's statement that it will not provide comments. The Transmission Provider may reasonably extend such fifteen-day period upon notice to the Interconnection Customer if the Interconnection Customer's comments require the Transmission Provider to perform additional analyses or make other significant modifications prior to the issuance of the final Interconnection Facilities Report. Upon request, the Transmission Provider shall provide the Interconnection Customer supporting documentation, workpapers, and databases or data developed in the preparation of the Interconnection Facilities Study, subject to confidentiality arrangements consistent with Section 13.1.

8.4 Meeting with Transmission Provider

Within ten (10) Business Days of providing a draft Interconnection Facilities Study report to Interconnection Customer, Transmission Provider and Interconnection Customer shall meet to discuss the results of the Interconnection Facilities Study.

8.5 Re-Study

If Re-Study of the Interconnection Facilities Study is required due to a higher queued project dropping out of the queue or a modification of a higher queued project pursuant to Section 4.4, Transmission Provider shall so notify Interconnection Customer in writing. Such Re-Study shall take no longer than sixty (60) Calendar Days from the date of notice. Any cost of Re-Study shall be borne by the Interconnection Customer being re-studied.

Section 9. Engineering & Procurement ("E&P") Agreement

Prior to executing an LGIA, an Interconnection Customer may, in order to advance the implementation of its interconnection, request and Transmission Provider shall offer the Interconnection Customer, an E&P Agreement that authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection. However, the Transmission Provider shall not be obligated to offer an E&P Agreement if Interconnection Customer is in Dispute Resolution as a result of an allegation that Interconnection Customer has failed to meet any milestones or comply with any prerequisites specified in other parts of the LGIP. The E&P Agreement is an optional procedure and it will not alter the Interconnection Customer's Queue Position or In-Service Date. The E&P Agreement shall provide for the Interconnection Customer to pay the cost of all activities authorized by the Interconnection Customer and to make advance payments or provide other satisfactory security for such costs.

The Interconnection Customer shall pay the cost of such authorized activities and any cancellation costs for equipment that is already ordered for its interconnection, which cannot be mitigated as hereafter described, whether or not such items or equipment later become unnecessary. If Interconnection Customer withdraws its application for interconnection or either party terminates the E&P Agreement, to the extent the equipment ordered can be canceled under reasonable terms, Interconnection Customer shall be obligated to pay the associated cancellation costs. To the extent that the equipment cannot be reasonably canceled, Transmission Provider may elect: (i) To take title to the equipment, in which event Transmission Provider shall refund Interconnection Customer any amounts paid by Interconnection Customer for such equipment and shall pay the cost of delivery of such equipment, or (ii) to transfer title to and deliver such equipment to Interconnection Customer, in which event Interconnection Customer shall pay any unpaid balance and cost of delivery of such equipment.

Section 10. Optional Interconnection Study

10.1 Optional Interconnection Study Agreement

On or after the date when the Interconnection Customer receives Interconnection System Impact Study results, the Interconnection Customer may request, and the Transmission Provider shall perform a reasonable number of Optional Studies. The request shall describe the assumptions that the Interconnection Customer wishes the Transmission Provider to study within the scope described in Section 10.2. Within five (5) Business Days after receipt of a request for an Optional Interconnection Study, the Transmission Provider shall provide to the Interconnection Customer an Optional Interconnection Study Agreement in the form of Appendix 5.

The Optional Interconnection Study Agreement shall: (i) Specify the technical data that the Interconnection Customer must provide for each phase of the Optional Interconnection Study, (ii) specify Interconnection Customer's assumptions as to which Interconnection Requests with earlier queue priority dates will be excluded from the Optional Interconnection Study case and assumptions as to the type of interconnection service for Interconnection Requests remaining in the Optional Interconnection Study case, and (iii) the Transmission Provider's estimate of the cost of the Optional Interconnection Study. To the extent known by the Transmission Provider, such estimate shall include any costs expected to be incurred by any Affected System whose participation is necessary to complete the Optional Interconnection Study. Notwithstanding the above, the Transmission Provider shall not be required as a result of an Optional Interconnection Study request to conduct any additional Interconnection Studies with respect to any other Interconnection Request.

The Interconnection Customer shall execute the Optional Interconnection Study Agreement within ten (10) Business Days of receipt and deliver the Optional Interconnection Study Agreement, the technical data and a $10,000 deposit to the Transmission Provider.

10.2 Scope of Optional Interconnection Study

The Optional Interconnection Study will consist of a sensitivity analysis based on the assumptions specified by the Interconnection Customer in the Optional Interconnection Study Agreement. The Optional Interconnection Study will also identify the Transmission Provider's Interconnection Facilities and the Network Upgrades, and the estimated cost thereof, that may be required to provide transmission service or Interconnection Service based upon the results of the Optional Interconnection Study. The Optional Interconnection Study shall be performed solely for informational purposes. The Transmission Provider shall use Reasonable Efforts to coordinate the study with any Affected Systems that may be affected by the types of Interconnection Services that are being studied. The Transmission Provider shall utilize existing studies to the extent practicable in conducting the Optional Interconnection Study.

10.3 Optional Interconnection Study Procedures

The executed Optional Interconnection Study Agreement, the prepayment, and technical and other data called for therein must be provided to the Transmission Provider within ten (10) Business Days of Interconnection Customer receipt of the Optional Interconnection Study Agreement. The Transmission Provider shall use Reasonable Efforts to complete the Optional Interconnection Study within a mutually agreed upon time period specified within the Optional Interconnection Study Agreement. If the Transmission Provider is unable to complete the Optional Interconnection Study within such time period, it shall notify the Interconnection Customer and provide an estimated completion date and an explanation of the reasons why additional time is required. Any difference between the study payment and the actual cost of the study shall be paid to the Transmission Provider or refunded to the Interconnection Customer, as appropriate. Upon request, the Transmission Provider shall provide the Interconnection Customer supporting documentation and workpapers and databases or data developed in the preparation of the Optional Interconnection Study, subject to confidentiality arrangements consistent with Section 13.1.

Section 11. Standard Large Generator Interconnection Agreement (LGIA)

11.1 Tender

Simultaneously with the issuance of the draft Interconnection Facilities Study report to the Interconnection Customer, the Transmission Provider shall tender to the Generator a draft LGIA together with draft appendices completed to the extent practicable. The draft LGIA shall be in the form of the Transmission Provider's Commission-approved standard form LGIA, which is in Appendix 6. Within thirty (30) Calendar Days after the issuance of the draft Interconnection Facilities Study Report, the Transmission Provider shall tender the completed draft LGIA appendices.

11.2 Negotiation

Notwithstanding Section 11.1, at the request of the Interconnection Customer the Transmission Provider shall begin negotiations with the Interconnection Customer concerning the appendices to the LGIA at any time after the Interconnection Customer executes the Interconnection Facilities Study Agreement. The Transmission Provider and the Interconnection Customer shall negotiate concerning any disputed provisions of the appendices to the draft LGIA for not more than sixty (60) Calendar Days after tender of the final Interconnection Facilities Study Report. If the Interconnection Customer determines that negotiations are at an impasse, it may request termination of the negotiations at any time after tender of the LGIA pursuant to Section 11.1 and request submission of the unexecuted LGIA with FERC or initiate Dispute Resolution procedures pursuant to Section 13.5. If the Interconnection Customer requests termination of the negotiations, but within sixty (60) Calendar Days thereafter fails to request either the filing of the unexecuted LGIA or initiate Dispute Resolution, it shall be deemed to have withdrawn its Interconnection Request. Unless otherwise agreed by the Parties, if the Interconnection Customer has not executed the LGIA, requested filing of an unexecuted LGIA, or initiated Dispute Resolution procedures pursuant to Section 13.5 within sixty days of tender of completed draft of the LGIA appendices, it shall be deemed to have withdrawn its Interconnection Request. The Transmission Provider shall provide to the Interconnection Customer a final LGIA within fifteen (15) Business Days after the completion of the negotiation process.

11.3 Execution and Filing

Within fifteen (15) Business Days after receipt of the final LGIA, the Interconnection Customer shall provide the Transmission Provider (A) reasonable evidence that continued Site Control or (B) posting of $250,000, non-refundable additional security, which shall be applied toward future construction costs. At the same time, Interconnection Customer also shall provide reasonable evidence that one or more of the following milestones in the development of the Large Generating Facility, at the Interconnection Customer election, has been achieved: (i) The execution of a contract for the supply or transportation of fuel to the Large Generating Facility; (ii) the execution of a contract for the supply of cooling water to the Large Generating Facility; (iii) execution of a contract for the engineering for, procurement of major equipment for, or construction of, the Large Generating Facility; (iv) execution of a contract for the sale of electric energy or capacity from the Large Generating Facility; or (v) application for an air, water, or land use permit.

The Interconnection Customer shall either: (i) Execute two originals of the tendered

LGIA and return them to the Transmission Provider; or (ii) request in writing that the Transmission Provider file with FERC an LGIA in unexecuted form. As soon as practicable, but not later than ten (10) Business Days after receiving either the two executed originals of the tendered LGIA (if it does not conform with a Commission-approved standard form of interconnection agreement) or the request to file an unexecuted LGIA, the Transmission Provider shall file the LGIA with FERC, together with its explanation of any matters as to which the Interconnection Customer and the Transmission Provider disagree and support for the costs that the Transmission Provider proposes to charge to the Interconnection Customer under the LGIA. An unexecuted LGIA should contain terms and conditions deemed appropriate by the Transmission Provider for the Interconnection Request. If the Parties agree to proceed with design, procurement, and construction of facilities and upgrades under the agreed-upon terms of the unexecuted LGIA, they may proceed pending Commission action.

11.4 Commencement of Interconnection Activities

If the Interconnection Customer executes the final LGIA, the Transmission Provider and the Interconnection Customer shall perform their respective obligations in accordance with the terms of the LGIA, subject to modification by FERC. Upon submission of an unexecuted LGIA, both Interconnection Customer and Transmission Provider shall promptly comply with the unexecuted LGIA, subject to modification by FERC.

Section 12. Construction of Transmission Provider's Interconnection Facilities and Network Upgrades

12.1 Schedule

The Transmission Provider and the Interconnection Customer shall negotiate in good faith concerning a schedule for the construction of the Transmission Provider's Interconnection Facilities and the Network Upgrades.

12.2 Construction Sequencing

12.2.1 General

In general, the In-Service Date of an Interconnection Customers seeking interconnection to the Transmission System will determine the sequence of construction of Network Upgrades.

12.2.2 Advance Construction of Network Upgrades That Are an Obligation of an Entity Other Than the Interconnection Customer

An Interconnection Customer with an LGIA, in order to maintain its In-Service Date, may request that the Transmission Provider advance to the extent necessary the completion of Network Upgrades that: (i) Were assumed in the Interconnection Studies for such Interconnection Customer, (ii) are necessary to support such In-Service Date, and (iii) would otherwise not be completed, pursuant to a contractual obligation of an entity other than the Interconnection Customer that is seeking interconnection to the Transmission System, in time to support such In-Service Date. Upon such request, Transmission Provider will use Reasonable Efforts to advance the construction of such Network Upgrades to accommodate such request; provided that the Interconnection Customer commits to pay Transmission Provider: (i) Any associated expediting costs and (ii) the cost of such Network Upgrades.

The Transmission Provider will refund to the Interconnection Customer both the expediting costs and the cost of Network Upgrades, in accordance with Article 11.4 of the LGIA. Consequently, the entity with a contractual obligation to construct such Network Upgrades shall be obligated to pay only that portion of the costs of the Network Upgrades that Transmission Provider has not refunded to the Interconnection Customer. Payment by that entity shall be due on the date that it would have been due had there been no request for advance construction. The Transmission Provider shall forward to the Interconnection Customer the amount paid by the entity with a contractual obligation to construct the Network Upgrades as payment in full for the outstanding balance owed to the Interconnection Customer. The Transmission Provider then shall refund to that entity the amount that it paid for the Network Upgrades, in accordance with Article 11.4 of the LGIA

12.2.3 Advancing Construction of Network Upgrades That Are Part of an Expansion Plan of the Transmission Provider

An Interconnection Customer with an LGIA, in order to maintain its In-Service Date, may request that the Transmission Provider advance to the extent necessary the completion of Network Upgrades that: (i) Are necessary to support such In-Service Date and (ii) would otherwise not be completed, pursuant to an expansion plan of the Transmission Provider, in time to support such In-Service Date. Upon such request, Transmission Provider will use Reasonable Efforts to advance the construction of such Network Upgrades to accommodate such request; provided that the Interconnection Customer commits to pay Transmission Provider any associated expediting costs. The Interconnection Customer shall be entitled to transmission credits, if any, for any expediting costs paid.

12.2.4 Amended Interconnection System Impact Study

An Interconnection System Impact Study will be amended to determine the facilities necessary to support the requested In-Service Date. This amended study will include those transmission and Large Generating Facilities that are expected to be in service on or before the requested In-Service Date.

Section 13. Miscellaneous

13.1 Confidentiality

Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of an LGIA.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

13.1.1 Scope

Confidential Information shall not include information that the receiving Party can demonstrate: (1) Is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of the LGIA; or (6) is required, in accordance with Section 13.1.6, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under the LGIA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

13.1.2 Release of Confidential Information

Neither Party shall release or disclose Confidential Information to any other person, except to its employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with these procedures, unless such person has first been advised of the confidentiality provisions of this Section 13.1 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Section 13.1.

13.1.3 Rights

Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

13.1.4 No Warranties

By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

13.1.5 Standard of Care

Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under these procedures or its regulatory requirements.

13.1.6 Order of Disclosure

If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of the LGIA. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

13.1.7 Remedies

The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Section 13.1. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Section 13.1, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Section 13.1, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Section 13.1.

13.1.8 Disclosure to FERC or Its Staff

Notwithstanding anything in this Section 13.1 to the contrary, and pursuant to 18 CFR 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to the LGIP, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Party to the LGIA when its is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112.

13.1.9 Subject to the exception in Section 13.1.8, any information that a Party claims is competitively sensitive, commercial or financial information ("Confidential Information") shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or (iv) necessary to fulfill its obligations under this LGIP or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a subregional, regional or national reliability organization or planning group. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

13.1.10 This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a Breach of this provision).

13.1.11 The Transmission Provider shall, at Interconnection Customer's election, destroy, in a confidential manner, or return the Confidential Information provided at the time of Confidential Information is no longer needed.

13.2 Delegation of Responsibility

The Transmission Provider may use the services of subcontractors as it deems appropriate to perform its obligations under this LGIP. Transmission Provider shall remain primarily liable to the Interconnection Customer for the performance of such subcontractors and compliance with its obligations of this LGIP. The subcontractor shall keep all information provided confidential and shall use such information solely for the performance of such obligation for which it was provided and no other purpose.

13.3 Obligation for Study Costs

Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Interconnection Studies. Any difference between the study deposit and the actual cost of the applicable Interconnection Study shall be paid by or refunded, except as otherwise provided herein, to Interconnection Customer or offset against the cost of any future Interconnection Studies associated with the applicable Interconnection Request prior to beginning of any such future Interconnection Studies. Any invoices for Interconnection Studies shall include a detailed and itemized accounting of the cost of each Interconnection Study. Interconnection Customer shall pay any such undisputed costs within thirty (30) Calendar Days of receipt of an invoice therefor. The Transmission Provider shall not be obligated to perform or continue to perform any studies unless Interconnection Customer has paid all undisputed amounts in compliance herewith.

13.4 Third Parties Conducting Studies

If (i) at the time of the signing of an Interconnection Study Agreement there is disagreement as to the estimated time to complete an Interconnection Study, (ii) the Interconnection Customer receives notice pursuant to Sections 6.3, 7.4 or 8.3 that the Transmission Provider will not complete an Interconnection Study within the applicable timeframe for such Interconnection Study, or (iii) the Interconnection Customer receives neither the Interconnection Study nor a notice under Sections 6.3, 7.4 or 8.3 within the applicable timeframe for such Interconnection Study, then the Interconnection Customer may require the Transmission Provider to utilize a third party consultant reasonably acceptable to Interconnection Customer and Transmission Provider to perform such Interconnection Study under the direction of the Transmission Provider. At other times, Transmission Provider may also utilize a third party consultant to perform such Interconnection Study, either in response to a general request of the Interconnection Customer, or on its own volition.

In all cases, use of a third party consultant shall be in accord with Article 26 of the LGIA (Subcontractors) and limited to situations where the Transmission Provider determines that doing so will help maintain or accelerate the study process for the Interconnection Customer's pending Interconnection Request and not interfere with the Transmission Provider's progress on Interconnection Studies for other pending Interconnection Requests. In cases where the Interconnection Customer requests use of a third party consultant to perform such Interconnection Study, Interconnection Customer and Transmission Provider shall negotiate all of the pertinent terms and conditions, including

reimbursement arrangements and the estimated study completion date and study review deadline. Transmission Provider shall convey all workpapers, data bases, study results and all other supporting documentation prepared to date with respect to the Interconnection Request as soon as practicable upon Interconnection Customer's request subject to the confidentiality provision in Section 13.1. In any case, such third party contract may be entered into with either the Interconnection Customer or the Transmission Provider at the Transmission Provider's discretion. In the case of (iii) the Interconnection Customer maintains its right to submit a claim to Dispute Resolution to recover the costs of such third party study. Such third party consultant shall be required to comply with this LGIP, Article 26 of the LGIA (Subcontractors), and the relevant OATT procedures and protocols as would apply if the Transmission Provider were to conduct the Interconnection Study and shall use the information provided to it solely for purposes of performing such services and for no other purposes. The Transmission Provider shall cooperate with such third party consultant and Interconnection Customer to complete and issue the Interconnection Study in the shortest reasonable time.

13.5 Disputes

13.5.1 Submission

In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with the LGIA, the LGIP, or their performance, such Party (the "disputing Party") shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this LGIA.

13.5.2 External Arbitration Procedures

Any arbitration initiated under these procedures shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Section 13, the terms of this Section 13 shall prevail.

13.5.3 Arbitration Decisions

Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of the LGIA and LGIP and shall have no power to modify or change any provision of the LGIA and LGIP in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.

13.5.4 Costs

Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) The cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

Appendices to LGIP

Appendix 1—Interconnection Request
Appendix 2—Interconnection Feasibility Study Agreement
Appendix 3—Interconnection System Impact Study Agreement
Appendix 4—Interconnection Facilities Study Agreement
Appendix 5—Optional Interconnection Study Agreement
Appendix 6—Standard Large Generator Interconnection Agreement

Appendix 1 to LGIP—Interconnection Request

1. The undersigned Interconnection Customer submits this request to interconnect its Large Generating Facility with the Transmission Provider's Transmission System pursuant to a Tariff.

2. This Interconnection Request is for (check one):

__A proposed new Large Generating Facility.

__An increase in the generating capacity or a Material Modification of an existing Generating Facility.

3. The type of interconnection service requested (check one or both as appropriate):

__[It is intended that the types of interconnection services specified in Article 4 of the LGIA be placed here.]

4. The Interconnection Customer provides the following information:

a. Address or location or the proposed new Large Generating Facility site (to the extent known) or, in the case of an existing Generating Facility, the name and specific location of the existing Generating Facility;

b. Maximum summer at __ degrees C and winter at __ degrees C megawatt electrical output of the proposed new Large Generating Facility or the amount of megawatt increase in the generating capacity of an existing Generating Facility;

c. General description of the equipment configuration;

d. Commercial Operation Date by day, month, and year;

e. Name, address, telephone number, and e-mail address of the Interconnection Customer's contact person;

f. Approximate location of the proposed Point of Interconnection (optional); and

g. Interconnection Customer Data (set forth in Attachment A).

5. Applicable deposit amount as specified in the LGIP.

6. Evidence of Site Control as specified in the LGIP (check one):

__Is attached to this Interconnection Request.
__Will be provided at a later date in accordance with this LGIP.

7. This Interconnection Request shall be submitted to the representative indicated below:

[To be completed by Transmission Provider]

8. Representative of the Interconnection Customer to contact:

[To be completed by Interconnection Customer]

9. This Interconnection Request is submitted by:

Name of Interconnection Customer: _____

By (signature): _____
Name (type or print): _____
Title: _____
Date: _____

Large Generating Facility Data Unit Ratings

kVA _____ °F _____ Voltage _____
Power Factor _____
Speed (RPM) _____ Connection (*e.g.* Wye) _____
Short Circuit Ratio _____ Frequency, Hertz _____
Stator Amperes at Rated kVA _____
Field Volts _____
Max Turbine MW _____ °F _____

Combined Turbine-Generator-Exciter Inertia Data

Inertia Constant, H= _____ kW sec/kVA
Moment-of-Inertia, WR2 = _____ lb. ft.2

	Direct axis	Quadrature axis
Reactance Data (Per Unit-Rated KVA):		
Synchronous—saturated	Xdv _____	Xqv _____
Synchronous—unsaturated	Xdi _____	Xqi _____
Transient—saturated	X'dv _____	X'qv _____
Transient—unsaturated	X'di _____	X'qi _____
Subtransient—saturated	X'dv _____	X'qv _____
Subtransient—unsaturated	X'di _____	X'qi _____
Negative Sequence—saturated	X2v _____	
Negative Sequence—unsaturated	X2i _____	
Zero Sequence—saturated	X0v _____	
Zero Sequence—unsaturated	X0i _____	
Leakage Reactance	Xlm _____	
Field Time Constant Data (Sec):		
Open Circuit	T'do _____	T'qo _____
Three-Phase Short Circuit Transient	T'd3 _____	T'q _____
Line to Line Short Circuit Transient	T'd2 _____	
Line to Neutral Short Circuit Transient	T'd1 _____	
Short Circuit Subtransient	T'd _____	T'q _____
Open Circuit Subtransient	T'do _____	T'qo _____
Armature Time Constant Data (Sec):		
Three Phase Short Circuit	Ta3 _____	
Line to Line Short Circuit	Ta2 _____	
Line to Neutral Short Circuit	Ta1 _____	

Note: If requested information is not applicable, indicate by marking "N/A."

MW Capability and Plant Configuration
Large Generating Facility Data

Armature Winding Resistance Data (Per Unit)

Positive R1_____
Negative R2_____
Zero R0_____
Rotor Short Time Thermal Capacity I22t = _____
Field Current at Rated kVA, Armature Voltage and PF = _____ amps
Field Current at Rated kVA and Armature Voltage, 0 PF = _____ amps
Three Phase Armature Winding Capacitance = _____ microfarad
Field Winding Resistance = _____ohms _____ °C
Armature Winding Resistance (Per Phase) = _____ ohms _____°C

Curves

Provide Saturation, Vee, Reactive Capability, Capacity Temperature Correction curves. Designate normal and emergency Hydrogen Pressure operating range for multiple curves.

Generator Step-Up Transformer Data

Ratings

Capacity Self-cooled/maximum nameplate _____kVA
Voltage Ratio Generator side/System side _____kV
Winding Connections Low V/High V (Delta or Wye) _____
Fixed Taps Available _____
Present Tap Setting _____

Impedance

Positive Z1 (on self-cooled kVA rating)_____ % _____ X/R
Zero Z0 (on self-cooled kVA rating)_____ % _____ X/R

Excitation System Data

Identify appropriate IEEE model block diagram of excitation system and power system stabilizer (PSS) for computer representation in power system stability simulations and the corresponding excitation system and PSS constants for use in the model.

Governor System Data

Identify appropriate IEEE model block diagram of governor system for computer representation in power system stability simulations and the corresponding governor system constants for use in the model.

Wind Generators

Number of generators to be interconnected pursuant to this Interconnection Request: ___
Elevation: ___
___Single Phase
___Three Phase
Inverter manufacturer, model name, number, and version: _____
List of adjustable setpoints for the protective equipment or software: _____

Note: A completed General Electric Company Power Systems Load Flow (PSLF) data sheet must be supplied with the Interconnection Request. If other data sheets are more appropriate to the proposed device then they shall be provided and discussed at Scoping Meeting.

Induction Generators

(*) Field Volts: _____
(*) Field Amperes: _____
(*) Motoring Power (kW): _____
(*) Neutral Grounding Resistor (If Applicable): _____
(*) I_2^2t or K (Heating Time Constant): _____
(*) Rotor Resistance: _____
(*) Stator Resistance: _____
(*) Stator Reactance: _____
(*) Rotor Reactance: _____
(*) Magnetizing Reactance: _____
(*) Short Circuit Reactance: _____
(*) Exciting Current: _____
(*) Temperature Rise: _____
(*) Frame Size: _____
(*) Design Letter: _____
(*) Reactive Power Required In Vars (No Load): _____
(*) Reactive Power Required In Vars (Full Load): _____
(*) Total Rotating Inertia, H: _____Per Unit on KVA Base _____

Note: Please consult Transmission Provider prior to submitting the Interconnection Request to determine if the information designated by (*) is required.

Appendix 2 to LGIP—Interconnection Feasibility Study Agreement

This Agreement is made and entered into this____day of_____, 20__by and between_____, a_____ organized and existing under the laws of the State of_____, ("Interconnection Customer,") and _____ a _____ existing under the laws of the State of_____, ("Transmission Provider"). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by the Interconnection Customer dated _____; and

Whereas, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System; and

Whereas, Interconnection Customer has requested the Transmission Provider to perform an Interconnection Feasibility Study to assess the feasibility of interconnecting the proposed Large Generating Facility to the

Transmission System, and of any Affected Systems;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in the Transmission Provider's Commission-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause to be performed an Interconnection Feasibility Study consistent with Section 6.0 of this LGIP in accordance with the Tariff.

3.0 The scope of the Interconnection Feasibility Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Interconnection Feasibility Study shall be based on the technical information provided by Interconnection Customer in the Interconnection Request, as may be modified as the result of the Scoping Meeting. Transmission Provider reserves the right to request additional technical information from Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection Feasibility Study and as designated in accordance with Section 3.3.4 of the LGIP. If, after the designation of the Point of Interconnection pursuant to Section 3.3.4 of the LGIP, Interconnection Customer modifies its Interconnection Request pursuant to Section 4.4, the time to complete the Interconnection Feasibility Study may be extended.

5.0 The Interconnection Feasibility Study report shall provide the following information:

—Preliminary identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;
—Preliminary identification of any thermal overload or voltage limit violations resulting from the interconnection; and
—Preliminary description and non-bonding estimated cost of facilities required to interconnect the Large Generating Facility to the Transmission System and to address the identified short circuit and power flow issues.

6.0 The Interconnection Customer shall provide a deposit of $10,000 for the performance of the Interconnection Feasibility Study.

Upon receipt of the Interconnection Feasibility Study the Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Interconnection Feasibility Study.

Any difference between the deposit and the actual cost of the study shall be paid by or refunded to the Interconnection Customer, as appropriate.

7.0 Miscellaneous. The Interconnection Feasibility Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider or Transmission Owner, if applicable]

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

[Insert name of Interconnection Customer]

By: _____
Title: _____
Date: _____

Assumptions Used in Conducting the Interconnection Feasibility Study

The Interconnection Feasibility Study will be based upon the information set forth in the Interconnection Request and agreed upon in the Scoping Meeting held on_____:

Designation of Point of Interconnection and configuration to be studied.

Designation of alternative Point(s) of Interconnection and configuration.

[Above assumptions to be completed by Interconnection Customer and other assumptions to be provided by Interconnection Customer and Transmission Provider]

Appendix 3 to LGIP—Interconnection System Impact Study Agreement

This agreement is made and entered into this___day of_____, 20__ by and between_____, a _____ organized and existing under the laws of the State of _____, ("Interconnection Customer,") and _____ a _____existing under the laws of the State of_____ , ("Transmission Provider"). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by the Interconnection Customer dated _____; and

Whereas, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System;

Whereas, the Transmission Provider has completed an Interconnection Feasibility Study (the "Feasibility Study") and provided the results of said study to the Interconnection Customer;[1] and

Whereas, Interconnection Customer has requested the Transmission Provider to perform an Interconnection System Impact Study to assess the impact of interconnecting the Large Generating Facility to the Transmission System, and of any Affected Systems;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in the Transmission Provider's Commission-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause to be performed an Interconnection System Impact Study consistent with Section 7.0 of this LGIP in accordance with the Tariff.

3.0 The scope of the Interconnection System Impact Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Interconnection System Impact Study will be based upon the results of the Interconnection Feasibility Study and the technical information provided by Interconnection Customer in the Interconnection Request, subject to any modifications in accordance with Section 4.4 of the LGIP. Transmission Provider reserves the right to request additional technical information from Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection Customer System Impact Study. If Interconnection Customer modifies its designated Point of Interconnection, Interconnection Request, or the technical information provided therein is modified, the time to complete the Interconnection System Impact Study may be extended.

5.0 The Interconnection System Impact Study report shall provide the following information:

—Identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection;
—Identification of any thermal overload or voltage limit violations resulting from the interconnection;
—Identification of any instability or inadequately damped response to system disturbances resulting from the interconnection and
—Description and non-binding, good faith estimated cost of facilities required to interconnect the Large Generating Facility to the Transmission System and to address the identified short circuit, instability, and power flow issues.

6.0 The Interconnection Customer shall provide a deposit of $50,000 for the performance of the Interconnection System Impact Study. The Transmission Provider's good faith estimate for the time of completion of the Interconnection System Impact Study is [insert date].

Upon receipt of the Interconnection System Impact Study, Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Interconnection System Impact Study.

Any difference between the deposit and the actual cost of the study shall be paid by or refunded to the Interconnection Customer, as appropriate.

7.0 Miscellaneous. The Interconnection System Impact Study Agreement shall

[1] This recital to be omitted if Interconnection Customer has elected to forego the Interconnection Feasibility Study.

include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, that are consistent with regional practices, Applicable Laws and Regulations and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.]

In witness thereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider or Transmission Owner, if applicable]

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

[Insert name of Interconnection Customer]

By: _____
Title: _____
Date: _____

Assumptions Used in Conducting the Interconnection System Impact Study

The Interconnection System Impact Study will be based upon the results of the Interconnection Feasibility Study, subject to any modifications in accordance with Section 4.4 of the LGIP, and the following assumptions:

Designation of Point of Interconnection and configuration to be studied.

Designation of alternative Point(s) of Interconnection and configuration.

[Above assumptions to be completed by Interconnection Customer and other assumptions to be provided by Interconnection Customer and Transmission Provider]

Appendix 4 to LGIP—Interconnection Facilities Study Agreement

This agreement is made and entered into this ____ day of _____, 20 __ by and between _____, a _____ organized and existing under the laws of the State of _____, ("Interconnection Customer,") and _____ a _____ existing under the laws of the State of _____, ("Transmission Provider"). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by the Interconnection Customer dated _____; and

Whereas, Interconnection Customer desires to interconnect the Large Generating Facility with the Transmission System;

Whereas, the Transmission Provider has completed an Interconnection System Impact Study (the "System Impact Study") and provided the results of said study to the Interconnection Customer; and

Whereas, Interconnection Customer has requested the Transmission Provider to perform an Interconnection Facilities Study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Interconnection System Impact Study in accordance with Good Utility Practice to physically and electrically connect the Large Generating Facility to the Transmission System.

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in the Transmission Provider's Commission-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause an Interconnection Facilities Study consistent with Section 8.0 of this LGIP to be performed in accordance with the Tariff.

3.0 The scope of the Interconnection Facilities Study shall be subject to the assumptions set forth in Attachment A and the data provided in Attachment B to this Agreement.

4.0 The Interconnection Facilities Study report (i) shall provide a description, estimated cost of (consistent with Attachment A), schedule for required facilities to interconnect the Large Generating Facility to the Transmission System and (ii) shall address the short circuit, instability, and power flow issues identified in the Interconnection System Impact Study.

5.0 The Interconnection Customer shall provide a deposit of $100,000 for the performance of the Interconnection Facilities Study. The time for completion of the Interconnection Facilities Study is specified in Attachment A.

Transmission Provider shall invoice Interconnection Customer on a monthly basis for the work to be conducted on the Interconnection Facilities Study each month. Interconnection Customer shall pay invoiced amounts within thirty (30) Calendar Days of receipt of invoice. Transmission Provider shall continue to hold the amounts on deposit until settlement of the final invoice.

6.0 Miscellaneous. The Interconnection Facility Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider or Transmission Owner, if applicable]

By: _____
Title: _____
Date: _____

By: _____
Title: _____
Date: _____

[Insert name of Interconnection Customer]

By: _____
Title: _____
Date: _____

Interconnection Customer Schedule Election for Conducting the Interconnection Facilities Study

The Transmission Provider shall use Reasonable Efforts to complete the study and issue a draft Interconnection Facilities Study report to the Interconnection Customer within the following number of days after of receipt of an executed copy of this Interconnection Facilities Study Agreement:

—Ninety (90) Calendar Days with no more than a ±20 percent cost estimate contained in the report, or

—One hundred eighty (180) Calendar Days with no more than a ±10 percent cost estimate contained in the report.

Data Form To Be Provided by Interconnection Customer With the Interconnection Facilities Study Agreement

Provide location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, *etc.*

One set of metering is required for each generation connection to the new ring bus or existing Transmission Provider station. Number of generation connections:

On the one line indicate the generation capacity attached at each metering location. (Maximum load on CT/PT)

On the one line indicate the location of auxiliary power. (Minimum load on CT/PT) Amps

Will an alternate source of auxiliary power be available during CT/PT maintenance? __Yes __No

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation?" __Yes __No (Please indicate on one line).

What type of control system or PLC will be located at the Interconnection Customer's Large Generating Facility?

_____

What protocol does the control system or PLC use?

_____

Please provide a 7.5-minute quadrangle of the site. Sketch the plant, station, transmission line, and property line.

_____

Physical dimensions of the proposed interconnection station:

_____

Bus length from generation to interconnection station:

_____

Line length from interconnection station to Transmission Provider's transmission line.

_____

Tower number observed in the field. (Painted on tower leg)*

_____

Number of third party easements required for transmission lines:*

_____

* To be completed in coordination with Transmission Provider.

Is the Large Generating Facility in the Transmission Provider's service area?

__Yes __No Local provider: _____

Please provide proposed schedule dates:

Begin Construction:

Date: _____

Generator step-up transformer: receives back feed power

Date: _____

Generation Testing:

Date: _____

Commercial Operation:

Date: _____

Appendix 5 to LGIP—Optional Interconnection Study Agreement

This agreement is made and entered into this ___ day of _____, 20 __ by and between _____, a _____ organized and existing under the laws of the State of _____, ("Interconnection Customer,") and _____ a _____ existing under the laws of the State of _____, ("Transmission Provider"). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

Recitals

Whereas, Interconnection Customer is proposing to develop a Large Generating Facility or generating capacity addition to an existing Generating Facility consistent with the Interconnection Request submitted by the Interconnection Customer dated _____;

Whereas, Interconnection Customer is proposing to establish an interconnection with the Transmission System; and

Whereas, Interconnection Customer has submitted to Transmission Provider an Interconnection Request; and

Whereas, on or after the date when the Interconnection Customer receives the Interconnection System Impact Study results, Interconnection Customer has further requested that the Transmission Provider prepare an Optional Interconnection Study;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

1.0 When used in this Agreement, with initial capitalization, the terms specified shall have the meanings indicated in the Transmission Provider's Commission-approved LGIP.

2.0 Interconnection Customer elects and Transmission Provider shall cause an Optional Interconnection Study consistent with Section 10.0 of this LGIP to be performed in accordance with the Tariff.

3.0 The scope of the Optional Interconnection Study shall be subject to the assumptions set forth in Attachment A to this Agreement.

4.0 The Optional Interconnection Study shall be performed solely for informational purposes.

5.0 The Optional Interconnection Study report shall provide a sensitivity analysis based on the assumptions specified by the Interconnection Customer in Attachment A to this Agreement. The Optional Interconnection Study will identify the Transmission Provider's Interconnection Facilities and the Network Upgrades, and the estimated cost thereof, that may be required to provide transmission service or interconnection service based upon the assumptions specified by the Interconnection Customer in Attachment A.

6.0 The Interconnection Customer shall provide a deposit of $10,000 for the performance of the Optional Interconnection Study. The Transmission Provider's good faith estimate for the time of completion of the Optional Interconnection Study is [insert date].

Upon receipt of the Optional Interconnection Study, the Transmission Provider shall charge and Interconnection Customer shall pay the actual costs of the Optional Study.

Any difference between the initial payment and the actual cost of the study shall be paid by or refunded to the Interconnection Customer, as appropriate.

7.0 Miscellaneous. The Optional Interconnection Study Agreement shall include standard miscellaneous terms including, but not limited to, indemnities, representations, disclaimers, warranties, governing law, amendment, execution, waiver, enforceability and assignment, that reflect best practices in the electric industry, and that are consistent with regional practices, Applicable Laws and Regulations, and the organizational nature of each Party. All of these provisions, to the extent practicable, shall be consistent with the provisions of the LGIP and the LGIA.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider or Transmission Owner, if applicable]

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date: _____

[Insert name of Interconnection Customer]

By: _____

Title: _____

Date: _____

Assumptions Used in Conducting the Optional Interconnection Study

[To be completed by Interconnection Customer consistent with Section 10 of the LGIP.]

Appendix 6 to LGIP—Standard Large Generator Interconnection Agreement

Standard Large Generator Interconnection Agreement (LGIA)

(Applicable to Generating Facilities That Exceed 20 MW)

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Standard Large Generator Interconnection Agreement

This standard large generator interconnection agreement ("Agreement") is made and entered into this ____ day of _____ 20__ by and between _____, a _____ organized and existing under the laws of _____ the State/Commonwealth of ("Interconnection Customer" with a Large Generating Facility), and _____, a [corporation] organized and existing under the laws of the State/Commonwealth of _____ ("Transmission Provider and/or Transmission Owner"). Interconnection Customer and Transmission Provider each may be referred to as a "Party" or collectively as the "Parties."

Recitals

Whereas, Transmission Provider operates the Transmission System; and

Whereas, Interconnection Customer intends to own, lease and/or control and operate the Generating Facility identified as a Large Generating Facility in Appendix C to this Agreement; and,

Whereas, Interconnection Customer and Transmission Provider have agreed to enter into this Agreement for the purpose of interconnecting the Large Generating Facility with the Transmission System;

Now, therefore, in consideration of and subject to the mutual covenants contained herein, it is agreed:

When used in this Standard Large Generator Interconnection Agreement, terms with initial capitalization that are not defined in Article 1 shall have the meanings specified in the Article in which they are used.

Article 1. Definitions

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affected System Operator shall mean the entity that operates an Affected System.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Ancillary Services shall mean those services that are necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the Transmission Provider's Transmission System in accordance with Good Utility Practice.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Applicable Reliability Council shall mean the reliability council applicable to the Transmission System to which the Generating Facility is directly interconnected.

Applicable Reliability Standards shall mean the requirements and guidelines of NERC, the Applicable Reliability Council, and the Control Area of the Transmission System to which the Generating Facility is directly interconnected.

Base Case shall mean the base case power flow, short circuit, and stability data bases used for the Interconnection Studies by the Transmission Provider or Interconnection Customer.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the Standard Large Generator Interconnection Agreement.

Breaching Party shall mean a Party that is in Breach of the Standard Large Generator Interconnection Agreement.

Business Day shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Clustering shall mean the process whereby a group of Interconnection Requests is studied together, instead of serially, for the purpose of conducting the Interconnection System Impact Study.

Commercial Operation Date of a unit shall mean the date on which Interconnection Customer commences commercial operation of the unit at the Generating Facility after Trial Operation of such unit has been completed as confirmed in writing substantially in the form shown in Appendix E to the Standard Large Generator Interconnection Agreement.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by NERC.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 17 of the Standard Large Generator Interconnection Agreement.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean the Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which distribution systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the Standard Large Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

Emergency Condition shall mean a condition or situation: (1) That in the judgement of the Party making the claim is imminently likely to endanger life or property; or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected; or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided, that Interconnection Customer is not obligated by the Standard Large Generator Interconnection Agreement to possess black start capability.

Energy Resource Interconnection Service (ER Interconnection Service) shall mean an Interconnection Service that allows the Interconnection Customer to connect its Generating Facility to the Transmission Provider's Transmission System to be eligible to deliver the Generating Facility's electric output using the existing firm or nonfirm capacity of the Transmission Provider's Transmission System on an as available basis. Energy Resource Interconnection Service in and of itself does not convey transmission service.

Engineering & Procurement (E&P) Agreement shall mean an agreement that

authorizes the Transmission Provider to begin engineering and procurement of long lead-time items necessary for the establishment of the interconnection in order to advance the implementation of the Interconnection Request.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. 791a *et seq.*

FERC shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing.

Generating Facility shall mean Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

Initial Synchronization Date shall mean the date upon which the Generating Facility is initially synchronized and upon which Trial Operation begins.

In-Service Date shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean any entity, including the Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with the Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment, as identified in Appendix A of the Standard Large Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean the Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by the Transmission Provider or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System. The scope of the study is defined in Section 8 of the Standard Large Generator Interconnection Procedures.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission Provider's Transmission System, the scope of which is described in Section 6 of the Standard Large Generator Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 2 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 1 to the Standard Large Generator Interconnection Procedures, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Large Generator Interconnection Agreement and, if applicable, the Transmission Provider's Tariff.

Interconnection Study shall mean any of the following studies: The Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study shall mean an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Standard Large Generator Interconnection Procedures.

Interconnection System Impact Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Large Generator Interconnection Procedures for conducting the Interconnection System Impact Study.

IRS shall mean the Internal Revenue Service.

Joint Operating Committee shall be a group made up of representatives from Interconnection Customers and the Transmission Provider to coordinate operating and technical considerations of Interconnection Service.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Loss shall mean any and all losses relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's performance, or non-performance of its obligations under the Standard Large Generator Interconnection Agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnifying Party.

Material Modification shall mean those modifications that have a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Metering Equipment shall mean all metering equipment installed or to be installed at the Generating Facility pursuant to the Standard Large Generator Interconnection Agreement at the metering points, including but not limited to instrument transformers, MWh-meters, data acquisition equipment, transducers, remote terminal unit, communications equipment, phone lines, and fiber optics.

NERC shall mean the North American Electric Reliability Council or its successor organization.

Network Resource shall mean that portion of a Generating Facility that is integrated with the Transmission Provider's Transmission System, designated as a Network Resource pursuant to the terms of the Tariff, and subjected to redispatch directives as ordered by the Transmission Provider in accordance with the Tariff.

Network Resource Interconnection Service (NR Interconnection Service) shall mean an Interconnection Service that allows the Interconnection Customer to integrate its Large Generating Facility with the Transmission Provider's Transmission System (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an RTO or ISO with market based congestion management, in the same manner as all other Network Resources. Network Resource Interconnection Service in and of itself does not convey transmission service.

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's Transmission System to accommodate the interconnection of the Large Generating Facility to the Transmission Provider's Transmission System.

Notice of Dispute shall mean a written notice of a dispute or claim that arises out of or in connection with the Standard Large Generator Interconnection Agreement or its performance.

Optional Interconnection Study shall mean a sensitivity analysis based on assumptions specified by the Interconnection Customer in the Optional Interconnection Study Agreement.

Optional Interconnection Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Large Generator Interconnection Procedures for conducting the Optional Interconnection Study.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

Point of Interconnection shall mean the point, as set forth in Appendix A to the Standard Large Generator Interconnection Agreement, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Large Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Scoping Meeting shall mean the meeting between representatives of the Interconnection Customer and Transmission Provider conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Site Control shall mean documentation reasonably demonstrating: (1) Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility; (2) an option to purchase or acquire a leasehold site for such purpose; or (3) an exclusivity or other business relationship between Interconnection Customer and the entity having the right to sell, lease or grant Interconnection Customer the right to possess or occupy a site for such purpose.

Small Generating Facility shall mean a Generating Facility that has a Generating Facility Capacity of no more than 20 MW.

Stand Alone Network Upgrades shall mean Network Upgrades that an Interconnection Customer may construct without affecting day-to-day operations of the Transmission System during their construction. Both the Transmission Provider and the Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify them in Appendix A to the Standard Large Generator Interconnection Agreement.

Standard Large Generator Interconnection Agreement (LGIA) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Large Generating Facility, that is included in the Transmission Provider's Tariff.

Standard Large Generator Interconnection Procedures (LGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Large Generating Facility that are included in the Transmission Provider's Tariff.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.

Tariff shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the Commission, and as amended or supplemented from time to time, or any successor tariff.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Standard Large Generator Interconnection Agreement to the extent necessary.

Transmission Provider shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix A to the Standard Large Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades, Stand Alone Network Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

Trial Operation shall mean the period during which Interconnection Customer is engaged in on-site test operations and commissioning of the Generating Facility prior to commercial operation.

Article 2. Effective Date, Term and Termination

2.1 *Effective Date.* This LGIA shall become effective upon execution by the Parties subject to acceptance by FERC (if

applicable), or if filed unexecuted, upon the date specified by FERC. Transmission Provider shall promptly file this LGIA with FERC upon execution in accordance with Article 3.1, if required.

2.2 *Term of Agreement.* Subject to the provisions of Article 2.3, this LGIA shall remain in effect for a period of ten (10) years from the Effective Date or such other longer period as the Interconnection Customer may request (Term to be Specified in Individual Agreements) and shall be automatically renewed for each successive one-year period thereafter.

2.3 *Termination Procedures.* This LGIA may be terminated as follows:

2.3.1 *Written Notice.* The Interconnection Customer may terminate this LGIA after giving the Transmission Provider ninety (90) Calendar Days advance written notice; or

2.3.2 *Default.* Either Party may terminate this LGIA in accordance with Article 17.

Notwithstanding the foregoing, no termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this LGIA, which notice has been accepted for filing by FERC.

2.4 *Termination Costs.* If a Party elects to terminate this Agreement pursuant to Article 2.3 above, each Party shall pay all costs incurred (including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment) or charges assessed by the other Party, as of the date of the other Party's receipt of such notice of termination, that are the responsibility of the Terminating Party under this LGIA. In the event of termination by either Party, both Parties shall use commercially Reasonable Efforts to mitigate the costs, damages and charges arising as a consequence of termination. Upon termination of this LGIA, unless otherwise ordered or approved by FERC:

2.4.1 With respect to any portion of the Transmission Provider's Interconnection Facilities that have not yet been constructed or installed, the Transmission Provider shall to the extent possible and with Interconnection Customer's authorization cancel any pending orders of, or return, any materials or equipment for, or contracts for construction of, such facilities; provided that in the event Interconnection Customer elects not to authorize such cancellation, Interconnection Customer shall assume all payment obligations with respect to such materials, equipment, and contracts, and the Transmission Provider shall deliver such material and equipment, and, if necessary, assign such contracts, to Interconnection Customer as soon as practicable, at Interconnection Customer's expense. To the extent that Interconnection Customer has already paid Transmission Provider for any or all such costs of materials or equipment not taken by Interconnection Customer, Transmission Provider shall promptly refund such amounts to Interconnection Customer, less any costs, including penalties incurred by the Transmission Provider to cancel any pending orders of or return such materials, equipment, or contracts.

If an Interconnection Customer terminates this LGIA, it shall be responsible for all costs incurred in association with that Interconnection Customer's interconnection, including any cancellation costs relating to orders or contracts for Interconnection Facilities and equipment, and other expenses including any Network Upgrades for which the Transmission Provider has incurred expenses and has not been reimbursed by the Interconnection Customer.

2.4.2 Transmission Provider may, at its option, retain any portion of such materials, equipment, or facilities that Interconnection Customer chooses not to accept delivery of, in which case Transmission Provider shall be responsible for all costs associated with procuring such materials, equipment, or facilities.

2.4.3 With respect to any portion of the Interconnection Facilities, and any other facilities already installed or constructed pursuant to the terms of this LGIA, Interconnection Customer shall be responsible for all costs associated with the removal, relocation or other disposition or retirement of such materials, equipment, or facilities.

2.5 *Disconnection.* Upon termination of this LGIA, the Parties will take all appropriate steps to disconnect the Large Generating Facility from the Transmission System. All costs required to effectuate such disconnection shall be borne by the terminating Party, unless such termination resulted from the non-terminating Party's Default of this LGIA or such non-terminating Party otherwise is responsible for these costs under this LGIA.

2.6 *Survival.* This LGIA shall continue in effect after termination to the extent necessary to provide for final billings and payments and for costs incurred hereunder, including billings and payments pursuant to this LGIA; to permit the determination and enforcement of liability and indemnification obligations arising from acts or events that occurred while this LGIA was in effect; and to permit each Party to have access to the lands of the other Party pursuant to this LGIA or other applicable agreements, to disconnect, remove or salvage its own facilities and equipment.

Article 3. Regulatory Filings

3.1 *Filing.* The Transmission Provider shall file this LGIA (and any amendment hereto) with the appropriate Governmental Authority, if required. Any information related to studies for interconnection asserted by Interconnection Customer to contain competitively sensitive commercial or financial information shall be maintained by the Transmission Provider and identified as "confidential" under seal stating that Interconnection Customer asserts such information is Confidential Information and has requested such information be kept under seal. If requested by the Transmission Provider, Interconnection Customer shall provide the Transmission Provider, in writing, with the Interconnection Customer's basis for asserting that the information referred to in this Article 3.1 is competitively sensitive information, and the Transmission Provider may disclose such writing to the appropriate Governmental Authority. Interconnection Customer shall be responsible for the costs associated with affording confidential treatment of such information. If the Interconnection Customer has executed this LGIA, or any amendment thereto, the Interconnection Customer shall reasonably cooperate with Transmission Provider with respect to such filing and to provide any information reasonably requested by Transmission Provider needed to comply with applicable regulatory requirements.

Article 4. Scope of Service

4.1 *Interconnection Product Options.* Interconnection Customer has selected the following (checked) type of Interconnection Service:

4.1.1 Energy Resource Interconnection Service (ER Interconnection Service).

4.1.1.1 *The Product.* ER Interconnection Service allows Interconnection Customer to connect the Large Generating Facility to the Transmission System and be eligible to deliver the Large Generating Facility's output using the existing firm or non-firm capacity of the Transmission System on an "as available" basis. To the extent Interconnection Customer wants to receive ER Interconnection Service, the Transmission Provider shall construct facilities consistent with the studies identified in Attachment A. ER Interconnection Service does not in and of itself convey any transmission delivery service.

4.1.1.2 *Transmission Delivery Service Implications.* Under ER Interconnection Service, the Interconnection Customer will be able to inject power from the Large Generating Facility into and deliver power across the interconnecting Transmission Provider's Transmission System on an "as available" basis up to the amount of MW's identified in the applicable stability and steady state studies to the extent the upgrades initially required to qualify for ER Interconnection Service have been constructed. Where eligible to do so (*e.g.*, PJM, ISO–NE, NYISO), the Interconnection Customer may place a bid to sell into the market up to the maximum identified Large Generating Facility output, subject to any conditions specified in the interconnection service approval, and the Large Generating Facility will be dispatched to the extent the Interconnection Customer's bid clears. In all other instances, no transmission delivery service from the Large Generating Facility is assured, but the Interconnection Customer may obtain point-to-point transmission delivery service or be used for secondary network transmission service, pursuant to the Transmission Provider's Tariff, up to the maximum output identified in the stability and steady state studies. In those instances, in order for the Interconnection Customer to obtain the right to deliver or inject energy beyond the Large Generating Facility Point of Interconnection or to improve its ability to do so, transmission delivery service must be obtained pursuant to the provisions of the Transmission Provider's Tariff. The Interconnection Customer's ability to inject its Large Generating Facility output beyond the Point of Interconnection, therefore, will depend on the existing capacity of the Transmission Provider's Transmission

System at such time as a transmission service request is made that would accommodate such delivery. The provision of firm point-to-point transmission service may require the construction of additional Network Upgrades.

4.1.2 Network Resource Interconnection Service (NR Interconnection Service).

4.1.2.1 *The Product.* The Transmission Provider must conduct the necessary studies and construct the Network Upgrades needed to integrate the Large Generating Facility (1) in a manner comparable to that in which the Transmission Provider integrates its generating facilities to serve native load customers; or (2) in an ISO or RTO with market based congestion management, in the same manner as all other Network Resources. NR Interconnection Service in and of itself does not convey any transmission delivery service.

4.1.2.2 *Transmission Delivery Service Implications.* NR Interconnection Service allows the Interconnection Customer's Large Generating Facility to be designated by any Network Customer under the Tariff on the Transmission Provider's Transmission System as a Network Resource, up to the Large Generating Facility's full output, on the same basis as all other existing Network Resources interconnected to the Transmission Provider's Transmission System, and to be studied as a Network Resource on the assumption that such a designation will occur. Although NR Interconnection Service does not convey a reservation of transmission service, any Network Customer under the Tariff can utilize its network service under the Tariff to obtain delivery of energy from the interconnected Interconnection Customer's Large Generating Facility in the same manner as it accesses other Network Resources. A Large Generating Facility receiving NR Interconnection Service may also be used to provide Ancillary Services after technical studies and/or periodic analyses are performed with respect to the Large Generating Facility's ability to provide any applicable Ancillary Services, provided that such studies and analyses have been or would be required in connection with the provision of such Ancillary Services by any existing Network Resource. However, if an Interconnection Customer's Large Generating Facility has not been designated as a Network Resource by any load, it cannot be required to provide Ancillary Services except to the extent such requirements extend to all Generating Facilities that are similarly situated.

NR Interconnection Service does not necessarily provide the Interconnection Customer with the capability to physically deliver the output of its Large Generating Facility to any particular load on the Transmission Provider's Transmission System without incurring congestion costs. In the event of transmission constraints on the Transmission Provider's Transmission System, the Interconnection Customer's Large Generating Facility shall be subject to the applicable congestion management procedures in the Transmission Provider's Transmission System in the same manner as all other Network Resources.

There is no requirement either at the time of study or interconnection, or at any point in the future, that the Interconnection Customer's Large Generating Facility be designated as a Network Resource by a Network Service Customer under the Tariff or that the Interconnection Customer identify a specific buyer (or sink). To the extent a Network Customer does designate the Large Generating Facility as a Network Resource, it must do so pursuant to the Transmission Provider's Tariff.

Once an Interconnection Customer satisfies the requirements for obtaining NR Interconnection Service, any future transmission service request for delivery from the Large Generating Facility within the Transmission Provider's Transmission System of any amount of capacity and/or energy, up to the amount initially studied, will not require that any additional studies be performed or that any further upgrades associated with such Large Generating Facility be undertaken, regardless of whether or not such Large Generating Facility is ever designated by a Network Customer as a Network Resource and regardless of changes in ownership of the Large Generating Facility. To the extent the Interconnection Customer enters into an arrangement for long term transmission service for deliveries from the Large Generating Facility outside the Transmission Provider's Transmission System, such request may require additional studies and upgrades in order for the Transmission Provider to grant such request.

4.2 *Provision of Service.* Transmission Provider shall provide Interconnection Service for the Large Generating Facility at the Point of Interconnection.

4.3 *Generator Balancing Service Arrangements.* Interconnection Customer must demonstrate, to the Transmission Provider's reasonable satisfaction, that it has satisfied the requirements of this Article 4.3 prior to the submission of any schedules for delivery service to such Transmission Provider identifying the Large Generating Facility as the Point of Receipt for such scheduled delivery.

4.3.1 Interconnection Customer is responsible for ensuring that its actual Large Generating Facility output matches the scheduled delivery from the Large Generating Facility to the Transmission Provider's Transmission System, consistent with the scheduling requirements of the Transmission Provider's FERC-approved market structure, including ramping into and out of such scheduled delivery, as measured at the Point of Interconnection, consistent with the scheduling requirements of the Transmission Provider's Tariff and any applicable FERC-approved market structure.

Interconnection Customer shall arrange for the supply of energy when there is a difference between the actual Large Generating Facility output and the scheduled delivery from the Large Generating Facility (the "Generator Balancing Service Arrangements").

Interconnection Customer may satisfy its obligation for making such Generator Balancing Service Arrangements by:

(a) Obtaining such service from another entity that (i) has generating resources deliverable within the applicable Control Area, (ii) agrees to assume responsibility for providing such Generator Balancing Service Arrangement to the Interconnection Customer, and (iii) has appropriate coordination service arrangements or agreements with the applicable Control Area that addresses Generator Balancing Service Arrangements for all generating resources for which the entity is responsible within the applicable Control Area;

(b) Committing sufficient additional unscheduled generating resources to the control of and dispatch by the applicable Control Area operator that are capable of supplying energy not supplied by the Interconnection Customer's scheduled Large Generating Facility, and entering into an appropriate coordination services agreement with the applicable Control Area that addresses Generator Balancing Service Arrangements obligations for the Large Generating Facility;

(c) Entering into an arrangement with another Control Area to dynamically schedule the Interconnection Customer's Large Generating Facility out of the applicable Control Area and into such other Control Area;

(d) Entering into a Generator Balancing Service Arrangements with the applicable Control Area; or

(e) In the event the load/generation balancing function of the applicable Control Area is accomplished through the function of its market structures approved by FERC, by entering into an arrangement consistent with such FERC-approved market structure.

In the event Interconnection Customer fails to demonstrate to the Transmission Provider that it has otherwise complied with this Article 4.3, the Interconnection Customer shall be deemed to have elected to enter into a Generator Balancing Service Arrangements with the applicable Control Area.

Nothing in this provision shall prejudice either Party from obtaining a FERC-approved tariff addressing its obligations and rights with respect to Generator Balancing Service Arrangements.

4.4 *Performance Standards.* Each Party shall perform all of its obligations under this LGIA in accordance with Applicable Laws and Regulations, Applicable Reliability Standards, and Good Utility Practice, and to the extent a Party is required or prevented or limited in taking any action by such regulations and standards, such Party shall not be deemed to be in Breach of this LGIA for its compliance therewith. If such Party is the Transmission Provider or Transmission Owner, then that Party shall amend the LGIA and submit the amendment to the Commission for approval.

4.5 *No Transmission Delivery Service.* The execution of this LGIA does not constitute a request for, nor the provision of, any transmission delivery service under the Transmission Provider's Tariff.

4.6 Interconnection Customer Provided Services. The services provided by Interconnection Customer under this LGIA are set forth in Article 9.6 and Article 13.5.1. Interconnection Customer shall be paid for such services in accordance with Article 11.6.

Article 5. Interconnection Facilities Engineering, Procurement, and Construction

5.1 *Options.* Unless otherwise mutually agreed to between the Parties, Interconnection Customer shall select the In-Service Date, Initial Synchronization Date, and Commercial Operation Date; and either Standard Option or Alternate Option set forth below for completion of the Transmission Provider's Interconnection Facilities and Network Upgrades as set forth in Appendix A, Interconnection Facilities and Network Upgrades, and such dates and selected option shall be set forth in Appendix B, Milestones.

5.1.1 *Standard Option.* The Transmission Provider shall design, procure, and construct the Transmission Provider's Interconnection Facilities and Network Upgrades, using Reasonable Efforts to complete the Transmission Provider's Interconnection Facilities and Network Upgrades by the dates set forth in Appendix B, Milestones. The Transmission Provider shall not be required to undertake any action which is inconsistent with its standard safety practices, its material and equipment specifications, its design criteria and construction procedures, its labor agreements, and Applicable Laws and Regulations. In the event the Transmission Provider reasonably expects that it will not be able to complete the Transmission Provider's Interconnection Facilities and Network Upgrades by the specified dates, the Transmission Provider shall promptly provide written notice to the Interconnection Customer and shall undertake Reasonable Efforts to meet the earliest dates thereafter.

5.1.2 *Alternate Option.* If the dates designated by Interconnection Customer are acceptable to Transmission Provider, the Transmission Provider shall so notify Interconnection Customer within thirty (30) Calendar Days, and shall assume responsibility for the design, procurement and construction of the Transmission Provider's Interconnection Facilities by the designated dates.

If Transmission Provider subsequently fails to complete Transmission Provider's Interconnection Facilities by the In-Service Date, to the extent necessary to provide back feed power; or fails to complete Network Upgrades by the Initial Synchronization Date to the extent necessary to allow for Trial Operation at full power output, unless other arrangements are made by the Parties for such Trial Operation; or fails to complete the Network Upgrades by the Commercial Operation Date, as such dates are reflected in Appendix B, Milestones; Transmission Provider shall pay Interconnection Customer liquidated damages in accordance with Article 5.3, Liquidated Damages, provided, however, the dates designated by Interconnection Customer shall be extended day for day for each day that the applicable RTO or ISO refuses to grant clearances to install equipment.

5.1.3 *Option to Build.* If the dates designated by Interconnection Customer are not acceptable to Transmission Provider, the Transmission Provider shall so notify the Interconnection Customer within thirty (30) Calendar Days, and unless the Parties agree otherwise, Interconnection Customer shall have the option to assume responsibility for the design, procurement and construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades. Both Transmission Provider and Interconnection Customer must agree as to what constitutes Stand Alone Network Upgrades and identify such Stand Alone Network Upgrades in Appendix A to the LGIA. Except for Stand Alone Upgrades, Interconnection Customer shall have no right to construct Network Upgrades under this option.

5.1.4 *Negotiated Option.* If the Interconnection Customer elects not to exercise its option under Article 5.1.3, Option to Build, Interconnection Customer shall so notify Transmission Provider within thirty (30) Calendar Days, and the Parties shall in good faith attempt to negotiate terms and conditions (including revision of the specified dates and liquidated damages, the provision of incentives or the procurement and construction of a portion of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades by Interconnection Customer) pursuant to which Transmission Provider is responsible for the design, procurement and construction of the Transmission Provider's Interconnection Facilities and Network Upgrades. If the Parties are unable to reach agreement on such terms and conditions, Transmission Provider shall assume responsibility for the design, procurement and construction of the Transmission Provider's Interconnection Facilities and Network Upgrades pursuant to 5.1.1, Standard Option.

5.2 *General Conditions Applicable to Option to Build.* If Interconnection Customer assumes responsibility for the design, procurement and construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades,

(1) The Interconnection Customer shall engineer, procure equipment, and construct the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades (or portions thereof) using Good Utility Practice and using standards and specifications provided in advance by the Transmission Provider;

(2) Interconnection Customer's engineering, procurement and construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades shall comply with all requirements of law to which Transmission Provider would be subject in the engineering, procurement or construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(3) Transmission Provider shall review and approve the engineering design, equipment acceptance tests, and the construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(4) Prior to commencement of construction, Interconnection Customer shall provide to Transmission Provider a schedule for construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades, and shall promptly respond to requests for information from Transmission Provider;

(5) At any time during construction, Transmission Provider shall have the right to gain unrestricted access to the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades and to conduct inspections of the same;

(6) At any time during construction, should any phase of the engineering, equipment procurement, or construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades not meet the standards and specifications provided by Transmission Provider, the Interconnection Customer shall be obligated to remedy deficiencies in that portion of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades;

(7) The Interconnection Customer shall indemnify the Transmission Provider for claims arising from the Interconnection Customer's construction of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades under the terms and procedures applicable to Article 18.1 Indemnity;

(8) The Interconnection Customer shall transfer control of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the Transmission Provider; and

(9) Transmission Provider shall approve and accept for operation and maintenance the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to the extent engineered, procured, and constructed in accordance with this Article 5.2.

5.3 *Liquidated Damages.* The actual damages to the Interconnection Customer, in the event the Transmission Provider's Interconnection Facilities or Network Upgrades are not completed by the dates designated by the Interconnection Customer and accepted by the Transmission Provider pursuant to subparagraphs 5.1.2 or 5.1.4, above, may include Interconnection Customer's fixed operation and maintenance costs and lost opportunity costs. Such actual damages are uncertain and impossible to determine at this time. Because of such uncertainty, any liquidated damages paid by the Transmission Provider to the Interconnection Customer in the event that Transmission Provider does not complete any portion of the Transmission Provider's Interconnection Facilities or Network Upgrades by the applicable dates, shall be an amount equal to ½ of 1 percent per day of the actual cost of the Transmission Provider's Interconnection Facilities and Network Upgrades, in the aggregate, for which Transmission Provider has assumed responsibility to design, procure and construct.

However, in no event shall the total liquidated damages exceed 20 percent of the actual cost of the Transmission Provider Interconnection Facilities and Network Upgrades for which the Transmission Provider has assumed responsibility to design, procure, and construct. The foregoing payments will be made by the Transmission Provider to the Interconnection Customer as

just compensation for the damages caused to the Interconnection Customer, which actual damages are uncertain and impossible to determine at this time, and as reasonable liquidated damages, but not as a penalty or a method to secure performance of this LGIA.

No liquidated damages shall be paid to Interconnection Customer if: (1) Interconnection Customer is not ready to commence use of the Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for the Large Generating Facility's Trial Operation or to export power from the Large Generating Facility on the specified dates, unless the Interconnection Customer would have been able to commence use of the Transmission Provider's Interconnection Facilities or Network Upgrades to take the delivery of power for Large Generating Facility's Trial Operation or to export power from the Large Generating Facility, but for Transmission Provider's delay; (2) the Transmission Provider's failure to meet the specified dates is the result of the action or inaction of the Interconnection Customer or any other Interconnection Customer who has entered into an LGIA with the Transmission Provider or any cause beyond Transmission Provider's reasonable control or reasonable ability to cure; (3) the interconnection Customer has assumed responsibility for the design, procurement and construction of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades; or (4) the Parties have otherwise agreed.

5.4 *Power System Stabilizers.* The Interconnection Customer shall procure, install, maintain and operate Power System Stabilizers in accordance with the guidelines and procedures established by the Applicable Reliability Council. Transmission Provider reserves the right to reasonably establish minimum acceptable settings for any installed Power System Stabilizers, subject to the design and operating limitations of the Large Generating Facility. If the Large Generating Facility's Power System Stabilizers are removed from service or not capable of automatic operation, the Interconnection Customer shall immediately notify the Transmission Provider's system operator, or its designated representative.

5.5 *Equipment Procurement.* If responsibility for construction of the Transmission Provider's Interconnection Facilities or Network Upgrades is to be borne by the Transmission Provider, then the Transmission Provider shall commence design of the Transmission Provider's Interconnection Facilities or Network Upgrades and procure necessary equipment as soon as practicable after all of the following conditions are satisfied, unless the Parties otherwise agree in writing:

5.5.1 The Transmission Provider has completed the Facilities Study pursuant to the Facilities Study Agreement;

5.5.2 The Transmission Provider has received written authorization to proceed with design and procurement from the Interconnection Customer by the date specified in Appendix B, Milestones; and

5.5.3 The Interconnection Customer has provided security to the Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.6 *Construction Commencement.* The Transmission Provider shall commence construction of the Transmission Provider's Interconnection Facilities and Network Upgrades for which it is responsible as soon as practicable after the following additional conditions are satisfied:

5.6.1 Approval of the appropriate Governmental Authority has been obtained for any facilities requiring regulatory approval;

5.6.2 Necessary real property rights and rights-of-way have been obtained, to the extent required for the construction of a discrete aspect of the Transmission Provider's Interconnection Facilities and Network Upgrades;

5.6.3 The Transmission Provider has received written authorization to proceed with construction from the Interconnection Customer by the date specified in Appendix B, Milestones; and

5.6.4 The Interconnection Customer has provided security to the Transmission Provider in accordance with Article 11.5 by the dates specified in Appendix B, Milestones.

5.7 *Work Progress.* The Parties will keep each other advised periodically as to the progress of their respective design, procurement and construction efforts. Either Party may, at any time, request a progress report from the other Party. If, at any time, the Interconnection Customer determines that the completion of the Transmission Provider's Interconnection Facilities will not be required until after the specified In-Service Date, the Interconnection Customer will provide written notice to the Transmission Provider of such later date upon which the completion of the Transmission Provider's Interconnection Facilities will be required.

5.8 *Information Exchange.* As soon as reasonably practicable after the Effective Date, the Parties shall exchange information regarding the design and compatibility of the Parties' Interconnection Facilities and compatibility of the Interconnection Facilities with the Transmission Provider's Transmission System, and shall work diligently and in good faith to make any necessary design changes.

5.9 *Limited Operation.* If any of the Transmission Provider's Interconnection Facilities or Network Upgrades are not reasonably expected to be completed prior to the Commercial Operation Date of the Large Generating Facility, Transmission Provider shall, upon the request and at the expense of Interconnection Customer, perform operating studies on a timely basis to determine the extent to which the Large Generating Facility and the Interconnection Customer Interconnection Facilities may operate prior to the completion of the Transmission Provider's Interconnection Facilities or Network Upgrades consistent with Applicable Laws and Regulations, Applicable Reliability Standards, Good Utility Practice, and this LGIA. Transmission Provider shall permit Interconnection Customer to operate the Large Generating Facility and the Interconnection Customer Interconnection Facilities in accordance with the results of such studies.

5.10 *Interconnection Customer's Interconnection Facilities ("ICIF").* Interconnection Customer shall, at its expense, design, procure, construct, own and install the ICIF, as set forth in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

5.10.1 *Large Generating Facility Specifications.* Interconnection Customer shall submit initial specifications for the ICIF, including System Protection Facilities, to Transmission Provider at least one hundred eighty (180) Calendar Days prior to the Initial Synchronization Date; and final specifications for review and comment at least ninety (90) Calendar Days prior to the Initial Synchronization Date. Transmission Provider shall review such specifications to ensure that the ICIF are compatible with the technical specifications, operational control, and safety requirements of the Transmission Provider and comment on such specifications within thirty (30) Calendar Days of Interconnection Customer's submission. All specifications provided hereunder shall be deemed confidential.

5.10.2 *Transmission Provider's Review.* Transmission Provider's review of Interconnection Customer's final specifications shall not be construed as confirming, endorsing, or providing a warranty as to the design, fitness, safety, durability or reliability of the Large Generating Facility, or the ICIF. Interconnection Customer shall make such changes to the ICIF as may reasonably be required by Transmission Provider, in accordance with Good Utility Practice, to ensure that the ICIF are compatible with the telemetry, communications, and safety requirements of the Transmission Provider.

5.10.3 *ICIF Construction.* The ICIF shall be designed and constructed in accordance with Good Utility Practice. Within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, the Interconnection Customer shall deliver to the Transmission Provider "as-built" drawings, information and documents for the ICIF, such as: a one-line diagram, a site plan showing the Large Generating Facility and the ICIF, plan and elevation drawings showing the layout of the ICIF, a relay functional diagram, relaying AC and DC schematic wiring diagrams and relay settings for all facilities associated with the Interconnection Customer's step-up transformers, the facilities connecting the Large Generating Facility to the step-up transformers and the ICIF, and the impedances (determined by factory tests) for the associated step-up transformers and the Large Generating Facilities. The Interconnection Customer shall provide Transmission Provider specifications for the excitation system, automatic voltage regulator, Large Generating Facility control and protection settings, transformer tap settings, and communications.

5.11 *Transmission Provider's Interconnection Facilities Construction.* The Transmission Provider's Interconnection

Facilities shall be designed and constructed in accordance with Good Utility Practice. Upon request, within one hundred twenty (120) Calendar Days after the Commercial Operation Date, unless the Parties agree on another mutually acceptable deadline, the Transmission Provider shall deliver to the Interconnection Customer the following "as-built" drawings, information and documents for the Transmission Provider's Interconnection Facilities [include appropriate drawings and relay diagrams].

The Transmission Provider will obtain control of the Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades upon completion of such facilities.

5.12 *Access Rights.* Upon reasonable notice and supervision by a Party, and subject to any required or necessary regulatory approvals, a Party ("Granting Party") shall furnish at no cost to the other Party ("Access Party") any rights of use, licenses, rights of way and easements with respect to lands owned or controlled by the Granting Party and its agents that are necessary to enable the Access Party to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (i) Interconnect the Large Generating Facility with the Transmission System; (ii) operate and maintain the Large Generating Facility, the Interconnection Facilities and the Transmission System; and (iii) disconnect or remove the Access Party's facilities and equipment upon termination of this LGIA. In exercising such licenses, rights of way and easements, the Access Party shall not unreasonably disrupt or interfere with normal operation of the Granting Party's business and shall adhere to the safety rules and procedures established in advance, as may be changed from time to time, by the Granting Party and provided to the Access Party.

5.13 *Lands of Other Property Owners.* If any part of the Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades is to be installed on property owned by persons other than Interconnection Customer or Transmission Provider or Transmission Owner, the Transmission Provider or Transmission Owner shall at Interconnection Customer's expense use efforts, similar in nature and extent to those that it typically undertakes on its own behalf, including use of its eminent domain authority, and to the extent consistent with state law, to procure from such persons any rights of use, licenses, rights of way and easements that are necessary to construct, operate, maintain, test, inspect, replace or remove the Transmission Provider or Transmission Owner's Interconnection Facilities and/or Network Upgrades upon such property. Upon receipt of a reasonable siting request, Transmission Provider shall provide siting assistance to the Interconnection Customer comparable to that provided to the Transmission Provider's own, or an Affiliate's generation.

5.14 *Permits.* The LGIA shall specify the allocation of the responsibilities of the Transmission Provider or Transmission Owner and the Interconnection Customer to obtain all permits, licenses and authorizations that are necessary to accomplish the interconnection in compliance with Applicable Laws and Regulations. The Transmission Provider or Transmission Owner and the Interconnection Customer shall cooperate with each other in good faith in obtaining any such permits, licenses and authorizations. With respect to this paragraph, Transmission Provider or Transmission Owner shall provide permitting assistance to the Interconnection Customer comparable to that provided to the Transmission Provider's own, or an Affiliate's generation.

5.15 *Early Construction of Base Case Facilities.* Interconnection Customer may request Transmission Provider to construct, and Transmission Provider shall construct, using Reasonable Efforts to accommodate Interconnection Customer's In-Service Date, all or any portion of any Network Upgrades required for Interconnection Customer to be interconnected to the Transmission System which are included in the Base Case of the Facilities Study for the Interconnection Customer, and which also are required to be constructed for another Interconnection Customer, but where such construction is not scheduled to be completed in time to achieve Interconnection Customer's In-Service Date.

5.16 *Suspension.* Interconnection Customer reserves the right, upon written notice to Transmission Provider, to suspend at any time all work by Transmission Provider associated with the construction and installation of Transmission Provider's Interconnection Facilities and/or Network Upgrades required under this LGIA with the condition that the Transmission Provider shall be left in a safe and reliable condition in accordance with Good Utility Practice and the Transmission Provider's safety and reliability criteria. In such event, Interconnection Customer shall be responsible for all reasonable and necessary costs which Transmission Provider (i) has incurred pursuant to this LGIA prior to the suspension and (ii) incurs in suspending such work, including any costs incurred to perform such work as may be necessary to ensure the safety of persons and property and the integrity of the Transmission System during such suspension and, if applicable, any costs incurred in connection with the cancellation or suspension of material, equipment and labor contracts which Transmission Provider cannot reasonably avoid; provided, however, that prior to canceling or suspending any such material, equipment or labor contract, Transmission Provider shall obtain Interconnection Customer's authorization to do so.

Transmission Provider shall invoice Interconnection Customer for such costs pursuant to Article 12 and shall use due diligence to minimize its costs. In the event Interconnection Customer suspends work by Transmission Provider required under this LGIA pursuant to this Article 5.16, and has not requested Transmission Provider to recommence the work required under this LGIA on or before the expiration of three (3) years following commencement of such suspension, this LGIA shall be deemed terminated.

5.17 Taxes

5.17.1 *Interconnection Customer Payments Not Taxable.* The Parties intend that all payments or property transfers made by Interconnection Customer to Transmission Provider for the installation of the Transmission Provider's Interconnection Facilities and the Network Upgrades shall be non-taxable, either as contributions to capital, or as an advance, in accordance with the Internal Revenue Code and any applicable state income tax laws and shall not be taxable as contributions in aid of construction or otherwise under the Internal Revenue Code and any applicable state income tax laws.

5.17.2 *Representations And Covenants.* In accordance with IRS Notice 2001–82 and IRS Notice 88–129, Interconnection Customer represents and covenants that (i) ownership of the electricity generated at the Large Generating Facility will pass to another party prior to the transmission of the electricity on the Transmission System, (ii) for income tax purposes, the amount of any payments and the cost of any property transferred to the Transmission Provider for the Transmission Provider's Interconnection Facilities will be capitalized by Interconnection Customer as an intangible asset and recovered using the straight-line method over a useful life of twenty (20) years, and (iii) any portion of the Transmission Provider's Interconnection Facilities that is a "dual-use intertie," within the meaning of IRS Notice 88–129, is reasonably expected to carry only a de minimis amount of electricity in the direction of the Large Generating Facility. For this purpose, "de minimis amount" means no more than 5 percent of the total power flows in both directions, calculated in accordance with the "5 percent test" set forth in IRS Notice 88–129. This is not intended to be an exclusive list of the relevant conditions that must be met to conform to IRS requirements for non-taxable treatment.

At Transmission Provider's request, Interconnection Customer shall provide Transmission Provider with a report from an independent engineer confirming its representation in clause (iii), above. Transmission Provider represents and covenants that the cost of the Transmission Provider's Interconnection Facilities paid for by Interconnection Customer will have no net effect on the base upon which rates are determined.

5.17.3 *Indemnification for Taxes Imposed Upon Transmission Provider.* Notwithstanding Article 5.17.1, Interconnection Customer shall protect, indemnify and hold harmless Transmission Provider from income taxes imposed against Transmission Provider as the result of payments or property transfers made by Interconnection Customer to Transmission Provider under this LGIA, as well as any interest and penalties, other than interest and penalties attributable to any delay caused by Transmission Provider.

Transmission Provider shall not include a gross-up for income taxes in the amounts it charges Interconnection Customer under this LGIA unless (i) Transmission Provider has determined, in good faith, that the payments or property transfers made by

Interconnection Customer to Transmission Provider should be reported as income subject to taxation or (ii) any Governmental Authority directs Transmission Provider to report payments or property as income subject to taxation; *provided, however,* that Transmission Provider may require Interconnection Customer to provide security, in a form reasonably acceptable to Transmission Provider (such as a parental guarantee or a letter of credit), in an amount equal to Interconnection Customer's estimated tax liability under this Article 5.17. Interconnection Customer shall reimburse Transmission Provider for such taxes on a fully grossed-up basis, in accordance with Article 5.17.4, within thirty (30) Calendar Days of receiving written notification from Transmission Provider of the amount due, including detail about how the amount was calculated.

In the event that the Transmission Provider includes a gross-up upon its own determination that the payments or property transfers should be reported as income subject to taxation, the Interconnection Customer may require the Transmission Provider to provide security, in a form reasonably acceptable to the Interconnection Customer (such as a parental guarantee or a letter of credit) in an amount equal to the Interconnection Customer's estimated tax liability under this Article 5.17.

The indemnification obligation shall terminate at the earlier of (1) the expiration of the 10-year testing period, as contemplated by IRS Notice 88–129, and the applicable statute of limitation, as it may be extended by the Transmission Provider upon request of the IRS, to keep these years open for audit or adjustment, or (2) the occurrence of a subsequent taxable event and the payment of any related indemnification obligations as contemplated by this Article 5.17.

5.17.4 *Tax Gross-Up Amount.* Interconnection Customer's liability for taxes under this Article 5.17 shall be calculated on a fully grossed-up basis. Except as may otherwise be agreed to by the parties, this means that Interconnection Customer will pay Transmission Provider, in addition to the amount paid for the Interconnection Facilities and Network Upgrades, an amount equal to (1) the current taxes imposed on Transmission Provider ("Current Taxes") on the excess of (a) the gross income realized by Transmission Provider as a result of payments or property transfers made by Interconnection Customer to Transmission Provider under this LGIA (without regard to any payments under this Article 5.17) (the "Gross Income Amount") over (b) the present value of future tax deductions for depreciation that will be available as a result of such payments or property transfers (the "Present Value Depreciation Amount"), plus (2) an additional amount sufficient to permit the Transmission Provider to receive and retain, after the payment of all Current Taxes, an amount equal to the net amount described in clause (1).

For this purpose, (i) Current Taxes shall be computed based on Transmission Provider's composite federal and state tax rates at the time the payments or property transfers are received and Transmission Provider will be treated as being subject to tax at the highest marginal rates in effect at that time (the "Current Tax Rate"), and (ii) the Present Value Depreciation Amount shall be computed by discounting Transmission Provider's anticipated tax depreciation deductions as a result of such payments or property transfers by Transmission Provider's current weighted average cost of capital. Thus, the formula for calculating Interconnection Customer's liability to Transmission Owner pursuant to this Article 5.17.4 can be expressed as follows: (Current Tax Rate × (Gross Income Amount − Present Value of Tax Depreciation))/(1-Current Tax Rate). Interconnection Customer's estimated tax liability in the event taxes are imposed shall be stated in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades.

5.17.5 *Private Letter Ruling or Change or Clarification of Law.* At Interconnection Customer's request and expense, Transmission Provider shall file with the IRS a request for a private letter ruling as to whether any property transferred or sums paid, or to be paid, by Interconnection Customer to Transmission Provider under this LGIA are subject to federal income taxation. Interconnection Customer will prepare the initial draft of the request for a private letter ruling, and will certify under penalties of perjury that all facts represented in such request are true and accurate to the best of Interconnection Customer's knowledge. Transmission Provider and Interconnection Customer shall cooperate in good faith with respect to the submission of such request.

Transmission Provider shall keep Interconnection Customer fully informed of the status of such request for a private letter ruling and shall execute either a privacy act waiver or a limited power of attorney, in a form acceptable to the IRS, that authorizes Interconnection Customer to participate in all discussions with the IRS regarding such request for a private letter ruling. Transmission Provider shall allow Interconnection Customer to attend all meetings with IRS officials about the request and shall permit Interconnection Customer to prepare the initial drafts of any follow-up letters in connection with the request. If the private letter ruling concludes that such transfers or sums are not subject to federal income taxation, or a clarification of or change in law results in Transmission Provider determining in good faith that such transfers or sums are not subject to federal income taxation, Parties' obligations regarding a gross-up or security under this Article 5.17 shall be reduced accordingly.

5.17.6 *Subsequent Taxable Events.* If, within 10 years from the date on which the relevant Transmission Provider Interconnection Facilities are placed in service, (i) Interconnection Customer Breaches the covenant contained in Article 5.17.2(i), (ii) a "disqualification event" occurs within the meaning of IRS Notice 88–129, or (iii) this LGIA terminates and Transmission Provider retains ownership of the Interconnection Facilities and Network Upgrades, the Interconnection Customer shall pay a tax gross-up for the taxes imposed on Transmission Provider, calculated using the methodology described in Article 5.17.4 and in accordance with IRS Notice 90–60.

5.17.7 *Contests.* In the event any Governmental Authority determines that Transmission Provider's receipt of payments or property constitutes income that is subject to taxation, Transmission Provider shall notify Interconnection Customer, in writing, within thirty (30) Calendar Days of receiving notification of such determination by a Governmental Authority. Upon the timely written request by Interconnection Customer and at Intercommection Customer's sole expense, Transmission Provider shall appeal, protest, seek abatement of, or otherwise oppose such determination. Upon Interconnection Customer's written request and sole expense, Transmission Provider shall file a claim for refund with respect to any taxes paid under this Article 5.17, whether or not it has received such a determination. Transmission Provider reserves the right to make all decisions with regard to the prosecution of such appeal, protest, abatement or other contest, including the selection of counsel and compromise or settlement of the claim, but Transmission Provider shall keep Interconnection Customer informed, shall consider in good faith suggestions from Interconnection Customer about the conduct of the contest, and shall reasonably permit Interconnection Customer or an Interconnection Customer representative to attend contest proceedings.

Interconnection Customer shall pay to Transmission Provider on a periodic basis, as invoiced by Transmission Provider, Transmission Provider's documented reasonable costs of prosecuting such appeal, protest, abatement or other contest. Transmission Provider will not be required to appeal or seek further review beyond one level of judicial review. At any time during the contest, Transmission Provider may agree to a settlement either with Interconnection Customer's consent or after obtaining written advice from nationally-recognized tax counsel, selected by Transmission Provider, but reasonably acceptable to Interconnection Customer, that the proposed settlement represents a reasonable settlement given the hazards of litigation. Interconnection Customer's obligation shall be based on the amount of the settlement agreed to by Interconnection Customer, or if a higher amount, so much of the settlement that is supported by the written advice from nationally-recognized tax counsel selected under the terms of the preceding sentence. Any settlement without Interconnection Customer's consent or such written advice will relieve Interconnection Customer from any obligation to indemnify Transmission Provider for the tax at issue in the contest.

5.17.8 *Refund.* In the event that (a) a private letter ruling is issued to Transmission Provider which holds that any amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider under the terms of this LGIA is not subject to federal income taxation, (b) any legislative change or administrative announcement, notice, ruling or other determination makes it reasonably clear to Transmission Provider in good faith that any

amount paid or the value of any property transferred by Interconnection Customer to Transmission Provider under the terms of this LGIA is not taxable to Transmission Provider, (c) any abatement, appeal, protest, or other contest results in a determination that any payments or transfers made by Interconnection Customer to Transmission Provider are not subject to federal income tax, or (d) if Transmission Provider receives a refund from any taxing authority for any overpayment of tax attributable to any payment or property transfer made by Interconnection Customer to Transmission Provider pursuant to this LGIA, Transmission Provider shall promptly refund to Interconnection Customer the following:

(i) Any payment made by Interconnection Customer under this Article 5.17 for taxes that is attributable to the amount determined to be non-taxable, together with interest thereon,

(ii) On any amounts paid by Interconnection Customer to Transmission Provider for such taxes which Transmission Provider did not submit to the taxing authority, calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(ii) from the date payment was made by Interconnection Customer to the date Transmission Provider refunds such payment to Interconnection Customer, and

(iii) With respect to any such taxes paid by Transmission Provider, any refund or credit Transmission Provider receives or to which it may be entitled from any Governmental Authority, interest (or that portion thereof attributable to the payment described in clause (i), above) owed to the Transmission Provider for such overpayment of taxes (including any reduction in interest otherwise payable by Transmission Provider to any Governmental Authority resulting from an offset or credit); *provided, however,* that Transmission Provider will remit such amount promptly to Interconnection Customer only after and to the extent that Transmission Provider has received a tax refund, credit or offset from any Governmental Authority for any applicable overpayment of income tax related to the Transmission Provider's Interconnection Facilities.

The intent of this provision is to leave both parties, to the extent practicable, in the event that no taxes are due with respect to any payment for Interconnection Facilities and Network Upgrades hereunder, in the same position they would have been in had no such tax payments been made.

5.17.9 *Taxes Other Than Income Taxes.* Upon the timely request by Interconnection Customer, and at Interconnection Customer's sole expense, Transmission Provider shall appeal, protest, seek abatement of, or otherwise contest any tax (other than federal or state income tax) asserted or assessed against Transmission Provider for which Interconnection Customer may be required to reimburse Transmission Provider under the terms of this LGIA. Interconnection Customer and Transmission Provider shall cooperate in good faith with respect to any such contest. Unless the payment of such taxes is a prerequisite to an appeal or abatement or cannot be deferred, no amount shall be payable by Interconnection Customer to Transmission Provider for such taxes until they are assessed by a final, non-appealable order by any court or agency of competent jurisdiction. In the event that a tax payment is withheld and ultimately due and payable after appeal, Interconnection Customer will be responsible for all taxes, interest and penalties, other than penalties attributable to any delay caused by Transmission Provider.

5.17.10 *Transmission Owners Who Are Not Transmission Providers.* If the Transmission Provider is not the same entity as the Transmission Owner, then (i) all references in this Article 5.17 to Transmission Provider shall be deemed also to refer to and to include the Transmission Owner, as appropriate, and (ii) this LGIA shall not become effective until such Transmission Owner shall have agreed in writing to assume all of the duties and obligations of the Transmission Provider under this Article 5.17 of this LGIA.

5.18 *Tax Status.* Each Party shall cooperate with the other to maintain the other Party's tax status. Nothing in this LGIA is intended to adversely affect any Transmission Provider's tax exempt status with respect to the issuance of bonds including, but not limited to, Local Furnishing Bonds.

5.19 Modification

5.19.1 *General.* Either Party may undertake modifications to its facilities. If a Party plans to undertake a modification that reasonably may be expected to affect the other Party's facilities, that Party shall provide to the other Party sufficient information regarding such modification so that the other Party may evaluate the potential impact of such modification prior to commencement of the work. Such information shall be deemed to be confidential hereunder and shall include information concerning the timing of such modifications and whether such modifications are expected to interrupt the flow of electricity from the Large Generating Facility. The Party desiring to perform such work shall provide the relevant drawings, plans, and specifications to the other Party at least ninety (90) Calendar Days in advance of the commencement of the work or such shorter period upon which the Parties may agree, which agreement shall not unreasonably be withheld, conditioned or delayed.

In the case of Large Generating Facility modifications that do not require Interconnection Customer to submit an Interconnection Request, Transmission Provider shall provide, within thirty (30) Calendar Days (or such other time as the Parties may agree), an estimate of any additional modifications to the Transmission System, Transmission Provider's Interconnection Facilities or Network Upgrades necessitated by such Interconnection Customer modification and a good faith estimate of the costs thereof.

5.19.2 *Standards.* Any additions, modifications, or replacements made to a Party's facilities shall be designed, constructed and operated in accordance with this LGIA and Good Utility Practice.

5.19.3 *Modification Costs.* Interconnection Customer shall not be directly assigned for the costs of any additions, modifications, or replacements that Transmission Provider makes to the Transmission Provider's Interconnection Facilities or the Transmission System to facilitate the interconnection of a third party to the Transmission Provider's Interconnection Facilities or the Transmission System, or to provide transmission service under the Transmission Provider's Tariff. Interconnection Customer shall be responsible for the costs of any additions, modifications, or replacements to the Interconnection Customer Interconnection Facilities that may be necessary to maintain or upgrade such Interconnection Customer Interconnection Facilities consistent with Applicable Laws and Regulations, Applicable Reliability Standards or Good Utility Practice.

Article 6. Testing and Inspection

6.1 *Pre-Commercial Operation Date Testing and Modifications.* Prior to the Commercial Operation Date, the Transmission Provider shall test the Transmission Provider's Interconnection Facilities and Network Upgrades and Interconnection Customer shall test the Large Generating Facility and the Interconnection Customer Interconnection Facilities to ensure their safe and reliable operation. Similar testing may be required after initial operation. Each Party shall make any modifications to its facilities that are found to be necessary as a result of such testing. Interconnection Customer shall bear the cost of all such testing and modifications. Interconnection Customer shall generate test energy at the Large Generating Facility only if it has arranged for the delivery of such test energy.

6.2 *Post-Commercial Operation Date Testing and Modifications.* Each Party shall at its own expense perform routine inspection and testing of its facilities and equipment in accordance with Good Utility Practice as may be necessary to ensure the continued interconnection of the Large Generating Facility with the Transmission System in a safe and reliable manner. Each Party shall have the right, upon advance written notice, to require reasonable additional testing of the other Party's facilities, at the requesting Party's expense, as may be in accordance with Good Utility Practice.

6.3 *Right to Observe Testing.* Each Party shall notify the other Party in advance of its performance of tests of its Interconnection Facilities. The other Party has the right, at its own expense, to observe such testing.

6.4 *Right to Inspect.* Each Party shall have the right, but shall have no obligation to: (i) Observe the other Party's tests and/or inspection of any of its System Protection Facilities and other protective equipment, including Power System Stabilizers; (ii) review the settings of the other Party's System Protection Facilities and other protective equipment; and (iii) review the other Party's maintenance records relative to the Interconnection Facilities, the System Protection Facilities and other protective

equipment. A Party may exercise these rights from time to time as it deems necessary upon reasonable notice to the other Party. The exercise or non-exercise by a Party of any such rights shall not be construed as an endorsement or confirmation of any element or condition of the Interconnection Facilities or the System Protection Facilities or other protective equipment or the operation thereof, or as a warranty as to the fitness, safety, desirability, or reliability of same. Any information that Transmission Provider obtains through the exercise of any of its rights under this Article 6.4 shall be deemed to be confidential hereunder.

Article 7. Metering

7.1 *General.* Each Party shall comply with the Applicable Reliability Council requirements. Unless otherwise agreed by the Parties, Transmission Provider shall install Metering Equipment at the Point of Interconnection prior to any operation of the Large Generating Facility and shall own, operate, test and maintain such Metering Equipment. Power flows to and from the Large Generating Facility shall be measured at or, at Transmission Provider's option, compensated to, the Point of Interconnection. Transmission Provider shall provide metering quantities, in analog and/or digital form, to Interconnection Customer upon request. Interconnection Customer shall bear all reasonable documented costs associated with the purchase, installation, operation, testing and maintenance of the Metering Equipment.

7.2 *Check Meters.* Interconnection Customer, at its option and expense, may install and operate, on its premises and on its side of the Point of Interconnection, one or more check meters to check Transmission Provider's meters. Such check meters shall be for check purposes only and shall not be used for the measurement of power flows for purposes of this LGIA, except as provided in Article 7.4 below. The check meters shall be subject at all reasonable times to inspection and examination by Transmission Provider or its designee. The installation, operation and maintenance thereof shall be performed entirely by Interconnection Customer in accordance with Good Utility Practice.

7.3 *Standards.* Transmission Provider shall install, calibrate, and test revenue quality Metering Equipment in accordance with applicable ANSI standards.

7.4 *Testing of Metering Equipment.* Transmission Provider shall inspect and test all Transmission Provider-owned Metering Equipment upon installation and at least once every two (2) years thereafter. If requested to do so by Interconnection Customer, Transmission Provider shall, at Interconnection Customer's expense, inspect or test Metering Equipment more frequently than every two (2) years. Transmission Provider shall give reasonable notice of the time when any inspection or test shall take place, and Interconnection Customer may have representatives present at the test or inspection. If at any time Metering Equipment is found to be inaccurate or defective, it shall be adjusted, repaired or replaced at Interconnection Customer's expense, in order to provide accurate metering, unless the inaccuracy or defect is due to Transmission Provider's failure to maintain, then Transmission Provider shall pay. If Metering Equipment fails to register, or if the measurement made by Metering Equipment during a test varies by more than two percent from the measurement made by the standard meter used in the test, Transmission Provider shall adjust the measurements by correcting all measurements for the period during which Metering Equipment was in error by using Interconnection Customer's check meters, if installed. If no such check meters are installed or if the period cannot be reasonably ascertained, the adjustment shall be for the period immediately preceding the test of the Metering Equipment equal to one-half the time from the date of the last previous test of the Metering Equipment.

7.5 *Metering Data.* At Interconnection Customer's expense, the metered data shall be telemetered to one or more locations designated by Transmission Provider and one or more locations designated by Interconnection Customer. Such telemetered data shall be used, under normal operating conditions, as the official measurement of the amount of energy delivered from the Large Generating Facility to the Point of Interconnection.

Article 8. Communications

8.1 *Interconnection Customer Obligations.* Interconnection Customer shall maintain satisfactory operating communications with Transmission Provider's Transmission System dispatcher or representative designated by Transmission Provider. Interconnection Customer shall provide standard voice line, dedicated voice line and facsimile communications at its Large Generating Facility control room or central dispatch facility through use of either the public telephone system, or a voice communications system that does not rely on the public telephone system. Interconnection Customer shall also provide the dedicated data circuit(s) necessary to provide Interconnection Customer data to Transmission Provider as set forth in Appendix D, Security Arrangements Details. The data circuit(s) shall extend from the Large Generating Facility to the location(s) specified by Transmission Provider. Any required maintenance of such communications equipment shall be performed by Interconnection Customer. Operational communications shall be activated and maintained under, but not be limited to, the following events: system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, and hourly and daily load data.

8.2 *Remote Terminal Unit.* Prior to the Initial Synchronization Date of the Large Generating Facility, a Remote Terminal Unit, or equivalent data collection and transfer equipment acceptable to both Parties, shall be installed by Interconnection Customer, or by Transmission Provider at Interconnection Customer's expense, to gather accumulated and instantaneous data to be telemetered to the location(s) designated by Transmission Provider through use of a dedicated point-to-point data circuit(s) as indicated in Article 8.1. The communication protocol for the data circuit(s) shall be specified by Transmission Provider. Instantaneous bi-directional analog real power and reactive power flow information must be telemetered directly to the location(s) specified by Transmission Provider.

Each Party will promptly advise the other Party if it detects or otherwise learns of any metering, telemetry or communications equipment errors or malfunctions that require the attention and/or correction by the other Party. The Party owning such equipment shall correct such error or malfunction as soon as reasonably feasible.

8.3 *No Annexation.* Any and all equipment placed on the premises of a Party shall be and remain the property of the Party providing such equipment regardless of the mode and manner of annexation or attachment to real property, unless otherwise mutually agreed by the Parties.

Article 9. Operations

9.1 *General.* Each Party shall comply with the Applicable Reliability Council requirements. Each Party shall provide to the other Party all information that may reasonably be required by the other Party to comply with Applicable Laws and Regulations and Applicable Reliability Standards.

9.2 *Control Area Notification.* At least three months before Initial Synchronization Date, the Interconnection Customer shall notify the Transmission Provider in writing of the Control Area in which the Large Generating Facility will be located. If the Interconnection Customer elects to locate the Large Generating Facility in a Control Area other than the Control Area in which the Large Generating Facility is physically located, and if permitted to do so by the relevant transmission tariffs, all necessary arrangements, including but not limited to those set forth in Article 7 and Article 8 of this LGIA, and remote Control Area generator interchange agreements, if applicable, and the appropriate measures under such agreements, shall be executed and implemented prior to the placement of the Large Generating Facility in the other Control Area.

9.3 *Transmission Provider Obligations.* Transmission Provider shall cause the Transmission System and the Transmission Provider's Interconnection Facilities to be operated, maintained and controlled in a safe and reliable manner and in accordance with this LGIA. Transmission Provider may provide operating instructions to Interconnection Customer consistent with this LGIA and Transmission Provider's operating protocols and procedures as they may change from time to time. Transmission Provider will consider changes to its operating protocols and procedures proposed by Interconnection Customer.

9.4 *Interconnection Customer Obligations.* Interconnection Customer shall at its own expense operate, maintain and control the Large Generating Facility and the Interconnection Customer Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA. Interconnection Customer shall operate the

Large Generating Facility and the Interconnection Customer Interconnection Facilities in accordance with all applicable requirements of the Control Area of which it is part, as such requirements are set forth in Appendix C, Interconnection Details, of this LGIA. Appendix C, Interconnection Details, will be modified to reflect changes to the requirements as they may change from time to time. Either Party may request that the other Party provide copies of the requirements set forth in Appendix C, Interconnection Details, of this LGIA.

9.5 *Start-Up and Synchronization.* Consistent with the Parties' mutually acceptable procedures, the Interconnection Customer is responsible for the proper synchronization of the Large Generating Facility to the Transmission Provider's Transmission System.

9.6 Reactive Power

9.6.1 *Power Factor Design Criteria.* Interconnection Customer shall design the Large Generating Facility to maintain a composite power delivery at continuous rated power output at the Point of Interconnection at a power factor within the range of 0.95 leading to 0.95 lagging, unless Transmission Provider has established different requirements that apply to all generators in the Control Area on a comparable basis.

9.6.2 *Voltage Schedules.* Once the Interconnection Customer has synchronized the Large Generating Facility with the Transmission System, Transmission Provider shall require Interconnection Customer to operate the Large Generating Facility to produce or absorb reactive power within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). Transmission Provider's voltage schedules shall treat all sources of reactive power in the Control Area in an equitable and not unduly discriminatory manner. Transmission Provider shall exercise Reasonable Efforts to provide Interconnection Customer with such schedules at least one (1) day in advance, and may make changes to such schedules as necessary to maintain the reliability of the Transmission System. Interconnection Customer shall operate the Large Generating Facility to maintain the specified output voltage or power factor at the Point of Interconnection within the design limitations of the Large Generating Facility set forth in Article 9.6.1 (Power Factor Design Criteria). If Interconnection Customer is unable to maintain the specified voltage or power factor, it shall promptly notify the System Operator.

9.6.2.1 *Governors and Regulators.* Whenever the Large Generating Facility is operated in parallel with the Transmission System and the speed governors (if installed on the generating unit pursuant to Good Utility Practice) and voltage regulators are capable of operation, Interconnection Customer shall operate the Large Generating Facility with its speed governors and voltage regulators in automatic operation. If the Large Generating Facility's speed governors and voltage regulators are not capable of such automatic operation, the Interconnection Customer shall immediately notify Transmission Provider's system operator, or its designated representative, and ensure that such Large Generating Facility's reactive power production or absorption (measured in MVARs) are within the design capability of the Large Generating Facility's generating unit(s) and steady state stability limits. Interconnection Customer shall not cause its Large Generating Facility to disconnect automatically or instantaneously from the Transmission System or trip any generating unit comprising the Large Generating Facility for an under or over frequency condition unless the abnormal frequency condition persists for a time period beyond the limits set forth in ANSI/IEEE Standard C37.106, or such other standard as applied to other generators in the Control Area on a comparable basis.

9.6.3 *Payment for Reactive Power.* Transmission Provider is required to pay Interconnection Customer for reactive power that Interconnection Customer provides or absorbs from the Large Generating Facility only in those instances where the Transmission Provider requests the Interconnection Customer to operate its Large Generating Facility outside the agreed upon dead band. Payments shall be pursuant to Article 11.6 or such other agreement to which the Parties have otherwise agreed.

9.7 Outages and Interruptions

9.7.1 Outages

9.7.1.1 *Outage Authority and Coordination.* Each Party may in accordance with Good Utility Practice in coordination with the other Party remove from service any of its respective Interconnection Facilities or Network Upgrades that may impact the other Party's facilities as necessary to perform maintenance or testing or to install or replace equipment. Absent an Emergency Condition, the Party scheduling a removal of such facility(ies) from service will use Reasonable Efforts to schedule such removal on a date and time mutually acceptable to both Parties. In all circumstances any Party planning to remove such facility(ies) from service shall use Reasonable Efforts to minimize the effect on the other Party of such removal.

9.7.1.2 *Outage Schedules.* The Transmission Provider shall post scheduled outages of its transmission facilities on the OASIS. Interconnection Customer shall submit its planned maintenance schedules for the Large Generating Facility to Transmission Provider for a minimum of a rolling twenty-four month period. Interconnection Customer shall update its planned maintenance schedules as necessary. Transmission Provider may request Interconnection Customer to reschedule its maintenance as necessary to maintain the reliability of the Transmission System; provided, however, adequacy of generation supply shall not be a criterion in determining Transmission System reliability. Transmission Provider shall compensate Interconnection Customer for any additional direct costs that the Interconnection Customer incurs as a result of having to reschedule maintenance, including any additional overtime, breaking of maintenance contracts or other costs above and beyond the cost the Interconnection Customer would have incurred absent the Transmission Provider's request to reschedule maintenance. Interconnection Customer will not be eligible to receive compensation, if during the twelve (12) months prior to the date of the scheduled maintenance, the Interconnection Customer had modified its schedule of maintenance activities.

9.7.1.3 *Outage Restoration.* If an outage on a Party's Interconnection Facilities or Network Upgrades adversely affects the other Party's operations or facilities, the Party that owns or controls the facility that is out of service shall use Reasonable Efforts to promptly restore such facility(ies) to a normal operating condition consistent with the nature of the outage. The Party that owns or controls the facility that is out of service shall provide the other Party, to the extent such information is known, information on the nature of the Emergency Condition, an estimated time of restoration, and any corrective actions required. Initial verbal notice shall be followed up as soon as practicable with written notice explaining the nature of the outage.

9.7.2 *Interruption of Service.* If required by Good Utility Practice to do so, Transmission Provider may require Interconnection Customer to interrupt or reduce deliveries of electricity if such delivery of electricity could adversely affect Transmission Provider's ability to perform such activities as are necessary to safely and reliably operate and maintain the Transmission System. The following provisions shall apply to any interruption or reduction permitted under this Article 9.7.2:

9.7.2.1 The interruption or reduction shall continue only for so long as reasonably necessary under Good Utility Practice;

9.7.2.2 Any such interruption or reduction shall be made on an equitable, non-discriminatory basis with respect to all Generating Facilities directly connected to the Transmission System;

9.7.2.3 When the interruption or reduction must be made under circumstances which do not allow for advance notice, Transmission Provider shall notify Interconnection Customer by telephone as soon as practicable of the reasons for the curtailment, interruption, or reduction, and, if known, its expected duration. Telephone notification shall be followed by written notification as soon as practicable;

9.7.2.4 Except during the existence of an Emergency Condition, when the interruption or reduction can be scheduled without advance notice, Transmission Provider shall notify Interconnection Customer in advance regarding the timing of such scheduling and further notify Interconnection Customer of the expected duration. Transmission Provider shall coordinate with the Interconnection Customer using Good Utility Practice to schedule the interruption or reduction during periods of least impact to the Interconnection Customer and the Transmission Provider;

9.7.2.5 The Parties shall cooperate and coordinate with each other to the extent necessary in order to restore the Large Generating Facility, Interconnection Facilities, and the Transmission System to

their normal operating state, consistent with system conditions and Good Utility Practice.

9.7.3 *Under-Frequency and Over-Frequency Conditions.* The Transmission System is designed to automatically activate a load-shed program as required by the Applicable Reliability Council in the event of an under-frequency system disturbance. Interconnection Customer shall implement under-frequency and over-frequency relay set points for the Large Generating Facility as required by the Applicable Reliability Council to ensure "ride through" capability of the Transmission System. Large Generating Facility response to frequency deviations of pre-determined magnitudes, both under-frequency and over-frequency deviations, shall be studied and coordinated with the Transmission Provider in accordance with Good Utility Practice. The term "ride through" as used herein shall mean the ability of a Generating Facility to stay connected to and synchronized with the Transmission System during system disturbances within a range of under-frequency and over-frequency conditions, in accordance with Good Utility Practice.

9.7.4 System Protection and Other Control Requirements

9.7.4.1 *System Protection Facilities.* Interconnection Customer shall, at its expense, install, operate and maintain System Protection Facilities as a part of the Large Generating Facility or the Interconnection Customer Interconnection Facilities. Transmission Provider shall install at Interconnection Customer's expense any System Protection Facilities that may be required on the Transmission Provider Interconnection Facilities or the Transmission System as a result of the interconnection of the Large Generating Facility and the Interconnection Customer Interconnection Facilities.

9.7.4.2 Each Party's protection facilities shall be designed and coordinated with other systems in accordance with Good Utility Practice.

9.7.4.3 Each Party shall be responsible for protection of its facilities consistent with Good Utility Practice.

9.7.4.4 Each Party's protective relay design shall incorporate the necessary test switches to perform the tests required in Article 6. The required test switches will be placed such that they allow operation of lockout relays while preventing breaker failure schemes from operating and causing unnecessary breaker operations and/or the tripping of the Interconnection Customer's units.

9.7.4.5 Each Party will test, operate and maintain System Protection Facilities in accordance with Good Utility Practice.

9.7.4.6 Prior to the In-Service Date, and again prior to the Commercial Operation Date, each Party or its agent shall perform a complete calibration test and functional trip test of the System Protection Facilities. At intervals suggested by Good Utility Practice and following any apparent malfunction of the System Protection Facilities, each Party shall perform both calibration and functional trip tests of its System Protection Facilities. These tests do not require the tripping of any in-service generation unit. These tests do, however, require that all protective relays and lockout contacts be activated.

9.7.5 *Requirements for Protection.* In compliance with Good Utility Practice, Interconnection Customer shall provide, install, own, and maintain relays, circuit breakers and all other devices necessary to remove any fault contribution of the Large Generating Facility to any short circuit occurring on the Transmission System not otherwise isolated by Transmission Provider's equipment, such that the removal of the fault contribution shall be coordinated with the protective requirements of the Transmission System. Such protective equipment shall include, without limitation, a disconnecting device or switch with load-interrupting capability located between the Large Generating Facility and the Transmission System at a site selected upon mutual agreement (not to be unreasonably withheld, conditioned or delayed) of the Parties. Interconnection Customer shall be responsible for protection of the Large Generating Facility and Interconnection Customer's other equipment from such conditions as negative sequence currents, over- or under-frequency, sudden load rejection, over- or under-voltage, and generator loss-of-field. Interconnection Customer shall be solely responsible to disconnect the Large Generating Facility and Interconnection Customer's other equipment if conditions on the Transmission System could adversely affect the Large Generating Facility.

9.7.6 *Power Quality.* Neither Party's facilities shall cause excessive voltage flicker nor introduce excessive distortion to the sinusoidal voltage or current waves as defined by ANSI Standard C84.1–1989, in accordance with IEEE Standard 519, or any applicable superseding electric industry standard. In the event of a conflict between ANSI Standard C84.1–1989, or any applicable superseding electric industry standard, ANSI Standard C84.1–1989, or the applicable superseding electric industry standard, shall control.

9.8 *Switching and Tagging Rules.* Each Party shall provide the other Party a copy of its switching and tagging rules that are applicable to the other Party's activities. Such switching and tagging rules shall be developed on a non-discriminatory basis. The Parties shall comply with applicable switching and tagging rules, as amended from time to time, in obtaining clearances for work or for switching operations on equipment.

9.9 Use of Interconnection Facilities by Third Parties

9.9.1 *Purpose of Interconnection Facilities.* Except as may be required by Applicable Laws and Regulations, or as otherwise agreed to among the Parties, the Interconnection Facilities shall be constructed for the sole purpose of interconnecting the Large Generating Facility to the Transmission System and shall be used for no other purpose.

9.9.2 *Third Party Users.* If required by Applicable Laws and Regulations or if the Parties mutually agree, such agreement not to be unreasonably withheld, to allow one or more third parties to use the Transmission Provider's Interconnection Facilities, or any part thereof, Interconnection Customer will be entitled to compensation for the capital expenses it incurred in connection with the Interconnection Facilities based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually-agreed upon methodology. In addition, cost responsibility for ongoing costs, including operation and maintenance costs associated with the Interconnection Facilities, will be allocated between Interconnection Customer and any third party users based upon the pro rata use of the Interconnection Facilities by Transmission Provider, all third party users, and Interconnection Customer, in accordance with Applicable Laws and Regulations or upon some other mutually agreed upon methodology. If the issue of such compensation or allocation cannot be resolved through such negotiations, it shall be submitted to FERC for resolution.

9.10 *Disturbance Analysis Data Exchange.* The Parties will cooperate with one another in the analysis of disturbances to either the Large Generating Facility or the Transmission Provider's Transmission System by gathering and providing access to any information relating to any disturbance, including information from oscillography, protective relay targets, breaker operations and sequence of events records, and any disturbance information required by Good Utility Practice.

Article 10. Maintenance

10.1 *Transmission Provider Obligations.* Transmission Provider shall maintain the Transmission System and the Transmission Provider's Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.

10.2 *Interconnection Customer Obligations.* Interconnection Customer shall maintain the Large Generating Facility and the Interconnection Customer Interconnection Facilities in a safe and reliable manner and in accordance with this LGIA.

10.3 *Coordination.* The Parties shall confer regularly to coordinate the planning, scheduling and performance of preventive and corrective maintenance on the Large Generating Facility and the Interconnection Facilities.

10.4 *Secondary Systems.* Each Party shall cooperate with the other in the inspection, maintenance, and testing of control or power circuits that operate below 600 volts, AC or DC, including, but not limited to, any hardware, control or protective devices, cables, conductors, electric raceways, secondary equipment panels, transducers, batteries, chargers, and voltage and current transformers that directly affect the operation of a Party's facilities and equipment which may reasonably be expected to impact the other Party. Each Party shall provide advance notice to the other Party before undertaking any work on such circuits, especially on electrical circuits involving circuit breaker trip and close contacts, current transformers, or potential transformers.

10.5 *Operating and Maintenance Expenses.* Subject to the provisions herein addressing the use of facilities by others, and except for operations and maintenance expenses associated with modifications made for providing interconnectien or transmission service to a third party and such third party pays for such expenses, Interconnection Customer shall be responsible for all reasonable expenses including overheads, associated with: (1) owning, operating, maintaining, repairing, and replacing Interconnection Customer Interconnection Facilities; and (2) operation, maintenance, repair and replacement of Transmission Provider's Interconnection Facilities.

Article 11. Performance Obligation

11.1 *Interconnection Customer Interconnection Facilities.* Interconnection Customer shall design, procure, construct, install, own and/or control the Interconnection Customer Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at its sole expense.

11.2 *Transmission Provider's Interconnection Facilities.* Transmission Provider or Transmission Owner shall design, procure, construct, install, own and/or control the Transmission Provider's Interconnection Facilities described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades, at the sole expense of the Interconnection Customer.

11.3 *Network Upgrades and Distribution Upgrades.* Transmission Provider or Transmission Owner shall design, procure, construct, install, and own the Network Upgrades and Distribution Upgrades described in Appendix A, Interconnection Facilities, Network Upgrades and Distribution Upgrades. The Interconnection Customer shall be responsible for all costs related to Distribution Upgrades. Unless the Transmission Provider or Transmission Owner elects to fund the capital for the Network Upgrades, they shall be solely funded by the Interconnection Customer.

11.4 Transmission Credits

11.4.1 *Refund of Amounts Advanced for Network Upgrades.* Interconnection Customer shall be entitled to a cash refund, equal to the total amount paid to Transmission Provider and Affected System Operator, if any, for the Network Upgrades, including any tax gross-up or other tax-related payments, and not refunded to Interconnection Customer pursuant to Article 5.17.8 or otherwise, to be paid to Interconnection Customer on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Transmission Provider's Tariff and Affected System's Tariff for transmission services with respect to the Large Generating Facility.

Notwithstanding the foregoing, Interconnection Customer, Transmission Provider, and Affected System Operator may adopt any alternative payment schedule that is mutually agreeable so long as Transmission Provider and Affected System Operator refund all amounts paid by Interconnection Customer for the Network Upgrades, together with interest, within five (5) years from the Commercial Operation Date. Transmission Provider and Affected System Operator shall provide refunds to Interconnection Customer only after commercial operation of the Large Generating Facility has been demonstrated.

If the Large Generating Facility fails to achieve commercial operation, but it or another Generating Facility is later constructed and makes use of the Network Upgrades, Transmission Provider and Affected System Operator shall at that time provide refunds to Interconnection Customer for the amounts advanced for the Network Upgrades. Any refund shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR § 35.19a(a)(2)(ii) from the date of any payment for Network Upgrades through the date on which the Interconnection Customer receives a refund of such payment pursuant to this subparagraph. Interconnection Customer may assign such refund rights to any person.

11.4.2 *Special Provisions for Affected Systems.* Unless the Transmission Provider provides, under the LGIA, for the payment of refunds for amounts advanced to Affected System Operator for Network Upgrades, the Interconnection Customer and Affected System Operator shall enter into an agreement that provides for such payment. The agreement shall specify the terms governing payments to be made by the Interconnection Customer to the Affected System Operator as well as the payment of refunds by the Affected System Operator.

Refunds are to be paid without regard to whether the Interconnection Customer contracts for transmission service on the Affected System. If the Interconnection Customer does not contract for transmission service, and in the absence of another mutually agreeable payment schedule, refunds shall be established at a level equal to the Affected System's rate for firm point-to-point transmission service multiplied by the output of the Large Generating Facility assumed in the Interconnection Facilities Study. All refunds must be paid within five years of the Commercial Operation Date.

11.4.3 Notwithstanding any other provision of this LGIA, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that the Interconnection Customer, shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain refunds or transmission credits for transmission service that is not associated with the Large Generating Facility.

11.5 *Provision of Security.* At least thirty (30) Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades, Interconnection Customer shall provide Transmission Provider, at Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction identified in Article 14.2.1. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring and installing the applicable portion of Transmission Provider's Interconnection Facilities, Network Upgrades, or Distribution Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider under this LGIA during its term.

In addition:

11.5.1 The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider, and contain terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount.

11.5.2 The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.5.3 The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

11.6 *Interconnection Customer Compensation.* If Transmission Provider requests or directs Interconnection Customer to provide a service pursuant to Articles 9.6.3 (Payment for Reactive Power), or 13.5.1 of this LGIA, Transmission Provider shall compensate Interconnection Customer in accordance with Interconnection Customer's applicable rate schedule then in effect unless the provision of such service(s) is subject to an RTO or ISO FERC-approved rate schedule. Interconnection Customer shall serve Transmission Provider or RTO or ISO with any filing of a proposed rate schedule at the time of such filing with FERC. To the extent that no rate schedule is in effect at the time the Interconnection Customer is required to provide or absorb any Reactive Power under this LGIA, the Transmission Provider agrees to compensate the Interconnection Customer in such amount as would have been due the Interconnection Customer had the rate schedule been in effect at the time service commenced; provided, however, that such rate schedule must be filed at FERC or other appropriate Governmental Authority within sixty (60) Calendar Days of the commencement of service.

11.6.1 *Interconnection Customer Compensation for Actions During Emergency Condition.* Transmission Provider or RTO or ISO shall compensate Interconnection Customer for its provision of real and reactive power and other Emergency Condition services that Interconnection Customer provides to support the Transmission System during an Emergency Condition in accordance with Article 11.6.

Article 12. Invoice

12.1 *General.* Each Party shall submit to the other Party, on a monthly basis, invoices of amounts due for the preceding month.

Each invoice shall state the month to which the invoice applies and fully describe the services and equipment provided. The Parties may discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts a Party owes to the other Party under this LGIA, including interest payments or credits, shall be netted so that only the net amount remaining due shall be paid by the owing Party.

12.2 *Final Invoice.* Within six months after completion of the construction of the Transmission Provider's Interconnection Facilities and the Network Upgrades, Transmission Provider shall provide an invoice of the final cost of the construction of the Transmission Provider's Interconnection Facilities and the Network Upgrades and shall set forth such costs in sufficient detail to enable Interconnection Customer to compare the actual costs with the estimates and to ascertain deviations, if any, from the cost estimates. Transmission Provider shall refund to Interconnection Customer any amount by which the actual payment by Interconnection Customer for estimated costs exceeds the actual costs of construction within thirty (30) Calendar Days of the issuance of such final construction invoice.

12.3 *Payment.* Invoices shall be rendered to the paying Party at the address specified in Appendix F. The Party receiving the invoice shall pay the invoice within thirty (30) Calendar Days of receipt. All payments shall be made in immediately available funds payable to the other Party, or by wire transfer to a bank named and account designated by the invoicing Party. Payment of invoices by Interconnection Customer will not constitute a waiver of any rights or claims Interconnection Customer may have under this LGIA.

12.4 *Disputes.* In the event of a billing dispute between Transmission Provider and Interconnection Customer, Transmission Provider shall continue to provide Interconnection Service under this LGIA as long as Interconnection Customer: (i) Continues to make all payments not in dispute; and (ii) pays to Transmission Provider or into an independent escrow account the portion of the invoice in dispute, pending resolution of such dispute. If Interconnection Customer fails to meet these two requirements for continuation of service, then Transmission Provider may provide notice to Interconnection Customer of a Default pursuant to Article 17. Within thirty (30) Calendar Days after the resolution of the dispute, the Party that owes money to the other Party shall pay the amount due with interest calculated in accord with the methodology set forth in FERC's Regulations at 18 CFR § 35.19a(a)(2)(ii).

Article 13. Emergencies

13.1 Definition. "Emergency Condition" shall mean a condition or situation: (i) That in the judgment of the Party making the claim is imminently likely to endanger life or property; or (ii) that, in the case of Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to the Transmission System, the Transmission Provider's Interconnection Facilities or the Transmission Systems of others to which the Transmission System is directly connected; or (iii) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Large Generating Facility or the Interconnection Customer Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; provided, that Interconnection Customer is not obligated by this LGIA to possess black start capability.

13.2 *Obligations.* Each Party shall comply with the Emergency Condition procedures of the applicable ISO/RTO, NERC, the Applicable Reliability Council, Applicable Laws and Regulations, and any emergency procedures agreed to by the Joint Operating Committee.

13.3 *Notice.* Transmission Provider shall notify Interconnection Customer promptly when it becomes aware of an Emergency Condition that affects the Transmission Provider's Interconnection Facilities or the Transmission System that may reasonably be expected to affect Interconnection Customer's operation of the Large Generating Facility or the Interconnection Customer's Interconnection Facilities. Interconnection Customer shall notify Transmission Provider promptly when it becomes aware of an Emergency Condition that affects the Large Generating Facility or the Interconnection Customer Interconnection Facilities that may reasonably be expected to affect the Transmission System or the Transmission Provider's Interconnection Facilities. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, the expected effect on the operation of Interconnection Customer's or Transmission Provider's facilities and operations, its anticipated duration and the corrective action taken and/or to be taken. The initial notice shall be followed as soon as practicable with written notice.

13.4 *Immediate Action.* Unless, in Interconnection Customer's reasonable judgment, immediate action is required, Interconnection Customer shall obtain the consent of Transmission Provider, such consent to not be unreasonably withheld, prior to performing any manual switching operations at the Large Generating Facility or the Interconnection Customer Interconnection Facilities in response to an Emergency Condition either declared by the Transmission Provider or otherwise regarding the Transmission System.

13.5 Transmission Provider Authority

13.5.1 *General.* Transmission Provider may take whatever actions or inactions with regard to the Transmission System or the Transmission Provider's Interconnection Facilities it deems necessary during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Transmission System or the Transmission Provider's Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service.

Transmission Provider shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Large Generating Facility or the Interconnection Customer Interconnection Facilities. Transmission Provider may, on the basis of technical considerations, require the Large Generating Facility to mitigate an Emergency Condition by taking actions necessary and limited in scope to remedy the Emergency Condition, including, but not limited to, directing Interconnection Customer to shut-down, start-up, increase or decrease the real or reactive power output of the Large Generating Facility; implementing a reduction or disconnection pursuant to Article 13.5.2; directing the Interconnection Customer to assist with blackstart (if available) or restoration efforts; or altering the outage schedules of the Large Generating Facility and the Interconnection Customer Interconnection Facilities. Interconnection Customer shall comply with all of Transmission Provider's operating instructions concerning Large Generating Facility real power and reactive power output within the manufacturer's design limitations of the Large Generating Facility's equipment that is in service and physically available for operation at the time, in compliance with Applicable Laws and Regulations.

13.5.2 *Reduction and Disconnection.* Transmission Provider may reduce Interconnection Service or disconnect the Large Generating Facility or the Interconnection Customer Interconnection Facilities, when such reduction or disconnection is necessary under Good Utility Practice due to Emergency Conditions. These rights are separate and distinct from any right of curtailment of the Transmission Provider pursuant to the Transmission Provider's Tariff. When the Transmission Provider can schedule the reduction or disconnection in advance, Transmission Provider shall notify Interconnection Customer of the reasons, timing and expected duration of the reduction or disconnection. Transmission Provider shall coordinate with the Interconnection Customer using Good Utility Practice to schedule the reduction or disconnection during periods of least impact to the Interconnection Customer and the Transmission Provider. Any reduction or disconnection shall continue only for so long as reasonably necessary under Good Utility Practice. The Parties shall cooperate with each other to restore the Large Generating Facility, the Interconnection Facilities, and the Transmission System to their normal operating state as soon as practicable consistent with Good Utility Practice.

13.6 *Interconnection Customer Authority.* Consistent with Good Utility Practice and the LGIA and the LGIP, the Interconnection Customer may take whatever actions or inactions with regard to the Large Generating Facility or the Interconnection Customer Interconnection Facilities during an Emergency Condition in order to (i) preserve public health and safety, (ii) preserve the reliability of the Large Generating Facility or

the Interconnection Customer Interconnection Facilities, (iii) limit or prevent damage, and (iv) expedite restoration of service. Interconnection Customer shall use Reasonable Efforts to minimize the effect of such actions or inactions on the Transmission System and the Transmission Provider's Interconnection Facilities. Transmission Provider shall use Reasonable Efforts to assist Interconnection Customer in such actions. Interconnection Customer shall not be obligated to follow Transmission Provider's instructions to the extent the instruction would have a material adverse impact on the safe and reliable operation of Interconnection Customer's Large Generating Facility. Upon request, Interconnection Customer shall provide Transmission Provider with documentation of any such alleged material adverse impact.

13.7 *Limited Liability.* Except as otherwise provided in Article 11.6.1 of this LGIA, neither Party shall be liable to the other for any action it takes in responding to an Emergency Condition so long as such action is made in good faith and is consistent with Good Utility Practice.

Article 14. Regulatory Requirements and Governing Law

14.1 *Regulatory Requirements.* Each Party's obligations under this LGIA shall be subject to its receipt of any required approval or certificate from one or more Governmental Authorities in the form and substance satisfactory to the applying Party, or the Party making any required filings with, or providing notice to, such Governmental Authorities, and the expiration of any time period associated therewith. Each Party shall in good faith seek and use its Reasonable Efforts to obtain such other approvals. Nothing in this LGIA shall require Interconnection Customer to take any action that could result in its inability to obtain, or its loss of, status or exemption under the Federal Power Act or the Public Utility Holding Company Act of 1935, as amended.

14.2 Governing Law and Applicable Tariffs

14.2.1 The validity, interpretation and performance of this LGIA and each of its provisions shall be governed by the laws of the state where the Point of Interconnection is located, without regard to its conflicts of law principles.

14.2.2 This LGIA is subject to all Applicable Laws and Regulations.

14.2.3 Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, rules, or regulations of a Governmental Authority.

Article 15. Notices

15.1 *General.* Unless otherwise provided in this LGIA, any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out in Appendix F, Addresses for Delivery of Notices and Billings.

Either Party may change the notice information in this LGIA by giving five (5) Business Days written notice prior to the effective date of the change.

15.2 *Billings and Payments.* Billings and payments shall be sent to the addresses set out in Appendix F.

15.3 *Alternative Forms of Notice.* Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out in Appendix F.

15.4 *Operations and Maintenance Notice.* Each Party shall notify the other Party in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to the implementation of Articles 9 and 10.

Article 16. Force Majeure

16.1 Force Majeure

16.1.1 Economic hardship is not considered a Force Majeure event.

16.1.2 Neither Party shall be considered to be in Default with respect to any obligation hereunder, (including obligations under Article 4), other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this Article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

Article 17. Default

17.1 Default

17.1.1 *General.* No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this LGIA or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 17.1.2, the defaulting Party shall have thirty (30) Calendar Days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within thirty (30) Calendar Days, the defaulting Party shall commence such cure within thirty (30) Calendar Days after notice and continuously and diligently complete such cure within ninety (90) Calendar Days from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.

17.1.2 *Right to Terminate.* If a Default is not cured as provided in this Article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this LGIA by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this LGIA, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article will survive termination of this LGIA.

Article 18. Indemnity, Consequential Damages and Insurance

18.1 *Indemnity.* The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this LGIA on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.

18.1.1 *Indemnified Person.* If an Indemnified Person is entitled to indemnification under this Article 18 as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under Article 18.1, to assume the defense of such claim, such Indemnified Person may at the expense of the indemnifying Party contest, settle or consent to the entry of any judgement with respect to, or pay in full, such claim.

18.1.2 *Indemnifying Party.* If an Indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this Article 18, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

18.1.3 *Indemnity Procedures.* Promptly after receipt by an Indemnified Person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in Article 18.1 may apply, the Indemnified Person shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the Indemnifying Party and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the Indemnifying Party, the

Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses.

The Indemnified Person shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (i) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (ii) shall not settle or consent to the entry of any judgement in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be reasonably withheld, conditioned or delayed.

18.2 *Consequential Damages.* Other than the Liquidated Damages heretofore described, in no event shall either Party be liable under any provision of this LGIA for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

18.3 *Insurance.* Each party shall, at its own expense, maintain in force throughout the period of this LGIA, and until released by the other Party, the following minimum insurance coverages, with insurers authorized to do business in the state where the Point of Interconnection is located:

18.3.1 Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the state in which the Point of Interconnection is located. The minimum limits for the Employers' Liability insurance shall be One Million Dollars ($1,000,000) each accident bodily injury by accident, One Million Dollars ($1,000,000) each employee bodily injury by disease, and One Million Dollars ($1,000,000) policy limit bodily injury by disease.

18.3.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of One Million Dollars ($1,000,000) per occurrence/ One Million Dollars ($1,000,000) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

18.3.3 Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of One Million Dollars ($1,000,000) per occurrence for bodily injury, including death, and property damage.

18.3.4 Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence/Twenty Million Dollars ($20,000,000) aggregate.

18.3.5 The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance policies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of this LGIA against the Other Party Group and provide thirty (30) days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

18.3.6 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the polices are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issues to each, except the insurer's liability shall not be increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.

18.3.7 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two (2) years after termination of this LGIA, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

18.3.8 The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under this LGIA.

18.3.9 Within ten (10) days following execution of this LGIA, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety (90) days thereafter, each Party shall provide certification of all insurance required in this LGIA, executed by each insurer or by an authorized representative of each insurer.

18.3.10 Notwithstanding the foregoing, each Party may self-insure to the extent it maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade, or better, by Standard & Poor's. For any period of time that a Party's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 18.3.1 through 18.3.9. In the event that a Party is permitted to self-insure pursuant to this Article 18.3.10, it shall not be required to comply with the insurance requirements applicable to it under Articles 18.3.1 through 18.3.9.

18.3.11 The Parties agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of this LGIA.

Article 19. Assignment

19.1 *Assignment.* This LGIA may be assigned by either Party only with the written consent of the other; provided that either Party may assign this LGIA without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this LGIA; and provided further that the Interconnection Customer shall have the right to assign this LGIA, without the consent of the Transmission Provider, for collateral security purposes to aid in providing financing for the Large Generating Facility, provided that the Interconnection Customer will require any secured party, trustee or mortgagee to notify the Transmission Provider of any such assignment. Any financing arrangement entered into by the Interconnection Customer pursuant to this Article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify the Transmission Provider of the date and particulars of any such exercise of assignment right(s). Any attempted assignment that violates this Article is void and ineffective. Any assignment under this LGIA shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

Article 20. Severability

20.1 *Severability.* If any provision in this LGIA is finally determined to be invalid, void or unenforceable by any court or other Governmental Authority having jurisdiction, such determination shall not invalidate, void or make unenforceable any other provision,

agreement or covenant of this LGIA; provided that if the Interconnection Customer (or any third party, but only if such third party is not acting at the direction of the Transmission Provider) seeks and obtains such a final determination with respect to any provision of the Alternate Option (Article 5.1.2), or the Negotiated Option (Article 5.1.4), then none of these provisions shall thereafter have any force or effect and the Parties' rights and obligations shall be governed solely by the Standard Option (Article 5.1.1).

Article 21. Comparability

21.1 *Comparability.* The Parties will comply with all applicable comparability and code of conduct laws, rules and regulations, as amended from time to time.

Article 22. Confidentiality

22.1 *Confidentiality.* Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this LGIA.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

22.1.1 *Term.* During the term of this LGIA, and for a period of three (3) years after the expiration or termination of this LGIA, except as otherwise provided in this Article 22, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

22.1.2 *Scope.* Confidential Information shall not include information that the receiving Party can demonstrate: (1) Is generally available to the public other than as a result of a disclosure by the receiving Party; (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party; (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential; (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party; (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this LGIA; or (6) is required, in accordance with Article 22.1.7 of the LGIA, Order of Disclosure, to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal proceeding establishing rights and obligations under this LGIA. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

22.1.3 *Release of Confidential Information.* Neither Party shall release or disclose Confidential Information to any other person, except to its employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this LGIA, unless such person has first been advised of the confidentiality provisions of this Article 22 and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this Article 22.

22.1.4 *Rights.* Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

22.1.5 *No Warranties.* By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

22.1.6 *Standard of Care.* Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this LGIA or its regulatory requirements.

22.1.7 *Order of Disclosure.* If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this LGIA. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

22.1.8 *Termination of Agreement.* Upon termination of this LGIA for any reason, each Party shall, within ten (10) Calendar Days of receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

22.1.9 *Remedies.* The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this Article 22. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this Article 22, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this Article 22, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this Article 22.

22.1.10 *Disclosure to FERC or its Staff.* Notwithstanding anything in this Article 22 to the contrary, and pursuant to 18 CFR section 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this LGIA, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party must, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this LGIA prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Party to the LGIA when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 388.112.

22.1.11 Subject to the exception in Article 22.1.10, any information that a Party claims is competitively sensitive, commercial or financial information under this LGIA ("Confidential Information") shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (i) required by law; (ii) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute; (iii) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld; or

(iv) necessary to fulfill its obligations under this LGIA or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to an RTO or ISO or to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

22.1.12 This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a Breach of this provision).

Article 23. Environmental Releases

23.1 Each Party shall notify the other Party, first orally and then in writing, of the release of any Hazardous Substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Large Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (i) Provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence; and (ii) promptly furnish to the other Party copies of any publicly available reports filed with any Governmental Authorities addressing such events.

Article 24. Information Requirements

24.1 *Information Acquisition.* Transmission Provider and the Interconnection Customer shall submit specific information regarding the electrical characteristics of their respective facilities to each other as described below and in accordance with Applicable Reliability Standards.

24.2 *Information Submission by Transmission Provider.* The initial information submission by Transmission Provider shall occur no later than one hundred eighty (180) Calendar Days prior to Trial Operation and shall include Transmission System information necessary to allow the Interconnection Customer to select equipment and meet any system protection and stability requirements, unless otherwise mutually agreed to by both Parties. On a monthly basis Transmission Provider shall provide Interconnection Customer a status report on the construction and installation of Transmission Provider's Interconnection Facilities and Network Upgrades, including, but not limited to, the following information: (1) Progress to date; (2) a description of the activities since the last report; (3) a description of the action items for the next period; and (4) the delivery status of equipment ordered.

24.3 *Updated Information Submission by Interconnection Customer.* The updated information submission by the Interconnection Customer, including manufacturer information, shall occur no later than one hundred eighty (180) Calendar Days prior to the Trial Operation. Interconnection Customer shall submit a completed copy of the Large Generating Facility data requirements contained in Appendix 1 to the LGIP. It shall also include any additional information provided to Transmission Provider for the Feasibility and Facilities Study. Information in this submission shall be the most current Large Generating Facility design or expected performance data. Information submitted for stability models shall be compatible with Transmission Provider standard models. If there is no compatible model, the Interconnection Customer will work with a consultant mutually agreed to by the Parties to develop and supply a standard model and associated information.

If the Interconnection Customer's data is materially different from what was originally provided to Transmission Provider pursuant to the Interconnection Study Agreement between Transmission Provider and Interconnection Customer, then Transmission Provider will conduct appropriate studies to determine the impact on the Transmission Provider Transmission System based on the actual data submitted pursuant to this Article 24.3. The Interconnection Customer shall not begin Trial Operation until such studies are completed.

24.4 *Information Supplementation.* Prior to the Operation Date, the Parties shall supplement their information submissions described above in this Article 24 with any and all "as-built" Large Generating Facility information or "as-tested" performance information that differs from the initial submissions or, alternatively, written confirmation that no such differences exist. The Interconnection Customer shall conduct tests on the Large Generating Facility as required by Good Utility Practice such as an open circuit "step voltage" test on the Large Generating Facility to verify proper operation of the Large Generating Facility's automatic voltage regulator.

Unless otherwise agreed, the test conditions shall include: (1) Large Generating Facility at synchronous speed; (2) automatic voltage regulator on and in voltage control mode; and (3) a five percent (5 percent) change in Large Generating Facility terminal voltage initiated by a change in the voltage regulators reference voltage. Interconnection Customer shall provide validated test recordings showing the responses of Large Generating Facility terminal and field voltages. In the event that direct recordings of these voltages is impractical, recordings of other voltages or currents that mirror the response of the Large Generating Facility's terminal or field voltage are acceptable if information necessary to translate these alternate quantities to actual Large Generating Facility terminal or field voltages is provided. Large Generating Facility testing shall be conducted and results provided to the Transmission Provider for each individual generating unit in a station.

Subsequent to the Operation Date, the Interconnection Customer shall provide Transmission Provider any information changes due to equipment replacement, repair, or adjustment. Transmission Provider shall provide the Interconnection Customer any information changes due to equipment replacement, repair or adjustment in the directly connected substation or any adjacent Transmission Provider-owned substation that may affect the Interconnection Customer Interconnection Facilities equipment ratings, protection or operating requirements. The Parties shall provide such information no later than thirty (30) Calendar Days after the date of the equipment replacement, repair or adjustment.

Article 25. Information Access and Audit Rights

25.1 *Information Access.* Each Party (the "disclosing Party") shall make available to the other Party information that is in the possession of the disclosing Party and is necessary in order for the other Party to: (i) verify the costs incurred by the disclosing Party for which the other Party is responsible under this LGIA; and (ii) carry out its obligations and responsibilities under this LGIA. The Parties shall not use such information for purposes other than those set forth in this Article 25.1 and to enforce their rights under this LGIA.

25.2 *Reporting of Non-Force Majeure Events.* Each Party (the "notifying Party") shall notify the other Party when the notifying Party becomes aware of its inability to comply with the provisions of this LGIA for a reason other than a Force Majeure event. The Parties agree to cooperate with each other and provide necessary information regarding such inability to comply, including the date, duration, reason for the inability to comply, and corrective actions taken or planned to be taken with respect to such inability to comply. Notwithstanding the foregoing, notification, cooperation or information provided under this Article shall not entitle the Party receiving such notification to allege a cause for anticipatory breach of this LGIA.

25.3 *Audit Rights.* Subject to the requirements of confidentiality under Article 22 of this LGIA, each Party shall have the right, during normal business hours, and upon prior reasonable notice to the other Party, to audit at its own expense the other Party's accounts and records pertaining to either Party's performance or either Party's satisfaction of obligations under this LGIA. Such audit rights shall include audits of the other Party's costs, calculation of invoiced amounts, the Transmission Provider's efforts to allocate responsibility for the provision of reactive support to the Transmission System, the Transmission Provider's efforts to allocate responsibility for interruption or reduction of generation on the Transmission System, and each Party's actions in an Emergency Condition. Any audit authorized by this Article shall be performed at the offices where such accounts and records are maintained and shall be limited to those portions of such accounts and records that relate to each Party's performance and satisfaction of obligations under this LGIA.

Each Party shall keep such accounts and records for a period equivalent to the audit rights periods described in Article 25.4.

25.4 Audit Rights Periods

25.4.1 *Audit Rights Period for Construction-Related Accounts and Records.* Accounts and records related to the design, engineering, procurement, and construction of Transmission Provider's Interconnection Facilities and Network Upgrades shall be subject to audit for a period of twenty-four months following Transmission Provider's issuance of a final invoice in accordance with Article 12.2.

25.4.2 *Audit Rights Period for All Other Accounts and Records.* Accounts and records related to either Party's performance or satisfaction of all obligations under this LGIA other than those described in Article 25.4.1 shall be subject to audit as follows: (i) for an audit relating to cost obligations, the applicable audit rights period shall be twenty-four months after the auditing Party's receipt of an invoice giving rise to such cost obligations; and (ii) for an audit relating to all other obligations, the applicable audit rights period shall be twenty-four months after the event for which the audit is sought.

25.5 *Audit Results.* If an audit by a Party determines that an overpayment or an underpayment has occurred, a notice of such overpayment or underpayment shall be given to the other Party together with those records from the audit which support such determination.

Article 26. Subcontractors

26.1 *General.* Nothing in this LGIA shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this LGIA; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this LGIA in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

26.2 *Responsibility of Principal.* The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this LGIA. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under Article 5 of this LGIA. Any applicable obligation imposed by this LGIA upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

26.3 *No Limitation by Insurance.* The obligations under this Article 26 will not be limited in any way by any limitation of subcontractor's insurance.

Article 27. Disputes

27.1 *Submission.* In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this LGIA or its performance, such Party (the "disputing Party") shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty (30) Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon mutual agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this LGIA.

27.2 *External Arbitration Procedures.* Any arbitration initiated under this LGIA shall be conducted before a single neutral arbitrator appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) Calendar Days of the submission of the dispute to arbitration, each Party shall choose one arbitrator who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within twenty (20) Calendar Days select a third arbitrator to chair the arbitration panel. In either case, the arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or RTO rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this Article 27, the terms of this Article 27 shall prevail.

27.3 *Arbitration Decisions.* Unless otherwise agreed by the Parties, the arbitrator(s) shall render a decision within ninety (90) Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this LGIA and shall have no power to modify or change any provision of this Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Network Upgrades.

27.4 *Costs.* Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) The cost of the arbitrator chosen by the Party to sit on the three member panel and one half of the cost of the third arbitrator chosen; or (2) one half the cost of the single arbitrator jointly chosen by the Parties.

Article 28. Representations, Warranties and Covenants

28.1 *General.* Each Party makes the following representations, warranties and covenants:

28.1.1 *Good Standing.* Such Party is duly organized, validly existing and in good standing under the laws of the state in which it is organized, formed, or incorporated, as applicable; that it is qualified to do business in the state or states in which the Large Generating Facility, Interconnection Facilities and Network Upgrades owned by such Party, as applicable, are located; and that it has the corporate power and authority to own its properties, to carry on its business as now being conducted and to enter into this LGIA and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this LGIA.

28.1.2 *Authority.* Such Party has the right, power and authority to enter into this LGIA, to become a party hereto and to perform its obligations hereunder. This LGIA is a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as the enforceability thereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally and by general equitable principles (regardless of whether enforceability is sought in a proceeding in equity or at law).

28.1.3 *No Conflict.* The execution, delivery and performance of this LGIA does not violate or conflict with the organizational or formation documents, or bylaws or operating agreement, of such Party, or any judgment, license, permit, order, material agreement or instrument applicable to or binding upon such Party or any of its assets.

28.1.4 *Consent and Approval.* Such Party has sought or obtained, or, in accordance with this LGIA will seek or obtain, each consent, approval, authorization, order, or acceptance by any Governmental Authority in connection with the execution, delivery and performance of this LGIA, and it will provide to any Governmental Authority notice of any actions under this LGIA that are required by Applicable Laws and Regulations.

Article 29. Joint Operating Committee

29.1 *Joint Operating Committee.* Except in the case of ISOs and RTOs, Transmission Provider shall constitute a Joint Operating Committee to coordinate operating and technical considerations of Interconnection Service. At least six (6) months prior to the expected Initial Synchronization Date, Interconnection Customer and Transmission Provider shall each appoint one representative and one alternate to the Joint Operating Committee. Each Interconnection

Customer shall notify the Transmission Provider of its appointment in writing. Such appointments may be changed at any time by similar notice. The Joint Operating Committee shall meet as necessary, but not less than once each calendar year, to carry out the duties set forth herein. The Joint Operating Committee shall hold a meeting at the request of either Party, at a time and place agreed upon by the representatives. The Joint Operating Committee shall perform all of its duties consistent with the provisions of this LGIA. Each Party shall cooperate in providing to the Joint Operating Committee all information required in the performance of the Joint Operating Committee's duties. All decisions and agreements, if any, made by the Joint Operating Committee shall be evidenced in writing. The duties of the Joint Operating Committee shall include the following:

29.1.1 Establish data requirements and operating record requirements.

29.1.2 Review the requirements, standards, and procedures for data acquisition equipment, protective equipment, and any other equipment or software.

29.1.3 Annually review the one (1) year forecast of maintenance and planned outage schedules of Transmission Provider's and Interconnection Customer's facilities at the Point of Interconnection.

29.1.4 Coordinate the scheduling of maintenance and planned outages on the Interconnection Facilities, the Large Generating Facility and other facilities that impact the normal operation of the interconnection of the Large Generating Facility to the Transmission System.

29.1.5 Ensure that information is being provided by each Party regarding equipment availability.

29.1.6 Perform such other duties as may be conferred upon it by mutual agreement of the Parties.

Article 30. Miscellaneous

30.1 *Binding Effect.* This LGIA and the rights and obligations hereof, shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties hereto.

30.2 *Conflicts.* In the event of a conflict between the body of this LGIA and any attachment, appendices or exhibits hereto, the terms and provisions of the body of this LGIA shall prevail and be deemed the final intent of the Parties.

30.3 *Rules of Interpretation.* This LGIA, unless a clear contrary intention appears, shall be construed and interpreted as follows: (1) The singular number includes the plural number and vice versa; (2) reference to any person includes such person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this LGIA, and reference to a person in a particular capacity excludes such person in any other capacity or individually; (3) reference to any agreement (including this LGIA), document, instrument or tariff means such agreement, document, instrument, or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof; (4) reference to any Applicable Laws and Regulations means such Applicable Laws and Regulations as amended, modified, codified, or reenacted, in whole or in part, and in effect from time to time, including, if applicable, rules and regulations promulgated thereunder; (5) unless expressly stated otherwise, reference to any Article, Section or Appendix means such Article of this LGIA or such Appendix to this LGIA, or such Section to the LGIP or such Appendix to the LGIP, as the case may be; (6) "hereunder", "hereof", "herein", "hereto" and words of similar import shall be deemed references to this LGIA as a whole and not to any particular Article or other provision hereof or thereof; (7) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term; and (8) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including".

30.4 *Entire Agreement.* This LGIA, including all Appendices and Schedules attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this LGIA. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this LGIA.

30.5 *No Third Party Beneficiaries.* This LGIA is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

30.6 *Waiver.* The failure of a Party to this LGIA to insist, on any occasion, upon strict performance of any provision of this LGIA will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this LGIA shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this LGIA. Termination or Default of this LGIA for any reason by the Interconnection Customer shall not constitute a waiver of the Interconnection Customer's legal rights to obtain an interconnection from the Transmission Provider. Any waiver of this LGIA shall, if requested, be provided in writing.

30.7 *Headings.* The descriptive headings of the various Articles of this LGIA have been inserted for convenience of reference only and are of no significance in the interpretation or construction of this LGIA.

30.8 *Multiple Counterparts.* This LGIA may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

30.9 *Amendment.* The Parties may by mutual agreement amend this LGIA by a written instrument duly executed by both of the Parties.

30.10 *Modification by the Parties.* The Parties may by mutual agreement amend the Appendices to this LGIA by a written instrument duly executed by both of the Parties. Such amendment shall become effective and a part of this LGIA upon satisfaction of all Applicable Laws and Regulations.

30.11 *Reservation of Rights.* Transmission Provider shall have the right to make a unilateral filing with FERC to modify this LGIA with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this LGIA pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this LGIA shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

30.12 *No Partnership.* This LGIA shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

In witness whereof, the Parties have executed this LGIA in duplicate originals, each of which shall constitute and be an original effective Agreement between the Parties.

[Insert name of Transmission Provider or Transmission Owner, if applicable]

By: _____

Title: _____

Date: _____

By: _____

Title: _____

Date:p _____

[Insert name of Interconnection Customer]

By: _____

Title: _____

Date: _____

Appendices to LGIA

Appendix A—Interconnection Facilities, Network Upgrades and Distribution Upgrades

Appendix B—Milestones

Appendix C—Interconnection Details

Appendix D—Security Arrangements Details

Appendix E—Commercial Operation Date

Appendix F—Addresses for Delivery of Notices and Billings

Appendix A to LGIA—Interconnection Facilities, Network Upgrades and Distribution Upgrades

1. Interconnection Facilities:

(a) [insert Interconnection Customer's Interconnection Facilities]:

(b) [insert Transmission Provider's Interconnection Facilities]:

2. Network Upgrades:

(a) [insert Stand Alone Network Upgrades]:

(b) [insert Other Network Upgrades]:

3. Distribution Upgrades:

Appendix B to LGIA—Milestones [Reserved]

Appendix C to LGIA—Interconnection Details [Reserved]

Appendix D to LGIA—Security Arrangements Details

Infrastructure security of Transmission System equipment and operations and control hardware and software is essential to ensure day-to-day Transmission System reliability and operational security. The Commission will expect all Transmission Providers, market participants, and Interconnection Customers interconnected to the Transmission System to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities will be expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

Appendix E to LGIA—Commercial Operation Date

This Appendix E is a part of the LGIA between Transmission Provider and Interconnection Customer.

[Date]

[Transmission Provider Address]

Re: _____Large Generating Facility

Dear: _____

On [Date] [Interconnection Customer] has completed Trial Operation of Unit No. _____. This letter confirms that [Interconnection Customer] commenced commercial operation of Unit No. ____ at the Large Generating Facility, effective as of [Date plus one day].

Thank you.

[Signature]

[Interconnection Customer Representative]

Appendix F to LGIA—Addresses for Delivery of Notices and Billings

Notices:

Transmission Provider:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

Billings and Payments:

Transmission Provider:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

Alternative Forms of Delivery of Notices (telephone, facsimile or email):

Transmission Provider:

[To be supplied.]

Interconnection Customer:

[To be supplied.]

[FR Doc. 03–20157 Filed 8–18–03; 8:45 am]

BILLING CODE 6717–01–P

Federal Register

Tuesday,
August 19, 2003

Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 35

Standardization of Small Generator Interconnection Agreements and Procedures; Proposed Rules

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM02–12–000]

Standardization of Small Generator Interconnection Agreements and Procedures

July 24, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations under the Federal Power Act (FPA) to require public utilities that own, operate, or control facilities for transmitting electric energy in interstate commerce to file revised Open Access Transmission Tariffs containing standard interconnection procedures and a standard interconnection agreement for small generators. Specifically, the Commission is proposing in this Notice of Proposed Rulemaking that such public utilities shall provide interconnection service to Small Generating Facilities (*i.e.*, devices used for the production of electricity having a capacity of no more than 20 megawatts), including their own generation, under the procedures set forth in the proposed standard interconnection procedures and according to a standard interconnection agreement. Any non-public utility that seeks voluntary compliance with the reciprocity condition of a jurisdictional transmission tariff may satisfy this condition by adopting these procedures and this agreement.

DATES: Comments are due October 3, 2003. Comments should be double spaced and include an executive summary. In order to facilitate the evaluation of comments, commenters are encouraged to file their comments electronically in WordPerfect, MS Word, Portable Document Format (PDF), or ASCII format.

ADDRESSES: Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426. Comments should reference Docket No. RM02–12–000. Please refer to the Comment Procedures Section of the preamble for additional information on how to file comments.

FOR FURTHER INFORMATION CONTACT:
Bruce Poole (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8468.

Patrick Rooney (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6205.

Kirk F. Randall (Technical Information), Office of Market, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8092.

Michael G. Henry (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8532.

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I. Introduction

1. This Notice of Proposed Rulemaking (NOPR) proposes the addition of Standard Small Generator Interconnection Procedures (Proposed SGIP) and a Standard Small Generator Interconnection Agreement (Proposed SGIA) to the Open Access Transmission Tariffs (OATTs) of jurisdictional public utilities.[1] The Commission expects that this rulemaking will reduce interconnection time and costs for Interconnection Customers and Transmission Providers, prevent undue discrimination, preserve reliability, increase energy supply, lower wholesale prices for customers by increasing the number and variety of new generation

[1] Provisions of the Proposed SGIP are referred to as "Sections" whereas provisions of the Proposed SGIA are referred to as "Articles."

resources that will compete in the wholesale electricity market, and facilitate development of non-polluting alternative energy sources (such as photovoltaic, fuel cell, and wind generators).

2. The Proposed SGIP sets forth the procedures that Interconnection Customers and Transmission Providers would be required to follow during the interconnection process.[2] Included in the Proposed SGIP are (1) the application form (referred to as the Interconnection Request), (2) Super-Expedited Procedures for interconnecting Precertified Small Generating Facilities no larger than 2 MW to a Low-Voltage Transmission System (*i.e.*, less than 69 kilovolts), (3) Expedited Procedures for interconnecting Small Generating Facilities larger than 2 MW but no larger than 10 MW to a Low-Voltage Transmission System, (4) procedures for interconnecting Small Generating Facilities to a High-Voltage Transmission System (*i.e.*, 69 kilovolts and above) and Small Generating Facilities larger than 10 MW interconnecting with a Low-Voltage Transmission System.

3. The Proposed SGIA sets forth the legal rights and obligations of each Party, addresses cost responsibility issues, establishes Milestones for the completion of the interconnection, and lays out a process for the resolution of disputes.

4. In this NOPR, we propose standard procedures and a standard agreement to be used by a public utility to interconnect a Small Generator with the utility's transmission facilities or with its jurisdictional distribution facilities for the purpose of selling electric energy at wholesale in interstate commerce.

A. Background

5. This NOPR responds to business and technology changes in the electric industry. Where the electric industry was once primarily the domain of large, vertically integrated utilities generating power at large centralized plants, advances in technology have created a burgeoning market for small power plants that may offer economic, reliability, or environmental benefits.

6. With these developments in mind, the Commission continues to work to encourage fully competitive bulk power markets. The effort took its first significant step with Order No. 888,[3] which required public utilities to provide other entities comparable access to their transmission systems, and continued with Order No. 2000,[4] which began the process of developing Regional Transmission Organizations (RTOs). The Commission has taken numerous actions to establish and protect robust, seamless, and competitive wholesale electricity markets.[5] Concurrent with the issuance of this NOPR, the Commission is issuing a Final Rule establishing standard interconnection procedures and a standard agreement for large generators to further encourage fully competitive bulk power markets and much-needed investment in generation.[6]

7. The Commission continues to seek the establishment of robust competitive wholesale electric markets.[7] A recent Commission White Paper stated the Commission's intent to focus on the formation of RTOs and Independent System Operators (ISOs) and on ensuring that RTOs and ISOs have good wholesale market rules in place.[8] It proposed to require all public utilities to join an RTO or ISO. Further, the White Paper stated that all RTOs and ISOs would, with limited exceptions, be required to implement a wholesale market platform consisting of elements that must be in place for well-functioning wholesale markets: (1) Regional independent grid operation, (2) a regional transmission planning process, (3) fair cost allocation for existing and new transmission, (4) market monitoring and market power mitigation, (5) spot markets to meet real-time energy needs, (6) transparency and efficiency in congestion management, (7) firm transmission rights; and (8) a regional approach to ensuring resource adequacy. Also, an RTO or ISO may propose participant funding for transmission upgrades for a generator interconnection, and, for a transitional period not to exceed a year, a region may use participant funding as soon as an independent entity has been approved by the Commission and the affected states.

B. Generator Interconnections

8. While the subject of generator interconnection arose in the Order No. 888 rulemaking, no explicit reference to it appeared in the OATT. Nevertheless, interconnection is a critical component of open access transmission service, and the Commission must ensure that interconnection service is provided under just and reasonable terms and conditions.

9. Entities seeking to interconnect generators have been hindered by the lack of standard interconnection procedures and agreements. Standard interconnection procedures limit opportunities for public utilities that own both generation and transmission to favor their own generation and help produce just and reasonable interconnection charges for generators. A standard interconnection agreement reduces market entry costs for generators and offers them access to regional energy markets on standard terms.

10. As discussed below, after the Commission initiated its interconnection NOPR in Docket No. RM02–1–000, Standardization of Generator Interconnection Agreements and Procedures, it became apparent that the rule as proposed might not sufficiently encourage the development of small generators, and that there needed to be a separate interconnection agreement and set of procedures designed specifically for small generators.

11. The effort to generically address Small Generator interconnection issues presents numerous challenges. The electric industry is faced with the

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[2] Unless otherwise defined in this Preamble, capitalized terms used in this NOPR have the meanings specified in Section 1 of the Proposed SGIP and Article 1 of the Proposed SGIA. The term Generating Facility means the specific device for which the Interconnection Customer has requested interconnection. The owner of the Generating Facility is referred to as the Interconnection Customer. The entity with which the Generating Facility is interconnecting is referred to as the Transmission Provider. The term Small Generator is intended to refer to any energy resource having a capacity of no more than 20 megawatts, or the owner of such a resource. Likewise, Large Generator refers to any energy resource having a capacity of more than 20 megawatts, or the owner of such a resource.

[3] Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. and Regs. ¶31,036 (1996), *order on reh'g*, Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶61,248 (1997), *order on reh'g*, Order No. 888-C , 82 FERC ¶61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York* v. *FERC*, 535 U.S. 1 (2002).

[4] Regional Transmission Organizations, Order No. 2000, 65 FR 810 (Jan. 6, 2000), FERC Stats. & Regs. ¶31,089 (1999), *order on reh'g*, Order No. 2000–A, 65 FR 12088 (Mar. 8, 2000), FERC Stats. & Regs. ¶31,092 (2000), *aff'd sub nom.* Public Util. Dist. No. 1 v. FERC, 272 F.3d 607 (D.C. Cir. 2001).

[5] *E.g.*, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 FR 55452 (Aug. 29, 2002), FERC Stats. & Regs. ¶32,563 (2002).

[6] Standardization of Generator Interconnection Agreements and Procedures, Final Rule, Docket No. RM02–1–000 (issued concurrently with this NOPR).

[7] E.g., Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, Notice of Proposed Rulemaking, 67 FR 55542 (Aug. 29, 2002), FERC Stats. & Regs. ¶32,563 (2002).

[8] White Paper: Wholesale Power Market Platform, Docket No. RM01–12–000 (Apr. 28, 2003) (White Paper).

competing needs for, on the one hand, maintaining electric system reliability and, on the other hand, encouraging increased generation, including generation using innovative technologies. To encourage small generators to participate in the interstate wholesale market, the interconnection process should be affordable and the terms and conditions should be clear, but these goals must not compromise the reliability of the electric system.

C. Large Generator Interconnection Rulemaking

12. The Commission issued an Advance Notice of Proposed Rulemaking (ANOPR) in Docket No. RM02–1–000 [9] (Large Generator Interconnection ANOPR) that was originally intended to develop standard generator interconnection procedures and a standard agreement for generators of all sizes. The Commission also initiated a collaborative process in which members of the electric industry and government (collectively, stakeholders) could draft standard interconnection procedures and interconnection agreement documents. Public meetings of these stakeholders culminated in the development of a Large Generator Interconnection Procedures (Consensus LGIP) and a Large Generator Interconnection Agreement (Consensus LGIA), which were filed with the Commission.[10]

13. The Commission then issued a Large Generator Interconnection NOPR.[11] The Commission proposed standard interconnection procedures for generators, which is referred to here as the Proposed LGIP. It also proposed a standard interconnection agreement for all generators, which is referred to here as the Proposed LGIA. Both would be incorporated into existing and future OATTs. The Proposed LGIP and Proposed LGIA generally followed the consensus documents filed with the Commission, but the Commission also resolved, for purposes of the NOPR, several issues that were left unresolved in the consensus documents. A Large Generator Interconnection Final Rule is being issued concurrently with the issuance of this NOPR.

D. Small Generator Interconnection ANOPR, Process, and Comments

14. Although the Proposed LGIP and Proposed LGIA provided for the expedited treatment of Small Generating Facilities, some commenters argued that the Commission should adopt separate standard interconnection procedures and agreements that address the unique concerns of Small Generators.[12] Small Generator Commenters proposed simplified standard procedures and agreements that would allow quicker, less costly, and simpler interconnection for Small Generating Facilities no larger than 2 MW, and different procedures and agreements for units larger than 2 MW but no larger than 20 MW. Persuaded that different procedures and agreements for Small Generators are needed, we severed consideration of Small Generating Facilities from the Large Generator Interconnection rulemaking and issued its Small Generator Interconnection ANOPR in August 2002.[13]

15. The Small Generator Interconnection ANOPR proposed two small generator interconnection procedures and two small generator interconnection agreements, with the distinction between the two sets of documents being the size of the Small Generator. These documents (hereafter, respectively, ANOPR SGIPs and ANOPR SGIAs) were offered by the Small Generator Commenters in their comments to the Large Generator Interconnection NOPR. We encouraged interested parties to pursue consensus on the ANOPR SGIPs and ANOPR SGIAs. To that end, the Commission convened a series of public meetings designed to enable the parties to discuss and reach as much agreement as possible.

16. The public meetings culminated in the negotiating parties [14] preparing two sets of standard small generator interconnection procedures and agreements (Coalition SGIPs and Coalition SGIAs, respectively) and submitting them to the Commission in November 2002. While the Coalition members reached consensus on some issues, significant disagreements remained. The documents nonetheless helped inform the Commission of the various challenges that confront both the owners of Small Generators and Transmission Providers. Public comments on the Small Generator Interconnection ANOPR were filed in December 2002.

II. Discussion

17. The results of the negotiations during the Small Generator Interconnection ANOPR process, the ANOPR comments, and the technical conference on queuing form the basis for the Proposed SGIP and Proposed SGIA that are included in this NOPR.

18. Coalition members drafted two Coalition SGIAs, one for Small Generating Facilities no larger than 2 MW, and a second for Small Generating Facilities larger than 2 MW but no larger than 20 MW. Likewise, they developed two sets of Coalition SGIPs. Although there was significant overlap between the two Coalition SGIAs as well as the two Coalition SGIPs, the Coalition members did not consolidate these four documents. To simplify the interconnection process and eliminate duplication, this NOPR offers a single Proposed SGIP and a single Proposed SGIA. The former incorporates different procedures for the processing of Interconnection Requests for Small Generating Facilities of various sizes.

19. Coalition members were often unable to reach consensus on an issue and the Commission needed to resolve the issue for the purpose of this NOPR. The Commission carefully evaluated the positions the Coalition members presented in the November 2002 consensus document as well as the ANOPR comments filed the following month. The Commission also acknowledges that NARUC has developed a model small generator interconnection procedures and agreement that is similar in many ways to the proposal contained in this NOPR. The NARUC model and its comments were very helpful in the development of this proposal.

20. Also, where appropriate, we are proposing some provisions and definitions identical or similar to those in the Large Generator Interconnection Final Rule (and the OATT) to ensure as much consistency as is reasonable between the large and small generator

[9] Standardizing Generator Interconnection Agreements and Procedures; Advance Notice of Proposed Rulemaking, 66 FR 55140 (Nov. 1, 2001), FERC Stats. & Regs. ¶ 35,540 (2002). The previously cited rulemaking is referred to here as the Large Generator Interconnection rulemaking, to distinguish it from the Small Generator Interconnection rule proposed here.

[10] While these consensus documents reflected significant agreement, they also identified disputed provisions and left a number of issues unresolved.

[11] Large Generator Interconnection NOPR, IV FERC Stats. & Regs. ¶ 32,560 (2002).

[12] Those commenters included The Solar Energy Industries Association, the U.S. Fuel Cell Council, the American Solar Energy Society, the U.S. Combined Heat and Power Association, the International District Energy Association, and the American Wind Energy Association (collectively, Small Generator Commenters).

[13] Standardization of Small Generator Interconnection Agreements and Procedures; Advance Notice of Proposed Rulemaking, 67 FR 54749 (Aug. 26, 2002), FERC Stats. & Regs. ¶ 35,544 (2002).

[14] The negotiating parties included representatives of small generators, the National Association of Regulatory Utility Commissioners, and transmission and distribution providers (collectively, "Coalition").

tariff provisions.[15] We invite comment on this approach, and ask interested parties to address whether Large Generators and Small Generators should be treated differently with respect to those parts of the Proposed SGIP and Proposed SGIA that follow the Final Rule LGIP and Final Rule LGIA.

21. The Coalition presents various procedures to determine whether certain Small Generators may interconnect safely with a Transmission Provider's Transmission System. In the Coalition's proposed SGIPs, some procedures would evaluate requests to interconnect Small Generators to a Transmission Provider's Distribution System, while others would evaluate requests to interconnect with its Transmission System. The Commission here proposes instead to use the voltage level of the Transmission Provider's Transmission System at which the interconnection is to be made as one basis for determining which procedure may be employed [16]—Low-Voltage procedures would apply to interconnections made at voltage levels below 69 kV, and High-Voltage procedures would apply to interconnections made at voltage levels of 69 kV and above. The Commission believes that this will assist the Parties by making clear which procedure applies to a particular Interconnection Request.

A. The Commission's Small Generator Interconnection Proposal

22. This NOPR includes a Proposed SGIP and a Proposed SGIA. The Proposed SGIP describes the process for evaluating the proposed interconnection. After the process is successfully completed, the Parties would then execute the Proposed SGIA, which sets forth the contractual rights and obligations of the Parties. To explain the contents of the Proposed SGIA and Proposed SGIP, we next present: (1) A discussion of our legal authority over a Small Generator's interconnection to a public utility's Transmission System, (2) a summary of the proposed interconnection process,[17] and (3) a discussion of significant issues that arose during the Small Generator Interconnection ANOPR process and how we propose to resolve them.

1. Jurisdiction

28. At the outset, it is important to clarify several terms when discussing the question of jurisdiction. "Local distribution" is a legal term; under FPA section 201(b)(1), the Commission lacks jurisdiction over local distribution facilities.[18] "Distribution" is an unfortunately vague term, but it is usually used to refer to lower-voltage lines that are not networked and that carry power in one direction. Some lower-voltage facilities are "local distribution" facilities not under our jurisdiction, but some are used for jurisdictional service such as carrying power to a wholesale power customer for resale and are included in a public utility's OATT (although in some instances, there is a separate OATT rate for using them, sometimes called a Wholesale Distribution Rate).

24. This NOPR proposes to apply the NOPR SGIA and NOPR SGIP in a manner consistent with the Large Generator Interconnection Final Rule. This is different from the authority proposed in the Small Generator Interconnection ANOPR, where, consistent with the jurisdiction proposed in the Large Generator Interconnection NOPR, we proposed to assert jurisdiction when the owner of a generator seeks to interconnect with a distribution facility to make a wholesale sale of electricity in interstate commerce.[19] Several commenters to the Small Generator Interconnection ANOPR object to the Commission asserting jurisdiction over interconnections to distribution facilities, both legally and as a matter of policy.[20] They argue, among other things, that the FPA reserves jurisdiction over local distribution facilities to the States and that the Commission lacks sufficient staff and expertise to regulate numerous Small Generator interconnections to Distribution Systems. These matters, they say, are best left to the States. Most of these commenters do not distinguish between distribution facilities owned by jurisdictional public utilities and those owned by non-public utilities.

25. The proposed rule proposes to apply to interconnections to the facilities of a public utility's Transmission System that, at the time the interconnection is requested, may be used either to transmit electric energy in interstate commerce or to sell electric energy at wholesale in interstate commerce pursuant to a Commission-filed OATT.[21] In other words, the standard interconnection procedures and contract terms would apply when an Interconnection Customer that plans to engage in a sale for resale in interstate commerce or to transmit electric energy in interstate commerce requests interconnection to facilities owned, controlled, or operated by the Transmission Provider or the Transmission Owner, or both, that are used to provide transmission service under an OATT that is on file at the Commission at the time the Interconnection Request is made. Therefore, the NOPR proposes to apply to a request to interconnect to a public utility's facilities used for transmission in interstate commerce. It also would apply to a request to interconnect to a public utility's "distribution" facilities used to transmit electric energy in interstate commerce on behalf of a wholesale purchaser pursuant to a Commission-filed OATT. But in such a case where the "distribution" facilities have a dual use, *i.e.*, the facilities are used for both wholesale sales and retail sales, the NOPR would apply to interconnections to these facilities only for the purpose of making sales of electric energy for resale in interstate commerce.[22]

26. For those Small Generator interconnections that would not be subject to the Final Rule SGIP and Final Rule SGIA, the Commission will make the Final Rule documents available as a guideline. The standardization of small generator terms and conditions would

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[15] *See, e.g.*, Articles 4.1, 5.1.2, 5.1.2.1, 5.2, 6.1–6.9, 6.12–6.20, 7, and 8 of the Proposed SGIA.

[16] The other basis is generator size.

[17] To aid the reader, the Appendices contain flow charts that depict the interconnection process. Appendix 1 depicts the Super-Expedited Procedures for interconnecting Small Generating Facilities no larger than 2 MW to a Low-Voltage Transmission System. Appendix 2 depicts the procedures for interconnecting Small Generating Facilities to a High-Voltage Transmission System and Small Generating Facilities larger than 2 MW to a Low-Voltage Transmission System.

[18] 16 U.S.C. 824(b)(1) (2000).

[19] Standardization of Generator Interconnection Agreements and Procedures, Notice of Proposed Rulemaking, 67 FR 22250 (May 2, 2002), FERC Stats. & Regs. ¶ 32,560 at 34,178 n.22 (2002).

[20] *E.g.*, Baltimore Gas & Electric Co., Commonwealth of Massachusetts Department of Telecommunications and Energy, Connecticut Department of Public Utility Control, Edison Electric Institute, FirstEnergy, NARUC, Public Service Commission of Wisconsin, and Southern Company Services Inc.

[21] For purposes of this paragraph, the term "Commission-filed OATT" means a tariff that is on file at, and has been approved by, the Commission.

[22] The Commission will exercise exclusive jurisdiction only over the Commission-jurisdictional service. *See* Laguna Irrigation District, 95 FERC ¶ 61,305 at 62,039 (2001) *aff'd sub nom. Pacific Gas & Electric Co.* v. *FERC*, 44 Fed. Appx. 170 (9th Cir. 2002); Tex-La Electric Cooperative of Texas, Inc., 67 FERC ¶ 61,019 at 61,055–56, *final order*, 69 FERC ¶ 61,269 (1994) (both noting that the Commission asserts jurisdiction over the service when the facilities are not purely "transmission" facilities). Accordingly, the Commission will continue to exercise exclusive jurisdiction over the rates, terms, and conditions of the Commission-jurisdictional service provided over the dual use "distribution" facility, but the Commission will not assert jurisdiction over all uses of that facility, because the regulation of "local distribution" of electricity to end users is reserved to the States.

benefit all customers nationwide by encouraging the development of small generation, including generation using innovative technologies.

27. Finally, the Commission proposes to apply the reciprocity requirements in Order No. 888 to this proceeding. Under the reciprocity provision in section 6 of the OATT, if the public utility seeks transmission service from a non-public utility to which it provides open access transmission service, the non-public utility that owns, controls, or operates transmission facilities must provide comparable transmission service that it is capable of providing on its own system. A non-public utility that has adopted a "safe harbor" Tariff to comply with a reciprocity condition may add to its Tariff an interconnection agreement and interconnection procedures that substantially conform or are superior to the Final Rule SGIP and Final Rule SGIA if it wishes to continue to qualify for safe harbor treatment. A non-public utility that owns, controls, or operates transmission and that has not filed with the Commission a safe harbor Tariff and seeks transmission service from a public utility must either satisfy its reciprocity obligation under a bilateral agreement or seek a waiver of the OATT reciprocity condition from the public utility.

2. Summary of the Interconnection Process for Small Generating Facilities

28. To interconnect its Generating Facility with a Transmission Provider's Transmission System, an Interconnection Customer must first submit an Interconnection Request to the Transmission Provider. When the Transmission Provider deems the Interconnection Request complete, the Interconnection Request would be placed in the Transmission Provider's queue with other pending interconnection requests.

29. The Proposed SGIP divides Interconnection Requests into two groups according to whether the interconnection is to a High-Voltage Transmission System (69 kV or above) or a Low-Voltage Transmission System (below 69 kV). Interconnections to Low-Voltage Transmission Systems would be further divided into three groups depending on the size of the Small Generator being interconnected: (1) Small Generating Facilities larger than 10 MW but no larger than 20 MW, (2) Small Generating Facilities larger than 2 MW but no larger than 10 MW, and (3) Small Generating Facilities no larger than 2 MW.

30. The review of the proposed interconnection of a Small Generator with a High-Voltage Transmission System or a Small Generator larger than 10 MW with a Low-Voltage Transmission System would proceed as follows. Once the Interconnection Request is deemed complete, the Parties would conduct a Scoping Meeting to review the Interconnection Request and also review existing studies of the Transmission Provider's Transmission System that are relevant to the Interconnection Request. Interconnection Studies, including the Interconnection Feasibility Study, Interconnection System Impact Study, and Interconnection Facilities Study, would next be performed to evaluate the proposed interconnection.[23] These studies identify any Adverse System Impact[24] to the Transmission Provider's Transmission System that may occur as a result of the interconnection, and the Transmission System modifications that need to be made to address them. The Interconnection Customer pays for the Transmission Provider's actual costs of performing each study, and the Proposed SGIP includes time periods within which the studies must be completed. If the Interconnection Customer agrees to pay for any necessary modifications, the Transmission Provider must proffer an SGIA to the Interconnection Customer.

31. Although the activities performed in the Small Generator process are the same as those in the Large Generator Interconnection Final Rule, the time lines proposed here are shorter. Accordingly, a Small Generator is likely to be interconnected more quickly under the Proposed SGIP than under the Final Rule LGIP.

32. For Small Generating Facilities larger than 2 MW but no larger than 10 MW interconnecting with a Transmission Provider's Low-Voltage Transmission System, the proposed interconnection would be evaluated using the Proposed SGIP's Expedited Screening Criteria. If the proposed interconnection passes the screening criteria and the Transmission Provider agrees that the Generating Facility can be safely interconnected with its Low-Voltage Transmission System, the former shall proffer an SGIA to the Interconnection Customer. However, if the Transmission Provider believes that the Generating Facility cannot be safely interconnected, irrespective of whether the proposed interconnection passes or fails the Expedited Screening Criteria, the Parties would follow the same procedures for Small Generating Facilities larger than 10 MW interconnecting with Low-Voltage Transmission Systems; *i.e.*, conduct a Scoping Meeting and perform Interconnection Studies. The Transmission Provider, after consulting with the Interconnection Customer, may determine whether a particular Generating Facility in this class of Small Generators may be interconnected absent a Scoping Meeting and Interconnection Studies. This is because, although the proposed interconnection may pass the Expedited Screening Criteria, it may nonetheless cause an Adverse System Impact, depending upon where the Small Generator is physically located on the Transmission Provider's Transmission System. Since this cannot be reflected in the screening criteria, the Transmission Provider may evaluate the proposed interconnection in greater detail and, if it is concerned about an Adverse System Impact to its Transmission System, require that a Scoping Meeting be held and Interconnection Studies be conducted.

33. However, in order to encourage the Parties to use the Expedited Screening Criteria to the fullest extent possible, the Commission proposes that, if the Interconnection Feasibility Study conducted under these conditions indicates no Adverse System Impact, the Transmission Provider must bear the cost of the Interconnection Feasibility Study. If an Adverse System Impact is identified, however, the Interconnection Customer must pay for the cost of the Interconnection Feasibility Study.

34. Interconnections of Precertified Small Generating Facilities no larger than 2 MW with the Transmission Provider's Low-Voltage Transmission System would be evaluated under the Proposed SGIP's Super-Expedited Procedures. A Precertified Small Generator is one that has been certified by a national testing laboratory as having met applicable consensus industry and safety standards. If a proposed interconnection passes all the Super-Expedited Screening Criteria, the Transmission Provider would proffer an SGIA to the Interconnection Customer. If the proposed interconnection fails the

[23] The Interconnection Feasibility Study evaluates on a preliminary basis the impact of the proposed interconnection to the Transmission Provider's Transmission System. The Interconnection System Impact Study evaluates in detail the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, Affected Systems. The Interconnection Facilities Study determines the required modifications to the Transmission Provider's Transmission System, including the detailed costs and scheduled completion dates for such modifications, that would be required to accommodate the Interconnection Request.

[24] An Adverse System Impact means that technical or operational limits on conductors or equipment have been exceeded, which may compromise the safety or reliability of the electric power system.

Super-Expedited screening criteria: (1) The Transmission Provider could permit the interconnection anyway, after evaluating other factors such as the physical location of the Generating Facility on its Transmission System, or (2) the Interconnection Customer could ask the Transmission Provider to perform an Additional Review, to be paid for by the Interconnection Customer.

35. The Additional Review is an expedited engineering evaluation limited to six hours of engineering time that is intended to identify minor modifications to Transmission Provider's Transmission System that may permit the Generating Facility to interconnect safely and reliably. If the Additional Review indicates that minor modifications to Transmission Provider's Transmission System can indeed be made that would permit the Generating Facility to interconnect safely and reliably, and the Interconnection Customer agrees to pay for the modifications, the Transmission Provider would provide the Interconnection Customer an SGIA. If the Additional Review does not indicate that the Generating Facility can be interconnected safely and reliably, the Parties would follow the procedures for Small Generating Facilities larger than 2 MW but no larger than 10 MW interconnecting with Low-Voltage Transmission Systems.

36. Once the steps called for in the Interconnection Procedures are completed, the Transmission Provider would provide a best estimate of costs to be paid by the Interconnection Customer to effect the interconnection, and the Parties would negotiate Milestones for completing the interconnection, all of which would be incorporated into the SGIA. The SGIA would become effective upon execution by the Parties, subject to acceptance by the Commission, if necessary.[25]

37. The Commission next discusses several issues that either divided the parties seeking to reach consensus during the Small Generator ANOPR process or on which the Commission departs from the consensus position.

3. Maximum Capacity of a Small Generator (Proposed SGIP Section 1, Proposed SGIA Article 1)

38. Consistent with the Large Generator Interconnection Final Rule and the Small Generator Interconnection ANOPR, Small Generating Facilities no larger than 20 MW are considered Small Generating Facilities under the Proposed SGIA and Proposed SGIP. The Commission proposes to treat as a single Generating Facility the aggregated generation at a site for which an Interconnection Customer seeks a single Point of Interconnection.

39. The Commission recognizes that 10 MW is used as the threshold for small generators in Texas, California, New York and Ohio. In addition, several entities, such as the PJM Interconnection, Electric Reliability Council of Texas, and the California Independent System Operator use 10 MW as the threshold because generators under 10 MW are considered less likely to affect reliability and safety. In this NOPR, the Commission likewise proposes special procedures for generators no larger than 10 MW. The Commission, however, proposes to adopt the higher 20 MW threshold, which is used by the Midwest Independent System Operator, in this rulemaking because it would encourage the development of a greater number of Small Generators and promote the development of innovative small generation technologies.

40. Regarding Interconnection Requests that propose to increase the capacity at an existing Generating Facility, the Commission proposes that the new total capacity would determine how the Interconnection Request should be evaluated. For example, if an Interconnection Customer seeks to increase the capacity of an existing Generating Facility from 2 MW to 5 MW by the addition of a second generator, the Interconnection Request would be evaluated as if it were for a 5 MW Generating Facility. Likewise, the Commission proposes that if an Interconnection Customer seeks to increase the size of an existing Generating Facility from 10 MW to 25 MW, the Interconnection Request would be evaluated as if it were a request for a 25 MW Generating Facility. In this case, the Interconnection Request would not be eligible for evaluation under the Proposed SGIP, but rather the Final Rule LGIP. We also invite comment on whether single projects with multiple points of interconnection (as might occur for a windfarm or an industrial cogeneration project serving multiple facilities) should be treated as separate projects or as a single project for queuing and Interconnection Study purposes.

41. Some Interconnection Requests could specify a level of capacity below the maximum capacity of the Generating Facility. We seek comment on how such Interconnection Requests should be addressed. For example, should an interconnection request for a device with a maximum capacity of 22 MW but seeking an interconnection for only 20 MW (and agreeing to restrict delivery to the Transmission Provider's Transmission System below that level) be evaluated under the Final Rule SGIP or the Final Rule LGIP?

4. Precertification of Small Generating Facilities No Larger than 2 MW (Proposed SGIP Section 3.1)

42. A small number of states have procedures to precertify Small Generator equipment that meet specified operational and safety standards in order to expedite interconnections.[26] Precertification eliminates the need for the Transmission Provider to study the equipment for safety and reliability purposes.

43. Precertification of the Interconnection Customer's equipment does not mean that the Generating Facility can be immediately interconnected to the Transmission Provider's Transmission System. Before a Precertified Generating Facility may be interconnected, it must first be determined that the interconnection would have no Adverse System Impact on the Transmission Provider's Transmission System. The purpose of Precertification is to ensure the safety of the Generating Facility itself, not the safety or reliability of the Generating Facility's interconnection to the Transmission Provider's Transmission System.

44. Although precertification presumably has expedited the development of small generation in states where such programs exist, there is no national precertification program. Manufacturers tell us that they face the cost and delay associated with having their equipment evaluated in each state. Moreover, many states lack procedures for evaluating equipment. In these states, generator equipment is evaluated on a case-by-case basis by the Transmission Provider in the course of

[25] Under Order No. 2001, if an executed interconnection agreement conforms with a Commission-approved standard form of interconnection agreement, the utility does not have to file it with the Commission but must report it in the Electric Quarterly Reports. *See* Revised Public Utility Filing Requirements, Order No. 2001, 67 FR 31043 (2002), FERC Stats. & Regs. ¶ 31,127 at P 178 (2002); *reh'g denied*, Order 2001–A, 100 FERC ¶ 61,074 (2002); *reconsideration and clarification denied*, Order No. 2001–B, 100 FERC ¶ 61,342 (2002); *further order*, Order No. 200–C, 101 FERC ¶ 61,314 (2002). An interconnection agreement must be filed only if it contains terms and conditions that deviate from the utility's generic, Commission-approved interconnection agreement or is filed in unexecuted form.

[26] The New York Department of Public Service, for example, maintains a list of approved equipment on its Web site.

evaluating each Interconnection Request.

45. The Coalition proposes a single, uniform, nationwide precertification process for Small Generating Facilities no larger than 2 MW that would encourage the development of small generation while ensuring the safety of the electric system. The Coalition proposes that the Commission itself certify equipment and maintain a registry of equipment that has been certified.

46. This NOPR does not propose to adopt the Coalition's proposal in its entirety. In the Proposed SGIP, a Precertified Generating Facility is defined as one that has been tested by a nationally recognized testing laboratory to consensus industry standards in order to ensure that it will operate in a safe manner. The Commission in this NOPR concludes that certifying equipment and maintaining a registry should be done by an industry-recognized testing organization, not this agency. Accordingly, rather than establish and maintain a list of precertified equipment, as proposed by the Coalition, the Commission encourages cooperation and information sharing among the States and industry participants regarding the precertification of generating equipment. This would eliminate duplication of effort and encourage small generation development, while advancing the movement toward a nationwide set of precertification standards.

47. The Commission recognizes that the IEEE Standards Board approved IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems on June 12, 2003 to create uniform standards to interconnect distributed generation for safe and reliable operation. Together with other technical industry documents, IEEE 1547 could serve as the basis for a national standard for precertification. The Coalition proposed other documents that might be relevant to equipment precertification. The Commission requests comments about what role, if any, the Commission should have in assessing which entity or entities could perform this precertification function.

5. Use of Screening Criteria (Proposed SGIP Sections 3.3 and 4.3)

48. Screening criteria simplify the process of evaluating the interconnection of certain Small Generating Facilities to the Transmission Provider's Transmission System. Their purpose is to identify quickly those proposed interconnections that can be implemented with minimal or no impact on the Transmission Provider's Transmission System and can, therefore, be completed quickly. An example of a Super-Expedited Screening Criterion is that the capacity of a Small Generator proposed for a radial circuit shall not exceed five percent of that circuit's annual peak load.

49. The Coalition developed four screening criteria: (1) Primary screening criteria, (2) secondary screening criteria, (3) distribution impact screening criteria, and (4) transmission impact screening criteria. The first three only apply to proposed interconnections with the Transmission Provider's Distribution System. Not all parties in the ANOPR process supported the use of all four Coalition screening criteria, especially the last two.

50. The Proposed SGIP includes two screening criteria to evaluate proposed interconnections with a Transmission Provider's Low-Voltage Transmission System (*i.e.*, below 69 kV): (1) Super-Expedited Screening Criteria for the smallest generating facilities, and (2) Expedited Screening Criteria for somewhat larger but still small generating facilities. Although both screening criteria use similar evaluation standards, the latter are easier to satisfy than the former. The Commission does not propose screening criteria for: (1) Small Generating Facilities of any size interconnecting with the Transmission Provider's High-Voltage Transmission System and (2) Small Generating Facilities larger than 10 MW interconnecting with the Transmission Provider's Low-Voltage Transmission System. Because of the potential for an Adverse System Impact, such requests to interconnect are best evaluated using the Scoping Meeting and Interconnection Studies.

51. A proposed interconnection that fails the Super-Expedited Screening Criteria may still qualify for interconnection by being evaluated using the Additional Review and three sequential Interconnection Studies: the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study. A proposed interconnection that fails the Expedited Screening Criteria may still qualify for interconnection by being evaluated using three sequential studies: the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study.

a. Super-Expedited Screening Criteria (Appendix 1 to the Proposed SGIP)

52. The Super-Expedited Screening Criteria[27] are designed to evaluate proposed interconnections for Precertified Small Generating Facilities no larger than 2 MW that are to be interconnected with the Transmission Provider's Low-Voltage Transmission System. If the proposed interconnection passes the Super-Expedited Screening Criteria, the Interconnection Customer and Transmission Provider would sign an Interconnection Agreement without any further review. However, if the proposed interconnection does not pass, the Interconnection Customer can request an Additional Review to be followed by, if necessary, an Interconnection Feasibility Study, Interconnection System Impact Study, and Interconnection Facilities Study.

b. Expedited Screening Criteria (Appendix 2 to the Proposed SGIP)

53. The Expedited Screening Criteria[28] are used to evaluate the proposed interconnection of Small Generating Facilities larger than 2 MW but no larger than 10 MW with the Transmission Provider's Low-Voltage Transmission System. If the proposed interconnection passes the Expedited Screening Criteria and the Transmission Provider believes that it can interconnect the Generating Facility safely and reliably, the Interconnection Customer would sign an Interconnection Agreement without any further review. However, if the Generating Facility does not pass the Expedited Screening Criteria, or if the Transmission Provider believes that the interconnection will undermine the safety and reliability of its Transmission System even though the proposed interconnection passes the Expedited Screening Criteria, the Parties would conduct a Scoping Meeting to determine the appropriate Interconnection Studies to be performed. However, as stated above, in order to encourage the Parties to use the Expedited Screening Criteria to the fullest extent possible, the Commission proposes that, if a subsequent Interconnection Feasibility Study indicates no Adverse System Impact, the Transmission Provider must bear the cost of the Interconnection Feasibility Study. If an Adverse System Impact is identified, however, the Interconnection Customer would have

[27] The Coalition SGIP referred to Super-Expedited Screening Criteria as the Primary Screening Criteria.

[28] The Coalition SGIP referred to Expedited Screening Criteria as the Impact Screening Criteria.

to pay for the Interconnection Feasibility Study.

6. Dispute Resolution (Proposed SGIP Section 2.11 and Proposed SGIA Article 8)

54. In the Small Generator Interconnection ANOPR, the Commission proposed that the Parties use the Commission's alternative dispute resolution service or any other informal services available to them to resolve disputes. The Commission also proposed that the outcome of the dispute resolution process would be binding if the Interconnection Customer so chooses.

55. The Coalition SGIAs and SGIPs propose using Technical Masters to help resolve disputes between the Parties. According to the Coalition proposal, these Technical Masters would be certified by the Commission and provided by the Commission to the Parties at minimal or no cost. The Coalition proposal identifies Technical Masters as "engineers with expertise in electric power transmission and distribution interconnection requirements who are qualified and independent."[29]

56. Several commenters[30] to the ANOPR take exception to the Commission's proposal that arbitration be binding if the Interconnection Customer so chooses. They argue that the Parties should be able to retain their rights of appeal when using the arbitration process.

57. The Proposed SGIP and Proposed SGIA would adopt the dispute resolution process in the Large Generator Interconnection Final Rule. The Commission endorses the use of Technical Masters and agrees that they must have the requisite expertise to review, and where possible, resolve technical issues raised by the Parties. The proposed Dispute Resolution procedures satisfy these requirements.[31] The Commission, however, declines to adopt the Coalition's proposal that it certify Technical Masters. Instead, the Commission proposes to maintain on its Web site a list of Technical Masters who may be called upon by the Parties in the event of a technical dispute. However, the Commission will neither evaluate nor certify persons that wish to be placed on the list.

58. With respect to the Interconnection Customer's ability to elect that arbitration be binding, we propose to adopt the language contained in the Large Generator Interconnection Final Rule, which provides that external arbitration would be binding on the Parties. However, the Arbitrator's final decision must be filed with the Commission if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Upgrades. Parties may comment on this proposal and explain whether and why large and small generators should be treated differently.

7. Queuing (Proposed SGIP Sections 4.4 and 4.7)

59. The Commission proposes that each Transmission Provider maintain a single queue per geographic area. A queue sequentially lists Interconnection Requests based upon the date and time they are complete. The Queue Position of each Interconnection Request determines the order of performing Interconnection Studies for each generator, if required, and the Interconnection Customer's cost responsibility for any Upgrades to the Transmitting Provider's Transmission System necessary to accommodate the Interconnection Request.

60. Queuing was discussed at a January 21, 2003 Technical Conference convened by Commission staff. Some conference participants suggested that the Commission require the use of a single queue for each geographic area, with Interconnection Requests being evaluated in the order in which they are received. Such an approach, it was argued, is fair, makes the queue easier to administer, and allows more efficient processing of Interconnection Requests, including the use of clustering and other study techniques. Clustering of studies allows a Transmission Provider to study multiple Interconnection Requests at the same time. Clustering may reduce study costs and allow multiple Interconnection Customers to share the cost of Upgrades. Other conference participants suggested creating multiple queues based on generator size. This approach, they argued, would prevent small generator interconnections, with their comparatively short study times, from being unreasonably delayed by large generators ahead of them in the queue.

61. While we here propose that each Transmission Provider maintain a single queue per geographic area, a Small Generator's Queue Position does not necessarily determine how long it takes to actually interconnect. In the Proposed SGIP, if a proposed interconnection passes either the Super-Expedited Screening Procedures or the Expedited Screening Procedures, the Interconnection Customer would have no cost responsibility for Upgrades. Accordingly, the Small Generator could be interconnected very quickly, regardless of its Queue Position.

62. If the proposed interconnection does not pass either the Super-Expedited Screening Procedures or the Expedited Screening Procedures, Interconnection Studies will be required to evaluate the proposal. And, if Upgrades are required, Queue Position may affect the Interconnection Customer's cost responsibility for the Upgrades. This is because Upgrades for interconnections higher in the queue may affect the need for Upgrades for interconnections lower in the queue. This would impact the cost of the interconnection for a particular Small Generator. However, as such costs for Small Generating Facilities may be relatively small or localized, we would permit the Interconnection Customer to ask to be interconnected out of queue order if it agrees to pay the full cost of the required Upgrades.

8. Parties to the Proposed SGIA (Proposed SGIA Article 9)

63. In general, the Commission does not address issues in this NOPR that were treated in the Large Generator Interconnection Final Rule unless parties propose that Small Generating Facilities be treated differently. However, in the Small Generator ANOPR process, parties raised this issue repeatedly, and for this reason the Commission includes a discussion of the issue.

64. Representatives of Interconnection Customers and representatives of Transmission Providers could not agree on whether the Transmission Owner should be a signatory to the SGIA, if the Transmission Provider and the Transmission Owner are different entities. The Commission proposes here the same approach taken in the Final Rule LGIA; that is, if the Transmission Owner is not also the Transmission Provider, both parties should sign the SGIA. We believe that this would better define the relationship among the Parties in one document, protect the Interconnection Customer and, therefore, facilitate the development of new generation resources. In an RTO or

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[29] Coalition SGIP, Attachment A Procedures Section 6, and Attachment B Procedures Section 1.11 (Nov. 12, 2002).

[30] *E.g.*, Bonneville Power Administration, Avista Corp., Central Maine Power Company, Public Service Company of New Mexico, and Public Service Electric and Gas Company.

[31] "[A]rbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration)." Article 27.2 of the LGIA in Standardization of Generator Interconnection Agreements and Procedures, Final Rule, Docket No. RM02–1–000 (issued concurrently with this NOPRA).

ISO where the Transmission Provider is not the Transmission Owner, the RTO's or ISO's compliance filing would be able to propose a modified interconnection agreement that provides different respective rights and obligations in the region. In other cases, we do not believe that the three party agreement would create an undue burden for either entity. Accordingly, the Commission proposes to require that both the Transmission Owner and the Transmission Provider, if applicable, sign the SGIA.

9. Affected Systems (Proposed SGIP Section 2.8)

65. The Coalition's proposal acknowledges that the interconnection of a Small Generator with a Transmission Provider's Transmission System may directly or indirectly affect other electric systems. Interconnection Customers generally prefer that the Transmission Provider be responsible for coordinating and performing all necessary Interconnection Studies and equipment Upgrades with the owner or operator of the Affected System.[32] Interconnection Customers also prefer that their interconnections not be made conditional on the completion of these studies and Upgrades. Transmission Providers, however, maintain that while they would use their best efforts to coordinate and complete necessary Affected System Interconnection Studies and Upgrades in time for the interconnection of a Small Generator, they cannot compel the owner/operator of the Affected System to perform within the specified time lines.

66. The Commission proposes to continue treating interconnection and delivery as separate aspects of transmission service and allowing Interconnection Customers to request interconnection separately from the delivery component of transmission service. In the vast majority of circumstances, interconnection alone is unlikely to affect the reliability of another electric system, especially if the generator being interconnected is a Small Generator. However, in those rare instances in which the mere interconnection itself may cause a reliability or safety problem on an Affected System, the Commission proposes to adopt the approach of Order No. 888 for Upgrades required to protect Affected Systems from reliability problems due to delivery service.[33] Under Order No. 888, the Transmission Provider is required to assist the customer in coordinating with the Affected System any Upgrades needed to protect the reliability of that system.[34] Also, we will allow the Transmission Provider to coordinate completion of Network Upgrades to its own Transmission System with the completion of the necessary Affected System Upgrades.[35]

67. Under Order No. 888, economic losses (*i.e.*, extra generating costs from having to redispatch generation) do not justify delaying the provision of the delivery component of transmission service, and the Commission proposes to adopt the same standard here for interconnections. As mentioned in the OATT, the Commission's Dispute Resolution Service is available should the Interconnection Customer wish to challenge the Transmission Provider's decision to delay construction pending completion of the Affected System's Upgrades.[36]

68. We also note that NERC Planning Standards already provide that Transmission Providers should work together to minimize effects on each other's systems. Whenever a Transmission Provider adds its own new generation to its Transmission System, it may cause reliability or safety effects on other systems that require coordination with the Affected Systems. A Transmission Provider must offer any Interconnection Customer service that is comparable to the service it provides for interconnections of its own generation.

69. The Commission notes that the proposed treatment of Affected Systems is comparable to that contained in the Large Generator Interconnection Final Rule and requests comments on if and why this approach should be modified for Small Generator interconnections.

10. Pricing/Cost Recovery for Upgrades (Proposed SGIA Article 5)

70. The Commission's current interconnection pricing policy for Transmission Systems that are operated by non-independent entities is to allocate the costs of the new facilities based on whether they are at or beyond the Point of Interconnection. Those transmission facilities that are at or beyond the Point of Interconnection are considered Network Upgrades, and are initially paid for by the Interconnection Customer. The costs are then refunded to the Interconnection Customer by the Transmission Provider in the form of transmission credits (with interest), with the result being that the costs of the Network Upgrades are rolled into the prices paid by all transmission customers.[37] Interconnection Facilities (meaning facilities on the Generating Facility's side of the Point of Interconnection) are considered sole use facilities and, accordingly, are directly assigned to and paid for by the Interconnection Customer.[38] Consistent with the Large Generator Interconnection Final Rule, we propose to retain this current pricing policy for Small Generating Facilities interconnecting with a Transmission System operated by a non-independent entity. The Commission seeks comments on whether this approach is appropriate for Small Generator interconnections. We also invite commenters to recount their recent experiences with interconnecting distributed generators to the Distribution System, in particular the process for determining whether Distribution Upgrades were necessary, and the cost assignment of those Upgrades.

71. For the Transmission Provider, such as an RTO or ISO, that is an independent entity, our current policy, and the policy that we adopted in the Large Generator Interconnection Final Rule, is to allow flexibility regarding the interconnection pricing policy that an independent entity may propose to adopt, subject to Commission approval. Also in that Final Rule, we permitted a Regional State Committee to establish criteria that an independent entity would use to determine which transmission system upgrades, including those required for generator interconnections, should be subject to incremental pricing ("participant funding") and which should not. The

[32] The Proposed SGIA and the Proposed SGIP define Affected System as "an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection."

[33] *See* section 21 of the OATT. *See also* Tampa Electric Co., 103 FERC ¶ 61,047 (2003), and Nevada Power, 97 FERC ¶ 61,227 (2001), *reh'g denied*, 99 FERC ¶ 61,347 (2002); *but see* American Electric Power Service Corporation, 102 FERC ¶ 61,336 (2003).

[34] Section 21.1 of the OATT states that: "The Transmission Provider will undertake reasonable efforts to assist the Transmission Customer in obtaining such arrangements, including without limitation, provide any information or data required by such other electric system pursuant to Good Utility Practice."

[35] Section 21.2 of the OATT states that: "Transmission Provider shall have the right to coordinate construction on its own system with the construction required by others. The Transmission Provider, after consultation with the Transmission Customer and representatives of such other systems, may defer construction of its new transmission facilities, if the new transmission facilities on another system cannot be completed in a timely manner."

[36] *See* Section 21.2 of the OATT.

[37] *See* Consumer Energy Co., 95 FERC ¶ 61,233, *reh'g denied*, 96 FERC ¶ 61,132 (2001).

[38] *See* Public Service Company of Colorado, 59 FERC ¶ 61,311 (1992), *reh'g denied*, 62 FERC ¶ 61,013 (1993).

Large Generator Interconnection Final Rule also permitted, for a period of transition to the start of RTO or ISO operations, not to exceed a year, participant funding to be used for Network Upgrades for a generator interconnection as soon as an independent entity has been approved by the Commission and the affected states. The Commission proposes to adopt the same policies for Small Generating Facilities that interconnect with a Transmission System operated by an independent entity. We seek comments on whether this approach is appropriate for Small Generating Facilities which interconnect to a Transmission System.

72. Because a Small Generating Facility may interconnect to a Transmission Provider's jurisdictional distribution facility for the purpose of making a sale of electricity at wholesale in interstate commerce, this NOPR also addresses cost recovery for Distribution Upgrades at or beyond the Point of Interconnection.[39] Consistent with the Large Generator Interconnection Final Rule, we here propose that the costs of Distribution Upgrades would be directly assigned to the Interconnection Customer. This is because Distribution Upgrades do not generally benefit all users. Distribution facilities generally deliver electricity to particular localities, and do not serve a bulk delivery service for the entire system as is the case for transmission facilities. Accordingly, it is not appropriate that all users share the cost of Distribution Upgrades. Rather, the Interconnection Customer itself should be solely responsible for the cost of Distribution Upgrades.

11. Liability, Indemnity, Force Majeure, and Insurance (Proposed SGIA Articles 6.13, 6.14, and 6.16)

73. In the Large Generator Interconnection Final Rule, the Commission adopted indemnification and Force Majeure provisions different from those applied to transmission service that appear in the OATT, and added a new provision limiting liability for consequential damages. This NOPR proposes a similar approach. The Commission asks commenters to address whether Small Generators should be treated differently from Large Generators with respect to liability, indemnity, and Force Majeure.[40]

74. Consistent with the Large Generator Interconnection Final Rule that is being issued concurrently with the issuance of this NOPR, we are including a provision in the proposed SGIA requiring the Parties to maintain minimum insurance coverage. However, we are not proposing specific coverage amounts in this NOPR. We request comments on whether the Small Generator Interconnection Final Rule should also include an insurance provision, and, if so, whether the provision should differ from the one contained in the Final Rule LGIA, what kind of insurance should be required, and at what level of coverage. Commenters should address how best to balance any need for insurance against the costs of insurance since such costs may discourage Small Generating Facilities from participating in the wholesale market.

75. The Commission also asks commenters to address two other issues regarding this proposed provision: first, should required insurance coverage coincide with the size of the facility? For example, a 20 MW generator would be subject to higher coverage amounts than a 10 MW generator, which itself would be subject to higher coverage amounts than a 5 MW generator. Similarly, should there be a megawatt cutoff that would exempt certain Small Generators (*e.g.*, those below a certain size) from some or all of the minimum insurance requirements. Second, should coverage types and amounts vary according to the type of generator so that, for example, solar or wind facilities would require different insurance coverages than gas-fired facilities.

12. Variations From the Final Rule on Compliance.

76. Regarding variations allowed from the Final Rule SGIP and Final Rule SGIA, consistent with the approach adopted in the Large Generator Interconnection Final Rule, we propose to apply a regional differences rationale to accommodate variations from the Final Rule during compliance, but with certain restrictions. We propose that a non-independent transmission provider (such as a Transmission Provider that owns generators or has Affiliates that own generators) and an RTO or ISO should be treated differently because an independent RTO or ISO does not raise the same level of concern regarding undue discrimination. Accordingly, we propose to allow an RTO or ISO greater flexibility than that allowed under the regional differences rationale to propose variations from the Final Rule provisions, as further discussed below.

77. Because we intend to supplement rather than supplant any standardization work that regional reliability groups already have undertaken regarding interconnection, we propose to permit a Transmission Provider, on compliance, to offer variations based on existing regional reliability requirements as part of its regional differences justification. Because we seek greater standardization of interconnection terms and conditions, we propose to permit a non-independent Transmission Provider to use the regional differences justification only due to established regional reliability standards.

78. For other proposed deviations from the Final Rule SGIP and Final Rule SGIA not made in response to established regional reliability requirements, we propose that a non-independent transmission provider justify variations in non-price terms and conditions of the Final Rule SGIP and Final Rule SGIA using the approach taken in Order No. 888, which allows them to propose variations on compliance that are "consistent with or superior to" the OATT.

79. To clarify, if on compliance a non-RTO or ISO Transmission Provider offers a variation from the Final Rule SGIP and Final Rule SGIA and the variation is in response to established (*i.e.*, approved by the Applicable Reliability Council) reliability requirements, then it would have to justify its variation using the regional difference rationale. If the variation is for any other reason, the non-RTO or ISO Transmission Provider must present its justification for the variation using the "consistent with or superior to" rationale that the Commission applies to variations from the OATT in Order No. 888.

80. With respect to an RTO or ISO, at the time its compliance filing is made, as discussed above, we propose to allow it to seek "independent entity variations" from the Final Rule pricing and non-pricing provisions. This is a balanced approach that recognizes that an RTO or ISO has different operating characteristics depending on its size and location and is less likely to act in an unduly discriminatory manner than a Transmission Provider that is a market participant. The RTO or ISO therefore would have greater flexibility to customize its interconnection procedures and agreements to fit regional needs.

81. Last, we invite comment on whether the proposed rule as drafted makes adequate provision to meet the

[39] The costs of all Interconnection Facilities, whether owned by the Small Generator or the Transmission provider, are directly assigned to the Interconnection Customer.

[40] The White Paper proposed that the Final Rule in Docket No. RM01–12–000 would limit the Liability of Regional Transmission Organizations, Independent System Operators, and transmission owners that belong to RTOs and ISO.

needs of the breadth of small generation technologies and fuel types (within the scope of those matters which are within the responsibility of this agency).

B. Summary of the Proposed SGIP and the Proposed SGIA

1. Standard Small Generator Interconnection Procedures (Proposed SGIP)

82. The Proposed SGIP sets forth the procedures that Interconnection Customers and Transmission Providers would be required to follow during the interconnection process, culminating in the signing of an interconnection agreement by the Parties.

83. *Section 1. Definitions*—Section 1 of the Proposed SGIP and Article 1 of the Proposed SGIA contain defined terms. For the sake of consistency, the proposed SGIP and proposed SGIA contain one common set of terms.

84. *Section 2. General Provisions*—Proposed Section 2 contains directions on which sections of the Proposed SGIP govern the interconnection of various sizes of Small Generating Facilities. Site Control, Material Modifications to a proposed Generating Facility, the coordination of studies between the Transmission Provider and Affected Systems, and the use of a single Point of Interconnection for multiple generators are also addressed. The Transmission Provider shall maintain records of all Interconnection Requests received, the times required to complete Interconnection Request approvals and disapprovals, and explanations for the actions taken on the Interconnection Requests.

85. Section 3. Super-Expedited Procedures for Interconnecting a Small Generating Facility No Larger than 2 MW to a Low-Voltage Transmission System [41]—The Transmission Provider shall use the Super-Expedited Screening Criteria to evaluate Interconnection Requests submitted under Section 3. Interconnection Customers whose Interconnection Requests fail the Super-Expedited Screening Criteria may request Additional Review and, if necessary, follow the procedures specified in Section 4.

86. Section 4. Procedures for Interconnecting a Small Generating Facility to a High-Voltage Transmission System and a Small Generating Facility Larger than 2 MW to a Low-Voltage Transmission System [42]—Proposed Section 4.3 sets forth special Expedited Procedures for Small Generating Facilities no larger than 10 MW interconnecting with Low-Voltage Transmission Systems, using the Expedited Screening Criteria. Proposed Section 4.4 describes queuing priority. Proposed Sections 4.5–4.8 describe the accelerated procedures (as compared with the procedures in the Large Generator Interconnection Final Rule) for interconnecting Small Generating Facilities to High-Voltage Transmission Systems and Small Generating Facilities Larger than 10 MW to Low-Voltage Transmission Systems. These procedures include a Scoping Meeting and various Interconnection Studies that are used to evaluate Interconnection Requests.

87. *Charts*—Charts include a diagram of a typical Small Generating Facility installation and flowcharts depicting the Proposed Section 3 and Section 4 procedures.

88. *Appendices*—Appendix 1 lists the Super-Expedited Screening Criteria that are applicable to the interconnection of Precertified Small Generating Facilities no larger than 2 MW with Low-Voltage Transmission Systems. Appendix 2 lists the Expedited Screening Criteria that are applicable to the interconnection of Small Generating Facilities no larger than 10 MW with Low-Voltage Transmission Systems. Appendices 3–5 are pro forma agreements for the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study, respectively. The Commission does not expect that these agreements would be filed with the Commission when executed. Appendix 6 is the standard Interconnection Request (Application Form). Appendix 7 is the Standard Small Generator Interconnection Agreement.

2. Standard Small Generator Interconnection Agreement (Proposed SGIA)

89. The Proposed SGIA sets forth the legal rights and obligations of each Party, addresses cost responsibility issues, establishes Milestones for the completion of the interconnection, and lays out a process for the resolution of disputes.

90. *Article 1. Definitions*—Section 1 of the Proposed SGIP and Article 1 of the Proposed SGIA contain defined terms. For the sake of consistency, the Proposed SGIP and Proposed SGIA contain one common set of terms.

91. *Article 2. Scope and Limitations of Agreement*—Proposed Article 2 describes responsibilities of the Parties to construct, interconnect, operate, and maintain the Generating Facility and the Transmission Provider's Transmission System.

92. *Article 3. Inspection, Testing, Authorization, and Right of Access*—Proposed Article 3 describes Generating Facility testing and inspection requirements. The Transmission Provider must provide written authorization before the Interconnection Customer begins Parallel Operation. Proposed Article 3 also gives the Transmission Provider certain limited rights to access Interconnection Customer's property.

93. *Article 4. Effective Date, Term, Termination, and Disconnection*—Proposed Article 4 describes the Term of the Proposed SGIA and also addresses default (including cure), termination, and temporary disconnection rights.

94. *Article 5. Cost Responsibility, Milestones, Billing, and Payment*—Proposed Article 5 assigns financial responsibility for the costs of owning, operating, maintaining, repairing, and replacing the Interconnection Customer's Interconnection Facilities, and operating, maintaining, repairing, and replacing Transmission Provider's Interconnection Facilities. The Transmission Provider and the Interconnection Customer shall agree on Milestones related to the construction of the facilities for which each Party is responsible. Financial security arrangements and billing and payment obligations also are described.

95. *Article 6. Miscellaneous*—Proposed Article 6 contains a number of provisions, including: that the laws of the state where the Point of Interconnection is located will govern, the SGIA may be amended upon agreement of the Parties as approved by the Commission, expectations regarding system infrastructure and operational security, and provisions for successors or assigns. Also included are provisions governing rights of third party beneficiaries, waiver, notice and communications between the Parties, severability, Force Majeure, default, the use of subcontractors, consequential damages, environmental releases, and insurance. Several of these provisions were not included in the Coalition SGIAs. Commenters are requested to speak to whether these provisions should be modified in the Final Rule SGIA to accommodate the needs of Small Generators.

96. *Article 7. Confidentiality*—Proposed Article 7 describes how Confidential Information must be treated by the Parties.

97. *Article 8. Disputes*—Proposed Article 8 describes the Dispute Resolution procedure.

[41] *See* Appendix A for a flowchart depicting this procedure.

[42] *See* Appendix B for a flowchart depicting this procedure.

98. *Article 9. Signatures*—Proposed Article 9 provides for signatures of the Interconnection Customer, Transmission Provider and, if applicable, the Transmission Owner.

99. *Appendices*—The proposed SGIA includes the following additional information: (1) Description and costs of the Generating Facility, Interconnection Facilities, and metering equipment, (2) a one-line diagram depicting the Generating Facility, Interconnection Facilities, metering equipment, and Upgrades, (3) Milestones, (4) additional operating requirements for the Transmission Provider's Transmission System and Affected Systems needed to support the Interconnection Customer's needs, and (5) the Transmission Provider's description of its Network Upgrades and Distribution Upgrades and a best estimate of their costs.

III. Public Reporting Burden and Information Collection Statement

100. The following collections of information contained in this proposed rule are being submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995. The Commission identifies the information provided under part 35 as FERC–516A.

101. Comments are solicited on the Commission's need for this information, whether the information would have practical use, the accuracy of the provided burden estimates, ways to enhance the quality, use, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques. The following burden estimate includes the cost of preparing and submitting tariff changes to comply with the Commission's proposed regulation.

Public Reporting Burden:

ESTIMATED ANNUAL BURDEN

Data Collection FERC–516A	Number of Respondents	Number of Responses	Hours Per Response	Total Annual Hours
Reporting	176	1	25	4,400
Recordkeeping	176	1	2	352
Totals				4,752

Total Annual Hours for Collection (Reporting + Recordkeeping) = 4,400 hours (176 respondents × 1 filing × 25 hours) + 352 hours (176 respondents × 1 filing × 2 hours to develop interconnection agreement format) = 4,752 hours.

Information Collection Costs: The Commission seeks comment on the costs to comply with these requirements. It has projected the average annualized cost for all respondents to be:

Annualized Startup Costs—Staffing requirements to review and prepare an interconnection agreement = $220,000 (176 respondents × $1,250 (25 hours @ $50 hourly rate)).

Annualized Costs (Operation & Maintenance)—The cost is equal to $5,984 (176 respondents × $34 (2 hours @ $17 hourly rate).

Total Annualized Costs (Startup and O&M) = $225,984.

102. OMB regulations require OMB to approve certain information collection requirements imposed by agency rule. 5 CFR 1320.11. Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Title: FERC–516A, Small Generator Interconnection Procedures and Agreement.

Action: Proposed Data Collections.

OMB Control No: To be determined.

The Applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit.

Frequency of Responses: One-time implementation.

Necessity of Information: The proposed rule would revise the reporting requirements contained in 18 CFR part 35. The Commission is proposing a standard SGIP and standard SGIA that public utilities must adopt. The adoption of these procedures and agreement will: (1) Reduce interconnection time and costs for Interconnection Customers and Transmission Providers, (2) limit opportunities for Transmission Providers to favor their own generation, (3) ease entry for new generation, and (4) encourage needed investment in the generation and transmission infrastructure.

103. Interconnection plays a growing crucial role in bringing much needed generation into the market to meet the needs of electricity customers. However, requests for interconnection frequently result in complex technical disputes about interconnection feasibility, cost and cost responsibility. The Commission expects that a standard SGIP and standard SGIA will reduce interconnection costs and time for Interconnection Customers and Transmission Providers, resolve most interconnection disputes, minimize opportunities for undue discrimination, foster increased development of economic generation, and improve system reliability.

104. *Internal Review:* The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Markets, Tariffs and Rates will use the data included in filings under section 203 and 205 of the Federal Power Act to evaluate efforts for the interconnection and coordination of the U.S. electric transmission system and to ensure the orderly implementation of the interconnection procedures and interconnection agreement as well as for general industry oversight. These information requirements conform to the Commission's plan for efficient information collection, communication, and management within the electric power industry.

105. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, E-mail: *michael.miller@ferc.gov*.

106. For submitting comments concerning the collection of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: (202) 395–7285, e-mail *pamelabeverly@oirasubmission @omb.eop.gov*.

IV. Environmental Analysis

107. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[43] The Commission concludes that promulgating the proposed rule would not present a major federal action having a significant adverse impact on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[44] The proposed rule falls within the categorical exemption provided in the Commission's regulations for approval of actions under section 205 of the Federal Power Act relating to the filing of schedules containing all rates and charges for any transmission or sale for resale subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications and services.[45] Consequently, neither an environmental assessment nor an environmental impact statement is required.

V. Regulatory Flexibility Act Certification

108. The Regulatory Flexibility Act of 1980 (RFA)[46] generally requires a description and analysis of proposed rules that will have significant economic impact on a substantial number of small entities. This rule applies to public utilities that own, control or operate interstate transmission facilities, not to electric utilities per se. The total number of public utilities that, absent waiver, would have to modify their current open access transmission tariffs by filing the Interim Tariff is 176.[47] Of these only 6 public utilities, or less than two percent, dispose of 4 million MWh or less per year.[48] The Commission does not consider this a substantial number, and in any event, these small entities may seek waiver of these requirements.[49]

[43] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[44] 18 CFR part 380 (2003).

[45] 18 CFR 380.4(a)(15)(16) (2003).

[46] 5 U.S.C. 601–612 (2000).

[47] The sources for this figure are FERC Form No. 1 and FERC Form No. 1–F data.

[48] *Id.*

[49] The Regulatory Flexibility Act defines a "small entity" as "one which is independently owned and operated and which is not dominant in its field of operation." *See* 5 U.S.C. 601(3) and 601(6) (2000); 15 U.S.C. 632(a)(1) (2000). In *Mid-Tex Elec. Coop. v. FERC*, 773 F.2d 327, 340–343 (DC Cir. 1985), the court accepted the Commission's conclusion that, since virtually all of the public utilities that it regulates do not fall within the meaning of the term "small entities" as defined in the Regulatory Flexibility Act, the Commission did not need to prepare a regulatory flexibility analysis in connection with its proposed rule governing the allocation of costs for construction work in progress (CWIP). The CWIP rules applied to all public utilities. The Small Generator interconnection rules will apply only to those public utilities that own, control or operate interstate transmission facilities. These entities are a subset of the group of public utilities found not to require preparation of a regulatory flexibility analysis for the CWIP rule.

VI. Comment Procedures

109. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss.

110. Comments are due October 3, 2003. Comments must refer to Docket No. RM02–12–000, and must include the commenter's name, the organization they represent, if applicable, and their address. Comments may be filed either in electronic or paper format. Comments should be double spaced and include an executive summary.

111. To facilitate the Commission's review of the comments, commenters are requested to identify each specific issue posed by the NOPR that their discussion addresses and to use headings that clearly identify the relevant Proposed SGIA article and Proposed SGIP section. Additional issues that commenters wish to raise should be identified separately. The Commission also invites commenters to explain the rationale for their support for any proposal in this NOPR.

112. Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats, and commenters may attach additional files with supporting information in certain other file formats. Commenters filing electronically do not need to make a paper filing. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street NE., Washington, DC 20426.

113. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

114. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

115. From FERC's Home page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

116. User assistance is available for FERRIS and the FERC's Web site during normal business hours from our Help line at (202) 502–8222 or the Public Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission.

Magalie R. Salas,

Secretary.

In consideration of the foregoing, the Commission proposes to amend Part 35, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a-825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. In § 35.28, paragraph (g) is added to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(g) Standard interconnection procedures and agreement for small generators.

(1) Every public utility that is required to have on file a non-discriminatory open access transmission tariff under this section must amend such tariff by adding the standard small generator interconnection procedures and agreement contained in Order

No. _____, FERC Stats. & Regs. ¶ _____ (Final Rule on Small Generator Interconnection) or such other small generator interconnection procedures and agreement as may be approved by the Commission consistent with Order No. _____, FERC Stats. & Regs. ¶ _____ (Final Rule on Small Generator Interconnection).

(i) The amendment required by this paragraph (g)(1) must be filed no later than [insert date that is 60 days after the effective date of the Final Rule].

(ii) Any public utility that seeks a deviation from the standard interconnection procedures and agreement contained in Order No. _____, FERC Stats. & Regs. ¶ _____ (Final Rule on Small Generator Interconnection), must demonstrate that the deviation is consistent with the principles of Order No. _____, FERC Stats. & Regs. ¶ _____ (Final Rule on Small Generator Interconnection).

(2) The non-public utility procedures for tariff reciprocity compliance described in paragraph (e) of this section are applicable to the standard small generator interconnection procedures and agreement.

Note: The following appendices will not be published in the Code of Federal Regulations

BILLING CODE 6718-01-P

Appendix A

Flow Chart of Super-Expedited Procedures for Interconnecting a Small Generating Facility No Larger than 2 MW to a Low-Voltage Transmission System

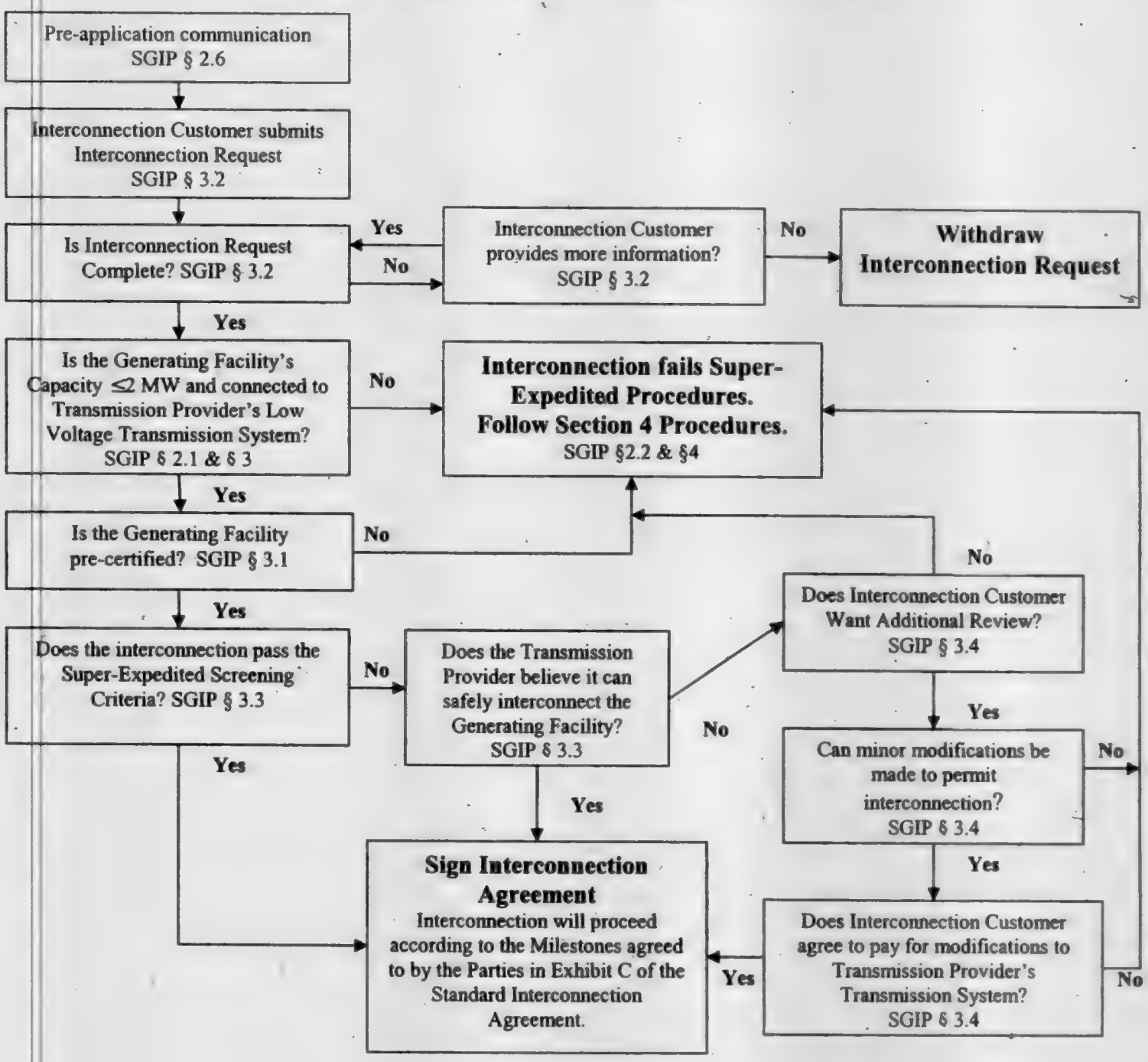

Appendix B

Flow Chart of Procedures for Interconnecting a Small Generating Facility to a High-Voltage Transmission System and a Small Generating Facility Larger than 2 MW to a Low-Voltage Transmission System

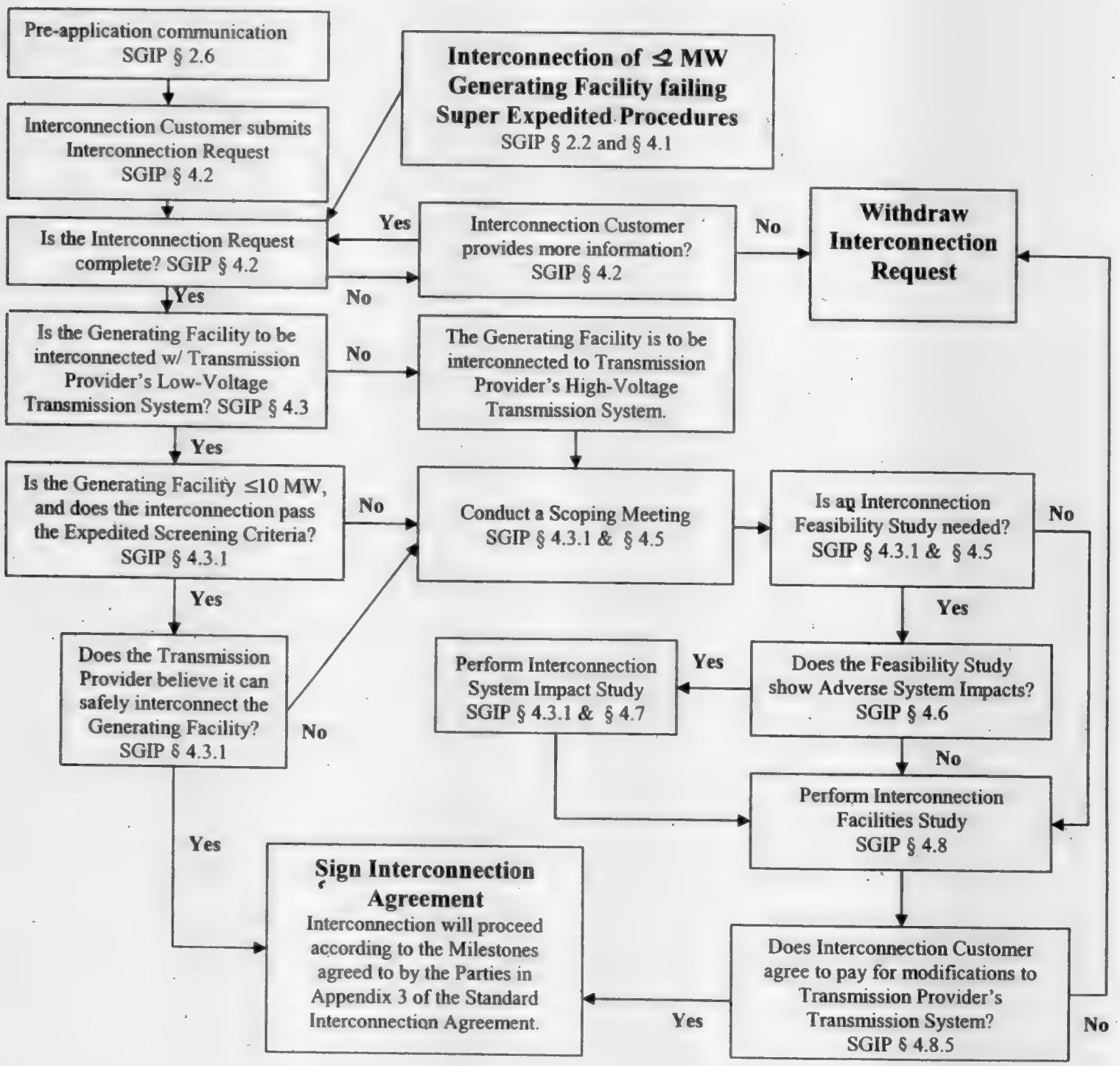

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Appendix C to the Small Generator Interconnection Preamble

Standard Small Generator Interconnection Procedures (SGIP) Including Standard Small Generator Interconnection Agreement (SGIA)

(Applicable To Generating Facilities No Larger Than 20 MW)

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- Appendix 7—Standard Small Generator Interconnection Agreement

Section 1. Definitions

When used with initial capitalization, the following terms shall have the meanings specified or referred to below. Terms used in this document with initial capitalization that are not defined below shall have the meanings specified in the section in which they are used or as specified in the Transmission Provider's Open Access Transmission Tariff (OATT), as may be amended from time to time.

Additional Review shall mean a technical evaluation by the Transmission Provider of a proposed interconnection that has failed to pass the Super-Expedited Screening Criteria. The review will determine whether minor modifications to the Transmission Provider's Transmission System (*e.g.*, changing meters, fuses, relay settings) can be performed in order to enable the interconnection to be made safely and reliably.

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Applicable Laws and Regulations shall mean all duly promulgated applicable Federal, State and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the Standard Small Generator Interconnection Agreement.

Breaching Party shall mean a Party that is in Breach of the Standard Small Generator Interconnection Agreement.

Business Day shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Commercial Operation Date of a unit shall mean the date on which the Interconnection Customer commences commercial operation of the unit at the Generating Facility after testing of such unit has been completed.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by NERC.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 6.17 of the Standard Small Generator Interconnection Agreement.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean the Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the Standard Small Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

Emergency Condition shall mean a condition or situation: (1) That in the judgement of the Party making the claim is imminently likely to endanger life or property, or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected, or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; *provided*, that the Interconnection Customer is not obligated by the Standard Small Generator Interconnection Agreement to possess black start capability.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Expedited Procedures shall mean the process described in the Standard Small Generator Interconnection Procedures for (1) a Generating Facility no larger than 10 MW interconnecting with a Transmission Provider's Low-Voltage Transmission System, and (2) a Generating Facility failing the Super-Expedited Procedures. The Expedited Procedures use the Expedited Screening Criteria to determine whether the Small Generating Facility can be interconnected without any further Interconnection Studies.

Expedited Screening Criteria shall mean the technical variables that are employed in the Expedited Procedures for evaluating the impact of interconnecting the Small Generating Facility to the Transmission Provider's Transmission System as it exists at the time of the analysis.

Fault Current shall mean the current that is produced by an electrical fault, such as single-phase to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase. The Fault Current is several times larger in magnitude than the current that normally flows through a circuit. A protective device must be able to interrupt this Fault Current within a few cycles. The Fault Current increases when a new generator is interconnected.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. 791a *et seq.*

FERC shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing.

Generating Facility shall mean Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

High-Voltage shall mean voltage levels at or above 69 kV.

IEEE shall mean the Institute of Electrical and Electronics Engineers.

Initial Review shall mean the Transmission Provider's review of the Interconnection Customer's Interconnection Request using the Super-Expedited Screening Criteria described in Section 3 of the Standard Small Generator Interconnection Procedures.

In-Service Date shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean any entity, including the Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with the Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment, as identified in Appendix 2 of the Standard Small Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean the Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by the Transmission Provider or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System. The scope of the study is defined the Standard Small Generator Interconnection Procedures.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Small Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission Provider's Transmission System, the scope of which is described in the Standard Small Generator Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Small Generator Interconnection Procedures for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 6 to the Standard Small Generator Interconnection Procedures, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Small Generator Interconnection Agreement and, if applicable, the Transmission Provider's Tariff.

Interconnection Study shall mean any of the following studies: the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the Standard Small Generator Interconnection Procedures.

Interconnection System Impact Study shall mean an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if the Generating Facility

were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Standard Small Generator Interconnection Procedures.

Interconnection System Impact Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Small Generator Interconnection Procedures for conducting the Interconnection System Impact Study.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Low-Voltage shall mean voltage levels below 69 kV.

Material Modification shall mean a modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Milestones shall mean the events and associated dates listed in Appendix 3 of the Standard Small Generator Interconnection Agreement. The Milestones describe events that are to be met by either Party as the Generating Facility proceeds to interconnection and Parallel Operation.

MW shall mean the abbreviation for megawatts, which is used to describe the capacity of a generating facility.

NERC shall mean the North American Electric Reliability Council or its successor organization.

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's Transmission System to accommodate the interconnection of the Generating Facility to the Transmission Provider's Transmission System.

Operating Requirements shall mean any operating and technical requirements that may be applicable due to Regional Transmission Organization, Independent System Operator, Control Area, or Transmission Provider requirements, including those set forth in Appendix 4 of the Standard Small Generator Interconnection Agreement.

Parallel Operation shall mean the two-way flow of power between a generator and a Transmission System. Generators that operate in parallel with a Transmission System require additional protection and control devices. This may be contrasted with a stand-alone generator that operates isolated from the utility company's electric system.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix 2 of the Standard Small Generator Interconnection Agreement, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

Point of Common Coupling shall mean the point in the interconnection of the Generating Facility with Transmission Provider's Transmission System at which the harmonic limits are applied.

Point of Interconnection shall mean the point, as set forth in Appendix 2 of the Standard Small Generator Interconnection Agreement, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

Precertified shall describe a Generating Facility if an identical sample of the manufacturer's model has been submitted to a national testing laboratory and found, after appropriate testing, to be in compliance with applicable consensus industry operational and safety standards.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Reasonable Efforts shall mean, with respect to an action required to be attempted or taken by a Party under the Standard Small Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Rules shall mean the rules promulgated by FERC relating to the interconnection of generators.

Scoping Meeting shall mean the meeting between representatives of the Interconnection Customer and Transmission Provider conducted for the purpose of discussing alternative interconnection options, to exchange information including any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Secondary Network shall mean a type of Low-Voltage electric system that is generally used in large metropolitan areas that are densely populated in order to provide high reliability of service (also known as secondary grid network or area network).

Site Control shall mean documentation reasonably demonstrating: (1) ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility, (2) an option to purchase or acquire a leasehold site for such purpose, or (3) an exclusivity or other business relationship between the Interconnection Customer and the entity having the right to sell, lease or grant the Interconnection Customer the right to possess or occupy a site for such purpose.

Small Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of no more than 20 MW.

Standard Small Generator Interconnection Agreement (SGIA) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Small Generating Facility, that is included in the Transmission Provider's Tariff.

Standard Small Generator Interconnection Procedures (SGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Small Generating Facility that are included in the Transmission Provider's Tariff.

Spot Network shall mean a type of Low-Voltage system found within modern commercial buildings to provide high reliability of service. Spot Networks generally use 12 kV to 480/277 volt vaults on site.

Super-Expedited Procedures shall mean the process described in Section 3 of the Standard Small Generator Interconnection Procedures for Generating Facilities no larger than 2 MW interconnecting with Transmission Provider's Low-Voltage Transmission System. The Super-Expedited Procedures use the Super-Expedited Screening Criteria to determine whether the proposed interconnection may cause an Adverse System Impact on Transmission Provider's Transmission System.

Super-Expedited Screening Criteria shall mean the technical variables that are employed in the Super-Expedited Procedures for evaluating the interconnection of a Small Generating Facility no larger than 2 MW to a Transmission Provider's Low-Voltage Transmission System.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.

Tariff shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the FERC, and as amended or supplemented from time to time, or any successor tariff.

Technical Master shall mean a person, as described in Article 8 of the Standard Small Generator Interconnection Agreement, with relevant technical experience selected to adjudicate disputes between the Parties.

Term shall mean the duration of the Standard Small Generator Interconnection Agreement.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Standard Small Generator Interconnection Agreement to the extent necessary.

Transmission Provider shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled, or operated by the Transmission Provider from the Point of

Change of Ownership to the Point of Interconnection as identified in Appendix 2 of the Standard Small Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. The Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

Upgrades shall mean the required additions and modifications to the Transmission Provider's Transmission System at or beyond the Point of Interconnection. Upgrades may be Network Upgrades or Distribution Upgrades. Upgrades do not include Interconnection Facilities.

Section 2. General Provisions

2.1 An Interconnection Request to interconnect a Generating Facility no larger than 2 MW with Transmission Provider's Low-Voltage Transmission System shall be evaluated under the Super-Expedited Procedures set forth in Section 3 of these Procedures. If the Generating Facility fails to pass the procedures set forth in Section 3, it may then be evaluated pursuant to Section 4 of these Procedures.

2.2 An Interconnection Request to interconnect: (1) A Generating Facility larger than 2 MW but no larger than 20 MW with Transmission Provider's Low-Voltage Transmission System, or (2) a Generating Facility with Transmission Provider's High-Voltage Transmission System, or (3) a Generating Facility that does not pass the Super-Expedited Procedures as set forth in Section 3 of these Procedures, shall be evaluated pursuant to Section 4 of these Procedures.

2.3 If the Interconnection Request is for a Generating Facility that includes multiple energy production devices at a site for which Interconnection Customer seeks a single Point of Interconnection, the Interconnection Request shall be evaluated on the basis of the aggregate capacity of the multiple devices.

2.4 If the Interconnection Request is for an increase in capacity for an existing Generating Facility, the Interconnection Request shall be evaluated on the basis of the new total capacity of the Generating Facility.

2.5 Transmission Provider shall maintain records of all Interconnection Requests received, the times required to complete Interconnection Request approvals and disapprovals, and justifications for the actions taken on the Interconnection Requests. Transmission Provider shall keep such records on file for three years.

2.6 To assist a prospective Interconnection Customer, Transmission Provider shall designate a contact person from whom information on the Interconnection Request and about Transmission Provider's Transmission System can be obtained through informal requests regarding a proposed project. Such information should include studies and other materials useful to an understanding of the feasibility of an interconnection at a particular point on Transmission Provider's Transmission System, except to the extent providing such materials would violate security requirements or confidentiality agreements, or be contrary to law or the Commission's Regulations. Transmission Provider shall comply with reasonable requests for access to or copies of such studies.

2.7 Transmission Provider shall coordinate the conduct of any studies required to determine the impact of the Interconnection Request on Affected Systems and include those results in the applicable study within the time frame specified in these procedures. Transmission Provider shall include Affected System representatives in all meetings held with Interconnection Customer as required by these procedures. Interconnection Customer shall cooperate with Transmission Provider in all matters related to the conduct of studies and the determination of modifications to Affected Systems. An Affected System that is a Transmission Provider itself shall cooperate with Transmission Provider in all matters related to the conduct of studies and the determination of modifications to Affected Systems. In no instance shall the processing of the Interconnection Request be delayed as a result of inaction by an Affected System.

2.8 Once an Interconnection Request is deemed complete, any Material Modification to the proposed Generating Facility, Interconnection Customer's Interconnection Facilities, or site of the interconnection not agreed to in writing by Transmission Provider, shall require submission of a new Interconnection Request.

2.9 Proof of Site Control for the Generating Facility shall be submitted with the Interconnection Request.

2.10 Transmission Provider may propose to interconnect more than one Generating Facility at a single Point of Interconnection in order to minimize costs. However, an Interconnection Customer may elect to pay the entire cost of separate Interconnection Facilities.

2.11 The following articles from the Standard Small Generator Interconnection Agreement are incorporated in these procedures by reference: Article 6.12 (Security Arrangements), Article 7 (Confidentiality), and Article 8 (Dispute Resolution).

Section 3. Super-Expedited Procedures for Interconnecting a Small Generating Facility No Larger Than 2 MW to a Low-Voltage Transmission System

3.1 *Precertification.* In order to qualify for the Super-Expedited Procedures described in this section, Interconnection Customer's Generating Facility must be precertified. The Generating Facility shall be considered precertified if an identical sample of the manufacturer's model has been submitted to a national testing laboratory and found, after appropriate testing, to be in compliance with applicable consensus industry operational and safety standards. No further design review, testing or additional equipment shall be required to meet the precertification requirements of this section.

3.2 *Interconnection Request.* Interconnection Customer shall submit to Transmission Provider an Interconnection Request (Application Form) in the form specified in Appendix 6 of these procedures. Transmission Provider shall notify Interconnection Customer within three Business Days of receipt of the Interconnection Request and inform Interconnection Customer of the date and time when it was received. Within ten Business Days from the date of receipt of the Interconnection Request, Transmission Provider shall notify Interconnection Customer whether the request is complete. If the Interconnection Request is not complete, Transmission Provider shall at the same time provide Interconnection Customer in writing a list detailing all information that must be provided to complete the Interconnection Request. The Interconnection Request shall be deemed complete when the required information has been provided by Interconnection Customer, or the Parties have agreed that Interconnection Customer may provide additional information at a later time, as specified in Section 7 of the Interconnection Request.

3.3 *Initial Review.* Within 20 Calendar Days after Transmission Provider notifies Interconnection Customer it has received a completed Interconnection Request, Transmission Provider shall: (1) Evaluate the Interconnection Request using the Super-Expedited Screening Criteria in Appendix 1 of these procedures, (2) review Interconnection Customer's analysis using the same criteria (if provided by Interconnection Customer), and (3) provide Interconnection Customer with its evaluation, including a comparison of the results of its own analyses with those of Interconnection Customer (if applicable).

If Transmission Provider determines that the Interconnection Request: (1) passes the Super-Expedited Screening Criteria, or (2) fails one or more of the Super-Expedited Screening Criteria but determines that the Generating Facility can be interconnected safely and reliably, it shall provide Interconnection Customer a Standard Small Generator Interconnection Agreement within five Business Days after such determination.

3.4 *Additional Review.* If Transmission Provider determines that the Interconnection Request fails the Super-Expedited Screening Criteria and cannot determine that the Generating Facility may be interconnected safely and reliably with its Transmission System, Interconnection Customer may offer to pay for an expedited Additional Review of the interconnection. The Additional Review shall not exceed six hours of Transmission Provider's engineering time (to be paid for by Interconnection Customer) and shall be completed within ten Business Days of the request. The review will determine whether minor modifications to Transmission Provider's Transmission System (*e.g.*, changing meters, fuses, relay settings) can be performed in order to enable the interconnection to be made safely and reliably. Transmission Provider shall provide Interconnection Customer with a copy of the review. If the Additional Review indicates that the interconnection can be made safely and reliably with minor modifications and Interconnection Customer agrees to pay these

additional costs, Transmission Provider shall provide Interconnection Customer a Standard Small Generator Interconnection Agreement within five Business Days after such determination. If the review indicates that the interconnection cannot be made safely and reliably with minor modifications, the Interconnection Request shall be processed under Section 4 of these Procedures.

3.5 *Interconnection of the Generating Facility.* After the Standard Small Generator Interconnection Agreement is signed by the Parties, interconnection of the Generating Facility will proceed according to the Milestones agreed to by the Parties in Appendix 3 of the Standard Small Generator Interconnection Agreement.

Section 4. Procedures for Interconnecting a Small Generating Facility to a High-Voltage Transmission System and a Small Generating Facility Larger Than 2 MW to a Low-Voltage Transmission System

4.1 *General.* An Interconnection Request to interconnect: (1) A Generating Facility larger than 2 MW but no larger than 20 MW with Transmission Provider's Low-Voltage Transmission System, or (2) a Generating Facility with Transmission Provider's High-Voltage Transmission System. Generating Facilities larger than 2 MW but no larger than 10 MW and Generating Facilities no larger than 2 MW that do not pass the Super-Expedited Procedures, that are to be interconnected with Transmission Provider's Low-Voltage Transmission System, shall be processed pursuant to the Expedited Procedures found in Section 4.3 of this section.

4.2 *Interconnection Request.* Interconnection Customer shall submit to Transmission Provider an Interconnection Request (Application Form) in the form specified in Appendix 6 of these procedures. Transmission Provider shall notify Interconnection Customer within three Business Days of receipt of the Interconnection Request and inform Interconnection Customer of the date and time when it was received. Within ten Business Days from the date of receipt of the Interconnection Request, Transmission Provider shall notify Interconnection Customer whether the request is complete. If the Interconnection Request is not complete, Transmission Provider shall at the same time provide Interconnection Customer in writing a list detailing all information that must be provided to complete the Interconnection Request. The Interconnection Request shall be deemed complete when the required information has been provided by Interconnection Customer, or the Parties have agreed that Interconnection Customer may provide additional information at a later time, as specified in Section 7 of the Interconnection Request.

4.3 *Expedited Procedures for a Small Generating Facility No Larger Than 10 MW Interconnecting With Transmission Provider's Low-Voltage Transmission System and a Small Generating Facility Failing the Super-Expedited Procedures.* An Interconnection Customer may request that Transmission Provider use the Expedited Screening Criteria contained in Appendix 2 of these procedures to evaluate the Interconnection Request.

4.3.1 If Transmission Provider determines that the Generating Facility can be interconnected safely and reliably based upon its analysis using the Expedited Screening Criteria, it shall provide Interconnection Customer a Standard Small Generator Interconnection Agreement within five Business Days after such determination.

If the Generating Facility passes the Expedited Screening Criteria, but Transmission Provider determines that the Generating Facility cannot be interconnected safely and reliably, the Parties shall conduct a Scoping Meeting. If at the Scoping Meeting the Parties conclude that an Interconnection Feasibility Study is required, and the study indicates no Adverse System Impact to Transmission Provider's Transmission System, the cost of the study shall be borne by Transmission Provider and no Interconnection System Impact Study shall be required. If the results of the Interconnection Feasibility Study indicate an Adverse System Impact to Transmission Provider's Transmission System, the cost of the study shall be borne by Interconnection Customer and an Interconnection System Impact Study shall be performed.

4.4 *Queuing Priority.* Transmission Provider shall assign a Queue Position based upon the date and time the Interconnection Request is deemed complete. The Queue Position of each Interconnection Request will be used to determine the cost responsibility for the facilities necessary to accommodate the interconnection.

4.5 *Scoping Meeting.* A Scoping Meeting will be held within ten Business Days, or as agreed to by the Parties, after Transmission Provider has notified Interconnection Customer that the Interconnection Request is deemed complete. The purpose of the meeting shall be to review the Interconnection Request, existing studies relevant to the Interconnection Request, and the results of the application of the Super-Expedited and/or Expedited Screening Criteria. Parties are expected to bring to the meeting personnel, including system engineers and other resources as may be reasonably required to accomplish the purpose of the meeting.

4.5.1 If the Parties agree at the Scoping Meeting that an Interconnection Feasibility Study needs to be performed, Transmission Provider shall provide Interconnection Customer, no later than five Business Days after the Scoping Meeting, an Interconnection Feasibility Study Agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

4.5.2 If the Parties agree at the Scoping Meeting that an Interconnection Feasibility Study does not need to be performed, Transmission Provider shall provide Interconnection Customer, no later than five Business Days after the Scoping Meeting, an Interconnection Facilities Study Agreement including an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

4.6 *Interconnection Feasibility Study.* An Interconnection Feasibility Study will include the following analyses for the purpose of identifying a potential Adverse System Impact to Transmission Provider's Transmission System that would result from the interconnection: (1) Initial identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection, (2) initial identification of any thermal overload or voltage limit violations resulting from the interconnection, (3) initial review of grounding requirements and system protection, and (4) description and non-binding estimated cost of facilities required to interconnect the Generating Facility to Transmission Provider's Transmission System in a safe and reliable manner.

4.6.1 If Interconnection Customer asks that the Interconnection Feasibility Study evaluate multiple potential points of interconnection, additional evaluations may need to be performed. All such evaluations are to be paid by Interconnection Customer.

4.6.2 An Interconnection System Impact Study shall not be required if the Interconnection Feasibility Study indicates no Adverse System Impact or if it identifies an Adverse System Impact, but Transmission Provider is able to identify a remedy without the need for an Interconnection System Impact Study. Otherwise an Interconnection System Impact Study shall be required.

4.7 *Interconnection System Impact Study.* The Interconnection System Impact Study shall evaluate the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, Affected Systems. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting. The study will consider all generating facilities that, on the date the Interconnection System Impact Study is commenced: (1) Are directly interconnected with Transmission Provider's Transmission System, (2) are interconnected with Affected Systems and may have an impact on the proposed interconnection, and (3) have a signed Interconnection Agreement to interconnect with Transmission Provider's Transmission System.

4.7.1 *General.* The Interconnection System Impact Study will consider, as appropriate, a short circuit analysis, a stability analysis, a power flow analysis, voltage drop and flicker studies, protection and set point coordination studies, and grounding reviews. The Interconnection System Impact Study will state the underlying assumptions of the study, show the results of the analyses, and list any potential impediments to providing the requested interconnection service. The study will indicate required Upgrades and a non-binding good faith estimate of cost and time to construct.

4.7.2 *Distribution Interconnection System Impact Study.* A distribution Interconnection System Impact Study shall be performed if a

potential Distribution System Adverse System Impact is identified in the Interconnection Feasibility Study. Transmission Provider shall send Interconnection Customer an Interconnection System Impact Study Agreement within five Business Days of transmittal of the Interconnection Feasibility Study report, including an outline of the scope of the study and a good faith estimate of the cost to perform the study. The study shall incorporate a load flow study, an analysis of equipment interrupting ratings, protection coordination study, voltage drop and flicker studies, protection and set point coordination studies, and grounding reviews, and the impact on system operation, as necessary.

4.7.3 *Transmission Interconnection System Impact Study.* Where the Interconnection Feasibility Study or a distribution Interconnection System Impact Study shows a potential Transmission System Adverse System Impact, within five Business Days following transmittal of the Interconnection Feasibility Study report and/or distribution Interconnection System Impact Study Report, Transmission Provider shall notify any Affected Systems in accordance with the procedures provided for in Transmission Provider's Tariff on file with FERC. Transmission Provider shall also send Interconnection Customer an Interconnection System Impact Study Agreement, including an outline of the scope of the study and a good faith estimate of the cost to perform the study.

4.7.4 *Coordinated Transmission and Distribution System Impact Studies.* Where transmission and distribution facilities are owned by different entities (such as in the case of transmission-dependent utilities (TDUs)) and no single entity is in a position to conduct an Interconnection System Impact Study covering both transmission and distribution electric systems, Transmission Provider, as applicable, shall conduct the Interconnection System Impact Study. Affected Systems shall participate in the study and provide all information necessary to prepare the study.

4.7.5 *Interconnection System Impact Study Cost Sharing.* Affected transmission and distribution providers may participate in the preparation of the Interconnection System Impact Study, with a division of costs among such entities as they may agree. All affected parties shall be afforded an opportunity to review and comment upon an Interconnection System Impact Study that covers potential Adverse System Impacts on their systems, and Transmission Provider has thirty additional Calendar Days to complete an Interconnection System Impact Study requiring review by Affected Systems.

4.8 *Interconnection Facilities Study.*

4.8.1 Within five Business Days of completion of the Interconnection System Impact Study, a report will be prepared and transmitted to Interconnection Customer along with an Interconnection Facilities Study Agreement, which shall include an outline of the scope of the study and a non-binding good faith estimate of the cost to perform the study.

4.8.2 The Interconnection Facilities Study shall specify and estimate the cost of the equipment, engineering, procurement and construction work (including overheads) needed to implement the conclusions of the Interconnection Feasibility Study and Interconnection System Impact Study to interconnect the Generating Facility. The Interconnection Facilities Study shall also identify: (1) The electrical switching configuration of the equipment, including, without limitation, transformer, switchgear, meters, and other station equipment, (2) the nature and estimated cost of Transmission Provider's Interconnection Facilities and Upgrades necessary to accomplish the interconnection, and (3) an estimate of the time required to complete the construction and installation of such facilities.

4.8.3 Parties may agree to permit Interconnection Customer to separately arrange for a third party to design and construct the required Interconnection Facilities. In such cases, Transmission Provider may review the design of the facilities, under the provisions of the Interconnection Facilities Study Agreement. If the Parties agree to separately arrange for design and construction, and comply with any security and confidentiality requirements, Transmission Provider shall make all relevant information available to Interconnection Customer in order to permit Interconnection Customer to obtain an independent design and cost estimate for the facilities.

4.8.4 Upon completion of the Interconnection Facilities Study, and with the agreement of Interconnection Customer to pay for Interconnection Facilities and Upgrades identified in the Interconnection Facilities Study, Transmission Provider shall provide Interconnection Customer a Standard Small Generator Interconnection Agreement within five Business Days.

4.9 *Interconnection of the Generating Facility.* After the Standard Small Generator Interconnection Agreement is signed by the Parties, interconnection of the Generating Facility will proceed according to the Milestones agreed to by the Parties in Appendix 3 of the Standard Small Generator Interconnection Agreement.

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Chart 1

Diagram of a Typical Small Generating Facility Installation

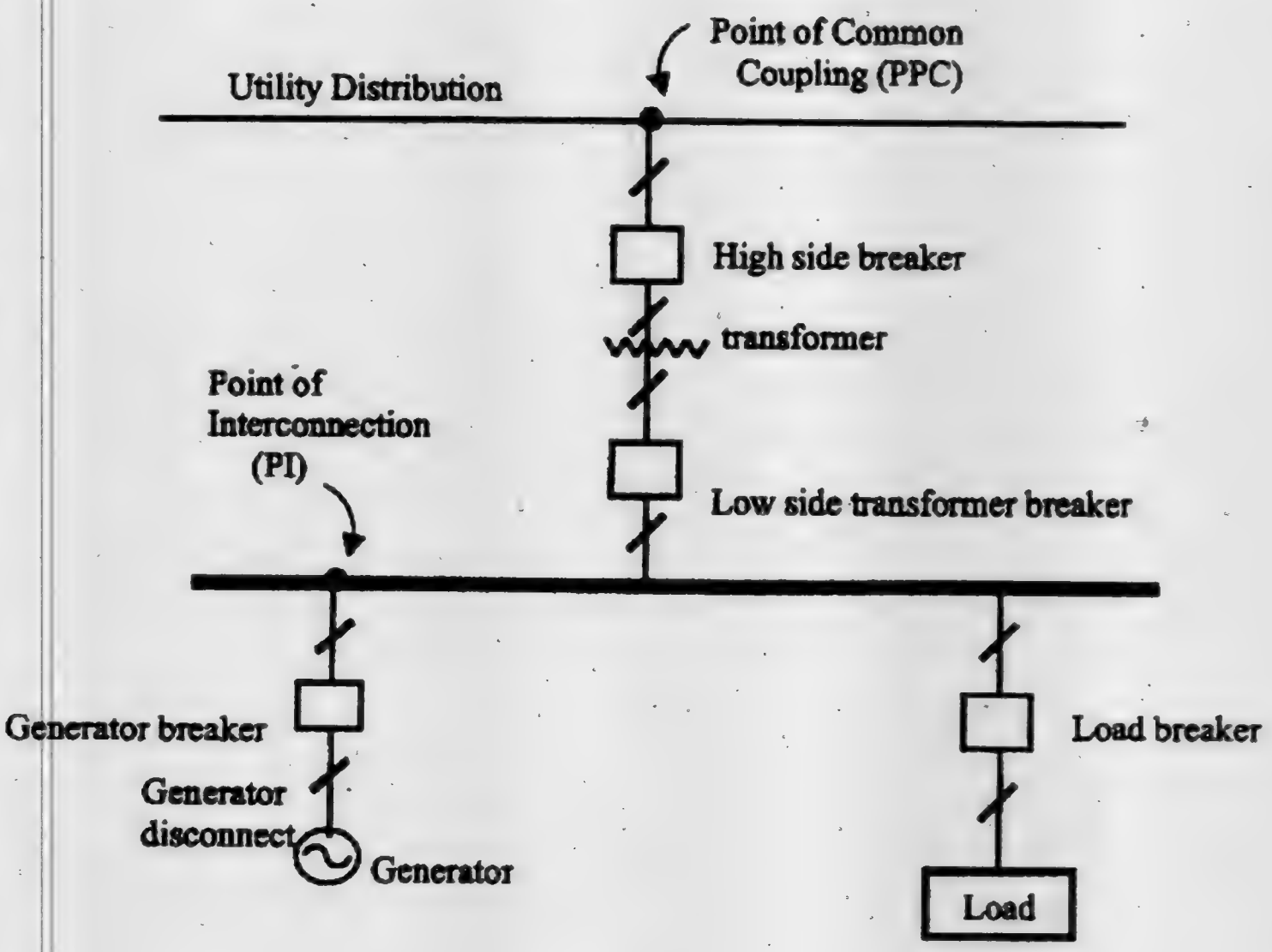

Chart 2

Flow Chart of Super-Expedited Procedures for Interconnecting a Small Generating Facility No Larger than 2 MW to a Low-Voltage Transmission System

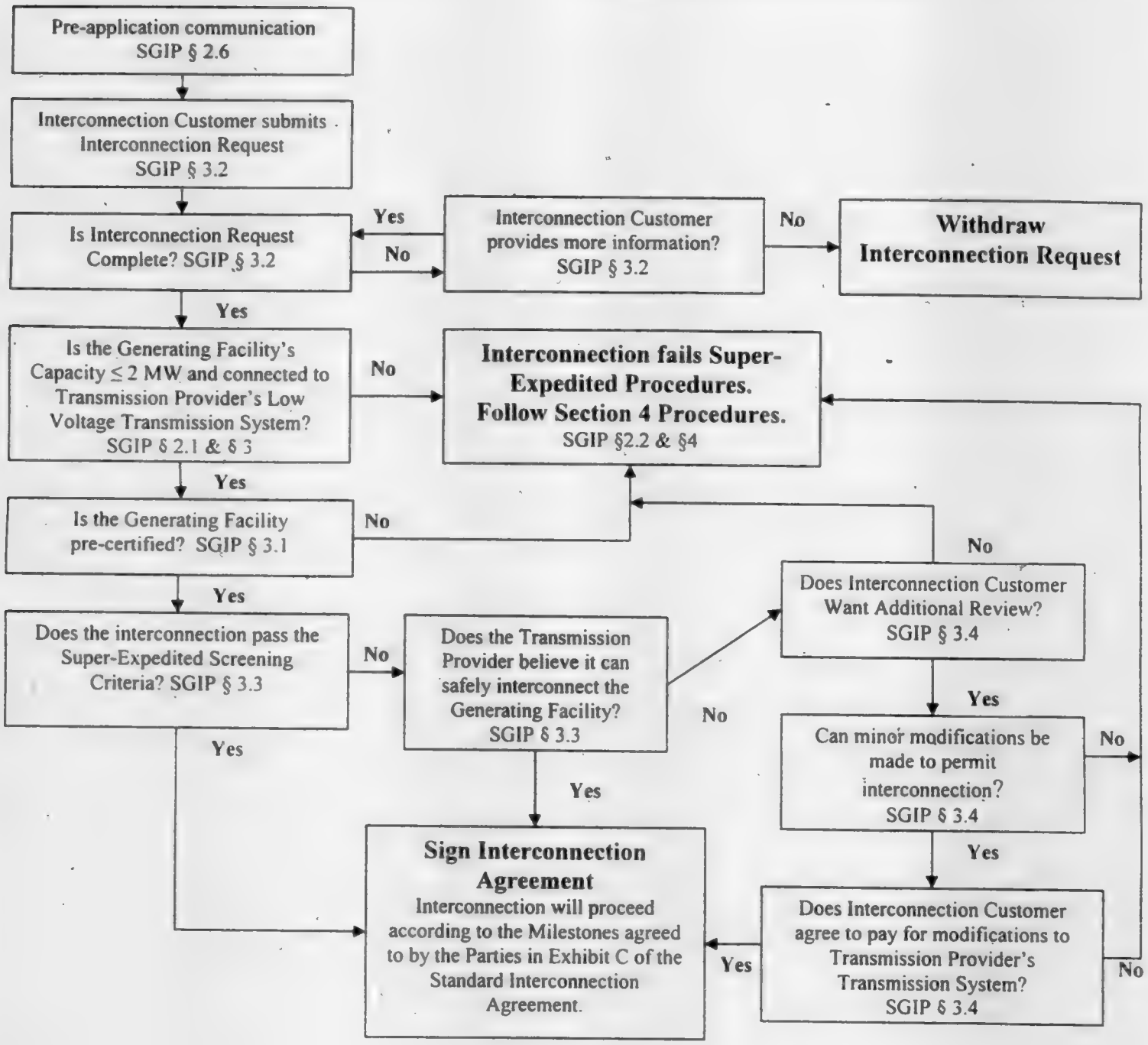

Chart 3

Flow Chart of Procedures for Interconnecting a Small Generating Facility to a High-Voltage Transmission System and a Small Generating Facility Larger than 2 MW to a Low-Voltage Transmission System

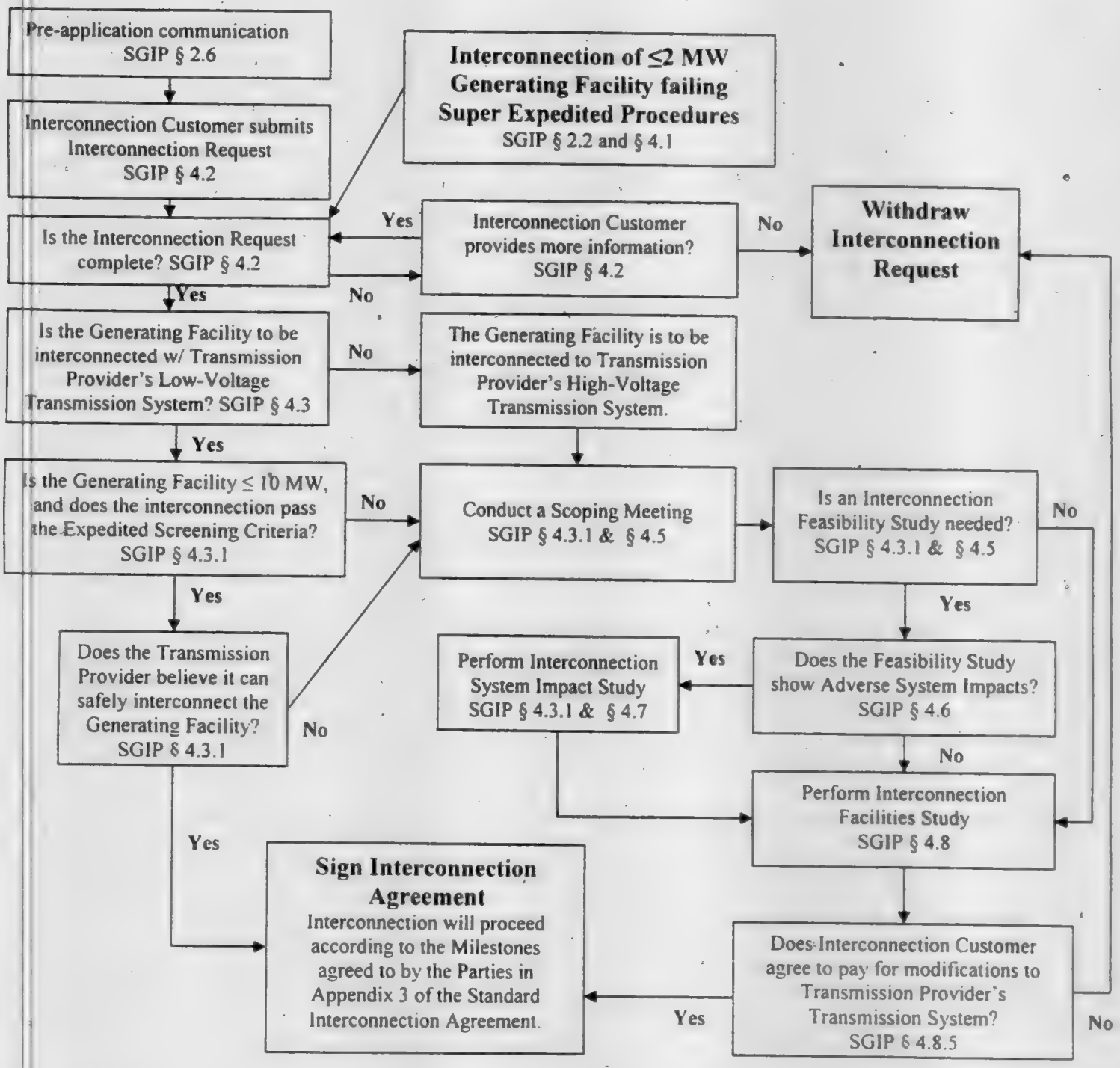

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Appendix 1

Super-Expedited Screening Criteria (Applicable to Generating Facilities No Larger than 2 MW)

1.1 For interconnection of the Generating Facility to a radial Low-Voltage circuit, the aggregate new generation capacity on the circuit shall not exceed five percent of the total circuit annual peak load as most recently measured at the substation.

1.2 For interconnection of the Generating Facility to the load side of Spot Network protectors, the Generating Facility must utilize an inverter-based equipment package and, together with other inverter-based generation, shall not exceed the smaller of five percent of a Spot Network's maximum load or 50 kW.

1.3 The Generating Facility, in aggregation with other generation on the Low-Voltage circuit, shall not contribute more than ten percent to the circuit's

maximum Fault Current on the High-Voltage (primary) level nearest the proposed Point of Common Coupling.

1.4 The Generating Facility, in aggregate with other generation on the Low-Voltage circuit, shall not cause any protective devices and equipment (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or customer equipment on the system to exceed 85 percent of the short circuit interrupting capability; nor is the interconnection proposed for a circuit that already exceeds 85 percent of the short circuit interrupting capability.

1.5 The Generating Facility, in aggregate with other generation interconnected to the Low-Voltage side of the substation transformer feeding the circuit where the Generating Facility proposes to interconnect, shall not exceed 10 MW in an area where there are known or posted transient stability limitations to generating units located in the general electrical vicinity (*e.g.*, three or four High-Voltage busses from the point of interconnection).

1.6 For interconnection of a single-phase generator where the primary Low-Voltage electric system is three-phase, four-wire, the Generating Facility shall be connected line-to-neutral. For interconnection of a single-phase generator where the primary Low-Voltage electric system is three-phase, three-wire, the Generating Facility shall be connected line-to-line.

1.7 For interconnection of a proposed three-phase generator to a three-phase, four-wire Low-Voltage circuit or a Low-Voltage circuit having mixed three-wire and four-wire sections, the aggregate generation capacity including the Generating Facility shall not exceed ten percent of line section peak load.

1.8 If the Generating Facility is to be interconnected on single-phase shared secondary, the aggregate new generation capacity on the shared secondary shall not exceed 20 kVA.

1.9 If the Generating Facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition shall not create an imbalance between the two sides of the 240 volt service of more than 20 percent of nameplate rating of the service transformer.

1.10 The Generating Facility's Point of Common Coupling shall be on a Low-Voltage electric system.

Appendix 2

Expedited Screening Criteria (Applicable to Generating Facilities No Larger than 10 MW)

1.1 For interconnection of the Generating Facility to a radial Low-Voltage circuit, the Generating Facility's capacity in aggregate with other generation on the circuit shall not exceed 15 percent of total circuit annual peak load as most recently measured at the substation; nor shall it exceed 15 percent of a Low-Voltage circuit line section design capacity. A line section is defined as that section of the Low-Voltage electric system between two sectionalizing devices.

1.2 The Generating Facility, in aggregation with other generation on the Low-Voltage circuit, shall not contribute more than ten percent to the Low-Voltage circuit's maximum Fault Current at the point on the primary level nearest the proposed Point of Common Coupling.

1.3 Interconnection of the Generating Facility in aggregate with other generation on the Low-Voltage circuit shall not cause any equipment, protective devices (including, but not limited to, substation breakers, fuse cutouts, and line reclosers), or customer equipment on the system to exceed 90 percent of their short circuit interrupting capability; nor may the interconnection be proposed for a circuit that already exceeds the 90 percent capability limit.

1.4 The Generating Facility's Point of Common Coupling shall not be on a Low-Voltage secondary or Spot Network.

1.5 The Generating Facility, in aggregate with other generation interconnected to the Low-Voltage side of the substation transformer feeding the Low-Voltage circuit where the Generating Facility proposes to interconnect, shall not exceed 10 MW in an area where there are known or posted transient stability limitations to generating units located in the general electrical vicinity (*e.g.*, three or four High-Voltage level busses from the point of interconnection).

Appendix 3

Interconnection Feasibility Study Agreement

This agreement is made and entered into this _____ day of _____ 20___ by and between _____, a _____ organized and existing under the laws of the State of _____, ("Interconnection Customer,") and _____, a _____ existing under the laws of the State of _____, ("Transmission Provider"). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

Recitals

Whereas, Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by Interconnection Customer on _____; and

Whereas, Interconnection Customer desires to interconnect the Generating Facility with Transmission Provider's Transmission System; and

Whereas, Interconnection Customer has requested Transmission Provider to perform an Interconnection Feasibility Study to assess the feasibility of interconnecting the proposed Generating Facility to Transmission Provider's Transmission System, and of any Affected Systems;

Now, Therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this agreement, with initial capitalization, the terms specified shall have the meanings indicated. Terms used in this agreement with initial capitalization but not defined in this agreement shall have the meanings specified in Section 1 of the Standard Small Generator Interconnection Procedures.

2.0 Interconnection Customer elects and Transmission Provider shall cause to be performed an Interconnection Feasibility Study consistent with Section 4.6 of the Standard Small Generator Interconnection Procedures in accordance with the Tariff.

3.0 The scope of the Interconnection Feasibility Study shall be subject to the assumptions set forth in Attachment A to this agreement.

4.0 The Interconnection Feasibility Study shall be based on the technical information provided by Interconnection Customer in the Interconnection Request, as may be modified as the result of the Scoping Meeting. Transmission Provider reserves the right to request additional technical information from Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection Feasibility Study and as designated in accordance with Section 4.5 (Scoping Meeting) of the Standard Small Generator Interconnection Procedures. If Interconnection Customer modifies its Interconnection Request, the time to complete the Interconnection Feasibility Study may be extended by agreement of the Parties.

5.0 In performing the study, Transmission Provider shall rely, to the extent reasonably practicable, on existing studies of recent vintage. The Interconnection Customer will not be charged for such existing studies; however, Interconnection Customer shall be responsible for charges associated with any new study or modifications to existing studies that are reasonably necessary to perform the Interconnection Feasibility Study.

6.0 The Interconnection Feasibility Study report shall provide the following information:

—Preliminary identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection,
—preliminary identification of any thermal overload or voltage limit violations resulting from the interconnection, and
—preliminary description and non-bonding estimated cost of facilities required to interconnect the Generating Facility to Transmission Provider's Transmission System and to address the identified short circuit and power flow issues.

7.0 Transmission Provider may require a study deposit of the lesser of 100 percent of estimated non-binding good faith study costs or $1,000.

8.0 The Interconnection Feasibility Study shall be completed and the results shall be transmitted to Interconnection Customer within thirty Calendar Days after this agreement is signed by the Parties.

9.0 Study fees shall be based on actual costs and will be invoiced to Interconnection Customer after the study is transmitted to Interconnection Customer. The invoice shall include an itemized listing of employee time and costs expended on the study.

10.0 Interconnection Customer shall pay any actual study costs that exceed the deposit without interest within thirty Calendar Days on receipt of the invoice. Transmission Provider shall refund any excess amount without interest within thirty Calendar Days of the invoice.

In witness whereof, the Parties have caused this agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.
[Insert name of Transmission Provider]

Signed _____

Name (Printed): _____

Title _____

[Insert name of Interconnection Customer]
Signed _____

Name (Printed): _____

Title _____

Attachment A to Interconnection Feasibility Study Agreement

Assumptions Used in Conducting the Interconnection Feasibility Study

The Interconnection Feasibility Study will be based upon the information set forth in the Interconnection Request and agreed upon in the Scoping Meeting held on_____:

(1) Designation of Point of Interconnection and configuration to be studied.

(2) Designation of alternative Points of Interconnection and configuration.

(1) and (2) are to be completed by Interconnection Customer. Other assumptions (listed below) are to be provided by Interconnection Customer and Transmission Provider.

Appendix 4

Interconnection System Impact Study Agreement

This agreement is made and entered into this _____day of_____ 20___by and between_____,
a_____organized and existing under the laws of the State of _____, ("Interconnection Customer,") and _____, a_____existing under the laws of the State of _____, ("Transmission Provider"). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

Recitals

Whereas, Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by Interconnection Customer on _____; and

Whereas, Interconnection Customer desires to interconnect the Generating Facility with Transmission Provider's Transmission System;

Whereas, Transmission Provider has completed an Interconnection Feasibility Study and provided the results of said study to Interconnection Customer (This recital to be omitted if the Parties have agreed to forego the Interconnection Feasibility Study.); and

Whereas, Interconnection Customer has requested Transmission Provider to perform an Interconnection System Impact Study to assess the impact of interconnecting the Generating Facility to Transmission Provider's Transmission System, and of any Affected Systems;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this agreement, with initial capitalization, the terms specified shall have the meanings indicated. Terms used in this agreement with initial capitalization but not defined in this agreement shall have the meanings specified in Section 1 of the Standard Small Generator Interconnection Procedures.

2.0 Interconnection Customer elects and Transmission Provider shall cause to be performed an Interconnection System Impact Study consistent with Section 4.7 of the Standard Small Generator Interconnection Procedures in accordance with the Tariff.

3.0 The scope of the Interconnection System Impact Study shall be subject to the assumptions set forth in Attachment A to this agreement.

4.0 The Interconnection System Impact Study will be based upon the results of the Interconnection Feasibility Study and the technical information provided by Interconnection Customer in the Interconnection Request. Transmission Provider reserves the right to request additional technical information from Interconnection Customer as may reasonably become necessary consistent with Good Utility Practice during the course of the Interconnection System Impact Study. If Interconnection Customer modifies its designated Point of Interconnection, Interconnection Request, or the technical information provided therein is modified, the time to complete the Interconnection System Impact Study may be extended.

5.0 The Interconnection System Impact Study report shall provide the following information:

—Identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection,

—Identification of any thermal overload or voltage limit violations resulting from the interconnection,

—Identification of any instability or inadequately damped response to system disturbances resulting from the interconnection and

—Description and non-binding, good faith estimated cost of facilities required to interconnect the Generating Facility to Transmission Provider's Transmission System and to address the identified short circuit, instability, and power flow issues.

6.0 Transmission Provider may require a study deposit of the lesser of 50 percent of estimated non-binding good faith study costs or $3,000.

7.0 The distribution Interconnection System Impact Study, if required, shall be completed and the results transmitted to Interconnection Customer within thirty Calendar Days after this agreement is signed by the Parties. The transmission Interconnection System Impact Study, if required, shall be completed and the results transmitted to Interconnection Customer within forty-five Calendar Days after this agreement is signed by the Parties, or in accordance with Transmission Provider's queuing procedures.

8.0 Study fees shall be based on actual costs and will be invoiced to Interconnection Customer after the study is transmitted to Interconnection Customer. The invoice shall include an itemized listing of employee time and costs expended on the study.

9.0 Interconnection Customer shall pay any actual study costs that exceed the deposit without interest within 30 Calendar Days on receipt of the invoice. Transmission Provider shall refund any excess amount without interest within thirty Calendar Days of the invoice.

In witness thereof, the Parties have caused this agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.
[Insert name of Transmission Provider]

Signed _____

Name (Printed): _____

Title _____

[Insert name of Interconnection Customer]

Signed _____

Name (Printed): _____

Title _____

Attachment A to Interconnection System Impact Study Agreement

Assumptions Used in Conducting the Interconnection System Impact Study

The Interconnection System Impact Study shall be based upon the results of the Interconnection Feasibility Study, subject to any modifications in accordance with Section 4.7 of the Standard Small Generator Interconnection Procedures, and the following assumptions:

(1) Designation of Point of Interconnection and configuration to be studied.

(2) Designation of alternative Points of Interconnection and configuration.

(1) and (2) are to be completed by Interconnection Customer. Other assumptions (listed below) are to be provided by Interconnection Customer and Transmission Provider.

Appendix 5

Interconnection Facilities Study Agreement

This agreement is made and entered into this _____ day of _____ 20 ____ by and between _____, a _____ organized and existing under the laws of the State of _____. ("Interconnection Customer,") and _____, a _____ existing under the laws of the State of _____, ("Transmission Provider"). Interconnection Customer and Transmission Provider each may be referred to as a "Party," or collectively as the "Parties."

Recitals

Whereas, Interconnection Customer is proposing to develop a Small Generating Facility or generating capacity addition to an existing Small Generating Facility consistent with the Interconnection Request completed by Interconnection Customer on _____; and

Whereas, Interconnection Customer desires to interconnect the Generating Facility with Transmission Provider's Transmission System;

Whereas, Transmission Provider has completed an Interconnection System Impact Study and provided the results of said study to Interconnection Customer; and

Whereas, Interconnection Customer has requested Transmission Provider to perform an Interconnection Facilities Study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to implement the conclusions of the Interconnection System Impact Study in accordance with Good Utility Practice to physically and electrically connect the Generating Facility to Transmission Provider's Transmission System.

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agreed as follows:

1.0 When used in this agreement, with initial capitalization, the terms specified shall have the meanings indicated. Terms used in this agreement with initial capitalization but not defined in this agreement shall have the meanings specified in Section 1 of the Standard Small Generator Interconnection Procedures.

2.0 Interconnection Customer elects and Transmission Provider shall cause an Interconnection Facilities Study consistent with Section 4.8 of the Standard Small Generator Interconnection Procedures to be performed in accordance with the Tariff.

3.0 The scope of the Interconnection Facilities Study shall be subject to data provided in Attachment A to this agreement.

4.0 An Interconnection Facilities Study report (1) shall provide a description, estimated cost of (consistent with Attachment A), schedule for required facilities to interconnect the Generating Facility to Transmission Provider's Transmission System and (2) shall address the short circuit, instability, and power flow issues identified in the Interconnection System Impact Study.

5.0 Transmission Provider may require a study deposit of the lesser of 50 percent of estimated non-binding good faith study costs or $10,000.

6.0 In cases where no Upgrades are required, the Interconnection Facilities Study shall be completed and the results shall be transmitted to Interconnection Customer within thirty Calendar Days after this agreement is signed by the Parties. In cases where Upgrades are required, the Interconnection Facilities Study shall be completed and the results shall be transmitted to Interconnection Customer within forty-five Calendar Days after this agreement is signed by the Parties.

7.0 Study fees shall be based on actual costs and will be invoiced to Interconnection Customer after the study is transmitted to Interconnection Customer. The invoice shall include an itemized listing of employee time and costs expended on the study.

8.0 Interconnection Customer shall pay any actual study costs that exceed the deposit without interest within 30 Calendar Days on receipt of the invoice. Transmission Provider shall refund any excess amount without interest within thirty Calendar Days of the invoice.

In witness whereof, the Parties have caused this agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of Transmission Provider]

_____

Signed _____

Name (Printed): _____

Title _____

[Insert name of Interconnection Customer]

_____

Signed _____

Name (Printed): _____

Title _____

Attachment A to Interconnection Facilities Study Agreement

Data To Be Provided by Interconnection Customer With the Interconnection Facilities Study Agreement

Provide location plan and simplified one-line diagram of the plant and station facilities. For staged projects, please indicate future generation, transmission circuits, *etc.*

On the one-line diagram, indicate the generation capacity attached at each metering location. (Maximum load on CT/PT)

On the one-line diagram, indicate the location of auxiliary power. (Minimum load on CT/PT) Amps

One set of metering is required for each generation connection to the new ring bus or existing Transmission Provider station. Number of generation connections: ____

Will an alternate source of auxiliary power be available during CT/PT maintenance? Yes ____ No ____

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total plant generation? Yes ____ No ____ (Please indicate on the one-line diagram).

What type of control system or PLC will be located at the Generating Facility?

_____

What protocol does the control system or PLC use?

_____

Please provide a 7.5-minute quadrangle map of the site. Indicate the plant, station, transmission line, and property lines.

Physical dimensions of the proposed interconnection station:

_____

Bus length from generation to interconnection station:

_____

Line length from interconnection station to Transmission Provider's Transmission System.

_____

Tower number observed in the field. (Painted on tower leg)*:

_____

Number of third party easements required for transmission lines*:

_____

* To be completed in coordination with Transmission Provider.

Is the Generating Facility located in Transmission Provider's service area?

Yes ____ No ____ If No, please provide name of local provider:

_____

Please provide the following proposed schedule dates:

Begin Construction Date: _____

Generator step-up transformers receive back feed power Date: _____

Generation Testing Date: _____

Commercial Operation Date: _____

Appendix 6

Small Generating Facility Interconnection Request (Application Form)

Instructions

Interconnection Customer declares its intention to sell electricity at wholesale in interstate commerce. Interconnection customer submits this request to interconnect its Small Generating Facility with the Transmission Provider's Transmission System pursuant to a Tariff.

In order for the Generating Facility to be considered for interconnection to Transmission Provider's Transmission System, Interconnection Customer must submit to Transmission Provider (1) a completed Interconnection Request (The Interconnection Request shall be deemed complete when the required information has been provided by Interconnection Customer, or the Parties have agreed that Interconnection Customer may provide additional information at a later time, as specified in Section 7 below), and (2) the appropriate non-refundable processing fee.

If requested information is not applicable, indicate by using "N/A".

Additional information to evaluate an Interconnection Request may be required by Transmission Provider as the application process proceeds.

Processing Fee

Indicate the amount of processing fee enclosed: $_____

Processing Fee for Small Generating Facilities No Larger than 2 MW:

The greater of:
$0.50/nameplate KVA rating, or
$100 for single phase generators no larger than 25 KVA, or
$500 for three phase generators and single phase generators larger than 25 KVA

Processing Fee for Small Generating Facilities Larger than 2 MW but No Larger than 20 MW:

$1,000 for generators no larger than 10 MW
$2,000 for generators larger than 10 MW

Section 1. Interconnection Customer Information

Interconnection Request (Application Form)

Indicate whether Interconnection Customer intends to participate as:

____ Network Resource
____ Energy-Only Resource
____ Non-Exporting Resource Participating in a Wholesale Market
____ Other (Describe: _____)

Indicate Generating Facility size:
___ 0–2.00 MW
___ 2.01–10.00 MW
___ 10.01–20.00 MW
Application is for:
___ New Generating Facility
___ Capacity addition to Existing Generating Facility
If capacity addition to existing facility, please describe:
_____
_____
_____

Legal Name of Interconnection Customer (or, if an Individual, Individual's Name)
Name: _____
Mailing Address: _____
City: _____
State: _____
Zip: _____
Generating Facility Location (if different from above):
_____
Telephone:
Daytime: _____
Evening: _____
Fax: _____
E-Mail Address: _____

Alternative Contact Information (If different from Interconnection Customer information above)
Contact Name: _____
Title: _____
Address: _____
_____
_____
Telephone:
Daytime: _____
Evening: _____
Fax: _____
E-Mail Address: _____

For generators installed at locations with existing electric service to which the proposed Generating Facility will interconnect, provide:
_____
(Local Electric Service Provider Name*)
_____
(Current Account Number*)
(*To be provided by Interconnection Customer if the local electric service provider is different from Transmission Provider)
Contact Name: _____
Contact Title: _____
Address: _____
_____
_____
Telephone:
Daytime: _____
Evening: _____
Fax: _____
E-Mail Address: _____

Section 2. Generator Qualifications

Energy Source:
_____Hydro [Specify Type (*e.g.*. Run-of-River)_____]
_____ Solar
_____ Wind
_____ Diesel
_____ Natural Gas
_____ Fuel Oil
_____ Other (Specify _____)
Type of Generator:
_____ Synchronous
_____ Induction
_____ DC Generator or Solar with Inverter
Generator Nameplate Rating: _____ kW (Typical)
Generator Nameplate KVA: _____
Interconnection Customer or Customer-Site Load: _____ kW (if none, so state) (Typical)
_____ (Reactive Load, if known)
Maximum physical export capability requested: _____kW
List components of the Generating Facility that are Precertified:.

Equipment Type	Precertifying Entity

Section 3. Generator Technical Information

Small Generating Facility (or solar collector) manufacturer, model name, number, and version: _____
Nameplate output power rating in kW: (Summer)_____ (Winter)_____
Nameplate output power rating in KVA: (Summer) _____ (Winter) _____
Individual generator power factor:
Rated power factor leading: _____
Rated power factor lagging: _____

Wind Generators

Number of generators to be interconnected pursuant to this Interconnection Request: __
Elevation: _____
___ Single Phase
___ Three Phase
Inverter manufacturer, model name, number, and version:
_____
List of adjustable setpoints for the protective equipment or software:
_____

Note: A completed General Electric Company Power Systems Load Flow (PSLF) data sheet must be supplied with the Interconnection Request.

Small Generating Facility Characteristic Data (for rotating machines)

Synchronous and Induction Generators:

Direct Axis Transient Reactance, X'_d: _____ P.U.
Direct Axis Unsaturated Transient Reactance, X'di: _____ P.U.
Direct Axis Subtransient Reactance, X''_d: _____ P.U.
Generator Saturation Constant (1.2): _____
Generation Saturation Constant (1.2): _____
Negative Sequence Reactance: _____ P.U.
Zero Sequence Reactance: _____ P.U.
KVA Base: _____
RPM Frequency: _____

Induction Generators:

(*) Field Volts: _____
(*) Field Amperes: _____
(*) Motoring Power (kW): _____
(*) Neutral Grounding Resistor (If Applicable): _____
(*) I_2^2t or K (Heating Time Constant): _____
(*) Rotor Resistance: _____
(*) Stator Resistance: _____
(*) Stator Reactance: _____
(*) Rotor Reactance: _____
(*) Magnetizing Reactance: _____
(*) Short Circuit Reactance: _____
(*) Exciting Current: _____
(*) Temperature Rise: _____
(*) Frame Size: _____
(*) Design Letter: _____
(*) Reactive Power Required In Vars (No Load): _____
(*) Reactive Power Required In Vars (Full Load): _____
(*) Total Rotating Inertia, H: __ Per Unit on KVA Base

Note: Please consult Transmission Provider prior to submitting the Interconnection Request to determine if the information designated by (*) is required.

Excitation and Governor System Data for Synchronous Generators Only

If determined to be required, provide appropriate IEEE model block diagram of excitation system, governor system, and power system stabilizer (PSS) in accordance with the regional reliability council criteria.

A PSS may be determined to be required by applicable studies. A copy of the manufacturer's block diagram may not be substituted.

Section 4. Interconnecting Equipment Technical Data Information

Will a transformer be used between the Small Generating Facility and the Point of Interconnection? ____ Yes ____ No

Will the transformer be provided by Interconnection Customer? _____ Yes _____ No

Transformer Data for Interconnection Customer-Owned Transformer (if applicable)

The transformer is: _____ single phase _____ three phase Size: _____ KVA
Transformer impedance: _____ % on _____ KVA Base

If Three Phase:
Transformer Primary: _____ Volts _____ Delta _____ Wye _____ Wye Grounded
Transformer Secondary: _____ Volts _____ Delta _____ Wye _____ Wye Grounded
Transformer fuse data for Interconnection Customer-owned fuse (if applicable): _____

_____

Note: Please attach a copy of fuse manufacturer's minimum melt and total clearing time-current curves

Fuse Manufacturer: _____
Type: _____ Size: _____
Speed: _____

Interconnecting Circuit Breaker (if applicable)

Manufacturer: _____
Type: _____
Load Rating (Amps): _____
Interrupting Rating (Amps): _____
Trip Speed (Cycles): _____

Interconnection Protective Relays (if applicable)

Note: Please attach a copy of any proposed time-overcurrent coordination curves

Manufacturer: _____
Type: _____
Style/Catalog No.: _____
Proposed Setting: _____
Manufacturer: _____
Type: _____
Style/Catalog No.: _____
Proposed Setting: _____
Manufacturer: _____
Type: _____
Style/Catalog No.: _____
Proposed Setting: _____
Manufacturer: _____
Type: _____
Style/Catalog No.: _____
Proposed Setting: _____
Manufacturer: _____
Type: _____
Style/Catalog No.: _____
Proposed Setting: _____

Current Transformer Data (if applicable)

Note: Please attach a copy of manufacturer's excitation & ratio correction curves

Manufacturer: _____
Type: _____
Accuracy Class: _____
Proposed Ratio Connection: _____/5
Manufacturer: _____
Type: _____
Accuracy Class: _____
Proposed Ratio Connection: _____/5

Potential Transformer Data (if applicable)

Manufacturer: _____
Type: _____
Accuracy Class: _____
Proposed Ratio Connection: _____/5
Manufacturer: _____
Type: _____
Accuracy Class: _____
Proposed Ratio Connection: _____/5

Section 5. General Information

Requested Point of Interconnection: _____

_____

Proposed In-Service Date: _____

Please attach a one-line diagram showing the configuration of all generating facility equipment, current and potential circuits, and protection and control schemes.
Is a one line diagram attached? _____ Yes _____ No

Please attach any site documentation that indicates the precise physical location of the proposed generating facility (*e.g.*, USGS topographic map or other diagram or documentation).
Is site documentation attached? _____ Yes _____ No

Please attach any documentation that describes and details the operation of the protection and control schemes.
Is protection and control scheme documentation attached? _____ Yes _____ No

Proposed location of protective interface equipment on property (Include address if different from Interconnection Customer's address):

_____

_____

Please attach copies of schematic drawings for all protection and control circuits, relay current circuits, relay potential circuits, and alarm/monitoring circuits (if applicable).
Are schematic drawings attached? _____ Yes _____ No

Please attach Site Control documentation.
Is Site Control documentation attached? _____ Yes _____ No

Does Interconnection Customer currently have control of the site? _____ Yes _____ No

Section 6. Signatures

I hereby certify that, to the best of my knowledge, all the information provided in this Interconnection Request is true and correct.
For Interconnection Customer (Printed): _____

_____

Signature: _____
Date: _____

I hereby determine that on the date and time specified below, Interconnection Customer has provided or agreed to provide per Section 7 all required information, and the Interconnection Request is considered complete.
For Transmission Provider (Printed): _____

_____

Signature: _____
Date: _____
Time: _____

Section 7. Agreement to Provide Data if Not Included With Initial Interconnection Request

Data Item	Date to be Provided

Data Item	Date to be Provided

Agreed to by:

For Transmission Provider — Date

For Interconnection Customer — Date

Appendix 7 to the Standard Small Generator Interconnection Procedures

STANDARD SMALL GENERATOR INTERCONNECTION AGREEMENT (SGIA)

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Identification of Parties and Recitals

This agreement is made and entered into this ____ day of _____, by _____, a _____ organized and existing under the laws of the State/Commonwealth of _____ and having its principal place of business in _____ ("Transmission Provider") and _____, a _____ organized and existing under the laws of the State/Commonwealth of _____ and having its principal place of business in _____, _____ ("Interconnection Customer").

Whereas, Interconnection Customer desires to engage in the interconnected operation of its Generating Facility with Transmission Provider's Transmission System;

Whereas, Interconnection Customer has applied for and been approved by Transmission Provider for interconnection pursuant to Transmission Provider's Small Generating Facility interconnection process and in accordance with the Standard Small Generator Interconnection Procedures; and

Whereas, Parties agree that interconnection of the Generating Facility will be expedited to the greatest extent possible.

Now, therefore, in consideration of and subject to the mutual covenants contained herein, it is agreed:

Article 1. Definitions

When used with initial capitalization, the following terms shall have the meanings specified or referred to below. Terms used in this document with initial capitalization that are not defined below shall have the meanings specified in the section in which they are used or as specified in the Transmission Provider's Open Access Transmission Tariff (OATT), as may be amended from time to time.

Additional Review shall mean a technical evaluation by the Transmission Provider of a proposed interconnection that has failed to pass the Super-Expedited Screening Criteria. The review will determine whether minor modifications to the Transmission Provider's Transmission System (*e.g.*, changing meters, fuses, relay settings) can be performed in order to enable the interconnection to be made safely and reliably.

Adverse System Impact shall mean the negative effects due to technical or operational limits on conductors or equipment being exceeded that may compromise the safety and reliability of the electric system.

Affected System shall mean an electric system other than the Transmission Provider's Transmission System that may be affected by the proposed interconnection.

Affiliate shall mean, with respect to a corporation, partnership or other entity, each such other corporation, partnership or other entity that directly or indirectly, through one

or more intermediaries, controls, is controlled by, or is under common control with, such corporation, partnership or other entity.

Applicable Laws and Regulations shall mean all duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits and other duly authorized actions of any Governmental Authority.

Breach shall mean the failure of a Party to perform or observe any material term or condition of the Standard Small Generator Interconnection Agreement.

Breaching Party shall mean a Party that is in Breach of the Standard Small Generator Interconnection Agreement.

Business Day shall mean Monday through Friday, excluding Federal Holidays.

Calendar Day shall mean any day including Saturday, Sunday or a Federal Holiday.

Commercial Operation Date of a unit shall mean the date on which the Interconnection Customer commences commercial operation of the unit at the Generating Facility after testing of such unit has been completed.

Confidential Information shall mean any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise.

Control Area shall mean an electrical system or systems bounded by interconnection metering and telemetry, capable of controlling generation to maintain its interchange schedule with other Control Areas and contributing to frequency regulation of the interconnection. A Control Area must be certified by NERC.

Default shall mean the failure of a Breaching Party to cure its Breach in accordance with Article 6.17 of the Standard Small Generator Interconnection Agreement.

Dispute Resolution shall mean the procedure for resolution of a dispute between the Parties in which they will first attempt to resolve the dispute on an informal basis.

Distribution System shall mean the Transmission Provider's facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries directly from nearby generators or from interchanges with higher voltage transmission networks which transport bulk power over longer distances. The voltage levels at which Distribution Systems operate differ among areas.

Distribution Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Distribution System at or beyond the Point of Interconnection to facilitate interconnection of the Generating Facility and render the transmission service necessary to effect Interconnection Customer's wholesale sale of electricity in interstate commerce. Distribution Upgrades do not include Interconnection Facilities.

Effective Date shall mean the date on which the Standard Small Generator Interconnection Agreement becomes effective upon execution by the Parties subject to acceptance by the Commission, or if filed unexecuted, upon the date specified by the Commission.

Emergency Condition shall mean a condition or situation: (1) That in the judgement of the Party making the claim is imminently likely to endanger life or property, or (2) that, in the case of a Transmission Provider, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to Transmission Provider's Transmission System, Transmission Provider's Interconnection Facilities or the electric systems of others to which the Transmission Provider's Transmission System is directly connected, or (3) that, in the case of Interconnection Customer, is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, or damage to, the Generating Facility or Interconnection Customer's Interconnection Facilities. System restoration and black start shall be considered Emergency Conditions; *provided*, that the Interconnection Customer is not obligated by the Standard Small Generator Interconnection Agreement to possess black start capability.

Environmental Law shall mean Applicable Laws or Regulations relating to pollution or protection of the environment or natural resources.

Expedited Procedures shall mean the process described in the Standard Small Generator Interconnection Procedures for (1) a Generating Facility no larger than 10 MW interconnecting with a Transmission Provider's Low-Voltage Transmission System, and (2) a Generating Facility failing the Super-Expedited Procedures. The Expedited Procedures use the Expedited Screening Criteria to determine whether the Small Generating Facility can be interconnected without any further Interconnection Studies.

Expedited Screening Criteria shall mean the technical variables that are employed in the Expedited Procedures for evaluating the impact of interconnecting the Small Generating Facility to the Transmission Provider's Transmission System as it exists at the time of the analysis.

Fault Current shall mean the current that is produced by an electrical fault, such as single-phase to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase. The Fault Current is several times larger in magnitude than the current that normally flows through a circuit. A protective device must be able to interrupt this Fault Current within a few cycles. The Fault Current increases when a new generator is interconnected.

Federal Power Act shall mean the Federal Power Act, as amended, 16 U.S.C. 791a *et seq*.

FERC shall mean the Federal Energy Regulatory Commission (Commission) or its successor.

Force Majeure shall mean any act of God, labor disturbance, act of the public enemy, war, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A Force Majeure event does not include an act of negligence or intentional wrongdoing.

Generating Facility shall mean Interconnection Customer's device for the production of electricity identified in the Interconnection Request, but shall not include the Interconnection Customer's Interconnection Facilities.

Generating Facility Capacity shall mean the net capacity of the Generating Facility and the aggregate net capacity of the Generating Facility where it includes multiple energy production devices.

Good Utility Practice shall mean any of the practices, methods and acts engaged in or approved by a significant portion of the electric industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region.

Governmental Authority shall mean any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that such term does not include Interconnection Customer, Transmission Provider, or any Affiliate thereof.

Hazardous Substances shall mean any chemicals, materials or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "hazardous constituents," "restricted hazardous materials," "extremely hazardous substances," "toxic substances," "radioactive substances," "contaminants," "pollutants," "toxic pollutants" or words of similar meaning and regulatory effect under any applicable Environmental Law, or any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any applicable Environmental Law.

High-Voltage shall mean voltage levels at or above 69 kV.

IEEE shall mean the Institute of Electrical and Electronics Engineers.

Initial Review shall mean the Transmission Provider's review of the Interconnection Customer's Interconnection Request using the Super-Expedited Screening Criteria described in Section 3 of the Standard Small Generator Interconnection Procedures.

In-Service Date shall mean the date upon which the Interconnection Customer reasonably expects it will be ready to begin use of the Transmission Provider's Interconnection Facilities to obtain back feed power.

Interconnection Customer shall mean any entity, including the Transmission Provider, Transmission Owner or any of the Affiliates or subsidiaries of either, that proposes to interconnect its Generating Facility with the Transmission Provider's Transmission System.

Interconnection Customer's Interconnection Facilities shall mean all facilities and equipment, as identified in Appendix 2 of the Standard Small Generator Interconnection Agreement, that are located between the Generating Facility and the Point of Change of Ownership, including any modification, addition, or upgrades to such facilities and equipment necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Customer's Interconnection Facilities are sole use facilities.

Interconnection Facilities shall mean the Transmission Provider's Interconnection Facilities and the Interconnection Customer's Interconnection Facilities. Collectively, Interconnection Facilities include all facilities and equipment between the Generating Facility and the Point of Interconnection, including any modification, additions or upgrades that are necessary to physically and electrically interconnect the Generating Facility to the Transmission Provider's Transmission System. Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Interconnection Facilities Study shall mean a study conducted by the Transmission Provider or a third party consultant for the Interconnection Customer to determine a list of facilities (including Transmission Provider's Interconnection Facilities and Network Upgrades as identified in the Interconnection System Impact Study), the cost of those facilities, and the time required to interconnect the Generating Facility with the Transmission Provider's Transmission System. The scope of the study is defined the Standard Small Generator Interconnection Procedures.

Interconnection Facilities Study Agreement shall mean the form of agreement contained in Appendix 5 of the Standard Small Generator Interconnection Procedures for conducting the Interconnection Facilities Study.

Interconnection Feasibility Study shall mean a preliminary evaluation of the system impact and cost of interconnecting the Generating Facility to the Transmission Provider's Transmission System, the scope of which is described in the Standard Small Generator Interconnection Procedures.

Interconnection Feasibility Study Agreement shall mean the form of agreement contained in Appendix 3 of the Standard Small Generator Interconnection Procedures for conducting the Interconnection Feasibility Study.

Interconnection Request shall mean an Interconnection Customer's request, in the form of Appendix 6 to the Standard Small Generator Interconnection Procedures, in accordance with the Tariff, to interconnect a new Generating Facility, or to increase the capacity of, or make a Material Modification to the operating characteristics of, an existing Generating Facility that is interconnected with the Transmission Provider's Transmission System.

Interconnection Service shall mean the service provided by the Transmission Provider associated with interconnecting the Interconnection Customer's Generating Facility to the Transmission Provider's Transmission System and enabling it to receive electric energy and capacity from the Generating Facility at the Point of Interconnection, pursuant to the terms of the Standard Small Generator Interconnection Agreement and, if applicable, the Transmission Provider's Tariff.

Interconnection Study shall mean any of the following studies: the Interconnection Feasibility Study, the Interconnection System Impact Study, and the Interconnection Facilities Study described in the Standard Small Generator Interconnection Procedures.

Interconnection System Impact Study shall mean an engineering study that evaluates the impact of the proposed interconnection on the safety and reliability of Transmission Provider's Transmission System and, if applicable, an Affected System. The study shall identify and detail the system impacts that would result if the Generating Facility were interconnected without project modifications or system modifications, focusing on the Adverse System Impacts identified in the Interconnection Feasibility Study, or to study potential impacts, including but not limited to those identified in the Scoping Meeting as described in the Standard Small Generator Interconnection Procedures.

Interconnection System Impact Study Agreement shall mean the form of agreement contained in Appendix 4 of the Standard Small Generator Interconnection Procedures for conducting the Interconnection System Impact Study.

Large Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of more than 20 MW.

Low-Voltage shall mean voltage levels below 69 kV.

Material Modification shall mean a modification that has a material impact on the cost or timing of any Interconnection Request with a later queue priority date.

Milestones shall mean the events and associated dates listed in Appendix 3 of the Standard Small Generator Interconnection Agreement. The Milestones describe events that are to be met by either Party as the Generating Facility proceeds to interconnection and Parallel Operation.

MW shall mean the abbreviation for megawatts, which is used to describe the capacity of a generating facility.

NERC shall mean the North American Electric Reliability Council or its successor organization.

Network Upgrades shall mean the additions, modifications, and upgrades to the Transmission Provider's Transmission System required at or beyond the point at which the Interconnection Customer interconnects to the Transmission Provider's Transmission System to accommodate the interconnection of the Generating Facility to the Transmission Provider's Transmission System.

Operating Requirements shall mean any operating and technical requirements that may be applicable due to Regional Transmission Organization, Independent System Operator, Control Area, or Transmission Provider requirements, including those set forth in Appendix 4 of the Standard Small Generator Interconnection Agreement.

Parallel Operation shall mean the two-way flow of power between a generator and a Transmission System. Generators that operate in parallel with a Transmission System require additional protection and control devices. This may be contrasted with a stand-alone generator that operates isolated from the utility company's electric system.

Party or Parties shall mean Transmission Provider, Transmission Owner, Interconnection Customer or any combination of the above.

Point of Change of Ownership shall mean the point, as set forth in Appendix 2 of the Standard Small Generator Interconnection Agreement, where the Interconnection Customer's Interconnection Facilities connect to the Transmission Provider's Interconnection Facilities.

Point of Common Coupling shall mean the point in the interconnection of the Generating Facility with Transmission Provider's Transmission System at which the harmonic limits are applied.

Point of Interconnection shall mean the point, as set forth in Appendix 2 of the Standard Small Generator Interconnection Agreement, where the Interconnection Facilities connect to the Transmission Provider's Transmission System.

Precertified shall describe a Generating Facility if an identical sample of the manufacturer's model has been submitted to a national testing laboratory and found, after appropriate testing, to be in compliance with applicable consensus industry operational and safety standards.

Queue Position shall mean the order of a valid Interconnection Request, relative to all other pending valid Interconnection Requests, that is established based upon the date and time of receipt of the valid Interconnection Request by the Transmission Provider.

Reasonable Efforts shall mean; with respect to an action required to be attempted or taken by a Party under the Standard Small Generator Interconnection Agreement, efforts that are timely and consistent with Good Utility Practice and are otherwise substantially equivalent to those a Party would use to protect its own interests.

Rules shall mean the rules promulgated by FERC relating to the interconnection of generators.

Scoping Meeting shall mean the meeting between representatives of the Interconnection Customer and Transmission Provider conducted for the purpose of discussing alternative interconnection options, to exchange information including

any transmission data and earlier study evaluations that would be reasonably expected to impact such interconnection options, to analyze such information, and to determine the potential feasible Points of Interconnection.

Secondary Network shall mean a type of Low-Voltage electric system that is generally used in large metropolitan areas that are densely populated in order to provide high reliability of service (also known as secondary grid network or area network).

Site Control shall mean documentation reasonably demonstrating: (1) Ownership of, a leasehold interest in, or a right to develop a site for the purpose of constructing the Generating Facility, (2) an option to purchase or acquire a leasehold site for such purpose, or (3) an exclusivity or other business relationship between the Interconnection Customer and the entity having the right to sell, lease or grant the Interconnection Customer the right to possess or occupy a site for such purpose.

Small Generating Facility shall mean a Generating Facility having a Generating Facility Capacity of no more than 20 MW.

Standard Small Generator Interconnection Agreement (SGIA) shall mean the form of interconnection agreement applicable to an Interconnection Request pertaining to a Small Generating Facility, that is included in the Transmission Provider's Tariff.

Standard Small Generator Interconnection Procedures (SGIP) shall mean the interconnection procedures applicable to an Interconnection Request pertaining to a Small Generating Facility that are included in the Transmission Provider's Tariff.

Spot Network shall mean a type of Low-Voltage system found within modern commercial buildings to provide high reliability of service. Spot Networks generally use 12 kV to 480/277 volt vaults on site.

Super-Expedited Procedures shall mean the process described in Section 3 of the Standard Small Generator Interconnection Procedures for Generating Facilities no larger than 2 MW interconnecting with Transmission Provider's Low-Voltage Transmission System. The Super-Expedited Procedures use the Super-Expedited Screening Criteria to determine whether the proposed interconnection may cause an Adverse System Impact on Transmission Provider's Transmission System.

Super-Expedited Screening Criteria shall mean the technical variables that are employed in the Super-Expedited Procedures for evaluating the interconnection of a Small Generating Facility no larger than 2 MW to a Transmission Provider's Low-Voltage Transmission System.

System Protection Facilities shall mean the equipment, including necessary protection signal communications equipment, required to protect (1) the Transmission Provider's Transmission System from faults or other electrical disturbances occurring at the Generating Facility and (2) the Generating Facility from faults or other electrical system disturbances occurring on the Transmission Provider's Transmission System or on other delivery systems or other generating systems to which the Transmission Provider's Transmission System is directly connected.

Tariff shall mean the Transmission Provider's Tariff through which open access transmission service and Interconnection Service are offered, as filed with the FERC, and as amended or supplemented from time to time, or any successor tariff.

Technical Master shall mean a person, as described in Article 8 of the Standard Small Generator Interconnection Agreement, with relevant technical experience selected to adjudicate disputes between the Parties.

Term shall mean the duration of the Standard Small Generator Interconnection Agreement.

Transmission Owner shall mean an entity that owns, leases or otherwise possesses an interest in the portion of the Transmission System at the Point of Interconnection and may be a Party to the Standard Small Generator Interconnection Agreement to the extent necessary.

Transmission Provider shall mean the public utility (or its designated agent) that owns, controls, or operates transmission or distribution facilities used for the transmission of electricity in interstate commerce and provides transmission service under the Tariff. The term Transmission Provider should be read to include the Transmission Owner when the Transmission Owner is separate from the Transmission Provider.

Transmission Provider's Interconnection Facilities shall mean all facilities and equipment owned, controlled, or operated by the Transmission Provider from the Point of Change of Ownership to the Point of Interconnection as identified in Appendix 2 of the Standard Small Generator Interconnection Agreement, including any modifications, additions or upgrades to such facilities and equipment. The Transmission Provider's Interconnection Facilities are sole use facilities and shall not include Distribution Upgrades or Network Upgrades.

Transmission System shall mean the facilities owned, controlled or operated by the Transmission Provider or Transmission Owner that are used to provide transmission service under the Tariff.

Upgrades shall mean the required additions and modifications to the Transmission Provider's Transmission System at or beyond the Point of Interconnection. Upgrades may be Network Upgrades or Distribution Upgrades. Upgrades do not include Interconnection Facilities.

Article 2. Scope and Limitations of Agreement

2.1 *Scope and Limitations of Agreement.* Transmission Provider and Interconnection Customer agree to interconnect the Generating Facility at the location described in Appendices 1 and 2 to this agreement, in accordance with this agreement. This agreement governs the facilities required to interconnect the Generating Facility to Transmission Provider's Transmission System and contains the terms and conditions under which Interconnection Customer may interconnect the Generating Facility, as described in Appendices 1 and 2, and to operate in parallel with Transmission Provider's Transmission System. This agreement does not authorize Interconnection Customer to export power or constitute an agreement to purchase or wheel Interconnection Customer's power. The export, purchase, or wheeling of power and other services that Interconnection Customer may require from Transmission Provider will be covered under separate agreements and nothing in this agreement is intended to affect any other agreement between Transmission Provider and Interconnection Customer. Interconnection Customer will be responsible for separately making all necessary arrangements (including scheduling) for delivery of electricity with Transmission Provider, distribution provider, Independent System Operator, or Regional Transmission Organization (as applicable).

2.2 *Responsibilities of the Parties.*

2.2.1 The Parties shall perform all obligations of this agreement in accordance with all Applicable Laws and Regulations, Operating Requirements, and Good Utility Practice.

2.2.2 Interconnection Customer shall construct, interconnect, operate and maintain its Generating Facility and construct, operate, and maintain its Interconnection Facilities in accordance with the applicable manufacturer's recommended maintenance schedule, in compliance with all aspects of the Rules, in accordance with this agreement, and with Good Utility Practice.

2.2.3 Transmission Provider shall construct, operate, and maintain its Transmission System and Interconnection Facilities in compliance with all aspects of the Rules, in accordance with this agreement, and with Good Utility Practice.

2.2.4 Interconnection Customer agrees to cause its facilities or systems to be constructed in accordance with applicable specifications that meet or exceed those provided by the National Electrical Safety Code, the American National Standards Institute, IEEE, Underwriter's Laboratory, and Operating Requirements in effect at the time of construction and other applicable national and state codes and standards. Interconnection Customer agrees to design, install, maintain, and operate, or cause the design, installation, maintenance, and operation of the Generating Facility so as to reasonably minimize the likelihood of a disturbance, originating on the system or equipment affecting or impairing the system or equipment of Transmission Provider, or Affected Systems.

2.2.5 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for the facilities that it now or subsequently may own unless otherwise specified in Appendices 1 and 2 of this agreement. Each Party shall be responsible for the safe installation, maintenance, repair and condition of their respective lines and appurtenances on their respective sides of the Point of Change of Ownership. Transmission Provider and Interconnection Customer, as appropriate, shall provide Interconnection Facilities that adequately protect Transmission Provider's Transmission System, personnel, and other persons from damage and injury. The allocation of responsibility for the design, installation, operation, maintenance and ownership of Interconnection Facilities shall

be delineated in Appendices 1, 2, 4, and 5 of this agreement.

2.2.6 Transmission Provider shall negotiate with all Affected Systems in support of Interconnection Customer's interconnection needs.

2.3 *Parallel Operation Obligations.* Once the Generating Facility has been authorized to commence Parallel Operation, Interconnection Customer shall abide by all rules and procedures pertaining to the Parallel Operation of the Generating Facility in the applicable Control Area, including, but not limited to, the rules and procedures concerning the operation of generation set forth in the Tariff or by the system operator for Transmission Provider's Transmission System and the Operating Requirements set forth in Appendix 4 of this agreement.

2.4 *Metering.* Interconnection Customer will be responsible for Transmission Provider's reasonable and necessary cost for the purchase, installation, operation, maintenance, testing, repair, and replacement of metering and data acquisition equipment specified in Appendices 1 and 2 of this agreement. Interconnection Customer's metering (and data acquisition, as required) equipment shall conform to applicable industry rules and operating requirements.

Article 3. Inspection, Testing, Authorization, and Right of Access

3.1 *Equipment Testing and Inspection.*

3.1.1 Interconnection Customer shall perform operational testing and inspection of the Generating Facility and Interconnection Facilities prior to interconnection. No fewer than five Business Days (or as may be agreed to by the Parties) prior to such testing and inspection, Interconnection Customer shall notify Transmission Provider of such activities. Testing and inspection shall occur on a Business Day. Transmission Provider may send qualified personnel to the Generating Facility site to inspect the interconnection and observe the Generating Facility's testing. Interconnection Customer shall provide Transmission Provider a written test report when such testing and inspection is completed.

3.1.2 Upon completion of such operational testing and inspection and receipt of the written report, Transmission Provider shall provide to Interconnection Customer written acknowledgment that it has received Interconnection Customer's written report; provided, however, any such written acknowledgment shall not be deemed to be or construed as any representation, assurance, guarantee, or warranty by Transmission Provider of the safety, durability, suitability, or reliability of the Generating Facility or any associated control, protective, and safety devices owned or controlled by Interconnection Customer or the quality of power produced by the Generating Facility.

3.2 *Authorization Required Prior To Parallel Operation.* Transmission Provider will use its best efforts to identify any requirements applicable to safe and reliable Parallel Operation and to notify Interconnection Customer of any changed or additional requirements as soon as they are known. Transmission Provider will cooperate with Interconnection Customer in addressing and meeting such requirements (including information and study requirements), and to obtain appropriate notifications that such requirements are met. Interconnection Customer will notify Transmission Provider once it has complied with all such requirements. Upon such notification, Transmission Provider will provide Interconnection Customer with written authorization to operate the Generating Facility in parallel with Transmission Provider's Transmission System. Such authorization shall not be unreasonably withheld, conditioned or delayed.

3.3 *Right of Access.* Upon reasonable notice, and subject to any required or necessary regulatory approvals, Interconnection Customer shall furnish to Transmission Provider at no cost, and as agreed upon by all Parties, any rights of use, licenses, rights of way, or easements with respect to lands owned or controlled by Interconnection Customer and its agents that are necessary to enable Transmission Provider to obtain ingress and egress to construct, operate, maintain, repair, test (or witness testing), inspect, replace or remove facilities and equipment to: (1) Interconnect the Generating Facility with Transmission Provider's Transmission System, (2) operate and maintain the Generating Facility, Interconnection Facilities (if required), and Transmission Provider's Transmission System, and (3) disconnect or remove Interconnection Customer's facilities and equipment upon termination of this agreement. In exercising such licenses, rights of way, and easements, Transmission Provider shall not unreasonably disrupt or interfere with normal operation of Interconnection Customer's property and shall adhere to all applicable safety rules and procedures. In the event of Emergency Conditions or hazardous conditions, Transmission Provider and Interconnection Customer shall exercise all Reasonable Efforts to comply with these provisions.

Article 4. Effective Date, Term, Termination, and Disconnection

4.1 *Effective Date.* This agreement shall become effective upon execution by the Parties subject to acceptance by FERC (if applicable), or if filed unexecuted, upon the date specified by FERC. Transmission Provider shall promptly file this agreement with FERC upon execution, if required.

4.2 *Term of Agreement.* This agreement shall be effective on the Effective Date and shall remain in effect for a period of ten years from the Effective Date or such other longer period as the Parties may agree and shall be automatically renewed for each successive one-year period thereafter, unless terminated earlier in accordance with Article 4.3 of this agreement.

4.3 *Termination.* No termination shall become effective until the Parties have complied with all Applicable Laws and Regulations applicable to such termination, including the filing with FERC of a notice of termination of this agreement (if required), which notice has been accepted for filing by FERC.

4.3.1 Interconnection Customer may terminate this agreement at any time by giving Transmission Provider thirty Calendar Days written notice.

4.3.2 In the event that there is a material change in Applicable Laws and Regulations that would prevent Transmission Provider from performing its obligations under this agreement or would impose a substantial additional cost upon Transmission Provider to perform its obligations under this agreement, and for which cost Transmission Provider is not reimbursed by Interconnection Customer or any other party, Transmission Provider may terminate this agreement by giving Interconnection Customer at least thirty Calendar Days prior written notice.

4.4 *Temporary Disconnection.*

4.4.1 *Emergency Conditions.* Under Emergency Conditions, Transmission Provider shall have the right to immediately suspend Interconnection Service and temporarily disconnect the Generating Facility. Transmission Provider shall notify Interconnection Customer promptly when it becomes aware of an Emergency Condition that affects the Generating Facility or Transmission Provider's Transmission System that may reasonably be expected to affect Interconnection Customer's operation of the Generating Facility. Interconnection Customer shall notify Transmission Provider promptly when it becomes aware of an emergency condition that may reasonably be expected to affect Transmission Provider's Transmission System or other Affected Systems. To the extent information is known, the notification shall describe the Emergency Condition, the extent of the damage or deficiency, or the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

4.4.2 *Routine Maintenance, Construction and Repair.* Transmission Provider shall have the right to interrupt Interconnection Service or curtail the output of the Generating Facility and temporarily disconnect the Generating Facility from Transmission Provider's Transmission System when necessary for routine maintenance, construction, and repairs on Transmission Provider's Transmission System. Transmission Provider shall provide Interconnection Customer with five Business Days notice prior to such interruption. Transmission Provider shall use its best efforts to coordinate such reduction or temporary disconnection with Interconnection Customer.

4.4.3 *Forced Outages.* During any forced outage of Interconnection Customer's facilities, Transmission Provider shall have the right to suspend Interconnection Service to effect immediate repairs on Transmission Provider's Transmission System; provided, however, Transmission Provider shall use its best efforts to provide Interconnection Customer with prior notice. If prior notice is not given, Transmission Provider will provide Interconnection Customer written documentation after the fact explaining the circumstances of the disconnection.

4.4.4 *Adverse Operating Effects.* Transmission Provider shall notify Interconnection Customer that operation of the Generating Facility may cause disruption

or deterioration of service to other customers served from the same electric system or if operating the Generating Facility could cause damage to Transmission Provider's Transmission System or Affected Systems. If, after notice to Interconnection Customer has been provided and a reasonable time to correct such adverse operating effect has elapsed, consistent with the conditions, and Interconnection Customer has failed to make such corrections, Transmission Provider may disconnect the Generating Facility. Transmission Provider shall provide Interconnection Customer with five Business Days notice prior to such disconnection.

4.4.5 *Modification of the Generating Facility.* Interconnection Customer must receive written authorization from Transmission Provider before making any Material Modification to the Generating Facility. If Interconnection Customer makes such modification without Transmission Provider's prior written authorization, the latter shall have the right to temporarily disconnect the Generating Facility. Such authorization shall not be unreasonably withheld.

4.4.6 *Reconnection.* The Parties shall cooperate with each other to restore the Generating Facility, Interconnection Facilities, and Transmission Provider's Transmission System to their normal operating state as soon as reasonably practicable following any reduction or temporary disconnection.

Article 5. Cost Responsibility, Milestones, Billing, and Payment

5.1 *Cost Responsibility.*

5.1.1 *Interconnection Facilities.* Interconnection Customer will pay for the cost of Interconnection Facilities itemized in Appendix 1 of this agreement. Transmission Provider will provide a best estimate cost, including overheads, for the purchase and construction of its Interconnection Facilities and provide a detailed itemization of such costs. Costs associated with Interconnection Facilities may be shared with other entities that may benefit from such facilities by agreement of Interconnection Customer, such other entities, and Transmission Provider.

5.1.2 *Network Upgrades.* Transmission Provider or Transmission Owner shall design, procure, construct, install, and own Network Upgrades described in Appendix 5 of this agreement. Unless Transmission Provider or Transmission Provider elect to initially pay for such facilities, the actual cost of the Network Upgrades, including overheads, shall be borne by Interconnection Customer.

5.1.2.1 *Refund of Amounts Advanced for Network Upgrades.* Interconnection Customer shall be entitled to a refund, equal to the total amount paid to Transmission Provider and Affected Systems, if any, for the Network Upgrades with interest, including any tax gross-up or other tax-related payments, to be paid to Interconnection Customer on a dollar-for-dollar basis, for the non-usage sensitive portion of transmission charges, as payments are made under Transmission Provider's Tariff and Affected Systems' Tariffs. Notwithstanding the foregoing, Interconnection Customer, Transmission Provider, and any Affected Systems may adopt any alternative payment schedule that is mutually agreeable so long as Transmission Provider and any Affected Systems refund all amounts paid by Interconnection Customer, with interest, within five years from the Commercial Operation Date. Transmission Provider and any Affected Systems shall provide refunds to Interconnection Customer only after commercial operation of the Generating Facility has been demonstrated. If the Generating Facility fails to achieve commercial operation, but it or another Generating Facility is later constructed and makes use of the Network Upgrades, Transmission Provider and Affected System Operator shall at that time provide refunds to Interconnection Customer for the amounts advanced for the Network Upgrades. Any refund shall include interest calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(ii) from the date of any payment for Network Upgrades through the date on which Interconnection Customer receives a refund of such payment pursuant to this subparagraph. Interconnection Customer may assign such refund rights to any person.

Notwithstanding any other provision of this agreement, nothing herein shall be construed as relinquishing or foreclosing any rights, including but not limited to firm transmission rights, capacity rights, transmission congestion rights, or transmission credits, that Interconnection Customer shall be entitled to, now or in the future under any other agreement or tariff as a result of, or otherwise associated with, the transmission capacity, if any, created by the Network Upgrades, including the right to obtain refunds or transmission credits for transmission service that is not associated with the Generating Facility.

5.1.3 *Distribution Upgrades.* Transmission Provider or Transmission Provider shall design, procure, construct, install, and own the distribution Upgrades described in Appendix 5 of this agreement. The actual cost of the Distribution Upgrades, including overheads, shall be directly assigned to Interconnection Customer.

5.1.4 *Operating and Maintenance Expenses.* Subject to the provisions herein addressing the use of facilities by others, and except for operating and maintenance expenses associated with modifications made for providing service to a third party and such third party pays for such expenses, Interconnection Customer shall be responsible for all reasonable expenses, including overheads, associated with: (1) Owning, operating, maintaining, repairing, and replacing its own Interconnection Facilities, and (2) operating, maintaining, repairing, and replacing Transmission Provider's Interconnection Facilities.

5.1.5 *General.* If the Parties agree that the Generating Facility benefits Transmission Provider's Transmission System, Interconnection Customer's cost responsibility for Transmission Provider's Interconnection Facilities or Upgrades will be reduced commensurate with such benefit. Benefits must be measurable and verifiable.

Where multiple Interconnection Requests require Upgrades to Transmission Provider's Transmission System, Interconnection Customers will be assigned costs or benefits separately where impacts can be separately attributed to respective projects. Where such attribution is not possible, Interconnection Customers will share costs or benefits in proportion to their projected Generating Facility capacities.

5.2 *Financial Security Arrangements.* At least thirty Calendar Days prior to the commencement of the procurement, installation, or construction of a discrete portion of a Transmission Provider Interconnection Facilities and Upgrades, Interconnection Customer shall provide Transmission Provider, at Interconnection Customer's option, a guarantee, a surety bond, letter of credit or other form of security that is reasonably acceptable to Transmission Provider and is consistent with the Uniform Commercial Code of the jurisdiction where the Point of Interconnection is located. Such security for payment shall be in an amount sufficient to cover the costs for constructing, procuring, and installing the applicable portion of Transmission Provider Interconnection Facilities and Upgrades and shall be reduced on a dollar-for-dollar basis for payments made to Transmission Provider under this agreement during its Term. In addition:

The guarantee must be made by an entity that meets the creditworthiness requirements of Transmission Provider, and contain terms and conditions that guarantee payment of any amount that may be due from Interconnection Customer, up to an agreed-to maximum amount.

The letter of credit must be issued by a financial institution reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

The surety bond must be issued by an insurer reasonably acceptable to Transmission Provider and must specify a reasonable expiration date.

5.3 *Milestones.* Parties shall agree on milestones for which each Party is responsible and list them in Appendix 3 of this agreement. A Party's obligations under this provision may be extended by agreement.

5.3.1 If Interconnection Customer fails to meet agreed milestones for which it is responsible, other than for reasons of Force Majeure, its responsibility for costs incurred to that point by Transmission Provider will increase at the rate of interest calculated in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(ii) from the date of failure until the date the Milestone is met.

5.3.2 If Transmission Provider fails to meet agreed milestones for which it is responsible, other than for reasons of Force Majeure, Interconnection Customer will be credited interest for costs incurred to that point (including the Interconnection Request processing fee and study costs incurred under the Standard Small Generator Interconnection Procedures) calculated at the rate in accordance with the methodology set forth in FERC's regulations at 18 CFR 35.19a(a)(2)(ii) from the date of failure until the date the Milestone is met.

5.4 *Billing and Payment.* Billing and payment obligations for services rendered,

for which Interconnection Customer is responsible under this agreement shall be performed in accordance with Transmission Provider's Tariff or in accordance with the terms of this agreement.

5.4.1 *Billing Procedure for Interconnection Facilities Construction.* Transmission Provider shall bill Interconnection Customer for monthly expenditures for the design, engineering and construction of, or for other charges related to, Interconnection Facilities contemplated by this agreement. Interconnection Customer shall pay each bill within thirty Calendar Days after receipt thereof.

5.4.2 *Final Accounting.* Within forty-five Calendar Days after completion of the construction and installation of Transmission Provider's Interconnection Facilities and/or Upgrades described in Appendices 1, 2, and 5 of this agreement, Transmission Provider shall provide Interconnection Customer with a final accounting report of any difference between: (1) Interconnection Customer's cost responsibility for the actual cost of such facilities under this agreement, and (2) Interconnection Customer's previous aggregate payments to Transmission Provider for such facilities. If Interconnection Customer's cost responsibility under this agreement exceeds its previous aggregate payments, Transmission Provider shall invoice Interconnection Customer and Interconnection Customer shall make payment to Transmission Provider. If Interconnection Customer's previous aggregate payments exceed its cost responsibility under this agreement, Transmission Provider shall refund to Interconnection Customer an amount equal to the difference within forty-five Calendar Days of the provision of such final accounting report.

Article 6. Miscellaneous

6.1 *Governing Law, Regulatory Authority and Rules.* The validity, interpretation and enforcement of this agreement and each of its provisions shall be governed by the laws of the State where the Point of Interconnection is located, without regard to its conflicts of law principles. This agreement is subject to all Applicable Laws and Regulations. Each Party expressly reserves the right to seek changes in, appeal, or otherwise contest any laws, orders, Rules, or regulations of a Governmental Authority.

6.2 *Amendment.* The Parties may by mutual agreement amend this agreement by a written instrument duly executed by both of the Parties.

6.3 *No Third Party Beneficiaries.* This agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations herein assumed are solely for the use and benefit of the Parties, their successors in interest and where permitted, their assigns.

6.4 *Waiver.* The failure of a Party to this agreement to insist, on any occasion, upon strict performance of any provision of this agreement will not be considered a waiver of any obligation, right, or duty of, or imposed upon, such Party.

Any waiver at any time by either Party of its rights with respect to this agreement shall not be deemed a continuing waiver or a waiver with respect to any other failure to comply with any other obligation, right, duty of this agreement. Termination or Default of this agreement for any reason by Interconnection Customer shall not constitute a waiver of Interconnection Customer's legal rights to obtain an interconnection from Transmission Provider. Any waiver of this agreement shall, if requested, be provided in writing.

6.5 *Assignment.* This agreement may be assigned by either Party only with the written consent of the other; provided that either Party may assign this agreement without the consent of the other Party to any Affiliate of the assigning Party with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this agreement; and provided further that Interconnection Customer shall have the right to assign this agreement, without the consent of Transmission Provider, for collateral security purposes to aid in providing financing for the Generating Facility, provided that Interconnection Customer will require any secured party, trustee or mortgagee to notify Transmission Provider of any such assignment. Any financing arrangement entered into by Interconnection Customer pursuant to this article will provide that prior to or upon the exercise of the secured party's, trustee's or mortgagee's assignment rights pursuant to said arrangement, the secured creditor, the trustee or mortgagee will notify Transmission Provider of the date and particulars of any such exercise of assignment right(s). Any attempted assignment that violates this article is void and ineffective. Any assignment under this agreement shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason thereof. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

6.6 *Entire Agreement.* This agreement, including all appendices attached hereto, constitutes the entire agreement between the Parties with reference to the subject matter hereof, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this agreement. There are no other agreements, representations, warranties, or covenants which constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this agreement.

6.7 *Notices.* Unless otherwise provided in this agreement, any notice, demand or request required or permitted to be given by either Party to the other and any instrument required or permitted to be tendered or delivered by either Party in writing to the other shall be effective when delivered and may be so given, tendered or delivered, by recognized national courier, or by depositing the same with the United States Postal Service with postage prepaid, for delivery by certified or registered mail, addressed to the Party, or personally delivered to the Party, at the address set out below:

Transmission Provider: _____

_____

Interconnection Customer: _____

_____

Either Party may change the notice information by giving five Business Days written notice prior to the effective date of the change.

6.7.1 *Billings and Payments.* Billings and payments shall be sent to the addresses set out below:

Transmission Provider: _____

_____

Interconnection Customer: _____

_____

6.7.2 *Alternative Forms of Notice.* Any notice or request required or permitted to be given by either Party to the other and not required by this agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

Transmission Provider: _____

_____

Interconnection Customer: _____

_____

6.7.3 *Operations and Maintenance Notice.* Each Party shall notify the other Party in writing of the identity of the person(s) that it designates as the point(s) of contact with respect to operations and maintenance the Party's facilities.

6.8 *Multiple Counterparts.* This agreement may be executed in two or more counterparts, each of which is deemed an original but all constitute one and the same instrument.

6.9 *No Partnership.* This agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

6.10 *Communications.* Each Party will provide the other Party with the name, title, address and phone numbers of its representative to receive operational communications and to conduct the daily communications which may be necessary or convenient for the administration of this agreement. Such designations, including names, addresses, and phone numbers, may be communicated or revised by one Party's notice to the other in accordance with Article 6.7.

6.11 *Severability.* If any provision or portion of this agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other Governmental Authority, (1) Such portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by such ruling, and (3) the remainder of this agreement shall remain in full force and effect.

6.12 *Security Arrangements.* Infrastructure security of Transmission

System equipment and operations and control hardware and software is essential to ensure day-to-day reliability and operational security. The Commission expects all Transmission Providers, market participants, and Interconnection Customers interconnected to electric systems to comply with the recommendations offered by the President's Critical Infrastructure Protection Board and, eventually, best practice recommendations from the electric reliability authority. All public utilities are expected to meet basic standards for system infrastructure and operational security, including physical, operational, and cyber-security practices.

6.13 *Indemnity.* The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under this agreement on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the Indemnified Party.

Indemnified Person. If an Indemnified Person is entitled to indemnification under this article as a result of a claim by a third party, and the Indemnifying Party fails, after notice and reasonable opportunity to proceed under this article, to assume the defense of such claim, such Indemnified Person may at the expense of the Indemnifying Party contest, settle or consent to the entry of any judgement with respect to, or pay in full, such claim.

Indemnifying Party. If an Indemnifying Party is obligated to indemnify and hold any Indemnified Person harmless under this article, the amount owing to the Indemnified Person shall be the amount of such Indemnified Person's actual Loss, net of any insurance or other recovery.

Indemnity Procedures. Promptly after receipt by an Indemnified Person of any claim or notice of the commencement of any action or administrative or legal proceeding or investigation as to which the indemnity provided for in this article may apply, the Indemnified Person shall notify the Indemnifying Party of such fact. Any failure of or delay in such notification shall not affect a Party's indemnification obligation unless such failure or delay is materially prejudicial to the Indemnifying Party.

The Indemnifying Party shall have the right to assume the defense thereof with counsel designated by such Indemnifying Party and reasonably satisfactory to the Indemnified Person. If the defendants in any such action include one or more Indemnified Persons and the Indemnifying Party and if the Indemnified Person reasonably concludes that there may be legal defenses available to it and/or other Indemnified Persons which are different from or additional to those available to the Indemnifying Party, the Indemnified Person shall have the right to select separate counsel to assert such legal defenses and to otherwise participate in the defense of such action on its own behalf. In such instances, the Indemnifying Party shall only be required to pay the fees and expenses of one additional attorney to represent an Indemnified Person or Indemnified Persons having such differing or additional legal defenses.

The Indemnified Person shall be entitled, at its expense, to participate in any such action, suit or proceeding, the defense of which has been assumed by the Indemnifying Party. Notwithstanding the foregoing, the Indemnifying Party (1) shall not be entitled to assume and control the defense of any such action, suit or proceedings if and to the extent that, in the opinion of the Indemnified Person and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability on the Indemnified Person, or there exists a conflict or adversity of interest between the Indemnified Person and the Indemnifying Party, in such event the Indemnifying Party shall pay the reasonable expenses of the Indemnified Person, and (2) shall not settle or consent to the entry of any judgement in any action, suit or proceeding without the consent of the Indemnified Person, which shall not be reasonably withheld, conditioned or delayed.

6.14 *Force Majeure.* Economic hardship is not considered a Force Majeure event.

Neither Party shall be considered to be in Default with respect to any obligation hereunder other than the obligation to pay money when due, if prevented from fulfilling such obligation by Force Majeure. A Party unable to fulfill any obligation hereunder (other than an obligation to pay money when due) by reason of Force Majeure shall give notice and the full particulars of such Force Majeure to the other Party in writing or by telephone as soon as reasonably possible after the occurrence of the cause relied upon. Telephone notices given pursuant to this article shall be confirmed in writing as soon as reasonably possible and shall specifically state full particulars of the Force Majeure, the time and date when the Force Majeure occurred and when the Force Majeure is reasonably expected to cease. The Party affected shall exercise due diligence to remove such disability with reasonable dispatch, but shall not be required to accede or agree to any provision not satisfactory to it in order to settle and terminate a strike or other labor disturbance.

6.15 *Environmental Releases.* Each Party shall notify the other Party, first orally and then in writing, of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the Generating Facility or the Interconnection Facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall: (1) Provide the notice as soon as practicable, provided such Party makes a good faith effort to provide the notice no later than twenty-four hours after such Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

6.16 *Insurance.* Each Party shall, at its own expense, maintain in force throughout the period of the Standard Small Generator Interconnection Agreement, and until released by the other Party, the following minimum insurance coverages, with insurers authorized to do business in the State where the Point of Interconnection is located:

6.16.1 Employers' Liability and Workers' Compensation Insurance providing statutory benefits in accordance with the laws and regulations of the State in which the Point of Interconnection is located. The minimum limits for the Employers' Liability Insurance shall be ($___) each accident bodily injury by accident, ($____) each employee bodily injury by disease, and ($____) policy limit bodily injury by disease.

6.16.2 Commercial General Liability Insurance including premises and operations, personal injury, broad form property damage, broad form blanket contractual liability coverage (including coverage for the contractual indemnification) products and completed operations coverage, coverage for explosion, collapse and underground hazards, independent contractors coverage, coverage for pollution to the extent normally available and punitive damages to the extent normally available and a cross liability endorsement, with minimum limits of ($____) per occurrence/($____) aggregate combined single limit for personal injury, bodily injury, including death and property damage.

6.16.3 Comprehensive Automobile Liability Insurance for coverage of owned and non-owned and hired vehicles, trailers or semi-trailers designed for travel on public roads, with a minimum, combined single limit of ($____) per occurrence for bodily injury, including death, and property damage.

6.16.4 Excess Public Liability Insurance over and above the Employers' Liability Commercial General Liability and Comprehensive Automobile Liability Insurance coverage, with a minimum combined single limit of ($____) per occurrence/($____) aggregate.

6.16.5 The Commercial General Liability Insurance, Comprehensive Automobile Insurance and Excess Public Liability Insurance polies shall name the other Party, its parent, associated and Affiliate companies and their respective directors, officers, agents, servants and employees ("Other Party Group") as additional insured. All policies shall contain provisions whereby the insurers waive all rights of subrogation in accordance with the provisions of the Standard Small Generator Interconnection Agreement against the Other Party Group and provide thirty days advance written notice to the Other Party Group prior to anniversary date of cancellation or any material change in coverage or condition.

6.16.6 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies shall contain provisions that specify that the policies are primary and shall apply to such extent without consideration for other policies separately carried and shall state that each insured is provided coverage as though a separate policy had been issued to each, except the insurer's liability shall not be

increased beyond the amount for which the insurer would have been liable had only one insured been covered. Each Party shall be responsible for its respective deductibles or retentions.

6.16.7 The Commercial General Liability Insurance, Comprehensive Automobile Liability Insurance and Excess Public Liability Insurance policies, if written on a Claims First Made Basis, shall be maintained in full force and effect for two years after termination of the Standard Small Generator Interconnection Agreement, which coverage may be in the form of tail coverage or extended reporting period coverage if agreed by the Parties.

6.16.8 The requirements contained herein as to the types and limits of all insurance to be maintained by the Parties are not intended to and shall not in any manner, limit or qualify the liabilities and obligations assumed by the Parties under the Standard Small Generator Interconnection Agreement.

6.16.9 Within ten days following execution of the Standard Small Generator Interconnection Agreement, and as soon as practicable after the end of each fiscal year or at the renewal of the insurance policy and in any event within ninety days thereafter, each Party shall provide certification of all insurance required in the Standard Small Generator Interconnection Agreement, executed by each insurer or by an authorized representative of each insurer.

6.16.10 Notwithstanding the foregoing, each Party may self-insure to the extent it maintains a self-insurance program; provided that, such Party's senior secured debt is rated at investment grade, or better, by Standard & Poor's. For any period of time that a Party's senior secured debt is unrated by Standard & Poor's or is rated at less than investment grade by Standard & Poor's, such Party shall comply with the insurance requirements applicable to it under Articles 6.16.1 through 6.16.9. In the event that a Party is permitted to self-insure pursuant to this Article 6.16.10, it shall not be required to comply with the insurance requirements applicable to it under Articles 6.16.1 through 6.16.9.

6.16.11 The Parties agree to report to each other in writing as soon as practical all accidents or occurrences resulting in injuries to any person, including death, and any property damage arising out of the Standard Small Generator Interconnection Agreement.

6.17 *Default.*

6.17.1 *General.* No Default shall exist where such failure to discharge an obligation (other than the payment of money) is the result of Force Majeure as defined in this agreement or the result of an act or omission of the other Party. Upon a Default, the non-defaulting Party shall give written notice of such Default to the defaulting Party. Except as provided in Article 6.17.2, the defaulting Party shall have thirty Calendar Days from receipt of the Default notice within which to cure such Default; provided however, if such Default is not capable of cure within thirty Calendar Days, the defaulting Party shall commence such cure within thirty Calendar Days after notice and continuously and diligently complete such cure within ninety Calendar Days from receipt of the Default notice; and, if cured within such time, the Default specified in such notice shall cease to exist.

6.17.2 *Right To Terminate.* If a Default is not cured as provided in this article, or if a Default is not capable of being cured within the period provided for herein, the non-defaulting Party shall have the right to terminate this agreement by written notice at any time until cure occurs, and be relieved of any further obligation hereunder and, whether or not that Party terminates this agreement, to recover from the defaulting Party all amounts due hereunder, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this article will survive termination of this agreement.

6.18 *Subcontractors.*

6.18.1 *General.* Nothing in this Agreement shall prevent a Party from utilizing the services of any subcontractor as it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing such services and each Party shall remain primarily liable to the other Party for the performance of such subcontractor.

6.18.2 *Responsibility of Principal.* The creation of any subcontract relationship shall not relieve the hiring Party of any of its obligations under this Agreement. The hiring Party shall be fully responsible to the other Party for the acts or omissions of any subcontractor the hiring Party hires as if no subcontract had been made; provided, however, that in no event shall the Transmission Provider be liable for the actions or inactions of the Interconnection Customer or its subcontractors with respect to obligations of the Interconnection Customer under Article 5 of this Agreement. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of such Party.

6.18.3 *No Limitation by Insurance.* The obligations under this article will not be limited in any way by any limitation of subcontractor's insurance.

6.19 *Consequential Damages.* Other than as expressly provided for in this agreement, neither Party shall be liable under any provision of this agreement for any losses, damages, costs or expenses for any special, indirect, incidental, consequential, or punitive damages, including but not limited to loss of profit or revenue, loss of the use of equipment, cost of capital, cost of temporary equipment or services, whether based in whole or in part in contract, in tort, including negligence, strict liability, or any other theory of liability; provided, however, that damages for which a Party may be liable to the other Party under another agreement will not be considered to be special, indirect, incidental, or consequential damages hereunder.

6.20 *Reservation of Rights.* Transmission Provider shall have the right to make a unilateral filing with FERC to modify this LGIA with respect to any rates, terms and conditions, charges, classifications of service, rule or regulation under section 205 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder, and Interconnection Customer shall have the right to make a unilateral filing with FERC to modify this LGIA pursuant to section 206 or any other applicable provision of the Federal Power Act and FERC's rules and regulations thereunder; provided that each Party shall have the right to protest any such filing by the other Party and to participate fully in any proceeding before FERC in which such modifications may be considered. Nothing in this LGIA shall limit the rights of the Parties or of FERC under sections 205 or 206 of the Federal Power Act and FERC's rules and regulations thereunder, except to the extent that the Parties otherwise mutually agree as provided herein.

Article 7. Confidentiality

7.1 *Confidentiality.* Confidential Information shall include, without limitation, all information relating to a Party's technology, research and development, business affairs, and pricing, and any information supplied by either of the Parties to the other prior to the execution of this Agreement.

Information is Confidential Information only if it is clearly designated or marked in writing as confidential on the face of the document, or, if the information is conveyed orally or by inspection, if the Party providing the information orally informs the Party receiving the information that the information is confidential.

If requested by either Party, the other Party shall provide in writing, the basis for asserting that the information referred to in this Article warrants confidential treatment, and the requesting Party may disclose such writing to the appropriate Governmental Authority. Each Party shall be responsible for the costs associated with affording confidential treatment to its information.

7.2 *Term.* During the term of this agreement, and for a period of three years after the expiration or termination of this agreement, except as otherwise provided in this article, each Party shall hold in confidence and shall not disclose to any person Confidential Information.

7.3 *Scope.* Confidential Information shall not include information that the receiving Party can demonstrate: (1) Is generally available to the public other than as a result of a disclosure by the receiving Party, (2) was in the lawful possession of the receiving Party on a non-confidential basis before receiving it from the disclosing Party, (3) was supplied to the receiving Party without restriction by a third party, who, to the knowledge of the receiving Party after due inquiry, was under no obligation to the disclosing Party to keep such information confidential, (4) was independently developed by the receiving Party without reference to Confidential Information of the disclosing Party, (5) is, or becomes, publicly known, through no wrongful act or omission of the receiving Party or Breach of this agreement, or (6) is required, in accordance with Article 7.8 (Order of Disclosure) to be disclosed by any Governmental Authority or is otherwise required to be disclosed by law or subpoena, or is necessary in any legal

proceeding establishing rights and obligations under this agreement. Information designated as Confidential Information will no longer be deemed confidential if the Party that designated the information as confidential notifies the other Party that it no longer is confidential.

7.4 *Release of Confidential Information.* Neither Party shall release or disclose Confidential Information to any other person, except to its employees, consultants, or to parties who may be or considering providing financing to or equity participation with Interconnection Customer, or to potential purchasers or assignees of Interconnection Customer, on a need-to-know basis in connection with this agreement, unless such person has first been advised of the confidentiality provisions of this article and has agreed to comply with such provisions. Notwithstanding the foregoing, a Party providing Confidential Information to any person shall remain primarily responsible for any release of Confidential Information in contravention of this article.

7.5 *Rights.* Each Party retains all rights, title, and interest in the Confidential Information that each Party discloses to the other Party. The disclosure by each Party to the other Party of Confidential Information shall not be deemed a waiver by either Party or any other person or entity of the right to protect the Confidential Information from public disclosure.

7.6 *No Warranties.* By providing Confidential Information, neither Party makes any warranties or representations as to its accuracy or completeness. In addition, by supplying Confidential Information, neither Party obligates itself to provide any particular information or Confidential Information to the other Party nor to enter into any further agreements or proceed with any other relationship or joint venture.

7.7 *Standard of Care.* Each Party shall use at least the same standard of care to protect Confidential Information it receives as it uses to protect its own Confidential Information from unauthorized disclosure, publication or dissemination. Each Party may use Confidential Information solely to fulfill its obligations to the other Party under this agreement or its regulatory requirements.

7.8 *Order of Disclosure.* If a court or a Government Authority or entity with the right, power, and apparent authority to do so requests or requires either Party, by subpoena, oral deposition, interrogatories, requests for production of documents, administrative order, or otherwise, to disclose Confidential Information, that Party shall provide the other Party with prompt notice of such request(s) or requirement(s) so that the other Party may seek an appropriate protective order or waive compliance with the terms of this Agreement. Notwithstanding the absence of a protective order or waiver, the Party may disclose such Confidential Information which, in the opinion of its counsel, the Party is legally compelled to disclose. Each Party will use Reasonable Efforts to obtain reliable assurance that confidential treatment will be accorded any Confidential Information so furnished.

7.9 *Termination of Agreement.* Upon termination of this agreement for any reason, each Party shall, within ten Calendar Days of receipt of a written request from the other Party, use Reasonable Efforts to destroy, erase, or delete (with such destruction, erasure, and deletion certified in writing to the other Party) or return to the other Party, without retaining copies thereof, any and all written or electronic Confidential Information received from the other Party.

7.10 *Remedies.* The Parties agree that monetary damages would be inadequate to compensate a Party for the other Party's Breach of its obligations under this article. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the first Party Breaches or threatens to Breach its obligations under this article, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law. Such remedy shall not be deemed an exclusive remedy for the Breach of this article, but shall be in addition to all other remedies available at law or in equity. The Parties further acknowledge and agree that the covenants contained herein are necessary for the protection of legitimate business interests and are reasonable in scope. No Party, however, shall be liable for indirect, incidental, or consequential or punitive damages of any nature or kind resulting from or arising in connection with this article.

7.11 *Disclosure to FERC or its Staff.* Notwithstanding anything in this article to the contrary, and pursuant to 18 CFR 1b.20, if FERC or its staff, during the course of an investigation or otherwise, requests information from one of the Parties that is otherwise required to be maintained in confidence pursuant to this Agreement, the Party shall provide the requested information to FERC or its staff, within the time provided for in the request for information. In providing the information to FERC or its staff, the Party may, consistent with 18 CFR 388.112, request that the information be treated as confidential and non-public by FERC and its staff and that the information be withheld from public disclosure. Parties are prohibited from notifying the other Party to this LGIA prior to the release of the Confidential Information to the Commission or its staff. The Party shall notify the other Party to this agreement when it is notified by FERC or its staff that a request to release Confidential Information has been received by FERC, at which time either of the Parties may respond before such information would be made public, pursuant to 18 CFR 38.112.

7.12 *Competitively Sensitive, Commercial or Financial Information.* Subject to the exception in Article 7.11, any information that a Party claims is competitively sensitive, commercial or financial information under this agreement ("Confidential Information") shall not be disclosed by the other Party to any person not employed or retained by the other Party, except to the extent disclosure is (1) required by law, (2) reasonably deemed by the disclosing Party to be required to be disclosed in connection with a dispute between or among the Parties, or the defense of litigation or dispute, (3) otherwise permitted by consent of the other Party, such consent not to be unreasonably withheld, or (4) necessary to fulfill its obligations under this agreement or as a transmission service provider or a Control Area operator including disclosing the Confidential Information to the RTO or ISO or to a regional or national reliability organization. The Party asserting confidentiality shall notify the other Party in writing of the information it claims is confidential. Prior to any disclosures of the other Party's Confidential Information under this subparagraph, or if any third party or Governmental Authority makes any request or demand for any of the information described in this subparagraph, the disclosing Party agrees to promptly notify the other Party in writing and agrees to assert confidentiality and cooperate with the other Party in seeking to protect the Confidential Information from public disclosure by confidentiality agreement, protective order or other reasonable measures.

7.13 *Information in Public Domain.* This provision shall not apply to any information that was or is hereafter in the public domain (except as a result of a Breach of this provision).

Article 8. Disputes

8.1 *Submission.* In the event either Party has a dispute, or asserts a claim, that arises out of or in connection with this agreement or its performance, such Party (the "Disputing Party") shall provide the other Party with written notice of the dispute or claim ("Notice of Dispute"). Such dispute or claim shall be referred to a designated senior representative of each Party for resolution on an informal basis as promptly as practicable after receipt of the Notice of Dispute by the other Party. In the event the designated representatives are unable to resolve the claim or dispute through unassisted or assisted negotiations within thirty Calendar Days of the other Party's receipt of the Notice of Dispute, such claim or dispute may, upon agreement of the Parties, be submitted to arbitration and resolved in accordance with the arbitration procedures set forth below. In the event the Parties do not agree to submit such claim or dispute to arbitration, each Party may exercise whatever rights and remedies it may have in equity or at law consistent with the terms of this agreement.

8.2 *External Arbitration Procedures.* Any arbitration initiated under this agreement shall be conducted before a single neutral Arbitrator/Technical Master (hereinafter referred to as Arbitrator) appointed by the Parties. If the Parties fail to agree upon a single Arbitrator within ten Calendar Days of the submission of the dispute to arbitration, each Party shall choose one Arbitrator who shall sit on a three-member arbitration panel. The two Arbitrators so chosen shall within 20 Calendar Days select a third Arbitrator to chair the arbitration panel. In either case, the Arbitrators shall be knowledgeable in electric utility matters, including electric transmission and bulk power issues, and shall not have any current or past substantial business or financial relationships with any party to the arbitration (except prior arbitration). The Arbitrator(s) shall provide each of the Parties an opportunity to be heard and, except as otherwise provided herein,

shall conduct the arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and any applicable FERC regulations or Regional Transmission Organization rules; provided, however, in the event of a conflict between the Arbitration Rules and the terms of this article, the terms of this article shall prevail.

8.3 *Arbitration Decisions.* Unless otherwise agreed by the Parties, the Arbitrator(s) shall render a decision within 90 Calendar Days of appointment and shall notify the Parties in writing of such decision and the reasons therefor. The Arbitrator(s) shall be authorized only to interpret and apply the provisions of this agreement and shall have no power to modify or change any provision of this agreement in any manner. The decision of the Arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction. The decision of the Arbitrator(s) may be appealed solely on the grounds that the conduct of the Arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act or the Administrative Dispute Resolution Act. The final decision of the Arbitrator must also be filed with FERC if it affects jurisdictional rates, terms and conditions of service, Interconnection Facilities, or Upgrades.

8.4 *Costs.* Each Party shall be responsible for its own costs incurred during the arbitration process and for the following costs, if applicable: (1) The cost of the Arbitrator chosen by the Party to sit on the three-member panel and one half of the cost of the third Arbitrator chosen, or (2) one half the cost of the single Arbitrator jointly chosen by the Parties.

Article 9. Signatures

In witness whereof, Parties have caused this agreement to be executed by their respective duly authorized representatives.

For Transmission Provider

Name: _____
Title: _____
Date: _____

For Transmission Owner (If Applicable)

Name: _____
Title: _____
Date: _____

For Interconnection Customer

Name: _____
Title: _____
Date: _____

Appendix 1

Description and Costs of Generating Facility, Interconnection Facilities, and Metering Equipment

Equipment, including the Generating Facility, Interconnection Facilities, and metering equipment shall be itemized and identified as being owned by Interconnection Customer, Transmission Provider, or Transmission Owner. Transmission Provider will provide a best estimate itemized cost, including overheads, of its Interconnection Facilities and metering equipment, and a best estimate itemized cost of the annual operation and maintenance expenses associated with its Interconnection Facilities and metering equipment.

Appendix 2

One-line Diagram Depicting Generating Facility, Interconnection Facilities, Metering Equipment, and Upgrades

Appendix 3

Milestones

In-Service Date: _____

Critical milestones and responsibility as agreed to by the Parties:

	Milestone/Date	Responsible Party
(1)		
(2)		
(3)		
(4)		
(5)		
(6)		
(7)		
(8)		
(9)		
(10)		

Agreed to by: For Transmission Provider	Date
For Transmission Owner (If Applicable)	Date
For Interconnection Customer	Date

Appendix 4

Additional Operating Requirements for Interconnection Provider's Transmission System and Affected Systems Needed To Support Interconnection Customer's Needs

Transmission Provider shall also provide requirements that must be met by Interconnection Customer prior to initiating Parallel Operation with Transmission Provider's Transmission System.

Appendix 5

Transmission Provider's Description of Transmission System Upgrades and Best Estimate of Upgrade Costs

Transmission Provider shall describe Upgrades and provide an itemized best estimate of the cost, including overheads, of the Upgrades and annual operation and maintenance expenses associated with such Upgrades. Transmission Provider shall functionalize Upgrade costs and annual expenses as either transmission or distribution related.

[FR Doc. 03–20155 Filed 8–18–03; 8:45 am]
BILLING CODE 6718–01–P

Federal Register

Tuesday,
August 19, 2003

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations; Proposed Rules

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI93

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 2003–04 late-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: You must submit comments on the proposed migratory bird hunting late-season frameworks by September 2, 2003.

ADDRESSES: Send your comments on the proposals to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the Service's office in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2003

On May 6, 2003, we published in the **Federal Register** (68 FR 24324) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2003–04 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 23, 2003, we published in the **Federal Register** (68 FR 37362) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and finalized the regulatory alternatives for the 2003–04 duck hunting season. The June 23 supplement also provided detailed information on the 2003–04 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) and Flyway Council meetings.

On June 18–19, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2003–04 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2003–04 regular waterfowl seasons. On July 17, 2003, we published in the **Federal Register** (68 FR 42546) a third document specifically dealing with the proposed frameworks for early-season regulations. In late August, we will publish a rulemaking establishing final frameworks for early-season migratory bird hunting regulations for the 2003–04 season.

On July 30–31, 2003, we held open meetings with the Flyway Council Consultants, at which the participants reviewed the status of waterfowl and developed recommendations for the 2003–04 regulations for these species. This document deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, areas, and limits.

We have considered all pertinent comments received through July 31, 2003, in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. The comment period is specified above under **DATES.** We will publish final regulatory frameworks for late-season migratory game bird hunting in the **Federal Register** on or about September 19, 2003.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **ADDRESSES** or from our Web site at *http://migratorybirds.fws.gov.*

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area is comprised of Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

Habitat conditions for breeding waterfowl have greatly improved over last year in most of the prairie survey areas. These improved conditions are reflected in the numbers of ponds counted this year. The estimate of May ponds (U.S. Prairies and Prairie and parkland Canada combined) of 5.2 ± 0.2 [SE] million is 91% higher than last year ($P < 0.001$) and 7% above the long-term average ($P = 0.034$). Numbers of ponds in Canada (3.5 ± 0.2 million) and the United States (1.7 ± 0.1 million) were above 2002 estimates (+145% in Canada and +30% in the U.S.; $P < 0.001$). Canadian ponds were similar to the 1974–2002 average ($P = 0.297$), while ponds in the United States were 10% above the 1974–2002 average ($P = 0.037$).

Most prairie areas had warm temperatures and abundant rain this spring. Two areas of dramatic improvement over the past several years were south-central Alberta and southern Saskatchewan, where conditions went from poor to good after much-needed precipitation relieved several years of drought. Other areas in the prairies also improved compared with 2002, but to a lesser extent. However, years of dry conditions in parts of the United States and Canadian prairies, combined with agricultural practices, have reduced the quality and quantity of residual nesting cover and overwater nest sites in many regions. This could potentially limit production for both dabbling and diving ducks, if the warm spring temperatures and good moisture of 2003 do not result

in rapid growth of new cover. Eastern South Dakota was the one area of the prairies where wetland habitat conditions were generally worse than last year, mostly due to low soil moisture, little winter precipitation, and no significant rains in April. This region received several inches of rain in May, but most birds had probably flown to other regions with more favorable wetland conditions.

In the northern part of the traditional survey area, habitat was in generally good condition and most areas had normal water levels. The exception was northern Manitoba, where low water levels in small streams and beaver ponds resulted in overall breeding habitat conditions that were only fair. Warm spring temperatures arrived much earlier this year than the exceptionally late spring last year. However, a cold snap in early May may have hurt early nesting species such as mallards and pintails, particularly in the northern Northwest Territories.

This spring, habitat conditions in the eastern survey area ranged from excellent to fair. In the southern and western part of this survey area, water and nesting cover were plentiful and temperatures were mild. Habitat quality decreased to the north, especially in northern and western Quebec, where many shallow marshes and bogs were either completely dry or reduced to mudflats. Beaver pond habitat was also noticeably less common than normal. To the east in Maine and most of the Maritime provinces, conditions were excellent, with adequate water and vegetation, and warm spring temperatures.

Weather and habitat conditions during the summer months can influence waterfowl production. Good wetland conditions increase renesting and brood survival. July wetland conditions were rated fair to good over most of Prairie Canada, the Dakotas, and eastern Montana, but poor conditions prevailed in eastern South Dakota, south-central Manitoba, central Saskatchewan, and north-central Montana. However, uniformly good conditions were found in the northern portions of the prairie provinces, and spring and summer rains made for good-to-excellent conditions along the border of Saskatchewan and eastern Montana. Results of the July Production Survey indicate that the number of ponds in Prairie Canada and the north-central United States combined was 2.5 ± 0.1 million ponds. This was 35 percent above last year's estimate of 1.8 ± 0.1 million ponds, but still 8 percent below the long-term average. July ponds in Prairie Canada were estimated to be 1.5 ± 0.1 million. This was 47 percent above last year's estimate of 1.0 ± 0.1 million but 16 percent below the long-term average. July ponds in the north-central United States were estimated at 1.0 ± 0.1 million. This was 21 percent above last year's estimate of 0.8± 0.1 million, but similar to the long-term average.

Breeding Population Status

In the traditional survey area, the total duck population estimate was 36.2 ± 0.7 million birds, 16 percent above ($P < 0.001$) last year's estimate of 31.2 ± 0.5 million birds, and 9 percent above ($P < 0.001$) the 1955–2002 long-term average. Mallard abundance was 7.9 ± 0.3 million birds, which was similar to last year's estimate of 7.5 ± 0.2 million birds ($P = 0.220$) and the long-term average ($P = 0.100$). Blue-winged teal abundance was estimated to be 5.5 ± 0.3 million birds. This value was 31 percent above last year's estimate of 4.2 ± 0.2 million birds ($P<0.001$) and 23 percent above the long-term average ($P = 0.001$). Estimates of shovelers (3.6 ± 0.2 million; +56%) and pintails (2.6 ± 0.2 million; +43%) were above 2002 estimates ($P < 0.001$), while estimates of gadwall (2.5 ± 0.2 million), wigeon (2.6 ± 0.2 million), green-winged teal (2.7 ± 0.2 million), redheads (0.6 ± 0.1 million), canvasbacks (0.6 ± 0.1 million), and scaup (3.7 ± 0.2 million) were unchanged from 2002 estimates ($P \geq 0.149$). Gadwall (+55%) and shovelers (+72%) were above their 1955–2002 averages ($P < 0.001$), as were green-winged teal (+46%; $P < 0.001$), which were at their second highest level since 1955. Pintails (−39%) and scaup (−29%) remained well below their long-term averages ($P < 0.001$). Estimates of wigeon, redheads, and canvasbacks were unchanged from their long-term averages ($P \geq 0.582$).

The eastern survey area comprises strata 51–56 and 62–69. The 2003 total duck population estimate for this area was 3.6 ± 0.3 million birds. This estimate is 17 percent lower than that of last year (4.4 ± 0.3 million birds, $P = 0.065$), but is similar to the 1996–2002 average ($P = 0.266$). Numbers of the individual species were similar to those of last year and the 1996–2002 average, with the exception of mergansers (0.6 ± 0.1 million), which decreased 30 percent from the 2002 estimate ($P = 0.035$).

Breeding Activity and Production

The number of broods in the north-central United States and Prairie Canada combined was 434,900, 23 percent higher than last year's estimate, and 7 percent below the long-term average. The number of broods in Prairie Canada and the north-central United States were 142 percent and 18 percent above last year's estimates, respectively. Brood indices in Prairie Canada were 24 percent below the long-term average, while brood counts were 31% above the long-term average in the north-central United States. Reflecting the lower concentration of ducks in the Canadian boreal forest this year compared to 2002, the brood index in this region was 72 percent lower than last year, and 76 percent below the long-term average. The late-nesting index, that is, the number of pairs and lone drakes without broods seen during July surveys, was 17 percent higher than last year, and 51 percent lower than the long-term average, for all areas combined. The late-nesting index was down 43 percent and 30 percent relative to last year in boreal Canada and Prairie Canada, respectively, but up 67 percent in the north-central United States. Late nesting indices were below the long-term average by 74 percent in boreal Canada, by 43 percent in the north-central United States, and by 46 percent in Prairie Canada.

Fall Flight Estimate

The size of the mid-continent mallard population, which comprises mallards from the traditional survey area, plus Michigan, Minnesota, and Wisconsin, was 8.8 million birds. This is similar to that of 2002 (8.6 million). The 2003 mid-continent mallard fall-flight estimate is 10.3 million birds, statistically similar to the 2002 estimate of 9.1 million birds. These estimates were based on revised mid-continent mallard population models and, therefore, differ from those previously published.

See section 1.B. Regulatory Alternatives for further discussion on the implications of this information for this year's selection of the appropriate hunting regulations.

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (Branta canadensis), brant (B. bernicla), snow geese (Chen caerulescens), Ross's geese (C. rossii), emperor geese (C. canagicus), white-fronted geese (Anser albifrons) and tundra swans (Cygnus columbianus). The timing of snowmelt and goose nesting activities in most areas of the Arctic and subarctic was near average in 2003. Only Alaska's North Slope, Banks and adjacent Arctic Islands, and Akimiski Island reported substantially delayed nesting phenology this year. Although Alaska's Yukon-Kuskokwim Delta experienced an early

spring snowmelt, we observed poor production of young by brant, cackling Canada geese, and emperor geese, likely due to low wetland levels and high fox predation. Conditions in 2003 were especially favorable for greater snow geese. Of the 25 populations for which current primary population indices were available, 8 populations (Atlantic Population, Aleutian, Dusky, and 3 temperate-nesting populations of Canada geese; Pacific Population White-fronted Geese; and Eastern Population Tundra Swans) displayed significant positive trends, and only Short Grass Prairie Population Canada geese displayed a significant negative trend over the most recent 10-year period. Forecasts for production of geese and swans in North America in 2003 varied regionally, but generally will be similar to or higher than in 2002.

Waterfowl Harvest and Hunter Activity

During the 2002–03 hunting season, duck stamp sales, duck harvest, and goose harvest all declined from the previous year. United States waterfowl hunters bagged about 8 percent fewer ducks and 7 percent fewer geese than in 2001. Duck stamp sales totaled 1,583,847 (4 percent decrease) and 12,740,300 ducks (−8%) and 3,378,600 geese (−7%) were harvested. The five most commonly harvested duck species were mallard (4,915,600), green-winged teal (1,389,500), gadwall (1,251,400), wood duck (1,212,800), and blue-winged/cinnamon teal (765,700).

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the May 6, 2003, **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The supplemental proposed rule, which appeared in the June 23, 2003, **Federal Register**, discussed the regulatory alternatives for the 2003–04 duck hunting season. Late-season comments are summarized below and numbered in the order used in the May 6 **Federal Register** document. We have included only the numbered items pertaining to late-season issues for which we received written comments. Consequently, the issues do not follow in direct numerical or alphabetical order.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the May 6, 2003, **Federal Register** document.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

A. Harvest Strategy Considerations

Council Recommendations: The Atlantic, Central, and Pacific Flyway Councils and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended the adoption of the "liberal" regulatory alternative, with the exception of some specific bag limits described below in sections 1.B. Regulatory Alternatives and 1.D. Special Seasons/Species Management. More specifically, recommendations concerned sections iii. Black Ducks, iv. Canvasbacks, v. Pintails, and viii. Wood Ducks.

Service Response: Currently, two stocks of mallards (midcontinent and eastern) are recognized for the purposes of Adaptive Harvest Management (AHM). This year, we will again use an approach to the optimization of these stocks' harvest, whereby the Atlantic Flyway regulatory strategy is based exclusively on the status of eastern mallards, and the regulatory strategy for the remaining Flyways is based exclusively on the status of midcontinent mallards. However, this approach continues to be considered provisional until its implications are better understood, and until such time that a more comprehensive approach to managing multiple duck stocks is developed.

For the 2003 hunting season, the Service made two significant changes to AHM, based on recommendations from the Flyway Councils: (1) The "very-restrictive" alternative was eliminated from the set of regulatory alternatives, and (2) consideration of a closed season in the western three Flyways is restricted to midcontinent (traditional survey plus Minnesota, Wisconsin, and Michigan) mallard breeding population levels <5.5 million. We also continue to offer extended framework dates in the "moderate" and "liberal" regulatory alternatives. The regulatory alternatives were discussed in the June 23 **Federal Register**.

The 2003 optimal regulatory strategy for midcontinent mallards was based on: (1) The revised regulatory alternatives, including the closed-season constraint; (2) updates of regulation-specific harvest rates; (3) current population models and updated model weights; and (3) the dual objectives to maximize long-term cumulative harvest and achieve a population goal of 8.8 million midcontinent mallards. Based on a spring population survey of 8.80 million mallards and 3.52 million Canadian ponds, the prescription is for a "liberal" season in 2003 for the three western Flyways.

The optimal regulatory strategy for eastern mallards was based on: (1) The revised regulatory alternatives; (2) current population models and updated model weights; and (3) an objective to maximize long-term cumulative harvest. The spring population size of eastern mallards (Northeast plot survey + Canada) this year was 1.04 million, suggesting that a "liberal" season in 2003 is appropriate for the Atlantic Flyway.

We support the recommendations of the Atlantic, Mississippi, Central and Pacific Flyways regarding selection of the "liberal" regulatory alternative and therefore propose to adopt the "liberal" regulatory alternative, as described in the June 23 **Federal Register**.

B. Regulatory Alternatives

Council Recommendations: The Central Flyway Council recommended the availability of two daily bag limit options, termed Options A and B. Under Option A, the daily bag limit would be 6 ducks, with species and sex restrictions as follows: 5 mallards (no more than 2 of which may be females), 3 scaup, 2 redheads, 2 wood ducks, 1 pintail, 1 mottled duck, and 1 canvasback. The season for pintails and canvasbacks would be limited to 39 days (see further discussion under section 1.D. Special Seasons/Species Management). Under Option B, the daily bag limit would be 5 ducks, with species and sex restrictions as follows: 3 scaup, 2 redheads, 2 wood ducks, 1 pintail, 1 mottled duck, 1 hen mallard, and 1 canvasback. There would be no restrictions on the season length for canvasbacks or pintails.

Service Response: We do not support the Central Flyway's Option B. The regulatory alternatives for the 2003–04 hunting season were discussed in the June 23 **Federal Register**. We believe that new approaches to multispecies harvest management should be addressed in the overall context of AHM harvest management for ducks. The AHM Task Force, AHM Working Group, and Flyway Councils are considering development of multispecies approaches, and these forums would be appropriate places for further discussion of the Central Flyway proposal.

D. Special Seasons/Species Management

iii. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended allowing States the opportunity to return to a 2-black-duck daily bag limit providing they close the black duck season one day for each day a 2-black-duck bag limit is employed. No offset would be required for days when the black duck bag limit was restricted to 1 bird. Both increased bag days and closed days must be consecutive, except that 1 split is allowed. This regulation will be evaluated annually by the Atlantic Flyway Council.

Service Response: We do not support the Atlantic Flyway Council's recommendation. This request is similar to the Council's request last year, which the Service denied due to the difficulty in assessing options on a Flyway basis and the inability to assess whether or not these options are harvest-neutral. Until there is some formal agreement to manage black duck harvests on something less than a rangewide basis, we believe black ducks should continue to be managed at that level. Although black duck numbers may have improved slightly in recent years in some areas, they still remain below goal, and this spring's breeding population estimates declined 13 percent.

Presently, we are waiting for the International Black Duck Harvest Management Working Group to complete its report, which is due in November. Until we have some formal agreement among the stakeholders, including the Mississippi Flyway, we believe it is premature to consider the harvest strategy proposed by the Flyway.

iv. Canvasbacks

Council Recommendations: The Atlantic Flyway Council recommended modifying the 1994 Canvasback Harvest Strategy to allow for a limited canvasback harvest (season within a season) during years when the predicted harvest exceeds the allowable harvest, but can still be achieved by a more restrictive package (moderate, restrictive, or very restrictive). The season closure threshold would remain at a predicted spring breeding population of 500,000. For 2003, the Council recommended that the Service allow a restrictive canvasback season of 30 consecutive hunt days for the Atlantic Flyway, with a one-bird daily limit.

The Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended that the Service allow a restrictive canvasback season of 30 consecutive hunt days for the Mississippi Flyway, with a one-bird daily limit.

The Central Flyway Council recommended that the existing interim harvest strategy for canvasbacks be followed during the 2003–04 season. The Council further recommended under Option A (described in section 1.B. Regulatory Alternatives) that the canvasback season be 39 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

The Pacific Flyway Council recommended a canvasback season of 86 days, plus 2 youth hunt days in the Pacific Flyway, with a daily bag limit of 1, and flexibility for States to select dates for canvasback seasons during any period within the duck season framework dates.

Service Response: We continue to support the harvest strategy adopted in 1994. This year, the strategy suggests that current population and habitat status, combined with the predicted harvests, would not support harvest of canvasbacks in the "liberal" season alternative. This spring, the estimate of canvasback abundance during the May survey was 558,000 birds, and the number of ponds in Prairie Canada was about 3.5 million. Using the model from the canvasback harvest management strategy, the number of birds that could be harvested in the United States during the 2003–04 hunting season, while still attaining the objective of 500,000 birds next spring, is about 102,000. The predicted harvest in the United States, associated with the "liberal" regulatory alternative in the United States, is about 119,000 birds.

We believe that if the harvest strategy indicates a full season cannot be allowed, in some cases, a limited harvest might be possible and still attain the spring abundance objective. Thus, we propose a season length at the level of the "restrictive" AHM alternative (*i.e.*, 30 days in the Atlantic and Mississippi Flyways, 39 days in the Central Flyway, and 60 days in the Pacific Flyway) for this year. Hunting days must be taken consecutively and must be consistent with established zone/split hunting configurations approved for the regular duck season in each State.

Further, for the second time in the past 3 years, we have proposed a departure from the 1994 canvasback harvest strategy. During the coming year, we encourage the Flyway Councils to review the harvest strategy.

v. Pintails

Council Recommendations: The Atlantic Flyway Council and the Upper- and Lower-Regulations Committees of the Mississippi Flyway Council recommended that the regulations for pintails in 2003–04 be a 60-day season with a 1-bird bag limit.

The Central Flyway Council recommended that the existing interim harvest strategy for pintails be followed during the 2003–04 season. The Council further recommended under Option A (described in section 1.B. Regulatory Alternatives) that the pintail season be 39 days, which may be split according to applicable zones/split duck hunting configurations approved for each State.

The Pacific Flyway Council recommended a full-season framework for pintails, with a daily bag limit of 1 bird.

Service Response: Last year, the Flyway Councils and the Service agreed to depart from the established pintail harvest strategy and implement a "season-within-a-season" in all four Flyways for northern pintails. The season length employed was the season length for the restrictive alternative under the AHM protocol in all four Flyways. The overall harvest declined, although not as much as predicted by the current models. This year, the breeding population estimate increased to 2.6 million; however, this estimate is still about 40 percent below the long-term population average. The interim strategy recommends a 1-pintail daily bag limit nationwide. However, based on the models, the predicted harvest (slightly more then 600,000) is projected to result in a lower breeding population in 2004.

Implementation of another year of the restrictive season length for pintails is projected to result in about a 7 percent population increase. Since the use of the strategy has not achieved the desired population growth, and model projections suggest a population decline under a "liberal" season length with a 1-bird daily bag limit in all four Flyways, we propose that we again

depart from the harvest strategy and restrict pintail season length to those in the "restrictive" AHM alternative. Season length would be 30 days in the Atlantic and Mississippi Flyways, 39 days in the Central Flyway, and 60 days in the Pacific Flyway. Hunting days must be consistent with established zone/split hunting configurations approved for the regular duck season in each State.

Further, for the second year in a row, we are proposing a departure from the interim harvest strategy for the reasons noted above, and in recognition that the habitat conditions in key pintail breeding areas offers some real chance to achieve population growth. During the coming year, we would like to review the harvest strategy with the Councils with regard to the provision in the interim strategy that permits seasons that are expected to reduce future breeding populations.

viii. Wood Ducks

Council Recommendations: The Atlantic Flyway Council recommends increasing the wood duck bag limit to three birds during October 1 through November 6 in the Atlantic Flyway for a 3-year experimental period (2003/04—2005/06).

Service Response: We do not support the Atlantic Flyway Council's recommendation. We are continuing to evaluate the usefulness of a modeling approach to the management of wood duck harvests; however, this work is not yet completed and we believe that changes in bag limits are premature at this time. Further, we are concerned about the potential effects of this change on local breeding populations.

4. Canada Geese

B. Regular Seasons

The Central Flyway Council recommended that regular season frameworks for dark geese in the west-tier States consist of a framework opening date of the Saturday nearest September 24 (September 27, 2003) and a framework closing date of the Sunday nearest February 15 (February 15, 2004). The season could be divided into 2 segments, except in Wyoming, where the season could be divided into 3 segments and evaluated in accordance with Service criteria. Season length would be 107 days, except in Colorado and Texas, where the season length would be 95 days. Daily bag limit would be five dark geese in the aggregate, with the following exceptions: (a) In the Western Goose Zone of Texas, the daily bag limit would be one white-fronted goose and three other dark geese (in the aggregate), and (b) in Colorado, the daily bag limit would be three dark geese in the aggregate. The possession limit would be twice the daily bag limit.

The Pacific Flyway Council recommended increasing the goose season length in eastern Washington from 100 to 107 days, creation of a new management area within Oregon's Northwest Special Permit Zone, elimination of California's San Joaquin Valley Special Management Area, and increasing the goose season length in Humboldt and DelNorte Counties, California, from 9 to 16 days.

Service Response: We concur with all the Council recommendations except for one aspect regarding the creation of a new management area within Oregon's Northwest Special Permit Zone. We continue to support efforts to address long-standing concerns about agricultural damage caused by Canada geese in this area, and would support the creation of the recommended zone with the condition that the daily bag limit on cackling Canada geese be reduced to two birds in the four-bird goose bag during the early portion of the goose season chosen for the new zone. We believe this restriction will help to minimize possible impacts on cackling Canada geese present in the area during this season. Cackling Canada geese are an important sport and subsistence resource and the population is currently 30 percent below objective levels and has not shown any increase in recent years. We believe that additional take of cackling Canada geese should not be encouraged at this time.

C. Special Late Season

Council Recommendations: The Atlantic Flyway Council recommended that Massachusetts' late Canada goose southern boundary of the coastal zone be extended from the present boundary in Duxbury, south to the Cape Cod Canal.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the experimental late (December) special Canada goose season in Minnesota be granted operational status.

Service Response: We concur.

8. Swans

Council Recommendations: The Central Flyway Council recommended that up to 200 tundra swan permits be temporarily transferred from South Dakota to North Dakota beginning in the 2003 season.

Service Response: We concur. The transfer of swan hunting permits within a Flyway is in accordance with guidelines in the Cooperative Flyway Management Plan for the Eastern Population of Tundra Swans.

In addition, the Service has completed the final environmental assessment (EA) for general swan seasons in the Pacific Flyway (the availability of the draft EA was announced in the May 16, 2003, **Federal Register** [68 FR 26642]). The EA includes a review of the 5-year experimental general swan hunting seasons that took place from 1995 to 2000, as well as a summary of the results of subsequent 2000–03 hunting seasons. Information from the most recent breeding and wintering populations surveys is also included in the EA. Three alternatives are evaluated to address the future of operational swan hunting seasons in Utah, Nevada, and the Pacific Flyway portion of Montana. The issuance of a new EA fulfills the Service commitment to assess the Pacific Flyway swan seasons at the end of the 2002–03 hunting season as established in the most recent EA on the issue, the availability of which was announced in the April 25, 2001, **Federal Register** (66 FR 20828). The EA focuses on the issue of whether or not to establish an operational approach for swan hunting. Related efforts to address population status and distributional concerns regarding the Rocky Mountain Population of trumpeter swans are also discussed. Three alternatives, including the proposed action, were considered. Copies are available from the Service's Web site at *www.migratorybirds.fws.gov* or by writing to Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 911 N.E., 11th Avenue, Portland, Oregon 97232–4181.

Public Comment Invited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. We intend that adopted final rules be as responsive as possible to all concerned interests and, therefore, seek the comments and suggestions of the public, other concerned governmental agencies, nongovernmental organizations, and other private interests on these proposals. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations to the address indicated under **ADDRESSES.**

Special circumstances involved in the establishment of these regulations limit the amount of time that we can allow for public comment. Specifically, two

considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified in **DATES** is contrary to the public interest.

Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 4107, 4501 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. However, as in the past, we will summarize all comments received during the comment period and respond to them in the final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341). In addition, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. We plan to begin the public scoping process in the near future.

The Service has also completed the final environmental assessment (EA) for general swan seasons in the Pacific Flyway. The EA includes a review of the 5-year experimental general swan hunting seasons that took place from 1995 to 2000, as well as a summary of the results of subsequent 2000–02 hunting seasons. Copies are available from the Service's Web site at *www.migratorybirds.fws.gov* or by writing to Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 911 N.E., 11th Avenue, Portland, Oregon 97232–4181.

Endangered Species Act Consideration

Prior to issuance of the 2003–04 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1543; hereinafter the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat, and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order 12866

The migratory bird hunting regulations are economically significant and are annually reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, and then updated in 1998. We will update again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES.**

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the rule clearly stated?

(2) Does the rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the rule (*e.g.*, grouping and order of sections, use of headings, paragraphing) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections?

(5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule?

(6) What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of the Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail comments to this address: *Exsec@ios.doi.gov.*

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis). The Analysis was subsequently updated in 1996 and 1998 and will be updated again in 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 1998 Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 2003. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES.**

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a

collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Thus, it is not a significant energy action and no Statement of Energy Effects is required.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2003–04 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: August 8, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 2003–04 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 2003, and March 10, 2004.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway that lies west of the 100th meridian.

Definitions: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese: Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese: snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of

migratory waterfowl (including mergansers and coots).

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Hunting Seasons and Duck Limits: 60 days, except pintails and canvasbacks which may not exceed 30 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (2 hens), 3 scaup, 1 black duck, 1 pintail, 1 canvasback, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, and 4 scoters. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Connecticut River Zone, Vermont: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Inland Zone of New Hampshire.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date for Atlantic Population (AP) goose seasons overlaps with special late season frameworks for resident geese, the framework closing date for AP goose seasons is January 14.

Connecticut:

North Atlantic Population (NAP) Zone: Between October 1 and January 31, a 60-day season may be held with a 2-bird daily bag limit in the H Unit and a 70-day season with a 3-bird daily bag in the L Unit.

Atlantic Population (AP) Zone: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

South Zone: A special experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

Delaware: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit.

Florida: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Georgia: In specific areas, a 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Maine: A 60-day season may be held Statewide between October 1 and January 31, with a 2-bird daily bag limit.

Maryland: Resident Population (RP) Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit.

Massachusetts: NAP Zone: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

New Hampshire: A 60-day season may be held statewide between October 1 and January 31, with a 2-bird daily bag limit.

New Jersey: Statewide: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York: Southern James Bay Population (SJBP) Zone: A 70-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

NAP Zone: Between October 1 and January 31, a 60-day season may be held, with a 2-bird daily bag limit in the High Harvest areas; and a 70-day season may be held, with a 3-bird daily bag limit in the Low Harvest areas.

Special Late Goose Season Area: An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Delaware, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

AP Zone: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

RP Zone: A 70-day season may be held between the last Saturday in October (October 25) and February 15, with a 5-bird daily bag limit.

North Carolina: SJBP Zone: A 70-day season may be held between October 1 and December 31, with a 2-bird daily bag limit, except for the Northeast Hunt Unit and Northampton County, which is closed.

RP Zone: A 70-day season may be held between October 1 and February 15, with a 5-bird daily bag limit.

Pennsylvania: SJBP Zone: A 40-day season may be held between November 15 and January 14, with a 2-bird daily bag limit.

Pymatuning Zone: A 35-day season may be held between October 1 and January 31, with a 1-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held from January 15 to February 15, with a 5-bird daily bag limit.

Rhode Island: A 60-day season may be held between October 1 and January 31, with a 2-bird daily bag limit. An experimental season may be held in designated areas from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, a 70-day season may be held during November 15 to February 15, with a 5-bird daily bag limit.

Vermont: A 45-day season may be held between the last Saturday in October (October 25) and January 31, with a 2-bird daily bag limit.

Virginia: SJBP Zone: A 40-day season may be held between November 15 and

January 14, with a 2-bird daily bag limit. Additionally, an experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit.

AP Zone: A 45-day season may be held between November 15 and January 31, with a 1-bird daily bag limit.

RP Zone: A 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Back Bay Area: Season is closed.

West Virginia: A 70-day season may be held between October 1 and January 31, with a 3-bird daily bag limit.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into three segments, except in Delaware and Maryland, where, following the completion of their duck season, and until March 10, Delaware and Maryland may split the remaining portion of the season to allow hunting on Mondays, Wednesdays, Fridays, and Saturdays only.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 60-day season between the Saturday nearest September 24 (September 27) and January 31, with a 3-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Hunting Seasons and Duck Limits: 60 days, except that the season for pintails and canvasbacks may not exceed 30 days for each species, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 3 scaup, 1 black duck, 1 pintail, 1 canvasback, 2 wood ducks, and 2 redheads. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser. In States that include mergansers in the duck bag limit, the daily limit is the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Arkansas, Minnesota, and Mississippi, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days, with 20 geese daily between the Saturday nearest September 24 (September 27) and March 10; for white-fronted geese not to exceed 86 days, with 2 geese daily or 107 days with 1 goose daily between the Saturday nearest September 24 (September 27) and the Sunday nearest February 15 (February 15); and for brant not to exceed 70 days, with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest September 24 (September 27) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest September 24 (September 27) and January 31.

Alabama: In the SJBP Goose Zone, the season for Canada geese may not exceed 50 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: In the Northwest Zone, the season for Canada geese may extend for 33 days, provided that one segment of at least 9 days occurs prior to October 15. In the remainder of the State, the season may not exceed 23 days. The season may extend to February 15, and may be split into 2 segments. The daily bag limit is 2 Canada geese.

Illinois: The total harvest of Canada geese in the State will be limited to 126,400 birds. The daily bag limit is 2 Canada geese. The possession limit is 10 Canada geese.

(a) North Zone—The season for Canada geese will close after 92 days or when 19,300 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first.

(b) Central Zone—The season for Canada geese will close after 92 days or when 24,100 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first.

(c) South Zone—The season for Canada geese will close after 92 days or when 28,600 birds have been harvested in the Southern Illinois Quota Zone, whichever occurs first.

Indiana: The season for Canada geese may extend for 70 days, except in the SJBP Zone, where the season may not exceed 50 days. The daily bag limit is 2 Canada geese.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky: (a) Western Zone—The season for Canada geese may extend for 66 days (81 days in Fulton County), and the harvest will be limited to 20,200 birds. Of the 20,200-bird quota, 13,100 birds will be allocated to the Ballard Reporting Area and 5,050 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 66-day season, the season in that reporting area will be closed. If the quotas in both the Ballard and Henderson/Union reporting areas are reached prior to completion of the 66-day season, the season in the counties and portions of counties that comprise the Western Goose Zone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 66 days (81 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with an 86-day white-fronted goose season or 1 white-fronted goose with a 107-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: (a) MVP Zone—The total harvest of Canada geese will be limited to 94,800 birds. The framework opening date for all geese is September 16, and the season for Canada geese may extend for 55 days. The daily bag limit is 2 Canada geese.

(1) Allegan County GMU—The Canada goose season will close after 50 days or when 3,000 birds have been

harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU—The Canada goose season will close after 50 days or when 1,000 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(b) SJBP Zone—The framework opening date for all geese is September 16, and the season for Canada geese may extend for 30 days. The daily bag limit is 2 Canada geese.

(1) Saginaw County GMU—The Canada goose season will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Tuscola/Huron GMU—The Canada goose season will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(c) Southern Michigan and Central Michigan GMUs—A special Canada goose season may be held between January 3 and February 1. The daily bag limit is 5 Canada geese.

Minnesota: (a) West Zone.

(1) West Central Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(2) Remainder of West Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

(d) Special Late Canada Goose Season—A special Canada goose season of up to 10 days may be held in December, except in the West Central Goose zone. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri: (a) Swan Lake Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments. The daily bag limit is 2 Canada geese.

(b) Southeast Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(c) Remainder of the State—(1) North Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(2) Middle Zone—The season for Canada geese may extend for 77 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(3) South Zone—The season for Canada geese may extend for 77 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

Ohio: The season for Canada geese may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 35 days and the daily bag limit is 1 Canada goose. A special Canada goose season of up to 22 days, beginning the first Saturday after January 10, may be held in the following Counties: Allen (north of U.S. Highway 30), Fulton, Geauga (north of Route 6), Henry, Huron, Lucas (Lake Erie Zone closed), Seneca, and Summit (Lake Erie Zone closed). During the special season, the daily bag limit is 2 Canada geese.

Tennessee: (a) Northwest Zone—The season for Canada geese may not exceed 72 days, and may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese may extend for 50 days. The daily bag limit is 2 Canada geese.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 90,000 birds.

(a) Horicon Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 26,100 birds. The season may not exceed 93 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 1,000 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese, and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone—The framework opening date for all geese is September 16. The harvest of Canada geese is limited to 58,400 birds, 500 of which are allocated to the Mississippi River Subzone. The season may not exceed 93 days, except in the Mississippi River Subzone, where the season may not exceed 71 days. The daily bag limit is 2 Canada geese. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 57,900 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, and Southern Illinois Quota Zones in Illinois; the Ballard and Henderson-Union Subzones in Kentucky; the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan; and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed, either by the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Hunting Seasons and Duck Limits: (1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days, except pintails and canvasbacks, which may not exceed 39 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no

more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 3 scaup, and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 13). A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

(2) Remainder of the Central Flyway: 74 days, except pintails and canvasbacks, which may not exceed 39 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 pintail, 1 canvasback, 2 redheads, 3 scaup, and 2 wood ducks. A single pintail and canvasback may also be included in the 6-bird daily bag limit for designated youth-hunt days.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser. In States that include mergansers in the duck daily bag limit, the daily limit may be the same as the duck bag limit, only one of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest September 24 (September 27) and the Sunday nearest February 15 (February 15). For light geese, outside dates for seasons may be selected between the Saturday nearest September 24 (September 27) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1999, are required.

Season Lengths and Limits: Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 95 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 86 days with a bag limit of 2 or a 107-day season with a bag limit of 1.

In South Dakota, for Canada geese in the Big Stone Power Plant Area of Canada Goose Unit 3, the daily bag limit is 3 until November 30, and 2 thereafter.

In Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In Colorado, the season may not exceed 95 days. The daily bag limit is 3 dark geese in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 95 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 3. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, Common Moorhens, and Purple Gallinules

Hunting Seasons and Duck Limits: Concurrent 107 days, except that the season for pintails and canvasbacks may not exceed 60 days, and season splits must conform to each State's zone/split configuration for duck hunting. The daily bag limit is 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 1 canvasback, 4 scaup, 2 redheads. A single pintail and canvasback may also be included in the 7-bird daily bag limit for designated youth-hunt days.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot, Common Moorhen, and Purple Gallinule Limits: The daily bag and possession limits of coots, common moorhens, and purple gallinules are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest September 24 (September 27) and the last Sunday in January (January 25).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits:

California, Oregon, and Washington: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 4), and the last Sunday in January (January 25). Basic daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming: Except as subsequently noted, 107-day seasons may be selected, with outside dates between the Saturday nearest September 24 (September 27), and the last Sunday in January (January 25). Basic daily bag limits are 3 light geese and 4 dark geese.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season

A 16-consecutive-day season may be selected in Oregon. A 16-day season may be selected in Washington, and this season may be split into 2-segments. A 30-consecutive-day season may be selected in California. In these States, the daily bag limit is 2 brant and is in addition to dark goose limits.

Arizona: The daily bag limit for dark geese is 3.

California

Northeastern Zone: The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose or 1 Aleutian Canada goose.

Southern Zone: In the Imperial County Special Management Area, light

geese only may be taken from the end of the general goose hunting season through the first Sunday in February (February 1).

Balance-of-the-State Zone: An 86-day season may be selected. Limits may not include more than 3 geese per day, of which not more than 2 may be white-fronted geese and not more than 1 may be a cackling Canada goose or Aleutian Canada goose. Two areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, the open season for Canada geese may be 16 days. The daily bag limit shall contain no more than 1 Canada goose, cackling Canada goose or Aleutian Canada goose.

(2) In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must end on or before December 14, and, in the Sacramento Valley Special Management Area (East), there will be no open season for Canada geese.

Oregon: Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling Canada goose or Aleutian Canada goose.

Harney, Klamath, Lake, and Malheur County Zone—For Lake County only, the daily dark goose bag limit may not include more than 2 white-fronted geese.

Northwest Special Permit Zone: Except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 165 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 4 and may include no more than 1 Aleutian Canada goose. Season dates in the Lower Columbia/N. Willamette Valley Management Area may be different than the remainder of the Northwest Special Permit Zone; however, for those season segments different from the Northwest Special Permit Zone, the cackling Canada goose limit is 2.

Closed Zone: Those portions of Coos and Curry Counties south of Bandon and west of U.S. 101 and all of Tillamook County.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese. A 107-day season may be selected in Areas 4 and 5 (eastern Washington).

Southwest Quota Zone: In the Southwest Quota Zone, except for designated areas, there will be no open season on Canada geese. In the designated areas, individual quotas will be established that collectively will not exceed 85 dusky Canada geese. See section on quota zones. In this area, the daily bag limit of dark geese is 4 and may include 4 cackling Canada geese. In Southwest Quota Zone Area 2B (Pacific and Grays Harbor Counties), the dark goose bag limit may include 1 Aleutian Canada goose.

Colorado: The daily bag limit for dark geese is 3 geese.

Idaho

Northern Unit: The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit: The daily bag limit on dark geese is 4.

Montana

West of Divide Zone and East of Divide Zone: The daily bag limit of dark geese is 4.

Nevada: The daily bag limit for dark geese is 3 except in the Lincoln and Clark County Zone, where the daily bag limit of dark geese is 2.

New Mexico: The daily bag limit for dark geese is 3.

Utah: The daily bag limit for dark geese is 3.

Wyoming: The daily bag limit for dark geese is 4.

Quota Zones: Seasons on dark geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days, and the established quota of dusky Canada geese must not be exceeded. Hunting of dark geese in those designated areas will only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese. If the monitoring program cannot be conducted, for any reason, the season must immediately close. In the designated areas of the Washington Southwest Quota Zone, a special late dark goose season may be held between the Saturday following the close of the general goose season and March 10. In the Northwest Special Permit Zone of Oregon, the framework closing date is extended to the Sunday closest to March 1 (February 29). Regular dark goose seasons may be split into 3 segments within the Oregon and Washington quota zones.

Swans

In portions of the Pacific Flyway (Montana, Nevada, and Utah), an open season for taking a limited number of swans may be selected. Permits will be issued by the State and will authorize each permittee to take no more than 1 swan per season. Each State's season may open no earlier than the Saturday nearest October 1 (October 4). These seasons are also subject to the following conditions:

Montana: No more than 500 permits may be issued. The season must end no later than December 1. The State must implement a harvest-monitoring program to measure the species composition of the swan harvest and should use appropriate measures to maximize hunter compliance in reporting bill-measurement and color information.

Utah: No more than 2,000 permits may be issued. During the swan season, no more than 10 trumpeter swans may be taken. The season must end no later than the second Sunday in December (December 14) or upon attainment of 10 trumpeter swans in the harvest, whichever occurs earliest. The Utah season remains subject to the terms of the Memorandum of Agreement entered into with the Service in August, 2001, regarding harvest monitoring, season closure procedures, and education requirements to minimize the take of trumpeter swans during the swan season.

Nevada: No more than 650 permits may be issued. During the swan season, no more than 5 trumpeter swans may be taken. The season must end no later than the Sunday following January 1 (January 4) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In addition, the States of Utah and Nevada must implement a harvest-monitoring program to measure the species composition of the swan harvest. The harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. The States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination. Further, the States of Montana, Nevada, and Utah must achieve at least an 80-percent compliance rate, or subsequent permits will be reduced by 10 percent. All three States must provide to the Service by June 30, 2003, a report detailing harvest, hunter participation, reporting compliance, and monitoring of swan

populations in the designated hunt areas.

Tundra Swans

In portions of the Atlantic Flyway (North Carolina and Virginia) and the Central Flyway (North Dakota, South Dakota [east of the Missouri River], and that portion of Montana in the Central Flyway), an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States that authorize the take of no more than 1 tundra swan per permit. A second permit may be issued to hunters from unused permits remaining after the first drawing. The States must obtain harvest and hunter participation data. These seasons are also subject to the following conditions:

In the Atlantic Flyway:

—The season is experimental.
—The season may be 90 days, from October 1 to January 31.
—In North Carolina, no more than 5,000 permits may be issued.
—In Virginia, no more than 600 permits may be issued.

In the Central Flyway:

—The season may be 107 days, from the Saturday nearest October 1 (October 4) to January 31.
—In the Central Flyway portion of Montana, no more than 500 permits may be issued.
—In North Dakota, no more than 2,200 permits may be issued.
—In South Dakota, no more than 1,300 permits may be issued.

Area, Unit, and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine State line to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont State line on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut State line.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire State line on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island State line; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from the Maine State line in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts State line.

Inland Zone: That portion of the State north and west of the above boundary and along the Massachusetts State line crossing the Connecticut River to Interstate 91 and northward in Vermont to Route 2, east to 102, northward to the Canadian border.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York State line in Raritan Bay and extending west along the New York State line to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware State line in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania State line in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont State line.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania State line.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81 to NY 31, east along NY 31 to NY 13, north along NY 13 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont State line, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York State line along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts State line at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

West Virginia

Zone 1 : That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to I–68; I–68 east to the Maryland State line; and along the State line to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa State line along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana State line.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri State line along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana State line.

South Zone: The remainder of Illinois.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois State line along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio State line.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois State line along Interstate Highway 64 to New Albany, east along State Road 62 to State Road 56, east along State Road 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio State line.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska State line along State Highway 175 to State Highway 37, southeast along State Highway 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois State line.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west and south of a line extending south from the Arkansas State line along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to the Mississippi State line.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

South Zone: The remainder of Michigan.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois State line (Lock and Dam 25) on Lincoln County Highway N to Missouri Highway 79; south on Missouri Highway 79 to Missouri Highway 47; west on Missouri Highway 47 to Interstate 70; west on Interstate 70 to U.S. Highway 54; south on U.S. Highway 54 to U.S. Highway 50; west on U.S. Highway 50 to the Kansas State line.

South Zone: That portion of Missouri south of a line running west from the Illinois State line on Missouri Highway 34 to Interstate 55; south on Interstate 55 to U.S. Highway 62; west on U.S. Highway 62 to Missouri Highway 53; north on Missouri Highway 53 to Missouri Highway 51; north on Missouri Highway 51 to U.S. Highway 60; west on U.S. Highway 60 to Missouri Highway 21; north on Missouri Highway 21 to Missouri Highway 72; west on Missouri Highway 72 to Missouri Highway 32; west on Missouri Highway 32 to U.S. Highway 65; north on U.S. Highway 65 to U.S. Highway 54; west on U.S. Highway 54 to the Kansas State line.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: That portion of the State north of a line extending east from the Indiana State line along U.S. Highway 30 to State Route 37, south along SR 37 to SR 95, east along SR 95 to LaRue-Prospect Road, east along LaRue-Prospect Road to SR 203, south along SR 203 to SR 739, east along SR 739 to SR 4, north along SR 4 to SR 309, east along SR 309 to U.S. 23, north along U.S. 23 to SR 231, north along SR 231 to U.S. 30, east along U.S. 30 to SR 42, north along SR 42 to SR 603, south along SR 603 to U.S. 30, east along U.S. 30 to SR 60, south along SR 60 to SR 39/60, east along SR 39/60 to SR 39, east along SR 39 to SR 241, east along SR 241 to U.S. 30, then east along U.S. 30 to the West Virginia State line.

South Zone: The remainder of Ohio.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota State line along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan State line.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That area of Kansas east of U.S. 283, and generally west of a line beginning at the Junction of the Nebraska State line and KS 28; south on KS 28 to U.S. 36; east on U.S. 36 to KS 199; south on KS 199 to Republic Co. Road 563; south on Republic Co. Road 563 to KS 148; east on KS 148 to Republic Co. Road 138; south on Republic Co. Road 138 to Cloud Co. Road 765; south on Cloud Co. Road 765 to KS 9; west on KS 9 to U.S. 24; west on U.S. 24 to U.S. 281; north on U.S. 281 to U.S. 36; west on U.S. 36 to U.S. 183; south on U.S. 183 to U.S. 24; west on U.S. 24 to KS 18; southeast on KS 18 to U.S. 183; south on U.S. 183 to KS 4; east on KS 4 to I–135; south on I–135 to KS 61; southwest on KS 61 to KS 96; northwest on KS 96 to U.S. 56; west on U.S. 56 to U.S. 281; south on U.S. 281 to U.S. 54; and west on U.S. 54 to U.S. 183; north on U.S. 183 to U.S. 56; southwest on U.S. 56 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains Zone: That portion of the State west of highways U.S. 183 and U.S. 20 from the South Dakota State line to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas State line.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and west of a line extending from the South Dakota State line along NE 26E Spur to NE 12, west on NE 12 to the Knox/Boyd County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: Area bounded by designated Federal and State highways and political boundaries beginning at the Kansas-Nebraska State line on U.S. Hwy. 73; north to NE Hwy. 67 north to U.S. Hwy 136; east to the Steamboat Trace (Trace); north to Federal Levee R–562; north and west to the Trace/Burlington Northern Railroad right-of-way; north to NE Hwy 2; west to U.S. Hwy 75; north to NE Hwy. 2; west to NE Hwy. 43; north to U.S. Hwy. 34; east to NE Hwy. 63; north and west to U.S. Hwy. 77; north to NE Hwy. 92; west to U.S. Hwy. 81; south to NE Hwy. 66; west to NE Hwy. 14; south to U.S. Hwy 34; west to NE Hwy. 2; south to U.S. Hwy. I–80; west to Gunbarrrel Rd. (Hall/Hamilton county line); south to Giltner Rd.; west to U.S. Hwy. 281; south to U.S. Hwy. 34; west to NE Hwy 10; north to County Road "R" (Kearney County) and County Road #742 (Phelps County); west to County Road #438 (Gosper County line); south along County Road #438 (Gosper County line) to County Road #726 (Furnas County Line); east to County Road #438 (Harlan County Line); south to U.S. Hwy 34; south and west to U.S. Hwy. 136; east to NE Hwy. 10; south to the Kansas-Nebraska State line.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota State line along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas State line along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I–35, north along I–35 to U.S. 412, west along U.S. 412 to OK 132, then north along OK 132 to the Kansas State line.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Unit: That portion of the State west of a line beginning at the North Dakota State line and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I–90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska State line.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along U.S. 212 to the Minnesota State line.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma State line along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana State line at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway portion)

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, and Washakie; and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary meets Park County Road 8VC, east along Park County Road 8VC to Park County Road 1AB, continuing east along Park County Road 1AB to Wyoming Highway 120, north along WY Highway 120 to WY Highway 294, south along WY Highway 294 to Lane 9, east along Lane 9 to Powel and WY Highway 14A, and finally east along WY Highway 14A to the Park County and Big Horn County line.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona—Game Management Units (GMU) as follows:

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines; west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties, and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

NAP L-Unit: That portion of Fairfield County north of Interstate 95 and that portion of New Haven County: starting at I–95 bridge on Housatonic River; north of Interstate 95; west of Route 10 to the intersection of Interstate 691; west along Interstate 691 to Interstate 84; west and south on Interstate 84 to Route 67; north along Route 67 to the Litchfield County line, then extending west along the Litchfield County line to the Shepaug River, then south to the intersection of the Litchfield and Fairfield County lines.

NAP H-Unit: All of the rest of the State not included in the AP or NAP–L descriptions.

AP Unit: Litchfield County and the portion of Hartford County, west of a line beginning at the Massachusetts State line in Suffield and extending south along Route 159 to its intersection with Route 91 in Hartford, and then extending south along Route 91 to its intersection with the Hartford/Middlesex County line.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maryland

SJBP Zone: Allegheny, Carroll, Frederick, Garrett, Washington Counties and the portion of Montgomery County south of Interstate 270 and west of Interstate 495 to the Potomac River.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

AP Zone: Remainder of the State.

Special Late Season Area: That portion of the Coastal Zone (see duck zones) that lies north of the Cape Cod Canal and east of Route 3, north to the New Hampshire line.

New Hampshire: Same zones as for ducks.

New Jersey

North—that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94: then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South—that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to Route 70; then west along Route 70 to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then east along Route 49 to Route 555; then south along Route 555 to Route 553; then east along Route 553 to Route 649; then north along Route 649 to Route 670; then east along Route 670 to Route 47; then north along Route 47 to Route 548; then east along Route 548 to Route 49; then east along Route 49 to Route 50; then south along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Lake Champlain Area: That area east and north of a continuous line extending along Route 11 from the New York-Canada boundary south to Route 9B, south along Route 9B to Route 9, south along Route 9 to Route 22 south of Keeseville, south along Route 22 to the west shore of South Bay along and around the shoreline of South Bay to Route 22 on the east shore of South Bay, southeast along Route 22 to Route 4, northeast along Route 4 to the New York-Vermont State line.

St. Lawrence Area: New York State Wildlife Management Units (WMUs): 6A, 6C, and 6H.

Northeast Area: That area north of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate 81, south along Interstate Route 81 to Route 31, east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York-Vermont boundary, excluding the Lake Champlain and St. Lawrence Areas.

Southwest Area: Consists of the following WMUs: 9C, 9G, 9H, 9J, 9K, 9M, 9N, and 9R; that part of WMU 9A lying south of a continuous line extending from the New York-Ontario boundary east along Interstate Route 190 to State Route 31, then east along Route 31 to Route 78 in Lockport; that part of WMU 9F lying in Erie County; and that part of WMU 8G lying south and west of a continuous line extending from WMU 9F east along the NYS Thruway to Exit 48 in Batavia, then south along State Route 98 to WMU 9H.

South Central Area: Consists of the following WMUs: 3A, 3C, 3H, 3K, 3N, 3P, 3R, 4G, 4H, 4N, 4O, 4P, 4R, 4W, 4X, 7R, 7S, 8T, 8W, 8X, 8Y, 9P, 9S, 9T, 9W, 9X, and 9Y; that part of WMU 3G lying in Putnam County; that part of WMU 3S lying northwest of Interstate Route 95; and that part of WMU 7M lying south of a continuous line extending from IR 81 at Cortland east along 41 Route to Route 26, then north along Route 26 to Route 23, then east along Route 23 to Route 8 at South New Berlin.

West Central Area: That area west of a continuous line extending from Lake Ontario east along the north shore of the Salmon River to Interstate Route 81 and then south along Interstate Route 81 to the New York-Pennsylvania boundary, excluding the Southwest and South Central Areas.

East Central Area: That area east of Interstate 81 that is south of a continuous line extending from Interstate Route 81 east along Route 31 to Route 13, north along Route 13 to Route 49, east along Route 49 to Route 365, east along Route 365 to Route 28, east along Route 28 to Route 29, east along Route 29 to Interstate Route 87, north along Interstate Route 87 to Route 9 (at Exit 20), north along Route 9 to Route 149, east along Route 149 to Route 4, north along Route 4 to the New York-Vermont boundary, and northwest of Interstate Route 95 in Westchester County, excluding the South Central Area.

Western Long Island Area: That area of Westchester County and its tidal waters southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying west of a continuous line extending due south from the New York-Connecticut boundary to the northern end of Sound Road (near Wading River), then south along Sound Road to North Country Road, then west

along North Country Road to Randall Road, then south along Randall Road to State Route 25A, then west along Route 25A to the William Floyd Parkway (County Route 46), then south along William Floyd Parkway to Fire Island Beach Road, then due south to international waters.

Eastern Long Island Area: that area of Suffolk County that is not part of the Western Long Island Area.

Special Late Hunting Area: consists of that area of Westchester County lying southeast of Interstate Route 95 and that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York—Connecticut boundary.

North Carolina

SJBP Hunt Zone: Includes the following counties or portions of counties: Anson, Cabarrus, Chatham, Davidson, Durham, Halifax (that portion east of NC 903), Iredell (that portion south of Interstate 40), Montgomery (that portion west of NC 109), Northampton (all of the county with the exception of that portion that is both north of U.S. 158 and east of NC 35), Richmond (that portion south of NC 73 and west of U.S. 220 and north of U.S. 74), Rowan, Stanly, Union, and Wake.

RP Hunt Zone: Includes the following counties or portions of counties: Alamance, Alleghany, Alexander, Ashe, Avery, Beaufort, Bertie (that portion south and west of a line formed by NC 45 at the Washington Co. line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Bladen, Brunswick, Buncombe, Burke, Caldwell, Carteret, Caswell, Catawba, Cherokee, Clay, Cleveland, Columbus, Craven, Cumberland, Davie, Duplin, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, Granville, Greene, Guilford, Halifax (that portion west of NC 903), Harnett, Haywood, Henderson, Hertford, Hoke, Iredell (that portion north of Interstate 40), Jackson, Johnston, Jones, Lee, Lenoir, Lincoln, McDowell, Macon, Madison, Martin, Mecklenburg, Mitchell, Montgomery (that portion that is east of NC 109), Moore, Nash, New Hanover, Onslow, Orange, Pamlico, Pender, Person, Pitt, Polk, Randolph, Richmond (all of the county with exception of that portion that is south of NC 73 and west of U.S. 220 and north of U.S. 74), Robeson, Rockingham, Rutherford, Sampson, Scotland, Stokes, Surry, Swain, Transylvania, Vance, Warren, Watauga, Wayne, Wilkes, Wilson, Yadkin, and Yancey.

Northeast Hunt Unit: Includes the following counties or portions of counties: Bertie (that portion north and east of a line formed by NC 45 at the Washington County line to U.S. 17 in Midway, U.S. 17 in Midway to U.S. 13 in Windsor, U.S. 13 in Windsor to the Hertford Co. line), Camden, Chowan, Currituck, Dare, Hyde, Northampton (that portion that is both north of U.S. 158 and east of NC 35), Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

Resident Canada Goose Zone: All of Pennsylvania except for Crawford, Erie, and Mercer Counties and the area east of I–83 from the Maryland State line to the intersection of U.S. Route 30 to the intersection of SR 441 to the intersection of I–283, east of I–283 to I–83, east of I–83 to the intersection of I–81, east of I–81 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of SR 147, east of SR 147 to the intersection of I–180, east of I–180 to the intersection of U.S. Route 220, east of U.S. Route 220 to the New York State line.

SJBP Zone: Erie, Mercer and Crawford Counties, except for the Pymatuning Zone (the area south of SR 198 from the Ohio State line to the intersection of SR 18 to the intersection of U.S. Route 322/SR 18, to the intersection of SR 3013, south to the Crawford/Mercer County line).

Pymatuning Zone: The area south of SR 198 from the Ohio State line to the intersection of SR 18 to the intersection of U.S. Route 322/SR 18, to the intersection of SR 3013, south to the Crawford/Mercer County line.

AP Zone: The area east of I–83 from the Maryland State line to the intersection of U.S. Route 30 to the intersection of SR 441 to the intersection of I–283, east of I–283 to I–83, east of I–83 to the intersection of I–81, east of I–81 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of SR 147, east of SR 147 to the intersection of I–180, east of I–180 to the intersection of U.S. Route 220, east of U.S. Route 220 to the New York State line.

Special Late Canada Goose Season Area: The SJBP zone (excluding the Pymatuning zone) and the northern portion of the AP zone defined as east of U.S. Route 220 from the New York State line, east of U.S. Route 220 to the intersection of I–180, east of I–180 to the intersection of SR 147, east of SR 147 to the intersection of U.S. Route 322, east of U.S. Route 322 to the intersection of I–81, north of I–81 to the intersection of I–80, and north of I–80 to the New Jersey State line.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Vermont: Same zones as for ducks.

Virginia

AP Zone: The area east and south of the following line—the Stafford County line from the Potomac River west to Interstate 95 at Fredericksburg, then south along Interstate 95 to Petersburg, then Route 460 (SE) to City of Suffolk, then south along Route 32 to the North Carolina line.

SJBP Zone: The area to the west of the AP Zone boundary *and* east of the following line: the "Blue Ridge" (mountain spine) at the West Virginia-Virginia Border (Loudoun County-Clarke County line) south to Interstate 64 (the Blue Ridge line follows county borders along the western edge of Loudoun-Fauquier-Rappahannock-Madison-Greene-Albemarle and into Nelson Counties), then east along Interstate Rt. 64 to Route 15, then south along Rt. 15 to the North Carolina line.

RP Zone: The remainder of the State west of the SJBP Zone.

Back Bay Area: The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

West Virginia: Same zones as for ducks.

Mississippi Flyway

Alabama: Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas: Northwest Zone: Benton, Carroll, Baxter, Washington, Madison,

Newton, Crawford, Van Buren, Searcy, Sebastion, Scott, Franklin, Logan, Johnson, Pope, Yell, Conway, Perry, Faulkner, Pulaski, Boone, and Marion Counties.

Illinois: Same zones as for ducks, but in addition:

North Zone: Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone: Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Zone: Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Indiana: Same zones as for ducks, but in addition:

SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Iowa: Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee State line at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana State line.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan

MVP Zone: The MVP Zone consists of an area north and west of the point beginning at the southwest corner of Branch county, north continuing along the western border of Branch and Calhoun counties to the northwest corner of Calhoun county, then easterly to the southwest corner of Eaton county, then northerly to the southern border of Ionia County, then easterly to the southwest corner of Clinton County, then northerly along the western border of Clinton County continuing northerly along the county border of Gratiot and Montcalm Counties to the southern border of Isabella County, then easterly to the southwest corner of Midland County, then northerly along the west Midland County border to Highway M–20, then easterly to U.S. Highway 10, then easterly to U.S. Interstate 75/U.S. Highway 23, then northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, then easterly on U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border.

SJBP Zone is the rest of the State, that area south and east of the boundary described above.

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly ½ mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons: Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin State line.

Central Michigan GMU: That portion of the Lower Peninsula north of the Southern Michigan GMU but south of a line beginning at the Wisconsin State line in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, easterly along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, easterly along U.S. 10 BR to U.S. 10, easterly along U.S. 10 to Interstate Highway 75/U.S. Highway 23, northerly along I–75/U.S. 23 to the U.S. 23 exit at Standish, easterly along U.S. 23 to the centerline of the Au Gres River, then southerly along the centerline of the Au Gres River to Saginaw Bay, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canadian border, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

West Zone: That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa State line, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota State line.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S.

59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH-7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Northwest Zone: That portion of the State encompassed by a line extending east from the North Dakota State line along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Special Canada Goose Seasons:

Southeast Zone: That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Missouri: Same zones as for ducks but in addition:

North Zone

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone

Southeast Zone: That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO) 34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

Ohio: Same zones as for ducks but in addition:

North Zone: Lake Erie SJBP Zone: That portion of the State encompassed by a line beginning in Lucas County at the Michigan State line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, east along I–80 to the Pennsylvania State line in Trumbull County, north along the Pennsylvania State line to SR 6 in Ashtabula County, west along SR 6 to the Lake/Cuyahoga County line, north along the Lake/Cuyahoga County line to the shore of Lake Erie.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion, and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama State line to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky State line.

Wisconsin: Same zones as for ducks but in addition:

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to Interstate Highway 39, southerly along Interstate Highway 39 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern & Santa Fe Railway and the Illinois State line in Grant County and extending northerly along the Burlington Northern & Santa Fe Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota State line.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois State line and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois State line.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver,

Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming State line south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming State line.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: That portion of the State east of Interstate Highway 25.

Nebraska

Dark Geese

Niobrara Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River. Where the Niobrara River forms the boundary, both banks will be in the Niobrara Unit.

East Unit: That area north and east of U.S. 281 at the Kansas/Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, east to U.S. 275, south to U.S. 77, south to NE 91, east to U.S. 30, east to Nebraska-Iowa State line.

Platte River Unit: That area south and west of U.S. 281 at the Kansas/Nebraska State line, north to Giltner Road (near Doniphan), east to NE 14, north to NE 66, east to U.S. 81, north to NE 22, west to NE 14 north to NE 91, west along NE 91 to NE 11, north to the Holt County line, west along the northern border of Garfield, Loup, Blaine and Thomas Counties to the Hooker County line, south along the Thomas/Hooker County lines to the McPherson County line, east along the south border of Thomas County to the western line of Custer County, south along the Custer/Logan County line to NE 92, west to U.S. 83, north to NE 92, west to NE 61, north along NE 61 to NE 2, west along NE 2 to the corner formed by Garden—Grant—Sheridan Counties, west along the north border of Garden, Morrill and Scotts Bluff Counties to the Wyoming State line.

North-Central Unit: The remainder of the State.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and U.S. 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia Counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

South Dakota

Canada Geese

Unit 1: Statewide except for Units 2, 3 and 4.

Big Stone Power Plant Area: That portion of Grant and Roberts Counties east of SD 15 and north of SD 20.

Unit 2: Brule, Buffalo, Charles Mix, Gregory, Hughes, Hyde, Lyman, Potter, Stanley, and Sully Counties and that portion of Dewey County south of U.S. 212.

Unit 3: Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts Counties.

Unit 4: Bennett County.

Texas

West Unit: That portion of the State lying west of a line from the international toll bridge at Laredo; north along I–35 and I–35W to Fort Worth; northwest along U.S. 81 and U.S. 287 to Bowie; and north along U.S. 81 to the Oklahoma State line.

East Unit: Remainder of State.

Wyoming (Central Flyway Portion)

Dark Geese

Area 1: Hot Springs, Natrona, and Washakie Counties, and the portion of Park County east of the Shoshone National Forest boundary and south of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 2: Converse County.

Area 3: Albany, Big Horn, Campbell, Crook, Fremont, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties, and that portion of Carbon County east of the Continental Divide; that portion of Park County west of the Shoshone National Forest boundary, and that Portion of Park County north of a line beginning where the Shoshone National Forest boundary crosses Park County Road 8VC, easterly along said road to Park County Road 1AB, easterly along said road to Wyoming Highway 120, northerly along said highway to Wyoming Highway 294, southeasterly along said highway to Lane 9, easterly along said lane to the town of Powel and Wyoming Highway 14A, easterly along said highway to the Park County and Big Horn County Line.

Area 4: Goshen and Platte Counties.

Pacific Flyway

Arizona

GMU 1 and 27: Game Management Units 1 and 27.

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to main street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of

intersection with the California-Nevada State line; north along the California-Nevada State line to the junction of the California-Nevada-Oregon State lines west along the California-Oregon State line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada State line south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican State line at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada State line.

Imperial County Special Management Area: The area bounded by a line beginning at Highway 86 and the Navy Test Base Road; south on Highway 86 to the town of Westmoreland; continue through the town of Westmoreland to Route S26; east on Route S26 to Highway 115; north on Highway 115 to Weist Rd.; north on Weist Rd. to Flowing Wells Rd.; northeast on Flowing Wells Rd. to the Coachella Canal; northwest on the Coachella Canal to Drop 18; a straight line from Drop 18 to Frink Rd.; south on Frink Rd. to Highway 111; north on Highway 111 to Niland Marina Rd.; southwest on Niland Marina Rd. to the old Imperial County boat ramp and the water line of the Salton Sea; from the water line of the Salton Sea, a straight line across the Salton Sea to the Salinity Control Research Facility and the Navy Test Base Road; southwest on the Navy Test Base Road to the point of beginning.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area (East): That area bounded by a line beginning at the junction of the Gridley-Colusa Highway and the Cherokee Canal; west on the Gridley-Colusa Highway to Gould Road; west on Gould Road and due west 0.75 miles directly to Highway 45; south on Highway 45 to Highway 20; east on Highway 20 to West Butte Road; north on West Butte Road to Pass Road; west on Pass Road to West Butte Road; north on West Butte Road to North Butte Road; west on North Butte Road and due west 0.5 miles directly to the Cherokee Canal; north on the Cherokee Canal to the point of beginning.

Sacramento Valley Special Management Area (West): That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral, and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I–84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada State line to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana State line (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada State line to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana State line, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Douglas, Coos, Curry, Josephine, and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill

Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to Milepost 19, north to the intersection of the Benton and Lincoln County line, north along the western boundary of Benton and Polk Counties to the southern boundary of Tillamook County, west along the Tillamook County boundary to the Pacific Coast.

Lower Columbia/N. Willamette Valley Management Area: Those portions of Clatsop, Columbia, Multnomah, and Washington Counties within the Northwest Special Permit Zone.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone and all of Lincoln County.

Closed Zone: Those portions of Coos and Curry Counties south of Bandon and west of U.S. 101 and all of Tillamook and Lincoln Counties.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Harney, Klamath, Lake, and Malheur County Zone: All of Harney, Klamath, Lake, and Malheur Counties.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Area 1: Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone): Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum Counties.

Area 2B (SW Quota Zone): Pacific and Grays Harbor Counties.

Area 3: All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4: Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5: All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Wyoming (Pacific Flyway Portion)

See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box Elder, Weber, Davis, Salt Lake, and Toole Counties lying west of I–15, north of I–80 and south of a line beginning from the Forest Street exit to the Bear River National Wildlife Refuge boundary, then north and west along the Bear River National Wildlife Refuge boundary to the farthest west boundary of the Refuge, then west along a line to Promontory Road, then north on Promontory Road to the intersection of SR 83, then north on SR 83 to I–84, then north and west on I–84 to State Hwy 30, then west on State Hwy 30 to the Nevada-Utah State line, then south on the Nevada-Utah State line to I–80.

[FR Doc. 03–20940 Filed 8–18–03; 8:45 am]
BILLING CODE 4310–55–P

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RULES GOING INTO EFFECT AUGUST 19, 2003

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Research and development companies; nonexclusive safe harbor from investment company definition; published 6-20-03

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Headlights and auxiliary lights; published 8-19-03

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 1018/P.L. 108–70

To designate the building located at 1 Federal Plaza in New York, New York, as the "James L. Watson United States Court of International Trade Building". (Aug. 14, 2003; 117 Stat. 886)

H.R. 1761/P.L. 108–71

To designate the facility of the United States Postal Service located at 9350 East Corporate Hill Drive in Wichita, Kansas, as the "Garner E. Shriver Post Office Building". (Aug. 14, 2003; 117 Stat. 887)

Last List August 15, 2003

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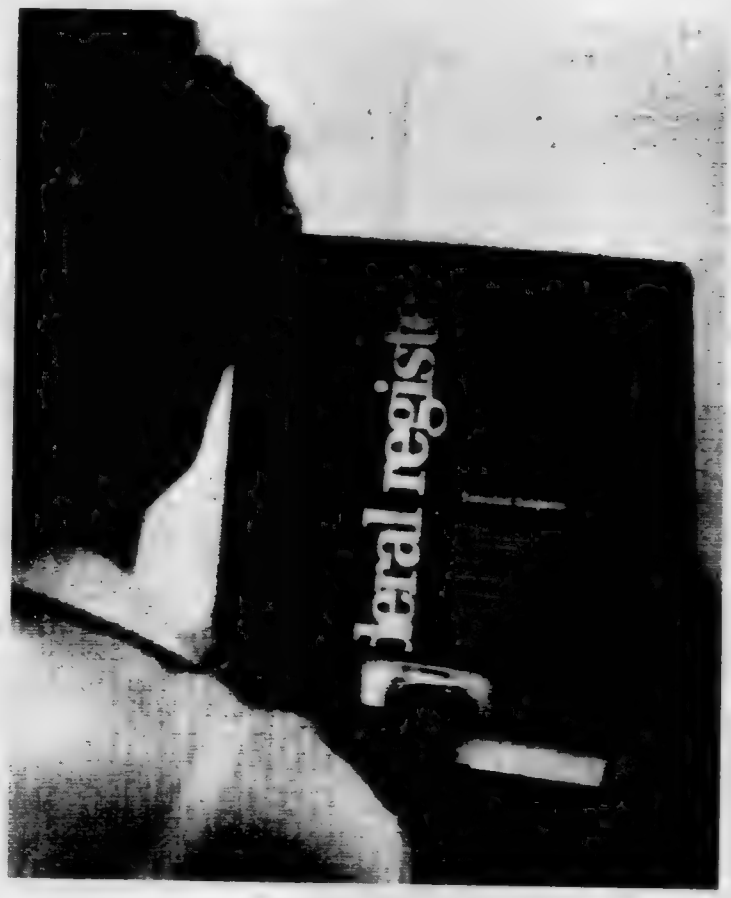

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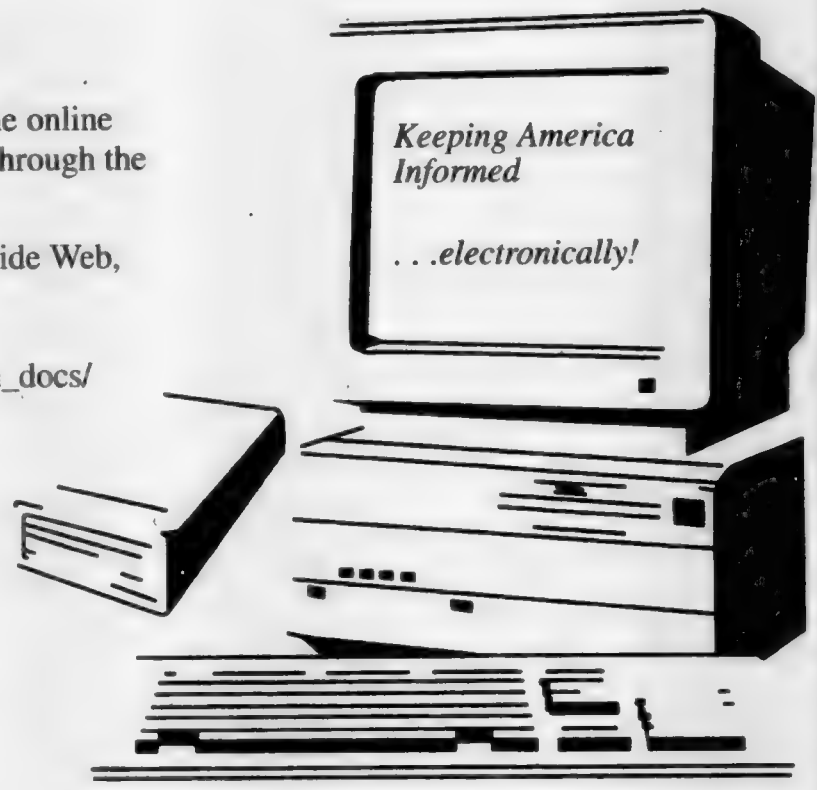

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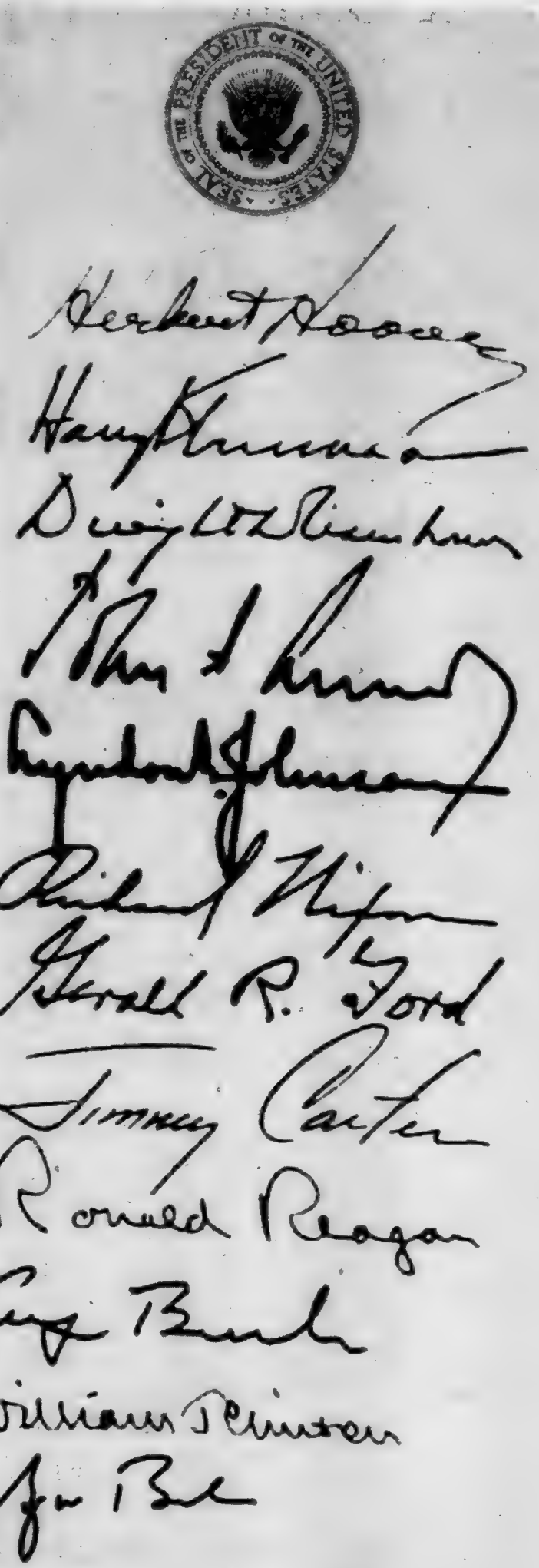

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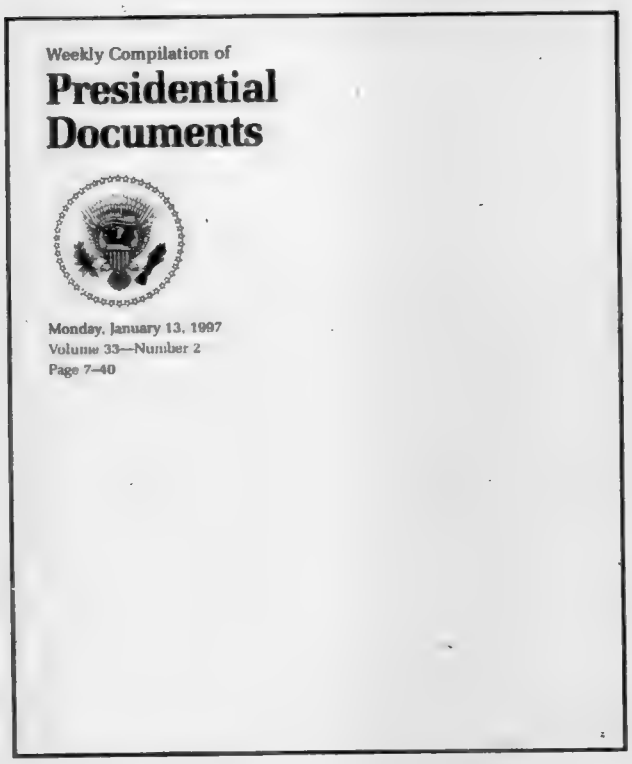

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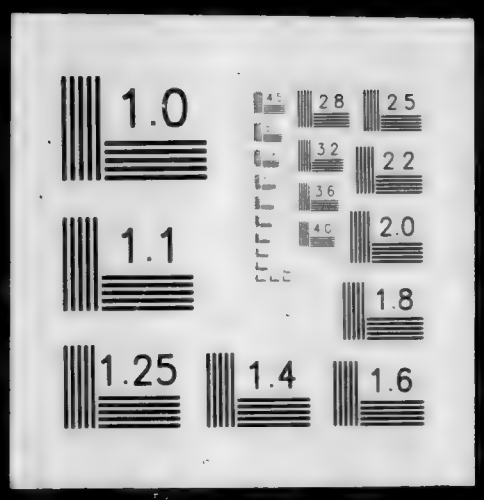
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Federal Register

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Rules and Regulations

Federal Register
Vol. 68, No. 161
Wednesday, August 20, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 319

[Docket No. 98–062–2]

RIN 0579–AB23

Update of Nursery Stock Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations for importing nursery stock to require additional certifications for imported niger seed and lilac, to reflect changes in plant taxonomy and pest distributions, and to make various changes to the requirements for postentry quarantine of imported plants. We are also making several other changes to update and clarify the regulations and improve their effectiveness. This action is necessary to update the existing regulations and make them easier to understand and implement.

DATES: This regulation is effective September 19, 2003. The incorporation by reference of the material described in the rule is approved by the Director of the Federal Register as of September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. William Thomas, Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–5214.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 319 prohibit or restrict the importation of certain plants and plant products into the United States to prevent the introduction of plant pests. The regulations contained in "Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products," §§ 319.37 through 319.37–14 (referred to below as the regulations), restrict, among other things, the importation of living plants, plant parts, and seeds for propagation.

On December 28, 2001, we published in the **Federal Register** (66 FR 67123–67134, Docket No. 98–062–1) a proposal to amend the regulations to require additional certifications for imported niger seed and lilac, to reflect changes in plant taxonomy and pest distributions, and to make various changes to the requirements for postentry quarantine of imported plants. We also proposed several other amendments to update and clarify the regulations and improve their effectiveness.

We solicited comments concerning our proposal for 60 days ending February 26, 2002. We received 15 comments by that date. They were from import treatment firms and representatives of State and foreign governments. Their concerns are discussed below by topic.

Changes in Taxonomy

Comment: Although some years ago botanists proposed transferring certain species in *Chyrsanthemum* to *Dendranthema*, the International Botanical Congress, which sets the standards for botanical nomenclature, has accepted the proposal that these species again be included in *Chrysanthemum*. Notice of this change was published in: Brummitt, D. (1997) "*Chrysanthemum* once again," Garden (London) 122 (9), 662–663; Royal Botanic Gardens, Kew, Richmond, Surrey, UK. The Animal and Plant Health Inspection Service (APHIS) should withdraw its proposal to transfer species from *Chrysanthemum* to other genera to reflect this information.

Response: We agree that the changes in taxonomy in the proposed rule were based on outdated information, and data from the Germplasm Resources Information Network of the Agricultural Research Service supports this commenter's assertion. Therefore, under this final rule, all but two of the plant species we had proposed to transfer to the genera *Ajania*, *Dendranthema*, *Leucanthemella*, and *Nipponanthemum* will continue to be referred to as *Chrysanthemum* spp. However, the Germplasm Resources Information Network indicates that the nippon daisy and the giant daisy are still assigned to *Nipponanthemum nipponicum* and *Leucanthemella serotina*, respectively. Therefore, in this final rule, we have added these two species to the list of prohibited articles in § 319.37–2, the list of articles eligible to be imported under the restrictions in § 319.37–5(c), and the list of articles subject to postentry quarantine in § 319.37–7.

We will continue to list *Dendranthema* spp. in the regulations because *Dendranthema* is widely used as a synonym for *Chrysanthemum* among importers.

Treatments Performed Outside the United States

We proposed to require that treatments performed outside the United States be monitored and certified by an APHIS inspector or an official of the plant protection service of the country exporting the regulated articles to the United States. We further proposed to require, in cases where an official of the exporting country monitors and certifies treatment, that the official issue a phytosanitary certificate that includes a declaration that the regulated articles have been treated in accordance with the Plant Protection and Quarantine (PPQ) Treatment Manual.

Comment: The requirement that treatments performed outside the United States be certified as having been performed "in accordance with the Plant Protection and Quarantine Treatment Manual" is prejudicial to the principle of equivalence, as enumerated in the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures and the International Plant Protection Convention's Guidelines for Phytosanitary Certificates. Wording such as "Treatments must be conducted in accordance with the Plant Protection and Quarantine Treatment Manual or by using a method providing an equivalent level of phytosanitary protection" would be preferred.

Response: The WTO agreement referred to by the commenter states that differing phytosanitary measures shall be considered equivalent "if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary

or phytosanitary protection." If a country exporting to the United States requests that APHIS recognize its phytosanitary treatments as equivalent to those in the PPQ Treatment Manual, APHIS will evaluate the exporting country's phytosanitary treatments according to the above principle and amend the regulations to declare equivalence if the evidence warrants it. In the absence of such a request, APHIS will require that treatments performed outside the United States be performed in accordance with the PPQ Treatment Manual.

Treatment of Niger Seed

We proposed to amend the regulations to allow niger seed to be imported into the United States if it is heat treated prior to shipment to the United States in accordance with the PPQ Treatment Manual at a facility that has been approved by APHIS. The facility would be required to operate in compliance with a written agreement with the plant protection service of the exporting country, in which the treatment facility owner agrees to (1) comply with the applicable APHIS regulations and treatment requirements and (2) allow APHIS inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations.

Comment: Facilities outside the United States should not be allowed to treat niger seed for export to the United States because their lower labor costs and ability to sell directly to importing customers give them a competitive advantage over U.S. treatment facilities. This would result in a loss of jobs and business at niger seed treatment facilities in the United States.

Response: The objective of our regulatory restrictions on niger seed is to ensure that noxious weeds do not enter the United States via imports. APHIS has determined that allowing facilities outside the United States to treat niger seed before it is imported to the United States would provide the same degree of protection against noxious weed entry as allowing facilities inside the United States to treat niger seed after it has been imported.

Comment: Facilities that treat niger seed outside the United States lack adequate oversight to ensure safety. Sampling procedures used to verify the efficacy of treatment may not be properly implemented by these facilities. APHIS inspectors should enforce PPQ Treatment Manual standards at the facilities in question.

Response: The commenters did not provide any specific information to support their claims regarding inadequate oversight at foreign facilities that treat niger seed. However, if we find that oversight is inadequate at any facility that treats niger seed outside the United States, we have the option of rescinding the written agreement that allows that facility to treat niger seed for export to the United States. As noted previously, APHIS inspectors will have the option of visiting treatment facilities outside the United States to ensure that the treatment prescribed for niger seed is being performed properly. Niger seed treated outside the United States will be sampled and inspected when it enters the United States to ensure that it is free of seeds of noxious weeds at the same rate as niger seed treated within the United States is sampled and inspected to ensure that it is free of noxious weeds. We believe that the oversight provided by APHIS and the plant protection service of the exporting country, coupled with sampling and inspection at the port of entry, will be adequate to determine whether niger seed treatment facilities outside the United States are operating in accordance with the requirements of the regulations.

Comment: Importing niger seed treated at facilities outside the United States and allowing it to be sold directly to import customers will make tracking the movement of imported niger seed within the United States difficult. If noxious weeds were to enter the country along with niger seed treated outside the United States, it would be difficult to determine their origin.

Response: Once niger seed enters the country and has been released from the port of entry following inspection, it may move freely within the country. Restricting its movement when there is no evidence indicating a risk of noxious weed infestation would constitute an unwarranted restraint of trade.

Treatment of Lilac from the Netherlands

The regulations at § 319.37–5(i) prohibit the importation of plants of the genus *Syringa* (lilac) from the Netherlands unless, at the time of arrival in the United States, the phytosanitary certificate accompanying the plants contains a declaration stipulating that, among other requirements, the plants were grown in soil that was fumigated with methyl bromide according to certain conditions. The Government of the Netherlands has requested that APHIS provide an alternative to treating the soil with methyl bromide, since the use of methyl bromide is no longer permitted in the Netherlands. We proposed to allow the soil in which the lilacs are grown to be certified free of viruliferous nematodes and other plant pests by the plant protection service of the Netherlands. For this certification to be valid, we would require that the soil be sampled and microscopically inspected by the plant protection service of the Netherlands within 12 months preceding the issuance of the certification.

Comment: It is highly unlikely that requiring that the soil in which lilacs from the Netherlands are grown be sampled and microscopically inspected would be an adequate risk mitigation measure for nematode infestation. It is well documented that air-dried golden nematode cysts can remain viable for several years and that practical and technical limitations can drastically reduce the detection efficacy of soil sampling and processing when cyst populations are low. The proposal is also inconsistent with the golden nematode regulations in APHIS' domestic quarantine notices (7 CFR 301.85(b)), which restrict the interstate movement of specified regulated articles within the United States, including soil. APHIS should consider restricting the importation of plants grown in field soil from the Netherlands and all other countries infested with potato cyst nematodes (*Globodera rostochiensis* and *G. pallida*) unless plants are grown in greenhouses on raised benches in a growing medium approved under § 319.37–8(e)(1).

Response: Under § 319.37–5(a), APHIS currently requires a soil-sampling regimen similar to that which we describe for lilacs to be undertaken by the plant protection service of the Netherlands to ensure that other products, notably bulbs, from the Netherlands are not grown in soil infested with nematodes. This paragraph states: "Any restricted article * * * from a country listed below [of which the Netherlands is one], at the time of arrival at the port of first arrival in the United States shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was grown on land which had been sampled and microscopically inspected by the plant protection service of the country in which grown within 12 months preceding issuance of the certificate and found free from * * * *Globodera rostochiensis* (Woll.) Behrens and *G. pallida*." This requirement has successfully prevented the introduction of nematodes associated with

infestations on bulbs from the Netherlands into the United States.

Like bulbs, lilacs from the Netherlands are imported without soil, thus limiting possible sites for nematode cyst infestation to the roots of the plants themselves. Additionally, the lilacs will be screened for nematode cysts at plant inspection stations at ports of entry in the United States. If nematode cysts were found on lilacs from the Netherlands at a plant inspection station, the lilacs would be denied entry. Given the facts discussed above, we believe requiring that the soil be sampled and inspected annually will adequately mitigate the risk of a potential potato cyst nematode introduction.

Comment: The proposal gives no consideration for the potential for infestation by other endoparasitic plant pathogenic nematodes that were likely kept under control by fumigation.

Response: We are not aware of any other plant pathogenic nematodes from the Netherlands that are of concern to us. If such nematodes are brought to our attention, we will address the problem in a separate rule.

Comment: The proposed 12-month sampling period is dangerously long and might allow for re-infestation by plant parasitic nematodes. A 30-day sampling period would substantially decrease this risk.

Response: The 12-month sampling period is a general standard for soil sampling for golden nematodes, as expressed in § 319.37–5(a). The Netherlands is one of the countries whose restricted nursery stock articles are regulated under § 319.37–5(a), and the 12-month sampling period has been effective in preventing the introduction of nematodes due to infestations on products other than lilacs. We believe that the 12-month sampling period will be adequate to guard against the introduction of the golden nematode due to infestation on lilacs imported from the Netherlands as well.

Comment: The term "viruliferous nematodes," as used in paragraph two of the proposed rule's "Treatment of the Lilac" section, could be misleading. The term as used here is likely intended to designate a virulent organism, one capable of infecting and reproducing on a plant. If this is the case, "viruliferous nematodes" could refer to all plant parasitic nematodes. However, among nematologists and plant virologists, the widely accepted, more restricted usage for the word "viruliferous" would refer to a nematode species capable of vectoring a plant virus. To avoid confusion, APHIS should substitute "plant parasitic nematodes" where this is the intended meaning.

Response: We agree that "plant parasitic nematodes" is a more accurate term than "viruliferous nematodes" and have changed the regulatory text in this document accordingly.

Peanut Stripe Virus

The regulations in § 319.37–2(a) prohibit the importation of seeds of the genus *Arachis* (peanut) from India, Indonesia, Japan, the People's Republic of China, the Philippines, Taiwan, and Thailand due to the existence of peanut stripe virus in those regions. We proposed removing the prohibition on the importation of peanuts from all of those regions except India because the peanut stripe virus is now reported to occur in seven of the nine peanut-producing States in the United States, and is widely prevalent in two of those States (Georgia and Virginia).

Comment: Allowing peanut seeds to be imported from Asia could allow insect pests that are not known to occur in the United States but cause serious damage to peanut seed and other oilseed crops in Asia and Africa, such as *Elasmolomus pallens*, to enter the United States. The proposed rule does not address this issue.

Response: In response to this comment, we are withdrawing this portion of the proposed rule. We plan to conduct a full risk assessment on importing peanut seed from Asia to determine the risk such imports might present to U.S. peanut and oilseed stock.

Postentry Quarantine Regulations

The regulations in § 319.37–7(d)(4) have required that restricted articles that are grown in postentry quarantine be kept at least 3 meters (approximately 10 feet) apart from: (1) Any domestic plant or plant product of the same genus and (2) any other imported plant or plant product.

We proposed to require that restricted articles that are grown in postentry quarantine be kept at least 3 meters apart from any other plant or plant product, whether domestic or imported, regardless of genus, unless the plants or plant products: (1) Are of the same genus, (2) enter postentry quarantine together, and (3) arrived together in a single shipment from a foreign region. This change would protect against the possibility that pests could spread from one shipment of plants under postentry quarantine to other plants or plant products, regardless of genera, that could host such pests.

Comment: The current requirement that restricted articles that are grown in postentry quarantine be kept 3 meters apart is adequate to prevent the spread of relatively immobile pests like nematodes, but does not protect adequately against the spread of insect-vectored pathogens and insect pests. The majority of plant genera should be required to be grown in a screenhouse or enclosed greenhouse during postentry quarantine.

Response: We believe that the requirements we proposed will protect domestic plants. While requiring many or most plants to be grown in a screenhouse or enclosed greenhouse may provide additional protection against disease transmission, such a change to the regulations would require careful evaluation and would also warrant the solicitation of comments from interested and affected parties. Therefore, we cannot address this comment in the present rule. We may consider such a proposal in the future.

Miscellaneous Comments

Comment: The description of the area of Canada regulated for potato cyst nematodes differs in § 319.37–5(a) and § 319.37–8(b). This discrepancy needs to be clarified.

Response: On September 18, 1992, we published in the **Federal Register** (57 FR 43134–43151) a final rule that, among other things, amended § 319.37–8(b) to update the description of the area on Vancouver Island in which potato cyst nematodes occur. This change was based on information supplied by the national plant protection organization of Canada. At the time, we should have updated the description of the same area that appears in § 319.37–5(a), but we failed to do so. Therefore, in this final rule, we are changing the description of the area in which potato cyst nematodes occur in § 319.37–5(a) to match the description found in § 319.37–8(b).

Comment: The regulations currently prohibit the importation in growing media of all plants produced in those regions of Canada that are regulated for potato cyst nematodes into the United States. APHIS should amend its regulations to provide for the importation from those regions of plants produced in growth chambers and in artificial growing media.

Response: We are currently preparing a proposed rule that addresses this issue.

Comment: The regulations in § 319.37–2 prohibit the importation of *Rosa* spp. from Australia, Bulgaria, Italy, and New Zealand because of rose wilt virus, and postentry quarantine is required by § 319.37–6 for *Rosa* spp. from all other countries for the same reason. Rose wilt is an undefined and

likely nonexistent agent, and should not be the subject of regulations.

Response: We are planning a risk assessment for roses to evaluate rose wilt and other diseases. We cannot address this issue in the present rule.

Comment: APHIS should consider regulating *Phytophthora ramorum* from Europe, *Pseudomonas avellana* from Europe and Asia, and *Anisogramma anomola* from Canada.

Response: APHIS is preparing regulations regarding the importation of *Phytophthora ramorum* hosts from Europe. We are also considering whether to take separate action on *Pseudomonas avellana* and *Anisogramma anomola*. We are unable to address these pests in this rule as they are beyond the scope of the proposed rule.

Comment: APHIS should consider a complete overhaul of its nursery stock regulations.

Response: We are considering whether to make major changes in our nursery stock regulations. If we decide to make such changes, we will publish a separate rule to give the public an opportunity to comment on those changes.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis, which is set out below, regarding the economic effects of this rule on small entities.

Under the Plant Protection Act (7 U.S.C. 7701–7772), the Secretary of Agriculture is authorized to regulate the importation of plants, plant products, and other articles to prevent the introduction of plant pests and noxious weeds.

We are amending the regulations for importing nursery stock to require additional certifications for imported niger seed and lilac, to reflect changes in plant taxonomy and pest distributions, and to make various changes to the requirements for postentry quarantine of imported plants. We are also making several other amendments to update and clarify the regulations and improve their effectiveness. The potential effects of the changes proposed in this document are discussed below, by topic.

Treatment of Niger Seed

We are amending the regulations to allow niger seed to be imported into the United States if it is treated at a treatment facility that has been approved by APHIS. Under this amendment, niger seed can be treated: (1) At the time of arrival at the port of first arrival in the United States or (2) prior to shipment to the United States at a treatment facility that has been approved by APHIS. Previously, the regulations in § 319.37–6(d) stated that imported niger seed must be heat treated upon arrival in the United States.

This change could potentially affect U.S. firms that import and treat niger seed. The treatment firms could suffer a loss in revenue, but we believe that there are only two such firms in the United States, and at least one of those firms is not small in size according to Small Business Administration (SBA) criteria. It is likely that the other treatment firm, whose size is unknown, will not be significantly affected, because niger seed treatment likely accounts for only a small portion of the firm's overall revenues. However, since we are unable to estimate the amount of niger seed that would be treated prior to shipment to the United States, we cannot determine the effect this rule will have on domestic firms that treat niger seed.

As a group, importers in the United States will likely be unaffected by this change, since it is not likely to affect the overall volume of niger seed imported into the United States. However, this change could result in new marketing and distribution channels that could benefit some importers at the expense of others. We estimate that there are fewer than 20 importers of niger seed in the United States. However, data on the importers' size are not available, although we expect at least some of the importers are likely to be small according to SBA criteria.

We are also amending the heat treatment schedule for imported niger seed. However, since the amendment to the treatment schedule only involves a change in the required treatment temperature, and no change in the type or duration of the treatment, we anticipate that existing treatment facilities will not be affected by that change.

Lilac From the Netherlands

This rule allows the importation of lilac from the Netherlands under new conditions due to the Netherlands' request for an alternative to the use of methyl bromide as a fumigant of soil for lilac to be exported to the United States. This change should have no effect on the volume of lilac imported from the Netherlands, since it simply provides a new mechanism for Dutch exporters to ship lilac without fumigating the soil in which it is grown and, therefore, should have no effect on U.S. entities, whether small or large.

Mango Seeds From the British Virgin Islands, Grenada, Trinidad and Tobago, and St. Vincent and the Grenadines

This rule prohibits the importation of mango seeds from the British Virgin Islands, Grenada, Trinidad and Tobago, and St. Vincent and the Grenadines due to the risk of introducing the mango seed weevil, *Sternochetus mangiferae*, into the United States. This change should have little or no effect on U.S. consumers, importers, or producers, due to the fact that the United States has historically imported a very small volume of mangoes and mango seeds from those countries. Between September 1, 1997, and May 31, 1998, the value of U.S. imports of fresh mangoes (with seeds intact) from Trinidad and Tobago and Grenada was approximately $20,000, or approximately 1 percent of the value of U.S. fresh mango imports from all countries combined during that period. During the same period, the United States imported no mangoes or mango seeds from St. Vincent and the Grenadines. Data on imports of mango seeds or fruit from the British Virgin Islands are not available. Furthermore, the United States imported no seeds, fruit, or spores for propagation from Trinidad and Tobago in 1997.

Willow From Belgium and Japan

This rule prohibits the importation of willow plants and plant parts from Belgium and Japan due to the risk of introducing the watermark disease of willow into the United States.

The United States has historically imported a very small volume of willow plants and plant parts from Belgium and Japan. The value of live trees and plants, including willow plants, imported into the United States from Belgium and Japan in 1997 totaled only $3 million, or less than 1 percent of the value of U.S. live tree and plant imports from all countries combined that year. Since willow plants compose only a small fraction of the plants imported from Belgium and Japan, this change should have little or no effect on U.S. consumers, importers, or producers.

Citrus Seeds From Gabon and Iran

This rule requires that seeds of all species of the plant family *Rutaceae* (citrus) from Gabon and Iran be treated for citrus canker upon arrival in the United States. This change should have no effect on U.S. consumers, producers, or importers, since imports of *Rutaceae* (citrus) from the two affected countries are nonexistent. Trade data for 1995 to 1997 show no U.S. imports of citrus fruit (fresh or dried) or seeds, fruit, or spores for propagation from either of the two regions.

Growing Requirements for Hops

This rule requires that imported hops plants and plant parts be grown and observed in postentry quarantine in an isolated growth chamber for 6 months, and then transferred to a greenhouse to be grown for an additional year.

Researchers and universities comprise the overwhelming bulk of entities in the United States that grow imported hop plants and plant parts. This change should have little or no effect on researchers, since most already have the equipment and facilities to comply with the rule's requirements. Accordingly, for most of the affected entities, the cost to comply with the requirements will be minimal.

Commercial Shipments of Bulbs

This rule allows the importation of bulbs of the genera *Crocosmia, Gladiolus, and Watsonia* in commercial shipments from Brazil, France, Italy, Malta, Mauritius, and Portugal.

In 1998, the United States imported over $175 million worth of bulbs and tubers. Imports from Brazil, France, Italy, Malta, Mauritius, and Portugal together accounted for less than 1 percent of the total bulb and tuber imports. Data on potential imports of bulbs that would result from this change are not available. However, given the export history of the countries affected, it is unlikely that this change will have a significant impact on domestic bulb producers or bulb importers.

Additional Approved Growing Media and Packing Material

This rule adds stockosorb superabsorbent polymer, zeolite, coir, and coal cinder to the list of growing media approved for the importation of certain plants.

This change is not expected to result in increased U.S. imports of plants in growing media; the expected result is a redistribution of the existing volume of plant imports among a larger number of approved growing media. Accordingly, the addition of these types of growing media should have no economic effect on U.S. consumers, producers, or importers.

This rule also adds stockosorb superabsorbent polymer to the list of approved packing material. We cannot determine what entities could be affected by this change, but we believe that it will not likely have a significant economic effect on any U.S. entities.

List of Ports of Entry

This rule amends the regulations to reflect that the port of El Paso, TX, no longer operates as a Federal plant inspection station. This port no longer operates as a plant inspection station because it does not have the capacity to perform treatments and provide the other services that are needed at Federal plant inspection stations. We believe that this change will not have any significant impact on any U.S. entities, whether small or large.

Other Changes

We are also making several other amendments to the regulations, including changes in plant taxonomy, postentry quarantine protocol, labeling requirements, and risk assessment policy, as well as other editorial changes, which will not have any economic effects on U.S. entities, whether small or large.

This final rule contains information collection requirements, which have been approved by the Office of Management and Budget (*see* "Paperwork Reduction Act" below).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0190.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects

7 CFR Part 300

Incorporation by reference, Plant diseases and pests, Quarantine.

7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Incorporation by reference, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

■ Accordingly, we are amending 7 CFR parts 300 and 319 as follows:

PART 300—INCORPORATION BY REFERENCE

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

■ 2. In § 300.1, paragraph (a) is amended as follows:

■ a. In paragraph (a)(6), by removing the word "and".

■ b. In paragraph (a)(7), by removing the period and adding a semicolon in its place.

■ c. By adding new paragraphs (a)(8) and (a)(9) to read as follows:

§ 300.1 Plant Protection and Quarantine Treatment Manual.

(a) * * *

(8) Treatment T412–a, dated July 2003; and

(9) Dry Heat Treatment Facilities for Niger (*Guizotia abyssinica*), dated July 2003.

* * * * *

PART 319—FOREIGN QUARANTINE NOTICES

■ 3. The authority citation for part 319 is revised to read as follows:

Authority: 7 U.S.C. 450 and 7701–7772; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 4. In § 319.37–2(a), the table is amended as follows:

■ a. By adding, in alphabetical order, entries for "*Brugmansia* spp.", "*Crocosmia* spp. (montebredia), except bulbs in commercial shipments", "*Datura* spp. (woody species)," "*Gladiolus* spp. (gladiolus), except bulbs in commercial shipments", "*Leucanthemella serotina*",

"*Nipponanthemum nipponicum*", and "*Watsonia* spp. (bugle lily), except bulbs in commercial shipments" to read as set forth below.

■ b. By revising the entries for "*Abelmoschus* spp. (okra)", "*Aesculus* spp. (horsechestnut)", "*Arachis* spp. (peanut) seed only (all other *Arachis* articles are included under Fabaceae)", "*Blighia sapida* (akee)", "*Crocosmia* spp. (montebretia)", "*Datura* spp.", "*Gladiolus* spp. (gladiolus)", "*Jasminum* spp. (jasmine)", "*Mangifera* spp. (mango) seed only", "*Salix* spp. (willow)", "*Sorbus* spp. (mountain ash)", and "*Watsonia* spp. (bugle lily)" to read as set forth below.

■ c. In the entry for "*Hydragea* spp.", by correcting the word "*Hydragea*" to read "*Hydrangea*".

§ 319.37–2 Prohibited articles.

(a) * * *

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
Abelmoschus spp. (okra)	Africa	Cotton leaf curl agent.
	Brazil	Cotton Anthocyanosis agent.
	Bangladesh, India, Sri Lanka	Bhendi yellow vein mosaic agent.
	Cote d'Ivoire, Nigeria	Okra mosaic virus.
	Iraq	Okra yellow leaf curl agent.
	Papua New Guinea, Trinidad and Tobago	Okra mosaic agents.
* * * * * * *		
Aesculus spp. (horsechestnut)	Czech Republic, Germany, Romania, Slovakia, United Kingdom	Horsechestnut variegation or yellow mosaic diseases.
* * * * * * *		
Arachis spp. (peanut) seed only (all other *Arachis* articles are included under Fabaceae).	India, Indonesia, Japan, People's Republic of China, Philippines, Taiwan, Thailand.	Peanut stripe virus.
	Burkina Faso, Cote d'Ivoire, Senegal India	Peanut clump virus. Indian peanut clump virus.
* * * * * * *		
Blighia sapida (akee)	Cote d'Ivoire, Nigeria	Okra mosaic virus.
* * * * * * *		
Brugmansia spp.	Colombia	Datura Columbia virus.
* * * * * * *		
Crocosmia spp. (montebretia)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli P.* Henn. (rust), *U. nyikensis* Syd. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
Crocosmia spp. (montebretia), except bulbs in commercial shipments.	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal	*U. transversalis* (Thuem.) Wint. (rust).
* * * * * * *		
Datura spp.	India	Datura distortion or enation mosaic virus.
Datura spp. (woody species)	(*See Brugmansia* spp.).	
* * * * * * *		
Gladiolus spp. (gladiolus)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli* P. Henn. (rust), *U. nyikensis* Syd. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
Gladiolus spp. (gladiolus), except bulbs in commercial shipments.	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal	*U. transversalis* (Thuem.) Wint. (rust).
* * * * * * *		
Jasminum spp. (jasmine)	Belgium, Germany, Great Britain	Jasmine variegation diseases.
	India	Chlorotic ringspot, phyllody, yellow ring mosaic diseases.
	Philippines	Sampaguita yellow ringspot mosaic diseases.
* * * * * * *		
Leucanthemella serotina	Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude.	*Puccinia horiana* P. Henn. (white rust of chrysanthemum).

Prohibited article (includes seeds only if specifically mentioned)	Foreign places from which prohibited	Plant pests existing in the places named and capable of being transported with the prohibited article
* * * * * * *		
Mangifera spp. (mango) seed only. (Prohibition not applicable to seeds imported into Guam, Hawaii, and the Northern Mariana Islands).	All except Guimaras Island (Republic of the Philippines) and North and South America (excluding Barbados, the British Virgin Islands, Dominica, French Guiana, Grenada, Guadeloupe, Martinique, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago).	*Sternochetus mangiferae* F. (mango seed weevil).
* * * * * * *		
Nipponanthemum nipponicum	Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude.	*Puccina horiana* P. Henn. (white rust of chrysanthemum).
* * * * * * *		
Salix spp. (willow)	Belgium, Germany, Great Britain, Japan, and the Netherlands ...	*Erwinia salicis* (Day) Chester (Watermark disease).
* * * * * * *		
Sorbus spp. (mountain ash)	Czech Republic, Denmark, Germany, Slovakia	Mountain ash variegation or ringspot mosaic disease.
* * * * * * *		
Watsonia spp. (bugle lily)	Africa	*Puccinia mccleanii* Doidge (rust), *Uredo gladioli-buettneri* Bub. (rust), *Uromyces gladioli* P. Henn. (rust), *U. nyikensis* Syd. (rust).
	Argentina, Uruguay	*U. gladioli* P. Henn. (rust).
Watsonia spp. (bugle lily), except bulbs in commercial shipments.	Africa, Brazil, France, Italy, Malta, Mauritius, Portugal	*U. transversalis* (Thuem.) Wint. (rust).
* * * * * * *		

* * * * *

■ 5. In § 319.37–4, paragraph (c) is amended as follows:

■ a. By revising the introductory text to read as set forth below.

■ b. By revising the introductory text of paragraph (c)(1) to read as set forth below.

■ c. By revising paragraph (c)(1)(iv) to read as set forth below.

■ d. By revising paragraph (c)(2) to read as set forth below.

§ 319.37–4 Inspection, treatment, and phytosanitary certificates of inspection.

* * * * *

(c) *Greenhouse-grown plants from Canada.* A greenhouse-grown restricted plant may be imported from Canada if the Plant Health and Production Division of the Canadian Food Inspection Agency (CFIA) signs a written agreement with the Animal and Plant Health Inspection Service allowing such importation, and provided that the following conditions are met:

(1) The Plant Health and Production Division of CFIA shall:

(i) * * *

(iv) Issue labels to each grower participating in the program. The labels issued to each grower shall bear a unique number identifying that grower, and shall bear the following statement: "This shipment of greenhouse-grown plants meets the import requirements of the United States, and is believed to be free from injurious plant pests. Issued by Plant Health and Production Division, Canadian Food Inspection Agency." The Plant Health and Production Division, CFIA, shall also ensure that the label is placed on the airway bill, bill of lading, or delivery ticket accompanying each shipment of articles; and

* * * * *

(2) Each greenhouse grower participating in the program shall enter into an agreement with the Plant Health and Production Division of CFIA in which the grower agrees to:

(i) Maintain records of the kinds and quantities of plants grown in their greenhouses, including the date of receipt and place of origin of the plants; keep the records for at least 1 year after the plants are shipped to the United States; and make the records available for review and copying upon request by either the Plant Health and Production Division of CFIA or an authorized representative of the Secretary of Agriculture;

(ii) Apply to an airway bill, bill of lading, or delivery ticket for plants to be shipped to the United States a label issued by CFIA that includes the identification number assigned to the grower by the Plant Health and Production Division, CFIA, and the following certification statement: "This shipment of greenhouse grown plants meets the import requirements of the United States and is believed to be free from injurious plant pests. Issued by Plant Health and Production Division, Canadian Food inspection Agency."; and

(iii) Use pest control practices approved by Plant Protection and Quarantine and the Plant Health and Production Division of CFIA to exclude pests from the greenhouses.

■ 6. Section 319.37–5 is amended as follows:

■ a. In paragraph (a), by removing the words ", and the Land District of South Saanich on Vancouver Island in British Columbia" and adding the words "and that portion of the Municipality of Central Saanich in the Province of British Columbia east of the West Saanich Road" in their place.

■ b. By revising paragraphs (c) and (i) to read as set forth below.

§ 319.37–5 Special foreign inspection and certification requirements.

* * * * *

(c) Any restricted article (except seeds) of *Chrysanthemum* spp. (chrysanthemum), *Dendranthema* spp.

(chrysanthemum), *Leucanthemella serotina*, or *Nipponanthemum nipponicum*, from any foreign place except Europe, Argentina, Brazil, Canada, the Canary Islands, Chile, Colombia, the Republic of South Africa, Uruguay, Venezuela, and all countries and localities located in part or entirely between 90° and 180° east longitude shall, at the time of arrival at the port of first arrival in United States, be accompanied by a phytosanitary certificate of inspection. The phytosanitary certificate of inspection must contain a declaration that such article was grown in a greenhouse nursery and found by the plant protection service of the country in which grown to be free from white rust of chrysanthemum (caused by the rust fungus *Puccinia horiana* P. Henn.) based on visual examination of the parent stock, the articles for importation, and the greenhouse nursery in which the articles for importation and the parent stock were grown, once a month for 4 consecutive months immediately prior to importation.

* * * * *

(i) Any restricted article of *Syringa* spp. (lilac) from the Netherlands is prohibited as specified in § 319.37–2(a) unless, at the time of arrival at the port of first arrival in the United States, the phytosanitary certificate accompanying the article of *Syringa* spp. (lilac) contains a declaration that stipulates that the parent stock was found free of plant diseases by inspection and indexing and that the *Syringa* spp. (lilac) to be imported were propagated either by rooting cuttings from indexed parent plants or by grafting indexed parent plant material on seedling rootstocks, and were grown in:

(1) Fumigated soil (fumigated by applying 400 to 870 pounds of methyl bromide per acre and covering the soil with a tarpaulin for 7 days) in a field at least 3 meters from the nearest nonindexed *Syringa* spp. (lilac), or

(2) Soil that has been sampled and microscopically inspected by the plant protection service of the Netherlands within 12 months preceding issuance of the phytosanitary certificate and that has been found free of the plant parasitic nematodes capable of transmitting European nepoviruses, including, but not limited to, the Arabis mosaic nepovirus.

* * * * *

■ 7. Section 319.37–6 is amended as follows:

■ a. By revising paragraph (d) to read as set forth below.

■ b. In paragraph (e), by removing the words "Burma," and "Ivory Coast," and by adding, in alphabetical order, the words "Cote d'Ivoire," "Gabon," "Iran," and "Myanmar,".

§ 319.37–6 Specific treatment and other requirements.

* * * * *

(d) Seeds of *Guizotia abyssinica* (niger seed) are allowed entry only if:

(1) They are treated in accordance with the PPQ Treatment Manual at the time of arrival at the port of first arrival in the United States; or

(2) They are treated prior to shipment to the United States at a facility that is approved by APHIS [9] and that operates in compliance with a written agreement between the treatment facility owner and the plant protection service of the exporting country, in which the treatment facility owner agrees to comply with the provisions of this section and allow inspectors and representatives of the plant protection service of the exporting country access to the treatment facility as necessary to monitor compliance with the regulations. Treatments must be certified in accordance with the conditions described in § 319.37–13(c).

* * * * *

■ 8. Section 319.37–7 is amended as follows:

■ a. In the table in paragraph (a)(3), by adding, in alphabetical order, entries for "*Brugmansia* spp.", "*Datura* spp. (woody species)", "*Leucanthemella serotina*", and "*Nipponanthemum nipponicum*" to read as set forth below.

■ b. In the table in paragraph (a)(3), by revising the entries for "*Aesculus* spp.", "*Blighia sapida*", "*Datura* spp.", "*Ribes* spp.", and "*Salix* spp." to read as set forth below.

■ c. In paragraph (b), by removing the entry for "*Phoenix*—date".

■ d. By revising paragraph (c)(1)(i) to read as set forth below and by adding and reserving paragraph (c)(1)(ii).

■ e. In paragraph (c)(2)(iv), by removing the words "now know" and adding the words "not known" in their place.

■ f. In paragraph (d)(1), by removing the words "of an inspector and only to the extent prescribed by the inspector;" and adding the words "of the coordinator, Postentry Quarantine Unit, USDA, APHIS, PPQ, Building 580, BARC-East, Beltsville, MD 20705;" in their place.

■ g. By revising paragraph (d)(4) to read as set forth below.

■ h. By revising paragraph (d)(7) to read as set forth below.

■ i. By removing paragraphs (d)(8) and (d)(9).

■ j. In paragraph (e), by redesignating footnote 9 and its reference in the text as footnote 10.

§ 319.37–7 Postentry quarantine.

(a) * * *

(3) * * *

Restricted articles (excluding seeds)	Foreign country(ies) or locality(ies) from which imported
* * *	* * *
Aesculus spp. (horsechestnut)	All except Canada, Czech Republic, Germany, Romania, Slovakia, United Kingdom.
* * *	* * *
Blighia sapida (akee)	All except Canada, Cote d'Ivoire, and Nigeria.
* * *	* * *
Brugmansia spp.	All except Canada and Colombia.
* * *	* * *
Datura spp.	All except Canada and India.
Datura spp. (woody species)	(See *Brugmansia* spp.)

[9] Criteria for the approval of niger seed treatment facilities are contained in the PPQ Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

Restricted articles (excluding seeds)	Foreign country(ies) or locality(ies) from which imported
* * * * * * *	
Leucanthemella serotina	All except Argentina; Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude.
* * * * * * *	
Nipponanthemum nipponicum	All except Argentina, Brazil, Canary Islands, Chile, Colombia, Europe, Republic of South Africa, Uruguay, Venezuela, and all countries, territories, and possessions of countries located in part or entirely between 90° and 180° east longitude.
* * * * * * *	
Ribes spp.	All except Canada, Europe, and New Zealand.
* * * * * * *	
Salix spp. (willow)	All of Europe (except Belgium, Germany, Great Britain, and the Netherlands).

* * * * *

(c) * * *

(1) * * *

(i) The following States have entered into a postentry quarantine agreement in accordance with this paragraph: All U.S. States and Territories, except the District of Columbia, Guam, Hawaii, Kansas, and the Northern Mariana Islands.

(ii) [Reserved]

* * * * * *

(d) * * *

(4) To keep the article separated from any other plant or plant product by no less than 3 meters (approximately 10 feet) unless such other plant or plant product is of the same genus as the article, entered postentry quarantine with the article, and arrived together with the article in a single shipment from a foreign region;

* * * * * *

(7) To grow the article or increase therefrom in postentry quarantine for a period of 2 years unless specified otherwise in the following:

(i) To grow the article or increase therefrom, if an article of *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Europe, only in a screenhouse with screening of a minimum of 16 mesh per inch.

(ii) To grow the article or increase therefrom, if an article of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina*, *Nipponanthemum nipponicum*, or *Dianthus* spp. (carnation, sweet-william), only in a greenhouse or other enclosed building, and to comply with the above conditions for a period of 6 months after importation for an article of *Chrysanthemum* spp., *Dendranthema* spp., *Leucanthemella serotina*, *Nipponanthemum nipponicum*, and for a period of 1 year after importation for an article of *Dianthus* spp. (carnation, sweet-william).

(iii) To grow the article or increase therefrom, if an article of *Humulus* spp. (hops), a meristem culture of the imported plant will be observed for 6 months, and the original plant will be destroyed after the meristem culture is established. After the 6-month observation, the meristem culture-generated plant must remain in postentry quarantine for an additional year.

* * * * * *

■ 9. In § 319.37–8, the introductory text of paragraph (e) and paragraphs (e)(1) and (g) are revised to read as follows:

§ 319.37–8 Growing media.

* * * * *

(e) A restricted article of any of the following groups of plants may be imported established in an approved growing medium listed in this paragraph, if the article meets the conditions of this paragraph, and is accompanied by a phytosanitary certificate issued by the plant protection service of the country in which the article was grown that declares that the article meets the conditions of this paragraph: *Alstroemeria*, *Ananas*,[11] *Anthurium*, *Begonia*, *Gloxinia* (= *Sinningia*), *Nidularium*, *Peperomia*, Polypodiophyta (= Filicales) (ferns), Rhododendron from Europe, and *Saintpaulia*.[11]

(1) Approved growing media are baked expanded clay pellets, coal cinder, coir, cork, glass wool, organic and inorganic fibers, peat, perlite, phenol formaldehyde, plastic particles, polyethylene, polymer stabilized starch, polystyrene, polyurethane, rock wool, sphagnum moss, ureaformaldehyde, stockosorb superabsorbent polymer, vermiculite, volcanic rock, or zeolite, or any combination of these media. Growing media must not have been previously used.

* * * * * *

(g) *Pest risk evaluation standards for plants established in growing media.* The Animal and Plant Health Inspection Service will conduct a pest risk assessment based on pest risk analysis guidelines established by the International Plant Protection Convention of the United Nations' Food and Agriculture Organization in response to each request to allow the importation of additional taxa of plants in growing media. These guidelines are available upon request by writing to USDA, APHIS, PPQ, Permits and Risk Assessment, Commodity Risk Analysis Branch, 4700 River Road Unit 133, Riverdale, MD 20737.

■ 10. In § 319.37–9, the list of approved packing material is amended by adding, in alphabetical order, a new entry to read as follows:

§ 319.37–9 Approved packing material.

* * * * * *

Stockosorb superabsorbent polymer.

* * * * * *

■ 11. Section § 319.37–13 is amended as follows:

■ a. The section heading is revised as set forth below.

■ b. In paragraph (a), footnote 11 and its reference in the text are redesignated as footnote 12.

■ c. A new paragraph (c) is added to read as follows:

[11] *Ananas* and *Nidularium* are bromeliads, and if imported into Hawaii, bromeliads are subject to postentry quarantine in accordance with § 319.37–7.

§ 319.37–13 Treatment and costs and charges for inspection and treatment; treatments applied outside the United States.

* * * * *

(c) Any treatment performed outside the United States must be monitored and certified by an APHIS inspector or an official from the plant protection service of the exporting country. If monitored and certified by an official of the plant protection service of the exporting country, then a phytosanitary certificate must be issued with the following declaration: "The consignment of (*fill in botanical name*) has been treated in accordance with the Plant Protection and Quarantine Treatment Manual." During the entire interval between treatment and export, the consignment must be stored and handled in a manner that prevents any infestation by pests and Federal noxious weeds.

§ 319.37–14 [Amended]

■ 15. In § 319.37–14, paragraph (b), in the list of ports of entry, under the undesignated center heading "TEXAS", the asterisk immediately before the words "El Paso" is removed.

Done in Washington, DC, this 15th day of August 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–21304 Filed 8–19–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

7 CFR Part 1580

RIN 0551–AA66

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service.

ACTION: Final rule.

SUMMARY: This final rule implements the Trade Act of 1974, as amended by the Trade Act of 2002 to establish a new program, Trade Adjustment Assistance (TAA) for Farmers. Under this program, the Department of Agriculture provides technical assistance and cash benefits to eligible producers of raw agricultural commodities when the Administrator, Foreign Agricultural Service (FAS), determines that increased imports have contributed importantly to a specific price decline over five preceding marketing years. The rule establishes the procedure by which producers of raw agricultural commodities can petition for certification of eligibility and apply for technical assistance and adjustment payments.

EFFECTIVE DATE: August 20, 2003.

ADDRESSES: U.S. Department of Agriculture, Foreign Agricultural Service, Import Policies and Programs Division, 1400 Independence Avenue, SW., Stop 1021, Washington, DC 20250–1021.

FOR FURTHER INFORMATION CONTACT: Richard Blabey, Director, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue, SW., STOP 1021, by email at *trade.adjustment@fas.usda.gov*, telephone at 202–720–2916, or fax at 202–720–0876.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The rule has been determined to be significant under E.O. 12866 and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This rule will not have a significant economic impact on a substantial number of small farm operations. Participation in the program is voluntary. Direct and indirect costs are likely to be very small as a percentage of revenue and in terms of absolute costs. The minimal regulatory requirements impact large and small businesses equally, and the program's benefits should improve cash flow and liquidity for farmers participating in the program.

Executive Order 12988

This rule has been reviewed under Executive Order 12988. The provisions of this rule would not have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The rule would not have retroactive effect. Before any judicial action may be brought regarding this rule, all administrative remedies must be exhausted.

National Environmental Policy Act

The Administrator has determined that this action will not have a significant effect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this rule.

Executive Orders 12372, 13083 and 13084, and the Unfunded Mandates Reform Act (P. L. 104–4)

These Executive Orders and Public Law 104–4 require consultation with State and local officials and Indian tribal governments. This rule does not impose an unfunded mandate or any other requirement on State, local or tribal governments. Accordingly, these programs are not subject to the provisions of Executive Order 12372, Executive Order 13083, and Executive Order 13084, or the Unfunded Mandates Reform Act.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Background

The Trade Act of 2002 (P.L. 107–210) amended the Trade Act of 1974 (19 U.S.C. 2551, *et seq.*) to add a new chapter 6, which establishes a program of trade adjustment assistance for farmers, providing both technical assistance and cash benefits to producers. The statute authorizes an appropriation of not more than $90 million for each fiscal year 2003 through 2007 to carry out the program.

Under this rule, a group of agricultural commodity producers may petition the Administrator of the Foreign Agricultural Service (FAS) for trade adjustment assistance from mid-August through the end of January. FAS will first review the petition for appropriateness, completeness, and timeliness, before publishing a notice in the **Federal Register** that it has been received. The Economic Research Service (ERS) will then conduct a market study to verify the decline in producer prices, and to assess possible causes, taking due account of any special factors which may have affected prices of the articles concerned, including imports, exports, production, changes in consumer preferences, weather conditions, diseases, and other relevant issues. ERS will report its findings to the FAS Administrator, who will then determine whether or not the group is eligible for trade adjustment assistance. If the national average price in the most recent marketing year for the commodity produced by the group is equal to or less than 80 percent of the average of the national average prices in the preceding 5 marketing years and

that increases in imports of that commodity contributed importantly to the decline in price, the Administrator will certify the group as eligible for trade adjustment assistance.

Upon certification, producers have 90 days to contact the Farm Service Agency (FSA) to apply for assistance. As soon as they apply, they are eligible to receive at no cost a technical assistance package specifically tailored to their needs by the Extension Service. Depending on the commodity and the region, the Extension Service package may include technical publications in print or on-line, group seminars and presentations, and one-on-one meetings. Producers, who receive the technical assistance and also satisfy personal and farm income limits, are eligible for TAA payments. If the funding authorized by Congress is insufficient to pay 100 percent of all TAA claims during the fiscal year, payments will be prorated and issued after June 15, the last possible date for producers to file a TAA application.

Producers may receive adjustment assistance in subsequent years. The Administrator will review and re-certify a petition for a subsequent qualifying year if prices remain at or below the same 80 percent threshold as the initial year of adjustment assistance, and if imports continue to increase and contribute importantly to the decline in prices.

Discussion of Comments

The Foreign Agricultural Service received 76 comments on the proposed rule. The comments focused on the following areas:

Inclusion of Aquaculture in the Program

The inclusion of aquaculture under TAA generated by far the most public comments, all of which were favorable. In fact, 47 respondents supported extending TAA coverage to fishermen of wild Alaska salmon, who face stiff competition from imported farm-raised salmon. Five more respondents proposed covering all fishermen. The rule covers aquaculture, which is defined to include products propagated and raised in controlled environments for the purpose of human consumption, and it covers fishermen whose catch is adversely affected by imported aquaculture products. FAS decided that inclusion of all fishermen under TAA for Farmers would be incompatible with section 143 of the Trade Act of 2002, which directs the Secretary of Commerce to conduct a study and report to Congress regarding whether a trade adjustment assistance program is appropriate and feasible for fishermen.

The Definition of Like or Directly Competitive Articles

Ten respondents favored a less restrictive definition that would recognize imports of some processed and semi-processed articles as directly competitive with the agricultural commodities they produced. The final rule leaves the definition of articles like or directly competitive unchanged. Petitioners, who believe that the definition in the rule is too limiting, may request a public hearing to present evidence supporting their case under § 1580.202. The rule allows the Administrator to evaluate the information provided in the hearing and other information submitted in writing and to amend the terms of the original petition, if warranted.

Impacted Areas

Five respondents supported this provision in the proposed rule allowing producers from impacted areas to file petitions; none opposed. They saw this option as potentially useful to regional producers who might be adversely affected by import competition, while producers nationally might be less affected.

Certification of a Decline in Net Farm Income

Three respondents expressed concern that producers managing diversified farms might not qualify for adjustment assistance payments due to higher earnings from sales of other commodities. The purpose of TAA is to assist producers to adjust to imports by providing technical assistance to all and cash payments to those facing economic hardship. The final rule leaves unchanged the requirement that producers certify to a decline in net farm income, as reported on Internal Revenue Service Schedule F (Form 1040) and Form 4835, in order to receive a cash payment. However, the final rule does exclude TAA payments from being considered part of net farm income in subsequent qualifying years. Otherwise, TAA payments might be the cause for excluding producers from receiving the full benefits of the program.

Window for Receiving Petitions

Two respondents questioned the use of a window for filing petitions. TAA is intended to provide rapid relief to producers. However, funding is limited to $90 million per fiscal year, which must be prorated among all eligible producers whenever claims exceed this amount, a very real possibility. Waiting until the close of the fiscal year to prorate is inconsistent with providing rapid relief. The rule therefore seeks middle ground between the intent of the legislation, on the one hand, and the requirement to prorate payments, on the other, by creating a window for filing petitions. The window concentrates the approval of petitions within the first half of the fiscal year. Closing the filing period at the end of January means that all petitions will be determined by mid-March and all applications for TAA benefits will be received by mid-June. The first prorated payments can be made shortly thereafter coincident with the issuance of any final counter-cyclical payments also made to the producer by the Commodity Credit Corporation. Because the total of TAA benefits and counter-cyclical payments are limited to $65,000 in each fiscal year, issuing TAA benefits at this time will facilitate the application of this payment limitation.

Classes of Agricultural Commodities

One respondent raised the point that the rule does not address classes of goods within a commodity as discussed in section 292(c) of the Trade Act of 1974. The rationale for mentioning classes of commodities the Trade Act is to permit producers to take full advantage of the program by allowing them to define their crop more narrowly than might otherwise be permitted. To that end, the rule requires producers to identify their commodity by its *Harmonized Tariff Schedule of the United States* (HTS) number. This not only facilitates the unambiguous collection of official import data for the commodity, but it also accommodates the major commodity classes, which are often separately identified in the HTS.

List of Subjects in 7 CFR Part 1580

Agricultural commodity imports; reporting and record keeping requirements; and trade adjustment assistance.

Final Rule

■ Accordingly, the regulations chapter XV at title 7 of the Code of Federal Regulations are amended by adding a new part 1580, to read as follows:

PART 1580—TRADE ADJUSTMENT ASSISTANCE FOR FARMERS

Sec.

1580.101 General statement.
1580.102 Definitions.
1580.201 Petitions for trade adjustment assistance.
1580.202 Hearings, petition reviews, and amendments.
1580.203 Determination of eligibility and certification by the Administrator.

1580.301 Application for trade adjustment assistance.
1580.302 Technical assistance and services.
1580.303 Adjustment assistance payments.
1580.401 Subsequent qualifying year eligibility.
1580.501 Administration.
1580.502 Maintenance of records, audits and compliance.
1580.503 Debarment and suspension.
1580.504 Fraud and recovery of overpayments.
1580.505 Appeals.
1580.601 Implementation.
1580.602 Paperwork Reduction Act assigned number.

Authority: 19 U.S.C. 2401.

§ 1580.101 General statement.

This part provides regulations for the Trade Adjustment Assistance for Farmers program. Under these provisions, producers of agricultural commodities may petition the Department of Agriculture for eligibility to apply for trade adjustment assistance based on criteria set forth in the Trade Act of 1974, as amended by the Trade Act of 2002 (19 U.S.C. 2251, *et seq.*). If the Administrator determines that the national average price for a commodity is less than 80 percent of the preceding 5-year average and that an increase in imports has contributed importantly to the decline in commodity prices, the producers may apply for technical assistance and cash benefits under the program.

§ 1580.102 Definitions.

As used in the part, the following terms mean:

Adjusted gross income means income as defined in 7 CFR 1400.601.

Administrator means the Administrator of the Foreign Agricultural Service (FAS).

Agricultural commodity means any commodity in its raw or natural state found in chapters 1, 4, 5, 6, 7, 8, 10, 12, 14, 23, 24, 41, 51, and 52 of the *Harmonized Tariff Schedule of the United States* (HTS), and articles that are either aquaculture products or directly competitive with aquaculture products found in chapter 3 of the HTS.

Aquaculture means the propagation and rearing of aquatic organisms in a controlled aquatic environment for the purpose of human consumption.

Articles like or directly competitive generally means products falling under the same HTS number used to identify the agricultural commodity in the petition. A "like" product means substantially identical in inherent or intrinsic characteristics, and the term "directly competitive" means those articles which are substantially equivalent for commercial purposes, that is, are adapted to the same uses and are essentially interchangeable therefore.

Authorized representative means an association of agricultural commodity producers.

Certification date means the date on which the Administrator announces in the **Federal Register** or by Department news release, whichever comes first, a certification of eligibility to apply for adjustment assistance.

Contributed importantly means a cause which is important, but not necessarily more important than any other cause.

Department means the U.S. Department of Agriculture.

Deputy Administrator means the Deputy Administrator of the Farm Service Agency (FSA).

Extension Service means the Cooperative State Research, Education, and Extension Service of the U.S. Department of Agriculture.

Family member means an individual to whom a person is related as spouse, lineal ancestor, lineal descendent, or sibling, including:

(1) Great grandparent;
(2) Grandparent;
(3) Parent;
(4) Children, including legally adopted children;
(5) Grandchildren;
(6) Great grandchildren;
(7) Sibling of the family member in the farming operation; and
(8) Spouse of a person listed in paragraphs (1) through (7) of this definition.

Farm Service Agency (FSA) means the Farm Service Agency of the U.S. Department of Agriculture.

Filing date means the date that a notice of petition is published in the **Federal Register**.

Group means three or more producers who are not members of the same family.

Impacted area means one or more States of the United States.

Marketing year means the marketing season or year as defined by National Agriculture Statistic Service (NASS), or a specific period as proposed by the petitioners and certified by the Administrator.

National average price means the average price paid to producers for an agricultural commodity in a marketing year as determined by the Administrator.

Net farm income means net farm profit or loss, excluding payments under this part, reported on Internal Revenue Service Schedule F (Form 1040) and Form 4835 for the tax year that most closely corresponds with the marketing year under consideration.

Net fishing income means net profit or loss, excluding payments under this part, reported on Internal Revenue Service Schedules C or C-EZ (Form 1040) for individuals or taxable income, excluding payments under this part, reported on Form 1120 for corporations during the tax year that most closely corresponds with the marketing year under consideration.

Person means an individual, partnership, joint stock owner, corporation, association, trust, estate, or any other legal entity as defined in 7 CFR 1400.3.

Pre-adjustment year means the tax year previous to that associated with the most recent marketing year in the initial producer petition.

Producer means a person who is either an owner, operator, landlord, tenant, or sharecropper, who shares in the risk of producing a crop and who is entitled to share in the crop available for marketing from the farm, or a qualified fisherman.

Qualified fisherman means a person whose catch competes in the marketplace with like or directly competitive aquaculture products and report net fishing income to the Internal Revenue Service on Schedules C or C–EZ (Form 1040).

Raw or natural state means unaltered by any process other than cleaning, grading, coating, sorting, trimming, mixing, conditioning, drying, dehulling, shelling, chilling, cooling, blanching, irradiating, or fumigating.

United States means the 50 States of the United States, the District of Columbia, and Puerto Rico.

§ 1580.201 Petitions for trade adjustment assistance.

(a) A group of agricultural commodity producers or qualified fishermen in the United States or their authorized representative may file a petition for trade adjustment assistance.

(b) Filings may be written or electronic, as provided for by the Administrator, and submitted to FAS from August 15 through January 31. Petitions received after January 31 will be returned to the sender. If January 31 falls on a weekend, the petition will be accepted the next business day.

(c) Petitions shall include the following information.

(1) Name, business address, phone number, and email address (if available) of each producer in the group, or their authorized representative. A petition filed by a group shall identify a contact person for the group.

(2) The agricultural commodity and its Harmonized Tariff Schedule of the United States (HTS) number.

(3) The production area represented by the group or its authorized representative. The petitioners shall indicate if they are filing on behalf of all producers in the United States, or if they are filing solely on behalf of all producers in a specifically identified impacted area. In the latter case, at least one member of the group must reside in each State within the impacted area, or the authorized representative must have members residing in each State within the impacted area.

(4) The beginning and ending dates for the marketing year during which domestic prices were affected by imports. A petition may be filed for only the most recent marketing year for which national average prices are available.

(5) A justification statement explaining why the petitioners should be considered eligible for adjustment assistance.

(6) Price data supporting the petition.

(i) If the petition is filed on behalf of all producers of the agricultural commodity in the United States, the Administrator shall use national average prices compiled by the National Agricultural Statistics Service (NASS), whenever possible. If NASS has not compiled price data for the commodity, the petitioners shall provide national average prices for the marketing year under review and for the previous five marketing years, and identify the source of the price series.

(ii) If the petition is filed on behalf of producers in a specifically identified impacted area, the petitioners shall provide national average prices for the impacted area for the marketing year under review and for the previous five marketing years, and identify the source of the price series.

(iii) The Administrator may request petitioners to provide records to support their national average price data.

(d) Once the petition is received, the Administrator shall determine if it meets the requirements of § 1580.201(c), and if so, publish notice in the **Federal Register** that a petition has been filed and that an investigation has begun. The notice shall identify the agricultural commodity, including any like or directly competitive commodities, the marketing year being investigated, the price series being used, and the production area covered by the petition. The notice may also announce the scheduling of a public hearing, if requested by the petitioners. If the petition does not meet the requirements of § 1580.201(c), the Administrator shall notify as soon as possible the contact person for the group or the authorized representative of the deficiencies.

§ 1580.202 Hearings, petition reviews, and amendments.

(a) If the petitioner, or any other person(s) found by the Administrator to have a substantial interest in the proceedings, submits not later than 10 days after the filing date a request in writing for a hearing, the Administrator shall provide for a public hearing and afford such interested person an opportunity to be present, to produce evidence, and to be heard.

(b) If the petitioner, or any other person(s) having an interest in the proceedings takes issue with any of the information published in the **Federal Register** concerning the petition, they may submit to the Administrator their comments in writing or electronically for consideration by the Administrator not later than 10 days after the filing date.

(c) A producer residing outside the impacted area identified in a petition may file to become a party to the petition by fulfilling the requirements of § 1580.201(c) within 10 days of the filing date. The Administrator may amend the original petition to expand the impacted area and include the additional filer, or consider it a separate filing.

(d) The Administrator shall publish in the **Federal Register** as soon as possible any changes to the original notice resulting from any actions taken under this section.

§ 1580.203 Determination of eligibility and certification by the Administrator.

(a) As soon as practicable after the filing date, but in any event not later than 40 days after that date, the Administrator shall determine whether the petitioners satisfy the following conditions for adjustment assistance.

(1) The national average price for the agricultural commodity for the marketing year under review is equal to or less than 80 percent of the average of the national average prices for the 5 marketing years preceding the most recent marketing year, and

(2) Increases in imports of articles like or directly competitive with the agricultural commodity contributed importantly to the decline in price described in paragraph (a)(1) of this section.

(b) If the Administrator determines that the above conditions have been satisfied, the producers covered by the petition shall be certified as eligible for adjustment assistance.

(c) Upon making a determination, whether affirmative or negative, the Administrator shall promptly publish in the **Federal Register** a summary of the determination, together with the reasons for making the determination.

(d) In addition, the Administrator shall notify producers covered by a certification how to apply for adjustment assistance. Notification methods may include direct mailings to known producers, messages to directly affected producer groups and organizations, electronic communications, internet web site notices, and use of broadcast and print media.

(e) Whenever a group of agricultural producers is certified as eligible for assistance, the Administrator shall use the occasion to notify and inform other producers about the Trade Adjustment Assistance Program and how they may petition for adjustment assistance.

§ 1580.301 Application for trade adjustment assistance.

(a) Only producers covered by a certification of eligibility may apply for adjustment assistance. Producers may request advice from FSA regarding the preparation and submission of their applications.

(b) An eligible producer may submit an application for adjustment assistance by submitting to FSA a designated application form at any time after the certification date but not later than 90 days after the certification date. If the 90-day application period ends on a weekend or legal holiday, the producer may apply the following business day.

(c) When submitting an application, the producer shall provide documentation to support the amount of production reported to FSA for the most recent marketing year.

(d) Upon submitting their application, producers shall be immediately eligible to request trade adjustment technical assistance from the Extension Service at no cost.

(e) Producers able to furnish their applications with all the following certifications shall be eligible for adjustment assistance payments:

(1) Certification that technical assistance from the Extension Service under § 1580.302 has been received.

(2) Certification that cash benefits have not been received under any of the provisions of the Trade Act of 1974, as amended, other than those permitted under this part.

(3) Certification that adjustment assistance payments have not exceeded the $10,000 limitation for the Federal fiscal year.

(4) Certification that net farm or fishing income for the most recent tax year was less than that during the producer's pre-adjustment year.

(5) Certification that their average adjusted gross income, as determined in

accordance with 7 CFR 1400.601, for the 3 preceding tax years does not exceed $2,500,000.

(6) To comply with certifications in (e)(4) and (e)(5) of this section, an applicant shall provide either—

(i) Supporting documentation from a certified public accountant or attorney, or

(ii) Relevant documentation and other supporting financial data, such as financial statements, balance sheets, and reports prepared for or provided to the Internal Revenue Service or another U.S. Government agency.

(f) Persons legally authorized to execute program documents for estates or trusts will be accepted only if such person furnishes evidence of the authority to execute such documents.

§ 1580.302 Technical assistance and services.

(a) Any producer of an agricultural commodity covered by a certification of eligibility may apply for and receive information and technical assistance from the Extension Service that will assist in adjusting to import competition and be at no cost to the producer.

(b) To qualify for technical assistance, producers shall apply under § 1580.301.

(c) Producers shall have an opportunity to meet at least once with an Extension Service employee within 180 days of petition certification to receive information regarding the feasibility and desirability of substituting one or more alternative commodities for the adversely affected agricultural commodity and to receive technical assistance that will improve the competitiveness of the production and marketing of the adversely affected agricultural commodity by the producer, including yield and marketing improvements. The Extension Service shall provide to producers written confirmation of all technical assistance meetings. Producers shall also have access to technical information provided in writing and electronically.

(d) Producers shall also be provided information concerning procedures for applying for and receiving other Federal assistance and services available to workers facing economic distress.

(e) Producers shall be entitled to employment services and training benefits under trade adjustment assistance for workers managed by the U.S. Department of Labor.

§ 1580.303 Adjustment assistance payments.

(a) Applicants shall satisfy by September 30 all conditions of § 1580.301 to qualify for adjustment assistance payments.

(b) The FSA office shall issue a payment to a producer that is equal to the product of the amount of the agricultural commodity produced in the most recent marketing year multiplied by one-half the difference between—

(1) An amount equal to 80 percent of the average of the national average prices of the agricultural commodity covered by the petition for the 5 marketing years preceding the most recent marketing year, and

(2) The national average price of the agricultural commodity for the most recent marketing year.

(c) The maximum amount of payments under this part that a person may receive during the Federal fiscal year shall not exceed $10,000.

(d) The total amount of payments made under this part to a person during any fiscal year when considered with the total amount of counter-cyclical payments made in accordance with part 1412 of this title for a corresponding crop year shall not exceed $65,000 per fiscal year, as determined by the Administrator.

(e) Any person who may be entitled to a payment may assign their rights to such payment in accordance with 7 CFR part 1404 or successor regulations as designated by the Department.

(f) In the case of death, incompetency, disappearance or dissolution of a person that is eligible to receive benefits in accordance with this part, such person or persons specified in 7 CFR part 707 may receive such benefits, as determined appropriate by FSA.

(g) If the Administrator, FAS, determines in September that program funds may be insufficient to meet the requirements for adjustment assistance payments under this part during the coming fiscal year, FSA may delay making adjustment payments in order to prorate amounts owed producers.

(h) FSA shall not make adjustment assistance payments to producers who have not met at least once with an Extension Service employee to receive technical assistance.

§ 1580.401 Subsequent qualifying year eligibility.

(a) Prior to the anniversary of a certification date,

(1) groups and authorized representatives that provided national average prices to justify their initial certifications shall provide the Administrator national average prices for the most recent marketing year, and

(2) the Administrator shall determine whether or not—

(i) The national average price for the agricultural commodity produced by the group for the most recent marketing year is equal to or less than 80 percent of the average of national average prices for the 5 marketing years used to make the first certification under § 1580.203(a)(1), and

(ii) Further increases in imports are contributing importantly to the decline in price.

(b) The Administrator shall promptly publish in the **Federal Register** the determination with supporting justification statement.

(c) In the case of a re-certification, FSA shall notify producers that they may be eligible to receive trade adjustment assistance for a subsequent qualifying year.

(d) To qualify for assistance in subsequent qualifying years, producers shall—

(1) Submit an application pursuant to § 1580.301, and

(2) Contact the Extension Service for technical adjustment assistance.

(e) The amount of an adjustment assistance payment during a qualifying year shall be determined in the same manner as in the originating year, except that the average national price shall be determined by using the 5-marketing-year period used to determine the amount of cash benefits for the first certification.

(f) An eligible producer who did not apply for adjustment assistance in the initial year may apply pursuant to § 1580.301.

§ 1580.501 Administration.

(a) The application process will be administered under the general supervision of the Administrator, FSA, and shall be carried out in the field by State and county FSA committees.

(b) State and county FSA committees and representatives do not have the authority to modify or waive any of the provisions of this part.

(c) The State FSA committee shall take any action required by this part that has not been taken by a county FSA committee. The State FSA committee shall also:

(1) Correct or require a county FSA committee to correct any action taken by such county FSA committee that is not in accordance with this part; and

(2) Require a county FSA committee to withhold taking or reversing any action that is not in accordance with this part.

(d) No delegation in this part to a State or county FSA committee shall prevent the Deputy Administrator from determining any question arising under the program or from reversing or modifying any determination made by a State or county FSA committee.

(e) The Administrator, FAS, may, by timely and appropriate public

notification, modify non-statutory opening dates and deadlines for submitting petitions.

(f) The Deputy Administrator may, in consultation with the Administrator, FAS, authorize the State and county committees to waive or modify non-statutory application deadlines or other program requirements in cases where lateness or failure to meet such other requirements by applicants does not adversely affect the operation of the program.

§ 1580.502 Maintenance of records, audits and compliance.

(a) Persons making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified herein, as may be requested by FSA. Such records and accounts must be retained for 2 years after the date of the final payment to the producer under this program.

(b) At all times during regular business hours, authorized representatives of FSA, the United States Department of Agriculture, or the Comptroller General of the United States shall have access to the premises of the producer in order to inspect, examine, and make copies of the books, records, and accounts, and other written data as specified in paragraph (a) of this section.

(c) Audits of certifications of average adjusted gross income may be conducted as necessary to determine compliance with the requirements of this subpart. As a part of this audit, income tax forms may be requested and if requested, must be supplied. If a producer has submitted information to FSA, including a certification from a certified public accountant or attorney, that relied upon information from a form previously filed with the Internal Revenue Service, such producer shall provide FSA a copy of any amended form filed with the Internal Revenue Service with 30 days of the filing.

(d) If requested in writing by the United States Department of Agriculture or the Comptroller General of the United States, the producer shall provide all information and documentation the reviewing authority determines necessary to verify any information or certification provided under this subpart, including all documents referred to in § 1580.301(c), within 30 days. Acceptable production documentation may be submitted by facsimile, in person, or by mail and may include copies of receipts, ledgers, income statements, deposit slips, register tapes, invoices for custom harvesting, records to verify production costs, contemporaneous measurements, truck scale tickets, fish tickets, landing reports, and contemporaneous diaries that are determined acceptable by the county committee. Failure to provide necessary and accurate information to verify compliance, or failure to comply with this subpart's requirements, will result in ineligibility for all program benefits subject to this subpart for the year or years subject to the request.

§ 1580.503 Debarment and suspension.

The Government-wide Debarment and Suspension (Nonprocurement) regulations and Government Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017—subparts A through E, apply to this part.

§ 1580.504 Fraud and recovery of overpayments.

(a) If the Administrator, FSA, or a court of competent jurisdiction, determines that any person has received any payment under this program to which the person was not entitled, such person will be liable to repay such amount to the Administrator, FSA. The Administrator, FSA, may waive such repayment if it is determined that:

(1) The payment was made without fault on the part of the person; and

(2) Requiring such repayment would be contrary to equity and good conscience.

(b) Unless an overpayment is otherwise recovered, or waived under paragraph (a), the Administrator, FSA, shall recover the overpayment by deductions from any sums payable to such person.

(c) If the Administrator, FSA, or a court of competent jurisdiction, determines that a person:

(1) Knowingly has made, or caused another to make, a false statement or representation of a material fact, or

(2) Knowingly has failed, or caused another to fail, to disclose a material fact, and, as a result of such false statement or representation, or of such nondisclosure, such person has received any payment under this program to which the person was not entitled, such person shall, in addition to any other penalty provided by law, be ineligible for any further payment under this program.

(d) Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination and an opportunity for a fair hearing has been given to the person concerned, and the determination has become final.

(e) Whoever makes a false statement of a material fact knowing it to be false, or knowingly fails to disclose a material fact, for the purpose of obtaining or increasing for himself or for any other person any payments authorized to be furnished under this program shall be fined not more that $10,000 or imprisoned for not more than 1 year, or both.

§ 1580.505 Appeals.

Any person may obtain reconsideration and review of determinations made with respect to applications for program benefits under this part in accordance with appeal regulations of the 7 CFR part 780.

§ 1580.601 Implementation.

Trade adjustment assistance is available for the most recent marketing year for which prices were available on February 3, 2003.

§ 1580.602 Paperwork Reduction Act assigned number.

FAS is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to maximum extent possible. The information collection requirements contained in these regulations (7 CFR part 1580) have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and been assigned OMB control number 0551–0040.

Dated: August 15, 2003.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 03–21338 Filed 8–19–03; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 01–036–2]

Requirements for Recognizing the Animal Health Status of Foreign Regions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations that set out our procedures for recognizing the animal health status of regions. Specifically, we are requiring regions that have been granted status

under the regulations to provide information, or allow us to access information, to confirm the regions' animal health status when we request it. This action is necessary to help prevent the introduction of foreign animal diseases into the United States.

EFFECTIVE DATE: September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Director, Sanitary Trade Issues Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734 -4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92, "Importation of Animals and Animal Products: Procedures for Requesting Recognition of Regions" (referred to below as the regulations), set out the process by which a foreign government may request recognition of the animal health status of a region or approval to export animals or animal products to the United States based on the risk associated with animals or animal products from that region. As provided in § 92.2, each request must include information about the region, including information on the authority, organization, and infrastructure of the veterinary services organization of the region; the extent to which movement of animals and animal products is controlled from regions of higher risk, and the level of biosecurity for such movements; livestock demographics and marketing practices in the region; diagnostic laboratory capabilities in the region; and the region's policies and infrastructure for animal disease control, *i.e.*, the region's emergency response capacity.

On March 6, 2003, we published a proposed rule in the **Federal Register** (68 FR 10667–10668, Docket No. 01–036–1) in which we proposed to amend the regulations to require regions that have been granted status under the regulations to provide information, or allow us to access information, to confirm the regions' animal health status when we request it.

We solicited comments concerning our proposal for 60 days ending May 5, 2003. We received four comments by that date. They were from representatives of domestic livestock producers and a State animal health agency. All of the commenters supported the proposed rule. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the regulations that set out our procedures for recognizing the animal health status of regions. Specifically, we are requiring regions that have been granted status under the regulations to provide information, or allow us to access information, to confirm the regions' animal health status when we request to do so. This action is necessary to help prevent the introduction of foreign animal diseases into the United States. We do not expect that this action will result in any economic effects, positive or negative.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0219.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Region, Reporting and recordkeeping requirements.

■ Accordingly, we are amending 9 CFR part 92 as follows:

PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. § 92.2 is amended by redesignating paragraph (a)(1) as paragraph (a) and adding a new paragraph (g) and an OMB citation at the end of the section to read as follows:

§ 92.2 Application for recognition of the animal health status of a region.

* * * * *

(g) If a region is granted animal health status under the provisions of this section, that region may be required to submit additional information pertaining to animal health status or allow APHIS to conduct additional information collection activities in order for that region to maintain its animal health status.

(Approved by the Office of Management and Budget under control number 0579–0219)

Done in Washington, DC this 15th day of August 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–21305 Filed 8–19–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 25, 91, 121, 125, and 135

[Docket No. FAA–2000–7909; Amdt. Nos. 25–111, 91–275, 121–289, 125–43, 135–85]

RIN 2120–AG91

Improved Flammability Standards for Thermal/Acoustic Insulation Materials Used in Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to the final rule published in the **Federal Register** on July 31, 2003. That rule upgraded flammability standards for thermal and acoustic insulation materials used in transport category airplanes.

EFFECTIVE DATE: This correction is effective on August 20, 2003.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, telephone (425) 227–2136.

Correction

In the final rule FR Doc. 03–18612, published on July 31, 2003, (68 FR 45046), make the following corrections:

1. On page 45046, in column 1 in the heading section, beginning on line 4, correct "Amdt. Nos. 25–110, 91–275, 121–289, 125–43, 135–85" to read "Amdt. Nos. 25–111, 91–275, 121–289, 125–43, 135–85."

Issued in Washington, DC, on August 12, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03–21330 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–33–AD; Amendment 39–13282; AD 2003–16–51]

RIN 2120–AA64

Airworthiness Directives; Schempp-Hirth Flugzeugbau GmbH Model Duo-Discus Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Schempp-Hirth (SCHEMPP-HIRTH) Flugzeugbau GmbH Model Duo-Discus gliders. This AD requires you to accomplish a one-time inspection of the bonding of the spar cap and spar web, and repair any defective bonding of the spar cap and spar web. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. The actions specified by this AD are intended to detect and correct failure of the bonding of the spar cap and spar web, which if not detected and corrected, could result in an in-flight failure of the wing.

DATES: The AD becomes effective August 20, 2003, to all affected persons who did not receive emergency AD 2003–16–51, issued August 7, 2003. Emergency AD 2003–16–51 contained the requirements of this amendment, and became effective immediately upon receipt and required the actions prior to further flight.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of August 20, 2003.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before September 15, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–33–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–33–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may view information related to this AD at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–33–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gregory Davidson, Aerospace Engineer, FAA, Small Airplane Directorate, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Has Happened So Far?

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain SCHEMPP-HIRTH Model Duo-Discus gliders. The LBA reports an in-flight failure of the wing structure at maneuvering loads. Initial analysis indicates failure in the bonding of the spar cap and spar web.

SCHEMPP–HIRTH has received additional reports of bonding problems of the spar cap and spar web.

SCHEMPP–HIRTH has issued service information regarding this subject:

- Technical Note No. 396–8/No. 890–3, dated August 1, 2003; and
- Appendix to Technical Note No. 396–8/No. 890–3, dated August 1, 2003.

On January 27, 2003, FAA issued emergency AD 2003–16–51 to require you to inspect the bonding of the spar cap and spar web; and repair any defective bonding of the spar cap and spar web.

Why Is It Important To Publish this AD?

The FAA found that immediate corrective action was required, that notice and opportunity for prior public comment were impracticable and contrary to the public interest, and that good cause existed to make the AD effective immediately by individual letters issued on August 7, 2003, to all known U.S. operators of certain SCHEMPP-HIRTH Duo-Discus gliders. These conditions still exist, and the AD is published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention To?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA

contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your written comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–33–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2003–16–51 Schempp-Hirth Flugzeugbau GmbH: Docket No. 2003-CE–33–AD.

(a) *What gliders are affected by this AD?* This AD applies to Model Duo-Discus gliders, serial numbers 165 through 389, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the gliders identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* This AD is intended to detect and correct failure of the bonding of the spar cap and spar web, which if not detected and corrected, could result in an in-flight failure of the wing.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
(1) Inspect the bonding between the spar cap and the spar web for defects.	Prior to further flight after August 20, 2003 (the effective date of this AD), except that this action was required prior to further flight after receipt those who received emergency AD 2003–16–51, which was issued on August 7, 2003.	In accordance with SCHEMPP–HIRTH Flugzeugbau for GmbH. Hircheim/Teck Technical Note No. 396–8, No. 890–3, dated August 1, 2003; and SCHEMPP–HIRTH Flugzeugbau GmbH. Hircheim/Teck Appendix to Technical Note No. 396–8/No. 890–3, dated August 1, 2003.
(2) Repair any defect in the bonding between the spar cap and the spar web, as specified in the service information.	Prior to further flight after the inspection required by paragraph (d)(1) of this AD.	In accordance with SCHEMPP–HIRTH Flugzeugbau GmbH. Hircheim/Teck Technical Note No. 396–8, No. 890–3, dated August 1, 2003; and SCHEMPP– HIRTH Flugzeugbau GmbH. Hircheim/Teck Appendix to Technical Note No. 396–8/No. 890–3, dated August 1, 2003.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Gregory Davidson, Aerospace Engineer, FAA, Small Airplane Directorate, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

(f) *Are special flight permits allowed?* No. Special flight permits are not allowed by this AD. The FAA has determined that the safety issue is severe enough that the gliders must be free of bonding defects in the spar area before further operation.

(g) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with SCHEMPP–HIRTH Flugzeugbau GmbH. Hircheim/Teck Technical Note No. 396–8, No. 890–3, dated August 1, 2003; and SCHEMPP–HIRTH Flugzeugbau GmbH. Hircheim/Teck Appendix to Technical Note No. 396–8/No. 890–3, dated August 1, 2003. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Schempp-Hirth Flugzeugbau GmbH, Postfach 1443, 73222 Kircheim/Teck, Federal Republic of Germany; telephone: 49 7021 7298–0; facsimile: 49 7021 7298–199. You may view copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) *When does this AD become effective?* This AD becomes effective August 20, 2003, to all affected persons who did not receive emergency AD 2003–16–51, issued August 7, 2003. Emergency AD 2003–16–51 contained the requirements of this amendment and became effective immediately upon receipt and required the actions before further flight.

Note: The subject of this AD is addressed in German AD Number 2003–246/2, dated August 1, 2003.

Issued in Kansas City, Missouri, on August 12, 2003.

Diane K. Malone,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21152 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–13–AD; Amendment 39–13283; AD 2003–17–08]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Learjet Model 45 airplanes, that currently requires repetitive application of grease to the rotating disk assembly of the nose landing gear (NLG) squat switch mechanism. This amendment requires replacement of the squat switch camrod of the NLG, which terminates the repetitive application; and also reduces the applicability of the existing AD. The actions specified by this AD are intended to prevent moisture contamination and subsequent formation of ice which could cause bending and damage of the squat switch assembly, driving the nose wheel to an uncommanded angle against the force of the steering system. This condition, if not corrected, could result in the airplane departing the runway at high speeds during landing. This action is intended to address the identified unsafe condition.

DATES: Effective September 24, 2003.

The incorporation by reference of Bombardier Service Bulletin SB 45–32–8, Revision 2, dated March 14, 2001, as listed in the regulations, is approved by the Director of the Federal Register as of September 24, 2003.

The incorporation by reference of Bombardier Service Information Letter SIL 32–016, dated March 30, 2000, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 6, 2000 (65 FR 65257, November 1, 2000).

ADDRESSES: The service information referenced in this AD may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Busto, Aerospace Engineer, Systems and Equipment Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4157; fax (316) 946–4107.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–22–04, amendment 39–11950 (65 FR 65257, November 1, 2000), which is applicable to certain Learjet 45 series airplanes, was published in the **Federal Register** on May 29, 2003 (68 FR 31999). The action proposed to require repetitive application of grease to the rotating disk assembly of the nose landing gear (NLG) squat switch mechanism. The action also proposed to require replacement of the squat switch camrod of the NLG, which would terminate the repetitive application; and would reduce the applicability of the existing AD. That action was prompted by tests conducted by the manufacturer that indicated a potential unsafe condition exists involving damage or bending of the squat switch assembly of the NLG due to moisture contamination and subsequent formation of ice.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 110 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 2000–22–04 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $7,150, or $65 per airplane.

The new actions that are required by this new AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will cost approximately $205 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $44,000, or $400 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a

"significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11950 (65 FR 65257, November 1, 2000), and by adding a new airworthiness directive (AD), amendment 39–13283, to read as follows:

2003–17–08 Learjet: Amendment 39–13283. Docket 2002–NM–13–AD. Supersedes AD 2000–22–04, Amendment 39–11950.

Applicability: Model 45 airplanes, certificated in any category; serial numbers (S/N) 45–005 through 45–071 inclusive, that have been modified per Bombardier Service Bulletin 45–32–3; and S/Ns 45–072 through 45–114 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent moisture contamination and subsequent formation of ice which could cause bending and damage of the squat switch assembly of the nose landing gear (NLG), driving the nose wheel to an uncommanded angle against the force of the steering system, and consequently resulting in the airplane departing the runway at high speeds during landing, accomplish the following:

Restatement of Requirements of AD 2000–22–04, Amendment 39–11950

Application of Grease

(a) Within 30 days after December 6, 2000 (the effective date of AD 2000–22–04, amendment 39–11950): Apply grease to the rotating disk assembly of the squat switch mechanism of the nose wheel in accordance with Bombardier Service Information Letter SIL 32–016, dated March 30, 2000. Thereafter, repeat this application at intervals not to exceed 30 days until the replacement required by paragraph (b) of this AD is accomplished.

New Requirements of This AD

Terminating Action

(b) Within 300 flight hours or 12 months after the effective date of this AD, whichever occurs first: Replace the camrod of the squat switch assembly of the NLG with a new assembly in accordance with the Accomplishment Instructions of Bombardier Service Bulletin SB 45–32–8, Revision 2, dated March 14, 2001. Accomplishment of the camrod replacement terminates the requirements of this AD.

Alternative Methods of Compliance

(c)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–22–04, amendment 39–11950, are approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Bombardier Service Information Letter SIL 32–016, dated March 30, 2000; and Bombardier Service Bulletin SB 45–32–8, Revision 2, dated March 14, 2001; as applicable.

(1) The incorporation by reference of Bombardier Service Bulletin SB 45–32–8, Revision 2, dated March 14, 2001, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Bombardier Service Information Letter SIL 32–016, dated March 30, 2000, was approved previously by the Director of the Federal Register as of December 6, 2000 (65 FR 65257, November 1, 2000).

(3) Copies may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on September 24, 2003.

Issued in Renton, Washington, on August 13, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21155 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–77–AD; Amendment 39–13281; AD 2003–17–07]

RIN 2120–AA64

Airworthiness Directives; Various Transport Category Airplanes Manufactured by McDonnell Douglas

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to various transport category airplanes manufactured by McDonnell Douglas. This AD requires a one-time test of the fire extinguishers for the engine and auxiliary power unit (APU), as applicable, to determine the capability of the Firex electrical circuits to fire discharge cartridges, and troubleshooting actions if necessary. This action is necessary to prevent failure of the fire extinguishers to fire discharge cartridges, which could result in the inability to put out a fire in an engine or in the APU. This action is intended to address the identified unsafe condition.

DATES: Effective September 24, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director

of the Federal Register as of September 24, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Samuel Lee, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5262; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to various transport category airplanes manufactured by McDonnell Douglas was published in the **Federal Register** on February 20, 2003 (68 FR 8155). That action proposed to require a one-time test of the fire extinguishers for the engine and auxiliary power unit (APU) to determine the capability of the Firex electrical circuits to fire discharge cartridges, and troubleshooting actions if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. The FAA has given due consideration to the comments received.

Request for Credit for Actions Accomplished Per Earlier Service Bulletin Revisions

Two commenters request that we revise the proposed AD to give credit for tests accomplished previously per the original issue of McDonnell Douglas Alert Service Bulletin DC9–26A029, dated July 27, 2000; or MD11–26A039, dated July 31, 2000. The proposed AD refers to Revision 01 of those service bulletins as the applicable sources of service information for certain airplanes affected by the proposed AD. The commenters note that the procedures for the test of the electrical circuit are similar in the original issue and Revision 01 of those service bulletins.

We concur and have added a new paragraph (b) to this final rule (and reidentified subsequent paragraphs accordingly) to state that tests and troubleshooting actions accomplished before the effective date of this AD per the original issue of those service bulletins are acceptable for compliance with the corresponding action required by paragraph (a) of this final rule.

Request To Clarify Requirements for Airplanes Without an APU Installed

One commenter requests that we revise the proposed AD to provide for airplanes on which no APU is installed, by changing paragraph (a) of this proposed AD to add the words "if installed" after "APU." The commenter states that it operates certain airplanes included in the effectivity listing of the related service bulletin that do not have an APU installed. The commenter states that it has informed the airplane manufacturer of this issue, and the airplane manufacturer intends to correct the effectivity of the related service bulletin. However, the commenter is concerned that the AD, as proposed, would require it to test an APU that does not exist on these airplanes. The commenter requests that we revise the proposed AD to ensure that it is able to comply with the requirements of the AD.

We concur with the intent of the commenter's request. We have revised paragraph (a) of this final rule to read, "Test the capability of the electrical circuits of the Firex fire extinguishers for the engine and the APU, as applicable." We have made a similar change to the Summary section of this final rule. We have also revised paragraph (a)(1) of this AD to clarify that the actions in that paragraph apply to "any airplane equipped with an APU," and we have revised paragraph (a)(2) of this final rule to clarify that the actions in that paragraph apply to "all airplanes."

Explanation of Additional Change to Final Rule

We have revised the applicability section of this final rule to identify the table in that section as "Table 1—Applicability." We have made a corresponding change to paragraph (a) of this final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

After we issued the proposed AD, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

There are approximately 3,311 airplanes of the affected designs in the worldwide fleet. The FAA estimates that 1,553 airplanes of U.S. registry will be affected by this AD, that it will take between 4 work hours and 7 work hours per airplane (depending upon airplane model) to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be between $403,780 and $706,615, or between $260 and $455 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on

the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–17–07 McDonnell Douglas: Amendment 39–13281. Docket 2001–NM–77–AD.

Applicability: This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category. Table 1 of this AD follows:

TABLE 1—APPLICABILITY

McDonnell Douglas Models	As listed in
Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 airplanes; DC–8–51, DC–8–52, DC–8–53, and DC–8–55 airplanes; DC–8F–54 and DC–8F–55 airplanes; DC–8–61, DC–8–62, and DC–8–63 airplanes; DC–8–61F, DC–8–62F, and DC–8–63F airplanes; DC–8–71, DC–8–72 and DC–8–73 airplanes; DC–8–71F, DC–8–72F, and DC–8–73F airplanes.	Boeing Alert Service Bulletin DC8–26A042, including Appendix A, dated January 31, 2002.
Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; DC–9–21 airplanes; DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, and DC–9–32F (C–9A, C–9B) airplanes; DC–9–41 airplanes; DC–9–51 airplanes; DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and MD–88 airplanes.	McDonnell Douglas Alert Service Bulletin DC9–26A029, Revision 01, dated May 8, 2001.
Model DC–10–10 and DC–10–10F airplanes; DC–10–15 airplanes; DC–10–30 and DC–10–30F (KC10A and KDC–10) airplanes; DC–10–40 and DC–10–40F airplanes; MD–10–10F and MD–10–30F airplanes.	McDonnell Douglas Alert Service, Bulletin DC10–26A050, dated July 31, 2000.
Model MD–11 and MD–11F airplanes	McDonnell Douglas Alert Service Bulletin MD11–26A039, Revision 01, dated November 21, 2002.
Model MD–90–30 airplanes	McDonnell Douglas Alert Service Bulletin MD90–26A005, dated July 31, 2000.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine and auxiliary power unit (APU) fire extinguishers to fire discharge cartridges, which could result in the inability to put out a fire in an engine or in the APU; accomplish the following:

Testing the Firex Electrical Circuits

(a) Within 18 months after the accumulation of 15,000 total flight hours, or within 18 months after the effective date of this AD, whichever occurs later: Test the capability of the electrical circuits of the Firex fire extinguishers for the engine and the APU, as applicable, per the applicable alert service bulletin (ASB) listed in Table 1 of this AD.

(1) *For any airplane equipped with an APU:* If any electrical circuit of the Firex fire extinguishers for the APU does not pass the testing, before further flight, accomplish the troubleshooting procedures specified in the applicable ASB. Dispatch with an inoperative APU is permitted for the amount of time specified in the Minimum Equipment List. Dispatch after that time is not permitted until the circuits are repaired per the Boeing Standard Wiring Practices Manual (SWPM) D6–82481.

(2) *For all airplanes:* If any electrical circuit of the Firex fire extinguishers for the engine does not pass the testing, before further flight, accomplish the troubleshooting procedures specified in the applicable ASB, and repair per SWPM D6–82481. Dispatch is not permitted until the circuits have been repaired.

Actions Accomplished Per Previous Issue of Service Bulletins

(b) Tests and troubleshooting procedures accomplished before the effective date of this AD per McDonnell Douglas Alert Service Bulletin DC9–26A029, dated July 27, 2000; or MD11–26A039, dated July 31, 2000; are considered acceptable for compliance with the corresponding action specified in paragraph (a) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with the applicable service bulletin listed in Table 2 of this AD. Table 2 follows:

TABLE 2.—APPLICABLE SERVICE BULLETINS

Service Bulletin	Revision Level	Date
Boeing Alert Service Bulletin DC8–26A042, including Appendix A	Original	January 31, 2002.
McDonnell Douglas Alert Service Bulletin DC9–26A029	Revision 01	May 8, 2001.
McDonnell Douglas Alert Service Bulletin DC10–26A050	Original	July 31, 2000.
McDonnell Douglas Alert Service Bulletin MD11–26A039	Revision 01	November 21, 2002.
McDonnell Douglas Alert Service Bulletin MD90–26A005	Original	July 31, 2000.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on September 24, 2003.

Issued in Renton, Washington, on August 12, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20987 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–178–AD; Amendment 39–13280; AD 2003–17–06]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747SP, and 747SR Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100, 747SP, and 747SR series airplanes, that requires repetitive inspections to find fatigue cracking between the seal ribs of the front spar web of the wing and outboard of the outboard seal rib to front spar station inboard (FSSI) 711, and repair of cracked structure. This AD also provides for an optional modification of a certain area. This action is necessary to find and fix fatigue cracking between the seal ribs of the front spar web of the wing and outboard of the outboard seal rib to FSSI 711, which could result in fuel leakage into the area of the inboard engines, and consequent increased risk of a fire. This action is intended to address the identified unsafe condition.

DATES: Effective September 24, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 24, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6421; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, 747SP, and 747SR series airplanes, was published in the **Federal Register** on February 4, 2003 (68 FR 5610). That action proposed to require repetitive inspections to find fatigue cracking between the seal ribs of the front spar web of the wing, and repair of cracked structure. That action also proposed to provide for an optional modification of a certain area.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. The FAA has given due consideration to the comments received from a single commenter.

Request To Revise Compliance Time

The commenter requests that we revise compliance time information in paragraphs (a) and (b) of the proposed AD to make the wording of the inspection threshold and grace period more specific. The commenter specifically asks that we add a new paragraph (a)(2) and revise paragraph (b)(1) of the proposed AD to include the words "Within 18 months of the effective date of this AD for all airplanes that have exceeded the total flight cycles or total flight hours * * *." The commenter states that this change is necessary so that operators of airplanes that have exceeded the thresholds specified in the service bulletin will know how much time they have to accomplish the initial inspection.

We do not concur with the commenter's request. Paragraph (b)(1) of this AD specifically refers to Tables 1 through 3 of Figure 1 of the Accomplishment Instructions or Appendix A of the referenced service bulletin as the appropriate source of the compliance time for the applicable initial or post-modification inspection. Paragraph (a) of this AD is intended to clarify the grace period stated in the service bulletin. We find that affected operators should be readily able to determine the applicable compliance time, as clarified by paragraph (a) of this AD. No change is necessary in this regard.

Request To Clarify Repair Instructions

The commenter requests that we revise paragraph (c) of the proposed AD to add a reference to corrosion or damage that may be found during the inspections or the optional modification specified in paragraph (d) of the proposed AD. The commenter states

that operators may find corrosion or damage during the required inspections, or fastener holes may be damaged during accomplishment of the optional modification.

We do not concur with the commenter's request to add a reference to corrosion or damage. The inspections described in the referenced service bulletin and required by this AD are intended only to reveal cracking related to the identified unsafe condition. If any corrosion or damage is found during accomplishment of an action required by this AD, an operator would be required—regardless of AD direction—to correct the corrosion or damage to ensure that the airplane is operated in an airworthy condition as required by the Federal Aviation Regulations.

Related to this, we infer that the rationale for the commenter's request is to ensure that repairs of corrosion and other damage may be approved by a delegated Designated Engineering Representative (DER). We do not agree that any change is necessary to meet the commenter's intent. If corrosion or damage is found, and the Manager of the Seattle Aircraft Certification Office (ACO) has authorized a Boeing Company DER to approve an alternative method of compliance for this AD, then the Boeing Company DER may approve a repair if it is structurally adequate per the FAA's delegation letter.

We concur, however, with the commenter's request to revise paragraph (c) of this final rule to add a reference to the optional modification. We note that paragraph (c) of the proposed AD states that it applies to any cracking found during any inspection required by the AD. This would include any inspection specified in the procedures for the optional modification. We find that adding the reference requested by the commenter may clarify that any cracking found during the optional modification must be repaired before further flight. Thus, for clarification, we have revised paragraph (c) of this AD to specify that the repair provisions in that paragraph apply to any cracking found during an inspection required by this AD, including cracking found during accomplishment of the modification specified in paragraph (d) of this AD.

Request To Clarify Inspection Threshold

The commenter requests that we revise paragraph (d) of the proposed AD to clarify that, if the optional modification is accomplished, the threshold for the repetitive inspections of Zone B is extended to the post-modification threshold specified in Tables 1 through 3 of Figure 1 of the service bulletin. The proposed AD does not include the words "post-modification" before the word "threshold." The commenter does not state any justification for its request.

We infer that the commenter is concerned that, because there are other thresholds specified in the service bulletin, operators may be confused about the new threshold for the repetitive inspections of Zone B. We concur that this clarification may be helpful and have revised paragraph (d) of this AD accordingly.

Request To Revise Inspection Terminology, Add Inspection Definition

The commenter requests that we revise paragraph (b) of the proposed AD to refer to a "detailed visual inspection" instead of a "detailed inspection." The commenter also requests that we add an AD note defining a "detailed visual inspection." The commenter points out that this note has appeared in other ADs.

We do not concur with the commenter's request to revise the inspection terminology. The term "detailed visual inspection" was changed to "detailed inspection" in Revision 2003.1 of the Air Transport Association of America (ATA)/MSG–3 document, "ATA Operator/Manufacturer Scheduled Maintenance Development." We find that this terminology should be readily understood by all affected operators, and no change to the terminology is necessary.

We do concur with the commenter's request to add the standard AD note defining a "detailed inspection." This note was inadvertently omitted from the proposed AD. Therefore, we have added a new Note 2 to this AD and renumbered subsequent notes accordingly.

Request To Clarify Area of Inspection

The commenter requests that we revise the "Summary" section of the proposed AD to clarify the area of inspection. The commenter states that the statement that the proposed AD would require, "repetitive inspections to find fatigue cracking between the seal ribs of the front spar web of the wing" is not accurate. The commenter states that inspections also extend outboard of the outboard seal rib to front spar station inboard (FSSI) 713.

We concur with the intent of the commenter's request; however, we find that the subject inspection area extends to FSSI 711, not FSSI 713 as stated by the commenter. We have revised the "Summary" of this final rule accordingly. We find that this does not expand the scope of the proposed AD because paragraph (b) of the proposed AD states that the inspections must be accomplished "per the Accomplishment Instructions" of Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, dated February 21, 2002. The "Summary" section of a proposed AD is intended to provide only a very general description of the proposed requirements, while the preamble more completely describes the proposed requirements.

Request To Revise Preamble

The commenter requests that we make the following changes to the preamble of the proposed AD:

- In the "Discussion" section of the proposed AD, identify the model on which the 24-inch crack in the front spar web of the right wing was found as a Boeing Model 747–200 series airplane, not a Model 747–100 series airplane.
- In the "Discussion" section of the proposed AD, state that the cracks originated from a hole common to a rib post on the front spar at FSSI 655.70, not FSSI 656.
- In the "Related Rulemaking" section of the proposed AD, state that both AD 90–17–18, amendment 39–6702 (55 FR 33279, August 15, 1990), and AD 95–12–26, amendment 39–9279 (60 FR 34107, June 30, 1995), refer to Boeing Service Bulletin 747–57A2259 as the appropriate source of information for actions required by those ADs.

We partially agree with the commenter's requests:

- We agree that the original report of cracking was on a Boeing Model 747–200 series airplane, not on a Model 747–100 as stated in the proposed AD. The unsafe condition associated with this AD is addressed on Model 747–200 series airplanes by the rulemaking action associated with Rules Docket No. 2001-NM–228–AD, which we issued as a notice of proposed rulemaking on February 24, 2003 (68 FR 10185, March 4, 2003).
- Section 1.C., "Reason," of Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, states that the hole from which the cracking originated was common to a rib post on the front spar at FSSI 656. Thus, the proposed AD is consistent with the service bulletin, and the change requested by the commenter is not necessary.
- AD 95–12–26 supersedes AD 90–17–18. Thus, the proposed AD should have referred to the requirements of AD 95–12–26 instead of AD 90–17–18.

Regardless of these issues, neither the "Discussion" nor the "Related Rulemaking" section is restated in this

final rule. Thus, no change to the final rule is necessary in this regard.

Explanation of Additional Change to Proposed AD

We have revised the service bulletin citation throughout this final rule to delete references to Appendices A and B of Boeing Special Attention Service Bulletin 747–57–2313, Revision 1. However, in paragraphs (b)(1), (b)(2), and (d) of this AD, the references to Appendix A of Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, have been retained because those paragraphs refer specifically to the inspection thresholds and intervals specified in Appendix A of the service bulletin. Also, we have retained the reference to Appendices A and B in the citation of the original issue of Boeing Special Attention Service Bulletin 747–57–2313, dated April 19, 2001, because those appendices are outside the numbered pages of that service bulletin.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

After the proposed AD was issued, we reviewed the figures we use to calculate the labor rate to do the required actions. To account for various inflationary costs in the airline industry, we find it appropriate to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The economic impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

There are approximately 109 airplanes of the affected design in the worldwide fleet. The FAA estimates that 59 airplanes of U.S. registry will be affected by this AD, that it will take approximately 25 work hours per airplane to accomplish the required inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $95,875, or $1,625 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator elect to do the optional modification of Zone B, it would take approximately 480 work hours to accomplish at an average labor rate of $65 per work hour. Parts cost would be approximately $16,652. Based on these figures, the cost impact of the proposed modification is estimated to be $47,852 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–17–06 Boeing: Amendment 39–13280. Docket 2001–NM–178–AD.

Applicability: Model 747–100, 747SP, and 747SR series airplanes, as listed in Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, dated February 21, 2002; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking between the seal ribs of the front spar web of the wing and outboard of the outboard seal rib to front spar station inboard 711, which could result in fuel leakage into the area of the inboard engines, and consequent increased risk of a fire; accomplish the following:

Compliance Times

(a) Where the compliance times in the service bulletin specify a compliance time interval calculated "after the initial release of this service bulletin," this AD requires compliance within the interval specified in the service bulletin "after the effective date of this AD." In addition, where the compliance time for the initial inspection in Tables 1 through 3 of Figure 1 of the service bulletin specifies "flight hours," this AD requires a compliance time of "total flight hours."

Initial and Repetitive Inspections

(b) Do detailed, high frequency eddy current and ultrasonic inspections to find cracking of the front spar web of the wing as specified in paragraphs (b)(1) and (b)(2) of this AD, per the Accomplishment Instructions of Boeing Special Attention

Service Bulletin 747–57–2313, Revision 1, dated February 21, 2002.

(1) Do the applicable initial or post-modification inspection at the times specified for the inspections in Tables 1 through 3 of Figure 1 of the Accomplishment Instructions or Appendix A of the service bulletin.

(2) After doing the applicable initial or post-modification inspection specified in paragraph (b)(1) of this AD: Repeat that inspection within the applicable intervals specified in Tables 1 through 3 of Figure 1 of the Accomplishment Instructions or Appendix A of the service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repair

(c) If any cracking is found during any inspection required by this AD, including any inspection performed during accomplishment of the optional modification per paragraph (d) of this AD: Before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Optional Modification

(d) Accomplishment of the modification of Zone B per Part 2 of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, dated February 21, 2002, would extend the threshold recommended in Tables 1 through 3 of Figure 1 of the Accomplishment Instructions or Appendix A of the service bulletin for the repetitive inspections of Zone B; to the new post-modification threshold specified in Tables 1 through 3 of Figure 1 of the service bulletin.

Previously Accomplished Inspections and Modifications

(e) Inspections and modifications done before the effective date of this AD per Boeing Special Attention Service Bulletin 747–57–2313, including Appendices A and B, dated April 19, 2001, are considered acceptable for compliance with the applicable actions specified in this AD.

Note 3: Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, dated February 21, 2002, recommends prior or concurrent accomplishment of Boeing Alert Service Bulletins 747–57A2259, 747–57A2266, and 747–54A2159. The modifications in those service bulletins are required by AD 95–10–16, amendment 39–9233.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Special Attention Service Bulletin 747–57–2313, Revision 1, dated February 21, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(i) This amendment becomes effective on September 24, 2003.

Issued in Renton, Washington, on August 12, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20986 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–27–AD; Amendment 39–13278; AD 2003–17–04]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. MU–2B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU–2B series airplanes. This AD requires you to repetitively inspect the cockpit windshield and cabin window surfaces for damage (damage is defined as crazing, scratches, and cracks). If any of the windshield or window surfaces have damage that exceeds certain limits, this AD requires you to replace the windshield or window. If the damage does not exceed certain limits, this AD allows you to blend out the damage following maintenance manual procedures. This AD is the result of continuing airworthiness information (MCAI) issued by the airworthiness authority for Japan. The actions specified by this AD are intended to prevent cockpit windshield or cabin window separation during flight, which could result in engine ingestion of glass, wing skin damage, or propeller damage, and possible loss of control of the airplane.

DATES: This AD becomes effective on October 3, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 3, 2003.

ADDRESSES: You may get the service information referenced in this AD from Mitsubishi Heavy Industries America, Inc., 4951 Airport Parkway, suite 800, Addison, Texas 75001; telephone: (972) 934–5480; facsimile: (972) 934–5488.

You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–27–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Direct all questions to:

—For the airplanes manufactured in Japan (Type Certificate A2PC): Mr. Carl Fountain, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California, 90712; telephone: (562) 627–5222; facsimile: (562) 627–5210; and

—For the airplanes manufactured in the United States (Type Certificate A10SW): Mr. Andy McAnaul, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The Japanese Civil Airworthiness Bureau (JCAB), which is the airworthiness authority for Japan, notified the FAA that an unsafe condition may exist on certain Mitsubishi MU–2B series airplanes. The JCAB reports that several Mitsubishi MU–2B series airplanes have had windshield or window separation during flight. Separation is defined as shattering glass. Further analysis shows that the separation is happening as a result of repeated cabin pressurization cycles.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Mitsubishi MU–2B series airplanes. This proposal was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on March 26, 2003 (68 FR 14558). The supplemental NPRM proposed to require you to:

—Repetitively inspect the cockpit windshield and cabin window surfaces for damage (damage would be defined as crazing, scratches, and cracks);
—Blend out the damage if the damage does not exceed certain limits; and
—Replace the windshield or window if damage exceeds certain limits.

What Is the Potential Impact if FAA Took No Action?

This condition, if not corrected, could result in shattering or separation of the cockpit windshield or cabin windows during flight, which could cause loss of control of the airplane.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Update the Contact Information for Mitsubishi Heavy Industries America, Inc. (MHIA)

What Is the Commenter's Concern?

MIHA has moved and the contact information should be changed to reflect the new address and telephone numbers.

What Is FAA's Response to the Concern?

We concur and have changed the final rule based on this comment.

Comment Issue No. 2: Remove the Contact Information for Mitsubishi Heavy Industries, Nagoya, Japan

What Is the Commenter's Concern?

MIHA is licensed by Mitsubishi Heavy Industries, Ltd. to maintain the type design for Model MU–2B series airplanes. Since MIHA manufactures replacement and modification parts for Model MU–2B series airplanes and is responsible for worldwide support the these airplanes, the reference to Mitsubishi Heavy Industries, Nagoya, Japan should be removed.

What Is FAA's Response to the Concern?

We concur and have changed the final rule based on this comment.

Comment Issue No. 3: Clarify Which Service Bulletin Is Applicable to the Affected Airplane Models and Serial Numbers

What Is the Commenter's Concern?

The commenter states that the final rule AD should clearly define which service bulletin is applicable to each airplane model and serial number in order to facilitate the owners/operators in obtaining the correct service bulletin for their airplane.

What Is FAA's Response to the Concern?

We concur with the commenter. In paragraphs (a)(2)(i) and (a)(2)(ii) of the proposed AD, we specifically referenced the affected airplane models and serial numbers that are applicable to each service bulletin. We have added language in paragraph (d) to further clarify this issue.

We have changed the final rule based on this comment.

Comment Issue No. 4: Update the Cost for Parts and Add Configuration Information in the Cost Impact Section

What Is the Commenter's Concern?

Since the issuance of the proposed AD, the price for replacements parts has significantly increased. The cost impact section should be changed to reflect current pricing and should also include the number of windshields and cabin windows each airplane has in its configuration.

What Is FAA's Response to the Concern?

We concur and have changed the final rule based on this comment.

FAA's Determination

What Is FAA's Final Determination on this Issue?

After careful reviewed all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the supplemental NPRM for correcting the unsafe condition; and
—Do not add any additional burden upon the public than was already proposed in the supplemental NPRM.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 315 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
8 workhours × $60 = $480	No parts required	$480	$480 × 315 = $151,200

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost per part No. (P/N)	Number of parts per short body model	Number of parts per long body model	Total cost per windshield/ window
16 workhours × $60 = $960	010A–31450–1 = $6,893	1	1	$7,853
	010A–31450–2 = $6,893	1	1	7,853
	010A–31451–1 = $5,024	1	1	5,984
	010A–31451–2 = $5,029	1	1	5,989
	010A–31874–1 = $4,838	1	1	5,798
	010A–31874–2 = $4,838	1	1	5,798
	010A–31870 = $3,279	2	5	4,239
	010A–31870–11 = $3,279	2	2	4,239
	030A–32402 = $2,308	0	1	3,268

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–17–04 Mitsubishi Heavy Industries, Ltd: Amendment 39–13278; Docket No. 97–CE–27–AD.

(a) *What airplanes are affected by this AD?* This AD affects the airplane models and serial numbers specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD that are equipped with the following part-numbered windshields and cabin windows and that are certificated in any category:

(1) *Windshields*

Part No.	Type of windshield
010A–31450–1/–2 ...	Windshield (LH/RH).
010A–31451–1/–2 ...	Cockpit side window (LH/RH).
010A–31874–1/–2 ...	Cockpit side window (LH/RH).
010A–31870	Cabin window.
010A–31870–11	Cabin window (at door).
030A–32402	Long body—small cabin window.

Note 1: The heated windshield is excluded from the inspection and replacement requirements of this AD.

(2) *Airplanes Affected by This AD and Applicable Service Information*

(i) Mitsubishi MU–2 Service Bulletin No. 224C applies to the following airplane models and serial numbers:

Models	Serial Nos.
MU–2B/–10/–15/–20/–25/–26.	008 through 347 (except 313 and 321).
MU–2B–30/–35/–36	501 through 696 (except 652 and 661).

(ii) Mitsubishi MU–2 Service Bulletin No. 087/56–001B applies to the following airplane models and serial numbers:

Models	Serial Nos.
MU–2B–25/–26/–26A/–40.	313SA, 321SA, and 348SA through 459SA.
MU–2B–35/–36A/–60 ..	652SA, 661SA, and 697SA through 1569SA.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent cockpit windshield or cabin window separation during flight, which could result in engine ingestion of glass, wing skin damage, or propeller damage, and possible loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the cockpit windshields and cabin windows for scratching, crazing, and cracking (referred to as damage).	Within the next 100 hours time-in-service (TIS) after October 3, 2003 (the effective date of this AD) and thereafter at intervals not to exceed 100 hours TIS from the last inspection, repair or replacement.	In accordance with Mitsubishi MU–2 Service Bulletin No. 224 (applicable to models and serial numbers specified in paragraph (a)(2)(i) of this AD and as specified in paragraph (f) of this AD) and Mitsubishi MU–2 Service Bulletin 087/56–001 (applicable to models and serial numbers specified in paragraph (a)(2)(ii) of this AD and as specified in paragraph (f) of this AD).
(2) Replace any window or windshield if damaged beyond the limits specified in Mitsubishi MU–2 Service Bulletin No. 224 (applicable to models and serial numbers specified in paragraph (a)(2)(i) of this AD and as specified in paragraph (f) of this AD) and Mitsubishi MU–2 Service Bulletin 087/56–001 (applicable to models and serial numbers specified in paragraph (a)(2)(ii) of this AD and as specified in paragraph (f) of this AD).	Prior to further flight after the inspection in which the damage was found.	In accordance with Mitsubishi MU–2 Service Bulletin No. 224 (applicable to models and serial numbers specified in paragraph (a)(2)(i) of this AD and as specified in paragraph (f) of this AD) and Mitsubishi MU–2 Service Bulletin 087/56–001 (applicable to models and serial numbers specified in paragraph (a)(2)(ii) of this AD and as specified in paragraph (f) of this AD).
(3) Repair any damage in the windshield or window that is within the limits specified in Mitsubishi MU–2 Service Bulletin No. 224 (applicable to models and serial numbers specified in paragraph (a)(2)(i) of this AD and as specified in paragraph (f) of this AD) and Mitsubishi MU–2 Service Bulletin 087/56–001 (applicable to models and serial numbers specified in paragraph (a)(2)(ii) of this AD and as specified in paragraph (f) of this AD).	Prior to further flight after the inspection in which the damage was found.	In accordance with the applicable Mitsubishi Maintenance Manual.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, direct all questions to:

(1) For the airplanes manufactured in Japan (Type Certificate A2PC): Mr. Carl Fountain, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Boulevard, Lakewood, California 90712; telephone: (562) 627–5222; facsimile: (562) 627–5210; and

(2) For the airplanes manufactured in the United States (Type Certificate A10SW): Mr. Andy McAnaul, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5156; facsimile: (817) 222–5960.

(f) *Are any service bulletins incorporated into this AD by reference?*

(1) Actions required by this AD must be done in accordance with the following:

(i) Mitsubishi MU–2 Service Bulletin No. 224 which incorporates the following pages:

Affected pages	Revision level	Date
3, 5, and 6	Original Issue	June 30, 1995.
2, 4	B	November 11, 1996.
1	C	April 20, 1998.

(ii) Mitsubishi MU–2 Service Bulletin 087/56–001 which incorporates the following pages:

Affected pages	Revision level	Date
3, 5, and 6	Original Issue	June 29, 1995.
2	A	September 26, 1996.
1, 4	B	May 4, 1998.

(2) The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Mitsubishi Heavy Industries America, Inc., 4951 Airport Parkway, suite 800, Addison, Texas 75001; telephone: (972) 934–5480; facsimile: (972) 934–5488. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Japanese AD No. TCD–4311–95, dated November 15, 1995.

(i) *When does this amendment become effective?* This amendment becomes effective on October 3, 2003.

Issued in Kansas City, Missouri, on August 12, 2003.

Diane K. Malone,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20985 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15409; Airspace Docket No. 03–ASO–8]

Amendment of Class D and E Airspace; Montgomery, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class D, E2, and E5 airspace at Montgomery, AL. As a result of an evaluation, it has been determined a modification should be made to the Montgomery, AL, Class D, E2, and E5 airspace areas to contain the VHF Omnidirectional Range (VOR)–A, Standard Instrument Approach Procedure (SIAP) to Montgomery Regional Airport—Dannelly Field. Additional surface area airspace and controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

History

On June 30, 2003, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending Class D, E2, and E5 airspace at Montgomery, AL, (68 FR 38651). This action provides adequate Class D, E2, and E5 airspace for IFR operations at Montgomery Regional Airport—Dannelly Field. Designations for Class D airspace areas extending upward from the surface of the earth and Class E airspace designations for airspace designated as surface areas and airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraphs 5000, 6002, and 6005 respectively, of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1. The Class D and E designations listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) amends Class D, E2, and E5 airspace at Montgomery, AL.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

ASO AL D Montgomery, AL [REVISED]

Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′02″ N, long. 86°23′38″ W)
Montgomery VORTAC
(Lat. 32°13′20″ N, long. 86°19′11″ W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5-mile radius of Montgomery Regional Airport—Dannelly Field, and within 1 mile each side of the Montgomery VORTAC 318° radial extending from the 5-mile radius to 6 miles southeast of the airport; excluding that airspace north of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and northeast of a line along the Montgomery VORTAC 320° radial. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 · Class E airspace designated as surface areas

* * * * *

ASO AL E2 Montgomery, AL [REVISED]

Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′02″ N, long. 86°23′38″ W)
Montgomery VORTAC
(Lat. 32°13′20″ N, long. 86°19′11″ W)

Within a 5-mile radius of Montgomery Regional Airport—Dannelly Field, and within 1 mile each side of the Montgomery VORTAC 318° radial extending from the 5-mile radius to 6 miles southeast of the airport; excluding that airspace north of a line 2.5 miles north of and parallel to RWY 10–28 at Montgomery Regional Airport—Dannelly Field and northeast of a line along the Montgomery VORTAC 320° radial. This Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace designated as surface areas.

* * * * *

ASO AL E5 Montgomery, AL [REVISED]

Montgomery Regional Airport—Dannelly Field, AL
(Lat 32°18′02″ N, long. 86°23′38″ W)
Montgomery VORTAC
(Lat 32°13′20″ N, long. 86°19′11″ W)
Maxwell AFB
(Lat 32°22′49″ N, long. 86°21′54″ W)
Autauga County Airport
(Lat 32°26′20″ N, long. 86°30′38″ W)
Wetumpka Municipal Airport
(Lat 32°31′46″ N, long. 86°19′42″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Montgomery Regional Airport—Dannelly Field, and within 4 miles east and 8 miles west of the Montgomery VORTAC 138° radial extending from the 7-mile radius to 16 Miles southeast of the Montgomery VORTAC, and within a 7-mile radius of Maxwell AFB and within a 7-mile radius of Autauga County Airport and within a 6.3-mile radius of Wetumpka Municipal Airport.

* * * * *

Issued in College Park, Georgia, on August 13, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–21323 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, and 135

[Docket No.: FAA–2003–15682; Amendment Nos. 121–288, 125–42, 135–84]

RIN 2120–AH89

Digital Flight Data Recorder Requirements—Changes to Recording Specifications and Additional Exceptions; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This document makes corrections to the final rule published in the **Federal Register** on July 18, 2003. This document makes some minor corrections and it also adds Parameter 15 to the document under parts 121 and 125, and changes the resolution in Parameter 15 by 0.1%.

DATES: This correction is effective August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Flight Standards Service, Air Transportation Division; telephone (202) 267–8166; facsimile (202) 267–5229; e-mail *gary.davis@faa.gov.*

Background

In response to a series of recommendations issued by the National Transportation Safety Board (NTSB), the FAA revised and updated parts 121, 125 and 135 of Title 14, Code of Federal Regulations (14 CFR) in 1997 to require that flight data recorders on U.S. registered airplanes be upgraded to record additional parameters of data (62 FR 38362, July 17, 1997). The exact number of parameters required depends on the age of the airplane; airplanes manufactured after August 19, 2002, must record 88 parameters of flight data.

The final rule published on July 18, 2003 (68 FR 42932) amends the flight data recorder regulations by expanding the recording specifications of certain data parameters for specified airplanes, and by adding aircraft models to the lists of aircraft excepted from the 1997 regulations. In addition, this rule corrects specifications in an operating rule appendix that were inadvertently omitted in previous actions. These changes are necessary to allow the continued operation of certain aircraft that are unable to meet the existing recorder criteria using installed equipment. The changes are also necessary for certain aircraft for which the cost to retrofit under 1997 regulatory changes would be cost prohibitive.

List of Subjects

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 125

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 135

Air taxis, Aircraft, Aviation safety, Reporting and record keeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration corrects Chapter I of Title 14, Code of Federal Regulations as follows:

Correction

■ In the final rule "Digital Flight Data Recorder Requirements—Changes to Recording Specifications and Additional Exceptions" published in the **Federal Register** on July 18, 2003, FR Doc. No. 03–18269 (68 FR 42932) make the following correction:

1. On Page 42932, in the first column, in the document heading, correct "RIN 2120–AH81" to read "RIN 2120–AH89".

2. On Page 42936, in the second column, in paragraph (2), line 9, correct the words "Jetstream 4100" to read "Jetstream 4100 Series,".

3. On Page 42936, in the third column, in Amendment Number 4, line 2, correct "5, 9, 12a, 14a, 16," to read "5, 9, 12a, 14a, 15, 16,".

4. On Page 42937, in the second column, in paragraph (2), line 9, correct the words "Jetstream 4100" to read "Jetstream 4100 Series,".

5. On Page 42937, in the third column, in Amendment Number 9, line 2, correct "5, 9, 12a, 14a, 16," to read "5, 9, 12a, 14a, 15, 16,".

6. In the charts on pages 42936 and 42938 after "14a" insert the following:

15. Pitch Control Surface(s) Position.[6].	Full Range	+/−2° Unless Higher Accuracy Uniquely Required.	0.5 or 0.25 for airplanes operated under § 135.152(j).	0.3% of full range.	For airplanes fitted with multiple or split surfaces, a suitable combination of inputs is acceptable in lieu of recording each surface separately. The control surfaces may be sampled alternately to produce the sampling interval of 0.5 or 0.25.

7. On page 42939, in the "Parameters" column, in 15, in the "Resolution" column, correct "0.2% of full range" to read "0.3% of full range.".

Issued in Washington, DC, on August 12, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 03–21329 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 98F–0717]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Sucrose Oligoesters

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of sucrose oligoesters (sucrose esters of fatty acids with an average degree of esterification ranging from four to seven) as an emulsifier or stabilizer, at a level not to exceed 2.0 percent, in chocolate and in butter-substitute spreads. This action is in response to a petition filed by Mitsubishi Chemical Corp.

DATES: This rule is effective August 20, 2003. Submit objections and requests for a hearing by September 19, 2003. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in new § 172.869 (21 CFR 172.869), effective August 20, 2003.

ADDRESSES: Submit written objections and requests for a hearing to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Martha D. Peiperl, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3077.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of September 1, 1998 (63 FR 46465), FDA announced that a food additive petition (FAP 8A4610) had been filed by Mitsubishi Chemical Corp., 5–2, Marunouchi 2-chome, Chiyoda-Ku, Tokyo 100, Japan, proposing that the food additive regulations be amended to provide for the safe use of sucrose esters of fatty acids with an average degree of esterification ranging from four to seven, as an emulsifier or stabilizer, at a level not to exceed 2.0 percent, in chocolate and in butter-substitute spreads. The petitioner also proposed to adopt the name SOE as the common or usual name for this additive.

The petitioner derived the name SOE as an acronym for sucrose oligoesters. Mitsubishi requested the name SOE to differentiate this additive from sucrose fatty acid esters (SFAE), listed under § 172.859 (21 CFR 172.859), and olestra, listed under § 172.867 (21 CFR 172.867).

The agency has reviewed the term sucrose oligoesters and finds it to be an acceptable name to identify the petitioned substance. Therefore, the agency agrees that the name sucrose oligoesters may be used as the common or usual name for sucrose esters of fatty acids with an average degree of esterification ranging from four to seven.

The agency has also considered the acronym SOE as an alternate name for this ingredient. The agency has generally allowed an acronym to be used as an alternate name for an ingredient in those cases where the name of the ingredient is long and only after there has been sufficient exposure to the acronym in conjunction with the established name to allow consumers to recognize the acronym as an alternative to the established name. For the subject petition, the agency believes that neither the food industry nor the consumer is currently familiar with the term SOE. Therefore, the agency is not adopting the acronym SOE as an alternate name for sucrose oligoesters at this time.

Sucrose oligoesters consists of a mixture of sucrose fatty acid esters, containing tetra-, penta-, hexa-, and hepta-esters (representing not less than 50 percent of the total esters), mono-, di-, and tri-esters (representing not greater than 45 percent of the total esters), and octa-ester (representing not greater than 40 percent of the total esters). The fatty acid moieties are derived from edible fats and oils, predominantly C8 through C22 fatty acids. The proposed additive, sucrose oligoesters, has a composition that overlaps that of sucrose fatty acid esters, listed under § 172.859, and olestra, listed under § 172.867. However, § 172.859(b)(1) requires that sucrose fatty acid esters contain a minimum of 80 percent of mono-, di-, and tri-esters of sucrose and § 172.867(b)(1) requires that olestra contain a minimum of 97 percent of octa-, hepta-, and hexa-esters of sucrose. The proposed additive is thus mid-range between these two listed food additives in terms of the average number of ester moieties on the sucrose backbone.

In support of the safety of the proposed use of sucrose oligoesters, Mitsubishi submitted a combined chronic and carcinogenicity study with a sucrose fatty acid ester blend of mono- through penta-esters in male and female rats, as well as analytical data on the percentages of mono- through octa-esters in both the proposed additive and the fatty acid ester blend. Mitsubishi also submitted a metabolism/pharmacokinetic study of ^{14}C-labeled sucrose fatty acid esters in rats and several study reports and publications previously considered by FDA during its safety reviews of sucrose fatty acid esters and olestra.

As discussed in more detail in section II of this document, the agency focused its safety evaluation on the exposure and the metabolic fates of the tetra-, penta-, and hexa-ester components of sucrose oligoesters because FDA considered the other esters more fully in the earlier decisions. The agency's safety determinations for the mono-, di-, and tri-ester components (sucrose fatty acid esters (60 FR 44755, August 29, 1995)) and for the hepta- and octa-ester components (olestra (61 FR 3118, January 30, 1996)) remain unchanged.

II. Evaluation of Safety

In order to establish, with reasonable certainty, that this new food additive is not harmful under its intended conditions of use, FDA considered the probable human dietary exposure to the additive, the available toxicological data on the additive, and the manufacturing process for this additive.

A. Estimated Daily Intake for Sucrose Oligoesters and its Component Esters

The petitioner provided information on both typical use levels and maximum use levels. Absent specific information on typical use levels, FDA bases its estimation of exposure to an additive on the maximum possible use levels of the additive. FDA believes that typical use levels are more appropriate for consideration of lifetime exposure because a consumer is unlikely to consistently choose only those products with the maximum levels of the additive. Furthermore, the maximum level allowed may be higher than what is used in most foods. Consistent with good manufacturing practices, products formulated with the additive will contain the additive at a level no greater than that needed to accomplish the intended technical effect. The petitioner has provided information which indicates that the typical use level of the additive in food products is 0.5 percent. Therefore, in estimating probable daily intake for sucrose oligoesters, the agency used 0.5 percent as the level in foods consumed over a lifetime of exposure.

The agency has estimated that the mean lifetime-averaged daily intake of sucrose oligoesters would be approximately 45 milligrams per person per day (mg/p/day). FDA also estimated that an individual at the 90th percentile of consumption of food that would contain the additive would have an exposure approximately two times the mean intake or 98 mg/p/day (Ref. 1).

Because the additive is a mixture and because the relevant safety studies were conducted on mixtures with a variety of compositions, FDA also examined the potential exposure to the component esters of sucrose oligoesters. The agency evaluated data from approximately 50 batches of the additive. Based on these data, the average percentages of the mono- through octa-esters in the additive were calculated. These averages were used in estimating exposure to the sucrose ester components of sucrose oligoesters for the consumer at the 90th percentile. FDA estimates exposure to these component esters to be 1.5 mg/p/day for the mono-ester, 4.2 mg/p/day for the di-

ester, 10 mg/p/day for the tri-ester (or 16 mg/p/day for the mono-, di-, and tri-esters combined), 14 mg/p/day for the tetra-ester, 19 mg/p/day for the penta-ester, 23 mg/p/day for the hexa-ester, 20 mg/p/day for the hepta-ester, and 9 mg/p/day for the octa-ester (Ref. 1).

B. Evaluation of Safety Studies

As mentioned in section II.A of this document, sucrose oligoesters consist of a mixture of mono- to octa-esters, with most of the esters ranging from four to seven fatty acids. The agency considered the nature of the petitioned substance, its constituents and metabolites, the currently approved uses of sucrose fatty acid esters and olestra, available related toxicological data, and exposure estimates for the individual sucrose fatty acid esters. Based on the totality of this information, the agency finds that the previous safety assessments for the mono-, di-, and tri-ester components and the hepta- and octa-ester components of sucrose oligoesters made during reviews for SFAE (sucrose fatty acid esters (60 FR 44755)) and olestra (olestra (61 FR 3118)), respectively, are applicable for the petitioned use of this additive (Ref. 2).

As stated previously, the estimated exposure to the combined mono-, di-, and tri-ester components of sucrose oligoesters from the proposed use is 16 mg/p/day. The agency finds that this estimated daily intake to these three sucrose esters from the proposed use of sucrose oligoesters and all approved uses of SFAE is less than the acceptable daily intake (ADI) level that was established for SFAE (Ref. 3).

As further stated previously, the estimated exposure to the hepta-ester from the proposed use of sucrose oligoesters is 20 mg/p/day and the estimated exposure to the octa-ester is 9 mg/p/day. Exposure to the hepta- and octa-esters from the proposed use of sucrose oligoesters would be insignificant in comparison to the current estimated exposure from olestra (20 mg/p/day *v.* 1,400 mg/p/day for the hepta-ester, and 9 mg/p/day *v.* 7,000 mg/p/day for the octa-ester) (Ref. 1 and 61 FR 3118).

In its review of the safety of the tetra-, penta-, and hexa-esters of sucrose oligoesters, the agency considered the estimated exposures to these ester components and other relevant information on sucrose fatty acid esters, including pharmacokinetic studies. In particular, the agency considered an absorption study of ^{14}C-labeled sucrose polyester consisting of approximately 81 percent hexa- and lower esters (predominately hexa- and penta-esters) in rats that was submitted with the Olestra petition (FAP 7A3997). This study demonstrated that only a small percentage (i.e. not more than 1.5 percent) of the administered radiolabeled esters was absorbed and that the majority of the absorbed radioactivity was found in expired air and urine. Additionally, interim necropsies performed during the absorption study demonstrated that the amount of radioactivity detected in tissues decreased rapidly over time and therefore did not bioaccumulate. Because any increase in exposure to the penta- and hexa-esters from the petitioned use of sucrose oligoesters would be very small, and considering the totality of evidence showing no toxicity from these esters, FDA has no safety concerns from the potential intake of penta- and hexa-ester components of sucrose oligoesters from this use (Refs. 4 and 5).

In its review of the safety of exposure to the tetra-ester component of the subject additive, the agency considered a metabolism study of ^{14}C-labeled sucrose esters of stearic acid in rats and a combined chronic oral toxicity/carcinogenicity study of sucrose esters of fatty acids in rats. Based on the comparison of an estimated ADI for the tetra-ester of 110 mg/p/day from the oral toxicity study with a highly conservative exposure estimate for the tetra ester of 26 mg/p/day[1], the agency has no safety concerns regarding the potential intake of sucrose tetra-ester in sucrose oligoesters from the petitioned use (Refs. 1, 2, and 5).

C. Specifications

In addition to specifications to ensure the identity of sucrose oligoesters, the agency considered specifications for residual levels of solvents and methanol. The additive is produced by interesterification of sucrose with methyl esters of fatty acids derived from edible fats and oils using the solvents dimethyl sulfoxide, isobutyl alcohol, or other appropriate solvents. To ensure removal of residual solvents and methanol from the methyl esters, the petitioner proposed specification limits for residual levels of dimethyl sulfoxide, isobutyl alcohol, and methanol. FDA has considered the manufacturing process for this additive and has determined that these specifications need to be included in the regulation.

[1]Highly conservative estimates of exposures to the component esters of the subject additive have been obtained by adding intakes for 90th percentile eaters-only from the proposed use of SOE and the regulated uses of SFAE and olestra.

III. Conclusion

Based on the totality of available information regarding the subject sucrose esters and the absence of any observed toxicity, FDA concludes that this additive is safe for its proposed use. Therefore, the agency concludes that the food additive regulations should be amended as set forth in this document. Because the foods described in new § 172.869(c) include foods subject to standards of identity, the agency notes that the additive may not be used in a standardized food unless permitted by the standard of identity. To ensure that only a food grade product is used in food, the additive must meet the specifications set forth in this document. The agency further concludes that the name sucrose oligoesters is acceptable for use as the common or usual name for the additive.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person (*see* **FOR FURTHER INFORMATION CONTACT**). As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Effects

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8A4610 (63 FR 46465). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

V. Paperwork Reduction Act 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. References

The following references have been placed on display in the Division of Dockets Management (*see* **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from DiNovi, Division of Biotechnology and GRAS Notice Review, to Peiperl, Division of Petition Review, June 2, 2003.

2. Memorandum from Young, Division of Food Contact Substance Notification Review,

to Peiperl, Division of Petition Review, March 8, 2002.

3. Memorandum from Bleiberg, Division of Health Effects Evaluation, to Anderson, Division of Product Policy, November 4, 1993.

4. Memorandum from Young, Division of Food Contact Substance Notification Review, to Peiperl, Division of Petition Review, July 18, 2002.

5. Memorandum from Young, Division of Food Contact Substance Notification Review, to Peiperl, Division of Petition Review, June 3, 2003.

VII. Objections

Any person who will be adversely affected by this regulation may at any time file with the Division of Dockets Management (*see* **ADDRESSES**) written or electronic objections. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Incorporation by reference, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

■ 1. The authority citation for 21 CFR part 172 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 348, 371, 379e.

■ 2. Section 172.869 is added to subpart I to read as follows:

§ 172.869 Sucrose oligoesters.

Sucrose oligoesters, as identified in this section, may be safely used in accordance with the following conditions:

(a) Sucrose oligoesters consist of mixtures of sucrose fatty acid esters with an average degree of esterification ranging from four to seven. It is produced by interesterification of sucrose with methyl esters of fatty acids derived from edible fats and oils (including hydrogenated fats and oils). The only solvents which may be used in the preparation of sucrose oligoesters are dimethyl sulfoxide, isobutyl alcohol, and those solvents generally recognized as safe in food.

(b) Sucrose oligoesters meet the specifications in the methods listed in the table in this paragraph. The methods cited for determining compliance with each specification are incorporated by reference, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the methods may be examined at the Center for Food Safety and Applied Nutrition's Library, room 1C–100, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the Office of the **Federal Register**, 800 North Capitol St. NW., suite 700, Washington, DC. Copies of the methods are available from the sources listed in the table in this paragraph:

Specification	Limit	Method Cited	Source for Obtaining Method
(1) Sucrose esters	Not less than 90%	"Method for Analyzing the Purity of Sucrose Fatty Acid Esters," issued by Mitsubishi Chemical Corp., June 17, 1998.	Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740.
(2) Mono-, di-, and tri-esters	Not more than 45%	"Method for Measuring the Ester Distribution of Sucrose Oligoesters," issued by Mitsubishi Chemical Corp., June 17, 1998.	Do.
(3) Tetra-, penta-, hexa-, and hepta-esters.	Not less than 50%	Do.	Do.
(4) Octa-esters	Not more than 40%	Do.	Do.
(5) Free Sucrose	Not more than 0.5%	"Free Sucrose Method," issued by Mitsubishi Chemical Corp., June 17, 1998.	Do.
(6) Acid Value	Not more than 4.0	"Acid Value," Appendix VII, Method I (Commercial Fatty Acids), in the *Food Chemicals Codex*, 4th ed. (1996), p. 820.	National Academy Press, 2101 Constitution Ave. NW, Washington, DC 20418 (Internet: *http://www.nap.edu*).
(7) Residue on Ignition	Not more than 0.7%	"Residue on Ignition, Appendix IIC, Method I, in the *Food Chemicals Codex*, 4th ed. (1996), pp. 751–752, (using a 1-gram sample).	Do.

Specification	Limit	Method Cited	Source for Obtaining Method
(8) Residual Methanol	Not more than 10 milligrams/kilogram.	Method listed in the monograph for "Sucrose Fatty Acid Esters" in the First Supplement to the 4th ed. of the *Food Chemicals Codex* (1997), pp. 44–45.	Do.
(9) Residual Dimethyl Sulfoxide	Not more than 2.0 milligrams/kilogram.	Do.	Do.
(10) Residual Isobutyl Alcohol	Not more than 10 milligrams/kilogram.	Do.	Do.
(11) Lead	Not more than 1.0 milligram/kilogram.	"Atomic Absorption Spectrophotometric Graphite Furnace Method," Method I, in the *Food Chemicals Codex*, 4th ed. (1996), pp. 763–765.	Do.

(c) The additive is used as an emulsifier (as defined in § 170.3(o)(8) of this chapter) or stabilizer (as defined in § 170.3(o)(28) of this chapter) in chocolate and in butter-substitute spreads, at a level not to exceed 2.0 percent; except that the additive may not be used in a standardized food unless permitted by the standard of identity.

Dated: August 6, 2003.

L. Robert Lake,

Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–21270 Filed 8–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD10

Special Regulations, Areas of the National Park System; Saguaro National Park, Designated Bicycle Routes

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: The National Park Service (NPS) is designating a trail where bicycles may be used off road in Saguaro National Park. This rule is necessary because the NPS regulations for bicycle use off park roads in units of the National Park System require that a special regulation be promulgated in order to allow use on trails outside of developed park areas.

DATES: The rule becomes effective September 19, 2003.

ADDRESSES: Superintendent, Saguaro National Park, 3693 South Old Spanish Trail, Tucson, AZ 85730–5601 e-mail: *SAGU_Cactus_Forest_Trail@nps.gov.* Fax: (520) 733–5183.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 3145, Washington, DC 20240. Phone number: (202) 208–4206. e-mail: *Kym_Hall@nps.gov.*

SUPPLEMENTARY INFORMATION:

Description of Saguaro National Park

Saguaro National Park is an important national resource visited by approximately 755,618 people annually. The gross area acreage is 91,445.96 (Federal: 87,156.17; Nonfederal: 4,289.79) of which 71,400 acres are designated wilderness. Giant saguaro cacti, unique to the Sonoran Desert, sometimes reach a height of 50 feet in this cactus forest, which covers the valley floor and the slopes of the Rincon and Tucson Mountains. The Cactus Forest Trail is a multi-use trail (5.3 miles long) that originates at the northern boundary of the park and eventually bisects the Cactus Forest Loop Drive. The segment of the Cactus Forest Trail within the loop drive is 2.5 miles long. Cactus Forest Loop Drive, an 8 mile paved loop road located in the western portion of the Rincon Mountain District, originates from the main entrance and visitor center and is the only paved road in the east district of the park. The Cactus Forest Trail is designed along the natural topography and vegetation of the area and meanders through a relatively even elevation with rolling hills and gentle peaks. The trail is lined with a variety and abundance of desert trees and shrubs.

Legislation and Purposes of Saguaro National Park

Saguaro National Park was initially reserved as a national monument on March 1, 1933 (Proclamation No. 2032, 47 Stat. 2557), and transferred from the Forest Service, U.S. Dept. of Agriculture, to the National Park Service on August 10, 1933. This area was of outstanding scientific interest because of the exceptional growth of various species of cacti, including the so-called giant saguaro cactus. Proclamation 3439 (November 16, 1961), enlarged the boundaries of the Saguaro National Monument to include certain lands within the Tucson Mountains containing a remarkable display of relatively undisturbed lower Sonoran desert vegetation, including a spectacular saguaro stand. Public Law 94–567(October 1976) designated parts of Saguaro National Monument as a wilderness area, known as the Saguaro Wilderness.

On June 19, 1991 Congress passed the "Saguaro National Monument Expansion Act of 1991" to authorize the addition of approximately 3,540 acres to the Rincon unit of Saguaro National Monument in order to protect, preserve, and interpret the monument's resources, and to provide for education and benefit to the public. Under the Saguaro National Park Establishment Act of 1994, Saguaro National Monument was given full recognition and statutory protection and renamed a National Park. *See* 16 U.S.C. 410ZZ.

Management Plans

Saguaro National Park General Management Plan (GMP) was completed in 1988. The GMP envisions the Rincon Mountain District as a main attraction for the first-time visitors, with the focus on the Saguaro forest and the lower Sonoran desert. Suggested frontcountry recreational uses include "* * * biking, jogging, picnicking, sunset watching, and horseback riding", while the "* * * backcountry wilderness would continue to be used primarily by hikers and horseback riders." In the 1988 plan, the Cactus Forest trail is located in the

frontcountry natural zone with a historic zone overlay. The management emphasis of the natural zone is the conservation of natural resources and processes. The plan states that "In certain locations, uses are allowed that do not adversely affect these resources and processes."

The park's trail plan for the Cactus Forest section of the Rincon Mountain District was completed in 1991. In addition to hiking and equestrian use, the plan proposed that the Cactus Forest Trail inside the Cactus Forest Loop Road be open to bicycle use for a one-year trial period. The plan also proposed the monitoring program designed to evaluate the environmental and social impacts of mountain bike use on the trail. The park adopted the plan's proposal and the trial period was extended for more than 10 years. The monitoring plan results indicated, overall, that any adverse impacts associated with bicycle use was negligible.

Starting in 1991, bicyclists, pedestrians, and equestrians were allowed to use the portion of the Cactus Forest Trail within the paved loop drive area. Recently, it was brought to the Park's attention that National Park Service regulations appear to require promulgation of a special regulation to permit bicycle use along the 2.5-mile section of the Cactus Forest Trail. In reviewing the actions leading to the opening of this trail for mountain bike use over 10 years ago, the Park discovered that the requirements in the regulation governing bicycle use had not been followed. While the trail is located in the frontcountry as identified in the GMP, the area is designated a natural zone. Under the servicewide regulations, because the trail is not in a developed area or special use zone the park is required by 36 CFR 4.30(b) to adopt a special regulation to designate a route for bicycle use. In part the regulations state that:

> Routes may only be designated for bicycle use based on a written determination that such use is consistent with the protection of a park area's natural, scenic and aesthetic values, safety considerations and management objectives and will not disturb wildlife or park resources. Except for routes designated in developed areas and special use zones, routes designated for bicycle use shall be promulgated as special regulations. (36 CFR 4.30)

Based on the criteria in the regulations, and the fact that the trail was not identified as being in a developed zone in the GMP in 1988, the Park determined that it did not then have the authority to allow such use on the trail. On April 15, 2002, the park closed the Cactus Forest Trail to bicycle use and initiated an Environmental Assessment and the special regulation process. In addition, the park will be addressing the bicycle use issue in a comprehensive way through the new GMP process that began in September 2002. The new GMP is scheduled to be complete in approximately 2–3 years. Apart from this Final rule, in the meantime, bicycles are allowed to use paved and unpaved roads in the park pursuant to 36 CFR 4.30(a).

History of Bicycle Use

In the early 1990's the NPS was in the process of preparing a trails management plan for the Cactus Forest section of the park. During the planning process, public scoping revealed that some members of the local community and the visiting public were interested in mountain bike trails in the park. Based on this information, the NPS analyzed the appropriateness of establishing mountain bike trails. As noted above, the park opened that portion of the trail inside the Cactus Forest Loop Road to mountain bike use for a one-year trial period. The park monitored the trail for resource and social impacts by implementing a monitoring plan that included sixteen photo-points along the trail. Park staff monitored these locations on a monthly basis.

The park recorded approximately 1,200 bicyclists, or nearly 50% of all trail users, on the trail between May 1, 1991 and June 30, 1992. There were no major incidents or accidents during the trial period. At the end of the one-year period, the park concluded that monitoring data revealed little measurable resource impact caused by bicycle use and the decision was made to keep the Cactus Forest Trail inside the loop road open to bicycle use. The park continued to monitor the trail for resource damage at the designated monitoring points, performed patrols, and engaged in informal contact with visitors using the trail. Continued use of that trail by bicyclists had been authorized by the Superintendent's Compendium since that time. Until bicycle use was prohibited in April 2002, the trail continued to be a popular trail for mountain biking. Much of the trail follows an old two-track road that was allowed to revegetate and become a trail. About half the use of the trail is by hikers and equestrians.

Impacts

Soils: Reinstating mountain bike use would likely result in added visitation on the trail. This type of use would impact soils differently than hiking and equestrian use. Some monitoring points show that soil erosion and loss has been exacerbated by the "cupping" of the cross-section of the trail that is caused by repeated use in the center of the trail. At times, multiple uses occurring on the trail have resulted in beneficial impacts by redistributing soils across the trail. Soils may be distributed from the center of the trail to the sides by cyclists, and then loosened and redistributed in the center of the trail by horses and hikers. Park staff would continue to maintain the trail depending on available staffing and funding levels. With proper trail repair and maintenance, the overall effect of added visitation on soils would be of minor intensity.

Vegetation: Mountain bike use would contribute to a greater amount of disturbance of vegetation from riders dismounting from their bikes onto the side of the trail to yield to another trail user or to push their bike uphill. Vegetation that is affected is typically located in steeper slopes or where the trail curves and is lost through repeated trampling. Impacts from the added use would be of minor intensity. Trail repair and rehabilitation may offset some of the impacts associated with trailside vegetation loss. Trailside re-vegetation efforts could help to restore the natural scene, as well as contribute to a more defined trail path.

Wildlife: Wildlife would be frightened or displaced by the presence of visitors. However, given the higher speeds that mountain bicycles may reach on the trail, there may be a greater tendency for cyclists to encounter and frighten wildlife. There may also be a greater tendency for mountain bikers to run over smaller vertebrates such as snakes on the trail. These factors, along with an anticipated increase in the amount of use on the trail are expected to result in more individual wildlife species being frightened and displaced from the immediate area. Overall, the impacts of this use on wildlife would be of minor intensity.

Archeological resources: Reinstating bicycle use on the Cactus Forest Trail would not have any additional impacts on archeological resources or historic structures. As with any increase in visitation, however, there is a greater possibility that cultural resources could be discovered and/or damaged. Bicycle use off the trail would not be permitted and it is anticipated that visitors would remain on the trail; therefore, impacts to archeological resources and historic structures would be negligible.

Visitor conflicts: Bicyclists would view the opportunity for an off-road experience in the park as beneficial. However, some hikers and equestrians

would feel as though their ability to experience park resources along the trail is diminished if they see mountain bike use as incompatible with their desired experience. Some hikers and equestrians may choose to use the trail less or avoid the trail completely. However, the multi-use orientation of the trail would be likely to have no more than minor impacts on a hiker or equestrian's ability to experience the park. This is because a number and variety of other trails in the Cactus Forest area are open to hiking and equestrian use only.

Visitor safety: There would be a greater potential for visitor accidents under this Final rule in comparison to no bicycle use. Mountain bikes traveling at higher speeds could inadvertently collide with other recreationists, regardless of their mode of travel. Horses may be frightened by bicyclists and their response may result in a number of unsafe situations. Given the past record of incidents on this trail, however, reinstating mountain bike use would not be considered an unsafe use if recreationists continued to abide by the recommended trail etiquette/rules. Overall impacts to visitor safety would be negligible to minor in intensity.

Threatened species: According to the U.S. Fish and Wildlife Service's October 2001 list of listed, proposed and candidate species for the area, there are seven species of concern, including four federally listed species (Mexican spotted owl, cactus ferruginous pygmy-owl, lesser long-nosed bat, Gila topminnow), one delisted species (American peregrine falcon), and two species proposed for listing (Chiricahua leopard frog, Goodding Onion) that are known to or might occur in the Rincon Mountain District where the Cactus Forest Trail is located.

The Goodding onion has not been recorded in the Rincon Mountains. The Cactus Forest Trail is in the same watershed as a drainage that could potentially be used to restock Gila topminnow. However, the Cactus Forest Trail is well below and disjunct from that drainage, and activities on the Cactus Forest Trail would have no impact on that drainage or affect its potential to reintroduce this fish. Despite surveys throughout the Rincon Mountains by Saguaro and other NPS biological staff, Chiricahua leopard frogs have never been recorded in Saguaro National Park. Furthermore, the proposed action will not affect potential habitat for this frog, which requires surface water above 3,000′ elevation.

The Cactus Forest Trail is located over a mile from the known Lesser long-nosed bat roost, and neither the trail, nor any of the activities proposed to occur on it, would be expected to disturb bats (which forage after dark), or saguaros or agaves, upon which the bats forage. Cactus ferruginous pygmy-owls (cfpo) have not been confirmed to occur in the Park since intensive surveys began in 1995; however, they may inhabit, and have the potential to breed, in the low (<4000′) elevations of the Rincon Mountain District of the Park. Within the last 20 years, one possible detection of this species occurred within a half-mile of the Cactus Forest Trail. Based on the descriptions of recently occupied territories, it does not appear that human presence, particularly established presence, is a deterrent to owl occupancy of a site.

American peregrine falcons are known to occur in the Rincon Mountain District, and may forage and perch around the project area in the non-breeding season. Peregrines may be affected by and try to avoid human activities on the Cactus Forest Trail; however, hiking, riding or biking on an established trail would be expected to have negligible to minor impacts on these birds. Five Mexican spotted owl protected activity centers lie within the Rincon Mountain District above 7000′ elevation. Designated critical habitat for the owl does not include the Cactus Forest Trail, nor is the project area suitable habitat for the owls.

The biological evaluation of these threatened and endangered species as part of the proposed action found that there would be no effect on the Mexican spotted owl, the Lesser long-nosed bat, or the Gila topminnow. One confirmed detection of the Cactus ferruginous pygmy owl within the park occurred in 1995 and two possible detections have occurred in the past two years, one of which was within half a mile of the Cactus Forest Trail. Fast moving bicycles, with their hard frames and spokes, might pose a slightly higher collision risk for the Cactus ferruginous pygmy owl than hikers or horses would, therefore, the proposed action may affect but is not likely to adversely affect Cactus ferruginous pygmy-owls or their habitat.

The U.S. Fish and Wildlife Service concurred with the determination of effect stated in the biological evaluation in a letter dated January 16, 2003.

Authorizing Bicycle Use

The final rule opens the approximately 2.5 mile section of the Cactus Forest Trail located within the Cactus Forest Drive loop to mountain biking on a permanent basis. The park will continue to monitor and mitigate the environmental impacts of mountain bike use through the use of volunteer organizations and local interest groups to ensure that the trail is maintained in good condition and issues of concern are immediately brought to the attention of the park management staff.

Public Comments

Saguaro National Park conducted initial internal scoping with appropriate park staff. Internal scoping was conducted by an interdisciplinary team of Saguaro National Park, and planning professionals of the National Park Service, Intermountain Support Office in Denver. Teams members conducted a field trip on July 11, 2002 to discuss purpose and need; important resource topics; past, present, and possible mitigation of the proposed action. Affiliated Native American tribes were contacted by letter dated July 12, 2002 to solicit any interests or concerns with the proposed action. External scoping was through a public scoping letter dated August 2002 and mailed to interested and affected parties. A press release was mailed to local newspapers.

The environmental assessment was released for public review and comment during a 30-day period ending November 20, 2002. The proposed rule was published on March 7, 2003 (68 FR 11019) and was open for public comment for 60 days. A total of 31 comments were received. Twenty-four of those writing in fully support the proposal to reopen the route to bike use. Four commentors did not support continued bike use on that trail. Other specific, substantive comments are summarized below.

1. *Comment:* One commentor suggested that additional routes be opened for mountain bike use.

Response: The scope of this project is limited to the Cactus Forest Trail inside the Cactus Forest Loop Drive and, accordingly, the rule only considers whether this specific trail can be reopened based on the analysis contained in the supporting environmental assessment. Additional trails may be considered during the General Management Plan process beginning at the park.

2. *Comment:* Several commentors felt that horses create more impact than bicycles on that trail and therefore bicycles should not be excluded while horses continue to be allowed.

Response: All recreational uses (hiking, equestrian, bicycling) contribute to impacts to the trail. The environmental assessment analyzed impacts resulting from all user groups before selecting an alternative. Additionally, under 36 CFR 4.30, bicycles may only be allowed upon

promulgation of a special regulation. Under 36 CFR 2.16, Horses and pack animals, the Superintendent is only required to designate areas where a horse may be used, not promulgate a special regulation.

3. *Comment:* Two commentors felt that other trails in the park would be more suitable for mountain bike use instead of this trail.

Response: The scope of the project was limited to the Cactus Forest Trail inside the Cactus Forest Loop Road. As the General Management Plan proceeds, other areas may be considered for bike use as well.

4. *Comment:* Many commentors did not feel that bicycles had caused unacceptable impacts to the Cactus Forest Loop Trail in the past and therefore should not be prohibited from using that trail now.

Response: The NPS would agree that based on previous monitoring and information compiled during the environmental assessment, bicycles have not created unacceptable impacts to the trail and continued use is appropriate.

5. *Comment:* Having the trail open to mountain bike use provides economic benefit to the community as well as health benefits to users and should continue to be allowed.

Response: Although the NPS believes that economic benefits resulting from reopening the trail to mountain bike use would be negligible, the NPS would generally agree that continued bike use will provide positive recreational benefits to the community and continued bike use is appropriate.

6. *Comment:* One commentor suggested the NPS charge a small fee to each bicycle rider for use of the trail to offset the cost of maintaining the trail for bicycle use.

Response: The NPS charges a $6.00 entrance fee to the paved loop road and the Cactus Forest Trail is not accessible to bicyclists except from this road. Thus, all bicyclists using this trail are already paying the park's entrance fee. The NPS believes that the impacts created by mountain bike use on this trail are not significant enough to warrant the cost of collecting an additional fee for this type of use. In addition, some of the maintenance work done on the trail is donated by local mountain bike user groups at little to no expense to the NPS.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies, or controls. This is an agency specific rule. The Pima County Parks and Recreation Department supports the establishment of this rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues. This rule implements the servicewide bicycle regulation with respect to a specific route in Saguaro National Park.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

There are no businesses in the surrounding area economically dependent on continued mountain bike use on this trail. The park does not have any mountain bike rental concessioners and the users are mainly private individuals using the trail for recreational purposes.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implications assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This Final rule only affects use of NPS administered lands and waters. It has no outside effects on other areas and only allows use within a small portion of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared an Environmental Assessment (EA). A copy of the EA is available by contacting the Superintendent, Saguaro National Park, 3693 South Old Spanish Trail, Tucson, Arizona 85730–5601. The EA may also be viewed via the internet at *http://www.nps.gov/sagu/CactusTrailEA.pdf.*

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes

and have determined that there are no potential effects. Affiliated Native American tribes were contacted by letter dated July 12, 2002 to solicit any interests or concerns with the proposed action. Two tribes responded; the Tohono O'odham and the Hopi Tribes. Both tribes expressed concern that archeological resources be surveyed for impacts from this proposed bicycle use. The NPS has determined that the archeological resources will not sustain adverse impacts and has indicated this in writing to the tribes.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example **§ 7.11 Saguaro National Park.**) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also email the comments to this address: *Exsec@ios.doi.gov.*

Drafting Information: The primary authors of this regulation were Laurie Domler, National Park Service Denver, Kym Hall, NPS Regulations Program Manager, and Sarah Craighead, Superintendent, Saguaro National Park.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements

■ We propose to amend 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

■ The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

■ 1. Add § 7.11 to read as follows:

§ 7.11 Saguaro National Park

(a) Bicycles. That portion of the Cactus Forest Trail inside the Cactus Forest Drive is open to non-motorized bicycle use.

(b) [Reserved].

Dated: August 11, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–21334 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–08–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 54 and 61

[CC Docket Nos. 96–262, 94–1, 99–249 and 96–45; FCC 03–164]

Access Charge Reform; Price Cap Performance Review for LECs; Low-Volume Long Distance Users; and Federal-State Joint Board on Universal Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission addresses two issues before the Commission on remand from the United States Court of Appeals for the Fifth Circuit. In the *CALLS Order*, 65 FR 57739, May 31, 2000, the Commission adopted comprehensive reforms to the interstate access charge regime and universal service support for price cap carriers, based in part on a proposal submitted by the Coalition for Affordable Local and Long-Distance Service. The Court affirmed the *CALL Order* in most respects, but remanded for further explanation and analysis the Commission's decisions to size the Interstate Access Support Mechanism at $650 million and to set the X-factor at 6.5 percent.

DATES: Effective September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Theodore Burmeister, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in CC Docket Nos. 96–262, 94–1, 99–249 and 96–45; FCC 03–164, released on July 10, 2003. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW., Washington, DC 20554.

I. Introduction

1. In this Order, the Commission addresses two issues on remand from the United States Court of Appeals for the Fifth Circuit. In the *CALLS Order*, the Commission adopted comprehensive reforms to the interstate access charge regime and universal service support for price cap carriers, based in part on a proposal submitted by the Coalition for Affordable Local and Long-Distance Service. On September 10, 2001, the Fifth Circuit affirmed the *CALLS Order* in most respects, but remanded for further analysis and explanation the decisions to size the Interstate Access Support (UIAS) mechanism at $650 million and to adopt the 6.5 percent X-factor. The Commission concludes that the $650 million IAS amount included in the integrated CALLS plan represents a reasonable estimate of the implicit support in access charges to be replaced with explicit support and is supported by the record in this proceeding. The Commission also concludes that the record supports the adoption of a 6.5 percent X-factor to achieve the Commission's target rate levels for price cap carriers.

2. It is ordered, pursuant to sections 1, 4(i) and (j), 201–209, 218–222, 254, and 403 of the Communications Act, as amended, 47 U.S.C. 151, 154(i), 154(j), 201–209, 218–222, 254, and 403, that this Order is hereby adopted and shall become effective September 19, 2003.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21247 Filed 8–19–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2003–15947]

RIN 2127–AI85

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA); Department of Transportation (DOT).

ACTION: Correcting amendment.

SUMMARY: This rule corrects an error in the figure for the removable dash label

required under Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Cash Protection*. This document resolves the problem by adding Figure 12, in order to restore consistency between the advanced air bag removable dash label and the advanced air bag sun visor warning label. This document also corrects a cross reference to the definition of "carlines" contained in the limited line manufacturer exception to the advanced air bag phase-in requirements.

DATES: This final rule is effective August 20, 2003.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may contact Lou Molino, Office of Crashworthiness Standards, Light Duty Vehicle Division, NVS–112. *Telephone:* (202) 366–2264. *Fax:* (202) 493–2739. For legal issues, you may contact Chris Calamita, Office of the Chief Counsel, NCC–20. *Telephone:* (202) 366–2992. *Fax:* (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590.

SUPPLEMENTARY INFORMATION: In a January 6, 2003 final rule, NHTSA amended the label requirements for vehicles certified to the advanced air bag requirements. (68 FR 504) The final rule added a bullet statement to the sun visor label (FMVSS No. 208, Figure 11) that states: "Never put a rear-facing child seat in the front." The statement has been required on air bag labels in vehicles without advanced air bags since 1996, but was not required for the advanced air bag labels. (65 FR 30680; May 12, 2000.) The decision not to include the statement was in recognition that the advanced air bag requirements are intended to minimize the risk related to air bag deployments. However, the only means to completely eliminate the risk of air bag-related injury or death to children in rear facing child restraints is to never place them in the vehicle's front seat.

The re-insertion of the statement on the sun visor label highlights the especially high risk of air bag-related injury or death to children in rear-facing child restraints. It also educates the public about the need to ensure that all children are properly restrained in the back seat.

However, the inclusion of the statement in the sun visor label, but not the dash label, created an inconsistency between the labels. Prior to the January 2003 amendment, the advanced air bag sun visor label (FMVSS No. 208, Figure 8) and the current advanced air bag dash label (FMVSS No. 208, Figure 9) were identical in content. Having this intentional consistency was necessary to avoid confusing consumers about the importance of the warnings.

In response to the January 2003 final rule, Honda commented that, "the Removable Label on Dash (Figure 9) that should correspond to the applicable sun visor label was not amended. To avoid confusing or misleading users, the statement '*never put a rear-facing child seat in the front*' should be added in the removable label." The agency agrees that the warnings on the removable dash label and sun visor label should be consistent.

To maintain consistency and conform the dash label to the sun visor label, Figure 12 is added to FMVSS No. 208, which is identical to Figure 9 except that Figure 12 has an additional bullet point stating: "Never put a rear-facing child seat in the front." Maintaining the uniformity of the dash and sun visor labels ensures that users are not confused as to the importance of placing rear-facing child seats in the vehicle's back seat. To further maintain consistency with the sun visor label, the bullet point will not be required on the temporary dash label if the vehicle has no back seat or the back seat is too small to accommodate a rear-facing child restraint.

The removable dash labels required on vehicles certified on or after December 1, 2003, must conform to Figure 12 of FMVSS No. 208. The labels on vehicles certified before December 1, 2003, must conform to either Figure 9 or 12.

This amendment also corrects a cross reference in S14.1(b), which incorrectly cites 49 CFR 585.4 for the definition of "carline." The correct cross-reference is 49 CFR 583.4.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

■ In consideration of the foregoing, NHTSA amends 49 CFR part 571 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFTEY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 40 CFR 1.50.

■ 2. Section 571.208 is amended as follows:

■ a. By revising paragraph (e) in S4.5.1;

■ b. By revising paragraph (b) in S14.1; and

■ c. By adding Figure 12 immediately following Figure 11.

The additions and revisions read as follows: § 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S4.5 *Other general requirements.*

S4.5.1 *Labeling and owner's manual information.*

* * * * *

(e) *Label on the dashboard.* (1) Except as provided in S4.5.1(e)(2), each vehicle that is equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in Figure 7 of this standard, and shall comply with the requirements of S4.5.1(e)(1)(i) through S4.5.1(e)(1)(iii).

(i) The heading area shall be yellow with the word "WARNING" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) If the vehicle does not have a back seat, the label shown in Figure 7 may be modified by omitting the statement: "The back seat is the safest place for children 12 and under."

(2) Vehicles certified to meet the requirements specified in S19, S21, and S23 before December 1, 2003, that are equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in either Figure 9 or Figure 12 of this standard, at manufacturer's option, and shall comply with the requirements of S4.5.1(e)(2)(i) through S4.5.1(e)(2)(iv).

(i) The heading area shall be yellow with black text.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) If the vehicle does not have a back seat, the labels shown in Figures 9 and 12 may be modified by omitting the statement: "The back seat is the safest place for children."

(iv) If the vehicle does not have a back seat or the back seat is too small to accommodate a rear-facing child restraint consistent with S4.5.4.1, the label shown in Figure 12 may be modified by omitting the statement: "Never put a rear-facing child seat in the front."

(3) Vehicles certified to meet the requirements specified in S19, S21, and S23 on or after December 1, 2003, that are equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in Figure 12 of this standard and shall comply with the requirements of S4.5.1(e)(3)(i) through S4.5.1(e)(3)(iv).

(i) The heading area shall be yellow with black text.

(ii) The message area shall be white with black text. The message area shall be no less than 30 cm^2 (4.7 in^2).

(iii) If the vehicle does not have a back seat, the label shown in Figure 12 may be modified by omitting the statement: "The back seat is the safest place for children."

(iv) If the vehicle does not have a back seat or the back seat is too small to accommodate a rear-facing child restraint consistent with S4.5.4.1, the label shown in Figure 12 may be modified by omitting the statement: "Never put a rear-facing child seat in the front."

* * * * *

S14.1 *Vehicles manufactured on or after September 1, 2003, and before September 1, 2006.*

* * * * *

(b) Manufacturers that sell three or fewer carlines, as that term is defined at 49 CFR 583.4, in the United States may, at the option of the manufacturer, meet the requirements of this paragraph instead of paragraph (a) of this section. Each vehicle manufactured on or after September 1, 2005 shall meet the requirement specified in S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 (in addition to the other requirements specified in this standard).

* * * * *

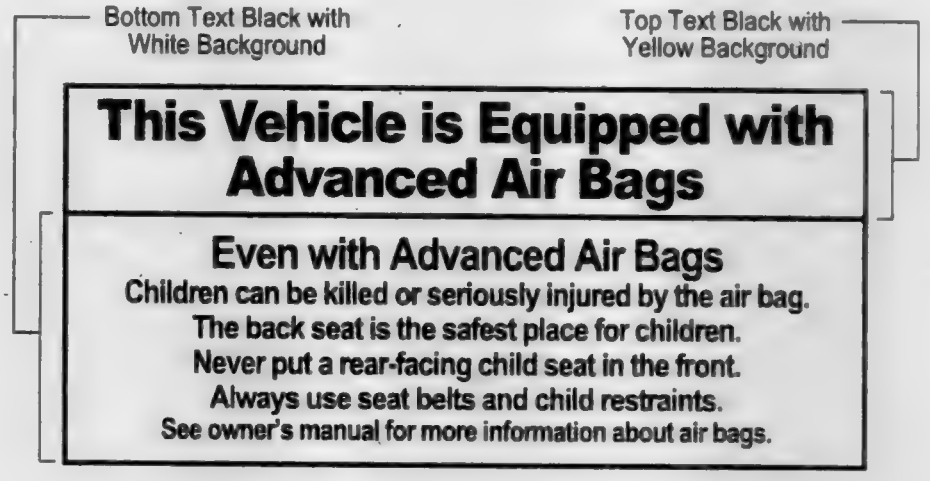

Figure 12. Removable Label on Dash.

* * * * *

Issued on August 14, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–21221 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 081503A]

Fisheries of the Exclusive Economic Zone Off Alaska; Arrowtooth Flounder in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for arrowtooth flounder in the Western Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of arrowtooth flounder in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 16, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–2778.

SUPPLEMENTARY INFORMATION: NMFS. manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679.

The 2003 TAC of arrowtooth flounder for the Western Regulatory Area was established as 8,000 metric tons (mt) by the final 2003 harvest specifications for groundfish in the GOA (68 FR 9924, March 3, 2003).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC for arrowtooth flounder in the Western Regulatory Area will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 7,900 mt, and is setting aside the remaining 100 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for arrowtooth flounder in the Western Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the

requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the 2003 TAC for arrowtooth flounder in the Western Regulatory Area of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 15, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable. Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21346 Filed 8–15–03; 3:04 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 161
Wednesday, August 20, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–1587; Airspace Docket No. 03–ASO)–13]

Proposed Amendment of Class E Airspace; Maxton, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Maxton, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Scotland Memorial Hospital, Laurinburg, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before September 19, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–/15847 Airspace Docket No. 03–ASO)–13, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15847/Airspace Docket No. 03–ASO–13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web Page at *http://www.faa.gov* or the Superintendent of Document's Web Page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E5 airspace at Maxton, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO NC E5 Maxton, NC [Revised]

Maxton, Laurinburg—Maxton Airport, NC
(Lat. 34°47′31″ N, long. 79°21′57″ W)
Sandhills VORTAC
(Lat. 35°12′56″ N, long. 79°35′17″ W)
Scotland Memorial Hospital
Point In Space Coordinates
(Lat. 34°45′49″ N, long. 79°28′10″ W)

That airspace extending upward from 700 feet or more above the surface within a 7-mile radius of the Laurinburg-Maxton Airport and within 2.5-miles each side of the Sandhills VORTAC 157° radial, extending from the 7-mile radius to 19 miles southeast of the airport, and that airspace within a 6-mile radius of the point in space (lat. 34°45′49″ N, long. 79°28′10″ W) serving Scotland Memorial Hospital.

* * * * *

Issued in College Park, Georgia, on August 13, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–21320 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15848; Airspace Docket No. 03–ASO–14]

Proposed Amendment of Class E Airspace; Smithfield, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Smithfield, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Johnston Memorial Hospital, Smithfield, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AG) is needed to contain the SIAP.

DATES: Comments must be received on or before September 19, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15848/ Airspace Docket No. 03–ASO–14, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “”Comments to Docket No. FAA–2003–15848/Airspace Docket No. 03–ASO–14. The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

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The Proposal

The FAA is considering an amendment to part 71 of the Federal

Aviation Regulations (14 CFR part 71) to amend Class E5 airspace at Smithfield, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO NC E5 Smithfield, NC [Revised]

Smithfield/Johnston County Airport, NC
(Lat. 35°32′27″ N, long. 78°23′25″ W)
Johnston Memorial Hospital
Point In Space Coordinates
(Lat. 35°31′23″ N, long. 78°20′35″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Smithfield County Airport and within a 6-mile radius of the point in space (lat. 35°31′23″ N, long. 78°20′35″ W) serving Johnston Memorial Hospital.

* * * * *

Issued in College Park, Georgia, on August 13, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–21321 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15849; Airspace Docket No. 03–ASO–15]

Proposed Amendment of Class E Airspace; Rocky Mount, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Rocky Mount, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Nash General Hospital, Rocky Mount, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before September 19, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15849/ Airspace Docket No. 03–ASO–15, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15849/Airspace Docket No. 03–ASO–15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550k, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the

Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web Page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Procedure Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E5 airspace at Rocky Mount, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 2979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the surface of the Earth

* * * * *

ASO NC E5 Rocky Mount, NC [Revised]

Rocky Mount-Wilson Airport, NC
(Lat. 35°51′18″ N, long. 77°53′35″ W)
Nash General Hospital
Point In Space Coordinates
(Lat. 35°57′47″ N, long. 77°51′19″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Rocky Mount-Wilson Airport and within a 6-mile radius of the point in space (Lat. 35°57′47″ N, long. 77°51′19″ W) serving Nash General Hospital.

* * * * *

Dated: Issued in College Park, Georgia, on August 13, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–21322 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15845; Airspace Docket No. 03–ASO–11]

Proposed Amendment of Class E Airspace; Raleigh, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Raleigh, NC. An Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Duke Medical Center, Durham, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before September 19, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of. Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15845 Airspace Docket No. 03–ASO–11, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket No. FAA–2003–15845/Airspace Docket No. 03–ASO–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Document's web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E5 airspace at Raleigh, NC. Class E airspace designations for airspace areas extending upward from 700 feet of more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30,2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO NC E5 Raleigh, NC [Revised]

Raleigh—Durham International Airport, NC
(Lat. 35°52′40″ N, long. 78°47′15″ W)
Leevy NDB
(Lat. 35°55′38″ N, long. 78°43′19″ W)
Horace Williams Airport
(Lat. 35°56′07″ N, long. 79°03′57″ W)
Duke Medical Center
Point In Space Coordinates
(Lat. 35°59′48″ N, long. 78°55′49″ W)

That airspace extending upward from 700 feet or more above the surface within a 10-mile radius of Raleigh-Durham International Airport and within 2.5 miles each side of the 045° bearing from Leevy NDB, extending from the 10-mile radius to 7 miles northeast of the NDB; within a 6.3-mile radius of Horace Williams Airport and that airspace within a 6-mile radius of the point in space (lat. 35°59′48″ N, long. 78°55′49″ W) serving Duke Medical Center.

* * * * *

Issued in College Park, Georgia, on August 13, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–21324 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121 and 135

[Docket No. FAA–2003–14830; Special Federal Aviation Regulation (SFAR) No. 71]

RIN 2120–AH02

Air Tour Operators in the State of Hawaii; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM), correction.

SUMMARY: The FAA published a notice of proposed rulemaking on August 8, 2003 (68 FR 47269) to continue the existing safety requirements in Special Federal Aviation Regulation No. 71 (SFAR 71) and eliminate the termination date for SFAR 71. In that proposed rule, the FAA inadvertently omitted the Regulatory Flexibility Analysis. This publication corrects that error and publishes the Regulatory Flexibility Analysis for public comment.

DATES: Comments must be received on or before September 8, 2003.

ADDRESSES: You may submit comments to FAA–2003–14830 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- Mail: Docket Management Facility: U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 am and 5 pm, Monday through Friday, except Federal holidays.
- Federal Rulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket

number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under **SUPPLEMENTARY INFORMATION** and Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 am and 5 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, Aviation Safety Inspector, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 267–8321, or by e-mail at *Alberta.Brown@faa.gov*.

SUPPLEMENTARY INFORMATION: The FAA published a notice of proposed rulemaking on August 8, 2003, (68 FR 47269) and the section titled "Initial Regulatory Flexibility Analysis" was inadvertently left out. This document corrects that error.

Correction: In FR Doc. 03–20277 published on August 8, 2003 (68 FR 47269), on page 47271, in column 3, before the paragraph heading "International Trade Impact Assessment," add the following information:

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA conducted the required review of this proposal and determined that it would have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to Section 603 of the Regulatory Flexibility Act, the Federal Aviation Administration has prepared the following initial regulatory flexibility analysis.

Reasons Why Agency Action Is Being Considered

The FAA is proposing to continue the existing safety standards in SFAR 71 without a termination date as a result of the reduction in accidents and incidents involving air tour operators in Hawaii and NTSB recommendations. The rationale for the major provisions of the NPRM are summarized below:

Safety provisions addressing the risks of beyond the shore operations. Based on an analysis of the risks of beyond the shore operations and NTSB recommendations, the FAA concludes that the benefits of these provisions justify the costs. Based on survivors' testimony, life preservers alone are insufficient in preventing loss of life in helicopter accidents over water. Without floats, helicopters sink very quickly upon impact, giving occupants little time to exit the aircraft. The FAA believes that helicopter floats, in conjunction with life preservers and pre-flight briefing on water ditching procedures, would significantly improve the chances of survival. Therefore, this proposal would require life preservers and passenger briefings for all air tours and floats for helicopters.

Provisions addressing weather. Between 1982 and 1994 there were 12 weather related accidents in Hawaii while between 1994 and 2002 there were 3 weather related accidents. This illustrates the effectiveness of the existing SFAR 71 weather related provisions and warrant their continuation.

Statement of Objectives and Legal Basis

The objective of this proposal is to continue a higher level of safety for Hawaii air tours. Under the United States Code, the FAA Administrator is required to consider the following matter, among others, as being in the public interest: assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce. [*See* 49 U.S.C. 40101(d)(1).] Additionally, it is the FAA Administrator's statutory duty to carry out her responsibilities "in a way that best tends to reduce or eliminate the possibility or recurrence of accidents in air transportation." [*See* 49 U.S.C. 44701(c).] Accordingly, this notice proposes to amend title 14 of the Code of Federal Regulations to continue the safety requirements of air tour operations in Hawaii, without a termination date.

Description of Small Entities Affected

The FAA concludes that all of the entities affected by the proposed amendments are small according to thresholds established by the Small Business Administration (i.e., employ fewer than 1,500 employees). An estimated 6 part 91 operators and 24 part 135 operators would be affected by the rule. The part 91 operators own about 11 aircraft, while the part 135 operators have about 80 aircraft. This proposed rule would impose total annualized costs per operator of approximately $99,000. According to a Small Business Administration analysis of Bureau of Census data for non-scheduled air transportation firms,[1] firms with fewer than 500 employees have average revenues of $1.87 million. The estimated cost to each of these small entities is approximately 5.3 percent of the average revenue of non-scheduled air transportation firms with fewer than 500 employees based on the SBA's Census data cited.

Projected Reporting, Recordkeeping and Other Compliance Requirements

The annualized cost for completing the performance plan and conducting the passenger briefing would impose average annualized costs per operator of approximately $43,500.

Overlapping, Duplicative, or Conflicting Federal Rules

The proposed rule would not overlap, duplicate, or conflict with existing Federal rules.

[1] Source: SBA Advocacy Office statistics for 1997. All Hawaii air tour operators are assumed to have fewer than 500 employees.

Analysis of Alternatives

Affected operators and helicopter air tour pilots have petitioned the FAA to amend SFAR 71. They argue that SFAR 71's 1500-foot minimum altitude requirement is "cumbersome and lacks flexibility in dynamic circumstances." The petitioners also maintain that allowing air tour flights as low as 300 feet above the surface would make SFAR 71 safer in certain circumstances.

The FAA has considered the petitioners' views in formulating this proposed rule. The issues raised are similar to comments received by the agency during the three SFAR rulemaking preceding this proposed rule. The FAA concludes that 1,500 feet provides a pilot with more distance, and, thus time, to avoid an accident or to deal with an error. An altitude of 300 feet provides 80 percent less distance and thus, much less reaction time.

Affordability Analysis

The FAA lacks reliable revenue and profit data on the individual entities affected by this rule, but the estimated cost to each of these small entities is approximately 5.3 percent of the average revenue of non-scheduled air transportation firms with fewer than 500 employees based on the SBA's Census data. Hawaii air tour operators have been subject to the proposed provisions of this rule since 1994. While there are fewer operators today than in 1994, the cause cannot be directly attributed to SFAR 71 but rather, the vagaries and nature of the tourism market. New air tour operators have entered the market after making the business decision to accept the provisions of this rule. The FAA invites comment on the potential impact of the proposal on revenues and profits.

Business Closure Analysis

The FAA estimates that none of the operators currently providing air tour flights would elect to stop providing the service. These operators have been complying with these provisions since 1994.

Disproportionality Analysis

All Hawaiian entities in the air tour market are small. Accordingly, the costs imposed by this proposal would be borne almost entirely by small businesses. The estimated costs are proportional to the frequency of operations and thus the burden is not disproportionate. Air tour safety in Hawaii has been significantly improved, and the FAA believes that the only way to continue this is to maintain these higher standards on these entities.

Key Assumptions Analysis

The FAA has made several conservative assumptions in this analysis, which may have resulted in an overestimate of the costs of the proposal. For example, the FAA assumes that the pilot in command would conduct all pre-flight briefings but the provision only requires the pilot to "ensure that each passenger has been briefed". The briefing could be recorded or provided by a lower paid employee. Also, the helicopter life preserver costs may be overestimated since there is a voluntary industry standard to which 13 helicopter tour operators subscribe that requires occupants to wear a personal flotation device.

Issued in Washington, DC, on August 18, 2003.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 03–21423 Filed 8–18–03; 12:19 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–108676–03]

RIN 1545–BC00

Distributions of Interest in a Loss Corporation From Qualified Trust; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to a notice of proposed rulemaking; by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This document contains regulations under section 382 of the Internal Revenue Code of 1986. The proposed regulations affect loss corporations and provide guidance on whether a loss corporation has an ownership change where a qualified trust described in section 401(a) distributes an ownership interest in an entity.

FOR FURTHER INFORMATION CONTACT: Martin Huck at (202) 622–7750 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under section 382 of the Internal Revenue Code.

Need for Correction

As published, this notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing (REG–108676–03), which is the subject of FR. Doc. 03–16230, is corrected as follows:

1. On page 38247, column 3, in the preamble, under the subject heading **ADDRESSES**, line 3, the language "5226, Internal Revenue Service, POB" is corrected to read "5207, Internal Revenue Service, POB".

2. On page 38248, column 1, in the preamble, under the subject heading **FOR FURTHER INFORMATION CONTACT**, line 5, the language "Treena Garrett, (202) 622–7180 (not toll-" is corrected to read "Treena Garrett, (202) 622–3401 (not toll-".

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–21356 Filed 8–19–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206 and 210

RIN 1010–AD04

Federal Oil Valuation

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The MMS is proposing to amend the existing regulations governing the valuation of crude oil produced from Federal leases for royalty purposes, and related provisions governing the reporting thereof. The current regulations became effective on June 1, 2000.

Experience thus far has shown that the 2000 rules have generally served both MMS (and the states who cooperate with MMS in auditing Federal leases) and the producing industry well. However, in continuing to evaluate the effectiveness and efficiency of its rules, MMS has identified certain issues that warrant further proposal and public comment. These issues concern primarily which published market

prices are most appropriate to value crude oil not sold at arm's length and what transportation deductions should be allowed. Experience thus far with the 2000 rules, some years of experience in taking and selling royalty-in-kind oil, and information learned during litigation challenging the 2000 rules indicate a potential for improving those rules in some respects.

DATES: Comments must be submitted on or before September 19, 2003.

ADDRESSES: Address your comments, suggestions, or objections regarding this proposed rule to:

By regular U.S. mail. Minerals Management Service, Minerals Revenue Management, Records and Information Management Team, P.O. Box 25165, MS 320B2, Denver, Colorado 80225–0165; or

By overnight mail or courier. Minerals Management Service, Minerals Revenue Management, Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225; or

By e-mail. *mrm.comments@mms.gov*. Please submit Internet comments as an ASCII file and avoid the use of special characters and any form of encryption. Also, please include "Attn: RIN 1010–AD04" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below.

Address your comments on the information collection requirements in this proposed rule by either fax (202) 395–6566 or e-mail (*OIRA_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–NEW). Send copies of your comments to Sharron L. Gebhardt, Regulatory Specialist, Records and Information Management Team, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, the MMS courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB Control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, Regulatory Specialist, Records and Information Management Team, Minerals Revenue Management, MMS, telephone (303) 231–3316, fax (303) 231–3385, or e-mail *sharron.gebhardt@mms.gov*. The principal authors of this rule are Geoffrey Heath of the Office of the Solicitor and David A. Hubbard of Minerals Revenue Management, MMS, Department of the Interior.

SUPPLEMENTARY INFORMATION:

I. Background

The MMS is proposing to amend the existing regulations at 30 CFR 206.100 *et seq.*, governing the valuation of crude oil produced from Federal leases for royalty purposes, and related provisions governing the reporting thereof. The current regulations became effective on June 1, 2000. The producing industry filed a lawsuit challenging several of the provisions in the 2000 rule. *Independent Petroleum Association of America* v. *Baca, Civil No. 00–761 (RCL) (D.D.C.)*, and *American Petroleum Institute* v. *Baca, Civil No. 00–887 (RCL) (D.D.C.) (consolidated)*. That lawsuit is still pending.

MMS conducted four public workshops on March 4–6, 2003, in Denver, Colorado; Albuquerque, New Mexico; Houston, Texas; and Washington, DC. At those workshops, MMS asked for discussion regarding, among other things, the best published index to use in valuing production not sold at arm's length and related timing issues, greater specificity regarding allowable transportation costs, the rate of return on undepreciated capital investment in calculating actual transportation costs, and the royalty effect of sales under joint operating agreements. After considering the input from these workshops, MMS is proposing these amendments in an effort to improve the current rule.

The amendments proposed do not alter the basic structure or underlying principles of the June 2000 rule. In proposing these amendments, the Department of the Interior reaffirms that the value for royalty purposes of crude oil produced from Federal leases is value at or near the lease. But in determining value at the lease of production not sold under an arm's-length contract at the lease, MMS is not restricted to a comparison to arm's-length sales of other production occurring in the field or area. MMS may begin with a "downstream" price or value, and determine value at the lease by deducting the costs of transporting oil to downstream sales points or markets, or by making appropriate adjustments for location and quality.

Federal lessees are not obligated to sell crude oil downstream of the lease. Lessees are at liberty to sell production at or near the lease, even if selling downstream might have resulted in a higher royalty value for the production than selling it at the lease. If lessees do choose to sell downstream, the choice to sell downstream does not make otherwise non-deductible costs deductible (for example, marketing costs). *See Independent Petroleum Association of America, et al.* v. *DeWitt, 279 F.3d 1036 (D.C. Cir. 2002), cert. denied sub nom., Independent Petroleum Association of America, et al.* v. *Watson, __U.S.__, 123 S. Ct. 869 (Jan. 13, 2003).*

In the following discussion, we group the proposed changes by issue category and discuss the specific proposed changes to specific sections of the rule in that context.

A. Change to NYMEX-Based Valuation—§ 206.103

1. Determining the NYMEX Price To Use for Valuation

For crude oil not sold at arm's length, the existing rule at § 206.103 provides for the use of spot prices at defined market centers published in approved publications both of which are listed in **Federal Register** Notices available on the MMS Internet site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/*, as the basis for valuation of crude oil for most of the country except the Rocky Mountain Region. (In the Rocky Mountain Region, spot prices are the basis for the third "benchmark.") Our experience with the rule and comments we have received lead us to believe that, at this time, New York Mercantile Exchange (NYMEX) futures prices may represent a more reliable and better assessment of current oil values than spot prices.

Use of the NYMEX price as the basis for royalty value may have several advantages, not the least of which is the fact that the volume of transactions and the number of participants is so large that, at least theoretically, no one entity could manipulate the resultant price. This is an issue partly because of the recent publicity and questions about the information provided to spot price reporting services and the effect such potentially inaccurate information has on spot prices in general. In addition, there is only one NYMEX price, and it is available from any number of sources. There would be no question about the "correct" publication to use to obtain the applicable index price.

Further, various questions have arisen about the timing of application of index prices. Published spot prices for specific months generally represent the market's assessment of prices for crude oil delivered during that month, but determined between the 26th day of the month 2 months prior to the delivery month and the 25th day of the month immediately preceding the delivery month. This is not true for California, where all the days in the calendar month preceding the month of delivery are used to assess spot prices applicable to the month of delivery.

MMS has studied the correlation between several public indicia of crude oil prices (*e.g.*, trading month spot prices, NYMEX prices, etc.) and the values actually used in paying royalties to MMS on crude oil sold at arm's length. These studies demonstrate that calendar-month NYMEX prices (applying the "roll", (as discussed below, to Gulf of Mexico, mid-continent, and Permian Basin production) have the highest correlation to reported arm's-length sales values of any publicly-available indices. We have examined both onshore and Gulf of Mexico crude oil types, and this conclusion applies to both.

Under the proposed rule, the "initial" or "base" NYMEX price that would be used to value production in a given production month is calculated by averaging the daily NYMEX settlement prices for each trading day in that month for deliveries in the first future month (known as the "prompt month"), excluding weekends and holidays. The prompt month changes during the production month so that in the beginning of the month the prompt month is the first month after the month of production. According to the NYMEX rules, trading ends at the close of business on the third business day prior to the 25th calendar day of the month (or the first business day prior to the 25th) preceding the delivery month. After that date the prompt month becomes the second month after the production month. *See* the NYMEX Web site for the specifications: *http://www.nymex.com/jsp/markets/lsco_fut_specif.jsp*.

We are proposing to exclude weekends and holidays for two reasons. First, if we include weekends and holidays, we would need to assign a price from other days on which trades actually take place. The normal way to do this is to use the preceding day's price (usually Friday's) on the assumption that that is the most accurate reflection of the price for deliveries that take place on the weekend. However, that results in weighting Fridays three times as much as other days. MMS does not believe there is a justification for overweighting Friday prices. The second reason that MMS is proposing to exclude weekends and holidays is that it is MMS's understanding that it is more common industry practice to exclude them in calculating monthly average prices on the NYMEX.

For example, to value production from Federal leases in March 2003 using NYMEX prices, you would average the NYMEX settlement prices published each business day in March, between March 1 and March 22, for April 2003, and between March 23 and 31 for May 2003. Importantly, this calculation is based on "trading days during the calendar month." This is different from "trading month," which is a term of art defined in these rules, as discussed below.

The 2000 rule uses prices assessed for the trading period that is as close to concurrent with the production month as possible. However, we've received comments that this period this is not consistent with the way industry does business. Under this proposal, the daily NYMEX prices used correspond more closely to the production month than under the existing rule.

MMS is proposing to apply a "roll" to the initial NYMEX oil prices from leases in the Gulf of Mexico and the mid-continent, including the Permian Basin. The "roll" is a commonly used measure of the trend of NYMEX prices for future deliveries in those areas. Proposing use of the roll necessitates proposing to change the definition of "trading month." In section 206.101 of the current rule, "trading month" is defined in terms of spot market sales. Because the NYMEX price is the measure of value under the proposed rule, and because MMS proposes to use the roll, MMS proposes to change the definition of "trading month" to conform with NYMEX definitions and practice.

MMS proposes to define trading month to mean the period extending from the second business day before the 25th day of the second calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the second business day before the last business day preceding the 25th day of that month) through the third business day before the 25th day of the calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the third business day before the last business day preceding the 25th day of that month), unless the NYMEX publishes a different definition or different dates on its official Web site, *http://www.nymex.com*, in which case the NYMEX definition will apply.

Prices reported for futures contracts on the NYMEX are not limited to deliveries in the prompt month. Rather, trades could be made in March 2003 for deliveries in April 2003 or in several subsequent months. Due to the fact that the NYMEX prices are future price estimates, and therefore inherently reflect increases or decreases in prices based upon expected trends, an adjustment to such estimates is necessary in order to extrapolate back to current price estimates, upon which royalty calculations are based. This adjustment factor is the "roll," which is added to the initial NYMEX price when the market is falling (to correct for the fact that the current price should be higher than the future price in a falling market) and subtracted from the initial NYMEX prices when the market is rising (to correct for the fact that the current price should be lower than the future price if the market is rising). We are proposing to use the roll because we believe it represents current market practice in establishing the sales price for crude oil production in certain regions of the country.

The roll formula includes the future prices for the two months beyond the prompt month, which is not the same as the prompt month used to determine the initial NYMEX price and assigns a progressively smaller weight to the second and third months. This is consistent with MMS's understanding of the common industry practice, including the weights and basis for the prices in the formula below. Specifically, the roll is calculated as follows:

$$\text{Roll} = .6667 \times (P_0 - P_1) + .3333 \times (P_0 - P_2),$$

where

- P_0=the average of the daily NYMEX settlement prices for deliveries during the prompt month that is the same as the month of production, as published for each day during the trading month for which the month of production is the prompt month.
- P_1=the average of the daily NYMEX settlement prices for deliveries during the month following the month of production, as published for each day during the trading month for which the month of production is the prompt month.
- P_2 = the average of the daily NYMEX settlement prices for deliveries during the second month following the month of production, as published for each day during the trading month for which the month of production is the prompt month.

Note that although prices P_0, P_1, and P_2 represent separate prices for periods 1, 2, and 3 months beyond the trading month, respectively, they are all determined during the same trading month. The roll may be a positive or a negative number, and, therefore, increase or decrease the royalty value, depending on whether the futures market is falling or rising.

For example, assume that the month of production for which you must determine royalty value is March 2003. March was the prompt month on the NYMEX (for year 2003) from January 22 through February 20, which is the trading month in this case. April is the first month following the month of production, and May is the second month following the month of production. As explained above, to determine the initial NYMEX price which the roll will adjust, for March 2003 production you first take the average of the daily settlement prices published for each business day from March 1 through March 20 for deliveries in April (the prompt month) and for each business day from March 21 through March 31 for deliveries in May (after May becomes the prompt month).

To calculate P_0, a different set of days is used. P_0 is the average of the daily NYMEX settlement prices for deliveries during March published for each business day between January 22 and February 20 (the trading month). P_1 is the average of the daily NYMEX settlement prices for deliveries during April published for each business day during the same trading month (*i.e.*, between January 22 and February 20). Similarly, P_2 is the average of the daily NYMEX settlement prices for deliveries during May published for each business day during the same trading month used for P_0 and P_1. In this example, assume that P_0 = $28.00 per bbl, P_1 = $27.70 per bbl, and P_2 = $27.10 per bbl. In this declining market, the roll = .6667 × ($28.00 minus; 27.70) + .3333 × ($28.00 − 27.10) = $.20 + $.30 = $.50. Fifty cents per barrel would then be added to the initial NYMEX settlement price used as the basis for royalty valuation. We have developed an illustration of this example and others which are available on the MMS Web site at *http://www.mrm.mms.gov/OilVal/ValGuid.htm*.

In this example, since the market is falling, prices that traders anticipate during the trading month (March) for deliveries in a future prompt month are lower than the prices at which oil actually is selling during March. The roll accounts for that trend. The roll will have the opposite effect in a rising market. The roll will be a subtraction from the initial NYMEX price calculation (adding a negative number to the NYMEX price) because traders anticipate higher prices for the future prompt months than actually are occurring during the calendar month of production.

The roll would be added to the initial NYMEX price used as the basis for royalty valuation, except for leases in California, Alaska, and the Rocky Mountain Region. The reason for this limitation is that at the workshops, industry representatives stated that they use the roll primarily for Gulf of Mexico and mid-continent production, and not for production in California, Alaska, or the Rocky Mountain Region.

While MMS expects the basic operation of the NYMEX market to be the same for the foreseeable future, it is not so clear that the roll will be a permanent feature of the marketplace. Therefore, MMS proposes that the Director of MMS would have the option of terminating use of the roll when MMS believes that using the roll is no longer a common industry practice at the end of each two-year period following the effective date of this paragraph through notice published in the **Federal Register** no later than 60 days before the end of the two-year period. Further, MMS also proposes to have the option to redefine how the roll is calculated to comport with changes in industry practice through notice published in the **Federal Register** no later than 60 days before the end of the two-year period. MMS will explain its rationale when it publishes the notice. MMS believes that this flexibility is appropriate so that the valuation standards more closely reflect market developments. MMS specifically requests comments on whether this is appropriate, and whether a two-year period is appropriate.

MMS is proposing to use NYMEX-based value as the basic measure of value for production not sold at arm's length in all areas except for the Rocky Mountain Region, where MMS proposes to use it as the revised third benchmark (proposed to be redesignated as section 206.103(b)(3)). As discussed earlier, the roll would not be added to the NYMEX price in the Rocky Mountain Region since its use does not reflect current industry practice there. The base NYMEX price would be adjusted for location and quality differentials and actual transportation costs back to the lease, as explained below.

2. Adjusting the NYMEX Price for Transportation Costs and Location and Quality Differentials

Under the 2000 rule, market center index (spot) prices are adjusted to determine the value of production at the lease through location and quality differentials and deduction of actual transportation costs. *See* 30 CFR § 206.103 and 206.112. Location and quality differentials are derived from lessees' own arm's-length exchange agreements or, if exchanges are not at arm's-length, through MMS approval. Actual transportation costs from the lease to a market center or intermediate exchange point are determined under 30 CFR § 206.110 and 206.111 according to whether transportation arrangements are arm's-length or non-arm's-length.

Adopting the NYMEX price as the basis for royalty valuation requires an additional adjustment beyond those in the current rule because the NYMEX price is defined only at Cushing, Oklahoma for light sweet crude oil. Therefore, differentials from Cushing to market centers other than Cushing are necessary. MMS believes that many lessees do not have arm's-length exchange agreements between each market center to which they transport or trade and Cushing. Therefore, MMS proposes to allow the use of published differentials when lessees do not exchange oil to Cushing at arm's length. Accordingly, MMS proposes to define a new term, "WTI differential," as follows:

> WTI differential means the average of the daily mean differentials for location and quality between a grade of crude oil at a market center and West Texas Intermediate (WTI) crude oil at Cushing, Oklahoma, published for each day for which price publications perform surveys for deliveries during the production month, calculated over the number of days on which those differentials are published (excluding weekends and holidays). Calculate the daily mean differentials by averaging the daily high and low differentials for the month in the selected publication. Use only the days and corresponding differentials for which such differentials are published.

Example. Assume the production month is March 2003. Industry trade publications perform their price surveys and determine differentials during January 26 through February 25 for oil delivered in March. (California is an exception. In California, the survey covers the calendar month of February for March deliveries.) The WTI differential (for example, the West Texas Sour crude at Midland, Texas, spread versus WTI) applicable to valuing oil produced in the March 2003 production month would be determined using all

the business days for which differentials are published during the period January 26 through February 25. Note, in this example, that the days used in the monthly average calculation of the WTI differential are different than the days used to calculate the NYMEX price and are different than the days used to calculate the roll.

This definition is intended to allow the lessee a method of calculating an accurate price at a market center near the lease so that crude oil produced from the lease can be accurately valued. The price at each market center would be the average of the daily NYMEX settlement prices published during the calendar month of production (including the roll, if applicable) plus or minus the appropriate WTI published differential. The lessee would then calculate a further differential from the market center to the lease.

For example, if a producer does not have an arm's-length exchange agreement to Cushing, and the applicable NYMEX price (including the roll) is $29.00/bbl, and the WTI differential for Light Louisiana Sweet (LLS) crude oil is plus $.30/bbl at St. James, Louisiana, the value at St. James would be $29.30. That value must be further adjusted from the market center to the lease by applicable location and quality differentials and for actual transportation costs between the lease and the market center.

Continuing the example, if a lessee produced Eugene Island (EI) sour crude and transported it from the lease to Burns Terminal at a cost of $1.19 per barrel, where it exchanged it at arm's length for LLS at St. James on the basis of $27.50/bbl for the EI crude and $28.80/bbl for the LLS, the value of the EI crude would be $29.30 (the LLS value at St. James) less the location and quality differential from the exchange agreement ($1.30), or $28.00. The lessee could then take the transportation allowance of $1.19 to get a value of $26.81 at the lease.

Changing from spot market index price-based valuation to NYMEX-based valuation and adding a definition for "WTI differential" would require a revision in the definition of "MMS-approved publication." In the context of the proposed valuation scheme, and because NYMEX prices are widely available, the only context in which MMS approval of a publication would be needed is for determining the WTI differential. Accordingly, the proposed rule would revise the definition of "MMS-approved publication" to read:

MMS-approved publication means a publication MMS approves for determining WTI differentials.

3. Specific Comments Requested

MMS requests specific comments about changing the valuation basis for transactions not at arm's length from spot to NYMEX prices, and to a calendar month average of such prices. MMS also requests specific comments on whether weekends and holidays should be included in the calculation of the average NYMEX price (and, if so, what price should be assigned to days on which no price is published). Further, MMS requests comments on whether it should include the "roll" in the calculation of the proper NYMEX price and whether the roll should apply only to areas other than California, Alaska, and the Rocky Mountain Region. MMS also requests comments on (1) whether lessees should use the location and quality differentials in their own arm's-length exchange agreements between Cushing and the lease or market center in preference to WTI differentials and (2) the circumstances under which they should use one or the other.

Under proposed section 206.103(a), for leases in California and Alaska, you must adjust the NYMEX price for applicable location and quality differentials and you may adjust for actual transportation costs, as described at section 206.112. MMS also requests comments on whether it should retain ANS spot prices as the valuation basis for crude oil produced in California and Alaska instead of changing the valuation basis to the NYMEX price.

B. Determining Differentials When Using NYMEX-Based Valuation When Lessees Do Not Have Information From Their Own Exchange Agreements—§§ 206.103 and 206.104

Based on requests we have received for valuation guidance and future valuation agreements for the Rocky Mountain Region, as well as our experience with RIK in that area, we believe that very few producers in the Rocky Mountain Region have actual trades of crude to Cushing. The same situation may apply to production in other areas, especially California. Therefore, in many cases producers do not have access to information to make adjustments to a price at Cushing. MMS therefore is proposing a change in how location and quality adjustments are made when you don't have an actual location and quality differential between Cushing and either the lease or a location to which you actually transport or exchange the oil.

For example, in the Rocky Mountain Region for sweet crude oil produced from leases in Wyoming, the market center would be Guernsey, Wyoming. Under the proposed rule, you would use the WTI differential for Wyoming Sweet at Guernsey for sweet crude oil, as published in an MMS-approved publication. If you use the WTI differential for Wyoming Sweet at Guernsey, and you transport your oil to Guernsey, you may also subtract actual transportation costs from the lease to Guernsey. If you exchange your oil from the lease to Guernsey, you must apply the appropriate location and quality differential to Guernsey. In the case of much of the crude oil produced from Federal leases in California, MMS anticipates that the market center would be Line 63 (for crude oil of like-quality to the crude oil for which Line 63 spot prices are published) or Kern River (for crude oil of like-quality to the crude oil for which Kern River spot prices are published).

More specifically, if the NYMEX price (unadjusted by the roll) is $29.00 and you do not have an arm's-length exchange agreement between Cushing and anywhere in Wyoming from which you could calculate a location and quality differential for your sweet crude, you would use the Guernsey WTI differential to value your sweet crude oil if you transport or exchange some or all of your oil to Guernsey. If the Guernsey WTI differential, calculated by taking the average of the daily high and lows and then averaged over the published days of the month, was −$.50/bbl, the value at Guernsey would be $29.00 − $.50 = $28.50/bbl. From this value, you could then subtract your transportation costs (or you would adjust for location and quality) from the lease to Guernsey.

If you did not move or exchange any of your oil to Guernsey, you would have to propose an alternative location and quality differential (between the lease and Guernsey) to MMS. You would then apply the WTI differential at Guernsey to adjust to Cushing. MMS is proposing that you may use the differential from the lease to Guernsey that you propose until MMS prescribes a different differential. If MMS prescribes a different differential, you would have to apply MMS' differential to all periods for which you used your proposed differential. You would have to pay any additional royalties resulting from using MMS' differential, plus late payment interest from the original royalty due date, or you would report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

MMS also requests comments regarding alternative valuation procedures, including differentials, in valuing sour crude oil in light of the fact that the WTI price at Cushing is for light

sweet crude oil. For example, would it be useful to begin valuation of sour crude produced in the Rocky Mountain Region at Hardisty, Alberta, Canada (at which spot market prices for sour crude are published in trade publications), and adjust the Hardisty price for the cost of transportation from Casper, Wyoming (a typical delivery point) to Hardisty and from the lease to Casper? Because Hardisty is farther from Rocky Mountain market and refineries, MMS proposed that applicable transportation costs would be added to, rather than subtracted from, this market center's prices. MMS would like to better understand the number of companies for whom Hardisty would be an appropriate market center. Would it be better in such cases for the lessee to consult directly with MMS on the proper valuation procedure rather than MMS providing specifics in the rule?

C. What Adjustments and Transportation Allowances Apply When Valuing Production Using Index Pricing?—§ 206.112

MMS is proposing to revise the framework of how and when to apply location and quality differentials and transportation allowances in calculating royalty value. The current rules are based on the proposition that the value of oil not sold at arm's length can be accurately measured by known, accepted index prices at market centers. In order to accommodate certain transactions where the oil does not flow to a market center, the current rule allows lessees, in certain circumstances, to value the oil as if its value were the same at some alternative location (such as a refinery) as it would be at a market center. For example, the regulation currently provides that "if you transport lease production directly to * * * an alternate disposal point, you may adjust the index price for your actual transportation costs." 30 CFR § 206.112(c). However, value at a refinery may not be the same as the value at a market center.

To be sure that all royalty values are properly adjusted by market-based location and quality differentials (and transportation costs) to the NYMEX pricing point (Cushing), MMS is proposing to rewrite section 206.112. Proposed section 206.112 would clarify that if royalty value at the lease is calculated by starting with the NYMEX price, the NYMEX price would then be adjusted by applicable transportation costs or location and quality differentials between the lease and the market center, and then between the market center and Cushing.

Paragraph (a) of proposed section 206.112 would apply to that portion of the oil produced from your lease that is transported or exchanged (or both transported and exchanged) between the lease and the market center. Paragraphs (b) and (c) would apply to the remainder of your oil. Under paragraph (a), if you transport your oil over any segment (*i.e.*, between any two points) between the lease and the market center, you would determine a transportation allowance under either section 206.110 or 206.111. If you exchange your oil for any segment between the lease and the market center, you would use location and quality differentials derived from your arm's-length exchange agreements. (If an exchange agreement is not at arm's-length, you would have to obtain MMS approval for a location and quality adjustment. Until MMS approves a proposed location and quality differential, you would use the location and quality differential derived from your non-arm's-length exchange agreement. If MMS prescribes a different differential, you would have to adjust previously reported and paid royalties, together with appropriate interest payments or credits. If you do not have an arm's-length exchange agreement for your oil between the market center and Cushing, you would use the WTI differential to adjust for location and quality between the market center and Cushing. You could not both take a transportation allowance and apply a location and quality differential between the same two points.

For example, a lessee produces sour crude from a lease in the Gulf of Mexico that trades as Eugene Island (EI) crude. Assume that the lessee transports 35 percent of the oil produced from the lease to the market center at Houma, Louisiana. To determine the value of that 35 percent of the production, the lessee first would determine its transportation allowance from the lease to Houma under section 206.110 or 206.111, as applicable. In the alternative, if the lessee has an arm's-length exchange agreement between the lease and Houma, it would use the location and quality differential derived from that exchange agreement for the change in location covered by the exchange agreement. The lessee would adjust the NYMEX price by the transportation costs or the location and quality differential. If the lessee exchanges the oil under an arm's-length exchange agreement between Houma and Cushing, it would further adjust the NYMEX price by the location and quality differential derived from that agreement. Alternatively, if the lessee did not exchange the oil between Houma and Cushing at arm's length, the lessee would adjust the NYMEX price by the published WTI-EI differential.

Paragraph (a) also addresses the situation in which the lessee both transports *and* exchanges a particular volume of oil from the lease to a market center. Therefore, assume the lessee transports 35 percent of the oil produced from the lease to Caillou Island and then exchanges that oil with another party at arm's length for Light Louisiana Sweet (LLS) at St. James, Louisiana, which is the LLS market center. To get the royalty value at Caillou Island, the lessee must add the differential in the exchange agreement (assume − $1.00) to the market value of LLS, which is the NYMEX price plus the WTI–LLS differential (assume − $.50). Assuming a NYMEX price of $29.00, the value at Caillou Island would be $27.50. The lessee may then subtract its transportation costs from the lease to Caillou Island (assume $1.00) to determine the royalty value at the lease (a net value of $26.50).

In the case of much of the crude oil produced from Federal leases in California, MMS anticipates that the market center would be Line 63 (for crude oil of like-quality to the crude oil for which Line 63 spot prices are published) or Kern River (for crude oil of like-quality to the crude oil for which Kern River spot prices are published). Therefore, to determine the adjusted NYMEX price for oil transported or exchanged to either of these market centers, the lessee would adjust the NYMEX price for the WTI differential between Cushing and the applicable market center.

Paragraph (b) or (c) of proposed section 206.112 applies when some, but not all of a lessee's oil is exchanged or transported to or through a market center. Paragraph (b) applies if the lessee transports or exchanges (or both transports and exchanges) at least 20 percent of the oil produced from the lease to a market center. In that event, the lessee would value that portion of the oil not transported or exchanged to a market center by the volume-weighted average of the values of the oil valued under paragraph (a). Therefore, in the preceding example, the lessee transported and exchanged 35 percent of its oil from the lease to the market center at St. James. The value of that oil calculated in that example was $26.50/bbl. Assume that the lessee also transported another 45 percent of its oil from the lease to St. James, and that the adjusted NYMEX-based value of that oil was $27.00/bbl. Finally, assume that the lessee transported the remaining 20

percent of the oil to its refinery in New Jersey. Under the current regulation, the lessee must come to MMS for advice as to how to value the portion of the oil transported to New Jersey. Under the proposed rule, to determine the value of that 20 percent, the lessee would calculate the volume-weighted average of the other two dispositions. In this example, the volume-weighted average = ((.35 × 26.50) + (.45 × 27.00))/.8 = $26.78. The value of the 20 percent transported to the lessee's refinery would be $26.78.

MMS seeks comments on this proposal as well as comments on whether 20 percent is a sufficient volume on which to base the value of oil that the lessee could not otherwise value under the current rule. MMS selected the 20 percent figure for this proposal because it is greater than the royalty percentage under the typical offshore lease (16⅔ percent).

Paragraph (c) of proposed section 206.112 addresses the situation where the lessee does not transport or exchange at least 20 percent of the oil to a market center. The lessee would use paragraph (a) to value the less than 20 percent portion (if any) that the lessee transports or exchanges (or both transports and exchanges) to a market center. For the remainder of its lease production, the lessee must come to MMS with a proposal for a location and quality differential between the lease and the market center. If MMS approves a different differential, the lessee would have to adjust its previously reported and paid royalties, together with an interest payment or credit. The lessee would use the WTI differential to adjust between the market center and Cushing.

Finally, the current rule is not clear about all situations in which a quality differential would be appropriate. For example, a lessee could transport its oil from the lease to its refinery at a market center, but its oil may be of a higher gravity and a lower sulfur content than the crude for which a price is published at the market center. In this situation, the lessee should make an adjustment for quality even though it has no exchange agreement or quality bank to use to make the adjustment. MMS proposes that in such circumstances, a lessee would use appropriate posted price gravity tables to adjust the value of its produced crude for gravity differences from the market center benchmark crude, and use a factor of 2.5 cents per one-tenth percent difference in sulfur content to adjust for quality when it has neither exchange agreements nor quality banks to fully adjust the quality of its oil to that of the crude oil at the market center. MMS has based this factor on its understanding of common sulfur bank adjustments for California. For instance, MMS understands, from its RIK program, that the All America Pipeline uses a sulfur adjustment of 50 cents per percent, after the first percent difference in sulfur. MMS believes that the typical sulfur content of oil produced from Federal leases is in the one to three percent range. Therefore, MMS' use of 2.5 cents per 0.1 percent sulfur difference would be similar to the factor used by the All America Pipeline. MMS believes that the ability to use a sulfur quality adjustment is a concern in California, but is seeking comments on whether producers in other parts of the country would find it useful as well. MMS also seeks comments on whether these are reasonable differentials, both for California and the rest of the country.

D. Transportation Cost Issues—§§ 206.110 and 206.111

1. Proposed Change to Rate of Return on Undepreciated Capital Investment — § 206.111(i)(2)

MMS is proposing to amend the regulations governing calculation of actual transportation costs in non-arm's-length situations by changing the allowed rate of return on undepreciated capital investment. In 1988, MMS determined that the appropriate rate of return was equal to the Standard and Poor's BBB bond rate. MMS explained its choice as follows:

> The MMS has examined several options relating to rate of return and decided that a rate of return should be closely associated with the cost of money necessary to construct transportation facilities. The MMS has examined the use of the corporate bond rate very carefully and has concluded that such rates are representative of the loan rates on sums of money comparable to that expected for the construction of transportation facilities.
>
> There is no doubt that there are some very high risks involved with some oil and gas ventures, such as wildcat drilling. However, the risk associated with building and developing a pipeline to move oil that has already been discovered is a much different risk. The risk of default (financial risk) is considered in corporate bond rates. Considering the risks related to transportation systems, a rate of return based on an applicable corporate bond rate would be appropriate for transportation systems.

53 FR 1213 (1988)

In 2000, when MMS revised the oil valuation regulations, MMS explained why it would continue to use the Standard and Poor's BBB bond rate as the rate of return for transportation allowances:

> The fact that a lessee's overall operations are funded historically by some proportion of debt and equity does not imply that the resulting aggregate weighted average cost is appropriate for determining a proper transportation allowance for royalty purposes. * * * MMS's research indicates that most recent pipeline investments are financed largely through debt rather than equity. For those pipelines financed entirely by debt, the BBB bond rate is a very favorable rate * * *
>
> The industry proposes using a weighted average cost of capital. * * * [W]e agree with industry's proposal to calculate a before-tax rate of return. Royalties are calculated before tax, so the rate of return used should be before-tax rate as well. * * * Even if, arguendo, we accepted the premise of using a weighted average cost of capital as the rate of return, MMS has found, using more appropriate SIC codes, tax rates, debt rates, and equity rates, that the average cost of capital is much lower than the 2.2 times BBB that industry calculated. MMS therefore concluded that industry's proposal is not well founded. * * * [S]ince the BBB bond rate is adequate as a rate of return used in calculating actual transportation costs for royalty purposes, there is no need for MMS to utilize the expertise of FERC staff to develop costs of debt and equity.

65 FR 14051

MMS believes that a market-based cost of capital is needed to reflect accurately the actual and necessary costs to owners of transportation systems. The capital costs, in addition to operating and maintenance expenses, must be accounted for in calculating costs. Capital costs are normally accounted for by allowing depreciation plus a rate of return on undepreciated capital investment.

Industry has challenged the 2000 rule as allegedly arbitrary and capricious in the lawsuit cited earlier. Among the challenged aspects of that rule is whether the Standard and Poor's BBB corporate bond rate is sufficient as an average rate of return on transportation capital investments. The 2000 rule also eliminated the exception allowing lessees to use tariffs filed with FERC as a transportation allowance in lieu of calculating actual transportation costs. Consequently, after June 1, 2000, calculation of actual costs, and the use of the rate of return as part of the calculation, was required of all lessees who did not have arm's-length transportation arrangements. The judicial challenge to the 2000 rule has led MMS to reconsider whether BBB is a sufficient rate of return.

When MMS promulgated regulations to value geothermal resources in 1992, MMS believed that the return on capital needed to compute properly a deduction for the costs of generating electricity should be the weighted

average of the returns to equity and debt (without considering income tax treatment). That led MMS to determine that two times the BBB rate was appropriate for that calculation.

MMS has examined some rates of return in the oil industry and believes that some weighted average rate of return considering both equity and debt is appropriate as an actual market-based cost of capital. MMS believes that establishing a uniform rate of return on which all parties can rely is preferable to the costs, delays, and uncertainty inherent in attempting to analyze appropriate project-specific or company-specific rates of return on investment.

MMS believes that the subset of companies that have invested, or are likely to invest, in oil pipelines is a very limited subset of the oil industry. MMS also believes that no standard industrial classification corresponds to those who are willing to invest in pipelines. MMS has received a new study from the American Petroleum Institute ("API"), titled "BBB Bond Rate Not an Adequate Measure of Capital Cost," that concluded that the cost of capital (after taxes) of the Department of Energy's Financial Reporting Service Companies was closer to 1.6 to 1.8 times the Standard and Poor's BBB bond rate. The API study explained that this group of producers included the companies that would be most likely to own pipelines. MMS, through its Offshore Minerals Management, Economics Division, has also studied several years' worth of data for both non-integrated oil transportation companies and larger oil producers, both integrated and independent, that MMS believes are more likely to invest in oil pipelines. This study concluded that that range of rates of return that would be appropriate for oil pipelines would be in the range of 1.1 to 1.5 times the Standard and Poor's BBB bond rate. While the relationship between the rates of return that MMS has examined and the BBB rate has not been constant, MMS is proposing for comment a rate of return of 1.5 times the Standard and Poor's BBB rate as this rate is within the range recommended by its own experts and close to the rate recommended by the industry experts.

2. Specification of Certain Allowable and Non-Allowable Costs—§§ 206.110 and 206.111

(i) Arm's-Length Transportation

In Section 206.110, MMS is proposing to add a new paragraph (b) that would specify many of the costs incurred for transporting oil under an arm's-length contract that are allowable deductions. MMS believes these costs are costs that are directly related to the movement of crude oil to markets away from the lease. Those costs include:

(1) The amount that you pay under your arm's-length transportation contract or tariff.

(2) Fees paid (either in volume or in value) for actual or theoretical line losses.

(3) Fees paid to a pipeline owner for administration of a quality bank.

(4) The cost of carrying on your books as inventory a volume of oil that the pipeline operator requires you to maintain, and that you do maintain, in the line as line fill. You must calculate this cost as follows:

(i) Multiply the volume that the pipeline requires the shipper to maintain in the pipeline by the value of that volume for the current month calculated under section 206.102 or section 206.103, as applicable; and (ii) multiply the value calculated under paragraph (i) by the monthly rate of return, calculated by dividing the rate of return specified in section 206.111(i)(2) by 12.

MMS proposes to allow this deduction because this cost appears to be an actual cost directly associated with transporting oil. In each month for which line fill is required, a shipper incurs the loss of available capital associated with the value of the line fill volume. The proposal therefore would allow a return on that value, calculated as described above. MMS seeks comments on whether this cost should be allowed as part of the transportation deduction.

(5) Fees paid to a terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance.

(6) Fees paid for short-term storage (30 days or less) incidental to transportation as required by a transporter.

(7) Fees paid to pump oil to another carrier's system or vehicles as required under a tariff.

(8) Transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when you do not sell the oil at the hub. These fees do not include title transfer fees.

MMS proposes to allow lessees to deduct transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when the shipper does not sell the oil at the hub. MMS believes that this also is a cost directly incurred for movement of the oil. MMS believes that title transfer fees are a cost of selling oil, not moving it, and are not deductible.

(9) Payments for a volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower-gravity crude oil for transportation. While this situation does not arise frequently, MMS believes that in such cases, this volumetric deduction is an actual cost incurred in moving oil.

(10) Costs of securing a letter of credit or other surety that the pipeline requires a shipper to maintain. These costs should only include the currently allocable costs applicable to the Federal lease. MMS believes that shippers can generally use two different means of assuring creditworthiness. The first involves a deposit or advanced payment in which the shipper incurs only the costs associated with the time value of money because they receive their deposit back. The other involves actual out-of-pocket costs to obtain a letter of credit, guarantee, or surety bond. MMS believes that these two means should be accounted for differently in calculating your transportation allowance.

In the first case, if you make a cash deposit of two months of the expected transportation charges (say $50,000), and transport 100,000 barrels per month, of which 75,000 barrels are from a Federal lease, you must calculate the cost as follows:

(i) Multiply the deposit by the monthly rate of return, calculated by dividing the rate of return specified in section 206.111(i)(2) by 12, and (ii) multiply that result by the proportion of total production from each Federal lease. In this example, if the Standard and Poor's BBB bond rate was 8%, the allowable monthly rate would be

$$\left(\frac{.08*1.5}{12}=.01\right),$$

and that would be multiplied by the amount of the deposit to get the monthly cost, which would be $500. Then you could include the share of that applicable to the Federal lease (75,000/100,000) = ¾. So you could include $375 as an allowable transportation cost for as long as the $50,000 is on deposit (and the other factors remain unchanged).

In the second case involving the expense of a letter of credit or other surety, if you pay your bank $5000 as a non-refundable fee for a letter of credit, you can include the proportion allocable to Federal production in the month that fee is paid, and then never again.

MMS believes that this is a cost that the lessee must incur to obtain the

pipeline's transportation service, and therefore is a cost of moving the oil. MMS welcomes comments on whether these are reasonable ways to calculate the actual costs of assuring a lessee's creditworthiness.

You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this paragraph. MMS seeks comments regarding whether these various costs should be allowed, and whether there are other costs directly attributable to the transportation of crude oil that should be included in the final rule.

In section 206.110, MMS proposes a new paragraph (c) that would specify certain costs as not deductible. Those include:

(1) Fees paid for long-term storage (more than 30 days).

(2) Administrative, handling, and accounting fees associated with terminalling.

(3) Title and terminal transfer fees.

(4) Fees paid to track and match receipts and deliveries at a market center or to avoid paying title transfer fees.

(5) Fees paid to brokers.

(6) Fees paid to scheduling service providers.

(7) Internal costs, including salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production.

(8) Gauging fees.

At the workshops, MMS received some comments that internal costs should be deductible. One person suggested that if an employee's only function were to arrange for downstream transportation of production, that person's salary should be deductible. MMS does not agree. Under the proposed rule, these types of indirect, internal costs are not deductible.

MMS does not believe that any of the above-described costs are incurred directly as part of the process of physically moving the crude oil. MMS seeks comments on whether any of these costs should be deductible.

(ii) Non-Arm's-Length Transportation

In section 206.111, MMS proposes to add a new paragraph (b)(6) that would specify many of the costs incurred for transporting oil under a non-arm's-length contract that are allowable deductions, but only to the extent they have not already been included in the actual cost calculation under paragraphs (d) through (j) of this section. Many of these costs are the same as those associated with arm's-length transportation contracts. Those costs include:

(1) Volumetric adjustments for actual line losses.

(2) The cost of carrying on your books as inventory a volume of oil that the pipeline operator requires you to maintain, and that you do maintain, in the line as line fill. You must calculate this cost as follows:

(A) Multiply the volume that the pipeline requires the shipper to maintain, and that it does maintain, in the pipeline by the value of that volume for the current month calculated under section 206.102 or section 206.103, as applicable; and (B) multiply the value calculated under paragraph (i) by the monthly rate of return, calculated by dividing the rate of return specified in section 206.111(i)(2) by 12.

(3) Fees paid to a non-affiliated terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance.

(4) Transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when you do not sell the oil at the hub. These fees do not include title transfer fees.

(5) A volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower-gravity crude oil for transportation.

These costs parallel those costs itemized in the arm's-length transportation provisions in section 206.110(b) insofar as appropriate for non-arm's-length situations. Several of the specific items allowed under the arm's-length provisions do not occur or are not appropriate for inclusion in a non-arm's-length transportation situation. Specifically, in a non-arm's-length situation, there is no arm's-length transportation tariff. (Instead, the lessee must calculate its actual costs of building and operating the pipeline.) In addition, MMS believes that even if an affiliated pipeline charges quality bank administrative fees to its own affiliate, the lessee/shipper is simply paying its affiliate and that it should not be regarded as part of the actual costs incurred to move oil. Further, in a non-arm's-length situation, decisions regarding short-term storage (and the cost associated with that storage) are under the lessee's or its affiliate's control, and likely may be avoided. MMS therefore believes that it is not appropriate to allow a short-term storage cost. Also, in a non-arm's-length situation, any fees charged by an affiliated pipeline to pump oil over to a third party-carrier's system are paid within the same corporate organization and are not an additional actual cost of transportation. Finally, in non-arm's-length situations, MMS expects that requiring a letter of credit from an affiliated producer is unnecessary and that the corporate organization ordinarily would avoid incurring the costs of the premium necessary for the letter of credit. MMS therefore believes it inappropriate to allow such a deduction.

In contrast to the 2000 rule, which disallows all line losses in non-arm's-length transportation situations, MMS proposes to allow actual, but not theoretical, line losses. MMS believes that actual line losses properly may be regarded as a cost of moving oil. In addition, if there is a line gain, the lessee must reduce its transportation allowance accordingly. In a non-arm's-length situation, however, a charge for theoretical line losses would be artificial and would not be an actual cost to the lessee. While a lessee may have to pay an amount to a pipeline operator for theoretical line losses as part of an arm's-length tariff, in a non-arm's-length situation, line losses, like other costs, should be limited to actual costs incurred.

The MMS also is proposing to add a new paragraph (b)(7) to section 206.111 that would list the costs that expressly are not deductible as transportation costs. These are the same costs discussed above in the section on arm's-length transportation contracts (section 206.110), with one addition, namely, that theoretical line losses are not deductible under non-arm's-length transportation arrangements.

3. Technical Correction to § 206.111(h)(5) Regarding Redepreciation

We propose to modify existing § 206.111(h)(5) to remedy an unintended consequence regarding depreciation when calculating a transportation allowance not involving an arm's-length transportation contract. When we amended the rules in March 2000, we intended the revisions regarding depreciation in the current rule to permit, one time only, a new depreciation schedule based on your purchase price when you purchase a transportation system from a previous owner. If a transportation system were sold more than once, subsequent purchasers would have to maintain the then-existing depreciation schedule.

However, existing paragraph (h)(5) says "if you or your affiliate purchase a transportation system at arm's length after June 1, 2000, from anyone other

than the original owner, you must assume the depreciation schedule of the person who owned the system on June 1, 2000." But if A were the original owner and still owned the system on June 1, 2000, and subsequently sold the system to B after June 1, 2000, who in turn sold it to C, the rule as written says that C would have to assume original owner A's depreciation schedule. This was not MMS' intent. To be consistent with the intended result, C should assume B's depreciation schedule in this situation.

Therefore, to reflect the original intent, MMS proposes to modify § 206.111(h)(5) to delete the words "who owned the system on June 1, 2000" and replace them with the words "from whom you bought the system." This change would enable C in the example above to assume the depreciation schedule of B based on B's purchase price of the transportation system and subsequent reinvestment.

E. Treatment of Joint Operating Agreements—§ 206.102

In the preamble to the 2000 rule, MMS explained:

> If a lessee sells to a co-lessee/designee under a joint operating agreement, MMS ordinarily will regard that arrangement as the designee disposing of production on the lessee's behalf and not as an actual sale to the designee.
>
> 65 FR 14060

Based upon further consideration of these situations, MMS does not believe there should be a presumption that all of these sorts of transactions are non-arm's-length and are not sales. When a party to a joint operating agreement, who is not the operator, allows the operator to dispose of its share of oil production in exchange for the consideration provided under that agreement, MMS recognizes that some of these arrangements may be sales of the production. The royalty value of the oil so transferred depends on whether the sale is an arm's-length sale. MMS expects that in most of the situations where the lessee is not the operator, the transaction may be at arm's-length. If the sale is at arm's-length, the question then becomes (as in any arm's-length situation) whether any of the exceptions in section 206.102(c) apply. In some circumstances, the sale also may be a marketing agreement, and the operator may be performing the marketing function for the lessee. In such a case, the MMS may determine that the lessee has improperly deducted marketing costs, and MMS may increase the royalty value accordingly. MMS will examine each case on its facts just as it does any other disposition of production.

MMS also proposes to change the reporting instructions in 30 CFR 210.53 with respect to sales under joint operating agreements to facilitate review and audit of these transactions. MMS proposes to add a new paragraph (c) to section 210.53 that would require an operator under a joint operating agreement who is also a designee and who reports and pays royalty on behalf of one or more working interest owners from whom the operator buys production, to report the share of the production it purchased from the working interest owners and the associated royalty payment on a separate line on the Form MMS–2014 from the line on which the operator reports its own share of production and the associated royalty payment.

F. Limit on Grace Period for Reporting Changes—§ 206.121

The MMS is proposing a technical correction to the regulation at section 206.121 that permitted a grace period for reporting and paying royalties after the June 2000 rule became effective to give royalty payors adequate time to change their systems. We are proposing to end-date the grace period for such adjustments, because we consider three years to be sufficient time to have reported and paid royalties under the regulations published in 2000.

G. Other Technical Changes

Section 206.103(b) applies to production from leases in the Rocky Mountain Region, a defined term. The current rule prescribes a series of four benchmarks described in paragraphs (b)(2) through (b)(5) for valuing production in the Rocky Mountain Region that is not sold at arm's-length. To provide clarity in this section of the rule, MMS is proposing to renumber paragraphs (b)(2) through (b)(5) to make them (b)(1) through (b)(4) so that the four benchmarks correspond with the four paragraph numbers. Other than this renumbering, the only change MMS is proposing to make to the valuation criteria for the Rocky Mountain Region is the change to the third benchmark from spot prices to NYMEX valuation, described above in I. A.

In addition, MMS proposes a technical change to the definition of "affiliate" in section 206.101. MMS would change paragraph (2) of the definition of "affiliate" by striking the words "of between 10 and 50 percent" and substituting therefor the words "10 through 50 percent" because the current definition does not specify the treatment of a situation in which one person owns exactly 50 percent of another.

H. Other Possible Changes That May Be Considered

In addition to issues already identified above on which MMS seeks comments, MMS specifically requests comments on the following issue: Should MMS allow using the NYMEX price to value oil sold at arm's-length in multiple sales downstream of the lease where the lessee does not first transfer to an affiliate and where "tracing" the production from the lease or unit to the specific sale is burdensome?

Under the 2000 rule, most lessees who are relatively large producers have the option of using a spot market index-based value even when the oil is sold at arm's length, because the lessee is working through an affiliate who is the seller in an arm's-length resale. Thus, if a lessee wants to avoid the burden of "tracing" the production to each particular sale out of a large number of sales to different purchasers, it may opt to use index-based value under the current 30 CFR § 206.102(d)(2). Lessees who do not first transfer to an affiliate and who sell directly to a large number of different purchasers do not have this option. MMS seeks comment on whether the option of using NYMEX prices should be extended to these situations in the event that MMS adopts NYMEX-based valuation.

II. Procedural Matters

1. Public Comment Policy

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours and on our Internet site at *www.mrm.mms.gov*. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

2. Summary Cost and Royalty Impact Data

Summarized below are the estimated costs and royalty impacts of the proposed rule to all potentially affected groups: Industry, the Federal Government, and State and local governments. The costs and the royalty collection impacts, are segregated into two categories—those that would accrue in the first year after the proposed rule becomes effective and those that would accrue on a continuing basis each year thereafter.

A. Industry

(1) Expected Increase in Royalties—NYMEX-Based Valuation Applied to Oil Not Sold at Arm's Length

Under this proposed rule, industry would value oil based on a market price that more closely represents the true value of the oil. We believe this may result in industry paying additional royalties compared to the current regulations. We provide estimates below of any significant increased royalties under the proposed rule.

The proposed rule maintains many of the provisions of the Federal oil valuation rule that became effective June 1, 2000 (the June 2000 Rule), including the concept of three separate valuation methodologies linked to different production locations. This analysis also is divided into the same three areas. They include California/Alaska (onshore and offshore), the Rocky Mountain Region, and the "rest of the country" including the Gulf of Mexico. This analysis highlights the impacts of modifying the pricing provisions and methodologies. The allowed adjustments for transportation and quality as outlined in the June 2000 Rule also would change somewhat, and some additional corresponding analysis is necessary.

"Rest of the Country"

In valuing production not sold under an arm's-length contract, the June 2000 Rule employed the spot price of the oil most closely associated with the production, with appropriate adjustments for location and quality. The timing of the spot month that corresponds with the production month is the quoted average from an MMS-approved publication from the 26th day of the month prior to the current production month to the 25th day of the current production month. For example, December royalty production is valued using the spot quotes for the oil most similar in location and quality from November 26th through December 25th.

The proposed new methodology for the "rest of the country," as discussed earlier, is the NYMEX Calendar Month Average daily settlement price with the "roll" and a differential. This method uses a trading month differential (found in MMS-approved publications and based on spot price quotes) applied to the average of the daily NYMEX prices, excluding weekends and holidays, during the production month for deliveries during the prompt month as defined in the proposed rule. For example, for the month of December, assume a producer seeks to value production whose characteristics are closely related to Light Louisiana Sweet (LLS) crude oil. The grade differential established over the period October 26 through November 25 would be applied to the average of the daily NYMEX prompt month prices published for each day in the month of December. The grade differential is the WTI spot price for the period October 26–November 25 less the LLS spot price for the same period. Assuming the WTI value is $29.00 per barrel and the LLS value is $28.00 per barrel, the differential is $1.00 per barrel.

The forward "roll" is added to the calendar month average NYMEX value and is determined by taking a ratio of the difference between the current month value, the 2nd month out future value, and the 3rd month out future value as reported on the NYMEX exchange. Assuming the "roll" calculation results in a value of $0.30 per barrel, the calculated royalty value, assuming the NYMEX calendar month average price is $29.50 per barrel, is $28.80 per barrel (including both the roll and the differential). It is calculated as follows for all royalty production not disposed of at arm's length in the month of December:

(NYMEX Calendar Month Average + "roll") − (Spot average WTI − Spot Average LLS) ($29.50 + $.30) − ($29 − $28) = $28.80 per barrel for December royalty production valued as not sold under an arm's-length contract.

We have compared prices under NYMEX adjusted for the roll and the grade differential discussed above with prices calculated under the existing rule based on spot prices at each of the market centers applicable in the "rest of the country—*e.g.*, Midland, St. James, and Empire. We found that over the period April 2000 through December 2002, or the period from approximately when the current rule became effective through the end of calendar year 2002, the adjusted average monthly NYMEX price exceeded the monthly average spot prices for these market centers by about $0.31 per barrel. We also have performed this comparison back to the beginning of 1999 and found that the difference is slightly higher over the entire period January 1999 through December 2002. We chose the $0.31 per barrel increment as the basis for our royalty impact estimates.

In estimating the impact of a change to NYMEX valuation, we made several assumptions in addition to the $0.31 per barrel increment. We assumed that 50 percent of all Federal barrels would be valued under the non-arm's-length provisions, that the offshore royalty rate is one-sixth and onshore royalty rate is one-eighth, and that volumes taken in kind would vary from 50,000 barrels per day to 180,000 barrels per day. The former includes only barrels currently taken in the small refiner program, and the latter includes small refiner volumes plus barrels currently going to the Strategic Petroleum Reserve. We then subtracted the volumes taken in kind and applied the $0.31 per barrel figure to the remaining barrels assumed to be valued under the non-arm's-length provisions. We estimate increased costs to industry in the form of higher royalty payments of $4,303,913 to $11,658,663 million per year.

California/Alaska

The current rule specifies Alaska North Slope (ANS) spot prices for oil delivered at Long Beach, California as the valuation basis for all crude produced in California or Alaska and not sold at arm's length. The ANS spot quotes on a monthly average basis (without weekends or holidays) apply directly to the production month. That is, the spot quotes from December 1st through the 31st apply directly to December production. The rule allows for transportation adjustments and quality allowances.

The proposed new methodology is the NYMEX Calendar Month Average daily settlement price with appropriate differentials, but without the "roll" discussed above. This method uses a trade-month differential (found in MMS-approved publications and based on spot price quotes) applied to the average of the daily NYMEX prices, excluding weekends and holidays, published for each day during the production month for deliveries during the prompt month as defined in the proposed rule.

For example, for the month of December, assume a producer seeks to value production whose quality and location are similar to Kern River crude oil (13.4 degree API gravity oil in Kern County). The grade differential

established over the period October 26 through November 25 would be applied to the average of the daily NYMEX prompt month prices published for each day in the month of December. The grade differential is the WTI spot price for the period October 26–November 25 less the Kern River spot price for the same period. Assuming the WTI value is $29.00 per barrel and the Kern River value is $20.00 per barrel, the negative $9.00 per barrel differential would be added to the NYMEX calendar month average price corresponding to the month of production (without weekends or holidays). Using the same NYMEX value, $29.50 per barrel, as in the previous example, the royalty value calculation would be as follows:

(Trading month CA spot oil assessment − Spot WTI assessment) + NYMEX calendar month average ($20 − $29) + $29.50 = $20.50 applied to all December royalty volumes that are valued as not sold under an arm's-length contract.

Because the proposed new valuation method uses new oil types and locations as its basis, location and quality adjustments must be made to the current basis (ANS) to make a meaningful comparison of values calculated under the proposed and current rules. Estimating the proper adjustments with precision is very difficult.

For example, again using Kern River crude oil to compare to ANS, there are significant differences in quality (13.4 degrees for Kern River and 29.5 for ANS) and in location (Kern County, CA and Long Beach, CA). The sulfur content of the two oils is nearly identical, so no sulfur price adjustment is needed. Gravity differential estimates can vary significantly because California posted price adjustment scales vary from $0.15 per degree API gravity to $0.25 per degree or more. The gravity adjustment range would then be from $2.42 to $4.03 per barrel.

The location differential can be estimated by the use of a tariff between points in Kern County to Long Beach. These tariffs currently range between $.75 and $1.25 per barrel.

Depending on how these differentials apply in specific cases, the result could be deductions from the ANS price from $3.17 to $5.28 per barrel in order to compare the adjusted ANS price to value calculated under the proposed rule. The result could be an overall royalty increase or decrease. Applying the high gravity and location adjustments above to the ANS price from 1999 through 2002 would result in an adjusted ANS price about $1.00 per barrel lower than the price derived under the proposed rule. Applying the low gravity and location adjustments to the ANS price would result in a value about $1.00 above the price derived under the proposed rule.

In estimating the impact of a change to NYMEX valuation, we made several assumptions in addition to the $1.00 per barrel increase or decrease. For California we assumed that 50 percent of all Federal barrels would be valued under the non-arm's-length provisions, that the offshore royalty rate is one-sixth and onshore royalty rate is one-eighth, and that volumes taken in kind in the small refiner program are 10,000 barrels per day. We then subtracted the volumes taken in kind and applied the $1.00 per barrel figure to the remaining barrels assumed to be valued under the non-arm's-length provisions. We estimate a range of −$2,120,650 to +2,120,650 per year in terms of higher or lower royalty payments. This range results because the location and quality adjustments can vary significantly. For Alaska we based our estimate on an average offshore royalty production of 1,600 barrels per day, and we assumed that all production would be valued under the non-arm's-length provisions. Using the same $1.00 per barrel figure that we used in California, we estimate a range of −$584,000 to +584,000 per year in terms of higher or lower royalty payments.

Rocky Mountain Region

Determining the impact of any proposed modification of the current pricing methodology for valuing oil not sold at arm's-length in the Rocky Mountain Region is also difficult. This is largely because there is no prescribed formula currently in place, but rather a series of benchmark procedures that lessees apply on an individual basis. Although this proposal does involve NYMEX pricing, it would apply only if and when the first two benchmark procedures (which rely exclusively on arm's-length values) are inapplicable. Where the third benchmark applies, valuation of Wyoming Sweet would rely on differentials between WTI at Cushing, Oklahoma, and Wyoming Sweet at Guernsey, Wyoming.

The proposed Wyoming Sweet valuation methodology is identical to that for California, with the obvious substitution of the Wyoming Sweet spot price for the California grades. For December production, the average value of Wyoming Sweet against WTI determined October 26th through November 25th applied to the NYMEX calendar month average becomes the basis of value:

(Trading month WY Sweet spot oil assessment − Spot WTI assessment) + NYMEX calendar month average.

We have compared prices under NYMEX adjusted for the grade differential (and not the "roll," as discussed earlier) with prices calculated under the existing rule based on spot prices at Guernsey, Wyoming—the only market center in the Rocky Mountain Region. We used the same time period, April 2000 through December 2002, as we did for the Rest of the Country (see footnote 3). Over this period the monthly average spot price exceeded the adjusted average monthly NYMEX price by about $0.04 per barrel. We have also performed this comparison back to the beginning of 1999 and find that the adjusted NYMEX price exceeded the monthly average spot price by about $0.02 per barrel over the entire period January 1999 through December 2002. To illustrate the highest potential cost to industry, we chose the $0.02 per barrel increment of NYMEX over spot as the basis for our benefit and cost estimates.

In estimating the impact of a change to NYMEX valuation, we made several assumptions in addition to the $0.02 per barrel increment. First we assumed that 50 percent of all Federal barrels would be valued under the non-arm's-length provisions. Then, because there are four non-arm's-length benchmarks in the Rocky Mountain Region and only the third benchmark would rely on NYMEX prices, we assumed that 25 percent of all Federal barrels that are valued under the benchmarks would be valued under each of the benchmarks and hence only 25 percent of those barrels would rely on NYMEX prices. (None of the other three benchmarks would change.) Thus 12½ percent of all Federal barrels would be valued under the third non-arm's-length benchmark. We also assumed that the royalty rate is one-eighth, and that volumes taken in kind (these are from Wyoming only) would be about 4,000 barrels per day. We then subtracted the volumes taken in kind and applied the $0.02 per barrel figure to the remaining barrels assumed to be valued under the non-arm's-length provisions. We estimate higher royalty payments to be about $11,738 per year.

(2) Expected Royalty Reduction—

(i) Increase Rate of Return in Non-Arm's-Length Situations From 1 Times the Standard and Poor's BBB Bond Rate to 1.5 times the Standard and Poor's BBB Bond Rate

The MMS does not routinely collect detailed allowance information, such as affiliation between the payor and transporter or the cost components used

to calculate a non-arm's-length allowance rate. Therefore we had to make several broad assumptions in order to estimate the impact of the proposed rule. We assumed that 50 percent of all allowances are non-arms-length. We also assumed that over the life of the pipeline, allowance rates are made up of ⅓ rate of return on undepreciated capital investment, ⅓ depreciation expenses and ⅓ operation, maintenance and overhead expenses. During FY 2001 royalty payors reported transportation allowance deductions of $45,363,394 for Federal oil production. Based on our assumptions, if ½ of the allowance deductions are non-arm's-length, then $22,681,697 of the total allowances fell in this category. If ⅓ of the allowance is made up of the rate of return, this equals $7,560,565. Therefore, we estimated that increasing the basis for the rate of return by 50 percent could result in additional allowance deductions of $3,780,283 ($7,560,565 × .50). Our review of transportation allowances deducted from oil royalties in the States of Wyoming, Colorado, Utah, and New Mexico revealed minimal amounts deducted from onshore leases. Therefore, we assumed that this entire increase would impact offshore royalties only.

(ii) Allow Line Loss as a Component of a Non-Arm's-Length Transportation Allowance

For offshore production, we based this estimate on the total offshore oil royalties for FY 2001 of $2,069,450,791. We assumed that 50 percent of all allowances are non-arms-length, and that oil pipeline losses are 0.2 percent of the volume of the production. Therefore, before making the further adjustments discussed below, we estimated this change could result in additional transportation allowances of $2,069,451 per year ($2,069,450,791 × .50 × .002). For onshore production we used total onshore oil royalties for FY 2001 of $252,575,890. We assumed that 50 percent of all allowances are non-arm's-length, and that oil pipeline losses are 0.2 percent of the volume of the production. Therefore, before making the further adjustments discussed below, we estimated this change could result in additional transportation allowances of $252,576 per year ($252,575,890 × .50 × .002).

We also needed to recognize that substantial volumes of offshore production are taken in kind and are not subject to the regulations regarding transportation. We estimated that between 50,000 barrels of oil per day (BOPD) and 180,000 BOPD may be taken in kind. The wide variance in this estimate is caused by the approximately 130,000 BOPD which may be taken in kind and placed into the Strategic Petroleum Reserve. Based on daily offshore Federal production of 222,100 BOPD, the amount of oil transportation subject to these regulations could range from a high of 77 percent of the production to a low of 19 percent of the production. [(222,100 − 50,000) / 222,100 = 77%; (222,100 − 180,000) / 222,100 = 19%]. Applying the high and low range factors for oil taken in kind, this could result in additional transportation allowance deductions for offshore leases ranging from $393,196 ($2,069,451 × 19%) to $1,593,477 ($2,069,451 × 77%) per year.

(iii) Allow Quality Bank Administration Fees As a Component of an Arm's-Length and a Non-Arm's-Length Transportation Allowance

For offshore oil production, we based our estimate on the total offshore oil royalty volume for FY 2001 of 81,066,567 barrels. We also estimated that quality bank administrative fees were $0.002 per barrel. We estimated that allowing such fees could result in additional offshore transportation allowances of $162,133 (81,066,567 × $0.002) per year before considering the effects of oil taken in kind. Applying the high and low range factors for oil taken in kind, this could result in additional transportation allowance deductions ranging from $30,805 ($162,133 − 19%) to $124,842 ($162,133 − 77%) per year. For onshore production we used the onshore royalty volume for FY 2001 of 9,496,181 barrels. Allowing such fees could result in additional allowances of $18,992 (9,496,181 × $0.002)

(iv) Allow Line Fill As a component of an Arm's-Length and a Non-Arm's-Length Transportation Allowance

For offshore oil production, we based this estimate on the total offshore oil royalty volume for FY 2001 of 81,066,567 barrels. We estimated that line fill costs ranged from $0.02 to $0.05 per barrel. We then estimated that this factor could result in additional transportation allowances of $1,621,331 (81,066,567 × $0.02) to $4,053,328 (81,066,567 × $0.05) before considering the effects of oil taken in kind. Applying the high and low range factors for oil taken in kind, this could result in additional offshore transportation allowance deductions ranging from $308,052 ($1,621,331 × 19%) to $3,121,062 ($4,053,328 × 77%) per year. For Onshore production we estimated that this factor could result in additional transportation allowances of $189,924 (9,496,181 × $0.02) to $474,809 (9,496,181 × $0.05).

Allow the Cost of a Letter of Credit As a Component of an Arm's-Length Transportation Allowance

Again we assumed that 50% of allowances were at arm's length. We again based the estimate on the total offshore oil royalty volume for FY 2001 of 81,066,567 barrels. We estimated that letter of credit costs ranged from $0.02 to $0.05 per barrel. We thus estimated that this could result in additional transportation allowances of $810,666 (81,066,567 × $0.02 × .5) to $2,026,664 (81,066,567 × $0.05 × .5). Applying the high and low range factors for oil taken in kind, this could result in additional offshore transportation allowance deductions ranging from $154,027 ($810,666 × 19%) to $1,560,531 ($2,026,664 × 77%) per year. For Onshore production we estimated that this factor could result in additional transportation allowances of $94,962 (9,496,181 × $0.02 ×.5) to $237,405 (9,496,181 × $0.05 × .5).

(vi) Royalty Reduction Summary, items (i)–(v)—Additional Deductions for Allowances

We estimate that between $4,666,363 and $10,180,195 in additional transportation allowances could be deducted from OCS lease royalties based on an increased rate of return and permissibility of line losses for non-arm's-length allowances; permissibility of quality bank administration fees and line fill costs for both arm's-length and non-arm's-length allowances; and permissibility of letter of credit costs for arm's-length allowances. Also, for these same items we estimate that between $556,454 and $983,782 of additional transportation allowances may be deducted from Onshore Federal lease royalties.

(3) Cost—Administration—

(i) System Modifications To Reflect NYMEX Pricing Basis

We believe any increases in administrative costs related to changes in non-arm's-length valuation procedures would be minimal. These procedures involve NYMEX prices, which are readily available at no cost from numerous sources. They also involve determination of spot price differentials at various locations. We believe that anyone who uses the non-arm's-length provisions of the current rule already has access to the needed publications and exchange agreements. For some lessees, modification of computer programs related to royalty

calculation and payment may be needed. We think that only about 50 of the approximately 800 Federal oil royalty payors would use the non-arm's-length provisions and thus might need to do some reprogramming. Using an estimated cost of $5,000 for each such payor to do its reprogramming, the added one-time cost would be $250,000.

(ii) Proposal of a Location Differential Under 206.112(c)(1))

We anticipate that, in a very few cases, companies may request approval of proposed differentials when less than 20 percent of the crude oil is transported or exchanged from the lease. These requests would have to: (1) Be in writing; (2) identify specifically all leases involved, the record title or operating rights owners of those leases, and the designees for those leases; (3) completely explain all relevant facts, including informing MMS of any changes to relevant facts that occur before MMS responds to their request; (4) include copies of all relevant documents; (5) provide the company's analysis of the issue(s), including citations to all relevant precedents (including adverse precedents); and (6) suggest the proposed differential. We estimate that there will be two such requests annually. We estimate the annual burden for these requests would be 660 hours (2 × 330), including record keeping. Based on a per-hour cost of $50, we estimate the cost to industry is $33,000.

B. State and Local Governments

This rule will not impose any additional burden on local governments. MMS estimates that States impacted by this rule may experience changes in royalty collections as indicated below:

(1) Expected Increased Royalty Revenues

States receiving revenues from offshore Outer Continental Shelf Lands Act Section 8(g) leases would share in a portion of the estimated additional $4,303,913 to $11,658,663 in royalties that would accrue annually from the "rest of the country" under the proposed valuation methodology. Based on each 8(g) State's share of total offshore royalties for FY 2001 and their 8(g) disbursement percentage, we estimate the States' 8(g) share to be between $26,363 and $71,119. Onshore States would receive additional revenue of $317,682.

The State of California would share in a portion of the estimated $2,120,650 increase to $2,120,650 decrease in royalties accruing from California. We estimate that royalties accruing to the State of California for onshore production would range from an increase of about $524,317 to a decrease of about $524,317. We further estimate that its 8(g) share would range from an increase of about $53,692 to a decrease of about $53,692. For Alaska we estimate that its 8(g) share would range from an increase of about $157,680 to a decrease of about $157,680, with no onshore impact. For the Rocky Mountain Region, we estimate an increase in the States' share of royalty revenues of about $5,869 per year.

(2) Expected Royalty Decreases—Increased Rate of Return and Inclusions of Line Loss, Quality Bank Administration Fees, Line Fill and Letters of Credit as Components of Allowance Costs

We estimate that between $33,785 and $73,705 in additional transportation allowances may be deducted from the States' share of Federal royalties for OCS 8(g) leases. In addition, we estimate that between $278,227 and $491,891 may be deducted from the States' share of onshore Federal lease royalties.

C. Federal Government

Because many of the changes in the proposed rule are technical clarifications and others are relatively minor changes to the valuation mechanisms, the impacts to the Federal Government should be minimal, especially in administration.

(1) Expected Royalty Increase—From Use of NYMEX Pricing

The Federal Government would receive an estimated $4,303,913, to $11,658,663 in royalties each year from the "rest of the country," of which affected States would receive a portion. We estimate the Federal share of offshore royalties to be between $3,642,186 and $10,952,180 and the Federal share of onshore royalties at $317,682. For California we estimate the range of royalty impacts to be from a decrease of $1,542,630 to an increase of $1,542,630 per year. For Alaska, we estimate the range of royalty impacts to be from a decrease of $426,320 to an increase of $426,320 per year. For the Rocky Mountain Region, we estimate an increase in royalty revenues of about $5,869 per year of the estimated additional $11,738 in royalties accruing to production from the affected States.

(2) Expected Royalty Decreases—Increased Rate of Return and Inclusions of Line Loss, Quality Bank Administration Fees, Line Fill and Letters of Credit as Components of Allowance Costs

We estimate that between $4,632,578 and $10,106,490 per year in additional transportation allowances may be deducted from Federal OCS royalties and between $278,227 and $491,891 from onshore royalties.

(3) Cost—Proposal of a Location Differential Uunder 206.112(c)

We anticipate that companies may request approval of proposed differentials when they transport or exchange less than 20 percent of the crude oil from the lease. In processing these requests MMS would have to: (1) Respond in writing; (2) verify all leases involved the record title or operating rights owners of those leases, and the designees for those leases; (3) completely explain all relevant facts; (4) obtain copies of all relevant documents; (5) analyze the issue(s), including citations to all relevant precedents (including adverse precedents); and (6) potentially defend our determination. For the above written requests, we estimate that there will be two responses annually. We estimate that the annual burden for these requests is 660 hours (2 × 330), including record keeping. Based on a per-hour cost of $50, we estimate the cost to the Federal Government is $33,000.

D. Summary of Royalty Impacts and Costs to Industry, State and Local Governments, and the Federal Government.

In the table, a negative numbers means a reduction in payment or receipt of royalties or a reduction in costs. A positive number means an increase in payment or receipt of royalties or an increase in costs. For the purpose of calculation of the net expected change in royalty impact, we have assumed that the average for royalty increases or decreases would be the midpoint of the proposed range.

SUMMARY OF COSTS AND ROYALTY IMPACTS

Description	Costs and royalty increases or royalty decreases	
	First year	Subsequent years
A. Industry		
(1) Royalty Increase based on using the revised NYMEX pricing.	Rocky Mtn Region: $11,738 California: −$2,120,650 to $2,120,650 Alaska: −$584,000 to $584,000 Rest of Country: −$4,303,913 to $11,658,663	Rocky Mountain Region: $11,738. California: −$2,120,650 to $2,120,650. Alaska: −$584,000 to $584,000. Rest of Country: −$4,303,913 to $11,658,663.
(2) Royalty Decrease—Increased Allowable Costs.	−$5,222,817 to −$11,163,977	−$5,222,817 to −$11,163,977.
(3) Net Expected Change in Royalty Payments from Industry.	−$200,371	−$200,371.
(4) Expected Range of Royalty Impact	−$9,552,976 to $9,152,234	−$9,552,976 to $9,152,234.
(5) Administrative Cost—reprogramming of systems and submitting location differential requests.	$283,000	$33,000.
B. State and Local Governments		
(1) Royalty Increase—increased royalty revenue in terms of the States' share of Federal royalties.	Rocky Mtn. Region: $5,869 California: −$578,009 to $578,009 Alaska: −$157,680 to $157,680 Rest of Country: $344,045 to $388,801	Rocky Mtn. Region: $5,869. California: −$578,009 to $578,009. Alaska: −$157,680 to $157,680. Rest of Country: $344,045 to $388,801.
(2) Royalty Decrease—Increased Allowable Costs in terms of the States' share of Federal royalties.	8(g) States: −$33,785 to −$73,705 All Other States: −$278,227 to −$491,891	8(g) States: −$33,785 to −$73,705. All Other States: −$278,227 to −$491,891.
(3) Net Expected Change to Royalty Payments to States.	−$66,512	−$66,512.
(4) Expected Range of Royalty Impact	−$951,371 to $818,347	−$951,371 to $818,347.
C. Federal Government		
(1) Royalty Increase—increased royalty revenues net of the States' share.	Rocky Mtn Region: $5,869 California: −$1,542,630 to $1,542,630 Alaska: −$426,320 to $426,320 Rest of Country: $3,959,868 to $11,269,862	Rocky Mtn Region: $5,869. California: −$1,542,630 to $1,542,630. Alaska: −$426,320 to $426,320. Rest of Country: $3,959,868 to $11,269,862.
(2) Royalty Decrease—Increased Allowable Costs net of the States' share.	−$4,910,805 to −$10,598,381	−$4,910,805 to −$10,598,381.
(3) Net Expected Change in Royalty Payment to the Federal Government.	−$133,859	−$133,859.
(4) Expected Range of Royalty Impacts	−$8,601,605 to $8,333,887	−$8,601,605 to $8,333,887.
(5) Cost of administrating location differential requests.	$33,000	$33,000.

3. Regulatory Planning and Review, Executive Order 12866

In accordance with the criteria in Executive Order 12866, this proposed rule is not an economically significant regulatory action as it does not exceed the $100 million threshold. The Office of Management and Budget (OMB) has made the determination under Executive Order 12866 to review this proposed rule because it raises novel legal or policy issues.

1. This proposed rule will not have an annual effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of Government. MMS has evaluated the costs of this rule, and estimates that industry would incur additional administrative costs of approximately $283,000 in the first year of implementation, and $33,000 in additional administrative costs in subsequent years. The Federal Government would incur $33,000 each year in additional administrative costs.

2. This proposed rule will not create inconsistencies with other agencies' actions.

3. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

4. This proposed rule will raise novel legal or policy issues. See proposed modifications in the *Provisions of This Proposed Rule* in the attached Threshold Analysis.

4. Regulatory Flexibility Act

I certify that this proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. See the above Analysis titled "Summary of Costs and Royalty Impacts."

Your comments are important. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions in this rule, call 1–800–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for

retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

5. Small Business Regulatory Enforcement Act (SBREFA)

This proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

1. Does not have an annual effect on the economy of $100 million or more. See the above Analysis titled "Summary of Costs and Royalty Impacts."

2. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

3. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

6. Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

1. This proposed rule will not significantly or uniquely affect small governments. Therefore, a Small Government Agency Plan is not required.

2. This proposed rule will not produce a Federal mandate of $100 million or greater in any year; *i.e.*, it is not a significant regulatory action under the Unfunded Mandates Reform Act. The analysis prepared for Executive Order 12866 will meet the requirements of the Unfunded Mandates Reform Act. See the above Analysis titled "Summary of Costs and Royalty Impacts."

7. Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings), Executive Order 12630

In accordance with Executive Order 12630, this proposed rule does not have significant takings implications. A takings-implication assessment is not required.

8. Federalism, Executive Order 13132

In accordance with Executive Order 13132, this proposed rule does not have federalism implications. A federalism assessment is not required. It will not substantially and directly affect the relationship between the Federal and State governments. The management of Federal leases is the responsibility of the Secretary of the Interior. Royalties collected from Federal leases are shared with State governments on a percentage basis as prescribed by law. This proposed rule would not alter any lease management or royalty sharing provisions. It would determine the value of production for royalty computation purposes only. This proposed rule would not impose costs on States or localities. Costs associated with the management, collection and distribution of royalties to States and localities are currently shared on a revenue receipt basis. This proposed rule would not alter that relationship.

9. Civil Justice Reform, Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this proposed rule will not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

10. Paperwork Reduction Act of 1995

This proposed rule contains new information collection requirements that we have submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, we invite the public and other Federal agencies to comment on any aspect of the reporting burden.

Submit your comments by fax (202) 395–6566 or e-mail (*OIRA_docket@omb.eop.gov*) to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior (OMB Control Number 1010–NEW).

Send copies of your comments to Sharron L. Gebhardt, Regulatory Specialist, Records and Information Management Team, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, the MMS courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov*. Include the title of the information collection and the OMB Control number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

OMB has up to 60 days to approve or disapprove this collection of information but may respond after 30 days. Therefore, public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. However, we will consider all comments received during the comment period for this notice of proposed rulemaking.

Information Collection Burden

The annual reporting burden is 1608 hours. We expect approximately 40 responses from 7 Federal lessees to submit the required information. The burden estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Using an average cost of $50 per hour, the total cost to respondents is $80,400.

Proposed 30 CFR part 206 subpart C	Reporting and recordkeeping requirements	Burden hours per responses	Annual number of responses	Annual burden hours
206.103(b)(4)	If you demonstrate to MMS's satisfaction that paragraphs (b)(1) through (b)(3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.	330	1	330
206.112(a)(2)(ii) ..	For oil that you exchange between your lease and the market center (or between any intermediate points between those locations) under an exchange agreement that is not at arm's length, you must obtain approval from MMS for a location and quality differential.	330	1	330
206.112(c)(1)	If you transport or exchange (or both transport and exchange) less than 20 percent of the crude oil produced from your lease between the lease and a market center, you must propose to MMS a differential between the lease and the market center for the portion of the oil that you do not transport or exchange * * *.	330	2	660

Proposed 30 CFR part 206 subpart C	Reporting and recordkeeping requirements	Burden hours per responses	Annual number of responses	Annual burden hours
210.53(c)(1) and (2),	On the Form MMS–2014, the operator must report the following information on separate lines: (1) The share of the production the operator purchased from each working interest owner and the associated royalty payment; and (2) The operator's own share of production and the associated royalty payment.	8	36	288
Total			40	1608

Public Comment Policy. The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Before submitting an ICR to OMB, PRA Section 3506(c)(2)(A) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA also requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. We have not identified non-hour cost burdens for this information collection. If you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this proposed information collection and address them in our final rule. We will provide a copy of the ICR to you without charge upon request and the ICR will also be posted on our Web site at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRInfColl.htm.*

We will post all comments in response to this proposed information collection on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm_*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

11. National Environmental Policy Act

This proposed rule deals with financial matters and has no direct effect on Minerals Management Service decisions on environmental activities. Pursuant to 516 DM 2.3A (2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement "policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case." Section 1.3 of the same appendix clarifies that royalties and audits are considered to be routine financial transactions that are subject to categorical exclusion from the NEPA process.

12. Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments "(59 FR 22951) and 512 DM 2, we have evaluated potential effects on Federally recognized Indian tribes and have determined that the changes we are proposing for Federal leases may have an impact on Indian leases. As such, by **Federal Register** Notice (68 FR 7086) dated February 12, 2003, MMS reopened the comment period on the January 2000 supplementary proposed rule for valuing crude oil produced from Indian leases. The comment period closed on April 14, 2003. MMS will determine how to proceed with that rulemaking based on comments received.

13. Effects on the Nation's Energy Supply, Executive Order 13211

In accordance with Executive Order 13211, this regulation does not have a significant effect on the nation's energy supply, distribution, or use. The proposed changes better reflect the way industry accounts internally for its oil valuation and provides a number of technical clarifications. None of these changes should impact significantly the way industry does business, and accordingly should not affect their approach to energy development or marketing. Nor does the proposed rule otherwise impact energy supply, distribution, or use.

14. Consultation and Coordination With Indian Tribal Governments, Executive Order 13175

In accordance with Executive Order 13175, this proposed rule does not have tribal implications that impose

substantial direct compliance costs on Indian tribal governments

15. Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the 56 rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading; for example, § 204.200 What is the purpose of this part?) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov*.

List of Subjects in 30 CFR Parts 206 and 210

Continental shelf, Government contracts, Mineral royalties, Natural gas, Petroleum, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: June 23, 2003.

Rebecca W. Watson,

Assistant Secretary for Land and Minerals Management.

For the reasons set forth in the preamble, subpart C of part 206 and subpart B of part 210 of title 30 of the Code of Federal Regulations are amended as follows:

1. The authority for part 206 continues to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 396a *et seq.*, 2101 *et seq.*; 30 .S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. Section 206.101 is amended as follows:

A. In the definition of "affiliate" in paragraph (2), the words "between 10 and 50 percent" are removed and the words "10 through 50 percent" are added in their place.

B. The definition of "index pricing" is removed.

C. The definition of "index pricing point" is removed.

D. The definition of "MMS-approved publication" is revised.

E. A new definition of "NYMEX price" is added in alphabetical order.

F. A new definition of "prompt month" is added in alphabetical order.

G. A new definition of "roll" is added in alphabetical order.

H. The definition of "spot price" is removed.

I. The definition of "trading month" is revised.

J. A new definition of "WTI differential" is added in alphabetical order.

The additions and revisions to § 206.101 read as follows:

§ 206.101. What definitions apply to this subpart?

* * * * *

MMS-approved publication means a publication MMS approves for determining WTI differentials.

* * * * *

NYMEX price means the average of the New York Mercantile Exchange (NYMEX) settle prices for light sweet crude oil delivered at Cushing, Oklahoma, calculated as follows:

(1) Sum the prices published for each day during the calendar month of production (excluding weekends and holidays) for oil to be delivered in the prompt month corresponding to each such day; and

(2) Divide the sum by the number of days on which those prices are published (excluding weekends and holidays).

* * * * *

Prompt month means the nearest month of delivery for which NYMEX futures prices are published during the trading month.

* * * * *

Roll means an adjustment to the NYMEX price that is calculated as follows:

$$\text{Roll} = .6667 \times (P_0 - P_1) + .3333 \times (P_0 - PP_2),$$

where: P_0 = the average of the daily NYMEX settlement prices for deliveries during the prompt month that is the same as the month of production, as published for each day during the trading month for which the month of production is the prompt month; P_1 = the average of the daily NYMEX settlement prices for deliveries during the month following the month of production, published for each day during the trading month for which the month of production is the prompt month; and P_2 = the average of the daily NYMEX settlement prices for deliveries during the second month following the month of production, as published for each day during the trading month for which the month of production is the prompt month. Calculate the average of the daily NYMEX settlement prices using only the days on which such prices are published (excluding weekends and holidays).

(1) *Example 1—Falling Market:* The month of production for which you must determine royalty value is March. March was the prompt month (for year 2003) from January 22 through February 20. April is the first month following the month of production, and May is the second month following the month of production. P_O therefore is the average of the daily NYMEX settlement prices for deliveries during March published for each business day between January 22 and February 20. P_1 is the average of the daily NYMEX settlement prices for deliveries during April published for each business day between January 22 and February 20. P_2 is the average of the daily NYMEX settlement prices for deliveries during May published for each business day between January 22 and February 20. In this example, assume that P_O = $28.00 per bbl, P_1 = $27.70 per bbl, and P_2 = $27.10 per bbl. In this example (a declining market), Roll = .6667 − ($28.00 − $27.70) + .3333 − ($28.00 − 27.10) = $.20 + $.30 = $.50. You add this number to the NYMEX price.

(2) *Example 2—Rising Market:* The month of production for which you must determine royalty value is July. July 2003 is the prompt month from May 21 through June 20. August is the first month following the month of production, and September is the second month following the month of production. P_O therefore is the average of the daily NYMEX settlement prices for deliveries during July published for each business day between May 21 and June 20. P_1 is the average of the daily NYMEX settlement prices for deliveries during August published for each business day between May 21 and June 20. P_2 is the average of the daily NYMEX settlement prices for deliveries during September published for each business day between May 21 and June 20. In this example, assume that P_O = $28.00 per bbl, P_1 = $28.90 per bbl, and P_2 = $29.50 per bbl. In this example (a rising market), Roll = .6667 × ($28.00 − $28.90) + .3333 × ($28.00 − $29.50) = (− $.60) + (− $.50) = − $1.10. You add this negative number to the NYMEX

price (effectively a subtraction from the NYMEX price).

* * * * *

Trading month means the period extending from the second business day before the 25th day of the second calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the second business day before the last business day preceding the 25th day of that month) through the third business day before the 25th day of the calendar month preceding the delivery month (or, if the 25th day of that month is a non-business day, the third business day before the last business day preceding the 25th day of that month), unless the NYMEX publishes a different definition or different dates on its official Web site, www.nymex.com, in which case the NYMEX definition will apply.

* * * * *

WTI differential means the average of the daily mean differentials for location and quality between a grade of crude oil at a market center and West Texas Intermediate (WTI) crude oil at Cushing, Oklahoma, published for each day for which price publications perform surveys for deliveries during the production month, calculated over the number of days on which those differentials are published (excluding weekends and holidays). Calculate the daily mean differentials by averaging the daily high and low differentials for the month in the selected publication. Use only the days and corresponding differentials for which such differentials are published.

Example. Assume the production month is March 2003. Industry trade publications perform their price surveys and determine differentials during January 26 through February 25 for oil delivered in March. (California is an exception. In California, the survey covers the calendar month of February for March deliveries.) The WTI differential (for example, the West Texas Sour crude at Midland, Texas, spread versus WTI) applicable to valuing oil produced in the March 2003 production month would be determined using all the business days for which differentials are published during the period January 26 through February 25.

3. In § 206.103, paragraph (e) is amended as follows:

A. The paragraph heading is revised to read "Production delivered to your refinery and NYMEX price is an unreasonable value."

B. In paragraph (e)(1)(ii), the words "an index price" are removed and the words "the NYMEX price" are added in their place.

C. In paragraph (e)(1)(iii), the words "the index price" are removed and the words "the NYMEX price" are added in their place, and paragraphs (a) through (d) are revised to read as follows:

§ 206.103. How do I value oil that is not sold under an arm's-length contract?

* * * * *

(a) *Production from leases in California or Alaska.* Value is the NYMEX price, adjusted for applicable location and quality differentials and transportation costs under § 206.112.

(b) *Production from leases in the Rocky Mountain Region.* This paragraph (b) provides methods and options for valuing your production under different factual situations. You must consistently apply paragraph (b)(1) or (b)(2) or (b)(3) to value all of your production from the same unit, communitization agreement, or lease (if the lease is not part of a unit or communitization agreement) that you cannot value under § 206.102 or that you elect under § 206.102(d) to value under this section.

(1) If you have an MMS-approved tendering program, you must value oil produced from leases in the area the tendering program covers at the highest winning bid price for tendered volumes.

(i) The minimum requirements for MMS to approve your tendering program are:

(A) You must offer and sell at least 30 percent of your production from both Federal and non-Federal leases in that area under your tendering program; and

(B) You must receive at least three bids for the tendered volumes from bidders who do not have their own tendering programs that cover some or all of the same area.

(ii) If you do not have an MMS-approved tendering program, you may elect to value your oil under either paragraph (b)(2) or (b)(3) of this section. After you select either paragraph (b)(2) or (b)(3) of this section, you may not change to the other method more often than once every 2 years, unless the method you have been using is no longer applicable and you must apply one of the other paragraphs. If you change methods, you must begin a new 2-year period.

(2) Value is the volume-weighted average of the gross proceeds accruing to the seller under your or your affiliates' arm's-length contracts for the purchase or sale of production from the field or area during the production month.

(i) The total volume purchased or sold under those contracts must exceed 50 percent of your and your affiliates' production from both Federal and non-Federal leases in the same field or area during that month.

(ii) Before calculating the volume-weighted average, you must normalize the quality of the oil in your or your affiliates' arm's-length purchases or sales to the same gravity as that of the oil produced from the lease.

(3) Value is the NYMEX price, adjusted for applicable location and quality differentials and transportation costs under § 206.112.

(4) If you demonstrate to MMS' satisfaction that paragraphs (b)(1) through (b)(3) of this section result in an unreasonable value for your production as a result of circumstances regarding that production, the MMS Director may establish an alternative valuation method.

(c) *Production from leases not located in California, Alaska, or the Rocky Mountain Region.* (1) Value is the NYMEX price, plus the roll, adjusted for applicable location and quality differentials and transportation costs under § 206.112.

(2) If the MMS Director determines that use of the roll no longer reflects prevailing industry practice in crude oil sales contracts or that the most common formula used by industry to calculate the roll changes, MMS may terminate or modify use of the roll under paragraph (c)(1) of this section at the end of each 2-year period following [EFFECTIVE DATE OF THE FINAL RULE] through notice published in the **Federal Register** not later than 60 days before the end of the 2-year period. MMS will explain the rationale for terminating or modifying the use the roll in this notice.

(d) *Unreasonable NYMEX-based value.* If MMS determines that the NYMEX price does not represent a reasonable royalty value in any particular case, MMS may establish reasonable royalty value based on other relevant matters.

* * * * *

4.–5. In § 206.104, the section heading and paragraphs (a) introductory text, (a)(3), (c), and (d) are revised to read as follows:

§ 206.104. What publications are acceptable to MMS?

(a) MMS periodically will publish in the **Federal Register** a list of acceptable publications based on certain criteria, including, but not limited to:

* * * * *

(3) Publications that use adequate survey techniques, including development of estimates based on daily

surveys of buyers and sellers of crude oil; and

* * * * *

(c) MMS will reference the tables you must use in the acceptable publications.

(d) MMS may revoke its approval of a particular publication if it determines that the prices or differentials published in the publication do not accurately represent market values or differentials.

6. In § 206.109, paragraph (b) is revised to read as follows:

§ 206.109. When may I take a transportation allowance in determining value?

* * * * *

(b) *Transportation allowances and other adjustments that apply when value is based on NYMEX prices.* If you value oil using the NYMEX price under § 206.103, MMS will allow an adjustment for certain location and quality differentials and certain costs associated with transporting oil as provided under § 206.112.

* * * * *

7. Section 206.110 is amended by:

A. In paragraph (a), in the first sentence, removing the words "under that contract" and adding in their place the words "as more fully explained in paragraph (b) of this section."

B. Redesignating paragraphs (b) through (e) as paragraphs (d) through (g).

C. Adding new paragraphs (b) and (c) to read as follows:

§ 206.110. How do I determine a transportation allowance under an arm's-length transportation contract?

* * * * *

(b) You may deduct any of the following actual costs incurred for transporting oil. You may not use as a deduction any cost that duplicates all or part of any other cost that you use under this paragraph:

(1) The amount that you pay under your arm's-length transportation contract or tariff.

(2) Fees paid (either in volume or in value) for actual or theoretical line losses.

(3) Fees paid to a pipeline owner for administration of a quality bank.

(4) The cost of carrying on your books as inventory a volume of oil that the pipeline operator requires you to maintain, and that you do maintain, in the line as line fill. You must calculate this cost as follows:

(i) Multiply the volume that the pipeline requires you to maintain, and that you do maintain, in the pipeline by the value of that volume for the current month calculated under § 206.102 or § 206.103, as applicable; and

(ii) Multiply the value calculated under paragraph (b)(4)(i) of this section by the monthly rate of return, calculated by dividing the rate of return specified in § 206.111(i)(2) by 12.

(5) Fees paid to a terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance.

(6) Fees paid for short-term storage (30 days or less) incidental to transportation as required by a transporter.

(7) Fees paid to pump oil to another carrier's system or vehicles as required under a tariff.

(8) Transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when you do not sell the oil at the hub. These fees do not include title transfer fees.

(9) Payments for a volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower-gravity crude oil for transportation.

(10) Costs of securing a letter of credit, or other surety, that the pipeline requires a shipper to maintain.

(c) You may not deduct any costs that are not actual costs of transporting oil, including but not limited to the following:

(1) Fees paid for long-term storage (more than 30 days).

(2) Administrative, handling, and accounting fees associated with terminalling.

(3) Title and terminal transfer fees.

(4) Fees paid to track and match receipts and deliveries at a market center or to avoid paying title transfer fees.

(5) Fees paid to brokers.

(6) Fees paid to a scheduling service provider.

(7) Internal costs, including salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production.

(8) Gauging fees.

* * * * *

8. Section 206.111 is amended by:

A. Revising the section heading and paragraph (a).

B. Revising paragraph (b) introductory text and adding new paragraphs (b)(6) and (b)(7).

C. In paragraph (h)(5), removing the words "who owned the system on June 1, 2000" and adding in their place the words "from whom you bought the system. Include in the depreciation schedule any subsequent reinvestment."

D. In paragraph (i)(2), in the first sentence, adding the words "1.5" before the words "the industrial bond yield index for Standard and Poor's BBB rating."

The revisions and additions to the section heading and paragraphs (a) and (b) read as follows: § 206.111. How do I determine a transportation allowance if I do not have an arm's-length transportation contract or arm's-length tariff?

(a) This section applies if you or your affiliate do not have an arm's-length transportation contract, including situations where you or your affiliate provide your own transportation services. Calculate your transportation allowance based on your or your affiliate's reasonable, actual costs for transportation during the reporting period using the procedures prescribed in this section.

(b) Your or your affiliate's actual costs include:

* * * * *

(6) To the extent not included in costs identified in paragraphs (d) through (j) of this section, you may also deduct the following actual costs. You may not use any cost as a deduction that duplicates all or part of any other cost that you use under this section:

(i) Volumetric adjustments for actual (not theoretical) line losses.

(ii) The cost of carrying on your books as inventory a volume of oil that the pipeline operator requires you to maintain, and that you do maintain, in the line as line fill. You must calculate this cost as follows:

(A) Multiply the volume that the pipeline requires you to maintain, and that you do maintain, in the pipeline by the value of that volume for the current month calculated under § 206.102 or § 206.103, as applicable; and

(B) Multiply the value calculated under paragraph (b)(6)(ii)(A) of this section by the monthly rate of return, calculated by dividing the rate of return specified in § 206.111(i)(2) by 12.

(iii) Fees paid to a non-affiliated terminal operator for loading and unloading of crude oil into or from a vessel, vehicle, pipeline, or other conveyance.

(iv) Transfer fees paid to a hub operator associated with physical movement of crude oil through the hub when you do not sell the oil at the hub. These fees do not include title transfer fees.

(v) A volumetric deduction to cover shrinkage when high-gravity petroleum (generally in excess of 51 degrees API) is mixed with lower-gravity crude oil for transportation.

(7) You may not deduct any costs that are not actual costs of transporting oil, including but not limited to the following:

(i) Fees paid for long-term storage (more than 30 days).

(ii) Administrative, handling, and accounting fees associated with terminalling.

(iii) Title and terminal transfer fees.

(iv) Fees paid to track and match receipts and deliveries at a market center or to avoid paying title transfer fees.

(v) Fees paid to brokers.

(vi) Fees paid to a scheduling service provider.

(vii) Internal costs, including salaries and related costs, rent/space costs, office equipment costs, legal fees, and other costs to schedule, nominate, and account for sale or movement of production.

(viii) Theoretical line losses.

(ix) Gauging fees.

* * * * * *

9. Section 206.112 is revised to read as follows:

§ 206.112. What adjustments and transportation allowances apply when I value oil production from my lease using the NYMEX price?

This section applies when you use the NYMEX price to calculate the value of production under § 206.103. As specified in this section, adjust the NYMEX price to reflect the difference in value between your lease and Cushing, Oklahoma.

(a) If you transport or exchange (or both transport and exchange) all or a portion of the oil produced from your lease to a market center, adjust the NYMEX price for that oil under paragraph (a)(1) or (a)(2) of this section, or both, as applicable. If you further exchange your oil at arm's length from the market center to Cushing, Oklahoma, use paragraph (a)(3)(i) of this section to adjust the NYMEX price for that oil between the market center and Cushing, Oklahoma. Otherwise, use paragraph (a)(3)(ii) to determine that adjustment. Use paragraph (b) or (c) of this section to value the oil that you do not transport or exchange to a market center.

(1) For oil that you transport between your lease and the market center (or between any intermediate points between those locations), you may take an allowance for the cost of transporting that oil between the relevant points as determined under § 206.110 or § 206.111, as applicable.

(2)(i) For oil that you exchange at arm's length between your lease and the market center (or between any intermediate points between those locations), you must adjust the NYMEX price by the applicable location and quality differentials derived from your arm's-length exchange agreement.

(ii) For oil that you exchange between your lease and the market center (or between any intermediate points between those locations) under an exchange agreement that is not at arm's length, you must obtain approval from MMS for a location and quality differential. Until you obtain such approval, you may use the location and quality differential derived from that exchange agreement. If MMS prescribes a different differential, you must apply MMS' differential to all periods for which you used your proposed differential. You must pay any additional royalties owed resulting from using MMS' differential plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

(3)(i) For oil that you exchange at arm's length between the market center and Cushing, Oklahoma, you must adjust the NYMEX price by the applicable location and quality differentials derived from your arm's-length exchange agreement.

(ii)(A) For oil that you do not exchange at arm's length between the market center and Cushing, Oklahoma, you must use the WTI differential published in an MMS-approved publication for the market center nearest your lease, for crude oil most similar in quality to your production, as your location and quality differential between the market center and Cushing, Oklahoma. (For example, for sweet crude oil produced in the Rocky Mountain Region, use the WTI differential for Wyoming Sweet crude oil at Guernsey, Wyoming.)

(B) After you select an MMS-approved publication to calculate the WTI differential under paragraph (a)(3)(i) of this section, you may not select a different publication more often than once every 2 years, unless the publication you use is no longer published or MMS revokes its approval of the publication. If you are required to change publications, you must begin a new 2-year period.

(4) You must determine the adjustments to the NYMEX price under paragraphs (a)(1) through (a)(3) of this section for each arrangement under which you dispose of production from your lease. For the oil disposed of under any one arrangement, you may not claim a transportation allowance between the same points between which you exchange that oil.

(5) *Example.* Assume that a Federal lessee produces crude oil from a lease near Artesia, New Mexico. Further assume that the lessee transports the oil to Roswell, New Mexico, and then exchanges the oil to Midland, Texas. Assume the lessee refines the oil received in exchange at Midland. Assume that the NYMEX price is $30.00/bbl, adjusted for the roll; that the WTI differential (Cushing to Midland) is −$.10/bbl; that the lessee's exchange agreement between Roswell and Midland results in a location and quality differential of −$.08/bbl; and that the lessee's actual cost of transporting the oil from Artesia to Roswell is $.40/bbl. In this example, the royalty value of the oil is $30.00 − $.10 − $.08 − $.40 = $29.42/bbl.

(b) If you transport or exchange (or both transport and exchange) at least 20 percent, but not all, of your oil produced from the lease to a market center, determine the value of the portion of the oil produced from your lease that is valued using the NYMEX price under § 206.103 but that is not transported or exchanged (or both transported and exchanged) to or through a market center as follows:

(1) Determine the volume-weighted average of the adjusted NYMEX prices determined under paragraph (a) of this section for the oil that you do transport or exchange (or both transport and exchange) from your lease to a market center.

(2) Use that volume-weighted average NYMEX price as the value of the oil that you do not transport or exchange (or both transport and exchange) from your lease to a market center.

(3) *Example.* Assume the same facts as in the example in paragraph (a)(5) of this section, except that the lessee transports and exchanges to Midland 40 percent of the production from the lease near Artesia, and transports the remaining 60 percent directly to its own refinery in Ohio. In this example, the 40 percent of the production would be valued at $29.42/bbl, as explained in the previous example. Under this paragraph (b), the other 60 percent also would be valued at $29.42/bbl.

(c)(1) If you transport or exchange (or both transport and exchange) less than 20 percent of the crude oil produced from your lease between the lease and a market center, you must propose to MMS a differential between the lease and the market center for the portion of the oil that you do not transport or exchange (or both transport and exchange) to a market center. Use the WTI differential between the market center and Cushing, Oklahoma, to adjust

the NYMEX price between those two points.

(2) You may use the differential you propose until MMS prescribes a different differential.

(3) If MMS prescribes a different differential, you must apply MMS" differential to all periods for which you used your proposed differential. You must pay any additional royalties owed resulting from using MMS" differential plus late payment interest from the original royalty due date, or you may report a credit for any overpaid royalties plus interest under 30 U.S.C. 1721(h).

(d)(1) If you adjust for location and quality differentials or for transportation costs under paragraphs (a), (b), or (c) of this section, also adjust the NYMEX price for quality based on premia or penalties determined by pipeline quality bank specifications at intermediate commingling points or at the market center if those points are downstream of the royalty measurement point approved by MMS or BLM, as applicable. Make this adjustment only if and to the extent that such adjustments were not already included in the location and quality differentials determined from your arm's-length exchange agreements.

(2) If the quality of your oil as adjusted is still different from the quality of the representative crude oil at the market center after making the quality adjustments described in paragraphs (a), (b), (c), and (d)(1) of this section, you may make further gravity adjustments using posted price gravity tables. If quality bank adjustments do not incorporate or provide for adjustments for sulfur content, you may make sulfur adjustments, based on the quality of the representative crude oil at the market center, of 2.5 cents per one-tenth percent difference in sulfur content, unless MMS approves a higher adjustment.

10. Section 206.118 is deleted.

11. In § 206.119, the first sentence of paragraph (c) is removed.

12. Section 206.121, the section heading and the first sentence are revised to read as follows:

§ 206.121. Is there any grace period for reporting and paying royalties?

You may adjust royalties reported and paid for the three production months beginning June 1, 2000, without liability for late payment interest if those adjustments are reported before [THE DATE THAT IS 90 DAYS AFTER THE PUBLICATION OF THE FINAL RULE IN THE **Federal Register**].

* * * * *

PART 210—FORMS AND REPORTS

Subpart B—Oil, Gas, and Sulphur—General

13. The authority for part 210 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 396d, 2107; 30 U.S.C. 189, 190, 359, 1023, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.*; and 44 U.S.C. 2506(a).

14. In § 210.53, a new paragraph (c) is added to read as follows:

§ 210.53. Reporting instructions.

* * * * *

(c) This paragraph applies if an operator under a joint operating agreement is also a designee and reports and pays royalty on behalf of one or more working interest owners from whom the operator buys production. On the Form MMS–2014, the operator must report the following information on separate lines:

(1) The share of the production the operator purchased from each working interest owner and the associated royalty payment; and

(2) The operator's own share of production and the associated royalty payment.

[FR Doc. 03–21217 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 326

RIN 0710–AA54

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Proposed rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to amend its regulations to adjust its Class I civil penalties under the Clean Water Act and the National Fishing Enhancement Act. The adjustment of civil penalties to account for inflation is required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Since we have not made any adjustments to our Class I civil penalties to account for inflation since 1989, we are proposing to make the initial 10 percent increase under this Act. The proposed adjusted Class I civil penalty under the Clean Water Act will not exceed $11,000 per violation, with a maximum civil penalty amount of $27,500. Under the National Fishing Enhancement Act, the proposed adjusted Class I civil penalty will not exceed $11,000 per violation. Increasing the maximum amounts of the Class I civil penalties to account for inflation will maintain the deterrent effects of those penalties.

DATES: Submit comments on or before October 6, 2003.

ADDRESSES: You may submit comments electronically, by mail, or through hand delivery or courier. Send electronic comments via e-mail to *cecwor@usace.army.mil*. Electronic comments should be submitted in ASCII format, to ensure that those comments can be read. Please avoid the use of special characters or encryption when providing electronic comments. Mail comments to HQUSACE, ATTN: CECW–OR, 441 "G" Street, NW., Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson at 202–761–4598 or access the U.S. Army Corps of Engineers Regulatory Home Page at *http://www.usace.army.mil/inet/functions/cw/cecwo/reg/*.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1989, (54 FR 50709) the Corps issued final regulations at 33 CFR 326.6 for procedures for the initiation and administration of Class I administrative penalty orders under section 309(g) of the Clean Water Act and section 205(e) of the National Fishing Enhancement Act. Under section 309(g) of the Clean Water Act, Class I civil penalties can be assessed for violations of the conditions and limitations of permits issued under section 404 of the Clean Water Act. Under section 205(e) of the National Fishing Enhancement Act, Class I civil penalties can be assessed for violations of permits issued section 10 of the Rivers and Harbors Act of 1899 and/or section 404 of the Clean Water Act for the construction and management of artificial reefs. Our current regulations at 33 CFR 326.6(a)(1) reflect the Class I civil penalty amounts stated in those statutes.

As stated in 33 CFR 326.6(a)(1), Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act cannot exceed $10,000 per violation, with a maximum Class I civil penalty of $25,000. In that subsection, the Class I civil penalty for a violation of a permit issued in accordance with section 205 of the National Fishing Enhancement Act cannot exceed $10,000 for each violation.

According to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, each Federal agency is required to adjust for inflation the maximum civil monetary penalties that can be imposed pursuant to that agency's statutory authorities.

Under section 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, the initial adjustment is limited to 10 percent of the civil penalty amount. Since we have not made any inflation adjustments for the Class I civil penalties since 33 CFR 326.6 was promulgated in 1989, we are limited to a 10 percent increase for these civil penalties. Therefore, we are proposing to increase the Class I civil penalty for violations of the conditions and limitations of Clean Water Act section 404 permits to $11,000 per violation, with a $27,500 maximum penalty. We are also proposing to increase the Class I civil penalty for violations of permits for the construction and management of artificial reefs under section 205 of the National Fishing Enhancement Act of 1984 to $11,000 per violation.

Administrative Requirements

Plain Language

In compliance with the principles in the President's Memorandum of June 1, 1998, regarding plain language, this preamble is written using plain language. The use of "we" in this notice refers the Corps and the use of "you" refers to the reader. We have also used the active voice, short sentences, and common everyday terms except for necessary technical terms.

Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Production Act, 44 U.S.C. 3501 *et seq.* The proposed rule adjusts our civil penalty amounts to comply with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. Therefore, this action is not subject to the Paperwork Reduction Act.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. For the Corps regulatory program under section 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, and section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, the current OMB approval number for information requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003, which expires December 31, 2004).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Corps must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that the proposed rule is not a "significant regulatory action" because it does not meet any of these four criteria. The proposed rule adjusts the Class I civil penalty amounts for violations of permit conditions and limitations for activities that involve discharges of dredged or fill material into waters of the United States and/or the construction and management of artificial reefs in navigable waters.

Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires the Corps to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." The phrase "policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

The proposed rule does not have Federalism implications. We do not believe that adjusting the Class I civil penalties to account for inflation will have substantial direct effects on the States, on the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. The proposed rule does not impose new substantive requirements. In addition, the proposed change will not impose any additional substantive obligations on State or local governments since it is applicable only to permittees who violate the conditions and limitations of certain Corps permits. Therefore, Executive Order 13132 does not apply to this proposed rule.

Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, a small entity is defined as : (1) A small business based on Small Business Administration size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; or (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the proposed rule on small entities, we believe that this action will not have a significant economic impact on a substantial number of small entities. Currently, the Corps regulations at 33 CFR 326.6 set the Class I civil penalties under section 309(g)(2)(A) at no more than $10,000 per violation, with a maximum of $25,000. The current Class I civil penalties under section 205 of the National Fishing Enhancement Act can be up to $10,000 per violation. The proposed rule increases those Class I civil penalties by 10 percent, in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended. The proposed rule is consistent with current agency practice, does not impose new substantive requirements, and therefore would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the Corps to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the final rule an explanation why that alternative was not adopted. Before the Corps establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, they must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Currently, in 33 CFR 326.6, the Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act may not exceed $10,000 per violation, with a $25,000 maximum. A Class I civil penalty under section 205(e) of the National Fishing Enhancement Act may not exceed $10,000 for each violation. The proposed rule adjusts those civil penalties, through 10 percent increases, to account for inflation, as required by the Federal Civil Penalties Adjustment Act of 1990, as amended. The proposed rule is consistent with current agency practice, does not impose new substantive requirements and therefore does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, the proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, we have determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of section 203 of UMRA.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The proposed rule does not involve technical standards. Therefore, we did not consider the use of any voluntary consensus standards.

Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the proposed rule on children, and explain why the regulation is preferable to other potentially effective and reasonably feasible alternatives.

The proposed rule is not subject to this Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, it does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires agencies to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The phrase "policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

The proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Currently, in 33 CFR 326.6, the Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act may not exceed $10,000 per violation, with a $25,000 maximum for any Class I civil penalty. In that subsection of the Corps regulations, a civil penalty under section 205(e) of the National Fishing Enhancement Act may not exceed $10,000 for each violation. The proposed rule adjusts those civil

penalties through a 10 percent increase to account for inflation, as required by the Federal Civil Penalties Adjustment Act of 1990, as amended. It is generally consistent with current agency practice and does not impose new substantive requirements. Therefore, Executive Order 13175 does not apply to this proposed rule.

Environmental Documentation

The Corps prepares appropriate environmental documentation, including Environmental Impact Statements when required, for all permit decisions. Therefore, environmental documentation under the National Environmental Policy Act is not required for this proposed rule. The proposed rule only revises our Class I civil penalties to account for inflation, as required by the Federal Civil Penalties Adjustment Act of 1990, as amended. Appropriate environmental documentation has been, or will be, prepared for each permit action that is subjected to the Class I administrative penalty process.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The proposed rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

The proposed rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities. The proposed rule relates solely to the adjustments to Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act and section 205(e) of the National Fishing Enhancement Act to account for inflation.

Executive Order 13211

The proposed rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The proposed rule relates solely to the adjustments to Class I civil penalties under section 309(g)(2)(A) of the Clean Water Act and section 205(e) of the National Fishing Enhancement Act to account for inflation. The proposed rule is consistent with current agency practice, does not impose new substantive requirements and therefore will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 33 CFR Part 326.

Administrative practice and procedure, Intergovernmental relations, Investigations, Law enforcement, Navigation (Water), Water pollution control, Waterways.

Dated: August 11, 2003.

Robert H. Griffin,

Major General, U.S. Army, Deputy Commander.

For the reasons set forth in the preamble, the Corps is proposing to amend 33 CFR 326.6(a)(1) as follows:

PART 326—Enforcement

1. The authority citation for 33 CFR part 326 is revised to read as follows:

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2104; 33 U.S.C. 1319; 28 U.S.C. 2461 note.

2. Amend § 326.6 by revising paragraph (a)(1) to read as follows:

§ 326.6 Class I administrative penalties.

(a) Introduction. (1) This section sets forth procedures for initiation and administration of Class I administrative penalty orders under section 309(g) of the Clean Water Act, and section 205 of the National Fishing Enhancement Act. Under section 309(g)(2)(A) of the Clean Water Act, Class I civil penalties may not exceed $11,000 per violation, except that the maximum amount of any Class I civil penalty shall not exceed $27,500. Under section 205(e) of the National Fishing Enhancement Act, penalties for violations of permits issued in accordance with that Act shall not exceed $11,000 for each violation.

* * * * *

[FR Doc. 03–21331 Filed 8–19–03; 8:45 am]

BILLING CODE 3710–92–U

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards Board; Accounting for the Costs of Employee Stock Ownership Plans (ESOPs) Sponsored by Government Contractors

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Cost Accounting Standards Board (CASB), Office of Federal Procurement Policy, invites public comments on proposed amendments to the Cost Accounting Standards (CAS), "Cost accounting standard for composition and measurement of pension cost", and "Accounting for the cost of deferred compensation". These proposed amendments address issues concerning the recognition of the costs of Employee Stock Ownership Plans (ESOPs) under Government cost-based contracts and subcontracts. These proposed amendments provide criteria for measuring the costs of ESOPs and their assignment to cost accounting periods. The allocation of a contractor's assigned ESOP costs to contracts and subcontracts is addressed in other Standards. The proposed amendments also clarify that accounting for the costs of ESOPs will be covered by the provisions of "Accounting for the cost of deferred compensation" and not by any other Standard.

DATES: Comments must be in writing and must be received by November 18, 2003.

ADDRESSES: Due to delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted to:

casb@omb.eop.gov. Please put the full body of your comments in the text of the electronic message and also as an attachment readable in either MS Word or Corel WordPerfect. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395–5105. Please cite CASB Docket No. 00–03A in your comment.

FOR FURTHER INFORMATION CONTACT: Robert A. Burton, Associate Administrator, Office of Federal Procurement Policy (telephone: (202) 395–3302).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Cost Accounting Standards Board's rules, regulations and Standards are codified at 48 CFR chapter 99. The Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires the Board, prior to the establishment of any new or revised Cost Accounting Standard, to complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of government contracts as a result of the adoption of a proposed Standard (*e.g.*, promulgation of a Staff Discussion Paper.)
2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).
3. Promulgate a Notice of Proposed Rulemaking (NPRM).
4. Promulgate a Final Rule.

This ANPRM is issued by the Board in accordance with the requirements of 41 U.S.C. 422(g)(1)(B) and (C), and, is step two of the four-step process.

B. Background and Summary

Prior Promulgations

The CAS and Federal Acquisition Regulation (FAR) have dealt with issues associated with ESOPs ever since ESOPs became popular in the late 1970s as a vehicle for providing incentive compensation to employees, as well as a means for corporations to finance their capital requirements. The popularity of ESOPs was greatly enhanced by their inclusion in the Employee Retirement Income Security Act of 1974 (ERISA) and by several beneficial changes to the Federal Income Tax Code in that same time period.

At first, the issues that arose were regarded as allowability matters that were to be treated in the FAR (or one of its predecessors, the Defense Acquisition Regulations or Armed Services Procurement Regulations). The views of the CASB were sought primarily on an advisory basis. However, after issuance of the decision of the Armed Services Board of Contract Appeals (ASBCA) in the "Parsons case," *Ralph Parsons Co.*, ASBCA Nos. 37391, 37946, and 37947, December 20, 1990, 91–1 BCA 23648, reconsideration denied 91–2 BCA 23751, various government commenters suggested to the CASB that ESOP cost measurement and period assignment matters warranted placement on the CASB's agenda. These suggestions were amplified in light of the decision of the ASBCA in *Ball Corp.*, ASBCA No. 49118, April 3, 2000, 00–1 BCA 30864. This position has been reiterated both by the Department of Defense and by some contractors.

The Board first considered issuing an Interpretation of its existing Standards, but then decided that additional research was needed. Various approaches for dealing with ESOP accounting issues were considered by the CASB and other interested parties in the late 1990s. On September 15, 2000, the Board issued a Staff Discussion Paper (SDP) on this topic (65 FR 56008, Sept. 15, 2000).

After the Board reviewed and discussed the public comments received in response to the Staff Discussion Paper, the staff was asked to perform additional research. The staff explored three different options: (a) Modify CAS 9904.415 so that the contribution to the ESOP could be treated as deferred compensation for government contract costing purposes; (b) Develop a separate Standard based on the "contribution approach;" and, (c) Develop a separate Standard based on Generally Accepted Accounting Principles (GAAP). The Board has tentatively decided to proceed with option (a).

Public Comments

The Board received sixteen (16) sets of public comments in response to the Staff Discussion Paper.

These comments came from contractors, government agencies, professional associations, industry associations, and individuals.

The majority of respondents agreed on several issues related to ESOPs for government contract costing purposes:

1. Generally Accepted Accounting Principles (GAAP), in particular SOP 93–6, do not provide adequate guidance for measuring ESOP costs.
2. There should be no distinction between "pension" and "deferred compensation" ESOPs in the measurement of ESOP costs.
3. The fair value of the stock should be established when title to the stock is transferred to the ESOP.
4. ESOP costs should be measured by the cost incurred by the contractor rather than the value of compensation received by employees.
5. The form of payment used to make distribution of ESOP benefits to employees is not relevant to the measurement of a contractor's ESOP costs.

There was, however, no strong consensus as to whether CAS 9904.412 or 9904.415 (or both) should be amended, or whether a new Standard should be adopted regarding ESOP costs.

This proposal is based upon continuing research performed by the staff of the Cost Accounting Standards Board, public comments received in response to the SDP, and deliberations of the Board. The various comments and proposals are discussed in greater detail under Section E, Public Comments. The Board would like to thank all the organizations and individuals who provided comments and information in response to the Staff Discussion Paper.

Conclusions

While there have been distinctions drawn in the past between "pension" and "deferred compensation" ESOPs, the Board has concluded that all ESOP costs should be treated consistently as deferred compensation.

Based on the comments received in response to the Staff Discussion Paper, the Board has also determined that specific guidance is required regarding the measurement of ESOP contributions and the assignment of ESOP costs to cost accounting periods. Specifically, the Board believes that the contractor's ESOP cost should be measured by the contribution made to the ESOP, not by the value of compensation received by the employee. In addition, the Board believes that these costs should be systematically assigned to the cost accounting periods in which ESOP awards are made to employees.

Benefits

CAS has never explicitly dealt with the cost of ESOPs. These costs can be significant. However, there have been numerous efforts by contracting parties to apply the provisions of existing CAS, principally CAS 9904.412 and 9904.415, to the ESOP cost determination process. These efforts have resulted in a distinction between "pension ESOPs" and "deferred compensation ESOPs" in Government contract cost accounting.

This distinction is not recognized in other fields of accounting.

Historically, many controversies regarding accounting for ESOP costs have been resolved at the local level by entering into an advance agreement between the contracting parties. Nevertheless, this is a cost accounting issue that has not been adequately dealt with within the framework of existing CAS. The Board recognizes that the diversity of current practices is not conducive to uniformity and consistency in cost measurement, assignment, or allocation of costs—the stated objectives of CAS.

The Board believes that these amendments will lead to a significant increase in uniformity and consistency in this important area of contract cost measurement. The Board also believes that the benefits of such improvements in contractor cost accounting practices should be substantial, and should greatly outweigh any added costs.

Summary Description of Proposed Amendments

The proposed amendments make clear that all ESOP cost determinations will become subject to CAS 9904.415. In addition, CAS 9904.412 is proposed to be amended to exclude the coverage of the costs of ESOPs that meet the definition of a pension plan.

The proposed amendments adopt the "contribution" approach for ESOP cost measurement. Using this approach, contractors' contributions to ESOPs for a cost accounting period become the basis for ESOP cost determination. That part of the contribution that is assignable to the cost accounting period would be recognized as deferred compensation cost for the period. This recognition as an assignable cost is, in turn, based on the identification of ESOP awards that have been made to employees during the period that qualify as deferred compensation in accordance with the corresponding definition incorporated in the Standard. In essence, the ESOP costs assignable to a cost accounting period are that part of the annual contribution that is attributable to the awards made to employees during the period.

The proposed transition method is designed to ensure that the adoption of this proposal will not cause changes to existing arrangements that contracting parties may have developed to deal with their existing ESOP cost determinations. In particular, the intent is that contractor/government advance agreements for *existing* ESOPs should not be disturbed. The emphasis is on making sure the procedures incorporated in this proposal are applied only to the measurement, assignment and allocation of costs of new ESOPs that are established after this proposal becomes effective, if ultimately adopted by the CASB.

C. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this proposal, because these amendments impose no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, *et seq.* The records required by this proposed rule are normally maintained by contractors that claim reimbursement of ESOP costs under government contracts.

D. Executive Order 12866 and the Regulatory Flexibility Act

Because the transition provision incorporated into this proposal ensures that arrangements for determining costs for existing ESOPs are not changed, the economic impact of these amendments, if any, on contractors is expected to be minor.

As a result, the Board has determined that this rule will not result in the promulgation of a "major rule" under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this proposal does not have a significant effect on a substantial number of small entities because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis in accordance with the Regulatory Flexibility Act of 1980.

E. Public Comments

This proposal is based upon responses to the CASB SDP entitled "Accounting for the Cost of Employee Stock Ownership Plans" that was published in the **Federal Register** on September 15, 2000 (65 FR 56008). Altogether, 16 responses were received, classified as follows:

Industry	7
Professional associations and others	4
Industry associations	3
Government Agencies	2
Total:	16

The SDP asked six specific questions and the responses to these questions are discussed below. In addition to these responses, several commenters submitted additional comments on topics not covered directly by the six questions; others summarized in general terms the more significant features of their detailed responses. The comments received and the Board's actions are summarized below.

Question 1

Does GAAP (SOP 93–6) provide sufficient guidance for accounting for the costs of ESOPs for Government contract costing purposes? Please discuss the rationale of your answer to this question.

Comments: Thirteen commenters acknowledged that SOP 93–6 does not provide adequate guidance for accounting for ESOPs for Government contracting purposes. Most of these commenters recognized that GAAP is not intended to address Government contracting issues.

Nevertheless, three of these commenters, the National Defense Industrial Association (NDIA), Boeing and Darrell J. Oyer & Co., recognized that GAAP contains some useful guidance. One of these commenters, Darrell J. Oyer & Company, explains this as follows:

> GAAP is not intended to address government contracting issues and does not do so in SOP 93–6. GAAP does provide some useful concepts concerning ESOPs; however, SOP 93–6 cannot blindly be applied to government contracting. Each aspect of SOP 93–6 must be considered on a case-by-case basis consistent with the principles of government contract costing.* * *

Two commenters, McDermott, Will & Emery and the Project on Government Oversight (POGO), thought that GAAP may provide adequate guidance for Government contract costing purposes. McDermott, Will & Emery commented favorably on the comprehensive treatment of the topic in SOP 93–6 and then stated that if "* * * the cost accounting standards for government contracts purposes were to differ materially from the requirements of SOP 93–6, contractors could be placed in an extremely awkward, illogical, and perhaps untenable position." This commenter also pointed out that any deviation from GAAP would require companies to keep two sets of books.

POGO expressed concerns about differing treatments for pension and deferred compensation ESOPs, valuation of shares acquired by ESOPs, and interest expense incurred by leveraged ESOPs as areas of potential abuse. POGO was principally concerned with the apparent current practice in Government contract cost accounting where "* * * interest expense may be passed on to contractors (and ultimately taxpayers) as a form of "employee compensation." POGO contrasted this practice with SOP 93–6 requirements that stipulate that "* * * interest expense incurred in financing leveraged

ESOPs is clearly reflected on financial statements as such."

However, POGO characterized its opinion that contractors should be required to account for ESOP costs using SOP 93–6, as "tentative." POGO stated:

> POGO is pleased to see that the Board is addressing an important Government contract accounting topic. This may be an area where the use of GAAP is appropriate; something we understand that some Government contractors have urged upon the Board for some time (although apparently not with respect to ESOPs). We would strongly recommend that the CAS Board, whatever its ultimate decision, consider the need to promote greater uniformity among Government contractors in this area, and to place greater importance on the financial implications for taxpayers, rather than those of contractors.

Response: The CAS Board recognizes that there are instances when GAAP is not appropriate for measuring costs on Government contracts. This is due, in part, to significant differences between the objectives of CAS and those of GAAP. CAS seeks to promote consistency and uniformity in the measurement, assignment and allocation of costs on Government contracts, while the broad objectives of GAAP relate to the fair presentation of income, cash flows, assets, liabilities and stockholders' equity in financial statements. GAAP does not embrace the CAS concern for appropriate accumulation and estimating of costs to specific cost objectives. The CAS Board believes that ESOPs are an instance where GAAP would be inappropriate for determining costs on Government contracts for the following reasons:

1. For contract costing purposes, the Government recognizes and reimburses a contractor's actual costs, as defined at 48 CFR 9904.401–30(a)(2). As stated in the May 1992 CASB "Restatement of Objectives, Policies and Concepts" (57 FR 31036), the Standards are intended to "provide criteria for the allocation to cost objectives of the costs of resources used." In the case of ESOPs, the costs of resources used are the amount of the company's contribution to the ESOP. The contribution represents the contractor's actual total costs to acquire shares that are awarded to employees; that is, the amount of contractor resources used to provide the deferred compensation to the employee. The value of the stock at distribution to employee accounts generally does not reflect a contractor's actual costs.

2. The cost for a leveraged ESOP measured using GAAP changes from period to period based on fluctuations in stock prices. The Government should not share in fluctuations of stock prices, whether up or down, that occur during the period between the time when an ESOP trust originally acquires shares and when those shares are distributed to employee accounts. The policy that the Government should not participate in the fluctuation of stock prices is already embodied in CAS 9904.415 related to stock options. The Preamble to CAS 9904.415, states:

> If the market price of the stock on the date of distribution is used, the Government, in effect, would be sharing in financial risk taking with the contractor. Subsequent fluctuations of the price of the stock should not influence the measurement of the award.

3. Congressional intent is to encourage the use of ESOPs. However, if the measurement date prescribed by GAAP were used for Government contracting purposes, it would significantly limit the use of leveraged ESOPs by Government contractors, particularly contractors whose stock is not widely traded. Government contractors could still use ESOPs, but would potentially suffer from financial disadvantages if leveraging caused a material effect on a company's debt to equity ratio. Often the establishment of a leveraged ESOP adversely affects a company's debt to equity ratio since the value of the company's stock may drop significantly after the leveraged ESOP is established due to the ESOP debt recognized on a contractor's books. Over a period of time, as the debt is paid off, the value of the stock can be expected to return to pre-ESOP levels. In the commercial marketplace, where the price a company receives for its product is not totally based on actual costs incurred, the company does not necessarily have to reduce the price of its products to reflect smaller deferred compensation awards resulting from the drop in stock value. This is not the case with Government cost-based contracting, since the contractor is only reimbursed for its actual costs incurred.

If GAAP were to be adopted for measuring the cost of a leveraged ESOP, the fair value of stock would become the basis for reimbursement of ESOP costs under Government contracts. Since the fair value of stock of Government contractors, whose stock is not widely traded, is lower after the initiation of a leveraged ESOP, the use of GAAP measurement requirements would impair those Government contractors' ability to recover sufficient monies to cover the debt payment of the leveraged ESOP.

The CAS Board notes there was consensus among the respondents to its SDP that the cost of ESOPs should be measured as the amount of the contractor's total contribution.

Question 2

Do you believe that distinguishing between "pension" and "deferred compensation" ESOP type is useful in the Government contract costing environment and that this feature should be included in any future CAS promulgation on this topic? Please include the rationale for your answer to this question.

Comments: With one exception (the DOD Inspector General), all commenters agreed that the distinction between "pension" and "deferred compensation" ESOPs serves no useful purpose. They described such distinction as either irrelevant, confusing, meaningless, artificial, specious or not useful. McDermott, Will & Emery described the relevance of the distinction as follows:

> ESOP companies are currently able to pick and choose whether they are better off being pension ESOPs or deferred compensation ESOPs by merely including or not including a meaningless provision in their plan documents offering participants distribution in the form of a life annuity. In practice, virtually no participants ever want a distribution in this form; and if they do, they are better off taking a lump sum distribution and purchasing their own annuity to fit their own needs than accepting the "one size fits all" annuity that the plan would provide. Whether this distribution form is present in the plan document has no logical connection whatsoever with the determination of the amount and timing of costs for government contracts purposes.

The Section of Public Contract Law of the American Bar Association (ABA) and Abt Associates Inc. attributed the concept of different types of ESOPs to a Government attempt to disallow interest costs related to ESOP financing. This view was expressed by the Public Contract Law Section of the ABA:

> Disputes have arisen over whether an ESOP is more appropriately accounted for under CAS 412 or under CAS 415. The primary driver in these disputes is the so-called "interest component" of the employer's contribution. In other words, should a portion of the employer's contribution be disallowed because the trust uses it to repay interest on borrowings? Under CAS 412, pension cost is measured by the entirety of an employer's contribution to the pension trust, even though the trustee may use it to repay borrowings. Under CAS 415, governing the costs of deferred compensation, the Government can argue that the portion of the employer's contribution that the trust uses to pay interest should not be included in measuring the employer's cost.

The DOD Inspector General (DOD IG) provided the following comments in

support of its argument that there should be a distinction in the treatment of "pension" and "deferred compensation" ESOPs for Government contract costing purposes:

> ESOPs that meet the requirements of a qualified pension plan are subject to laws and regulations governing pension costs that should be considered in the cost accounting standards. ESOPs that do not meet the requirements of a qualified retirement plan should be addressed in CAS 9904.415 as deferred compensation subject to the individual contracts between the employer and the employee.

The Board notes that Boeing recognized that a uniform approach is needed for all ESOPs for cost measurement purposes, but was not specific as to the section of CAS that should be amended for that purpose. Although, the DOD IG stated that a distinction should be made between "pension" and "deferred compensation" ESOPs for Government contract costing purposes, several other commenters, including DynCorp and AIA, indicated that the "status quo" is acceptable and no further action by the Board is needed. Since the current practice recognizes, in effect, a distinction between these two types of ESOPs, then acceptance of the "status quo" would also imply that these commenters believe that distinguishing between the two types of ESOPs would be useful in the government contract costing environment. Therefore, the notion that there are two different types of ESOPs, "pension" and "deferred compensation" ESOPs, may have more support than indicated by the sole affirmative response received to this question.

Response: It is widely recognized that the two different types of ESOPs, "pension" and "deferred compensation" ESOPs, are recognized only in the Government contract costing environment. The Government was compelled to make this distinction as the result of the ASBCA's decision in *Ralph Parsons Co.*, supra. The ASBCA held that since FAR 31.205–6(j)(8) (ESOPs) is included in the pension section of the cost principle, it does not apply to ESOPs that do not meet the definition of a pension. Therefore, those ESOPs that do not meet the definition of a pension are considered to be deferred compensation covered by FAR 31.205–6(k), which incorporates CAS 9904.415 in its entirety.

The DOD IG's comments about qualified pensions refer to ERISA, not to CAS. The only distinction between pensions and deferred compensation in the CAS is the requirement that pension benefits be payable for life. This distinction is not found in ERISA. The Board does not agree that ERISA qualification for pension plans should be the sole determining factor for which CAS should be applied in the measurement and assignment of ESOP costs for Government contracting purposes.

The Board agrees with the majority of commenters that no distinction should be made between "pension" and "deferred compensation" ESOPs in measurement and assignment of cost. Therefore, the proposed amendments would eliminate this distinction in the measurement and assignment of ESOP costs. As a consequence, a significant step will be taken to improve uniformity and consistency in the cost accounting practices among Government contractors in like circumstances—a primary objective of the Board. Furthermore, the current differences in the recognition and measurement of the interest element in the ESOP cost calculations among the two different types of ESOPs will be eliminated.

In summary, the Board proposes that CAS 9904.412 be amended to ensure that no ESOP is subject to the provisions of that Standard. At the same time, it is proposed that CAS 9904.415 be amended so that all the ESOPs become subject to that Standard.

Question 3

If you believe that a distinction between ESOP types is useful and should be included in any future CAS promulgations, do you also believe that amendments, or an interpretation, to CAS 9904.412 and/or CAS 9904.415 is the appropriate action for the Board to take?

Comments: Since in response to Question 2, only one commenter indicated that a distinction between ESOP types is useful, it might have been expected that a single response would be obtained to this question. However, a total of nine commenters provided their opinion as to which Standard should be changed. Of the remaining seven commenters, five responded that no amendments or clarifications to either CAS 9904.412 or 9904.415 are required, and the other two (ESOP Association and Abt Associates Inc.) provided no specific response to this question.

Of the nine commenters who recommended that changes are required, three stated that CAS 9904.415 should be amended (DOD, ABA and POGO); two believe that CAS 9904.412 should be amended (Parsons, Brinkerhoff and United Technologies), three expressed no preference as to which standard should be amended (NDIA, Darrell J. Oyer & Co., and McDermott, Will & Emery); and one (the DOD IG) recommended that both CAS 9904.412 and 9904.415 be amended.

In addition, two commenters (United Technologies and DynCorp), who consider ESOPs defined contribution plans, believe that, given the *Ball* decision, CAS 9904.412 and 9904.415 would produce the same results.

The Boeing response reflects the view of the five commenters who thought that no amendments to existing Standards are required (Boeing, Lockheed Martin, AIA, ALCOA, DynCorp):

> We believe the current provisions of CAS 9904.412 and 9904.415 are adequate if properly interpreted. If clarification is desired to avoid interpretive disputes, amendments or interpretations to existing standards could be useful * * *.

Response: The purpose of this question was to solicit opinions as to what format any Board action in this area should take. However, the responses that were obtained varied greatly and did not clearly point to any specific course of action.

Regarding the main thrust of the question, whether it would be more appropriate to deal with ESOPs under CAS 9904.412 or 9904.415, the Board believes that ESOPs have more in common with deferred compensation plans than with pension plans. Therefore, the Board proposes amendments to CAS 9904.415 to provide for the measurement and assignment of ESOP costs, and to CAS 9904.412 to clearly state that it is not applicable to ESOPs, including those plans which provide benefits that are "payable for life."

Question 4

Do you believe that the fair value of the shares released by an ESOP to individual employee accounts should be established at the date when the title to these shares is transferred to the ESOP or should it be the date when the shares are committed to be released to employee accounts? If you would like to propose a different date or a modified version of the two dates referred to above, please explain.

Comments: The majority of commenters (13 of 16) indicated that for shares transferred to an ESOP trust, the fair value should be established at the date when the title to these shares is transferred to the trust. Several commenters expanded on this basic response. It was frequently stressed that the contribution to the trust could be in the form of cash as well as shares, and thus, the critical date should be the date when an irrevocable transfer is made to

the trust either in cash or in stock. These commenters, including two Government agencies, probably would agree with the following, rather general, statement made by Parsons Brinkerhoff:

> If the company's contribution is made in stock, we believe the fair value of shares should be as of the date the shares are transferred, or committed to be transferred, to the ESOP. The fair value of shares at any later time, *e.g.*, at the time committed to be released to employee accounts, would not be relevant in determining allocability as a contract cost. If the company's contribution is made in cash, excluding payments made to the Trust to re-purchase shares from the Trust, then the entire amount of the payment, regardless of how characterized, *e.g.*, contribution, loan principal, interest, or dividends on a qualified security, is allocable to the government.

McDermott, Will & Emery, however, does not agree with this type of response and indicated that the CAS Board should strive for conformance with GAAP and, in particular, with SOP 93–6. McDermott, Will & Emery believes that the proper valuation date should be the date when the shares are committed to be released to employee accounts. McDermott, Will & Emery stated:

> The fair value of shares should be established in accordance with the GAAP rule of SOP 93–6, *i.e.*, at the time the shares are committed to be released to employee accounts.
>
> Establishing it at any other time would put the CAS out of synch with GAAP, creating a highly undesirable and unnecessary "two sets of books" environment for government contractors.

Response: The Board agrees with the majority of commenters and is proposing to adopt the "contribution" approach to ESOP cost accounting as the best measure of a contractor's cost to provide the ESOP benefit awarded to employees. Therefore, the value of shares transferred to an ESOP should be established as of the date when the title to the shares is transferred to the trust.

The Board also notes that in adopting this approach, risks associated with changes in the market value of stock or property subsequent to the date the title to such stock or property is transferred to the ESOP, either up or down, are borne by the ESOP trust. From this perspective, the government does not bear any risk or perceived conflict of interest associated with share price fluctuations after the contribution has been made as pointed out by Lockheed Martin. This is consistent with the current CAS 9904.415 provision regarding stock options.

The Board believes that any other measurement date, such as that suggested by McDermott, Will & Emery, would not reflect the contractor's cost in providing the ESOP benefit and would, therefore, be inappropriate for the measurement of costs for government contracting purposes. McDermott, Will & Emery's rationale is based on its desire to avoid differences between financial accounting and contract cost accounting. As discussed in the Board's response to Question 1, GAAP are not appropriate for determining ESOP costs on Government contracts.

Question 5

For contract costing purposes, should a distinction be made between measurement of the "cost to the company" or measurement of compensation "received by the employee?" Please explain. If a distinction should be made, please also comment on the method that should be used to measure this amount.

Comments: All the commenters who responded to this question either stated directly or implied that a distinction should be made between measurement of "cost to the company" and the measurement of "compensation received by the employee." With one exception (McDermott, Will & Emery), they also all stated that the proper measurement should be the "cost to the company." The line of thought of this majority is exemplified by the following two quotes. First, NDIA stated:

> We firmly believe that the only relevant date is the measurement date of the cost to the company. ESOPs are essentially a defined contribution plan. Thus when the company incurs the cost that is the measurement date. The measurement date based on "received by the employee" is irrelevant.
>
> As a basic principle, no further contract cost or costing consideration exists after the date for the cost to the company. This approach accurately measures the cost to the company. Any attempt to impact contract costs after these events is inappropriate.

The same point of view, in different words, was also expressed by the Public Contract Law section of the ABA:

> The purpose of the proposal is to measure the contractor's cost, not the amount of compensation received by the employee. In a leveraged ESOP, these two will hardly ever be the same. If the contractor contributes $100, and by the time the shares are released the stock has doubled in value, should the contractor's "cost" be $200? We think not.

McDermott, Will & Emery disagreed with the majority response stating that GAAP should prevail for the purpose of Government contract cost accounting in order to maintain consistency between financial and Government contract reporting and to increase contractors' profitability. At the same time, their comments cited a potential weakness in the GAAP methodology for financial reporting purposes. The commenter's justification for this position is stated as follows:

> * * * the GAAP rule, which measures compensation "received by the employee," should govern, so that there is no inconsistency between the GAAP reporting and the government contract cost reporting that is required of these companies. Arguably, the GAAP rule should be reformed, as users of corporate financial statements probably have more interest in what the corporation spent than in what the employees received.
>
> However, so long as government contractors must use the GAAP rule in their audited statements and SEC reports, it is unfair and problematic to require them to use a completely different rule for contract costing purposes which could negatively impact their profitability and their access to working capital.

The scenario that could prove to be detrimental to a contractor under such circumstances is further described by the commenter in response to another question:

> For example, in a leveraged ESOP where the price of a company's stock has *increased* since the time the shares were acquired, if the ESOP company reflects the cost of the shares at the time they were originally acquired in their indirect rates, then that company will have lower revenue from cost based government contracts, but higher pension expense under GAAP. This will both distort and negatively impact the company's profitability and, especially for a smaller business, its ability to obtain funding to support its business with the government.

Response: The Board agrees with the majority of commenters that a distinction exists between measurement of the "cost to the company" and the measurement of "compensation received by the employee." The Board has determined that the relevant concept in the measurement of ESOP costs for Government contracts is the "cost to the company." Therefore, the Board proposes adoption of the "contribution"pproach to ESOP cost measurement.

Regarding the comments of McDermott, Wills & Emery, the Board notes that the use of the "compensation received by the employee" as the measurement of ESOP costs could result in the reimbursements to contractors in excess of their actual costs as defined at CAS 9904.401–30(a)(2). The commenter would have the Board believe that failure to adopt GAAP will unfairly penalize contractors by reducing their revenues. However, under cost-type Government contracts it is intended that the contractor be reimbursed actual costs and, in addition, be paid a negotiated profit. In the commenter's example, the costs submitted by the

contractor for reimbursement would not constitute actual costs incurred, but could include amounts in excess of actual costs. Such inflated amounts would represent additional profit to the contractor, not reimbursement of a contractor's costs. In the subject example, total profit would be enlarged beyond that contemplated in contract negotiations. This enlargement would be contrary to the intent of the contracting parties and would result in increased costs to the Government in the form of a "windfall" profit to the contractor. Conversely, if McDermott, Will & Emery's example is changed to reflect a *decrease* in the price of a company's stock since the shares were acquired by the ESOP, in accordance with GAAP, the company would be reimbursed only for the decreased value of the shares under Government contracts and would likely not recover its actual costs incurred. In such a situation the contractor would be unfairly penalized by reduced profitability and decreased working capital.

Question 6

Should the form of payment of ESOP benefits to the employee make a difference in measuring the cost allocable to Government contracts? If so, how should the cost be determined?

Comments: All of the fourteen commenters who responded to this question were unanimous in their conclusion that the form of payment of ESOP benefits should make no difference in measuring the cost allocable to Government contracts. This response from DOD is fairly typical:

> The form of payment of ESOP benefits to the employee should not make a difference in measuring the cost allocable to Government contracts. The measured cost should be the same whether the benefit is paid in cash, other assets or stock. It should also be the same whether the benefit is paid as a lump sum or over an employee's life. The cost allocable to Government contracts should be based on the cost to the contractor and not on the compensation received by the employee.

Response: The Board agrees with the commenters that the form of payment to employees should not make any difference to the ESOP cost measurement process for government contract costing purposes. The Board notes that neither the value nor form of distribution of ESOP awards to employees determines the contractor's cost of providing the ESOP benefit.

Additional Comments

1. Public Policy Issues

Comments: Several commenters stressed the public policy aspect of ESOPs and, in particular, Congressional support for these plans. These commenters seem to suggest that any Standard on this topic should not interfere with the original Congressional intent of encouraging employee ownership through ESOPs.

Response: The Board believes that the proposed amendments to CAS 9904.415 would not interfere with the intent of Congress.

2. Applicability of the *Ball Corporation* Decision

Comments: Another theme included in the comments was that whatever problems there might have been a few years ago with ESOP cost measurement, these issues have been, in effect, clarified and resolved by the ASBCA in its decision in *Ball Corporation, supra.*

Lockheed Martin Corporation summarized this point of view as follows:

> Court actions resulted in decisions such as the *Ball Corporation* ASBCA case which affirmed that the broad conceptual guidance found in CAS Standards were adequate for the measurement and allocation of ESOP costs. The controversies are basically settled and the courts have established that there is adequate guidance on how to account for ESOP costs.

Response: The Board believes that clarification of the measurement and assignment of ESOP costs is needed to promote uniformity and consistency in accounting for ESOP costs, despite the decision in *Ball Corporation, supra.* That decision did not address the contribution method of measuring ESOP costs incorporated into these proposed amendments. The ASBCA's decision in that case was limited to a determination that the fundamental requirements of the measurement criteria in CAS 9904.415–40(b) had been met by the contractor, that neither CAS 9904.415–50(d) or (e) was applicable in that instance, and that the Government had not demonstrated that the contractor's ESOP contributions failed to represent the present value of the future benefits.

F. Additional Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to this ANPRM. All comments must be in writing and submitted in accordance with the instructions indicated in the **ADDRESSES** section.

List of Subjects in 48 CFR 9904

Government procurement, Cost Accounting Standards.

Angela B. Styles,

Chair, Cost Accounting Standards Board.

Accordingly, for the reasons set forth in the preamble, it is proposed to amend part 9904 as follows:

PART 9904—COST ACCOUNTING STANDARDS

1. The authority citation for part 9904 continues to read as follows:

Authority: Public Law 100–679, 102 Stat 4056, 41 U.S.C. 422

2. Section 9904.412–20 is revised to read as follows:

9904.412–20 Purpose.

(a) The purpose of this Standard 9904.412 is to provide guidance for determining and measuring the components of pension cost. The Standard establishes the basis on which pension costs shall be assigned to cost accounting periods. The provisions of this Cost Accounting Standard should enhance uniformity and consistency in accounting for pension costs and thereby increase the probability that those costs are properly allocated to cost objectives.

(b) This Standard does not cover the cost of Employee Stock Ownership Plan (ESOPs). that meet the definition of a pension plan. Such plans are considered a form of deferred compensation and covered under 9904.415.

3. Section 9904.415–20 is revised to read as follows:

9904.415–20 Purpose.

(a) The purpose of this Standard 9904.415 is to provide criteria for the measurement of the cost of deferred compensation and the assignment of such cost to cost accounting periods. The application of these criteria should increase the probability that the cost of deferred compensation is allocated to cost objectives in a uniform and consistent manner.

(b) This Standard is applicable to the cost of all deferred compensation except the following which are covered in other Cost Accounting Standards:

(1) The cost for compensated personal absence, and

(2) The cost for pension plans that do not meet the definition of an Employee Stock Ownership Plan (ESOP).

4. Section 9904.415–30 is revised to read as follows:

9904.415–30 Definitions.

(a) The following are definitions of terms which are prominent in this

Standard 9904.415. Other terms defined elsewhere in this Chapter 99 shall have the meanings ascribed to them in those definitions unless paragraph (b) of this subsection, requires otherwise.

(1) *Contribution* means the amount paid by a contractor to satisfy the contractor's obligation under a deferred compensation plan. The contribution may be made in cash, stock, or other property, or any combination thereof. Contribution does not include the sale of stock or property by a contractor to a trust.

(2) *Deferred compensation* means an award made by a contractor to compensate an employee in a future cost accounting period or periods for services rendered in one or more cost accounting periods prior to the date of the receipt of compensation by the employee. This definition shall not include the amount of year end accruals for salaries, wages, or bonuses that are to be paid within a reasonable period of time after the end of a cost accounting period.

(3) *Employee Stock Ownership Plan (ESOP)* means any deferred compensation plan designed to invest primarily in the stock of the contractor's corporation including, but not limited to, plans covered by the Employee Retirement Income Security Act (ERISA).

(4) *Fair value* means the amount that a seller would reasonably expect to receive in a current sale between a willing buyer and a willing seller, that is, other than a forced or liquidation sale.

(b) The following modifications of terms defined elsewhere in this Chapter 99 are applicable to this Standard:

(1) *Market value* means the current or prevailing price of a stock or other property as indicated by market quotations.

(2) [Reserved].

5. Section 9904.415–40 is revised to read as follows:

9904.415–40 Fundamental requirement.

(a) The cost of deferred compensation shall be assigned to the cost accounting period in which the contractor incurs an obligation to compensate the employee. In the event no obligation is incurred prior to payment, the cost of deferred compensation shall be the amount paid and shall be assigned to the cost accounting period in which the payment is made.

(b) Measurement of deferred compensation costs.

(1) For deferred compensation other than ESOPs, the deferred compensation cost shall be the present value of the future benefits to be paid by the contractor.

(2) For an ESOP, the deferred compensation cost shall be the amount contributed to the ESOP by the contractor.

(c) The cost of each award of deferred compensation shall be considered separately for purposes of measurement and assignment of such costs to cost accounting periods. However, if the cost of deferred compensation for the employees covered by a deferred compensation plan can be measured and assigned with reasonable accuracy on a group basis, separate computations for each employee are not required.

6. Section 9904.415–50 is revised to read as follows:

9904.415–50 Techniques for application.

(a) The contractor shall be deemed to have incurred an obligation for the cost of deferred compensation when all of the following conditions have been met. However, for awards which require that the employee perform future service in order to receive the benefits, the obligation is deemed to have been incurred as the future service is performed for that part of the award attributable to such future service:

(1) There is a requirement to make the future payment(s) which the contractor cannot unilaterally avoid.

(2) The deferred compensation award is to be satisfied by a future payment of money, other assets, or shares of stock of the contractor.

(3) The amount of the future payment can be measured with reasonable accuracy.

(4) The recipient of the award is known.

(5) If the terms of the award require that certain events must occur before an employee is entitled to receive the benefits, there is a reasonable probability that such events will occur.

(6) For stock options, there must be a reasonable probability that the options ultimately will be exercised.

(b) If any of the conditions in 9904.415–50(a) is not met, the cost of deferred compensation shall be assignable only to the cost accounting period or periods in which the compensation is paid to the employee.

(c) If the cost of deferred compensation can be estimated with reasonable accuracy on a group basis, including consideration of probable forfeitures, such estimate may be used as the basis for measuring and assigning the present value of future benefits.

(d) The following provisions are applicable for plans that meet the conditions of 9904.415–50(a) and the compensation is to be paid in money.

(1) If the deferred compensation award provides that the amount to be paid shall include the principal of the award plus interest at a rate fixed at the date of award, such interest shall be included in the computation of the amount of the future benefit. If no interest is included in the award, the amount of the future benefit is the amount of the award.

(2) If the deferred compensation award provides for payment of principal plus interest at a rate not fixed at the time of award but based on a specified index which is determinable in each applicable cost accounting period; *e.g.*, a published corporate bond rate, such interest shall be included in the computation of the amount of future benefit. The interest rate to be used shall be the rate in effect at the close of the period in which the cost of deferred compensation is assignable. Since that interest rate is likely to vary from the actual rates in future periods, adjustments shall be made in any such future period in which the variation in rates materially affects the cost of deferred compensation.

(3) If the deferred compensation award provides for payment of principal plus interest at a rate not based on a specified index, or not determinable in each applicable year, the

(i) Cost of deferred compensation for the principal of the award shall be measured by the present value of the future benefits of the principal, and shall be assigned to the cost accounting period in which the employer incurs an obligation to compensate the employee; and

(ii) Interest on such awards shall be assigned to the cost accounting period(s) in which the payment of the deferred compensation is made.

(4) If the terms of the award require that the employee perform future service in order to receive benefits, the cost of the deferred compensation shall be appropriately assigned to the periods of current and future service based on the facts and circumstances of the award. The cost of deferred compensation for each cost accounting period shall be the present value of the future benefits of the deferred compensation calculated as of the end of each such period to which such cost is assigned.

(5) In computing the present value of the future benefits, the discount rate shall be equal to the interest rate as determined by the Secretary of the Treasury pursuant to Public Law 92–41, 85 Stat. 97, at the time the cost is assignable.

(6) If the award is made under a plan which requires irrevocable funding for

payment to the employee in a future cost accounting period together with all interest earned thereon, the amount assignable to the period of award shall be the amount irrevocably funded.

(7) In computing the assignable cost for a cost accounting period, any forfeitures which reduce the employer's obligation for payment of deferred compensation shall be a reduction of contract costs in the period in which the forfeiture occurred. The amount of the reduction for a forfeiture shall be the amount of the award that was assigned to a prior period, plus interest compounded annually, using the same Treasury rate that was used as the discount rate at the time the cost was assigned. For irrevocably funded plans, pursuant to 9904.415–50(d)(6), the amount of the reduction for a forfeiture shall be the amount initially funded plus or minus a pro-rata share of the gains and losses of the fund.

(8) If the cost of deferred compensation for group plans measured in accordance with 9904.415–50(c) is determined to be greater than the amounts initially assigned because the forfeiture was overestimated, the additional cost shall be assignable to the cost accounting period in which such cost is ascertainable.

(e) The following provisions are applicable for plans that meet the conditions of 9904.415–50(a) and the compensation is received by the employee in other than money. The measurements set forth in this paragraph constitute the present value of future benefits for awards made in other than money and, therefore, shall be deemed to be a reasonable measure of the amount of the future payment:

(1) If the award is made in the stock of the contractor, the cost of deferred compensation for such awards shall be based on the market value of the stock on the measurement date; *i.e.*, the first date the number of shares awarded is known. If such values are unavailable or not appropriate (thin market, volatile price movements, etc.) an acceptable alternative is the fair value of the stock.

(2) If an award is made in the form of options to employees to purchase stock of the contractor, the cost of deferred compensation of such award shall be the amount by which the market value of the stock exceeds the option price multiplied by the number of shares awarded on the measurement date; *i.e.*, the first date on which both the option price and the number of shares is known. If the option price on the measurement date is equal to or greater than the market value of the stock, no cost shall be deemed to have been incurred for contract costing purposes.

(3) If the terms of an award of stock or stock option require that the employee perform future service in order to receive the stock or to exercise the option, the cost of the deferred compensation shall be appropriately assigned to the periods of current and future service based on the facts and circumstances of the award. The cost to be assigned shall be the value of the stock or stock option at the measurement date as prescribed in 9904.415–50(e)(1) or (e)(2).

(4) If an award is made in the form of an asset other than cash, the cost of deferred compensation for such award shall be based on the market value of the asset at the time the award is made. If a market value is not available, the fair value of the asset shall be used.

(5) If the terms of an award, made in the form of an asset other than cash, require that the employee perform future service in order to receive the asset, the cost of the deferred compensation shall be appropriately assigned to the periods of current and future service based on the facts and circumstances of the award. The cost to be assigned shall be the value of the asset at the time of award as prescribed in 9904.415–50(e)(4).

(6) In computing the assignable cost for a cost accounting period, any forfeitures which reduce the employer's obligation for payment of deferred compensation shall be a reduction of contract costs in the period in which the forfeiture occurred. The amount of the reduction shall be equal to the amount of the award that was assigned to a prior period, plus interest compounded annually, using the Treasury rate (see 9904.415–50(d)(5)) that was in effect at the time the cost was assigned. If the recipient of the award of stock options voluntarily fails to exercise such options, such failure shall not constitute a forfeiture under provisions of this Standard.

(7) Stock option awards or any other form of stock purchase plans containing all of the following characteristics shall be considered noncompensatory and not covered by this Standard 9904.415:

(i) Substantially all full-time employees meeting limited employment qualifications may participate.

(ii) Stock is offered equally to eligible employees or based on a uniform percentage of salary or wages.

(iii) An option or a purchase right must be exercisable within a reasonable period.

(iv) The discount from the market price of the stock is no greater than would be reasonable in an offer of stock to stockholders or others.

(f)(1) The provisions of 9904.415(d) and (e) shall not apply to ESOPs. The contractor's cost for an ESOP shall be measured by the contractor's contribution, including interest and dividends if applicable, to the ESOP. The measurement of contributions made in stock of the corporation or property, shall be based on the market value of the stock or property at the time the contributions are made. If the market value is not available, then fair value of the stock or property shall be used.

(2) A contractor's contribution to an ESOP shall be assignable to the cost accounting period only to the extent that the number of shares, cash, or any combination thereof resulting from the contribution are awarded to individual employees in the accounting period. Any portion of the shares or cash resulting from the contractor's contribution that is not awarded to individual employees during the cost accounting period when the contribution is made to the ESOP shall be assigned to a future cost accounting period or periods when the remaining portion of stock or cash is awarded to individual employees. This stock shall retain the value established in the year of the contribution which resulted in its purchase or availability to the ESOP.

7. Section 9904.415–60 is amended by adding paragraphs (f), (g), and (h) to read as follows:

9904.415–60 Illustrations.

* * * * *

(f) Contractor F has a non-leveraged ESOP. Under the contractor's plan, employees were awarded 5,000 shares of stock for the year ended December 31, 2004. On the date the 5,000 shares were contributed to the ESOP, the shares had a market value of $10.00 each. The total measured and assigned deferred compensation cost for FY 2004 is $50,000 (5,000 × $10 = $50,000). The market value of the contractor's stock when earned by the employees, whether higher or lower than the $10.00 per share market value when the contractor's contribution was made to the ESOP, is irrelevant to the measurement of the contractor's ESOP costs.

(g) Contractor G has a leveraged ESOP. Under the contractor's plan, employees were awarded 10,000 shares of stock for the year ended December 31, 2004. The contractor contributes $780,000 in cash to the ESOP trust (ESOT) to satisfy the principal and interest payment on the ESOT loan for FY 2004, resulting in the bank releasing 9,000 shares of stock. The contractor contributes 1,000 shares of stock valued at $60,000 to the ESOT, representing the

balance of the 10,000 shares. The total measured and assigned deferred compensation cost for FY 2004 is $840,000—the contractor's total contribution to satisfy the deferred compensation obligation totaling 10,000 shares.

(h)(1) Contractor H has a leveraged ESOP. Under the contractor's plan, employees were awarded 8,000 shares of stock for the year ended December 31, 2004. The contractor contributes $500,000 in cash to the ESOT to satisfy the principal and interest payment on the ESOT loan for 2004, resulting in the bank releasing 10,000 shares of stock. The total measured deferred compensation cost for 2004 is $500,000—the contractor's contribution for the cost accounting period. The total assignable deferred compensation cost for 2004 is $400,000—the portion of the contribution that satisfies the 8,000 shares of deferred compensation awarded to the employees in the year [(8,000 shares ÷ 10,000 shares) × $500,000 = $400,000]. The remaining $100,000 of the contribution made in 2004 is assignable to future periods in which the remaining 2,000 shares of stock are awarded to the employees.

(2) At December 31, 2005, the employees were awarded 12,000 shares of stock. The contractor again contributed $500,000 in cash to the ESOT to satisfy the principal and interest payment on the ESOT loan for 2005, resulting in the bank releasing 10,000 shares of stock. However, the total deferred compensation assignable to 2005 is $600,000, the cost of the 12,000 shares awarded to employees. The cost of the award is comprised of the contractor's contribution for the current cost accounting period (10,000 shares at $500,000) and the 2004 contribution carryover (2,000 shares at $100,000).

.8. Section 9904.415–63 is revised to read as follows:

9904.415–63 Effective date.

(a) This Standard 9904.415 is effective as of [effective date of final rule].

(b) This Standard shall be followed by each contractor on or after the start of its next cost accounting period beginning after the receipt of a contract or subcontract to which this Standard is applicable.

(c) Contractors with prior CAS-covered contracts with full coverage shall continue to follow Standard 9904.415 in effect prior to [effective date] until this Standard, effective [effective date], becomes applicable following receipt of a contract or subcontract to which this revised Standard applies.

9. Section 9904.415–64 is added to read as follows:

9904.415–64 Transition method.

(a) For contractors and subcontractors that were subject to Standard 9904.415 in effect prior to [effective date of final rule], the requirements of this Standard, as amended, shall apply to the cost of new ESOPs that are established after this Standard, as amended, becomes applicable to the contractor or subcontractor. Any ESOP in existence prior to the applicability date of this amended Standard, shall remain subject to the Cost Accounting Standard(s) that were applicable to such plans prior to the applicability date of this amended Standard.

(b) For contractors and subcontractors that have established advance agreements regarding the recognition of the costs of ESOPs that were established prior to the applicability date of this amended Standard, the awarding agency and contractor shall comply with the provisions of such advance agreement(s) for existing ESOPs. All ESOPs established on or after [effective date] shall be subject to the requirements of this Standard.

[FR Doc. 03–21074 Filed 8–19–03; 8:45 am]
BILLING CODE 3110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 080703B]

Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and the Gulf of Alaska, King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands, Scallop and Salmon Fisheries Off the Coast of AK

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notification regarding the evaluation of potential habitat areas of particular concern (HAPCs) within essential fish habitat (EFH).

SUMMARY: NMFS intends to evaluate alternative approaches for HAPC designation in the EFH Environmental Impact Statement (EIS) NMFS is preparing in conjunction with the North Pacific Fishery Management Council. Although NMFS' notice of intent to prepare the North Pacific EFH EIS implied that specific new HAPCs would be evaluated in the EIS, NMFS' current plan is to consider specific HAPC designations in separate National Environmental Policy Act analyses.

FOR FURTHER INFORMATION CONTACT: Cindy Hartmann, (907) 586–7585.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act requires NMFS and the Council to identify EFH in fishery management plans. The EFH regulations at 50 CFR 600.815(a)(8) encourage Councils to identify HAPCs within EFH based on the ecological importance of the habitat, sensitivity to human-induced environmental degradation, stress to the habitat from development activities, and/or rarity of the habitat.

On June 6, 2001, NMFS published a notice of intent to prepare an EIS for the EFH components of the following five management plans: the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea/Aleutian Islands (BSAI) Area, the FMP for groundfish of the Gulf of Alaska, the FMP for BSAI Commercial King and Tanner Crabs, the FMP for the Scallop Fishery off Alaska, and the FMP for the Salmon Fishery in the EEZ off the Coast of Alaska (66 FR 30396). NMFS requested written comments and gave notice of six scoping meetings. NMFS noted that three types of actions will be analyzed in the EIS: (1) describe and identify EFH for the fisheries; (2) identify HAPCs within EFH; and (3) minimize to the extent practicable the adverse effects of fishing on EFH.

On January 10, 2002, NMFS published a notification of preliminary alternative approaches for EFH and HAPC and requested written comments (67 FR 1325). Subsequently, based on public comment at the April, 2003, Council meeting, NMFS and the Council determined that it would be most effective to identify an approach to HAPC designation first, and then to consider specific candidate HAPCs through a separate process. For this first iteration of the HAPC process, any resulting HAPC designations and associated fishery management measures would be promulgated on the same time line as any measures resulting from the EFH EIS. The Council may also consider additional HAPCs in the future.

The EFH EIS will evaluate five alternative approaches for identifying HAPCs. Under Alternative 1, the FMPs would be amended to remove the present identification of HAPCs. Under Alternative 2, HAPCs would remain as they are currently identified in the Council's FMPs: living substrates in

shallow waters, living substrates in deep waters, and freshwater areas used by anadromous fish. Under Alternative 3, HAPC designations would be constrained to explicit geographically defined sites or locations, such as a particular seamount. Under Alternative 4, habitat types would be selected based on the HAPC considerations in the regulations, and HAPC sites would then be selected within the habitat types. Under Alternative 5, HAPC areas would be identified for individual FMP species based on the productivity of the habitat.

The timeline for completing the EFH EIS has been revised since the scoping meetings held in 2001. The current schedule is as follows: Council review of preliminary draft EIS from September 15 - October 14, 2003; Draft EIS published for public comments by January 16, 2004; public comment period on draft EIS no later than January 16 - April 15, 2004; Final EIS published by June 1, 2005; Record of Decision by August 14, 2005; any resulting FMP amendments and final regulations by August 13, 2006; concurrent HAPC process with any implementing regulations by August 13, 2006.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: August 14, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21366 Filed 8–19–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 161
Wednesday, August 20, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Willamette Province Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet in Salem, Oregon. The purpose of the meeting is to discuss issues pertinent to the implementation of the Northwest Forest Plan (NFP) and to provide advice to Federal land managers in the Province. The specific topics to be covered at the meeting include the results of the 2003 Province Implementation monitoring and the Settlement Agreement of the lawsuit *American Forest Resource Council* v. *BLM*, involving the Northwest Forest Plan.

DATES: The meeting will be held September 18, 2003.

ADDRESSES: The meeting will be held at the Salem District Office of the Bureau of Land Management, 1717 Fabry Road, Salem, Oregon. Send written comments to Neal Forrester, Williamette Province Advisory Committee, c/o Willamette National Forest, P.O. Box 10607, Eugene, Oregon (541) 225-6436 or electronically to *nforrester@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Neal Forrester, Willamette National Forest, (541) 225-6436.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to PAC members. However persons who wish to bring matters to the attention of the Committee may file written statements with the PAC staff before or after the meeting. A public forum will be provided and individuals will have the opportunity to addess the PAC. Oral comments will be limited to three minutes.

Dated: August 14, 2003.

Dallas J. Emch,

Forest Supervisor, Willamette National Forest.

[FR Doc. 03–21262 Filed 8–19–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Central Sonoma Watershed, Sonoma County, California

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the Council on Environmental Quality regulations (40 CFR part 1500), and the Natural Resources Conservation Service regulations (7 CFR part 650), the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Supplemental Watershed Agreement No. 7 for the Central Sonoma Watershed, Sonoma County, California.

FOR FURTHER INFORMATION CONTACT: Luana Kiger, Special Assistant to the State Conservationist, Natural Resources Conservation Service, 430 G Street, Davis, California, 95616–4164, telephone (530) 792–5661.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the modifications to the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Charles W. Bell, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this action.

The original project purpose was flood prevention. Supplement No. 7 will add fish and wildlife development as a second purpose. The proposed work involves reconstructing 1,100 feet of flood channel to improve its fish habitat characteristics.

The Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Luana Kiger, Special Assistant to the State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: August 14, 2003.

Charles W. Bell,

State Conservationist.

[FR Doc. 03–21263 Filed 8–19–03; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

United States Travel and Tourism Promotion Advisory Board; Notice of Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Open Meeting.

Date: September 8, 2003.
Time: 9:30 a.m. to 12:30 p.m.
Place: Ellis Island, NY.

SUMMARY: The United States Travel and Tourism Promotion Advisory Board ("Board") will hold its inaugural meeting on September 8, 2003 at Ellis Island, NY.

The Board will discuss the design, development and subsequent implementation of an international advertising and promotional campaign, which will seek to encourage individuals from select countries to travel to the United States for the express purpose of engaging in tourism. The meeting will be open to the public. Time will be permitted for public comment.

Written comments concerning Board affairs are welcome anytime before or after the meeting. Written comments should be directed to Julie Heizer, Office of Travel and Tourism Industries,

International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Room 7025, Washington, DC 20230; via fax at (202) 482–4272; or, via e-mail at *promotion@tinet.ita.doc.gov*. Minutes will be available within 30 days of this meeting.

The Board is mandated by Pub. L. 108–7, Section 210. As directed by Pub. L. 108–7, Section 210, the Secretary of Commerce shall design, develop and implement an international advertising and promotional campaign, which seeks to encourage individuals to travel to the United States. The Board shall recommend to the Secretary of Commerce the appropriate coordinated activities for funding. This campaign shall be a multi-media effort that seeks to leverage the Federal dollars with contributions of cash and in-kind products unique to the travel and tourism industry. The Board was chartered in August of 2003 and will expire on August 8, 2005.

Ellis Island is accessible by Circle Line-Statue of Liberty Ferry, Inc. ferries only. There is a fee to take Circle Line-Statue of Liberty Ferry boats. Ferries depart from Battery Park in New York City and Liberty State Park in Jersey City, New Jersey. Persons attending this meeting should allow ample time to clear security. All passengers will be screened before they board the Circle Line-Statue of Liberty Ferry boats, and there will be restrictions on backpacks and luggage. Visitors are advised to arrive early, leaving up to one hour for processing through the security system.

For further information phone Cary Justice, Office of Service Industries, Tourism and Finance (SITF), International Trade Administration, U.S. Department of Commerce at (202) 482–2560. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to SITF.

Dated: August 15, 2003.

Cary G. Justice,

Special Assistant, Office of Service Industries, Tourism, and Finance.

[FR Doc. 03–21303 Filed 8–19–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement, Article 1904; NAFTA Panel Reviews; Notice of Panel Decision

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of panel decision.

SUMMARY: On August 13, 2003, the binational panel issued its decision in the review of the final results of the countervailing duty determination made by the International Trade Administration (ITA) respecting Certain Softwood Lumber Products from Canada (Secretariat File No. USA–CDA–2002–1904–03) affirmed in part and remanded in part the determination of the Department of Commerce. The Department will return the determination on remand no later than October 14, 2003. A copy of the complete panel decision is available from the NAFTA Secretariat.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

Panel Decision: On August 13, 2003, the Binational Panel affirmed in part and remanded in part the Department of Commerce's final antidumping duty determination. The following issues were remanded to the Department:

1. To determine the adequacy of remuneration, and therefore benefit, based upon cross-border benchmarks. To make a new determination as to whether there is a benefit using a standard other than cross-border benchmarks.

2. To reconsider the matter of excluding reprocessed Maritimes-origin lumber in light of the Panel's opinion.

3. The Panel vacates the Department's rejection of an exclusion for used railroad ties and remands for reconsideration in light of the Panel's opinion.

4. Commerce failed to properly apply its own "input source" criterion by failing to grant applications submitted by all companies that relied on the source of their lumber as a basis for exclusion. The Panel remanded this issue to Commerce for consideration of those additional companies whose applications were based on input source.

5. The Panel remands the issue of the inclusion of residual products in the denominator of the subsidy calculation to the Department for further consideration.

Commerce was directed to issue it's determination on remand within 60 days of the issuance of the decision or not later than October 14, 2003.

Dated: August 14, 2003.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 03–21250 Filed 8–19–03; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081203C]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Navy Operations of Surveillance Towed Array Sensor System Low Frequency Active Sonar

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of two Letters of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that NMFS has issued two 1–year Letters of Authorization (LOAs) to take marine mammals by harassment incidental to the U.S. Navy's operation of Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) sonar operations to the Chief of Naval Operations, Department of the Navy, 2000 Navy Pentagon, Washington, D.C., and persons operating under his authority.

DATES: Effective from August 16, 2003, through August 15, 2004.

ADDRESSES: A copy of the June 27, 2003, application is available by writing to Chris E. Yates, Acting Chief, Marine

Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or by telephoning the contact listed here.

FOR FURTHER INFORMATION CONTACT: Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, ext 163.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if NMFS finds that the taking will have no more than a negligible impact on the species or stock(s), and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking.

Regulations governing the taking of marine mammals incidental to the U.S. Navy's operation of SURTASS LFA sonar were published on July 16, 2002 (67 FR 46712), and remain in effect until August 15, 2007. For detailed information on this action, please refer to that document. These regulations include mitigation, monitoring, and reporting requirements for the incidental taking of marine mammals by the SURTASS LFA sonar system.

Summary of Request

On June 27, 2003, NMFS received an application from the U.S. Navy for two LOAs, each LOA covering one ship, under the regulations issued on July 16, 2002 (67 FR 46712). The Navy requested that the LOAs become effective on August 16, 2003. This application updated the information contained in the original application for an LOA dated August 12, 1999, and the revised application submitted on April 6, 2000, for takings of marine mammals by harassment incidental to deploying the SURTASS LFA sonar system for training, testing and routine military operations. The June 27, 2003, application requested authorization to take, by harassment, small numbers of marine mammals incidental to operation of the SURTASS LFA sonar system using the Research Vessel *Cory Chouest* and the *USNS Impeccable*, for a period not to exceed 1 year. The application's take estimates are based on 12 nominal 9–day active sonar missions (or equivalent shorter missions) among both vessels, regardless of which vessel is performing a specific mission, not to exceed a total of 432 hours of transmission time combined for both vessels.

The specified geographic regions identified in the application are the following oceanographic provinces described in Longhurst (1998) and identified in 50 CFR 216.180(a): the Archipelagic Deep Basins Province, the North Pacific Tropical Gyre (West) Province, and the North Pacific Tropical Gyre (East) Province, and the Western Pacific Warm Pool Province, all within the Pacific Trade Wind Biome; the Kuroshio Current Province, within the Pacific Westerly Winds Biome; the North Pacific Epicontinental Sea Province, within the Pacific Polar Biome; and the China Sea Coastal Province, within the North Pacific Coastal Biome. The Navy's operating areas, as identified in the application, are portions of the provinces but do not encompass the entire area of the provinces. Due to critical naval warfare requirements, the U.S. Navy has identified the necessity for both SURTASS LFA sonar vessels to be stationed in the North Pacific Ocean during fiscal year 2004.

Authority: Authorization

Accordingly, NMFS issued two LOAs to the U.S. Navy on August 14, 2003 authorizing the taking, by harassment only, of small numbers of marine mammals incidental to operating the SURTASS LFA sonar system for training, testing and routine military operations. Issuance of these LOAs is based on findings, described in the preamble to the final rule (67 FR 46712, July 16, 2002), that the activities described in the two LOAs will result in the taking of no more than small numbers of marine mammals, and the total taking will have no more than a negligible impact on marine mammal stocks, and will not have an unmitigable adverse impact on the availability of the affected marine mammal stocks for subsistence uses. A copy of the LOAs and other cited documents are available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Acoustics_Program/Sound.htm#Sonar*.

These LOAs remain valid until August 15, 2004, provided the Navy is in conformance with the conditions of the regulations and the LOAs, and the mitigation, monitoring, and reporting requirements described in 50 CFR 216.184–216.186 (67 FR 46712, July 16, 2002) and in the LOAs are undertaken.

Dated: August 14, 2003.

Laurie K. Allen,

Acting Office Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–21369 Filed 8–19–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080703C]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Applications for scientific research permit modifications (1369, 1335).

SUMMARY: Notice is hereby given that NMFS received applications to modify existing scientific research permits related to threatened Pacific salmon and steelhead. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the permit modification requests must be received at the appropriate address or fax number (*see* **ADDRESSES**) no later than 5 p.m. Pacific daylight savings time on September 19, 2003.

ADDRESSES: Written comments on the modification requests should be sent to Protected Resources Division, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737. Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph: 503–231–2005, Fax: 503–230–5435, e-mail: *Garth.Griffin@noaa.gov*). Permit applications are available at *http://www.nwr.noaa.gov*.

SUPPLEMENTARY INFORMATION:

Authority

Scientific research permits are issued in accordance with Section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq.*) and Federal regulations governing listed fish and wildlife permits (50CFR Parts 222–226). NMFS issues permits and modifications based on findings that such permits and modifications: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits and modifications.

Anyone requesting a hearing on the permit modification application listed in this notice should set out the specific reasons why a hearing would be appropriate (*see* **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA.

Species Covered in This Notice

The following listed species and evolutionarily significant units (ESUs) are covered in this notice:

Chinook salmon (*O. tshawytscha*): threatened naturally produced and artificially propagated Puget Sound (PS).

Permit Applications Received

Permit 1335–Modification 3

The U.S. Forest Service in Corvalis, Oregon requests a modification to permit 1335 for annual take of juvenile threatened artificially propagated PS chinook salmon associated with its current study in the Puget Sound basin, Washington State. The purposes of the research are to assess watershed conditions and factors limiting salmonid health and production, and evaluate watershed health under the Northwest Forest Plan. The activities will benefit listed fish by generating information to improve forest management.

Permit 1369–Modification 1

The King County Department of Natural Resources and Parks in Seattle, Washington requests a modification to permit 1369 for increased annual take of juvenile threatened naturally produced PS chinook salmon associated with an expansion of work sites under its current study. The purpose of the study is to investigate scientific issues pertaining to how salmonid habitat in King County can be protected while concurrently providing local farmers with the technical and regulatory means to drain their farmlands to continue agricultural production. This program will develop a comprehensive information base about the habitat quality; the extent of the current and potential salmonid use of habitat where most commercial agriculture occurs; and techniques to avoid, minimize, or mitigate agriculture-related impacts on listed salmonids and their habitat.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the applications and modification requests, associated documents, and any comments submitted to determine whether the applications and modification requests meet the requirements of section 10(a) of the ESA and Federal regulations. NOAA will not make any final determinations until after the end of the 30 day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: August 14, 2003.

Barbara Schroeder,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–21367 Filed 8–19–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080703D]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of 16 scientific research permits (1114, 1119, 1124, 1134, 1152, 1194, 1379, 1403, 1406, 1410, 1421, 1422, 1423, 1426, 1427,) and six scientific research permit modifications (1290, 1291, 1322, 1335, 1366, 1382).

SUMMARY: Notice is hereby given that on June 30, 2003, NMFS' Northwest Region issued the permits and permit modifications allowing researchers to take endangered and threatened species for purposes of scientific research and enhancement under the Endangered Species Act (ESA).

ADDRESSES: The applications and related documents are available for review in the following office, by appointment:

Protected Resources Division, NOAA Fisheries, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (phone: 503–230–5400, fax: 503–230–5435).

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, Oregon (phone: (503) 231–2005, fax: (503) 230–5435, e-mail: *garth.griffin@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Authority: Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Scientific research and enhancement permits are issued in accordance with and subject to Section 10(a)(1)(A) of the ESA and NMFS' regulations governing listed fish and wildlife permits (50 CFR parts 222–226). Authority to take listed species is subject to conditions set forth in the permits.

Species Covered in this Notice

The listed species (evolutionarily significant units) covered by this notice are identified below and listed in the subsequent table by the numbers that precede each of them in the following list:

(1) Endangered upper Columbia River steelhead (*Oncorhynchus mykiss*)
(2) Endangered upper Columbia River Chinook Salmon (*O. tshawytscha*)
(3) Endangered Snake River sockeye salmon (*O. nerka*)
(4) Threatened Snake River fall chinook salmon (*O. mykiss*)
(5) Threatened Snake River spring/summer chinook salmon (*O. mykiss*)
(6) Threatened Snake River steelhead (*O. mykiss*)
(7) Threatened middle Columbia River steelhead (*O. mykiss*)
(8) Threatened lower Columbia River chinook salmon (*Oncorhynchus mykiss*)
(9) Threatened lower Columbia River steelhead (*O. mykiss*)
(10) Threatened lower Columbia River chum salmon (*O. keta*)
(11) Threatened upper Willamette River chinook salmon (*O. mykiss*)
(12) Threatened upper Willamette River steelhead (*O. mykiss*)
(13) Threatened Puget Sound chinook salmon (*Oncorhynchus mykiss*)
(14) Threatened Hood Canal summer chum (*O. keta*)
(15) Threatened Ozette lake sockeye salmon (*O. nerka*)
(16) Threatened Oregon coast coho salmon (*O. kisutch*)
(17) Threatened southern Oregon-northern California coast coho salmon (O. kisutch)

TABLE 1. TWENTY-TWO SCIENTIFIC RESEARCH PERMIT ACTIONS AFFECTING THREATENED AND ENDANGERED PACIFIC SALMON AND STEELHEAD

Permit No.	Affected species/ ESU	Permittee	Federal Register notice of application receipt
1114	1, 2	Washington Department of Fish and Wildlife	April 2, 2003 (68 FR 15997)
1119	1, 2	U.S. Fish and Wildlife Service	April 30, 2003 (68 FR 23107)
1124	3, 4, 5	Idaho Department of Fish and Game	April 2, 2003 (68 FR 15997)
1134	4, 5, 6	Columbia River Inter-Tribal Fish Commission	April 2, 2003 (68 FR 15997)
1152	5, 6	Oregon Department of Fish and Wildlife	April 2, 2003 (68 FR 15997)
1194	1, 2, 5	Northwest Fisheries Science Center	April 30, 2003 (68 FR 23107)
1205	4, 5, 17	Oregon Department of Environmental Quality	April 30, 2003 (68 FR 23107)
1290	1, 2, 4, 5, 7, 8	Northwest Fisheries Science Center	April 2, 2003 (68 FR 15997)
1291	1–5, 7–9	U.S. Geological Survey	April 2, 2003 (68 FR 15997)
1322	2, 4, 5, 8, 10, 11	Northwest Fisheries Science Center	April 2, 2003 (68 FR 15997)
1335	1, 2, 8, 11, 12, 16, 17	U.S. Forest Service	April 30, 2003 (68 FR 23107)
1366	1–6, 8, 9, 11	Oregon Cooperative Fish and Wildlife Research Unit	April 30, 2003 (68 FR 23107)
1379	1–6, 8	Columbia River Inter-Tribal fish Commission	April 30, 2003 (68 FR 23107)
1382	7	U.S. Geological Survey	April 30, 2003 (68 FR 23107)
1403	5, 6, 7	Northwest Fisheries Science Center	April 30, 2003 (68 FR 23107)
1406	5, 6	Northwest Fisheries Science Center	April 30, 2003 (68 FR 23107)
1410	1–12, 14–17	Northwest Fisheries Science Center	March 14, 2003 (68 FR 12342)
1421	1–10	U.S. Fish and Wildlife Service	April 30, 2003 (68 FR 23107)
1422	1, 2, 7	U.S. Forest Service	April 30, 2003 (68 FR 23107)
1423	1, 2	U.S. Fish and Wildlife Service	April 30, 2003 (68 FR 23107)
1426	7	Bonneville Power Administration	April 30, 2003 (68 FR 23107)
1427	8, 9, 11, 12	Oregon Department of Environmental Quality	April 30, 2003 (68 FR 23107)

Dated: August 14, 2003.

Barbara Schroeder,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–21368 Filed 8–19–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Commercial Availability Petition under the North American Free Trade Agreement (NAFTA)

August 14, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Request for Public Comments concerning a petition for modification of the NAFTA rules of origin for products made from certain yarns of cashmere and of camel hair.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

Summary

On July 10, 2003, the Chairman of CITA received a petition from Amicale Industries, Inc. alleging that certain yarns of carded cashmere or of carded camel hair, classified in heading 5108.10.60 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim a modification of the NAFTA rules of origin. Amicale requests that the NAFTA rules of origin for woven fabrics of subheadings 5111.11 and 5111.19, and for apparel of subheadings 6201.11, 6202.11, 6203.11, 6204.11 and 6204.31 be modified to all for use of non-North American yarn of subheading 5108.10.60. Such a proclamation may be made only after reaching agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this petition, in particular with regard to whether cashmere and camel hair yarn can be supplied by the domestic industry in commercial quantities in a timely manner. Te be ensured full consideration, comments must be submitted by September 19, 2003 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

Background

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. In consultations regarding such a change, the NAFTA countries are to consider issues of availability of supply of fibers, yarns, or fabrics in the free trade area and whether domestic producers are capable of supplying commercial quantities of the good in a timely manner. The Statement of Administrative Action (SAA) that

accompanied the NAFTA Implementation Act stated that any interested person may submit to CITA a request for a modification to a particular rule of origin based on a change in the availability in North America of a particular fiber, yarn or fabric and that the requesting party would bear the burden of demonstrating that a change is warranted. The SAA provides that CITA may make a recommendation to the President regarding a change to a rule of origin for a textile or apparel good. The NAFTA Implementation Act provides the President with the authority to proclaim modifications to the NAFTA rules of origin as are necessary to implement an agreement with one or more NAFTA country on such a modification.

On July 10, 2003, the Chairman of CITA received a petition from Amicale Industries, Inc. alleging that certain yarns of carded cashmere or of carded camel hair, classified in HTSUS heading 5108.10.60, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that the President proclaim a modification of the NAFTA rules of origin. The referenced yarns would be used to produce woven fabrics classified in HTS subheadings 5111.11 and 5111.19 for use in suits, coats and suit-type jackets classified under HTS subheadings 6201.11, 6202.11, 6203.11, 6203.31, 6204.11 and 6204.31. Such a proclamation may be made only after reaching agreement with the other NAFTA countries on the modification

CITA is soliciting public comments regarding this request, particularly with respect to whether the yarns of cashmere or of camel hair described above, classified in HTSUS heading 5108.10.60, can be supplied by the domestic industry in commercial quantities in a timely manner. The petition states that potential North American suppliers of the referenced yarns would be required to deliver them within 21 days of receipt of a purchase order. To ensure full consideration, comments must be received no later than September 19, 2003. Interested persons are invited to submit six copies of such comments or information to the Chairman, Committee for the Implementation of Textile Agreements, room 3100, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230.

If a comment alleges that yarns of carded cashmere or of carded camel hair can be supplied by the domestic industry in commercial quantities in a timely manner, CITA will closely review any supporting documentation, such as a signed statement by a manufacturer of the yarn stating that it produces the yarn that is in the subject of the request, including the quantities that can be supplied and the time necessary to fill an order, as well as any relevant information regarding past production.

CITA will protect any business confidential information that is marked business confidential from disclosure to the full extent permitted by law. CITA will make available to the public non-confidential versions of the request and non-confidential versions of any public comments received with respect to a request in room 3100 in the Herbert Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230. Persons submitting comments on a request are encouraged to include a non-confidential version and a non-confidential summary.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–21285 Filed 8–19–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before October 20, 2003. If you anticipate difficulty in submitting comments within that period, contact the person listed below as soon as possible.

ADDRESSES: Written comments may be sent to (1) Lorena F. Truett, Oak Ridge National Laboratory, P.O. Box 2008, Oak Ridge, TN 37831–6073; or by fax to (865) 574–3851; or by e-mail to *TruettLF@ORNL.gov;* and to (2) Sharon Evelin, Acting Director, Records Management Division IM–11/ Germantown Bldg., Office of Business and Information Management, Office of the Chief Information Officer, U.S. Department of Energy, Washington, DC 20585–1290.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lorena F. Truett, Oak Ridge National Laboratory, phone (865) 574–4225, fax (865) 574–3851, e-mail *TruettLF@ORNL.gov.*

SUPPLEMENTARY INFORMATION: This package contains the following supplementary information:

(1) *OMB No.:* NEW.

(2) *Package Title:* Hydrogen, Fuel Cells & Infrastructure Technologies Program Baseline Knowledge Assessment.

(3) *Type of Review:* New collection.

(4) *Purpose:* The Baseline Knowledge Assessment for the DOE Hydrogen, Fuel Cells & Infrastructure Technologies (HFC&IT) program will measure the levels of and changes in awareness and understanding of hydrogen and fuel cell technologies and the hydrogen economy within four target populations: (1) The general public, (2) students and educators, (3) personnel in state and local governments, and (4) potential users of hydrogen fuel and technologies in business and industry. Four distinct information collections will be required, one for each of the target populations. These collections will be conducted in stages, with the general public study conducted first. Changes relative to baseline knowledge levels will be determined when, after three years, each population group will be surveyed again using the same survey instrument and methodology. The instrument for assessing baseline knowledge will be specifically targeted to the population group. The public survey, for example, will assess a general knowledge of the production, storage, delivery, applications, and safety of hydrogen and fuel cells. Information gathered in this assessment will assist the HFC&IT program in formulating an overall education plan for hydrogen technologies. It will also provide a baseline for determining changes in public awareness and understanding of

the hydrogen economy, which is an important measure from which the success of program education strategies can be evaluated.

(5) *Respondents:* Although the numbers of respondents and methods of information collection will differ for each of the populations, the general scope and temper of the four collections will be the same. The general public will be surveyed first. That survey and the general public responses may influence the design of the surveys for the other target populations. For the general public, a random (probability sample) survey of 1,000 adults, age 18 and over, will be conducted via computer-assisted phone telephone interviews (CATI) or by other appropriate mechanism. About twenty closed-end questions will be posed. For students, a random survey of 500 teens (ages 12–17) and 500 pre-teens (ages 6–11) will be conducted, also using CATI or other technology and closed-end questions. Approximately 100–150 primary and secondary educators will be randomly selected from a national contact list for interviewing. Questions for educators will be of both closed-end and open-end formats. Contacts with energy agencies in all 50 states and the District of Columbia will be made, and a limited number of local (*i.e.*, municipal) agencies will also be contacted. Questions to state and local government agencies will be of both closed-end and open-end formats. A limited number of large-scale or potential large-scale users of energy sources powered by hydrogen and fuel cells will also be interviewed using both closed-end and open-end questions.

(6) *Estimated Number of Burden Hours:* For the general public survey, the burden is estimated at ten minutes per respondent for 1,000 respondents, for a total time and cost burden of 167 hours and $0. The total burdens for the other populations will depend on the designs of those surveys, but will be similar in temper and scope to the burden for the general public survey. The total time and cost burden for the student survey is tentatively estimated to be 133 hours and $0; the total burden for educators is estimated to be 25 hours and $0. The total burden for the state and local government and large-scale user surveys is expected to be less than the burden for the student survey.

Statutory Authority: Energy Reorganization Act of 1974 (Public Law 93–438).

Issued in Washington, DC, on August 13, 2003.

Sharon Evelin,

Acting Director, Records Management Division, Office of Records and Business Management, Office of the Chief Information Officer.

[FR Doc. 03–21299 Filed 8–19–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Agency Information Collection Extension

AGENCY: Department of Energy.

ACTION: Submission for Office of Management and Budget Review; Comment request.

SUMMARY: The Department of Energy (DOE) has submitted an information collection package, OMB Control Number 1910–5103, Reporting and Record Keeping Requirements for Safety Management System for extension under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). This package contains an information collection that is used by Departmental Management to exercise management oversight and control over management and operating (M&O) contractors operating DOE's facilities. This contractor management oversight and control function concerns the ways in which DOE management contractors document their environment, safety and health systems to ensure contractor employees' safety and health.

DATES: Comments must be submitted on or before September 19, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3087. (Also, please notify the DOE contact listed in this notice.)

ADDRESSES: Address comments to DOE Desk Officer, Office of Management and Budget. Office of Information and Regulatory Affairs (OIRA), Room 10102, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503. (Comments should also be addressed to Sharon Evelin, Acting Director, Records Management Division, Office of Business and Information Management, Office of Chief Information Officer, IM–11, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–1290.

SUPPLEMENTARY INFORMATION: *(1) Title:* Environment, Safety and Health; *(2) Current OMB Control Number:* 1910–5103; *(3) Summary:* A three year extension is requested which includes mandatory obligations; *(4) Purpose:* This information is required by the Department to ensure that the Departmental environment, safety and health resources and requirements are managed efficiently and effectively and to exercise management oversight of DOE contractors; *(5) Type of Respondents:* DOE management and operating contractors; *(6) Estimated number of responses:* 7 per year; and *(7) Estimated total burden hours:* 2,450.

Statutory Authority: Department of Energy Organization Act, Public Law 92–01.

Issued in Washington, DC, on August 13, 2003.

Sharon Evelin,

Acting Director, Records Management Division, Office of Business and Information Management, Office of the Chief Information Officer.

[FR Doc. 03–21300 Filed 8–19–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho National Engineering and Environmental Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

DATES: Wednesday, September 17, 2003; 8 a.m.–5 p.m.

Opportunities for public participation will be held from 11:45–12 noon and 3:30 to 3:45 p.m. Additional time may be made available for public comment during the presentations.

ADDRESSES: Willard Arts Center, 498 A Street, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Green Lowe, Idaho National Engineering and Environmental Laboratory (INEEL) Citizens' Advisory Board (CAB) Facilitator, Jason Associates Corporation, 545 Shoup Avenue, Suite 335B, Idaho Falls, ID 83402, Phone (208) 522–1662, X3012 or visit the Board's Internet home page at *http://www.ida.net/users/cab.*

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda

The tentative objectives for the meeting include:

- To receive a status report addressing the Environmental Management Program, implementation of the Performance Management Plan for Accelerating Cleanup at the INEEL, and compliance with the Idaho Settlement Agreement
- To discuss and finalize a recommendation addressing reactions to/concerns about the INEEL End State Plan to be submitted to DOE-HQ
- To discuss and finalize a recommendation addressing reactions to/concerns about the Final Sagebrush Steppe Reserve Environmental Assessment
- To discuss participation in the upcoming Site Specific Advisory Board Chairs Meeting
- Discuss changes to Annual Work Plan to reflect current funding situation

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments. Additional time may be made available for public comment during the presentations.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Minutes will also be available by writing to Ms. Penny Pink, INEEL CAB Administrator, North Wind Environmental, Inc., P.O. Box 51174, Idaho Falls, ID 83405 or by calling (208) 528–8718.

Issued at Washington, DC, on August 15, 2003.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–21301 Filed 8–19–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Northern New Mexico

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Northern New Mexico. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, September 17, 2003; 1 p.m.–8:30 p.m.

ADDRESSES: Sagebrush Inn and Conference Center, 1508 Paseo del Pueblo Sur, Taos, NM.

FOR FURTHER INFORMATION CONTACT: Menice Manzanares, Northern New Mexico Citizens' Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, NM 87505. Phone (505) 995–0393; fax (505) 989–1752; or e-mail: *mmanzanares@doeal.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1 p.m.—Call to Order by Ted Taylor, DDFO; Welcome and Introductions by Jim Brannon, Board Chair; Approval of Agenda; Approval of July 30 Meeting Minutes
1:15 p.m.—Public Comment
1:30 p.m—Board Business
- Election of Officers for FY 03–04 (As per Section V. Of the NNMCAB Bylaws)
- Election of Chair
- Election of Vice-Chair
- Recruitment Update
- Report from Chairman Brannon
- Discussion of Paducah, KY trip
- Discussion of DOE Budget/Chairs' Teleconference
- Discussion of Committee Work Plans/Chair Appointments
- Report from DOE, Ted Taylor, DDFO
- Report from Executive Director, Menice S. Manzanares
- Call for New Business

2:30 p.m.—Break
2:45 p.m.—Reports from Committees and Presentation of Committee Work Plans for FY 03–04
- Community Outreach Committee, Abad Sandoval
- Monitoring and Surveillance Committee, Wayne Wentworth
- Environmental Restoration Committee, Dr. Fran Berting
- Waste Management Committee, Don Jordan
- Budget Committee, Don Jordan

3:45 p.m.—Consideration of Fiscal Year 2003–04 NNMCAB Budget
4:45 p.m.—Dinner Break
6 p.m.—Presentation on Environmental Issues
7:45 p.m.—Break
8 p.m.—Public Comment
8:15 p.m.—Board Comment and Recap of Meeting
8:30 p.m.—Adjourn

This agenda is subject to change at least one day in advance of the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Menice Manzanares at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the beginning of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 1660 Old Pecos Trail, Suite B, Santa Fe, NM. Hours of operation for the Public Reading Room are 9 a.m.-4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Menice Manzanares at the Board's office address or telephone number listed above. Minutes and other Board documents are on the Internet at: *http:www.nnmcab.org.*

Issued at Washington, DC, on August 15, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–21302 Filed 8–19–03; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–333–005 and RP01–51–004]

Crossroads Pipeline Company; Notice of Compliance Filing

August 13, 2003.

Take notice that on August 7, 2003, Crossroads Pipeline Company (Crossroads) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

Proposed Effective May 23, 2003.
- Second Revised Sheet No. 2.
- Second Revised Sheet No. 9.
- First Revised Sheet No. 618.
- First Revised Sheet No. 619.

Proposed Effective April 1, 2004.
- Third Revised Sheet No. 2.
- Third Revised Sheet No. 9.
- Second Revised Sheet No. 618.
- Second Revised Sheet No. 619.

Crossroads states it is making this filing in compliance with the Commission's July 23, 2003 Order (July 23 Order) in the above-referenced dockets. In the July 23 Order, the Commission held that Crossroads' August 2, 2002 filing to comply with the Commission's July 3, 2002 order on Crossroads' compliance with Order Nos. 637, 587–G, and 587–L generally complied with the requirements of those Orders. Crossroad's states, however, that the Commission required it to make certain compliance changes by filing actual tariff sheets within 15 days of the date of issuance of the July 23 Order. Crossroads states that the Commission directed that those tariff sheets should have a May 23, 2003 effective date. In addition, Crossroads states that the Commission identified other compliance changes that were to have an effective date of April 1, 2004. These revised tariff sheets reflect the changes required by the Commission in the July 23 Order.

Crossroads states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: August 19, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–21260 Filed 8–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–4–006]

Northwest Pipeline Corporation; Notice of Amendment

August 13, 2003.

Take notice that on August 8, 2003, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP02–4–006, an amendment to the pending application filed July 14, 2003, pursuant to section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to further amend the certificate of public convenience and necessity that was issued for its "Evergreen Expansion" project by Commission order dated June 27, 2002 in Docket No. CP02–4–000 and CP02–4–001, as amended May 7, 2003 in Docket No. CP02–4–002, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Northwest states that by this amendment to the pending amended application, Northwest withdraws its request for the Commission to approve the previously proposed installation of a 30-inch check valve and control system at the Sumas Compressor Station "B" plant.

Any questions concerning this amendment may be directed to Gary K. Kotter, Manager, Certificates and Tariffs, Northwest Pipeline corporation, P.O. Box 58900, Salt Lake City, Utah 84158–0900, at (801) 584–7117 or fax (801) 584–7764.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in

lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: August 25, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–21257 Filed 8–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12094–000]

Hydro Technology Systems, Inc.; Notice of Availability of Environmental Assessment

August 13, 2003.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR part 380), the Office of Energy Projects (OEP) staff has reviewed an application for an amendment of exemption to increase the authorized nameplate capacity at the Meyers Falls 1910 Project, FERC No. 12094, and has prepared an Environmental Assessment (EA) on the application. The project is located in the bypass reach of the Meyers Falls Project, FERC No. 2544, on the Colville River in Stevens County near the city of Kettle Falls, Washington. The exempt project, which is under construction, has an authorized capacity of 300 kW (one generating unit) with a hydraulic capacity of 50 cubic feet per second (cfs).

Specifically, the project exemptee (Hydro Technology Systems, Inc.) has requested Commission approval to amend the present exemption to install two units instead of one with the same authorized (300 kW) generation and (50 cfs) hydraulic capacity. In addition, the exemptee proposes to add a third generating unit with a hydraulic capacity of 12 cfs to its authorized plant. The proposed change would only effect the generating equipment located in the powerhouse and the efficient use of available flows, but not the amount of flow used. The required 25 cfs bypass flow of the Meyers Falls Project, FERC No. 2544, and the total water rights quantity (50 cfs) for the subject project would not be affected.

In the EA, OEP staff analyzed the probable environmental effects of the proposed amendment and has concluded that approval of the proposal would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA is attached to the Order Amending Exemption issued on August 12, 2003. Copies of the EA are available for review in Public Reference Room 2-A of the Commission's offices at 888 First Street, NE., Washington, DC. The EA also may be viewed on the Commission's Internet Web site (*http://www.ferc.gov*)using the eLibrary (FERRIS) link. Click on the eLibrary link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or by e-mail to *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC's Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–21259 Filed 8–19–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Participation at MISO Advisory Committee Meetings and MISO Board of Director Meetings

August 13, 2003.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff will attend the monthly Advisory Committee meetings and Board of Director meetings of the Midwest Independent Transmission System Operator, Inc. (MISO). The staff's attendance is part of the Commission's ongoing outreach efforts.

The meetings are held monthly. The Advisory Committee meetings for 2003 will be held on August 20, September 17, October 15, November 19 and December 10, 2003 "beginning at 10 a.m. The Advisory Committee meetings for 2003 will be held at the Lakeside Corporate Center (directly across from MISO's headquarters), 701 City Center Drive, Carmel IN 46032.

The Board of Director meetings will be held on August 21, September 18, October 16, November 20, and December 11, 2003 "beginning at 8:30 am. The Board of Director meetings will be held at MISO's headquarters, 701 City Center Drive, Carmel, IN 46032.

These meetings are open to the public. The meetings may discuss matters at issue in Docket No. RM01–12–000, Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design; in Docket No. EL02–65–000, et al., Alliance Companies, et al.; in Docket No. RT01–87–000, et al., Midwest Independent Transmission System Operator, Inc.; in Docket No. ER03–323, et al., Midwest Independent Transmission System Operator, Inc., and in Docket No. ER03–1118, Midwest Independent Transmission System Operator, Inc.

For more information, contact Patrick Clarey, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5937 or *patrick.clarey@ferc.gov*, or Christopher Miller, Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov*.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–21258 Filed 8–19–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7546–9]

Agency Information Collection Activities: Continuing Collection; Comment Request; Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types, EPA ICR No.1572.06, OMB No. 2050–0050, expires on December 31, 2003. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the

proposed information collection as described below.

DATES: Comments must be submitted on or before October 20, 2003.

ADDRESSES: Comments may be submitted by mail, through hand delivery/courier, or electronically. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section.

The mailing address, referencing Docket ID No. RCRA–2003–0017, is: OSWER Docket (5305T), EPA Docket Center, U.S. Environmental Protection Agency Headquarters, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Hand deliveries of comments should be made to the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by the Docket ID No. RCRA–2003–0017.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington DC 20460–001.

Hand deliveries must be brought to the OSWER Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Docket is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: David Eberly by phone at (703) 308–8645, by mail at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, or by e-mail at *eberly.david@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. How Can I Get Copies of the ICR Supporting Statement and Other Related Information?

1. Docket. EPA has established an official public docket for this ICR under Docket ID No. RCRA–2003–0017. The official public docket consists of the documents specifically referenced in the ICR, any public comments received, and other information related to this ICR. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center (see **ADDRESSES** above). The EPA Docket Center Reading Room is open from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding federal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the OSWER Docket is (202) 566–0740. Copies are $0.15/page.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI, and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in A.1 above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments in formulating a final decision.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA

Dockets." Once in the system, select "search," and then key in Docket ID No. RCRA–2003–0017. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov*, Attention Docket ID No. RCRA–2003–0017. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in **ADDRESSES.** These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. By Mail. Send an original of your comments, referencing Docket ID No. RCRA–2003–0017, to: OSWER Docket, (mail code 5305T) EPA Docket Center, U.S. Environmental Protection Agency Headquarters, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

3. By Hand Delivery or Courier. Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC., Attention Docket ID No. RCRA–2003–0010. Such deliveries are only accepted during the Docket's normal hours of operation, from 8:30 a.m. to 4:30 p.m. Monday through Friday, excluding federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. Send or deliver information identified as CBI only to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue NW., Washington DC 20460–001, Attention Docket ID No. RCRA–2003–0017. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information. In particular, for this ICR, EPA is soliciting information on the estimates for performing waste analyses as required in 40 CFR 264.13(a)(1) and 40 CFR 265.13(a)(1).

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Affected Entities: Entities potentially affected by this action are owners and operators of hazardous waste management facilities.

Title: Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types, EPA ICR #1572.06, OMB No. 2050–0050, expires on December 31, 2003.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, requires that the U.S. Environmental Protection Agency develop standards for hazardous waste treatment, storage, and disposal facilities (TSDFs), as may be necessary, to protect human health and the environment. Section 3004, Subsections (1), (3), (4), (5), and (6) specify that these standards include, but not be limited to, the following requirements:

(1) Maintaining records of all hazardous wastes identified or listed under this title which are treated, stored, or disposed of, * * * and the manner in which such wastes were treated, stored, or disposed of;

(3) Treatment, storage, or disposal of all such waste received by the unit pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator;

(4) The location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

(5) Contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste; and

(6) The maintenance or operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable.

All of the collection requirements covered in this ICR have been published in 40 CFR parts 261, 264 and 265, subparts J through DD, and 40 CFR part 266, subpart F. With each collection covered in this ICR, EPA is aiding the goal of complying with its statutory mandate under RCRA to develop standards for hazardous waste TSDFs, as may be necessary, to protect human health and the environment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Burden Statement

For tank systems, the public reporting burden is estimated to average six hours per respondent per year. The recordkeeping burden is estimated to average 155 hours per respondent per year.

For surface impoundments, the public reporting burden is estimated to average two hours per respondent per year. The recordkeeping burden is estimated to average 152 hours per respondent per year.

For waste piles, there is no public reporting burden associated with the

requirements covered in this ICR. The recordkeeping burden is estimated to average 20 hours per respondent per year.

For land treatment units, the public reporting burden is estimated to average one hour per respondent per year. The recordkeeping burden is estimated to average one hour per respondent per year.

For landfills, the public reporting burden is estimated to average seven hours per respondent per year. The recordkeeping burden is estimated to average 80 hours per respondent per year.

For incinerators, the public reporting burden is estimated to average two hours per respondent per year. The recordkeeping burden is estimated to average three hours per respondent per year.

For thermal treatment units, there is no public reporting or recordkeeping burden associated with the requirements covered in this ICR.

For chemical, physical, and biological treatment units, there is no public reporting or recordkeeping burden associated with the requirements covered in this ICR.

For drip pads, there is no public reporting or recordkeeping burden associated with the requirements covered in this ICR.

For miscellaneous units, there is no public reporting or recordkeeping burden associated with the requirements covered in this ICR.

For process vents, the public reporting burden is estimated to average ten hours per respondent per year. The recordkeeping burden is estimated to average 1,072 hours per respondent per year.

For equipment leaks, the public reporting burden is estimated to average seven hours per respondent per year. The recordkeeping burden is estimated to average 83 hours per respondent per year.

For containment buildings, the public reporting burden is estimated to average six hours per respondent per year. The recordkeeping burden is estimated to average 56 hours per respondent per year.

For specific hazardous waste recovery and recycling units, there is no public reporting burden associated with these requirements. The recordkeeping burden is estimated to average four hours per respondent per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 6, 2003.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 03–21348 Filed 8–19–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AZ099–NOA; FRL–7546–7]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Harquahala Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order denying petition to object to state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2), the EPA Administrator is hereby denying a petition to object to a state operating permit issued by the Maricopa County Environmental Services Division to the Harquahala Generating Station. This order constitutes final action on the petition submitted by Don't Waste Arizona (DWA). Pursuant to section 505(b)(2) of the Clean Air Act (Act), petitioner may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this decision under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region IX, Air Division, 75 Hawthorne Street, San Francisco, CA 94105. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/harquahala_decision2001.pdf.*

FOR FURTHER INFORMATION CONTACT: Emmanuelle Rapicavoli, Air Permits Office, EPA Region IX, telephone (415) 972–3969, e-mail *rapicavoli.emmanuelle@epa.gov.* Interested parties may also contact the Maricopa Environmental Services Division, Air Quality Division, 1001 North Central Avenue, Suite 201, Phoenix, AZ 85004.

SUPPLEMENTARY INFORMATION: The Clean Air Act affords EPA the opportunity for a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

DWA submitted a petition to the Administrator on March 20, 2001, seeking EPA's objection to the operating permit issued to the Harquahala Generating Station. The petitioner maintained that the Harquahala Generating Station operating permit was inconsistent with the Act because the permit failed to: (1) Meet federal requirements for an excess emission affirmative defense provision, namely Condition 10 of the Permit; (2) include best available control technology (BACT) emission limits for nitrogen oxides (NO_X), carbon monoxides (CO), volatile organic compounds (VOC), and particulate matter (PM_{10}); (3) require an updated BACT analysis during the permit renewal period; (4) use an appropriate substitute method for calculating startup and shutdown emissions when the continuous emissions monitors (CEMs) for NO_X and CO are not operational; (5) require sufficient opacity monitoring to assure compliance with certain opacity requirements; (6) require an operations and maintenance plan for selective catalytic reduction (SCR) pollution control technology to be submitted before startup of the equipment; (7) include a review of the toxic effects of ammonium sulfate formed as a result of the proposed BACT (in this case, SCR); and (8) be responsive to public comments regarding PSD issues.

The Administrator issued an order denying this petition on July 2, 2003. The order explains the reasons behind EPA's conclusion that petitioner failed

to demonstrate that the issuance of the Harquahala Generating Station permit was not in compliance with requirements of the Clean Air Act on the grounds raised.

Dated: August 6, 2003.

Deborah Jordan,

Acting Regional Administrator, Region 9.

[FR Doc. 03–21350 Filed 8–19–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0036; FRL–7319–2]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: A meeting of the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances (NAC/AEGL Committee) will be held on September 16–18, 2003, in Washington, DC. At this meeting, the NAC/AEGL Committee will address, as time permits, the various aspects of the acute toxicity and the development of Acute Exposure Guideline Levels (AEGLs) for the following chemicals: Acetone cyanohydrin; acetonitrile; acrylic acid; butadiene; bromine; carbon monoxide; chloroacetic acid; chloroacetonitrile; dimethyl sulfate; disulfur dichloride; fluorine; isobutyronitrile; jet fuel 8; malononitrile; methanol; methylene chloride; methyl ethyl ketone; oleum; phenol; phosphorus oxychloride; phosphorus trichloride; propionitrile; styrene; sulfur dichloride; sulfur trioxide; sulfuric acid; tetrachloroethylene; 1,1,1-trichloroethane; vinyl chloride; and xylenes.

DATES: A meeting of the NAC/AEGL Committee will be held from 10 a.m. to 5:30 p.m. on September 16, 2003; 8:30 a.m. to 5:30 p.m. on September 17, 2003; and 8 a.m. to noon on September 18, 2003.

ADDRESSES: The meeting will be held at the U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC, Room numbers North 4437 B, C, and D.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may be of particular interest to anyone who may be affected if the AEGL values are adopted by government agencies for emergency planning, prevention, or response programs, such as EPA's Risk Management Program under the Clean Air Act and Amendments Section 112r. It is possible that other Federal agencies besides EPA, as well as State agencies and private organizations, may adopt the AEGL values for their programs. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0036. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Meeting Procedures

For additional information on the scheduled meeting, the agenda of the NAC/AEGL Committee, or the submission of information on chemicals to be discussed at the meeting, contact the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

The meeting of the NAC/AEGL Committee will be open to the public. Oral presentations or statements by interested parties will be limited to 10 minutes. Interested parties are encouraged to contact the DFO to schedule presentations before the NAC/AEGL Committee. Since seating for outside observers may be limited, those wishing to attend the meeting as observers are also encouraged to contact the DFO at the earliest possible date to ensure adequate seating arrangements. Inquiries regarding oral presentations and the submission of written statements or chemical-specific information should be directed to the DFO.

III. Future Meetings

Another meeting of the NAC/AEGL Committee is scheduled for December 2003 in San Antonio, TX.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: August 13, 2003.

Margaret Schneider,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 03–21352 Filed 8–19–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0272; FRL–7323–2]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket ID number OPP–2003–0272, must be received on or before September 19, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–5697; e-mail address: *tompkins.jim@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II. Registration Applications. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0272. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact

information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPP–2003–0272. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0272. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2003–0272.

3. *By hand delivery or courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., Attention: Docket ID Number OPP–2003–0272. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

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1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients not Included in Any Previously Registered Products

1. *File symbol*: 100–RRGA. *Applicant*: Syngenta Crop Protection. Inc., P.O. Box 18300, Greensboro, NC 27409. *Product name*: Butafenacil Technical. *Active ingredient*: Butafenacil at 98%. *Proposed classification/Use:* None. For formulation into herbicide end use products; for use as a cotton harvest aid.

2. *File symbol*: 100–RRGE. *Applicant:* Syngenta Crop Protection. *Product name:* TSS 75 WG. *Active ingredient:* Trifloxysulfuron-sodium at 75%. *Proposed classification/Use:* None. Control of certain broadleaf weeds, sedges, and grasses in almonds, citrus, cotton, sugarcane, and tomatoes.

3. *File symbol*: 100–RRGG. *Applicant:* Syngenta Crop Protection. *Product name:* Trifloxysulfuron-sodium Technical; *Active ingredient:* Trifloxysulfuron-sodium at 94%. *Proposed classification/Use:* None. For formulation into herbicides; for use on almonds, citrus, cotton, sugarcane, tomatoes, and turf.

4. *File symbol*: 100–RRGT. *Applicant:* Syngenta Crop Protection. *Product name:* Inspire. *Active ingredient:* Butafenacil at 9.6%. *Proposed classification/Use:* None. For use as cotton harvest aid.

5. *File symbol*: 100–RRGU. *Applicant:* Syngenta Crop Protection. *Product name:* Monument. *Active ingredient:* Trifloxysulfuron-sodium at 75%. *Proposed classification/Use:* None. Control of certain broadleaf weeds, sedges, and grasses in turf.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: August 13, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 03–21351 Filed 8–19–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0262; FRL–7321–7]

Dimethomorph; Notice of Filing Pesticide Petitions to Establish Tolerances for Certain Pesticide Chemical in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket ID number OPP–2003–0262, must be received on or before September 19, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–3194; e-mail address: *brothers.shaja@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Industry (NAICS 111)
- Crop production (NAICS 112)
- Animal production (NAICS 311)
- Food manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0262. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

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2. *By mail.* Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2003–0262.

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2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 11, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summary of Petitions

The petitioner's summary of the pesticide petitions are printed below as required by FFDCA section 408(d)(3). The summary of the petitions were prepared by BASF Corporation and represents the view of BASF Corporation. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4 (IR-4)

PP 2E6483 and PP 3E6558

EPA has received pesticide petitions (2E6483 and 3E6558) from Interregional Research Project Number 4 (IR-4), 681 U.S. Highway #1 South, North Brunswick, NJ 08902–3390 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.493 by establishing tolerances for residues of dimethomorph, (E,Z)4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl morpholine in or on the following raw agricultural commodities: Vegetable, fruiting, group 8 at 2.0 parts per million (ppm) (2E6483), brassica, leafy, greens,

(subgroup 5B), and turnip, tops at 20 ppm (PP 3E6558), taro, leaves at 6.0 ppm (3E6558), and taro, roots at 0.5 ppm (3E6558). IR-4 also proposes to delete the existing tolerance for tomato, fruit at 0.5 ppm. Tomato is included in the proposed tolerance for the fruiting vegetable group 8 at 2.0 ppm. EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This summary has been prepared by BASF Corporation, Research Triangle Park, NC 27709.

A. Residue Chemistry

1. *Plant metabolism.* Based upon the results of metabolism studies conducted on potato, grape, and lettuce, the nature of the residues in plants is considered to be understood.

2. *Analytical method.* A reliable method for the determination of dimethomorph residues in fruiting vegetables (except cucurbits) (crop group 8), leafy brassica greens (subgroup 5B), turnip greens, taro leaves and roots exists; this method is the FDA Multi-Residue Method, Protocol D, as published in the Pesticide Analytical Manual I.

3. *Magnitude of residues.* The magnitude of residues for the proposed tolerances are adequately understood.

B. Toxicological Profile

1. *Acute toxicity*—i. Oral lethal dose LD_{50} studies were conducted on dimethomorph technical:

a. An acute oral toxicity study in the Sprague-Dawley rat for dimethomorph technical with a LD_{50} of 4,300 milligrams/kilogram body weight (mg/kg bwt) for males and 3,500 mg/kg bwt for females. Based upon EPA toxicity criteria, the acute oral toxicity category for dimethomorph technical is Category III or slightly toxic.

b. An acute toxicity study in the CD-1 mouse for dimethomorph technical with a LD_{50} of greater than 5,000 mg/kg bwt for males and 3,699 mg/kg/bwt for females. Based on the EPA toxicity category criteria, the acute oral toxicity category for dimethomorph technical is Category III or slightly toxic.

ii. Oral LD_{50} studies were conducted on the two isomers (E and Z) alone:

a. An acute oral toxicity study in the Wistar rat for the E-isomer with a LD_{50} greater than 5,000 mg/kg bwt for males and approximately 5,000 mg/kg bwt for females.

b. An acute oral toxicity study in the Wistar rat for the Z-isomer with a LD_{50} greater than 5,000 mg/kg bwt for both males and females.

iii. An acute dermal toxicity study in the Wistar rat for dimethomorph technical with a dermal LD_{50} greater than 5,000 mg/kg bwt for both males and females. Based on the EPA toxicity category criteria, the acute dermal toxicity category for dimethomorph is Category IV or relatively non-toxic.

iv. A 4–hour inhalation study in Wistar rats for dimethomorph technical with a lethal concentration LC_{50} greater than 4.2 milligram per liter (mg/L) for both males and females. Based on the EPA toxicity category criteria, the acute inhalation toxicity category for dimethomorph technical is Category IV or relatively non-toxic.

v. A skin irritation study was performed using New Zealand White rabbits. Based on EPA's toxicity criteria, the skin irritation toxicity category for dimethomorph technical in this study is Category IV or non-to-slightly irritating.

vi. An eye irritation study using New Zealand white rabbits demonstrated dimethomorph technical produced moderate conjunctival redness, slight to moderate chemosis and slight discharge 3 hours after treatment. Based on EPA's toxicity criteria, the eye toxicity category for dimethomorph technical is Category III (slightly to moderately irritating).

2. *Genotoxicity.*—i. *Salmonella* reverse gene mutation assays (2 studies) were negative up to a limit dose of 5,000 g/plate. Chinese hamster lung V79 cells were negative for mutations at the HGPRT locus at up to toxic doses in two studies.

ii. Two Chinese hamster lung (V79 cells) structural chromosomal studies were reportedly positive for chromosomal aberrations at the highest dose tested (HDT) (160 g/ml/-S9; 170 g/ml/+S9). However, dimethomorph induced only a weak response in increasing chromosome aberrations in this test system. In addition, these results were not confirmed in two micronucleus tests under *in vivo* conditions.

iii. Structural chromosomal aberration studies were weakly positive in human lymphocytic cultures, but only in S9 activated cultures treated at 422 g/mL, the HDT, which was strongly cytotoxic. No increase in chromosomal aberrations was observed in the absence of S9 activation at all doses. Furthermore, the positive clastogenic response observed under the *in vitro* conditions was not confirmed in two *in vivo* micronucleus assays.

iv. Micronucleus assay (2 studies) indicated that dimethomorph was negative for inducing micronuclei in bone marrow cells of mice following i.p. administration of doses up to 200 mg/kg or oral doses up to the limit dose of 5,000 mg/kg. Thus, dimethomorph was found to be negative in these studies for causing cytogenic damage *in vivo.*

v. Dimethomorph was negative for inducing unscheduled DNA synthesis, in cultured rat liver cells, at doses up to 250 grams per milliliter (g/ml), a weakly cytotoxic level.

vi. Dimethomorph was negative for transformation in Syrian hamster embryo cells treated, in the presence and absence of activation, up to cytotoxic concentrations (265 g/mL/+S9; 50 g/mL/-S9).

3. *Reproductive and developmental toxicity*—i. A rat developmental toxicity study with a lowest observed adverse effect level (LOAEL) for maternal toxicity of 160 mg/kg/day and a NOAEL for maternal toxicity of 60 mg/kg/day. The NOAEL for developmental toxicity is 60 mg/kg/day. Dimethomorph is not teratogenic in the Sprague-Dawley rat.

ii. A rabbit development toxicity study with a LOAEL for maternal toxicity of 650 mg/kg/day and a NOAEL for maternal toxicity of 300 mg/kg/day. The NOAEL for developmental toxicity is 650 mg/kg/day, the HDT. Dimethomorph is not teratogenic in the New Zealand white rabbit.

iii. A two-generation rat reproduction study with a LOAEL for parental systemic toxicity of 1,000 ppm, or approximately 80 mg/kg/day, and a NOAEL for parental systemic toxicity of 300 ppm, or approximately 24 mg/kg/day. The NOAEL for fertility and reproductive function was 1,000 ppm, the highest concentration tested (HCT), or approximately 80 mg/kg bwt/day.

4. *Subchronic toxicity*—i. A 90–day dietary study in Sprague-Dawley rats with a NOAEL of greater than or equal to 1,000 ppm, the HCT tested, or approximately 73 mg/kg/day for males and 82 mg/kg/day for females.

ii. A 90–day dog dietary study with a NOAEL of 450 ppm, or approximately 15 mg/kg/day, and a LOAEL of 1,350 ppm, or approximately 43 mg/kg/day.

5. *Chronic toxicity*–i. A 2–year chronic toxicity study in Sprague-Dawley rats with a NOAEL of 200 ppm or approximately 9 mg/kg/day for males and 12 mg/kg/day for females. The LOAEL for systemic toxicity is 750 ppm, or approximately 36 mg/kg/day for males and 58 mg/kg/day for females.

ii. A 1–year chronic toxicity study in dogs with a NOAEL of 450 ppm, or approximately 14.7 mg/kg/day and a

LOAEL of 1,350, or approximately 44.6 mg/kg/day.

iii. A 2–year oncogenicity study in Sprague-Dawley rats with a NOAEL for systemic toxicity of 200 ppm, or approximately 9 mg/kg/day for males and 11 mg/kg/day for females. The LOAEL for systemic toxicity was 750 ppm, or approximately 34 mg/kg/day for males and 46 mg/kg/day for females. There was no evidence of increased incidence of neoplastic lesions in treated animals. The NOAEL for oncogenicity is 2,000 ppm, the Highest Concentration Tested (HCT), or approximately 95 mg/kg/day for males and 132 mg/kg/day for females.

iv. A 2–year oncogenicity study in CD-1 mice with a NOAEL for systemic toxicity of 100 mg/kg/day and a LOAEL of 1,000 mg/kg/day. There was no evidence of increased incidence of neoplastic lesions in treated animals. The NOAEL for oncogenicity is 1,000 mg/kg/day, the HDT.

6. *Animal metabolism*. Results from the livestock and rat metabolism studies show that orally administered dimethomorph was rapidly excreted by the animals. The principal route of elimination is the feces.

7. *Metabolite toxicology*. There were no metabolites identified in plant or animal commodities which require regulation.

8. *Endocrine disruption*. Collective organ weights and histopathological findings from the two-generation reproduction study in rats, as well as from the subchronic and chronic toxicity studies in two or more animal species, demonstrate no apparent estrogenic effects or effects on the endocrine system. There is no information available which suggests that dimethomorph technical would be associated with endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure*. The CARES 1.1 model with the CSFII/FCID consumption data were used to calculate chronic and acute exposure estimates. Result exposure estimates 99.9th percentile were compared against the dimethomorph reference dose (RfD) and chronic population adjusted dose (cPAD).

i. *Food*. The dietary assessment analysis followed an initial tier approach with only one minor refinement. Tolerance values, default processing factors, and 100% crop treated (CT) values were assumed in the assessment. The only minor refinement was including percent crop treated values for potatoes (2.2%), tomatoes (0.1%), cucumbers (2.9%), and pumpkin (13.6%). Vegetables (fruiting, bulb, cucurbit), lettuce (leaf, head), grapes (including raisins), potatoes, hops, grain, brassica (leafy greens), leaves of root and tuber vegetables, and taro roots as the target crops were also considered for this analysis.

a. *Chronic*. Results of the chronic dietary exposure assessment for dimethomorph (BAS 550 F) are listed in Table 1. The estimated chronic dietary exposure for all current and pending commodities ranged from 7.5% to 15.2% of the %cPAD (0.1 mg/kg bwt/day) for all subpopulations.

TABLE 1.–CHRONIC DIETARY EXPOSURE ASSESSMENT FOR DIMETHOMORPH (BAS 550 F)

Population	Exposure Estimate (mg/kg bwt/day)	%cRfD	%cPAD
Birth to 1–year	0.007972	7.97	7.97
1–2 years	0.01513	15.13	15.13
3–5 years	0.01331	13.31	13.31
1–6 years	0.01512	15.12	15.12
6–12 years	0.007794	7.79	7.79
Teens 13–19 years	0.007482	7.48	7.48
Females 13–49 years	0.007771	7.77	7.77
Males 20–49 years	0.006853	6.85	6.85
Adults 50+ years	0.007548	7.55	7.55

b. *Acute*. Exposure estimates for the dimethomorph acute dietary assessment ranged from 0.064 to 0.174 mg/kg bwt/day for all subpopulations (Table 2). The %aRfd and %aPAD were not applicable for the acute dietary assessment since toxicology studies have shown that dimethomorph poses no acute dietary risk.

TABLE 2.—ACUTE DIETARY EXPOSURE ASSESSMENT FOR DIMETHOMORPH (BAS 550 F)

Population	Exposure Estimate (mg/kg bwt/day)	%aRfD	%aPAD
Birth to 1–year	0.1736	NA	NA
1–2 years	0.1742	NA	NA
3–5 years	0.1584	NA	NA
1–6 years	0.1654	NA	NA
6–12 years	0.09621	NA	NA

TABLE 2.—ACUTE DIETARY EXPOSURE ASSESSMENT FOR DIMETHOMORPH (BAS 550 F)—Continued

Population	Exposure Estimate (mg/kg bwt/day)	%aRfD	%aPAD
Teens 13–19 years	0.07855	NA	NA
Females 13–49 years	0.07306	NA	NA
Males 20–49 years	0.06386	NA	NA
Adults 50 + years	0.07058	NA	NA

Results of the chronic and acute dietary exposure analysis demonstrate a reasonable certainty that no harm to the general U.S. population or any subpopulation would results from the use of dimethomorph on vegetables (fruiting, bulb, cucurbit), lettuce (leaf, head), grapes (including raisins), potatoes, hops, grain, brassica (leafy greens), leaves of root and tuber vegetables, and taro root.

ii. *Drinking water.* EPA's Pesticide Root Zone Model/Exposed Analysis Modeling System (PRZM/EXAMS) and Screening Concentration in Groundwater (SCI-GROW) models were used to estimate the maximum dimethomorph concentrations in surface water and ground water, respectively. Results for the chronic drinking water assessment are listed in Table 3.

TABLE 3.—CHRONIC DRINKING WATER ASSESSMENT FOR DIMETHOMORPH

DWLOC chronic	Adult males 20–49	Adult females 13–49	Children 1–6 years	Children birth to 1
No effect level	9	9	9	9
Safety factor	100	100	100	100
RfD=	0.09	0.09	0.09	0.09
cPAD	0.09	0.09	0.09	0.09
A) Chronic food (mg/kg/day)	0.006853	0.007771	0.01512	0.007972
B) Residential (mg/kg/day)	0	0	0	0
water cPAD-(A+B)	0.08314700	0.10222900	0.07488000	0.08202800
DWLOC chronic µg/L	2910	3067	749	820
DEC's				
PRZM/EXAMS (EFED) surface water (µg/L)	12.65	12.65	12.65	12.65
Sci-Grow (EFED) ground water	0.26	0.26	0.26	0.26

2. *Aggregate exposure* (diet + water). The aggregate exposure of dimethomorph residues for food and drinking water is summarized in Table 4 below. Currently dimethomorph (BAS 550 F) is not considered for residential use and therefore residential exposure was not included in the aggregate exposure assessment.

TABLE 4.—AGGREGATE EXPOSURE OF DIMETHOMORPH (BAS 550 F)

Exposure	Infants (0–1 years)	Children (1–6 years)	Males (20–49 years)	Females (13–49 years)
FOOD				
Acute exposure (mg/kg bwt/day)	0.1736	0.1654	0.06386	0.07306
Chronic exposure (mg/kg bwt/day)	0.007972	0.01512	0.006853	0.007771
%aRfD and %aPAD	NA	NA	NA	NA
%cRfD and %cPAD	7.97	15.12	6.85	7.77
WATER				
Acute exposure (mg/kg/bwt)	0.001265	0.000843	0.000361	0.000402

TABLE 4.—AGGREGATE EXPOSURE OF DIMETHOMORPH (BAS 550 F)—Continued

Exposure	Infants (0–1 years)	Children (1–6 years)	Males (20–49 years)	Females (13–49 years)
Chronic exposure (mg/kg bwt/day)	0.001265	0.000843	0.000361	0.000402
%aRfD and %aPAD	NA	NA	NA	NA
%cRfD and %cPAD	25.30	16.87	7.23	8.03
AGGREGATE				
Acute exposure (mg/kg bwt/day)	0.174865	0.166243	0.064221	0.073462
Chronic exposure (mg/kg bwt/day)	0.009237	0.015963	0.007214	0.008173
%aRfD and %aPAD	NA	NA	NA	NA
%cRfD and %cPAD	33.27	31.99	14.08	15.80

These results indicate the aggregate exposure of dimethomorph (BAS 550 F), from potential residues in food and drinking water, will not exceed EPA's level of concern (100% of RfD). Overall, considering a "worst-case" scenario, we can conclude with reasonable certainty that no harm will occur from either acute or chronic aggregate exposure of dimethomorph residues in the current and pending commodities.

3. *Non-dietary exposure.* Currently, there are no registered residential uses for dimethomorph in the United States. Thus, an assessment of non-dietary exposure is not relevant to this petition.

D. Cumulative Effects

There is no information to indicate that any toxic effects produced by dimethomorph would be cumulative with those of any other chemical. The fungicidal mode of action of dimethomorph is unique; dimethomorph inhibits cell wall formation only in Oomycete fungi. The result is lysis of the cell wall that kills growing cells and inhibits spore formation in mature hyphae. This unique mode of action and limited pest spectrum suggest that there is little or no potential for cumulative toxic effects in mammals. In addition, the toxicity studies submitted to support this petition do not indicate that dimethomorph is a particularly toxic compound. No toxic end-points of potential concern were identified.

E. Safety Determination

1. *U.S. population.* Based on the acute toxicity data, BASF believes that dimethomorph does not pose any acute dietary risks. Therefore, a calculation of an acute RfD is not needed. The cPAD is 0.1 mg/kg bwt/day, based on a NOAEL of approximately 10 mg/kg bwt/day (200 ppm) from a 2–year dietary toxicity study in rats that demonstrated decreased body weight and liver foci in females at 750 ppm. The cPAD is calculated using an uncertainty factor of 100. The theoretical maximum residue concentration (TMRC) for all commodities covered in this petition is estimated at 0.003 mg/kg bwt/day for the general population. This represents a dietary exposure to the general population of the United States that is 3.0% of the cPAD. The combined TMRC for all current and pending dimethomorph tolerances in potatoes, tomatoes, grapes, hops, cereal grain commodities, lettuce (head and leaf), endive (escarole), radichio, cucurbit vegetables (crop group 9), bulb vegetables (crop group 3), and fruiting vegetables (except cucurbits) (crop group 8) will utilize less than 10% of the cPAD for the general U.S. population. Since EPA generally has no concern for exposures below 100 percent of the cPAD, EPA should conclude that there is a reasonable certainty that no harm will result from aggregate exposure to dimethomorph residues in or on commodities of the cited crops.

2. *Infants and children.* The TMRC for all commodities covered in this petition is minimal. The consumption of residues of dimethomorph on commodities associated with this request will use approximately 7.0% of the cPAD for children ages 1–6. Moreover, the combined TMRC values for all current and pending dimethomorph tolerances will utilize less than 10% of the cPAD for each of the subgroups. The results of the studies submitted to support this package provide no evidence that dimethomorph caused reproductive, developmental or fetotoxic effects. No such effects were noted at dose levels that were not maternally toxic. The NOAELs observed in the developmental and reproductive studies were 6 to 65 times higher than the NOAEL used to establish the cPAD. There is no evidence to indicate that children or infants would be more sensitive than adults to toxic effects caused by exposure to dimethomorph. Therefore, the registrant believes that the results of the toxicology and metabolism studies support both the safety of dimethomorph to humans based on the intended use as a fungicide on domestically produced fruiting vegetables (except cucurbits) (crop group 8) and the granting of the requested tolerances.

F. International Tolerances.

There are no Canadian, Mexican, or Codex maximum residue levels established for dimethomorph for the commodities associated with this request; consequently, a discussion of international harmonization is not relevant.

[FR Doc. 03–20899 Filed 8–19–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0222; FRL–7316–3]

Issuance of Experimental Use Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted experimental use permits (EUP) to the following pesticide applicants. An EUP permits use of a pesticide for experimental or research purposes only in accordance with the limitations in the permit.

FOR FURTHER INFORMATION CONTACT: *For 69592–EUP–1*: Susanne Cerrelli, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8077; e-mail address: *cerrelli.susanne@epa.gov*, or

For 70515–EUP–3: Carol E. Frazer, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8810; e-mail address: *frazer.carol@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who conduct or sponsor research on pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this action, consult the persons listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0222. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. EUP

EPA has issued the following EUPs:

1. *69592–EUP–1.* Issuance. AgraQuest, Inc, 1530 Drew Ave., Davis, CA 95616. This EUP allows the use of 2,371.2 pounds of the fungicide *Bacillus pumilus* strain QST2808 on 3,955 total acres of brassica, bulb vegetables, cereal grains, cucurbits, fields of roses, forestry, fruiting vegetables, grapes, grass seed, hops, landscape, leafy vegetables, legume vegetables, mint, peanuts, pome fruits, root/tuber vegetables, stone fruits, strawberries, and sugarbeets to obtain phytotoxicity data over a large geographical area and to evaluate the control of various plant pathogens including: *Bremia lactucae, Cercospora spp., Erysiphe spp., Oidiopsis taurica, Peronospora parasitica, Puccinia spp., Sclerotinia spp., Sphaerotheca macularis, Uncinula necator, Uromyces phaseoli*, and *Phytophthora spp.* The program is authorized only in the States of Arizona, California, Colorado, Georgia, Florida, Idaho, Indiana, Michigan, Minnesota, North Carolina, North Dakota, New Jersey, New Mexico, New York, Oklahoma, Oregon, Pennsylvania, Texas, Virginia, Washington, Wisconsin, and West Virginia. The EUP is effective from June 6, 2003 to June 30, 2005. A temporary exemption from the requirement of a tolerance for residues of the *Bacillus pumilus* strain QST2808 in or on all agricultural commodities has been established.

2. *70515–EUP–3.* Issuance. Nutra-Park Inc., 3225 Deming Way, Suite 140, Middleton, WI 53562. This EUP allows the use of 220 gallons of the growth regulator NPI 100 10EC (containing the active ingredient lysophosphatidylethanolamine (LPE)) on 5,000 acres of apples, apricots, avocados, bananas, blackberries, blueberries, boysenberries, cherries, coffee, crabapples, cranberries, currants, eggplant, grapefruits, grapes, kiwis, lemons, limes, mandarins, mangos, mineolas, oranges, peaches, pears, peppers, pimentos, pineapples, plums, pomegranates, pummelos, raspberries, strawberries, tangelos, tangerines, and tomatoes to evaluate the control of ripening and shelf life. The program is authorized only in the States of Arizona, California, Florida, Georgia, Massachusetts, Oregon, South Carolina, Washington, and Wisconsin. The EUP is effective from July 1, 2003 to June 30, 2005. An exemption from the requirement of a tolerance has been established for residues of the active ingredient in or on all food commodities.

Authority: 7 U.S.C. 136c.

List of Subjects

Environmental protection, Experimental use permits.

Dated: August 8, 2003.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 03–21353 Filed 8–19–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7546–6]

Proposed Agreement Pursuant to Sections 122(g) and (h) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Chemical Recovery Systems Superfund Site

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice; request for public comment on proposed de minimis settlement.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of response costs concerning the Chemical Recovery Systems Superfund Site in Elyria, Ohio. EPA proposes to enter into this agreement under the authority of sections 122(g) and (h) and 107 of CERCLA. In addition to the review by the public pursuant to this document, the agreement has been approved by the United States Department of Justice. The proposed agreement has been executed by the following eighty three (83) de minimis parties:

3M Company
Adelphia, Inc.
Aexcel Corporation (f/k/a DeSantis Coatings)

Alcoa Building Products, Inc. (f/k/a Stolle Corporation)
American Colors, Inc.
American Greetings Corporation
Auto & Industrial Finishes, Inc.
Barr, Inc.
BASF Corp. (Limbacher Paint & Color Works, Inc.)
Bayer Polymers, LLC (f/k/a Mobay)
Benjamin Moore (f/k/a Technical Coatings, Inc.)
Berenfield Containers, Inc.
Borden Chemical, Inc.
Borg Warner, Inc. (Borg-Warner Corporation)
Bosch Rexroth Corp. (Mannesman Rexroth/Rexroth Corp.)
Bridgestone/Firestone North American Tire, LLC (Firestone Tire & Rubber)
Browning Ferris Industries of Ohio, Inc.
Bucyrus International, Inc. (Bucyrus Erie)
Bud Industries, Inc.
Chemcentral Corp.
Chemical Distributors, Inc.
Chemtron Corp.
C L Holdings, Inc. (f/k/a Conneaut Leather, Inc.)
Crown Beverage Packing, Inc; Crown Cork & Seal Co., Inc.; and Level 3 Communications, Inc.; (f/k/a Continental Can Company, Inc.)
Cytec Olean, Inc. (f/k/a Conap, Inc.)
CWM Chemical Service, LLC (f/k/a Chemtrol)
DaimlerChrysler Corp. (Chrysler Plastic Products)
Dorn Color, Inc.
Dow Corning Corporation
Eastman Kodak Company
FBC Chemical Corporation
Ferriot Inc. (f/k/a Ferriot Brothers, Inc.)
FirstEnergy Nuclear Operating Co. (Painesville Nuclear Plant)
Foseco Metallurgical, Inc.
Franklin International (Franklin Chemical/Glue)
General Electric Company
Great Lakes Terminal & Transportation Corp. of Pennsylvania
Hasbro, Inc. (Kenner Toys)
Honeywell International, Inc. (Sinclair & Valentine)
Hoover Company, The
Hubbell Power Systems, Inc. (Ohio Brass)
Hukill Chemical Corporation
Ingersoll-Rand (Clark Equipment Company)
International Paper (Masonite/Marlite)
ITW Food Equipment Group, LLC (Hobart Corp.)
J C Whitlam Manufacturing Company
Kalcor Coatings Company
Liberty Solvents and Chemicals
Mahoning Paint Company
Mameco International
Marconi Communications, Inc. (Lorain Products)
Miller Studio, Inc.
Moen, Inc. (Stanadyne, Inc.)
Molded Fiber Glass Companies
Neville Chemical Company
Nordson Corporation
Northrop Grumman Space & Mission Systems Corp. (TRW, Inc.)
Ohio Dept. of Transportation
Owens-Illinois, Inc.
Parker Hannifin Corp., Nichols Airborne Division (Airborne Manufacturing)
Pfizer (Parke-Davis & Co./Warner Lambert, LLC)
Philip Services Corp. (Nortru, Inc.)
Plas-Tanks Industries, Inc.
Quality Synthetic Rubber, Inc.
R. W. Beckett Corporation
Rexam Beverage Can Americas (National Can)
Robertson Ceco Corporation (f/k/a H. H. Robertson Co.)
Rockwell International
Ruscoe Company, The (W.J. Ruscoe Co.)
Scott Fetzer Company, The (Quikut)
Shell Oil Company (Shell Chemical Co.)
Taylor Metal Products Corp.
Technical Products, Inc.
Tecumseh Products Company
Temperature Control Company
ThermaTru Corp. (Lake Shore Industries)
Therm-O-Disc, Inc.
Thomas Steel Strip Corp.
U S Chemical & Plastics
Universal Cooperatives
Viacom, Inc. (Luxaire, Inc.)
Whirlpool Corp.
Wooster Brush Company, The

This settlement agreement requires the settling parties to pay a total of $651,200 to the Hazardous Substance Superfund. The settlement also includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a).

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlements. The Agency will consider all comments received and may modify or withdraw its consent to the settlements if comments received disclose facts or considerations which indicate that the settlements are inappropriate, improper, or inadequate.

Background: Additional background information on the Site is available for public inspection at the following locations: Elyria Public Library, 320 Washington Ave., Elyria, OH 44305. Records Center, U.S. EPA, Region 5, 7th Floor, 77 W. Jackson Blvd., Chicago, IL 60604–3590.

DATES: Comments on the proposed agreement must be received by EPA on or before September 19, 2003.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, and should refer to: In the Matter of Chemical Recovery Systems Site, U.S. EPA Docket No. V–W–03–C–750.

FOR FURTHER INFORMATION CONTACT: Thomas C. Nash, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 886–0552.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Dated: August 7, 2003.

William Muno,

Director, Superfund Division.

[FR Doc. 03–21349 Filed 8–19–03; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

August 13, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents,

including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments October 20, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy B. Herman at 202–418–0214 or via the internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0280.

Title: Section 90.633 (f) and (g), Conventional Systems Loading Requirements (Wide Area Systems).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for profit, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 15.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 10 hours.

Annual Reporting and Recordkeeping Cost Burden: $3,000.

Needs and Uses: 800 and 900 MHz radio systems are normally licensed to cover a confined area of operation. These rule sections, however, provide applicants who need specially configured wide area or ribbon systems the opportunity to request authorization for such systems upon a showing of need. The information collected is used by licensing personnel to determine if such systems should be authorized. Since the frequencies are reused by other licensees, Commission responsibility for maintaining spectrum efficiency necessitates this determination.

OMB Control No.: 3060–0949.

Title: Interstate Telephone Service Provider Worksheet.

Form No.: FCC Form 159–W.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit entities, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 4,000.

Estimated Time Per Response: .25 hours.

Frequency of Response: Annual and on occasion reporting requirements.

Total Annual Burden: 1,000 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: Section 9 of the Communications Act of 1934, as amended, authorized the FCC to assess and collect annual regulatory fees to recover costs incurred in carrying out its enforcement, policy and rulemaking activities and its user information services. Common carrier licensees and permittees who provide interstate telephone operator services must pay those fees. These regulatory fees are based upon a percentage of the carrier's interstate revenues. The information is necessary to determine how much each carrier's interstate revenues are available to the carrier by extraction from another OMB collection, Telecommunications Reporting Worksheet, FCC Form 499–A (OMB Control Number 3060–0855). The requested FCC Form 159–W is intended to provide a convenient format for documenting the extracted interstate revenue information (which is already populated on the form) and complete/verify the simple calculation of the fee amount due. The information will be used by the Commission to determine if a party has properly calculated the amount if it's regulatory fee due.

OMB Control No.: 3060–1004.

Title: Wireless Telecommunications Bureau Standardizes Carrier Reporting on Wireless E911 Implementation.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 303 respondents; 1,212 responses.

Estimated Time Per Response: 5 hours.

Frequency of Response: Quarterly, semi-annual and one-time reporting requirements and recordkeeping requirement.

Total Annual Burden: 1,282 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The Wireless Telecommunications Bureau (WTB) has taken steps to facilitate more uniform reporting of wireless Enhanced 911 (E911) deployment, in order to foster greater coordination and collaboration among various stakeholders in the implementation process. The Bureau established the format of an Excel spreadsheet to be submitted with the wireless carrier E911 deployment reports required by the Commission. The Commission sought and received emergency OMB approval for this information collection on 08/07/03. The Commission is now seeking the full three year clearance from the OMB.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21371 Filed 8–19–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 98–67; DA 03–2644]

Communication Services for The Deaf (CSD) Petition for Limited Waiver and Request for Expedited Relief Regarding the Provision of Video Relay Services (VRS) for Depositions and Other Legal Proceedings

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks public comment on a petition for limited waiver and request for expedited relief requesting that the Commission waive § 64.604(a)(3) of its rules to the extent necessary to permit communications assistants to deny video relay services (VRS) calls in the limited situation that involves depositions or legal proceedings that are initiated between parties located in two separate and remote locations.

DATES: Interested parties may file comments in this proceeding on or before September 15, 2003. Reply comments may be filed on or before September 30, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica Myers, Consumer & Governmental Affairs Bureau, Disability Rights Office at (202) 418–2429 (voice), (202) 418–0464 (TTY), or e-mail at *Erica.Myers@fcc.gov*.

SUPPLEMENTARY INFORMATION: When filing comments, please reference CC Docket No. 98–67. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/*

ecfs.html. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204 Washington, DC 20554.

Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted, along with three paper copies, to: Erica Myers, Consumer & Governmental Affairs Bureau, Disability Rights Office, 445 12th Street, SW., Room 6–A432 Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CC Docket No. 98–67, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are subject to disclosure. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this *Public Notice* may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY). This *Public Notice* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Federal Communications Commission.

Margaret M. Egler,

Deputy Chief, Consumer & Governmental Affairs Bureau.

[FR Doc. 03–21246 Filed 8–19–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2621]

Petitions for Reconsideration of Action in Rulemaking Proceeding

August 14, 2003.

Petitions for Reconsideration have been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by September 4, 2003. *See* Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: In the Matter of the Commission's Rules Regarding Ultra-Wideband Transmission Systems (ET Docket No. 98–153).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21370 Filed 8–19–03; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 13507F.
Name: Cargo Carriers Ltd.
Address: 3729 Union Road, Suite 17, Cheektowaga, NY, 14225–4246.
Date Revoked: July 30, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4015F.
Name: Caribbean Cold Storage, Inc.
Address: 1505 Dennis Street, Jacksonville, FL 32204.
Date Revoked: August 1, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4407F.
Name: JCC International, Inc.

Address: 6275 N. State Road, #7, Madison, IN 47250.

Date Revoked: July 17, 2003.

Reason: Failed to maintain a valid bond.

License Number: 3879NF.

Name: S.Q. Unlimited Transportation Services, Inc., dba S.Q. Ocean Services.

Address: 1040 Industry Drive, Seattle, WA 98188.

Date Revoked: August 1, 2003.

Reason: Surrendered license voluntarily.

License Number: 16277N.

Name: Trans-Union Group (Miami) Co.

Address: 2801 NW 74th Avenue, Suite 173, Miami, FL 33122.

Date Revoked: July 24, 2003.

Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–21317 Filed 8–19–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Correction

In the **Federal Register** Notice published August 7, 2003 (68 FR 47064) the reference to Dart Cargoways India Private Limited is corrected to read:

Draft Cargoways India Private Limited, No. 14 More Street, Chennai—600 001, Tamilnadu, 91–44–25272128, India.

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/Address	Date reissued
11949N	Eastern Trans Line, Inc., 377 Route 17 South, Suite 216, Hasbrouck Heights, NJ 07604.	June 23, 2003.
15565N	International Equipment Logistics, Inc., 210 E. Essex Avenue, Avenel, NJ 07001	June 18, 2003.
17109N	Namgene Paik dba Southern Logistic Service, 8735 Bellanca Avenue, Unit B, Los Angeles, CA 90045.	June 28, 2003.
4100NF	Trans World Shipments, Inc., 6701 NW 7th Street, Suite 100, Miami, FL 33126	April 4, 2003.

Dated: August 15, 2003.

Karen V. Gregory,

Acting Assistant Secretary.

[FR Doc. 03–21315 Filed 8–19–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 3, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. John Alfred Melancon, Breaux Bridge, Louisiana; to acquire additional voting shares of First Bankshares of St. Martin, Ltd., Breaux Bridge, Louisiana, and thereby indirectly acquire additional voting shares of First Louisiana National Bank, Breaux Bridge, Louisiana.

Board of Governors of the Federal Reserve System, August 14, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21249 Filed 8–19–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transaction were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

ET date	Trans Num	ET REQ Status	Party Name
07-AUG-03	20030813	G	Liberty Media Corporation
	.....	G	Comcast Corporation
	.....	G	QVC, Inc.
	20030814	G	Richard B. Cohen
	.....	G	Fleming Companies, Inc.
	.....	G	Fleming Transportation Service, Inc.
	.....	G	Fleming Foods of Texas L.P.
	.....	G	Fleming Foods Management Co., L.L.C.
	.....	G	RFS Marketing Services, Inc.
	.....	G	Piggly Wiggly Company
	.....	G	Fleming International Ltd.
	20030825	G	Boralex Power Income Fund
	.....	G	Black Hills Corporation
	.....	G	Northern Electric Power Co., L.P.
	.....	G	South Glens Falls Limited Partnership
	20030826	G	Boralex Power Income Fund
	.....	G	William Rockford
	.....	G	Northern Electric Power Co., L.P.
	.....	G	South Glens Falls Limited Partnership
08-AUG-03	20030754	G	The Black & Decker Corporation
	.....	G	Masco Corporation
	.....	G	Weiser Lock Corporation
	.....	G	Baldwin Hardware Corporation
	.....	G	Baldwin Hardware Service, LLC
29-JUL-03	20030647	G	Grupo TMM, S.A.
	.....	G	Kansas City Southern
	.....	G	Kansas City Southern
	20030806	G	Cooperative De Serguros Mutiples De Puerto Rico
	.....	G	Royal & Sun Alliance Insurance Group plc
	.....	G	Royal & Sun Alliance Insurance (Puerto Rico), Inc.
	20030815	G	Sandler Capital Partners V, L.P.
	.....	G	Paul G. Allen
	.....	G	Charter Communications, L.P.
30-JUL-03	20030762	G	J.W. Childs Equity Partners II, L.P.
	.....	G	Keith E. Loiselle
	.....	G	CDL Medical Technologies, Inc.
	20030794	G	Florida Rock Industries, Inc.
	.....	G	Lafarge S.A.
	.....	G	Lafarge Florida Inc.
	20030811	G	Caderice Design Systems, Inc.
	.....	G	Verplex Systems, Inc.
	.....	G	Verplex Systems, Inc.
31-JUL-03	20030767	G	Select Medical Corporation
	.....	G	The Henry H. Kessler Foundation, Inc.
	.....	G	Kessler Rehabilitation Corporation
	20030778	G	Nabi Biopharmaceuticals
	.....	G	Braintree Holdings
	.....	G	Braintree Laboratories, Inc.
06-AUG-03	20030789	G	IDEC Pharmaceuticals Corporation
	.....	G	Biogen, Inc.
	.....	G	Biogen, Inc.
	20030808	G	WellPoint Health Networks Inc.
	.....	G	Wisconsin United for Health Foundation, Inc.
	.....	G	Cobalt Corporation
	20030810	G	Dean Foods Company
	.....	G	Horizon Organic Holding Corporation
	.....	G	Horizon Organic Holding Corporation
24-JUL-03	20030774	G	ING Furman Selz Investors III L.P.
	.....	G	Wabash National Corporation
	.....	G	Apex Trailer Leasing & Rentals, L.P.
	.....	G	Wabash National Trailer Centers, Inc.
	20030777	G	Code, Hennesy & Simmons IV. L.P.
	.....	G	Churchill ESOP Capital Investments Partners
	.....	G	Jones Stephens Corp.
	20030797	G	ASP Westward Partners, L.P.
	.....	G	NiSource Inc.
	.....	G	Primary Energy, Inc.
	.....	G	Cokenergy, LLC
	.....	G	Lakeside Energy, LLC
	.....	G	North Lake Energy, LLC

TRANSACTION GRANTED EARLY TERMINATION—Continued

ET date	Trans Num	ET REQ Status	Party Name
	.....	G	Portside Energy, LLC
	.....	G	Ironside Energy, LLC
	.....	G	Harbor Coal LLC
25-JUL-03	20030674	G	Siemens AG
	.....	G	ALSTOM
	.....	G	ALSTOM
	20030805	G	Arsenal Capital Partners Qualified Purchaser Fund LP
	.....	G	Wyeth
	.....	G	Scientific Protein Laboratories, Inc.
	20030807	G	Morgan Stanley Dean Witter Capital Partners IV, L.P.
	.....	G	NiSource Inc.
	.....	G	Columbia Energy Resources, Inc.
	20030812	G	El Chico Holding Company, L.P.
	.....	G	J.W. Childs Equity Partners, L.P.
	.....	G	Chevys, Inc.
	.....	G	Rio Bravo Acquisitions, Inc.
	.....	G	Chevys New York, Inc.
	.....	G	Chevys of Parsippany, Inc.
	.....	G	Chevys of Greenbelt, Inc.
	.....	G	Katmandu Creations, Inc.
28-JUL-03	20030745	G	General Dynamics Corporation
	.....	G	Veridian Corporation
	.....	G	Veridian Corporation
21-JUL-03	20030648	G	Deutsche Post AG
	.....	G	Airborne, Inc.
	.....	G	Airborne, Inc.
	20030727	G	Alcatel
	.....	G	Avanex Corporation
	.....	G	Avanex Corporation
	20030736	G	Avanex Corporation
	.....	G	Corning Incorporated
	.....	G	Corning Incorporated
	20030737	G	Corning Incorporated
	.....	G	Avanex Corporation
	.....	G	Avanex Corporation
	20030782	G	JLG Industries, Inc.
	.....	G	Textron Inc.
	.....	G	TRAK International, Inc.
	20030793	G	Austin Ventures VIII, L.P.
	.....	G	Staktek Corporation
	.....	G	Staktek Corporation
22-JUL-03	20030733	G	Zimmer Holdings, Inc.
	.....	G	Centerpulse Ltd.
	.....	G	Centerpulse Ltd.
	20030766	G	Cash America International, Inc.
	.....	G	Lee Schear
	.....	G	Cashland, Inc.
	20030799	G	Timothy N. Poster
	.....	G	Kirk Kerkorian
	.....	G	GNLV, Corp.
	.....	G	GNL, Corp.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative, or Renee Hallman, Legal Technician, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Shira Pavis Minton,

Acting Secretary.

[FR Doc. 03–21292 Filed 8–19–03; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) allow the proposed information collection project: "Surveys of Employee Benefit Managers of Large National Employers Concerning Dissemination Effectiveness of Health Services Research Information (SEBM)". In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHRQ

invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by October 20, 2003.

ADDRESSES: Written comments should be submitted to: Cynthia D. McMichael, Reports Clearance Officer, AHRQ, 540 Gaither Road, Suite 5022, Rockville, MD 20850.

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from AHRQ's Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Cynthia D. McMichael, AHRQ, Reports Clearance Officer, (301) 427–1651.

SUPPLEMENTARY INFORMATION:

Proposed Project

"Surveys of Employee Benefit Managers of Large National Employers Concerning Dissemination Effectiveness of Health Services Research Information (SEBM)".

The SEBM is a series of two questionnaires and one telephone interview to learn the extent of awareness, use of , and satisfaction with the content of health services research information by employee benefits managers of large national employers. The surveys will also measure the effectiveness of the methods used to disseminate health services research information. The initial survey will serve as a benchmark against which the remaining two surveys in this study will be measured. Subsequent to the initial survey, AHRQ will initiate two interventions: (1) Placing AHRQ-sponsored information on a Web site and (2) making personal contact with employee benefits managers; a survey will follow each intervention to measure the extent to which each intervention makes employee benefit managers aware of AHRQ and its health research information. With this knowledge, AHRQ will be able to make changes to its information dissemination efforts to make them more effective and responsive to employee benefit managers.

Data Confidentiality Provisions

Data collected by the contractor and the contractor's draft analyses will be retained for one year after final acceptance of all contract deliverables, unless longer retention is requested by the agency for audit purposes. All agency documents pertaining to the contract will be archived after the contract is completed and retained in accordance with a Federal Records Act retention schedule.

Methods of Collection

The data will be collected using a combination of web-based and telephone surveys.

ESTIMATED ANNUAL RESPONDENT BURDEN

Survey	Number of respondents	Estimated time per respondent in minutes	Estimated total burden hours	Estimated annual cost to the government
Initial Benchmark Survey	240	10	40	$4000
Post Intervention Survey #1	45	10	7.5	750
Post Intervention Survey #2	240	10	40	4000
Total	525	10	87.5	8750

Request for Comments

In accordance with the above cited legislation, comments on AHRQ's information collection are requested with regard to any of the following: (a) whether the proposed collection of information is necessary for the proper performance of functions of AHRQ, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: August 14, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–21296 Filed 8–19–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03110]

Enhancement of Laboratory Quality Assurance Programs for HIV/AIDS Testing in Countries Supported by the Global AIDS Program; Notice of Intent To Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program for the enhancement of national laboratory quality assurance programs supporting HIV/AIDS testing for surveillance and prevention activities in countries supported by the Global AIDS Program (GAP). The Catalog of Federal Domestic Assistance number for this program is 93.939.

B. Eligible Applicant

Assistance will be provided only to the National Serology Reference Laboratory (NRL) in the Country of Australia. This announcement is restricted to the Australia NRL because it is a unique agency charged by the World Health Organization (WHO) with providing External Quality Assessment Schemes (EQAS), training, and technical assistance for HIV/AIDS laboratory testing to 100 national and regional reference laboratories in the Asia region and South Pacific.

C. Funding

Approximately $150,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 15, 2003, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact:

Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Thomas L. Hearn, Ph.D., Deputy Director, Division of Laboratory Systems, PHPPO, 4770 Buford Highway, MS–G25, Atlanta, GA 30341–3717, Telephone: (770)–488–8282.

Dated: August 14, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–21264 Filed 8–19–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03162]

Expansion of HIV/AIDS/STD Monitoring, Evaluation and Other Program Support in the Government of Brazil; Notice of Intent to Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program for the improvement and expansion of HIV/AIDS/STD prevention and support activities in Brazil. The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the Foundation for the Scientific and Technological Development in Health (FIOTEC). The Brazilian Government has conducted the National response to the HIV/AIDS epidemic in Brazil primarily through the Ministry of Health division referred to as the National Coordination of STDs and HIV (CN DST–HIV). This coordination has been supported both by the Ministry of Finance and two World Bank Loans/Grants, a third three-year loan is currently being implemented FY 2003. The CN DST–HIV receives its only funding directly from the Ministry of Finance, there is no fiscal unit or mechanism to receive or manage direct funding from other donor agencies.

In 1999, the Brazilian Ministry of Health (MOH) requested the Global AIDS Program (GAP) to conduct a needs assessment of their National AIDS Program. As a result of this assessment the Brazilian MOH invited the Global Aids Program to provide technical assistance to the National Coordination for Sexually Transmitted Diseases and HIV/AIDS Program in Brazil (CN DST/AIDS). The CN DST–HIV implements its strategic plan through a number of governmental and non-governmental agencies, including Federal Universities. These partner organizations often provide a variety of technical, programmatic and management services to the National Coordination. One such organization is FIOTEC.

FIOTEC is a foundation that draws on the collective body of Health Researchers from a group of research institutes called the Oswaldo Cruz Foundation, or FIOCRUZ. There are a number of these institutes located across the country working in close collaboration with Federal, State and Municipal Health offices. These research institutes work in areas of applied research of infectious diseases control and public health management.

FIOTEC also is a management organization with a strong fiscal unit that manages several international grant awards to the Governmental of Brazil. The foundation has an established record of transparent fiscal management with international grants that could avail its services to manage this cooperative agreement. To date, HHS/CDC/GAP has not worked with this foundation.

HHS/CDC/GAP and the CN DST–HIV are currently entering into a joint collaboration, through a Memorandum of Understanding, that is designed to assist them in building a Monitoring and Evaluation Unit and to further scale up these activities at the State and Municipal levels of Government.

As noted above, the CN DST/AIDS is the only organization that can carry out these activities. However, the CN DST/AIDS has no financial mechanism for the direct receipt of funds. It has no fiscal unit and cannot enter into a direct cooperative agreement with GAP Brazil or any other agency. Presently, the CN DST/AIDS receives funds from the Ministry of Health in three ways (1) directly from the Ministry of Finance (2) through an agreement with the United Nations, and (3) through a cooperative agreement with MOH/FIOTEC.

FIOTEC/FIOCRUZ has been identified by the MOH/CN DST/AIDS as the domestic organization to assist in this effort and would benefit in the long term from CDC's expertise to institutionalize these methodologies of Monitoring and Evaluation. Therefore, after much examination and negotiation to find the best mechanism to initiate and manage this CDC Cooperative Agreement—the Ministry of Health has determined that the only mechanism to operationalize this Cooperative Agreement between them and HHS/CDC/GAP is through FIOTEC.

C. Funding

Approximately $1,000,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 15, 2003, and will be made for a 12-month budget period within a project period of up to four years. Funding estimates may change. None of these funds may be used to support travel to or from or activities in Cuba.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact:

Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: William E. Brady, Global AIDS Program (GAP), Brazil Country Team, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention, Brazil-CDC AIDS Project Team, CN DST/AIDS, Brasilia, Brazil, Telephone: 55–61 273–4851, e-mail: *web0@cdc.gov*.

Dated: August 14, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–21265 Filed 8–19–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 03147]

Improving HIV/AIDS/STI/TB Prevention and Control Activities in the Ethiopian Federal Democratic Republic Ministry of Health; Notice of Intent to Fund Single Eligibility Award

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2003 funds for a cooperative agreement program for

improving prevention and control of Human Immunodeficiency Virus/ Acquired Immunodeficiency Syndrome/ other Sexually Transmitted Infections/ Tuberculosis (HIV/AIDS/STI/TB) in the Ethiopian Federal Democratic Republic Ministry of Health (MOH). The Catalog of Federal Domestic Assistance number for this program is 93.941.

B. Eligible Applicant

Assistance will be provided only to the MOH. The MOH is the only appropriate and qualified organization to conduct specific set of activities supportive of the CDC GAP technical assistance to Ethiopia. The MOH has been mandated by the Ethiopian Government to provide leadership in the provision of health care to the country of Ethiopia; the MOH is uniquely positioned, in terms of legal authority, ability, and credibility to work in the area of HIV/AIDS/STI/TB prevention and control; the MOH is the only organization capable of conducting and coordinating national HOV/AIDS/ STI/TB surveillance; and the MOH is the primary partner of CDC/Ethiopia for HIV/AIDS/STI/TB activities in Ethiopia.

C. Funding

Approximately $100,000 is available in FY 2003 to fund this award. It is expected that the award will begin on or before September 15, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimate may change.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact:

Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact:

Tadesse Wuhib, Country Director, CDC–Ethiopia, P.O. Box 1014, Entoto Road, Addis Ababa, Telephone: (Office) 251–1–66–95–51; (Cell) 251–9–228543, e-mail address: *wuhibt@etcdc.com.*

Dated: August 14, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–21266 Filed 8–19–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Objective Work Plan and Project Abstract.

OMB No.: 0980–0204.

Description: The information collected by the Objective Work Plan is needed to properly administer and monitor the Administration for Native Americans (ANA) Program's competitive areas—Social and Economic Development Strategies (SEDS), ANA Environmental Regulatory Enhancement, Native Language Preservation, and ANA Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense Activities, by providing information in an application for a grant award. This data is used by legislatively-mandated Native American review panels, and ANA, as the basis for recommendations for the decisions to award competitive ANA grants. The project Abstract provides crucial information in a concise format that is used by the independent review panel, ANA staff and the Commissioner during all phases of the review process.

Respondents: Tribal Govt. Native non-profits, Tribal Colleges & Universities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
OWP	650	1	28	18,200
Project Abstract	650	1	1	650

Estimated Total Annual Burden Hours: 18,850.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *lauren_wittenberg@omb.eop.gov.*

Dated: August 14, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–21288 Filed 8–19–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0187]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Postmarket Surveillance of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management

and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 19, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Postmarket Surveillance of Medical Devices—21 CFR Part 822 (OMB Control Number 0910–0449)—Extension

Section 522(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360l(a)) authorizes FDA to require manufacturers to conduct postmarket surveillance (PS) of any device that meets the criteria set forth in the statute.

The PS regulation in part 822 (21 CFR part 822) establishes procedures that FDA uses to approve and disapprove PS plans. The regulation provides specific, clear, and flexible instructions to manufacturers so they know what information is required in a PS plan submission. FDA reviews submissions in accordance with §§ 822.15 through 822.18 (which describe the grounds for approving or disapproving a PS plan). If this information is not collected, FDA cannot ensure that the PS will result in the collection of useful data that can reveal unforeseen adverse events or other information necessary to protect the public health.

Respondents to this collection of information are those manufacturers who require PS of their products. As previously stated, the collection of data and information under these regulations is conducted on a very infrequent basis and only as necessary.

In the **Federal Register** of May 15, 2003 (68 FR 26307), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	No. of Responses	Total Annual Responses	Hours per Response	Total Hours
822.9 and 822.10	5	1	5	120	600
822.21	2	1	2	40	80
822.26	1	1	1	8	8
822.27	1	1	1	40	40
822.28	1	1	1	40	40
822.29	1	1	1	120	120
822.30	1	1	1	40	40
822.34	1	1	1	20	20
822.38	23	2	46	80	3,680
Totals					4,628

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
822.31	23	1	23	20	460
822.32	69	1	69	10	690
Totals					1,150

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA estimates, based on current staffing and resources, only one actual PS action and manufacturers' aversion to the stigma of PS over the past year. One PS action will be issued for generic devices comprising of approximately five manufacturers. Each manufacturer will be required to submit a PS plan (§§ 822.9 and 822.10) and interim and final reports on the progress of the surveillance (§ 822.38). FDA anticipates that, on a case-by-case basis, requests for additional information may be made from a manufacturer. FDA expects that a small number of respondents will propose changes to their PS plans (§ 822.21), request a waiver of a specific requirement of this regulation (§ 822.29), or request exemption from the requirement to conduct PS of their device (§ 822.30). FDA's experience has shown that a few respondents will go out of business (§ 822.26) or cease marketing the device subject to PS (§ 822.28) each year. In addition, manufacturers must certify transfer of records when ownership changes (§ 822.34).

Section 822.25 does not constitute information collections subject to review under the PRA because "* * * they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument * * *" (5 CFR 1320.3(h)(1)).

FDA expects that at least some of the manufacturers will be able to satisfy the PS requirement using information or data they already have. For purposes of calculating burden, however, FDA has assumed that each PS order can only be satisfied by a 3-year clinically-based surveillance plan, using three investigators. These estimates are based on FDA's knowledge and experience with limited implementation of section 522 of the act under the Safe Medical Devices Act of 1990. Therefore, FDA would expect that the recordkeeping requirements would apply to a maximum of 23 manufacturers (6 added each year) and 69 investigators (3 years per surveillance plan). After 3 years,

FDA would expect these numbers to remain level as the surveillance plans conducted under the earliest orders reach completion and new orders are issued.

Dated: August 13, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–21226 Filed 8–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0191]

Agency Emergency Processing Under OMB Review; Submission of Validation Data for Reprocessed Single-Use Devices; Correction

AGENCY: Food and Drug Administration; HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of July 23, 2003 (68 FR 43534). The document corrected a notice that appeared in the **Federal Register** of July 8, 2003 (68 FR 40676), that announced that a proposed collection of information had been submitted to the Office of Management and Budget for emergency processing under the Paperwork Reduction Act of 1995. The July 23, 2003, document published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy and Planning (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 03–18692, appearing on page 43534 in the **Federal Register** of July 23, 2003, the following correction is made:

1. On page 43534, in the first column, in the fourth line, "[Docket No. 2003N–0069]" is corrected to read "[Docket No. 2003N–0191]".

Dated: August 13, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–21227 Filed 8–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 18, 2003, from 8 a.m. to 6 p.m.

Location: Gaithersburg Hilton Hotel, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 18, 2003, the following committee updates are tentatively scheduled: (1) Announcement of appointment of the new Director, Division of Hematology, Office of Blood Research and Review, Center for Biologics Evaluation and Research; (2) summary of Public Health Service Advisory Committee on Blood Safety and Availability; (3) summary of National Heart, Lung and Blood Institute workshop on pathogen reduction and blood component safety; (4) approval of human immune deficiency virus, type 1 (HIV–1) group "O" sensitive assays; (5) revised guidance on Severe Acute Respiratory Syndrome; (6) updated donor travel survey; and (7) labeling and storage: Blood and blood components (proposed regulation). In the morning, the committee will also hear informational presentations on: (1) An overview of counterterrorism exercise; and (2) the current status of West Nile Virus safety. In the afternoon, the committee will hear presentations, discuss and provide recommendations on the topic of supplemental testing for HIV–1 and hepatitis C virus.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 8, 2003. Oral presentations from the public will be scheduled between approximately 10 a.m. and 10:15 a.m., 11:30 a.m. and 12:30 p.m., and 4:15 p.m. and 4:45 p.m. on September 18, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 8, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Linda A. Smallwood or Pearline K. Muckelvene at 301–827–1281 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 13, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–21229 Filed 8–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0347]

Small Entity Compliance Guide on Labeling *Trans* Fatty Acids; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a small entity compliance guide (SECG) for a final rule published in the **Federal Register** of July 11, 2003, entitled "Food Labeling: *Trans* Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims." This SECG, also entitled "Food Labeling: *Trans* Fatty Acids in Nutrition

Labeling, Nutrient Content Claims, and Health Claims," is intended to help small businesses understand that final rule and to set forth in plain language the requirements of the regulation.

DATES: Submit written or electronic comments on the SECG at any time.

ADDRESSES: Submit written comments concerning this SECG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit written requests for single copies of the SECG to the Industry Activities Staff, Center for Food Safety and Applied Nutrition (HFS–565), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835. Send one self-adhesive address label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Julie Schrimpf, Center for Food Safety and Applied Nutrition (HFS–800), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–2373, FAX 301–436–2636.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 11, 2003 (68 FR 41434), FDA issued a final rule requiring that *trans* fatty acids be declared in the nutrition label of conventional foods and dietary supplements on a separate line immediately under the line for the declaration of saturated fatty acids. This final rule becomes effective on January 1, 2006.

We examined the economic implications of that final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–602) and determined that the final rule would have a significant economic impact on a substantial number of small entities.

In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121), we are making available this SECG stating in plain language the requirements of the final rule.

FDA is issuing this SECG as level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115). This SECG represents the agency's current thinking on the subject. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. You may use an alternative approach if such approach satisfies the requirements of the applicable statutes and regulations. If you want to discuss an alternative approach, contact the FDA staff responsible for implementing this guidance (see **FOR FURTHER INFORMATION CONTACT**).

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the SECG entitled "Food Labeling: *Trans* Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims." Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the SECG and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/dms/guidance.html*.

Dated: August 12, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–21228 Filed 8–19–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–33]

Notice of Proposed Information Collection: Comment Request; Request for Occupied Conveyance

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov*.

FOR FURTHER INFORMATION CONTACT: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1672 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Occupied Conveyance.

OMB Control Number, if applicable: 2502–0268.

Description of the need for the information and proposed use: Usage of the form HUD–9539 will enable HUD to determine whether various persons qualify to remain as a tenant in occupancy. This information will also provide the basis for facilitating the management and administration of the property disposition program. Respondents are occupants of the property, former mortgagors, and tenants.

Agency form numbers, if applicable: HUD–9539.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 21,125; the number of respondents is 12,750 generating approximately 74,750

annual responses; the frequency of response is on occasion; and the estimated time needed to prepare the response varies from 15 minutes to 30 minutes.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: August 13, 2003.

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. 03–21238 Filed 8–19–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–12]

Delegations of Procurement Authority and Designation of Senior Procurement Executive

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: In this notice, the Secretary of HUD delegates all procurement authority of the Secretary to the Assistant Secretary for Administration/Chief Information Officer and the Chief Procurement Officer, and authorizes each to exercise all duties and powers of the Secretary regarding departmental procurement activities. The Chief Procurement Officer continues to serve as the Department's Senior Procurement Executive.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Edward L. Girovasi, Jr., Director, Policy and Field Operations Division, Office of the Chief Procurement Officer, Room 5262, 451 7th Street SW., Washington, DC 20410–3000, (202) 708–0294 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Secretary is issuing new delegations of procurement authority to reflect the Department's current organizational structure. Since the last publication of the Department's delegations of procurement authority, the Office of the Chief Procurement Officer has been organizationally realigned under the authority of the Assistant Secretary for Administration/Chief Information Officer.

This notice encompasses all of the delegations of procurement authority made by the Secretary within the Department. Therefore, through this notice, the Secretary supersedes, delegates, and designates as follows:

Section A. Authority Superseded

This notice supersedes an unpublished delegation dated May 24, 2001, which delegated procurement authority to the Assistant Secretary for Administration/Chief Information Officer. The May 24, 2001, delegation authorized the Assistant Secretary for Administration/Chief Information Officer to exercise all duties and powers of the Secretary regarding departmental procurement activities, and delegated to the Assistant Secretary for Administration/Chief Information Officer the responsibility for the administrative oversight of all departmental procurement activities.

This notice supersedes the Notice of Designation of Senior Procurement Executive and Revocation and Delegation of Procurement Authority published in the **Federal Register** on October 13, 1998 (63 FR 54722), which designated the Chief Procurement Officer as the Department's Senior Procurement Executive, and which transferred all procurement authority for the Department to the Chief Procurement Officer.

Section B. Designation and Delegation of Authority

The Assistant Secretary for Administration/Chief Information Officer and the Chief Procurement Officer are delegated all procurement authority of the Secretary and are authorized to exercise all duties and powers of the Secretary regarding departmental procurement activities. Included in the authority delegated in this notice is the authority to enter into, administer, and/or terminate all procurement contracts and interagency agreements entered into under the authority of the Economy Act within the Department and make related determinations and findings. Additionally, included in the authority delegated to the Chief Procurement Officer in this notice is the authority to order debarment, suspension, and/or limited denial of participation sanctions, pursuant to HUD regulations at 24 CFR part 24.

The Assistant Secretary for Administration/Chief Information Officer is delegated the responsibility for the administrative oversight of all departmental procurement activities.

The Chief Procurement Officer is designated the Department's Senior Procurement Executive. Included in the Senior Procurement Executive's functions are certain duties, responsibilities, and powers, such as the responsibility for procurement program development, which includes:

a. Implementation of procurement initiatives, best practices, and reforms;

b. In coordination with the Office of Federal Procurement Policy, determination of specific areas where governmentwide performance standards should be established and applied, and development of governmentwide procurement policies, regulations, and standards;

c. Establishment and maintenance of an evaluation program for all procurement activities within the Department;

d. Development of programs to enhance the professionalism of the Department's procurement workforce, including the establishment of educational, training, and experience requirements for procurement personnel; and,

e. Development of all departmental procurement policy, regulations and procedures.

Section C. Authority To Issue Rules and Regulations

The Chief Procurement Officer is authorized to issue rules and regulations as may be necessary to carry out the procurement authority delegated under Section B.

Section D. Authority To Redelegate

The Chief Procurement Officer is authorized to redelegate to qualified employees of the Department any of the authority delegated under Section B.

Authority: 41 U.S.C. 414(2) and (3); Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 11, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–21245 Filed 8–19–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–01]

Consolidated Delegation of Authority for the Office of Housing

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of revocation and delegation of authority.

SUMMARY: This notice consolidates all delegations of authority to the Assistant Secretary for Housing-Federal Housing

Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner. This delegation supersedes and/or revokes all prior delegations from the Secretary to the Assistant Secretary. Additionally, the authority delegated applies not only to current statutory authorities but also to later-enacted statutes and statutory amendments that pertain to the legislative acts cited in the delegation.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Eliot C. Horowitz, Senior Advisor to the Assistant Secretary for Housing-Federal Housing Commissioner, Office of Housing, Department of Housing and Urban Development, Room 9110, Washington, DC 20410–8000; telephone (202) 708–1490. (This is not a toll-free number.) Persons with hearing or speech impairments may call HUD's toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD offices have undergone several changes over the past few years. Programs and functions have been revamped and refocused so that HUD can deliver services to its clients and customers in the most productive, efficient, and responsive manner possible. A natural consequence of these changes is the restructuring of HUD offices as well as the nature and scope of the particular duties the offices perform. This, in turn, requires the issuance of new and updated delegations of authority.

The purpose of today's publication is to provide the public with a comprehensive listing of delegations of authority from the Secretary of HUD to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary-Deputy Federal Housing Commissioner. In the near future, the Office of Housing (Housing), which includes the Federal Housing Administration (FHA), will publish in the **Federal Register**, a comprehensive listing of up-to-date delegations of authority issuing from the Housing Assistant Secretary to HUD staff both within and outside of Housing. Therefore, the public shall be able to find, in one publication, all of the authority delegated from the Secretary to the Housing Assistant Secretary, and in another, all the authority redelegated by the Housing Assistant Secretary.

HUD last published a comprehensive delegation from the Secretary to the Housing Assistant Secretary and the General Deputy Assistant Secretary on May 22, 1989 (54 FR 22033). Over the years, other delegations and redelegations were issued by the Secretary and the Housing Assistant Secretary, respectively, that were program specific, *e.g.*, recognizing authorities and functions emanating from new legislation. However, experience teaches that maintaining a comprehensive or master delegation, on the one hand, and splinter delegations, on the other, can create for the public a measure of confusion and difficulty in keeping track of which HUD offices and staff are responsible for the conduct of the various HUD programs and program components. Accordingly, Housing shall periodically update and publish, in its entirety, the Secretary's master delegation to reflect major new or modified delegations, including any revocations of authority. The Housing Assistant Secretary's master redelegation shall be treated in similar fashion. Therefore, one will only need to review a single publication to locate where Housing program authorities and functions reside.

Section A. General Delegation of Authority

Unless otherwise stated, the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing are each delegated the power and authority of the Secretary of HUD with respect to all Housing programs and functions, including but not limited to, those listed below in Sections A through E, with authority to redelegate to employees of the Department, unless otherwise specified. Only the Housing Assistant Secretary, however, is delegated the authority to issue rules or regulations to carry out Housing programs and to waive regulations. This authority may not be redelegated. The Housing Assistant Secretary, as well as other Housing officials, are authorized to cause the seal of HUD to be affixed to, and to authenticate copies of documents. The authority to affix the seal and authenticate copies of documents is also addressed in a separate delegation of authority. Finally, the authority delegated herein supersedes and revokes prior delegations from the Secretary to the Housing Assistant Secretary and applies both to current authority and later enacted statutory authority.

Section B. Multifamily Programs—Authority Delegated:

The authority of the Secretary of HUD with respect to Housing's multifamily programs and functions authorized under the following:

(1) Titles I, II, V, VI, VII, VIII, IX, and XI of the National Housing Act (12 U.S.C. 1701 *et. seq.*) in exercising the power and authority delegated under this section;

(2) Section 202 of the Housing Act of 1959, as such section existed prior to the enactment of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 1701q note) as amended by section 811 of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–561);

(3) Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended by Subtitle A of Title VIII of the National Affordable Housing Act of 1990, with respect to the provision of capital advances and rental housing assistance for supportive housing for the elderly, as amended by Subtitle C of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–561);

(4) Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s) with respect to the Rent Supplement program for disadvantaged persons, including the authority to administer contracts and requirements for rent supplements;

(5) Section 8 Housing assistance under the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*), including the authority delegated under Executive Order 11196, to approve the undertaking of any annual contribution, grant, or loan, or any agreement or contract for any annual contribution, grant, or loan;

(6) Section 808 of the National Affordable Housing Act, Pub. L. 101–625, and Sections 671, 672, 674, 676, and 677 of the Housing and Community Development Act of 1992 (42 U.S.C. 13631) with respect to the provision of service coordinators in federally-assisted housing;

(7) Sections 201, 202, 203, and 204 of the Housing and Community Development Amendments of 1978, and the amendments contained in Title I of the Multifamily Housing Property Disposition Reform Act of 1994 (Pub. L. 103–233, 12 U.S.C. 1701 note);

(8) The Housing Development Grant Program, pursuant to Section 17 of the United States Housing Act of 1937 (42 U.S.C.1437o);

(9) Under Section 4(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3533), the Assistant Secretary for Housing-Federal Housing Commissioner is the Assistant to the Secretary who shall be responsible for providing information and advice to nonprofit organizations desiring to sponsor housing projects assisted under programs administered by the Department;

(10) The authority of the Secretary under the Revolving Fund for Liquidating Programs (12 U.S.C. 1701q) to manage, repair, lease, and otherwise take all actions necessary to protect the financial interest of the Secretary in properties as to which the Secretary is mortgagee-in-possession and to manage, repair, complete, remodel and convert, administer, dispose of, lease, sell or exchange for cash or credit at public or private sale, pay annual sums in lieu of taxes on, obtain insurance against loss on, and otherwise deal with properties as to which the Secretary has acquired title based on a loan made under the former Section 312 Rehabilitation Loan Program;

(11) The function of the Secretary under Section 7(i)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(3)), concerning the sale, exchange, or lease of real or personal property and the sale or exchange of securities or obligations with respect to any multifamily project;

(12) Title IV of the Housing and Community Development Amendments of 1978 (42 U.S.C. 8001, *et seq*);

(13) Authority to endorse any checks or drafts in payment of insurance losses on which the United States of America, acting by and through the Secretary or his/her successors or assigns, is a payee (joint or otherwise) in connection with the disposition of the government's interest in property or lease of such property;

(14) Section 2 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701t);

(15) The Multifamily Mortgage Foreclosure Act of 1981 (12 U.S.C. 3701–3717);

(16) To act as an Attesting Officer with authorization to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, record, paper, microfilm, or other documents is a true copy of that in the files of the Department;

(17) The Congregate Housing Services Program under Section 802 of the National Affordable Housing Act (42 U.S.C. 8011);

(18) The HOPE for Homeownership of Multifamily Units Program under Title IV, Subtitle B, of the National Affordable Housing Act (42 U.S.C. 12701, 12871);

(19) The Multifamily Risk Sharing Programs pursuant to Section 542 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, October 28, 1992);

(20) Title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715 note), the Emergency Low Income and Housing Preservation Act of 1987 (ELIHPA), as amended by Subtitle A of Title VI of the National Affordable Housing Act (12 U.S.C.4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA), as further amended by Title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*);

(21) Section 811 of Subtitle B of Title VIII of the National Affordable Housing Act of 1990 (42 U.S.C. 8013), with respect to the provision of capital advances and rental housing assistance for supportive housing for persons with disabilities as amended by Subsection C of Title VIII of the American Homeownership and Economic Opportunity Act of 2000 (Pub. L. 106–569);

(22) Section 581 of the National Affordable Housing Act of 1990 (Pub. L. 101–625) and Chapter 2, Subtitle C of Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 1190 *et seq.*), relating to the federally-assisted low-income housing drug elimination program;

(23) The Portfolio Reengineering Demonstration program authorized under Sections 211 and 212 of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. No. 104–204, 110 Stat. 2874, approved September 26, 1997), as re-authorized and amended by Section 522(b) of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. No. 105–65, 111 Stat. 1344, 1446, approved October 27, 1997) (42 U.S.C. 1437 fnote);

(24) To take actions necessary to ensure that participants in HUD programs under the jurisdiction of the Assistant Secretary for Housing comply with the regulations, rules, and procedures of the Department including, but not limited to, imposing limited denials of participation and acting as the debarment official in proceedings under part 24 of Title 24 of the Code of Federal Regulations;

(25) The Rental Assistance Program authorized by Section 236 of the National Housing Act (12 U.S.C. 1715z–1);

(26) The management and disposition of HUD-owned multifamily projects and HUD-held mortgages and the provision of grants and loans, as provided under Section 204(a) of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204 (12 U.S.C. 1715z–11a));

(27) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u);

(28) To the Housing Assistant Secretary only without authority to redelegate, the authority to issue regulations under Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)), and to waive regulations under Section 7(q)(2) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)(2));

(29) The authority to administer the provisions of Section 7(i) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)), relating but not limited to the foreclosure of mortgages, sales of foreclosed properties, and the modification of terms of the contracts;

(30) The authority to administer the provisions of Section 7(j) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(j)), relating to the establishment of fees and charges;

(31) The authority to administer the provisions of Section 7(k) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(k)), relating to the acceptance of voluntary services.

Section C. Single Family Programs—Authority Delegated

The authority of the Secretary of HUD with respect to Housing single family programs and functions, and the authority with respect to mortgagee activities (including Title I lenders) for both single family and multifamily programs of the following:

(1) Titles I, II, V, VI, VIII, and IX of the National Housing Act (12 U.S.C. 1701 *et seq.*);

(2) Section 106 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x);

(3) The Interstate Land Sales Full Disclosure Act, Title XIV of the Housing and Urban Development Act of 1968 (15 U.S.C. 1701, *et seq.*);

(4) The Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601, *et seq.*);

(5) The authority to prescribe standards for designs, construction, and alteration of structures for programs (other than public housing programs) prescribed under the National Housing Act (12 U.S.C. 1701 *et seq.*) and the United States Housing Act of 1937 (42 U.S.C. 1437–1437n);

(6) To approve or disapprove variances from the design or construction standards for all programs

(other than public housing programs) under the National Housing Act (12 U.S.C. 1701, *et seq.*) and the United States Housing Act of 1937 (42 U.S.C. 1437–1437n);

(7) The authority to evaluate and determine the technical suitability of housing products and materials under Section 21 of the National Housing Act (12 U.S.C. 1735e), and to issue engineering and technical bulletins governing the acceptability of housing system components, materials, and methods of construction;

(8) All matters and requirements of the National Manufactured Housing Construction and Safety Standards Act of 1974, Title VI of the Housing and Community Development Act of 1974 (42 U.S.C. 5401–5426);

(9) To convey and execute deeds of conveyance, deeds of release, assignments, satisfactions of mortgages, and any other written instrument relating to real or personal property or any interest therein, heretofore, or hereafter acquired by the Secretary pursuant to the National Housing Act (12 U.S.C. 1701, *et seq.*);

(10) To perform the functions of the Secretary under Section 7(i)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)(3)), concerning the sale, exchange, or lease of real or personal property, and the sale or exchange of securities or obligations with respect to any single family property;

(11) Authority to endorse any checks or drafts in payment of insurance losses on which the United States of America acting by and through the Secretary or his/her successors or assigns, is a payee (joint or otherwise), in connection with the disposition of the government's interest in property or lease of such property;

(12) The authority of the Secretary under the Revolving Funds for Liquidating Programs (12 U.S.C. 1701q) to manage, repair, lease, and otherwise take all actions necessary to protect the financial interest of the Secretary in properties as to which the Secretary is mortgagee-in-possession and to manage, repair, complete, remodel and convert, administer, dispose of, lease, sell or exchange for cash or credit at public or private sale, pay annual sums in lieu of taxes on, obtain insurance against loss on, and otherwise deal with properties as to which the Secretary has acquired title based on a loan under the former Section 312 Rehabilitation Loan Program;

(13) To act as an Attesting Officer with authorization to cause the seal of the Department of Housing and Urban Development to be affixed to such documents as may require its application and to certify that a copy of any book, record, paper, microfilm, or other document is a true copy of that in the files of the Department;

(14) The Nehemiah Housing Opportunity grant program, Sections 609–613 of the Housing and Community Development Act of 1987 (12 U.S.C. 1715e);

(15) To take actions necessary to ensure that participants in HUD programs comply with regulations, rules, and procedures of the Department including, but not limited to, imposing limited denials of participations and acting as the debarring official in proceedings under part 24 of Title 24 of the Code of Federal Regulations;

(16) To appoint a Special Assistant for Cooperative Housing pursuant to Section 102(h) of the Housing Amendments of 1955 (12 U.S.C. 1715e note);

(17) To the Housing Assistant Secretary only without authority to redelegate, the authority to issue regulations under Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)), and to waive regulations under Section 7(q)(2) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(q)(2));

(18) The authority to administer the provisions of Section 7(i) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(i)), relating, but not limited to, the foreclosure of mortgages, sales of foreclosed properties, and the modification of terms of the contracts;

(19) The authority to administer the provisions of Section 7(j) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(j)), relating to the establishment of fees and charges;

(20) The authority to administer the provisions of Section 7(k) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(k)), relating to the acceptance of voluntary services.

Section D. Financial Operations and Management Controls—Authority Delegated

(1) To provide financial management for programs administered by the Assistant Secretary for Housing-Federal Housing Commissioner;

(2) To formulate and develop financial management and internal control policies; to oversee Housing/FHA's compliance with OMB Circulars A–123 (Management and Accountability Control), A–127 (Financial Management Systems), and A–130 (Federal Information Resources) as they apply to Housing and FHA financial and program operations; to establish and supervise the development and execution of uniform Housing and FHA policies, principles and procedures necessary for financial management; to issue directions that implement policies approved by the Assistant Secretary for Housing-Federal Housing Commissioner in the functions assigned to the Housing-FHA Comptroller; and to advise the Assistant Secretary for Housing-Federal Housing Commissioner on the financial impact of newly proposed housing programs and mortgagee insurance products and modification to existing products;

(3) To maintain the FHA General Ledger and the chart of accountants of the FHA funds;

(4) To establish and maintain appropriate financial management controls over Housing and FHA programs; to devise and establish insurance servicing accounting and fiscal procedures and to administer the fiscal policies and activities for Housing and FHA programs; to provide technical guidance to organizational elements under the Assistant Secretary in the field of accounting and fiscal matters; to track Housing and FHA financial activities against the budget and business plan; and to coordinate the development and maintenance of integrated financial management systems needed for accounting and management of housing and FHA programs;

(5) To prepare reports; to report to the Assistant Secretary for Housing-Federal Housing Commissioner, other Offices, the Department's Chief Financial Officer, and other HUD Regional and field staff on the financial condition of FHA mortgage insurance programs (including actual and projected cash flows, accounting and performance reports, program effectiveness controls, and insurance reserves analyses); to publish an annual FHA report reflecting prior year accomplishments and the audited financial statements; and to prepare internal reports on the financial condition of Housing and FHA programs;

(6) To develop and maintain integrated financial management systems; and to direct studies and audits of the accounting and financial information and systems functions;

(7) To prepare and execute policies and systems to measure the financial and actuarial soundness of Housing and FHA programs; and to ensure the conduct of an independent annual audit of the FHA program financial statements;

(8) To obtain reports, information, advice, and assistance in carrying out assigned functions; and to develop financial management information to assist in developing budget, financial, accounting, and cost-accounting information on a timely basis;

(9) To direct the investment of money held in the various Housing/FHA insurance funds, not needed for current operations, in bonds or other obligations of the United States, or in bonds or other obligations guaranteed as to principal and interest by the United States;

(10) To borrow funds from Treasury to facilitate credit reform programs;

Section E. Regulations of Government-Sponsored Enterprises—Authority Delegated

To perform regulatory functions authorized under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*), as described and subject to the exceptions noted in the notice of delegation of authority published on February 12, 1999 (64 FR 7406).

Section F. Authority Excepted

Authority excepted from this delegation of authority from the Secretary of Housing and Urban Development to the Assistant Secretary for Housing-FHA Commissioner and the General Deputy Assistant Secretary for Housing is the authority to sue and be sued.

Section G. Conclusive Evidence of Authority

Any instrument or document executed in the name of the Secretary by an employee of the Department of Housing and Urban Development under the authority of this delegation purporting to relinquish or transfer any right, title, or interest in, or to real of personal property, shall be conclusive evidence of the authority of such employee to act for the Secretary in executing such instrument or document.

Section H. Delegations Revoked

This delegation supersedes and/or revokes all prior delegations from the Secretary to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 11, 2003.

Mel Martinez,

Secretary.

[FR Doc. 03–21239 Filed 8–19–03; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–02]

Redelegations of Authority to the Office of Housing/Federal Housing Administration for Multifamily Housing Programs and Health Care Programs

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegation of authority for multifamily and health care programs.

SUMMARY: Published elsewhere in today's **Federal Register**, the Secretary of HUD issued an up-to-date comprehensive delegation of authority for housing and health care programs to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner. This notice advises the public of redelegations of authority for Multifamily Housing Programs from the Assistant Secretary to Office of Housing staff in the (1) Office of Multifamily Housing in Headquarters and in the Field, and (2) Office of Insured Health Care Facilities.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Janet Golrick, Assistant Deputy Assistant Secretary for Office of Multifamily Housing, Office of Housing, Department of Housing and Urban Development, Room 6112, Washington, DC 20410, phone (202) 708–2495. (This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY number by calling the toll-free Federal Relay Service number at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The organizational structure of the Office of Multifamily Housing, Office of Housing, has undergone substantial change over recent years. Office of Housing Headquarters personnel is primarily responsible for assisting the Assistant Secretary in developing policies and procedures for Office of Housing programs. On occasion, Headquarters will review and decide cases where, for example, novel issues have national implications.

A separate question concerns which positions within the Office of Housing should be redelegated the authority to bind the Department. While a number of HUD staff, reflecting a range of expertise, may participate in the decision-making process, performing such functions as gathering and assessing facts and making recommendations about the disposition of a transaction, only a relatively small number of managers, acting within the scope of their redelegated authority and applicable law, have independent authority through the delegation process to make binding decisions on behalf of HUD.

Accordingly, under this delegation, which supersedes all prior delegations to staff in the Office of Multifamily Housing and the Office of Insured Health Care Facilities, the Assistant Secretary is delegating very broad operating authority to a clearly defined universe of Office of Housing positions in Headquarters and in the field.

Section I. Multifamily Housing Programs: Office of Housing Organization

A. Office of Multifamily Housing—Headquarters

All Multifamily Housing managers in Headquarters and in the field report to the Deputy Assistant Secretary and Associate Deputy Assistant Secretary for Multifamily Housing. In Headquarters, there are five major Multifamily Housing offices, each of which is headed by a Director. These Offices and a general description of each are the following:

Office of Multifamily Housing Development

This Office develops and implements policies and guidelines for the loan origination aspects of the Federal Housing Administration (FHA) multifamily housing and health care mortgage insurance programs, excluding section 242 hospitals, from pre-application to final endorsement of the mortgage note. The Office is also responsible for Multifamily Accelerated Processing (MAP) and section 542 Risk-Sharing policies and procedures, including lender approval and lender monitoring. Housing Office staff provides technical guidance to the HUD/FHA multifamily housing field staff, the industry, and other Headquarters Offices.

Office of Asset Management

The Office of Asset Management is responsible for strategic planning, guidance, and oversight of HUD's

multifamily housing portfolio of project assets after development and upon occupancy (multifamily housing properties consist primarily of rental housing properties with five or more dwelling units, such as apartments or town houses, but also include nursing homes, elderly housing, mobile home parks, retirement service centers, and, very occasionally, vacant land). The Office develops policy for, and oversees, field office asset management operations. The Office is responsible for oversight of regulated property ownership and management, routine mortgage servicing, default servicing, acquisition and/or disposition of loans and properties, and management of properties where the Secretary is owner or mortgagee-in-possession. The Office also has oversight for subsidy payments for the sections 202/811 elderly and disabled programs. The Office serves as Multifamily Housing's liaison with the Real Estate Assessment Center (REAC) and the Departmental Enforcement Center (DEC). The Office oversees field office and lender-servicing activities for HUD-involved properties. Through two field Property Disposition Centers, the Office oversees HUD management, ownership, and the sale of properties, which HUD owns by virtue of default and foreclosure, or for which HUD is mortgagee-in-possession. In support of asset management, the Office defines business requirements for automated systems development and modification.

Office of Housing Assistance and Grant Administration

The Office of Housing Assistance and Grant Administration is responsible for directing and overseeing housing assistance and competitive grant programs administered by the Office of Multifamily Housing Programs with its primary focus on production and development functions. Programs include project-based section 8 housing assistance, the section 202/811 Capital Advance Program, the section 531 Rehabilitation Program, Service Coordinators, Assisted Living Conversion, and Congregate Housing Services Programs.

Office of Housing Assistance Contract Administration Oversight

The Office of Housing Assistance Contract Administration Oversight is responsible for providing policies, procedures, guidelines, technical oversight, performance assessment, and compliance under the terms of the respective Annual Contributions Contracts for section 8 Contract Administrators (CA). The section 8 contract administration oversight by this Office provides that properties continue to meet the Department's standard of providing decent, safe, and sanitary housing to low-income families. Additionally, this Office is responsible for assuring the Department meets its financial obligations to owners as specified in the various subsidy contracts by ensuring availability of subsidy payments. The Office oversees ongoing funding of project-based assistance contracts, including contracts under section 8, Rent Supplement, and Rental Assistance Payments programs.

Office of Program Systems Management

The Office of Program Systems Management is responsible for the automated systems that support Multifamily Housing programs. The Office works with the other four Multifamily Offices to develop and enhance the systems used to support their respective programs.

B. Office of Multifamily Housing—Field Office Structure

The Field Office organization consists of 51 offices, including Hubs and Program Centers. In all, there are 18 Hubs. Each of the 18 Hubs also has a Program Center (referred to as the Projects Management Staff), co-located with the Hub. The Program Center administers programs for the immediate geographical area of the Hub, whereas the Hub oversees operations for the broader geographic area. There are 33 Program Centers, each of which reports to a Hub and is located elsewhere within the Hub's broader geographic jurisdiction.

The highest-ranking official in a Hub is the Hub Director. His or her immediate deputy is the Director of the Operations Staff (referred to in this notice as the Operations Officer). The Director of the Projects Management Staff (referred to in this notice as the Director of Project Management) reports to the Hub Director and oversees the work of the co-located Program Center. The head of a Program Center located outside of the Hub is the Program Center Director. The occupant of this position also reports to the Hub Director. (Note: In this notice, reference to "Program Center Directors" refers to both the aforementioned Director of Projects Management and the Directors of Program Centers located outside the Hub location).

The chart below identifies each Hub, Program Centers that report to it, and the geographic area that it serves.

MULTIFAMILY HOUSING HUB STRUCTURE

Hub	Program center	Geographic area serviced
Atlanta	Caribbean, Knoxville, Louisville, Nashville (Also, a Multifamily Property Disposition Center is located in Atlanta).	Georgia, Kentucky, Puerto Rico, Tennessee, Virgin Islands.
Baltimore	Richmond, Washington, DC	Maryland, Virginia, Washington, DC.
Boston	Hartford, Manchester, Providence	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.
Buffalo		NY State, except for NYC Metro Area.
Chicago	Indianapolis	Illinois, Indiana.
Columbus	Cleveland	Ohio.
Denver		Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming.
Detroit		Michigan.
Fort Worth	Albuquerque, Houston, Little Rock, New Orleans, San Antonio (Also, a Multifamily Property Disposition Center is located in Fort Worth).	Arkansas, Louisiana, New Mexico, Texas.
Greensboro	Columbia	North Carolina, South Carolina.
Jacksonville	Birmingham, Coral Gables, Jackson	Florida, Alabama, Mississippi.
Kansas City	Des Moines, Oklahoma City, Omaha, St. Louis	Iowa, Kansas, Missouri, Nebraska, Oklahoma.
Los Angeles		Southern California.
Minneapolis	Milwaukee	Minnesota, Wisconsin.
New York City		New York City Metro Area.

MULTIFAMILY HOUSING HUB STRUCTURE—Continued

Hub	Program center	Geographic area serviced
Philadelphia	Charleston, Newark, Pittsburgh	Delaware, New Jersey, Pennsylvania, West Virginia.
San Francisco	Honolulu, Phoenix, Las Vegas	Arizona, Northern California, Hawaii, Nevada.
Seattle	Anchorage, Portland	Alaska, Idaho, Oregon, Washington.

In summary, certain Multifamily Housing Office managers in Program Centers, Hubs, and Headquarters, acting within the scope of their redelegated authorities and applicable law, have independent authority, through the delegation process, to make binding decisions on behalf of the Department. Program Center Directors report to Hub Directors who, in turn, report to the Deputy Assistant Secretary and the Associate Deputy Assistant Secretary for Multifamily Housing Programs.

C. Office of Insured Health Care Facilities (OIHCF)

The Office of Insured Health Care Facilities was created some twelve years ago for the express purpose of reviewing and approving mortgage insurance proposals for hospitals and to handle asset management and property disposition matters related to HUD's insured hospital portfolio. OIHCF also administers all matters under Title XI of the National Housing Act (mortgage insurance for group practice facilities). Prior to the creation of OIHCF, hospital mortgage insurance applications were processed within the Office of Multifamily Housing. However, because of underwriting and oversight issues unique to hospital care facilities, HUD determined to create this separate office with particular expertise in the health care area. Unlike the usual case where applications for mortgage insurance are submitted to the local Program Center, insurance proposals for hospitals are submitted to OIHCF in Headquarters. OIHCF staff is located in HUD Headquarters, although some staff is out-stationed to New York City. The Director and the Deputy Director of OIHCF report directly to the Assistant Secretary and the General Deputy Assistant Secretary for Housing. In making its determinations, OIHCF also oversees work performed by personnel in the Department of Health and Human Services (HHS), pursuant to a Memorandum of Agreement between the two departments. OIHCF also makes limited use of resources in the Office of Multifamily Housing's Field structure. In order to facilitate transactions in hospital insurance cases, certain authority is being delegated to Hub Directors in Multifamily Housing Field Offices. However, this authority may be exercised only pursuant to the prior direction or concurrence of the OIHCF Director.

Section II. Multifamily Housing Programs—Functions

The Office of Multifamily Housing is charged with carrying out duties of the Assistant Secretary and General Deputy Assistant Secretary for Housing, as they relate to multifamily programs set forth in HUD's governing legislation. This broad range of programs enables HUD, in concert with its partners from the private and public sectors, to provide safe, decent, and affordable multifamily housing to millions of American families. The programs include mortgage insurance, capital advances, grant programs, and some programs that assist communities in reducing crime. Some programs make access to assisted living facilities more affordable.

Note: Multifamily Housing programs and functions related thereto do not include activities performed by the Office of Housing under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA) (12 U.S.C. 4501 *et seq*). A separate Office within Housing, the Office of Government Sponsored Enterprise Regulatory Staff assists the Assistant Secretary in carrying out the provisions of the FHEFSSA.

Under this delegation, the Assistant Secretary redelegates broad program authority, with limited exceptions that are discussed in Section III. of this notice to the Deputy Assistant Secretary, the Associate Deputy Assistant Secretary, certain Multifamily Housing Directors in Headquarters and the Field, and the Director of the OIHCF.

Characterizing the authority that is being redelegated by the Assistant Secretary in broad or general terms will enable the Deputy Assistant Secretary, the Associate Deputy Assistant Secretary, and certain Directors to perform all functions necessary to accomplish Multifamily Program tasks and objectives.

In some past delegation notices, HUD has set forth, in "laundry list" fashion, the functions that are carried out by managers under generic function headings. Publishing detailed lists has proven problematic, as some listed items become obsolete over time, while others are omitted through oversight. Conversely, this delegation sets forth functions in general terms, while the preamble provides insights into the nature of the work performed by managers with delegated authority under each category. The basic Multifamily Housing functions and a brief description of each are as follows:

A. General Authority: This authority allows Office of Housing officials, in the Office of Multifamily Housing and in OIHCF, to sign any and all documents necessary to carry out the business, within their program and geographic jurisdictions. In addition, this authority allows such officials, when considering a proposal, to waive any directives, not mandated by statute or regulation, or reserved to Headquarters, for good cause and with a written justification.

B. Production: This function allows a manager with delegated authority to make all necessary determinations that relate to the FHA-insured mortgage underwriting process and the Risk-Sharing Programs. Essentially, this category of functions begins with a pre-application or application for mortgage insurance and ends with the Department's endorsement of an insured mortgage and related documentation. For all mortgage insurance programs, it includes, but is not limited to, such activities as determining the acceptability of project sites; issuing conditional or firm commitments for FHA insurance; issuing initial or final endorsements for FHA insurance; executing regulatory agreements; requiring corrective actions and escrow accounts as needed; and wherever applicable, directing the actions of HUD clients in connection with a project's development (*e.g.*, authorizing a Housing Finance Agency to process risk sharing loans or to conduct a subsidy layering review). Similar production functions are performed in connection with capital advances for elderly persons (section 202) and persons with disabilities (section 811). For example, applications are reviewed and rated; funding awards are made; and regulatory agreements executed.

C. Asset Management: Functions carried out under this category involve HUD's continuing relationship with a multifamily project after it has been added to the HUD portfolio through either FHA mortgage insurance, co-

insurance or risk-sharing programs, direct loan, capital advance or grant programs, or other subsidy programs, and combinations thereof. On-going decision-making relates to an insured or subsidized project's occupancy, operations, and physical and financial condition from the time of occupancy through financial disposition including but not limited to prepayment, repayment of the loan or end of the subsidy contract, foreclosure, and/or termination of the subsidy contract. In addition, functions involve the renewal of section 8 contracts and other project-based assistance, and imposing sanctions upon project owners that, for example, violate the terms of their regulatory agreement and/or section 8 housing assistance contracts.

D. Competitive Capital Advance Programs: Competitive programs within the Office of Multifamily Housing typically include those for the section 202 supportive housing for the elderly, section 811 supportive housing for persons with disabilities, service coordinators, and the assisted living conversion programs. In any given year, Congress may authorize additional or alternative programs. Office functions include developing the criteria for applications, rating and ranking applications, and executing capital advance and grant agreements. Once a grant is awarded, functions include monitoring compliance with the grant agreement, terminating a grant for non-compliance, modifying a grant, and closing out a grant. Once a capital advance has been awarded under the section 202 or section 811 programs, functions include processing a firm commitment application, initially closing the project, monitoring compliance with the construction contract, and finally closing the project once costs have been certified.

E. Program Demonstrations: Periodically, the Congress will enact legislation that authorizes HUD to conduct a multifamily housing program on a demonstration basis. The purpose of a demonstration is essentially to test the viability of a new program on a limited basis, *e.g.*, by geography, case volume, or time. Functions related to demonstration programs include developing program criteria, implementing the program, monitoring activities and results, preparing any required reports to Congress, and closing out the program.

F. Property Disposition: Property disposition functions begin after HUD has made an initial decision to foreclose on a property. These functions include notifying an owner, and hearing and deciding an owner's appeal to the foreclosure determination; deciding the terms of and directing a foreclosure sale; accepting a deed-in-lieu of foreclosure, authorizing any work and related terms required by a project in advance of a sale; advertising a project for sale; approving disposition plans, sales documents, and purchasers; executing rental assistance contracts; and relocation of residents as may be necessary.

G. Coinsurance: HUD stopped accepting new applications for multifamily housing coinsurance in 1990. However, multifamily housing coinsurance program functions are still carried on in relation to the existing inventory, and include any and all actions necessary to carry out the program authorized under 12 U.S.C. 1715z-9. Functions also include authorizing second mortgage documents in partial-payment of claims cases, as well approving requests for the conversion of coinsurance to full mortgage insurance.

H. Portfolio Reengineering: The Portfolio Reengineering Demonstration Project was originally authorized in 1996 and most recently in 1998 under Title V of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Pub. L. 105–65). Although all cases under the program have been closed, there are certain actions remaining, such as final disbursements to joint venture partners, which will enable the program to be terminated.

I. Hospital Mortgage Insurance: Functions for the hospital mortgage insurance program cover the range of activities from the pre-commitment stage through property disposition. The functions include the same kinds of activities described above for the multifamily insurance program and fall within the generic categories of production, asset management, and property disposition.

J. Contract Administration Oversight/ Funding: Functions in this area of contract administration oversight involve activities related to the award of the Contract Administration Contracts (Annual Contribution Contracts), assessment and assignment of section 8 contracts to the Performance-Based Contract Administrators (PBCAs), evaluation of PBCA performance, provision of technical assistance to PBCAs and prescription of any remedial actions needed to improve PBCA performance. Key functions also involve developing policies and procedures for field offices and coordinating efforts between the PBCAs and the local multifamily field office staff, monitoring, evaluating, and providing technical guidance relative to field activities, assuring that PBCAs provide data needed to evaluate their performance and the status of contracts they administer, and coordinating audit activities associated with section 8 Contract Administration.

Funding activities involve all budget and funding responsibilities associated with the Rental Assistance Programs (RAP) (*i.e.*, section 8 but not sections 202/811, RAP, Rent Supplement, Project-Based section 8, and Service Coordinators), including both HUD and third-party administered contracts. Activities also include creating and approving administrative commitments for active contracts, determinations of funding levels, reservations of the subsidy based on funding availability, monitoring allotments as compared to annual appropriations, funding assignments against allotments, reservations compared to fund assignments, and actual reservations versus estimated activity. Additional functions include monitoring the timely payment of section 8 housing assistance to administrators and project owners in cooperation with the section 8 Financial Management Center (FMC) and the accounting staff in the Office of the Chief Financial Officer. The work with the FMC primarily focuses on the impact of funding and payment when initiating conversions from HUDCAPS to LOCCS. The funding area also works with the Department's budget and accounting organizations to generate budget authority estimates for the above-referenced subsidy programs, develop procedures for funding and payment processes, and systems integration to support the data. Another function is to liaison and coordinate with counterpart staff in the field offices to provide training and guidance, and to assure that funds are obligated and contracted.

Section III. Multifamily and Health Care Programs—Summary of Delegations

As noted above, in order to efficiently administer the business of multifamily housing, the Assistant Secretary is delegating broad authority to clearly identified positions within the Office of Multifamily Housing in Headquarters and the Field, and to the Director and Deputy Director of OIHCF. Delegations in relation to four programs are being afforded exceptional treatment. These programs are the property disposition program, coinsurance program, portfolio restructuring program, and the mortgage insurance program for hospitals. This section contains a general discussion of

delegations for all multifamily programs. The authority actually delegated is set forth in section V below.

A. Headquarters—Office of Multifamily Housing: Inasmuch as the Deputy Assistant Secretary and the Associate Deputy Assistant Secretary oversee the operations of the Office of Multifamily Housing, each is being delegated authority to conduct all business related to multifamily programs, with limited exceptions. The Deputy Assistant Secretary and Associate Deputy Assistant Secretary will not be delegated any authority to perform functions under the mortgage insurance program for hospitals. The Director and Deputy Director of OIHCF will administer that program. Only the Assistant Secretary or a person acting in the position of the Assistant Secretary can issue or waive a regulation.

Headquarters Directors will also be delegated authority appropriate to their particular subject matter jurisdictions. These directors typically assist the Deputy Assistant Secretary in developing the policies, guidance, and procedures pursuant to which multifamily programs are conducted. Although requests related to individual projects ordinarily originate and are decided in the Field, in unique cases or cases that have national implications, require novel interpretations of policy, or have extraordinary monetary or other significance, Headquarters Office Directors may elect to review and decide. The Assistant Secretary is redelegating authority to Headquarters directors to enable them to function efficiently in these kinds of circumstances.

The Director of the Office of Multifamily Housing Development will be delegated the authority to perform all program functions summarized in section II.A. (General), section II.B (Production), and section II.E (Program Demonstrations), for the FHA mortgage insurance programs and Risk-Sharing.

The Director of the Office of Asset Management will be delegated the authority to perform all program functions in section II.A. (General), section II.C. (Asset Management), section II.D. (Competitive Capital Advance Programs), section II.E. (Program Demonstrations), section II.F. (Property Disposition), section II.G. (Coinsurance), and section II.H. (Portfolio Reengineering).

The Director of the Office of Housing Assistance and Grant Administration will be delegated the authority to perform program functions in section II. A (General), and section II.D. (Competitive Capital Advance Program).

The Director of the Office of Housing Assistance Contract Administration Oversight will be delegated the authority to perform all program functions summarized in section II.A. (General), section II.J. (Contract Administration Oversight/Funding).

The responsibilities of the remaining Director in Headquarters (the Office of Program Systems Management) are such that no delegations are required.

B. Field Offices—Office of Multifamily Housing: As a general rule, actions involving individual projects that come to the Department are considered and decided by Housing officials at the Field Office level. Managers who work at or near the location of a proposal are ordinarily best suited to assess the needs of the community and, within that context, the merits of a proposal. Accordingly, Field Office managers require broad delegations of authority. Authority will be delegated to each Hub Director and each Hub Operations Officer to perform, within the full geographic jurisdiction of the Hub, all of the functions described in sections II.A. through E. of this notice (*i.e.*, functions related to General Authority; Production; Asset Management; Competitive Capital Advance Program; and Program Demonstrations). Special treatment is afforded to two program areas, *i.e.*, property disposition and coinsurance.

Property Disposition: Authority to exercise property disposition functions (section II.F. above) will be delegated only to the Director for the Property Disposition Center in the Atlanta, Georgia Hub and the Fort Worth, Texas Hub. To maximize efficiencies, the Office of Housing has concentrated relevant resources and expertise in these two Hubs that conduct property disposition activities for the entire United States.

Coinsurance: Authority to exercise asset management functions for HUD's coinsured portfolio is delegated to the Hub Director, Operations Officer, and the Program Center Director in the Greensboro, North Carolina Hub only. As noted, no new coinsurance activity is allowable and the staff and resources have been concentrated in Greensboro to handle all matters related to the extant coinsurance portfolio.

Hospital Mortgage Insurance Program: Property disposition functions are being delegated to the Hub Director, Operations Officer, and the Program Center Director in the Atlanta and Fort Worth Hubs. Certain Field Office managers will be delegated authority to sign closing documents for the final insurance endorsement of a mortgage loan. Also, Field staff will perform services (*e.g.*, environmental reviews) in support of program determinations made by OIHCF.

C. Office of Insured Health Care Facilities: The OIHCF Director and Deputy Director will be delegated all of the authority in section II.A (General) and section II.I (Hospital Insurance Program Functions), other than the authority to authorize commitments for mortgage insurance. The Director and Deputy Director can only issue a commitment, subject to the prior authorization of the Assistant Secretary for Housing-Federal Housing Commissioner.

Section IV. Futher Redelegations

The authority being redelegated by the Assistant Secretary and General Deputy Assistant Secretary may not be further redelegated by Office of Multifamily Housing managers in Headquarters and the Field, except by Hub Directors, in the two circumstances described herein. Ordinarily, if an official is, for any reason, unable to perform duties, another official will act in his or her stead during that period, pursuant to a written, specific delegation of authority or office order of succession. However, workload or other demands in a particular Hub, at any given time, may require the Hub Director to redelegate authority to staff in the Hub or a Program Center.

Accordingly, to ensure the smooth flow of business, the Hub Director will be permitted to delegate authority (other than that to issue waivers of directives, or conditional and firm mortgage loan insurance commitments or endorse FHA notes) to, or withdraw it from, any Supervisory Project Manager(s) and Senior Project Managers under his or her jurisdiction. Supervisory and Senior Project Managers are senior staff that typically perform complex and significant duties in connection with multifamily housing transactions. These delegations need not be published in the **Federal Register**, but must be in writing and available for public inspection at the (involved) Hub, Program Center(s), and Washington, DC Headquarters Office of Multifamily Housing.

Another circumstance may arise in relation to a particular transaction where, for example, because of particular expertise or workload demands, another HUD employee may be required to perform the involved functions. In such an event, the Hub Director redelegating the authority will do so in writing, describing the particular transaction and duties to be performed. This specific delegation will not be published. The delegation will, however, be made a part of the record

of the transaction, so that parties to the transaction know that the HUD official performing the function is duly authorized to carry out the prescribed duties.

Section V. Multifamily Housing Programs And Health Care Programs—Authority Redelegated

The Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner retain and redelegate, (1) to the Deputy Assistant Secretary for the Office of Multifamily Housing Programs and Associate Deputy Assistant Secretary and (2) through the Deputy Assistant Secretary and Associate Deputy Assistant Secretary, to the Headquarters Office Directors listed below, and (3) through the Headquarters Office Directors, to the Headquarters and Field Office managers listed below, and (4) to the Director of the Office of Insured Health Care facilities, the power and authority described as follows:

A. Deputy Assistant Secretary and Associate Deputy Assistant Secretary of the Office of Multifamily Housing Programs: Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct all multifamily housing programs, other than the mortgage insurance program for hospitals, including but not limited to, the exercise of the following functions:

(1) The general power to modify and sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance, capital advance, risk-sharing, or other programs;

(3) All asset management functions related to mortgage insurance, grant, or other programs;

(4) All functions necessary to carry out competitive capital advance programs;

(5) All functions necessary to carry out a program conducted on a demonstration basis;

(6) All property disposition functions;

(7) All functions necessary to the conduct of the multifamily coinsurance program;

(8) All functions necessary to the conduct of the portfolio reengineering program, re-authorized under Title V of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1998 (Public Law 106–65); and

(9) All functions necessary to the conduct of section 8 contract administration oversight/funding.

B. Director, Office of Multifamily Development: Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct all multifamily housing programs other than the mortgage insurance program for hospitals, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance or risk-sharing programs;

(3) All functions necessary to carry out a program conducted on a demonstration basis.

C. Director, Office of Asset Management: Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct all multifamily housing programs, other than the mortage insurance program for hospitals, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All asset management functions related to mortgage insurance, loans, capital advances, or grants or other programs, except functions related to the renewal of Section 8 contracts and other project-based assistance;

(3) All functions necessary to carry out competitive capital advance programs;

(4) All functions necessary to carry out a program conducted on a demonstration basis;

(5) All property disposition functions;

(6) All functions necessary to conduct the multifamily coinsurance program; and

(7) All functions necessary to conduct the portfolio reengineering program, re-authorized under Title V of the Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1998.

D. Director, Office of Housing Assistance and Grant Administration: Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All functions necessary to carry out competitive capital advance programs; and

(3) Only asset management functions related to the renewal of Section 8 contracts and other project-based assistance.

E. Director, Office of Housing Assistance Contract Administration Oversight:

Authority is redelegated, on a nationwide basis, to take all actions necessary to conduct the business of Section 8 Contract Administration and funding Rental Assistance Programs as designated in Section II, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and waive any directive that is not mandated by a statute or regulation; and

(2) All functions related to Section 8 Contract Administration and funding.

F. All Hub Directors, Operations Officers, and Program Center Directors: The authority redelegated authorizes these officials to take all actions necessary to the conduct of all multifamily programs, not including the property disposition program, coinsurance program, portfolio reengineering program and, except as noted in the specific delegations below, the hospital and Title XI mortgage insurance programs. The authority is further limited in that it may only be exercised within each official's authorized geographic jurisdiction. Accordingly, the Hub Directors and Operations Officers may exercise the functions enumerated herein with the full geographic jurisdiction of their respective Hubs, that includes all Program Center areas under their respective jurisdictions. The Hub Director for Project Management may only exercise the authority within the immediate "program center" jurisdiction of the Hub. The Program Center Director may only exercise the authority within the geographic jurisdiction of the Program Center. The authority redelegated permits the exercise of the following functions:

(1) The general power to modify and sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) All production functions related to mortgage insurance, grant, or other multifamily housing insurance programs, and to endorse notes for mortgage insurance for loans issued under the hospital mortgage insurance program and Title XI mortgage insurance program;

(3) All asset management functions related to mortgage insurance, grant, or other programs, except for the authority to issue (a) a notice of violation and/or

notice of default under a regulatory agreement and (b) a notice of default, abatement, termination and/or redirection under a housing assistance contract (except that a HUB Director can issue a notice of abatement and, subsequently, a notice of termination under the terms of a housing assistance contract);

(4) All functions necessary to carry out competitive capital advance programs; and

(5) All functions necessary to carry out a program conducted on a demonstration basis.

G. Directors for Property Disposition Centers in the Atlanta, Georgia and Fort Worth, Texas Hubs Only: Authority is redelegated, on a nationwide basis, to take all actions and perform all functions, including signing any documents in furtherance thereof and issuing waivers of directives not mandated by statute or regulation, necessary to conduct the multifamily property disposition program.

H. Hub Director, Operations Officer, and Program Center Director for the Greensboro, North Carolina Hub Only: Authority is redelegated, on a nationwide basis, to take all actions and to perform all functions, including signing any documents in furtherance thereof and issuing waivers of directives not mandated by statute or regulation, necessary to the conduct of the multifamily coinsurance program.

I. Hub Directors, Operations Officers, and Directors for Project Management in Buffalo, New York, Philadelphia, Pennsylvania, Atlanta, Georgia, Jacksonville, Florida, Columbus, Ohio, Fort Worth, Texas, Kansas City, Kansas, Denver, Colorado, San Francisco, California, and Seattle, Washington, and the Program Center Directors in Pittsburgh, Pennsylvania, Cleveland, Ohio, Houston, Texas, and Oklahoma City, Oklahoma Only: Authority is redelegated, on a nationwide basis, to take all actions and perform all functions, including signing documents in furtherance thereof and issuing waivers of directives not mandated by statute or regulation, necessary to conduct of the portfolio reengineering program authorized under Title V of the Department of Veteran Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1998 (Public Law 106–65).

J. Director, Office of Insured Health Care Facilities: Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of the mortgage insurance program for hospitals including the exercise of the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions, except that the authority to authorize commitments for mortgage insurance is subject to the prior authorization of the Assistant Secretary;

(3) All asset management functions; and

(4) All property disposition functions.

Section VI. Authority Excepted

The authority redelegated in Sections V.A through J, does not include authority to issue or waive regulations, or to implement the authority contained in the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4501 *et seq.*).

Section VII. Further Redelegations

The authority redelegated by the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary-Deputy Federal Housing Commissioner may not be further redelegated by the officials identified in Sections V.A through J, except that a Hub Director may (1) redelegate to, or withdraw from, any Supervisory Project Manager(s) or Senior Project Managers within his or her geographic jurisdiction, any of the authority delegated to him or her under this notice, except the authority to issue waivers, or FHA conditional or firm mortgage insurance commitments, and to endorse FHA notes for insurance. Any such delegation, or withdrawal thereof, need not be published in the **Federal Register,** but shall be in writing and maintained for public inspection in the Hub, affected Program Center(s), and the Washington, DC Headquarters Office of Multifamily Housing; and (2) issue a specific delegation in writing, to a HUD employee for the exercise of functions in relation to a particular transaction or transactions. The specific delegation need not be published in the **Federal Register** but must identify the transaction(s); scope of delegated functions; and be made part of the record of the transaction(s) so that all parties thereto will have notice that the authorizing HUD official is duly authorized to carry out the prescribed duties. If work is transferred from one Hub to another, the delegation must also be approved in writing by the Deputy Assistant Secretary or Associate Deputy Assistant Secretary for Multifamily Programs.

Section VIII. Revocation of Delegations

All prior redelegations of authority from the Assistant Secretary for Housing-Federal Housing Commissioner to staff in the Office of Multifamily Housing and in the OIHCF are hereby revoked and/or superseded. The Assistant Secretary for Housing-Federal Housing Commissioner or the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner may, at any time, revoke any of the authority redelegated herein. Notice of any revocation will be published in the **Federal Register.**

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: August 11, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–21240 Filed 8–19–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–03]

Delegations of Authority for the Office of Housing/Federal Housing Administration Single Family Housing Programs

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegation of authority for single family housing programs.

SUMMARY: Published elsewhere in today's **Federal Register**, the Secretary of HUD issued an up-to-date comprehensive delegation of authority for housing programs to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner. This notice advises the public of redelegations of authority for Single Family housing programs, from the Assistant Secretary to Office of Housing staff in the Office of Single Family Housing, in Headquarters and in the Field.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Kitty M. Woodley, Special Assistant to the Deputy Assistant Secretary for the Office of Single Family Housing, Office of Housing, Department of Housing and Urban Development, Room 9282, Washington, DC 20410. telephone (202) 708–2676, x3570. Persons with hearing

or speech impairments may call HUD's TTY number at (202) 708–1455 or the Federal Information Relay Service's TTY number at (800) 877–8339. Other than the "800" number, the telephone numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION: The organizational structure of the Office of Single Family Housing, Office of Housing, has undergone substantial change over recent years. A major focus of HUD's reform effort has been, and remains, on placing decision-making authority in HUD Offices at or near the geographic site of a transaction. Headquarters personnel are primarily responsible for assisting the Assistant Secretary in developing policies and procedures for Office of Housing programs. Also, Headquarters staff is responsible for carrying out consumer protection legislation. On occasion, Headquarters staff will review and make determinations concerning mortgage insurance transactions if, for example, novel issues having national implications are involved. A separate question concerns what positions, within the Office of Housing, should be delegated authority to bind the Department. While a number of HUD staff, reflecting a range of expertise, may participate in decision-making, performing such functions as gathering and assessing facts and making recommendations about the disposition of a transaction, only a relatively small number of managers, acting within the scope of their delegated authority and applicable law, have independent authority through the delegation process, to make binding decisions on behalf of HUD.

Accordingly, under this redelegation, that revokes and or supersedes all prior redelegations to Office of Single Family Housing managers, the Assistant Secretary is redelegating very broad operating authority to a clearly defined universe of Office of Housing positions in Headquarters and in the Field.

Section I. Single Family Housing Programs-Office of Housing Organization

A. Office of Single Family Housing—Headquarters: All Single Family Housing managers, in Headquarters and the Field, report to the Deputy Assistant Secretary and Associate Deputy Assistant Secretary for Single Family Housing. In Headquarters, there are three major single family housing offices, each of which are headed by a Director and are comprised of Divisions. These Offices are the following:

- *The Office of Single Family Housing Program Development:* This Office is comprised of two Divisions. The Home Mortgage Insurance Division is generally responsible for developing and implementing policies, procedures, and guidelines covering pre-application stage through the final endorsement stage of FHA mortgage insurance cases, including mortgage loan origination and refinancing cases.

The Program Support Division is responsible for: administering HUD's Housing Counseling program; managing FHA's nonprofit mortgagor, discount sales, and secondary financing programs; maintaining the Single Family Housing Web site; producing Single Family Housing brochures; overseeing the marketing of Single Family Housing programs; and providing a wide variety of technical assistance to the three Offices within Single Family Housing.

- *The Office of Single Family Asset Management:* This Office is also comprised of two Divisions. The Single Family Servicing and Loss Mitigation Division is responsible for implementing the single family loan servicing and loss mitigation program, as well as for strategic planning and guidance in relation to HUD's mortgage loan portfolio. This portfolio includes loans that are currently insured or that have been assigned to the Department. Although a Headquarters Division, its staff, including the Division director, is out-stationed to Oklahoma City and Tulsa, Oklahoma. Also, the loan servicing and loss mitigation function is carried out only by this Headquarters division, and not by any Field Office.

The Asset Management and Disposition Division develops policies and procedures for, and implements, the single family housing property disposition program.

- *The Office of Lender Activities and Program Compliance:* This Office consists of two Divisions. The Lender Approval and Re-certification Division assists in the development of criteria for approving FHA lenders. Applications from mortgage lenders seeking to become FHA mortgagees are filed with, reviewed, and decided within this Division. The Division is also responsible for lender re-certifications.

The second division, the Quality Assurance Division, is responsible for ensuring that FHA-approved lenders comply with requirements that govern lender practices. It monitors the performance of lenders and how well their loans perform on an ongoing basis. If necessary, the Office can work with lenders to improve their practices, or, at the other extreme, assist the Office of Housing in terminating a lender's FHA approval status.

B. Office of Single Family Housing—Field Office Structure: In order to maximize efficiencies and empower people and communities, the Office of Single Family Housing undertook a major field reorganization over the past few years. Today, the Office has four Homeownership Centers (HOC) located in Atlanta, Georgia; Denver, Colorado; Philadelphia, Pennsylvania; and Santa Ana, California. These HOCs are responsible for the processing of cases within their respective geographic jurisdictions. In addition, Office of Single Family Housing employees, engaged in program support and lender monitoring activities, are out-stationed to locations throughout the United States. Among other things, these employees work within local communities, conducting marketing and outreach responsibilities, to ensure that the public is aware of and has access to Office of Housing programs.

A uniform structure applies to all of the HOCs. The highest ranking official in the HOC is the HOC Director, who is assisted by the HOC Deputy Director. Functions performed by HOC staff are distributed, according to type (*e.g.*, production, quality assurance, etc.), among five Divisions, each headed by a Division Director. The five HOC Divisions are titled (1) Processing and Underwriting; (2) Quality Assurance; (3) Program Support; (4) Real Estate Owned; and (5) Operations and Customer Service.

Division Directors report to the HOC Director and Deputy Director. (As is the case in Headquarters, all staff report to the Deputy Assistant Secretary and Associate Deputy Assistant Secretary for Single Family Housing.) The chart below identifies each HOC and its geographic jurisdiction.

ATLANTA HOMEOWNERSHIP CENTER

Atlanta	Indianapolis	Memphis	Coral Gables
Jackson	Chicago	Nashville	Louisville
Jacksonville	Orlando	Birmingham	Caribbean
Knoxville	Tampa	Columbia	
Greensboro			

DENVER HOMEOWNERSHIP CENTER

Denver	Omaha	Shreveport	Kansas City
Casper	Albuquerque	Fort Worth	Lubbock
Salt Lake City	Helena	Fargo	Dallas
Des Moines	San Antonio	Sioux Falls	Milwaukee
St. Louis	Tulsa	Little Rock	Minneapolis
Oklahoma City	New Orleans		

PHILADELPHIA HOMEOWNERSHIP CENTER

Philadelphia	Cincinnati	Grand Rapids	Manchester
Albany	Camden	Boston	Charleston
New York	Buffalo	Bangor	Hartford
Providence	Burlington	Pittsburgh	Baltimore
Columbus	Washington, DC	Richmond	Wilmington
Detroit	Cleveland	Flint	Newark

SANTA ANA HOMEONWERSHIP CENTER

Santa Ana	Los Angeles	San Diego	Anchorage
Fresno	Phoenix	San Francisco	Boise
Honolulu	Reno	Tucson	Portland
Las Vegas	Sacramento	Seattle	Spokane

Section II. Single Family Programs—Functions

The Office of Single Family Housing is charged with carrying out duties of the Assistant Secretary and General Deputy Assistant Secretary for Housing as they relate to single family programs set forth in HUD's governing legislation. This broad range of programs enables HUD, in concert with program participants in the private and public sectors, to provide safe, decent, and affordable single family housing to millions of American families. Programs include the implementation of certain regulatory programs administered by the Office of Housing. They promote homeownership opportunities, provide for affordable financing, and help to educate people, who are often first-time homeowners, on how to maintain a home.

Note: Single family programs, and functions related thereto, do not include activities performed by the Office of Housing under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), 12 U.S.C. 4501 *et seq.* A separate office within the Office of Housing, the Office of Government Sponsored Enterprise Regulatory Staff, assists the Assistant Secretary in carrying out the provisions of the FHEFSSA.

Under this delegation, the Assistant Secretary redelegates broad program authority to the Deputy Assistant Secretary, the Associate Deputy Assistant Secretary, and commensurate with their respective duties, Directors in Headquarters and in the Field.

Characterizing the redelegated authority in broad or generic terms will enable the Deputy Assistant Secretary, Associate Deputy Assistant Secretary, and Directors in Headquarters and the Field, to perform all functions necessary to accomplish single family program tasks and objectives.

In some past delegation notices, HUD has set forth, in "laundry list" fashion the detailed functions carried out by managers under generic function headings. Publishing detailed lists has proven problematic, as some listed items become obsolete over time, while other functions are omitted through oversight. Conversely, this delegation sets forth functions in generic terms, while the preamble provides insights into the nature of the work performed by managers with delegated authority under each category. The basic Single Family functions and a brief description of each are as follows:

A. General Authority: This authority allows managers to sign any and all documents necessary to carry out the business within their program and geographical jurisdictions. In addition, it allows managers, when considering a proposal, to waive any directives not mandated by statute or regulation for good cause and with a written justification.

B. Production: This function allows a manager with delegated authority to make all necessary determinations that relate to the insured mortgage process. Essentially, this category of functions begins with a proposal to insure a home mortgage and ends with the Department's endorsement of an insured mortgage. For all insurance programs, it includes, but is not limited to, such activities as approving direct endorsement lenders monitoring contract reviews, maintaining rosters and other lists of appraisers, inspectors, and lenders, performing underwriting reviews for mortgage credit, performing appraisal reviews, performing architectural field reviews, and setting mortgage limits.

C. Servicing and Loss Mitigation: Servicing and Loss Mitigation functions are intended to ensure the servicing of the secretary-held mortgage portfolio and partial claims and the monitoring of FHA servicers' use of loss mitigation and timely reporting of defaulted, FHA-insured loans. Additional responsibilities include: Writing off or compromising principal debt, up to a maximum of $100,000; providing on-site and off-site loss mitigation training to lenders, housing counseling agencies, and other FHA program offices within HUD; administering the Home Equity Conversion Mortgage reverse equity mortgage program; operating a nationwide call center to respond to questions concerning loss mitigation and foreclosure relief programs; and supporting the Department's endeavor against predatory lending practices.

D. Quality Assurance: Quality assurance functions are intended to ensure that an FHA lender is in compliance with FHA lending requirements and procedures. Lenders that fail to meet FHA standards are subject to sanctions. Functions include: Monitoring lender performance; reviewing default and insurance claim statistics; placing a lender on credit watch; making recommendations to the FHA Mortgagee Review Board for the imposition of sanctions; and entering into indemnification agreements; or terminating a lender's FHA status.

E. Lender Approval and Recertification: The approval of new lenders and the recertification of existing lenders are FHA's "gatekeeping" functions. Functions include the approval of Single Family and Multifamily lenders and processing

the approval and recertification applications from Single Family Title I and Title II lenders, and multifamily lenders for participation in FHA programs. An additional function is the administration of the Institution Master File system, which is used to track the status of lenders and their various authorities and also "feeds" lender data to over twenty of HUD/FHA's other data systems.

F. Grants: Every year, the Office of Single Family Housing issues a Notice Of Funding Availability (NOFA) for the single family housing counseling program. This competitive funding program is part of HUD's annual SuperNOFA publication that announces funding programs developed throughout the Department. In any given year, however, Congress may authorize funds for additional grant programs. The Assistant Secretary for Housing is the Grant Officer and thus the sole official responsible for making grantee selections. Other grant functions include developing criteria for grant applications, rating and ranking proposals, and selecting government technical representatives to oversee performance under the grant contracts. Once a grant is awarded, functions include monitoring a grantee's compliance with the agreement, modifying a grant, terminating a grant for non-compliance, and closing out a grant in the usual course. The Assistant Secretary will retain and not redelegate the authority of the Grant Officer to make selections of grantees or to approve recipient noncompetitive grants.

G. Program Demonstrations: Periodically, the Congress enacts legislation authorizing HUD to conduct a program on a demonstration basis. The purpose of the demonstration is essential to test the viability of a new program or product on a limited basis, *e.g.*, by geography, case volume, or time. Functions related to demonstration programs include developing program criteria, implementing the program, monitoring activities and results, preparing any required reports to the Congress, and closing out the demonstration program.

H. Property Disposition: Although most property disposition functions occur after HUD has acquired title to a property, there are exceptions that involve the pre-acquisition period. For example, in anticipation of acquiring title, HUD may decide to allow a family to remain in the conveyed property (*i.e.*, an occupied conveyance). Pre-acquisition decisions will then concern approving a lease and setting a rent level. Other decisions concern a property's maintenance (or preservation) during the period of conveyance from a lender. HUD reviews claims for insurance benefits, and once these are paid, the Department obtains title to a property and assumes the responsibilities of an owner. Among other things, it maintains the property, paying taxes, utility costs, and prepares it for sale. Contractors perform property maintenance functions, with HUD monitoring the work. Sales are conducted pursuant to a bidding process with functions ranging from advertising the property to execution of the deed upon a sale. HUD regulations governing single family property dispositions are set forth at 24 CFR part 291. Consistent with current practice, the Assistant Secretary for Housing will not delegate the authority under 24 CFR 291.210(c), Direct sales to individuals or entities.

I. Debarments and Limited Denials of Participation: A participant or contractor or affiliate, other than a mortgagee, who fails to comply with HUD program regulations, rules, and/or procedures, can be denied the right to participate in a HUD program or programs. Procedures governing the nature and scope of proceedings for the issuance of a debarment or limited denial of participation are set forth in 24 CFR part 24. Only certain officials may issue such limited denials of participation pursuant to the process in the regulations.

Note: Mortgagees are subject to an independent sanction process set forth in 24 CFR part 25.]

Section III. Single Family Housing Programs—Summary of Delegations

In order to efficiently administer the business of single family housing, the Assistant Secretary is delegating broad authority to managers within the Office of Single Family Housing in Headquarters and in the Field. This section provides a summary of the delegations. The authority actually being delegated is set forth under section IV.

A. Headquarters: The Deputy Assistant Secretary and Associate Deputy Assistant Secretary oversee the operations of the Office of Single Family Housing. Accordingly, each is being delegated the authority to conduct all business related to these programs. Headquarters directors, to the level of the Division Director, will be delegated authority commensurate with their respective subject matter jurisdictions. These directors typically assist the Deputy Assistant Secretary in developing the policies, guidance, and procedures pursuant to which single family programs are conducted. There are times, however, when Headquarters directors are required to review and decide upon a transaction. Some decisions warrant a Headquarters review and decision, notwithstanding that requests and transactions ordinarily originate and are decided in the Field. Headquarters may elect to review and decide upon cases that, for example, are of first impression, have national implications, require novel interpretations of guidance, or that have extraordinary monetary or other significance. The Assistant Secretary is re-delegating authority to Headquarters directors to allow them to function in these circumstances. The actual authority being delegated to the staff within each Office may be summarized as follows:

- The Director and Deputy Director of the Office of Single Family Housing Program Development will be delegated the authority to perform all of the functions listed in section II. A. (General), section II. B (Production), section II. F. (Grants), and section II. G. (Program Demonstrations). Office Division Directors will be delegated authority to perform the following functions:

The Director of the Home Mortgage Insurance Division will be authorized to perform functions under section II. A. (General) and section II. B. (Production).

The Director of the Program Support Division will be authorized to perform functions under section II. A. (General), section II. F. (Grants), and section II. G. (Program Demonstrations).

The Director and Deputy Director of the Office of Single Family Asset Management will be delegated the authority in section II. A. (General), section II. C. (Loan Servicing and Loss Mitigation), and section II. H. (Property Disposition).

The Director of the Single Family Servicing and Loss Mitigation Division will be authorized to perform functions under section II. A. (General), and section II. C. (Loan Management and Loss Mitigation).

- The Director and Deputy Director of the Office of Lender Activities and Program Compliance will be delegated authority to perform the functions identified under section II. A. (General), and section II. D. (Quality Assurance) and section II. E. (Lender Approval and Recertification). Among other things, they may also issue credit watch letters, and conduct informal hearings under 24 CFR part 202, Approval of Lending Institutions and Mortgagees. The Director serves as a non-voting member to the MRB.

The Division Directors for Lender Approval and Re-certification, and Quality Assurance shall be delegated the authority in section II. A. (General).

B. Single Family Field Offices: As a rule, requests that come to the Department are considered and decided by Housing officials at the Field Office level. Managers who work at or near the location of a proposal are often best suited to assess the needs of the local community and, within that context, the merits of a transaction. To enhance efficiency, the Office of Housing has centralized decision-making for single-family programs in its four Home Ownership Centers. Additional staff located in some 80 HUD offices throughout the country makes recommendations to and carries out functions on behalf of management in the HOCs. Accordingly, HOC managers require broad delegations of authority.

Each of the four HOC Directors and his or her Deputy Director will be delegated all of the authority in section II, other than section II. C. (Loan Servicing and Loss Mitigation), and section II.I., (Debarment responsibilities). Headquarters staff only carries out loan servicing and loss mitigation functions. The Assistant Secretary or General Deputy Assistant Secretary makes debarment determinations. However, pursuant to HUD's regulations at 24 CFR 200.204, the process for removing appraisers that violate HUD rules and procedures from the appraisal roster is, and will continue to be, carried out by staff in the HOCs. The Director of the Processing and Underwriting Division within each HOC issues to an appraiser the written notice of the proposed roster removal. If an appeal is filed by the appraiser, the HOC Director or Deputy Director handles the appeal (including an informal conference if one is requested) and makes the final determination of the matter.

HOC Division Directors, other than the Director of the Operations and Customer Service Division, will be delegated the authority in section II. A. (General), to authorize transactions, *i.e.*, to sign required documents, in relation to their respective subject matter jurisdictions. However, Division Directors will not be delegated the authority to waive directives. The Director of the Operations and Customer Service Division provides internal, administrative support for the HOC. Since this Division does not make binding determinations in proceedings that involve and/or impact HUD's public customers and clients, there is no need to delegate section II authority to the Division Director.

In addition:

- The Director of the Processing and Underwriting Division will be delegated the authority to perform functions under sections II. B. (Production), and section II. G. (Program Demonstrations).
- The Director of the Quality Assurance Division will be delegated the authority to perform functions under section II. D. (Quality Assurance).
- The Director of the Program Support Division will be delegated authority to perform the functions under section II. F. (Grants), and section II. G. (Program Demonstrations).
- The Director of the Real Estate Owned Division will be delegated authority to perform functions under sections II. G. (Program Demonstrations), and section II. H. (Property Disposition).

Section IV. Single Family Programs—Authority Redelegated

The Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner retain and redelegate (1) to the Deputy Assistant Secretary for the Office of Single Family Housing and Associate Deputy Assistant Secretary and (2) through the Deputy Assistant Secretary and Associate Deputy Assistant Secretary, to the Headquarters Office Directors and Headquarters Deputy Office Directors listed below, and (3) through the Headquarters Office Directors and Deputy Office Directors, to the Headquarters and Field Office managers listed below, the power and authority described as follows:

A. Deputy Assistant Secretary and Associate Deputy Assistant Secretary, Office of Single Family Housing: Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of all single-family housing programs, including, but not limited to, the exercise of the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions, and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance, grant, or other programs;

(3) All loan servicing and loss mitigation functions, including the authority to act as a claims collection officer and to write off or compromise debt up to $100,000;

(4) All quality assurance functions;

(5) All functions necessary to administer grants and cooperative agreements awarded by the Assistant Secretary. However, noncompetitive contract awards proposed by assistance recipients subject to the administrative requirements for grants and cooperative agreements at 24 CFR part 85 may only be approved by the Assistant Secretary;

(6) All functions necessary to carry out a program conducted on a demonstration basis;

(7) All property disposition functions, other than authorizing direct sales under 24 CFR 291.210(c);

(8) Authority to conduct hearings concerning a lender or program participant's participation in HUD programs, and to issue (a) limited denials of participation, and (b) debarment notices, where a participant has elected not to contest the debarment decision of the Assistant Secretary.

B. Director and Deputy Director, Office of Single Family Program Housing Development: Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single-family housing programs, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance, grant, or other programs;

(3) All functions necessary to carry out a cooperative agreement or competitive or non-competitive grant program, except for making grantee selections and approving recipient noncompetitive contracts; and,

(4) All functions necessary to carry out a program conducted on a demonstration basis.

C. Director, Home Mortgage Insurance Division, Office of Single Family Housing Program Development: Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by a statute or regulation; and,

(2) All production functions related to mortgage insurance, grant, or other programs.

D. Director, Program Support Division, Office of Single Family Housing Program Development: Authority is redelegated, on a nationwide basis, to take all actions and to perform all functions necessary to the conduct of the single family programs as follows:

(1) The general power to sign any documents necessary to perform

enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) All functions necessary to carry out a cooperative agreement, competitive or non-competitive grant program except for making grantee selections and approving recipient noncompetitive contracts; and,

(3) All functions necessary to carry out a program conducted on a demonstration basis.

E. Director and Deputy Director, Office of Single Family Asset Management: Authority is re-delegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) Loan servicing and loss mitigation functions, including the authority to act as a claims collection officer and to write off or compromise debt up to $100,000;

(3) All property disposition functions other than authorizing direct sales under 24 CFR 291.210(c); and,

(4) All functions necessary to carry out a program conducted on a demonstration basis.

F. Director, Single Family Servicing and Loss Mitigation Division, Office of Single Family Asset Management: Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulations; and,

(2) All loan servicing and loss mitigation functions, including the authority to act as a claims collection officer and to write off or compromise debt up to $100,000.

G. Director, Asset Management and Property Disposition Division, Office of Single Family Asset Management: Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) All property disposition functions other than authorizing direct sales under 24 CFR 291.210(c); and,

(3) All functions necessary to carry out a program conducted on a demonstration basis.

H. Director and Deputy Director, Office of Lender Activities and Program Compliance: Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family programs in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) All quality assurance functions, including lender approval, re-certification, and program compliance functions;

(3) Authority to conduct hearings concerning a lender or program participants participation in HUD programs, and to issue (a) limited denials of participation; and,

(4) All functions necessary to carry out a program conducted on a demonstration basis.

I. Director, Lender Approval and Re-certification Division, Office of Lender Activities and Program Compliance: Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family housing programs, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation; and,

(2) All functions related to approving and re-certifying FHA lenders;

J. Director, Quality Assurance Division, Office of Lender Activities and Program Compliance: Authority is redelegated, on a nationwide basis, to take all actions necessary to the conduct of single family programs, in relation to the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions and to waive any directive that is not mandated by statute or regulation;

(2) Monitor lender performance and default and claim rates and to enter into indemnification agreements; and,

(3) All quality assurance functions related to program compliance by approved FHA lenders.

K. Homeownership Center—Director and Deputy Director: Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions, and to waive any directive that is not mandated by a statute or regulation;

(2) All production functions related to mortgage insurance, grant, or other programs;

(3) Monitor lender performance and default and claim rates and to enter into indemnification agreements;

(4) All functions necessary to carry out a cooperative agreement, competitive or non-competitive grant program except for making grantee selections and approving recipient noncompetitive contracts;

(5) All functions necessary to carry out a program conducted on a demonstration basis;

(6) All property disposition functions other than authorizing direct sales under 24 CFR 291.210(c);

(7) Authority to issue limited denials of participation; and

(8) Authority pursuant to 24 CFR 200.204(a)(2)(iii) to administer the appeals process in connection with the removal of an appraiser from the appraiser roster and to issue a final decision concerning an appraiser's removal from the roster.

L. Homeownership Center—Processing and Underwriting Division Director: Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions but not to issue waivers of directives;

(2) All production functions related to mortgage insurance, grant, or other programs;

(3) All functions necessary to carry out a program conducted on a demonstration basis; and

(4) Authority pursuant to 24 CFR 200.204(a)(2)(iii) to issue the written notice of proposed roster removal to an appraiser.

M. Homeownership Center—Quality Assurance Division Director: Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions but not to issue waivers of directives; and,

(2) Monitor lender performance and default and claim rates and to enter into indemnification agreements.

N. Homeownership Center—Program Support Division Director: Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

(1) The general power to sign any documents to perform enumerated functions but not to issues waivers of directives;

(2) All functions necessary to carry out a cooperative agreement, competitive or non-competitive grant program except for making grantee selections and approving recipient noncompetitive contracts; and,

(3) All functions necessary to carry out a program conducted on a demonstration basis.

O. Homeownership Center—Real Estate Owned Division Director: Authority is redelegated, within their respective jurisdictions, to take all actions necessary to the conduct of all single family housing programs including, but not limited to, the exercise of the following functions:

(1) The general power to sign any documents necessary to perform enumerated functions but not to issue waivers of directives;

(2) All property disposition functions other than authorizing direct sales under 24 CFR 291.210(c); and,

(3) All functions necessary to carry out a demonstration conducted on a demonstration basis.

Section V. Authority Excepted

The authority redelegated in section IV.A through O does not include authority to issue or waive regulations or to implement the authority contained in the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, 12 U.S.C. 4501 *et seq.*

Section VI. Further Redelegations

The authority redelegated by the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary-Deputy Federal Housing Commissioner may not be further redelegated by the officials identified in section IV. A through O.

Section VII. Revocation of Delegations

All prior redelegations issued by the Assistant Secretary for Housing to staff in the Office of Single Family Housing are hereby superseded and/or revoked. The Assistant Secretary for Housing—Federal Housing Commissioner or the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner may, at any time, revoke any of the authority redelegated in this notice. Notice of any revocation will be published in the **Federal Register**.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 11, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–21241 Filed 8–19–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–04]

Redelegations of Authority to Other HUD Offices

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegations of authority.

SUMMARY: Published elsewhere in today's **Federal Register**, the Secretary of HUD issued an up-to-date comprehensive delegation of authority for housing programs to the Assistant Secretary for Housing—Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner. This notice advises the public of redelegations of authority from the Assistant Secretary for Housing—Federal Housing Commissioner to HUD officials in HUD Offices other than the Office of Housing.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Eliot C. Horowitz, Senior Advisor to the Assistant Secretary for Housing-Federal Housing Commissioner, Office of Housing, Department of Housing and Urban Development, Room 9110, Washington, DC 20410, phone (202) 708–0614, x2125. Persons with hearing or speech impairments may call HUD's TTY number at (202) 708–1455 or the Federal Information Relay Service's TTY number at (800) 877–8339. Other than the "800" number, the telephone numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION: Housing legislation and programs are implemented and administered by the Office of Housing. However, in some instances, the nature of a statute or program, or component thereof, requires another HUD Office to conduct the program or participate in its administration. Under this delegation, the Housing Assistant Secretary is redelegating authority to two HUD Offices as follows: the Office of Fair Housing and Equal Opportunity (FHEO) and the Office of the General Counsel. All prior delegations from the Assistant Secretary of Housing to other HUD Offices are superseded and/or revoked.

Section I. Discussion of Redelegations of Authority

A. FHEO

On February 12, 1999, the Secretary of HUD delegated authority to the Assistant Secretary and General Deputy Assistant Secretary for Housing, enabling each to implement various provisions of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (FHEFSSA), 12 U.S.C. 4501 *et seq.* (64 FR 7406). Under FHEFSSA, HUD has general and specific regulatory authorities respecting the Federal National Mortgage Association and the Federal Home Loan Mortgage Association (collectively referred to as Government Sponsored Enterprises or GSEs). The legislation, more fully described in the February 12, 1999 **Federal Register**, requires HUD to take a number of actions including, but not limited to, establishing goals for the GSEs' purchases of mortgages (*e.g.*, for low- and moderate-income families and housing located in central cities, rural and other under-served areas). Another major thrust of the legislation is designed to ensure that the GSEs and mortgage lenders comply with the Fair Housing authority under FHEFSSA and, thus, do not engage in discriminatory practices.

Also, on February 12, 1999, the Assistant Secretary for Housing redelegated the Fair Housing authority of FHEFSSA to the Assistant Secretary for FHEO (64 FR 7407). The nature of the authority redelegated, also more fully described in the February 12, 1999 **Federal Register** publication, complements authorities already under the jurisdiction of FHEO. Essentially, this authority enables FHEO to receive and properly safeguard confidential and propriety information received from a GSE and to take appropriate enforcement related actions where violations of FHEFSSA requirements occur. The authority delegated herein references the reader to the notice in the **Federal Register** of February 12, 1999, and in no way revises that delegation. Consistent with that notice, the authority delegated to the Assistant Secretary for FHEO may not be redelegated.

B. Office of General Counsel

The Assistant Secretary for Housing-Federal Housing Commissioner is redelegating authority to the General Counsel to take all actions permitted under 24 CFR 30.45 and 24 CFR 30.36. This action restates, reaffirms, and supersedes the Assistant Secretary's decisions to redelegate the same authority on September 12, 2002, published in the **Federal Register** on December 31, 2002 at 67 FR 79943 and 79944. .

Also on September 12, 2002, the General Counsel redelegated the authority, to staff in the Departmental Enforcement Center (DEC), to take actions under 24 CFR 30.45 and 30.36. *See* 67 FR 79944 and 79945. That redelegation remains in effect and is not affected by the redelegations issued today. The DEC was recently placed under the Office of the General Counsel and is responsible for carrying out a wide range of HUD enforcement activities. The redelegations issued today promote efficient enforcement operations within the Department. The nature of the authority being redelegated today is set forth below.

HUD regulations at 24 CFR 30.45 authorize the Assistant Secretary for Housing, or his or her designee, to take a civil money penalty action against any mortgagor of a multifamily property with a mortgage insured, co-insured, or held by the Secretary pursuant to Title II of the National Housing Act or against any mortgagor of a property with a mortgage held by the Secretary pursuant to section 202 of the Housing Act of 1959. Section 30.45 refers to the statutory provisions enumerating the violations for which the Assistant Secretary may impose a penalty upon those mortgagors. (*See* 12 U.S.C. 1701q–1(b) and (c), and 12 U.S.C. 1735f–15(b) and (c).)

HUD regulations at 24 CFR 30.36 authorize the Assistant Secretary for Housing, or the Assistant Secretary's designee, to take a civil money penalty action against any principal, officer or employee of a mortgagee or lender, or other participant, in either a mortgage insured under the National Housing Act (Act) or any loan that is covered by a contract of insurance under Title I of the Act, or any provider of assistance to a borrower in connection with any such mortgage or loan, including sellers, borrowers, closing agents, title companies, real estate agents, mortgage brokers, appraisers, loan correspondents, dealers, consultants, contractors, subcontractors and inspectors. Section 30.36 also identifies the violations for which the Assistant Secretary may impose a penalty. (*See* also 12 U.S.C. 1735f–14.)

In addition, the Assistant Secretary is redelegating the authority to the General Counsel to issue (1) a notice of violation under the terms of a regulatory agreement and/or (2) a notice of default under the terms of a section 8 housing assistance contract. HUD regulations at 24 CFR 30.68 authorize the Assistant Secretary for Housing or his or her designee, and the Assistant Secretary for Public and Indian Housing, or his or her designee, to initiate civil money penalty actions against any owner, any general partner of a partnership owner, or any agent employed to manage the property that has an identity of interest with the owner or the general partner or a partnership owner of a property receiving project-based assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), for a knowing and material breach of a housing assistance payments contract.

Violations of a project regulatory agreement can result in serious sanctions being imposed against a project owner. A notice of violation of the regulatory agreement provides an owner with both a notice of violations and the opportunity to remedy the violations. If violations are not remedied, the Office of Housing can impose sanctions upon a project owner including making a request that a lender declare a default under the project's insured mortgage. Similarly, violations of the terms of a housing assistance contract, if not remedied, can lead to serious consequences, including a decision by the Office of Housing to abate, terminate or redirect housing assistance funds. Notices of violations under regulatory agreements and defaults under housing assistance contracts address project owners who fail to maintain their properties in accordance with HUD requirements.

Finally, the delegation of authority, noticed today, does not affect the authority of the Mortgagee Review Board, described in 24 CFR 30.35, or the Assistant Secretary for Housing, to initiate civil money penalty actions.

Section II. Authority Redelegated

The Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner retain and redelegate, to the officials listed below, the power and authority described as follows:

A. Assistant Secretary, Office of Fair Housing and Equal Opportunity

Authority is redelegated on a nation-wide basis to exercise the Fair Housing provisions of FHEFSSA at 12 U.S.C. 4545, and under the regulations at 24 CFR part 81, subpart C, as described in the **Federal Register** notice of delegation of February 12, 1999 (64 FR 7407) and subject to the limitations and/or exceptions set forth therein.

B. General Counsel, Office of the General Counsel

Authority is redelegated to the General Counsel to take all actions permitted under 24 CFR 30.45, 24 CFR 30.36, and 24 CFR 30.68 to issue (1) a notice of violation under the terms of a project regulatory agreement and (2) a notice of default under a section 8 housing assistance contract.

Section III. Authority Excepted

The authority delegated in Section II. does not include the authority to waive regulations under the program jurisdiction of the Assistant Secretary for Housing.

Section IV. Further Redelegations

A. The authority redelegated to the Assistant Secretary for the Office of Fair Housing and Equal Opportunity may not be redelegated.

B. The General Counsel is authorized to redelegate the authority redelegated in section II.B. above.

Section V. Prior Delegations Revoked and/or Superseded

The delegations of authority to the General Counsel, issued on December 31, 2002 are hereby superseded.

Section VI. Revocation of Authority

The Assistant Secretary for Housing-Federal Housing Commissioner may revoke the authority authorized herein, in whole or part, at any time. Any revocation or modification of a redelegation will be published in the **Federal Register**.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 11, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–21242 Filed 8–19–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–05]

Redelegations of Authority to the Office of Multifamily Housing Assistance Restructuring

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegations of authority.

SUMMARY: Published elsewhere in today's **Federal Register**, the Secretary of HUD issued an up-to-date comprehensive delegation of authority for housing programs to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner. This notice advises the public of redelegations of authority from the Housing Assistant Secretary to the Office of Multifamily Housing Assistance Restructuring

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Eliot C. Horowitz, Senior Advisor to the Assistant Secretary for Housing-Federal Housing Commissioner, Office of Housing, Department of Housing and Urban Development, Room 9110, Washington, DC 20410–8000, telephone (202) 708–0614. (This is not a toll-free number.) Persons with hearing-or speech-impairments may call HUD's toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Discussion of Redelegation of Authority

Over the years, the cost to the federal government of assisting affordable, rental housing has increased rapidly. Under their assistance contracts, many projects have been charging rents that far exceed those charged for comparable units in unassisted housing in the local market. To preserve the low-income housing affordability and availability of these units, while reducing the long-term costs of project based assistance, Congress enacted the Multifamily Assisted Housing Reform and Affordability Act, Title V. of Public Law 105–65 (approved October 27, 1997) (42 U.S.C. 1437) (MAHRA). On January 10, 2002, the President signed the Mark-to-Market Extension Act of 2001, Title VI of Public Law 107–342. The Mark-to-Market Extension Act of 2001 amended certain programmatic and administrative provisions of MAHRA.

MAHRA seeks to ensure the long-term viability of multifamily projects that (1) receive project-based rental assistance from HUD (primarily through the section 8 program) and (2) have Secretary held or insured mortgage financing through the Federal Housing Administration (FHA). MAHRA established a new office within HUD, the Office of Multifamily Housing Assistance Restructuring (OMHAR) that is responsible for carrying out the purposes of the Act and enables OMHAR to restructure the mortgage financing of the Secretary-held or HUD-insured projects as well as the project-based assistance.

Section 571 of MAHRA establishes OMHAR within the Department of Housing and Urban Development. Section 572 states that the Office shall be under the management of a Director appointed by the President. The Mark-to-Market Extension Act of 2001 amended section 578 of MAHRA to provide that all authority and responsibilities of the Director shall be carried out through, and under the oversight of, the Federal Housing Commissioner. In addition, the legislation states that OMHAR shall have a Deputy Director, appointed by the Director, who shall have powers and duties defined by the Director and who shall, in the absence of the Director, serve as the Acting Director.

The organization of OMHAR consists of both a Headquarters and a Field Office structure. Within Headquarters, transactions are decided by the OMHAR Director, Deputy Directors, a Field Liaison and a Loan Committee. The Field structure is comprised of four Production Offices. Each Production Office has a Portfolio Director who oversees the mortgage and/or assistance restructurings, as well as a Deputy Portfolio Director and a Loan Committee. As of April 2002, the OMHAR Production Offices are located in New York, Chicago, San Francisco, and Washington, DC.

Section 573 of MAHRA, captioned "Duty and Authority of Director," provides in part that "the Secretary shall, acting through the Director, administer the program of mortgage and rental assistance restructuring and that the Director may delegate to officers and employees of the Office (but not to contractors, subcontractors, or consultants) any of the functions, powers, and duties of the Director, as the Director considers appropriate."

In order to accomplish restructuring transactions, the Director of OMHAR requires certain authority that has been delegated by the HUD Secretary to the Assistant Secretary of Housing-Federal Housing Commissioner and that can be redelegated by the Assistant Secretary. The authority to be delegated herein will enable OMHAR to modify the terms of insured or Secretary-held mortgages, determine the type and amount of section 8 assistance that would be provided to a project, approve mortgage prepayments, in whole or part, issue firm commitments and endorse mortgage notes for FHA-insurance for refinancing cases, and approve transfers of physical assets. The Director of OMHAR has, in the past, redelegated certain functions in order to facilitate the development and efficient review of Restructuring Plans, Restructuring Commitments and rent restructuring (OMHAR Lite) applications while continuing to ensure the integrity of OMHAR's work product. These redelegations have allowed the approval of certain Restructuring Commitments and OMHAR Lite applications to be performed by Portfolio Directors, Deputy Directors, Production Loan Committees, and a Headquarters Loan Committee. Under the authority redelegated herein, the Director may modify these redelegations.

The specific authorities redelegated are set forth in Section II. of this notice.

II. Authority Redelegated

The Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner retain and redelegate to the Director, Office of Multifamily Housing Assistance Restructuring the power and authority described as follows:

Authority is redelegated, on a nationwide basis, to exercise the following functions, in making decisions under MAHRA, that are binding upon the Department of Housing and Urban Development in the conduct of any mortgage and/or assistance restructuring transaction:

(1) Modify the principal balance, payments, interest rate, and amortization period and other terms of existing FHA insured and HUD-held mortgages;

(2) Approve a prepayment, in whole or part, of an insured mortgage note pursuant to section 517(b)(1) of MAHRA;

(3) Determine the type of rental assistance and the section 8 contract rent levels, pursuant to sections 514 and 515 of MAHRA;

(4) Determine the Section 8 contract rent levels for eligible properties referred to OMHAR whose debt is not restructured pursuant to section 524(a)(1) of MAHRA;

(5) Issue a firm commitment for FHA mortgage insurance and endorse the

mortgage note for FHA mortgage insurance under the state housing finance agency risk sharing provisions of section 542(c) of the Housing and Community Development of 1992 (Public Law 102–550, approved October 28, 1992);

(6) Issue a firm commitment for FHA mortgage insurance and endorse the mortgage note for FHA mortgage insurance under the Government Sponsored Enterprises risk sharing provisions of section 542(b) of the Housing and Community Development of 1992 (Public Law 102–550, approved October 28, 1992);

(7) Issue HUD forms 92264 and 92264A upon approval of a restructuring plan;

(8) Approve Transfers of Physical assets;

(9) Approve Environmental Assessment and Compliance Findings for related Laws report, HUD form 4128.1;

(10) Issue a commitment to insure and endorse for insurance a mortgage note given to refinance a HUD insured or HUD-held mortgage, pursuant to section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n);

(11) Select participating administrative entities, enter into and carry out the Secretary's duties under portfolio restructuring agreements, pursuant to section 513 of MAHRA;

(12) Compensate third parties under section 517(b)(5) of MAHRA;

(13) Apply project accounts under section 517(b)(6) of MAHRA.

III. Authority Excepted

The authority delegated in section II. does not include the authority to waive regulations under the program jurisdiction of the Assistant Secretary for Housing.

IV. Prior Delegations Revoked and/or Superseded

All prior redelegations of authority to the Director of OMHAR are hereby revoked or superseded.

V. Revocation of Authority

The Assistant Secretary for Housing-Federal Housing Commissioner may revoke the authority authorized herein, in whole or part, at any time. Any revocation or modification of a redelegation will be published in the **Federal Register**.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 11, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–21243 Filed 8–19–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–06]

Delegations of Authority for the Office of Housing-Federal Housing Administration, Deputy Assistant Secretary for Finance and Budget

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revocation and redelegation of authority to the Office of Finance and Budget.

SUMMARY: Published elsewhere in today's **Federal Register** is a revised delegation of authority for Housing Programs from the Secretary of HUD to the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner. This notice advises the public of redelegation of authority from the Assistant Secretary and General Deputy Assistant Secretary to the Deputy Assistant Secretary for Finance and Budget.

EFFECTIVE DATE: August 11, 2003.

FOR FURTHER INFORMATION CONTACT: Sandy Allison, Associate Deputy Assistant Secretary for Finance and Budget, Office of Housing, Department of Housing and Urban Development, Room 9110, Washington, DC 20410–8000, telephone (202) 708–2601. (This is not a toll-free number.) Persons with hearing or speech impairments may call HUD's toll-free Federal Information Relay at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Section I. Deputy Assistant Secretary for Finance and Budget: Organization

On July 19, 2002, HUD established a new position within the Office of Housing, which includes the Federal Housing Administration (FHA). The new position is the Deputy Assistant Secretary for Finance and Budget (FAB). Under the new organization, four offices report to the FAB Deputy Assistant Secretary. These are the (1) Office of Evaluation; (2) Office of Budget and Field Resources; (3) Office of Asset Sales; and (4) Office of the Housing-FHA Comptroller. The following is a brief summary of each of these offices.

A. Office of Evaluation: The Office of Evaluation assesses the financial impact of new or revised HUD/FHA programs and policies, new or proposed legislation, and/or new or proposed rules and regulations of the Office of Management and Budget (OMB), the General Accounting Office (GAO), or the Department of Treasury. Based on these assessments, the office develops recommendations, alternatives, and various scenarios used by managers to determine appropriate actions. The Office is responsible for actuarial analyses and cash flow projections of the FHA insurance funds and evaluates relationships between current market conditions and FHA program goals and objectives. The Office uses both internal and external resources to estimate the financial impact of policy changes or external factors (such as regional recessions or natural disasters) on FHA programs. The following additional functions are conducted by the Office of Evaluation: monitoring daily cash flows to make sound investments; conducting quarterly analyses of economic developments; and on-going actuarial analyses of FHA's insurance funds.

B. The Office of Budget and Field Resources: The Office of Budget and Field Resources is responsible for the formulation, presentation, and execution of the Office of Housing's program and administrative budgets. This includes fund assignments and control, financial resource management, coordination of financial resources in support of Field operations, and budget analysis and reporting. The Office is responsible for analyzing and evaluating the financial and budgetary impact of new or revised Housing programs and policies, proposed legislation, and new or revised OMB, GAO, or Treasury guidance. The responsibilities and duties of personnel within the Office of Budget and Field Resources pertain to internal HUD matters, do not require rendering decisions that bind HUD in relation to external clients and customers, and therefore, do not require delegations of authority.

C. Office of Asset Sales: The Office of Asset Sales oversees the disposition of mortgage notes acquired by Housing upon a default by the mortgagor and assignment of the note to FHA in return for the payment of a claim. The Office is responsible for the sale of single family, multifamily, and hospital notes in the manner most advantageous to the Government. The Office develops alternative disposition methods that will reduce the acquisition and holding costs of these assets while increasing recovery upon sale.

D. Office of the Housing-FHA Comptroller: The Office of the Housing-FHA Comptroller (Comptroller) is a Headquarters operation. The Office contains one field component, the Financial Operations Center, located in Albany, New York, that reports to one of the three major Washington, DC offices within the Office of the Housing-FHA Comptroller. A description of the three major offices follows:

(1) The Office of Financial Services: The Office of Financial Services is comprised of three Headquarters Divisions, and one field component, the Financial Operations Center, which is located in Albany, New York. The Office provides the policy direction, review, and coordination required to collect insurance premiums, to provide the financial services required to support FHA's multibillion dollar Single Family, Multifamily, and Title I insurance portfolios, and to provide the financial support necessary to manage FHA's asset management and disposition programs. The Office collects and maintains financial data necessary to generate accurate accounting entries to the General and Subsidiary ledgers and FHA's financial statements. The Office supports the systems and staff needed to maintain the insurance operations for FHA programs. The Office provides policy guidance and oversight for FHA's debt management and due diligence activities in the Financial Operations Center and supports FHA's asset sales programs. A summary of each division and the Financial Operations Center follows:

(a) The Single Family Insurance Operations Division. This Division is responsible for performing the accounting functions and providing financial management services to FHA-approved lenders who originate and/or service FHA Single Family insured mortgages. The Division maintains the national portfolio that consists of 13 million insurance records of active and terminated Single Family FHA-insured loans. The Division collects the mortgage insurance premiums and processes refunds of premium overpayments to lenders and homeowners.

(b) The Single Family Post Insurance Division. This Division is responsible for providing accounting and processing functions necessary to support the FHA single family asset acquisition, management, and disposition operations. The Division directs and coordinates all operating requirements, systems development, and reporting functions requirements for its areas of responsibility. The Division provides servicing support, claims processing and asset disposition processing. It also provides contractor oversight as appropriate.

(c) The Multifamily Financial Operations Division. This Division is responsible for performing the accounting and financial management services necessary for the servicing of all multifamily, insured mortgages in the FHA portfolio and the support of the approved lenders who hold FHA-insured mortgages. The division is also responsible for the servicing of HUD-Held Multifamily mortgages and the payment of claims for Multifamily defaulted mortgages. These responsibilities include collection of insurance premiums, management of escrow accounts, payments of preservation and protection expenses, and recording of mortgage satisfactions.

(d) The Financial Operations Center. The Financial Operations Center (or Center) is responsible for providing policy guidance, system support and general oversight of FHA debt management, collection and due diligence/asset liquidation activities for FHA Assets not elsewhere administered. The Center is also responsible for all financial duties relating to the HUD-owned Title I Insurance portfolio such as establishing repayment plans, administering the Treasury offset program, and accepting compromise plans or write-offs.

(2) The Office of Financial Analysis and Reporting: The Office of Financial Analysis and Reporting is comprised of three Headquarters Divisions. The Office is responsible for classifying, summarizing, analyzing, and reporting the financial, accounting and budgetary activities and transactions for FHA/Housing activities as required for a wholly-owned government corporation, subject to the provisions of the Government Corporation Control Act. The Office also evaluates the impact of new or proposed OMB, GAO, or Treasury rules and regulations, develops financial performance measures, and oversees cash management and investment. Primary functions include developing and implementing accounting policies and procedures based on Federal Basis Generally Accepted Accounting Principles (FGAAP) requirements and directives and regulations from the Office of Management and Budget, the Treasury, Congress and the Administration; reconciling actual cash, accounting and budgetary events to independent source documents to assure the Department that the general ledger accounts are in order and the budgetary statements accurately represent account balances; participating with auditors, both internal and external, in the planning and conduct of accounting and financial management audits, investigations, and reviews; monitoring daily cash flows; making sound investments; and preparing the FHA Annual Report. A description of the three divisions follows.

(a) Financial Analysis and Controls Division. This Division is responsible for developing and implementing accounting and budgetary reporting policy. It is responsible for ensuring that all requirements, internal and external, relating to financial reporting and accounting are followed in FHA's accounting practices and that any changes to such requirements are communicated to appropriate staff.

(b). General Ledger Division. This Division is responsible for the preparation of all the cost accounting, Credit Reform accounting, FGAAP accounting, and budgetary accounting entries that update the General and Subsidiary ledgers of FHA. This includes all daily transactions and FGAAP entries at the end of each accounting period, as required, together with special entries as required by Credit Reform and budgetary accounting.

(c) The Financial Reporting Division. This Division monitors and prepares Housing's official responses to audit issues. This involves both program and financial audits performed by both internal and external organizations.

(3) Office of Systems and Technology: The Office of Systems and Technology coordinates the development and maintenance of integrated financial and management information systems necessary for accounting and management of the Housing and FHA programs.

Section II. Redelegations to the Office of the Deputy Assistant Secretary for Finance and Budget

The Assistant Secretary redelegates program authority in broad terms to the Deputy Assistant Secretary for Finance and Budget. In addition, the Housing-FHA Comptroller, who reports to the Deputy Assistant Secretary, is redelegated concurrent authority, with that of the Deputy Assistant Secretary, to oversee the FHA financial operations and other Office of Housing programs. The general functions and a brief description of the authority delegated are as follows:

A. General Authority: Authority is redelegated to the (1) Deputy Assistant Secretary to sign any and all documents necessary to carry out the business of the Office of Finance and Budget,

including oversight of FHA financial operations, and (2) Housing-FHA Comptroller to sign any and all documents necessary to carry out the oversight of FHA financial operations. In concert with the specific authorities redelegated to each of them, the Deputy Assistant Secretary and the Housing-FHA Comptroller, in considering a transaction, are also redelegated authority to waive any directives not mandated by statute or regulation, for good cause and with a written justification.

B. Oversight of Financial Operations: The Deputy Assistant Secretary for Finance and Budget is delegated such authority as is necessary to oversee the financial management and operations of Housing programs. The FHA Comptroller, who reports to the Deputy Assistant Secretary, is responsible for overseeing the financial operations of the Federal Housing Administration.

C. Investment of Surplus Funds: The Deputy Assistant Secretary is redelegated authority to invest FHA funds in certain specified types of accounts, *e.g.*, U.S. Treasury securities.

D. Borrowing From U.S. Treasury: The Deputy Assistant Secretary is redelegated authority to borrow from the U.S. Treasury such funds as necessary to maintain a positive cash flow in the various FHA insurance funds.

E. Administration of the FHA Title I Loans: The Deputy Assistant Secretary is redelegated the authority to perform such duties as are necessary to carry out the financial functions of the FHA Title I Program.

F. Administration of the FHA Title II Insured Loans: The Deputy Assistant Secretary is redelegated the authority to perform such actions as may be necessary to carry out the financial functions of all FHA Title II insured loans.

G. Payment of FHA Claims: The Deputy Assistant Secretary is redelegated such authority to perform such actions as may be necessary to make FHA claim payments. These duties include but are not limited to determining the appropriate amount of benefits to be paid, making appropriate certifications for payments issued in debentures and/or cash, extending requisite time periods for a lender's submission of claim documentation, and collecting, through administrative offset, any indebtedness due HUD.

H. Servicing of FHA Insured Loans: The Deputy Assistant Secretary is redelegated the authority to perform such duties as necessary to carry out the financial responsibilities for HUD-held notes and properties including but not limited to collecting mortgage payments, ensuring the protection and preservation of collateral, establishing and directing the use of funds in escrow accounts, and executing appropriate legal documents upon payment-in-full of a mortgage.

I. Liaison with U.S. Treasury Department: The Deputy Assistant Secretary is redelegated such authority as is necessary to process and effect such transactions with the U.S. Treasury as may be required in the normal operation of FHA operations.

J. Sale of FHA Assets: The Deputy Assistant Secretary is redelegated such authority as necessary to sell Secretary-held mortgages.

K. Management of HUD-held Mortgages, Notes and HUD-Owned Properties: The Deputy Assistant Secretary is redelegated such authority as necessary to make disbursements on HUD-owned or managed properties for the payment of property related expenses, including property taxes, utility bills, property management fees, etc.

Section III. Further Redelegations

The authority redelegated by the Assistant Secretary for Housing-Federal Housing Commissioner and the General Deputy Assistant Secretary-Deputy Federal Housing Commissioner to the Deputy Assistant Secretary for Finance and Budget may be redelegated by memorandum. A copy of the redelegation will be maintained by the employee receiving the delegation and by the Deputy Assistant Secretary and available for public inspection. The Housing-FHA Comptroller may not redelegate the authority redelegated herein.

Section IV. Revocation of Delegations

The Assistant Secretary for Housing-Federal Housing Commissioner or the General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner may, at any time, revoke any of the authority redelegated herein. Notice of any revocation will be published in the **Federal Register**. This redelegation of authority supersedes and/or revokes all prior redelegations of authority to staff in the Office of the Housing-FHA Comptroller.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 11, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–21244 Filed 8–19–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Trinity Adaptive Management Working Group

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Trinity Adaptive Management Working Group (TAMWG). The TAMWG affords stakeholders the opportunity to give policy, management, and technical input concerning Trinity River restoration efforts to the Trinity Management Council. Primary objectives of the meeting will include: review of Trinity River Restoration Program budget, fall flows, a Restoration Program review of the Rush Creek Delta project, review of a letter from Humboldt County to the Secretary of Interior regarding Klamath River Fishery Water Supply, a review of fish returns, program overview, and setting future meeting dates. The meeting is open to the public.

DATES: The Trinity Adaptive Management Working Group will meet from 9 a.m. to 5 p.m. on Thursday, September 4, 2003.

ADDRESSES: The meeting will be held at the Victorian Restaurant, 1709 Main Street, Weaverville, CA 96093.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Ellen Mueller of the U.S. Fish and Wildlife Service, California/Nevada Operations Office, 2800 Cottage Way, W–2606, Sacramento, California 95825, (916) 414–6464. Dr. Mary Ellen Mueller is the designee of the committee's Federal Official—Steve Thompson, Manager of the U.S. Fish and Wildlife Service, California/Nevada Operations Office.

SUPPLEMENTARY INFORMATION: For background information and questions regarding the Trinity River Restoration Program, please contact Douglas Schleusner, Executive Director, Trinity River Restoration Program, P.O. Box 1300, 1313 South Main Street, Weaverville, California 96093, (530) 623–1800.

Dated: August 12, 2003.

Mary Ellen Mueller,

Acting Manager, California/Nevada Operations Office, Sacramento, CA.

[FR Doc. 03–21256 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-910-0777-26-241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice.

SUMMARY: This notice announces a meeting of the Arizona Resource Advisory Council (RAC).

The business meeting will be held on September 17, 2003, at the BLM National Training Center, 9828 North 31st Avenue in Phoenix, Arizona. It will begin at 9:30 a.m. and conclude at 4 p.m. The agenda items to be covered include: review of the July 10, 2002 meeting minutes; BLM State Director's Update on Statewide Issues; RAC Discussion on Standards for Rangeland Health and Guidelines for Grazing Administration (S&Gs) Working Group Recommendations on the Sustaining Working Landscape Initiative; a public comment period (between 10:30 a.m. and 12:30 p.m.) will follow this discussion for the RAC to accept verbal and written comments from the public. *The focus of this meeting will be to develop the RAC's recommendations for the Sustaining Working Landscape Initiative, and to gather public comments on those recommendations to forward to BLM in Washington DC.* However, if time permits the following agenda items will be presented: BLM's Budget Development Process and E-Planning Pilot Project; RAC Questions on Written Reports from BLM Field Office Managers; Field Office Rangeland Resource Team Proposals; Reports by the Standards and Guidelines, Recreation and Tourism, Public Relations, Land Use Planning, and Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion of future meetings.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Carl Rountree,

Acting Arizona State Director.

[FR Doc. 03–21267 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee Findings and Recommendations and Minority Opinion Regarding a Dispute Between the Royal Hawaiian Academy of Traditional Arts and the Bernice Pauahi Bishop Museum

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: At a May 9-10, 2003, public meeting in St. Paul, MN, the Native American Graves Protection and Repatriation Review Committee considered a dispute between the Royal Hawaiian Academy of Traditional Arts (Honolulu, HI) and the Bernice Pauahi Bishop Museum (Honolulu, HI). The dispute focuses on whether an appropriate repatriation pursuant to the Native American Graves Protection and Repatriation Act has been completed between the Bishop Museum and 13 culturally affiliated Native Hawaiian organizations for 83 cultural items that were recovered in the early 20th century from the Kawaihae Caves complex on Hawaii Island, HI. The Review Committee considered written and oral presentations by both parties, and responses to questions posed to both parties. Following is background information on the dispute, the Review Committee's findings and recommendations, and the minority opinion of a Review Committee member.

SUPPLEMENTARY INFORMATION:

Background. The National Park Service publishes this notice as part of its administrative and staff support for the Review Committee. The findings, recommendations, and minority opinion are those of the Review Committee and do not necessarily represent the views of the Secretary of the Interior or the National Park Service. Neither the Secretary of the Interior nor the National Park Service has taken a position on these matters.

The Native American Graves Protection and Repatriation Act (NAGPRA) (25 U.S.C. 3001 et seq.) directs the Secretary of the Interior to establish and maintain an advisory committee of seven private citizens nominated by Indian tribes, Native Hawaiian organizations, and national museum organizations and scientific organizations. Review Committee responsibilities include "facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants and Federal agencies or museums relating to the return of such items including convening the parties to the dispute if deemed desirable" (25 U.S.C. 3006 (c)(4)). The Review Committee's dispute procedures are available online at www.cr.nps.gov/nagpra (click on "Review Committee," then click on "Procedures").

The following background information regarding this dispute was developed from materials submitted by the Royal Hawaiian Academy of Traditional Arts and the Bernice Pauahi Bishop Museum.

On February 26, 2000, the museum loaned 83 items from the Kawaihae Caves collection to Hui Malama I Na Kupuna o Hawai'i Nei, a Native Hawaiian organization. Hui Malama I Na Kupuna o Hawai'i Nei was one of four culturally affiliated Native Hawaiian organizations then recognized by the museum under NAGPRA. At the time of the loan, not all four of the culturally affiliated Native Hawaiian organizations were aware of or concurred with the loan or other terms or conditions of transfer. Hui Malama I Na Kupuna o Hawai'i Nei claims that the 83 items were then sealed in 1 of the Kawaihae Caves, on Hawaii Island, HI.

On April 5, 2000, notices of inventory completion and intent to repatriate for human remains and funerary objects were published in the Federal Register (volume 65, number 66; FR Doc. 00-8350 and FR Doc. 00-8351) on behalf of the museum. The notices listed 4 Native Hawaiian organizations as culturally affiliated, and included the 83 items on loan to Hui Malama I Na Kupuna o Hawai'i Nei.

In August 2000, 7 additional Native Hawaiian organizations were determined to be culturally affiliated by the museum. Later that year, 2 more Native Hawaiian organizations were determined to be culturally affiliated by the museum, bringing the number of culturally affiliated Native Hawaiian organizations to 13. Members of several of the 13 culturally affiliated Native Hawaiian organizations asked to view the 83 items on loan to Hui Malama I Na Kupuna o Hawai'i Nei. The museum declined to grant this request.

On September 18, 2000, the museum's board of directors voted to recall the loan of the 83 items and Hui Malama I Na Kupuna o Hawai'i Nei was informed of the museum's decision. Hui Malama I Na Kupuna o Hawai'i Nei did not return the items in response to the recall.

On March 9, 2001, revised notices of inventory completion and intent to repatriate were published in the Federal Register (volume 66, number 47; FR

Doc. 01-5940 and FR Doc. 01-5941) on behalf of the museum. The notices listed 13 Native Hawaiian organizations as culturally affiliated. On March 12, 2001, the museum notified the 13 culturally affiliated Native Hawaiian organizations that the revised notices had been published.

On April 12, 2001, the museum informed the 13 culturally affiliated Native Hawaiian organizations that the museum had completed the NAGPRA requirements for repatriation to the 13 organizations. The museum requested that the 13 organizations notify the museum if repatriation and final disposition would require the recovery of the subject items from their "present location."

On August 7, 2001, the museum informed the 13 culturally affiliated Native Hawaiian organizations that the museum had repatriated the human remains and funerary objects to the 13 organizations on April 12, 2001, and that final disposition was the responsibility of the 13 organizations. The museum also stated that its role and statutory responsibility under 43 CFR 10.10 (d) was completed.

Between August 2001 and March 2002, the Royal Hawaiian Academy of Traditional Arts, one of the culturally affiliated Native Hawaiian organizations, continued to discuss the status of the repatriation with representatives of the museum.

On March 18, 2002, the museum sent an e-mail message to the academy, which stated that "the museum has completed its statutory responsibility under NAGPRA," and considered the matter closed. On the same day, the academy wrote to the Review Committee, requesting that the Review Committee consider a dispute between the academy and the museum.

Findings and Recommendations. On May 9-10, 2003, the Review Committee considered the dispute as presented by representatives of the Royal Hawaiian Academy of Traditional Arts and the Bernice Pauahi Bishop Museum, and, by a 6-1 vote, made the following findings and recommendations --

"The dispute seeks to establish whether an appropriate repatriation occurred between the Bernice Pauahi Bishop Museum and 13 claimants for 83 items described as "human remains" and "funerary objects" recovered from the Kawaihae Caves complex (Forbes Cave) in Hawaii in the early 20th century.

"The 13 claimants are the culturally affiliated Native Hawaiian organizations listed in 2 Federal Register notices: FR Doc. 01-5940 and FR Doc. 01-5941. The 83 items are those listed in the museum's shipping invoice BP-20194, dated February 26, 2000.

"Having reviewed documentation submitted by the Royal Hawaiian Academy of Traditional Arts, 1 of the 13 claimants, and the museum, as well as having considered their oral presentations, the Review Committee finds that --

"1. The repatriation process used by the museum for the 83 items was flawed and remains incomplete.

"2. The place and manner of return for the 83 items has not been determined consistent with NAGPRA (25 U.S.C. 3005 (a)(3) and 43 CFR 10.10 (d)).

"3. The museum is responsible for the completion of the repatriation process for the 83 items.

"The Review Committee recommends that --

"1. The museum renew the consultation process for repatriation of the 83 items.

"2. The museum recall the February 26, 2000, loan of the 83 items to Hui Malama I Na Kupuna O Hawai'i Nei.

"3. The 13 claimants in the consultation process be treated in a respectful and equitable manner.

"4. The 83 items be made available to all parties in the consultation.

"The Review Committee commends the Royal Hawaiian Academy of Traditional Arts and the Bernice Pauahi Bishop Museum for their willingness to continue consultation and for their positive attitude towards finding the most appropriate repatriation and disposition solutions."

Minority Opinion by Ms. Rosita Worl. "The Review Committee recommended that a museum reopen a final decision and begin anew. I am unable to support the findings and recommendations of the Review Committee based on my understanding of NAGPRA, and thus offer a minority opinion.

"NAGPRA provides that a decision is final when a museum makes a determination that an item meets a NAGPRA category and that it is culturally affiliated to groups with standing to make a claim, the culturally affiliated groups exercise their right to claim, the notice is published in the Federal Register, the 30-day period lapses without controversy, and the item is transferred to the claimants.

"In 2001, 13 Native Hawaiian organizations filed claims for 83 human remains and funerary objects under the control of the Bernice Pauahi Bishop Museum. On March 9, 2001, the museum published notices in the Federal Register of its determination that the 83 objects satisfy the statutory definitions of human remains and funerary objects and that the cultural items are culturally affiliated with the 13 claimants. No additional claimants came forward following publication of the notices. In a letter dated April 12, 2001, the museum repatriated the 83 human remains and funerary objects identified in the March 9, 2001, notices to the group consisting of the 13 claimants. The letter stated '[w]ith completion of repatriation, the legal interest in these human remains and funerary objects is transferred to the group. Final disposition is now the responsibility of the group.'

"The place and manner of repatriation are to be resolved by the museum and the claimant, but in this instance a claimant or claimants were already in possession. NAGPRA does not require that loans be recalled as a predicate to a determination and publication of a notice. A museum can maintain possession of an item during the pendency of a dispute. In this instance, the museum was notified that an agreement was reached and the museum then sent out a letter indicating that the matter was now in the hands of those asserting the claim. The museum obligation was then completed and any future dispute between the 13 claimants does not include the museum.

"The decision of the Review Committee grants a museum request to rethink a previous published decision. In so doing this, the Review Committee has granted the desires of one museum to the detriment of all museums that have an interest in the finality of decisions and the minimization of risk and cost in repatriation. NAGPRA expressly protects museums in 25 U.S.C. 3005 (f), and the findings and recommendations of the Review Committee seek to nullify that provision which is outside of the Review Committee's statutory authority.

"The minority opinion is that the Bernice Pauahi Bishop Museum is no longer a party in any dispute among the claimants as to the final resting place of the human remains and funerary objects. Whether the Review Committee may now assist the 13 claimants in resolving the dispute among them is a separate matter."

Dated: June 12, 2003.

Armand Minthorn,

Chair, Native American Graves Protection and Repatriation Review Committee.

[FR Doc. 03–21335 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the American Museum of Natural History, New York, NY. The human remains were removed from Awatovi pueblo in Navajo County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Hopi Tribe of Arizona.

At an unknown date, human remains representing a minimum of 20 individuals were removed by Mr. Burton, an agent for the U.S. Department of the Interior, Bureau of Indian Affairs, from Awatovi pueblo in Navajo County, AZ. The human remains were subsequently acquired by Dr. Aleš Hrdlička, who gifted the human remains to the American Museum of Natural History in 1900. No known individuals were identified. No associated funerary objects are present.

The human remains have been identified as Native American based on their origin at Awatovi pueblo. Awatovi pueblo, an ancestral Hopi village site located on the Hopi Indian Reservation, was destroyed in A.D. 1700.

Although the lands from which the human remains were removed are currently under the jurisdiction of the U.S. Department of the Interior, Bureau of Indian Affairs, the American Museum of Natural History has possession and control of the human remains because their removal from tribal land predates the permit requirements established by the Antiquities Act of 1906.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains listed above represent the physical remains of 20 individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Hopi Tribe of Arizona.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Luc Litwinionek, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5846, before September 19, 2003. Repatriation of the human remains to the Hopi Tribe of Arizona may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Hopi Tribe of Arizona that this notice has been published.

Dated: July 24, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–21342 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.
ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY. The human remains and associated funerary objects were removed from an undesignated ruined pueblo in Cibola or McKinley Counties, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains and associated funerary objects was made by American Museum of Natural History professional staff in consultation with representatives of the Zuni Tribe of the Zuni Reservation, New Mexico.

In 1900, human remains representing a minimum of 17 individuals were removed by Dr. Aleš Hrdlička from an undesignated ruined pueblo 9 miles southwest of Zuni pueblo, NM. No known individuals were identified. The two associated funerary objects are a Pinedale black-on-white ceramic bowl and a Heshota utla polychrome ceramic pitcher. The undesignated ruined pueblo site from which the human remains and associated funerary objects were removed is believed to be on the Zuni Indian Reservation.

Pinedale black-on-white and Heshota utla polychrome ceramics were produced during the Pueblo III and Pueblo IV periods, roughly between A.D. 1250 and A.D. 1450. The human remains probably were interred during that period. The human remains have been identified as Native American based on geographic and documentary evidence. The human remains were found in the pre- and postcontact territory of the Zuni people. Although there was some migration into this area between A.D. 1175 and the Coronado entrada in A.D. 1540, the continuity of a core architectural and ceramic tradition during the time period in which these human remains were interred suggests an ethnic continuity in the area. Zuni oral history provides further evidence for the existence of a shared group identity between the past population represented by these human remains and associated funerary objects and the present-day Zuni Tribe of the Zuni Reservation, New Mexico.

Although the lands from which the human remains were removed are currently under the jurisdiction of the U.S. Department of the Interior, Bureau of Indian Affairs, the American Museum of Natural History has possession and control of the human remains and associated funerary objects because their removal from tribal land predates the permit requirements established by the Antiquities Act of 1906.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains listed above represent the physical remains of 17 individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the two objects listed above are reasonably believed to have been placed with or

near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Luc Litwinionek, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5846, before September 19, 2003. Repatriation of the human remains and associated funerary objects to the Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: July 24, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–21343 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Humphrey Center for American Indian Studies, Central Lakes College, Brainerd, MN

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Humphrey Center for American Indian Studies, Central Lakes College, Brainerd, MN, that meet the definition of "sacred objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations within this notice.

The 18 items are 5 drums, 1 rattle, 2 pipes, 1 belt weapon, 1 rainmaker, 1 umbilical bag, 1 bear claw necklace, 4 chokers, 1 medicine bag, and 1 buffalo headdress. Central Lakes College acquired all of the items in 1996 from John "Pete" Humphrey.

At an unknown date, Mr. Humphrey acquired two leather drums from John Morrison, Red Lake Band of Chippewa Indians, Minnesota. One drum is approximately 15 inches in diameter, and 1 inch tall. It is undecorated. The other drum is approximately 12 inches in diameter and 3 inches tall, with small randomly placed red paint stains on the drum's surface.

At an unknown date, Mr. Humphrey acquired a rattle from an unidentified family of the Red Lake Band of Chippewa Indians, Minnesota. The rattle is made from a baking powder can.

At an unknown date, Mr. Humphrey acquired a pipestone pipe from Ed Needum, Red Lake Band of Chippewa Indians, Minnesota. The stem is sumac and displays four hollowed ovals and three incised teepees along the stem.

In approximately 1959, Mr. Humphrey was given a belt weapon by an unidentified member of the Red Lake Band of Chippewa Indians, Minnesota. The grip end of the handle is wrapped in wire, and the upper end is encased in leather that is dyed with black geometric patterns. Two bear claws are attached near the weapon end of the handle.

At unknown dates, Mr. Humphrey was given a rainmaker, a necklace, and two chokers by the George and Anna Ritchie family, Red Lake Band of Chippewa Indians, Minnesota. The rainmaker is made of wood, with yellow and red painted lightning stripes. The necklace consists of a circle of bear fur trimmed with tan cloth. Attached to the fur are blue and green beads and 20 bear claws. One of the chokers is made of bone, metal beads, and leather separators. There is a large shell at center front with attached weasel fur. The other choker is made of deer antler and pipestone, with a pipestone thunderbird at the center.

At an unknown date, Mr. Humphrey was given a buffalo headdress by unidentified members of the Red Lake Band of Chippewa Indians, Minnesota. It is made of buffalo fur and has two buffalo horns at the top and an eagle feather attached at the front center.

At an unknown date, Mr. Humphrey purchased a water drum from Elizabeth Star in Walker, MN. The drum is believed to have been manufactured by a member of the Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota.

At an unknown date, Mr. Humphrey purchased a drum and an umbilical bag from Sherman Holbert, of Garrison, MN. The drum is approximately 7 inches in diameter and 1 inch tall. A black circle has been painted in the center of the drum, and four elongated diamond shapes extend from the circle. The lizard-shaped bag is beaded on the front, and is plain leather on the back. The four appendages are closed with beads and short leather thongs.

In the 1970s, Mr. Humphrey purchased a large ceremonial drum from Sherman Holbert. The drum is approximately 34 inches in diameter and 45 inches tall. The rim is lined with black fur and the sides are covered with red and navy wool and sewn blue felt hands. The drum is decorated with beads, metal coins and thimbles. Four gold-beaded patches depict red-beaded human figures. A line bisects the surface of the drum, with one half colored a bluish-green, and the other half colored red. Although the drum is of Ojibwe manufacture, the origin is not known.

At an unknown date, Mr. Humphrey acquired a black steatite pipe with silver-colored inlay from Reuben Fairbanks, a member of the Red Lake Band of Chippewa Indians. The stem is beaded.

At an unknown date, Mr. Humphrey was given a choker by Dale Sanders, of Brainerd, MN. The origin of the choker is unknown, but it is believed to be Ojibwe. It is made of bone, metal beads, and leather separators. Four rows of metal beads and bone pieces are attached at each end with leather ties. At the center of the choker are cowry shells and a conch shell.

At an unknown date, Mr. Humphrey was given a choker by Dick Gaudette, of Deerwood, MN. It is made of bone with metal beads and leather separators. Four bear claws are attached at the center of the bottom row of bone. The origin of this object is unknown.

At an unknown date, Mr. Humphrey acquired a bag from an unknown source. The bag is woven of a natural fiber, with a green fabric trim. Colored diamonds are woven into one side. Two leather ties and cowry shells are attached at the center of the top.

Consultation with members of the Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota and the Red Lake Band of Chippewa Indians, Minnesota indicates that the cultural items described above are specific ceremonial objects used in sacred ceremonies.

Officials of the Humphrey Center for American Indian Studies, Central Lakes College have determined that, pursuant to 25 U.S.C. 3001 (3)(C), the cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Humphrey Center for American Indian Studies, Central Lakes College also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the sacred objects and the Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota and the Red Lake Band of Chippewa Indians, Minnesota.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the sacred objects should contact Sharon Fodness, Humphrey Center for American Indian Studies, Central Lakes College, 501 West College Drive, Brainerd, MN 56401, e-mail sfodness@clcmn.edu, telephone (218) 855-8194, before September 19, 2003. Repatriation of the sacred objects to the Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota and the Red Lake Band of Chippewa Indians, Minnesota may proceed after that date if no additional claimants come forward.

The Humphrey Center for American Indian Studies, Central Lakes College is responsible for notifying the Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota and the Red Lake Band of Chippewa Indians, Minnesota that this notice has been published.

Dated: July 18, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–21345 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the Oregon State Museum of Anthropology, University of Oregon, Eugene, OR; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Oregon State Museum of Anthropology. The human remains and associated funerary objects were removed from site 35UM35, within the town of Umatilla, OR.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of these Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

This notice corrects the minimum number of individuals and the number of associated funerary objects that were reported in a Notice of Inventory Completion published November 17, 1998 (FR Doc. 98-30681, pages 63945-63946). A review of Oregon State Museum of Anthropology collections resulted in the identification of 2 additional sets of Native American human remains and 11 additional associated funerary objects from site 35UM35, all culturally affiliated with the same tribe listed in the original notice. The notice also corrects the total number of associated funerary objects.

The sixth paragraph in the original notice is corrected by substituting the following paragraph:

In 1965, human remains representing a minimum of four individuals were recovered from site 35UM35, within the town of Umatilla, OR, during legally authorized excavations conducted by University of Oregon archeologists. No known individuals were identified. The 16 associated funerary objects are 1 pounder, 1 piece of quartzite, bones of a gray fox, fragments of mussel shell, unworked flakes, 1 steatite bead, 1 dentalium shell bead, 1 piece of antler, 6 chert tools, and 2 basalt fragments.

The ninth paragraph in the original notice is corrected by substituting the following paragraph:

Officials of the Oregon State Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of 12 individuals of Native American ancestry. Officials of the Oregon State Museum of Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 17 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Oregon State Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes of the Umatilla Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact C. Melvin Aikens, Oregon State Museum of Anthropology, 1224 University of Oregon, Eugene, OR 97402-1224, telephone (541) 346-5115, before September 19, 2003. Repatriation of the human remains and associated funerary objects to the Confederated Tribes of the Umatilla Reservation, Oregon may proceed after that date if no additional claimants come forward.

Oregon State Museum of Anthropology is responsible for notifying the Confederated Tribes of the Umatilla Reservation, Oregon that this notice has been published.

Dated: July 9, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–21339 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA, and U.S. Department of Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA, and in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC. The human remains were removed from tribal lands of the Pueblo of Cochiti, Sandoval County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human

remains. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalogue records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Pueblo of Cochiti, New Mexico.

In 1904 or earlier, human remains representing at least one individual were removed from an unknown location on tribal lands of the Pueblo of Cochiti, New Mexico, "Cochite [sic] Pueblo Ruin," by an unknown individual. The human remains were purchased by F.W. Putnam from the Fred Harvey Company. The human remains were acquired by Mrs. P.A. Hearst, who donated the human remains to the Phoebe A. Hearst Museum of Anthropology in 1904. No known individual was identified. No associated funerary objects are present.

Based on the circumstances of burial, the human remains are identified as Native American. The geographical location of the burial on tribal lands indicates that the human remains are most likely to be culturally affiliated with the Pueblo of Cochiti, New Mexico.

Officials of the Phoebe A. Hearst Museum of Anthropology and the Bureau of Indian Affairs have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of at least one individual of Native American ancestry. Officials of the Phoebe A. Hearst Museum of Anthropology and the Bureau of Indian Affairs also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Pueblo of Cochiti, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley CA 94720, telephone (510) 642-6096, before September 19, 2003. Repatriation of the human remains to the Pueblo of Cochiti, New Mexico, may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Pueblo of Cochiti, New Mexico that this notice has been published.

Dated: July 8, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–21341 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Springfield Science Museum, Springfield, MA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Springfield Science Museum, Springfield, MA. The human remains and associated funerary objects were removed from various sites in western Massachusetts, including Hampden and Hampshire Counties.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by Springfield Science Museum professional staff in consultation with representatives of the Stockbridge Munsee Community, Wisconsin.

The human remains and associated funerary objects are described in this notice according to county and town, and site location when available.

Hampden County, MA.

In 1864, human remains representing one individual were removed from the Fort Hill site (also known as the Long Hill Street site), Springfield, Hampden County, MA, by local collector Alfred Booth. The remains were donated to the Springfield Science Museum by Mr. Booth in the same year. No known individual was identified. No associated funerary objects are present.

In 1895, human remains representing one individual were removed from the Fort Hill site (also known as the Long Hill Street site), Springfield, Hampden County, MA, by L.G. Grant, while excavating for the cellar of a house. The human remains were donated to the Springfield Science Museum in 1925 by J.T. Bowne, who had purchased them from G. Sherman in 1903. No known individual was identified. No associated funerary objects are present. According to Mr. Bowne's journal, the human remains were encountered in fireplaces or pits.

The Fort Hill site dates to the Historic period. The settlement was built in 1666 and was occupied by Native Americans until 1675. The human remains were probably buried during this time.

In 1899 or before, human remains representing a minimum of one individual were removed from the Crescent Hill site, Springfield, Hampden County, MA, by Nathan D. Bill. Mr. Bill donated the human remains to the Springfield Science Museum in 1899. No known individual was identified. No associated funerary objects are present. At an unknown date, human remains representing a minimum of one individual were removed from the Crescent Hill site, Springfield, Hampden County, MA, by an unknown individual and were later acquired by the Springfield Science Museum. No known individual was identified. No associated funerary objects are present.

The Crescent Hill site does not have an established chronology, but it probably dates to the Late Woodland period or early in the Historic period.

In 1902, human remains representing a minimum of one individual were removed from the Chapin/Dakin site (also known as West Springfield Meadows), Hampden County, MA, by Dr. W.H. Chapin and were accessioned by the Springfield Science Museum in the same year. No known individual was identified. No associated funerary objects are present.

In 1903, human remains representing a minimum of one individual and, in 1907, human remains representing a minimum of four individuals were removed from the Chapin/Dakin site (also known as West Springfield Meadows), Hampden County, MA, by J.T. Bowne and were accessioned by the Springfield Science Museum in 1925. No known individuals were identified. No associated funerary objects are present.

Local history maintains that an extensive Woodland period habitation site existed at West Springfield Meadows. Objects found at the site but not associated with the burials include Levanna-type projectile points and pottery, which suggest a Middle to Late Woodland period occupation (A.D. 100-1500).

In 1912 or before, human remains representing a minimum of one

individual were removed from the north side of Meadow Road, 200 feet from the State Road (known as the Meadow/State Road site) in Longmeadow, Hampden County, MA, by R.O. Morris. The Springfield Science Museum acquired the remains from Mr. Morris in 1912. No known individual was identified. No associated funerary objects are present.

Although the Meadow/State Road site has not been dated, the burial location and mortuary practices are consistent with Native American interments found in western Massachusetts during the Late Woodland period and early in the Historic period.

In 1917 or before, human remains consisting of one complete human skeleton, representing one individual, were removed from a site on the Chicopee River opposite the Page-Storm Drop Forge Company, Chicopee, Hampden County, MA, by F.T. Ley. The Springfield Science Museum acquired the human remains in 1917. No known individual was identified. No associated funerary objects are present.

Although this site has not been dated, the burial location and mortuary practices are consistent with Native American interments found in western Massachusetts during the Late Woodland period and early in the Historic period.

In 1917 or before and 1918 or before, human remains consisting of two partial skeletons, representing a minimum of two individuals, were removed from the north bank of the Chicopee River at the junction with the Connecticut River, Chicopee, Hampden County, MA, by F.T. Ley. The Springfield Science Museum acquired the human remains and associated funerary objects in 1917 and 1918. No known individuals were identified. The eight associated funerary objects acquired in 1917 are one hammer stone, one fire-cracked rock, five flakes, and one unidentified stone artifact.

Although this site has not been dated, the burial location and mortuary practices are consistent with Native American interments found in western Massachusetts during the Late Woodland period and early in the Historic period.

In 1921 or before, human remains consisting of a partial cranium, representing one individual, were removed from an unknown site in Hampden County, MA, by local collector E H. Barney. The Springfield Science Museum acquired the human remains from Mr. Barney in 1921. No known individual was identified. No associated funerary objects are present.

Although there is no age information contained in the museum records, the condition of the human remains suggests a Late Woodland or later date (post-A.D. 1000).

In 1923 or before, human remains representing a minimum of one individual were removed from the bank of the Agawam River, Agawam, Hampden County, MA, by A.C. Yost. The remains were donated to the Springfield Science Museum by Mr. Yost in 1923. No known individual was identified. No associated funerary objects are present.

Although this site has not been dated, the burial location and mortuary practices are consistent with Native American interments found in western Massachusetts during the Late Woodland period and early in the Historic period.

In 1925 or before, human remains representing a minimum of one individual were removed from the Smith Farm site, South Hadley Falls, Hampden County, MA, by local collector W.B. Sturtevant. The remains were donated to the Springfield Science Museum by Mr. Sturtevant in 1925. No known individual was identified. No associated funerary objects are present. The bones are stained green from the presence of copper in the burial, suggesting that this was an Adena burial dating to the Early Woodland period (1000-200 B.C.).

In 1933 or before, human remains representing a minimum of two individuals were removed from the west end of the South End Bridge, Springfield, Hampden County, MA, by an unknown collector. The remains were donated to the Springfield Science Museum by the W.H. Graham Corporation in 1933. No known individuals were identified. No associated funerary objects are present.

Although this site has not been dated, the burial location and mortuary practices are consistent with Native American interments found in western Massachusetts during the Late Woodland period and early in the Historic period.

At an unknown date, human remains representing a minimum of one individual were removed from the grounds of the Page-Storm Drop Forge Company, Chicopee, Hampden County, MA, by an unknown person. The Springfield Science Museum acquired the human remains from Mrs. F. Storm in 1937. No known individual was identified. No associated funerary objects are present.

Although this site has not been dated, the burial location and mortuary practices are consistent with Native American interments found in western Massachusetts during the Late Woodland period and early in the Historic period.

At an unknown date during the 1940s, human remains representing a minimum of one individual were removed from the Alsing's Rock Shelter site in Wilbraham, Hampden County, MA, by H. Morhman. The Springfield Science Museum acquired the human remains and associated funerary objects from Mr. Morhman in 1977. No known individual was identified. The 132 associated funerary objects are 47 charcoal fragments, 1 rodent tooth, 61 burned animal bone fragments, 8 wood fragments, 1 quartz Levanna point, 8 shell fragments, 1 quartzite flake, and 5 stone core fragments. The quartz Levanna point suggests that the site dates to the Late Woodland period (A.D. 1000-1500).

In 1975 or before, human remains representing a minimum of one individual were removed from 943 Main Street, Agawam, Hampden County, MA, by H.A. Briggs. The Springfield Science Museum acquired the human remains and associated funerary objects from Mr. Briggs in 1975. No known individual was identified. The nine associated funerary objects are flint blades.

Although this site has not been dated, the burial location and mortuary practices are consistent with Native American interments found in western Massachusetts during the Late Woodland period and early in the Historic period.

In the 1960s, human remains representing a minimum of 49 individuals were removed from the Guida Farm site, Westfield, Hampden County, MA, by W.R. Young. The Springfield Science Museum acquired the human remains and associated funerary objects from Mr. Young in 1979. No known individuals were identified. The 126 associated funerary objects are 1 adze blade tip; 46 charcoal pieces; 17 faunal fragments; 11 chert, quartz, quartzite, and basalt flakes; 1 burned nut hull; 1 quartzite projectile point; 2 igneous rock fragments; and 47 cord-marked, incised, and undecorated pottery sherds.

The Guida Farm site is described by Douglas S. Byers and Irving Rouse in a Bulletin of the Archaeological Society of Connecticut article published in 1960 as a habitation site with burial components dating from the Early Woodland through the Late Woodland period (circa 1000 B.C.-A.D. 1500).

Hampshire County, MA.

In 1957, human remains representing a minimum of two individuals were removed from the Fort River site, Hadley, Hampshire County, MA, by W.R. Young. The remains were

accessioned by the Springfield Science Museum in 1979. No known individuals were identified. No associated funerary objects are present.

Although the Fort River site has not been dated, the burial location and mortuary practices are consistent with Native American interments found in western Massachusetts during the Late Woodland period and early in the Historic period.

At an unknown date, human remains representing a minimum of one individual were removed from a site in North Hadley, Hampshire County, MA, by an unknown collector. The Springfield Science Museum acquired the remains in 1975 from an unknown person. No known individual was identified. No associated funerary objects are present.

Although this site has not been dated, the burial location and mortuary practices are consistent with Native American interments found in western Massachusetts during the Late Woodland period and early in the Historic period.

At an unknown date, human remains representing a minimum of one individual were removed from a burial site in North Hadley, Hampshire County, MA, by W.R. Young. The year in which the Springfield Science Museum acquired the human remains and associated funerary object is uncertain, but it may have been 1979. No known individual was identified. The one associated funerary object is a retouched flake.

Although this site has not been dated, the burial location and mortuary practices are consistent with Native American interments found in western Massachusetts during the Late Woodland period and early in the Historic period.

In 1986 or before, human remains representing a minimum of one individual were removed from site 19-HS-276, in North Hatfield, Hampshire County, MA, by W.S. Rodimon. The Springfield Science Museum acquired the human remains from Mr. Rodimon in 1986. No known individual was identified. No associated funerary objects are present.

Although site 19-HS-276 has not been dated, the burial location and mortuary practices are consistent with Native American interments found in western Massachusetts during the Late Woodland period and early in the Historic period.

In 1996, human remains representing a minimum of one individual were removed from a site at South Hadley Falls, Hampshire County, MA, by C.S. Allen. The Springfield Science Museum acquired the human remains and associated funerary objects from Mr. Allen in the same year. No known individual was identified. The 45 associated funerary objects are copper beads. The presence of copper beads suggests that the burial is Adena, dating the site to the Early Woodland period (circa 1000-200 B.C.).

At an unknown date, human remains representing a minimum of one individual were removed from a site in North Amherst, Hampshire County, MA, by an unknown collector. It is unknown how and when the Springfield Science Museum acquired the human remains. No known individual was identified. No associated funerary objects are present.

Although this site has not been dated, the burial location and mortuary practices are consistent with Native American interments found in western Massachusetts during the Late Woodland period and early in the Historic period.

Western Massachusetts.

In 1917 or before, human remains consisting of two crania, representing two individuals, were removed from an unknown site in western Massachusetts by an unknown individual. The Springfield Science Museum acquired the human remains in 1917 by unknown means. No known individuals were identified. No associated funerary objects are present.

Although there is no age information contained in the museum records, the condition of the human remains suggests a Late Woodland period or later date (post-A.D. 1000).

At unknown dates, human remains representing a minimum of four individuals were removed from unknown sites in western Massachusetts by unknown collectors. It is unknown how and when the Springfield Science Museum acquired the human remains. No known individuals were identified. No associated funerary objects are present.

Although there is no age information contained in the museum records, the condition of the human remains suggests a Late Woodland period or later date (post-A.D. 1000).

Based on historic documentation, geographic location of the burials, and oral history, the human remains and associated funerary objects described above are most likely to be culturally affiliated with the present-day Stockbridge Munsee Community, Wisconsin. All of the western Massachusetts sites described above lie within the known homeland of the Mohican Indians. Occupation of the area by the Mohican Indians is well documented for the Historic period, and Mohican oral history maintains that there is also prehistoric occupation in the Hudson and Connecticut River Valleys. The Mohican Indians are represented today by the Stockbridge Munsee Community, Wisconsin.

Officials of the Springfield Science Museum have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of 84 individuals of Native American ancestry. Officials of the Springfield Science Museum also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 321 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Springfield Science Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Stockbridge Munsee Community, Wisconsin.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact David Stier, Director, Springfield Science Museum, 220 State Street, Springfield, MA 01103, telephone (413) 263-6800, extension 321, before September 19, 2003. Repatriation of the human remains and associated funerary objects to the Stockbridge Munsee Community, Wisconsin may proceed after that date if no additional claimants come forward.

The Springfield Science Museum is responsible for notifying the Stockbridge Munsee Community, Wisconsin that this notice has been published.

Dated: July 10, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–21336 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The University of Montana, Missoula, MT, and U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of The University of Montana, Missoula, MT, and in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC. The human remains were removed from the Flathead Indian Reservation, Lake County, MT.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by The University of Montana and the Bureau of Indian Affairs professional staff in consultation with representatives of the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana.

In 1950, human remains (UMFC44) representing a minimum of one individual were removed from an unknown location on the Flathead Indian Reservation, Lake County, MT. Although the human remains are too fragmentary to evaluate ancestry with certainty, some characteristics are present that are typical of Native Americans. Moreover, the degree of weathering of the human remains is consistent with a prehistoric age, and the human remains are therefore considered to be Native American. No known individual was identified. No associated funerary objects are present.

In 1979, human remains (UMFC56) representing a minimum of one individual were removed by Lake County law enforcement authorities from an undisclosed location on the Flathead Indian Reservation, Lake County, MT. The character of the dental wear is similar to that on prehistoric Native American individuals from the region and the human remains therefore are considered most likely Native American. No known individual was identified. No associated funerary objects are present.

The Lake County Sheriff/Coroner had custody of the human remains until May 2002. At that time, The University of Montana sought and received custody of the human remains from the Lake County Sheriff/Coroner for the purpose of returning the human remains to Native American tribes pursuant to applicable State and Federal laws.

The region from which the human remains originated was inhabited during prehistoric and historic times by the ancestors of the present-day Confederated Salish & Kootenai Tribes of the Flathead Indian Reservation, Montana. On the basis of oral traditions; geographic, kinship, archeological, anthropological, and historical data; and study of the human remains, the University of Montana has determined that the human remains are culturally affiliated with members of the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana.

Officials of The University of Montana and the Bureau of Indian Affairs have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of two individuals of Native American ancestry. Officials of The University of Montana and the Bureau of Indian Affairs also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Thomas A. Foor, Professor, Department of Anthropology, The University of Montana, Missoula, MT 59806, telephone (406) 243-2971, before September 19, 2003. Repatriation of the human remains to the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana may proceed after that date if no additional claimants come forward.

The University of Montana is responsible for notifying the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana that this notice has been published.

Dated: July 8, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–21337 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: The University of Montana, Missoula, MT

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of The University of Montana, Missoula, MT. The human remains and associated funerary objects were removed from various locations in western Montana.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by The University of Montana professional staff in consultation with the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana.

Prior to 1991, human remains (UMFC01) representing a minimum of two individuals were removed from an unknown location in Montana west of the Continental Divide. Some of the human remains are stained with a red substance likely to be ocher, which is consistent with a prehistoric Native American secondary burial practice. No known individuals were identified. No associated funerary objects are present.

Prior to 1991, human remains (UMFC10) representing a minimum of one individual were removed from an unknown location in Montana west of the Continental Divide. The human remains are weathered to an extent consistent with an age of several hundred years, and the human remains therefore probably are associated with the prehistoric Native American inhabitants of Montana. No known individual was identified. No associated funerary objects are present.

Prior to 1991, human remains (UMFC11) representing a minimum of one individual were removed from an unknown location in Montana west of the Continental Divide. Some of the human remains are stained with a red substance likely to be ocher, which is consistent with a prehistoric Native American secondary burial practice. No known individual was identified. No associated funerary objects are present.

Prior to 1991, human remains (UMFC15) representing a minimum of one individual were removed from an unknown location in Montana west of the Continental Divide. Some of the

human remains are stained with a red substance likely to be ocher, which is consistent with a prehistoric Native American secondary burial practice. Although the skull is too fragmentary to evaluate ancestry with certainty, characteristics of the skull and geographic location indicate that the individual was probably Native American. No known individual was identified. No associated funerary objects are present.

Prior to 1991, human remains (UMFC17) representing a minimum of one individual were removed from an unknown location in Montana west of the Continental Divide. Some of the human remains are stained with a red substance likely to be ocher, which is consistent with a prehistoric Native American secondary burial practice. Although the skull is too fragmentary to evaluate ancestry with certainty, characteristics of the skull and geographic location indicate that the individual was probably Native American. No known individual was identified. No associated funerary objects are present.

In 1938, human remains (UMFC20) representing a minimum of one individual were removed from an unknown location in Mineral County, MT. Physical characteristics of the human remains, the types of associated funerary objects, and geographic location indicate that the individual was probably Native American from late prehistoric or historic times. No known individual was identified. The 71 associated funerary objects are 39 shell beads, 30 glass beads, and 2 chipped stone artifacts.

Prior to 1991, human remains (UMFC21) representing a minimum of two individuals were removed from an unknown location in Montana west of the Continental Divide. Physical characteristics of one set of human remains and geographic location indicate that the individuals were probably Native American. No known individuals were identified. No associated funerary objects are present.

Prior to 1991, human remains (UMFC24) representing a minimum of one individual were removed from an unknown location in Sanders County, MT. The character of the dental wear is similar to that on prehistoric individuals from the region and therefore the individual is most likely Native American. No known individual was identified. No associated funerary objects are present.

Prior to 1991, human remains (UMFC25) representing a minimum of one individual were removed from an unknown location in Montana west of the Continental Divide. The individual is immature, but the observable characteristics on the human remains and geographic location indicate that the individual was probably Native American. No known individual was identified. No associated funerary objects are present.

Prior to 1991, human remains (UMFC34) representing a minimum of one individual were removed from an unknown location in Montana west of the Continental Divide. The individual exhibits a mixture of "Mongoloid" and "Caucasoid" characteristics, but the types of associated funerary objects make it reasonably certain that the human remains are Native American. No known individual was identified. The 80 associated funerary objects are 66 shell beads and 14 elk teeth.

Prior to 1991, human remains (UMFC41) representing a minimum of two individuals were removed from an unknown location in Montana west of the Continental Divide. Although the human remains are too fragmentary to evaluate ancestry with certainty, some characteristics are present that are typical of Native Americans. Moreover, the degree of weathering of the human remains is consistent with a prehistoric age, and the human remains are therefore considered to be Native American. No known individuals were identified. No associated funerary objects are present.

In 1978, human remains (UMFC48) representing a minimum of one individual were removed from the prehistoric archeological site 24SA118 in Sanders County, MT. Metric analysis of the human remains indicates that the individual is of Native American ancestry. No known individual was identified. No associated funerary objects are present.

Prior to 1991, human remains (UMFC53) representing a minimum of one individual were removed from an unknown location in Montana west of the Continental Divide. The type of the associated funerary objects and degree of weathering of the human remains makes the attribution of the human remains as Native American from late prehistoric or historic times reasonably certain. No known individual was identified. The 17 associated funerary objects are glass beads.

Prior to 1991, human remains (UMFC67) representing a minimum of one individual were removed from an unknown location in Montana west of the Continental Divide. Some of the human remains are stained with a red substance likely to be ocher, which is consistent with a prehistoric Native American secondary burial practice. No known individual was identified. No associated funerary objects are present.

Prior to 1991, human remains (UMFC72) representing a minimum of one individual were removed from an unknown location in Montana west of the Continental Divide. Metric analysis and geographic location indicate that the individual was probably Native American. No known individual was identified. No associated funerary objects are present.

Prior to 1991, human remains (24MO1017) representing a minimum of one individual were removed from prehistoric archeological site 24MO1017 in Missoula County, MT. Metric analysis and geographic location indicate that the individual was probably Native American. No known individual was identified. No associated funerary objects are present.

Prior to 1991, human remains (24PW1065) representing a minimum of one individual were removed from prehistoric archeological site 24PW1065 in Powell County, MT. Metric analysis and geographic location indicate that the individual was probably Native American. No known individual was identified. No associated funerary objects are present.

At various unknown times before 1991, local law enforcement officials from the counties from which the human remains described above were removed presented the human remains to the Montana State Medical Examiner and The University of Montana, Department of Anthropology physical anthropologists for analysis. Local Sheriffs/Coroners had custody of the human remains and associated funerary objects until May 2002. At that time, The University of Montana sought and received custody of the human remains and associated funerary objects from the law enforcement officials for the purpose of returning them to Native American tribes pursuant to applicable State and Federal laws.

In 1999, human remains representing a minimum of one individual were left at The University of Montana by an unknown individual who did not disclose the location or date of discovery of the human remains other than the fact that they came from the Seeley Lake area of Missoula County, MT. Metric analysis and geographic location indicate that the individual was probably Native American. No known individual was identified. No associated funerary objects are present.

The region from which all of the human remains described above originated was inhabited during prehistoric and historic times by the ancestors of the present-day

Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana. On the basis of oral traditions; geographic, kinship, archeological, anthropological, and historical data; and study of the human remains and associated funerary objects, The University of Montana has determined that the human remains and associated funerary objects are culturally affiliated with members of the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana.

Officials of The University of Montana have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of 21 individuals of Native American ancestry. Officials of The University of Montana also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 168 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of The University of Montana have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the human remains and the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Thomas A. Foor, Professor, Department of Anthropology, The University of Montana, Missoula, MT 59806, telephone (406) 243-2971, before September 19, 2003. Repatriation of the human remains and associated funerary objects to the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana may proceed after that date if no additional claimants come forward.

The University of Montana is responsible for notifying the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana that this notice has been published.

Dated: July 9, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–21340 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA. The human remains were removed from northern Indiana and other areas in the Great Lakes region.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations within this notice.

A detailed assessment of the human remains was made by University of Pennsylvania Museum of Archaeology and Anthropology professional staff in consultation with representatives of the Miami Tribe of Oklahoma and the Peoria Tribe of Indians of Oklahoma.

At an unknown date, human remains representing a minimum of five individuals were removed from an unknown site in the Great Lakes region by an unknown individual. The human remains were in the possession of the Academy of Natural Sciences, Philadelphia, PA, for an unknown period of time and in 1997 were transferred to the University of Pennsylvania Museum of Archaeology and Anthropology. According to museum records, at least one set of human remains dates to the Historic period. No known individuals were identified. No associated funerary objects are present.

At an unknown date, probably between 1800 and 1853, human remains representing a minimum of one individual were removed from an unknown site in Indiana by Dr. Tuley. At an unknown date, the human remains were donated to the Academy of Natural Sciences by Dr. Tuley, and in 1997, were transferred to the University of Pennsylvania Museum of Archaeology and Anthropology. According to museum records, the human remains date to the Historic period. No known individual was identified. No associated funerary objects are present.

At an unknown date, human remains representing a minimum of one individual were removed from an unknown site in the Great Lakes region by Dr. Enos Lowe. At an unknown date, the human remains were donated to the Academy of Natural Sciences by Dr. Lowe, and in 1997, were transferred to the University of Pennsylvania Museum of Archaeology and Anthropology. Original catalog documentation identifies the individual as "Big-Fire, a Miami Chief." No associated funerary objects are present.

At an unknown date, probably between 1800 and 1853, human remains representing a minimum of one individual were removed from an unknown site in Indiana by J.W. Davies. At an unknown date, the human remains were donated to the Academy of Natural Sciences by Mr. Davies, and in 1997, were transferred to the University of Pennsylvania Museum of Archaeology and Anthropology. Original catalog documentation identifies the individual as "Miami Capt. Jim, a Miami Chief." No associated funerary objects are present.

At an unknown date, probably between 1800 and 1853, human remains representing a minimum of three individuals were removed from an unknown site near Pendleton, Madison County, IN, by Dr. Edwin Fussel. At an unknown date, the human remains were donated to the Academy of Natural Sciences by Dr. Fussell, and in 1997, were transferred to the University of Pennsylvania Museum of Archaeology and Anthropology. Museum records do not contain any information on the age of the human remains. No known individuals were identified. No associated funerary objects are present.

In 1845, human remains representing a minimum of one individual were removed from an unknown site in the Great Lakes region by Rev. W.F. Ferguson. In 1845, the human remains were donated to the Academy of Natural Sciences by Rev. Ferguson, and in 1997, were transferred to the University of Pennsylvania Museum of Archaeology and Anthropology. Museum records do not contain any information on the age of the human remains. No known individual was identified. No associated funerary objects are present.

The human remains described above have been identified as Native American based on accession information that identifies them as "Miami."

Archeological, historical, and ethnographic information, along with information provided by the Miami Tribe of Oklahoma, indicate that northern Indiana, including Madison County, and adjacent areas of the Great Lakes region are within the aboriginal and historic homeland of the Miami people. The Miami people are represented today by the Miami Tribe of Oklahoma and the Peoria Tribe of Indians in Oklahoma.

Officials of the University of Pennsylvania Museum of Archaeology and Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of 12 individuals of Native American ancestry. Officials of the University of Pennsylvania Museum of Archaeology and Anthropology also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Miami Tribe of Oklahoma and the Peoria Tribe of Indians in Oklahoma. The Peoria Tribe of Indians in Oklahoma has agreed to the repatriation of the human remains to the Miami Tribe of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Jeremy Sabloff, the Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, Philadelphia, PA 19104-6324, telephone (215) 898-4051, facsimile (215) 898-0657, before September 19, 2003. Repatriation of the human remains to the Miami Tribe of Oklahoma may proceed after that date if no additional claimants come forward.

The University of Pennsylvania Museum of Archaeology and Anthropology is responsible for notifying the Miami Tribe of Oklahoma and the Peoria Tribe of Indians in Oklahoma that this notice has been published.

Dated: July 15, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–21344 Filed 8–19–03; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1047 (Preliminary)]

Ironing Tables and Certain Parts Thereof From China

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) (the Act), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from China of ironing tables and certain parts thereof, provided for in subheading 9403.20.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules, upon notice from the Department of Commerce (Commerce) of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On June 30, 2003, a petition was filed with the Commission and Commerce by Home Products International, Inc. (HPI), Chicago, IL, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of ironing tables and certain parts thereof from China. Accordingly, effective June 30, 2003, the Commission instituted antidumping duty investigation No. 731–TA–1047 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 8, 2003 (68 FR 40683). The conference was held in Washington, DC, on July 21, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 14, 2003. The views of the Commission are contained in USITC Publication 3623 (August 2003), entitled Ironing Tables and Certain Parts Thereof from China: Investigation No. 731–TA–1047 (Preliminary).

By order of the Commission.

Issued: August 14, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21362 Filed 8–19–03; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitations for a Cooperative Agreement: Production of Eight Satellite/Internet Broadcasts

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: The Department of Justice (DOJ), National Institute of Corrections (NIC), announces the availability of funds in FY 2004 for a cooperative agreement to fund the production of eight satellite/Internet broadcasts. Four of the proposed programs are nationwide satellite/Internet broadcasts. Four of the proposed programs are nationwide satellite/Internet broadcasts (three hours each). The other four are satellite/Internet Training Programs: two of the four are site coordinator/facilitator training (Training for Trainers) sessions. The site coordinator precursor modules will contain eight

hours of satellite/Internet training split over two days. The remaining two training programs are content-driven programs, one 24 hours in length and the other 32 hours in length. For the 24-hour program, there will be 12 hours of live-broadcast satellite/Internet training over three days (supplemented by 12 hours of off-air activities directed by previously trained site coordinators). For the 32-hour program, there will be 16 hours of live-broadcast satellite/Internet training over four days (supplemented by 16 hours of off-air activities directed by previously trained site coordinators). There will be a total of 56 hours of broadcast time in FY 2004.

DATES: Applications must be received by 4 p.m. on Tuesday, September 30, 2003. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to insure delivery by the due date. Hand delivered applications can be brought to 500 First Street, NW., Room 5007, Washington, DC 20534. The security desk will call (202) 307–3106, and 0 for pickup. Faxed or e-mailed applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: A copy of this announcement and the required application forms can be downloaded from the NIC web page at *www.nicic.org* (click on "partnering with NIC" and then "cooperative agreement.") Hard copies of the announcement can be obtained by calling Rita Rippetoe at 1–800–995–6423, ext. 44222, or by e-mail at *rrippetoe@bop.gov*. Any specific questions regarding the application process should be directed to Ms. Rippetoe.

All technical and/or programmatic questions concerning this announcement should be directed to Ed Wolahan, Corrections Program Specialist, at 1960 Industrial Circle, Longmont, Colorado 80501, or by calling 800–995–6429, ext 131, or by e-mail at *ewolahan@bop.gov*.

SUPPLEMENTARY INFORMATION:

Background

Satellite/Internet Broadcasting is defined as training/education process transpiring between trainers/teachers at one location and participants/students at other locations via technology. NIC is using satellite broadcasting and the Internet to economically reach more correctional staff in Federal, State and local agencies. Another strong benefit of satellite delivery is its ability to broadcast programs conducted by experts in the correctional field, thus reaching the entire audience at the same time with exactly the same information. In addition, NIC is creating training programs from its edited 24- and 32-hour satellite/Internet training programs for dissemination through the NIC Information Center.

Purpose

The purpose for funding this initiative is to:

(1) Produce four three-hour satellite/Internet broadcasts, disseminating current information to the criminal justice community;

(2) Product two eight-hour training sessions for site coordinators/facilitators. These sessions will train facilitators from each registered site concerning the outcomes expected and the knowledge and skills needed to facilitate the broadcast and off-air activities for the two training programs described in paragraph (3) below;

(3) Produce two satellite/Internet training programs (one 16 hours in length and one 12 hours in length) that respond directly to the needs identified by practitioners working in criminal justice. The 16-hour satellite/Internet training will be delivered four hours each day from Monday through Thursday and the 12-hour training will be delivered for four hours each day from Tuesday through Thursday.

Scope of Work

To address the scope of work for this project, the following will be needed:

1. *Producer Consultation and Creative Services:* The producer will: (a) Consult and collaborate with NIC's Distance Learning Manager on program design, program coordination, design of field segments and content development; (b) work with each consultant/trainer to develop their modules for delivery using the satellite/Internet format and/or the teleconference format; (c) help develop scripts, graphic design, production elements and rehearsals for each module of the site coordinators' training and the satellite/Internet training programs; and (d) use their expertise in designing creative ways to deliver satellite teleconferencing. The producer will also be responsible for attending planning meetings and assisting in the video of testimonials at conferences.

2. *Pre-Productive Video:* The producer will supervise the production of vignettes to be used in each of the three-hour satellite/Internet broadcast, as well as the 12- and 16-hour satelletie/Internet training programs. NIC presenters (content experts) will draft outlines of the scripts for each vignette. From the outlines, scripts will be developed by the producer (script writing expert) and approved by NIC's Distance Learning Manager. Professional actors will play the parts designated by the script. Story boards for each production will be written by NIC's Distance Learning Manager.

The producer will supervise camera and audio crews to capture testimonials from leaders in the correctional field at designated correctional conferences. The producer will coordinate all planning of the production and post-production for each of the eight satellite/Internet broadcasts.

Video Production: Video production for each teleconference will consist of videotaping content-related events in the field, editing existing video, and videotaping experts for testinomal presentations. It will also include voice-over, audio and music for each video, if necessary. Blank tapes and narration for field shooting will be purchased for each site. The format for all field shooting will be either Beta Cam, DV Pro Digital and/or Mini DVD.

Post Production (Studio): Innovative and thought-provoking opening sequences will be produced for each teleconference. In addition, graphics will be utilized to enhance the learning in each module. The producer will coordinate art direction, lighting, and set design and furniture for all teleconference segments. (Set design should change periodically throughout the award period). The producer will organize and supervise the complete production crew on rehearsal and production days, per the schedules below.

3. *Production:* The production group will set up and maintain studio lighting, adjust audio, and have a complete production crew for the days and hours set forth below. A production crew shall include the following: Director, Audio Operator, Video Operator, Character Generator Operator, Floor Director, Four (4) Camera Operators, Teleprompter Operator, On-Line Internet Coordinator, Make-Up Artist (production time only), and Interactive Assistance Personnel (fax, e-mail, and telephone).

(1) Site Coordinators' Training for Foundation Skills for Trainers (8 Hours)

Production Dates: December 10–11, 2003

Rehearsal: December 9, 2003—8 hours

Production On-Air and Rehearsal: December 10, 2003—9 hours

Production On-Air: December 11, 2003—5 hours

(2) Implementing Effective Correctional Management of Offenders in the Community (3 Hours)

Program Date: February 25, 2004
Rehearsal: February 24, 2004—8 hours
Production On-Air February 25, 2004—5 hours

(3) Foundation Skills for Trainers (16 Hours of Satellite/Internet Broadcast)

Program Dates: March 22–25, 2004
Rehearsal: March 21, 2004—8 hours
Production On-Air and Rehearsal: March 22, 2004—9 hours
Production On-Air and Rehearsal: March 23, 2004—9 hours
Production On-Air and Rehearsal: March 24, 2004—9 hours
Production On-Air: March 25, 2004—5 hours

(4) Thinking for a Change (3 Hours)

Program Date: April 28, 2004
Rehearsal: April 27, 2004—8 hours
Production On-Air: April 28, 2004—5 hours

(5) Site Coordinators' Training for Agency FTO/OJT Program Development (8 Hours)

Program Dates: May 19–20, 2004
Rehearsal: May 18, 2004—8 hours
Production On-Air and Rehearsal: May 19, 2004—9 hours
Production On-Air: May 20, 2004—5 hours

(6) Staff Wellness (3 Hours)

Program Date: June 16, 2004
Rehearsal: June 15, 2004—8 hours
Production On-Air: June 16, 2004—5 hours

(7) Agency FTO/OJT Program Development (12 Hours of Satellite/Internet Broadcast)

Program Dates: August 17 to 19, 2004
Rehearsal: August 16, 2004—8 hours
Production On-Air & Rehearsal: August 17, 2004—9 hours
Production On-Air & Rehearsal: August 18, 2004—9 hours
Production On-Air: August 19, 2004—5 hours

(8) Classification of High-Risk Offenders (3 Hours)

Program Date: September 15, 2004
Rehearsal: September 14, 2004—8 hours
Production On-Air: September 15, 2004—5 hours

4. *Transmission:*

a. Purchase satellite uplink time that will include the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States;

b. Acquire downlink transponder time for KU-Band and C-Band; and

c. Purchase Internet streaming of 200 simultaneous feeds for each program.

5. *Equipment:* Applicants must have a minimum of the following equipment:

a. Broadcast Studio of approximately 2,000 square feet, with an area for a studio audience of between 15 and 20 people;

b. Four Digital Studio Cameras (one of which may be an overhead camera with robotic control);

c. Chroma Key: At least one wall with chroma key capability along with the digital ultimate keying system;

d. A tape operation facility providing playback/record in various formats, including DV, Betacam, Betacam SP, SVHS, VHS, U-Matic 3/4 & SP;

e. A/B roll linear and digital nonlinear editing;

f. Three-dimensional animation with computer graphics;

g. Internet streaming capacity for several hundred simultaneous downloads in both G2 Real Player and Microsoft Media Player;

h. Ability to archive three to four satellite/Internet broadcasts from FY 2003 and all eight broadcasts from FY 2004;

i. Computer Teleprompter for at least two studio cameras;

j. Satellite Uplink and Transponder: KU-Band and C-Band/or Digital with C-Band to cover the footprints of Alaska, Hawaii, Virgin Islands, and the Continental United States; and

k. Portable Field Equipment: Digital Video Cameras with recording decks, portable lighting kits, microphones (both hand-held and lapel), field monitors, audio mixers, and camera tripods.

6. *Personnel:* Applicants must have a minimum of the following qualified personnel:

a. Producer/Director
b. Script Writer
c. Set Designer
d. Lighting Designer
e. Audio Operator
f. Graphics Operator
g. Graphics Artist
h. Floor Manager
i. Studio Camera Operators (4)
j. Tape Operator
k. Location Camera Operator
l. Teleprompter Operator
m. Clerical/Administrative Support
n. Makeup Artist

Application Requirement: Applicants must submit an original (signed in blue ink) and five copies of their application and the required forms (see below). Applicant must prepare a proposal that describes their plan to address the requirements to produce eight live satellite/Internet broadcasts. The plan must include a list of all required equipment, identify their key operational staff and the relevant expertise of each, and address the manner in which they would perform all tasks in collaboration with NIC's Distance Learning Manager. Please note that the Standard Form 424, Application for Federal Assistance, submitted with the proposal must contain the cover sheet, budget, budget narrative, assurances, certifications, and management plan. All required forms and instructions for their completion may be downloaded from the NIC website: *http://www.nicic.org.*

Authority: Public Law 93–415.

Amount of Award: This is a cooperative agreement. A cooperative agreement is a form of assistance relationship through which the National Institute of Corrections is involved during the performance of the award. This award is made to an organization who has the capability to produce live satellite/Internet teleconferences. This initiative emphasizes television quality production that meets or exceeds major network quality. The award will be limited to $300,000 for both direct and indirect costs related to this project. Funds may not be used to purchase equipment, for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Academy Division.

All products from this funding will be in the public domain and available to interested agencies through the National Institute of Corrections.

Availability of Funds: Funds are not presently available for this cooperative agreement. The Government's obligation under this cooperative agreement is contingent upon the availability of appropriated funds from which payment for cooperative agreement purposes can be made. No legal liability on the part of the government for any payment may arise until funds are made available for this cooperative agreement and until the awardee receives notice of such availability, to be confirmed in writing. Nothing contained herein shall be construed to obligate the parties to any expenditure or obligation of funds in excess or in advance of appropriation in accordance with Antideficiency Act, 31 U.S.C. 1341.

Award Period: This award period is from December 1, 2003 to November 30, 2004.

Eligible Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team or individual with the requisite skills to successfully meet the objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member review panel.

Number of Awards: One (1).

Executive Order 12372: This program is not subject to the provisions of Executive Order 12372.

NIC Application Number: 04A21. This number should appear as a reference line in your cover letter and also in box 11 of Standard Form 424, and on the outside of the package sent to NIC.

Catalog of federal domestic assistance number: 16,601; Corrections—Staff Training and Development.

Dated: August 13, 2003.

Larry B. Solomon,

Deputy Director, National Institute of Corrections.

[FR Doc. 03–21255 Filed 8–19–03; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 14, 2003.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of each ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/ this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title: International Price Program (IPP)/U.S. Export Price Indexes.

OMB Number: 1220–0025.

Affected Public: Business or other for-profit.

Frequency: Monthly and quarterly.

Type of Response: Reporting.

Number of Respondents: 4,350.

Number of Annual Responses: 20,575.

Estimated Time Per Response: Varies from 1 to 30 minutes with an average of 9 minutes.

Total Burden Hours: 12,612.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/ maintaining systems or purchasing services: $0.

Description: The International Price Program indexes, a primary economic indicator, are used as: Measures of movement in international prices, indicators of inflationary trends in the economy; sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They are also used to deflate the Gross Domestic Product.

Agency: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title: International Price Program (IPP)/U.S. Import Product Information.

OMB Number: 1220–0026.

Affected Public: Business or other for-profit.

Frequency: Monthly and quarterly.

Type of Response: Reporting.

Number of Respondents: 5,400.

Number of Annual Responses: 23,420.

Estimated Time Per Response: Varies from 1 to 30 minutes with an average of 9 minutes.

Total Burden Hours: 15,495.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/ maintaining systems or purchasing services: $0.

Description: The International Price Program indexes, a primary economic indicator, are used as: Measures of movement in international prices, indicators of inflationary trends in the economy; sources of information used to determine U.S. monetary, fiscal, trade, and commercial policies. They are also used to deflate the Gross Domestic Product.

Darrin A. King,

Acting Departmental Clearance Officer.

[FR Doc. 03–21272 Filed 8–19–03; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (the department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employee Benefits Security Administration is soliciting comments concerning the information collection request (ICR) incorporated in the Voluntary Fiduciary Collection Program (the VFC Program) and the Prohibited Transaction Class Exemption (the Exemption) that is used in connection with the VFC Program. The ICR is currently approved under OMB Number 1210–0118. A copy of the ICR may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before October 20, 2003.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. telephone: (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The VFC program is an enforcement program intended to encourage the full correction of certain breaches of fiduciary responsibility and the restoration of losses resulting from those breaches to participants and beneficiaries in employee benefit plans. For certain eligible breaches that have been corrected according to the terms and conditions of the VFC Program, the Department will issue a "no action" letter, thereby releasing the applicant from possible civil penalties under section 502(a) of ERISA. The VFC Program provides applicants with information both on identifying eligible transactions for correction and on the means for achieving fully acceptable corrections. The information collection consists of an application, description of the transaction and correction, and other appropriate supporting documentation.

The Exemption, used only in conjunction with the VFC Program, permits applicants to the VFC Program to make full correction of certain eligible transactions without incurring sanctions in the form of excise taxes imposed under sections 4975(a) and (b) of the Internal Revenue Code (the Code) by reason of sections 4975(c)(1)(A) through (E) of the Code. For those fiduciaries wishing to take advantage of the Exemption, the information collection for the VFC Program also includes notification to interested persons, generally participants and beneficiaries, that an application has been submitted under the VFC Program. A copy of the notice must also be furnished to a Regional Office of the Employee Benefits Security Administration.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Action

This notice requests comments on the extension of the ICR included in the VFC Program and the Exemption. The Department is not proposing or implementing changes to the existing ICR at this time.

Type or Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Voluntary Fiduciary Correction Program and Prohibited Transaction Class Exemption.

OMB Number: 1210–0118.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 150.

Frequency of Response: On occasion.

Responses: 200.

Estimated Total Burden Hours: 1,200.

Total Burden Cost (Operating and Maintenance): $66,970.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: August 14, 2003.

Joseph S. Piacentini,

Acting Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 03–21271 Filed 8–19–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,099]

Allegheny Ludlum, Melt Shop and Rolling Mill Division, Houston, PA; Notice of Revised Determination on Reconsideration

By application of June 6, 2003, the United Steel Workers of America, Local 7139–07, requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on April 21, 2003, based on the finding that criterion 3(A) (the workers' firm is a supplier and the component parts it supplied for the primary firm accounted for at least 20 percent of the production or sales of the workers' firm) and 3(B)(a loss of business by the workers' firm with the primary firm contributed importantly to the workers' separation or threat of separation) have not been met. The denial notice was published in the **Federal Register** on May 7, 2003 (68 FR 24503).

Pursuant to the receipt of the request for reconsideration, and upon further review of the initial investigation, it has become apparent that Allegheny Ludlum, Melt Shop and Rolling Mill Division, Houston, Pennsylvania supplies component parts for stainless steel bar, rod and wire and a loss of business with a manufacturer (whose workers were certified eligible to apply for adjustment assistance) contributed importantly to the workers separation or threat of separation.

Conclusion

After careful review of the facts obtained in the investigation, I determine that workers of Allegheny Ludlum, Melt Shop and Rolling Mill Division, Houston, Pennsylvania qualify as adversely affected secondary workers under section 222 of the Trade Act of 1974. In accordance with the provisions of the Act, I make the following certification:

All workers of Allegheny Ludlum, Melt Shop and Rolling Mill Division, Houston, Pennsylvania, who became totally or partially separated from employment on or after February 27, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 1st day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–21280 Filed 8–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,873]

Alpha Thought/Provider Business Services, Pittsburgh, PA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Alpha Thought/Provider Business

Services, Pittsburgh, Pennsylvania. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–51,873; Alpha Thought/Provider Business Services, Pittsburgh, Pennsylvania (August 8, 2003).

Signed at Washington, DC this 13th day of August 2003.

Linda G. Poole,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–21276 Filed 8–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,919]

Chevron—Texaco, Customer Service Department, Concord, CA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Chevron—Texaco, Customer Service Department, Concord, California. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–51,919; Chevron—Texaco, Customer Service Department, Concord, California (August 8, 2003)

Signed at Washington, DC, this 13th day of August, 2003.

Linda G. Poole,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–21275 Filed 8–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,001]

e-Gain Communications Corporation, Novato, CA; Notice of Revised Determination on Reconsideration

By application of April 8, 2003, a petitioner requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm.

The initial investigation resulted in a negative determination issued on March 18, 2003, based on the finding that the petitioning workers did not produce an article within the meaning of section 222 of the Act. The denial notice was published in the **Federal Register** on April 2, 2003 (68 FR 16094).

The petitioner alleges that they produced a product.

Upon further review during the reconsideration process, and contact with the company, it became apparent that the subject facility workers did produce a product (specifically, software which was marketed for retail sale) within the meaning of section 222 of the Act.

In addition, it was revealed that the company shifted production of competitive software to India and subsequently began importing a significant portion of this production to U.S. customers during the relevant period.

The investigation further revealed that employment declined at the subject firm during the relevant period.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with those produced at e-Gain Communications Corporation, Novato, California, contributed importantly to the declines in sales or production and to the total or partial separation of workers at the subject firm. In accordance with the provisions of the Act, I make the following certification:

All workers of e-Gain Communications Corporation, Novato, California, who became totally or partially separated from employment on or after February 18, 2002 through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC this 8th day of August 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–21281 Filed 8–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–50,544]

Firestone Tube Company, Russellville, AR; Notice of Revised Determination on Reopening

On May 15, 2003, the Department, on its own motion, reopened its investigation for the former workers of the subject firm.

The initial investigation was initiated on January 13, 2003, and resulted in a negative determination issued on March 7, 2003. The investigation findings showed that increases in imports of rubber inner tubes produced by Firestone Tube Company in Russellville, Arkansas, did not contribute importantly to the employment, sales or production declines at that firm. Furthermore, the firm did not shift production of rubber inner tubes from the plant to a foreign country from 2000 through September 2002. The denial notice was published in the **Federal Register** on March 26, 2003 (68 FR 14706).

The Department has obtained new information showing that the increases in company imports of inner tubes were like or directly competitive with those that could have been produced at the Russellville, Arkansas plant, had the machinery used to produced them not been shipped out of the plant during the final quarter of 2002. The workers are not separately identifiable by product line at the plant.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with inner tubes produced by Firestone Tube Company, Russellville, Arkansas, contributed importantly to the decline in sales or production and to the total or partial separation of workers of the subject firm.

In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Firestone Tube Company, Russellville, Arkansas, who became totally or partially separated from employment on or after January 7, 2002, through two years from the date of certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed in Washington, DC, this 30th day of July 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–21282 Filed 8–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,185]

Fishing Vessel (F/V) North Runner, Egegik, AK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Fishing Vessel (F/V) North Runner, Egegik, Alaska. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–51,185; Fishing Vessel (F/V) North Runner, Egegik, Alaska (August 6, 2003)

Signed at Washington, DC this 12th day of August 2003.

Linda G. Poole,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–21279 Filed 8–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations begin or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 2, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 2, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 7th day of August, 2003.

Linda G. Poole,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted Between 07/28/2003 and 08/01/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,407	Jonathan Reid, Inc (Comp)	Lumberton, NC	07/28/2003	07/22/2003
52,408	Texas Steel Partners (TX)	Ft. Worth, TX	07/28/2003	06/23/2003
52,409	Baxter Healthcare, Inc. (PACE)	Rochester, MI	07/28/2003	07/20/2003
52,410	Radio Frequency Services (Comp)	Wilkesboro, NC	07/28/2003	07/17/2003
52,411	Elastic Corp. of America, Inc. (Comp)	Asheboro, NC	07/28/2003	07/22/2003
52,412	Lear Corporation (UAW)	Elsie, MI	07/28/2003	06/23/2003
52,413	Honeywell International, Inc. (Comp)	Mars Hill, NC	07/29/2003	07/21/2003
52,414	Actco Tool and Manufacturing Company (Wkrs)	Meadville, PA	07/29/2003	07/17/2003
52,415	Today's Plastics (AR)	Booneville, AR	07/29/2003	07/29/2003
52,416	Jolly Gardener (Wkrs)	Poland, ME	07/29/2003	07/27/2003
52,417	Pennsylvania House (USWA)	Lewisburg, PA	07/29/2003	07/17/2003
52,418	Tyler Pipe (TX)	Tyler, TX	07/29/2003	07/23/2003
52,419	Nestaway (UAW)	Cleveland, OH	07/29/2003	07/16/2003
52,420	Sea Hawk Seafoods, Inc. (Comp)	Valdez, AK	07/30/2003	07/22/2003
52,421	John P. O'Connor (Comp)	Dillingham, AK	07/30/2003	07/29/2003
52,422	Fishing Vessel (F/V) Loon (Comp)	Point Baker, AK	07/30/2003	07/24/2003
52,423	Fishing Vessel (F/V) Kayla Marie C. (Comp)	Old Harbor, AK	07/30/2003	07/22/2003
52,424	Emglo Products, LLC (USWA)	Johnstown, PA	07/30/2003	07/29/2003
52,425	Home Products International (IAMAW)	Eason, MN	07/30/2003	07/29/2003
52,426	Gretag Imaging, Inc. (CO)	Englewood, CO	07/30/2003	07/28/2003
52,427	Dan River, Inc. (Wkrs)	Danville, VA	07/30/2003	07/14/2003
52,428	Edison Fashion, Inc. (AWJB)	Bronx, NY	07/30/2003	07/28/2003
52,429	Agilent Technologies (Wkrs)	Fort Collins, Co	07/31/2003	07/21/2003
52,430	New York Air Brake Corporation (Comp)	Watertown, NY	07/31/2003	07/30/2003
52,431	PFC, Inc. (Comp)	Athens, TN	07/31/2003	07/29/2003
52,432	Agilent Technologies (CO)	Colorado Sprgs., CO	07/31/2003	07/29/2003
52,433	Design Engineering (Comp)	New London, IA	07/31/2003	07/17/2003
52,434	De La Rue Cash Systems (Comp)	Watertown, WI	07/31/2003	07/07/2003
52,435	Quaker Alloy, Inc. (Comp)	Myerstown, PA	07/31/2003	07/29/2003
52,436	Empire Steel Castings (Comp)	Laureldale, PA	07/31/2003	07/29/2003
52,437	Calmar, Inc. (Wkrs)	City Industry, CA	07/31/2003	07/29/2003
52,438	Consolidated Fab Inc. (Wkrs)	Clinton, SC	07/31/2003	07/17/2003

APPENDIX—Continued

[Petitions Instituted Between 07/28/2003 and 08/01/2003]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,439	Hudson RCI (Comp)	Temecula, CA	07/31/2003	07/30/2003
52,440	Thermo King, Inc. (Wkrs)	Louisville, GA	07/31/2003	06/30/2003
52,441	Conn-Selmer (Comp)	Elkhart, IN	07/31/2003	07/14/2003
52,442	Fruit of the Loom (Comp)	Harlingen, TX	07/31/2003	07/30/2003
52,443	Formica Corporation (Comp)	Cincinnati, OH	08/01/2003	07/31/2003
52,444	Luzenac America (CO)	Centennial, CO	08/01/2003	08/01/2003
52,445	Baron Drawn Steel Corporation (Comp)	Toledo, OH	08/01/2003	07/21/2003
52,446	Graphite Design International (Wkrs)	San Diego, CA	08/01/2003	07/22/2003
52,447	Fisher Controls, LLC (Comp)	N. Stonington, CT	08/01/2003	07/18/2003
52,448	T.S. Trim Industries (Comp)	Athens, OH	08/01/2003	08/01/2003
52,449	Springs Industries (Comp)	Gainsville, GA	08/01/2003	07/31/2003

[FR Doc. 03–21273 Filed 8–19–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,236]

KC Fisheries, Inc., Kodiak, AK; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at KC Fisheries, Kodiak, Alaska. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–51,236; KC Fisheries, Inc., Kodiak, Alaska (August 6, 2003).

Signed at Washington, DC, this 12th day of August, 2003.

Linda G. Poole,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–21278 Filed 8–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,611, TA–W–51,611A, et al.]

National Steel Corporation (NSC), United States Steel Corporation, Corporate Headquarters, Mishakawa, IN, Granite City Division, Granite City, IL, Great Lakes Operations, Ecorse, MI, Medwest Operations, Portage, IN, Procoil Corporation, United States Steel Corporation, Canton, MI, National Steel Corporation, United States Steel Corporation, Technical Research Center, Trenton, MI, National Steel Pellet Company, United States Steel Corporation, Keewatin, MI, Delray Connecting Railroad, United States Steel Corporation, Detroit, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 9, 2003, applicable to workers of National Steel Corporation, Corporate Headquarters, Mishakawa, Indiana, Granite City Division, Granite City, Illinois, Great Lakes Operations, Ecorse, Michigan, Midwest Operations, Portage, Indiana, ProCoil Corporation, Canton, Michigan, Technical Research Center, Trenton, Michigan, National Steel Pellet Company, Keewatin, Minnesota and Delray Connecting Railroad, Detroit, Michigan. The notice was published in the **Federal Register** on July 22, 2003 (68 FR 43371).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of flat rolled steel.

New information shows that United States Steel purchased the assets of National Steel Corporation on May 20, 2003 and some of the workers separated from employment at the subject firm had their wages reported under a separate unemployment insurance (UI) tax account for United States Steel Corporation.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of National Steel Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–51,611 is hereby issued as follows:

All workers of National Steel Corporation (NSC), United States Steel Corporation, Corporate Headquarters, Mishakawa, Indiana (TA–W–51,611); National Steel Corporation, United States Steel Corporation, Granite City Division, Granite City, Indiana (TA–W–51,611A); National Steel Corporation, United States Steel Corporation, Great Lakes Operations, Ecorse, Michigan (TA–W–51,611B); National Steel Corporation, United States Steel Corporation, Midwest Operations, Portage, Indiana (TA–W–51,611C); ProCoil Corporation, United States Steel Corporation, Canton, Michigan (TA–W–51,611D); National Steel Corporation, Technical Research Center, Trenton, Michigan (TA–W–51,611E); National Steel Pellet Company, United States Steel Corporation, Keewatin, Minnesota (TA–W–51,611F); and, Delray Connecting Railroad, United States Steel Corporation, Detroit, Michigan (TA–W–51,611I) who became totally or partially separated from employment on or after April 8, 2002, through July 9, 2005, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–21277 Filed 8–19–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–41,390]

Sumitomo Mitsubishi Silicon Corporation, Also Known as SUMCO USA, Including Temporary Workers of Kelly Services, Salem, OR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 16, 2002, applicable to workers of Sumitomo Mitsubishi Silicon Corporation, also known as SUMCO USA, Salem, Oregon. The notice was published in the **Federal Register** on September 10, 2002 (67 FR 57452).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. Information provided by the company shows that temporary workers of Kelly Services were employed at Sumitomo Mitsubishi Silicon Corporation, also known as SUMCO USA, to produce silicon wafers at the Salem, Oregon location of the subject firm.

Based on these findings, the Department is amending this certification to include temporary workers of Kelly Services, Salem, Oregon working at Sumitomo Mitsubishi Silicon Corporation, also known as SUMCO USA, Salem, Oregon.

The intent of the Department's certification is to include all workers of Sumitomo Mitsubishi Silicon Corporation, also known as SUMCO USA, who were adversely affected by increased imports.

The amended notice applicable to TA–W–41,390 is hereby issued as follows:

All workers of Sumitomo Mitsubishi Silicon Corporation, also known as SUMCO USA, Salem, Oregon, including temporary workers of Kelly Services, Salem, Oregon producing silicon wafers at Sumitomo Mitsubishi Silicon Corporation, also known as SUMCO USA, Salem, Oregon, who became totally or partially separated from employment on or after March 16, 2001, through August 16, 2004, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 4th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–21283 Filed 8–20–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–39,436]

Wiegand Appliance Division, Emerson Electric Company, Vernon, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 16, 2001, applicable to workers of Wiegand Appliance Division, Emerson Electric Company, Vernon, Alabama. The notice was published in the **Federal Register** on August 6, 2001 (66 FR 41053).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers were engaged in activities related to the production of electric heating elements until the company closed in July 2003.

New information shows that workers were retained at the subject firm beyond the July 16, 2003, expiration date of the certification. These employees completed the tracking of previous orders to the customers until their termination on July 21, 2003. Based on these findings, the Department is amending the certification to extend the July 16, 2003, expiration date for TA–W–39,436 to read July 21, 2003.

The intent of the Department's certification is to include all workers of Wiegand Appliance Division, Emerson Electric Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–39,436 is hereby issued as follows:

All workers of Wiegand Appliance Division, Emerson Electric Company, Vernon, Alabama, who became totally or partially separated from employment on or after June 1, 2000, through July 21, 2003, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–21284 Filed 8–20–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463), as amended, and section 166(h)(4) of the Workforce Investment Act (WIA) [29 U.S.C. 2911(h)(4)], notice is hereby given of the next meeting of the Native American Employment and Training Council as constituted under WIA.

Time and Date: The meeting will begin at 9 a.m. e.d.t. (eastern daylight saving time) on Tuesday, September 9, 2003, and continue until 5 p.m. e.d.t. that day. The meeting will reconvene at 9 a.m. e.d.t on Wednesday, September 10, 2003, and continue until approximately 5 p.m. e.d.t. on that day. The period from 3 p.m. to 5 p.m. e.d.t. on September 10 will be reserved for participation and presentation by members of the public. The meeting will reconvene on Thursday, September 11, 2003, and adjourn at approximately 12 noon e.d.t. on that day.

Place: All sessions will be held in Room N–3437 A, B, and C, FPB, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Status: The meeting will be open to the public. Persons who need special accommodations should contact Mr. Gross on (202) 693–3752 by September 3, 2003.

Matters to be Considered: The formal agenda will focus on the following topics: (1) Election of Council Chairperson, Vice-Chairperson, and other officers; (2) comments from the Department on overall employment and training issues, including implementation of the OMB "Common Measures" for evaluating employment and training programs: (3) Council workgroup reports; (4) status of the Council report to the Department and Congress; (5) status of the Technical Assistance and Training Initiative; and

(6) status of Welfare Reform and WIA reauthorization legislation.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Gross, Acting Chief, Division of Indian and Native American Programs, Office of National Programs, Employment and Training Administration, U.S. Department of Labor, Room S–5206, 200 Constitution Avenue, NW., Washington, DC 20210.

Telephone: (202) 693–3752 (VOICE) (this is not a toll-free number) or 1–800–877–8339 (TTY) or speech-to-speech at 1–877–877–8982 (these are toll-free numbers).

Signed at Washington, DC, this 14th day of August, 2003.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 03–21274 Filed 8–19–03; 8:45 am]

BILLING CODE 4510–30–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: NRC Form 531, Request for Taxpaper Identification Number.

3. The form number if applicable: NRC Form 531.

4. How often the collection is required: One time from each applicant or individual to enable the Department of the Treasury to process electronic payments or collect debts owed to the Government.

5. Who will be required or asked to report: All individuals doing business with the U. S. Nuclear Regulatory Commission, including contractors and recipients of credit, licenses, permits, and benefits.

6. An estimate of the number of annual responses: 300.

7. The estimated number of annual respondents: 300.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 25 hours (5 minutes per response).

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: applicable.

10. Abstract:

The Debt Collection Improvement Act of 1996 requires that agencies collect taxpayer identification numbers (TINs) from individuals who do business with the Government, including contractors and recipients of credit, licenses, permits, and benefits. The TIN will be used to process all electronic payments (refunds) made to licensees by electronic funds transfer by the Department of the Treasury. The Department of the Treasury will use the TIN to determine whether the refund can be used to administratively offset any delinquent debts reported to the Treasury by other government agencies. In addition, the TIN will be used to collect and report to the Department of the Treasury any delinquent indebtedness arising out of the licensee's or applicant's relationship with the NRC.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by September 19, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen,

Office of Information and Regulatory Affairs (3150–0188),

NEOB–10202,

Office of Management and Budget,

Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 13th day of August, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–21293 Filed 8–19–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–344]

Environmental Assessment and Finding of No Significant Impact Related to Portland General Electric Company's Request for Partial Exemption From the Recordkeeping Requirements

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering granting a partial exemption from the Recordkeeping requirements of Title 10 of the Code of Federal Regulations (10 CFR) 50.71(c); 10 CFR part 50, appendix A; 10 CFR part 50, appendix B, for the Trojan Nuclear Plant (TNP) as requested by Portland General Electric Company (PGE) on July 9, 2003. An environmental assessment (EA) was performed by the NRC staff in support of its review of the exemption request.

II. Environmental Assessment

Introduction

PGE is the licensee and holder of Facility Operating License No. NPF–1(TNP). On January 27, 1993, PGE notified NRC of its decision to permanently cease power operation at TNP. PGE submitted the Trojan Decommissioning Plan (DP) and a decommissioning environmental report on January 2, 1993, which the NRC approved on December 18, 1995. The licensee began decommissioning shortly after NRC approved the DP. The licensee has removed and successfully shipped the TPN steam generators, pressurizer, and reactor pressure vessel for off-site disposal at the U.S. Ecology low-level radioactive waste disposal facility near Richland, Washington. With removal of these components, the licensee has removed approximately 99 percent of the activity covered under its part 50 license.

Purpose and Need for Proposed Action

The requested exemption and application of the exemption will eliminate an unwarranted financial burden on ratepayers associated with the storage of a large volume of hardcopy records.

The Proposed Action

The proposed action would allow the disposal of records, prior to termination of Trojan Nuclear Plant Possession Only License No. NPF–1, that: (1) Are associated with the operation, design, fabrication, erection, and testing of structures, systems, and components that are no longer quality-related and/or important to safety, and that are no longer operational; and (2) require storage in their original hardcopy formats due to practical and feasibility limitations associated with transferring them to microform format, such that significant amounts of costly storage space are required.

Alternatives to Proposed Action

No action. Under this alternative TNP would continue to store the records in question until license termination.

The Affected Environment and Environmental Impacts

None. The proposed action is purely administrative in nature and will have no effect on the environment.

Agencies and Persons Contacted

None.

Conclusions

NRC has determined that the proposed action will have no significant effect on the quality of the human environment.

III. Finding of No Significant Impact

Based on this review, the NRC staff has concluded that there are no significant impacts on the quality of the human environment. Accordingly, the staff has determined that preparation of an Environmental Impact Statement is not warranted, and a Finding of No Significant Impact is appropriate.

IV. Further Information

The licensee's request for the proposed action (ADAMS Accession No: ML022970110) and other related documents to this proposed action are available for public inspection and copying for a fee at NRC's Public Document Room at NRC Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. These documents are available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.html*.

Any questions with respect to this action should be referred to John Buckley, Decommissioning Branch, Mailstop T–7F27, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6607.

Dated at Rockville, Maryland, this 11th day of August, 2003.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–21294 Filed 8–19–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposals(s): (1) *Collection title:* Application and Claim for Unemployment Benefits and Employment Service.

(2) *Form(s) submitted:* UI–1, UI–1 (Internet), UI–3.

(3) *OMB Number:* 3220–0022.

(4) *Expiration date of current OMB clearance:* 9/30/2003.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 11,200.

(8) *Total annual responses:* 78,700.

(9) *Total annual reporting hours:* 8,617.

(10) *Collection description:* Under Section 2 of the Railroad Unemployment Insurance Act, unemployment benefits are provided for qualified railroad employees. The collection obtains the information needed for determining the eligibility to and amount of such benefits from railroad employees.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–21252 Filed 8–19–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48334; File No. SR–Amex–2003–10]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC, Relating to Its After-Hours Trading Facility

August 13, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 24, 2003, the American Stock Exchange LLC, ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 11, 2003, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rules 1300, 1301 and 1302 relating to the operation of its After Hours Trading Facility. Below is the text of the proposed rule change. Proposed new language is *italicized*. Proposed deletions are in [brackets].

* * * * *

After Hours Trading

Rule 1300 (a) The Rules in this 1300 Series (Rules 1300 through 1306) shall apply to (i) all Exchange contracts made on the Exchange through its "After-Hours Trading Facility" (as this Rule defines that term) and (ii) the handling of orders, and the conduct of accounts and other matters, relating to trading through that facility. [Only specialists registered in Portfolio Depositary

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated June 10, 2003.

Receipts ("PDRs"), Index Fund Shares or in investment trust securities listed on the Exchange pursuant to Section 118B of the Exchange's Listed Standards, Policies and Requirements may participate in the After-Hours Trading Facility for their dealer account in such securities. Any reference in this 1300 Series to specialist transactions in the After-Hours Trading Facility is limited to transactions by specialists in PDRs, Index Fund Shares or investment trust securities in which they are registered.]

(b) through (d) No change.

(e) As used in this 1300 series of Rules and other Rules in their application to After-Hours Trading, the following terms shall have the meanings specified below:

(i) The term "closing price" means the price established by the last "regular way" sale on the American Stock Exchange in a security prior to the official closing of the 9:30 a.m. to 4:00 p.m. trading session, as determined by the Exchange. In the case of a Portfolio Depositary Receipt, *Index Fund Share,* or an investment trust security listed pursuant to Section 118B of the Exchange's [Listing Standards, Policies and Requirements] *Company Guide*, the term "closing price" means the price established by the last "regular way" sale on the American Stock Exchange prior to the official closing of the 9:30 a.m. to 4:15 p.m. trading session, as determined by the Exchange.

(ii) through (iv) No change.

Rule 1301 Securities to be Traded

Only such equity securities as the Exchange may specify shall be dealt in through the After-Hours Trading Facility. Any such security must be listed or admitted to unlisted trading privileges on the Exchange. *Orders in Nasdaq securities traded on the Exchange pursuant to unlisted trading privileges are not eligible for entry into the After-Hours Trading Facility.*

Rule 1302 (a) Entry of Orders

(i) Closing-Price Orders—Subject to Rule 1306 (Impact of Trading Halts on After-Hours Trading), a member or member organization may enter into the After-Hours Trading Facility a closing-price order at such times as the Exchange may specify. A specialist registered in a *stock or other security traded pursuant to the Exchange's equity trading rules ("equity-traded security"), (including, without limitation, Portfolio Depositary Receipts ("PDRs℠"), Index Fund Shares, Trust Issued Receipts ("TIRs"), rights, warrants, and securities listed pursuant to Sections 106, 107 or 118B of the Exchange Company Guide* [Portfolio Depositary Receipt, Index Fund Share or in an investment trust security listed on the Exchange pursuant to section 118B of the Exchange's Listing Standards, Policies and Requirements] may enter a closing price order for his *or her* dealer account in such security into the After-Hours Trading Facility if there is an imbalance of either buy or sell orders in the [f]*F*acility immediately prior to the close of the Facility in order to eliminate all or any part of such order imbalance. *In the event that, in any stock or any equity-traded security, other than PDRs, Index Fund Shares, TIRs, or an investment trust security listed under Section 118B of the Exchange Company Guide ("Section 118B security"), an open agency order to buy (sell) on the specialist's book limited to the closing price remains unexecuted after the specialist buys (sells) at its price in the After-Hours Trading Facility, then the specialist shall offer that execution to the open order prior to the opening of trading on the next business day. In the event that there is more than one such open agency order, then the specialist shall offer the execution to each order in time priority until either the execution is accepted or until all such orders have rejected the execution. Such acceptance must be made within a reasonable time of the offer or the offer will be deemed to have been rejected.*

(ii) Closing-Price Coupled Orders—Subject to Rule 1306, a member or member organization may enter into the After-Hours Trading Facility a closing-price order to buy coupled with a closing-price order to sell the same quantity of the same security for execution against each other. However, *subject to paragraph (ii)(2) of this rule,* a member or member organization may not so enter such coupled orders if both such orders are for an account in which any member or member organization has a direct or indirect interest.

1. A specialist registered in a [Portfolio Depositary Receipt] *PDR,* Index Fund Share, *TIR* or [in an investment trust security listed on the Exchange pursuant to Section 118B of the Exchange's Listing Standards, Policies and Requirements] *section 118B security* may agree prior to 4:15 p.m. to take the contra side of an order in such security represented in the crowd by entering a coupled order in the After-Hours Trading Facility.

2. A specialist registered in any stock or any equity-traded security other than a PDR, Index Fund Share, TIR or section 118B security may agree prior to the close of the Facility to take the buy (sell) side of a coupled order in such security only after determining no buy (sell) orders in the After-Hours Trading Facility will remain unexecuted. In addition, a member or member organization may enter a closing-price order to buy (sell) any stock or any equity-traded security other than a PDR, Index Fund Share, TIR or Section 118B security for the account of the specialist registered in such security coupled with a closing price order to sell (buy) for the account of any member or member organization which has agreed to offset all or part of any market-on-close imbalance that existed in the security prior to the official closing of the trading session in such security. However, in the event that an open agency order in any stock or any equity-traded security other than a PDR, Index Fund Share, TIR or section 118B security to buy (sell) on the specialist's book limited to the closing price remains unexecuted after the specialist buys (sells) at its price in the After-Hours Trading Facility, then the specialist shall offer that execution to the open order prior to the opening of trading on the next business day. In the event that there is more than one such open agency order, then the specialist shall offer the execution to each order in time priority until either the execution is accepted or until all such orders have rejected the execution. Such acceptance must be made within a reasonable time of the offer or the offer will be deemed to have been rejected.

(iii) No change.

(b) Migration of Orders—Subject to Rule 1306, a "regular way" good 'til cancelled order that is designated as After-Hours eligible, that is on the specialist's limit order book and that is executable at the closing price or better shall migrate from the specialist's limit order book to the After-Hours Trading Program, except that any order for an account in which the specialist member organization or any associated party has a direct or indirect interest shall not so migrate, and provided further that any order for a [Portfolio Depositary Receipt] *PDR,* Index Fund Share, *TIR* or [an investment trust security listed on the Exchange pursuant to Section 118B of the Exchange's Listing Standards, Policies and Requirements] *section 118B security* shall not so migrate.

(c) through (g) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed

rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 1300(a), which relates to operation of the Exchange After-Hours Trading Facility ("AHT Facility" or "Facility") (governed by Rules 1300 through 1306), currently provides that only specialists registered in specified securities—Portfolio Depositary Receipts, Index Fund Shares or unit investment trusts listed pursuant to section 118B of the Amex *Company Guide*—may participate in the AHT Facility for their dealer account in these securities. In order to help reduce volatility on the close, and to afford Amex specialists flexibility comparable to that of New York Stock Exchange ("NYSE") specialists who participate in NYSE's after-hours crossing session, while maintaining the protection of customer orders, the Exchange believes that specialists should be permitted to participate for their dealer accounts in stocks or in securities traded as equity securities on the Exchange ("equity-traded securities"). These "equity-traded securities" include, without limitation, rights; warrants; securities listed under Sections 106 (Currency and Index Warrants), 107 (Other Securities) and 118B (Investment Trusts) of the *Company Guide;* Portfolio Depositary Receipts (PDRs™); Index Fund Shares; and Trust Issued Receipts (TIRs). Rule 1302(a)(i), therefore, would provide that a specialist in a stock or other equity-traded security may enter a closing price order in the AHT Facility for the specialist's dealer account to offset an imbalance of buy or sell orders in the Facility immediately prior to the 5 p.m. after hours trading session.

Rule 1300(e) (Definitions) would be amended to add Index Fund Shares to the securities for which the "closing price" is the last regular way sale on the Exchange prior to the official closing of the 9:30 a.m. to 4:15 p.m. trading session. This is because Index Fund Shares may also trade until 4:15 p.m. Rule 1301 (Securities to be Traded) would be amended to state that orders in Nasdaq stocks traded on the Exchange pursuant to unlisted trading privileges are not eligible for entry in the AHT Facility.

Under proposed amendments to Rule 1302(a)(i), if an open agency order to buy (sell) on the specialist's book limited to the closing price remains unexecuted after the specialist buys (sells) the security at its price in the AHT Facility, then the specialist would have to offer that execution to the open order before the opening of trading the next business day. This restriction would not apply to PDRs, Index Fund Shares, TIRs and securities listed under sections 106, 107 or 118B of the *Company Guide*. If there are multiple open agency orders, the specialist will have to offer the execution to each order in time priority until either the execution is accepted or until all such orders have rejected the execution. This restriction protects the interest of investors in having their orders on the book executed, if the investor so wishes, if the specialist has previously bought or sold the security in the AHT Facility for his or her own account.

PDRs, Index Fund Shares, TIRs and other derivatively-priced equity-traded securities would not be subject to this restriction in so far as PDRs, Index Fund Shares and section 118B securities are not currently subject to these restrictions in connection with AHT transactions. Moreover, because such securities are derivatively-priced, they may change in value based on price changes in the underlying index or portfolio securities. The Exchange believes it would be inappropriate to subject the specialist to risk of a market move from the AHT session until the opening of trading the next trading day at 9:30 a.m. for unexecuted customer orders remaining on the specialist's book.

Under current Rule 1302(a)(ii), a member or member organization may enter into the AHT Facility a closing-price order to buy coupled with a closing-price order to sell the same amount of the same security for execution against each other. However, both such orders cannot be for the accounts of members or member organizations. The provision in Rule 1302(a)(ii) that the specialist in PDRs, Index Fund Shares and section 118B securities may agree before 4:15 p.m. to take the contra side on a crowd order by entering a coupled order in the AHT Facility would be amended to add TIRs to the securities eligible for such treatment, and to separate this provision as paragraph (ii)(1) of Rule 1302(a). New paragraph (ii)(2) would be added to provide that a specialist in an Amex-listed stock or equity traded security could also take one side of a coupled order transaction after determining that no buy or sell orders in the Facility will remain unexecuted. In order to further an important purpose of the proposed rule to help reduce volatility at the close, both sides of a coupled order could be for the accounts of members or member organizations, including the specialist. However, for any unexecuted open agency order on the specialist's book in any stock or equity traded security other than a PDR, Index Fund Share, TIR or section 118B security, after the specialist buys or sells the security at its price in the AHT Facility, the specialist must offer that execution to the open order before the opening of trading on the next business day. If there is more than one open agency order, then the specialist must offer the execution to each order in time priority either until the execution is accepted or until all such orders have rejected the execution. Acceptance must be made within a reasonable time of the offer or the offer will be deemed rejected. These procedures are comparable to those proposed for closing price orders and are intended to provide comparable investor protection. PDRs, Index Fund Shares, TIRs and section 118B securities would be exempted from this restriction for the reasons described above for closing price orders.

In addition, Rule 1302(b) would be amended to add TIRs to the securities for which specialist proprietary orders are not permitted to migrate from the specialist's book to the AHT Facility. Securities currently so restricted include PDRs, Index Fund Shares and section 118B securities.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)[4] of the Act in general and furthers the objectives of section 6(b)(5)[5] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2003–10 and should be submitted by September 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21254 Filed 8–19–03; 8:45 am]

BILLING CODE 8010–01–P

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48339; File No. SR–CBOE–2003–32]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Refund of Certain Telecommunication Fees

August 14, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. CBOE has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A)(iii) of the Act,[3] and paragraph (f)(6) of Rule 19b–4 under the Act,[4] which renders the proposal effective upon receipt of this filing by the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to make a change to its Fee Schedule to refund certain telecommunication fees that were collected from members and member organizations during 2002 in anticipation of the need to fund a new trading floor telecommunications system. The text of the proposed rule change is available at the office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE proposes to make a change to its Fee Schedule to refund certain telecommunication fees that were collected from members and member organizations during 2002 in anticipation of the need to fund a new trading floor telecommunications system. In SR–CBOE–2002–71,[6] the Exchange amended its Fee Schedule, effective January 1, 2003, to reduce certain of its telecommunications fees due to its decision to defer a previously planned purchase of a new trading floor telephone system. These telecommunications rates had been raised by approximately 50% at the start of calendar year 2002 (this increase had previously been reduced by approximately 60% in May 2002.) In SR–CBOE–2002–71, the Exchange also indicated that it intended to file a separate proposed rule filing that would refund the increased telecommunications fees that were collected during 2002 to the members and member organizations that paid them. This filing effectuates that refund.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act[7] in general, and with Section 6(b)(4) of the Act[8] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] The CBOE has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] *See* Securities Exchange Act Release No. 47171 (January 13, 2003), 68 FR 2594 (January 17, 2003) (order approving File No. SR–CBOE–2002–71).

[7] 15 U.S.C. 78(f)(b).

[8] 15 U.S.C. 78(f)(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission has decided, consistent with the protection of investors and the public interest, to waive the five-day pre-filing notice and 30-day operative date to allow CBOE to immediately refund the increased telecommunications fees that were collected during 2002 to the members and member organizations that paid them.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to file number SR–CBOE–2003–32, and should be submitted by September 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21307 Filed 8–19–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48340; File No. SR–MSRB–2003–06]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change Filing by the Municipal Securities Rulemaking Board to Amend Rule A–14, on Annual Fees

August 14, 2003.

On July 3, 2003, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities & Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("the Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change (File No. SR–MSRB–2003–06) (the "proposed rule change"). The MSRB's proposed rule change amends Rule A–14, which provides for an annual fee paid to the MSRB.

The Commission published the proposed rule change for notice and comment in the **Federal Register** on July 15, 2003.[3] The Commission received two comment letters on the proposed rule change.[4] This order approves the proposed rule change.

I. Description of the Proposed Rule Change

The MSRB proposed to amend Rule A–14, on annual fees paid by brokers, dealers and municipal securities dealers (collectively "dealers"). In its filing, the MSRB requested that the proposed rule change become effective prior to the beginning of the Board's fiscal year of 2004 (October 1, 2003). The proposed rule change increases the annual fee, from $200 to $300, for each fiscal year a dealer conducts municipal securities activities. The effective date of the proposed fee change does not alter the date in which the fees must be received by the Board.[5] Under Rule A–14, the fee must be received by the office of the Board no later than October 31 of the fiscal year of the Board.

II. Summary of Comments

The commission received two comment letters addressing the proposed rule change. Both comment letters expressed their opposition to the proposed rule change for an increase in annual fees. One commentator stated that the increasing fees drive out the smaller firms from engaging in municipal securities business.[6] The other commentator suggested that the fees paid to the MSRB should be based on generated revenues from a firm's municipal securities activities.[7]

III. Discussion and Commission Findings

Section 19(b) of the Act[8] requires the Commission to approve a proposed rule change filed by the MSRB if the Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder. After careful review of the proposed rule change and the related comments, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder, which govern the MSRB,[9] and, in particular, the requirements of section 15B(b)(2)(J) of the Act.[10] Under section 15B(b)(2)(J) of the Act, in pertinent part, the Board's rules must provide that each municipal securities broker and each municipal securities dealer pay to the Board "such reasonable fees and charges as may be necessary or appropriate" to defray the costs and expenses of operating and administering the Board. The Commission believes that the annual fee, as described in the proposed rule change, is necessary and appropriate to defray Board expenses. Thus, the Commission believes that the MSRB's proposal meets the required statutory threshold.

To address the comment letters, the Commission notes that the annual fee, levied under Rule A–14, is a flat rate that applies equally to all dealers conducting municipal securities

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[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–48140 (June 8, 2003), 68 FR 41852 (July 15, 2003).

[4] *See* letter from Erich Sokolower, Managing Director, Repex & Co., Inc., to MSRB, dated July 13, 2003; letter from Ying Cui, Winstrade, to MSRB, dated July 25, 2003.

[5] *See* Release No. 34–48140.

[6] *See* letter from Repex & Co, Inc., note 4, *supra*.

[7] *See* letter from Winstrade, note 4, *supra*.

[8] 15 U.S.C. 78s(b).

[9] Additionally, in approving this rule the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78o–4(b)(2)(J).

business regardless of the size or type of transactions. In Rule A–13, the MSRB sets forth a fee structure that assesses dealers based on dealers' underwriting and transaction amount.[11]

The Commission recognizes the difficulties inherent in assessing the MSRB's fee structure, and believes that the MSRB has made a good faith effort to do so in a manner that is fair and reasonable. The Commission agrees with the MSRB that the fees are not levied for a specific purpose but for general purposes, and that MSRB regulatory activities affect all participants in the dealer community.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–MSRB–2003–06) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21253 Filed 8–19–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48333; File No. SR–PCX–2003–37]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 by the Pacific Exchange, Inc. Relating to a One-Year Extension of the Automatic Opening Rotation Pilot Program

August 13, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 4, 2003 and August 6, 2003, the Exchange filed amendments to the proposed rule change.[3] The Exchange has designated the proposed rule change, as amended, as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its AOR pilot program for one year until September 30, 2004. The text of the proposed rule change, as amended, is available at the Office of the Secretary, the PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On September 30, 1999, the Commission approved a one-year pilot program for the operation of the Exchange's AOR System.[5] On August 21, 2000,[6] August 13, 2001,[7] and June 10, 2002,[8] the Commission granted one-year extensions to the pilot program. The pilot program is currently set to expire on September 30, 2003.

AOR provides a procedure to facilitate the execution of option orders at the opening by providing an electronic means of establishing a single price opening. The Exchange is requesting an additional extension of the AOR pilot program for one year, to September 30, 2004. The added time permits the Exchange to phase-in the Exchange's new trading platform for options, "PCX Plus", on an issue-by-issue basis.[9] As each issue is phased into PCX Plus, the Exchange will simultaneously phase-out such issue from the current AOR process. PCX Plus will eventually replace the AOR process in its entirety.[10] Hence, the Exchange will not be seeking permanent approval of the AOR pilot program.[11] The Exchange believes that the AOR pilot program is operating successfully and without any problems and, on that basis, believes that a one-year extension of the pilot program is warranted.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act[12] in general, and furthers the objectives of Section 6(b)(5)[13] in particular, because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition

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[11] Rule A–13 provides for an underwriting fee of $.03 per $1000 par value of bonds and $.01 per $1000 par value of notes, and a transaction fee of $.005 per $1000 par value.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Tania J. Cho, Staff Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 1, 2003, replacing Form 19b–4 in its entirety ("Amendment No. 1") and August 6, 2003 ("Amendment No. 2"). In Amendment No. 1, the PCX clarified the implementation and operative dates of PCX Plus and represented that it will not be seeking additional extension of the Automated Opening Rotation ("AOR") pilot program provided that PCX Plus has been implemented without delay. The PCX also made minor technical corrections to a citation in its footnotes and in the rule text and changed its basis for filing the proposed rule change from Section 19(b)(2) to Section 19(b)(3)(A)(iii) of the Act. In Amendment No. 2, the PCX changed its basis for filing the proposed rule change from Section 19(b)(3)(A)(iii) to Section 19(b)(3)(A) and Rule 19b–4(f)(6) of the Act and made minor technical corrections to a reference in its footnotes.

[4] 17 CFR 240.19b–4(f)(6).

[5] *See* Securities Exchange Act Release Nos. 41970 (September 30, 1999), 64 FR 54713 (October 7, 1999) (approving one-year AOR pilot) and 41824 (September 1, 1999), 64 FR 49263 (September 10, 1999) (in part, approving AOR for sixteen issues on a thirty-day pilot basis).

[6] *See* Securities Exchange Act Release No. 43187 (August 21, 2000), 65 FR 52464 (August 29, 2000).

[7] *See* Securities Exchange Act Release No. 44688 (August 13, 2001), 66 FR 43600 (August 20, 2001).

[8] *See* Securities Exchange Act Release No. 46055 (June 10, 2002), 67 FR 41288 (June 17, 2002).

[9] *See* Securities Exchange Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (Order approving PCX Plus).

[10] The PCX represents that it will file a rule proposal to eliminate the AOR pilot program rule text in Rule 6.64, Commentary .03 if the PCX Plus transition is completed before September 30, 2004.

[11] The PCX estimates that PCX Plus will be implemented gradually on an issue-by-issue basis beginning December 15, 2003, and is anticipated to become completely operative by June 30, 2004. The Exchange will not be seeking an additional extension of its AOR pilot program provided that the PCX Plus implementation is completed without significant delay.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change, as amended, were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change, as amended, has been filed by the Exchange as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15] Because the foregoing proposed rule change, as amended: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) by its terms, does not become operative for 30 days after the date of the filing, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6).[17] The Exchange also provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of the filing of the proposed rule change. At any time within 60 days of the filing of such proposed rule change, as amended, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–37 and should be submitted by September 10, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21306 Filed 8–19–03; 8:45 am]

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before October 20, 2003.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Sandra Johnston, Program Analyst, Office of Financial Assistance, Small Business Administration, 409 3rd Street SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Sandra Johnston, Program Analyst, 202–205–7528 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Secondary Participation Guaranty Agreement."

Description of Respondents: Participating Lenders used these forms to apply for initial issuance of an SBA Guarantee Interest Certificate.

Form No: 1086.

Annual Responses: 12,500.

Annual Burden: 46,875.

Title: "Survey of Job Creation and Retention in the DELTA Program."

Description of Respondents: Small Firms that receive a SBA DELTA Loan.

Form No: 1989.

Annual Responses: 33.

Annual Burden: 8.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cynthia Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Program Analyst, 202–205–7570 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Military Reservist Economic Injury Disaster Loan."

Description: Military Reservist Economic Injury Disaster Loan.

Form No: 5R.

Annual Responses: 2,500.

Annual Burden: 5,000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Kimberly Mace, Administrative Assistant, Office of Advisory Councils, Small Business Administration, 409 3rd Street SW., 7th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Kimberly Mace, Administrative Assistant, 202–401–8252 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "U.S. Small Business Administration Advisory Committee Membership-Nominee Information."

Description: To collect information for Candidates for Advisory Council.

Form No: 898.

Annual Responses: 500.

Annual Burden: 83.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–21290 Filed 8–19–03; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9W60]

Commonwealth of Pennsylvania

Tioga, McKean, and Potter Counties and the contiguous counties of Bradford, Cameron, Clinton, Elk, Forest, Lycoming, and Warren in the Commonwealth of Pennsylvania; and Allegany, Cattaraugus, Chemung, and Steuben in the State of New York constitute an economic injury disaster loan area as a result of severe storms and flooding that occurred throughout the counties from July 21 to July 28, 2003. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on May 12, 2004 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 2.953 percent.

The numbers assigned for economic injury for this disaster are 9W6800 for Pennsylvania and 9W6900 for New York.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: August 12, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–21251 Filed 8–19–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3533]

State of Tennessee (Amendment #1)

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective August 6, 2003, the above numbered declaration is hereby amended to include Fayette County as a disaster area due to damages caused by severe storms, high winds and heavy rain occurring on July 21 through July 22, 2003.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Haywood and Hardeman in the State of Tennessee; and Benton County in the State of Mississippi may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 29, 2003, and for economic injury the deadline is April 29, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 7, 2003.

Cheri L. Cannon,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 03–21289 Filed 8–19–03; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notification of Interest by Candidate Cities for Permanent Site of the Free Trade Area of the Americas (FTAA) Secretariat

AGENCY: Office of the United States Trade Representative.

ACTION: Request for notification of interest by candidate cities before November 20, 2003.

SUMMARY: At the July 2003 Trade Negotiations Committee (TNC) meeting of the Free Trade Area of the Americas (FTAA) in San Salvador, Vice Ministers agreed that cities seeking to be considered to host the permanent site of the FTAA Secretariat should notify the FTAA Co-Chairs of their interest before November 20, 2003. Notifications of interest by candidate cities do not need to follow a particular format and may include any information deemed pertinent by the applicant. U.S. cities interested in being considered to host the permanent site of the Secretariat are encouraged to submit notifications at the earliest opportunity.

DATES: Notifications of interest should be received by the FTAA Co-Chairs (Brazil and the United States) before November 20, 2003.

ADDRESSES: To the Co-Chairs Ambassador Peter F. Allgeier and Ambassador Adhemar G. Bahadian. Submission by electronic mail to both *tnc-cnc@ustr.gov* and *cnc-tnc@mre.gov.br*, submissions by facsimile to both (202) 395–9602 and 011–(5561) 411–6097. Copies also should be sent to the Co-Chairs Assistants: Ms. Karen Lezny by electronic mail to *klezny@ustr.gov* or by facsimile (202) 395–9602; and Mr. João Marcos Paes Leme by electronic mail to *cnc-tnc@mre.gov.br* or facsimile 011—(5561) 411–6097. Candidate cities are strongly encouraged to submit documents electronically rather than by facsimile.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning response to **Federal Register** notices, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative at (202) 395–3475. Questions concerning the FTAA negotiations should be addressed to the agency's Office of the Americas at (202) 395–5190, or the Office of Intergovernmental Affairs and Public Liaison at (202) 395–6120. the FTAA TNC Guidance and Instructions from the San Salvador July 2003 meeting are available on the USTR Web site at *http://www.ustr.gov/regions/whemisphere/ftaa.shtml* and the official FTAA Web site (*http://www.ftaa-alca.org*). This official FTAA Web site also contains general information regarding the FTAA process, including official documents.

SUPPLEMENTARY INFORMATION:

1. Background

On December 11, 1994, the 34 democratically-elected leaders in the Western Hemisphere met in Miami, Florida for the first Summit of the Americas. The Heads of State and Government agreed to construct a Free Trade Area of the Americas, or FTAA, in which barriers to trade and investment will be progressively eliminated. They also agreed to complete negotiations towards this agreement by the year 2005. Since that time, the 34 countries have been involved in comprehensive negotiations. The FTAA is the cornerstone of President Bush's vision for trade in the Western Hemisphere—a plan that would foster economic growth and opportunity, promote regional integration and strengthen democracies. When established, the FTAA create the largest free trade area in the world with a $13 trillion market and The FTAA countries have generally agreed that there will be a permanent Secretariat, but they have not yet defined either the functions of the Secretariat or its size.

2. Requirements for Submissions

Candidate cities interested in hosting the permanent site of the FTAA Secretariat should submit written notification to the addresses indicated above no later than November 20, 2003. In order to facilitate prompt processing of submissions, USTR strongly urges electronic (e-mail) submissions in response to this notice. Submissions by e-mail should use the following subject line: "Permanent FTAA Secretariat Site: Notification of Interest." Documents should be submitted as either

WordPerfect, MSWORD, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel files.

Notifications submitted in response to this request will be placed by the U.S. Co-Chair in a USTR file open to public inspection pursuant to 15 CFR 2003.5. All public documents shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186. General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Christopher A. Padilla,

Assistant U.S. Trade Representative for Intergovernmental Affairs and Public Liaison.

[FR Doc. 03–21261 Filed 8–19–03; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Public Comment on the Market Access Implications for U.S. Trade in Services of the Accession to the European Union of Austria, Finland and Sweden

AGENCY: Office of the United States Trade Representative.

ACTION: Request for comment.

SUMMARY: The Trade Policy Staff Committee gives notice that the Office of the United States Trade Representative (USTR) requests written submissions from the public concerning the market access implications for U.S. trade in services of the 1995 enlargement of the European Union to include Austria, Finland and Sweden. On July 10, 2003, the European Communities and its Member States (collectively, the EC) transmitted a "Notification Pursuant to Article V:5 of the GATS—Accession of Austria, Finland and Sweden to the European Communities" (S/C/N/231), notifying the WTO Council for Trade in Services of their intention to modify or withdraw Specific Commitments. It stated that previous GATS schedules of specific commitments and lists of MFN exemptions will be replaced by new commitments as from April 30, 2004. The existing schedules and lists are accessible through the WTO's Services Database Web site, *http://tsdb.wto.org/wto/WTOHomepublic.htm*. From that site, click on "Pre-defined Reports" and then "All Sectors in Each Country."

On August 6, 2003, the United States indicated its claim of interest in the modification or withdrawal of specific commitments and requested negotiations with the EC pursuant to GATS Article XXI with a view to reaching an agreement on any necessary compensatory adjustment. The United States also requested that the EC clarify the legal and procedural basis for any modifications in the GATS Article II MFN exemptions of the EC or its Member States that may be included in the EC's consolidated list of GATS Article II MFN exemptions, reflecting changes in the EC's WTO obligations resulting from the 1995 enlargement. USTR and other agencies are currently engaged in an assessment of the potential impact on U.S. services trade of the 1995 enlargement of the EC and in particular of what compensation the EC may owe to the United States under WTO rules; comments from the public in response to this notice will be incorporated into that assessment.

DATE: Submissions must be received on or before noon, 30 days after publication.

ADDRESSES: Submissions by Electronic Mail: *FR0091@ustr.gov*. Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee (TPSC), Office of the USTR, at (202)395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202)395–3475. Substantive questions concerning this review should be addressed to Mark Mowrey, Deputy Assistant U.S. Trade Representative for Europe and the Mediterranean, telephone (202)395–3074.

SUPPLEMENTARY INFORMATION:

1. Background Information

A. The 1995 Enlargement

On January 1, 1995, the EC grew from 12 to 15 Member States, with the accession to the Union of Austria, Finland and Sweden effective that date. With respect to WTO rules related to trade in goods, the United States entered into compensation negotiations with the EC under General Agreement on Tariffs and Trade (GATT) Articles XXIV and XXVIII. Those negotiations took place in 1994 and 1995, yielding a bilateral agreement on compensation which entered into force on July 22, 1996 (effective from December 30, 1995).

Despite repeated requests from the United States and other WTO members, the EC failed in the period subsequent to the 1995 enlargement to notify WTO Members of its proposed modification or withdrawal of commitments as the result of this enlargement as required under GATS Articles V:5 and XXI. However, on July 10, 2003 the EC provided its proposed consolidated GATS schedule for the EC 15 and formally notified its intent to modify or withdraw commitments as a result of its enlargement. Pursuant to GATS Article XXI, the EC is required to enter into negotiations with any WTO Members who believe they may be affected by the proposed modification or withdrawal of specific commitments with a view to reaching agreement on any necessary compensatory. On August 6, 2003 the United States notified the EC that it did desire such negotiations.

B. The EC Notification of 2003

On July 10, 2003, the EC transmitted a communication to the WTO Secretariat presenting its consolidated schedule for the EC 15 of specific commitments under the GATS, and its consolidated list for the EC 15 of GATS Article II MFN exemptions.

(1) Specific Commitments

The EC's Communication stated that pursuant to Article V:5 of the GATS and in accordance with the terms of GATS Article XXI:1(b), the EC was notifying the WTO's Council for Trade in Services of its intention to modify or withdraw a number of specific GATS commitments. The EC presented a summary list of these modified commitments, which is paraphrased below:

a. *Horizontal Commitments*

- Market access entry: the EC limitation with respect to public utilities services being subject to public monopolies or to the granting of exclusive rights to private operators is extended to Austria, Finland and Sweden.
- National treatment limitations on subsidies—mode 3: the limitations on subsidies on mode 3 inscribed in the EC's schedule now apply also to Austria, Finland and Sweden.

b. *Sectoral commitments*

- Rental/Leasing services without operators—relating to aircraft: the EC's limitations under mode 2 and mode 3 are extended to Austria.
- Services incidental to manufacturing: the commitment included in the schedule of Austria is withdrawn.

• Education services—limitation to "only privately funded services": the EC's limitation is now extended also to Austria.

c. *Space Transport*

• The commitment included in the schedule of Austria is withdrawn.

(2) MFN Exemptions

In its communication of July 10, 2003 the EC also proposed a consolidated list of GATS Article II MFN exemptions for the EC 15 that in essence would extend the coverage of the EC's existing MFN exemptions to Austria, Sweden and Finland. According to the EC's notification, the only modifications or withdrawals of specific commitments are those listed in the Annex attached to the notification, which does not refer to the EC's MFN exemptions. The United States therefore believes that the EC's MFN exemptions are not within the scope of its GATS Article V notification and has requested that the EC provide clarification of the procedural and legal basis for any changes in its MFN exemption list.

(3) Applicable GATS Requirements

Article V of the GATS provides that the GATS does not prevent a WTO Member from being a party to an economic integration agreement liberalizing trade in services provided that, *inter alia*, the agreement has substantial sectoral coverage and provides for the absence or elimination of substantially all discrimination between the parties in the sectors covered by such an agreement. Paragraph 5 of Article V provides that if such an agreement is later enlarged or significantly modified, and a WTO Member intends to modify or withdraw a specific GATS commitment as a result, it must provide 90 days advance notice of such modification and follow the applicable procedures set out in GATS Article XXI. Paragraph 2 of Article XXI provides that WTO Members who believe they may be affected by the proposed modification of commitments can request negotiations with the modifying Member with the purpose of reaching an agreement on compensation for the proposed modification.

While Article XXI covers modification and withdrawal of specific GATS commitments, it does not address modifications to a WTO Member's MFN exemptions pursuant to GATS Article II. The GATS Annex on MFN exemptions provides that any modifications to a WTO Member's MFN exemptions, after entry into force of the Agreement Establishing the WTO ("WTO Agreement"), require a Member to seek a waiver pursuant to Article IX of the WTO Agreement. The EC's communication of July 10, 2003 did not address the issue of whether it intends to seek a waiver for its proposed consolidated list of MFN exemptions.

(4) Accessing the Schedules of Specific Commitments and Lists of MFN Exemptions

The EC's proposed consolidated schedule of specific commitments and consolidated list of MFN exemptions for the EC 15 are restricted WTO documents. The public therefore is advised to examine the existing GATS schedules of specific commitments and lists of MFN exemptions of the EC, Austria, Finland and Sweden to determine whether changes implied through consolidation of the schedules and lists would impact U.S. commercial interests. The existing schedules and lists are accessible through the WTO's Services Database Web site, *http://tsdb.wto.org/wto/WTOHomepublic.htm*. From that site, click on "Pre-defined Reports" and then "All Sectors in Each Country."

2. Requirements for Submissions

To ensure prompt and full consideration of responses, USTR strongly recommends that interested persons submit comments by electronic mail to the following e-mail address: *FR0091@ustr.gov*. Persons making submissions by e-mail should use the following subject line: "Services Accession Austria, Finland and Sweden." Documents should be submitted in WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the character "P-". The "P-" or "BC-" should be followed by the name of the submitted information. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written submissions will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6 must be clearly marked "Business Confidential" at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries will be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m.–12 noon and 1–4 p.m., Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairperson; Trade Policy Staff Committee.

[FR Doc. 03–21364 Filed 8–19–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 23–11A, 14 CFR Part 23 Type Certification of an Airplane Originally Certificated to Joint Aviation Regulations—Very Light Airplane (JAR–VLA) Standards

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 23–11A, 14 CFR part 23 Type Certification of an Airplane Originally Certificated to Joint Aviation Regulations—Very Light Airplane (JAR–VLA) Standards. The AC sets forth an acceptable means, but not the only means, to show compliance to the subject part for type certification of certain small airplanes. This AC is applicable to an applicant with a Joint Aviation Regulations—Very Light Airplane (JAR–VLA) who applies for a normal or utility category type certificate or a type certificate of a special class airplane. The AC cancels AC 23–11.

DATES: Advisory Circular 23–11A was issued by the Manager of the Small Airplane Directorate on July 14, 2003.

How to Obtain Copies: A paper copy of AC 23–11A may be obtained by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at (301)

386–5394. The AC will also be available on the Internet at *http://www.airweb.faa.gov/AC.*

Issued in Kansas City, Missouri, on August 5, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21318 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice Before Waiver With Respect to Land at Raleigh County Memorial Airport, Beckley, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The FAA is publishing notice of proposed release of 218.37 acres of land at the Raleigh County Memorial Airport, Beckley, West Virginia, to the Raleigh County Airport Authority and the Raleigh County Commission for the development of an industrial park. there are no impacts to the Airport and the land is not needed for airport development as shown on the Airport Layout Plan. Fair Market Value of the land will be paid to the Raleigh County Airport and the Raleigh County Commission, and used for Airport purposes.

DATES: Comments must be received on or before September 19, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Connie Boley-Lilly,
Program Specialist,
Federal Aviation Administration,
Beckley Airports District Office,
176 Airport Circle, Room 101,
Beaver, West Virginia 25813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Thomas Cochran, Airport Manager, Raleigh County Memorial Airport at the following address:

Thomas Cochran, Airport Manager,
Raleigh County Memorial Airport,
176 Airport Circle, Room 105,
Beaver, West Virginia 25813.

FOR FURTHER INFORMATION CONTACT: Connie Boley-Lilly, Program Specialist, Beckley Airport District Office, (304) 252–6216 ext. 125, FAX (304) 253–8028.

SUPPLEMENTARY INFORMATION:

On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation investment and Reform Act for the 21st Century, Public Law 10–181 (April 5, 2000; 114 Stat. 61) (AIR 21) requires that a 30 day public notice must be provided before the Secretary may waive any condition imposed on an interest in surplus property.

Issued in Beckley, West Virginia, on August 6, 2003.

Larry F. Clark,

Manager, Beckley Airport District Office, Eastern Region.

[FR Doc. 03–21327 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Premium War Risk Insurance

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of extension of aviation insurance.

SUMMARY: This notice contains the text of a memo from the Secretary of Transportation to the President regarding the extension of the provision of aviation insurance coverage for U.S. flag commercial air carrier service in domestic and international operations.

DATES: Dates of extension from August 12, 2003 through October 11, 2003.

FOR FURTHER INFORMATION CONTACT: Helen Kish, Program Analyst, APO–3, or Eric Nelson, Program Analyst, APO–3, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591, telephone (202) 267–9943 or (202) 267–3090. Or online at FAA Insurance Web site: *http://insurance.faa.gov.*

SUPPLEMENTARY INFORMATION: On August 11, 2003, the Secretary of Transportation authorized a 60-day extension of aviation insurance provided by the Federal Aviation Administration as follows:

Memorandum to the President

"Pursuant to the authority delegated to me by the President in paragraph (3) of Presidential Determination No. 01–29 of September 23, 2001, and the direction of Section 1202 of the Homeland Security Act of 2002, I hereby extend that determination to allow for the provision of aviation insurance and reinsurance coverage for U.S. Flag commercial air carrier service in domestic and international operations for an additional 60 days.

Pursuant to section 44306(b) of Chapter 443 of 49 U.S.C., Aviation Insurance, the period for provision of insurance shall be extended from August 13, 2003, through October 11, 2003."

/s/ Norman Y. Mineta

Affected Public: Air Carriers who currently have Premium War-Risk Insurance with the Federal Aviation Administration.

Issued in Washington, DC on August 14, 2003.

John M. Rodgers,

Director, Office of Aviation Policy and Plans.

[FR Doc. 03–21326 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent and Request for Comment

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of Intent (NOI) to prepare a Programmatic Environmental Impact Statement for licensing launches of horizontally launched vehicles and reentries of reentry vehicles.

SUMMARY: The FAA is publishing this notice to announce its intent to prepare a Programmatic Environmental Impact Statement (PEIS) in accordance with the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality implementing regulations. This NOI also serves as an official request for comments in preparation of the PEIS. This PEIS will assess environmental impacts associated with the proposed action, reasonable alternatives including those identified during scoping, the no action alternative, and cumulative impacts. This PEIS will support decisions made to meet the FAA's responsibility to license commercial launches and reentries and launch and reentry site operations consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. Issuing a launch or reentry license is considered a Federal action and is therefore subject to NEPA review.

Proposed Action and Possible Alternatives: The proposed action for this PEIS is to license the launch and landing of horizontally launched vehicles and the reentry of reentry vehicles. Reentry vehicles are defined as vehicles designed to return from Earth orbit or outer space to Earth; or reusable launch vehicles designed to return substantially intact from Earth orbit or outer space to Earth. A launch is defined as to place or try to place a launch vehicle or reentry vehicle and any payload from Earth (A) in a

suborbital trajectory; (B) in Earth orbit in outer space; or (C) otherwise in outer space, including activities involved in the preparation of a launch vehicle or payload for launch.

Alternatives to the proposed action may include activities such as not licensing horizontal launches, not licensing vertical reentries, not licensing horizontal reentries, not licensing powered reentries, and not licensing unpowered reentries.

FAA exercises licensing authority in accordance with the Commercial Space Launch Act and Commercial Space Transportation Licensing Regulations, 14 CFR Ch.III, which authorize the FAA to license the launch of a launch vehicle when conducted within the U.S. and those operated by U.S. citizens abroad. The scope of the PEIS would include launches on both orbital and suborbital trajectories.

In May 1992, the U.S. Department of Transportation issued the *Final Programmatic Environmental Impact Statement for Commercial Reentry Vehicles* that assessed the environmental impacts of licensing the unpowered reentry of reentry vehicles from space to Earth. This 1992 PEIS relied in part on the analysis in the *Programmatic Environmental Assessment of Commercial Expendable Launch Vehicle Programs*, February 1986.

In May 2001, the FAA issued the *Programmatic Environmental Impact Statement for Licensing Launches*, which assessed the environmental impacts of licensing commercial launches. This 2001 PEIS updated and replaced the 1986 Programmatic Environmental Assessment (EA).

The PEIS for Licensing Launches of Horizontally Launched Vehicles and Reentries of Reentry Vehicles will update and replace the 1992 PEIS and address the launch of horizontally launched vehicles and the reentry of all reentry vehicles.

Scoping: Public scoping will be conducted as part of the PEIS development process to ensure that all interested government and private organizations, and the general public have an opportunity to express their concerns and identify topics that should be addressed in the PEIS. The FAA has developed a public participation Web site (*http://ast.faa.gov/*) which provides information on the development of this PEIS and provides the public an opportunity to submit comments electronically. Materials on the Web site include information about licensing and the NEPA process; frequently asked questions, a fact sheet on the PEIS; a comparison of the analysis of the previous programmatic documents; and public comment forms. Scoping meetings may be requested by organizations or individuals that feel their concerns cannot be met through the online opportunity to comment. Information regarding the development of the PEIS is available on the public participation Web site at *http://ast.faa.gov/*, under the "What's new on the AST Web site—Announcements" section.

To Submit Comments: Written comments, statements, and/or questions regarding scoping issues or the PEIS process should be addressed to Ms. Michon Washington, FAA Environmental Specialist, FAA PEIS, c/o ICF Consulting, 9300 Lee Highway, Fairfax, Virginia 22031; phone (703) 934–3950; fax (703) 934–3951; e-mail at *FAA.PEIS@icfconsulting.com;* or by Web site *http://ast.faa.gov/*.

Comments should clearly identify and describe the specific issue(s) or topics to be included in the PEIS. To ensure sufficient time to consider issues identified during public scoping, comments should be submitted no later than September 26, 2003.

Issued in: Washington DC.

Responsible Official:

Herbert Bachner,

Manager, Space Systems Development Division.

[FR Doc. 03–21319 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD 2003 15934]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before October 20, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas M.P. Christensen, Office of National Security Plans, Maritime Administration, 400 Seventh St., SW., Washington, DC 20590. Telephone: 202–366–5900; FAX 202–488–0941 or e-mail: *tom.christensen@marad.dot.gov*. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Voluntary Tanker Agreement.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0505.

Form Numbers: None.

Expiration Date of Approval: Three years after date of approval by the Office of Management and Budget.

Summary of Collection of Information: The collection consists of a request from the Maritime Administration (MARAD) that each participant in the Voluntary Tanker Agreement submit a list of the names of ships owned, chartered or contracted for by the participant, and their size and flags of registry. There is no prescribed format for this information.

Need and Use of the Information: The collected information is necessary to evaluate tanker capability and make plans for the use of this capability to meet national emergency requirements. This information will be used by both MARAD and Department of Defense to establish overall contingency plans.

Description of Respondents: Tanker companies that operate in international trade and who have agreed to participate in this agreement.

Annual Responses: 15.

Annual Burden: One hour per response.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit*. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov*.

By Order of the Maritime Administrator,

Dated: August 12, 2003.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–21191 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15940]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *LA FEMME DE LA MER*.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15940 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 19, 2003.

ADDRESSES: Comments should refer to docket number MARAD 2003–15940. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *LA FEMME DE LA MER* is:

Intended Use: "Recreational charters intended for small groups. Each charter to have a duration of one to four weeks."

Geographic Region: "Alaska (except Southeastern Alaska), Washington State, Oregon, and California."

Dated: August 13, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–21189 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15937]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *PERSISTENCE*.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15937 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 19, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15937. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *PERSISTENCE* is:

Intended Use: "Six passenger commercial sport fishing."

Geographic Region: "Near coastal within 200 nm of California and along Baja California, Mexico."

Dated: August 13, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–21192 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15938]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of

the Coastwise Trade Laws for the vessel *PRIME TIME*.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15938 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 19, 2003.

ADDRESSES: Comments should refer to docket number MARAD 2003–15938. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel PRIME TIME is:

Intended Use: "Occasional charters along the west coast of the U.S. The charters will be for six (6) to twelve (12) passengers for day or longer private charters."

Geographic Region: "Intended operations will be the west coast of the United States, from the Canadian border to the Mexican border, more specifically the region from the waters of Puget Sound and the San Juan Islands south to San Diego Bay. Therefore we are requesting a waiver that would be valid in the western coastal U.S. waters."

Dated: August 13, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–21193 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15936]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *SANCHA*.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–15936 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 19, 2003.

ADDRESSES: Comments should refer to docket number MARAD 2003–15936. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *SANCHA* is:

Intended Use: "Charters."

Geographic Region: "Texas, Louisiana, Mississippi, Alabama, Florida."

Dated: August 13, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–21190 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 15939]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *TUNACIOUS*.

SUMMARY: As authorized by Pub. L. 105–383 and Pub. L. 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application

is given in DOT docket 2003–15939 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before September 19, 2003.

ADDRESSES: Comments should refer to docket number MARAD–2003–15939. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel *TUNACIOUS is:*

Intended Use: "Fishing Charter."

Geographic Region: "East Coast of United States."

Dated: August 13, 2003.

By order of the Maritime Administrator.

Murray Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 03–21194 Filed 8–19–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–855 (Sub–No. 1X) and AB–847 (Sub–No. 2X)]

A & R Line, Inc.—Abandonment Exemption—in Cass and Pulaski Counties, IN and Toledo, Peoria & Western Railway Corporation—Discontinuance of Service Exemption—in Cass and Pulaski Counties, IN

On July 31, 2003, A & R Line, Inc. (A&R) and Toledo, Peoria & Western Railway Corporation (TP&W) jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903. A&R seeks to abandon and TP&W seeks to discontinue service over a line of railroad known as the A&R line extending from milepost 5.1W near Kenneth to the end of the line at milepost 21.OW near Winamac, a distance of 15.9 miles in Cass and Pulaski Counties, IN. The line constitutes A&R's entire line of railroad. The line traverses United States Postal Service Zip Codes 47550, 46978, 46985 and 46996, and it includes the station of Winamac at milepost 21.OW.

The line does not contain federally granted rights-of-way. Any documentation in A&R's or TP&W's possession will be made available promptly to those requesting it.

The interest of railroad employees of TP&W will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). The Board generally does not impose labor protective conditions on a railroad, such as A&R here, that is abandoning its entire line. *See, Northampton and Bath R. Co.—Abandonment*, 354 I.C.C. 784 (1978).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 18, 2003.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 9, 2003. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–855 (Sub-No. 1X) and AB–847 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Ball Janik LLP, 1455 F St., NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before September 9, 2002.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 11, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–21033 Filed 8–19–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–847 (Sub–No. 1X), STB Docket No. AB–856 (Sub–No. 1X)]

Toledo, Peoria & Western Railway Corporation–Discontinuance Exemption–in Starke and Pulaski Counties, IN; J.K. Line, Inc.—Abandonment Exemption—in Starke and Pulaski Counties, IN

On July 31, 2003, Toledo, Peoria & Western Railway Corporation (TP&W)

and J.K. Line, Inc. (J.K.) (collectively, petitioners) jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 for J.K. to abandon and for TP&W to discontinue service over a 17-mile line of railroad between milepost 199, near North Judson, and milepost 183, near Monterey, at the end of the line, in Starke and Pulaski Counties, IN.[1] The line traverses U.S. Postal Service Zip Codes 46511 and 46960.

The line does not contain federally granted rights-of-way. Any documentation in J.K.'s possession will be made available promptly to those requesting it.

In STB Docket No. AB–856 (Sub-No. 1X), J.K. is proposing to abandon a line that constitutes its entire rail system. When issuing abandonment authority for railroad lines that constitute the carrier's entire system, the Board does not impose labor protection, except in specifically enumerated circumstances. *See Northampton and Bath R. Co.–Abandonment*, 354 I.C.C. 784, 785–86 (1978) (*Northampton*). Therefore, if the Board grants the petition for exemption, in the absence of a showing that one or more of the exceptions articulated in *Northampton* are present, no labor protective conditions would be imposed. In STB Docket No. AB–847 (Sub-No. 1X), the interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.–Abandonment–Goshen*, 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by November 18, 2003.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. See 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than September 9, 2003. Each trail use request must be accompanied by a $150 filing fee. See 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–847 (Sub-No. 1X) and AB–856 (Sub-No. 1X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Louis E. Gitomer, Esq., Of Counsel, Ball Janik LLP, 1455 F Street, NW., Suite 225, Washington, DC 20005. Replies to the petition are due on or before September 9, 2003.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: August 13, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–21196 Filed 8–19–03; 8:45 am]

BILLING CODE 4915–00–P

[1] TP&W is an indirect subsidiary of RailAmerica, Inc. *See RailAmerica, Inc.–Control Exemption–Florida Rail Lines, Inc., Toledo, Peoria and Western Railroad Corporation, Marksman Corporation, and Toledo, Peoria & Western Railway Corporation*, STB Finance Docket No. 33777 (STB served Sept. 17, 1999). TP&W acquired J.K., a subsidiary of Cargill Incorporated, in *RailAmerica, Inc., et al.–Control and Merger Exemption–A&R Line, Inc., and J.K. Line, Inc.*, STB Finance Docket No. 34269 (STB served Dec. 12, 2002).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Ruling 2000–35

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Ruling 2000–35, Automatic Enrollment in Section 403(b) Plans.

DATES: Written comments should be received on or before October 20, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue ruling should be directed to Allan Hopkins, at (202) 622–3945, or at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Automatic Enrollment in Section 403(b) Plans.

OMB Number: 1545–1694.

Revenue Ruling Number: Revenue Ruling 2000–35.

Abstract: Revenue Ruling 2000–35 describes certain criteria that must be met before an employee's compensation can be reduced and contributed to an employer's section 403(b) plan in the absence of an affirmative election by the employee.

Type of Review: Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 1 hours, 45 minutes.

Estimated Total Annual Burden Hours: 175.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and

tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 14, 2003.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 03–21357 Filed 8–19–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be conducted (via teleconference).

DATES: The meeting will be held Thursday, September 11, 2003, at 2 p.m., Central daylight time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, September 11, 2003, from 2 p.m. to 3 p.m. Central daylight time via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: August 8, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–21358 Filed 8–19–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, September 12, 2003, from 8 a.m. to 5 p.m., and Saturday, September 13, 2003, from 8 a.m. to Noon at the Renaissance Dallas North Hotel, 4099 Valley View Lane, Dallas, TX 75244.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 5 Taxpayer Advocacy Panel will be held Friday, September 12, 2003, from 8 a.m. to 5 p.m., and Saturday, September 13, 2003, from 8 a.m. to Noon at the Renaissance Dallas North Hotel, 4099 Valley View Lane, Dallas, TX 75244. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various IRS issues.

Dated: August 8, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–21359 Filed 8–19–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted.

DATES: The meeting will be held Friday, September 5, 2003, 8 a.m. to 5 p.m., and Saturday, September 6, 2003, 8 a.m. to noon at the Hotel Teatro, 1100 14th Street, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Friday, September 5, 2003, 8 a.m. to 5 p.m., and Saturday, September 6, 2003, 8 a.m. to noon in the Hotel Teatro, 1100 14th Street, Denver, CO 80202. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623.

The agenda will include the following: mid-year assessment reports, discussion of various administrative issues, discussion and prioritization of issues elevated to Joint Committee, and discussion of next meeting.

Dated: August 7, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–21360 Filed 8–19–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, West Virginia, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Sunday, September 7, 2003, from 7 p.m. to 10 p.m., and Monday, September 8, 2003, from 8 a.m. to 3 p.m. at the Embassy Suites Hotel, 3912 Vincennes Road, Indianapolis, IN 46268.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 4 Taxpayer Advocacy Panel will be held Sunday, September 7, 2003, from 7 p.m. to 10 p.m., and Monday, September 8, 2003, from 8 a.m. to 3 p.m. at the Embassy Suites Hotel, 3912 Vincennes Road, Indianapolis, IN 46268. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221. Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various IRS issues.

Dated: August 6, 2003.

Tersheia Carter,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–21361 Filed 8–19–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0042]

Agency Information Collection Activities Under OMB Review

AGENCY: Board of Veterans' Appeal, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Board of Veterans' Appeal (BVA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0042."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0042" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Statement of Accredited Representative in Appealed Case, VA Form 646.

OMB Control Number: 2900–0042.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 646 is used by accredited veterans' service organization representatives to present their argument to the Board on behalf of appellants of whom the service organizations represent. It facilitates appellants' exercise of their representation rights. The legal and factual arguments presented on the form are considered and addressed by the Board in making decisions on appeals. The form is also designed to solicit enough identifying data to enable VA to identify the particular case to which the statement pertains so that it may be properly considered and filed when received by VA. It aids the Board in assuring that rights to representation have been honored by establishing that the record has been made available to the representative for review and presentation of argument.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 6, 2003, at page 24048.

Affected Public: Not-for-profit institutions.

Estimated Total Annual Burden: 28,440 hours.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 28,440.

Dated: August 8, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–21230 Filed 8–19–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0642]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 19, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0642."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0642" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: VA Copayment Refund—USAA/Hartford Claim Form, VA Form 10–0406.

OMB Control Number: 2900–0642.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0406 will be used to reimburse veterans insured by USAA/Hartford Life Insurance for co-payments they paid to VA for medical care from January 1, 1995 through December 31, 2001. Such insured veterans will have a one year time period from the initial notification date on a first-come-first-served basis, to file claim with VA for refund of their co-payments. The information collected will be used to determine the validity of such claims.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 3, 2003, at page 16349.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 12,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 24,000.

Dated: August 8, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–21231 Filed 8–19–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0090]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before September 19, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, Fax (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0090."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0090" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Voluntary Service, VA Form 10–7055.

OMB Control Number: 2900–0090.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–7055 is used to assist personnel of both voluntary organizations, which recruit volunteers from their membership, and the VA in selection, screening and placement of volunteers in the nationwide VA Voluntary Service program. The volunteer program supplements the medical care and treatment of veteran patients in all VA medical centers. This form is necessary to assist in determining the suitability and placement of potential volunteers.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on June 3, 2003, at pages 33229–33230.

Affected Public: Individuals or households, Not-for-profit institutions.

Estimated Total Annual Burden: 8,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 32,000.

Dated: August 8, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–21232 Filed 8–19–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900—New—Foreign Medical]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before September 19, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8130 or FAX (202) 273–5981, or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900—New—Foreign Medical."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900—New—Foreign Medical" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Claim Cover Sheet for Foreign Medical Program, VA Form 10–7959f.

OMB Control Number: 2900—New—Foreign Medical.

Type of Review: New collection.

Abstract: VA Form 10–7959f will be used to submit claims for payment/reimbursement of expenses related to veterans who are residing or traveling overseas (except for Canada and the Philippines) with a service-connected disability. The form outlines the basic veteran information necessary for consideration of claims for reimbursement. Use of this form by providers or veteran is optional. VA accepts provider generated billing statement, Uniform Billing-Forms (UB) 92, HCFA 1500, Medicare Health

Insurance Claims Form. This information collection is needed to carry out the health care benefits allowed by the Foreign Medical Program.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on June 3, 2003, at pages 33228–33229.

Affected Public: Individuals or households, Business or other for profit, and Not for profit institutions.

Estimated Total Annual Burden: 3,652 hours.

Estimated Average Burden Per Respondent: 11 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,660.

Estimated Total Annual Responses: 19,920.

Dated: August 8, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–21233 Filed 8–19–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0160]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before September 19, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 273–8030, Fax (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0160."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0160" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. State Home Inspection—Staffing Profile, VA Form 10–3567.

b. State Home Report and Statement of Federal Aid Claimed, VA Form 10–5588.

c. State Home Program Application for Veterans Care—Medical Certification, VA Form 10–10SH.

d. Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals, VA Form 10–0143.

e. Statement of Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, VA Form 10–1043A.

f. Certification Regarding Lobbying, VA Form 10–0144.

g. Statement of Assurance of Compliance with Equal Opportunity Law, VA Form 10–0144A.

h. Per Diem for Adult Day Health Care of Veterans in State Homes, 38 CFR part 52, and Per Diem for Nursing Home Care of Veterans in State Homes, 38 CFR parts 17, 51, and 48.

OMB Control Number: 2900–0160.

Type of Review: Extension of a currently approved collection.

Abstract: VA pays per diem to State homes providing adult day health care to eligible veterans. To ensure high quality care is furnished to the veterans, VA requires those facilities providing adult day health care to furnish an application for recognition based on certification; appeal information, application and justification for payment; records and reports which facility management must maintain regarding activities of residents or participants; information relating to whether the facility meets standards concerning residents' rights and responsibilities prior to admission or enrollment, during admission or enrollment, and upon discharge; the records and reports which facilities management and health care professionals must maintain regarding residents or participants and employees; documents pertaining to the management of the facilities; food menu planning; pharmaceutical records; and life safety documentation. This information is necessary to ensure that VA per diem payments are limited to facilities providing high quality care to eligible veterans.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 6, 2003, at pages 24048–24050.

Affected Public: State, Local or Tribal Government, Individuals or Households, and Not-For-Profit Institutions.

Estimated Total Annual Burden: 15,886 hours.

a. State Home Inspection—Staffing Profile, VA Form 10–3567—86 hours.

b. State Home Report and Statement of Federal Aid Claimed, VA Form 10–5588—1,026 hours.

c. State Home Program Application for Veterans Care—Medical Certification, VA Form 10–10SH—10,565 hours.

d. Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals, VA Form 10–0143—21 hours.

e. Statement of Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, VA Form 10–0143A—21 hours.

f. Certification Regarding Lobbying, VA Form 10–0144—21 hours.

g. Statement of Assurance of Compliance with Equal Opportunity Law, VA Form 10–0144A—21 hours.

h. Per Diem for Adult Day Health Care of Veterans in State Homes, 38 CFR Part 52, and Per Diem for Nursing Home Care of Veterans in State Homes, 38 CFR Parts 17, 51, and 48—4,125 hours.

Estimated Average Burden Per Respondent:

a. State Home Inspection—Staffing Profile, VA Form 10–3567—30 minutes.

b. State Home Report and Statement of Federal Aid Claimed, VA Form 10–5588—30 minutes.

c. State Home Program Application for Veterans Care—Medical Certification, VA Form 10–10SH—30 minutes.

d. Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals, VA Form 10–0143—7 minutes.

e. Statement of Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, VA Form 10–0143A—7 minutes.

f. Certification Regarding Lobbying, VA Form 10–0144—7 minutes.

g. Statement of Assurance of Compliance with Equal Opportunity Law, VA Form 10–0144A—7 minutes.

h. Per Diem for Adult Day Health Care of Veterans in State Homes, 38 CFR Part 52, and Per Diem for Nursing Home Care of Veterans in State Homes, 38 CFR Parts 17, 51, and 48—7 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 43,157.

a. State Home Inspection—Staffing Profile, VA Form 10–3567—171.

b. State Home Report and Statement of Federal Aid Claimed, VA Form 10–5588—171.

c. State Home Program Application for Veterans Care—Medical Certification, VA Form 10–10SH—21,129.

d. Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals, VA Form 10–0143—171.

e. Statement of Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, VA Form 10–0143A—171.

f. Certification Regarding Lobbying, VA Form 10–0144—171.

g. Statement of Assurance of Compliance with Equal Opportunity Law, VA Form 10–0144A—171.

h. Per Diem for Adult Day Health Care of Veterans in State Homes, 38 CFR Part 52, and Per Diem for Nursing Home Care of Veterans in State Homes, 38 CFR Parts 17, 51, and 48—21,002.

Dated: July 28, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–21234 Filed 8–19–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0180]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 19, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0180."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0180" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Compliance Report of Proprietary Institutions, VA Form 20–4274.

OMB Control Number: 2900–0180.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 20–4274 is used to determine whether or not proprietary educational institutions receiving Federal financial assistance are in compliance with applicable civil rights statutes and regulations. The collected information is used to identify areas that may indicate, statistically, disparate treatment of minority group members.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 1, 2003, at pages 15799–15800.

Affected Public: Business or other for-profit, and Federal Government.

Estimated Annual Burden: 155 hours.

Estimated Average Burden Per Respondent: 75 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 124.

Dated: August 8, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–21235 Filed 8–19–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0001]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the Agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine a veteran's eligibility, dependency, and income, as appropriate, for compensation and/or pension benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 20, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0001" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the

information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veteran's Application for Compensation and/or Pension, VA Form 21–526.

OMB Control Number: 2900–0001.

Type of Review: Extension of a currently approved collection.

Abstract: This form is used as an original application for veterans to apply for compensation and/or pension benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 592,500 hours.

Estimated Average Burden Per Respondent: 1 hour and 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 395,000.

Dated: July 29, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–21236 Filed 8–19–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0465]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine an individual's continued entitlement to VA benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before October 20, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0465" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Student Verification of Enrollment, VA Form 22–8979.

OMB Control Number: 2900–0465.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 22–8979 is used by students in certifying attendance and continued enrollment in courses leading to a standard college degree or in non-college degree programs. The form obtains certification of actual attendance by the student and verification of that student's continued enrollment before VA release payment. The student is required to submit the verification on a monthly basis to allow for a frequent, periodic release of payment.

Affected Public: Individuals or households.

Estimated Annual Burden: 45,475 hours.

Estimated Average Burden Per Respondent: 1⅓ minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 333,333.

Estimated Number of Responses: 2,000,000.

Dated: July 29, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–21237 Filed 8–19–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 68, No. 161

Wednesday, August 20, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14644; Airspace Docket No. 03–AGL–01]

Modification of Class E Airspace; Kenton OH; Revocation of Class E Airspace; Bellefontaine, OH

Correction

In rule document 03–19167 appearing on page 44202 in the issue of Monday, July 28, 2003, make the following correction:

§71.1 [Corrected]

On page 44202, in the third column, in § 71.1, under the heading "**AGL OH E5 Kenton, OH [Revised]**" in the fifth line "83°23′39″W.," should read "83°28′39″W.,".

[FR Doc. C3–19167 Filed 8–19–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
August 20, 2003

Part II

Department of Veterans Affairs

Draft National Capital Asset Realignment for Enhanced Services (CARES) Plan; Notice

DEPARTMENT OF VETERANS AFFAIRS

Draft National Capital Asset Realignment for Enhanced Services (CARES) Plan

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: This document concerns VA's health care planning process known as CARES, or Capital Asset Realignment for Enhanced Services. The CARES process was designed to enable the veterans health care system to more effectively use its resources to deliver more care, to more veterans, in places where veterans need it most. We are providing interested persons the opportunity to review and submit written comments to the independent CARES Commission concerning the draft National CARES Plan of the Under Secretary for Health.

DATES: Comments must be submitted by October 20, 2003.

ADDRESSES: Written comments can be mailed to Richard E. Larson, Executive Director, CARES Commission, 00CARES, 810 Vermont Avenue, NW., Washington, DC 20480; or faxed to (202) 501–2196; or e-mail to *www.carescommission.va.gov*. Comments should indicate that they are submitted in response to the "Notice; Draft National Capital Asset Realignment for Enhanced Services (CARES) Plan."

FOR FURTHER INFORMATION CONTACT: Janice R. Sloan, CARES Commission, at (202) 501–2000.

SUPPLEMENTARY INFORMATION: VA's mission to provide quality health care for America's veterans has not changed since its inception. But how that care is provided—at what kind of facilities, where they are located and which types of procedures are used—has been subject to dynamic change. Medical advances, modern health care trends, and veteran migrations all have an impact on the medical care landscape. In a dynamic health care environment, VA must plan to embrace change so it can best serve veterans health care needs in the future.

The draft National CARES Plan embodies the plan for managing a vital element of that change: The Department's capital infrastructure. The plan is based on a systematic, national assessment of the future needs of veterans and the present location and condition of the physical plant that delivers their health care. The draft National CARES Plan identifies gaps where there is an imbalance between current infrastructure and future needs. It then makes recommendations to solve these imbalances and assure that VA is best positioned to meet veterans health care needs into the future.

The draft Plan incorporates new community-based primary and specialty outpatient clinics. Additionally, four new Spinal Cord Injury and Disorders Units have been proposed, along with two new Blind Rehabilitation Centers. Other enhancements include expansion of numerous existing outpatient clinics, renovations of inpatient beds, diagnostic and ancillary services, as well as two new hospitals.

This notice includes the draft National CARES Plan, including an appendix that summarizes individual network plans, which was prepared by VA's Under Secretary for Health after review of present and projected user data, as well as input from a wide range of sources and stakeholders and the individual network plans. The full plan, all appendices, and related information can be viewed at *www.va.gov/CARES*.

The independent CARES Commission, appointed by the VA Secretary, is evaluating this draft National CARES Plan, which incorporates individual network Market Plans. Members of the Commission include individuals with special knowledge or interest relating to VA health care, as well as representatives from stakeholders' groups.

This notice provides interested persons an opportunity to submit written comments concerning the draft National CARES Plan to the CARES Commission. The Commission will consider these comments in developing its recommendations to the VA Secretary. Under the CARES process, the Secretary will either accept or reject the Commission's recommendations, without modification.

Dated: August 5, 2003.

Tim S. McClain,

General Counsel.

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References

Access Calculation Technical Summary
CACI/Milliman Enrollment/Demand Model
Congressional Contacts
Congressional Letter
DoD Primary Receiving Centers
GAO Report (GAO/HEHS–99–145) titled "VHA Health Care Improvements Needed in Capital Asset Planning and Budgeting"
GAO Testimony (GAO/HEHS–99–173) titled "VHA Health Care Challenges Facing VA in Developing an Asset Realignment Process"
Handbook for Market Plan Development
IBM Market Planning Template Technical Summary
Planning Initiative Selection Criteria
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Introduction

Environment of Change Surrounds VA Mission

The mission so nobly described by Abraham Lincoln as "Caring for those who shall have borne the battle" represents a single constant, surrounded by constant change.

The one, unchanging feature attending Mr. Lincoln's charge to provide health care for America's veterans is that the nation regards it as a duty of the highest priority. But how that job is done—at what kind of facilities, where they are located, and which types of procedures are used—has been subject to dynamic change, as a function of medical advances, modern health care trends, regional migration and other factors.

This document embodies the plan for managing a vital element of that change: the capacity and placement of facilities, their accessibility and the acute care infrastructure necessary to meet the current and future needs of veterans. The underlying planning process is entitled "Capital Asset Realignment for

Enhanced Services (CARES), and the foundational CARES Plan includes:

- Findings from an objective comparison of data on future needs versus current capabilities;
- A comprehensive assessment of the adequacy of all current VHA health care space to meet these needs;
- An investment strategy to guide the allocation of capital resources to meet those space needs;
- Exploration of alternative use of campuses to benefit veterans, such as assisted living facilities or other compatible uses, with revenues used to invest in veteran services;
- Adopting the Critical Access Hospital (CAH) model developed by the Centers for Medicare and Medicaid Services for small facilities as a guide to ensure that quality of care is maintained in the future;
- A description of consolidations of services and realignments to replace inefficient, aged campuses with modern facilities to improve quality and cost effectiveness;
- A description of internal collaborations between the three VA administrations and external collaborations with the Department of Defense (DoD) to maximize joint utilization of capital resources; and
- A description of stakeholder involvement in the CARES process.

Background Includes Transformational Changes

A brief word of background on the federal entity charged with caring for America's veterans may help to place the CARES process and this plan into perspective. This entity is the Department of Veterans Affairs (VA). Many changes in VA's health care system have come through gradual evolution, but there also have been instances of remarkable transformation. After World War II, for example, VA astounded critics by accomplishing a dramatic and highly successful expansion to meet the needs of millions of World War II veterans.

VA's health care system—in modern parlance, the Veterans Health Administration (VHA)—was transformed again in the 1990's. Having initially lagged behind the national trend of placing greater reliance on primary care and outpatient settings, VHA accomplished a reinvention of major proportions.

In just seven years—from 1995 to 2002—VA changed from an inpatient model of care characterized by a limited number of specialized facilities, to an outpatient model with more than 1,300 access sites in veterans' communities across the United States. Acute operating beds were reduced from 52,000 to about 19,000, and the inpatient average daily census dropped about 60 percent in this period. Most telling, by 2002, the VA was treating more than 1.5 million additional veterans annually—an increase greater than 50% since the beginning of the period.[1]

A key element of the reorganization was dividing the VA system into strategic networks. There are currently 21 of these Veterans Integrated Service Networks, commonly referred to as "VISNs." VISNs are focal points for coordinating medical services in a population-based approach to care. In a few short years, VISNs guided VA's transformation into a system of highly efficient, ambulatory-based care, backed by a highly integrated system of tertiary care and other services.

Echoes of Change: Reverberations Linger

Reverberations can linger in the wake of such remarkable changes in the VA health care system. For example, when VA geared up to care for World War II veterans, medical staffs were augmented virtually overnight (through affiliation with the nation's medical schools). Necessary expansion of the infrastructure took much longer—with site selection, design, funding, and construction of VA facilities around the country stretching through the 1950's and 60's.

The more recent reformation of VA health care during the 1990's—creating today's efficient, primary care focused, outpatient-based system—was also followed by reverberations. While making strong progress in refining primary care modalities and expanding access through investments in community based clinics, VA had limited success in securing capital to maintain its acute care infrastructure.

Initial restructurings, such as reducing bed numbers, closing staffed wards, changing specific use of buildings, etc., were accomplished with dispatch. But further steps were problematic, since disposition of capital assets traditionally has been a difficult process in the Federal sector in general, and in the VA, in particular. In addition, vacant space may be scattered and not concentrated in specific locations amenable to closure or re-use. To some extent, the lack of concentrated space simply reflects the nature of physical plant entities, *i.e.*, vacant and underutilized buildings (many of which have historic value) cannot be moved around like most other resources. Disposing of such assets can be a complex process for any department or agency. For VA, periodic, vigorous opposition from local interest groups who object to the proposed re-use of the facility or land has complicated this difficult task.

GAO Paints Challenge in Stark Terms

In view of this background, it was not particularly surprising when, in 1999, the General Accounting Office (GAO) gave VA poor marks, for its record in divesting itself of vacant and underutilized buildings. Some details in the GAO comments were noteworthy, such as the contention that, unless VA implemented more effective capital investment planning and budgeting, it could "spend billions of dollars operating hundreds of unneeded buildings over the next 5 years or more."[2]

Although the GAO financial estimate were based upon complete campus closures (not closing/demolishing individual buildings at over 150 sites), which are not fully achievable, VA embraced the recommendation to strengthen capital investment planning—because the GAO's conclusion was in perfect accord with VA's own goals for the direction of its health care system. This GAO conclusion was that "VA could enhance veterans" health care benefits if it reduced the level of resources spent on underused or inefficient buildings, and used these resources instead to provide health care more efficiently in existing locations or closer to where veterans live."[3]

Congressional authorizing, appropriating and oversight committees had also expressed concern over the lack of a long-term capital planning process.

Designing a Tool of Unprecedented Precision

In designing the CARES process, VA explicitly followed GAO recommendations, such as working to eliminate subjective judgments, developing methods to quantify the benefits of locations and facilities, and seeking the best-defined measurement standards. The completed CARES design therefore differed from previous planning and budgeting efforts in several important respects. CARES was:

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[1] Source: Department of Veterans Affairs Program Statistics, April 17, 2003.

[2] *VA Health Care: Capital Asset Planning and Budgeting Need Improvement* (GAO/T–HEHS–99–83, Mar. 10, 1999).

[3] *VA Health Care: Improvements Needed in Capital Asset Planning and Budgeting*, GAO/HEHS–99–145 (Washington, DC: Aug. 13, 1999), p. 4.

Comprehensive—the systematic assessment of the condition and functionality of current space and requirements to meet projected changes in the demand for services was applied throughout the VA system.

Data driven—the use of market-specific actuarial projections brought a new level of credibility to the assessment of future veterans' needs in well-defined health care markets.

Objective—"gaps" in service (disparities between current capabilities and future needs) were identified based solely on clear-cut application of "threshold criteria."

Systematic—planning initiatives and their resolution in market plans followed a set of system-wide assessment and projection methodologies and tools based upon national data sources.

Most Distinguishable Characteristic—Stakeholder Involvement

One piece of GAO advice, in particular, led to one of the defining characteristics of CARES. This area of GAO commentary involved the diverse groups of publics with whom VA health care is intimately involved at many levels.

GAO asserted that these groups have not always had an appropriate role in dealing with VA capital assets. According to the GAO, these publics should be involved in an active advisory role in developing procedures, criteria, etc., for CARES. GAO pointed out that the involvement of these public groups not only facilitates receiving valuable perspectives from them, the GAO stated, but also enhances understanding of and builds support for the process.[4]

The importance VA placed on these publics was reflected by the fact that they were termed "stakeholders" in the CARES process. The resources and policies devoted to ensure that they were part of the process further attested to their importance. Stakeholders included veterans service organizations, VA employees, academic affiliates, Department of Defense sharing partners, and the congressional delegations that represent all the other publics. Chapter 3 of this plan details the unprecedented level of interaction between VA and these stakeholders during the design and application of CARES.

Meeting the CARES Deadline

The "roll out" of CARES began on June 5, 2002, when Secretary of Veterans Affairs Anthony J. Principi announced the initiation of the CARES process. Fourteen months later, on August 1, 2003, this Draft National CARES Plan was presented to the CARES Commission. (The role of the Commission and the overall CARES timetable are explained in Chapter 2.)

This relatively short development period for such a complex planning process reflects that the CARES timetable had an absolute deadline: to have an approved National CARES Plan in time to meet congressional target dates for capital funding proposals for FY 2005 and FY 2006.

At the time this draft was published, it was anticipated that the completed and fully reviewed National CARES Plan would be ready for the Secretary's decision by the end of December 2003—which would meet the stipulated deadline for the first of these fiscal year budget cycles.

In building a virtual roadmap for veterans' health care in the future, the CARES process combined state-of-the-art statistical methodologies with thorough, pragmatic planning analyses. This complex undertaking was the first comprehensive, long-range assessment of the VA health care system's capital requirements since 1981, when a multi-year effort known as the Medical District Initiated Planning Process (MEDIPP) conducted a similar, if less sophisticated, system-wide appraisal.

Developing the Draft National CARES Plan in such a short time period was a formidable task. Despite the fact that a detailed "CARES Guide and Operating Plan" was prepared and distributed to VA planning teams in advance, full implementation of the process required many adaptations and temporary solutions. Ultimately, some limitations in the CARES process had to be accepted, with the understanding that improvements would be made when the process was integrated with VHA's regular strategic planning process. While the CARES pilot was instructive in demonstrating the importance of stakeholder participation, it was a contracted study performed by a consultant in a single VISN.[5]

The CARES pilot did not provide the tools, technical methodologies or processes to extend the process to the entire VA health care system. These tools had to be developed in real time, without benefit of full testing. Implementation began with unfamiliar databases, and an incomplete understanding of the interrelationships and policy implications of a complex set of data, methodologies and processes.

As indicated in the succeeding chapters, many improvements were made as the plan developed and the knowledge base improved. At the time this Draft National CARES Plan was published, improvements in the process were still underway, notably including those required to develop credible forecasts of the need for Nursing Home Care, Domiciliary Care and selected mental health components. Inclusion of these three program areas was therefore postponed until the next VHA strategic planning cycle.

CARES Plan Had Numerous Authors

Credit for the CARES process and for this plan is due literally hundreds of men and women across the nation who devoted a great deal of time and energy to this effort.

Some contributors devoted long hours of complex, diligent work—in addition to regular job responsibilities. Yet all of those involved—from the designers of the process, to the statisticians who ran the data, to the program experts who constructed models for special disabilities, to the network planning teams comprised of planners, clinicians and administrators who brought the numbers to life—gave CARES the attention and the respect it deserved as a key element in the future of VA medical programs.

The largest group of contributors was comprised of the many stakeholders in the VA system, prominently including America's veterans service organizations. Their active participation—learning about CARES, providing advice at various stages of the process, and commenting on findings and proposals—was fundamental to the program's integrity.

Because of the collective involvement of these numerous "authors" of this CARES Plan, the Department of Veterans Affairs stands poised to fulfill its long term planning mission: "to improve access to, and the quality and cost effectiveness of, veterans health care."

Chapter 1: CARES

Continuing VA's Improvement Process

CARES is a systematic planning process to prepare VA's facilities and campuses to meet the future veterans health care needs through a methodical, system-wide assessment of the current existing and future needs for space, and of the size, mission and locations of facilities, compared to the number of projected enrollees and forecasts of their anticipated utilization of medical

[4] VA Health Care: VA is Struggling to Address Asset Realignment Challenges, GAO/HEHS–00–88 (Washington, DC: April 5, 2000), p. 5.

[5] The role of the pilot program in VISN 12 as the first step in the phased implementation of CARES is discussed in Chapter 2.

services. The changes described will occur over an extended period. In particular, the complexity of realigning clinical services and campuses necessitate careful planning in order to ensure a seamless transition in services. The Draft National CARES Plan contains the capital requirements to enhance the current infrastructure so that VA health care services are delivered in a modern functional health care environment. CARES is another step in the dynamic improvement process that characterizes the VA health care system. The CARES process follows the many improvements achieved in the processes and outcomes by the VA.

Quality is an essential component in any assessment. A recent judgment presented in an authoritative medical journal provided a definitive indication of how VA care compares with the medical community at large. Simply stated, VA care was found to be significantly better than care provided in the fee-for-service program paid for through Medicare. This conclusion was reported in a study published in the New England Journal of Medicine, which compared VA care with the Medicare fee-for-service program on 11 similar quality indicators for the period from 1997 to 1999. VA scores were better in all 11 categories. The study noted that VA outperformed Medicare again in 2000, this time on 12 of 13 indicators.[6] Calling the study's findings "robust," a Journal editorial confirmed, "VA care appears to be better."[6a]

Along the way to achieving high scores in quality, the VA established a position of health care industry leadership in patient safety and electronic medical records. In 2002, for example, two VA facilities received the first John M. Eisenberg Patient Safety Awards, sponsored by the National Quality Forum and the Joint Commission on Accreditation of Healthcare Organizations.[6b] And VA's electronic medical record system and Bar Code Medication Administration (BCMA) program have been widely recognized as groundbreaking tools for improving health care quality and patient safety. The BCMA program won the 2002 Pinnacle Award, a top honor presented by the American Pharmaceutical Association Foundation.

Today, numerous other innovative management practices sustain the pace of VA clinical improvements, including:

- Preventive measures such as pneumococal vaccinations and diabetic foot examinations, which demonstrably reduced the incidence of illness and infection in VA's patient population.
- A morbidity and mortality monitoring system, which ensures that quality improvement in VA surgical programs is ongoing.
- Telemedicine initiatives, which not only bring diagnostic support and specialist consultation to remote delivery sites, but allow monitoring of patients in their own homes, in a new "Telehealth care" program.

All of these actions were stimulated and supported through a continuous improvement philosophy instilled throughout the organization, based on the principles of the Malcolm Baldrige National Quality Award.

The most significant element of VA's management re-invention—one which directly facilitated and accelerated positive change in the system—was the creation of decentralized health care delivery systems called Veterans Integrated Service Networks (VISNs). Networks implemented challenging system alterations, such as dramatic reductions in inpatient hospital beds, closures of redundant campuses, and consolidation of services. Under VISN management, the transformed VA system achieved extensive improvements in access and enrolled millions of new veterans (a measure of success which, nonetheless, has put new strains on VA's capital assets). These changes must be incorporated into CARES planning as well as future challenges to be anticipated in the planning for capital assets.

Clearly, the systematic assessment and improvement of quality that has characterized the VA health care system since the early 1990's has produced dramatic results. VHA's determination to emulate this success in the systematic planning for capital assets had an excellent starting place in the CARES process.

The timing for improved capital asset planning is right. The forecasted decrease in the veteran population, though offset in part by increasing numbers of enrollees and aging of the veteran population, is raising questions regarding the size and distribution of VA facilities and outpatient services. VHA planners and leaders must assure that facilities are in the right place and have the physical plant necessary to provide quality care to the aging veteran population. The CARES planning process and the National CARES Plan will prepare VHA to meet that challenge of the provision of veterans' health care in the 21st century.

What Did CARES Assess?

CARES focused on capital requirements at a macro level by using projections of beds and outpatient visits by broad categories such as inpatient medicine, surgery and psychiatry, and outpatient primary care, mental health and specialty care. CARES did not develop plans at the diagnostic or service line level (cardiovascular disease, diabetes, etc.) These lower level plans will be considered as part of VHA's revised strategic planning process.

The CARES process systematically assessed the critical components that determine the future need for capital and services. CARES comprised the first detailed system-wide assessment and integration of the following elements:

- *Physical Plant*—CARES developed and used assessments of the current condition and functionality of all space that provides and supports the delivery of health care services. A comprehensive evaluation and database were developed to determine the amount of space that did not meet current standards and that should be improved.
- *Enrollment*—CARES utilized enrollment forecasts by priority group, based upon the Secretary's enrollment decisions and Presidential budget requests.
- *Utilization*—CARES developed the expected utilization of enrollees for bed days of care and outpatient visits for all priority groups by age and gender, and the specific needs of the SCI and Blind Rehabilitation Program.
- *Management of Utilization*—CARES prompted VISN decisions on managing utilization changes from a range of alternatives, such as new construction, renovations, leases, contracts and other mechanisms.
- *Vacant Space*—CARES brought about the evaluation of all vacant space, including determination of potential use in meeting future expected utilization, and all possible disposition alternatives including lease, building demolition, and other divestiture measures.
- *Realignments*—CARES facilitated a systematic assessment of the potential for realignment of services and campuses. The capital costs and savings of these realignments are not yet fully integrated into the National CARES Plan because their complexity requires more detailed analysis (in the event they are approved.)
- *Access*—CARES determined driving times to primary outpatient and acute

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[6] NEJM, *Effect of the Transformation of the Veterans Affairs Health Care System on the Qaulity of Care*, Ashish Jha, Vol. 348:2218–2227, May 29, 2003.

[6a] NEJM, *Editorial: The Right Care*, Stephen Jencks, M.D., Vol. 348:2218–2227, May 29, 2003.

[6b] Modern Healthcare, *The Week in Healthcare, VA Captures Two Awards, Eisenbergs Reward Patient Safety*, Sept. 16, 2002.

inpatient care, based upon the current locations of VA sites of care, to gauge the percentage and number of veterans who are within travel time guidelines.

• *Collaborations*—CARES identified opportunities to jointly meet VBA, NCA and DoD needs for space, and the information regarding potential collaborations will be integrated into future assessments of space needs at VHA delivery sites.

CARES Strategic Emphasis

The VA health care delivery system of the future requires a capital investment strategy, which is based upon a systematic assessment of the future needs of veterans and the present location and condition of the physical plant that delivers these services to veterans. Because of the dynamic nature of health care delivery in the 21st century, VA's planning tools must be flexible enough to accommodate changes in the projected veterans' health care needs, in medical technology, and in departmental policy. Thus, the National CARES Plan must be seen as a beginning, linked to redesigned strategic planning and a capital asset prioritization process.

Balancing the System

Outpatient Care

The National CARES Plan must ensure that VA is a balanced health care system that has adequate acute inpatient capacity to meet the acute care needs of an aging veteran enrollee population. The inpatient-oriented approach of the 1980's has been replaced by a system with a strong outpatient orientation, as demonstrated by expansion to more than 600 Community Based Outpatient Clinics (CBOCs), and an increase of 14.5 million annual outpatient visits from 1997 through 2002. A "snapshot" picture of the result may be seen in the fact that, in 2001, VA provided accessible primary care to 67% of enrollees who live within 30 minutes driving time of a primary care delivery site.

The CARES forecasting model projected continued growth in outpatient care, and VISN market plans proposed 234 CBOCs to meet that strategic need. In order to achieve a functional balance between acute care and outpatient services, the National CARES Plan recognized a fundamental tenet of modern health care—*i.e.*, that outpatient demand must be supported by a viable acute and tertiary care component. Achieving this balance is particularly important to VA with respect to the acute and rehabilitation needs of special disability populations such as veterans with spinal cord injury, blindness, and traumatic brain injury.

The National CARES Plan reinforced VA's strategy of ensuring that continued growth in outpatient care would be supported by a high quality, appropriately sized and appropriately located acute care inpatient system. In order to move in the direction of a more balanced system, the National CARES Plan identified the capital requirements needed to expand to meet the growing forecasted demand for outpatient services. Improvements in access to outpatient care (which experience indicates will increase demand) must be balanced against strengthening the inpatient acute infrastructure in order to provide high quality services across the continuum of care.

The investment strategy for outpatient access sites is described in greater detail in Chapter 4. The Draft National CARES Plan proposed a system-wide consideration of potential new access points or CBOCs and a selective process for identifying markets in the plan with new CBOC access sites to be prioritized for early implementation. The highest priority markets are those having predictions of large future demand gaps (by clinic visits), co-existing with large access gaps (by driving time), and also where the number of enrollees per proposed CBOC that fell outside access guidelines met efficiency standards (developed in the review process—*i.e.*, greater than 7,000 enrollees). The second priority group is comprised of markets where large demand gaps co-exist with large access gaps, but the number of enrollees would not meet efficiency standards. The third group consists of CBOCs proposed in markets where there are demand gaps but not access gaps.

The highest priority group also includes CBOCs that are part of the realignment proposals and DoD collaborations. Proposed CBOCs identified through the CARES process in the draft National Plan will also go through a well-developed review process prior to any implementation.

Acute Inpatient Care

As a systematic planning process, CARES, with some campus and service realignments exceptions [7], validated that the current size and location of the acute inpatient care infrastructure will be to meet the future inpatient needs of veterans. The process forecasted that the future demand for acute beds would be largely in balance with current capabilities. Nevertheless, CARES also demonstrated that substantial investment of capital is required to maintain that acute infrastructure to meet the current and future specialized acute and tertiary needs of veterans.

Realignments/Efficient Utilization of Campuses for Veterans Services

The dramatic changes in health care delivery within the United States and the VA include improved methods of treating patients that have reduced lengths of stay and admissions as outpatient, community and home care replace inpatient care. As a result, many campuses have vacant space that is costly to maintain as described elsewhere in the plan. These changes, combined with an aged infrastructure (50.4 years average age of VA facilities) resulted in opportunities for reviewing the structure of our campuses to develop a more efficient footprint, possibly transfer services to other campuses and find opportunities to enhance use lease all or portions of campuses with services for veterans such as assisted living facilities. Revenues from these enhanced uses would be retained by the VISNs to invest in improved services for veterans.

Use of the National CARES Plan

Perhaps the most important use of the CARES Plan is a publicly available assessment of capital needs, based on assumptions, policies and methodologies that are open to discussion, systematic improvement, and change over time.

In a system as large as the VA, conducting a comprehensive assessment of current and future capital requirements poses an inherent risk of creating an unmanageable pool of funding requirements. However, a comprehensive assessment is necessary to determine the magnitude of the funding required to fully prepare for the future. While CARES included a comprehensive capital needs assessment of VA's acute infrastructure and existing outpatient sites, the plan recognizes that specific priorities and availability of funds will determine what is ultimately implemented. Of significance in the present context, the National CARES Plan should be viewed as not merely a set of stand-alone funding requirements, but rather as a strategic guide to the future investment of capital, intended to:

• Establish the need for capital requirements, similar to a Certificate of Need in state health care regulatory programs, which—in the case of CARES—reflect the priorities of the Under Secretary for Health and the Secretary of Veterans Affairs;

[7] Described in subsequent chapters (see especially Chapters 8 and 9).

- Identify realignments of services and campuses that will improve quality and efficiency;
- Provide a 5-year estimate of the capital required to meet all the needs identified; and
- Identify collaborations within VA and with DoD that will result in more efficient use of capital resources.

The Economics of CARES

CARES is a systematic process for determining the resources required to meet expected demand for VHA services over the next 20 years. The National CARES Plan reflects thousands of micro decisions made regarding how each VISN would address gaps in forecasted supply and demand for the CARES categories of health care services. Based upon the CARES forecasting planning model and using the computerized Market Planning Template [8], VISNs were able to develop planning scenarios and methodically determine costs of alternatives to manage workload changes or maintain current capacity as determined by the workload forecasts. Decisions whether to renovate, lease, build, or contract were facilitated for all CARES planning categories by using the Market Planning Template.

The CARES process required assessment of the quality of all existing space in use within the VHA—a monumental task in itself. The decisions (and costs) for acquiring additional space vs. renovating existing space were analyzed with the operating costs necessary to meet future patient services.

The use of standardized methods allowed many cost alternatives to be assessed in determining how to meet future demands. For example, the costs of contracts could be compared with using in-house resources. In addition, initial estimates of future revenues expected from enhanced use and other revenue generating solutions were identified.

Thus, CARES is multifaceted and no single dollar figure can be placed on all aspects of the process. Depending upon the specific financial aspect being considered, there are several ways of viewing the economics of CARES, as illustrated by the following observations:

Cost Minimization

A distinguishing characteristic of the proposals to address predicated gaps in clinical capacity and of any capital proposal valued at more than $2,000,000 dollars was that VISNs were required to consider alternative solutions. Comparative costs between ways to manage workload forecasts received strong consideration in selecting the preferred solution. However, other CARES criteria such as quality, and potential impact on DoD sharing and academic affiliations also were considered. In the Draft National CARES Plan, the lower cost alternative was selected in nearly 60% of all planning solutions. Improvements in the costing model may increase this percentage when the final National CARES Plan is completed.

Budget

A summary of budget implications of meeting capital costs for the expected workload demand projected in CARES is presented below. The estimates do not include any of the costs, savings, and revenue estimate from the realignment and consolidation of services discussed in Chapters 8 and 9 (Small Facilities and Realignment), except where they were part of the VISN proposed market plans and were included in the market plan template. In most cases, the estimated costs and savings were not included, but will be further developed prior to and during implementation.

Table 1.1 shows the current dollar cost estimates for the five-year budget cycle. These costs include all CARES categories except Research and Other Space. While all the costs represented in Table 1.1 must be refined through specific project applications and further costing to include capital costs and savings from realignments, they do provide an estimate of the magnitude of investment required to maintain and prepare the VHA capital infrastructure for the future.

TABLE 1.1.—ESTIMATED 5-YEAR CAPITAL BUDGET (IN CURRENT DOLLARS) FY 2004–FY 2008

Fiscal year	2004	2005	2006	2007	2008
Capital Estimates*	$921,356,849	$824,137,915	$743,161,421	$652,717,033	$455,889,005
Efficiency Savings Estimates**	157,137,865	202,516,767	233,910,786	241,083,813	287,966,010
Revenue Estimates***	27,955,741	31,930,287	65,059,026	68,245,255	70,579,766
Total Cost Estimates	736,263,243	589,690,862	444,191,609	343,387,966	97,343,228

* *Capital Investment Costs* include all proposed construction, demolition and build-out costs for new leases. The capital estimates do not include recurring lease costs. They do not yet include capital costs of savings associated with the realignment or consolidation of services that are in the Draft National CARES Plan but require further cost analysis before inclusion in the final Plan.

** *Efficiency Savings* include such things as savings in utility or maintenance costs from demolishing buildings or consolidation of services. These costs were estimated by VISNs. However, they did not have a standardized way to estimate these savings so this dollar figure is not a comprehensive estimate. These savings will be more fully developed during implementation.

*** *Revenues* were also estimated by the VISNs and are not comprehensive. Examples of revenues include estimates from Enhanced Use Lease initiatives or revenues from the sale of property. These estimates will also be more fully developed during implementation.

All Capital Investments

Capital investments for the 20-year planning period are estimated at $4,655,503,656 (in current dollars) plus $468,555,970 proposed for Research. Capital investment needs and estimates beyond the five-year period used in the budget estimates above are not as reliable as the 5-year budget period due the inherent difficulty of capital planning beyond a 5-year period. Capital Investment needs will be dictated by changing health care delivery practices and changes in technology. Although the amount of space required for future needs can be estimated using the workload projections, other capital needs cannot be identified beyond five years with the same degree of accuracy. The forecasting results will be reconsidered each year in the VHA planning cycle in order to ensure that the capital forecasts reflect changing policy, technology and other dynamics within the health care system.

Vacant/Underutilized Space

- The National CARES Plan would achieve a 42% reduction in vacant/underutilized-space nationally, from 8,571,605 square feet in FY 2001 to 4,934,002 square feet in FY 2022.

[8] Described in Chapter 2.

• Savings from reducing vacant/underutilized space would total over $45 million per year. [Note that the GAO report which estimated a savings of $1 million a day was based on complete campus closures (about 19–20 campuses) and not individual building closures, so it is not comparable to this CARES study.]

• Total demolition costs would amount to $58,796,952.

Service Consolidations (Proximity) and Campus Realignments

Actual savings due to campus realignments, consolidations, downsizing and closures will be assessed in detail during the CARES implementation process. When the proposed realignments and consolidations are approved as strategic directions, final decisions regarding relative savings and costs of the changes will be fully analyzed before the implementation plan is finalized.

Implementation of the National CARES Plan

Implementation of the National CARES Plan will extend over many years. It will be multifaceted, depending upon whether implementation requires additional capital, recurring funding, primarily policy changes and/or realignments that are possible at minimal cost. For example, converting to a Critical Access Hospital [9] is driven more by policy than by resources, whereas meeting the requirements to upgrade the acute capital infrastructures are heavily dependent on budget. Priority mechanisms, either in place or recently revised (such as the Capital Asset Prioritization process), will advance funding proposals from the National CARES Plan on a project-by-project basis.

Extensive development of business plans, clinical service consolidation plans, contracting and other plans will require time to ensure that services are maintained to veterans during the transition period.

The National CARES Plan also proposed additional collaborations within VA—with VBA and NCA—to maximize the use of VA assets. These implementation plans will fall under the "One VA" Initiative managed by the VA. Numerous additional collaborations between VA and DoD sites will ensure the most effective use of federal health care assets and will be integrated within the VA/DoD collaborative mechanisms currently in place.

The community is an important partner in the implementation process. Partnerships with the community, in which community resources can be used to meet VA capital requirements, are proposed in the plan. Community contracts are an effective way to meet changes in demand that warrant investments in capital. They also often bring services closer to veterans, particularly in rural areas. They are particularly encouraged in the context of the demand peak in 2012 and 2013. Innovative approaches to community partnerships will be encouraged for further development during implementation.

Cycles of Improvement

CARES was the first step in VHA's revised strategic planning process. The planning horizon extends to 2022, and the plan is based upon enrollment and utilization forecasts. As in all strategic plans that look into the future based upon assumptions, policies, health care delivery and veteran choices, the planning system must be sufficiently flexible to adapt to a changing health care environment. The forecasts and forecasting methods will be continuously tested and improved by monitoring actual experience. In addition, alternative future scenarios may be created to ensure that investments that are planned remain viable as developments pose new challenges and opportunities. Until fully implemented, all approved CARES proposals will be updated based upon the latest forecasts of veteran enrollee workload.

Chapter 2: The CARES Planning Process

Phased Application Chosen To Facilitate Adjustments

Managing the capital assets of the nation's largest health care system is a complicated prospect by any measure. The CARES mission was to reform this undertaking into an objective process using unprecedented levels of data sophistication, systematic evaluation, and stakeholder involvement, integrated into a comprehensive 20-year look at VA's capital asset needs.

Anticipating that such an innovative methodology would benefit significantly from the ability to make adjustments after an initial trial, VA leaders chose a phased approach to designing and implementing CARES. Phase I was a pilot test of the process conducted by a contractor working with a single VA health care network (VISN 12); in Phase II, the refined CARES process was applied within the remaining 20 VISNs comprising the balance of the VA health care system.

The second, larger effort took place under the guidance of the National CARES Program Office (NCPO), but represented an intensely collaborative effort within the Veterans Health Administration, as well as with the other two VA Administrations, other VA support staff and many other organizations. The staff of the VISNs, in particular, played a key role in the process, and notable contributions were made by VA experts from special disability programs.

Pilot Experience Yields Local Action, Improvements to National Plan

In accordance with OMB guidelines,[10] the CARES process focuses on markets—or distinct veteran population areas. The Phase I pilot identified three market areas: the Chicago area, Wisconsin and the Upper Peninsula of Michigan.

In this initial effort, the contractor [11] developed a data driven, predictive methodology to assess veterans' health care needs in the test market, and then formulated various solutions that could meet those needs. Following a detailed review process, the contractor recommended options to the Secretary of Veterans Affairs. After consulting with stakeholders, the Secretary of Veterans Affairs made a decision to realign capital assets in the VISN 12 market areas.[12] The final results of CARES Phase I were announced in February 2002.

In preparing for CARES Phase II (extension of the refined methodology to all markets within VHA's remaining 20 VISNs), VA leadership decided that VA personnel, rather than contractor staff, would coordinate and carry out the planning process. The conversion from a contracted study in one VISN, to a VA-operated planning process extended to the entire system, went well beyond the scope of the pilot. The extensive revisions of the CARES process included not only substantive data validation issues, such as updating enrollment projections, but also refining utilization projections, creating a standardized costing and workload allocation tool, assessing all space in VHA facilities and developing new projection methods for special disability programs. In effect, CARES Phase II piloted a new process that would be

[9] See Chapter 8, Small Facilities.

[10] *OMB Capital Program Guide*, Version 1.0 (Washington, DC; July 1997).

[11] Booz, Allen Hamilton.

[12] Actions included: consolidation of inpatient activities at two Chicago VA facilities; conversion of Lakeside VA Medical Center to a long-term care facility; expansion of access to VA outpatient facilities in the market.

subsequently integrated into a redesigned strategic planning process.

The challenge of developing a national process while recognizing that health care is delivered through local systems required a new approach that included the following elements:

- Use of national databases and methodologies to determine current and future needs;
- The assessment of all space in VHA for its safety and functionality;
- National definition of the planning initiatives to be addressed by VISNs;
- VISN development of plans that address the planning initiatives;
- Standardized planning support systems and data for plan development and costing to ensure consistent results;
- Policy and tools that supported local and national stakeholder involvement;
- On-site technical support to the VISNs for plan development; and
- Detailed national review process to create a national plan from the VISN plans.

The CARES process was significantly strengthened by NCPO's refined forecasts of future veteran health care needs, based on projected demand data provided by a national actuarial firm, in conjunction with veteran population data from VA's Office of the Actuary. The VISNs used these data and an innovative planning application designed by the VA and developed by IBM[13] to develop solutions to meet those needs.

A notable enhancement in the Phase II planning model was increased commitment to the aggressive, systematic inclusion of stakeholders. The requirement for in-depth communications with vitally interested publics at national, regional and local levels was integral to the process. Multiple modalities and media were designed and used to inform stakeholders about CARES in general and to solicit their comments on potential changes in respective markets in particular.

Nine-Step Planning Model

The enhanced CARES model comprised a nine-step process designed to ensure consistency in the development of CARES Market Plans within each VISN.

Step 1: Identify Market Areas as the Planning Unit for Analysis of Veteran Needs

The VISNs identified market areas based on standardized data for veteran population, enrollment, and market share provided by NCPO. Each network also used local knowledge of their unique transportation networks, natural barriers, existing referral patterns and other considerations to help select their market areas (Appendix C).

Step 2: Conduct Market Analysis of Veteran Health Care Needs

A national actuarial firm—referred to hereinafter as CACI/Milliman[14]—that had developed enrollment, workload and budget projections for VA budget development, under VA direction modified the model to develop standardized forecasts of future enrollees and their utilization of resources from 2002 through 2022 for each market area in all VISNs. Translation of the data into the following VHA CARES Categories facilitated the identification of "gaps" between current VHA services and the level or location of services that will be needed in the future. These were "high level" macro categories that would enable planning to occur at a level of detail adequate for capital needs rather than detailed service-level planning (Appendix L):

Inpatient Medicine
Outpatient Primary Care
Inpatient Surgery
Outpatient Mental Health
Inpatient Psychiatry
Outpatient Specialty Care
Outpatient Ancillary and Diagnostic Care

The CACI/Milliman model also projected workload demand in the following categories, which were not used to identify gaps because private sector benchmark utilization rates were not available to validate results:

Residential Rehabilitation
Intermediate/Nursing Home Care
Spinal Cord Injury
Domiciliary
Blind Rehabilitation

Since the statistical model's data validation on these non-private sector services was not adequate for objective planning, these categories were either removed from the Phase II cycle (*i.e.*, held constant) or, as in the case of Blind Rehabilitation and Spinal Cord Injury, alternative forecasting models were developed outside of the CACI/Milliman model. Teams of VA planners and VHA experts from the concerned special disability programs collaborated to produce these unique projections. (Chapter 7 of this plan details CARES planning for special disability programs.) Data on the current supply and location of VHA health care services was collected for all facilities, markets and VISNs (Appendix O). In most instances, FY 2001 was used as the source year for baseline data. A profile was created for each VISN and made accessible to VHA staff on a web site established as the repository for all CARES data. Baseline data included:

- Space (condition, capacity and current vacant space)
- Workload (FY 2001 bed days of care and clinic stops)
- Unit Costs (facility specific in-house and contract unit costs)
- Special Disability Population Data
- Access Data
- Facility List
- Research Expenditures and Academic Affiliations
- Clinical Inventory
- Potential DoD, VBA and NCA Collaborations
- Enhanced Use Lease Valuations
- Summary of VISN FY 2003/FY 2007 Strategic Plans

Step 3: Identify Planning Initiatives for Each Market Area

Data collected in Step 2 made it possible to directly compare current access and capacity, with quantitative projections of future demand. "Gaps" in service were indicated in any market where actual utilization in FY 2001 was significantly less than utilization projected for FY 2012 and FY 2022.

Such gaps in various market areas formed the basis for the development of "planning initiatives"—essentially a description of the potential future disparity between capacity and need. Since the time horizon was 10 to 20 years in the future, and the longer the future forecast, the greater the uncertainty, only the large capacity gaps, *i.e.*, 25 percent gaps meeting at least minimum volume thresholds, were generally selected.

Planning Initiative Selection Teams were formed, including members from the NCPO, the VISNs, representatives from VA's special disability programs, and the VISN Support Service Center (VSSC). The teams reviewed each overlap or gap in supply and demand data, selecting planning initiatives for each VISN and Market Area based on established criteria for planning

[13] *U.S. Department of Veterans Affairs: Cares Web-Enabled Template*, developed by PricewaterhouseCoopers (PwC), under contract to IBM Corp. Process is fully explained and documented in References Section.

[14] Primary contractor on the project evolved from Condor Technology Solutions, to CACI Inc., to Milliman USA, Inc.; for purposes of this plan, referred to as "CACI/Milliman'

remedial action.[15] Planning Initiatives were identified in the following areas:

Access to Health Care Services
Outpatient Capacity (Primary Care, Specialty Care, Mental Health)
Inpatient Capacity (Medicine, Surgery, Psychiatry)
Special Disabilities (Blind Rehabilitation, Spinal Cord Injuries and Disorders)
Small Facilities
Consolidations and Realignments (Proximity)
Vacant Space
Collaborative Opportunities (DoD, VBA, NCA)

In addition to the Planning Initiatives, all workload changes that resulted in gaps between predicted demand and current supply were required to be managed in the market plans. Workload had to be managed (*i.e.*, accounted for in the plan with a determination of where and how services would be provided) at the market or VISN level. Options for managing workload included in-house provision of services or by contracting, sharing, or other arrangements. The requirement to manage all projected workload was a significant addition to the planning process, which was included in order to assure that all space needs were addressed in the National CARES Plan. Final planning initiatives are summarized in Appendices D through G.

Step 4: Develop Market Plans To Address Planning Initiatives and All Space Requirements

The selected planning initiatives formed the key elements of the VISN CARES Market Plans. All VISNs developed market plans, which included a description of the preferred solution selected by the VISN for all planning initiatives identified in every market as well as potential solutions considered to address each planning initiative.

VISN planning teams were expected to identify alternative solutions for their plan development process. In proposing these various alternative solutions, VISN planners were required to assemble specific supportive data, which were entered into the IBM-developed market-planning tool. The standardized algorithms in the market planning tool assured a consistent methodology for analyzing each solution's impact on workload, space and cost, as well as other CARES criteria such as quality, access, community impact, staffing and others. Since all space planning is relational and requires a comprehensive solution, all workload gaps were accounted for in the VISN plans. The allocation of expected workload demand and space needs were resolved in addition to the planning initiative gaps.

Thus, all VISNs used the same criteria and planning tool (using local operating and capital costs) to determine the relative merits of meeting future demand via contract, renovation of available space, new construction, sharing/joint ventures/enhanced use or acquiring new sites of care. VISNs briefed stakeholders on their planning initiatives, and presented their proposed solutions. Comments and other feedback from stakeholders were duly noted for incorporation into the planning process.

Step 5: VACO Review and Evaluation: Developing the Draft National CARES Plan

The VISN plans served as input to the development of the Draft National CARES Plan. The Draft National CARES Plan is not a compilation of individual VISN plans. It represents a comprehensive series of national decisions made after reviewing the individual VISN Market Plans. Each VISN CARES Market Plan was subjected to extensive review by three review groups before ultimately being considered by the Under Secretary for Health for inclusion in the Draft National CARES Plan. These review organizations were the NCPO-organized field and headquarters review teams, the Clinical CARES Advisory Group (CCAG) and the CARES Strategic Resource Group (also known as the "One VA Committee.") The clinical experts (CCAG) provided the most rigorous review and comments on issues with medical and other direct care (including mission-related) implications, while the Strategic Resource Group took a more generalized management approach, looking especially closely at matters concerning collaboration with other departments or administrations.

The NCPO performed a comprehensive and intensive review, assembling review groups to look at similar types of planning initiatives from all VISNs, assuring a structured assessment that was consistent across the VA system as well as an overall assessment of whether the individual solutions within a market added up to a sensible market plan. In many instances, VISNs accepted recommendations from these review groups to change initially proposed solutions to planning initiatives; in all instances, the feedback from the review groups became part of the record included with the VISN CARES Market Plans.

The next stop for each VISN CARES Market Plan was the Under Secretary for Health, who reviewed them and accompanying comments from the diverse review groups and stakeholders. As a result of the Under Secretary for Health's review of the adequacy of the market plans, VISNs were required to review the potential realignment of specific facilities/campuses and to consider the feasibility of conversion from a 24-hour/7day-per-week operations to an 8-hour/40-hour-per-week type of operation. The rationale for the requested review was to fully assess the potential to consolidate space and improve the cost effectiveness and quality of VA's health care delivery. The guidance included the continuation of all services to veterans as part of the realignment review. The results of this initiative were incorporated into the draft National CARES Plan.

The product of the Under Secretary's review process and policy decisions formed the draft National CARES Plan. Executive summaries of the VISN plans as amended by the National CARES Plan are included as Appendix A.

Step 6: Independent Commission Review

The Secretary of Veterans Affairs appointed an independent CARES Commission comprised of knowledgeable, well-respected executives from outside VA, to review and recommend action on the draft National CARES Plan.

The Under Secretary for Health delivered the draft National CARES Plan to the Secretary of Veteran Affairs, who then transmitted the draft National CARES Plan to the CARES Commission for review. The Under Secretary for Health published the plan in the **Federal Register**, and made a copy of the plan and all appendices available on the CARES website, making this information available to the general public. The Commission will conduct public hearings within each VISN to obtain direct stakeholder feedback on the National CARES Plan.

The publication date in the **Federal Register** for the Draft National CARES Plan officially begins a 60-day public comment period, during which interested parties may submit their views in writing to the Commission, addressed to: The CARES Commission, 810 Vermont Ave., NW, Wash., DC 20420.

The Commission is expected to carefully consider the views and concerns of all stakeholders, including veterans service organizations, medical

[15] Planning Selection Criteria can be found in the Reference Section.

school affiliates, local community groups and government entities.

At the conclusion of the public comment period, after considering these final contributions of views, and having thoroughly considered the draft plan and all relevant commentary and documentation, the CARES Commission will accept, reject or modify the draft National CARES Plan and make final recommendations to the Secretary.

Step 7: Secretary of Veterans Affairs Decision

The Secretary of Veterans Affairs will consider the Commission's recommendations and supporting comments regarding the Draft National CARES Plan, and make a determination to accept, reject or ask the Commission to consider additional information prior to his final decision.

Step 8: Implementation

VISNs will prepare detailed implementation plans for their CARES Market Plans, as directed by the Under Secretary for Health. The implementation plans will subsequently be submitted to the Under Secretary for approval. Approved market plans will be used by VISNs to develop capital proposals that will be selected for funding through a capital prioritization process that is linked to the CARES process and to subsequent strategic planning cycles.

Step 9: Integration Into Strategic Planning Process

As VISNs proceed with the implementation of their CARES Market Plans, the planning initiatives and proposed solutions will be refined and incorporated into the annual VHA strategic planning cycle. The integration of capital assets and strategic planning will ensure that programmatic and capital implementation proposals are integrated into current VHA strategic planning and resource allocation. The alignment of policy assumptions and strategic objectives will thus focus an integrated planning process.

Chapter 3: Stakeholder Involvement and Communications

Building Stakeholder Support

Veteran patients and the medical practitioners who care for them lie at the heart of the VA health care system, surrounded and supported by a "body" of other publics integrally affected by developments in the system.

As noted in the introduction of the CARES plan, these publics are termed "stakeholders" in the CARES process—a designation reflecting that they collectively hold a place of preeminent importance in the realm of veteran health care. Example stakeholders are veterans organizations, VA employees, academic affiliates, Department of Defense sharing partners, and the congressional delegations that represent all the other publics.

In a report to the Secretary of Veterans Affairs and in congressional testimony regarding capital assets planning, GAO concluded that stakeholders have not always had an appropriate role in dealing with VA capital assets. According to GAO, stakeholders should be involved in an active advisory role in developing procedures, criteria, etc., for CARES. Their inclusion and involvement not only facilitates receiving valuable perspectives from stakeholders, GAO stated, but also, in the process, enhances understanding of and builds support for the CARES process.[16]

Stakeholder Involvement Implicit in the Process

Recognizing the value of stakeholder advice, CARES designers made it implicit in the process to engage the widest possible range of stakeholders from beginning to end. When the program was first publicly announced, VA stated the firm commitment that it would include a coordinated communication effort to provide timely, accurate and consistent information about the purpose and process of CARES. This chapter of the plan documents the manner in which that commitment was honored.

As VA prepared to launch Phase II of the process, the Secretary of Veterans Affairs, Deputy Secretary, Under Secretary for Health and other key VA leaders thoroughly discussed CARES in congressional testimony and during speeches and briefings presented across the country. Additionally, VA leaders talked to the media extensively about the process during numerous print and broadcast interviews. The Associated Press and New York Times published stories about CARES that were rerun across the country, spurring localized stories in many smaller papers and media outlets. Both the Secretary and Deputy Secretary participated in videotaped presentations on CARES, which were shown at facility-level and regional town hall meetings and other stakeholder forums.

Unprecedented in Public Planning

The National CARES Program Office, the VHA Office of Communications and VA's Office of Congressional and Legislative Affairs collaborated in establishing a CARES communications environment of openness and cooperation. The goals were to:

- Inform primary stakeholders and other interested parties about CARES;
- Promote understanding of the planning data generated in the process; and
- Encourage maximum participation of all stakeholders in terms of not only learning about the process, but also providing advice during the development of methodology, and comments on specific planning initiatives being considered.

One innovative step taken in CARES communications took place over the Internet. Information web sites are routine elements in modern government, so establishment of the high quality, multifaceted CARES site was not unusual.

But the way this site was continuously updated to publish virtually every piece of CARES planning information as soon as it became available was unique. Allowing public access to information at the same instant it was received by national planners and senior officials was new to VA, and may well represent a level of openness unprecedented in public planning.

As the CARES process proceeded, anyone with access to the Internet could find up-to-the-minute information—listed by market and by VISN—on current VA capacity to provide care, projections on future needs, areas where planners identified service "overlaps" or "gaps," and possible solutions to better meet future needs.

National Veterans Organization and Stakeholder Outreach

Veterans Service Organizations (VSOs)

At the beginning of Phase II of CARES, the National VSOs, including the American Legion, Veterans of Foreign Wars, Blinded Veterans Association, Paralyzed Veteran Association and Eastern PVA, Disabled American Veterans, Catholic War Veterans, Vietnam Veterans of America and numerous others, were thoroughly briefed on the process, and they were periodically updated on the program's progress in subsequent meetings.

These meetings, which were attended by CACI/Milliman staff and CARES program officials, involved comprehensive discussions of the primary statistical planning model, as well as other CARES methodologies. The VSOs played a role in numerous changes incorporated into the model and in other enhancements made in the process.

[16] *VA Health Care: VA is Struggling to Address Asset Realignment Challenges*, GAO/HEHS–00–88 (Washington, DC: April 5, 2000), p. 5.

Responding to queries and addressing concerns at the national level, the NCPO held monthly group meetings with VSOs, as well as dozens of individual CARES briefings for VSO leaders. Concerns related to local issues were relayed to CARES Communication Coordinators at the VISN level, who followed up with information or made other appropriate responses. While the NCPO endeavored to conduct vigorous outreach concerning CARES, many key aspects of the communication process were designed in response to discussions held at monthly VSO meetings. Examples included sharing monthly summaries of communications and outreach with VSOs; providing VSOs with real time planning initiative data selection information; and modifying the CARES forecasting contract to explore methodologies that could improve future forecasts of veteran demand for specific services.

The VSOs designated local points-of-contact to interact with VA counterparts (VHA's CARES points-of-contacts), helping to get information to key veteran constituents. Clearly, the National VSOs' assistance with CARES information distribution was critical to a successful communication effort at the local level.

As previously noted, National VSOs were provided with the data used to select the planning initiatives at the same time internal VA teams received the data. Subsequently, they received the planning initiative results to ensure that there was a clear understanding of the process and its results. As each VISN submitted its Market Plan, the NCPO provided copies to the VSOs, soliciting their views and comments.

U.S. Congress

CARES briefings were provided directly to the member, or to key staff, in the offices of 37 Senators and 80 Representatives. In some instances, these briefings were presented directly to the member by the Secretary of Veterans Affairs or the Deputy, or by the NCPO and VA's Office of Congressional and Legislative Affairs. Special emphasis was placed on briefings for the House and Senate Veterans' Affairs Committees. Representatives of national VSOs were present at many of these briefings. Congressional offices were encouraged to access the CARES web site for specific information about their local areas. A complete listing of congressional contacts in Washington, DC and the field is included in the Reference Section.

Affiliates

Following the announcement of the planning initiatives, VA's Office of Academic Affiliations, in conjunction with the NCPO, sent letters to VISN directors and the deans of VA's medical school affiliates encouraging discussion of CARES impact on academic issues. The letters emphasized the importance of timely participation in CARES, noting that some affiliation stakeholders in the Chicago area felt they had missed the opportunity to contribute advice in Phase I of CARES because they came late to the process.

Additionally, NCPO and the Office of Academic Affiliations kept the American Association of Medical Colleges (AAMC) informed and helped prepare an AAMC Presidential Memo for distribution to deans. The CARES process was the subject of briefings at two AAMC meetings.

Appendix M details affiliate outreach efforts conducted by individual VISNs.

Unions

A Memorandum of Understanding between VA and AFGE was developed to establish local union representation on all CARES planning committees. This commitment was honored, and VISN Market Plans were submitted to the union's Partnership Council members. See Appendix M for a description of individual VISN union outreach.

Employees

Extensive efforts were made at both VA Central Office and in the field to keep employees informed and up-to-date on CARES. At the time this Plan was published by the Under Secretary for Health, this was an on-going process.

When CARES was launched in 2002, a brief message announcing the program was printed on the biweekly Pay and Leave Slip delivered to each VA employee. Articles about CARES were published in the VA's national "Vanguard" employee newsletter, and the VA Satellite Telecast, "Newscast to Employees," reported the launching of CARES. Several abbreviated update messages on CARES were transmitted over the intranet systems carrying VA's All Employee Daily Email.

VISN and facility level newsletters reported the birth of CARES and provided periodic updates. In addition, two, all employee Townhall meetings on CARES were held in VACO, and every VA hospital and VISN office held one or more Townhall CARES discussions with employees.

National Communication and Outreach Support

The VHA Office of Communications, in conjunction with the NCPO, worked with 20 VISN CARES Communications Coordinators across the country, disseminating information and answering queries about the process. Information and guidance was provided to the public affairs officers who were responsible for CARES communications at individual VA facilities. VHA Communications produced and distributed more than 40 national products, such as news releases, question and answer sets, fact sheets, videos, posters, brochures, and other products to help VA communicators in the field tell the CARES story in an accurate, thorough and consistent manner.

VHA and the VA's Office of Public Affairs jointly conducted three intensive training conferences on CARES communications, attended by VISN and facility directors and other key VHA field personnel charged with publicizing CARES, answering inquiries about it, etc. More than 300 people attended these two-and-a-half day sessions, learning techniques and sharing expertise to improve outreach and responsiveness to CARES stakeholders. In addition, NCPO sponsored three major conferences and seminars specifically designed to provide CARES information to Central Office employees, veterans service organizations and congressional staff.

Five shorter training sessions for facility-level public affairs officers were held in Dallas, New York, Durham, Boston and Los Angeles. More than 75 of these local VA communicators received a day of training and several products to help them publicize and explain CARES to stakeholders.

VA public affairs specialists discussed CARES outreach techniques in national conference calls, with 70–90 CARES Communications Coordinators participating every week. The VHA Office of Communications coordinated the calls, and regional staff of VA's Office of Public Affairs contributed ideas and expertise.

Millions of Communications Contacts

Many millions of stakeholders received some information about CARES through general reporting in print and broadcast media, but VA has no precise means of estimating these contacts. Some tangible indicators are, however, available.

VHA produces a monthly report that tracks actual contacts with stakeholders. A compilation of these monthly reports

indicates that more than 6.5 million contacts were directly sent information about CARES or received CARES information in face-to-face meetings.[17] This number of contacts represents the entire gamut of CARES stakeholders, including veterans, employees, union members among VA employees, congressional staff, affiliates, Department of Defense representatives, and members of the public.

Most of the VISNs relied heavily on communication modes, such as briefings, web sites, e-mails and mailings. Overall, of the 6,598,201 total stakeholder contacts, nearly 42 percent were in the form of mail-outs (e-mails, brochures, and newsletters).[18] More than 1.1 million or 16 percent were employee contacts, which accounted for the second largest category. The third largest category, at a little more than 1 million (or 2 percent), was VSO contacts.

Summary of Stakeholder Involvement

A thorough review was conducted of the Stakeholder Narratives that were a part of the VISN CARES Market Plans submitted April 15, 2003. Specifically, the review team looked at whether there was adequate outreach, whether input was solicited and received, and whether the input influenced the Market Plans. A thorough analysis of each market is available in Appendix M.

All VISNs reported extensive and intensive contacts with stakeholders, documenting a wide array of steps taken to apprise these groups of possible future changes in VA health care services. These contacts included both systematic and one-time efforts to solicit concerns and recommendations. Appendix M sets forth details by VISN and market.

A multiplicity of interactions disclosed recurrent concerns relating to such issues as access to care and facility closures from veterans, and job security from employees. See Appendix M for a listing of expressed concerns.

When evaluating all twenty-one (21) VISNs, no major "red flags" were discerned in the context of unanticipated stakeholder concerns. However, in some instances there were indications that VISNs and facilities did not fully address potential mission changes or realignments with stakeholders, preferring instead to wait until more formal decisions were made. These were relatively rare occurrences confined primarily to the Small Facilities and Proximity Planning Initiatives, since most planning initiatives dealt with expansions in outpatient care. In most cases, stakeholders were asked to respond to alternative solutions proposed for these Proximity and Small Facilities Planning Initiatives, and their concerns were described in solutions to those initiatives.

In summary, stakeholder narratives in the VISN CARES Market Plans showed that, across the board, VISNs made a concerted effort to inform their stakeholders of the CARES process, and to obtain and consider input from these stakeholders on controversial planning initiatives.

Chapter 4: Enhancing Access to Health Care Services

Clear and Compelling Purpose: Outpatient Access and Inpatient Capacity

The growth of Community-Based Outpatient Clinics (CBOCs) has improved access to services for veterans. CARES provided a mechanism to measure progress towards its stated goal of "improving quality as measured by access."[19] Complementary to this stated goal was the intention to ensure that the current and future acute care infrastructure is capable of meeting the needs of veterans who access health care services. The CARES process enabled VA to develop a cost effective investment strategy to improve access in selected markets and ensure the availability of the acute care infrastructure.

Measuring Veteran Access to Care

The traditional way of measuring access in VHA was through determining where patients from a given county seek specific types of treatment, such as primary care, inpatient acute care, mental health care and specialized services. Episodes of treatment at all VA facilities in that county were tallied over a three-year period, and the proportional use of each VA facility was determined, *i.e.*, which percent used facility "A" vs. facility "B," etc. Travel time to obtain services was not measured.

As previously noted, the planning focus of the CARES process was the "market," or a distinct veteran population in a defined geographic area. The state-of-the-art methodology used in CARES not only was capable of greater precision in measuring access, but also provided more information to support planning decisions. The CARES approach involved determining the percentage of enrollees living within specific travel times to the nearest, appropriate VHA facility.

The new data allowed access within each market to be scored with regard to two "thresholds:" first, a minimum percentage of enrollees living within a specified travel time to obtain VA primary care; second, notwithstanding the percentage of enrollees living within these travel times, the total number living outside the guidelines could not exceed a specified number. In other words, to qualify as an "access" planning initiative according to the criteria developed for CARES, a market had to first meet a relative standard (percentage living within access guidelines) as well as an absolute standard (a specified number of enrollees living outside access guidelines). Table 4.1 presents the specific criteria.

TABLE H.1.—ACCESS CRITERIA

Type of care	Time criteria (minutes)	Threshold criteria (%)	Number of enrollees outside of guidelines	#PIs
Primary Care	30 Min.—Urban 30 Min.—Rural 60 Min.—Highly Rural	70	Less Than 11,000	27
Acute Hospital	60 Min.—Urban 90 Min.—Rural	65	Less Than 12,000	24

[17] Note: the large numbers are in part due to potential briefing and/or mail-outs to the individuals on multiple occasions. In addition, some media releases were counted as part of the "contacts" submitted by the VISNs and VA facilities. Due to the complex nature of the CARES process and the projection models, multiple briefings and educational sessions were not only desirable and necessary to convey the scope of the enterprise, but also to create "educated publics" who could be more actively involved as stakeholders.

[18] Again, as noted above, some of the contacts were via local media in the form of news coverage. The volume is indicative of the extensive local efforts (see Appendix M) to engage various stakeholder groups in a dialogue on the CARES process and to receive their input into the planning.

[19] VHA Directive 2002–032, June 5, 2002: "Capital Asset Realignment for Enhanced Services (CARES) Program".

TABLE H.1.—ACCESS CRITERIA—Continued

Type of care	Time criteria (minutes)	Threshold criteria (%)	Number of enrollees outside of guidelines	#PIs
Tertiary Care	120 Min.—Highly Rural 240 Min.—Urban 240 Min.—Rural Community Standard—Highly Rural	65	Less Than 12,000	6

(Specific methodology for calculating travel time to VA care can be found in Appendix P; a technical explanation of specific access calculations is contained in the References Section.)

To illustrate the application of these criteria as shown in Table 4.1 above, the first line in the table (dealing with primary care) should be understood to connote the following:

- Column 1: States type of care as Primary, Acute Hospital or Tertiary.
- Column 2 (time criteria) and Column 3 (threshold): taken together, stipulate that at least 70 percent of enrolled veterans living in urban or rural areas of the market should live within the following travel times to a VA primary care facility: for urban and rural areas, 30 minutes; for highly rural areas, 60 minutes.
- Column 4 (number of enrollees): states that there can be no more than specified number of enrollees living outside the time guidelines.
- Column 5 (number of PI's): reports that 27 planning initiatives were proposed to correct "access issues" nationwide for primary care.

An "access issue" was defined in markets that failed to meet both thresholds, *i.e.*, less than the stated percentage of enrollees met the travel time requirement and more than the specified number of enrollees lived outside the travel time guidelines. Following the data analysis and identification of access issues, VA planners developed solutions within each market, for each Access Planning Initiative.

Of the 57 total Access Planning Initiatives, 27 (or 47%) were for primary care, 24 (or 42%) for acute hospital care, and six (or 11%) for tertiary hospital care. (Appendix D contains a listing of access initiatives for each VISN.)

Summary of Access Planning Initiative Solutions

Approaches to resolving access issues fell into the following categories:

Primary Care

- New community-based outpatient sites, either VA-staffed (*i.e.*, "in-house") or via contract
- New Joint VA/DoD ambulatory care clinics

Acute Hospital Care

- Renovation of existing infrastructure to reactivate acute care services
- Referral to other VA facilities that may have augmented capacity
- Contracting with, or leasing space within, community-based non-VA facilities
- Joint ventures or sharing agreements with DoD or affiliated hospitals

Tertiary Care Services

- Contracting with community tertiary care facilities and DoD facilities
- Referrals to VA tertiary facilities that may have augmented capacity

Outpatient Access Investment Strategy

The backlog of acute inpatient capital needs identified in the CARES process has made the improvement of access a complex problem from many perspectives. Increases in new access points historically have generated new users to the VHA health care system beyond forecasted utilization. This new demand for care, if not cautiously approached in the National CARES Plan, could increase acute inpatient needs before a systematic infrastructure improvement process is in place to ensure that the expected new demand can be met in a quality inpatient environment. In addition, the financial requirements for construction or leases of new access sites, as well as for additional operating funds, would compete with the funding requirements for delivering health care services to current and projected veteran enrollees.

An important initial step for CARES was to produce a system-wide assessment of the magnitude of capital and operating needs. The magnitude of the capital backlog, the growth in projected outpatient demand, and the number of access gaps had not been systematically measured prior to the CARES process. In the CARES effort, VISNs proposed to meet these projected increases in outpatient demand through renovation and expansion of existing outpatient delivery sites, and through establishing 161 new CBOCs in markets where there were Access Planning Initiatives. In addition, 73 new CBOCs were proposed in markets where there was not an Access Planning Initiative, but where there were gaps between future projected demand and current capacity.

When the results of the market plans were compiled, it was clear that difficult policy decisions had to be made in order to achieve a balanced growth of outpatient capacity and access, while ensuring the safety and availability of the acute inpatient infrastructure. As a result, the National CARES Plan includes CBOC priority groups that focused the initial growth of CBOCs in markets with large future outpatient gaps (Capacity Planning Initiatives), large access gaps (Access Planning Initiatives) and where the largest number of projected enrollees per new CBOC reflects an efficient allocation of resources.

The following are the priority groups that comprise the CBOC investment strategy in the National CARES Plan:

- Highest priority group (1): Markets that have large future capacity gaps in addition to large access gaps and where the number of enrollees who do not meet access guidelines per CBOC proposed is greater than 7,000 enrollees per CBOC (48 CBOCs). This group includes additional CBOCs that are linked to realignment and five key DoD outpatient collaborations.
- Second priority group (2): Markets that met the same criteria as in highest priority group, but where the numbers of enrollees that do not meet access guidelines are less than 7,000 enrollees per CBOC proposed.
- Third priority group (3): Markets with large demand gaps but where 70% or more enrollees were within access driving time guidelines. Since these markets did not have access planning initiatives a planning target for them is to meet their growth in outpatient demand by expansion at existing sites.

Inpatient Access Investment Strategy

Improvements in inpatient access were considered more critical than improvements in outpatient access, since an acute inpatient episode of care presents a daily burden to a veteran's support system. Many studies have

described the importance of that support system in reducing lengths of stay and improving clinical outcomes. VISN Market Plans often proposed the use of contract care to improve hospital access, a solution that can be more flexible in covering the geography of a market, meeting fluctuations in demand and as a result may be more cost effective than the establishment of VA-owned sites of care. Improving inpatient access while meeting future capacity requirements can be accomplished without creating the kind of competing resource demands noted in the outpatient care situation,

Projected Improvements In Access

Tables 4.2 and Table 4.3 show the improvement in the enrollee population access to care. Table 4.2 contains information on the projected improvements in access percentages and the number of enrollees remaining outside the access guidelines by type at the national level. The primary care access data only includes the impact of the 48 CBOCs in the high priority group. It is important to compare these numbers with the baseline acceptable level, or threshold, which was 70% of enrollees within travel time guidelines for primary care, 65% for hospital and tertiary care.

TABLE 4.2.—PERCENT ENROLLEES WITHIN GUIDELINES AND NUMBER OF ENROLLEES OUTSIDE GUIDELINES BY TYPE: FY 2001–FY 2022

Type	FY 2001		FY 2012		FY 2022	
	Percent enrollees within guideline	Number enrollees outside guidelines	Percent enrollees within guideline	Number enrollees outside guidelines	Percent enrollees within guideline	Number enrollees outside guidelines
Primary Care	74	1,474,354	74	1,554,720	74	1,410,224
Hospital Care	72	1,573,205	82	1,079,649	82	970,448
Tertiary Care	94	318,960	97	179,941	97	161,741

(Compare with baseline thresholds of 70% for primary care, 65% for hospital and tertiary care.)

As indicated in Table 4.2, from a national system perspective, most VA medical facilities are currently within national guidelines for access, since most facilities are located near veteran population centers and because of the growth in the VA of over 600 CBOCs. Current high levels of access are consistent with an investment strategy that ensures the availability of the acute care infrastructure to veterans.

With the implementation of the National CARES Plan, dramatic improvement is projected in acute hospital care access (approximately 600,000 more enrollees within guidelines) and significant improvement is projected in tertiary care access (approximately 150,000 more enrollees within guidelines). While the number of enrollees outside primary care access guidelines increases in FY 2012, it drops slightly below the FY 2001 baseline in FY 2022. The increase in the number of enrollees outside access guidelines in FY 2012 is due to the peak in total enrollment during that time period, although the percentage of total enrollees within access guidelines remains steady at 74 percent.

If the 48 new high priority group CBOCs (in eight additional market areas) were implemented, then, by FY 2012, 79% of all markets (see Table 4.3) would be projected to have achieved the threshold for primary care access. Substantial improvements in hospital access occur as well. Projecting forward to FY 2022, the forecast was that these access improvements would be sustained for primary and tertiary care, and there would be a slight additional improvement for hospital care.

TABLE 4.3.—PERCENTAGE OF MARKET AREAS WITHIN ACCESS GUIDELINES BY TYPE: FY 2001–FY 2022

[73 Market Areas—excludes Puerto Rico]

Type	FY01	FY12	FY22
Primary Care	67	79	79
Hospital Care	86	89	90

TABLE 4.3.—PERCENTAGE OF MARKET AREAS WITHIN ACCESS GUIDELINES BY TYPE: FY 2001–FY 2022—Continued

[73 Market Areas—excludes Puerto Rico]

Type	FY01	FY12	FY22
Tertiary Care	100	100	100

New Primary Care Access Sites

Table 4.4 lists the specific CBOCs included in the highest priority CBOC investment group. These 48 CBOCs are located in markets that have large future capacity gaps in addition to large access gaps and where the number of enrollees who do not meet access guidelines per CBOC proposed is greater than 7,000 enrollees per CBOC. In addition to this list of 48 CBOCs, new primary care access sites that are linked to realignment or key DoD collaborations are also considered in the highest priority CBOC investment group.

TABLE 4.4.—NEW ACCESS SITES IN NATIONAL CARES PLAN

VISN	Market area	Facility parent	Facility name	Planned to open
6	Northeast	Richmond	Charlottesville	2006
6	Northeast	Richmond	Emporia	2005
6	Northeast	Hampton	Norfolk	2005
6	Southwest	Asheville	Franklin	2004
6	Southwest	Salisbury	Greensboro	2007
6	Southwest	Asheville	Hendersonville	2004
6	Southwest	Salisbury	Hickory	2004
6	Southwest	Salisbury	Gastonia	2010
6	Southwest	Asheville	Rutherfordton	2009
7	Alabama	Birmingham	Opelika	2009

TABLE 4.4.—NEW ACCESS SITES IN NATIONAL CARES PLAN—Continued

VISN	Market area	Facility parent	Facility name	Planned to open
7	Alabama	Birmingham	Childersburg	2006
7	Alabama	Birmingham	Guntersville	2008
7	Alabama	Birmingham	Bessemer	2004
7	Alabama	CAVHCS—West Campus	Enterprise	2010
7	Georgia	Augusta	Aiken	2006
7	Georgia	Augusta	Athens	2004
7	Georgia	Dublin	Milledgeville	2009
7	Georgia	Dublin	Brunswick	2008
7	Georgia	Atlanta	Stockbridge	2007
7	Georgia	Atlanta	Newnan	2008
7	Georgia	Dublin	Perry	2005
7	South Carolina	Charleston	Hinesville	2006
7	South Carolina	Columbia (SC)	Spartanburg	2005
8	South Carolina	South Charleston	Summerville	2006
8	North	Gainesville	Camden	2006
8	North	Gainesville	Jackson County	2005
8	North	Gainesville	Putnam	2005
8	North	Gainesville	Summerfield	2006
16	Central Lower	Houston	Conroe	2005
16	Central Lower	Alexandria	Fort Polk	2005
16	Central Lower	Houston	Galveston (Dual Site—Site 1)	2004
16	Central Lower	Houston	Galveston (Dual Site—Site 2)	2004
16	Central Lower	Houston	Katy	2007
16	Central Lower	Alexandria	Lake Charles	2006
16	Central Lower	Houston	Lake Jackson	2009
16	Central Lower	Alexandria	Natchitoches	2006
16	Central Lower	Houston	Richmond	2008
16	Central Lower	Houston	Tomball	2006
16	Eastern Southern	Eastern Southern	Eglin AFB	2004
20	Inland North	Spokane	Central Washington	2006
23	Iowa	Des Moines	Carroll	2006
23	Iowa	Des Moines	Marshalltown	2004
23	Iowa	Iowa City	New Cedar Rapids	2004
23	Iowa	Iowa City	Ottumwa	2006
23	Minnesota	St. Cloud	Alexandria	2005
23	Minnesota	Minneapolis	Elk River	2005
23	Minnesota	Minneapolis	Redwood Falls	2006
23	Minnesota	Minneapolis	Rice Lake	2007

Chapter 5: Enhancing Outpatient Care

Modern Ambulatory Care Approach—A Vital Part of VA's Integrated System of Health Care Delivery

Technological advances (prominently including minimally invasive procedures) and the increasing use of pharmaceutical therapy in lieu of hospitalization launched a dramatic, industry-wide increase in reliance on outpatient services in the 1980s. Fueled by cost economies realized through this more flexible approach, the trend grew rapidly into the 90s, but the VA health care system was not well positioned to benefit from this development.

VA must be prepared to meet the total needs of veteran patients, including acute and tertiary care. Until 1995, archaic statutes required inpatient admissions for care that should have been delivered as outpatient services. Furthermore, changes in VHA's operational culture—with its historic inpatient treatment orientation—were needed before the modern outpatient care model could be adapted to fit the VA system.[20]

In reinventing its health care system in recent years, VA aggressively incorporated the positive features of ambulatory care into updated clinical practice patterns and performance measures (practice guidelines). The commitment to meet the total needs of veteran patients was accommodated through new referral patterns within the integrated VA system.

The success of VA's commitment to provision of services across the full spectrum of care has been thoroughly documented in VA workload statistics: from FY 1996 to FY 2002, inpatient average daily census dropped 53 percent with a concurrent increase in outpatient visits of 54 percent[21]. Moreover, at the end of the period, VA was treating over 1.5 million more veterans each year than it did at the beginning. Many patients also benefited by receiving care in a more convenient setting closer to their homes.

Recognizing the pivotal role which modern ambulatory care now plays in the VA system, the CARES process was designed to ensure (as detailed in this chapter) adequate future capacity in primary, specialty, and mental health care services to meet the projected future demand.

CARES Criteria for Outpatient Capacity Planning Initiatives

Planning initiatives were selected as the most significant gaps in care based upon national criteria applied in each market. Since they represent the most significant gaps, there is a higher degree of confidence that they will survive the inherent uncertainties of forecasts of the future. The new capital prioritization processes that will drive the selection of projects for capital funding include criteria directly related to the size of the gap. It is important to note, however,

[20] "Vision for Change: A Plan to Restructure the Veterans Health Administration," Department of Veterans Affairs, Wash., DC, 1995.

[21] VSSC "KLFMENU" *http://klfmenu.med.va.gov/* Financial Summary.

that VISN-level CARES Market Plans address workload and space solutions for all gaps in all CARES categories regardless of whether or not a planning initiative was identified. Thus, all future workload is addressed in the planning process. Nevertheless, the primary approach was to identify where future "gaps" in service could be expected for each market within each VISN and then develop possible solutions (termed Outpatient Capacity Planning Initiatives) for managing the workload and capital needs in these markets. Capacity gap identification involved comparing current workload data (Base Year of FY 2002) with projections 10 and 20 years into the future (FY 2012 and FY 2022). Threshold Criteria for the three categories of care were established (as shown in Table 5.1) to determine where the "workload gaps" might be considered as Planning Initiatives.

Although data were available for a fourth outpatient CARES category, Ancillary/Diagnostics, the mixed nature of the workload comprising this category (tests and procedures) were too dissimilar for statistical inclusion with the other three, visit-oriented categories. For this reason, planning initiatives were not identified for Ancillary/Diagnostic services.

To illustrate application of the criteria, consider the first line of Table 5.1, which indicates that a gap would exist if two conditions in the primary care category were identified:

- The number of outpatient visits in FY 2012 or FY 2022 is projected to increase more than 25% over the volume in FY 2001; and
- In FY 2012 or FY 2022, projections show a gap of more than 26,000 "stops," or clinic visits, over the number that took place in FY 2001.

Both the size of the workload gap (the margin by which it exceeds the threshold) and whether the gap was forecasted in both FY 2012 and FY 2022 were factors in deciding the priority and magnitude of response that went into the planning initiatives. One hundred forty-three (143) outpatient capacity planning initiatives were identified, all of them in response to gaps projected through increasing workload.

TABLE 5.1.—NUMBER OF PIS IDENTIFIED USING OUTPATIENT GAP THRESHOLD CRITERIA

CARES category	Threshold criteria %change from FY2001	Workload criteria (stops)	# PIs identified
Primary Care	25	26,000	53
Specialty Care	25	30,000	71
Mental Health	25	16,000	19

Outpatient Workload Trends

Workload projections for both the outpatient and the inpatient categories discussed in the next chapter are impacted by projected enrollment trends, by anticipated changes in health care practices, and by new technologies that permit more treatment on an outpatient rather than an inpatient basis. Changes in veteran enrollment are impacted by the aging of current enrollees, influx of new enrollees from active duty status, and reliance on Medicare and other private sector health providers, as shown in Figure 5.1.[22]

Figure 5.1 National CARES Enrollment Projections by Age Group

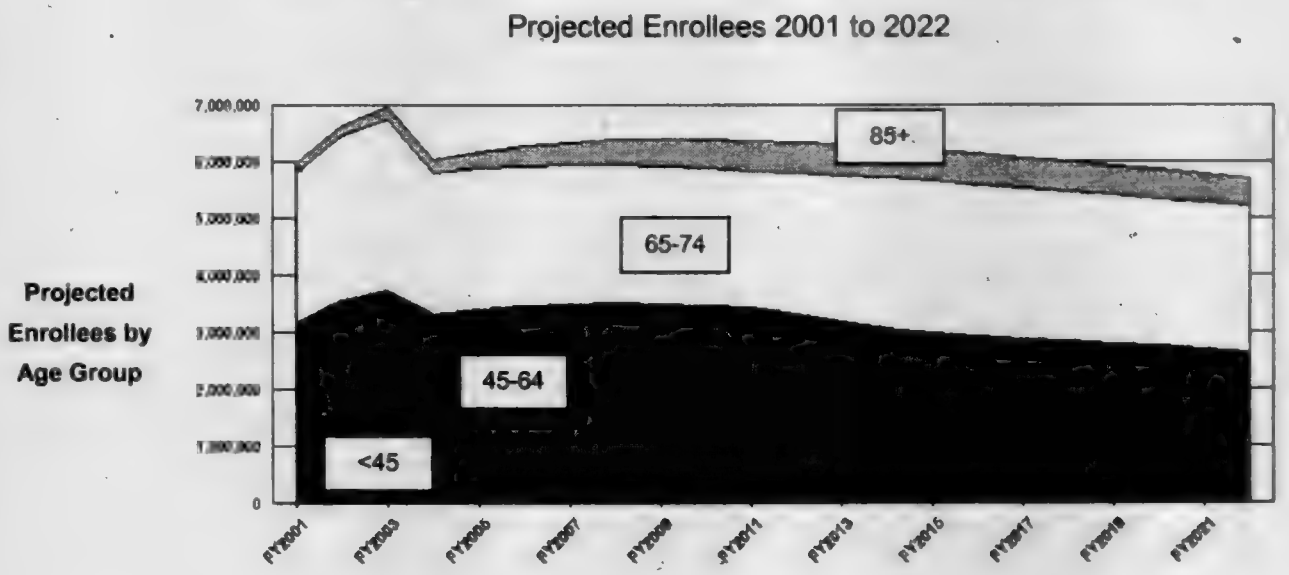

[22] CACI/Milliman Enrollment/Demand Model can be found under References

Figure 5.2 CARES National Outpatient Workload Gaps

Primary Care, Specialty Care and Mental Health

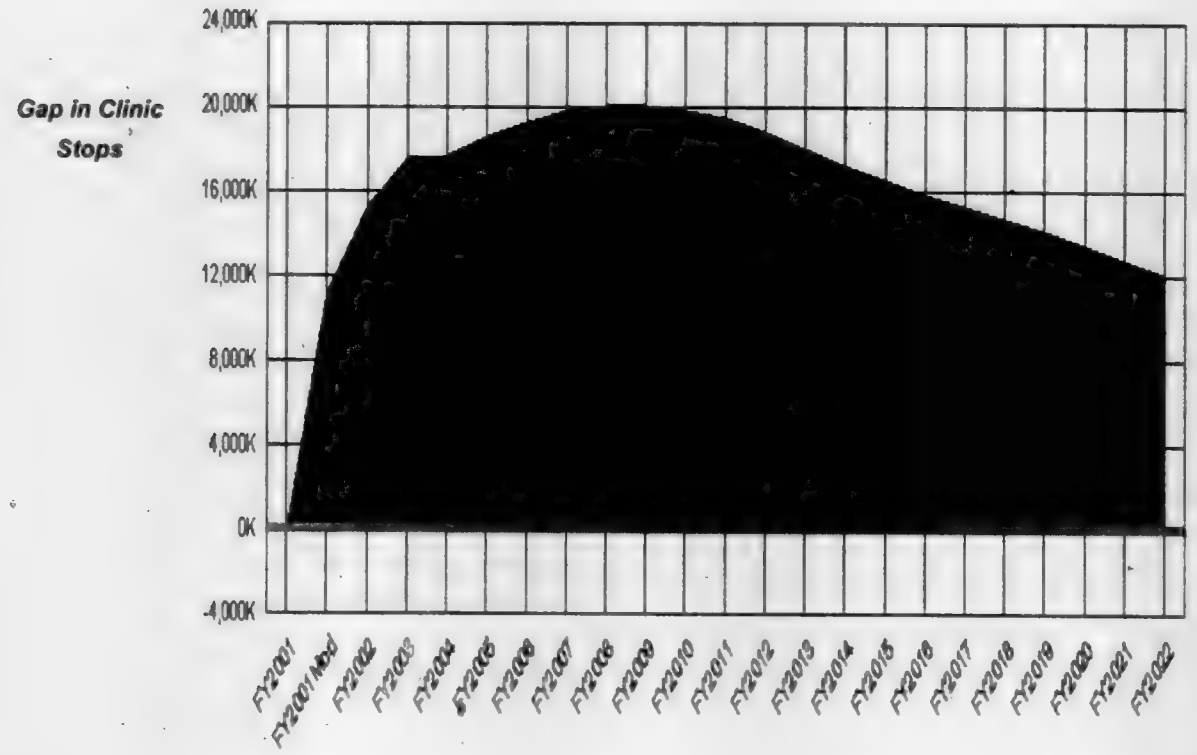

Gaps in Clinic Stops

Figures 5.2 through 5.5 show the variance in outpatient workload (clinic stops) projected for each year through FY 2022 compared with baseline workload (actual FY 2001). This variance between projected workload and baseline workload is referred to as a "gap". The CARES forecasting model projects that outpatient clinic stops will increase significantly from the baseline year through FY 2009 and then will gradually decline as illustrated in Figure 5.2 below. The projected workload in FY 2022, although lower than the peak in FY 2009, will still represent a net increase in workload from FY 2001.

Breaking up this single trend line for a closer look at the three CARES outpatient categories reflects significant differences in projected gaps in each respective area.

Primary Care

Projected national workload gaps, measured in outpatient primary care clinic stops,[23] are shown in the graph below. The most significant gap in workload is projected between the baseline year (FY 2001) and the first year of forecast demand (FY 2002). This initial gap in what VHA actually provided in FY 2001 and what the model forecasts for FY 2002 was due to the CACI/Milliman Demand Model assumptions that supply would be available for all projected veteran demand. The model implied that FY 2001 workload was artificially suppressed due to budgetary, capital or staffing constraints.

The primary care workload gap is projected to grow in future years until an anticipated decrease in enrollment levels (due to declining veteran population) becomes a significant factor around FY 2009 (as shown in Figure 5.3 below).

[23] Appendix L lists the clinic stop codes (subspecialties) associated with each of the Outpatient CARES Categories.

Figure 5.3 Projected Gaps in Primary Care Clinic Stops by Fiscal Year

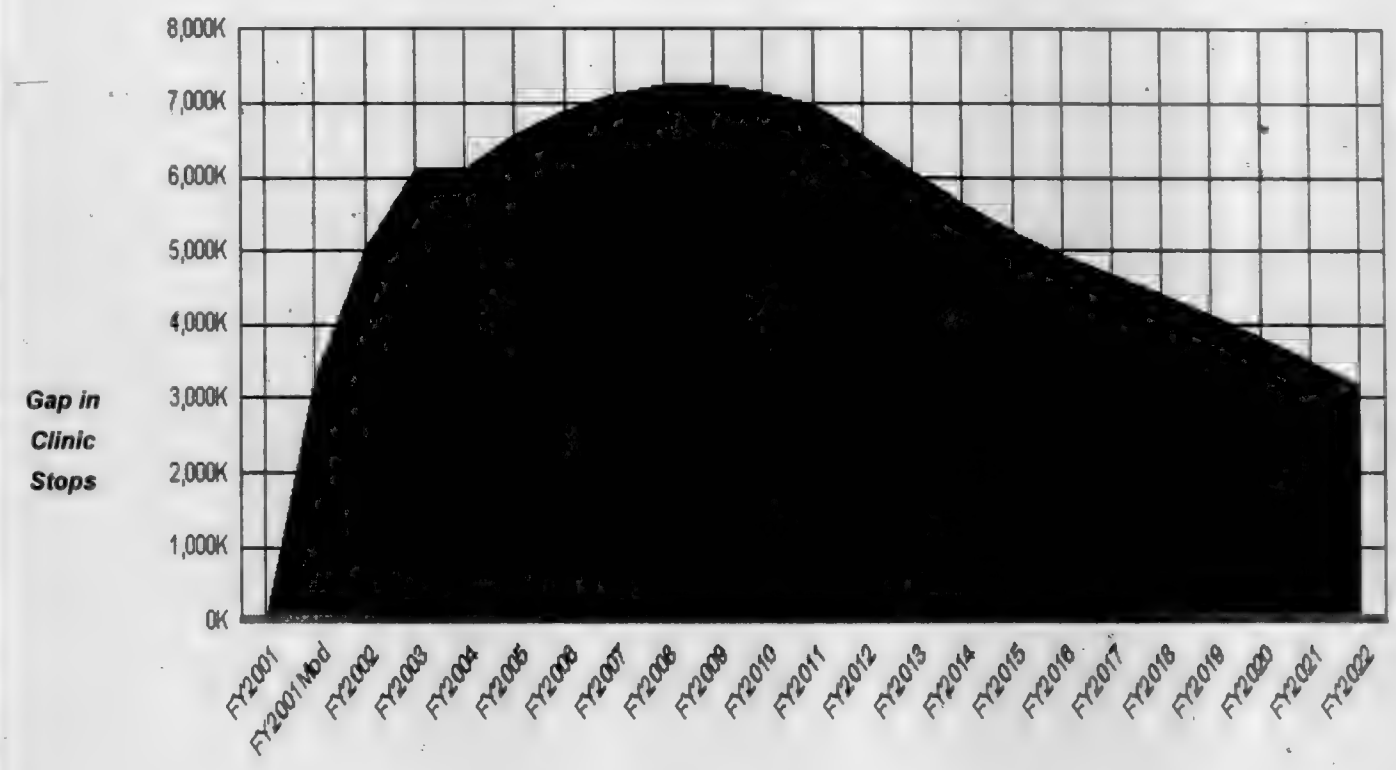

Specialty Care

Projected national workload gaps, measured in outpatient specialty care clinic stops, are shown in the graph below (Figure 5.4). Again, the most significant gap is projected between FY 2001 and the first year of forecasted demand. This forecasted, initial gap is even more pronounced for specialty care (an indication which validates VHA's current focus on reducing waiting times for such sub-specialty services as cardiology, ophthalmology, orthopedics and urology). The projected gap in specialty care workload continues to grow in future years until the anticipated decline in enrollment levels becomes a significant factor in FY 2010.

Figure 5.4 Projected Gaps in Specialty Care Clinic Stops by Fiscal Year

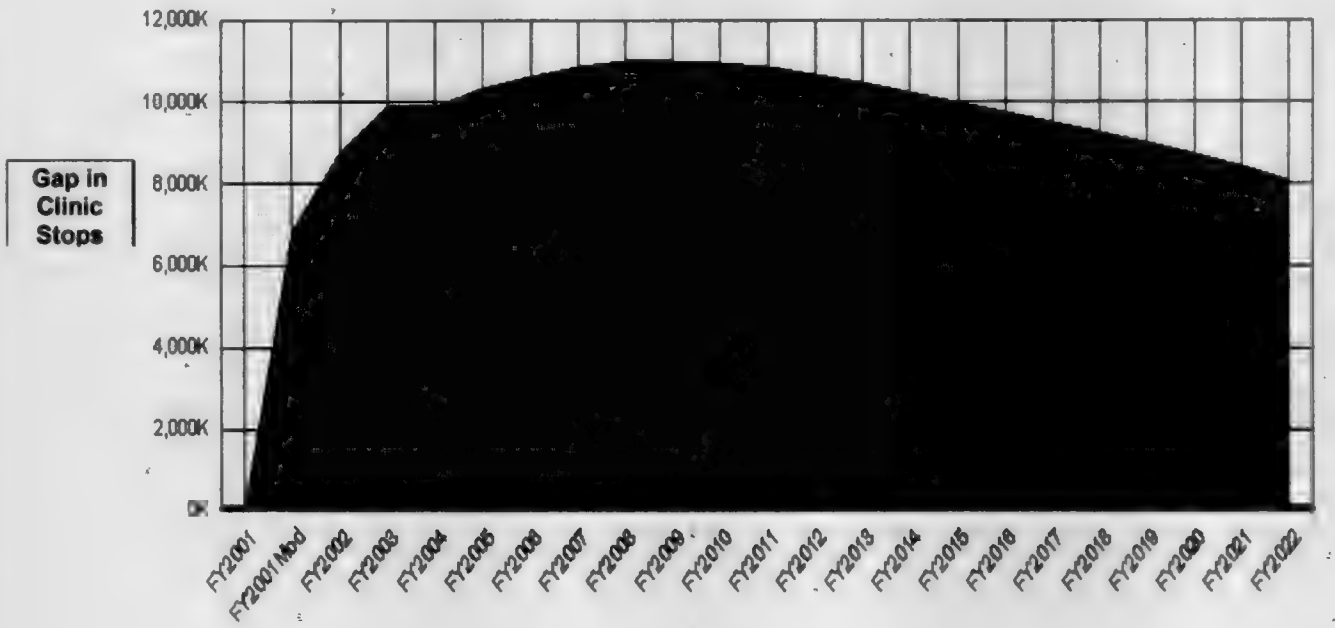

Mental Health

Projected national workload gaps, measured in outpatient mental health clinic stops, are shown in Figure 5.5. Declining enrollment levels and utilization rates of veterans age 65 and older become significant factors in FY 2008.[24]

Figure 5.5 Projected Gaps in Mental Health Care Clinic Stops by Fiscal Year

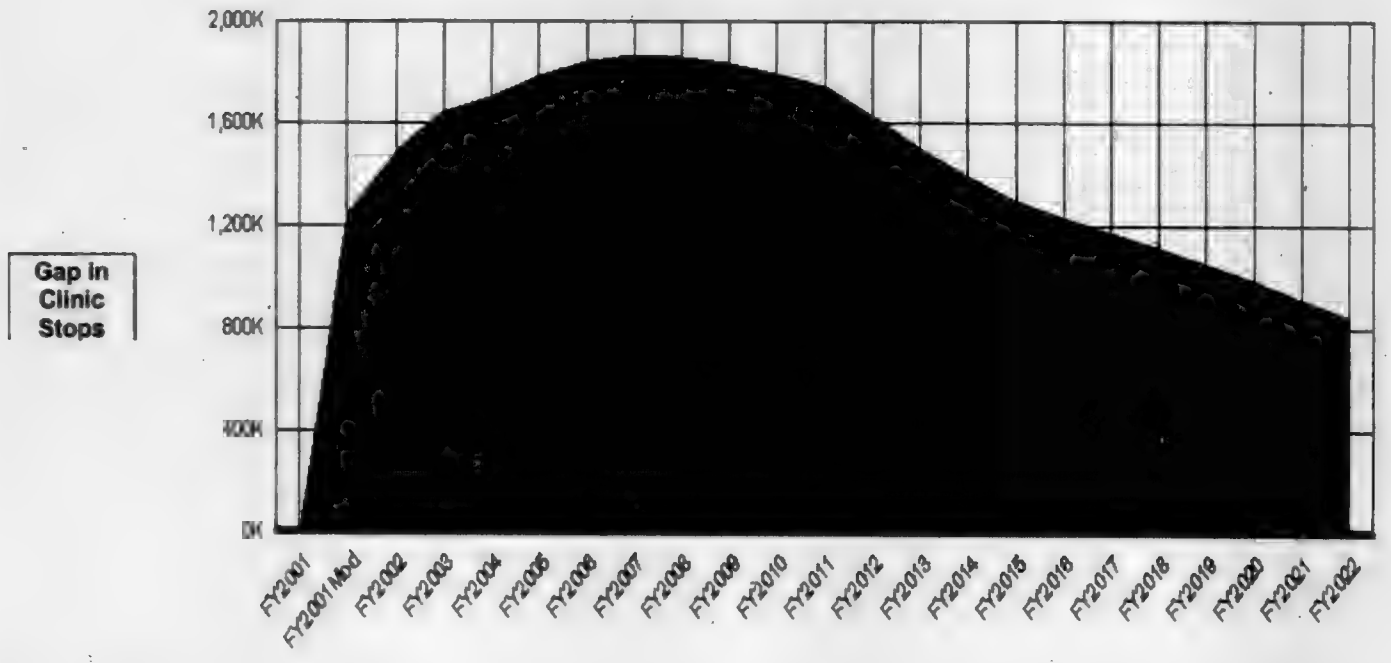

Summary of Outpatient Capacity Solutions

VISN CARES Market Plans identified a variety of options to resolve all projected outpatient workload gaps, including those associated with Outpatient Capacity Planning Initiatives; and manage space requirements at each facility.

Tables 5.2 and 5.3 show how VHA will handle outpatient workload for two snapshots in time, FY 2012 and FY 2022. Outpatient workload units in these tables represent the total number of clinic stops projected for each facility in each VISN, rolled up to the national level. The total number of projected clinic stops in each CARES category was used to estimate the amount of space needed at each facility for each of the planning years. VISNs were required to solve each of their facilities' total space needs in each of the CARES categories. Tables 5.2 and 5.3 focus on outpatient Primary Care, Specialty Care and Mental Health Care solutions for two of the planning years—FY 2012 and FY 2022.

By FY 2022, VHA will handle approximately 85 percent of all outpatient workload in-house. Contracting for outpatient workload is used as a short-term solution to a greater extent in earlier years when workload is at its peak.

TABLE 5.2.—WORKLOAD SOLUTIONS FOR OUTPATIENT CATEGORIES—FY 2012

Workload alternative	Primary care		Specialty care		Mental health	
	Number of clinic stops	Percent of total	Number of clinic stops	Percent of total	Number of clinic stops	Percent of total
Contract	2,959,588	14.3	3,835,207	17.2	1,214,262	12.0
Joint Venture	44,450	0.2	203,608	0.9	22,200	0.2
In-Sharing	88,860	0.4	66,518	0.3	442	0.0
Sell	0	0.0	640	0.0	530	0.0
In-house	17,547,286	85.1	18,135,140	81.6	8,851,592	87.8
Total Demand	20,640,184		22,241,113		10,089,026	

[24] **Note:** The Mental Health outpatient projection methodology is being reviewed and is under revision. The projections shown in Figure 5.5 are probably underestimates of the demand for services. The forecasts will be updated for the next Fiscal Year strategic planning cycle.

TABLE 5.3.—WORKLOAD SOLUTIONS FOR OUTPATIENT CATEGORIES—FY 2022

Workload alternative	Primary care		Specialty care		Mental health	
	Number of clinic stops	Percent of total	Number of clinic stops	Percent of total	Number of clinic stops	Percent of total
Contract	2,175,508	12.5	3,056,393	15.4	957,536	10.3
Joint Venture	41,450	0.2	200,950	1.0	24,200	0.3
In-Sharing	88,860	0.5	66,518	0.3	442	0.0
Sell	0	0.0	640	0.0	530	0.0
In-house	15,089,305	86.8	16,470,253	83.3	8,336,124	89.4
Total Demand	17,395,123		19,794,754		9,318,832	

Table 5.4 presents outpatient space solutions for all planning years combined—through FY 2022. A combination of solutions are planned to resolve space requirements in order to meet future outpatient workload demand. Primary care solutions rely more heavily on the use of leased space as part of providing appropriate access and space within markets.

TABLE 5.4.—SPACE SOLUTIONS FOR OUTPATIENT CATEGORIES—CUMULATIVE THROUGH 2022

Space alternative	Primary care		Specialty care		Mental health	
	Square feet	% total	Square feet	% total	Square feet	% total
Existing-Non Renovated	4,867,243	48.1	8,583,918	42.7	3,260,328	56.8
Renovate Existing	984,836	9.7	1,299,938	6.5	540,547	9.4
Convert Vacant	363,183	3.6	1,324,502	6.6	284,919	5.0
New Construction	1,064,626	10.5	4,776,324	23.7	658,975	11.5
Donate	56,785	0.6	128,554	0.6	22,520	0.3
Lease	2,745,428	27.1	3,768,876	18.7	973,200	17.0
Enhanced Use	45,500	0.4	240,000	1.2	0	0.0
Total Space Proposed	10,127,601		20,122,112		5,740,489	

A salient feature of this multifaceted approach to acquiring needed space is flexibility. Varied approaches of this nature can be helpful in working around unexpected delays, further assuring that the VA health care system will have adequate capacity in critically important ambulatory services.

National CARES Plan

The National CARES Plan, developed from the VISN CARES Market Plans, focuses on improvements to existing outpatient delivery sites. The focus is part of the overall National CARES Plan strategic direction for maintaining VHA's current infrastructure. Existing VHA sites and their capital requirements are included in the National CARES Plan without any priority groupings. Priority setting will occur during project-specific decisions. Reflecting a perceived need to structure new CBOCs into priority groups prior to implementation, VHA decided to group the proposed new outpatient access sites (CBOCs) into 3 priority levels, as described in detail in Chapter 4.[25] Priority groupings will enable VHA to carefully phase-in new CBOC growth so that a balanced expansion of outpatient capacity at existing and new sites can be achieved.

Chapter 6: Ensuring Inpatient Capacity

Inpatient Services Redefined: Reduced Capacity, Refined Expectations

With the increased reliance on ambulatory services noted in the preceding chapter, the role of VA inpatient facilities has not diminished, but rather has become more precisely defined. In the VA system, that role is to serve as the vital referral junction for acute and tertiary care, as well as a point of convergence for other health care services not available in ambulatory care facilities.

Background on Changing Inpatient Environment

The dramatic shift from inpatient to outpatient care in the VA system over the past few years was briefly described in the previous chapter of this plan. Several salient features of the concomitant changes VA has experienced in inpatient hospital care are discussed below.

The transition was begun in a gradual fashion when, between 1969 and 1994, there was a 56 percent decline in average daily census (ADC) from 91,878 to 39,953, respectively.[26] Overall, VA beds declined by about 50,000 over this 25-year period. Between 1995 and 2002, there was a further drop and even more striking shift to outpatient health care delivery. During this seven-year period, there was a drop in the ADC of about 60 percent to 14,925.[27] Acute operating beds fell by 63 percent (from about 52,000 in 1994 to about 19,000 in 2002). The period of most rapid decline in bed utilization and numbers of beds was 1997 to 1998. After 1998, the average occupancy rate started to rise to a high of 80 percent in 1999 (in 2002, about 75 percent compared to 71 percent in 1994). In addition, strengthening of primary care services, such as home care, case management, telemedicine, and patient self-help instruction has reduced the number of medicine bed days of care.

The changes from inpatient to outpatient care have also been coupled with and, to a large extent made possible by, rapid advances in medical technology, which require on-going

[25] Table 4.4, Chapter 4, lists the new access sites included in the draft National CARES Plan.

[26] GAO/HEHS–95–121, VA Health Care: Opportunities for Service Delivery Efficiencies [* * *]

[27] From the VA's KLF Menu Database.

investment in imaging equipment.[28] Applications include cardiac catheterization, invasive radiology (including angiography), sophisticated scanning (CT, MRI, and PET), and micro-vascular and minimally invasive surgical techniques that are highly dependent upon the use of expensive imaging equipment. Atypical anti-psychotics, second-generation anti-depressants, and better case management have decreased the need for hospitalization of mentally ill veterans. The focus on patient safety and outcomes in acute care settings and the volume-quality relationship are discussed further in Chapter 8, Small Facilities. Furthermore, a recent study conducted by the VA emphasized the need for early referral and intervention in patients with acute cardiovascular events.[29] Conclusions of recent medical literature underscore the need to consolidate volume-dependent procedures in tertiary care hospitals and to refer patients with complex medical conditions (*e.g.*, requiring ICU care) as early as possible. The appropriate functioning of VA hospitals as a part of a health care delivery network (rather than stand-alone, full-service hospitals) is critical to the provision of the highest quality of care for our veteran patients.

Referral Patterns More Important Than Ever

In view of the dramatic increase of patients who have gained access to VA health care through the greatly expanded number of community based clinics, it is clearly more important than ever to have dependable referral patterns to robust inpatient services. In this context, the CARES process examined the size, placement and configuration of existing inpatient services. Inpatient capacity was compared to future projections to identify markets that could expect significant future increases and/or decreases in inpatient medicine, surgery, and psychiatry services. The process then proceeded to develop possible solutions for managing the inpatient workload and capital needs in markets with capacity gaps.

CARES Criteria for Inpatient Capacity Planning Initiatives

Planning initiatives represent the most significant gaps in care on a national basis and will be a priority focus during the implementation phase of CARES. It is important to note, however, that CARES Market Plans address workload and space solutions for all gaps in all CARES categories regardless of whether a planning initiative was identified.

Inpatient Capacity Planning Initiatives were identified for each market of each VISN for workload gaps that met threshold criteria listed in Table 6.1. Both the size of the workload gap and whether the gap remained in both FY 2012 and FY 2022 were factors in identifying a planning initiative. The gap had to involve at least +/-20 projected inpatient beds or represent a 25 percent change from FY 2001 to be considered for identification as a PI. Gaps that met these criteria in both FY 2012 and FY 2022 were considered more significant than those meeting the criteria in one year only. Of the 60 Inpatient Planning Initiatives identified, 37 represented gaps due to increasing workload and 23 represented gaps due to decreasing workload.

TABLE 6.1.—INPATIENT GAP THRESHOLD CRITERIA

CARES category	Threshold criteria % change from FY 2001	Workload criteria (beds)	# PIs with increasing demand	# PIs with decreasing demand
Medicine	25	±20	23	11
Surgery	25	±20	3	5
Psychiatry	25	±20	11	7

Inpatient Workload Trends

Gaps in Inpatient Beds

Figures 6.1 through 6.4 show the variance in inpatient workload (beds) projected for each year through FY 2022 compared with baseline workload (actual FY 2001). This variance between projected workload and baseline workload is referred to as a "gap". Beds were estimated by using projected "bed days of care" from the CACI/Milliman demand model.[29a]

As with outpatient care, the trend line for each category is impacted by the enrollment projections that decline over time (Chapter 5, Figure 5.1), and by continued changes in technology and health care practices that allow more treatment on an outpatient rather than an inpatient basis. Declining enrollees and inpatient stays contribute to the downward trends in later years.

The CARES forecasting model projects a modest national gap in bed days of care beginning in the base year FY 2001 that grows to FY 2004 and then declines gradually over the forecast period to projected a net decrease in bed days and related beds in FY 2022 as shown in the graph below.

[28] Ludmerer, KM, Time to Heal [Oxford University Press: Oxford, New York, 1999], pp.176–177, 319.

[29] The VA Report may be found at: *http://www.va.gov/opp/eval/1_Table%20of%20Contents.pdf]* See also: American College of Cardiology/American Heart Association Practice Guidelines, 2002 *http://www.circulationaha.org/*—which emphasize an "early invasive" approach to cardiovascular care.

[29a] Projected Beds are calculated as (projected bed days of care)/365 days a year/.85 percent occupancy).

Figure 6.1 CARES National Inpatient Workload Gaps
Inpatient Medicine, Surgery, and Psychiatry Beds (Includes Contract Care)

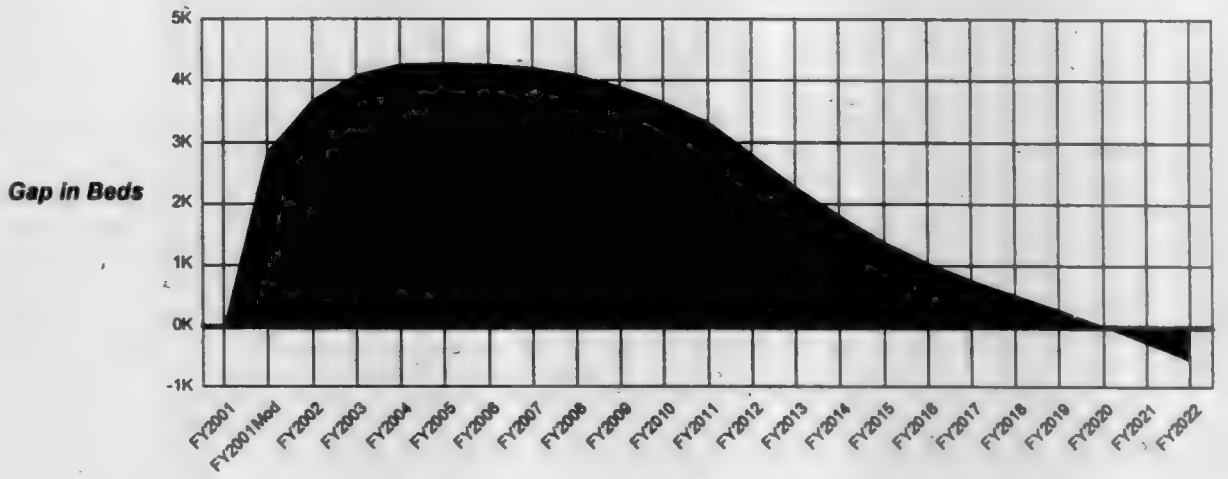

Estimated Beds = Bed Days of Care/365 days/.85 Percent Occupancy

Because this trend line masks significant differences in projected gaps for the three inpatient CARES categories, each category and its trend line will be discussed separately.

Inpatient Medicine

National projected workload gaps, measured in projected beds, for inpatient medicine are shown in Figure 6.2. As seen with the outpatient trends in Chapter 5, a significant gap in workload occurs between the baseline year (FY 2001) and the first year of forecasted demand (FY 2002), a reflection of the demand model's implication that budget, capital and staffing constraints existed in FY 2001 and are removed from future workload projections. The positive inpatient medicine gaps peak in FY 2008 when the impact of enrollment levels and trends in inpatient medicine begin reducing demand. By FY 2022, inpatient medicine beds are only slightly higher than in FY 2001.

Figure 6.2 Projected Gaps in Inpatient Medicine Beds by Fiscal Year (Includes Contract Care)

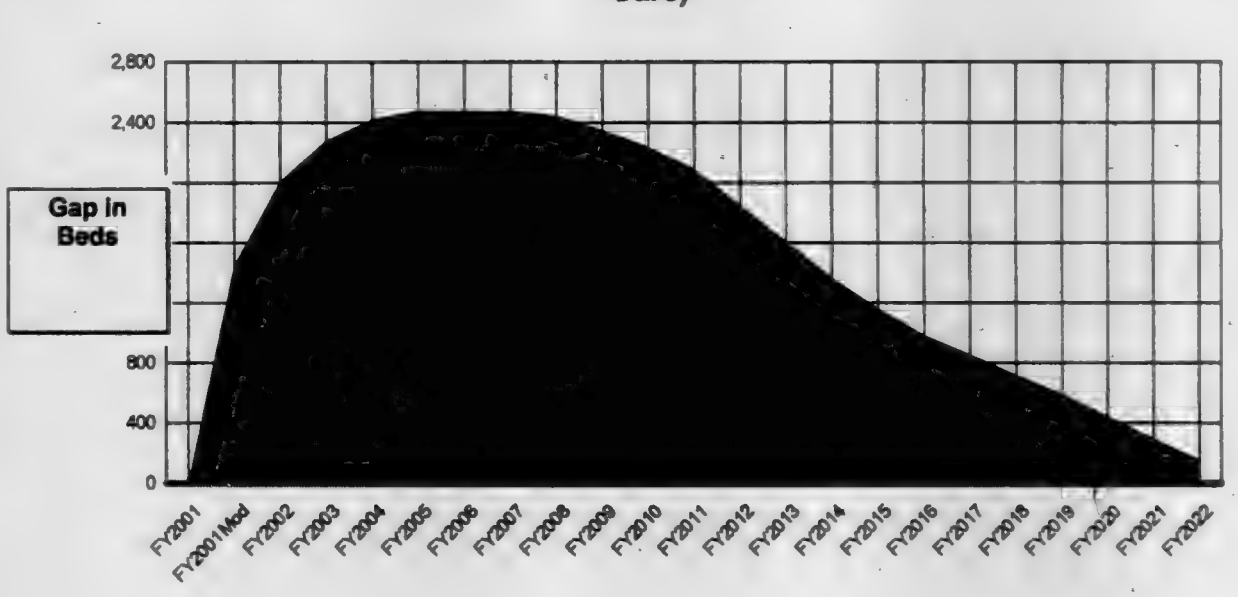

Inpatient Surgery

Projected workload gaps for inpatient surgery show an opposite trend than for inpatient medicine (as shown in Figure 6.3 below). Actual FY 2001 baseline beds days of care for inpatient surgery are greater than the first year of forecasted demand (FY 2002) indicating a slight overcapacity of 4,907 bed days of care, or 16 beds for inpatient surgery on a national basis. However, the gap grows in a positive direction until FY 2007 when enrollment levels and trends in inpatient surgery, such as declines in lengths of stay and more treatments being provided on an outpatient basis, become significant factors. By FY 2022 inpatient surgical demand is significantly lower than in FY 2001.

Figure 6.3 Projected Gaps in Inpatient Surgery Beds by Fiscal Year (Includes Contracts)

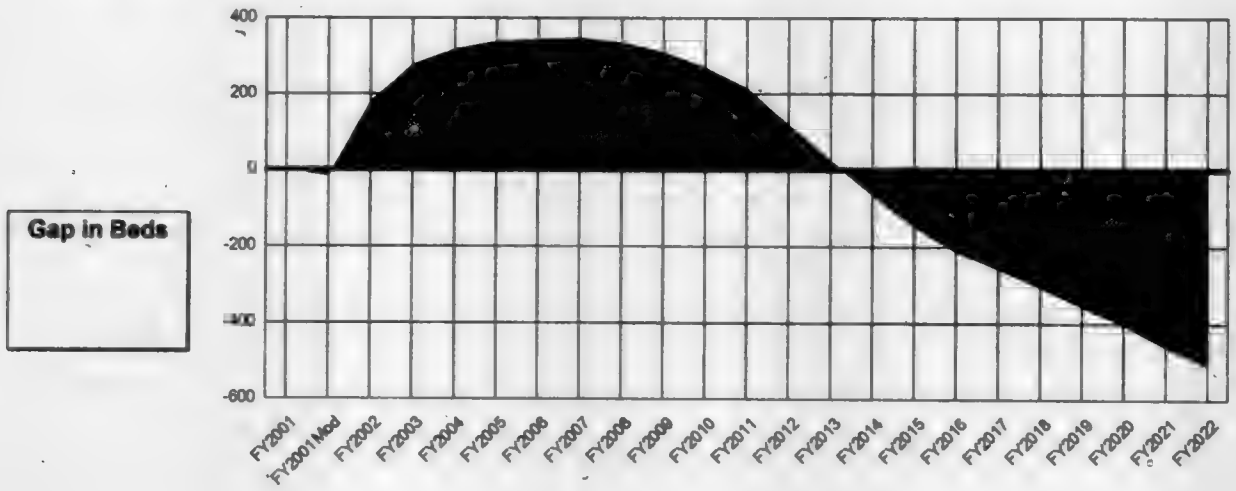

Inpatient Psychiatry

Inpatient psychiatry gaps indicate a current shortage of beds, but a rapid decline in demand beginning as early as FY 2004 that continues steadily until FY 2022 when demand drops below FY 2001 levels, as shown in Figure 6.4 below.[30]

Figure 6.4 Projected Gaps in Inpatient Psychiatry Beds by Fiscal Year (Includes Contracts)

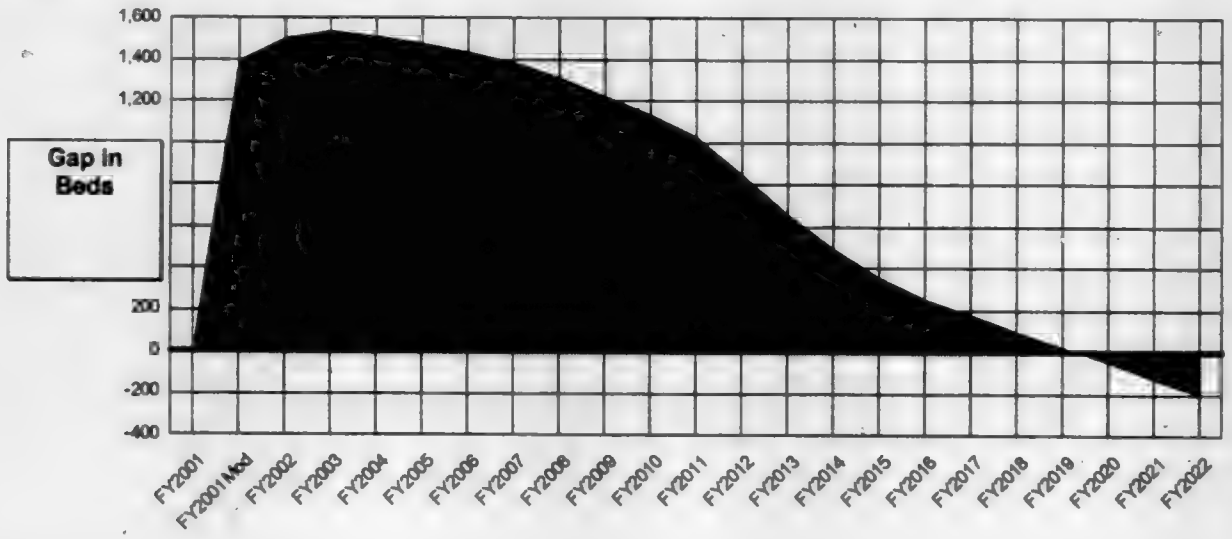

Summary of Inpatient Capacity Solutions

VISN CARES Market Plans identified a variety of solutions to resolve all projected inpatient workload demand, including workload demand associated with Inpatient Capacity Planning Initiatives, and manage space requirements at each facility.

Tables 6.2 and 6.3 focus on inpatient Medicine, Surgery and Psychiatry solutions for two of the planning years—FY 2012 and FY 2022. Inpatient workload units in these tables represent the total number of bed days of care (not beds) projected for each facility in each VISN, rolled up to the national level. The total number of projected bed days of care in each CARES category was used to estimate the amount of space needed at each facility for each of the planning years. VISNs were required to solve each of their facilities' total space needs in each of the CARES categories.

By FY 2022, VHA will handle approximately 90 percent of all inpatient workload in-house. Contracting is used as a short-term solution to a greater extent in earlier years during workload peaks. Approximately 169 inpatient beds (52,522 bed days of care) are planned as joint ventures with the Department of Defense or other entities.

[30] Note: Inpatient Psychiatry projections are presently undergoing revision. Revised projections should be available for next year's strategic planning cycle.

TABLE 6.2.—WORKLOAD SOLUTIONS FOR INPATIENT CATEGORIES—FY 2012

Workload alternative	Medical care		Surgical care		Psychiatry care	
	Bed days of care	Percent of total	Bed days of care	Percent of total	Bed days of care	Percent of total
Contract	340,929	13.4	83,021	8.6	183,047	8.6
Joint Venture	30,475	1.2	5,112	0.5	28,525	1.3
In-Sharing	5,575	0.2	6,506	0.7	365	0.0
Sell	0	0.0	0	0.0	0	0.0
In-house	2,162,899	85.2	867,449	90.2	1,916,714	90.1
Total Demand	2,539,878		962,088		2,128,651	

TABLE 6.3.—WORKLOAD SOLUTIONS FOR INPATIENT CATEGORIES—FY 2022

Workload alternative	Medical care		Surgical care		Psychiatry care	
	Bed days of care	Percent of total	Bed days of care	Percent of total	Bed days of care	Percent of total
Contract	206,850	10.1	51,185	6.6	102,266	5.6
Joint Venture	24,769	1.2	4,284	0.6	23,469	1.3
In-Sharing	5,575	0.3	6,394	0.8	365	0.0
Sell	0	0.0	0	0.0	0	0.0
In-house	1,803,287	88.4	714,929	92.0	1,691,730	93.1
Total Demand	2,040,481		776,792		1,817,830	

Table 6.4 presents inpatient space solutions for all planning years combined—through FY 2022. Overall, the capital investments needed for inpatient care are more reflective of the total volume of workload (bed days of care), and not in response to an increasing or decreasing workload gap. The proposed investments are indicative of the condition of the current space for inpatient wards across VHA and the need to upgrade or modernize existing clinical space.

TABLE 6.4.—SPACE SOLUTIONS FOR INPATIENT CATEGORIES—CUMULATIVE THROUGH FY 2022

Space alternative	Medical care		Surgical care		Psychiatry care	
	Square feet	% total	Square feet	% total	Square feet	% total
Existing-Non Renovated	2,722,180	57.4	1,029,718	61.4	1,709,795	46.5
Renovate Existing	839,754	17.7	336,844	20.1	677,858	18.4
Convert Vacant	391,957	8.3	109,430	6.5	552,604	15.0
New Construction	475,281	10.0	158,302	9.4	590,808	16.0
Donate	110,558	2.3	16,700	1.0	49,000	1.3
Lease	199,878	4.2	26,900	1.6	104,990	2.8
Enhanced Use	7,000	0.1	0	0.0	0	0.0
Total Space Proposed	4,746,608		1,677,894		3,685,055	

National CARES Plan

The CARES investment strategy is to ensure that the acute care infrastructure will be available to meet the current and future acute care requirements. As a result of this strategy, all markets with proposed capital requirements related to acute inpatient care are included in the National CARES Plan.

Chapter 7: Enhancing Access to Special Disability Programs

Traditional Role, Substantial Responsibility in Special Disabilities

While the nation's commitment to provide medical care to eligible veterans extends across the full spectrum of injury and disease, the VA system has traditionally had a distinctive role in addressing the needs of veterans with special disabilities. In part because many of these special disabilities were incurred in wartime and in part because the intensive levels of care involved are often difficult for veterans to obtain elsewhere, VA has acquired substantial responsibility in this health care arena.

Cognizant of this history and the unique stature of Special Disability Programs (SDPs) within the VA health care system, CARES designers focused the initial application of the process on Special Disability Programs with congressionally-mandated capacity requirements, including:

- Blind Rehabilitation
- Mental Health—Seriously Mentally Ill (SMI), Post-Traumatic Stress Disorder (PTSD), and Substance Abuse
- Homelessness
- Spinal Cord Injury & Disorders (SCI/D)
- Traumatic Brain Injury (TBI)

Capacity Requirements

Under CARES, Spinal Cord Injury & Disorders (SCI/D) capacity requirements were to be maintained as measured by the monthly VA/PVA beds and staffing survey and VHA Directive 2002–022.[31]

[31] Survey by VA and the Paralyzed Veterans of America (PVA); Other references include: VHA

Continued

Similarly, the VISNs were advised that legislative capacity requirements for Blind Rehabilitation (BR) programs must be met.[32] However, since the CARES process set out to review the allocation and distribution of health care services throughout the VA system, an attempt was made to develop projections that would include an assessment of the SDPs. Program officials and clinical experts from the involved SDPs were consulted and participated actively throughout the process.

Workload Projections

Hitherto, VA has had no agreed-upon methods of projecting the needs of populations served by the SDPs. In general, the CARES planning model/process used an actuarial forecasting model (supplied by CACI/Milliman) with:

- VA and National Census databases to project enrollment and market share annually through 2022;
- Actuarial survival/mortality data and new active duty military separations;
- Private sector databases to predict healthcare utilization, with adjustments for VA experience (lack of co-pay, male predominance, higher co-morbidity, use of Medicare and private sector health care and management efficiency);
- Criteria for access (travel time), safety, quality of care, impact on affiliations, research, and other missions (DoD contingency support and Homeland Security); and
- Survey of space, beds, and clinical services in all VA facilities and VISNs.

However, since VA programs to serve special disability populations are so unique, no comparable private sector utilization benchmarks were available for the SDPs; VA services continue to be the only benchmarks. Since projections for special disability programs therefore were based solely on VA utilization data, the SDP projections used in the CARES process in general were subject to several limitations:

- Some of the advantage of the Milliman forecasting model would be lost, since the VA workload data may be subject to supply constraints.[33]
- CARES models were not designed for service-level planning. They were configured for larger scale planning for capital asset needs. Smaller numbers tend to show wider variation and less reliability.
- In addition, internal variables, such as VA-specific factors like public policy decisions and the vision of the administration at any one time, may affect the planning assumptions used in the model.

Process and Procedures for Special Disability Program CARES Planning

The National CARES Program Office (NCPO) engaged the clinical leaders of the SDPs as active participants in the development of CARES planning models for SDPs. A Planning Initiative Selection Team made up of SDP representatives reviewed national data as projected using the CARES model from the existing Milliman categories.

In the areas of Mental Health and Traumatic Brain Injury, a number of consultations, discussions, and on-going investigation of the general CARES model did not lead to an alternative methodology to project needs for those specific SDPs. It was decided that specific recommendations from Mental Health would be further explored with representatives of the Mental Health Strategic Healthcare Group (SHG) and the Committee on the Care of Veterans with Serious Mental Illness (SMIC). Further progress in this area would be channeled into the strategic planning process that incorporates CARES.

However, in the areas of Blind Rehabilitation and Spinal Cord Injury & Disorders, the NCPO and SDP leaders were able to develop acceptable alternative data analyses and forecasting methodologies to enable inclusion of these SDPs in CARES. Subject matter experts working with actuarial and data management support personnel produced these pioneering approaches:[34] Which were generally based on:

- The prevalence of the Special Disability Group (SDG) in the veteran population as derived from external studies.
- Enrollment projections by health care priority group used in the overall CARES demand model as applied to the target group to obtain estimates of the enrolled SDG by VISN.
- Utilization rates based on actual FY2001 experience by VISN. Appropriate utilization rates were then applied to each projection year through 2022.

Planning Initiative selections for the Special Disability Programs were based upon the revised projections and were incorporated into the VISN-level Market Plans by February 2003. SCI/D and BR program representatives worked with the VISN-level CARES Steering Committees or Task Forces to resolve the proposed planning initiatives and met with VISN-level staff and involved veterans service organizations (VSOs).

Blind Rehabilitation (BR) Forecasts and Planning Initiatives

The BR projections, Planning Initiatives, planning recommendations, and final recommendations for CARES are summarized in Appendix Q. Briefly, two new Blind Rehabilitation Centers (BRCs) were proposed and will be forwarded for approval as follows:

- 36-bed BRC in Biloxi (VISN 16)
- 24-bed BRC in Long Beach (VISN 22)

Nevertheless, over the past several years, the BR program has increasingly emphasized the establishment of outpatient rehabilitation services in the continuum of care for visually impaired veterans. The BR program is designed to improve the quality of life for blinded and severely visually impaired veterans through the development of skills and capabilities needed for personal independence, emotional stability, and successful integration into the community and family environment.

Prior to the CARES process, the BR program was comprised of 10 Inpatient BRCs (in 8 VISNs), 92 full-time Visual Impairment Services Team (VIST) Coordinators, 20 Blind Rehabilitation Outpatient Specialists (BROS), 5 National Program Consultants, and Inpatient Computer Access Training programs at medical centers throughout the country and Puerto Rico. Services are provided using a multi-disciplinary team approach. In addition, there are currently one Visual Impairment Services Outpatient Rehabilitation Program (VISOR) and three Visual Impairment Centers to Optimize Remaining Sight (VICTORS) programs.

Spinal Cord Injury Forecasts and Planning Initiatives

The SCI/D program is a network of services provided in a "hub-and-spokes" format; the hubs are the SCI Centers and the spokes are non-center facilities. Interdisciplinary and coordinated services utilize referral guidelines to determine the appropriate site of care.

Prior to the CARES process, there were 23 SCI Centers in 15 VISNs. Due to the sizable increase in users of specialty services over the last 6 years, the CARES recommendations call for additional future capacity. The SCI/D projections, planning initiatives,

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Directive 99–013, Decision Making Authority for the SCI&D Program; VHA Directive 1176 and VA Handbook 1176.1, Spinal Cord Injury and Disorders System of CARE; and M–2, Part XXIV.

[32] See Reference Section: CARES Guidebook Phase II (June 2002, Chapter 5, Market Plans).

[33] **Note:** private sector utilization is also constrained by the benefits packages that third-party payers are willing to fund.

[34] A detailed description of the methods and projections used can be found in Appendix Q.

planning recommendations, and final recommendations for CARES are summarized in Appendix Q. Briefly, 4 new SCI/D Units were proposed and will be forwarded for implementation as follows:

- 30-bed SCI/D Unit in Syracuse (alternatively, Albany) (VISN 2)
- 30-bed SCI/D Unit in VISN 16 (exact location still under study'"proposed, North Little Rock)
- 30-bed SCI/D Unit in Denver (VISN 19)
- 30 to 40-bed unit in Minneapolis (VISN 23)

Expansion of 20 additional SCI/D beds in Augusta (VISN 7) was planned. Other initiatives included expansion of LTC (long-term care) SCI/D beds in conjunction with SCI/D Units as follows:

- 30 beds in Tampa (VISN 8)
- 20 beds in Memphis (VISN 9)
- 30 beds in Long Beach (VISN 22)
- 20 beds in Cleveland (VISN 10) [35]

Other planning issues addressed included the proposed consolidation of all VISN 3 SCI/D beds from Castle Point to the Bronx VAMC with an outpatient SCI/D program remaining at Castle Point. In addition, and outpatient SCI/D clinic will be developed at the Philadelphia VAMC.

Future Directions

Mental Health, Domiciliary/ Homelessness

The NCPO, CACI/Milliman, and representatives of the Mental Health SHG and the SMI (Seriously Mentally Ill) Committee have conducted a series of reviews of the mental health inpatient and outpatient projections. The intent of the reviews was to attempt to understand the drivers of the CARES projections for psychiatry and for programs related to mental health, such as the domiciliary programs. There was a general consensus that mental health projections needed to be further studied and refined.

For the CARES planning process, the following workload projections were held constant:

- Outpatient mental health, whenever a decrease in projected visits projected was observed;

- All non-benchmarked residential rehab programs: Substance Abuse Residential Rehabilitation, Compensated Work Therapy, Residential Rehabilitation, Post-Traumatic Stress Disorder Residential Rehabilitation Treatment, Sustained Treatment and Rehabilitation (STAR) and Domiciliary Programs.

Domiciliary beds and other non-benchmarked services were originally projected based upon a national average utilization rate, which, in effect, would have resulted in a redistribution of beds from those VISNs or markets with larger numbers of beds to those with fewer beds. Such redistribution was felt to be inappropriate and raised a number of policy and programmatic questions, which are being explored further and will be revised as CARES is incorporated into the next strategic planning cycle.

The goals of the review will be to modify and improve the projection methodology for Mental Health services in general and residential rehabilitation programs in particular. Decisions regarding the utilization rates and distribution of the various Mental Health rehabilitation programs should be focused on the mission and, programmatic content of these programs, and quantified by the available data. Recommendations should be "evidenced-based" to the extent possible. Any alternative projections methodology should be linked to VA's official Veteran Population demographic database.

Traumatic Brain Injury

The VA has established four primary Traumatic Brain Injury (TBI) Centers, located at the VAMCs in Richmond, VA; Minneapolis, MN; Palo Alto, CA; and Tampa, FL. These four TBI Centers provide leadership for the additional 19 VAMCs and three military hospitals participating in the TBI Network for provision of specialized TBI services.[36]

TBI services were included in the current cycle of CARES, but workload data for this area were not separately listed. Applicable workload was included in various categories, including outpatient specialty care, inpatient rehabilitation, and outpatient primary care, as appropriate. The NCPO discussed the application of the CARES process in this specialty area with program officials within the Rehabilitation Strategic Healthcare Group for TBI programs. Research in the forecasting and geographic distribution of need for TBI services is on-going and will be incorporated into VA's strategic planning efforts as it becomes available.

National CARES Plan

Based upon projections for increased demand for services, several new Blind Rehabilitation Centers (VISNs 16 and 22) and SCI/D units (VISNs 2, 16, 19, and 23) have been included in the National CARES Plan. In addition, expansion of SCI/D long-term care beds in VISNs 8, 9, 10, and 22 have been recommended for implementation as well as additional acute/sustaining SCI/D beds in VISN 7. An outpatient SCI/D clinic at Philadelphia VAMC will be developed to meet the needs of veterans in the Eastern Market of VISN 4, including South Jersey, Eastern Pennsylvania and Delaware.

Table 7.1 below summarizes the cost of capital investments required to accomplish the proposed enhancements to Special Disability Programs outlined in this chapter.

TABLE 7.1.—CAPITAL INVESTMENTS FOR SPECIAL DISABILITY PROGRAMS FY 2022–FY 2022

Special disability program	Renovation of existing space (square feet)	New construction (square feet)	Lease (square feet)	Total costs in current $
Blind Rehabilitation	31,106	35,500	0	$9,587,628
Spinal Cord Injury	41,799	382,172	0	94,263,411
Residential Rehab	65,594	63,705	26,874	15,458,463
Domiciliary	328,419	111,153	0	52,330,817

Note: These cost estimates do not include the proposed Philadelphia outpatient SCI/D clinic.

[35] **Note:** although not originally an SDP-proposed planning initiative, the additional SCI/D LTC beds in Cleveland have been proposed by VISN 10 and are supported by the CARES planning model projections for SCI/D LTC.

[36] Refer to IL 10–97–010, Traumatic Brain Injury Network of Care.

Chapter 8: Strategic Directions of Small Facilities

Small Facilities To Play Appropriate Role

The skill and dedication of the men and women who provide health care to the nation's veterans should not be judged by the size of the facility at which they work. Surveys of patient satisfaction indicate that, from the consumers' viewpoint, there is no correlation between facility size and the perceived quality of service.[37] Furthermore, some of the highest honors achieved in VA health care for overall quality and efficiency have been won by smaller facilities.[38]

However, the inherently lower volume of care provided at smaller facilities has undeniable implications for specific types of procedures (the clear relationship between volume and outcomes for certain medical and surgical procedures is discussed below).

The CARES process therefore included an in-depth review of small facilities, to assure that they will play an appropriate role in providing high quality, cost-effective care throughout the VA system. A Small Facility Planning Initiative process was instituted to determine if and how resources, facilities, and services should be realigned to provide acute care in the future. The specific objectives were:

- To assure provision of cost-effective, appropriate, high quality patient care. "Quality" includes clinical proficiency across the spectrum of care, safe environment, and appropriate facilities.
- To evaluate the functioning of small facilities within each market and VISN as part of VA's health care delivery system.
- To consider each small facility's role in meeting projected acute inpatient care demand.

Overview

As described in detail in the Overview section of Chapter 6 of this Plan ("Ensuring Inpatient Capacity"), there have been striking changes in American medicine in recent years, prominently including a fundamental shift to ambulatory care. The changes from inpatient to outpatient care have been coupled with and, to a large extent, made possible by rapid advances in medical technology, which require ongoing investment in imaging equipment.[39]

Recent emphasis on patient safety and outcomes in acute care settings, especially from surgical procedures, point to a need to rethink how the VA delivers health care across its system of hospitals and clinics.

Many of the technological advances and the patient safety/quality emphases favor a reduction and consolidation of beds in centers that can provide state-of-the-art and "cutting edge" medicine to our nations" veterans.[40] VA medical centers can no longer provide care that only meets local standards of quality, but increasingly must aim to be part of a "world class" system of health care delivery. VA's own recent study of outcomes in patients with acute cardiovascular events pointed out that veterans were being referred for interventional treatment at less than the rate of Medicare patients and were being referred later.[41] Networking and early referral has been shown to improve outcomes for rural health care providers.[42] Likewise, the medical literature and consumer groups, like the Leapfrog group, have emphasized the relationship between volume and outcomes for certain kinds of procedures and for intensive care unit (ICU) treatment.[43 44 45 46 47]

The VA has felt the impact of these changes, particularly in its small medical centers. Responses have ranged from closing surgery or medicine acute beds to consolidation of two or more acute care facilities. Many of the medical centers with low workload and small acute bed sections chose to close, due to one or more of the following factors: Staff proficiency, quality of care, small ICU bed numbers, staff retention, cost of capital improvements, and availability of other health care options in their communities.[48]

At the same time, other small VA facilities have recognized and attempted to meet the health care needs of veterans in areas where access to care and the availability of other alternative providers is limited. Rural health care initiatives developed and used by the Centers for Medicare and Medicaid Services (CMS) to support access to acute care in remote areas have resulted in the adoption of a "Critical Access Hospital" (CAH) model for Medicare reimbursement.[49]

In order to qualify for CAH reimbursement from Medicare, facilities must meet the following criteria.[50]

- Must be located more than 35 miles from the nearest hospital (waivers and flexible interpretation have been allowed);
- Must be deemed by the state to be a "necessary provider;"
- Must have no more than15 acute beds [with up to 25 beds total, including "swing" beds for respite/hospice and/or SNF (skilled nursing facility) services]; [ICU beds are discouraged];
- Cannot have length of stays (LOS) greater than 96 hours (except respite/hospice);
- Must be part of a network of hospitals;
- May use physician extenders (Nurse Practitioners or Physician's Assistants or registered Nurse Midwives) with physicians available on call.

In practice, CAH providers have filled an important need for health care services, as many are located in areas designated as shortage areas.[51] The most common diagnoses treated in CAHs are acute respiratory and acute gastrointestinal disorders.

CARES Criteria

In order to be selected as a "small facility" for the purposes of CARES, a facility had to meet of the following three criteria:

- Had to provide acute hospital bed services;
- Had to have acute medicine beds;
- The total of projected acute beds for medicine, surgery and psychiatry in

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[37] American Customer Satisfaction Index, 2002.

[38] Examples: Grand Junction, CO, won the 2001 Presidential Award for Quality; Erie, PA and Walla Walla, WA, VAMCs received VA's top-ranked Carey Award for Quality in 2001.

[39] Ludmerer, KM, Time to Heal [Oxford University Press: Oxford, New York, 1999], pp.176–177, 319.

[40] *E.g.*, an abdominal aortic aneurysm can be stented, using minimally invasive surgery with a LOS of 24 to 48 hours as compared to many days to a few weeks for an open surgical repair.

[41] Note current approaches to cardiovascular care favor an "early invasive" approach. [For the VA Report: *http://www.va.gov/opp/eval/1_Table%20of%20Contents.pdf*] See also: American College of Cardiology/American Heart Association Practice Guidelines, 2002 [*http://www.circulationaha.org/*].

[42] Johnson, DE, Network Improves Rural Care, Health Care Strategic Management, 9(12): 8, 1991.

[43] Birkmeyer, JD *et al.*, Hospital Volume and Surgical Mortality in the United States. NEJM [New England Journal of Medicine] 346: 1128–37, 2002. [Editorial same issue: Volume and Outcome—It is Time to Move Ahead, pp. 1161–164.]

[44] Bach, PB, *et al.*, The Influence of Hospital Volume on Survival after Resection for Lung Cancer. NEJM 345: 181–188, 2001.

[45] Canto, JG, *et al.*, The Volume of Primary Angioplasty Procedures and Survival after Acute Myocardial Infarction. NEJM 342: 1573–1580, 2000.

[46] Begg, DB, *et al.*, Variations in Morbidity after Radical Prostatectomy. NEJM 346: 1138–1144, 2002.

[47] *http://www.leapfroggroup.org*

[48] Examples include: Manchester, NH; Bath, Batavia, & Canandaigua, NY; Bonham, TX; White City, OR; Livermore, CA; Lincoln and Grand Island, NB.

[49] Created by the Balanced Budget Act of 1997 (BBA) as part of the Medicare Rural Hospital Flexibility Program.

[50] *http://www.hospitalconnect.com/aha/member_relations/cah/faq.html* [AHA website-FAQs].

[51] For references, see Appendix N.

2012 and 2022 had to be less than 40 beds.

Each market with one or more of the 19 identified "small facilities" received the Handbook for Market Plan Development (available in References) to provide instructions for the small facility evaluation process. The guidance required development of a minimum of three scenarios (with an optional fourth or 'combination' scenario):

- Retain acute hospital beds;
- Close acute hospital beds and reallocate workload to another VHA facility;
- Close acute hospital beds and implement contracting, sharing or joint venturing for workload in the community;
- Optional: Combination of any of the above, but predominately contracting with a community provider(s) and referral to another VAMC(s).

It should be noted that the CARES planning process only addressed the acute care missions of small facilities and did not address the long-term care or chronic psychiatry missions of VA facilities. Therefore, any recommendations refer only to the acute care beds.

Table 8.1. lists the 19 facilities with Small Facility Planning Initiatives that met the selection criteria, which used FY2001 as the base year.[52]

TABLE 8.1.—SMALL FACILITY PLANNING INITIATIVES

VISN & facility		Baseline beds	Projected 2012	Projected 2022
V03	Hudson Valley	10	13	9
V04	Altoona	19	19	13
V04	Butler	9	10	8
V04	Erie	18	14	10
V06	Beckley	32	15	10
V07	Dublin	33	36	30
V11	Fort Wayne	26	17	14
V11	Saginaw	13	25	20
V15	Poplar Bluff	18	15	11
V16	Muskogee	25	37	29
V17	Kerrville	22	15	12
V18	Prescott	29	28	22
V19	Cheyenne	14	17	14
V19	Grand Junction	23	24	18
V20	Walla Walla*	34	40	36
V23	Des Moines	39	34	24
V23	Hot Springs	31	23	20
V23	Knoxville	27	26	20
V23	St. Cloud	21	25	18

*22 bed Psychiatry Residential Rehab. Program included in 34 beds, actual acute beds are 14.

Review and Recommendations For Small Facility Planning Initiatives

Evaluations of each small facility were incorporated into a criteria-driven checklist for detailed review of each VISN-level proposal submitted. Supplemental data that were considered consisted of the following:

- Cost data and scenario inputs on the VSSC CARES Portal (web-site);
- Patient Satisfaction Survey data from FY2002 (courtesy of the SHEP/PACE Office);
- Lists of surgical procedures performed at each of the small facilities (by volume and code) for FY2001 and FY2002;
- Average bed day of care (BDOC) costs compared to Medicare unit costs for each of the small facilities for Medicine, Surgery, and Psychiatry beds;
- Top diagnosis related group (DRGs) with average length of stay (ALOS) for each small facility;
- Distance to the nearest VA Facility as determined independently (using MapPoint software);
- Literature reviews as appropriate, including Medicare Critical Access Hospital (CAH) Guidance (Appendix N).

A summary of the recommendations from the small facility review follows. Table 8.2 shows the final recommendations on small facilities as recommended for implementation by the Under Secretary of Health. Appendix F includes detailed recommendations for small facilities.

Retain Acute Hospital Beds

Eleven medical centers would retain their acute hospital beds, but would have a restricted "scope of practice" that would limit surgical inpatient beds and intensive care unit beds. Surgery beds would be converted to 'observation' beds.

Convert Acute Beds to Critical Access Hospital Model

Seven of the eleven facilities would convert their acute beds to CAH-like model. Several medical centers already met the CAH criteria: low acuity levels; short ALOS (less than four days); a decreasing number of acute care beds; and few, if any, ICU beds. Nevertheless, of the remaining small facilities reviewed, most showed a longer ALOS (than Medicare), although there was a mixed picture with respect to cost per BDOC (which was lower than contract costs in some, and higher than contract cost for others). Though costs for conversion to a CAH-like operation could not be estimated at the time of the review, such conversions were expected to reduce in-house operating costs. Nonetheless, one of the key drivers in recommending a transition to a CAH-like model of acute care delivery was the expectation that the quality of care and patient outcomes could be improved by:

- Greater coordination of care (at the VISN and Market levels);
- Earlier transfer and/or referral of complex cases; and
- Consolidation of volume-dependent cases in tertiary care facilities.

Other overriding factors supporting the "retain acute bed" option included a facility's role as a local health care

[52] Based upon BDOC projections after updating for Census 2000 in January 2003.

provider in the community, the distance to another VHA facility, and innovative consolidations.

Closure of Acute Hospital Beds

Eight medical centers were recommended for closure of acute hospital beds over the next several years. One facility's acute bed closure would occur as a transition. In Altoona, the transition would occur after 2012, when beds are expected to decline much further. Knoxville's acute and long-term beds would be closed through a consolidation of Knoxville with Des Moines, which is a distance of 44 miles. The majority of these facilities are proposing to provide inpatient care through a combination of referrals to another VA medical center and community hospital(s). The intention of the acute bed closures is to keep access local, maintain customer satisfaction through better access, and improve cost efficiencies and patient outcomes.

Other

In addition, Big Spring, Texas (VISN 18) will close inpatient surgery. Big Spring will be reviewed as a realignment issue and studied for the possibility of no longer providing health care services on the Big Spring campus. Development of a Critical Access Hospital, that would include a plan for a nursing home and expansion of an existing clinic to a multi-specialty outpatient clinic, will be explored for the Odessa-Midland area.

TABLE 8.2.—SMALL FACILITY RECOMMENDATIONS

Facility	VISN	Retain acute beds *	Convert to 'CAH-like' model	Contract and/or refer	Decrease and/or review surgery	Close or review ICU beds	Comments
Hudson Valley Castle Point.	3	Y	Y	.....	N/A	N/A	Enhanced Use at Montrose. Castle Point retains beds. Convert to CAH.
Erie	4	Y	N	.....	Y	Y	Convert inpt to outpt. surgery w/ (with) surgery observation (obs.) beds. Eval. ICU.
Beckley	6	Y	Y	.....	Y	Y	Convert inpt to outpt surgery w/ obs. beds; convert to CAH. Close ICU beds.
Dublin	7	Y	N	.....	Y	Y	Transition inpt surg. to outpt w/ obs. beds. Eval. ICU beds.
Poplar Bluff	15	Y	Y	.....	N/A	N/A	Functioning as CAH at present.
Muskogee	16	Y	N	.....	Y	Y	Convert inpt to ambulatory surgery w/surg. observation (obs.) beds. Eval. ICU. Eval. Psych. bed expansion.
Prescott	18	Y	N	.....	N/A	N/A	Bed expansion to lessen demand pressure on Phoenix.
Cheyenne	19	Y	Y	.....	Y	Y	Convert to CAH, close ICU and continue surgery but w/limited scope of practice.
Grand Junction	19	Y	Y	.....	Y	Y	Convert to CAH, close ICU and continue surgery but w/limited scope of practice.
Des Moines	23	Y	N	.....	Y	Y	Move acute beds from Knoxville to Moines Des Moines. Eval. ICU & for reduced scope of surgical practice.
Hot Springs	23	Y	Y	Y	N/A	N/A	Convert to CAH; decreased beds w/increased contract/referral.
Altoona	4	Transition	Y	Y	N/A	Y	Implement closure of acute beds by 2012; interim, convert to CAH.
Butler	4	N	N/A	Y	N/A	N/A	Transfer medicine services to Pittsb. & contract emergency care.
Fort Wayne	11	N	N/A	Y	N/A	N/A	Acute medicine would close by contracting and transferring to other VAMCs.
Saginaw	11	N	N/A	Y	N/A	N/A	Acute medicine would close by contracting and transferring to other VAMCs.
Kerrville	17	N	N	Y	N/A	N/A	Implement in coordination with San Antonio capacity; in interim, convert to CAH.
Walla Walla	20	N	N/A	Y	N/A	N/A	Contracted beds only.
Knoxville	23	N	N/A	N	N/A	N/A	Consolidate with Des Moines.
St. Cloud	23	N**	N/A	Y	N/A	.....	Transfer medicine services to Minneapolis & contract.
Total "Yes"	.....	11	7	8	7	8	

TABLE 8.2.—SMALL FACILITY RECOMMENDATIONS—Continued

Facility	VISN	Retain acute beds *	Convert to 'CAH-like' model	Contract and/or refer	Decrease and/or review surgery	Close or review ICU beds	Comments
Converting to contract/referral or consolidation.	.....	8	.....	.....	.....	.....	
Total facilities reviewed.	.....	19	.....	.....	.....	.....	

* Except ICU & surgery beds.
** Acute Psychiatry beds will remain open.

Conclusions

The transition from an emphasis on inpatient care to outpatient care has been based upon advances in medical technology and therapy. In addition, for the VA, declining inpatient care has been coupled with an expansion of primary care, outpatient specialty care (especially ambulatory or 'same day' surgery), and better case management. The trend towards more sophisticated imaging and advances in invasive techniques, which shorten hospital stays but require the investment in expensive major equipment, has led to a further consolidation of care in tertiary care facilities of more complex cases. Optimal and efficient functioning of the VA's health care delivery system depends upon early referral and transfer of patients with complicated conditions and those requiring major surgery, where outcomes may be volume-dependent.

These trends have led to declines in bed days of care in smaller facilities to the point at which staff proficiency and outcomes may be compromised in low-volume sites. Moreover, economies of scale in provision of the latest medical and imaging technology cannot be realized. Nevertheless, many small VA medical centers (VAMCs) are important providers of health care in their communities. Several have already managed to achieve an appropriate level of functioning by decreasing their ALOS and early referral of patients with conditions beyond their scope of services. Others (by choice or through recommendation) would close their acute beds and manage acute patients through a combination of referral to other VAMCs and to community hospitals. The specific solutions to the issues of access to acute care depend upon the location of the facility and the availability and quality of alternative health care providers.

In response to the impact of the changes described above, many private sector rural hospitals closed or became no longer viable. In an effort to support access to acute care in rural areas, CMS began funding "Critical Access Hospitals" through Medicare in 1999. Reimbursement under Medicare was linked to meeting certain criteria and operational standards, as well as JCAHO accreditation (from 2002 onwards).[53]

The CARES review of small facilities in the VA has proposed a CAH-like process of designating small facilities, requiring that they meet certain operational standards and restricting their "scope of practice." The intent of this process would be to improve the efficiency, effectiveness, and to enhance the level of functioning of, small facilities within the context of VA's national system of health care delivery. Over the course of the next year, the VA will develop and implement policies to govern the operation of acute beds in small VA facilities, which may fit into a CAH-like model of health care delivery.

Chapter 9: Proximity and Campus Realignments

Facility Placement

In recent years, site selection for VA health care facilities has been supported by careful planning, from needs assessment and demographic analyses, to evaluation of area transportation networks and, of course, careful consideration of the proximity of other VA medical service capacity.

But the placement of medical facilities for veterans has not always been so discriminating. In fact, many VA facilities owe their location less to prudent study than to historic happenstance. For example, the veterans health system had no choice whatsoever in the location of an entire chain of hospitals it acquired en masse from the Public Health Service via Presidential Executive Order. The several U.S. military hospitals turned over to the VA through intergovernmental transfers were located on sites convenient for defense bases. And the location of some VA-built hospitals was influenced by events not entirely under VA control, *e.g.*, land donation, legislative "ear marking" of funds for a particular site, etc.[54]

The resultant arrangement of VA facilities, while not exactly haphazard, was far from the balanced array of services modern strategic planners would design from scratch in order to maximize efficiency in future service to veterans.

In addition, the dramatic changes in health care delivery within the United States and the VA include improved methods of treating patients that have reduced lengths of stay and admissions as outpatient, community and home care replace inpatient care. As a result many campuses have vacant space that is costly to maintain as described elsewhere in the plan. These changes, combined with an aged infrastructure (50.4 years average age of VA facilities) resulted in the need to review the structure of our campuses to develop a more efficient footprint, to transfer services to other campuses, and to find opportunities to enhance use lease all or portions of campuses with services for veterans such as assisted living facilities. Revenues from these enhanced uses would be retained by the VISNs to invest in improved services for veterans.

There were two components in the planning process for reviewing the potential for realigning services and campuses to improve the cost effectiveness and quality of care. The first component, labeled "Proximity," identified tertiary and acute hospitals located within CARES-prescribed distance criteria, and focused on acute

[53] **Note:** According to a GAO study, while Medicare reimbursement is "at cost", pilots in Montana (called "Medical Assistance Facilities") showed that Medicare costs were less expensive than treatment would have been in full service rural hospitals. [GAO/HEHS–96–12R, Oct. 1995.]

[54] Adkins, Robinson E., *Medical Care of Veterans*, Wash., DC, 90th Congress, 1st Session, House Committee Print No. 4., p. 119.

inpatient as well as highly specialized services. After a review of the results of the Proximity initiatives and recommendations by the Under Secretary for Health, a second component was added to this process, entitled Campus Realignment.

The second component focused on the so-called "Division II" facility (a division of another VA hospital, but located on its own, separate campus). Division II facilities are usually smaller or less active facilities integrated to varying degrees with their larger, parent facilities. The Division II facilities may have acute beds, but more typically have non-acute inpatient programs as well as a variety of ambulatory services. In considering the results of the CARES Proximity review, the USH noted that many Division II facilities had been overlooked, particularly those without acute inpatient beds.

Previous Consolidations

As noted elsewhere in this Plan, the delivery of, demand for, and economics of health care have changed dramatically over the past decade. The VHA has continually strived to meet and stay ahead of the challenges in this changing environment. Several total facility integrations and a multitude of consolidations of acute inpatient programs, subspecialty programs, diagnostic and therapeutic services and administrative services have occurred in recent years. Some of the facilities reviewed have achieved consolidations, integrations and mission changes that support CARES goals.

Proximity

The Proximity component involved identifying opportunities for consolidations and infrastructure realignments due to close geographic proximity of VHA facilities with similar missions. Planners were cognizant that consolidating or eliminating duplicative clinical and administrative services would increase efficiencies, allowing reinvestment of the savings in enhancing services to veterans.

For tertiary care facilities in close proximity, the focus was on the cost effectiveness of offering highly specialized services and optimizing the use of scarce medical specialties. The standard for proximity (60 miles for acute facilities and 120 miles for "tertiary" facilities) was determined as a practical range for which cooperative arrangements and referrals within a network of facilities might take place.

The Planning Initiative Selection Team identified 32 Proximity Planning Initiatives involving 19 tertiary and 13 acute care facilities. A complete listing and the results of the review are contained in Appendix G.

Campus Realignments

After reviewing the results of the Proximity process, the Under Secretary for Health (USH) review team determined that the opportunity for consolidations and more effective utilization of space had not been fully explored with respect to Division II facilities. A review of utilization data and team analyses led to the identification of the Division II facilities with potential for further consolidation, including changes such as converting from 24-hour, 7-days/week to 8-hours, 5-days/week operations.

Evaluation Process for Campus Realignment

The identified sites were reviewed for initial concept feasibility for inclusion in the Draft National CARES plan. A more comprehensive evaluation will occur prior to approval of the draft National CARES Plan and prior to implementation. The concept criteria used were:

1. Can the proposal be implemented in the next 5 years?
2. What and how much workload will be absorbed at other VA facilities?
3. What and how much workload will be contracted in the community?
4. How much in capital investments will be required? How much will be saved?
5. What will become of the campus or excess space?
6. How much in recurring dollars will be saved to reprogram elsewhere?
7. Can the FTEE be absorbed in the 8-hour operation, or at other VA sites?

The results by facility are summarized in Table 9.1 below.

TABLE 9.1—CAMPUS REALIGNMENT PROPOSALS

VISN	Facility	Description
1	Bedford, MA	Maintain current outpatient services at Bedford campus or another site accessible to veterans. Current services for inpatient psychiatry, domiciliary, nursing home and other workload will be transferred from Bedford campus to Brockton, West-Roxbury and other appropriate campuses (Manchester VAMC). The remainder of the Bedford campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.
1	Jamaica Plains, Boston, MA	Study the feasibility of redesigning the Jamaica Plains campus to consolidate services into fewer buildings for operational savings and to maximize the enhanced use lease potential of the campus for assisted living or other compatible types of use. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.
2	Canandaigua, NY	Current services of acute inpatient psychiatry, nursing home, domiciliary and residential rehabilitation services at Canandaigua will be transferred to other VAMCs within the VISN. Outpatient services will be provided in Canandaigua's market. VA will no longer operate health care services at this campus. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.
3	Lyons, NJ	Campus remains open with current mission.
3	St. Albans, NYC	St Albans maintains existing services. Build new facilities for outpatient, nursing home, and domiciliary care. Demolish old facilities. Design new construction to include facility placement on site to maximize the area for an enhanced use lease project for alternative uses to benefit veterans such as an assisted living facility or other compatible use. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.

TABLE 9.1—CAMPUS REALIGNMENT PROPOSALS—Continued

VISN	Facility	Description
3	Montrose, NY	Maintain outpatient services on the Montrose campus at a location that maximizes the enhanced use lease potential of the site. Current domiciliary, psychiatry, medicine, nursing home and other inpatient units will be transferred to Castle Point. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.
3	Manhattan/Brooklyn, NYC	Develop a plan to consider the feasibility of consolidating inpatient care at Brooklyn. Incorporate the proposed outpatient improvements for Brooklyn in the current proposed plan. Maintain a significant outpatient primary and specialty care presence at the current site or another location in Manhattan. Evaluate the site for enhanced use leasing. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.
4	Pittsburgh-Highland Drive (HD), PA	Current services at Highland Drive will be transferred to University Drive and Aspinwall campuses, with new facilities for psychiatry, mental health, and related research and administrative services. VA will no longer operate health care services at this campus. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.
5	Perry Point, MD	While maintaining the current mission, redesign the campus to maximize the enhanced use lease of the campus. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans. The redesign of the campus should include the current proposed new nursing home, other required new buildings to consolidate services; and preservation of the historic sites: the Mansion, Grist Mill, and 5 acres of Indian burial grounds.
7	Augusta-Uptown Division (UD), GA	Augusta Uptown Division will remain open. Study the feasibility of realigning the campus footprint including the feasibility of consolidating selected current services at the Uptown Division to the Downtown Division or other VAMCs and contracting with the community. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans. Explore with DoD the feasibility of greater coordination of VA/DoD services at either VA division.
7	Central Alabama (CAVHCS)-West (Montgomery), AL.	Montgomery campus would remain open. The proposal to convert Montgomery to an outpatient-only facility and to contract out inpatient care requires further study.
8	Lake City, FL	Transfer of current inpatient surgery services to Gainesville. Inpatient medicine will be re-evaluated when Gainesville has expanded inpatient capacity (due to construction of a proposed new bed tower). Nursing home care and outpatient services will remain at Lake City.
9	Lexington-Leestown (L), KY	Current services of outpatient care and nursing home care will be transferred to the Cooper Drive campus, as space is available. Due to possible space limitations at Cooper Drive it may be necessary to relocate some outpatient primary and outpatient mental health services to alternative locations other than Cooper Drive. VA will no longer operate health care services at this campus. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans. Enhanced use opportunities for the majority of the Leestown campus appear to exist with Eastern State Hospital.
10	Brecksville, OH	Current services at the Brecksville Division will be transferred to the Wade Park Division. VA will no longer operate health care services at this campus. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.
15	Leavenworth, KS	The Secretary's Advisory Board developed a realignment plan for Topeka and Leavenworth that was accepted by the USH. Further realignments would not be cost effective. Realignments include nursing home, psychiatry, and domiciliary care.
16	Gulfport, MS	Gulfport's current patient care services will be transferred to the Biloxi division and possibly Keesler AFB. VA will no longer operate health care services at this campus. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.
17	Marlin, TX	Remaining current outpatient services will be transferred to a new and more accessible location in the Marlin and Waco area. VA will no longer operate health care services at this campus. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.
17	Kerrville, TX	Kerrville will continue to provide nursing home and outpatient services. Acute care services will be transferred to San Antonio VAMC as space becomes available from the proposed inpatient construction at San Antonio. In the interim, Kerrville would convert to a Critical Access Hospital (CAH). An enhanced use lease for assisted living for veterans is under development. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.

TABLE 9.1—CAMPUS REALIGNMENT PROPOSALS—Continued

VISN	Facility	Description
18	Big Spring, TX	Close surgery and contract for care in communities nearest to patients. Study the possibility of no longer providing health care services at Big Spring by development of a Critical Access or acute care hospital for the Odessa Midland area. That study would include a nursing home and expansion of an existing clinic to a multi specialty outpatient clinic.
20	Vancouver, WA	Study/develop plan to enhance use lease the campus by contracting for nursing home care and relocating outpatient services. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.
20	White City, OR	White City will maintain outpatient services. The Domiciliary care and CWT programs will be transferred to other VAMCs in VISN 20. The balance of the campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.
20	Walla Walla, WA	Walla Walla will maintain outpatient services and contract for acute inpatient medicine and psychiatry (will improve hospital access in the Inland North Market) and nursing home care. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.
21	Livermore, CA	Current nursing home bed services will be transferred to Menlo Park campus and community contracts. Outpatient services are to be transferred to an expanded San Joaquin Valley CBOC and a new East Bay CBOC closer to where the patients live. VA will no longer operate health care services at this campus. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in local services for veterans.
23	Hot Springs, SD	Hot Springs will remain open as Critical Access Hospital (CAH)
23	Knoxville, TN	Knoxville will remain open. All VA Central Iowa HCS inpatient care, including acute care, long-term care and domiciliary care at Knoxville will be transferred to the Des Moines campus. A new 120-bed nursing home is proposed at Des Moines to replace the 226 nursing home beds at Knoxville. VA Central Iowa HCS will operate a CBOC at Knoxville for outpatient care once inpatient care is shifted to Des Moines.

Future Actions on Campus Realignment

While the campus realignment initiative was complementary to the CARES plans submitted by the VISNs, it was developed after those plans. Therefore, the capital requirements and cost savings of proposed campus realignment proposals were not developed and analyzed using the IBM template and are not included in the summary cost tables in the draft National CARES Plan.

Further analysis will be undertaken during the CARES Commission review to prepare for their recommendations to the Secretary. In addition, should the CARES Commission recommend and the Secretary concur in these recommendations there would be a detailed assessment of all costs and service relocations as part of the initial phase of implementation of the National CARES Plan.

Chapter 10: Health Care Quality and Need

Refined Quality Measures

Continuing refinements in measurement methodologies, combined with the growing availability of more detailed administrative databases, have brought a new dimension of precision to the issue of quality in health care. No longer a subjective, "physician-only, peer review" matter, quality has become a legitimate planning consideration.[5]

CARES Market Plans were required to address the impact that a proposed planning initiative solution would have on the quality of health care services provided to veterans. CARES focused on the impact of the following six aspects of quality that might result from a decision to realign services, close a facility, consolidate programs, change missions or add new sites of care.

Quality performance indicators
Continuity and coordination of care
Volume as it relates to proficiencies
Access to health care services
Mix of services
Capacity needs

Although quality is generally thought of as being measured at the clinical service-delivery level, changes in capital assets to meet changing workload demands can also impact the quality of care provided. Small Facilities Planning Initiatives examined quality from a clinically oriented perspective evaluating whether small facilities should operate under a more limited scope of practice referring more complex cases to other VA medical centers or to the community. Proximity Planning Initiatives identified clinical consolidations that could improve the volume of services or expertise available within a particular VISN or market.

Impact of CARES Market Plans on Health Care Quality and Need

Markets sometimes selected solutions that were not the most cost effective alternative for well-founded reasons, but in no cases did they select an alternative that had a less than desirable impact on quality without including a plan for elimination of that impact. One consistent theme found in these narratives was the demonstration that quality is higher in VHA facilities than in community facilities as demonstrated by JCAHO accreditation, National Committee on Quality Assurance (NCQA) scores and VHA performance measure results. This drove decisions to provide services in-house rather than to contract out. When contracting out was selected, strengthening contract oversight or enhancing case management programs was generally always proposed to minimize any impact on quality.

[5] NEJM, Quality of Care—What is it? Volume 335:891–894, Sept. 19, 1996.

Performance indicators, however, were only one of the CARES quality criteria. CARES also looked at quality across five other different aspects: Coordination, volume, access, mix of services, and capacity needs of health care services. The general impact of each type of planning initiative on the six aspects of quality is summarized in the table below.

TABLE 10.1.—HEALTH CARE QUALITY AND NEED IMPROVEMENTS FROM MARKET PLAN SOLUTIONS

Planning initiatives	Improve performance indicators	Improve continuity/coordination	Increase workload volume	Improve veteran access	Expand service mix	Meet capacity needs
Access		X		X		
Capacity	X	X	X	X	X	X
Small Facility	X		X			
Consolidations/Realignments			X	X		
Special Disabilities			X	X		X
Collaborations			X	X		
Vacant Space				X	X	X

Quality and Access to Primary Care, Acute Hospital and Tertiary Care Services

Markets with access planning initiatives for primary, acute hospital or tertiary care services were required to propose new access sites to improve the number of enrollees within driving time guidelines. Improvements in access resulting from the National CARES Plan strategy are discussed in Chapter 4, "Enhancing Access to Health Care Services." New access sites were proposed using various combinations of leases, contracts, joint ventures, and VA staffed and non-VA staffed alternatives. While cost was a factor used by markets to determine their preferred alternative, quality issues such as the ability to provide sufficient volume, mix of services or availability of health care professionals weighed heavily in their decisions.

Quality and Workload Capacity Solutions

Quality Performance Indicators

The main quality factor discussed in inpatient and outpatient capacity planning initiative narratives was the strong desire to maintain a high level of quality care as measured by patient satisfaction, clinical performance and preventive care measures and waiting times. Facilities felt strongly about achieving compliance with these VHA priority performance goals and chose an option that maintained quality or minimized the negative impact on their outcomes, whether that solution was provided at the parent facility, off-site or through non-VA providers.

Continuity and Coordination of Care

Many inpatient and outpatient capacity planning initiative solutions, particularly outpatient primary care and mental health, involved off-site care through either new access sites or expansion of existing sites. The decision to use VA versus non-VA providers was often based on data that VA providers have more control over quality outcomes through the administration of clinical guidelines and prevention measures. Many markets chose solutions that maintained the current character of their primary care group practice models to ensure a consistently high level of quality care for all enrolled veterans. Those who chose non-VA provider solutions for positive financial or access impact also felt strongly about compliance with these measures and proposed to minimize the potential negative impact on quality by strengthening contractual oversight of quality outcomes or by enhancing case management programs to ensure coordination and continuity of care.

Volume of Service Provided

Solutions to outpatient specialty and acute inpatient capacity planning initiatives showed a greater concern for quality based on volume of care. In the case of outpatient specialty care, markets often proposed moving more primary care off-site to allow expansion of specialty care at the parent facility. The reasons most often stated for this strategy were the availability of sub-specialist providers, minimizing negative impact on affiliations due to volume of care, and proximity to diagnostic and therapeutic services. Solutions for off-site specialty care usually involved moving only selected subspecialties to Community Based Outpatient Clinics or using non-VA providers. In the case of inpatient medicine and surgery, non-VA providers were often chosen as the preferred solution because the impact on quality due to low volume of care was perceived to be more important than the impact on quality due to fragmentation of care among multiple providers. Consolidation of acute programs within a market, and other realignments for reasons of quality, cost and staffing efficiencies, were often seen in acute inpatient psychiatry.

Access to Care

Both VA and non-VA solutions seek to have a positive impact on quality by improving access and reducing waiting times. This was stressed most often in outpatient specialty and mental health planning initiatives. Specialty care waiting times have been a focus of VHA over the past few years. For outpatient mental health, integration into a patient's community was viewed as having a significant impact on quality due to increased compliance with treatment plans and decreased potential for hospitalization.

Mix of Services

Many markets chose to establish new or to expand existing Community Based Outpatient Clinics or Satellite Outpatient Clinics (SOPs) to include primary, mental health, specialty and ancillary/diagnostic care. These markets provide models using this expanded mix of services to improve quality by decreasing waiting times, reducing duplicated tests and repeat visits, and increasing patient satisfaction. Markets that did not have the population base to support these larger CBOCs or SOPs generally felt that quality of care, based on these same factors, would be greatest if provided at the parent facility where patients would have access to specialized and support services.

Capacity Needs

Market Plans were required to resolve capacity needs in workload and space. Controls were in place to ensure that the plans did resolve these gaps in the IBM Market Planning Template.

Quality and Small Facilities

The majority of medical centers that proposed closing acute hospital beds planned to refer workload to other VHA facilities and to community hospitals in order to keep access local, maintain customer satisfaction and improve cost efficiencies. The impact on all aspects of quality was considered positive. The medical centers that proposed to retain less than 40 acute hospital beds indicated that the potential impact on quality from low volume would be offset by such factors as being a key provider in the community or vast distances to other VHA facilities. A proposed solution for minimizing the impact of low volume on quality involves a conversion of acute beds to a Critical Access Hospital (CAH). Medicare's CAH criteria includes such provisions as being part of a referral hospital network, length of stays no more than 96 hours, full-time emergency coverage, and designation by the state as a "necessary provider.[56]

Quality and Proximity/Campus Realignments

No consolidation or realignment proposals resulting from proximity planning initiatives are anticipated to have a negative impact on quality. Quality issues resulting from proposed realignments were discussed in the narratives in terms of the impact on medical school affiliations, DoD sharing agreements and veteran access. Consolidation of services, particularly small volume and high cost procedures and subspecialties, was viewed as having a positive impact on quality of services provided.

Quality and Special Disability Programs

Spinal Cord Injury and Disorders and Blind Rehabilitation planning initiative solutions focused on quality in terms of expanding capacity and improving access to meet veteran needs through 2022. Some facilities propose space enhancements to improve the quality of the environment in which these services are provided.

Quality and Collaborative Opportunities

Quality was often stated as a positive impact of DoD collaborative initiatives, generally based on volume and mix of services. DoD physicians that are given clinical privileges at a VHA facility enhance care to veterans and maintain their proficiency for small volume procedures. DoD has more extensive experience with the treatment of women and children and offers patient care and resident training expertise in these specialties.

Quality and Vacant Space

CARES Market Plan vacant space solutions largely impacted cost efficiency and environmental safety, with a lesser impact on health care services and need. Vacant space was converted or reserved for future health care services when demand data supported the need. Buildings determined to be unsafe or unusable buildings too costly to maintain were proposed for demolition. Usable buildings not needed for future health care services were proposed for enhanced use lease, out-leasing, collaborative efforts or other alternatives that would avoid cost or produce revenue. Some of the enhanced use lease solutions would improve access and service mix by providing veterans with additional services, such as independent living and assisted living.

Chapter 11: Capital Investments (Safety and Environment)

Relationship of Capital Assets to Safety and the Environment

The CARES process recognizes that the management of VHA's capital assets must be coordinated with respect to the functionality of the space, occupational safety and health, fire safety, seismic considerations, and other building and equipment design criteria which affect safety codes and standards. This chapter of the CARES Plan addresses these issues as well as the general area of capital investment.

Process of Developing Market Plans

The VISN market planning process was largely determined by the web-based computer application developed by IBM called the IBM Market Planning Template.[57] Appendix K outlines the assumptions and limitations of the IBM Market Planning Template used to develop capital investment plans. The template required the following steps:

1. Allocate the projected workload demand at the market level to VISN facilities for each CARES Category.
2. Manage projected workload demand by determining how much workload would be managed in-house or through community contracts, joint ventures, sharing, or a combination of any of these choices. The amount of workload managed in-house determined how much space was needed at a treating facility for a particular CARES Category.
3. Manage projected space needs at each treating facility for each CARES Category through new construction, converting vacant space, leasing space in the community, or through an enhanced use initiative or donated space. The projected space required at a treating facility to meet the in-house workload demand was determined using a square foot/workload unit (space driver) unique to each facility and based on optimum space (Appendix O). The projected space was compared to current space available at a facility in that CARES Category, and a "space needed" or "space overage" amount was calculated. The IBM Market Planning Template allowed a VISN to find a space solution within 25% of the projected space need, allowing some flexibility in addressing local efficiencies, such as the use of longer hours or more staff. In some cases, this 25% was not sufficient, but the template would not allow less than 75% of the space need to be met.

Capital Plans

A Capital Plan will be developed during the implementation phase of CARES. The Capital Plans will cover a five to ten year time period rather than the 20-year planning horizon used for VISN Market Plans. A shorter time frame for capital planning is necessary in order to keep current with changing technology and health care delivery systems. The 20-year workload projections will be used to validate the need for the projects over the expected 20-year life of the investment.

Improving Safety and Functionality of Existing Space

Maintain Appropriate Tertiary Care Environment

As VHA increases access to both outpatient and inpatient health care services, one of the primary missions of the CARES planning process is to ensure that a safe and appropriate infrastructure is sustained at VA's tertiary care facilities. The National CARES Plan proposes capital investments in the seven core CARES categories (inpatient medicine, surgery, psychiatry and outpatient primary care, mental health, specialty, ancillary/diagnostic) of $1.7 billion dollars to support VHA tertiary care facilities. This is a sub-set of the $2.6 billion dollars proposed for capital investments in those seven clinical CARES categories for all facilities combined.

[56] Chapter 8 "Strategic Direction of Small Facilities" and Appendix N "Critical Access Hospital Designation"

[57] IBM Market Planning Template Technical Summary is included under References.

Safety and Functionality of Existing Space

By projecting veteran workload needs for the next twenty years, CARES was able to determine what existing infrastructure will be needed through the year 2022, assess the condition of that infrastructure, and plan to bring it to acceptable industry standards. The current condition of VHA's physical environment was measured through a facility survey process that resulted in an overall Condition Score for all existing space (Appendix O). Elements that were scored and weighted to make up the Condition Score for space in each CARES Category at each VHA facility included layout, code compliance, handicap accessibility and patient privacy. Space in each CARES Category at each facility was scored on a range of 1 to 5 with 5 being the best. Space with a Condition Score of less than 3 was considered for renovation to a score of 5. The following table shows the impact of these planned improvements.

TABLE 11.1.—RENOVATION AND IMPROVEMENTS TO EXISTING SPACE FY 2002–FY 2022

Type of investment	Total space	Prior weighted condition score of space	Total cost (current $'s)	Revised condition score of space
Convert Vacant	3,779,421	2.40	$402,859,514	5.00
Renovate Existing	7,981,188	3.41	603,040,996	5.00
National Totals	11,760,609	3.09	1,005,900,510	5.00

Data and Report Last Updated: 6/26/03.

Note: Table 11.1 includes all CARES categories except Research and Other Space. It includes the seven, core inpatient and outpatient clinical categories as well as Nursing Home/Intermediate, Domiciliary, Spinal Cord Injury, Blind Rehabilitation, Residential Rehabilitation, and Administration.

As seen in Table 11.1 above, the overall Condition Score for existing VHA space planned for renovation in CARES is 3.09, reflecting current compliance with recommended guidelines for space condition. Figures 11.3 and 11.4, later in this chapter, show the distribution by year of the necessary renovations to existing infrastructure. The majority of renovation costs appear in years 2004 through 2006, indicating the immediate need to improve the quality and functionality of VHA's infrastructure.

Vacant space was also given a Condition Score at each VHA facility. Vacant space that was converted to usable space to address workload gaps in VISN Market Plans had an even lower average Condition Score of 2.40 (Table 11.1). The conversion of this vacant space to meet workload demand will also result in the improvement of this space to acceptable levels.

Seismic Strengthening

The VA Secretary has made seismic strengthening a priority to assure the safety of our infrastructure in high-risk areas of the country. VHA has currently placed 63 sites on its priority list. VISN responses in meeting this priority through the CARES process are shown in the table below.

TABLE 11.2.—PROPOSED SEISMIC CORRECTIONS (VISN COST ESTIMATES IN CURRENT DOLLARS)

VISN	Facility name	Market name	Cost
8	San Juan	Puerto Rico	$85,000,000
20	American Lake	Western Washington	21,840,000
20	Portland	South Cascades	49,680,000
20	Roseburg	South Cascades	17,000,000
20	White City *	South Cascades	(**)
20	Seattle	Western Washington	16,960,000
20	Walla Walla *	Inland North	5,700,000
21	Fresno	South Valley	12,000,000
21	Palo Alto	South Coast	28,972,872
21	San Francisco	North Coast	51,000,000
22	Long Beach	California	39,000,000
22	San Diego	California	49,100,000
22	West LA	California	64,400,000
Total			440,652,872

* Being considered for realignment
** Included in Building Replacement Costs.

Parking Improvements

Although parking improvements were not directly included in the IBM Market Planning Template, many VISNs did submit initiatives under the Vacant Space category. Adequate parking is considered a necessary part of ensuring full access to health care services. VISN Market Plans have identified eight parking initiatives; five initiatives are planned for accomplishment through the enhanced use program and three through new construction.

Meeting Capacity Demand for the Future

In addition to ensuring that VHA maintains an appropriate tertiary care environment and improves the safety and functionality of its existing infrastructure, CARES addresses infrastructure needs to meet projected future demand.

Outpatient Capital Investments

The CARES planning model projected an overall increase in the demand for

outpatient services (primary care, specialty care and mental health care), which resulted in a demand for additional space. The peak in this workload demand was usually managed through contracting for care or leasing space, both of which reduce the demand for in house space. Therefore, outpatient demand resulted in less renovation of existing space and conversion of vacant space as compared to inpatient demand. Figures 11.1 and 11.2 show the relationship between workload demand gaps and space demand gaps for outpatient care. By comparing the trends in both charts below, it can be seen that space gaps over a 20-year period followed workload projection trends.

Figure 11.1 National Outpatient Workload Gaps in Clinic Stops (Includes Contract Care)
FY 2002 – FY2022

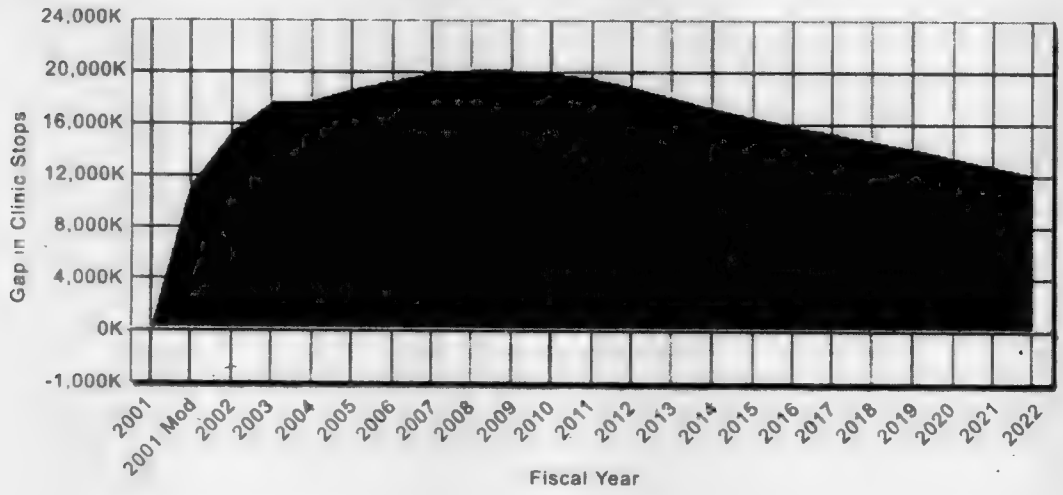

Figure 11.2 National Outpatient Space Gaps in Square Feet
FY 2022 – FY 2022
Includes Outpatient Primary Care, Specialty Care and Mental Health

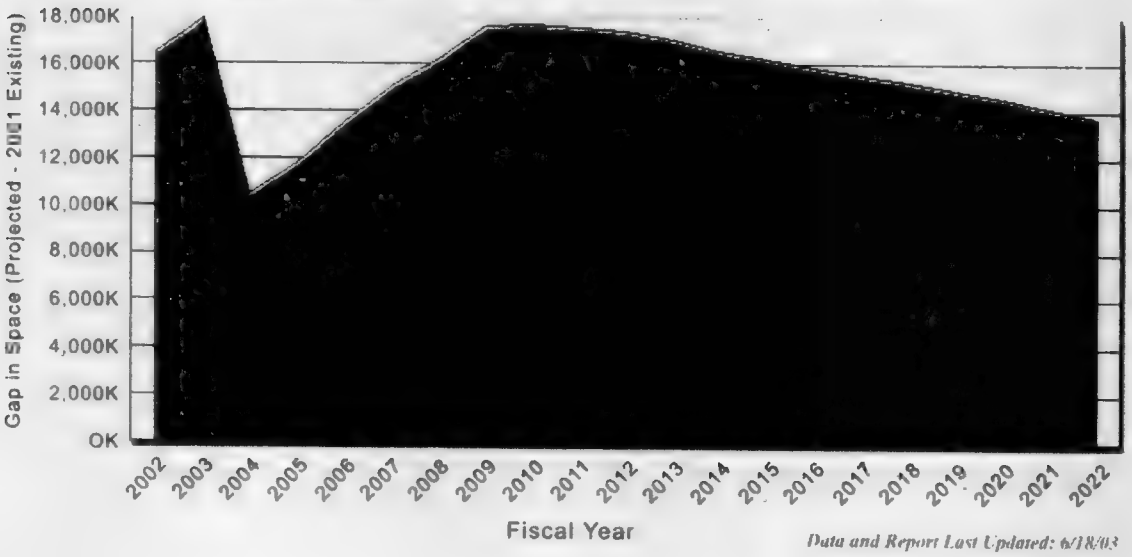

Data and Report Last Updated: 6/18/03

Figure 11.3 National Inpatient Capital Investments in Current Dollars

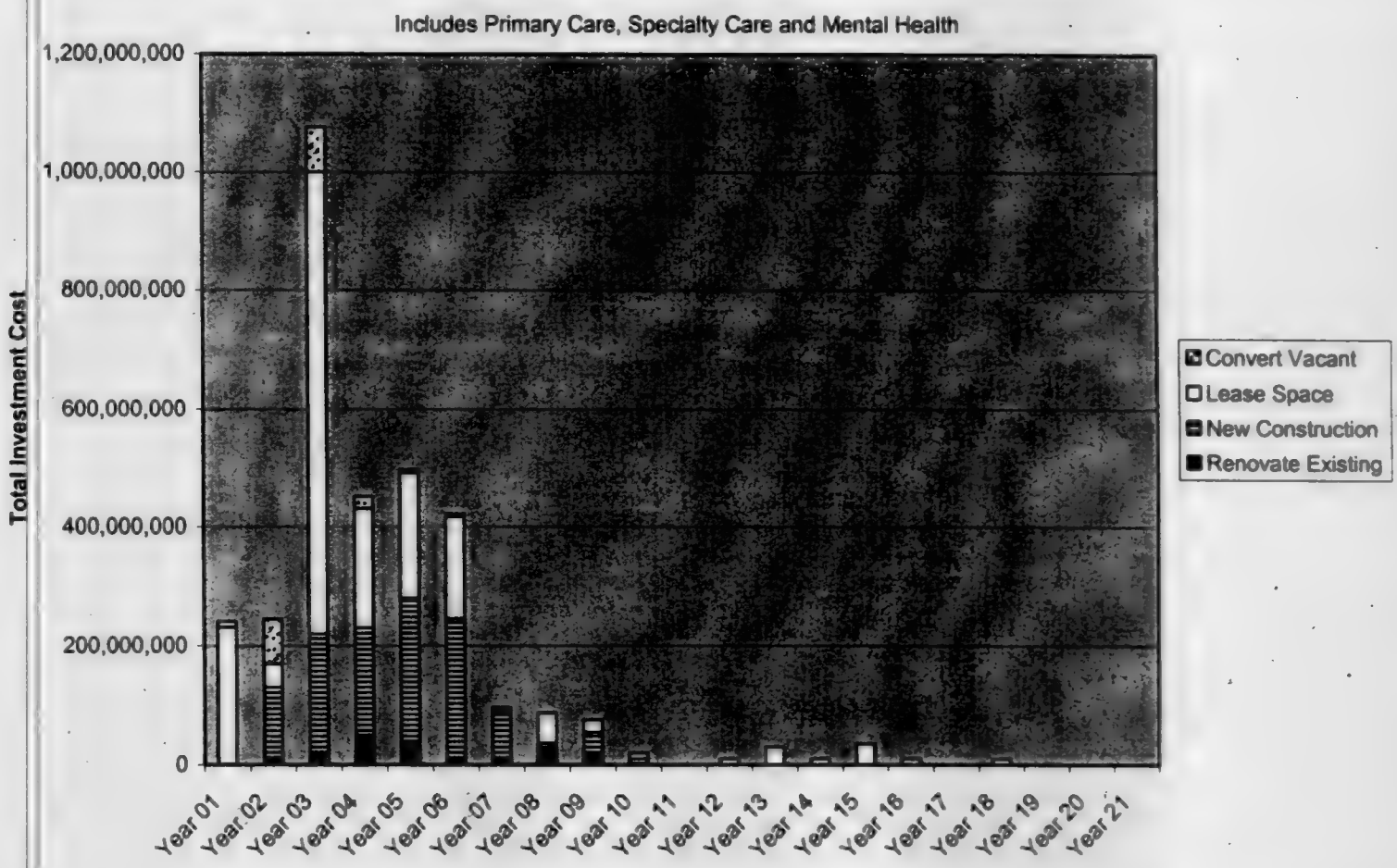

Inpatient Capital Investments

Current inpatient infrastructure is not adequately sized to meet the current demand for space. Additionally, the existing space did not meet patient privacy or other standards for environment of care. However, with the majority of the outpatient increases managed through contracts or in leased space, space within existing facilities can be renovated to accommodate the needs.

Figure 11.4 shows the capital investments proposed for inpatient care. New construction and conversion of vacant space make up a significantly larger portion of inpatient capital investments than it did for outpatient care. Outpatient care is more readily provided through Community Based Outpatient Clinics or other off-site leased facilities.

Figure 11.4 National Inpatient Capital Investments in Current Dollars

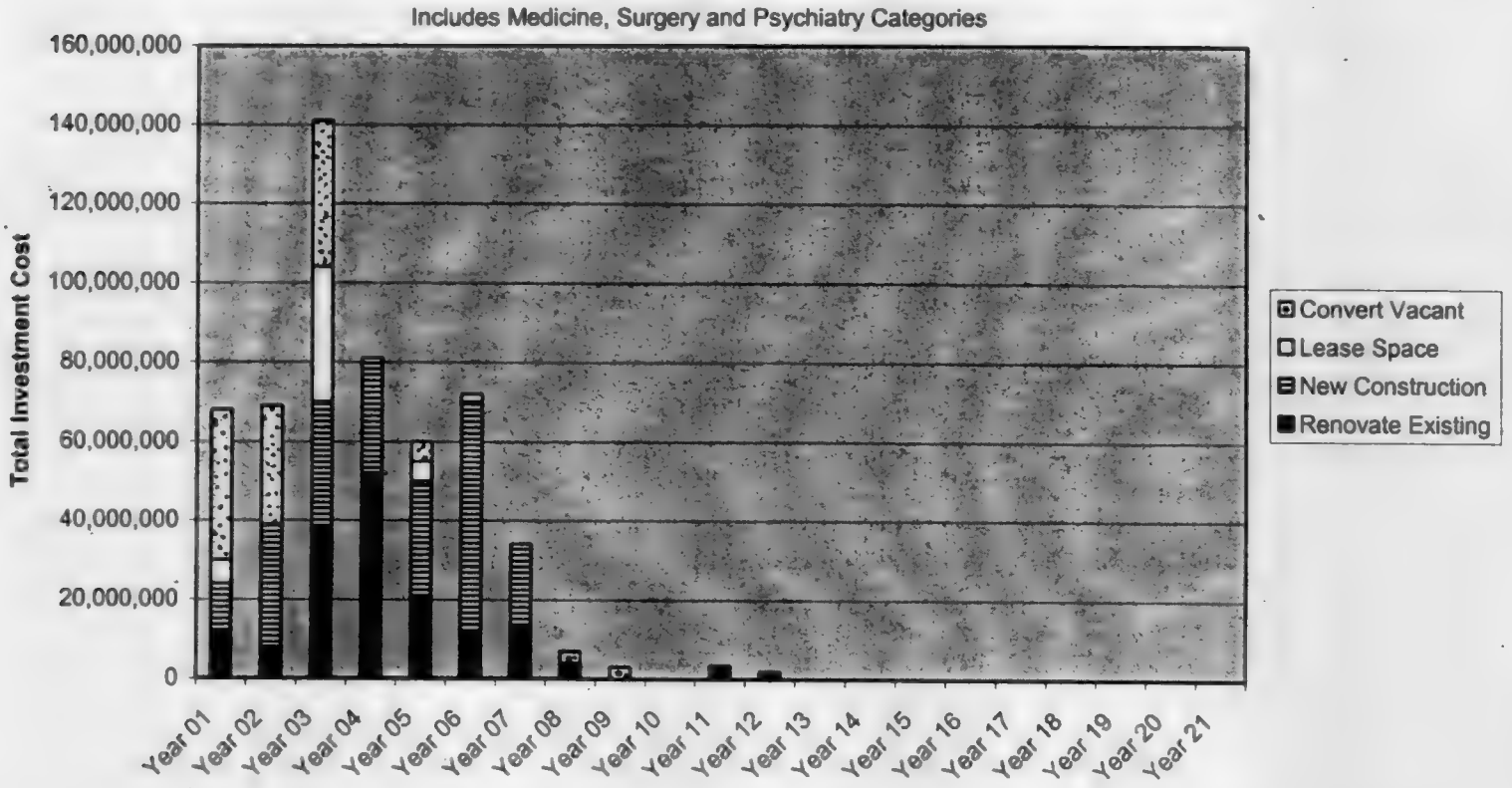

Types of Capital Investments

VA-Owned versus Leased Space

VA-owned space expansion was achieved through new construction or conversion of vacant space. 16,201,969 square feet of new construction and 4,121,335 square feet of vacant space conversion have been identified to address increasing workload capacity. While some of this expansion is needed to meet future workload demand, some space shortages were identified as currently existing.

Leased space was utilized for peak demands in in-house workload. Leasing was a good temporary solution that eliminated the need for permanent VA owned space. The chart below shows the total proposed leased space by year. The second chart graphically depicts the square footage leased by year compared to the workload demand.

Figure 11.5 Total Leased Space

Amount of Inpatient Leased Space in Square Feet

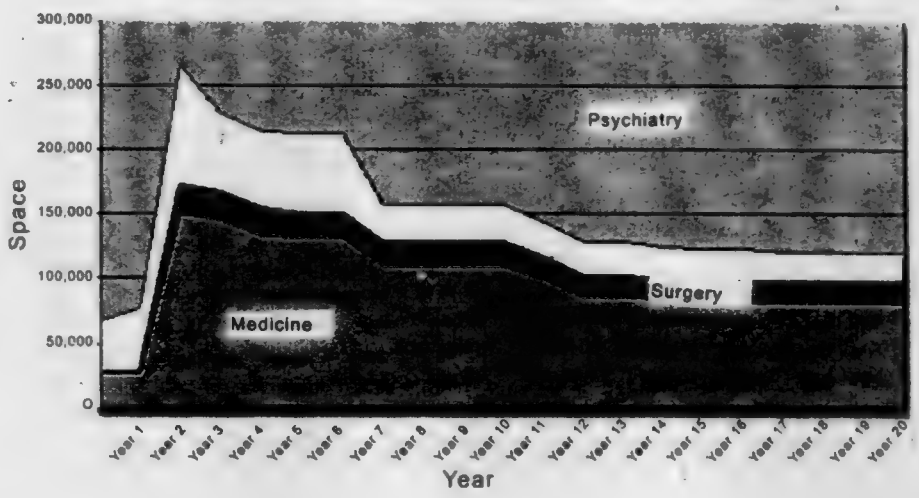

Amount of Outpatient Leased Space in Square Feet

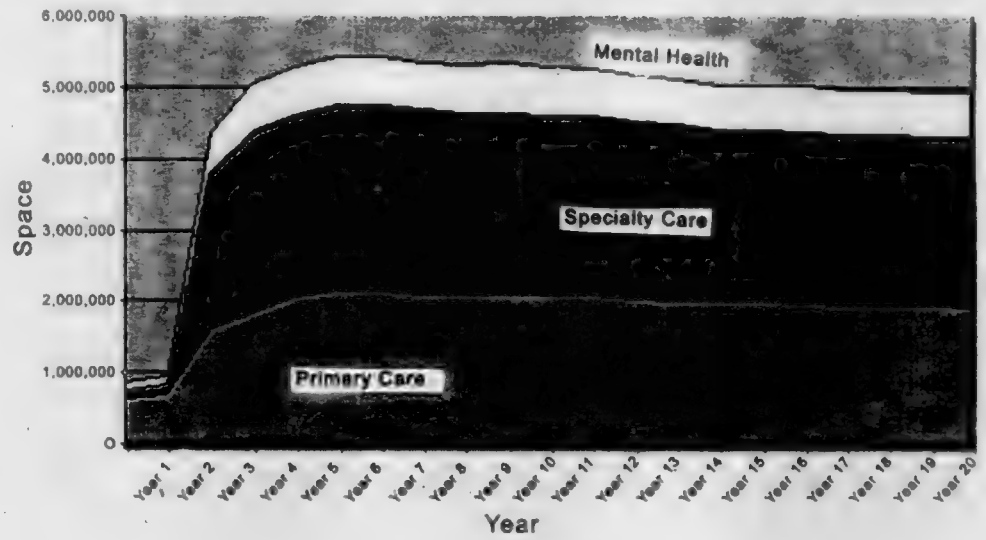

Enhanced Use Lease To Expand VHA Capacity

Enhanced use lease initiatives have been identified as an option for expanding capacity at a facility to meet future workload demand. A total of 792,200 square feet of enhanced use lease space is proposed nationally. Of this square footage, 54 percent represents expansion of clinical programs; 46 percent is identified for additional administration and research space.

The CARES Planning Process has encouraged the VA to manage excess land through collaborations with NCA, VBA, and enhanced use lease initiatives. Eleven VISNs identified sites in their CARES Market Plans for future cemeteries. Five thousand acres will be or have been allocated for NCA. More details on collaborative opportunities are available in Chapter 13.

Donated Space

Donated space was used only on a limited basis as a solution to expand space capacity. Donated space was also used for unusual space situations, such as extended clinic hours or renovation of existing space to improve capacity (Appendix K).

Chapter 12: Reducing Vacant Space

Background

The GAO Report (GAO/HEHS–99–145) titled "VHA Health Care Improvements Needed in Capital Asset Planning and Budgeting" from August 1999 states:

VA's large, aged infrastructure could be the biggest obstacle confronting its efforts to transform itself from a hospital-based operator to a health care provider that relies on integrated networks of VA and non-VA providers to meet veterans' health care needs. Over the next few years, VA could spend one of every four of its health care dollars operating, maintaining, and improving capital assets at its 181 major delivery locations that encompass over 4,700 buildings on 18,000 acres of land nationwide.

The cost savings cited by GAO are based upon total closure of facilities and not the reduction of vacant space that is dispersed throughout numerous campuses within individual buildings, which is our current condition. However recognizing the importance of reducing vacant space, the CARES Plan included a discrete component—described in this chapter of the plan—designed to reduce excess space and conserve resources by lowering maintenance and operational costs of infrastructure not needed by VHA to meet its various missions.

The description and data on the reduction in vacant space does not include the results of the realignment

reviews that are described in Chapter 9. This data will be fully developed during implementation planning.

Baseline CARES Data

To evaluate the ability of existing capital assets to meet future demand, VHA first conducted a comprehensive survey of current infrastructure, (Appendix O). This Space and Functional Survey evaluated both the quantity and the quality of the physical infrastructure that was owned or leased by VHA. This was used to develop the inventory of existing VHA-owned space that included approximately 8.5 million square feet of vacant space.

Projecting Vacant Space

The existing VHA-owned space inventory and the workload projections were used to develop a projected demand for space. Using the projected demand for space, VISNs developed a 20-year plan of actions (renovation, new construction, converting vacant space, leasing) that adjusted the existing inventory to meet projected need. Space that was not utilized for patient care, support of patient care or other VA missions, was identified as vacant. The resulting vacant space was then proposed for demolition, divestiture, out leasing or enhanced use.

Summary of Vacant Space Planning Initiatives

The CARES planning process resulted in a projected 42% reduction of vacant space from 8,571,605 square feet in FY2001 (excludes space that is currently out leased) to 4,934,002 square feet in FY2022 for a net reduction of 3,637,603 square feet. See Table 12.1.

TABLE 12.1.—REDUCTIONS IN VACANT SPACE IN SQUARE FEET (FY 2001 TO FY 2022)

	FY 2001	FY 2022
Total Space	93,949,947	118,156,557
Vacant Space ...	8,571,605	4,934,002
% Vacant	9	4

The following charts and tables depict VHA's plans to manage its vacant space over the 20 year planning horizon.

Figure 12.1 graphically depicts reduction in vacant space over the 20 year planning cycle.

Figure 12.1 Reduction in Vacant Space

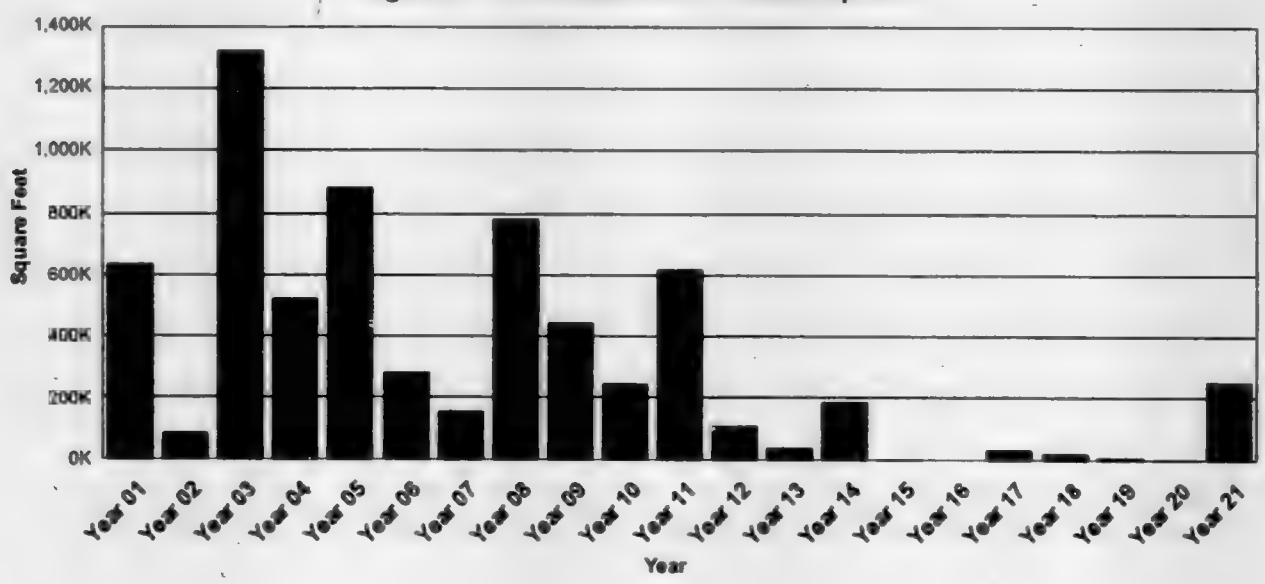

Most of the reduction in vacant space is accomplished in the first few years of the planning horizon since much of this space is currently vacant and not dependent upon realigning space. In addition, from Year 1 to Year 11, demolition remains fairly high as new vacant space is created by consolidations of existing services/buildings and modern building replacements. Decreases in vacant space in the later years occur because complete units (buildings or wings) have been demolished and the vacant space remaining is scattered in pockets throughout facilities. The increase in the reduction of vacant space in Year 21 is due to two facilities planning to undergo mission changes. The fact that domino moves are needed to phase in these mission changes, and the fact that historic buildings are involved, caused the final demolition of their space to occur in Year 21 rather than earlier.

Figure 12.2 depicts the vacant space that has been planned for out leasing. Out leasing includes space leased to Service Organizations, Community Service Organizations, National and Community Homeless programs, and State, Local and other Federal agencies.

Figure 12.2 Space Out Leased

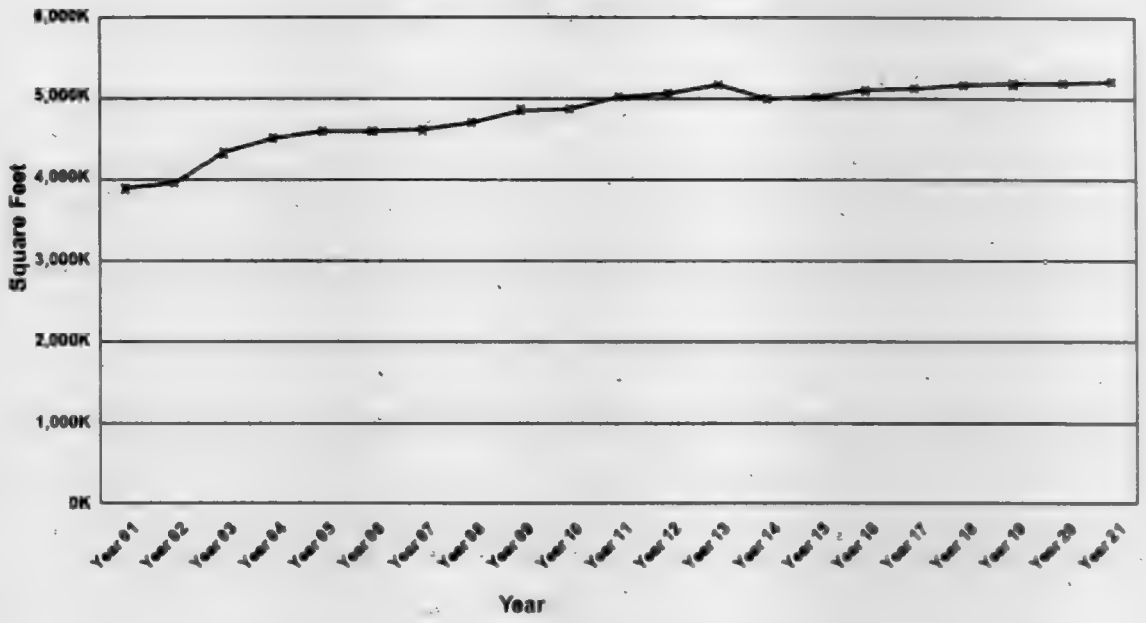

Figure 12.3 below indicates the space that has been planned for enhanced use lease opportunities that could generate revenue for VHA.

Figure 12.3 Space Used For Enhanced Use Lease Initiatives

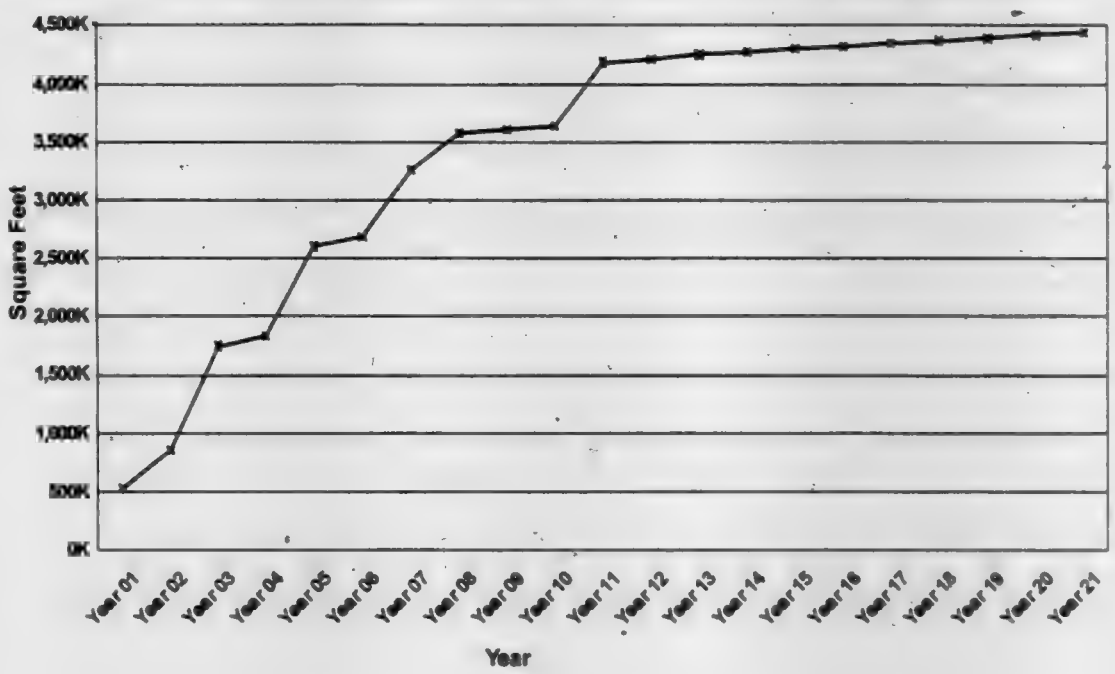

Figure 12.4 Space Remaining Vacant

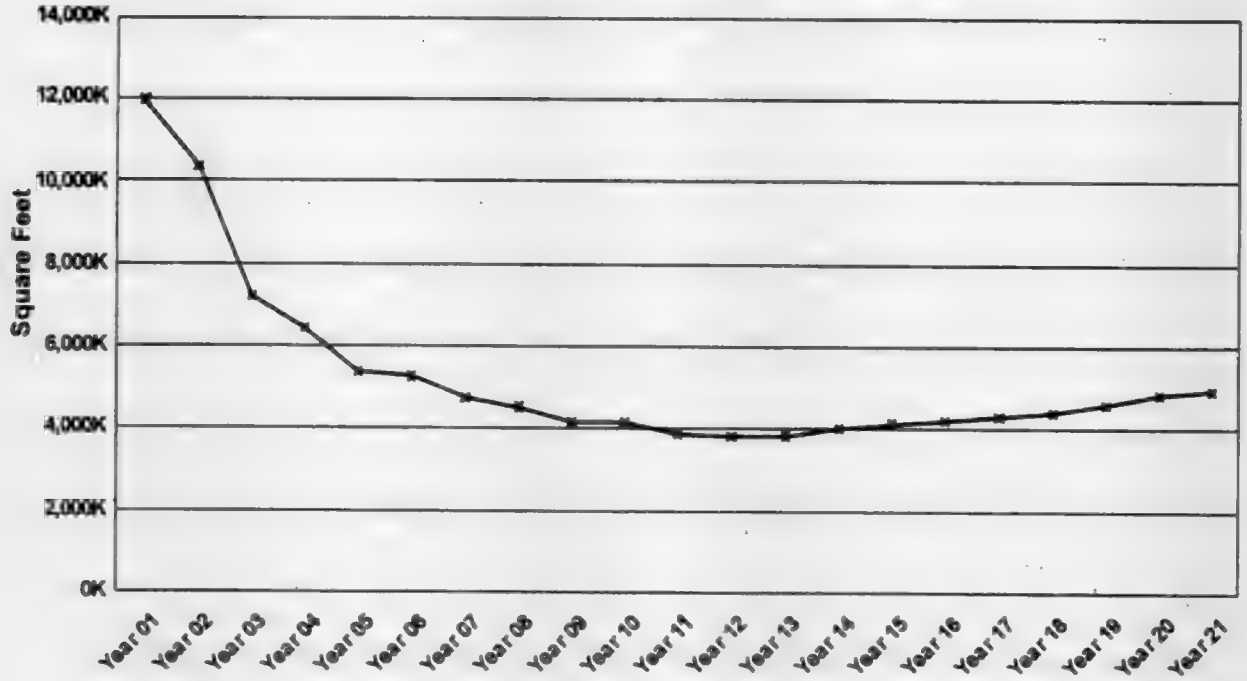

As mentioned in other areas of this plan, proposed capital investments cannot be accurately predicted beyond five years. This also applies in predicting alternative uses of vacant space. The demand for possible vacant space at VA facilities could change in the future based on a number of factors such as the economy or changes in health care delivery practices. In most instances, the vacant space is not contiguous but consists of pockets of vacant space scattered throughout the campuses, rendering it useless for alternative uses.

Savings associated with the reduction in vacant space are shown below. The reduction in vacant space described in Table 12.2 represents a minimum reduction since it does not include reductions in vacant space that will occur due to realignments of campuses and reuse of the campus through enhanced use leasing.[58]

TABLE 12.2.—RECURRING COST OF VACANT/UNDERUTILIZED SPACE THROUGH 2022

[Costs are in current dollars]

	FY 2001	FY 2022	Difference
Vacant/underutilized space in square feet (SF)	8,571,605 SF	4,934,002 SF	3,637,603 SF
Average cost/sf to maintain in current $[58]	$12.39 per SF	$12.39 per SF	.....
Annual cost ($ per year)	$106,245,044	$61,156,955	$45,088,089
Other savings/profits/costs ($ per year) *	.....	$15,493,381	.....
Revised annual costs ($ per year) *	$106,245,044	$45,663,574	$60,581,470
Cost per day ($ per day)	$291,082	$125,105	$165,977

Note: *Other Savings/Profits/Costs related to the management of vacant space include such things as revenues from enhanced use lease initiatives, operational savings from building demolition, or revenues from sale of property. VISNs did not have a standardized way to enter these cost estimates so this dollar figure is not all inclusive of the potential savings from the management of vacant space.

Campus Closures

The CARES planning process has identified several potential campus closures for which the total savings has not yet been fully evaluated. Chapter 9 on Proximity and Campus Realignments and Appendix G, Proximity Planning Initiatives, contain additional information regarding facility mission changes and the potential uses for the resulting vacant space.

Chapter 13: VBA and NCA Collaborative Initiatives

Serving Veterans: "The Family Business"

In addition to the Veterans Health Administration, which provides the medical services at the heart of this CARES Plan, two other primary VA branches manage programs and services for veterans. The Veterans Benefits Administration (VBA) oversees the Department's programs for compensation and pension, education, loan guaranty and life insurance. The National Cemetery Administration (NCA) is responsible for burial benefits, national cemeteries and the State Cemetery Grants Program.

In planning future changes in VHA's infrastructure, the CARES process not only considered strategies to address projected health care demand, but also sought opportunities for efficiencies in rent and property management through

[58] Cost provided by Professional Estimator in VHA Office of Facilities Management.

collaboration with these other two VA administrations.

Summary of Proposed VBA Initiatives

A number of very positive, long-standing examples of collaborations resulting in such efficiencies can be found around the nation. These involve either the placement of VBA benefits offices on VA medical center grounds, or leased space shared by VBA offices and VA outpatient clinics. With the benefits of such actions well known, incorporating such arrangements in future strategic plans was a given.

Therefore, intense teamwork between VBA planners and various VISNs was needed to identify 17 CARES planning initiatives involving interdepartmental collaboration. At the time the CARES Plan was prepared for publication, these initiatives remained in early stages of development. As a result, only a preliminary assessment of the feasibility of these potential collaborations is presented here.

While both VHA and VBA approached any proposed collaborative venture with the objective of finding cost efficiencies, the consensus was that service to veterans would remain the priority consideration. In this context, review of these initiatives focused on the extent to which they would support and enhance VBA's productivity, accuracy, and timeliness in delivering benefits.

Specifically, VBA evaluated and prioritized proposals to co-locate benefits offices onto VA medical center grounds at 17 locations, based on the potential to improve claims processing and accessibility to veterans. The initiatives were categorized in three priority levels and accordingly assigned general time periods for further development and implementation. The following listings include comments about the criteria considered in this process:

High Priority Initiatives: Co-location of VBA offices at 6 VA Medical Center sites during years 2004–2010. Evaluation indicates that claims processing and accessibility requirements would be met, while achieving a high return on the transition investment (*i.e.*, areas involved are subject to expensive rents, and significant costs can be avoided or reduced).

Medium Priority Initiatives: Co-location of VBA offices at 11 VA Medical Center sites during years 2011–2016. Evaluation indicates that claims processing and accessibility requirements would be met, but the transition investment would bring lower return because rents are less expensive at these designated sites.

Low Priority Initiatives: Co-location of a VBA office at one VA Medical Center site during 2017–2022. Evaluation indicates that claims processing and accessibility requirements would not be met, notwithstanding rent circumstances.

The high priority VBA co-location initiatives developed in the CARES process—on which further development and implementation are recommended during the period 2004–2010—are listed below. A more comprehensive listing and explanation of all high, medium and low priority sites can be found in Appendix H.

- VISN 1 (Newington CT)
- VISN 7 (Columbia) SC
- VISN 18 (Albuquerque, NM)
- VISN 22 (Los Angeles, CA)
- VISN 22 (Reno, NV)
- VISN 23 (Minneapolis, MN)

Summary of Proposed NCA Initiatives

The National Cemetery Administration (NCA) collaborated with VHA in the CARES process to identify potential excess land at VA Medical Centers that could be used to provide burial options for veterans and eligible family members.

After an analysis of VA properties and projected future needs in each VISN, NCA identified 58 locations within 18 VISNs, where acquiring available land would be of interest. As a result of discussions at the Planning Initiative Selection Conference, 23 initiatives involving 14 VISNs were identified. Further review and analysis by VHA and NCA narrowed this list to a total of 16 collaborative opportunities within 11 VISNs.

Major reasons for inability to collaborate on some of the initiatives included insufficient acreage available at the medical facility, and unsuitability of the site for cemetery development (for example, due to inappropriate topography or aesthetics).

At the time this CARES Plan was prepared for publication, these NCA collaboration initiatives remained in early stages of development. Therefore, only a preliminary assessment of their feasibility is presented here.

Similar to the circumstance noted above for collaboration between VHA and VBA, both VHA and NCA approached these potential collaborations with the objective of finding cost efficiencies. And again, the consensus was that service to veterans would remain the priority consideration.

In this instance, review of the initiatives focused on NCA's goals and strategies, and the initiatives were scored on their potential to improve the efficiency, timeliness of services, and overall accessibility of burial benefits and national cemeteries.

The planning horizon for high priority NCA CARES initiatives was designed as 2004–2010. The following sites were selected for these high priority initiatives, based on the potential to continue to provide access to burial services to veterans, or to provide access to veterans not currently served by existing NCA or state veteran cemeteries:

- VISN 3 (VA Hudson Valley HCS and Montrose)
- VISN 6 (Salem)
- VISN 8 (Future co-location at Sabana Seca Naval Facility at San Juan)
- VISN 10 (Chillicothe)
- VISN 15 (Leavenworth and St. Louis)
- VISN 20 (Walla Walla)
- VISN 22 (West LA)

A complete listing of sites for medium priority initiatives (for potential action during the years 2011–2016), and low priority initiatives (potential action in the years 2017–2022), and further explanation of the high priority sites, is presented in Appendix H.

Chapter 14: Partnering with the Department of Defense

Federal Medicine: DoD and VA Opportunities

There is a tremendous potential for savings through sharing of medical services and other resources among federal medical providers. Because of sheer size and wide dispersion around the country, the VA and DoD health care systems in particular have available numerous collaborative opportunities.

VA operates 162 hospitals and more than 850 community and outpatient clinics, nationwide, at a cost of more than $28 billion. DoD spends a similar amount on health care, split between approximately 75 military hospitals and 600 clinics and through networks run by managed care support contractors.

Resource sharing between the VA and DoD facilities has been increasing since the early 1980's. Some of the specific activities involved are major medical and surgical services, laundry, blood supply and other laboratory services, specialty care, training activities, joint venture construction and the operation of facilities.

In the summer of 2001, the President's Management Agenda was announced. The agenda is an aggressive strategy for improving the management of the federal government. Contained in the agenda is a specific section entitled

"Improved Coordination of VA and DoD Programs and Systems." In this section, the President directed VA and DoD to improve the coordination of benefits, services, information and infrastructure to ensure the highest quality of health care and efficient use of resources.

In response to the President, VA and DoD established a Joint Executive Council (JEC) in February 2002 to facilitate and monitor health care, benefits, and other sharing activities. During the past year, the two Departments have undertaken unprecedented efforts to improve cooperation and sharing in a variety of areas through the JEC.

Reflecting a new sense of order after establishment of the JEC, VA and DoD sharing efforts can now be categorized as follows:

- Local sharing agreements allow VA Medical Centers and Military Treatment Facilities (MTFs) to exchange inpatient care, outpatient care, and ancillary services as well as support services.
- Joint venture sharing agreements pool resources to build new facilities or to capitalize on existing facilities.
- National sharing initiatives, coordinated by the JEC, are interagency initiatives, such as joint disability discharge physicals.

CARES Designers Foresaw Additional Sharing Progress

Since the CARES process was initiated just as these intensified sharing actions were being implemented, it might seem that expecting significant further improvements or savings from this area would be somewhat optimistic.

Nevertheless, the enhanced CARES design exhibited a strong conviction that the process would deliver further progress—as reflected in one of the stated goals for CARES planning: "to improve sharing facilities and services with DoD."

In fact, the CARES process identified dozens of additional sharing opportunities. In many instances, the potential new opportunities were immediately helpful in developing solutions to planning initiatives that VISNs already had identified through other CARES components (*e.g.*, enhancing access, ensuring inpatient capacity, etc.)

The draft VISN Market Plans therefore were submitted with numerous planning initiatives for additional sharing with local DoD facilities. These initiatives were reviewed by an interagency team, which included representatives from the National CARES Program Office and the VISNs, as well as representatives from Tricare, Army, Navy and the Air Force. The review analyzed these collaborative opportunities in the context of projected workload for both departments.

The reviewers conducted a detailed evaluation, in some cases directly contacting the VISNs to clarify their submissions. After the review, the team divided the collaborative opportunities into the following five categories.

1. High Priority

a. There exists an acute demand for access to services or facilities on the part of DoD or VA

b. There appears to be substantial mutual advantages to collaboration

c. DoD has proposed a major construction facilities project at the collaboration site. The proposed project is currently in planning or design and immediate coordination is required to determine the scope, cost, and operational implications of collaboration.

d. The project has high visibility to Congress and senior leadership of DoD and/or VA.

2. Near Term

a. The potential for mutually advantageous collaboration appears high.

b. DoD or VA may be contemplating a facilities project, the scope and cost of which could be affected by collaboration.

c. Formal planning and design have not yet been initiated.

d. Preliminary discussions and coordination activities should start in the current fiscal year.

3. Future

a. Potential for mutually advantageous collaboration appears possible, but there exists no compelling reason to pursue detailed planning at this time.

b. No new facilities or projects are currently contemplated by either DoD or VA.

c. Should continue to be considered but likely will not be seriously evaluated until after completion of the 2005 Base Realignment and Closure process (BRAC 2005).

4. Good Ideas

a. Refers to potential collaborative opportunities that have little or no impact on capital investment programs.

b. Relates more to operational functions that would likely produce better business practices.

c. Would not normally be considered within the purview of CARES but instead would be better suited to examination in other DoD/VA sharing venues.

5. Local Development

a. Potential for mutually advantageous collaboration is not readily apparent.

b. VISN CARES analysts have indicated proximity to DoD facilities could lead to further investigation.

c. No new facilities or projects are currently contemplated by DoD or VA.

Collaboration Results

Collaborations and Sharing Opportunities are detailed in Appendix I.

TABLE 14.1.—NUMBER OF DOD COLLABORATIONS BY PRIORITY

High Priority	21
Near Term Development	13
Future Development	9
Good Ideas	5
Local Development	26

High Priority DoD Collaborations

Selected Highlights (A complete list of initiatives can be found in Appendix I)

VISN 3: VA New Jersey HCS and Ft Monmouth (USA). Army is providing space for a CBOC to address primary care. The clinic would treat both veterans and military personnel.

VISN 5: VAMC Washington and Fort Belvoir (USA). Fort Belvoir providing space in new facility for VA primary and specialty care.

VISN 20: VAM&ROC Anchorage and Fort Wainwright (USA). VA will relocate to new clinic space in the new hospital at Fort Wainwright and expand primary and specialty care and mental health services.

VISN 16: Gulf Coast Veterans Health Care System (Biloxi and Gulf Port Divisions) and Keesler AFB hospital are pursuing an opportunity to relocate selected services of the Gulf Port and Biloxi Divisions through sharing with Keesler AFB. This would result in the vacancy of the Gulf Port Division and the opportunity to enhance-use lease the property.

Near Term Development DoD Collaborations

Selected Highlights (A complete list of initiatives can be found in Appendix I)

VISN 5: Baltimore VAMC and Fort Meade (USA). Army would provide space for a VA CBOC.

VISN 20: Seattle VAMC and Bremerton Naval Hospital. Sharing agreement for medical (acute inpatient medicine and emergency services) and ancillary (pharmacy first-fills and laboratory) and support of veterans enrolled at the CBOC Bremerton.

Chapter 15: Research and Academic Affiliations

Contributions to American Health Care

The primary VHA mission is serving the health care needs of the nation's veterans. But VHA has three other statutory missions—medical education, research, and serving in a contingency backup role to the Department of Defense (DoD), coupled with supporting Homeland Security.

The VA was authorized in the post-World War II era to implement involvement in research and medical education in order to attract talented, young medical professionals into the VA system. The arrangement has paid tremendous dividends. Not only has the VA had the benefit of highly skilled medical staff, but also the "side benefit" contributions to the nation at large in research and education have been tremendous.

VA research has produced an array of remarkable medical advances over the years, from the pioneer kidney and liver transplants, and the scientific basis for CT scanning, to more recent, groundbreaking therapies for many types of mental illness. Seventy percent of physicians now practicing in the nation have had some portion of their training in the VA system. The VA health care system also plays a substantial training role throughout the allied health professions.

VA's contingency roles are also of vital importance, both in support of DoD and the Public Health Service during times of disaster or national emergency. Moreover, the VA is one of the nation's principal assets for responding with medical assistance in large-scale national emergencies as part of the Homeland Security network.

This Chapter highlights the following:

- VA Research
- VA's Academic Affiliations
- Relationship of these missions to CARES

Research

VA's research program is one of the largest and most productive in the nation. The Office of Research and Development oversees VA's research in biomedicine, rehabilitation, health services and cooperative studies. With an annual budget of nearly $400 million and total research dollars of more than $1 billion, VA research funds more than 5,200 investigators at 113 VA facilities across the country. VA-based investigators are currently conducting more than 17,000 active research projects designed to enhance the health care VHA provides to veterans. Each of the divisions has particular areas of expertise, but the divisions also increasingly work across disciplinary boundaries to maintain focus on improving patient care. In addition, VA's research program seeks to translate knowledge gained through research into practice by ensuring that new information is quickly made available to those who deliver care. Moreover, VHA clinician-investigators provide high quality care to veterans, who, as a result, have access to experimental drugs and protocols before these "cutting-edge" treatments are available in private or community hospitals.

CARES and Research

Research is considered a CARES non-clinical service in that it does not generate patient workload directly. As such, workload criteria are not appropriate measures of need. To determine the space needed at each facility to support its research program, CARES developed a measure that assigns a dollar value to each square foot of research space, equaling $150 research dollars per square foot. This ratio was derived from dividing the total VHA research dollars in FY2001 by the total square footage of research space in the same year. This ratio is applied to the projected research funding at each facility to determine space needs in the future.

The National CARES Plan contains more than 20 research leases, new construction, and enhanced use (EU) lease proposals that address one or more of the following situations:

- Space available at VA facilities does not meet VA criteria and is far enough under criteria to warrant replacement rather than renovation;
- Future projections indicate a need for a significant amount of additional research space—exceeding the amount locally available;
- Community and/or affiliate partnering is proposed to provide and/or share research space.

When research space is slated to decrease in the future, the space is vacated and either made available for other uses or held in reserve. A number of market plans expect a positive impact on research from planning initiatives that expand in-house inpatient and outpatient services; in several situations, research space will be increased through reallocating existing facility space.

Capital costs for research are not included in other cost estimates in the National CARES Plan because research does not generate patient workload directly. Research is a critical part of the VA mission, however, and a summary of capital improvement costs from the VISN Market Plans is presented in Table 15.1.

TABLE 15.1.—SUMMARY OF CAPITAL INVESTMENTS FOR RESEARCH THROUGH FY 2022

Capital investment	Square feet	Total cost in current $
Renovate Existing Space	828,993	$87,077,891
New Construction	1,509,417	326,267,915
Lease (Build Out Costs)	986,464	55,210,164
Enhanced Use	350,400	0
Total		468,555,970

Academic Affiliations

VA is the largest single provider of health professional training in the world. Currently, 130 VHA facilities have affiliations with 107 of the nation's 126 medical schools and over 1,200 other educational institutions.[59] In FY2002, over 76,000 students received clinical training in VHA facilities. Through these partnerships, almost 28,000 medical residents and 16,000 medical students receive some of their training at VHA medical centers every year. Accounting for approximately nine percent of the Graduate Medical Education (GME) in the United States, VHA supports 8,800 physician resident positions in almost 2,000 residency programs accredited in the name of our

[59] Reference: VHA Directive 1400, July 31, 2002. Enabling legislation and basic authority for VHA's conduct of education and training programs are contained in Title 38 U.S. Code Chapters 73 and 81.

university partners[60]. VHA physician faculty members have joint appointments at the university and at VHA, participating in patient care at VHA facilities, supervising students and residents, and conducting research. VHA would have difficulty delivering high quality patient care without the physician staff and residents that are available through these affiliations. Moreover, residents provide much of the direct medical care, including "24/7" coverage of inpatient services, in those VA medical centers with housestaff. From an historical perspective, VHA's affiliations with the nation's medical schools dates from the drafting of Memorandum No. 2, initiated by General Omar Bradley in 1946.

CARES and Academic Affiliations

In general, the CARES Market Plan narratives indicate a preference for maintaining facility-based research programs and academic affiliations, citing the loss of affiliations as one potentially negative impact of contracting and/or inpatient and outpatient service reductions. Only one VISN cited the potential for new affiliations and research through contracting with community facilities.

In the past few years, a number of consolidations of affiliated VA medical centers have occurred with somewhat mixed results. In 2002, the follow-up report of a study of three integrations was published.[61] The "lessons learned" from the study of three VA systems with strong academic affiliations—*i.e.*, VA Chicago Health Care System, VA New York Harbor Healthcare System, and VA Boston Healthcare System—may be summarized as follows (from Section 5.2, "Looking Forward," of the reference cited):

- Staff should to be prepared for a lengthy change and adjustment period that will result from the major organizational change involved in consolidations or integrations.
- Major reorganizations need to be carefully staged and synchronized in order to assure that infrastructure and physical space needs are prepared for the restructuring of clinical services.
- Although medical center integration is generally undertaken with an expectation of saving money, an initial need for capital investment is required. Buildings must be adapted to new (consolidated) uses, often having increased capacity from their prior status. The savings are to be realized from long-term operational efficiencies.
- Moreover, while the division of inpatient and outpatient care may make conceptual sense, a number of logistic problems are created and encountered—especially when the same staff must work at two divisions of a facility. Studies of patient flow patterns, of staff working relationships, and of transportation issues need to be dealt with in advance as part of the planning efforts.
- Shared leadership of education programs is difficult in practice. Recruitment of faculty (attending physicians) and especially of service line and/or section chiefs often becomes problematic.
- Early and on-going involvement of all affiliates is key in assuring a coordinated planning process. Similar academic standing of the involved affiliates may facilitate collaboration, and unequal standing tends to hinder productive interaction.
- VA's critical missions in research and education should be acknowledged and support of those missions seen as an explicit goal of any integration.

The above-cited study by Dr. Van Deusen Lukas *et al.* also pointed out that, with respect to the integration process.[62]

- All three systems studied reported some success in passing JCAHO review and in achieving operating efficiencies.
- Different approaches to clinical integration were noted in each of the examples. [The authors characterized these as "wait and see" (Chicago), "targeted opportunities" (New York Harbor), and "full consolidation" (Boston).
- Not surprisingly, Boston achieved the most progress, but also faced the greatest challenges in terms of transition issues, timing of moves and restructuring space needs, organizational issues, and external impacts (especially budgetary challenges and lack of initial funding for renovation construction projects).

The authors also noted that, from the standpoint of the academic missions involved, education was more affected than research during facility integrations. The impact on education was largely because of the service-based organization of clinical teaching, which, in the integrated facilities, required some division and/or sharing not only of teaching responsibilities but also of administration (*e.g.*, which affiliate recruits and hires the service chief, how residents are supervised and evaluated in a dual affiliation situation, and how faculty are appointed).

Summary and Conclusions

VA's missions in health professions' education and medical research continue to be strongly supported by the CARES process. Opportunities for enhancement of research space have been identified. With respect to education, research done by the HSR&D Management Decision and Research Center points out that tertiary facility consolidations and integrations may be successfully accomplished. However, the process is a complicated and difficult undertaking. Integration is subject to a number of key factors that require the on-going participation of the academic affiliates in the transition to an integrated facility management. Facility consolidations require an initial, up front capital investment to reconfigure space in order to achieve long-term operational efficiencies. The most successful examples are those in which the involved academic affiliates are active participants in the planning for the new organizational structures.

Please refer to Chapter 9, Proximity and Campus Realignments, for information on the proposed resolution of Proximity Planning Initiatives that may involve consolidation of services. As VA moves forward with the implementation process, recognition and continued attention to its academic mission (research and education) and partners (academic affiliates) will ensure a smoother transition in the proposed consolidations and the maintenance of high quality care to veterans.

Chapter 16: Staffing and Community Impact

Anticipating Impact Was Integral to Process

A salient feature of CARES was the ability to recognize and manage interrelated consequences of various planning solutions.

Consider, as an example, the dynamics for an Access Planning Initiative. When an access "gap" was discerned, other issues immediately came into play, including "Partnering with DoD" (to examine potential sharing of military ambulatory care services), "Ensuring Inpatient Capacity" (to evaluate referral patterns for any outpatient service solution), and "Quality" (which ultimately reviewed any arrangement to provide care.)

This capability is prominently applied in anticipating the impact of

[60] Office of Academic Affairs Web Site, Veterans Health Administration, Department of Veterans Affairs [*http://www.va.gov/oaa/default.asp*]

[61] Lukas C VD, Camberg L, Taneja LC. Integration of Affiliated VA Medical Centers: Second Report (June 2002; HSR&D Management Decision and Research Center, Boston). [*http://www.va.gov/resdev/prt/affiliated-integration-2.doc*]

[62] Lukas, *et al.*, Op. cit. "Highlights."

proposed changes in VHA's physical infrastructure and mix of services. In the development of solutions to planning initiatives, VISNs were asked to consider what effect, if any, the proposed solutions would have on staffing and the community. Information regarding the impact is contained in the narrative portion of proposed solutions within each Market Plan. This chapter summarizes those findings.

Staffing Adjustments

VISNs identified the potential impact of the planning initiative solutions on current and projected number of staff and defined the effects as significant increases, decreases, or minimal adjustments. The market plans described the VISN's strategies to mitigate the potential impact of staffing changes on current staff and to minimize downsizing and relocation problems. Plan explained how the network communicated the potential impact of the staffing changes to current employees.

Outpatient

Between the base year (2002) and 2022, projected demand for care increases significantly for two of the CARES categories—specialty care and primary care. Market plans describe how VISNs will need to plan for the recruitment and hiring of additional staff to care for the projected increased workload.

More VISNs identified planning initiatives for increased projected demand in specialty care than in any other capacity workload category. In response, 69 percent of the specialty care planning initiative solutions called for new staff. In seven percent of the solutions, staff would be reassigned and in two percent, markets recommend temporary staff. It was anticipated that recruiting will be a problem for markets with shortages of specialty care providers, especially in rural areas, or where salary caps limit VA's ability to compete with the community for specialists.

A large number of planning initiatives were also identified for primary care gaps due to projected increased demand. Of the 174 planning solutions, 64 percent contained statements supporting the need for additional staff to care for the projected increase in primary care workload. In nine percent of the solutions, markets would reassign staff, two percent would use temporary staff, and eight percent reported minimal or no impact on staffing. Recruiting primary care staff was cited as less of a problem than described for specialty care staff.

While fewer markets submitted planning initiative solutions for mental health, 68 percent of solutions reported the need for additional staff. Staffing needs may increase system-wide after mental health is studied in the next strategic planning cycle.

Inpatient

Network solutions to a projected decline in Inpatient workload for medicine and surgery were more likely to reassign staff to other programs. Reducing staff as a strategy was proposed in very few instances.

Community Impact

VISNs identified the potential impact of the planning initiative solutions on community, community health care delivery systems and employees. VISNs described their strategies to minimize any potential negative impact on the community health care delivery systems and economy. The plans also describe VISN strategies to communicate the potential impact on the community.

The majority of solutions proposed for the planning initiatives will have a positive impact on the community, especially the solutions for expanded and more accessible primary, specialty and mental health care. The solutions will improve veteran satisfaction, offer opportunities for more employment and employee relocation, revitalize community financial environments, improve continuity of services, and enhance community relations. Overall, in most cases, the planning solutions offer positive, beneficial changes to the community and community health care systems.

Fewer than ten of the solutions evoked potential negative community reaction. Negative comments were found in narratives for medicine, psychiatry, research, vacant space and ancillary diagnostics. Potential community concerns were more likely to be mentioned if jobs would be lost due to a facility closure or if the buildings targeted for demolition were on the National Historical Register. Projected loss of space and downsizing of inpatient programs may have a negative impact on the ability of VHA's research program to recruit and retain funded investigators and associated staff. Other concerns were the limited capacity to contract for specialists and mental health professionals in the community.

VISNs will continue to use many strategies to communicate and explain the planning initiative solutions and their impact on veterans, employees, stakeholders, and the community at large. Examples of communication methods are described in Chapter 3. The ultimate objective in this CARES area is to support the primary goal of enhancing health care services to veterans, within an environment that is comfortable with change.

Chapter 17: VA's Role in Support of the Department of Defense and in a Federal Response to Domestic Incidents

Less Visible, Extremely Important 4th Mission

In addition to caring for veterans, engaging in research and medical education, and operating the Veterans National Cemetery System, there is a fourth mission assigned to the Department of Veterans Affairs. That mission is to serve in a primary back up role to the Department of Defense Military Healthcare System (MHS) during war or national emergency, and also to assist other Federal agencies in providing medical and other services during natural disaster or terrorist attack.

While the CARES planning model cannot predict future conflicts or national emergencies, CARES planning guidance does require VHA to consider these responsibilities as decisions are made about the placement, size and scope of hospitals and clinics, and to ensure that decisions do not compromise emergency management and support functions.

Even before describing VHA's specific role in supporting DoD, this reassuring statement can be made: Planning initiatives developed in the Draft National CARES Plan did not pose significant downsizing of acute care beds in any VA facility designated to play a key (receiving center) role in the contingency support mission. This means, essentially, that no VA in-house space that might be required by DoD in this context is at risk because of CARES process decisions.

Preparing to meet VHA's fourth mission is an ongoing challenge. The principle risk for VHA is the ability to secure staff to meet emergency surge requirements to care for patients. VHA annually assesses the number of beds that could be available in 24, 48, and 72 hours. VHA also retains the authority to contract for care in times of emergency and has flexibility in using that authority. CARES addresses support to DoD in a couple of ways. First, CARES plans for an 85 percent occupancy rate when planning for space needs in its hospitals. This creates a 15 percent margin for surge space in the event of an emergency. In addition there is no significant downsizing of future beds in Primary Receiving Centers that would

place any in house space requirements at risk in the future. Second, VHA is constantly improving and testing the process by which facilities would make this surge space available in time of war or national emergency.

CARES Market Plans Impact on National Defense and Homeland Security

VISNs were required to discuss in their CARES Market Plans the impact of planning initiative solutions on the VA's fourth mission. They were asked to describe the strategy the VISN would use to meet a realistic estimate for DoD contingency needs and those contingency needs provided by VA's Emergency Management Strategic Health Care Groups. As indicated previously, the overwhelming majority of planning initiative solutions, and other bed gap solutions, had either no impact or a positive impact on support to DoD contingency needs. The potential positive impact is a result of the expected improvement in the acute inpatient infrastructure that will ensure that VA's facilities are available to meet any contingency needs and the overall expansion in space proposed in the plan.

Potential negative impact from planning initiative solutions are anticipated in the following areas:

Contracting Services in the Community

VISNs that proposed planning initiative solutions involving significant community contracts had different views on the impact on DoD contingency planning. Most did view contracting as eliminating the medical center's contingency support capacity, and proposed working with DoD to find ways of ensuring preparedness in the future or including national emergency provisions in contracts. However, a few facilities saw expansion of contract services as a chance to develop a closer relationship with community hospitals that could support disaster preparedness in the future. A few facilities felt the delivery of mental health services dealing with PTSD and potential outcomes in the event of a conflict, would be better delivered by VA than through community providers due to expertise in these areas.

Small Facilities

Facilities with fewer than 40 acute beds, which the Draft National CARES Plan recommended should eliminate acute beds or change to a Critical Access Hospital (CAH) designation, will no longer be a resource for hospital beds in the event of military action or national emergency. A list of these facilities can be found in Chapter 8, "Strategic Direction of Small Facilities." The extent that these small facilities would be used in the event of a conflict would determine the extent of the impact on DoD contingency planning. However, none of these small facilities is currently designated as a Primary Receiving Center.[63]

Consolidations and Realignments (Proximity)

Facilities proposed for closure as part of the solution of a Proximity Planning Initiative can be found in Chapter 9, "Proximity and Campus Realignments." Closures will not have an impact on DoD contingency planning in those markets.

Out Leasing

VISNs which lease space to the National Guard or other agencies involved with national defense were reluctant to terminate the leases to gain space back for patient care services. In many cases, the leases were retained and other alternatives for space expansion at the facility were proposed.

Staffing

Although VISN CARES Market Plans include infrastructure or service expansions at many facilities that support VHA's emergency response role, the ability to acquire emergency staffing to provide the additional care is an issue not addressed in this cycle of CARES.

Chapter 18: Optimizing Use of Resources

Optimize Resources To Meet Needs

A brief review of the titles of preceding chapters in this CARES Plan brings into focus the complexity of realigning the capital assets of a health care system, and the inter-related nature of CARES components.

For example, there are multiple, overlapping considerations in planning to improve access, enhance ambulatory care, ensure the availability of inpatient services, and protect special disability programs. These elements of the CARES process are interwoven, influencing each other as well as the central issue of quality in caring for veterans. The inherent linkage of CARES elements further extends to avoiding duplicative facilities, supporting research and medical education, reducing vacant space, and virtually every other component discussed in the plan.

With all of these items simultaneously in play during the CARES process, with dynamic adjustments being made to maximize beneficial effects and minimize negative impact on other components, it was prudent to apply a unifying filter at the end of the process. This took the form of a review to ensure that CARES-driven actions would optimize the use of limited resources, while meeting future changes in workload demand. This chapter describes the "resource optimization" review and provides a summary assessment of how resources were optimized in the CARES process.

Managing Workload Economically

One criteria used in the development of CARES Market Plans was a consideration of the most economical method for managing workload through in-house, contract, joint ventures or sharing and the most economical way to manage the space for in-house workload through renovation, new construction, conversion of vacant space or enhanced use. Operating costs of underutilized and vacant space were to be reduced. One of the driving forces behind CARES was a General Accounting Office report indicating that VHA expends as much as $1 million a day on underused or inefficient capital infrastructure.[64]

Workload Demand

Table 18.1 shows the national projected changes in workload demand by CARES Category. Except for inpatient surgery, workload is increasing over the 20 years of the CARES planning horizon. The draft National CARES Plan describes how the increase in workload will be managed, focusing on the space and capital requirements through FY 2022.

[63] A List of DoD Primary Receiving Centers can be found under References or at *www.va.gov/emshg*.

[64] GAO Report available under References.

TABLE 18.1.—CHANGE IN NATIONAL WORKLOAD DEMAND 2001 THROUGH 2022 IN BED DAYS OF CARE AND VISITS

Planning category	FY 2001 workload	FY 2012		FY 2022	
		Total demand	% change	Total demand	% change
Primary Care (Visits)	12,972,821	20,451,216	58	17,211,299	33
Specialty Care (Visits)	10,950,477	22,112,050	102	19,657,531	80
Mental Health (Visits)	7,621,946	10,091,975	32	9,310,644	22
Ancillary/Diagnostic (Visits)	14,756,388	25,952,483	76	24,260,090	64
Medicine (BDOC)	1,794,836	2,533,902	41	2,036,878	13
Surgery (BDOC)	821,656	949,937	16	764,596	−7
Psychiatry (BDOC)	1,599,750	2,130,950	33	1,819,064	14

Costs To Implement CARES Market Plans

Cost Minimization in Managing Workload

Planning guidance encouraged the VISNs to select the most viable options for meeting projected care demands. For managing workload, this was accomplished by selecting one of the following options: in-house, contracting, sharing and joint ventures, or a combination of these options. VISNs were provided through the IBM Market Template with a systematic tool to evaluate the costs of the options.

Initially, for CARES planning purposes, in-house workload costs were assumed to be equal to unit costs obtained from VHA's Decision Support System (DSS) database for each facility. During the review process, the methodology for measuring in-house costs was improved to allow for marginal costs to be used for marginal gaps in workload. Contracting costs were set equal to Medicare (provider and facility) costs in each county and were provided by CACI/Milliman (Appendix O).

A basic assumption of the CARES planning model was that the cost of additional workload performed in-house would be equal to the associated DSS unit, variable, and indirect fixed costs, as appropriate, multiplied by the additional workload units. If workload was moved between facilities, savings at the transferring facility were calculated on the basis of these costs. Additional costs at the receiving facility were calculated using the same costing rules with the receiving facility's unit costs. There were no economies of scale assumed in the model. Any efficiencies resulting from reallocation of workload had to be estimated and entered into the model by the VISNs.

Analysis of the cost of alternative options for the Planning Initiatives indicates that 60 percent of the options selected were the lower cost option. However, the cost of alternative options was based upon unit costing this will change when VISNs have the opportunity to re-evaluate their selections prior to final approval of the plan.

Flexibility

Utilization of resources is optimized when flexibility is maintained in the face of peak workload and variable workload. VISNs smoothed out variation in in-house workloads to avoid unnecessary fixed construction costs by the use of contracts. In general, VISN CARES Market Plans reflect increased utilization of contract care during periods of peak demand. The amount of care that would be contracted would then decline as workload fell to the point at which the VISNs were able to accommodate demand within their existing infrastructure. This is reflected in the two graphs below.

Figure 18.1 Forecasted Contract Workload FY 2002

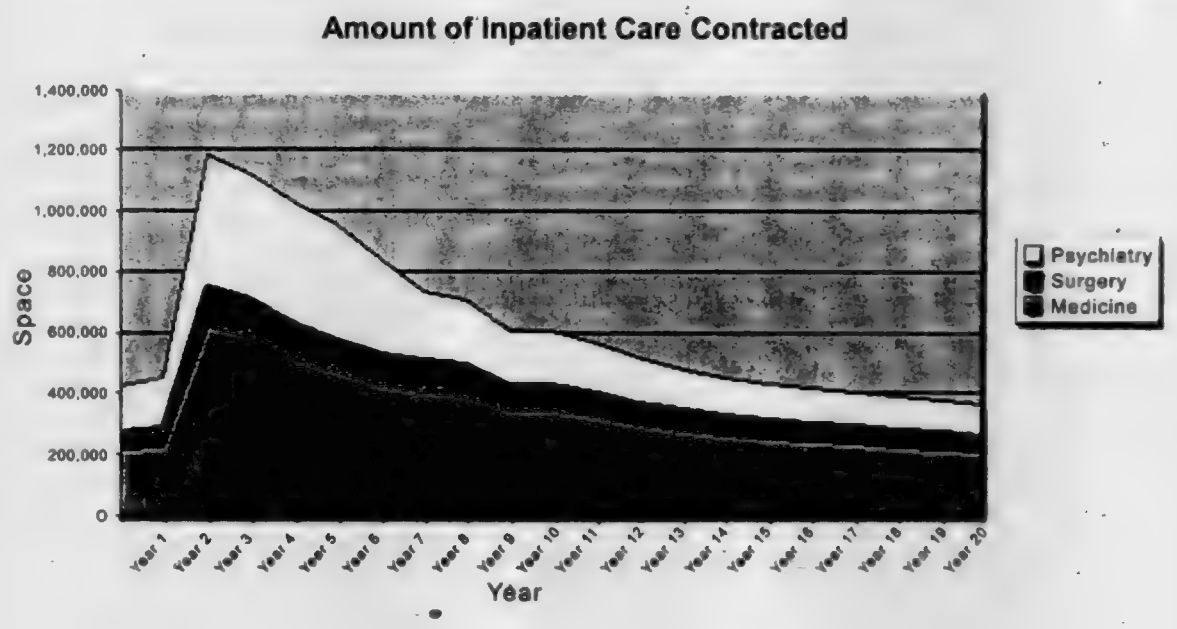

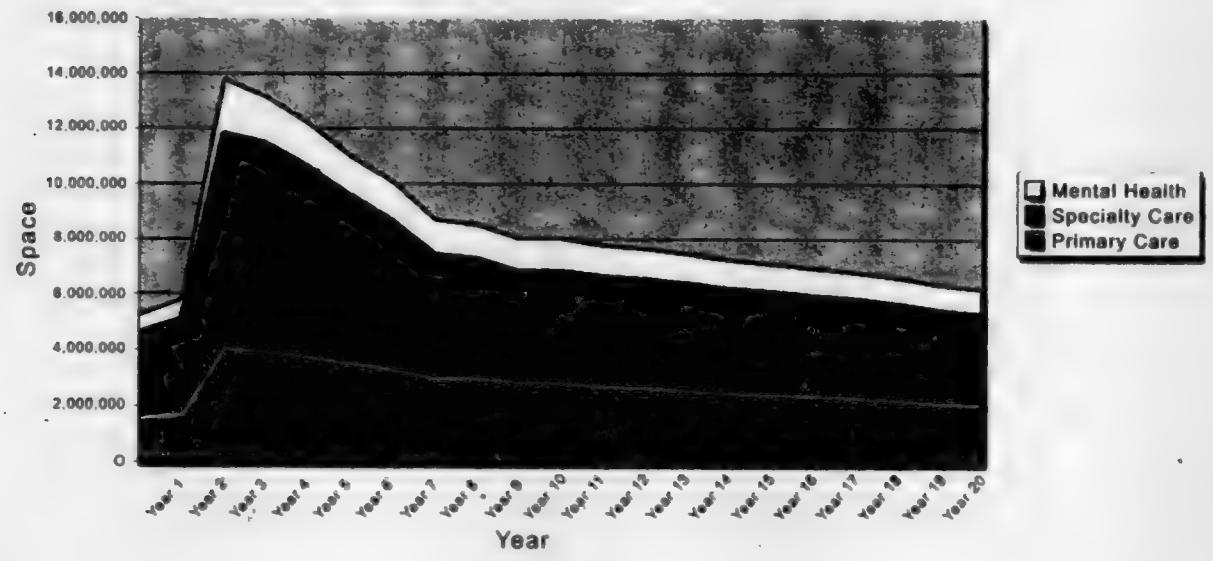

Managing Space

Planning guidance encouraged the VISNs to select the most viable options for meeting space needs as projected by in-house workload demands. For managing space, this was accomplished by selecting one of the following options: new construction, leased space, conversion of vacant space, enhanced use and donated space or a combination of options. Existing space could be renovated to improve quality or functionality, but renovation alone could not expand the space.

Cost estimates for construction, renovation, demolition and lease were provided by VHA's Office of Facilities Management Professional Estimators. These regionally adjusted construction and lease costs were based on the condition and type of space to be renovated, the type of space to be constructed, the type of new construction or the type of space to be leased.

VISNS considered how they would meet the space needs associated with their planning initiatives, increasing workload and environment of care concerns. Market Plan solutions included acquisition of additional space, and improvement of existing space, through new construction, leasing, renovation, and enhanced use development.

Chapter 11 describes in detail the cost-effective solutions VISN developed to manage projected space needs.

Non-Recurring Costs to Manage Space

Based on the preferred space solutions selected by the VISNs for meeting in-house workload demand, Table 18.2 reflects a potential capital cost for the non-flatlined, clinical CARES Categories. These costs include new construction, renovation and build out costs for leases. This does not include recurring costs for leases.

TABLE 18.2.—TOTAL CAPITAL COSTS BY CLINICAL CARES CATEGORIES THROUGH 2012 IN CURRENT DOLLARS

CARES category	Capital costs in current $
Medicine	222,693,711
Ancillary/Diagnostic	678,354,996
Mental Health	264,906,059
Specialty Care	1,253,538,192
Primary Care	460,512,706
Psychiatry	221,496,568
Surgery	75,776,725
Total	3,177,278,957

Note: Costs in Table 18.2 include only the seven core clinical CARES categories, and therefore are a sub-set of the total capital estimates in Table 1.1.

VISN's tended to use lease space to accommodate in-house workload during periods of peak demand and new construction and conversion of space for sustained increases as shown in the chart below.

TABLE 18.3.—LEASED SPACE THROUGH 2012

CARES category	Leased space in square feet
Medicine	177,381
Ancillary/Diagnostic	1,437,653
Mental Health	855,596
Specialty Care	3,606,576
Primary Care	2,536,801
Psychiatry	97,740
Surgery	25,300
National totals	8,737,047

Vacant/Underutilized Space Savings

Implementation of the VISN CARES Market Plans would reduce the amount of vacant/underutilized space by 42 percent, from 8,571,605 square feet in FY 2001 to 4,934,002 square feet in FY 2022. Vacant space totals do not include space that is out-leased to third parties.

TABLE 18.4.—REDUCTIONS IN VACANT/UNDERUTILIZED SPACE IN SQUARE FEET

	FY 2001	FY 2022
Total Space	93,949,947	118,156,557
Vacant Space	8,571,605	4,934,002
% Vacant	9	4

Recurring cost associated with remaining vacant/underutilized space is estimated at $167,553 daily.[65]

Savings associated with the reduction in vacant space are shown below. The reduction in vacant space described in Table 18.5 represents a minimum reduction since it does not include reductions in vacant space that will occur due to realignments of campuses and reuse of the campus through enhanced use leasing.

TABLE 18.5.—RECURRING COST OF VACANT/UNDERUTILIZED SPACE THROUGH 2022

[Costs are in current dollars]

	FY 2001	FY 2022	Difference
Vacant/Underutilized Space in Square Feet (SF)	8,571,605 SF	4,934,002 SF	3,637,603 SF
Average Cost/SF to Maintain Current $[66]	$12.39 per SF.	$12.39 per SF.	
Annual Cost ($ per year)	$106,245,044	$61,156,955	$45,088,089
Other Savings/Profits/Costs ($ per year)*	.....	$15,493,381	
Revised Annual Costs ($ per year)	$106,245,044	$45,663,574	$60,581,470
Cost per Day ($ per day)	$291,082	$125,105	$165,977

[66] Cost provided by Professional Estimator in VHA Office of Facilities Management.

Note: *Other Savings/Profits/Costs related to the management of vacant space include such things as revenues from enhanced use lease initiatives, non-unit costs savings from building demolition, or revenues from sale of property. VISNs did not have a standardized way to enter these cost estimates so this dollar figure is not all inclusive of the potential savings from the management of vacant space.

Other Economic/Financial Considerations

A number of economic and financial considerations influenced a VISN's selection of how they would manage their future needs. Some of these considerations included:

- Feasibility of contracting in the community for services at Medicare rates;
- Projected availability of services in the community;
- Savings and efficiencies as a result of shifting services among sites;
- Efficiencies resulting from enhanced productivity by providing additional facilities, such as additional exam rooms for medical providers;
- Efficiencies resulting from joint ventures with affiliates and DoD through shared capital; and
- Revenues from enhanced use and shared services with affiliates, DoD and other entities.

Although 60 percent of the solutions selected by VISNs were the lower cost alternatives, in 40 percent of the solutions a VISN appeared to choose the more expensive alternative for solving a planning initiative or closing a capacity gap. Many times the least expensive alternative was not feasible or preferred for the reasons described above. In other cases, access and quality considerations prevented the VISN from choosing what appeared to be the least expensive alternative. In each case where VISNs did not choose the least expensive alternative, they provided rationales in their narratives on cost savings and optimizing resources.

While in many cases VISNs were able to develop cost estimates of the factors described above that would make one alternative more costly than another and incorporate them into their decision-making, many times these factors were difficult to estimate. Factors such as the availability of contract services in a community were difficult to quantify in the IBM planning software, and decisions to choose a more costly alternative were explained in the narrative portion of their market plans. More extensive analyses will take place as the CARES plans are implemented and these estimates will be improved.

Chapter 19: Extended Care Improvements

Thanks to "Greatest Generation," Destiny of Leadership & Innovation

Demographics, prominently including what has been called America's "Greatest Generation," made VA's destiny as a world leader in geriatrics and extended care inescapable; the high cost and limited quality of life inherent in institutional nursing home care made an innovative approach to this responsibility inevitable.

The projected peak in the number of elderly veterans (most of whom served during World War II) will occur during the first decade of this century, approximately 20 years in advance of that occurrence (peak number of older citizens) in the general U.S. population. VA health care therefore has been at the forefront of caring for older patients, identifying and developing treatments for age-related conditions, and studying the aging process itself. The number of Veterans over 85 years of age triples from 380,000 today to 1.2 million by 2010.

Just over two decades ago, forecasts concerning the growing number of older veterans first caused political leaders, and medical planners alike to look ahead to the year 2000 with trepidation.[67] With the number of veterans age 75 and older expected to exceed three million by the Millennium, there was growing anxiety about VA's ability to increase nursing home capacity sufficiently to accommodate eligible veterans. In response to these concerns, VA began developing innovative approaches to providing extended care. The Millennium has come and gone, and at the time this CARES Plan was published, the number of veterans age 75 and older had just exceeded 4 million. VA extended care workload data indicate that the nursing home care program has been strained, but it has not collapsed; veterans' needs have been met in traditional settings—in VA's three nursing home programs (VA, contract community, and State Home), and in increasingly innovative, non-institutional settings.

National CARES Forecasts for Nursing Home Care

Today, eligibility for nursing home care is prescribed by statute and is increasingly reserved by policy for the highest priority veterans. The Millennium Health Care and Benefits Act for Veterans, passed into law in 1999, defines eligibility for long-term care and provides for a continuum of non-institutional extended care as part of the basic benefits package for VA enrollees.

One of VHA's strategic objectives in extended care is to provide treatment in the least restrictive setting. Further, VA is exploring ways to avoid institutionalization, by supporting successful aging in Veterans own homes and communities. VHA nursing home programs provide post-acute rehabilitation enabling veterans to return to the community and home. Rehabilitation programs are more costly than community based nursing homes but increase the efficiency of acute care programs by permitting timely and safe discharge after acute care. Rehabilitation programs provide a critical step in the continuum of care that can ultimately result in a veteran being able to return to their home environment. In addition, there is long-term nursing home care that is maintenance-oriented, typically

[67] *The Aging Veteran: Present and Future Medical Needs;* VA Response to PL 94–581, Section 117(a), March, 1980., p. II.

prescribed when the veteran can no longer remain in the community or home. However, nursing home care is not only costly, it can impair family relationships and reduce the overall quality of life. As a result, the population requiring nursing home care must be carefully selected after other alternative delivery settings are ruled out. Technology and skills exist in today's health care delivery system to meet a substantial portion of extended care needs in non-institutional settings.

VHA encourages the use of non-institutional extended care services such as Adult Day Health Care, Assisted Living and other home care alternatives in all circumstances other than those in which institutionalization is unavoidable.

Forecasting Model Requires Revision, But Space Conditions Addressed

The current nursing home model does not adequately address the following important considerations:

1. How will improvements in the health status of the elderly impact long-term care?

2. How will trends in the use of alternatives to Nursing Home care impact-projected demand for Nursing Home care?

3. How can the use of home health care be substituted for institutional care?

The model is being revised to provide improved projections for the next strategic planning cycle that will remove the bias towards the use of nursing home care over non-institutional alternatives. Since the model could not adequately reflect current and emerging practices in extended care, no planning initiatives were developed based on future workload gaps identified in this program area.

Although planning initiatives were not identified for Nursing Homes, VISNs were encouraged to submit capital investment proposals in their CARES Market Plans to address poor space conditions. While this chapter only discusses VA capital improvements, the overall supply of nursing home beds will be addressed during the next strategic planning cycle, so State Veterans Nursing Home beds and community nursing home beds will be included.

Nursing Home Capital Improvements

Capital improvements submitted by VISNs in their CARES Market Plans to remedy space deficiencies are summarized in Table 19.1. While investments will not be submitted for implementation until bed need forecasts are available, the following table provides information regarding the current assessment of space needs and their resolution.

CARES planning guidance recommended that space with a Condition Score less than 3.0 be considered for renovation. Condition Scores were derived from the Space and Functional Surveys conducted at each VHA facility during the baseline data collection phase of CARES (Appendix O). The surveys quantify the general condition and functionality of the space, resulting in a combined weighted average Condition Score for layout, code compliance, handicap accessibility, and patient privacy. Scores range from a high quality score of 5.0 to a low quality score of 1.0. The majority of Intermediate/Nursing Home Care capital investments in the CARES Market Plans are proposed based on low Condition Scores.

TABLE 19.1—SUMMARY NURSING HOME CARE INVESTMENTS FY 2002–FY 2022

Type of investment	Number of facilities	Activation years	Square footage	Total cost in current $
New Construction	12	2004–2012	854,267	191,595,461
Convert Vacant Space	1	2003	15,100	1,933,361
Renovations	24	2005–2016	747,548	57,391,534
Enhanced Use Lease	1	2004	95,000	(*)
Total	38	2003–2016	1,711,915	250,920,356

* Not Available.

New Construction

New construction nursing home investments are proposed at the following facilities:

VISN 03—St. Albans
VISN 03—Castle Point
VISN 05—Perry Point
VISN 06—Beckley
VISN 10—Cleveland-Wade Park
VISN 19—Denver
VISN 20—American Lake
VISN 20—Walla Walla[68]
VISN 21—Menlo Park
VISN 22—Las Vegas
VISN 22—West Los Angeles
VISN 23—Des Moines

The majority of the new construction proposed replaces existing nursing home beds at facilities with low Condition Scores where complete replacement was less costly than renovation.

Renovation of Current Space

Of the 24 facilities with nursing home renovation improvements submitted in the VISN CARES Market Plans, nine currently have Condition Scores below 3.0 (renovation recommended), six facilities have Condition Scores between 3.0 and 4.0 and nine have Condition Scores greater than 4.0. Renovations of space with scores greater than 3.0 include seismic corrections and changes in functionality of existing space for a new or growing program. Programs for specialized geriatric psychiatric care, such as Alzheimer's Units, often require adaptation to the normal nursing home care setting.

Enhanced Use Lease

One enhanced use lease proposal is included in VISN 11 for replacement nursing home beds at Illiana HCS (Danville), due to poor quality space.

Convert Vacant Space

VAMC Clarksburg in VISN 4 has recently converted most of its vacant space for additional nursing home capacity.

Chapter 20: The Future

Conversion to Systematic Pursuit of Improvement

Continuous improvement is basic to the philosophy of virtually every quality management program, a regular tenet of best business practices, and—in fact—the final step in the CARES process. From the outset, it was envisioned that CARES planning procedures would be

[68] Under review for realignment.

incorporated into the systematic program of ongoing strategic planning activities, conducted in regular cycles to continuously improve the placement and configuration of capital assets in the VA health care system.

This chapter of the plan explains how CARES will be integrated into the new VHA strategic planning process, and how the CARES capital agenda ultimately will be completed. Implementation of the capital requirements of CARES into the VA capital planning process is also described.

Completing The Agenda

While the projections for the majority of clinical programs and associated capital needs were studied in Phase II, some categories assumed a current workload due to required improvements in the projection methodologies. Their capital needs and services will be studied between the publication date of this plan, and April 2004 (VHA strategic plan due date) for mental health, domiciliary, long term psychiatry, and nursing home care.

In September 2003, the CACI/Milliman enrollment projection FY 2004 model will be run to provide the framework to complete the postponed topics. The September model results will be closely integrated with the Secretary's Enrollment Level Decision model run in July as part of the preparation of the FY 2005 budget that will be sent to Congress in February 2004.

Integration of the CARES Process Into VHA Strategic Planning

The CARES planning process and VHA's strategic planning process under the Office of Policy and Planning (OPP) currently function programmatically as two separate planning processes.

CARES was established as a separate activity outside the Office of Policy and Planning's strategic planning process when it was a contracted study for the VISN 12 pilot. The National CARES Program Office was formed to begin Phase 2 in December 2001 under the direction of the Deputy Secretary for the Department of Veteran Affairs, although organizationally staff resided in VHA. While the CARES program utilized the Enrollment Level Decision Analysis (ELDA) model, the model had not been used for strategic planning. The adaptation to CARES required different planning assumptions based upon a 20-year time horizon as contrasted with the shorter run budget planning time horizon. The assumptions differed in part because the short-term market share growth projected under the enrollment model was not sustainable for the long-range projections under CARES. Many other forecasting issues were identified as a result of the forecasts utilized at a local market area instead of a national level. A separate CARES contract was developed that was jointly developed by NCPO and OPP. The next contract with Milliman for enrollment projections will incorporate budget and strategic planning assumptions and requirements into a single contract, unifying the long term CARES modeling with short term planning activities.

The National CARES Program Office collaborated with the Office of Policy and Planning for other planning functions. OPP's Planning System's Support Group (PSSG) piloted the CARES travel time access methodology and assisted in the development of the Market Area maps. In addition, the VA Long Term Care Model resides in OPP and is managed by the PSSG. The OPP, CARES, and Geriatrics and Extended Care Strategic Healthcare Group formed a team to revise the long-term care model to respond to the Secretary's revisions to the long-term care policy. Teamed with VA's Office of the Actuary, VA and non-VA researchers are revising the Nursing home bed and alternatives forecasting model as described in the Nursing Home Chapter.

The Under Secretary for Health asked the National Leadership Board's Strategic Planning Committee to determine how CARES planning should be integrated into the VA/VHA strategic planning process, including which data sets and assumptions will be used as a basis for planning, and how timelines for the process will be incorporated into the VHA strategic planning cycle. Representatives from key offices associated with CARES and strategic planning participated in discussions to develop recommendations to integrate the planning processes.

The National Leadership Board recommended strategic planning and CARES should become an integrated process under OPP and use the same projected enrollment database by July 2004. The term, CARES, will no longer be used after this current plan is completed. The first step will be the integration of the future planning activities into the strategic planning guidance.

Integrating the strategic planning process under one office provide more consistent and coordinated guidance to VHA program and field office planning efforts. The CARES planning data, assumptions, processes, and timelines will reconcile with other existing strategic planning activities of the Administration and activities required by Congress and OMB.

Capital Prioritization Process

The plan approved by the Secretary will be the source of capital projects that are incorporated into VA's 5-year capital plan. Specific projects submitted by VISNs will be prioritized annually using criteria integrated with the CARES planning criteria and other Departmental and Presidential priorities.

Implementation

There are aspects of the plan that can be implemented without capital investments after the Secretary's approval. They are primarily the result of service consolidations, campus realignments and the changes in the acute mission of small facilities. After the national Cares Plan is approved, detailed planning to determine the final feasibility of these realignments will be incorporated into the VHA strategic planning process.

Appendix A—VISN Market Plan Executive Summaries

VISN 1 Executive Summary

Access

Primary Care—The draft National CARES Plan attempts to balance meeting national access guidelines with ensuring the current and future viability of its acute care infrastructure. Because of this, while new access points in this VISN are included in the National Plan, they are not in the high implementation priority category at this time.

Hospital Care—Access in the North and Far North markets is being met through community contracts. In addition, telemedicine and telecare programs will be used across the network to improve quality and access for primary care and specialty care. The Maine Telemedicine program for the private sector will be used to provide cost effective care to the Maine veterans in collaboration with the VA.

Campus Realignment/Consolidation of Services

Bedford—Outpatient services will be maintained at the Bedford campus. Current services of inpatient psychiatry, domiciliary, nursing home and other workload) from the Bedford campus will be transferred to Brockton, West-Roxbury and other appropriate campuses (Manchester). The remainder of the Bedford campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in services for veterans.

Jamaica Plains—Study the feasibility of redesigning the Jamaica Plains campus to consolidate services into buildings for operational savings and to maximize the enhanced use lease potential of the campus for assisted living or other compatible types

of use. Retain multi-disciplinary outpatient clinic.

Outpatient Services

Primary Care—Increasing primary care demand in the Far North, East and West markets is being met primarily through community contracts, telemedicine, and expansion of existing CBOCs. Some in-house expansion is planned for Brockton, Togus and Newington. Excess outpatient demand from West Roxbury and from the Causeway Clinic will be moved to Jamaica Plains.

Mental Health—Increasing demand for mental health in the Far North and North markets is being met through community contracts, telemedicine, and expansion of existing CBOCs that will include mental health services.

Specialty Care—Increasing specialty care demand in all four markets is being met using community contracts to the extent feasible, telemedicine, shifting selected services to CBOCs and in-house expansion through significant new construction and conversion of vacant space. Northampton will lease 50,000 sq.ft. in the Springfield area. West Roxbury and Providence have replacement operating room projects in their specialty care expansions.

Inpatient Services

Medicine—Increasing inpatient medicine demand and access gaps in the Far North and North markets is being met through community contracts, also needed to resolve access gaps. Increasing inpatient medicine demand in the East and West markets is being met through in-house expansion at West Roxbury, Providence and West Haven.

Psychiatry—Decreasing inpatient psychiatry demand in the East market is being met through the consolidation of acute psychiatry at Bedford, Brockton and Providence.

Vacant Space

VISN 1 will have total of 255,829 sq. ft. of vacant space in 2022. This represents a reduction of 51.4% from 2001 (526,674 sq. ft.).

Extended Care

Proposed capital investments to remedy space deficiencies in nursing homes include renovation of 51,289 existing sq. ft in the West market (Northampton & West Haven) and the renovation of 43,017 sq. ft in the Far North market (Togus).

Collaboration

VBA—Relocate the VARO from Hartford to Newington.

Facility Condition—Low facility condition scores (scores below 3.0) at many VISN 1 facilities have been addressed through renovation projects that are phased early in the plan due to immediate infrastructure needs, many of which have been on hold pending CARES. No space is being renovated that will not be needed through the year 2022.

VISN 2 Executive Summary

Campus Realignment/Consolidation of Services

Canandaigua—Current services of acute inpatient psychiatry, nursing home, domiciliary and residential rehabilitation services at Canandaigua will be transferred to other VAMCs within the VISN. Outpatient services will be provided in Canandaigua's market. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in services for veterans.

Outpatient Services

Primary Care—Increased primary care outpatient services has been identified in the Finger Lakes/Southern Tier market. There is a significant increase in primary care workload, especially in Monroe County. The VISN proposes to utilize contractual services in close proximity to the patients' homes to address increased outpatient primary care demand.

Specialty Care—Increasing specialty care outpatient services has been identified in three markets (all but the Western market). The VISN is proposing a combination of approaches tailored to the individual needs of each market. These approaches include utilizing fee basis; contracting for services in the counties where the patient lives; maintaining existing current workload at the existing medical center and existing CBOCs and renovating CBOC space.

Inpatient Services

Medicine—Increased inpatient medicine services are projected for both the Central and the Finger Lakes/Southern Tier markets. The VISN proposes to move workload from the Western or Central market to the Finger Lakes & Southern Tier market and utilize contracting for services in the counties where the patient resides. This includes utilizing fee basis and contracts for inpatient medicine services. Additional contract services will need to be established for the increased projected workload especially in the Monroe County area. Projected increase at Bath can be handled in the current space.

Vacant Space

VISN 2 will have total of 182,950 sq. ft. of vacant space in 2022. This represents a reduction of 15.9% from 2001 total vacant space (217,546 sq. ft.).

Special Populations

Build a new 30 bed SCI/D Unit at the Syracuse VAMC.

Inpatient Services

Medicine—Increased inpatient medicine services has been identified for both the Central and the Finger Lakes/Southern Tier markets. The VISN proposes to move workload from the Western or Central market to the Finger Lakes & Southern Tier market to utilize contracting for services in the counties where the patient resides. This includes utilizing fee basis and contracts for inpatient medicine services. Additional contract services will need to be established for the increased projected workload, especially in the Monroe County area. Projected increase at Bath can be handled in the current space.

Enhanced Use

The VISN has identified the Buffalo VAMC and the Canandaigua VAMC as having potential Enhanced Use opportunities.

VISN 3 Executive Summary

Campus Realignment/Consolidation of Services/Small Facilities

St. Albans—Build new facilities for outpatient, nursing home and domiciliary care. Demolish old facilities and design new construction on site to maximize the area for an enhanced use lease project such as assisted living facility, or other compatible uses to benefit veterans. Any revenues or in kind services will remain in the VISN to invest in services for veterans.

Lyons—Lyons maintains its current services because of lack of nursing home space and psychiatric space at East Orange and legislative requirements to maintain in-house nursing home units preclude any changes.

Montrose—Current services of domiciliary beds and all other inpatient units including psychiatry, medicine and nursing home will be transferred to Castle Point. Maintain outpatient services on the Montrose campus at a location that maximizes the enhanced use lease potential of the site. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in services for veterans.

Castle Point—Current inpatient services will be transferred from Montrose to Castle Point. The Spinal Cord Injury (SCI) Unit would be relocated to the Bronx. Castle Point Campus will maintain an SCI outpatient unit. Castle Point will convert to a Critical Access Hospital based.

New York (Manhattan) and Brooklyn—Develop a plan to consider the feasibility of consolidating acute inpatient care at the Brooklyn and incorporate the proposed outpatient care improvements for Brooklyn in the current plan. Maintain a significant outpatient primary and specialty care presence in Manhattan at the current site or another appropriate location in Manhattan.

Outpatient Services

Primary Care—Increased primary care outpatient demand has been identified in all three of the Network's markets. The VISN proposes to meet the majority of this need through expansion of in-house space via new construction (138,000 sq. ft.), conversion of vacant space (70,000 sq. ft.) and utilization of community contracts. A new joint VA/DoD CBOC is proposed for Ft. Monmouth, NJ. A new CBOC for Passaic County, NJ is included in the plan but is not in the high implementation priority group.

Specialty Care—All three of the Network's markets are projected to experience increased outpatient specialty care demand. The VISN proposes to meet the majority of this need through the expansion of in-house services with new construction (457,000 sq. ft.),

vacant space conversion (114,000 sq. ft.) and some utilization of community contracts.

Inpatient Services

Medicine—Decreasing demand identified in the Metro New York market will be absorbed at the Brooklyn and New York campuses with some contracting in the community. Increasing demand projected for the New Jersey market will be accommodated in-house through new construction (50,000 sq. ft.) and conversion of vacant space (77,200 sq. ft.).

Psychiatry—Decreasing demand identified in the Metro New York market will be absorbed at the Brooklyn and New York campuses. Increasing demand projected for the New Jersey market will be met through the expansion of in-house services with new construction (107,000 sq. ft.) and the conversion of vacant space (129,000 sq. ft.).

Extended Care

Proposed capital investments for nursing home care to remedy space deficiencies include renovation of 19,533 existing sq. ft. in the VA New Jersey market (VA New Jersey HCS) and new construction of 150,000 sq. ft. in the VA Metro New York market (St. Albans & VA Hudson Valley HCS).

Vacant Space

VISN 3 will have a total of 469,844 sq.ft. of vacant space in 2022. This represents a reduction of 53.1% from 2001 total vacant space (1,001,997 sq.ft.).

Enhanced Use

The VISN proposes development of long-term leases of existing golf courses and associated buildings and pursuing public/private development of VA buildings and/or land for uses including senior housing, assisted living, and other similar life care. Any revenues will remain in the VISN to invest in services for veterans.

Collaboration

VBA—Collocate the Newark Regional Office into currently available VHA space at the Lyons Campus of the VA New Jersey Health Care System.

NCA—A feasibility study must be completed to evaluate any potential land impediments at the Castle Point and Montrose campuses of the VA Hudson Valley HCS for use by NCA. Both campuses have excess land that can be made available to NCA.

DoD—Opportunities currently under review include collocation of the Ainsworth Clinic with Brooklyn, establishment of a new CBOC at Ft. Monmouth, and development of shared services between West Point and Montrose.

Special Populations

The LTC Spinal Cord Injury (SCI) unit will be consolidated from Castle Point to the Bronx. SCI Unit at the East Orange Campus will remain. Outpatient SCI services will be maintained at Castle Point.

VISN 4 Executive Summary

Campus Realignment/Consolidation of Services

Highland Drive—Current services at Highland Drive will be transferred to University Drive and Aspinwall campuses, with new facilities for psychiatry, mental health, and related research and administrative services. VA will no longer operate health care services at this campus. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in services for veterans. A major construction project to accommodate services at the University Drive and Aspinwall campuses is required.

Small Facility

Butler will maintain nursing home and outpatient services and close its hospital acute care services. Altoona will maintain outpatient services and close its hospital acute care services by 2012 as the need for acute care beds declines. Erie will maintain its current services except it will close its inpatient surgical services and retain outpatient surgery and observation beds. The inpatient demand from these programs will be referred to Pittsburgh or contracted out to the community.

Outpatient Services

Specialty care is increasing in demand for both markets and primary care in the eastern market. In-house expansion, contracting out, and enhanced use arrangements will handle the specialty care workload. Space for additional in-house specialty clinics will be achieved through increased use of CBOCs for primary care to free up specialty care space at VAMCs. These CBOCs are proposed but are not in the national high priority category.

Inpatient Services

Inpatient medicine demand is increasing in the Eastern market while inpatient surgery demand is decreasing in the Western market. The Eastern market increase will be managed by in-house expansion, contracting out, and enhanced use at all five hospital sites. The Pittsburgh HCS in the Western market will convert the decreasing surgery beds to medicine beds to absorb part of workload from Butler, Altoona and Erie.

Extended Care

Proposed capital investments for nursing home care to remedy space deficiencies are included for Altoona, Butler, Coatesville, Lebanon and Clarksburg.

Vacant Space

VISN 4 will have a total of 446,001 sq.ft. of vacant space in 2022. This represents an increase of 15% over 2001 total vacant space (387,373 sq.ft.). Further analysis is required in order to determine how this can be avoided through improved space planning.

Enhanced Use

Butler is exploring a number of potential enhanced use proposals. The proposals include: adult residential living program, 16-bed intermediate psychiatry facility, administrative space for DOD, and community diagnostic services center. In addition, the local community hospital (Butler Memorial) and Butler have explored enhanced use opportunities on the VA campus to expand specialty care. This innovative proposal would enhance services to veterans in the Butler area and could result in replacing older buildings with more state-of-the-art, energy efficient space.

Collaborations

Collaborative opportunities are being explored with the VBA in Pittsburgh and Wilkes-Barre.

VISN 5 Executive Summary

Consolidation of Services

Washington and Baltimore have consolidated a significant number of services and will continue to investigate clinical and administrative program efficiencies, *e.g.* radiation therapy, brachytherapy, warehouse functions.

Outpatient Services

Primary Care and Mental Health—Increasing primary care and mental health demand is being met in all three markets through a combination of in-house expansion, expansion of existing Community Based Outpatient Clinics (CBOCs) and the establishment of DoD joint ventures. Outpatient mental health is being integrated with primary care at all sites.

Specialty Care—Increasing specialty care demand at Martinsburg, Baltimore and Washington is being met using a combination of in-house expansion (new construction and leases), offering selected high volume specialty care services at larger CBOCs, and community contracts. Perry Point will use primarily community contracts for specialty care expansion.

Inpatient Services

Psychiatry—Decreasing inpatient psychiatry demand in the Baltimore market has been met through the downsizing of beds at Baltimore in FY2002. Increasing inpatient psychiatry demand in the Washington market is being met through a shift of beds from Perry Point to Washington with in-house space expansion.

Extended Care

Proposed capital investments for nursing home care units to remedy space deficiencies include the renovation of 18,000 existing sq. ft in the Martinsburg market (Martinsburg), the renovation of 22,208 existing sq. ft. in the Washington market (Washington) and new construction of 67,000 sq. ft. in the Baltimore market (Perry Point).

Mental Health—Some domiciliary beds are being shifted from Martinsburg to Washington to establish a domiciliary presence in DC area and to obviate the need for replacement of poor quality space at Martinsburg.

Vacant Space

VISN 5 will have a total of 127,310 sq.ft. of vacant space in 2022. This represents a reduction of 66.3% from 2001 total vacant space (377,381 sq.ft.).

Enhanced Use

Ft. Howard—An enhanced use lease has been approved for Ft. Howard that targets 297,613 sq. ft. to develop a retirement community for veterans and non-veterans. Revenues will remain in the VISN to invest in services for veterans.

Perry Point—While maintaining the current mission, redesign the campus to maximize the enhanced use lease potential of the campus. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in services for veterans. The redesign of the campus should include the current proposed new nursing home, other required new buildings to consolidate services; and preservation of the historic sites: the Mansion, Grist Mill, and 5 acres of Indian burial grounds.

Collaboration

VBA—All three Compensated Work Therapy Programs (CWT) in VISN 5 are developing a contract (MOU) with their Regional Vocational Office to provide a service by which veterans enrolled in VR&E programming would be evaluated by the CWT program for Chapter 31 feasibility purposes.

DoD—DoD opportunities developed include: outpatient joint ventures in all three markets with Ft. Detrick, Ft. Meade and Ft. Belvoir; joint resident education program between Walter Reed AMC and VAMC Washington, targeted to expand VISN-wide and; the Armed Forces Retirement Home as a possible location for a new domiciliary presence in the DC area.

VISN 6 Executive Summary

Access

Primary Care—Increase primary care access points in two markets by adding nine (9) new CBOCs: six (6) in the Southwest market and three (3) in the Northeast market. The National CARES Plan attempts to balance meeting national access guidelines with ensuring the current and future viability of its acute care infrastructure. Because of this, new access points in the Southeast and Northwest markets are not included in the National Plan, but they are not in the high priority implementation category.

Hospital Care—Increase the access for hospital care in the Southeast market by providing limited inpatient care at a DoD site located in the eastern part of the market that will enable this market to meet the hospital access guidelines.

Small Facility

Beckley, WV—Retain acute medicine beds. Convert their bed designation to Critical Access Hospital Beds. Close inpatient surgery beds and utilize observation beds, local contracting, or transfer to other VAMCs to meet surgical needs.

Outpatient Services

Primary Care—Increase primary care services in all of the four markets to meet increased demand and access guidelines. VISN 6 will use a combination of approaches tailored to the individual needs of each market. Approaches include establishing new CBOCs using a mix of VA-staffed clinics in leased space and contract-model clinics in the Southwest and Northeast markets; expanding existing CBOCs; establishing new Satellite Outpatient Clinics (SOPC) in certain former CBOC sites; and renovating and/or constructing new outpatient space.

Specialty Care—Increase specialty care services at six care sites and in three markets with the exception of Northwest market. VISN 6 will use a combination of approaches tailored to individual needs of each market. Approaches include providing specialty care services at multiple SOPCs/CBOCs; as a major component of outpatient additions; and using community contracts for the early years before lease/construction and for peak years.

Mental Health—Increase the mental health outpatient services in three markets with the exception of the Northwest market due to increased demand and primary care in all four markets. The VISN will use a combination of approaches tailored to the individual needs of each market. These approaches include incorporating Mental Health into CBOCs; renovating and constructing new outpatient space at the parent facilities; and providing some limited workload by contract.

Inpatient Services

Medicine—Increased inpatient medicine services have been identified for both the Southeast and the Southwest markets. This will require constructing new space, renovating existing space and using telemedicine links with out-station locations to augment coordination, timeliness and quality of care. Community contracts for projected peak year usage will also be employed as appropriate.

Surgery—Increased inpatient surgery services have been identified for both the Southeast and the Southwest markets. This will require a combination of ward renovation projects and new construction. To create enough space for these projects, outpatient functions currently located in inpatient areas will be relocated to the proposed outpatient additions. The projects will be supplemented by sharing agreements for acute hospital care, as appropriate. There is a slight decrease in demand at Salisbury. Therefore, no significant changes are planned at this time beyond an increased reliance on in-house versus contract services and a focus on increased productivity.

Psychiatry—Increased inpatient psychiatry services have been identified for the Southeast market. This will require ward renovation projects that will provide space and address patient privacy and efficiency issues at each facility. To create sufficient space for these projects, outpatient functions currently located in inpatient areas will be relocated to the proposed outpatient additions. Decreased inpatient psychiatry services will be addressed through the elimination of 47 beds by FY 2022.

Extended Care

Proposed capital investments in nursing homes to remedy space deficiencies include the renovation of 5,000 existing sq.ft. in the Northeast market (Hampton) and new construction of 40,000 sq.ft. in the Northwest market (Beckley) for a replacement facility.

Vacant Space

VISN 6 will have a total of 104,518 sq.ft. of vacant space in 2022. This represents a reduction of 72.0% from 2001 total vacant space (373,034 sq.ft.).

Enhanced Use

Durham has an approved enhanced use project in which a real estate development company will finance, build, operate and maintain, on the VAMC grounds a mixed-use development (approximately 650,000 sq. ft.) consisting of a hotel, retail space, office buildings, and parking garage addition for non-VA use.

Collaboration

NCA—Provide additional acreage to the NCA at Salisbury and for a possible new site at Salem.

VISN 7 Executive Summary

Access

VISN 7 has a primary care access gap in all three markets and an acute hospital gap in the Alabama and South Carolina markets. The plan includes 15 new CBOCs in the Alabama (AL), the Georgia (GA), and South Carolina (SC) markets to address the primary care access gap. The acute hospital gap will be met in AL by contracts in Huntsville and Dothan and in the SC market by contracts in Greenville, SC and Savannah, GA.

Campus Realignment/Consolidation of Services

Central Alabama Health Care System—Montgomery—The proposal to convert Montgomery to an outpatient-only facility and to contract out inpatient care requires further study.

Augusta, GA—Study the feasibility of realigning the campus footprint including the feasibility of consolidating selected current services at the Uptown Division to the Downtown Division. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility or other compatible uses. Any revenues or in kind services will remain in the VISN to invest in services for veterans. Explore with DoD the feasibility of greater coordination with DoD services at either VA division.

Small Facility

Dublin VAMC to retain its inpatient program, but will evaluate ICU bed needs and review surgical program for appropriate scope of practice.

Outpatient Services

Increasing demand for primary care and specialty care in all 3 markets and mental health in the SC market will be met by addition of 15 new CBOCs, expansion of existing CBOCs via contract, lease and new construction. Demand will also be met by reconfiguration of space at the VAMCs via renovation, conversion of vacant, new construction and leasing.

Inpatient Services

Increasing demand for medicine in both AL & SC markets, surgery in AL and psychiatry in the SC market will be met by contract hospital sites, conversion of vacant space, new construction, renovation, and leasing as required by each site of care.

Extended Care

Proposed capital investments for Nursing Home Care Units (NHCU) to remedy space deficiencies include the renovation of 67,247 existing sq.ft. in the South Carolina market (Charleston & Columbia).

Vacant Space

VISN 7 will have a total of 284,005 sq.ft. of vacant space in 2022. This represents a reduction of 57.2% from 2001 total vacant space (664,146 sq.ft.).

Enhanced Use

Columbia has an enhanced use project utilizing 26 acres.

Collaborations

VBA—The VBA will co-locate on Columbia VAMC property as part of the enhanced use project.

DoD—Following are the new DOD/VA opportunities VISN 7 is planning or exploring: (1) Atlanta is exploring the possibility of locating their new South Fulton County CBOC at Joel Army Medical Clinic (Ft. McPherson), (2) Charleston plans to construct a new Savannah CBOC at Hunter Army Airfield when the current Savannah CBOC lease expires in 2005, (3) New Hinesville, GA CBOC will either be on the Ft. Stewart Army Base or in the Hinesville community, (4) Plan to contract for hospital care in the Savannah community may be met by purchasing DoD care from nearby Ft. Stewart, (5) Montgomery realignment will examine opportunities to purchase inpatient care from Maxwell AFB as part of studying the realignment of inpatient services, and (6) Central Alabama Veterans Health Care System is pursuing options with Ft. Rucker (Enterprise AL area) and Ft. Benning (Columbus, GA). VISN 7/DoD has a Tiger Team in place to evaluate additional sharing opportunities including possible application for demonstration site for the VA/DoD Health Care Resources Sharing Project (NDAA).

Special Populations

Increase the number of SCI beds at the Augusta VAMC by adding 11 beds now and increase to the projected need by 2012.

Facility Condition

Inpatient wards—The inpatient ward conditions at the Atlanta, Columbia and Charleston VAMC's were identified as a VISN Planning Initiative.

Lease Expirations

The Greenville CBOC will be relocated to larger leased space and the Savannah CBOC will be relocated to new construction at Hunter AFB.

VISN 8 Executive Summary

Access

VISN 8 has a primary care access gap in the North market and an acute hospital gap in Central, Gulf, and North markets. Primary care access in the North market will be met by adding 4 new points of primary care. Acute hospital access in Central market will be increased by adding a new VA owned and operated site for hospital care in Orlando (Gulf market), by adding new contract sites for hospital care in the Gulf South market area (Ft Meyers) and for North market, by adding 2 new points of acute medical care at Jacksonville Shands (contract) and Jacksonville DoD (Joint Venture)

Campus Realignment/Consolidation of Services

Lake City—Transfer of current inpatient surgery services now to Gainesville. Inpatient medicine service transfer to Gainesville will be reevaluated when Gainesville has expanded inpatient capacity (due to construction of a proposed new bed tower). Nursing home care and outpatient services will remain at Lake City.

Outpatient Services

Increasing demand for primary care and specialty care in all 5 markets and mental health in 2 markets will be met by addition of 4 new CBOC's (North market only), expansion of existing CBOC's via contract, lease and new construction. Demand will also be met by reconfiguring of space at the VAMCs via renovation, conversion of vacant, and new construction.

Inpatient Services

Tampa (West Central Florida sub-market) will build a new inpatient bed tower above the new Spinal Cord Injury (SCI) Center to meet medical, surgical, and psychiatry inpatient workload. Decreasing medicine demand for Gulf market, and medicine and surgery for Puerto Rico markets is addressed through the downsizing of beds at Bay Pines between FY2012 and 2022 and San Juan between 2006 and 2022. San Juan space will be realigned through an approved and funded major project in 2006. Increasing psychiatry demand in the North market will be met through new construction at Gainesville.

Vacant Space

VISN 8 will have a total of 250,390 sq.ft. of vacant space in 2022. This represents an increase of 405.6% over 2001 total vacant space (49,525 sq.ft.). This will require further analysis to determine how this can be avoided through improved space planning.

Enhanced Use

Potential enhanced use projects are being explored for Bay Pines. None have been developed for inclusion in this cycle of CARES. University of Miami enhanced use lease project proposal is in development. University of Miami will pay for construction cost of adding three additional floors to existing research building at estimated cost of $8 million. Miami will address interior needs at est. cost of $10 million. Project identified for design in 2005 and construction in 2006–2007.

Collaborations

DoD—Outpatient joint ventures in the Puerto Rico market with Fort Buchanan and in the Gulf market with McDill AFB, Inpatient joint venture in the North market with Jacksonville Navy Hospital.

NCA—NCA is interested in acreage for a cemetery along with any proposed construction in the Sarasota or Fort Myers area.

VBA—VBA and Jacksonville OPC are exploring mini VARO sites. New site for Jacksonville clinic has space planned for small VBA office. A mini-VARO in West Palm Beach is also being explored. An expanded VBA presence is being explored as part of the plan to establish inpatient services at Orlando in the Central market.

Special Populations

Increase the number of Long Term SCI beds at Tampa by adding a 30-bed wing to the current SCI building.

VISN 9 Executive Summary

Access

Primary Care—The draft National CARES Plan attempts to balance meeting national access guidelines with ensuring the current and future viability of its acute care infrastructure. Because of this, while new access points in this VISN are included in the National Plan, they are not in the high implementation priority category at this time.

Campus Realignment/Consolidation of Services

Lexington—Current services of outpatient care and nursing home care will be transferred to Cooper Drive. Due to possible space limitations at Cooper Drive it may be necessary to relocate some outpatient primary care and outpatient mental health psychiatric services to alternative locations other than Cooper Drive. VA will no longer operate health care services at this campus. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Enhanced use opportunities for the majority of the Leestown campus with the state of Kentucky appears to exist with Eastern State Hospital. Any revenues or in kind services will remain in the VISN to invest in services for veterans. Plans also include the pursuit of collaborative opportunities between the Louisville and Lexington VAMCs.

Nashville and Murfreesboro—Maintain both facilities and develop complimentary missions through the consolidation of services. Nashville will provide inpatient acute medicine and surgery programs while retaining a minimum number of medicine beds at Murfreesboro to support demand generated from the long-term programs. Murfreesboro will provide acute and long-term inpatient psychiatry and nursing home care services.

Outpatient Services

Primary Care and Mental Health—Outpatient demand is increasing in three of the four markets for primary care and in two of the four markets for mental health care. Increased capacity for these services is being addressed through a combination of in-house expansion (renovations and leases) and expansion of existing contracts (CBOCs). In addition, outpatient mental health is being integrated with primary care at all sites.

Specialty Care—Increase the capacity for outpatient specialty care in all four markets. The plan is to use a mix of in-house expansion, telemedicine, inclusion of selected high volume specialty services at larger CBOCs and through the use of community contracts.

Inpatient Services

Medicine—Increase inpatient medicine services in the Central and Western markets to meet demand through a mix of in-house expansions (Nashville and Memphis) and community contracts (Chattanooga in the Central market and in outlying areas as available in the Western market).

Surgery—Consolidate inpatient surgery at Murfreesboro to Nashville, along with contracting for some surgical beds within the Chattanooga community. Maintain existing services to provide selected high volume surgical services at the Huntington facility with recurring reevaluation of quality and cost-effectiveness. Contract for excess demand, particularly in the Charleston, WV area.

Psychiatry—To meet inpatient psychiatry demand in the Northern market, acute inpatient psychiatry services will be centralized to one site within the Northern market or refer patients to the Murfreesboro, Tennessee program. Options to centralize services within the North market include provision of these services as part of the enhanced use agreement with the State of Kentucky on the Leestown campus or consolidating services to the Louisville VAMC.

Louisville—Construction of a new or fully renovated facility sized to meet service delivery requirements and projected demand will be studied. Options include construction of a new medical center, full renovation of the current facility and the potential for a collaborative hospital within a hospital arrangement with University of Louisville Medical School affiliate. Opportunities exist for VBA co-location as well as enhanced DOD sharing should a new facility option be selected.

Vacant Space[3]

VISN 9 will have a total of 121,348 sq.ft. of vacant space in 2022. This represents a reduction of 74.8% from 2001 total vacant space (481,551 sq.ft.).

Enhanced Use

Enhance use leasing is proposed for parts of the Lexington-Leestown property with the State of Kentucky for an acute and long-term care psychiatry facility (Eastern State Hospital, 238 beds). There is the potential for Eastern State to provide acute and long-term psychiatric services for veterans as part of the enhanced use lease. There is additional opportunity for enhanced use leases with the State of Kentucky Department of Veterans Affairs for a 60–80 bed domiciliary and a 40-bed transition/homeless shelter.

Collaboration

VBA—Co-locate the Louisville VA Medical Center and Louisville Regional Office operation on the same campus or same physical structure. This will be considered in conjunction with the overall facility plan for Louisville. This opportunity is predicated on the identification of cost benefits outcomes of three options, including construction of a new facility, total renovation of the existing facility or development of a collaborative project with the affiliate medical school. A parking garage will be necessary regardless of the option selected.

NCA—Expansion of existing national cemetery at Mountain Home. Initial agreement has been reached on two 50-acre sites.

DoD—Expansion of space for primary care and outpatient mental health services at Fort Knox CBOC.

Special Populations

Add 20 LTC SCI beds within the current Spinal Cord Injury unit at Memphis.

VISN 10 Executive Summary

Access

Hospital Care—Improve access to acute hospital care in the Central and Eastern markets to ensure that at least 65% of veteran enrollees are within the driving time guidelines. This would be achieved by contracting for acute hospital care in the local community of Columbus, Ohio, which would increase the percentage of veterans within the standard access guideline from 39% to 83% in 2012 and to 84% in 2022. Currently, the Eastern market is within the guidelines for access to hospital care. The Eastern market would provide hospital care utilizing contracts in the Canton, Ohio area, allowing the market to stay within the hospital access guidelines.

Campus Realignment/Consolidation of Services

Cleveland—Current services at the Brecksville division will be transferred to the Wade Park division. This project will require new construction of 500,730 sq. ft. and renovation of existing space at the Wade Park of 140,400 sq. ft. This project includes the enhanced use lease of 102 acres at Brecksville in exchange for property adjacent to Wade Park. This consolidation will result in a reduction of 548,363 sq. ft. of the Brecksville Division. The Western market is also expanding the sharing/consolidation of services between the Cincinnati and Dayton VA Medical Centers.

Outpatient Services

Primary Care and Mental Health—Increasing primary care outpatient services is being addressed in all three markets through a combination of in-house expansion (leases and new construction), use of telemedicine, and expansion of existing Community Based Outpatient Clinics (CBOCs), in addition to new CBOCs. Outpatient mental health services have been an integral part of the existing CBOCs and the Network will continue to support the expansion of mental health services in all network CBOCs.

Specialty Care—Columbus, OH: A new expanded 260,000 sq. ft. outpatient specialty care center would be built on the DoD/Defense Supply Center site located in Columbus, Ohio. DoD has up to 200 acres available at this location at no cost to the Department of Veterans Affairs. At the completion of this project, 150,000 sq. ft. of leased space will be terminated. Overall, VISN 10 is increasing specialty care outpatient services in all three markets and at all six care sites. The need is being met by utilizing a combination of in-house expansion (new construction and leases), offering selected high volume specialty care services at larger CBOCs, and through community contracts.

Inpatient Services

Medicine—Increasing inpatient medicine services in the Eastern market is being met through the consolidation of the Brecksville division to Wade Park. This will require new construction and renovation of existing space for Medicine at the Wade Park division. The Central market will utilize community hospital contracts and other arrangements within the Columbus metropolitan area to provide local inpatient services.

Extended Care

Capital Investment for a new nursing home to remedy space deficiencies of the current nursing home at Brecksville is planned. The nursing home is part of the consolidation plans.

Vacant Space

VISN 10 will have a total of 115,989 sq.ft. of vacant space in 2022. This represents a reduction of 65.1% from 2001 total vacant space (332,125 sq.ft.).

Enhanced Use

Enhanced use is proposed for 690,669 sq. ft. of space. The vast majority (548,363 sq. ft. or 79%) is associated with the consolidation of activities of the Brecksville Division to Cleveland-Wade Park. The remaining space (142,306 sq. ft.) is associated with proposed enhanced use lease projects at Cincinnati (leasing of Quarters and use proceeds for additional adjacent parking) and Dayton (leasing of empty building).

Collaboration

NCA—NCA is considering the use of up to 50 acres on the Chillicothe campus for a cemetery site, but not before 2009.

VISN 11 Executive Summary

Access

Primary Care—The National CARES Plan attempts to balance meeting national access guidelines with ensuring the current and future viability of its acute care infrastructure. Because of this, while new access points in this VISN are included in the National Plan, they are not in the high implementation priority category at this time.

Hospital Care—Increase access for hospital care in the Central Illinois market by contracting with community providers at two new sites on the western side of the market.

Consolidation of Services

The Ann Arbor and Detroit facilities currently have several services that they have consolidated and they include: cardiac surgery, neurosurgery, interventional cardiology, cochlear implant, gynecologic cytopathology, nuclear medicine, sleep laboratory, GRECC, HSR&D, contract

administration, prosthetic management. Future consolidations to be considered are: home oxygen management, and radiology interpretation.

Small Facility

Saginaw and Ft. Wayne divisions of NIHCS will maintain outpatient and nursing home services. Acute medicine services will be transferred to Indianapolis, Ann Arbor and Detroit. There will be partial contracting out for inpatient/emergent care services and to improve the access for patients in the northern sectors of Lower Michigan. Patient transfer protocols will be upgraded to address these significant changes, and the Ann Arbor HCS must be upgraded prior to any bed consolidation to address the transfer of projected medicine patients to this facility. VAMCs Detroit and Indianapolis do not require renovation prior to either consolidation.

Outpatient Services

Specialty Care—Increase the specialty outpatient care services in all three markets and at all eight care sites to include selected CBOCs. Three innovative telemedicine networking systems located at the tertiary level facilities are also proposed. These new systems can provide care and consultation services to the veteran in either another VHA facility or at his/her home. These systems will particularly assist the older veteran with ambulation issues, dementia, Alzheimer's, Parkinson's, and the SCI patient. These systems have shown that they can increase patient satisfaction, and significantly reduce the number of emergency room, and other visits, and future hospitalizations.

Primary Care—Increase the primary outpatient care services in two markets and at all care sites except the Illiana HCS at Danville, Illinois.

Inpatient Services

Medicine—Increase inpatient medicine beds in the Michigan market to meet the projected demand. The Ann Arbor HCS and the Detroit VAMC will need to increase their compliment of medicine beds to meet that projected demand and to add additional beds to meet the change in acute beds from Saginaw (small facility) and the consolidation of five beds from the Battle Creek VAMC.

Extended Care

A new nursing home is proposed using the enhanced-use leasing process to remedy several space and functional deficiencies in the Central Illinois market (Illiana HCS).

Vacant Space

VISN 11 will have a total of 252,761 sq.ft. of vacant space in 2022. This represents a reduction of 71.4% from 2001 total vacant space (884,615 sq.ft.).

Enhanced Use

There are several enhanced use lease projects planned by the network to address significant space issues to meet the projected primary and specialty outpatient care workload. There are significant enhanced use projects planned at the Battle Creek (new Mental Health Building & Vet Center), the Illiana HCS for the new nursing home care unit, and at NIHCS—Ft. Wayne Division to relocate their outpatient services and dispose of their inpatient building to a community provider.

Collaboration

VBA—Co-locate the VARO to the Indianapolis VAMC.

NCA—The Network is planning to demolish several buildings at the NIHCS-Marion Division to rid itself of unwanted, historic, vacated space and to appropriately backfill with providing additional acreage (9 acres) to the existing and co-located NCA cemetery.

Special Populations

The Network is proposing to establish a Blind Rehabilitation Outpatient Service (BROS) presence at each of the seven care sites.

VISN 15 Executive Summary

Campus Realignment/Consolidation of Services Proximity

Leavenworth—Continuation of the Secretary's Advisory Board recommendations. The Secretary's Advisory Board was created prior to CARES to consider realignments within VISN 15. The Advisory Board developed a comprehensive plan for realignment and consolidation of services between Topeka and Leavenworth that was approved by the USH and incorporated into the VISN's CARES plan. It included realignments of nursing home care unit, psychiatry and outpatient surgery. Under this plan Leavenworth would maintain acute beds. In addition, Leavenworth will provide additional primary care capacity for Kansas City, and both Leavenworth and Topeka would retain 24/7 emergency services at both campuses.

Small Facility

Poplar Bluff—Poplar Bluff will maintain acute care beds. This facility currently operates as a Critical Access Hospital and will continue as such when VHA develops its CAH criteria.

Outpatient Services

Primary Care—Increased primary care outpatient demand has been identified in all three of the Network's markets. The majority of this need will be met through expansion of in-house space via new construction (18,000 sq. ft.) conversion of vacant space (44,500 sq. ft.), lease space (182,900 sq. ft.) and utilization of community contracts. The National CARES Plan attempts to balance meeting national access guidelines with ensuring the current and future viability of its acute care infrastructure. While new access points in the Central and the East markets are included in the National Plan, they are not in the high implementation priority category at this time.

Specialty Care—All three of the Network's markets are projected to experience increased outpatient specialty care demand. The VISN proposes to meet the majority of this need through the expansion of in-house services with new construction (405,400 sq. ft.), vacant space conversion (63,400 sq. ft.), lease space (20,000 sq. ft.) and utilization of community contracts. In addition, some shifting of care between facilities is proposed.

Inpatient Services

Psychiatry—Decreasing demand in the Central market will be offset by the increased workload from the Western market (Western market has no in-patient psychiatry beds). Inpatient workload will be met through a combination of in-house and community contracts. New construction (66,800 sq. ft.) is proposed to meet projected space needs.

Vacant Space

VISN 15 will have a total of 241,618 sq.ft. of vacant space in 2022. This represents a reduction of 70.5% from 2001 total vacant space (819,050 sq.ft.).

Enhanced Use

The Network is developing a project at the Leavenworth campus that would rehabilitate 39 historic buildings for mixed use, including an assisted living facility. In addition, there would be an expansion of the Leavenworth National Cemetery. The second project is the out-leasing of approximately 2.5 acres of land to a commercial developer in exchange for the construction of a parking garage adjacent to the St. Louis-John Cochran facility.

Collaboration

NCA—Collaborative opportunities under development include the expansion of the Leavenworth National Cemetery described above and potential expansion of the Jefferson Barracks National Cemetery by 2008.

DoD—Opportunities include sharing CBOC space at the current CBOC at the Warrensburg State Veterans Home with Whiteman AFB. In addition, Kansas City may provide laboratory testing for Whiteman Air Force Base. The VISN and Scott AFB are currently discussing concepts for a joint planning of a replacement hospital at Scott AFB.

Facility Conditions

Infrastructure issues associated with the chilled water, steam, and electrical distribution systems in buildings housing inpatient care have been identified due to the high risk of disrupting health care delivery operations. Estimated correction costs exceed $20 million.

VISN 16 Executive Summary

Access

Primary Care—VISN 16 has a primary care access gap in all four markets and an acute hospital gap as well in the Eastern Southern market. The plan includes as a high implementation priority category, 11 CBOCs for the Eastern Southern and Central Lower markets. The National CARES Plan attempts to balance meeting national access guidelines while ensuring the current and future viability of its acute care infrastructure. Consequently, while new access points in the Upper Western and the Central Southern markets in this VISN are included in the National Plan, they are not in the high implementation priority category at this time.

Hospital—The acute hospital gap will be met in Eastern Southern market through a sharing agreement with Eglin AFB, adding a point of care by contracting in Panama City, continued contracting with University of South Alabama in Mobile and expanding services currently provided by Pensacola Naval Hospital via a joint venture.

Consolidation/Realignment

Gulfport's current patient care services will be transferred to the Biloxi campus and possibly Keesler AFB. VA will no longer operate health care services at this campus. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility or other compatible uses to benefit veterans. Any revenues or in kind services will remain in the VISN to invest in services for veterans.

Small Facility

Muskogee maintains its inpatient program, but will evaluate ICU bed needs and review surgical program for appropriate scope of practice.

Outpatient Services

Increasing demand for primary care and specialty care in all 4 markets will be met by the addition of 11 new CBOC's in the Eastern Southern and the Central Lower markets, expansion of existing CBOC's via contract, lease and new construction. In addition, it will be met by reconfiguration of space at the VAMCs via renovation, conversion of vacant, and new construction.

Inpatient Services

Increasing demand for medicine in Central Southern (CS), Eastern Southern (ES), and Upper Western (UW) markets, and Psychiatry in CS and UW will be met by renovation in UW and CS and new construction in Biloxi to accommodate the consolidation of Gulfport services to Biloxi. Increasing demand in ES will be met through joint venture, sharing and contract.

Extended Care

Proposed capital investments for nursing homes to remedy space deficiencies include the renovation of 23,735 existing sq. ft. in the Central Lower market (Alexandria & Shreveport) and include the renovation of 61,231 existing sq. ft. in the Central Southern market (Biloxi).

Vacant Space

VISN 16 will have a total of 122,921 sq.ft. of vacant space in 2022. This represents a reduction of 46.3% from 2001 (228,743 sq.ft.):

Enhanced Use

Houston has the potential for an enhanced use lease cooperative arrangement with the private sector to construct a high-rise medical arts building.

Collaborations

DoD—Eastern Southern market—Joint venture with Pensacola Naval Hospital, sharing with Eglin AFB and Tyndall AFB involving a broad range of services; Central Lower—Sharing with Ft. Polk involving Primary Care, Mental Health, and Psychiatric services; Upper Western—Sharing with Ft. Sill and Tinker AFB dental, primary care and possibly other services; Central Southern—Sharing or possible joint venture with Keesler AFB for services yet to be determined.

NCA—The consolidation of Gulfport division to Biloxi will impact acreage available for possible NCA expansion.

VBA—There is the possibility of replacing the existing VBA office located on the Central Arkansas Healthcare System-North Little Rock campus with new construction on the campus.

Special Populations

Build a new 20-bed Blind Rehabilitation Center at Biloxi. Construct a new 25-bed SCI Center at the Central Arkansas Healthcare System-North Little Rock division.

VISN 17 Executive Summary

Access

Primary Care—The National CARES Plan attempts to balance meeting national access guidelines with ensuring the current and future viability of its acute care infrastructure. Because of this, while new access points in this VISN are included in the National Plan, they are not in the high implementation priority category at this time.

Hospital—Deficiencies in hospital access in Austin, Lower Rio Grande Valley, are being met through contracting or leasing beds in local communities.

Campus Realignment/Consolidation of Services/Small Facility

Kerrville—Kerrville will continue providing nursing home and outpatient services. Acute inpatient services will be transferred to San Antonio as space becomes available from the proposed inpatient construction at San Antonio. In the interim, Kerrville would convert to a Critical Access Hospital (CAH). In addition, inpatient services will be contracted for in Harlingen and Corpus Christi.

Waco—Current services will be transferred to Temple and community contracts and leases used to provide these services. Current inpatient psychiatry services will be met primarily at Temple. The VISN will also lease 27-inpatient psychiatry beds in Austin. Blind Rehabilitation and a third of Waco's nursing home care services will be transferred to the Temple VAMC. The balance of nursing home care needs will be contracted out in the Waco Central Texas market area. Outpatient services will be moved to a new location more strategically placed to improve access for patients from both Waco and Marlin.

Outpatient Services

Primary Care and Mental Health—Increasing demand for primary care and mental health outpatient services is being met across the network primarily through expansion of Community Based Outpatient Clinics (CBOCs). Outpatient mental health is being integrated with primary care at all sites as well as being expanded in-house at parent facilities.

Specialty Care—Increasing specialty care services in all four markets is being met using a combination of in-house expansion (new construction, renovation and leases), which offer selected high volume specialty care services at larger CBOCs, and community contracts.

Inpatient Services

Medicine and Psychiatry—Increasing demand in the North market will be met by expanding in-house services at the Dallas through construction and renovation projects. In addition, contracts for hospital care in Austin, Harlingen and Corpus Christi will increase services in the remaining three markets.

Vacant Space

VISN 17 will have a total of 365,954 sq.ft. of vacant space in 2022. This represents a reduction of 1.6% from 2001 total vacant space (372,025 sq.ft.).

Enhanced Use

A major enhanced use project for assisted living in Kerrville has been submitted for approval.

Collaboration

DoD—North market—Sharing opportunity with Joint Reserve Base in North Fort Worth for a possible CBOC. Central market—Sharing opportunities between Fort Hood and the Temple Medical Center (telemedicine, orthopedics, psychiatry, sleep lab, training). South market "Inpatient/outpatient sharing and enhanced use among San Antonio, Brooks Army Medical Center and Wilford Hall Air Force Medical Center including CBOCs, consolidating reference labs, domiciliary, Consolidated Mail Out Pharmacy (CMOP), discharge physicals, sleep lab, and consolidation of bone marrow transplant programs at VA.

VISN 18 Executive Summary

Access

The gap in hospital and tertiary care access in the New Mexico/West Texas market is being met through expanding the joint venture with DoD in El Paso and contracting in Midland/Odessa, Lubbock, and Roswell.

Campus Realignment/Consolidation of Services/Small Facility

Prescott—Medicine workload at Prescott will increase by taking patients who would have been referred to Phoenix. This will also enhance the ability to recruit specialists at Prescott to meet the need for outpatient specialty care. Utilization review will ensure that lengths of stay are comparable to Medicare guidelines.

Big Spring—Close surgery and contract for care in communities nearest to patients. Study the possibility of no longer providing health care services at Big Spring by development of a Critical Access Hospital for the Odessa-Midland area that would include a nursing home and expansion of an existing clinic to a multi-specialty outpatient clinic. Also as part of the study, consider the possible need for acute hospital care in the area.

Outpatient Services

Primary Care and Mental Health—Increasing primary care and mental health

outpatient service is being addressed in both markets primarily through expansion of existing Community Based Outpatient Clinics (CBOCs) as well as increasing services at parent facilities. Outpatient mental health is being integrated with primary care at all sites.

Specialty Care—Increasing specialty care services in both markets will be met using a combination of in-house expansion (new construction, renovation and leases), and by offering selected high volume specialty care services at larger CBOCs, and through community contracts.

Inpatient Services

Medicine—Increasing demand in the Arizona market will be met by expanding in-house services at all three facilities using renovation projects. In the New Mexico/West Texas market, demand will be met by expanding the joint venture at the William Beaumont Army Medical Center adjacent to the El Paso OPC as well as contracting for care in Lubbock, Roswell, and local communities in West Texas and New Mexico for emergency care.

Psychiatry—The increasing demand for inpatient psychiatry will be met by expanding services at Phoenix, Tucson, and Albuquerque in addition to expanding the VA/DoD joint venture at William Beaumont Army Medical Center in El Paso. Contracting for emergency care will also be implemented in Mexico and West Texas.

Vacant Space

VISN 18 will have a total of 8,054 sq.ft. of vacant space in 2022. This represents a reduction of 80.0% from 2001 total vacant space (40,368 sq.ft.).

Extended Care

Proposed capital investments for nursing homes include the renovation of 58,314 sq. ft. in the New Mexico/West Texas market (Albuquerque & Amarillo) and the renovation of 124,209 sq. ft. in the Arizona market (Phoenix, Prescott & Tucson).

Enhanced Use

A major enhanced use leasing project at Phoenix is being pursued which will make office space available on its campus in downtown Phoenix to affiliates, as well as DoD and the private sector. Albuquerque is pursuing a multi-use project that includes collocation of the VARO, a hoptel, and an assisted living facility.

Collaboration

DoD—The VISN is pursuing expansion of the joint venture with William Beaumont Army Medical Center in El Paso as well as a primary care clinic with Luke AFB at the Mesa CBOC.

Research

The VISN will join with Arizona State University (ASU) to establish an Arizona Biomedical Institute. In addition, the VISN is working with both ASU and University of Arizona to establish a Molecular Diagnostics and Research Laboratory. Albuquerque also has a very active research program that has numerous space and functional deficiencies. All of these initiatives will require construction and/or enhanced use projects.

VISN 19 Executive Summary

Access

Primary Care—The National CARES Plan attempts to balance meeting national access guidelines with ensuring the current and future viability of its acute care infrastructure. Because of this, while new access points in this VISN are included in the National Plan, they are not in the high implementation priority category at this time.

Hospital Care—Increased access for hospital care in the Eastern Rockies, Montana, Wyoming, Grand Junction and Western Rockies markets by contracting at seven sites in VISN 19.

Tertiary Care—Increased access for hospital care in the Eastern Rockies and Montana markets by contracting for care at three sites.

Small Facility

Grand Junction and Cheyenne—Maintain acute bed sections at both facilities and develop appropriate parameters (more restrictive) for types of in-house surgery procedures. Complete an evaluation to determine if ICU beds could be closed (VA external review survey).

Fort Harrison—Fort Harrison maintains current services

Outpatient Services

Primary Care—Increasing the primary care outpatient services in one market, and highly rural care in all markets requires new construction and conversion of space. The replacement hospital at Denver will include a large outpatient care project and a VA/DoD joint venture.

Specialty Care—Increase specialty care outpatient services in all five markets and at all care sites. Contracting is utilized in high peak periods of growth. New construction of 359,600 sq. ft. is planned in to meet environment of care concerns and the increasing workload demand. Other solutions include renovation, conversion of existing space and leasing alternatives.

Inpatient Services

Medicine—Increase inpatient medicine services in the Eastern Rockies market. The majority of the increasing demand will be absorbed at VAMC Denver. This is part of the replacement facility (new construction) proposal at Denver. Excess space will be demolished.

Extended Care

Capital investments for nursing home care (NHCU) to remedy space deficiencies include the new construction of 32,271 sq. ft. in the Eastern Rockies market (Denver).

Vacant Space

VISN 19 will have a total of 198,534 sq.ft. of vacant space in 2022. This represents an increase of 66.3% over 2001 total vacant space (119,357 sq.ft.). This will require further analysis to determine how this can be avoided through improved space planning.

Enhanced Use

Enhanced use leasing is being explored at Salt Lake (Phase 2). Proposal was submitted to demolish old VA buildings and replace buildings with a new building. VA will occupy some of the space.

Collaboration

DoD—Activities include (1) F.E. Warren AFB & Cheyenne: VAMC continuing to allow the use of facilities for minor number of services, (2) U.S. Air Force Academy & Denver ongoing discussions related to available VA services, (3) Buckley AFB & Denver: discussions continue regarding Buckley AFB patients using new facility at Fitzsimmons, (4) Ft. Carson Army & CBOC: discussions continue regarding VA use of space and facilities at Ft. Carson Army base in Colorado Springs, and (5) Hill AFB & Salt Lake: no potential agreements identified.

Special Populations

Build a new SCI Center located with the replacement facility at Denver.

Facility Condition

Low Condition Scores—Renovation was the main solution for the majority of buildings that had condition scores that were lower than 3.0. Lead paint problems will be improved in all facilities.

Seismic

The seismic condition will be improved by the construction projects at Fort Harrison.

Replacement Facility Study at Denver

The Denver replacement hospital is included in the plan.

VISN 20 Executive Summary

Access

Primary Care—VISN 20 will increase primary care access points in the Inland North markets by adding a new CBOC site in Central Washington State and enhancing the Spokane mobile clinic. This will help achieve access for more than 70% of veterans who will be within a 30-minute drive time of primary care.

Hospital Care—Inland North and South Cascades markets plan to meet the need for increased hospital access by contracting at 6 sites.

Tertiary Care—Alaska, Inland North and Inland South markets plan to increase access to tertiary care by contracting in Anchorage, AK; and Spokane, Tri-Cities, and Yakima, WA.

Campus Realignment/Consolidation of Services

Vancouver—Study/develop a plan to enhance use lease the campus by contracting for nursing home care and relocating outpatient services to another location to maintain or improve access. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in services for veterans.

White City Domiciliary—The domiciliary and CWT programs will be transferred to other VAMCs. Maintain outpatient services. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility or other compatible uses. Any revenues or in kind

services will remain in the VISN to invest in services for veterans.

Walla Walla—Maintain outpatient services and contract for acute inpatient medicine and psychiatry care (will improve hospital access in the Inland North market) and nursing home care. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in services for veterans.

Small Facility

Roseburg—Converting surgical beds to 24-hour surgical observation beds is underway at Roseburg.

Spokane—Develop appropriate parameters (more restrictive) for types of in-house surgery procedures.

Outpatient Services

Primary Care—Increase the primary care outpatient services in three markets and at all care sites through planned CBOC and DoD joint ventures, and new construction and converting in-house space.

Mental Health—Increased demand for mental health in the Inland North market will be managed in-house and through increased contracting. Mental Health and primary care services are integrated into all new CBOCs.

Specialty Care—All five markets and all care sites will need to increase outpatient specialty care services. In all cases, approaches include expanding specialty care in-house services and contracting in high peak periods of growth. Additionally, two CBOCs will offer selected high volume specialty care services. New construction of 228,467 sq. ft. is planned to meet access, environment of care concerns, and the increasing workload demand. Other solutions include a combination of renovation, conversion of existing space, and leasing.

Inpatient Services

Medicine—Western Washington market will need to increase inpatient medicine services. VA Puget Sound Health Care System, and Seattle, will absorb additional workload through increased in-house, contract and joint venture options. A joint venture with Madigan Army Medical Center (MAMC) will involve closure of American Lake acute beds and referral of inpatient care to MAMC. Capital Investments are not required.

Vacant Space

VISN 20 a total of 273,862 sq.ft. of vacant space in 2022. This represents an increase of 10.5% over 2001 total vacant space (247,887 sq.ft.). This will require further analysis to determine how this can be avoided through improved space planning.

Enhanced Use

White City, Portland, Roseburg, and Seattle are exploring enhanced use leasing projects.

Collaboration

DoD—The proposed collaborations between VA and DoD include: (1) a pilot VA/DoD demonstration site with American Lake Division, VA PSHCS, and Madigan Army Medical Center; (2) ongoing collaboration efforts with Everett, Bremerton, and Oak Harbor Naval Hospital; and (3) VA Alaska HCS is planning for expanded sharing/integration with both Bassett Army Community Hospital and Elmendorf Air Force Base in order to meet demand projections in both Fairbanks and Anchorage.

VBA—The proposed collaborations at Boise, Portland and Seattle are still in development. Potential collocation is available on the Boise campus. Alaska VAHSRO, VHA, and VBA activities will continue to be collocated after new clinic construction.

NCA—Roseburg as a high priority for NCA collaboration.

Facility Condition

Low Condition Scores—Renovation was the main solution for the majority of buildings with condition scores lower than 3.0. Lead paint problems will be improved in all facilities.

Seismic

Seismic conditions will be improved through proposed construction projects at Portland, American Lake, Seattle, White City and Roseburg.

VISN 21 Executive Summary

Access

Tertiary Care—Sierra Nevada market will expand services at Reno VAMC and contract locally.

Hospital Care—South Coast market will contract locally to meet demand and improve access.

Campus Realignment/Consolidation of Services

Livermore—Current nursing home services will be transferred to Menlo Park campus and contracts in the community. Outpatient services are proposed to transfer to an expanded San Joaquin Valley CBOC and a new East Bay CBOC closer to where the patients live. Both CBOCs will offer primary care, specialty services and mental health services. VA will no longer operate health care services at this campus. The campus will be evaluated for alternative uses to benefit veterans such as enhanced use leasing for an assisted living facility. Any revenues or in kind services will remain in the VISN to invest in services for veterans.

San Francisco/Palo Alto—Services to be consolidated at San Francisco include the following: Administrative Services: Reproduction Services (*i.e.*, copies), an HR Classification. Clinical Services: Parkinson's Disease and Epilepsy Surgery and Brain Mapping, portions of Neurosurgery including Stereotactic Radiosurgery (including Gamma Knife), Brainstem auditory evoked responses, Somato sensory evoked potentials, All surgery requiring intra-operative spinal cord and root monitoring, Electronystagmographs, Brachytherapy for Prostate Cancer, Endovascular, embolism of AVM, Mohs Surgery, Portions of Radiology including Neuroradiology through increased use of PACS, All Dental Surgery including Dental Implantology, and portions of Laboratory Services.

Services to be consolidated at Palo Alto include the following: Administrative Services: Warehousing operations, Disposal of government property program, Recycling program, Management of grounds and transportation services, Prosthetics & Sensory Aids purchasing agents, IRM help desk and police training. Clinical Services: Long-term inpatient care for dementia, neurobehavioral problems and substance abuse, Electroconvulsive therapy (ECT), Long-term care for chronically mentally ill and Selected laboratory contract testing.

Outpatient Services

Primary Care—Increasing primary care demand in all six markets is being met primarily through expansion of existing CBOCs, as well as increasing services at parent facilities. In some cases, expanded hours are planned to increase capacity. A multi-specialty expanded CBOC in the San Joaquin Valley and a new CBOC are in the plan as high priorities to meet the outpatient requirements associated with the closure of Livermore. However, since the National CARES Plan attempts to balance meeting national access guidelines, while other access points are included in the National Plan, they are not in the high implementation priority category at this time.

Specialty Care—Increasing specialty care demand in all six markets is being met by using in-house expansion (new construction, renovation and leases), utilizing telehealth options for select clinics and offering selected high volume specialty care services on-site at larger CBOCs.

Inpatient Services

Surgery—Decreasing demand in South Coast market is being managed by reducing in-house services at Palo Alto.

Psychiatry—Decreasing demand in South Coast market is being managed by reducing in-house services.

Vacant Space

VISN 21 will have a total of 207,745 sq.ft. of vacant space in 2022. This represents a reduction of 1.0% from 2001 total vacant space (208,899 sq.ft.).

Enhanced Use

Proposals are being developed involving research at San Francisco and long-term care in Sacramento. These proposals involve construction as well as leasing. In addition the VISN is pursuing the following enhanced use lease opportunities: Joint venture for ambulatory and long-term care with Alameda County and assisted living facility at the Menlo Park Division of Palo Alto Health Care System.

Collaboration

DoD—The VISN is developing the following collaborative opportunities with DoD: In Pacific Island market enhancing access to tertiary and acute care and to meet primary and specialty care outpatient needs through expanded agreements with Tripler AFB. There may be opportunities of collaboration in medical research with DoD in Hawaii, particularly given DoD's anticipation of a new research facility on Oahu. In addition, there are opportunities

with DoD in the North Valley market at Travis AFB to provide enhanced access to inpatient care, primary care, and specialty care. Also working with DoD on joint ventures for both inpatient and outpatient care in Monterrey.

Seismic

The VISN has proposed seismic construction projects at facilities in the North Coast, South Coast and South Valley markets, including VA facilities in Palo Alto, San Francisco Menlo Park and Fresno.

VISN 22 Executive Summary

Campus Realignment/Consolidation of Services

Long Beach-Greater LA: The two facilities will continue to refer patients for interventional cardiology/cardiac surgery and neurosurgery as well as implementing extensive collaboration in the areas of laboratory, radiation therapy, and radiology. Other opportunities for consolidation, integration and cooperation are anticipated in Geriatrics and Extended Care and Mental Health.

Outpatient Services

Increasing demand for primary care and specialty care services in both the California and Nevada markets will be met by expansion of existing CBOC's via clinical services contracts, replacement leases, and new construction and reconfiguration of space at the VAMC's via enhanced use leases, renovations, conversion of vacant space and new construction.

Inpatient Services

Increasing demand for inpatient medicine beds in the California and Nevada markets will be met by VA/DoD sharing, conversion of vacant space and renovation of existing space. The peak demand, which occurs between 2004 and 2012, will be addressed through contracting. The majority of decreasing demand for inpatient psychiatry will be addressed through the downsizing of beds at all California market facilities between FY2012 and 2022.

Las Vegas—Develop a plan for a new hospital in Las Vegas that would include the current plans for a multi-specialty outpatient clinic.

Extended Care

Proposed capital investments for nursing home care to remedy space deficiencies identified include the new construction of 95,000 sq. ft. in the Nevada market (Las Vegas) and the renovation of 79,786 sq. ft. (Long Beach & San Diego) and the replacement of 130,000 sq. ft. in the California market (Greater LA).

Vacant Space

VISN 22 had total vacant space of 818,885 sq. ft. in 2001. This total will be reduced by 208,812 sq. ft. through enhanced use leasing and by 241,075 sq. ft. through out-lease leaving a total of 574,687 sq. ft. of vacant space. This represents a reduction of 29%.

The Network CARES Market Plan proposes that a majority of the vacant space be reduced through demolition of vacated buildings on the north side of the West Los Angeles campus and at the Sepulveda campus. The Plan includes a strategy to consolidate all care, with the exception of long-term care, on the south side of the West Los Angeles campus as part of building a new clinical addition on the south side. This project would be in addition to a co-location project with VBA. A wide variety of outpatient mental health programs and support staff would also be located within this new clinical addition to accommodate the rising workload. The proposed clinical addition would also consolidate other clinical services currently in buildings on the north campus and free up a majority of the north campus for demolition of old buildings and construction of a State Nursing Home, expansion of the Los Angeles National Cemetery or other veteran-focused projects. This consolidation would also improve the efficiency of care delivery and improve patient access to services on the West Los Angeles campus.

Enhanced Use

The Network approach to this initiative is the development of a VISN 22 Excess Land Use Policy included in the CARES Market Plan. This policy will provide planning and guidance developed with stakeholder input (including community representatives and local government representatives) to ensure proposed developments are viable enhanced use lease projects.

Collaborations

DoD—DoD collaboration opportunities included in the plan are through the Michael O'Callaghan Federal Hospital in Las Vegas, Balboa Naval Hospital in San Diego and with Medical Treatment Facilities throughout southern California.

VBA—VBA collaborations include construction of a new VARO building at the West LA campus. Space in this building will be included for VHA administrative functions. This will be accomplished through an enhanced-use lease project. In the Nevada market, the plan includes collocation of VBA space at the new site of the Las Vegas OPC.

NCA—Utilize 20 acres of West LA campus land for a columbarium.

Special Populations

Long Beach—A new 24-bed Blind Rehabilitation Center and conversion of 30 acute SCI beds to long-term care SCI beds are planned.

Facility Condition

Nursing Home—Improvement and expansion of nursing home space is achieved mainly through renovation and new construction. Capital investments consist of renovation of 64,000 sq. ft. at Long Beach and 16,000 sq. ft. at San Diego, new construction of 95,000 sq. ft. at Las Vegas and construction of a 130,000 sq. ft. replacement facility at the West LA campus.

Research

Improvement and expansion of research space is achieved mainly through new construction. Capital investments consist of construction of 45,000 sq. ft. at Loma Linda, 260,000 sq. ft. at San Diego, and 245,000 sq. ft. at the West LA campus. Existing space will be demolished at West LA, and backfilled in San Diego and Loma Linda.

Seismic

The plan addresses seismic issues through new construction and demolition of old buildings at the West LA campus and Long Beach, and through renovation at San Diego, Long Beach, and West LA. Costs for seismic improvements are $39 million for Long Beach, $49.1 million for San Diego, and $64.4 million for West LA.

Land

VISN 22 has developed an Excess Land Use Policy that provides a process to address excess land. Upon review by the CARES Commission and approval by the Secretary of Veterans Affairs, the Land Use Planning process will guide local VA leadership when recommending re-use initiatives to the Secretary.

VISN 23 Executive Summary

Access

Primary Care—Primary care access will be improved in two markets with seven new Community Based Outpatient Clinics (CBOCs) for the Iowa and the Minnesota markets included in the plan. The National CARES Plan attempts to balance meeting national access guidelines with ensuring the current and future viability of its acute care infrastructure. Because of this, new access points in the Nebraska, North Dakota and South Dakota markets are in the National Plan; however, they are not in the high implementation priority category at this time.

Hospital Care—Access to VA hospital care will improve in the Iowa, Minnesota, North Dakota and South Dakota markets through community contracts at eleven sites.

Tertiary Care—Tertiary Care access will improve for veterans in the North Dakota market by contracting for care in Bismarck and Minot.

Campus Realignment/Consolidation of Services/Small Facility

Hot Springs—The Hot Springs division of the VA Black Hills HCS identified the concept of the Critical Access Hospital (CAH) in their small facilities proposal. The National CARES Program Office fully endorsed the CAH concept where Hot Springs would begin converting their hospital length of stay to no greater than 96 hours, maintain bed levels below 15 and maintain a strong link to their referral network.

Knoxville—Knoxville will maintain outpatient services, and all inpatient care, including acute care, long-term care and domiciliary will be transferred to the Des Moines campus. A new 120-bed nursing home is proposed at Des Moines to replace the 226 nursing home beds at Knoxville.

St. Cloud—Maintain acute psychiatry, domiciliary, other mental health and outpatient services. Acute medicine is transferred to Minneapolis and contracts in the local community.

Des Moines—Must be upgraded to accommodate the transfer of projected workload from Knoxville.

Outpatient Services

Specialty Care—Specialty care outpatient services will increase in four markets and at all care sites. Contracting is utilized in high peak periods of growth. New construction of 171,000 sq. ft. is planned in VISN 23 to meet access initiatives, environment of care concerns and the increasing workload demand. Other solutions include renovation, conversion of existing space and leasing alternatives.

Primary Care—Primary care outpatient services will increase in five markets. Planned CBOCs in the Iowa and Minnesota markets, new construction and internal conversion will help improve access. The new CBOCs planned will be leased sites or contract care. In-house expansions will occur through capital investments in renovation, conversion and new construction.

Inpatient Services

Medicine—Inpatient medicine services will decrease in the Iowa, Minnesota, Nebraska and South Dakota markets. As a result, St. Cloud will shift all medicine beds to Minneapolis. VA Central Iowa Health Care System will transfer all medicine beds located at Knoxville to Des Moines. The VISN will also transfer some medicine from in-house care to contract care to improve hospital access for veterans. The VISN proposes significant capital investments for tertiary care ICUs, monitored beds and overall facility conditions.

Surgery—Inpatient surgery services will decrease in the Minnesota market resulting in a tremendous shift from inpatient to outpatient care. As a result, space will be realigned from inpatient to outpatient specialty care at VAMC Minneapolis.

Extended Care

Capital investments for a nursing home care unit to remedy space deficiencies include the new construction of 50,000 sq. ft. in the Iowa market (Des Moines), and the renovation of 26,806 sq. ft. in Nebraska market (Grand Island) are planned.

Vacant Space

VISN 23 will have a total of 329,682 sq.ft. of vacant space in 2022. This represents a reduction of 21.6% from 2001 total vacant space (420,424 sq.ft.).

Enhanced Use

Three enhanced use lease projects are proposed: (1) Single Room Occupancy Initiative Concept plan (approval pending), (2) Federal Credit Union Concept plan (approved), public hearing completed requires approximately an acre of property on medical center campus, and (3) A St. Paul VARO enhanced use initiative with a private developer to co-locate onto the Minneapolis campus.

Collaboration

VBA—Three collaborations are proposed: (1) The VARO St. Paul would relocate to new construction on land at the VAMC Minneapolis campus through an enhanced use lease proposal (high priority), (2) Central Iowa Health Care System collaboration is an enhanced use lease development project to relocate the Iowa VARO from the Federal Building in downtown Des Moines to the Des Moines medical center (medium priority), and (3) VA Nebraska-Western Iowa Health Care System is exploring a co-location with VBA on the Lincoln campus (medium priority).

NCA—VA Central Iowa Health Care System and the State of Iowa Department of Veterans Affairs propose a State sponsored Veterans Cemetery on VA land at the Knoxville campus. The current status of the proposal is dependent upon state legislative action.

DoD—Collaborations are planned for community based outpatient clinic at the Offutt AFB and Grand Forks AFB.

Special Populations

Build a new Spinal Cord Injury (SCI) center at Minneapolis.

Facility Condition

Low Condition Scores—VISN 23 proposed renovation as the main solution for the majority of buildings with condition scores lower than 3.0 except for the domiciliary program. Lead paint problems will be corrected in all facilities.

Appendix B—Glossary of Acronyms and Definitions

Acronyms

ADC—Average Daily Census
AL—Assisted Living
BRC—Blind Rehabilitation Center
CAH—Critical Access Hospital
CARES—Capital Asset Realignment for Enhanced Services
CBOC—Community Based Outpatient Clinic
CMS—Centers for Medicare and Medicaid Services
CWT—Compensated Work Therapy Program
DoD—Department of Defense
EU—Enhanced Use
EUL—Enhanced Use Lease
FTEE—Full Time Equivalent Employee
FY—Fiscal Year
GAO—General Accounting Office
GRECC—Geriatric Research, Education and Clinical Center
HSR&D—Health Services Research & Development
ICU—Intensive Care Unit
LTC—Long Term Care
MOA—Memorandum of Agreement
MOU—Memorandum of Understanding
NCPO—National CARES Program Office
NDAA—National Defense Authorization Act
NHCU—Nursing Home Care Unit
OPC—Outpatient Clinic
PTSD—Post-Traumatic Stress Disorder
RO—VBA Regional Office
SCI—Spinal Cord Injury
SCI&D—Spinal Cord Injury & Disorder
SOPC—Satellite Outpatient Clinic
SMI—Seriously Mentally Ill
Sq. Ft.—Square Foot
VA—Department of Veterans Affairs —
VACO—VA Central Office
VAMC—VA Medical Center
VBA—Veterans Benefits Administration
VHA—Veterans Health Administration
VISN—Veterans Integrated Service Network
VR&E—Vocational Rehabilitation & Employment
VSO—Veteran Service Organization
VSSC—VISN Support Service Center

Definitions.

Acute Care Hospital—Offers primary care, general internal medicine, and limited surgical and diagnostic capabilities.

Access guidelines—Minimum percentage of enrollees living within a specific travel time to obtain a VA primary care, plus an absolute standard *i.e.*, a specific number of enrollees living outside the access guidelines.

Capacity Planning Initiative—A plan to meet large increases or decreases in inpatient or outpatient resources with the appropriate resources.

CARES (Capital Asset Realignment for Enhanced Services)—A planning process that evaluates future demand for veterans' health care services against current supply and realigns VHA capital assets in a way that results in more accessible, high quality health care for veterans.

CBOC (Community—Based tpatient Clinic)—VA operated, or contracted or leased healthcare facility geographically distinct or separate from parent medical facility.

Critical Access Hospital (CAH)—Center for Medicare and Medicaid designation of hospitals that are located more than 35 miles from the nearest hospital; must have no more than 15 acute beds; ICU beds discouraged: cannot have length of stays (LOS) greater than 96 hours (except respite/hospice); and must be part of a network of hospitals.

Market Plan—A description of proposed actions to meet the outpatient and inpatient needs for veterans for the next 20 years. It focuses on access, capital requirements, and potential realignments and consolidations.

Market share—The percentage of veteran population enrolled for healthcare services.

Planning Initiative (PI)—A VACO identified future gap, potential overlap in services, large change in demand, or required access improvements for a market area that met specific thresholds and that need to be resolved.

Proximity—Two or more acute or tertiary hospital facilities with similar missions within close proximity of each other.

Small Facilities—Medical Centers that have a projected acute bed levels fewer than 40 beds in 2012 and 2022.

Tertiary Care Hospital—Provides a full range of basic and sophisticated diagnostic and treatment services across the continuum of care, including some of the most highly specialized services. Tertiary medical centers are generally affiliated with schools of medicine, participate in undergraduate and graduate medical education, conduct clinical and basic medical research, and serve as regional referral centers.

[FR Doc. 03–20239 Filed 8–19–03; 8:45 am]

BILLING CODE 8320–01–U

Federal Register

Wednesday,
August 20, 2003

Part III

Department of Homeland Security

Federal Emergency Management Agency

Compendium of Flood Map Changes; Notice

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Compendium of Flood Map Changes

AGENCY: Federal Emergency Management Agency (FEMA), Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice provides listings of changes made to the National Flood Insurance Program (NFIP) maps effective during the first 6 months of 2003.

DATES: The listings include changes to NFIP maps that became effective January 1, 2003, through June 30, 2003.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, Hazard Study Branch, Mitigation Division, FEMA, 500 C Street S.W., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: In accordance with Section 1360(i) of the National Flood Insurance Reform Act of 1994, this notice is provided to inform interested parties of changes made by FEMA to NFIP maps. The two listings provided show communities affected by map changes made by letter and communities affected by physical map changes. For each Letter of Map Change, the first listing provides the map panel(s) affected, effective (determination) date of the change, case number, and determination type. For each physical map change, the Map Revision listing provides the map panel(s) affected and the effective date of the change. The listing also identifies: (1) those panels on which the Special Flood Hazard Areas have not been changed or have been changed only to incorporate the Letters of Map Change issued before the effective date; and (2) those panels for which a Flood Insurance Rate Map is produced for the first time, resulting only in changes to flood insurance and floodplain management requirements in the affected community. Future notices of changes to NFIP maps will be published approximately every 6 months.

Dated: August 8, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

Two listings are provided below. The first listing includes all Letters of Map Change issued by FEMA from January 1 through June 30, 2003. The following types of letters are included in the listing:

Type	Description
01	Letter of Map Revision Based on Fill
02	Letter of Map Amendment
05	Letter of Map Revision With Base Flood Elevation Changes
06	Letter of Map Revision Without Base Flood Elevation Changes
08	Denial
12	Floodway Revision
17	Letter of Map Revision-Inadvertent Inclusion in Floodway
18	Letter of Map Revision-Inadvertent Inclusion in V Zone
19	Letter of Map Change Revalidation

The second listing includes map panels that FEMA physically revised and republished from January 1 through June 30, 2003. For those map panels on which the Special Flood Hazard Areas have not been changed or have been changed only to incorporate Letters of Map Change issued before the effective date, two asterisks(**) are shown to the right of the map panel number. For those map panels for which a Flood Insurance Rate Map is produced for the first time, resulting only in changes to flood insurance and floodplain management requirements in the affected community, three asterisks(***) are shown to the right of the map panel number.

For both listings, a single asterisk is shown to the right of each county name that appears in the "Community" column. This asterisk indicates the area covered is the unincorporated areas of that county.

Region	State	Community	Map panel	Determination date	Case No.	Type
01	CT	BARKHAMSTED, TOWN OF	0901340010B	03–APR–2003	03–01–0800A	02
01	CT	BERLIN, TOWN OF	0900220010D	30–JAN–2003	03–01–0498A	02
01	CT	BRANFORD, TOWN OF	0900730005C	03–JAN–2003	03–01–0084A	02
01	CT	BRIDGEPORT, CITY OF	0900020001B	10–FEB–2003	03–01–0628A	02
01	CT	CHESHIRE, TOWN OF	0900740003E	10–MAR–2003	03–01–0776A	02
01	CT	CHESHIRE, TOWN OF	0900740012E	10–JAN–2003	03–01–0450A	02
01	CT	CHESHIRE, TOWN OF	0900740012E	06–MAR–2003	03–01–0692A	17
01	CT	CLINTON, TOWN OF	0900610003D	20–FEB–2003	03–01–0652A	02
01	CT	DANBURY, CITY OF	0900040005B	16–JAN–2003	03–01–0294A	02
01	CT	EAST HAVEN, TOWN OF	0900760002E	03–JAN–2003	03–01–0548V	19
01	CT	EAST HAVEN, TOWN OF	0900760002E	28–APR–2003	03–01–1018A	02
01	CT	EAST HAVEN, TOWN OF	0900760005E	03–JAN–2003	03–01–0548V	19
01	CT	EAST HAVEN, TOWN OF	0900760007E	03–JAN–2003	03–01–0548V	19
01	CT	EAST HAVEN, TOWN OF	0900760009E	03–JAN–2003	03–01–0548V	19
01	CT	EAST HAVEN, TOWN OF	0900760010E	03–JAN–2003	03–01–0548V	19
01	CT	FAIRFIELD, TOWN OF	0900070008C	20–MAR–2003	03–01–0782A	02
01	CT	GREENWICH, TOWN OF	0900080018C	18–FEB–2003	03–01–0682A	02
01	CT	GREENWICH, TOWN OF	0900080024C	01–APR–2003	03–01–003P	05
01	CT	GREENWICH, TOWN OF	0900080024C	28–APR–2003	03–01–023P	05
01	CT	GUILFORD, TOWN OF	0900770005B	20–MAR–2003	03–01–0814A	02
01	CT	GUILFORD, TOWN OF	0900770010B	03–FEB–2003	03–01–0626A	02
01	CT	GUILFORD, TOWN OF	0900770010B	13–FEB–2003	03–01–0676A	02
01	CT	GUILFORD, TOWN OF	0900770015B	18–FEB–2003	03–01–0434A	02
01	CT	GUILFORD, TOWN OF	0900770015B	07–APR–2003	03–01–0802A	02
01	CT	GUILFORD, TOWN OF	0900770017B	21–JAN–2003	03–01–0444A	18
01	CT	KENT, TOWN OF	0901860010B	02–JAN–2003	03–01–0396A	02
01	CT	MADISON, TOWN OF	0900790013C	02–JAN–2003	03–01–0414A	02
01	CT	MANSFIELD, TOWN OF	0901280020C	27–MAR–2003	03–01–0480A	01
01	CT	MERIDEN, CITY OF	0900810003C	25–FEB–2003	03–01–011P	05
01	CT	MERIDEN, CITY OF	0900810005C	27–MAR–2003	03–01–0420A	02
01	CT	NEW BRITAIN, CITY OF	0900320005D	24–APR–2003	03–01–0932A	02

Region	State	Community	Map panel	Determination date	Case No.	Type
01	CT	NEWTOWN, TOWN OF	0900110010C	17–APR–2003	03–01–0906V	19
01	CT	NEWTOWN, TOWN OF	0900110019C	17–APR–2003	03–01–0906V	19
01	CT	NEWTOWN, TOWN OF	0900110056C	17–APR–2003	03–01–0906V	19
01	CT	NOANK FIRE DISTRICT	0901290002B	24–APR–2003	03–01–0934A	02
01	CT	OLD LYME, TOWN OF	0901030016D	10–APR–2003	03–01–0700A	02
01	CT	OLD SAYBROOK, TOWN OF	0900690004D	10–JAN–2003	03–01–0428A	02
01	CT	OLD SAYBROOK, TOWN OF	0900690004D	27–MAR–2003	03–01–0400A	02
01	CT	SHELTON, CITY OF	0900140012C	06–MAR–2003	03–01–0740A	02
01	CT	STAMFORD, CITY OF	0900150009D	16–JAN–2003	03–01–0458A	01
01	CT	STRATFORD, TOWN OF	0900160002C	31–MAR–2003	03–01–0698A	02
01	CT	THOMPSON, TOWN OF	0901170010B	06–MAR–2003	03–01–0594A	02
01	CT	WALLINGFORD, TOWN OF	0900900009B	07–APR–2003	03–01–0858A	02
01	CT	WEST HARTFORD,TOWN OF	0950820004C	24–FEB–2003	03–01–0688A	02
01	CT	WEST HARTFORD,TOWN OF	0950820004C	24–APR–2003	03–01–0750A	02
01	CT	WESTON, TOWN OF	0900180003C	03–FEB–2003	03–01–0148A	02
01	CT	WESTON, TOWN OF	0900180005C	03–FEB–2003	03–01–0148A	02
01	CT	WETHERSFIELD, TOWN OF	0900400001B	10–FEB–2003	03–01–0492A	02
01	CT	WINDSOR, TOWN OF	0900410005D	10–JAN–2003	03–01–0426A	17
01	CT	WOODSTOCK, TOWN OF	0901200015B	06–MAR–2003	03–01–0474A	02
01	MA	ADAMS, TOWN OF	2500160005B	16–JAN–2003	03–01–0196A	02
01	MA	ADAMS, TOWN OF	2500160005B	24–FEB–2003	03–01–0722A	02
01	MA	AMESBURY, TOWN OF	2500750003D	24–MAR–2003	03–01–0462A	02
01	MA	ASHBURNHAM, TOWN OF	2502900010B	08–JAN–2003	03–01–0272A	02
01	MA	ASHLAND, TOWN OF	2501790002B	13–MAR–2003	03–01–0568A	02
01	MA	ATTLEBORO, CITY OF	2500490005C	24–MAR–2003	03–01–0674A	17
01	MA	ATTLEBORO, CITY OF	2500490010C	20–FEB–2003	03–01–0540A	02
01	MA	AUBURN, TOWN OF	2502920005C	08–JAN–2003	03–01–0418A	01
01	MA	AVON, TOWN OF	2502310001C	24–MAR–2003	03–01–0670A	02
01	MA	BELLINGHAM, TOWN OF	2502320003B	08–JAN–2003	03–01–0264A	02
01	MA	BERKLEY, TOWN OF	2500500001B	31–MAR–2003	03–01–0772A	02
01	MA	BOURNE, TOWN OF	2552100008F	08–JAN–2003	03–01–0062A	02
01	MA	BRAINTREE, TOWN OF	2502330004D	24–FEB–2003	03–01–0546A	02
01	MA	BRAINTREE, TOWN OF	2502330005D	27–MAR–2003	03–01–0714A	02
01	MA	CHELMSFORD, TOWN OF	2501880010B	17–MAR–2003	03–01–0596A	02
01	MA	CHELMSFORD, TOWN OF	2501880010B	20–MAR–2003	03–01–0774A	02
01	MA	CONCORD, TOWN OF	2501890005B	20–FEB–2003	03–01–0634A	02
01	MA	CONCORD, TOWN OF	2501890010B	13–FEB–2003	03–01–0384A	02
01	MA	CUMMINGTON, TOWN OF	2501590002B	27–FEB–2003	03–01–0738A	02
01	MA	DARTMOUTH, TOWN OF	2500510020C	27–JAN–2003	03–01–0116A	02
01	MA	DIGHTON, TOWN OF	2500520020B	27–MAR–2003	03–01–0826A	02
01	MA	DUDLEY, TOWN OF	2503020007B	27–MAR–2003	03–01–0324A	02
01	MA	EASTON, TOWN OF	2500530005C	03–APR–2003	03–01–0502A	02
01	MA	EASTON, TOWN OF	2500530005C	10–APR–2003	03–01–0898A	02
01	MA	EASTON, TOWN OF	2500530010E	17–APR–2003	03–01–0848A	02
01	MA	FOXBOROUGH, TOWN OF	2502390001B	23–JAN–2003	03–01–0334A	02
01	MA	FREETOWN, TOWN OF	2500560030B	16–JAN–2003	03–01–0274A	02
01	MA	GLOUCESTER, CITY OF	2500820002D	28–APR–2003	03–01–0884A	02
01	MA	HANOVER, TOWN OF	2502660001B	03–FEB–2003	03–01–0454A	02
01	MA	HOLLISTON, TOWN OF	2501950004C	30–JAN–2003	03–01–0504A	02
01	MA	HULL, TOWN OF	2502690004B	10–MAR–2003	03–01–0572A	02
01	MA	LAWRENCE, CITY OF	2500870002B	20–MAR–2003	03–01–0638A	02
01	MA	MALDEN, CITY OF	2502020005C	20–FEB–2003	03–01–0696A	02
01	MA	MALDEN, CITY OF	2502020006C	08–JAN–2003	03–01–0452A	02
01	MA	MARSHFIELD, TOWN OF	2502730003D	08–JAN–2003	03–01–0406A	02
01	MA	MELROSE , CITY OF	2502060001B	30–JAN–2003	03–01–0448A	02
01	MA	MELROSE , CITY OF	2502060003B	03–APR–2003	03–01–0570A	02
01	MA	METHUEN, CITY OF	2500930005C	17–MAR–2003	03–01–0486A	02
01	MA	MIDDLEBOROUGH, TOWN OF	2502750030B	24–MAR–2003	03–01–0808A	02
01	MA	NAHANT, TOWN OF	2500950004B	30–JAN–2003	03–01–0380A	02
01	MA	NEW BEDFORD, CITY OF	2552160005B	20–FEB–2003	03–01–0194A	01
01	MA	NORFOLK, TOWN OF	2552170005C	17–MAR–2003	03–01–0168A	02
01	MA	NORWOOD, TOWN OF	2502480005B	10–APR–2003	03–01–0886A	02
01	MA	OAK BLUFFS, TOWN OF	2500720001D	03–APR–2003	03–01–0710A	02
01	MA	PEABODY, CITY OF	2500990010B	16–JAN–2003	03–01–0446A	17
01	MA	PEMBROKE, TOWN OF	2502770010C	03–APR–2003	03–01–0464A	02
01	MA	PITTSFIELD, CITY OF	2500370015D	30–JAN–2003	03–01–0364A	02
01	MA	PITTSFIELD, CITY OF	2500370020C	20–FEB–2003	03–01–0442A	02
01	MA	PLYMOUTH, TOWN OF	2502780012C	01–APR–2003	03–01–013P	05
01	MA	PLYMOUTH, TOWN OF	2502780045C	07–APR–2003	03–01–0790A	02
01	MA	QUINCY, CITY OF	2552190004C	18–FEB–2003	03–01–0686A	02
01	MA	QUINCY, CITY OF	2552190004C	24–FEB–2003	03–01–0598A	02
01	MA	QUINCY, CITY OF	2552190012C	10–APR–2003	03–01–0876A	02
01	MA	RANDOLPH, TOWN OF	2502510002D	30–JAN–2003	03–01–0254A	02

Region	State	Community	Map panel	Determination date	Case No.	Type
01	MA	REVERE, CITY OF	2502880004C	10–JAN–2003	03–01–0190A	02
01	MA	REVERE, CITY OF	2502880004C	16–JAN–2003	03–01–0518A	02
01	MA	REVERE, CITY OF	2502880004C	20–MAR–2003	03–01–0870A	02
01	MA	SALISBURY, TOWN OF	2501030004C	20–FEB–2003	03–01–0460A	02
01	MA	SCITUATE, TOWN OF	2502820003D	21–APR–2003	03–01–1028A	02
01	MA	SCITUATE, TOWN OF	2502820003D	21–APR–2003	03–01–1030A	02
01	MA	SCITUATE, TOWN OF	2502820003D	21–APR–2003	03–01–1032A	02
01	MA	SHEFFIELD, TOWN OF	2500410014B	30–JAN–2003	03–01–0198A	02
01	MA	STURBRIDGE, TOWN OF	2503370006B	24–FEB–2003	03–01–0550A	02
01	MA	SUDBURY, TOWN OF	2502170005C	17–MAR–2003	03–01–0534A	02
01	MA	TOPSFIELD, TOWN OF	2501060002D	21–JAN–2003	03–01–0284A	02
01	MA	WAKEFIELD, TOWN OF	2502210005B	24–MAR–2003	03–01–0520A	17
01	MA	WALPOLE, TOWN OF	2502540005B	27–JAN–2003	03–01–0292A	02
01	MA	WAREHAM, TOWN OF	2552230002B	07–APR–2003	03–01–0790AD	02
01	MA	WAREHAM, TOWN OF	2552230007D	20–MAR–2003	03–01–0636A	02
01	MA	WAREHAM, TOWN OF	2552230011D	27–MAR–2003	03–01–0828A	02
01	MA	WELLESLEY, TOWN OF	2502550005B	20–FEB–2003	03–01–0388A	02
01	MA	WESTWOOD, TOWN OF	2552250002D	06–FEB–2003	03–01–0424A	02
01	MA	WEYMOUTH, TOWN OF	2502570007C	23–JAN–2003	03–01–0314A	02
01	MA	WILMINGTON, TOWN OF	2502270002C	10–MAR–2003	03–01–0262A	02
01	MA	WORCESTER, CITY OF	2503490002B	17–JAN–2003	03–01–0544V	19
01	MA	WORCESTER, CITY OF	2503490011B	17–JAN–2003	03–01–0544V	19
01	MA	WORCESTER, CITY OF	2503490015B	27–JAN–2003	03–01–0354A	02
01	MA	YARMOUTH, TOWN OF	2500150005D	08–JAN–2003	03–01–0276A	02
01	ME	ACTON, TOWN OF	2301900001B	06–FEB–2003	03–01–0506A	02
01	ME	ACTON, TOWN OF	2301900010B	06–MAR–2003	03–01–0694A	02
01	ME	ALBION, TOWN OF	230231—02A	14–APR–2003	03–01–0862A	02
01	ME	ALFRED, TOWN OF	2301910025C	13–MAR–2003	03–01–0716A	02
01	ME	ALFRED, TOWN OF	2301910036C	03–FEB–2003	03–01–0482A	02
01	ME	ARUNDEL, TOWN OF	2301920005C	24–APR–2003	03–01–0888A	02
01	ME	BAR HARBOR, TOWN OF	2300640005B	10–MAR–2003	03–01–0708A	18
01	ME	BAR HARBOR, TOWN OF	2300640005B	03–APR–2003	03–01–0736A	02
01	ME	BAR HARBOR, TOWN OF	2300640010B	04–APR–2003	03–01–005P	05
01	ME	BATH, CITY OF	2301180003B	16–JAN–2003	03–01–0374A	02
01	ME	BELGRADE, TOWN OF	2302320005B	18–FEB–2003	03–01–0608A	02
01	ME	BOOTHBAY HARBOR, TOWN OF	2302130003B	27–MAR–2003	03–01–0660A	18
01	ME	BOOTHBAY, TOWN OF	2302120013B	31–MAR–2003	03–01–0786A	02
01	ME	BREWER, CITY OF	2301040005B	27–FEB–2003	03–01–0640A	02
01	ME	BREWER, CITY OF	2301040005B	28–APR–2003	03–01–0866A	02
01	ME	BRIDGTON, TOWN OF	2300410005B	06–MAR–2003	03–01–0684A	02
01	ME	BRISTOL, TOWN OF	2302150015C	24–MAR–2003	03–01–0650A	18
01	ME	BROOKLIN,TOWN OF	230275—11 A	03–JAN–2003	03–01–0342A	02
01	ME	BURNHAM, TOWN OF	2301300015B	03–FEB–2003	03–01–0378A	02
01	ME	BUXTON, TOWN OF	2301460010B	06–MAR–2003	03–01–0488A	02
01	ME	BUXTON, TOWN OF	2301460010B	06–MAR–2003	03–01–0666A	02
01	ME	CANAAN, TOWN OF	230356—04 B	21–JAN–2003	03–01–0410A	02
01	ME	CANTON, TOWN OF	2300910009B	16–JAN–2003	03–01–0408A	02
01	ME	CASTINE, TOWN OF	2302770010B	13–MAR–2003	03–01–0796A	02
01	ME	CHINA, TOWN OF	2302350005B	17–APR–2003	03–01–0878A	02
01	ME	CHINA, TOWN OF	2302350015B	31–MAR–2003	03–01–0760A	02
01	ME	DEDHAM, TOWN OF	230279—04	21–APR–2003	03–01–0840A	02
01	ME	ELLSWORTH, CITY OF	2300660015B	17–APR–2003	03–01–0890A	02
01	ME	FRANKFORT, TOWN OF	2302540005A	24–FEB–2003	03–01–0582A	02
01	ME	FREEDOM, TOWN OF	230255—01A	13–MAR–2003	03–01–0720A	02
01	ME	FREEPORT, TOWN OF	2300460012B	16–JAN–2003	03–01–0224A	02
01	ME	FREEPORT, TOWN OF	2300460014B	16–JAN–2003	03–01–0224A	02
01	ME	GRAY, TOWN OF	2300480010A	08–JAN–2003	03–01–0352A	02
01	ME	HARPSWELL, TOWN OF	2301690003B	20–MAR–2003	03–01–0580A	18
01	ME	HARPSWELL, TOWN OF	2301690005B	06–MAR–2003	03–01–0556A	02
01	ME	HARPSWELL, TOWN OF	2301690006B	03–APR–2003	03–01–0422A	18
01	ME	HARPSWELL, TOWN OF	2301690011B	10–APR–2003	03–01–0810A	18
01	ME	HARPSWELL, TOWN OF	2301690014D	20–MAR–2003	03–01–0764A	18
01	ME	HARTLAND, TOWN OF	230361—02A	06–FEB–2003	03–01–0514A	02
01	ME	JEFFERSON, TOWN OF	2300850010B	21–JAN–2003	03–01–0440A	02
01	ME	KITTERY, TOWN OF	2301710005D	30–JAN–2003	03–01–0210A	02
01	ME	LAMOINE, TOWN OF	2302850010A	10–APR–2003	03–01–0372A	02
01	ME	LAMOINE, TOWN OF	2302850010A	24–APR–2003	03–01–0306A	02
01	ME	LEBANON, TOWN OF	2301930040A	20–MAR–2003	03–01–0728A	02
01	ME	LINCOLN, TOWN OF	2301090015B	08–JAN–2003	03–01–0412A	02
01	ME	LINCOLN, TOWN OF	2301090015B	06–MAR–2003	03–01–0616A	02
01	ME	LINCOLNVILLE, TOWN OF	2301720015A	03–FEB–2003	03–01–0470A	02
01	ME	MADISON, TOWN OF	2301260014C	03–FEB–2003	03–01–0466A	02
01	ME	MADISON, TOWN OF	2301260019C	03–FEB–2003	03–01–0468A	02

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01	ME	MEXICO, TOWN OF	2300950004B	03–MAR–2003	03–01–0584A	02
01	ME	MOUNT CHASE TOWN	230462—01A	27–FEB–2003	03–01–0622A	02
01	ME	MT. VERNON, TOWN OF	2302410005B	06–FEB–2003	03–01–0508A	02
01	ME	NEWCASTLE, TOWN OF	2302180002A	30–JAN–2003	03–01–0242A	02
01	ME	NEWPORT, TOWN OF	230398—08B	02–JAN–2003	03–01–0310A	02
01	ME	NEWPORT, TOWN OF	230398—10 B	30–JAN–2003	03–01–0308A	01
01	ME	NORTH BERWICK, TOWN OF	2301970007C	06–FEB–2003	03–01–0562A	02
01	ME	ORLAND,TOWN OF	230288—08 A	03–JAN–2003	03–01–0370A	02
01	ME	PERU, TOWN OF	2300980025B	06–FEB–2003	03–01–0530A	02
01	ME	RANDOLPH, TOWN OF	2302440001B	14–APR–2003	03–01–0798A	02
01	ME	RANGELEY, TOWN OF	2303520007B	13–FEB–2003	03–01–0602A	02
01	ME	RAYMOND, TOWN OF	2302050020B	13–FEB–2003	03–01–0554A	02
01	ME	ROCKPORT, TOWN OF	2300770005B	17–MAR–2003	03–01–0746A	02
01	ME	ROME, TOWN OF	2302460005B	03–JAN–2003	03–01–0376A	02
01	ME	ROME, TOWN OF	2302460005B	16–JAN–2003	03–01–0438A	02
01	ME	SEBAGO, TOWN OF	2302060018B	06–FEB–2003	03–01–0516A	02
01	ME	SEBAGO, TOWN OF	2302060018B	07–APR–2003	03–01–0824A	02
01	ME	SOUTH BRISTOL, TOWN OF	2302200015B	05–MAR–2003	03–01–017P	05
01	ME	SOUTHWEST HARBOR, TOWN OF	2302930015B	21–APR–2003	03–01–0756A	02
01	ME	ST. ALBANS, TOWN OF	230369—04A	17–MAR–2003	03–01–0718A	02
01	ME	ST. ALBANS, TOWN OF	230369—04A	17–APR–2003	03–01–0844A	02
01	ME	ST. ALBANS, TOWN OF	230369——04A	13–MAR–2003	03–01–0744A	02
01	ME	STANDISH, TOWN OF	2302070025B	31–MAR–2003	03–01–0806A	02
01	ME	STANDISH, TOWN OF	2302070030B	25–FEB–2003	03–01–001P	05
01	ME	STANDISH, TOWN OF	2302070040B	24–MAR–2003	03–01–0512A	02
01	ME	STEUBEN, TOWN OF	230323—02 A	13–FEB–2003	03–01–0176A	02
01	ME	STOW, TOWN OF	2301860001B	27–MAR–2003	03–01–0758A	02
01	ME	SULLIVAN, TOWN OF	230295—01 A	16–JAN–2003	03–01–0528A	02
01	ME	SWANS ISLAND,TOWN OF	230297—09A	10–JAN–2003	03–01–0122A	02
01	ME	SWANS ISLAND,TOWN OF	230297—10A	10–JAN–2003	03–01–0122A	02
01	ME	T17 R04 WELS, TOWNSHIP OF	230453—01A	06–MAR–2003	03–01–0604A	02
01	ME	T17 R04 WELS, TOWNSHIP OF	230453—01A	27–MAR–2003	03–01–0730A	02
01	ME	TRENTON, TOWN OF	2302990010A	03–APR–2003	03–01–0822A	18
01	ME	TRENTON, TOWN OF	2302990010A	10–APR–2003	03–01–0860A	18
01	ME	WAYNE, TOWN OF	2301880005B	31–MAR–2003	03–01–0706A	02
01	ME	WAYNE, TOWN OF	2301880005B	21–APR–2003	03–01–0792A	02
01	ME	WELD, TOWN OF	230353—04A	27–MAR–2003	03–01–0302A	02
01	ME	WINDHAM, TOWN OF	2301890015B	13–MAR–2003	03–01–0328A	02
01	ME	WINDHAM, TOWN OF	2301890035B	13–MAR–2003	03–01–0328A	02
01	ME	WINN, TOWN OF	230404—01A	13–FEB–2003	03–01–0560A	02
01	ME	YORK, TOWN OF	2301590024D	03–FEB–2003	03–01–0026A	02
01	ME	YORK, TOWN OF	2301590024D	10–APR–2003	03–01–0830A	02
01	NH	ALTON, TOWN OF	3300010030B	24–FEB–2003	03–01–0510A	02
01	NH	AMHERST, TOWN OF	3300810004B	27–MAR–2003	03–01–0836A	02
01	NH	BRENTWOOD, TOWN OF	3301250001C	21–APR–2003	03–01–0904A	02
01	NH	CONWAY, TOWN OF	3300110040C	03–FEB–2003	03–01–0578A	02
01	NH	DEERING, TOWN OF	3300850010A	03–APR–2003	03–01–0850A	02
01	NH	DURHAM, TOWN OF	3301460010C	18–FEB–2003	03–01–0642A	02
01	NH	ERROL, TOWN OF	3302060030B	17–APR–2003	03–01–0908V	19
01	NH	FREEDOM, TOWN OF	3300130010C	24–MAR–2003	03–01–0752A	02
01	NH	GREENLAND, TOWN OF	3302100005B	03–JAN–2003	03–01–0184A	02
01	NH	HILLSBOROUGH, TOWN OF	3300900005B	30–JAN–2003	03–01–0432A	02
01	NH	HOLDERNESS, TOWN OF	3300590004C	13–MAR–2003	02–01–015P	05
01	NH	HUDSON, TOWN OF	3300920005B	13–MAR–2003	03–01–0644A	02
01	NH	JACKSON, TOWN OF	3300140025B	24–FEB–2003	03–01–0618A	02
01	NH	KEENE, CITY OF	3300230008D	28–APR–2003	03–01–1016A	02
01	NH	LOUDON, TOWN OF	3301170003B	02–JAN–2003	03–01–0322A	02
01	NH	LOUDON, TOWN OF	3301170003B	21–APR–2003	03–01–0902A	02
01	NH	MEREDITH, TOWN OF	3300060005B	24–MAR–2003	03–01–0784A	02
01	NH	MILFORD, TOWN OF	3300960002B	10–MAR–2003	03–01–0788A	02
01	NH	MILTON, TOWN OF	3301490006B	06–FEB–2003	03–01–0552A	02
01	NH	MOULTONBOROUGH, TOWN OF	3300150002C	17–APR–2003	03–01–0818A	02
01	NH	NASHUA, CITY OF	3300970039C	03–APR–2003	03–01–0868A	02
01	NH	NASHUA, CITY OF	3300970040C	21–APR–2003	03–01–0936A	02
01	NH	NASHUA, CITY OF	3300970075C	02–JAN–2003	03–01–0346A	02
01	NH	NASHUA, CITY OF	3300970075C	02–JAN–2003	03–01–0362A	02
01	NH	NASHUA, CITY OF	3300970075C	30–JAN–2003	03–01–0436A	02
01	NH	NASHUA, CITY OF	3300970075C	20–FEB–2003	03–01–0712A	02
01	NH	NORTH HAMPTON, TOWN OF	3302320003B	31–MAR–2003	03–01–0834A	02
01	NH	OSSIPEE, TOWN OF	3300160008C	28–APR–2003	03–01–1014A	02
01	NH	RAYMOND, TOWN OF	3301400005D	24–FEB–2003	03–01–0600A	02
01	NH	RINDGE, TOWN OF	3301890010B	20–FEB–2003	03–01–0690A	02
01	NH	SALISBURY, TOWN OF	330121—08B	30–JAN–2003	03–01–0484A	02

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01	NH	SOMERSWORTH, CITY OF	3301510005B	13–MAR–2003	03–01–0812A	02
01	NH	SOMERSWORTH, CITY OF	3301510005B	04–APR–2003	03–01–402P	06
01	NH	TUFTONBORO, TOWN OF	3302340015B	21–JAN–2003	03–01–0404A	02
01	NH	WAKEFIELD, TOWN OF	3300190005A	17–MAR–2003	03–01–0794A	02
01	NH	WEARE, TOWN OF	3302350010B	21–JAN–2003	03–01–0472A	02
01	RI	BARRINGTON, TOWN OF	44001C0006F	03–MAR–2003	03–01–0350A	02
01	RI	CHARLESTOWN, TOWN OF	4453950020C	02–JAN–2003	03–01–0152A	02
01	RI	CRANSTON, CITY OF	4453960009B	02–JAN–2003	03–01–0392A	02
01	RI	CRANSTON, CITY OF	4453960009B	13–MAR–2003	03–01–0610A	02
01	RI	CRANSTON, CITY OF	4453960009B	17–MAR–2003	03–01–0766A	01
01	RI	CRANSTON, CITY OF	4453960009B	27–MAR–2003	03–01–0842A	02
01	RI	EAST PROVIDENCE, CITY OF	4453980007C	20–FEB–2003	03–01–0588A	01
01	RI	GLOCESTER, TOWN OF	4400340005C	03–FEB–2003	03–01–0558A	02
01	RI	JOHNSTON, TOWN OF	4400180010C	30–JAN–2003	03–01–0576A	02
01	RI	NORTH KINGSTOWN, TOWN OF	4454040008B	20–FEB–2003	03–01–0338A	02
01	RI	NORTH KINGSTOWN, TOWN OF	4454040012B	03–APR–2003	03–01–0726A	02
01	RI	NORTH PROVIDENCE, TOWN OF	4400200001C	24–APR–2003	03–01–1064A	02
01	RI	NORTH PROVIDENCE, TOWN OF	4400200002C	27–MAR–2003	03–01–0360A	02
01	RI	SOUTH KINGSTOWN, TOWN OF	4454070026D	03–FEB–2003	03–01–0574A	02
01	RI	WARWICK, CITY OF	4454090002D	30–JAN–2003	03–01–0188A	02
01	RI	WARWICK, CITY OF	4454090006E	07–APR–2003	03–01–0894A	02
01	VT	BERLIN, TOWN OF	5001060009B	02–JAN–2003	03–01–0358A	02
01	VT	BRISTOL, TOWN OF	5000010015B	13–FEB–2003	03–01–0532A	02
01	VT	CALAIS, TOWN OF	500109—04B	21–JAN–2003	03–01–0586A	02
01	VT	ESSEX, TOWN OF	5000340012B	13–FEB–2003	03–01–0664A	02
01	VT	JEFFERSONVILLE, VILLAGE OF	5000620001A	21–APR–2003	03–01–0914A	02
01	VT	LUNENBURG, TOWN OF	500048—09A	21–JAN–2003	03–01–0368A	02
01	VT	MONTPELIER, CITY OF	5055180002A	06–FEB–2003	03–01–0630A	02
01	VT	MONTPELIER, CITY OF	5055180002A	06–FEB–2003	03–01–0648A	02
01	VT	MONTPELIER, CITY OF	5055180002A	20–FEB–2003	03–01–0656A	02
01	VT	MONTPELIER, CITY OF	5055180002A	24–FEB–2003	03–01–0754A	02
01	VT	MONTPELIER, CITY OF	5055180002A	27–FEB–2003	03–01–0646A	02
01	VT	MONTPELIER, CITY OF	5055180002A	10–MAR–2003	03–01–0804A	02
01	VT	MONTPELIER, CITY OF	5055180002A	21–APR–2003	03–01–0592A	02
01	VT	MORGAN, TOWN OF	500255—02	10–JAN–2003	03–01–0456A	02
01	VT	MORGAN, TOWN OF	500255—02	13–MAR–2003	03–01–0780A	02
01	VT	MORGAN, TOWN OF	500255—02	27–MAR–2003	03–01–0820A	02
01	VT	NEWBURY, TOWN OF	5002370005C	02–JAN–2003	03–01–0394A	02
01	VT	NEWFANE, TOWN AND VILLAGE OF	5001330010B	23–JAN–2003	03–01–0494A	02
01	VT	NORTHFIELD, TOWN OF	5001180002B	03–FEB–2003	03–01–0612A	02
01	VT	NORTHFIELD, TOWN OF	5001180002B	24–APR–2003	03–01–0982A	02
01	VT	NORWICH, TOWN OF	5002950003C	31–MAR–2003	03–01–0846A	02
01	VT	RICHMOND, TOWN OF	5000400008B	10–JAN–2003	03–01–0356A	02
01	VT	RICHMOND, TOWN OF	5000400010B	07–APR–2003	03–01–0892A	02
01	VT	SHAFTSBURY, TOWN OF	500019—11C	20–FEB–2003	03–01–0704A	02
01	VT	STRAFFORD, TOWN OF	5002400015C	28–APR–2003	03–01–1046A	02
01	VT	SUTTON, TOWN OF	500198—07A	24–APR–2003	03–01–0984A	02
01	VT	TINMOUTH, TOWN OF	500270—02H	18–FEB–2003	03–01–0662A	02
01	VT	UNDERHILL, TOWN OF	5000420017B	13–FEB–2003	03–01–0678A	02
01	VT	WALLINGFORD, TOWN OF	5001030005B	24–APR–2003	03–01–0950A	02
01	VT	WELLS, TOWN OF	5002710001B	18–FEB–2003	03–01–0136A	02
01	VT	WELLS, TOWN OF	5002710001B	28–APR–2003	03–01–0992A	02
01	VT	WILLIAMSTOWN, TOWN OF	5000800005B	06–FEB–2003	03–01–0478A	17
01	VT	WILLIAMSTOWN, TOWN OF	5000800005B	06–MAR–2003	03–01–0778A	01
01	VT	WILLIAMSTOWN, TOWN OF	5000800005B	14–APR–2003	03–01–0948A	01
01	VT	WILMINGTON, TOWN OF	5001420005B	17–APR–2003	03–01–0880A	02
01	VT	WOODBURY, TOWN OF	500314—04A	24–APR–2003	03–01–0918A	02
02	NJ	BEACHWOOD, BOROUGH OF	3403680001B	17–APR–2003	03–02–0574A	02
02	NJ	BERKELEY HEIGHTS, TOWNSHIP OF	3404590001E	30–JAN–2003	03–02–0362A	02
02	NJ	BERKELEY HEIGHTS, TOWNSHIP OF	3404590001E	13–FEB–2003	03–02–0356A	02
02	NJ	BERKELEY HEIGHTS, TOWNSHIP OF	3404590001E	10–MAR–2003	03–02–0458A	02
02	NJ	BERKELEY HEIGHTS, TOWNSHIP OF	3404590001E	17–MAR–2003	03–02–0532A	02
02	NJ	BERKELEY HEIGHTS, TOWNSHIP OF	3404590001E	31–MAR–2003	03–02–0366A	01
02	NJ	BERKELEY HEIGHTS, TOWNSHIP OF	3404590001E	23–APR–2003	02–02–025P	06
02	NJ	BERKELEY HEIGHTS, TOWNSHIP OF	3404590003E	23–APR–2003	02–02–025P	06
02	NJ	BERKELEY HEIGHTS, TOWNSHIP OF	3404590003E	28–APR–2003	03–02–0956A	02
02	NJ	BERNARDS, TOWNSHIP OF	3404280005B	16–JAN–2003	03–02–0452A	02
02	NJ	BERNARDS, TOWNSHIP OF	3404280010B	20–FEB–2003	03–02–0470A	02
02	NJ	BERNARDSVILLE, BOROUGH OF	3404290001B	10–FEB–2003	03–02–0340A	02
02	NJ	BERNARDSVILLE, BOROUGH OF	3404290001B	13–FEB–2003	03–02–0336A	02
02	NJ	BERNARDSVILLE, BOROUGH OF	3404290001B	13–FEB–2003	03–02–0338A	02
02	NJ	BERNARDSVILLE, BOROUGH OF	3404290001B	10–MAR–2003	03–02–0234A	02
02	NJ	BERNARDSVILLE, BOROUGH OF	3404290002C	18–MAR–2003	03–02–0920V	19

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02	NJ	BERNARDSVILLE, BOROUGH OF	3404290005C	18–MAR–2003	03–02–0920V	19
02	NJ	CARNEYS POINT, TOWNSHIP OF	3404240010B	08–JAN–2003	03–02–0302A	02
02	NJ	CARNEYS POINT, TOWNSHIP OF	3404240010B	03–APR–2003	03–02–0682A	02
02	NJ	CHATHAM, TOWNSHIP OF	3405040006C	24–FEB–2003	03–02–0428A	02
02	NJ	CLIFTON, CITY OF	3403960005B	24–MAR–2003	03–02–0496A	01
02	NJ	CRANFORD, TOWNSHIP OF	3452910001B	13–FEB–2003	03–02–0092A	02
02	NJ	DENVILLE, TOWNSHIP OF	3452920005B	02–JAN–2003	03–02–0238A	02
02	NJ	DOVER, TOWNSHIP OF	3452930008D	03–JAN–2003	03–02–0242A	02
02	NJ	FAIR LAWN, BOROUGH OF	34003C0167F	06–MAR–2003	03–02–0528A	02
02	NJ	HAMILTON, TOWNSHIP OF	3402460005B	23–JAN–2003	03–02–0246A	02
02	NJ	HAMILTON, TOWNSHIP OF	3402460005B	30–JAN–2003	03–02–0370A	02
02	NJ	HAMILTON, TOWNSHIP OF	3402460015C	02–JAN–2003	03–02–0288A	02
02	NJ	HAMILTON, TOWNSHIP OF	3402460015C	13–FEB–2003	03–02–0372A	02
02	NJ	HAMILTON, TOWNSHIP OF	3402460015C	27–FEB–2003	03–02–0374A	02
02	NJ	HAMMONTON, TOWN OF	3400100015C	13–FEB–2003	03–02–0492A	02
02	NJ	HARDING, TOWNSHIP OF	3403440004D	24–FEB–2003	03–02–0402A	02
02	NJ	LACEY, TOWNSHIP OF	340376—09A	27–FEB–2003	03–02–0342A	02
02	NJ	MANASQUAN, BOROUGH OF	3453030001C	03–JAN–2003	03–02–0290A	02
02	NJ	MANASQUAN, BOROUGH OF	3453030001C	17–MAR–2003	03–02–0670A	02
02	NJ	MEDFORD LAKES, BOROUGH OF	3401030001B	27–JAN–2003	03–02–0144A	02
02	NJ	MEDFORD, TOWNSHIP OF	3401040005B	14–APR–2003	03–02–0634A	02
02	NJ	MEDFORD, TOWNSHIP OF	3401040010B	03–MAR–2003	03–02–0386A	02
02	NJ	MEDFORD, TOWNSHIP OF	3401040010B	24–MAR–2003	03–02–0126A	02
02	NJ	MIDLAND PARK, BOROUGH OF	34003C0157G	10–JAN–2003	03–02–0272A	02
02	NJ	MILLVILLE, CITY OF	3401730020B	24–APR–2003	03–02–0618A	02
02	NJ	MONROE, TOWNSHIP OF	3402690006C	06–MAR–2003	03–02–0722A	02
02	NJ	MOUNT LAUREL, TOWNSHIP OF	3401070010E	21–APR–2003	03–02–0692A	02
02	NJ	NEPTUNE, TOWNSHIP OF	3403170002C	24–MAR–2003	03–02–0750A	02
02	NJ	NEPTUNE, TOWNSHIP OF	3403170003C	24–MAR–2003	03–02–0784A	02
02	NJ	NEW MILFORD, BOROUGH OF	34003C0192F	17–MAR–2003	03–02–0516A	02
02	NJ	NEW PROVIDENCE, BOROUGH OF	3453060001D	30–JAN–2003	03–02–0416A	02
02	NJ	PALMYRA, BOROUGH OF	3401100001C	16–JAN–2003	03–02–0466A	01
02	NJ	PARAMUS, BOROUGH OF	34003C0191F	24–APR–2003	03–02–0248A	02
02	NJ	PATERSON, CITY OF	3404040004A	31–MAR–2003	03–02–0344A	02
02	NJ	PAULSBORO, BOROUGH OF	3402100001B	20–FEB–2003	03–02–0350A	02
02	NJ	PLUMSTED, TOWNSHIP OF	3403860010B	21–APR–2003	03–02–0326A	02
02	NJ	RAMSEY, BOROUGH OF	34003C0067F	06–MAR–2003	03–02–0378A	02
02	NJ	READINGTON, TOWNSHIP OF	3405140016B	20–MAR–2003	03–02–0814A	02
02	NJ	RUMSON, BOROUGH OF	3453160001D	14–APR–2003	03–02–0662A	02
02	NJ	SUMMIT, CITY OF	3404760001B	24–FEB–2003	03–02–0292A	02
02	NJ	SUMMIT, CITY OF	3404760001B	24–MAR–2003	03–02–0136A	02
02	NJ	SUMMIT, CITY OF	340476001B	17–MAR–2003	03–02–0562A	02
02	NJ	UNION BEACH, BOROUGH OF	3403310001D	31–MAR–2003	03–02–0450A	02
02	NJ	WALL, TOWNSHIP OF	3403330003A	17–MAR–2003	03–02–0630A	02
02	NJ	WANTAGE, TOWNSHIP OF	3405620030A	13–FEB–2003	03–02–0380A	02
02	NJ	WANTAGE, TOWNSHIP OF	3405620030A	14–APR–2003	03–02–0868X	02
02	NJ	WAYNE, TOWNSHIP OF	3453270007B	24–MAR–2003	03–02–0628A	02
02	NJ	WEST DEPTFORD, TOWNSHIP OF	3402140003B	27–FEB–2003	03–02–0444A	02
02	NJ	WEYMOUTH, TOWNSHIP OF	3405360028C	17–JAN–2003	03–02–0570V	19
02	NJ	WEYMOUTH, TOWNSHIP OF	3405360036C	17–JAN–2003	03–02–0570V	19
02	NY	AMHERST, TOWN OF	3602260004D	06–FEB–2003	03–02–0282A	02
02	NY	AMHERST, TOWN OF	3602260004D	10–FEB–2003	03–02–0122A	02
02	NY	AMHERST, TOWN OF	3602260004D	13–FEB–2003	03–02–0244A	02
02	NY	AMHERST, TOWN OF	3602260004D	21–APR–2003	03–02–0650A	02
02	NY	AMHERST, TOWN OF	3602260006E	16–JAN–2003	03–02–0166A	02
02	NY	AMHERST, TOWN OF	3602260006E	03–FEB–2003	03–02–0094A	02
02	NY	AMHERST, TOWN OF	3602260006E	20–FEB–2003	03–02–0482A	02
02	NY	AMHERST, TOWN OF	3602260006E	06–MAR–2003	03–02–0500A	02
02	NY	AMHERST, TOWN OF	3602260006E	13–MAR–2003	03–02–0544A	02
02	NY	AMHERST, TOWN OF	3602260006E	24–APR–2003	03–02–0830A	02
02	NY	AMHERST, TOWN OF	3602260007E	30–JAN–2003	03–02–0180A	02
02	NY	AMHERST, TOWN OF	3602260007E	06–FEB–2003	03–02–0294A	02
02	NY	AMHERST, TOWN OF	3602260007E	18–FEB–2003	03–02–0418A	02
02	NY	AMHERST, TOWN OF	3602260007E	10–MAR–2003	03–02–0388A	02
02	NY	AMHERST, TOWN OF	3602260007E	10–MAR–2003	03–02–0580A	02
02	NY	AMHERST, TOWN OF	3602260007E	10–MAR–2003	03–02–0656A	02
02	NY	AMHERST, TOWN OF	3602260007E	03–APR–2003	03–02–0542A	02
02	NY	AMHERST, TOWN OF	3602260007E	14–APR–2003	03–02–0700A	02
02	NY	AMHERST, TOWN OF	3602260009E	03–APR–2003	03–02–0602A	02
02	NY	ARCADE, VILLAGE OF	3615550005D	16–JAN–2003	03–02–0124A	02
02	NY	ATHENS, VILLAGE OF	3602850002B	13–MAR–2003	03–02–0394A	02
02	NY	BALLSTON, TOWN OF	36091C0553E	10–MAR–2003	03–02–0280A	02
02	NY	BEDFORD, TOWN OF	3609030010C	21–APR–2003	03–02–0732A	02

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02	NY	BELLMONT, TOWN OF	361392A	21–APR–2003	03–02–0658A	02
02	NY	BOLTON, TOWN OF	3508690005D	31–MAR–2003	03–02–0462A	02
02	NY	BRIGHTWATERS, VILLAGE OF	36103C0859G	14–APR–2003	03–02–0436A	02
02	NY	BUFFALO, CITY OF	3602300010C	13–FEB–2003	03–02–0448A	02
02	NY	BUFFALO, CITY OF	3602300010C	21–APR–2003	03–02–0770A	02
02	NY	CHAMPLAIN, TOWN OF	3613110020B	31–MAR–2003	03–02–0588A	02
02	NY	CICERO, TOWN OF	3605720005D	24–MAR–2003	03–02–0506A	02
02	NY	CLARENCE, TOWN OF	3602320005C	30–JAN–2003	03–02–0212A	02
02	NY	CLARENCE, TOWN OF	3602320005C	03–FEB–2003	03–02–0430A	01
02	NY	CLARENCE, TOWN OF	3602320005C	13–FEB–2003	03–02–0052A	02
02	NY	CLARENCE, TOWN OF	3602320005C	18–FEB–2003	03–02–0368A	01
02	NY	CLARENCE, TOWN OF	3602320005C	31–MAR–2003	03–02–0600A	01
02	NY	CLARENCE, TOWN OF	3602320005C	03–APR–2003	03–02–0554A	02
02	NY	CLARENCE, TOWN OF	3602320005C	14–APR–2003	03–02–0598A	02
02	NY	CLARENCE, TOWN OF	3602320011C	06–FEB–2003	03–02–0276A	02
02	NY	CLARENCE, TOWN OF	3602320011C	24–APR–2003	03–02–0184A	01
02	NY	CLARENCE, TOWN OF	3602320013C	13–MAR–2003	03–02–0058A	01
02	NY	CLARENCE, TOWN OF	3602320013C	17–MAR–2003	03–02–0194A	02
02	NY	CLARENCE, TOWN OF	3602320013C	24–APR–2003	03–02–0744A	02
02	NY	CLAY, TOWN OF	3605730005B	23–JAN–2003	03–02–0204A	02
02	NY	CLAY, TOWN OF	3605730005B	28–APR–2003	03–02–0794A	02
02	NY	CONCORD, TOWN OF	3602350010C	27–MAR–2003	03–02–0200A	02
02	NY	COXSACKIE, TOWN OF	3611150009A	10–APR–2003	03–02–0564A	02
02	NY	DRESDEN, TOWN OF	3614100015B	20–MAR–2003	03–02–0790A	02
02	NY	DRESDEN, TOWN OF	3614100015B	03–APR–2003	03–02–0604A	02
02	NY	EAST AURORA, VILLAGE OF	3653350003C	16–JAN–2003	03–02–0328A	02
02	NY	EAST HAMPTON,TOWN OF	36103C0576G	13–FEB–2003	03–02–0008A	02
02	NY	EAST ROCKAWAY, VILLAGE OF	36059C0218F	03–MAR–2003	03–02–0258A	02
02	NY	ELLENBURG, TOWN OF	361382—07A	18–FEB–2003	03–02–0284A	02
02	NY	EVANS, TOWN OF	3602400009F	20–MAR–2003	03–02–0440A	02
02	NY	FREEPORT, VILLAGE OF	36059C0238F	10–APR–2003	03–02–0552A	02
02	NY	GLENVILLE,TOWN OF	3607380041B	13–FEB–2003	03–02–0060A	02
02	NY	GORHAM, TOWN OF	3606010001C	08–JAN–2003	03–02–0230A	02
02	NY	GORHAM, TOWN OF	3606010001C	06–FEB–2003	03–02–0100A	02
02	NY	GOSHEN, TOWN OF	3606170015B	23–JAN–2003	03–02–0352AD	02
02	NY	GREECE, TOWN OF	3604170002D	03–MAR–2003	03–02–0522A	02
02	NY	GREEN ISLAND, VILLAGE OF	3600090001B	30–JAN–2003	03–02–0108A	01
02	NY	GREENBURGH,TOWN OF	3609110010B	31–MAR–2003	03–02–0652A	02
02	NY	GREENVILLE, TOWN OF	3606150010B	27–FEB–2003	03–02–0062A	02
02	NY	GROVELAND, TOWN OF	3603850005C	31–MAR–2003	03–02–0540A	02
02	NY	GUILFORD, TOWN OF	3610880003A	13–FEB–2003	03–02–0548A	02
02	NY	HAMBURG, TOWN OF	3602440019D	30–JAN–2003	03–02–0192A	02
02	NY	HAMBURG, VILLAGE OF	3602430002B	03–FEB–2003	03–02–0040A	02
02	NY	HAMPTONBURGH, TOWN OF	360617 0015	23–JAN–2003	03–02–0352A	02
02	NY	ISLAND PARK, VILLAGE OF	36059C0307F	13–MAR–2003	03–02–0260A	02
02	NY	JOHNSON CITY, VILLAGE OF	360047—1B	18–FEB–2003	03–02–0422A	01
02	NY	LAKE GEORGE, TOWN OF	3608760010B	10–APR–2003	03–02–0702A	02
02	NY	LANCASTER, TOWN OF	3602490009C	20–MAR–2003	03–02–0068A	02
02	NY	LENOX, TOWN OF	3604040003C	18–APR–2003	03–02–0550A	02
02	NY	LIMA, TOWN OF	361286—01A	16–JAN–2003	03–02–0232A	02
02	NY	LINDENHURST, VILLAGE OF	36103C0861G	24–APR–2003	03–02–0620A	02
02	NY	LOCKPORT, TOWN OF	3610130006D	07–APR–2003	03–02–0514A	02
02	NY	LONG BEACH, CITY OF	36059C0308F	03–APR–2003	03–02–0582A	02
02	NY	MANLIUS, TOWN OF	3605840010D	24–FEB–2003	03–02–0304A	02
02	NY	MINA, TOWN OF	3613710025B	03–JAN–2003	03–02–0510V	19
02	NY	MONROE, TOWN OF	3606210005C	28–APR–2003	03–02–0802A	02
02	NY	NELSON, TOWN OF	361293—04B	30–JAN–2003	03–02–0364A	02
02	NY	NEW ROCHELLE, CITY OF	3609220006C	17–MAR–2003	03–02–0502A	02
02	NY	NEW YORK, CITY OF	3604970108C	17–APR–2003	03–02–0666A	02
02	NY	NEW YORK, CITY OF	3604970111C	17–MAR–2003	03–02–0478A	02
02	NY	NEW YORK, CITY OF	3604970125E	20–FEB–2003	03–02–0104A	02
02	NY	NEW YORK, CITY OF	3604970125E	03–MAR–2003	03–02–0250A	02
02	NY	NEW YORK, CITY OF	3604970133E	06–MAR–2003	03–02–0266A	02
02	NY	NEW YORK, CITY OF	3604970139E	30–JAN–2003	03–02–0188A	02
02	NY	NEW YORK, CITY OF	3604970139E	10–APR–2003	03–02–0594A	02
02	NY	NEW YORK, CITY OF	3604970144E	03–MAR–2003	03–02–0454A	02
02	NY	NEW YORK, CITY OF	3604970148E	10–MAR–2003	03–02–0498A	02
02	NY	NEW YORK, CITY OF	3604970149E	10–JAN–2003	03–02–0090A	02
02	NY	NEW YORK, CITY OF	3604970149E	24–FEB–2003	03–02–0098A	18
02	NY	NEW YORK, CITY OF	3604970153E	10–MAR–2003	03–02–0498A	02
02	NY	NEWSTEAD, TOWN OF	3602510010D	08–JAN–2003	03–02–0324A	02
02	NY	NIAGARA FALLS, CITY OF	3605060003B	18–FEB–2003	03–02–0278A	02
02	NY	NORTH GREENBUSH,TOWN OF	3611640002A	06–MAR–2003	03–02–0644A	02

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02	NY	OGDEN, TOWN OF	3604240005B	20–MAR–2003	03–02–0128A	01
02	NY	ONEIDA, CITY OF	360408003D	13–FEB–2003	03–02–0220A	02
02	NY	ORLEANS, TOWN OF	3603450001B	06–MAR–2003	03–02–0508A	02
02	NY	OSWEGO, CITY OF	3605560062D	06–MAR–2003	03–02–0556A	02
02	NY	OYSTER BAY, TOWN OF	36059C0261F	28–APR–2003	03–02–0376A	02
02	NY	OYSTER BAY, TOWN OF	36059C0264F	10–MAR–2003	03–02–0526A	02
02	NY	PERU,TOWN OF	3613840030B	30–JAN–2003	03–02–0286A	02
02	NY	PLATTSBURGH, CITY OF	3601680001B	24–APR–2003	03–02–0638A	02
02	NY	PREBLE, TOWN OF	360185—01B	03–FEB–2003	03–02–0004A	02
02	NY	RICHLAND, TOWN OF	3606600001D	08–JAN–2003	03–02–0164A	02
02	NY	ROTTERDAM, TOWN OF	3607400009B	17–MAR–2003	02–02–027P	05
02	NY	ROTTERDAM, TOWN OF	3607400012B	27–FEB–2003	03–02–0406A	02
02	NY	ROTTERDAM, TOWN OF	3607400012B	27–FEB–2003	03–02–0408A	02
02	NY	ROTTERDAM, TOWN OF	3607400012B	27–FEB–2003	03–02–0410A	02
02	NY	ROTTERDAM, TOWN OF	3607400012B	27–FEB–2003	03–02–0412A	02
02	NY	SALINA, TOWN OF	3605910002A	20–MAR–2003	03–02–0538A	02
02	NY	SARATOGA, TOWN OF	36091C0465E	20–FEB–2003	03–02–0252A	01
02	NY	SARDINIA, TOWN OF	3602560017C	17–JAN–2003	03–02–0572V	19
02	NY	SIDNEY, VILLAGE OF	3602110001C	03–FEB–2003	03–02–0014A	02
02	NY	SOUTHOLD,TOWN OF	36103C0176G	13–MAR–2003	03–02–0568A	02
02	NY	STONY POINT, TOWN OF	3606930011C	13–MAR–2003	03–02–0384A	02
02	NY	STONY POINT, TOWN OF	3606930011C	03–APR–2003	03–02–0490A	02
02	NY	SYLVAN BEACH, VILLAGE OF	3610420001D	24–FEB–2003	03–02–0306A	02
02	NY	SYLVAN BEACH, VILLAGE OF	3610420001D	06–MAR–2003	03–02–0614A	02
02	NY	URBANA, TOWN OF	3607830004B	13–FEB–2003	03–02–0392A	02
02	NY	WAYNE, TOWN OF	3607850001B	06–MAR–2003	03–02–0236A	02
02	NY	WEBSTER, TOWN OF	3604360007C	21–JAN–2003	03–02–0176A	02
02	NY	WELLS, TOWN OF	361112—03A	21–APR–2003	03–02–0530A	02
02	NY	WEST SENECA, TOWN OF	3602620001B	06–FEB–2003	03–02–0214A	02
02	NY	WEST SENECA, TOWN OF	3602620003B	20–FEB–2003	03–02–0228A	01
02	NY	WHEATFIELD, TOWN OF	3605130004D	27–JAN–2003	03–02–0442A	02
02	NY	WHEATFIELD, TOWN OF	3605130004D	10–FEB–2003	03–02–0082A	02
02	NY	WHEATFIELD, TOWN OF	3605130004D	13–FEB–2003	03–02–0446A	02
02	NY	WHEATFIELD, TOWN OF	3605130004D	31–MAR–2003	03–02–0772A	02
02	NY	WHEATFIELD, TOWN OF	3605130004D	21–APR–2003	03–02–0106A	02
02	NY	WILLSBORO, TOWN OF	3602670015B	28–APR–2003	03–02–0808A	02
01	NY	WOLCOTT, TOWN OF	360901—03C	13–FEB–2003	03–02–0012A	02
02	PR	PUERTO RICO, COMMONWEALTH OF	7200000045E	28–APR–2003	03–02–0708A	01
02	PR	PUERTO RICO, COMMONWEALTH OF	7200000206C	25–APR–2003	02–02–035P	05
02	PR	PUERTO RICO, COMMONWEALTH OF	7200000250D	21–APR–2003	03–02–0660X	02
02	PR	PUERTO RICO, COMMONWEALTH OF	7200000292D	03–APR–2003	03–02–0420A	02
02	PR	PUERTO RICO, COMMONWEALTH OF	7200000292D	17–APR–2003	03–02–0314A	01
02	PR	PUERTO RICO, COMMONWEALTH OF	7200000292D	21–APR–2003	03–02–0316A	01
02	VI	VIRGIN ISLANDS, TERRITORY OF THE	7800000085D	14–APR–2003	03–02–0610A	02
03	DE	DELAWARE CITY, CITY OF	10003C0255G	21–APR–2003	03–03–1156A	02
03	DE	KENT COUNTY *	1000010020B	27–FEB–2003	03–03–0936A	02
03	DE	KENT COUNTY *	1000010075B	31–MAR–2003	03–03–0706A	02
03	DE	KENT COUNTY *	1000010075B	03–APR–2003	03–03–0862A	02
03	DE	KENT COUNTY *	1000010090B	17–APR–2003	03–03–0940A	02
03	DE	KENT COUNTY *	1000010130C	23–JAN–2003	03–03–0402A	02
03	DE	KENT COUNTY *	1000010175B	16–JAN–2003	03–03–0288A	02
03	DE	KENT COUNTY *	1000010200B	21–JAN–2003	03–03–0246A	02
03	DE	KENT COUNTY *	100001030C	23–JAN–2003	03–03–0402A	02
03	DE	NEW CASTLE COUNTY *	10003C0059G	06–MAR–2003	03–03–0514A	02
03	DE	NEW CASTLE COUNTY *	10003C0086G	21–JAN–2003	03–03–0368A	02
03	DE	NEW CASTLE COUNTY *	10003C0120H	27–FEB–2003	03–03–0386A	02
03	DE	NEW CASTLE COUNTY *	10003C0145G	06–FEB–2003	03–03–0584A	02
03	DE	NEW CASTLE COUNTY *	10003C0145G	03–APR–2003	03–03–0720A	02
03	DE	NEW CASTLE COUNTY *	10003C0225G	21–FEB–2003	03–03–065P	05
03	DE	SUSSEX COUNTY*	10005C0104F	03–JAN–2003	03–03–0230A	02
03	DE	SUSSEX COUNTY*	10005C0252F	16–JAN–2003	03–03–0272A	02
03	DE	SUSSEX COUNTY*	10005C0253F	16–JAN–2003	03–03–0334A	02
03	MD	ALLEGANY COUNTY *	2400010041B	03–JAN–2003	03–03–0212A	02
03	MD	ALLEGANY COUNTY *	2400010300A	13–FEB–2003	03–03–0752A	02
03	MD	ANNE ARUNDEL COUNTY *	2400080031C	13–MAR–2003	03–03–0548A	02
03	MD	ANNE ARUNDEL COUNTY *	2400080031C	13–MAR–2003	03–03–1098A	02
03	MD	ANNE ARUNDEL COUNTY *	2400080044D	03–FEB–2003	03–03–0538A	02
03	MD	BALTIMORE COUNTY*	2400100290B	21–JAN–2003	03–03–0442A	02
03	MD	BALTIMORE COUNTY*	2400100360B	17–MAR–2003	03–03–0774A	02
03	MD	BALTIMORE COUNTY*	2400100380B	21–JAN–2003	03–03–0360A	02
03	MD	BALTIMORE COUNTY*	2400100455B	03–MAR–2003	03–03–0562A	02
03	MD	BALTIMORE COUNTY*	2400100455B	24–APR–2003	03–03–1084A	02
03	MD	BALTIMORE COUNTY*	2400100510B	13–FEB–2003	03–03–0670A	02

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03	MD	CALVERT COUNTY*	2400110032B	16–JAN–2003	03–03–0482A	02
03	MD	CAROLINE COUNTY *	2401300215B	28–APR–2003	03–03–0898A	02
03	MD	CECIL COUNTY*	2400190008A	24–FEB–2003	03–03–0802A	02
03	MD	DORCHESTER COUNTY *	2400260075A	03–MAR–2003	03–03–0874A	02
03	MD	ELKTON, TOWN OF	2400220003C	16–JUN–2003	03–03–041P	05
03	MD	FREDERICK, CITY OF	2400270180A	24–JAN–2003	02–03–117P	05
03	MD	FREDERICK, CITY OF	2400300003C	24–JAN–2003	02–03–117P	05
03	MD	FREDERICK, CITY OF	2400300004C	24–JAN–2003	02–03–117P	05
03	MD	HARFORD COUNTY *	24025C0258D	18–APR–2003	02–03–195P	05
03	MD	HOWARD COUNTY*	2400440028C	21–MAR–2003	03–03–097P	05
03	MD	HOWARD COUNTY*	2400440033B	07–APR–2003	03–03–1006A	02
03	MD	MONTGOMERY COUNTY *	2400490175C	27–JAN–2003	03–03–0496A	17
03	MD	POCOMOKE CITY, CITY OF	2400840001C	07–APR–2003	03–03–0828A	02
03	MD	PRINCE GEORGE'S COUNTY *	245080045D	15–JAN–2003	03–03–0530A	02
03	MD	QUEEN ANNES COUNTY*	2400540047B	21–APR–2003	03–03–0776A	02
03	MD	ST. MARYS COUNTY*	2400640040C	18–FEB–2003	03–03–0594A	02
03	MD	ST. MARYS COUNTY*	2400640042B	27–JAN–2003	03–03–0462A	02
03	MD	ST. MARYS COUNTY*	2400640055C	28–APR–2003	03–03–0990A	02
03	MD	ST. MICHAELS, TOWN OF	2400690001B	21–JAN–2003	03–03–0570A	02
03	MD	TALBOT COUNTY *	2400660037A	21–JAN–2003	03–03–0582A	02
03	MD	TALBOT COUNTY *	2400660037A	03–APR–2003	03–03–0520A	02
03	MD	WASHINGTON COUNTY *	2400700070A	17–APR–2003	03–03–0568A	02
03	MD	WASHINGTON COUNTY *	2400700085B	10–JAN–2003	03–03–0362A	02
03	MD	WASHINGTON COUNTY *	2400700090B	25–APR–2003	02–03–171P	05
03	MD	WICOMICO COUNTY *	2400780022C	30–JAN–2003	03–03–0632A	02
03	PA	ADAMS, TOWNSHIP OF	4214150003B	19–MAR–2003	03–03–0974A	02
03	PA	ADDISON, TOWNSHIP OF	4225080001A	03–APR–2003	03–03–0588A	02
03	PA	AVONDALE, BOROUGH OF	42029C0458E	23–JAN–2003	03–03–0668A	02
03	PA	BEDMINSTER, TOWNSHIP OF	42017C0158F	23–JAN–2003	03–03–0662A	02
03	PA	BEDMINSTER, TOWNSHIP OF	42017C0159F	07–APR–2003	03–03–0696A	17
03	PA	BERWICK, BOROUGH OF	4203380002B	23–JAN–2003	03–03–0330A	02
03	PA	BLOOMSBURG, TOWN OF	4203390005B	03–FEB–2003	03–03–0656A	02
03	PA	BOWMANSTOWN, BOROUGH OF	42025C0291D	10–MAR–2003	03–03–0712A	02
03	PA	BRADDOCK, BOROUGH OF	42003C0388E	13–MAR–2003	03–03–1076A	02
03	PA	BRADFORD, CITY OF	4218550010B	03–MAR–2003	03–03–0820A	02
03	PA	BRADFORD, TOWNSHIP OF	4215160009A	27–FEB–2003	03–03–1004A	02
03	PA	CAMBRIDGE, TOWNSHIP OF	4215640002C	06–MAR–2003	03–03–0728A	02
03	PA	CAMBRIDGE, TOWNSHIP OF	4215640005C	06–MAR–2003	03–03–0728A	02
03	PA	CHALFONT, BOROUGHS OF	42017C0287F	07–APR–2003	03–03–0822A	02
03	PA	CONEMAUGH, TOWNSHIP OF	4220470010A	03–FEB–2003	03–03–0348A	02
03	PA	CONYNGHAM, TOWNSHIP OF	4206000003B	20–FEB–2003	03–03–0644A	02
03	PA	COVINGTON, TOWNSHIP OF	4211750010B	06–FEB–2003	03–03–0498A	01
03	PA	CRANESVILLE, BOROUGH OF	4213560001A	18–FEB–2003	03–03–0920A	02
03	PA	DELAWARE, TOWNSHIP OF	4210100010B	19–MAR–2003	03–03–0964A	02
03	PA	EARL, TOWNSHIP OF	42011C0552E	20–FEB–2003	03–03–0666A	02
03	PA	EAST BRADFORD TOWNSHIP OF	42029C0334E	24–MAR–2003	03–03–0518A	02
03	PA	ELIZABETH, TOWNSHIP OF	4217730005C	03–FEB–2003	03–03–0382AD	02
03	PA	EMMAUS, BOROUGH OF	42077C0244D	18–FEB–2003	03–03–0930A	02
03	PA	EXETER, TOWNSHIP OF	42011C0517E	06–FEB–2003	03–03–0890A	02
03	PA	FALLS, TOWNSHIP OF	42017C0458F	27–MAR–2003	03–03–0560A	01
03	PA	FALLS, TOWNSHIP OF	42017C0462F	20–MAR–2003	03–03–0868A	02
03	PA	FALLS, TOWNSHIP OF	42017C0466F	27–MAR–2003	03–03–0560A	01
03	PA	FERGUSON, TOWNSHIP OF	4202600005D	27–MAR–2003	03–03–0610A	02
03	PA	FINDLAY, TOWNSHIP OF	42003C0284E	17–MAR–2003	03–03–0464A	02
03	PA	GILPIN, TOWNSHIP OF	4213060005C	20–MAR–2003	03–03–1056A	02
03	PA	GREENE, TOWNSHIP OF	4216490010C	27–MAR–2003	03–03–1190A	02
03	PA	GREENSBURG, CITY OF	42129C0409	27–MAR–2003	03–03–1108A	02
03	PA	HAMILTON, TOWNSHIP OF	4200020004B	13–FEB–2003	03–03–0784A	02
03	PA	HANOVER, TOWNSHIP OF	4206080010C	13–MAR–2003	03–03–039P	05
03	PA	HEMPFIELD, TOWNSHIP OF	42129C0417D	03–APR–2003	03–03–1222A	02
03	PA	HUNLOCK, TOWNSHIP OF	4209940010A	06–MAR–2003	03–03–1048A	02
03	PA	HUNTINGDON, BOROUGH OF	4204860005C	07–MAR–2003	03–03–083P	05
03	PA	JERSEY SHORE, BOROUGH OF	4206420001B	24–FEB–2003	03–03–0240A	02
03	PA	JOHNSTOWN, CITY OF	4202310010C	06–FEB–2003	03–03–0278A	02
03	PA	LOWER MERION, TOWNSHIP OF	42091C0432E	13–MAR–2003	03–03–0708A	02
03	PA	LOWER TOWAMENSING, TOWNSHIP OF	42025C0284D	16–JAN–2003	03–03–0276A	02
03	PA	LUMBER, TOWNSHIP OF	4211290004B	08–JAN–2003	03–03–0440A	02
03	PA	LYNN, TOWNSHIP OF	42077C0115D	16–JAN–2003	03–03–0590A	02
03	PA	MAIDENCREEK, TOWNSHIP OF	42011C0378E	17–APR–2003	03–03–1340A	02
03	PA	MARPLE, TOWNSHIP OF	42045C0014D	27–JAN–2003	03–03–0782A	02
03	PA	MARPLE, TOWNSHIP OF	42045C0014D	03–MAR–2003	03–03–0614A	02
03	PA	MARYSVILLE, BOROUGH OF	4207510001B	19–MAR–2003	03–03–0490A	02
03	PA	MIFFLIN, TOWNSHIP OF	4225900003A	23–JAN–2003	03–03–0134A	02

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03	PA	MOON, TOWNSHIP OF	42003C0308E	14–JAN–2003	02–03–043P	05
03	PA	MUHLENBERG, TOWNSHIP OF	42011C0367F	06–FEB–2003	03–03–0558A	17
03	PA	NEW BRITAIN, TOWNSHIP OF	42017C0288F	24–APR–2003	03–03–1426A	02
03	PA	NORTH FAYETTE, TOWNSHIP OF	42003C0308E	14–JAN–2003	02–03–043P	05
03	PA	NORTH HEIDELBERG, TOWNSHIP OF	42011C0320F	20–FEB–2003	03–03–0944A	02
03	PA	NORTH WOODBURY, TOWNSHIP OF	4213920004A	13–JAN–2003	03–03–027P	05
03	PA	NORTHAMPTON, TOWNSHIP OF	42017C0429F	10–FEB–2003	03–03–0884A	02
03	PA	PERKIOMEN, TOWNSHIP OF	42091C0227F	17–MAR–2003	03–03–0502A	01
03	PA	PHILADELPHIA, CITY OF	4207570183F	24–FEB–2003	03–03–0988A	02
03	PA	POLK, TOWNSHIP OF	4218930005A	03–MAR–2003	03–03–0960A	02
03	PA	READING, TOWNSHIP OF	4200040015B	07–APR–2003	03–03–0718A	02
03	PA	RICHLAND, TOWNSHIP OF	42017C0136F	17–MAR–2003	03–03–1150A	02
03	PA	RICHMOND, TOWNSHIP OF	4215690003B	20–FEB–2003	03–03–0882A	02
03	PA	ROBINSON, TOWNSHIP OF	42003C0308E	14–JAN–2003	02–03–043P	05
03	PA	RUSH, TOWNSHIP OF	4219430002B	17–APR–2003	03–03–0786A	02
03	PA	SALISBURY, TOWNSHIP OF	42077C0254D	30–JAN–2003	03–03–0506A	02
03	PA	SALTLICK, TOWNSHIP OF	4216360014A	19–MAR–2003	03–03–1000A	02
03	PA	SILVER LAKE, TOWNSHIP OF	422091—01A	30–JAN–2003	03–03–0764A	02
03	PA	SMITHFIELD, TOWNSHIP OF	4204940005C	07–MAR–2003	03–03–083P	05
03	PA	SOUTH HEIDELBERG, TOWNSHIP OF	42011C0491E	17–APR–2003	03–03–1226A	01
03	PA	SOUTH WHITEHALL, TOWNSHIP OF	42077C0231D	21–APR–2003	03–03–1320A	02
03	PA	SPRING GARDEN, TOWNSHIP OF	4209370001B	28–MAR–2003	02–03–123P	05
03	PA	SPRINGETTSBURY, TOWNSHIP OF	4210310001A	28–MAR–2003	02–03–123P	05
03	PA	SPRINGFIELD, TOWNSHIP OF	42091C0377E	03–FEB–2003	03–03–0766A	02
03	PA	SPRINGFIELD, TOWNSHIP OF	42091C0379E	08–JAN–2003	03–03–0508A	02
03	PA	STATE COLLEGE, BOROUGH OF	4202700005B	10–MAR–2003	03–03–0350A	01
03	PA	THORNBURY, TOWNSHIP OF	42045C0029D	10–JAN–2003	03–03–0068A	02
03	PA	THORNBURY, TOWNSHIP OF	42045C0039D	10–MAR–2003	03–03–0298A	02
03	PA	TIONESTA, TOWNSHIP OF	4204680015D	24–MAR–2003	03–03–0912A	02
03	PA	TUNKHANNOCK, BOROUGH OF	4209170001C	23–APR–2003	03–03–061P	05
03	PA	TUNKHANNOCK, TOWNSHIP OF	4222060004C	23–APR–2003	03–03–061P	05
03	PA	UPPER MAKEFIELD, TOWNSHIP OF	42017C0345F	10–APR–2003	03–03–0734A	02
03	PA	UPPER MERION, TOWNSHIP OF	42091C0353F	27–JAN–2003	03–03–0710A	02
03	PA	UPPER SALFORD, TOWNSHIP OF	42091C0116F	28–APR–2003	03–03–1324A	02
03	PA	UPPER SAUCON, TOWNSHIP OF	42077C0267D	24–FEB–2003	03–03–0612A	02
03	PA	VERONA, BOROUGH OF	42003C0238G	13–FEB–2003	03–03–0910A	02
03	PA	WARWICK, TOWNSHIP OF	4217860001B	03–FEB–2003	03–03–0382A	02
03	PA	WATSON, TOWNSHIP OF	4206610010B	21–JAN–2003	03–03–0608A	02
03	PA	WEST BRANDYWINE, TOWNSHIP OF	42029C0166D	06–MAR–2003	03–03–0914A	02
03	PA	WEST GOSHEN, TOWNSHIP OF	42029C0352D	11–FEB–2003	03–03–053P	05
03	PA	WEST GOSHEN, TOWNSHIP OF	42029C0353D	24–APR–2003	03–03–0946A	02
03	PA	WEST GOSHEN, TOWNSHIP OF	42029C0354D	27–FEB–2003	03–03–0698A	02
03	PA	WESTTOWN, TOWNSHIP OF	42029C0362D	13–MAR–2003	03–03–0732A	02
03	PA	WHITE OAK, BOROUGH OF	42003C0508E	13–FEB–2003	03–03–011P	05
03	PA	WHITE, TOWNSHIP OF	4217250004A	08–JAN–2003	03–03–0554A	01
03	PA	WHITEHALL, TOWNSHIP OF	42077C0163D	08–JAN–2003	03–03–0492A	02
03	PA	WHITEMARSH, TOWNSHIP OF	42091C0358E	03–APR–2003	03–03–0466A	02
03	PA	WRIGHTSTOWN, TOWNSHIP OF	42017C0317F	03–APR–2003	03–03–0664A	02
03	PA	WRIGHTSTOWN, TOWNSHIP OF	42017C0319F	03–APR–2003	03–03–0664A	02
03	PA	WYOMISSING, BOROUGH OF	42011C0503E	19–MAR–2003	03–03–1184A	02
03	PA	YORK, TOWNSHIP OF	4210320001B	26–FEB–2003	03–03–023P	05
03	PA	ZELIENOPLE, BOROUGH OF	4202260001B	28–APR–2003	03–03–1388A	02
03	VA	ACCOMACK COUNTY *	5100010125C	28–APR–2003	03–03–1444A	02
03	VA	ALEXANDRIA, CITY OF	5155190005D	31–MAR–2003	03–03–0434A	02
03	VA	ALLEGHANY COUNTY*	5100090150B	10–APR–2003	03–03–1036A	02
03	VA	AMELIA COUNTY*	5103140004B	24–MAR–2003	03–03–0646A	02
03	VA	BEDFORD COUNTY *	5100160100A	03–JAN–2003	03–03–0144A	02
03	VA	BEDFORD COUNTY *	5100160100A	10–APR–2003	03–03–1096A	02
03	VA	BEDFORD COUNTY *	5100160100A	24–APR–2003	03–03–1120A	02
03	VA	BEDFORD COUNTY *	5100160175A	10–JAN–2003	03–03–0182A	02
03	VA	BEDFORD COUNTY *	5100160175A	16–JAN–2003	03–03–0622A	02
03	VA	BEDFORD COUNTY *	5100160175A	24–FEB–2003	03–03–0070A	02
03	VA	BEDFORD COUNTY *	5100160175A	24–FEB–2003	03–03–0626A	02
03	VA	BRISTOL, CITY OF	5100220003C	30–JAN–2003	03–03–0684A	02
03	VA	BRUNSWICK COUNTY *	5102360175B	23–JAN–2003	03–03–0420A	02
03	VA	BUCHANAN COUNTY*	51027C0409E	06–MAR–2003	03–03–0536A	02
03	VA	CEDAR BLUFF, TOWN OF	5101620001C	28–APR–2003	03–03–1272A	02
03	VA	CHESAPEAKE, CITY OF	5100340021C	03–FEB–2003	03–03–0400A	02
03	VA	CHESAPEAKE, CITY OF	5100340021C	17–MAR–2003	03–03–0344A	02
03	VA	CHESAPEAKE, CITY OF	5100340022C	27–FEB–2003	03–03–0194A	02
03	VA	CHESAPEAKE, CITY OF	5100340032C	10–APR–2003	03–03–0080A	02
03	VA	CHESAPEAKE, CITY OF	5100340034C	16–JAN–2003	03–03–0078A	01
03	VA	CHESAPEAKE, CITY OF	5100340050C	16–JAN–2003	03–03–0292A	02

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03	VA	CHESTERFIELD COUNTY *	5100350008B	28–APR–2003	03–03–1146A	02
03	VA	COLONIAL HEIGHTS, CITY OF	5100390004B	25–MAR–2003	03–03–101P	05
03	VA	COURTLAND, TOWN OF	51175C0280C	10–APR–2003	03–03–1042A	02
03	VA	COURTLAND, TOWN OF	51175C0280C	10–APR–2003	03–03–1044A	02
03	VA	COURTLAND, TOWN OF	51175C0285C	10–FEB–2003	03–03–0596A	02
03	VA	COURTLAND, TOWN OF	51175C0285C	07–APR–2003	03–03–0850A	02
03	VA	COURTLAND, TOWN OF	51175C0285C	10–APR–2003	03–03–0948A	02
03	VA	COURTLAND, TOWN OF	51175C0285C	28–APR–2003	03–03–1090A	02
03	VA	ELKTON, TOWN OF	5101370001C	27–JAN–2003	03–03–0532A	02
03	VA	FAIRFAX COUNTY *	5155250025D	30–JAN–2003	03–03–0376A	02
03	VA	FAIRFAX COUNTY *	5155250025D	03–FEB–2003	03–03–0216A	02
03	VA	FAIRFAX COUNTY *	5155250025D	03–FEB–2003	03–03–0748A	02
03	VA	FAIRFAX COUNTY *	5155250025D	27–FEB–2003	03–03–0602A	02
03	VA	FAIRFAX COUNTY *	5155250025D	06–MAR–2003	03–03–0742A	02
03	VA	FAIRFAX COUNTY *	5155250025D	17–MAR–2003	03–03–0810A	02
03	VA	FAIRFAX COUNTY *	5155250025D	24–MAR–2003	03–03–1132A	02
03	VA	FAIRFAX COUNTY *	5155250025D	24–MAR–2003	03–03–1154A	02
03	VA	FAIRFAX COUNTY *	5155250025D	31–MAR–2003	03–03–0886A	02
03	VA	FAIRFAX COUNTY *	5155250050D	10–JAN–2003	03–03–0424A	02
03	VA	FAIRFAX COUNTY *	5155250050D	06–MAR–2003	03–03–0742A	02
03	VA	FAIRFAX COUNTY *	5155250050D	27–MAR–2003	03–03–0578A	02
03	VA	FAIRFAX COUNTY *	5155250075D	10–FEB–2003	03–03–0410A	02
03	VA	FAIRFAX COUNTY *	5155250075D	24–APR–2003	03–03–0688A	02
03	VA	FAIRFAX COUNTY *	5155250075D	25–JUN–2003	03–03–1572A	02
03	VA	FAIRFAX COUNTY *	5155250075D	27–JUN–2003	03–03–1588A	02
03	VA	FAIRFAX COUNTY *	5155250079D	17–MAR–2003	03–03–0522A	02
03	VA	FAIRFAX COUNTY *	5155250087D	10–APR–2003	03–03–1038A	02
03	VA	FAIRFAX COUNTY *	5155250100D	23–JAN–2003	03–03–0454A	02
03	VA	FAIRFAX COUNTY *	5155250100D	06–FEB–2003	03–03–0760A	02
03	VA	FAIRFAX COUNTY *	5155250100D	28–APR–2003	03–03–1104A	02
03	VA	FAIRFAX COUNTY *	5155250100D	28–MAY–2003	03–03–1562A	02
03	VA	FAIRFAX COUNTY *	5155250125D	24–FEB–2003	03–03–0852A	01
03	VA	FAIRFAX COUNTY *	5155250125D	24–FEB–2003	03–03–0932A	01
03	VA	FAIRFAX COUNTY *	5155250125D	10–APR–2003	03–03–1112A	02
03	VA	FAIRFAX COUNTY *	5155250150D	30–JAN–2003	03–03–0324A	02
03	VA	FAIRFAX COUNTY *	5155250150D	06–MAR–2003	03–03–0724A	02
03	VA	FAUQUIER COUNTY *	5100550050A	10–APR–2003	03–03–1160A	02
03	VA	FAUQUIER COUNTY *	5100550215A	20–FEB–2003	02–03–155P	05
03	VA	FAUQUIER COUNTY *	5100550215A	27–MAR–2003	03–03–0980A	02
03	VA	FAUQUIER COUNTY *	5100550285B	20–FEB–2003	02–03–155P	05
03	VA	FAUQUIER COUNTY *	5100550285B	06–MAR–2003	03–03–0860A	02
03	VA	FAUQUIER COUNTY *	5100550305A	20–FEB–2003	02–03–155P	05
03	VA	FAUQUIER COUNTY *	5100550360A	13–FEB–2003	02–03–185P	05
03	VA	FRANKLIN COUNTY *	5100610090B	03–FEB–2003	03–03–0374A	02
03	VA	FRANKLIN COUNTY *	5100610090B	10–APR–2003	03–03–0872A	02
03	VA	FRANKLIN COUNTY *	5100610095B	03–JAN–2003	03–03–0084A	02
03	VA	FRANKLIN COUNTY *	5100610095B	03–APR–2003	03–03–0308A	02
03	VA	FRANKLIN COUNTY *	5100610210B	03–JAN–2003	03–03–0480A	02
03	VA	FRANKLIN COUNTY *	5100610210B	08–JAN–2003	03–03–0254A	02
03	VA	FRANKLIN COUNTY *	5100610210B	06–FEB–2003	03–03–0256A	02
03	VA	FRANKLIN COUNTY *	5100610210B	18–FEB–2003	03–03–0486A	02
03	VA	FRANKLIN COUNTY *	5100610215B	03–APR–2003	03–03–0290A	02
03	VA	FRANKLIN COUNTY *	5100610215B	24–APR–2003	03–03–0790A	02
03	VA	FRANKLIN COUNTY *	5100610215B	24–APR–2003	03–03–0878A	02
03	VA	FRANKLIN COUNTY *	5100610220B	03–JAN–2003	03–03–0372A	02
03	VA	FRANKLIN COUNTY *	5100610220B	16–JAN–2003	03–03–0320A	02
03	VA	FRANKLIN COUNTY *	5100610220B	27–MAR–2003	03–03–0436A	02
03	VA	FRANKLIN COUNTY *	5100610220B	27–MAR–2003	03–03–0958A	02
03	VA	FRANKLIN COUNTY *	5100610220B	03–APR–2003	03–03–1046A	02
03	VA	FRANKLIN COUNTY *	5100610220B	10–APR–2003	03–03–1062A	02
03	VA	FRANKLIN COUNTY *	5100610240	27–MAR–2003	03–03–0736A	02
03	VA	FRANKLIN COUNTY *	5100610240B	10–APR–2003	03–03–0396A	02
03	VA	FRONT ROYAL, TOWN OF	5101670002B	03–MAR–2003	03–03–0716A	02
03	VA	GLOUCESTER COUNTY*	5100710036B	23–JAN–2003	03–03–0122A	02
03	VA	GLOUCESTER COUNTY*	5100710037B	24–APR–2003	03–03–1060A	02
03	VA	GLOUCESTER COUNTY*	5100710039B	07–APR–2003	03–03–0102A	02
03	VA	GLOUCESTER COUNTY*	5100710060B	24–MAR–2003	03–03–0624A	02
03	VA	HANOVER COUNTY *	5102370375A	23–JAN–2003	03–03–0460A	02
03	VA	HENRICO COUNTY *	5100770025B	13–FEB–2003	03–03–0150A	02
03	VA	HENRICO COUNTY *	5100770025B	28–APR–2003	03–03–1174A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	23–JAN–2003	03–03–0364A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	18–FEB–2003	03–03–0744A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	24–FEB–2003	03–03–0574A	02

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03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	24–FEB–2003	03–03–0794A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	27–FEB–2003	03–03–0488A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	27–FEB–2003	03–03–0772A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	06–MAR–2003	03–03–0604A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	06–MAR–2003	03–03–0922A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	20–MAR–2003	03–03–0934A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	24–MAR–2003	03–03–0956A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	27–MAR–2003	03–03–0672A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	27–MAR–2003	03–03–0726A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	27–MAR–2003	03–03–0972A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0155D	28–APR–2003	03–03–1232A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0160D	23–JAN–2003	03–03–0364A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0160D	24–APR–2003	03–03–0916A	02
03	VA	ISLE OF WIGHT COUNTY *	51093C0170D	18–FEB–2003	03–03–0636A	02
03	VA	JAMES CITY COUNTY *	5102010030B	30–JAN–2003	03–03–0390A	01
03	VA	JAMES CITY COUNTY *	5102010030B	30–JAN–2003	03–03–0798A	02
03	VA	JAMES CITY COUNTY *	5102010030B	10–FEB–2003	03–03–0800A	01
03	VA	JAMES CITY COUNTY *	5102010030B	27–FEB–2003	03–03–0692A	01
03	VA	JAMES CITY COUNTY *	5102010045B	13–FEB–2003	03–03–0694A	02
03	VA	LOUDOUN COUNTY *	51107C0050D	06–MAR–2003	03–03–0740A	02
03	VA	LOUDOUN COUNTY *	51107C0380D	21–MAR–2003	03–03–047P	05
03	VA	MANASSAS, CITY OF	51153C0113D	27–MAR–2003	03–03–0846A	02
03	VA	MATHEWS COUNTY*	5100960012C	18–FEB–2003	03–03–0412A	02
03	VA	MECKLENBURG COUNTY *	5101890150A	24–FEB–2003	03–03–0534A	02
03	VA	MIDDLESEX COUNTY *	5100980025B	13–MAR–2003	03–03–0700A	02
03	VA	MONTGOMERY COUNTY *	5100990050B	21–APR–2003	03–03–1152A	01
03	VA	NEWPORT NEWS, CITY OF	5101030006C	10–APR–2003	03–03–1058A	02
03	VA	NORFOLK, CITY OF	5101040014C	31–MAR–2003	03–03–0690A	02
03	VA	PETERSBURG, CITY OF	5101120001B	25–MAR–2003	03–03–101P	05
03	VA	PITTSYLVANIA COUNTY *	5101130115B	18–FEB–2003	03–03–0342A	02
03	VA	PORTSMOUTH, CITY OF	5155290025B	17–APR–2003	03–03–1134A	01
03	VA	PRINCE WILLIAM COUNTY *	51153C0186D	13–FEB–2003	03–03–0168A	02
03	VA	PRINCE WILLIAM COUNTY *	51153C0238D	03–APR–2003	03–03–1092A	02
03	VA	PULASKI COUNTY *	5101250200B	10–APR–2003	03–03–0188A	02
03	VA	RICHMOND COUNTY *	5103100050A	24–APR–2003	03–03–0918A	02
03	VA	ROANOKE, CITY OF	51161C0023D	03–MAR–2003	03–03–0638A	02
03	VA	ROANOKE, CITY OF	51161C0046D	20–MAR–2003	03–03–0616A	02
03	VA	ROCKBRIDGE COUNTY *	51163C0175C	28–APR–2003	03–03–0780A	02
03	VA	ROCKBRIDGE COUNTY *	51163C0375C	17–MAR–2003	03–03–0196A	02
03	VA	ROCKINGHAM COUNTY*	5101330028B	14–APR–2003	03–03–0618A	02
03	VA	ROCKINGHAM COUNTY*	5101330029B	14–APR–2003	03–03–0618A	02
03	VA	SALEM, CITY OF	51161C0037D	17–MAR–2003	03–03–0148A	02
03	VA	SALEM, CITY OF	51161C0043D	03–FEB–2003	03–03–0394X	01
03	VA	SHENANDOAH COUNTY *	5101470100B	03–JAN–2003	03–03–0074A	02
03	VA	SMITHFIELD, TOWN OF	51093C0135D	13–FEB–2003	03–03–0524A	02
03	VA	SMITHFIELD, TOWN OF	51093C0135D	10–APR–2003	03–03–1010A	02
03	VA	SMITHFIELD, TOWN OF	51093C0155D	18–FEB–2003	03–03–0572A	02
03	VA	SOUTHAMPTON COUNTY *	51175C0160C	13–MAR–2003	03–03–0642A	02
03	VA	SPOTSYLVANIA COUNTY*	5103080125C	10–APR–2003	03–03–1110A	02
03	VA	SPOTSYLVANIA COUNTY*	5103080275C	24–APR–2003	03–03–1172A	02
03	VA	SUFFOLK, CITY OF	5101560022B	27–MAR–2003	03–03–0902A	02
03	VA	SURRY COUNTY *	51181C0045C	24–APR–2003	03–03–1228A	02
03	VA	VIENNA, TOWN OF	5100530002B	13–MAR–2003	03–03–1094A	02
03	VA	VIRGINIA BEACH, CITY OF	5155310014E	30–JAN–2003	03–03–0446A	02
03	VA	VIRGINIA BEACH, CITY OF	5155310023E	16–JAN–2003	03–03–0478A	02
03	VA	VIRGINIA BEACH, CITY OF	5155310029E	06–FEB–2003	03–03–0640A	02
03	VA	WAYNESBORO, CITY OF	5155320010B	18–FEB–2003	03–03–0356A	02
03	VA	WESTMORELAND COUNTY*	5102500025C	30–APR–2003	03–03–1168A	02
03	VA	WINCHESTER, CITY OF	5101730005B	03–APR–2003	03–03–0892A	02
03	VA	WISE COUNTY *	5101740084A	13–MAR–2003	03–03–1050A	02
03	VA	YORK COUNTY *	5101820043B	13–MAR–2003	03–03–0678A	02
03	VA	YORK COUNTY *	5101820043B	21–APR–2003	03–03–1128A	02
03	WV	ALDERSON, TOWN OF	54063C0007C	03–JAN–2003	03–03–0264A	02
03	WV	BELLE, TOWN OF	5400710001C	10–MAR–2003	03–03–0650A	02
03	WV	BOONE COUNTY *	54005C0045B	24–MAR–2003	03–03–0448A	02
03	WV	BOONE COUNTY *	54005C0070C	24–APR–2003	03–03–0942A	02
03	WV	BOONE COUNTY *	54005C0090B	21–JAN–2003	03–03–0296A	02
03	WV	BRAXTON COUNTY *	54007C0040C	14–APR–2003	03–03–0380A	02
03	WV	BRAXTON COUNTY *	54007C0070C	03–MAR–2003	03–03–0580A	02
03	WV	BUCKHANNON, CITY OF	5401990001C	17–APR–2003	03–03–1070A	02
03	WV	BUFFALO, TOWN OF	5401660001B	31–MAR–2003	03–03–0880A	02
03	WV	CABELL COUNTY *	5400160049A	14–APR–2003	03–03–1016A	02
03	WV	CABELL COUNTY *	5400160066A	23–JAN–2003	03–03–0474A	02

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03	WV	CHARLESTON, CITY OF	5400730004C	16–JAN–2003	03–03–0228A	02
03	WV	CHARLESTON, CITY OF	5400730004C	23–JAN–2003	03–03–0406A	02
03	WV	CHARLESTON, CITY OF	5400730004C	24–FEB–2003	03–03–0210A	02
03	WV	CHARLESTON, CITY OF	5400730004C	21–APR–2003	03–03–0166A	02
03	WV	CHARLESTON, CITY OF	5400730008C	24–MAR–2003	03–03–0928A	02
03	WV	CLAY, COUNTY *	54015C0025B	06–FEB–2003	03–03–0866A	17
03	WV	EAST BANK, TOWN OF	5400770001B	07–APR–2003	03–03–0842A	02
03	WV	GRANT COUNTY*	5400380050B	16–JAN–2003	03–03–0128AD	02
03	WV	HAMPSHIRE COUNTY*	54027C0232C	21–APR–2003	03–03–1020A	02
03	WV	HARDY COUNTY *	5400510275C	27–FEB–2003	03–03–0770A	02
03	WV	HARRISON COUNTY*	5400530079B	16–JAN–2003	03–03–0392A	02
03	WV	HARRISON COUNTY*	5400530106C	30–JAN–2003	03–03–0248A	02
03	WV	JACKSON COUNTY *	5400630075B	27–FEB–2003	03–03–0220A	02
03	WV	JACKSON COUNTY *	5400630075B	31–MAR–2003	03–03–1204A	02
03	WV	JEFFERSON COUNTY *	5400650010B	31–MAR–2003	03–03–0114A	02
03	WV	JEFFERSON COUNTY *	5400650044B	07–APR–2003	03–03–0938A	02
03	WV	KANAWHA COUNTY *	5400700083C	07–APR–2003	03–03–0704A	02
03	WV	KANAWHA COUNTY *	5400700243C	14–APR–2003	03–03–0472A	02
03	WV	LOGAN COUNTY *	5455360021B	20–MAR–2003	03–03–0818A	02
03	WV	MCDOWELL COUNTY *	5401140125B	16–APR–2003	02–03–159P	05
03	WV	MERCER COUNTY*	5401240104B	27–FEB–2003	03–03–0338A	02
03	WV	MERCER COUNTY*	5401240112C	03–APR–2003	03–03–0542A	02
03	WV	MINERAL COUNTY *	5401290100A	16–JAN–2003	03–03–0128A	02
03	WV	MINGO COUNTY *	5401330033C	03–JAN–2003	03–03–0126A	02
03	WV	MINGO COUNTY *	5401330123C	27–FEB–2003	03–03–0500A	02
03	WV	MONONGALIA COUNTY *	5401390106C	07–APR–2003	03–03–0576A	02
03	WV	NICHOLAS COUNTY*	5401460137B	23–JAN–2003	03–03–0476A	02
03	WV	NITRO, CITY OF	5400810003B	23–JAN–2003	03–03–0408A	02
03	WV	OHIO COUNTY *	5401490050C	14–APR–2003	03–03–0516A	02
03	WV	PUTNAM COUNTY*	5401640061A	03–APR–2003	03–03–0816A	02
03	WV	PUTNAM COUNTY*	5401640095B	13–FEB–2003	03–03–0162A	02
03	WV	RANDOLPH COUNTY *	5401750185A	23–JAN–2003	03–03–0252A	02
03	WV	WARDENSVILLE, TOWN OF	540245—01B	20–MAR–2003	03–03–0836A	02
03	WV	WAYNE COUNTY*	5402000102B	17–JAN–2003	03–03–001P	05
03	WV	WAYNE COUNTY*	5402000102B	10–APR–2003	03–03–0768A	01
03	WV	WETZEL COUNTY *	5402070029A	17–APR–2003	03–03–1066A	02
03	WV	WHEELING, CITY OF	5401520010C	10–JAN–2003	03–03–0250A	02
03	WV	WHEELING, CITY OF	5401520015D	24–APR–2003	03–03–0986A	02
03	WV	WIRT COUNTY*	5402110003B	06–MAR–2003	03–03–0652A	02
03	WV	WOOD COUNTY *	5402130016A	07–APR–2003	03–03–0994A	02
03	WV	WOOD COUNTY *	5402130126A	20–MAR–2003	03–03–0676A	02
04	AL	ALABASTER, CITY OF	0101920002B	31–JAN–2003	03–04–1698A	01
04	AL	ANNISTON, CITY OF	0100200001C	30–JAN–2003	03–04–1562A	02
04	AL	BALDWIN COUNTY*	01003C0842K	14–FEB–2003	03–04–2888A	02
04	AL	BESSEMER, CITY OF	01073C0462E	25–APR–2003	03–04–4790A	01
04	AL	BIRMINGHAM, CITY OF	01073C0318E	07–MAR–2003	03–04–3340A	02
04	AL	BOAZ, CITY OF	010276A—01	02–JAN–2003	03–04–1272A	02
04	AL	CHEROKEE COUNTY*	0102340100B	21–FEB–2003	03–04–3060A	02
04	AL	CHEROKEE COUNTY*	0102340100B	18–APR–2003	03–04–4086A	02
04	AL	CHEROKEE COUNTY*	0102340125B	17–JAN–2003	03–04–2192A	02
04	AL	CHEROKEE COUNTY*	0102340125B	07–FEB–2003	03–04–2552A	02
04	AL	CHEROKEE COUNTY*	0102340125B	17–APR–2003	03–04–4326A	02
04	AL	CHEROKEE COUNTY*	0102340175B	24–APR–2003	03–04–4082A	02
04	AL	CHICKASAW, CITY OF	01097C0439J	31–JAN–2003	03–04–2262A	02
04	AL	COLBERT COUNTY	0103180125B	23–JAN–2003	03–04–2000A	02
04	AL	COLBERT COUNTY	0103180125B	17–APR–2003	03–04–4710A	02
04	AL	COLBERT COUNTY	0103180150B	13–MAR–2003	03–04–2848A	02
04	AL	CULLMAN COUNTY *	0102470175B	10–APR–2003	03–04–4768A	02
04	AL	DAPHNE, CITY OF	01003C0393K	24–JAN–2003	03–04–1130A	01
04	AL	DAPHNE, CITY OF	01003C0506K	30–JAN–2003	03–04–2264A	02
04	AL	DAPHNE, CITY OF	01003C0508K	08–JAN–2003	03–04–1692A	02
04	AL	DAPHNE, CITY OF	01003C0508K	28–FEB–2003	03–04–3144A	02
04	AL	DAPHNE, CITY OF	01003C0508K	28–MAR–2003	03–04–4042A	02
04	AL	DAPHNE, CITY OF	01003C0508K	03–APR–2003	03–04–3842A	02
04	AL	DECATUR, CITY OF	01103C0060D	16–JAN–2003	03–04–1502A	02
04	AL	DECATUR, CITY OF	01103C0060D	17–APR–2003	03–04–4574A	02
04	AL	DECATUR, CITY OF	01103C0070D	20–MAR–2003	03–04–3776A	02
04	AL	DOTHAN, CITY OF	01069C0064E	28–MAR–2003	03–04–4142A	02
04	AL	DOTHAN, CITY OF	01069C0202E	28–MAR–2003	03–04–4142A	02
04	AL	ELMORE COUNTY*	0104060100C	10–JAN–2003	03–04–1958A	02
04	AL	ELMORE COUNTY*	0104060100C	24–JAN–2003	03–04–2110A	02
04	AL	ELMORE COUNTY*	0104060100C	30–JAN–2003	03–04–1674A	02
04	AL	ELMORE COUNTY*	0104060100C	13–MAR–2003	03–04–3586A	02

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04	AL	ELMORE COUNTY*	0104060100C	17–MAR–2003	03–04–1840A	02
04	AL	ELMORE COUNTY*	0104060100C	27–MAR–2003	03–04–3338A	02
04	AL	ELMORE COUNTY*	0104060100C	03–APR–2003	03–04–3778A	02
04	AL	ELMORE COUNTY*	0104060100C	14–APR–2003	03–04–4188A	02
04	AL	ELMORE COUNTY*	0104060100C	17–APR–2003	03–04–4582A	02
04	AL	ELMORE COUNTY*	0104060125C	06–FEB–2003	03–04–1528A	02
04	AL	ELMORE COUNTY*	0104060200C	20–MAR–2003	03–04–3186A	01
04	AL	FLORENCE, CITY OF	0101400006C	03–APR–2003	03–04–3190A	01
04	AL	GADSDEN, CITY OF	0100800015C	27–MAR–2003	03–04–3914A	02
04	AL	GULF SHORES, TOWN OF	01003C0814K	08–JAN–2003	03–04–0428A	02
04	AL	GULF SHORES, TOWN OF	01003C0814K	13–MAR–2003	03–04–0810A	02
04	AL	HOKES BLUFF, TOWN OF	0102540001A	17–APR–2003	03–04–4578A	02
04	AL	HUNTSVILLE, CITY OF	01089C0326D	20–MAR–2003	03–04–3774A	02
04	AL	HUNTSVILLE, CITY OF	01089C0329D	11–APR–2003	03–04–4382A	02
04	AL	HUNTSVILLE, CITY OF	01089C0340D	10–APR–2003	03–04–3178A	01
04	AL	HUNTSVILLE, CITY OF	01089C0341D	06–MAR–2003	03–04–2314A	02
04	AL	HUNTSVILLE, CITY OF	01089C0343D	20–MAR–2003	03–04–3772A	02
04	AL	HUNTSVILLE, CITY OF	01089C0365D	08–JAN–2003	03–04–1672A	01
04	AL	HUNTSVILLE, CITY OF	01089C0456D	13–MAR–2003	03–04–3656A	02
04	AL	JACKSONVILLE, CITY OF	0100220002B	06–FEB–2003	03–04–1220A	02
04	AL	JEFFERSON COUNTY *	01073C0203E	19–FEB–2003	03–04–171P	05
04	AL	JEFFERSON COUNTY *	01073C0250E	06–FEB–2003	03–04–1506A	02
04	AL	LAMAR COUNTY *	0102710175B	06–MAR–2003	03–04–3520A	02
04	AL	LANETT, CITY OF	0100290010B	20–MAR–2003	03–04–3958A	02
04	AL	LANETT, CITY OF	0100290010B	10–APR–2003	03–04–2396A	02
04	AL	LANETT, CITY OF	0100290010B	10–APR–2003	03–04–2398A	02
04	AL	LAUDERDALE COUNTY *	0103230050B	07–MAR–2003	03–04–2656A	02
04	AL	LAUDERDALE COUNTY *	0103230105B	27–MAR–2003	03–04–3850A	02
04	AL	LAUDERDALE COUNTY *	0103230180C	03–JAN–2003	03–04–1526A	02
04	AL	LEE COUNTY *	0102500125C	21–FEB–2003	03–04–3106A	02
04	AL	LEE COUNTY *	0102500125C	18–APR–2003	03–04–4804A	02
04	AL	LEE COUNTY *	0102500140C	13–FEB–2003	03–04–3262A	02
04	AL	LEEDS, CITY OF	01073C0366E	28–FEB–2003	03–04–2936A	02
04	AL	LIMESTONE COUNTY *	0103070025B	23–JAN–2003	03–04–1620A	02
04	AL	LIMESTONE COUNTY *	0103070075B	06–MAR–2003	03–04–1530A	02
04	AL	LIMESTONE COUNTY *	0103070150B	06–FEB–2003	03–04–1592A	02
04	AL	MADISON COUNTY *	01089C0485D	13–FEB–2003	03–04–0426A	02
04	AL	MARSHALL COUNTY *	0102750150B	07–MAR–2003	03–04–1966A	02
04	AL	MOBILE COUNTY*	01097C0650J	28–MAR–2003	03–04–3660A	02
04	AL	MOBILE COUNTY*	01097C0654J	20–MAR–2003	03–04–3848A	02
04	AL	MONTGOMERY COUNTY *	01101C0060F	28–MAR–2003	03–04–3846A	01
04	AL	MONTGOMERY COUNTY *	01101C0120F	03–APR–2003	03–04–2938A	02
04	AL	MONTGOMERY COUNTY *	01101C0200F	21–FEB–2003	03–04–3108A	02
04	AL	MONTGOMERY COUNTY *	01101C0200F	03–APR–2003	03–04–2938A	02
04	AL	MONTGOMERY, CITY OF	01101C0065F	06–FEB–2003	03–04–2714A	02
04	AL	MONTGOMERY, CITY OF	01101C0070F	23–JAN–2003	03–04–2116A	02
04	AL	MONTGOMERY, CITY OF	01101C0070F	24–APR–2003	03–04–4580A	02
04	AL	MONTGOMERY, CITY OF	01101C0070F	25–APR–2003	03–04–4840A	01
04	AL	MONTGOMERY, CITY OF	01101C0135F	30–JAN–2003	03–04–2434A	02
04	AL	MUSCLE SHOALS, CITY OF	0100470005C	02–JAN–2003	03–04–0808A	17
04	AL	MUSCLE SHOALS, CITY OF	0100470005C	27–MAR–2003	03–04–3472A	02
04	AL	MUSCLE SHOALS, CITY OF	0100470005C	28–MAR–2003	03–04–191P	05
04	AL	MUSCLE SHOALS, CITY OF	0100470005C	10–APR–2003	03–04–4190A	02
04	AL	MUSCLE SHOALS, CITY OF	0100470005C	24–APR–2003	03–04–4910A	02
04	AL	ORANGE BEAGH, CITY OF	01003C0841K	31–JAN–2003	03–04–1134A	02
04	AL	ORANGE BEACH, CITY OF	01003C0842K	30–JAN–2003	03–04–2500A	02
04	AL	ORANGE BEACH, CITY OF	01003C0842K	03–MAR–2003	03–04–2718A	02
04	AL	PELHAM, CITY OF	0101930001B	24–JAN–2003	03–04–0614A	02
04	AL	PHENIX CITY, CITY OF	0101840010B	24–APR–2003	03–04–4818A	02
04	AL	RAINBOW CITY, CITY OF	0103510001C	30–JAN–2003	03–04–2436A	02
04	AL	RUSSELL COUNTY *	0102870227B	20–FEB–2003	03–04–2908A	02
04	AL	SHEFFIELD, CITY OF	0100480002C	24–JAN–2003	03–04–2108A	02
04	AL	SHELBY COUNTY*	0101910195B	17–JAN–2003	03–04–2194A	02
04	AL	SHELBY COUNTY*	0101910195B	23–JAN–2003	03–04–1462A	02
04	AL	ST. CLAIR COUNTY *	0102900300B	10–APR–2003	03–04–4460A	02
04	AL	TALLADEGA COUNTY *	0102970100B	17–APR–2003	03–04–4576A	02
04	AL	TALLADEGA COUNTY *	0102970125B	03–JAN–2003	03–04–1670A	02
04	AL	TALLADEGA COUNTY *	0102970200B	06–MAR–2003	03–04–2816A	02
04	AL	TALLADEGA COUNTY *	0102970225B	20–MAR–2003	03–04–3522A	02
04	AL	TALLADEGA COUNTY *	0102970275B	13–MAR–2003	03–04–2316A	02
04	AL	TUSCALOOSA, CITY OF	01125C0529E	07–MAR–2003	03–04–3550A	02
04	AL	TUSCALOOSA, CITY OF	01125C0700E	23–JAN–2003	03–04–1456A	02
04	AL	WALKER COUNTY *	0103010055B	02–JAN–2003	03–04–0640A	02

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04	AL	WALKER COUNTY *	0103010055B	23–JAN–2003	03–04–2594A	02
04	AL	WALKER COUNTY *	0103010055B	10–APR–2003	03–04–3342A	02
04	AL	WALKER COUNTY *	0103010055B	11–APR–2003	03–04–4242A	02
04	AL	WALKER COUNTY *	0103010140B	28–MAR–2003	03–04–3532A	02
04	AL	WALKER COUNTY *	0103010215B	13–FEB–2003	03–04–2712A	02
04	AL	WALKER COUNTY *	0103010220B	06–FEB–2003	03–04–1322A	02
04	AL	WETUMPKA, CITY OF	0100700002C	17–APR–2003	03–04–4244A	02
04	AL	WINSTON COUNTY *	0103040009B	30–JAN–2003	03–04–1026A	02
04	AL	WINSTON COUNTY *	0103040009B	26–FEB–2003	03–04–0688A	02
04	AL	WINSTON COUNTY *	0103040009B	03–MAR–2003	03–04–2196A	02
04	FL	ALACHUA COUNTY*	1200010259A	20–MAR–2003	03–04–2992A	02
04	FL	ALACHUA COUNTY*	1200010269A	30–JAN–2003	03–04–2428A	02
04	FL	ALTAMONTE SPRINGS, CITY OF	12117C0120E	08–JAN–2003	03–04–1398A	02
04	FL	ALTAMONTE SPRINGS, CITY OF	12117C0120E	27–MAR–2003	03–04–2130A	02
04	FL	ALTAMONTE SPRINGS, CITY OF	12117C0140E	26–FEB–2003	03–04–3038A	02
04	FL	ALTAMONTE SPRINGS, CITY OF	12117C0140E	13–MAR–2003	03–04–3566A	01
04	FL	ALTAMONTE SPRINGS, CITY OF	12117C0140E	03–APR–2003	03–04–3768A	02
04	FL	ALTAMONTE SPRINGS, CITY OF	12117C0140E	04–APR–2003	03–04–3992A	02
04	FL	APOPKA, CITY OF	12095C0110E	24–APR–2003	03–04–4860A	01
04	FL	APOPKA, CITY OF	12095C0120E	24–APR–2003	03–04–4642A	01
04	FL	APOPKA, CITY OF	12095C0140E	20–MAR–2003	03–04–1954A	02
04	FL	AUBURNDALE, CITY OF	12105C0335F	14–FEB–2003	03–04–2770A	02
04	FL	BAY COUNTY*	12005C0164G	20–FEB–2003	03–04–1916A	02
04	FL	BAY COUNTY*	12005C0220G	03–APR–2003	03–04–3936A	02
04	FL	BAY COUNTY*	12005C0233G	27–MAR–2003	03–04–3232A	02
04	FL	BAY COUNTY*	12005C0310G	15–JAN–2003	03–04–0674A	02
04	FL	BAY COUNTY*	12005C0329G	13–FEB–2003	03–04–2282A	02
04	FL	BAY COUNTY*	12005C0329G	24–MAR–2003	03–04–3078A	02
04	FL	BAY COUNTY*	12005C0329G	03–APR–2003	03–04–4378A	02
04	FL	BAY COUNTY*	12005C0331G	16–JAN–2003	03–04–1682A	02
04	FL	BAY COUNTY*	12005C0338G	13–MAR–2003	03–04–4006A	02
04	FL	BAY COUNTY*	12005C0338G	04–APR–2003	03–04–3882A	02
04	FL	BAY COUNTY*	12005C0351G	10–JAN–2003	03–04–1434A	01
04	FL	BAY COUNTY*	12005C0353G	23–JAN–2003	03–04–1512A	02
04	FL	BOCA RATON, CITY OF	1201950007C	07–MAR–2003	03–04–2558A	02
04	FL	BOYNTON BEACH, CITY OF	1201960005C	20–FEB–2003	03–04–1922A	02
04	FL	BREVARD COUNTY *	12009C0100E	17–JAN–2003	03–04–2336A	02
04	FL	BREVARD COUNTY *	12009C0100E	03–APR–2003	03–04–4128A	01
04	FL	BREVARD COUNTY *	12009C0190F	14–FEB–2003	03–04–2372A	02
04	FL	BREVARD COUNTY *	12009C0190F	27–MAR–2003	03–04–4110A	02
04	FL	BREVARD COUNTY *	12009C0190F	10–APR–2003	03–04–4248A	01
04	FL	BREVARD COUNTY *	12009C0260E	08–JAN–2003	03–04–1910A	02
04	FL	BREVARD COUNTY *	12009C0260E	31–JAN–2003	03–04–1710A	02
04	FL	BREVARD COUNTY *	12009C0260E	13–MAR–2003	03–04–3648A	02
04	FL	BREVARD COUNTY *	12009C0260E	20–MAR–2003	03–04–3354A	02
04	FL	BREVARD COUNTY *	12009C0260E	24–MAR–2003	03–04–3440A	02
04	FL	BREVARD COUNTY *	12009C0270E	07–MAR–2003	03–04–4250A	02
04	FL	BREVARD COUNTY *	12009C0275E	08–JAN–2003	03–04–1850A	02
04	FL	BREVARD COUNTY *	12009C0275E	17–MAR–2003	03–04–2568A	02
04	FL	BREVARD COUNTY *	12009C0290E	10–APR–2003	03–04–4468A	02
04	FL	BREVARD COUNTY *	12009C0313E	03–APR–2003	03–04–3146A	02
04	FL	BREVARD COUNTY *	12009C0360E	24–JAN–2003	03–04–2100A	02
04	FL	BREVARD COUNTY *	12009C0365E	30–JAN–2003	03–04–2472A	02
04	FL	BREVARD COUNTY *	12009C0365E	20–MAR–2003	03–04–3116A	01
04	FL	BREVARD COUNTY *	12009C0365E	28–MAR–2003	03–04–1888A	01
04	FL	BREVARD COUNTY *	12009C0430E	13–MAR–2003	03–04–3696A	02
04	FL	BREVARD COUNTY *	12009C0430E	17–MAR–2003	03–04–3742A	02
04	FL	BREVARD COUNTY *	12009C0430E	27–MAR–2003	03–04–3480A	01
04	FL	BREVARD COUNTY *	12009C0430E	03–APR–2003	03–04–3552A	01
04	FL	BREVARD COUNTY *	12009C0430E	10–APR–2003	03–04–4634A	02
04	FL	BREVARD COUNTY *	12009C0430E	25–APR–2003	03–04–5008A	02
04	FL	BREVARD COUNTY *	12009C0435E	17–JAN–2003	03–04–2334A	02
04	FL	BREVARD COUNTY *	12009C0435E	30–JAN–2003	03–04–2492A	02
04	FL	BREVARD COUNTY *	12009C0435E	06–FEB–2003	03–04–2794A	02
04	FL	BREVARD COUNTY *	12009C0435E	20–MAR–2003	03–04–3890A	01
04	FL	BREVARD COUNTY *	12009C0435E	25–APR–2003	03–04–4602A	01
04	FL	BREVARD COUNTY *	12009C0439E	17–APR–2003	03–04–4786A	01
04	FL	BREVARD COUNTY *	12009C0440E	08–JAN–2003	03–04–0782A	01
04	FL	BREVARD COUNTY *	12009C0441F	24–APR–2003	03–04–4864A	02
04	FL	BROWARD COUNTY*	12011C0117G	26–FEB–2003	03–04–0352A	02
04	FL	BROWARD COUNTY*	12011C0195F	10–APR–2003	03–04–4262A	02
04	FL	BROWARD COUNTY*	12011C0195F	14–APR–2003	03–04–4650A	02
04	FL	BROWARD COUNTY*	12011C0195F	24–APR–2003	03–04–4518A	02

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04	FL	BROWARD COUNTY*	12011C0306F	07–MAR–2003	03–04–2566A	02
04	FL	BROWARD COUNTY*	12011C0308F	24–APR–2003	03–04–4220A	02
04	FL	CALLAHAN, TOWN OF	1201700325C	23–JAN–2003	03–04–1524A	01
04	FL	CALLAHAN, TOWN OF	1201710001B	23–JAN–2003	03–04–1524A	01
04	FL	CAPE CORAL, CITY OF	1250950020C	03–JAN–2003	03–04–1174A	01
04	FL	CAPE CORAL, CITY OF	1250950020C	08–JAN–2003	03–04–1382A	01
04	FL	CAPE CORAL, CITY OF	1250950020C	16–JAN–2003	03–04–1886A	01
04	FL	CAPE CORAL, CITY OF	1250950020C	16–JAN–2003	03–04–2166A	01
04	FL	CAPE CORAL, CITY OF	1250950020C	31–JAN–2003	03–04–1896A	01
04	FL	CAPE CORAL, CITY OF	1250950020C	13–FEB–2003	03–04–2426A	01
04	FL	CAPE CORAL, CITY OF	1250950020C	13–FEB–2003	03–04–2618A	01
04	FL	CAPE CORAL, CITY OF	1250950020C	14–FEB–2003	03–04–2546A	01
04	FL	CAPE CORAL, CITY OF	1250950020C	17–MAR–2003	03–04–3390A	01
04	FL	CAPE CORAL, CITY OF	1250950020C	20–MAR–2003	03–04–1754A	01
04	FL	CAPE CORAL, CITY OF	1250950020C	21–MAR–2003	03–04–2986A	01
04	FL	CAPE CORAL, CITY OF	1250950020C	18–APR–2003	03–04–4690A	01
04	FL	CAPE CORAL, CITY OF	1250950020C	25–APR–2003	03–04–4878A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	08–JAN–2003	03–04–1380A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	15–JAN–2003	03–04–1656A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	16–JAN–2003	03–04–1886A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	16–JAN–2003	03–04–2166A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	07–FEB–2003	03–04–3346A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	13–FEB–2003	03–04–2312A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	13–FEB–2003	03–04–2618A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	14–FEB–2003	03–04–2544A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	14–FEB–2003	03–04–2546A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	17–MAR–2003	03–04–3386A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	20–MAR–2003	03–04–1754A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	27–MAR–2003	03–04–3388A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	03–APR–2003	03–04–3782A	01
04	FL	CAPE CORAL, CITY OF	1250950030C	18–APR–2003	03–04–4690A	01
04	FL	CAPE CORAL, CITY OF	1250950035C	03–JAN–2003	03–04–1174A	01
04	FL	CAPE CORAL, CITY OF	1250950035C	17–APR–2003	03–04–4516A	01
04	FL	CAPE CORAL, CITY OF	1250950040C	03–JAN–2003	03–04–1174A	01
04	FL	CAPE CORAL, CITY OF	1250950040C	17–MAR–2003	03–04–3386A	01
04	FL	CAPE CORAL, CITY OF	1250950040C	27–MAR–2003	03–04–3602A	01
04	FL	CAPE CORAL, CITY OF	1250950040C	25–APR–2003	03–04–4878A	01
04	FL	CAPE CORAL, CITY OF	1250950045C	16–JAN–2003	03–04–1886A	01
04	FL	CAPE CORAL, CITY OF	1250950045C	17–APR–2003	03–04–4516A	01
04	FL	CASSELBERRY, CITY OF	12117C0140E	26–FEB–2003	03–04–2380A	17
04	FL	CITRUS COUNTY *	1200630115B	15–JAN–2003	03–04–1760A	02
04	FL	CITRUS COUNTY *	1200630115B	07–MAR–2003	03–04–3524A	02
04	FL	CITRUS COUNTY *	1200630210B	27–MAR–2003	03–04–4090A	02
04	FL	CITRUS COUNTY *	1200630260B	08–JAN–2003	03–04–1056A	02
04	FL	CITRUS COUNTY *	1200630260B	10–JAN–2003	03–04–1532A	02
04	FL	CITRUS COUNTY *	1200630260B	27–MAR–2003	03–04–3740A	02
04	FL	CITRUS COUNTY *	1200630260B	03–APR–2003	03–04–4210A	02
04	FL	CITRUS COUNTY *	1200630260B	24–APR–2003	03–04–4656A	02
04	FL	CITRUS COUNTY *	1200630270B	21–MAR–2003	03–04–3818X	02
04	FL	CLAY COUNTY *	1200640045D	21–MAR–2003	03–04–3378A	02
04	FL	CLAY COUNTY *	1200640065D	17–JAN–2003	03–04–0350A	02
04	FL	CLAY COUNTY *	1200640065D	21–MAR–2003	03–04–3378A	02
04	FL	CLAY COUNTY *	1200640120D	13–MAR–2003	03–04–3360A	02
04	FL	CLAY COUNTY *	1200640135D	13–MAR–2003	03–04–3152A	02
04	FL	CLAY COUNTY *	1200640140D	06–MAR–2003	03–04–3270A	02
04	FL	CLAY COUNTY *	1200640155D	26–FEB–2003	03–04–3168A	02
04	FL	CLAY COUNTY *	1200640155D	24–APR–2003	03–04–4502A	01
04	FL	CLAY COUNTY *	1200640350D	20–FEB–2003	03–04–2038A	02
04	FL	CLAY COUNTY *	1251240065D	17–JAN–2003	03–04–0350A	02
04	FL	CLEARWATER, CITY OF	1250960007D	25–APR–2003	03–04–4264A	02
04	FL	CLEARWATER, CITY OF	1250960008D	06–FEB–2003	03–04–2406A	02
04	FL	CLEARWATER, CITY OF	1250960014B	13–MAR–2003	03–04–2886A	02
04	FL	CLERMONT, CITY OF	12069C0545D	07–FEB–2003	03–04–2474A	02
04	FL	CLERMONT, CITY OF	12069C0545D	13–FEB–2003	03–04–0298A	02
04	FL	CLERMONT, CITY OF	12069C0545D	21–MAR–2003	03–04–3640A	02
04	FL	CLERMONT, CITY OF	12069C0545D	21–MAR–2003	03–04–3642A	02
04	FL	CLERMONT, CITY OF	12069C0565D	30–JAN–2003	03–04–2138A	02
04	FL	CLERMONT, CITY OF	12069C0565D	30–JAN–2003	03–04–2190A	02
04	FL	CLERMONT, CITY OF	12069C0565D	07–FEB–2003	03–04–2418A	02
04	FL	CLERMONT, CITY OF	12069C0565D	10–APR–2003	03–04–4050A	02
04	FL	COCOA, CITY OF	12009C0290E	24–JAN–2003	03–04–2260A	02
04	FL	COLLIER COUNTY *	1200670195D	18–APR–2003	03–04–3790A	01
04	FL	COLLIER COUNTY *	1200670812E	13–MAR–2003	03–04–2606A	02

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04	FL	COLUMBIA COUNTY*	1200700175B	17–APR–2003	03–04–4350A	02
04	FL	CORAL GABLES, CITY OF	12025C0190J	26–FEB–2003	03–04–1316A	02
04	FL	CORAL SPRINGS, CITY OF	12011C0095F	17–APR–2003	03–04–4214A	02
04	FL	CORAL SPRINGS, CITY OF	12011C0115F	03–JAN–2003	03–04–1274A	02
04	FL	DAVIE, CITY OF	12011C0195F	17–APR–2003	03–04–4288A	02
04	FL	DAVIE, CITY OF	12011C0305F	24–APR–2003	03–04–3928A	02
04	FL	DAYTONA BEACH, CITY OF	12127C0353G	20–MAR–2003	03–04–065P	05
04	FL	DAYTONA BEACH, CITY OF	12127C0366G	10–JAN–2003	03–04–1564A	02
04	FL	DEERFIELD BEACH, CITY OF	12011C0108F	18–APR–2003	03–04–4396A	02
04	FL	DEERFIELD BEACH, CITY OF	12011C0109G	02–JAN–2003	03–04–1284A	02
04	FL	DEERFIELD BEACH, CITY OF	12011C0109G	21–FEB–2003	03–04–2846A	02
04	FL	DEERFIELD BEACH, CITY OF	12011C0109G	27–MAR–2003	03–04–3734A	02
04	FL	DEERFIELD BEACH, CITY OF	12011C0120F	16–JAN–2003	03–04–1846A	02
04	FL	DEERFIELD BEACH, CITY OF	12011C0120F	21–MAR–2003	03–04–2778A	02
04	FL	DEFUNIAK SPRINGS, CITY OF	12131C0275F	21–MAR–2003	03–04–3304A	02
04	FL	DESTIN, CITY OF	12091C0488H	26–FEB–2003	03–04–2128A	01
04	FL	EAGLE LAKE, CITY OF	12105C0510F	07–MAR–2003	03–04–3598A	02
04	FL	EDGEWOOD, CITY OF	12095C0410E	11–APR–2003	03–04–4412A	02
04	FL	ESCAMBIA COUNTY*	12033C0365F	21–MAR–2003	03–04–3224A	02
04	FL	FLORIDA CITY, CITY OF	12025C0365J	20–MAR–2003	03–04–3310A	02
04	FL	FORT LAUDERDALE, CITY OF	12011C0217F	04–APR–2003	03–04–4648A	02
04	FL	FRUITLAND PARK, CITY OF	12069C0308D	07–FEB–2003	03–04–2376A	02
04	FL	GADSDEN COUNTY *	1200910300A	10–APR–2003	03–04–4052A	02
04	FL	GAINESVILLE, CITY OF	1200010275A	06–MAR–2003	03–04–3446A	02
04	FL	GILCHRIST COUNTY *	12041C0175C	21–MAR–2003	03–04–2738A	02
04	FL	GREEN COVE SPRINGS, CITY OF	1200640165D	02–JAN–2003	03–04–0998A	02
04	FL	GULF COUNTY *	12045C0407C	15–JAN–2003	03–04–1190A	02
04	FL	GULF COUNTY *	12045C0407E	07–FEB–2003	03–04–2402A	02
04	FL	GULF COUNTY *	12045C0407E	11–APR–2003	03–04–3638A	02
04	FL	GULF COUNTY *	12045C0409E	13–FEB–2003	03–04–2742A	02
04	FL	GULF COUNTY *	12045C0437E	07–MAR–2003	03–04–3484A	02
04	FL	HAINES CITY, CITY OF	12105C0357F	08–JAN–2003	02–04–9434A	01
04	FL	HERNANDO COUNTY *	1201100225B	17–MAR–2003	03–04–3050A	02
04	FL	HERNANDO COUNTY *	1201100225B	17–MAR–2003	03–04–3052A	02
04	FL	HIALEAH, CITY OF	12025C0075J	10–JAN–2003	03–04–1556A	02
04	FL	HIALEAH, CITY OF	12025C0075J	20–MAR–2003	03–04–3010A	01
04	FL	HIALEAH, CITY OF	12025C0075J	03–APR–2003	03–04–3784A	01
04	FL	HIALEAH, CITY OF	12025C0075J	25–APR–2003	03–04–5948A	02
04	FL	HIALEAH, CITY OF	12025C0180J	10–APR–2003	03–04–4258A	02
04	FL	HILLSBOROUGH COUNTY*	1201120040C	28–FEB–2003	03–04–3468A	01
04	FL	HILLSBOROUGH COUNTY*	1201120045D	06–FEB–2003	03–04–2112A	01
04	FL	HILLSBOROUGH COUNTY*	1201120180F	14–FEB–2003	03–04–3026A	02
04	FL	HILLSBOROUGH COUNTY*	1201120180F	26–FEB–2003	03–04–1740A	01
04	FL	HILLSBOROUGH COUNTY*	1201120180F	10–APR–2003	03–04–4336A	02
04	FL	HILLSBOROUGH COUNTY*	1201120185F	23–JAN–2003	03–04–2424A	02
04	FL	HILLSBOROUGH COUNTY*	1201120185F	24–JAN–2003	03–04–2450A	02
04	FL	HILLSBOROUGH COUNTY*	1201120185F	11–APR–2003	03–04–3820A	02
04	FL	HILLSBOROUGH COUNTY*	1201120185F	24–APR–2003	03–04–4212A	01
04	FL	HILLSBOROUGH COUNTY*	1201120190D	27–MAR–2003	03–04–0856A	01
04	FL	HILLSBOROUGH COUNTY*	1201120192D	17–APR–2003	03–04–4826A	02
04	FL	HILLSBOROUGH COUNTY*	1201120195D	08–JAN–2003	03–04–1244A	02
04	FL	HILLSBOROUGH COUNTY*	1201120205D	06–FEB–2003	03–04–2294A	01
04	FL	HILLSBOROUGH COUNTY*	1201120205D	14–MAR–2003	03–04–3786A	01
04	FL	HILLSBOROUGH COUNTY*	1201120205D	25–APR–2003	03–04–5916A	02
04	FL	HILLSBOROUGH COUNTY*	1201120380E	21–FEB–2003	03–04–3192A	01
04	FL	HILLSBOROUGH COUNTY*	1201120389D	31–JAN–2003	03–04–1110A	01
04	FL	HILLSBOROUGH COUNTY*	1201120389D	26–FEB–2003	03–04–3278A	01
04	FL	HILLSBOROUGH COUNTY*	1201120389D	26–FEB–2003	03–04–3280A	01
04	FL	HILLSBOROUGH COUNTY*	1201120395E	06–FEB–2003	03–04–2894A	02
04	FL	HILLSBOROUGH COUNTY*	1201120511C	07–FEB–2003	03–04–2008A	01
04	FL	HILLSBOROUGH COUNTY*	1201120515B	07–FEB–2003	03–04–2008A	01
04	FL	HOLLYWOOD, CITY OF	12011C0304F	16–JAN–2003	03–04–2182A	02
04	FL	HOLLYWOOD, CITY OF	12011C0308F	11–APR–2003	03–04–4286A	02
04	FL	HOLLYWOOD, CITY OF	12011C0309F	08–JAN–2003	03–04–1072A	02
04	FL	HOMESTEAD, CITY OF	12025C0365J	10–APR–2003	03–04–4000A	01
04	FL	INDIAN RIVER SHORES, TOWN OF	12061C0091	21–MAR–2003	03–04–3008A	02
04	FL	JACKSONVILLE, CITY OF	1200770050E	25–FEB–2003	03–04–085P	05
04	FL	JACKSONVILLE, CITY OF	1200770065E	10–APR–2003	03–04–0440A	01
04	FL	JACKSONVILLE, CITY OF	1200770134E	24–APR–2003	03–04–4120A	02
04	FL	JACKSONVILLE, CITY OF	1200770141E	28–FEB–2003	03–04–2218A	02
04	FL	JACKSONVILLE, CITY OF	1200770157E	20–FEB–2003	03–04–2760A	02
04	FL	JACKSONVILLE, CITY OF	1200770212E	02–JAN–2003	03–04–1268A	02
04	FL	JACKSONVILLE, CITY OF	1200770231E	20–MAR–2003	03–04–1600A	17

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04	FL	JACKSONVILLE, CITY OF	1200770233E	20-MAR-2003	03-04-1600A	17
04	FL	JACKSONVILLE, CITY OF	1200770239E	26-FEB-2003	03-04-0630A	02
04	FL	JACKSONVILLE, CITY OF	1200770253F	08-APR-2003	03-04-027P	05
04	FL	JUPITER, TOWN OF	1251190006D	13-MAR-2003	03-04-3350A	02
04	FL	KISSIMMEE, CITY OF	12097C0065F	23-JAN-2003	03-04-1602A	01
04	FL	KISSIMMEE, CITY OF	12097C0065F	26-FEB-2003	03-04-2626A	01
04	FL	KISSIMMEE, CITY OF	12097C0066F	15-JAN-2003	03-04-0862A	01
04	FL	KISSIMMEE, CITY OF	12097C0066F	11-APR-2003	03-04-4376A	02
04	FL	KISSIMMEE, CITY OF	12097C0068F	08-JAN-2003	03-04-1238A	02
04	FL	LADY LAKE, TOWN OF	12069C0155D	03-APR-2003	03-04-3348A	02
04	FL	LADY LAKE, TOWN OF	12069C0155D	17-APR-2003	03-04-3538A	02
04	FL	LADY LAKE, TOWN OF	12069C0165D	17-JAN-2003	03-04-1046A	01
04	FL	LADY LAKE, TOWN OF	12069C0165D	20-FEB-2003	03-04-2622A	01
04	FL	LAKE COUNTY *	12069C0100D	13-MAR-2003	03-04-2562A	02
04	FL	LAKE COUNTY *	12069C0334D	17-JAN-2003	03-04-1854A	02
04	FL	LAKE COUNTY *	12069C0334D	06-FEB-2003	03-04-2270A	02
04	FL	LAKE COUNTY *	12069C0334D	14-APR-2003	03-04-4596A	02
04	FL	LAKE COUNTY *	12069C0345D	23-JAN-2003	03-04-0576A	02
04	FL	LAKE COUNTY *	12069C0345D	20-FEB-2003	03-04-0758A	02
04	FL	LAKE COUNTY *	12069C0362D	03-APR-2003	03-04-3898A	02
04	FL	LAKE COUNTY *	12069C0365D	17-APR-2003	03-04-4594A	02
04	FL	LAKE COUNTY *	12069C0370D	26-FEB-2003	03-04-2746A	01
04	FL	LAKE COUNTY *	12069C0370D	24-APR-2003	03-04-4504A	02
04	FL	LAKE COUNTY *	12069C0435D	24-JAN-2003	03-04-1614A	02
04	FL	LAKE COUNTY *	12069C0435D	21-FEB-2003	03-04-1588A	02
04	FL	LAKE COUNTY *	12069C0455D	10-JAN-2003	03-04-1498A	02
04	FL	LAKE COUNTY *	12069C0455D	16-JAN-2003	03-04-1852A	02
04	FL	LAKE COUNTY *	12069C0455D	07-FEB-2003	03-04-1994A	02
04	FL	LAKE COUNTY *	12069C0455D	06-MAR-2003	03-04-3444A	02
04	FL	LAKE COUNTY *	12069C0480D	08-JAN-2003	03-04-1410A	02
04	FL	LAKE COUNTY *	12069C0545D	08-JAN-2003	03-04-1288A	02
04	FL	LAKE COUNTY *	12069C0545D	21-FEB-2003	03-04-2272A	02
04	FL	LAKE COUNTY *	12069C0545D	17-APR-2003	03-04-2578A	02
04	FL	LAKE COUNTY *	12069C0560D	17-JAN-2003	03-04-1856A	02
04	FL	LAKE COUNTY *	12069C0565D	26-FEB-2003	03-04-2726A	02
04	FL	LAKE COUNTY *	12069C0625D	13-FEB-2003	03-04-2740A	02
04	FL	LAKE COUNTY *	12069C0625D	17-MAR-2003	03-04-3644A	01
04	FL	LAKE WALES, CITY OF	12105C0535F	10-APR-2003	03-04-1980A	01
04	FL	LAKELAND, CITY OF	12105C0294F	10-APR-2003	03-04-077P	05
04	FL	LAKELAND, CITY OF	12105C0313F	19-FEB-2003	03-04-033P	05
04	FL	LAKELAND, CITY OF	12105C0320F	16-JAN-2003	03-04-1680A	02
04	FL	LAKELAND, CITY OF	12105C0485F	16-JAN-2003	03-04-1680A	02
04	FL	LAUDERDALE LAKES, CITY OF	12011C0204F	31-JAN-2003	03-04-2080A	02
04	FL	LAUDERDALE LAKES, CITY OF	12011C0204F	31-JAN-2003	03-04-2082A	02
04	FL	LAUDERDALE LAKES, CITY OF	12011C0204F	31-JAN-2003	03-04-2084A	02
04	FL	LAUDERDALE LAKES, CITY OF	12011C0204F	31-JAN-2003	03-04-2086A	02
04	FL	LAUDERDALE LAKES, CITY OF	12011C0204F	31-JAN-2003	03-04-2088A	02
04	FL	LAUDERDALE LAKES, CITY OF	12011C0204F	31-JAN-2003	03-04-2090A	02
04	FL	LAUDERDALE LAKES, CITY OF	12011C0204F	31-JAN-2003	03-04-2092A	02
04	FL	LAUDERDALE LAKES, CITY OF	12011C0204F	31-JAN-2003	03-04-2094A	02
04	FL	LAUDERDALE LAKES, CITY OF	12011C0204F	31-JAN-2003	03-04-2096A	02
04	FL	LAUDERHILL, CITY OF	12011C0212F	08-JAN-2003	03-04-1208A	02
04	FL	LEE COUNTY*	1251240075D	02-JAN-2003	03-04-1230A	01
04	FL	LEE COUNTY*	1251240225C	13-MAR-2003	03-04-2620A	01
04	FL	LEE COUNTY*	1251240505E	20-FEB-2003	03-04-1612A	01
04	FL	LEE COUNTY*	1251240510D	06-MAR-2003	03-04-1594A	01
04	FL	LEE COUNTY*	1251240510D	21-MAR-2003	03-04-2988A	01
04	FL	LEE COUNTY*	1251240530C	13-FEB-2003	03-04-2798A	01
04	FL	LEESBURG, CITY OF	12069C0316D	04-APR-2003	03-04-3998A	02
04	FL	LEESBURG, CITY OF	12069C0317D	06-FEB-2003	03-04-2430A	02
04	FL	LEON COUNTY *	12073C0250D	24-APR-2003	03-04-4114A	02
04	FL	LEON COUNTY *	12073C0315D	13-FEB-2003	03-04-2574A	02
04	FL	LEON COUNTY *	12073C0350D	10-APR-2003	03-04-3352A	02
04	FL	LONGWOOD, CITY OF	12117C0130E	26-FEB-2003	03-04-2274A	02
04	FL	LONGWOOD, CITY OF	12117C0130E	24-APR-2003	03-04-4624A	02
04	FL	MAITLAND, CITY OF	12095C0165E	31-JAN-2003	03-04-1726A	17
04	FL	MAITLAND, CITY OF	12095C0165E	28-MAR-2003	03-04-4106A	02
04	FL	MANATEE COUNTY *	1201530014C	20-FEB-2003	03-04-135P	05
04	FL	MANATEE COUNTY *	1201530018C	20-FEB-2003	03-04-135P	05
04	FL	MANATEE COUNTY *	1201530307B	25-APR-2003	03-04-4636A	02
04	FL	MANATEE COUNTY *	1201530326B	24-JAN-2003	03-04-2728A	02
04	FL	MANATEE COUNTY *	1201530342C	28-FEB-2003	03-04-0002A	01
04	FL	MANATEE COUNTY *	1201530344C	17-MAR-2003	03-04-2288A	02

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04	FL	MANATEE COUNTY *	1201530354C	14–APR–2003	03–04–4788A	02
04	FL	MARGATE, CITY OF	12011C0115F	03–JAN–2003	03–04–1180A	02
04	FL	MARGATE, CITY OF	12011C0115F	04–APR–2003	03–04–2644A	02
04	FL	MARION COUNTY *	1201600300B	23–JAN–2003	03–04–1684A	02
04	FL	MARION COUNTY *	1201600355B	10–APR–2003	03–04–4670A	02
04	FL	MARION COUNTY *	1201600650B	17–APR–2003	03–04–3884A	02
04	FL	MARION COUNTY *	1201600715B	27–MAR–2003	03–04–1920A	02
04	FL	MARION COUNTY *	1201600725B	23–JAN–2003	03–04–0538A	01
04	FL	MARION COUNTY *	1201600860B	26–FEB–2003	03–04–3028A	02
04	FL	MARTIN COUNTY *	12085C0132F	27–MAR–2003	03–04–3698A	02
04	FL	MARTIN COUNTY *	12085C0133F	27–MAR–2003	03–04–1500A	02
04	FL	MARTIN COUNTY *	12085C0145F	25–APR–2003	03–04–4184A	02
04	FL	MARTIN COUNTY *	12085C0282F	04–APR–2003	03–04–4616A	02
04	FL	MARTIN COUNTY *	12085C0310F	06–FEB–2003	03–04–2290A	02
04	FL	MARTIN COUNTY *	12085C0510F	03–APR–2003	03–04–4246A	02
04	FL	MELBOURNE, CITY OF	12009C0435E	08–JAN–2003	03–04–1666A	02
04	FL	MIAMI DADE COUNTY*	12025C0075J	10–JAN–2003	03–04–0806A	01
04	FL	MIAMI DADE COUNTY*	12025C0075J	21–MAR–2003	03–04–2548A	02
04	FL	MIAMI DADE COUNTY*	12025C0075J	04–APR–2003	03–04–4256A	01
04	FL	MIAMI DADE COUNTY*	12025C0080J	16–JAN–2003	03–04–1718A	02
04	FL	MIAMI DADE COUNTY*	12025C0080J	06–MAR–2003	03–04–2268A	02
04	FL	MIAMI DADE COUNTY*	12025C0080J	21–MAR–2003	03–04–2548A	02
04	FL	MIAMI DADE COUNTY*	12025C0081J	26–FEB–2003	03–04–2994A	02
04	FL	MIAMI DADE COUNTY*	12025C0090J	16–JAN–2003	03–04–1722A	02
04	FL	MIAMI DADE COUNTY*	12025C0090J	21–MAR–2003	03–04–2548A	02
04	FL	MIAMI DADE COUNTY*	12025C0160J	06–MAR–2003	03–04–3308A	02
04	FL	MIAMI DADE COUNTY*	12025C0165J	17–JAN–2003	03–04–1858A	02
04	FL	MIAMI DADE COUNTY*	12025C0255J	18–APR–2003	03–04–4394A	02
04	FL	MIAMI DADE COUNTY*	12025C0269J	02–JAN–2003	03–04–1234A	02
04	FL	MIAMI DADE COUNTY*	12025C0356J	13–FEB–2003	03–04–1518A	02
04	FL	MIAMI DADE COUNTY*	12025C0356J	25–APR–2003	03–04–4934A	02
04	FL	MIAMI, CITY OF	12025C0180J	02–JAN–2003	03–04–1236A	02
04	FL	MINNEOLA, CITY OF	12069C0555D	17–JAN–2003	03–04–1626A	02
04	FL	MIRAMAR, CITY OF	12011C0290F	16–JAN–2003	03–04–1312A	01
04	FL	MIRAMAR, CITY OF	12011C0295F	08–JAN–2003	03–04–1306A	01
04	FL	MIRAMAR, CITY OF	12011C0295F	16–JAN–2003	03–04–1312A	01
04	FL	MIRAMAR, CITY OF	12011C0295F	10–APR–2003	03–04–3744A	01
04	FL	MIRAMAR, CITY OF	12011C0315F	08–JAN–2003	03–04–1894A	02
04	FL	MT. DORA, CITY OF	12069C0378D	06–FEB–2003	03–04–1950A	02
04	FL	MT. DORA, CITY OF	12069C0378D	10–APR–2003	03–04–2040A	02
04	FL	NAPLES, CITY OF	1251300391C	14–FEB–2003	03–04–2948A	02
04	FL	NAPLES, CITY OF	1251300391C	20–FEB–2003	03–04–2856A	02
04	FL	NAPLES, CITY OF	1251300391C	17–APR–2003	03–04–4496A	02
04	FL	NAPLES, CITY OF	1251300391C	24–APR–2003	03–04–4494A	02
04	FL	NAPLES, CITY OF	1251300393C	24–APR–2003	03–04–4354A	01
04	FL	NEW SMYRNA BEACH, CITY OF	12127C0540G	17–APR–2003	03–04–4380A	02
04	FL	NEW SMYRNA BEACH, CITY OF	12127C0541G	06–MAR–2003	03–04–2582A	02
04	FL	NEW SMYRNA BEACH, CITY OF	12127C0541G	14–APR–2003	03–04–4466A	02
04	FL	NICEVILLE, CITY OF	12091C0370H	06–FEB–2003	03–04–2910A	02
04	FL	NORTH LAUDERDALE, CITY OF	12011C0205F	20–MAR–2003	03–04–3312A	02
04	FL	NORTH LAUDERDALE, CITY OF	12011C0205F	10–APR–2003	03–04–4174A	02
04	FL	NORTH LAUDERDALE, CITY OF	12011C0205F	10–APR–2003	03–04–4176A	02
04	FL	OAKLAND, TOWN OF	12095C0200E	13–FEB–2003	03–04–2942A	02
04	FL	OCOEE, CITY OF	12095C0210E	12–MAR–2003	02–04–167P	05
04	FL	OKALOOSA COUNTY *	12091C0418H	30–APR–2003	03–04–275P	05
04	FL	OKALOOSA COUNTY *	12091C0435H	14–APR–2003	03–04–4392A	02
04	FL	OKALOOSA COUNTY *	12091C0454H	16–JAN–2003	03–04–1818A	02
04	FL	OKALOOSA COUNTY *	12091C0458H	16–JAN–2003	03–04–1818A	02
04	FL	ORANGE COUNTY *	12095C0215E	17–JAN–2003	03–04–2156A	02
04	FL	ORANGE COUNTY *	12095C0220E	06–MAR–2003	03–04–3216A	01
04	FL	ORANGE COUNTY *	12095C0235E	16–JAN–2003	03–04–0768A	02
04	FL	ORANGE COUNTY *	12095C0255E	17–APR–2003	03–04–4816A	02
04	FL	ORANGE COUNTY *	12095C0260E	16–JAN–2003	03–04–2134A	02
04	FL	ORANGE COUNTY *	12095C0260E	06–FEB–2003	03–04–2786A	02
04	FL	ORANGE COUNTY *	12095C0260E	21–FEB–2003	03–04–3236A	02
04	FL	ORANGE COUNTY *	12095C0260E	03–MAR–2003	03–04–3220A	02
04	FL	ORANGE COUNTY *	12095C0260E	17–APR–2003	03–04–1914A	02
04	FL	ORANGE COUNTY *	12095C0270E	03–MAR–2003	03–04–2570A	02
04	FL	ORANGE COUNTY *	12095C0270E	13–MAR–2003	03–04–3590A	02
04	FL	ORANGE COUNTY *	12095C0280E	30–JAN–2003	03–04–2330A	01
04	FL	ORANGE COUNTY *	12095C0280E	03–MAR–2003	03–04–3220A	02
04	FL	ORANGE COUNTY *	12095C0285E	08–JAN–2003	03–04–1774A	02
04	FL	ORANGE COUNTY *	12095C0285E	23–JAN–2003	03–04–2374A	02

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04	FL	ORANGE COUNTY *	12095C0285E	17–APR–2003	03–04–3964A	01
04	FL	ORANGE COUNTY *	12095C0295E	06–MAR–2003	03–04–1952A	01
04	FL	ORANGE COUNTY *	12095C0295E	13–MAR–2003	03–04–3384A	01
04	FL	ORANGE COUNTY *	12095C0305E	24–APR–2003	03–04–4148A	02
04	FL	ORANGE COUNTY *	12095C0385E	30–JAN–2003	03–04–2332A	02
04	FL	ORANGE COUNTY *	12095C0405E	21–FEB–2003	03–04–3228A	02
04	FL	ORANGE COUNTY *	12095C0405E	28–MAR–2003	03–04–4104A	02
04	FL	ORANGE COUNTY *	12095C0410E	17–JAN–2003	03–04–1908A	02
04	FL	ORANGE COUNTY *	12095C0410E	06–MAR–2003	03–04–3150A	02
04	FL	ORANGE COUNTY *	12095C0410E	17–APR–2003	03–04–2340A	01
04	FL	ORANGE COUNTY *	12095C0415E	08–JAN–2003	03–04–1776A	02
04	FL	ORANGE COUNTY *	12095C0415E	04–APR–2003	03–04–3646A	01
04	FL	ORANGE COUNTY *	12095C0420E	13–MAR–2003	03–04–3588A	02
04	FL	ORANGE COUNTY *	12095C0420E	10–APR–2003	03–04–4508A	02
04	FL	ORANGE COUNTY *	12095C0435E	06–MAR–2003	03–04–3482A	02
04	FL	ORANGE COUNTY *	12095C0465E	13–FEB–2003	03–04–2940A	02
04	FL	ORANGE COUNTY *	12095C0465E	20–MAR–2003	03–04–3808A	02
04	FL	ORANGE COUNTY *	12095C0465E	03–APR–2003	03–04–3810A	02
04	FL	ORANGE COUNTY *	12095C0585E	11–APR–2003	03–04–3922A	01
04	FL	ORANGE COUNTY *	12095C0625E	15–JAN–2003	03–04–1128A	02
04	FL	ORANGE COUNTY *	12095C0625E	11–APR–2003	03–04–3922A	01
04	FL	ORANGE PARK, CITY OF	1200660005B	27–FEB–2003	03–04–2980A	02
04	FL	ORLANDO, CITY OF	12095C0235E	17–APR–2003	03–04–4348A	02
04	FL	ORLANDO, CITY OF	12095C0240E	16–JAN–2003	03–04–1550A	01
04	FL	ORLANDO, CITY OF	12095C0240E	06–FEB–2003	03–04–1546A	17
04	FL	ORLANDO, CITY OF	12095C0240E	27–MAR–2003	03–04–3046A	01
04	FL	ORLANDO, CITY OF	12095C0265E	16–JAN–2003	03–04–1898A	02
04	FL	ORLANDO, CITY OF	12095C0265E	23–JAN–2003	03–04–2368A	02
04	FL	ORLANDO, CITY OF	12095C0265E	14–FEB–2003	03–04–1300A	01
04	FL	ORLANDO, CITY OF	12095C0265E	07–MAR–2003	03–04–2572A	02
04	FL	ORLANDO, CITY OF	12095C0265E	28–MAR–2003	03–04–4102A	02
04	FL	ORLANDO, CITY OF	12095C0270E	24–APR–2003	03–04–4754A	02
04	FL	ORLANDO, CITY OF	12095C0405E	06–FEB–2003	03–04–1546A	17
04	FL	ORLANDO, CITY OF	12095C0435E	26–FEB–2003	03–04–2456A	02
04	FL	ORLANDO, CITY OF	12095C0435E	03–MAR–2003	03–04–2458A	01
04	FL	ORLANDO, CITY OF	12095C0435E	17–APR–2003	03–04–2460A	01
04	FL	ORLANDO, CITY OF	12095C0455E	03–MAR–2003	03–04–2458A	01
04	FL	ORLANDO, CITY OF	12095C0455E	17–APR–2003	03–04–2460A	01
04	FL	ORMOND BEACH, CITY OF	12127C0194G	24–APR–2003	03–04–4352A	01
04	FL	ORMOND BEACH, CITY OF	12127C0212H	20–FEB–2003	03–04–2884V	19
04	FL	ORMOND BEACH, CITY OF	12127C0212H	21–MAR–2003	03–04–3746A	01
04	FL	ORMOND BEACH, CITY OF	12127C0212H	04–APR–2003	03–04–3268A	02
04	FL	ORMOND BEACH, CITY OF	12127C0213H	20–FEB–2003	03–04–2884V	19
04	FL	OSCEOLA COUNTY *	12097C0065F	26–FEB–2003	03–04–1694A	01
04	FL	OSCEOLA COUNTY *	12097C0090F	18–APR–2003	03–04–4606A	01
04	FL	OSCEOLA COUNTY *	12097C0120F	26–FEB–2003	03–04–2140A	02
04	FL	OSCEOLA COUNTY *	12097C0225F	03–APR–2003	03–04–3994A	02
04	FL	OSCEOLA COUNTY *	12097C0240F	17–JAN–2003	03–04–1864A	02
04	FL	OSCEOLA COUNTY *	12097C0240F	23–JAN–2003	03–04–0292A	17
04	FL	OSCEOLA COUNTY *	12097C0240F	23–JAN–2003	03–04–1866A	02
04	FL	OSCEOLA COUNTY *	12097C0240F	23–JAN–2003	03–04–1868A	02
04	FL	OSCEOLA COUNTY *	12097C0240F	17–MAR–2003	03–04–3708A	02
04	FL	OSCEOLA COUNTY *	12097C0240F	17–MAR–2003	03–04–3710A	02
04	FL	OSCEOLA COUNTY *	12097C0240F	17–MAR–2003	03–04–3714A	02
04	FL	OSCEOLA COUNTY *	12097C0240F	21–MAR–2003	03–04–0290A	01
04	FL	OSCEOLA COUNTY *	12097C0240F	27–MAR–2003	03–04–3716A	02
04	FL	OSCEOLA COUNTY *	12097C0240F	27–MAR–2003	03–04–3720A	02
04	FL	OSCEOLA COUNTY *	12097C0240F	27–MAR–2003	03–04–3722A	02
04	FL	OSCEOLA COUNTY *	12097C0240F	18–APR–2003	03–04–4682A	02
04	FL	OSCEOLA COUNTY *	12097C0240F	24–APR–2003	03–04–4684A	02
04	FL	OSCEOLA COUNTY *	12097C0240F	24–APR–2003	03–04–4686A	02
04	FL	OSCEOLA COUNTY *	12097C0400F	17–JAN–2003	03–04–1862A	02
04	FL	OSCEOLA COUNTY *	12097C0400F	23–JAN–2003	03–04–1870A	02
04	FL	OSCEOLA COUNTY *	12097C0400F	07–MAR–2003	03–04–3534A	02
04	FL	OSCEOLA COUNTY *	12097C0400F	27–MAR–2003	03–04–3724A	02
04	FL	OSCEOLA COUNTY *	12097C0400F	27–MAR–2003	03–04–3726A	02
04	FL	OSCEOLA COUNTY *	12097C0400F	27–MAR–2003	03–04–3728A	02
04	FL	OSCEOLA COUNTY *	12097C0400F	24–APR–2003	03–04–4414A	02
04	FL	OVIEDO, CITY OF	12117C0170E	13–FEB–2003	03–04–2744A	02
04	FL	PALM BEACH COUNTY *	1201920155B	11–APR–2003	03–04–3814A	02
04	FL	PALM BEACH COUNTY *	1201920190B	18–APR–2003	03–04–4358A	02
04	FL	PALM BEACH GARDENS, CITY OF	1202210001C	23–JAN–2003	03–04–1106A	02
04	FL	PALM COAST, CITY OF	1200850045B	02–JAN–2003	03–04–0804A	02

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04	FL	PANAMA CITY BEACH, CITY OF	12005C0304G	14–FEB–2003	03–04–1956A	02
04	FL	PANAMA CITY, CITY OF	12005C0331G	06–FEB–2003	03–04–2280A	02
04	FL	PANAMA CITY, CITY OF	12005C0331G	11–APR–2003	03–04–4390A	02
04	FL	PANAMA CITY, CITY OF	12005C0335G	06–FEB–2003	03–04–2280A	02
04	FL	PANAMA CITY, CITY OF	12005C0342G	20–FEB–2003	03–04–2736A	02
04	FL	PANAMA CITY, CITY OF	12005C0342G	07–MAR–2003	03–04–4096A	02
04	FL	PANAMA CITY, CITY OF	12005C0344G	24–MAR–2003	03–04–4152A	02
04	FL	PANAMA CITY, CITY OF	12005C0344G	03–APR–2003	03–04–3362A	02
04	FL	PANAMA CITY, CITY OF	12005C0344G	17–APR–2003	03–04–3924A	02
04	FL	PARKER, CITY OF	12005C0426G	20–FEB–2003	03–04–2854A	02
04	FL	PARKLAND, CITY OF	12011C0085F	02–APR–2003	03–04–203P	05
04	FL	PARKLAND, CITY OF	12011C0105F	02–APR–2003	03–04–203P	05
04	FL	PASCO COUNTY *	1202300185D	16–JAN–2003	03–04–1162A	02
04	FL	PASCO COUNTY *	1202300185D	17–JAN–2003	03–04–2170A	02
04	FL	PASCO COUNTY *	1202300189C	04–APR–2003	03–04–4002A	02
04	FL	PASCO COUNTY *	1202300195D	02–JAN–2003	03–04–0698A	01
04	FL	PASCO COUNTY *	1202300195D	14–FEB–2003	03–04–2782A	02
04	FL	PASCO COUNTY *	1202300195D	20–MAR–2003	03–04–3664A	02
04	FL	PASCO COUNTY *	1202300195D	04–APR–2003	03–04–3870A	02
04	FL	PASCO COUNTY *	1202300205D	24–APR–2003	03–04–4714A	02
04	FL	PASCO COUNTY *	1202300215D	07–FEB–2003	03–04–1844A	02
04	FL	PASCO COUNTY *	1202300250E	24–JAN–2003	03–04–1622A	01
04	FL	PASCO COUNTY *	1202300335C	28–FEB–2003	03–04–2106A	01
04	FL	PASCO COUNTY *	1202300335C	13–MAR–2003	03–04–3356A	02
04	FL	PASCO COUNTY *	1202300335C	13–MAR–2003	03–04–3366A	02
04	FL	PASCO COUNTY *	1202300352C	13–FEB–2003	02–04–8102A	02
04	FL	PASCO COUNTY *	1202300352C	21–MAR–2003	03–04–3488A	02
04	FL	PASCO COUNTY *	1202300353C	02–JAN–2003	03–04–1276A	02
04	FL	PASCO COUNTY *	1202300353C	24–APR–2003	03–04–4832A	02
04	FL	PASCO COUNTY *	1202300354D	03–JAN–2003	03–04–1164A	02
04	FL	PASCO COUNTY *	1202300354D	20–FEB–2003	03–04–2612A	02
04	FL	PASCO COUNTY *	1202300360D	02–JAN–2003	03–04–0954A	02
04	FL	PASCO COUNTY *	1202300360D	02–JAN–2003	03–04–1278A	02
04	FL	PASCO COUNTY *	1202300360D	17–JAN–2003	03–04–2220A	01
04	FL	PASCO COUNTY *	1202300360D	23–JAN–2003	03–04–1182A	01
04	FL	PASCO COUNTY *	1202300360D	14–FEB–2003	03–04–2608A	02
04	FL	PASCO COUNTY *	1202300360D	14–FEB–2003	03–04–2610A	02
04	FL	PASCO COUNTY *	1202300360D	20–FEB–2003	03–04–2852A	02
04	FL	PASCO COUNTY *	1202300360D	26–FEB–2003	03–04–2944A	02
04	FL	PASCO COUNTY *	1202300360D	20–MAR–2003	03–04–2796A	01
04	FL	PASCO COUNTY *	1202300360D	21–MAR–2003	03–04–3876A	02
04	FL	PASCO COUNTY *	1202300360D	28–MAR–2003	03–04–3872A	02
04	FL	PASCO COUNTY *	1202300360D	24–APR–2003	03–04–3516A	01
04	FL	PASCO COUNTY *	1202300361C	17–APR–2003	03–04–4422A	02
04	FL	PASCO COUNTY *	1202300362D	28–MAR–2003	03–04–3874A	02
04	FL	PASCO COUNTY *	1202300362D	03–APR–2003	03–04–2720A	02
04	FL	PASCO COUNTY *	1202300370D	23–JAN–2003	03–04–1182A	01
04	FL	PASCO COUNTY *	1202300410E	06–MAR–2003	03–04–2764A	01
04	FL	PASCO COUNTY *	1202300410E	16–APR–2003	03–04–4424A	02
04	FL	PASCO COUNTY *	1202300425E	10–JAN–2003	03–04–1210A	01
04	FL	PASCO COUNTY *	1202300425E	23–JAN–2003	03–04–0544A	01
04	FL	PASCO COUNTY *	1202300430E	30–JAN–2003	03–04–2014A	01
04	FL	PASCO COUNTY *	1202300430E	20–FEB–2003	03–04–2010A	01
04	FL	PASCO COUNTY *	1202300450E	30–JAN–2003	03–04–2014A	01
04	FL	PASCO COUNTY *	1202300450E	20–FEB–2003	03–04–2298A	01
04	FL	PASCO COUNTY *	1202300450E	27–MAR–2003	03–04–0008A	01
04	FL	PASCO COUNTY *	1202300450E	28–MAR–2003	03–04–2414A	01
04	FL	PASCO COUNTY *	1202300450E	17–APR–2003	03–04–5378A	02
04	FL	PEMBROKE PINES, CITY OF	12011C0290F	17–APR–2003	03–04–4290A	02
04	FL	PINELLAS COUNTY *	1251390039C	13–MAR–2003	03–04–3076A	02
04	FL	PINELLAS COUNTY *	1251390069D	17–APR–2003	03–04–3878A	02
04	FL	PINELLAS COUNTY *	1251390079C	02–JAN–2003	03–04–1290A	02
04	FL	PINELLAS COUNTY *	1251390182C	23–JAN–2003	03–04–1842A	02
04	FL	PINELLAS COUNTY *	1251390286E	19–FEB–2003	03–04–013P	05
04	FL	PLANTATION, CITY OF	12011C0215F	20–FEB–2003	03–04–1706A	02
04	FL	PLANTATION, CITY OF	12011C0215F	25–APR–2003	03–04–4410A	02
04	FL	POLK COUNTY*	12105C0125F	20–FEB–2003	03–04–051P	05
04	FL	POLK COUNTY*	12105C0145F	24–JAN–2003	03–04–0714A	02
04	FL	POLK COUNTY*	12105C0175F	06–MAR–2003	03–04–2880A	02
04	FL	POLK COUNTY*	12105C0250F	20–FEB–2003	03–04–051P	05
04	FL	POLK COUNTY*	12105C0250F	11–APR–2003	03–04–4372A	02
04	FL	POLK COUNTY*	12105C0275F	16–JAN–2003	03–04–0866A	01
04	FL	POLK COUNTY*	12105C0275F	26–FEB–2003	03–04–3122A	01

Region	State	Community	Map panel	Determination date	Case No.	Type
04	FL	POLK COUNTY*	12105C0281F	11–APR–2003	03–04–3082A	02
04	FL	POLK COUNTY*	12105C0294F	10–APR–2003	03–04–077P	05
04	FL	POLK COUNTY*	12105C0302F	10–JAN–2003	03–04–1496A	02
04	FL	POLK COUNTY*	12105C0302F	03–APR–2003	03–04–3760A	02
04	FL	POLK COUNTY*	12105C0302F	03–APR–2003	03–04–3996A	02
04	FL	POLK COUNTY*	12105C0345F	10–JAN–2003	03–04–0056A	02
04	FL	POLK COUNTY*	12105C0425F	16–JAN–2003	03–04–0866A	01
04	FL	POLK COUNTY*	12105C0425F	26–FEB–2003	03–04–3122A	01
04	FL	POLK COUNTY*	12105C0425F	06–MAR–2003	03–04–2516A	02
04	FL	POLK COUNTY*	12105C0425F	20–MAR–2003	03–04–3706A	02
04	FL	POLK COUNTY*	12105C0425F	27–MAR–2003	03–04–3718A	02
04	FL	POLK COUNTY*	12105C0425F	24–APR–2003	03–04–4688A	02
04	FL	POLK COUNTY*	12105C0460F	30–JAN–2003	03–04–1358A	01
04	FL	POLK COUNTY*	12105C0460F	13–MAR–2003	03–04–3544A	02
04	FL	POLK COUNTY*	12105C0460F	04–APR–2003	03–04–3940A	02
04	FL	POLK COUNTY*	12105C0470F	10–APR–2003	03–04–199P	05
04	FL	POLK COUNTY*	12105C0480F	24–JAN–2003	03–04–2104A	02
04	FL	POLK COUNTY*	12105C0480F	03–APR–2003	03–04–3812A	02
04	FL	POLK COUNTY*	12105C0480F	11–APR–2003	03–04–4362A	02
04	FL	POLK COUNTY*	12105C0490F	10–APR–2003	03–04–199P	05
04	FL	POLK COUNTY*	12105C0510F	10–JAN–2003	03–04–1442A	02
04	FL	POLK COUNTY*	12105C0510F	06–FEB–2003	03–04–2276A	02
04	FL	POLK COUNTY*	12105C0510F	13–FEB–2003	03–04–2616A	02
04	FL	POLK COUNTY*	12105C0510F	14–APR–2003	03–04–4464A	02
04	FL	POLK COUNTY*	12105C0535F	15–JAN–2003	03–04–1664A	02
04	FL	POLK COUNTY*	12105C0535F	22–JAN–2003	02–04–305P	05
04	FL	POLK COUNTY*	12105C0535F	18–APR–2003	03–04–4604A	02
04	FL	POLK COUNTY*	12105C0590F	16–JAN–2003	03–04–1712A	02
04	FL	POLK COUNTY*	12105C0625F	10–JAN–2003	03–04–1520A	02
04	FL	POLK COUNTY*	12105C0710F	30–JAN–2003	03–04–2214A	02
04	FL	POLK COUNTY*	12105C0755F	21–MAR–2003	03–04–3592A	02
04	FL	POLK COUNTY*	12105C0760F	06–FEB–2003	03–04–0958A	02
04	FL	POLK COUNTY*	12105C0770F	10–APR–2003	03–04–3194A	02
04	FL	POLK COUNTY*	12105C0825F	08–JAN–2003	02–04–9486A	02
04	FL	POLK COUNTY*	12105C0885F	10–JAN–2003	03–04–0072A	02
04	FL	POLK COUNTY*	12105C0925F	13–FEB–2003	03–04–2642A	02
04	FL	PORT ORANGE, CITY OF	12127C0368G	31–JAN–2003	03–04–1890A	01
04	FL	PORT ORANGE, CITY OF	12127C0369G	23–JAN–2003	03–04–1880A	02
04	FL	PORT ORANGE, CITY OF	12127C0388G	23–JAN–2003	03–04–1880A	02
04	FL	PORT ORANGE, CITY OF	12127C0508G	30–JAN–2003	03–04–1480A	01
04	FL	PORT ORANGE, CITY OF	12127C0509G	13–FEB–2003	03–04–1786A	01
04	FL	PORT ORANGE, CITY OF	12127C0516G	30–JAN–2003	03–04–1480A	01
04	FL	PORT ORANGE, CITY OF	12127C0525G	13–FEB–2003	03–04–1786A	01
04	FL	PORT ORANGE, CITY OF	12127C0525G	04–APR–2003	03–04–4426A	01
04	FL	PORT ORANGE, CITY OF	12127C0528G	14–FEB–2003	03–04–3100A	02
04	FL	PORT RICHEY, CITY OF	1202340003B	26–FEB–2003	03–04–2064A	02
04	FL	PUTNAM COUNTY *	1202720150B	24–APR–2003	03–04–4814A	02
04	FL	PUTNAM COUNTY *	1202720205A	03–APR–2003	03–04–4150A	02
04	FL	ROCKLEDGE, CITY OF	12009C0365E	28–MAR–2003	03–04–4124A	01
04	FL	ROCKLEDGE, CITY OF	12009C0365E	28–MAR–2003	03–04–4126A	01
04	FL	SANFORD, CITY OF	12117C0040E	08–JAN–2003	03–04–0382A	01
04	FL	SANFORD, CITY OF	12117C0045E	30–JAN–2003	03–04–2124A	02
04	FL	SANTA ROSA COUNTY *	1202740280B	03–APR–2003	03–04–3888A	02
04	FL	SANTA ROSA COUNTY *	1202740341C	14–APR–2003	03–04–4492A	02
04	FL	SANTA ROSA COUNTY *	1202740358E	14–APR–2003	03–04–3826A	02
04	FL	SARASOTA COUNTY *	1251440151D	27–MAR–2003	03–04–1152A	01
04	FL	SARASOTA COUNTY *	1251440161E	15–JAN–2003	03–04–0180A	02
04	FL	SARASOTA COUNTY *	1251440163E	06–MAR–2003	03–04–3016A	02
04	FL	SARASOTA COUNTY *	1251440332E	28–FEB–2003	03–04–1696A	02
04	FL	SARASOTA COUNTY *	1251440334E	25–APR–2003	03–04–4632A	02
04	FL	SARASOTA COUNTY *	1251440342E	13–MAR–2003	03–04–2146A	02
04	FL	SARASOTA COUNTY *	1251440342E	20–MAR–2003	03–04–3018A	02
04	FL	SARASOTA COUNTY *	1251440342E	25–APR–2003	03–04–2310A	01
04	FL	SARASOTA COUNTY *	1251440451D	31–JAN–2003	03–04–2022A	02
04	FL	SARASOTA, CITY OF	1251500009B	27–MAR–2003	03–04–3824A	02
04	FL	SEMINOLE COUNTY*	12117C0140E	08–JAN–2003	03–04–1280A	02
04	FL	SEMINOLE COUNTY*	12117C0140E	13–FEB–2003	03–04–2292A	02
04	FL	SEMINOLE COUNTY*	12117C0145E	16–JAN–2003	03–04–1770A	02
04	FL	SEMINOLE COUNTY*	12117C0145E	13–FEB–2003	03–04–2564A	02
04	FL	SEMINOLE COUNTY*	12117C0145E	26–FEB–2003	03–04–2502A	02
04	FL	SEMINOLE COUNTY*	12117C0145E	17–MAR–2003	03–04–3636A	02
04	FL	SEMINOLE COUNTY*	12117C0145E	27–MAR–2003	03–04–3230A	02
04	FL	SOUTH MIAMI, CITY OF	12025C0276J	16–JAN–2003	03–04–1758A	02

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04	FL	ST. CLOUD, CITY OF	12097C0252F	20–FEB–2003	03–04–0506A	02
04	FL	ST. JOHNS COUNTY *	1251470085D	03–JAN–2003	03–04–0618A	02
04	FL	ST. JOHNS COUNTY *	1251470085D	21–MAR–2003	03–04–3256A	02
04	FL	ST. JOHNS COUNTY *	1251470085D	10–APR–2003	03–04–3764A	02
04	FL	ST. JOHNS COUNTY *	1251470090D	30–JAN–2003	03–04–1752A	01
04	FL	ST. JOHNS COUNTY *	1251470090D	14–FEB–2003	03–04–2154A	02
04	FL	ST. JOHNS COUNTY *	1251470090D	06–MAR–2003	03–04–1590A	01
04	FL	ST. JOHNS COUNTY *	1251470090D	06–MAR–2003	03–04–3112A	01
04	FL	ST. JOHNS COUNTY *	1251470090D	06–MAR–2003	03–04–3114A	01
04	FL	ST. JOHNS COUNTY *	1251470090D	03–APR–2003	03–04–2470A	01
04	FL	ST. JOHNS COUNTY *	1251470090D	18–APR–2003	03–04–4266C	01
04	FL	ST. JOHNS COUNTY *	1251470095D	30–JAN–2003	03–04–1752A	01
04	FL	ST. JOHNS COUNTY *	1251470095D	03–APR–2003	03–04–2470A	01
04	FL	ST. JOHNS COUNTY *	1251470138D	07–FEB–2003	03–04–1964A	02
04	FL	ST. LUCIE COUNTY *	12111C0089G	21–FEB–2003	03–04–0960A	02
04	FL	SUMTER COUNTY *	1202960075B	21–FEB–2003	03–04–1342A	02
04	FL	SUNRISE, CITY OF	12011C0185F	13–MAR–2003	03–04–2890A	02
04	FL	SUNRISE, CITY OF	12011C0185F	13–MAR–2003	03–04–2892A	02
04	FL	TALLAHASSEE, CITY OF	12073C0282D	25–MAR–2003	02–04–183X	05
04	FL	TALLAHASSEE, CITY OF	12073C0282D	03–APR–2003	03–04–3886A	02
04	FL	TALLAHASSEE, CITY OF	12073C0284D	25–MAR–2003	02–04–183X	05
04	FL	TAMARAC, CITY OF	12011C0185F	20–MAR–2003	03–04–4428A	01
04	FL	TAMARAC, CITY OF	12011C0205F	24–APR–2003	03–04–4692A	01
04	FL	TAMPA, CITY OF	1201120095C	18–APR–2003	03–04–4168A	01
04	FL	TAMPA, CITY OF	1201140022C	24–APR–2003	03–04–5216A	02
04	FL	TAMPA, CITY OF	1201140026C	20–MAR–2003	03–04–3788A	01
04	FL	TAMPA, CITY OF	1201140038C	02–JAN–2003	03–04–1042A	01
04	FL	TAMPA, CITY OF	1201140043C	13–FEB–2003	03–04–2844A	02
04	FL	TARPON SPRINGS, CITY OF	1202590006B	06–MAR–2003	03–04–2550A	02
04	FL	TAVARES, CITY OF	12069C0345D	14–FEB–2003	03–04–1030A	02
04	FL	TAVARES, CITY OF	12069C0345D	06–MAR–2003	03–04–2136A	02
04	FL	TAVARES, CITY OF	12069C0345D	17–MAR–2003	03–04–3442A	02
04	FL	TAVARES, CITY OF	12069C0345D	03–APR–2003	03–04–2792A	02
04	FL	TAVARES, CITY OF	12069C0345D	10–APR–2003	03–04–4094A	02
04	FL	TAVARES, CITY OF	12069C0355D	20–FEB–2003	03–04–2818A	02
04	FL	TAVARES, CITY OF	12069C0361D	03–APR–2003	03–04–2792A	02
04	FL	TAVARES, CITY OF	12069C0362D	10–JAN–2003	03–04–0760A	02
04	FL	TITUSVILLE, CITY OF	12009C0180E	08–JAN–2003	03–04–1848A	02
04	FL	TITUSVILLE, CITY OF	12009C0180E	08–JAN–2003	03–04–1912A	02
04	FL	TITUSVILLE, CITY OF	12009C0180E	16–JAN–2003	03–04–1494A	02
04	FL	TITUSVILLE, CITY OF	12009C0180E	23–JAN–2003	03–04–1414A	01
04	FL	VENICE, CITY OF	1251440331E	20–FEB–2003	03–04–1076A	01
04	FL	VENICE, CITY OF	1251440332E	20–FEB–2003	03–04–1076A	01
04	FL	VOLUSIA COUNTY*	12127C0042G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0044G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0064G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0200G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0200H	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0202G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0202H	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0203H	24–APR–2003	03–04–5150A	02
04	FL	VOLUSIA COUNTY*	12127C0211G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0211H	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0212G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0212H	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0213G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0213H	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0325G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0350G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0363G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0368G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0389G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0460G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0470G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0508G	23–JAN–2003	03–04–0348A	02
04	FL	VOLUSIA COUNTY*	12127C0508G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0509G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0516G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0525G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0540G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0540G	13–MAR–2003	03–04–2382A	02
04	FL	VOLUSIA COUNTY*	12127C0543G	20–FEB–2003	03–04–2882V	19
04	FL	VOLUSIA COUNTY*	12127C0620G	20–FEB–2003	03–04–2882V	19

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04	FL	VOLUSIA COUNTY*	12127C0650G	20-FEB-2003	03-04-2882V	19
04	FL	VOLUSIA COUNTY*	12127C0685G	20-FEB-2003	03-04-2882V	19
04	FL	VOLUSIA COUNTY*	12127C0700G	20-FEB-2003	03-04-2882V	19
04	FL	VOLUSIA COUNTY*	12127C0755G	20-FEB-2003	03-04-2882V	19
04	FL	VOLUSIA COUNTY*	12127C0760G	20-FEB-2003	03-04-2882V	19
04	FL	VOLUSIA COUNTY*	12127C0780G	20-FEB-2003	03-04-2882V	19
04	FL	VOLUSIA COUNTY*	12127C0795G	27-FEB-2003	03-04-3020A	02
04	FL	VOLUSIA COUNTY*	12127C0825G	20-FEB-2003	03-04-2882V	19
04	FL	WAKULLA COUNTY *	1203150250B	23-JAN-2003	03-04-1970A	02
04	FL	WAKULLA COUNTY *	1203150250B	17-APR-2003	03-04-4342A	02
04	FL	WALTON COUNTY *	12031C0737F	16-JAN-2003	03-04-0854A	02
04	FL	WALTON COUNTY *	12131C0543F	02-JAN-2003	03-04-1112A	02
04	FL	WALTON COUNTY *	12131C0543F	06-MAR-2003	03-04-2748A	02
04	FL	WALTON COUNTY *	12131C0543F	04-APR-2003	03-04-3880A	02
04	FL	WALTON COUNTY *	12131C0737F	16-JAN-2003	03-04-0854A	02
04	FL	WALTON COUNTY *	12131C0737F	25-APR-2003	03-04-5006A	02
04	FL	WEST PALM BEACH, CITY OF	1201920145B	02-JAN-2003	02-04-9438A	01
04	FL	WEST PALM BEACH, CITY OF	1201920150A	26-FEB-2003	03-04-1304A	01
04	FL	WESTON, CITY OF	12011C0190F	10-APR-2003	03-04-4260A	02
04	FL	WESTON, CITY OF	12011C0195F	24-APR-2003	03-04-4216A	02
04	FL	WINDERMERE, TOWN OF	12095C0385E	14-FEB-2003	03-04-3024A	02
04	FL	WINTER GARDEN, CITY OF	12095C0215E	21-FEB-2003	03-04-3382A	01
04	FL	WINTER PARK, CITY OF	12095C0165E	14-FEB-2003	03-04-3118A	02
04	FL	WINTER SPRINGS, CITY OF	12117C0145E	10-JAN-2003	03-04-0054A	02
04	FL	WINTER SPRINGS, CITY OF	12117C0145E	06-MAR-2003	03-04-3526A	02
04	FL	WINTER SPRINGS, CITY OF	12117C0165E	16-JAN-2003	03-04-1708A	02
04	GA	ALBANY, CITY OF	13095C0105D	30-JAN-2003	03-04-2074A	02
04	GA	ALPHARETTA, CITY OF	13121C0054E	17-MAR-2003	03-04-2828AD	02
04	GA	ATLANTA, CITY OF	13121C0163E	21-APR-2003	03-04-4704A	02
04	GA	AUGUSTA, CITY OF	1301580070E	08-JAN-2003	03-04-0264A	02
04	GA	BALDWIN COUNTY*	1300050050B	06-FEB-2003	03-04-3176A	02
04	GA	BALDWIN COUNTY*	1300050050B	27-FEB-2003	03-04-3238A	02
04	GA	BALDWIN COUNTY*	1300050075B	06-FEB-2003	03-04-2432A	02
04	GA	BALDWIN COUNTY*	1300050075B	20-MAR-2003	03-04-3678A	02
04	GA	BARROW COUNTY*	1304970050A	28-MAR-2003	03-04-035P	05
04	GA	BARTOW COUNTY *	13015C0095F	27-FEB-2003	03-04-3454A	02
04	GA	BIBB COUNTY*	1300110010D	05-MAR-2003	03-04-103P	05
04	GA	BULLOCH COUNTY*	1300190300B	24-APR-2003	03-04-3676A	02
04	GA	BURKE COUNTY*	130022300B	27-FEB-2003	03-04-0312A	02
04	GA	CHATHAM COUNTY*	1300300075C	03-FEB-2003	03-04-2002A	02
04	GA	CHATHAM COUNTY*	1300300075C	20-MAR-2003	03-04-2360A	02
04	GA	CLAYTON COUNTY*	1300410035C	18-FEB-2003	03-04-1450A	02
04	GA	CLAYTON COUNTY*	1300410065B	24-APR-2003	03-04-4238A	02
04	GA	COBB COUNTY*	13067C0025F	23-JAN-2003	03-04-1660A	02
04	GA	COBB COUNTY*	13067C0025F	03-FEB-2003	03-04-2160A	02
04	GA	COBB COUNTY*	13067C0025F	06-FEB-2003	03-04-0556A	02
04	GA	COBB COUNTY*	13067C0025F	27-FEB-2003	03-04-1828A	01
04	GA	COBB COUNTY*	13067C0025F	07-APR-2003	03-04-2244A	02
04	GA	COBB COUNTY*	13067C0030F	20-MAR-2003	03-04-1328A	02
04	GA	COBB COUNTY*	13067C0030F	07-APR-2003	03-04-3838A	02
04	GA	COBB COUNTY*	13067C0035F	30-JAN-2003	03-04-2344A	02
04	GA	COBB COUNTY*	13067C0035F	03-MAR-2003	03-04-3414A	02
04	GA	COBB COUNTY*	13067C0035F	13-MAR-2003	03-04-3276A	02
04	GA	COBB COUNTY*	13067C0035F	20-MAR-2003	03-04-3456A	02
04	GA	COBB COUNTY*	13067C0035F	03-APR-2003	03-04-1122A	02
04	GA	COBB COUNTY*	13067C0035F	03-APR-2003	03-04-4316A	02
04	GA	COBB COUNTY*	13067C0035F	03-APR-2003	03-04-4318A	02
04	GA	COBB COUNTY*	13067C0035F	10-APR-2003	03-04-3462A	01
04	GA	COBB COUNTY*	13067C0035F	10-APR-2003	03-04-4232A	02
04	GA	COBB COUNTY*	13067C0035F	17-APR-2003	03-04-3952A	02
04	GA	COBB COUNTY*	13067C0035F	17-APR-2003	03-04-4322A	02
04	GA	COBB COUNTY*	13067C0035F	17-APR-2003	03-04-5184A	02
04	GA	COBB COUNTY*	13067C0040F	16-JAN-2003	03-04-1034A	02
04	GA	COBB COUNTY*	13067C0040F	06-FEB-2003	03-04-3164A	02
04	GA	COBB COUNTY*	13067C0040F	07-APR-2003	03-04-1504A	02
04	GA	COBB COUNTY*	13067C0045F	02-JAN-2003	03-04-1214A	02
04	GA	COBB COUNTY*	13067C0045F	30-JAN-2003	03-04-2498A	02
04	GA	COBB COUNTY*	13067C0045F	07-APR-2003	03-04-2934A	02
04	GA	COBB COUNTY*	13067C0045F	10-APR-2003	03-04-1816A	02
04	GA	COBB COUNTY*	13067C0050F	16-JAN-2003	03-04-0048A	02
04	GA	COBB COUNTY*	13067C0050F	21-JAN-2003	03-04-1830A	02
04	GA	COBB COUNTY*	13067C0050F	24-FEB-2003	03-04-2968A	02
04	GA	COBB COUNTY*	13067C0050F	20-MAR-2003	03-04-1742A	02

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04	GA	COBB COUNTY*	13067C0050F	27-MAR-2003	03-04-3580A	02
04	GA	COBB COUNTY*	13067C0050F	03-APR-2003	03-04-4706A	02
04	GA	COBB COUNTY*	13067C0055F	13-FEB-2003	03-04-0820A	02
04	GA	COBB COUNTY*	13067C0055F	20-MAR-2003	03-04-3754A	02
04	GA	COBB COUNTY*	13067C0060F	28-APR-2003	03-04-5290A	02
04	GA	COBB COUNTY*	13067C0070F	23-JAN-2003	03-04-0274A	02
04	GA	COBB COUNTY*	13067C0070F	23-JAN-2003	03-04-2412A	02
04	GA	COBB COUNTY*	13067C0075F	27-MAR-2003	03-04-3840A	02
04	GA	COBB COUNTY*	13067C0075F	07-APR-2003	03-04-2114A	02
04	GA	COBB COUNTY*	13067C0075F	10-APR-2003	03-04-1962A	17
04	GA	COBB COUNTY*	13067C0085F	03-APR-2003	03-04-3986A	02
04	GA	COBB COUNTY*	13067C0090F	24-FEB-2003	03-04-2506A	02
04	GA	COBB COUNTY*	13067C0090F	13-MAR-2003	03-04-2932A	02
04	GA	COBB COUNTY*	13067C0090F	24-MAR-2003	03-04-1976A	02
04	GA	COBB COUNTY*	13067C0095F	03-APR-2003	03-04-3986A	02
04	GA	COLUMBIA COUNTY*	1300590095B	30-JAN-2003	03-04-1264A	02
04	GA	COLUMBIA COUNTY*	1300590095B	06-FEB-2003	03-04-1444A	02
04	GA	COLUMBIA COUNTY*	1300590125A	10-APR-2003	03-04-4442A	02
04	GA	COLUMBUS, CITY OF	1351580045D	03-JAN-2003	03-04-0186A	02
04	GA	COLUMBUS, CITY OF	1351580045D	23-JAN-2003	03-04-0838A	02
04	GA	COLUMBUS, CITY OF	1351580050D	06-FEB-2003	03-04-0836A	02
04	GA	COLUMBUS, CITY OF	1351580050D	24-FEB-2003	03-04-2930A	02
04	GA	COLUMBUS, CITY OF	1351580050D	17-APR-2003	03-04-4076A	02
04	GA	COVINGTON, CITY OF	1301440004B	27-JAN-2003	03-04-1586A	02
04	GA	COWETA COUNTY *	1302980100A	24-FEB-2003	03-04-1572A	02
04	GA	COWETA COUNTY *	1302980125A	20-MAR-2003	03-04-3286A	02
04	GA	CUMMING, CITY OF	13117C0095C	03-APR-2003	03-04-3432A	02
04	GA	DAWSON COUNTY	1303040125A	28-APR-2003	03-04-4948A	02
04	GA	DE KALB COUNTY *	13089C0010H	16-JAN-2003	03-04-0972A	02
04	GA	DE KALB COUNTY *	13089C0016H	27-MAR-2003	03-04-0744A	02
04	GA	DE KALB COUNTY *	13089C0066H	17-APR-2003	03-04-4138A	02
04	GA	DE KALB COUNTY *	13089C0069H	08-JAN-2003	03-04-2068A	02
04	GA	DE KALB COUNTY *	13089C0086H	06-FEB-2003	03-04-1826A	02
04	GA	DE KALB COUNTY *	13089C0086H	06-FEB-2003	03-04-2696A	02
04	GA	DE KALB COUNTY *	13089C0086H	17-MAR-2003	03-04-2964A	02
04	GA	DE KALB COUNTY *	13089C0088H	08-JAN-2003	03-04-0928A	02
04	GA	DE KALB COUNTY *	13089C0112H	24-MAR-2003	03-04-3490A	02
04	GA	DE KALB COUNTY *	13089C0113H	18-FEB-2003	03-04-2440A	02
04	GA	DE KALB COUNTY *	13089C0113H	27-MAR-2003	03-04-3852A	02
04	GA	DE KALB COUNTY *	13089C0131H	17-APR-2003	03-04-3422A	02
04	GA	DE KALB COUNTY *	13089C0142H	27-JAN-2003	03-04-2246A	02
04	GA	DE KALB COUNTY *	13089C0162H	13-MAR-2003	03-04-2690A	02
04	GA	DE KALB COUNTY *	13089C0162H	17-APR-2003	03-04-3954A	02
04	GA	DE KALB COUNTY *	13089C0169H	17-APR-2003	03-04-4654A	02
04	GA	DE KALB COUNTY *	13089C0176H	03-APR-2003	03-04-4400A	02
04	GA	DE KALB COUNTY *	13089C0188H	08-JAN-2003	03-04-2072A	02
04	GA	DOUGLAS COUNTY *	1303060030A	30-JAN-2003	03-04-0786A	02
04	GA	DUBLIN, CITY OF	1302170002B	10-MAR-2003	03-04-3258A	02
04	GA	DULUTH, CITY OF	1300980001C	30-JAN-2003	03-04-1064A	02
04	GA	DULUTH, CITY OF	1300980001C	24-APR-2003	03-04-2554A	02
04	GA	FANNIN COUNTY*	13111C0185D	06-MAR-2003	03-04-3460A	02
04	GA	FANNIN COUNTY*	13111C0205D	10-APR-2003	03-04-4320A	02
04	GA	FANNIN COUNTY*	13111C0285D	27-FEB-2003	03-04-3576A	02
04	GA	FAYETTE COUNTY *	13113C0040D	06-FEB-2003	03-04-1662A	02
04	GA	FAYETTE COUNTY *	13113C0040D	24-APR-2003	03-04-4234A	02
04	GA	FLOYD COUNTY*	13115C0195D	23-JAN-2003	03-04-1688A	02
04	GA	FORSYTH COUNTY *	13117C0075C	06-FEB-2003	03-04-2188A	02
04	GA	FORSYTH COUNTY *	13117C0075C	27-MAR-2003	03-04-0736A	02
04	GA	FORSYTH COUNTY *	13117C0090C	17-APR-2003	03-04-3856A	02
04	GA	FORSYTH COUNTY *	13117C0125C	16-JAN-2003	03-04-0330A	02
04	GA	FORSYTH COUNTY *	13117C0125C	23-JAN-2003	03-04-1750A	02
04	GA	FORSYTH COUNTY *	13117C0125C	20-MAR-2003	03-04-3800A	02
04	GA	FORSYTH COUNTY *	13117C0125C	10-APR-2003	03-04-3088A	02
04	GA	FORSYTH COUNTY *	13117C0155C	27-FEB-2003	03-04-3134A	02
04	GA	FORSYTH COUNTY *	13117C0160C	13-MAR-2003	03-04-2830A	02
04	GA	FORT OGLETHORPE, CITY OF	1300280025D	10-APR-2003	03-04-4448A	01
04	GA	FULTON COUNTY *	13121C0054E	17-MAR-2003	03-04-2828A	02
04	GA	FULTON COUNTY *	13121C0087E	24-JAN-2003	03-04-2250A	02
04	GA	FULTON COUNTY *	13121C0317E	03-FEB-2003	03-04-2592A	01
04	GA	GEORGETOWN, CITY OF	1303790001B	31-MAR-2003	03-04-4614A	02
04	GA	GILMER COUNTY*	13123C0060C	31-MAR-2003	03-04-4440A	02
04	GA	GILMER COUNTY*	13123C0090B	27-FEB-2003	03-04-3158A	02
04	GA	GILMER COUNTY*	13123C0100B	10-MAR-2003	03-04-2162A	02

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04	GA	GWINNETT COUNTY *	1303220055C	03–MAR–2003	03–04–3528A	02
04	GA	GWINNETT COUNTY *	1303220080C	03–APR–2003	03–04–3214A	01
04	GA	GWINNETT COUNTY *	1303220085C	07–APR–2003	03–04–4324A	02
04	GA	GWINNETT COUNTY *	1303220095C	30–JAN–2003	03–04–2338A	02
04	GA	GWINNETT COUNTY *	1303220095C	10–FEB–2003	03–04–3032A	02
04	GA	GWINNETT COUNTY *	1303220155D	02–JAN–2003	03–04–1542A	02
04	GA	GWINNETT COUNTY *	1303220160E	21–FEB–2003	03–04–091P	05
04	GA	GWINNETT COUNTY *	1303220160E	03–APR–2003	03–04–4092A	02
04	GA	GWINNETT COUNTY *	1303220165B	10–APR–2003	03–04–3184A	02
04	GA	GWINNETT COUNTY *	1303220180C	22–JAN–2003	03–04–113P	05
04	GA	GWINNETT COUNTY *	1303220185C	10–JAN–2003	03–04–1066A	02
04	GA	GWINNETT COUNTY *	1303220185C	24–APR–2003	03–04–4736A	02
04	GA	GWINNETT COUNTY *	1303220190C	13–MAR–2003	03–04–3324A	02
04	GA	GWINNETT COUNTY *	1303220280C	10–MAR–2003	03–04–3054A	02
04	GA	GWINNETT COUNTY *	1303220305C	06–FEB–2003	03–04–2800A	02
04	GA	HABERSHAM COUNTY *	1304580070B	03–APR–2003	03–04–1262A	02
04	GA	HABERSHAM COUNTY *	1304580075B	30–JAN–2003	03–04–2874A	02
04	GA	HALL COUNTY *	13139C0175E	03–FEB–2003	03–04–2076A	02
04	GA	HARRIS COUNTY*	1303380150A	23–JAN–2003	03–04–1716A	02
04	GA	HARRIS COUNTY*	1303380150A	23–JAN–2003	03–04–2356A	02
04	GA	HARRIS COUNTY*	1303380150A	06–MAR–2003	03–04–2870A	02
04	GA	HARRIS COUNTY*	1303380150A	27–MAR–2003	03–04–3982A	02
04	GA	HARRIS COUNTY*	1303380150A	07–APR–2003	03–04–1714A	02
04	GA	HARRIS COUNTY*	1303380150A	10–APR–2003	03–04–2836A	02
04	GA	HARRIS COUNTY*	1303380225A	14–APR–2003	03–04–1978A	02
04	GA	HENRY COUNTY *	1304680065B	30–JAN–2003	03–04–1538A	02
04	GA	HENRY COUNTY *	1304680150B	27–FEB–2003	03–04–1188A	02
04	GA	HENRY COUNTY *	13247C0162C	27–FEB–2003	03–04–3392AD	02
04	GA	JACKSON COUNTY	1303450200A	10–APR–2003	03–04–057P	05
04	GA	JEFFERSON, CITY OF	1301120005B	10–APR–2003	03–04–057P	05
04	GA	LENOX, TOWN OF	13075C0050B	13–MAR–2003	03–04–3616A	02
04	GA	LILBURN, CITY OF	1301000001B	16–JAN–2003	03–04–0748A	02
04	GA	LILBURN, CITY OF	1301000001B	10–APR–2003	03–04–0930A	02
04	GA	LONG COUNTY *	1301270125B	10–APR–2003	03–04–2970A	02
04	GA	LUMPKIN COUNTY	1303540145A	16–JAN–2003	03–04–0214A	02
04	GA	MACON, CITY OF	1300110020E	06–MAR–2003	03–04–3030A	02
04	GA	MARIETTA, CITY OF	13067C0035F	17–APR–2003	03–04–5706A	02
04	GA	MARIETTA, CITY OF	13067C0035F	24–APR–2003	03–04–3282A	02
04	GA	MARIETTA, CITY OF	13067C0050F	13–FEB–2003	03–04–2164A	02
04	GA	MARIETTA, CITY OF	13067C0050F	27–MAR–2003	03–04–2488A	02
04	GA	MARIETTA, CITY OF	13067C0050F	24–APR–2003	03–04–2442A	02
04	GA	MONROE COUNTY*	1301380025C	19–FEB–2003	03–04–2960A	02
04	GA	MONROE COUNTY*	1301380025C	03–APR–2003	03–04–4478A	02
04	GA	MORGAN COUNTY*	13211C0095A	24–FEB–2003	03–04–1822A	02
04	GA	MORGAN COUNTY*	13211C0180A	23–JAN–2003	03–04–1762A	02
04	GA	MORGAN COUNTY*	13211C0180A	17–APR–2003	03–04–4368A	02
04	GA	MORGAN COUNTY*	13211C0230A	02–JAN–2003	03–04–1972A	02
04	GA	MORGAN COUNTY*	13211C0350A	23–JAN–2003	03–04–2364A	02
04	GA	MORGAN COUNTY*	13211C0350A	10–FEB–2003	03–04–2694A	02
04	GA	MURRAY COUNTY*	1303660075B	13–FEB–2003	03–04–2872A	02
04	GA	MURRAY COUNTY*	1303660175B	10–APR–2003	03–04–4048A	02
04	GA	NEWTON COUNTY *	1301430085A	02–JAN–2003	03–04–0432A	02
04	GA	PAULDING COUNTY *	13223C0227B	23–JAN–2003	03–04–1402A	02
04	GA	PAULDING COUNTY *	13223C0251B	24–MAR–2003	03–04–2832A	02
04	GA	PEACHTREE CITY, CITY OF	13113C0080D	30–JAN–2003	03–04–1360A	02
04	GA	PULASKI COUNTY	13235C0150C	24–APR–2003	03–04–2834A	02
04	GA	RABUN COUNTY *	1301560050B	17–APR–2003	03–04–3434A	02
04	GA	RICHMOND COUNTY*	1301580020E	27–FEB–2003	03–04–2774A	02
04	GA	RICHMOND COUNTY*	1301580020E	23–APR–2003	03–04–245P	05
04	GA	RICHMOND COUNTY*	1301580020E	28–APR–2003	03–04–4890A	02
04	GA	RICHMOND COUNTY*	1301580060E	24–FEB–2003	03–04–1308A	02
04	GA	RICHMOND COUNTY*	1301580080E	21–APR–2003	03–04–3910A	02
04	GA	RICHMOND HILL, CITY OF	1300180001B	06–MAR–2003	03–04–1242A	02
04	GA	ROCKDALE COUNTY *	13247C0040C	16–JAN–2003	03–04–1834A	02
04	GA	ROCKDALE COUNTY *	13247C0162C	27–FEB–2003	03–04–3392A	02
04	GA	ROSWELL, CITY OF	13121C0034E	10–APR–2003	03–04–3988A	02
04	GA	ROSWELL, CITY OF	13121C0054E	10–APR–2003	03–04–3912A	02
04	GA	ROSWELL, CITY OF	13121C0054E	24–APR–2003	03–04–4546A	02
04	GA	SMYRNA, CITY OF	13067C0070F	16–JAN–2003	03–04–0814A	02
04	GA	SMYRNA, CITY OF	13067C0070F	03–APR–2003	03–04–3684A	02
04	GA	SMYRNA, CITY OF	13067C0075F	30–JAN–2003	03–04–1724A	02
04	GA	SMYRNA, CITY OF	13067C0075F	03–MAR–2003	03–04–1334A	02
04	GA	SUMTER COUNTY*	13261C0350B	02–JAN–2003	03–04–0272A	02

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04	GA	TRION, TOWN OF	1300380005C	10–FEB–2003	03–04–3104A	02
04	GA	UNION COUNTY*	1302540025C	27–FEB–2003	03–04–3328A	02
04	GA	WALTON COUNTY *	13297C0060B	07–APR–2003	03–04–3730A	02
04	GA	WALTON COUNTY *	13297C0080B	10–MAR–2003	03–04–2318A	02
04	GA	WALTON COUNTY *	13297C0100B	23–JAN–2003	03–04–0434A	02
04	GA	WALTON COUNTY *	13297C0100B	27–MAR–2003	03–04–1566A	02
04	GA	WALTON COUNTY *	13297C0100B	27–MAR–2003	03–04–3438A	02
04	GA	WALTON COUNTY *	13297C0100B	24–APR–2003	03–04–5290A	02
04	GA	WARNER ROBINS, CITY OF	1301110005C	03–APR–2003	03–04–4548A	02
04	GA	WHITFIELD COUNTY*	1301930190C	16–JAN–2003	03–04–1882A	02
04	GA	WOODSTOCK, CITY OF	13057C0310C	07–MAR–2003	03–04–2308A	01
04	KY	BOWLING GREEN, CITY OF	21227C0092D	08–JAN–2003	03–04–0550A	17
04	KY	CALLOWAY COUNTY *	2103130005A	24–MAR–2003	03–04–4062A	02
04	KY	CAMPBELL COUNTY *	2100340065B	17–APR–2003	03–04–4312A	02
04	KY	CAMPBELL COUNTY *	2100340080B	17–APR–2003	03–04–4618A	02
04	KY	CAMPBELL COUNTY *	2100340085B	03–FEB–2003	03–04–1616A	02
04	KY	CAMPBELL COUNTY *	2100340090B	17–APR–2003	03–04–4618A	02
04	KY	CARROLL COUNTY*	2100450010B	28–APR–2003	03–04–4848A	02
04	KY	CARTER COUNTY *	2100500180B	13–MAR–2003	03–04–2922A	02
04	KY	CLARK COUNTY*	2102780057B	16–JAN–2003	03–04–1748A	02
04	KY	DAVIESS COUNTY *	21059C0085C	07–APR–2003	03–04–3686A	02
04	KY	DAVIESS COUNTY *	21059C0115C	17–MAR–2003	03–04–2920A	02
04	KY	DAVIESS COUNTY *	21059C0120C	06–MAR–2003	03–04–3036A	01
04	KY	DAVIESS COUNTY *	21059C0260C	06–FEB–2003	03–04–2392A	02
04	KY	DAVIESS COUNTY *	21059C0280C	21–JAN–2003	03–04–1548A	01
04	KY	ELIZABETHTOWN, CITY OF	21093C0153C	03–FEB–2003	03–04–2540A	02
04	KY	FLOYD COUNTY *	2100690030C	17–MAR–2003	03–04–2534A	01
04	KY	GALLATIN COUNTY*	2102810015A	24–FEB–2003	03–04–3058A	02
04	KY	GALLATIN COUNTY*	2102810015A	20–MAR–2003	03–04–2210A	01
04	KY	GALLATIN COUNTY*	2102810020A	13–MAR–2003	03–04–3056A	02
04	KY	GALLATIN COUNTY*	2102810020A	07–APR–2003	03–04–2536A	02
04	KY	GALLATIN COUNTY*	2102810020A	07–APR–2003	03–04–2538A	02
04	KY	GREENUP, CITY OF	2100880001B	10–FEB–2003	03–04–1544A	01
04	KY	JEFFERSON COUNTY*	21111C0010D	06–MAR–2003	03–04–3174A	02
04	KY	JEFFERSON COUNTY*	21111C0015D	24–FEB–2003	03–04–1990A	02
04	KY	JEFFERSON COUNTY*	21111C0020D	10–JAN–2003	03–04–1384A	02
04	KY	JEFFERSON COUNTY*	21111C0020D	17–APR–2003	03–04–4702A	02
04	KY	JEFFERSON COUNTY*	21111C0080D	16–JAN–2003	03–04–1490A	02
04	KY	JEFFERSON COUNTY*	21111C0080D	13–FEB–2003	03–04–1440A	02
04	KY	JEFFERSON COUNTY*	21111C0085D	03–FEB–2003	03–04–2322A	02
04	KY	JEFFERSON COUNTY*	21111C0105D	06–FEB–2003	03–04–2366A	02
04	KY	JEFFERSON COUNTY*	21111C0110D	20–MAR–2003	03–04–3542A	02
04	KY	JEFFERSON COUNTY*	21111C0110D	24–MAR–2003	03–04–3540A	02
04	KY	JEFFERSON COUNTY*	21111C0160D	23–JAN–2003	03–04–1928A	02
04	KY	JEFFERSON COUNTY*	21111C0165D	16–JAN–2003	03–04–0682A	02
04	KY	JEFFERSON COUNTY*	21111C0170D	02–JAN–2003	03–04–0206A	02
04	KY	JEFFERSON COUNTY*	21111C0170D	06–FEB–2003	03–04–0684A	02
04	KY	JEFFERSON COUNTY*	21111C0170D	06–FEB–2003	03–04–2168A	02
04	KY	JEFFERSON COUNTY*	21111C0170D	10–FEB–2003	03–04–0110A	02
04	KY	JEFFERSON COUNTY*	21111C0170D	13–FEB–2003	03–04–2698A	02
04	KY	JEFFERSON COUNTY*	21111C0170D	24–FEB–2003	03–04–2972A	01
04	KY	JEFFERSON COUNTY*	21111C0170D	10–MAR–2003	03–04–3512A	02
04	KY	JEFFERSON COUNTY*	21111C0170D	14–APR–2003	03–04–4554A	02
04	KY	JEFFERSON COUNTY*	21111C0205D	10–JAN–2003	03–04–1492A	02
04	KY	JEFFERSON COUNTY*	21111C0235D	07–APR–2003	03–04–3048A	02
04	KY	JEFFERSON COUNTY*	21111C0245D	17–MAR–2003	03–04–3628A	02
04	KY	LEXINGTON-FAYETTE URBAN COUNTY GOVE	2100670060C	10–FEB–2003	03–04–2254A	02
04	KY	LEXINGTON-FAYETTE URBAN COUNTY GOVE	2100670060C	27–FEB–2003	03–04–2256A	02
04	KY	LEXINGTON-FAYETTE URBAN COUNTY GOVE	2100670090C	10–JAN–2003	03–04–1386A	02
04	KY	LEXINGTON-FAYETTE URBAN COUNTY GOVE	2100670090C	23–JAN–2003	03–04–1982A	01
04	KY	LEXINGTON-FAYETTE URBAN COUNTY GOVE	2100670125C	06–MAR–2003	03–04–3670A	02
04	KY	LOUISVILLE, CITY OF	21111C0090D	23–JAN–2003	03–04–1884A	01
04	KY	LOUISVILLE, CITY OF	21111C0160D	02–JAN–2003	03–04–1012A	02
04	KY	LOUISVILLE, CITY OF	21111C0160D	13–FEB–2003	03–04–1120A	02
04	KY	MARSHALL COUNTY *	2102520050B	28–APR–2003	03–04–4134A	02
04	KY	MARSHALL COUNTY *	2102520100B	10–JAN–2003	03–04–0202A	02
04	KY	MARSHALL COUNTY *	2102520100B	10–APR–2003	03–04–2172A	02
04	KY	MOREHEAD, CITY OF	2102040005B	20–FEB–2003	03–04–1984A	02
04	KY	OWENSBORO, CITY OF	21059C0120C	10–APR–2003	03–04–2258A	1
04	KY	OWENSBORO, CITY OF	21059C0260C	07–APR–2003	03–04–4310A	02
04	KY	PENDLETON COUNTY *	210297—05A	08–JAN–2003	03–04–0788A	02
04	KY	PENDLETON COUNTY *	210297—05A	24–FEB–2003	03–04–2974A	02
04	KY	PRESTONSBURG, CITY OF	2100720001D	14–APR–2003	03–04–0936A	01

Region	State	Community	Map panel	Determination date	Case No.	Type
04	KY	ROWAN COUNTY *	2102030045B	08–JAN–2003	03–04–0872A	01
04	KY	SILVER GROVE, CITY OF	2100340045B	17–MAR–2003	03–04–0942A	01
04	KY	SOUTHGATE, CITY OF	210276—01	31–MAR–2003	03–04–2486A	02
04	KY	STANTON, CITY OF	2101960001B	10–JAN–2003	03–04–0324A	02
04	KY	STURGIS, CITY OF	210217 B	21–FEB–2003	03–04–147P	05
04	KY	TAYLOR MILL, CITY OF	2102460001C	24–MAR–2003	03–04–3798A	02
04	KY	WEST POINT, CITY OF	21093C0005C	06–MAR–2003	03–04–2842A	02
04	KY	WHITLEY COUNTY*	21235C0110C	17–APR–2003	03–04–5104V	19
04	KY	WORTHINGTON, CITY OF	2100920001B	10–JAN–2003	03–04–0934A	02
04	MS	BOONEVILLE, CITY OF	280135—06A	10–APR–2003	03–04–4408A	02
04	MS	FORREST COUNTY *	28035C0150C	13–MAR–2003	03–04–3234A	02
04	MS	GEORGE COUNTY *	2802230025B	31–MAR–2003	03–04–0620A	02
04	MS	GULFPORT, CITY OF	2852530035D	16–JAN–2003	03–04–2044A	02
04	MS	HINDS COUNTY*	2800700250D	06–FEB–2003	03–04–1942A	02
04	MS	JACKSON, CITY OF	2800720030F	26–FEB–2003	03–04–0512A	02
04	MS	LAUDERDALE COUNTY *	28075C0085D	25–APR–2003	03–04–4334A	01
04	MS	LINCOLN COUNTY	2802730225B	06–FEB–2003	03–04–2266A	02
04	MS	LONG BEACH, CITY OF	2852570003C	06–FEB–2003	03–04–2784A	02
04	MS	MADISON COUNTY *	28089C0195D	24–APR–2003	03–04–4332A	02
04	MS	MADISON, CITY OF	28089C0310D	18–APR–2003	03–04–4588A	01
04	MS	OLIVE BRANCH,CITY OF	28033C0065E	19–MAR–2003	03–04–021P	05
04	MS	OXFORD, CITY OF	2800930100B	06–FEB–2003	03–04–1554A	01
04	MS	PEARL RIVER COUNTY *	28109C0100D	13–FEB–2003	03–04–1104A	02
04	MS	PEARL RIVER VALLEY WATER SUPPLY DIS	2803380070B	27–MAR–2003	03–04–3916A	02
04	MS	RANKIN COUNTY *	2801420070C	20–FEB–2003	03–04–2850A	01
04	MS	RIDGELAND, CITY OF	28089C0315D	10–APR–2003	02–04–189P	05
04	MS	RIDGELAND, CITY OF	28089C0320D	03–APR–2003	03–04–3474A	01
04	MS	RIDGELAND, CITY OF	28089C0320D	10–APR–2003	02–04–189P	05
04	MS	RIDGELAND, CITY OF	28089C0340D	03–APR–2003	03–04–3474A	01
04	MS	SALTILLO, TOWN OF	28081C0155D	13–FEB–2003	03–04–1092A	02
04	MS	SALTILLO, TOWN OF	28081C0155D	13–FEB–2003	03–04–1292A	02
04	MS	SALTILLO, TOWN OF	28081C0155D	07–MAR–2003	03–04–3428A	02
04	MS	SALTILLO, TOWN OF	28081C0155D	28–MAR–2003	03–04–3110A	02
04	MS	SOUTHAVEN, CITY OF	28033C0035F	07–FEB–2003	03–04–1812A	02
04	MS	SOUTHAVEN, CITY OF	28033C0035F	10–APR–2003	03–04–4486A	02
04	MS	SOUTHAVEN, CITY OF	28033C0041E	20–MAR–2003	03–04–1876A	02
04	MS	TUPELO, CITY OF	28081C0142D	03–JAN–2003	03–04–1634A	02
04	MS	TUPELO, CITY OF	28081C0227D	02–JAN–2003	02–04–8514A	01
04	MS	WARREN COUNTY*	2801980200B	21–MAR–2003	03–04–2408A	02
04	NC	ALAMANCE COUNTY*	37001C0200E	13–MAR–2003	03–04–1204A	02
04	NC	ALEXANDER COUNTY*	3703980003C	13–MAR–2003	03–04–3404A	02
04	NC	ALEXANDER COUNTY*	3703980003C	24–APR–2003	03–04–4384A	02
04	NC	ASHE COUNTY *	37009C0153F	18–FEB–2003	03–04–2388A	02
04	NC	ASHEVILLE, CITY OF	37021C0308C	15–JAN–2003	02–04–485P	05
04	NC	AVERY COUNTY *	3700100100B	03–FEB–2003	03–04–1248A	02
04	NC	BEAUFORT COUNTY*	3700130215B	31–MAR–2003	03–04–3970A	02
04	NC	BLADEN COUNTY *	3702930004B	07–APR–2003	03–04–2524A	02
04	NC	BOONE, TOWN OF	37189C0183E	20–MAR–2003	03–04–3498A	01
04	NC	BRUNSWICK COUNTY*	3702950130C	31–MAR–2003	03–04–3612A	02
04	NC	BRUNSWICK COUNTY*	3702950220C	19–FEB–2003	03–04–111P	05
04	NC	BRUNSWICK COUNTY*	3702950220C	13–MAR–2003	03–04–3530A	02
04	NC	BRUNSWICK COUNTY*	3702950300C	13–FEB–2003	03–04–2238A	02
04	NC	BRUNSWICK COUNTY*	3702950310E	27–FEB–2003	03–04–1418A	02
04	NC	BRUNSWICK COUNTY*	3702950310E	27–FEB–2003	03–04–1420A	02
04	NC	BRUNSWICK COUNTY*	3702950360E	30–JAN–2003	03–04–1426A	01
04	NC	BRUNSWICK COUNTY*	3702950360E	31–MAR–2003	03–04–3750A	02
04	NC	BRYSON CITY, TOWN OF	3702280005B	31–MAR–2003	03–04–3002A	02
04	NC	BUNCOMBE COUNTY *	37021C0326C	14–APR–2003	03–04–1652A	02
04	NC	BURKE COUNTY *	3700340100C	17–APR–2003	03–04–3972A	02
04	NC	BURKE COUNTY *	3700340250C	03–FEB–2003	03–04–2228A	02
04	NC	CALDWELL COUNTY *	37027C00050	30–JAN–2003	03–04–2394A	02
04	NC	CALDWELL COUNTY *	37027C0045E	16–JAN–2003	03–04–1060A	01
04	NC	CALDWELL COUNTY *	37027C0050D	16–JAN–2003	03–04–1488A	02
04	NC	CALDWELL COUNTY *	37027C0050D	13–FEB–2003	03–04–2346A	02
04	NC	CALDWELL COUNTY *	37027C0050D	17–APR–2003	03–04–5094A	02
04	NC	CALDWELL COUNTY *	37027C0070D	23–JAN–2003	03–04–1080A	02
04	NC	CALDWELL COUNTY *	37027C0085E	27–FEB–2003	03–04–2926A	02
04	NC	CARY, TOWN OF	37183C0293E	13–FEB–2003	03–04–1746A	02
04	NC	CARY, TOWN OF	37183C0293E	20–FEB–2003	03–04–3198A	02
04	NC	CARY, TOWN OF	37183C0512E	03–MAR–2003	03–04–2200A	02
04	NC	CATAWBA COUNTY *	3700500075C	30–JAN–2003	03–04–2348A	02
04	NC	CATAWBA COUNTY *	3700500135B	03–FEB–2003	03–04–2523A	02
04	NC	CATAWBA COUNTY *	3700500200C	18–FEB–2003	03–04–2810A	02

Region	State	Community	Map panel	Determination date	Case No.	Type
04	NC	CATAWBA COUNTY *	3700500200C	18–FEB–2003	03–04–3004A	02
04	NC	CATAWBA COUNTY *	3700500200C	03–MAR–2003	03–04–3126A	02
04	NC	CATAWBA COUNTY *	3700500200C	14–APR–2003	03–04–4480A	02
04	NC	CATAWBA COUNTY *	3700500280B	21–APR–2003	03–04–5040A	02
04	NC	CATAWBA COUNTY *	3700500325B	16–JAN–2003	03–04–0916A	02
04	NC	CATAWBA COUNTY *	3700500325B	21–JAN–2003	03–04–2028A	02
04	NC	CATAWBA COUNTY *	3700500325B	03–FEB–2003	03–04–1370A	02
04	NC	CATAWBA COUNTY *	3700500325B	10–FEB–2003	03–04–2630A	02
04	NC	CATAWBA COUNTY *	3700500325B	13–FEB–2003	03–04–2672A	02
04	NC	CATAWBA COUNTY *	3700500325B	13–FEB–2003	03–04–2680A	02
04	NC	CATAWBA COUNTY *	3700500325B	27–FEB–2003	03–04–3202A	02
04	NC	CATAWBA COUNTY *	3700500325B	03–MAR–2003	03–04–3204A	02
04	NC	CATAWBA COUNTY *	3700500325B	10–MAR–2003	03–04–2860A	02
04	NC	CATAWBA COUNTY *	3700500325B	20–MAR–2003	03–04–3556A	02
04	NC	CATAWBA COUNTY *	3700500325B	20–MAR–2003	03–04–3560A	02
04	NC	CATAWBA COUNTY *	3700500325B	03–APR–2003	03–04–4298A	02
04	NC	CATAWBA COUNTY *	3700500325B	07–APR–2003	03–04–4022A	02
04	NC	CATAWBA COUNTY *	3700500325B	21–APR–2003	03–04–5042A	02
04	NC	CATAWBA COUNTY *	3700500325B	28–APR–2003	03–04–4196A	02
04	NC	CATAWBA COUNTY *	3700500350C	02–JAN–2003	03–04–1020A	02
04	NC	CATAWBA COUNTY *	3700500350C	02–JAN–2003	03–04–1160A	02
04	NC	CATAWBA COUNTY *	3700500350C	08–JAN–2003	03–04–0598A	02
04	NC	CATAWBA COUNTY *	3700500350C	16–JAN–2003	03–04–0518A	02
04	NC	CATAWBA COUNTY *	3700500350C	16–JAN–2003	03–04–1136A	02
04	NC	CATAWBA COUNTY *	3700500350C	16–JAN–2003	03–04–1350A	02
04	NC	CATAWBA COUNTY *	3700500350C	16–JAN–2003	03–04–1368A	02
04	NC	CATAWBA COUNTY *	3700500350C	16–JAN–2003	03–04–1372A	02
04	NC	CATAWBA COUNTY *	3700500350C	16–JAN–2003	03–04–1646A	02
04	NC	CATAWBA COUNTY *	3700500350C	23–JAN–2003	03–04–2236A	02
04	NC	CATAWBA COUNTY *	3700500350C	03–FEB–2003	03–04–1352A	02
04	NC	CATAWBA COUNTY *	3700500350C	27–FEB–2003	03–04–3124A	02
04	NC	CATAWBA COUNTY *	3700500350C	17–MAR–2003	03–04–3398A	02
04	NC	CATAWBA COUNTY *	3700500350C	17–MAR–2003	03–04–3400A	02
04	NC	CATAWBA COUNTY *	3700500350C	20–MAR–2003	03–04–3558A	02
04	NC	CATAWBA COUNTY *	3700500350C	10–APR–2003	03–04–4020A	02
04	NC	CATAWBA COUNTY *	3700500350C	17–APR–2003	03–04–5096A	02
04	NC	CHARLOTTE, CITY OF	3401590029B	08–JAN–2003	03–04–1650A	01
04	NC	CHARLOTTE, CITY OF	3701580185B	17–APR–2003	03–04–3748A	01
04	NC	CHARLOTTE, CITY OF	3701580190B	08–JAN–2003	03–04–1650A	02
04	NC	CHARLOTTE, CITY OF	3701590026B	16–JAN–2003	03–04–1428A	02
04	NC	CONOVER, TOWN OF	3700530001B	16–JAN–2003	03–04–0724A	02
04	NC	CORNELIUS, TOWN OF	3704980005A	02–JAN–2003	03–04–1354A	02
04	NC	CORNELIUS, TOWN OF	3704980005A	02–JAN–2003	03–04–1792A	02
04	NC	CORNELIUS, TOWN OF	3704980005A	08–JAN–2003	03–04–1640A	02
04	NC	CORNELIUS, TOWN OF	3704980005A	21–JAN–2003	03–04–1016A	02
04	NC	CORNELIUS, TOWN OF	3704980005A	27–FEB–2003	03–04–1436A	02
04	NC	CORNELIUS, TOWN OF	3704980005A	06–MAR–2003	03–04–3252A	02
04	NC	CORNELIUS, TOWN OF	3704980005A	06–MAR–2003	03–04–3254A	02
04	NC	CORNELIUS, TOWN OF	3704980005A	06–MAR–2003	03–04–3296A	02
04	NC	CORNELIUS, TOWN OF	3704980005A	31–MAR–2003	03–04–3064A	02
04	NC	CORNELIUS, TOWN OF	3704980005A	31–MAR–2003	03–04–4018A	02
04	NC	CORNELIUS, TOWN OF	3704980005A	21–APR–2003	03–04–5044A	02
04	NC	CRAVEN COUNTY*	3700720305B	13–FEB–2003	03–04–2352A	02
04	NC	CRAVEN COUNTY*	3700720330B	03–FEB–2003	03–04–2208A	02
04	NC	CRAVEN COUNTY*	3700720330B	03–APR–2003	03–04–4166A	02
04	NC	CURRITUCK COUNTY *	3700780070C	31–MAR–2003	03–04–3610A	02
04	NC	CURRITUCK COUNTY *	3700780201D	14–APR–2003	03–04–3394A	02
04	NC	DALLAS, TOWN OF	37071C0191E	04–MAR–2003	03–04–3210V	19
04	NC	DARE COUNTY*	3753480810E	21–FEB–2003	03–04–101P	05
04	NC	DAVIDSON COUNTY *	35057C0300D	07–APR–2003	03–04–1644A	02
04	NC	DAVIDSON COUNTY *	37057C0285D	13–FEB–2003	03–04–2670A	02
04	NC	DAVIDSON COUNTY *	37057C0285D	03–APR–2003	03–04–3448A	02
04	NC	DAVIDSON COUNTY *	37057C0285D	07–APR–2003	03–04–4034A	02
04	NC	DAVIDSON COUNTY *	37057C0300D	10–JAN–2003	03–04–0728A	02
04	NC	DAVIDSON COUNTY *	37057C0300D	16–JAN–2003	03–04–1638A	02
04	NC	DAVIDSON COUNTY *	37057C0300D	03–MAR–2003	03–04–2864A	02
04	NC	DAVIDSON COUNTY *	37057C0300D	31–MAR–2003	03–04–3608A	02
04	NC	DAVIDSON COUNTY *	37057C0325D	02–JAN–2003	03–04–0596A	02
04	NC	DAVIDSON COUNTY *	37057C0325D	20–FEB–2003	03–04–3066A	02
04	NC	DAVIDSON COUNTY *	37057C0400D	03–JAN–2003	03–04–0204A	02
04	NC	DAVIDSON COUNTY *	37057C0400D	16–JAN–2003	03–04–0408A	02
04	NC	DAVIDSON COUNTY *	37057C0400D	16–JAN–2003	03–04–1804A	02
04	NC	DAVIE COUNTY *	3703080045C	17–MAR–2003	03–04–3298A	02

Region	State	Community	Map panel	Determination date	Case No.	Type
04	NC	DUPLIN COUNTY *	3700830100B	03–MAR–2003	03–04–3672A	02
04	NC	DUPLIN COUNTY *	3700830175B	03–FEB–2003	03–04–2494A	02
04	NC	DUPLIN COUNTY *	3700830200B	16–JAN–2003	03–04–1192A	02
04	NC	DUPLIN COUNTY *	3700830220B	31–MAR–2003	03–04–3966A	02
04	NC	DUPLIN COUNTY *	3700830236B	16–JAN–2003	03–04–1084A	02
04	NC	DUPLIN COUNTY *	3700830236B	30–JAN–2003	03–04–2386A	02
04	NC	DURHAM, CITY OF	37063C0068G	21–MAR–2003	03–04–053P	05
04	NC	DURHAM, CITY OF	37063C0166H	23–JAN–2003	03–04–1810A	02
04	NC	EASTERN BAND OF CHEROKEE INDIANS	3704010014B	03–FEB–2003	03–04–019P	05
04	NC	FAYETTEVILLE, CITY OF	3700770009D	17–APR–2003	03–04–1768A	02
04	NC	FAYETTEVILLE, CITY OF	3700770014C	13–FEB–2003	03–04–2302A	01
04	NC	FRANKLIN COUNTY*	37069C0355D	03–APR–2003	03–04–1582A	02
04	NC	FRANKLIN COUNTY*	37069C0400D	16–JAN–2003	03–04–0900A	02
04	NC	FRANKLINVILLE, TOWN OF	370197—01B	16–JAN–2003	03–04–0040A	01
04	NC	GASTON COUNTY *	37071C0063E	04–MAR–2003	03–04–3208V	19
04	NC	GASTON COUNTY *	37071C0184E	04–MAR–2003	03–04–3208V	19
04	NC	GASTON COUNTY *	37071C0209E	04–MAR–2003	03–04–3208V	19
04	NC	GASTON COUNTY *	37071C0216E	04–MAR–2003	03–04–3208V	19
04	NC	GASTON COUNTY *	37071C0230E	04–MAR–2003	03–04–3208V	19
04	NC	GASTON COUNTY *	37071C0303E	04–MAR–2003	03–04–3208V	19
04	NC	GASTON COUNTY *	37071C0307E	04–MAR–2003	03–04–3208V	19
04	NC	GASTON COUNTY *	37071C0308E	04–MAR–2003	03–04–3208V	19
04	NC	GASTONIA, CITY OF	37071C0194E	04–MAR–2003	03–04–3212V	19
04	NC	GASTONIA, CITY OF	37071C0277E	04–MAR–2003	03–04–3212V	19
04	NC	GASTONIA, CITY OF	37071C0281E	04–MAR–2003	03–04–3212V	19
04	NC	GASTONIA, CITY OF	37071C0282E	04–MAR–2003	03–04–3212V	19
04	NC	GASTONIA, CITY OF	37071C0283E	07–APR–2003	03–04–4158A	02
04	NC	GASTONIA, CITY OF	37071C0284E	04–MAR–2003	03–04–3212V	19
04	NC	GOLDSBORO, CITY OF	3702550010C	10–APR–2003	03–04–2664A	01
04	NC	GRANVILLE COUNTY*	37077C0075C	20–MAR–2003	03–04–3098A	02
04	NC	GREENSBORO, CITY OF	3753510002C	17–APR–2003	03–04–5400A	01
04	NC	GREENSBORO, CITY OF	3753510018C	13–FEB–2003	03–04–1808A	02
04	NC	GREENSBORO, CITY OF	3753510019D	24–JAN–2003	02–04–0149P	08
04	NC	GREENVILLE, CITY OF	3701910010B	03–FEB–2003	03–04–1904A	02
04	NC	GREENVILLE, CITY OF	3701910010B	20–FEB–2003	03–04–1806A	02
04	NC	HALIFAX COUNTY *	3073270005B	03–APR–2003	03–04–3974AD	02
04	NC	HALIFAX COUNTY *	3703270005B	07–APR–2003	03–04–4454A	02
04	NC	HALIFAX COUNTY *	3703270010B	17–MAR–2003	03–04–3506A	02
04	NC	HARNETT COUNTY *	37085C0105D	17–MAR–2003	03–04–1348A	02
04	NC	HAYWOOD COUNTY*	3701200135B	24–APR–2003	03–04–5038A	02
04	NC	HAYWOOD COUNTY*	3701200160C	17–APR–2003	03–04–4036A	01
04	NC	HICKORY, CITY OF	3700540005B	16–JAN–2003	03–04–1082A	02
04	NC	HICKORY, CITY OF	3700540005B	16–JAN–2003	03–04–1172A	02
04	NC	HICKORY, CITY OF	3700540005B	17–APR–2003	03–04–5190A	02
04	NC	HICKORY, CITY OF	3700540015B	17–MAR–2003	03–04–3396A	02
04	NC	HIGH POINT, CITY OF	3701130003C	14–APR–2003	03–04–4726A	02
04	NC	INDIAN TRAIL, TOWN OF	37179C0015D	13–FEB–2003	03–04–2422A	02
04	NC	IREDELL COUNTY *	3703130150C	02–JAN–2003	03–04–0716A	02
04	NC	IREDELL COUNTY *	3703130150C	17–APR–2003	03–04–3072A	02
04	NC	IREDELL COUNTY *	3703130200C	23–JAN–2003	03–04–1374A	02
04	NC	IREDELL COUNTY *	3703130200C	13–FEB–2003	03–04–2674A	02
04	NC	IREDELL COUNTY *	3703130200C	20–MAR–2003	03–04–2118A	02
04	NC	IREDELL COUNTY *	3703130200C	28–MAR–2003	03–04–213P	05
04	NC	IREDELL COUNTY *	3703130200C	21–APR–2003	03–04–2384A	02
04	NC	IREDELL COUNTY *	3703130200C	21–APR–2003	03–04–4940A	02
04	NC	JOHNSTON COUNTY *	37101C0015D	13–FEB–2003	03–04–1988A	02
04	NC	JOHNSTON COUNTY *	37101C0255D	13–FEB–2003	03–04–2032A	02
04	NC	JONES COUNTY *	37103C0095C	08–JAN–2003	03–04–0358A	02
04	NC	KINSTON, CITY OF	3701450005C	10–FEB–2003	03–04–2120A	02
04	NC	KITTY HAWK, TOWN OF	3704390002D	31–MAR–2003	03–04–3862A	02
04	NC	LEE COUNTY *	37105C0050B	06–MAR–2003	03–04–1628A	02
04	NC	LENOIR, CITY OF	37027C0078D	21–JAN–2003	03–04–2034A	01
04	NC	LINCOLN COUNTY *	3701460075C	03–FEB–2003	03–04–2522A	02
04	NC	LINCOLN COUNTY *	3701460075C	31–MAR–2003	03–04–3804A	02
04	NC	LONG BEACH, TOWN OF	3753540003D	16–JAN–2003	03–04–0414A	02
04	NC	LUMBERTON, CITY OF	37155C0178D	07–APR–2003	03–04–4436A	02
04	NC	LUMBERTON, CITY OF	37155C0179D	28–APR–2003	03–04–4038A	02
04	NC	LUMBERTON, CITY OF	37155C0180D	17–MAR–2003	03–04–2628A	02
04	NC	LUMBERTON, CITY OF	37155C0186D	17–MAR–2003	03–04–3866A	02
04	NC	MAGGIE VALLEY, TOWN OF	3703890001B	31–MAR–2003	03–04–3250A	17
04	NC	MECKLENBURG COUNTY *	3701580030D	03–FEB–2003	03–04–2232A	02
04	NC	MECKLENBURG COUNTY *	3701580170C	10–APR–2003	03–04–4296A	02
04	NC	MECKLENBURG COUNTY *	3701580185B	31–MAR–2003	03–04–3496A	01

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04	NC	MONTGOMERY COUNTY*	3703360025B	02–JAN–2003	03–04–0038A	02
04	NC	MONTGOMERY COUNTY*	3703360025B	02–JAN–2003	03–04–0722A	02
04	NC	MONTGOMERY COUNTY*	3703360025B	16–JAN–2003	03–04–1636A	02
04	NC	MONTGOMERY COUNTY*	3703360025B	30–JAN–2003	03–04–0726A	02
04	NC	MONTGOMERY COUNTY*	3703360025B	13–FEB–2003	03–04–2658A	02
04	NC	MONTGOMERY COUNTY*	3703360025B	13–FEB–2003	03–04–2660A	02
04	NC	MONTGOMERY COUNTY*	3703360025B	18–FEB–2003	03–04–2788A	02
04	NC	MONTGOMERY COUNTY*	3703360025B	18–FEB–2003	03–04–3000A	02
04	NC	MONTGOMERY COUNTY*	3703360025B	31–MAR–2003	03–04–3968A	02
04	NC	MONTGOMERY COUNTY*	3703360025B	10–APR–2003	03–04–4294A	02
04	NC	MONTGOMERY COUNTY*	3703360065B	06–MAR–2003	03–04–3096A	02
04	NC	MOUNT HOLLY, CITY OF	37071C0217E	04–MAR–2003	03–04–3206V	19
04	NC	NAGS HEAD, TOWN OF	3753560002F	17–APR–2003	03–04–2600A	18
04	NC	NAGS HEAD, TOWN OF	3753560008D	17–APR–2003	03–04–3300A	18
04	NC	NEW BERN, CITY OF	3700720320B	17–MAR–2003	03–04–3222A	02
04	NC	NEW HANOVER COUNTY*	3701680040D	17–MAR–2003	03–04–4032A	02
04	NC	NEW HANOVER COUNTY*	3701680045E	03–MAR–2003	03–04–3128A	02
04	NC	NEW HANOVER COUNTY*	3701680045E	07–APR–2003	03–04–2814A	02
04	NC	NEW HANOVER COUNTY*	3701680085E	14–APR–2003	03–04–4744A	02
04	NC	NEWTON, CITY OF	3700570005B	23–JAN–2003	03–04–0920A	02
04	NC	NEWTON, CITY OF	3700570005B	14–APR–2003	03–04–3806A	02
04	NC	NORTHAMPTON COUNTY*	3701730005C	06–MAR–2003	03–04–3200A	02
04	NC	NORWOOD, TOWN OF	37167C0275D	21–JAN–2003	03–04–1202A	02
04	NC	OAK ISLAND, TOWN OF	3753540003D	16–JAN–2003	03–04–0034A	02
04	NC	OCEAN ISLE BEACH, TOWN OF	3753570003C	30–JAN–2003	03–04–1430A	02
04	NC	ONSLOW COUNTY*	3703400180C	17–MAR–2003	03–04–3450A	02
04	NC	ONSLOW COUNTY*	3703400300C	27–MAR–2003	03–04–3070A	02
04	NC	ONSLOW COUNTY*	3703400315C	10–APR–2003	03–04–4160A	02
04	NC	ONSLOW COUNTY*	3703400360C	14–APR–2003	03–04–4524A	02
04	NC	ONSLOW COUNTY*	3703400460C	10–APR–2003	03–04–4226A	02
04	NC	PAMLICO COUNTY*	3701810145B	24–MAR–2003	03–04–1424A	02
04	NC	PENDER COUNTY*	3703440394B	27–FEB–2003	03–04–3068A	02
04	NC	PENDER COUNTY*	3703440525C	23–JAN–2003	03–04–1642A	02
04	NC	PERQUIMANS COUNTY*	3703150105B	20–FEB–2003	03–04–2862A	02
04	NC	PLYMOUTH, TOWN OF	3702490003C	10–APR–2003	03–04–4224A	02
04	NC	RALEIGH, CITY OF	37183C0160E	03–FEB–2003	03–04–1944A	01
04	NC	RALEIGH, CITY OF	37183C0328E	20–FEB–2003	03–04–2226A	01
04	NC	RALEIGH, CITY OF	37183C0329E	31–MAR–2003	03–04–2668A	01
04	NC	RALEIGH, CITY OF	37183C0352E	03–MAR–2003	03–04–4028A	02
04	NC	RALEIGH, CITY OF	37183C0526E	30–JAN–2003	02–04–389P	05
04	NC	RALEIGH, CITY OF	37183C0527E	30–JAN–2003	02–04–389P	05
04	NC	RALEIGH, CITY OF	37183C0531E	30–JAN–2003	02–04–389P	05
04	NC	RANDOLPH COUNTY *	3701950150B	20–MAR–2003	03–04–2954A	02
04	NC	ROCKY MOUNT, CITY OF	3700920004C	10–APR–2003	03–04–2224A	02
04	NC	ROCKY MOUNT, CITY OF	3700920005C	30–JAN–2003	03–04–1654A	02
04	NC	SOUTHERN SHORES, TOWN OF	3704300002C	27–FEB–2003	03–04–3074A	02
04	NC	STANLY COUNTY *	37167C0075D	10–MAR–2003	03–04–3318A	02
04	NC	STANLY COUNTY *	37167C0175D	02–JAN–2003	03–04–1246A	02
04	NC	STANLY COUNTY *	37167C0175D	21–JAN–2003	03–04–1974A	02
04	NC	STANLY COUNTY *	37167C0175D	20–FEB–2003	03–04–2858A	02
04	NC	STANLY COUNTY *	37167C0175D	17–MAR–2003	03–04–3402A	02
04	NC	STATESVILLE, CITY OF	3701350003A	06–FEB–2003	03–04–2906A	01
04	NC	TRANSYLVANIA COUNTY *	37175C0165C	23–JAN–2003	03–04–1124A	02
04	NC	UNION COUNTY *	37179C0020C	20–FEB–2003	03–04–2790A	02
04	NC	UNION COUNTY *	37179C0090C	16–JAN–2003	03–04–0902A	02
04	NC	WAKE FOREST, TOWN OF	37183C0177E	16–JAN–2003	03–04–1560A	01
04	NC	WARREN COUNTY*	3703960002C	02–JAN–2003	03–04–1158A	02
04	NC	WARREN COUNTY*	3703960002C	03–JAN–2003	03–04–0526A	02
04	NC	WARREN COUNTY*	3703960002C	10–JAN–2003	03–04–1574A	02
04	NC	WARREN COUNTY*	3703960002C	10–JAN–2003	03–04–1794A	02
04	NC	WARREN COUNTY*	3703960002C	10–JAN–2003	03–04–1796A	02
04	NC	WARREN COUNTY*	3703960002C	10–JAN–2003	03–04–1798A	02
04	NC	WARREN COUNTY*	3703960002C	10–JAN–2003	03–04–1820A	02
04	NC	WARREN COUNTY*	3703960002C	16–JAN–2003	03–04–0476A	02
04	NC	WARREN COUNTY*	3703960002C	16–JAN–2003	03–04–0600A	02
04	NC	WARREN COUNTY*	3703960002C	16–JAN–2003	03–04–0914A	02
04	NC	WARREN COUNTY*	3703960002C	16–JAN–2003	03–04–1252A	02
04	NC	WARREN COUNTY*	3703960002C	16–JAN–2003	03–04–1486A	02
04	NC	WARREN COUNTY*	3703960002C	16–JAN–2003	03–04–1800A	02
04	NC	WARREN COUNTY*	3703960002C	16–JAN–2003	03–04–1874A	02
04	NC	WARREN COUNTY*	3703960002C	16–JAN–2003	03–04–2122A	02
04	NC	WARREN COUNTY*	3703960002C	16–JAN–2003	03–04–2240A	02
04	NC	WARREN COUNTY*	3703960002C	21–JAN–2003	03–04–1516A	02

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04	NC	WARREN COUNTY*	3703960002C	21–JAN–2003	03–04–1872A	02
04	NC	WARREN COUNTY*	3703960002C	23–JAN–2003	03–04–2212A	02
04	NC	WARREN COUNTY*	3703960002C	23–JAN–2003	03–04–2354A	02
04	NC	WARREN COUNTY*	3703960002C	23–JAN–2003	03–04–2446A	02
04	NC	WARREN COUNTY*	3703960002C	23–JAN–2003	03–04–2490A	02
04	NC	WARREN COUNTY*	3703960002C	23–JAN–2003	03–04–2530A	02
04	NC	WARREN COUNTY*	3703960002C	23–JAN–2003	03–04–2596A	02
04	NC	WARREN COUNTY*	3703960002C	30–JAN–2003	03–04–0042A	02
04	NC	WARREN COUNTY*	3703960002C	30–JAN–2003	03–04–1086A	02
04	NC	WARREN COUNTY*	3703960002C	30–JAN–2003	03–04–2528A	02
04	NC	WARREN COUNTY*	3703960002C	30–JAN–2003	03–04–2678A	02
04	NC	WARREN COUNTY*	3703960002C	13–FEB–2003	03–04–2808A	02
04	NC	WARREN COUNTY*	3703960002C	18–FEB–2003	03–04–2320A	02
04	NC	WARREN COUNTY*	3703960002C	18–FEB–2003	03–04–2632A	02
04	NC	WARREN COUNTY*	3703960002C	18–FEB–2003	03–04–2928A	02
04	NC	WARREN COUNTY*	3703960002C	20–FEB–2003	03–04–2030A	02
04	NC	WARREN COUNTY*	3703960002C	24–FEB–2003	03–04–2624A	02
04	NC	WARREN COUNTY*	3703960002C	06–MAR–2003	03–04–2676A	02
04	NC	WARREN COUNTY*	3703960002C	06–MAR–2003	03–04–3130A	02
04	NC	WARREN COUNTY*	3703960002C	06–MAR–2003	03–04–3218A	02
04	NC	WARREN COUNTY*	3703960002C	06–MAR–2003	03–04–3408A	02
04	NC	WARREN COUNTY*	3703960002C	06–MAR–2003	03–04–3410A	02
04	NC	WARREN COUNTY*	3703960002C	06–MAR–2003	03–04–3412A	02
04	NC	WARREN COUNTY*	3703960002C	10–MAR–2003	03–04–2026A	02
04	NC	WARREN COUNTY*	3703960002C	10–MAR–2003	03–04–3948A	02
04	NC	WARREN COUNTY*	3703960002C	17–MAR–2003	03–04–2868A	02
04	NC	WARREN COUNTY*	3703960002C	17–MAR–2003	03–04–3320A	02
04	NC	WARREN COUNTY*	3703960002C	17–MAR–2003	03–04–3752A	02
04	NC	WARREN COUNTY*	3703960002C	17–MAR–2003	03–04–3868A	02
04	NC	WARREN COUNTY*	3703960002C	20–MAR–2003	03–04–4526A	02
04	NC	WARREN COUNTY*	3703960002C	24–MAR–2003	03–04–3248A	02
04	NC	WARREN COUNTY*	3703960002C	31–MAR–2003	03–04–1062A	02
04	NC	WARREN COUNTY*	3703960002C	31–MAR–2003	03–04–2058A	02
04	NC	WARREN COUNTY*	3703960002C	31–MAR–2003	03–04–3302A	02
04	NC	WARREN COUNTY*	3703960002C	31–MAR–2003	03–04–3570A	02
04	NC	WARREN COUNTY*	3703960002C	31–MAR–2003	03–04–3976A	02
04	NC	WARREN COUNTY*	3703960002C	31–MAR–2003	03–04–4170A	02
04	NC	WARREN COUNTY*	3703960002C	03–APR–2003	03–04–3974A	02
04	NC	WARREN COUNTY*	3703960002C	07–APR–2003	03–04–3044A	02
04	NC	WARREN COUNTY*	3703960002C	07–APR–2003	03–04–4418A	02
04	NC	WARREN COUNTY*	3703960002C	10–APR–2003	03–04–4666A	02
04	NC	WARREN COUNTY*	3703960002C	14–APR–2003	03–04–4024A	02
04	NC	WARREN COUNTY*	3703960002C	17–APR–2003	03–04–2806A	02
04	NC	WARREN COUNTY*	3703960002C	17–APR–2003	03–04–5000A	02
04	NC	WARREN COUNTY*	3703960002C	17–APR–2003	03–04–5412A	02
04	NC	WARREN COUNTY*	3703960002C	17–APR–2003	03–04–5414A	02
04	NC	WARREN COUNTY*	3703960002C	28–APR–2003	03–04–3062A	02
04	NC	WASHINGTON, CITY OF	3700170006C	18–FEB–2003	03–04–1902A	02
04	NC	WAYNE COUNTY*	3702540025C	17–MAR–2003	03–04–1790A	02
04	NC	WILMINGTON, CITY OF	3701680105D	16–JAN–2003	03–04–0364A	02
04	NC	WILMINGTON, CITY OF	3701710010B	24–MAR–2003	03–04–2520A	02
04	NC	WILMINGTON, CITY OF	3701710010B	10–APR–2003	03–04–4698A	02
04	NC	WINSTON-SALEM, CITY OF	37067C0139H	14–APR–2003	03–04–4846A	02
04	SC	AIKEN COUNTY*	4500020040B	24–APR–2003	03–04–4530A	02
04	SC	AIKEN COUNTY*	4500020250B	28–MAR–2003	03–04–219P	05
04	SC	ANDERSON COUNTY *	4500130200B	20–MAR–2003	03–04–2646A	02
04	SC	ANDERSON COUNTY *	4500130370B	06–MAR–2003	03–04–1028A	02
04	SC	BEAUFORT COUNTY*	4500250095D	06–MAR–2003	03–04–3242A	02
04	SC	BERKELEY COUNTY *	4500290290C	20–MAR–2003	03–04–3132A	02
04	SC	BERKELEY COUNTY *	4500290290C	31–MAR–2003	03–04–3452A	02
04	SC	BERKELEY COUNTY *	4500290290C	03–APR–2003	03–04–3738A	02
04	SC	CHARLESTON COUNTY*	4554130225G	24–FEB–2003	03–04–2588A	02
04	SC	CHARLESTON COUNTY*	4554130400F	23–JAN–2003	03–04–0844A	02
04	SC	CLARENDON COUNTY *	4500510225B	21–JAN–2003	03–04–1992A	02
04	SC	CLARENDON COUNTY *	4500510225B	13–MAR–2003	03–04–4054A	02
04	SC	CLARENDON COUNTY *	4500510225B	24–APR–2003	03–04–4308A	02
04	SC	EDGEFIELD COUNTY *	4502290145C	21–JAN–2003	03–04–0886A	02
04	SC	FOREST ACRES, CITY OF	45079C0113G	10–MAR–2003	03–04–3652A	02
04	SC	FORT MILL, TOWN OF	4501950001B	24–MAR–2003	03–04–1686A	02
04	SC	GOOSE CREEK, CITY OF	4500290290C	21–JAN–2003	03–04–1926A	02
04	SC	GOOSE CREEK, CITY OF	4500290290C	03–FEB–2003	03–04–2324A	02
04	SC	GREENVILLE COUNTY *	4500890165B	17–APR–2003	03–04–4274A	02
04	SC	GREENVILLE COUNTY *	4500890185B	24–APR–2003	03–04–2912A	01

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04	SC	GREER, CITY OF	4500890165B	03–APR–2003	03–04–3510A	01
04	SC	HORRY COUNTY *	45051C0582H	27–FEB–2003	03–04–2704A	01
04	SC	HORRY COUNTY *	45051C0601H	27–FEB–2003	03–04–2704A	01
04	SC	HORRY COUNTY *	45051C0665H	20–MAR–2003	03–04–2918A	02
04	SC	KERSHAW COUNTY *	45055C0394D	17–MAR–2003	03–04–3274A	02
04	SC	KINGSTREE, TOWN OF	450190 B	06–MAR–2003	03–04–1266A	02
04	SC	LEXINGTON COUNTY *	45063C0113G	17–APR–2003	03–04–4056A	02
04	SC	LEXINGTON COUNTY *	45063C0137G	10–MAR–2003	03–04–4200A	02
04	SC	LEXINGTON COUNTY *	45063C0142G	16–JAN–2003	03–04–1168A	02
04	SC	LEXINGTON COUNTY *	45063C0232G	20–MAR–2003	03–04–3034A	02
04	SC	LEXINGTON COUNTY *	45063C0258G	16–JAN–2003	03–04–1194A	02
04	SC	LEXINGTON COUNTY *	45063C0258G	16–JAN–2003	03–04–1196A	02
04	SC	NEWBERRY COUNTY*	4502240225B	06–FEB–2003	03–04–2532A	02
04	SC	NEWBERRY COUNTY*	4502240225B	31–MAR–2003	03–04–3554A	02
04	SC	NEWBERRY COUNTY*	4502240225B	31–MAR–2003	03–04–3758A	02
04	SC	NEWBERRY, CITY OF	4501530002B	13–FEB–2003	03–04–2634A	02
04	SC	NORTH AUGUSTA, CITY OF	4500070010D	03–FEB–2003	03–04–1738A	01
04	SC	RICHLAND COUNTY*	45079C0025H	10–JAN–2003	03–04–1784A	02
04	SC	RICHLAND COUNTY*	45079C0025H	16–JAN–2003	03–04–0602A	02
04	SC	RICHLAND COUNTY*	45079C0025H	23–JAN–2003	03–04–1968A	02
04	SC	RICHLAND COUNTY*	45079C0025H	17–MAR–2003	03–04–3418A	02
04	SC	RICHLAND COUNTY*	45079C0025H	14–APR–2003	03–04–4272A	02
04	SC	RICHLAND COUNTY*	45079C0025H	14–APR–2003	03–04–4386A	02
04	SC	RICHLAND COUNTY*	45079C0025H	17–APR–2003	03–04–4668A	02
04	SC	RICHLAND COUNTY*	45079C0025H	28–APR–2003	03–04–4894A	02
04	SC	RICHLAND COUNTY*	45079C0111G	10–APR–2003	03–04–4536A	02
04	SC	ROCK HILL, CITY OF	4501960004C	21–JAN–2003	03–04–2730A	01
04	SC	ROCK HILL, CITY OF	4501960004C	21–JAN–2003	03–04–2732A	01
04	SC	SALUDA COUNTY*	4502300002B	02–JAN–2003	03–04–1314A	02
04	SC	SALUDA COUNTY*	4502300002B	03–FEB–2003	03–04–2062A	02
04	SC	SALUDA COUNTY*	4502300002B	13–FEB–2003	03–04–2602A	02
04	SC	SALUDA COUNTY*	4502300002B	06–MAR–2003	03–04–3918A	02
04	SC	SALUDA COUNTY*	4502300002B	31–MAR–2003	03–04–3794A	02
04	SC	SIMPSONVILLE, CITY OF	4500920005B	06–MAR–2003	03–04–2840A	02
04	SC	SIMPSONVILLE, CITY OF	4500920005B	17–MAR–2003	03–04–3094A	02
04	SC	SPARTANBURG COUNTY *	4501760075B	27–MAR–2003	03–04–2702A	02
04	SC	SPARTANBURG COUNTY *	4501760075B	31–MAR–2003	03–04–2046A	02
04	SC	SPARTANBURG COUNTY *	4501760075B	31–MAR–2003	03–04–2700A	02
04	SC	SUMTER COUNTY *	4501820090C	13–FEB–2003	03–04–1422A	01
04	SC	SUMTER, CITY OF	4501840001C	24–FEB–2003	03–04–2914A	02
04	SC	YORK COUNTY *	4501930050B	27–MAR–2003	03–04–3508A	02
04	SC	YORK COUNTY *	4501930050B	24–APR–2003	03–04–4420A	02
04	SC	YORK COUNTY *	4501930125C	20–JAN–2003	03–04–037P	05
04	SC	YORK COUNTY *	4501930130D	07–APR–2003	03–04–4058A	02
04	SC	YORK COUNTY *	4501930136D	24–MAR–2003	03–04–2504A	01
04	TN	ALCOA, CITY OF	475421—01B	07–APR–2003	03–04–2452A	01
04	TN	ALCOA, CITY OF	475421—03B	17–APR–2003	03–04–3022A	01
04	TN	ARLINGTON, TOWNSHIP OF	47157C0120E	10–JAN–2003	03–04–0780A	01
04	TN	BLOUNT COUNTY *	4703560025B	28–APR–2003	03–04–2444A	02
04	TN	BRADLEY COUNTY *	4703570060B	24–FEB–2003	03–04–1258A	02
04	TN	BRADLEY COUNTY *	4703570125B	16–JAN–2003	03–04–0848A	02
04	TN	BRENTWOOD, CITY OF	47187C0085E	06–MAR–2003	03–04–2898A	02
04	TN	BRENTWOOD, CITY OF	47817C0035E	17–JAN–2003	03–04–2180V	19
04	TN	BRENTWOOD, CITY OF	47817C0040E	17–JAN–2003	03–04–2180V	19
04	TN	BRENTWOOD, CITY OF	47817C0085E	17–JAN–2003	03–04–2180V	19
04	TN	BRISTOL, CITY OF	4701820005B	16–JAN–2003	03–04–1050A	02
04	TN	CHATTANOOGA, CITY OF	47065C0237F	17–APR–2003	03–04–4992A	02
04	TN	CHATTANOOGA, CITY OF	47065C0238F	28–APR–2003	03–04–4140A	02
04	TN	CHATTANOOGA, CITY OF	47065C0239F	21–APR–2003	03–04–4156A	02
04	TN	CHATTANOOGA, CITY OF	47065C0334F	28–APR–2003	03–04–4728A	01
04	TN	CHATTANOOGA, CITY OF	47065C0343F	21–JAN–2003	03–04–2604A	02
04	TN	CHATTANOOGA, CITY OF	47065C0351F	10–APR–2003	03–04–4568A	01
04	TN	CHATTANOOGA, CITY OF	47065C0362F	21–FEB–2003	03–04–119P	05
04	TN	CHATTANOOGA, CITY OF	47065C0364F	21–FEB–2003	03–04–119P	05
04	TN	CHATTANOOGA, CITY OF	47065C0368F	21–JAN–2003	03–04–2358A	02
04	TN	CLEVELAND, CITY OF	4700150004D	16–JAN–2003	03–04–2152A	02
04	TN	CLEVELAND, CITY OF	4700150004D	14–APR–2003	03–04–3568A	02
04	TN	COLLEGEDALE, CITY OF	47065C0391F	21–APR–2003	03–04–4730A	01
04	TN	COLLIERVILLE, TOWN OF	47157C0240E	08–JAN–2003	03–04–0218A	01
04	TN	COLLIERVILLE, TOWN OF	47157C0240E	03–APR–2003	03–04–2420A	01
04	TN	COLLIERVILLE, TOWN OF	47157C0245E	21–APR–2003	03–04–5166A	01
04	TN	COLUMBIA, CITY OF	4754230004D	03–APR–2003	03–04–0904A	02
04	TN	COVINGTON, CITY OF	47167C0065E	18–FEB–2003	03–04–0436A	01

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04	TN	COVINGTON, CITY OF	47167C0065E	10–APR–2003	03–04–3650A	02
04	TN	DAYTON, CITY OF	4701520005C	30–JAN–2003	03–04–0458A	02
04	TN	DYERSBURG, CITY OF	47045C0190D	30–JAN–2003	03–04–1998A	02
04	TN	EAST RIDGE, CITY OF	47065C0364F	20–FEB–2003	03–04–1254A	17
04	TN	ENGLEWOOD, CITY OF	470271—02B	08–JAN–2003	03–04–0036A	02
04	TN	FAIRVIEW, CITY OF	47187C0056E	17–JAN–2003	03–04–2176V	19
04	TN	FAIRVIEW, CITY OF	47187C0057E	17–JAN–2003	03–04–2176V	19
04	TN	FRANKLIN COUNTY *	4703440020B	06–MAR–2003	03–04–3138A	02
04	TN	FRANKLIN, CITY OF	47187C0072E	17–JAN–2003	03–04–2178V	19
04	TN	FRANKLIN, CITY OF	47187C0074E	03–APR–2003	03–04–2904A	02
04	TN	FRANKLIN, CITY OF	47187C0074E	03–APR–2003	03–04–4678A	02
04	TN	FRANKLIN, CITY OF	47187C0127E	17–JAN–2003	03–04–2178V	19
04	TN	FRANKLIN, CITY OF	47187C0131E	17–JAN–2003	03–04–2178V	19
04	TN	FRANKLIN, CITY OF	47187C0132E	17–JAN–2003	03–04–2178V	19
04	TN	GERMANTOWN, CITY OF	47157C0235E	02–JAN–2003	03–04–1608A	01
04	TN	GERMANTOWN, CITY OF	47157C0235E	03–APR–2003	03–04–3426A	17
04	TN	GERMANTOWN, CITY OF	47157C0235E	10–APR–2003	03–04–3260A	01
04	TN	GERMANTOWN, CITY OF	47157C0235E	28–APR–2003	03–04–5420A	01
04	TN	GERMANTOWN, CITY OF	47157C0240E	10–APR–2003	03–04–3260A	01
04	TN	GOODLETTSVILLE, CITY OF	47165C0381D	13–FEB–2003	03–04–2024A	02
04	TN	HAMILTON COUNTY *	47065C0388F	10–APR–2003	03–04–3546A	02
04	TN	HARDIN COUNTY*	4700820125C	24–APR–2003	03–04–3314A	17
04	TN	JACKSON, CITY OF	47113C0155D	28–APR–2003	03–04–5742A	01
04	TN	JACKSON, CITY OF	47113C0162D	14–APR–2003	03–04–1270A	02
04	TN	JELLICO, CITY OF	4754310002B	21–APR–2003	03–04–5454A	02
04	TN	JELLICO, CITY OF	4754310002B	28–APR–2003	03–04–5956A	02
04	TN	JOHNSON CITY, CITY OF	47179C0040C	10–JAN–2003	03–04–0678A	02
04	TN	KNOX COUNTY *	4754330075B	16–JAN–2003	03–04–2230A	02
04	TN	KNOXVILLE, CITY OF	4754340025B	13–FEB–2003	03–04–1148A	02
04	TN	KNOXVILLE, CITY OF	4754340025B	10–APR–2003	03–04–4528A	02
04	TN	LEWISBURG, CITY OF	47117C0134C	03–JAN–2003	03–04–0746A	01
04	TN	LEXINGTON, CITY OF	47077C0057C	07–JAN–2003	03–04–1764A	02
04	TN	MADISON COUNTY *	47113C0285D	16–JAN–2003	03–04–1508A	02
04	TN	MARSHALL COUNTY*	47117C0100C	10–JAN–2003	03–04–1396A	02
04	TN	MCNAIRY COUNTY*	4701270125D	16–JAN–2003	03–04–1960A	02
04	TN	MEMPHIS, CITY OF	47157C0170E	03–APR–2003	03–04–0534A	02
04	TN	MEMPHIS, CITY OF	47157C0185E	02–JAN–2003	03–04–1678A	02
04	TN	MEMPHIS, CITY OF	47157C0230E	22–JAN–2003	02–04–523P	05
04	TN	MEMPHIS, CITY OF	47157C0230E	28–APR–2003	03–04–3334A	01
04	TN	MEMPHIS, CITY OF	47157C0285E	17–APR–2003	03–04–4566A	02
04	TN	MONTGOMERY COUNTY *	4701360050B	10–APR–2003	03–04–3978A	02
04	TN	MONTGOMERY COUNTY *	4701360125B	20–MAR–2003	03–04–2648A	02
04	TN	MONTGOMERY COUNTY *	4701360165B	21–JAN–2003	03–04–2390A	02
04	TN	MURFREESBORO, CITY OF	47149C0140F	07–APR–2003	03–04–2448A	01
04	TN	MURFREESBORO, CITY OF	47149C0143G	03–FEB–2003	03–04–1938A	02
04	TN	MURFREESBORO, CITY OF	47149C0259G	18–FEB–2003	03–04–0632A	01
04	TN	MURFREESBORO, CITY OF	47149C0259G	06–MAR–2003	03–04–2820A	02
04	TN	MURFREESBORO, CITY OF	47149C0278F	18–FEB–2003	03–04–0632A	01
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0119F	07–APR–2003	03–04–3136A	02
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0227F	28–APR–2003	03–04–4620A	01
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0229F	13–FEB–2003	03–04–0676A	02
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0231F	13–FEB–2003	03–04–2078A	02
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0231F	06–MAR–2003	03–04–3288A	02
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0231F	17–APR–2003	03–04–4562A	02
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0236F	14–APR–2003	03–04–3674A	02
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0242F	06–MAR–2003	03–04–0260A	01
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0253F	13–FEB–2003	03–04–1366A	01
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0254F	13–FEB–2003	03–04–1366A	01
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0261F	06–MAR–2003	03–04–0260A	01
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0304F	16–JAN–2003	03–04–1116A	01
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0326F	16–JAN–2003	03–04–1766A	02
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0366F	27–JAN–2003	03–04–0454A	01
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0368F	16–JAN–2003	03–04–1860A	19
04	TN	NASHVILLE & DAVIDSON COUNTY, CITY O	47037C0378F	07–APR–2003	03–04–3330A	02
04	TN	OAK RIDGE, CITY OF	4754410010D	10–JAN–2003	03–04–1900A	02
04	TN	OBION COUNTY *	4703610150B	06–MAR–2003	03–04–2102A	02
04	TN	PULASKI, CITY OF	4700670005C	27–JAN–2003	03–04–2688A	02
04	TN	RHEA COUNTY*	4701510075B	07–APR–2003	03–04–4154A	02
04	TN	RIPLEY, TOWN OF	4701000002C	16–JAN–2003	03–04–1362A	01
04	TN	RIPLEY, TOWN OF	4701000004C	16–JAN–2003	03–04–1362A	01
04	TN	RIPLEY, TOWN OF	4703330105C	16–JAN–2003	03–04–1362A	01
04	TN	RIVES, CITY OF	470235—01A	03–FEB–2003	03–04–0200A	02
04	TN	RUTHERFORD COUNTY *	47149C0045E	07–APR–2003	03–04–1728A	01

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04	TN	RUTHERFORD COUNTY *	47149C0114E	18–FEB–2003	03–04–1126A	02
04	TN	RUTHERFORD COUNTY *	47149C0135E	13–FEB–2003	03–04–1408A	02
04	TN	RUTHERFORD COUNTY *	47149C0139F	03–APR–2003	03–04–3854A	02
04	TN	RUTHERFORD COUNTY *	47149C0380F	16–JAN–2003	03–04–1256A	02
04	TN	SEVIER COUNTY*	4702360050B	16–JAN–2003	03–04–1598A	02
04	TN	SEVIER COUNTY*	4702360065B	30–JAN–2003	03–04–0546A	02
04	TN	SHELBY COUNTY *	47157C0105E	02–JAN–2003	03–04–1676A	02
04	TN	SHELBY COUNTY *	47157C0145E	07–APR–2003	03–04–0286A	01
04	TN	SHELBY COUNTY *	47157C0160E	17–APR–2003	03–04–3836A	01
04	TN	SHELBY COUNTY *	47157C0185E	07–APR–2003	03–04–0286A	01
04	TN	SHELBY COUNTY *	47157C0195E	10–FEB–2003	03–04–0826A	01
04	TN	SHELBY COUNTY *	47157C0290E	16–JAN–2003	03–04–1302A	01
04	TN	SHELBYVILLE, CITY OF	4700080028C	07–APR–2003	03–04–2878A	17
04	TN	SMYRNA, TOWN OF	47149C0130F	06–FEB–2003	03–04–0318A	02
04	TN	STEWART COUNTY *	4701800005A	10–JAN–2003	03–04–0562A	02
04	TN	UNICOI COUNTY *	4702380005B	28–APR–2003	03–04–4484A	02
04	TN	WILLIAMSON COUNTY *	47187C0014E	17–JAN–2003	03–04–2174V	19
04	TN	WILLIAMSON COUNTY *	47187C0025E	17–JAN–2003	03–04–2174V	19
04	TN	WILLIAMSON COUNTY *	47187C0030E	17–JAN–2003	03–04–2174V	19
04	TN	WILLIAMSON COUNTY *	47187C0030E	03–APR–2003	03–04–2900A	01
04	TN	WILLIAMSON COUNTY *	47187C0030E	03–APR–2003	03–04–4868A	02
04	TN	WILLIAMSON COUNTY *	47187C0030E	03–APR–2003	03–04–4870A	02
04	TN	WILLIAMSON COUNTY *	47187C0030E	03–APR–2003	03–04–4872A	01
04	TN	WILLIAMSON COUNTY *	47187C0035E	17–JAN–2003	03–04–2174V	19
04	TN	WILLIAMSON COUNTY *	47187C0072E	17–JAN–2003	03–04–2174V	19
04	TN	WILLIAMSON COUNTY *	47187C0075E	17–JAN–2003	03–04–2174V	19
04	TN	WILLIAMSON COUNTY *	47187C0078E	17–JAN–2003	03–04–2174V	19
04	TN	WILLIAMSON COUNTY *	47187C0125E	17–JAN–2003	03–04–2174V	19
04	TN	WILLIAMSON COUNTY *	47187C0132E	17–JAN–2003	03–04–2174V	19
04	TN	WILLIAMSON COUNTY *	47187C0134E	17–JAN–2003	03–04–2174V	19
04	TN	WILLIAMSON COUNTY *	47187C0140E	17–JAN–2003	03–04–2174V	19
04	TN	WILLIAMSON COUNTY *	47187C0145E	17–JAN–2003	03–04–2174V	19
04	TN	WILLIAMSON COUNTY *	47187C0190E	13–FEB–2003	03–04–2802A	01
04	TN	WILLIAMSON COUNTY *	47187C0195E	17–JAN–2003	03–04–2174V	19
04	TN	WILLIAMSON COUNTY *	47187C0230E	17–JAN–2003	03–04–2174V	19
04	TN	WILSON COUNTY *	4702070040C	03–APR–2003	03–04–2198A	02
05	IL	ADDISON, VILLAGE OF	1701980004C	10–JAN–2003	03–05–0024A	02
05	IL	ADDISON, VILLAGE OF	1701980004C	21–APR–2003	03–05–2140A	02
05	IL	ALGONQUIN, VILLAGE OF	1704740001B	31–JAN–2003	03–05–0519A	17
05	IL	ALGONQUIN, VILLAGE OF	1704740001B	20–JUN–2003	03–05–2444A	01
05	IL	ANTIOCH, VILLAGE OF	17097C0026F	26–MAR–2003	03–05–1121A	02
05	IL	ARTHUR, VILLAGE OF	1705200001B	11–JUN–2003	03–05–3796A	02
05	IL	AURORA, CITY OF	17089C0319F	24–JAN–2003	03–05–1227A	01
05	IL	AURORA, CITY OF	17089C0385F	24–JAN–2003	03–05–1227A	01
05	IL	AURORA, CITY OF	1703200025E	31–JAN–2003	03–05–1611A	02
05	IL	AURORA, CITY OF	1703200015D	09–MAY–2003	03–05–2888A	02
05	IL	AURORA, CITY OF	1703200015D	06–JUN–2003	03–05–3486A	02
05	IL	BATAVIA, CITY OF	17089C0329F	28–MAY–2003	03–05–3332A	02
05	IL	BEACH PARK, VILLAGE OF	17097C0087G	09–MAY–2003	03–05–2197A	02
05	IL	BEACH PARK, VILLAGE OF	17097C0087G	06–JUN–2003	03–05–3117A	02
05	IL	BEACH PARK, VILLAGE OF	17097C0067G	28–MAY–2003	03–05–3184A	02
05	IL	BELVIDERE, CITY OF	1700080001B	10–FEB–2003	03–05–0743A	02
05	IL	BIG ROCK, VILLAGE OF	17089C0295F	18–JUN–2003	03–05–3786A	02
05	IL	BLOOMINGTON, CITY OF	17113C0504D	09–MAY–2003	03–05–3119A	02
05	IL	BLOOMINGTON, CITY OF	17113C0501D	04–JUN–2003	03–05–3519A	02
05	IL	BLOOMINGTON, CITY OF	17113C0482D	18–JUN–2003	03–05–3609A	02
05	IL	BLOOMINGTON, CITY OF	17113C0482D	11–JUN–2003	03–05–3610A	02
05	IL	BOLINGBROOK, VILLAGE OF	17197C0045F	05–FEB–2003	03–05–0316A	01
05	IL	BOLINGBROOK, VILLAGE OF	17197C0034E	31–JAN–2003	03–05–0551A	01
05	IL	BOLINGBROOK, VILLAGE OF	17197C0045F	02–MAY–2003	03–05–2385A	01
05	IL	BOLINGBROOK, VILLAGE OF	17197C0034E	16–MAY–2003	03–05–2983A	01
05	IL	BOLINGBROOK, VILLAGE OF	17197C0045F	16–MAY–2003	03–05–2983A	01
05	IL	BOLINGBROOK, VILLAGE OF	17097C0052E	13–JUN–2003	03–05–3533A	02
05	IL	BOND COUNTY	1709960100B	23–APR–2003	03–05–2861A	02
05	IL	BRADLEY, VILLAGE OF	1703380001B	14–FEB–2003	03–05–1292A	17
05	IL	BRADLEY, VILLAGE OF	1703380001B	31–JAN–2003	03–05–1329A	02
05	IL	BUFFALO GROVE, VILLAGE OF	17031C0063F	28–FEB–2003	03–05–0723A	17
05	IL	BUFFALO GROVE, VILLAGE OF	17097C0261F	14–FEB–2003	03–05–1174A	02
05	IL	BUFFALO GROVE, VILLAGE OF	17097C0262F	12–MAR–2003	03–05–1419A	02
05	IL	BUFFALO GROVE, VILLAGE OF	17097C0261F	20–JUN–2003	03–05–3859A	02
05	IL	BUREAU COUNTY	1707290250A	04–APR–2003	03–05–1038A	02
05	IL	CALUMET CITY, CITY OF	17031C0756F	11–JUN–2003	03–05–3756A	02
05	IL	CARLOCK, VILLAGE OF	17113C0260D	16–MAY–2003	03–05–2939A	02

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05	IL	CARLOCK, VILLAGE OF	17113C0300D	16–MAY–2003	03–05–2939A	02
05	IL	CARMI, CITY OF	1706810005B	14–MAY–2003	03–05–1477A	02
05	IL	CARMI, CITY OF	1706810005B	30–APR–2003	03–05–2537A	02
05	IL	CARMI, CITY OF	1706810005B	27–JUN–2003	03–05–3147A	02
05	IL	CARMI, CITY OF	1706810005B	13–JUN–2003	03–05–3205A	02
05	IL	CAROL STREAM, VILLAGE OF	1702020005C	10–MAR–2003	03–05–0035A	02
05	IL	CAROL STREAM, VILLAGE OF	1702020005C	13–MAR–2003	03–05–1088A	02
05	IL	CARROLL COUNTY	1700190125B	14–FEB–2003	03–05–1555A	02
05	IL	CHAMPAIGN COUNTY	1708940175B	07–MAR–2003	03–05–1436A	02
05	IL	CHAMPAIGN COUNTY	1708940175B	26–FEB–2003	03–05–1645A	02
05	IL	CHAMPAIGN COUNTY	1708940150B	18–JUN–2003	03–05–3474A	02
05	IL	CHAMPAIGN COUNTY *	1708940205B	06–FEB–2003	03–05–0389A	02
05	IL	CHAMPAIGN COUNTY *	0708940150B	17–MAR–2003	03–05–1079A	02
05	IL	CHAMPAIGN COUNTY *	1708940205B	17–MAR–2003	03–05–1080A	02
05	IL	CHAMPAIGN COUNTY *	1708940095C	03–JAN–2003	03–05–1081V	19
05	IL	CHAMPAIGN COUNTY *	1708940100C	03–JAN–2003	03–05–1081V	19
05	IL	CHAMPAIGN, CITY OF	1700260010B	08–JAN–2003	02–05–4726A	02
05	IL	CHARLESTON, CITY OF	1700520005C	14–MAR–2003	03–05–0724A	02
05	IL	CHERRY VALLEY, VILLAGE OF	1707200020C	24–JAN–2003	03–05–0909A	02
05	IL	CHICAGO RIDGE, VILLAGE OF	17031C0609F	14–MAY–2003	03–05–1712A	02
05	IL	CHICAGO RIDGE, VILLAGE OF	17031C0608F	02–APR–2003	03–05–2544A	02
05	IL	CLINTON COUNTY*	170044—24B	24–FEB–2003	03–05–1293A	02
05	IL	CLINTON COUNTY*	170044—25B	23–JAN–2003	03–05–1351X	02
05	IL	CLINTON, CITY OF	17039C0190D	21–APR–2003	03–05–1149A	08
05	IL	COAL VALLEY, VILLAGE OF	17161C0329E	02–JAN–2003	03–05–1041A	02
05	IL	COLLINSVILLE, CITY OF	1704390005B	07–MAY–2003	03–05–2692A	02
05	IL	COOK COUNTY	17031C0209F	14–FEB–2003	03–05–0916A	02
05	IL	COOK COUNTY	17031C0612F	09–APR–2003	03–05–1476A	01
05	IL	COOK COUNTY	17031C0253F	26–MAR–2003	03–05–1544A	02
05	IL	COOK COUNTY	17031C0727F	27–JUN–2003	03–05–3509A	02
05	IL	COOK COUNTY	17031C0386F	27–JUN–2003	03–05–4010A	02
05	IL	CREST HILL, CITY OF	17197C0134E	09–MAY–2003	03–05–2346A	01
05	IL	CREST HILL, CITY OF	17197C0135F	09–MAY–2003	03–05–2346A	01
05	IL	CRESTWOOD, VILLAGE OF	17031C0617F	21–MAR–2003	03–05–0745A	02
05	IL	CRESTWOOD, VILLAGE OF	17031C0619F	29–JAN–2003	03–05–1556A	02
05	IL	CRESTWOOD, VILLAGE OF	17031C0617F	21–MAR–2003	03–05–2272A	02
05	IL	CRESTWOOD, VILLAGE OF	17031C0636F	16–APR–2003	03–05–2687A	02
05	IL	CRESTWOOD, VILLAGE OF	17031C0617F	25–JUN–2003	03–05–3078A	02
05	IL	CRETE, VILLAGE OF	17197C0359F	26–MAR–2003	03–05–0244A	02
05	IL	CRYSTAL LAKE, CITY OF	1704760001C	21–MAR–2003	03–05–2077A	02
05	IL	CRYSTAL LAKE, CITY OF	1704760003C	07–MAY–2003	03–05–2922A	02
05	IL	CRYSTAL LAKE, CITY OF	1704760003C	06–JUN–2003	03–05–3506A	02
05	IL	CRYSTAL LAKE, CITY OF	1707320330D	20–JUN–2003	03–05–3808A	02
05	IL	DANVILLE, CITY OF	1706620010C	31–JAN–2003	03–05–1119A	02
05	IL	DARIEN, CITY OF	1707500002A	18–FEB–2003	03–05–0364A	17
05	IL	DE KALB COUNTY	17037C0076D	22–JAN–2003	03–05–1443A	02
05	IL	DE KALB COUNTY	17037C0138D	09–APR–2003	03–05–2319A	02
05	IL	DE KALB, CITY OF	17037C0066D	15–JAN–2003	02–05–4792A	01
05	IL	DECATUR, CITY OF	1704290020C	26–FEB–2003	03–05–1161A	02
05	IL	DEERFIELD, VILLAGE OF	17097C0286F	03–JAN–2003	03–05–0564A	17
05	IL	DEERFIELD, VILLAGE OF	17097C0287F	10–FEB–2003	03–05–0857A	17
05	IL	DEERFIELD, VILLAGE OF	17097C0286F	21–MAR–2003	03–05–1411A	02
05	IL	DEERFIELD, VILLAGE OF	17097C0286F	28–MAR–2003	03–05–2303A	02
05	IL	DEERFIELD, VILLAGE OF	17097C0286F	28–MAY–2003	03–05–3278A	17
05	IL	DEERFIELD, VILLAGE OF	17097C0286F	25–JUN–2003	03–05–3909A	02
05	IL	DES PLAINES, CITY OF	17031C0216F	14–FEB–2003	03–05–0820A	02
05	IL	DES PLAINES, CITY OF	17031C0236F	25–APR–2003	03–05–1925A	01
05	IL	DES PLAINES, CITY OF	17031C0219F	06–JUN–2003	03–05–2415A	17
05	IL	DES PLAINES, CITY OF	17031C0216F	09–APR–2003	03–05–2478A	02
05	IL	DES PLAINES, CITY OF	17031C0219F	30–APR–2003	03–05–2590A	02
05	IL	DES PLAINES, CITY OF	17031C0219F	25–JUN–2003	03–05–3850A	02
05	IL	DEWITT COUNTY	17039C0235D	16–MAY–2003	03–05–2065A	02
05	IL	DEWITT COUNTY	17039C0190D	14–MAY–2003	03–05–2797A	02
05	IL	DEWITT COUNTY	17039C0300D	18–JUN–2003	03–05–3623A	02
05	IL	DOLTON, VILLAGE OF	17031C0751F	21–MAY–2003	03–05–1616A	01
05	IL	DOUGLAS COUNTY	1701940100B	08–JAN–2003	03–05–0894A	02
05	IL	DOUGLAS COUNTY	1701940100B	28–MAR–2003	03–05–1116A	02
05	IL	DU PAGE COUNTY*	1701970025B	13–FEB–2003	03–05–0032A	02
05	IL	DU PAGE COUNTY*	1701970010C	21–JAN–2003	03–05–0762A	02
05	IL	DU PAGE COUNTY*	1701970055B	27–JAN–2003	03–05–0772A	02
05	IL	DU PAGE COUNTY*	1701970020B	27–JAN–2003	03–05–0777A	02
05	IL	DU PAGE COUNTY*	1701970040B	13–MAR–2003	03–05–1362A	02
05	IL	DU PAGE COUNTY*	1701970035B	27–FEB–2003	03–05–1399A	02

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05	IL	DU PAGE COUNTY*	1701970010C	31–MAR–2003	03–05–1693A	02
05	IL	DU PAGE COUNTY*	1701970055B	14–APR–2003	03–05–1699A	02
05	IL	DU PAGE COUNTY*	1701970040B	28–APR–2003	03–05–2138A	02
05	IL	DU PAGE COUNTY*	1701970045B	14–APR–2003	03–05–2150A	02
05	IL	EAST PEORIA, CITY OF	1706490005B	29–JAN–2003	03–05–0998A	01
05	IL	EDWARDSVILLE, CITY OF	1704410001C	29–JAN–2003	03–05–1417A	17
05	IL	EDWARDSVILLE, CITY OF	1704410001C	05–MAR–2003	03–05–1970A	02
05	IL	EFFINGHAM, CITY OF	170229—03B	09–MAY–2003	03–05–3007A	02
05	IL	ELWOOD, VILLAGE OF	17197C0286E	08–JAN–2003	03–05–0314A	17
05	IL	FOX LAKE, VILLAGE OF	17097C0015G	26–MAR–2003	03–05–2114A	02
05	IL	FOX LAKE, VILLAGE OF	17097C0015G	23–APR–2003	03–05–2851A	02
05	IL	FOX LAKE, VILLAGE OF	17097C0020F	27–JUN–2003	03–05–3527A	01
05	IL	FOX RIVER VALLEY GARDENS, VILLAGE OF	1704780001B	10–FEB–2003	03–05–1410A	02
05	IL	FOX RIVER VALLEY GARDENS, VILLAGE OF	1704780001B	19–MAR–2003	03–05–2302A	02
05	IL	FRANKFORT, VILLAGE OF	17197C0327E	02–JAN–2003	03–05–0100A	02
05	IL	FRANKFORT, VILLAGE OF	17197C0310E	26–MAR–2003	03–05–0143P	05
05	IL	FRANKFORT, VILLAGE OF	17197C0214E	02–APR–2003	03–05–1018A	02
05	IL	FRANKFORT, VILLAGE OF	17197C0331E	05–FEB–2003	03–05–1433A	02
05	IL	FRANKFORT, VILLAGE OF	17197C0310E	28–MAR–2003	03–05–1740A	02
05	IL	FRANKFORT, VILLAGE OF	17197C0310E	26–FEB–2003	03–05–1965A	02
05	IL	FRANKFORT, VILLAGE OF	17197C0213E	21–MAR–2003	03–05–2256A	02
05	IL	FRANKFORT, VILLAGE OF	17197C0331E	28–MAR–2003	03–05–2347A	02
05	IL	FRANKFORT, VILLAGE OF	17197C0310E	09–MAY–2003	03–05–3128A	02
05	IL	FRANKLIN COUNTY	1708990004B	09–APR–2003	03–05–2427A	02
05	IL	FRANKLIN COUNTY	1708990005B	07–MAY–2003	03–05–2968A	02
05	IL	FRANKLIN PARK, VILLAGE OF	17031C0367F	22–JAN–2003	03–05–0977A	02
05	IL	GENOA, CITY OF	17037C0009D	10–JAN–2003	02–05–4162A	02
05	IL	GENOA, CITY OF	17037C0030D	02–MAY–2003	03–05–2843A	02
05	IL	GENOA, CITY OF	17037C0009D	21–MAY–2003	03–05–3318A	02
05	IL	GLEN ELLYN, VILLAGE OF	1702070005C	27–MAR–2003	03–05–1656A	02
05	IL	GLEN ELLYN, VILLAGE OF	1702070005C	10–APR–2003	03–05–2137A	02
05	IL	GLENWOOD, VILLAGE OF	17031C0761F	26–MAR–2003	03–05–2465A	02
05	IL	GREEN ROCK, CITY OF	1702850001C	16–MAY–2003	03–05–1958A	02
05	IL	GRUNDY COUNTY	1702560075C	10–JAN–2003	03–05–0746A	02
05	IL	GURNEE, VILLAGE OF	17097C0068G	04–APR–2003	03–05–1618A	01
05	IL	HARVARD, CITY OF	1707320050B	25–APR–2003	03–05–2752X	02
05	IL	HERRIN, CITY OF	1707170003B	02–APR–2003	03–05–0653A	02
05	IL	HEYWORTH, VILLAGE OF	17113C0705D	14–MAR–2003	03–05–2334A	02
05	IL	HIGHLAND PARK, CITY OF	17097C0279F	31–JAN–2003	02–05–4602A	02
05	IL	HIGHLAND PARK, CITY OF	17097C0279F	15–JAN–2003	03–05–0509A	02
05	IL	HIGHLAND PARK, CITY OF	17097C0279F	25–APR–2003	03–05–2609A	02
05	IL	HIGHLAND PARK, CITY OF	17097C0279F	09–APR–2003	03–05–2740A	02
05	IL	HIGHLAND PARK, CITY OF	17097C0279F	04–JUN–2003	03–05–3437A	02
05	IL	HOFFMAN ESTATES, VILLAGE OF	17031C0186F	29–JAN–2003	03–05–1516A	02
05	IL	HOFFMAN ESTATES, VILLAGE OF	17031C0176F	11–APR–2003	03–05–2070A	01
05	IL	HOLIDAY HILLS, VILLAGE OF	1709360001B	21–FEB–2003	03–05–1782A	02
05	IL	IROQUOIS COUNTY	17075C0120D	09–MAY–2003	03–05–1204A	01
05	IL	IROQUOIS COUNTY	17075C0045D	14–FEB–2003	03–05–1506A	02
05	IL	IROQUOIS COUNTY	17075C0110D	02–APR–2003	03–05–1749A	02
05	IL	IROQUOIS COUNTY	17075C0105D	05–MAR–2003	03–05–2025A	02
05	IL	IROQUOIS COUNTY	17075C0110D	05–MAR–2003	03–05–2025A	02
05	IL	ISLAND LAKE, VILLAGE OF	1703700001B	14–FEB–2003	03–05–0623A	01
05	IL	ISLAND LAKE, VILLAGE OF	1703700001B	16–APR–2003	03–05–1876A	02
05	IL	ISLAND LAKE, VILLAGE OF	17097C0114F	02–MAY–2003	03–05–2449A	01
05	IL	ISLAND LAKE, VILLAGE OF	17097C0118F	02–MAY–2003	03–05–2449A	01
05	IL	ISLAND LAKE, VILLAGE OF	1703700001B	25–APR–2003	03–05–2683A	02
05	IL	ISLAND LAKE, VILLAGE OF	1703700001B	27–JUN–2003	03–05–3663A	02
05	IL	JACKSONVILLE, CITY OF	1705160005C	09–MAY–2003	03–05–2360A	17
05	IL	JACKSONVILLE, CITY OF	1709030085B	09–MAY–2003	03–05–2360A	17
05	IL	JOHNSBURG, VILLAGE OF	1707320095B	02–APR–2003	03–05–2520A	02
05	IL	JOLIET, CITY OF	17197C0130E	28–FEB–2003	02–05–2033P	06
05	IL	JOLIET, CITY OF	17197C0140E	28–FEB–2003	02–05–2033P	06
05	IL	JOLIET, CITY OF	17197C0137E	10–JAN–2003	03–05–0691A	01
05	IL	JOLIET, CITY OF	17197C0141E	10–JAN–2003	03–05–0691A	01
05	IL	JOLIET, CITY OF	17197C0142E	24–JAN–2003	03–05–1309A	02
05	IL	JOLIET, CITY OF	17197C0135F	23–MAY–2003	03–05–1800A	17
05	IL	JOLIET, CITY OF	17197C0135F	11–APR–2003	03–05–2069A	01
05	IL	JOLIET, CITY OF	17197C0141F	11–APR–2003	03–05–2069A	01
05	IL	JOLIET, CITY OF	17197C0135F	21–MAR–2003	03–05–2076A	01
05	IL	JOLIET, CITY OF	17197C0163E	16–MAY–2003	03–05–2937A	02
05	IL	JUSTICE, VILLAGE OF	17031C0489F	05–MAR–2003	03–05–0656A	02
05	IL	KANE COUNTY	17089C0233F	29–JAN–2003	03–05–1264A	02
05	IL	KANE COUNTY	17089C0130F	05–FEB–2003	03–05–1276A	02

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05	IL	KANE COUNTY	17089C0163F	14–FEB–2003	03–05–1449A	02
05	IL	KANE COUNTY	17089C0305F	16–MAY–2003	03–05–1736A	01
05	IL	KANE COUNTY	17089C0130F	21–MAY–2003	03–05–1929A	02
05	IL	KANE COUNTY	17089C0326F	25–APR–2003	03–05–2850A	02
05	IL	KANE COUNTY	17089C0070F	20–JUN–2003	03–05–3600A	02
05	IL	KANE COUNTY	17089C0158F	04–JUN–2003	03–05–3602A	02
05	IL	KANE COUNTY	17089C0242F	20–JUN–2003	03–05–3972A	01
05	IL	KANE COUNTY *	17089C0233F	16–JAN–2003	03–05–0754A	02
05	IL	KANE COUNTY *	17089C0233F	17–MAR–2003	03–05–0776A	02
05	IL	KANKAKEE COUNTY	1703360170C	26–FEB–2003	03–05–0591A	17
05	IL	KANKAKEE COUNTY	1703360190C	29–JAN–2003	03–05–0666A	02
05	IL	KANKAKEE COUNTY	1703360170C	22–JAN–2003	03–05–0729A	02
05	IL	KANKAKEE COUNTY	1703360180C	22–JAN–2003	03–05–1336A	02
05	IL	KANKAKEE COUNTY	1703360190C	29–JAN–2003	03–05–1547A	02
05	IL	KANKAKEE COUNTY	1703360170C	05–FEB–2003	03–05–1548A	02
05	IL	KANKAKEE COUNTY	1703360065B	05–FEB–2003	03–05–1635A	02
05	IL	KANKAKEE COUNTY	1703360180C	02–MAY–2003	03–05–1726A	17
05	IL	KANKAKEE COUNTY	1703360185C	02–MAY–2003	03–05–1726A	17
05	IL	KANKAKEE COUNTY	1703360185C	07–MAR–2003	03–05–1823A	02
05	IL	KANKAKEE COUNTY	1703360185C	28–MAR–2003	03–05–1824A	17
05	IL	KANKAKEE COUNTY	1703360180C	09–APR–2003	03–05–1877A	02
05	IL	KANKAKEE COUNTY	1703360155B	18–APR–2003	03–05–2062A	02
05	IL	KANKAKEE COUNTY	1703360190C	19–MAR–2003	03–05–2173A	02
05	IL	KANKAKEE COUNTY	1703360170C	16–APR–2003	03–05–2219A	17
05	IL	KANKAKEE COUNTY	1703360170C	06–JUN–2003	03–05–3262A	17
05	IL	KENDALL COUNTY	1703410010C	14–FEB–2003	03–05–1758A	02
05	IL	KENDALL COUNTY	1703410020C	11–JUN–2003	03–05–2616A	02
05	IL	KIRKLAND, VILLAGE OF	17037C0015D	14–MAY–2003	03–05–2908A	02
05	IL	KIRKLAND, VILLAGE OF	17037C0004D	11–JUN–2003	03–05–3361A	02
05	IL	LA SALLE COUNTY	17099C0125E	31–JAN–2003	03–05–1294A	02
05	IL	LAKE COUNTY	17097C0020F	10–JAN–2003	03–05–0731A	02
05	IL	LAKE COUNTY	17097C0110H	10–JAN–2003	03–05–0810A	02
05	IL	LAKE COUNTY	17097C0132G	28–MAR–2003	03–05–0981A	02
05	IL	LAKE COUNTY	17097C0010F	10–JAN–2003	03–05–1124A	02
05	IL	LAKE COUNTY	17097C0010F	22–JAN–2003	03–05–1126A	02
05	IL	LAKE COUNTY	17097C0166G	21–FEB–2003	03–05–1232A	02
05	IL	LAKE COUNTY	17097C0205F	21–MAR–2003	03–05–1346A	02
05	IL	LAKE COUNTY	17097C0144F	14–FEB–2003	03–05–1510A	02
05	IL	LAKE COUNTY	17097C0205F	21–FEB–2003	03–05–1792A	02
05	IL	LAKE COUNTY	17097C0020F	05–MAR–2003	03–05–1943A	02
05	IL	LAKE COUNTY	17097C0110H	21–MAR–2003	03–05–1986A	02
05	IL	LAKE COUNTY	17097C0020F	28–MAR–2003	03–05–2040A	02
05	IL	LAKE COUNTY	17097C0266G	19–MAR–2003	03–05–2240A	02
05	IL	LAKE COUNTY	17097C0144F	16–APR–2003	03–05–2352A	02
05	IL	LAKE COUNTY	17097C0155G	30–APR–2003	03–05–2693A	02
05	IL	LAKE COUNTY	17097C0010F	23–APR–2003	03–05–2824A	02
05	IL	LAKE COUNTY	17097C0155G	04–JUN–2003	03–05–2921A	02
05	IL	LAKE COUNTY	17097C0020F	09–MAY–2003	03–05–3093A	02
05	IL	LAKE COUNTY	17097C0010F	11–JUN–2003	03–05–3693A	02
05	IL	LAKE COUNTY	17097C0020F	13–JUN–2003	03–05–3704A	02
05	IL	LAKE COUNTY	17097C0010F	20–JUN–2003	03–05–3813A	02
05	IL	LAKE FOREST, CITY OF	17097C0259F	31–JAN–2003	03–05–0277A	02
05	IL	LAKE FOREST, CITY OF	17097C0276F	26–FEB–2003	03–05–1599A	02
05	IL	LAKE ZURICH, VILLAGE OF	17097C0228F	06–JAN–2003	02–05–2329P	06
05	IL	LAKE-IN-THE-HILLS, VILLAGE OF	1704810003E	05–FEB–2003	03–05–0585A	02
05	IL	LAKEMOOR, VILLAGE OF	17097C0105H	07–MAY–2003	03–05–2734A	02
05	IL	LAKEWOOD, VILLAGE OF	1707320310C	04–APR–2003	03–05–0419A	01
05	IL	LAKEWOOD, VILLAGE OF	170805—01B	04–APR–2003	03–05–0419A	01
05	IL	LAKEWOOD, VILLAGE OF	170805—01B	02–JAN–2003	03–05–1029A	02
05	IL	LANSING, VILLAGE OF	17031C0759F	14–FEB–2003	03–05–1418A	02
05	IL	LANSING, VILLAGE OF	17031C0766F	27–JUN–2003	03–05–2407A	02
05	IL	LAWRENCE COUNTY	1704090040B	06–JUN–2003	03–05–1632A	02
05	IL	LEE COUNTY	17103C0100D	05–MAR–2003	03–05–0852A	02
05	IL	LEE COUNTY	17103C0075D	28–FEB–2003	03–05–1776A	02
05	IL	LEE COUNTY	17103C0175D	23–APR–2003	03–05–2874A	02
05	IL	LEE COUNTY	17103C0015D	16–MAY–2003	03–05–3456A	02
05	IL	LENZBURG, VILLAGE OF	1706160130A	06–FEB–2003	03–05–1054A	02
05	IL	LIBERTYVILLE, VILLAGE OF	17097C0164G	26–FEB–2003	02–05–4007A	01
05	IL	LIBERTYVILLE, VILLAGE OF	17097C0161F	14–MAY–2003	02–05–4380A	02
05	IL	LIBERTYVILLE, VILLAGE OF	17097C0164G	24–JAN–2003	03–05–1280A	02
05	IL	LIBERTYVILLE, VILLAGE OF	17097C0168G	28–FEB–2003	03–05–1791A	02
05	IL	LIBERTYVILLE, VILLAGE OF	17097C0164G	16–APR–2003	03–05–2542A	02
05	IL	LIBERTYVILLE, VILLAGE OF	17097C0161F	20–JUN–2003	03–05–2836A	01

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05	IL	LIBERTYVILLE, VILLAGE OF	17097C0162G	20-JUN-2003	03-05-2836A	01
05	IL	LILY LAKE, VILLAGE OF	17089C0250F	07-MAY-2003	03-05-2793A	02
05	IL	LINCOLNSHIRE, VILLAGE OF	17097C0258G	31-JAN-2003	03-05-1267A	02
05	IL	LISLE, VILLAGE OF	1702110005B	03-APR-2003	03-05-1383A	02
05	IL	LIVINGSTON COUNTY	1709290009A	09-APR-2003	03-05-0912A	02
05	IL	LIVINGSTON COUNTY	1709290008A	09-MAY-2003	03-05-2944A	02
05	IL	LIVINGSTON COUNTY	1709290008A	09-MAY-2003	03-05-2978A	02
05	IL	LOGAN COUNTY	17107C0150C	28-MAY-2003	03-05-1194A	02
05	IL	LOGAN COUNTY	17107C0125C	30-MAY-2003	03-05-3046A	02
05	IL	LOMBARD, VILLAGE OF	1701970045B	24-MAR-2003	03-05-0023A	02
05	IL	LONG GROVE, VILLAGE OF	17097C0234F	15-JAN-2003	03-05-0921A	02
05	IL	LONG GROVE, VILLAGE OF	17097C0253F	20-JUN-2003	03-05-2914A	02
05	IL	LONG GROVE, VILLAGE OF	17097C0261F	20-JUN-2003	03-05-2914A	02
05	IL	LYNWOOD, VILLAGE OF	17031C0768F	25-JUN-2003	03-05-3646A	02
05	IL	MACHESNEY PARK, VILLAGE OF	1710090005A	09-APR-2003	03-05-1974A	17
05	IL	MACHESNEY PARK, VILLAGE OF	1710090005A	16-MAY-2003	03-05-3059A	02
05	IL	MADISON COUNTY	1704360085B	24-JAN-2003	03-05-0992A	02
05	IL	MADISON COUNTY	1704360085B	10-JAN-2003	03-05-1129A	02
05	IL	MADISON COUNTY	1704360105B	07-MAR-2003	03-05-2000A	02
05	IL	MADISON COUNTY	1704360120B	25-JUN-2003	03-05-3729A	02
05	IL	MANHATTAN, VILLAGE OF	17197C0295E	17-APR-2003	03-05-0306P	06
05	IL	MANHATTAN, VILLAGE OF	17197C0311E	17-APR-2003	03-05-0306P	06
05	IL	MANHATTAN, VILLAGE OF	17197C0311E	06-JUN-2003	03-05-3503A	02
05	IL	MARION, CITY OF	1707190002B	09-APR-2003	03-05-2441A	02
05	IL	MATTESON, VILLAGE OF	17031C0738F	10-FEB-2003	03-05-1401A	01
05	IL	MATTESON, VILLAGE OF	17031C0738F	18-APR-2003	03-05-2270A	01
05	IL	MATTESON, VILLAGE OF	17031C0738F	18-JUN-2003	03-05-2314A	01
05	IL	MATTESON, VILLAGE OF	17031C0719F	30-MAY-2003	03-05-3164A	01
05	IL	MCHENRY COUNTY	1707320025B	22-JAN-2003	02-05-4595A	02
05	IL	MCHENRY COUNTY	1707320115B	15-JAN-2003	03-05-0716A	02
05	IL	MCHENRY COUNTY	1707320355B	31-JAN-2003	03-05-1031A	02
05	IL	MCHENRY COUNTY	1707320240B	04-APR-2003	03-05-1413A	02
05	IL	MCHENRY COUNTY	1707320115B	12-FEB-2003	03-05-1630A	02
05	IL	MCHENRY COUNTY	1707320355B	02-APR-2003	03-05-1821A	02
05	IL	MCHENRY COUNTY	1707320210B	12-MAR-2003	03-05-1944A	02
05	IL	MCHENRY COUNTY	1707320230B	26-MAR-2003	03-05-2035A	02
05	IL	MCHENRY COUNTY	1707320240B	02-MAY-2003	03-05-2829A	02
05	IL	MCHENRY COUNTY	1707320225B	04-JUN-2003	03-05-3445A	02
05	IL	MCHENRY COUNTY	1707320240B	18-JUN-2003	03-05-3791A	02
05	IL	MCHENRY, CITY OF	1704830003D	07-MAR-2003	03-05-1945A	02
05	IL	MCHENRY, CITY OF	1704830003D	16-MAY-2003	03-05-2594A	02
05	IL	MCLEAN COUNTY	17113C0150D	10-JAN-2003	02-05-4219A	02
05	IL	MCLEAN COUNTY	17113C0150D	26-FEB-2003	03-05-0648A	02
05	IL	MCLEAN COUNTY	17113C0150D	28-FEB-2003	03-05-1106A	02
05	IL	MCLEAN COUNTY	17113C0150D	22-JAN-2003	03-05-1224A	02
05	IL	MCLEAN COUNTY	17113C0150D	02-APR-2003	03-05-1517A	02
05	IL	MCLEAN COUNTY	17113C0150D	14-FEB-2003	03-05-1769A	02
05	IL	MCLEAN COUNTY	17113C0300D	30-APR-2003	03-05-2038A	02
05	IL	MCLEAN COUNTY	17113C0675D	21-MAY-2003	03-05-2674A	02
05	IL	MCLEAN COUNTY	17113C0318D	23-MAY-2003	03-05-3272A	02
05	IL	MCLEAN COUNTY	17113C0510D	23-MAY-2003	03-05-3272A	02
05	IL	MCLEAN COUNTY	17113C0150D	18-JUN-2003	03-05-3608A	02
05	IL	MIDLOTHIAN, VILLAGE OF	17031C0726F	16-MAY-2003	03-05-2688A	02
05	IL	MIDLOTHIAN, VILLAGE OF	17031C0639F	09-MAY-2003	03-05-3104A	02
05	IL	MIDLOTHIAN, VILLAGE OF	17031C0726F	28-MAY-2003	03-05-3154A	02
05	IL	MOKENA, VILLAGE OF	17197C0195E	14-FEB-2003	03-05-1591A	02
05	IL	MOLINE, CITY OF	17161C0310E	19-MAR-2003	03-05-1178A	02
05	IL	MOLINE, CITY OF	17161C0328E	02-MAY-2003	03-05-1523A	02
05	IL	MOLINE, CITY OF	17161C0328E	13-JUN-2003	03-05-2524A	02
05	IL	MOLINE, CITY OF	17161C0328E	20-JUN-2003	03-05-3857A	02
05	IL	MOLINE, CITY OF	17161C0328E	25-JUN-2003	03-05-3858A	02
05	IL	MOLINE, CITY OF	17161C0328E	18-JUN-2003	03-05-3861A	02
05	IL	MOLINE, CITY OF	17161C0328E	18-JUN-2003	03-05-3864A	02
05	IL	MOLINE, CITY OF	17161C0330E	18-JUN-2003	03-05-3864A	02
05	IL	MOLINE, CITY OF	17161C0328E	25-JUN-2003	03-05-3867A	02
05	IL	MOLINE, CITY OF	17161C0330E	25-JUN-2003	03-05-3867A	02
05	IL	MONROE COUNTY	1705090125D	30-MAY-2003	03-05-2288A	02
05	IL	MONROE COUNTY*	1705090150D	18-MAR-2003	03-05-0466A	02
05	IL	MONROE COUNTY*	1705090035E	18-MAR-2003	03-05-2120V	19
05	IL	MONROE COUNTY*	1705090055E	18-MAR-2003	03-05-2120V	19
05	IL	MONROE COUNTY*	1705090150D	18-MAR-2003	03-05-2120V	19
05	IL	MONTGOMERY, VILLAGE OF	17089C0385F	12-MAR-2003	03-05-1932A	02
05	IL	MORRIS, CITY OF	1702630006C	18-APR-2003	03-05-2489A	02

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05	IL	MOUNT PROSPECT, VILLAGE OF	17031C0204F	28–FEB–2003	03–05–0849A	02
05	IL	MOUNT PROSPECT, VILLAGE OF	17031C0209F	02–APR–2003	03–05–1614A	02
05	IL	MOUNT PROSPECT, VILLAGE OF	17031C0212F	26–FEB–2003	03–05–1861A	02
05	IL	MOUNT PROSPECT, VILLAGE OF	17031C0212F	02–APR–2003	03–05–2048A	17
05	IL	MOUNT PROSPECT, VILLAGE OF	17031C0216F	05–MAR–2003	03–05–2052A	02
05	IL	MOUNT PROSPECT, VILLAGE OF	17031C0216F	07–MAR–2003	03–05–2086A	02
05	IL	MOUNT PROSPECT, VILLAGE OF	17031C0216F	09–APR–2003	03–05–2087A	17
05	IL	MOUNT PROSPECT, VILLAGE OF	17031C0216F	09–APR–2003	03–05–2088A	17
05	IL	MOUNT PROSPECT, VILLAGE OF	17031C0212F	25–APR–2003	03–05–2446A	02
05	IL	MOUNT PROSPECT, VILLAGE OF	17031C0212F	28–MAR–2003	03–05–2492A	02
05	IL	MOUNT PROSPECT, VILLAGE OF	17031C0216F	25–APR–2003	03–05–2993A	02
05	IL	NAPERVILLE, CITY OF	1702130007C	20–FEB–2003	03–05–1083A	02
05	IL	NAPERVILLE, CITY OF	1702130007C	27–MAR–2003	03–05–1672A	02
05	IL	NAPERVILLE, CITY OF	1702130007C	31–MAR–2003	03–05–1687A	02
05	IL	NAPERVILLE, CITY OF	1702130007C	07–APR–2003	03–05–2128A	02
05	IL	NAPERVILLE, CITY OF	1702130007C	07–APR–2003	03–05–2148A	02
05	IL	NAPERVILLE, CITY OF	1702130021C	04–APR–2003	03–05–0220P	06
05	IL	NAPERVILLE, CITY OF	17197C0033F	04–APR–2003	03–05–0220P	06
05	IL	NAPERVILLE, CITY OF	17197C0033F	02–MAY–2003	03–05–2722A	02
05	IL	NAPERVILLE, CITY OF	17197C0034E	02–MAY–2003	03–05–2722A	02
05	IL	NAPERVILLE, CITY OF	17197C0034E	16–MAY–2003	03–05–2723A	01
05	IL	NEW LENOX, VILLAGE OF	17197C0190E	04–APR–2003	03–05–1874A	02
05	IL	NORMAL, TOWN OF	17113C0313D	15–JAN–2003	03–05–1268A	02
05	IL	NORTH AURORA, VILLAGE OF	17089C0340F	06–FEB–2003	03–05–0396A	02
05	IL	NORTH AURORA, VILLAGE OF	17089C0340F	27–JUN–2003	03–05–2847A	02
05	IL	NORTHBROOK, VILLAGE OF	17031C0227F	16–MAY–2003	03–05–2846A	02
05	IL	NORTHFIELD, VILLAGE OF	17031C0232F	19–MAR–2003	03–05–1629A	02
05	IL	NORTHFIELD, VILLAGE OF	17031C0231F	12–MAR–2003	03–05–1908A	01
05	IL	NORTHFIELD, VILLAGE OF	17031C0232F	12–MAR–2003	03–05–1908A	01
05	IL	NORTHFIELD, VILLAGE OF	17031C0231F	12–MAR–2003	03–05–2019A	02
05	IL	NORTHFIELD, VILLAGE OF	17031C0234F	25–JUN–2003	03–05–2516A	02
05	IL	OAK BROOK, VILLAGE OF	1702140002B	16–JAN–2003	03–05–0390A	02
05	IL	OAK BROOK, VILLAGE OF	1702140003B	10–FEB–2003	03–05–0774A	02
05	IL	OAK FOREST, CITY OF	17031C0707F	15–JAN–2003	03–05–1228A	02
05	IL	OAK FOREST, CITY OF	17031C0707F	29–MAY–2003	03–05–1842P	06
05	IL	OAK FOREST, CITY OF	17031C0707F	30–MAY–2003	03–05–2211A	01
05	IL	OAK FOREST, CITY OF	17031C0707F	02–APR–2003	03–05–2425A	02
05	IL	OAK LAWN, VILLAGE OF	17031C0609F	22–JAN–2003	03–05–1245A	02
05	IL	OAK LAWN, VILLAGE OF	17031C0609F	06–JUN–2003	03–05–1573A	02
05	IL	OAK LAWN, VILLAGE OF	17031C0609F	16–APR–2003	03–05–2522A	02
05	IL	OAK LAWN, VILLAGE OF	17031C0609F	20–JUN–2003	03–05–3169A	02
05	IL	OGLE COUNTY	1705250235A	10–JAN–2003	03–05–0919A	17
05	IL	OGLE COUNTY	1705250235A	26–FEB–2003	03–05–1767A	02
05	IL	ORLAND PARK, VILLAGE OF	17031C0692F	15–JAN–2003	02–05–2981P	05
05	IL	ORLAND PARK, VILLAGE OF	17031C0614F	07–MAY–2003	03–05–1196A	02
05	IL	ORLAND PARK, VILLAGE OF	17031C0702F	06–JUN–2003	03–05–2860A	02
05	IL	ORLAND PARK, VILLAGE OF	17031C0684F	04–JUN–2003	03–05–2887A	02
05	IL	OTTAWA, CITY OF	17099C0530E	23–APR–2003	03–05–1269A	02
05	IL	PALATINE, VILLAGE OF	17031C0179F	15–JAN–2003	02–05–4182A	02
05	IL	PALATINE, VILLAGE OF	17031C0183F	19–MAR–2003	02–05–4192A	01
05	IL	PALATINE, VILLAGE OF	17031C0181F	04–APR–2003	03–05–1201A	02
05	IL	PALOS HILLS, CITY OF	17031C0604F	10–JAN–2003	03–05–1132A	02
05	IL	PALOS HILLS, CITY OF	17031C0604F	05–FEB–2003	03–05–1626A	02
05	IL	PALOS HILLS, CITY OF	17031C0604F	06–JUN–2003	03–05–3498A	02
05	IL	PALOS HILLS, CITY OF	17031C0603F	18–JUN–2003	03–05–3544A	02
05	IL	PALOS HILLS, CITY OF	17031C0604F	18–JUN–2003	03–05–3643A	02
05	IL	PALOS PARK, VILLAGE OF	17031C0612F	06–JUN–2003	03–05–2034A	02
05	IL	PEORIA, CITY OF	1705360015B	28–MAR–2003	03–05–1799A	02
05	IL	PEORIA, CITY OF	1705360015B	26–FEB–2003	03–05–1910A	02
05	IL	PERRY COUNTY	1705380005B	16–APR–2003	03–05–1783A	02
05	IL	PIATT COUNTY	1705420004B	26–MAR–2003	03–05–1954A	02
05	IL	PLAINFIELD, VILLAGE OF	17197C0045F	04–JUN–2003	03–05–3157A	01
05	IL	PONTIAC, CITY OF	1704260001C	28–MAR–2003	03–05–1406A	02
05	IL	PONTIAC, CITY OF	1704260001C	22–JAN–2003	03–05–1407A	02
05	IL	PONTIAC, CITY OF	1704260001C	07–MAR–2003	03–05–1860A	02
05	IL	PONTIAC, CITY OF	1704260001C	09–MAY–2003	03–05–3074A	02
05	IL	PONTOON BEACH, VILLAGE OF	1704470001B	15–JAN–2003	03–05–0128A	02
05	IL	PULASKI COUNTY	1705620025A	23–APR–2003	03–05–1240A	02
05	IL	PULASKI COUNTY	1705620025A	31–JAN–2003	03–05–1564A	02
05	IL	PULASKI COUNTY	1705620025A	28–FEB–2003	03–05–1617A	02
05	IL	QUINCY, CITY OF	1700010160C	26–FEB–2003	03–05–1340A	02
05	IL	RANDOLPH COUNTY	1705750025B	16–MAY–2003	03–05–3020A	02
05	IL	REYNOLDS, VILLAGE OF	17161C0435E	30–MAY–2003	03–05–2600A	02

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05	IL	RICHLAND COUNTY	1709950075B	29–JAN–2003	03–05–1491A	02
05	IL	RIVERWOODS, VILLAGE OF	17097C0259F	06–JUN–2003	03–05–2118A	17
05	IL	RIVERWOODS, VILLAGE OF	17097C0267G	07–MAY–2003	03–05–2901A	02
05	IL	ROCK ISLAND COUNTY	17161C0200E	17–JAN–2003	03–05–0523A	17
05	IL	ROCK ISLAND COUNTY	17161C0145E	14–FEB–2003	03–05–1314A	17
05	IL	ROCK ISLAND COUNTY	17161C0320E	23–APR–2003	03–05–2724A	02
05	IL	ROCK ISLAND COUNTY	17161C0275E	18–JUN–2003	03–05–3329A	02
05	IL	ROCK ISLAND COUNTY	17161C0145E	23–MAY–2003	03–05–3342A	01
05	IL	ROCKFORD, CITY OF	1707230014B	21–MAR–2003	03–05–1528A	02
05	IL	ROLLING MEADOWS, CITY OF	17031C0183F	13–MAR–2003	03–05–0682A	08
05	IL	ROLLING MEADOWS, CITY OF	17031C0183F	10–FEB–2003	03–05–0683A	17
05	IL	ROSELLE, VILLAGE OF	1702160002B	17–MAR–2003	03–05–1659A	02
05	IL	ROUND LAKE BEACH, VILLAGE OF	17097C0126F	10–FEB–2003	03–05–0950A	17
05	IL	ROUND LAKE BEACH, VILLAGE OF	17097C0127G	31–JAN–2003	03–05–1347A	02
05	IL	ROUND LAKE BEACH, VILLAGE OF	17097C0126F	28–FEB–2003	03–05–1582A	17
05	IL	ROUND LAKE BEACH, VILLAGE OF	17097C0126F	20–JUN–2003	03–05–3647A	02
05	IL	ROUND LAKE, VILLAGE OF	17097C0129F	07–MAR–2003	03–05–1588A	01
05	IL	ROUND LAKE, VILLAGE OF	17097C0128F	02–MAY–2003	03–05–2620A	01
05	IL	ROUND LAKE, VILLAGE OF	17097C0128F	16–MAY–2003	03–05–3426X	01
05	IL	ROUND LAKE, VILLAGE OF	17097C0129F	16–MAY–2003	03–05–3426X	01
05	IL	ROUND LAKE, VILLAGE OF	17097C0137F	16–MAY–2003	03–05–3426X	01
05	IL	ROUND LAKE, VILLAGE OF	17097C0140F	16–MAY–2003	03–05–3426X	01
05	IL	SALEM, CITY OF	1704540005B	05–MAR–2003	03–05–1303A	02
05	IL	SANGAMON COUNTY *	1709120250C	16–JAN–2003	03–05–0043A	02
05	IL	SANGAMON COUNTY *	1709120250C	21–JAN–2003	03–05–0765A	02
05	IL	SANGAMON COUNTY *	1709120135C	16–JAN–2003	03–05–1360A	01
05	IL	SAYBROOK, VILLAGE OF	17113C0600D	04–APR–2003	03–05–1784A	02
05	IL	SHOREWOOD,VILLAGE OF	17197C0140E	07–MAR–2003	02–05–2985P	06
05	IL	SHOREWOOD,VILLAGE OF	17197C0255E	07–MAR–2003	02–05–2985P	06
05	IL	SHOREWOOD,VILLAGE OF	17197C0139E	22–JAN–2003	03–05–0132A	01
05	IL	SIDNEY, VILLAGE OF	1700330001B	25–JUN–2003	03–05–3936A	02
05	IL	SLEEPY HOLLOW, VILLAGE OF	17089C0156F	18–JUN–2003	03–05–3740A	02
05	IL	SOUTH ELGIN, VILLAGE OF	17089C0251F	17–APR–2003	03–05–1474P	05
05	IL	ST. CHARLES, CITY OF	17089C0258F	24–FEB–2003	03–05–0359A	01
05	IL	ST. CHARLES, CITY OF	17089C0262F	16–JAN–2003	03–05–0397A	02
05	IL	ST. CHARLES, CITY OF	17089C0260F	25–JUN–2003	03–05–3872A	02
05	IL	ST. CLAIR COUNTY *	1706160070B	03–APR–2003	03–05–1393A	17
05	IL	ST. CLAIR COUNTY *	1706160035A	24–MAR–2003	03–05–1394A	02
05	IL	STONE PARK, VILLAGE OF	17031C0369F	24–FEB–2003	03–05–0769A	02
05	IL	SWANSEA, VILLAGE OF	1706370001B	10–MAR–2003	03–05–0763A	02
05	IL	SYCAMORE, CITY OF	17037C0076D	16–MAY–2003	03–05–2837A	02
05	IL	TINLEY PARK, CITY OF	17031C0717F	26–MAR–2003	03–05–1343A	01
05	IL	TOWER LAKES, VILLAGE OF	17097C0207F	02–APR–2003	03–05–1625A	02
05	IL	TUSCOLA, CITY OF	1701950005C	15–JAN–2003	03–05–1252A	17
05	IL	TUSCOLA, CITY OF	1701950005C	14–MAR–2003	03–05–2200A	02
05	IL	TUSCOLA, CITY OF	1701950005C	30–MAY–2003	03–05–3124A	02
05	IL	UNION COUNTY	1706560075B	05–FEB–2003	03–05–0806A	02
05	IL	VERMILION COUNTY	1709350003A	04–APR–2003	03–05–2733A	02
05	IL	WARRENVILLE, CITY OF	1702180001C	20–MAR–2003	03–05–0770A	17
05	IL	WAUCONDA, VILLAGE OF	17097C0119G	02–MAY–2003	03–05–2750A	01
05	IL	WAUKEGAN, CITY OF	17097C0088F	14–MAY–2003	03–05–2971A	02
05	IL	WESTCHESTER, VILLAGE OF	17031C0459F	27–JAN–2003	03–05–1052A	02
05	IL	WESTCHESTER, VILLAGE OF	17031C0476F	13–FEB–2003	03–05–1065A	02
05	IL	WESTMONT, VILLAGE OF	1702200001B	24–APR–2003	03–05–2152A	02
05	IL	WHITE COUNTY	1709060100B	14–MAY–2003	03–05–2804A	02
05	IL	WILL COUNTY	17197C0385E	05–FEB–2003	02–05–1945C	01
05	IL	WILL COUNTY	17197C0350E	30–JUN–2003	02–05–3658P	06
05	IL	WILL COUNTY	17197C0350E	22–JAN–2003	02–05–4412A	02
05	IL	WILL COUNTY	17197C0157E	05–FEB–2003	02–05–4585A	02
05	IL	WILL COUNTY	17197C0350E	10–JAN–2003	03–05–0553A	01
05	IL	WILL COUNTY	17197C0415E	14–FEB–2003	03–05–1565A	02
05	IL	WILL COUNTY	17197C0405E	07–MAY–2003	03–05–1621A	17
05	IL	WILL COUNTY	17197C0090E	02–APR–2003	03–05–2294A	02
05	IL	WILL COUNTY	17197C0195F	23–APR–2003	03–05–2534A	02
05	IL	WILL COUNTY	17197C0030E	16–MAY–2003	03–05–3000A	02
05	IL	WILL COUNTY	17197C0295E	04–JUN–2003	03–05–3306A	02
05	IL	WILLOW SPRINGS, VILLAGE OF	17031C0582F	11–JUN–2003	03–05–2819A	02
05	IL	WINNEBAGO COUNTY	1707200035B	02–JUN–2003	03–05–0546P	06
05	IL	WINNEBAGO COUNTY	1707200010B	09–APR–2003	03–05–2258A	17
05	IL	WINNEBAGO COUNTY	1707200005B	28–MAY–2003	03–05–2762A	02
05	IL	WINNETKA, VILLAGE OF	17031C0232F	10–FEB–2003	03–05–1001A	01
05	IL	WOOD RIVER, CITY OF	1704510005B	07–MAR–2003	03–05–1806A	02
05	IL	WOODLAND, VILLAGE OF	17075C0185D	28–MAY–2003	03–05–2697A	02

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05	IN	ADAMS COUNTY *	1804240020C	13–FEB–2003	03–05–0360A	01
05	IN	ALLEN COUNTY *	18003C0305D	06–FEB–2003	03–05–1070A	17
05	IN	ALLEN COUNTY *	18003C0350D	27–MAR–2003	03–05–1666A	02
05	IN	ALLEN COUNTY *	18003C0410D	24–MAR–2003	03–05–1685A	02
05	IN	ALLEN COUNTY *	18003C0215D	22–MAR–2003	03–05–800P	05
05	IN	AUBURN, CITY OF	1800460005C	27–JUN–2003	03–05–3888A	02
05	IN	BARTHOLOMEW COUNTY	1800060050B	08–JAN–2003	03–05–1045A	02
05	IN	BARTHOLOMEW COUNTY	1800060100B	26–FEB–2003	03–05–1771A	02
05	IN	BARTHOLOMEW COUNTY	1800060075B	25–APR–2003	03–05–1916A	02
05	IN	BARTHOLOMEW COUNTY	1800060050B	05–MAR–2003	03–05–2027A	02
05	IN	BARTHOLOMEW COUNTY	1800060125B	09–MAY–2003	03–05–3138A	02
05	IN	BARTHOLOMEW COUNTY	1800060075B	20–JUN–2003	03–05–3464A	02
05	IN	BARTHOLOMEW COUNTY	1800060100B	18–JUN–2003	03–05–3764A	02
05	IN	BLACKFORD COUNTY	1804780004B	25–APR–2003	03–05–3024A	02
05	IN	BLOOMINGTON, CITY OF	1801690025C	16–MAY–2003	03–05–1973A	17
05	IN	BOONE COUNTY	1800110045B	20–JUN–2003	03–05–1405A	02
05	IN	BOONE COUNTY	1800110080C	26–MAR–2003	03–05–2117A	02
05	IN	BOONE COUNTY	1800110090B	27–JUN–2003	03–05–2369A	02
05	IN	BOONE COUNTY	1800110090B	23–MAY–2003	03–05–2511A	02
05	IN	BROWN COUNTY	1851740080B	18–JUN–2003	03–05–3868A	02
05	IN	CARMEL, CITY OF	18057C0205F	14–APR–2003	03–05–047P	05
05	IN	CARMEL, CITY OF	18057C0209F	20–FEB–2003	03–05–1389V	19
05	IN	CARMEL, CITY OF	18057C0226F	20–FEB–2003	03–05–1389V	19
05	IN	CARMEL, CITY OF	18057C0227F	20–FEB–2003	03–05–1389V	19
05	IN	CARMEL, CITY OF	18057C0228F	20–FEB–2003	03–05–1389V	19
05	IN	CARMEL, CITY OF	18057C0229F	20–FEB–2003	03–05–1389V	19
05	IN	CARMEL, CITY OF	18057C0235F	20–FEB–2003	03–05–1389V	19
05	IN	CARMEL, CITY OF	18057C0236F	20–FEB–2003	03–05–1389V	19
05	IN	CARMEL, CITY OF	18057CO209F	20–FEB–2003	03–05–1389V	19
05	IN	CARMEL, CITY OF	18057C0205F	04–APR–2003	03–05–2323A	02
05	IN	CARMEL, CITY OF	18057C0216F	30–APR–2003	03–05–2527A	02
05	IN	CARMEL, CITY OF	18057C0235F	16–MAY–2003	03–05–3206A	02
05	IN	CARMEL, CITY OF	18057C0227F	16–MAY–2003	03–05–3304A	02
05	IN	CARMEL, CITY OF	18057C0235F	20–JUN–2003	03–05–3922A	02
05	IN	CARROLL COUNTY	1800190025B	25–APR–2003	03–05–2719A	02
05	IN	CARROLL COUNTY	1800190025B	28–MAY–2003	03–05–3404A	02
05	IN	CASS COUNTY	1800220150B	02–APR–2003	03–05–2214A	02
05	IN	CASS COUNTY	1800220085B	09–MAY–2003	03–05–2897A	02
05	IN	CICERO, TOWN OF	18057C0045F	20–FEB–2003	03–05–1388V	19
05	IN	CICERO, TOWN OF	18057C0130F	20–FEB–2003	03–05–1388V	19
05	IN	CICERO, TOWN OF	18057C0135F	20–FEB–2003	03–05–1388V	19
05	IN	CLARK COUNTY	1804260175C	19–MAR–2003	02–05–4140A	01
05	IN	CLARK COUNTY	1804260125C	15–JAN–2003	03–05–0944A	02
05	IN	CLARK COUNTY	1804260050B	05–FEB–2003	03–05–1050A	01
05	IN	CLARK COUNTY	1804260125C	05–FEB–2003	03–05–1050A	01
05	IN	CLARK COUNTY	1804260175C	22–JAN–2003	03–05–1302A	02
05	IN	CLARK COUNTY	1804260125C	21–FEB–2003	03–05–1348A	02
05	IN	CLARK COUNTY	1804260175C	12–FEB–2003	03–05–1480A	01
05	IN	CLARK COUNTY	1804260175C	29–JAN–2003	03–05–1545A	02
05	IN	CLARK COUNTY	1804260125C	07–MAR–2003	03–05–2061A	02
05	IN	CLARK COUNTY	1804260175C	16–APR–2003	03–05–2437A	02
05	IN	CLARK COUNTY	1804260175C	23–APR–2003	03–05–2681A	02
05	IN	CLARK COUNTY	1804260175C	27–JUN–2003	03–05–2691A	01
05	IN	CLARK COUNTY	1804260175C	06–JUN–2003	03–05–2738A	02
05	IN	CLARK COUNTY	1804260175C	09–MAY–2003	03–05–3191A	02
05	IN	CLARK COUNTY	1804260175C	20–JUN–2003	03–05–3424A	02
05	IN	CLARK COUNTY	1804260175C	04–JUN–2003	03–05–3453A	02
05	IN	CLARK COUNTY	1804260125C	13–JUN–2003	03–05–3487A	02
05	IN	CLARK COUNTY	1804260175C	11–JUN–2003	03–05–3530A	02
05	IN	CLARK COUNTY	1804260125C	18–JUN–2003	03–05–3730A	02
05	IN	CLINTON COUNTY	1800290001B	09–MAY–2003	03–05–2009A	02
05	IN	COLUMBUS, CITY OF	1800070015D	14–MAR–2003	03–05–1890A	01
05	IN	CORYDON, TOWN OF	1800860005B	06–JUN–2003	03–05–3472A	02
05	IN	DE KALB COUNTY	1800440130B	02–APR–2003	03–05–2345A	02
05	IN	DECATUR, CITY OF	1800010005C	03–FEB–2003	03–05–0268A	17
05	IN	DECATUR, CITY OF	180010005C	10–FEB–2003	03–05–1085A	02
05	IN	DELAWARE COUNTY	1800510075C	16–APR–2003	03–05–1820A	17
05	IN	ELKHART COUNTY	1800560075A	03–MAR–2003	03–05–0127A	02
05	IN	ELKHART COUNTY	1800560075A	15–JAN–2003	03–05–0824A	02
05	IN	ELKHART COUNTY	1800560015B	13–JUN–2003	03–05–3045A	02
05	IN	ELKHART, CITY OF	1800570010C	18–JUN–2003	03–05–2372A	17
05	IN	ELLETTSVILLE, TOWN OF	1804440001B	18–APR–2003	03–05–1511A	02
05	IN	ELLETTSVILLE, TOWN OF	180170—01C	25–JUN–2003	03–05–3189A	02

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05	IN	ELLETTSVILLE, TOWN OF	180170—01C	21–MAY–2003	03–05–3407A	02
05	IN	ELLETTSVILLE, TOWN OF	180170—01C	21–MAY–2003	03–05–3408A	02
05	IN	EVANSVILLE, CITY OF	1802570003B	18–FEB–2003	03–05–1372A	01
05	IN	FAIRMOUNT, TOWN OF	18053C0250D	23–APR–2003	03–05–1960A	02
05	IN	FAYETTE COUNTY	1804170004B	25–APR–2003	03–05–1209A	02
05	IN	FISHERS, TOWN OF	18057C0145F	20–FEB–2003	03–05–1387V	19
05	IN	FISHERS, TOWN OF	18057C0235F	20–FEB–2003	03–05–1387V	19
05	IN	FISHERS, TOWN OF	18057C0255F	20–FEB–2003	03–05–1387V	19
05	IN	FISHERS, TOWN OF	18057C0255F	13–JUN–2003	03–05–3636A	02
05	IN	FLOYD COUNTY	1804320050B	14–FEB–2003	03–05–1577A	02
05	IN	FORT WAYNE, CITY OF	18003C0260E	05–MAR–2003	02–05–2904P	05
05	IN	FRANKLIN COUNTY	18047C0020C	28–MAR–2003	03–05–1780A	02
05	IN	FRANKLIN, CITY OF	1801140002B	12–MAR–2003	03–05–2007A	02
05	IN	GRANT COUNTY	18053C0125D	07–MAR–2003	03–05–1862A	02
05	IN	GRANT COUNTY	18053C0150D	07–MAR–2003	03–05–1862A	02
05	IN	GRANT COUNTY	18053C0250D	23–APR–2003	03–05–2610A	02
05	IN	GRANT COUNTY	18053C0125D	16–MAY–2003	03–05–2869A	02
05	IN	GRANT COUNTY	18053C0165D	14–MAY–2003	03–05–2943A	02
05	IN	GRANT COUNTY	18053C0125D	09–MAY–2003	03–05–3095A	02
05	IN	GREENE COUNTY	1804360004A	24–JAN–2003	03–05–1233A	02
05	IN	GREENE COUNTY	1804360004A	26–FEB–2003	03–05–1868A	02
05	IN	GREENE COUNTY	1804360001A	11–JUN–2003	03–05–3803A	02
05	IN	GREENFIELD, CITY OF	1800840006C	22–JAN–2003	03–05–0109A	01
05	IN	GREENFIELD, CITY OF	1800840006C	31–JAN–2003	03–05–0733A	02
05	IN	GREENFIELD, CITY OF	1800840006C	09–MAY–2003	03–05–1166A	02
05	IN	GREENFIELD, CITY OF	1800840006C	09–MAY–2003	03–05–1169A	02
05	IN	GREENSBURG, CITY OF	1800430001B	14–MAY–2003	03–05–2596A	02
05	IN	GREENWOOD, CITY OF	1801150001B	08–JAN–2003	03–05–0869A	02
05	IN	GREENWOOD, CITY OF	1801110050C	18–APR–2003	03–05–1947A	01
05	IN	GREENWOOD, CITY OF	1801150004B	04–JUN–2003	03–05–3357A	02
05	IN	HAMILTON COUNTY*	18057C0165F	31–MAR–2003	03–05–1066A	01
05	IN	HAMILTON COUNTY*	18057C0025F	20–FEB–2003	03–05–1390V	19
05	IN	HAMILTON COUNTY*	18057C0065F	20–FEB–2003	03–05–1390V	19
05	IN	HAMILTON COUNTY*	18057C0070F	20–FEB–2003	03–05–1390V	19
05	IN	HAMILTON COUNTY*	18057C0145F	20–FEB–2003	03–05–1390V	19
05	IN	HAMILTON COUNTY*	18057C0155F	20–FEB–2003	03–05–1390V	19
05	IN	HAMILTON COUNTY*	18057C0160F	20–FEB–2003	03–05–1390V	19
05	IN	HAMILTON COUNTY*	18057C0165F	20–FEB–2003	03–05–1390V	19
05	IN	HAMILTON COUNTY*	18057C0265F	20–FEB–2003	03–05–1390V	19
05	IN	HAMILTON, TOWN OF	1802480001D	21–MAY–2003	03–05–2907A	02
05	IN	HAMILTON, TOWN OF	1802480001D	09–MAY–2003	03–05–2958A	02
05	IN	HAMILTON, TOWN OF	1802480001D	21–MAY–2003	03–05–3343A	02
05	IN	HAMILTON, TOWN OF	1802480001D	21–MAY–2003	03–05–3351A	02
05	IN	HAMILTON, TOWN OF	1802480001D	21–MAY–2003	03–05–3352A	02
05	IN	HAMILTON, TOWN OF	1802480001D	30–MAY–2003	03–05–3475A	02
05	IN	HAMMOND, CITY OF	1801340008B	16–APR–2003	03–05–1955A	01
05	IN	HANCOCK COUNTY	1804190100B	10–JAN–2003	03–05–0589A	02
05	IN	HANCOCK COUNTY	1804190100B	22–JAN–2003	03–05–0877A	02
05	IN	HANCOCK COUNTY	1804190025B	12–FEB–2003	03–05–1644A	02
05	IN	HANCOCK COUNTY	1804190100B	04–APR–2003	03–05–2239A	02
05	IN	HANCOCK COUNTY	1804190050B	25–APR–2003	03–05–2885A	02
05	IN	HARRISON COUNTY	1800850008B	18–JUN–2003	03–05–2192A	02
05	IN	HENDRICKS COUNTY	1804150050B	31–JAN–2003	03–05–0582A	17
05	IN	HENDRICKS COUNTY	1804150050B	26–FEB–2003	03–05–1779A	02
05	IN	HENDRICKS COUNTY	1804150100B	14–MAR–2003	03–05–2008A	02
05	IN	HENDRICKS COUNTY	1804150150B	21–MAR–2003	03–05–2236A	02
05	IN	HENDRICKS COUNTY	1804150100B	21–MAY–2003	03–05–2608A	02
05	IN	HENDRICKS COUNTY	1804150050B	23–APR–2003	03–05–2872A	02
05	IN	HENDRICKS COUNTY	1804150050B	18–JUN–2003	03–05–3476A	02
05	IN	HIGHLAND, TOWN OF	1851760001C	24–JAN–2003	03–05–0325A	01
05	IN	HIGHLAND, TOWN OF	1851760001C	08–JAN–2003	03–05–0647A	02
05	IN	HOBART, CITY OF	1801360005B	15–JAN–2003	03–05–1163A	02
05	IN	HUNTINGTON COUNTY	1804380125C	05–MAR–2003	03–05–1914A	02
05	IN	HUNTINGTON COUNTY	1804380075C	06–JUN–2003	03–05–3465A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0241E	18–APR–2003	02–05–4206A	01
05	IN	INDIANAPOLIS, CITY OF	18097C0240E	30–MAY–2003	03–05–0203A	01
05	IN	INDIANAPOLIS, CITY OF	18097C0241E	05–FEB–2003	03–05–0233A	01
05	IN	INDIANAPOLIS, CITY OF	18097C0243E	05–FEB–2003	03–05–0233A	01
05	IN	INDIANAPOLIS, CITY OF	18097C0254E	22–JAN–2003	03–05–0333A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0254E	21–FEB–2003	03–05–0454A	17
05	IN	INDIANAPOLIS, CITY OF	18097C0044E	15–JAN–2003	03–05–0571A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0205E	31–JAN–2003	03–05–0651A	01
05	IN	INDIANAPOLIS, CITY OF	18097C0205E	21–FEB–2003	03–05–0696A	01

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05	IN	INDIANAPOLIS, CITY OF	18097C0135E	28–MAR–2003	03–05–0742A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0263E	10–FEB–2003	03–05–0821A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0114E	21–FEB–2003	03–05–0853A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0155E	08–JAN–2003	03–05–0882A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0240E	07–MAR–2003	03–05–0930A	01
05	IN	INDIANAPOLIS, CITY OF	18097C0114E	29–JAN–2003	03–05–1013A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0138E	31–JAN–2003	03–05–1016A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0116E	14–FEB–2003	03–05–1020A	01
05	IN	INDIANAPOLIS, CITY OF	18097C0089E	31–JAN–2003	03–05–1030A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0039E	08–JAN–2003	03–05–1039A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0063E	10–JAN–2003	03–05–1127A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0280E	15–JAN–2003	03–05–1171A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0038E	17–JAN–2003	03–05–1172A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0043E	26–FEB–2003	03–05–1195A	17
05	IN	INDIANAPOLIS, CITY OF	18097C0089E	09–APR–2003	03–05–1243A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0254E	24–JAN–2003	03–05–1321A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0254E	29–JAN–2003	03–05–1409A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0109E	02–APR–2003	03–05–1535A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0086E	05–MAR–2003	03–05–1598A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0155E	28–FEB–2003	03–05–1649A	01
05	IN	INDIANAPOLIS, CITY OF	18097C0089E	21–FEB–2003	03–05–1864A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0087E	28–MAY–2003	03–05–1981A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0020E	07–MAR–2003	03–05–2053A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0253E	28–MAR–2003	03–05–2116A	01
05	IN	INDIANAPOLIS, CITY OF	18097C0020E	26–MAR–2003	03–05–2177A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0067E	09–APR–2003	03–05–2196A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0262E	09–APR–2003	03–05–2255A	01
05	IN	INDIANAPOLIS, CITY OF	18097C0089E	26–MAR–2003	03–05–2324A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0154E	16–MAY–2003	03–05–2488A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0136E	09–MAY–2003	03–05–2538A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0110E	04–APR–2003	03–05–2607A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0155E	09–APR–2003	03–05–2769A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0063E	14–MAY–2003	03–05–2785A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0041E	06–JUN–2003	03–05–2808A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0110E	02–MAY–2003	03–05–2815A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0088E	16–APR–2003	03–05–2849A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0089E	16–APR–2003	03–05–2849A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0186E	06–JUN–2003	03–05–3016A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0061E	09–MAY–2003	03–05–3053A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0041E	21–MAY–2003	03–05–3172A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0087E	30–MAY–2003	03–05–3173A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0160E	21–MAY–2003	03–05–3261A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0155E	30–MAY–2003	03–05–3305A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0263E	20–JUN–2003	03–05–3358A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0270E	25–JUN–2003	03–05–3410A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0253E	11–JUN–2003	03–05–3787A	02
05	IN	INDIANAPOLIS, CITY OF	18097C0110E	25–JUN–2003	03–05–3916A	02
05	IN	JACKSON COUNTY	1804050210B	15–JAN–2003	03–05–1305A	02
05	IN	JEFFERSONVILLE, CITY OF	1800270005D	09–MAY–2003	03–05–0322A	02
05	IN	JEFFERSONVILLE, CITY OF	1800270005D	31–JAN–2003	03–05–1447A	02
05	IN	JEFFERSONVILLE, CITY OF	1800270005D	23–MAY–2003	03–05–3151A	02
05	IN	JOHNSON COUNTY	1801110050C	31–JAN–2003	03–05–0627A	02
05	IN	JOHNSON COUNTY	1801110100C	17–JAN–2003	03–05–0722A	02
05	IN	JOHNSON COUNTY	1801110100C	10–JAN–2003	03–05–0937A	02
05	IN	JOHNSON COUNTY	1801110100C	31–JAN–2003	03–05–1592A	02
05	IN	JOHNSON COUNTY	1801110050C	04–JUN–2003	03–05–3429A	02
05	IN	JOHNSON COUNTY	1801110050C	25–JUN–2003	03–05–3963A	02
05	IN	JONESBORO, TOWN OF	18053C0251D	06–JUN–2003	03–05–2805A	02
05	IN	KOSCIUSKO COUNTY	18085C0035C	31–JAN–2003	03–05–0836A	02
05	IN	KOSCIUSKO COUNTY	18085C0080C	05–FEB–2003	03–05–0851A	02
05	IN	KOSCIUSKO COUNTY	18085C0080C	02–JAN–2003	03–05–0931A	02
05	IN	KOSCIUSKO COUNTY	18085C0100C	05–FEB–2003	03–05–1298A	02
05	IN	KOSCIUSKO COUNTY	18085C0045C	22–JAN–2003	03–05–1304A	02
05	IN	KOSCIUSKO COUNTY	18085C0080C	31–JAN–2003	03–05–1499A	02
05	IN	KOSCIUSKO COUNTY	18085C0100C	31–JAN–2003	03–05–1600A	02
05	IN	KOSCIUSKO COUNTY	18085C0080C	26–FEB–2003	03–05–1852A	02
05	IN	KOSCIUSKO COUNTY	18085C0040C	26–FEB–2003	03–05–1859A	02
05	IN	KOSCIUSKO COUNTY	18085C0035C	09–MAY–2003	03–05–1881A	02
05	IN	KOSCIUSKO COUNTY	18085C0100C	14–MAR–2003	03–05–2111A	02
05	IN	KOSCIUSKO COUNTY	18085C0125C	30–MAY–2003	03–05–2467A	02
05	IN	KOSCIUSKO COUNTY	18085C0100C	06–JUN–2003	03–05–2481A	02
05	IN	KOSCIUSKO COUNTY	18085C0100C	02–APR–2003	03–05–2518A	02
05	IN	KOSCIUSKO COUNTY	18085C0035C	09–APR–2003	03–05–2547A	02

Region	State	Community	Map panel	Determination date	Case No.	Type
05	IN	KOSCIUSKO COUNTY	18085C0031C	14–MAY–2003	03–05–2896A	02
05	IN	KOSCIUSKO COUNTY	18085C0075C	09–MAY–2003	03–05–2976A	02
05	IN	KOSCIUSKO COUNTY	18085C0045C	07–MAY–2003	03–05–3031A	02
05	IN	KOSCIUSKO COUNTY	18085C0080C	21–MAY–2003	03–05–3161A	02
05	IN	KOSCIUSKO COUNTY	18085C0125C	21–MAY–2003	03–05–3281A	02
05	IN	KOSCIUSKO COUNTY	18085C0080C	06–JUN–2003	03–05–3502A	02
05	IN	KOSCIUSKO COUNTY	18085C0100C	11–JUN–2003	03–05–3792A	02
05	IN	KOSCIUSKO COUNTY	18085C0080C	25–JUN–2003	03–05–3941A	02
05	IN	LA PORTE COUNTY	1801440050C	04–JUN–2003	03–05–3470A	02
05	IN	LAGRANGE COUNTY	1801250001B	31–JAN–2003	03–05–1612A	02
05	IN	LAGRANGE COUNTY	1801250003B	28–FEB–2003	03–05–1988A	02
05	IN	LAGRANGE COUNTY	1801250004B	23–APR–2003	03–05–2403A	02
05	IN	LAGRANGE COUNTY	1801250003B	11–JUN–2003	03–05–3428A	02
05	IN	LAKE COUNTY	1801260105B	07–APR–2003	02–05–3080P	05
05	IN	LAKE COUNTY	1801260135B	08–JAN–2003	03–05–0910A	02
05	IN	LAKE COUNTY	1801260225B	12–FEB–2003	03–05–1557A	02
05	IN	LAKE COUNTY	1801260120B	14–FEB–2003	03–05–1766A	02
05	IN	LAKE COUNTY	1801260045B	04–APR–2003	03–05–2315A	02
05	IN	LAKE COUNTY	1801260120B	18–JUN–2003	03–05–3204A	02
05	IN	LAWRENCEBURG, CITY OF	1800410001B	14–MAY–2003	03–05–2853A	01
05	IN	LEBANON, CITY OF	1800130001D	07–MAY–2003	03–05–2036A	02
05	IN	LIBERTY, TOWNSHIP OF	1804880002A	19–MAR–2003	03–05–0517A	02
05	IN	LIBERTY, TOWNSHIP OF	1804880001A	09–APR–2003	03–05–1966A	02
05	IN	LIBERTY, TOWNSHIP OF	1804880002A	27–JUN–2003	03–05–3924A	02
05	IN	MEDORA, TOWN OF	1800980001B	25–APR–2003	03–05–1342A	02
05	IN	MIAMI COUNTY	1804090112B	14–MAR–2003	03–05–2016A	02
05	IN	MICHIGAN CITY, CITY OF	1801470010B	16–MAY–2003	03–05–2187A	01
05	IN	MICHIGAN CITY, CITY OF	1801470015B	28–MAR–2003	03–05–2285A	02
05	IN	MICHIGAN CITY, CITY OF	1801470015B	27–JUN–2003	03–05–3958A	02
05	IN	MONROE COUNTY	1804440005B	31–JAN–2003	03–05–1554A	02
05	IN	MONROE COUNTY	1804440002B	16–MAY–2003	03–05–2940A	02
05	IN	MONTGOMERY COUNTY	1804450006B	05–FEB–2003	03–05–1508A	02
05	IN	MOORESVILLE, TOWN OF	1803340003C	11–JUN–2003	03–05–1331A	17
05	IN	MUNCIE, CITY OF	1800530010C	22–JAN–2003	03–05–1133A	02
05	IN	MUNCIE, CITY OF	1800530010C	07–MAR–2003	03–05–1437A	02
05	IN	MUNCIE, CITY OF	1800530010C	23–MAY–2003	03–05–3293A	02
05	IN	MUNCIE, CITY OF	1800530010C	25–JUN–2003	03–05–3331A	02
05	IN	MUNSTER, TOWN OF	1801390002B	02–JAN–2003	03–05–0587A	02
05	IN	MUNSTER, TOWN OF	1801390002B	26–FEB–2003	03–05–1739A	02
05	IN	MUNSTER, TOWN OF	1801390002B	04–APR–2003	03–05–1751A	02
05	IN	NASHVILLE, TOWN OF	1800180001D	02–MAY–2003	03–05–2832A	02
05	IN	NASHVILLE, TOWN OF	1800180001D	02–MAY–2003	03–05–2833A	02
05	IN	NEW ALBANY, CITY OF	1800620010D	09–MAY–2003	02–05–4767A	01
05	IN	NEW ALBANY, CITY OF	1800620010D	10–FEB–2003	03–05–0885A	17
05	IN	NEW CASTLE, CITY OF	18065C0175C	05–FEB–2003	03–05–0308A	01
05	IN	NEW HAVEN, CITY OF	18003C0285E	19–FEB–2003	03–05–799P	05
05	IN	NEW HAVEN, CITY OF	18003C0305D	19–FEB–2003	03–05–799P	05
05	IN	NEW WHITELAND, TOWN OF	1801110020C	12–FEB–2003	03–05–0238A	01
05	IN	NEWBURGH, TOWN OF	1802760001B	31–JAN–2003	03–05–1706A	02
05	IN	NOBLE COUNTY	1801830075B	05–FEB–2003	03–05–1707A	02
05	IN	NOBLE COUNTY	1801830075B	26–MAR–2003	03–05–1708A	17
05	IN	NOBLE COUNTY *	1801830075B	23–JAN–2003	03–05–1059A	02
05	IN	NOBLESVILLE, CITY OF	1800820015E	06–FEB–2003	03–05–1356A	01
05	IN	NOBLESVILLE, CITY OF	18057C0155F	13–MAR–2003	03–05–1376A	02
05	IN	NOBLESVILLE, CITY OF	18057C0135F	20–FEB–2003	03–05–1386V	19
05	IN	NOBLESVILLE, CITY OF	18057C0145F	20–FEB–2003	03–05–1386V	19
05	IN	NOBLESVILLE, CITY OF	18057C0165F	20–FEB–2003	03–05–1386V	19
05	IN	NOBLESVILLE, CITY OF	18057C0235F	20–FEB–2003	03–05–1386V	19
05	IN	NOBLESVILLE, CITY OF	18057C0255F	20–FEB–2003	03–05–1386V	19
05	IN	NOBLESVILLE, CITY OF	18057C0260F	20–FEB–2003	03–05–1386V	19
05	IN	NOBLESVILLE, CITY OF	18057C0265F	20–FEB–2003	03–05–1386V	19
05	IN	NOBLESVILLE, CITY OF	18057C0270F	20–FEB–2003	03–05–1386V	19
05	IN	NOBLESVILLE, CITY OF	18057C0235F	18–JUN–2003	03–05–2572P	06
05	IN	NOBLESVILLE, CITY OF	18057C0245F	18–JUN–2003	03–05–2572P	06
05	IN	NOBLESVILLE, CITY OF	18057C0265F	06–JUN–2003	03–05–2581A	01
05	IN	NOBLESVILLE, CITY OF	18057C0155F	02–MAY–2003	03–05–2883A	02
05	IN	NOBLESVILLE, CITY OF	18057C0255F	02–MAY–2003	03–05–2884A	02
05	IN	NOBLESVILLE, CITY OF	18057C0265F	02–MAY–2003	03–05–3129A	02
05	IN	NOBLESVILLE, CITY OF	18057C0145F	27–JUN–2003	03–05–3195A	02
05	IN	NOBLESVILLE, CITY OF	18057C0145F	11–JUN–2003	03–05–3737A	02
05	IN	NORTH MANCHESTER, TOWN OF	18169C0030D	25–APR–2003	03–05–2237A	02
05	IN	NORTH MANCHESTER, TOWN OF	18169C0030D	14–MAY–2003	03–05–3260X	02
05	IN	NORTH WEBSTER, TOWN OF	18085C0045C	27–JUN–2003	03–05–3142A	02

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05	IN	OHIO COUNTY	180406—02B	31–JAN–2003	02–05–4734A	02
05	IN	PLAINFIELD, TOWN OF	1804150100B	22–JAN–2003	03–05–1254A	02
05	IN	PLAINFIELD, TOWN OF	1800890001B	26–FEB–2003	03–05–1875A	02
05	IN	PLAINFIELD, TOWN OF	1800890001B	26–MAR–2003	03–05–2316A	02
05	IN	PLAINFIELD, TOWN OF	1804150100B	28–MAR–2003	03–05–2365A	02
05	IN	PLAINFIELD, TOWN OF	1804150100B	19–MAR–2003	03–05–2371A	02
05	IN	PLAINFIELD, TOWN OF	1804150110B	28–MAY–2003	03–05–3152A	02
05	IN	PLAINFIELD, TOWN OF	1804150100B	11–JUN–2003	03–05–3468A	02
05	IN	PORTAGE, CITY OF	1802020015B	09–MAY–2003	03–05–2735A	02
05	IN	PORTER COUNTY	1804250160B	23–APR–2003	03–05–2462A	02
05	IN	PORTER COUNTY	1804250060B	09–MAY–2003	03–05–2942A	02
05	IN	POSEY COUNTY	180209—16B	22–JAN–2003	03–05–0727A	02
05	IN	PUTNAM COUNTY	1802130003B	23–MAY–2003	03–05–3202A	02
05	IN	SALEM, CITY OF	1802790001B	20–JUN–2003	03–05–1928A	01
05	IN	SCHERERVILLE, TOWN OF	1801260085B	27–JAN–2003	02–05–3647P	05
05	IN	SCHERERVILLE, TOWN OF	1801420005B	10–JAN–2003	03–05–0898A	02
05	IN	SCHERERVILLE, TOWN OF	1801420005B	07–MAR–2003	03–05–2055A	02
05	IN	SCHERERVILLE, TOWN OF	1801420005B	04–JUN–2003	03–05–3633A	02
05	IN	SCHERERVILLE, TOWN OF	1801420005B	06–JUN–2003	03–05–3637A	02
05	IN	SELLERSBURG, TOWN OF	1804260125C	26–MAR–2003	03–05–2014A	01
05	IN	SEYMOUR, CITY OF	1800990004C	31–JAN–2003	03–05–0219A	17
05	IN	SEYMOUR, CITY OF	1800990004C	29–JAN–2003	03–05–1552A	02
05	IN	SEYMOUR, CITY OF	1800990004C	16–APR–2003	03–05–1589A	02
05	IN	SEYMOUR, CITY OF	1800990004C	26–FEB–2003	03–05–1743A	02
05	IN	SEYMOUR, CITY OF	1800990004C	14–FEB–2003	03–05–1756A	02
05	IN	SEYMOUR, CITY OF	1800990004C	16–MAY–2003	03–05–2066A	02
05	IN	SEYMOUR, CITY OF	1800990004C	21–MAY–2003	03–05–2736A	01
05	IN	SEYMOUR, CITY OF	1800990004C	09–MAY–2003	03–05–2974A	02
05	IN	SEYMOUR, CITY OF	1800990004C	28–MAY–2003	03–05–3065A	02
05	IN	SEYMOUR, CITY OF	1800990004C	16–MAY–2003	03–05–3141A	02
05	IN	SEYMOUR, CITY OF	1800990004C	28–MAY–2003	03–05–3199A	02
05	IN	SHELBY COUNTY	1802350150B	26–MAR–2003	03–05–2307A	02
05	IN	SPEEDWAY, TOWN OF—USE CID 180159	18097C0136E	28–JAN–2003	02–05–4779P	05
05	IN	SPENCER COUNTY	1802370150A	10–JAN–2003	03–05–0580A	02
05	IN	ST. JOHN, TOWN OF	1801260080B	14–FEB–2003	03–05–0586A	02
05	IN	ST. JOSEPH COUNTY	1802240100A	26–MAR–2003	03–05–1979A	02
05	IN	ST. JOSEPH COUNTY	1802240075A	16–MAY–2003	03–05–2450A	02
05	IN	ST. JOSEPH COUNTY	1802240075A	30–APR–2003	03–05–2775A	02
05	IN	STEUBEN COUNTY	1802430025B	10–JAN–2003	03–05–1115A	02
05	IN	STEUBEN COUNTY	1802430100B	29–JAN–2003	03–05–1241A	02
05	IN	STEUBEN COUNTY	1802430025B	24–JAN–2003	03–05–1259A	02
05	IN	STEUBEN COUNTY	1802430075B	22–JAN–2003	03–05–1323A	02
05	IN	STEUBEN COUNTY	1802430025B	29–JAN–2003	03–05–1326A	02
05	IN	STEUBEN COUNTY	1802430025B	22–JAN–2003	03–05–1350A	02
05	IN	STEUBEN COUNTY	1802430025B	31–JAN–2003	03–05–1566A	02
05	IN	STEUBEN COUNTY	1802430025B	05–FEB–2003	03–05–1655A	02
05	IN	STEUBEN COUNTY	1802430025B	10–FEB–2003	03–05–1729A	02
05	IN	STEUBEN COUNTY	1802430025B	26–FEB–2003	03–05–1894A	02
05	IN	STEUBEN COUNTY	1802430025B	14–MAR–2003	03–05–2328A	02
05	IN	STEUBEN COUNTY	1802430025B	28–MAR–2003	03–05–2337A	02
05	IN	STEUBEN COUNTY	1802430100B	14–MAR–2003	03–05–2342A	02
05	IN	STEUBEN COUNTY	1802430100B	19–MAR–2003	03–05–2419A	02
05	IN	STEUBEN COUNTY	1802430100B	28–MAR–2003	03–05–2420A	02
05	IN	STEUBEN COUNTY	1802430025B	18–APR–2003	03–05–2508A	02
05	IN	STEUBEN COUNTY	1802430100B	02–APR–2003	03–05–2529A	02
05	IN	STEUBEN COUNTY	1802430100B	16–MAY–2003	03–05–2945A	02
05	IN	STEUBEN COUNTY	1802430025B	06–JUN–2003	03–05–3270A	02
05	IN	STEUBEN COUNTY	1802430100B	30–MAY–2003	03–05–3504A	02
05	IN	STEUBEN COUNTY	1802430075B	18–JUN–2003	03–05–3545A	02
05	IN	SULPHUR SPRINGS, TOWN OF	18065C0050C	25–JUN–2003	03–05–2927A	02
05	IN	SWITZERLAND COUNTY	1802510100B	09–APR–2003	03–05–2375A	02
05	IN	TELL CITY, CITY OF	180197—03B	12–MAR–2003	03–05–0632A	02
05	IN	TELL CITY, CITY OF	180197—06B	22–JAN–2003	03–05–1327A	02
05	IN	TELL CITY, CITY OF	180197—09B	22–JAN–2003	03–05–1327A	02
05	IN	TELL CITY, CITY OF	180197—06B	09–MAY–2003	03–05–2926A	02
05	IN	TELL CITY, CITY OF	180197—06B	14–MAY–2003	03–05–2928A	02
05	IN	TIPPECANOE COUNTY	1804280035B	08–JAN–2003	03–05–0476A	02
05	IN	TIPPECANOE COUNTY	1804280020B	02–APR–2003	03–05–1774A	02
05	IN	TIPPECANOE COUNTY	1804280080B	26–FEB–2003	03–05–1912A	02
05	IN	TIPPECANOE COUNTY	1804280050B	21–MAY–2003	03–05–2442A	02
05	IN	TIPPECANOE COUNTY	1804280030B	28–MAY–2003	03–05–2766A	01
05	IN	TIPPECANOE COUNTY	1804280095B	28–MAY–2003	03–05–3439A	02
05	IN	TIPTON COUNTY	1804750004B	04–JUN–2003	03–05–2995A	02

Region	State	Community	Map panel	Determination date	Case No.	Type
05	IN	TIPTON, CITY OF	1802550001C	07-MAR-2003	03-05-2119A	02
05	IN	VANDERBURGH COUNTY *	1802560050B	08-JAN-2003	03-05-0378A	02
05	IN	VANDERBURGH COUNTY *	1802560025C	08-JAN-2003	03-05-1062A	01
05	IN	VANDERBURGH COUNTY *	1802560025C	08-JAN-2003	03-05-1068A	01
05	IN	VANDERBURGH COUNTY *	1802560050B	21-JAN-2003	03-05-1074A	01
05	IN	VANDERBURGH COUNTY *	1802560025C	10-JAN-2003	03-05-1075A	01
05	IN	VANDERBURGH COUNTY *	1802560025C	06-FEB-2003	03-05-1087A	01
05	IN	VANDERBURGH COUNTY *	1802560025C	27-JAN-2003	03-05-1089A	01
05	IN	VANDERBURGH COUNTY *	1802560025C	27-FEB-2003	03-05-1096A	01
05	IN	VANDERBURGH COUNTY *	1802560025C	03-FEB-2003	03-05-1097A	01
05	IN	VANDERBURGH COUNTY *	1802560025C	27-JAN-2003	03-05-1098A	02
05	IN	VANDERBURGH COUNTY *	1802560025C	30-JAN-2003	03-05-1099A	02
05	IN	VANDERBURGH COUNTY *	1802560025C	23-JAN-2003	03-05-1352A	01
05	IN	VANDERBURGH COUNTY *	1802560015C	30-JAN-2003	03-05-1365A	01
05	IN	VANDERBURGH COUNTY *	1802560025C	30-JAN-2003	03-05-1366A	01
05	IN	VANDERBURGH COUNTY *	1802560100B	03-MAR-2003	03-05-1379A	02
05	IN	VANDERBURGH COUNTY *	1802560025C	10-FEB-2003	03-05-1400A	02
05	IN	VANDERBURGH COUNTY *	1802560025C	18-FEB-2003	03-05-1663A	01
05	IN	VANDERBURGH COUNTY *	1802560015C	03-APR-2003	03-05-1667A	02
05	IN	VANDERBURGH COUNTY *	1802560100B	27-FEB-2003	03-05-1668A	02
05	IN	VANDERBURGH COUNTY *	1802560025C	06-MAR-2003	03-05-1676A	01
05	IN	VANDERBURGH COUNTY *	1802560015C	27-FEB-2003	03-05-1679A	02
05	IN	VANDERBURGH COUNTY *	1802560025C	10-MAR-2003	03-05-1697A	02
05	IN	VANDERBURGH COUNTY *	1802560025C	21-APR-2003	03-05-2133A	02
05	IN	VANDERBURGH COUNTY *	1802560015C	31-MAR-2003	03-05-2143A	01
05	IN	VANDERBURGH COUNTY *	1802560025C	20-MAR-2003	03-05-2144A	01
05	IN	VANDERBURGH COUNTY *	1802560015C	14-APR-2003	03-05-2156A	01
05	IN	VANDERBURGH COUNTY *	1802560025C	21-APR-2003	03-05-2159A	01
05	IN	VANDERBURGH COUNTY *	1802560025C	28-APR-2003	03-05-2635A	01
05	IN	VANDERBURGH COUNTY *	1802560025C	28-APR-2003	03-05-2636A	01
05	IN	VANDERBURGH COUNTY *	1802560025C	28-APR-2003	03-05-2649A	02
05	IN	VIGO COUNTY	1802630130B	15-JAN-2003	02-05-4733A	02
05	IN	VIGO COUNTY	1802630070B	29-JAN-2003	03-05-0291A	17
05	IN	VIGO COUNTY	1802630070B	28-MAR-2003	03-05-0484A	01
05	IN	VIGO COUNTY	1802630070B	24-JAN-2003	03-05-1255A	02
05	IN	VIGO COUNTY	1802630070B	18-JUN-2003	03-05-3526A	02
05	IN	WABASH COUNTY	18169C0020D	22-JAN-2003	03-05-1192A	02
05	IN	WABASH COUNTY	18169C0030D	14-MAY-2003	03-05-2080A	02
05	IN	WARRICK COUNTY	1804180100C	07-MAR-2003	03-05-1917A	02
05	IN	WARRICK COUNTY	1804180200B	04-JUN-2003	03-05-3360A	02
05	IN	WARRICK COUNTY *	1804180175B	30-JAN-2003	03-05-1354A	02
05	IN	WARSAW, CITY OF	18085C0086C	10-JAN-2003	03-05-1180A	02
05	IN	WARSAW, CITY OF	18085C0086C	21-MAY-2003	03-05-3089A	02
05	IN	WELLS COUNTY	1802880100C	31-JAN-2003	03-05-1179A	02
05	IN	WELLS COUNTY	1802880100C	30-APR-2003	03-05-2749A	02
05	IN	WEST LAFAYETTE, CITY OF	1802540002C	12-FEB-2003	03-05-0693A	01
05	IN	WEST LAFAYETTE, CITY OF	1804280055B	12-FEB-2003	03-05-0693A	01
05	IN	WEST LAFAYETTE, CITY OF	1802540002C	26-MAR-2003	03-05-2006A	02
05	IN	WESTFIELD, TOWN OF	18057C0115F	20-FEB-2003	03-05-1385V	19
05	IN	WESTFIELD, TOWN OF	18057C0120F	20-FEB-2003	03-05-1385V	19
05	IN	WESTFIELD, TOWN OF	18057C0140F	20-FEB-2003	03-05-1385V	19
05	IN	WESTFIELD, TOWN OF	18057C0138F	02-APR-2003	03-05-2477A	01
05	IN	WESTFIELD, TOWN OF	18057C0140F	30-APR-2003	03-05-2540A	01
05	IN	WESTFIELD, TOWN OF	18057C0120F	02-APR-2003	03-05-2550A	02
05	IN	WHITE COUNTY	1804470002C	12-MAR-2003	03-05-0959A	02
05	IN	WHITE COUNTY	1804470002C	31-JAN-2003	03-05-1434A	02
05	IN	WHITE COUNTY	1804470002C	07-MAR-2003	03-05-1647A	02
05	IN	WHITE COUNTY	1804470002C	21-MAR-2003	03-05-1938A	02
05	IN	WHITE COUNTY	1804470002C	07-MAY-2003	03-05-2791A	02
05	IN	WHITE COUNTY	1804470005C	14-MAY-2003	03-05-3006A	02
05	IN	WHITE COUNTY	1804470005C	16-MAY-2003	03-05-3123A	02
05	IN	WHITE COUNTY	1804470005C	11-JUN-2003	03-05-3438A	02
05	IN	WHITELAND, TOWN OF	1801110100C	14-MAY-2003	03-05-0298A	01
05	IN	WHITELAND, TOWN OF	1801180001A	23-APR-2003	03-05-0939A	02
05	IN	WHITELAND, TOWN OF	1801180001A	30-APR-2003	03-05-2827A	02
05	IN	WHITING, CITY OF	1803130001C	12-MAR-2003	02-05-3365A	02
05	IN	WHITING, CITY OF	1803130001C	27-MAR-2003	03-05-0112P	08
05	IN	WHITLEY COUNTY	1802980002B	21-MAY-2003	03-05-3077A	02
05	IN	WHITLEY COUNTY	1802980001B	16-MAY-2003	03-05-3282A	02
05	IN	WINONA LAKE, TOWN OF	18085C0086C	02-JAN-2003	03-05-1104A	02
05	IN	WINONA LAKE, TOWN OF	18085C0086C	14-MAY-2003	03-05-2322A	02
05	IN	WINONA LAKE, TOWN OF	18085C0086C	06-JUN-2003	03-05-2962A	02
05	IN	WINSLOW,TOWN OF	180200—01B	25-JUN-2003	03-05-3344A	02

Region	State	Community	Map panel	Determination date	Case No.	Type
05	MI	ALBEE, TOWNSHIP OF	26145C0245D	07-MAR-2003	03-05-1899A	02
05	MI	ALBEE, TOWNSHIP OF	26145C0245D	07-MAR-2003	03-05-2112A	02
05	MI	ALGONAC, CITY OF	2601910001C	14-MAR-2003	03-05-1811A	02
05	MI	ALGONAC, CITY OF	2601910001C	20-JUN-2003	03-05-1935A	01
05	MI	ALGONAC, CITY OF	2601910001C	07-MAY-2003	03-05-2474A	02
05	MI	ALGONAC, CITY OF	2601910001C	18-JUN-2003	03-05-3073A	02
05	MI	ALLENDALE, CHARTER TOWNSHIP OF	2604900005B	02-APR-2003	03-05-0964A	02
05	MI	ALPENA, CITY OF	2600100005B	14-MAR-2003	03-05-2010A	02
05	MI	ALPENA, TOWNSHIP OF	2600110024B	23-APR-2003	03-05-2717A	02
05	MI	ALPENA, TOWNSHIP OF	2600110039C	30-APR-2003	03-05-2789A	02
05	MI	ANN ARBOR, CITY OF	2602130008D	24-JAN-2003	03-05-1208A	02
05	MI	ATLAS, TOWNSHIP OF	2603930005A	02-APR-2003	03-05-1141A	02
05	MI	AUGRES, TOWNSHIP OF	2600130025B	18-JUN-2003	03-05-2679A	02
05	MI	BANGOR, CHARTER TOWNSHIP OF	26017C0145D	03-JAN-2003	03-05-0891A	02
05	MI	BANGOR, CHARTER TOWNSHIP OF	26017C0140D	05-FEB-2003	03-05-1049A	02
05	MI	BANGOR, CHARTER TOWNSHIP OF	26017C0140D	08-JAN-2003	03-05-1266A	02
05	MI	BANGOR, CHARTER TOWNSHIP OF	26017C0140D	14-MAR-2003	03-05-1549A	01
05	MI	BANGOR, CHARTER TOWNSHIP OF	26017C0115D	14-FEB-2003	03-05-1813A	02
05	MI	BANGOR, CHARTER TOWNSHIP OF	26017C0140D	14-MAR-2003	03-05-1869A	02
05	MI	BANGOR, CHARTER TOWNSHIP OF	26017C0140D	23-APR-2003	03-05-2672A	02
05	MI	BANGOR, CHARTER TOWNSHIP OF	26017C0140D	23-APR-2003	03-05-2857A	02
05	MI	BANGOR, CHARTER TOWNSHIP OF	26017C0140D	20-JUN-2003	03-05-3920A	02
05	MI	BANKS, TOWNSHIP OF	2606430001B	24-JAN-2003	03-05-0414A	02
05	MI	BANKS, TOWNSHIP OF	2606430003B	17-JAN-2003	03-05-1160A	02
05	MI	BANKS, TOWNSHIP OF	2606430004B	07-MAY-2003	03-05-2876A	02
05	MI	BANKS, TOWNSHIP OF	2606430003B	06-JUN-2003	03-05-3520A	02
05	MI	BAY MILLS, TOWNSHIP OF	2603740025B	08-JAN-2003	03-05-1222A	02
05	MI	BAY MILLS, TOWNSHIP OF	2603740050B	23-APR-2003	03-05-1937A	02
05	MI	BEAUGRAND, TOWNSHIP OF	2606460002B	16-MAY-2003	03-05-2835A	02
05	MI	BEDFORD, TOWNSHIP OF	26115C0364D	04-APR-2003	03-05-1424A	02
05	MI	BENTON, TOWNSHIP OF	2600310002B	02-MAY-2003	03-05-2068A	01
05	MI	BERLIN, TOWNSHIP OF	26115C0136D	23-MAY-2003	03-05-3100A	02
05	MI	BIG RAPIDS, TOWNSHIP OF	260135—06B	26-MAR-2003	03-05-1982A	02
05	MI	BLOOMFIELD, TOWNSHIP OF	2601690016B	29-JAN-2003	03-05-0926A	02
05	MI	BLOOMFIELD, TOWNSHIP OF	2601690004C	26-MAR-2003	03-05-2049A	02
05	MI	BRANT, TOWNSHIP OF	26145C0225D	17-JAN-2003	03-05-1444A	02
05	MI	BROOMFIELD, TOWNSHIP OF	26073C0275C	23-APR-2003	03-05-2807A	02
05	MI	BROWNSTOWN, CHARTER TOWNSHIP OF	2602180010B	31-JAN-2003	03-05-1217A	02
05	MI	BROWNSTOWN, CHARTER TOWNSHIP OF	2602180015B	21-MAY-2003	03-05-2084A	02
05	MI	BROWNSTOWN, CHARTER TOWNSHIP OF	2602180010B	09-MAY-2003	03-05-2809A	17
05	MI	BUCHANAN, TOWNSHIP OF	2605550005A	27-JUN-2003	03-05-3120A	02
05	MI	BUENA VISTA, TOWNSHIP OF	26145C0085D	14-FEB-2003	03-05-1150A	02
05	MI	BUENA VISTA, TOWNSHIP OF	26145C0085D	02-MAY-2003	03-05-2698A	02
05	MI	BUENA VISTA, TOWNSHIP OF	26145C0085D	23-APR-2003	03-05-2858A	02
05	MI	CADILLAC, CITY OF	26165C0456C	25-APR-2003	03-05-3026A	01
05	MI	CALEDONIA, TOWNSHIP OF	26069300058	25-JUN-2003	03-05-3863A	02
05	MI	CANNON, TOWNSHIP OF	2607340025A	08-JAN-2003	03-05-0761A	02
05	MI	CANTON, TOWNSHIP OF	2602190006B	24-JUN-2003	02-05-3652P	05
05	MI	CANTON, TOWNSHIP OF	2602190009B	25-JUN-2003	03-05-3739A	02
05	MI	CARROLLTON, TOWNSHIP OF	26145C0080D	14-MAR-2003	03-05-0521A	02
05	MI	CARROLLTON, TOWNSHIP OF	26145C0085D	14-MAR-2003	03-05-0521A	02
05	MI	CARROLLTON, TOWNSHIP OF	26145C0080D	13-JUN-2003	03-05-3611X	02
05	MI	CASCADE, CHARTER TOWNSHIP OF	2608140025A	30-APR-2003	03-05-2357A	02
05	MI	CASEVILLE, TOWNSHIP OF	2602570002A	16-APR-2003	03-05-2463A	02
05	MI	CASTLETON, TOWNSHIP OF	2606410010B	02-APR-2003	03-05-2176A	02
05	MI	CHEBOYGAN, CITY OF	2600580005B	08-JAN-2003	03-05-1103A	02
05	MI	CHESTERFIELD, TOWNSHIP OF	2601200010B	28-FEB-2003	03-05-1183A	02
05	MI	CHESTERFIELD, TOWNSHIP OF	2601200010B	17-JAN-2003	03-05-1274A	02
05	MI	CHESTERFIELD, TOWNSHIP OF	2601200010B	28-MAR-2003	03-05-1561A	02
05	MI	CHESTERFIELD, TOWNSHIP OF	2601200010B	07-MAY-2003	03-05-2231A	02
05	MI	CHESTERFIELD, TOWNSHIP OF	2601200010B	09-MAY-2003	03-05-2593A	02
05	MI	CHESTERFIELD, TOWNSHIP OF	2601200010B	06-JUN-2003	03-05-3440A	02
05	MI	CHOCOLAY, TOWNSHIP OF	2604480010B	02-APR-2003	03-05-2039A	02
05	MI	CLARK, TOWNSHIP OF	2607590050B	10-JAN-2003	03-05-0993A	02
05	MI	CLARK, TOWNSHIP OF	2607590050B	08-JAN-2003	03-05-1113A	02
05	MI	CLARK, TOWNSHIP OF	2607590050B	09-MAY-2003	03-05-1753A	02
05	MI	CLARK, TOWNSHIP OF	2607590050B	25-APR-2003	03-05-2917A	02
05	MI	CLARKSTON, CITY OF THE VILLAGE OF	2604720001B	23-MAY-2003	03-05-2430D	02
05	MI	CLAY, TOWNSHIP OF	2601940003B	31-JAN-2003	03-05-1218A	01
05	MI	CLAY, TOWNSHIP OF	2601940003B	28-MAY-2003	03-05-3003A	01
05	MI	CLAY, TOWNSHIP OF	2601940003B	25-JUN-2003	03-05-3505A	02
05	MI	CLAY, TOWNSHIP OF	2601940001B	13-JUN-2003	03-05-3518A	02
05	MI	CLAY, TOWNSHIP OF	2601940002B	13-JUN-2003	03-05-3658A	02

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05	MI	CLEVELAND, TOWNSHIP OF	260302—09A	08–JAN–2003	03–05–1010A	02
05	MI	CLINTON, CHARTER TOWNSHIP OF	2601210005E	21–MAR–2003	03–05–1637A	02
05	MI	CLINTON, CHARTER TOWNSHIP OF	2601210005E	12–MAR–2003	03–05–1735A	02
05	MI	COLDWATER, TOWNSHIP OF	2608260010A	14–MAR–2003	03–05–2064A	02
05	MI	COLON, TOWNSHIP OF	2605100010A	28–MAR–2003	03–05–1998A	02
05	MI	COMMERCE, TOWNSHIP OF	2604730005B	21–MAR–2003	03–05–1279A	02
05	MI	COMMERCE, TOWNSHIP OF	2604730010B	19–MAR–2003	03–05–2101A	02
05	MI	COTTRELLVILLE, TOWNSHIP OF	2601960005B	08–JAN–2003	03–05–0133A	02
05	MI	COTTRELLVILLE, TOWNSHIP OF	2601960005B	09–APR–2003	03–05–2476A	02
05	MI	DAVISON, CITY OF	2600740005B	03–JAN–2003	03–05–0088A	02
05	MI	DAVISON, TOWNSHIP OF	2606640005B	26–FEB–2003	03–05–0601A	02
05	MI	DE WITT, TOWNSHIP OF	2606310005B	23–MAY–2003	03–05–3130A	02
05	MI	DEARBORN HEIGHTS, CITY OF	2602210007C	10–FEB–2003	03–05–1301A	02
05	MI	DEARBORN HEIGHTS, CITY OF	2602210007C	21–MAY–2003	03–05–2780A	02
05	MI	DEARBORN HEIGHTS, CITY OF	2602210007C	23–MAY–2003	03–05–3101A	02
05	MI	DEARBORN HEIGHTS, CITY OF	2602210007C	30–MAY–2003	03–05–3165A	02
05	MI	DEARBORN, CITY OF	2602200005D	15–JAN–2003	03–05–0512A	02
05	MI	DEARBORN, CITY OF	2602200005D	23–APR–2003	03–05–2254A	02
05	MI	DEARBORN, CITY OF	2602200005D	28–MAR–2003	03–05–2396A	02
05	MI	DEARBORN, CITY OF	2602200005D	28–MAR–2003	03–05–2448A	02
05	MI	DEARBORN, CITY OF	2602200005D	25–APR–2003	03–05–2583A	02
05	MI	DEARBORN, CITY OF	2602200005D	07–MAY–2003	03–05–2856A	02
05	MI	DEEP RIVER, TOWNSHIP OF	2603500010B	14–FEB–2003	03–05–1571A	02
05	MI	DEEP RIVER, TOWNSHIP OF	2603500010B	06–JUN–2003	03–05–3441A	02
05	MI	DEERFIELD, TOWNSHIP OF	26073C0285C	21–MAR–2003	03–05–1590A	02
05	MI	DELHI, CHARTER TOWNSHIP OF	2600880005C	22–JAN–2003	03–05–1230A	02
05	MI	DELHI, CHARTER TOWNSHIP OF	2600880005C	05–FEB–2003	03–05–1415A	17
05	MI	DELHI, CHARTER TOWNSHIP OF	2600880005C	25–JUN–2003	03–05–3892A	02
05	MI	DELTA, CHARTER TOWNSHIP OF	2600660005D	28–MAY–2003	03–05–2210A	02
05	MI	DETOUR, TOWNSHIP OF	2607750001A	10–JAN–2003	03–05–0915A	02
05	MI	DETOUR, TOWNSHIP OF	2607750001A	12–FEB–2003	03–05–0917A	02
05	MI	DETOUR, TOWNSHIP OF	2607750001A	03–JAN–2003	03–05–0961A	02
05	MI	DETOUR, TOWNSHIP OF	2607750001A	21–MAR–2003	03–05–2073A	02
05	MI	DRUMMOND ISLAND, TOWNSHIP OF	2608030025A	14–FEB–2003	03–05–1497A	02
05	MI	DRUMMOND ISLAND, TOWNSHIP OF	2608030075A	14–MAR–2003	03–05–2207A	02
05	MI	DRUMMOND ISLAND, TOWNSHIP OF	2608030100A	02–APR–2003	03–05–2470A	02
05	MI	DRUMMOND ISLAND, TOWNSHIP OF	2608030075A	09–APR–2003	03–05–2708A	02
05	MI	DRUMMOND ISLAND, TOWNSHIP OF	2608030075A	11–JUN–2003	03–05–3603A	02
05	MI	EAST CHINA, TOWNSHIP OF	2601970005B	07–MAY–2003	03–05–2972A	02
05	MI	EAST LANSING, CITY OF	2600890005B	17–JAN–2003	03–05–1181A	02
05	MI	ELBA, TOWNSHIP OF	2607760001A	23–APR–2003	03–05–2818A	02
05	MI	ELBA, TOWNSHIP OF	2607760001A	09–MAY–2003	03–05–2950A	02
05	MI	ELMWOOD, TOWNSHIP OF	2601130005C	03–JAN–2003	03–05–0455A	02
05	MI	FABIUS, TOWNSHIP OF	2607810025A	08–JAN–2003	03–05–0906A	02
05	MI	FABIUS, TOWNSHIP OF	2607810025A	15–JAN–2003	03–05–1315A	02
05	MI	FABIUS, TOWNSHIP OF	2607810025A	14–FEB–2003	03–05–1519A	02
05	MI	FABIUS, TOWNSHIP OF	2607810025A	10–FEB–2003	03–05–1619A	02
05	MI	FABIUS, TOWNSHIP OF	2607810025A	26–FEB–2003	03–05–1858A	02
05	MI	FABIUS, TOWNSHIP OF	2607810025A	07–MAR–2003	03–05–1941A	02
05	MI	FABIUS, TOWNSHIP OF	2607810025A	07–MAR–2003	03–05–1989A	02
05	MI	FABIUS, TOWNSHIP OF	2607810025A	02–APR–2003	03–05–2409A	02
05	MI	FABIUS, TOWNSHIP OF	2607810025A	09–APR–2003	03–05–2411A	02
05	MI	FABIUS, TOWNSHIP OF	2607810025A	14–MAY–2003	03–05–3185A	02
05	MI	FARMINGTON HILLS, CITY OF	2601720002C	08–JAN–2003	03–05–1118A	02
05	MI	FARMINGTON HILLS, CITY OF	2601720002C	12–MAR–2003	03–05–1968A	02
05	MI	FARMINGTON HILLS, CITY OF	2601720002C	21–MAY–2003	03–05–2491A	02
05	MI	FARMINGTON HILLS, CITY OF	2601720002C	18–JUN–2003	03–05–2503A	02
05	MI	FARMINGTON HILLS, CITY OF	2601720002C	18–APR–2003	03–05–2779A	02
05	MI	FENTON, TOWNSHIP OF	2603940009B	13–JUN–2003	03–05–2512A	02
05	MI	FLAT ROCK, CITY OF	2602240003B	02–APR–2003	03–05–2354A	02
05	MI	FLAT ROCK, CITY OF	2602240003B	21–MAY–2003	03–05–2479A	01
05	MI	FLAT ROCK, CITY OF	2602240003B	20–JUN–2003	03–05–3655A	02
05	MI	FLAT ROCK, CITY OF	2602240003B	20–JUN–2003	03–05–3854A	02
05	MI	FORD RIVER, TOWNSHIP OF	26041C0804C	31–JAN–2003	03–05–1605A	02
05	MI	FORD RIVER, TOWNSHIP OF	26041C0784C	30–APR–2003	03–05–2911A	02
05	MI	FOWLERVILLE,VILLAGE OF	2604390001A	02–APR–2003	03–05–1493A	02
05	MI	FOWLERVILLE,VILLAGE OF	2604390001A	30–APR–2003	03–05–1714A	02
05	MI	FRASER, CITY OF	2601220001B	12–FEB–2003	03–05–1489A	02
05	MI	FRASER, CITY OF	2601220001B	16–APR–2003	03–05–1636A	02
05	MI	FRASER, CITY OF	2601220001B	19–MAR–2003	03–05–2105A	02
05	MI	FRASER, CITY OF	2601220001B	25–APR–2003	03–05–3028A	02
05	MI	FRASER, CITY OF	2601220001B	09–MAY–2003	03–05–3090A	02
05	MI	FRASER, TOWNSHIP OF	26017C0110D	10–FEB–2003	03–05–1248A	02

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05	MI	FRENCHTOWN, CHARTER TOWNSHIP OF	26115C0258D	26-FEB-2003	03-05-1138A	02
05	MI	FRUITLAND, TOWNSHIP OF	260265—02B	18-JUN-2003	03-05-3719A	02
05	MI	GAINES, TOWNSHIP OF	2602930004A	10-FEB-2003	03-05-1238A	02
05	MI	GAINES, TOWNSHIP OF	2602930008A	25-APR-2003	03-05-2461A	02
05	MI	GARFIELD, TOWNSHIP OF	2607660050A	14-MAR-2003	03-05-1587A	02
05	MI	GARFIELD, TOWNSHIP OF	2607660050A	27-JUN-2003	03-05-3900A	02
05	MI	GEORGETOWN, CHARTER TOWNSHIP OF	2605890005B	08-JAN-2003	03-05-0889A	02
05	MI	GEORGETOWN, CHARTER TOWNSHIP OF	2605890005B	18-JUN-2003	03-05-2276A	17
05	MI	GEORGETOWN, CHARTER TOWNSHIP OF	2605890005B	07-MAY-2003	03-05-3091A	02
05	MI	GIBRALTAR, CITY OF	2602260001B	14-MAR-2003	03-05-1863A	02
05	MI	GRAND HAVEN, TOWNSHIP OF	2602700005B	02-APR-2003	03-05-2348A	02
05	MI	GRAND RAPIDS, CITY OF	2601060025C	13-FEB-2003	03-05-1069A	02
05	MI	GRAND RAPIDS, CITY OF	2601060025C	26-MAR-2003	03-05-1812A	17
05	MI	GRAND RAPIDS, CITY OF	2601060005C	11-APR-2003	03-05-1856A	02
05	MI	GRAND RAPIDS, CITY OF	2601060025C	19-MAR-2003	03-05-1873A	02
05	MI	GRAND RAPIDS, CITY OF	2601060025C	14-MAR-2003	03-05-1990A	02
05	MI	GRAND RAPIDS, CITY OF	2601060005C	18-JUN-2003	03-05-3806A	02
05	MI	GRANDVILLE, CITY OF	2602710001B	06-MAR-2003	03-05-1353A	17
05	MI	GRANDVILLE, CITY OF	2602710002B	20-JUN-2003	03-05-2932A	01
05	MI	GRANDVILLE, CITY OF	2602710002B	13-JUN-2003	03-05-3496A	02
05	MI	GRANT, TOWNSHIP OF	2606100015A	06-JUN-2003	03-05-3415A	02
05	MI	GREEN OAK, TOWNSHIP OF	2604400005B	30-APR-2003	03-05-1486A	02
05	MI	GREEN OAK, TOWNSHIP OF	2604400015B	21-MAY-2003	03-05-3394A	02
05	MI	GREENBUSH, TOWNSHIP OF	2600010004C	24-JAN-2003	03-05-1481A	02
05	MI	GREENBUSH, TOWNSHIP OF	2600010004C	09-APR-2003	03-05-1711A	02
05	MI	GREENBUSH, TOWNSHIP OF	2600010004C	26-FEB-2003	03-05-1853A	02
05	MI	GREENBUSH, TOWNSHIP OF	2600010004C	05-MAR-2003	03-05-1854A	02
05	MI	GREENBUSH, TOWNSHIP OF	2600010004C	26-FEB-2003	03-05-1930A	02
05	MI	GREENBUSH, TOWNSHIP OF	2600010004C	23-APR-2003	03-05-2298A	02
05	MI	GREENBUSH, TOWNSHIP OF	2600010004C	19-MAR-2003	03-05-2333A	02
05	MI	GREENBUSH, TOWNSHIP OF	2600010007C	21-MAY-2003	03-05-3105A	02
05	MI	GREENBUSH, TOWNSHIP OF	2600010007C	21-MAY-2003	03-05-3148A	02
05	MI	GREENBUSH, TOWNSHIP OF	2600010007C	25-JUN-2003	03-05-3891A	02
05	MI	GROSSE ILE, TOWNSHIP OF	2602270010B	02-JAN-2003	03-05-0908A	02
05	MI	GROSSE ILE, TOWNSHIP OF	2602270010B	05-FEB-2003	03-05-0994A	02
05	MI	GROSSE ILE, TOWNSHIP OF	2602270010B	15-JAN-2003	03-05-1025A	01
05	MI	GROSSE ILE, TOWNSHIP OF	2602270010B	26-FEB-2003	03-05-1122A	02
05	MI	GROSSE ILE, TOWNSHIP OF	2602270010B	10-FEB-2003	03-05-1648A	02
05	MI	HAMBURG, TOWNSHIP OF	2601180010C	14-MAR-2003	03-05-2074A	02
05	MI	HAMBURG, TOWNSHIP OF	2601180010C	02-APR-2003	03-05-2472A	02
05	MI	HAMPTON, TOWNSHIP OF	26017C0190D	05-FEB-2003	03-05-0425A	02
05	MI	HAMPTON, TOWNSHIP OF	26017C0190D	14-FEB-2003	03-05-1185A	02
05	MI	HAMPTON, TOWNSHIP OF	26017C0185D	02-APR-2003	03-05-1867A	01
05	MI	HAMPTON, TOWNSHIP OF	26017C0190D	21-MAR-2003	03-05-2022X	02
05	MI	HAMPTON, TOWNSHIP OF	26017C0190D	14-MAR-2003	03-05-2060A	02
05	MI	HAMPTON, TOWNSHIP OF	26017C0185D	23-MAY-2003	03-05-3156X	01
05	MI	HAMPTON, TOWNSHIP OF	26017C0185D	06-JUN-2003	03-05-3300A	02
05	MI	HAMPTON, TOWNSHIP OF	26017C0185D	20-JUN-2003	03-05-3820A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	14-MAR-2003	03-05-0243A	02
05	MI	HARRISON, TOWNSHIP OF	2601230010C	08-JAN-2003	03-05-0984A	02
05	MI	HARRISON, TOWNSHIP OF	2601230010C	31-JAN-2003	03-05-1032A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	21-FEB-2003	03-05-1131A	02
05	MI	HARRISON, TOWNSHIP OF	2601230010C	21-FEB-2003	03-05-1154A	02
05	MI	HARRISON, TOWNSHIP OF	2601230010C	26-FEB-2003	03-05-1479A	01
05	MI	HARRISON, TOWNSHIP OF	2601230005C	26-FEB-2003	03-05-1748A	02
05	MI	HARRISON, TOWNSHIP OF	2601230010C	12-MAR-2003	03-05-1795A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	09-APR-2003	03-05-1895A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	21-MAR-2003	03-05-1997A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	12-MAR-2003	03-05-1999A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	28-MAY-2003	03-05-2012A	02
05	MI	HARRISON, TOWNSHIP OF	2601230010C	14-MAR-2003	03-05-2029A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	28-MAY-2003	03-05-2042A	01
05	MI	HARRISON, TOWNSHIP OF	2601230010C	28-MAY-2003	03-05-2042A	01
05	MI	HARRISON, TOWNSHIP OF	2601230005C	19-MAR-2003	03-05-2293A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	16-APR-2003	03-05-2327A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	02-APR-2003	03-05-2339A	02
05	MI	HARRISON, TOWNSHIP OF	2601230010C	19-MAR-2003	03-05-2340A	02
05	MI	HARRISON, TOWNSHIP OF	2601230010C	16-MAY-2003	03-05-2402A	02
05	MI	HARRISON, TOWNSHIP OF	2601230010C	16-APR-2003	03-05-2453A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	16-APR-2003	03-05-2497A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	09-APR-2003	03-05-2686A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	23-APR-2003	03-05-2772A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	25-APR-2003	03-05-2783A	02

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05	MI	HARRISON, TOWNSHIP OF	2601230005C	16–MAY–2003	03–05–2920A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	07–MAY–2003	03–05–3127A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	14–MAY–2003	03–05–3208A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	23–MAY–2003	03–05–3395A	02
05	MI	HARRISON, TOWNSHIP OF	2601230010C	11–JUN–2003	03–05–3480A	02
05	MI	HARRISON, TOWNSHIP OF	2601230005C	25–JUN–2003	03–05–3944A	02
05	MI	HART, CITY OF	260484—01A	02–MAY–2003	03–05–2469A	02
05	MI	HARTLAND, TOWNSHIP OF	2607840005B	08–JAN–2003	03–05–0918A	02
05	MI	HAY, TOWNSHIP OF	2609840001A	19–MAR–2003	03–05–2181A	02
05	MI	HAYNES, TOWNSHIP OF	260274—04A	13–JUN–2003	03–05–3485A	02
05	MI	HENDERICKS, TOWNSHIP OF	2608060050B	31–JAN–2003	03–05–1311A	02
05	MI	HOLLAND, TOWNSHIP OF	2604920003D	31–JAN–2003	03–05–1040A	02
05	MI	HOLLAND, TOWNSHIP OF	2604920004D	08–JAN–2003	03–05–1109A	02
05	MI	HOLLAND, TOWNSHIP OF	2604920006D	10–JAN–2003	03–05–1205A	02
05	MI	HOLLY, TOWNSHIP OF	2604740002B	14–FEB–2003	03–05–1764A	02
05	MI	HOPE, TOWNSHIP OF	2606810010B	08–JAN–2003	03–05–1151A	02
05	MI	HOWELL, CITY OF	2604410002B	16–MAY–2003	03–05–3058A	02
05	MI	HUDSONVILLE, CITY OF	2604930002A	08–JAN–2003	03–05–1145A	02
05	MI	IDA, TOWNSHIP OF	26115C0355D	19–MAR–2003	03–05–1777A	02
05	MI	IDA, TOWNSHIP OF	26115C0355D	28–MAR–2003	03–05–2224A	02
05	MI	INDEPENDENCE, TOWNSHIP OF	2604750008B	08–JAN–2003	03–05–1008A	02
05	MI	INDEPENDENCE, TOWNSHIP OF	2604750006B	14–MAR–2003	03–05–2092A	02
05	MI	INDEPENDENCE, TOWNSHIP OF	2604750008B	14–MAR–2003	03–05–2092A	02
05	MI	INDEPENDENCE, TOWNSHIP OF	2604750006B	19–MAR–2003	03–05–2188A	02
05	MI	INDEPENDENCE, TOWNSHIP OF	2604750007B	02–APR–2003	03–05–2410A	02
05	MI	INDEPENDENCE, TOWNSHIP OF	2604750008B	23–MAY–2003	03–05–2430A	02
05	MI	INDEPENDENCE, TOWNSHIP OF	2604750006B	20–JUN–2003	03–05–3728A	02
05	MI	IRONWOOD, TOWNSHIP OF	2604030003B	10–JAN–2003	02–05–4789A	02
05	MI	JAMES, TOWNSHIP OF	26145C0130D	10–JAN–2003	03–05–1251A	02
05	MI	JAMES, TOWNSHIP OF	26145C0130D	05–FEB–2003	03–05–1496A	02
05	MI	JAMES, TOWNSHIP OF	26145C0130D	14–MAR–2003	03–05–2085A	02
05	MI	JAMES, TOWNSHIP OF	26145C0130D	09–MAY–2003	03–05–3112A	02
05	MI	JAMES, TOWNSHIP OF	26145C0125D	18–JUN–2003	03–05–3434A	02
05	MI	JOHNSTOWN, TOWNSHIP OF	260355—07A	04–JUN–2003	03–05–3425A	02
05	MI	KAWKAWLIN, TOWNSHIP OF	26017C0110D	10–FEB–2003	03–05–0403A	02
05	MI	KAWKAWLIN, TOWNSHIP OF	26017C0110D	28–MAY–2003	03–05–2881A	02
05	MI	KIMBALL, TOWNSHIP OF	260594—09A	26–FEB–2003	03–05–0600A	02
05	MI	LAKE ORION, VILLAGE OF	2605880001A	24–JAN–2003	03–05–0975A	02
05	MI	LAKE ORION, VILLAGE OF	2605880001A	20–JUN–2003	03–05–3853A	02
05	MI	LANSING, CITY OF	2600900006B	28–FEB–2003	03–05–1887A	02
05	MI	LEELANAU, TOWNSHIP OF	260114—10B	29–JAN–2003	03–05–1284A	02
05	MI	LEELANAU, TOWNSHIP OF	260114—11B	29–JAN–2003	03–05–1284A	02
05	MI	LEELANAU, TOWNSHIP OF	260114—10B	31–JAN–2003	03–05–1550A	02
05	MI	LEELANAU, TOWNSHIP OF	260114—07B	11–JUN–2003	03–05–2382A	02
05	MI	LEELANAU, TOWNSHIP OF	260114—07B	11–JUN–2003	03–05–2923A	02
05	MI	LEELANAU, TOWNSHIP OF	260114—07B	16–MAY–2003	03–05–3303A	02
05	MI	LEELANAU, TOWNSHIP OF	260114—20B	11–JUN–2003	03–05–3767A	02
05	MI	LIVONIA, CITY OF	2602330003B	28–MAY–2003	03–05–2530A	17
05	MI	LONG LAKE, TOWNSHIP OF	2607820025A	10–FEB–2003	03–05–0954A	02
05	MI	MACOMB, TOWNSHIP OF	2604450020B	26–JUN–2003	02–05–1637P	05
05	MI	MACOMB, TOWNSHIP OF	2604450020B	19–MAY–2003	02–05–1639P	05
05	MI	MACOMB, TOWNSHIP OF	2604450010B	08–JAN–2003	03–05–0456A	01
05	MI	MACOMB, TOWNSHIP OF	2604450010B	14–MAR–2003	03–05–2089A	02
05	MI	MACOMB, TOWNSHIP OF	2604450010B	02–APR–2003	03–05–2485A	02
05	MI	MACOMB, TOWNSHIP OF	2604450010B	28–MAY–2003	03–05–2979A	01
05	MI	MACOMB, TOWNSHIP OF	2604450010B	18–JUN–2003	03–05–3515A	02
05	MI	MACOMB, TOWNSHIP OF	2604450010B	13–JUN–2003	03–05–3709A	02
05	MI	MANISTEE, TOWNSHIP OF	2601320005B	14–MAR–2003	02–05–4163A	02
05	MI	MASONVILLE, TOWNSHIP OF	26041C0438C	23–MAY–2003	03–05–2598A	02
05	MI	MENOMINEE, TOWNSHIP OF	2607020030B	14–MAR–2003	03–05–1246A	02
05	MI	MENOMINEE, TOWNSHIP OF	2607020030B	17–JAN–2003	03–05–1430A	02
05	MI	MENOMINEE, TOWNSHIP OF	2607020030B	26–MAR–2003	03–05–2058A	02
05	MI	MENOMINEE, TOWNSHIP OF	2607020015B	27–JUN–2003	03–05–3076A	02
05	MI	MENOMINEE, TOWNSHIP OF	2607020025B	20–JUN–2003	03–05–3192A	02
05	MI	MENOMINEE, TOWNSHIP OF	2607020030B	25–JUN–2003	03–05–3484A	02
05	MI	MERIDIAN, CHARTER TOWNSHIP OF	2600930015B	08–JAN–2003	03–05–0965A	02
05	MI	MERIDIAN, CHARTER TOWNSHIP OF	2600930013B	08–JAN–2003	03–05–1046A	02
05	MI	MERIDIAN, CHARTER TOWNSHIP OF	2600930015B	31–JAN–2003	03–05–1534A	17
05	MI	MERIDIAN, CHARTER TOWNSHIP OF	2600930010B	10–FEB–2003	03–05–1633A	02
05	MI	MERIDIAN, CHARTER TOWNSHIP OF	2600930015B	26–FEB–2003	03–05–1855A	02
05	MI	MERIDIAN, CHARTER TOWNSHIP OF	2600930015B	26–FEB–2003	03–05–1918A	02
05	MI	MERIDIAN, CHARTER TOWNSHIP OF	2600930010B	14–MAR–2003	03–05–1992A	02
05	MI	MERIDIAN, CHARTER TOWNSHIP OF	2600930010B	14–MAR–2003	03–05–2208A	02

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05	MI	MERIDIAN, CHARTER TOWNSHIP OF	2600930015B	16-APR-2003	03-05-2694A	02
05	MI	MERIDIAN, CHARTER TOWNSHIP OF	2600930015B	30-MAY-2003	03-05-2777A	02
05	MI	MERIDIAN, CHARTER TOWNSHIP OF	2600930015B	09-MAY-2003	03-05-3271A	02
05	MI	MERIDIAN, CHARTER TOWNSHIP OF	2600930010B	25-JUN-2003	03-05-3942A	02
05	MI	MIDLAND, CITY OF	2601400007D	02-APR-2003	03-05-1737A	02
05	MI	MIDLAND, CITY OF	2601400007D	09-MAY-2003	03-05-2330A	02
05	MI	MONROE, CITY OF	26115C0242D	11-JUN-2003	03-05-1936A	02
05	MI	MONROE, CITY OF	26115C0241D	18-APR-2003	03-05-2770A	02
05	MI	MORAN, TOWNSHIP OF	2604430075B	11-JUN-2003	03-05-3312A	02
05	MI	MORLEY, VILLAGE OF	260585—01A	21-MAR-2003	03-05-2096A	02
05	MI	NILES, TOWNSHIP OF	260041—08B	30-APR-2003	03-05-2468A	02
05	MI	NILES, TOWNSHIP OF	260041—07B	23-APR-2003	03-05-2899A	02
05	MI	NORTHVILLE, CITY OF	2602350001B	05-FEB-2003	03-05-0402A	02
05	MI	NORTHVILLE, TOWNSHIP OF	2606690005B	10-FEB-2003	02-05-1846P	06
05	MI	NORTON SHORES, CITY OF	2601650001A	12-MAR-2003	03-05-0972A	02
05	MI	NORVELL, TOWNSHIP OF	260424—03A	05-FEB-2003	03-05-1594A	02
05	MI	NORVELL, TOWNSHIP OF	260424—03A	05-FEB-2003	03-05-1595A	02
05	MI	NORVELL, TOWNSHIP OF	260424—03A	05-FEB-2003	03-05-1597A	02
05	MI	NORVELL, TOWNSHIP OF	260424—10A	02-APR-2003	03-05-2392A	02
05	MI	NORVELL, TOWNSHIP OF	260424—10A	02-MAY-2003	03-05-2757A	02
05	MI	NOTTAWA, TOWNSHIP OF	26073C0175C	26-MAR-2003	02-05-4530A	02
05	MI	NOVI, CITY OF	2601750009C	13-FEB-2003	02-05-4110A	08
05	MI	NOVI, CITY OF	2601750005C	08-JAN-2003	03-05-0859A	02
05	MI	NOVI, CITY OF	2601750006C	21-MAY-2003	03-05-1456P	05
05	MI	NOVI, CITY OF	2601750005C	19-MAR-2003	03-05-2296A	02
05	MI	NOVI, CITY OF	2601750009C	23-APR-2003	03-05-2318A	01
05	MI	NOVI, CITY OF	2601750009C	18-APR-2003	03-05-2848A	17
05	MI	ONEIDA, TOWNSHIP OF	2600700005B	12-MAR-2003	03-05-2026A	02
05	MI	ONEIDA, TOWNSHIP OF	2600700008B	12-MAR-2003	03-05-2026A	02
05	MI	ONEKAMA, TOWNSHIP OF	2602760001B	26-FEB-2003	03-05-0816A	02
05	MI	ONEKAMA, TOWNSHIP OF	2602760001B	09-APR-2003	03-05-2426A	02
05	MI	ONOTA, TOWNSHIP OF	2603450025B	26-MAR-2003	03-05-2098A	02
05	MI	ORCHARD LAKE VILLAGE, CITY OF	2604770005A	08-JAN-2003	03-05-1036A	02
05	MI	OSCODA, TOWNSHIP OF	2601010025C	04-JUN-2003	03-05-3397A	02
05	MI	OWOSSO, CITY OF	2605960002B	17-JAN-2003	03-05-1082V	19
05	MI	OWOSSO, CITY OF	2605960004B	17-JAN-2003	03-05-1082V	19
05	MI	OWOSSO, CITY OF	2605960003B	06-JUN-2003	03-05-2912A	02
05	MI	OWOSSO, CITY OF	2605960004B	20-JUN-2003	03-05-3605A	02
05	MI	OWOSSO, TOWNSHIP OF	2608090005A	24-JAN-2003	03-05-1520A	02
05	MI	PARK, TOWNSHIP OF	2601850001B	23-APR-2003	03-05-2905A	02
05	MI	PENTWATER, VILLAGE OF	2602770001B	08-JAN-2003	03-05-1135A	02
05	MI	PITTSFIELD, CHARTER TOWNSHIP OF	2606230020C	21-MAY-2003	03-05-2838A	02
05	MI	PLAINFIELD, TOWNSHIP OF	2601090005B	08-APR-2003	03-05-376P	05
05	MI	PLYMOUTH, CHARTER TOWNSHIP OF	2602370005C	05-FEB-2003	03-05-0721A	17
05	MI	PLYMOUTH, CITY OF	2602360001C	28-MAR-2003	03-05-2169A	02
05	MI	PLYMOUTH, CITY OF	2602360001C	16-MAY-2003	03-05-3023A	17
05	MI	PORT AUSTIN, TOWNSHIP OF	260290—06C	18-APR-2003	03-05-2526A	02
05	MI	PORT AUSTIN, TOWNSHIP OF	260290—04C	18-APR-2003	03-05-2601A	02
05	MI	RABER, TOWNSHIP OF	2607860025A	26-FEB-2003	03-05-1741A	02
05	MI	RABER, TOWNSHIP OF	2607860025A	18-JUN-2003	03-05-3531A	02
05	MI	RABER, TOWNSHIP OF	2607860025A	20-JUN-2003	03-05-3901A	02
05	MI	REDFORD, TOWNSHIP OF	2602380005B	31-JAN-2003	03-05-0880A	02
05	MI	REDFORD, TOWNSHIP OF	2602380005B	28-MAY-2003	03-05-3422A	02
05	MI	RIVERVIEW, CITY OF	2602400005C	02-MAY-2003	03-05-2821A	02
05	MI	RUSH, TOWNSHIP OF	260522—06A	27-JUN-2003	03-05-3139A	02
05	MI	SAGINAW, TOWNSHIP OF	26145C0130D	23-APR-2003	03-05-0458A	01
05	MI	SAGINAW, TOWNSHIP OF	26145C0130D	21-FEB-2003	03-05-1794A	02
05	MI	SAGINAW, TOWNSHIP OF	26145C0130D	18-JUN-2003	03-05-3841A	02
05	MI	SCIO, TOWNSHIP OF	2605370008A	02-JAN-2003	03-05-0201A	02
05	MI	SELMA, TOWNSHIP OF	26165C0338C	10-JAN-2003	03-05-1206A	02
05	MI	SELMA, TOWNSHIP OF	26165C0338C	31-JAN-2003	03-05-1533A	02
05	MI	SHELBY, TOWNSHIP OF	2601260020B	10-JAN-2003	02-05-4195A	02
05	MI	SHELBY, TOWNSHIP OF	2601260020B	05-MAR-2003	03-05-0897A	02
05	MI	SHELBY, TOWNSHIP OF	2601260015B	12-MAR-2003	03-05-1942A	02
05	MI	SHELBY, TOWNSHIP OF	2601260010B	26-MAR-2003	03-05-1963A	02
05	MI	SHELBY, TOWNSHIP OF	2601260020B	16-MAY-2003	03-05-2747A	02
05	MI	SHELBY, TOWNSHIP OF	2601260010B	25-APR-2003	03-05-2753A	02
05	MI	SHELBY, TOWNSHIP OF	2601260020B	11-JUN-2003	03-05-3285A	02
05	MI	SHERMAN, TOWNSHIP OF	26073C0165C	09-MAY-2003	03-05-2043A	17
05	MI	SHIAWASSEE, TOWNSHIP OF	260523—01A	04-JUN-2003	03-05-3346A	02
05	MI	SILVER CREEK, TOWNSHIP OF	26036907B	10-JAN-2003	03-05-1285A	02
05	MI	SILVER CREEK, TOWNSHIP OF	26036901B	31-JAN-2003	03-05-1542A	02
05	MI	SOUTH HAVEN, CITY OF	2602110002B	04-JUN-2003	03-05-3008A	02

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05	MI	SOUTH ROCKWOOD, VILLAGE OF	26115C0109D	08–JAN–2003	03–05–0901A	02
05	MI	SPRING LAKE, TOWNSHIP OF	2602810002B	27–JUN–2003	03–05–3122A	02
05	MI	SPRING LAKE, VILLAGE OF	2602820001B	16–MAY–2003	03–05–1950A	02
05	MI	ST. CHARLES, VILLAGE OF	26145C0230D	18–JUN–2003	03–05–2871A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	08–JAN–2003	03–05–0953A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	21–MAR–2003	03–05–0958A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	08–JAN–2003	03–05–0983A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	31–JAN–2003	03–05–1157A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	10–JAN–2003	03–05–1167A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	10–JAN–2003	03–05–1168A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	05–FEB–2003	03–05–1226A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	24–JAN–2003	03–05–1291A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	10–JAN–2003	03–05–1332A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	22–JAN–2003	03–05–1333A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	31–JAN–2003	03–05–1349A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	23–APR–2003	03–05–1448A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	31–JAN–2003	03–05–1569A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	31–JAN–2003	03–05–1570A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	26–FEB–2003	03–05–1721A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	10–FEB–2003	03–05–1722A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	26–FEB–2003	03–05–1931A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	07–MAR–2003	03–05–2041A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	14–MAR–2003	03–05–2182A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	19–MAR–2003	03–05–2183A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	21–MAR–2003	03–05–2184A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	02–APR–2003	03–05–2266A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	09–MAY–2003	03–05–2331A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	13–JUN–2003	03–05–2383A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	02–APR–2003	03–05–2405A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	09–APR–2003	03–05–2443A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	09–APR–2003	03–05–2504A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	09–APR–2003	03–05–2521A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	23–MAY–2003	03–05–2536A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	16–APR–2003	03–05–2591A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	23–APR–2003	03–05–2619A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	23–APR–2003	03–05–2758A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	18–APR–2003	03–05–2767A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	30–APR–2003	03–05–2773A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	30–APR–2003	03–05–2778A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	30–APR–2003	03–05–2787A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	25–APR–2003	03–05–2788A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	07–MAY–2003	03–05–2898A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	02–MAY–2003	03–05–2915A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	07–MAY–2003	03–05–2938A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	21–MAY–2003	03–05–3037A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	07–MAY–2003	03–05–3088A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	16–MAY–2003	03–05–3301A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	27–JUN–2003	03–05–3339A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	21–MAY–2003	03–05–3353A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	13–JUN–2003	03–05–3399A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	04–JUN–2003	03–05–3400A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	04–JUN–2003	03–05–3421A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	18–JUN–2003	03–05–3433A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	13–JUN–2003	03–05–3466A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	13–JUN–2003	03–05–3513A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	13–JUN–2003	03–05–3631A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	13–JUN–2003	03–05–3701A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	11–JUN–2003	03–05–3713A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	11–JUN–2003	03–05–3735A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	13–JUN–2003	03–05–3757A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	11–JUN–2003	03–05–3779A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	18–JUN–2003	03–05–3818A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	20–JUN–2003	03–05–3866A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	25–JUN–2003	03–05–3881A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	25–JUN–2003	03–05–3927A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	27–JUN–2003	03–05–3930A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	27–JUN–2003	03–05–3931A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	25–JUN–2003	03–05–3951A	02
05	MI	ST. CLAIR SHORES, CITY OF	2601270005B	27–JUN–2003	03–05–4060A	02
05	MI	ST. CLAIR, CITY OF	2602790001B	03–JAN–2003	02–05–1649A	01
05	MI	ST. JOSEPH, TOWNSHIP OF	2600450005A	14–FEB–2003	03–05–1428A	01
05	MI	STANDISH, TOWNSHIP OF	2600170010C	07–MAY–2003	03–05–2973A	02
05	MI	STERLING HEIGHTS, CITY OF	2601280010E	11–JUN–2003	03–05–2416A	02

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05	MI	STERLING HEIGHTS, CITY OF	2601280010E	14-MAY-2003	03-05-2981A	02
05	MI	STEVENSVILLE, VILLAGE OF	260557—01A	15-JAN-2003	03-05-1037A	02
05	MI	SWAN CREEK, TOWNSHIP OF	26145C0180D	29-JAN-2003	03-05-1244A	02
05	MI	SWAN CREEK, TOWNSHIP OF	26145C0125D	05-FEB-2003	03-05-1420A	02
05	MI	SWAN CREEK, TOWNSHIP OF	26145C0125D	11-JUN-2003	03-05-3620A	02
05	MI	TAYLOR, CITY OF	2607280001B	08-JAN-2003	03-05-0524A	02
05	MI	TAYLOR, CITY OF	2607280001B	26-FEB-2003	03-05-1319A	02
05	MI	TAYLOR, CITY OF	2607280001B	05-FEB-2003	03-05-1620A	02
05	MI	TAYLOR, CITY OF	2607280004A	02-APR-2003	03-05-2179A	02
05	MI	TAYLOR, CITY OF	2607280004A	02-APR-2003	03-05-2351A	02
05	MI	TAYLOR, CITY OF	2607280004A	28-MAY-2003	03-05-2704A	17
05	MI	TAYMOUTH, TOWNSHIP OF	26145C0255D	07-MAY-2003	03-05-2702A	02
05	MI	TAYMOUTH, TOWNSHIP OF	26145C0250D	14-MAY-2003	03-05-2959A	02
05	MI	TAYMOUTH, TOWNSHIP OF	26145C0255D	14-MAY-2003	03-05-2959A	02
05	MI	THOMAS, TOWNSHIP OF	26145C0125D	21-MAR-2003	02-05-4785A	02
05	MI	THOMAS, TOWNSHIP OF	26145C0130D	31-JAN-2003	03-05-1139A	02
05	MI	THOMAS, TOWNSHIP OF	26145C0125D	14-FEB-2003	03-05-1345A	02
05	MI	THOMAS, TOWNSHIP OF	26145C0130D	23-MAY-2003	03-05-2113A	02
05	MI	THOMAS, TOWNSHIP OF	26145C0070D	18-APR-2003	03-05-2528A	02
05	MI	THOMAS, TOWNSHIP OF	26145C0070D	09-MAY-2003	03-05-3066A	02
05	MI	THOMAS, TOWNSHIP OF	26145C0130D	11-JUN-2003	03-05-3648A	02
05	MI	THOMAS, TOWNSHIP OF	26145C0130D	25-JUN-2003	03-05-3825A	02
05	MI	THORNAPPLE, TOWNSHIP OF	2606300002B	09-APR-2003	03-05-1487A	02
05	MI	TRENTON, CITY OF	2602440004C	31-JAN-2003	03-05-1500A	01
05	MI	TRENTON, CITY OF	2602440001B	14-FEB-2003	03-05-1607A	02
05	MI	TROY, CITY OF	2601800004E	08-JAN-2003	03-05-0499A	02
05	MI	TROY, CITY OF	2601800004E	09-APR-2003	03-05-0676A	02
05	MI	TROY, CITY OF	2601800004E	15-JAN-2003	03-05-0873A	02
05	MI	TROY, CITY OF	2601800002D	07-MAY-2003	03-05-1568A	02
05	MI	TROY, CITY OF	2601800001E	26-MAR-2003	03-05-1572A	02
05	MI	TROY, CITY OF	2601800006E	21-MAR-2003	03-05-2045A	02
05	MI	TROY, CITY OF	2601800004E	25-APR-2003	03-05-2051A	02
05	MI	TROY, CITY OF	2601800004E	21-MAR-2003	03-05-2081A	02
05	MI	TROY, CITY OF	2601800006E	25-APR-2003	03-05-2852A	02
05	MI	TROY, CITY OF	2601800004E	23-APR-2003	03-05-2867A	02
05	MI	TROY, CITY OF	2601800006E	23-APR-2003	03-05-2913A	02
05	MI	TROY, CITY OF	2601800001E	27-JUN-2003	03-05-3326A	02
05	MI	TROY, CITY OF	2601800002D	13-JUN-2003	03-05-3702A	02
05	MI	TROY, CITY OF	2601800004E	20-JUN-2003	03-05-3732A	02
05	MI	UNION, TOWNSHIP OF	2608050025A	28-MAY-2003	03-05-1905A	02
05	MI	UNION, TOWNSHIP OF	26073C0194C	30-MAY-2003	03-05-2310A	02
05	MI	UNION, TOWNSHIP OF	26073C0194C	19-MAR-2003	03-05-2311A	02
05	MI	VICTOR, TOWNSHIP OF	2607200010B	12-MAR-2003	03-05-1984A	02
05	MI	VICTOR, TOWNSHIP OF	2607200010B	18-APR-2003	03-05-2517A	02
05	MI	VICTOR, TOWNSHIP OF	2607200010B	07-MAY-2003	03-05-3018A	02
05	MI	WARREN, CITY OF	2601290010C	12-FEB-2003	02-05-4487A	02
05	MI	WARREN, CITY OF	2601290005C	08-JAN-2003	03-05-0451A	02
05	MI	WARREN, CITY OF	2601290005C	08-JAN-2003	03-05-0452A	02
05	MI	WARREN, CITY OF	2601290010C	31-JAN-2003	03-05-0685A	02
05	MI	WARREN, CITY OF	2601290010C	10-JAN-2003	03-05-0904A	02
05	MI	WARREN, CITY OF	2601290010C	12-MAR-2003	03-05-1949A	02
05	MI	WARREN, CITY OF	2601290010C	07-MAR-2003	03-05-2002A	02
05	MI	WARREN, CITY OF	2601290010C	12-MAR-2003	03-05-2004A	02
05	MI	WARREN, CITY OF	2601290005C	19-MAR-2003	03-05-2050A	02
05	MI	WARREN, CITY OF	2601290010C	19-MAR-2003	03-05-2050A	02
05	MI	WARREN, CITY OF	2601290010C	23-APR-2003	03-05-2588A	02
05	MI	WARREN, CITY OF	2601290010C	25-APR-2003	03-05-2760A	02
05	MI	WARREN, CITY OF	2601290010C	23-MAY-2003	03-05-3158A	02
05	MI	WARREN, CITY OF	2601290010C	06-JUN-2003	03-05-3449A	02
05	MI	WARREN, CITY OF	2601290010C	13-JUN-2003	03-05-3494A	02
05	MI	WATERFORD, CHARTER TOWNSHIP OF	2602840005B	22-JAN-2003	03-05-1423A	02
05	MI	WATERFORD, CHARTER TOWNSHIP OF	2602840020B	29-JAN-2003	03-05-1596A	02
05	MI	WATERFORD, CHARTER TOWNSHIP OF	2602840020B	10-FEB-2003	03-05-1763A	02
05	MI	WATERFORD, CHARTER TOWNSHIP OF	2602840020B	26-FEB-2003	03-05-1793A	02
05	MI	WATERFORD, CHARTER TOWNSHIP OF	2602840020B	09-APR-2003	03-05-2090A	02
05	MI	WATERFORD, CHARTER TOWNSHIP OF	2602840020B	09-APR-2003	03-05-2091A	02
05	MI	WATERFORD, CHARTER TOWNSHIP OF	2602840010B	21-MAR-2003	03-05-2230A	02
05	MI	WATERFORD, CHARTER TOWNSHIP OF	2602840005B	19-MAR-2003	03-05-2232A	02
05	MI	WATERFORD, CHARTER TOWNSHIP OF	2602840020B	22-MAY-2003	03-05-2514A	02
05	MI	WATERFORD, CHARTER TOWNSHIP OF	2602840005B	02-MAY-2003	03-05-3072A	02
05	MI	WATERFORD, CHARTER TOWNSHIP OF	2602840010B	23-MAY-2003	03-05-3167A	02
05	MI	WATERFORD, CHARTER TOWNSHIP OF	2602840005B	25-JUN-2003	03-05-3345A	02
05	MI	WATERFORD, CHARTER TOWNSHIP OF	2602840010B	18-JUN-2003	03-05-3707A	02

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05	MI	WATERVLIET, TOWNSHIP OF	2600480005A	11–JUN–2003	03–05–3412A	02
05	MI	WEST BLOOMFIELD, TOWNSHIP OF	2601820005B	25–JUN–2003	03–05–2235A	02
05	MI	WHITE LAKE, TOWNSHIP OF	2604790010B	31–JAN–2003	03–05–0718A	02
05	MI	WHITE LAKE, TOWNSHIP OF	2604790005B	21–MAR–2003	03–05–2005A	02
05	MI	WHITE LAKE, TOWNSHIP OF	2604790005B	09–APR–2003	03–05–2386A	02
05	MI	WHITEWATER, TOWNSHIP OF	2607940025A	24–JAN–2003	03–05–1247A	02
05	MI	WHITEWATER, TOWNSHIP OF	2607940025A	26–MAR–2003	03–05–1978A	02
05	MI	WHITEWATER, TOWNSHIP OF	2607940025A	19–MAR–2003	03–05–2106A	02
05	MI	WHITEWATER, TOWNSHIP OF	2607940025A	09–MAY–2003	03–05–2374A	02
05	MI	WHITEWATER, TOWNSHIP OF	2607940025A	09–APR–2003	03–05–2799X	02
05	MI	WILLIAMSTOWN, TOWNSHIP OF	2600950010A	05–FEB–2003	03–05–1344A	02
05	MI	WINDSOR, CHARTER TOWNSHIP OF	2600710010C	10–FEB–2003	03–05–1004A	02
05	MI	WINDSOR, CHARTER TOWNSHIP OF	2600710010C	02–APR–2003	03–05–1755A	02
05	MI	WINDSOR, CHARTER TOWNSHIP OF	2600710005C	11–JUN–2003	03–05–3274A	02
05	MI	WINDSOR, CHARTER TOWNSHIP OF	2600710010C	25–JUN–2003	03–05–3356A	02
05	MI	WOLVERINE LAKE, VILLAGE OF	260480—01A	31–JAN–2003	03–05–0700A	02
05	MI	WOLVERINE LAKE, VILLAGE OF	260480—01A	23–MAY–2003	03–05–2699A	02
05	MI	WOODHAVEN, CITY OF	2607300005A	29–JAN–2003	03–05–0864A	02
05	MI	WYANDOTTE, CITY OF	2602460001B	30–APR–2003	03–05–2454A	02
05	MI	WYOMING, CITY OF	2601110015C	10–MAR–2003	03–05–1076A	02
05	MI	WYOMING, CITY OF	2601110015C	23–APR–2003	03–05–0462A	17
05	MI	ZILWAUKEE, CITY OF	26145C0085D	09–APR–2003	03–05–1715A	02
05	MN	AITKIN COUNTY	2706280325C	08–JAN–2003	03–05–0830A	02
05	MN	AITKIN COUNTY	2706280110C	15–JAN–2003	03–05–1223A	02
05	MN	AITKIN COUNTY	2706280205C	02–APR–2003	03–05–2380A	02
05	MN	AITKIN COUNTY	2706280205C	23–APR–2003	03–05–2700A	02
05	MN	AITKIN COUNTY	2706280110C	07–MAY–2003	03–05–3009A	02
05	MN	AITKIN COUNTY	2706280235B	23–MAY–2003	03–05–3115A	02
05	MN	AITKIN COUNTY	2706280205C	28–MAY–2003	03–05–3267A	02
05	MN	AITKIN, CITY OF	2700010001B	23–APR–2003	03–05–2502A	02
05	MN	ANDOVER, CITY OF	2706890015B	09–MAY–2003	03–05–2509A	02
05	MN	ANOKA COUNTY	2700050050A	17–JAN–2003	03–05–1289A	02
05	MN	ANOKA COUNTY	2700050050A	06–JUN–2003	03–05–2810A	02
05	MN	ANOKA, CITY OF	275227—A02	21–FEB–2003	03–05–1798A	02
05	MN	BAYPORT, CITY OF	275229—02A	02–JAN–2003	03–05–0712A	01
05	MN	BENTON COUNTY	2700190100C	03–JAN–2003	03–05–0147A	17
05	MN	BENTON COUNTY	2700190100C	16–MAY–2003	03–05–0720A	17
05	MN	BLAINE, CITY OF	2700070001D	29–JAN–2003	02–05–4347A	02
05	MN	BLAINE, CITY OF	2700070003D	15–JAN–2003	03–05–0418A	02
05	MN	BLAINE, CITY OF	2700070003D	12–MAR–2003	03–05–0573A	01
05	MN	BLAINE, CITY OF	2700070005D	12–MAR–2003	03–05–0573A	01
05	MN	BLAINE, CITY OF	2700070001D	28–MAR–2003	03–05–0881A	17
05	MN	BLAINE, CITY OF	2700070003D	17–JAN–2003	03–05–1186A	02
05	MN	BLAINE, CITY OF	2700070005D	05–FEB–2003	03–05–1263A	02
05	MN	BLAINE, CITY OF	2700070001D	12–FEB–2003	03–05–1773A	02
05	MN	BLAINE, CITY OF	2700070006D	05–MAR–2003	03–05–1801A	17
05	MN	BLAINE, CITY OF	2700070006D	23–APR–2003	03–05–1922A	17
05	MN	BLAINE, CITY OF	2700070006D	28–FEB–2003	03–05–1923A	02
05	MN	BLAINE, CITY OF	2700070006D	05–MAR–2003	03–05–1924A	17
05	MN	BLAINE, CITY OF	2700070005D	14–MAR–2003	03–05–2104A	02
05	MN	BLAINE, CITY OF	2700070003D	02–APR–2003	03–05–2242A	02
05	MN	BLAINE, CITY OF	2700070003D	02–APR–2003	03–05–2243A	02
05	MN	BLAINE, CITY OF	2700070003D	02–APR–2003	03–05–2244A	02
05	MN	BLAINE, CITY OF	2700070003D	02–APR–2003	03–05–2245A	02
05	MN	BLAINE, CITY OF	2700070003D	02–APR–2003	03–05–2246A	02
05	MN	BLAINE, CITY OF	2700070003D	02–APR–2003	03–05–2247A	02
05	MN	BLAINE, CITY OF	2700070003D	02–APR–2003	03–05–2248A	02
05	MN	BLAINE, CITY OF	2700070003D	02–APR–2003	03–05–2249A	02
05	MN	BLAINE, CITY OF	2700070003D	02–APR–2003	03–05–2250A	02
05	MN	BLAINE, CITY OF	2700070003D	02–APR–2003	03–05–2251A	02
05	MN	BLAINE, CITY OF	2700070003D	14–MAR–2003	03–05–2309A	02
05	MN	BLAINE, CITY OF	2700070006D	02–APR–2003	03–05–2368A	17
05	MN	BLAINE, CITY OF	2700070001D	02–APR–2003	03–05–2422A	02
05	MN	BLAINE, CITY OF	2700070010D	02–APR–2003	03–05–2423A	02
05	MN	BLAINE, CITY OF	2700070001D	02–APR–2003	03–05–2466A	02
05	MN	BLAINE, CITY OF	2700070001D	23–MAY–2003	03–05–2500A	02
05	MN	BLAINE, CITY OF	2700070001D	16–APR–2003	03–05–2501A	02
05	MN	BLAINE, CITY OF	2700070003D	18–JUN–2003	03–05–2539A	01
05	MN	BLAINE, CITY OF	2700070006D	18–JUN–2003	03–05–2539A	01
05	MN	BLAINE, CITY OF	2700070005D	09–APR–2003	03–05–2597A	02
05	MN	BLAINE, CITY OF	2700070001D	09–APR–2003	03–05–2695A	02
05	MN	BLAINE, CITY OF	2700070003D	02–MAY–2003	03–05–2802A	02
05	MN	BLAINE, CITY OF	2700070001D	28–MAY–2003	03–05–2825A	17

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05	MN	BLAINE, CITY OF	2700070003D	23–MAY–2003	03–05–3036A	02
05	MN	BLAINE, CITY OF	2700070001D	14–MAY–2003	03–05–3038A	02
05	MN	BLAINE, CITY OF	2700070003D	20–JUN–2003	03–05–3259A	02
05	MN	BLAINE, CITY OF	2700070005D	04–JUN–2003	03–05–3617A	02
05	MN	BLAINE, CITY OF	2700070005D	25–JUN–2003	03–05–3851A	02
05	MN	BLAINE, CITY OF	2700070001D	20–JUN–2003	03–05–3875A	02
05	MN	BROOKLYN CENTER, CITY OF	2701510003B	27–JAN–2003	03–05–0392A	02
05	MN	BROOKLYN CENTER, CITY OF	2701510003B	24–APR–2003	03–05–1397A	02
05	MN	BROOKLYN PARK, CITY OF	2701520004C	24–FEB–2003	03–05–0779A	02
05	MN	BURNSVILLE, CITY OF	2701020002B	14–MAY–2003	03–05–2870A	02
05	MN	CAMBRIDGE, CITY OF	2701980005A	26–FEB–2003	03–05–1893A	02
05	MN	CHATFIELD, CITY OF	2701250001A	25–JUN–2003	03–05–3522A	01
05	MN	CHISAGO COUNTY	2706820175C	18–JUN–2003	03–05–3057A	02
05	MN	CHISAGO COUNTY	2706820150C	16–MAY–2003	03–05–3283A	02
05	MN	CHISAGO, CITY OF	2707070001A	30–MAY–2003	03–05–3286A	02
05	MN	CLAY COUNTY	2752350250C	17–JAN–2003	03–05–0865A	02
05	MN	CLAY COUNTY	2752350100C	27–JUN–2003	03–05–3964A	02
05	MN	COON RAPIDS,CITY OF	2700110001A	23–APR–2003	03–05–2506A	02
05	MN	COON RAPIDS,CITY OF	2700110001A	13–JUN–2003	03–05–3111A	01
05	MN	COON RAPIDS,CITY OF	2700110001A	30–MAY–2003	03–05–3431A	02
05	MN	COON RAPIDS,CITY OF	2700110001A	11–JUN–2003	03–05–3457A	02
05	MN	COON RAPIDS,CITY OF	2700110002A	11–JUN–2003	03–05–3685A	02
05	MN	CORCORAN, CITY OF	2701550001C	13–MAR–2003	03–05–0412A	02
05	MN	CORCORAN, CITY OF	2701550005C	23–JAN–2003	03–05–1355A	02
05	MN	CROOKSTON, CITY OF	2703640002C	19–MAR–2003	03–05–2265A	02
05	MN	CROSSLAKE, CITY OF	270095—08B	08–JAN–2003	03–05–0875A	02
05	MN	CROSSLAKE, CITY OF	270095—11B	21–MAY–2003	03–05–3039A	02
05	MN	CROW WING COUNTY	2700910025B	16–MAY–2003	03–05–3201A	02
05	MN	CROW WING COUNTY	2700910250B	18–JUN–2003	03–05–3448A	17
05	MN	CRYSTAL, CITY OF	2701560004C	27–JAN–2003	03–05–0395A	02
05	MN	CRYSTAL, CITY OF	2701560004C	16–JAN–2003	03–05–0780A	02
05	MN	DAKOTA COUNTY	2701010150B	02–MAY–2003	03–05–3097A	02
05	MN	DELANO, CITY OF	2705390001C	28–MAY–2003	03–05–2712A	02
05	MN	EAST GRAND FORKS, CITY OF	2752360005C	21–FEB–2003	03–05–1654A	02
05	MN	EDEN PRAIRIE, CITY OF	2701590005C	23–JAN–2003	03–05–0388A	02
05	MN	EDEN PRAIRIE, CITY OF	2701590010C	10–FEB–2003	03–05–1361A	02
05	MN	EDEN PRAIRIE, CITY OF	2701590005C	10–APR–2003	03–05–1681A	02
05	MN	EDEN PRAIRIE, CITY OF	2701590005C	10–APR–2003	03–05–1696A	02
05	MN	ELGIN, CITY OF	27157C0340D	16–MAY–2003	03–05–1295A	01
05	MN	ELK RIVER, CITY OF	27141C0385E	02–APR–2003	03–05–2515A	02
05	MN	GOLDEN VALLEY, CITY OF	2701620003B	10–FEB–2003	03–05–0399A	02
05	MN	GOODHUE COUNTY	2701400200A	12–FEB–2003	03–05–1537A	02
05	MN	GREENWOOD, TOWNSHIP OF	2707360575C	14–MAR–2003	03–05–2193A	02
05	MN	GREENWOOD, TOWNSHIP OF	2707360575C	09–MAY–2003	03–05–3013A	02
05	MN	GREENWOOD, TOWNSHIP OF	2707360575C	21–MAY–2003	03–05–3079A	02
05	MN	GREENWOOD, TOWNSHIP OF	2707360575C	20–JUN–2003	03–05–3736A	02
05	MN	HAM LAKE, CITY OF	2706740010B	04–APR–2003	03–05–1441A	01
05	MN	HAM LAKE, CITY OF	2706740005B	05–FEB–2003	03–05–1484A	02
05	MN	HAM LAKE, CITY OF	2706740005B	05–FEB–2003	03–05–1488A	02
05	MN	HAM LAKE, CITY OF	2706740010B	31–JAN–2003	03–05–1531A	02
05	MN	HAM LAKE, CITY OF	2706740010B	29–JAN–2003	03–05–1532A	02
05	MN	HAM LAKE, CITY OF	2706740010B	05–FEB–2003	03–05–1562A	02
05	MN	HAM LAKE, CITY OF	2706740005B	05–FEB–2003	03–05–1628A	02
05	MN	HUGO, CITY OF	2705040010C	08–JAN–2003	03–05–1105A	01
05	MN	HUGO, CITY OF	2705040010C	06–JUN–2003	03–05–1815A	01
05	MN	ISANTI COUNTY	2701970060B	21–MAR–2003	03–05–1034A	02
05	MN	ISANTI COUNTY	2701970040B	21–MAY–2003	03–05–1957A	02
05	MN	ISANTI COUNTY	2701970065B	07–MAR–2003	03–05–1976A	02
05	MN	ISANTI COUNTY	2701970070A	07–MAR–2003	03–05–1976A	02
05	MN	ISANTI COUNTY	2701970030B	23–MAY–2003	03–05–2421A	02
05	MN	ISANTI COUNTY	2701970060B	23–APR–2003	03–05–2523A	02
05	MN	ISANTI COUNTY	2701970030B	16–MAY–2003	03–05–3114A	02
05	MN	ISANTI COUNTY	2701970020A	23–MAY–2003	03–05–3268A	02
05	MN	ISANTI COUNTY	2701970075A	18–JUN–2003	03–05–3698A	02
05	MN	ISANTI COUNTY	2701970060B	25–JUN–2003	03–05–3717A	02
05	MN	ITASCA COUNTY	2702000775A	08–JAN–2003	03–05–1108A	02
05	MN	JACKSON,CITY OF	2702130002D	17–APR–2003	03–05–2556P	05
05	MN	JORDAN, CITY OF	2704300001C	15–JAN–2003	02–05–3699A	01
05	MN	KOOCHICHING COUNTY	2702330006B	12–FEB–2003	03–05–1762A	02
05	MN	KOOCHICHING COUNTY	2702330006B	05–MAR–2003	03–05–1901A	02
05	MN	KOOCHICHING COUNTY	2702330006B	19–MAR–2003	03–05–2377A	02
05	MN	KOOCHICHING COUNTY	2702330006B	27–JUN–2003	03–05–4008A	02
05	MN	LA CRESCENT, CITY OF	2752370001B	02–MAY–2003	03–05–2201A	01

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05	MN	LE SUEUR COUNTY	27079C0091D	17–JAN–2003	03–05–1170A	02
05	MN	LE SUEUR COUNTY	27079C0075D	15–JAN–2003	03–05–1257A	02
05	MN	LILYDALE, CITY OF	275241—01A	30–MAY–2003	03–05–0090A	02
05	MN	LINO LAKES, CITY OF	2700150010B	21–FEB–2003	03–05–0945A	02
05	MN	LINO LAKES, CITY OF	2700150010B	15–JAN–2003	03–05–1318A	01
05	MN	LINO LAKES, CITY OF	2700150010B	22–JAN–2003	03–05–1402X	01
05	MN	LINO LAKES, CITY OF	2700150010B	26–FEB–2003	03–05–1498A	01
05	MN	LINO LAKES, CITY OF	2700150010B	07–MAR–2003	03–05–2021A	02
05	MN	LINO LAKES, CITY OF	2700150010B	26–MAR–2003	03–05–2217A	02
05	MN	MAPLE GROVE, CITY OF	2701690001B	06–FEB–2003	03–05–0759A	02
05	MN	MAPLE GROVE, CITY OF	2701690001B	18–FEB–2003	03–05–1093A	02
05	MN	MAPLE GROVE, CITY OF	2701690003B	17–MAR–2003	03–05–1691A	02
05	MN	MAPLEWOOD, CITY OF	270378—05C	08–JAN–2003	03–05–0139A	02
05	MN	MAPLEWOOD, CITY OF	270378—05C	02–APR–2003	03–05–1889A	01
05	MN	MAPLEWOOD, CITY OF	270378—05C	07–MAY–2003	03–05–2195A	02
05	MN	MEDINA, CITY OF	2701710003B	24–APR–2003	03–05–2151A	02
05	MN	MEEKER COUNTY	2702800006B	21–FEB–2003	03–05–1809A	02
05	MN	MINNETONKA, CITY OF	2701730002C	31–MAR–2003	03–05–1382A	02
05	MN	MINNETONKA, CITY OF	2701730005B	10–APR–2003	03–05–2135A	02
05	MN	MINNETRISTA, CITY OF	270175—08B	16–JAN–2003	03–05–1060A	02
05	MN	MOORHEAD, CITY OF	2752440005D	19–MAR–2003	03–05–2295A	02
05	MN	MOORHEAD, CITY OF	2752440010D	23–APR–2003	03–05–2592A	02
05	MN	MOOSE LAKE, CITY OF	270045—03B	02–JAN–2003	03–05–0948A	02
05	MN	MOOSE LAKE, CITY OF	270045—03B	05–MAR–2003	03–05–1878A	02
05	MN	MORRISON COUNTY	2706170290B	15–JAN–2003	03–05–1120A	02
05	MN	MORRISON COUNTY	2706170400B	30–APR–2003	03–05–2711A	02
05	MN	MORRISON COUNTY	2706170400B	20–JUN–2003	03–05–3831A	02
05	MN	NEW BRIGHTON, CITY OF	2703800005B	23–APR–2003	02–05–0197P	05
05	MN	NEW BRIGHTON, CITY OF	2703800005B	30–APR–2003	03–05–3055A	02
05	MN	NEW BRIGHTON; CITY OF	2703800005B	30–MAY–2003	03–05–3056A	02
05	MN	NORMAN COUNTY	27107C0205D	17–JAN–2003	03–05–0263A	17
05	MN	NORMAN COUNTY	27107C0300D	05–MAR–2003	03–05–0971A	02
05	MN	ORONOCO, CITY OF	27109C0041D	14–MAY–2003	03–05–2701A	02
05	MN	OWATONNA, CITY OF	2704630002B	04–JAN–2003	02–05–0917A	02
05	MN	OWATONNA, CITY OF	2704630002B	04–APR–2003	03–05–2395A	02
05	MN	PINE COUNTY	2707040075B	02–JAN–2003	03–05–0336A	02
05	MN	PINE COUNTY	2707040340B	12–MAR–2003	03–05–2278A	02
05	MN	PINE COUNTY	2707040340B	19–MAR–2003	03–05–2299A	02
05	MN	PINE COUNTY	2707040340B	04–APR–2003	03–05–2456A	02
05	MN	PINE COUNTY	2707040340B	11–JUN–2003	03–05–3681A	02
05	MN	PINE ISLAND, CITY OF	27109C0025D	12–FEB–2003	03–05–0480A	02
05	MN	PINE ISLAND, CITY OF	27109C0025D	20–JUN–2003	03–05–1906A	01
05	MN	PINE ISLAND, CITY OF	27109C0025D	23–APR–2003	03–05–2933A	02
05	MN	PLYMOUTH, CITY OF	2701790010C	27–JAN–2003	03–05–1058A	02
05	MN	PLYMOUTH, CITY OF	2701790005C	20–MAR–2003	03–05–1689A	02
05	MN	PLYMOUTH, CITY OF	2701790010C	17–APR–2003	03–05–1704A	17
05	MN	POLK COUNTY	2705030525B	31–JAN–2003	03–05–1560A	02
05	MN	POLK COUNTY	2705030050B	05–FEB–2003	03–05–1727A	02
05	MN	POLK COUNTY	2705030025B	06–JUN–2003	03–05–1962A	02
05	MN	POLK COUNTY	2705030475B	27–JUN–2003	03–05–2480A	02
05	MN	PRINCETON, CITY OF	2702920001B	26–FEB–2003	03–05–0966A	02
05	MN	PRIOR LAKE, CITY OF	2704320002C	26–FEB–2003	03–05–1503A	02
05	MN	RICE COUNTY	2706460025C	17–JAN–2003	03–05–1440A	02
05	MN	RICE COUNTY	2706460075B	24–JAN–2003	03–05–1482A	02
05	MN	RICE COUNTY	2706460025C	29–JAN–2003	03–05–1581A	02
05	MN	RICE COUNTY	2706460150B	10–FEB–2003	03–05–1786A	02
05	MN	RICE COUNTY	2706460100B	06–JUN–2003	03–05–3622A	02
05	MN	ROCK COUNTY	270642—27B	28–MAY–2003	03–05–3116A	02
05	MN	ROCK COUNTY	270642—23B	21–MAY–2003	03–05–3334A	02
05	MN	ROSEAU COUNTY	2706330200C	02–JAN–2003	03–05–0596A	02
05	MN	ROSEAU, CITY OF	2704140005C	08–JAN–2003	03–05–1123A	02
05	MN	ROYALTON, CITY OF	2703030001B	05–MAR–2003	03–05–1152A	02
05	MN	SAVAGE, CITY OF	2704330001C	25–APR–2003	03–05–1492A	02
05	MN	SAVAGE, CITY OF	2704330001C	11–JUN–2003	03–05–3629A	02
05	MN	SCOTT COUNTY	2704280080C	15–JAN–2003	02–05–4590A	02
05	MN	SCOTT COUNTY	2704280020C	22–JAN–2003	03–05–1260A	02
05	MN	SCOTT COUNTY	2704280125C	15–JAN–2003	03–05–1337X	02
05	MN	SCOTT COUNTY	2704280100C	25–JUN–2003	03–05–3882A	02
05	MN	SHERBURNE COUNTY	27141C0205E	02–APR–2003	03–05–1902A	17
05	MN	SHERBURNE COUNTY	27141C0355E	14–MAR–2003	03–05–2204A	02
05	MN	SHERBURNE COUNTY	27141C0240E	28–MAY–2003	03–05–2394A	02
05	MN	SHERBURNE COUNTY	27141C0245E	04–JUN–2003	03–05–2844A	02
05	MN	SHERBURNE COUNTY	27141C0335E	16–MAY–2003	03–05–3140A	02

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05	MN	SHERBURNE COUNTY	27141C0070E	06–JUN–2003	03–05–3477A	02
05	MN	SHERBURNE COUNTY	27141C0265E	11–JUN–2003	03–05–3495A	02
05	MN	SIBLEY COUNTY	2706200075B	23–APR–2003	03–05–2107A	02
05	MN	SPRING PARK, CITY OF	2701860001B	17–MAR–2003	03–05–0045A	02
05	MN	ST. LOUIS COUNTY	2704160450C	11–JUN–2003	03–05–1716A	02
05	MN	ST. LOUIS COUNTY	2704160775C	28–MAY–2003	03–05–2431A	02
05	MN	ST. PAUL, CITY OF	2752480036F	18–JUN–2003	03–05–3183A	01
05	MN	STEARNS COUNTY	2705460335B	25–APR–2003	03–05–3032A	02
05	MN	STEARNS COUNTY	2705460085A	14–MAY–2003	03–05–3087A	02
05	MN	STEARNS COUNTY	2705460190B	04–JUN–2003	03–05–3126A	01
05	MN	STEELE COUNTY	2706350055B	20–JUN–2003	03–05–1501A	02
05	MN	VADNAIS HEIGHTS, CITY OF	2703850001C	20–JUN–2003	03–05–3068A	02
05	MN	VADNAIS HEIGHTS, CITY OF	2703850001C	25–JUN–2003	03–05–3292A	02
05	MN	VADNAIS HEIGHTS, CITY OF	2703850001C	13–JUN–2003	03–05–3359A	02
05	MN	VADNAIS HEIGHTS, CITY OF	2703850001C	27–JUN–2003	03–05–3773A	02
05	MN	WABASHA, CITY OF	27157C0095D	21–FEB–2003	03–05–1306A	02
05	MN	WASHINGTON COUNTY	2704990125B	21–MAR–2003	03–05–0642A	02
05	MN	WASHINGTON COUNTY	2704990025B	08–JAN–2003	03–05–0689A	02
05	MN	WASHINGTON COUNTY	2704990125B	15–JAN–2003	03–05–1011A	02
05	MN	WASHINGTON COUNTY	2704990025B	07–MAY–2003	03–05–2774A	02
05	MN	WASHINGTON COUNTY	2704990125B	21–MAY–2003	03–05–3307A	02
05	MN	WASHINGTON COUNTY	2704990125B	25–JUN–2003	03–05–3712A	02
05	MN	WATERTOWN, CITY OF	2700560001C	30–APR–2003	03–05–2289A	02
05	MN	WHITE BEAR LAKE, CITY OF	270386—03B	31–JAN–2003	03–05–0649A	02
05	MN	WHITE BEAR,TOWNSHIP OF	2706880005B	12–FEB–2003	03–05–1747A	02
05	MN	WHITE BEAR;TOWNSHIP OF	2706880005B	02–APR–2003	03–05–2032A	02
05	MN	WHITE BEAR,TOWNSHIP OF	2706880005B	11–APR–2003	03–05–2460A	02
05	MN	WHITE BEAR,TOWNSHIP OF	2706880005B	30–APR–2003	03–05–2754A	02
05	MN	WHITE BEAR,TOWNSHIP OF	2706880005B	21–MAY–2003	03–05–3402A	02
05	MN	WHITE BEAR,TOWNSHIP OF	2706880005B	06–JUN–2003	03–05–3497A	02
05	MN	WINONA COUNTY	2705250150C	10–FEB–2003	03–05–1502A	02
05	MN	WINONA COUNTY	2705250118C	16–MAY–2003	03–05–2739A	01
05	MN	WINONA, CITY OF	2752500006D	18–APR–2003	03–05–0951A	01
05	MN	WINSTED, CITY OF	270614—01A	28–MAR–2003	03–05–2361A	02
05	MN	WRIGHT COUNTY	2705340009B	16–MAY–2003	03–05–1991A	02
05	MN	WRIGHT COUNTY	2705340007B	09–APR–2003	03–05–2424A	02
05	MN	WRIGHT COUNTY	2705340028C	23–APR–2003	03–05–2859A	02
05	MN	WRIGHT COUNTY	2705340027B	30–MAY–2003	03–05–2936A	02
05	MN	YELLOW MEDICINE COUNTY	2705440300B	26–FEB–2003	03–05–1485A	02
05	OH	ADAMS COUNTY	39001C0175C	20–JUN–2003	03–05–1879A	02
05	OH	ARCANUM, VILLAGE OF	3906840001B	09–APR–2003	03–05–1745A	02
05	OH	ARCANUM, VILLAGE OF	3906840001B	16–MAY–2003	03–05–3022A	02
05	OH	ASHLAND COUNTY	3907590004B	13–JUN–2003	03–05–3043A	02
05	OH	ASHTABULA COUNTY	3900100210B	12–MAR–2003	03–05–1551A	02
05	OH	ATHENS COUNTY	3907600175B	18–JUN–2003	03–05–3716A	02
05	OH	AUGLAIZE COUNTY	39011C0090C	15–JAN–2003	03–05–1225A	02
05	OH	AUGLAIZE COUNTY	39011C0025C	12–MAR–2003	03–05–1513A	02
05	OH	AUGLAIZE COUNTY	39011C0090C	12–MAR–2003	03–05–1580A	02
05	OH	AUGLAIZE COUNTY	39011C0085C	02–APR–2003	03–05–1825A	02
05	OH	AUGLAIZE COUNTY	39011C0090C	23–APR–2003	03–05–2925A	02
05	OH	AVON, CITY OF	3903480005C	17–JAN–2003	03–05–1216A	02
05	OH	AVON, CITY OF	3903480005C	20–JUN–2003	03–05–3099A	02
05	OH	BEAVERCREEK, CITY OF	3908760002B	14–APR–2003	03–05–1865A	02
05	OH	BEAVERCREEK, CITY OF	3908760002B	06–JUN–2003	03–05–3482A	02
05	OH	BELLBROOK, CITY OF	3901940001B	14–MAR–2003	03–05–2079A	02
05	OH	BRUNSWICK, CITY OF	3903800004B	20–JUN–2003	03–05–3665A	02
05	OH	BUTLER COUNTY	3900370035B	07–MAR–2003	03–05–1946A	01
05	OH	BUTLER COUNTY	3900370050C	28–MAY–2003	03–05–1977A	01
05	OH	BUTLER COUNTY	3900370050C	18–JUN–2003	03–05–3939X	01
05	OH	CAMBRIDGE, CITY OF	39059C0111C	08–JAN–2003	03–05–0644A	02
05	OH	CAMBRIDGE, CITY OF	39059C0091C	26–MAR–2003	03–05–1200A	01
05	OH	CANAL FULTON, VILLAGE OF	3905110001B	23–APR–2003	03–05–2855A	02
05	OH	CARROLL COUNTY	3907630025B	06–JUN–2003	03–05–3467A	02
05	OH	CELINA, CITY OF	3903930005C	22–JAN–2003	03–05–1220A	02
05	OH	CHAMPAIGN COUNTY	3900550115C	11–JUN–2003	03–05–3146A	02
05	OH	CHARDON, CITY OF	3901910005C	07–MAY–2003	03–05–3035A	02
05	OH	CHILLICOTHE, CITY OF	3904820005D	15–JAN–2003	03–05–1111A	02
05	OH	CHILLICOTHE, CITY OF	39141C0355C	16–APR–2003	03–05–2015A	01
05	OH	CINCINNATI, CITY OF	3902100006B	03–FEB–2003	03–05–1084A	01
05	OH	CINCINNATI, CITY OF	3902100012B	31–MAR–2003	03–05–1690A	02
05	OH	CLARK COUNTY	3907320180A	21–FEB–2003	03–05–0854A	02
05	OH	CLARK COUNTY	3907320180A	21–MAR–2003	03–05–1308A	02
05	OH	CLARK COUNTY	3907320165B	18–JUN–2003	03–05–2960A	02

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05	OH	CLERMONT COUNTY	3900650005B	16–MAY–2003	03–05–2429A	02
05	OH	CLERMONT COUNTY	3900650085D	25–JUN–2003	03–05–3635A	02
05	OH	CLEVELAND, CITY OF	3901040015B	13–JUN–2003	03–05–3362A	02
05	OH	COLUMBUS, CITY OF	39049C0290G	26–MAR–2003	03–05–0803A	01
05	OH	COLUMBUS, CITY OF	39049C0290G	31–JAN–2003	03–05–1146A	01
05	OH	COLUMBUS, CITY OF	39049C0377H	09–MAY–2003	03–05–1335A	02
05	OH	COLUMBUS, CITY OF	39049C0295G	09–MAY–2003	03–05–1505A	01
05	OH	COLUMBUS, CITY OF	39049C0245G	27–JUN–2003	03–05–1606A	01
05	OH	COLUMBUS, CITY OF	39049C0295G	30–APR–2003	03–05–1817A	02
05	OH	COLUMBUS, CITY OF	39049C0290G	21–MAR–2003	03–05–1972A	01
05	OH	COLUMBUS, CITY OF	39049C0377H	06–JUN–2003	03–05–2234A	01
05	OH	COLUMBUS, CITY OF	39049C0270G	02–APR–2003	03–05–2349A	02
05	OH	COLUMBUS, CITY OF	39049C0227G	23–APR–2003	03–05–2931A	02
05	OH	COLUMBUS, CITY OF	39049C0270G	30–APR–2003	03–05–3042A	02
05	OH	COLUMBUS, CITY OF	39049C0290G	28–MAY–2003	03–05–3324A	01
05	OH	CUYAHOGA FALLS, CITY OF	3905260005B	16–APR–2003	03–05–2483A	02
05	OH	DEFIANCE COUNTY	3901430120B	14–FEB–2003	03–05–0618A	17
05	OH	DELAWARE COUNTY	39041C0025J	07–MAR–2003	03–05–0583A	02
05	OH	DELTA, VILLAGE OF	3901830005C	18–JUN–2003	03–05–1613A	02
05	OH	DELTA, VILLAGE OF	3901830005C	23–APR–2003	03–05–2406A	02
05	OH	DOVER, CITY OF	3905430005B	07–MAR–2003	03–05–1996A	02
05	OH	DOVER, CITY OF	3907820080B	07–MAR–2003	03–05–1996A	02
05	OH	DOVER, CITY OF	3907820090B	07–MAR–2003	03–05–1996A	02
05	OH	ERIE COUNTY	3901530045B	19–MAR–2003	03–05–1760A	02
05	OH	ERIE COUNTY	3901530050B	21–MAY–2003	03–05–3015A	02
05	OH	FAIRFIELD COUNTY	3901580035D	17–JAN–2003	03–05–1188A	02
05	OH	FAIRFIELD COUNTY	3901580035D	30–APR–2003	03–05–2759A	02
05	OH	FAIRFIELD COUNTY	3901580035D	06–JUN–2003	03–05–2891A	02
05	OH	FAIRFIELD, CITY OF	3900380005B	17–JAN–2003	03–05–1283A	02
05	OH	FAIRFIELD, CITY OF	3900380005B	13–JUN–2003	03–05–2355A	02
05	OH	FINDLAY, CITY OF	3902440005C	02–APR–2003	03–05–1638A	02
05	OH	FINDLAY, CITY OF	3907670080B	04–JUN–2003	03–05–2505A	01
05	OH	FINDLAY, CITY OF	3902440004B	13–JUN–2003	03–05–3769A	02
05	OH	FRANKLIN COUNTY	39049C0195G	14–JAN–2003	02–05–3227P	05
05	OH	FRANKLIN COUNTY	39049C0281G	14–JAN–2003	02–05–3227P	05
05	OH	FULTON COUNTY	3901820100C	26–FEB–2003	03–05–0967A	02
05	OH	FULTON COUNTY	3901820135C	10–JAN–2003	03–05–1130A	02
05	OH	FULTON COUNTY	3901820100C	31–JAN–2003	03–05–1521A	02
05	OH	FULTON COUNTY	3901820100C	23–APR–2003	03–05–1964A	02
05	OH	GAHANNA, CITY OF	39049C0186G	05–MAR–2003	03–05–0811A	02
05	OH	GALLIA COUNTY*	3901850120C	03–APR–2003	03–05–1684A	02
05	OH	GRANVILLE, VILLAGE OF	3903300001B	25–JUN–2003	03–05–3479A	01
05	OH	GREENE COUNTY	3901930060B	22–JAN–2003	03–05–1300A	02
05	OH	GREENE COUNTY	3901930050B	19–MAR–2003	03–05–1744A	02
05	OH	GREENE COUNTY	3901930070B	23–APR–2003	03–05–2586A	02
05	OH	GROVE CITY, CITY OF	39049C0327G	08–JAN–2003	03–05–0848A	02
05	OH	GROVE CITY, CITY OF	39049C0333G	23–MAY–2003	03–05–1897A	01
05	OH	GROVE CITY, CITY OF	39049C0239G	04–JUN–2003	03–05–3207A	02
05	OH	HAMILTON COUNTY	3902040070B	09–MAY–2003	03–05–2994X	01
05	OH	HAMILTON COUNTY	3902040075B	09–MAY–2003	03–05–2994X	01
05	OH	HAMILTON COUNTY *	3902040005B	08–JAN–2003	03–05–0369A	02
05	OH	HAMILTON COUNTY *	3902040035B	28–APR–2003	03–05–1373A	02
05	OH	HAMILTON COUNTY *	3902040100B	20–MAR–2003	03–05–1380A	17
05	OH	HAMILTON COUNTY *	3902040040C	07–APR–2003	03–05–1384A	02
05	OH	HAMILTON COUNTY *	3902040040C	10–APR–2003	03–05–1706A	02
05	OH	HANCOCK COUNTY	3907670090B	21–MAR–2003	03–05–0657A	01
05	OH	HANCOCK COUNTY	3907670080B	13–JUN–2003	03–05–3768A	02
05	OH	HANCOCK COUNTY	3907670080B	11–JUN–2003	03–05–3770A	02
05	OH	HARRISON COUNTY	3902550002A	09–MAY–2003	03–05–2948A	02
05	OH	HARRISON, CITY OF	3902200005C	16–JAN–2003	03–05–0797A	02
05	OH	HILLIARD, CITY OF	39049C0115G	14–FEB–2003	03–05–0673A	01
05	OH	HILLIARD, CITY OF	39049C0116G	14–FEB–2003	03–05–0673A	01
05	OH	HUDSON, VILLAGE OF	3906600002B	09–MAY–2003	03–05–0437P	08
05	OH	JACKSON, CITY OF	3902920005D	03–JAN–2003	03–05–0603A	17
05	OH	KENT, CITY OF	3904560001B	28–MAY–2003	03–05–2471A	02
05	OH	KETTERING, CITY OF	3904120010B	21–MAY–2003	03–05–3196A	02
05	OH	KETTERING, CITY OF	3904120020B	20–JUN–2003	03–05–3731A	02
05	OH	KNOX COUNTY	3903060135C	03–JAN–2003	03–05–0900A	17
05	OH	KNOX COUNTY	3903060090C	09–APR–2003	03–05–1529A	02
05	OH	LAKE COUNTY	3907710047C	21–FEB–2003	03–05–0841A	02
05	OH	LAKE COUNTY	3907710049C	21–FEB–2003	03–05–0841A	02
05	OH	LAKE COUNTY	3907710047C	12–FEB–2003	03–05–1586A	02
05	OH	LANCASTER, CITY OF	3901610003D	08–JAN–2003	03–05–1134A	02

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05	OH	LAWRENCE COUNTY	3903250075B	10–FEB–2003	03–05–0929A	02
05	OH	LAWRENCE COUNTY	3903250075B	25–APR–2003	03–05–1102A	02
05	OH	LAWRENCE COUNTY	3903250185B	04–JUN–2003	03–05–1429A	01
05	OH	LAWRENCE COUNTY	3903250185B	31–JAN–2003	03–05–1431A	02
05	OH	LAWRENCE COUNTY	3903250110B	02–APR–2003	03–05–2486A	02
05	OH	LICKING COUNTY	3903280200B	07–MAY–2003	03–05–2975A	02
05	OH	LOGAN COUNTY	3907720025C	09–APR–2003	03–05–2389A	02
05	OH	LOGAN COUNTY	3907720025C	16–APR–2003	03–05–2614A	02
05	OH	LOGAN COUNTY	3907720025C	21–MAY–2003	03–05–3061A	02
05	OH	LOGAN COUNTY	3907720025C	06–JUN–2003	03–05–3535A	02
05	OH	LOGAN, CITY OF	3902740001C	21–MAR–2003	03–05–1408A	01
05	OH	LONDON,CITY OF	3903660002B	23–APR–2003	03–05–0943A	02
05	OH	LORAIN COUNTY	3903460090B	26–FEB–2003	03–05–1221A	02
05	OH	LORAIN COUNTY	3903460085B	16–MAY–2003	03–05–1425A	02
05	OH	LORAIN COUNTY	3903460085B	16–MAY–2003	03–05–1426A	02
05	OH	LORAIN, CITY OF	3903510003C	06–JUN–2003	03–05–2904A	02
05	OH	LOUISVILLE, CITY OF	3905160002D	16–MAY–2003	03–05–3048A	02
05	OH	LUCAS COUNTY	39095C0218D	05–FEB–2003	03–05–1575A	02
05	OH	LUCAS COUNTY	39095C0042D	09–MAY–2003	03–05–2790A	01
05	OH	LUCAS COUNTY	39095C0061D	09–MAY–2003	03–05–2790A	01
05	OH	LUCAS COUNTY	39095C0042D	04–JUN–2003	03–05–2955A	01
05	OH	LUCAS COUNTY	39095C0062D	21–MAY–2003	03–05–3308A	02
05	OH	LUCAS COUNTY	39095C0219D	04–JUN–2003	03–05–3446A	02
05	OH	LUCAS COUNTY	39095C0062D	06–JUN–2003	03–05–3460A	02
05	OH	LUCAS COUNTY	39095C0227D	11–JUN–2003	03–05–3463A	02
05	OH	LUCAS COUNTY	39095C0064D	25–JUN–2003	03–05–3816A	02
05	OH	LUCAS COUNTY	39095C0140D	20–JUN–2003	03–05–3842A	02
05	OH	LUCAS COUNTY	39095C0053D	25–JUN–2003	03–05–3935A	02
05	OH	MAHONING COUNTY	3903670100B	07–MAY–2003	03–05–2706A	02
05	OH	MARION COUNTY	39101C0004C	31–JAN–2003	03–05–1027A	01
05	OH	MAUMEE, CITY OF	39095C0234D	26–FEB–2003	03–05–1819A	01
05	OH	MEDINA COUNTY	3903780005B	02–JAN–2003	02–05–4186A	01
05	OH	MEDINA COUNTY	3903780055B	10–FEB–2003	03–05–0640A	02
05	OH	MEDINA COUNTY	3903780005B	22–JAN–2003	03–05–0831A	02
05	OH	MEDINA COUNTY	3903780005B	11–JUN–2003	03–05–3624A	02
05	OH	MERCER COUNTY	3903920100B	16–APR–2003	03–05–0709A	02
05	OH	MERCER COUNTY	3903920100B	29–JAN–2003	03–05–1261A	02
05	OH	MERCER COUNTY	3903920100B	17–JAN–2003	03–05–1270A	02
05	OH	MERCER COUNTY	3903920100B	05–FEB–2003	03–05–1297A	02
05	OH	MERCER COUNTY	3903920100B	16–APR–2003	03–05–2054A	01
05	OH	MERCER COUNTY	3903920100B	04–APR–2003	03–05–2233A	02
05	OH	MERCER COUNTY	3903920100B	19–MAR–2003	03–05–2300A	02
05	OH	MERCER COUNTY	3903920100B	09–APR–2003	03–05–2350A	02
05	OH	MERCER COUNTY	3903920100B	09–APR–2003	03–05–2484A	02
05	OH	MERCER COUNTY	3903920100B	02–APR–2003	03–05–2605A	02
05	OH	MERCER COUNTY	3903920100B	02–APR–2003	03–05–2613A	02
05	OH	MERCER COUNTY	3903920100B	02–APR–2003	03–05–2685A	02
05	OH	MERCER COUNTY	3903920075B	21–MAY–2003	03–05–2877A	02
05	OH	MERCER COUNTY	3903920100B	28–MAY–2003	03–05–2986A	02
05	OH	MERCER COUNTY	3903920100B	16–MAY–2003	03–05–2988A	02
05	OH	MERCER COUNTY	3903920100B	14–MAY–2003	03–05–3064A	02
05	OH	METAMORA, VILLAGE OF	3901820057C	14–MAR–2003	03–05–2213A	02
05	OH	METAMORA, VILLAGE OF	3908400001B	14–MAR–2003	03–05–2213A	02
05	OH	MIAMI COUNTY	3903980005B	12–MAR–2003	03–05–1017A	02
05	OH	MILFORD, CITY OF	3902270005D	11–JUN–2003	03–05–3021A	02
05	OH	MONTEZUMA, VILLAGE OF	3903960001B	30–APR–2003	03–05–2764A	02
05	OH	MONTGOMERY COUNTY	3907750040C	07–MAR–2003	03–05–1258A	01
05	OH	MONTGOMERY COUNTY	3907750040C	07–MAR–2003	03–05–1891A	02
05	OH	MOUNT VERNON, CITY OF	3903110003B	07–MAY–2003	03–05–2464A	02
05	OH	MUSKINGUM COUNTY	3904250105D	09–MAY–2003	03–05–2709A	02
05	OH	NELSONVILLE, CITY OF	3900200005B	02–MAY–2003	03–05–2894A	01
05	OH	NEWARK,CITY OF	3903350002F	21–MAR–2003	03–05–2359A	02
05	OH	NILES, CITY OF	3905400005C	12–MAR–2003	03–05–2099A	02
05	OH	NILES, CITY OF	3905400005C	02–APR–2003	03–05–2185A	02
05	OH	NILES, CITY OF	3905400005C	02–APR–2003	03–05–2186A	02
05	OH	NILES, CITY OF	3905400005C	14–MAR–2003	03–05–2225A	02
05	OH	NILES, CITY OF	3905400005C	26–MAR–2003	03–05–2226A	17
05	OH	NILES, CITY OF	3905400005C	14–MAR–2003	03–05–2227A	02
05	OH	NILES, CITY OF	3905400005C	14–MAR–2003	03–05–2228A	02
05	OH	NILES, CITY OF	3905400005C	14–MAR–2003	03–05–2253A	02
05	OH	NILES, CITY OF	3905400005C	26–MAR–2003	03–05–2260A	17
05	OH	NILES, CITY OF	3905400005C	14–MAR–2003	03–05–2262A	02
05	OH	NILES, CITY OF	3905400005C	14–MAR–2003	03–05–2268A	02

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05	OH	NILES, CITY OF	3905400005C	14-MAR-2003	03-05-2277A	02
05	OH	NILES, CITY OF	3905400005C	14-MAR-2003	03-05-2290A	02
05	OH	NILES, CITY OF	3905400005C	14-MAR-2003	03-05-2313A	02
05	OH	NILES, CITY OF	3905400005C	26-MAR-2003	03-05-2370A	02
05	OH	NILES, CITY OF	3905400005C	26-MAR-2003	03-05-2379A	02
05	OH	NILES, CITY OF	3905400005C	26-MAR-2003	03-05-2387A	02
05	OH	NILES, CITY OF	3905400005C	26-MAR-2003	03-05-2390A	17
05	OH	NILES, CITY OF	3905400005C	26-MAR-2003	03-05-2391A	02
05	OH	NILES, CITY OF	3905400005C	26-MAR-2003	03-05-2412A	02
05	OH	NILES, CITY OF	3905400005C	26-MAR-2003	03-05-2418A	02
05	OH	NILES, CITY OF	3905400005C	09-APR-2003	03-05-2684A	02
05	OH	NILES, CITY OF	3905400005C	09-APR-2003	03-05-2689A	02
05	OH	NILES, CITY OF	3905400005C	09-APR-2003	03-05-2690A	02
05	OH	NILES, CITY OF	3905400005C	09-APR-2003	03-05-2725A	02
05	OH	NILES, CITY OF	3905400005C	09-APR-2003	03-05-2726A	02
05	OH	NILES, CITY OF	3905400005C	09-APR-2003	03-05-2728A	02
05	OH	NILES, CITY OF	3905400005C	09-APR-2003	03-05-2729A	17
05	OH	NILES, CITY OF	3905400005C	23-APR-2003	03-05-2730A	02
05	OH	NILES, CITY OF	3905400005C	18-APR-2003	03-05-2803A	02
05	OH	NILES, CITY OF	3905400005C	25-APR-2003	03-05-2999A	02
05	OH	NILES, CITY OF	3905400005C	25-APR-2003	03-05-3017A	02
05	OH	NILES, CITY OF	3905400005C	14-MAY-2003	03-05-3025A	02
05	OH	NILES, CITY OF	3905400005C	25-APR-2003	03-05-3062A	02
05	OH	NILES, CITY OF	3905400005C	30-APR-2003	03-05-3069A	02
05	OH	NILES, CITY OF	3905400005C	16-MAY-2003	03-05-3311A	02
05	OH	NILES, CITY OF	3905400005C	25-JUN-2003	03-05-3493A	17
05	OH	NILES, CITY OF	3905400005C	13-JUN-2003	03-05-3540A	02
05	OH	NILES, CITY OF	3905400005C	20-JUN-2003	03-05-3654A	02
05	OH	NILES, CITY OF	3905400005C	11-JUN-2003	03-05-3667A	02
05	OH	NILES, CITY OF	3905400005C	11-JUN-2003	03-05-3674A	02
05	OH	NILES, CITY OF	3905400005C	11-JUN-2003	03-05-3675A	02
05	OH	NILES, CITY OF	3905400005C	11-JUN-2003	03-05-3676A	02
05	OH	NILES, CITY OF	3905400005C	11-JUN-2003	03-05-3687A	02
05	OH	NILES, CITY OF	3905400005C	11-JUN-2003	03-05-3700A	02
05	OH	NILES, CITY OF	3905400005C	11-JUN-2003	03-05-3710A	02
05	OH	NILES, CITY OF	3905400005C	13-JUN-2003	03-05-3743A	02
05	OH	NILES, CITY OF	3905400005C	13-JUN-2003	03-05-3746A	02
05	OH	NILES, CITY OF	3905400005C	11-JUN-2003	03-05-3748A	02
05	OH	NILES, CITY OF	3905400005C	11-JUN-2003	03-05-3750A	02
05	OH	NILES, CITY OF	3905400005C	11-JUN-2003	03-05-3752A	02
05	OH	NILES, CITY OF	3905400005C	11-JUN-2003	03-05-3754A	02
05	OH	NILES, CITY OF	3905400005C	18-JUN-2003	03-05-3760A	02
05	OH	NILES, CITY OF	3905400005C	13-JUN-2003	03-05-3774A	02
05	OH	NILES, CITY OF	3905400005C	25-JUN-2003	03-05-3802A	02
05	OH	NILES, CITY OF	3905400005C	27-JUN-2003	03-05-3807A	02
05	OH	NILES, CITY OF	3905400005C	13-JUN-2003	03-05-3817A	02
05	OH	NORTH OLMSTED, CITY OF	3901200002C	10-JAN-2003	03-05-1187A	17
05	OH	NORTH OLMSTED, CITY OF	3901200002C	02-APR-2003	03-05-1421A	02
05	OH	NORTH OLMSTED, CITY OF	3901200002C	12-MAR-2003	03-05-1422A	02
05	OH	NORTH OLMSTED, CITY OF	3901200002C	02-MAY-2003	03-05-2816A	02
05	OH	NORTH RIDGEVILLE, CITY OF	3903520005C	28-MAY-2003	02-05-1839P	05
05	OH	NORTH RIDGEVILLE, CITY OF	3903520005C	24-JAN-2003	03-05-1265A	02
05	OH	OTTAWA COUNTY	3904320025A	22-JAN-2003	02-05-4770A	02
05	OH	OTTAWA COUNTY	3904320125B	08-JAN-2003	03-05-1112A	02
05	OH	OTTAWA COUNTY	3904320125B	24-JAN-2003	03-05-1137A	02
05	OH	OTTAWA COUNTY	3904320200B	25-APR-2003	03-05-1165A	02
05	OH	OTTAWA COUNTY	3904320125B	31-JAN-2003	03-05-1416A	02
05	OH	OTTAWA COUNTY	3904320125B	16-MAY-2003	03-05-2205A	02
05	OH	OTTAWA COUNTY	3904320050B	13-JUN-2003	03-05-3144A	02
05	OH	OTTAWA COUNTY	3904320125B	11-JUN-2003	03-05-3340A	02
05	OH	OTTAWA COUNTY	3904320225B	18-JUN-2003	03-05-3659A	02
05	OH	OTTAWA, VILLAGE OF	3904720002C	29-JAN-2003	03-05-1236A	02
05	OH	OTTAWA, VILLAGE OF	3904720002C	19-MAR-2003	03-05-2100A	02
05	OH	OTTAWA, VILLAGE OF	3904720002C	20-JUN-2003	03-05-3656A	02
05	OH	PAULDING COUNTY	3907770150D	25-JUN-2003	03-05-3284A	02
05	OH	PORTAGE COUNTY	390453—22C	22-JAN-2003	02-05-4184A	02
05	OH	PORTAGE COUNTY	390453—34C	03-JAN-2003	02-05-4603A	02
05	OH	PORTAGE COUNTY	390453—22C	29-JAN-2003	03-05-0844A	02
05	OH	PORTAGE COUNTY	390453—35C	13-JUN-2003	03-05-2595A	02
05	OH	PREBLE COUNTY	3904600055B	26-FEB-2003	03-05-1015A	02
05	OH	PROSPECT, VILLAGE OF	39101C0053C	10-FEB-2003	03-05-0497A	02
05	OH	PUTNAM COUNTY	3904650110B	02-JAN-2003	03-05-0474A	02
05	OH	PUTNAM COUNTY	3904650130B	21-MAR-2003	03-05-0598A	02

Region	State	Community	Map panel	Determination date	Case No.	Type
05	OH	PUTNAM COUNTY	3904650130B	15-JAN-2003	03-05-1162A	02
05	OH	REYNOLDSBURG, CITY OF	39049C0283G	07-MAY-2003	03-05-1296A	02
05	OH	RICHWOOD, VILLAGE OF	3905490001B	23-APR-2003	03-05-2696A	02
05	OH	ROSS COUNTY	39141C0555C	16-MAY-2003	02-05-4749A	02
05	OH	ROSS COUNTY	3904800050B	21-MAR-2003	03-05-0151A	02
05	OH	ROSS COUNTY	39141C0555C	18-APR-2003	03-05-2963A	02
05	OH	ROSS COUNTY	39141C0560C	02-MAY-2003	03-05-2964A	02
05	OH	ROSS COUNTY	39141C0555C	02-MAY-2003	03-05-2965A	02
05	OH	ROSS COUNTY	39141C0555C	02-MAY-2003	03-05-2966A	02
05	OH	ROSS COUNTY	39141C0560C	02-MAY-2003	03-05-2967A	02
05	OH	RUSSIA, VILLAGE OF	3905800001A	21-MAR-2003	03-05-1640A	02
05	OH	SANDUSKY COUNTY	3904860105B	26-MAR-2003	03-05-0999A	02
05	OH	SANDUSKY, CITY OF	390156—03B	25-APR-2003	03-05-3014A	02
05	OH	SANDUSKY, CITY OF	390156—06B	06-JUN-2003	03-05-3430A	02
05	OH	SENECA COUNTY	3907790075B	09-APR-2003	03-05-1518A	02
05	OH	SENECA COUNTY	3907790075B	21-MAY-2003	03-05-3121A	02
05	OH	SEVILLE, VILLAGE OF	3903840001B	18-APR-2003	03-05-2776A	02
05	OH	SEVILLE, VILLAGE OF	3903840001B	23-JUN-2003	03-05-2879A	08
05	OH	SEVILLE, VILLAGE OF	3903840001B	16-MAY-2003	03-05-2924A	02
05	OH	SEVILLE, VILLAGE OF	3903840001B	14-MAY-2003	03-05-3041A	02
05	OH	SHELBY COUNTY	3905030060C	05-FEB-2003	03-05-0468A	02
05	OH	SHELBY COUNTY	3905030055C	26-FEB-2003	03-05-1278A	02
05	OH	SHELBY COUNTY	3905030130C	26-FEB-2003	03-05-1540A	02
05	OH	SOUTH BLOOMFIELD, VILLAGE OF	39129C0180H	11-JUN-2003	03-05-2072A	02
05	OH	SPRINGBORO, CITY OF	3905640001B	02-APR-2003	03-05-1509A	02
05	OH	SPRINGFIELD, CITY OF	3907320180A	28-MAR-2003	03-05-2103A	02
05	OH	ST. MARYS, CITY OF	39011C0080C	10-FEB-2003	03-05-1730A	02
05	OH	STARK COUNTY	3907800010B	28-MAR-2003	03-05-1155A	01
05	OH	STARK COUNTY	3907800102B	09-APR-2003	03-05-1202A	01
05	OH	STARK COUNTY	3907800085B	16-MAY-2003	03-05-1933A	02
05	OH	STARK COUNTY	3907800175B	13-JUN-2003	03-05-2615A	02
05	OH	STRONGSVILLE, CITY OF	3901320005B	04-JUN-2003	03-05-3436A	02
05	OH	SUMMIT COUNTY	3907810100B	15-JAN-2003	03-05-0459A	02
05	OH	SUMMIT COUNTY	3907810105B	11-APR-2003	03-05-0817A	02
05	OH	SWANTON, VILLAGE OF	3906320005B	28-FEB-2003	03-05-1140A	02
05	OH	TIPP CITY, CITY OF	3904010005D	25-APR-2003	03-05-1882A	02
05	OH	TOLEDO, CITY OF	39095C0059D	26-FEB-2003	02-05-4225A	02
05	OH	TOLEDO, CITY OF	39095C0113D	19-MAY-2003	03-05-0434P	06
05	OH	TOLEDO, CITY OF	39095C0252D	17-JAN-2003	03-05-0465A	17
05	OH	TOLEDO, CITY OF	39095C0078D	26-MAR-2003	03-05-0825A	02
05	OH	TOLEDO, CITY OF	39095C0088D	26-FEB-2003	03-05-0861A	02
05	OH	TOLEDO, CITY OF	39095C0059D	10-JAN-2003	03-05-1290A	02
05	OH	TOLEDO, CITY OF	39095C0068D	15-JAN-2003	03-05-1320A	02
05	OH	TOLEDO, CITY OF	39095C0082D	23-JUN-2003	03-05-1451P	06
05	OH	TOLEDO, CITY OF	39095C0064D	21-MAR-2003	03-05-1558A	02
05	OH	TOLEDO, CITY OF	39095C0059D	12-MAR-2003	03-05-1652A	02
05	OH	TOLEDO, CITY OF	39095C0078D	07-MAY-2003	03-05-1734A	02
05	OH	TOLEDO, CITY OF	39095C0059D	09-MAY-2003	03-05-2001A	02
05	OH	TOLEDO, CITY OF	39095C0057D	21-MAR-2003	03-05-2031A	02
05	OH	TOLEDO, CITY OF	39095C0086D	27-JUN-2003	03-05-2110A	02
05	OH	TOLEDO, CITY OF	39095C0068D	28-MAR-2003	03-05-2115A	02
05	OH	TOLEDO, CITY OF	39095C0059D	19-MAR-2003	03-05-2267A	02
05	OH	TOLEDO, CITY OF	39095C0083D	09-MAY-2003	03-05-2388A	02
05	OH	TOLEDO, CITY OF	39095C0062D	02-APR-2003	03-05-2432A	02
05	OH	TOLEDO, CITY OF	39095C0062D	02-APR-2003	03-05-2433A	02
05	OH	TOLEDO, CITY OF	39095C0079D	18-APR-2003	03-05-2482A	02
05	OH	TOLEDO, CITY OF	39095C0078D	30-APR-2003	03-05-2741A	02
05	OH	TOLEDO, CITY OF	39095C0078D	18-APR-2003	03-05-2743A	02
05	OH	TOLEDO, CITY OF	39095C0059D	23-APR-2003	03-05-2744A	02
05	OH	TOLEDO, CITY OF	39095C0064D	18-JUN-2003	03-05-2817A	02
05	OH	TOLEDO, CITY OF	39095C0079D	02-MAY-2003	03-05-2854A	02
05	OH	TOLEDO, CITY OF	39095C0105D	04-JUN-2003	03-05-2961A	01
05	OH	TOLEDO, CITY OF	39095C0059D	18-JUN-2003	03-05-3174A	02
05	OH	TOLEDO, CITY OF	39095C0068D	04-JUN-2003	03-05-3180A	02
05	OH	TOLEDO, CITY OF	39095C0079D	16-MAY-2003	03-05-3181A	02
05	OH	TOLEDO, CITY OF	39095C0079D	16-MAY-2003	03-05-3182A	02
05	OH	TOLEDO, CITY OF	39095C0083D	06-JUN-2003	03-05-3459A	02
05	OH	TOLEDO, CITY OF	39095C0078D	20-JUN-2003	03-05-3934A	02
05	OH	TROY, CITY OF	39040200005B	15-JAN-2003	02-05-4665A	02
05	OH	TROY, CITY OF	39040200005B	06-JUN-2003	03-05-3501A	02
05	OH	TRUMBULL COUNTY	3905350100B	06-JUN-2003	03-05-3514A	02
05	OH	TRUMBULL COUNTY	3905350175B	11-JUN-2003	03-05-3677A	02
05	OH	TRUMBULL COUNTY	3905350125B	20-JUN-2003	03-05-3741A	02

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05	OH	TUSCARAWAS COUNTY	3907820090B	19-MAR-2003	03-05-1312A	01
05	OH	TUSCARAWAS COUNTY	3907820070B	21-MAR-2003	03-05-2353A	02
05	OH	TUSCARAWAS COUNTY	3907820090B	18-JUN-2003	03-05-2756A	02
05	OH	TUSCARAWAS COUNTY	3907820070B	11-JUN-2003	03-05-3619A	02
05	OH	UHRICHSVILLE, CITY OF	3905470005C	15-JAN-2003	03-05-0907A	01
05	OH	UHRICHSVILLE, CITY OF	3905470005C	17-JAN-2003	03-05-1009A	02
05	OH	UNION COUNTY	3908080150B	12-FEB-2003	03-05-1646A	02
05	OH	UNION COUNTY	3908080150B	11-JUN-2003	03-05-2892A	02
05	OH	URBANA, CITY OF	3900600005B	06-JUN-2003	03-05-3447A	02
05	OH	VANDALIA, CITY OF	3904180001B	21-FEB-2003	02-05-3230P	05
05	OH	WARREN COUNTY	3907570085D	17-JAN-2003	03-05-1114A	02
05	OH	WARREN COUNTY	3907570069D	25-JUN-2003	03-05-3108A	02
05	OH	WARREN, CITY OF	3905350125B	11-JUN-2003	03-05-2794A	02
05	OH	WASHINGTON COUNTY	3905660125B	26-MAR-2003	03-05-2498X	02
05	OH	WASHINGTON COUNTY	3905660125B	18-JUN-2003	03-05-2716A	02
05	OH	WAVERLY, CITY OF	39131C0045B	21-MAR-2003	03-05-1214A	01
05	OH	WAVERLY, CITY OF	39131C0045B	25-JUN-2003	03-05-3614A	01
05	OH	WAYNE COUNTY	39169C0110C	14-MAY-2003	03-05-2763A	02
05	OH	WESTERVILLE, CITY OF	39049C0157G	12-FEB-2003	03-05-1608A	02
05	OH	WESTERVILLE, CITY OF	39049C0156G	12-MAR-2003	03-05-1940A	02
05	OH	WHITEHOUSE, VILLAGE OF	39095C0218D	21-FEB-2003	03-05-0566A	01
05	OH	WHITEHOUSE, VILLAGE OF	39095C0219D	21-FEB-2003	03-05-0566A	01
05	OH	WHITEHOUSE, VILLAGE OF	39095C0214D	24-JAN-2003	03-05-1527A	02
05	OH	WHITEHOUSE, VILLAGE OF	39095C0218D	24-JAN-2003	03-05-1527A	02
05	OH	WHITEHOUSE, VILLAGE OF	39095C0218D	28-FEB-2003	03-05-1808A	02
05	OH	WHITEHOUSE, VILLAGE OF	39095C0219D	28-FEB-2003	03-05-1808A	02
05	OH	WILLIAMS COUNTY	3907850025B	02-JAN-2003	03-05-0858A	02
05	OH	WILLIAMS COUNTY	3907850050B	26-FEB-2003	03-05-1789A	02
05	OH	WILLIAMS COUNTY	3907850075B	16-APR-2003	03-05-1983A	02
05	OH	WOOD COUNTY	3908090012C	22-JAN-2003	03-05-0973A	02
05	OH	WOOD COUNTY	3908090011C	26-FEB-2003	03-05-1490A	02
05	OH	WOOD COUNTY	3908090050C	09-APR-2003	03-05-1857A	17
05	OH	WOOD COUNTY	3908090012C	12-MAR-2003	03-05-1961X	02
05	OH	WOOD COUNTY	3908090110B	21-MAR-2003	03-05-2030A	02
05	OH	WOOD COUNTY	3908090105B	14-MAY-2003	03-05-2487A	02
05	OH	WOOD COUNTY	3908090012C	02-APR-2003	03-05-2732X	02
05	OH	WOOD COUNTY	3908090016B	14-MAY-2003	03-05-3177A	02
05	OH	WOOD COUNTY	3908090016B	18-JUN-2003	03-05-3187A	01
05	OH	WOOD COUNTY	3908090012C	28-MAY-2003	03-05-3188A	02
05	OH	WOOD COUNTY	3908090016B	28-MAY-2003	03-05-3188A	02
05	OH	WOOD COUNTY	3908090016B	20-JUN-2003	03-05-3354A	01
05	OH	WOOSTER, CITY OF	39169C0140C	14-MAR-2003	03-05-2178A	02
05	OH	XENIA, CITY OF	3901970005B	23-APR-2003	03-05-2886A	02
05	OH	XENIA, CITY OF	3901970005B	21-MAY-2003	03-05-3265A	02
05	OH	ZANESVILLE, CITY OF	3904270005F	10-JAN-2003	03-05-0518A	02
05	WI	ADAMS COUNTY	55001C0330C	14-MAY-2003	03-05-1952A	17
05	WI	ADAMS COUNTY	55001C0175C	04-JUN-2003	03-05-2397A	02
05	WI	ALLOUEZ, VILLAGE OF	5500200125B	10-JAN-2003	03-05-1057A	01
05	WI	ALLOUEZ, VILLAGE OF	5500200125B	24-MAR-2003	03-05-1358A	02
05	WI	ALLOUEZ, VILLAGE OF	5500200125B	27-MAR-2003	03-05-1677A	02
05	WI	BARRON COUNTY	5505680125B	23-APR-2003	03-05-2834A	02
05	WI	BAYFIELD COUNTY	5505390004C	15-JAN-2003	03-05-0076A	02
05	WI	BAYFIELD COUNTY	5505390006B	21-FEB-2003	03-05-1653A	02
05	WI	BAYFIELD COUNTY	5505390006B	05-MAR-2003	03-05-2094X	02
05	WI	BIRCHWOOD, VILLAGE OF	550574—01B	15-JAN-2003	03-05-0471A	02
05	WI	BIRCHWOOD, VILLAGE OF	550574—01B	25-JUN-2003	03-05-3060A	02
05	WI	BROWN COUNTY *	5500200150B	20-MAR-2003	03-05-1100A	01
05	WI	BROWN COUNTY *	5500200150B	21-APR-2003	03-05-1674A	02
05	WI	BURLINGTON, CITY OF	5503480001C	22-JAN-2003	03-05-1219A	02
05	WI	BURLINGTON, CITY OF	5503480001C	09-APR-2003	03-05-1898A	01
05	WI	CHIPPEWA COUNTY	5555490175B	05-FEB-2003	03-05-0590A	02
05	WI	CHIPPEWA COUNTY	5555490075B	10-FEB-2003	03-05-1541A	02
05	WI	COLUMBIA COUNTY	5505810050C	15-JAN-2003	03-05-0818A	02
05	WI	COLUMBIA COUNTY	5505810075C	10-JAN-2003	03-05-1177A	02
05	WI	COLUMBIA COUNTY	5505810075C	07-MAR-2003	03-05-1956A	02
05	WI	COLUMBIA COUNTY	5505810150C	07-MAR-2003	03-05-1956A	02
05	WI	COLUMBIA COUNTY	5505810075C	19-MAR-2003	03-05-2011A	02
05	WI	DANE COUNTY	5500770100A	09-MAY-2003	03-05-2063A	02
05	WI	DANE COUNTY*	5500770175C	27-MAR-2003	03-05-1660A	02
05	WI	DE PERE, CITY OF	5500210005C	06-FEB-2003	03-05-0368A	02
05	WI	DE PERE, CITY OF	5500210005C	16-JAN-2003	03-05-0400A	02
05	WI	DODGE COUNTY	5500940120B	21-MAR-2003	03-05-0607A	02
05	WI	DOOR COUNTY	5501090085A	09-APR-2003	03-05-1720A	02

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05	WI	DOOR COUNTY	5501090085A	04–APR–2003	03–05–1987A	02
05	WI	DOOR COUNTY	5501090105A	23–APR–2003	03–05–2083A	01
05	WI	DOUGLAS COUNTY	5505380275B	29–JAN–2003	03–05–0515A	02
05	WI	DOUGLAS COUNTY	5505380125B	11–JUN–2003	03–05–3516A	02
05	WI	DUNN COUNTY	5501180125A	09–MAY–2003	03–05–2820A	02
05	WI	EAU CLAIRE COUNTY	5555520150B	16–MAY–2003	03–05–0739A	02
05	WI	EAU CLAIRE COUNTY	5555520275B	12–MAR–2003	03–05–2071A	02
05	WI	EAU CLAIRE, CITY OF	5501280005D	04–APR–2003	03–05–1190A	01
05	WI	EAU CLAIRE, CITY OF	5501280015D	09–APR–2003	03–05–1559A	01
05	WI	EAU CLAIRE, CITY OF	5501280005D	26–FEB–2003	03–05–1602A	02
05	WI	EAU CLAIRE, CITY OF	5501280015D	26–MAR–2003	03–05–1724A	02
05	WI	ELM GROVE, VILLAGE OF	5505780001B	23–JUN–2003	03–05–1985A	02
05	WI	ETTRICK, VILLAGE OF	550420001B	13–JAN–2003	03–05–0253A	02
05	WI	ETTRICK, VILLAGE OF	555585—32A	13–JAN–2003	03–05–0253A	02
05	WI	FOND DU LAC COUNTY	5501310170C	08–JAN–2003	03–05–0706A	02
05	WI	FOND DU LAC COUNTY	5501310170C	21–MAR–2003	03–05–0707A	02
05	WI	FOND DU LAC COUNTY	5501310195B	21–MAY–2003	03–05–2589A	02
05	WI	FOND DU LAC COUNTY	5501310070C	14–MAY–2003	03–05–3109A	02
05	WI	FOND DU LAC COUNTY	5501310070C	14–MAY–2003	03–05–3110A	02
05	WI	FOND DU LAC COUNTY	5501310080B	25–JUN–2003	03–05–3960A	02
05	WI	FOND DU LAC, CITY OF	5501360005D	08–JAN–2003	03–05–1176A	02
05	WI	FOND DU LAC, CITY OF	5501360005D	10–JAN–2003	03–05–1210A	02
05	WI	FOND DU LAC, CITY OF	5501360005D	15–JAN–2003	03–05–1231A	02
05	WI	FOND DU LAC, CITY OF	5501360005D	12–FEB–2003	03–05–1778A	02
05	WI	FOND DU LAC, CITY OF	5501360005D	07–MAR–2003	03–05–1975A	02
05	WI	FOND DU LAC, CITY OF	5501360005D	16–MAY–2003	03–05–2451A	01
05	WI	FOND DU LAC, CITY OF	5501360005D	23–APR–2003	03–05–2792A	02
05	WI	FOREST COUNTY	5506030001A	29–JAN–2003	03–05–1438A	02
05	WI	FOREST COUNTY	5506030001A	29–JAN–2003	03–05–1439A	02
05	WI	FOREST COUNTY	5506030001A	17–JAN–2003	03–05–1445A	02
05	WI	FOREST COUNTY	5506030001A	05–FEB–2003	03–05–1536A	02
05	WI	FOREST COUNTY	5506030001A	04–APR–2003	03–05–1539A	02
05	WI	FOREST COUNTY	5506030001A	29–JAN–2003	03–05–1579A	02
05	WI	FOREST COUNTY	5506030001A	29–JAN–2003	03–05–1583A	02
05	WI	FOREST COUNTY	5506030009A	26–MAR–2003	03–05–2362A	02
05	WI	FOREST COUNTY	5506030006A	16–APR–2003	03–05–2786A	02
05	WI	FOREST COUNTY	5506030001A	18–APR–2003	03–05–2822A	02
05	WI	FOREST COUNTY	5506030001A	18–APR–2003	03–05–2842A	02
05	WI	FRANKLIN, CITY OF	5502730005B	02–APR–2003	03–05–1546A	02
05	WI	FRANKLIN, CITY OF	5502730005B	20–JUN–2003	03–05–2203A	01
05	WI	FREMONT, VILLAGE OF	5504960001C	10–FEB–2003	03–05–1198A	02
05	WI	FREMONT, VILLAGE OF	5504960001C	09–APR–2003	03–05–2356A	02
05	WI	FREMONT, VILLAGE OF	5504960001C	13–JUN–2003	03–05–2602A	01
05	WI	GAYS MILLS, VILLAGE OF	5500710001C	26–MAR–2003	03–05–0863A	02
05	WI	GLENDALE, CITY OF	5502750005C	20–JUN–2003	03–05–2438A	02
05	WI	GREEN BAY, CITY OF	5500220020E	27–JAN–2003	03–05–0367A	02
05	WI	GREEN BAY, CITY OF	5500220005E	17–MAR–2003	03–05–0798A	17
05	WI	GREEN BAY, CITY OF	5500220010E	20–FEB–2003	03–05–1051A	02
05	WI	GREEN BAY, CITY OF	5500220005E	27–FEB–2003	03–05–1061A	02
05	WI	GREEN LAKE COUNTY	5501650003A	17–JAN–2003	02–05–4608A	08
05	WI	GREEN LAKE COUNTY	5501650004A	24–JAN–2003	03–05–0401A	02
05	WI	GREEN LAKE COUNTY	550165—04A	23–APR–2003	03–05–2765A	02
05	WI	GREENDALE, VILLAGE OF	5502760002B	21–MAR–2003	03–05–1043A	02
05	WI	GREENFIELD, CITY OF	5502770001B	22–JAN–2003	03–05–1101A	02
05	WI	HARTLAND, VILLAGE OF	5504810001C	13–JUN–2003	03–05–3604A	02
05	WI	HORTONVILLE, VILLAGE OF	5505290002A	20–JUN–2003	03–05–3598A	02
05	WI	HOWARD, VILLAGE OF	5500230005B	10–MAR–2003	03–05–0775A	17
05	WI	HOWARD, VILLAGE OF	5500230005B	10–APR–2003	03–05–1683A	02
05	WI	IOWA COUNTY	5505220225A	09–APR–2003	03–05–2321A	02
05	WI	IRON COUNTY	5501820008B	10–JAN–2003	03–05–0654A	02
05	WI	IRON COUNTY	5501820008B	28–MAR–2003	03–05–2286A	02
05	WI	JACKSON COUNTY	5505830125B	21–FEB–2003	03–05–0812A	01
05	WI	JACKSON, VILLAGE OF	5505300001C	19–MAR–2003	03–05–2306A	02
05	WI	JANESVILLE, CITY OF	5503630130A	17–JAN–2003	02–05–3209A	01
05	WI	JEFFERSON COUNTY	5501910050B	21–MAR–2003	03–05–1623A	02
05	WI	JEFFERSON COUNTY	5501910125B	12–FEB–2003	03–05–1641A	17
05	WI	JEFFERSON COUNTY	5501910200B	09–APR–2003	03–05–2440A	02
05	WI	JEFFERSON COUNTY	5501910200B	27–JUN–2003	03–05–3337A	02
05	WI	LA CROSSE, CITY OF	5555620005B	17–APR–2003	03–05–1392A	02
05	WI	LA CROSSE, CITY OF	5555620005B	07–APR–2003	03–05–1705A	02
05	WI	LA CROSSE, CITY OF	5555620008B	03–APR–2003	03–05–2139A	02
05	WI	LA CROSSE, CITY OF	5555620008B	27–APR–2003	03–05–2626X	02
05	WI	LAKE DELTON, VILLAGE OF	55111C0250D	05–MAR–2003	03–05–1191A	02

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05	WI	LAVALLE, VILLAGE OF	55111C0200D	07–MAY–2003	03–05–3107A	02
05	WI	LINCOLN COUNTY*	5505850030B	10–JAN–2003	03–05–0593A	02
05	WI	MANITOWOC, CITY OF	550240—04B	19–MAR–2003	03–05–1478A	02
05	WI	MARATHON COUNTY	5502450375B	10–JAN–2003	02–05–2826A	01
05	WI	MARATHON COUNTY	5502450400B	22–JAN–2003	03–05–0506A	02
05	WI	MARATHON COUNTY	5502450375B	12–FEB–2003	03–05–0520A	02
05	WI	MARATHON COUNTY	5502450375B	29–JAN–2003	03–05–0834A	02
05	WI	MARATHON COUNTY	5502450375B	05–MAR–2003	03–05–0955A	02
05	WI	MARATHON COUNTY	5502450250B	05–MAR–2003	03–05–1213A	02
05	WI	MARATHON COUNTY	5502450200B	11–APR–2003	03–05–2317A	02
05	WI	MARATHON COUNTY	5502450225B	28–MAR–2003	03–05–2428A	02
05	WI	MARATHON COUNTY	5502450225B	09–APR–2003	03–05–2798X	02
05	WI	MARATHON COUNTY	5502450525B	23–APR–2003	03–05–2956A	02
05	WI	MARATHON COUNTY	5502450525B	21–MAY–2003	03–05–3193A	02
05	WI	MARATHON COUNTY	5502450400B	18–JUN–2003	03–05–3323A	17
05	WI	MARINETTE COUNTY	5502590400B	21–MAR–2003	03–05–1584A	02
05	WI	MARINETTE COUNTY	5502590725B	09–APR–2003	03–05–1907A	02
05	WI	MARINETTE COUNTY	5502590700B	12–MAR–2003	03–05–2175A	02
05	WI	MARINETTE COUNTY	5502590625B	16–APR–2003	03–05–2189A	02
05	WI	MARINETTE COUNTY	5502590765B	27–JUN–2003	03–05–3860A	02
05	WI	MARQUETTE COUNTY	5506010125B	14–FEB–2003	03–05–1732A	17
05	WI	MC FARLAND, VILLAGE OF	5500770275C	31–MAR–2003	03–05–1664A	02
05	WI	MENASHA, CITY OF	5505100005C	21–JAN–2003	03–05–0380A	02
05	WI	MENASHA, CITY OF	55139C0105E	18–MAR–2003	03–05–2121V	19
05	WI	MENASHA, CITY OF	55139C0110E	18–MAR–2003	03–05–2121V	19
05	WI	MENASHA, CITY OF	55139C0105E	30–APR–2003	03–05–2746A	02
05	WI	MENASHA, CITY OF	55139C0110E	30–MAY–2003	03–05–3420A	02
05	WI	MENASHA, CITY OF	55139C0110E	04–JUN–2003	03–05–3524A	02
05	WI	MENOMONEE FALLS, VILLAGE OF	5504830005C	15–JAN–2003	03–05–1007A	02
05	WI	MENOMONEE FALLS, VILLAGE OF	5504830005C	19–MAR–2003	03–05–2229A	02
05	WI	MENOMONEE FALLS, VILLAGE OF	5504830005C	25–JUN–2003	03–05–3333A	17
05	WI	MENOMONEE FALLS, VILLAGE OF	5504830010C	11–JUN–2003	03–05–3414A	02
05	WI	MEQUON, CITY OF	55089C0085D	02–JAN–2003	03–05–0516A	02
05	WI	MEQUON, CITY OF	55089C0085D	23–APR–2003	03–05–2878A	02
05	WI	MISHICOT, VILLAGE OF	5555660005C	11–JUN–2003	03–05–3541A	02
05	WI	MONROE COUNTY	5505710135B	09–APR–2003	03–05–2097A	02
05	WI	MUSKEGO, CITY OF	5504860001B	12–FEB–2003	03–05–1770A	02
05	WI	MUSKEGO, CITY OF	5504860001B	26–FEB–2003	03–05–1953A	02
05	WI	NEENAH, CITY OF	55139C0111E	17–APR–2003	03–05–1701A	01
05	WI	NEENAH, CITY OF	55139C0111E	18–MAR–2003	03–05–2124V	19
05	WI	NEW BERLIN, CITY OF	5504870003E	07–MAY–2003	03–05–2220A	02
05	WI	NEW GLARUS, VILLAGE OF	5501640001B	16–APR–2003	03–05–2606A	02
05	WI	OAK CREEK, CITY OF	5502790002B	10–FEB–2003	03–05–1818A	02
05	WI	OCONOMOWOC LAKE, VILLAGE OF	5505820005B	29–JAN–2003	02–05–4604A	02
05	WI	OCONOMOWOC LAKE, VILLAGE OF	5505820005B	09–APR–2003	03–05–2677A	02
05	WI	OCONTO COUNTY	5502940125A	22–JAN–2003	02–05–4222A	02
05	WI	OCONTO COUNTY	5502940295A	10–JAN–2003	03–05–1048A	17
05	WI	OCONTO COUNTY	5502940290A	09–APR–2003	03–05–2413A	02
05	WI	OCONTO, CITY OF	5502970001B	02–JAN–2003	03–05–1110A	02
05	WI	OMRO, CITY OF	55139C0186E	18–MAR–2003	03–05–2123V	19
05	WI	ONEIDA COUNTY	55085C0300B	31–JAN–2003	03–05–1211A	02
05	WI	ONEIDA COUNTY	55085C0200B	21–FEB–2003	03–05–1892A	02
05	WI	OSHKOSH, CITY OF	5505110010D	27–FEB–2003	03–05–0764A	02
05	WI	OSHKOSH, CITY OF	55139C0215E	18–MAR–2003	03–05–2122V	19
05	WI	OSHKOSH, CITY OF	55139C0220E	18–MAR–2003	03–05–2122V	19
05	WI	OSHKOSH, CITY OF	55139C0225E	18–MAR–2003	03–05–2122V	19
05	WI	OSHKOSH, CITY OF	55139C0335E	18–MAR–2003	03–05–2122V	19
05	WI	OSHKOSH, CITY OF	55139C0215E	25–JUN–2003	03–05–2882A	17
05	WI	OSHKOSH, CITY OF	55139C0220E	25–APR–2003	03–05–3010A	02
05	WI	OSHKOSH, CITY OF	55139C0225E	11–JUN–2003	03–05–3597A	02
05	WI	OUTAGAMIE COUNTY	5503020050B	02–APR–2003	03–05–1317A	02
05	WI	OUTAGAMIE COUNTY	5503020150B	13–JUN–2003	03–05–1494A	02
05	WI	OUTAGAMIE COUNTY	5503020050B	14–FEB–2003	03–05–1634A	02
05	WI	OUTAGAMIE COUNTY	5503020100C	16–MAY–2003	03–05–2398A	02
05	WI	OUTAGAMIE COUNTY	5503020100C	30–MAY–2003	03–05–3030A	02
05	WI	OZAUKEE COUNTY	55089C0050E	09–MAY–2003	03–05–2957A	02
05	WI	PIERCE COUNTY	5555710175C	21–MAR–2003	03–05–1610A	02
05	WI	PIERCE COUNTY *	5555710025B	21–APR–2003	02–05–4309P	05
05	WI	PIERCE COUNTY *	5555710030B	21–APR–2003	02–05–4309P	05
05	WI	PITTSVILLE, CITY OF	55141C0245F	15–JAN–2003	03–05–1033A	02
05	WI	PLEASANT PRAIRIE, VILLAGE OF	5506130005B	30–MAY–2003	03–05–3299A	02
05	WI	POLK COUNTY	5505770200B	29–JAN–2003	03–05–1182A	02
05	WI	POLK COUNTY	5505770275B	10–FEB–2003	03–05–1543A	02

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05	WI	PORTAGE COUNTY	5505720250C	14–MAR–2003	03–05–1199A	02
05	WI	PORTAGE COUNTY	5505720050C	26–FEB–2003	03–05–1515A	02
05	WI	PRICE COUNTY	5503430105C	18–APR–2003	03–05–1886A	02
05	WI	RACINE COUNTY	5503470010B	07–MAR–2003	03–05–1203A	02
05	WI	RACINE COUNTY	5503470010B	12–MAR–2003	03–05–2075A	02
05	WI	RACINE COUNTY	5503470005B	23–APR–2003	03–05–2782A	02
05	WI	REEDSBURG, CITY OF	55111C0195D	28–MAR–2003	03–05–1144A	02
05	WI	RICHLAND CENTER, CITY OF	5555760001B	29–MAY–2003	02–05–3964P	05
05	WI	RICHLAND COUNTY	5503560200B	08–JAN–2003	02–05–4669A	02
05	WI	RICHLAND COUNTY	5503560050B	24–JAN–2003	03–05–1432A	02
05	WI	RICHLAND COUNTY	5503560050B	07–MAR–2003	03–05–2017A	02
05	WI	RICHLAND COUNTY	5503560150B	18–JUN–2003	03–05–3450A	02
05	WI	ROSHOLT, VILLAGE OF	550341—01B	19–MAR–2003	03–05–1553A	02
05	WI	ROSHOLT, VILLAGE OF	550341—01B	30–APR–2003	03–05–2033A	01
05	WI	RUSK COUNTY	5506020225B	29–JAN–2003	03–05–1578A	02
05	WI	SAUK COUNTY	55111C0375D	17–JAN–2003	03–05–1207A	02
05	WI	SAUK COUNTY	55111C0575D	31–JAN–2003	03–05–1235A	02
05	WI	SAUK COUNTY	55111C0525D	24–JAN–2003	03–05–1272A	02
05	WI	SAUK COUNTY	55111C0525D	05–FEB–2003	03–05–1524A	02
05	WI	SAUK COUNTY	55111C0350D	21–FEB–2003	03–05–1911A	02
05	WI	SAUK COUNTY	55111C0600D	04–APR–2003	03–05–2435A	02
05	WI	SAUK COUNTY	55111C0350D	07–MAY–2003	03–05–2875A	02
05	WI	SAUK COUNTY	55111C0575D	20–JUN–2003	03–05–3290A	17
05	WI	SAUK COUNTY	55111C0550D	25–JUN–2003	03–05–3517A	02
05	WI	SCHOFIELD, CITY OF	5555790001C	27–JUN–2003	03–05–3102A	01
05	WI	SHAWANO COUNTY	5504120150B	02–JAN–2003	03–05–0968A	02
05	WI	SHAWANO COUNTY	5504120100B	05–FEB–2003	03–05–1003A	02
05	WI	SHAWANO COUNTY	5504120150B	24–JAN–2003	03–05–1325A	02
05	WI	SHAWANO COUNTY	5504120150B	10–FEB–2003	03–05–1754A	02
05	WI	SHIOCTON, VILLAGE OF	5503090001B	26–MAR–2003	03–05–1324A	02
05	WI	ST. CROIX COUNTY	555578—01B	02–MAY–2003	03–05–2095A	02
05	WI	ST. CROIX COUNTY	555578—08B	16–APR–2003	03–05–2525A	02
05	WI	ST. CROIX COUNTY *	555578—15B	13–FEB–2003	03–05–0362A	01
05	WI	STEVENS POINT, CITY OF	5503420005B	11–JUN–2003	03–05–3670A	02
05	WI	STURGEON BAY, CITY OF	5501110005B	02–APR–2003	03–05–2023A	02
05	WI	STURGEON BAY, CITY OF	5501110005B	13–JUN–2003	03–05–3642A	02
05	WI	THIENSVILLE, VILLAGE OF	55089C0079D	12–MAR–2003	03–05–2078A	02
05	WI	TREMPEALEAU COUNTY *	555585—15A	31–MAR–2003	03–05–1094A	02
05	WI	TREMPEALEAU COUNTY *	555585—38A	10–MAR–2003	03–05–1371A	02
05	WI	TWIN LAKES, VILLAGE OF	5502110002B	07–MAR–2003	03–05–1797A	02
05	WI	VERNON COUNTY	5504500025B	10–FEB–2003	03–05–1717A	02
05	WI	WALWORTH COUNTY	5504820085B	24–JAN–2003	03–05–1526A	02
05	WI	WASHBURN COUNTY	5506060125B	04–APR–2003	03–05–1125A	02
05	WI	WASHBURN COUNTY	5506060125B	11–JUN–2003	03–05–3679A	02
05	WI	WASHBURN COUNTY	5506060125B	13–JUN–2003	03–05–3697A	02
05	WI	WASHINGTON COUNTY	5504710015B	15–JAN–2003	03–05–1117A	02
05	WI	WASHINGTON COUNTY	5504710020B	12–MAR–2003	03–05–1525A	02
05	WI	WASHINGTON COUNTY	5504710090B	19–MAR–2003	03–05–2408A	02
05	WI	WAUKESHA COUNTY	5504760020B	29–JAN–2003	03–05–1239A	02
05	WI	WAUKESHA COUNTY	5504760015B	17–JAN–2003	03–05–1242A	02
05	WI	WAUKESHA COUNTY	5504760015B	21–FEB–2003	03–05–1275A	02
05	WI	WAUKESHA COUNTY	5504760020B	07–MAR–2003	03–05–2024A	02
05	WI	WAUKESHA COUNTY	5504760020B	19–MAR–2003	03–05–2287A	02
05	WI	WAUKESHA COUNTY	5504760060B	02–APR–2003	03–05–2439A	02
05	WI	WAUKESHA COUNTY	5504760015B	18–JUN–2003	03–05–3264A	02
05	WI	WAUKESHA COUNTY	5504760060B	11–JUN–2003	03–05–3795X	02
05	WI	WAUPACA COUNTY	5504920205B	22–JAN–2003	03–05–0928A	02
05	WI	WAUPACA COUNTY	5504920155A	21–FEB–2003	03–05–1775A	02
05	WI	WAUPACA COUNTY	5504920115A	25–JUN–2003	03–05–3029A	02
05	WI	WAUPACA COUNTY	5504920040A	25–JUN–2003	03–05–3799A	02
05	WI	WAUPUN, CITY OF	5501080001E	23–APR–2003	03–05–1310A	02
05	WI	WAUPUN, CITY OF	5501080001E	20–JUN–2003	03–05–3627A	02
05	WI	WAUSAU, CITY OF	5502450375B	28–FEB–2003	03–05–1256A	02
05	WI	WAUSAU, CITY OF	5502450250B	09–MAY–2003	03–05–2718A	02
05	WI	WAUWATOSA, CITY OF	5502840005B	08–JAN–2003	03–05–0914A	02
05	WI	WEST ALLIS, CITY OF	5502850003C	05–MAR–2003	03–05–1253A	02
05	WI	WEST ALLIS, CITY OF	5502850003C	19–MAR–2003	03–05–2218A	02
05	WI	WHITEWATER, CITY OF	5502000004B	20–JUN–2003	03–05–3801A	02
05	WI	WINNEBAGO COUNTY	55139C0170E	16–MAY–2003	03–05–3082A	02
05	WI	WINNEBAGO COUNTY	55139C0215E	16–MAY–2003	03–05–3092A	02
05	WI	WINNEBAGO COUNTY	55139C0050E	04–JUN–2003	03–05–3348A	02
05	WI	WINNEBAGO COUNTY	55139C0200E	20–JUN–2003	03–05–3419A	01
05	WI	WINNEBAGO COUNTY	55139C0225E	04–JUN–2003	03–05–3442A	02

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05	WI	WINNEBAGO COUNTY	55139C0215E	13–JUN–2003	03–05–3599A	02
05	WI	WINNEBAGO COUNTY *	5505370025C	16–JAN–2003	03–05–0033A	02
05	WI	WINNEBAGO COUNTY *	5505370100C	30–JAN–2003	03–05–0050A	02
05	WI	WINNEBAGO COUNTY *	55139C0220E	18–MAR–2003	03–05–0755A	02
05	WI	WINNEBAGO COUNTY *	5505370075C	16–JAN–2003	03–05–0756A	02
05	WI	WINNEBAGO COUNTY *	5505370075C	10–FEB–2003	03–05–1063A	02
05	WI	WINNEBAGO COUNTY *	55139C0335E	31–MAR–2003	03–05–1090A	02
05	WI	WINNEBAGO COUNTY *	55139C0200E	18–MAR–2003	03–05–1370A	01
05	WI	WINNEBAGO COUNTY *	55139C0200E	20–MAR–2003	03–05–1395A	02
05	WI	WINNEBAGO COUNTY *	55139C0030E	28–APR–2003	03–05–1698A	02
05	WI	WINNEBAGO COUNTY *	55139C0112E	14–APR–2003	03–05–1700A	02
05	WI	WINNEBAGO COUNTY *	55139C0050E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0065E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0105E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0110E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0112E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0113E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0114E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0150E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0170E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0175E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0176E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0200E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0215E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0220E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0225E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0250E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0330E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0335E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0355E	18–MAR–2003	03–05–2126V	19
05	WI	WINNEBAGO COUNTY *	55139C0365E	18–MAR–2003	03–05–2126V	19
05	WI	WINNECONNE, VILLAGE OF	55139C0177E	18–MAR–2003	03–05–2125V	19
05	WI	WYEVILLE, VILLAGE OF	5502930001C	21–MAR–2003	03–05–0940A	02
06	AR	BENTON COUNTY	05007C0061F	28–MAR–2003	03–06–475A	17
06	AR	BENTONVILLE, CITY OF	05007C0044F	08–JAN–2003	03–06–093A	01
06	AR	BENTONVILLE, CITY OF	05007C0155H	28–MAY–2003	03–06–1088A	17
06	AR	BOONEVILLE, CITY OF	050472—01B	14–MAY–2003	03–06–1040A	02
06	AR	BOONEVILLE, CITY OF	050472—01B	31–JAN–2003	03–06–369A	02
06	AR	BRYANT, CITY OF	0503080001C	11–JUN–2003	03–06–1589A	02
06	AR	CABOT, CITY OF	0504480015B	11–JUN–2003	03–06–1509A	01
06	AR	CAMDEN, CITY OF	0501630002A	30–APR–2003	03–06–1414A	01
06	AR	CENTERTON, CITY OF	05007C0135E	16–MAY–2003	03–06–589A	02
06	AR	CLARKSVILLE, CITY OF	0501120002C	21–MAR–2003	03–06–667A	02
06	AR	CLEBURNE COUNTY	0504240025C	30–APR–2003	03–06–1341A	02
06	AR	CONWAY, CITY OF	05045C0130F	14–MAR–2003	03–06–1039A	02
06	AR	CONWAY, CITY OF	05045C0130F	11–JUN–2003	03–06–1466A	01
06	AR	CRAIGHEAD COUNTY	05031C0195C	04–JUN–2003	03–06–788A	02
06	AR	DES ARC, CITY OF	050237—01A	30–MAY–2003	03–06–1647A	02
06	AR	DES ARC, CITY OF	050237—01A	24–JAN–2003	03–06–374A	02
06	AR	DES ARC, CITY OF	050237—01A	21–FEB–2003	03–06–743A	02
06	AR	DYER, TOWN OF	05033C0195E	02–APR–2003	03–06–1076A	01
06	AR	DYER, TOWN OF	05033C0195E	28–MAR–2003	03–06–1095A	02
06	AR	ELKINS, CITY OF	05143C0115E	15–JAN–2003	03–06–571A	02
06	AR	FAULKNER COUNTY	05045C0145F	03–JAN–2003	03–06–156A	02
06	AR	FAYETTEVILLE, CITY OF	05143C0115E	28–MAY–2003	03–06–1709A	02
06	AR	FORT SMITH, CITY OF	050462D	03–JAN–2003	03–06–134A	02
06	AR	FORT SMITH, CITY OF	0550130005D	04–JUN–2003	03–06–1760A	02
06	AR	FORT SMITH, CITY OF	0550130010D	14–FEB–2003	03–06–610A	02
06	AR	GARLAND COUNTY	05051C0090C	30–MAY–2003	03–06–1590A	02
06	AR	GARLAND COUNTY	05051C0125C	23–MAY–2003	03–06–467A	02
06	AR	GARLAND COUNTY	05051C0154C	29–JAN–2003	03–06–595A	02
06	AR	GARLAND COUNTY	05051C0158C	21–FEB–2003	03–06–806A	02
06	AR	GRANT COUNTY	050434—19B	23–APR–2003	03–06–1289A	02
06	AR	GREENWOOD, CITY OF	0501980005B	08–JAN–2003	03–06–310A	17
06	AR	HOPE, CITY OF	0500870004A	29–JAN–2003	03–06–064A	01
06	AR	HOT SPRINGS, CITY OF	05051C0154C	25–JUN–2003	03–06–1987A	02
06	AR	HOT SPRINGS, CITY OF	05051C0158C	16–APR–2003	03–06–928A	02
06	AR	INDEPENDENCE COUNTY	0500900090B	14–MAY–2003	03–06–1606A	02
06	AR	JACKSONVILLE, CITY OF	0501800010E	02–APR–2003	03–06–1138A	02
06	AR	JACKSONVILLE, CITY OF	0501800005E	14–MAY–2003	03–06–1176A	01
06	AR	JACKSONVILLE, CITY OF	0501800010E	06–JUN–2003	03–06–1571A	01
06	AR	JACKSONVILLE, CITY OF	0501800010E	13–JUN–2003	03–06–1623A	17
06	AR	JACKSONVILLE, CITY OF	0501800005E	10–FEB–2003	03–06–591A	01

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06	AR	JONESBORO, CITY OF	05031C0151C	07–MAY–2003	03–06–1110A	02
06	AR	JONESBORO, CITY OF	05031C0043C	22–JAN–2003	03–06–578A	02
06	AR	JONESBORO, CITY OF	05031C0151C	04–APR–2003	03–06–860A	01
06	AR	LITTLE ROCK, CITY OF	0501810101F	13–JUN–2003	02–06–2217P	05
06	AR	LITTLE ROCK, CITY OF	0501810106F	21–MAY–2003	03–06–1674A	02
06	AR	LITTLE ROCK, CITY OF	0501810084F	13–JUN–2003	03–06–1800A	02
06	AR	LITTLE ROCK, CITY OF	0501810084F	30–MAY–2003	03–06–1812A	02
06	AR	LITTLE ROCK, CITY OF	0501810113F	20–JUN–2003	03–06–1959A	02
06	AR	LITTLE ROCK, CITY OF	0501810037F	30–MAY–2003	03–06–648A	01
06	AR	LITTLE ROCK, CITY OF	0501810044F	10–FEB–2003	03–06–810A	02
06	AR	LITTLE ROCK, CITY OF	0501810084F	16–APR–2003	03–06–915A	02
06	AR	LOWELL, CITY OF	05007C0164E	07–MAR–2003	03–06–701A	02
06	AR	MANSFIELD, CITY OF	0502020005C	21–MAY–2003	03–06–771A	02
06	AR	MAYFLOWER, CITY OF	05045C0210E	25–APR–2003	03–06–1479A	02
06	AR	MCGEHEE, CITY OF	0500680005C	16–MAY–2003	03–06–1649A	02
06	AR	MCGEHEE, CITY OF	0500680005C	07–MAR–2003	03–06–662A	02
06	AR	NORTH LITTLE ROCK, CITY OF	0501790279D	14–MAR–2003	03–06–987A	02
06	AR	NORTH LITTLE ROCK, CITY OF	0501790287D	14–MAR–2003	03–06–987A	02
06	AR	PEA RIDGE,CITY OF	05007C0065F	21–FEB–2003	03–06–805A	02
06	AR	PERRYVILLE, CITY OF	05105C0129B	23–APR–2003	03–06–1450A	02
06	AR	PERRYVILLE, CITY OF	05105C0129B	14–MAY–2003	03–06–1621A	02
06	AR	PIGGOTT, CITY OF	0500350001B	10–JAN–2003	03–06–546A	17
06	AR	PULASKI COUNTY	0501790279D	13–JUN–2003	03–06–1316A	01
06	AR	PULASKI COUNTY	0501790287D	13–JUN–2003	03–06–1316A	01
06	AR	PULASKI COUNTY	0501790445D	10–JAN–2003	03–06–562A	17
06	AR	ROGERS, CITY OF	05007C0155H	11–APR–2003	03–06–154P	06
06	AR	RUSSELLVILLE, CITY OF	0501780038D	25–JUN–2003	03–06–1961A	02
06	AR	RUSSELLVILLE, CITY OF	0501780038D	28–MAR–2003	03–06–753A	02
06	AR	SALINE COUNTY	0501910140B	11–APR–2003	03–06–809A	02
06	AR	SEARCY, CITY OF	0504670009B	27–JUN–2003	03–06–1872A	02
06	AR	SEARCY, CITY OF	0504670009B	27–JUN–2003	03–06–1874A	02
06	AR	SHARP COUNTY	050464—13A	07–MAR–2003	03–06–862A	02
06	AR	SPRINGDALE, CITY OF	05143C0017C	02–APR–2003	03–06–1165A	02
06	AR	SPRINGDALE, CITY OF	05143C0036C	21–FEB–2003	03–06–619A	01
06	AR	STONE COUNTY	0504650115A	26–FEB–2003	03–06–871A	02
06	AR	STUTTGART, CITY OF	0500020005C	26–FEB–2003	03–06–900A	02
06	AR	TEXARKANA, CITY OF	0501370059C	11–APR–2003	03–06–973A	02
06	AR	VAN BUREN, CITY OF	05033C0170G	19–FEB–2003	02–06–873P	05
06	AR	WASHINGTON COUNTY	05143C0155C	16–APR–2003	03–06–1299A	02
06	AR	WASHINGTON COUNTY	05143C0160C	16–APR–2003	03–06–1299A	02
06	AR	WASHINGTON COUNTY	05143C0075C	28–FEB–2003	03–06–567A	02
06	AR	WASHINGTON COUNTY	05143C0050C	21–MAR–2003	03–06–603A	02
06	AR	WEST FORK, CITY OF	05143C0170C	02–APR–2003	03–06–1121A	02
06	AR	YELL COUNTY	05149C0285E	14–FEB–2003	03–06–633A	02
06	LA	ALEXANDRIA, CITY OF	2201460015F	06–JUN–2003	03–06–1096A	02
06	LA	ALEXANDRIA, CITY OF	2201460015F	26–MAR–2003	03–06–1125A	02
06	LA	ALEXANDRIA, CITY OF	2201460015F	04–JUN–2003	03–06–1680A	01
06	LA	ALEXANDRIA, CITY OF	2201460015F	30–MAY–2003	03–06–1791A	02
06	LA	ALEXANDRIA, CITY OF	2201460015F	30–MAY–2003	03–06–1806A	02
06	LA	ALEXANDRIA, CITY OF	2201450235D	06–JUN–2003	03–06–1820A	02
06	LA	ALEXANDRIA, CITY OF	2201460010F	11–JUN–2003	03–06–1862A	02
06	LA	ALEXANDRIA, CITY OF	2201450235D	12–FEB–2003	03–06–598A	02
06	LA	ALLEN PARISH	2200090225B	23–APR–2003	03–06–1260A	02
06	LA	ALLEN PARISH	2200090225B	07–MAY–2003	03–06–1371A	02
06	LA	ALLEN PARISH	2200090225B	25–JUN–2003	03–06–1694A	02
06	LA	ALLEN PARISH	2200090075B	25–JUN–2003	03–06–1973A	02
06	LA	ASCENSION PARISH	2200130030C	11–APR–2003	03–06–1286A	02
06	LA	ASCENSION PARISH	2200130110D	21–MAY–2003	03–06–1432A	02
06	LA	ASCENSION PARISH	2200130120C	30–MAY–2003	03–06–1699A	01
06	LA	ASCENSION PARISH	2200130040B	23–MAY–2003	03–06–1716A	02
06	LA	ASCENSION PARISH	2200130045C	28–MAR–2003	03–06–362A	02
06	LA	ASCENSION PARISH	2200130045C	24–JAN–2003	03–06–638A	02
06	LA	ASCENSION PARISH	2200130120C	18–JUN–2003	03–06–714A	02
06	LA	ASCENSION PARISH	2200130105C	26–MAR–2003	03–06–909A	01
06	LA	ASCENSION PARISH	2200130040B	19–MAR–2003	03–06–932A	02
06	LA	AVOYELLES PARISH	2200190250B	28–MAR–2003	03–06–1032A	02
06	LA	BOSSIER CITY, CITY OF	2200330030C	19–MAR–2003	03–06–1055A	02
06	LA	BOSSIER CITY, CITY OF	2200330020C	02–APR–2003	03–06–1085A	02
06	LA	BOSSIER CITY, CITY OF	2200330030C	16–APR–2003	03–06–1197A	02
06	LA	BOSSIER CITY, CITY OF	2200330020C	30–APR–2003	03–06–1335A	02
06	LA	BOSSIER CITY, CITY OF	2200330030C	30–APR–2003	03–06–1336A	02
06	LA	BOSSIER CITY, CITY OF	2200310295B	30–APR–2003	03–06–1355A	02
06	LA	BOSSIER CITY, CITY OF	2200310315B	30–APR–2003	03–06–1365A	02

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06	LA	BOSSIER CITY, CITY OF	2200310285B	07–MAY–2003	03–06–1366A	02
06	LA	BOSSIER CITY, CITY OF	2200330030C	30–APR–2003	03–06–1448A	02
06	LA	BOSSIER CITY, CITY OF	2200330030C	30–APR–2003	03–06–1559A	02
06	LA	BOSSIER CITY, CITY OF	2200330030C	16–MAY–2003	03–06–1593A	02
06	LA	BOSSIER CITY, CITY OF	2200330020C	16–MAY–2003	03–06–1668A	02
06	LA	BOSSIER CITY, CITY OF	2200330030C	18–JUN–2003	03–06–1701A	02
06	LA	BOSSIER CITY, CITY OF	2200330030C	25–JUN–2003	03–06–1828A	02
06	LA	BOSSIER CITY, CITY OF	2200330030C	20–JUN–2003	03–06–1876A	02
06	LA	BOSSIER CITY, CITY OF	2200310315B	03–JAN–2003	03–06–523A	02
06	LA	BOSSIER CITY, CITY OF	2200310315B	24–JAN–2003	03–06–628A	02
06	LA	BOSSIER CITY, CITY OF	2200310295B	31–JAN–2003	03–06–736A	02
06	LA	BOSSIER CITY, CITY OF	2200330005C	05–FEB–2003	03–06–801A	02
06	LA	BOSSIER CITY, CITY OF	2200330030C	21–FEB–2003	03–06–877A	02
06	LA	BOSSIER CITY, CITY OF	2200310315B	28–FEB–2003	03–06–898A	02
06	LA	BOSSIER CITY, CITY OF	2200310315B	04–APR–2003	03–06–913A	01
06	LA	BOSSIER PARISH	2200310315B	03–JAN–2003	03–06–136A	01
06	LA	BOSSIER PARISH	2200310285B	18–JUN–2003	03–06–1591A	02
06	LA	BOSSIER PARISH	2200310315B	18–JUN–2003	03–06–1819A	01
06	LA	BOSSIER PARISH	2200310285B	10–JAN–2003	03–06–550A	02
06	LA	BOSSIER PARISH	2200310315B	21–FEB–2003	03–06–752A	02
06	LA	CADDO PARISH	22017C0255F	30–MAY–2003	03–06–1642A	02
06	LA	CALCASIEU PARISH	2200370225D	18–JUN–2003	03–06–1226A	02
06	LA	CALCASIEU PARISH	2200370250D	23–APR–2003	03–06–1293A	02
06	LA	CALDWELL PARISH	2200440010A	30–APR–2003	03–06–1312A	02
06	LA	CALDWELL PARISH	2200440015A	23–MAY–2003	03–06–1560A	02
06	LA	CATAHOULA PARISH	2200470150C	23–APR–2003	03–06–1297A	02
06	LA	CLAIBORNE PARISH	2203620090B	26–MAR–2003	03–06–991A	02
06	LA	DENHAM SPRINGS, CITY OF	22063C0205D	19–MAR–2003	03–06–1056A	02
06	LA	DENHAM SPRINGS, CITY OF	22063C0205D	30–MAY–2003	03–06–1144A	02
06	LA	DENHAM SPRINGS, CITY OF	22063C0205D	04–APR–2003	03–06–646A	02
06	LA	EAST BATON ROUGE PARISH	2200580110D	19–MAR–2003	03–06–1054A	02
06	LA	EAST BATON ROUGE PARISH	2200580115D	26–MAR–2003	03–06–1101A	02
06	LA	EAST BATON ROUGE PARISH	2200580115D	04–JUN–2003	03–06–1162A	02
06	LA	EAST BATON ROUGE PARISH	2200580110D	04–APR–2003	03–06–1232A	02
06	LA	EAST BATON ROUGE PARISH	2200580095D	16–MAY–2003	03–06–1301A	01
06	LA	EAST BATON ROUGE PARISH	2200580100D	18–APR–2003	03–06–1302A	01
06	LA	EAST BATON ROUGE PARISH	2200580110D	16–APR–2003	03–06–1329A	02
06	LA	EAST BATON ROUGE PARISH	2200580100D	20–JUN–2003	03–06–1485A	02
06	LA	EAST BATON ROUGE PARISH	2200580115D	21–MAY–2003	03–06–1712A	02
06	LA	EAST BATON ROUGE PARISH	2200580110D	18–JUN–2003	03–06–1713A	02
06	LA	EAST BATON ROUGE PARISH	2200580110D	27–JUN–2003	03–06–1813A	02
06	LA	EAST BATON ROUGE PARISH	2200580110D	06–JUN–2003	03–06–1821A	02
06	LA	EAST BATON ROUGE PARISH	2200580095D	13–JUN–2003	03–06–1875A	02
06	LA	EAST BATON ROUGE PARISH	2200580095D	05–FEB–2003	03–06–265A	01
06	LA	EAST BATON ROUGE PARISH	2200580100D	16–APR–2003	03–06–267A	01
06	LA	EAST BATON ROUGE PARISH	2200580080D	29–JAN–2003	03–06–516A	01
06	LA	EAST BATON ROUGE PARISH	2200580115D	05–FEB–2003	03–06–528A	02
06	LA	EAST BATON ROUGE PARISH	2200580100D	02–JAN–2003	03–06–555A	02
06	LA	EAST BATON ROUGE PARISH	2200580105D	03–JAN–2003	03–06–557A	02
06	LA	EAST BATON ROUGE PARISH	2200580110D	15–JAN–2003	03–06–564A	02
06	LA	EAST BATON ROUGE PARISH	2200580095D	09–APR–2003	03–06–600A	01
06	LA	EAST BATON ROUGE PARISH	2200580085D	28–FEB–2003	03–06–728A	02
06	LA	EAST BATON ROUGE PARISH	2200580110D	12–FEB–2003	03–06–756A	02
06	LA	EAST BATON ROUGE PARISH	2200580095D	26–MAR–2003	03–06–897A	01
06	LA	EVANGELINE PARISH	2200640002B	22–JAN–2003	03–06–229A	01
06	LA	EVANGELINE PARISH	2200640002B	17–JAN–2003	03–06–289A	02
06	LA	EVANGELINE PARISH	2200640002B	07–MAR–2003	03–06–873A	02
06	LA	GONZALES, CITY OF	2200150005C	02–MAY–2003	03–06–1439A	02
06	LA	GREENWOOD, TOWN OF	22017C0430F	21–FEB–2003	03–06–821A	02
06	LA	HAMMOND, CITY OF	2202080001D	25–APR–2003	03–06–1282A	02
06	LA	HARRISONBURG, VILLAGE OF	2200480005B	25–APR–2003	03–06–1145A	01
06	LA	IBERIA PARISH	2200780120D	18–JUN–2003	03–06–1122A	01
06	LA	JENNINGS, CITY OF	2200980002B	14–MAY–2003	03–06–966A	01
06	LA	KINDER, TOWN OF	220010—01C	26–MAR–2003	03–06–1090A	02
06	LA	KINDER, TOWN OF	220010—01C	21–MAY–2003	03–06–1686A	02
06	LA	KINDER, TOWN OF	220010—01C	08–JAN–2003	03–06–563A	02
06	LA	KINDER, TOWN OF	22001001C	10–JAN–2003	03–06–577A	02
06	LA	KINDER, TOWN OF	220010—01C	15–JAN–2003	03–06–627A	02
06	LA	KINDER, TOWN OF	220010—01C	05–MAR–2003	03–06–926A	02
06	LA	LAFAYETTE PARISH	22055C0070G	16–MAY–2003	03–06–1126A	02
06	LA	LAFAYETTE PARISH	22055C0080G	16–MAY–2003	03–06–1126A	02
06	LA	LAFAYETTE PARISH	22055C0040H	16–MAY–2003	03–06–1451A	02
06	LA	LAFAYETTE PARISH	22055C0070G	25–JUN–2003	03–06–1465A	02

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06	LA	LAFAYETTE PARISH	22055C0045G	02–MAY–2003	03–06–1508A	02
06	LA	LAFAYETTE PARISH	22055C0065G	28–MAY–2003	03–06–1511A	01
06	LA	LAFAYETTE PARISH	22055C0065G	14–MAY–2003	03–06–1619A	02
06	LA	LAFAYETTE PARISH	22055C0065G	08–JAN–2003	03–06–517A	02
06	LA	LAFAYETTE, CITY OF	22055C0045G	04–APR–2003	03–06–1275A	02
06	LA	LAFAYETTE, CITY OF	22055C0045G	02–MAY–2003	03–06–1501A	02
06	LA	LAFAYETTE, CITY OF	22055C0045G	22–JAN–2003	03–06–639A	02
06	LA	LAFAYETTE, CITY OF	22055C0040H	29–JAN–2003	03–06–794A	01
06	LA	LAFAYETTE, CITY OF	22055C0045G	19–FEB–2003	03–06–808A	17
06	LA	LIVINGSTON PARISH	22063C0125D	04–APR–2003	03–06–1042A	02
06	LA	LIVINGSTON PARISH	22063C0225D	14–MAY–2003	03–06–1051A	02
06	LA	LIVINGSTON PARISH	22063C0205D	14–MAR–2003	03–06–1052A	02
06	LA	LIVINGSTON PARISH	22063C0125D	19–MAR–2003	03–06–1053A	02
06	LA	LIVINGSTON PARISH	22063C0125D	09–APR–2003	03–06–1154A	02
06	LA	LIVINGSTON PARISH	22063C0205D	23–MAY–2003	03–06–1199A	02
06	LA	LIVINGSTON PARISH	22063C0115D	02–MAY–2003	03–06–1235A	02
06	LA	LIVINGSTON PARISH	22063C0125D	23–MAY–2003	03–06–1281A	02
06	LA	LIVINGSTON PARISH	22063C0210D	02–MAY–2003	03–06–1412A	02
06	LA	LIVINGSTON PARISH	22063C0120D	18–JUN–2003	03–06–1630A	02
06	LA	LIVINGSTON PARISH	22063C0225D	21–MAY–2003	03–06–1662A	02
06	LA	LIVINGSTON PARISH	22063C0205D	21–MAY–2003	03–06–1663A	02
06	LA	LIVINGSTON PARISH	22063C0205D	11–JUN–2003	03–06–1781A	02
06	LA	LIVINGSTON PARISH	22063C0125D	28–MAY–2003	03–06–1794A	02
06	LA	LIVINGSTON PARISH	22063C0115D	25–JUN–2003	03–06–1904A	02
06	LA	LIVINGSTON PARISH	22063C0150D	08–JAN–2003	03–06–241A	02
06	LA	LIVINGSTON PARISH	22063C0225D	29–JAN–2003	03–06–393A	02
06	LA	LIVINGSTON PARISH	22063C0125D	24–JAN–2003	03–06–485A	02
06	LA	LIVINGSTON PARISH	22063C0125D	02–JAN–2003	03–06–500A	02
06	LA	LIVINGSTON PARISH	22063C0209D	22–JAN–2003	03–06–521A	01
06	LA	LIVINGSTON PARISH	22063C0115D	10–JAN–2003	03–06–553A	02
06	LA	LIVINGSTON PARISH	22063C0125D	10–JAN–2003	03–06–554A	02
06	LA	LIVINGSTON PARISH	22063C0125D	10–JAN–2003	03–06–594A	02
06	LA	LIVINGSTON PARISH	22063C0120D	31–JAN–2003	03–06–608A	01
06	LA	LIVINGSTON PARISH	22063C0125D	15–JAN–2003	03–06–609A	02
06	LA	LIVINGSTON PARISH	22063C0225D	26–FEB–2003	03–06–624A	02
06	LA	LIVINGSTON PARISH	22063C0370D	29–JAN–2003	03–06–642A	02
06	LA	LIVINGSTON PARISH	22063C0120D	24–JAN–2003	03–06–663A	02
06	LA	LIVINGSTON PARISH	22063C0125D	31–JAN–2003	03–06–766A	02
06	LA	LIVINGSTON PARISH	22063C0125D	10–FEB–2003	03–06–774A	02
06	LA	LIVINGSTON PARISH	22063C0120D	21–FEB–2003	03–06–875A	02
06	LA	LIVINGSTON PARISH	22063C0115D	26–MAR–2003	03–06–876A	02
06	LA	LIVINGSTON PARISH	22063C0120D	26–FEB–2003	03–06–878A	02
06	LA	LIVINGSTON PARISH	22063C0125D	12–MAR–2003	03–06–896A	01
06	LA	LIVINGSTON PARISH	22063C0125D	12–MAR–2003	03–06–938A	02
06	LA	LIVINGSTON PARISH	22063C0125D	21–MAR–2003	03–06–971A	02
06	LA	LIVINGSTON PARISH	22063C0225D	25–APR–2003	03–06–980A	02
06	LA	LIVINGSTON, TOWN OF	22063C0255D	21–MAY–2003	03–06–1247A	02
06	LA	MONROE, CITY OF	22073C0045E	02–MAY–2003	03–06–1080A	02
06	LA	MONROE, CITY OF	22073C0075E	12–MAR–2003	03–06–952A	02
06	LA	OUACHITA PARISH	22073C0025E	23–MAY–2003	03–06–1453A	02
06	LA	OUACHITA PARISH	22073C0070E	09–MAY–2003	03–06–1521A	02
06	LA	OUACHITA PARISH	22073C0070E	02–APR–2003	03–06–370A	02
06	LA	PINEVILLE, CITY OF	2201510005B	06–JUN–2003	03–06–1109A	02
06	LA	RAPIDES PARISH	2201450275C	10–JAN–2003	03–06–565A	02
06	LA	RAPIDES PARISH	2201450165B	10–FEB–2003	03–06–738A	02
06	LA	RICHLAND PARISH	220154—41C	21–MAY–2003	03–06–1340A	02
06	LA	SCOTT, CITY OF	22055C0045G	23–MAY–2003	03–06–1117A	02
06	LA	SCOTT, CITY OF	22055C0020G	16–APR–2003	03–06–1146A	02
06	LA	SCOTT, CITY OF	22055C0040H	11–JUN–2003	03–06–1620A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	19–MAR–2003	03–06–1064A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	19–MAR–2003	03–06–1078A	02
06	LA	SHREVEPORT, CITY OF	22017C0477F	14–MAR–2003	03–06–1084A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	26–MAR–2003	03–06–1086A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	26–MAR–2003	03–06–1087A	02
06	LA	SHREVEPORT, CITY OF	22017C0476F	19–MAR–2003	03–06–1093A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	25–APR–2003	03–06–1334A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	30–APR–2003	03–06–1367A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	09–MAY–2003	03–06–1470A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	02–MAY–2003	03–06–1471A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	07–MAY–2003	03–06–1487A	02
06	LA	SHREVEPORT, CITY OF	22017C0486F	03–JAN–2003	03–06–149A	01
06	LA	SHREVEPORT, CITY OF	22017C0487F	09–MAY–2003	03–06–1525A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	16–MAY–2003	03–06–1675A	02

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06	LA	SHREVEPORT, CITY OF	22017C0487F	04–JUN–2003	03–06–1676A	01
06	LA	SHREVEPORT, CITY OF	22017C0451F	21–MAY–2003	03–06–1687A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	23–MAY–2003	03–06–1715A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	04–JUN–2003	03–06–1803A	02
06	LA	SHREVEPORT, CITY OF	22017C0478F	19–FEB–2003	03–06–379A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	17–JAN–2003	03–06–380A	01
06	LA	SHREVEPORT, CITY OF	22017C0495F	17–JAN–2003	03–06–380A	01
06	LA	SHREVEPORT, CITY OF	22017C0487F	05–FEB–2003	03–06–666A	01
06	LA	SHREVEPORT, CITY OF	22017C0478F	12–FEB–2003	03–06–702A	01
06	LA	SHREVEPORT, CITY OF	22017C0487F	21–MAR–2003	03–06–715A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	10–FEB–2003	03–06–786A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	26–FEB–2003	03–06–815A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	10–FEB–2003	03–06–817A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	10–FEB–2003	03–06–818A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	10–FEB–2003	03–06–819A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	05–MAR–2003	03–06–912A	02
06	LA	SHREVEPORT, CITY OF	22017C0486F	26–MAR–2003	03–06–929A	01
06	LA	SHREVEPORT, CITY OF	22017C0487F	26–MAR–2003	03–06–929A	01
06	LA	SHREVEPORT, CITY OF	22017C0487F	07–MAR–2003	03–06–939A	02
06	LA	SHREVEPORT, CITY OF	22017C0487F	12–MAR–2003	03–06–948A	02
06	LA	SLIDELL, CITY OF	2202040010C	02–MAY–2003	03–06–1357A	02
06	LA	ST. BERNARD PARISH	2252040290B	14–MAR–2003	03–06–882A	02
06	LA	ST. CHARLES PARISH	2201600050C	02–MAY–2003	03–06–127P	05
06	LA	ST. CHARLES PARISH	2201600125C	02–MAY–2003	03–06–127P	05
06	LA	ST. CHARLES PARISH	2201600150C	02–MAY–2003	03–06–127P	05
06	LA	ST. LANDRY PARISH	2201650325C	06–JUN–2003	03–06–1250A	02
06	LA	ST. LANDRY PARISH	2201650125C	21–MAY–2003	03–06–1292A	02
06	LA	ST. LANDRY PARISH	2201650200C	20–JUN–2003	03–06–1418A	01
06	LA	ST. MARTIN PARISH	2201780225B	31–JAN–2003	03–06–579A	01
06	LA	ST. TAMMANY PARISH	2252050395D	24–JAN–2003	03–06–534A	02
06	LA	ST. TAMMANY PARISH	2252050575D	12–FEB–2003	03–06–737A	02
06	LA	ST. TAMMANY PARISH	2252050150C	04–APR–2003	03–06–775A	02
06	LA	ST. TAMMANY PARISH	2252050125C	04–APR–2003	03–06–851A	02
06	LA	ST. TAMMANY PARISH	2252050440D	07–MAR–2003	03–06–941A	02
06	LA	ST. TAMMANY PARISH	2252050360C	20–JUN–2003	03–06–997A	02
06	LA	SULPHUR, CITY OF	2200410001C	20–JUN–2003	03–06–1440A	02
06	LA	TANGIPAHOA PARISH	2202060225E	16–APR–2003	03–06–1132A	02
06	LA	TANGIPAHOA PARISH	2202060125D	23–APR–2003	03–06–1191A	02
06	LA	TANGIPAHOA PARISH	2202060175E	25–APR–2003	03–06–1296A	02
06	LA	TANGIPAHOA PARISH	2202060205D	12–FEB–2003	03–06–349A	02
06	LA	TANGIPAHOA PARISH	2202060240D	22–JAN–2003	03–06–367A	02
06	LA	TANGIPAHOA PARISH	2202060175E	12–MAR–2003	03–06–797A	01
06	LA	TANGIPAHOA PARISH	2202060175E	26–MAR–2003	03–06–869A	02
06	LA	TANGIPAHOA PARISH	2202060110D	07–MAR–2003	03–06–988A	02
06	LA	TENSAS PARISH	2202150020A	10–FEB–2003	03–06–622A	02
06	LA	VERMILION PARISH	2202210175D	02–MAY–2003	03–06–1364A	02
06	LA	WALKER, TOWN OF	22063C0207D	16–MAY–2003	03–06–1661A	02
06	LA	WALKER, TOWN OF	22063C0139D	21–MAY–2003	03–06–1664A	02
06	LA	WEST CARROLL PARISH	220243—15B	15–JAN–2003	03–06–371A	02
06	LA	YOUNGSVILLE, TOWN OF	22055C0065G	05–MAR–2003	03–06–854A	01
06	LA	YOUNGSVILLE, VILLAGE OF	22055C0070G	21–FEB–2003	03–06–803A	02
06	NM	ALBUQUERQUE, CITY OF	35001C0119D	08–JAN–2003	02–06–2143P	06
06	NM	ALBUQUERQUE, CITY OF	35001C0138D	08–JAN–2003	02–06–2143P	06
06	NM	ALBUQUERQUE, CITY OF	35001C0351D	08–JAN–2003	02–06–2143P	06
06	NM	ALBUQUERQUE, CITY OF	35001C0362D	04–JUN–2003	03–06–1066A	02
06	NM	ALBUQUERQUE, CITY OF	35001C0356D	18–JUN–2003	03–06–1274A	02
06	NM	ALBUQUERQUE, CITY OF	35001C0337D	04–JUN–2003	03–06–1373A	02
06	NM	ALBUQUERQUE, CITY OF	35001C0142E	28–MAY–2003	03–06–1657A	02
06	NM	ALBUQUERQUE, CITY OF	35001C0328D	13–JUN–2003	03–06–200P	05
06	NM	ALBUQUERQUE, CITY OF	35001C0128E	30–APR–2003	03–06–413P	05
06	NM	ALBUQUERQUE, CITY OF	35001C0136E	30–APR–2003	03–06–413P	05
06	NM	ALBUQUERQUE, CITY OF	35001C0327D	14–MAY–2003	03–06–439P	05
06	NM	ALBUQUERQUE, CITY OF	35001C0354D	26–MAR–2003	03–06–476A	01
06	NM	ALBUQUERQUE, CITY OF	35001C0163E	03–JAN–2003	03–06–530A	02
06	NM	ALBUQUERQUE, CITY OF	35001C0367E	22–JAN–2003	03–06–649A	02
06	NM	ALBUQUERQUE, CITY OF	35001C0329D	05–MAR–2003	03–06–945A	02
06	NM	BERNALILLO COUNTY	35001C0531D	25–JUN–2003	03–06–1483A	02
06	NM	BERNALILLO COUNTY	35001C0339D	08–JAN–2003	03–06–234A	02
06	NM	BERNALILLO COUNTY	35001C0337D	09–APR–2003	03–06–653A	02
06	NM	BERNALILLO COUNTY	35001C0387E	05–MAR–2003	03–06–905A	02
06	NM	BOSQUE FARMS, CITY OF	3501420001B	21–MAY–2003	03–06–1290A	01
06	NM	BOSQUE FARMS, CITY OF	3501420001B	30–APR–2003	03–06–1347A	02
06	NM	BOSQUE FARMS, CITY OF	3501420001B	16–MAY–2003	03–06–1459A	01

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06	NM	BOSQUE FARMS, CITY OF	3501420001B	16-MAY-2003	03-06-1615A	02
06	NM	BOSQUE FARMS, CITY OF	3501420001B	17-JAN-2003	03-06-253A	01
06	NM	BOSQUE FARMS, CITY OF	3501420001B	22-JAN-2003	03-06-544A	02
06	NM	CARLSBAD, CITY OF	3500170004C	31-MAR-2003	03-06-1218P	06
06	NM	CARLSBAD, CITY OF	3500170003C	27-JUN-2003	03-06-1717A	02
06	NM	FARMINGTON, CITY OF	3500670042E	26-MAR-2003	03-06-1097A	01
06	NM	FARMINGTON, CITY OF	3500670042E	12-FEB-2003	03-06-759A	01
06	NM	GRANT COUNTY	3501210022B	06-JUN-2003	03-06-1482A	02
06	NM	LAS CRUCES, CITY OF	35013C0631E	23-APR-2003	03-06-1309A	02
06	NM	LAS CRUCES, CITY OF	35013C0633E	09-MAY-2003	03-06-1456A	02
06	NM	LAS CRUCES, CITY OF	35013C0631E	25-JUN-2003	03-06-1795A	01
06	NM	LAS CRUCES, CITY OF	35013C0631E	20-JUN-2003	03-06-1831A	01
06	NM	LAS CRUCES, CITY OF	35013C0518F	18-JUN-2003	03-06-1898X	02
06	NM	LAS CRUCES, CITY OF	35013C0518F	16-APR-2003	03-06-694P	06
06	NM	LAS CRUCES, CITY OF	35013C0631E	16-APR-2003	03-06-694P	06
06	NM	LAS CRUCES, CITY OF	35013C0633E	16-APR-2003	03-06-694P	06
06	NM	LAS CRUCES, CITY OF	35013C0518F	23-MAY-2003	03-06-925A	02
06	NM	LOS ALAMOS COUNTY	3500350004B	19-MAR-2003	03-06-930A	02
06	NM	LOS LUNAS, VILLAGE OF	3501440005A	19-MAR-2003	03-06-717A	02
06	NM	SAN JUAN COUNTY	3500640375B	05-MAR-2003	03-06-942A	02
06	NM	SANTA FE, CITY OF	3500700011B	14-FEB-2003	03-06-387A	02
06	NM	TAOS COUNTY	3500780475C	19-MAR-2003	03-06-1092A	02
06	NM	TORRANCE COUNTY	3501330007A	23-MAY-2003	03-06-1383P	06
06	NM	TORRANCE COUNTY	3501330006A	23-MAY-2003	03-06-1383P	06
06	NM	TRUTH OR CONSEQUENCES, CITY OF	3500730005C	21-MAR-2003	03-06-1063A	02
06	OK	BARTLESVILLE, CITY OF	4002200015C	23-MAY-2003	03-06-1557A	02
06	OK	BIXBY, TOWN OF	40143C0630H	30-MAY-2003	03-06-1771A	02
06	OK	BIXBY, TOWN OF	40143C0610H	15-JAN-2003	03-06-576A	17
06	OK	BIXBY, TOWN OF	40143C0610H	15-JAN-2003	03-06-593A	02
06	OK	BLANCHARD, CITY OF	4001010010B	10-FEB-2003	03-06-386A	01
06	OK	BROKEN ARROW, CITY OF	40143C0540H	16-APR-2003	01-06-839P	05
06	OK	BROKEN ARROW, CITY OF	40143C0631H	25-JUN-2003	03-06-1894A	02
06	OK	BRYAN COUNTY	40013C0100D	28-MAY-2003	03-06-1514A	02
06	OK	BRYAN COUNTY	40013C0300D	08-JAN-2003	03-06-612A	02
06	OK	CANADIAN COUNTY	40017C0425D	25-JUN-2003	03-06-1919A	02
06	OK	CATOOSA, CITY OF	4001650001D	16-MAY-2003	03-06-1617A	02
06	OK	CHOCTAW, CITY OF	40109C0410G	05-FEB-2003	03-06-781A	02
06	OK	CHOCTAW, CITY OF	40109C0405G	09-MAY-2003	03-06-789A	02
06	OK	CLAREMORE, CITY OF	4053750005F	30-MAY-2003	03-06-1612A	02
06	OK	CREEK COUNTY	4004900070C	14-MAY-2003	03-06-1633A	02
06	OK	CREEK COUNTY	4004900070C	20-JUN-2003	03-06-1698A	02
06	OK	DAVIS, CITY OF	400366—01A	05-FEB-2003	03-06-542A	02
06	OK	DEL CITY, CITY OF	40109C0383G	16-MAY-2003	03-06-1374A	02
06	OK	DEL CITY, CITY OF	40109C0387G	24-JAN-2003	03-06-725A	02
06	OK	DELAWARE COUNTY	40041C0177D	18-APR-2003	03-06-1249A	02
06	OK	DELAWARE COUNTY	4005020025C	09-APR-2003	03-06-1253A	02
06	OK	DELAWARE COUNTY	40041C0180D	23-APR-2003	03-06-1254A	02
06	OK	DELAWARE COUNTY	40041C0180D	18-APR-2003	03-06-1255A	02
06	OK	DELAWARE COUNTY	40041C0180D	09-MAY-2003	03-06-1478A	02
06	OK	DELAWARE COUNTY	40041C0160D	06-JUN-2003	03-06-1580A	02
06	OK	DELAWARE COUNTY	40041C0190D	27-JUN-2003	03-06-1792A	01
06	OK	DELAWARE COUNTY	4005020050C	29-JAN-2003	03-06-361A	02
06	OK	DELAWARE COUNTY	4005020025C	19-FEB-2003	03-06-705A	02
06	OK	DELAWARE COUNTY	4005020025C	05-FEB-2003	03-06-735A	02
06	OK	DELAWARE COUNTY	4005020050C	02-APR-2003	03-06-822A	02
06	OK	DURANT, CITY OF	40013C0108C	25-APR-2003	03-06-541A	02
06	OK	EDMOND, CITY OF	40109C0089G	21-MAR-2003	03-06-1060A	02
06	OK	EDMOND, CITY OF	40109C0069G	25-APR-2003	03-06-1304A	02
06	OK	EDMOND, CITY OF	40109C0069G	09-MAY-2003	03-06-1564A	02
06	OK	EDMOND, CITY OF	40109C0069G	06-JUN-2003	03-06-1656A	02
06	OK	EDMOND, CITY OF	40109C0069G	11-JUN-2003	03-06-1849A	02
06	OK	EDMOND, CITY OF	40109C0069G	02-JAN-2003	03-06-490A	02
06	OK	EDMOND, CITY OF	40109C0069G	02-APR-2003	03-06-491A	02
06	OK	EDMOND, CITY OF	40109C0069G	15-JAN-2003	03-06-505A	17
06	OK	EDMOND, CITY OF	40109C0069G	31-JAN-2003	03-06-568A	02
06	OK	EDMOND, CITY OF	40109C0060G	08-JAN-2003	03-06-569A	17
06	OK	EDMOND, CITY OF	40109C0080G	05-FEB-2003	03-06-596A	02
06	OK	EDMOND, CITY OF	40109C0069G	28-FEB-2003	03-06-892A	02
06	OK	EDMOND, CITY OF	40109C0069G	28-FEB-2003	03-06-893A	02
06	OK	ENID, CITY OF	40047C0115C	14-MAR-2003	03-06-1049A	02
06	OK	FAIRVIEW, CITY OF	4001120001B	29-JAN-2003	03-06-355A	02
06	OK	GLENPOOL, CITY OF	40143C0582H	10-JAN-2003	03-06-452A	02
06	OK	GOLDSBY, TOWN OF	4001020005B	28-MAY-2003	03-06-1683A	02

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06	OK	GRADY COUNTY	4004830120D	11–JUN–2003	03–06–1416A	02
06	OK	HARRAH, CITY OF	40109C0427G	10–JAN–2003	03–06–331A	02
06	OK	HARRAH, CITY OF	40109C0431G	10–JAN–2003	03–06–331A	02
06	OK	HARRAH, CITY OF	40109C0431G	18–MAR–2003	03–06–690P	05
06	OK	HASKELL, TOWN OF	40101C0025D	11–APR–2003	03–06–626A	02
06	OK	HOWE, TOWN OF	4000910001A	12–MAR–2003	03–06–1048A	02
06	OK	KINGFISHER, CITY OF	40073C0430C	06–MAY–2003	00–06–1294V	19
06	OK	KINGFISHER, CITY OF	40073C0435C	06–MAY–2003	00–06–1294V	19
06	OK	LATIMER COUNTY	4005350100A	02–MAY–2003	03–06–1353A	02
06	OK	LE FLORE COUNTY	4004840010A	16–MAY–2003	03–06–1135A	02
06	OK	LE FLORE COUNTY	4004840008A	21–MAY–2003	03–06–1707A	02
06	OK	LE FLORE COUNTY	4004840014A	05–MAR–2003	03–06–888A	02
06	OK	LINCOLN COUNTY	4004570165B	21–MAY–2003	03–06–1187A	02
06	OK	LINCOLN COUNTY	4004570275A	20–JUN–2003	03–06–1690A	02
06	OK	LINCOLN COUNTY	4004570275A	08–JAN–2003	03–06–335A	02
06	OK	MARSHALL COUNTY	4005110150A	20–JUN–2003	03–06–1785A	02
06	OK	MAYES COUNTY	4004580025C	16–MAY–2003	03–06–1639A	02
06	OK	MAYES COUNTY	4004580050C	22–JAN–2003	03–06–583A	02
06	OK	MIDWEST CITY, CITY OF	40109C0405G	16–MAY–2003	03–06–1629A	02
06	OK	MIDWEST CITY, CITY OF	40109C0385G	03–JAN–2003	03–06–570A	02
06	OK	MIDWEST CITY, CITY OF	40109C0385G	10–FEB–2003	03–06–760A	02
06	OK	MOORE, CITY OF	40027C0041F	11–JUN–2003	03–06–1108A	02
06	OK	MOORE, CITY OF	40027C0037F	28–MAR–2003	03–06–1228A	02
06	OK	MOORE, CITY OF	40027C0037F	16–MAY–2003	03–06–1601A	02
06	OK	MOORE, CITY OF	40027C0037F	21–FEB–2003	03–06–883A	02
06	OK	MUSTANG, CITY OF	40017C0490D	23–APR–2003	03–06–1270A	02
06	OK	NORMAN,CITY OF	40027C0090F	03–JAN–2003	02–06–2487A	01
06	OK	NORMAN,CITY OF	40027C0095G	25–APR–2003	03–06–1458A	02
06	OK	NORMAN,CITY OF	40027C0065F	23–MAY–2003	03–06–1480A	02
06	OK	NORMAN,CITY OF	40027C0095G	04–JUN–2003	03–06–1586A	02
06	OK	NORMAN,CITY OF	40027C0095G	17–JAN–2003	03–06–655A	02
06	OK	NORTH ENID, TOWN OF	40047C0115C	21–FEB–2003	03–06–804A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0218G	25–APR–2003	02–06–1547P	05
06	OK	OKLAHOMA CITY, CITY OF	40109C0480G	29–JAN–2003	03–06–086A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0507G	02–APR–2003	03–06–1129A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0369G	26–MAR–2003	03–06–1130A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0391G	07–MAY–2003	03–06–1179A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0482G	09–APR–2003	03–06–1195A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0508G	18–APR–2003	03–06–1279A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0190G	23–APR–2003	03–06–1280A	01
06	OK	OKLAHOMA CITY, CITY OF	40109C0388G	30–APR–2003	03–06–1303A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0069G	20–JUN–2003	03–06–1360A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0207G	13–JUN–2003	03–06–1524A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0219G	07–MAY–2003	03–06–1551A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0362G	21–MAY–2003	03–06–1558A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0211G	21–MAY–2003	03–06–1572A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0219G	21–MAY–2003	03–06–1579A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0437G	16–MAY–2003	03–06–1628A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0216G	21–MAY–2003	03–06–1654A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0216G	04–JUN–2003	03–06–1667A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0211G	11–JUN–2003	03–06–1834A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0211G	03–JAN–2003	03–06–348A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0207G	28–MAR–2003	03–06–383A	17
06	OK	OKLAHOMA CITY, CITY OF	40109C0202G	10–JAN–2003	03–06–394A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0201G	09–JAN–2003	03–06–433P	05
06	OK	OKLAHOMA CITY, CITY OF	40109C0377G	11–APR–2003	03–06–482A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0369G	15–JAN–2003	03–06–486A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0207G	03–JAN–2003	03–06–501A	17
06	OK	OKLAHOMA CITY, CITY OF	40109C0218G	17–JAN–2003	03–06–526A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0329G	14–FEB–2003	03–06–527A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0216G	14–FEB–2003	03–06–540A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0507G	15–JAN–2003	03–06–545A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0391G	15–JAN–2003	03–06–552A	17
06	OK	OKLAHOMA CITY, CITY OF	40109C0216G	10–JAN–2003	03–06–558A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0216G	15–JAN–2003	03–06–559A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0368G	31–JAN–2003	03–06–585A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0182G	21–FEB–2003	03–06–651A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0211G	15–JAN–2003	03–06–657X	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0506G	25–FEB–2003	03–06–693P	05
06	OK	OKLAHOMA CITY, CITY OF	40109C0508G	25–FEB–2003	03–06–693P	05
06	OK	OKLAHOMA CITY, CITY OF	40109C0329G	26–FEB–2003	03–06–696P	05
06	OK	OKLAHOMA CITY, CITY OF	40109C0333G	26–FEB–2003	03–06–696P	05
06	OK	OKLAHOMA CITY, CITY OF	40109C0337G	26–FEB–2003	03–06–696P	05

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06	OK	OKLAHOMA CITY, CITY OF	40109C0211G	10–FEB–2003	03–06–729A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0182G	22–JAN–2003	03–06–733A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0329G	24–JAN–2003	03–06–742A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0216G	26–FEB–2003	03–06–746A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0216G	10–FEB–2003	03–06–747X	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0216G	05–FEB–2003	03–06–748X	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0329G	10–FEB–2003	03–06–755A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0216G	05–FEB–2003	03–06–764A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0218G	05–FEB–2003	03–06–764A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0506G	14–FEB–2003	03–06–776A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0352G	21–FEB–2003	03–06–785A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0369G	19–FEB–2003	03–06–825A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0337G	28–FEB–2003	03–06–884A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0368G	21–FEB–2003	03–06–906A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0184G	28–MAR–2003	03–06–916A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0219G	07–MAR–2003	03–06–940A	02
06	OK	OKLAHOMA CITY, CITY OF	40109C0508G	28–MAY–2003	03–06–969A	17
06	OK	OKLAHOMA CITY, CITY OF	40109C0506G	09–APR–2003	03–06–983A	02
06	OK	OKLAHOMA COUNTY	40109C0055G	23–APR–2003	03–06–1244A	02
06	OK	OKLAHOMA COUNTY	40109C0060G	22–JAN–2003	03–06–634A	02
06	OK	OKLAHOMA COUNTY	40109C0060G	31–JAN–2003	03–06–793X	17
06	OK	OKMULGEE COUNTY	40049200508	26–FEB–2003	03–06–791A	02
06	OK	OSAGE COUNTY	4001460610D	28–MAR–2003	03–06–1102A	02
06	OK	OSAGE COUNTY	4001460535C	06–JUN–2003	03–06–1419A	02
06	OK	OSAGE COUNTY	4001460610D	10–FEB–2003	03–06–502A	02
06	OK	OWASSO, CITY OF	40143C0228H	12–FEB–2003	02–06–1603C	06
06	OK	OWASSO, CITY OF	40143C0228H	05–MAR–2003	03–06–927A	02
06	OK	PAWHUSKA, CITY OF	4001520001B	02–APR–2003	03–06–1026A	02
06	OK	ROGERS COUNTY	4053790130C	30–MAY–2003	03–06–1659A	02
06	OK	SAPULPA, CITY OF	4000530130C	25–JUN–2003	03–06–1809A	02
06	OK	SAPULPA, CITY OF	4000530135C	05–FEB–2003	03–06–710A	02
06	OK	SEMINOLE, CITY OF	40133C0068C	30–APR–2003	03–06–560A	02
06	OK	SHAWNEE, CITY OF	40125C0102D	14–MAY–2003	03–06–1243A	02
06	OK	SHAWNEE, CITY OF	40125C0111D	23–MAY–2003	03–06–1718A	02
06	OK	SHAWNEE, CITY OF	40125C0125D	29–JAN–2003	03–06–730A	02
06	OK	SHAWNEE, CITY OF	40125C0103D	12–MAR–2003	03–06–994A	02
06	OK	STEPHENS COUNTY	40137C0175E	28–FEB–2003	03–06–780A	02
06	OK	STILLWATER, CITY OF	4053800005D	10–JAN–2003	03–06–457A	02
06	OK	STILLWELL, CITY OF	4000010001C	14–FEB–2003	03–06–719A	02
06	OK	THE VILLAGE, CITY OF	40109C0208G	14–MAY–2003	03–06–1578A	02
06	OK	TULSA, CITY OF	40143C0540H	14–APR–2003	02–06–225P	05
06	OK	TULSA, CITY OF	40143C0530H	23–APR–2003	03–06–1189A	02
06	OK	TULSA, CITY OF	40143C0395H	07–MAY–2003	03–06–1370A	02
06	OK	TULSA, CITY OF	40143C0530H	16–MAY–2003	03–06–1622A	02
06	OK	TULSA, CITY OF	40143C0520H	20–JUN–2003	03–06–1693A	02
06	OK	TULSA, CITY OF	40143C0510H	25–JUN–2003	03–06–1900A	02
06	OK	TULSA, CITY OF	40143C0390H	31–JAN–2003	03–06–478A	02
06	OK	TULSA, CITY OF	40143C0530H	02–JAN–2003	03–06–511A	02
06	OK	WAGONER COUNTY	4002150014B	04–APR–2003	02–06–1643P	05
06	OK	WAGONER COUNTY	4002150018B	04–APR–2003	02–06–1643P	05
06	OK	WAGONER COUNTY	4002150027B	04–APR–2003	02–06–1643P	05
06	OK	WAGONER COUNTY	4002150031B	04–APR–2003	02–06–1643P	05
06	OK	WAGONER COUNTY	4002150033B	06–JUN–2003	03–06–1036A	01
06	OK	WAGONER COUNTY	4002150145B	16–APR–2003	03–06–1114A	02
06	OK	WAGONER COUNTY	4002150055B	09–MAY–2003	03–06–1415A	02
06	OK	WAGONER COUNTY	4002150065B	14–MAY–2003	03–06–1454A	02
06	OK	WAGONER COUNTY	4002150029B	28–MAY–2003	03–06–1502A	02
06	OK	WARR ACRES, CITY OF	40109C0211G	30–APR–2003	02–06–2577A	02
06	OK	WARR ACRES, CITY OF	40109C0211G	30–APR–2003	03–06–1184A	02
06	OK	WARR ACRES, CITY OF	40109C0211G	26–MAR–2003	03–06–148A	02
06	OK	YUKON, CITY OF	40017C0339E	16–APR–2003	03–06–1251A	02
06	TX	ABILENE, CITY OF	4854500020D	23–MAY–2003	03–06–1705A	02
06	TX	ALLEN, CITY OF	48085C0290G	18–APR–2003	02–06–375P	05
06	TX	ALLEN, CITY OF	48085C0430G	18–APR–2003	02–06–375P	05
06	TX	ALLEN, CITY OF	48085C0430G	19–MAR–2003	03–06–436P	05
06	TX	ALLEN, CITY OF	48085C0435G	19–MAR–2003	03–06–436P	05
06	TX	ALLEN, CITY OF	48085C0435G	25–APR–2003	03–06–907A	02
06	TX	ALTON, CITY OF	4803340295D	18–JUN–2003	03–06–1103A	01
06	TX	ALTON, CITY OF	4815710005A	18–JUN–2003	03–06–1103A	01
06	TX	ANDERSON COUNTY	4800010010B	16–APR–2003	03–06–1318A	02
06	TX	ANGLETON, CITY OF	48039C0445H	29–JAN–2003	02–06–1742A	01
06	TX	ANNA, CITY OF	48085C0175G	21–FEB–2003	02–06–1548P	06
06	TX	ANNA, CITY OF	48085C0175G	13–MAR–2003	03–06–1014P	06

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06	TX	ARLINGTON, CITY OF	48439C0463H	14–MAY–2003	03–06–1348A	01
06	TX	ARLINGTON, CITY OF	48439C0441J	23–MAY–2003	03–06–1719A	02
06	TX	ARLINGTON, CITY OF	48439C0456H	22–JAN–2003	03–06–499A	01
06	TX	ARLINGTON, CITY OF	48439C0462H	25–JUN–2003	03–06–849P	05
06	TX	AUSTIN, CITY OF	48453C0160E	16–APR–2003	03–06–1031A	02
06	TX	AUSTIN, CITY OF	48453C0165E	06–JUN–2003	03–06–1156A	02
06	TX	AUSTIN, CITY OF	48453C0200E	20–JUN–2003	03–06–1181A	02
06	TX	AUSTIN, CITY OF	48453C0155E	07–MAY–2003	03–06–1368A	02
06	TX	AUSTIN, CITY OF	48453C0245E	25–JUN–2003	03–06–1429A	02
06	TX	AUSTIN, CITY OF	48453C0150E	18–JUN–2003	03–06–1455A	02
06	TX	AUSTIN, CITY OF	48453C0200E	30–APR–2003	03–06–1467A	02
06	TX	AUSTIN, CITY OF	48453C0175F	06–JUN–2003	03–06–1492A	02
06	TX	AUSTIN, CITY OF	48453C0160E	02–MAY–2003	03–06–1507A	02
06	TX	AUSTIN, CITY OF	48453C0160E	09–MAY–2003	03–06–1577A	02
06	TX	AUSTIN, CITY OF	48453C0200E	28–MAY–2003	03–06–1653A	02
06	TX	AUSTIN, CITY OF	48453C0160E	23–MAY–2003	03–06–1682A	02
06	TX	AUSTIN, CITY OF	48453C0125E	18–JUN–2003	03–06–1895A	02
06	TX	AUSTIN, CITY OF	48453C0195E	10–JAN–2003	03–06–319A	02
06	TX	AUSTIN, CITY OF	48453C0255F	15–JAN–2003	03–06–327A	02
06	TX	AUSTIN, CITY OF	48453C0200E	05–FEB–2003	03–06–734A	02
06	TX	AUSTIN, CITY OF	48453C0205E	29–JAN–2003	03–06–768A	02
06	TX	AZLE, CITY OF	48439C0119H	11–JUN–2003	03–06–1337A	02
06	TX	AZLE, CITY OF	48439C0119H	16–MAY–2003	03–06–1679A	02
06	TX	AZLE, CITY OF	48439C0232H	14–MAY–2003	03–06–999A	02
06	TX	BELL COUNTY	4807060130B	28–MAY–2003	03–06–903A	01
06	TX	BENBROOK, CITY OF	48439C0380H	10–FEB–2003	03–06–510A	01
06	TX	BENBROOK, CITY OF	48439C0380H	10–FEB–2003	03–06–602A	02
06	TX	BENBROOK, CITY OF	48439C0380H	12–MAR–2003	03–06–891A	01
06	TX	BEXAR COUNTY	48029C0145F	04–FEB–2003	02–06–1711P	06
06	TX	BEXAR COUNTY	48029C0140F	02–JAN–2003	02–06–1846P	06
06	TX	BEXAR COUNTY	48029C0145F	02–JAN–2003	02–06–1846P	06
06	TX	BEXAR COUNTY	48029C0145F	06–JUN–2003	02–06–2298P	05
06	TX	BEXAR COUNTY	48029C0115E	09–MAY–2003	03–06–1142A	02
06	TX	BEXAR COUNTY	48029C0095E	05–MAR–2003	03–06–242A	02
06	TX	BOYD, CITY OF	48497C0225C	10–JAN–2003	03–06–488A	02
06	TX	BRAZORIA COUNTY	48039C0415H	06–JUN–2003	03–06–1338A	02
06	TX	BRAZORIA COUNTY	48039C0010I	04–JUN–2003	03–06–1345A	01
06	TX	BRAZORIA COUNTY	48039C0415H	25–JUN–2003	03–06–1975A	02
06	TX	BRAZORIA COUNTY	48039C0535H	07–MAY–2003	03–06–306A	02
06	TX	BRAZOS COUNTY	48041C0205D	23–MAY–2003	03–06–1758A	02
06	TX	BRECKENRIDGE, CITY OF	48429C0095C	05–FEB–2003	03–06–765A	02
06	TX	BROWNSVILLE, CITY OF	4801030020B	25–JUN–2003	03–06–1759A	01
06	TX	BROWNSVILLE, CITY OF	4801010350B	02–APR–2003	03–06–870A	01
06	TX	BURLESON, CITY OF	48439C0540H	31–JAN–2003	03–06–495A	17
06	TX	BURNET COUNTY	48053C0284C	23–APR–2003	03–06–1265A	02
06	TX	BURNET COUNTY	48053C0075C	26–FEB–2003	03–06–621A	02
06	TX	CAMERON COUNTY	4801010150B	24–JUN–2003	03–06–1549P	06
06	TX	CARROLLTON, CITY OF	48113C0040J	03–APR–2003	02–06–2053P	05
06	TX	CARROLLTON, CITY OF	48113C0040J	16–APR–2003	03–06–1372A	02
06	TX	CARROLLTON, CITY OF	48113C0040J	07–MAY–2003	03–06–1413A	02
06	TX	CARROLLTON, CITY OF	48113C0020J	21–FEB–2003	03–06–572A	02
06	TX	CARROLLTON, CITY OF	48113C0160J	12–FEB–2003	03–06–741A	02
06	TX	CARROLLTON, CITY OF	48113C0160J	12–FEB–2003	03–06–855A	17
06	TX	CARROLLTON, CITY OF	48113C0160J	16–APR–2003	03–06–890A	17
06	TX	CEDAR HILL, CITY OF	48113C0605J	16–MAY–2003	03–06–1627A	02
06	TX	CEDAR HILL, CITY OF	48113C0605J	25–JUN–2003	03–06–1963A	02
06	TX	CEDAR PARK, CITY OF	48491C0306C	14–FEB–2003	03–06–607A	02
06	TX	CLEBURNE, CITY OF	48251C0114F	21–APR–2003	03–06–529A	06
06	TX	COLLEYVILLE, TOWN OF	48439C0195H	18–JUN–2003	03–06–604A	17
06	TX	COLLEYVILLE, TOWN OF	48439C0215H	14–FEB–2003	03–06–669A	02
06	TX	COLLEYVILLE, TOWN OF	48439C0195H	12–MAR–2003	03–06–998A	02
06	TX	COLUMBUS, CITY OF	48089C0145C	28–MAY–2003	03–06–1433A	02
06	TX	COLUMBUS, CITY OF	48089C0145C	28–MAY–2003	03–06–1434A	02
06	TX	COLUMBUS, CITY OF	48089C0145C	29–JAN–2003	03–06–605A	02
06	TX	COMAL COUNTY	4854630055D	14–MAY–2003	03–06–1600A	02
06	TX	COMAL COUNTY	4854630055D	07–APR–2003	03–06–418P	06
06	TX	COMANCHE, CITY OF	4801510005C	02–MAY–2003	03–06–1200A	17
06	TX	CONROE, CITY OF	48339C0378F	06–JUN–2003	02–06–944P	06
06	TX	COPPELL, CITY OF	48113C0155J	17–JAN–2003	03–06–451A	17
06	TX	CORPUS CHRISTI, CITY OF	4854640302C	07–MAR–2003	03–06–782A	02
06	TX	CROSS ROADS, TOWN OF	48121C0405E	30–MAY–2003	02–06–1831P	06
06	TX	DALLAS COUNTY	48113C0235J	22–JAN–2003	03–06–640A	02
06	TX	DALLAS, CITY OF	48113C0310J	27–MAR–2003	02–06–2294P	06

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06	TX	DALLAS, CITY OF	48113C0355J	03–JAN–2003	03–06–074A	02
06	TX	DALLAS, CITY OF	48113C0045J	16–MAY–2003	03–06–1172A	02
06	TX	DALLAS, CITY OF	48113C0170J	18–APR–2003	03–06–1269A	02
06	TX	DALLAS, CITY OF	48113C0330J	23–APR–2003	03–06–1437A	02
06	TX	DALLAS, CITY OF	48113C0490J	23–MAY–2003	03–06–1552A	02
06	TX	DALLAS, CITY OF	48113C0320J	11–JUN–2003	03–06–1554A	02
06	TX	DALLAS, CITY OF	48113C0330J	20–JUN–2003	03–06–1977X	02
06	TX	DALLAS, CITY OF	48113C0190J	02–JAN–2003	03–06–239A	02
06	TX	DALLAS, CITY OF	48113C0330J	03–APR–2003	03–06–447P	05
06	TX	DALLAS, CITY OF	48113C0185J	15–JAN–2003	03–06–520A	02
06	TX	DALLAS, CITY OF	48113C0215J	02–APR–2003	03–06–535A	02
06	TX	DALLAS, CITY OF	48113C0355J	22–JAN–2003	03–06–590A	01
06	TX	DALLAS, CITY OF	48113C0365J	22–JAN–2003	03–06–590A	01
06	TX	DALLAS, CITY OF	48113C0355J	13–JUN–2003	03–06–707A	02
06	TX	DALLAS, CITY OF	48113C0345J	26–FEB–2003	03–06–886A	02
06	TX	DALLAS, CITY OF	48113C0195J	09–APR–2003	03–06–954A	02
06	TX	DALWORTHINGTON GARDENS, TOWN OF	48439C0441J	28–MAY–2003	02–06–1406A	01
06	TX	DALWORTHINGTON GARDENS, TOWN OF	48439C0442H	28–MAY–2003	02–06–1406A	01
06	TX	DENTON COUNTY	48121C0532E	02–MAY–2003	03–06–1062A	02
06	TX	DENTON COUNTY	48121C0485E	14–MAR–2003	03–06–456A	02
06	TX	DENTON COUNTY	48121C0510E	07–MAR–2003	03–06–704A	01
06	TX	DENTON, CITY OF	48121C0355F	25–FEB–2003	02–06–419P	05
06	TX	DENTON, CITY OF	48121C0365E	13–JUN–2003	03–06–181P	06
06	TX	DENTON, CITY OF	48121C0370E	13–JUN–2003	03–06–181P	06
06	TX	DENTON, CITY OF	48121C0360E	15–JAN–2003	03–06–454A	02
06	TX	DUNCANVILLE, CITY OF	48113C0470J	02–MAY–2003	03–06–1140A	02
06	TX	EL PASO, CITY OF	4802140022E	05–JUN–2003	02–06–1458P	05
06	TX	EL PASO, CITY OF	4802140037B	02–MAY–2003	03–06–107P	05
06	TX	EL PASO, CITY OF	4802140044B	13–JUN–2003	03–06–1644A	02
06	TX	ENNIS, CITY OF	48139C0220D	24–APR–2003	03–06–126P	06
06	TX	EULESS, CITY OF	48439C0330J	02–APR–2003	03–06–411P	05
06	TX	EULESS, CITY OF	48439C0330J	21–MAR–2003	03–06–787A	01
06	TX	EVERMAN, CITY OF	48439C0420H	24–JAN–2003	03–06–543A	02
06	TX	FAIRVIEW, TOWN OF	48085C0295G	07–MAR–2003	02–06–2616P	06
06	TX	FAIRVIEW, TOWN OF	48085C0315G	16–APR–2003	03–06–1030A	17
06	TX	FARMERS BRANCH, CITY OF	48113C0170J	07–FEB–2003	02–06–2308P	05
06	TX	FARMERS BRANCH, CITY OF	48113C0170J	11–JUN–2003	03–06–1022A	02
06	TX	FARMERS BRANCH, CITY OF	48113C0180J	28–MAR–2003	03–06–1149A	02
06	TX	FLOWER MOUND, TOWN OF	48121C0520E	02–MAY–2003	03–06–1323A	02
06	TX	FLOWER MOUND, TOWN OF	48121C0540E	11–APR–2003	03–06–1445A	02
06	TX	FLOWER MOUND, TOWN OF	48121C0545E	09–MAY–2003	03–06–1614X	02
06	TX	FLOWER MOUND, TOWN OF	48121C0545E	30–APR–2003	03–06–352A	02
06	TX	FLOWER MOUND, TOWN OF	48121C0545E	29–JAN–2003	03–06–656A	02
06	TX	FORNEY, CITY OF	480410—01B	04–JUN–2003	03–06–1846A	02
06	TX	FORT BEND COUNTY	48157C0290J	28–MAR–2003	03–06–597A	01
06	TX	FORT BEND COUNTY	48157C0235J	05–MAR–2003	03–06–758A	02
06	TX	FORT BEND COUNTY L.I.D. #2	48157C0255J	28–MAR–2003	03–06–816A	01
06	TX	FORT BEND COUNTY M.U.D. #25	48157C0235J	25–APR–2003	03–06–300A	01
06	TX	FORT WORTH, CITY OF	48439C0260H	02–JAN–2003	02–06–1073P	05
06	TX	FORT WORTH, CITY OF	48439C0170H	10–MAR–2003	02–06–2296P	06
06	TX	FORT WORTH, CITY OF	48251C0033H	13–JAN–2003	02–06–2441P	05
06	TX	FORT WORTH, CITY OF	48439C0545H	13–JAN–2003	02–06–2441P	05
06	TX	FORT WORTH, CITY OF	48121C0490F	02–MAY–2003	03–06–040P	05
06	TX	FORT WORTH, CITY OF	48439C0140H	19–MAR–2003	03–06–1000A	02
06	TX	FORT WORTH, CITY OF	48439C0405J	16–APR–2003	03–06–1287A	02
06	TX	FORT WORTH, CITY OF	48439C0427J	16–APR–2003	03–06–1331A	02
06	TX	FORT WORTH, CITY OF	48439C0405J	02–MAY–2003	03–06–1421A	02
06	TX	FORT WORTH, CITY OF	48439C0380H	23–APR–2003	03–06–1427A	02
06	TX	FORT WORTH, CITY OF	48439C0165H	27–JUN–2003	03–06–1595A	01
06	TX	FORT WORTH, CITY OF	48439C0385J	06–JUN–2003	03–06–1672A	02
06	TX	FORT WORTH, CITY OF	48439C0385J	18–JUN–2003	03–06–1902A	02
06	TX	FORT WORTH, CITY OF	48439C0245H	05–FEB–2003	03–06–296A	02
06	TX	FORT WORTH, CITY OF	48439C0313J	14–MAR–2003	03–06–320A	17
06	TX	FORT WORTH, CITY OF	48439C0429J	29–JAN–2003	03–06–724A	02
06	TX	FORT WORTH, CITY OF	48439C0415H	19–FEB–2003	03–06–858A	02
06	TX	FRISCO, CITY OF	48085C0405G	23–MAY–2003	03–06–043P	05
06	TX	FRISCO, CITY OF	48085C0290G	18–JUN–2003	03–06–1618A	02
06	TX	FRISCO, CITY OF	48085C0265G	02–JAN–2003	03–06–316A	02
06	TX	FRISCO, CITY OF	48085C0265G	14–APR–2003	03–06–846P	06
06	TX	GALENA PARK, CITY OF	48201C0905J	10–FEB–2003	03–06–601A	02
06	TX	GARLAND, CITY OF	48113C0380K	19–MAR–2003	03–06–1006P	06
06	TX	GARLAND, CITY OF	48113C0210K	25–APR–2003	03–06–1398P	06
06	TX	GARLAND, CITY OF	48113C0240J	07–MAY–2003	03–06–1498A	02

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06	TX	GARLAND, CITY OF	48113C0220K	20-JUN-2003	03-06-1845A	02
06	TX	GARLAND, CITY OF	48113C0360K	13-JUN-2003	03-06-1884A	02
06	TX	GARLAND, CITY OF	48113C0210J	14-FEB-2003	03-06-823A	17
06	TX	GARLAND, CITY OF	48113C0210K	05-MAR-2003	03-06-910A	02
06	TX	GARLAND, CITY OF	48113C0210K	12-MAR-2003	03-06-984X	17
06	TX	GARLAND, CITY OF	48113C0210K	26-MAR-2003	03-06-985A	01
06	TX	GARLAND, CITY OF	48113C0230J	26-MAR-2003	03-06-985A	01
06	TX	GILLESPIE COUNTY	48171C0267C	25-APR-2003	03-06-582A	02
06	TX	GRAHAM, CITY OF	48503C0195D	05-FEB-2003	03-06-341A	02
06	TX	GRAHAM, CITY OF	48503C0195D	21-FEB-2003	03-06-778A	02
06	TX	GRAND PRAIRIE, CITY OF	48113C0295J	24-JUN-2003	02-06-2299P	05
06	TX	GRAND PRAIRIE, CITY OF	48113C0445J	09-MAY-2003	03-06-1553A	02
06	TX	GRAND PRAIRIE, CITY OF	48113C0445J	16-MAY-2003	03-06-1646A	02
06	TX	GRAND PRAIRIE, CITY OF	48113C0445J	27-JUN-2003	03-06-2027A	02
06	TX	GRAND PRAIRIE, CITY OF	48113C0435J	23-JUN-2003	03-06-430P	06
06	TX	GRAND PRAIRIE, CITY OF	48113C0445J	23-JUN-2003	03-06-430P	06
06	TX	GRAND PRAIRIE, CITY OF	48113C0445J	24-JAN-2003	03-06-575A	01
06	TX	GRAPEVINE, CITY OF	48439C0210H	03-APR-2003	02-06-1719P	05
06	TX	GRAPEVINE, CITY OF	48439C0215H	12-MAR-2003	03-06-1043A	02
06	TX	GREENVILLE, CITY OF	48231C0180F	02-APR-2003	03-06-824A	17
06	TX	GUADALUPE COUNTY	4802660110C	03-FEB-2003	02-06-432P	06
06	TX	GUADALUPE COUNTY	4802660050B	21-MAY-2003	03-06-1245A	02
06	TX	GUADALUPE COUNTY	4802660050B	12-JUN-2003	03-06-1546P	06
06	TX	GUADALUPE COUNTY	4802660150C	03-JAN-2003	03-06-480A	02
06	TX	GUADALUPE COUNTY	4802660175C	14-MAR-2003	03-06-867A	02
06	TX	HARRIS COUNTY	48201C0515J	18-APR-2003	01-06-2046P	05
06	TX	HARRIS COUNTY	48201C0705J	18-APR-2003	01-06-2046P	05
06	TX	HARRIS COUNTY	48201C0710J	18-APR-2003	01-06-2046P	05
06	TX	HARRIS COUNTY	48201C0715J	18-APR-2003	01-06-2046P	05
06	TX	HARRIS COUNTY	48201C0720J	18-APR-2003	01-06-2046P	05
06	TX	HARRIS COUNTY	48201C0230J	20-MAR-2003	02-06-1537P	05
06	TX	HARRIS COUNTY	48201C0870J	20-MAR-2003	02-06-1537P	05
06	TX	HARRIS COUNTY	48201C0880J	20-MAR-2003	02-06-1537P	05
06	TX	HARRIS COUNTY	48201C0890J	20-MAR-2003	02-06-1537P	05
06	TX	HARRIS COUNTY	48201C1010K	20-MAR-2003	02-06-1537P	05
06	TX	HARRIS COUNTY	48201C0265J	21-MAR-2003	03-06-099A	01
06	TX	HARRIS COUNTY	48201C0320K	12-MAR-2003	03-06-1050A	02
06	TX	HARRIS COUNTY	48201C0320K	16-APR-2003	03-06-1139A	02
06	TX	HARRIS COUNTY	48201C0435J	25-APR-2003	03-06-1288A	01
06	TX	HARRIS COUNTY	48201C0230J	11-JUN-2003	03-06-1474A	01
06	TX	HARRIS COUNTY	48201C0495J	07-MAY-2003	03-06-1489A	01
06	TX	HARRIS COUNTY	48201C0265J	30-MAY-2003	03-06-1575A	02
06	TX	HARRIS COUNTY	48201C0405J	06-JUN-2003	03-06-1766A	01
06	TX	HARRIS COUNTY	48201C0405J	04-JUN-2003	03-06-1767A	01
06	TX	HARRIS COUNTY	48201C0405J	06-JUN-2003	03-06-1768A	01
06	TX	HARRIS COUNTY	48201C0445K	20-JUN-2003	03-06-1788A	02
06	TX	HARRIS COUNTY	48201C0615J	25-JUN-2003	03-06-1976A	02
06	TX	HARRIS COUNTY	48201C0410J	15-JAN-2003	03-06-218A	01
06	TX	HARRIS COUNTY	48201C0290J	22-JAN-2003	03-06-286A	01
06	TX	HARRIS COUNTY	48201C0215J	21-FEB-2003	03-06-618A	01
06	TX	HARRIS COUNTY	48201C0430K	26-FEB-2003	03-06-658A	02
06	TX	HARRIS COUNTY	48201C0235K	14-MAY-2003	03-06-800A	01
06	TX	HARRIS COUNTY	48201C0435J	05-MAR-2003	03-06-859A	02
06	TX	HAYS COUNTY	48209C0155E	30-APR-2003	03-06-1452A	02
06	TX	HAYS COUNTY	48209C0155E	20-JUN-2003	03-06-1651A	02
06	TX	HEMPSTEAD, TOWN OF	4806400050B	14-MAR-2003	03-06-949A	02
06	TX	HENDERSON COUNTY	48213C0225C	27-JUN-2003	03-06-1231A	02
06	TX	HIDALGO COUNTY	4803340400C	23-MAY-2003	03-06-1692A	02
06	TX	HIGHLAND PARK, TOWN OF	48113C0335J	03-JAN-2003	02-06-2421P	05
06	TX	HIGHLAND PARK, TOWN OF	48113C0335J	30-APR-2003	03-06-1009P	06
06	TX	HIGHLAND VILLAGE, VILLAGE OF	48121C0533F	04-JUN-2003	03-06-986A	02
06	TX	HOOD COUNTY	4803560145B	04-APR-2003	03-06-1161A	02
06	TX	HOOD COUNTY	4803560130C	19-FEB-2003	03-06-161A	02
06	TX	HOOD COUNTY	4803560110C	21-MAY-2003	03-06-1677A	02
06	TX	HOOD COUNTY	4803560110C	17-JAN-2003	03-06-473A	02
06	TX	HOOD COUNTY	4803560140B	02-APR-2003	03-06-506A	02
06	TX	HOOD COUNTY	4803560130C	22-JAN-2003	03-06-613A	02
06	TX	HOOD COUNTY	4803560145B	05-MAR-2003	03-06-911A	02
06	TX	HOOD COUNTY	4803560065B	16-APR-2003	03-06-923A	02
06	TX	HOUSTON COUNTY	4808720009A	11-APR-2003	03-06-1118A	02
06	TX	HOUSTON, CITY OF	48201C1055K	18-APR-2003	02-06-584P	05
06	TX	HOUSTON, CITY OF	48201C0435J	02-APR-2003	03-06-1241A	02
06	TX	HOUSTON, CITY OF	48201C0630J	09-APR-2003	03-06-1313A	02

Region	State	Community	Map panel	Determination date	Case No.	Type
06	TX	HOUSTON, CITY OF	48201C0670K	16–APR–2003	03–06–1401A	02
06	TX	HOUSTON, CITY OF	48201C0860K	11–JUN–2003	03–06–1774A	02
06	TX	HOUSTON, CITY OF	48201C0860K	13–JUN–2003	03–06–1787A	02
06	TX	HOUSTON, CITY OF	48201C0835K	30–MAY–2003	03–06–1801X	02
06	TX	HOUSTON, CITY OF	48201C0845K	02–JAN–2003	03–06–494A	02
06	TX	HOUSTON, CITY OF	48201C0835K	12–FEB–2003	03–06–812A	02
06	TX	HOUSTON, CITY OF	48201C1005K	14–MAR–2003	03–06–947A	02
06	TX	HOWE, TOWN OF	48181C0210E	19–MAR–2003	03–06–964A	02
06	TX	HUNT COUNTY	48231C0150E	05–FEB–2003	03–06–525A	01
06	TX	HURST, CITY OF	48439C0309J	31–JAN–2003	02–06–2049P	05
06	TX	HURST, CITY OF	48439C0317J	31–JAN–2003	02–06–2049P	05
06	TX	HURST, CITY OF	48439C0304J	27–JUN–2003	03–06–1264A	02
06	TX	HURST, CITY OF	48439C0306J	07–MAR–2003	03–06–508A	02
06	TX	HUTTO, TOWN OF	48491C0244C	21–FEB–2003	02–06–2047P	06
06	TX	HUTTO, TOWN OF	48491C0335C	21–FEB–2003	02–06–2047P	06
06	TX	IRVING, CITY OF	48113C0135J	24–JUN–2003	02–06–2315P	05
06	TX	IRVING, CITY OF	48113C0145J	24–JUN–2003	02–06–2315P	05
06	TX	IRVING, CITY OF	48113C0320J	26–MAR–2003	03–06–1192A	02
06	TX	IRVING, CITY OF	48113C0315J	25–APR–2003	03–06–1306A	01
06	TX	IRVING, CITY OF	48113C0315J	25–APR–2003	03–06–1351A	02
06	TX	IRVING, CITY OF	48113C0315J	16–MAY–2003	03–06–1435A	02
06	TX	IRVING, CITY OF	48113C0320J	16–MAY–2003	03–06–1435A	02
06	TX	IRVING, CITY OF	48113C0320J	23–APR–2003	03–06–1442A	02
06	TX	IRVING, CITY OF	48113C0305J	21–FEB–2003	03–06–861A	02
06	TX	IRVING, CITY OF	48113C0305J	11–APR–2003	03–06–953A	02
06	TX	IRVING, CITY OF	48113C0305J	07–MAR–2003	03–06–972A	02
06	TX	JOHNSON COUNTY	48251C0037H	02–MAY–2003	03–06–1325A	02
06	TX	JOSHUA, CITY OF	48251C0039G	23–APR–2003	03–06–636A	02
06	TX	JUSTIN, CITY OF	48121C0500F	04–JUN–2003	03–06–1576A	02
06	TX	JUSTIN, CITY OF	48121C0500F	11–JUN–2003	03–06–1770A	01
06	TX	KATY, CITY OF	48201C0590J	07–MAR–2003	03–06–637A	02
06	TX	KENDALL COUNTY	4804170253B	08–JAN–2003	03–06–561A	02
06	TX	KILLEEN, CITY OF	4807060130B	25–JUN–2003	03–06–1298A	01
06	TX	KILLEEN, CITY OF	4800310003C	14–MAY–2003	03–06–1339A	01
06	TX	KILLEEN, CITY OF	4807060130B	16–MAY–2003	03–06–1472A	01
06	TX	KYLE, CITY OF	48209C0185E	02–APR–2003	02–06–2442P	05
06	TX	KYLE, CITY OF	48209C0205E	02–APR–2003	02–06–2442P	05
06	TX	LA PORTE, CITY OF	48201C0940J	02–APR–2003	03–06–1128A	01
06	TX	LAKE BRIDGEPORT, CITY OF	48497C0160C	14–FEB–2003	03–06–315A	02
06	TX	LAKEWAY, CITY OF	48453C0330E	10–FEB–2003	03–06–058P	06
06	TX	LAKEWAY, CITY OF	48453C0330E	18–JUN–2003	03–06–1866A	02
06	TX	LANCASTER, CITY OF	48113C0635J	30–JAN–2003	01–06–1088P	05
06	TX	LEAGUE CITY, CITY OF	4854880011D	02–MAY–2003	03–06–1319A	01
06	TX	LEAGUE CITY, CITY OF	4854880030E	14–MAR–2003	03–06–770A	01
06	TX	LEWISVILLE, CITY OF	48121C0545E	29–JAN–2003	03–06–761A	02
06	TX	LIBERTY COUNTY	4804380175B	11–JUN–2003	03–06–1810A	02
06	TX	LIBERTY COUNTY	4804380300B	12–MAR–2003	03–06–763A	02
06	TX	LINDSAY, TOWN OF	480766—01A	13–JUN–2003	03–06–1411A	02
06	TX	LITTLE ELM, TOWN OF	48121C0420E	17–MAR–2003	03–06–128P	06
06	TX	LLANO COUNTY	4812340210B	09–APR–2003	03–06–1295A	02
06	TX	LLANO COUNTY	4812340140B	25–JUN–2003	03–06–1721A	02
06	TX	LLANO COUNTY	4812340285B	25–JUN–2003	03–06–1954A	02
06	TX	LLANO COUNTY	4812340285B	10–JAN–2003	03–06–356A	02
06	TX	LLANO COUNTY	4812340285B	26–FEB–2003	03–06–722A	02
06	TX	LLANO COUNTY	4812340210B	31–JAN–2003	03–06–727A	02
06	TX	LONGVIEW, CITY OF	4802640010D	25–APR–2003	03–06–342A	17
06	TX	LONGVIEW, CITY OF	4802640010D	10–FEB–2003	03–06–769A	17
06	TX	LOWRY CROSSING, CITY OF	48085C0325G	30–MAY–2003	03–06–1120A	02
06	TX	LUBBOCK COUNTY	48303C0275D	04–JUN–2003	03–06–1426A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	14–MAR–2003	03–06–1034A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	12–MAR–2003	03–06–1035A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	12–MAR–2003	03–06–1044A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	07–MAR–2003	03–06–1045A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	12–MAR–2003	03–06–1047A	02
06	TX	LUBBOCK, CITY OF	48303C0315D	19–MAR–2003	03–06–1061A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	14–MAR–2003	03–06–1070A	02
06	TX	LUBBOCK, CITY OF	48303C0285D	19–MAR–2003	03–06–1071A	02
06	TX	LUBBOCK, CITY OF	48303C0315D	14–MAR–2003	03–06–1072A	02
06	TX	LUBBOCK, CITY OF	48303C0285D	21–MAR–2003	03–06–1082A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	19–MAR–2003	03–06–1098A	02
06	TX	LUBBOCK, CITY OF	48303C0305D	30–APR–2003	03–06–1105A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	28–MAR–2003	03–06–1111A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	26–MAR–2003	03–06–1131A	02

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06	TX	LUBBOCK, CITY OF	48303C0295D	26-MAR-2003	03-06-1134A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	04-APR-2003	03-06-1141A	02
06	TX	LUBBOCK, CITY OF	48303C0285D	04-APR-2003	03-06-1143A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	04-APR-2003	03-06-1150A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	26-MAR-2003	03-06-1151A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	26-MAR-2003	03-06-1152A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	26-MAR-2003	03-06-1166A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	23-APR-2003	03-06-1167A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	02-APR-2003	03-06-1178A	02
06	TX	LUBBOCK, CITY OF	48303C0305D	02-APR-2003	03-06-1239A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	04-APR-2003	03-06-1240A	02
06	TX	LUBBOCK, CITY OF	48303C0305D	04-APR-2003	03-06-1252A	02
06	TX	LUBBOCK, CITY OF	48303C0285D	02-APR-2003	03-06-1258A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	04-APR-2003	03-06-1262A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	28-MAR-2003	03-06-1276X	02
06	TX	LUBBOCK, CITY OF	48303C0290D	28-MAR-2003	03-06-1277X	02
06	TX	LUBBOCK, CITY OF	48303C0285D	02-APR-2003	03-06-1284A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	23-APR-2003	03-06-1410A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	30-APR-2003	03-06-1460A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	30-APR-2003	03-06-1461A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	09-MAY-2003	03-06-1484A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	07-MAY-2003	03-06-1486A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	21-MAY-2003	03-06-1491A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	02-MAY-2003	03-06-1493A	02
06	TX	LUBBOCK, CITY OF	48303C0285D	21-MAY-2003	03-06-1555A	02
06	TX	LUBBOCK, CITY OF	48303C0315D	04-JUN-2003	03-06-1605A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	30-MAY-2003	03-06-1652A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	16-MAY-2003	03-06-1670A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	28-MAY-2003	03-06-1671A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	23-MAY-2003	03-06-1681A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	21-MAY-2003	03-06-1688A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	28-MAY-2003	03-06-1714A	02
06	TX	LUBBOCK, CITY OF	48303C0315D	30-MAY-2003	03-06-1764A	02
06	TX	LUBBOCK, CITY OF	48303C0305D	04-JUN-2003	03-06-1777A	02
06	TX	LUBBOCK, CITY OF	48303C0285D	06-JUN-2003	03-06-1804A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	18-JUN-2003	03-06-1853A	02
06	TX	LUBBOCK, CITY OF	48303C0285D	20-JUN-2003	03-06-1878A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	03-JAN-2003	03-06-211A	01
06	TX	LUBBOCK, CITY OF	48303C0295D	31-JAN-2003	03-06-498A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	03-JAN-2003	03-06-512A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	03-JAN-2003	03-06-513A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	02-JAN-2003	03-06-518A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	03-JAN-2003	03-06-531A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	08-JAN-2003	03-06-532A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	08-JAN-2003	03-06-536A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	26-FEB-2003	03-06-573A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	17-JAN-2003	03-06-615A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	15-JAN-2003	03-06-623A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	15-JAN-2003	03-06-631A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	15-JAN-2003	03-06-632A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	22-JAN-2003	03-06-635A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	31-JAN-2003	03-06-641A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	15-JAN-2003	03-06-645A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	17-JAN-2003	03-06-647A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	17-JAN-2003	03-06-654A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	22-JAN-2003	03-06-659A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	17-JAN-2003	03-06-660A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	26-FEB-2003	03-06-670A	02
06	TX	LUBBOCK, CITY OF	48303C0280D	17-JAN-2003	03-06-675A	02
06	TX	LUBBOCK, CITY OF	48303C0315D	24-JAN-2003	03-06-708A	02
06	TX	LUBBOCK, CITY OF	48303C0315D	22-JAN-2003	03-06-712A	02
06	TX	LUBBOCK, CITY OF	48303C0285D	05-FEB-2003	03-06-783A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	21-FEB-2003	03-06-784A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	12-FEB-2003	03-06-796A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	12-FEB-2003	03-06-811A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	21-FEB-2003	03-06-881A	02
06	TX	LUBBOCK, CITY OF	48303C0305D	21-FEB-2003	03-06-887A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	26-FEB-2003	03-06-894A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	05-MAR-2003	03-06-935A	02
06	TX	LUBBOCK, CITY OF	48303C0285D	28-FEB-2003	03-06-946A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	19-MAR-2003	03-06-958A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	05-MAR-2003	03-06-960A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	12-MAR-2003	03-06-961A	02

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06	TX	LUBBOCK, CITY OF	48303C0295D	07–MAR–2003	03–06–963A	02
06	TX	LUBBOCK, CITY OF	48303C0295D	05–MAR–2003	03–06–968A	02
06	TX	LUBBOCK, CITY OF	48303C0290D	12–MAR–2003	03–06–974A	02
06	TX	MANSFIELD, CITY OF	48439C0560H	04–JUN–2003	03–06–1183A	01
06	TX	MANSFIELD, CITY OF	48439C0560H	13–JUN–2003	03–06–1658A	01
06	TX	MCKINNEY, CITY OF	48085C0280G	30–APR–2003	03–06–1294A	01
06	TX	MCKINNEY, CITY OF	48085C0290G	30–APR–2003	03–06–1294A	01
06	TX	MCKINNEY, CITY OF	48085C0305G	19–MAR–2003	03–06–965A	02
06	TX	MCLENDON-CHISHOLM, CITY OF	480546—01A	16–MAY–2003	03–06–1075A	02
06	TX	MCLENDON-CHISHOLM, CITY OF	48054601A	14–FEB–2003	03–06–547A	02
06	TX	MCLENNAN COUNTY	4804560050B	23–APR–2003	03–06–1136A	02
06	TX	MEDINA COUNTY	4504720100B	25–JUN–2003	03–06–1826A	02
06	TX	MESQUITE, CITY OF	48113C0360K	13–MAR–2003	02–06–1259P	05
06	TX	MESQUITE, CITY OF	48113C0370J	26–MAR–2003	03–06–1160A	02
06	TX	MESQUITE, CITY OF	48113C0390J	02–MAY–2003	03–06–682P	05
06	TX	MIDLAND, CITY OF	48329C0088E	19–MAR–2003	03–06–1094A	02
06	TX	MIDLAND, CITY OF	48329C0087E	28–MAR–2003	03–06–1229A	02
06	TX	MIDLAND, CITY OF	48329C0067E	09–APR–2003	03–06–1308A	02
06	TX	MIDLAND, CITY OF	48329C0088E	21–MAY–2003	03–06–1409A	01
06	TX	MIDLAND, CITY OF	48329C0068E	28–MAY–2003	03–06–1520A	01
06	TX	MIDLAND, CITY OF	48329C0088E	13–JUN–2003	03–06–1797A	02
06	TX	MIDLAND, CITY OF	48329C0087E	11–JUN–2003	03–06–1839A	02
06	TX	MIDLAND, CITY OF	48329C0068E	18–JUN–2003	03–06–1871A	02
06	TX	MIDLAND, CITY OF	48329C0088E	18–JUN–2003	03–06–1873A	02
06	TX	MIDLAND, CITY OF	48329C0086E	18–JUN–2003	03–06–1899A	02
06	TX	MIDLAND, CITY OF	48329C0089E	05–FEB–2003	03–06–399A	02
06	TX	MIDLAND, CITY OF	48329C0087E	02–JAN–2003	03–06–522A	02
06	TX	MIDLAND, CITY OF	48329C0088E	22–JAN–2003	03–06–740A	02
06	TX	MIDLAND, CITY OF	48329C0089E	19–MAR–2003	03–06–950A	02
06	TX	MIDLAND, CITY OF	48329C0086E	12–MAR–2003	03–06–955A	01
06	TX	MIDLOTHIAN, CITY OF	48139C0090D	25–JUN–2003	03–06–1266A	01
06	TX	MISSOURI CITY, CITY OF	48157C0255J	12–MAR–2003	03–06–721A	17
06	TX	MONTAGUE COUNTY	48337C0260C	23–MAY–2003	03–06–1611A	02
06	TX	MONTGOMERY COUNTY	48339C0515F	21–MAY–2003	02–06–1250A	02
06	TX	MONTGOMERY COUNTY	48339C0555F	09–APR–2003	03–06–1155A	02
06	TX	MONTGOMERY COUNTY	48339C0539G	18–APR–2003	03–06–1261A	02
06	TX	MONTGOMERY COUNTY	48339C0539G	26–FEB–2003	03–06–872A	02
06	TX	MONTGOMERY COUNTY	48339C0539G	07–MAR–2003	03–06–924A	02
06	TX	NACOGDOCHES COUNTY	4809470012A	05–MAR–2003	03–06–937A	02
06	TX	NEW BRAUNFELS, CITY OF	4854630125C	07–MAY–2003	03–06–1362A	02
06	TX	NORTH RICHLAND HILLS, CITY OF	48439C0302J	18–MAR–2003	01–06–1464P	05
06	TX	ODESSA, CITY OF	48135C0170D	18–JUN–2003	03–06–1702A	01
06	TX	ODESSA, CITY OF	48135C0135D	25–JUN–2003	03–06–1827A	02
06	TX	ODESSA, CITY OF	48135C0170D	07–MAR–2003	03–06–745A	01
06	TX	ODESSA, CITY OF	48135C0135D	12–MAR–2003	03–06–979A	02
06	TX	PARIS, CITY OF	4804270004B	05–FEB–2003	03–06–038A	01
06	TX	PASADENA, CITY OF	48201C0940J	11–JUN–2003	03–06–1330A	01
06	TX	PEARLAND, CITY OF	48039C0010I	08–JAN–2003	03–06–368A	01
06	TX	PFLUGERVILLE, CITY OF	48453C0075E	20–MAY–2003	02–06–2052P	06
06	TX	PLANO, CITY OF	48121C0578E	11–FEB–2003	02–06–1255P	06
06	TX	PLANO, CITY OF	48085C0410G	19–FEB–2003	02–06–536P	05
06	TX	PLANO, CITY OF	48085C0420G	12–MAR–2003	02–06–992P	05
06	TX	PLANO, CITY OF	48085C0430G	11–APR–2003	03–06–1059A	02
06	TX	PLANO, CITY OF	48085C0445G	11–APR–2003	03–06–1263A	02
06	TX	PLANO, CITY OF	48085C0445G	18–APR–2003	03–06–1267A	02
06	TX	PLANO, CITY OF	48085C0430G	14–MAY–2003	03–06–1565A	02
06	TX	PLANO, CITY OF	48085C0420G	16–MAY–2003	03–06–1610A	02
06	TX	PLANO, CITY OF	48085C0440G	25–JUN–2003	03–06–1818A	17
06	TX	PLANO, CITY OF	48085C0440G	25–APR–2003	03–06–629A	01
06	TX	PLANO, CITY OF	48085C0440G	12–MAR–2003	03–06–779A	17
06	TX	PLANO, CITY OF	48085C0445G	05–FEB–2003	03–06–792A	01
06	TX	PLANO, CITY OF	48085C0445G	19–MAR–2003	03–06–852A	02
06	TX	POLK COUNTY	4805260006B	02–APR–2003	03–06–1193A	02
06	TX	RICHARDSON, CITY OF	48113C0205J	16–MAY–2003	03–06–1650A	02
06	TX	RICHARDSON, CITY OF	48113C0205J	22–JAN–2003	03–06–254A	17
06	TX	RICHARDSON, CITY OF	48113C0205J	14–FEB–2003	03–06–868A	02
06	TX	RICHLAND HILLS, CITY OF	48439C0311J	26–FEB–2003	03–06–901A	02
06	TX	ROANOKE, CITY OF	48121C0515F	09–JAN–2003	02–06–1949P	06
06	TX	ROANOKE, CITY OF	48121C0655E	13–MAY–2003	03–06–1381P	06
06	TX	ROCKWALL COUNTY	4805430150B	07–APR–2003	02–06–2579P	06
06	TX	ROCKWALL COUNTY	4805430075B	28–FEB–2003	03–06–751A	02
06	TX	ROCKWALL COUNTY	48231C0240E	28–FEB–2003	03–06–751A	02
06	TX	ROCKWALL, CITY OF	4805470005C	22–JAN–2003	02–06–2578A	01

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06	TX	ROCKWALL, CITY OF	4805470005C	15–JAN–2003	03–06–515A	17
06	TX	ROUND ROCK, CITY OF	48491C0240C	18–FEB–2003	02–06–1948P	06
06	TX	ROUND ROCK, CITY OF	48491C0330D	28–FEB–2003	03–06–586A	01
06	TX	ROUND ROCK, CITY OF	48491C0240C	02–APR–2003	03–06–679P	05
06	TX	ROUND ROCK, CITY OF	48491C0330D	02–APR–2003	03–06–679P	05
06	TX	ROYSE CITY, CITY OF	4805460001B	06–JUN–2003	03–06–1464A	02
06	TX	SACHSE, CITY OF	48113C0230J	05–FEB–2003	03–06–726A	17
06	TX	SAN ANGELO, CITY OF	4806230015D	04–JUN–2003	03–06–1332A	02
06	TX	SAN ANTONIO, CITY OF	48029C0120F	14–JAN–2003	01–06–1534P	06
06	TX	SAN ANTONIO, CITY OF	48029C0263F	19–FEB–2003	02–06–1072P	05
06	TX	SAN ANTONIO, CITY OF	48029C0313E	17–FEB–2003	02–06–1266P	06
06	TX	SAN ANTONIO, CITY OF	48029C0476E	17–FEB–2003	02–06–1266P	06
06	TX	SAN ANTONIO, CITY OF	48029C0277F	29–JAN–2003	02–06–1679P	05
06	TX	SAN ANTONIO, CITY OF	48029C0303E	03–MAR–2003	02–06–1686P	06
06	TX	SAN ANTONIO, CITY OF	48029C0311E	03–MAR–2003	02–06–1686P	06
06	TX	SAN ANTONIO, CITY OF	48029C0294F	12–MAR–2003	02–06–1707P	05
06	TX	SAN ANTONIO, CITY OF	48029C0294F	02–MAY–2003	02–06–1947P	05
06	TX	SAN ANTONIO, CITY OF	48029C0457E	02–MAY–2003	02–06–1947P	05
06	TX	SAN ANTONIO, CITY OF	48029C0402F	08–MAY–2003	02–06–2307P	05
06	TX	SAN ANTONIO, CITY OF	48029C0406F	08–MAY–2003	02–06–2307P	05
06	TX	SAN ANTONIO, CITY OF	48029C0407F	08–MAY–2003	02–06–2307P	05
06	TX	SAN ANTONIO, CITY OF	48029C0408E	06–MAR–2003	02–06–2426P	06
06	TX	SAN ANTONIO, CITY OF	48029C0257F	08–JAN–2003	02–06–2469A	02
06	TX	SAN ANTONIO, CITY OF	48029C0243F	14–MAY–2003	03–06–1073A	02
06	TX	SAN ANTONIO, CITY OF	48029C0140F	19–MAR–2003	03–06–1099A	02
06	TX	SAN ANTONIO, CITY OF	48029C0417F	16–MAY–2003	03–06–1327A	02
06	TX	SAN ANTONIO, CITY OF	48029C0266F	07–MAY–2003	03–06–1468A	02
06	TX	SAN ANTONIO, CITY OF	48029C0405F	25–JUN–2003	03–06–1640A	02
06	TX	SAN ANTONIO, CITY OF	48029C0243F	06–JUN–2003	03–06–1757A	02
06	TX	SAN ANTONIO, CITY OF	48029C0140F	20–JUN–2003	03–06–1772A	02
06	TX	SAN ANTONIO, CITY OF	48029C0140F	06–FEB–2003	03–06–180P	06
06	TX	SAN ANTONIO, CITY OF	48029C0476E	28–APR–2003	03–06–419P	06
06	TX	SAN ANTONIO, CITY OF	48029C0251F	03–FEB–2003	03–06–428P	06
06	TX	SAN ANTONIO, CITY OF	48029C0241F	06–MAR–2003	03–06–432P	06
06	TX	SAN ANTONIO, CITY OF	48029C0232F	17–MAR–2003	03–06–450P	06
06	TX	SAN ANTONIO, CITY OF	48029C0263F	26–FEB–2003	03–06–750A	02
06	TX	SAN ANTONIO, CITY OF	48029C0259F	26–FEB–2003	03–06–820A	02
06	TX	SAN ANTONIO, CITY OF	48029C0115E	28–FEB–2003	03–06–917A	02
06	TX	SAN ANTONIO, CITY OF	48029C0243F	26–MAR–2003	03–06–933A	02
06	TX	SAN ANTONIO, CITY OF	48029C0406F	14–MAY–2003	03–06–951A	02
06	TX	SAN ANTONIO, CITY OF	48029C0257F	21–MAR–2003	03–06–959A	02
06	TX	SAN ANTONIO, CITY OF	48029C0291F	21–MAY–2003	03–06–981A	01
06	TX	SEAGOVILLE, CITY OF	48113C0545J	26–MAR–2003	03–06–889A	02
06	TX	SELMA, CITY OF	48029C0308E	21–MAR–2003	02–06–1684P	05
06	TX	SELMA, CITY OF	48029C0304E	01–MAY–2003	02–06–1838P	05
06	TX	SELMA, CITY OF	48029C0308E	01–MAY–2003	02–06–1838P	05
06	TX	SHAVANO PARK, CITY OF	48029C0252F	21–JAN–2003	02–06–2309P	05
06	TX	SHAVANO PARK, CITY OF	48029C0254F	21–JAN–2003	02–06–2309P	05
06	TX	SHAVANO PARK, CITY OF	48029C0258F	07–MAY–2003	03–06–1476A	02
06	TX	SIMONTON, VILLAGE OF	48157C0075J	14–MAR–2003	02–06–2023A	01
06	TX	SMITH COUNTY	4811850250B	10–JAN–2003	03–06–336A	02
06	TX	SMITH COUNTY	4811850250B	14–FEB–2003	03–06–856A	02
06	TX	SMITH COUNTY	4811850250B	09–MAY–2003	03–06–943A	02
06	TX	SOUTH LAKE, CITY OF	48439C0180H	23–MAY–2003	03–06–1751A	02
06	TX	SOUTH LAKE, CITY OF	48439C0190H	23–MAY–2003	03–06–1751A	02
06	TX	SOUTH LAKE, CITY OF	48439C0185H	26–MAR–2003	03–06–611A	01
06	TX	SPRINGTOWN, CITY OF	4805210005B	23–APR–2003	03–06–1268A	02
06	TX	STEPHENS COUNTY	48429C0075C	30–MAY–2003	03–06–1506A	02
06	TX	SUNNYVALE, TOWN OF	48113C0395J	28–MAR–2003	03–06–1027A	02
06	TX	TARRANT COUNTY	48439C0140H	21–MAY–2003	03–06–1091A	02
06	TX	TARRANT COUNTY	48439C0232H	25–APR–2003	03–06–1436A	02
06	TX	TEMPLE, CITY OF	4800340004C	19–MAR–2003	02–06–590P	05
06	TX	TEMPLE, CITY OF	4807060155B	19–MAR–2003	02–06–590P	05
06	TX	TEMPLE, CITY OF	4807060160B	19–MAR–2003	02–06–590P	05
06	TX	TITUS COUNTY	481023—23A	08–JAN–2003	03–06–366A	02
06	TX	TRAVIS COUNTY	48453C0260F	11–APR–2003	03–06–1307A	02
06	TX	TRAVIS COUNTY	48453C0110E	15–JAN–2003	03–06–354A	02
06	TX	TRAVIS COUNTY	48453C0110E	29–JAN–2003	03–06–614A	02
06	TX	TYLER, CITY OF	4805710013B	16–MAY–2003	03–06–1115A	02
06	TX	UNIVERSAL CITY, CITY OF	48029C0316E	27–JUN–2003	03–06–1632A	01
06	TX	VERNON, CITY OF	4816520005B	21–MAR–2003	03–06–1089A	02
06	TX	VICTORIA, CITY OF	4806380005G	06–JUN–2003	03–06–1706A	02
06	TX	WALKER COUNTY	4810420007C	14–MAY–2003	03–06–1342A	02

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06	TX	WALKER COUNTY	4810420009C	12–MAR–2003	03–06–813A	02
06	TX	WASHINGTON COUNTY	4811880006A	14–FEB–2003	03–06–668A	02
06	TX	WATAUGA, CITY OF	48439C0282H	10–MAR–2003	02–06–263P	05
06	TX	WEATHERFORD, CITY OF	4805220010C	21–MAY–2003	03–06–1173A	02
06	TX	WHITEHOUSE, CITY OF	4811850355B	31–JAN–2003	03–06–661A	02
06	TX	WILLIAMSON COUNTY	48491C0240C	27–JAN–2003	02–06–1945P	06
06	TX	WILLIAMSON COUNTY	48491C0218C	13–MAR–2003	02–06–938P	05
06	TX	WILLIAMSON COUNTY	48491C0115C	26–MAR–2003	03–06–1163A	02
06	TX	WILLIAMSON COUNTY	48491C0125C	15–JAN–2003	03–06–302A	02
06	TX	WILLIAMSON COUNTY	48491C0100C	13–JUN–2003	03–06–514A	02
06	TX	WILLIAMSON COUNTY	48491C0115C	24–JAN–2003	03–06–731A	17
06	TX	WISE COUNTY	48497C0100C	09–APR–2003	03–06–1175A	02
06	TX	WOLFFORTH, CITY OF	48303C0400D	23–MAY–2003	03–06–1256A	02
07	IA	AMES, CITY OF	1902540005B	23–MAY–2003	03–07–539A	01
07	IA	AMES, CITY OF	1902540008C	04–APR–2003	03–07–610A	01
07	IA	ANKENY, CITY OF	1902260003C	17–JAN–2003	03–07–074A	02
07	IA	ANKENY, CITY OF	1902260001B	22–JAN–2003	03–07–175A	01
07	IA	ANKENY, CITY OF	1902260003C	11–APR–2003	03–07–662A	02
07	IA	ANKENY, CITY OF	1902260001B	07–MAY–2003	03–07–811X	17
07	IA	BENTON COUNTY	1908450005A	10–JAN–2003	03–07–248A	02
07	IA	BETTENDORF, CITY OF	1902400005E	25–JUN–2003	03–07–1028A	01
07	IA	BETTENDORF, CITY OF	1902400005E	11–APR–2003	03–07–401A	02
07	IA	BETTENDORF, CITY OF	1902400005E	20–JUN–2003	03–07–969A	02
07	IA	BLACK HAWK COUNTY	19053500095B	03–JAN–2003	03–07–257A	02
07	IA	BLACK HAWK COUNTY	19053500045B	07–MAY–2003	03–07–678A	17
07	IA	BONDURANT, CITY OF	190707—01A	25–APR–2003	03–07–654A	02
07	IA	BUCHANAN COUNTY	1908480025C	25–JUN–2003	03–07–1002A	02
07	IA	BUTLER COUNTY	1908500100B	23–APR–2003	03–07–741A	02
07	IA	CEDAR FALLS, CITY OF	1900170002B	18–JUN–2003	03–07–1046A	02
07	IA	CEDAR FALLS, CITY OF	1900170006B	24–JAN–2003	03–07–216A	01
07	IA	CEDAR FALLS, CITY OF	1900170004B	14–MAR–2003	03–07–362A	01
07	IA	CEDAR FALLS, CITY OF	1900170004B	26–FEB–2003	03–07–400A	01
07	IA	CEDAR FALLS, CITY OF	1900170006B	14–FEB–2003	03–07–452X	01
07	IA	CEDAR RAPIDS, CITY OF	1901870020B	14–MAR–2003	03–07–353A	02
07	IA	CEDAR RAPIDS, CITY OF	1901870010B	07–MAR–2003	03–07–526A	02
07	IA	CLAYTON COUNTY	1908580006B	22–JAN–2003	03–07–033A	02
07	IA	CLEAR LAKE, CITY OF	1900590001B	15–JAN–2003	03–07–298A	02
07	IA	CLEAR LAKE, CITY OF	1900590003B	22–JAN–2003	03–07–331A	02
07	IA	CLEAR LAKE, CITY OF	1900590001B	19–FEB–2003	03–07–406A	02
07	IA	CLEAR LAKE, CITY OF	1900590001B	23–APR–2003	03–07–575A	02
07	IA	CLEAR LAKE, CITY OF	1900590003B	25–APR–2003	03–07–611A	02
07	IA	CLEAR LAKE, CITY OF	1900590003B	18–APR–2003	03–07–770A	02
07	IA	CLIVE, CITY OF	1904880005C	21–FEB–2003	03–07–235A	02
07	IA	CLIVE, CITY OF	1904880005C	21–FEB–2003	03–07–309A	02
07	IA	CLIVE, CITY OF	1904880005C	10–FEB–2003	03–07–339A	02
07	IA	CLIVE, CITY OF	1904880005C	28–MAY–2003	03–07–368A	01
07	IA	CLIVE, CITY OF	1904880005C	21–FEB–2003	03–07–369A	01
07	IA	CLIVE, CITY OF	1904880005C	19–MAR–2003	03–07–566A	02
07	IA	CORALVILLE, CITY OF	19103C0070D	26–FEB–2003	03–07–439A	01
07	IA	CORALVILLE, CITY OF	19103C0090D	26–FEB–2003	03–07–439A	01
07	IA	CORALVILLE, CITY OF	19103C0090D	11–JUN–2003	03–07–648A	01
07	IA	COUNCIL BLUFFS, CITY OF	1902350005D	08–JAN–2003	03–07–178A	02
07	IA	COUNCIL BLUFFS, CITY OF	1902350010C	02–MAY–2003	03–07–333A	01
07	IA	COUNCIL BLUFFS, CITY OF	1902350010C	18–APR–2003	03–07–624A	02
07	IA	COUNCIL BLUFFS, CITY OF	1902350010C	11–JUN–2003	03–07–919A	02
07	IA	DALLAS COUNTY	19049C0140D	16–APR–2003	03–07–707A	02
07	IA	DALLAS COUNTY	19049C0140D	30–APR–2003	03–07–825X	02
07	IA	DAVENPORT, CITY OF	1902420005B	02–APR–2003	03–07–198A	02
07	IA	DAVENPORT, CITY OF	1902420002B	29–JAN–2003	03–07–317A	02
07	IA	DAVENPORT, CITY OF	1902420006B	14–MAR–2003	03–07–335A	02
07	IA	DAVENPORT, CITY OF	1902420002B	25–JUN–2003	03–07–530A	01
07	IA	DAVENPORT, CITY OF	1902420004C	14–MAY–2003	03–07–748A	02
07	IA	DAVENPORT, CITY OF	1902420005B	21–MAY–2003	03–07–844A	02
07	IA	DAVENPORT, CITY OF	1902420004C	18–JUN–2003	03–07–875A	02
07	IA	DES MOINES, CITY OF	1902270004D	21–FEB–2003	03–07–413A	01
07	IA	DES MOINES, CITY OF	1902270004D	25–JUN–2003	03–07–977A	01
07	IA	DICKINSON COUNTY	1908640050C	29–JAN–2003	03–07–310A	02
07	IA	DICKINSON COUNTY	1908640050C	15–JAN–2003	03–07–325A	02
07	IA	DICKINSON COUNTY	1908640050C	19–MAR–2003	03–07–641X	02
07	IA	DICKINSON COUNTY	1908640100C	16–APR–2003	03–07–715A	02
07	IA	DICKINSON COUNTY	1908640050C	23–APR–2003	03–07–796A	02
07	IA	FOREST CITY, CITY OF	1902830005C	21–MAY–2003	03–07–666A	01
07	IA	GRIMES, CITY OF	1902280001B	28–FEB–2003	03–07–460A	02

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07	IA	GRUNDY CENTER, CITY OF	190403—01A	28–FEB–2003	03–07–427A	02
07	IA	HARRISON COUNTY	1901430200A	04–APR–2003	03–07–593A	02
07	IA	HORNICK, CITY OF	190291—01A	07–MAR–2003	03–07–533A	02
07	IA	HUMBOLDT, CITY OF	1901550005B	16–APR–2003	03–07–750A	02
07	IA	HUMBOLDT, CITY OF	1901550005B	09–MAY–2003	03–07–761A	02
07	IA	HUMBOLDT, CITY OF	1901550005B	14–MAY–2003	03–07–764A	02
07	IA	HUMBOLDT, CITY OF	1901550005B	13–JUN–2003	03–07–863A	02
07	IA	IOWA CITY, CITY OF	19103C0090D	02–APR–2003	03–07–713A	02
07	IA	IOWA CITY, CITY OF	19103C0090D	02–APR–2003	03–07–716A	02
07	IA	JOHNSON COUNTY	19103C0125D	16–APR–2003	03–07–744A	02
07	IA	JOHNSON COUNTY	19103C0053D	04–JUN–2003	03–07–958A	02
07	IA	LINN COUNTY	1908290070B	27–JUN–2003	03–07–1000A	02
07	IA	MARENGO, CITY OF	1901570001D	23–APR–2003	03–07–709A	02
07	IA	MARION, CITY OF	1901910002B	25–APR–2003	03–07–597A	01
07	IA	MARION, CITY OF	1901910005B	11–JUN–2003	03–07–837A	02
07	IA	MARSHALL COUNTY	1908900160B	23–MAY–2003	03–07–950A	02
07	IA	MARSHALLTOWN, CITY OF	1902000002B	24–JAN–2003	03–07–393A	02
07	IA	MARTENSDALE, CITY OF	19181C0054D	02–JAN–2003	03–07–193A	02
07	IA	MASON CITY, CITY OF	1900600005B	14–MAY–2003	03–07–820A	01
07	IA	MONONA COUNTY	19133C0025C	13–JUN–2003	03–07–756A	17
07	IA	MUSCATINE COUNTY	1908360225B	13–JUN–2003	03–07–1026A	02
07	IA	MUSCATINE COUNTY	1908360175B	02–APR–2003	03–07–524A	02
07	IA	NEWTON, CITY OF	1906280005A	23–APR–2003	03–07–394A	02
07	IA	NORTH LIBERTY, CITY OF	19103C0060D	31–JAN–2003	03–07–327A	01
07	IA	NORTH LIBERTY, CITY OF	19103C0060D	25–APR–2003	03–07–751A	01
07	IA	NORTH LIBERTY, CITY OF	19103C0080D	25–APR–2003	03–07–751A	01
07	IA	NORWALK, CITY OF	19181C0010D	16–MAY–2003	03–07–905A	02
07	IA	OXFORD, CITY OF	19103C0053D	08–JAN–2003	03–07–258A	02
07	IA	POLK COUNTY	1909010085D	30–APR–2003	03–07–145A	01
07	IA	POLK COUNTY	1909010110C	23–APR–2003	03–07–552A	02
07	IA	POLK COUNTY	1909010200C	30–MAY–2003	03–07–865A	02
07	IA	POLK COUNTY	1909010200C	04–JUN–2003	03–07–953A	02
07	IA	PRINCETON, CITY OF	1902440002B	04–APR–2003	03–07–649A	02
07	IA	RED OAK, CITY OF	1902100002C	21–MAR–2003	03–07–647A	02
07	IA	ROBINS, CITY OF	1904430002A	28–MAR–2003	03–07–529A	02
07	IA	RUNNELLS, CITY OF	190800—01A	19–MAR–2003	03–07–232A	02
07	IA	RUNNELLS, CITY OF	190800—01A	16–MAY–2003	03–07–616A	02
07	IA	SPENCER, CITY OF	1900710005B	13–JUN–2003	03–07–1017A	02
07	IA	SPENCER, CITY OF	1900710005B	25–JUN–2003	03–07–1061A	02
07	IA	SPENCER, CITY OF	1900710005B	20–JUN–2003	03–07–1062A	02
07	IA	SPENCER, CITY OF	1900710005B	23–APR–2003	03–07–785A	02
07	IA	SPENCER, CITY OF	1900710005B	25–APR–2003	03–07–786A	02
07	IA	STORY COUNTY	1909070065B	10–FEB–2003	03–07–211A	17
07	IA	STORY COUNTY	1909070050B	23–MAY–2003	03–07–328A	02
07	IA	URBANDALE, CITY OF	1902300010D	30–APR–2003	03–07–535A	01
07	IA	VOLGA, CITY OF	190085—01B	04–JUN–2003	03–07–956A	02
07	IA	WAPELLO COUNTY	1909110002B	04–APR–2003	03–07–430A	02
07	IA	WARREN COUNTY	19181C0040D	27–JUN–2003	03–07–687A	02
07	IA	WARREN COUNTY	19181C0015D	25–APR–2003	03–07–705A	02
07	IA	WATERLOO, CITY OF	1900250015E	12–FEB–2003	03–07–274A	02
07	IA	WATERLOO, CITY OF	1900250005E	21–MAY–2003	03–07–312A	01
07	IA	WATERLOO, CITY OF	1900250015E	19–MAR–2003	03–07–579A	02
07	IA	WATERLOO, CITY OF	1900250015E	26–MAR–2003	03–07–704A	02
07	IA	WATERLOO, CITY OF	1900250015E	16–MAY–2003	03–07–913A	02
07	IA	WATERLOO, CITY OF	1900250015E	21–MAY–2003	03–07–914A	02
07	IA	WATERLOO, CITY OF	1900250015E	21–MAY–2003	03–07–915A	02
07	IA	WATERLOO, CITY OF	1900250015E	14–MAY–2003	03–07–916A	02
07	IA	WATERLOO, CITY OF	1900250015E	04–JUN–2003	03–07–963A	02
07	IA	WAVERLY, CITY OF	19017C0054C	10–FEB–2003	03–07–391A	02
07	IA	WAVERLY, CITY OF	19017C0054C	18–APR–2003	03–07–762A	02
07	IA	WHEATLAND, CITY OF	190090—01	07–MAR–2003	03–07–365A	02
07	IA	WOODBURY COUNTY	190536—16B	07–MAY–2003	03–07–534A	02
07	KS	ALBERT, CITY OF	2000170001A	12–MAR–2003	03–07–141A	01
07	KS	ALLEN COUNTY	20001C0100D	25–JUN–2003	03–07–743A	01
07	KS	ALTOONA, CITY OF	200382—01A	10–FEB–2003	03–07–311A	02
07	KS	ANDOVER, CITY OF	2003830230D	07–MAY–2003	03–07–607A	01
07	KS	BARTON COUNTY	2000160365C	11–APR–2003	03–07–373A	02
07	KS	BEL AIRE, CITY OF	2008640005B	12–MAR–2003	03–07–574A	02
07	KS	BEL AIRE, CITY OF	2008640005B	23–APR–2003	03–07–790A	02
07	KS	BUTLER COUNTY	2000370160C	28–FEB–2003	03–07–279A	02
07	KS	BUTLER COUNTY	2000370240C	02–APR–2003	03–07–679A	02
07	KS	CHEROKEE COUNTY	2000440275B	09–MAY–2003	03–07–776A	02
07	KS	CLEARWATER, CITY OF	2004820001A	18–JUN–2003	03–07–1014A	02

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07	KS	COFFEY COUNTY	20006200003A	03–JAN–2003	03–07–304A	02
07	KS	DICKINSON COUNTY	20041C0090C	05–MAR–2003	03–07–446A	02
07	KS	DOUGLAS COUNTY	20045C0017C	28–FEB–2003	03–07–354A	02
07	KS	DOUGLAS COUNTY	20045C0060C	21–FEB–2003	03–07–355A	02
07	KS	DOUGLAS COUNTY	20045C0060C	23–MAY–2003	03–07–800A	01
07	KS	EL DORADO, CITY OF	20003900001D	26–MAR–2003	03–07–487A	02
07	KS	FAIRWAY, CITY OF	20091C0094F	11–JUN–2003	03–07–466A	02
07	KS	FAIRWAY, CITY OF	20091C0094F	18–APR–2003	03–07–548A	02
07	KS	GALVA, CITY OF	20049700001A	12–FEB–2003	03–07–434A	02
07	KS	GARDEN CITY, CITY OF	20518600005D	17–JAN–2003	03–07–190A	02
07	KS	HALSTEAD, CITY OF	20013100001D	21–MAR–2003	03–07–454A	02
07	KS	HARVEY COUNTY	20058500025B	25–JUN–2003	03–07–1054A	02
07	KS	HARVEY COUNTY	20058501250D	12–MAR–2003	03–07–594A	02
07	KS	HARVEY COUNTY	20058501250D	27–JUN–2003	03–07–994A	02
07	KS	HOLTON, CITY OF	20014100050D	11–JUN–2003	03–07–826A	02
07	KS	JEFFERSON COUNTY	20014700750B	22–JAN–2003	03–07–061A	02
07	KS	JEFFERSON COUNTY	20014700750B	09–APR–2003	03–07–360A	02
07	KS	JOHNSON COUNTY	20091C0260F	28–FEB–2003	03–07–049A	02
07	KS	JOHNSON COUNTY	20091C0365F	28–MAY–2003	03–07–577A	02
07	KS	KANSAS CITY, CITY OF	20036300050C	02–MAY–2003	03–07–842A	02
07	KS	LAWRENCE, CITY OF	20045C0076C	15–JAN–2003	03–07–239A	02
07	KS	LAWRENCE, CITY OF	20045C0039C	26–MAR–2003	03–07–626A	02
07	KS	LAWRENCE, CITY OF	20045C0036C	19–MAR–2003	03–07–631A	02
07	KS	LAWRENCE, CITY OF	20045C0036C	28–MAR–2003	03–07–632A	02
07	KS	LAWRENCE, CITY OF	20045C0036C	28–MAR–2003	03–07–633A	02
07	KS	LAWRENCE, CITY OF	20045C0019C	23–MAY–2003	03–07–799A	01
07	KS	LAWRENCE, CITY OF	20045C0038C	23–MAY–2003	03–07–799A	01
07	KS	LEAWOOD, CITY OF	20091C0217F	10–JAN–2003	03–07–050A	02
07	KS	LEAWOOD, CITY OF	20091C0219F	10–JAN–2003	03–07–050A	02
07	KS	LEAWOOD, CITY OF	20091C0236F	10–JAN–2003	03–07–050A	02
07	KS	LENEXA, CITY OF	20091C0201F	15–JAN–2003	03–07–341A	02
07	KS	LYON COUNTY	20020101250B	22–JAN–2003	03–07–244A	02
07	KS	LYON COUNTY	20020101500B	10–FEB–2003	03–07–398A	02
07	KS	MANHATTAN, CITY OF	20030000020D	10–JAN–2003	03–07–260A	17
07	KS	MANHATTAN, CITY OF	20030000060D	18–JUN–2003	03–07–959A	01
07	KS	MCPHERSON COUNTY	20021402250B	12–MAR–2003	03–07–569A	02
07	KS	MCPHERSON COUNTY	20021401500B	21–MAR–2003	03–07–629A	02
07	KS	MCPHERSON, CITY OF	20021700150D	05–FEB–2003	03–07–411A	02
07	KS	MCPHERSON, CITY OF	20021700150D	21–FEB–2003	03–07–528A	02
07	KS	MCPHERSON, CITY OF	20021700050D	26–MAR–2003	03–07–636A	02
07	KS	MCPHERSON, CITY OF	20021700150D	04–APR–2003	03–07–734A	02
07	KS	MCPHERSON, CITY OF	20021700150D	21–MAY–2003	03–07–945A	02
07	KS	MCPHERSON, CITY OF	20021700150D	04–JUN–2003	03–07–970A	02
07	KS	MCPHERSON, CITY OF	20021700050D	25–JUN–2003	03–07–989A	02
07	KS	MIAMI COUNTY	200220—06A	19–MAR–2003	03–07–213A	02
07	KS	MIAMI COUNTY	200220—23A	07–MAR–2003	03–07–459A	02
07	KS	MIAMI COUNTY	200220—23A	28–MAR–2003	03–07–685X	02
07	KS	MIAMI COUNTY	200220—06A	07–MAY–2003	03–07–766A	02
07	KS	MIAMI COUNTY	200220—31A	25–JUN–2003	03–07–982A	02
07	KS	MULVANE, CITY OF	20032600050D	16–APR–2003	03–07–719A	02
07	KS	NEW CAMBRIA, CITY OF	20031800010A	07–MAY–2003	03–07–830A	02
07	KS	NEWTON, CITY OF	20013300050C	20–JUN–2003	03–07–1060A	02
07	KS	NEWTON, CITY OF	20013300050C	15–JAN–2003	03–07–246A	01
07	KS	NEWTON, CITY OF	20013300050C	28–MAR–2003	03–07–656A	02
07	KS	NEWTON, CITY OF	20058501250D	04–APR–2003	03–07–723A	01
07	KS	NEWTON, CITY OF	20013300050C	21–MAY–2003	03–07–936A	02
07	KS	NICKERSON, CITY OF	20155C0090D	30–MAY–2003	03–07–869A	02
07	KS	OLATHE, CITY OF	20091C0159F	29–APR–2003	02–07–1011P	05
07	KS	OLATHE, CITY OF	20091C0167F	29–APR–2003	02–07–1011P	05
07	KS	OLATHE, CITY OF	20091C0307F	10–JAN–2003	02–07–1054A	02
07	KS	OLATHE, CITY OF	20091C0326F	10–JAN–2003	02–07–1054A	02
07	KS	OLATHE, CITY OF	20091C0194F	15–JAN–2003	03–07–342A	02
07	KS	OLATHE, CITY OF	20091C0194F	28–APR–2003	03–07–494P	05
07	KS	OLATHE, CITY OF	20091C0306F	07–MAY–2003	03–07–495P	06
07	KS	OLATHE, CITY OF	20091C0310F	07–MAY–2003	03–07–495P	06
07	KS	OLATHE, CITY OF	20091C0306F	11–APR–2003	03–07–570A	02
07	KS	OLATHE, CITY OF	20091C0306F	09–APR–2003	03–07–571A	02
07	KS	OLATHE, CITY OF	20091C0306F	09–APR–2003	03–07–572A	02
07	KS	OVERLAND PARK, CITY OF	20091C0208F	19–FEB–2003	01–07–457P	05
07	KS	OVERLAND PARK, CITY OF	20091C0220F	19–FEB–2003	01–07–457P	05
07	KS	OVERLAND PARK, CITY OF	20091C0206F	10–JAN–2003	03–07–051A	02
07	KS	OVERLAND PARK, CITY OF	20091C0213F	10–JAN–2003	03–07–051A	02
07	KS	OVERLAND PARK, CITY OF	20091C0214F	10–JAN–2003	03–07–051A	02

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07	KS	OVERLAND PARK, CITY OF	20091C0218F	10–JAN–2003	03–07–051A	02
07	KS	OVERLAND PARK, CITY OF	20091C0219F	10–JAN–2003	03–07–051A	02
07	KS	OVERLAND PARK, CITY OF	20091C0326F	10–JAN–2003	03–07–051A	02
07	KS	OVERLAND PARK, CITY OF	20091C0327F	10–JAN–2003	03–07–051A	02
07	KS	OVERLAND PARK, CITY OF	20091C0331F	10–JAN–2003	03–07–051A	02
07	KS	OVERLAND PARK, CITY OF	20091C0331F	11–JUN–2003	03–07–1015A	17
07	KS	OVERLAND PARK, CITY OF	20091C0202F	10–FEB–2003	03–07–132A	02
07	KS	OVERLAND PARK, CITY OF	20091C0211F	08–JAN–2003	03–07–219A	02
07	KS	OVERLAND PARK, CITY OF	20091C0332F	22–JAN–2003	03–07–314A	02
07	KS	OVERLAND PARK, CITY OF	20091C0208F	10–JAN–2003	03–07–332A	02
07	KS	OVERLAND PARK, CITY OF	20091C0204F	23–APR–2003	03–07–477P	05
07	KS	OVERLAND PARK, CITY OF	20091C0213F	21–MAR–2003	03–07–545A	02
07	KS	OVERLAND PARK, CITY OF	20091C0214F	21–MAR–2003	03–07–546A	02
07	KS	OVERLAND PARK, CITY OF	20091C0335F	23–APR–2003	03–07–635A	01
07	KS	OVERLAND PARK, CITY OF	20091C0204F	09–APR–2003	03–07–692A	17
07	KS	OVERLAND PARK, CITY OF	20091C0217F	16–MAY–2003	03–07–720A	01
07	KS	OVERLAND PARK, CITY OF	20091C0209F	07–MAY–2003	03–07–827A	02
07	KS	OVERLAND PARK, CITY OF	20091C0335F	28–MAY–2003	03–07–909A	01
07	KS	OVERLAND PARK, CITY OF	20091C0208F	28–MAY–2003	03–07–968A	02
07	KS	PARK CITY, CITY OF	2003210150A	21–MAR–2003	03–07–538A	01
07	KS	PARK CITY, CITY OF	2009630001A	16–APR–2003	03–07–596A	01
07	KS	PARK CITY, CITY OF	2003210150A	23–APR–2003	03–07–657A	01
07	KS	PITTSBURG, CITY OF	2000720005D	10–FEB–2003	02–07–785P	05
07	KS	POTTAWATOMIE COUNTY	2006210260C	04–APR–2003	03–07–484P	06
07	KS	POTTAWATOMIE COUNTY	2006210260C	21–MAY–2003	03–07–935A	02
07	KS	PRAIRIE VILLAGE, CITY OF	20091C0207F	11–APR–2003	03–07–492P	05
07	KS	PRAIRIE VILLAGE, CITY OF	20091C0207F	12–MAR–2003	03–07–598A	02
07	KS	PRATT, CITY OF	2002780020D	10–JAN–2003	03–07–316A	02
07	KS	RENO COUNTY	20155C0090D	28–FEB–2003	03–07–440A	02
07	KS	RENO COUNTY	20155C0455D	09–MAY–2003	03–07–742A	02
07	KS	RENO COUNTY	20155C0253D	25–APR–2003	03–07–760A	02
07	KS	RICE COUNTY	2002900005C	30–APR–2003	03–07–726A	02
07	KS	RICE COUNTY	2002900008C	27–JUN–2003	03–07–995A	01
07	KS	RILEY COUNTY	2002980090B	04–JUN–2003	03–07–097A	01
07	KS	RILEY COUNTY	2002980150B	12–FEB–2003	03–07–435A	02
07	KS	ROELAND PARK, CITY OF	20091C0092F	26–FEB–2003	03–07–320A	02
07	KS	ROELAND PARK, CITY OF	20091C0094F	16–MAY–2003	03–07–806A	02
07	KS	SALINA, CITY OF	2003190015B	03–JAN–2003	02–07–1168A	02
07	KS	SALINA, CITY OF	2003190015B	18–JUN–2003	03–07–1019A	02
07	KS	SALINA, CITY OF	2003190015B	18–JUN–2003	03–07–1021A	02
07	KS	SALINA, CITY OF	2003160060B	19–MAR–2003	03–07–176A	02
07	KS	SALINA, CITY OF	2003190015B	03–JAN–2003	03–07–210A	02
07	KS	SALINA, CITY OF	2003190015B	03–JAN–2003	03–07–278A	02
07	KS	SALINA, CITY OF	2003190015B	08–JAN–2003	03–07–282A	02
07	KS	SALINA, CITY OF	2003190015B	08–JAN–2003	03–07–305A	02
07	KS	SALINA, CITY OF	2003160060B	29–JAN–2003	03–07–343A	02
07	KS	SALINA, CITY OF	2003190005B	09–APR–2003	03–07–386A	02
07	KS	SALINA, CITY OF	2003190015B	14–FEB–2003	03–07–448A	02
07	KS	SALINA, CITY OF	2003190015B	28–MAR–2003	03–07–455A	02
07	KS	SALINA, CITY OF	2003190015B	28–FEB–2003	03–07–543A	02
07	KS	SALINA, CITY OF	2003190015B	23–MAY–2003	03–07–547A	02
07	KS	SALINA, CITY OF	2003190015B	16–APR–2003	03–07–568A	02
07	KS	SALINA, CITY OF	2003190015B	26–MAR–2003	03–07–634A	02
07	KS	SALINA, CITY OF	2003190015B	16–APR–2003	03–07–681A	02
07	KS	SALINA, CITY OF	2003190015B	04–APR–2003	03–07–697A	02
07	KS	SALINA, CITY OF	2003190015B	02–MAY–2003	03–07–730A	01
07	KS	SALINA, CITY OF	2003160060B	02–MAY–2003	03–07–732A	01
07	KS	SALINA, CITY OF	2003190015B	16–APR–2003	03–07–752A	02
07	KS	SALINA, CITY OF	2003190015B	18–APR–2003	03–07–777A	02
07	KS	SALINA, CITY OF	2003190015B	25–APR–2003	03–07–843A	02
07	KS	SALINA, CITY OF	2003190015B	28–MAY–2003	03–07–856A	02
07	KS	SALINA, CITY OF	2003190015B	23–MAY–2003	03–07–873A	02
07	KS	SALINA, CITY OF	2003190015B	20–JUN–2003	03–07–912A	01
07	KS	SALINA, CITY OF	2003190015B	21–MAY–2003	03–07–925A	02
07	KS	SALINA, CITY OF	2003190015B	04–JUN–2003	03–07–926A	02
07	KS	SALINA, CITY OF	2003190015B	28–MAY–2003	03–07–955A	02
07	KS	SALINA, CITY OF	2003190015B	30–MAY–2003	03–07–966A	02
07	KS	SALINE COUNTY	2003160055B	09–MAY–2003	03–07–580A	08
07	KS	SEDGWICK COUNTY	2003210125A	28–MAR–2003	03–07–295A	02
07	KS	SEDGWICK COUNTY	2003210225A	21–FEB–2003	03–07–374A	02
07	KS	SEDGWICK COUNTY	2003210225A	29–JAN–2003	03–07–375A	02
07	KS	SEDGWICK COUNTY	2003210300A	07–MAY–2003	03–07–382A	01
07	KS	SEDGWICK COUNTY	2003210300A	26–MAR–2003	03–07–383A	02

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07	KS	SEDGWICK COUNTY	2003210150A	12–MAR–2003	03–07–410A	02
07	KS	SEDGWICK COUNTY	2003210175A	12–MAR–2003	03–07–563A	02
07	KS	SEDGWICK COUNTY	2003210225A	19–MAR–2003	03–07–614A	02
07	KS	SEDGWICK COUNTY	2003210150A	30–APR–2003	03–07–809A	02
07	KS	SEDGWICK COUNTY	2003210225A	30–APR–2003	03–07–819A	02
07	KS	SEDGWICK COUNTY	2003210075A	21–MAY–2003	03–07–838A	02
07	KS	SEDGWICK, CITY OF	2001340001D	09–APR–2003	03–07–661A	02
07	KS	SEDGWICK, CITY OF	2001340001D	16–MAY–2003	03–07–831A	02
07	KS	SHAWNEE COUNTY	2003310120C	13–JUN–2003	03–07–1020A	02
07	KS	SHAWNEE COUNTY	2003310100C	17–JAN–2003	03–07–308A	02
07	KS	SHAWNEE COUNTY	2003310065C	04–JUN–2003	03–07–450A	02
07	KS	SHAWNEE, CITY OF	20091C0065F	24–JAN–2003	03–07–264A	02
07	KS	SHAWNEE, CITY OF	20091C0065F	21–MAR–2003	03–07–644A	01
07	KS	SHAWNEE, CITY OF	20091C0065F	07–MAY–2003	03–07–725A	02
07	KS	SHAWNEE, CITY OF	20091C0185F	21–MAY–2003	03–07–927A	01
07	KS	SUMNER COUNTY	20191C0080B	21–FEB–2003	03–07–465A	17
07	KS	SUMNER COUNTY	20191C0140B	30–MAY–2003	03–07–872A	02
07	KS	TOPEKA, CITY OF	2051870014C	02–JAN–2003	03–07–288A	02
07	KS	TOPEKA, CITY OF	2051870005C	31–JAN–2003	03–07–363A	02
07	KS	TOPEKA, CITY OF	2051870011C	02–APR–2003	03–07–684A	02
07	KS	TOPEKA, CITY OF	2003310095C	30–MAY–2003	03–07–859A	01
07	KS	VALLEY CENTER, CITY OF	2003210050A	28–MAR–2003	03–07–116A	02
07	KS	WAMEGO, CITY OF	2002760002C	07–MAY–2003	03–07–855A	02
07	KS	WICHITA, CITY OF	2003280035B	20–JUN–2003	03–07–1047A	02
07	KS	WICHITA, CITY OF	2003280015B	18–JUN–2003	03–07–1052A	02
07	KS	WICHITA, CITY OF	2003280020B	17–JAN–2003	03–07–292A	02
07	KS	WICHITA, CITY OF	2003280035B	15–JAN–2003	03–07–293A	02
07	KS	WICHITA, CITY OF	2003280005B	22–JAN–2003	03–07–294A	02
07	KS	WICHITA, CITY OF	2003280020B	17–JAN–2003	03–07–303A	01
07	KS	WICHITA, CITY OF	2003280020B	29–JAN–2003	03–07–323A	01
07	KS	WICHITA, CITY OF	2003280030B	24–JAN–2003	03–07–376A	02
07	KS	WICHITA, CITY OF	2003210150A	26–FEB–2003	03–07–554A	02
07	KS	WICHITA, CITY OF	2003280015B	19–MAR–2003	03–07–599A	01
07	KS	WICHITA, CITY OF	2003280015B	19–MAR–2003	03–07–600A	01
07	KS	WICHITA, CITY OF	2003280015B	19–MAR–2003	03–07–601A	01
07	KS	WICHITA, CITY OF	2003280035B	26–MAR–2003	03–07–602A	17
07	KS	WICHITA, CITY OF	2003280025B	14–MAR–2003	03–07–603A	02
07	KS	WICHITA, CITY OF	2003280035B	26–MAR–2003	03–07–655A	02
07	KS	WICHITA, CITY OF	2003280035B	30–APR–2003	03–07–789A	02
07	KS	WICHITA, CITY OF	2003280035B	25–APR–2003	03–07–812A	02
07	KS	WICHITA, CITY OF	2003280035B	09–MAY–2003	03–07–817A	02
07	KS	WICHITA, CITY OF	2003280030B	11–JUN–2003	03–07–938A	02
07	KS	WICHITA, CITY OF	2003280030B	23–MAY–2003	03–07–949A	02
07	MO	ADVANCE, CITY OF	2904200001B	04–APR–2003	03–07–306A	02
07	MO	BATES COUNTY	2907850002B	14–MAR–2003	03–07–562A	02
07	MO	BATES COUNTY	2907850005B	28–MAR–2003	03–07–613A	02
07	MO	BELLA VILLA, CITY OF	29189C0316H	29–JAN–2003	03–07–259A	02
07	MO	BELLEFONTAINE NEIGHBORS, CITY OF	29189C0201H	02–APR–2003	03–07–650A	02
07	MO	BLACKWATER, CITY OF	290109—01B	12–MAR–2003	03–07–340A	02
07	MO	BLUE SPRINGS, CITY OF	2901690005C	07–MAY–2003	03–07–778A	02
07	MO	BLUE SPRINGS, CITY OF	2901690005C	07–MAY–2003	03–07–910A	02
07	MO	BOONE COUNTY	2900340106B	30–APR–2003	03–07–670A	01
07	MO	BROOKFIELD, CITY OF	2902140002B	24–JAN–2003	03–07–280A	02
07	MO	BROOKFIELD, CITY OF	2902140002B	14–FEB–2003	03–07–300A	02
07	MO	BROOKFIELD, CITY OF	2902140002B	23–MAY–2003	03–07–932A	02
07	MO	BUTLER COUNTY	2900440185B	18–APR–2003	03–07–066A	02
07	MO	BUTLER COUNTY	2900440080C	09–APR–2003	03–07–765A	02
07	MO	CALLAWAY COUNTY	2900490275B	17–JAN–2003	02–07–1157A	02
07	MO	CAMDEN COUNTY	2907890005B	03–JAN–2003	03–07–286A	02
07	MO	CAMDEN COUNTY	2907890008B	09–MAY–2003	03–07–408A	02
07	MO	CAMDEN COUNTY	2907890002B	26–FEB–2003	03–07–441A	02
07	MO	CAMDEN COUNTY	2907890008B	30–APR–2003	03–07–813A	02
07	MO	CAPE GIRARDEAU COUNTY	2907900125B	30–APR–2003	03–07–595A	02
07	MO	CARROLL COUNTY	2900570125B	23–APR–2003	03–07–426A	02
07	MO	CARROLLTON, TOWN OF	2900580005B	09–MAY–2003	03–07–422A	02
07	MO	CARTHAGE, CITY OF	2901810001B	16–MAY–2003	03–07–735A	02
07	MO	CARTHAGE, CITY OF	2901810001B	28–MAY–2003	03–07–736A	02
07	MO	CARTHAGE, CITY OF	2901810001B	28–MAY–2003	03–07–967A	02
07	MO	CASS COUNTY	2907830025C	08–JAN–2003	03–07–254A	02
07	MO	CASS COUNTY	2907830125B	05–FEB–2003	03–07–297A	02
07	MO	CASS COUNTY	2907830025C	22–JAN–2003	03–07–299A	02
07	MO	CASS COUNTY	2907830050C	05–FEB–2003	03–07–421X	02
07	MO	CASS COUNTY	2907830200B	14–MAR–2003	03–07–458A	02

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07	MO	CASS COUNTY	2907830200B	16–APR–2003	03–07–555A	02
07	MO	CASS COUNTY	2907830125B	11–APR–2003	03–07–700A	02
07	MO	CASS COUNTY	2907830125B	02–APR–2003	03–07–701A	02
07	MO	CASS COUNTY	2907830050C	04–JUN–2003	03–07–921A	02
07	MO	CASS COUNTY	2907830125B	25–JUN–2003	03–07–976A	02
07	MO	CHARLACK, CITY OF	29189C0179H	09–APR–2003	03–07–605A	01
07	MO	CHESTERFIELD, CITY OF	29189C0140H	02–APR–2003	03–07–746X	01
07	MO	CHRISTIAN COUNTY	2908470005A	09–APR–2003	03–07–420A	02
07	MO	CLAY COUNTY	2900860025A	23–APR–2003	03–07–0112P	05
07	MO	CLAY COUNTY	2900860015B	17–APR–2003	98–07–547V	19
07	MO	CLAY COUNTY	2900860050C	17–APR–2003	98–07–547V	19
07	MO	CLAY COUNTY	2900860080B	17–APR–2003	98–07–547V	19
07	MO	COBALT VILLAGE,VILLAGE OF	29123C0170C	25–JUN–2003	03–07–1029A	02
07	MO	COLE COUNTY	2901070060B	18–APR–2003	03–07–151A	02
07	MO	COLUMBIA, CITY OF	2900360006B	13–JUN–2003	03–07–986A	01
07	MO	DADE COUNTY	29057C0260B	24–JAN–2003	03–07–370A	02
07	MO	DARDENNE PRAIRIE, TOWN OF	29183C0430E	05–MAR–2003	03–07–451A	01
07	MO	DES PERES, CITY OF	29189C0281J	21–MAR–2003	03–07–630A	02
07	MO	DES PERES, CITY OF	29189C0281J	30–MAY–2003	03–07–960A	02
07	MO	EUREKA, CITY OF	29189C0332H	28–MAR–2003	03–07–273A	01
07	MO	EXCELSIOR SPRINGS, CITY OF	2900900005C	14–MAR–2003	98–07–592V	19
07	MO	FENTON, CITY OF	29189C0289H	07–MAY–2003	03–07–733A	02
07	MO	FLORISSANT, CITY OF	29189C0062J	21–FEB–2003	03–07–456A	02
07	MO	FLORISSANT, CITY OF	29189C0054J	16–APR–2003	03–07–627A	01
07	MO	FRANKLIN COUNTY	2904930180B	08–JAN–2003	03–07–243A	01
07	MO	FRONTENAC, CITY OF	29189C0281J	21–MAR–2003	03–07–643A	02
07	MO	FULTON, CITY OF	2900510003C	25–JUN–2003	03–07–993A	02
07	MO	GALENA, CITY OF	2904290125B	07–MAR–2003	03–07–202A	01
07	MO	GLADSTONE, CITY OF	2900910001C	14–MAY–2003	03–07–870A	02
07	MO	GREENE COUNTY	2907820070B	15–JAN–2003	00–07–676P	06
07	MO	GREENE COUNTY	2907820100B	15–JAN–2003	00–07–676P	06
07	MO	GREENE COUNTY	2907820055B	26–MAR–2003	03–07–358A	02
07	MO	GREENE COUNTY	2907820135B	31–JAN–2003	03–07–403A	02
07	MO	GREENE COUNTY	2907820130C	10–FEB–2003	03–07–419A	02
07	MO	GREENE COUNTY	2907820125C	06–JUN–2003	03–07–542A	02
07	MO	GREENE COUNTY	2907820125C	18–APR–2003	03–07–564A	02
07	MO	GREENE COUNTY	2907820125C	27–JUN–2003	03–07–854A	02
07	MO	HARTSBURG, VILLAGE OF	2900370001A	07–MAR–2003	03–07–557A	02
07	MO	HERCULANEUM, CITY OF	2901920005D	03–JAN–2003	03–07–290A	02
07	MO	JACKSON, CITY OF	2952650001C	10–FEB–2003	03–07–415A	02
07	MO	JASPER COUNTY	2908070100B	16–APR–2003	03–07–319A	02
07	MO	JEFFERSON COUNTY	2908080065C	27–JUN–2003	03–07–1008A	02
07	MO	JEFFERSON COUNTY	2908080120D	12–FEB–2003	03–07–212A	02
07	MO	JEFFERSON COUNTY	2908080090D	08–JAN–2003	03–07–321A	02
07	MO	JEFFERSON COUNTY	2908080080C	15–JAN–2003	03–07–345A	02
07	MO	JEFFERSON COUNTY	2908080090D	14–MAY–2003	03–07–615A	02
07	MO	JEFFERSON COUNTY	2908080080C	25–APR–2003	03–07–672A	02
07	MO	JEFFERSON COUNTY	2908080090D	06–JUN–2003	03–07–864A	02
07	MO	JEFFERSON COUNTY	2908080095C	14–MAY–2003	03–07–904A	02
07	MO	JOPLIN, CITY OF	2901830005C	10–JAN–2003	01–07–831P	05
07	MO	JOPLIN, CITY OF	2901830025C	10–JAN–2003	01–07–831P	05
07	MO	JOPLIN, CITY OF	2901830025C	26–MAR–2003	03–07–640A	02
07	MO	JOPLIN, CITY OF	2901830015C	14–MAY–2003	03–07–828A	02
07	MO	KANSAS CITY, CITY OF	2901730065B	16–APR–2003	03–07–586A	02
07	MO	KANSAS CITY, CITY OF	2901730065B	16–APR–2003	03–07–727A	02
07	MO	KANSAS CITY, CITY OF	2901730060B	30–MAY–2003	03–07–814A	02
07	MO	KANSAS CITY, CITY OF	2901730025B	21–MAY–2003	03–07–841A	02
07	MO	KANSAS CITY, CITY OF	2901730030B	21–MAY–2003	03–07–848A	02
07	MO	LADUE,CITY OF	29189C0301H	09–APR–2003	03–07–637A	02
07	MO	LAKE ST. LOUIS, CITY OF	29183C0220F	30–MAY–2003	03–07–849A	02
07	MO	LAKE WINNEBAGO, CITY OF	2908770001A	16–MAY–2003	03–07–922A	02
07	MO	LAKE WINNEBAGO, CITY OF	2908770001A	16–MAY–2003	03–07–923A	02
07	MO	LAMAR, CITY OF	2900250001C	10–JAN–2003	03–07–181A	01
07	MO	LEE'S SUMMIT, CITY OF	2901740009C	17–JAN–2003	03–07–344A	02
07	MO	LEE'S SUMMIT, CITY OF	2901720040E	14–MAY–2003	03–07–693A	01
07	MO	LEE'S SUMMIT, CITY OF	2901740005C	14–MAY–2003	03–07–693A	01
07	MO	LEE'S SUMMIT, CITY OF	2901740005C	11–JUN–2003	03–07–920A	02
07	MO	LEE'S SUMMIT, CITY OF	2901740007C	30–MAY–2003	03–07–948A	02
07	MO	LEXINGTON, CITY OF	2907070005B	14–FEB–2003	03–07–359A	02
07	MO	LIBERTY, CITY OF	2900960001B	09–APR–2003	03–07–698A	02
07	MO	LIVINGSTON COUNTY	2908140125B	14–FEB–2003	03–07–412A	02
07	MO	MACON, CITY OF	2902200002B	14–MAY–2003	03–07–405A	02
07	MO	MANCHESTER, CITY OF	29189C0259H	05–FEB–2003	03–07–184A	02

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07	MO	MCDONALD COUNTY	290817150A	19–FEB–2003	03–07–418A	02
07	MO	MONITEAU COUNTY	2902370125B	28–FEB–2003	03–07–153A	02
07	MO	MORGAN COUNTY	2902440200B	08–JAN–2003	03–07–236A	02
07	MO	MORGAN COUNTY	2902440200B	07–MAY–2003	03–07–608A	02
07	MO	MORGAN COUNTY	2902440200B	13–JUN–2003	03–07–998A	02
07	MO	NEWTON COUNTY	2908200150B	19–MAR–2003	03–07–214A	02
07	MO	NEWTON COUNTY	2908200015B	18–APR–2003	03–07–442A	02
07	MO	O'FALLON, CITY OF	29183C0230E	10–FEB–2003	03–07–223A	01
07	MO	O'FALLON, CITY OF	29183C0239E	05–FEB–2003	03–07–302A	01
07	MO	O'FALLON, CITY OF	29183C0239E	12–FEB–2003	03–07–467A	01
07	MO	O'FALLON, CITY OF	29183C0230F	21–MAY–2003	03–07–783A	01
07	MO	O'FALLON, CITY OF	29183C0239E	25–JUN–2003	03–07–824A	01
07	MO	O'FALLON, CITY OF	29183C0241E	25–JUN–2003	03–07–943A	01
07	MO	OSAGE BEACH, CITY OF	290671	14–FEB–2003	03–07–397A	02
07	MO	OSAGE BEACH, CITY OF	290671—02B	16–MAY–2003	03–07–801A	02
07	MO	PACIFIC, CITY OF	2901340001C	27–JUN–2003	03–07–1007A	02
07	MO	PACIFIC, CITY OF	2901340001C	02–MAY–2003	03–07–617A	02
07	MO	PACIFIC, CITY OF	2901340001C	14–MAY–2003	03–07–867A	02
07	MO	PARKVILLE, CITY OF	2902940001B	11–JUN–2003	03–07–868A	02
07	MO	PETTIS COUNTY	2908230200B	16–APR–2003	03–07–745A	02
07	MO	PLATTE COUNTY	2904750125A	22–JAN–2003	03–07–269A	02
07	MO	PLEASANT VALLEY, CITY OF	2901000001A	18–APR–2003	03–07–699A	02
07	MO	QULIN, CITY OF	2900480001A	09–MAY–2003	03–07–845A	02
07	MO	RAY COUNTY	2907780075B	11–JUN–2003	03–07–874A	02
07	MO	RIPLEY COUNTY	2908300200A	12–MAR–2003	03–07–389A	02
07	MO	RIPLEY COUNTY	2908300200A	04–APR–2003	03–07–722X	02
07	MO	SEDALIA, CITY OF	2902830001C	16–APR–2003	03–07–438A	01
07	MO	SEDALIA, CITY OF	2902830001C	09–APR–2003	03–07–689A	02
07	MO	SIKESTON, CITY OF	2952700006C	18–JUN–2003	03–07–1044A	02
07	MO	SMITHVILLE, CITY OF	2952710005C	24–APR–2003	03–07–0112P	05
07	MO	ST. ANN, CITY OF	29189C0157H	21–MAY–2003	03–07–754A	02
07	MO	ST. CHARLES COUNTY	29183C0150E	02–JUN–2003	03–07–103P	06
07	MO	ST. CHARLES COUNTY	29183C0280E	02–JUN–2003	03–07–103P	06
07	MO	ST. CHARLES COUNTY	29183C0285E	02–JUN–2003	03–07–103P	06
07	MO	ST. CHARLES COUNTY	29183C0325E	02–JUN–2003	03–07–103P	06
07	MO	ST. CHARLES COUNTY	29183C0451E	10–FEB–2003	03–07–225A	02
07	MO	ST. CHARLES COUNTY	29183C0195E	25–APR–2003	03–07–584A	02
07	MO	ST. CHARLES COUNTY	29183C0267E	25–APR–2003	03–07–695A	02
07	MO	ST. CHARLES COUNTY	29183C0435E	21–MAY–2003	03–07–782A	01
07	MO	ST. CHARLES COUNTY	29183C0451E	18–JUN–2003	03–07–954A	01
07	MO	ST. CHARLES, CITY OF	29183C0266E	05–FEB–2003	03–07–371A	01
07	MO	ST. CHARLES, CITY OF	29183C0267E	25–APR–2003	03–07–784A	02
07	MO	ST. CHARLES, CITY OF	29183C0260E	11–JUN–2003	03–07–792A	01
07	MO	ST. CHARLES, CITY OF	29183C0267E	02–MAY–2003	03–07–815A	02
07	MO	ST. FRANCOIS COUNTY	2908320150B	09–APR–2003	03–07–396A	01
07	MO	ST. JOSEPH, CITY OF	2900430005C	11–JUN–2003	03–07–1010A	02
07	MO	ST. LOUIS COUNTY	29189C0312H	24–APR–2003	02–07–172P	05
07	MO	ST. LOUIS COUNTY	29189C0316H	24–APR–2003	02–07–172P	05
07	MO	ST. LOUIS COUNTY	29189C0385H	18–JUN–2003	03–07–1031A	02
07	MO	ST. LOUIS COUNTY	29189C0405H	15–JAN–2003	03–07–241A	02
07	MO	ST. LOUIS COUNTY	29189C0058H	29–JAN–2003	03–07–348A	02
07	MO	ST. LOUIS COUNTY	29189C0265H	12–MAR–2003	03–07–449A	01
07	MO	ST. LOUIS COUNTY	29189C0279J	11–APR–2003	03–07–618A	01
07	MO	ST. LOUIS COUNTY	29189C0267H	30–APR–2003	03–07–638A	01
07	MO	ST. LOUIS COUNTY	29189C0286H	30–APR–2003	03–07–638A	01
07	MO	ST. LOUIS COUNTY	29189C0162H	30–MAY–2003	03–07–918A	02
07	MO	ST. PETERS, CITY OF	29183C0244E	15–JAN–2003	03–07–324A	02
07	MO	ST. PETERS, CITY OF	29183C0264E	12–MAR–2003	03–07–588A	02
07	MO	ST. PETERS, CITY OF	29183C0242E	30–MAY–2003	03–07–984A	02
07	MO	STE. GENEVIEVE, CITY OF	2903250001A	21–MAY–2003	03–07–728A	02
07	MO	STOCKTON, CITY OF	29039C0235C	11–APR–2003	03–07–380A	02
07	MO	STONE COUNTY	2904290100B	26–FEB–2003	03–07–407A	02
07	MO	STONE COUNTY	2904290100B	04–JUN–2003	03–07–639A	02
07	MO	TANEY COUNTY	290435—16A	16–MAY–2003	03–07–737A	02
07	MO	WARREN COUNTY	2904430075C	05–FEB–2003	03–07–381A	02
07	MO	WARREN COUNTY	2904430050B	19–MAR–2003	03–07–423A	02
07	MO	WARREN COUNTY	2904430125B	18–JUN–2003	03–07–729A	02
07	MO	WEBB CITY, CITY OF	2901870001B	21–FEB–2003	03–07–447A	02
07	MO	WEBB CITY, CITY OF	2901870001B	04–APR–2003	03–07–527A	02
07	MO	WEBSTER COUNTY	29225C0225A	10–FEB–2003	03–07–334A	02
07	MO	WELDON SPRING, CITY OF	29183C0435E	17–JAN–2003	03–07–291A	01
07	MO	WENTWORTH, TOWN OF	290483—01A	07–MAY–2003	03–07–798A	02
07	MO	WENTZVILLE, CITY OF	29183C0195E	22–JAN–2003	03–07–019A	01

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07	MO	WEST PLAINS, CITY OF	2901660004D	15–JAN–2003	03–07–349X	01
07	MO	WILLOW SPRINGS, CITY OF	2901670001B	19–MAR–2003	03–07–409A	02
07	NE	BELLEVUE, CITY OF	31153C0065F	13–JUN–2003	03–07–1022A	02
07	NE	BELLEVUE, CITY OF	31153C0065F	02–MAY–2003	03–07–779A	02
07	NE	BELLEVUE, CITY OF	31153C0065F	06–JUN–2003	03–07–929A	01
07	NE	BUFFALO COUNTY	3104190011B	11–JUN–2003	03–07–628A	02
07	NE	CHEYENNE COUNTY	3104240175B	19–MAR–2003	03–07–559A	02
07	NE	CHEYENNE COUNTY	3104240175B	18–APR–2003	03–07–803X	02
07	NE	CLARKS, VILLAGE OF	3101490005A	11–APR–2003	03–07–623A	02
07	NE	COLFAX COUNTY	31037C0130C	05–MAR–2003	03–07–464A	02
07	NE	COLFAX COUNTY	31037C0025C	09–APR–2003	03–07–651A	02
07	NE	COLUMBUS, CITY OF	3152720005D	06–JUN–2003	03–07–206A	01
07	NE	COLUMBUS, CITY OF	3152720015D	06–JUN–2003	03–07–206A	01
07	NE	CRETE, CITY OF	3101860003C	02–MAY–2003	03–07–810A	02
07	NE	CRETE, CITY OF	3101860003C	30–APR–2003	03–07–816A	02
07	NE	CUSTER COUNTY	3104280010B	11–JUN–2003	03–07–941A	02
07	NE	DAKOTA COUNTY	3104290040B	23–MAY–2003	03–07–488A	01
07	NE	GRAND ISLAND, CITY OF	3101030015B	27–JUN–2003	03–07–1025A	02
07	NE	GRAND ISLAND, CITY OF	3101030015B	08–JAN–2003	03–07–283A	02
07	NE	GRAND ISLAND, CITY OF	3101030020B	08–JAN–2003	03–07–296A	02
07	NE	GRAND ISLAND, CITY OF	3101030005B	10–FEB–2003	03–07–336A	02
07	NE	GRAND ISLAND, CITY OF	3101030015B	12–FEB–2003	03–07–337A	02
07	NE	GRAND ISLAND, CITY OF	3101030015B	12–FEB–2003	03–07–372A	02
07	NE	GRAND ISLAND, CITY OF	3101030015B	12–FEB–2003	03–07–384A	02
07	NE	GRAND ISLAND, CITY OF	3101030020B	12–FEB–2003	03–07–414A	02
07	NE	GRAND ISLAND, CITY OF	3101030015B	05–MAR–2003	03–07–540A	02
07	NE	GRAND ISLAND, CITY OF	3101030015B	14–MAR–2003	03–07–541A	02
07	NE	GRAND ISLAND, CITY OF	3101030010B	19–MAR–2003	03–07–582A	02
07	NE	GRAND ISLAND, CITY OF	3101030015B	14–MAR–2003	03–07–591A	02
07	NE	GRAND ISLAND, CITY OF	3101000100C	14–MAR–2003	03–07–606A	02
07	NE	GRAND ISLAND, CITY OF	3101000100C	28–MAR–2003	03–07–642A	02
07	NE	GRAND ISLAND, CITY OF	3101030020B	02–APR–2003	03–07–667A	02
07	NE	GRAND ISLAND, CITY OF	3101030005B	02–APR–2003	03–07–690A	02
07	NE	GRAND ISLAND, CITY OF	3101030015B	02–MAY–2003	03–07–774A	02
07	NE	GRAND ISLAND, CITY OF	3101000100C	02–MAY–2003	03–07–775A	02
07	NE	GRAND ISLAND, CITY OF	3101030020B	25–APR–2003	03–07–802X	02
07	NE	GRAND ISLAND, CITY OF	3101030020B	14–MAY–2003	03–07–805A	02
07	NE	GRAND ISLAND, CITY OF	3101030010B	16–MAY–2003	03–07–832A	02
07	NE	GRAND ISLAND, CITY OF	3101030015B	04–JUN–2003	03–07–934A	02
07	NE	GRAND ISLAND, CITY OF	3101030005B	25–JUN–2003	03–07–987A	02
07	NE	HALL COUNTY	3101000100C	21–FEB–2003	03–07–436A	02
07	NE	HALL COUNTY	3101000100C	26–FEB–2003	03–07–437A	02
07	NE	HALL COUNTY	3101000125B	21–MAY–2003	03–07–771A	02
07	NE	HALL COUNTY	3101000125B	23–MAY–2003	03–07–780A	02
07	NE	HAMILTON COUNTY	3104410100A	10–FEB–2003	03–07–071A	02
07	NE	HAMILTON COUNTY	3104410025A	10–JAN–2003	03–07–277A	02
07	NE	HAMILTON COUNTY	3104410025A	10–FEB–2003	03–07–347A	02
07	NE	HAMILTON COUNTY	3104410025A	05–FEB–2003	03–07–402A	02
07	NE	HAMILTON COUNTY	3104410025A	12–FEB–2003	03–07–416A	02
07	NE	HAMILTON COUNTY	3104410025A	02–APR–2003	03–07–646A	02
07	NE	HAMILTON COUNTY	3104410100A	11–APR–2003	03–07–652A	02
07	NE	HAMILTON COUNTY	3104410025A	02–APR–2003	03–07–665A	02
07	NE	HAMILTON COUNTY	3104410025A	11–APR–2003	03–07–718A	02
07	NE	HAMILTON COUNTY	3104410075A	21–MAY–2003	03–07–835A	02
07	NE	HARTINGTON, CITY OF	3103760005A	19–MAR–2003	03–07–489A	02
07	NE	HARTINGTON, CITY OF	3103760005A	19–MAR–2003	03–07–490A	02
07	NE	HARTINGTON, CITY OF	3103760005A	02–APR–2003	03–07–491A	02
07	NE	HENDERSON, CITY OF	310378—01A	19–FEB–2003	03–07–247A	02
07	NE	HENDERSON, CITY OF	310378—01A	05–FEB–2003	03–07–390A	02
07	NE	HOWARD COUNTY	3104460100A	11–APR–2003	03–07–186A	01
07	NE	HOWARD COUNTY	3104460100A	30–APR–2003	03–07–322A	02
07	NE	LINCOLN, CITY OF	31109C0310E	29–JAN–2003	02–07–968A	01
07	NE	LINCOLN, CITY OF	31109C0305E	03–JAN–2003	03–07–077A	02
07	NE	LINCOLN, CITY OF	31109C0310E	13–JUN–2003	03–07–1013A	02
07	NE	LINCOLN, CITY OF	31109C0305E	27–JUN–2003	03–07–1082A	02
07	NE	LINCOLN, CITY OF	31109C0430E	10–FEB–2003	03–07–118P	06
07	NE	LINCOLN, CITY OF	31109C0315E	05–FEB–2003	03–07–146A	02
07	NE	LINCOLN, CITY OF	31109C0315E	03–JAN–2003	03–07–228A	01
07	NE	LINCOLN, CITY OF	31109C0285E	05–FEB–2003	03–07–276A	01
07	NE	LINCOLN, CITY OF	31109C0317E	24–JAN–2003	03–07–378A	02
07	NE	LINCOLN, CITY OF	31109C0310E	29–JAN–2003	03–07–379A	02
07	NE	LINCOLN, CITY OF	31109C0305E	12–MAR–2003	03–07–388A	01
07	NE	LINCOLN, CITY OF	31109C0305E	23–APR–2003	03–07–429A	01

Region	State	Community	Map panel	Determination date	Case No.	Type
07	NE	LINCOLN, CITY OF	31109C0215E	09–MAY–2003	03–07–532A	01
07	NE	LINCOLN, CITY OF	31109C0305E	07–MAR–2003	03–07–560A	02
07	NE	LINCOLN, CITY OF	31109C0310E	19–MAR–2003	03–07–621A	02
07	NE	LINCOLN, CITY OF	31109C0310E	14–MAR–2003	03–07–622A	02
07	NE	LINCOLN, CITY OF	31109C0305E	21–MAR–2003	03–07–659A	02
07	NE	LINCOLN, CITY OF	31109C0318E	18–APR–2003	03–07–791A	02
07	NE	LINCOLN, CITY OF	31109C0315E	07–MAY–2003	03–07–836A	02
07	NE	LINCOLN, CITY OF	31109C0317E	16–MAY–2003	03–07–839A	02
07	NE	LINCOLN, CITY OF	31109C0310E	04–JUN–2003	03–07–979A	02
07	NE	MERRICK COUNTY	3104570075A	17–JAN–2003	03–07–356A	02
07	NE	MERRICK COUNTY	3104570075A	24–JAN–2003	03–07–357A	02
07	NE	MERRICK COUNTY	3104570175B	29–JAN–2003	03–07–387A	02
07	NE	MERRICK COUNTY	3104570175B	29–JAN–2003	03–07–395A	02
07	NE	MERRICK COUNTY	3104570200B	12–FEB–2003	03–07–417A	02
07	NE	MERRICK COUNTY	3104570200B	12–FEB–2003	03–07–443A	02
07	NE	MERRICK COUNTY	3104570200B	12–FEB–2003	03–07–444A	02
07	NE	MERRICK COUNTY	3104570075A	14–MAR–2003	03–07–485A	02
07	NE	MERRICK COUNTY	3104570150A	26–FEB–2003	03–07–525A	02
07	NE	MERRICK COUNTY	3104570150A	26–MAR–2003	03–07–531A	02
07	NE	MERRICK COUNTY	3104570175B	28–FEB–2003	03–07–558A	02
07	NE	MERRICK COUNTY	3104570150A	12–MAR–2003	03–07–581A	02
07	NE	MERRICK COUNTY	3104570175B	28–MAR–2003	03–07–587A	02
07	NE	MERRICK COUNTY	3104570150A	26–MAR–2003	03–07–590A	02
07	NE	MERRICK COUNTY	3104570125B	16–MAY–2003	03–07–823A	02
07	NE	MERRICK COUNTY	3104570200B	23–MAY–2003	03–07–833A	02
07	NE	MERRICK COUNTY	3104570150A	21–MAY–2003	03–07–858A	02
07	NE	MERRICK COUNTY	3104570050A	18–JUN–2003	03–07–860A	02
07	NE	MERRICK COUNTY	3104570175B	06–JUN–2003	03–07–901A	01
07	NE	OMAHA, CITY OF	3152740030F	15–JAN–2003	02–07–1146A	02
07	NE	OMAHA, CITY OF	3152740010F	03–JAN–2003	03–07–203A	01
07	NE	OMAHA, CITY OF	3152740025F	03–JAN–2003	03–07–203A	01
07	NE	OMAHA, CITY OF	3152740025F	06–JUN–2003	03–07–964A	02
07	NE	PLATTE COUNTY	3104670225D	11–APR–2003	03–07–326A	02
07	NE	PLATTE COUNTY	3104670200D	04–APR–2003	03–07–565A	02
07	NE	SALINE COUNTY	3104720050A	11–JUN–2003	03–07–424A	02
07	NE	SCHUYLER, CITY OF	31004600108	22–JAN–2003	03–07–307A	02
07	NE	SCHUYLER, CITY OF	31037C0130C	21–MAR–2003	03–07–350A	02
07	NE	SCOTTS BLUFF COUNTY	3104730150A	14–FEB–2003	03–07–149A	01
07	NE	SIDNEY, CITY OF	3100390010B	11–JUN–2003	03–07–711A	02
07	NE	SUTTON, CITY OF	31004501B	10–JAN–2003	03–07–209A	02
07	NE	SUTTON, CITY OF	310045—01B	29–JAN–2003	03–07–252A	02
07	NE	VALLEY, CITY OF	3100780004B	28–FEB–2003	03–07–318A	02
07	NE	VALLEY, CITY OF	3100780001B	20–JUN–2003	03–07–983A	02
07	NE	YORK COUNTY	3104860006B	14–MAY–2003	03–07–578A	02
08	CO	ADAMS COUNTY	08001C0030G	29–MAY–2003	02–08–211P	05
08	CO	ADAMS COUNTY	08001C0036G	29–MAY–2003	02–08–211P	05
08	CO	ADAMS COUNTY	08001C0045G	30–JAN–2003	02–08–283P	05
08	CO	ADAMS COUNTY	08001C0335G	30–JAN–2003	02–08–283P	05
08	CO	ARAPAHOE COUNTY	08005C0480J	02–JAN–2003	03–08–0001A	02
08	CO	ARAPAHOE COUNTY	08005C0485J	02–JAN–2003	03–08–0001A	02
08	CO	ARAPAHOE COUNTY	08005C0170J	17–MAR–2003	03–08–0158A	01
08	CO	ARAPAHOE COUNTY	08005C0280J	16–MAY–2003	03–08–0306A	17
08	CO	ARVADA, CITY OF	08059C0183E	18–JUN–2003	02–08–560V	19
08	CO	ARVADA, CITY OF	08059C0184E	18–JUN–2003	02–08–560V	19
08	CO	ARVADA, CITY OF	08059C0202E	18–JUN–2003	02–08–560V	19
08	CO	ARVADA, CITY OF	08059C0203E	18–JUN–2003	02–08–560V	19
08	CO	ARVADA, CITY OF	08059C0208E	18–JUN–2003	02–08–560V	19
08	CO	ARVADA, CITY OF	08059C0210E	18–JUN–2003	02–08–560V	19
08	CO	ARVADA, CITY OF	08059C0211E	18–JUN–2003	02–08–560V	19
08	CO	AURORA, CITY OF	0500020040E	24–APR–2003	03–08–0210P	05
08	CO	AURORA, CITY OF	0800020160E	24–APR–2003	03–08–0210P	05
08	CO	BOULDER, CITY OF	08013C0415F	27–FEB–2003	02–08–340P	05
08	CO	BOULDER, CITY OF	08013C0535F	27–FEB–2003	02–08–340P	05
08	CO	BOULDER, CITY OF	08013C0555G	27–FEB–2003	02–08–340P	05
08	CO	BOULDER, CITY OF	08013C0405F	29–JAN–2003	03–08–0127A	01
08	CO	BOULDER, CITY OF	08013C0415F	01–MAY–2003	03–08–0169A	01
08	CO	BOULDER, CITY OF	08013C0395F	11–JUN–2003	03–08–0388A	17
08	CO	BROOMFIELD, CITY AND COUNTY OF	0850730020E	26–FEB–2003	02–08–156P	05
08	CO	BROOMFIELD, CITY AND COUNTY OF	0850730020E	27–JUN–2003	03–08–0270P	05
08	CO	CANON CITY, CITY OF	0800680001D	13–MAR–2003	03–08–0206A	02
08	CO	CASTLE ROCK, TOWN OF	0800500170C	23–JUN–2003	02–08–408P	06
08	CO	CASTLE ROCK, TOWN OF	0800500186C	23–JUN–2003	02–08–408P	06
08	CO	CASTLE ROCK, TOWN OF	0800500188C	23–JUN–2003	02–08–408P	06

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08	CO	CASTLE ROCK, TOWN OF	0800500170C	24-JAN-2003	02-08-462P	06
08	CO	CHAFFEE COUNTY	0802690210B	13-MAR-2003	03-08-0232A	02
08	CO	COLORADO SPRINGS, CITY OF	08041C0751F	13-MAY-2003	03-08-0223P	05
08	CO	COLORADO SPRINGS, CITY OF	08041C0516F	25-APR-2003	03-08-0284A	01
08	CO	COLORADO SPRINGS, CITY OF	08041C0728F	09-APR-2003	03-08-0324A	02
08	CO	COLORADO SPRINGS, CITY OF	08041C0737F	01-MAY-2003	03-08-0333A	02
08	CO	COLORADO SPRINGS, CITY OF	08041C0737F	27-MAY-2003	03-08-0408A	01
08	CO	COMMERCE CITY, CITY OF	08001C0335G	30-JAN-2003	02-08-283P	05
08	CO	COMMERCE CITY, CITY OF	08001C0075G	20-JUN-2003	03-08-0419A	01
08	CO	DENVER, CITY AND COUNTY OF	0800460006D	24-APR-2003	03-08-0210P	05
08	CO	DENVER, CITY AND COUNTY OF	0800460012F	24-APR-2003	03-08-0210P	05
08	CO	DENVER, CITY AND COUNTY OF	0800460010C	21-APR-2003	03-08-0215A	02
08	CO	DENVER, CITY AND COUNTY OF	0800460018C	07-MAY-2003	03-08-0359A	02
08	CO	DOUGLAS COUNTY	0800490065C	24-APR-2003	01-08-358P	05
08	CO	DOUGLAS COUNTY	0800490070E	24-APR-2003	01-08-358P	05
08	CO	DOUGLAS COUNTY	0800490070E	16-JAN-2003	02-08-171P	05
08	CO	DOUGLAS COUNTY	0800490186C	22-MAY-2003	02-08-408P	06
08	CO	DOUGLAS COUNTY	0800490188C	22-MAY-2003	02-08-408P	06
08	CO	DOUGLAS COUNTY	0800490170C	24-JAN-2003	02-08-464P	06
08	CO	DOUGLAS COUNTY	0800490090C	25-JUN-2003	02-08-491P	05
08	CO	EAGLE COUNTY	0800510243C	03-JAN-2003	02-08-529A	02
08	CO	EAGLE COUNTY	0800510212C	07-MAY-2003	03-08-0139A	02
08	CO	EL PASO COUNTY	08041C0490F	13-MAR-2003	03-08-0084A	02
08	CO	EL PASO COUNTY	08041C0600F	08-JAN-2003	03-08-0088A	02
08	CO	EL PASO COUNTY	08041C0270F	31-MAR-2003	03-08-0106A	02
08	CO	EL PASO COUNTY	08041C0744F	26-FEB-2003	03-08-0108A	01
08	CO	EL PASO COUNTY	08041C0575F	13-MAR-2003	03-08-0113A	02
08	CO	EL PASO COUNTY	08041C0951F	13-MAR-2003	03-08-0219A	02
08	CO	EL PASO COUNTY	08041C0744F	10-MAR-2003	03-08-0283A	01
08	CO	EL PASO COUNTY	08041C0270F	21-APR-2003	03-08-0347A	02
08	CO	EL PASO COUNTY	08041C0951F	28-MAY-2003	03-08-0398A	02
08	CO	EL PASO COUNTY	08041C0754F	11-JUN-2003	03-08-0438A	02
08	CO	ERIE, TOWN OF	08013C0435F	05-FEB-2003	03-08-0138A	02
08	CO	FLORENCE, CITY OF	0800700361D	19-MAR-2003	03-08-0253A	02
08	CO	FLORENCE, CITY OF	0800700361D	03-APR-2003	03-08-0279A	02
08	CO	FLORENCE, CITY OF	0800700361D	01-MAY-2003	03-08-0335A	02
08	CO	FORT COLLINS, CITY OF	0801020008C	22-MAY-2003	02-08-499P	05
08	CO	FREMONT COUNTY	0800670342C	19-MAR-2003	02-08-269P	05
08	CO	GARFIELD COUNTY	0802051880B	02-JUN-2003	03-08-0287A	02
08	CO	GOLDEN, CITY OF	08059C0188E	18-JUN-2003	02-08-560V	19
08	CO	GOLDEN, CITY OF	08059C0277E	18-JUN-2003	02-08-560V	19
08	CO	GOLDEN, CITY OF	N/A	17-JAN-2003	03-08-0097X	06
08	CO	GREELEY, CITY OF	0802660609C	04-FEB-2003	03-08-0144A	08
08	CO	GREELEY, CITY OF	0801840002B	23-APR-2003	03-08-0278A	02
08	CO	GREELEY, CITY OF	0802660609C	09-MAY-2003	03-08-0285A	01
08	CO	GREEN MOUNTAIN FALLS, TOWN OF	08041C0467F	11-JUN-2003	03-08-0276A	02
08	CO	GUNNISON COUNTY	0800780755B	05-FEB-2003	03-08-0053A	02
08	CO	GUNNISON COUNTY	0800780475B	23-JAN-2003	03-08-0111A	02
08	CO	GUNNISON COUNTY	0800780325B	23-APR-2003	03-08-0170A	02
08	CO	GUNNISON COUNTY	0800780775B	13-MAR-2003	03-08-0202A	02
08	CO	JEFFERSON COUNTY	08059C0187E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	08059C0191E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	08059C0192E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	08059C0265E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	08059C0285E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	08059C0295E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	08059C0355E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	08059C0370E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	08059C0380E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	08059C0385E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	08059C0395E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	08059C0405E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	08059C0410E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	08059C0415E	18-JUN-2003	02-08-560V	19
08	CO	JEFFERSON COUNTY	0800870380C	25-JUN-2003	03-08-0099P	05
08	CO	JEFFERSON COUNTY	0800870360B	23-JAN-2003	03-08-0126A	02
08	CO	JEFFERSON COUNTY	0800870270B	02-MAY-2003	03-08-0221A	02
08	CO	JEFFERSON COUNTY	0800870170B	16-APR-2003	03-08-0248A	02
08	CO	JEFFERSON COUNTY	08059C0410E	26-JUN-2003	03-08-0456P	05
08	CO	LA PLATA COUNTY	0800970259C	02-JUN-2003	03-08-0396A	02
08	CO	LA PLATA COUNTY	0800970384C	25-JUN-2003	03-08-0430A	02
08	CO	LAKEWOOD, CITY OF	08059C0194E	18-JUN-2003	02-08-560V	19
08	CO	LAKEWOOD, CITY OF	08059C0285E	18-JUN-2003	02-08-560V	19

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08	CO	LAKEWOOD, CITY OF	08059C0302E	18–JUN–2003	02–08–560V	19
08	CO	LAKEWOOD, CITY OF	08059C0305E	18–JUN–2003	02–08–560V	19
08	CO	LAKEWOOD, CITY OF	08059C0310E	18–JUN–2003	02–08–560V	19
08	CO	LAKEWOOD, CITY OF	08059C0315E	18–JUN–2003	02–08–560V	19
08	CO	LAKEWOOD, CITY OF	0850750010C	05–JUN–2003	03–08–0090P	05
08	CO	LAKEWOOD, CITY OF	0850750005C	09–APR–2003	03–08–0258A	02
08	CO	LAKEWOOD, CITY OF	0850750005C	25–APR–2003	03–08–0331A	02
08	CO	LAKEWOOD, CITY OF	0850750010C	27–MAY–2003	03–08–0356A	02
08	CO	LAKEWOOD, CITY OF	08059C0305E	18–JUN–2003	03–08–0392A	02
08	CO	LARIMER COUNTY	0801010204B	07–MAY–2003	03–08–0363A	02
08	CO	LIMON, TOWN OF	0801090001B	16–APR–2003	03–08–0307A	02
08	CO	LITTLETON, CITY OF	0800170010D	27–MAR–2003	03–08–0259A	02
08	CO	LITTLETON, CITY OF	0800170005D	18–JUN–2003	03–08–0460P	06
08	CO	LITTLETON, CITY OF	080017IND0	18–JUN–2003	03–08–0460P	06
08	CO	LOUISVILLE, CITY OF	08013C0559G	23–JAN–2003	03–08–0130A	01
08	CO	LOUISVILLE, CITY OF	08013C0559G	17–MAR–2003	03–08–0185A	01
08	CO	LOUISVILLE, CITY OF	08013C0559G	07–MAY–2003	03–08–0288A	02
08	CO	MANITOU SPRINGS, CITY OF	08041C0706F	13–MAR–2003	03–08–0231A	02
08	CO	MANITOU SPRINGS, CITY OF	08041C0707F	02–MAY–2003	03–08–0274A	02
08	CO	MANITOU SPRINGS, CITY OF	08041C0706F	06–JUN–2003	03–08–0367A	02
08	CO	PALMER LAKE, TOWN OF	08041C0260F	04–JUN–2003	03–08–0314A	17
08	CO	PARKER, TOWN OF	0803100070D	16–JAN–2003	02–08–171P	05
08	CO	PARKER, TOWN OF	0803100090B	25–JUN–2003	02–08–491P	05
08	CO	PUEBLO COUNTY	0801470225B	26–FEB–2003	03–08–0176A	02
08	CO	PUEBLO COUNTY	0801470225B	23–APR–2003	03–08–0266A	02
08	CO	ROUTT COUNTY	0801560295A	07–APR–2003	03–08–0282A	02
08	CO	SHERIDAN, CITY OF	08005C0145J	18–JUN–2003	03–08–0451A	02
08	CO	STEAMBOAT SPRINGS, CITY OF	0801590002C	11–APR–2003	03–08–0182A	02
08	CO	SUPERIOR, TOWN OF	08013C0562G	18–JUN–2003	03–08–0444P	06
08	CO	SUPERIOR, TOWN OF	08013C0566G	18–JUN–2003	03–08–0444P	06
08	CO	SUPERIOR, TOWN OF	08013C0567G	18–JUN–2003	03–08–0444P	06
08	CO	SUPERIOR, TOWN OF	08013CIND0A	18–JUN–2003	03–08–0444P	06
08	CO	THORNTON, CITY OF	08001C0335G	30–JAN–2003	02–08–283P	05
08	CO	VAIL, TOWN OF	0800540002C	18–JUN–2003	03–08–0465A	02
08	CO	WELD COUNTY	0802660855C	02–JAN–2003	03–08–0025A	02
08	CO	WELD COUNTY	0802660750C	25–APR–2003	03–08–0254A	02
08	CO	WELD COUNTY	0802660480C	27–JUN–2003	03–08–0404A	02
08	CO	WESTMINSTER, CITY OF	0800080001B	29–MAY–2003	02–08–211P	05
08	CO	WESTMINSTER, CITY OF	08059C0084E	18–JUN–2003	02–08–560V	19
08	CO	WESTMINSTER, CITY OF	08059C0092E	18–JUN–2003	02–08–560V	19
08	CO	WESTMINSTER, CITY OF	08059C0093E	18–JUN–2003	02–08–560V	19
08	CO	WESTMINSTER, CITY OF	08059C0208E	18–JUN–2003	02–08–560V	19
08	CO	WESTMINSTER, CITY OF	0800080010C	20–JAN–2003	03–08–0044P	06
08	CO	WHEAT RIDGE, CITY OF	08059C0194E	18–JUN–2003	02–08–560V	19
08	CO	WHEAT RIDGE, CITY OF	08059C0215E	18–JUN–2003	02–08–560V	19
08	CO	WHEAT RIDGE, CITY OF	0850790005C	12–FEB–2003	03–08–0203A	02
08	CO	WHEAT RIDGE, CITY OF	0850790005C	07–APR–2003	03–08–0205P	06
08	MT	ANACONDA-DEER LODGE COUNTY	3000170040B	01–MAY–2003	03–08–0303A	02
08	MT	BOZEMAN, CITY OF	3000280016C	21–MAY–2003	03–08–0252A	02
08	MT	BOZEMAN, CITY OF	3000280016C	21–MAY–2003	03–08–0339A	02
08	MT	BUTTE-SILVER BOW COUNTY	3000770340D	16–APR–2003	03–08–0271A	02
08	MT	BUTTE-SILVER BOW COUNTY	3000770193D	16–APR–2003	03–08–0297A	02
08	MT	CARBON COUNTY	3001390315C	05–FEB–2003	03–08–0137A	02
08	MT	CARBON COUNTY	3001390315A	10–MAR–2003	03–08–0200A	02
08	MT	CARBON COUNTY	3001390315C	16–APR–2003	03–08–0290X	02
08	MT	CASCADE COUNTY	3000080415A	10–MAR–2003	02–08–540A	17
08	MT	CASCADE COUNTY	3000080240C	26–FEB–2003	03–08–0260A	02
08	MT	CASCADE COUNTY	3000080415B	19–MAR–2003	03–08–0299X	17
08	MT	CASCADE COUNTY	3000080409B	23–APR–2003	03–08–0317A	02
08	MT	FLATHEAD COUNTY	3000231845E	04–FEB–2003	03–08–0154A	02
08	MT	FLATHEAD COUNTY	3000232315D	04–FEB–2003	03–08–0156A	02
08	MT	FLATHEAD COUNTY	3000232290C	13–MAR–2003	03–08–0224A	02
08	MT	FLATHEAD COUNTY	3000231845E	09–APR–2003	03–08–0255A	02
08	MT	FLATHEAD COUNTY	3000231820F	21–MAY–2003	03–08–0381A	17
08	MT	FLATHEAD COUNTY	3000232315D	25–JUN–2003	03–08–0457A	02
08	MT	GALLATIN COUNTY	3000270190B	21–JAN–2003	03–08–0075A	02
08	MT	GRANITE COUNTY	3001410575A	06–MAR–2003	03–08–0186A	02
08	MT	GRANITE COUNTY	3001410525A	09–APR–2003	03–08–0245A	01
08	MT	JEFFERSON COUNTY	3001540550B	25–JUN–2003	03–08–0262A	02
08	MT	LAKE COUNTY	30047C0015B	21–JAN–2003	03–08–0129A	02
08	MT	LAKE COUNTY	30047C0015B	19–MAR–2003	03–08–0246A	02
08	MT	LAKE COUNTY	30047C0015B	02–MAY–2003	03–08–0341A	02
08	MT	LAKE COUNTY	30047C0100B	28–MAY–2003	03–08–0387A	02

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08	MT	LAKE COUNTY	30047C0175B	27–JUN–2003	03–08–0395A	02
08	MT	LEWIS AND CLARK COUNTY	3000381570D	24–MAR–2003	03–08–0220A	02
08	MT	LINCOLN COUNTY	3001570595B	12–MAR–2003	02–08–032P	06
08	MT	LINCOLN COUNTY	3001570325B	09–MAY–2003	03–08–0228A	02
08	MT	LINCOLN COUNTY	3001570650B	09–MAY–2003	03–08–0310A	02
08	MT	LINCOLN COUNTY	3001570475B	09–MAY–2003	03–08–0328A	02
08	MT	LINCOLN COUNTY	3001570620B	09–MAY–2003	03–08–0354A	02
08	MT	MISSOULA COUNTY	30063C1190D	18–JUN–2003	03–08–0296A	02
08	MT	PARK COUNTY	3001600016B	08–JAN–2003	03–08–0119A	02
08	MT	PARK COUNTY	3001600020B	21–JAN–2003	03–08–0122A	02
08	MT	PARK COUNTY	3001600017B	03–JAN–2003	03–08–0151X	02
08	MT	RAVALLI COUNTY	30081C0110C	19–MAR–2003	03–08–0098A	17
08	MT	RAVALLI COUNTY	30081C0110C	23–JAN–2003	03–08–0125A	02
08	MT	RAVALLI COUNTY	30081C0045C	16–APR–2003	03–08–0209A	02
08	MT	RAVALLI COUNTY	30081C0120C	21–APR–2003	03–08–0373X	17
08	MT	RAVALLI COUNTY	30081C0110C	25–JUN–2003	03–08–0468X	02
08	MT	SUPERIOR, TOWN OF	3001280005A	23–MAY–2003	02–08–440P	06
08	MT	THREE FORKS, CITY OF	3000290001B	12–FEB–2003	03–08–0143A	01
08	MT	THREE FORKS, CITY OF	3000290001B	27–MAR–2003	03–08–0257A	02
08	ND	BISMARCK, CITY OF	3801490025A	15–JAN–2003	02–08–475A	01
08	ND	BISMARCK, CITY OF	3801490025A	15–JAN–2003	03–08–0063A	01
08	ND	BISMARCK, CITY OF	3801490020B	09–APR–2003	03–08–0140A	01
08	ND	BISMARCK, CITY OF	3801490020B	17–MAR–2003	03–08–0166A	01
08	ND	BISMARCK, CITY OF	3801490025A	13–MAR–2003	03–08–0201A	01
08	ND	BURLEIGH COUNTY	3800170780A	02–MAY–2003	03–08–0352A	02
08	ND	FARGO, CITY OF	3853640030D	10–FEB–2003	03–08–0136A	01
08	ND	GRAFTON, CITY OF	3801370001C	06–MAR–2003	03–08–0159A	01
08	ND	GRAFTON, CITY OF	3801370003C	06–MAR–2003	03–08–0204A	02
08	ND	GRAFTON, CITY OF	3801370001C	07–APR–2003	03–08–0275A	02
08	ND	GRAND FORKS COUNTY	3800330004B	27–JUN–2003	03–08–0399A	02
08	ND	GRAND FORKS, CITY OF	3853650010D	10–FEB–2003	03–08–0171A	01
08	ND	GRAND FORKS, CITY OF	3853650010D	10–FEB–2003	03–08–0178A	01
08	ND	GRAND FORKS, CITY OF	3853650010D	10–FEB–2003	03–08–0181A	01
08	ND	HARWOOD, CITY OF	3803380002C	23–JAN–2003	02–08–542A	01
08	ND	HARWOOD, CITY OF	3803380001C	14–MAY–2003	03–08–0325A	01
08	ND	HARWOOD, CITY OF	3803380002C	14–MAY–2003	03–08–0325A	01
08	ND	HAZEN, CITY OF	3800670005D	13–MAR–2003	03–08–0226A	02
08	ND	MANDAN, CITY OF	3800720020B	06–MAR–2003	03–08–0134A	01
08	ND	MANDAN, CITY OF	3800720020B	06–MAR–2003	03–08–0172A	01
08	ND	MANDAN, CITY OF	3800720020B	27–MAR–2003	03–08–0227A	01
08	ND	MAYVILLE, CITY OF	3801330001B	25–APR–2003	03–08–0157A	02
08	ND	STANLEY, TOWNSHIP OF	3802580005B	17–MAR–2003	03–08–0168A	02
08	ND	STANLEY, TOWNSHIP OF	3802580005B	03–MAR–2003	03–08–0189A	01
08	ND	STANLEY, TOWNSHIP OF	3802580005B	19–MAR–2003	03–08–0207A	02
08	ND	WALCOTT, TOWNSHIP OF	3800980002B	03–APR–2003	03–08–0222A	01
08	ND	WALSH COUNTY	3801350014B	23–APR–2003	03–08–0263A	02
08	ND	WALSH COUNTY	3801350014B	23–APR–2003	03–08–0264A	01
08	SD	ABERDEEN, CITY OF	46013C0330C	02–JAN–2003	02–08–414A	01
08	SD	ABERDEEN, CITY OF	46013C0330C	10–FEB–2003	03–08–0107A	01
08	SD	ABERDEEN, CITY OF	46013C0265C	01–MAY–2003	03–08–0291A	01
08	SD	ABERDEEN, CITY OF	46013C0265C	01–MAY–2003	03–08–0348A	02
08	SD	ABERDEEN, CITY OF	46013C0310C	07–MAY–2003	03–08–0361A	02
08	SD	ABERDEEN, CITY OF	46013C0265C	11–JUN–2003	03–08–0368A	01
08	SD	ABERDEEN, CITY OF	46013C0265C	04–JUN–2003	03–08–0417A	02
08	SD	ABERDEEN, CITY OF	46013C0265C	04–JUN–2003	03–08–0427A	01
08	SD	BEADLE COUNTY	4602510003B	04–FEB–2003	03–08–0194A	02
08	SD	BROOKINGS, CITY OF	4600040005B	03–APR–2003	03–08–0187A	01
08	SD	BROWN COUNTY	46013C0265C	16–APR–2003	03–08–0345A	02
08	SD	CUSTER, CITY OF	4600190001E	25–JUN–2003	03–08–0455A	17
08	SD	DELL RAPIDS, CITY OF	4600590001A	25–JUN–2003	03–08–0470A	02
08	SD	GROTON, CITY OF	46013C0352C	04–JUN–2003	03–08–0377A	02
08	SD	GROTON, CITY OF	46013C0352C	04–JUN–2003	03–08–0420A	02
08	SD	GROTON, CITY OF	46013C0352C	27–JUN–2003	03–08–0473A	01
08	SD	LAKE COUNTY	4602760150B	19–MAR–2003	03–08–0068A	02
08	SD	LAKE COUNTY	4602760150B	21–MAY–2003	03–08–0376A	02
08	SD	LAWRENCE COUNTY	4600940200B	03–MAR–2003	03–08–0148A	01
08	SD	LINCOLN COUNTY	4602770004B	27–MAR–2003	03–08–0218A	02
08	SD	LINCOLN COUNTY	4602770001B	25–JUN–2003	03–08–0383A	02
08	SD	MADISON, CITY OF	4600440001B	18–JUN–2003	03–08–0426A	02
08	SD	MINNEHAHA COUNTY	4600570055C	06–MAY–2003	99–08–412V	19
08	SD	MINNEHAHA COUNTY	4600570065C	06–MAY–2003	99–08–412V	19
08	SD	MINNEHAHA COUNTY	4600570100C	06–MAY–2003	99–08–412V	19
08	SD	MINNEHAHA COUNTY	4600570110C	06–MAY–2003	99–08–412V	19

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08	SD	MINNEHAHA COUNTY	4600570170C	06–MAY–2003	99–08–412V	19
08	SD	MINNEHAHA COUNTY	4600570200C	06–MAY–2003	99–08–412V	19
08	SD	NEW UNDERWOOD, CITY OF	4600920001D	16–APR–2003	03–08–0315A	02
08	SD	PENNINGTON COUNTY	4600640767C	04–FEB–2003	02–08–254P	06
08	SD	PENNINGTON COUNTY	4600640769B	04–FEB–2003	02–08–254P	06
08	SD	PHILIP, CITY OF	460033—01B	10–MAR–2003	03–08–0100A	02
08	SD	PHILIP, CITY OF	460033—01B	10–MAR–2003	03–08–0142A	02
08	SD	PHILIP, CITY OF	460033—01B	10–MAR–2003	03–08–0149A	02
08	SD	RAPID CITY, CITY OF	4654200003F	26–FEB–2003	03–08–0177A	02
08	SD	RAPID CITY, CITY OF	4654200006F	10–MAR–2003	03–08–0208A	02
08	SD	RAPID CITY, CITY OF	4654200003F	18–JUN–2003	03–08–0428A	02
08	SD	SIOUX FALLS, CITY OF	4600600015C	02–MAY–2003	03–08–0217A	01
08	SD	SIOUX FALLS, CITY OF	4600570110B	26–FEB–2003	03–08–0261X	01
08	SD	SPEARFISH, CITY OF	4600460004E	06–FEB–2003	00–08–177V	19
08	SD	SPEARFISH, CITY OF	4600460005E	06–FEB–2003	00–08–177V	19
08	SD	UNION COUNTY	460242—40D	21–JAN–2003	03–08–0093A	01
08	SD	UNION COUNTY	460242——23D	09–JAN–2003	03–08–0105A	02
08	SD	UNION COUNTY	460242—40D	05–FEB–2003	03–08–0160A	02
08	SD	UNION COUNTY	460242—32D	09–MAY–2003	03–08–0371A	02
08	SD	UNION COUNTY	4602420040D	20–JUN–2003	03–08–0450A	02
08	SD	WATERTOWN, CITY OF	4600160010B	02–JAN–2003	02–08–512A	01
08	SD	WATERTOWN, CITY OF	4600160010B	27–MAY–2003	03–08–0344A	02
08	UT	BOUNTIFUL, CITY OF	4900390005C	12–FEB–2003	02–08–347P	06
08	UT	BOX ELDER COUNTY	4900050027C	06–MAR–2003	03–08–0021A	02
08	UT	CEDAR CITY, CITY OF	4900740003B	11–JUN–2003	03–08–0146A	01
08	UT	CEDAR CITY, CITY OF	4900740004B	11–JUN–2003	03–08–0146A	01
08	UT	DRAPER, CITY OF	49035C0444F	31–MAR–2003	03–08–0273X	05
08	UT	DRAPER, CITY OF	49035C0463E	31–MAR–2003	03–08–0273X	05
08	UT	FARMINGTON, CITY OF	4900440002D	27–JAN–2003	03–08–0132A	02
08	UT	FARMINGTON, CITY OF	4900440002D	11–JUN–2003	03–08–0391A	02
08	UT	GARFIELD COUNTY	4900650450B	03–APR–2003	03–08–0256A	02
08	UT	HERRIMAN, TOWN OF	49035C0420E	23–APR–2003	03–08–0045P	06
08	UT	HERRIMAN, TOWN OF	49035C0575E	23–APR–2003	03–08–0045P	06
08	UT	LEHI, CITY OF	4902090110C	02–MAY–2003	03–08–0289A	01
08	UT	LOGAN, CITY OF	4900190005B	20–FEB–2003	03–08–0183A	02
08	UT	MURRAY, CITY OF	49035C0291F	09–JAN–2003	03–08–0073A	01
08	UT	MURRAY, CITY OF	49035C0292F	09–JAN–2003	03–08–0073A	01
08	UT	OAKLEY, TOWN OF	4901380001B	04–FEB–2003	03–08–0131A	02
08	UT	OAKLEY, TOWN OF	4901380001B	09–APR–2003	03–08–0244A	02
08	UT	PARK CITY, CITY OF	4901390005B	03–MAR–2003	03–08–0192A	02
08	UT	RIVERTON, CITY OF	49035C0440F	15–JAN–2003	03–08–0079A	02
08	UT	RIVERTON, CITY OF	49035C0440F	03–APR–2003	03–08–0330A	02
08	UT	SALT LAKE CITY, CITY OF	49035C0143E	21–JAN–2003	03–08–0052A	02
08	UT	SALT LAKE CITY, CITY OF	49035C0143E	02–JAN–2003	03–08–0109A	02
08	UT	SALT LAKE CITY, CITY OF	49035C0301E	05–FEB–2003	03–08–0147A	02
08	UT	SALT LAKE COUNTY	49035C0420E	23–APR–2003	03–08–0045P	06
08	UT	SALT LAKE COUNTY	49035C0575E	23–APR–2003	03–08–0045P	06
08	UT	SALT LAKE COUNTY	49035C0458E	12–FEB–2003	03–08–0118A	02
08	UT	SALT LAKE COUNTY	49035C0452E	19–MAR–2003	03–08–0211A	02
08	UT	SALT LAKE COUNTY	49035C0188E	31–MAR–2003	03–08–0267A	02
08	UT	SALT LAKE COUNTY	49035C0458E	23–APR–2003	03–08–0280A	02
08	UT	SALT LAKE COUNTY	49035C0304E	23–APR–2003	03–08–0316A	02
08	UT	SANDY CITY, CITY OF	49035C0462E	01–MAY–2003	03–08–0135A	02
08	UT	SANDY CITY, CITY OF	49035C0462E	23–APR–2003	03–08–0319A	02
08	UT	SARATOGA SPRINGS, CITY OF	4902500115A	08–JAN–2003	03–08–0074A	01
08	UT	SOUTH JORDAN, CITY OF	49035C0441F	20–JUN–2003	03–08–0412A	02
08	UT	SPANISH FORK, CITY OF	4902410025A	16–FEB–2003	01–08–306P	05
08	UT	ST. GEORGE, CITY OF	4901770050D	27–MAR–2003	02–08–101P	05
08	UT	ST. GEORGE, CITY OF	4901770029D	16–MAY–2003	03–08–0301A	02
08	UT	SUMMIT COUNTY	4901340550B	19–FEB–2003	03–08–0161A	02
08	UT	SUMMIT COUNTY	4901340525B	11–APR–2003	03–08–0346A	02
08	UT	UINTAH COUNTY	4901470014C	19–MAR–2003	03–08–0031A	02
08	UT	UINTAH COUNTY	4901470014C	05–FEB–2003	03–08–0153A	02
08	UT	WASHINGTON,CITY OF	4901820015C	19–MAR–2003	02–08–546A	01
08	UT	WASHINGTON,CITY OF	4901820015C	17–MAR–2003	03–08–0057A	02
08	UT	WASHINGTON,CITY OF	4901820015C	26–FEB–2003	03–08–0175A	02
08	UT	WASHINGTON,CITY OF	4901820015C	27–JUN–2003	03–08–0421A	02
08	UT	WEBER COUNTY	4901870175B	27–JUN–2003	03–08–0386A	02
08	UT	WOODS CROSS, CITY OF	490054B—01	12–FEB–2003	02–08–347P	06
08	WY	CASPER, CITY OF	5600370010C	09–APR–2003	03–08–0292A	02
08	WY	CHEYENNE, CITY OF	5600300005E	06–MAR–2003	03–08–0115A	02
08	WY	GILLETTE, CITY OF	5600070005C	07–MAY–2003	03–08–0369A	02
08	WY	JACKSON, TOWN OF	56039C0660B	23–APR–2003	03–08–0326A	02

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08	WY	LARAMIE COUNTY	5600290500D	12–FEB–2003	03–08–0150A	02
08	WY	LARAMIE COUNTY	5600290505D	27–MAY–2003	03–08–0173A	02
08	WY	PARK COUNTY	5600850029B	23–APR–2003	03–08–0191A	02
08	WY	PARK COUNTY	5600850029B	16–MAY–2003	03–08–0337A	02
08	WY	ROCK SPRINGS, CITY OF	5600510005E	11–JUN–2003	03–08–0322A	02
08	WY	SHERIDAN, CITY OF	5600440005D	12–FEB–2003	03–08–0050A	17
08	WY	TETON COUNTY	56039C0800B	03–MAR–2003	03–08–0193A	02
08	WY	WORLAND, CITY OF	5600560001C	09–MAY–2003	03–08–0351A	01
09	AZ	AVONDALE, CITY OF	04013C2080H	22–MAY–2003	02–09–190P	05
09	AZ	AVONDALE, CITY OF	04013C2090G	22–MAY–2003	02–09–190P	05
09	AZ	AVONDALE, CITY OF	04013C2080H	12–FEB–2003	03–09–0278P	05
09	AZ	BUCKEYE, TOWN OF	04013C1570F	20–MAY–2003	03–09–0245P	05
09	AZ	BUCKEYE, TOWN OF	04013C2035G	20–MAY–2003	03–09–0245P	05
09	AZ	CASA GRANDE, CITY OF	0400800010C	03–MAR–2003	03–09–0480A	01
09	AZ	CASA GRANDE, CITY OF	0400800010C	27–JUN–2003	03–09–1216A	01
09	AZ	CHANDLER, CITY OF	04013C3030G	07–MAY–2003	03–09–0353P	05
09	AZ	CHANDLER, CITY OF	04013C3030G	19–MAR–2003	03–09–0377A	01
09	AZ	CHANDLER, CITY OF	04013C2670G	26–FEB–2003	03–09–0530A	02
09	AZ	CHANDLER, CITY OF	04013C2670G	14–APR–2003	03–09–0695P	06
09	AZ	CHANDLER, CITY OF	04013C2670G	12–MAY–2003	03–09–0917X	06
09	AZ	COCHISE COUNTY	0400121232D	03–APR–2003	01–09–880V	19
09	AZ	COCHISE COUNTY	0400121251E	03–APR–2003	01–09–880V	19
09	AZ	COCHISE COUNTY	0400121253E	03–APR–2003	01–09–880V	19
09	AZ	COCHISE COUNTY	0400121275D	03–APR–2003	01–09–880V	19
09	AZ	COCONINO COUNTY	0400193964C	30–JAN–2003	02–09–1336P	05
09	AZ	EL MIRAGE, CITY OF	04013C1615J	15–MAY–2003	01–09–017P	05
09	AZ	EL MIRAGE, CITY OF	04013C1620G	15–MAY–2003	01–09–017P	05
09	AZ	FLAGSTAFF, CITY OF	0400200007D	13–JUN–2003	03–09–1025A	02
09	AZ	GILA COUNTY	0400280285B	09–MAY–2003	03–09–0730A	17
09	AZ	GILBERT, TOWN OF	04013C2670G	20–FEB–2003	03–09–0085A	01
09	AZ	GILBERT, TOWN OF	04013C2655F	21–APR–2003	03–09–0328A	01
09	AZ	GILBERT, TOWN OF	04013C2655F	13–MAR–2003	03–09–0485A	01
09	AZ	GILBERT, TOWN OF	04013C2655F	09–APR–2003	03–09–0617A	01
09	AZ	GILBERT, TOWN OF	04013C2660F	07–APR–2003	03–09–0646A	01
09	AZ	GILBERT, TOWN OF	04013C2680G	13–JUN–2003	03–09–0931A	01
09	AZ	GLENDALE, CITY OF	04013C1615J	15–MAY–2003	01–09–017P	05
09	AZ	GLENDALE, CITY OF	04013C1620G	15–MAY–2003	01–09–017P	05
09	AZ	GLENDALE, CITY OF	04013C1645F	27–MAR–2003	03–09–0497A	01
09	AZ	GOODYEAR, CITY OF	04013C2060F	08–JAN–2003	02–09–1489A	01
09	AZ	GOODYEAR, CITY OF	04013C2060F	21–JAN–2003	02–09–272P	06
09	AZ	GOODYEAR, CITY OF	04013C2080H	21–JAN–2003	02–09–272P	06
09	AZ	LITCHFIELD PARK, CITY OF	04013C2060F	21–JAN–2003	02–09–272P	06
09	AZ	LITCHFIELD PARK, CITY OF	04013C2080H	21–JAN–2003	02–09–272P	06
09	AZ	MARANA, TOWN OF	04019C0980K	23–MAY–2003	02–09–1386P	06
09	AZ	MARANA, TOWN OF	04019C1605K	27–JAN–2003	02–09–1491A	02
09	AZ	MARICOPA COUNTY	04013C1615J	15–MAY–2003	01–09–017P	05
09	AZ	MARICOPA COUNTY	04013C1620G	15–MAY–2003	01–09–017P	05
09	AZ	MARICOPA COUNTY	04013C0780G	23–JAN–2003	03–09–0234A	02
09	AZ	MARICOPA COUNTY	04013C0780G	26–FEB–2003	03–09–0248A	01
09	AZ	MARICOPA COUNTY	04013C0375F	24–APR–2003	03–09–0302P	06
09	AZ	MARICOPA COUNTY	04013C0795G	04–FEB–2003	03–09–0380A	02
09	AZ	MARICOPA COUNTY	04013C0780G	10–MAR–2003	03–09–0609X	01
09	AZ	MESA, CITY OF	04013C2180F	17–APR–2003	02–09–950P	05
09	AZ	MESA, CITY OF	04013C2185F	17–APR–2003	02–09–950P	05
09	AZ	MESA, CITY OF	04013C2190F	17–APR–2003	02–09–950P	05
09	AZ	MESA, CITY OF	04013C2195F	17–APR–2003	02–09–950P	05
09	AZ	MESA, CITY OF	04013C2195F	13–MAR–2003	03–09–0375A	01
09	AZ	MESA, CITY OF	04013C2195F	13–JUN–2003	03–09–0835A	01
09	AZ	MOHAVE COUNTY	0400582350C	27–JAN–2003	03–09–0263A	02
09	AZ	MOHAVE COUNTY	0400580025B	11–APR–2003	03–09–0443A	02
09	AZ	MOHAVE COUNTY	0400582140C	25–JUN–2003	03–09–0925A	02
09	AZ	ORO VALLEY, TOWN OF	04019C1039K	31–MAR–2003	03–09–0206A	02
09	AZ	PAYSON, TOWN OF	0401070003A	20–JUN–2003	03–09–0742A	01
09	AZ	PEORIA, CITY OF	04013C1615J	15–MAY–2003	01–09–017P	05
09	AZ	PEORIA, CITY OF	04013C1620G	15–MAY–2003	01–09–017P	05
09	AZ	PHOENIX, CITY OF	04013C1665H	29–MAY–2003	03–09–0290P	05
09	AZ	PHOENIX, CITY OF	04013C2130F	29–MAY–2003	03–09–0290P	05
09	AZ	PHOENIX, CITY OF	04013C2105E	24–MAR–2003	03–09–0468A	02
09	AZ	PHOENIX, CITY OF	04013C1215J	10–APR–2003	03–09–0505P	06
09	AZ	PHOENIX, CITY OF	04013C1660G	28–MAY–2003	03–09–0508P	05
09	AZ	PHOENIX, CITY OF	04013C1655J	25–MAR–2003	03–09–0573P	06
09	AZ	PHOENIX, CITY OF	04013C1690F	09–APR–2003	03–09–0654A	02
09	AZ	PHOENIX, CITY OF	04013C1670F	27–JUN–2003	03–09–0765A	02

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09	AZ	PHOENIX, CITY OF	04013C2130F	09–MAY–2003	03–09–0846A	02
09	AZ	PHOENIX, CITY OF	04013C2155F	28–MAY–2003	03–09–0906A	02
09	AZ	PHOENIX, CITY OF	04013C1230G	18–JUN–2003	03–09–1067A	02
09	AZ	PIMA COUNTY	04019C2225K	30–JUN–2003	01–09–407P	05
09	AZ	PIMA COUNTY	04019C2825K	30–JUN–2003	01–09–407P	05
09	AZ	PIMA COUNTY	04019C1670K	08–JAN–2003	03–09–0176A	02
09	AZ	PIMA COUNTY	04019C1635K	27–JAN–2003	03–09–0288A	02
09	AZ	PIMA COUNTY	04019C1630K	03–APR–2003	03–09–0525A	17
09	AZ	PIMA COUNTY	04019C1670K	11–APR–2003	03–09–0671A	17
09	AZ	PINAL COUNTY	0400770125D	01–MAY–2003	03–09–0281A	02
09	AZ	PINAL COUNTY	0400770300C	19–FEB–2003	03–09–0303A	02
09	AZ	PINAL COUNTY	0400770450D	09–MAY–2003	03–09–0634A	01
09	AZ	PINAL COUNTY	0400771475C	14–MAY–2003	03–09–0716A	01
09	AZ	PRESCOTT, CITY OF	04025C2090F	05–FEB–2003	03–09–0369A	02
09	AZ	SCOTTSDALE, CITY OF	04013C2160E	04–FEB–2003	03–09–0086A	02
09	AZ	SCOTTSDALE, CITY OF	04013C2160E	02–JAN–2003	03–09–0183A	02
09	AZ	SCOTTSDALE, CITY OF	04013C2160E	09–JAN–2003	03–09–0203A	02
09	AZ	SCOTTSDALE, CITY OF	04013C2160E	09–MAY–2003	03–09–0843A	02
09	AZ	SCOTTSDALE, CITY OF	04013C1695G	18–JUN–2003	03–09–0860A	02
09	AZ	SIERRA VISTA, CITY OF	0400170005D	03–APR–2003	01–09–880V	19
09	AZ	SIERRA VISTA, CITY OF	0400170015D	03–APR–2003	01–09–880V	19
09	AZ	TEMPE, CITY OF	04013C2165G	21–JAN–2003	03–09–0222A	02
09	AZ	TOLLESON, CITY OF	04013C2085F	19–MAR–2003	03–09–0410A	01
09	AZ	TOLLESON, CITY OF	04013C2095E	19–MAR–2003	03–09–0410A	01
09	AZ	TUCSON, CITY OF	04019C1643K	12–FEB–2003	02–09–1252P	05
09	AZ	TUCSON, CITY OF	04019C2231K	12–FEB–2003	02–09–1252P	05
09	AZ	TUCSON, CITY OF	04019C2254K	11–APR–2003	02–09–926A	01
09	AZ	TUCSON, CITY OF	04019C2226K	09–JAN–2003	03–09–0079A	01
09	AZ	TUCSON, CITY OF	04019C2232K	10–FEB–2003	03–09–0225A	02
09	AZ	TUCSON, CITY OF	04019C2232K	05–FEB–2003	03–09–0329A	02
09	AZ	TUCSON, CITY OF	04019C2232K	11–JUN–2003	03–09–0880A	02
09	AZ	TUCSON, CITY OF	04019C2227K	06–JUN–2003	03–09–0884A	02
09	AZ	TUCSON, CITY OF	04019C2257K	21–MAY–2003	03–09–0893A	02
09	AZ	TUCSON, CITY OF	04019C2210K	11–JUN–2003	03–09–0933A	02
09	AZ	TUCSON, CITY OF	04019C2256K	25–JUN–2003	03–09–1184A	02
09	AZ	WILLCOX, CITY OF	0400180001C	27–JAN–2003	02–09–726P	05
09	CA	AGOURA HILLS, CITY OF	0650430757B	15–JAN–2003	03–09–0175A	02
09	CA	ANAHEIM, CITY OF	06059C0008F	11–JUN–2003	03–09–0733A	02
09	CA	ANDERSON, CITY OF	0603590001C	24–JUN–2003	03–09–0299P	05
09	CA	ANDERSON, CITY OF	0603590001C	25–JUN–2003	03–09–0704X	05
09	CA	ARCATA, CITY OF	0600610002E	21–JAN–2003	03–09–0229A	02
09	CA	ARROYO GRANDE, CITY OF	0603050001C	08–JAN–2003	03–09–0250A	02
09	CA	BANNING, CITY OF	0602460015B	28–MAY–2003	03–09–0710P	06
09	CA	BELMONT, CITY OF	0650160005B	08–JAN–2003	03–09–0233A	02
09	CA	BENICIA, CITY OF	0603680004C	27–JAN–2003	02–09–1518A	02
09	CA	BRAWLEY, CITY OF	0600650600B	18–JUN–2003	03–09–1099A	02
09	CA	BUENA PARK, CITY OF	06059C0005E	18–JUN–2003	02–09–1323P	05
09	CA	BUENA PARK, CITY OF	06059C0005E	18–JUN–2003	03–09–1164P	05
09	CA	BUTTE COUNTY	06007C0520C	27–JUN–2003	03–09–1095A	02
09	CA	CAMARILLO, CITY OF	0650200002B	30–JAN–2003	02–09–583P	05
09	CA	CAMARILLO, CITY OF	0650200005B	30–JAN–2003	02–09–583P	05
09	CA	CATHEDRAL CITY, CITY OF	0607040005D	25–APR–2003	03–09–0477A	02
09	CA	CATHEDRAL CITY, CITY OF	0607040005D	16–APR–2003	03–09–0583A	01
09	CA	CITRUS HEIGHTS, CITY OF	0602620090E	23–APR–2003	03–09–0499A	17
09	CA	CITRUS HEIGHTS, CITY OF	0602620085E	27–JUN–2003	03–09–0642A	02
09	CA	CLAYTON, CITY OF	0600270001C	09–MAY–2003	03–09–0387P	05
09	CA	CLAYTON, CITY OF	0600270001C	09–MAY–2003	03–09–0826A	01
09	CA	CLOVIS, CITY OF	06019C1595F	17–MAR–2003	02–09–1360A	01
09	CA	CLOVIS, CITY OF	06019C1040F	09–MAY–2003	03–09–0854A	02
09	CA	CLOVIS, CITY OF	06019C1580F	09–MAY–2003	03–09–0854A	02
09	CA	COLUSA COUNTY	06011C0535F	16–MAY–2003	99–09–1051V	19
09	CA	COLUSA COUNTY	06011C0810F	16–MAY–2003	99–09–1051V	19
09	CA	CONCORD, CITY OF	0650220006C	29–JAN–2003	03–09–0279A	02
09	CA	CONCORD, CITY OF	0650220010C	09–MAY–2003	03–09–0387P	06
09	CA	CONTRA COSTA COUNTY	0600250290C	03–APR–2003	03–09–0613A	02
09	CA	CONTRA COSTA COUNTY	0600250280C	23–APR–2003	03–09–0745A	02
09	CA	CONTRA COSTA COUNTY	0600250280C	16–MAY–2003	03–09–0836A	02
09	CA	CORONA, CITY OF	0602500005F	09–MAY–2003	03–09–0797A	02
09	CA	CORONA, CITY OF	0602500010D	09–MAY–2003	03–09–0797A	02
09	CA	CORTE MADERA, TOWN OF	0650230001B	19–MAR–2003	03–09–0409A	02
09	CA	DANVILLE, TOWN OF	0607070001B	03–APR–2003	03–09–0406A	02
09	CA	DANVILLE, TOWN OF	0607070001B	20–JUN–2003	03–09–1136A	02
09	CA	DAVIS, CITY OF	0604240009C	21–JAN–2003	03–09–0363A	02

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09	CA	DAVIS, CITY OF	0604240017C	21–JAN–2003	03–09–0363A	02
09	CA	DAVIS, CITY OF	0604240017C	21–JAN–2003	03–09–0364A	02
09	CA	DEL NORTE COUNTY	0650250025B	19–MAR–2003	03–09–0276A	02
09	CA	EAST PALO ALTO, CITY OF	0607080001B	03–APR–2003	03–09–0591A	02
09	CA	EAST PALO ALTO, CITY OF	0607080001B	09–APR–2003	03–09–0679A	01
09	CA	EL CAJON, CITY OF	06073C1662F	25–JUN–2003	03–09–0942A	02
09	CA	ELK GROVE, CITY OF	0602620320E	02–JAN–2003	03–09–0219A	02
09	CA	ELK GROVE, CITY OF	0602620315D	11–JUN–2003	03–09–0966A	02
09	CA	ESCONDIDO, CITY OF	06073C0811F	24–APR–2003	02–09–714P	05
09	CA	ESCONDIDO, CITY OF	06073C0812F	24–APR–2003	02–09–714P	05
09	CA	ESCONDIDO, CITY OF	06073C1076F	07–APR–2003	03–09–0799A	02
09	CA	ESCONDIDO, CITY OF	06073C0818F	20–JUN–2003	03–09–0968A	01
09	CA	FAIRFIELD, CITY OF	0603700009D	23–JAN–2003	03–09–0269A	01
09	CA	FAIRFIELD, CITY OF	0603700010C	02–MAY–2003	03–09–0466A	02
09	CA	FOUNTAIN VALLEY, CITY OF	06059C0037F	25–JUN–2003	03–09–0408A	02
09	CA	FREMONT,CITY OF	0650280029C	19–FEB–2003	03–09–0396A	02
09	CA	FREMONT,CITY OF	0650280033C	19–FEB–2003	03–09–0396A	02
09	CA	FREMONT,CITY OF	0650280030C	11–JUN–2003	03–09–1029A	02
09	CA	FRESNO COUNTY	06019C2600F	10–FEB–2003	03–09–0121A	01
09	CA	FRESNO COUNTY	06019C1585F	12–FEB–2003	03–09–0343A	02
09	CA	FRESNO COUNTY	06019C0700F	16–APR–2003	03–09–0516A	02
09	CA	FRESNO COUNTY	06019C1585F	27–JUN–2003	03–09–0949A	01
09	CA	FRESNO COUNTY	06019C1580F	14–MAY–2003	03–09–0983A	01
09	CA	FULLERTON, CITY OF	06059C0001E	13–MAR–2003	03–09–0148A	02
09	CA	FULLERTON, CITY OF	06059C0001E	06–JUN–2003	03–09–0879A	02
09	CA	FULLERTON, CITY OF	06059C0006E	27–JUN–2003	03–09–1141A	02
09	CA	GILROY, CITY OF	0603400004E	28–MAY–2003	03–09–0923A	02
09	CA	GLENN COUNTY	0600570400C	31–MAR–2003	03–09–0414A	01
09	CA	GONZALES, CITY OF	0601950250D	14–JAN–2003	02–09–1516P	06
09	CA	HAYWARD, CITY OF	0650330019E	10–FEB–2003	02–09–542P	05
09	CA	HAYWARD, CITY OF	0650330019E	19–MAR–2003	03–09–0444A	02
09	CA	HEALDSBURG, CITY OF	0603750530B	27–MAY–2003	03–09–0778A	01
09	CA	HEALDSBURG, CITY OF	0603780005C	27–MAY–2003	03–09–0778A	01
09	CA	HEMET, CITY OF	0602530005D	09–JAN–2003	03–09–0188A	01
09	CA	HEMET, CITY OF	0602451490C	23–APR–2003	03–09–0342A	01
09	CA	HEMET, CITY OF	0602452125B	01–MAY–2003	03–09–0476A	01
09	CA	HEMET, CITY OF	0602530005D	09–APR–2003	03–09–0621A	01
09	CA	HEMET, CITY OF	0602452125B	11–JUN–2003	03–09–0660A	01
09	CA	HEMET, CITY OF	0602530005D	21–MAY–2003	03–09–0885A	01
09	CA	HERCULES, CITY OF	0604340008B	02–JAN–2003	03–09–0006A	01
09	CA	HUNTINGTON BEACH, CITY OF	06059C0036F	16–APR–2003	03–09–0708A	02
09	CA	HUNTINGTON BEACH, CITY OF	06059C0036F	16–APR–2003	03–09–0722A	02
09	CA	HUNTINGTON BEACH, CITY OF	06059C0036F	16–APR–2003	03–09–0723A	02
09	CA	HUNTINGTON BEACH, CITY OF	06059C0036F	16–APR–2003	03–09–0750A	02
09	CA	HUNTINGTON BEACH, CITY OF	06059C0036F	21–MAY–2003	03–09–0988A	02
09	CA	HUNTINGTON BEACH, CITY OF	06059C0036F	25–JUN–2003	03–09–1185A	02
09	CA	INYO COUNTY	0600731900B	31–MAR–2003	03–09–0332A	01
09	CA	KERN COUNTY	0600750745B	27–JAN–2003	03–09–0232A	01
09	CA	KERN COUNTY	0600750580D	06–JUN–2003	03–09–0801A	02
09	CA	KERN COUNTY	0600750580D	21–MAY–2003	03–09–0889A	02
09	CA	KERN COUNTY	0600751010B	20–JUN–2003	03–09–0932A	02
09	CA	KINGS COUNTY	0600860050B	26–FEB–2003	03–09–0401A	02
09	CA	LA QUINTA, CITY OF	0607090005B	15–JAN–2003	02–09–1517A	01
09	CA	LA QUINTA, CITY OF	0607090005B	04–JUN–2003	03–09–0802A	01
09	CA	LAFAYETTE, CITY OF	0650370002C	09–JAN–2003	03–09–0152A	02
09	CA	LAKE COUNTY	0600900340A	03–JAN–2003	02–09–1415A	02
09	CA	LAKE COUNTY	0600900840B	09–JAN–2003	03–09–0261A	01
09	CA	LAKE COUNTY	0600900565B	01–MAY–2003	03–09–0776A	02
09	CA	LAKE COUNTY	0600900845B	21–MAY–2003	03–09–0878A	02
09	CA	LAKE COUNTY	0600900340A	13–JUN–2003	03–09–0905A	02
09	CA	LAKE ELSINORE, CITY OF	0606360013E	29–APR–2003	03–09–0732P	06
09	CA	LAKE ELSINORE, CITY OF	0606360014E	29–APR–2003	03–09–0732P	06
09	CA	LAKE ELSINORE, CITY OF	0606360027E	29–APR–2003	03–09–0732P	06
09	CA	LANCASTER, CITY OF	0606720010B	14–MAY–2003	03–09–0892A	02
09	CA	LEMOORE,CITY OF	0600860050B	20–FEB–2003	03–09–0446A	01
09	CA	LEMOORE,CITY OF	0600860050B	30–MAY–2003	03–09–0753P	06
09	CA	LONG BEACH, CITY OF	0601360025C	15–JAN–2003	03–09–0277A	02
09	CA	LONG BEACH, CITY OF	0601360005C	10–MAR–2003	03–09–0415V	19
09	CA	LONG BEACH, CITY OF	0601360010C	10–MAR–2003	03–09–0415V	19
09	CA	LONG BEACH, CITY OF	0601360015C	10–MAR–2003	03–09–0415V	19
09	CA	LONG BEACH, CITY OF	0601360025C	10–MAR–2003	03–09–0415V	19
09	CA	LONG BEACH, CITY OF	0601360025C	20–JUN–2003	03–09–1129A	02
09	CA	LOS ANGELES COUNTY	0650430480B	21–APR–2003	02–09–404P	05

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09	CA	LOS ANGELES COUNTY	0650430345B	30–APR–2003	03–09–0041P	06
09	CA	LOS ANGELES COUNTY	0650430460B	15–JAN–2003	03–09–0065P	06
09	CA	LOS ANGELES COUNTY	0650430757B	02–MAY–2003	03–09–0689A	17
09	CA	LOS ANGELES COUNTY	0650430345B	30–APR–2003	03–09–0694X	06
09	CA	LOS ANGELES COUNTY	0650430480B	06–JUN–2003	03–09–0796A	02
09	CA	LOS ANGELES, CITY OF	0601370069D	15–MAY–2003	03–09–0035P	05
09	CA	LOS ANGELES, CITY OF	0601370073D	03–APR–2003	03–09–0500A	02
09	CA	LOS ANGELES, CITY OF	0601370071C	13–MAR–2003	03–09–0502A	02
09	CA	LOS ANGELES, CITY OF	0601370071C	27–MAR–2003	03–09–0565A	02
09	CA	LOS ANGELES, CITY OF	0601370072E	13–JUN–2003	03–09–1056A	02
09	CA	LOS ANGELES, CITY OF	0601370054D	25–JUN–2003	03–09–1059A	02
09	CA	LOS GATOS, TOWN OF	0603430001A	22–JAN–2003	01–09–159P	05
09	CA	MADERA COUNTY	0601700615B	19–FEB–2003	03–09–0318A	02
09	CA	MADERA COUNTY	0601700225B	27–MAR–2003	03–09–0340A	02
09	CA	MARIN COUNTY	0601730250A	21–JAN–2003	03–09–0275A	02
09	CA	MARTINEZ, CITY OF	0650440002B	13–MAR–2003	03–09–0426A	02
09	CA	MENDOCINO COUNTY	0601B30803B	27–JAN–2003	03–09–0192A	01
09	CA	MENLO PARK, CITY OF	0603210008D	09–JAN–2003	03–09–0244A	02
09	CA	MENLO PARK, CITY OF	0603210008D	06–MAR–2003	03–09–0486A	02
09	CA	MENLO PARK, CITY OF	0603210008D	17–MAR–2003	03–09–0534A	02
09	CA	MENLO PARK, CITY OF	0603210008D	17–MAR–2003	03–09–0556A	02
09	CA	MENLO PARK, CITY OF	0603210007D	25–APR–2003	03–09–0792A	02
09	CA	MERCED COUNTY	06047C0440E	26–FEB–2003	03–09–0194A	01
09	CA	MERCED COUNTY	06047C0150E	27–MAR–2003	03–09–0461A	02
09	CA	MERCED COUNTY	06047C0350E	27–MAR–2003	03–09–0461A	02
09	CA	MERCED COUNTY	06047C0410E	25–APR–2003	03–09–0740A	01
09	CA	MERCED COUNTY	06047C0440E	18–JUN–2003	03–09–0903A	01
09	CA	MERCED COUNTY	06047C0445E	11–JUN–2003	03–09–0985A	02
09	CA	MERCED, CITY OF	06047C0440E	26–FEB–2003	03–09–0370A	01
09	CA	MERCED, CITY OF	06047C0440E	19–FEB–2003	03–09–0372A	01
09	CA	MERCED, CITY OF	06047C0440E	03–MAR–2003	03–09–0379A	01
09	CA	MERCED, CITY OF	06047C0420E	21–MAY–2003	03–09–0549A	01
09	CA	MERCED, CITY OF	06047C0440E	07–MAY–2003	03–09–0822A	01
09	CA	MERCED, CITY OF	06047C0440E	27–JUN–2003	03–09–0830A	01
09	CA	MERCED, CITY OF	06047C0440E	07–MAY–2003	03–09–0841A	01
09	CA	MERCED, CITY OF	06047C0440E	09–MAY–2003	03–09–0842A	01
09	CA	MERCED, CITY OF	06047C0430E	16–MAY–2003	03–09–0869A	01
09	CA	MERCED, CITY OF	06047C0430E	18–JUN–2003	03–09–0956A	02
09	CA	MILL VALLEY, CITY OF	0601770005B	09–MAY–2003	03–09–0550A	02
09	CA	MILL VALLEY, CITY OF	0601770005B	01–MAY–2003	03–09–0747A	02
09	CA	MILPITAS, CITY OF	0603440001G	08–JAN–2003	03–09–0249A	02
09	CA	MILPITAS, CITY OF	0603440001G	21–JAN–2003	03–09–0273A	02
09	CA	MILPITAS, CITY OF	0603440001G	21–JAN–2003	03–09–0282A	02
09	CA	MILPITAS, CITY OF	0603440003G	27–JAN–2003	03–09–0298A	02
09	CA	MILPITAS, CITY OF	0603440003G	10–FEB–2003	03–09–0312A	02
09	CA	MILPITAS, CITY OF	0603440001G	04–FEB–2003	03–09–0323A	02
09	CA	MILPITAS, CITY OF	0603440001G	04–FEB–2003	03–09–0327A	02
09	CA	MILPITAS, CITY OF	0603440001G	05–FEB–2003	03–09–0344A	02
09	CA	MILPITAS, CITY OF	0603440003G	12–FEB–2003	03–09–0349A	02
09	CA	MILPITAS, CITY OF	0603440003G	19–FEB–2003	03–09–0385A	02
09	CA	MILPITAS, CITY OF	0603440001G	23–JAN–2003	03–09–0405A	02
09	CA	MILPITAS, CITY OF	0603440001G	03–APR–2003	03–09–0407A	02
09	CA	MILPITAS, CITY OF	0603440003G	20–FEB–2003	03–09–0421A	02
09	CA	MILPITAS, CITY OF	0603440001G	04–FEB–2003	03–09–0442A	02
09	CA	MILPITAS, CITY OF	0603440003G	06–MAR–2003	03–09–0511A	02
09	CA	MILPITAS, CITY OF	0603440001G	20–FEB–2003	03–09–0512A	02
09	CA	MILPITAS, CITY OF	0603440001G	24–FEB–2003	03–09–0547A	02
09	CA	MILPITAS, CITY OF	0603440001G	27–MAR–2003	03–09–0584A	02
09	CA	MILPITAS, CITY OF	0603440003G	27–MAR–2003	03–09–0590A	02
09	CA	MILPITAS, CITY OF	0603440001G	24–MAR–2003	03–09–0594A	02
09	CA	MILPITAS, CITY OF	0603440003G	03–APR–2003	03–09–0626A	02
09	CA	MILPITAS, CITY OF	0603440003G	03–APR–2003	03–09–0627A	02
09	CA	MILPITAS, CITY OF	0603440003G	02–JUN–2003	03–09–0649A	02
09	CA	MILPITAS, CITY OF	0603440003G	27–MAR–2003	03–09–0650A	02
09	CA	MILPITAS, CITY OF	0603440003G	09–APR–2003	03–09–0662A	02
09	CA	MILPITAS, CITY OF	0603440001G	21–APR–2003	03–09–0719A	02
09	CA	MILPITAS, CITY OF	0603440003G	23–APR–2003	03–09–0787A	02
09	CA	MILPITAS, CITY OF	0603440003G	21–APR–2003	03–09–0794A	02
09	CA	MILPITAS, CITY OF	0603440001G	25–APR–2003	03–09–0807A	02
09	CA	MILPITAS, CITY OF	0603440003G	01–MAY–2003	03–09–0825A	02
09	CA	MILPITAS, CITY OF	0603440001G	09–MAY–2003	03–09–0851A	02
09	CA	MILPITAS, CITY OF	0603440003G	07–MAY–2003	03–09–0852A	02
09	CA	MILPITAS, CITY OF	0603440001G	16–MAY–2003	03–09–0912A	02

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09	CA	MILPITAS, CITY OF	0603440001G	09-MAY-2003	03-09-0937A	02
09	CA	MILPITAS, CITY OF	0603440001G	16-MAY-2003	03-09-0943A	02
09	CA	MILPITAS, CITY OF	0603440003G	09-MAY-2003	03-09-0947A	02
09	CA	MILPITAS, CITY OF	0603440001G	09-MAY-2003	03-09-0955A	02
09	CA	MILPITAS, CITY OF	0603440001G	16-MAY-2003	03-09-0984A	02
09	CA	MILPITAS, CITY OF	0603440001G	28-MAY-2003	03-09-0993A	02
09	CA	MILPITAS, CITY OF	0603440001G	04-JUN-2003	03-09-1006A	02
09	CA	MILPITAS, CITY OF	0603440001G	06-JUN-2003	03-09-1023A	02
09	CA	MILPITAS, CITY OF	0603440001G	06-JUN-2003	03-09-1037A	02
09	CA	MILPITAS, CITY OF	0603440001G	06-JUN-2003	03-09-1040A	02
09	CA	MILPITAS, CITY OF	0603440001G	02-JUN-2003	03-09-1068A	02
09	CA	MILPITAS, CITY OF	0603440003G	20-JUN-2003	03-09-1131A	02
09	CA	MILPITAS, CITY OF	0603440003G	20-JUN-2003	03-09-1134A	02
09	CA	MILPITAS, CITY OF	0603440003G	20-JUN-2003	03-09-1135A	02
09	CA	MILPITAS, CITY OF	0603440003G	27-JUN-2003	03-09-1202A	02
09	CA	MILPITAS, CITY OF	0603440003G	27-JUN-2003	03-09-1222A	02
09	CA	MONTEREY COUNTY	0601950460D	20-MAR-2003	02-09-869P	05
09	CA	MORENO VALLEY, CITY OF	0650740020B	04-JUN-2003	03-09-1024A	02
09	CA	MORGAN HILL, CITY OF	0603460002C	27-MAR-2003	03-09-0514A	01
09	CA	MORRO BAY, CITY OF	0603070005C	21-APR-2003	03-09-0592A	02
09	CA	MOUNTAIN VIEW, CITY OF	0603470004E	19-MAR-2003	03-09-0507A	02
09	CA	MURRIETA, CITY OF	0607512745A	23-APR-2003	03-09-0140A	01
09	CA	MURRIETA, CITY OF	0607512740A	16-APR-2003	03-09-0603A	01
09	CA	NAPA COUNTY	0602050365A	06-MAR-2003	03-09-0392A	02
09	CA	NAPA COUNTY	0602050410B	10-MAR-2003	03-09-0478A	02
09	CA	NAPA, CITY OF	0602070005D	21-APR-2003	03-09-0490A	02
09	CA	NAPA, CITY OF	0602070005D	07-APR-2003	03-09-0615A	02
09	CA	NAPA, CITY OF	0602070005D	11-APR-2003	03-09-0697A	02
09	CA	NAPA, CITY OF	0602070010C	11-APR-2003	03-09-0702A	02
09	CA	NAPA, CITY OF	0602070010C	16-APR-2003	03-09-0751A	02
09	CA	NAPA, CITY OF	0602070010C	11-APR-2003	03-09-0783A	02
09	CA	NEVADA COUNTY	0602100579B	15-JAN-2003	03-09-0264A	02
09	CA	NEVADA COUNTY	0602100583B	15-JAN-2003	03-09-0264A	02
09	CA	NEVADA COUNTY	0602100583B	14-MAY-2003	03-09-0653A	02
09	CA	NEVADA COUNTY	0602100484C	01-MAY-2003	03-09-0816A	02
09	CA	NEVADA COUNTY	0602100484C	11-JUN-2003	03-09-1002A	02
09	CA	NEWARK, CITY OF	0600090005F	23-APR-2003	03-09-0696A	02
09	CA	NEWARK, CITY OF	0600090005F	06-JUN-2003	03-09-0920A	02
09	CA	NEWPORT BEACH, CITY OF	06059C0054F	23-APR-2003	03-09-0365A	02
09	CA	OAKLAND, CITY OF	0650480020B	17-MAR-2003	03-09-0403A	02
09	CA	OAKLAND, CITY OF	0650480020B	19-MAR-2003	03-09-0557A	02
09	CA	OAKLEY, CITY OF	0607660355A	11-APR-2003	03-09-0681A	01
09	CA	OCEANSIDE, CITY OF	06073C0756G	24-FEB-2003	03-09-0413A	02
09	CA	OCEANSIDE, CITY OF	06073C0464F	25-JUN-2003	03-09-0862A	02
09	CA	ORANGE COUNTY	06059C0049G	23-JUN-2003	02-09-1127P	06
09	CA	ORANGE COUNTY	06059C0058F	11-JUN-2003	03-09-0939A	02
09	CA	ORANGE, CITY OF	06059C0022F	22-MAY-2003	02-09-910P	05
09	CA	PALO ALTO, CITY OF	0603480005E	13-MAR-2003	03-09-0242A	02
09	CA	PALO ALTO, CITY OF	0603480002E	05-FEB-2003	03-09-0297A	02
09	CA	PALO ALTO, CITY OF	0603480002E	19-FEB-2003	03-09-0386A	02
09	CA	PALO ALTO, CITY OF	0603480003E	24-FEB-2003	03-09-0416A	02
09	CA	PALO ALTO, CITY OF	0603480003E	26-FEB-2003	03-09-0498A	02
09	CA	PALO ALTO, CITY OF	0603480002E	26-FEB-2003	03-09-0501A	02
09	CA	PALO ALTO, CITY OF	0603480002E	26-FEB-2003	03-09-0510A	02
09	CA	PALO ALTO, CITY OF	0603480003E	24-MAR-2003	03-09-0575A	02
09	CA	PALO ALTO, CITY OF	0603480003E	27-MAR-2003	03-09-0593A	02
09	CA	PALO ALTO, CITY OF	0603480003E	09-APR-2003	03-09-0669A	02
09	CA	PALO ALTO, CITY OF	0603480003E	16-APR-2003	03-09-0736A	02
09	CA	PALO ALTO, CITY OF	0603480002E	25-APR-2003	03-09-0806A	02
09	CA	PALO ALTO, CITY OF	0603480003E	28-MAY-2003	03-09-0815A	02
09	CA	PALO ALTO, CITY OF	0603480002E	11-JUN-2003	03-09-1030A	02
09	CA	PALO ALTO, CITY OF	0603480002E	18-JUN-2003	03-09-1086A	02
09	CA	PALO ALTO, CITY OF	0600348002E	27-JUN-2003	03-09-1186A	02
09	CA	PALOS VERDES ESTATES, CITY OF	0601450005B	04-FEB-2003	03-09-0120A	02
09	CA	PALOS VERDES ESTATES, CITY OF	0601450005B	03-APR-2003	03-09-0397A	02
09	CA	PERRIS, CITY OF	0602580010D	26-FEB-2003	03-09-0348A	01
09	CA	PERRIS, CITY OF	0602580010D	07-MAY-2003	03-09-0832A	02
09	CA	PLACER COUNTY	06061C0069F	02-JAN-2003	03-09-0165A	02
09	CA	PLEASANT HILL, CITY OF	0600340003B	08-JAN-2003	03-09-0047A	02
09	CA	PLUMAS COUNTY	060244C	04-FEB-2003	02-09-1396A	02
09	CA	PLUMAS COUNTY	060244—975C	10-JAN-2003	03-09-0254A	02
09	CA	PLUMAS COUNTY	060244—975C	19-MAR-2003	03-09-0699X	02
09	CA	PLUMAS COUNTY	060244—300C	21-MAY-2003	03-09-0729A	02

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09	CA	PORTERVILLE, CITY OF	0650660845B	19-MAR-2003	03-09-0195A	01
09	CA	PORTERVILLE, CITY OF	0604070010D	02-JAN-2003	03-09-0235A	02
09	CA	PORTERVILLE, CITY OF	0650660845B	06-JUN-2003	03-09-0688A	02
09	CA	POWAY, CITY OF	06073C1358F	29-MAY-2003	03-09-0026P	05
09	CA	POWAY, CITY OF	06073C1356F	03-MAR-2003	03-09-0285A	02
09	CA	POWAY, CITY OF	06073C1358F	05-FEB-2003	03-09-0338A	02
09	CA	POWAY, CITY OF	06073C1093F	03-APR-2003	03-09-0504A	02
09	CA	POWAY, CITY OF	06073C1359F	03-APR-2003	03-09-0620A	02
09	CA	POWAY, CITY OF	06073C1359F	09-APR-2003	03-09-0659A	02
09	CA	RANCHO CUCAMONGA, CITY OF	06071C7890F	04-FEB-2003	03-09-0305A	02
09	CA	RANCHO CUCAMONGA, CITY OF	06071C7890F	05-FEB-2003	03-09-0339A	02
09	CA	RANCHO CUCAMONGA, CITY OF	06071C7895F	29-APR-2003	03-09-0351P	06
09	CA	RANCHO CUCAMONGA, CITY OF	06071C7890F	24-MAR-2003	03-09-0566A	02
09	CA	RANCHO CUCAMONGA, CITY OF	06071C8610F	21-MAY-2003	03-09-0908A	01
09	CA	RANCHO CUCAMONGA, CITY OF	06071C7890F	02-JUN-2003	03-09-0944A	02
09	CA	REDWOOD CITY, CITY OF	0603250011B	09-JAN-2003	03-09-0146A	01
09	CA	RIVERSIDE COUNTY	0602452050C	29-APR-2003	03-09-0732P	06
09	CA	RIVERSIDE COUNTY	0602452065B	29-APR-2003	03-09-0732P	06
09	CA	RIVERSIDE, CITY OF	0602600015B	26-JUN-2003	01-09-652P	05
09	CA	RIVERSIDE, CITY OF	0602600020B	26-JUN-2003	01-09-652P	05
09	CA	ROSEVILLE, CITY OF	06061C0478F	28-MAY-2003	02-09-1258P	05
09	CA	ROSEVILLE, CITY OF	06061C0479G	28-MAY-2003	02-09-1258P	05
09	CA	ROSEVILLE, CITY OF	06061C0487F	28-MAY-2003	02-09-1258P	05
09	CA	ROSEVILLE, CITY OF	06061C0476F	28-JAN-2003	02-09-511P	06
09	CA	SACRAMENTO COUNTY	0602620310F	23-JAN-2003	02-09-1169P	05
09	CA	SACRAMENTO COUNTY	0602620330D	23-JAN-2003	03-09-0161A	01
09	CA	SACRAMENTO COUNTY	0602620375C	09-APR-2003	03-09-0574A	02
09	CA	SACRAMENTO COUNTY	0602620500C	09-MAY-2003	03-09-0718A	02
09	CA	SACRAMENTO COUNTY	0602620185F	01-MAY-2003	03-09-0858A	02
09	CA	SACRAMENTO COUNTY	0602620185F	25-JUN-2003	03-09-1083A	02
09	CA	SACRAMENTO, CITY OF	0602660015F	09-APR-2003	03-09-0262A	01
09	CA	SAN BERNARDINO, CITY OF	06071C7930F	29-JAN-2003	03-09-0125A	02
09	CA	SAN DIEGO COUNTY	06073C0812F	24-APR-2003	02-09-714P	05
09	CA	SAN DIEGO COUNTY	06073C0494F	06-MAR-2003	03-09-0425A	01
09	CA	SAN DIEGO, CITY OF	06073C1332F	01-MAY-2003	02-09-1505P	05
09	CA	SAN DIEGO, CITY OF	06073C1334F	01-MAY-2003	02-09-1505P	05
09	CA	SAN DIEGO, CITY OF	06073C1334F	03-JAN-2003	03-09-0181A	01
09	CA	SAN DIEGO, CITY OF	06073C1613F	29-JAN-2003	03-09-0322A	02
09	CA	SAN DIEGO, CITY OF	06073C1594F	24-MAR-2003	03-09-0569A	02
09	CA	SAN DIEGO, CITY OF	06073C1332F	09-JUN-2003	03-09-0578P	05
09	CA	SAN DIEGO, CITY OF	06073C1334F	09-JUN-2003	03-09-0578P	05
09	CA	SAN DIEGO, CITY OF	06073C1614F	11-JUN-2003	03-09-1049A	02
09	CA	SAN JACINTO, CITY OF	0650560005D	11-APR-2003	03-09-0606A	01
09	CA	SAN JOAQUIN COUNTY	0602990145B	04-FEB-2003	03-09-0227A	17
09	CA	SAN JOAQUIN COUNTY	0602990590C	01-MAY-2003	03-09-0683A	02
09	CA	SAN JOSE, CITY OF	0603490047E	08-JAN-2003	03-09-0019A	02
09	CA	SAN JOSE, CITY OF	0603490053E	03-APR-2003	03-09-0243A	02
09	CA	SAN JOSE, CITY OF	0603490048E	10-JAN-2003	03-09-0256A	01
09	CA	SAN JOSE, CITY OF	0603490026D	09-JAN-2003	03-09-0258A	02
09	CA	SAN JOSE, CITY OF	0603490009G	15-JAN-2003	03-09-0266A	02
09	CA	SAN JOSE, CITY OF	0603490047E	15-JAN-2003	03-09-0268A	02
09	CA	SAN JOSE, CITY OF	0603490020F	27-JAN-2003	03-09-0307A	02
09	CA	SAN JOSE, CITY OF	0603490048E	27-JAN-2003	03-09-0310A	02
09	CA	SAN JOSE, CITY OF	0603490026D	29-JAN-2003	03-09-0321A	02
09	CA	SAN JOSE, CITY OF	0603490047E	04-FEB-2003	03-09-0325A	02
09	CA	SAN JOSE, CITY OF	0603490014E	29-JAN-2003	03-09-0326A	02
09	CA	SAN JOSE, CITY OF	0603490037D	04-FEB-2003	03-09-0333A	02
09	CA	SAN JOSE, CITY OF	0603490047E	26-FEB-2003	03-09-0335A	02
09	CA	SAN JOSE, CITY OF	0603490031D	20-FEB-2003	03-09-0391A	02
09	CA	SAN JOSE, CITY OF	0603490020F	19-FEB-2003	03-09-0393A	02
09	CA	SAN JOSE, CITY OF	0603490020F	12-FEB-2003	03-09-0395A	02
09	CA	SAN JOSE, CITY OF	0603490009G	24-FEB-2003	03-09-0445A	02
09	CA	SAN JOSE, CITY OF	0603490037D	07-APR-2003	03-09-0463A	02
09	CA	SAN JOSE, CITY OF	0603490027D	20-FEB-2003	03-09-0465A	02
09	CA	SAN JOSE, CITY OF	0603490048E	12-FEB-2003	03-09-0469A	02
09	CA	SAN JOSE, CITY OF	0603490048E	05-FEB-2003	03-09-0481X	02
09	CA	SAN JOSE, CITY OF	0603490031D	31-MAR-2003	03-09-0517A	02
09	CA	SAN JOSE, CITY OF	0603490009G	19-MAR-2003	03-09-0551A	02
09	CA	SAN JOSE, CITY OF	0603490020F	13-MAR-2003	03-09-0586A	02
09	CA	SAN JOSE, CITY OF	0603490020F	27-MAR-2003	03-09-0597A	02
09	CA	SAN JOSE, CITY OF	0603490029D	27-MAR-2003	03-09-0599A	02
09	CA	SAN JOSE, CITY OF	0603490026D	27-MAR-2003	03-09-0601A	02
09	CA	SAN JOSE, CITY OF	0603490047E	03-APR-2003	03-09-0604A	02

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09	CA	SAN JOSE, CITY OF	0603490020F	03–APR–2003	03–09–0612A	02
09	CA	SAN JOSE, CITY OF	0603490020F	03–APR–2003	03–09–0614A	02
09	CA	SAN JOSE, CITY OF	0603490020F	09–APR–2003	03–09–0680A	02
09	CA	SAN JOSE, CITY OF	0603490037D	07–APR–2003	03–09–0684A	02
09	CA	SAN JOSE, CITY OF	0603490009G	07–APR–2003	03–09–0685A	02
09	CA	SAN JOSE, CITY OF	0603490020F	16–APR–2003	03–09–0706A	02
09	CA	SAN JOSE, CITY OF	0603490048E	16–APR–2003	03–09–0737A	02
09	CA	SAN JOSE, CITY OF	0603490047E	16–APR–2003	03–09–0738A	02
09	CA	SAN JOSE, CITY OF	0603490037D	16–APR–2003	03–09–0739A	02
09	CA	SAN JOSE, CITY OF	0603490009G	16–APR–2003	03–09–0746A	02
09	CA	SAN JOSE, CITY OF	0603490020F	16–APR–2003	03–09–0760A	02
09	CA	SAN JOSE, CITY OF	0603490037D	16–APR–2003	03–09–0761A	02
09	CA	SAN JOSE, CITY OF	0603490037D	16–APR–2003	03–09–0766A	02
09	CA	SAN JOSE, CITY OF	0603490047E	21–APR–2003	03–09–0781A	02
09	CA	SAN JOSE, CITY OF	0603490048E	21–APR–2003	03–09–0793A	02
09	CA	SAN JOSE, CITY OF	0603490053E	21–APR–2003	03–09–0793A	02
09	CA	SAN JOSE, CITY OF	0603490026D	21–APR–2003	03–09–0795A	02
09	CA	SAN JOSE, CITY OF	0603490020F	07–MAY–2003	03–09–0828A	02
09	CA	SAN JOSE, CITY OF	0603490020F	09–MAY–2003	03–09–0829A	02
09	CA	SAN JOSE, CITY OF	0603490009G	07–MAY–2003	03–09–0847A	02
09	CA	SAN JOSE, CITY OF	0603490047E	09–MAY–2003	03–09–0848A	02
09	CA	SAN JOSE, CITY OF	0603490047E	07–MAY–2003	03–09–0849A	02
09	CA	SAN JOSE, CITY OF	0603490048E	07–MAY–2003	03–09–0850A	02
09	CA	SAN JOSE, CITY OF	0603490020F	09–MAY–2003	03–09–0865A	02
09	CA	SAN JOSE, CITY OF	0603490014E	21–MAY–2003	03–09–0875A	02
09	CA	SAN JOSE, CITY OF	0603490009G	21–MAY–2003	03–09–0876A	02
09	CA	SAN JOSE, CITY OF	0603490019E	16–MAY–2003	03–09–0882A	02
09	CA	SAN JOSE, CITY OF	0603490020F	16–MAY–2003	03–09–0916A	02
09	CA	SAN JOSE, CITY OF	0603490020F	06–JUN–2003	03–09–0948A	02
09	CA	SAN JOSE, CITY OF	0603490020F	14–MAY–2003	03–09–0950A	02
09	CA	SAN JOSE, CITY OF	0603490020F	28–MAY–2003	03–09–0959A	02
09	CA	SAN JOSE, CITY OF	0603490048E	16–MAY–2003	03–09–0973A	02
09	CA	SAN JOSE, CITY OF	0603490014E	11–JUN–2003	03–09–0976A	02
09	CA	SAN JOSE, CITY OF	0603490020F	28–MAY–2003	03–09–0989A	02
09	CA	SAN JOSE, CITY OF	0603490020F	28–MAY–2003	03–09–0991A	02
09	CA	SAN JOSE, CITY OF	0603490014E	04–JUN–2003	03–09–1005A	02
09	CA	SAN JOSE, CITY OF	0603490020F	04–JUN–2003	03–09–1011A	02
09	CA	SAN JOSE, CITY OF	0603490020F	11–JUN–2003	03–09–1039A	02
09	CA	SAN JOSE, CITY OF	0603490020F	11–JUN–2003	03–09–1060A	02
09	CA	SAN JOSE, CITY OF	0603490020F	13–JUN–2003	03–09–1077A	02
09	CA	SAN JOSE, CITY OF	0603490020F	11–JUN–2003	03–09–1079A	02
09	CA	SAN JOSE, CITY OF	0603490020F	13–JUN–2003	03–09–1092A	02
09	CA	SAN JOSE, CITY OF	0603490048E	13–JUN–2003	03–09–1101A	02
09	CA	SAN JOSE, CITY OF	0603490019E	25–JUN–2003	03–09–1105A	02
09	CA	SAN JOSE, CITY OF	0603490009G	20–JUN–2003	03–09–1111A	02
09	CA	SAN JOSE, CITY OF	0603490048E	13–JUN–2003	03–09–1123A	02
09	CA	SAN JOSE, CITY OF	0603490020F	11–JUN–2003	03–09–1128A	02
09	CA	SAN JOSE, CITY OF	0603490026D	25–JUN–2003	03–09–1167A	02
09	CA	SAN JOSE, CITY OF	0603490020F	27–JUN–2003	03–09–1180A	02
09	CA	SAN JOSE, CITY OF	0603490020F	27–JUN–2003	03–09–1187A	02
09	CA	SAN JOSE, CITY OF	0603490026D	27–JUN–2003	03–09–1197A	02
09	CA	SAN JUAN CAPISTRANO, CITY OF	06059C0075F	13–JUN–2003	03–09–0717A	01
09	CA	SAN JUAN CAPISTRANO, CITY OF	06059C0075F	20–JUN–2003	03–09–1036A	01
09	CA	SAN LEANDRO, CITY OF	0600130003C	19–MAR–2003	03–09–0542A	02
09	CA	SAN LEANDRO, CITY OF	0600130003C	27–MAR–2003	03–09–0581A	02
09	CA	SAN LEANDRO, CITY OF	0600130003C	27–MAR–2003	03–09–0588A	02
09	CA	SAN LUIS OBISPO COUNTY	0603040592C	09–JAN–2003	03–09–0034A	02
09	CA	SAN LUIS OBISPO COUNTY	0603040477B	25–APR–2003	03–09–0672A	02
09	CA	SAN LUIS OBISPO COUNTY	0603040188C	25–APR–2003	03–09–0789A	02
09	CA	SAN LUIS OBISPO, CITY OF	0603100005C	23–APR–2003	03–09–0423A	02
09	CA	SAN LUIS OBISPO, CITY OF	0603100005C	27–JUN–2003	03–09–1179A	02
09	CA	SAN MARCOS, CITY OF	06073C1052F	16–APR–2003	03–09–0668A	02
09	CA	SAN MATEO COUNTY	0603110318B	31–JAN–2003	03–09–0179P	06
09	CA	SAN MATEO COUNTY	0603110319B	31–JAN–2003	03–09–0179P	06
09	CA	SAN MATEO COUNTY	0603110382B	31–JAN–2003	03–09–0179P	06
09	CA	SAN MATEO COUNTY	0603110113B	18–JUN–2003	03–09–0919X	02
09	CA	SAN MATEO, CITY OF	0603280004B	24–FEB–2003	03–09–0411A	01
09	CA	SAN MATEO, CITY OF	0603280002B	25–APR–2003	03–09–0809A	02
09	CA	SAN RAFAEL, CITY OF	0650580020B	19–FEB–2003	03–09–0399A	02
09	CA	SAN RAFAEL, CITY OF	0650580015B	16–APR–2003	03–09–0743A	02
09	CA	SANTA ANA, CITY OF	06059C0028F	02–JAN–2003	02–09–1400A	01
09	CA	SANTA BARBARA COUNTY	0603310765E	18–MAR–2003	03–09–0009P	05
09	CA	SANTA BARBARA COUNTY	0603310229D	12–FEB–2003	03–09–0246A	02

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09	CA	SANTA BARBARA COUNTY	0603310730C	04-JUN-2003	03-09-0701A	02
09	CA	SANTA BARBARA, CITY OF	0603350005D	09-JAN-2003	03-09-0110A	02
09	CA	SANTA BARBARA, CITY OF	0603350004D	26-FEB-2003	03-09-0488A	02
09	CA	SANTA BARBARA, CITY OF	0603350005D	24-MAR-2003	03-09-0519X	02
09	CA	SANTA CLARA COUNTY	0603370240D	22-JAN-2003	01-09-159P	05
09	CA	SANTA CLARA, CITY OF	0603500003D	29-JAN-2003	03-09-0320A	02
09	CA	SANTA CLARA, CITY OF	0603500003D	12-FEB-2003	03-09-0324A	02
09	CA	SANTA CLARA, CITY OF	0603500003D	19-MAR-2003	03-09-0552A	02
09	CA	SANTA CLARA, CITY OF	0603500003D	25-APR-2003	03-09-0779A	02
09	CA	SANTA CLARA, CITY OF	0603500005D	01-MAY-2003	03-09-0786A	02
09	CA	SANTA CLARA, CITY OF	0603500003D	06-JUN-2003	03-09-1007A	02
09	CA	SANTA CLARA, CITY OF	0603500003D	06-JUN-2003	03-09-1010A	02
09	CA	SANTA CLARA, CITY OF	0603500003D	06-JUN-2003	03-09-1088A	02
09	CA	SANTA CLARITA, CITY OF	0607290345C	30-APR-2003	03-09-0041P	06
09	CA	SANTA CLARITA, CITY OF	0650430345B	02-MAY-2003	03-09-0295A	01
09	CA	SANTA CLARITA, CITY OF	0607290345C	30-APR-2003	03-09-0694X	06
09	CA	SANTA CRUZ COUNTY	0603530210B	07-MAY-2003	03-09-0833A	02
09	CA	SANTA CRUZ COUNTY	0603530215B	11-JUN-2003	03-09-0954A	02
09	CA	SANTA PAULA, CITY OF	0604130590C	27-MAR-2003	03-09-0548A	02
09	CA	SANTA ROSA, CITY OF	0603810011B	09-APR-2003	03-09-0673A	02
09	CA	SEBASTOPOL, CITY OF	0603820001C	02-JAN-2003	03-09-0109A	02
09	CA	SEBASTOPOL, CITY OF	0603820001C	08-JAN-2003	03-09-0111A	01
09	CA	SHASTA COUNTY	0603580405B	02-JAN-2003	03-09-0204A	02
09	CA	SHASTA COUNTY	0603580450B	29-JAN-2003	03-09-0272A	02
09	CA	SHASTA COUNTY	0603580685C	16-APR-2003	03-09-0576A	02
09	CA	SHASTA COUNTY	0603580550B	14-MAY-2003	03-09-0692A	02
09	CA	SHASTA COUNTY	0603580715B	25-JUN-2003	03-09-0935A	02
09	CA	SHASTA LAKE, CITY OF	0607580005A	13-JUN-2003	03-09-0957A	02
09	CA	SIMI VALLEY, CITY OF	0604210007B	30-JAN-2003	02-09-1001P	05
09	CA	SIMI VALLEY, CITY OF	0604210009B	30-JAN-2003	02-09-1001P	05
09	CA	SIMI VALLEY, CITY OF	0604210008B	08-JAN-2003	03-09-0218A	02
09	CA	SIMI VALLEY, CITY OF	0604210004B	09-JAN-2003	03-09-0255A	02
09	CA	SIMI VALLEY, CITY OF	0604210004B	04-FEB-2003	03-09-0308A	02
09	CA	SIMI VALLEY, CITY OF	0604210008B	06-MAR-2003	03-09-0345A	02
09	CA	SIMI VALLEY, CITY OF	0604210009B	19-FEB-2003	03-09-0400A	02
09	CA	SIMI VALLEY, CITY OF	0604210006B	24-FEB-2003	03-09-0439A	02
09	CA	SIMI VALLEY, CITY OF	0604210009B	24-FEB-2003	03-09-0456A	02
09	CA	SIMI VALLEY, CITY OF	0604210002B	24-FEB-2003	03-09-0458A	02
09	CA	SIMI VALLEY, CITY OF	0604210007B	19-MAR-2003	03-09-0479A	02
09	CA	SIMI VALLEY, CITY OF	0604210002B	24-FEB-2003	03-09-0520A	02
09	CA	SIMI VALLEY, CITY OF	0604210002B	24-FEB-2003	03-09-0528A	02
09	CA	SIMI VALLEY, CITY OF	0604210008B	03-APR-2003	03-09-0540A	01
09	CA	SIMI VALLEY, CITY OF	0604210009B	03-APR-2003	03-09-0540A	01
09	CA	SIMI VALLEY, CITY OF	0604210008B	07-MAY-2003	03-09-0567A	02
09	CA	SIMI VALLEY, CITY OF	0604210006B	07-APR-2003	03-09-0570A	02
09	CA	SIMI VALLEY, CITY OF	0604210008B	13-MAR-2003	03-09-0577A	02
09	CA	SIMI VALLEY, CITY OF	0604210009B	09-APR-2003	03-09-0579A	02
09	CA	SIMI VALLEY, CITY OF	0604210007B	07-APR-2003	03-09-0616A	02
09	CA	SIMI VALLEY, CITY OF	0604210009B	09-APR-2003	03-09-0664A	02
09	CA	SIMI VALLEY, CITY OF	0604210004B	23-APR-2003	03-09-0744A	02
09	CA	SIMI VALLEY, CITY OF	0604210009B	21-APR-2003	03-09-0762A	02
09	CA	SIMI VALLEY, CITY OF	0604210008B	07-MAY-2003	03-09-0844A	02
09	CA	SIMI VALLEY, CITY OF	0604210008B	07-MAY-2003	03-09-0845A	02
09	CA	SIMI VALLEY, CITY OF	0604210009B	01-MAY-2003	03-09-0856A	02
09	CA	SIMI VALLEY, CITY OF	0604210004B	27-MAY-2003	03-09-0872A	02
09	CA	SIMI VALLEY, CITY OF	0604210006B	28-MAY-2003	03-09-0899A	02
09	CA	SIMI VALLEY, CITY OF	0604210009B	18-JUN-2003	03-09-0914A	02
09	CA	SIMI VALLEY, CITY OF	0604210008B	25-JUN-2003	03-09-0994A	02
09	CA	SIMI VALLEY, CITY OF	0604210008B	11-JUN-2003	03-09-0997A	01
09	CA	SIMI VALLEY, CITY OF	0604210009B	11-JUN-2003	03-09-0997A	01
09	CA	SIMI VALLEY, CITY OF	0604210009B	06-JUN-2003	03-09-1021A	02
09	CA	SIMI VALLEY, CITY OF	0604210009B	11-JUN-2003	03-09-1075A	02
09	CA	SIMI VALLEY, CITY OF	0604210004B	20-JUN-2003	03-09-1104A	02
09	CA	SIMI VALLEY, CITY OF	0604210004B	27-JUN-2003	03-09-1137A	02
09	CA	SIMI VALLEY, CITY OF	0604210009B	25-JUN-2003	03-09-1145A	02
09	CA	SOLANO COUNTY	0606310406B	26-FEB-2003	03-09-0524A	02
09	CA	SOLVANG, CITY OF	0603310559C	07-MAY-2003	02-09-1302P	05
09	CA	SONOMA COUNTY	0603750110B	12-FEB-2003	03-09-0359A	02
09	CA	SONOMA COUNTY	0603750520B	13-MAR-2003	03-09-0464A	02
09	CA	SONOMA COUNTY	0603750885B	27-MAR-2003	03-09-0543A	02
09	CA	SONOMA COUNTY	0603750655B	16-APR-2003	03-09-0580A	02
09	CA	SONOMA COUNTY	0603750885B	14-MAY-2003	03-09-0668A	02
09	CA	SONOMA COUNTY	0603750515B	25-APR-2003	03-09-0670A	02

Region	State	Community	Map panel	Determination date	Case No.	Type
09	CA	SONOMA COUNTY	0603750635B	16–MAY–2003	03–09–0873A	02
09	CA	SUNNYVALE, CITY OF	0603520001D	27–JAN–2003	03–09–0289A	02
09	CA	SUNNYVALE, CITY OF	0603520001D	26–FEB–2003	03–09–0564A	02
09	CA	SUNNYVALE, CITY OF	0603520001D	16–MAY–2003	03–09–0622A	02
09	CA	SUNNYVALE, CITY OF	0603520001D	25–APR–2003	03–09–0731A	02
09	CA	SUNNYVALE, CITY OF	0603520001D	23–APR–2003	03–09–0774A	02
09	CA	SUNNYVALE, CITY OF	0603520001D	23–APR–2003	03–09–0804A	02
09	CA	SUNNYVALE, CITY OF	0603520001D	21–APR–2003	03–09–0812A	02
09	CA	SUNNYVALE, CITY OF	0603520001D	04–JUN–2003	03–09–1001A	02
09	CA	SUNNYVALE, CITY OF	0603520001D	02–JUN–2003	03–09–1027A	02
09	CA	SUNNYVALE, CITY OF	0603520001D	20–JUN–2003	03–09–1169X	02
09	CA	SUTTER COUNTY	0603940305D	23–JAN–2003	02–09–1486A	01
09	CA	TEHAMA COUNTY	0650640475C	06–MAY–2003	00–09–1140V	19
09	CA	TEHAMA COUNTY	0650640480E	06–MAY–2003	00–09–1140V	19
09	CA	TEHAMA COUNTY	0650640475B	13–MAR–2003	03–09–0434A	02
09	CA	THOUSAND OAKS, CITY OF	0604130940B	29–MAY–2003	03–09–0531P	06
09	CA	TULARE COUNTY	0650660825B	16–APR–2003	03–09–0211A	01
09	CA	UKIAH, CITY OF	0601860001E	13–MAR–2003	03–09–0491A	02
09	CA	UKIAH, CITY OF	0601860002D	21–APR–2003	03–09–0703A	02
09	CA	VACAVILLE, CITY OF	0603730012C	11–JUN–2003	03–09–0827A	02
09	CA	VALLEJO, CITY OF	0603740005C	13–FEB–2003	02–09–1265P	06
09	CA	VALLEJO, CITY OF	0603740010C	13–MAR–2003	03–09–0440A	02
09	CA	VALLEJO, CITY OF	0603740005C	27–MAR–2003	03–09–0470A	01
09	CA	VENTURA COUNTY	0604130540C	06–FEB–2003	02–09–1213P	05
09	CA	VENTURA COUNTY	0604130545C	06–FEB–2003	02–09–1213P	05
09	CA	VENTURA COUNTY	0604130545C	05–MAR–2003	03–09–0007P	05
09	CA	VENTURA COUNTY	0604130645B	17–MAR–2003	03–09–0427A	01
09	CA	VENTURA COUNTY	0604130645B	19–MAR–2003	03–09–0467A	01
09	CA	VENTURA COUNTY	0604130940B	21–APR–2003	03–09–0700A	02
09	CA	VENTURA COUNTY	0604130645B	25–JUN–2003	03–09–0831A	01
09	CA	VISALIA, CITY OF	0604090005D	03–APR–2003	03–09–0215A	01
09	CA	VISALIA, CITY OF	0604090005D	05–FEB–2003	03–09–0319A	01
09	CA	VISALIA, CITY OF	0604090010C	25–APR–2003	03–09–0777A	02
09	CA	VISALIA, CITY OF	0604090010C	25–JUN–2003	03–09–0891A	01
09	CA	WOODLAND, CITY OF	0604260410C	26–FEB–2003	02–09–1453A	02
09	CA	WOODLAND, CITY OF	0604260440C	09–JAN–2003	03–09–0226A	02
09	CA	WOODLAND, CITY OF	0604260420C	16–APR–2003	03–09–0561A	02
09	CA	WOODLAND, CITY OF	0604260440C	03–APR–2003	03–09–0596A	02
09	CA	WOODLAND, CITY OF	0604260440C	20–JUN–2003	03–09–0971A	02
09	CA	WOODLAND, CITY OF	0604260410C	20–JUN–2003	03–09–1114A	02
09	CA	WOODLAND, CITY OF	0604260420C	20–JUN–2003	03–09–1130A	02
09	CA	WOODLAND, CITY OF	0604260420C	27–JUN–2003	03–09–1234X	02
09	CA	YOLO COUNTY	0604230559D	13–MAR–2003	03–09–0457A	02
09	CA	YOLO COUNTY	0604230559D	09–APR–2003	03–09–0656A	02
09	CA	YOUNTVILLE, TOWN OF	0602090001C	27–JUN–2003	03–09–1062A	02
09	CA	YUCAIPA, CITY OF	06071C8745F	09–APR–2003	03–09–0568A	02
09	HI	HAWAII COUNTY	1551660713D	24–APR–2003	02–09–1456P	05
09	HI	HAWAII COUNTY	1551660267C	25–FEB–2003	03–09–0139P	06
09	HI	HAWAII COUNTY	1551661157C	18–JUN–2003	03–09–0331A	02
09	HI	HAWAII COUNTY	1551660880C	11–JUN–2003	03–09–0967A	02
09	HI	KAUAI COUNTY	1500020130D	12–FEB–2003	03–09–0330A	02
09	HI	MAUI COUNTY	1500030138B	13–JUN–2003	03–09–0107P	05
09	HI	MAUI COUNTY	1500030151C	13–JUN–2003	03–09–0107P	05
09	HI	MAUI COUNTY	1500030330B	06–MAY–2003	03–09–0116P	05
09	HI	MAUI COUNTY	1500030265C	08–MAY–2003	03–09–0144P	05
09	NV	CARSON CITY, CITY OF	3200010080C	29–MAY–2003	01–09–592P	05
09	NV	CLARK COUNTY	32003C2535E	19–JUN–2003	02–09–718P	05
09	NV	CLARK COUNTY	32003C2552E	19–JUN–2003	02–09–718P	05
09	NV	CLARK COUNTY	32003C2553E	19–JUN–2003	02–09–718P	05
09	NV	CLARK COUNTY	32003C2554E	19–JUN–2003	02–09–718P	05
09	NV	CLARK COUNTY	32003C2556E	19–JUN–2003	02–09–718P	05
09	NV	CLARK COUNTY	32003C2560E	19–JUN–2003	02–09–718P	05
09	NV	CLARK COUNTY	32003C2562E	07–APR–2003	02–09–913P	05
09	NV	CLARK COUNTY	32003C2566E	07–APR–2003	02–09–913P	05
09	NV	CLARK COUNTY	32003C2567E	07–APR–2003	02–09–913P	05
09	NV	CLARK COUNTY	32003C2568E	07–APR–2003	02–09–913P	05
09	NV	CLARK COUNTY	32003C2569E	07–APR–2003	02–09–913P	05
09	NV	CLARK COUNTY	32003C2580E	07–APR–2003	02–09–913P	05
09	NV	CLARK COUNTY	32003C2583E	07–APR–2003	02–09–913P	05
09	NV	CLARK COUNTY	32003C2585E	07–APR–2003	02–09–913P	05
09	NV	CLARK COUNTY	32003C2590E	07–APR–2003	02–09–913P	05
09	NV	CLARK COUNTY	32003C2910E	07–APR–2003	02–09–913P	05
09	NV	CLARK COUNTY	32003C2535E	27–JAN–2003	03–09–0153P	06

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09	NV	CLARK COUNTY	32003C2535E	24-MAR-2003	03-09-0366A	02
09	NV	CLARK COUNTY	32003C2569E	09-MAY-2003	03-09-0513A	02
09	NV	CLARK COUNTY	32003C2535E	25-JUN-2003	03-09-0819A	01
09	NV	CLARK COUNTY	32003C2562E	21-APR-2003	03-09-0861X	05
09	NV	CLARK COUNTY	32003C2566E	21-APR-2003	03-09-0861X	05
09	NV	CLARK COUNTY	32003C2567E	21-APR-2003	03-09-0861X	05
09	NV	CLARK COUNTY	32003C2568E	21-APR-2003	03-09-0861X	05
09	NV	CLARK COUNTY	32003C2569E	21-APR-2003	03-09-0861X	05
09	NV	CLARK COUNTY	32003C2580E	21-APR-2003	03-09-0861X	05
09	NV	CLARK COUNTY	32003C2583E	21-APR-2003	03-09-0861X	05
09	NV	CLARK COUNTY	32003C2585E	21-APR-2003	03-09-0861X	05
09	NV	CLARK COUNTY	32003C2590E	21-APR-2003	03-09-0861X	05
09	NV	CLARK COUNTY	32003C2910E	21-APR-2003	03-09-0861X	05
09	NV	CLARK COUNTY	32003C2535E	20-JUN-2003	03-09-0904P	06
09	NV	DOUGLAS COUNTY	32005C0235F	28-MAY-2003	02-09-759P	06
09	NV	DOUGLAS COUNTY	32005C0235F	27-MAR-2003	03-09-0381A	02
09	NV	DOUGLAS COUNTY	32005C0040F	27-MAR-2003	03-09-0585A	02
09	NV	FALLON, CITY OF	3200020001A	23-JAN-2003	03-09-0283A	02
09	NV	HENDERSON, CITY OF	32003C2590E	19-MAR-2003	02-09-382P	06
09	NV	HENDERSON, CITY OF	32003C2590E	19-MAR-2003	02-09-717P	06
09	NV	HENDERSON, CITY OF	32003C2590E	19-MAR-2003	02-09-782P	06
09	NV	HENDERSON, CITY OF	32003C2580E	07-APR-2003	02-09-913P	05
09	NV	HENDERSON, CITY OF	32003C2590E	07-APR-2003	02-09-913P	05
09	NV	HENDERSON, CITY OF	32003C2590E	23-JAN-2003	03-09-0274A	02
09	NV	HENDERSON, CITY OF	32003C2585E	14-JAN-2003	03-09-0284X	06
09	NV	HENDERSON, CITY OF	32003C2595E	14-JAN-2003	03-09-0284X	06
09	NV	HENDERSON, CITY OF	32003C2590E	10-FEB-2003	03-09-0452A	01
09	NV	HENDERSON, CITY OF	32003C2590E	10-MAR-2003	03-09-0455A	02
09	NV	HENDERSON, CITY OF	32003C2590E	11-APR-2003	03-09-0690A	02
09	NV	HENDERSON, CITY OF	32003C2580E	21-APR-2003	03-09-0861X	05
09	NV	HENDERSON, CITY OF	32003C2590E	21-APR-2003	03-09-0861X	05
09	NV	LANDER COUNTY	3200130145F	21-MAY-2003	03-09-0791A	02
09	NV	LAS VEGAS, CITY OF	32003C2155E	13-MAR-2003	03-09-0168A	01
09	NV	LAS VEGAS, CITY OF	32003C2155E	19-MAR-2003	03-09-0560A	01
09	NV	LAS VEGAS, CITY OF	32003C2155E	20-JUN-2003	03-09-0895A	01
09	NV	LAS VEGAS, CITY OF	32003C2135E	01-MAY-2003	03-09-0936P	06
09	NV	LAS VEGAS, CITY OF	32003C2155E	01-MAY-2003	03-09-0936P	06
09	NV	MESQUITE, CITY OF	32003C0379E	28-APR-2003	03-09-0236P	06
09	NV	MESQUITE, CITY OF	32003C0387E	28-APR-2003	03-09-0236P	06
09	NV	MESQUITE, CITY OF	32003C0386E	10-FEB-2003	03-09-0453A	01
09	NV	NORTH LAS VEGAS, CITY OF	32003C1766E	20-FEB-2003	03-09-0177P	06
09	NV	NORTH LAS VEGAS, CITY OF	32003C2160E	19-FEB-2003	03-09-0398A	02
09	NV	NORTH LAS VEGAS, CITY OF	32003C2160E	26-JUN-2003	03-09-0441P	06
09	NV	RENO, CITY OF	32031C3178E	11-APR-2003	03-09-0265A	01
09	NV	RENO, CITY OF	32031C3186E	11-APR-2003	03-09-0265A	01
09	NV	WASHOE COUNTY	32031C3188E	05-FEB-2003	02-09-1520A	02
09	NV	WASHOE COUNTY	32031C3170E	19-FEB-2003	03-09-0036A	02
09	NV	WASHOE COUNTY	32031C3188E	26-FEB-2003	03-09-0296A	02
09	NV	WASHOE COUNTY	32031C3189E	09-APR-2003	03-09-0518A	02
10	AK	ANCHORAGE, MUNICIPALITY OF	0200052203C	19-FEB-2003	03-10-0211A	02
10	AK	ANCHORAGE, MUNICIPALITY OF	0200050230B	23-APR-2003	03-10-0385A	02
10	AK	ANCHORAGE, MUNICIPALITY OF	0200050510C	18-JUN-2003	03-10-0579A	02
10	AK	FAIRBANKS-NORTH STAR BOROUGH	0250090181G	02-JAN-2003	03-10-0133A	02
10	AK	FAIRBANKS-NORTH STAR BOROUGH	0250090184G	11-JUN-2003	03-10-0312A	01
10	AK	FAIRBANKS-NORTH STAR BOROUGH	0250090184G	09-MAY-2003	03-10-0381A	01
10	AK	FAIRBANKS-NORTH STAR BOROUGH	0250090184G	14-MAY-2003	03-10-0417A	01
10	AK	FAIRBANKS-NORTH STAR BOROUGH	0250090184G	14-MAY-2003	03-10-0426A	01
10	AK	FAIRBANKS-NORTH STAR BOROUGH	0250090183G	10-APR-2003	03-10-0443A	02
10	AK	JUNEAU, CITY AND BOROUGH OF	0200090880C	11-APR-2003	03-10-0364A	01
10	AK	KENAI PENINSULA BOROUGH	0200122150A	17-MAR-2003	03-10-0247A	02
10	AK	MATANUSKA-SUSITNA, BOROUGH OF	0200219725D	16-APR-2003	03-10-0242A	01
10	ID	ADA COUNTY	16001C0130H	20-FEB-2003	00-10-269V	19
10	ID	ADA COUNTY	16001C0140H	20-FEB-2003	00-10-269V	19
10	ID	ADA COUNTY	16001C0143H	20-FEB-2003	00-10-269V	19
10	ID	ADA COUNTY	16001C0144H	20-FEB-2003	00-10-269V	19
10	ID	ADA COUNTY	16001C0151H	20-FEB-2003	00-10-269V	19
10	ID	ADA COUNTY	16001C0152H	20-FEB-2003	00-10-269V	19
10	ID	ADA COUNTY	16001C0169H	20-FEB-2003	00-10-269V	19
10	ID	ADA COUNTY	16001C0254H	20-FEB-2003	00-10-269V	19
10	ID	ADA COUNTY	16001C0258H	20-FEB-2003	00-10-269V	19
10	ID	ADA COUNTY	16001C0283H	20-FEB-2003	00-10-269V	19
10	ID	ADA COUNTY	16001C0284H	20-FEB-2003	00-10-269V	19
10	ID	ADA COUNTY	16001C0161H	20-FEB-2003	03-10-0006P	06

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10	ID	ADA COUNTY	16001C0162H	20–FEB–2003	03–10–0006P	06
10	ID	ADA COUNTY	16001C0254G	23–JAN–2003	03–10–0045A	01
10	ID	ADA COUNTY	16001C0140H	06–MAR–2003	03–10–0223A	17
10	ID	ADA COUNTY	16001C0156H	20–FEB–2003	03–10–0228P	05
10	ID	ADA COUNTY	16001C0157H	20–FEB–2003	03–10–0228P	05
10	ID	ADA COUNTY	16001C0176H	20–FEB–2003	03–10–0228P	05
10	ID	ADA COUNTY	16001C0178H	20–FEB–2003	03–10–0228P	05
10	ID	ADA COUNTY	16001C0142H	11–APR–2003	03–10–0245A	17
10	ID	ADA COUNTY	N/A	27–MAR–2003	03–10–0316P	06
10	ID	ADA COUNTY	16001C0143H	09–APR–2003	03–10–0335A	01
10	ID	ADA COUNTY	16001C0140H	21–MAY–2003	03–10–0384A	17
10	ID	ADA COUNTY	16001C0141H	21–MAY–2003	03–10–0384A	17
10	ID	ADA COUNTY	16001C0134H	06–JUN–2003	03–10–0397A	17
10	ID	ADA COUNTY	16001C0140H	14–MAY–2003	03–10–0428A	01
10	ID	ADA COUNTY	16001C0143H	25–JUN–2003	03–10–0643A	01
10	ID	ADA COUNTY	16001C0259H	27–JUN–2003	03–10–0652A	02
10	ID	AMMON, CITY OF	1600280001C	13–JUN–2003	03–10–0229P	05
10	ID	BINGHAM COUNTY	1600180435C	05–FEB–2003	03–10–0180A	02
10	ID	BINGHAM COUNTY	1600180280B	26–FEB–2003	03–10–0219A	02
10	ID	BINGHAM COUNTY	1600180250B	19–MAR–2003	03–10–0253A	02
10	ID	BINGHAM COUNTY	1600180425B	09–MAY–2003	03–10–0375A	02
10	ID	BINGHAM COUNTY	1600180425B	07–MAY–2003	03–10–0386A	02
10	ID	BINGHAM COUNTY	1600180425B	07–MAY–2003	03–10–0401A	02
10	ID	BINGHAM COUNTY	1600180425B	25–JUN–2003	03–10–0500A	02
10	ID	BLAINE COUNTY	1651670441B	21–MAY–2003	02–10–700P	05
10	ID	BLAINE COUNTY	1651670269B	05–FEB–2003	03–10–0184A	02
10	ID	BOISE, CITY OF	16001C0169H	20–FEB–2003	00–10–269V	19
10	ID	BOISE, CITY OF	16001C0277H	20–FEB–2003	00–10–269V	19
10	ID	BOISE, CITY OF	16001C0281H	20–FEB–2003	00–10–269V	19
10	ID	BOISE, CITY OF	16001C0284H	20–FEB–2003	00–10–269V	19
10	ID	BOISE, CITY OF	16001C0305H	20–FEB–2003	00–10–269V	19
10	ID	BOISE, CITY OF	16001C0281H	07–MAR–2003	03–10–0215P	06
10	ID	BOISE, CITY OF	16001C0167H	06–MAR–2003	03–10–0224A	02
10	ID	BOISE, CITY OF	16001C0186H	06–MAR–2003	03–10–0224A	02
10	ID	BOISE, CITY OF	N/A	27–MAR–2003	03–10–0316P	06
10	ID	BONNER COUNTY	1602060300C	21–APR–2003	03–10–0198A	02
10	ID	BONNER COUNTY	1602060300C	12–FEB–2003	03–10–0213A	02
10	ID	BONNER COUNTY	1602060300C	13–MAR–2003	03–10–0289A	02
10	ID	BONNER COUNTY	1602060300C	31–MAR–2003	03–10–0305A	02
10	ID	BONNER COUNTY	1602060300C	24–MAR–2003	03–10–0313A	02
10	ID	BONNER COUNTY	1602060300C	11–JUN–2003	03–10–0527A	02
10	ID	BONNER COUNTY	1602060260B	11–JUN–2003	03–10–0538A	02
10	ID	BONNER COUNTY	1602060430B	25–JUN–2003	03–10–0553A	02
10	ID	BONNEVILLE COUNTY	1600270070D	13–JUN–2003	03–10–0229P	05
10	ID	BONNEVILLE COUNTY	1600270235D	13–JUN–2003	03–10–0229P	05
10	ID	BONNEVILLE COUNTY	1600270240C	17–MAR–2003	03–10–0235A	01
10	ID	BONNEVILLE COUNTY	1600270320C	21–MAY–2003	03–10–0470A	02
10	ID	COTTONWOOD, CITY OF	1600670005B	06–MAR–2003	03–10–0244A	02
10	ID	EAGLE, CITY OF	16001C0134H	20–FEB–2003	00–10–269V	19
10	ID	EAGLE, CITY OF	16001C0153H	20–FEB–2003	00–10–269V	19
10	ID	EAGLE, CITY OF	16001C0161H	20–FEB–2003	00–10–269V	19
10	ID	EAGLE, CITY OF	16001C0162H	20–FEB–2003	00–10–269V	19
10	ID	EAGLE, CITY OF	16001C0153G	03–MAR–2003	03–10–0004A	17
10	ID	EAGLE, CITY OF	16001C0161H	20–FEB–2003	03–10–0006P	06
10	ID	EAGLE, CITY OF	16001C0162H	20–FEB–2003	03–10–0006P	06
10	ID	EAGLE, CITY OF	N/A	27–MAR–2003	03–10–0316P	06
10	ID	EAGLE, CITY OF	16001C0153G	13–MAR–2003	03–10–0350X	01
10	ID	EAGLE, CITY OF	16001C0154H	21–MAY–2003	03–10–0406A	17
10	ID	EAGLE, CITY OF	16001C0153H	25–JUN–2003	03–10–0445A	01
10	ID	EAGLE, CITY OF	16001C0153H	23–APR–2003	03–10–0453X	17
10	ID	EAGLE, CITY OF	16001C0154H	18–JUN–2003	03–10–0482A	17
10	ID	GARDEN CITY, CITY OF	16001C0162H	20–FEB–2003	00–10–269V	19
10	ID	GARDEN CITY, CITY OF	16001C0166H	20–FEB–2003	00–10–269V	19
10	ID	GARDEN CITY, CITY OF	16001C0167H	20–FEB–2003	00–10–269V	19
10	ID	GARDEN CITY, CITY OF	16001C0169H	20–FEB–2003	00–10–269V	19
10	ID	GARDEN CITY, CITY OF	N/A	27–MAR–2003	03–10–0316P	06
10	ID	GARDEN CITY, CITY OF	16001C0166H	03–APR–2003	03–10–0359A	17
10	ID	GARDEN CITY, CITY OF	16001C0166H	28–MAY–2003	03–10–0365A	01
10	ID	GARDEN CITY, CITY OF	16001C0166H	25–APR–2003	03–10–0488X	01
10	ID	GARDEN CITY, CITY OF	16001C0169H	11–JUN–2003	03–10–0563A	02
10	ID	GEM COUNTY	1601270265A	01–MAY–2003	03–10–0341A	02
10	ID	GEM COUNTY	1601270265A	14–MAY–2003	03–10–0532A	02
10	ID	GOODING COUNTY	1602270200B	21–APR–2003	03–10–0053A	02

Region	State	Community	Map panel	Determination date	Case No.	Type
10	ID	HAILEY, CITY OF	1600220668D	11–JUN–2003	03–10–0559A	02
10	ID	JEFFERSON COUNTY	16051C0386B	09–JAN–2003	03–10–0149A	02
10	ID	JEFFERSON COUNTY	16051C0375B	23–APR–2003	03–10–0221A	01
10	ID	KAMIAH, CITY OF	1600940001B	31–MAR–2003	03–10–0249A	02
10	ID	KETCHUM, CITY OF	1600230461C	19–FEB–2003	03–10–0234A	02
10	ID	KOOTENAI COUNTY	1600760050C	25–APR–2003	03–10–0282A	02
10	ID	KOOTENAI COUNTY	1600760155C	09–APR–2003	03–10–0353A	02
10	ID	KOOTENAI COUNTY	1600760025C	11–JUN–2003	03–10–0434A	02
10	ID	KOOTENAI COUNTY	1600760280C	21–MAY–2003	03–10–0461A	02
10	ID	KOOTENAI COUNTY	1600760280C	02–JUN–2003	03–10–0572X	02
10	ID	LATAH COUNTY	1600860355B	27–JAN–2003	03–10–0128A	02
10	ID	LATAH COUNTY	1600860330D	18–JUN–2003	03–10–0505A	02
10	ID	LEMHI COUNTY	1600920665A	19–FEB–2003	02–10–693A	02
10	ID	MERIDIAN, CITY OF	16001C0143H	20–FEB–2003	00–10–269V	19
10	ID	MERIDIAN, CITY OF	16001C0144H	20–FEB–2003	00–10–269V	19
10	ID	MERIDIAN, CITY OF	16001C0231H	20–FEB–2003	00–10–269V	19
10	ID	MERIDIAN, CITY OF	16001C0232H	20–FEB–2003	00–10–269V	19
10	ID	MERIDIAN, CITY OF	16001C0251H	20–FEB–2003	00–10–269V	19
10	ID	MERIDIAN, CITY OF	16001C0232H	06–MAR–2003	03–10–0194A	01
10	ID	MERIDIAN, CITY OF	16001C0143H	13–MAR–2003	03–10–0233A	17
10	ID	MERIDIAN, CITY OF	16001C0144H	17–MAR–2003	03–10–0293A	02
10	ID	MERIDIAN, CITY OF	N/A	27–MAR–2003	03–10–0316P	06
10	ID	MERIDIAN, CITY OF	16001C0144H	20–JUN–2003	03–10–0602A	02
10	ID	PAYETTE, CITY OF	1601980129B	12–FEB–2003	03–10–0190A	02
10	ID	STAR, CITY OF	16001C0140H	14–MAY–2003	03–10–0051A	17
10	ID	TETON COUNTY	16081C0141C	07–MAY–2003	03–10–0354A	02
10	ID	TWIN FALLS, CITY OF	1601200005B	16–APR–2003	03–10–0360A	02
10	ID	TWIN FALLS, CITY OF	1601200005B	02–MAY–2003	03–10–0466A	02
10	ID	VALLEY COUNTY	1602200325A	11–JUN–2003	03–10–0431A	02
10	ID	VALLEY COUNTY	1602200325A	28–MAY–2003	03–10–0485A	02
10	ID	VALLEY COUNTY	1602200475A	25–JUN–2003	03–10–0494A	02
10	ID	VALLEY COUNTY	1602200475A	25–JUN–2003	03–10–0591A	02
10	ID	WEISER,CITY OF	1601240005B	25–JUN–2003	03–10–0521A	02
10	ID	WEISER,CITY OF	1601240005B	25–JUN–2003	03–10–0575A	02
10	OR	ALBANY, CITY OF	4101370005F	26–FEB–2003	03–10–0150A	01
10	OR	ALBANY, CITY OF	4101370003F	23–APR–2003	03–10–0324A	01
10	OR	ALBANY, CITY OF	4101370005F	07–APR–2003	03–10–0408X	01
10	OR	ALBANY, CITY OF	4101370005F	21–MAY–2003	03–10–0531A	02
10	OR	ASHLAND, CITY OF	4100900003B	06–MAR–2003	03–10–0033A	01
10	OR	ASHLAND, CITY OF	4100900003B	23–APR–2003	03–10–0109A	02
10	OR	ASHLAND, CITY OF	4100900001B	02–JAN–2003	03–10–0122A	01
10	OR	ASHLAND, CITY OF	4100900003B	04–FEB–2003	03–10–0178A	02
10	OR	ASHLAND, CITY OF	4100900001B	25–JUN–2003	03–10–0467A	02
10	OR	ATHENA, CITY OF	4102060001D	07–APR–2003	03–10–0344A	02
10	OR	BAKER CITY, CITY OF	41001C0385C	23–APR–2003	03–10–0346A	02
10	OR	BEAVERTON,CITY OF	4102400002C	05–FEB–2003	03–10–0171A	02
10	OR	BEAVERTON,CITY OF	4102400006C	12–FEB–2003	03–10–0195A	02
10	OR	BENTON COUNTY	4100080090C	29–JAN–2003	03–10–0139A	02
10	OR	BENTON COUNTY	4100080080C	28–MAY–2003	03–10–0502A	02
10	OR	BENTON COUNTY	4100080175C	28–MAY–2003	03–10–0502A	02
10	OR	COOS BAY, CITY OF	4100440008B	10–MAR–2003	03–10–0268A	02
10	OR	COOS BAY, CITY OF	4100440008B	16–MAY–2003	03–10–0474A	02
10	OR	COOS COUNTY	4100420240B	10–FEB–2003	03–10–0202A	02
10	OR	COOS COUNTY	4100420080B	01–MAY–2003	03–10–0309A	02
10	OR	COOS COUNTY	4100420135B	15–MAY–2003	03–10–0405P	06
10	OR	CORVALLIS, CITY OF	4100090005E	23–APR–2003	03–10–0301A	01
10	OR	CORVALLIS, CITY OF	4100090006E	09–APR–2003	03–10–0323A	02
10	OR	CORVALLIS, CITY OF	4100090004E	04–JUN–2003	03–10–0504A	02
10	OR	CORVALLIS, CITY OF	4100090002E	11–JUN–2003	03–10–0513A	02
10	OR	CORVALLIS, CITY OF	4100090002E	25–JUN–2003	03–10–0530A	02
10	OR	CORVALLIS, CITY OF	4100090005E	25–JUN–2003	03–10–0555A	02
10	OR	DESCHUTES COUNTY	41017C0140C	13–MAR–2003	03–10–0155A	02
10	OR	DETROIT, CITY OF	41047C0160G	09–APR–2003	03–10–0157A	02
10	OR	DETROIT, CITY OF	41047C1060G	09–APR–2003	03–10–0256A	02
10	OR	DOUGLAS COUNTY	4100590290A	03–MAR–2003	03–10–0222A	02
10	OR	DOUGLAS COUNTY	4100590735A	06–MAR–2003	03–10–0264A	02
10	OR	DOUGLAS COUNTY	4100590930A	11–APR–2003	03–10–0300A	02
10	OR	DOUGLAS COUNTY	4100590710A	31–MAR–2003	03–10–0315A	02
10	OR	DOUGLAS COUNTY	4100590930A	01–MAY–2003	03–10–0338A	02
10	OR	DOUGLAS COUNTY	4100590930A	25–APR–2003	03–10–0373A	02
10	OR	DUNES CITY, CITY OF	41039C1440F	15–JAN–2003	03–10–0152A	02
10	OR	EUGENE, CITY OF	41039C0619F	02–JAN–2003	02–10–753A	02
10	OR	EUGENE, CITY OF	41039C1129F	27–JAN–2003	03–10–0182A	02

Region	State	Community	Map panel	Determination date	Case No.	Type
10	OR	EUGENE, CITY OF	41039C1136F	04–FEB–2003	03–10–0187A	02
10	OR	EUGENE, CITY OF	41039C1104F	12–FEB–2003	03–10–0217A	01
10	OR	EUGENE, CITY OF	41039C1126F	23–APR–2003	03–10–0236A	02
10	OR	EUGENE, CITY OF	41039C1127F	23–APR–2003	03–10–0236A	02
10	OR	EUGENE, CITY OF	41039C1107F	07–MAY–2003	03–10–0421A	02
10	OR	EUGENE, CITY OF	41039C1136F	02–MAY–2003	03–10–0432A	02
10	OR	EUGENE, CITY OF	41039C1136F	07–MAY–2003	03–10–0441A	02
10	OR	EUGENE, CITY OF	41039C1136F	09–MAY–2003	03–10–0455A	02
10	OR	EUGENE, CITY OF	41039C1128F	21–MAY–2003	03–10–0458A	02
10	OR	EUGENE, CITY OF	41039C1107F	18–JUN–2003	03–10–0487A	02
10	OR	EUGENE, CITY OF	41039C1107F	25–JUN–2003	03–10–0506A	02
10	OR	EUGENE, CITY OF	41039C0619F	18–JUN–2003	03–10–0595A	02
10	OR	GLADSTONE, CITY OF	4100170001B	21–MAY–2003	03–10–0478A	02
10	OR	GRANTS PASS, CITY OF	4155900237D	09–JAN–2003	03–10–0134A	02
10	OR	GRANTS PASS, CITY OF	4101080004C	13–MAR–2003	03–10–0141A	02
10	OR	GRANTS PASS, CITY OF	4155900329B	01–MAY–2003	03–10–0430A	02
10	OR	HARNEY COUNTY	4100830604B	02–MAY–2003	03–10–0349A	02
10	OR	HILLSBORO, CITY OF	4102430002B	08–JAN–2003	03–10–0087A	02
10	OR	INDEPENDENCE, CITY OF	41053C0140C	29–JAN–2003	03–10–0170A	02
10	OR	JACKSON COUNTY	4155890537B	16–APR–2003	03–10–0159A	02
10	OR	JACKSON COUNTY	4155890314B	05–FEB–2003	03–10–0205A	02
10	OR	JACKSON COUNTY	4155890277B	18–JUN–2003	03–10–0446A	02
10	OR	JACKSON COUNTY	4155890291B	21–MAY–2003	03–10–0476A	02
10	OR	JACKSON COUNTY	4155890477C	02–JUN–2003	03–10–0477A	02
10	OR	JACKSON COUNTY	4155890305B	02–JUN–2003	03–10–0479A	02
10	OR	KEIZER, CITY OF	41047C0193G	19–MAR–2003	03–10–0246A	01
10	OR	KEIZER, CITY OF	41047C0194G	13–MAR–2003	03–10–0262A	02
10	OR	KEIZER, CITY OF	4102880005B	27–MAR–2003	03–10–0280A	02
10	OR	KEIZER, CITY OF	4102880005B	27–MAR–2003	03–10–0326A	02
10	OR	KEIZER, CITY OF	41047C0194G	04–JUN–2003	03–10–0362A	02
10	OR	KEIZER, CITY OF	41047C0194G	24–MAR–2003	03–10–0374A	02
10	OR	KEIZER, CITY OF	41047C0193G	03–APR–2003	03–10–0415X	02
10	OR	KEIZER, CITY OF	41047C0331G	03–APR–2003	03–10–0415X	02
10	OR	KEIZER, CITY OF	41047C0194G	20–JUN–2003	03–10–0537A	02
10	OR	KEIZER, CITY OF	41047C0194G	04–JUN–2003	03–10–0547A	02
10	OR	KEIZER, CITY OF	41047C0194G	11–JUN–2003	03–10–0557A	02
10	OR	KLAMATH COUNTY	4101091350B	12–FEB–2003	03–10–0193A	02
10	OR	KLAMATH COUNTY	4101091350B	19–MAR–2003	03–10–0266A	02
10	OR	LAKE OSWEGO, CITY OF	4100180002C	02–JAN–2003	03–10–0095A	02
10	OR	LAKE OSWEGO, CITY OF	4100180003C	14–MAY–2003	03–10–0450A	02
10	OR	LANE COUNTY	41039C0620F	20–FEB–2003	03–10–0084A	02
10	OR	LANE COUNTY	41039C1685F	29–JAN–2003	03–10–0118A	02
10	OR	LANE COUNTY	41039C0600F	23–JAN–2003	03–10–0156A	02
10	OR	LANE COUNTY	41039C1107F	15–JAN–2003	03–10–0158A	02
10	OR	LANE COUNTY	41039C1153F	23–JAN–2003	03–10–0176A	02
10	OR	LANE COUNTY	41039C0990F	05–FEB–2003	03–10–0189A	02
10	OR	LANE COUNTY	41039C1210F	10–FEB–2003	03–10–0197A	02
10	OR	LANE COUNTY	41039C1660F	12–FEB–2003	03–10–0216A	02
10	OR	LANE COUNTY	41039C1660F	26–FEB–2003	03–10–0230A	02
10	OR	LANE COUNTY	41039C1087F	31–MAR–2003	03–10–0232A	02
10	OR	LANE COUNTY	41039C1655F	13–MAR–2003	03–10–0260A	02
10	OR	LANE COUNTY	41039C1427F	19–MAR–2003	03–10–0265A	02
10	OR	LANE COUNTY	41039C2135F	27–MAY–2003	03–10–0295A	02
10	OR	LANE COUNTY	41039C1100F	09–APR–2003	03–10–0343A	02
10	OR	LANE COUNTY	41039C1180F	18–JUN–2003	03–10–0358A	02
10	OR	LANE COUNTY	41039C0575F	01–MAY–2003	03–10–0372A	02
10	OR	LANE COUNTY	41039C0550F	14–MAY–2003	03–10–0410A	02
10	OR	LANE COUNTY	41039C1127F	09–MAY–2003	03–10–0419A	02
10	OR	LANE COUNTY	41039C0940F	28–MAY–2003	03–10–0452A	02
10	OR	LANE COUNTY	41039C1107F	20–JUN–2003	03–10–0492A	02
10	OR	LANE COUNTY	41039C1690F	25–JUN–2003	03–10–0569A	02
10	OR	LINCOLN CITY, CITY OF	4101300001C	12–FEB–2003	03–10–0162A	02
10	OR	LINCOLN COUNTY	4101290425B	21–JAN–2003	03–10–0106A	02
10	OR	LINCOLN COUNTY	4101290175B	03–MAR–2003	03–10–0239A	02
10	OR	LINCOLN COUNTY	4101290475B	01–MAY–2003	03–10–0396A	02
10	OR	LINCOLN COUNTY	4101290425B	21–MAY–2003	03–10–0433A	02
10	OR	LINN COUNTY	4101360040B	15–JAN–2003	03–10–0052A	02
10	OR	LINN COUNTY	4101360350B	05–FEB–2003	03–10–0054A	02
10	OR	LINN COUNTY	4101360350B	05–FEB–2003	03–10–0165A	02
10	OR	LINN COUNTY	4101360365B	19–MAR–2003	03–10–0274A	02
10	OR	LINN COUNTY	4101360350B	28–MAY–2003	03–10–0328A	02
10	OR	LINN COUNTY	4101360215B	25–APR–2003	03–10–0366A	02
10	OR	LINN COUNTY	4101360190B	09–MAY–2003	03–10–0439A	02

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10	OR	LINN COUNTY	4101360180B	25–JUN–2003	03–10–0454A	02
10	OR	LINN COUNTY	4101360025B	09–MAY–2003	03–10–0459A	02
10	OR	LINN COUNTY	4101360365B	02–MAY–2003	03–10–0462A	02
10	OR	LINN COUNTY	4101360040B	21–MAY–2003	03–10–0480A	02
10	OR	LINN COUNTY	4101360190B	11–JUN–2003	03–10–0501A	02
10	OR	MULTNOMAH COUNTY	4101790382B	08–JAN–2003	03–10–0016A	02
10	OR	MULTNOMAH COUNTY	4101790215B	13–MAR–2003	03–10–0254A	02
10	OR	MULTNOMAH COUNTY	4101790215B	13–MAR–2003	03–10–0267A	02
10	OR	ONTARIO, CITY OF	4101520005B	13–JUN–2003	03–10–0574A	02
10	OR	PENDLETON, CITY OF	4102110005F	14–MAY–2003	03–10–0404A	01
10	OR	POLK COUNTY	41053C0075D	15–JAN–2003	02–10–741A	02
10	OR	POLK COUNTY	41053C0125C	21–JAN–2003	03–10–0125A	02
10	OR	POLK COUNTY	41053C0225C	05–FEB–2003	03–10–0185A	02
10	OR	PORTLAND, CITY OF	4101830048C	23–JAN–2003	02–10–636A	01
10	OR	PORTLAND, CITY OF	4101830048C	10–MAR–2003	03–10–0071A	02
10	OR	PORTLAND, CITY OF	4101830047D	23–JAN–2003	03–10–0104A	02
10	OR	PORTLAND, CITY OF	4101830047D	26–FEB–2003	03–10–0231A	02
10	OR	PORTLAND, CITY OF	4101830048C	11–APR–2003	03–10–0329A	02
10	OR	PORTLAND, CITY OF	4101830047D	09–APR–2003	03–10–0355A	02
10	OR	PORTLAND, CITY OF	4101830048C	03–APR–2003	03–10–0407X	02
10	OR	PRINEVILLE, CITY OF	41013C0236B	19–MAR–2003	03–10–0310A	02
10	OR	ROCKAWAY, CITY OF	4102010001C	28–MAY–2003	03–10–0436A	02
10	OR	ROSEBURG, CITY OF	4100670005E	12–MAY–2003	03–10–0263P	06
10	OR	ROSEBURG, CITY OF	4100670005E	19–MAR–2003	03–10–0270A	02
10	OR	ROSEBURG, CITY OF	4100670005E	07–MAY–2003	03–10–0369A	02
10	OR	ROSEBURG, CITY OF	4100670005E	20–JUN–2003	03–10–0512A	02
10	OR	ROSEBURG, CITY OF	4100670005E	02–JUN–2003	03–10–0514A	02
10	OR	ROSEBURG, CITY OF	4100670005E	25–JUN–2003	03–10–0554A	02
10	OR	SALEM, CITY OF	41047C0192G	19–FEB–2003	03–10–0212A	02
10	OR	SALEM, CITY OF	N/A	05–MAR–2003	03–10–0292X	06
10	OR	SALEM, CITY OF	41047C0342H	17–APR–2003	03–10–0347P	06
10	OR	SALEM, CITY OF	41047C0361H	17–APR–2003	03–10–0347P	06
10	OR	SALEM, CITY OF	41047C0363H	17–APR–2003	03–10–0347P	06
10	OR	SALEM, CITY OF	41047C0334H	25–APR–2003	03–10–0427A	02
10	OR	SALEM, CITY OF	41047C0194G	18–JUN–2003	03–10–0550A	17
10	OR	SALEM, CITY OF	41047C0329G	27–JUN–2003	03–10–0571A	02
10	OR	SALEM, CITY OF	41047C0333H	03–JAN–2003	98–10–226V	19
10	OR	SALEM, CITY OF	41047C0342H	03–JAN–2003	98–10–226V	19
10	OR	SALEM, CITY OF	41047C0344H	03–JAN–2003	98–10–226V	19
10	OR	SALEM, CITY OF	41047C0361H	03–JAN–2003	98–10–226V	19
10	OR	SODAVILLE, CITY OF	4101360380B	21–APR–2003	03–10–0257A	02
10	OR	SODAVILLE, CITY OF	4101360380B	11–JUN–2003	03–10–0525A	02
10	OR	SPRINGFIELD, CITY OF	41039C1153F	23–APR–2003	03–10–0389A	02
10	OR	TILLAMOOK COUNTY	4101960315A	02–JUN–2003	03–10–0496A	02
10	OR	TUALATIN, CITY OF	4102770002D	04–FEB–2003	03–10–0199A	02
10	OR	TURNER, CITY OF	41047C0677H	21–JAN–2003	03–10–0164A	01
10	OR	WARRENTON, CITY OF	4100330001B	25–JUN–2003	03–10–0564A	02
10	OR	WASHINGTON COUNTY	4102380318B	08–JAN–2003	03–10–0067A	02
10	OR	WASHINGTON COUNTY	4102380509B	29–JAN–2003	03–10–0181A	02
10	OR	WASHINGTON COUNTY	4102380364C	12–FEB–2003	03–10–0204A	02
10	OR	WASHINGTON COUNTY	4102380344B	13–MAR–2003	03–10–0288A	02
10	OR	WASHINGTON COUNTY	4102380363C	13–MAR–2003	03–10–0288A	02
10	OR	WASHINGTON COUNTY	4102380350B	11–JUN–2003	03–10–0371A	02
10	OR	WASHINGTON COUNTY	4102380175B	16–MAY–2003	03–10–0412A	02
10	OR	WILSONVILLE, CITY OF	4100250005B	19–FEB–2003	03–10–0169A	02
10	OR	WINSTON, CITY OF	4155930001D	23–APR–2003	03–10–0382A	02
10	OR	WOODBURN, CITY OF	41047C0117G	23–APR–2003	03–10–0099A	02
10	OR	YAMHILL COUNTY	4102490300C	27–JUN–2003	03–10–0518A	02
10	WA	ABERDEEN, CITY OF	5300580004B	06–MAR–2003	03–10–0203A	02
10	WA	BATTLE GROUND, CITY OF	5300250001B	01–MAY–2003	03–10–0438A	02
10	WA	BELLEVUE, CITY OF	53033C0680F	01–MAY–2003	03–10–0066A	02
10	WA	BELLEVUE, CITY OF	53033C0657F	19–FEB–2003	03–10–0132A	02
10	WA	BELLEVUE, CITY OF	53033C0680F	09–APR–2003	03–10–0248A	02
10	WA	BELLEVUE, CITY OF	53033C0657F	21–APR–2003	03–10–0357A	02
10	WA	BENTON COUNTY	5302370510B	03–MAR–2003	03–10–0167A	02
10	WA	BENTON COUNTY	5302370636D	16–APR–2003	03–10–0444A	02
10	WA	BRIER, CITY OF	53061C1317E	09–APR–2003	03–10–0352A	02
10	WA	BURLINGTON, CITY OF	5301530001B	25–JUN–2003	03–10–0237A	01
10	WA	CARNATION, CITY OF	53033C0418G	04–FEB–2003	03–10–0225A	02
10	WA	CARNATION, CITY OF	53033C0419G	16–APR–2003	03–10–0448A	02
10	WA	CENTRALIA, CITY OF	5301020043B	11–JUN–2003	03–10–0600X	01
10	WA	CHELAN COUNTY	5300150075B	03–MAR–2003	03–10–0127A	02
10	WA	CHELAN COUNTY	5300150800B	13–MAR–2003	03–10–0220A	17

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10	WA	CHELAN COUNTY	5300150800B	25–APR–2003	03–10–0332A	02
10	WA	CLALLAM COUNTY	5300210535D	16–APR–2003	03–10–0380A	02
10	WA	CLARK COUNTY	5300240311B	26–FEB–2003	03–10–0227A	02
10	WA	CLARK COUNTY	5300240317C	18–JUN–2003	03–10–0490A	02
10	WA	COWLITZ COUNTY	5300320129F	14–MAY–2003	03–10–0398A	02
10	WA	ELLENSBURG, CITY OF	5302340002C	14–MAY–2003	03–10–0378A	02
10	WA	EPHRATA, CITY OF	5300510001B	16–MAY–2003	03–10–0370A	02
10	WA	GOLD BAR, TOWN OF	53061C1427E	03–MAR–2003	03–10–0206A	17
10	WA	GRAYS HARBOR COUNTY	5300570350B	21–APR–2003	03–10–0208A	02
10	WA	GRAYS HARBOR COUNTY	5300570407B	27–MAY–2003	03–10–0475A	02
10	WA	ISLAND COUNTY	53029C0275D	23–JAN–2003	03–10–0160A	02
10	WA	JEFFERSON COUNTY	5300690135B	25–APR–2003	03–10–0402A	02
10	WA	KING COUNTY	53033C0377F	22–MAY–2003	02–10–452P	05
10	WA	KING COUNTY	53033C0379G	22–MAY–2003	02–10–452P	05
10	WA	KING COUNTY	53033C1020F	23–JAN–2003	02–10–497A	17
10	WA	KING COUNTY	53033C0705F	15–JAN–2003	02–10–708A	02
10	WA	KING COUNTY	53033C0710G	15–JAN–2003	02–10–708A	02
10	WA	KING COUNTY	53033C1250F	10–MAR–2003	03–10–0108A	02
10	WA	KING COUNTY	53033C1225F	09–JAN–2003	03–10–0153A	02
10	WA	KING COUNTY	53033C0680F	24–MAR–2003	03–10–0251A	02
10	WA	KING COUNTY	53033C1280F	19–MAR–2003	03–10–0255A	02
10	WA	KING COUNTY	53033C0213G	16–APR–2003	03–10–0259A	17
10	WA	KING COUNTY	53033C1079H	27–MAY–2003	03–10–0275A	02
10	WA	KING COUNTY	53033C1009F	27–MAR–2003	03–10–0277A	02
10	WA	KING COUNTY	53033C0680F	13–MAR–2003	03–10–0287A	02
10	WA	KING COUNTY	53033C1057H	27–MAR–2003	03–10–0356A	02
10	WA	KING COUNTY	53033C1057H	01–MAY–2003	03–10–0425A	02
10	WA	KING COUNTY	53033C0680F	13–JUN–2003	03–10–0517A	02
10	WA	KING COUNTY	53033C0687F	11–JUN–2003	03–10–0536A	02
10	WA	KITSAP COUNTY	5300920285B	09–APR–2003	03–10–0271A	02
10	WA	KITSAP COUNTY	5300920205B	09–MAY–2003	03–10–0377A	02
10	WA	KITSAP COUNTY	5300920050B	09–MAY–2003	03–10–0383A	02
10	WA	KITTITAS COUNTY	5300950436B	20–JUN–2003	03–10–0526A	02
10	WA	KLICKITAT COUNTY	5300990025B	31–MAR–2003	03–10–0336A	02
10	WA	LEAVENWORTH, CITY OF	5300190779C	11–JUN–2003	03–10–0435A	02
10	WA	LEWIS COUNTY	5301020370B	13–MAR–2003	03–10–0172A	02
10	WA	LEWIS COUNTY	5301020460B	21–MAY–2003	03–10–0418A	02
10	WA	LEWIS COUNTY	5301020465B	21–MAY–2003	03–10–0483A	02
10	WA	MASON COUNTY	5301150150C	03–APR–2003	03–10–0177A	02
10	WA	MASON COUNTY	5301150275C	02–MAY–2003	03–10–0331A	02
10	WA	MOUNT VERNON, CITY OF	5301580001B	19–MAR–2003	03–10–0278A	02
10	WA	MOUNTLAKE TERRACE, CITY OF	53061C1320E	13–MAR–2003	03–10–0284A	02
10	WA	ORTING, TOWN OF	5301430001B	14–MAY–2003	03–10–0456A	02
10	WA	PEND OREILLE COUNTY	53051C0200C	31–MAR–2003	03–10–0105A	02
10	WA	PEND OREILLE COUNTY	53051C0850C	19–FEB–2003	03–10–0138A	02
10	WA	PEND OREILLE COUNTY	53051C0975C	05–FEB–2003	03–10–0168A	02
10	WA	PIERCE COUNTY	5301380576C	09–JAN–2003	03–10–0151A	02
10	WA	PIERCE COUNTY	5301380470C	06–MAR–2003	03–10–0276A	02
10	WA	PIERCE COUNTY	5301380125C	23–APR–2003	03–10–0281A	02
10	WA	PIERCE COUNTY	5301380275C	04–JUN–2003	03–10–0463A	02
10	WA	POULSBO, CITY OF	5302410005C	02–JUN–2003	03–10–0457A	02
10	WA	RIVERSIDE, TOWN OF	5301220001B	03–JAN–2003	02–10–656P	06
10	WA	SAN JUAN COUNTY	5301490005B	04–FEB–2003	03–10–0179A	02
10	WA	SHORELINE, CITY OF	53033C0040F	09–JAN–2003	03–10–0068A	02
10	WA	SKAGIT COUNTY	5301510235D	05–FEB–2003	03–10–0188A	02
10	WA	SKAGIT COUNTY	5301510025C	20–FEB–2003	03–10–0238A	02
10	WA	SKAGIT COUNTY	5301510285C	09–APR–2003	03–10–0283A	02
10	WA	SKAGIT COUNTY	5301510225C	18–JUN–2003	03–10–0339A	02
10	WA	SKAGIT COUNTY	5301510225C	21–APR–2003	03–10–0390A	02
10	WA	SKAGIT COUNTY	5301510250C	09–MAY–2003	03–10–0391A	02
10	WA	SKAMANIA COUNTY	5301600425B	20–JUN–2003	03–10–0491A	02
10	WA	SNOHOMISH COUNTY	53061C1055E	12–FEB–2003	03–10–0027A	02
10	WA	SNOHOMISH COUNTY	53061C0384E	24–MAR–2003	03–10–0241A	02
10	WA	SNOHOMISH COUNTY	53061C0370E	31–MAR–2003	03–10–0285A	02
10	WA	SNOHOMISH COUNTY	53061C1330E	27–MAY–2003	03–10–0294A	02
10	WA	SNOHOMISH COUNTY	53061C0735E	17–MAR–2003	03–10–0303A	02
10	WA	SPOKANE COUNTY	5301740189C	25–MAR–2003	02–10–614P	05
10	WA	SPOKANE COUNTY	5301740225B	29–JAN–2003	03–10–0166A	02
10	WA	SPOKANE COUNTY	5301740225B	24–MAR–2003	03–10–0269A	02
10	WA	SPOKANE COUNTY	5301740294C	13–MAR–2003	03–10–0272A	02
10	WA	SPOKANE COUNTY	5301740310C	09–APR–2003	03–10–0348A	02
10	WA	SPOKANE COUNTY	5301740294C	16–APR–2003	03–10–0388A	02
10	WA	SPOKANE COUNTY	5301740294C	14–MAY–2003	03–10–0472A	02

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10	WA	SPOKANE COUNTY	5301740294C	06–JUN–2003	03–10–0539A	02
10	WA	STEVENS COUNTY	5301850350B	12–FEB–2003	03–10–0183A	02
10	WA	SULTAN, CITY OF	53061C1406E	16–APR–2003	03–10–0379A	02
10	WA	SULTAN, CITY OF	53061C1406E	09–MAY–2003	03–10–0451A	02
10	WA	SULTAN, CITY OF	53061C1406E	18–JUN–2003	03–10–0489A	02
10	WA	SULTAN, CITY OF	53061C1406E	20–JUN–2003	03–10–0604A	02
10	WA	SUMNER,CITY OF	5301470005D	25–APR–2003	02–10–589A	01
10	WA	THURSTON COUNTY	5301880050C	11–APR–2003	03–10–0129A	02
10	WA	THURSTON COUNTY	5301880215C	06–MAR–2003	03–10–0144A	02
10	WA	THURSTON COUNTY	5301880350C	06–MAR–2003	03–10–0144A	02
10	WA	THURSTON COUNTY	5301880511C	11–APR–2003	03–10–0145A	02
10	WA	THURSTON COUNTY	5301880440C	27–MAR–2003	03–10–0302A	02
10	WA	THURSTON COUNTY	5301880075C	28–MAY–2003	03–10–0318A	02
10	WA	UNION GAP, CITY OF	5302290002C	02–JAN–2003	03–10–0019A	02
10	WA	WHATCOM COUNTY	530198—35B	15–JAN–2003	03–10–0078A	17
10	WA	WHATCOM COUNTY	530198—50B	19–FEB–2003	03–10–0226A	02
10	WA	WHATCOM COUNTY	530198—33IB	09–APR–2003	03–10–0314A	02
10	WA	YAKIMA COUNTY	5302171055C	19–MAR–2003	03–10–0311A	02

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01	CONNECTICUT	EAST HAVEN, TOWN OF	0900760001E	02–JAN–2003
01	CONNECTICUT	EAST HAVEN, TOWN OF	0900760002E	02–JAN–2003
01	CONNECTICUT	EAST HAVEN, TOWN OF	0900760003E	02–JAN–2003
01	CONNECTICUT	EAST HAVEN, TOWN OF	0900760004E	02–JAN–2003
01	CONNECTICUT	EAST HAVEN, TOWN OF	0900760005E	02–JAN–2003
01	CONNECTICUT	EAST HAVEN, TOWN OF	0900760006E	02–JAN–2003
01	CONNECTICUT	EAST HAVEN, TOWN OF	0900760007E	02–JAN–2003
01	CONNECTICUT	EAST HAVEN, TOWN OF	0900760008E	02–JAN–2003
01	CONNECTICUT	EAST HAVEN, TOWN OF	0900760009E	02–JAN–2003
01	CONNECTICUT	EAST HAVEN, TOWN OF	0900760010E	02–JAN–2003
01	CONNECTICUT	EAST HAVEN, TOWN OF	090076IND0A	02–JAN–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110005C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110010C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110011O	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110015C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110016C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110017C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110018C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110019C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110039C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110040C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110052C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110054C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110055C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110056C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110057C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110058C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	0900110080C	16–APR–2003
01	CONNECTICUT	NEWTOWN, TOWN OF	090011IND0A	16–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400010B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400020B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400040B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400065B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400080B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400085B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400101B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400102B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400105B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400106B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400107B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400108B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400109B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400115B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	2304400130B	02–APR–2003
01	MAINE	ALLAGASH, TOWN OF	230440IND0A	02–APR–2003
01	MAINE	NEWCASTLE, TOWN OF	2302180001B	01–APR–2003
01	MAINE	NEWCASTLE, TOWN OF	2302180002B	01–APR–2003
01	MAINE	NEWCASTLE, TOWN OF	230218IND0	01–APR–2003
01	MAINE	WELLS, TOWN OF	2301580005D	16–JAN–2003
01	MAINE	WELLS, TOWN OF	2301580010D	16–JAN–2003
01	MAINE	WELLS, TOWN OF	2301580011D	16–JAN–2003

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01	MAINE	WELLS, TOWN OF	2301580013D	16–JAN–2003
01	MAINE	WELLS, TOWN OF	2301580016D	16–JAN–2003
01	MAINE	WELLS, TOWN OF	2301580017D	16–JAN–2003
01	MAINE	WELLS, TOWN OF	2301580018D	16–JAN–2003
01	MAINE	WELLS, TOWN OF	2301580019D	16–JAN–2003
01	MAINE	WELLS, TOWN OF	2301580021D	16–JAN–2003
01	MAINE	WELLS, TOWN OF	2301580023D	16–JAN–2003
01	MAINE	WELLS, TOWN OF	230158IND0A	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490002B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490005B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490006B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490007B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490008B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490010B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490011B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490012B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490013B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490014B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490015B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490016B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490017B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490018B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	2503490019B	16–JAN–2003
01	MASSACHUSETTS	WORCESTER, CITY OF	250349IND0A	16–JAN–2003
01	NEW HAMPSHIRE	DANBURY, TOWN OF	330111 B***	01–JAN–2003
01	NEW HAMPSHIRE	DANBURY, TOWN OF	3301119999***	01–JAN–2003
01	NEW HAMPSHIRE	ERROL, TOWN OF	3302060015B	16–APR–2003
01	NEW HAMPSHIRE	ERROL, TOWN OF	3302060020B	16–APR–2003
01	NEW HAMPSHIRE	ERROL, TOWN OF	3302060025B	16–APR–2003
01	NEW HAMPSHIRE	ERROL, TOWN OF	3302060030B	16–APR–2003
01	NEW HAMPSHIRE	ERROL, TOWN OF	3302060035B	16–APR–2003
01	NEW HAMPSHIRE	ERROL, TOWN OF	3302060040B	16–APR–2003
01	NEW HAMPSHIRE	ERROL, TOWN OF	3302060050B	16–APR–2003
01	NEW HAMPSHIRE	ERROL, TOWN OF	3302060055B	16–APR–2003
01	NEW HAMPSHIRE	ERROL, TOWN OF	3302060060B	16–APR–2003
01	NEW HAMPSHIRE	ERROL, TOWN OF	330206IND0A	16–APR–2003
01	NEW HAMPSHIRE	SANDOWN, TOWN OF	330191 A***	01–JAN–2003
01	NEW HAMPSHIRE	SANDOWN, TOWN OF	3301919999***	01–JAN–2003
02	NEW JERSEY	BERNARDSVILLE, BOROUGH OF	3404290001C	17–MAR–2003
02	NEW JERSEY	BERNARDSVILLE, BOROUGH OF	3404290002C	17–MAR–2003
02	NEW JERSEY	BERNARDSVILLE, BOROUGH OF	3404290003C	17–MAR–2003
02	NEW JERSEY	BERNARDSVILLE, BOROUGH OF	3404290004C	17–MAR–2003
02	NEW JERSEY	BERNARDSVILLE, BOROUGH OF	3404290005C	17–MAR–2003
02	NEW JERSEY	BERNARDSVILLE, BOROUGH OF	3404290006C	17–MAR–2003
02	NEW JERSEY	BERNARDSVILLE, BOROUGH OF	3404290008C	17–MAR–2003
02	NEW JERSEY	BERNARDSVILLE, BOROUGH OF	3404290009C	17–MAR–2003
02	NEW JERSEY	BERNARDSVILLE, BOROUGH OF	340429IND0A	17–MAR–2003
02	NEW JERSEY	WEYMOUTH, TOWNSHIP OF	3405360009C	16–JAN–2003
02	NEW JERSEY	WEYMOUTH, TOWNSHIP OF	3405360011C	16–JAN–2003
02	NEW JERSEY	WEYMOUTH, TOWNSHIP OF	3405360013C	16–JAN–2003
02	NEW JERSEY	WEYMOUTH, TOWNSHIP OF	3405360015C	16–JAN–2003
02	NEW JERSEY	WEYMOUTH, TOWNSHIP OF	3405360016C	16–JAN–2003
02	NEW JERSEY	WEYMOUTH, TOWNSHIP OF	3405360017C	16–JAN–2003
02	NEW JERSEY	WEYMOUTH, TOWNSHIP OF	3405360028C	16–JAN–2003
02	NEW JERSEY	WEYMOUTH, TOWNSHIP OF	3405360036C	16–JAN–2003
02	NEW JERSEY	WEYMOUTH, TOWNSHIP OF	3405360037C	16–JAN–2003
02	NEW JERSEY	WEYMOUTH, TOWNSHIP OF	3405360038C	16–JAN–2003
02	NEW YORK	MINA, TOWN OF	340536IND0A	16–JAN–2003
02	NEW YORK	MINA, TOWN OF	3613710005B	02–JAN–2003
02	NEW YORK	MINA, TOWN OF	3613710010B	02–JAN–2003
02	NEW YORK	MINA, TOWN OF	3613710015B	02–JAN–2003
02	NEW YORK	MINA, TOWN OF	3613710020B	02–JAN–2003
02	NEW YORK	MINA, TOWN OF	3613710025B	02–JAN–2003
02	NEW YORK	MINA, TOWN OF	3613710030B	02–JAN–2003
02	NEW YORK	MINA, TOWN OF	361371IND0A	02–JAN–2003
02	NEW YORK	SARDINIA, TOWN OF	3602560005C	16–JAN–2003
02	NEW YORK	SARDINIA, TOWN OF	3602560010C	16–JAN–2003
02	NEW YORK	SARDINIA, TOWN OF	3602560015C	16–JAN–2003
02	NEW YORK	SARDINIA, TOWN OF	3602560017C	16–JAN–2003
02	NEW YORK	SARDINIA, TOWN OF	3602560019C	16–JAN–2003
02	NEW YORK	SARDINIA, TOWN OF	3602560020C	16–JAN–2003
02	NEW YORK	SARDINIA, TOWN OF	3602560030C	16–JAN–2003
02	NEW YORK	SARDINIA, TOWN OF	3602560036C	16–JAN–2003
02	NEW YORK	SARDINIA, TOWN OF	3602560040C	16–JAN–2003

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02	NEW YORK	SARDINIA, TOWN OF	360256IND0A	16–JAN–2003
03	VIRGINIA	FAIRFAX, CITY OF	5155240001C	19–FEB–2003
03	VIRGINIA	FAIRFAX, CITY OF	5155240002C	19–FEB–2003
03	VIRGINIA	FAIRFAX, CITY OF	5155240003C	19–FEB–2003
03	VIRGINIA	FAIRFAX, CITY OF	5155240004C	19–FEB–2003
03	VIRGINIA	FAIRFAX, CITY OF	5155240005C	19–FEB–2003
03	VIRGINIA	FAIRFAX, CITY OF	515524IND0A	19–FEB–2003
04	FLORIDA	DAYTONA BEACH, CITY OF	12127C0218H**	19–FEB–2003
04	FLORIDA	DAYTONA BEACH, CITY OF	12127CIND0A**	19–FEB–2003
04	FLORIDA	HOLLY HILL, CITY OF	12127C0214H**	19–FEB–2003
04	FLORIDA	HOLLY HILL, CITY OF	12127C0218H**	19–FEB–2003
04	FLORIDA	HOLLY HILL, CITY OF	12127CIND0A**	19–FEB–2003
04	FLORIDA	ORMOND BEACH, CITY OF	12127C0194H	19–FEB–2003
04	FLORIDA	ORMOND BEACH, CITY OF	12127C0200H	19–FEB–2003
04	FLORIDA	ORMOND BEACH, CITY OF	12127C0202H	19–FEB–2003
04	FLORIDA	ORMOND BEACH, CITY OF	12127C0203H	19–FEB–2003
04	FLORIDA	ORMOND BEACH, CITY OF	12127C0204H	19–FEB–2003
04	FLORIDA	ORMOND BEACH, CITY OF	12127C0208H	19–FEB–2003
04	FLORIDA	ORMOND BEACH, CITY OF	12127C0211H	19–FEB–2003
04	FLORIDA	ORMOND BEACH, CITY OF	12127C0212H	19–FEB–2003
04	FLORIDA	ORMOND BEACH, CITY OF	12127C0213H	19–FEB–2003
04	FLORIDA	ORMOND BEACH, CITY OF	12127C0214H	19–FEB–2003
04	FLORIDA	ORMOND BEACH, CITY OF	12127C0216H	19–FEB–2003
04	FLORIDA	ORMOND BEACH, CITY OF	12127C0218H	19–FEB–2003
04	FLORIDA	ORMOND BEACH, CITY OF	12127CIND0A	19–FEB–2003
04	FLORIDA	VOLUSIA COUNTY*	12127C0194H**	19–FEB–2003
04	FLORIDA	VOLUSIA COUNTY*	12127C0200H**	19–FEB–2003
04	FLORIDA	VOLUSIA COUNTY*	12127C0202H**	19–FEB–2003
04	FLORIDA	VOLUSIA COUNTY*	12127C0203H**	19–FEB–2003
04	FLORIDA	VOLUSIA COUNTY*	12127C0204H**	19–FEB–2003
04	FLORIDA	VOLUSIA COUNTY*	12127C0208H**	19–FEB–2003
04	FLORIDA	VOLUSIA COUNTY*	12127C0211H**	19–FEB–2003
04	FLORIDA	VOLUSIA COUNTY*	12127C0212H**	19–FEB–2003
04	FLORIDA	VOLUSIA COUNTY*	12127C0213H**	19–FEB–2003
04	FLORIDA	VOLUSIA COUNTY*	12127C0214H**	19–FEB–2003
04	FLORIDA	VOLUSIA COUNTY*	12127C0216H**	19–FEB–2003
04	FLORIDA	VOLUSIA COUNTY*	12127C0218H**	19–FEB–2003
04	FLORIDA	VOLUSIA COUNTY*	12127CIND0A**	19–FEB–2003
04	KENTUCKY	HARLAN, CITY OF	2101020001C	02–APR–2003
04	KENTUCKY	HARLAN, CITY OF	2101020002C	02–APR–2003
04	KENTUCKY	HARLAN, CITY OF	2101020003C	02–APR–2003
04	KENTUCKY	HARLAN, CITY OF	210102IND0	02–APR–2003
04	KENTUCKY	WHITLEY COUNTY*	21235C0070C	16–APR–2003
04	KENTUCKY	WHITLEY COUNTY*	21235C0090C	16–APR–2003
04	KENTUCKY	WHITLEY COUNTY*	21235C0110C	16–APR–2003
04	KENTUCKY	WHITLEY COUNTY*	21235C0130C	16–APR–2003
04	KENTUCKY	WHITLEY COUNTY*	21235C0135C	16–APR–2003
04	KENTUCKY	WHITLEY COUNTY*	21235C0140C	16–APR–2003
04	KENTUCKY	WHITLEY COUNTY*	21235C0145C	16–APR–2003
04	KENTUCKY	WHITLEY COUNTY*	21235CIND0A	16–APR–2003
04	KENTUCKY	WILLIAMSBURG, CITY OF	21235C0070C	16–APR–2003
04	KENTUCKY	WILLIAMSBURG, CITY OF	21235C0110C	16–APR–2003
04	KENTUCKY	WILLIAMSBURG, CITY OF	21235CIND0A	16–APR–2003
04	NORTH CAROLINA	BELMONT, CITY OF	37071C0214E	03–MAR–2003
04	NORTH CAROLINA	BELMONT, CITY OF	37071C0216E	03–MAR–2003
04	NORTH CAROLINA	BELMONT, CITY OF	37071C0218E	03–MAR–2003
04	NORTH CAROLINA	BELMONT, CITY OF	37071C0219E	03–MAR–2003
04	NORTH CAROLINA	BELMONT, CITY OF	37071C0302E	03–MAR–2003
04	NORTH CAROLINA	BELMONT, CITY OF	37071C0304E	03–MAR–2003
04	NORTH CAROLINA	BELMONT, CITY OF	37071C0306E	03–MAR–2003
04	NORTH CAROLINA	BELMONT, CITY OF	37071C0307E	03–MAR–2003
04	NORTH CAROLINA	BELMONT, CITY OF	37071C0308E	03–MAR–2003
04	NORTH CAROLINA	BELMONT, CITY OF	37071C0309E	03–MAR–2003
04	NORTH CAROLINA	BELMONT, CITY OF	37071C0316E	03–MAR–2003
04	NORTH CAROLINA	BELMONT, CITY OF	37071C0317E	03–MAR–2003
04	NORTH CAROLINA	BELMONT, CITY OF	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	BESSEMER CITY, CITY OF	37071C0158E	03–MAR–2003
04	NORTH CAROLINA	BESSEMER CITY, CITY OF	37071C0159E	03–MAR–2003
04	NORTH CAROLINA	BESSEMER CITY, CITY OF	37071C0165E	03–MAR–2003
04	NORTH CAROLINA	BESSEMER CITY, CITY OF	37071C0166E	03–MAR–2003
04	NORTH CAROLINA	BESSEMER CITY, CITY OF	37071C0167E	03–MAR–2003
04	NORTH CAROLINA	BESSEMER CITY, CITY OF	37071C0168E	03–MAR–2003
04	NORTH CAROLINA	BESSEMER CITY, CITY OF	37071C0169E	03–MAR–2003
04	NORTH CAROLINA	BESSEMER CITY, CITY OF	37071C0186E	03–MAR–2003

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04	NORTH CAROLINA	BESSEMER CITY, CITY OF	37071C0188E	03–MAR–2003
04	NORTH CAROLINA	BESSEMER CITY, CITY OF	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	CHERRYVILLE, CITY OF	37071C0025E	03–MAR–2003
04	NORTH CAROLINA	CHERRYVILLE, CITY OF	37071C0038E	03–MAR–2003
04	NORTH CAROLINA	CHERRYVILLE, CITY OF	37071C0039E	03–MAR–2003
04	NORTH CAROLINA	CHERRYVILLE, CITY OF	37071C0040E	03–MAR–2003
04	NORTH CAROLINA	CHERRYVILLE, CITY OF	37071C0150E	03–MAR–2003
04	NORTH CAROLINA	CHERRYVILLE, CITY OF	37071C0151E	03–MAR–2003
04	NORTH CAROLINA	CHERRYVILLE, CITY OF	37071C0155E	03–MAR–2003
04	NORTH CAROLINA	CHERRYVILLE, CITY OF	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	CRAMERTON, TOWN OF	37071C0214E	03–MAR–2003
04	NORTH CAROLINA	CRAMERTON, TOWN OF	37071C0218E	03–MAR–2003
04	NORTH CAROLINA	CRAMERTON, TOWN OF	37071C0301E	03–MAR–2003
04	NORTH CAROLINA	CRAMERTON, TOWN OF	37071C0302E	03–MAR–2003
04	NORTH CAROLINA	CRAMERTON, TOWN OF	37071C0303E	03–MAR–2003
04	NORTH CAROLINA	CRAMERTON, TOWN OF	37071C0304E	03–MAR–2003
04	NORTH CAROLINA	CRAMERTON, TOWN OF	37071C0306E	03–MAR–2003
04	NORTH CAROLINA	CRAMERTON, TOWN OF	37071C0308E	03–MAR–2003
04	NORTH CAROLINA	CRAMERTON, TOWN OF	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	DALLAS, TOWN OF	37071C0179E	03–MAR–2003
04	NORTH CAROLINA	DALLAS, TOWN OF	37071C0183E	03–MAR–2003
04	NORTH CAROLINA	DALLAS, TOWN OF	37071C0184E	03–MAR–2003
04	NORTH CAROLINA	DALLAS, TOWN OF	37071C0187E	03–MAR–2003
04	NORTH CAROLINA	DALLAS, TOWN OF	37071C0191E	03–MAR–2003
04	NORTH CAROLINA	DALLAS, TOWN OF	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	DELLVIEW, TOWN OF	37071C0025E	03–MAR–2003
04	NORTH CAROLINA	DELLVIEW, TOWN OF	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0025E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0038E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0039E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0040E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0045E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0061E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0062E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0063E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0064E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0068E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0070E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0090E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0095E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0115E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0150E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0151E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0155E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0158E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0159E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0160E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0165E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0166E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0167E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0168E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0169E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0179E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0180E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0181E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0182E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0183E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0184E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0186E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0187E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0188E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0189E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0191E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0192E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0193E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0194E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0203E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0205E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0209E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0210E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0211E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0212E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0213E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0214E	03–MAR–2003

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04	NORTH CAROLINA	GASTON COUNTY *	37071C0217E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0218E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0219E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0228E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0230E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0235E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0236E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0255E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0260E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0270E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0276E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0277E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0278E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0279E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0281E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0282E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0283E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0284E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0290E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0295E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C8301E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0302E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0303E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0304E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0306E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0307E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0308E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0309E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0315E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0316E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0317E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0318E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071C0319E	03–MAR–2003
04	NORTH CAROLINA	GASTON COUNTY *	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0167E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0168E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0169E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0186E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0187E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0188E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0189E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0191E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0192E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0193E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0194E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0213E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0214E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0255E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0260E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0276E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0277E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0278E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0279E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0281E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0282E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0283E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0284E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0290E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0295E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0301E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0302E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0303E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071C0304E	03–MAR–2003
04	NORTH CAROLINA	GASTONIA, CITY OF	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	HIGH SHOALS, CITY OF	37071C0061E	03–MAR–2003
04	NORTH CAROLINA	HIGH SHOALS, CITY OF	37071C0062E	03–MAR–2003
04	NORTH CAROLINA	HIGH SHOALS, CITY OF	37071C0063E	03–MAR–2003
04	NORTH CAROLINA	HIGH SHOALS, CITY OF	37071C0064E	03–MAR–2003
04	NORTH CAROLINA	HIGH SHOALS, CITY OF	37071C0068E	03–MAR–2003
04	NORTH CAROLINA	HIGH SHOALS, CITY OF	37071C0070E	03–MAR–2003
04	NORTH CAROLINA	HIGH SHOALS, CITY OF	37071C0180E	03–MAR–2003
04	NORTH CAROLINA	HIGH SHOALS, CITY OF	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	LOWELL, CITY OF	37071C0211E	03–MAR–2003

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04	NORTH CAROLINA	LOWELL, CITY OF	37071C0214E	03–MAR–2003
04	NORTH CAROLINA	LOWELL, CITY OF	37071C0301E	03–MAR–2003
04	NORTH CAROLINA	LOWELL, CITY OF	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	MCADENVILLE,TOWN OF	37071C0212E	03–MAR–2003
04	NORTH CAROLINA	MCADENVILLE,TOWN OF	37071C0213E	03–MAR–2003
04	NORTH CAROLINA	MCADENVILLE,TOWN OF	37071C0214E	03–MAR–2003
04	NORTH CAROLINA	MCADENVILLE,TOWN OF	37071C0218E	03–MAR–2003
04	NORTH CAROLINA	MCADENVILLE,TOWN OF	37071C0302E	03–MAR–2003
04	NORTH CAROLINA	MCADENVILLE,TOWN OF	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	MOUNT HOLLY, CITY OF	37071C0209E	03–MAR–2003
04	NORTH CAROLINA	MOUNT HOLLY, CITY OF	37071C0210E	03–MAR–2003
04	NORTH CAROLINA	MOUNT HOLLY, CITY OF	37071C0216E	03–MAR–2003
04	NORTH CAROLINA	MOUNT HOLLY, CITY OF	37071C0217E	03–MAR–2003
04	NORTH CAROLINA	MOUNT HOLLY, CITY OF	37071C0218E	03–MAR–2003
04	NORTH CAROLINA	MOUNT HOLLY, CITY OF	37071C0219E	03–MAR–2003
04	NORTH CAROLINA	MOUNT HOLLY, CITY OF	37071C0228E	03–MAR–2003
04	NORTH CAROLINA	MOUNT HOLLY, CITY OF	37071C0230E	03–MAR–2003
04	NORTH CAROLINA	MOUNT HOLLY, CITY OF	37071C0236E	03–MAR–2003
04	NORTH CAROLINA	MOUNT HOLLY, CITY OF	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	RANLO, TOWN OF	37071C0192E	03–MAR–2003
04	NORTH CAROLINA	RANLO, TOWN OF	37071C0194E	03–MAR–2003
04	NORTH CAROLINA	RANLO, TOWN OF	37071C0211E	03–MAR–2003
04	NORTH CAROLINA	RANLO, TOWN OF	37071C0213E	03–MAR–2003
04	NORTH CAROLINA	RANLO, TOWN OF	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	SPENCER MOUNTAIN, TOWN OF	37071C0203E	03–MAR–2003
04	NORTH CAROLINA	SPENCER MOUNTAIN, TOWN OF	37071C0211E	03–MAR–2003
04	NORTH CAROLINA	SPENCER MOUNTAIN, TOWN OF	37071CIND0A	03–MAR–2003
04	NORTH CAROLINA	STANLEY, TOWN OF	37071C0090E	03–MAR–2003
04	NORTH CAROLINA	STANLEY, TOWN OF	37071C0182E	03–MAR–2003
04	NORTH CAROLINA	STANLEY, TOWN OF	37071C0184E	03–MAR–2003
04	NORTH CAROLINA	STANLEY, TOWN OF	37071C0203E	03–MAR–2003
04	NORTH CAROLINA	STANLEY, TOWN OF	37071C0205E	03–MAR–2003
04	NORTH CAROLINA	STANLEY, TOWN OF	37071C0210E	03–MAR–2003
04	NORTH CAROLINA	STANLEY, TOWN OF	37071C0212E	03–MAR–2003
04	NORTH CAROLINA	STANLEY, TOWN OF	37071CIND0A	03–MAR–2003
04	TENNESSEE	BRENTWOOD, CITY OF	47187C0035E	16–JAN–2003
04	TENNESSEE	BRENTWOOD, CITY OF	47187C0040E	16–JAN–2003
04	TENNESSEE	BRENTWOOD, CITY OF	47187C0045E	16–JAN–2003
04	TENNESSEE	BRENTWOOD, CITY OF	47187C0079E	16–JAN–2003
04	TENNESSEE	BRENTWOOD, CITY OF	47187C0080E	16–JAN–2003
04	TENNESSEE	BRENTWOOD, CITY OF	47187C0085E	16–JAN–2003
04	TENNESSEE	BRENTWOOD, CITY OF	47187C0090E	16–JAN–2003
04	TENNESSEE	BRENTWOOD, CITY OF	47187C0095E	16–JAN–2003
04	TENNESSEE	BRENTWOOD, CITY OF	47187C0140E	16–JAN–2003
04	TENNESSEE	BRENTWOOD, CITY OF	47187C0145E	16–JAN–2003
04	TENNESSEE	BRENTWOOD, CITY OF	47187CIND0A	16–JAN–2003
04	TENNESSEE	CARTER COUNTY *	47019C0126D	16–APR–2003
04	TENNESSEE	FAIRVIEW, CITY OF	47187C0010E	16–JAN–2003
04	TENNESSEE	FAIRVIEW, CITY OF	47187C0013E	16–JAN–2003
04	TENNESSEE	FAIRVIEW, CITY OF	47187C0014E	16–JAN–2003
04	TENNESSEE	FAIRVIEW, CITY OF	47187C0020E	16–JAN–2003
04	TENNESSEE	FAIRVIEW, CITY OF	47187C0055E	16–JAN–2003
04	TENNESSEE	FAIRVIEW, CITY OF	47187C0056E	16–JAN–2003
04	TENNESSEE	FAIRVIEW, CITY OF	47187C0057E	16–JAN–2003
04	TENNESSEE	FAIRVIEW, CITY OF	47187C0058E	16–JAN–2003
04	TENNESSEE	FAIRVIEW, CITY OF	47187C0065E	16–JAN–2003
04	TENNESSEE	FAIRVIEW, CITY OF	47187CIND0A	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0072E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0074E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0078E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0079E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0080E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0085E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0090E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0127E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0130E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0131E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0132E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0133E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0134E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0140E	16–JAN–2003
04	TENNESSEE	FRANKLIN, CITY OF	47187C0185E	16–JAN–2003

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04	TENNESSEE	WILLIAMSON COUNTY *	47187C0005E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0010E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0011E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0012E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0013E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0014E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0020E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0025E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0030E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0035E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0050E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0055E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0056E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0057E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0058E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0059E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0062E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0064E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0065E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0070E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0072E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0074E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0075E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0078E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0079E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0080E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0085E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0090E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0095E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0115E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0120E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0125E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0127E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0130E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0132E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0133E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0134E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0140E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0145E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0150E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0165E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0175E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0180E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0185E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0190E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0195E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0200E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0205E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0225E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0228E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0230E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0235E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0240E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0245E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0250E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0257E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0265E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187C0270E	16–JAN–2003
04	TENNESSEE	WILLIAMSON COUNTY *	47187CIND0A	16–JAN–2003
05	IL	BEECHER, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	BOLINGBROOK, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	BRADLEY, VILLAGE OF	1703380019C	05–MAY–2003
05	IL	BRADLEY, VILLAGE OF	1703380038C	05–MAY–2003
05	IL	BRADLEY, VILLAGE OF	1703380039C	05–MAY–2003
05	IL	BRADLEY, VILLAGE OF	170338IND0A**	05–MAY–2003
05	IL	BRAIDWOOD, CITY OF	17197CIND0A**	17–MAR–2003
05	IL	CHAMPAIGN COUNTY *	1708940095C	02–JAN–2003
05	IL	CHAMPAIGN COUNTY *	1708940100C	02–JAN–2003
05	IL	CHAMPAIGN COUNTY *	170894IND0A**	02–JAN–2003
05	IL	CHANNAHON, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	COLUMBIA, CITY OF	1705100020D	17–MAR–2003
05	IL	COLUMBIA, CITY OF	1705100035D	17–MAR–2003
05	IL	COLUMBIA, CITY OF	1705100055D	17–MAR–2003

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05	IL	COLUMBIA, CITY OF	170510IND0A**	17–MAR–2003
05	IL	CREST HILL, CITY OF	17197CIND0A**	17–MAR–2003
05	IL	CRETE, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	ELWOOD, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	FRANKFORT, VILLAGE OF	17197C0195F	17–MAR–2003
05	IL	FRANKFORT, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	GODLEY, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	HOMER GLENN, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	JOLIET, CITY OF	17197C0141F	17–MAR–2003
05	IL	JOLIET, CITY OF	17197C0143F	17–MAR–2003
05	IL	JOLIET, CITY OF	17197CIND0A**	17–MAR–2003
05	IL	KANKAKEE, CITY OF	1703390019D	05–MAY–2003
05	IL	KANKAKEE, CITY OF	1703390038D	05–MAY–2003
05	IL	KANKAKEE, CITY OF	1703390039D	05–MAY–2003
05	IL	KANKAKEE, CITY OF	1703390057D	05–MAY–2003
05	IL	KANKAKEE, CITY OF	1703390076D	05–MAY–2003
05	IL	KANKAKEE, CITY OF	1703390077D	05–MAY–2003
05	IL	KANKAKEE, CITY OF	1703390078D	05–MAY–2003
05	IL	KANKAKEE, CITY OF	1703390079D	05–MAY–2003
05	IL	KANKAKEE, CITY OF	170339IND0A**	05–MAY–2003
05	IL	LOCKPORT, CITY OF	17197CIND0A**	17–MAR–2003
05	IL	MAHOMET, VILLAGE OF	1700290001C	02–JAN–2003
05	IL	MAHOMET, VILLAGE OF	1700290002C	02–JAN–2003
05	IL	MAHOMET, VILLAGE OF	1700290004C	02–JAN–2003
05	IL	MAHOMET, VILLAGE OF	1700290005C	02–JAN–2003
05	IL	MAHOMET, VILLAGE OF	1700290006C	02–JAN–2003
05	IL	MAHOMET, VILLAGE OF	170029IND0A**	02–JAN–2003
05	IL	MANHATTAN, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	MINOOKA, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	MOKENA, VILLAGE OF	17197C0195F	17–MAR–2003
05	IL	MOKENA, VILLAGE OF	17197C0211F	17–MAR–2003
05	IL	MOKENA, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	MONEE, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	MONROE COUNTY*	1705090020E	17–MAR–2003
05	IL	MONROE COUNTY*	1705090035E	17–MAR–2003
05	IL	MONROE COUNTY*	1705090050E	17–MAR–2003
05	IL	MONROE COUNTY*	1705090055E	17–MAR–2003
05	IL	MONROE COUNTY*	1705090075E	17–MAR–2003
05	IL	MONROE COUNTY*	1705090100D	17–MAR–2003
05	IL	MONROE COUNTY*	1705090125D	17–MAR–2003
05	IL	MONROE COUNTY*	1705090150D	17–MAR–2003
05	IL	MONROE COUNTY*	1705090175D	17–MAR–2003
05	IL	MONROE COUNTY*	1705090200D	17–MAR–2003
05	IL	MONROE COUNTY*	170509IND0A**	17–MAR–2003
05	IL	NEW LENOX, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	PARK FOREST, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	PEOTONE, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	PLAINFIELD, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	ROCKDALE, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	ROMEOVILLE, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	SHOREWOOD,VILLAGE OF	17197C0141F	17–MAR–2003
05	IL	SHOREWOOD,VILLAGE OF	17197C0143F	17–MAR–2003
05	IL	SHOREWOOD,VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	STEGER, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	SYMERTON, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	TINLEY PARK, CITY OF	17197CIND0A**	17–MAR–2003
05	IL	UNIVERSITY PARK, VILLAGE OF	17197CIND0A**	17–MAR–2003
05	IL	WILL COUNTY *	17197C0141F	17–MAR–2003
05	IL	WILL COUNTY *	17197C0143F	17–MAR–2003
05	IL	WILL COUNTY *	17197C0195F	17–MAR–2003
05	IL	WILL COUNTY *	17197C0211F	17–MAR–2003
05	IL	WILL COUNTY *	17197CIND0A**	17–MAR–2003
05	IL	WILMINGTON, CITY OF	17197CIND0A**	17–MAR–2003
05	IN	ARCADIA, TOWN OF	18057C0045F	19–FEB–2003
05	IN	ARCADIA, TOWN OF	18057C0050F	19–FEB–2003
05	IN	ARCADIA, TOWN OF	18057C0055F	19–FEB–2003
05	IN	ARCADIA, TOWN OF	18057C0065F	19–FEB–2003
05	IN	ARCADIA, TOWN OF	18057CIND0A**	19–FEB–2003
05	IN	ATLANTA, TOWN OF	18057C0050F	19–FEB–2003
05	IN	ATLANTA, TOWN OF	18057C0055F	19–FEB–2003
05	IN	ATLANTA, TOWN OF	18057CIND0A**	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0119F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0138F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0140F	19–FEB–2003

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05	IN	CARMEL, CITY OF	18057C0145F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0205F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0206F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0207F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0208F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0209F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0216F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0226F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0227F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0228F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0229F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0235F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0236F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057C0237F	19–FEB–2003
05	IN	CARMEL, CITY OF	18057CIND0A**	19–FEB–2003
05	IN	CICERO, TOWN OF	18057C0025F	19–FEB–2003
05	IN	CICERO, TOWN OF	18057C0045F	19–FEB–2003
05	IN	CICERO, TOWN OF	18057C0050F	19–FEB–2003
05	IN	CICERO, TOWN OF	18057C0065F	19–FEB–2003
05	IN	CICERO, TOWN OF	18057C0110F	19–FEB–2003
05	IN	CICERO, TOWN OF	18057C0130F	19–FEB–2003
05	IN	CICERO, TOWN OF	18057C0135F	19–FEB–2003
05	IN	CICERO, TOWN OF	18057C0155F	19–FEB–2003
05	IN	CICERO, TOWN OF	18057CIND0A**	19–FEB–2003
05	IN	FISHERS, TOWN OF	18057C0145F	19–FEB–2003
05	IN	FISHERS, TOWN OF	18057C0165F	19–FEB–2003
05	IN	FISHERS, TOWN OF	18057C0229F	19–FEB–2003
05	IN	FISHERS, TOWN OF	18057C0235F	19–FEB–2003
05	IN	FISHERS, TOWN OF	18057C0237F	19–FEB–2003
05	IN	FISHERS, TOWN OF	18057C0245F	19–FEB–2003
05	IN	FISHERS, TOWN OF	18057C0255F	19–FEB–2003
05	IN	FISHERS, TOWN OF	18057C0260F	19–FEB–2003
05	IN	FISHERS, TOWN OF	18057C0265F	19–FEB–2003
05	IN	FISHERS, TOWN OF	18057CIND0A**	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0025F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0045F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0050F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0055F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0060F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0065F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0070F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0080F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0090F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0105F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0110F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0115F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0119F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0120F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0130F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0135F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0138F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0140F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0145F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0155F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0160F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0165F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0170F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0200F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0205F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0206F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0207F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0208F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0209F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0216F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0226F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0227F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0228F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0229F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0235F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0236F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0237F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0245F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0255F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0260F	19–FEB–2003

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05	IN	HAMILTON COUNTY*	18057C0265F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0270F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0280F	19–FEB–2003
05	IN	HAMILTON COUNTY*	18057C0290F	19–FEB–2003
05	IN	HAMILTON COUNTY*	19057CIND0A**	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0130F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0135F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0140F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0145F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0155F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0165F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0170F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0200F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0229F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0235F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0245F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0255F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0260F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0265F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0270F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0280F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057C0290F	19–FEB–2003
05	IN	NOBLESVILLE, CITY OF	18057CIND0A**	19–FEB–2003
05	IN	SHERIDAN, TOWN OF	18057C0025F	19–FEB–2003
05	IN	SHERIDAN, TOWN OF	18057C0105F	19–FEB–2003
05	IN	SHERIDAN, TOWN OF	18057CIND0A**	19–FEB–2003
05	IN	WESTFIELD, TOWN OF	18057C0105F	19–FEB–2003
05	IN	WESTFIELD, TOWN OF	18057C0110F	19–FEB–2003
05	IN	WESTFIELD, TOWN OF	18057C0115F	19–FEB–2003
05	IN	WESTFIELD, TOWN OF	18057C0119F	19–FEB–2003
05	IN	WESTFIELD, TOWN OF	18057C0120F	19–FEB–2003
05	IN	WESTFIELD, TOWN OF	18057C0130F	19–FEB–2003
05	IN	WESTFIELD, TOWN OF	18057C0138F	19–FEB–2003
05	IN	WESTFIELD, TOWN OF	18057C0140F	19–FEB–2003
05	IN	WESTFIELD, TOWN OF	18057C0205F	19–FEB–2003
05	IN	WESTFIELD, TOWN OF	18057C0206F	19–FEB–2003
05	IN	WESTFIELD, TOWN OF	18057C0207F	19–FEB–2003
05	IN	WESTFIELD, TOWN OF	18057CIND0A**	19–FEB–2003
05	MI	OWOSSO, CITY OF	2605960001B	16–JAN–2003
05	MI	OWOSSO, CITY OF	2605960002B	16–JAN–2003
05	MI	OWOSSO, CITY OF	2605960003B	16–JAN–2003
05	MI	OWOSSO, CITY OF	2605960004B	16–JAN–2003
05	MI	OWOSSO, CITY OF	2605960005B	16–JAN–2003
05	MI	OWOSSO, CITY OF	260596IND0A**	16–JAN–2003
05	MN	NORTHFIELD, CITY OF	2704060004C	02–APR–2003
05	MN	NORTHFIELD, CITY OF	2704060007C	02–APR–2003
05	MN	NORTHFIELD, CITY OF	2704060008C	02–APR–2003
05	MN	NORTHFIELD, CITY OF	2704060009C	02–APR–2003
05	MN	NORTHFIELD, CITY OF	2704060012C	02–APR–2003
05	MN	NORTHFIELD, CITY OF	270406IND0A**	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480004F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480012F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480014F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480017F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480018F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480019F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480028F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480029F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480033F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480034F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480036F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480037F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480041F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480042F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480043F	02–APR–2003
05	MN	ST. PAUL, CITY OF	2752480044F	02–APR–2003
05	MN	ST. PAUL, CITY OF	275248IND0A**	02–APR–2003
05	OH	ADELPHI, VILLAGE OF	39141C0225C	02–APR–2003
05	OH	ADELPHI, VILLAGE OF	39141CIND0A**	02–APR–2003
05	OH	BAINBRIDGE, VILLAGE OF	39141C0460C	02–APR–2003
05	OH	BAINBRIDGE, VILLAGE OF	39141CIND0A**	02–APR–2003
05	OH	CHILLICOTHE, CITY OF	39141C0335C	02–APR–2003
05	OH	CHILLICOTHE, CITY OF	39141C0355C	02–APR–2003
05	OH	CHILLICOTHE, CITY OF	39141CIND0A**	02–APR–2003

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05	OH	CLARKSBURG, VILLAGE OF	39141CIND0A**	02–APR–2003
05	OH	FRANKFORT, VILLAGE OF	39141C0145C	02–APR–2003
05	OH	FRANKFORT, VILLAGE OF	39141C0150C	02–APR–2003
05	OH	FRANKFORT, VILLAGE OF	39141CIND0A**	02–APR–2003
05	OH	KINGSTON, VILLAGE OF	39141C0200C	02–APR–2003
05	OH	KINGSTON, VILLAGE OF	39141CIND0A**	02–APR–2003
05	OH	ROSS COUNTY *	39141C0025C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0075C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0100C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0125C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0145C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0150C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0175C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0200C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0225C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0275C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0300C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0320C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0325C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0330C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0335C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0340C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0345C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0355C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0365C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0375C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0400C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0450C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0460C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0475C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0500C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0550C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0555C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0560C	02–APR–2003
05	OH	ROSS COUNTY *	39141C0575C	02–APR–2003
05	OH	ROSS COUNTY *	39141CIND0A**	02–APR–2003
05	OH	SOUTH SALEM, VILLAGE OF	39141C0300C	02–APR–2003
05	OH	SOUTH SALEM, VILLAGE OF	39141CIND0A**	02–APR–2003
05	WI	BELLEVILLE, VILLAGE OF	55025C0570F	17–JUN–2003
05	WI	BELLEVILLE, VILLAGE OF	55025C0731F	17–JUN–2003
05	WI	BELLEVILLE, VILLAGE OF	55025C0732F	17–JUN–2003
05	WI	BELLEVILLE, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	BELLEVILLE, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	BLACK EARTH, VILLAGE OF	55025C0169F	17–JUN–2003
05	WI	BLACK EARTH, VILLAGE OF	55025C0188F	17–JUN–2003
05	WI	BLACK EARTH, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	BLACK EARTH, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	BLUE MOUNDS, VILLAGE OF	55025C0350F	17–JUN–2003
05	WI	BLUE MOUNDS, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	BLUE MOUNDS, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	BROOKLYN, VILLAGE OF	55025C0775F	17–JUN–2003
05	WI	BROOKLYN, VILLAGE OF	55025C0800F	17–JUN–2003
05	WI	BROOKLYN, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	BROOKLYN, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	CAMBRIDGE, VILLAGE OF	55025C0494F	17–JUN–2003
05	WI	CAMBRIDGE, VILLAGE OF	55025C0500F	17–JUN–2003
05	WI	CAMBRIDGE, VILLAGE OF	55025C0656F	17–JUN–2003
05	WI	CAMBRIDGE, VILLAGE OF	55025C0657F	17–JUN–2003
05	WI	CAMBRIDGE, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	CAMBRIDGE, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	COTTAGE GROVE, VILLAGE OF	55025C0456F	17–JUN–2003
05	WI	COTTAGE GROVE, VILLAGE OF	55025C0475F	17–JUN–2003
05	WI	COTTAGE GROVE, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	COTTAGE GROVE, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	CROSS PLAINS, VILLAGE OF	55025C0356F	17–JUN–2003
05	WI	CROSS PLAINS, VILLAGE OF	55025C0357F	17–JUN–2003
05	WI	CROSS PLAINS, VILLAGE OF	55025C0400F	17–JUN–2003
05	WI	CROSS PLAINS, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	CROSS PLAINS, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	DANE COUNTY*	55025C0025F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0050F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0075F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0088F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0090F	17–JUN–2003

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05	WI	DANE COUNTY*	55025C0095F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0125F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0150F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0166F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0169F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0175F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0188F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0200F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0225F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0228F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0229F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0236F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0237F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0238F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0239F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0241F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0242F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0243F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0244F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0250F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0251F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0252F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0259F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0261F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0263F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0264F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0267F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0268F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0269F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0275F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0279F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0286F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0287F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0288F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0289F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0300F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0315F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0320F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0325F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0350F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0352F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0356F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0357F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0375F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0381F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0382F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0384F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0393F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0394F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0400F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0401F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0402F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0403F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0404F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0406F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0407F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0408F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0409F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0411F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0412F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0413F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0414F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0416F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0417F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0418F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0419F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0426F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0427F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0428F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0429F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0431F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0432F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0434F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0436F	17–JUN–2003

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05	WI	DANE COUNTY*	55025C0437F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0438F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0439F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0441F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0442F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0443F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0444F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0456F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0457F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0458F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0459F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0475F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0494F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0500F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0525F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0550F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0556F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0557F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0560F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0570F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0575F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0576F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0584F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0592F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0600F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0611F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0625F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0640F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0650F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0656F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0657F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0658F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0659F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0675F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0700F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0725F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0731F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0732F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0750F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0775F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0800F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0825F	17–JUN–2003
05	WI	DANE COUNTY*	55025C0850F	17–JUN–2003
05	WI	DANE COUNTY*	55025CIND1A**	17–JUN–2003
05	WI	DANE COUNTY*	55025CIND2A**	17–JUN–2003
05	WI	DANE, VILLAGE OF	55025C0050F	17–JUN–2003
05	WI	DANE, VILLAGE OF	55025C0075F	17–JUN–2003
05	WI	DANE, VILLAGE OF	55025C0225F	17–JUN–2003
05	WI	DANE, VILLAGE OF	55025C0250F	17–JUN–2003
05	WI	DANE, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	DANE, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	DE FOREST, VILLAGE OF	55025C0075F	17–JUN–2003
05	WI	DE FOREST, VILLAGE OF	55025C0088F	17–JUN–2003
05	WI	DE FOREST, VILLAGE OF	55025C0090F	17–JUN–2003
05	WI	DE FOREST, VILLAGE OF	55025C0250F	17–JUN–2003
05	WI	DE FOREST, VILLAGE OF	55025C0251F	17–JUN–2003
05	WI	DE FOREST, VILLAGE OF	55025C0252F	17–JUN–2003
05	WI	DE FOREST, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	DE FOREST, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	DEERFIELD, VILLAGE OF	55025C0500F	17–JUN–2003
05	WI	DEERFIELD, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	DEERFIELD, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	FITCHBURG, CITY OF	55025C0412F	17–JUN–2003
05	WI	FITCHBURG, CITY OF	55025C0413F	17–JUN–2003
05	WI	FITCHBURG, CITY OF	55025C0414F	17–JUN–2003
05	WI	FITCHBURG, CITY OF	55025C0416F	17–JUN–2003
05	WI	FITCHBURG, CITY OF	55025C0418F	17–JUN–2003
05	WI	FITCHBURG, CITY OF	55025C0419F	17–JUN–2003
05	WI	FITCHBURG, CITY OF	55025C0438F	17–JUN–2003
05	WI	FITCHBURG, CITY OF	55025C0576F	17–JUN–2003
05	WI	FITCHBURG, CITY OF	55025C0584F	17–JUN–2003
05	WI	FITCHBURG, CITY OF	55025C0600F	17–JUN–2003
05	WI	FITCHBURG, CITY OF	55025C0625F	17–JUN–2003
05	WI	FITCHBURG, CITY OF	55025CIND1A**	17–JUN–2003

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05	WI	FITCHBURG, CITY OF	55025CIND2A**	17–JUN–2003
05	WI	LINCOLN COUNTY*	5505850190C	03–MAR–2003
05	WI	LINCOLN COUNTY*	5505850195C	03–MAR–2003
05	WI	LINCOLN COUNTY*	550585IND0A**	03–MAR–2003
05	WI	MADISON, CITY OF	55025C0242F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0243F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0244F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0261F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0263F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0264F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0267F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0268F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0269F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0275F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0384F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0394F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0400F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0401F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0402F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0403F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0404F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0406F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0407F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0408F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0409F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0411F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0412F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0413F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0414F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0416F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0417F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0418F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0419F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0426F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0427F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0428F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0429F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0431F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0432F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0434F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0436F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0437F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0438F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0439F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0441F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0442F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0443F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0444F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0475F	17–JUN–2003
05	WI	MADISON, CITY OF	55025C0576F	17–JUN–2003
05	WI	MADISON, CITY OF	55025CIND1A**	17–JUN–2003
05	WI	MADISON, CITY OF	55025CIND2A**	17–JUN–2003
05	WI	MAPLE BLUFF, VILLAGE OF	55025C0407F	17–JUN–2003
05	WI	MAPLE BLUFF, VILLAGE OF	55025C0426F	17–JUN–2003
05	WI	MAPLE BLUFF, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	MAPLE BLUFF, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	MARSHALL, VILLAGE OF	55025C0315F	17–JUN–2003
05	WI	MARSHALL, VILLAGE OF	55025C0320F	17–JUN–2003
05	WI	MARSHALL, VILLAGE OF	55025C0325F	17–JUN–2003
05	WI	MARSHALL, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	MARSHALL, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	MAZOMANIE, VILLAGE OF	55025C0166F	17–JUN–2003
05	WI	MAZOMANIE, VILLAGE OF	55025C0175F	17–JUN–2003
05	WI	MAZOMANIE, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	MAZOMANIE, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	MC FARLAND, VILLAGE OF	55025C0437F	17–JUN–2003
05	WI	MC FARLAND, VILLAGE OF	55025C0439F	17–JUN–2003
05	WI	MC FARLAND, VILLAGE OF	55025C0441F	17–JUN–2003
05	WI	MC FARLAND, VILLAGE OF	55025C0443F	17–JUN–2003
05	WI	MC FARLAND, VILLAGE OF	55025C0444F	17–JUN–2003
05	WI	MC FARLAND, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	MC FARLAND, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	MENASHA, CITY OF	55139C0105E	17–MAR–2003
05	WI	MENASHA, CITY OF	55139C0110E	17–MAR–2003

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05	WI	MENASHA, CITY OF	55139CIND0A**	17–MAR–2003
05	WI	MIDDLETON, CITY OF	55025C0238F	17–JUN–2003
05	WI	MIDDLETON, CITY OF	55025C0381F	17–JUN–2003
05	WI	MIDDLETON, CITY OF	55025C0382F	17–JUN–2003
05	WI	MIDDLETON, CITY OF	55025C0384F	17–JUN–2003
05	WI	MIDDLETON, CITY OF	55025C0400F	17–JUN–2003
05	WI	MIDDLETON, CITY OF	55025C0401F	17–JUN–2003
05	WI	MIDDLETON, CITY OF	55025C0402F	17–JUN–2003
05	WI	MIDDLETON, CITY OF	55025C0403F	17–JUN–2003
05	WI	MIDDLETON, CITY OF	55025CIND1A**	17–JUN–2003
05	WI	MIDDLETON, CITY OF	55025CIND2A**	17–JUN–2003
05	WI	MONONA, CITY OF	55025C0428F	17–JUN–2003
05	WI	MONONA, CITY OF	55025C0429F	17–JUN–2003
05	WI	MONONA, CITY OF	55025C0436F	17–JUN–2003
05	WI	MONONA, CITY OF	55025C0437F	17–JUN–2003
05	WI	MONONA, CITY OF	55025C0441F	17–JUN–2003
05	WI	MONONA, CITY OF	55025CIND1A**	17–JUN–2003
05	WI	MONONA, CITY OF	55025CIND2A**	17–JUN–2003
05	WI	MOUNT HOREB, VILLAGE OF	55025C0350F	17–JUN–2003
05	WI	MOUNT HOREB, VILLAGE OF	55025C0375F	17–JUN–2003
05	WI	MOUNT HOREB, VILLAGE OF	55025C0525F	17–JUN–2003
05	WI	MOUNT HOREB, VILLAGE OF	55025C0550F	17–JUN–2003
05	WI	MOUNT HOREB, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	MOUNT HOREB, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	NEENAH, CITY OF	55139C0095E	17–MAR–2003
05	WI	NEENAH, CITY OF	55139C0105E	17–MAR–2003
05	WI	NEENAH, CITY OF	55139C0110E	17–MAR–2003
05	WI	NEENAH, CITY OF	55139C0111E	17–MAR–2003
05	WI	NEENAH, CITY OF	55139C0112E	17–MAR–2003
05	WI	NEENAH, CITY OF	55139C0113E	17–MAR–2003
05	WI	NEENAH, CITY OF	55139C0114E	17–MAR–2003
05	WI	NEENAH, CITY OF	55139CIND0A**	17–MAR–2003
05	WI	OMRO, CITY OF	55139C0170E	17–MAR–2003
05	WI	OMRO, CITY OF	55139C0186E	17–MAR–2003
05	WI	OMRO, CITY OF	55139C0190E	17–MAR–2003
05	WI	OMRO, CITY OF	55139CIND0A**	17–MAR–2003
05	WI	OREGON, VILLAGE OF	55025C0584F	17–JUN–2003
05	WI	OREGON, VILLAGE OF	55025C0592F	17–JUN–2003
05	WI	OREGON, VILLAGE OF	55025C0600F	17–JUN–2003
05	WI	OREGON, VILLAGE OF	55025C0611F	17–JUN–2003
05	WI	OREGON, VILLAGE OF	55025C0625F	17–JUN–2003
05	WI	OREGON, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	OREGON, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	OSHKOSH, CITY OF	55139C0215E	17–MAR–2003
05	WI	OSHKOSH, CITY OF	55139C0220E	17–MAR–2003
05	WI	OSHKOSH, CITY OF	55139C0225E	17–MAR–2003
05	WI	OSHKOSH, CITY OF	55139C0330E	17–MAR–2003
05	WI	OSHKOSH, CITY OF	55139C0335E	17–MAR–2003
05	WI	OSHKOSH, CITY OF	55139CIND0A**	17–MAR–2003
05	WI	ROCKDALE, VILLAGE OF	55025C0656F	17–JUN–2003
05	WI	ROCKDALE, VILLAGE OF	55025C0657F	17–JUN–2003
05	WI	ROCKDALE, VILLAGE OF	55025C0658F	17–JUN–2003
05	WI	ROCKDALE, VILLAGE OF	55025C0659F	17–JUN–2003
05	WI	ROCKDALE, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	ROCKDALE, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	SHOREWOOD HILLS, VILLAGE OF	55025C0404F	17–JUN–2003
05	WI	SHOREWOOD HILLS, VILLAGE OF	55025C0408F	17–JUN–2003
05	WI	SHOREWOOD HILLS, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	SHOREWOOD HILLS, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	STOUGHTON, CITY OF	55025C0625F	17–JUN–2003
05	WI	STOUGHTON, CITY OF	55025C0640F	17–JUN–2003
05	WI	STOUGHTON, CITY OF	55025C0650F	17–JUN–2003
05	WI	STOUGHTON, CITY OF	55025CIND1A**	17–JUN–2003
05	WI	STOUGHTON, CITY OF	55025CIND2A**	17–JUN–2003
05	WI	SUN PRAIRIE, CITY OF	55025C0259F	17–JUN–2003
05	WI	SUN PRAIRIE, CITY OF	55025C0267F	17–JUN–2003
05	WI	SUN PRAIRIE, CITY OF	55025C0269F	17–JUN–2003
05	WI	SUN PRAIRIE, CITY OF	55025C0275F	17–JUN–2003
05	WI	SUN PRAIRIE, CITY OF	55025C0279F	17–JUN–2003
05	WI	SUN PRAIRIE, CITY OF	55025C0286F	17–JUN–2003
05	WI	SUN PRAIRIE, CITY OF	55025C0287F	17–JUN–2003
05	WI	SUN PRAIRIE, CITY OF	55025C0288F	17–JUN–2003
05	WI	SUN PRAIRIE, CITY OF	55025C0300F	17–JUN–2003
05	WI	SUN PRAIRIE, CITY OF	55025CIND1A**	17–JUN–2003

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05	WI	SUN PRAIRIE, CITY OF	55025CIND2A**	17–JUN–2003
05	WI	VERONA, CITY OF	55025C0393F	17–JUN–2003
05	WI	VERONA, CITY OF	55025C0394F	17–JUN–2003
05	WI	VERONA, CITY OF	55025C0556F	17–JUN–2003
05	WI	VERONA, CITY OF	55025C0557F	17–JUN–2003
05	WI	VERONA, CITY OF	55025CIND1A**	17–JUN–2003
05	WI	VERONA, CITY OF	55025CIND2A**	17–JUN–2003
05	WI	WAUNAKEE, VILLAGE OF	55025C0228F	17–JUN–2003
05	WI	WAUNAKEE, VILLAGE OF	55025C0229F	17–JUN–2003
05	WI	WAUNAKEE, VILLAGE OF	55025C0236F	17–JUN–2003
05	WI	WAUNAKEE, VILLAGE OF	55025C0237F	17–JUN–2003
05	WI	WAUNAKEE, VILLAGE OF	55025C0241F	17–JUN–2003
05	WI	WAUNAKEE, VILLAGE OF	55025C0242F	17–JUN–2003
05	WI	WAUNAKEE, VILLAGE OF	55025C0250F	17–JUN–2003
05	WI	WAUNAKEE, VILLAGE OF	55025CIND1A**	17–JUN–2003
05	WI	WAUNAKEE, VILLAGE OF	55025CIND2A**	17–JUN–2003
05	WI	WINNEBAGO COUNTY *	55139C0025E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0030E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0035E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0050E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0065E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0070E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0075E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0095E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0100E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0105E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0110E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0111E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0112E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0113E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0114E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0150E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0165E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0170E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0175E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0176E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0177E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0180E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0186E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0190E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0200E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0215E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0220E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0225E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0250E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0260E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0280E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0285E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0300E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0305E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0310E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0315E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0320E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0330E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0335E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0350E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0355E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139C0365E	17–MAR–2003
05	WI	WINNEBAGO COUNTY *	55139CIND0A**	17–MAR–2003
05	WI	WINNECONNE, VILLAGE OF	55139C0176E	17–MAR–2003
05	WI	WINNECONNE, VILLAGE OF	55139C0177E	17–MAR–2003
05	WI	WINNECONNE, VILLAGE OF	55139CIND0A**	17–MAR–2003
06	AR	CONWAY, CITY OF	05045C0065G	05–FEB–2003
06	AR	CONWAY, CITY OF	05045CIND0A**	05–FEB–2003
06	AR	ENOLA, CITY OF	05045CIND0A**	05–FEB–2003
06	AR	FAULKNER COUNTY	05045C0054F	05–FEB–2003
06	AR	FAULKNER COUNTY	05045C0055F	05–FEB–2003
06	AR	FAULKNER COUNTY	05045C0062G	05–FEB–2003
06	AR	FAULKNER COUNTY	05045C0065G	05–FEB–2003
06	AR	FAULKNER COUNTY	05045CIND0A**	05–FEB–2003
06	AR	GREENBRIER, CITY OF	05045C0054F	05–FEB–2003
06	AR	GREENBRIER, CITY OF	05045C0055F	05–FEB–2003
06	AR	GREENBRIER, CITY OF	05045CIND0A**	05–FEB–2003
06	AR	GUY, CITY OF	05045CIND0A**	05–FEB–2003

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06	AR	MAYFLOWER, CITY OF	05045CIND0A**	05–FEB–2003
06	AR	MOUNT VERNON, TOWN OF	05045CIND0A**	05–FEB–2003
06	AR	SALINE COUNTY *	0501910180C	02–APR–2003
06	AR	SALINE COUNTY *	0501910240C	02–APR–2003
06	AR	SALINE COUNTY *	0501910245C	02–APR–2003
06	AR	SALINE COUNTY *	0501910290C	02–APR–2003
06	AR	SALINE COUNTY *	0501910295C	02–APR–2003
06	AR	SALINE COUNTY *	050191IND0A**	02–APR–2003
06	AR	VILONIA, TOWN OF	05045CIND0A**	05–FEB–2003
06	AR	WOOSTER, TOWN OF	05045C0054F	05–FEB–2003
06	AR	WOOSTER, TOWN OF	05045C0065G	05–FEB–2003
06	AR	WOOSTER, TOWN OF	05045CIND0A**	05–FEB–2003
06	NM	CHAVES COUNTY *	3501250750C	17–MAR–2003
06	NM	CHAVES COUNTY *	3501250752C	17–MAR–2003
06	NM	CHAVES COUNTY *	3501250754C	17–MAR–2003
06	NM	CHAVES COUNTY *	3501250775C	17–MAR–2003
06	NM	CHAVES COUNTY *	3501250900C	17–MAR–2003
06	NM	CHAVES COUNTY *	350125IND0A**	17–MAR–2003
06	NM	LOGAN, VILLAGE OF	35037CIND0A**	05–MAY–2003
06	NM	QUAY COUNTY *	35037C0641C	05–MAY–2003
06	NM	QUAY COUNTY *	35037C0642C	05–MAY–2003
06	NM	QUAY COUNTY *	35037C0643C	05–MAY–2003
06	NM	QUAY COUNTY *	35037C0644C	05–MAY–2003
06	NM	QUAY COUNTY *	35037C0654C	05–MAY–2003
06	NM	QUAY COUNTY *	35037C0658C	05–MAY–2003
06	NM	QUAY COUNTY *	35037C0661C	05–MAY–2003
06	NM	QUAY COUNTY *	35037C0662C	05–MAY–2003
06	NM	QUAY COUNTY *	35037C0663C	05–MAY–2003
06	NM	QUAY COUNTY *	35037C0664C	05–MAY–2003
06	NM	QUAY COUNTY *	35037C0666C	05–MAY–2003
06	NM	QUAY COUNTY *	35037C0977C	05–MAY–2003
06	NM	QUAY COUNTY *	35037CIND0A**	05–MAY–2003
06	NM	ROSWELL, CITY OF	3500060001C	17–MAR–2003
06	NM	ROSWELL, CITY OF	3500060003C	17–MAR–2003
06	NM	ROSWELL, CITY OF	3500060004C	17–MAR–2003
06	NM	ROSWELL, CITY OF	3500060005C	17–MAR–2003
06	NM	ROSWELL, CITY OF	3500060006C	17–MAR–2003
06	NM	ROSWELL, CITY OF	3500060007C	17–MAR–2003
06	NM	ROSWELL, CITY OF	3500060008C	17–MAR–2003
06	NM	ROSWELL, CITY OF	350006IND0A**	17–MAR–2003
06	NM	SAN JON, VILLAGE OF	35037C0977C	05–MAY–2003
06	NM	SAN JON, VILLAGE OF	35037CIND0A**	05–MAY–2003
06	NM	TUCUMCARI, CITY OF	35037C0641C	05–MAY–2003
06	NM	TUCUMCARI, CITY OF	35037C0642C	05–MAY–2003
06	NM	TUCUMCARI, CITY OF	35037C0643C	05–MAY–2003
06	NM	TUCUMCARI, CITY OF	35037C0644C	05–MAY–2003
06	NM	TUCUMCARI, CITY OF	35037C0654C	05–MAY–2003
06	NM	TUCUMCARI, CITY OF	35037C0661C	05–MAY–2003
06	NM	TUCUMCARI, CITY OF	35037C0662C	05–MAY–2003
06	NM	TUCUMCARI, CITY OF	35037C0663C	05–MAY–2003
06	NM	TUCUMCARI, CITY OF	35037C0664C	05–MAY–2003
06	NM	TUCUMCARI, CITY OF	35037C0666C	05–MAY–2003
06	NM	TUCUMCARI, CITY OF	35037CIND0A**	05–MAY–2003
06	OK	BERNICE, TOWN OF	40041C0045D	16–APR–2003
06	OK	BERNICE, TOWN OF	40041C0160D	16–APR–2003
06	OK	BERNICE, TOWN OF	40041CIND0A**	16–APR–2003
06	OK	BIXBY, TOWN OF	40143C0538J	16–APR–2003
06	OK	BIXBY, TOWN OF	40143CIND0A**	16–APR–2003
06	OK	BROKEN ARROW, CITY OF	40143C0527J	16–APR–2003
06	OK	BROKEN ARROW, CITY OF	40143C0528J	16–APR–2003
06	OK	BROKEN ARROW, CITY OF	40143C0529J	16–APR–2003
06	OK	BROKEN ARROW, CITY OF	40143C0536J	16–APR–2003
06	OK	BROKEN ARROW, CITY OF	40143C0537J	16–APR–2003
06	OK	BROKEN ARROW, CITY OF	40143C0538J	16–APR–2003
06	OK	BROKEN ARROW, CITY OF	40143C0539J	16–APR–2003
06	OK	BROKEN ARROW, CITY OF	40143C0541J	16–APR–2003
06	OK	BROKEN ARROW, CITY OF	40143C0543J	16–APR–2003
06	OK	BROKEN ARROW, CITY OF	40143CIND0A**	16–APR–2003
06	OK	COLCORD, TOWN OF	40041C0475D	16–APR–2003
06	OK	COLCORD, TOWN OF	40041C0580D	16–APR–2003
06	OK	COLCORD, TOWN OF	40041C0600D	16–APR–2003
06	OK	COLCORD, TOWN OF	40041CIND0A**	16–APR–2003
06	OK	COLLINSVILLE, CITY OF	40143CIND0A**	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0040D	16–APR–2003

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06	OK	DELAWARE COUNTY *	40041C0045D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0064D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0065D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0068D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0070D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0090D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0095D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0155D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0160D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0165D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0170D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0177D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0180D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0181D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0182D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0183D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0184D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0190D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0195D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0201D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0203D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0225D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0280D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0285D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0300D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0325D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0350D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0375D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0425D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0450D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0475D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0500D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0550D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0575D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0579D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0580D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0586D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0587D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0600D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041C0625D	16–APR–2003
06	OK	DELAWARE COUNTY *	40041CIND0A**	16–APR–2003
06	OK	DOVER, TOWN OF	40073C0306C	05–MAY–2003
06	OK	DOVER, TOWN OF	40073C0310C	05–MAY–2003
06	OK	DOVER, TOWN OF	40073CIND0A**	05–MAY–2003
06	OK	GLENPOOL, CITY OF	40143CIND0A**	16–APR–2003
06	OK	GROVE, TOWN OF	40041C0064D	16–APR–2003
06	OK	GROVE, TOWN OF	40041C0068D	16–APR–2003
06	OK	GROVE, TOWN OF	40041C0177D	16–APR–2003
06	OK	GROVE, TOWN OF	40041C0180D	16–APR–2003
06	OK	GROVE, TOWN OF	40041C0181D	16–APR–2003
06	OK	GROVE, TOWN OF	40041C0182D	16–APR–2003
06	OK	GROVE, TOWN OF	40041C0183D	16–APR–2003
06	OK	GROVE, TOWN OF	40041C0184D	16–APR–2003
06	OK	GROVE, TOWN OF	40041C0195D	16–APR–2003
06	OK	GROVE, TOWN OF	40041C0201D	16–APR–2003
06	OK	GROVE, TOWN OF	40041C0203D	16–APR–2003
06	OK	GROVE, TOWN OF	40041CIND0A**	16–APR–2003
06	OK	HENNESSEY, CITY OF	40073C0185C	05–MAY–2003
06	OK	HENNESSEY, CITY OF	40073CIND0A**	05–MAY–2003
06	OK	JAY, TOWN OF	40041C0325D	16–APR–2003
06	OK	JAY, TOWN OF	40041CIND0A**	16–APR–2003
06	OK	JENKS, CITY OF	40143CIND0A**	16–APR–2003
06	OK	KANSAS, TOWN OF	40041C0575D	16–APR–2003
06	OK	KANSAS, TOWN OF	40041CIND0A**	16–APR–2003
06	OK	KINGFISHER COUNTY	40073C0025C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0065C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0070C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0150C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0175C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0180C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0185C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0190C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0195C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0260C	05–MAY–2003

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06	OK	KINGFISHER COUNTY	40073C0275C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0276C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0280C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0300C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0305C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0306C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0310C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0315C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0320C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0330C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0340C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0350C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0375C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0380C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0385C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0400C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0410C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0425C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0430C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0435C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0450C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0475C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0500C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0525C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0550C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0575C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0585C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073C0625C	05–MAY–2003
06	OK	KINGFISHER COUNTY	40073CIND0A**	05–MAY–2003
06	OK	KINGFISHER, CITY OF	40073C0430C	05–MAY–2003
06	OK	KINGFISHER, CITY OF	40073C0435C	05–MAY–2003
06	OK	KINGFISHER, CITY OF	40073CIND0A**	05–MAY–2003
06	OK	LE FLORE COUNTY *	4004840001B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840002B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840003B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840004B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840005B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840006B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840007B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840008B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840009B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840010B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840011B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840012B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840013B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840014B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840015B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840016B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840017B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840018B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840019B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004840020B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	4004849999B***	01–JUN–2003
06	OK	LE FLORE COUNTY *	400484IND0A***	01–JUN–2003
06	OK	LIBERTY, TOWN OF	40143CIND0A**	16–APR–2003
06	OK	LOTSEE, VILLAGE OF	40143CIND0A**	16–APR–2003
06	OK	LOYAL, TOWN OF	40073C0276C	05–MAY–2003
06	OK	LOYAL, TOWN OF	40073CIND0A**	05–MAY–2003
06	OK	OAKS, TOWN OF	40041C0575D	16–APR–2003
06	OK	OAKS, TOWN OF	40041CIND0A**	16–APR–2003
06	OK	OWASSO, CITY OF	40143C0367J	16–APR–2003
06	OK	OWASSO, CITY OF	40143C0377J	16–APR–2003
06	OK	OWASSO, CITY OF	40143CIND0A**	16–APR–2003
06	OK	PRAGUE, CITY OF	4004350003C	05–MAY–2003
06	OK	PRAGUE, CITY OF	400435IND0A**	05–MAY–2003
06	OK	SAND SPRINGS, CITY OF	40143CIND0A**	16–APR–2003
06	OK	SKIATOOK, TOWN OF	40143CIND0A**	16–APR–2003
06	OK	SPERRY, TOWN OF	40143CIND0A**	16–APR–2003
06	OK	TULSA COUNTY *	40143C0365J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0367J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0368J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0369J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0376J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0377J	16–APR–2003

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06	OK	TULSA COUNTY *	40143C0378J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0379J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0386J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0387J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0388J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0389J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0506J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0507J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0508J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0509J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0526J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0527J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0528J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0529J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0536J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0537J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0538J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0539J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0541J	16–APR–2003
06	OK	TULSA COUNTY *	40143C0543J	16–APR–2003
06	OK	TULSA COUNTY *	40143CIND0A**	16–APR–2003
06	OK	TULSA, CITY OF	40143C0366J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0367J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0368J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0369J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0376J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0377J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0378J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0379J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0386J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0387J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0388J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0389J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0506J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0507J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0508J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0509J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0508J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0509J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0526J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0527J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0528J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0529J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0536J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0537J	16–APR–2003
06	OK	TULSA, CITY OF	40143C0538J	16–APR–2003
06	OK	TULSA, CITY OF	40143CIND0A**	16–APR–2003
06	OK	WEST SILOAM SPRINGS, TOWN OF	40041C0625D	16–APR–2003
06	OK	WEST SILOAM SPRINGS, TOWN OF	40041CIND0A**	16–APR–2003
06	TX	ADDISON, TOWN OF	48113CIND0A**	05–FEB–2003
06	TX	BALCH SPRINGS, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	CARROLLTON, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	CEDAR HILL, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	COCKRELL HILL, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	COMBINE, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	COPPELL, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	DALLAS COUNTY *	48113C0210K	05–FEB–2003
06	TX	DALLAS COUNTY *	48113C0220K	05–FEB–2003
06	TX	DALLAS COUNTY *	48113C0360K	05–FEB–2003
06	TX	DALLAS COUNTY *	48113C0385K	05–FEB–2003
06	TX	DALLAS COUNTY *	48113CIND0A**	05–FEB–2003
06	TX	DALLAS, CITY OF	48113C0220K	05–FEB–2003
06	TX	DALLAS, CITY OF	48113C0360K	05–FEB–2003
06	TX	DALLAS, CITY OF	48113C0380K	05–FEB–2003
06	TX	DALLAS, CITY OF	48113C0385K	05–FEB–2003
06	TX	DALLAS, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	DESOTO, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	DUNCANVILLE, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	FARMERS BRANCH, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	GARLAND, CITY OF	48113C0210K	05–FEB–2003
06	TX	GARLAND, CITY OF	48113C0220K	05–FEB–2003
06	TX	GARLAND, CITY OF	48113C0360K	05–FEB–2003
06	TX	GARLAND, CITY OF	48113C0380K	05–FEB–2003
06	TX	GARLAND, CITY OF	48113C0385K	05–FEB–2003
06	TX	GARLAND, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	GLENN HEIGHTS, CITY OF	48113CIND0A**	05–FEB–2003

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06	TX	GRAND PRAIRIE, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	HIGHLAND PARK, TOWN OF	48113CIND0A**	05–FEB–2003
06	TX	HUTCHINS, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	IRVING, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	LANCASTER, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	MESQUITE, CITY OF	48113C0360K	05–FEB–2003
06	TX	MESQUITE, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	RICHARDSON, CITY OF	48113C0220K	05–FEB–2003
06	TX	RICHARDSON, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	ROWLETT, CITY OF	48113C0380K	05–FEB–2003
06	TX	ROWLETT, CITY OF	48113C0385K	05–FEB–2003
06	TX	ROWLETT, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	SACHSE, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	SEAGOVILLE, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	SUNNYVALE, TOWN OF	48113C0380K	05–FEB–2003
06	TX	SUNNYVALE, TOWN OF	48113C0385K	05–FEB–2003
06	TX	SUNNYVALE, TOWN OF	48113CIND0A**	05–FEB–2003
06	TX	UNIVERSITY PARK, CITY OF	48113CIND0A**	05–FEB–2003
06	TX	WILMER, CITY OF	48113CIND0A**	05–FEB–2003
07	IA	MARSHALL COUNTY *	1908900075B	02–JAN–2003
07	IA	MARSHALL COUNTY *	1908900100B	02–JAN–2003
07	IA	MARSHALL COUNTY *	1908900155B	02–JAN–2003
07	IA	MARSHALL COUNTY *	1908900160B	02–JAN–2003
07	IA	MARSHALL COUNTY *	1908900165B	02–JAN–2003
07	IA	MARSHALL COUNTY *	1908900170B	02–JAN–2003
07	IA	MARSHALL COUNTY *	1908900200B	02–JAN–2003
07	IA	MARSHALL COUNTY *	190890IND0A**	02–JAN–2003
07	KS	COOLIDGE, CITY OF	20075C0090D	02–JAN–2003
07	KS	COOLIDGE, CITY OF	20075CIND0 **	02–JAN–2003
07	KS	HAMILTON COUNTY*	20075C0090D	02–JAN–2003
07	KS	HAMILTON COUNTY*	20075C0100D	02–JAN–2003
07	KS	HAMILTON COUNTY*	20075C0175D	02–JAN–2003
07	KS	HAMILTON COUNTY*	20075C0177D	02–JAN–2003
07	KS	HAMILTON COUNTY*	20075C0200D	02–JAN–2003
07	KS	HAMILTON COUNTY*	20075C0225D	02–JAN–2003
07	KS	HAMILTON COUNTY*	20075CIND0 **	02–JAN–2003
07	KS	SYRACUSE, CITY OF	20075C0177D	02–JAN–2003
07	KS	SYRACUSE, CITY OF	20075CIND0 **	02–JAN–2003
07	KS	WAMEGO, CITY OF	2002760001C	17–MAR–2003
07	KS	WAMEGO, CITY OF	2002760002C	17–MAR–2003
07	KS	WAMEGO, CITY OF	200276IND0A**	17–MAR–2003
07	MO	AUGUSTA, VILLAGE OF	29183CIND0A**	17–MAR–2003
07	MO	CLAY COUNTY *	2900860015B	16–APR–2003
07	MO	CLAY COUNTY *	2900860025B	16–APR–2003
07	MO	CLAY COUNTY *	2900860040C	16–APR–2003
07	MO	CLAY COUNTY *	2900860050C	16–APR–2003
07	MO	CLAY COUNTY *	2900860055B	16–APR–2003
07	MO	CLAY COUNTY *	2900860060B	16–APR–2003
07	MO	CLAY COUNTY *	2900860080B	16–APR–2003
07	MO	CLAY COUNTY *	2900860085B	16–APR–2003
07	MO	CLAY COUNTY *	2900860090B	16–APR–2003
07	MO	CLAY COUNTY *	2900860095B	16–APR–2003
07	MO	CLAY COUNTY *	2900860125B	16–APR–2003
07	MO	CLAY COUNTY *	2900860150B	16–APR–2003
07	MO	CLAY COUNTY *	290086IND0A**	16–APR–2003
07	MO	COTTLEVILLE, CITY OF	29183CIND0A**	17–MAR–2003
07	MO	DALTON, VILLAGE OF	2904640001C	17–MAR–2003
07	MO	DARDENNE PRAIRIE, TOWN OF	29183C0220F	17–MAR–2003
07	MO	DARDENNE PRAIRIE, TOWN OF	29183CIND0A**	17–MAR–2003
07	MO	DUNKLIN COUNTY *	2901220095C	05–FEB–2003
07	MO	DUNKLIN COUNTY *	290122IND0A**	05–FEB–2003
07	MO	EXCELSIOR SPRINGS, CITY OF	2900900005C	16–APR–2003
07	MO	FLINTHILL, VILLAGE OF	29183CIND0A**	17–MAR–2003
07	MO	FORISTELL, CITY OF	29183CIND0A**	17–MAR–2003
07	MO	JOSEPHVILLE, VILLAGE OF	29183C0210F	17–MAR–2003
07	MO	JOSEPHVILLE, VILLAGE OF	29183C0230F	17–MAR–2003
07	MO	JOSEPHVILLE, VILLAGE OF	29183CIND0A**	17–MAR–2003
07	MO	KEARNEY, CITY OF	2900950005C	16–APR–2003
07	MO	LAKE ST. LOUIS, CITY OF	29183C0215F	17–MAR–2003
07	MO	LAKE ST. LOUIS, CITY OF	29183C0220F	17–MAR–2003
07	MO	LAKE ST. LOUIS, CITY OF	29183CIND0A**	17–MAR–2003
07	MO	MOSBY, CITY OF	2900980001C	16–APR–2003
07	MO	NEW MELLE, VILLAGE OF	29183CIND0A**	17–MAR–2003
07	MO	O'FALLON, CITY OF	29183C0210F	17–MAR–2003

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07	MO	O'FALLON, CITY OF	29183C0220F	17–MAR–2003
07	MO	O'FALLON, CITY OF	29183C0230F	17–MAR–2003
07	MO	O'FALLON, CITY OF	29183CIND0A**	17–MAR–2003
07	MO	PEMISCOT COUNTY *	2907790075C	05–FEB–2003
07	MO	PEMISCOT COUNTY *	290779IND0A**	05–FEB–2003
07	MO	PORTAGE DES SIOUX, CITY OF	29183CIND0A**	17–MAR–2003
07	MO	PRATHERSVILLE, VILLAGE OF	2901010001B	16–APR–2003
07	MO	SMITHVILLE, CITY OF	2952710005D	16–APR–2003
07	MO	SMITHVILLE, CITY OF	2952710010D	16–APR–2003
07	MO	SMITHVILLE, CITY OF	295271IND0A**	16–APR–2003
07	MO	ST. CHARLES COUNTY *	29183C0210F	17–MAR–2003
07	MO	ST. CHARLES COUNTY *	29183C0215F	17–MAR–2003
07	MO	ST. CHARLES COUNTY *	29183C0220F	17–MAR–2003
07	MO	ST. CHARLES COUNTY *	29183C0230F	17–MAR–2003
07	MO	ST. CHARLES COUNTY *	29183CIND0A**	17–MAR–2003
07	MO	ST. CHARLES, CITY OF	29183CIND0A**	17–MAR–2003
07	MO	ST. PAUL, CITY OF	29183C0210F	17–MAR–2003
07	MO	ST. PAUL, CITY OF	29183C0230F	17–MAR–2003
07	MO	ST. PAUL, CITY OF	29183CIND0A**	17–MAR–2003
07	MO	ST. PETERS, CITY OF	29183CIND0A**	17–MAR–2003
07	MO	WELDON SPRING HEIGHTS, TOWN OF	29183CIND0A**	17–MAR–2003
07	MO	WELDON SPRING, CITY OF	29183CIND0A**	17–MAR–2003
07	MO	WENTZVILLE, CITY OF	29183C0210F	17–MAR–2003
07	MO	WENTZVILLE, CITY OF	29183C0215F	17–MAR–2003
07	MO	WENTZVILLE, CITY OF	29183C0220F	17–MAR–2003
07	MO	WENTZVILLE, CITY OF	29183CIND0A**	17–MAR–2003
07	MO	WEST ALTON, TOWN OF	29183CIND0A**	17–MAR–2003
08	CO	ARVADA, CITY OF	08059C0050E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0175E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0176E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0177E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0178E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0179E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0181E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0182E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0183E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0184E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0187E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0191E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0192E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0201E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0202E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0203E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0204E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0206E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0208E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0211E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0212E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059C0216E	17–JUN–2003
08	CO	ARVADA, CITY OF	08059CIND0A**	17–JUN–2003
08	CO	BOW MAR, TOWN OF	08059C0320E	17–JUN–2003
08	CO	BOW MAR, TOWN OF	08059C0410E	17–JUN–2003
08	CO	BOW MAR, TOWN OF	08059CIND0A**	17–JUN–2003
08	CO	EDGEWATER, CITY OF	08059C0214E	17–JUN–2003
08	CO	EDGEWATER, CITY OF	08059C0218E	17–JUN–2003
08	CO	EDGEWATER, CITY OF	08059C0302E	17–JUN–2003
08	CO	EDGEWATER, CITY OF	08059C0306E	17–JUN–2003
08	CO	EDGEWATER, CITY OF	08059CIND0A**	17–JUN–2003
08	CO	GOLDEN, CITY OF	08059C0188E	17–JUN–2003
08	CO	GOLDEN, CITY OF	08059C0189E	17–JUN–2003
08	CO	GOLDEN, CITY OF	08059C0276E	17–JUN–2003
08	CO	GOLDEN, CITY OF	08059C0277E	17–JUN–2003
08	CO	GOLDEN, CITY OF	08059C0279E	17–JUN–2003
08	CO	GOLDEN, CITY OF	08059C0281E	17–JUN–2003
08	CO	GOLDEN, CITY OF	08059C0285E	17–JUN–2003
08	CO	GOLDEN, CITY OF	08059CIND0A**	17–JUN–2003
08	CO	JEFFERSON COUNTY *	08059C0050E	17–JUN–2003
08	CO	JEFFERSON COUNTY *	08059C0070E	17–JUN–2003
08	CO	JEFFERSON COUNTY *	08059C0075E	17–JUN–2003
08	CO	JEFFERSON COUNTY *	08059C0084E	17–JUN–2003
08	CO	JEFFERSON COUNTY *	08059C0088E	17–JUN–2003
08	CO	JEFFERSON COUNTY *	08059C0089E	17–JUN–2003
08	CO	JEFFERSON COUNTY *	08059C0090E	17–JUN–2003
08	CO	JEFFERSON COUNTY *	08059C0091E	17–JUN–2003

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08	CO	JEFFERSON COUNTY *	08059C0092E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0093E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0094E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0103E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0111E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0113E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0150E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0175E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0176E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0177E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0178E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0179E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0181E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0182E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0183E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0184E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0186E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0187E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0188E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0189E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0191E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0192E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0193E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0194E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0201E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0202E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0203E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0204E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0206E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0207E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0208E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0211E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0212E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0214E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0215E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0216E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0218E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0235E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0245E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0255E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0260E	17-JUN-2003
08	CO	JEFFERSON COUNTY *	08059C0265E	17-JUN-2003
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[FR Doc. 03–21002 Filed 8–19–03; 8:45am]
BILLING CODE 6718–04–F

Federal Register

Wednesday,
August 20, 2003

Part IV

Department of Health and Human Services

Centers for Medicare and Medicaid Services

42 CFR Part 405

Medicare Program; Payment Reform for Part B Drugs; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 405

[CMS–1229–P]

RIN 0938–AM12

Medicare Program; Payment Reform for Part B Drugs

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise, based on one of four approaches, the current payment methodology for Part B covered drugs and biologicals that are not paid on a cost or prospective payment basis. We are seeking comments on which of these proposed approaches we should implement. This proposed rule would also make changes to Medicare payment for furnishing or administering certain drugs and biologicals.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 14, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1229–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1229–P, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Marjorie Baldo, (410) 786–0548.

SUPPLEMENTARY INFORMATION: *Inspection of Public Comments:* Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, please call (410) 786–7197.

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AMP Average Manufacturer's Price
APC Ambulatory Payment Classification
ASCO American Society of Clinical Oncology
ASP Average Sale Price
AWP Average Wholesale Price
BBA Balanced Budget Act of 1997
BBRA Balanced Budget Refinement Act of 1999
BIPA Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000
CMS Centers for Medicare & Medicaid Services
DHHS Department of Health and Human Services
DME Durable Medical Equipment
DMERC Durable Medical Equipment Regional Carrier
DOJ Department of Justice
EAC Estimated Acquisition Cost
EPO Erythropoietin
ESRD End-Stage Renal Disease
FSS Federal Supply Schedule
GAO General Accounting Office
MEDPAC Medicare Payment Advisory Commission
NDC National Drug Code
NOC Not Otherwise Classified
OIG Department of Health and Human Services Office of Inspector General
OMB Office of Management and Budget
OPPS Outpatient Prospective Payment System
PPO Preferred Provider Organization
PRA Paperwork Reduction Act of 1995
SDP Single Drug Pricer
VA Department of Veterans Affairs
WAMP Widely Available Market Price

I. Background

A. Covered Drugs and Biologicals

Medicare Part B currently covers a limited number of prescription drugs. For the purposes of this proposed rule, the term "drugs" will hereafter refer to both drugs and biologicals. Currently covered Medicare drugs generally fall into three categories: drugs furnished incident to a physician's service, durable medical equipment (DME) drugs, and statutorily covered drugs and other drugs.

1. Drugs Furnished Incident to a Physician's Service

These are injectable or intravenous drugs that are administered incident to a physician's service (section 1861(s)(2) of the Social Security Act (the Act)). The Act limits coverage to drugs that are not usually self-administered. Under the "incident-to" provision, the physician must incur a cost for the drug, and must bill for it. Examples include injectable prostate cancer drugs (lupron acetate for depot suspension, goserelin acetate implant), injectable drugs used in connection with treatment of cancer (epoetin alpha), intravenous drugs used to treat cancer (paclitaxel and docetaxel

used to treat breast cancer), injectable anti-emetic drugs used to treat the nausea resulting from chemotherapy, infliximab used to treat rheumatoid arthritis, and rituximab used to treat non-Hodgkin's lymphoma.

2. Durable Medical Equipment (DME) Drugs

These are drugs that are administered through a covered item of DME such as a nebulizer or pump. Two of the most common drugs in this category are the inhalation drugs albuterol sulfate and ipratropium bromide.

3. Statutorily Covered Drugs and Other Drugs

Certain drugs are specifically covered by statute including: immunosuppressive drugs; hemophilia blood clotting factor; certain oral anti-cancer drugs; oral anti-emetic drugs; pneumococcal, influenza and hepatitis vaccines; antigens; erythropoietin for trained home dialysis patients; certain other drugs separately billed by end stage renal disease (ESRD) facilities (for example, iron dextran, vitamin D injections); and osteoporosis drugs.

4. Types of Providers

Types of providers and suppliers that are paid based on average wholesale price (AWP) for all or some of the Medicare covered drugs they furnish include: physicians, pharmacies, DME suppliers, hospital outpatient departments, and ESRD facilities.

5. Drugs Paid on a Cost or Prospective Payment Basis

Drugs paid on a cost or prospective payment basis that are generally outside of the scope of this proposed rule include: drugs furnished during an inpatient hospital stay (except clotting factor); drugs packaged under the outpatient prospective payment system (OPPS); drugs furnished by ESRD facilities whose payments are included in Medicare's composite rate; and drugs furnished by critical access hospitals, skilled nursing facilities (unless outside of a covered stay), comprehensive outpatient rehabilitation facilities, rural health facilities, and federally qualified health centers.

B. Current Medicare Drug Spending

In 2002, the preliminary estimate of allowed charges for the approximately 450 drugs paid by Medicare carriers is $8.4 billion. The majority of these expenditures were for drugs administered incident to a physician's service and drugs furnished in conjunction with DME. Spending growth for Medicare drugs has been substantial. Medicare allowed charges for drugs were approximately $3.3 billion in 1998. As indicated above, we estimate 2002 Medicare spending for drugs at approximately $8.4 billion or nearly three times the 1998 levels or an average of 27 percent per year. Because during this time period Medicare fee-for-service enrollment grew by an average of only 1.4 percent per year, other factors such as price increases and additional utilization played a greater role in this expenditure growth. More than 77 percent of Medicare spending for drugs goes to oncologists and urologists for cancer drugs and pharmacies and other medical suppliers of DME drugs. Medicare spending for drugs billed by oncologists has more than tripled between 1998 and 2002 growing from $1.2 billion to $3.8 billion. Between 2001 and 2002, Medicare spending for drugs billed by oncologists increased by 41 percent. Growth in spending for the two highest expenditure DME drugs, albuterol and ipratropium bromide, has increased from $393 million in 1998 to nearly $1.0 billion in 2002.

Much of the current Medicare spending is concentrated in relatively few of the approximately 450 covered drugs. For example, of the $8.4 billion for carrier paid drugs, 7 drugs account for 49 percent of spending ($4.0 billion), 19 drugs account for 75 percent of spending ($6.2 billion) and 33 drugs account for 86 percent of spending ($7.1 billion). The top drug code, epoetin alpha (Q0136), accounts for 13 of carrier spending. Two prostate cancer drugs, lupron acetate for depot suspension (J9217) and goserelin acetate implant (J9202), combined, account for 14 of carrier paid drugs. Two generic drugs furnished via a covered item of DME, albuterol and ipratropium bromide, account for 13 percent of carrier drug spending.

Intermediaries and not carriers process ESRD facility claims for drugs paid outside the ESRD composite rate. In 2000, allowed charges for ESRD facilities for these drugs were $1.4 billion for erythropoietin, $0.1 billion for iron dextran, $0.1 billion for vitamin D injections, and $0.4 billion for all other separately billed drugs. Section 1881(b)(11)(B) of the Act provides a statutory formula to determine the payment amount for erythropoietin separately billed by ESRD facilities. The other drugs furnished and separately billed by ESRD facilities are paid 95 percent of the AWP under section 1842(o) of the Act.

C. History of the Current Payment System

In the June 5, 1991 physician fee schedule proposed rule (56 FR 25792), we proposed that the drug payment limit be based on 85 percent of the national AWP of the drug. For very high volume drugs, we proposed that the drug payment limits be based on the estimated acquisition cost (EAC) of the drugs. The EAC was to be determined from survey data. We received many comments, primarily from oncologists, indicating that an 85 percent standard was inappropriate. In response to these comments, the 1992 physician fee schedule final rule established a payment limit based on the lower of 100 percent of AWP or the EAC. However, because of statistical sampling concerns generated by a lack of information on the variation in acquisition costs between low and high volume providers, the EAC was never implemented. Various legislative proposals were submitted to move away from payment based on 100 percent of AWP, including changing the percentage of AWP to a lower amount. In 1997, the Congress, responding in part to one of these proposals, amended the Act to limit payment for drugs not paid on a cost or prospective payment basis to the lower of the actual charge or 95 percent of AWP (section 1842(o)(1) of the Act as added by section 4556 of the Balanced Budget Act of 1997 (BBA 1997) (Pub. L. 105–33)). The statutory term, average wholesale price, is not defined in law or regulation. In creating payment limits for Medicare covered drugs, Medicare currently relies on the list AWP. The term "list AWP" will hereafter refer to the AWP published in commercial compendia such as Red Book, Price Alert, and Medispan.

D. List AWP and Widely Available Market Prices

Numerous reports by the General Accounting Office (GAO), and the Office of Inspector General (OIG), as well as data collected by the Department of Justice (DOJ), discussed below, have indicated that 95 percent of list AWP reflected in published compendia is significantly higher than the prices that drug manufacturers, wholesalers, physician supply houses, specialty pharmacies, and similar entities actually charge to physicians and suppliers purchasing these drugs.

Differences between Medicare's payment based on 95 percent of list AWP and the widely available market prices creates what has been referred to as the "spread". The presence of a

substantial "spread" or a difference between the price that physicians and suppliers actually pay to acquire drugs in the market and Medicare's reimbursement at 95 percent of list AWP, means that the Medicare program and Medicare beneficiaries often overpay for drugs. For a few drugs, the "spread" is so large that the amount that the Medicare beneficiary pays the physician or supplier for coinsurance is greater than the physician or supplier's payment to acquire the drug. For example, leucovorin calcium (J0640) has a list AWP of $18.44. Based on GAO and OIG studies, the widely available market price is 15 percent of the list AWP or $2.77. The Medicare payment is 95 percent of the list AWP, or $17.52. The beneficiary coinsurance is 20 percent of the Medicare payment or $3.69. The beneficiary is paying more in coinsurance ($3.69) than the physician is paying to purchase the drug ($2.77).

E. Studies and Developments Since the Balanced Budget Act of 1997 (BBA)

This section discusses developments since BBA and provides an overview of some of the relevant studies that have been performed illustrating the excessive payments that occur under the current payment methodology.

In September 2000, the Medicare program attempted to allow carriers to consider data provided by DOJ as another and more accurate data source than the list AWP in the published compendia. The use of another data source would allow us to set more accurate AWP payment limits for certain drugs (Program Memorandum "An Additional Source of Average Wholesale Price Data in Pricing Drugs and Biologicals Covered by the Medicare Program," (AB–00–86, (change request #1232), published September 8, 2000). However, we deferred implementation of this program memorandum in November 2000 since, although we continued to believe that the list AWP reported in the published compendia was inaccurate and inflated, congressional action pending at that time would have precluded the immediate use of this data. We wanted to avoid the disruption that would result from a decrease in payment allowances followed by an immediate increase due to congressional action. In addition to the payment disruption, we also received numerous public comments asserting that drug payments for chemotherapy drugs subsidize payments for services related to the administration of these drugs. The deferral of the use of the DOJ data was published in our program memorandum titled, "Source of Average Wholesale Price Data in Pricing Drugs and Biologicals Covered by the Medicare Program," AB–00–115 (change request #1447) published November 17, 2000.

In December 2000, the Congress enacted the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554). Section 429(a) of BIPA mandated that the GAO conduct a study on the payment for drugs under the current Medicare methodology. Section 429(c) established a moratorium on reductions in Medicare payments rates for drugs until after the Secretary reviewed the GAO report. In the study, the GAO was required to—

- Identify the average prices at which Medicare drugs are acquired by physicians and other suppliers;
- Quantify the difference between such average prices and the Medicare payment amount; and
- Determine the extent to which Medicare payment is adequate to compensate physicians, providers of services, or other suppliers of these drugs for costs incurred related to administrative costs of furnishing drugs and biologicals.

In addition, BIPA required the GAO to provide specific recommendations for revised methodologies for payment of drugs and for related services under the Medicare program. In making these recommendations, BIPA instructed the GAO to consider—

- If appropriate, new or adjusted payments for costs incurred in the administration, handling, or storage of certain categories of drugs;
- The method and amount of payment for similar drugs made by large group health plans;
- The potential for patients to receive inpatient or outpatient hospital services in lieu of services in a physician's office as a result of any revised payment methodology;
- The effect of any revised payment methodology on the delivery of drug therapies by hospital outpatient departments; and
- The results of a previously mandated GAO study (GAO–02–053) on the adequacy of Medicare's physician payments to oncologists.

Additionally, the Congress required that the GAO, in making their recommendations, "shall ensure that any proposed revised payment methodology be designed to ensure that Medicare beneficiaries continue to have appropriate access to health care services under the Medicare program."

Section 429(b) of BIPA requires us, notwithstanding any other provision of law, to revise the Medicare payment methodology for drugs under sections 1842(o) of the Act based on the GAO report to the Congress. We may, to the extent appropriate, provide new or adjusted payments for the costs incurred in the administration, handling, and storage of drugs. However, the estimated aggregate payments for drugs under the revised system (including additional payments for the administration, handling, and storage of drugs) cannot exceed payments as projected by the Secretary under section 1842(o) of the Act.

Prior to the completion of the GAO report, the OIG published a report in January 2001 titled "Medicare Reimbursement of Prescription Drugs" (OEI–03–00–00310) that revealed excessive payments for Medicare covered drugs. This study was a follow-up to a prior 1997 OIG Study: "Excessive Medicare Payments for Prescription Drugs" (OEI–03–97–00290) in which the OIG found that payments based on 95 percent of list AWP were substantially greater than the prices widely available to the physician community. In this January 2001 study, the OIG compared calendar year (CY) 1999 Medicare payments for 24 high expenditure drugs to prices available to the physician and supplier community, the Department of Veterans Affairs (VA), and Medicaid. In determining the prices available to the physician supplier community, the OIG reviewed print and online catalogs from five drug wholesalers and one group purchasing organization. The report indicated that we would have saved $761 million a year by paying for drugs based on the actual wholesale prices available to physicians and suppliers rather than paying 95 percent of list AWP.

In September 2001, the GAO presented its study to the Congress in a report titled, "Medicare: Payments for Covered Outpatient Drugs Exceed Providers' Costs" (GAO–01–1118). The report contained some significant findings and also confirmed previous OIG reports on drug payments.

- Physicians and suppliers are able to obtain Medicare-covered drugs at prices significantly below 95 percent of list AWP. (*See* Table 1 in Appendix A for a reprint of the table from the GAO report summarizing some of these findings.)
- For most physician-administered drugs, the average discount from list AWP ranged from 13 percent to 34 percent; two physician-administered drugs had discounts of 65 and 86 percent. That is, physicians paid an average of 66 to 87 percent of the list AWP, and for two drugs physicians paid 14 percent and 35 percent of the list AWP.

- For two high expenditure drugs provided by pharmacies, ipratropium bromide and albuterol, discounts from list AWP averaged 78 percent and 85 percent, respectively. In other words, suppliers paid 15 and 22 percent of the list AWP.
- While physician practices that purchase large volumes of drugs may have access to larger discounts and rebates, low volume providers can also purchase drugs for markedly less than list AWP, and often at additional discounts below widely available prices. In particular, physicians who bill Medicare for low volumes of drugs used in cancer treatment receive discounted prices for many of these drugs similar to or greater than widely available discounts. (*See* Table 2 in Appendix A for a reprint of the table from the GAO report summarizing some of these findings.)
- Private health plans use their drug-purchase and patient volume to negotiate favorable prices for drugs and the physician and supplier services related to supplying or delivering the drugs.
- Public payers, such as the VA, use their purchasing volume along with information about actual transaction prices from private payers to lower their drug payments.

Based on its studies, the GAO concluded that our current payment methodology is flawed because current payment rates (that is, 95 percent of the list AWP) do not reflect market prices. The GAO recommended that we take the following actions with regard to the payment for drugs and related services.

- Establish Medicare payment levels for Part B drugs that are more closely related to their costs. Payments for drugs should be set at levels that reflect actual market transaction prices and the likely acquisition cost to providers.
- Pay appropriately for drug delivery and administration and not allow potential overpayments for drugs to subsidize payments for related services.
- Examine the benefits and risks of expanding the current competitive bidding demonstration projects for drugs covered under Part B.
- Institute a process to monitor access to Part B covered drugs to ensure that payment changes do not negatively affect access for particular drugs or groups of beneficiaries or for certain geographic areas.

F. Implications of GAO and OIG Studies

Table 4 provides a summary of the reports on Medicare prescription drugs published by OIG between 1997 through 2001. The 1997 report indicated that for 22 drugs studied by the OIG, Medicare's allowances for these drugs exceeded wholesale prices by $447 million in 1996. For 1998 the report indicated that Medicare would have saved $1 billion if the allowed amounts for the 34 drugs studied were equal to prices obtained by the VA through the Federal Supply Schedule (FSS). Additionally, the report indicated that Medicare would have saved $1.6 billion for 24 drugs studied if Medicare had paid for these drugs based on the FSS. Although the savings estimates vary, for example due to differences in the particular drugs studied, OIG concluded based on the reports that the potential savings for Medicare and its beneficiaries from reforming the current payment policy to a system based on FSS is substantial.

In table 3, we have combined the findings of the GAO and OIG reports displaying the prices that they found as a percent of list AWP. For the GAO report, we used the findings from their widely available drug prices. We examined but did not use the separate survey of low volume billers. Although many low volume biller prices were below the widely available drug prices, they were compiled through a small phone survey of physicians. The widely available drug prices were based on price lists from wholesalers and GPOs. We believe that the widely available drug prices are a better reflection of the prices available to physicians and suppliers. In addition, there was much more consistency between the GAO's widely available drug prices and the OIG's finding.

Table 3 separately presents the findings for brand name drugs and for generic drugs. The "spread," computed as a percent of Medicare's payment at 95 percent of list AWP, is also displayed for each drug based on the average of the GAO and OIG findings. The lower the price found by GAO or OIG as a percent of list AWP, the larger the spread between that price and Medicare's current payment. In effect, the "spread" is the difference between the Medicare allowed charge (95 percent of the list AWP) and the actual purchase price paid by the physicians and suppliers. The percent spread is the difference between the Medicare payment and the market price expressed as a percentage of the Medicare payment. For example, the list AWP for granisetron hcl (J1626) is $19.52. The Medicare payment is 95 percent of the list AWP or $18.54. The average of the GAO and OIG data indicates that the market price is 71 of the list AWP or $13.86. The 25 percent spread is calculated as ($18.54 – $13.86) / $18.54 = $4.68 / $18.54 = .25 = 25 percent.

A review of Table 3 shows that in general the "spread," in percentage terms, is larger for the generic drugs examined in the studies than for brand drugs. This is consistent with our understanding that when actual market prices decline with the introduction of generic competition, the list AWPs do not usually experience a corresponding decline of the same magnitude. With one exception, among the brand name drugs studied, physicians and suppliers could obtain these drugs at 71 percent to 87 percent of list AWP, which translates into a spread of 25 percent and 8 percent, respectively. For the generic drugs examined, there was considerably more variability. For six of the drugs examined, physicians or suppliers could purchase at a price between 15 percent and 46 percent of list AWP, translating into a spread of 84 percent and 52 percent, respectively. The other three drugs examined had spreads more in line with that for brand drugs.

A general conclusion reached in reviewing the GAO and OIG data is that there is a level of overstatement in the list AWP for all drugs beyond the 5 percent currently accounted for in Medicare's policy. Using the average of the GAO and OIG findings, every drug studied was available at a price not greater than 87 percent of list AWP. Most drugs could be obtained at an even lower price, sometimes substantially lower.

If we examine the data in the aggregate, the difference between Medicare's payment and widely available market prices was $1.5 billion in 2002 for the 29 drugs where we have GAO and OIG data. That is, if Medicare had paid widely available market prices instead of 95 percent of list AWP in 2002 for these 29 drugs, Medicare and its beneficiaries would have paid nearly $1.5 billion less for drugs or nearly 17 percent less than total estimated payments of $8.4 billion. Of this amount, Medicare and its beneficiaries would have paid approximately $475 million less to oncologists and $760 million less to suppliers of DME drugs. Assuming that widely available market prices were between 80 percent and 90 percent of list AWP for all other drugs, the total savings to Medicare and its beneficiaries in 2002 from paying in this way would have been between $1.7 and $2.0 billion.

II. Provisions of the Proposed Rule

A. Approaches to Revising the Current Payment System

Given the serious and well-documented flaws in the current

Medicare payment system identified by the GAO, OIG, and our own analyses, we are seeking comments on four different approaches to revising the Medicare drug payment system: (1) Basing our reform efforts on the comparability provision in the statute; (2) applying an average list AWP discount to the list AWPs as of April 1, 2003; (3) utilizing existing sources of market-based prices and developing additional sources for market monitoring; and (4) establishing a competitive acquisition program and Average Sales Price system. We are proposing to select one of these options.

Option 1—Comparability Provision

One option we are proposing is to base our reform efforts on the "comparability" provision in the Act, section 1842(b)(3)(B) of the Act. Specifically, this provision limits Medicare payment for a drug to what our contractors pay when the same drug is provided to their private policyholders and subscribers under comparable circumstances. As described below, we are proposing additional guidance to our contractors in identifying comparable circumstances with respect to the drug payments they make in their private sector business. While comparability applies to all charge-based services, we are proposing to focus its application on drugs given the excessive payments by the Medicare program and our beneficiaries under the current methodology, as reflected in several OIG and GAO reports.

Section 1842 of the Act authorizes us to enter into contracts with carriers for the administration of Part B benefits. Section 1842(b)(3) of the Act mandates that each contract with a carrier provide that the carrier:

"* * * will take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to policyholders and subscribers of the carrier * * *."

Section 1842 of the Act sets forth general provisions applicable to part B payment determinations, including drug payments. The comparability provision requires a carrier to take action, when necessary, to ensure that Part B charges are reasonable and "not higher than the charge applicable for a comparable service in comparable circumstances" to its own policyholders. This limitation is a principle set forth by the Congress at the outset of the Medicare program, providing that Medicare beneficiaries should not be charged more than private pay patients for a comparable service provided under comparable circumstances. To this end, the Congress mandated that, where payment for a service to a Medicare beneficiary is on a charge basis, as opposed to a cost basis, the carrier's private plan, if it has one, should be assessed to determine whether the service in question and the circumstances under which the service is provided are "comparable" to Medicare. If the service is comparable, then the applicable charge under the carrier's private insurance plan may serve as a limitation on the amount that we pay. In accordance with these provisions, we have broad authority to make comparability adjustments with respect to Part B payment determinations based on charges.

At the time the Congress legislated the current drug payment methodology, it did not amend our authority to make comparability adjustments or provide any indication that the other provisions of section 1842(b) of the Act with respect to Part B payment calculations were no longer applicable.

Section 1842(b)(3) of the Act requires carriers, including Durable Medical Equipment Regional Carriers (DMERCs), to limit payment rates for Medicare covered drugs to the amounts that the carriers pay when these drugs are provided to their private policyholders and subscribers under comparable circumstances. We are proposing to issue additional guidance to our contractors indicating that comparability would exist with drug payments made in the same geographic area under the carrier's indemnity health insurance products or broad network preferred provider organization (PPO) products that do not rely on selective contracting. We are seeking comments on this proposed guidance.

Consistent with § 405.508(c), the responsibility for determining that a carrier's indemnity product or PPO product is comparable would in the first instance fall upon the carrier in reporting pertinent information about its programs to us. When the pertinent information has been reported, we will advise the carrier whether any of its products has comparability. If we determine that a carrier's lower private payment for a drug has comparability in a given locality, the lower private payment limit would apply to the Medicare payment in that locality.

Contractors would inform physicians, suppliers and other impacted parties about the new lower payment limit through their usual means of provider education (for example, bulletins, newsletters, Web site postings.)

As an example of how this approach would apply to a specific drug using hypothetical data, we will examine docetaxol (J9170). Suppose the national payment limit for docetaxol in 2004 was $358. If one of our carriers was paying $325 for docetaxol in one of its localities in its comparable private side business, the Medicare payment limit for docetaxol in that locality would be set at $325. This lower payment amount would only apply in that locality and would not be the national payment limit. If, however, the carrier was paying $375 for docetaxol in this locality, the Medicare payment would be based on the current national limit of $358.

We understand that to the extent private sector drug payments vary by geographic region, the application of comparability may result in regional variation in drug payments. We seek comment on this aspect of the policy.

It is our understanding that historically many private insurers have focused more on payments for oral drugs and inhalation drugs than injectable drugs, although this is changing due to the rapid growth in expenditures for injectable drugs. MedPAC discussed this in their June 2003 report to Congress titled "Report to the Congress: Variation and Innovation in Medicare," which stated that "Only as expenditures have sharply increased in the past few years have payers begun to focus on more efficient methods of paying for these drugs." We are seeking information on these new methods of paying for injectable drugs and comments on any implications for Medicare drug payment limits under the comparability provision.

Option 2—Average AWP Discount

a. Existing Drugs

Another option we are proposing is to apply an average AWP discount to the AWPs published in commercial compendia as of April 1, 2003. Specifically, we would lock-in and reduce the AWP published as of April 1, 2003 in the national drug pricing compendia by an average price discount from AWP. Our analysis of the available data from the GAO and OIG studies indicates that the majority of drugs examined had a discount of approximately 10 to 20 percent off of the AWP, with the remaining drugs having larger discounts. The Medicare payment limit, therefore, would be set at between 80 percent and 90 percent of the AWP published as of April 1, 2003. We are seeking comment on the appropriate uniform reduction to make in this range. This policy would be effective January 1, 2004. In future years, these prices would be updated on an annual basis by the increase in the consumer price index for medical care

for the 12-month period ending June of the prior year.

As an example of how this approach might apply to a specific drug assuming an average AWP discount of 15 percent, we will again examine docetaxol (J9170). The April 1, 2003 AWP published in the commercial compendia for docetaxol is $377. Applying an average AWP discount of 15 percent, the Medicare 2004 payment limit for J9170 would be $320. Assuming a 4.0 percent increase in the consumer price index (CPI) for medical care for the 12-month period ending June 2004, the 2005 payment limit for J9170 would be $333, regardless of the list AWP at that time.

b. New Drugs and Drugs With Patent Expirations

The reimbursement rate for new drugs and drugs coming off of patent would be determined for the first year based on our review of information provided by the manufacturer about the expected widely available market price for that year. As a condition of obtaining a HCPCS code for billing purposes (in the case of new drugs) or continuing to recognize a HCPCS code for billing purposes (in the case of drugs coming off patent), manufacturers would be required to provide information on the anticipated widely available market price that a prudent physician or prudent supplier would pay for the drug and a rationale for the new price. We expect that drug manufacturers in the normal course of conducting their business have determined the prices that physicians and suppliers would pay for the drug when sold through a distributor or via direct distribution.

If we suspect that a manufacturer has knowingly supplied misleading pricing information to generate or maintain a "spread" between Medicare payment and the widely available market price, we will refer the matter to the OIG. As stated by the OIG in their Office of Inspector General's Compliance Program Guidance for Pharmaceutical Manufacturers (68 FR 23737) that was published on May 5, 2003:

"If a pharmaceutical manufacturer purposefully manipulates the AWP to increase its customers' profits by increasing the amount the federal health care programs reimburse its customers, the anti-kickback statute is implicated. Unlike bona fide discounts, which transfer remuneration from a seller to a buyer, manipulation of the AWP transfers remuneration to a seller's immediate customer from a subsequent purchaser (the federal or state government). Under the anti-kickback statute, offering remuneration to a purchaser or referral source is improper if one purpose is to induce the purchase or referral of program business. In other words, it is illegal for a manufacturer knowingly to establish or inappropriately maintain a particular AWP if one purpose is to manipulate the 'spread' to induce customers to purchase its product."

During the first year the HCPCS code is used for billing, the manufacturer would provide updated information to us on the actual prices that physicians and suppliers are paying to purchase the drug. Again, we expect manufacturers would collect this information in the normal course of conducting their business.

We would review this data and other available data sources on the widely available market price of the drug to determine if an adjustment to the Medicare payment limit would be required for the second year. In the absence of a second year adjustment, the first year payment would be updated by the increase in the medical component of the CPI for the 12-month period ending six months prior to the year. For the third year and all subsequent years, the Medicare payment limit would be updated on an annual basis by the increase in the CPI for medical care for the 12-month period ending June of the prior year.

Option 3—Market Monitoring

Another option we are proposing is to utilize existing sources of market-based prices in developing Medicare payment limits and to develop additional sources of this information for market monitoring. Under this option, we would define AWP to be the widely available market price. Initially, we would use the market analyses available to us from GAO and OIG studies to transition widely available market prices into the Medicare payments. As discussed below, over time we may expand our data sources for these market prices. Although the GAO and OIG performed market analyses on drugs covering the majority of Medicare expenditures, they did not study all of the approximately 450 Medicare drugs. As described earlier in section I.B, Medicare drug spending is concentrated in relatively few drugs; 33 drugs account for 86 percent of the spending. Initially, for those drugs where we do not have GAO and OIG information on which to base a market price, we would proceed as in option 2 and base the payment limit on an average AWP discount off of the list AWP reported to the commercial compendia as of April 1, 2003.

a. Definition of Average Wholesale Price

In implementing sections 1842(o) of the Act and 429 of BIPA, we propose to define the AWP of a drug to be the widely available market price. The widely available market price would be the price that a prudent physician or prudent supplier would pay when purchasing the drug from common sources. Common sources that a prudent physician or supplier might utilize when purchasing a drug include, but are not limited to, wholesalers, manufacturers, repackagers, physician supply houses, pharmacies, specialty pharmacies, and group purchasing organizations. The widely available market price would not be a list price that is commonly discounted, but would be the purchase price net of discounts, rebates, and price concessions routinely available to prudent purchasers.

The widely available market price would reflect prices in programs where a manufacturer, a manufacturer's subsidiary or related company, or a repackager sells drugs to physicians and suppliers directly or through buying groups or other mechanisms. For example, if a drug manufacturer establishes a buying group easily accessed by prudent physicians, the lower price offered to the buying group should be reflected as the widely available market price.

It is not our intent to set the Medicare payment limit below the widely available market price. Under the current system, the Medicare allowed charge is the lower of the actual charge and 95 percent of the AWP. Using the authority granted to the Secretary under section 429(b) of BIPA, the Medicare allowed charge in a fully phased-in revised payment methodology would be the lower of the actual charge or the widely available market price. We would not pay at 95 percent of the widely available market price since we wish to consider further the issue of beneficiary access at 95 percent of the widely available market price. As described in section II.D, we do not expect any beneficiary access issues with payment at the widely available market price.

b. Use of existing sources of market based prices

As described earlier in section I.F, both the GAO and OIG have performed market analyses of the widely available market prices for the top Medicare drugs in terms of expenditures. While the market analyses differed in their methodologies, for example the GAO used averages of drug prices from their data sources and the OIG used medians, in general the results were consistent for these drugs. To begin to incorporate this information into the Medicare payment limits for the drugs that have been studied, we would take the average discount between the GAO and OIG data for the drug and apply it to the list AWP reported in the published

compendia as of April 1, 2003. Although as noted the results of the GAO and OIG market analyses are generally consistent, we seek comment on our proposed approach of averaging these two data sources.

For example, one drug studied by both the GAO and OIG is rituximab (J9310). The April 1, 2003 list AWP published in the commercial compendia for rituximab is $501.13 for 100 mg. The GAO study indicates the average market price for rituximab is 81 percent of the list AWP. The OIG study indicates the average market price for rituximab is 80 percent of AWP. The average of these two data sources rounded to nearest percent is 81 percent of the list AWP. Under this option, the Medicare payment limit for J9310 would be $405.92 (that is, 81 percent of $501.13) effective January 1, 2004.

Clotting factor was the subject of a separate GAO report entitled "Payment for Blood Clotting Factor Exceeds Providers' Acquisition Costs" (GAO–03–184). This report found that the market price for clotting factor was 59 percent of list AWP for hemophilia treatment centers and 69 percent of list AWP for homecare companies. We are proposing to transition these market prices into the Medicare payment limit for clotting factor at the average of these two figures, 64 percent, with an initial transition amount of 80 percent in 2004. (*see* section 3.f. for further discussion on the transition to market prices). We are requesting comments on the appropriate payment limit rate. The limit would apply for all clotting factor HCPCS codes, including both the human and recombinant forms.

c. Drugs Without Market-Based Price Information

Initially, for those drugs where we do not have GAO and OIG information on which to base a market price, we would proceed as in option 2 and base the payment limit on the average AWP discount off of the list AWP reported to the commercial compendia as of April 1, 2003.

As an example of how this approach might apply to a specific drug assuming an average AWP discount of 15 percent, we will examine ifosfamide (J9208). The OIG and GAO did not study ifosfamide. The April 1, 2003 list AWP published in the commercial compendia for ifosfamide is $158. The Medicare payment limit for J9208 would be $135 (that is, 85 percent of $158) effective January 1, 2004.

d. Exceptions Process for First Year Reductions

A manufacturer could seek an exception from the application of these reductions on January 1, 2004 to one or more of its drugs if it would furnish us before October 1, 2003 with verifiable data on the widely available market price, as described earlier in section II.A.3.a, of the drug as of April 1, 2003 and certify the accuracy of this data. We will review the data and determine if it should be incorporated into the Medicare payment limit. Note that all data submitted as part of comments on this proposed rule would be available to the public. Also note that we would base any changes to our proposed payment policy only on data that we could make available to the public.

e. Future Years

As discussed in section 3.f below, we expect to develop additional sources of market-based prices in future years for the purpose of market monitoring. We also recognize that the OIG may perform updated market analyses on drugs previously studied or additional drugs. If the OIG performs a new market analysis, we expect to incorporate this information into the Medicare payment limits. As we develop additional sources of widely available market prices and sufficient new valid information becomes available from these sources, we expect to incorporate this information into the Medicare payment limits based on the methodology described above. In the absence of additional valid data sources indicating a change in the widely available market price, the Medicare payment limits would be updated on an annual basis by the increase in the CPI for medical care for the 12-month period ending June of the prior year.

f. Transition for Existing Drugs

For existing drugs where the widely available market price based on the OIG and GAO studies is less than 80 percent of list AWP, we would transition to the market-based payment in 15 percentage point increments. This is similar to the approach taken by the Congress in specifying the incremental payment changes under the inherent reasonableness authority (section 1842(b)(8) of the Act). For example, one drug studied by both the GAO and OIG is ipratropium bromide (J7644). The April 1, 2003 AWP published in the commercial compendia for ipratropium bromide is $3.52. The GAO study indicates the average market price for ipratropium bromide is 33 percent of list AWP. The OIG study indicates the average market price for ipratropium bromide is 34 percent of list AWP. The average of these two data sources rounded to the nearest percent is 34 percent of AWP. Because this is lower than 80 percent of list AWP, the Medicare payment limit for ipratropium bromide effective January 1, 2004 would be 80 percent of the list AWP or $2.82. The Medicare payment limit for ipratropium bromide effective January 1, 2005 would be 65 percent of the list AWP published in the commercial compendia as of April 1, 2003 updated by the medical CPI. The Medicare payment limits for CY 2006 and CY 2007 would be 50 percent and 35 percent, respectively, of the April 1, 2003 list AWP updated by the medical CPI. In 2008, the transition to the widely available market price would be complete and the payment limit would be 34 percent of the April 1, 2003 list AWP updated by the medical CPI.

To the extent that the OIG performs a new market analysis or additional data sources are developed as described in section 3.h, the target widely available market price might change.

g. New Drugs and Drugs with Patent Expirations

The payment limit for new drugs and drugs coming off of patent would be determined as described under option 2. The only difference would be that under the market monitoring approach the out year payment limit might change to the extent that the OIG performs a market analysis or additional data sources are developed as described in the next section.

h. Additional Sources of Market-Based Prices

We are considering additional sources of market-based price information. These sources could include drug distributors (for example, wholesalers, physician supply houses, specialty pharmacies, retail pharmacies, manufacturers, repackagers) physicians, suppliers, and group purchasing organizations (GPOs). To the extent that payments by private insurers and health plans reflect widely available market prices, we are considering inclusion of these sources.

The general approach we will use is to take the median price among valid available sources of information on widely available market prices, after making any adjustments required to make the information comparable. We are considering whether to restrict the median calculation to those information sources that reflect significant market share. We are proposing to rely on a single information source if we determine that the source is representative of the widely available market price for a drug.

We are considering the acquisition of this market-based price information through market research firms, contractors, consultants, the OIG, and/or by directly obtaining such data.

If we obtain additional sources of market-based prices and if we determine

these sources are valid for the purposes of determining payment limits based on widely available prices, we will provide an opportunity for public comment on the sources.

1. Data from Distributors and Manufacturers

We would seek to acquire data from drug distributors and manufacturers. Although there may be many distributors for a given drug, our understanding is that most physicians and suppliers tend to use the same distributors over a given time period and that the majority of these purchases, at least for injectable drugs, are concentrated in a small number of distributors. We are considering whether to focus our efforts initially on these distributors and we are seeking comment on this focused approach.

Our market analyses would also include pricing information from manufacturers' direct distribution programs since, as discussed earlier, we understand that many of these programs are easily accessible to physicians and suppliers and that the prices offered in these programs are often lower than the prices available through other distribution channels.

2. Data From Physicians and Suppliers

We would also seek to obtain acquisition cost information from physician and suppliers. Although individual invoice pricing may not necessarily be reflective of the widely available market price, for example due to the presence of volume related rebates and price concessions, this information could be informative in developing the widely available market price.

While issues have been raised in the past concerning the use of invoice prices due to the potential presence of volume discounting, we note that the GAO study found that physicians who billed for low amounts of chemotherapy drugs were still able to obtain significant price discounts. We seek comment on this issue.

3. Data from Private Insurers and Health Plans

We are considering obtaining data from private insurers and health plans, including Medicare carriers' private businesses. As discussed earlier, it is our understanding that while many private insurers pay widely available market prices for oral drugs and inhalation drugs, they have not historically paid widely available market prices for injectable drugs. Given this, we are considering initially seeking private business prices for oral and inhalation drugs. For example, we are considering whether to request our four DMEPOS contractors to supply us with oral and inhalation drug pricing and related information from their private side business.

For injectable drugs, as private insurers develop alternative payment approaches that reflect widely available market prices, we could seek this information from them. For example, similar to the approach suggested for oral and inhalation drugs, we are considering asking our carriers to furnish us with their private business payments for these drugs.

4. Approaches to Acquiring Market-Based Pricing Information

We are considering the acquisition of this market-based price information through market research firms, consultants, contractors, the OIG, and/or directly obtaining such data. It is our understanding that many manufacturers use market research firms to gather information on their products. For example, they conduct surveys of physician practices and compile pricing information. We are considering contracting with one of these firms to perform a market analysis of physician practices. We also understand that a few private health plans have begun to use consultants, at least for injectable drugs, to assist them in developing market-based payment structures. We are considering contracting with these consultants. We are considering an attempt to obtain pricing information directly from distributors using full or part-time CMS employed or contracted physicians. We are considering the selection of one or more contractors to acquire this information for us and maintain updated pricing information. The OIG may also update market analyses of drugs they have previously studied and examine additional drugs.

Option 4—Competitive Acquisition Program and Average Sales Prices

A fourth option we are considering is the establishment of a competitive acquisition program for drugs covered under section 1842(o) of the Act coupled with the establishment of a process for determining Average Sales Price (ASP). Under this option, we would establish competitive acquisition areas and entities would bid to supply drugs to physicians in one or more of these areas. A physician could choose annually to acquire drugs from one of these entities and the entity would be responsible for billing Medicare. Alternatively, a physician could choose to purchase drugs and bill Medicare. If a physician elected to purchase drugs, we would pay the physician the ASP for the drug. Manufacturers would be required to furnish us with the ASP for each of their drugs quarterly. This option is consistent with the GAO's recommendation that we evaluate expanding competitive bidding approaches to obtain lower drug prices (GAO–01 1118, p.5) and is consistent with our understanding of Congressional intent with respect to section 429 of BIPA.

Below we describe our proposed competitive acquisition program and ASP-based payment systems. We seek comment on any additional elements that need to be considered in the establishment of these payment systems. We also note that for some drugs, such as those currently provided directly from the manufacturer to the physician, we may be potentially introducing an additional distribution level in the form of the bidding entity. Therefore, we have explicitly identified safeguards under the competitive acquisition program that are more implicit under our alternative payment reform proposals. While we believe that section 429 of BIPA contemplates (and section 1842(o) of the Act could be defined to permit) the use of such a competitive acquisition model, coupled with the implementation of an ASP setting function described below, we specifically solicit comments on the extent of the authority to implement the option set forth below either in its entirety or in a modified fashion.

A. Competitive Acquisition

1. Categories of Drugs

Under this proposal, we would bid two categories of drugs in each competitive acquisition area: oncology and non-oncology. The oncology category would consist of covered drugs typically billed by oncologists or otherwise used to treat cancer. The non-oncology category would consist of all other covered drugs with the exception of DME drugs, clotting factors, drugs furnished to individuals in connection with the treatment of end stage renal disease, and vaccines. Payment for excepted drugs would be based on the ASP. We may propose subcategories of non-oncology drugs in the future. We seek comment on any additional categories of drugs that may be inappropriate for competitive bidding due to low utilization, a unique method of delivery, or similar reasons.

2. Bidding Entity Qualifications

a. Capacity

Bidding entities would be required to demonstrate sufficient capacity to

supply the drugs in the drug category in accordance with all applicable state requirements and pharmacy laws. The entity would need to have sufficient arrangements to acquire and to deliver drugs within the category at the bid price for all physicians that may elect such entity in a competitive acquisition area.

b. Shipment

Bidding entities would be required to have arrangements in effect for the shipment of drugs at least 5 days each week and for the timely delivery (including emergency situations) of drugs in the competitive acquisition area. The shipments would be made to the physician and not directly to the beneficiary, except under circumstances where a beneficiary currently receives the drug in the home or other nonphysician office setting. The contractor would not deliver drugs to a physician except upon receipt of a prescription.

c. Integrity of the distribution system.

Bidding entities would need to demonstrate that the drugs provided in the competitive acquisition program would be acquired directly from the manufacturer or from a distributor that has acquired the drugs directly from the manufacturer.

d. Inquiries and dispute resolution.

Bidding entities would be required to establish procedures for the prompt response and resolution of physician and beneficiary inquiries regarding the shipment of drugs and to establish a grievance process for the resolution of disputes. For disputes that are not resolved at the bidding entity, we propose to establish a national ombudsman to oversee and review complaints under the competitive acquisition program.

3. Bidding Process

a. Evaluation of bids.

We propose to select one or more winning bidders for each category based on the bid prices for the drugs, the ability to ensure product integrity, customer service, and past experience in the distribution of drugs. We also propose to reject any bid that we estimate would result in aggregate payments that exceed the payments that would have been made if the drugs in the category were paid at the ASP.

b. Timing of bidding process.

We expect to have the initial bidding process complete and the winning entities selected in time for the competitive acquisition program to be implemented for oncology drugs beginning in 2005 and non-oncology drugs beginning in 2006. We propose to select subsequent contractors on a periodic basis and seek comment on the appropriate time between bidding periods and the appropriate length of the contracts.

c. Bid prices.

The prices bid by an entity would be the prices in effect and available for the supply of contracted drugs in the area through the entity for the entire contract period. The bid price would not vary within a competitive acquisition area. The bid price would include all costs related to carrying out the contract provisions, including costs related to the delivery, dispensing, and shipping of the drug.

d. Bidding on a national or regional basis.

We would propose, but not require, entities to bid for contracts in more than one competitive acquisition area.

4. Competitive Acquisition Areas

We seek comment on the appropriate geographic regions to establish for a competitive acquisition program.

5. Billing and Coinsurance Under Competitive Acquisition

We propose that a successful bidder would be responsible for billing Medicare and collecting coinsurance for the drugs they supply that are subsequently administered to Medicare beneficiaries.

B. Average Sales Price

Under the competitive acquisition model option, a physician would make an annual election to obtain drugs in a given category through a winning bidder or could purchase the drugs and bill Medicare. If a physician chooses to purchase drugs, they would be paid under the ASP-based system described below. Manufacturers would be required to report the ASP to us on a quarterly basis.

1. Definition of Average Sales Price

Under this proposed option we would propose to define the ASP for a drug for a quarter as a manufacturer's total sales for the quarter less any sales exempted from the ASP calculation divided by the total number of units of such drug sold by the manufacturer in such quarter less any units from sales exempted from the ASP calculation. We seek comment on this definition as well as on the appropriate categories of sales that should be exempted from the ASP calculation.

2. Discounts

Under this proposal, in calculating the ASP, the manufacturer would take into account volume discounts, prompt pay discounts, cash discounts, the free goods that are contingent on any purchase requirement, chargebacks, and rebates (other than rebates under section 1927), that result in a reduction of the cost to the purchaser. A rebate to a payor or other entity that does not take title to a covered outpatient drug shall not be taken into account in determining such price unless the manufacturer has an agreement with the payor or other entity under which the purchaser's price for the drug is reduced as a consequence of such rebate.

3. Payments.

We propose to pay for multi-source drugs at an appropriate markup above ASP and seek comment on a markup in the range of 101 to 112 percent of ASP. We propose to pay for single source drugs at the lesser of an appropriate markup of ASP in the range of 101 to 112 percent or the Wholesale Acquisition Cost (WAC).

a. Wholesale Acquisition Cost (WAC).

Under this competitive acquisition model option we would propose defining the WAC as the manufacturer's list price for the drug to wholesalers and direct purchasers in the United States as reported in wholesale price guides or other publications of drug pricing data. The WAC would not include prompt pay or other discounts, rebates or reductions in price.

B. Increases in Payments Related to the Costs of Furnishing or Administering Drugs

As described earlier, section 429(b) of BIPA requires us to revise the Medicare payment methodology for drugs under section 1842(o) of the Act based on the GAO report to the Congress. Under section 429(b), to the extent the Secretary determines appropriate, the Secretary may make adjustments to the practice expense component of the physician fee schedule for costs incurred in the administration, handling, or storage of certain categories of such drugs and biologicals. Section 429(b) also authorizes the Secretary to make proposals for new payments to providers of services or suppliers for such costs, if appropriate. However, the estimated aggregate payments for drugs under the revised system (including additional payments for related costs of furnishing or administering the drug) cannot exceed payments as projected by the Secretary under the current system. Below, we discuss payment issues associated with furnishing or administering Medicare covered drugs. To the extent appropriate, we are proposing increased payments for the administration of drugs or new payments to providers or suppliers for

furnishing Medicare covered drugs and seek comment on the applicability of these payments under each of our four options for reforming the current payment system.

1. Proposed Changes in Physician Fee Schedule Payment for the Administration of Medicare Covered Drugs

a. SMS and Supplemental Survey Data

An important element in calculation of the practice expense relative value units (RVUs) for all services paid using the physician fee schedule is specialty-specific practice expenses per hour of patient care. We use the American Medical Association's (AMA's) Socioeconomic Monitoring System (SMS) survey of actual aggregate cost data by specialty as the major source of data for these expenses per hour. However, not every specialty is included in the SMS data and several other specialties have commented that the SMS data were not adequately representative of the costs incurred by their specialty. (63 FR 58824–58826) Section 212 of the Balanced Budget Refinement Act of 1999 (BBRA) directed us to establish a process under which we would accept and use, to the maximum extent practicable and consistent with sound data practices, data collected or developed by organizations. In an interim final rule published on May 3, 2000 (65 FR 25664) we set forth our criteria for accepting such supplemental surveys. In the December 31, 2002 **Federal Register** that contained the 2003 physician fee schedule final rule (67 FR 79972), in response to comments, we made some modifications to these criteria. In this year's physician schedule proposed rule (68 FR 49030), we proposed changes to the deadline for submitting supplemental survey information to our contractor, the Lewin Group.

Using the SMS data, we calculated a total practice expense per hour of $99.30 for oncology. We are currently using this practice expense per hour for CMS specialty codes 83 (Hematology/Oncology) and 90 (Medical Oncology). However, the American Society of Clinical Oncology (ASCO) submitted a supplemental survey in 2002 with a practice expense per hour of $189.00. In the 2003 physician fee schedule final rule (67 FR 79973), we discussed the practice expense survey submitted by the ASCO. Although the survey met our stated criteria, we did not use it in the calculation of the 2003 practice expense RVUs because of concerns about the data. Our contractor, the Lewin Group evaluated the data and indicated that average compensation (including salaries and fringes) for clinical and administrative staff reported in the ASCO survey averaged $71,014 and $87,253 respectively and appear inconsistent with other available data on wage rates for such staff. Furthermore, the Lewin Group indicated that the category of "other professional expenses" was 349 percent higher than the SMS survey. The Lewin Group suggested that we seek an explanation for the high values in the ASCO survey before incorporating it into the practice expense methodology. In the December 31, 2002 physician fee schedule final rule we indicated that we intended to meet with ASCO to discuss our concerns and that we would consider using the data in the future if our concerns were addressed. We have subsequently held such discussions with ASCO and understand that the high values for average compensation for clinical and administrative staff are largely due to a limited number of practices with very high values that raise the average values calculated across all respondents to the survey. At this time, we are proposing to incorporate the survey into the methodology. Since our practice has been to use all survey data and not eliminate practices with high values, we are including all respondents in the supplemental practice expense per hour.

As we note in more detail below, section 429(b) authorizes the Secretary to provide for adjustments to payments for the costs incurred in the administration of certain categories of drugs. While we believe the provision allows the Secretary to make changes to practice expense payments in a non-budget neutral manner, we also believe that it anticipates that the Secretary will make adjustments to payments for drug administration services at the same time the Secretary revises the payment methodology for drugs. Otherwise, we would be unable to compare the aggregate costs of the changes authorized by section 429. We are, therefore, proposing only to incorporate the oncology survey data into the practice expense methodology at the same time proposed changes in Medicare payment for drugs are adopted.

ASCO, the GAO, and OIG have all indicated that Medicare overpays for drugs and revisions to the payment methodology for drugs should coincide with increase in practice expense payments for drug administration services. In testimony before the House Ways and Means Committee on October 3, 2002, ASCO acknowledged the need for comprehensive reform of Medicare payment for drugs and physician practice expenses. ASCO testified:

> We do not relish being targets for those who correctly point out that some drugs are reimbursed by Medicare at a rate that exceeds the acquisition cost * * * reform must be comprehensive, encompassing both overpayments for drugs and underpayments for the costs of administering the drugs.

The GAO echoed this view in testimony before the House Energy and Commerce Subcommittee on Health Oversight and Investigations on September 21, 2001 testifying: "it should be a principle of Medicare payment policy to pay for each service appropriately." OIG testified:

> Our reports have shown time after time that Medicare pays too much for drugs * * * We agree that physicians need to be properly reimbursed for patient care. However, we do not believe that the payment of artificially inflated drug prices is an appropriate mechanism to compensate them.

At the same hearing, Subcommittee Chair James C. Greenwood stated:

> We will need to develop a solution that results in Medicare paying prices for drugs that are closer to the actual prices paid by health care providers. Similarly we will need to take steps to ensure that health care providers are sufficiently reimbursed for all of their services.

Furthermore, we remain concerned about high practice expense per hour values from the ASCO survey. Even when practices with extremely high values are eliminated from the calculations, the supplemental survey practice expense per hour would remain 174 percent higher than the all physician average and more than 45 percent higher than the next highest specialty. We will continue investigating why oncology practice expenses would be so far above other specialties. For the reasons above, we believe the supplemental survey should only be incorporated into the practice expense methodology at the same time that Medicare revises the payment methodology for drugs.

b. Weight Averaging Supplemental Survey and SMS Data

When we use supplemental survey data, we have generally blended the supplemental data with SMS data for the specialty in order to use the maximum number of survey responses in calculating a practice expense per hour. However, the argument has been made that specialty societies would only undertake a survey because of the belief that the existing SMS data were not sufficiently representative of the specialty's practice expenses. According to this argument, blending the

supplemental data with existing SMS data were not appropriate. We agree and propose to use supplemental survey data without blending it with the SMS data.

On only one previous occasion have we used blended data in the calculation of a specialty's practice expense per hour. In the 1999 physician fee schedule final rule (64 FR 59391), we blended the survey data from the Society of Thoracic Surgeons (STS) with the older SMS data for cardiac and thoracic surgery. Consistent with the proposed change to use supplemental survey data for oncologists' practice expenses without blending it with the SMS data, we are proposing to recalculate the practice expense per hour for cardiac and thoracic surgery using the data from only the STS survey which will result in a modest increase in their practice expense per hour. We are proposing to use the following revised data for oncology and cardiac and thoracic surgery:

REVISED PRACTICE EXPENSE PER HOUR

[Dollar]

Specialty	Clin. staff	Admin. staff	Office expense	Med. supplies	Med. equip.	Other	Total
Cardiac/Thoracic	19.5	18.0	17.2	2.1	2.1	14.2	73.1
Oncology	53.4	34.7	34.4	16.9	7.4	42.2	189.0

c. Nonphysician Work Pool

The nonphysician work pool is a special methodology that we used to determine practice expense RVUs for many services that do not have physician work RVUs. We created the nonphysician work pool as an interim measure until we could further analyze the effect of the basic practice expense methodology on Medicare payment for services that do not have physician work RVUs. While the nonphysician work pool is of benefit to many of the services that were originally included, we have allowed specialties to request that their services be removed from the pool. Because the nonphysician work pool includes a variety of services performed by many different specialties, we use the "all physician" average practice expense per hour in place of a specialty-specific practice expense per hour.

Oncologists currently receive approximately 23 percent of their Medicare physician fee schedule revenues from drug administration services that are in the nonphysician work pool. For drug administration codes to benefit from the increase in oncology's practice expense per hour, it would be necessary to remove them from the nonphysician work pool and use the general top-down methodology to establish their practice expense RVUs. For this reason, we are proposing to remove therapeutic and diagnostic infusions (CPT codes 90780 and 90781), therapeutic, prophylactic or diagnostic injections (CPT codes 90782 through 90788) and chemotherapy administration (CPT codes 96408 through 96549) from the nonphysician work pool. Practice expense RVUs for these services will be computed utilizing the standard practice expense methodology used for computing practice expense RVUs for other services outside the nonphysician work pool. (CPT code 96400, chemotherapy injection, is not listed above because it has already been removed from the nonphysician work pool at the request of the American Urological Association. See the December 31, 2002 final rule, 67 FR 79981. This service is primarily provided by urologists and increased in payment by 640 percent between 2002 and 2003 as a result of being removed from the nonphysician work pool).

As we state above, we use the all physician average practice expense per hour in calculating the aggregate practice expense pool for services included in the nonphysician work pool. Once drug administration services are removed from the nonphysician work pool, nearly 98 percent of Medicare allowed charges for services affected by the nonphysician work pool calculations are diagnostic tests provided by radiologists, cardiologists and internists and therapeutic radiation oncology services. Because there is a less heterogeneous group of services remaining in the nonphysician work pool once drug administration services are removed and to minimize the impact of the removal of these services, we are proposing to revise the practice expense per hour based on a weighted average of the specialties that perform the services affected by its calculations. We are proposing to use the following revised data in the practice expense methodology for services remaining in the nonphysician work pool:

REVISED PRACTICE EXPENSE PER HOUR

Specialty	Clin. staff	Admin. staff	Office expense	Med. supplies	Med. equip	Other	Total
Nonphysician Work Pool	$15.8	$17.4	$21.5	$7.9	$4.9	$15.0	$82.6

In the practice expense methodology, the practice expense per hour for each category of costs is multiplied by the physician time per procedure and summed to the specialty level to create aggregate cost pools. By definition, nonphysician work pool services do not involve the physician and have no physician time. To create the nonphysician work pool, we have used clinical staff time per procedure in the computation. In the June 28, 2002 proposed rule (67 FR 43851), we proposed to use the maximum staff time where multiple staff are involved in providing the service. By using the maximum staff time, we are assuming that clinical staff are working concurrently. However, it is possible that clinical staff are working sequentially and it would be appropriate to use the total staff time for each service. We believe the staff time arrangement will likely differ based on the specific service and it is not possible to adopt a rule that will address every situation. Nevertheless, we are proposing to use the total staff time in place of the maximum staff time for developing the 2004 physician fee schedule. As we stated earlier, the nonphysician work pool was adopted as an interim step until we could further

analyze the effect of the top-down methodology on nonphysician work pool services. We have performed these analyses and are optimistic about being able to address nonphysician work pool issues as part of developing the 2005 physician fee schedule. At that time, we will no longer need to use staff time in the creation of the aggregate cost pools and this issue will be resolved.

We have modeled the effect of removing drug administration services from the nonphysician work pool in combination with the change to the practice expense per hour and clinical staff time changes described above. These changes will increase the practice expense RVUs for the nonphysician work pool by approximately 3 percent relative to the practice expense RVUs shown in the physician fee schedule proposed rule published on August 15, 2003.

d. Crosswalk Issues

As stated above, we are currently using the oncology practice expense per hour for CMS specialties 83 (Hematology/Oncology) and 90 (Medical Oncology). We have reviewed 2002 Medicare data for specialty 82 (Hematology). The mix of services provided by physicians billing under specialty 82 is similar to those of specialties 83 and 90. For this reason, we are proposing to change the specialty practice expense per hour crosswalk for specialty 82 from internal medicine to oncology.

e. Issues Related to Budget Neutrality

Section 1848(c)(2)(B)(ii)(II) of the Act requires that the additional expenditures resulting from changes in RVUs be budget-neutral. We normally adjust the practice expense RVUs so that the aggregate amount of expenditures is the same before and after a change to the methodology or data that are used to develop the practice expense RVUs. However, section 429(b)(1) of the BIPA indicates that, "Notwithstanding *any* other provision of law" * * *. (emphasis added) the Secretary is required to revise payments for drugs and is allowed to provide for adjustments to payment amounts for the practice expense component of the physician fee schedule (or new payments to providers or suppliers) for the costs incurred in the administration, handling, or storage of certain categories of drugs and biologicals). The additional physician fee schedule payment and the new payments to providers and suppliers cannot exceed savings from revising payments for drugs. We believe that BIPA section 429(b) provides authority for us to increase physician fee schedule expenditures (that is, not apply the budget-neutrality requirement in section 1848(c)(2)(B)(ii)(II) of the Act) for adjustments made to the practice expense RVUs for drug administration. We have modeled all of the changes described above and determined that payments for the drug administration services will increase by $190 million ($150 million to oncologists and $40 million to other specialties that provide drug administration services such as rheumatology, gastroenterology and infectious disease). Because section 429(b) of BIPA provides authority to increase physician fee schedule expenditures for the adjustments to the practice expense RVUs for drug administration services, the proposed adjustments to practice expense RVUs will increase physician fee schedule allowed charges by $190 million or the amount of increased payments for drug administration services. In general, the proposed adjustments to practice expense RVUs will result in increases in payment for those specialties that provide drug administration services and minimal net payment effects on other specialties. We believe that BIPA allows us not to apply the physician fee schedule budget-neutrality requirements in the context of revising payment rates for drugs and only if the additional expenditures from these and other changes described below do not exceed savings from revising prices for drugs. If we increased physician fee schedule expenditures for the adjustments made to the practice expense RVUs for drug administration without simultaneously revising payments for drugs, we would be spending more on Medicare drugs and drug administration services than we would be in the absence of making the payment changes. Such a policy is clearly prohibited by BIPA.

As we stated earlier, we believe the statute anticipates that we would make drug administration payment changes in conjunction with adopting a revised payment methodology for Medicare drugs. Therefore, we are also proposing not to make the drug administration payment changes, even if we were to make them budget neutral under section 1848(c)(2)(B)(ii)(II) of the Act with respect to other physician fee schedule service unless the drug payment changes are also made. If these proposed changes are adopted the increased costs will be reflected in the sustainable growth rate.

f. Multiple Pushes

In the November 25, 1991 **Federal Register** (56 FR 59541), we indicated that Medicare will allow CPT code 96408 (Chemotherapy administration, intravenous; push technique) to be reported only once per day even if the physician administers multiple drugs. Since this code is in the nonphysician work pool, its payment amount is established based on charge-based practice expense RVUs. However, because we are establishing resource-based practice expense RVUs and there are additional resources involved in administering each subsequent drug, we are proposing to change our policy and allow for 96408 to be reported once per day for each drug administered. Using 2002 Medicare utilization data and the payment amounts resulting from the proposed changes described above, we estimate a $25 million increase in Medicare allowed charges to oncologists. We will reflect any increased costs associated with paying for multiple drug administrations on the same day in the sustainable growth rate. However, as discussed previously, we do not believe the statute permits us to adopt this proposal without revising Medicare's payment methodology for drugs since aggregate payments for drugs and drug administration services would exceed payments that would be made in the absence of such changes.

g. Summary of Physician Fee Schedule Proposals

We are proposing to: (1) Use the ASCO survey data without blending it with existing SMS data to determine practice expenses per hour for use in the top-down methodology (resulting in increased payment rates for drug administration codes provided by oncologists, rheumatologists, gastroenterologists, infectious disease specialties and all other physicians that provide these services); (2) revise the cardiac/thoracic surgery practice expense per hour to use supplemental survey data without blending with SMS data; (3) remove drug administration codes from the nonphysician work pool and instead use our general top-down methodology to establish practice expense relative values units (RVUs); (4) revise the practice expense per hour and clinical staff time used to determine the nonphysician work pool; (5) change the specialty practice expense crosswalk for specialty 82 (Hematology) from internal medicine to oncology; (6) increase physician fee schedule expenditures for the adjustments made to the practice expense RVUs for drug administration services (but only if there are accompanying revisions in payment for drugs discussed elsewhere in this proposed rule) resulting in minimal net payment effects on any specialty that does not provide drug administration services; and (7) revise our policy on payment for multiple pushes.

We have modeled the above proposals as though they were in effect in 2002 to determine the specialty-level impact on

Medicare revenues for oncologists. In 2002, oncologists received approximately $3.8 billion in Medicare revenues for drugs, $1.1 billion for physician fee schedule services and $0.1 billion for all other services. Taken together, oncologists received approximately $5.0 billion in 2002 Medicare revenues for all services. Using 2002 utilization, we estimate that total physician fee schedule payments to oncologists would have increased by $150 million as a result of using oncology survey data and other changes to the practice expense methodology. Allowing payment for multiple drug administration by the push technique would have increased oncology payments another $25 million. The estimated additional payment of $175 million to oncologists represents a 17 percent increase in their physician fee schedule revenues and a 58 percent increase in their payments for drug administration services. If we had adopted one of the proposals described above to revise drug payments in 2002, Medicare revenues to oncologists would have increased $80 million or 2 percent from applying comparability. Medicare revenues to oncologists would have declined by $570 million or 8 percent from applying an average list AWP discount of 80 percent.

2. Clotting Factor

As mentioned earlier, in January 2003 the GAO issued a report entitled "MEDICARE: Payment for Blood Clotting Factor Exceeds Providers" Acquisition Costs" (GAO–03–184). GAO recommended that we establish Medicare payment levels for clotting factor that are more closely related to providers' acquisition costs and then establish a separate payment for the cost of delivering clotting factor to Medicare beneficiaries by hemophilia treatment centers and homecare companies. In following the GAO's recommendation, at the same time that we establish an appropriate price for clotting factor, we plan to establish a separate payment to hemophilia treatment centers and homecare companies for the administrative costs associated with furnishing the clotting factor. GAO estimated that total delivery costs in 2000 and 2001 ranged from $0.03 to $0.08 per unit of clotting factor sold by hemophilia treatment centers. GAO did not receive enough data from homecare companies to estimate their costs. We are proposing to create a payment of $0.05 per unit of clotting factor provided to Medicare beneficiaries by hemophilia treatment centers and homecare companies to appropriately pay for the administrative costs associated with furnishing the clotting factor. Note that we are not proposing the creation of separate payment for furnishing the clotting factor for individuals or entities other than hemophilia treatment centers and homecare companies, for example hospitals. The administrative costs of these other individuals or entities associated with furnishing clotting factor are already paid for in their respective payment systems. We also note that GAO indicated that providers may also furnish other services for which they are not separately reimbursed, such as patient education and community outreach. However, these services are not Medicare-covered benefits and they are generally targeted to younger patients who are not Medicare beneficiaries. We are proposing not to include such non-Medicare covered services in the separate payment that we plan to establish for furnishing clotting factor. Section 429(b) of BIPA authorizes the Secretary to establish payment for clotting factor delivery. Therefore, we plan to assure that the total amount of Medicare expenditures for both clotting factor and delivery of such factor does not exceed the amount that Medicare would otherwise spend for clotting factor in the absence of adjustment in payment for the drug and establishment of a separate fee for furnishing the drug. We are seeking public comment and data related to the appropriateness of a fee for furnishing clotting factor under each of our four options for revising the current payment methodology.

3. Separately Billable ESRD Drugs

Medicare pays ESRD facilities a prospective payment, the composite rate, for each hemodialysis treatment furnished. The composite rate is designed to cover the facility's costs of ESRD services furnished to beneficiaries. ESRD facilities can also bill Medicare separately for certain drugs paid outside the composite rate, including erythropoietin, vitamin D analogue, and calcitrol. By law, Medicare payment for erythropoietin furnished by ESRD facilities is $10 per 1,000 units. The other separately billable drugs are paid under the current 95 percent of list AWP methodology.

In its March 2003 report to Congress, MedPAC concludes that after taking into account the combined payments to ESRD facilities for both the dialysis treatment and the separately billable drugs, the aggregate Medicare payments for outpatient dialysis services appear to be adequate. However, MedPAC found that in 2001, Medicare's composite rate payment did not cover the costs of providing dialysis services. MedPAC indicated that the profitability of erythropoietin and other separately billable drugs is subsidizing the lower margins under the composite rate. The finding regarding the profitability of the separately billable drugs is consistent with two earlier studies by the OIG. The OIG also found that Medicare's payment rates for these drugs were high relative to providers' costs and the rates paid by the VA and Medicaid programs.

We believe that it is important to pay appropriately for the composite rate and separately billable drugs and not have payments for one cross-subsidize the other. It is our preference for the Congress to provide explicit authority to increase the composite rate when we reduce payments for ESRD separately billable drugs. However, we believe that Congress intended for us to establish additional payments for ESRD facilities to account for increased costs resulting from revised drug payment rates. Section 429(b) provides that the Secretary may provide for additional payments to providers or suppliers for the administration, handling, and storage of drugs and biologicals. While the citation in section 429(b) is to a provision of the statute that no longer exists, we believe that in light of other provisions in section 429, Congress intended the Secretary to provide for additional payments to ESRD facilities for increased costs related to the administration of drugs and biologicals to offset revised Part B payments rates if the Secretary determined it was appropriate. We believe based on the MedPAC analysis that it is appropriate to increase ESRD payments to offset the savings that will occur as we reform drug payments under the current methodology. This would result in the same amount of money being paid to ESRD facilities in 2004, but with more accurate payment for separately billable drugs. This would not involve the bundling of payment for these drugs or the drug savings into the composite rate, but a separate payment from the composite rate. After we have selected an AWP reform option, we would determine the average first year savings from the ESRD separately billable drugs per hemodialysis treatment and create a separate ESRD facility payment per hemodialysis treatment equal to this amount. As stated earlier, we would prefer for Congress to provide explicit authority for us to bundle the savings from reforming the separately billable ESRD drug payments into the composite rate.

We are requesting comments from the public on our interpretation of the BIPA

provisions as well as our proposal for additional ESRD payments.

4. Inhalation and Home Infusion Drugs

For inhalation drugs furnished in connection with an item of DME, Medicare currently pays for: (i) The DME itself, (ii) servicing of the DME, and (iii) the inhalation or infusion drug. For inhalation drugs, Medicare also pays a dispensing fee.

Inhalation equipment, such as nebulizers and home infusion pumps, are paid under the DME benefit under the capped rental category. The supplier furnishes the equipment to a beneficiary and the supplier is paid 10 percent of the purchase price for the first three months and 7.5 percent of the purchase price for months 4 through 15 (that is, up to 120 percent) of the purchase price of the equipment. The supplier furnishes the equipment for as many months as the beneficiary needs it. The statute also provides for a purchase option for the beneficiary. If a beneficiary does not purchase the equipment, the supplier retains title to the equipment and could furnish it to another beneficiary. In this case, the payment occurs in a similar fashion and the supplier could be paid up to another 120 percent of the purchase price of the equipment. Medicare's payment includes delivery of the equipment to the patient and any necessary setup and training of the beneficiary in its use.

The statute specifies that Medicare also make payments for maintenance and servicing the equipment. Such maintenance and servicing payments cover 6-month periods beginning 7 months after initial use of the equipment. By statute, Medicare's payment for maintenance and servicing is equal to the lesser of a reasonable and necessary maintenance and servicing fee, or 10 percent of the total purchase price of the equipment.

In their September 2001 report described earlier (GAO–01–1118), the GAO noted that although there have been no recent analyses of the adequacy of Medicare DME payments, there are indications that the payments may be above market rates. We are unaware of any studies indicating that absent excessive Medicare payments for DME drugs, payment for the DME itself is inadequate. Nevertheless, we are interested in receiving convincing and comprehensive data from the public about any underpayment for inhalation and infusion durable medical equipment believed to exist and the applicability of that data under each of our four options revising the current payment methodology.

We note that it has been suggested that the current excessive Medicare payments for DME drugs are used to pay for inhalation and infusion services provided by DME suppliers that are not covered by the Medicare program. We believe it is inappropriate for excessive drug payments to subsidize these non-covered services.

5. Oral Drugs Provided by Pharmacies

Medicare makes no separate payment to pharmacies for dispensing covered Medicare drugs such as oral immunosuppressive and oral anti-emetic drugs. The GAO report did not make a recommendation with respect to dispensing fees for pharmacies. We are seeking public comment and data related to the appropriateness of dispensing fees under each of our four options for revising the current payment methodology.

C. Beneficiary Access to Drugs

Given our intent to pay appropriately for drugs and our proposed increases in payments for the costs related to furnishing and administering drugs, we do not believe that any beneficiaries will experience drug access issues as a result of our four proposed options. For the drugs (for example, the inhalation drugs) where we are not currently proposing changes in payments related to the administrative costs of furnishing the drugs, we are seeking comments and data supporting the appropriateness of any payment changes.

Although we do not believe any drug access issues will result from this proposed rule, we intend to monitor beneficiary access closely and may propose additional changes to our payment system in the future if necessary. The data sources we might examine in our access monitoring effort include claims data, surveys and focus groups, beneficiary inquiries to the 1–800-Medicare number, and environmental scanning activities.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Requirement:

Under proposed option 2 and option 3 for this regulation, a manufacturer of a new drug or a drug coming off patent would have to submit detailed information and a rationale to us for a new price, in order to receive a HCPCS code or continue the use of a HCPCS code, respectively. During the first year, the manufacturer would also have to provide updated information on the actual prices that Medicare physicians and supplier pay to purchase the drug.

The burden associated with these requirements is the time involved in providing us the information the first time and in providing us the updates. The burden of submitting the data should be minimal, as most of it will undoubtedly be electronically stored and transmitted. Submitting information should take no longer than 1 hour; updates would take no more than 30 minutes per year. Assuming a maximum of 50 Medicare Part B covered drugs per year either new, coming off patent, or subject to a manufacturer update in the first year based on actual sales, we expect the maximum aggregate burden per year would not exceed 150 hours. In addition, under option 3 a manufacturer could request an exception to price reduction in the first year. We believe that it would take an average of one hour to submit the request and the necessary data and certification. Given the universe of approximately 450 Medicare drug codes and assuming an average of 10 manufacturers per drug code, the maximum aggregate burden associated with this activity would be 4500 hours.

For proposed option 3 for this regulation we would collect, through various means, market-based price information. This information would be collected from any of the following: manufacturers, distributors, physicians and suppliers, and private insurers and health plans.

The burden associated with these requirements is the time involved in providing us the information. We expect it would take an average of one hour to provide us with this information. We expect the burden will not vary significantly regardless of the number of codes requested since this information

is predominately stored electronically by these entities. Assuming a maximum of 1000 of the above entities are requested to provide information in a given year, the maximum aggregate burden associated with this information in 1000 hours per year.

Under option 4, bidders would have to submit a bid. They would have to demonstrate that they have sufficient capacity, that the source of the drugs is the wholesaler or distributor for the wholesaler, and that they have arrangements for shipment within a specified time frame. They would be required to have a procedure for resolving disputes.

The burden associated with the competitive acquisition program would be the time it would take a bidder to submit the bid and to document that it has met the requirements. We expect it would take an average of approximately 40 hours to collect the information for competitive bidding under option 4. Given that we are seeking comment on the number of geographic areas to conduct the competitive bidding, it is not possible to estimate the aggregate burden.

Also under option 4 we are requesting information from manufacturers on the Average Sales Price of a drug. We believe that it would take an average of one hour to collect this information. Given the universe of approximately 450 Medicare drug codes and assuming an average of 10 manufacturers per drug code, the maximum aggregate burden associated with this activity would be 4500 hours per quarter.

If you comment on these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, DRDI, DRD–B, Attn: Julie Brown, Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

Comments submitted to OMB may also be emailed to the following address: email: *baguilar@omb.eop.gov;* or faxed to OMB at (202) 395–6974.

IV. Response to Public Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Analysis

We have examined the impact of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132. Executive Order 12866 (as amended by Executive Order 13258, which reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for final rules with economically significant effects (that is, a final rule that would have an annual effect on the economy of $100 million or more in any 1 year, or would adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities). As described below, we have simulated the effect of changes in payment resulting from the implementation of each of the four options for revising the current drug payment methodology. We have also simulated the impact of our proposed increase in payments for the administrative costs related to furnishing drugs.

Since this rule is considered to be a major rule because it is economically significant, we have prepared a regulatory impact analysis. The RFA requires that we analyze regulatory options for small businesses and other entities. We prepare a Regulatory Flexibility Analysis unless we certify that a rule would not have a significant economic impact on a substantial number of small entities. The analysis must include a justification concerning the reason action is being taken, the kinds and number of small entities the rule affects, and an explanation of any meaningful options that achieve the objectives with less significant adverse economic impact on the small entities.

For purposes of the RFA, physicians and non-physician practitioners are considered small businesses if they generate revenues of $8.5 million or less. Approximately 96 percent of physicians are considered to be small entities. There are in excess of 20,000 physicians and other practitioners that receive Medicare payment for drugs. These physicians are more concentrated in the specialties of oncology, urology, and rheumatology. Of the physicians in these specialties, approximately 40 percent are in oncology and 45 percent in urology.

For purposes of the RFA, approximately 98 percent of suppliers of DME and prosthetic devices are considered small businesses according to the Small Business Administration's (SBA) size standards. We estimate that 106,000 entities bill Medicare for DME, prosthetics, orthotics, surgical dressings, and other equipment and supplies each year. Total Medicare expenditures for DME are approximately $7 billion per year, of which approximately $1 billion are for DME drugs.

The impact of this proposed rule on an individual physician or DME supplier is dependent on the mix of drugs they provide to Medicare beneficiaries. For example, under the market monitoring option a physician could: (1) Determine the quantities of drugs that the physician provides to Medicare beneficiaries; (2) determine the proposed impact on that physician for drugs which have been studied by GAO and OIG based on the quantities the physician provides, the information in Table 3, and our proposed transition as described in section II.A.3.f; and, (3) determine the proposed impact on that physician for drugs which have not been studied by GAO and OIG based on the quantities the physician provides and our proposal to pay 80 percent to 90 percent of AWP as discussed earlier in section II.A.3.c. Different impacts will result from this calculation depending on the mix of drugs provided.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds. To the extent changes in drug payments would have any impact on small rural hospitals, it would be limited to the few drugs they might furnish with pass-through status

under the Outpatient Prospective Payment System.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined that this proposed rule will have no consequential effect on State, local, or tribal governments.

We have examined this final rule in accordance with Executive Order 13132 and have determined that this regulation would not have any significant impact on the rights, roles, or responsibilities of State, local, or tribal governments.

A. Anticipated Effects

We have prepared the following analysis, related to the assessment requirements. It explains the rationale for, and purposes of, the rule, details the costs and benefits of the rule, analyzes alternatives, and presents the measures we are using to minimize the burden on small entities. As indicated elsewhere, we are making changes to payments for drugs and related services in response to the requirements of section 429(b) of BIPA and section 1842(o) of the Act. It is our intent to revise our drug payment system and pay appropriately for the administrative costs related to furnishing drugs. We provide information for each of the policy changes in the relevant sections in this rule. The provisions of this rule are changing only our payment rates for drugs and related services. This rule does not impose reporting, record keeping, and other compliance requirements except as described in section II.A.2.b New Drugs and Drugs with Patent Expirations and section II.A.4.b Average Sales Price. We are unaware of any relevant Federal rules that duplicate, overlap, or conflict with this rule.

B. Impact of Approaches to Revising the Current Payment System

The proposed approach of basing our reform efforts on the comparability provision (Option 1) in the statute and issuing additional guidance to our contractors would result in decreases in Medicare expenditures for drugs of $4.1 billion over the ten-year period FY 2004 through 2013. The effect of implementing an average list AWP discount (Option 2) is dependent on the level of the discount. We are seeking comment on the appropriate discount in the range of 10 percent to 20 percent. At 10 percent, the impact of this proposal is $5.1 billion for FY 2004 through 2013. At 20 percent the impact is $14.3 billion for FY 2004 through 2013. The implementation of market monitoring (Option 3) is also dependent on the list AWP discount since the discount impacts the drugs that have not been studied by the OIG and GAO. At a 10 percent discount for the drugs that have not been studied, the impact of this proposal is $16.1 billion for FY 2004 through 2013. At 20 percent, the impact is $19.4 billion for FY 2004 through 2013. The proposed approach of basing our reform efforts on the establishment of a competitive acquisition program and Average Sales Price system (Option4) is dependent on the ASP markup. At a 1 percent markup the impact of this proposal for FY 2004 through 2013 is $13.5 billion excluding DME drugs and $27.6 billion including DME drugs. At a 12 percent markup the impact of this proposal for FY 2004 through 2013 is $7.6 billion excluding DME drugs and $21.2 billion including DME drugs.

C. Impact on Payments Related to Furnishing or Administering Drugs

We have simulated the impact of our proposed increase in payments for the costs of furnishing or administering drugs. Medicare payments for physician fee schedule services are estimated to increase by $1.6 billion over the ten-year period FY 2004 through 2013. For ESRD facility costs related to furnishing separately billable ESRD drugs, we would set payments budget neutral to the reductions in drug payments. For DME inhalation, DME home infusion, and oral drugs provided by pharmacies, we are seeking comment on the appropriateness of any changes to the payments for the administrative costs of furnishing these drugs.

D. Alternatives Considered

This proposed rule contains the four alternative approaches to reforming the current payment methodology that we considered, each of which has been discussed in detail. We are seeking comment on these approaches. We expect to select one of these approaches after reviewing all public comments received on the proposed rule and making any necessary modifications.

E. Impact on Beneficiaries

We have simulated the effect of changes in beneficiary copayments for drugs and related changes in beneficiary Part B premium payments resulting from the implementation of the four options for reforming the AWP system. The proposed approach of basing our reform efforts on the comparability provision in the statute and issuing additional guidance to our contractors would result in decreases in these payments by beneficiaries of $2.6 billion over the ten-year period FY 2004 through 2013. The effect on beneficiary payments resulting from the implementation of an average list AWP discount is dependent on the level of the discount. At 10 percent, the proposal will save beneficiaries $3.2 billion for FY 2004 through 2013. At 20 percent, the proposal will save beneficiaries $9.1 billion for FY 2004 through 2013. The implementation of market monitoring is also dependent on the list AWP discount since this impacts the drugs that have not been studied by the OIG and GAO. At a 10 percent discount for the drugs that have not been studied, the proposal will save beneficiaries $10.3 billion for FY 2004 through 2013. At 20 percent, the proposal will save beneficiaries $12.3 billion for FY 2004 through 2013. The proposed approach of basing our reform efforts on the establishment of a competitive acquisition program and Average Sales Price system is dependent on the ASP markup. At a 1 percent markup the proposal will save beneficiaries $8.6 billion excluding DME drugs and $17.6 billion including DME drugs. At a 12 percent markup this proposal will save beneficiaries $4.8 billion excluding DME drugs and $13.5 billion including DME drugs.

Beneficiaries will pay an additional $1.1 billion in copayments and related Part B premium increases as a result of the proposed changes to the Medicare physician fee schedule.

As described in section II.C, we do not believe that any beneficiaries will experience drug access issues as a result of our four proposed options. We intend to monitor beneficiary access closely and may propose additional changes to our payment system in the future if necessary.

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget has reviewed this regulation.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 27, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: August 13, 2003.

Tommy G. Thompson,

Secretary.

Addendum A

TABLE 1.—REPRINT OF "TABLE 3: WIDELY AVAILABLE DISCOUNTS FROM AWP FOR MEDICARE-COVERED DRUGS BILLED PRIMARILY BY PHYSICIANS, 2001" FROM THE GAO REPORT

Drug name	Specialty most frequently billing for drug	Average AWP[a]	Average widely available discount from AWP (percentage)[b]
Leuprolide acetate (for depot suspension)	urology	$618.93	17.6
Rituximab	oncology[c]	478.47	19.2
Goserelin acetate implant	urology	469.99	21.9
Docetaxel	oncology	313.51	22.0
Filgrastim (G–CSF) 480 mcg	oncology	300.40	[d]18.0
Pamidronate disodium	oncology	279.86	16.8
Hylan G–F 20	orthopedic surgery	225.13	[d]17.7
Filgrastim (G–CSF) 300mcg	oncology	193.62	[d]18.4
Paclitaxel	oncology	180.57	19.0
Irinotecan	oncology	141.32	22.9
Carboplatin	oncology	120.48	20.3
Gemcitabine HCl	oncology	112.34	21.3
Dolasetron mesylate, injection	oncology	45.02	[d]65.0
Granisetron HCl, injection	oncology	19.52	29.3
Leucovorin calcium	oncology	18.44	85.6
Epoetin alpha for non-ESRD use	oncology	12.91	15.2
Ondansetron HCl, injection	oncology	6.41	12.8
Botulinum toxin type A	neurology	4.86	[e]n/a
Imiglucerase	oncology	3.95	[e]n/a
Dexamethasone sodium phosphate	oncology	1.44	14.2
Heparin sodium	oncology	0.43	34.4

Source: GAO Report "Medicare Payments for Covered Outpatient Drugs Exceed Providers' Cost" (GAO–01–1118)

[a] "Average AWP" is the average of AWP of each NDC for that product adjusted to the HCPCS-defined dosage.

[b] "Average widely available discount from AWP" for each drug was calculated by (1) determining the average widely available price(s) for each NDC for that drug, (2) determining the percentage difference between the average widely available price(s) and the AWP for each NDC for that drug, and (3) averaging the percentage differences for all NDCs for that drug.

[c] "Oncology" specialty includes hematology/oncology and medical oncology.

[d] "Average widely available discount from AWP" in 2001 for this drug is based on a price or prices from a single wholesaler. For these four drugs, we had 2000 data from two or more sources. Those data showed that the average widely available discount from AWP in 2000 was 18.8 percent for Filgrastim (G–CSF) 480 mcg, 17.6 percent for Hylan G–F 20, 19.0 percent for Filgrastim (G–CSF) 300mcg, and 42.2 percent for Dolasetron mesylate, injection.

[e] We (GAO) were unable to obtain wholesaler or GPO prices for these products.

Source: GAO analysis of data from BESS, the Medical Economics Drug Topics Red Book CD–ROM vol. 21, and wholesaler and GPO price lists.

TABLE 2.—REPRINT OF "TABLE 4: DISCOUNTS FROM AWP OBTAINED BY PHYSICIANS WHO BILLED MEDICARE FOR A LOW VOLUME OF SELECTED DRUGS, COMPARED TO WIDELY AVAILABLE DISCOUNTS, 2001" FROM THE GAO REPORT

Drug name	Low volume billers' average discount from AWP (percentage)	Average widely available discount from AWP[a] (percentage)
Leuprolide acetate (for depot suspension)	32.8	17.6
Rituximab	15.7	19.2
Goserelin acetate implant	[b]22.3	21.9
Docetaxel	22.0	22.0
Filgrastim (G–CSF) (480 mcg)	22.4	[c]18.0
Pamidronate disodium	18.0	16.8
Filgrastim (G–CSF) (300mcg)	21.7	[c]18.4
Paclitaxel	25.8	19.0
Irinotecan	27.1	22.9
Carboplatin	[b]20.0	20.3
Gemcitabine HCl	16.1	21.3
Dolasetron mesylate, injection	62.0	[c]65.0
Granisetron HCl, injection	28.1	29.3
Leucovorin calcium	90.4	85.6
Epoetin alpha for non-ESRD use	22.1	15.2
Ondansetron HCl, injection	26.4	12.8

Source: GAO Report "Medicare Payments for Covered Outpatient Drugs Exceed Providers' Cost" (GAO–01–1118)

[a] "Average widely available discount from AWP" for each drug was calculated by (1) determining the average widely available price(s) for each NDC for that drug, (2) determining the percentage difference between the average widely available price(s) and the AWP for each NDC for that drug, and (3) averaging the percentage differences for all NDCs for that drug.

[b] "Low-volume billers' average discount from AWP" for this drug is based on a price from a single physician.

[c] "Average widely available discount from AWP" for this drug is based on a price or prices from a single wholesaler.

Notes: Out of our sample of 108 physicians, 14 provided us with acquisition cost data for 16 of the 18 cancer treatment drugs we examined. An additional 37 physicians belonged to large, hospital-based or national chain oncology practices that likely had access to widely available drug price discounts. Fifty-six physicians could not be contacted or refused to participate. One physician in the sample did not purchase drugs.

Source: GAO telephone survey of a sample of physicians who billed Medicare for a low volume of cancer drugs in 1999 and AWPs listed in a contemporaneous wholesaler catalog.

TABLE 3.—MEDICARE PART B DRUGS IN THE MOST RECENT GAO AND OIG STUDIES

Brand drugs [c]	HCPCS	Medicare allowed charges (CY '02, run thru 2/03)	Rank in terms of medicare allowed charges across all part B drugs	GAO average widely available price as a percent of AWP [a] (2001)	OIG median catalogue price as a percent of AWP [b] (2000)	Average of GAO and OIG data (percent)	"Spread" [j] (percent)
EPOETIN ALFA (PROCRIT)	Q0136	$928	1	85	89	87	8
LEUPROLIDE ACETATE (LUPRON)	J9217	627	2	82	80	81	15
GOSERELIN ACETATE (ZOLADEX)	J9202	441	4	78	80	79	17
RITUXIMAB (RITUXAN)	J9310	377	5	81	80	81	15
PACLITAXEL [c] (TAXOL)	J9265	226	9	81	80	81	15
DOCETAXEL (TAXOTERE)	J9170	221	10	78	80	79	17
CARBOPLATIN (PARAPLATIN)	J9045	189	11	80	82	81	15
IRINOTECAN (CAMPTOSAR)	J9206	170	12	77	80	79	17
GEMCITABINE HCL (GEMZAR)	J9201	159	13	79	80	80	16
PAMIDRONATE DISODIUM [c] (AREDIA)	J2430	126	14	83	87	85	11
DOLASETRON MESYLATE (ANZEMET)	J1260	125	15	[d] 58	[d] 53	56	41
FILGRASTIM (NEUPOGEN) 480mcg	J1441	99	17	[d] 81	[d] 80	81	15
HYLAN G–F 20 (SYNVISC)	J7320	93	18	[d] 82	.....	[f] 82	14
MYCOPHENOLATE MOFETIL (CELLCEPT)	J7517	64	20	[e] 86	.....	86	9
FILGRASTIM (NEUPOGEN) 300mcg	J1440	53	26	[d] 81	[d] 80	81	15
GRANISETRON HCL (KYTRIL)	J1626	47	28	71	71	71	25
ONDANSETRON (ZOFRAN)	J2405	45	29	87	86	87	8
VINORELBINE TARTATE [c] (NAVELBINE)	J9390	38	33	81	[g] 81	15	
SARGRAMOSTIM (LEUKINE)	J2820	35	35	80	.....	[g] 80	16
TOPOTECAN (HYCAMTIM)	J9350	34	36	.....	84	[g] 84	12
Generic Drugs							
IPRATROPIUM BROMIDE	J7644	550	3	[d] 33	[d][i] 34	34	64
ALBUTEROL SULFATE	J7619	381	5	15	[i] 18	17	82
IMMUNE GLOBULIN [h]	J1561 J1563	105	.....	.....	72	[g] 72	24
LEUCOVORIN CALCIUM	J0640	61	22	14	15	15	84
DOXORUBICIN HCL	J9000	29	41	.....	22	[g] 22	77
DEXAMETHOSONE SODIUM PHOSPHATE	J1100	3	104	86	.....	[f] 86	9
HEPARIN SODIUM LOCK-FLUSH	J1642	3	105	66	[f] 66	.....	31
CROMOLYN SODIUM	J7631	3	106	31	[f] 31	67	
ACETYLCYSTEINE	J7608	2	129	[e] 28	64	46	52

Sources: GAO, "Medicare Payments for Covered Outpatient Drugs Exceed Providers' Costs," September 2001. OIG, "Medicare Reimbursement of Prescription Drugs," January 2001. OIG, "Excessive Medicare Reimbursement for Albuterol," March 2002. OIG, "Excessive Medicare Reimbursement for Ipratromium Bromide," March 2002.

[a] GAO estimated the average widely available discount from AWP. We converted that figure into the average widely available price as percent of AWP by subtracting the GAO average widely available discount from 100 percent.

[b] The OIG studies report the median Medicare payment amount and the median catalogue price for each HCPCS code. Based on the OIG data, we divided the OIG Medicare payment amount by 95 percent to estimate AWP and then divided the median catalogue price by the estimated AWP.

[c] PACLITAXEL and PAMIDRONATE DISODIUM became generic drugs in 2002 and VINORELBINE TARTATE became generic in 2003, however, the pricing information in the GAO and OIG studies covers the time period when they were brand drugs only.

[d] For these drugs, GAO only had data from 1 wholesaler in 2001, but had data from 2 or more sources in 2000. The widely available price as a % of AWP shown above for these drugs is the 2000 estimate. The figures for 2000 and 2001, respectively, were: DOLASETRON MESYLATE (58% and 35%), FILGRASTIM 480mcg (81% and 82%), HYLAN G–F 20 (82% and 82%) FILGRASTIM 300mcg (81% and 82%), and IPRATROPIUM BROMIDE (33% and 22%).

[e] GAO data are for 2000.

[f] Only based on GAO data.

[g] Only based on OIG data.

[h] Immune globulin was included in the generic category because it is a multisource biologic. OIG collected data on Immune Globulin HCPCs J1562. That Jcode is no longer in use and now corresponds to Jcodes 1561 and 1563.

[i] The price estimates based on OIG data for ALBUTEROL AND IPRATROPIUM BROMIDE include more than just catalogue prices. OIG conducted special studies on these two drugs in 2002. The studies provided data on the median Medicare payment amount in 2001, the median wholesale catalogue price in 2001, the median invoice price (data gathered by OIG reflecting the time period 1998—August 2000), and the median wholesale acquisition cost reported in the April 2001 Drug Topics Redbook. For these 2 drugs, we calculated the median price across OIG's three data sources, and then divided it by our estimate of AWP (OIG's Medicare median payment amount divided by 95%).

[j] The "spread" is the percent difference between the Medicare reimbursement price (*i.e.*, 95 percent of AWP) and the average GAO/OIG widely available/catalogue price.

[k] Top 20 w/combined Jcodes.

TABLE 4.—SUMMARY OF OIG REPORTS ON MEDICARE PRESCRIPTION DRUGS

Year of Report	1997	1998	2000			2001		2002
Drugs reviewed	22 drugs	34 drugs	5 ESRD drugs	Albuterol	24 drugs	Albuterol	24 drugs	Ipratropium Bromide
Year Reviewed	1996	1997	1998	1999	1999	2000	2000	2000
Medicare Expenditures for Reviewed Drugs	[3] $1.5	[3] $2.1	[4] $379	[4] $246	[3] $3.1	[4] $296	[3] $3.7	[4] $348
Excessive Payments Based On:								
VA	.....	[3] $1	[4] $162	[4] $209	[3] $1.6	[4] $264	[3] $1.9	[4] $279
Catalogs	[4] $447	.....	.....	.....	[4] $761	[4] $245	[4] $887	[4] $262
Medicaid	.....	.....	[4] $42	[4] $120	[4] $425	.....	.....	.....
Beneficiary Share of Excessive Payments:								
VA	.....	.....	[4] $32	[4] $42	[4] $320	[4] $53	[4] $380	[4] $56
Catalogs	[4] $89	[4] $200	.....	.....	[4] $152	[4] $49	[4] $177	[4] $52

TABLE 4.—SUMMARY OF OIG REPORTS ON MEDICARE PRESCRIPTION DRUGS—Continued

Year of Report	1997	1998	2000			2001		2002
Drugs reviewed	22 drugs	34 drugs	5 ESRD drugs	Albuterol	24 drugs	Albuterol	24 drugs	Ipratropium Bromide
Medicaid	.....	.....	[4]$8	[4]$24	[4]$85	.....	.....	

Sources:
[1] OIG, "Testimony of George F. Grob, Deputy Inspector General for Evaluation and Inspections, HHS Office of Inspector General," House Committee on Energy and Commerce, Subcommittee on Oversight and Investigations and Subcommittee on Health, Joint Hearing September 21, 2001.
[2] OIG, "Excessive Reimbursement for Ipratropium Bromide," Report Number: OEI–03–01–00411, March 2002.
[3] Billion.
[4] Million.

LIST OF MEDICARE DRUG HCPCS CODES

HCPCS*	Description
90371	HEPATITIS B IG, IM
90375	RABIES IG, IM/SC
90376	RABIES IG, HEAT TREATED
90379	RESPIRATORY SYNCYTIAL VIRUS IG, IV
90385	RHO(D) IG (RHLG), MINIDOSE, IM
90389	TETANUS IG, IM
90585	BACILLUS CALMETTE-GUERIN VACCINE, PERCUTANEOUS
90632	HEPATITIS A VACCINE, ADULT IM
90633	HEPATITIS A VACCINE, PED/ADOL, 2 DOSE
90634	HEPATITIS A VACCINE, PED/ADOL, 3 DOSE
90645	HEMOPHILUS INFLUENZA B VACCINE, HBOC, IM
90675	RABIES VACCINE, IM
90691	TYPHOID VACCINE, IM
90700	DIPTHERIA, TETANUS TOXOIDS VACCINE, IM
90703	TETANUS VACCINE, IM
90704	MUMPS VACCINE, SC
90705	MEASLES VACCINE, SC
90706	RUBELLA VACCINE, SC
90707	MEASLES, MUMPS AND RUBELLA VIRUS VACCINE, SC
90713	POLIOVIRUS VACCINE, IPV, SC
90716	CHICKEN POX VACCINE, SC
90717	YELLOW FEVER VACCINE, SC
90718	TETANUS AND DIPTHERIA TOXOIDS VACCINE > 7, IM
90721	DIPTHERIA, TETANUS TOXOIDS, & ACELLULAR PERTUSSIS VACCINE & HEMOPHILUS INFLUENZA B VACCINE, IM
90733	MENINGOCOCCAL VACCINE, SC
90740	HEPATITIS B VACCINE, DIALYSIS OR IMMUNOSUPPRESSED PATIENT, 3 DOSE, IM
90743	HEPATITIS B VACCINE, ADOL, 2 DOSE, IM
90744	HEPATITIS B VACCINE, PED/ADOL 3 DOSE, IM
90746	HEPATITIS B VACCINE, ADULT, IM
90747	HEPATITIS B VACCINE, DIALYSIS OR IMMUNOSUPPRESSED PATIENT, 4 DOSE, IM
J0130	INJECTION, ABCIXIMAB, 10 MG
J0150	INJECTION, ADENOSINE, 6 MG (NOT TO BE USED TO REPORT ANY ADENOSINE PHOSPHATE)
J0151	INJECTION, ADENOSINE, 90 MG (NOT TO BE USED TO REPORT ANY ADENOSINE PHOSPHATE)
J0170	INJECTION, ADRENALIN, EPINEPHRINE, UP TO 1 ML AMPULE
J0200	INJECTION, ALATROFLOXACIN MESYLATE, 100 MG
J0205	INJECTION, ALGLUCERASE, PER 10 UNITS
J0207	INJECTION, AMIFOSTINE, 500 MG
J0210	INJECTION, METHYLDOPATE HCL, UP TO 250 MG
J0256	INJECTION, ALPHA 1-PROTEINASE INHIBITOR—HUMAN, 10 MG
J0280	INJECTION, AMINOPHYLLIN, UP TO 250 MG
J0282	INJECTION, AMIODARONE HYDROCHLORIDE, 30 MG
J0285	INJECTION, AMPHOTERICIN B, 50 MG
J0287	INJECTION, AMPHOTERICIN B LIPID COMPLEX, 10 MG
J0288	INJECTION, AMPHOTERICIN B CHOLESTERYL SULFATE COMPLEX, 10 MG
J0289	INJECTION, AMPHOTERICIN B LIPOSOME, 10 MG
J0290	INJECTION, AMPICILLIN SODIUM, 500 MG
J0295	INJECTION, AMPICILLIN SODIUM/SULBACTAM SODIUM, PER 1.5 GM
J0300	INJECTION, AMOBARBITAL, UP TO 125 MG
J0330	INJECTION, SUCCINYLCHOLINE CHLORIDE, UP TO 20 MG
J0360	INJECTION, HYDRALAZINE HCL, UP TO 20 MG
J0380	INJECTION, METARAMINOL BITARTRATE, PER 10 MG
J0390	INJECTION, CHLOROQUINE HYDROCHLORIDE, UP TO 250 MG
J0395	INJECTION, ARBUTAMINE HCL, 1 MG
J0456	INJECTION, AZITHROMYCIN, 500 MG
J0460	INJECTION, ATROPINE SULFATE, UP TO 0.3 MG
J0470	INJECTION, DIMERCAPROL, PER 100 MG
J0475	INJECTION, BACLOFEN, 10 MG
J0476	INJECTION, BACLOFEN, 50 MCG FOR INTRATHECAL TRIAL
J0500	INJECTION, DICYCLOMINE HCL, UP TO 20 MG
J0515	INJECTION, BENZTROPINE MESYLATE, PER 1 MG
J0520	INJECTION, BETHANECHOL CHLORIDE, MYOTONACHOL OR URECHOLINE, UP TO 5 MG
J0530	INJECTION, PENICILLIN G BENZATHINE AND PENICILLIN G PROCAINE, UP TO 600,000
J0540	INJECTION, PENICILLIN G BENZATHINE AND PENICILLIN G PROCAINE, UP TO 1,200,000

LIST OF MEDICARE DRUG HCPCS CODES—Continued

HCPCS*	Description
J0550	INJECTION, PENICILLIN G BENZATHINE AND PENICILLIN G PROCAINE, UP TO 2,400,000
J0560	INJECTION, PENICILLIN G BENZATHINE, UP TO 600,000 UNITS
J0570	INJECTION, PENICILLIN G BENZATHINE, UP TO 1,200,000 UNITS
J0580	INJECTION, PENICILLIN G BENZATHINE, UP TO 2,400,000 UNITS
J0585	BOTULINUM TOXIN TYPE A, PER UNIT
J0587	BOTULINUM TOXIN TYPE B, PER 100 UNITS
J0592	INJECTION, BUPRENORPHINE HYDROCHLORIDE, 0.1 MG
J0600	INJECTION, EDETATE CALCIUM DISODIUM, UP TO 1000 MG
J0610	INJECTION, CALCIUM GLUCONATE, PER 10 ML
J0620	INJECTION, CALCIUM GLYCEROPHOSPHATE AND CALCIUM LACTATE, PER 10 ML
J0630	INJECTION, CALCITONIN SALMON, UP TO 400 UNITS
J0636	INJECTION, CALCITRIOL, 0.1 MCG
J0637	INJECTION, CASPOFUNGIN ACETATE, 5 MG
J0640	INJECTION, LEUCOVORIN CALCIUM, PER 50 MG
J0670	INJECTION, MEPIVACAINE HYDROCHLORIDE, PER 10 ML
J0690	INJECTION, CEFAZOLIN SODIUM, 500 MG
J0692	INJECTION, CEFEPIME HYDROCHLORIDE, 500 MG
J0694	INJECTION, CEFOXITIN SODIUM, 1 GM
J0696	INJECTION, CEFTRIAXONE SODIUM, PER 250 MG
J0697	INJECTION, STERILE CEFUROXIME SODIUM, PER 750 MG
J0698	INJECTION, CEFOTAXIME SODIUM, PER GM
J0702	INJECTION, BETAMETHASONE ACETATE AND BETAMETHASONE SODIUM PHOSPHATE, PER 3 MG
J0704	INJECTION, BETAMETHASONE SODIUM PHOSPHATE, PER 4 MG
J0706	INJECTION, CAFFEINE CITRATE, 5MG
J0713	INJECTION, CEFTAZIDIME, PER 500 MG
J0715	INJECTION, CEFTIZOXIME SODIUM, PER 500 MG
J0720	INJECTION, CHLORAMPHENICOL SODIUM SUCCINATE, UP TO 1 GM
J0725	INJECTION, CHORIONIC GONADOTROPIN, PER 1,000 USP UNITS
J0735	INJECTION, CLONIDINE HYDROCHLORIDE, 1 MG
J0740	INJECTION, CIDOFOVIR, 375 MG
J0743	INJECTION, CILASTATIN SODIUM; IMIPENEM, PER 250 MG
J0744	INJECTION, CIPROFLOXACIN FOR INTRAVENOUS INFUSION, 200 MG
J0745	INJECTION, CODEINE PHOSPHATE, PER 30 MG
J0760	INJECTION, COLCHICINE, PER 1 MG
J0770	INJECTION, COLISTIMETHATE SODIUM, UP TO 150 MG
J0780	INJECTION, PROCHLORPERAZINE, UP TO 10 MG
J0800	INJECTION, CORTICOTROPIN, UP TO 40 UNITS
J0835	INJECTION, COSYNTROPIN, PER 0.25 MG
J0850	INJECTION, CYTOMEGALOVIRUS IMMUNE GLOBULIN INTRAVENOUS (HUMAN), PER VIAL
J0880	INJECTION, DARBEPOETIN ALFA, 5 MCG
J0895	INJECTION, DEFEROXAMINE MESYLATE, 500 MG
J0900	INJECTION, TESTOSTERONE ENANTHATE AND ESTRADIOL VALERATE, UP TO 1 CC
J0945	INJECTION, BROMPHENIRAMINE MALEATE, PER 10 MG
J0970	INJECTION, ESTRADIOL VALERATE, UP TO 40 MG
J1000	INJECTION, DEPO-ESTRADIOL CYPIONATE, UP TO 5 MG
J1020	INJECTION, METHYLPREDNISOLONE ACETATE, 20 MG
J1030	INJECTION, METHYLPREDNISOLONE ACETATE, 40 MG
J1040	INJECTION, METHYLPREDNISOLONE ACETATE, 80 MG
J1051	INJECTION, MEDROXYPROGESTERONE ACETATE, 50 MG
J1056	INJECTION, MEDROXYPROGESTERONE ACETATE/ESTRADIOL CYPIONATE, 5MG/25MG
J1060	INJECTION, TESTOSTERONE CYPIONATE AND ESTRADIOL CYPIONATE, UP TO 1 ML
J1070	INJECTION, TESTOSTERONE CYPIONATE, UP TO 100 MG
J1080	INJECTION, TESTOSTERONE CYPIONATE, 1 CC, 200 MG
J1094	INJECTION, DEXAMETHASONE ACETATE, 1 MG
J1100	INJECTION, DEXAMETHASONE SODIUM PHOSPHATE, 1MG
J1110	INJECTION, DIHYDROERGOTAMINE MESYLATE, PER 1 MG
J1120	INJECTION, ACETAZOLAMIDE SODIUM, UP TO 500 MG
J1160	INJECTION, DIGOXIN, UP TO 0.5 MG
J1165	INJECTION, PHENYTOIN SODIUM, PER 50 MG
J1170	INJECTION, HYDROMORPHONE, UP TO 4 MG
J1180	INJECTION, DYPHYLLINE, UP TO 500 MG
J1190	INJECTION, DEXRAZOXANE HYDROCHLORIDE, PER 250 MG
J1200	INJECTION, DIPHENHYDRAMINE HCL, UP TO 50 MG
J1205	INJECTION, CHLOROTHIAZIDE SODIUM, PER 500 MG
J1212	INJECTION, DMSO, DIMETHYL SULFOXIDE, 50 percent, 50 ML
J1230	INJECTION, METHADONE HCL, UP TO 10 MG
J1240	INJECTION, DIMENHYDRINATE, UP TO 50 MG
J1245	INJECTION, DIPYRIDAMOLE, PER 10 MG
J1250	INJECTION, DOBUTAMINE HYDROCHLORIDE, PER 250 MG
J1260	INJECTION, DOLASETRON MESYLATE, 10 MG
J1270	INJECTION, DOXERCALCIFEROL, 1 MCG
J1320	INJECTION, AMITRIPTYLINE HCL, UP TO 20 MG
J1325	INJECTION, EPOPROSTENOL, 0.5 MG
J1327	INJECTION, EPTIFIBATIDE, 5 MG
J1364	INJECTION, ERYTHROMYCIN LACTOBIONATE, PER 500 MG
J1380	INJECTION, ESTRADIOL VALERATE, UP TO 10 MG
J1390	INJECTION, ESTRADIOL VALERATE, UP TO 20 MG
J1410	INJECTION, ESTROGEN CONJUGATED, PER 25 MG
J1435	INJECTION, ESTRONE, PER 1 MG
J1436	INJECTION, ETIDRONATE DISODIUM, PER 300 MG
J1438	INJECTION, ETANERCEPT, 25 MG (CODE MAY BE USED FOR MEDICARE WHEN DRUG

LIST OF MEDICARE DRUG HCPCS CODES—Continued

HCPCS*	Description
J1440	INJECTION, FILGRASTIM (G–CSF), 300 MCG
J1441	INJECTION, FILGRASTIM (G–CSF), 480 MCG
J1450	INJECTION FLUCONAZOLE, 200 MG
J1452	INJECTION, FOMIVIRSEN SODIUM, INTRAOCULAR, 1.65 MG
J1455	INJECTION, FOSCARNET SODIUM, PER 1000 MG
J1460	INJECTION, GAMMA GLOBULIN, INTRAMUSCULAR, 1 CC
J1470	INJECTION, GAMMA GLOBULIN, INTRAMUSCULAR, 2 CC
J1480	INJECTION, GAMMA GLOBULIN, INTRAMUSCULAR, 3 CC
J1490	INJECTION, GAMMA GLOBULIN, INTRAMUSCULAR, 4 CC
J1500	INJECTION, GAMMA GLOBULIN, INTRAMUSCULAR, 5 CC
J1510	INJECTION, GAMMA GLOBULIN, INTRAMUSCULAR, 6 CC
J1520	INJECTION, GAMMA GLOBULIN, INTRAMUSCULAR, 7 CC
J1530	INJECTION, GAMMA GLOBULIN, INTRAMUSCULAR, 8 CC
J1540	INJECTION, GAMMA GLOBULIN, INTRAMUSCULAR, 9 CC
J1550	INJECTION, GAMMA GLOBULIN, INTRAMUSCULAR, 10 CC
J1563	INJECTION, IMMUNE GLOBULIN, INTRAVENOUS, 1G
J1564	INJECTION, IMMUNE GLOBULIN, 10 MG
J1565	INJECTION, RESPIRATORY SYNCYTIAL VIRUS IMMUNE GLOBULIN, INTRAVENOUS, 50 MG
J1570	INJECTION, GANCICLOVIR SODIUM, 500 MG
J1580	INJECTION, GARAMYCIN, GENTAMICIN, UP TO 80 MG
J1590	INJECTION, GATIFLOXACIN, 10MG
J1600	INJECTION, GOLD SODIUM THIOMALATE, UP TO 50 MG
J1610	INJECTION, GLUCAGON HYDROCHLORIDE, PER 1 MG
J1620	INJECTION, GONADORELIN HYDROCHLORIDE, PER 100 MCG
J1626	INJECTION, GRANISETRON HYDROCHLORIDE, 100 MCG
J1630	INJECTION, HALOPERIDOL, UP TO 5 MG
J1631	INJECTION, HALOPERIDOL DECANOATE, PER 50 MG
J1642	INJECTION, HEPARIN SODIUM, (HEPARIN LOCK FLUSH), PER 10 UNITS
J1644	INJECTION, HEPARIN SODIUM, PER 1000 UNITS
J1645	INJECTION, DALTEPARIN SODIUM, PER 2500 IU
J1650	INJECTION, ENOXAPARIN SODIUM, 10 MG
J1652	INJECTION, FONDAPARINUX SODIUM, 0.5 MG
J1655	INJECTION, TINZAPARIN SODIUM, 1000 IU
J1670	INJECTION, TETANUS IMMUNE GLOBULIN, HUMAN, UP TO 250 UNITS
J1700	INJECTION, HYDROCORTISONE ACETATE, UP TO 25 MG
J1710	INJECTION, HYDROCORTISONE SODIUM PHOSPHATE, UP TO 50 MG
J1720	INJECTION, HYDROCORTISONE SODIUM SUCCINATE, UP TO 100 MG
J1730	INJECTION, DIAZOXIDE, UP TO 300 MG
J1742	INJECTION, IBUTILIDE FUMARATE, 1 MG
J1745	INJECTION, INFLIXIMAB, 10 MG
J1750	INJECTION, IRON DEXTRAN, 50 MG
J1756	INJECTION, IRON SUCROSE, 1 MG
J1785	INJECTION, IMIGLUCERASE, PER UNIT
J1790	INJECTION, DROPERIDOL, UP TO 5 MG
J1800	INJECTION, PROPRANOLOL HCL, UP TO 1 MG
J1810	INJECTION, DROPERIDOL AND FENTANYL CITRATE, UP TO 2 ML AMPULE
J1815	INJECTION, INSULIN, PER 5 UNITS
J1835	INJECTION, ITRACONAZOLE, 50 MG
J1840	INJECTION, KANAMYCIN SULFATE, UP TO 500 MG
J1850	INJECTION, KANAMYCIN SULFATE, UP TO 75 MG
J1885	INJECTION, KETOROLAC TROMETHAMINE, PER 15 MG
J1890	INJECTION, CEPHALOTHIN SODIUM, UP TO 1 GRAM
J1910	INJECTION, KUTAPRESSIN, UP TO 2 ML
J1940	INJECTION, FUROSEMIDE, UP TO 20 MG
J1950	INJECTION, LEUPROLIDE ACETATE (FOR DEPOT SUSPENSION), PER 3.75 MG
J1955	INJECTION, LEVOCARNITINE, PER 1 GM
J1956	INJECTION, LEVOFLOXACIN, 250 MG
J1960	INJECTION, LEVORPHANOL TARTRATE, UP TO 2 MG
J1980	INJECTION, HYOSCYAMINE SULFATE, UP TO 0.25 MG
J1990	INJECTION, CHLORDIAZEPOXIDE HCL, UP TO 100 MG
J2000	INJECTION, LIDOCAINE HCL, 50 CC
J2010	INJECTION, LINCOMYCIN HCL, UP TO 300 MG
J2020	INJECTION, LINEZOLID, 200MG
J2060	INJECTION, LORAZEPAM, 2 MG
J2150	INJECTION, MANNITOL, 25 percent IN 50 ML
J2175	INJECTION, MEPERIDINE HYDROCHLORIDE, PER 100 MG
J2180	INJECTION, MEPERIDINE AND PROMETHAZINE HCL, UP TO 50 MG
J2210	INJECTION, METHYLERGONOVINE MALEATE, UP TO 0.2 MG
J2250	INJECTION, MIDAZOLAM HYDROCHLORIDE, PER 1 MG
J2260	INJECTION, MILRINONE LACTATE, 5 MG
J2270	INJECTION, MORPHINE SULFATE, UP TO 10 MG
J2271	INJECTION, MORPHINE SULFATE, 100MG
J2275	INJECTION, MORPHINE SULFATE (PRESERVATIVE-FREE STERILE SOLUTION), PER 10 MG
J2300	INJECTION, NALBUPHINE HYDROCHLORIDE, PER 10 MG
J2310	INJECTION, NALOXONE HYDROCHLORIDE, PER 1 MG
J2320	INJECTION, NANDROLONE DECANOATE, UP TO 50 MG
J2321	INJECTION, NANDROLONE DECANOATE, UP TO 100 MG
J2322	INJECTION, NANDROLONE DECANOATE, UP TO 200 MG
J2324	INJECTION, NESIRITIDE, 0.5 MG
J2355	INJECTION, OPRELVEKIN, 5 MG
J2360	INJECTION, ORPHENADRINE CITRATE, UP TO 60 MG

LIST OF MEDICARE DRUG HCPCS CODES—Continued

HCPCS*	Description
J2370	INJECTION, PHENYLEPHRINE HCL, UP TO 1 ML
J2400	INJECTION, CHLOROPROCAINE HYDROCHLORIDE, PER 30 ML
J2405	INJECTION, ONDANSETRON HYDROCHLORIDE, PER 1 MG
J2410	INJECTION, OXYMORPHONE HCL, UP TO 1 MG
J2430	INJECTION, PAMIDRONATE DISODIUM, PER 30 MG
J2440	INJECTION, PAPAVERINE HCL, UP TO 60 MG
J2460	INJECTION, OXYTETRACYCLINE HCL, UP TO 50 MG
J2501	INJECTION, PARICALCITOL, 1 MCG
J2510	INJECTION, PENICILLIN G PROCAINE, AQUEOUS, UP TO 600,000 UNITS
J2515	INJECTION, PENTOBARBITAL SODIUM, PER 50 MG
J2540	INJECTION, PENICILLIN G POTASSIUM, UP TO 600,000 UNITS
J2543	INJECTION, PIPERACILLIN SODIUM/TAZOBACTAM SODIUM, 1 GRAM/0.125 GRAMS (1.125)
J2545	PENTAMIDINE ISETHIONATE, INHALATION SOLUTION, PER 300 MG, ADMINISTERED THROUGH
J2550	INJECTION, PROMETHAZINE HCL, UP TO 50 MG
J2560	INJECTION, PHENOBARBITAL SODIUM, UP TO 120 MG
J2590	INJECTION, OXYTOCIN, UP TO 10 UNITS
J2597	INJECTION, DESMOPRESSIN ACETATE, PER 1 MCG
J2650	INJECTION, PREDNISOLONE ACETATE, UP TO 1 ML
J2670	INJECTION, TOLAZOLINE HCL, UP TO 25 MG
J2675	INJECTION, PROGESTERONE, PER 50 MG
J2680	INJECTION, FLUPHENAZINE DECANOATE, UP TO 25 MG
J2690	INJECTION, PROCAINAMIDE HCL, UP TO 1 GM
J2700	INJECTION, OXACILLIN SODIUM, UP TO 250 MG
J2710	INJECTION, NEOSTIGMINE METHYLSULFATE, UP TO 0.5 MG
J2720	INJECTION, PROTAMINE SULFATE, PER 10 MG
J2725	INJECTION, PROTIRELIN, PER 250 MCG
J2730	INJECTION, PRALIDOXIME CHLORIDE, UP TO 1 GM
J2760	INJECTION, PHENTOLAMINE MESYLATE, UP TO 5 MG
J2765	INJECTION, METOCLOPRAMIDE HCL, UP TO 10 MG
J2770	INJECTION, QUINUPRISTIN/DALFOPRISTIN, 500 MG (150/350)
J2780	INJECTION, RANITIDINE HYDROCHLORIDE, 25 MG
J2788	INJECTION, RHO D IMMUNE GLOBULIN, HUMAN, MINIDOSE, 50 MCG
J2790	INJECTION, RHO D IMMUNE GLOBULIN, HUMAN, FULL DOSE, 300 MCG
J2792	INJECTION, RHO D IMMUNE GLOBULIN, INTRAVENOUS, HUMAN, SOLVENT DETERGENT, 100 IU
J2795	INJECTION, ROPIVACAINE HYDROCHLORIDE, 1 MG
J2800	INJECTION, METHOCARBAMOL, UP TO 10 ML
J2820	INJECTION, SARGRAMOSTIM (GM-CSF), 50 MCG
J2910	INJECTION, AUROTHIOGLUCOSE, UP TO 50 MG
J2912	INJECTION, SODIUM CHLORIDE, 0.9 percent, PER 2 ML
J2916	INJECTION, SODIUM FERRIC GLUCONATE COMPLEX IN SUCROSE INJECTION, 12.5 MG
J2920	INJECTION, METHYLPREDNISOLONE SODIUM SUCCINATE, UP TO 40 MG
J2930	INJECTION, METHYLPREDNISOLONE SODIUM SUCCINATE, UP TO 125 MG
J2940	INJECTION, SOMATREM, 1 MG
J2941	INJECTION, SOMATROPIN, 1 MG
J2950	INJECTION, PROMAZINE HCL, UP TO 25 MG
J2993	INJECTION, RETEPLASE, 18.1 MG
J2995	INJECTION, STREPTOKINASE, PER 250,000 IU
J2997	INJECTION, ALTEPLASE RECOMBINANT, 1 MG
J3000	INJECTION, STREPTOMYCIN, UP TO 1 GM
J3010	INJECTION, FENTANYL CITRATE, 0.1 MG
J3030	INJECTION, SUMATRIPTAN SUCCINATE, 6 MG (CODE MAY BE USED FOR MEDICARE WHEN DRUG)
J3070	INJECTION, PENTAZOCINE, 30 MG
J3100	INJECTION, TENECTEPLASE, 50MG
J3105	INJECTION, TERBUTALINE SULFATE, UP TO 1 MG
J3120	INJECTION, TESTOSTERONE ENANTHATE, UP TO 100 MG
J3130	INJECTION, TESTOSTERONE ENANTHATE, UP TO 200 MG
J3140	INJECTION, TESTOSTERONE SUSPENSION, UP TO 50 MG
J3150	INJECTION, TESTOSTERONE PROPIONATE, UP TO 100 MG
J3230	INJECTION, CHLORPROMAZINE HCL, UP TO 50 MG
J3240	INJECTION, THYROTROPIN ALPHA, 0.9 MG, PROVIDED IN 1.1 MG VIAL
J3245	INJECTION, TIROFIBAN HYDROCHLORIDE, 12.5 MG
J3250	INJECTION, TRIMETHOBENZAMIDE HCL, UP TO 200 MG
J3260	INJECTION, TOBRAMYCIN SULFATE, UP TO 80 MG
J3265	INJECTION, TORSEMIDE, 10 MG/ML
J3280	INJECTION, THIETHYLPERAZINE MALEATE, UP TO 10 MG
J3301	INJECTION, TRIAMCINOLONE ACETONIDE, PER 10 MG
J3302	INJECTION, TRIAMCINOLONE DIACETATE, PER 5 MG
J3303	INJECTION, TRIAMCINOLONE HEXACETONIDE, PER 5 MG
J3305	INJECTION, TRIMETREXATE GLUCURONATE, PER 25 MG
J3315	INJECTION, TRIPTORELIN PAMOATE, 3.75 MG
J3320	INJECTION, SPECTINOMYCIN DIHYDROCHLORIDE, UP TO 2 GM
J3360	INJECTION, DIAZEPAM, UP TO 5 MG
J3364	INJECTION, UROKINASE, 5000 I.U. VIAL
J3365	INJECTION, IV, UROKINASE, 250,000 I.U. VIAL
J3370	INJECTION, VANCOMYCIN HCL, 500 MG
J3395	INJECTION, VERTEPORFIN, 15 MG
J3410	INJECTION, HYDROXYZINE HCL, UP TO 25 MG
J3420	INJECTION, VITAMIN B–12 CYANOCOBALAMIN, UP TO 1000 MCG
J3430	INJECTION, PHYTONADIONE (VITAMIN K), PER 1 MG
J3475	INJECTION, MAGNESIUM SULFATE, PER 500 MG
J3480	INJECTION, POTASSIUM CHLORIDE, PER 2 MEQ

LIST OF MEDICARE DRUG HCPCS CODES—Continued

HCPCS*	Description
J3485	INJECTION, ZIDOVUDINE, 10 MG
J3487	INJECTION, ZOLEDRONIC ACID, 1 MG
J7030	INFUSION, NORMAL SALINE SOLUTION , 1000 CC
J7040	INFUSION, NORMAL SALINE SOLUTION, STERILE (500 ML=1 UNIT)
J7042	5 percent DEXTROSE/NORMAL SALINE (500 ML = 1 UNIT)
J7050	INFUSION, NORMAL SALINE SOLUTION, 250 CC
J7051	STERILE SALINE OR WATER, UP TO 5 CC
J7060	5 percent DEXTROSE/WATER (500 ML = 1 UNIT)
J7070	INFUSION, D5W, 1000 CC
J7100	INFUSION, DEXTRAN 40, 500 ML
J7110	INFUSION, DEXTRAN 75, 500 ML
J7120	RINGERS LACTATE INFUSION, UP TO 1000 CC
J7130	HYPERTONIC SALINE SOLUTION, 50 OR 100 MEQ, 20 CC VIAL
J7190	FACTOR VIII (ANTIHEMOPHILIC FACTOR, HUMAN) PER I.U.
J7191	FACTOR VIII (ANTIHEMOPHILIC FACTOR (PORCINE)), PER I.U.
J7192	FACTOR VIII (ANTIHEMOPHILIC FACTOR, RECOMBINANT) PER I.U.
J7193	FACTOR IX (ANTIHEMOPHILIC FACTOR, PURIFIED, NON-RECOMBINANT) PER I.U.
J7194	FACTOR IX, COMPLEX, PER I.U.
J7195	FACTOR IX (ANTIHEMOPHILIC FACTOR, RECOMBINANT) PER I.U.
J7197	ANTITHROMBIN III (HUMAN), PER I.U.
J7198	ANTI-INHIBITOR, PER I.U.
J7310	GANCICLOVIR, 4.5 MG, LONG-ACTING IMPLANT
J7317	SODIUM HYALURONATE, PER 20 TO 25 MG DOSE FOR INTRA-ARTICULAR INJECTION
J7320	HYLAN G–F 20, 16 MG, FOR INTRA ARTICULAR INJECTION
J7330	AUTOLOGOUS CULTURED CHONDROCYTES, IMPLANT
J7340	DERMAL AND EPIDERMAL TISSUE OF HUMAN ORIGIN, WITH OR WITHOUT BIOENGINEERED OR
J7342	DERMAL TISSUE, OF HUMAN ORIGIN, WITH OR WITHOUT OTHER BIOENGINEERED OR
J7500	AZATHIOPRINE, ORAL, 50 MG
J7501	AZATHIOPRINE, PARENTERAL, 100 MG
J7502	CYCLOSPORINE, ORAL, 100 MG
J7504	LYMPHOCYTE IMMUNE GLOBULIN, ANTITHYMOCYTE GLOBULIN, EQUINE, PARENTERAL, 250 MG
J7505	MUROMONAB–CD3, PARENTERAL, 5 MG
J7506	PREDNISONE, ORAL, PER 5 MG
J7507	TACROLIMUS, ORAL, PER 1 MG
J7508	TACROLIMUS, ORAL, PER 5 MG
J7509	METHYLPREDNISOLONE ORAL, PER 4 MG
J7510	PREDNISOLONE ORAL, PER 5 MG
J7511	LYMPHOCYTE IMMUNE GLOBULIN, ANTITHYMOCYTE GLOBULIN, RABBIT, PARENTERAL, 25 MG
J7513	DACLIZUMAB, PARENTERAL, 25 MG
J7515	CYCLOSPORINE, ORAL, 25 MG
J7516	CYCLOSPORIN, PARENTERAL, 250 MG
J7517	MYCOPHENOLATE MOFETIL, ORAL, 250 MG
J7520	SIROLIMUS, ORAL, 1 MG
J7525	TACROLIMUS, PARENTERAL, 5 MG
J7599	IMMUNOSUPPRESSIVE DRUG, NOT OTHERWISE CLASSIFIED
J7608	ACETYLCYSTEINE, INHALATION SOLUTION ADMINISTERED THROUGH DME, UNIT DOSE FORM, PER GRAM
J7618	ALBUTEROL, ALL FORMULATIONS INCLUDING SEPARATED ISOMERS, INHALATION SOLUTION ADMINISTERED THROUGH DME, CONCENTRATED FORM, PER 1 MG (ALBUTEROL) OR PER 0.5 MG (LEVALBUTEROL)
J7619	ALBUTEROL, ALL FORMULATIONS INCLUDING SEPARATED ISOMERS, INHALATION SOLUTION ADMINISTERED THROUGH DME, UNIT DOSE, PER 1 MG (ALBUTEROL) OR PER 0.5 MG (LEVALBUTEROL)
J7626	BUDESONIDE INHALATION SOLUTION, ADMINISTERED THROUGH DME, UNIT DOSE FORM, 0.25 TO 0.50 MG
J7628	BITOLTEROL MESYLATE, INHALATION SOLUTION ADMINISTERED THROUGH DME, CONCENTRATED FORM, PER MILLIGRAM
J7631	CROMOLYN SODIUM, INHALATION SOLUTION ADMINISTERED THROUGH DME, UNIT DOSE FORM, PER 10 MILLIGRAMS
J7639	DORNASE ALPHA, INHALATION SOLUTION ADMINISTERED THROUGH DME, UNIT DOSE FORM, PER MILLIGRAM
J7644	IPRATROPIUM BROMIDE, INHALATION SOLUTION ADMINISTERED THROUGH DME, UNIT DOSE FORM, PER MILLIGRAM
J7648	ISOETHARINE HCL, INHALATION SOLUTION ADMINISTERED THROUGH DME, CONCENTRATED FORM, PER MILLIGRAM
J7649	ISOETHARINE HCL, INHALATION SOLUTION ADMINISTERED THROUGH DME, UNIT DOSE FORM, PER MILLIGRAM
J7668	METAPROTERENOL SULFATE, INHALATION SOLUTION ADMINISTERED THROUGH DME, CONCENTRATED FORM, PER 10 MILLIGRAMS
J7669	METAPROTERENOL SULFATE, INHALATION SOLUTION ADMINISTERED THROUGH DME, UNIT DOSE FORM, PER 10 MILLIGRAMS
J7682	TOBRAMYCIN, UNIT DOSE FORM, 300 MG, INHALATION SOLUTION, ADMINISTERED THROUGH DME
J7699	NOC DRUGS, INHALATION SOLUTION ADMINISTERED THROUGH DME
J8499	PRESCRIPTION DRUG, ORAL, NON CHEMOTHERAPEUTIC, NOS
J8510	BUSULFAN; ORAL, 2 MG
J8520	CAPECITABINE, ORAL, 150 MG
J8521	CAPECITABINE, ORAL, 500 MG
J8530	CYCLOPHOSPHAMIDE; ORAL, 25 MG
J8560	ETOPOSIDE; ORAL, 50 MG
J8600	MELPHALAN; ORAL, 2 MG
J8610	METHOTREXATE; ORAL, 2.5 MG
J8700	TEMOZOLMIDE, ORAL, 5 MG
J8999	PRESCRIPTION DRUG, ORAL, CHEMOTHERAPEUTIC, NOS
J9000	DOXORUBICIN HCL, 10 MG
J9001	DOXORUBICIN HYDROCHLORIDE, ALL LIPID FORMULATIONS, 10 MG
J9010	ALEMTUZUMAB, 10 MG
J9015	ALDESLEUKIN, PER SINGLE USE VIAL
J9017	ARSENIC TRIOXIDE, 1MG
J9020	ASPARAGINASE, 10,000 UNITS
J9031	BCG (INTRAVESICAL) PER INSTILLATION
J9040	BLEOMYCIN SULFATE, 15 UNITS
J9045	CARBOPLATIN, 50 MG

LIST OF MEDICARE DRUG HCPCS CODES—Continued

HCPCS*	Description
J9050	CARMUSTINE, 100 MG
J9060	CISPLATIN, POWDER OR SOLUTION, PER 10 MG
J9062	CISPLATIN, 50 MG
J9065	INJECTION, CLADRIBINE, PER 1 MG
J9070	CYCLOPHOSPHAMIDE, 100 MG
J9080	CYCLOPHOSPHAMIDE, 200 MG
J9090	CYCLOPHOSPHAMIDE, 500 MG
J9091	CYCLOPHOSPHAMIDE, 1.0 GRAM
J9092	CYCLOPHOSPHAMIDE, 2.0 GRAM
J9093	CYCLOPHOSPHAMIDE, LYOPHILIZED, 100 MG
J9094	CYCLOPHOSPHAMIDE, LYOPHILIZED, 200 MG
J9095	CYCLOPHOSPHAMIDE, LYOPHILIZED, 500 MG
J9096	CYCLOPHOSPHAMIDE, LYOPHILIZED, 1.0 GRAM
J9097	CYCLOPHOSPHAMIDE, LYOPHILIZED, 2.0 GRAM
J9100	CYTARABINE, 100 MG
J9110	CYTARABINE, 500 MG
J9120	DACTINOMYCIN, 0.5 MG
J9130	DACARBAZINE, 100 MG
J9140	DACARBAZINE, 200 MG
J9150	DAUNORUBICIN, 10 MG
J9151	DAUNORUBICIN CITRATE, LIPOSOMAL FORMULATION, 10 MG
J9160	DENILEUKIN DIFTITOX, 300 MCG
J9165	DIETHYLSTILBESTROL DIPHOSPHATE, 250 MG
J9170	DOCETAXEL, 20 MG
J9180	EPIRUBICIN HYDROCHLORIDE, 50 MG
J9181	ETOPOSIDE, 10 MG
J9182	ETOPOSIDE, 100 MG
J9185	FLUDARABINE PHOSPHATE, 50 MG
J9190	FLUOROURACIL, 500 MG
J9200	FLOXURIDINE, 500 MG
J9201	GEMCITABINE HCL, 200 MG
J9202	GOSERELIN ACETATE IMPLANT, PER 3.6 MG
J9206	IRINOTECAN, 20 MG
J9208	IFOSFAMIDE, 1 GM
J9209	MESNA, 200 MG
J9211	IDARUBICIN HYDROCHLORIDE, 5 MG
J9212	INJECTION, INTERFERON ALFACON–1, RECOMBINANT, 1 MCG
J9213	INTERFERON, ALFA–2A, RECOMBINANT, 3 MILLION UNITS
J9214	INTERFERON, ALFA–2B, RECOMBINANT, 1 MILLION UNITS
J9215	INTERFERON, ALFA–N3, (HUMAN LEUKOCYTE DERIVED), 250,000 IU
J9216	INTERFERON, GAMMA 1–B, 3 MILLION UNITS
J9217	LEUPROLIDE ACETATE (FOR DEPOT SUSPENSION), 7.5 MG
J9218	LEUPROLIDE ACETATE, PER 1 MG
J9219	LEUPROLIDE ACETATE IMPLANT, 65 MG
J9230	MECHLORETHAMINE HYDROCHLORIDE, (NITROGEN MUSTARD), 10 MG
J9245	INJECTION, MELPHALAN HYDROCHLORIDE, 50 MG
J9250	METHOTREXATE SODIUM, 5 MG
J9260	METHOTREXATE SODIUM, 50 MG
J9265	PACLITAXEL, 30 MG
J9266	PEGASPARGASE, PER SINGLE DOSE VIAL
J9268	PENTOSTATIN, PER 10 MG
J9270	PLICAMYCIN, 2.5 MG
J9280	MITOMYCIN, 5 MG
J9290	MITOMYCIN, 20 MG
J9291	MITOMYCIN, 40 MG
J9293	INJECTION, MITOXANTRONE HYDROCHLORIDE, PER 5 MG
J9300	GEMTUZUMAB OZOGAMICIN, 5MG
J9310	RITUXIMAB, 100 MG
J9320	STREPTOZOCIN, 1 GM
J9340	THIOTEPA, 15 MG
J9350	TOPOTECAN, 4 MG
J9355	TRASTUZUMAB, 10 MG
J9357	VALRUBICIN, INTRAVESICAL, 200 MG
J9360	VINBLASTINE SULFATE, 1 MG
J9370	VINCRISTINE SULFATE, 1 MG
J9375	VINCRISTINE SULFATE, 2 MG
J9380	VINCRISTINE SULFATE, 5 MG
J9390	VINORELBINE TARTRATE, PER 10 MG
J9600	PORFIMER SODIUM, 75 MG
P9041	INFUSION, ALBUMIN (HUMAN), 5percent, 50 ML
P9043	INFUSION, PLASMA PROTEIN FRACTION (HUMAN), 5percent, 50 ML
P9045	INFUSION, ALBUMIN (HUMAN), 5percent, 250 ML
P9046	INFUSION, ALBUMIN (HUMAN), 25percent, 20 ML
P9047	INFUSION, ALBUMIN (HUMAN), 25percent, 50 ML
P9048	INFUSION, PLASMA PROTEIN FRACTION (HUMAN), 5percent, 250ML
Q0136	INJECTION, EPOETIN ALPHA, (FOR NON ESRD USE), PER 1000 UNITS
Q0163	DIPHENHYDRAMINE HYDROCHLORIDE, 50 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT TIME OF CHEMOTHERAPY TREATMENT NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0164	PROCHLORPERAZINE MALEATE, 5 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN

LIST OF MEDICARE DRUG HCPCS CODES—Continued

HCPCS*	Description
Q0165	PROCHLORPERAZINE MALEATE, 10 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0166	GRANISETRON HYDROCHLORIDE, 1 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 24 HOUR DOSAGE REGIMEN
Q0167	DRONABINOL, 2.5 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0168	DRONABINOL, 5 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0169	PROMETHAZINE HYDROCHLORIDE, 12.5 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0170	PROMETHAZINE HYDROCHLORIDE, 25 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0171	CHLORPROMAZINE HYDROCHLORIDE, 10 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0172	CHLORPROMAZINE HYDROCHLORIDE, 25 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0173	TRIMETHOBENZAMIDE HYDROCHLORIDE, 250 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0174	THIETHYLPERAZINE MALEATE, 10 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0175	PERPHENAZINE, 4 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0176	PERPHENAZINE, 8MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0177	HYDROXYZINE PAMOATE, 25 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0178	HYDROXYZINE PAMOATE, 50 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0179	ONDANSETRON HYDROCHLORIDE 8 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0180	DOLASETRON MESYLATE, 100 MG, ORAL, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR AN IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 24 HOUR DOSAGE REGIMEN
Q0181	UNSPECIFIED ORAL DOSAGE FORM, FDA APPROVED PRESCRIPTION ANTI-EMETIC, FOR USE AS A COMPLETE THERAPEUTIC SUBSTITUTE FOR A IV ANTI-EMETIC AT THE TIME OF CHEMOTHERAPY TREATMENT, NOT TO EXCEED A 48 HOUR DOSAGE REGIMEN
Q0183	DERMAL TISSUE, OF HUMAN ORIGIN, WITH AND WITHOUT OTHER BIOENGINEERED OR
Q0187	FACTOR VIIA (COAGULATION FACTOR, RECOMBINANT) PER 1.2 MG
Q2022	VON WILLEBRAND FACTOR COMPLEX, HUMAN, PER IU
Q3025	INJECTION, INTERFERON BETA–1A, 11 MCG FOR INTRAMUSCULAR USE
Q4052	INJECTION, OCTREOTIDE, DEPOT FORM FOR INTRAMUSCULAR INJECTION, 1 MG
Q4053	INJECTION, PEGFILGRASTIM, PER 1 MG
Q9920	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 20 OR LESS
Q9921	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 21
Q9922	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 22
Q9923	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 23
Q9924	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 24
Q9925	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 25
Q9926	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 26
Q9927	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 27
Q9928	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 28
Q9929	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 29
Q9930	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 30
Q9931	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 31
Q9932	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 32
Q9933	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 33
Q9934	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 34
Q9935	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 35
Q9936	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 36
Q9937	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 37
Q9938	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 38
Q9939	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 39
Q9940	INJECTION OF EPO, PER 1000 UNITS, AT PATIENT HCT OF 40 OR ABOVE

*Under HIPAA, pharmacies must use NDC codes, not HCPCS codes, to bill for drugs effective October 16, 2003.

[FR Doc. 03–21308 Filed 8–15–03; 1:35 pm]

BILLING CODE 4120–01–P

Federal Register

Wednesday,
August 20, 2003

Part V

Department of Transportation

Research and Special Programs Administration

Revision of the Emergency Response Guidebook; Notices

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–03–14793; Notice No. 03–10]

Revision of the Emergency Response Guidebook

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of regulatory review; request for comments.

SUMMARY: This notice advises interested persons that the Research and Special Programs Administration (RSPA) is soliciting comments on the development of the Emergency Response Guidebook 2004 (ERG2004), particularly from those who have experience using the 2000 Emergency Response Guidebook (ERG2000) during hazardous materials incidents. The ERG2004 will supersede ERG2000. The development of ERG2004 is a joint effort involving the transportation agencies of the United States, Canada, and Mexico.

DATES: Comments must be received on or before September 30, 2003.

ADDRESSES: You may submit comments by any of the following methods:

- Web Site: *http://dms.dot.gov* . Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: To the Docket Management System; Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: You must include the agency name and docket number RSPA–03–14793 at the beginning of your comment. You should submit two copies of your comments, if you submit them by mail. If you wish to receive confirmation that we received your comments, you should include a self-addressed stamped postcard. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477) or you may visit *http://dms.dot.gov*.

Docket: You may view the public docket through the Internet at *http://dms.dot.gov* or in person at the Docket Management System office at the above address.

FOR FURTHER INFORMATION CONTACT: Jerre Thomas, Research and Special Programs Administration (DHM–50), 400 Seventh Street SW., Washington, DC 20590–0001, phone number: (202) 366–4900. Internet e-mail to *jerre.thomas@rspa.dot.gov*.

SUPPLEMENTARY INFORMATION: The Federal hazardous materials transportation law (49 U.S.C. 5101 *et seq.*) empowers the Secretary of Transportation to issue and enforce regulations deemed necessary to ensure the safe transport of hazardous materials. In addition, the law directs the Secretary of Transportation to provide law enforcement and fire fighting personnel with technical information and advice for meeting emergencies connected with the transportation of hazardous materials.

I. Request for Comments

A. Background and Purpose

RSPA developed the Emergency Response Guidebook (ERG) for use by emergency services personnel to provide guidance for initial response to hazardous materials incidents. Since 1980, it has been our goal for all public emergency response vehicles, including fire fighting, police, and rescue squad vehicles, to carry a copy of the ERG. To accomplish this, we have published seven editions of the ERG and have distributed over seven million copies to emergency services agencies, without charge.

The ERG2004 is being jointly developed by RSPA, Transport Canada, and the Secretary of Communication and Transport of Mexico. ERG2004 will supersede ERG2000 and will be published in English, French, and Spanish for use by emergency response personnel. Publication of ERG2004 will facilitate the safe transport of hazardous materials through North America and increase public safety by providing consistent emergency response procedures for hazardous materials incidents in North America. In order to continually improve the ERG, RSPA actively solicits comments from interested parties, especially those who have experience using the ERG2000 during hazardous materials incidents.

B. Emergency Response Guidebook User Concerns

Comments are solicited on Emergency Response Guidebook user concerns and on the following questions:

(1) Have emergency responders experienced a problem of inconsistent guidance between ERG2000 and other sources of technical information? If so, in what way could ERG2004 be revised to reduce inconsistencies?

(2) Have emergency responders experienced confusion or difficulty in understanding the scope or purpose of ERG2000? If so, in what way could ERG2004 be revised to reduce this difficulty?

(3) Have emergency responders experienced confusion or difficulty in understanding the application of EGR2000? If so, in what way could ERG2004 be revised to reduce this difficulty?

(4) How could the "Table of Initial Isolation and Protective Action Distances" or its introduction be made easier to comprehend and use?

(5) In the "Table of Initial Isolation and Protective Action Distances," does the distinction between day and night protective action distances add useful information for the first responder? How could the distinction be improved?

(6) Initial isolation and protective action distances were developed based on accident histories. Modeling for worst-case scenarios in the event of terrorism or sabotage indicates it may be appropriate to apply a factor of 1.5 or 2.0 to the values in the guidebook in those instances. What is the best way and format to alert the user to the need to consider increasing protective action distances when terrorism or sabotage is suspected? Should short, cautionary language to that effect be added to the guidebook?

(7) Could the "List of Dangerous Water-Reactive Material" introduced in NAERG96 be enhanced or improved?

(8) Have emergency responders experienced difficulty understanding the capabilities of chemical protective clothing, and the limitations of structural fire fighter's protective clothing in hazardous materials incidents? If so, in what way can ERG2004 be revised to improve understanding?

(9) Have any identification numbers (ID No.) been incorrectly assigned to a material (Name or Material)?

(10) Has any identification number/material been assigned to the "wrong" guide? If so, please identify the material and the guide.

(11) Are the responses on each guide appropriate for the material assigned to the guide?

(12) Have emergency responders experienced difficulty with legibility of ERG2000's print style, format, or durability?

(13) Have emergency response agencies experienced difficulty in obtaining copies of ERG2000 for their vehicles?

(14) Besides the Table of Placards, Rail Car Identification Chart, and Road Trailer Identification Chart, should other pictorial information be included?

(15) Are the Table of Placards, Rail Car Identification Chart, and Road Trailer Identification Chart accurate and useful?

(16) Are the terms listed in the Glossary defined satisfactorily?

(17) Should additional terms be added to the Glossary?

(18) How can this guidebook be enhanced to assist responders in responding to incidents of intentional release of chemical, radiological, nuclear, or biological agents?

Supporting data and analyses will enhance the value of comments submitted.

Issued in Washington, DC, on August 15, 2003 under authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 03–21328 Filed 8–19–03; 8:45 am]

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H.R. 1018/P.L. 108–70
To designate the building located at 1 Federal Plaza in

New York, New York, as the "James L. Watson United States Court of International Trade Building". (Aug. 14, 2003; 117 Stat. 886)

H.R. 1761/P.L. 108–71

To designate the facility of the United States Postal Service located at 9350 East Corporate Hill Drive in Wichita, Kansas, as the "Garner E. Shriver Post Office Building". (Aug. 14, 2003; 117 Stat. 887)

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Federal Register

8–21–03 Thursday
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(ISSN 0097-6326)

Federal Register

8–21–03 Thursday
Vol. 68 No. 162 Aug. 21, 2003

Pages 50457–50680

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 333, 347, 348, and 359

RIN 3064–AC55

Filing Procedures, Corporate Powers, International Banking, Management Official Interlocks, Golden Parachute and Indemnification Payments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC has adopted a final rule amending its procedures relating to filings, mutual to stock conversions, international banking, management official interlocks and golden parachute payments. The changes are mostly technical in nature or clarify previous FDIC positions; however, the final rule includes a waiver provision to its regulations. The waiver provision grants discretionary power to the FDIC Board of Directors to waive regulatory provisions that are not based on statutory requirements.

DATES: September 22, 2003.

FOR FURTHER INFORMATION CONTACT: Division of Supervision and Consumer Protection: Steven D. Fritts, Associate Director, (202) 898–3723, Mindy West, Examination Specialist, (202) 898–7221; Legal Division: Supervision and Legislation Branch, Robert C. Fick, Counsel, (202) 898–8962, Susan van den Toorn, Counsel, (202) 898–8707.

SUPPLEMENTARY INFORMATION:

I. Background

Part 303 of the FDIC's regulations (part 303) generally describes the procedures to be followed by both the FDIC and applicants with respect to applications and notices required to be filed by statute or regulation. On December 27, 2002, the FDIC issued in final form a revised part 303 to reflect a recent internal reorganization at the FDIC and to remove the delegations of authority from the regulation. *See:* 67 FR 79246. On the same date, the FDIC issued the Notice of proposed rulemaking ("the notice of proposed rulemaking") for revisions to parts 303, 347, 348, and 359 and technical corrections to other regulations in chapter III. *See:* 67 FR 79271.

II. Final Rule Part 303

The FDIC is amending § 303.2 to clarify how the statutory definitions in the FDI Act apply to part 303. Several provisions in part 303 utilize terms, such as "bank," "company," and "depository institution holding company," that are defined in the FDI Act. The FDIC is clarifying that unless such terms are expressly defined differently in part 303, those terms will have the meanings given them in the FDI Act. Therefore, § 303.2 specifies that wherever a term that is defined in the FDI Act is used in part 303, it will have the meaning given the term in the FDI Act except to the extent part 303 expressly defines that term differently.

The FDIC is amending § 303.4—*Computation of time,* to clarify when the general rule regarding the commencement of the various time periods in part 303 applies. Several subparts of part 303 include a provision that specifies when a particular time period commences. See, for example, subpart E—Change in Bank Control. It is the FDIC's intention that in those instances where a specific provision exists, the specific provision prevails over the general rule set forth in § 303.4. The FDIC is modifying the first sentence of § 303.4 to clarify that the general rule only applies to the extent there is no specific provision regarding when a particular time period commences.

The FDIC is revising § 303.11(g) to provide a time within which the FDIC has to respond to an institution or institution-affiliated party that files a response to a notice of intent or temporary order issued pursuant to this section. The FDIC believes that 30 days is a reasonable time in which to review any response submitted by an institution or institution-affiliated party. Additionally, the FDIC is placing the last sentence of current § 303.11(g)(3)(ii) into a separate paragraph to clarify that it applies to § 303.11(g)(3) in its entirety, and not only to § 303.11(g)(3)(ii).

The FDIC is adding a provision setting forth its authority to waive any non-statutorily required provision for good cause. New § 303.12 provides that the Board may, for good cause and to the extent permitted by statute, waive the applicability of any provision of chapter III. The provisions could be waived, in whole or in part, at any time by the Board when good cause is shown, subject to the provisions of the Administrative Procedure Act and the provisions of chapter III. Any provision of the rules may be waived by the Board on its own motion or on petition if good cause is shown.

The FDIC is revising § 303.22(a)(1) in order to clarify the rating required for a bank or thrift holding company to be eligible for expedited processing for a proposed institution seeking deposit insurance. The existing § 303.22(a)(1) rating for a thrift holding company of a "2" is inappropriate since the Office of Thrift Supervision has ratings of "A", "S", and "U". Revised § 303.22(a)(1) would provide that an eligible holding company would be defined as a bank or thrift holding company that has consolidated assets of at least $150 million or more; a BOPEC rating of at least "2" for bank holding companies or an above average or "A" rating for thrift holding companies; and at least 75 percent of its consolidated depository institution assets comprised of eligible depository institutions.

The FDIC is amending several sections in subpart E to clarify that the acquisition of control of a parent company of a state nonmember bank generally requires a change in control notice. Section 7(j)(18) of the FDI Act (12 U.S.C. 1817(g)(18)) indicates that the Change in Bank Control Act applies to acquisitions of control of companies that control insured depository institutions. It has long been the FDIC's interpretation that a change in control notice is required whenever any person acquires control of a company that controls, directly or indirectly, a state nonmember bank. Such control could be indirect in that the company exerts control of the bank through one or more intermediate companies of a multi-tiered organization. The amendments merely clarify the regulations in this regard. Specifically, the FDIC is adding a definition of "parent company" to the definitions listed in § 303.81; adding a reference to parent company in the

provisions requiring a change in control notice for a state nonmember bank in § 303.82; adding to § 303.83(a) exemptions for acquisitions of the voting shares of bank holding companies, and for acquisitions of the voting shares of savings and loan holding companies, and adding technical conforming changes to various sections in 12 CFR 303.80 through 303.83.

It has also been the FDIC's practice not to require a change in control notice in those cases where either the Board of Governors of the Federal Reserve System or the Office of Thrift Supervision reviews a change in control notice for the proposed transaction. For example, where a person proposes to acquire control of a bank holding company that controls a state nonmember bank, and the Board of Governors of the Federal Reserve System reviews a change in control notice for the same transaction, the FDIC considers it an unnecessary duplication for the acquirer to also file a change in control notice with the FDIC. The changes codify the FDIC's practice in that regard.

The FDIC is also clarifying when an acquisition subject to the Change in Bank Control Act may be consummated. Section 7(j) of the FDI Act, 12 U.S.C. 1817(j), generally provides that any person acquiring control of an insured depository institution must give the appropriate federal banking agency sixty days prior written notice of such proposed transaction. Previous § 303.85 could be interpreted to permit consummation of the proposed transaction prior to the expiration of that 60-day period. In order to eliminate the potential for misunderstandings regarding the time period available to the FDIC for considering a proposed change in bank control transaction, the FDIC is amending 12 CFR 303.85 (a) and (b) to make clear that the 60-day notice period commences on the day after the date that the appropriate regional director accepts the notice as substantially complete.

In § 303.86 the FDIC is providing a more descriptive heading for paragraph (c) by including the phrase, "waiving publication, acting before close of public comment period" and amending paragraph (c) by substituting "paragraphs (a) and (d)" for "this paragraph."

The FDIC adopted a technical correction to § 303.244 creating a cross-reference to § 359.4(a)(4) of this chapter regarding golden parachutes and severance plan payments to make clear the responsibilities of an applicant seeking approval of filings. Specifically, insured depository institutions, depository institution holding companies or institution-affiliated parties making requests for such payments often overlook the requirement that a party submitting such an application demonstrate that it does not possess and is not aware of any information, evidence, documents or other materials which would indicate that there is a reasonable basis to believe, at the time such payment is made, that the institution-affiliated party who is to benefit from a golden parachute or severance plan engaged in any breach of fiduciary duty or other misconduct that would have a material adverse effect on the bank; is substantially responsible for the bank's insolvency; violated any law which would have a material effect on the bank; or violated certain federal criminal and currency-reporting laws. In addition, with regard to part 359 of this chapter, the FDIC is revising the reference in § 359.1(f)(1)(ii)(C) to part 303 to read, "303.101(c)."

III. Other Regulatory Changes

Technical corrections are made to part 333.4—Conversions from mutual to stock, form to correct references to part 303 of this chapter. The old citations in § 333.4(a) and (c) is replaced with: "subpart I of part 303 of this chapter."

A technical correction is made to part 347—International Banking § 347.108(f) to reference the correct citation with regard to procedures for applications and notices for obtaining FDIC approval to invest in foreign organizations. Procedures are set out in subpart J of part 303 of this chapter, not subpart D of part 347 as provided for in the prior regulation.

A technical correction is also being made to part 348—Management Official Interlocks, § 348.2 regarding the definition of Management official to correct the cross-reference to part 303 of this chapter. The correct citation should be to 12 CFR 303.101(b).

IV. Request for Public Comment as Part EGRPRA and Regulatory Flexibility Act Regulatory Review.

Consistent with our obligation pursuant to Section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA, 12 U.S.C. 3311), the FDIC requested public comment to identify any areas of part 303, not merely those sections for which changes were being proposed, that are outdated, unnecessary, or unduly burdensome. The FDIC also requested public comment on whether part 303 should be continued without change, amended or rescinded to minimize any significant economic impact it may have on a substantial number of small insured institutions (*i.e.*, those with assets of $150 million or less) consistent with our obligation pursuant to Section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The FDIC received no comments in response to this EGRPRA request. While no comments were received specifically with regard to the EGRPRA request, the FDIC notes that the federal financial regulatory agencies are soliciting comments on their plan to identify and eliminate outdated, unnecessary or unduly burdensome regulations imposed on insured depository institutions. *See:* 68 FR 35589 (June 16, 2003). The request for comment includes application regulations such as 12 CFR part 303. Written comments must be received no later than September 15, 2003.

V. Overview of Comments Received

As noted above, FDIC published a notice of proposed rulemaking in the **Federal Register** on December 27, 2002, and requested comments on the proposed amendments. The FDIC received 3 comment letters from organizations. All of the comment letters were opposed to the waiver provision in the proposed regulation. The organizations filing comments were two national trade organizations and one state-based nonprofit organization. The commenters stated they believed that if the FDIC waived regulations not required by statute, it is likely that the agency will waive public comment, public notice requirements, and other vital parts of the merger application process. Consequently, they argue, the public's input into mergers that affect access to credit and capital for minority and low- and moderate-income communities will be cut-off. Comments further stated that in order for a regulatory process to be fair to all parties, the agency cannot waive a process for some banks and not others. They argue that waivers on a case-by-case basis are arbitrary and result in uneven regulatory enforcement. In the notice of proposed rulemaking, the waiver provision would be limited to non-statutorily required provisions and for good cause. As such, the provision would not permit the FDIC to waive the public comment, public notice requirements of the merger application process since those procedures are required by statute. *See:* 12 U.S.C. 1828(c)(3). It is the FDIC's intention to utilize the waiver provision only in extraordinary circumstances. For example, the FDIC had seen the need for such a waiver provision from time to

time when an institution has failed to meet the record keeping requirements of the deposit insurance regulations and without a waiver of such requirements, accountholders in a failed bank situation would suffer substantial penalties because of the bank's failure to keep adequate records. Consequently, the FDIC is adopting the waiver provision as proposed.

VI. Regulatory Flexibility Act Analysis

Pursuant to 5 U.S.C. 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the FDIC hereby certifies that the amendments set forth in this final rule will not have a significant economic impact on a substantial number of small entities. The final rule makes primarily technical changes to the existing rule.

VII. Paperwork Reduction Act

This final rule does not create or modify any collection of information pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Consequently, no information has been submitted to the Office of Management and Budget for review.

VIII. Plain Language Requirement

Section 722 of the Gramm-Leach-Bliley Act of 1999 (GLBA) requires the federal banking agencies to use "plain language" in all proposed and final rules published after January 1, 2000. The proposed rule requested comments on how the rule might be changed to reflect the requirements of GLBA. No comments were received.

IX. Assessment of Impact of Federal Regulation on Families

The FDIC has determined that the final rule will not affect family well-being within the meaning the section 654 of the Treasury and General Government Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects

12 CFR Part 203

Administrative practice and procedure, Banks, banking, Bank merger, Branching, Foreign investments, Golden parachute payments, Insured branches, Interstate branching, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 333

Banks, banking, Corporate powers.

12 CFR Part 347

Banks deposit insurance, Banks, Credit, Foreign banking, Foreign investments, Insured branches, Investments, Reporting and recordkeeping requirements, United States investments abroad.

12 CFR Part 348

Antitrust, Banks, banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 359

Bank deposit insurance, Banks, banking, Golden parachute payments, Indemnity payments.

■ For the reasons set out in the preamble, the FDIC hereby amends 12 CFR parts 303, 333, 347, 348 and 359.

PART 303—FILING PROCEDURES

■ 1. The authority citation for part 303 continues to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819, (Seventh and Tenth), 1820, 1823, 1828, 1828a, 1831a, 1831e, 1831o, 1831p–1, 1831w, 1835a, 3104, 3105, 3108, 3207, 15 U.S.C. 1601–1607, 6716.

§ 303.2 [Amended]

■ 2. In § 303.2 remove the phrase, "For purposes of this part," and add in its place the phrase, "Except as modified or otherwise defined in this part, terms used in this part that are defined in the Federal Deposit Insurance Act (12 U.S.C. 1811 et seq.) have the meanings provided in the Federal Deposit Insurance Act. Additional definitions of terms used in this part are as follows:".

§ 303.4 [Amended]

■ 3. In § 303.4 after the phrase, "For purposes of this part," add the words, "and except as otherwise specifically provided,".

■ 4. In § 303.11, paragraph (9)(3)(ii) is revised to read as follows:

§ 303.11 Decisions.

* * * * *

(g) * * *

(3) * * *

(ii)(A) Any other relevant information, mitigation circumstance, documentation, or other evidence in support of the applicant's position. An applicant may also request a hearing under § 303.10.

(B) Failure by an applicant to file a written response with the FDIC to a notice of intent or a temporary order within the specified time period, shall constitute a waiver of the opportunity to respond and shall constitute consent to a final order under this paragraph (g). The FDIC shall consider any such response, if filed in a timely manner, within 30 days of receiving the response.

* * * * *

■ 5. Section 303.12 is added to read as follows:

§ 303.12 Waivers.

(a) The Board of Directors, of the FDIC (Board) may, for good cause and to the extent permitted by statute, waiver the applicability of any provision of this chapter.

(b) The provisions of this chapter may be suspended, revoked, amended or waived for good cause shown, in whole or in part, at any time by the Board, subject to the provisions of the Administrative Procedure Act and the provisions of this chapter. Any provision of the rules may be waived by the Board on its own motion or on petition if good cause thereof is shown.

■ 6. In § 303.22, paragraph (a)(1) is amended by revising the second sentence to read as follows:

§ 303.22 Processing.

(a) * * *

(1) * * * An eligible holding company is defined as a bank or thrift holding company that has consolidated assets of at least $150 million or more; a BOPEC rating of at least "2" for bank holding companies or an above average or "A" rating for thrift holding companies; and at least 75 percent of its consolidated depository institution assets comprised of eligible depository institutions.

* * * * *

■ 7. Section 303.80 is revised to read as follows:

§ 303.80 Scope.

This subpart sets forth the procedures for submitting a notice to acquire control of an insured state nonmember bank or a parent company of an insured state nonmember bank pursuant to the Change in Bank Control Act of 1978, section 7(j) of the FDI Act (12 U.S.C. 1817(j)).

■ 8. Section 303.81 is revised to read as follows:

§ 303.81 Definitions.

For purposes of this subpart:

(a) *Acquisition* includes a purchase, assignment, transfer, pledge or other disposition of voting shares, or an increase in percentage ownership resulting from a redemption of voting shares of an insured state nonmember bank or a parent company.

(b) *Acting in concert* means knowing participation in a joint activity or parallel action towards a common goal of acquiring control of an insured state nonmember bank or a parent company, whether or not pursuant to an express agreement.

(c) *Control* means the power, directly or indirectly, to direct the management or policies of an insured bank or a parent company or to vote 25 percent or more of any class of voting shares of an insured bank or a parent company.

(d) *Parent Company* means any company that controls, directly or indirectly, an insured state nonmember bank.

(e) *Person* means an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, and any other form of entity; and a voting trust, voting agreement, and any group of persons acting in concert.

■ 9. Section 303.82 is amended by revising paragraphs (a), (b), (c) and (d) to read as follows:

§ 303.82 Transactions requiring prior notice.

(a) *Prior notice requirement.* Any person acting directly or indirectly, or through or in concert with one or more persons, shall give the FDIC 60 days prior written notice, as specified in § 303.84, before acquiring control of an insured state nonmember bank or any parent company, unless the acquisition is exempt under § 303.83.

(b) *Acquisition requiring prior notice*—(1) *Acquisition of control.* The acquisition of control, unless exempted, requires prior notice to the FDIC.

(2) *Rebuttable presumption of control.* The FDIC presumes that an acquisition of voting shares of an insured state nonmember bank or a parent company constitutes the acquisition of the power to direct the management or policies of an insured bank or a parent company requiring prior notice to the FDIC, if, immediately after the transaction, the acquiring person (or persons acting in concert) will own, control, or hold with power to vote 10 percent or more of any class of voting shares of the institution, and if:

(i) The institution has registered shares under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

(ii) No other person will own, control or hold the power to vote a greater percentage of that class of voting shares immediately after the transaction. If two or more persons, not acting in concert, each propose to acquire simultaneously equal percentages of 10 percent or more of a class of voting shares of an insured state nonmember bank or a parent company, each such person shall file prior notice with the FDIC.

(c) *Acquisition of loans in default.* The FDIC presumes an acquisition of a loan in default that is secured by voting shares of an insured state nonmember bank or a parent company to be an acquisition of the underlying shares for purposes of this section.

(d) *Other transactions.* Acquisitions other than those set forth in paragraph (b)(2) of this section resulting in a person's control of less than 25 percent of a class of voting shares of an insured state nonmember bank or a parent company are not deemed by the FDIC to constitute control for purposes of the Change in Bank Control Act.

* * * * *

■ 10. Section 303.83 is amended by revising paragraphs (a)(1) through (a)(2), (a)(6) and (a)(7), (b)(1) and (b)(2), and by adding a new paragraph (a)(8), to read as follows:

§ 303.83 Transactions not requiring prior notice.

(a) * * *

(1) The acquisiiton of additional voting shares of an insured state nonmember bank or a parent company by a person who:

(i) Held the power to vote 25 percent or more of any class of voting shares of the institution continuously since the later of March 9, 1979, or the date that the institution commenced business as an insured state nonmember bank or a parent company; or

(ii) Is presumed, under § 303.82(b)(2), to have controlled the institution continuously since March 9, 1979, if the aggregate amount of voting shares held does not exceed 25 percent or more of any class of voting shares of the institution or, in other cases, where the FDIC determines that the person has controlled the institution continuously since March 9, 1979;

(2) The acquisition of additional shares of a class of voting shares of an insured state nonmember bank or a parent company by any person (or persons acting in concert) who has lawfully acquired and maintained control of the institution (for purposes of § 303.82) after complying with the procedures of the Change in Bank Control Act to acquire voting shares of the institution under this subpart;

* * * * *

(6) The receipt of voting shares of an insured state nonmember bank or a parent company through a pro rata stock dividend;

(7) The acquisition of voting shares in a foreign bank, which has a insured branch or branches in the United States. (This exemption does not extend to the reports and information required under paragraphs 9, 10, and 12 of the Change in Bank Control Act of 1978 (12 U.S.C. 1817(j)(9), (10), and (12)) and;

(8) The acquisition of voting shares of a depository institution holding company that either the Board of Governors of the Federal Reserve System or the Office of Thrift Supervision reviews pursuant to the Change in Bank Control Act (12 U.S.C. 1817(j)).

(b) *Prior notice exemption.* (1) The following acquisitions of voting shares of an insured state nonmember bank or a parent company, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate FDIC office within 90 calendar days after the acquisition and provides any relevant information requested by the FDIC:

(i) The acquisition of voting shares through inheritance;

(ii) The acquisition of voting shares as a bona fide gift; or

(iii) The acquisition of voting shares in satisfaction of a debt previously contracted in good faith, except that the acquirer of a defaulted loan secured by a controlling amount of a state nonmember bank's voting securities or a parent company's voting securities shall file a notice before the loan is acquired.

(2) The following acquisitions of voting shares of an insured state nonmember bank or a parent company, which otherwise would require prior notice under this subpart, are not subject to the prior notice requirements if the acquiring person notifies the appropriate FDIC office within 90 calendar days after receiving notice of the acquisition and provides any relevant information requested by the FDIC.

(i) A percentage increase in ownership of voting shares resulting from a redemption of voting shares by the issuing bank or a parent company; or

(ii) The sale of shares by any shareholder that is not within the control of a person resulting in that person becoming the largest shareholder.

* * * * *

■ 11. Section 303.85 is amended by revising paragraphs (a) and (b) to read as follows:

§ 303.85 Processing.

(a) *Acceptance of notice, additional information.* The FDIC shall notify the person or persons submitting a notice under this subpart in writing of the date the notice is accepted as substantially complete. The FDIC may request additional information at any time.

(b) *Commencement of the 60-day notice period: consummation of acquisition.* (1) The 60-day notice period specified in § 303.82 shall

commerce on the day after the date of acceptance of a substantially complete notice by the appropriate regional director. The notificant(s) may consummate the proposed acquisition after the expiration of the 60-day notice period, unless the FDIC disapproves the proposed acquisition or extends the notice period.

* * * * *

■ 12. Section 303.86 is amended by revising paragraph (c) to read as follows:

§ 303.86 Public Notice requirements.

* * * * *

(c) *Shortening or waiving public comment period, waiving publications; acting before close of public comment period.* The FDIC may shorten the public comment period to a period of not less than 10 days, or waive the public comment or newspaper publication requirements of paragraph (a) of this section, or act on a notice before the expiration of a public comment period, if it determines in writing either that an emergency exists or that disclosure of the notice, solicitation of public comment, or delay until expiration of the public comment period would seriously threaten the safety and soundness of the bank to be acquired.

* * * * *

■ 13. In section 303.244, paragraphs (c)(4) and (c)(5) are revised and new paragraph (c)(6) is added to read as follows:

§ 303.244 Golden parachute and severance plan payments.

* * * * *

(c) * * *

(4) The cost of the proposed payment and its impact on the institution's capital and earnings;

(5) The reasons why the consent to the payment should be granted; and

(6) Certification and documentation as to each of the points cited in § 359.4(a)(4).

* * * * *

PART 333—EXTENSION OF CORPORATE POWERS

■ 14. The authority citation for part 333 continues to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819 ("Seventh", "Eighth" and "Tenth"), 1828, 1828(m), 1831p–1(c).

§ 333.4 [Amended]

■ 15. In § 333.4, paragraphs (a) and (c) are amended by removing the words "§ 303.15 of this chapter" and adding in their place the words "subpart I of part 303 of this chapter."

PART 347—INTERNATIONAL BANKING

■ 16. The authority citation for part 347 continues to read as follows:

Authority: 12 U.S.C. 1813, 1815, 1817, 1819, 1820, 1828, 3103, 3104, 3105, 3108; Title IX, Pub. L. 98–181, 97 Stat. 1153.

■ 17. Section 347.108 is amended by revising paragraph (f) to read as follows:

§ 347.108 Obtaining FDIC approval to invest in foreign organizations.

* * * * *

(f) *Procedures.* Procedures for applications and notices under this section are set out in subpart J of part 303 of this chapter.

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

■ 18. The authority citation for part 348 continues to read as follows:

Authority: 12 U.S.C. 1823(k), 3207.

■ 19. In § 348.2, paragraph (j)(1)(iii) is revised to read as follows:

§ 348.2 Definitions.

* * * * *

(j) * * *

(iii) A senior executive officer as that term is defined in 12 CFR 303.101(b).

* * * * *

PART 359—GOLDEN PARACHUTE AND INDEMNIFICATION PAYMENTS

■ 20. The authority citation for part 359 continues to read as follows:

Authority: 12 U.S.C. 1828(k).

§ 359.1 [Amended]

■ 21. In § 359.1(f)(1)(ii)(C) remove the reference to "§ 303.14(a)(4)" and add in its place, "§ 303.101(c)".

Dated at Washington, DC, this 4th day of August, 2003.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 03–20451 Filed 8–20–03; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–13–AD; Amendment 39–13200; AD 2003–12–15]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce RB211 Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–12–15 that applies to Rolls-Royce (RR) plc RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 series turbofan engines that was published in the **Federal Register** on June 25, 2003. A service bulletin was incorrectly identified by revision number and revision date in the Compliance section, paragraph (a) and the Optional Terminating Action section, paragraph (f). This document corrects these items. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective June 25, 2003.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule AD, FR Doc 03–15449, that applies to Rolls-Royce (RR) plc RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 series turbofan engines, was published in the **Federal Register** on June 25, 2003 (68 FR 37735). The following corrections are needed:

§ 39.13 [Corrected]

■ On page 37736, in the third column, in the Compliance section, paragraph (a), in the third line, "dated August 6, 2002," is corrected to read "Revision 2, dated September 26, 2002,".

■ On page 37738, in the first column, in the Optional Terminating Action section, paragraph (f) in the third line, "Revision 1, dated August 6, 2002," is corrected to read "Revision 2, dated September 26, 2002,".

Issued in Burlington, MA, on August 14, 2003.

Marc J. Bouthillier,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–21412 Filed 8–20–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–32–AD; Amendment 39–13285; AD 2003–17–10]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems, Inc. Propeller Hub Models B5JFR36C1101, C5JFR36C1102, B5JFR36C1103, and C5JFR36C1104

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for McCauley Systems, Inc. propellers that are installed on, but not limited to, BAE Systems (Operations) Limited Jetstream Model 4101 airplanes. That AD currently requires a one-time fluorescent peñetrant inspection (FPI) of propeller blade retention areas for cracks. This AD requires initial and repetitive FPI or Ultrasonic Inspection (UT) of propeller blade retention areas for cracks, replacement of high time propeller blades, and a one-time inspection of propeller hubs. This AD is prompted by four reports of significant cracks found in propeller blade shanks since the issuance of AD 2003–15–01. We are issuing this AD to prevent propeller blade failure or hub failure due to cracking, which could result in failure of the propeller and loss of control of the airplane.

DATES: Effective August 21, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of August 21, 2003.

We must receive any comments on this AD by October 20, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–32–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You can get the service information referenced in this AD from McCauley Propeller Systems, 3535 McCauley Drive, Vandalia, OH 45377.

You may examine the AD docket by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Room 107, Des Plaines, IL 60018; telephone: (847) 294–7132; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION: On July 14, 2003, the FAA issued AD 2003–15–01, Amendment 39–13243 (68 FR 42244, July 17, 2003). That AD applies to the following McCauley Systems, Inc. propeller assemblies that are installed on, but not limited to, BAE Systems (Operations) Limited Jetstream Model 4101 airplanes:

- Hub Model B5JFR36C1101, with Model 114GC series propeller blades.
- Hub Model C5JFR36C1102, with Model L114GC series propeller blades.
- Hub Model B5JFR36C1103, with Model 114HC series propeller blades.
- Hub Model C5JFR36C1104, with Model L114HC series propeller blades.

That AD requires a one-time FPI of propeller blade retention areas for cracks. That AD was prompted by a report of a significant crack in a propeller blade shank and two reports of cracks in the hubs of the same propeller model. That condition, if not corrected, could result in a failure of the propeller blade or hub and loss of control of the airplane.

Actions Since AD 2003–15–01 Was Issued

Since that AD was issued, four additional propeller blade cracks have been reported. Based on examination of these cracked propeller blades, a repetitive inspection interval has been established.

Relevant Service Information

We have reviewed and approved the technical contents of McCauley Alert Service Bulletin (ASB) 246C, Revision 3, dated August 12, 2003, that describes procedures for FPI or UT of propeller blades. We have also reviewed and approved the technical contents of McCauley ASB245A, Revision 1, dated August 13, 2003, that describes procedures for a one-time eddy current inspection of propeller hubs.

Differences Between This AD and the Service Information

McCauley ASB246C, Revision 3, dated August 12, 2003, requires the operator to perform a blade shake check at 72-hour internals. This AD does not require the blade shake check. McCauley ASB245 A, Revision 1, dated August 13, 2003, requires initial and repetitive hub inspections. This AD does not require repetitive hub inspections, but does require a different compliance internal.

FAA's Determination and Requirements of This AD

The unsafe condition described previously is likely to exist or develop on other McCauley Systems, Inc. propeller hub Models B5JFR36C1101, C5JFR36C1102, B5JFR36C1103, and C5JFR36C1104, of the same type design. We are issuing this AD to prevent propeller blade failure or hub failure due to cracking, which could result in failure of the propeller and loss of control of the airplane. You must use the service information described previously to perform these actions.

FAA's Determination of the Effective Date

Since an unsafe condition exists that requires the immediate adoption of this AD, we have found that notice and opportunity for public comment before issuing this AD are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Interim Action

These actions are interim actions and we may take further rulemaking actions in the future.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–32–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary on the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 2003–NE–32–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–17–10 McCauley Propeller Systems, Inc.: Amendment 39–13285. Docket No. 2003–NE–32–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective August 21, 2003.

Affected ADs

(b) This AD supersedes AD 2003–15–01, Amendment 39–13243.

Applicability

(c) This AD applies to McCauley Propeller Systems, Inc. propeller hub models that are listed in Table 1 of this AD, and are installed on, but not limited to, BAE Systems (Operations) Limited Jetstream Model 4101 airplanes. Table 1 follows:

TABLE 1.—PROPELLER MODELS BY HUB MODEL AND BLADE MODEL

Propeller hub model	With propeller blade model installed
B5JFR36C1101	114GC series.
C5JFR36C1102	L114GC series.
B5JFR36C1103	114HC series.
C5JFR36C1104	L114HC series.

Unsafe Condition

(d) This AD is prompted by four reports of significant cracks found in propeller blade shanks since the issuance of AD 2003–15–01. We are issuing this AD to prevent propeller blade failure or hub failure due to cracking, which could result in failure of the propeller and loss of control of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Initial Inspection of Propeller Blades

(f) Inspect propeller blades for cracks in the retention area using either the fluorescent penetrant inspection (FPI) procedure specified in paragraphs 5.A. through 5.L. of McCauley Alert Service Bulletin (ASB) 246C, Revision 3, dated August 12, 2003, or using the ultrasonic inspection (UT) procedure specified in paragraphs 6.A. through 6.F. of McCauley ASB246C, Revision 3, dated August 12, 2003. Use the compliance times specified in the following Table 2:

TABLE 2.—COMPLIANCE TIMES FOR THE INITIAL FPI OR UT OF PROPELLER BLADES

If the propeller blade time-since-new (TSN) is:	Or if:	Then inspect:
(1) 10,000 hours TSN or more	The blade was overhauled at least twice.	Within 10 hours time-in-service (TIS) after the effective date of this AD.
(2) 6,000 hours TSN or more	The blade was overhauled at least once.	Within 200 hours TIS after the effective date of this AD or at 10,010 hours TIS whichever is later.
(3) Fewer than 6,000 hours TSN	The blade has not been overhauled.	At the next overhaul.

Credit for Previous Inspection

(g) The one-time inspections done using AD 2003–15–01, published July 17, 2003, constitute compliance with the initial inspection requirements of this AD.

Repetitive Inspection of Propeller Blades

(h) For blades that have 10,000 hours or more TSN or that have been overhauled at

least twice, inspect propeller blades for cracks in the retention area using either the FPI procedure specified in paragraphs 5.A. through 5.L. of McCauley ASB246C, Revision 3, dated August 12, 2003, or using the UT procedure specified in paragraphs 6.A. through 6.F. of McCauley ASB ASB246C, Revision 3, dated August 12, 2003, at the following intervals:

(1) Inspect within 100 hours TIS after the initial inspection, or within 10 hours TIS after the effective date of this AD, whichever is later.

(2) Thereafter, repetitively inspect within every 100 hours TIS, for a maximum of five repetitive inspections.

(i) The repetitive inspection of paragraph (h) of this AD applies when the blade reaches 10,000 hours TIS.

Blade Replacement

(j) Replace propeller blades as follows:

(1) Remove from service blades with cracks.

(2) For blades that pass all of the repetitive inspections in paragraph (h)(2) of this AD, replace with blades that have never been overhauled, within 100 hours TIS after the fifth repetitive inspection.

Eddy Current Inspection (ECI) of Propeller Hubs

(k) For propeller hubs that have been overhauled one or more times, perform a one-time ECI of the propeller hub, within 300 hours TIS after the effective date of this AD. Use the procedures specified in the Accomplishment Instructions of McCauley ASB245A, Revision 1, dated August 13, 2003.

(l) Remove hubs with crack indications from service.

Reporting Requirements

(m) Report findings of the FPI or UT using the procedures specified in paragraph 7. of McCauley ASB246C, Revision 3, dated August 12, 2003. Report the finding of the hub inspection using the procedures specified in paragraph 5.H.(5) of ASB245A, Revision 1, dated August 13, 2003. The Office of Management and Budget (OMB) has approved the reporting requirements specified in paragraph 7. of McCauley ASB246C, Revision 3, dated August 12, 2003, and reporting requirements specified in paragraph 5.H.(5) of ASB245A, Revision 1, dated August 13, 2003, 2003, and assigned OMB control number 2120–0056.

Alternative Methods of Compliance (AMOCs)

(n) You must request AMOCs as specified in 14 CFR 39.19. All AMOCs must be approved by the manager, Chicago Aircraft Certification Office, FAA, 2300 East Devon Avenue, Room 1007, Des Plaines, IL 60018.

Material Incorporated by Reference

(o) You must use the service information specified in Table 3 to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of the documents listed in Table 3 of this AD in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from McCauley Propeller Systems, 3535 McCauley Drive, Vandalia, OH 45377. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Table 3 follows:

TABLE 2.—INCORPORATION BY REFERENCE

Service Bulletin No.	Page	Revision	Date
McCauley, ASB245A ..... Total Pages: 12.	ALL	1	August 13, 2003.
McCauley, ASB246C ..... Total Pages: 27.	ALL	3	August 12, 2003.

Related Information

(p) None.

Issued in Burlington, Massachusetts, on August 18, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–21519 Filed 8–19–03; 2:45 pm]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15727; Airspace Docket No. 03–ACE–69]

Modification of Class E Airspace; Corning, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Corning, IA. A review of controlled airspace for Corning Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E. A discrepancy in the airspace extension was also detected. The area is modified and enlarged to conform to the criteria in FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, December 25, 2003. Comments for inclusion in the Rules Docket must be received on or before October 7, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15727/Airspace Docket No. 03–ACE–69, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Corning, IA. An examination of controlled airspace for Corning Municipal Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment also modifies the extension to the Corning, IA Class E airspace by defining it with the 009° bearing from the Corning nondirectional radio beacon (NDB) versus the current 010° bearing. This amendment brings

the legal description of the Corning, IA Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticiipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15727/Airspace Docket No. 03–ACE–69." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regualtion (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Corning IA

Corning Municipal Airport, IA
(Lat. 40°59′39″N, long. 94°45′18″ W)
Corning NDB
(Lat. 40°59′47″N, long. 94°45′25″ W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Corning Municipal Airport and within 2.6 miles each side of the 009° bearing from the Corning NDB extending from the 6.3-mile radius to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on August 11, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–21461 Filed 8–20–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15726; Airspace Docket No. 03–ACE–68]

Modification of Class E Airspace; Clarion, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Clarion, IA. A review of controlled airspace for Clarion Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E. A discrepancy in the airspace extension was also detected. The area is modified and enlarged to conform to the criteria in FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, December 25, 2003. Comments for inclusion in the Rules Docket must be received on or before October 6, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15726/Airspace Docket No. 03–ACE–68, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except

Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Clarion, IA. An examination of controlled airspace required for Clarion Municipal Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an airspace to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment also modifies the extension to the Clarion, IA Class E airspace area by defining it with the 308° bearing from the Clarion nondirectional radio beacon (NDB) versus the current 310° bearing. This amendment brings the legal description of the Clarion, IA Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15726/Airspace Docket No. 03–ACE–68." The postcard will be date/time stamped and returned to the commenter.

Agency Findings

The regulations adopted will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Clarion, IA

Clarion Municipal Airport, IA
(Lat. 42°44′31″ N., long. 93°45′32″ W.)
Clarion NDB
(Lat. 42°44′45″ N., long. 93°45′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Clarion Municipal Airport and within 2.6 miles each side of the 308° bearing from the Clarion NDB extending from the 6.3-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO; on August 11, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–21460 Filed 8–20–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15725; Airspace Docket No. 03–ACE–67]

Modification of Class E Airspace; Charlton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action modifies the Class E airspace area at Chariton, IA. A review of controlled airspace for Chariton Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2E. A discrepancy in the airspace extension was also detected. The area is modified and enlarged to conform to the criteria in FAA Order 7400.2E.

DATES: This direct final rule is effective on 0901 UTC, December 25, 2003. Comments for inclusion in the Rules Docket must be received on or before October 5, 2003.

ADDRESSES: Send comments on this rule to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15725/Airspace Docket No. 03–ACE–67, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the rule, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface of the earth at Chariton, IA. An examination of controlled airspace for Chariton Municipal Airport reveals it does not meet the criteria for 700 AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This amendment also modifies the extension to the Chariton, IA Class E airspace area by defining it with the 348° bearing from the Chariton nondirectional radio beacon (NDB) versus the current 350° bearing. This amendment brings the legal description of the Chariton, IA Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in **Federal Register** and a notice of proposed remaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this remaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15725/Airspace Docket No. 03–ACE–67." The postcard will be date/time stamped and returned to the commented.

Agency Findings

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Chariton, IA

Chariton Municipal Airport, IA

(Lat. 41°01′ 11″ N, long. 93°21′35″ W)
Chariton NDB
(Lat 41°01′00″ N, long. 93°21′43″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Chariton Municipal Airport and within 2.6-miles east and 4.4 miles west of the 348° bearing from the Chariton NDB, extending from the 6.5-mile radius to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on August 11, 2003.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–21459 Filed 8–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15454; Airspace Docket No. 03–ACE–52]

Modification of Class E Airspace; Wichita Mid-Continent Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Tuesday, July 15, 2003, (68 FR 41691) [FR Doc. 03–17766]. It corrects an error in the McConnell Air Force Base (AFB) airport reference point.

DATES: This direct final rule is effective on 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–17766, published on Tuesday, July 15, 2003, (68 FR 41691) modified Class E airspace at Wichita Mid-Continent Airport, KS. The modification was to provide the appropriate Class E airspace to protect aircraft executing newly developed instrument approach procedures at Cessna Aircraft Field, Wichita, KS, to correct discrepancies in the Wichita Mid-Continent Airport, KS Class E airspace area and to bring the legal description into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. This Class E airspace area is defined, in part, by the McConnell AFB airport reference point. On August 4, 2003, a revised McConnell AFB airport reference point was published. This correction incorporates the revised McConnell AFB airport reference point into the Wichita Mid-Continent Airport, KS Class E airspace area and its legal description.

■ Accordingly, pursuant to the authority delegated to me, the Wichita Mid-Continent Airport, KS Class E airspace, as published in the **Federal Register** on Tuesday, July 15, 2003, (68 FR 41691), [FR Doc. 03–17766] is corrected as follows:

§ 71.1 [Corrected]

■ On page 41692, Column 2, paragraph headed "ACE KS E5 Wichita Mid-Continent Airport, KS," sixth and seventh lines, change:

"Wichita McConnell Air Force Base, KS (Lat. 37°37′33″ N., long. 97°16′03″ W.)"

to read "miles south of the airport."

"Wichita McConnell Air Force Base, KS (Lat. 37°37′23″ N., long. 97°16′24″ W.)"

Issued in Kansas City, MO, on August 11, 2003.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 03–21458 Filed 8–20–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15299; Airspace Docket No. 03–AWP–9]

Modification of Class E Airspace; Window Rock, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This confirms the effective date of the direct final rule that modifies Class E airspace at Window Rock, AZ.

EFFECTIVE DATE: 0901 UTC, September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Division, Airspace Branch, AWP–520, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION: The FAA published a direct final rule with request for comments (FR Document 03–15526) in the **Federal Register** on June 19, 2003 (68 FR 36743). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on September 4, 2003. No adverse comments were received, and thus this action confirms that the direct final rule will be effective on that date.

Issued in Los Angeles, California.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 03–21457] Filed 8–20–03; 8:45 am]

BILLING CODE 4910–13–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AC77

NASA Grant and Cooperative Agreement Handbook—Financial Reporting

AGENCY: National Aeronautics and Space Administration

ACTION: Final rule.

SUMMARY: This final rule amends the NASA Grant and Cooperative Agreement Handbook by updating the requirement for submission of quarterly Federal Cash Transactions Reports (Standard Form (SF) 272s) to reflect the existing practice of submitting these reports electronically, and clarifying the circumstances under which NASA may suspend or terminate grantee advance payments. The intended effect of this change is to formalize a process change (electronic submission of quarterly financial reports) and to ensure that NASA takes corrective action in a timely and coordinated fashion when grantee financial reports are late.

EFFECTIVE DATE: August 21, 2003.

FOR FURTHER INFORMATION CONTACT: Rita Svarcas, NASA Headquarters, Code HK, Washington DC, (202) 358–0464, e-mail: *Rita.Svarcas@nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

This change amends the NASA Grant and Cooperative Agreement Handbook to reflect NASA's implementation of the Department of Health and Human Services' Payment Management System (DHHS/PMS), including electronic submission of grantees' quarterly Federal Cash Transactions Reports (SF 272s). The changes also clarify NASA's

policies and internal practices with regard to suspension or termination of advance payments. This change delegates responsibility for suspension and termination of advance payments to the NASA Financial Management Office in certain cases involving financial reporting. In all other cases, the Grant Officer retains responsibility for suspension and termination of advance payments. Additionally, this change amends the withholding provision. The change removes a phrase in that provision addressing withholding of future awards, as the phrase duplicates another provision and is not directly relevant to withholding of advance payments. The withholding provision is also amended to more specifically state the conditions under which NASA may withhold advance payments consistent with existing guidance and procedures contained in the Grant and Cooperative Agreement Handbook.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the change updates and clarifies existing operational practices.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in CFR Part 1260

Grant Programs—Science and Technology.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 14 CFR Part 1260 is amended as follows:

■ 1. The authority citation for 14 CFR 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1) and Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301, *et seq.*)

PART 1260—GRANTS AND COOPERATIVE AGREEMENT

■ 2. Section 1260.26 is revised to read as follows:

§ 1260.26 Financial management.

Financial Management

August 2003

(a) Advance payments through a Letter of Credit will be made by the Financial Management Office of the NASA Center assigned financial cognizance of the grant, using the Department of Health and Human Services' Payment Management System (DHHS/PMS), in accordance with procedures provided to the Recipient. The Recipient shall submit a Federal Cash Transactions Report (SF 272), and, when applicable, a Continuation Sheet (SF 272A) electronically to DHHS/PMS within 15 working days following the end of each Federal Fiscal quarter (*i.e.*, December 31, March 31, June 30, and September 30). One Federal Cash Transactions Report shall be submitted for all grants financed under a letter of credit arrangement with each NASA Center.

(b) In addition, the Recipient shall submit a final SF 272 in paper form to NASA within 90 calendar days after the expiration date of the grant. The final SF 272 shall pertain only to the completed grant and shall include total disbursements from inception through completion. The report shall be marked "Final". The final SF 272 shall be submitted to the Financial Management Office, with a copy sent to the NASA Grant Officer.

(c) Unless otherwise directed by the Grant Officer, any unexpended balance of funds which remains at the end of any funding period, except the final funding period of the grant, shall be carried over to the next funding period, and may be used to defray costs of any funding period of the grant. This includes allowing the carry over of funds to the second and subsequent years of a multiple year grant. This provision also applies to subcontractors performing substantive work under the grant. For grant renewals, the estimated amount of unexpended funds shall be identified in the grant budget section of the Recipient's renewal proposal. NASA reserves the right to remove unexpended balances from grants when insufficient efforts have been made by the grantee to liquidate funding balances in a timely fashion.

[End of provision]

■ 3. Section 1260.56 is revised to read as follows:

§ 1260.56 Withholding.

Withholding

August 2003

If a Recipient fails to comply with the project objectives, the terms and conditions of this award, or reporting requirements under this or previous NASA awards, NASA may withhold advance payments under this award including its augmentations, and may also withhold advance payments under future awards to the Recipient, pending correction of the deficiency by the Recipient. Upon determination that the deficiency has been corrected, the cognizant NASA Financial Management Office shall resume advance payments and release of previously withheld amounts after coordination with the Grant Officer.

■ 4. Section 1260.75 is amended by revising paragraphs (b)(1) and (c)(2) to read as follows:

§ 1260.75 Summary of report requirements.

* * * * *

(b) * * *

(1) The Federal Cash Transactions Report (SF 272) shall be submitted by the recipient, in accordance with § 1260.26, as a condition of receiving advance payments. Instructions and answers to payment questions will be provided by the NASA Financial Management Office of the Center that has been assigned financial cognizance of the grant. (*See* § 1260.152.)

* * * * *

(c) * * *

(2) A Final Federal Cash Transactions Report, SF 272, is required from the recipient for each grant, in accordance with §§ 1260.26 and 1260.152. The report is due within 90 calendar days after the expiration date of the grant or cooperative agreement.

* * * * *

■ 5. Section 1260.76 is amended by revising paragraphs (d) and (e) and adding new paragraphs (f), (g), and (h) to read as follows:

§ 1260.76 Termination and enforcement.

* * * * *

(d) Failure of the recipient to provide a required report can result in the Agency and the public being denied information about grant activities, NASA officials having less information for making decisions, grant closeout being delayed, and confidence being undermined as to whether the recipient will meet the requirements under other grants. Because NASA grants provide for advance payments, a recipient could be fully paid before final reports are

due. At this point, it is too late to withhold payment on the existing grant. Consistent with §§ 1260.122(h) and 1260.162(a), NASA may suspend or terminate advance payments from recipients that fail to comply with reporting requirements.

(e) To remedy failure to furnish timely reports, special condition at § 1260.56, Withholding, should be used when awarding a new grant or modifying an existing grant with non-responsive organizations. Special condition at § 1260.56 allows NASA to suspend or terminate advance payments under an institution's letter of credit pending receipt of the satisfactorily completed reports required in § 1260.75.

(f) The NASA Financial Management Office, notifying the Grant Officer, shall take action to either suspend or terminate a recipient's advance payments when—

(1) A recipient organization is unwilling or unable to establish a financial management system that meets the requirements of advance payments as evidenced by an audit report or failure to comply with the NASA requirements;

(2) A recipient organization is unwilling or unable to report, on an accurate and timely basis, cash disbursements or cash balances as required by NASA. Advance payments shall be temporarily suspended when two (2) successive quarterly reports are late or when two (2) reports are late in a fiscal year; or

(3) A recipient organization has demonstrated an unwillingness or inability to establish procedures that will minimize time elapsing between drawdowns and related disbursements.

(g) In addition to the situations delineated in paragraph (f) of this section, the NASA Grant Officer may direct the NASA Financial Management Office to either suspend or terminate a recipient's advance payments under circumstances where a recipient has otherwise failed to comply with the project objectives, the terms and conditions of the award, or NASA reporting requirements.

(h) The Financial Management Office (for the cases set forth in paragraph (f) of this section) or the Grant Officer (for all other cases) may resume advance payments and may release any previously withheld amounts when the recipient has taken corrective action that makes suspension or withholding no longer necessary. To release for payment amounts they have previously withheld, grant officers shall send a memorandum to the Financial Management Office. The Financial Management Office shall likewise coordinate any release of withheld payments with the grant officer.

■ 6. Section 1260.152 is amended by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 1260.152 Financial reporting.

* * * * *

(b) Recipients are required to submit the report electronically to the Department of Health and Human Services' Payment Management System (DHHS/PMS) within 15 working days following the end of each Federal fiscal quarter. Reports are required for each quarter whether or not advances have been made during that quarter.

(c) Additionally, recipients shall submit a final SF 272 in paper form to the NASA Financial Management Office, and shall furnish a copy of the final SF 272 to the appropriate grant officer.

[FR Doc. 03–21437 Filed 8–20–03; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 732, 740, 744, 750, 752, 754, 758, 770, and 772

[Docket No. 030726186–3186–01]

RIN 0694–AC81

Export Clearance—Conformance of Export Administration Regulations With Foreign Trade Statistics Regulations

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) to add references to the Automated Export System (AES) and to conform the EAR to certain provisions of the Foreign Trade Statistics Regulations (FTSR) including provisions related to AES promulgated on July 17, 2003. It also conforms some terminology in part 758 to that found elsewhere in the EAR and updates references to another government agency to reflect a name change.

DATES: This rule is effective September 22, 2003.

FOR FURTHER INFORMATION CONTACT: For information on the relationship of this rule to the export of crude oil or unprocessed Western Red Cedar (15 CFR part 754), contact Eugene Lewis, Acting Director, Deemed Exports and Short Supply Division, *elewis@bis.doc.gov* or (202) 482–6109. For other information concerning this rule, contact Thomas W. Andrukonis, Director, Office of Enforcement Analysis, *tandruko@bis.doc.gov* or (202) 482–4255.

SUPPLEMENTARY INFORMATION:

Background

The Foreign Trade Statistics Regulations (FTSR) (15 CFR part 30) require submission to the government of certain information regarding exports either through a Shipper's Export Declaration (SED) or the Automated Export System (AES). On July 17, 2003 (68 FR 42534), the Census Bureau amended these regulations to require, *inter alia*, filing via AES rather than an SED for all exports of items listed on the Commerce Control List when a filing under the FTSR is required. The EAR (15 CFR Subchapter C) also provide rules that complement the FTSR for transactions that are subject to the EAR. This rule amends the EAR by revising two sections in part 758 to conform more closely to the Foreign Trade Statistics Regulations (FTSR) and by revising one such to conform to terminology used elsewhere in the EAR. This rule also amends parts 732, 740, 744, 752, 754, 758, 770, and 772 to add references to AES in places where references to SEDs appear. These amendments are needed because, without them, the EAR would appear to require that an SED be filed even when the FTSR requires that the filing take place via AES. Additionally, in parts 740 and 744 this rule replaces statements that an SED must be filed with the carrier with statements that the SED or AES must be filed in accordance with the requirements of the FTSR. This rule replaces the phrase "U.S. Customs Service" with "Bureau of Customs and Border Protection" and, in one instance, with "Bureau of Customs and Border Protection or Bureau of Immigration and Customs Enforcement" to reflect the names of the agencies that currently perform the functions formerly performed by the U.S. Customs Service. The specific changes made by this rule are described below.

This rule amends section 732.5 and paragraph 740.1(d) by adding references to AES to their headings. This rule amends paragraph 732.3(n)(1) to add a reference to AES immediately following the reference to SEDs and to replace the phrase "U.S. Customs Service" with "Bureau of Customs and Border Protection."

This rule amends paragraph 740.1(d) to remove a reference to paragraph 758.2 because paragraph 758.1 describes the requirements of AES. This rule amends

footnote number 1 to paragraph 740.13(d)(1) to add a reference to AES immediately following the reference to SEDs. Paragraphs 740.15(c)(1)(iv), 740.15(c)(2)(iv), 744.7(b)(1)(iv), and 744.7(b)(2)(iv) are amended to add references to AES immediately following the references to the SED and to amend the statement that the SED must be filed with the carrier to a statement that the SED or AES must be filed in accordance with the FTSR. Paragraph 740.13(d)(1) deals with certain "mass market" software that is eligible for License Exception TSU. Paragraph 740.15(c) is a provision of License Exception AVS dealing with shipments to U.S. or Canadian vessels, planes, and airline installations or agents. Paragraph 744.7(b) provides an exception for U.S. and Canadians carriers to restrictions on certain exports to and for the use of certain foreign vessels or aircraft.

This rule amends paragraphs 750.7(b), 752.7(b) and 752.15(a) to add references to AES in places where references to SEDs appear. Additionally, paragraph 752.15(a) is amended to state that SEDs or AES records must be submitted in accordance with the requirements of the FTSR as well as section 758.1 of the EAR (previously this paragraph did not mention the FTSR) and to eliminate references to the now non-existent Bureau of Census Monthly Reporting System.

This rule amends paragraphs 754.2(h)(2), 754.2(i)(3), 754.2(j)(2), 754.4(d)(3)(ii), and 754.4(c)(4) to add references to AES to the previously existing references to SEDs and amends paragraph 754.2(j)(2) to correct the mailing address listed therein. Section 754.2 deals with exports of crude oil. Paragraphs (h)(2) and (i)(3) provide language that must be on the SED or AES record when certain license exceptions are used. Paragraph (j)(2) provides that the exporter must submit a copy of the SED or AES record directly to BIS. This requirement is in addition to the requirements of the FTSR. Section 754.4 deals with exports of unprocessed Western Red Cedar. Paragraph (c)(4) describes language that must be on the SED or AES record when license exception WRC is used. Paragraph (d)(3)(i) requires exporters to retain a copy of the SED or AES record.

This rule amends paragraph 758.1(b)(2) to require an SED or AES submission for exports requiring a license under the EAR, not just those authorized by such a license. This change conforms the EAR requirement to that of the FTSR found at 15 CFR 30.55(h)(2)(ii). This rule also makes conforming changes to paragraphs 758.1(b)(1) and (b)(3). This rule amends paragraph 758.1(e) to add the parenthetical "U.S. principal party in interest" immediately following the word "exporter." This change clarifies the latter term and conforms the EAR to the FTSR (15 CFR 30.4).

This rule amends the introductory paragraph to section 758.2 to remove all references to AES "Option 3"; to replace the word "four" with the word "three" and the word "three" with the word "two" when referring to filing options because the Census July 17, 2003 rule removed Option 3, leaving a total of three options, numbered 1, 2, and 4, two of which are electronic. This rule also amends some citations to the FTSR as needed to reflect changes made by the Census July 17, 2003 rule and replaces the phrase "U.S. Customs Service" with "Bureau of Customs and Border Protection."

This rule amends the fourth sentence of paragraph 758.2(a) to make clear that the agency 30 day time limit for reviewing Option 4 Letters of Intent runs from the date of referral of the Letter of Intent to the agency by the Census Bureau and that any agency objections must be received by the Census Bureau within the 30 days or the agency will be deemed not to object. These changes conform EAR paragraph 758.2(a) to the corresponding requirements of the FTSR (15 CFR 30.62(b)(1)).

This rule amends paragraph 758.2(c)(3) to replace the listing of the countries that have been designated as terrorist supporting by the Secretary of State with the phrase "Country Group E:1." This change conforms this paragraph with the usage elsewhere in the EAR.

This rule amends paragraphs 758.7(b)(1)(i), 758.7(b)(6), section 758.9, paragraphs 770.2(e)(2)(ii), 770.2(f), and section 772.1(definition of NLR) to add references to AES wherever references to SED appear. This rule also amends section 758.9 to replace the phrase "U.S. Customs Service" with "Bureau of Customs and Border Protection or Bureau of Immigration and Customs Enforcement". Paragraphs 758.7(b)(1)(i) and (b)(6) deal with authority to inspect items about to be exported and with detention and seizure of shipments, respectively. Section 758.9 makes clear that part 758 of the EAR does not relieve anyone from compliance with other laws. Paragraphs 770.2(e)(ii) and 770.2(f) address documentation requirements when shipping numerical control systems and parts, accessories; and equipment exported as scrap, respectively. Section 772.1 contains definitions of terms found elsewhere in the EAR.

Although the Export Administration Act expired on August 20, 2001, Executive Order 13222 of August 17, 2001 (3 CFR 2001 Comp., p. 783 (2002)), as extended by the Notice of August 7, 2003 (68 FR 47833, August 11, 2003), continues the Regulations in effect under the International Emergency Economic Powers Act.

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a current, valid OMB control number. In accordance with the PRA, 44 U.S.C. Chapter 35, OMB approved on April 26, 2002, with control number 0607–0512, the collection of all information associated with the AES and SED. The Census Bureau has estimated that each electronic SED will take approximately 3 minutes to complete and that each paper SED will take approximately 11 minutes to complete. This rule does not change the number of transactions for which such filing is necessary nor does it change the amount of information that will have to be filed for any transaction. This rule also involves a collection of information by BIS that bears OMB control number 0694–0027. The burden hour estimated associated with the collection that this rule involves (submitting a copy of the Shipper's Export Declaration or Automated Export System record to BIS when exporting certain crude oil), is nine annual burden hours. BIS believes that this rule will not change the number of burden hours.

3. This rule does not contain policies with Federalism implications as this term is defined in Executive Order 13132.

4. We find good cause to waive the provisions of the Administrative Procedure Act requiring prior notice and the opportunity for public comment (5 USC 553(b)(B)) because they are unnecessary as the changes made by this rule simply make certain provisions of the Export Administration Regulations conform to other rules that have been lawfully promulgated. No other law requires that a notice of final rulemaking and an opportunity for public comment be given for this rule. Because a notice of final rulemaking and an opportunity for public comment are

not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 USC 601 *et seq.*) are not applicable.

List of Subjects

15 CFR Parts 732, 740, 750, 752, and 758

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 744

Exports, Foreign trade, Reporting and Recordkeeping requirements.

15 CFR Part 754

Exports, Foreign trade, Forests and forest products, Petroleum, Reporting and recordkeeping requirements.

15 CFR Parts 770 and 772

Exports, foreign trade.

■ Accordingly, parts 732, 740, 744, 750, 752, 754, 758, 770, and 772 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 732—[AMENDED]

■ 1. The authority citation for part 732 is revised to read as follows:

Authority: 50 USC app. 2401 *et seq.*; 50 USC 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

■ 2. Section 732.3 is amended by revising the second sentence of paragraph (n)(1) to read as follows:

§ 732.3 Steps regarding the ten general prohibitions.

* * * * *

(n) * * *

(1) * * * You should skip the Steps in § 732.4 of this part regarding License Exceptions and proceed directly to the Steps in § 732.5 of this part regarding recordkeeping, clearing the Bureau of Customs and Border Protection with the appropriate Shipper's Export Declaration or Automated Export System record, and using the required Destination Control Statement.

* * * * *

■ 3. Section 732.5 is amended by revising the heading to read as follows:

§ 732.5 Steps regarding Shipper's Export Declaration or Automated Export System record, Destination Control Statements, and recordkeeping.

* * * * *

PART 740—[AMENDED]

■ 4. The authority citation for part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

■ 5. Section 740.1 is amended by revising the heading and the third sentence of paragraph (d) to read as follows:

§ 740.1 Introduction.

* * * * *

(d) *Shippers Export Declaration or Automated Export System Record.* * * * *See* § 758.1 of the EAR for Shipper's Export Declaration or Automated Export System (AES) requirements.

* * * * *

■ 6. Section 740.13 is amended by revising footnote number one to paragraph (d)(1) to read as follows:

§ 740.13 Technology and software—unrestricted (TSU).

* * * * *

(d) * * *

[1] "Mass market" software may fall under the classification of "general use" software for export clearance purposes. Exporters should consult the Census Bureau FTSR for possible SED or AES requirements.

■ 7. Section 740.15 is amended by revising paragraphs (c)(1)(iv) and (c)(2)(iv) to read as follows:

§ 740.15 Aircraft and vessels (AVS).

* * * * *

(c) * * *

(1) * * *

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) or Automated Export System (AES) record is filed in accordance with the requirements of the Foreign Trade Statistics Regulations (15 CFR part 30), except that an SED or AES record is not required when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their own use.

(2) * * *

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) or Automated Export System (AES) record is filed in accordance with the requirements of the Foreign Trade Statistics Regulations (15 CFR part 30), except that an SED or AES record is not required when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations.

* * * * *

PART 744—[AMENDED]

■ 8. The authority citation for part 744 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 12947, 60 FR 5079, 3 CFR, 1995 Comp., p. 356; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of November 9, 2001, 66 FR 56965, 3 CFR, 2001 Comp., p. 917; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

■ 9. Section 744.7 is amended by revising paragraphs (b)(1)(iv) and (b)(2)(iv) to read as follows:

§ 744.7 Restrictions on certain exports to and for the use of certain foreign vessels or aircraft.

* * * * *

(b) * * *

(1) * * *

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) or Automated Export System (AES) record is filed in accordance with the requirements of the Foreign Trade Statistics Regulations (15 CFR part 30), except that an SED or AES record is not required when any of the commodities, other than fuel, is exported by U.S. airlines to their own aircraft abroad for their own use.

(2) * * *

(iv) Shipped as cargo for which a Shipper's Export Declaration (SED) or Automated Export System (AES) record is filed in accordance with the requirements of the Foreign Trade Statistics Regulations (15 CFR part 30), except that an SED or AES record is not required when any of these commodities is exported by U.S. airlines to their own installations and agents abroad for use in their aircraft operations.

* * * * *

PART 750—[AMENDED]

■ 10. The authority citation for part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

■ 11. Section 750.7 is amended by revising the fourth sentence of paragraph (b) to read as follows:

§ 750.7 Issuance of licenses.

* * * * *

(b) * * * Exporters must use the complete license number when preparing a Shipper's Export Declaration (SED) or Automated Export System (AES) record and any other export control documents, and in communicating with the Department of Commerce concerning the license.

* * * * *

PART 752—[AMENDED]

■ 12. The authority citation for part 752 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

■ 13. Section 752.7 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

§ 752.7 Direct shipment to customers.

* * * * *

(b) * * *

(1) *Exports by an SCL holder.* The SCL holder may make a direct shipment by entering on the Shipper's Export Declaration or Automated Export System record the name and address of the customer as ultimate consignee and adding the notation "by order of (name and address of consignee requesting the direct shipment)."

* * * * *

■ 14. Section 752.15 is amended by revising paragraph (a) to read as follows:

§ 752.15 Export clearance.

(a) *Shipper's Export Declaration (SED) or Automated Export System (AES) record.* The SED or AES record covering an export made under an SCL must be prepared in accordance with requirements of the Foreign Trade Statistics Regulations (15 CFR part 30) and § 758.1 of the EAR.

(1) *Item descriptions.* Item descriptions on the SED or AES record must indicate specifically the ECCN and item description conforming to the applicable CCL description and incorporating any additional information where required by Schedule B (*e.g.*, type, size, name of specific item, *etc.*).

(2) *Value of shipments.* There is no value limitation on shipments under the SCL; however, you must indicate the value of each shipment on the respective SED or AES record.

(3) *SCL number.* The SED or AES record must include the SCL number followed by a blank space, and then the consignee number identifying the SCL's approved consignee to whom the shipment is authorized.

* * * * *

PART 754—[AMENDED]

■ 15. The authority citation for part 754 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et. seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 30 U.S.C. 185(s), 185(u); 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; E.O. 11912, 41 FR 15825, 3 CFR, 1976 Comp., p. 114; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

■ 16. Section 754.2 is amended by revising paragraphs (h)(2), (i)(3), and (j)(2) to read as follows:

§ 754.2 Crude oil.

* * * * *

(h) * * *

(2) A person exporting crude oil pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the letter code "SS–SPR" or the equivalent code as set forth in Appendix C to 15 CFR part 30.

(i) * * *

(3) A person exporting crude oil pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the letter code "SS–SAMPLE" or the equivalent code as set forth in Appendix C to 15 CFR part 30.

(j) * * *

(2) *Shipper's Export Declaration or Automated Export System.* In addition to the requirements of paragraph (j)(1) of this section, for each export under License Exceptions TAPS, the exporter must file with BIS a Shipper's Export Declaration (SED) or Automated Export System (AES) record covering the export not later than 21 days after the export has occurred. The SED or AES record shall be sent to the following address: Director, Deemed Exports and Short Supply Division, Office of Strategic Trade and Foreign Policy Controls, Bureau of Industry and Security, PO Box 273, U.S. Department of Commerce, Washington, DC 20044.

* * * * *

■ 17. Section 754.4 is amended by revising paragraphs (c)(4) and (d)(3)(ii) to read as follows:

§ 754.4 Unprocessed western red cedar.

* * * * *

(c) * * *

(4) A person exporting any item pursuant to this License Exception must enter on any required Shipper's Export Declaration (SED) or Automated Export System (AES) record the letter code "SS–WRC".

(d) * * *

(3) * * *

(ii) A copy of the Shipper's Export Declaration of Automated Export System record.

* * * * *

PART 758—[AMENDED]

■ 18. The authority citation for part 758 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

■ 19. Section 758.1 is amended by revising paragraphs (b)(1), (2), and (3) and the third sentence of paragraph (e) to read as follows:

§ 758.1 The Shipper's Export Declaration (SED) or Automated Export System (AES) record.

* * * * *

(b) * * *

(1) For all exports of items subject to the EAR that are destined to Cuba, Iran, Iraq, Libya, North Korea, Sudan, or Syria, regardless of value (*see* 15 CFR 30.55);

(2) For all exports subject to the EAR that require a license regardless of value, or destination;

(3) For all exports of commodities and mass market software subject to the EAR when the value of the commodities or mass market software classified under a single Schedule B Number (or Harmonized Tariff Schedule number) is over $2,500, except as exempted by the Foreign Trade Statistics Regulations (FTSR) in 15 CFR part 30 and referenced in paragraph (c) of this section; or

* * * * *

(e) *Signing the Shipper's Export Declaration or transmitting data via AES.*

* * * The person who signs the SED or transmits data via AES, whether exporter (U.S. principal party in interest) or agent, is responsible for the truth, accuracy, and completeness of the SED or AES record, except insofar as that person can demonstrate that he or she reasonably relied on information furnished by others.

* * * * *

■ 20. Section 758.2 is amended by revising the introductory paragraph, the fourth sentence of paragraph (a) and paragraph (c)(3) to read as follows:

§ 758.2 Automated Export System (AES).

The Census Bureau's Foreign Trade Statistics Regulations (FTSR) (15 CFR Part 30) contain provisions for filing Shipper's Export Declarations (SEDs) electronically using the Automated Export System (AES). In order to use AES, you must apply directly to the Census Bureau for certification and approval through a Letter of Intent (*see* 15 CFR 30.60(b) and Appendix A to part 30 of the FTSR). Three AES filing options are available for transmitting shipper's export data. Option 1 is the standard paper filing of the SED, while the other two options are electronic. Option 2 requires the electronic filing of all information required for export prior to export (15 CFR 30.61(a) and 30.63); Option 4 is available only for approved filers (approval by Census Bureau, Bureau of Customs and Border Protection, BIS and other agencies) and requires no information to be transmitted prior to export, with complete information transmitted within 10 working days of exportation (15 CFR 30.61(b) and 30.62).

(a) *Census' Option 4 Application Process.*

* * * If the Census Bureau receives neither notification of denial, nor a request for an extension from the agency within 30 days of the date of referral of the letter of intent to the agency, the applicant is deemed to be approved by that agency. * * *

* * * * *

(c) BIS Option 4 evaluation criteria.

* * * * *

(3) Exports are destined to a country in Country Group E:1 (Supplement No.1 to part 740 of the EAR).

* * * * *

■ 21. Section 758.7 is amended by revising the first sentence of paragraph (b)(1)(i) and the third sentence of paragraph (b)(6) to read as follows:

§ 758.7 Authority of the Office of Export Enforcement, the Bureau of Industry and Security, Customs Offices and postmasters in clearing shipments.

* * * * *

(b) * * *

(1) * * *

(i) *Purpose of inspection.* All items declared for export are subject to inspection for the purpose of verifying the items specified in the SED or AES record, or if there is no SED or AES record, the bill of lading or other loading document covering the items about to be exported, and the value and quantity thereof, and to assure observance of the other provisions of the Export Administration Regulations.

* * * * *

(6) * * * In addition to the authority of Customs officers to seize and detain items, both Customs officials and officials to the Office of Export Enforcement are authorized to detain any shipment held for review of the SED or AES record, or if there is no SED or AES record, the bill of lading or other loading document covering the items about to be exported, or for physical inspection of the items, whenever such action is deemed to be necessary to assure compliance with the EAR.

* * * * *

■ 22. Section 758.9 is revised to read as follows:

§ 758.9 Other applicable laws and regulations.

The provisions of this part 758 apply only to exports regulated by BIS. Nothing contained in this part 758 shall relieve any person from complying with any other law of the United States or rules and regulations issued thereunder, including those governing SEDs, AES records, and manifests, or any applicable rules and regulations of the Bureau of Customs and Border Protection or Bureau of Immigration and Customs Enforcement.

PART 770—[AMENDED]

■ 23. The authority citation for part 770 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

■ 24. Section 770.2 is amended by revising the first sentences in paragraphs (e)(2)(ii) and (f) to read as follows:

§ 770.2 Item interpretations.

* * * * *

(e) * * *

(2) * * *

(ii) When preparing the Shipper's Export Declaration (SED) or Automated Export System (AES) record, a system being shipped complete (*i.e,* machine and control unit), should be reported under the Schedule B number for each machine. * * *

(f) *Interpretation 6: Parts, accessories, and equipment exported as scrap.* Parts, accessories, or equipment that are being shipped as scrap should be described on the SED or AES record in sufficient detail to be identified under the proper ECCN. * * *

* * * * *

PART 772—[AMENDED]

■ 25. The authority citation for part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2003, 66 FR 47833, August 11, 2003.

■ 26. Section 772.1 is amended by revising the definition of NLR to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

NLR. NLR ("no license required") is a symbol entred on the Shipper's Export Declaration or an Automated Export System record certifying that no license is required.

* * * * *

Dated: August 15, 2003.

Matthew S. Borman,

Acting Assistant Secretary for Export Administration.

[FR Doc. 03–21471 Filed 8–20–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF DEFENSE

48 CFR Part 217

[DFARS Case 2002–D041]

Defense Federal Acquisition Regulation Supplement; Multiyear Contracting Authority Revisions

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 820 of the National Defense Authorization Act for Fiscal Year 2003. Section 820 restricts the use of multiyear contracts for supplies to only those for complete and usable end items, and restricts the use of advance procurement to only those long-lead items necessary in order to meet a planned delivery schedule for complete major end items.

DATES: Effective date: August 21, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before October 20, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@osd.mil.* Please cite DFARS Case 2002–D041 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations

Council, Attn: Ms. Teresa Brooks, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D041.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 217.1 to implement Section 820 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314). Section 820 amends the multiyear contracting authority at 10 U.S.C. 2306b(i) to specify that DoD may obligate funds for procurement of an end item under a multiyear contract only if the item is a complete and usable end item; and that DoD may obligate funds for advance procurement of property only for those long-lead items necessary to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily pertains to DoD planning and budget considerations with regard to multiyear contracts. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D041.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 820 of the National Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314), which restricts the use of multiyear contracts for supplies to only those for complete and usable end items, and restricts the use of advance procurement to only those long-lead items necessary in order to meet a planned delivery schedule for complete major end items. Section 820 became effective upon enactment on December 2, 2002. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 217

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 217 is amended as follows:

■ 1. The authority citation for 48 CFR Part 217 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 217—MULTIYEAR CONTRACTING

■ 2. Section 217.172 is amended as follows:

■ a. By revising paragraph (a);

■ b. In paragraph (b) by adding, before the period, the parenthetical "(10 U.S.C. 2306b(a)(6))"; and

■ c. In paragraph (d)(1), in the parenthetical, by removing "10 U.S.C. 2306b(l)(1)" and adding in its place "10 U.S.C. 2306b(l)(1)(B)(i)(II)". The revised text reads as follows:

217.172 Multiyear contracts for supplies.

(a) This section applies to all multiyear contracts for supplies, including weapon systems and other multiyear acquisitions specifically authorized by law. For additional policies that apply only to multiyear contracts for weapon systems and other multiyear acquisitions specifically authorized by law, see 217.173.

* * * * *

■ 3. Section 217.173 is amended as follows:

■ a. By revising the heading and paragraph (b) introductory text;

■ b. By redesignating paragraph (b)(5) as paragraph (b)(7); and

■ c. By adding new paragraphs (b)(5) and (b)(6). The revised and added text reads as follows:

217.173 Multiyear contracts for weapon systems and other multiyear acquisitions specifically authorized by law.

* * * * *

(b) The head of the agency must ensure that the following conditions are satisfied before awarding a multiyear contract under the authority described in paragraph (a) of this section or for other multiyear acquisitions specifically authorized by law:

* * * * *

(5) The contract is for the procurement of a complete and usable end item (10 U.S.C. 2306b(i)(4)(A)).

(6) Funds appropriated for any fiscal year for advance procurement are obligated only for the procurement of those long-lead items that are necessary in order to meet a planned delivery schedule for complete major end items that are programmed under the contract to be acquired with funds appropriated for a subsequent fiscal year (including an economic order quantity of such long-lead items when authorized by law (10 U.S.C. 2306b(i)(4)(B)).

* * * * *

■ 4. Section 217.174 is amended by revising paragraphs (a)(1) and (a)(2) and by adding paragraph (c) to read as follows:

217.174 Multiyear contracts that employ economic order quantity procurement.

(a) * * *

(1) A multiyear contract providing for economic order quantity procurement in excess of $20 million in any one year (10 U.S.C. 2306b(l)(1)(B)(i)(I)); or

(2) A contract for advance procurement leading to a multiyear contract that employs economic order quantity procurement in excess of $20 million in any one year (10 U.S.C. 2306b(l)(1)(B)(ii); Section 8008(a) of Public Law 105–56 and similar sections in subsequent DoD appropriations acts).

* * * * *

(c) See 217.173(b)(6) for additional provisions regarding procurement of economic order quantities of long-lead items.

[FR Doc. 03–21309 Filed 8–20–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 219

[DFARS Case 2003–D003]

Defense Federal Acquisition Regulation Supplement; Competitiveness Demonstration Codes Update

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update the list of industry categories designated by DoD for enhanced small business participation under the Small Business Competitiveness Demonstration Program.

EFFECTIVE DATE: August 21, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; facsimile (703) 602–0350. Please cite DFARS Case 2003–D003.

SUPPLEMENTARY INFORMATION:

A. Background

Policy for the Small Business Competitiveness Demonstration Program is in FAR subpart 19.10. One of the objectives of the Program is to expand small business participation in certain targeted industry categories. Each Federal agency participating in the Program designates its own targeted categories in consultation with the Small Business Administration. DoD's targeted categories are in DFARS 219.1005(b).

This final rule updates the North American Industry Classification System (NAICS) codes shown for the targeted industry categories at 219.1005(b)(10), for consistency with the 2002 NAICS listing published by the U.S. Census Bureau. In addition, to simplify the descriptions of targeted categories, the entries for research and development have been combined with the entries for manufacturing at 219.1005(b)(5), (6), and (7). These changes are administrative only and have no impact on the Program.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2003–D003.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 219 is amended as follows:

■ 1. The authority citation for 48 CFR Part 219 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

■ 2. Section 219.1005 is amended in paragraph (b), in the table, by revising paragraphs (5), (6), (7), and (10) to read as follows:

219.1005 Applicability.

* * * * *

(b) * * *

NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS)

Description	NAICS code
* * * * * * * *	
(5) Aircraft Engine and Engine Parts Manufacturing (including Research and Development)	336412
(6) Guided Missile and Space Vehicle Manufacturing (including Research and Development)	336414
(7) Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing (including Research and Development)	336419
* * * * * * * *	
(10) (i) Cellular and Other Wireless Telecommunications	517212
(ii) Satellite Telecommunications	517410
(iii) Other Telecommunications	517910

[FR Doc. 03–21314 Filed 8–20–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 2002–D042]

Defense Federal Acquisition Regulation Supplement; Contractor Performance of Security-Guard Functions

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 332 of the National Defense Authorization Act for Fiscal Year 2003. Section 332 provides temporary authority for contractor performance of security-guard functions at military installations or facilities to meet the increased need for such functions since September 11, 2001.

EFFECTIVE DATE: August 21, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; facsimile (703) 602–0350. Please cite DFARS Case 2002–D042.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 7443 on February 14, 2003, to implement Section 332 of the National

Defense Authorization Act for Fiscal Year 2003 (Public Law 107–314). Section 332 authorizes DoD to waive the prohibition at 10 U.S.C. 2465(a), to permit contractor performance of security-guard functions at military installations or facilities to meet the increased need for such functions since September 11, 2001.

Three respondents submitted comments on the interim rule. Two of the respondents expressed their support for the rule. A third respondent stated that a contracting officer's representative (COR) may be appointed to an installation's Provost Marshal or Security Office and questioned whether the rule should specify that contracting offices must ensure that CORs are duly trained. DoD believes that training of CORs is already adequately addressed in DFARS 201.602–2(2), which states that a COR must be "qualified by training and experience commensurate with the responsibilities to be delegated in accordance with department/agency guidelines." Therefore, DoD believes that no change to the rule is needed, and has adopted the interim rule as a final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to security-guard functions in excess of those being performed on military installations or facilities as of September 10, 2001. While the rule is expected to result in additional opportunities for small business concerns to perform security-guard functions, the overall impact is not expected to be substantial.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR part 237, which was published at 68 FR 7443 on February 14, 2003, is adopted as a final rule without change.

[FR Doc. 03–21310 Filed 8–20–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2003–D007]

Defense Federal Acquisition Regulation Supplement; Caribbean Basin Country—Dominican Republic

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add the Dominican Republic to the list of Caribbean Basin countries whose products DoD may acquire under the Trade Agreements Act, in accordance with a determination of the United States Trade Representative.

EFFECTIVE DATE: August 21, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2003–D007.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the clause at DFARS 252.225–7021, Trade Agreements, to add the Dominican Republic to the definition of "Caribbean Basin country." The rule implements the direction of the United States Trade Representative to treat the products of the Dominican Republic as eligible products in acquisitions subject to the Trade Agreements Act (68 FR 27883, May 21, 2003).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2003–D007.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 252 is amended as follows:

■ 1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7021 [Amended]

■ 2. Section 252.225–7021 is amended as follows:

■ a. By revising the clause date to read "(AUG 2003)"; and

■ b. In paragraph (a)(1) by adding, in alphabetical order, "Dominican Republic" to the list of countries.

[FR Doc. 03–21313 Filed 8–20–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2002–D016]

Defense Federal Acquisition Regulation Supplement; Liability for Loss Under Vessel Repair and Alteration Contracts

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to increase a contractor's liability for loss or damage under vessel repair and alteration contracts, from $5,000 to $50,000 per incident. The increased dollar ceiling is based on adjustments for inflation, the need to provide a financial incentive for contractors to minimize loss and damage, and common insurance practices.

EFFECTIVE DATE: August 21, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132,

3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; facsimile (703) 602–0350. Please cite DFARS Case 2002–D016.

SUPPLEMENTARY INFORMATION:

A. Background

DoD uses the clause at DFARS 252.217–7012, Liability and Insurance, in master agreements for repair and alteration of vessels. The clause holds a contractor liable for loss or damage resulting from defective contractor workmanship and materials, and contains a liability ceiling for any other contractor-incurred loss or damage. This rule increases the contractor's liability ceiling from $5,000 to $50,000 per incident.

DoD published a proposed rule at 68 FR 7491 on February 14, 2003. One respondent submitted comments on the proposed rule. A summary of DoD's analysis of the comments is provided below:

Comment: The respondent took issue with the increase in the contractor's liability ceiling from $5,000 to $50,000, and instead recommended a ceiling of $7,465 based on actual inflation experienced by the shipbuilding industry since 1982 when the $5,000 ceiling was established.

DoD Response: Do not concur. The increase was not based solely on inflation factors. The increase from $5,000 to $50,000 was determined to be appropriate as a result of a Navy study of incidents of contractor-incurred damages under vessel repair and alteration contracts during a recent 3-year period, which indicated that 70 percent of the incidents were for amounts below $50,000, whereas only 30 percent of the incidents were for amounts of $5,000 or less. The objective of the increase is to provide a financial incentive for contractors to minimize loss and damage.

Comment: The respondent does not agree with DoD's position that the increased dollar ceiling is necessary to provide a financial incentive for contractors to minimize loss or damage. The clause at DFARS 252.217–7012 already provides a strong financial incentive for contractors to minimize loss or damage. Under the clause, the Government's assumption of risk is essentially limited to loss or damage resulting from accidents. To require contractors to assume more of the costs associated with accidental damage to vessels will not necessarily result in a reduced number of occurrences, but will force contractors to price the costs of assumption of additional risks (due to higher ceilings) into their cost proposals for Navy ship repair work.

DoD Response: Do not concur. Increasing the ceiling is consistent with the commercial insurance practice of setting a deductible that lowers claim frequency, eliminates insubstantial claims, and provides an incentive for the insured to avoid losses. Any increased contract costs that might result from the higher ceiling should be offset by the reduced number of claims submitted to the Government.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* DoD has prepared a final regulatory flexibility analysis, which is summarized as follows:

This rule increases a contractor's liability for loss or damage to a Government vessel, materials, or equipment, from $5,000 to $50,000 per incident. The rule will apply to small entities that have a master agreement with DoD for repair and alteration of vessels. There is no available estimate of the total number of small entities that will be subject to the rule. However, the Naval Sea Systems Command (NAVSEA), which is responsible for the maintenance and repair of the majority of vessels, has collected data indicating that, during the period from May 1997 to October 2002, there were 61 occurrences of contractor-caused damages. Of those, 13 occurrences (21 percent) were attributed to small entities. Entities with master agreements for repair and alteration of vessels will need to increase their insurance coverage from $5,000 to $50,000. DoD considered using a liability ceiling of less than $50,000, but believes the $50,000 ceiling to be appropriate because—

1. This ceiling should capture a majority of claims, since a NAVSEA study has shown that 70 percent of incidents of contractor-incurred damages during a recent 3-year period were for amounts less than $50,000;

2. The increase should provide an incentive for contractors to reduce the number of such occurrences, thereby reducing vessel "down-time" for maintenance and repair and making more efficient use of scarce maintenance dollars; and

3. The increase is consistent with the commercial insurance practice of setting a deductible that lowers claim frequency, eliminates insubstantial claims, and provides an incentive for the insured to avoid losses.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 252 is amended as follows:

■ 1. The authority citation for 48 CFR Part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.217–7012 [Amended]

■ 2. Section 252.217–7012 is amended as follows:

■ a. By revising the clause date to read "(AUG 2003)"; and

■ b. In paragraph (b)(6), by removing "$5,000" and adding in its place "$50,000".

[FR Doc. 03–21311 Filed 8–20–03; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 68, No. 162
Thursday, August 21, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 1910, 1941 and 1965

RIN 0560–AH01

Revisions to Direct Farm Loan Programs Appraisal Regulations

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Farm Service Agency's (FSA) regulations governing real estate and chattel appraisals. In the loan making process, the rule proposes to allow FSA to obtain appraisals after loan funds become available and the applicant is determined eligible. Also, the rule proposes to increase the dollar threshold that determines when a real estate appraisal is required. In loan servicing, the rule proposes to raise the dollar threshold for real estate appraisals in partial release situations, and allow the Agency to release real estate security without appraising the retained real estate in some cases. All these changes will reduce FSA's appraisal costs and enhance the timeliness of program delivery of certain loan making and servicing actions.

DATES: Comments on this rule must be received on or before October 20, 2003 to be given full consideration.

ADDRESSES: Written comments may be mailed to the Farm Service Agency, U.S. Department of Agriculture, Farm Loan Programs, Loan Servicing and Property Management Division, Attention: Director, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250–0523, or comments will be accepted when submitted at *http://www.regulations.gov*. All written comments received in connection with this rule will be available for public inspection 8:15 a.m.–4:45 p.m., Eastern Standard Time, except holidays, at 1250 Maryland Avenue, SW., Suite 500, Washington, DC 20024–0523.

FOR FURTHER INFORMATION CONTACT: Michael Cumpton, Senior Loan Officer, Farm Service Agency; telephone: 202–690–4014; Facsimile: 202–690–0949; E-mail: *mike_cumpton@wdc.usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant and has not been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601, the Agency has determined that there will not be a significant economic impact on a substantial number of small entities. All Farm Service Agency direct loan borrowers and all entities affected by this rule are small businesses according to the North American Industry Classification System, and the United States Small Business Administration. There is no diversity in size of the entities affected by this rule and the costs to comply with it are the same for all entities.

In this rule, FSA is proposing revisions to both loan making and loan servicing regulations. In loan making, the Agency will not require a real estate appraisal completed by a certified general appraiser when real estate is used to secure an operating loan (OL) of less than $50,000. This action will affect less than 5 percent of the OL's processed per year, or approximately 720 applicants. This would result in an annual savings to the Agency of approximately $540,000 ($750/appraisal). In loan servicing, the Agency will increase the dollar threshold for requiring a certified real estate appraisal from $10,000 to $25,000 when considering partial releases, subordinations, exchanges, or other real estate servicing actions. The Agency estimates that this will eliminate the need for approximately 150 certified real estate appraisals, for a savings to the Agency annually of approximately $112,500.

The Agency does not expect these changes to impose any additional cost on the borrowers. In fact, the reduced need for appraisals should benefit borrowers with increased timeliness of loan decisions by the Agency. Therefore, the costs of compliance from this rule are deemed not significant. Accordingly, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Agency certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact Statement

The environmental impacts of this rule have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799, and part 1940, subpart G. FSA has completed an environmental evaluation and concluded that the rule requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Executive Order 12988

This rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this executive order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Executive Order 12372

For reasons set forth in the Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs and activities within this rule are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector. Agencies generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures of $100 million or more in any 1 year for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This proposed rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus, this proposed rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 13132

The policies contained in this rule do not have any substantial direct effect on States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Nor does this proposed rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with the States is not required.

Paperwork Reduction Act

The amendments to 7 CFR Chapter XVIII contain no new information collections that require approval under the Paperwork Burden Reduction Act of 1995 for OMB control numbers 0560–0158, 0560–0162, and 0560–0178.

Federal Assistance Programs

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans

Discussion of the Proposed Rule

This rule proposes to amend the regulations that govern the requirement for appraisals for FSA Farm Loan Programs (FLP) direct loans.

Application Processing

FSA proposes to remove the requirement for obtaining a real estate or chattel appraisal as part of the application process in 7 CFR 1910.4(b)(21). Under existing regulations, when real estate is to be taken as security, FSA usually obtains the appraisal by contracting with a qualified appraiser, prior to approval of a loan. Chattel appraisals are completed by FSA employees who have been adequately trained and delegated chattel appraisal authority. The proposed rule will allow FSA to approve loans with the condition that an acceptable appraisal, which reflects at least adequate collateral for the loan, will be obtained before the loan is closed. Therefore, FSA will not be required to wait on a real estate appraisal and may conditionally approve the loan.

The primary benefit to FSA is one of cost savings. As previously discussed, existing procedures require that an appraisal be obtained prior to loan approval. Because availability of loan funds is subject to Congressional appropriations, all FSA farm loans are approved subject to the availability of funds. When appropriation levels are inadequate to meet loan demand, approved applications are held until funding becomes available. Sometimes, a year or more may pass before loan funds become available for an applicant, particularly in the farm ownership (FO) loan program. In such cases, the real estate appraisal purchased prior to loan approval is outdated when funding becomes available, and FSA must purchase a new appraisal. Thus, FSA pays for two real estate appraisals for one loan. Under this proposed rule, FSA will not purchase an appraisal until funds are available for the loan, thus, eliminating the need for second appraisals and the costs associated with them. While delays in funding can occur, the appraisal requirement will not cause any additional delay in most loan closings as loan funds are usually available without delay. On the Agency's, "Request for Obligations of Funds," applicants will agree that the 15-working day loan closing requirement may be exceeded to obtain the necessary appraisals. FSA will endeavor to minimize any delays. This change does not affect FSA's responsibility for ordering and funding the cost of real estate and chattel appraisals for loan making purposes.

Operating Loan Real Estate Appraisal Limits

FSA proposes to amend 7 CFR 1941.25 to require that a real estate appraisal be obtained when real estate is taken as primary security for an operating loan (OL) and the amount of the loan to be secured by the real estate exceeds $50,000. The section currently provides no threshold dollar amount. FSA has determined that OL loans of $50,000 or less generally constitute less risk than larger loans due to the relatively small dollar amount involved. In addition, operations with credit needs in this range are normally not complex. Loan officials will no longer have to wait for an appraisal in such cases before conducting a loan analysis and making a credit decision. Therefore, applicants will receive loan funds on a more timely basis. This revision adds consistency with the existing Low Documentation policy for operating loans of $50,000 or less, reduces the number of real estate appraisals required, and reduces FSA's real estate appraisal expenses.

Real Estate Security Servicing

FSA proposes to increase the transaction amount triggering the need for a real estate appraisal referenced in 7 CFR 1965.13(d), from $10,000 to $25,000. This will reduce the number of appraisals required by the Agency when borrowers wish to sell some portion of their real estate. Also, FSA is currently required to appraise the real property retained when processing a partial release. This measure ensures that the property retained by the borrower, after the sale, is not adversely affected by the loss of the tract sold (such as when the sale removes access to a paved road). The proposed rule would eliminate this requirement in most cases as this determination can usually be made without an appraisal. FSA may still obtain an appraisal on the property to be sold or retained when necessary to protect the government's financial interests.

List of Subjects

Part 1910

Agriculture, Credit, Loan programs—housing and community development, Low and moderate income housing, Sex discrimination.

Part 1941

Crops, Livestock, Loan programs—agriculture, Rural areas, Youth.

Part 1965

Foreclosure, Credit, Loan programs—agriculture, Loan programs—housing and community development, Rural areas.

Accordingly, 7 CFR chapter XVIII is proposed to be amended as follows:

PART 1910—GENERAL

1. The authority citation for part 1910 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Receiving and Processing Applications

2. In § 1910.4 revise paragraph (b) by removing paragraph 21 and redesignating paragraph 22 as paragraph 21.

3. In § 1910.4 revise paragraph (j)(1)(i) to read as follows:

§ 1910.4 Processing applications.

* * * * *

(j) * * *

(1) * * *

(i) Receipt by the applicant of a signed copy of the Agency's request for obligation of funds on the appropriate Agency form is written notice of loan approval and any conditions that must be met prior to loan closing. Loan approval conditions may include, but are not limited to, obtaining required real estate and chattel appraisals.

* * * * *

PART 1941—OPERATING LOANS

4. The authority citation for part 1941 continues to read as follows:

Authority: 5 U.S.C. 301 and 7 U.S.C. 1989.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

5. Revise § 1941.25 paragraph (a)(4) to read as follows:

§ 1941.25 Appraisals.

(a) * * *

(4) A real estate appraisal is required when real estate is taken as primary security, as defined in § 1941.4, and the amount of the loan to be secured by the real estate exceeds $50,000.

* * * * *

PART 1965—REAL ESTATE

6. The authority citation for part 1965 continues to read as follows:

Authority: 5 U.S.C. 301, 7 U.S.C. 1989 and 42 U.S.C. 1480.

Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases

7. In § 1965.13 revise introductory paragraph (d) to read as follows:

§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.

* * * * *

(d) *Appraisals.* A new appraisal report for the security to be transferred or released will be obtained in accordance with § 761.7 of this title as necessary to protect the financial interests of the Government or when the transaction involves more than $25,000. A new appraisal report for the security to be retained will be obtained in accordance with that section as necessary to protect the financial interests of the Government. Appraisal reports under this section may show the present market value of the property being transferred or released and the property being retained on a single appraisal report or on separate appraisal reports. The value of rights to mining products, gravel, oil, gas, coal or other minerals will be specifically included as a part of the appraised value of the real estate security.

* * * * *

Signed in Washington, DC, on August 14, 2003.

J.B. Penn,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 03–21422 Filed 8–20–03; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 106, 114, 9004, and 9034

[Notice 2003–14]

Candidate Travel

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed changes to its rules covering the proper rates and timing for payment of candidate travel on private means of transportation that are not offered for commercial use, including government conveyances. The proposed rule would provide more comprehensive guidance than the current regulations by establishing a single, uniform valuation scheme for campaign travel that does not depend on whether the service provider is a corporation, labor organization, individual, partnership, limited liability company or other entity, or on whether the destination city is served by regularly scheduled commercial service. The proposed rules would apply to all Federal candidates including publicly funded presidential candidates. No final decisions have been made by the Commission on any of the proposed revisions in this Notice. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before September 19, 2003. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on October 1, 2003, at 9:30 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *travel2003@fec.gov* and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr. Richard T. Ewell, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is proposing several changes to its rules to establish a simple, uniform payment scheme covering all candidate travel on either government or private aircraft and other conveyances. The current regulation at 11 CFR 114.9(e) establishes the timing for reimbursement and the amount that a candidate must reimburse a corporation or labor organization for the use of a private airplane or other means of transportation, but does not address means of travel furnished by individuals, partnerships, and other entities. The current rules in section 114.9(e) are also not fully consistent with the Commission's treatment of similar travel by presidential and vice-presidential candidates using government-provided transportation under 11 CFR 9004.7 and 9034.7.

I. Proposed 11 CFR 100.93 Payment for Travel by Airplane and Other Means of Transportation

A. Proposed Replacement of 11 CFR 114.9(e) With Proposed 11 CFR 100.93

The Commission proposes several changes to the candidate travel rules currently set forth at 11 CFR 114.9(e). While 11 CFR part 114 focuses on corporate and labor organization activity, and current 11 CFR 114.9(e)(2) focuses on means of travel owned or leased by corporations or labor organizations, the Commission seeks to broaden the rules to include airplanes and other means of travel owned by persons other than corporations and labor organizations. The Commission recognizes that in most cases the means of travel used for campaign trips is likely to be owned or leased by a corporation or labor organization, but notes that the current section heading for 11 CFR 114.9, "Use of corporate and labor organization facilities and means of transportation," would not accurately convey the scope of the proposed travel rules encompassing airplanes and other means of transportation owned by individuals, partnerships, or other entities. Therefore, the Commission proposes deleting the reference to "means of transportation" from the title of 11 CFR 114.9, removing and reserving paragraph (e) of 114.9, and relocating the substance of the travel reimbursement rules to a new section.

To accommodate the broadened scope of the travel reimbursement rules, the Commission proposes adding new section 100.93 to the enumerated exceptions to the definition of "contribution" in 11 CFR part 100, subpart C. This new section would describe circumstances in which the use of a private means of transportation not owned or leased by candidates or their authorized committees would not be contributions, much like current § 100.52 (also in subpart C), which describes when the use of commercial transportation is or is not a contribution. Proposed § 100.93 would be based on the current 11 CFR 114.9(e), with the organizational and substantive changes described below.

B. Proposed 11 CFR 100.93(a) Scope and Definitions

1. Proposed Paragraph (a)(1) Scope

Proposed paragraph (a)(1) would define the scope of the rules and clarify any perceived ambiguity regarding the scope of the current 11 CFR 114.9(e)(1). The current rule focuses on the use of airplanes owned by corporations or labor organizations that "are not licensed to offer commercial service for travel in connection with a Federal election." One district court found this wording to be ambiguous. In this case, a presidential candidate claimed that the regulation applied to all travel on airplanes except airplanes owned or leased by a corporation or labor organization possessing a license for travel in connection with a Federal election. *See Federal Election Commission* v. *Arlen Specter '96,* 150 F. Supp. 2d 797, 804 and 808 (E.D. Pa. 2001). The Court noted that no such license existed and ultimately deferred to the Commission's longstanding determination that 11 CFR 114.9(e) applies to airplanes owned by corporations or labor organizations not engaged in the business of providing commercial air service generally, without regard to any connection with a Federal election. *Id.* at 812.

In order to remove this perceived ambiguity, the Commission proposes further clarification of the class of airplanes affected. As noted above, proposed 11 CFR 100.93 would apply to service providers depending on whether the airplane is or is not "normally operated for commercial passenger service," rather than whether the owner of the airplane is "licensed to offer commercial service for travel in connection with a Federal election."

The Commission notes that commercial and non-commercial air travel is subject to the authority of the Department of Transportation (DOT) and various certifications of the Federal Aviation Administration (FAA). Aircraft are permitted to operate pursuant to various FAA safety certifications based generally on passenger capacity, route frequency, and type of service offered. Private aircraft not offering commercial passenger service operations normally operate under certification provided pursuant to either 14 CFR parts 91 or 125.[1] Some airlines receive certificates of public necessity and convenience to operate commercial passenger service as common carriers within specified domestic locations pursuant to 14 CFR part 135. Other common carriers, such as commercial air taxi service and on-demand charter service, are permitted to operate under special certification in 14 CFR part 298, which exempts them from certain requirements that would be otherwise required under 14 CFR part 135. Certain other aircraft are also permitted to serve as common carriers and offer passenger service for compensation under 14 CFR parts 121 and 129. Each of the FAA certifications focuses mainly on the technical specifications and safety requirements of the aircraft and crew.

Aircraft operating under 14 CFR part 91 certification are not usually permitted to accept any form of payment or reimbursement from passengers, but a special FAA exception permits Federal candidates to reimburse the owners of such aircraft for the use of planes pursuant to the Commission's regulations. *See* 14 CFR 91.321.[2] The Commission therefore intends its regulations in proposed 11 CFR 100.93 to apply only to airplanes *not* authorized to conduct operations in air transportation as a common carrier (*e.g.*, 14 CFR parts 91 or 125), while the current regulations at 11 CFR 100.52 would apply to all airplanes operated pursuant to other certifications that do permit carriage of passengers for compensation. Proposed 11 CFR 100.93, however, would focus on the normal use of the airplane, rather than the operating certificate possessed by its owner, to avoid the need for title and certification checks. The Commission seeks comment on whether the type of certification with the FAA, or some other method, should be used to determine whether an airplane is normally operated for commercial passenger service such that a normal and usual rate for that passenger service could be readily and accurately ascertained.

As noted above, the current rule distinguishes between the use of airplanes owned or leased by a corporation or labor organization licensed to offer commercial services for travel, and airplanes that are owned by other corporations or labor organizations not normally engaged in commercial air passenger service. This distinction requires an examination of the plane's ownership or lease structure to determine the proper reimbursement timing and amount. The Commission is concerned that the ownership determination may add unnecessary confusion to the payment process and is proposing to shift the focus of the rule away from whether the airplane's owner is a corporation or labor organization

[1] Aircraft operating pursuant to certification under 14 CFR parts 91 or 125 are not permitted to operate as common carriers, meaning that they cannot hold themselves out to the public as providing passenger service for compensation. *See* 14 CFR 119.1(a) (establishing additional base requirements in excess of the 14 CFR part 91 requirements for all air carriers and commercial operators that serve as common carriers) and 14 CFR 125.1(a) (applies to aircraft with a seating capacity of 20 or more persons, but only where common carriage is not involved).

[2] Aircraft operating under 14 CFR part 125 certification are similarly prohibited from operating as common carriers, but there is no similar general prohibition on the acceptance of payment from passengers to warrant an identical exception.

and onto the normal use of the airplane. The proposed rules would therefore apply not only to airplanes owned by corporations or labor organizations, but also to airplanes owned by any "person," as defined at 11 CFR 100.10, as well as airplanes owned by the Federal government or a State or local government.

An alternative approach, which is not incorporated into the proposed rules, would be to focus the distinction on whether the service provider is a "commercial vendor," as defined in 11 CFR 116.1(c), with respect to the transportation services. This approach would continue to require an examination of the ownership structure of service provider. Relying on the term "commercial vendor" could also lead to a different result in certain circumstances. For example, Commercial Airline A owns a specially configured jet that is reserved for its corporate executives and offers the use of that jet to Candidate B. Under the "commercial vendor" alternative, Commercial Airline A would likely qualify as a "commercial vendor" of transportation services, meaning that 11 CFR 100.52(d), rather than 11 CFR 100.93, would govern the reimbursement requirements for Candidate B's travel on the jet. This result would require Candidate B to calculate the "usual and normal rate" for the use of the jet under 11 CFR 100.52(d)(2), which could be difficult to ascertain because passengers on the jet are not normally charged any fee. However, under the proposed "not normally operated for commercial passenger service" approach, Candidate B's use of the jet would be governed by proposed § 100.93, not § 100.52, and the proper reimbursement could be calculated by referring to first-class or charter rates to that destination.

The Commission seeks comments on broadening the coverage of these travel rules from corporations and labor organizations to any "person" or government, as well as the proposed shift in focus from the ownership of the airplane to the normal use of the airplane.

The scope of proposed § 100.93, however, would be limited to non-commercial means of transportation. A campaign traveler using a commercial airline or other means of commercial transportation would continue to be subject to the more general definition in 11 CFR 100.52, which categorizes "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services' as an "in-kind contribution." 11 CFR 100.52(d). Thus, a candidate or other campaign traveler receives an in-kind contribution when he or she is provided commercial transportation without charge or at a charge that is less than the usual and normal charge for that transportation. Proposed § 100.93(a) would include a cross-reference to 11 CFR 100.52(a) and (d) to affirm the continued application of these rules to providers of commercial transportation.

2. Proposed Paragraph (a)(2) Definitions

Proposed paragraph (a)(2) would define several terms used in new § 100.93. The term "campaign traveler" would be defined to provide a succinct term covering the candidate, candidate's agent, or other individual traveling on behalf of a candidate or a candidate's authorized committee. "Service provider" would describe the person or entity providing the transportation to the campaign traveler. Given the complex ownership and leasing arrangements often associated with airplanes and other means of transportation, a "service provider" may be either the owner of the conveyance or a different person who is leasing the conveyance from the owner and making it available for the campaign traveler's use.

Under proposed paragraph (a)(2), the term "unreimbursed value" would be defined as the portion of the value provided to the campaign traveler, calculated according to the rules in this section, that is not reimbursed by the candidate's authorized committee. A late payment would not qualify as a reimbursement under this section, which means that the value of the service provided would be an in-kind contribution to the candidate. By contrast, a service provider would not make an in-kind contribution if the candidate's authorized committee provides payment within the time specified in this proposed section. The Commission seeks comments on each of these definitions.

C. 11 CFR 100.93(b) General Rule

Proposed § 100.93(b) would set forth the general rule for when travel by private means of transportation would not constitute a contribution to a candidate or authorized committee, as well as when and to what extent such travel is an in-kind contribution. Under proposed paragraph (b)(1), a candidate's authorized committee would not receive or accept a contribution if the authorized committee pays the service provider the full value of the transportation within the specified time, as determined in this proposed section. This proposed paragraph would generally require that the candidate's authorized committee, rather than the campaign traveler, pay the service provider to avoid receiving or accepting a contribution. The campaign traveler could pay the service provider directly for his or her own travel rather than having the campaign committee do so. Such payment would constitute an in-kind contribution by the campaign traveler to the candidate, unless it qualifies for the transportation expense exception set forth in 11 CFR 100.79.

In light of the fact that the current rules at 11 CFR 114.9(e) are limited to airplanes owned by corporations or labor organizations, payment is required because the unpaid use of the airplanes would constitute a contribution in violation of 2 U.S.C. 441b. In contrast, individuals, partnerships, and certain other persons are permitted to make in-kind contributions to candidates up to the amounts set forth in 2 U.S.C. 441a. Thus, a campaign traveler may use an airplane provided by someone permitted to make an in-kind contribution, and this use would be an in-kind contribution. Proposed 100.93(b)(2) would recognize this possibility by describing when a service provider would be making an in-kind contribution. For an in-kind contribution to be permissible, however, the candidate's authorized committee must comply with the payment conditions in proposed 11 CFR 100.93. If these conditions are not met, then the provision of the airplane would be prohibited if the service provider is a corporation or labor organization, or if the value of the service would, when added to other contributions to the same candidate by the service provider, exceed that service provider's contribution limit. *See* proposed 11 CFR 100.93(b)(2). The value of the in-kind contribution would be determined in the same manner as the amount of the reimbursement would normally be determined under proposed paragraphs (c), (d) or (e) of new section 100.93.

The Commission recognizes that this approach could, in some cases, require the same type of ownership analysis that otherwise would be avoided by the proposed rules. This analysis, however, would no longer be a necessary step in every circumstance because it would be employed only where the airplane's provider elects not to seek full or partial reimbursement from the candidate's authorized committee, or when the committee fails to reimburse the service provider. The Commission seeks comments on whether reimbursement should always be required, regardless of the ownership of the airplane, or whether the possibility of an in-kind

contribution from a permissible source should be addressed in some other fashion.

D. Proposed 11 CFR 100.93(c) Travel by Airplane

When a candidate or other campaign passenger uses an airplane owned by a person who is not in the business of providing commercial air travel, the current rules set the rate of reimbursement at either the first-class airfare or the normal charter rate, depending on whether a destination city is served by regularly scheduled commercial air service. 11 CFR 114.9(e)(1). The charter rate, which is normally higher than first-class airfare to an airport in the same area, represents the actual cost that a campaign would incur, but for the use of the corporate or labor airplane, to reach a particular destination by air when that destination is not served by commercial air service. Nevertheless, the Commission recognizes that candidates who campaign in major metropolitan areas that have regularly scheduled airline service will generally be able to use a private plane and reimburse only the equivalent of a first-class airfare, whereas the candidates who campaign in more rural areas that have little, if any, commercial air service would be required to reimburse the equivalent charter rate. The Commission is concerned that the current reimbursement scheme might be unnecessarily complex and negatively affects campaigning in rural areas.

To address these concerns, the Commission seeks comments on three alternative reimbursement rules in proposed 11 CFR 100.93(c), as well as any other appropriate payment schemes. The Commission also seeks comments on whether and how it should further simplify the rules and address other inequities, if any, arising from the current application of 11 CFR 114.9(e) or the changes proposed for § 100.93.

In addition, the Commission notes that many charter services charge a traveler for "deadhead miles," those miles the airplane travels empty while returning to its home base after a one-way flight. In some cases, charter services also require compensation for positioning costs for airplanes based many miles from the pickup and drop-off points. The Commission therefore seeks comments on how, if at all, the three alternative payment schemes should account for these expenses associated with the positioning of the airplane or "deadhead miles." For example, when a candidate travels one-way from California to Virginia on a private airplane based in Nevada and that airplane returns empty to Nevada, should that candidate's authorized committee be required to pay the expenses associated with the Nevada-to-California and Virginia-to-Nevada flights? If so, should each of these positioning or "deadhead" flights be determined in the same manner as described in the three alternative payment schemes below, or by using some other method?

1. Alternative A: Payment Based on First-Class Airfare

Alternative A would set the payment rate, for each individual traveling for campaign purposes, at the amount of the lowest non-discounted first-class airfare to the closest airport that has such service, regardless of whether the actual destination airport is served by regularly scheduled commercial air service. The proposed rule would focus on the closest destination airport, rather than the destination city, to avoid further confusion in light of the various geographic considerations discussed in Advisory Opinion ("AO") 1999–13.[3] Because airfares may vary based on the date of travel, the rate used in calculating the payment amount would have to correspond to the date of actual travel. The Commission seeks comments on how precisely the base rate should correspond to the actual date of travel. For example, some airlines or charter companies may set a base rate for tickets purchased over a month in advance of the travel date that is different than the price of the same ticket when purchased on the date of travel. Should a campaign be permitted to use the normal advance ticket price when calculating the comparable base rate as required in proposed § 100.93, or should a campaign be required to calculate the comparable rate based on purchase on a fixed date or period, such as the actual date of travel or the lowest price within seven days of the travel date?

Alternative A would also allow an authorized committee to reimburse the provider of a private airplane at the coach rate to the destination airport where the same airport is served by regularly scheduled coach airline service but not regularly scheduled first-class airline service. This distinction for coach service would accommodate industry trends and is based on the current rules governing presidential candidates' payments for the use of government aircraft. *See* 11 CFR 9004.7(b)(5)(i)(B) and 9034.7(b)(5)(i)(B). Please note, however, that if the actual destination is an airport that is not served by any regularly scheduled commercial air service, and the closest airport is served by regularly scheduled coach airline service but not regularly scheduled first-class airline service, the proposed reimbursement amount would still be the lowest non-discounted first-class airfare for the closest airport that is served by regularly scheduled first-class airline service and not the coach fare for the closest airport.

In addition, Alternative A would eliminate the advance payment requirement in 11 CFR 114.9(e)(1). Currently, because payment must be made prior to travel, the campaign must provide a check in advance to the corporation to cover a certain number of passengers. If last minute passengers are not paid for prior to boarding the airplane, the campaign has failed to comply with the requirements of current 11 CFR 114.9(e)(1), regardless of how promptly the campaign subsequently makes an after-the-fact reimbursement. However, where candidates use other means of transportation addressed in 11 CFR 109.2(e)(2), last minute passengers do not cause the same complications because the reimbursement may be made "within a commercially reasonable time," rather than in advance, so that the number of passengers is settled at the time the reimbursement is made.

Alternative A would address this disparate treatment by allowing a fixed period of seven calendar days for payment after travel has begun. This seven-day period would be shorter than the thirty-or-sixty day period used for other forms of transportation, *see* below, because under Alternative A the campaign would have complete control over the timing of the reimbursement as all the necessary passenger information and costs would be fixed at the time the airplane departs. Thus, it should be possible for the candidate's authorized committee to calculate the proper reimbursement rate without a billing or invoice process to cause delay.

The Commission recognizes that the removal of the advance payment rule could be perceived as a departure from the previous approach under which corporations are prohibited from extending credit outside the ordinary course of their business. *See* 11 CFR

[3] In AO 1999–13, the Commission recognized that particular destination cities might be serviced by several airports in the surrounding region. In that advisory opinion, the Commission determined that an airport need not be within the corporate limits of a city in order for that city to be considered "served by regularly scheduled commercial air service." The Commission further agreed that it was reasonable for the requestor to determine whether a city is served by a particular airport through reference to published sources such as a FAA directory or a corporate directory regarded at the time as the charter industry's standard reference for airports.

part 116. While the creation of a fixed post-travel time period for reimbursement in these circumstances is technically an extension of credit, the Commission nevertheless seeks comments on the potential consequences of the proposed rule with respect to the use of an airplane owned by a corporation or labor organization where reimbursement does not occur in advance. The Commission also seeks comments on whether the advance payment requirement should be retained and what, if any, other reimbursement timetables would be appropriate.

2. Alternative B: Payment Based on a Combination of First-Class Airfare and Charter Rate

Alternative B would provide for two different payment rates, following closely the travel valuation rules set forth in the ethics rules for the House of Representatives and the United States Senate. *See* Select Committee on Ethics, U.S. Senate, Senate Ethics Manual, S. Pub. No. 108–1 (2003), "Private Air Travel" at p. 60; Committee on Standards of Official Conduct, U.S. House of Representatives, Rules of the U.S House of Representatives on Gifts and Travel (2001), "Use of Private Aircraft for Travel" available at <*http://www.house.gov/ethics/Gifts_and_Travel_Chapter.htm#_Toc476623633*>. The first rate, in proposed paragraph (c)(1) of Alternative B, would apply to previously scheduled flights, as opposed to flights specifically scheduled for a campaign traveler, between cities with regularly scheduled air service. The payment rate for these trips would be the normal cost of first-class airfare between the cities. Thus, travel between airports served by regularly scheduled air service would be treated similarly under both Alternative A and Alternative B, except that Alternative B would not permit the first-class airfare amount where the airplane is chartered specifically for the campaign traveler's use. Both Alternative A and Alternative B would permit payment at the coach rate where coach service is regularly scheduled on the same route, but would not permit campaigns to pay the lower amount for discounted fares such as "supersavers," "e-savers," or a government rate.

Under proposed paragraph (c)(2) of Alternative B, the Commission would require the amount of payment for other air travel, including flights specifically scheduled for a campaign traveler or flights where the origin or destination city is not served by regularly scheduled air service, to be no less than the normal charter rate for a similar airplane. The valuation of travel to airports not served by regularly scheduled commercial airline service would therefore differ from the valuation in proposed paragraph (c)(3) of Alternative A, which would value such travel at the amount of the first-class rate to the nearest airport. For the same reasons discussed above for Alternative A, the candidate's authorized committee would be required to make the proper payment within seven calendar days of the departure date.

3. Alternative C: Payment Based on Charter Rate

Alternative C would establish a uniform rule by requiring the payment amount to be the normal and usual cost of chartering a plane of sufficient size to accommodate all campaign travelers plus the news media and security personnel where applicable. This payment rate would depend on the rate for chartering the entire plane, rather than a per-passenger cost, and would not vary based on whether the destination airport is served by regularly scheduled commercial air service of any particular class. Alternative C could provide a more accurate reflection of the true value of the use of a private or governmental airplane by campaign travelers. Because the campaign would be responsible for the cost of chartering the entire plane and the addition of last minute travelers would not increase the cost, the payment amount would be known prior to the time of departure. Thus, the Commission would continue to require advance payment for the use of all airplanes not normally used for commercial passenger service. To the extent that Alternative C would increase the cost of candidate travel when private airplanes are used, should the Commission consider such a factor when it evaluates appropriate reimbursement rates?

E. Proposed 11 CFR 100.93(d) Other Means of Transportation

The Commission proposes a set period of time for payment of travel by means other than by airplane: thirty calendar days from the receipt of the invoice, but no more than sixty calendar days following the date the travel commenced. *See* proposed 11 CFR 100.93(d). This fixed deadline would add more clarity and certainty than the current rule's reference to a "commercially reasonable" period, but would retain the flexibility necessary to account for costs that cannot be calculated until the completion of travel or shortly thereafter. The sixty-day cutoff would help to ensure that the invoice will be rendered to the campaign promptly. Any extensions of credit resulting from payments not being made within the sixty-day period would be considered in-kind contributions to the candidate and would therefore result in a violation of the Act and Commission regulations where such contributions are prohibited or excessive. The payment rate would be set at the usual and normal fare or rental readily available to the general public at the time of travel.

F. Proposed 11 CFR 100.93(e) Government Conveyances

Paragraph (e) of proposed 11 CFR 100.93 would clarify the appropriate payment for travel using any means of transportation, including an airplane, that is owned or leased by the Federal government or any State or local government. For government airplanes, one of the three alternatives described above would be used. For other means of travel, a campaign traveler using a government conveyance would have to reimburse the government entity within thirty calendar days of the receipt of an invoice, but no later than sixty calendar days following the date on which travel commenced. The required payment rate would be the amount of the usual fare or rental charge readily available to the general public for the travel date.

G. Proposed 11 CFR 100.93(f) Reporting

Proposed paragraph (f)(1) of 11 CFR 100.93 would refer candidates and their authorized committees to the existing reporting requirements for the receipt of an in-kind contribution. Under 11 CFR 104.13, a candidate must report the amount of unreimbursed value for travel services as both the receipt of a contribution from the service provider and an expenditure by the candidate committee.

In addition, a candidate's authorized committee would be required to record the travel dates along with the report of the disbursement for repayment of the travel service. Under proposed paragraph (f)(2) of §100.93, the Commission would require the authorized committee to report the actual date of travel in the "purpose of disbursement" field corresponding to the disbursement.

H. Proposed 11 CFR 100.93(g) Recordkeeping

Presidential and vice-presidential candidates are currently required to maintain records documenting the rates used in calculating their travel reimbursements. 11 CFR 9004.7(b)(5)(v) and 9034.7(b)(5)(v). Under proposed 11 CFR 100.93(g), these recordkeeping

requirements would apply to other candidates.

II. Proposed Revisions to 11 CFR 106.3(e) Reportable Expenditure for a Candidate Who Uses Government Conveyance for Campaign Related Travel

Candidates who use government conveyance or accommodations for campaign-related travel are currently required to report an expenditure in the amount equivalent to the "rate for comparable commercial conveyance or accommodation." 11 CFR 106.3(e). To eliminate disparities between campaign-related travel on private planes and travel on government planes, the Commission proposes revising 11 CFR 106.3 by replacing the reference to the "rate of comparable commercial conveyance" with a reference to the applicable rates for travel reimbursement set forth in proposed 11 CFR 100.93(c) and (d). Both the reimbursement rates and the payment due dates in proposed 11 CFR 100.93 would be applicable to travel by airplane and other means of travel, whether owned by an individual, corporation, labor organization, partnership, the Federal government, a State government, or any other person. The Commission seeks comment on this approach and the proposed revisions to 11 CFR 106.3(e).

III. Proposed Revisions to 11 CFR 9004.7(b) and 9034.7(b) Payment for Travel on Government Conveyances by Publicly Funded Presidential Candidates

The current regulations at 11 CFR 9004.7(b) and 9034.7(b) govern travel on government conveyance by primary and general election presidential and vice-presidential candidates receiving federal funding. The two rules are virtually identical and require the presidential or vice-presidential candidate to pay the appropriate government entity at one of several specified rates. These rates are established in largely the same manner as the reimbursement rates set forth in the current 11 CFR 114.9(e). The Commission proposes revising 11 CFR 9004.7(b)(5)(i) and (8) and 9034.7(b)(5)(i) and (8) to replace the parallel rate determinations in those rules with a reference to the reimbursement rates that would be set forth in proposed 11 CFR 100.93. As with the valuation of travel on government conveyances by non-presidential or vice-presidential candidates in 11 CFR 106.3(e), the reimbursement rates in proposed 11 CFR 100.93 would serve as the applicable valuation of travel by presidential and vice-presidential candidates aboard government conveyances. Minor changes would be made to the wording in paragraphs (b)(5)(i) through (iv) in sections 9004.7 and 9034.7 to clarify that the required reimbursement rate is a floor, not a ceiling on how much the candidate may reimburse, in order to permit a candidate to pay at a higher rate when required by other government agencies or branches. The Commission seeks comment on this approach and the proposed revisions to 11 CFR 9004.7 and 9034.7.

V. Other Travel Issues

While the various approaches in the proposed rules may at times overstate or understate the actual cost or value of the air transportation service provided, the Commission anticipates that over time the costs will even out so that the actual disparity, if any, will be minor. The proposed rules are premised on the belief that an across-the-board approach to determining air travel costs is advisable, both for ease of compliance and for ease of administration. Nevertheless, the Commission recognizes that situations may arise that would not be readily addressed by the proposed rules. The Commission is therefore seeking comments describing how, if at all, some of these situations should be addressed in the rules.

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

[Regulatory Flexibility Act]

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these proposals, which apply only to Federal candidates and their campaign committees. Federal candidates and their campaign committees are not small entities. To the extent that operators of air-taxi services or on-demand air charter services are affected, the effect would result from candidate travel choices rather than Commission requirements. These rules propose no sweeping changes, and are largely intended to simplify the process of determining payment and allocation ratios and reimbursement rates. The proposed rules would not increase the cost of compliance by small entities so as to cause a significant economic impact.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 106

Campaign funds, political committees and parties, political candidates.

11 CFR Part 114

Business and industry, elections, labor.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9034

Campaign funds, reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapters A, E, and F of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 434, and 438(a)(8).

2. Section 100.93 would be added to subpart C of part 100 to read as follows:

§ 100.93 Travel by airplane or other means of travel.

(a) *Scope and definitions.*

(1) This section applies to all campaign travelers who use an airplane, or other means of transportation that is not normally operated for commercial passenger service. *See* 11 CFR 100.52(a) and (d) for treatment of transportation services that are normally operated for commercial passenger service.

(2) For the purposes of this section, the following terms are defined as follows:

Campaign traveler means a candidate, candidate's agent, or other individual traveling on behalf of a candidate or candidate's authorized committee.

Service provider means the owner of an airplane or other conveyance, or a person who leases an airplane or other conveyance from the owner, and uses the airplane or other conveyance to provide transportation to a campaign traveler.

Unreimbursed value means the difference between the actual value of the service provided, as set forth in this section, and the amount of payment for that service by the campaign traveler to the service provider within the time limits set forth in this section. A payment that is not made within the time limits set forth in this section is not a reimbursement for the purposes of this section.

(b) *General rule.*

(1) No contribution results from travel by airplane, or other means of

transportation, by a campaign traveler, if the candidate's authorized committee reimburses the service provider, within the required time, for the full value of the transportation as provided in this section.

(2) Except as provided in 11 CFR 100.79, the unreimbursed value of the transportation provided to a campaign traveler, as determined in paragraphs (c) or (d) of this section, is an in-kind contribution from the service provider to the candidate.

[Alternative A]

(c) *Travel by airplane.* If a campaign traveler uses an airplane that is not normally operated for commercial passenger service, the candidate's authorized committee must pay the service provider, no later than seven (7) calendar days after the date the flight began, the following amount:

(1) In the case of travel to an airport served by regularly scheduled first-class commercial airline service, the lowest unrestricted and non-discounted first-class air fare available for time traveled; or

(2) In the case of an airport served by regularly scheduled coach airline service, but not regularly scheduled first-class commercial airline service, the lowest unrestricted and non-discounted coach commercial air fare for the time traveled; or

(3) In the case of travel to an airport not served by regularly scheduled commercial airline service, the lowest unrestricted first-class airfare, for the time traveled, to the airport:

(i) With regularly scheduled first-class commercial service; and

(ii) That is closest to the airport actually used.

[Alternative B]

(c) *Travel by airplane.* If a campaign traveler uses an airplane that is not normally operated for commercial passenger service, the candidate's authorized committee must pay the service provider, no later than seven (7) calendar days after the date the flight began, the following amount:

(1) In the case of travel via a previously or regularly scheduled flight by the owner or operator of the airplane, where the cities between which the campaign traveler is flying have regularly scheduled commercial air service (regardless of whether such service is direct), the cost of a first-class ticket from the point of departure to the destination. If only coach service is available between those points, the amount is the coach rate. If more than one first-class or coach rate is available, the amount is the lowest fare. However, no discount fares, such as "supersaver" fares, will be used for valuation purposes.

(2) In the case of a flight scheduled specifically for the use of a campaign traveler, or when the route does not have regularly scheduled commercial air service, the cost of chartering the same or a similar airplane for that flight. If campaign travelers for more than one candidate are traveling together between cities with no regularly scheduled service, then each candidate's authorized committee must pay its proportionate share of the cost of the charter.

[Alternative C]

(c) *Travel by airplane.* If a campaign traveler uses an airplane that is not normally operated for commercial passenger service, the candidate's authorized committee must pay the service provider, in advance, the usual commercial charter rate for an airplane sufficient in size to accommodate the campaign-related travelers, including the candidate, news media, and security personnel.

(d) *Other means of transportation.* If a campaign traveler who uses any other means of transportation, including an automobile, train, or helicopter, the candidate's authorized committee must reimburse the service provider within thirty (30) calendar days after the date of receipt of the invoice for such travel, but not later than sixty (60) calendar days after the date the travel began, at the normal and usual fare or rental charge readily available to the general public for time traveled.

(e) *Government conveyances.*

(1) If a campaign traveler uses an airplane that is provided by the Federal government, or by a State or local government, the candidate's authorized committee must pay the governmental entity in accordance with paragraph (c) of this section.

(2) If a campaign traveler uses a conveyance, other than an airplane, that is provided by the Federal government, or by a State or local government, the candidate's authorized committee must reimburse the government entity in accordance with paragraph (d) of this section.

(f) *Reporting.*

(1) In accordance with 11 CFR 104.13, a candidate's authorized committee must report the receipt of an in-kind contribution and the making of an expenditure under paragraph (b)(2) of this section.

(2) When reporting a disbursement for travel services in accordance with this section, a candidate's authorized committee must report the actual dates of travel for which the disbursement is made in the "purpose of disbursement" field.

(g) *Recordkeeping.*

(1) For travel by airplane, the candidate's authorized committee shall maintain documentation of the lowest unrestricted nondiscounted air fare for the time traveled, including the airline, flight number and travel service providing that fare or the charter rate, as appropriate.

(2) For travel by other conveyances, the candidate's authorized committee shall maintain documentation of the commercial fare or rental charge for a conveyance of sufficient size, including the service provider and the size, model and make of the conveyance.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

3. The authority citation for part 106 would continue to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

4. Section 106.3 would be amended by revising paragraph (e) to read as follows:

§ 106.3 Allocation of expenses between campaign and non-campaign related travel.

* * * * *

(e) Notwithstanding paragraphs (b) and (c) of this section, the reportable expenditure for a candidate who uses government conveyance for travel that is campaign-related is the applicable rate set forth in 11 CFR 100.93(c) or (d). The reportable expenditure for a candidate who uses government accommodations for travel that is campaign-related is the rate for comparable commercial accommodation. In the case of a candidate authorized by law or required by national security to be accompanied by staff and equipment, the allocable expenditures are the costs of facilities sufficient to accommodate the party, less authorized or required personnel and equipment. If such a trip includes both campaign and noncampaign stops, equivalent costs are calculated in accordance with paragraphs (b) and (c) of this section.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

5. The authority citation for part 114 would continue to read as follows:

Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 438(a)(8), and 441b.

6. Section 114.9 would be amended by revising the section title and removing and reserving paragraph (e) to read as follows:

§ 114.9 Use of corporate or labor organization facilities.

* * * * *

(e) [Removed and reserved]

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

7. The authority citation for Part 9004 would continue to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

8. Section 9004.7 would be amended by revising paragraphs (b)(5) and (b)(8) to read as follows:

§ 9004.7 Allocation of travel expenditures.

* * * * *

(b) * * *

(5) Payment for use of government conveyances and accommodations.

(i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the applicable rate set forth in 11 CFR 100.93(c).

(ii) If a government airplane is flown to a campaign-related stop where it will pick up passengers, or from a campaign-related stop where it left off passengers, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the greater of the amount billed or the amount required under 11 CFR 100.93(c) for one passenger.

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the commercial rental rate for a conveyance sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service.

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted air fare available for the time traveled, including the airline, flight number and travel service providing that fare or the charter rate, as appropriate. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate for a conveyance of sufficient size, including the provider of the conveyance and the size, model and make of the conveyance.

* * * * *

(8) Travel on private airplanes and other conveyances not normally operated for commercial passenger service is governed by 11 CFR 100.93.

* * * * *

PART 9034—ENTITLEMENTS

9. The authority citation for part 9034 would continue to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

10. Section 9034.7 would be amended by revising paragraphs (b)(5) and (b)(8) to read as follows:

§ 9034.7 Allocation of travel expenditures.

* * * * *

(b) * * *

(5) Payment for use of government conveyances and accommodations.

(i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the applicable rate set forth in 11 CFR 100.93(c).

(ii) If a government airplane is flown to a campaign-related stop where it will pick up passengers, or from a campaign-related stop where it left off passengers, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the greater of the amount billed or the amount required under 11 CFR 100.93(c) for one passenger.

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the commercial rental rate for a conveyance sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service.

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted air fare available for the time traveled, including the airline, flight number and travel service providing that fare or the charter rate, as appropriate. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate for a conveyance of sufficient size, including the provider of the conveyance and the size, model and make of the conveyance.

* * * * *

(8) Travel on private airplanes and other conveyances not normally operated for commercial passenger service is governed by 11 CFR 100.93.

Dated: August 18, 2003.

Michael E. Toner,

Commissioner, Federal Election Commission.

[FR Doc. 03–21463 Filed 8–20–03; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 102 and 110

[Notice 2003–13]

Multicandidate Committees and Biennial Contribution Limits

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed changes to its rules covering three areas: (1) Multicandidate political committee status, (2) annual contributions by persons other than multicandidate committees to national party committees, and (3) biennial contribution limits for individuals. The proposed changes would clarify the qualifications for multicandidate political committee status and require a political committee to notify the Commission when it has qualified as a multicandidate committee. The proposed changes would also update the limit on contributions from persons other than multicandidate committees to national party committees. In addition, the proposed changes would adjust the attribution of contributions to candidates from individuals under the biennial limits. No final decisions have been made by the Commission on any of the proposed revisions in this Notice. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

DATES: Comments must be received on or before September 19, 2003. If the Commission receives sufficient requests

to testify, it will hold a hearing on these proposed rules on October 1, 2003, at 9:30 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *multicand03@fec.gov* and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr. Richard T. Ewell, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is considering changes to several separate rules to address three different issues. First, the Commission proposes changes to its rules regarding the certification requirements and contribution limits of a political committee that qualifies as a multicandidate committee. Second, the Commission proposes updating the annual limit on contributions from person other than multicandidate committees to national party committees in order to conform to the change made by Congress in the Bipartisan Campaign Reform Act of 2002 ("BCRA"). Finally, the Commission proposes corrections to its rules on the annual limit on aggregate individual contributions in light of BCRA. These proposed rules would implement the provisions of the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), 2 U.S.C. 431 *et seq.*

I. Proposed Changes to 11 CFR 102.2, 110.2 Multicandidate Committee Status

A. Proposed 11 CFR 110.2—Contributions by Multicandidate Political Committees

Section 110.2 sets forth contribution limits for multicandidate political committees in accordance with the limits established by 2 U.S.C. 441a(a)(2). Section 441a(a)(4) of the FECA provides that, "the term 'multicandidate committee' means a political committee which has been registered with [the Commission or Secretary of the Senate] for a period of not less than six months, which has received contributions from more than 50 persons, and except for any State political party organization, has made contributions to 5 or more candidates for Federal office." 2 U.S.C. 441a(a)(4). On the basis of this statutory provision, the Commission's rules at 11 CFR 1005.(e)(3) define a "multicandidate committee" as a political committee meeting these three requirements.

FECA, prior to BCRA, provided significantly higher limits on contributions to candidates for political committees with multicandidate status than for those without that status ($5,000 per election versus $1,000). BCRA raised and indexed for inflation the contribution limit for non-multicandidate committees (to $2,000 per election), and due to the inflation adjustment such limit may eventually become higher than the limit imposed on multicandidate committees. *See* 2 U.S.C. 441a(c). Thus, this contribution limit itself one day may create a substantial disincentive for attaining multicandidate political committee status.

In addition, the limit on contributions to national party committees from multicandidate committees is $15,000 per year (as it was prior to BCRA), yet BCRA increased the limit on contributions to the same national party committees from non-multicandidate committees to $25,000 per year. 2 U.S.C. 441a(a)(2)(B) and (1)(B). Furthermore, the contribution limit for multicandidate committees is not indexed for inflation, which means that over time the current $10,000 difference in the contribution limit to national party committees will increase. 2 U.S.C. 441a(c).

These statutory changes have raised the issue of whether political committees may opt out of multicandidate committee status. The Commission preliminarily concludes that the definition of "multicandidate committee" in 2 U.S.C. 441a(a)(4) means that a political committee becomes a multicandidate committee by operation of law, not committee choice. Consequently the Commission proposes the addition of a sentence to 11 CFR 110.2(a) to state that a political committee automatically becomes a multicandidate committee at the time it satisfies the six-month waiting period, receives contributions from fifty or more contributors, and makes contributions to five or more candidates.

In the alternative, the Commission seeks comments on whether multicandidate political committee status may be considered optional. Commenters addressing this alternative are requested to provide the legal basis that would support this interpretation of 2 U.S.C. 441a(a)(4). Please note that the wording of the proposed rule in 11 CFR 110.2(a) does not implement this alternative.

B. Proposed 11 CFR 102.2(a)(3)—Certification of Multicandidate Status

To monitor compliance with the contribution limits, the Commission has required multicandidate political committees to file FEC Form 1M with the Commission to certify that they satisfied the criteria described above for becoming multicandidate political committees. Specifically, current 11 CFR 102.2(a)(3) requires that this certification be filed before a political committee may avail itself of the multicandidate committee contribution limits.

The Commission proposes to amend 11 CFR 102.2(a)(3) to eliminate the requirements that a political committee file Form 1M with the Commission before making any contributions under the increased contribution limits with respect to candidates in 11 CFR 110.2(b). Instead, § 102.2(a)(3) would specify that a political committee must certify its status as a multicandidate committee within ten days of satisfying the requirements of 11 CFR 1005.(e)(3). This certification provides clear notice of the political committee's status to the Commission and to recipients of contributions from the committee. The ten-day period corresponds to the usual time allotted for a political committee to report any changes to its Statement of Organization. *See* 11 CFR 102.2(a)(2). Thus, failure to file the form within the requisite time period would be a violation of the reporting requirements of 2 U.S.C. The Commission seeks comments on how it should address a failure to file the certification of multicandidate status. Specifically, how

should the Commission address a situation where a political committee qualifies for multicandidate status, does not certify its status within ten days, but makes a contribution over $2,000 to a candidate for Federal office? The Commission also seeks comments on what certification process, if any, should be used if the Commission adopts an alternative approach and allows multicandidate status to be optional at the choice of the committee.

II. 11 CFR 110.1 Conforming Change to Contributions by Persons Other Than Multicandidate Political Committees

In section 307(a)(2) of BCRA, Congress raised the annual aggregate limit on contributions by persons other than multicandidate committees to national political party committees from $20,000 to $25,000. 2 U.S.C. 441a(a)(1)(B). The Commission proposes to revise the corresponding regulation in 11 CFR 110.1 to reflect this statutory change.

III. 11 CFR 110.5 Aggregate Biennial Contribution Limitation for Individuals

BCRA amended the provisions in the Act that limit the total amount of contributions that may be made by individuals. Section 441a(a)(3) of the FECA previously permitted individuals to make no more than $25,000 in aggregate contributions per calendar year. This provision was revised by BCRA to establish new biennial aggregate limits that permit individuals to make up to $95,000 in contributions, including up to $37,500 in contributions to candidates and their authorized committees, and up to $57,500 in contributions to any other political committees. 2 U.S.C. 441a(a)(3)(A) and (B). The $57,500 aggregate contribution limit contains a further restriction in that no more than $37,500 of this amount may be given to committees that are not the political committees of national political parties. 2 U.S.C. 441a(a)(3)(B). Regulations implementing these changes were issued as part of the rulemaking entitled "Contribution Limitations and Prohibitions." *See* Contribution Limitations and Prohibitions; Final Rules, 67 FR 69928 (November 19, 2002). Previously, 2 U.S.C. 441a(a)(3) also provided that, for the purposes of the annual limitation, any contribution made to a candidate "in a year other than the calendar year in which the election is held with respect to which such contribution is made, is considered to be made during the calendar year in which such election is held." BCRA deleted this language from the Act. However, the Commission retained 11 CFR 110.5(c), which specifically addressed contributions made in a non-election year. The proposed rules would amend § 110.5(c) to delete the current language and to replace it with language affirmatively stating that for the purposes of the biennial contribution limits in 11 CFR 110.5 (which are set forth in paragraph (b)), a contribution to a candidate will be attributed to the two-year period in which the contribution is actually made, regardless of when the election will be held. For example, for the purposes of the biennial limit, a contribution made in 2004 to a candidate in a 2006 Senate race would be attributed to the individual's limit for the 2003–2004 period. Similarly, a contribution made in 2005 to a candidate in the 2008 presidential race would be attributed to the individual's limit for the 2005–2006 period. In addition, a contribution made during 2007 to retire debt from a 2006 House election would be attributed to the individual's two-year limit for the 2007–2008 period, not for the 2005–2006 period.

The Commission seeks comments on whether the proposed revisions are consistent with BCRA. If the Commission revises its regulations in this manner, the Commission seeks comment on when such revisions should become effective.

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

[Regulatory Flexibility Act]

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these proposals. These rules propose no sweeping changes, and are largely intended to simplify the process of determining the status of political committees and the aggregate biennial amounts that individuals may contribute to candidates for Federal office. Several of the proposed changes are purely technical, and those few proposals that might increase the cost of compliance by small entities would not do so in such an amount as to cause a significant economic impact.

List of Subjects

11 CFR Part 102

Political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, political committees and parties.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapter A of chapter 1 of title 11 of the Code of Federal Regulations as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for part 102 would continue to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

2. Section 102.2 would be amended by revising paragraph (a)(3) to read as follows:

§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).

(a) * * *

(3) A committee shall certify to the Commission that it has satisfied the criteria for becoming a multicandidate committee set forth at 11 CFR 100.5(e)(3) by filing FEC Form 1M no later than ten (10) calendar days after qualifying for multicandidate committee status.

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441, 441f, 441g, 441h, and 441k.

4. Section 110.1 would be amended by revising paragraph (c)(3) to read as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).

* * * * *

(c) * * *

(3) Each recipient committee referred to in 11 CFR 110.1(c)(2) may receive up to the $25,000 limitation from a contributor, but the limits of 11 CFR 110.5 shall also apply to contributions made by an individual.

* * * * *

5. Section 110.2 would be amended by revising paragraph (a)(1) to read as follows:

§ 110.2 Contributions by multicandidate political committees (2 U.S.C. 441a(a)(2)).

(a)(1) *Scope.* This section applies to all contributions made by any multicandidate political committee as defined in 11 CFR 100.5(e)(3). See 11 CFR 102.2(a)(3) for multicandidate

political committee certification requirements. A political committee becomes a multicandidate committee whether or not the political committee has certified its status as a multicandidate committee with the Commission in accordance with 11 CFR 102.2(a)(3)

* * * * *

6. Section 110.5 would be amended by revising paragraph (c) to read as follows:

§ 110.5 Aggregate bi-annual contribution limitation for individuals (2 U.S.C. 441a(a)(3)).

* * * * *

(c) *Contributions made in a nonelection year.* For purposes of the biennial limitation on contributions, any contribution to a candidate or his or her authorized committee with respect to a particular election shall be considered to be made during the two-year period described in paragraph (b)(1) of this section in which the contribution is actually made, regardless of the year in which the particular election is held. *See* 11 CFR 110.1(b)(6). This paragraph (c) also applies to earmarked contributions and contributions to a single candidate committee that has supported or anticipates supporting the candidate.

* * * * *

Dated: August 18, 2003.

Michael E. Toner,

Commissioner, Federal Election Commission.

[FR Doc. 03–21462 Filed 8–20–03; 8:45 am]

BILLING CODE 6715–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–169–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to all McDonnell Douglas Model MD–90–30 airplanes, that currently requires replacing the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and doing associated modifications. The actions specified by that AD are intended to ensure that the lanyards on the pressure relief door have adequate strength. Lanyards of inadequate strength could allow the pressure relief door to detach from the thrust reverser in the event that an engine bleed air duct bursts, which could result in the detached door striking and damaging the horizontal stabilizer, and consequent reduced controllability of the airplane. This proposed AD is prompted by the fact that a certain paragraph of the existing AD prohibits installation of certain part numbers of lanyards; the numbers listed in that paragraph correspond to new, improved lanyards that are acceptable for installation. This action would correct these part numbers to prohibit installation of suspect lanyards while allowing installation of the new, improved lanyards. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 6, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–169–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–169–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024); and Rohr, Inc., 850 Lagoon Drive, Chula Vista, California 91910–2098. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Stephen Kolb, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5244; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–169–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–169–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 27, 2003, the FAA issued AD 2003–11–15, amendment 39–13174 (68 FR 33355, June 4, 2003), applicable to all McDonnell Douglas Model MD–90–30 airplanes. That AD requires replacing

the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and doing associated modifications. That action was prompted by a report indicating that the lanyards on the pressure relief door for the thrust reversers on the subject airplanes do not meet the certification requirements for strength. The requirements of that AD are intended to ensure that the lanyards on the pressure relief door for the thrust reverser have adequate strength so that the door will not detach from the thrust reverser in the event that an engine bleed air duct bursts, which could result in the door striking and damaging the horizontal stabilizer. This condition could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Paragraph (b) of AD 2003–11–15 prohibits installation of pressure relief door lanyards having certain part numbers. Since the issuance of that AD, the FAA has determined that the part numbers listed in that paragraph are incorrect. The numbers in that paragraph are Illustrated Parts Catalog numbers that correspond to new, improved lanyard assemblies that are acceptable for installation per the requirements of the existing AD. Paragraph (b) should have referred to the part numbers of the pressure relief door lanyards that paragraph (a) of AD 2003–11–15 requires to be replaced.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would revise AD 2003–11–15 to continue to require replacing the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and doing associated modifications. The proposed AD would also prohibit installation of certain pressure relief door lanyards.

Explanation of Additional Change to Existing Requirements

We have revised the heading that precedes paragraph (b) of this AD from "Spares" to "Parts Installation." We find the heading "Parts Installation" more accurately describes the contents of that paragraph.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD. However, for clarity and consistency in this proposed AD, we have retained the language of the existing AD regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 110 airplanes of the affected design in the worldwide fleet. The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD. The proposed changes in this action add no additional economic burden. The current costs for this proposed AD are repeated for the convenience of affected operators, as follows:

It takes approximately 8 work hours per airplane to accomplish the actions currently required by AD 2003–11–15, at an average labor rate of $65 per work hour. Required parts are provided at no cost to the operator. Based on these figures, the cost impact of the actions currently required by AD 2003–11–15 is estimated to be $10,920, or $520 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–13174 (68 FR 33355, June 4, 2003), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2003–NM–169–AD. Revises AD 2003–11–15, Amendment 39–13174.

Applicability: All Model MD–90–30 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the lanyards on the pressure relief door for the thrust reverser have adequate strength so that the door will not detach from the thrust reverser in the event that an engine bleed air duct bursts, which could result in the door striking and damaging the horizontal stabilizer, accomplish the following:

Replacement of Lanyards on the Thrust Reverser Pressure Relief Door

(a) Within 18 months after the effective date of the AD, replace the lanyards on the pressure relief door for the thrust reverser with new, improved lanyards, and accomplish associated modifications, per the Accomplishment Instructions of Boeing Service Bulletin MD90–78–048, dated February 15, 2001. The associated modifications include removing the pressure relief door, modifying the pressure relief door (including replacing existing brackets with new brackets and re-identifying the door with a new part number), modifying the lower track beam (including removing terminals, replacing the aft quick-release pin with a new pin, and re-identifying the beam with a new part number), modifying the heat shield on the lanyard assembly attach lugs, and re-installing the pressure relief door.

Note 2: Boeing Service Bulletin MD90–78–048, dated February 15, 2001, refers to International Aero Engines Service Bulletin V2500–NAC–78–0184, dated February 16, 2001, for instructions on replacing the lanyards on the pressure relief door for the thrust reverser.

Parts Installation

(b) After the effective date of this AD, no person may install a lanyard having part number (S700M1392A170) or (S700M1392A161) on the pressure relief door for the thrust reverser on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 15, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21414 Filed 8–20–03; 8:45 am]

BILLING CODE 4910–13–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 263

[Docket No. 2002–1 CARP DTRA3]

Digital Performance Right in Sound Recordings and Ephemeral Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Office of the Library of Congress is requesting comment on proposed regulations that set rates and terms for the use of sound recordings in eligible nonsubscription transmissions made by noncommercial licensees, and for the making of related ephemeral recordings. The rates and terms are for the 2003 and 2004 statutory licensing period.

DATES: Comments are due no later than September 22, 2003.

ADDRESSES: An original and five copies of any comment shall be delivered by hand to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20559–6000; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024–0977.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Since 1995, copyright owners of sound recordings have had the exclusive right to perform their works publicly by means of a digital audio transmission, subject to certain limitations. 17 U.S.C. 106(6). Among the limitations on the performance right was the creation of a new compulsory license for nonexempt, noninteractive digital subscription transmissions. 17 U.S.C. 114. Section 114 was later amended with the passage of the Digital Millennium Copyright Act of 1998 ("DMCA"), Public Law 105–304, to cover additional digital audio transmissions, including services making eligible nonsubscription transmissions. The DMCA also created a new statutory license to provide for the making of certain ephemeral phonerecords that facilitate the making of digital audio transmissions pursuant to the section 114 license. *See* 17 U.S.C. 112(e).

Rates and terms for use of sound recordings pursuant to these licenses by eligible nonsubscription services and by business-to-business establishment services were published in the **Federal Register** on July 8, 2002, after a full hearing before a Copyright Arbitration Royalty Panel ("CARP"), but these rates only applied to those transmissions made through December 31, 2002. *See* 67 FR 45239 (July 8, 2002).

In accordance with section 114(f)(2)(C)(i)(II), the Copyright Office initiated a new rate proceeding in January 2002 to set rates and terms for the current license period, January 1, 2003 through December 31, 2004. The first step in the rate adjustment process is the announcement of a voluntary six-month negotiation period *See* 67 FR 4472 (January 30, 2002). Although no agreements were reached during the early stages of this proceeding, copyright owners and performers did ultimately reach an agreement with certain licensees and the proposed settlement was published in the **Federal Register** on May 20, 2003. 68 FR 27506 (May 20, 2003). This agreement, however, did not make any special provisions for noncommercial entities who operate under the same statutory licenses, because noncommercial webcasters were involved in separate rate negotiations to establish an alternative rate structure to the one that would be set in accordance with the procedures set forth in 17 U.S.C. 112(e) and 114(f). These negotiations were conducted in accordance with the Small Webcaster Settlement Act of 2002 ("SWSA"), Public Law 107–321, 116 Stat. 2780.

The SWSA was passed in 2002 to address certain concerns of small webcasters with respect to the rates announced on July 8, 2002, and the CARP process which established those rates. Basically, it gave small commercial webcasters and noncommercial webcasters another opportunity to negotiate a different and separate rate schedule applicable to their use of sound recordings in digital transmissions for the period through 2004. The negotiations for these alternative agreements were conducted sequentially. SoundExchange, an unincorporated division of the

Recording Industry Association of America, Inc. that is authorized to negotiate on behalf of copyright owners and performers, reached an agreement with small commercial webcasters in December 2002. *See* 67 FR 78510 (December 24, 2002). Negotiations between SoundExchange and the noncommercial webcasters followed and were completed in May 2003. The SWSA agreement applicable to the noncommercial entities was published in the **Federal Register** on June 11, 2003. 68 FR 35008 (June 11, 2003). Noncommercial webcasters who wished to take advantage of the rates and terms set forth in this agreement and had already made digital audio transmissions were required to submit a completed and signed election form to SoundExchange no later than 30 days after publication of the rates and terms in the **Federal Register**. Noncommercial webcasters who have not yet made a digital audio transmission may still elect to operate under the SWSA provided that they file the election form no later than the first date on which it would be obligated to make a royalty payment. *See* 68 FR at 35009.

Shortly thereafter, SoundExchange, the American Council on Education, and the Intercollegiate Broadcasting System, Inc., jointly with Harvard Radio Broadcasting Co., Inc. filed a petition with the Copyright Office for adjustment of the section 112 and 114 statutory rates and terms applicable to noncommercial licensees, requesting that the Office publish the proposed rates and terms for public comment pursuant to 37 CFR 251.63(b). The proposed rates and terms are identical to the applicable rates and terms for the period ending December 31, 2002, as established in the Order of the Librarian of Congress published July 8, 2002. *See* 67 FR 45239 (July 8, 2002).

The purpose for proposing these rates and terms is to ensure that a statutory rate is set for noncommercial licensees, so that there is no gap in the statutory rate scheme. Thus, a noncommercial licensee who does not opt to operate under the rates and terms negotiated in the SWSA agreement would operate according to the rates and terms announced today, should they be adopted as final rules. However, noncommercial webcasters who have elected to operate under the rates and terms negotiated pursuant to the SWSA and published on June 11, 2003, will not be affected by the proposed rates and terms announced today.

Section 251.63(b) of title 37 of the Code of Federal Regulations allows the Librarian to adopt proposed rates and terms without convening a CARP, provided that the proposed rates and terms are published in the **Federal Register** and no interested party with an intent to participate in the proceeding files a comment objecting to the proposed terms. In other words, unless there is an objection from a person with a significant interest in setting rates and terms applicable to noncommercial licensees and who is prepared and eligible to participate in a CARP proceeding, the Librarian can adopt the rates and terms in the proposed settlement in final regulations without convening a CARP. This procedure to adopt negotiated rates and terms in the case where an agreement has been reached has been specifically endorsed by Congress.

> If an agreement as to rates and terms is reached and there is no controversy as to these matters, it would make no sense to subject the interested parties to the needless expense of an arbitration proceeding conducted under [section 114(f)(2) (1995)]. Thus, it is the Committee's intention that in such a case, as under the Copyright Office's current regulations concerning rate adjustment proceedings, the Librarian of Congress should notify the public of the proposed agreement in a notice-and-comment proceeding and, if no opposing comment is received from a party with a substantial interest and an intent to participate in an arbitration proceeding, the Librarian of Congress should adopt the rates embodied in the agreement without convening an arbitration panel.
>
> S. Rep. No. 104–128, at 29 (1995) (citations omitted).

Accordingly, the Copyright Office is granting the joint petition filed on July 3, 2003, and is publishing for public comment the proposed rates and terms embodied in the agreement. Any party who objects to the proposed rates and terms set forth herein must file a written objection with the Copyright Office and an accompanying Notice of Intent to Participate, if the party has not already done so, in accordance with the requirements set forth in the Copyright Office's November 20, 2001, Notice. *See* 66 FR 58180, 58181 (November 20, 2001). The content of the written challenge should describe the party's interest in the proceeding, the proposed rule the party finds objectionable, and the reasons for the challenge.

Only a party with a significant interest in these rates and terms and who is prepared to participate in a CARP proceeding has standing to object. A noncommercial webcaster that has elected to operate under the rates and terms negotiated under the SWSA and published on June 11 would have no standing to object to the rates and terms announced today.

If no comments are received, the regulations shall become final upon publication of a final rule and shall cover the period from January 1, 2003, to December 31, 2004.

Schedule for Filing a Written Direct Case

On August 18, 2004, the Copyright Office issued an order in this proceeding in which it: (1) Announced the consolidation of this proceeding with the proceeding to establish rates and terms for new subscription services, Docket No. 2001–2–DTNSRA; (2) set forth a new precontroversy discovery schedule and set a date for a meeting to discuss administrative issues; (3) directed parties in this proceeding to file a Notice of Intention to Submit a Written Direct Case; and (4) set a new briefing schedule for filing oppositions and replies to the pending motion to adopt the interim protective order.

Any new participants who may enter this proceeding by filing an objection to the proposed rates and terms as they apply to noncommercial entities must comply with the dates and requirements set forth in the August 18 order. *See http://www.copyright.gov/carp/order81803.pdf.* Accordingly, all parties to this proceeding, including any new participants, must be prepared to file a written direct case with the Copyright Office and serve a copy of the written direct case on all parties to this proceeding on October 6, 2003.

List of Subjects in 37 CFR Part 263

Copyright, Digital audio transmissions, Performance right, Sound recordings.

Proposed Regulation

In consideration of the foregoing, the Copyright Office proposes adding part 263 to 37 CFR to read as follows:

PART 263—RATES AND TERMS FOR CERTAIN TRANSMISSIONS AND THE MAKING OF EPHEMERAL REPRODUCTIONS BY NONCOMMERCIAL LICENSEES

Sec.
263.1 General.
263.2 Definitions.
263.3 Royalty Rates and Terms.

Authority: 17 U.S.C. 112(e), 114, 801(b)(1).

§ 263.1 General.

This part 263 establishes rates and terms of royalty payments for the public performance of sound recordings in certain digital transmissions by certain Noncommercial Licensees in accordance with the provisions of 17 U.S.C. 114, and the making of ephemeral recordings by certain

Noncommercial Licensees in accordance with the provisions of 17 U.S.C. 112(e), during the period 2003–2004.

§ 263.2 Definitions.

For purposes of this part, the following definition shall apply:

A *Noncommercial Licensee* is a person or entity that has obtained a compulsory license under 17 U.S.C. 114 and the implementing regulations therefor, or that has obtained a compulsory license under 17 U.S.C. 112(e) and the implementing regulations therefor to make ephemeral recordings for use in facilitating such transmissions, and—

(a) Is exempt from taxation under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

(b) Has applied in good faith to the Internal Revenue Service for exemption from taxation under section 501 of the Internal Revenue Code and has a commercially reasonable expectation that such exemption shall be granted, or

(c) Is a State of possession or any governmental entity or subordinate thereof, or the United States or District of Columbia, making transmissions for exclusively public purposes.

§ 263.3 Royalty Rates and Terms.

A Noncommercial Licensee shall in every respect be treated as a "Licensee" under part 262 of this chapter, and all terms applicable to Licensees and their payments under part 262 of this chapter shall apply to Noncommercial Licensees and their payment, except that a Noncommercial Licensee shall pay royalties at the rates applicable to such a "Licensee," as currently provided in § 261.3(a), (c), (d) and (e) of this chapter, rather than at the rates set forth in § 262.3(a) through (d) of this chapter.

Dated: August 18, 2003.

David O. Carson,

General Counsel.

[FR Doc. 03–21467 Filed 8–20–03; 8:45 am]

BILLING CODE 1410–33–P

DEPARTMENT OF DEFENSE

48 CFR Part 242

[DFARS Case 2002–D015]

Defense Federal Acquisition Regulation Supplement; Production Surveillance and Reporting

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to eliminate requirements for contract administration offices to perform production surveillance on contractors that have only Criticality Designator C (low-urgency) contracts. This change will permit contract administration offices to devote more resources to critical and high-risk contracts.

DATES: DoD will consider all comments received by October 20, 2003.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. As an alternative, respondents may e-mail comments to: *dfars@osd.mil*. Please cite DFARS Case 2002–D015 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2002–D015.

At the end of the comment period, interested parties may view public comments on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, (703) 602–0293.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS 242.1104 presently requires the cognizant contract administration office to conduct a periodic risk assessment of each contractor to determine the degree of production surveillance needed for contracts awarded to that contractor, and to develop a production surveillance plan based on the risk level determined during the risk assessment. This proposed rule revises DFARS 242.1104 to eliminate requirements for production surveillance on contractors that have only Criticality Designator C (low-urgency) contracts, and for monitoring of progress on any Criticality Designator C contract, unless production surveillance or contract monitoring is specifically requested by the contracting officer. This change will enable contract administration offices to use production surveillance resources in a more effective manner.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the DFARS changes in this rule primarily affect the allocation of Government resources to production surveillance functions. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002–D015.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 242

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 242 as follows:

1. The authority citation for 48 CFR part 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

2. Section 242.1104 is revised to read as follows:

242.1104 Surveillance requirements.

(a) The cognizant contract administration office (CAO)—

(i) Shall perform production surveillance on all contractors that have Criticality Designator A or B contracts;

(ii) Shall not perform production surveillance on contractors that have only Criticality Designator C contracts, unless specifically requested by the contracting officer; and

(iii) When production surveillance is required, shall—

(A) Conduct a periodic risk assessment of the contractor to determine the degree of production surveillance needed for all contracts awarded to that contractor. The risk assessment shall consider information provided by the contractor and the contracting officer;

(B) Develop a production surveillance plan based on the risk level determined during a risk assessment;

(C) Modify the production surveillance plan to incorporate any special surveillance requirements for individual contracts, including any requirements identified by the contracting officer; and

(D) Monitor contract progress and identify potential contract delinquencies in accordance with the production surveillance plan. Contracts with Criticality Designator C are exempt from this requirement unless specifically requested by the contracting officer.

[FR Doc. 03–21312 Filed 8–20–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

RIN 1018–AI32

Migratory Bird Hunting and Permits; Regulations for Managing Resident Canada Goose Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: In recent years, the numbers of Canada geese that nest and/or reside predominantly within the conterminous United States (resident Canada geese) have undergone dramatic population growth and have increased to levels that are increasingly coming into conflict with people and human activities and causing personal and public property damage, as well as public health concerns, in many parts of the country. The U.S. Fish and Wildlife Service (Service or "we") believes that resident Canada goose populations must be reduced, more effectively managed, and controlled to reduce goose related damages. This rule would authorize State wildlife agencies to conduct (or allow) indirect and/or direct population control management activities, including the take of birds, on resident Canada goose populations. The intent of this rule is to allow State wildlife management agencies sufficient flexibility to deal with problems caused by resident Canada geese and guide and direct resident Canada goose population growth and management activities in the conterminous United States.

DATES: Comments on this proposed rule must be received by October 20, 2003.

ADDRESSES: Comments should be mailed to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, 4401 North Fairfax Drive, MBSP–4107, Arlington, Virginia 22203. We will not consider anonymous comments. All comments received, including names and addresses, will become part of the public record. Alternatively, comments may be submitted electronically to the following address: *canada_goose_eis@fws.gov*. The public may inspect comments during normal business hours in Room 4107, 4501 North Fairfax Drive, Arlington, Virginia. You may obtain copies of the draft environmental impact statement from the above address or from the Division of Migratory Bird Management Web site at *http://migratorybirds.fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, or Ron Kokel (703) 358–1714.

SUPPLEMENTARY INFORMATION: Migratory birds are protected under four bilateral migratory bird treaties the United States entered into with Great Britain (for Canada), Mexico, Japan, and Russia. Regulations allowing the take of migratory birds are authorized by the Migratory Bird Treaty Act (16 U.S.C. 703–711), and the Fish and Wildlife Improvement Act of 1978 (16 U.S.C. 712). The Migratory Bird Treaty Act (Act) provides that, subject to and to carry out the purposes of the treaties, the Secretary of the Interior is authorized and directed to determine when, to what extent, and by what means it is compatible with the conventions to allow hunting, killing, and other forms of taking of migratory birds, their nests, and eggs. The Act requires the Secretary to implement a determination by adopting regulations permitting and governing those activities.

Canada geese are Federally protected by the Act by reason of the fact that they are listed as migratory birds in all four treaties. These regulations must meet the requirements of the most restrictive of the four, which for Canada geese is the treaty with Canada. We have prepared these regulations compatible with its terms, with particular reference to Articles VII, V, and II.

Regulations governing the issuance of permits to take, capture, kill, possess, and transport migratory birds are promulgated in Title 50 Code of Federal Regulations (CFR) parts 13 and 21, and issued by the Service. Regulations governing the take, possession, and transportation of migratory birds under sport hunting seasons are annually promulgated in 50 CFR part 20 by the Service.

In recent years, numbers of Canada geese that nest and/or reside predominantly within the conterminous United States (resident Canada geese) have undergone dramatic population growth and have increased to levels that are increasingly coming into conflict with people and causing personal and public property damage. We believe that resident Canada goose populations must be reduced, more effectively managed, and controlled to reduce goose related damages. This rule would establish a new regulation authorizing State wildlife agencies to conduct (or allow) indirect and/or direct population control management activities, including the take of birds, on resident Canada goose populations. The intent of this rule is to allow State wildlife management agencies sufficient flexibility to deal with problems caused by resident Canada geese and guide and direct resident Canada goose population growth and management activities in the conterminous United States.

Population Delineation and Status

Waterfowl management activities frequently are based on the delineation of populations that are the target of management. Some goose populations are delineated according to where they winter, whereas others are delineated based on the location of their breeding grounds. For management purposes, populations can comprise one or more species of geese.

Canada geese (*Branta canadensis*) nesting within the conterminous United States are considered subspecies or hybrids of the various subspecies originating in captivity and artificially introduced into numerous areas throughout the conterminous United States. Canada geese are highly philopatric to natal areas, and no evidence presently exists documenting breeding between Canada geese nesting within the conterminous United States and those subspecies nesting in northern Canada and Alaska. Canada geese nesting within the conterminous United States in the months of March, April, May, or June, or residing within the conterminous United States in the months of April, May, June, July, and August will be collectively referred to in this proposed rule as "resident" Canada geese.

The recognized subspecies of Canada geese are distributed throughout the northern temperate and sub-arctic regions of North America (Delacour 1954; Bellrose 1976; Palmer 1976). Historically, breeding Canada geese are

believed to have been restricted to areas north of 35 degrees and south of about 70 degrees latitude (Bent 1925; Delacour 1954; Bellrose 1976; Palmer 1976). Today, in the conterminous United States, Canada geese can be found nesting in every State, primarily due to translocations and introductions since the 1940s.

The majority of Canada geese still nest in localized aggregations throughout Canada and Alaska and migrate annually to the conterminous United States to winter, with a few reaching as far south as northern Mexico. However, the distribution of Canada geese has expanded southward and numbers have increased appreciably throughout the southern portions of the range during the past several decades (Rusch *et al.* 1995). The following is a brief description of the status and distribution of the major management populations of Canada geese covered by this proposed rule:

In the Atlantic Flyway, the resident population of Canada geese nests from Southern Quebec and the Maritime Provinces of Canada southward throughout the States of the Atlantic Flyway (Sheaffer and Malecki 1998; Johnson and Castelli 1998; Nelson and Oetting 1998). This population is believed to be of mixed racial origin (*B. c. canadensis, B. c. interior, B. c. moffitti*, and *B. c. maxima*) and is the result of purposeful introductions by management agencies, coupled with released birds from private aviculturists and releases from captive decoy flocks after live decoys were outlawed for hunting in the 1930s. Following the Federal prohibition on the use of live decoys in 1935, Dill and Lee (1970) cited an estimate of more than 15,000 domesticated and semi-domesticated geese that were released from captive flocks. With the active restoration programs that occurred from the 1950s through the 1980s, the population has grown to over 1 million birds in the northeastern United States and has increased an average of 5 percent per year since 1993 (Sheaffer and Malecki 1998; Atlantic Flyway Council 1999; U.S. Fish and Wildlife Service, 2002).

In the Mississippi Flyway, most resident Canada geese are giant Canada geese (*B. c. maxima*). Once believed to be extinct (Delacour 1954), Hanson (1965) rediscovered them in the early 1960s, and estimated the giant Canada goose population at about 63,000 birds in both Canada and the United States. In the nearly 40 years since their rediscovery, the breeding population of giant Canada geese in the Mississippi Flyway now exceeds 1.4 million individuals and has been growing at a rate of about 6 percent per year since 1993 (Rusch *et al.* 1996; Wood *et al.* 1996; Nelson and Oetting 1998; U.S. Fish and Wildlife Service, 2002).

In the Central Flyway, Canada geese that nest and/or reside in the States of the Flyway consist mainly of two populations, the Great Plains and Hi-Line. The Great Plains Population (Nelson 1962; Vaught and Kirsch 1966; Williams 1967) consists of geese (*B. c. maxima/B. c. moffiti*) that have been restored to previously occupied areas in Saskatchewan, North and South Dakota, Nebraska, Kansas, Oklahoma, and Texas. For management purposes, this population is often combined with the Western Prairie Population (composed of geese (*B. c. maxima/B. c. moffiti/B. c. interior*) that nest throughout the prairie regions of Manitoba and Saskatchewan) and winter together from the Missouri River in South Dakota southward to Texas. The Hi-Line Population (Rutherford 1965; Grieb 1968, 1970) (*B. c. moffitti*) nests in southeastern Alberta, southwestern Saskatchewan and eastern Montana, Wyoming, and northcentral Colorado. The population winters from Wyoming to central New Mexico. Overall, these three populations of large subspecies of Canada geese have increased tremendously over the last 30 years as the result of active restoration and management by Central Flyway States and Provinces. In 1999, the index for these three populations was over 900,000 birds, 95 percent higher than 1990, and 687 percent higher than 1980 (Gabig 2000). More recently, the 2002 mid-winter survey estimate of the Great Plains Population (surveyed together with the Western Prairie Population) was 710,300 geese and has increased an average of 10 percent per year since 1993. For the Hi-Line Population, both the mid-winter survey and the spring survey estimates have increased an average of 6 percent per year since 1993 (U.S. Fish and Wildlife Service, 2002).

In the Pacific Flyway, two populations of the western Canada goose, the Rocky Mountain Population and the Pacific Population, are predominantly composed of Canada geese that nest and/or reside in the States of the Flyway. The Rocky Mountain Population (*B. c. moffitti*) nests from southwestern Alberta southward through the intermountain regions of western Montana, Utah, Idaho, Nevada, Colorado, and Wyoming. They winter southward from Montana to southern California, Nevada, and Arizona. Highly migratory, they have grown from a breeding population of about 14,000 in 1970 (Krohn and Bizeau 1980) to over 130,000 (Subcommittee on Rocky Mountain Canada Geese 2000; U.S. Fish and Wildlife Service, 2002). Mid-winter survey estimates of Rocky Mountain Population Canada geese have increased an average of 4 percent per year since 1993, while spring populations have increased 6 percent per year over the last 10 years (U.S. Fish and Wildlife Service, 2002). The Pacific Population (Krohn and Bizeau 1980; Ball *et al.* 1981) (*B. c. moffitti*) nests from southern British Columbia southward and west of the Rockies in the States of Idaho, western Montana, Washington, Oregon, northern California, and northwestern Nevada. They are essentially nonmigratory and winter primarily in these same areas.

Flyway Management Plans and Population Goals

The Atlantic, Mississippi, Central, and Pacific Flyway Councils are administrative bodies established to cooperatively deliver migratory bird management under the flyway system. The Councils, which are comprised of representatives from each member State and Province, make recommendations to the Service on matters regarding migratory game birds. The Flyway Councils work with the Service and the Canadian Wildlife Service to manage populations of Canada geese that occur in their geographic areas. Since there are large numbers of resident Canada geese in each Flyway, the Councils developed and prepared cooperative Flyway management plans to address these populations and establish overall population goals and associated objectives/strategies. A common goal among the plans is the need to balance the positive aspects of resident Canada geese with the conflicts they can cause. While the Service does not formally adopt Flyway management plans, because of the cooperative nature of migratory bird management under the Flyway Council system, and the fact that the Flyway Councils and States are the most knowledgeable sources of information regarding the establishment of goose population goals and objectives under their purview, we believe incorporation of these management plans into the formulation of our overall resident Canada goose management help define the objectives for acceptable resident Canada goose population reduction and management. Thus, we have attempted to incorporate the goals and objectives of the Flyways' resident Canada goose management plans and their associated population objectives into the formulation of this proposed rule. A more detailed discussion of the Flyway management plans, their specific goals and objectives, is

contained in the draft EIS described in the **ADDRESSES** section of this document.

The objective of this proposed rule is to allow State wildlife management agencies sufficient flexibility to deal with problems, conflicts, and damages caused by resident Canada geese and guide and direct resident Canada goose population growth and management activities in the conterminous United States. The program established by this rule should contribute to human health and safety, protect personal property and agricultural crops, protect other interests from injury, and allow resolution or prevention of injury to people, property, agricultural crops, or other interests from resident Canada geese. Further, the means must be effective, environmentally sound, cost-effective, flexible enough to meet the variety of management needs found throughout the flyways, should not threaten viable resident Canada goose populations as determined by each Flyway Council, and in accordance with the mission of the Service. Formulating such a national management strategy to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce related damages, safety, and public health concerns was a complex problem, and Flyway input was essential for incorporating regional differences and solutions.

As such, we note that the overall population objectives established by the Flyways were derived independently based on the States' respective management needs and capabilities, and in some cases, these objectives were an approximation of population levels from an earlier time when problems were less severe. In other cases, population objective levels were calculated from what was professionally judged to be a more desirable or acceptable density of geese with respect to conflicts and concerns. We further note that these population sizes are only optimal in the sense that it was each Flyway's best attempt to balance the many competing considerations of both consumptive and nonconsumptive users. As with any goal or objective, we believe that these population objectives should be periodically reviewed and/or revised in response to changes in resident Canada goose populations, damage levels, public input, or other factors. Current resident Canada goose population estimates and population objectives for each Flyway are shown in Table 1. We note that over the last three years (2001–03), the total number of temperate-nesting Canada geese, or resident Canada geese, has averaged approximately 3.2 million in the U.S. and 1.1 in Canada for a total spring population of 4.3 million (Moser and Caswell, in press).

TABLE 1.—RECENT RESIDENT CANADA GOOSE POPULATION ESTIMATES (2001–03 AVERAGE) AND POPULATION OBJECTIVES ON A FLYWAY BASIS

Current resident Canada goose population [a]	Atlantic flyway	Mississippi flyway	Central flyway	Pacific flyway
U.S	1,148,536	1,292,298	528,948	218,311
Canada	269,439	152,434	343,286	372,686
Total	1,417,975	1,444,732	872,234	590,996

Resident Canada goose population objective	Atlantic flyway [b]	Mississippi flyway [c]	Central flyway [d]	Pacific flyway
U.S.	620,000	989,000	368,833–448,833	•54,840–90,900
Canada	30,000	180,000		•35,750–56,250
Total	650,000	1,169,000		•90,590–147,150

[a] Moser and Caswell, in press.
[b] Atlantic Flyway Council Section 1999.
[c] Population objective numbers are draft and are not final at this time (Giant Canada Goose Committee 2000).
[d] Only U.S. States provided population objectives (Gabig 2000).
• Lower end of the Pacific Flyway population objective for the Pacific Population of Western Canada geese derived from "Restriction Level" and upper end derived from "Liberalization Level" as shown in Management Plan for the Pacific Population of Western Canada Geese (Subcommittee on Pacific Population of Western Canada Geese 2000). While the cited report refers to numbers of pairs, nests, and individual geese, the numbers shown here have been converted to numbers of individual geese.

Potential Causes of Population Growth and Past Attempts to Slow Growth

The rapid rise of resident Canada goose populations has been attributed to a number of factors. Most resident Canada geese live in temperate climates with relatively stable breeding habitat conditions and low numbers of predators, tolerate human and other disturbances, have a relative abundance of preferred habitat (especially those located in urban/suburban areas with current landscaping techniques), and fly relatively short distances to winter compared with other Canada goose populations. This combination of factors contributes to consistently high annual production and survival. Further, the virtual absence of waterfowl hunting in urban areas provides additional protection to those urban portions of the resident Canada goose population. Given these characteristics, most resident Canada goose populations are continuing to increase in both rural and urban areas.

We have attempted to curb the growth of resident Canada goose populations by several means. Expansion of existing annual hunting season frameworks (special and regular seasons), the issuance of control permits on a case-by-case basis, and a Special Canada goose permit have all been used with varying degrees of success. While these approaches have provided relief in some areas, they have not completely addressed the problem.

Normally, complex Federal and State responsibilities are involved with Canada goose control activities. All control activities, except those intended to either scare geese out of, or preclude them from using, a specific area, such as harassment, habitat management, or repellants, require a Federal permit issued by the Service. Additionally, permits to alleviate migratory bird depredations are issued by the Service in coordination with the Wildlife Services program of the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (Wildlife Services). Wildlife Services is the Federal agency with lead responsibility for dealing with wildlife

damage complaints. In most instances, State permits are required as well.

Conflicts and Impacts

Conflicts between geese and people affect or damage several types of resources, including property, human health and safety, agriculture, and natural resources. Common problem areas include public parks, airports, public beaches and swimming facilities, water-treatment reservoirs, corporate business areas, golf courses, schools, college campuses, private lawns, athletic fields, amusement parks, cemeteries, hospitals, residential subdivisions, and along or between highways.

Property damage usually involves landscaping and walkways, most commonly on golf courses, parks, and waterfront property. In parks and other open areas near water, large goose flocks create local problems with their droppings and feather litter (Conover and Chasko, 1985). Surveys have found that, while most landowners like seeing some geese on their property, eventually, increasing numbers of geese and the associated accumulation of goose droppings on lawns, which results in a reduction of both the aesthetic value and recreational use of these areas, cause many landowners to view geese as a nuisance (Conover and Chasko, 1985).

Negative impacts on human health and safety occur in several ways. At airports, large numbers of geese can create a very serious threat to aviation. Resident Canada geese have been involved in a large number of aircraft strikes resulting in dangerous landing/take-off conditions, costly repairs, and loss of human life. As a result, many airports have active goose control programs. Excessive goose droppings are a disease concern for many people. Public beaches in several States have been closed by local health departments due to excessive fecal coliform levels that in some cases have been traced back to geese and other waterfowl. Additionally, during nesting and brood-rearing, aggressive geese have bitten and chased people and injuries have occurred due to people falling or being struck by wings.

Agricultural and natural resource impacts include losses to grain crops, overgrazing of pastures, and degrading water quality. In heavy concentrations, goose droppings can overfertilize lawns and degrade water quality, resulting in eutrophication of lakes and excessive algae growth (Manny *et al.*, 1994). Overall, complaints related to personal and public property damage, agricultural damage, public safety concerns, and other public conflicts have increased as resident Canada goose populations increased.

We have further described the various impacts of resident Canada geese on natural resources, public and private property, and health and human safety in our draft EIS on resident Canada goose management. Due to the volume of technical information, we refer the reader to the draft EIS for specific details. Procedures for obtaining a copy of the draft EIS are described in the **ADDRESSES** section of this document.

Environmental Consequences of Taking No Action

We fully analyzed the No Action alternative with regard to resident Canada goose management in our draft EIS, to which we refer the reader (U.S. Fish and Wildlife Service 2002). In summary, we expect that resident Canada goose populations will continue to grow. Within 10 years, populations could approach 1.6 million in the Atlantic Flyway, 2.0 million in the Mississippi Flyway, 1.3 million in the Central Flyway, and 450,000 in the Pacific Flyway. Additionally, resident Canada goose problems and conflicts related to goose distribution are likely to continue and expand. Resident Canada geese will continue to impact public and private property, safety, and health, and impacts are likely to grow as goose populations increase. Lastly, both Federal and State workloads related to dealing with these increasing conflicts and populations will also increase.

Environmental Consequences of Proposed Action

We fully analyzed our proposed action in the draft EIS on resident Canada goose management, to which we refer the reader for specific details (U.S. Fish and Wildlife Service 2002). In summary, under our proposed action, entitled "State Empowerment," we expect a reduction in resident Canada goose populations, especially in problem areas. We also expect significant reductions in conflicts caused by resident Canada geese; decreased impacts to property, safety, and health; and increased hunting opportunities. We expect some initial State and Federal workload increases associated with implementation of the management strategies; however, over the long term, we expect that workloads would decrease. Lastly, we expect our proposed action to maintain viable resident Canada goose populations.

Proposed Resident Canada Goose Regulations

Recently completed resident Canada goose modeling in Missouri (Coluccy 2000; Coluccy and Graber 2000), when extrapolated to the entire Mississippi Flyway, indicates that reduction of the Mississippi Flyway's resident population from the current 1,335,683 geese to the Flyway Council's goal of 989,000 geese would require one of several management actions: (1) The harvest of an additional 240,000 geese annually over that already occurring; (2) the take of an additional 426,000 goslings per year; (3) a Flyway-wide nest removal of 264,000 nests annually; or (4) a combination of harvesting an additional 120,000 geese annually and the take of an additional 160,000 goslings per year. Each of these management alternatives would be required annually for 10 years to reach the Flyway's population management goal. In the Atlantic Flyway, where the resident Canada goose population is even further above established Flyway goals, these numbers would be even greater. Similar numbers would be expected in the Central Flyway, while numbers would be correspondingly smaller in the Pacific Flyway.

Thus, to reduce the four Flyways' resident populations from the current level of approximately 3.5 million to the Flyway Councils' goals of approximately 2.1 million geese would require, at a minimum for the next 10 years, either the harvest of an additional 480,000 geese annually, the take of an additional 852,000 goslings per year, a Flyway-wide nest removal of 528,000 nests annually, or a combination of the harvest of an additional 240,000 geese annually and the take of an additional 320,000 goslings per year. We believe the only way possibly to attain these numbers is to give the States *the flexibility* to address the problems caused by resident Canada goose populations within their respective States. By addressing population reductions on a wide number of available fronts, we believe the combination of various damage management strategies and population control strategies would successfully reduce numbers of resident Canada geese *in those priority areas identified by the States*. Since the States are the most informed and knowledgeable local authorities on wildlife conflicts in their respective States, we believe it is logical to authorize them to take the necessary actions within specified parameters.

To give States the needed flexibility to address the problems caused by resident Canada geese, this proposed rule would

establish a regulation authorizing State wildlife agencies (or their authorized agents) to conduct (or allow) management activities, including the take of birds, on resident Canada goose populations. This proposed rule would authorize indirect and/or direct population control strategies such as aggressive harassment, nest and egg destruction, gosling and adult trapping and culling programs, expanded methods of take to increase hunter harvest, or other general population reduction strategies. The intent of this proposed rule is to allow State wildlife management agencies sufficient flexibility, within predefined guidelines, to deal with problems caused by resident Canada geese within their respective States. Other guidelines would include criteria for such activities as special take authorization during a portion of the Treaty closed period (August 1–31); control for the protection of airport safety, agriculture, and public health; and the take of nests and eggs without permits.

States could choose to implement specific strategies, such as specific depredation orders that address goose control at airports, agricultural sites, public health sites, and the non-permitted take of nests and eggs, identified under the regulation conditions and guidelines. The Orders would be for resident Canada goose populations only and, as such, in order to ensure protection of migrant Canada goose populations, could only be implemented between April 1 and August 31, except for the take of nests and eggs which could be additionally implemented in March.

Special Canada goose hunting seasons within the existing Treaty frameworks (*i.e.*, September 1 to March 10) would continue to be handled within the existing migratory bird hunting season regulation development process. This proposed rule would also provide new regulatory options to State wildlife management agencies to potentially increase the harvest of resident Canada geese above that which results from existing special Canada goose seasons that target resident Canada geese. This proposed rule would authorize the use of additional hunting methods such as electronic calls, unplugged shotguns, and expanded shooting hours (one-half hour after sunset). During existing, operational, special September Canada goose seasons (*i.e.*, September 1–15), these additional hunting methods would be available for use on an operational basis. Utilization of these additional hunting methods during any new special seasons or other existing, operational special seasons (*i.e.*, September 15–30) could be approved as experimental and would require demonstration of a minimal impact to migrant Canada goose populations. These experimental seasons would be authorized on a case-by-case basis through the normal migratory bird hunting regulatory process. All of these expanded hunting methods and opportunities under Special Canada goose hunting seasons would be in accordance with the existing Migratory Bird Treaty frameworks for sport hunting seasons (*i.e.*, 107-day limit from September 1 to March 10) and would be conducted outside of any other open waterfowl season (*i.e.*, when *all other waterfowl and crane hunting seasons were closed*).

Take of resident Canada geese outside the existing Migratory Bird Treaty frameworks for sport hunting seasons (*i.e.*, 107-day limit from September 1 to March 10) would also be available under this proposed rule by creation of a new subpart to 50 CFR part 21 specifically for the management of overabundant resident Canada goose populations. Under this new subpart, we would establish a regulation under the authority of the Migratory Bird Treaty Act with the intent to reduce and/or stabilize resident Canada goose population levels. The "managed take" regulation would authorize each State in eligible areas to initiate aggressive resident Canada goose take strategies, within the conditions that we provide, with the intent to reduce the populations. The regulation will enable States to use the general public acting under strict program controls to kill resident Canada geese, by way of shooting in a hunting manner, during the August 1 through September 15 period when all waterfowl and crane hunting seasons, excluding falconry, are closed, inside or outside the migratory bird hunting season frameworks. The regulation would also authorize the use of additional methods of take to kill resident Canada geese during that period. The regulation would authorize the use of electronic calls and unplugged shotguns, liberalize daily bag limits on resident Canada geese, and allow shooting hours to continue until one-half hour after sunset. The Service would annually assess the overall impact and effectiveness of the "managed take" regulation to ensure compatibility with long-term conservation of this resource. If at any time evidence is presented that clearly demonstrates that there no longer exists a serious threat of injury to the area or areas involved for a particular resident Canada goose population, we will initiate action to suspend the regulation, and/or regular-season regulation changes, for that population. Suspension of regulations for a particular population would be made following a public review process.

Under this proposed rule, the Service would maintain primary authority for the management of resident Canada geese, but the individual States would be authorized to implement the provisions of this regulation within the guidelines established by the Service. In addition to specific strategies, we would continue the use of special and regular hunting seasons, issued under 50 CFR 20, and the issuance of depredation permits and special Canada goose permits, issued under 50 CFR 21.41 and 21.26, respectively. Participating States would be required to annually monitor the spring breeding population to assess population status and provide for the long-term conservation of the resource. Additionally, States or other applicable parties (such as airports or public health officials) would be required to annually report all take of geese under authorized management activities.

References Cited

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NEPA Considerations

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we prepared a draft EIS in February 2002. The draft EIS is available to the public at the location indicated under the **ADDRESSES** caption.

Endangered Species Act Consideration

Section 7(a)(2) of the Endangered Species Act (ESA), as amended (16 U.S.C. 1531–1543; 87 Stat. 884) provides that "Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *." We have initiated Section 7 consultation under the ESA for this proposed rule. The result of our consultation under Section 7 of the ESA will be available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for actions that will have a significant economic impact on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. The economic impacts of this proposed rule will fall primarily on State and local governments and Wildlife Services because of the structure of wildlife damage management. Data are not available to estimate the exact number of governments affected, but it is unlikely to be a substantial number on a national scale. We estimate that implementation of new resident Canada goose management regulations would help alleviate local public health and safety concerns, decrease economic damage caused by excessive numbers of geese, and increase the quality of life for those people experiencing goose conflicts. Implementation of new resident Canada goose regulations would also help reduce agricultural losses caused by these geese. Our proposed rule would give State fish and wildlife agencies significantly more latitude to manage resident Canada goose populations. Goose populations would be reduced to levels that local communities can support, and agricultural damages from resident Canada geese would be reduced. We have determined that a Regulatory Flexibility Act analysis is not required.

Executive Order 12866

In accordance with the criteria in Executive Order 12866, this proposed action is not a significant regulatory action subject to Office of Management and Budget (OMB) review. This rule will not have an annual economic effect of $100 million or adversely affect any economic sector, productivity, competition, jobs, the environment, or other units of government. Therefore, a cost-benefit economic analysis is not required. This proposed action will not create inconsistencies with other agencies' actions or otherwise interfere with an action taken or planned by another agency. The Federal agency most interested in this action is Wildlife Services. The action proposed is consistent with the policies and guidelines of other Department of the Interior bureaus. This proposed action will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This proposed action will not raise novel legal or policy issues because we

have previously managed resident Canada geese under the Migratory Bird Treaty Act.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? (6)What else could the Service do to make the rule easier to understand?

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of $100 million or more; nor will it cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Paperwork Reduction Act and Information Collection

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Under the Act, information collections must be approved by OMB. Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. As required by the Act, we will submit the necessary paperwork to OMB for approval to collect this information. We will not collect any information until approved by OMB and a final regulation is published.

What Will the Required Information Be Used for?

The proposed information collection, record-keeping, and reporting requirements imposed under proposed regulations in 50 CFR part 21, subpart E will be used to administer this program, and particularly in monitoring resident Canada goose population status and in the assessment of impacts that alternative regulatory strategies may have on resident Canada goose populations. The information collections will be required in order to authorize State governments responsible for migratory bird management to take (or allow the take of) resident Canada geese within the program guidelines.

What Are the Current Information Collection Burden Estimates Under the Existing Permit Process?

Current total annual burden estimates for resident Canada goose depredation permits (those permits issued under 50 CFR 21.41), including the time for completing the application and filing annual reports, is 2,304 hours. The annual "out-of-pocket" cost to the applicants is approximately $12,225. Under the Special Canada Goose Permit program (50 CFR 21.26), the total annual burden, including application and reporting requirements, is 114 hours. There is no annual "out-of-pocket" cost to the respondents under the Special Canada Goose Permit program because State agencies are exempt from the $25 application processing fee (50 CFR 13.11).

How Many Agencies, Organizations, or People Would Potentially Be Affected Under the New Requirements of This Rule?

Based on information in the DEIS, Wildlife Services annually receives approximately 2,000 requests for technical assistance for property damage caused by resident Canada geese. Further, in 2000, the Service issued about 1,600 depredation permits for resident Canada geese. We believe these numbers are fairly representative of the current needs status. However, we also recognize that some unknown number of needs for assistance go unreported due to either higher individual resident Canada goose damage tolerance levels or personal perceptions that the obtained assistance would not "solve" the problem. Additionally, we know that States operating under the Special Canada Goose Permit (50 CFR 21.26) have been issuing individual authorizations within their respective States. For example, in 2000, the States of Michigan, Minnesota, Missouri, and Ohio, operating under a Special Canada Goose Permit, issued 528 authorizations to individuals within their respective States. These authorizations enabled the named individual(s) to conduct control and management activities on resident Canada geese under the auspices of the State wildlife agency. Had these States not held the special permit, we believe some number of these individuals would have applied for depredation permits.

How Would This Rule Change the Estimated Burden Associated With the Current Permit Process?

We expect that this proposed rule would alleviate approximately 2,000 current or potential permit holders from the requirement of applying for a Federal depredation permit to control and manage resident Canada geese. Thus, under this proposed rule, paperwork burden would be eliminated in two main areas: Application submission and annual reporting requirements.

Under the application-associated burden, using an average of 1.5 hours to complete an application for a depredation permit, we estimate that approximately 3,500 hours (2,000 × 1.5 hours) of existing or potential burden would be eliminated with this proposed rule. Additionally, the associated annual "out-of-pocket" cost to the current and potential applicants that would be eliminated is approximately $50,000 (2,000 applicants multiplied by a $25 application processing fee).

Under the burden associated with annual reporting requirements, a similar elimination of existing burden would occur. Normally, holders of depredation permits are required to submit an annual report detailing the number of birds, eggs, or nests actually taken under the permit. The Service uses this information to determine whether a permit holder is in compliance with the permit and to track the number of birds actually taken from the wild and monitor the impact on the resource. While most annual reporting requirements would be eliminated under the proposed rule, a few would remain (those required for the State wildlife agency summarizing activities under § 21.61(d)(1) and (6)). Others would be replaced by the maintenance of a log recording activities. As with the normal permit application, the amount of time it takes to complete the annual report or log depends on the scope of the activities. We estimate it normally takes an average of 1 hour to complete the annual report for a depredation permit. Maintenance of a log book would be significantly less burden than completion of an annual report. We estimate that maintenance of a log book would require approximately 10 minutes per logbook, or about 1 minute per entry. Thus, we estimate that the proposed rule would result in a total annual burden of 333 hours (2,000 × 10

minutes) or less for the reporting requirements.

What About Those State Agencies Currently Operating Under the Special Canada Goose Permit? How Would They Be Affected?

States currently operating under the existing Special Canada Goose Permit would experience some changes in burden if they opt to operate under the proposed rule. Currently each permittee (*i.e.*, State wildlife agency) is required to submit not only an application for the permit, but an annual report detailing the number of birds, eggs, or nests actually taken under the permit. Burden requirements for the application would be eliminated for those States that opt to participate in the new management program. However, under the proposed rule, annual reports would continue to be required for State wildlife agencies summarizing management activities under § 21.61(d)(1) and (6), similar to that required under the Special Canada Goose Permit program. We estimate it would take an average of 2 hours to complete this annual report (the same as that estimated under the Special Canada Goose Permit program). We estimate that the proposed rule would not significantly affect the overall burden associated under both programs of approximately 90 hours (45 States × 2 hours) or less.

How Do the Conservation Order Provisions Affect the Estimated Burden? Are There Not Additional Reporting Requirements Associated With the Special Management Actions Authorized Under the Conservation Order?

Yes. Under § 21.61(d)(6)(iii)(H), States must keep detailed records of activities carried out under the Conservation Order and must submit an annual report summarizing such activities. We expect a maximum of 45 State wildlife agencies will participate under the authority of the Conservation Order, requiring an average of 24 hours to collect the information from program participants. Thus, the burden assumed by State participants would be 1,080 hours or less.

What Is the Total Estimated Burden of This New Program?

We estimate the maximum total annual burden would be about 1,503 hours (333 + 90 + 1,080).

How Can I Comment on This Estimate?

Comments are invited from the public on: (1) Whether the collection of information is necessary for the proper performance of the function of the Service, including whether the information will have practical utility; (2) the accuracy of the Service's burden of the collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) how to minimize the burden of the collection of information on those who are to respond, including the use of electronic, mechanical, or other forms of information technology. Send your comments on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA via facsimile or e-mail using the following fax number or e-mail address: (202) 395–6566 (fax); *OIRA_DOCKET@omb.eop.gov* (e-mail); and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 1849 C Street, NW., Washington, DC 20204.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. The purpose of the act is to strengthen the partnership between the Federal Government and State, local, and tribal governments and to end the imposition, in the absence of full consideration by Congress, of Federal mandates on these governments without adequate Federal funding, in a manner that may displace other essential governmental priorities. We have determined, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the proposed action would not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this action is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

We, in promulgating this rule, have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity, has been written to minimize litigation, provides a clear legal standard for affected conduct, and specifies in clear language the effect on existing Federal law or regulation. It is not anticipated that this rule will require any additional involvement of the justice system beyond enforcement of provisions of the Migratory Bird Treaty Act of 1918 that have already been implemented through previous rulemakings.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed action, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This action will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this proposed action will help alleviate private and public property damage and concerns related to public health and safety and allow the exercise of otherwise unavailable privileges.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given statutory responsibility over these species by the Migratory Bird Treaty Act. While legally this responsibility rests solely with the Federal Government, it is in the best interest of the migratory bird resource for us to work cooperatively with the Flyway Councils and States to develop and implement the various migratory bird management plans and strategies.

For example, in the establishment of migratory game bird hunting regulations, we annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Frameworks are developed in a cooperative process with the States and the Flyway Councils and any State or Tribe may be more restrictive than the Federal frameworks. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations.

The proposed rulemaking was developed following extensive input from the Flyway Councils, States, and Wildlife Services. Individual Flyway management plans were developed and approved by the four Flyway Councils, and States actively participated in the scoping process for the DEIS. This proposed rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. The proposed rule

allows States the latitude to develop and implement their own resident Canada goose management action plan within the frameworks of the proposed alternative. Therefore, in accordance with Executive Order 13132, this proposed rule does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have determined that this rule has no effects on Federally-recognized Indian tribes. Specifically, Tribes were sent copies of our August 19, 1999, Notice of Intent (64 FR 45269) that outlined the proposed action in the Draft Environmental Impact Statement on Resident Canada Goose Management. In addition, Tribes were sent our December 30, 1999, Notice of Meetings (64 FR 73570), which provided the public additional opportunity to comment on the DEIS process. No known Native American tribes depend on this resource for sustenance or religious purposes.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 12866 and is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Parts 20 and 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we hereby propose to amend parts 20 and 21, of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 20—[AMENDED]

1. The authority citation for part 20 is revised to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755, 16 U.S.C. 703–712; Fish and Wildlife Act of 1956, 16 U.S.C. 742a–j; Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

2. Amend § 20.11 by adding paragraph (n) to read as follows:

§ 20.11 What terms do I need to understand?

* * * * *

(n) *Resident Canada geese* means Canada geese that nest within the lower 48 States in the months of March, April, May, or June, or reside within the lower 48 States in the months of April, May, June, July, or August.

3. Revise paragraphs (b) and (g) of § 20.21 to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(b) With a shotgun of any description capable of holding more than three shells, unless it is plugged with a one-piece filler, incapable of removal without disassembling the gun, so its total capacity does not exceed three shells. However, this restriction does not apply during:

(1) A light-goose-only season (greater and lesser snow geese and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

(2) A season only for resident Canada geese during the period of September 1 to September 15 when all other waterfowl and crane hunting seasons, excluding falconry, are closed.

* * * * *

(g) By the use or aid of recorded or electrically amplified bird calls or sounds, or recorded or electrically amplified imitations of bird calls or sounds. However, this restriction does not apply during:

(1) A light-goose-only season (greater and lesser snow geese and Ross' geese) when all other waterfowl and crane hunting seasons, excluding falconry, are closed while hunting light geese in Atlantic, Central, and Mississippi Flyway portions of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

(2) A season only for resident Canada geese during the period of September 1 to September 15 when all other waterfowl and crane hunting seasons, excluding falconry, are closed.

PART 21—[AMENDED]

4. The authority citation for part 21 is revised to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108, 113 Stat. 1491, Note Following 16 U.S.C. 703.

5. Amend § 21.3 by revising the definition for "Resident Canada geese" to read as follows:

§ 21.3 Definitions.

* * * * *

Resident Canada geese means Canada geese that nest within the lower 48 States in the months of March, April, May, or June, or reside within the lower 48 States in the months of April, May, June, July, or August.

* * * * *

6. Add § 21.61 to subpart E to read as follows:

§ 21.61 Control and management of resident Canada geese.

(a) *Which Canada geese are covered by this regulation?* This regulation addresses the control and management of resident Canada geese, as described in § 21.3.

(b) *What is the resident Canada goose control and management program, and what is its purpose?* The resident Canada goose control and management program authorizes State wildlife agencies to conduct (or allow) indirect and/or direct population control management activities, including the take of birds, on resident Canada goose populations. The intent of the program is to allow State wildlife management agencies sufficient flexibility to deal with problems, conflicts, and damages caused by resident Canada geese and guide and direct resident Canada goose population growth and management activities in the conterminous United States. The program contributes to human health and safety, protects personal property and agricultural crops, protects other interests from injury, and allows resolution or

prevention of injury to people, property, agricultural crops, or other interests from resident Canada geese. The management and control activities allowed or conducted under the program are intended to relieve or prevent damage and injurious situations. No person should construe this program as opening, reopening, or extending any hunting season contrary to any regulations established under Section 3 of the Migratory Bird Treaty Act.

(c) *Who may participate in the program?* Only State wildlife agencies (State) in the lower 48 States are eligible to conduct (or allow) and implement the various resident Canada goose control and management program components.

(d) *What are the various components of the resident Canada goose control and management program?* The resident Canada goose control and management program has six components. Any State identified in paragraph (c) of this section, may implement all, part, or none of the following program components:

(1) *State control and management activities for resident Canada geese.* State wildlife agencies (or their authorized agents) may conduct (or allow) control and management activities, including the take of birds, on resident Canada goose populations when necessary to protect human health and safety; protect personal property, agricultural crops, and other interests from injury; and allow resolution or prevention of injury to people, property, agricultural crops, or other interests from resident Canada geese; and to reduce resident Canada goose populations within Flyway management objectives. Control and management activities include indirect and/or direct population control strategies such as aggressive harassment, trapping and relocation, nest and egg manipulation and destruction, gosling and adult trapping and culling programs, or other general population reduction strategies. The program is subject to the following restrictions:

(i) States should encourage and utilize nonlethal goose management tools to the extent they deem appropriate in an effort to minimize lethal take.

(ii) Methods of take for the control and management of resident Canada geese are at the State's discretion from among the following: Firearms, alpha-chloralose, traps, egg and nest manipulation and destruction, euthanization, and other damage control techniques consistent with accepted wildlife damage-management programs as may be approved by the Director.

(iii) States and their employees and agents may conduct (or allow) management and control activities, including the take of resident Canada geese, under this section between April 1 and August 31. The manipulation and destruction of resident Canada goose nests and eggs may take place between March 1 and June 30.

(iv) States and their employees and agents may possess, transport, and otherwise dispose of resident Canada geese taken under this section. States must dispose of birds taken under this program by donation to public museums or public institutions for scientific or educational purposes, by processing them for human consumption and distributing them free of charge to charitable organizations, or by burying or incinerating them. States, their employees, and designated agents may not sell, offer for sale, barter, or ship for the purpose of sale or barter any resident Canada geese taken under this section, nor their plumage or eggs. Persons authorized to operate under the program may not possess or transport resident Canada goose nests and eggs taken under this section. Any specimens needed for scientific purposes as determined by the Director must not be destroyed, and information on birds carrying metal leg bands must be submitted to the Bird Banding Laboratory by means of a toll-free telephone number at 1–800–327–BAND (or 2263).

(v) No person conducting resident Canada goose control and management activities under this section should construe the program as authorizing the killing of resident Canada geese or destruction of their nests and eggs contrary to any State law or regulation, nor may any control or management activities be conducted on any Federal land without specific authorization by the responsible management agency. No person may exercise the privileges granted under this section unless they possess any permits required for such activities by any State or Federal land manager.

(vi) States and their employees and agents operating under the provisions of this section may not use decoys, calls, or other devices to lure birds within gun range.

(vii) Persons using shotguns are required to use nontoxic shot.

(viii) Any State, its employees, and agents exercising the privileges of this section must keep and maintain a log recording the date and number of birds killed each month under this authorization. The log and any related records must be made available to Federal or State wildlife enforcement officers upon request during normal business hours.

(ix) Any State employee or designated agent authorized to carry out management and control activities must have a copy of the State's authorization and designation in their possession when carrying out any activities. If the State is conducting operations on private property at the request of the property owner or occupant, the State must also require the property owner or occupant on whose premises resident Canada goose control and management activities are being conducted to allow, at all reasonable times, including during actual operations, free and unrestricted access to any Service special agent or refuge officer, State wildlife or deputy wildlife agent, warden, protector, or other wildlife law enforcement officer (wildlife officer) on the premises where they are, or were, conducting activities. Furthermore, any State employee or designated agent conducting such activities must promptly furnish whatever information is required concerning such activities to any such wildlife officer.

(x) States exercising the privileges granted by this section must submit an annual report summarizing activities, including the date, numbers, and location of birds taken by December 31 of each year. The State should submit the annual report to the Assistant Director for Migratory Birds and State Programs, U.S. Fish and Wildlife Service, (Attention: Division of Migratory Bird Management), 4401 North Fairfax Drive, MBSP–4107, Arlington, Virginia 22203.

(2) *Airport safety.* States may authorize commercial, public, and private airports (Airports) (and their employees or their agents) to establish and implement a resident Canada goose control and management program when necessary to protect public safety and allow resolution or prevention of airport safety threats from resident Canada geese. Control and management activities include indirect and/or direct population control strategies such as aggressive harassment, trapping and relocation, nest and egg manipulation and destruction, gosling and adult trapping and culling programs, or other general population reduction strategies. This program is subject to the following restrictions:

(i) Authorized airports should utilize nonlethal goose management tools to the extent they deem appropriate. To minimize lethal take, Airports should follow the following procedure:

(A) Assess the problem to determine its extent or magnitude, its impact on

current operations, and the appropriate control method to be used.

(B) Base control methods on sound biological, environmental, social, and cultural factors.

(C) Formulate appropriate methods into a control strategy that utilizes the approach or concept that encourages the use of several control techniques rather than relying on a single method.

(D) Always first consider nonlethal harassment methods in any control strategy.

(ii) Methods of take for the control of resident Canada geese are at the State's discretion from among the following: Firearms, alpha-chloralose, traps, egg and nest manipulation and destruction, euthanization, and other damage control techniques consistent with accepted wildlife damage-management programs as may be approved by the Director.

(iii) Authorized airports may conduct management and control activities, including the take of resident Canada geese, under this section between April 1 and August 31. The manipulation and destruction of resident Canada goose nests and eggs may take place between March 1 and June 30.

(iv) Authorized airports and their employees and agents may possess, transport, and otherwise dispose of resident Canada geese taken under this section. They must dispose of birds taken under this order by donation to public museums or public institutions for scientific or educational purposes, by processing them for human consumption and distributing them free of charge to charitable organizations, or by burying or incinerating them. Airports, their employees, and designated agents may not sell, offer for sale, barter, or ship for the purpose of sale or barter any resident Canada geese taken under this section, nor their plumage or eggs. Persons authorized to operate under the program may not possess or transport resident Canada goose nests and eggs taken under this section. Any specimens needed for scientific purposes as determined by the Director must not be destroyed, and information on birds carrying metal leg bands must be submitted to the Bird Banding Laboratory by means of a toll-free telephone number at 1–800–327–BAND (or 2263).

(v) Resident Canada geese may be taken only within a 3-mile radius of the Airport.

(vi) Persons using shotguns are required to use nontoxic shot as identified in § 20.22(j).

(vii) Authorized airports, and their employees and agents operating a program authorized under the provisions of this section may not use decoys, calls, or other devices to lure birds within gun range.

(viii) Any Airport exercising the privileges of a program authorized under this section must keep and maintain a log recording the date and number of birds killed, and the number of nests and eggs taken under this authorization. The log must be maintained for a period of 3 years (and records of 3 previous years of takings must be maintained at all times thereafter). The log and any related records must be made available to Federal or State wildlife enforcement officers upon request during normal business hours.

(ix) Nothing in this section authorizes the killing of resident Canada geese or destruction of their nests and eggs contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the Airport possesses the appropriate State authorization or other permits required by the State, when required; nor does it authorize the killing of any migratory bird species or destruction of their nest or eggs other than resident Canada geese.

(3) *Nest and eggs.* States may authorize the manipulation and destruction of resident Canada goose nests and the take of resident Canada goose eggs when necessary to allow resolution or prevention of injury to people, property, agricultural crops, or other interests from resident Canada geese, and to reduce resident Canada goose populations within Flyway management objectives. An authorized program is subject to the following restrictions:

(i) Persons authorized to operate under the program should utilize nonlethal goose management tools to the extent they deem appropriate in an effort to minimize lethal take.

(ii) Methods of take are at the State's discretion from among the following: egg and nest manipulation and destruction, and other damage control techniques consistent with accepted wildlife damage-management programs as may be approved by the Director.

(iii) Persons authorized to operate under the program may conduct resident Canada goose nest and egg manipulation and destruction activities between March 1 and June 30.

(iv) Persons authorized to operate under the program may not possess or transport resident Canada goose nest and eggs taken under this section. Persons authorized to operate under the program may not sell, offer for sale, barter, or ship for the purpose of sale or barter any resident Canada goose nest or egg taken under this section.

(v) Any person exercising the privileges of this section under a State authorization must keep and maintain a log recording the date and number of resident Canada goose nests and eggs taken under this authorization. The log must be maintained for a period of 3 years (and records of 3 previous years of takings must be maintained at all times thereafter). The log and any related records must be made available to Federal or State wildlife enforcement officers upon request during normal business hours.

(vi) Nothing in this section authorizes the destruction of resident Canada goose nests or the take of resident Canada goose eggs contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the persons authorized to operate under the program possess the appropriate State permits, when required; nor does it authorize the killing of any migratory bird species or destruction of their nest or eggs other than resident Canada geese.

(4) *Agricultural depredation.* States may authorize landowners, operators, and tenants actively engaged in the production of commercial agriculture (agricultural producers) (or their employees or agents) to conduct indirect and/or direct population control strategies such as aggressive harassment, nest and egg manipulation and destruction, gosling and adult trapping and culling programs, or other general population reduction strategies on resident Canada goose populations when the geese are committing or about to commit depredations to agricultural crops and when necessary to allow resolution or prevention of injury to agricultural crops or other agricultural interests from resident Canada geese. The program is subject to the following restrictions:

(i) Authorized agricultural producers should utilize nonlethal goose management tools to the extent they deem appropriate. To minimize lethal take, agricultural producers should follow the following procedure:

(A) Assess the problem to determine its extent or magnitude, its impact to current operations, and the appropriate control method to be used.

(B) Base control methods on sound biological, environmental, social, and cultural factors.

(C) Formulate appropriate methods into a control strategy that utilizes the approach/concept that encourages the use of several control techniques rather than relying on a single method.

(D) Always first consider nonlethal harassment methods in any control strategy.

(ii) Methods of take for the control of resident Canada geese are at the State's discretion among the following: firearms, alpha-chloralose, traps, egg and nest manipulation and destruction, euthanization, and other damage control techniques consistent with accepted wildlife damage-management programs as may be approved by the Director.

(iii) Authorized agricultural producers and their employees and agents may conduct management and control activities, including the take of resident Canada geese, under this section between April 1 and August 31. The manipulation and destruction of resident Canada goose nests and eggs may take place between March 1 and June 30.

(iv) Authorized agricultural producers and their employees and agents may possess, transport, and otherwise dispose of resident Canada geese taken under this section. Agricultural producers must dispose of birds taken under this order by donation to public museums or public institutions for scientific or educational purposes, by processing them for human consumption and distributing them free of charge to charitable organizations, or by burying or incinerating them. Agricultural producers, their employees, and designated agents may not sell, offer for sale, barter, or ship for the purpose of sale or barter any resident Canada geese taken under this section, nor their plumage or eggs. Persons authorized to operate under the program may not possess or transport resident Canada goose nests and eggs taken under this section. Any specimens needed for scientific purposes as determined by the Director must not be destroyed, and information on birds carrying metal leg bands must be submitted to the Bird Banding Laboratory by means of a toll-free telephone number at 1–800–327–BAND (or 2263).

(v) Resident Canada geese may be taken on land an authorized agricultural producer personally controls and where damage is either occurring or where geese are committing or about to commit depredations to agricultural crops.

(vi) Persons using shotguns are required to use nontoxic shot as identified in § 20.22(j).

(vii) Authorized agricultural producers, and their employees and agents, operating under the provisions of this section may not use decoys, calls, or other devices to lure birds within gun range.

(viii) Any authorized agricultural producer exercising the privileges of this section must keep and maintain a log that indicates the date and number of birds killed and the date and number of nests and eggs taken under this authorization. The log must be maintained for a period of 3 years (and records for 3 previous years of takings must be maintained at all times thereafter). The log and any related records must be made available to Federal or State wildlife enforcement officers upon request during normal business hours.

(ix) Nothing in this section authorizes the killing of resident Canada geese or the destruction of their nests and eggs contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the agricultural producer possesses the appropriate State permits, when required; nor does its authorize the killing of any migratory bird species or destruction of their nest or eggs other than resident Canada geese.

(5) *Public health.* States may authorize State, county, municipal, or local public health officials (public health agencies) (or their employees or their agents) to establish and implement a resident Canada goose control and management program when necessary to protect public health and allow resolution or prevention of public health threats from resident Canada geese. Control and management activities include indirect and/or direct population control strategies such as aggressive harassment, trapping and relocation, nest and egg manipulation and destruction, gosling and adult trapping and culling programs, or other general population reduction strategies. The program is subject to the following restrictions:

(i) Authorized public health agencies should utilize nonlethal goose management tools to the extent they deem appropriate. To minimize lethal take, public health agencies should follow the following procedure:

(A) Assess the problem to determine its extent or magnitude, its impact to public health, and the appropriate control methods to be used.

(B) Base control methods on sound biological, environmental, social, and cultural factors.

(C) Formulate appropriate methods into a control strategy that utilizes the approach or concept that encourages the use of several control techniques rather than relying on a single method.

(D) Always first consider nonlethal harassment methods in any control strategy.

(ii) Methods of take for the control of resident Canada geese are at the State's discretion from among the following: Firearms, alpha-chloralose, traps, egg and nest manipulation and destruction, euthanization, and other damage control techniques consistent with accepted wildlife damage-management programs as may be approved by the Director.

(iii) Authorized public health agencies and their employees and agents may conduct management and control activities, including the take of resident Canada geese, under this section between April 1 and August 31. The manipulation and destruction of resident Canada goose nests and eggs may take place between March 1 and June 30.

(iv) Authorized public health agencies and their employees and agents may possess, transport, and otherwise dispose of resident Canada geese taken under this section. Public health agencies must dispose of birds taken under this order by donation to public museums or public institutions for scientific or educational purposes, by processing them for human consumption and distributing them free of charge to charitable organizations, or by burying or incinerating them. Public health agencies, their employees, and designated agents may not sell, offer for sale, barter, or ship for the purpose of sale or barter any resident Canada geese taken under this section, nor their plumage or eggs. Persons authorized to operate under the program may not possess or transport resident Canada goose nests and eggs taken under this section. Any specimens needed for scientific purposes as determined by the Director must not be destroyed, and information on birds carrying metal leg bands must be submitted to the Bird Banding Laboratory by means of a toll-free telephone number at 1–800–327–BAND (or 2263).

(v) Resident Canada geese may be taken only within the area of potential health threat.

(vi) Persons using shotguns are required to use nontoxic shot as identified in § 20.22(j).

(vii) Authorized public health agencies, and their employees and agents operating under the provisions of this section may not use decoys, calls, or other devices to lure birds within gun range.

(viii) Any authorized public health agencies exercising the privileges of this section must keep and maintain a log which indicates the date and number of birds killed and the date and number of nests and eggs taken under this authorization. The log must be maintained for a period of 3 years (and records for the 3 previous years of takings must be maintained at all times thereafter). The log and any related records must be made available to Federal or State wildlife enforcement

officers upon request during normal business hours.

(ix) Nothing in this section authorizes the killing of resident Canada geese or destruction of their nests and eggs contrary to the laws or regulations of any State, and none of the privileges of this section may be exercised unless the public health agency possesses the appropriate State permits, when required; nor does it authorize the killing of any migratory bird species or destruction of their nest and eggs other than resident Canada geese.

(6) *Managed take of resident Canada geese:* (i) What is managed take? Managed take is a special management action that is needed to control certain wildlife populations when traditional management programs are unsuccessful in preventing overabundance of the population. We are implementing a managed take program under the authority of the Migratory Bird Treaty Act to reduce and stabilize resident Canada goose populations. Managed take allows additional methods of taking resident Canada geese, allows shooting hours for resident Canada geese to extend to one-half hour after sunset, and removes daily bag limits for resident Canada geese inside or outside the migratory bird hunting season frameworks as described below.

(ii) *In what areas can a managed take program be implemented?* All States except Alaska and Hawaii.

(iii) *What is required in order for State governments to participate in a managed take program?* Any State government responsible for the management of wildlife and migratory birds may, without permit, kill or cause to be killed under its general supervision, resident Canada geese under the following conditions:

(A) Activities conducted under the managed take program may not affect endangered or threatened species as designated under the Endangered Species Act.

(B) Control activities must be conducted clearly as such and are not to be construed as opening, reopening, or extending any open hunting season contrary to any regulations promulgated under Section 3 of the Migratory Bird Treaty Act.

(C) Control activities may only be conducted under this section between August 1 and September 15.

(D) Control activities may be conducted only when all waterfowl (including resident Canada goose) and crane hunting seasons, excluding falconry, are closed.

(E) Control measures employed through this section may be implemented only between the hours of one-half hour before sunrise to one-half hour after sunset.

(F) Nothing in the program may limit or initiate management actions on Federal land without concurrence of the Federal agency with jurisdiction.

(G) States must designate participants who must operate under the conditions of the managed take program.

(H) States must inform participants of the requirements/conditions of the program that apply.

(I) States must keep annual records of activities carried out under the authority of the program. Specifically, information must be collected on:

(*1*) The number of individuals participating in the program;

(*2*) The number of days individuals participated in the program;

(*3*) The total number of resident Canada geese shot and retrieved during the program; and

(*4*) The number of resident Canada geese shot but not retrieved. The States must submit an annual report summarizing activities conducted under the program on or before June 1 of each year, to the Chief, Division of Migratory Bird Management, 4401 N. Fairfax Dr., Suite 634, Arlington, Virginia 22203.

(iv) *What is required for individuals to participate in the program?* Individual participants in State programs covered by the managed take program must comply with the following requirements:

(A) Participants must comply with all applicable State laws or regulations including possession of whatever permit(s) or other authorization(s) may be required by the State government concerned.

(B) Participants who take resident Canada geese under the program may not sell or offer for sale those birds or their plumage, but may possess, transport, and otherwise properly use them.

(C) Participants must permit at all reasonable times, including during actual operations, any Federal or State game or deputy game agent, warden, protector, or other game law enforcement officer free and unrestricted access over the premises on which such operations have been or are being conducted and must promptly furnish whatever information an officer requires concerning the operation.

(D) Participants may take resident Canada geese by any method except those prohibited as follows:

(*1*) With a trap, snare, net, rifle, pistol, swivel gun, shotgun larger than 10 gauge, punt gun, battery gun, machine gun, fish hook, poison, drug, explosive, or stupefying substance.

(*2*) From or by means, aid, or use of a sinkbox or any other type of low-floating device, having a depression affording the person a means of concealment beneath the surface of the water.

(*3*) From or by means, aid, or use of any motor vehicle, motor-driven land conveyance, or aircraft of any kind, except that paraplegics and persons missing one or both legs may take from any stationary motor vehicle or stationary motor-driven land conveyance.

(*4*) From or by means of any motorboat or other craft having a motor attached, or any sailboat, unless the motor has been completely shut off and the sails furled, and its progress has ceased. A craft under power may be used only to retrieve dead or crippled birds; however, the craft may not be used under power to shoot any crippled birds.

(*5*) By the use or aid of live birds as decoys. No person may take resident Canada geese on an area where tame or captive live geese are present unless such birds are, and have been for a period of 10 consecutive days before the taking, confined within an enclosure that substantially reduces the audibility of their calls and totally conceals the birds from the sight of resident Canada geese.

(*6*) By means or aid of any motor-driven land, water, or air conveyance, or any sailboat used for the purpose of or resulting in the concentrating, driving, rallying, or stirring up of resident Canada geese.

(*7*) By the aid of baiting, or on or over any baited area, where a person knows or reasonably should know that the area is or has been baited as described in § 20.11(j) and (k). Resident Canada geese may not be taken on or over lands or areas that are baited areas, and where grain or other feed has been distributed or scattered solely as the result of manipulation of an agricultural crop or other feed on the land where grown, or solely as the result of a normal agricultural operation as described in § 20.11(h) and (l) . However, nothing in this paragraph prohibits the taking of resident Canada geese on or over the following lands or areas that are not otherwise baited areas:

(*i*) Standing crops or flooded standing crops (including aquatics); standing, flooded, or manipulated natural vegetation; flooded harvested croplands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation or normal soil stabilization practice as described in § 20.11(g), (i), (l), and (m);

(*ii*) From a blind or other place of concealment camouflaged with natural vegetation;

(*iii*) From a blind or other place of concealment camouflaged with vegetation from agricultural crops, as long as such camouflaging does not result in the exposing, depositing, distributing, or scattering of grain or other feed; or

(*iv*) Standing or flooded standing agricultural crops where grain is inadvertently scattered solely as a result of a hunter entering or exiting a hunting area, placing decoys, or retrieving downed birds.

(*8*) Participants may not possess shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, tungsten-nickel-iron, or other shots that are authorized in § 20.21(j).

(v) *Under what conditions would the managed take program be suspended?* We will annually assess the overall impact and effectiveness of the program on each resident Canada goose population to ensure compatibility with long-term conservation of this resource. If at any time evidence is presented that clearly demonstrates that a resident Canada goose population no longer presents a serious threat of injury to the area or areas involved, we will initiate action to suspend the program for the specific resident Canada goose population in question. However, resumption of growth by the resident Canada goose population in question may warrant reinstatement of such regulations to control the population. Depending on the status of resident Canada goose populations, it is possible that a managed take program may be in effect for one or more resident Canada goose populations, but not others.

(e) *What are the general program conditions and restrictions?* The program is subject to the conditions elsewhere in this section, and, unless otherwise specifically authorized, the conditions outlined below:

(1) Nothing in this section applies to any Federal land within a State's boundaries without written permission of the Federal agency with jurisdiction.

(2) States may not undertake any actions under this section if the activities adversely affect other migratory birds or species designated as endangered or threatened under the authority of the Endangered Species Act.

(f) *Can the program be suspended?* We reserve the right to suspend or revoke an Agency's authority under this program if we find that the terms and conditions specified in the program have not been adhered to by that Agency. The criteria for suspension and revocation are outlined in § 13.27 and § 13.28 of this subchapter. Upon appeal, final decisions to revoke authority will be made by the Director. Additionally, at such time that we determine that a specific population of resident Canada geese no longer poses a threat to human health or safety, personal property, agricultural crops, or injury to other interests; or no longer needs to be reduced in order to allow resolution or prevention of injury to people, property, agricultural crops, or other interests, or is within Flyway management objectives, we may choose to terminate part or all of the program. In all cases, we will annually review the effectiveness of the program.

(g) *What population information is the State required to collect concerning the resident Canada goose control and management program?* Participating States must provide an annual estimate of the breeding population and distribution of resident Canada geese in their State. The States must submit this estimate on or before August 1 of each year, to the Chief, Division of Migratory Bird Management, 4401 N. Fairfax Dr., MBSP–4107, Arlington, Virginia 22203.

(h) *Has OMB approved the information collection requirements of the program?* The information collection requirements of the program will be submitted to OMB for approval. Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The proposed recordkeeping and reporting requirements imposed under § 21.61 will be used to administer this program, particularly in the assessment of impacts that alternative regulatory strategies may have on resident Canada geese and other migratory bird populations, and to monitor the program effectiveness and the population status of resident Canada geese. We will require the information from State wildlife agencies responsible for migratory bird management in order to continue participation in the program and to protect the resident Canada goose population. We estimate the public reporting burden for this collection of information to be 1503 hours, including the time for gathering and maintaining data needed, and completing and reviewing the collection of information. States may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Service Information Collection Clearance Officer, Fish and Wildlife Service, ms 224–ARLSQ, 1849 C Street, NW., Washington, DC 20240, or the Office of Management and Budget, Paperwork Reduction Project 1018–0099, Washington, DC 20503.

* * * * *

Dated: July 9, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–21268 Filed 8–20–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 081303C]

Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and the Gulf of Alaska; Public Hearings

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public hearings on the revised Draft Alaska Groundfish Fisheries Programmatic Supplemental Environmental Impact Statement (PSEIS)

SUMMARY: NOAA Fisheries will hold five public meetings in Washington, D.C., Seattle, WA, and in Juneau, Kodiak and Anchorage, AK, in September and October 2003 for the purpose of answering questions and receiving public testimony on the PSEIS.

DATES: See **SUPPLEMENTARY INFORMATION** under the heading "Meeting Dates and Addresses" for the dates of the public meetings.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** under the heading "Meeting Dates and Addresses" for the addresses of the public meetings.

FOR FURTHER INFORMATION CONTACT: Steven K. Davis, Programmatic SEIS Manager, Anchorage, AK, Phone: 907–271–3523.

SUPPLEMENTARY INFORMATION: On November 27, 2001, based on a review of public comment, NOAA Fisheries announced its intent to revise the Alaska Groundfish Fisheries draft PSEIS released in January 2001 (66 FR 59228, November 27, 2001). An extensive public involvement process has resulted in the adoption of new multi-objective policy alternatives which have been analyzed in the revised PSEIS.

The public comment period on the revised PSEIS is from August 29, 2003 until October 15, 2003. The public has the opportunity to submit comments on the document in one of three ways:

(1) Mail in a written comment letter to: National Marine Fisheries Service, Alaska Regional Office, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel;

(2) Submit a comment through the NOAA Fisheries e-Comments website, accessible at *http://www.fakr.noaa.gov/sustainablefisheries/seis/default.com*;

(3) Submit oral comments at one of the revised PSEIS public hearings.

Faxed comments will not be accepted.

NMFS has scheduled five public hearings on the revised PSEIS. The purpose of these meetings is to provide an opportunity for the public to ask questions on the revised PSEIS, as well as to submit formal oral testimony on the document during the comment period. Information on these meetings can also be found on the NOAA Fisheries Alaska Region's website at *http://www.fakr.noaa.gov*.

Meeting Dates and Addresses

The dates, times, locations, and telephone numbers of the hearings are as follows:

September 8, 2003, 1 p.m. - 4 p.m. Eastern daylight time - NOAA, Science Center Room, 1301 East-West Highway, Silver Spring, MD. Local Contact: Kim Marshall 301–713–2341.

September 11, 2003, 5 p.m. - 8 p.m. Pacific daylight time - Alaska Fisheries Science Center, 7600 Sand Point Way N.E., Bldg. 9, Seattle, WA. Local Contact: Dan Ito 206–526–4232.

September 17, 2003, 1 p.m. - 5 p.m. Alaska daylight time - National Marine Fisheries Service, Federal Building, 709 W. 9th Street, Room 445, Juneau, AK. Local Contact: Jim Hale: 907–586–7491.

September 24, 2003, 3 p.m. - 7 p.m. Alaska daylight time - Alaska Fisheries Science Center Kodiak Laboratory, Kodiak Fisheries research Center Conference Room, 301 Research Ct., Kodiak, AK. Local Contact: Tom Pearson 907–481–1780.

October 7, 2003, 5:30 p.m. - 8 p.m. - Sheraton Hotel, 401 E 6th Avenue, Anchorage, AK. Local Contact: Steven K. Davis 907–271–3523.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Steven K. Davis at 907–271–3523 at least 7 working days prior to the meeting date.

Dated: August 14, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21365 Filed 8–20–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 162
Thursday, August 21, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket 03–074–1]

International Plant Protection Convention Draft Standard on the Plant Pest Risks Associated with Living Modified Organisms; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: We are giving notice of a public meeting to solicit comments on a draft international standard concerning the plant pest risks associated with living modified organisms.

DATES: The public meeting will be held on September 18, 2003, from 1 to 3 p.m.

ADDRESSES: The meeting will be held at the USDA Center at Riverside, 4700 River Road, Riverdale, MD, in Conference Rooms C and D.

FOR FURTHER INFORMATION CONTACT: Dr. Terri Dunahay, Director for International Biotechnology Policy, BRS, APHIS, 4700 River Road Unit 146, Riverdale, MD 20737–1236; phone (301) 734–4308, fax (301) 734–8669, e-mail: *terri.g.dunahay@aphis.usda.gov*.

For further information on APHIS's participation in international standard-setting activities, contact Mr. Narcy Klag, Manager, International Standards Management, PIM, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8469, e-mail: *narcy.g.klag@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: The International Plant Protection Convention (IPPC) is recognized as the standard-setting body for international phytosanitary (plant health) issues by the World Trade Organization. In April 2001, the IPPC's Interim Commission on Phytosanitary Measures (ICPM) recommended that an international standard be developed to address potential plant pest risks associated with living modified organisms (LMOs). An expert working group was established to develop detailed specifications for the standard. The decision to develop an international standard was the result of requests from IPPC member countries for guidance from the IPPC on evaluating potential phytosanitary issues that may be associated with LMOs.

APHIS has held two public meetings regarding the development of an LMO standard in the IPPC. The need for a standard was discussed at a public meeting announced in the **Federal Register** on February 20, 2001 (66 FR 10874, Docket No. 01–012–1), and held on March 8, 2001. At the second public meeting, which was announced in the **Federal Register** on July 27, 2001 (66 FR 39136, Docket No. 01–061–1), and held on August 23, 2001, we solicited public comments on the development of specifications for the LMO standard. The transcripts of both meetings are available on the Internet at *http://www.aphis.usda.gov/ppq/pim/standards/draft_standard_&_discussion_for_review.htm*.

The specifications for the standard were adopted at the ICPM–4 meeting in March 2002. The United States supported the development of a stand-alone risk analysis standard for LMOs, but the decision at ICPM–4 was to draft the LMO standard as a supplement to an existing IPPC standard, International Standard for Phytosanitary Measures (ISPM) No. 11, "Pest Risk Analysis for Quarantine Pests." The specifications describe the scope of the standard as guidance on how to assess the phytosanitary risks that could be presented by LMOs, and charge the working group with the following tasks:

- Consider existing pest risk analysis procedures and IPPC and other relevant standards;
- Identify relevant hazards and methods for the evaluation of the potential phytosanitary risks presented by LMOs;
- Formulate a draft supplement to ISPM No. 11 providing guidance on the conduct of pest risk analyses for LMOs consistent with relevant aspects of the Cartagena Protocol, taking account of Annex III of the Cartagena Protocol and September 2001 statements from the Open Ended Working Group, as amended by ICPM–4; and
- Maintain a clear and easily understood standard, and provide comprehensive guidance on pest risk analysis for LMOs.

The working group, consisting of seven experts, one from each FAO region plus representation from the Convention on Biological Diversity, the Global Invasive Species Program, and Canada (as host) met in September 2002 to draft the standard. The draft standard was reviewed by the Standards Committee in May 2003 and posted for country consultation in June 2003. The draft standard and guidelines for submitting comments are available on the Internet at *http://www.aphis.usda.gov/ppq/pim/standards/draft_standards_4_comment.htm*. Comments should be submitted to Mr. Narcy Klag on or before September 22, 2003 (*see* **FOR FURTHER INFORMATION CONTACT** at the beginning of this notice for Mr. Klag's postal and e-mail addresses).

We are holding this public meeting to provide a forum for the submission of comments from representatives of non-governmental organizations on the format and content of the draft standard. If you wish to speak at the meeting, please register in advance by sending an e-mail or fax to Dr. Terri Dunahay (*see* **FOR FURTHER INFORMATION CONTACT** at the beginning of this notice for Dr. Dunahay's e-mail address and fax number). Registrants should include their name, affiliation, address, and telephone number. Speakers are welcome, but not required, to submit written copies of their comments via e-mail to Dr. Dunahay. Based on the number of registered speakers, limits may be imposed on the length of each speaker's presentation. The meeting will be recorded, and information about obtaining a transcript will be provided at the meeting.

We will also provide the opportunity for interested persons to participate by teleconference. Those wishing to do so should contact Dr. Dunahay via e-mail by Friday, September 12, 2003, for phone-in information.

If you require special accommodations, such as a sign language interpreter, please contact either of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Parking and Security Procedures

Please note that a fee of $2.25 in exact change is required to enter the parking lot at the USDA Center at Riverside. The machine accepts $1 bills or quarters.

Upon entering the building, visitors should inform security personnel that they are attending the Living Modified Organisms public meeting. State-issued photo identification is required and all bags will be screened. Security personnel will direct visitors to the registration tables located outside of Conference Rooms C and D on the first floor. Registration upon arrival is required for all participants, including those who have registered in advance to speak. Visitor badges must be worn at all times in the building.

Further information regarding the meeting may be obtained from either of the persons listed under **FOR FURTHER INFORMATION CONTACT**.

Done in Washington, DC, this 15th day of August 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–21421 Filed 8–20–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Objections to New Land Management Plans, Plan Amendments, and Plan Revisions

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension, with revision, of the information collection for objections to new land management plans, plan amendments, and plan revisions as required by Title 36 of the Code of Federal Regulations, part 219 (36 CFR part 219).

DATES: Comments must be received in writing on or before October 20, 2003 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Forest Service, USDA, Assistant Director for Planning, Ecosystem Management Coordination, Mail Stop 1104, 1400 Independence Avenue SW., Washington, DC 20250–1104. Comments also may be submitted via facsimile to (202) 205–1012 or by e-mail to: *froth@fs.fed.us.*

The public may inspect comments received at the Ecosystem Management Coordination Office, 201 14th St SW., Washington, DC during normal business hours. Visitors are encouraged to call ahead to (202) 205–0895 to facilitate entry into to the building.

FOR FURTHER INFORMATION CONTACT: Frank Roth, Ecosystem Management Coordination, at (202) 205–1547 or e-mail to: *froth@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Objection to new land management plans, plan amendments, and plan revisions.

OMB Number: 0596–0158.

Expiration Date of Approval: October 31, 2003.

Type of Request: Extension with revision of currently approved collection.

Abstract: The information that would be required by 36 CFR 219.19 is the minimum information needed for a citizen or organization to explain the nature of the objection being made to a proposed land management plan, plan amendment, or plan revision and the reason why the individual or organization objects. Specifically, an objector must provide name, mailing address, and if possible, telephone number; an identification of the specific proposed plan, amendment or revision that is the subject of the objection; and a concise statement explaining how the environmental disclosure documents, if any, and proposed plan, amendment, or revision are inconsistent with law, regulation, Executive order, or policy and any recommendations for change. The Reviewing Officer must review the objection(s) and relevant information and then respond to the objector(s) in writing.

Estimate of Annual Burden: 10 hours to prepare the objection.

Type of Respondents: Interested and affected individuals, organizations, and governmental units who participate in the planning process: such as persons who live in or near National Forest System (NFS) lands; local, State, and Tribal governments who have an interest in the plan; Federal agencies with an interest in the management of NFS lands and resources; not-for-profit organizations interested in NFS management, such as environmental groups, recreations groups, educational institutions; and commercial users of NFS land and resources.

Estimated Annual Number of Respondents: 1210 a year.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12,100 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. In submitting this proposal to the Office of Management and Budget for approval, the Forest Service will summarize and respond to comments received.

Dated: August 14, 2003.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 03–21407 Filed 8–20–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on September 17 and 18, 2003, in Ukiah, California. The purpose of the meeting is to conduct annual implementation monitoring of two projects completed in previous years, relating to standards and guidelines in the Northwest Forest Plan (NWFP).

DATES: The meeting will be held from 8:30 a.m. to 5 p.m., September 17 and 18, 2003.

ADDRESSES: The meeting will be held in the field both days, beginning at the Bureau of Land Management Office Conference Room, 2550 North State St., Ukiah, CA.

FOR FURTHER INFORMATION CONTACT: Phebe Brown, Committee Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–1137; EMAIL *pybrown@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The two projects to be monitored are: (1) Cow Mountain prescribed burn (September 17), Bureau of Land Management Project; and (2) Howard Mill understory burn (September 18), Upper Lake Ranger District of the Mendocino National Forest. The meeting is open to the public.

Dated: August 14, 2003.

Phebe Y. Brown,

Staff Coordinator.

[FR Doc. 03–21428 Filed 8–20–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-351–832, A-122–840, A-560–815, A-201–830, A-841–805, A-274–804, A823–812, C-351–833, and C-122–841]

Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Initiation of Changed Circumstances Antidumping Duty Administrative Review and Countervailing Duty Administrative Reviews, and Intent To Revoke Orders in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Changed Circumstances Review of the Antidumping Duty and Countervailing Duty Orders, and Intent To Revoke Orders in Part.

SUMMARY: On July 24, 2003, in accordance with 19 CFR 351.216(b), petitioners[1] in the antidumping duty and countervailing duty proceedings on carbon and certain alloy steel wire rod (wire rod) filed a request for a changed circumstances antidumping administrative review on the antidumping duty orders on steel wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine and countervailing duty orders on steel wire rod from Brazil and Canada. This changed circumstances review concerns certain grade 1080 tire cord quality wire rod and certain grade 1080 tire bead quality wire rod. These products were excluded from the original scope of these antidumping and countervailing duty orders; however, petitioners are requesting a further clarification of the technical description of these products. *See* the "Scope of the Changed Circumstances Review," below.

In response to petitioners' request, the Department of Commerce (the Department) is initiating a changed circumstances review with respect to the specific grade 1080 tire cord quality wire rod and tire bead quality wire rod products specified in this notice. Interested parties are invited to comment on this notice of initiation.

EFFECTIVE DATE: August 21, 2003.

FOR FURTHER INFORMATION CONTACT: Brian J. Sheba, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0145.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty orders on steel wire rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine on October 29, 2002. *See Notice of Antidumping Duty Orders: Carbon and Certain Alloy Steel Wire Rod From Brazil, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine*, 67 Fed. Reg. 65,945, *and Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Carbon and Alloy Steel Wire Rod From Canada*, 67 Fed. Reg. 65,944. The Department published the countervailing duty orders on steel wire rod from Brazil, and Canada on October 22, 2002. *See Notice of Countervailing Duty Orders: Carbon and Certain Alloy Steel Wire Rod From Brazil and Canada*, 67 Fed. Reg. 64,871. On July 24, 2003, petitioners requested that the Department change the technical description of certain grade 1080 tire cord quality wire rod and grade 1080 tire bead quality wire rod (hereafter, tire cord wire rod). This request arises, petitioners aver, because the original definition of the excluded tire cord wire rod was drawn too narrowly and, thus, captures within the scope certain products petitioners no longer wish to have subject to the orders. Acceding to petitioners' request would, petitioners maintain, "exclude a larger quantity of grade 1080 tire cord and grade 1080 tire bead wire rod from the scope of the antidumping and countervailing duty orders." Letter from Collier, Shannon, Scott, dated July 24, 2003, at 2. According to petitioners, good cause to initiate this review, as required by 19 CFR 351.216(c), "exists in this case because the petitioners no longer wish products subject to the proposed scope language" to be covered by the orders.[2]

Petitioners believe that they continue to represent more than 50 percent of total production of the domestic like product in the United States, but do not allege they represent more than 85 percent of the production of the domestic like product and therefore do not represent "substantially all" of the production of the domestic like product. *See* 19 C.F.R. 351.222(g)(1)(i). Letter from Collier, Shannon, Scott, dated August 6, 2003 , at 2. Petitioners, however, also believe they represent substantially all domestic production of grade 1080 tire cord and tire bead quality wire rod that is the subject of this request for review. Petitioners claim Georgetown Steel and North Star Steel Texas are the only known domestic producers of such steel and have no reason to believe that any domestic producer of wire rod will have reason to object to its request. *Id.* at 2.

At present, the Department has no information on the record that the other known domestic producers of wire rod have no interest in maintaining the antidumping duty order with respect to the domestic like product or the certain specific grade of 1080 tire cord and tire bead quality described below. In particular, the Department does not have information on the record of this changed circumstances review that the petitioners do indeed account for substantially all, or at least 85 percent, of the production of the domestic like product. Accordingly, we are not combining this initiation with a preliminary determination, pursuant to 351.221(c)(3)(ii). This notice of initiation will accord all interested parties an opportunity to address this proposed exclusion.

[1] Petitioners are Georgetown Steel Company (formerly GS Industries), North Star Steel Texas, Gerdau Ameristeel (formerly Co-Steel Raritan), and Keystone Consolidated Industries.

[2] Petitioners suggest any final affirmative changed circumstances determination, excluding the additional tire cord wire rod products, be effective retroactively to the date of their request, or July 24, 2003.

Scope of the Order

The merchandise covered by these orders is certain hot-rolled products of carbon steel and alloy steel, in coils, of approximately round cross section, 5.00 mm or more, but less than 19.00 mm, in solid cross-sectional diameter.

Specifically excluded are steel products possessing the above-noted physical characteristics and meeting the Harmonized Tariff Schedule of the United States (HTSUS) definitions for (a) stainless steel; (b) tool steel; (c) high nickel steel; (d) ball bearing steel; and (e) concrete reinforcing bars and rods. Also excluded are (f) free machining steel products (*i.e.*, products that contain by weight one or more of the following elements: 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.04 percent of phosphorus, more than 0.05 percent of selenium, or more than 0.01 percent of tellurium).

Also excluded from the scope are 1080 grade tire cord quality wire rod and 1080 grade tire bead quality wire rod. This grade 1080 tire cord quality rod is defined as: (i) grade 1080 tire cord quality wire rod measuring 5.0 mm or more but not more than 6.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.15 mm; (vi) capable of being drawn to a diameter of 0.30 mm or less with 3 or fewer breaks per ton, and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.006 percent or less of nitrogen, and (5) not more than 0.15 percent, in the aggregate, of copper, nickel and chromium.

This grade 1080 tire bead quality rod is defined as: (i) grade 1080 tire bead quality wire rod measuring 5.5 mm or more but not more than 7.0 mm in cross-sectional diameter; (ii) with an average partial decarburization of no more than 70 microns in depth (maximum individual 200 microns); (iii) having no inclusions greater than 20 microns; (iv) having a carbon segregation per heat average of 3.0 or better using European Method NFA 04–114; (v) having a surface quality with no surface defects of a length greater than 0.2 mm; (vi) capable of being drawn to a diameter of 0.78 mm or larger with 0.5 or fewer breaks per ton; and (vii) containing by weight the following elements in the proportions shown: (1) 0.78 percent or more of carbon, (2) less than 0.01 percent of soluble aluminum, (3) 0.040 percent or less, in the aggregate, of phosphorus and sulfur, (4) 0.008 percent or less of nitrogen, and (5) either not more than 0.15 percent, in the aggregate, of copper, nickel and chromium (if chromium is not specified), or not more than 0.10 percent in the aggregate of copper and nickel and a chromium content of 0.24 to 0.30 percent (if chromium is specified).

The designation of the products as "tire cord quality" or "tire bead quality" indicates the acceptability of the product for use in the production of tire cord, tire bead, or wire for use in other rubber reinforcement applications such as hose wire. These quality designations are presumed to indicate that these products are being used in tire cord, tire bead, and other rubber reinforcement applications, and such merchandise intended for the tire cord, tire bead, or other rubber reinforcement applications is not included in the scope. However, should petitioners or other interested parties provide a reasonable basis to believe or suspect that there exists a pattern of importation of such products for other than those applications, end-use certification for the importation of such products may be required. Under such circumstances, only the importers of record would normally be required to certify the end use of the imported merchandise.

All products meeting the physical description of subject merchandise that are not specifically excluded are included in this scope.

The products under investigation are currently classifiable under subheadings 7213.91.3010, 7213.91.3090, 7213.91.4510, 7213.91.4590, 7213.91.6010, 7213.91.6090, 7213.99.0031, 7213.99.0038, 7213.99.0090, 7227.20.0010, 7227.20.0020, 7227.20.0090, 7227.20.0095, 7227.90.6051, 7227.90.6053, 7227.90.6058, and 7227.90.6059 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

Scope of Changed Circumstances Review

The products subject to this changed circumstances antidumping duty and countervailing duty administrative review are certain grade 1080 tire cord steel wire rod and grade 1080 tire bead steel wire rod. Point (iii) of the existing definition of these products reads: "having no inclusions greater than 20 microns." Petitioners suggest amending this to read "having no non-deformable inclusions greater than 20 microns and no deformable inclusions greater than 35 microns." Petitioners' Request at 5 (emphases in original).

Petitioners would then insert an explanatory paragraph after the existing definition of tire cord wire rod reading:

For purposes of the grade 1080 tire cord quality wire rod and the grade 1080 tire bead quality wire rod, an inclusion will be considered to be deformable if its ratio of length (measured along the axis - that is, the direction of rolling - of the rod) over thickness (measured on the same inclusion in a direction perpendicular to the axis of the rod) is equal to or greater than three. The size of an inclusion for purposes of the 20 microns and 35 microns limitations is the measurement of the largest dimension observed on a longitudinal section measured in a direction perpendicular to the axis of the rod.

Letter from Collier, Shannon, Scott, dated August 6, 2003 , at 6; original emphasis deleted.

Initiation of Changed Circumstances Antidumping Duty Administrative Review

Pursuant to sections 751(d) and 782(h)(2) of the Tariff Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Tariff Act (*i.e.*, a changed circumstances review) where the Department determines that producers accounting for substantially all of the production of that domestic like product have expressed a lack of interest in continuance of an order. Section 751(b)(1) of the Tariff Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 68 Fed. Reg. 19,970 (April 23, 2003).

In accordance with sections 751(d)(1) and 782(h)(2) of the Tariff Act, and 19 CFR 351.216 and 351.222(g) of the Department's regulations, domestic producers of the like product, Georgetown Steel Company, North Star Steel Texas, Gerdau Ameristeel , and Keystone Consolidated Industries, claim changed circumstances exist and have made affirmative statements that no

further interest exists in continuing the order with respect to the specific grade 1080 tire cord and tire bead quality steel wire rod described above. Petitioners further allege they represent more than 50 percent of the total production of the domestic like product and greater than 85 percent of the specific type of merchandise subject to this changed circumstances review. Based upon the statements of no interest by the petitioners, we are initiating this changed circumstances administrative review.

If, as a result of this review, we revoke the order, in part, we intend to instruct the Bureau of Customs and Border Protection (Customs) to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of the tire cord wire rod products meeting the specifications indicated above, as of July 24, 2003, the date this changed circumstances review request was filed by Petitioners, in accordance with 19 CFR 351.222(g)(4). We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Tariff Act. The current requirement for a cash deposit of estimated antidumping duties on certain tire cord wire rod products meeting the specifications set forth above will continue unless and until we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on the initiation of this changed circumstances review. Parties who submit argument in this proceeding are requested to submit with the argument (i) a statement of the issue, and (ii) a brief summary of the argument. All written comments may be submitted by interested parties not later than 14 days after the date of publication of this notice in accordance with 19 CFR 351.303, with the exception that only three (3) copies need be served on the Department, and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

The Department will publish in the **Federal Register** a notice of preliminary result of changed circumstances review, in accordance with 19 CFR 351.221(c), which will set forth the factual and legal conclusions upon which our preliminary results are based, and a description of any action proposed based on those results. Interested parties may submit comments for consideration in the Department's preliminary results not later than 14 days after publication of this notice. Responses to those comments may be submitted not later than five days following submission of the comments. All written comments must be submitted in accordance with 19 CFR 351.303, with the exception that only three (3) copies need be served on the Department, and must be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303.

The Department intends to publish in the **Federal Register** the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments, no later than 270 days after the date of publication of this notice, or within 45 days if all parties to the proceeding agree to the outcome of this review. *See* 19 CFR 351.216(e).

This notice is published in accordance with section 751(b)(1) of the Tariff Act and 19 CFR 351.216 and 351.222.

Dated: August 14, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–21445 Filed 8–20–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–846]

Brake Rotors From the People's Republic of China: Final Results of the Eighth New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of the eighth new shipper review.

SUMMARY: On June 3, 2003, the Department of Commerce published the preliminary results of the eighth new shipper review of the antidumping duty order on brake rotors from the People's Republic of China with respect to Xiangfen Hengtai Brake System Co., Ltd and Xianghe Xumingyuan Auto Parts Co., Ltd. (collectively referred to as the respondents). The period of review is April 1, 2002, through September 30, 2002. We gave interested parties an opportunity to comment on our preliminary results. However, no interested party submitted comments.

The final results do not differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: August 21, 2003.

FOR FURTHER INFORMATION CONTACT: Terre Keaton or Margarita Panayi, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–1280, or (202) 482–0049, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2003, the Department published in the **Federal Register** the preliminary results of this new shipper review (*see Brake Rotors from the People's Republic of China: Preliminary Results of the Eighth New Shipper Review*, 68 FR 33095 (June 3, 2003)("*Preliminary Results*")). We provided parties the opportunity to comment on the preliminary results of the review. However, no interested party submitted comments.

The Department has conducted this review in accordance with section 751(a)(2)(B) of the Tariff Act of 1930, as amended, ("the Act").

Scope of Order

The products covered by this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo of an original equipment manufacturer ("OEM") which produces vehicles sold in the United States (e.g., General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this order are not certified by OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of this order are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8

inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this order is dispositive.

Final Results of Review

For the reasons discussed in our *Preliminary Results*, we determine that the following weighted-average margin percentages exist for the following companies during the period April 1, 2002, through September 30, 2002:

Manufacturer/producer/exporter	Margin Percent
Xiangfen Hengtai Brake System Co., Ltd	0.00
Xianghe Xumingyuan Auto Parts Co., Ltd	0.00

Assessment Rates

The Department shall determine, and the U.S. Bureau of Customs and Border Protection ("BCBP") shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of the final results of this review. For assessment purposes, we do not have the actual entered value for either respondent for which we calculated a margin because it is not the importer of record for the subject merchandise. Therefore, we calculated individual importer- or customer-specific assessment rates by aggregating the dumping margins calculated for all of the U.S. sales examined and dividing that amount by the total quantity of the sales examined. To determine whether the duty assessment rates are *de minimis* (*i.e.*, at or above 0.50 percent), in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we have calculated importer- or customer-specific *ad valorem* ratios based on export prices. We will instruct the BCBP to assess antidumping duties on all appropriate entries covered by this review if any importer or customer-specific assessment rate calculated is above *de minimis*.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Xiangfen Hengtai Brake System Co., Ltd (Hengtai) or Xianghe Xumingyuan Auto Parts Co., Ltd (Xumingyuan) of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review.

The following deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a)(1) and (a)(2)(B) of the Act: (1) the cash deposit rate for Hengtai (*i.e.*, for subject merchandise manufactured and exported by Hengtai) and Xumingyuan (*i.e.*, for subject merchandise manufactured and exported by Xumingyuan) will be the rate indicated above; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the PRC NME entity and for subject merchandise exported by either Hengtai or Xumingyuan but not manufactured by them will continue to be the PRC-wide rate (*i.e.*, 43.32 percent); and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter that supplied that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.3059(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act and 19 CFR 351.214.

Dated: August 15, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–21446 Filed 8–20–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Closed Meeting of the U.S. Automotive Parts Advisory Committee (APAC)

AGENCY: International Trade Administration, Commerce.

ACTION: Announcement of meeting.

SUMMARY: The APAC will have a closed meeting on September 4, 2003 at the U.S. Department of Commerce to discuss U.S.-made automotive parts sales in Japanese and other Asian markets.

DATES: September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Henry Misisco, U.S. Department of Commerce, Room 4036, Washington, DC 20230, telephone: 202–482–0554.

SUPPLEMENTARY INFORMATION: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government Officials on matters relating to the implementation of the Fair Trade in Automotive Parts Act of 1998 (Pub. L. 105–261). The Committee: (1) Reports to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets; (2) reviews and considers data collected on sales of U.S.-made auto parts and accessories in Japanese and other Asian markets; (3) advises the Secretary of Commerce during consultations with other Governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; and (4) assists in establishing priorities for the initiative to increase sales of U.S.-made auto parts and accessories to Japanese markets, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and (5) assists the Secretary of Commerce in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to its authorizing legislation. At the meeting, committee members will discuss specific trade and sales

expansion programs related to automotive parts trade policy between the United States and Japan and other Asian markets.

The Acting Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on August 15, 2003, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the September 4th meeting of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying Room 5317, Main Commerce.

Dated: August 15, 2003.

Henry Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 03–21409 Filed 8–20–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081503D]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held on Monday, September 8, 2003 through Thursday September 11, 2003.

ADDRESSES: These meetings will be held at the Baton Rouge Marriott, 5500 Hilton Avenue, Baton Rouge, LA; telephone: 225–924–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

September 10

8:30 a.m.—Convene.

8:45 a.m.—Receive an address by RADM Robert Duncan.

9 a.m.–11 a.m.—Receive four presentations of Marine Fisheries Initiative (MARFIN) reports on stock structure of Gulf red snapper. These reports suggest there are separate subpopulations of red snapper east and west of the Mississippi River.

11 a.m.–11:30 a.m.—Receive the Habitat Protection Committee report.

1:30 p.m.–3:30 p.m.—Receive the Reef Fish Management Committee report.

3:30 p.m.–4 p.m.—Receive the Mackerel Management Committee report.

4 p.m.–4:30 p.m.—Receive the Shrimp Management Committee report.

4:30 p.m.–5 p.m.—(Closed Session) Receive the report of the Advisory Panel (AP) Selection Committee.

September 11

8:30 a.m.–9 a.m.—Receive the Migratory Species Committee report.

9 a.m.–9:15 a.m.—Receive a report of the Logo Selection Committee.

9:15 a.m.–9:30 a.m.—Receive a report of the Budget Committee.

9:30 a.m.–10 a.m.—Receive Enforcement Reports.

10 a.m.–10:15 a.m.—Receive the NMFS Regional Administrator's Report.

10:15 a.m.–10:45 a.m.—Receive Director's Reports.

10:45 a.m.–11 a.m.—Other Business

11 a.m.–11:15 a.m.—Election of Chairman and Vice Chairman.

Committees

September 8

9 a.m.–10 a.m.—Orientation session for New Members.

10 a.m.–11:30 a.m.—(Closed Session) - Convene the AP Selection Committee to review NMFS enforcement records.

1 p.m.–4:30 p.m.—Convene the Reef Fish Management Committee to review the Vermilion Snapper Regulatory Amendment Options Paper that includes alternatives for arresting overfishing that is believed to be occurring on that stock. The committee will review public comments on this issue from scoping hearings held in August 2003. The committee will consider implementing a new stock assessment procedure (SEDAR - Southeast Data and Review) under which groups of panels review the data, develop the assessment, and develop a peer-reviewed assessment. The committee will consider alternatives that should be included in the Reef Fish 18 options paper for management of the grouper stocks. The committee will also discuss which of the Council's advisory panels to utilize in the development of a red snapper individual fishing quota (IFQ) system. The committee will also consider submitting an emergency action request to NMFS to assure that there is no lapse between the June 16, 2004 expiration of the current regulations establishing the Madison-Swanson and Steamboat Lumps marine reserves, and implementation of the new regulations under Amendment 21.

4:30 p.m.–5:30 p.m.—Convene the Budget Committee to discuss the CY2004 budget.

September 9

8:30 a.m.–10:30 a.m.—Convene the Mackerel Management Committee to review potential alternatives and issues to be included in a scoping document for Amendment 15 to the Coastal Migratory Pelagics Fishery Management Plan (FMP).

10:30 a.m.–12:30 p.m.—Convene the Shrimp Management Committee to review Draft Shrimp Amendment 13/ Environmental Assessment (EA) Options Paper that includes alternatives for status criteria and benchmarks as well as a revised standardized bycatch reporting methodology; and a Draft Options Paper for Shrimp Amendment 14/Supplementary Invironmental Impact Statement (SEIS) that includes alternatives to improve the bycatch reporting methodology, further reduce bycatch, and achieve optimum yield.

2 p.m.–4:30 p.m.—Convene the Migratory Species Management Committee to discuss shark bycatch in the menhaden purse seine fishery, Highly Migratory Species (HMS) Advisory Panel recommendations on Amendment 1 to the HMS FMP, scoping issues for HMS Amendment 2 and Billfish Amendment2, and the International Commission for the Conservation of Atlantic Tunas Draft recommendations on Integrated Migratory and Control Measures.

4:30 p.m.–5:30 p.m.—Convene the Habitat Protection Committee to discuss the Florida Offshore Aquaculture Inc. Permit, and a dredge material disposal application in Mississippi.

Although non-emergency issues not contained in the agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act), those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson Act, provided the public has been notified of the Council's intent to

take final action to address the emergency. A copy of the Committee schedule and agenda can be obtained by calling (813) 228–2815.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by August 29, 2003.

Dated: August 15, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21454 Filed 8–20–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081503C]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Oversight Committee in September 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Tuesday, September 9, 2003, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Four Points by Sheraton, 407 Squire Road, Revere, MA 02151; telephone: (781) 284–7200.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Scallop committee will review and discuss days-at-sea (DAS) allocations resulting from the measures chosen by the Council at its August 13–14 meeting for Amendment 10 to the Scallop Fishery Management Plan. The Committee will also review draft regulations and changes to the Amendment 10 submission documents if available.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 15, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21453 Filed 8–20–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on September 3, 2003, at the Institute for Defense Analyses, Alexandria, VA.

The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons safety, security and surety inspections.

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended, Title 5, U.S.C. app. II, (1988)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. section 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: August 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–21395 Filed 8–20–03; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Unmanned Aerial Vehicles and Long-Range Strike Studies. The purpose of the meeting is to brief the Chief of Staff on the results of the study. This meeting will be closed to the public.

DATES: 31 July 2003.

ADDRESSES: Room 4E987, The Pentagon.

FOR FURTHER INFORMATION CONTACT: Maj Dwight Pavek, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–21429 Filed 8–20–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–347–000]

Blue Lake Gas Storage Company; Notice of Application

August 14, 2003.

Take notice that on August 8, 2003, Blue Lake Gas Storage Company (Blue Lake), 9 E Greenway Plaza, Houston, Texas 77046, filed in Docket No. CP03–347–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA), 15 U.S.C. 717f(c), as amended, and the Regulations of the Federal Energy Regulatory Commission's (Commission) 18 CFR sections 157.5 *et seq.*, Subpart A, requesting that the Commission issue an order authorizing Blue Lake to increase the MDWQ to a certificated level of 700 MMcf/d and MDIQ to 700MMcf/d in order to provide greater flexibility to serve storage customers on a day by day basis, in particular during times of peak demands on the system.

The project is more fully set forth in the request on file with the Commission and open to public inspection. This filing is available for review on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to J. Gordon Pennington, Senior Counsel—Pipeline, 555 11th Street, NW., Washington, DC 20004, (202) 637–3544 or Dawn A. McGuire, Attorney, 9 Greenway Plaza, Houston, Texas 77046, (832) 676–5503.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the nonparty commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commissions' final order.

Protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Comment Date: September 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21372 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–562–000]

Dominion Cove Point LNG, LP; Notice of Proposed Changes in FERC Gas Tariff

August 14, 2003.

Take notice that on August 11, 2003, Dominion Cove Point LNG, LP. (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of September 10, 2003:

First Revised Sheet No. 4.
Second Revised Sheet No. 8.
Second Revised Sheet No. 23.
First Revised Sheet No. 70.
First Revised Sheet No. 90.
First Revised Sheet No. 91.
First Revised Sheet No. 110.
Third Revised Sheet No. 205.
First Revised Sheet No. 505.
First Revised Sheet No. 506.
First Revised Sheet No. 515.

Cove Point states that the purpose of this filing is to update its system map, correct minor errors and clarify ambiguous language. No substantive changes have been made to the above referenced tariff sheets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21385 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–564–000]

Dominion Cove Point LNG, LP; Notice of Tariff Filing

August 14, 2003.

Take notice that on August 11, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of September 10, 2003:

First Revised Sheet No. 24.
First Revised Sheet No. 51.
Second Revised Sheet No. 72.
Second Revised Sheet No. 92.
First Revised Sheet No. 113.

Third Revised Sheet No. 200.
First Revised Sheet No. 283.
Sheet Nos. 284–399.

Cove Point states that the purpose of this filing is to allow Cove Point the opportunity to charge Negotiated Rates for its transportation, peaking and LNG tanker discharging services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21387 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–377–002]

Dominion Transmission, Inc.; Notice of Compliance Filing

August 14, 2003.

Take notice that on August 11, 2003, Dominion Transmission, Inc. (DTI) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Second Substitute Fifth Revised Sheet No. 1173, with an effective date of July 1, 2003.

DTI states that the purpose of this filing is to comply with the Commission's Delegated letter order issued July 31, 2003 in Docket No. RP03–377–001 requiring that DTI refile a substitute tariff sheet correcting the references and incorporation of North American Energy Standards Board's Wholesale Gas Quadrant (WGQ) standards governing partial day recalls. DTI has made the changes requested by the Commission by deleting the references to WGQ Standards 4.3.4 and 5.3.55 from Section 31 of the General Terms and Conditions (GT&C) of its tariff.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: August 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21384 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–563–000]

Northern Border Pipeline Company; Notice of Tariff Filing

August 14, 2003.

Take notice that on August 11, 2003, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet Number 270, to become effective September 11, 2003.

Northern Border proposes to revise its tariff, specifically Subsection 26.2(b) of its General Terms and Conditions to (1) clarify that the criteria for an acceptable bid will continue to apply when capacity becomes available on a first-come, first-served basis and (2) allow firm shippers under defined conditions an opportunity to bid on posted available capacity and be awarded such capacity, when the bid is for a shorter path than the posted path, at the Maximum Rate, on a first-come, first-served basis, for a term not to exceed 31 days.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21386 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–6–001]

Panhandle Eastern Pipe Line Company, LLC; Notice of Filing

August 14, 2003.

On July 24, 2003, Panhandle Eastern Pipe Line Company, LLC (Panhandle), filed notice of withdrawal of its Revised Standards of Conduct filed on October 26, 2000 in Docket No. MG01–6–000.

Specifically, Panhandle states that it no longer has a marketing affiliate, does not transport on behalf of a marketing affiliate, and is not subject to the marketing affiliate rules.

Any person desiring to intervene or to protest said filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www/ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21379 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–7–001]

Sea Robin Pipeline Company; Notice of Filing

August 14, 2003.

On July 24, 2003, Sea Robin Pipeline Company (Sea Robin), filed notice of withdrawal of its Revised Standards of Conduct filed on October 26, 2000 in Docket No. MG01–7–000.

Specifically, Sea Robin states that it has no marketing affiliate, does not transport on behalf of a marketing affiliate, and is not subject to the marketing affiliate rules.

Any person desiring to intervene or to protest said filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www/ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: August 29, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21380 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–8–001]

Southwest Gas Storage Company; Notice of Filing

August 14, 2003.

On July 24, 2003, Southwest Gas Storage Company (Southwest), filed notice of withdrawal of its Revised Standards of Conduct filed on October 26, 2000 in Docket No. MG01–8–000.

Specifically, Southwest states that it has no marketing affiliate, does not transport on behalf of a marketing affiliate, and is not subject to the marketing affiliate rules.

Any person desiring to intervene or to protest said filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www/ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21381 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP81–296, CP81–296–019, CP84–441–033, CP86–251–003, CP87–75–010, CP87–85–002, CP87–131–009, CP87–132–016, CP87–358–007, CP88–171–033, CP89–629–036, CP90–639–021, CP91–433–002, CP91–1618–005, and CP91–2206–011]

Tennessee Gas Pipeline Company; Notice of Application To Amend Certificates of Public Convenience and Necessity

August 14, 2003.

Take notice that on August 11, 2003, Tennessee Gas Pipeline Company (Tennessee), a Delaware corporation, whose mailing address is Nine E. Greenway Plaza, Houston, Texas 77046, filed an application pursuant to Section 7(c) of the Natural Gas Act ("NGA"), 15 U.S.C. 717f(c), as amended, and the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR Sections 157.5 *et seq.*, Subpart A, requesting that the Commission amend certain Certificates of Public Convenience and Necessity that authorized the construction and operation of pipeline facilities located in the Northeast United States during the early 1980s through the early 1990s. Such facilities included laterals, metering facilities, pipeline looping and additional compression.

Copies of Tennessee's filing are on file with the Commission and are available for public inspection in the Public Reference Room and may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number (excluding the last three digits) in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. Any questions concerning this application may be directed to Dawn McGuire, Counsel, Tennessee Pipeline Company, 9 E Greenway Plaza, Houston, Texas 77046, call (832) 676–5503, fax (832) 676–2251.

Between 1981 and 1991, Tennessee filed certain applications to construct facilities in New Hampshire, Massachusetts, Connecticut, Rhode Island, New York, New Jersey and Pennsylvania. The environmental reports that Tennessee included in these filings incorporated a voluntary ban on the use of herbicides and pesticides as part of Tennessee's maintenance of its rights-of-way. Thereafter, the Commission integrated these voluntary restrictions as conditions to the Environmental Assessments, the Final Environmental Impact Statements, and ultimately the Certificate Orders for these projects.

Tennessee states that it has determined that a new set of challenges have resulted from its efforts to comply with self-imposed restrictions prohibiting the use of herbicides and pesticides. Tennessee states that it has determined that a new set of challenges have resulted from these efforts. Specifically, Tennessee says that invasive, poisonous plants located on Tennessee's rights-of-way now pose a potential danger to threatened and endangered plant species found adjacent to the rights-of-way. In addition, Tennessee explains that employees and contractors are exposed to threatening health situations as they attempt to control the invasive plants and harmful insects by means other than with herbicides or pesticides.

Tennessee proposes to maintain its rights-of-way, including fenced-in areas that Tennessee holds through easements, right of access agreements, or in fee, and to adhere to all state specific and local regulations, as they may change from time to time, for facilities authorized in the below-referenced filings. Therefore, Tennessee requests that the Commission amend the certificates so that they allow the use of herbicides and pesticides, as conditioned above, as tools for Tennessee's long-term maintenance of its rights-of-way.

There are two ways to become involved in the Commission's review of this proposed amendment. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All such motions or protests must be filed on or before the comment date. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the proposed amendment provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this proposed amendment should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 5, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21376 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–477–005]

Tennessee Gas Pipeline Company; Notice of Revised Compliance Tariff Filing

August 14, 2003.

Take notice that on August 11, 2003, Tennessee Gas Pipeline Company, (Tennessee) tendered for filing as part of its FERC Gas Tariff, Fifth Revised

Volume No. 1, the tariff sheets identified at Appendix A to the filing, with an effective date of October 1, 2003.

Tennessee states that the revised tariff sheets are being filed in order to comply with the Commission's July 11, 2003 Order in the referenced proceeding, which relates to Tennessee's previous filings to comply with Order Nos. 637, 637–A, and 637–B.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: August 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21383 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–9–001]

Trunkline Gas Company, LLC; Notice of Filing

August 14, 2003.

On July 24, 2003, Trunkline Gas Company, LLC (Trunkline), filed notice of withdrawal of its Revised Standards of Conduct filed on October 26, 2000 in Docket No. MG01–9–000.

Specifically, Trunkline Gas states that it has no marketing affiliate, does not transport on behalf of a marketing affiliate, and is not subject to the marketing affiliate rules.

Any person desiring to intervene or to protest said filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www/ferc.gov,* using the eLibrary (ERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21382 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG01–10–002]

Trunkline LNG Company, LLC; Notice of Filing

August 14, 2003.

On July 24, 2003, Trunkline LNG Company, LLC (Trunkline LNG), filed notice of withdrawal of its Revised Standards of Conduct filed on October 26, 2000 in Docket No. MG01–10–000.

Specifically, Trunkline LNG states that it has no marketing affiliate, does not transport on behalf of a marketing affiliate, and is not subject to the marketing affiliate rules.

Any person desiring to intervene or to protest said filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www/ferc.gov,* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 4, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21378 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP02–374–000, CP02–376–000, CP02–377–000 and CP02–378–000]

Cameron LNG, LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Hackberry LNG Project

August 14, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) on the construction and operation of the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities proposed by Cameron LNG, LLC (Cameron LNG) in the above-referenced docket.[1]

[1] On May 12, 2003, Sempra Energy LNG Corporation filed a letter with the Commission

Continued

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the proposed project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The final EIS also evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives.

The final EIS addresses the potential environmental effects of the construction and operation of the following facilities in Cameron, Calcasieu, and Beauregard Parishes, Louisiana:

- A ship unloading slip with two berths, each equipped with mooring and breasting dolphins, three liquid unloading arms, and one vapor return arm;
- Three LNG storage tanks, each with a usable volume of 1,006,000 barrels (3.5 billion standard cubic feet of gas equivalent);
- Nine first-stage pumps, each sized for 250 million standard cubic feet per day (MMscf/d);
- Ten second-stage pumps, each sized for 188 MMscf/d;
- Twelve submerged combustion vaporizers, each sized for 150 MMscf/d;
- A boil-off gas compressor and condensing system;
- An LNG circulation system;
- A natural gas liquids recovery unit;
- Ancillary utilities, buildings, and service facilities at the LNG terminal; and
- A 35.4-mile, 36-inch-diameter natural gas sendout pipeline.

The purpose of building these facilities is to transport approximately 1.5 billion cubic feet per day of imported natural gas to the United States market. As part of the proposed project, Cameron LNG plans to remove the existing liquefied petroleum gas facilities and associated dock at the proposed terminal site.

The final EIS has been placed in the public files of the FERC and is available for public inspection at:

Federal Regulatory Energy Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

A limited number of copies of the final EIS are available from the Public References and Files Maintenance Branch identified above. In addition, the final EIS has been mailed to Federal, state, and local agencies; elected officials; public libraries; newspapers; parties to the proceeding; and public interest groups, individuals, and affected landowners who requested a copy of the EIS.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the NEPA, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of a final EIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make their views known. In such cases, the agency decision may be made at the same time the notice of the final EIS is published, allowing both periods to run concurrently. The Commission decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov/*)using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notifications of these filings, document summaries, and direct links to the documents. Go to *https://ferconline.ferc.gov/*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21374 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

stating that it had acquired Hackberry LNG Terminal, L.L.C. from Dynegy Midstream Services, Limited Partnership, and had changed the company's name to Cameron LNG, LLC.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–39–000]

Kinder Morgan Interstate Gas Transmission, LLC; Notice of Availability of the Environmental Assessment for the Proposed Cheyenne Market Center Project

August 5, 2003.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Kinder Morgan Interstate Gas Transmission, LLC (Kinder Morgan) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed Cheyenne Market Center Project facilities including:

Compressor Facilities

- Rockport (Cheyenne Hub) Compressor Station—install two additional 1,680-horsepower (hp) compressor units within the Rockport Compressor Station in Weld County, Colorado.
- The new Kimball Junction Compressor Station—install two 1,151-hp compressor units at the existing Kimball Junction Interconnect (interconnect between Kinder Morgan's 16-inch-diameter Rockport Lateral, 20-inch-diameter Pony Express Pipeline, and 12-inch-diameter Weld County to Huntsman Pipeline) in Kimball County, Nebraska.
- Huntsman Compressor Station—install two additional 3,550-hp compressor units in a new building immediately adjacent to the northern side of the existing compressors, and install central injection and withdrawal meters within the confines of the Huntsman Compressor Station. This station is located within the Huntsman Storage Field, in Cheyenne County, Nebraska.

Injection/Withdrawal Wells

- Drill ten new injection/withdrawal wells at the Huntsman Storage Field. The proposed well field design configuration is to drill these wells

directionally (diverging directionally from a vertical well bore) from two new multiple wellhead surface location sites. Six wells would be drilled at Pad #1, located west and adjacent to the Huntsman Storage Field Well #9. Four wells would be drilled at Pad #2 in the northeast corner of the Huntsman Compressor Station.

Storage Field Lines

- Install about 2,000 feet of 12-inch-diameter pipeline loop originating at the proposed multiple wellhead Pad #1 site and terminating at the Huntsman Compressor Station inlet header facilities. This new 12-inch-diameter pipeline would loop a 12-inch-diameter pipeline from Huntsman Storage Field Well #9 to the compressor station.
- Install about 1,800 feet of 8-inch-diameter pipeline loop originating at the proposed multiple wellhead Pad #2 site and terminating at the Huntsman Compressor Station inlet header facilities. This new 8-inch-diameter pipeline would start at Pad #2, tie into the existing 8-inch-diameter discharge pipeline at Huntsman Storage Field Well #23 and loop the pipeline back to the compressor station.

Auxiliary Facilities

- Station Supervisory Control Systems—install computer-based supervisory-type process control systems at the Huntsman and Rockport Compressor Stations.
- Check Meter and Flow Control—install a check meter and bi-directional flow control assembly, with appurtenances, at the existing Kimball Junction Interconnect located between Kinder Morgan's 16-inch-diameter Rockport Lateral and 20-inch-diameter Pony Express Pipeline.
- Valves—install control valves at the existing Kinder Morgan/Colorado Interstate Gas Company (CIG) Weld County Measurement Station in Weld County, Colorado.
- Pigging and Gas Cleaning Facilities—install pigging facilities on the new 12-inch-diameter storage field pipeline and, depending upon the moisture content of the gas, install either a gas scrubber, coalesce filter, or gas separator on the new 8-inch-diameter storage field pipeline.
- Office Building—construct an office building with septic system and water well at the Rockport Compressor Station.

The proposed project would be an incremental expansion of Kinder Morgan's existing Huntsman Storage Facilities. The project would create incremental storage capacity for up to 6,000,000 dekatherms (Dth), with an associated injection capability of about 38,400 Dth per day (Dthd) and an associated withdrawal deliverability of about 62,400 Dthd. Through the new facilities, Kinder Morgan proposes to offer a Cheyenne Market Center Service that would allow for the injection, storage, and withdrawal of gas supplies received and delivered at the Cheyenne Hub using facilities incremental to, and separate from, existing Kinder Morgan transportation or storage services. The proposed project would provide customers with additional flexibility to store gas and utilize receipt and delivery points on short notice.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your comments to:

Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

- Label one copy of the comments for the attention of the Gas Branch 1, PJ11.1.
- Reference Docket No. CP03–39–000; and
- Mail your comments so that they will be received in Washington, DC on or before August 30, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the FERRIS link. Click on the FERRIS link, enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with FERRIS, the FERRIS helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCOnlineSupport@ferc.gov*. The FERRIS link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to*http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21375 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene, Protests, and Comments

August 15, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12266–000.

c. *Date filed:* June 24, 2002.

d. *Applicant:* MSR 14 Hydro, LLC.

e. *Name of Project:* Mississippi Lock & Dam 14 Project.

f. *Location:* On the Mississippi River, in Scott County, Iowa, utilizing the Mississippi River Lock & Dam 14 which is administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Brent Smith, MSR 14 Hydro LLC., P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the U. S. Army Corps of Engineers' Mississippi River Lock & Dam 14 and would consist of: (1) A proposed 50-foot-long, 168-inch-diameter concrete penstock, (2) a proposed powerhouse containing one generating unit having an installed capacity of 5 MW, (3) a proposed 1-mile-long, 25 kV transmission line, and (4) appurtenant facilities.

The applicant estimates that the average annual generation would be 43.2 GWh and would be sold to a local utility.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper;*See* 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's Web site under "e-filing" link. The Commission strongly encourages electronic filing.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21497 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11887–000]

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

August 15, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12457–000.

c. *Date Filed:* May 20, 2003.

d. *Applicant:* Wind River Hydro, LLC.

e. *Name of Project:* Wind River Diversion Hydroelectric Project.

f. *Location:* The proposed project would be located at the Bureau of Reclamation's (BOR) Wind River Diversion Dam, on the Wind River in Fremont County, Wyoming.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Brent L. Smith, President; Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, (208) 745–0834.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the BOR's existing Wind River Diversion Dam would consist of: (1) One 8-foot-diameter, 50-foot-long steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1 MW, (3) a 24.9-kv transmission line approximately 1 mile long, and (4) appurtenant facilities. The project would have an annual generation of 4.5 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies provided by the Commission's regulations to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21498 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11887–000]

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

August 15, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No:* 12458–000.

c: *Date Filed:* May 23, 2003.

d. *Applicant:* Pilot Butte Hydro, LLC.

e. *Name of Project:* Pilot Butte Dam Hydroelectric Project.

f. *Location:* The proposed project would be located at the Bureau of Reclamation's (BOR) Pilot Butte Dam, on the Wind River in Fremont County, Wyoming.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Brent L. Smith, President; Northwest Power Services, Inc., P.O. Box 535, Rigby, Idaho 83442, (208) 745–0834.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 502–8763.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed run-of-river project using the BOR's existing Pilot Butte Dam would consist of: (1) One 5-foot-diameter, 300-foot-long steel penstock, (2) a powerhouse containing one generating unit with a total installed capacity of 1 MW, (3) a 15-kv transmission line approximately 1 mile long, and (4) appurtenant facilities. The project would have an annual generation of 6.5 GWh.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Competing Development Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and eight copies to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

s. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21499 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL03–137–000, *et al.*]

American Electric Power Service Corp, Docket Nos. EL03–137–000, *et al.*; Notice of Second Plenary Conference

August 14, 2003.

In the matter of EL03–137–000, EL03–138–000, EL03–139–000, EL03–140–000, EL03–141–000, EL03–142–000, EL03–143–000, EL03–144–000, EL03–145–000, EL03–146–000, EL03–147–000, EL03–148–000, EL03–149–000, EL03–150–000, EL03–151–000, EL03–152–000, EL03–153–000, EL03–154–000, EL03–155–000, EL03–156–000, EL03–157–000, EL03–158–000, EL03–159–000, EL03–160–000, EL03–161–000, EL03–162–000, EL03–163–000, EL03–164–000, EL03–165–000, EL03–166–000, EL03–167–000, EL03–168–000, EL03–169–000, EL03–170–000, EL03–171–000, EL03–172–000, EL03–173–000, EL03–174–000, EL03–175–000, EL03–176–000, EL03–177–000, EL03–178–000, EL03–179–000; Aquila, American Electric Power Service Corporation Inc., Arizona Public Service Company, Automated Power Exchange, Inc., Bonneville Power Administration, California Department of Water Resources, California Power Exchange, Cargill-Alliant, LLC, City of Anaheim, California, City of Azuza, California, City of Glendale, California, City of Pasadena, California, City of Redding, California, City of Riverside, California, Coral Power, LLC, Duke Energy Trading and Marketing Company Dynegy Power Marketing, Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation, LLC, Cabrillo, Power 1 LLC and Cabrillo Power II LLC, Enron Power Marketing, Inc. and Enron Energy Services, Inc., F P & L Energy, Idaho Power Company, Los Angeles Department of Water and Power Mirant Americas Energy Marketing, LP, Mirant Americas Energy Marketing, LP, and Mirant Potero, LLC, Modesto Irrigation District, Morgan Stanley Capital Group, Northern California Power Agency, Pacific Gas and Electric Company, PacifiCorp, PGE Energy Services, Portland General Electric Company, Powerex Corporation, (f/k/a British Columbia Power Exchange Corp.), Public Service Company of Colorado; Public Service Company of New Mexico, Puget Sound Energy, Inc., Reliant Resources, Inc., Reliant Energy Power Generation, and Reliant Energy Services, Inc., Salt River Project Agricultural, Improvement and Power District San Diego Gas & Electric Company, Sempra Energy Trading Corporation, Sierra Pacific Power Company, Southern California Edison Company, TransAlta Energy Marketing (U.S.) Inc. and TransAlta Energy Marketing (California), Inc., Tucson Electric Power Company, Western Area Power Administration, Williams Energy Services Corporation.

Take notice that the Trial Staff of the Federal Energy Regulatory Commission (Commission) will convene a second plenary conference in the above-referenced cases on Tuesday, August 26, 2003 at 10 a.m. in Hearing Room 1 at the offices of the Commission, 888 1st Street, Washington, DC 20426. The conference will continue to be held as a settlement conference pursuant to Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602. Therefore, participation at the conference will be limited to the Identified Entities listed above, interveners in the instant dockets, and Trial Staff.

At the conference, Trial Staff plans to initially meet with the Identified Entities and all interveners to discuss the overall status of the proceeding. In that regard, Trial Staff plans to discuss with all the parties procedures that can be adopted to streamline the discovery and trial phases of the instant case for those entities that cannot be removed from the case by means of settlement or dismissal prior to September 3, 2003. It would be Trial Staff's aim to find a way to preserve fruitful settlement discussions for those cases that do not settle or are not dismissed before September 3, 2003. Similarly, Trial Staff is mindful of the numerous petitions for rehearing and requests for clarification that have been filed and would like to discuss the ramifications of those pleadings and potential Commission action on those filings.

Thereafter, Trial Staff proposes, as necessary, to meet with the Identified Entities and the Intervener Groups. As time permits, Trial Staff would also be willing to meet with individual Identified Entities about the particular status of their cases.

All parties with questions regarding this second plenary conference may contact Joel M. Cockrell at 202–502–8153, Edith A. Gilmore at 202–502–8632, or Janet K. Jones at 202–502–8165.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21377 Filed 8–20–03; 8:45 am.

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1656–000, ER03–1046–000, RT01–65–000, RM01–12–000]

California Independent System Operator Corp.: Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design; Notice of Technical Conference

August 15, 2003.

Take notice that a technical conference for California ISO will be held on November 6, 2003, from approximately 10 a.m. to 4 p.m. Pacific Standard Time in the auditorium of the California Public Utilities Commission, 505 Van Ness Avenue, San Francisco, California. Members of the Commission will attend and participate in the discussions.

This conference shall be one in a series of regional technical conferences announced in the White Paper issued in this docket on April 28, 2003. The Commission intends to use these conferences to discuss with states and market participants in each region reasonable timetables for addressing wholesale market design issues discussed in the White Paper and ways in which to tailor the final rule in this proceeding to benefit customers within each region.

The Commission is inviting selected panelists to participate in this conference; it is not entertaining requests to make presentations. Further details of the conference, including the agenda, will be specified in a subsequent notice. All interested persons may attend the conference, and registration is not required. However, in-person attendees are encouraged to register on-line at *http://www.ferc.gov/whats-new/registration/smd_1106-form.asp*

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity for remote listening of the conference via Real Audio or a Phone Bridge Connection for a fee. Persons interested in making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://*

www.capitolconnection.org and click on "FERC."

For more information about the conference, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 03–21500 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000 and RT01–95–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, New York Independent System Operator, Inc.; Notice of Technical Conference

August 15, 2003.

Take notice that a technical conference for the New York Independent System Operator, Inc. will be held on October 20, 2003, from approximately 1 p.m. to 5 p.m. Eastern Daylight Time at the offices of Consolidated Edison Company, 4 Irving Place, 19th floor auditorium, New York City, New York. Members of the Commission will attend and participate in the discussion. An agenda will be issued at a later time.

This conference is one in a series of regional technical conferences announced in the White Paper issued in Docket No. RM01–12–000 on April 28, 2003. The Commission intends to use these conferences to discuss with states and market participants in each region reasonable timetables for addressing wholesale market design issues and ways to tailor the final rule in this proceeding to benefit customers within the region.

The Commission is inviting selected panelists to participate in this conference; it is not entertaining requests to make presentations. Further details of the conference, including the agenda, will be specified in a subsequent notice. All interested persons may attend the conference, and registration is not required. However, in-person attendees are encouraged to register on-line at *http://www.ferc.gov/whats-new/registration/smd_1020-form.asp*

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity to remotely listen to the conference via the Internet or a Phone Bridge Connection for a fee. Persons interested in making arrangements should contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100) as soon as possible or visit the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on "FERC."

For more information about the conference, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 03–21501 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03–13–000]

Application of the Primary Function Test for Gathering on the Outer Continental Shelf; Notice of Public Conference

August 14, 2003.

Take notice that on September 23, 2003, the Commission will convene a public conference in the above captioned proceeding. The purpose of the conference will be to explore whether the Commission should reformulate its test for defining nonjurisdictional gathering in the shallow waters of the Outer Continental Shelf (OCS) and if so what the new test should be.

The Commission has considered its offshore gathering policy a number of times in the past decade.[1] Nevertheless, a satisfactory definition of gathering under the Natural Gas Act has remained elusive. A clear, consistent approach to offshore gathering is needed to protect producers and customers from the market power of third party transporters and to avoid different jurisdictional outcomes for companies that perform essentially the same economic function.

Background

A. Evolution of the Primary Function Test

Although section 1(b) of the Natural Gas Act states that the provisions of that act do not apply "to the production or gathering of natural gas," the act itself does not define those terms. The Commission has defined gathering as "the collecting of gas from various wells and bringing it by separate and several individual lines to a central point where it is delivered into a single line."[2] The Supreme Court has added that "production" and "gathering" are terms "narrowly confined to the physical acts of drawing the gas from the earth and preparing it for the first stages of distribution."[3] These definitions have been useful in describing gathering as a concept. Nevertheless, as the courts have recognized, "the line between gathering and transportation is inherently elusive."[4] Attempts to establish a functional test, useful in the context of specific proceedings, resemble the pursuit of a desert mirage. Historically, the tendency has been to announce a particular physical characteristic that could be used to identify nonjurisdictional gathering, only to substitute other criteria later to reflect changes in the industry or in the evolution of Commission policy.[5] In

[1] See generally Natural Gas Gathering Services Performed by Interstate Pipelines and Interstate Pipeline Affiliates —Issues Related to Rates and Terms and Conditions of Service, Docket No. RM94–4–000, Notice of Public Conference, 65 FERC ¶61,136 (1993); Gas Pipeline Facilities and Services on the Outer Continental Shelf—Issues Related to the Commission's Jurisdiction Under the Natural Gas Act and the Outer Continental Shelf Lands Act, Docket No. RM96–5–000, Policy Statement, 74 FERC ¶61,222 (1996) (1996 Policy Statement); Chevron U.S.A., Inc. v. FERC, 193 F. Supp. 2d 54 (D.DC, January 11, 2002), appeal pending sub nom. Williams Companies, *et al.* v. FERC, No. 02–5056 (DC Cir.) (appeal of district court ruling on motion that FERC did not have authority under the Outer Continental Shelf Lands Act (OCSLA) to issue regulations requiring gas service providers on the Outer Continental Shelf (OCS)to submit quarterly reports of services provided).

[2] Lomak Petroleum, Inc. v. FERC, 206 F.3d 1193, 1196 (DC Cir 2000), quoting from Barnes Transportation Company, 18 FPC at 372 (1957). *See* also *Conoco, Inc.* v. *FERC*, 90 F.3d 536, 539 n.2 (DC Cir. 1996)("Gathering is the process of taking natural gas from the wells and moving it to a collection point for further movement through the pipeline's principal transmission system.") (quoting *Northwest Pipeline Corp.* v. *FERC*, 905 F.2d 1403, 1404 n.1 (10th Cir. 1990)).

[3] *Northern Natural Gas Co.* v. *State Corp. Comm'n*, 372 U.S. 84, 90 (1963).

[4] *Exxon Mobil Gas Marketing Company* v. *FERC* (*Exxon*), No. 00–1355 (DC Cir. August 6, 2002) (Judge Edwards dissenting) slip op. at 18, citing *Conoco, Inc.* v. *FERC* 90 F. 3d 536 at 542 (DC Cir. 1996).

[5] For many years, the Commission employed two principal tests to differentiate (primarily onshore) transportation from gathering facilities. The "behind-the-plant" test presumes that all facilities located between the wellhead and a processing plant are non-jurisdictional gathering lines, while facilities downstream of the processing plant are presumptively transportation facilities. *See* Phillips Petroleum Co., 10 FPC 246 (1951), rev'd in part on other grounds sub nom. *Phillips Petroleum Co.* v. *Wisconsin*, 347 U.S. 672 (1954). For gas that

Farmland Industries, Inc.,[6] the Commission identified a number of factors for consideration in analyzing the section 1(b) gathering test, and stated that "the ultimate test is whether the primary function can be classified as transportation or gathering." The primary function test factors included:

- The length and diameter of a pipeline (longer and wider pipe indicating transportation);
- The central point in a field;
- The pipeline's geographic configuration (a web-like pattern, for example, suggesting a gathering function)
- Location of compressors and processing plants (*i.e.*, the "behind the plant" test);
- The location of wells along all or part of the facilities (typically indicating gathering); and
- Operating pressure of a line, with higher pressure generally associated with the need to propel gas in a transportation function.

The primary function test has been relatively satisfactory for analyzing onshore facilities. Offshore, however, the test has proven more difficult to apply.[7] Thus, in EP Operating Co. v. FERC, 876 F.2d 46, 48–49 (5th Cir. 1989), the Commission initially ruled that under the primary function test the offshore platform where initial gas treatment took place constituted a "central point in the field" where the gathering function was complete, and therefore the 51-mile long, 16-inch diameter OCS pipeline downstream of the platform at issue in that case was a jurisdictional transportation facility. The court reversed that finding, holding that while the length and diameter of pipeline facilities might indicate a transportation function onshore, those factors had less weight in the offshore context because of the longer distances between the point of production in deep water and the nearest connection with an interstate pipeline. The court further questioned the validity of a central-point-in-the-field analysis applied to unitary OCS structures.

In response, the Commission modified its primary function test for the OCS, stating that as drilling operations pushed further offshore from existing interstate pipeline connections, it would apply a sliding scale to allow for the increasing length and diameter appropriate for gathering lines in correlation to the distance from shore and the water depth of the offshore production area.[8] Later, following a conference on offshore gathering in Docket No. RM96–5–000, the Commission issued a policy statement announcing that it would "presume facilities located in deep water [more than 200 meters] are primarily engaged in gathering or production."[9]

As with onshore facilities, the use of the primary function test, as modified by the policy statement for deepwater facilities, seems to be workable, and there has been relatively little controversy concerning its application in recent years. Efforts to apply the primary function test to offshore facilities in the shallow OCS, however, have been contentious.

B. The Sea Robin Pipeline

Difficulties applying the primary function test to offshore facilities were highlighted by the Commission's decision in Sea Robin Pipeline Company (Sea Robin).[10] Sea Robin's offshore pipeline facilities were certificated as jurisdictional transmission facilities by the Commission in 1969. The system consists of 438 miles of pipeline that transports unprocessed gas from shallow water on the OCS to a processing plant onshore. The system is configured in the form of a "Y". Along the two arms of the "Y", 45 lateral lines with diameters ranging from 4.5 to 30 inches are connected to 67 receipt points located on production platforms, or at subsea taps. Through those upstream arms, Sea Robin moves the gas to a manned platform with two turbine compressor units at the fork of the "Y" closer to shore. The bottom line of the "Y", from the platform to shore, consists of 66.3 miles of 36-inch pipeline. Along this segment the gas is mingled with additional gas from four platforms.

In response to a request to reclassify the Sea Robin facilities from transmission to gathering, the Commission found that the primary function of Sea Robin's entire system was and continued to be jurisdictional transportation. In reaching that conclusion, the Commission emphasized the length and size of Sea Robin's pipeline, and also certain non-physical factors, such as the reliance of shippers in the original jurisdictional determination. The U.S. Court of Appeals for the Fifth Circuit remanded that decision.[11] In doing so the court said the Commission had relied too heavily on the size of Sea Robin's system as a determinative factor and did not give enough consideration to the different nature of gathering on the OCS. The court also faulted the Commission for reliance on non-physical considerations, such as Sea Robin's ownership and shipper expectations. The court specifically found that the Commission's consideration of a "regulatory gap" in the absence of Natural Gas Act jurisdiction was inappropriate: "Need for regulation cannot alone create authority to regulate."[12]

In its decision, the court suggested that the primary function test could be adapted to the operational characteristics of the OCS, so that portions of its system could be considered to be predominantly gathering and other parts predominantly transportation. On remand, then, the Commission adopted this suggestion and reformulated the primary function test to draw the jurisdictional line at an internal point on the Sea Robin system, at the junction of the "Y".[13] The Commission concluded that the part of Sea Robin's pipeline facilities from the platform to shore was a jurisdictional transportation system. Upstream of that point the two legs of the "Y" formed a non-jurisdictional gathering system.

In reformulating its primary function test, the Commission concluded that the "behind-the-plant" factor is not

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required no processing, the "central-point-in-the-field" test applied, under which lateral lines that collect gas from separate wells before converging into a larger single line—typically at the point where the gas is compressed for transportation by the pipeline—were classified as gathering facilities. E.g., Barnes, supra

[6] 23 FERC ¶ 61,063 at 61,143 (1983). The Commission later added a number of "non-physical" criteria, including (1) the purpose, location and operation of a facility; (2) the business of the owner; (3) whether the jurisdictional determination is consistent with the objectives of the NGA and other legislation; and (4) the changing technical and geographic nature of exploration and production. Amerada Hess Corp., 52 FERC ¶ 61,268 at 61,844–45 (1990). Under the primary function test, no one factor is determinative, nor do all factors apply in every situation. *See e.g.*, Williams Field Services, 194 F.3d at 116; Farmland, 23 FERC at 61,143.

[7] As more new facilities were constructed offshore on the OCS, where the pattern of gathering and distribution differs, the applicability of the factors was questioned. Specifically, it is often not feasible to process raw gas on open water. As a result, pipelines on the OCS typically do not gather gas at a local, centralized point within a producing field as they would onshore, to prepare it for traditional transportation. Rather, on the OCS, they construct relatively long lines to carry the raw gas from offshore platforms, where after production only rudimentary gas treatment takes place (primarily to remove water), to the shore or a point closer to shore where it can be processed into "pipeline quality" gas that can be transported by an interstate pipeline.

[8] *See* Amerada Hess, 52 FERC at 61,988 (1990).

[9] *See* 1996 Policy Statement, note 1 supra.

[10] 71 FERC ¶ 61,351 (1995), reh'g denied, 75 FERC ¶ 61,332 (1996).

[11] *Sea Robin Pipeline Company* v. *FERC*, 127 F.3d 365 (5th Cir. 1997).

[12] *Id.* at 371.

[13] Sea Robin Pipeline Company, Order on Remand, 87 FERC ¶ 61,384 (1999) (Comm. Bailey dissenting), rehearing denied, 92 FERC ¶ 61,072 (2000).

necessarily determinative of where gathering ends when applied to offshore facilities. In addition, the Commission announced that where a pipeline system includes a facility where gas is delivered by several relatively small diameter lines for aggregation and preparation for further delivery onshore through a single larger diameter pipeline, the location of that collection facility will be afforded considerable weight for purposes of identifying the demarcation point between gathering and transportation on OCS systems.[14]

Although not all OCS pipeline systems exhibit such a centralized aggregation point, *e.g.*, facilities with a straight-line or spine-and-lateral type configuration, the presence of such a location would be considered the offshore analogue of the onshore "central-point-in-the-field" criterion.

The Commission's decision on remand, based on its reformulated test that included the central point of aggregation as a factor offshore, was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in Exxon (note 4 supra).[15]

C. The "Reformulated, Modified Primary Function Test"

Despite the several modifications of the primary function test described above, its utility in identifying nonjurisdictional gathering facilities remains uneven. As mentioned, the rule seems to work fairly well onshore, possibly because where other factors are not conclusive, there is usually a processing plant located at the end of a gathering system that serves as a logical demarcation point between jurisdictional and nonjurisdictional systems. Also, after an initial round of decisions interpreting the 1996 Policy Statement applying the primary function test to facilities located in deep water beyond the OCS, there has been relatively little controversy. In the shallow areas on the OCS, on the other hand, the status of facilities remains unsettled. The Commission continues to receive requests to reclassify jurisdictional transmission facilities as gathering, over the objection of customers who have been served through the facilities. In these types of cases, the correct interpretation of the primary function test is usually the main issue.

Based on the number of contested cases presented to us, we are concerned about the high degree of uncertainty that seems built into the primary function test as applied offshore. The primary function test lists numerous factors for consideration, with no one factor having priority. Thus, for example, the size of a particular system may suggest that it is transmission, but the configuration may suggest gathering. The primary function test does not indicate how such inconsistencies should be resolved. The result, over time, has been the gradual reclassification of more and larger systems as gathering, even in cases where systems had been regulated for many years under the Natural Gas Act. Systems with generally similar physical characteristic may have a different regulatory status because of relatively minor physical differences. This result can produce different regulatory results for competitors who perform essentially the same economic function. It is also seems unfair to customers who may have made investments relying on the regulated status of a transporter, only to find themselves subject to the market power of that transporter in its new deregulated form. The "need for regulation" may not create authority to regulate; on the other hand, inconsistent classification and regulatory treatment cannot be what Congress intended when it established a comprehensive scheme of federal regulation that included transportation from the OCS.

Public Conference

The Commission is convening a public conference to hear suggestions from interested persons on developing a new test for gathering on the OCS that is reasonably objective and that furthers the regulatory goals of the Natural Gas Act. (The conference will not include the policy adopted for deepwater facilities in Docket No. RM96–5–000.) A new test should ensure that similar facilities are subject to similar regulatory treatment. It should also provide incentives for investment in production, gathering, and transportation infrastructure offshore, without subjecting producers to the unregulated market power of third party transporters. Persons who appear at the conference should be prepared to indicate how the Commission's definition of gathering can be changed to achieve these goals. Persons seeking to make formal statements at the public conference should be prepared to address questions set forth below. Other questions may arise during the course of the proceedings.

Questions

1. To what extent should a gathering test that be based on the length and diameter of the pipeline, the extent the facilities are operationally integrated with either production or transportation facilities, the function of compression in relation to the facilities, and the proximity to the pipeline transportation grid?

2. To what extent should the location of processing plants, the central point of aggregation, the operating pressure of a line, and geographic configuration of facilities, be considered relevant in evaluating the status of facilities on the OCS? What are the advantages and disadvantages of relying on these factors? Are there any other factors that should be considered?

3. What should be the relevance of non physical factors such as a facility's history of regulation or the major business purpose of an owner?

4. If formerly certificated facilities are determined to be gathering, may the Commission nonetheless require the company to file for abandonment under section 7(b) of the Natural Gas act before the facilities may be transferred to another company?

Procedures

The public conference convened by this notice will be held on September 23, 2003 at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All interested persons are invited to attend. Persons interested in speaking or making a presentation should indicate their interest no later than September 3, 2003 by a letter addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket No. AD03–13–000. Each request to participate must include the name of a contact person, their telephone number and e-mail address. There is no need to provide advance notice to the Commission simply to attend the conference.

Comments addressing the questions set out in this notice may also be filed by September 3, 2003. Every effort will be made to accommodate requests to make presentations, but depending on the number of requests received, a limit may have to be placed on the number of presenters and the time allowed for presentations.

Members of the Commission intend to participate in the public conference and will reserve time for questions and answers. In a subsequent notice, we will provide further details on the conference, including the agenda and a list of participants, as plans evolve. For additional information, please contact Gordon Wagner, Office of General

[14] 87 FERC at 62,248.

[15] *See* also Williams Gas Processing—*Gulf Coast Company, L.P. et al.* v. *FERC*, No. 01–1327 (DC Cir. June 20, 2003).

Counsel, phone 202–502–8947, e-mail: *gordon.wagner@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 03–21373 Filed 8–20–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7547–2]

Protection of Stratospheric Ozone: Notice 18 for Significant New Alternatives Policy Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of acceptability.

SUMMARY: This Notice of Acceptability expands the list of acceptable substitutes for ozone-depleting substances (ODS) under the U.S. Environmental Protection Agency's (EPA) Significant New Alternatives Policy (SNAP) program. The substitutes are for use in the following sectors: refrigeration and air conditioning, solvents cleaning, foam blowing, fire suppression and explosion protection, and aerosols.

EFFECTIVE DATE: August 21, 2003.

ADDRESSES: Information relevant to this notice is contained in Air Docket A–91–42, 1301 Constitution Avenue, NW.; U.S. Environmental Protection Agency, Mail Code 6102T; Washington, DC 20460. The docket reading room is located at the address above in room B102 in the basement. Reading room telephone: (202) 566–1744, facsimile: (202) 566–1749, Air docket staff telephone: (202) 566–1742 and facsimile: (202) 566–1741 You may inspect the docket between 8:30 a.m. and 4:30 p.m. weekdays. As provided in 40 CFR part 2, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Margaret Sheppard by telephone at (202) 564–9163, by fax at (202) 565–2155, by e-mail at *sheppard.margaret@epa.gov*, or by mail at U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Mail Code 6205J, Washington, DC 20460. Overnight or courier deliveries should be sent to 501 3rd Street, NW., Washington, DC 20001.

For more information on the Agency's process for administering the SNAP program or criteria for evaluation of substitutes, refer to the original SNAP rulemaking published in the Federal Register on March 18, 1994 (59 FR 13044). Notices and rulemakings under the SNAP program, as well as other EPA publications on protection of stratospheric ozone, are available from EPA's Ozone Depletion World Wide Web site at *http://www.epa.gov/ozone/* including the SNAP portion at *http://www.epa.gov/ozone/snap/.*

EPA has established an official public docket for this action under Docket ID No. OAR–2003–0118 (continuation Docket A–91–42). The official public docket consists of the documents specifically referenced in this action and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

An electronic version of the public docket is available through EPA's electronic public docket and comment system. EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the previous paragraph. Once in the system, select "search," then key in the appropriate docket identification number (OAR–2003–0118).

SUPPLEMENTARY INFORMATION:

I. Listing of Acceptable Substitutes
  A. Refrigeration
  B. Solvents Cleaning
  C. Foam Blowing
  D. Fire Suppression and Explosion Protection
  E. Aerosols
II. Section 612 Program
  A. Statutory Requirements
  B. Regulatory History
Appendix A—Summary of Acceptable Decisions

I. Listing of Acceptable Substitutes

This section presents EPA's most recent acceptable listing decisions for substitutes in the following industrial sectors: refrigeration and air conditioning, solvents, cleaning, foam blowing, fire suppression and explosion protection, and aerosols. For copies of the full lists of SNAP decisions in all industrial sectors, visit EPA's Ozone Depletion Web site at *http://www.epa.gov/ozone/snap/lists/index.html.*

The sections below discuss each substitute listing in detail. Appendix A contains a table summarizing today's listing decisions. The statements in the "Further Information" column in the table provide additional information, but are not legally binding under section 612 of the Clean Air Act. In addition, the "further information" may not be a comprehensive list of other legal obligations you may need to meet when using the substitute. Although you are not required to follow recommendations in the "further information" column of the table to use a substitute, EPA strongly encourages you to apply the information when using these substitutes. In many instances, the information simply refers to standard operating practices in existing industry and/or building-code standards. Thus, many of these statements, if adopted, would not require significant changes to existing operating practices.

Submissions to EPA for the use of the substitutes listed in this document may be found under category VI–D of EPA air docket A–91–42 at the address described above under **ADDRESSES.** You can find other material supporting the decisions in this action under category IX–B of EPA docket A–91–42 and in e-docket OAR–2003–0118 at *http://www.epa.gov/edocket/.*

A. Refrigeration

1. R–407C

EPA's decision. R–407C is acceptable for use in new and retrofit equipment as a substitute for R–502 in:

- retail food refrigeration
- cold storage warehouses
- commercial ice machines
- refrigerated transport
- ice skating rinks
- water coolers
- residential dehumidifiers
- vending machines
- industrial process air conditioning
- reciprocating chillers
- screw chillers
- industrial process refrigeration
- non-mechanical heat transfer systems
- household refrigerators and freezers
- household and light commercial air conditioning

R–407C is a blend of 23% by weight HFC–32 (difluoromethane, Chemical

Abstract Service [CAS] No. 75–10–5), 25% by weight HFC–125 (pentafluoroethane, CAS No. 354–33–6) and 52% by weight HFC–134a (1,1,1,2-tetrafluoroethane, CAS No. 811–997–2). The submission may be found in EPA Air Docket A–91–42, item VI–D–293.

EPA previously listed R–407C as an acceptable alternative for hydrochlorofluorocarbon (HCFC)–22 and chlorofluorocarbons (CFCs) (February 8, 1996; 61 FR 4736) and as an acceptable substitute for HCFC blends (December 20, 2002; 67 FR 77927) in various refrigeration and air conditioning end uses under SNAP.

Environmental information. The ozone depletion potential (ODP) or R–407C is zero. The Global Warming Potentials (GWPs) of HFC–32, HFC–125, and HFC–134a are 543, 3450, and 1320, respectively (relative to carbon dioxide, using a 100-year time horizon (United Nations Environment Programme (UNEP) and World Meteorological Organization (WMO) *Scientific Assessment of Ozone Depletion:* 2002).) The atmospheric lifetimes of these constituents as 4.9, 29 and 14.0 years, respectively.

All components of this blend are excluded from the definition of volatile organic compound (VOC) under Clean Air Act regulations addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards. 40 CFR 51.100(s).

Flammability information. While HFC–32 is moderately flammable, the blend as formulated and under worst case fractionated formulation scenarios is not flammable.

Toxicity and exposure data. All components of the blend have 8 hour/day, 40 hour/week workplace environmental exposure limits (WEELs) of 1000 ppm established by the American Industrial Hygiene Association (AIHA). EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry. We also expect that users of R–407C will adhere to the AIHA's WEELs.

Comparison to other refrigerants. R–407C is not an ozone depleter; thus, it poses a lower risk for ozone depletion than R–502, a blend of HCFC–22 and CFC–115, the ODS it replaces. R–407C has a comparable or lower GWP than most other substitutes for R–502. Flammability and toxicity risks are low, as discussed above. Thus, we find that R–407C is acceptable because there are no other substitutes that are currently or potentially available and that provide a substantially reduced risk to public health and the environment in the end uses listed.

2. ISCEON 89

EPA's decision. ISCEON 89 is acceptable for use in new and retrofit equipment as a substitute for R–13B1 in very low temperature refrigeration. ISCEON 89 is a blend of 86% by weight HFC–125 (pentafluoroethane, CAS No. 354–33–6), 9% by weight PFC–218 (octofluoropropane, CAS NO. 76–19–7) and 5% by weight R–290 (propane, CAS No. 74–98–6). The submission may be found in EPA Air Docket A–91–42, item VI–D–293.

Environmental information. The ozone depletion potential (ODP) of ISCEON 89 is zero. Relative to carbon dioxide, using a 100-year time horizon, from the source cited above in IA1, the Global Warming Potentials (GWPs) of HFC–125 and PFC–218 are 3450 and 8690, respectively. The source lists the atmospheric lifetimes as 29 years for HFC–125 and 2600 years for PFC–218. The source does not list a GWP for propane, but it is thought to be on the order of 10 to 20.

Because of the high GWP of HFC–125 and especially PFC–218, EPA strongly encourages prompt identification and repair of any leaks that may occur. EPA notes that most of the R–13B1 alternatives already listed as acceptable for use within the very low temperature refrigeration end use have GWPs as high or higher than this blend, and encourages the continued search for lower-GWP alternatives for this end use. The contribution of these blends to global warming will be minimized through the implementation of the venting prohibition under section 608(c)(2) of the Clean Air Act (*See* 40 CFR part 82, subpart F). This section and EPA's implementing regulations at subpart F of 40 CFR part 82 prohibit venting or release of substitutes for class I and class II ozone depleting substances used in refrigeration and air-conditioning and require proper handling and disposal of these substances, such as recycling or recovery.

Propane is defined as a volatile organic compound (VOC) under Clean Air Act regulations addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards. 40 CFR 51.100(s). HFC–125 and PFC–218 are excluded from the definition of VOC under those regulations.

Flammability information. While propane is flammable, the blend formulated as submitted is not. The submitter has provided data to indicate that under a worst case fractionation scenario, the blend will have a lower flammable limit (LFL) of 6% by volume. Due to this minor risk of flammability, EPA expects users to take extra precautions while handling this blend, including those listed under *Toxicity and exposure data,* below.

Toxicity and exposure data. All components of the blend have workplace guidance level exposure limits on the order of 1000 ppm. EPA believes this exposure limit will be protective of human health and safety. EPA expects users to adhere to all exposure limits, follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components, and undertake all other safety precautions common in the refrigeration and air conditioning industry.

Comparison to other refrigerants. ISCEON 89 is not an ozone depleter; thus, it reduces the associated risk compared to R–13B1, the ODS it replaces. ISCEON 89 has a comparable or lower GWP than most other substitutes for R–13B1 in very low temperature refrigeration end use. Thus, we find that ISCEON 89 is acceptable because it reduces overall risk to public health and the environment in the end use listed.

3. RS–44

EPA's decision. RS–44 is acceptable for use in new and retrofit equipment as a substitute for HCFC–22 in the following end uses:

- industrial process refrigeration
- industrial process air conditioning
- ice skating rinks
- cold storage warehouses
- refrigerated transport
- retail food refrigeration
- commercial ice machines
- household refrigerators and freezers
- residential dehumidifiers
- screw chillers
- reciprocating chillers
- centrifugal chillers
- household and light commercial air conditioning

The submitter of RS–44 claims that the composition of this blend is confidential business information. You can find a version of the submission with information claimed confidential by the submitter removed in EPA Air Docket A–91–142, item VI–D–295.

Environmental information. The ozone depletion potential (ODP) of RS–44 is zero. The Global Warming Potentials (GWPs) of the constituents are all below 5000 (relative to carbon

dioxide, using a 100-year time horizon, from the source listed in IA1).

At least one component of this blend has not been excluded from the definition of VOC under Clean Air Act regulations addressing the development of SIPs to attain and maintain the national ambient air quality standards. 40 CFR 51.100(s).

Flammability information. While at least one component of the blend is moderately flammable, the submitter has provided test results that show the blend as formulated and at worst case formulation and worst case fractionated formulation conditions is not flammable.

Toxicity and exposure data. Components of the blend have workplace guidance level exposure limits on the order of 600 to 1000 ppm. EPA believes this exposure limit will be protective of human health and safety. EPA expects users to follow all recommendations specified in the Material Safety Data Sheet (MSDS) for the blend and the individual components and other safety precautions common in the refrigeration and air conditioning industry.

Comparison to other refrigerants. RS–44 is not an ozone depleter; thus, it reduces risk from ozone depletion compared to CFC–12, the ODS it replaces. RS–44 has a comparable or lower GWP than most other substitutes for HCFC–22. Flammability and toxicity risks are low, as discussed above. Thus, we find that RS–44 is acceptable because it reduces overall risk to public health and the environment in the end uses listed.

B. Solvents Cleaning

1. HFE–7000

Hydrofluoroether (HFE)–7000 is acceptable for use as a substitute for methyl chloroform and CFC–113 in the precision cleaning and electronics cleaning end uses. 3M, the submitter, indicates that this chemical is also known as HFE–301 and propane, 1,1,1,2,2,3,3 hepta fluoro-3-methoxy or 1-(methoxy)-1,1,2,2,3,3,3-heptafluoropropane. The empirical formula is $C_4H_3F_7O$ and it is also identified as CH_3-O-CF_2-CF_2-CF_3 and R–E347mcc1. You can find a version of the submission with information claimed confidential by the submitter removed, in EPA Air Docket A–91–42, items VI–D–272 and VI–D–300. EPA previously found HFE–7000 acceptable in several refrigerant end uses (March 22, 2002; 67 FR 13272).

Environmental information. The ODP of HFE–7000 is zero. The GWP is estimated as 400 (derived from Ninomiya *et al.*, 2000) relative to carbon dioxide, using a 100-year time horizon. Experimental data indicates a lifetime of 4.7 years (Ninomiya *et al.*, 2000).

HFE–7000 is considered a VOC. This chemical is being reviewed by EPA for exclusion from the definition of VOC under Clean Air Act regulations addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards. 40 CFR 51.100(s).

Flammability information. This chemical is nonflammable.

Toxicity and exposure data. The manufacturer has recommended an acceptable exposure limit (AEL) of 75 ppm over an eight-hour time-weighted average. EPA has reviewed this exposure limit and believes it is protective of human health and safety. We expect users to follow all recommendations specified in the MSDS for this chemical.

Comparison to other aerosol solvents. HFE–7000 is not an ozone depleter; thus, in the electronics and precision cleaning end uses, it reduces risk overall compared to methyl chloroform and CFC–113, the ODSs it replaces. The GWP and atmospheric lifetime of HFE–7000 are lower than those of several other acceptable alternatives that are cleaning solvents.

C. Foam Blowing

1. Ecomate™

EPA's decision. Ecomate™ is acceptable as a substitute for CFCs and HCFCs in the following end-uses:

- Rigid polyurethane and polyisocyanurate laminated boardstock;
- Rigid polyurethane appliance;
- Rigid polyurethane slabstock and other foams;
- Rigid polyurethane commercial refrigeration and sandwich panels; and
- Polyurethane integral skin foam.

The submitter, Foam Supplies, claims that the composition of Ecomate™ is confidential business information (*see* docket A–91–42, item VI–D–296).

Environmental information. Ecomate™ has no ODP and very low or zero global warming potential (GWP). Users should be aware that Ecomate™ is not excluded from the definition of volatile organic compound (VOC) under Clean Air Act regulations addressing the development of State implemention plans (SIPs) to attain and maintain the national ambient air quality standards. 40 CFR 51.100(s). For more information refer to the manufacturer of Ecomate™, EPA regulations, and your state or local air quality agency. Also, because Ecomate™ is considered hazardous, spills and disposal should be handled in accordance with requirements of the Resource Conservation and Recovery Act (RCRA).

Flammability information: Ecomate™ is flammable and should be handled with proper precautions. Use of Ecomate™ will require safe handling and shipping as prescribed by OSHA and DOT (for example, using personal safety equipment and following requirements for shipping hazardous materials at 49 CFR parts 170 through 173). However, when blended with fire retardant, the flammability of Ecomate™ can be reduced to make a formulation that is either combustible or non-flammable (refer to the manufacturer of Ecomate™ for more information). Due to its flammability, EPA is not finding Ecomate™ acceptable for use in spray foam at this time. For information on the safety training requirements for use of flammable blowing agents in spray foam refer to SNAP Notice of Acceptability 11 (64 FR 68039, December 6, 1999) or contact the EPA SNAP program.

Toxicity and exposure data. Ecomate™ should be handled with proper precautions. EPA anticipates that Ecomate™ will be used in such a manner so that any recommendations specified in the manufacturers' Material Safety Data Sheets (MSDSs) are followed. OSHA established a permissible exposure limit for the main component of Ecomate™ of 100 ppm for a time-weighted average over an eight-hour work shift.

Comparison to other foam blowing agents. Ecomate™ is not an ozone depleter; thus, it reduces risk overall compared to the ODS it replaces. Ecomate™ has a comparable or lower GWP than the other substitutes for CFCs and HCFCs in these end uses. Thus, we find that Ecomate™ is acceptable because it reduces overall risk to public health and the environment in the end uses listed.

2. HFC–245fa

EPA's decision. Hydrofluorocarbon (HFC)–245fa is an acceptable substitute for all HCFCs in:

- Rigid polyurethane and polyisocyanurate laminated boardstock;
- Rigid polyurethane appliance;
- Rigid polyurethane slabstock and other foams;
- Rigid polyurethane commercial refrigeration and sandwich panels;
- Phenolic insulation board and bunstock;
- Polyolefin;
- Polystyrene: extruded boardstock and billet;
- Polyurethane integral skin foam.

HCF–245fa is also known as 1,1,1,3,3-pentafluoropropane (CAS Registry No. 460–73–1). We previously found HFC–245fa acceptable for use as a substitute for CFC–11 and HCFC–141b in foam blowing (64 FR 68041, December 6, 1999), refrigeration and air conditioning (65 FR 37901, June 19, 2000) and aerosols (67 FR 13272, March 22, 2002).

In its original rulemaking on March 18, 1994 (59 FR 13084), the SNAP program addressed the use of blends in foam blowing applications. EPA determined that notification was not required for "use of blends or mixtures of substitutes listed as acceptable under the SNAP program in open-celled or closed-cell or semi-rigid end uses" *except* in the following end-uses: polyurethane rigid laminated boardstock; polystyrene extruded boardstock and billet foams; phenolic foams; and polyolefin foams. Therefore, use of HFC–245fa in blends with other substitutes that EPA has found acceptable [1] as HCFC replacements is currently acceptable in the following end uses:

- Rigid polyurethane appliance;
- Rigid polyurethane slabstock and other foams;
- Rigid polyurethane commercial refrigeration and sandwich panels;
- Polyurethane integral skin foam.

Approval of an HFC–245fa blend in any other end-use would require formal determination by EPA. Blends of HFC–245fa and other substitutes EPA has found acceptable as replacements for HCFCs are subject to the same conditions that apply to the individual substitutes (*e.g.*, flammable blowing agents in spray foam require EPA approval and safety training). For more information on HFC–245fa and its blends refer to the original listing (64 FR 68041, December 6, 1999) and the information below for blends of HFC–245fa and HCFC–22.

3. Blends of HFC–245fa and HCFC–22

EPA's decision. Blends of HFC–245fa and HCFC–22 are acceptable substitutes for blends of HCFC–141b and HCFC–22, where the HFC–245fa replaces the HCFC–141b in:

- Rigid polyurethane and polysocyanurate laminated boardstock;
- Rigid polyurethane appliance;
- Rigid polyurethane slabstock and other foams;
- Rigid polyurethane commercial refrigeration and sandwich panels;
- Phenolic insulation board and bunstock;
- Polyolefin;
- Polyurethane integral skin foam.

Further information on HFC–245fa is described above in section C.2. of this document.

Environmental information. HFC–245fa has an ODP of zero. It has a GWP of 1022. This value is similar to or lower than the GWP of the substances that HFC–245fa would be replacing. Both HFC–245fa and HCFC–22 have been excluded from the definition of VOC under Clean Air regulations addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards. 40 CFR 51.100(s).

Flammability. Blends of HFC–245fa and HCFC–22 are non-flammable.

Toxicity and exposure data. EPA anticipates that HFC–245fa will be used in such a manner so that any recommendations specified in the manufacturers' Material Safety Data Sheets (MSDSs) are followed. We also expect that the workplace exposure level will not exceed the American Industrial Hygiene Association's (AIHA) workplace environmental exposure limit (WEEL) of 300 ppm for HFC–245fa or the American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Value (TLV) of 1000 ppm for HCFC–22.

The blend of HFC–245fa and HCFC–22 has moderate to low toxicity. EPA expects that these blends will be used in a manner such that occupational exposure to any component of the blend does not exceed the WEEL for that chemical.

Comparison to other foam blowing agents. HFC–245fa has a lower ODP than HCFC–141b, the ODS it replaces; thus, blends of HFC–245fa and HCFC–22 reduces risk overall compared to the ODS blends they replace. Blends of HFC–245fa and HCFC–22 have comparable or lower GWP than HCFC–141b and other approved substitutes for HCFC–141b. Blends of HFC–245fa and HCFC–22 are non-flammable. Blends of HFC–245fa and HCFC–22 exhibit moderate to low toxicity and guidance is available from the AIHA and the ACGIH on their use in the workplace. Thus, we find that blends of HFC–245fa and HCFC–22 are acceptable because they reduce overall risk to public health and the environment in the end uses listed.

D. Fire Suppression and Explosion Protection

1. HFC–125 with 0.15% *d*-limonene (NAF S–125)

EPA's decision. NAF S–125 is acceptable for use as a substitute for halon 1301 in the total flooding end use in both normally occupied and unoccupied spaces. NAF S–125 is a mixture of HFC–125 containing 0.15% *d*-limonene by weight. HFC–125 is also known as 1,1,1,2,2-pentafluoroethane, CAS No. 354–33–6. Another name for *d*-limonene is 4-isopropenyl-1-methyl-1-cyclohexene, CAS No. 5989–27–5. EPA finds the blend acceptable as submitted; however, blends containing more than 0.15% *d*-limonene are not addressed by today's decision. EPA previously found HFC–125 acceptable in total flooding (January 29, 2002; 67 FR 4185). EPA previously found the entire class of terpenes, including *d*-limonene, acceptable in solvent cleaning (March 18, 1994; 59 FR 13044).

Environmental information. Both of the components of NAF S–125 have an ozone depletion potential of zero. HFC–125 has a global warming potential (GWP) of 2800 and *d*-limonene has a GWP of 10. These values are lower than the GWP of Halon 1301 (6900).

HFC–125 is excluded from the definition of volatile organic compound (VOC) under Clean Air Act regulations addressing the development of State implementation plans (SIPs) to attain and maintain the national ambient air quality standards. 40 CFR 51.100(s). *d*-limonene is used as a solvent in cleaning solutions and has a variety of uses. *d*-limonene is a VOC. Given that *d*-limonene exists at higher percentages in commonly used cleaners and polishes than it does in NAF S–125, the effects of fire extinguishers containing *d*-limonene upon the environment and the general population are expected to be minimal.

Flammability. Although *d*-limonene is flammable, the blend is non-flammable.

Toxicity and exposure data. As with other fire suppressants, EPA recommends that you minimize exposure to this agent. If personnel are exposed to the agent, they should exit the area within five minutes or less. EPA recommends that unnecessary exposure to fire suppression agents and their decomposition products be avoided and that personnel exposure be limited to no more than 5 minutes.

In order to keep exposure levels as low as possible, EPA recommends the following for establishments installing and maintaining total flooding systems:

—Put adequate ventilation in place. If ventilation is suspected to be inadequate, self-contained breathing apparatus (SCBA) should be available;
—Wear proper personal protection equipment (impervious butyl gloves, eye protection, chemical resistant aprons, long sleeves, and safety shoes);

[1] By acceptable, in this case we mean acceptable, acceptable subject to use conditions, or acceptable subject to use limits.

—Clean up all spills immediately in accordance with good industrial hygiene practices; and
—Provide training for safe handling procedures to all employees that would be likely to handle the containers of NAF S 125 or extinguishing units filled with the material.

Use of this agent should conform with relevant Occupational Safety and Health Administration (OSHA) requirements, including 29 CFR part 1910, subpart L, § 1910.160 for fixed fire extinguishing systems, § 1910.162 for gaseous agents and § 1910.165 for predischarge employee alarms. Per OSHA requirements, protective gear (self-contained breathing apparatus) should be available in the event that personnel reenter the area. In addition, also observe the guidelines in the National Fire Protection Association (NFPA) 2001 standard for use of Clean Agent Fire Extinguishing Systems for use of HFC–125.

Comparison to other fire suppressants. NAF S–125 has no ODP; thus, it reduces risk overall compared to halon 1301, the ODS it replaces. EPA has already found acceptable HFC–125, the main ingredient in NAF S–125. NAF S–125 has a GWP comparable with that of many other acceptable substitutes for halon 1301. Thus, we find that NAF S–125 is acceptable because it does not present a greater risk to public health and the environment in the end use listed than other substitutes that are available.

E. Aerosols

1. HFE–7000

HFE–7000 is acceptable for use as a substitute for methyl chloroform, CFC–113, and HCFC–141b in the aerosol solvent end use. For further information about HFE–7000, see above in section B.1 on solvent cleaning.

Comparison to other aerosol solvents. HFE–7000 is not an ozone depleter; thus, in the aerosol solvent end use, it reduces risk overall compared to methyl chloroform, CFC–113, and HCFC–141b, the ODSs it replaces. The GWP and atmospheric lifetime of HFE–7000 are lower than those of a number of other acceptable alternatives that are aerosol solvents.

II. Section 612 Program

A. Statutory Requirements

Section 612 of the Clean Air Act authorizes EPA to develop a program for evaluating alternatives to ozone-depleting substances. We refer to this program as the Significant New Alternatives Policy (SNAP) program. The major provisions of section 612 are:

• *Rulemaking*—Section 612(c) requires EPA to promulgate rules making it unlawful to replace any class I (chlorofluorocarbon, halon, carbon tetrachloride, methyl choloroform, and hydrobromofluorocarbon) or class II (hydrochlorofluorocarbon) substance with any substitute that the Administrator determines may present adverse effects to human health or the environment where the Administrator has identified an alternative that (1) reduces the overall risk to human health and the environment, and (2) is currently or potentially available.

• *Listing of Unacceptable/Acceptable Substitutes*—Section 612(c) also requires EPA to publish a list of the substitutes unacceptable for specific uses. EPA must publish a corresponding list of acceptable alternatives for specific uses.

• *Petition Process*—Section 612(d) grants the right to any person to petition EPA to add a substance to or delete a substance from the lists published in accordance with section 612(c). The Agency has 90 days to grant or deny a petition. Where the Agency grants the petition, it must publish the revised lists within an additional six months.

• *90-day Notification*—Section 612(e) directs EPA to require any person who produces a chemical substitute for a class I substance to notify the Agency not less than 90 days before new or *existing* chemicals are introduced into interstate commerce for significant new uses as substitutes for a class I substance. The producer must also provide the Agency with the producer's unpublished health and safety studies on such substitutes.

• *Outreach*—Section 612(b)(1) states that the Administrator shall seek to maximize the use of federal research facilities and resources to assist users of class I and II substances in identifying and developing alternatives to the use of such substances in key commercial applications.

• *Clearinghouse*—Section 612(b)(4) requires the Agency to set up a public clearinghouse of alternative chemicals, product substitutes, and alternative manufacturing processes that are available for products and manufacturing processes which use class I and II substances.

B. Regulatory History

On March 18, 1994, EPA published the final rulemaking (59 FR 13044) which described the process for administering the SNAP program. In the same notice, we issued the first acceptability lists for substitutes in the major industrial use sectors. These sectors include:

• Refrigeration and air conditioning;
• Foam blowing;
• Solvents cleaning;
• Fire suppression and explosion protection;
• Sterilants;
• Aerosols;
• Adhesives, coatings and inks; and
• Tobacco expansion.

These sectors compose the principal industrial sectors that historically consumed the largest volumes of ozone-depleting compounds.

As described in this original rule for the SNAP program, EPA does not believe that rulemaking procedures are required to list alternatives as acceptable with no limitations. Such listings do not impose any sanction, nor do they remove any prior license to use a substance. Therefore, by this notice we are adding substances to the list of acceptable alternatives without first requesting comment on new listings.

However, we do believe that notice-and-comment rulemaking is required to place any substance on the list of prohibited substitutes, to list a substance as acceptable only under certain conditions, to list substances as acceptable only for certain uses, or to remove a substance from the lists of prohibited or acceptable substitutes. We publish updates to these lists as separate notices of rulemaking in the **Federal Register.**

The Agency defines a "substitute" as any chemical, product substitute, or alternative manufacturing process, whether existing or new, intended for use as a replacement for a class I or class II substance. Anyone who produces a substitute must provide EPA with health and safety studies on the substitute at least 90 days before introducing it into interstate commerce for significant new use as an alternative. This requirement applies to substitute manufacturers, but may include importers, formulators, or end-users, when they are responsible for introducing a substitute into commerce.

You can find a complete chronology of SNAP decisions and the appropriate **Federal Register** citations from the SNAP section of EPA's Ozone Depletion World Wide Web site at *www.epa.gov/ozone/snap/chron.html*. This information is also available from the Air Docket (see **ADDRESSES** section above for contact information).

Dated: August 7, 2003.

Brian J. McLean,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

Appendix A: Summary of Acceptable Decisions

End-Use	Substitute	Decision	Further information
Refrigeration and Air Conditioning			
Industrial process refrigeration (retrofit and new).	RS–44 as a substitute for HCFC–22. R–407C as a substitute for R–502	Acceptable. Acceptable.	
Industrial process air conditioning (retrofit and new).	RS–44 as a substitute for HCFC–22. R–407C as a substitute for R–502	Acceptable. Acceptable	
Ice skating rinks (retrofit and new)	RS–44 as a substitute for HCFC–22. R–407C as a substitute for R–502	Acceptable. Acceptable.	
Cold storage warehouses (retrofit and new)	RS–44 as a substitute for HCFC–22. R–407C as a substitute for R–502	Acceptable. Acceptable.	
Refrigerated transport (retrofit and new)	RS–44 as a substitute for HCFC–22. R–407C as a substitute for R–502	Acceptable. Acceptable.	
Retail food refrigeration (retrofit and new) ..	RS–44 as a substitute for HCFC–22. R–407C as a substitute for R–502	Acceptable. Acceptable.	
Vending machines (retrofit and new)	R–407C as a substitute for R–502	Acceptable.	
Water coolers (retrofit and new)	R–407C as a substitute for R–502	Acceptable.	
Commercial ice machines (retrofit and new).	RS–44 as a substitute for HCFC–22. R–407C as a substitute for R–502	Acceptable. Acceptable.	
Household refrigerators and freezers (retrofit and new).	RS–44 as a substitute for HCFC–22. R–407C as a substitute for R–502	Acceptable. Acceptable.	
Centrifugal chillers (retrofit and new)	RS–44 as a substitute for HCFC–22.	Acceptable.	
Reciprocating chillers (retrofit and new)	RS–44 as a substitute for HCFC–22. R–407C as a substitute for R–502	Acceptable. Acceptable.	
Screw chillers (retrofit and new)	RS–44 as a substitute for HCFC–22. R–407C as a substitute for R–502	Acceptable. Acceptable.	
Very low temperature refrigeration (retrofit and new).	ISCEON 89 as a substitute for R–13B1.	Acceptable.	
Non-mechanical heat transfer systems (retrofit and new).	R–407C as a substitute for R–502	Acceptable.	
Household and light commercial air conditioning (retrofit and new).	RS–44 as a substitute for HCFC–22. R–407C as a substitute for R–502	Acceptable. Acceptable.	
Residential dehumidifiers (retrofit and new)	RS–44 as a substitute for HCFC–22. R–407C as a substitute for R–502	Acceptable. Acceptable.	
Solvent Cleaning			
Precision cleaning	HFE–7000 as a substitute for CFC–113, methyl chloroform, and HCFC–141b.	Acceptable	EPA expects that the workplace environmental exposure will not exceed the workplace exposure limit of 75 ppm and that users will observe the manufacturer's recommendations in MSDSs.

End-Use	Substitute	Decision	Further information
Electronics cleaning	HFE–7000 as a substitute for CFC–113, methyl chloroform, and HCFC–141b.	Acceptable	EPA expects that the workplace environmental exposure will not exceed the workplace exposure limit of 75 ppm and that users will observe the manufacturer's recommendations in MSDSs.
Foam Blowing			
Rigid polyurethane and polyisocyanurate laminated boardstock.	Ecomate as a substitute for CFCs and HCFCs.	Acceptable.	
	HFC–245fa as a substitute for HCFCs.	Acceptable.	
	Blends of HFC–245fa and HCFC–22 as a substitute for blends of HCFC–141b and HCFC–22.	Acceptable.	
Rigid polyurethane appliance foam	Ecomate as a substitute for CFCs and HCFCs.	Acceptable.	
	HFC–245fa as a substitute for HCFCs.	Acceptable.	
	Blends of HFC–245fa and HCFC–22 as a substitute for blends of HCFC–141b and HCFC–22.	Acceptable.	
Rigid polyurethane slabstock and other foams.	Ecomate as a substitute for CFCs and HCFCs.	Acceptable.	
	HFC–245fa as a substitute for HCFCs.	Acceptable.	
	Blends of HFC–245fa and HCFC–22 as a substitute for blends of HCFC–141b and HCFC–22.	Acceptable.	
Rigid polyurethane commercial refrigeration and sandwich panels.	Ecomate as a substitute for CFCs and HCFCs.	Acceptable.	
	HCF–245fa as a substitute for HCFCs.	Acceptable.	
	Blends of HFC–245fa and HCFC–22 as a substitute blends of HCFC–141b and HCFC–22.	Acceptable.	
Polyurethane integral skin foam	Ecomate as a substitute for CFCs and HCFCs.	Acceptable.	
	HFC–245fa as a substitute for HCFCs.	Acceptable.	
	Blends of HFC–245fa and HCFC–22 as a substitute for blends of HCFC–141b and HCFC–22.	Acceptable.	
Phenolic insulation board and bunstock	HFC–245fa as a substitute for HCFCs.	Acceptable.	
	Blends of HFC–245fa and HCFC–22 as a substitute for blends of HCFC–141b and HCFC–22.	Acceptable.	
Polyolefin	HFC–245fa as a substitute for HCFCs.	Acceptable.	
	Blends for HFC–245fa and HCFC–22 as a substitute for blends of HCFC–141b and HCFC–22.	Acceptable.	
Fire Suppression and Explosion Protection			
Total flooding	NAF S–125 as a substitute for Halon 1301.	Acceptable	Use of the agent should be in accordance with the safety guidelines in the latest edition of the NFPA 2001 Standard for Clean Agent Fire Extinguishing Systems. Extinguisher bottles should be clearly labeled with the potential hazards associated with the use of HFC–125 and d-limonene, as well as handling procedures to reduce risk resulting from these hazards.

End-Use	Substitute	Decision	Further information
			See additional notes 1, 2, 3, 4, 5.
Aerosols			
Aerosol solvents	HFE–7000 as a substitute for CFC–113, methyl chloroform, and HCFC–141b.	Acceptable	EPA expects that the workplace environmental exposure will not exceed the workplace exposure limit of 75 ppm and that users will observe the manufacturer's recommendations in MSDSs.

Additional notes:
1—Should conform with relevant OSHA requirements, including 29 CFR 1910, Subpart L, Sections 1910.160, 1910.161 (dry chemicals and aerosols) and 1910.162 (gaseous agents).
2—Per OSHA requirements, protective gear (SCBA) should be available in the event personnel should reenter the area.
3—Discharge testing should be strictly limited to that which is essential to meet safety or performance requirements.
4—The agent should be recovered from the fire protection system in conjunction with testing or servicing, and recycled for later use or destroyed.
5—EPA has no intention of duplicating or displacing OSHA coverage related to the use of personal protective equipment (*e.g.*, respiratory protection), fire protection, hazard communication, worker training or any other occupational safety and health standard with respect to halon substitutes.

[FR Doc. 03–21425 Filed 8–20–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7547–1]

Public Water System Supervision Program Revision for the State of Arkansas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Arkansas is revising its approved Public Water System Supervision Program. Arkansas has adopted the Lead and Copper Rule Minor Revisions to provide monitoring relief for public water systems and clarify some corrosion control treatment requirements, Variance and Exemptions Rule to maintain the authority to issue variances and exemptions especially small system variances, Public Notification Rule to provide more timely notice for violations that pose an acute risk to public health, Radionuclides Rule to standardize the monitoring of radiological contaminants and establish a maximum contaminant level (MCL) for uranium, the Arsenic Rule to provide for better public health protection by lowering the MCL for arsenic and the Filter Backwash Recycling Rule to require water systems to institute changes to return recycle flow to a plant's treatment process that may otherwise compromise microbial control. EPA has determined that these revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA intends to approve these program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by September 22, 2003 to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 22, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on September 22, 2003. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Arkansas Department of Health, Division of Engineering—Slot #37, 4815 West Markham, Little Rock, Arkansas 72205 and United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: José G. Rodriguez, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665–8087.

Authority: (Section 1413 of the Safe Drinking Water Act, as amended (1996); and 40 CFR part 142 of the National Primary Drinking Water Regulations)

Dated: August 14, 2003.

Lawrence Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 03–21426 Filed 8–20–03; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.

Previously Announced Date & Time: Tuesday, August 25, 2003, 10 a.m., Meeting Closed to the Public. This Meeting Was Rescheduled to Wednesday, August 27, 2003.

DATE AND TIME: Wednesday, August 27, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, August 28, 2003 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2003–20: U.S. Representative Silvestre Reyes by J. Fernando Barrueta, Hispanic College Fund, Inc.

Draft Advisory Opinion 2003–22: American Bankers Association and ABA BankPAC, by counsel Kenneth A. Gross and Ki P. Hong.

Notice of Proposed Rulemaking on Mailing Lists.

Notice of Proposed Rulemaking on Telephone Banks.

Routine Administrative Matters.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–21533 Filed 8–19–03; 11:25 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 4, 2003.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. The Mike Wilson Descendents' Trust, Jacksonville, Arkansas, to increase its control of First Arkansas Bancshares, Inc., Jacksonville, Arkansas ("Bancshares"). In addition, Larry T. Wilson, Michael K. Wilson, Kathryn W. Roberts, the Kenneth Pat Wilson Annual Gift Trust, the Larry Timothy Wilson Annual Gift Trust, the Kathryn Patricia Wilson Roberts Annual Gift Trust, the Michael K. Wilson Annual Gift Trust, and The Mike Wilson Descendents' Trust, all of Jacksonville, Arkansas, have applied to retain control of Bancshares.

B. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. Gale Mark Hoese, David Kurt Hoese, and Terry Clayton Hoese, all of Glencoe, Minnesota, and Todd Curtis Hoese, Waconia, Minnesota; to acquire control of Commercial Bancshares, Inc., Bloomington, Minnesota, and thereby indirectly acquire control of First Commercial Bank, Bloomington, Minnesota.

Board of Governors of the Federal Reserve System, August 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21394 Filed 8–20–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 15, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. Freedom Bancshares, Inc., Commerce, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Freedom Bank of Georgia, Commerce, Georgia.

2. RB Bancorporation, Athens, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Reliance Bank, Athens, Alabama.

Board of Governors of the Federal Reserve System, August 15, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21393 Filed 8–20–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003F–0370]

Unilever United States, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Unilever United States, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of vitamin D_3 as a nutrient supplement in certain foods for special dietary use, such as meal replacement products and snack replacement products.

FOR FURTHER INFORMATION CONTACT: Judith L. Kidwell, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3354.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP No. 3A4746) has been filed by Unilever United States, Inc., 390 Park Ave., New York, NY 10022–4698. The petition proposes to amend the food additive regulations in § 172.380 *Vitamin D_3* (21 CFR 172.380) to provide for the safe use of vitamin D_3 in certain foods for special dietary use, such as meal replacement products and snack replacement products.

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 1, 2003.

Laura M. Tarantino,

Acting Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–21396 Filed 8–20–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Drug Pricing Program Reporting Requirements (OMB No. 0915–0176)—Revision

Section 602 of Pub. L. 102–585, the Veterans Health Care Act of 1992, enacted section 340B of the Public Health Service Act (PHS Act), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement with the Secretary of Health and Human Services in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed an amount determined under a statutory formula.

Covered entities which choose to participate in the section 340B drug discount program must comply with the requirements of section 340B(a)(5) of the PHS Act. Section 340B(a)(5)(A) prohibits a covered entity from accepting a discount for a drug that would also generate a Medicaid rebate. Further, section 340B(a)(5)(B) prohibits a covered entity from reselling or otherwise transferring a discounted drug to a person who is not a patient of the entity.

In response to the statutory mandate of section 340B(a)(5)(C) to develop audit guidelines and because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA Pharmacy Affairs Branch (PAB) has developed a dispute resolution process for manufacturers and covered entities as well as manufacturer guidelines for audit of covered entities.

Audit guidelines: A manufacturer will be permitted to conduct an audit only when there is reasonable cause to believe a violation of section 340B(a)(5)(A) or (B) has occurred. The manufacturer must notify the covered entity in writing when it believes the covered entity has violated the provisions of section 340B. If the problem cannot be resolved, the manufacturer must then submit an audit work plan describing the audit and evidence in support of the reasonable cause standard to the HRSA PAB for review. The office will review the documentation to determine if reasonable cause exist. Once the audit is completed, the manufacturer will submit copies of the audit report to the HRSA PAB for review and resolution of the findings, as appropriate. The manufacturer will also submit an informational copy of the audit report to the HHS Office of Inspector General.

Dispute resolution guidelines: Because of the potential for disputes involving covered entities and participating drug manufacturers, the HRSA PAB has developed an informal dispute resolution process which can be used if an entity or manufacturer is believed to be in violation of section 340B. Prior to filing a request for resolution of a dispute with the HRSA PAB, the parties must attempt, in good faith, to resolve the dispute. All parties involved in the dispute must maintain written documentation as evidence of a good faith attempt to resolve the dispute. If the dispute is not resolved and dispute resolution is desired, a party must submit a written request for a review of the dispute to the HRSA PAB. A committee appointed to review the documentation will send a letter to the party alleged to have committed a violation. The party will be asked to provide a response to or a rebuttal of the allegations.

To date, there have been no requests for audits, but two disputes have reached the level where a committee review may be needed. As a result, the estimates of annualized hour burden for audits and disputes have been reduced to the level shown in the table below.

Reporting Requirement	No. of Respondents	Responses per Respondent	Total Responses	Hours/Response	Total Burden Hours
AUDITS					
Audit Notification of Entity [1]	2	1	2	4	8
Audit Workplan [1]	1	1	1	8	8
Audit Report [1]	1	1	1	1	1
Entity Response	0	0	0	0	0
DISPUTE RESOLUTION					
Mediation Request	2	4	8	10	80
Rebuttal	2	1	2	16	32
TOTAL	8	1.8	14	9.2	129

[1] Prepared by the manufacturer

Recordkeeping requirement	No. of record-keepers	Hours of rec-ordkeeping	Total burden
Dispute records	10	15	5

The total burden is 134 hours.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503 Fax Number 202–395–6974.

Dated: August 15, 2003.

Jon L. Nelson,

Associate Administrator for Management and Program Support.

[FR Doc. 03–21399 Filed 8–20–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Interdisciplinary, Community-Based Linkages; Notice of Meeting; Cancellation

In notice FR Doc. 03–20249, on page 47344 in the **Federal Register** of August 8, 2003, the meeting scheduled for September 7–9, 2003, is canceled.

Authority: Public Law 92–463.

Dated: August 15, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–21397 Filed 8–20–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment Ryan White Comprehensive AIDS Resources Emergency (CARE) Act Reauthorization Workgroup

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of public meetings and opportunity to provide written comments.

SUMMARY: On May 15, 2003, the Centers for Disease Control and Prevention (CDC)/Health Resources and Services Administration (HRSA) Advisory Committee on HIV and STD Prevention and Treatment established the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act Reauthorization Workgroup. The workgroup is seeking public input about future HIV/AIDS care program directions including issues related to the third reauthorization of the Ryan White CARE Act. The CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment will subsequently submit a set of formal recommendations relating to future program directions and reauthorization issues to the HRSA Administrator.

DATES: Three public meetings will be held on September 12, 2003, September 25, 2003, and October 3, 2003, from 9:30 a.m. to 3:30 p.m. To be assured of consideration for this public session, written comments should be postmarked no later than 12 days prior to each meeting.

ADDRESSES: The September 12, 2003, public meeting will be held at the Marriott Wardman Park Hotel, 2660 Woodley Road, NW., Washington, DC, telephone (202) 328–2000; the September 25, 2003, public meeting will be held at the Miami Airport Marriott, 1201 NW., LeJeune Road, Miami, Florida, telephone (305) 649–5000; and the October 3, 2003, public meeting will be held at the Hyatt Regency Los Angeles, 711 South Hope Street, Los Angeles, California, telephone (213) 683–1234. Written comments should be sent to the CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment, c/o HRSA HIV/AIDS Bureau, Office of Policy and Program Development, Attention: Regina Tosca, Parklawn Building, Room 7–18, 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Ms. Shelley Gordon, Office of Policy and Program Development, HIV/AIDS Bureau, Health Resources and Services Administration, (301) 443–5400, fax (301) 443–3323, or e-mail *SGordon@HRSA.gov*.

SUPPLEMENTARY INFORMATION: The meetings will be open to the public, limited only by the space available. The meeting rooms will accommodate approximately 80 people. The purpose of the meetings is to obtain public input into future program directions and issues related to the reauthorization of the Ryan White CARE Act of 1990, as amended by the Ryan White CARE Act Amendment of 1996 and 2000 (Pub. L. 104–146 and Pub. L. 106–345). Written comments should be limited to no more than 10 single-spaced pages (or 20 double-spaced, excluding addendum or supplemental materials) and should contain the name, address, telephone and fax numbers, and any organizational affiliation of the persons requesting to provide a written statement. All requests for making oral comments will be honored at the meetings on September 12, September 25, and October 3. Depending on the number of requests to present oral comments, it may be necessary to limit the length of time for each presenter. We are particularly interested in comments which address the following questions:

1. Is the CARE Act structured to best provide Federal Emergency Assistance for HIV treatment and care services?

2. What in the CARE Act works for you and what does not?

3. Does the CARE Act provide adequate resources to respond to your needs or those of your community?

4. Does the CARE Act local planning process (*e.g.*, needs assessment, priority setting, and allocation processes) ensure a fair and appropriate opportunity to determine the HIV care and support service needs of your community?

5. What are the most significant HIV service gaps in your community? How can the CARE Act help fill them?

6. What are the most significant barriers to access to services? How can the CARE Act help overcome them?

7. How can the CARE Act respond more fully to the current and changing needs of people living with HIV?

8. What is the single most important thing you would change in the CARE Act and why?

Authority: Pub. L. 92–463 (5 U.S.C., App. 2); 42 U.S.C. 217a, sec. 222 of the Public Health Service Act.

Dated: August 14, 2003.

Elizabeth M. Duke,

Administrator.

[FR Doc. 03–21398 Filed 8–20–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Decision 03–20]

Customs Approval of BSI Inspectorate America Corporation as a Commercial Gauger

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of Approval of BSI Inspectorate America Corporation of Tallaboa-Penuelas, Puerto Rico, as a Commercial Gauger.

SUMMARY: BSI Inspectorate America Corporation of Tallaboa-Penuelas, Puerto Rico has applied to Customs and Border Protection under Part 151.13 of the Customs Regulations for approval as a commercial gauger to gauge petroleum products, animal and vegetable oils, and organic compounds. Customs has determined that this company meets all of the requirements for approval as a commercial gauger. Specifically, BSI Inspectorate America Corporation has been granted approval to gauge petroleum product under Chapter 27 and Chapter 29, animal and vegetable oils under Chapter 15 and organic compounds under Chapter 29 of the Harmonized Tariff Schedule of the United States (HTSUS). Therefore, in accordance with Part 151.13 of the Customs Regulations, BSI Inspectorate America Corporation of Tallaboa-Penuelas, Puerto Rico, is hereby approved to gauge the products named above.

Location: BSI Inspectorate America Corporation accredited site is located at: Bo. Encarnacion Road 127 Km 19.1, Tallaboa-Penuelas, Puerto Rico 00624.

EFFECTIVE DATE: July 17, 2003.

FOR FURTHER INFORMATION CONTACT: Arlene Faustermann, Science Officer, Laboratories and Scientific Services, Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500 North, Washington, DC 20229, (202) 927–1060.

Dated: July 17, 2003.

Donald A. Cousins,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. 03–21465 Filed 8–20–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

[CBP Decision 03–19]

Customs Accreditation of BSI Inspectorate America Corporation as a Commercial Laboratory

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of Accreditation of BSI Inspectorate America Corporation of Tallaboa-Penuelas, Puerto Rico, as a Commercial Laboratory.

SUMMARY: BSI Inspectorate America Corporation of Tallaboa-Penuelas, Puerto Rico has applied to Customs and Border Protection under Part 151.12 of the Customs Regulations for accreditation as a commercial laboratory to analyze petroleum products under Chapter 27 and Chapter 29 of the Harmonized Tariff Schedule of the United States (HTSUS). Customs has determined that this company meets all of the requirements for accreditation as a commercial laboratory. Specifically, BSI Inspectorate America Corporation has been granted accreditation to perform the following test methods at their Tallaboa-Penuelas, Puerto Rico site: (1) Distillation of Petroleum Products, ASTM D86; (2) Flash-Point by Pensky Martens Closed Cup Tester, ASTM D93; (3) Water in Petroleum Products and Bituminous Materials by Distillation, ASTM D95; (4) API Gravity by Hydrometer, ASTM D287; (5) Kinematic Viscosity of Transparent and Opaque Liquids, ASTM D445; (6) Sediment in Crude Oils and Fuel Oils by Extraction, ASTM D473; (7) Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method, ASTM D1298; (8) Water in Crude Oil by Distillation, ASTM D4006; (9) Percent by Weight of Sulfur by Energy-Dispersive X-Ray Fluorescence, ASTM D4294; and (10) Vapor Pressure of Petroleum Products, ASTM D5191. Therefore, in accordance with Part 151.12 of the Customs Regulations, BSI Inspectorate America Corporation of Tallaboa-Penuelas, Puerto Rico is hereby accredited to analyze the products named above.

Location: BSI Inspectorate America Corporation accredited site is located at: Bo. Encarnacion Road 127 Km 19.1, Tallaboa-Penuelas, Puerto Rico 00624.

EFFECTIVE DATE: July 15, 2003.

FOR FURTHER INFORMATION CONTACT: Arlene Faustermann, Science Officer, Laboratories and Scientific Services, Customs and Border Protection, 1300 Pennsylvania Avenue NW., Suite 1500 North, Washington, DC 20229, (202) 927–1060.

Dated: July 15, 2003.

Donald A. Cousins,

Acting Executive Director, Laboratories and Scientific Services.

[FR Doc. 03–21466 Filed 8–20–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4834–C–02]

Notice of Funding Availability (NOFA) for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages, Fiscal Year 2003; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages, Fiscal Year 2003; Correction.

SUMMARY: On July 16, 2003, HUD published the Notice of Funding Availability (NOFA) for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages Fiscal Year 2003. This document makes several technical corrections to the NOFA.

FOR FURTHER INFORMATION CONTACT: Jacqueline Kruszek, Office of Public and Indian Housing, Denver Regional Office, Department of Housing and Urban Development, 633 17th Street, Denver, CO, 80202–3607, telephone (303) 675–1600 (this is not a toll-free number). Persons with hearing and/or speech challenges may access the above telephone number via TTY (text telephone) by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On July 16, 2003, HUD published the Notice of Funding Availability (NOFA) for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages, Fiscal Year 2003 (68 FR 42190). Subsequent to publication, it was discovered that additional funds were available but not stated in the NOFA. This document makes clear the amount of funds available. In addition, it was determined that paragraph numbers were inadvertently omitted from both Section VI. "Threshold Requirements" and under Rating Factor

3 under the element labeled, "Public Facilities and Improvement Projects." The labels are corrected in this document. Further, it was determined, and is corrected in this document, that under Rating Factor 1, zero points will be awarded if an applicant has not submitted either of the reports required by Rating Factor 1 in a timely manner. Also, it was ascertained that incorrect dollar values were listed under Rating Factor 2 in the NOFA, "Need/Extent of the Problem," and the dollar values are corrected in this document.

Additionally, it was determined that language in Rating Factor 2, in the section entitled, "Public Facilities and Improvements and Economic Development Projects," needed explanation. Therefore, a clarification is made by this document. In addition, a correction is made in this document to make clear that the title of form HUD–424 is "Application for Federal Assistance." This document also clarifies that the Logic Model form may be used to address program evaluation requirements under Rating Factor 1(1)(b) of this NOFA. Finally, it was determined that the text under Rating Factor 3 "Soundness of Approach", subsection entitled, "Public Facilities and Improvement Projects" was confusing. The text of that subsection is clarified in this document.

Accordingly, the Notice of Funding Availability (NOFA) for the Community Development Block Grant Program for Indian Tribes and Alaska Villages, Fiscal Year 2003, published in the **Federal Register** on July 16, 2003, (68 FR 41290) is corrected as follows:

1. On page 42190, in the first column, the paragraph entitled, "Available Funds" is corrected to read as follows: "The FY 2003 appropriation for the ICDBG Program is $70,538,500. In addition, FY 2002 ICDBG carry-over of $7,899,850 is available for distribution, for a total of $78,438,350."

2. On page 42195, in the middle column under Section II. entitled, "Amount Allocated," paragraph (A) "Available Funds" is corrected to read as follows: "The FY 2003 appropriation for the ICDBG Program is $70,538,500. In addition, FY 2002 ICDBG carry-over of $7,899,850 is available for distribution, for a total of $78,438,350."

3. On page 42195, in the middle column, under Section II. entitled, "Amount Allocated," paragraph (C) "Allocations to Area ONAPs" is corrected to read as follows: "The requirements for allocating funds to Area ONAPs responsible for program administration are found at 24 CFR 1003.101. Following these requirements, based on an appropriation of $70,538,500 and FY 2002 ICDBG carry-over of $7,899,850, less $4,000,000 retained to fund Imminent Threat Grants, the allocations for FY 2003 are as follows:

Eastern/Woodland	$ 8,028,368
Southern Plains	14,911,565
Northern Plains	11,210,433
Southwest	29,066,801
Northwest	4,004,517
Alaska	7,216,666
Total	$74,438,350

4. On page 42201, in the middle column, the subsection heading, "Project Specific Threshold Requirements" is corrected to read as follows, "(B) Project Specific Threshold Requirements."

5. On page 42204, paragraph (b), beginning in the middle column and continuing to the third column, is corrected by adding the following sentence prior to paragraph (c): "(0 points) The applicant has not submitted either of the required reports in a timely manner."

6. On page 42205, in the first column, paragraph (a) "Public Facilities and Improvements and Economic Development Projects" is corrected to read as follows: "The proposed activities benefit the neediest segment of the population, as identified below. For economic development projects, you may consider beneficiaries of the project as persons served by the project and/or persons employed by the project, and jobs created or retained by the project."

7. On page 42205, in the middle column, the sixth paragraph is corrected to read as follows: "This ratio is computed for each tribe and contained in Appendix B of this NOFA.

(15 points) $400–$699 or the tribe's total FY 2003 IHBG amount was $100,000 or less and Appendix B of this NOFA does not indicate that the Indian tribe has no AIAN households experiencing income or housing problems.

(10 points) $700–1,199

(5 points) $1,200–$1,999

(0 points) The dollar amount for the Indian tribe is $2,000 or higher, or Appendix B of this NOFA indicates that the Indian tribe has no AIAN households experiencing income or housing problems."

8. On page 42206, in the first column, the subsection heading, "Public Facilities and Improvement Projects" is corrected to read as follows: "(a) Public Facilities and Improvement Projects.

(15 points) If a tribe assumes operation and maintenance responsibilities for the public facilities and improvements, a tribal resolution is included in the application that adopts the operation and maintenance plan and commits the necessary funds to provide for these responsibilities. In addition, the operation and maintenance plan is included in the application and addresses maintenance, repairs, insurance, and replacement reserves and includes a cost breakdown for annual expenses. If an entity other than the tribe commits to pay for operation and maintenance for the public facilities and improvements, a letter of commitment from the entity is included in the application that identifies the maintenance responsibilities and, if applicable, responsibilities for operations the entity will assume as well as the necessary funds to provide for these responsibilities. Submission of the operation and maintenance plan is not required when an entity other than the tribe assumes operation and maintenance responsibilities. For community buildings only, a tribal resolution or letter of commitment is included in the application that identifies the source of and commits the necessary operating funds for any recreation, social or other services to be provided. In addition, letters of commitment from service providers are included which address both operating expenses and space needs.

(10 points) If a tribe assumes operation and maintenance responsibilities for public facilities and improvements, a tribal resolution is included in the application that adopts the operation and maintenance plan and commits the necessary funds to provide for these responsibilities. In addition, the operation and maintenance plan is included in the application and addresses most of the above items (maintenance, repairs, insurance, replacement reserves) but does not include a satisfactory cost breakdown for annual expenses. If an entity other than the tribe commits to pay for operation and maintenance for the public facilities and improvements, a letter of commitment identifying maintenance responsibilities and, if applicable, responsibilities for operations the entity will assume, but no information committing the necessary funds in included. Submission of the operation and maintenance plan is not required when an entity other than the tribe assumes operation and maintenance responsibilities. For community buildings only, a tribal resolution or letter of commitment is included in the application that identifies the source of and commits the necessary operating funds for any recreation, social or other

services to be provided. In addition, letters of commitment from service providers are included which address both operating expenses and space needs. Information provided is sufficient to determine that the project will proceed effectively.

(5 points) If a tribe assumes operation and maintenance responsibilities for public facilities and improvements, a tribal resolution is included in the application that adopts the operation and maintenance plan and commits the necessary funds to provide for these responsibilities or the operation and maintenance plan is included in the application and addresses most of the above items (maintenance, repairs, insurance, replacement reserves). If an entity other than the tribe commits to pay for operation and maintenance for the public facilities and improvements, the maintenance provider is identified and, if applicable, responsibilities for operations the entity will assume are included in the application, but no letter of commitment is provided. For community buildings only, no tribal resolution or letter of commitment is included in the application that identifies the source of and commits the necessary funds for any recreation, social or other services to be provided. However, letters of commitment to provide services are included but they do not address operating expenses and space needs. Information provided is sufficient to determine that the project will proceed effectively.

(0 points) None of the above criteria is met."

9. On page 42207, in the third column under the subsection entitled, "Rating Factor 5 Comprehensiveness and Coordination (5 points)" that continues to the first column on page 42208, the last sentence of the paragraph is corrected to read as follows: "However, applicants may use this form to address program evaluation requirements under Rating Factor 1(1)(b) of this NOFA."

10. In the middle column on page 42208, under paragraph (C), entitled, "Application Submission," number one on the list of forms is corrected to read as follows: "1. Application for Federal Assistance (HUD–424)."

Dated: August 15, 2003.

Michael M. Liu,

Assistant Secretary for Public and Indian Housing

[FR Doc. 03–21420 Filed 8–18–03; 12:19 pm]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability; Draft Environmental Impact Statement on Resident Canada Goose Management; Reopening of Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability for public comment; reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is reopening the comment period on a Draft Environmental Impact Statement (DEIS) which is available for public review. The DEIS analyzes the potential environmental impacts of alternative strategies to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce goose-related damages. The analysis provided in the DEIS is intended to accomplish the following: inform the public of the proposed action and alternatives; address public comment received during the scoping period; and disclose the direct, indirect, and cumulative environmental effects of the proposed actions and each of the alternatives. The Service invites the public to comment on the DEIS.

DATES: Written comments on the DEIS must be received on or before October 20, 2003.

ADDRESSES: Requests for copies of the DEIS should be mailed to Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, 4401 North Fairfax Drive, MBSP–4107, Arlington, Virginia 22203. Copies of the DEIS can be downloaded from the Division of Migratory Bird Management Web site at *http://migratorybirds.fws.gov*. Comments on the DEIS should be sent to the above address. Alternatively, comments may be submitted electronically to the following address: *canada_goose_eis@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, or Ron Kokel (703) 358–1714.

SUPPLEMENTARY INFORMATION: On March 1, 2002 (67 FR 9448), and March 7, 2002 (67 FR 10431), notices were published in the **Federal Register** announcing the availability of our DEIS on resident Canada goose management. On March 26, 2002 (67 FR 13792), we published a notice in the **Federal Register** to announce the schedule of public hearings to invite further public participation in the DEIS review process.

The DEIS evaluates alternative strategies to reduce, manage, and control resident Canada goose populations in the continental United States and to reduce goose-related damages. The objective of the DEIS is to provide a regulatory mechanism that would allow State and local agencies, other Federal agencies, and groups and individuals to respond to damage complaints or damages by resident Canada geese. The DEIS is a comprehensive programmatic plan intended to guide and intended to guide and direct resident Canada goose population growth and management activities in the conterminous United States. The DEIS analyzes seven management alternatives: (1) No Action (Alternative A); (2) Increase Use of Nonlethal Control and Management (excludes all permitted activities) (Alternative B); (3) Increase Use of Nonlethal Control and Management (continue permitting of those activities generally considered nonlethal) (Alternative C); (4) New Regulatory Options to Expand Hunting Methods and Opportunities (Alternative D); (5) Integrated Depredation Order Management (consisting of an Airport Depredation Order, a Nest and Egg Depredation Order, an Agricultural Depredation Order, and a Public Health Depredation Order) (Alternative E); (6) State Empowerment (Proposed Action) (Alternative F); and (7) General Depredation Order (Alternative G). Alternatives were analyzed with regard to their potential impacts on resident Canada geese, other wildlife species, natural resources, special status species, socioeconomics, historical resources, and cultural resources.

Our proposed action (Alternative F) would establish a regulation authorizing State wildlife agencies (or their authorized agents) to conduct (or allow) management activities, including the take of birds, on resident Canada goose populations when necessary to protect human health and safety; protect personal property, agricultural crops, and other interests from injury; and allow resolution or prevention of injury to people, property, agricultural crops, or other interests from resident Canada geese; and to reduce resident Canada goose populations within management objectives. Control and management activities include indirect and/or direct population control strategies such as aggressive harassment, trapping and relocation, nest and egg destruction, gosling and adult trapping and culling programs, or other general population reduction strategies. The intent of

Alternative F is to allow State wildlife management agencies sufficient flexibility, within predefined guidelines, to deal with problems caused by resident Canada geese within their respective States. Other guidelines under Alternative F would include criteria for such activities as control options for taking geese during the portion of the Migratory Bird Treaty closed period (August 1–31), airport, agricultural, and public health control, and the non-permitted take of nests and eggs.

We are publishing simultaneously a proposed rule in the **Federal Register** that would implement our preferred alternative. Because of the publishing of the proposed rule, we have reopened the comment period on the DEIS. The Service invites careful consideration by all parties, and welcomes serious scrutiny from those committed to the long-term conservation of migratory birds.

In order to be considered, electronic submission of comments must include your name and postal mailing address; we will not consider anonymous comments. All comments received including names and addresses, will become part of the public record. The public may inspect comments during normal business hours at the Service's office in Room 4701, 4501 North Fairfax Drive, Arlington, Virginia. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's National Environmental Policy Act regulations [40 CFR 1506.6(f)]. Our practice is to make all comments available for public inspection during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If a respondent wishes us to withhold his/her name and/or address, this must be stated prominently at the beginning of the comment.

Dated: July 1, 2003.

Steve Williams,

Director.

[FR Doc. 03–21269 Filed 8–20–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

A request to reinstate the information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the Bureau estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: North American Bird Banding Program—Banding Database.

Previous OMB Approval Number: 1018–0006.

Summary: In accordance with the Migratory Bird Treaty Act, the USGS Bird Banding Laboratory issues permits for the trapping and marking of migratory birds. These permits require that data on marked birds be submitted to the Bird Banding Laboratory in a timely fashion. Currently this data is submitted electronically using a program (Band Manager) supplied by the Bird Banding Laboratory and the Canadian Bird Banding Office to all active permit holders. Data may also be submitted using a paper form. These data are used to provide researchers with information needed for projects and also to respond to the 85,000 reports of banded birds received annually by the Bird Banding Laboratory and the Canadian Bird Banding Office. These data are vital to the study of avian biology. Data are received for approximately 1.2 million birds per year. For further information on the North American Bird Banding Program, *see* our Web site *(http://www.pwrc,usgs.gov/bbl).*

Estimated Annual Number of Respondents: 2400.

Estimated Annual Burden Hours: 27, 563.

Affected Public: Primarily U.S. and Canadian citizens who hold either a U.S. or Canadian permit to mark and tag birds (bird banding).

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313 or see the Web site at *http://www.pwrc,usgs.gov/bbl.*

Dated: August 11, 2003.

Ken Williams,

Acting Associate Director for Biology.

[FR Doc. 03–21430 Filed 8–20–03; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

A request to reinstate the information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions of the bureaus, including whether the information will have practical utility;

2. The accuracy of the Bureau estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: North American Bird Banding Program—Encounter Database.

Previous OMB Approval Number: 1018–0005.

Summary: The North American Bird Banding Program receives reports of banded birds (encounters) from the public via a 1–800 telephone number, web site forms, and letters. These reports are submitted voluntarily at the volition of the reporter. The information that is collected (band number, type of bird, where and when it was found, how found) is computerized and utilized by state, provincial, federal and private agencies as well as by both U.S. and Canadian researchers. The data on waterfowl and other game birds are one part of the data set used to help managers set hunting regulations. All data are utilized by both private and public agencies and individuals for management and conservation studies. Also, avian researchers throughout North America utilize these data in many of their studies as well as in many publications on avian topics. All persons reporting a band encounter receive a Certificate of Appreciation giving them information on type of bird, when and where was banded and who banded. For further information on the North American Banding Program and the Encounter Database see our Web site (*http://www.pwrc.usgs.gov/bbl*).

Estimated Annual Number of Respondents: 85,000.

Estimated Annual Burden Hours: 7,083.

Affected Public: Primarily U.S. and Canadian citizens. Some citizens of Mexico, the Caribbean, Central America, Middle America, South America, Europe, Asia.

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313 or *see* the Web site at *http://www.pwrc.usgs.gov/bbl*.

Dated: August 11, 2003.

Ken Williams,

Acting Associate Director for Biology.

[FR Doc. 03–21431 Filed 8–20–03; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

A request to reinstate the information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;

2. The accuracy of the Bureau estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate, electronic, mechanical, or other forms of information technology.

Title: North American Bird Banding Program—Application for Federal Bird Banding Permit.

Previous OMB Approval Number: 1018–0017.

Summary: In accordance with the Migratory Bird Treaty Act and subsequent treaties with other countries, the trapping and marking of wild migratory birds must be monitored. To accomplish this mandate, federal permits are required to trap and mark. The permit is required for persons who trap and mark for research or management purposes. Responsibility to evaluate applications and issue permits is the responsibility of the USGS Bird Banding Laboratory. The application provides information about the applicant that is necessary to assess and evaluate qualifications of the applicant. For further information on the North American Bird Banding Program, *see* our Web site (*http://www.pwrc.usgs.gov/bbl*).

Estimated Annual Number of Respondents: 550.

Estimated Annual Burden Hours: 550.

Affected Public: Mostly U.S. citizens from the public and private sectors with a few from Canada, the Caribbean, Central America and South America. Permits to band in Canada are handled by the Canadian Wildlife Service, Bird Banding Office.

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192, telephone (703) 648–7313 or *see* the Web site at *http://www.pwrc.usgs.gov/bbl*.

Dated: August 11, 2003.

Ken Williams,

Acting Associate Director for Biology.

[FR Doc. 03–21432 Filed 8–20–03; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Gaming Compact Between the State of Arizona and the Yavapai-Prescott Indian Tribe.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Tribal-State Compact for Class III gaming between the State of Arizona and the Yavapai-Prescott Indian Tribe. The Compact expands the scope of gaming activities authorized under the Compact, increase wager limits, increase the number of permitted gaming devices, and allows the tribe to enter into gaming device transfer agreements with one or more gaming tribes.

EFFECTIVE DATE: August 21, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 11, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–21464 Filed 8–20–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Beaufort Sea Alaska, Oil and Gas Lease Sale 186

AGENCY: Minerals Management Service, Interior.

ACTION: Final Notice of Sale (NOS) 186, Beaufort Sea.

SUMMARY: The MMS will open and publicly announce bids received for blocks offered in Oil and Gas Lease Sale 186 on September 24, 2003, in accordance with provisions of the OCS Lands Act (43 U.S.C. 1331–1356, as amended) and the implementing regulations (30 CFR part 256).

DATES: Public bid reading will begin at 9 a.m. on Wednesday, September 24, 2003, at the Wilda Marston Theatre, Z. J. Loussac Public Library, 3600 Denali Street, Anchorage, Alaska. All times referred to in this document are local Anchorage, Alaska times, unless otherwise specified.

ADDRESSES: A FNOS 186 package containing this Notice of Sale and several supporting and essential documents referenced herein are available from: Alaska OCS Region, Information Resource Center, Minerals Management Service, 949 East 36th Avenue, Room 330, Anchorage, Alaska 99508–4302, Telephone: (907) 271–6438 or 1–800–764–2627.

These documents are also available on the MMS Alaska OCS Region Internet site at *http://www.mms.gov/alaska.*

Filing of Bids: Bidders must submit bids to the Alaska OCS Region, 949 East 36th Avenue, Third Floor, Anchorage, Alaska 99508, between the hours of 8 a.m. and 4 p.m. on normal business days, prior to the Bid Submission deadline of 10 a.m., Tuesday, September 23, 2003. If bids are mailed, the envelope containing all of the sealed bids must be marked as follows:

Attention: Mr. Tom Warren, Contains Sealed Bids for Sale 186.

If bids are received later than the time and date specified above, they will be returned unopened to the bidders. Bidders may not modify or withdraw their bids unless the Regional Director, Alaska OCS Region receives a written modification or written withdrawal request prior to 10 a.m., Tuesday, September 23, 2003. Should an unexpected event such as an earthquake or travel restrictions be significantly disruptive to bid submission, the Alaska OCS Region may extend the Bid Submission Deadline. Bidders may call (907) 271–6010 for information about the possible extension of the Bid Submission Deadline due to such an event.

Note: Four blocks in the easternmost Beaufort Sea area are subject to jurisdictional claims by both the United States and Canada. This Notice refers to this area as the Disputed Portion of the Beaufort Sea. The section on Method of Bidding identifies the four blocks and describes the procedures for submitting bids for them.

Area Offered for Leasing: MMS is offering for leasing all whole and partial blocks listed in the document "Blocks Available for Leasing in OCS Oil and Gas Lease Sale 186" included in the FNOS 186 package. All of these blocks are shown on the following Official Protraction Diagrams (which may be purchased from the Alaska OCS Region):

- NR 05–01, Dease Inlet, revised September 30, 1997
- NR 05–02, Harrison Bay North, revised September 30, 1997
- NR05–03, Teshekpuk, revised September 30, 1997
- NR 05–04, Harrison Bay, revised September 30, 1997
- NR 06–01, Beechey Point North, approved February 1, 1996
- NR 06–03, Beechey Point, revised September 30, 1997
- NR 06–04, Flaxman Island, revised September 30, 1997
- NR 07–03, Barter Island, revised September 30, 1997
- NR 07–05, Demarcation Point, revised September 30, 1997
- NR 07–06, Mackenzie Canyon, revised September 30, 1997

Official block descriptions are derived from these diagrams; however, not all blocks included on a diagram are being offered. To ascertain which blocks are being offered and the royalty suspension provisions that apply you must refer to the document "Blocks Available for Leasing in OCS Oil and Gas Lease Sale 186." The Beaufort Sea OCS Oil and Gas Lease Sale 186 Locator Map is also available to assist in locating the blocks relative to the adjacent areas. The Locator Map is for use in identifying locations of blocks but is not part of the official description of blocks available for lease. Some of the blocks may be partially encumbered by an existing lease, or transected by administrative lines such as the Federal/State jurisdictional line. Partial block descriptions are derived from Supplemental Official OCS Block Diagrams and OCS Composite Block Diagrams, which are available upon request at the address, phone number, or internet site given above.

Lease Terms and Conditions: On February 20, 2003, MMS published a Notice of Availability (68 FR 8306) of the proposed Notice of Sale for Sale 186, which included proposed lease terms and conditions providing for a minimum bid amount of $62 per hectare and a rental rate of $13 per hectare, consistent with past OCS sales in the Alaska OCS Region. After further consideration, MMS has determined that the minimum bid levels for Sale 186 should be reduced and rentals set on a sliding scale. MMS announced the intent to make these changes in a **Federal Register** notice published July 17, 2003, (68 FR 42420) to give potential bidders and other interested parties ample time to consider these changes in preparing for the lease sale. These changes, now adopted do not affect minimum royalty requirements, or royalty suspension volumes.

Initial Period: Ten years.

Minimum Bonus Bid Amount: Offer all blocks in Zone A with a minimum bid of $37.50 per hectare and all blocks in Zone B with a minimum bid of $25 per hectare. Refer to the Beaufort Sea OCS Oil and Gas Lease Sale 186 Locator Map mentioned above.

Rental Rates: The Lessee shall pay the Lessor, on or before the first day of each lease year which commences prior to a discovery in paying quantities of oil or gas on the leased area, a rental as shown in the table below.

Minimum Royalty Rates: The Lessee shall pay the Lessor, at the expiration of each lease year which commences after a discovery of oil and gas in paying quantities, a minimum royalty of $13 per hectare, or fraction thereof, until the start of royalty-bearing production.

Royalty Rates: A 12½ percent royalty rate will apply for all blocks.

SUMMARY TABLE OF MINIMUM BIDS, MINIMUM ROYALTY RATES AND RENTAL RATES

Terms (values per hectare)	Zone A	Zone B
Royalty Rate	12½% fixed	12½% fixed
Minimum Bid	$37.50	$25.00
Minimum Royalty	$13.00	$13.00
Rental Rates:		
Year 1	$7.50	$2.50
Year 2	$7.50	$3.75
Year 3	$7.50	$5.00
Year 4	$7.50	$6.25
Year 5	$7.50	$7.50
Year 6	$12.00	$10.00
Year 7	$17.00	$12.00
Year 8	$22.00	$15.00
Year 9	$30.00	$17.00
Year 10	$30.00	$20.00

Royalty Suspension Areas: Royalty suspension provisions apply to first oil production. Royalty suspensions on the production of oil and condensate, prorated by lease acreage and subject to price thresholds, will apply to all blocks. Royalty suspension volumes (RSV) are based on 2 zones, Zone A and Zone B, as depicted on the Locator Map and listed in the document "Blocks Available for Leasing in the Beaufort Sea OCS Oil and Gas Lease Sale 186." More specific details regarding royalty suspension eligibility, applicable price thresholds and implementations are included in the document "Royalty Suspension Provisions, Sale 186" in the final NOS 186 package. Minimum royalty requirements apply during RSV periods. Depending on surface area and zone, leases will receive a RSV as follows:

Hectares	Zone A million barrels RSV	Zone B million barrels RSV
770 or less	10	15
771–1540	20	30
1541 or above	30	45

The RSV only applies to liquid hydrocarbon production, *i.e.*, oil and condensates. Natural gas volumes that leave the lease are subject to original lease-specified royalties. The market value of natural gas will be determined by MMS's Minerals Revenue Management (MRM) office. MRM will value the natural gas from Sale 186 based on its potential uses and applicable market characteristics at the time the gas is produced.

The lessee must pay royalty on production that would otherwise receive royalty suspension from automatic relief (in 30 CFR 260), and such production will count towards the RSV, in any calendar year during which the arithmetic average of the daily closing prices for the nearby delivery month on the New York Mercantile Exchange (NYMEX) for oil exceeds the adjusted product price threshold.

(a) The adjusted ceiling price threshold for light sweet crude oil in any year, say t, is determined by inflating an oil price of $28 per barrel beginning in base year 1994. This base year price is modified by the percentage change in the implicit price deflator for the interval between 1994 and year t, resulting in the adjusted oil price threshold for year t. For example, if the deflator from 1994 through 2003 indicates that inflation totaled 15 percent, then the adjusted price threshold in calendar year 2003 would become $32.20 per barrel for oil. Royalty on all oil production in calendar year 2003 would be due if the 2003 average NYMEX oil price exceeded $32.20 per barrel.

(b) MMS will provide notice when adjusted price thresholds are exceeded.

(c) In cases where the actual average price for the product exceeds the adjusted price threshold in any calendar year, royalties must be paid in the following calendar year. (*See* 30 CFR 260.122(c) for more detail.)

A fixed oil price floor applies, below which oil and condensate would be produced both royalty-free except for the required minimum royalty of $13 per hectare, and would not count against the RSV. Until the total RSV allocation is exhausted, if the arithmetic average of the daily closing oil prices for the specified time period is below the price floor, then any oil produced during that time period would be royalty-free and would not be subtracted from the lease's remaining RSV. If the arithmetic average of the daily closing oil prices falls below the floor price after the original RSV is exhausted, the lessee receives no additional royalty-free production.

(a) The price floor for light sweet crude oil is set at a fixed $18 per barrel with no adjustment for inflation. The comparison with the price floor is based on the arithmetic average of the daily closing prices for the "nearby delivery month" on the NYMEX for light sweet crude oil with no adjustments for inflation. "The period of assessment" for which the average daily prices are calculated is a quarter of a calendar year with the calendar year quarters being January–March, April–June, July–September, and October–December.

(b) MMS will provide notice in the **Federal Register** or directly to lessees when the average NYMEX quarterly oil price is below $18 per barrel.

The price ceiling and floor provisions expire when aggregate production excluding floor production volumes of oil (and condensate) has used up the lease's original RSV amount.

For purposes of the RSV, a lease operating under an approved unit agreement must have its own qualifying well, as defined in 30 CFR 250.115. Otherwise, production allocated to it from a well in another lease in the unit is not eligible for royalty relief.

Stipulations and Information to Lessees: The documents entitled "Lease Stipulations for Oil and Gas Lease Sale 186" and "Information to Lessees for Oil and Gas Lease Sale 186" contain the text of the Stipulations and the Information to Lessees that apply to this sale. This document is included in the FNOS 186 package.

Method of Bidding: Procedures for the submission of bids in Sale 186 are described in paragraph (a) below. Procedures for the submission bids for the four blocks in the Disputed Portion of the Beaufort Sea will differ as described in paragraph (b) below.

(a) *Submission of Bids.* For each block bid upon, a bidder must submit a separate signed bid in a sealed envelope labeled "Sealed bid for Oil and Gas Lease Sale 186, not to be opened until 9 a.m., Wednesday, September 24, 2003." The total amount of the bid must be in whole dollars; any cent amount above the whole dollar will be ignored by MMS. Details of the information required on the bid(s) and the bid envelope(s) are specified in the document "Bid Form and Envelope" contained in the final NOS 186 package.

(b) *Submission of Bids in the Disputed Portion of the Beaufort Sea.* Procedures for the submission of bids on blocks 6201, 6251, 6301, and 6361 in Official Protraction Diagram NR 07–06 will differ from procedures in paragraph (a) above as follows:

Separate, signed bids on these blocks must be submitted in sealed envelopes labeled only with "Disputed Portion of the Beaufort Sea," Company Number, and a sequential bid number for the company submitting the bid(s). The envelope thus would be in the following format: Disputed Portion of the Beaufort Sea Bid. Company No: 00000. Bid No: 1.

On or before September 24, 2008, the MMS will determine whether it is in the best interest of the United States either to open bids for these blocks or to return the bids unopened. The MMS will notify bidders at least 30 days before bid opening. Bidders on these blocks may withdraw their bids at any time after such notice and prior to 10 a.m. of the day before bid opening. If the MMS does not give notice by September 24, 2008, the bids will be returned unopened. The MMS reserves the right to return these bids at any time. The MMS will not disclose which blocks received bids or the names of bidders in this area unless the bids are opened.

The MMS published a list of restricted joint bidders, which applies to this sale, in the **Federal Register** at 68 FR 22415 on April 28, 2003. Bidders submitting joint bids must state on the bid form the proportionate interest of each participating bidder, in percent to a maximum of five decimal places, *e.g.* 33.33333 percent. MMS may require bidders to submit other documents in accordance with 30 CFR 256.46. MMS warns bidders against violation of 18 U.S.C. 1860 prohibiting unlawful combination or intimidation of bidders. Bidders must execute all documents in conformance with signatory authorizations on file in the Alaska OCS Region. Partnerships also must submit or have on file a list of signatories authorized to bind the partnership. Bidders are advised that MMS considers the signed bid to be a legally binding obligation on the part of the bidder(s) to comply with all applicable regulations, including paying the one-fifth bonus bid amount on all high bids. A statement to this effect must be included on each bid (see the document "Bid Form and Envelope" contained in the FNOS 186 package).

Bonus Bid Deposit: Each bidder submitting an apparent high bid must submit a bonus bid deposit to MMS equal to one-fifth of the bonus bid amount for each such bid submitted for Sale 186. Under the authority granted by 30 CFR 256.46(b), MMS requires bidders to use electronic funds transfer (EFT) procedures for payment of the one-fifth bonus bid deposits, following the detailed instructions contained in the document "Instructions for Making EFT Bonus Payments" included in the FNOS 186 package. All payments must be electronically deposited into an interest-bearing account in the U.S. Treasury (account specified in the EFT instruction) by 1 p.m. Eastern Time the day following bid reading. Such a deposit does not constitute and shall not be construed as acceptance of any bid on behalf of the United States. If a lease is awarded, MMS requests that only one transaction be used for payment of the four-fifths bonus bid amount and the first year's rental.

Please Note: Certain bid submitters [*i.e.*, those that do NOT currently own or operate an OCS mineral lease OR those that have ever defaulted on a one-fifth bonus payment (EFT or otherwise)] will be required to guarantee (secure) their one-fifth bonus payment prior to the submission of bids. For those who must secure the EFT one-fifth bonus payment, one of the following options may be provided: (1) A third-party guarantee; (2) an Amended Development Bond Coverage; (3) a Letter of Credit; or (4) a lump sum payment in advance via EFT. The EFT instructions specify the requirements for each option.

Withdrawal of Blocks: The United States reserves the right to withdraw any block from this sale prior to issuance of a written acceptance of a bid for the block.

Acceptance, Rejection, or Return of Bids: The United States reserves the right to reject any and all bids. In any case, no bid will be accepted, and no lease for any block will be awarded to any bidder, unless the bidder has complied with all requirements of this Notice, including the documents contained in the associated final NOS Sale 186 package and applicable regulations; the bid is the highest valid bid; and the amount of the bid has been determined to be adequate by the authorized officer. The Attorney General of the United States may also review the results of the lease sale prior to the acceptance of bids and issuance of leases. Any bid submitted which does not conform to the requirements of this Notice, the OCS Lands Act, as amended, and other applicable regulations may be returned to the person submitting that bid by the Regional Director and not considered for acceptance. To ensure that the Government receives a fair return for the conveyance of lease rights for this sale, high bids will be evaluated in accordance with MMS bid adequacy procedures.

Successful Bidders: As required by MMS, each company that has been awarded a lease must execute all copies of the lease (Form MMS–2005 (March 1986) as amended); pay by EFT the balance of the bonus bid amount and the first year's rental for each lease issued in accordance with the requirements of 30 CFR 218.155, and satisfy the bonding requirements of 30 CFR 256, subpart I. Each bidder who is a successful high bidder must have on file in the Alaska OCS Region a currently valid certification (Debarment Certification Form) certifying that the bidder is not excluded from participation in primary covered transactions under Federal non-procurement programs and activities. A certification previously provided to that office remains currently valid until new or revised information applicable to that certification become available. In the event of new or revised applicable information, MMS will require a subsequent certification before lease issuance can occur. Persons submitting such certification should review the requirements of 43 CFR, part 12, subpart D. A copy of the Debarment Certification Form is contained in the FNOS 186 package.

Affirmative Action: MMS requests that, prior to bidding, Equal Opportunity Affirmative Action Representation Form MMS 2032 (June 1985) and Equal Opportunity Compliance Report Certification Form MMS 2033 (June 1985) be on file in the Alaska OCS Region. This certification is required by 41 CFR 60 and Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967. In any event, prior to the execution of any lease contract, both forms are required to be on file in the Alaska OCS Region.

Jurisdiction: The United States claims exclusive maritime resource jurisdiction over the area offered. Canada claims such jurisdiction over the four easternmost blocks included in the sale area. These blocks are located in Official Protraction Diagram NR 07–06 as block

numbers 6201, 6251, 6301, and 6361. Nothing in this Notice shall affect or prejudice in any manner the position of the United States with respect to the nature or extent of the internal waters, the territorial sea, the high seas, or sovereign rights or jurisdiction for any purpose whatsoever. Bid submission procedures pertaining to blocks in this Disputed Portion of the Beaufort Sea are described in paragraph (b) under Method of Bidding.

Notice of Bidding Systems: Section 8(a)(8) (43 U.S.C. 1337(a)(8)) of the OCS Lands Act requires that, at least 30 days before any lease sale, a Notice be submitted to Congress and published in the **Federal Register**. This Notice of Bidding Systems is for Sale 186, Beaufort Sea, scheduled to be held on September 24, 2003.

In Sale 186, all blocks are being offered under a bidding system that uses a cash bonus and a fixed royalty of 12 1/2 percent with a royalty suspension of up to 30 million barrels of oil equivalent per lease in Zone A of the sale area or with a royalty suspension of up to 45 million barrels of oil equivalent per lease in Zone B of the sale area. The amount of royalty suspension available on each lease is dependent on the area of the lease and specified in the Sale Notice. This bidding system is authorized under 30 CFR 260.110(a)(7), which allows use of a cash bonus bid with a royalty rate of not less than 12 1/2 percent and with suspension of royalties for a period, volume, or value of production, and an annual rental. Analysis performed by MMS indicates that use of this system provides an incentive for development of this area while ensuring that a fair sharing of revenues will result if major discoveries are made and produced.

Specific royalty suspension provisions for Sale 186 are contained in the document "Royalty Suspension Provisions, Sale 186" included in the FNOS 186 package.

Dated: August 15, 2003.

Thomas A. Readinger,

Acting Director, Minerals Management Service.

[FR Doc. 03–21472 Filed 8–20–03; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA, and U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA, and in the control of the U.S. Department of the Interior, Bureau of Indian Affairs, Washington, DC. The human remains and associated funerary objects were removed from the tribal lands of the Navajo Nation, Arizona, Utah, & New Mexico, Apache County, AZ.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations within this notice.

An assessment of the human remains, and catalog records and associated documents relevant to the human remains, was made by Phoebe A. Hearst Museum of Anthropology professional staff in consultation with representatives of the Navajo Nation, Arizona, Utah, and New Mexico.

In 1924, human remains representing at least two individuals were removed from the "West bank of Pueblo Colorado Wash," in the Cornfields District, Apache County, AZ, by Albert B. Reagan, who donated the human remains to the Phoebe Hearst Museum of Anthropology in the same year. No known individuals were identified. The one associated funerary object is a cotton cloth fragment.

Based on museum records that identify the human remains as a "partial Navajo skeleton" and the geographical location of the burials, the human remains are determined to be Native American. The presence of an associated funerary object of European origin dates the burials to a post-European contact time period. Consultation evidence indicates that the region was inhabited by Navajo culture groups at the time of European contact. The current descendants are the Navajo Nation, Arizona, Utah, and New Mexico. The west bank of Pueblo Colorado Wash, Cornfields District, Apache County, AZ, is within the exterior boundaries of the tribal lands of the Navajo Nation, Arizona, Utah, and New Mexico.

Officials of the U.S. Department of the Interior, Bureau of Indian Affairs and the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of at least two individuals of Native American ancestry. Officials of the U.S. Department of the Interior, Bureau of Indian Affairs and the Phoebe A. Hearst Museum of Anthropology also havae determined that, pursuant to 25 U.S.C. 3001(3)(A), the one object described above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Department of the Interior, Bureau of Indian Affairs and the Phoebe A. Hearst Museum of Anthropology have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary object and the Navajo Nation, Arizona, Utah, and New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary object should contact C. Richard Hitchcock, NAGPRA Coordinator, Phoebe A. Hearst Museum of Anthropology, University of California, Berkeley, Berkeley, CA 94720, telephone (510) 642–6096, before September 22, 2003. Repatriation of the human remains and associated funerary object to the Navajo Nation, Arizona, Utah, and New Mexico may proceed after that date if no additional claimants come forward.

The Phoebe A. Hearst Museum of Anthropology is responsible for notifying the Navajo Nation, Arizona, Utah, and New Mexico that this notice has been published.

Dated: July 8, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–21390 Filed 8–20–03; 8:45 am]

BILLING CODE 4312–50–M

INTERNATIONAL TRADE COMMISSION

[Investigation 332–325]

The Economic Effects of Significant U.S. Import Restraints: Fourth Update

AGENCY: United States International Trade Commission.

ACTION: Notice of fourth update report and scheduling of public hearing.

EFFECTIVE DATE: August 14, 2003.

SUMMARY: The Commission has announced the schedule for its fourth update report in investigation No. 332–325, The Economic Effects of Significant U.S. Import Restraints, and has established deadlines for the submission of requests to appear at the hearing and for the filing of written submissions as set forth below. The investigation was requested by the Office of the U.S. Trade Representative (USTR) in May 1992. That request called for an initial investigation and subsequent updates, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Soamiely Andriamananjara, Project Leader (202) 205–3252 or Marinos Tsigas, Deputy Project Leader (202) 708–3654, Office of Economics, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202) 205–3091. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

Background

The Commission instituted this investigation following receipt on May 15, 1992 of a request from the USTR. The request asked that the Commission conduct an investigation assessing the quantitative economic effects of significant U.S. import restraints on the U.S. economy, and prepare periodic update reports following the submission of the first report. The first report was delivered to the USTR in November 1993, the first update in December 1995, the second update in May 1999, and the third update in June 2002.

In this fourth update report, the Commission will assess the economic effects of significant tariff and non-tariff U.S. import restraints on U.S. consumers, on the activities of U.S. firms, on the income and employment of U.S. workers, and on the net economic welfare of the United States. The assessment will not include import restraints resulting from final antidumping or countervailing duty investigations, section 337 and 406 investigations, or section 301 actions.

The initial notice of institution of this investigation was published in the **Federal Register** of June 17, 1992 (57 FR 27063).

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on December 9, 2003. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., November 14, 2003. Any prehearing briefs (original and 14 copies) should be filed not later than close of business, November 17, 2003; the deadline for filing post-hearing briefs or statements is the close of business, January 10, 2004. In the event that, as of the close of business on November 14, 2003, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202) 205–2000 after November 20, 2003, to determine whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on January 10, 2004. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E St. SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.8) (*see* Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*).

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

List of Subjects: U.S. Import Restraints, Nontariff measures (NTM), Tariffs, Imports.

By order of the Commission.

Issued: August 15, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21455 Filed 8–20–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Pursuant to 28 CFR 50.7 notice is hereby given that on July 31, 2003, a proposed Consent Decree in *United States* v. *E.F.I. DuPont De Nemours and Company ("DuPont")*, Civil Action No. 5.03CV–175–R, was lodged with the United States District Court for the Western District of Kentucky.

The Consent Decree resolves the government's claims for violations of the General Duty of Care provisions of the Clean Air Act, 42 U.S.C. 7412(r),

with respect to DuPont's fluoroproducts plant in Louisville, Kentucky.

The settlement provides for payment of $550,000 in civil penalties and performance of eight Supplemental Environmental Projects ("SEPs") valued at $552,000. Under the proposed SEPs, DuPont will provide emergency response equipment and training for Local Emergency Planning Committees ("LEPCs"), provide a green buffer zone between its facility and the surrounding area, and contract with a community group in an environmental justice area to set up a website on environmental issues and ensure that the group can continue to run its information center which disseminates information on environmental issues.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *E.I.DuPont De Nemours and Company*, D.J. Ref. 90–5–2–1–2099/2.

The Consent Decree may be examined at U.S. EPA Region 4, 61 Forsyth Street, Atlanta, Georgia 30303. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood *(tonia.fleetwood@usdoj.gov)*, fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section.

[FR Doc. 03–21388 Filed 8–20–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 U.S.C. 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Earthgrains Baking Companies, Inc., et al.*, Civil Action No. *4–03CV01043SNL*, was lodged on July 31, 2003, with the United States District Court for the Eastern District of Missouri.

In this action the United States sought civil penalties and injunctive relief for Defendants' violations of the industrial refrigerant, repair, testing, record-keeping, and reporting regulations at 40 CFR, part 82, subpart F, §§ 82.156–82.166 ("Recycling and Emissions Reduction"), promulgated pursuant to subchapter VI of the Act ("Stratospheric Ozone Protection"), 42 U.S.C. 7671–7671q.

The Consent Decree settles an action brought under section 113 of the Clean Air Act, 42 U.S.C. 7413. The Consent Decree provides that *Earthgrains Baking Companies, Inc., et al.*, will pay the United States $5.25 million in civil penalties, and perform extensive injunctive relief by retrofitting, replacing, or retiring a total of 264 Industrial Refrigeration Appliances and Commercial Refrigeration Appliances that presently contain ozone depleting substances with non-ozone depleting substances (*e.g.* glycol, water, ammonia, *etc*).

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Earthgrains Baking Companies, Inc., et al.*, D.J. Ref. #90–5–2–1–07388.

The proposed Consent Decree may be examined at the office of the United States Attorney, Eastern District of Missouri, Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, Room 20.333, St. Louis, Missouri 63102; the Headquarters Office of the Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $*10.00* (25 cents per page reproduction costs), payable to the U.S. Treasury.

Robert Maher,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–21392 Filed 8–20–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on August 11, 2003, a proposed Consent Decree ("Decree") in *United States* v. *Glencore AG*, Civil Action No. 3:03CV1381 (JBA) was lodged with the United States District Court for the District of Connecticut.

In this action the United States seeks civil penalties and injunctive relief to address Glencore's alleged violations of the Clean Air Act and its implementing regulations in 40 CFR part 80 with respect to Glencore's importation, refining, distribution and sale of reformulated and conventional motor gasoline within the United States. The alleged violations include exceedances of the regulatory limits for Reid vapor pressure and exhaust benzene levels for certain batches of gasoline, three reporting or record keeping violations, and a tank sampling violation. To resolve these alleged violations, the Decree requires Glencore to pay a civil penalty of $450,000 to the United States and complete a three-year "Compliance Assurance Program" as specified in the Decree to ensure Glencore's future compliance with the Clean Air Act's programs and regulations concerning reformulated and conventional motor gasoline. The Compliance Assurance Program requires Glencore to retain an auditor or consultant to perform certain detailed periodic reviews and verification procedures with respect to Glencore's records, reports and laboratory data concerning its compliance with applicable fuel regulations.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Glencore AG*, Civil Action No. 3:03CV1381 (JBA) (D. Conn.), D.J. Ref. 90–5–2–1–2169.

The Decree may be examined at the Office of the United States Attorney,

Connecticut Financial Center, 157 Church Street, 23rd Floor, New Haven, CT 06508, and at U.S. EPA Region I, One Congress Street, Suite 1100, Boston MA 02114–2023. During the public comment period, the Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–21391 Filed 8–20–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Pursuant to section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2), notice is hereby given that on July 28, 2003, a Consent Decree with Robert Dwight Weed, Jr. was lodged with the United States District Court for the Eastern District of Michigan in the matter of *United States* v. *Robert Dwight Weed, Jr.*, No. 2:03–CV–72897 (E.D. Mich.).

In that action the United States seeks to recover from the Defendant pursuant to sections 107 and 113(g)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. 9607 and 9613(g)(2), the costs incurred and to be incurred by the United States in responding to the release and/or threatened release of hazardous substances at and from the Durako Paint Site (or "Site") in Detroit, Wayne County, Michigan.

Under the proposed Partial Consent Decree, Defendant Robert Dwight Weed, Jr. Will pay $30,000 to the Hazardous Substances Superfund in reimbursement of the costs incurred by the United States at the Site.

The Department of Justice will receive for a period of thirty (30 days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Robert Dwight Weed, Jr.*, (No. 2:03–CV–72897 (E.D. Mich.) (DOJ Ref. No. 90–11–3–07511).

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, 211 W. Fort Street, Detroit, Michigan 48226–3211; and at EPA Region 5, 77 W. Jackson Blvd., Chicago, Illinois 60604 (contact Sherry L. Estes, Esq., (312) 886–7164). During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Partial Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please refer to *United States* v. *Robert Dwight Weed, Jr.*, (No. 2:03–CV–72897 (E.D. Mich.) (DOJ Ref. No. 90–11–3–07511), and enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

William Brighton,

Assistant Section Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 03–21389 Filed 8–20–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Report of mail order transactions.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposal information collection was previously published in the **Federal Register** Volume 68, Number 110, on page 34420 on June 9, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 22, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Report of Mail Order Transactions.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: None. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* business or other for-profit. Other: None. Abstract: The Comprehensive Methamphetamine

Control Act of 1996 (Pub. L. 104–237) (MCA) amended the Controlled Substances Act to require that each regulated person who engages in a transaction with a non-regulated person which involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals) and uses or attempts to use the Postal Service or any private or commercial carrier shall, on a monthly basis, submit a report of each such transaction conducted during the previous month to the Attorney General.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are forty estimated respondents for this information collection. Thirty-seven respondents respond on paper, taking 1 hour for each response to do so. Three respondents submit responses electronically, taking 15 minutes to do so. Respondents are required by law to respond monthly.

(6) *An estimate of the total public burden (in hours) associated with this collection:* This collection requires an estimated total of 453 annual burden hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 15, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–21410 Filed 8–20–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection Under Review: Annual Reporting Requirement for manufacturers of Listed Chemicals

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 110, and page 34420 on June 9, 2003, allowing for a 60-day comment period.

The purpose of this notices is to allow for an additional 30 days for public comment until September 22, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, of facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Existing of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Annual Reporting Requirement for Manufacturers of Listed Chemicals.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. This information collection permits the Drug Enforcement Administration to monitor the volume and availability of domestically manufactured listed chemicals. These listed chemicals may be subject to diversion for the illicit production of controlled substances. This information collection is required by law.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 respondents respond annually to this information collection, with each response estimated to take four hours.

(6) *An estimate of the total public burden (in hours) associated with this collection:* There is an estimated 400 annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 15, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–21411 Filed 8–20–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OJP (OJP)–1381]

Meeting of the Global Justice Information-Sharing Initiative Federal Advisory Committee

AGENCY: Office of Justice Programs (OJP), Bureau of Justice Assistance (BJA), Justice.

ACTION: Notice of meeting.

SUMMARY: This is an announcement of a meeting of the Global Justice Information-Sharing Initiative (Global) Federal Advisory Committee (GAC) to discuss the Global Initiative, as described at *http://www.it.ojp.gov/global.*

DATES: The meeting will take place on Wednesday, October 8, 2003, from 1 p.m. to 5:15 p.m. ET, and Thursday, October 9, 2003, from 8:30 a.m. to 12 Noon ET.

ADDRESSES: The meeting will take place at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA 22202; Phone: (703) 486–1111.

FOR FURTHER INFORMATION CONTACT: J. Patrick McCreary, Global Designated Federal Employee (DFE), Bureau of

Justice Assistance, Office of Justice Programs, 810 7th Street, Washington, DC 20531; Phone: (202) 616–0532 [**Note:** this is not a toll-free number]; e-mail: *mccrearj@ojp.usdoj.gov.*

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Due to security measures, however, members of the public who wish to attend this meeting must register with Mr. J. Patrick McCreary at the above address at least (7) days in advance of the meeting. Registrations will be accepted on a space available basis. Access to the meeting will not be allowed without registration. All attendees will be required to sign in at the meeting registration desk. Please bring photo identification and allow extra time prior to the meeting.

Anyone requiring special accommodations should notify Mr. McCreary at least seven (7) days in advance of the meeting.

Purpose

The GAC will act as the focal point for justice information systems integration activities in order to facilitate the coordination of technical, funding, and legislative strategies in support of the Administration's justice priorities.

The GAC will guide and monitor the development of the Global information sharing concept. It will advise the Assistant Attorney General, OJP; the Attorney General; the President (through the Attorney General); and local, state, tribal, and federal policymakers in the executive, legislative, and judicial branches. The GAC will also advocate for strategies for accomplishing a Global information-sharing capability.

Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with approval of the DFE.

J. Patrick McCreary,

Global DFE, Bureau of Justice Assistance, Office of Justice Programs.

[FR Doc. 03–21468 Filed 8–20–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Solicitation for Grant Applications (SGA) 03–15; Ending Chronic Homelessness Through Employment and Housing

AGENCY: Office of Disability Employment Policy, U.S. Department of Labor; and Office of Special Needs, U.S. Department of Housing and Urban Development.

ACTION: Notice of Correction.

SUMMARY: In the FR Vol. 68, No. 138, Friday, July 18, 2003 the competition was announced and the SGA printed in its entirety. Based on the emergency caused by the power outages in the Northeast quadrant of the United States, the preparation and submission of proposals have been adversely affected. Due to this interruption, the deadline for submission of applications is extended. All applications must now be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. EST, August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Cassandra Willis, Department of Labor, Telephone (202) 693–4570.

Signed at Washington, DC this 19 day of August, 2003.

Daniel P. Murphy,

Director, Procurement Services Center.

[FR Doc. 03–21614 Filed 8–19–03; 3:28 pm]

BILLING CODE 4510–CX–M

DEPARTMENT OF LABOR

Employment and Training Administration

Public Meeting of the Advisory Committee on Apprenticeship (ACA)

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to section 10 of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. APP. 1), notice is hereby given of a meeting of the Advisory Committee on Apprenticeship (ACA).

Time and Date: The meeting will begin at 8:30 a.m. on Tuesday, September 16, and continue until approximately 5 p.m. The meeting will reconvene at 8:30 a.m. on Wednesday, September 17, and continue until 4 p.m.

Place: Donald E. Stephens Convention Center, 5555 N. River Road, Rosemont, Illinois; Telephone: (847) 692–2220.

The agenda is subject to change due to time constraints and priority items which may come before the Committee between the time of this publication and the scheduled date of the ACA meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4671, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693–2796, (this is not a toll-free number).

Matters To Be Considered: The agenda will focus on reports from the Committee's subcommittees on the following topics:

- Career Lattice/Credentialing
- Education and Outreach
- Training/Staff Development
- New and Emerging Industries
- Legislative

Status: Members of the public are invited to attend the proceedings. Individuals with special needs should contact Ms. Marion Winters at (202) 693–3786 no later than September 12, 2003, if special accommodations are needed.

Any member of the public who wishes to file written data or comments pertaining to the agenda may do so by sending them to Mr. Anthony Swoope, Administrator, Office of Apprenticeship Training, Employer and Labor Services, Employment and Training Administration, U.S. Department of Labor, Room N–4671, 200 Constitution Avenue NW., Washington, DC 20210. Such submissions should be sent by September 12, 2003, to be included in the record for the meeting.

Any member of the public who wishes to speak at the meeting should indicate the nature of the intended presentation and the amount of time needed by furnishing a written statement to the Designated Federal Official, Mr. Anthony Swoope, by September 12, 2003. The Chairperson will announce at the beginning of the meeting the extent to which time will permit the granting of such requests.

Signed at Washington, DC, this 15 day of August, 2003.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training Administration.

[FR Doc. 03–21404 Filed 8–20–03; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is

invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before September 22, 2003 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Mr. Jonathan Womer, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on June 10, 2003 (68 FR 34653 and 34654). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Financial Disclosure Form.

OMB number: 3095–NEW.

Agency form number: Standard Form NEW.

Type of review: Regular.

Affected public: Business or other for-profit, Federal government.

Estimated number of respondents: 25,897.

Estimated time per response: 2 hours.

Frequency of response: On occasion.

Estimated total annual burden hours: 51,794 hours.

Abstract: Executive Order 12958 as amended, "Classified National Security Information" authorizes the Information Security Oversight Office to develop standard forms that promote the implementation of the Government's security classification program. These forms promote consistency and uniformity in the protection of classified information.

The Financial Disclosure Form will contain information that will be used to make personnel security determinations, including whether to grant a security clearance; to allow access to classified information, sensitive areas, and equipment; or to permit assignment to sensitive national security positions. The data may later be used as a part of a review process to evaluate continued eligibility for access to classified information or as evidence in legal proceedings.

The Financial Disclosure Form will help law enforcement obtain pertinent information in the preliminary stages of potential espionage and counter terrorism cases. The Policy Coordinating Committee on Records Access and Information Security forwarded the current form to the Information Security Oversight Office for issuance. The Office of Management and Budget is aware of the form.

Dated: August 14, 2003.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 03–21419 Filed 8–20–03; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580]

Notice of Consideration of a License Amendment Request by Fansteel, Inc., for Approval of Transfer of its Muskogee, OK Facility License, and Opportunity to Request a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of an amendment request to authorize transfer of a license, and opportunity to provide written comments or to request a hearing.

FOR FURTHER INFORMATION CONTACT: J.C. Shepherd, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6712; Fax: (301) 415–5398; and/or by email: *jcs2@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a license amendment to Fansteel, Inc.'s (Fansteel) materials license SMB–911 to authorize transfer of its license to MRI, Inc. License SMB–911 was issued to Fansteel under 10 CFR part 40 and authorizes Fansteel to possess up to 400 tons of natural uranium and thorium in any form. The material at the Muskogee site is in the form of uranium, thorium, radium, and decay-chain products in process equipment and buildings, soil, sludge, and groundwater.

On July 24, 2003, Fansteel submitted a request for authorization to transfer the current license with an amended Decommissioning Plan (currently under review and the subject of **Federal Register** notice 68 FR 47621, which provides an opportunity to provide comments and/or to request a hearing on that action) to MRI, Inc., a corporation to be formed under Delaware law as part of Fansteel's exit from bankruptcy. In conjunction with this request, Fansteel submitted with its request, a "Joint Reorganization Plan of Fansteel, Inc. and Subsidiaries" and a "Disclosure Statement with Respect to Joint Reorganization Plan of Fansteel, Inc. Et Al." to the United States Bankruptcy Court for the District of Delaware.

Pursuant to 10 CFR 40.46, no license issued or granted under the regulations in Part 40, shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the Commission, after securing full information that the transfer is in accordance with the provisions of the Atomic Energy Act of 1954, as amended (AEA), gives its consent in writing. Therefore, before the issuance of an amendment, the NRC will have made the findings required by the AEA, and NRC's regulations. These findings will be documented in a Safety Evaluation Report. An Environmental Assessment (EA) will not be performed because, pursuant to 10 CFR 51.22(c)(21), this action is categorically excluded from the requirement to perform an EA.

II. Opportunity to Provide Written Comments

In accordance with 10 CFR 2.1305, the NRC is providing notice that, as an alternative to requests for hearings and petitions to intervene, persons may submit written comments regarding license transfer applications; however, such comments will not constitute part

of the decisional record. Comments should be submitted within 30 days after notice of receipt is published in the **Federal Register**, by mail, telegram, or facsimile, addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that written comments also be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101, or by e-mail to *secy@nrc.gov*.

III. Opportunity to Request a Hearing

NRC hereby also provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearing on License Transfer Applications," of NRC's rules of practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1306(a), any person whose interest may be affected by this action may file a request for a hearing or petition for leave to intervene in accordance with § 2.1306(b). Pursuant to § 2.1306(c), to be timely, hearing requests and intervention petitions must be filed not later than 20 days after notice of receipt is published in the **Federal Register**.

In accordance with 10 CFR 2.1306(b)(4) and 2. 1313(b), the request for a hearing or intervention petition must be filed with:

1. The applicant, Fansteel, Inc., Number One Tantalum Place, North Chicago, IL 60064 Attention: Mr. Gary Tessitore, and;

2. The Office of the Secretary either:

(a) By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 a.m. and 4:15 p.m. Federal workdays; or

(b) By mail, telegram, or facsimile, addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101, or by e-mail to *secy@nrc.gov.* , and;

In accordance with 10 CFR 2.1313(b), each hearing request or intervention petition must also be served, by delivering it personally or by mail, to:

1. The NRC staff, by delivery to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel either by means of facsimile transmission to (301) 415–3725, or by e-mail to *ogcmailcenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of NRC's regulations, hearing requests and intervention petitions must:

1. State the name, address, and telephone number of the requestor or petitioner;

2. Set forth the issues sought to be raised, and

(a) demonstrate that such issues are within the scope of the proceeding on the license transfer application,

(b) demonstrate that such issues are relevant to the findings the NRC must make to grant the application for license transfer,

(c) provide a concise statement of the alleged facts or expert opinions which support the petitioner's position on the issues and on which the petitioner intends to rely at hearing, together with references to the specific sources and documents on which the petitioner intends to rely to support its position on the issues, and

(d) provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact;

3. Specify both the facts pertaining to the petitioner's interest and how that interest may be affected with particular reference to the factors in 2.1308(a).

Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting any such hearing will be published in the **Federal Register** and served on the parties to the hearing.

IV. Further Information

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," details with respect to this action, including the application for amendment and supporting documentation, are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html*. These documents may also be examined, and/or copied for a fee, at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Dated at Rockville, Maryland, this 15th day of August, 2003.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–21418 Filed 8–20–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Sunshine Act Meetings

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: Thursday, August 21, 2003 at 10:30 a.m.

PLACE: Commission conference room, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: Further consideration of fiscal year 2004 budget.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

Dated: August 19, 2003.

Garry J. Sikora,

Acting Secretary.

[FR Doc. 03–21544 Filed 8–19–03; 11:37 am]

BILLING CODE 7710–FW–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement

Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Evidence for Application of Overall Minimum: OMB 3220–0083.

Under section 3(f)(3) of the Railroad Retirement Act (RRA), the total monthly benefits payable to a railroad employee and his/her family are guaranteed to be no less than the amount which would be payable if the employee's railroad service had been covered by the Social Security Act. The Social Security Overall Minimum Guarantee is prescribed in 20 CFR part 229. To administer this provision, the Railroad Retirement Board (RRB) requires information about a retired employee's spouse and child(ren) who would not be eligible for benefits under the RRA but would be eligible for benefits under the Social Security Act if the employee's railroad service had been covered by that Act. The RRB obtains the required information by the use of forms G–319 (Statement Regarding Family and Earnings for Special Guaranty Computation) and G–320 (Statement by Employee Annuitant Regarding Student Age 18–19). One form is completed by each respondent. The RRB proposes no changes to Form G–319 or Form G–320.

Estimate of annual respondent burden: The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (Min)	Burden (Hrs)
G–319 *Employee Completed:*			
With assistance	95	26	41
Without assistance	5	55	5
G–319 *Spouse Completed:*			
With assistance	95	30	48
Without assistance	5	60	5
G–320:			
With assistance	86	10	14
Without assistance	4	26	2
Total	290	.....	115

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Office at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–21405 Filed 8–20–03; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will public periodic summaries of proposed data collections.

Comment are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Student Beneficiary Monitoring; OMB 3220–0123.

Under provisions of the Railroad Retirement Act (RRA), there are two types of benefits whose payment is based upon the status of a child being a full-time student, a survivor benefit under section 2 and an increased retirement benefit under section 3(f)(3).

A survivor benefit is paid directly to the student unless there is a representative payee. The benefit for a student in a life case is paid by increasing the retired parent's annuity rate under the overall minimum guaranty. The requirements for obtaining benefits based on full-time student status are prescribed in 20 CFR 219.54 and 219.55.

The RRB requires evidence of full-time school attendance in order to determine that a child is entitled to student benefits. The RRB utilizes the following forms to conduct its student monitoring program. Form G–315, *Student Questionnaire*, obtains certification of a student's full-time school attendance. It also obtains information on a student's marital status, Social Security benefits, and employment which are needed to determine entitlement or continued entitlement to benefits under the RRA. Form G–315a, *Statement by School Official of Student's Full-time Attendance*, is used to obtain verification from a school that a student attends school full-time and provides their expected graduation date. Form G–315a.1, *Notice of Cessation of Full-Time Attendance*, is used by a school to notify the RRB that a student has ceased full-time school attendance. Completion is required to obtain or retain a benefit. One response is requested of each respondent.

The RRB proposes no changes to Forms G–315, G–315a, or G–315a.1. The completion time for the G–315 is estimated at seven minutes per response. The completion time for the G–315a and G–315a.1 is estimated at two minutes. The RRB estimates that approximately 960 Form G–315's, 210 Form G–315a's and 60 Form G–315a.1's are received annually.

Additional information or comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information

collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–21406 Filed 8–20–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27713; 70–10083]

Hydro-Quebec, et al.; Order Granting Limited Approval to Application of Hydro Quebec, et al.

On July 30, 2003, we issued notice of an application by Hydro-Quebec and certain of its subsidiaries under sections 9(a)(2) and 10 of the Act to acquire an interest in Cross-Sound Cable Company (New York) LLC ("CSC NY"). *See* Holding Co. Act Release 27703 (July 30, 2003.[1] The application also seeks exemptions for Hydro-Quebec and certain of its subsidiaries under sections 3(a)(5) and 3(a)(1) of the Act. As described in the notice, CSNY is constructing a transmission line (the "Cross Sound Cable") between New York and Connecticut. The transmission line has not yet entered into commercial operation. The notice period for filing comments or requests for hearing with respect to the application runs through August 25, 2003.

On August 14, 2003, in response to a sudden black-out affecting large parts of the eastern and midwestern sections of the United States, the Department of Energy issued an order pursuant to section 202(c) of the Federal Power Act requiring that the Cross Sound Cable be operated to, among other things, "alleviate the current disruptions in electric transmission service." Department of Energy Order No. 202–03–1 (Aug. 14, 2003) ("DOE Order").

Based upon these circumstances, we hereby grant the application of Hydro-Quebec *et al.* for the limited purpose of complying with the DOE Order.[2] Our grant of the application for these limited purposes is without prejudice to our ability to take any action with respect to this Order or the application following the conclusion of the notice period.

The necessity for immediate action of the Commission does not permit prior notice of the Commission's action. CF. Holding Co. Act Release No. 35–27502 (Mar. 18, 2002).

Accordingly, it is ordered, pursuant to sections 3, 9(a)(2), 10 and 20 of the Public Utility Holding Company Act of 1935 that the application of Hydro-Quebec *et al.* is granted for the limited purpose of complying with Department of Energy Order 202–03–1.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21401 Filed 8–20–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 26151; 812–13003]

Barclays Global Fund Advisors, et al.; Notice of Application

August 15, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application to amend a prior order under section 6(c) of the Investment Company Act of 1940 ("Act") granting an exemption from sections 2(a)(32), 5(a)(1), and 22(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to amend a prior order that permits: (a) An open-end management investment company, whose series are based on certain fixed-income securities indices, to issue shares of limited redeemability; (b) secondary market transactions in the shares of the series to occur at negotiated prices; and (c) affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares ("Prior Order").[1] Applicants seek to amend the Prior Order in order to offer additional series based on different fixed-income securities indices.

APPLICANTS: Barclays Global Fund Advisors ("Adviser"), iShares Trust ("Trust") and SEI Investments Distribution Co. ("Distributor").

FILING DATES: The application was filed on August 15, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 5, 2003 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 5th Street, NW., Washington, DC 20549–0609. Applicants: Richard F. Morris, Esq., Barclays Global Fund Advisors, c/o Barclays Global Investors, N.A., 45 Fremont Street, San Francisco, CA 94105; Susan C. Mosher, Esq., iShares Trust, c/o Investors Bank & Trust Company, 200 Clarendon Street, Boston, MA 02116; and William E. Zitelli, Esq., SEI Investments Distribution Co., One Freedom Valley Drive, Oaks, PA 19456.

FOR FURTHER INFORMATION CONTACT: Laura J. Riegel, Senior Counsel, at (202) 942–0567, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 5th Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company

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[1] Specifically, Hydro-Québec ("HQ"), 75 René-Lévesque Blvd. West, Montréal, Québec H2Z 1A4 Canada, a corporation wholly owned by the government of Québec and a public-utility holding company that claims exemption under the Act under rule 10, and its subsidiaries, TransEnergie HQ, Inc. ("TEI"), 740 rue Nôtre-Dame Ouest, Bureau 800, Montréal, Québec, H3C 3X6 Canada, a Canadian corporation, TransEnergie U.S. Ltd. ("TEUS"), a Delaware corporation and Cross-Sound Cable Company (New York), LLC ("CSC NY"), a New York limited liability company, both located at 110 Turnpike Road, Westborough, MA 01581 (collectively, "Applicants") have filed an application under sections 3(a)(1), 3(a)(5), 9(a)(2) and 10 of the Act in connection with a proposed acquisition of interests in CSC NY (the "Transaction").

Applicants request an order under sections 9(a)(2) and 10 of the Act authorizing HQ through TEI and TEUS to acquire interests in CSC NY; an order exempting TEUS from registration under section 3(a)(1); and an order exempting HQ from registration under section 3(a)(5).

[2] The Commission has, in the past, issued orders in response to crises in the energy sector while at the same time retaining its authority to reconsider the matter at an appropriate time. *See* Union Electric Co., Holding Co. Act Release No. 18368 (Apr. 10, 1974).

[1] Barclays Global Fund Advisors, *et al.*, Investment Company Act Release Nos. 25594 (May 29, 2002) (notice) and 25622 (June 25, 2002) (order).

registered under the Act and established in the state of Delaware. The Trust is organized as a series fund with multiple series. The Adviser, an investment adviser registered under the Investment Advisers Act of 1940, will serve as investment adviser to each New Fund. The Distributor, a broker-dealer unaffiliated with the Adviser and registered under the Securities Exchange Act of 1934, serves as the principal underwriter for the Trust.

2. The Trust is currently permitted to offer seven series based on fixed-income securities indices in reliance on the Prior Order. Applicants seek to amend the Prior Order to permit the Trust to offer 11 new series based on fixed-income securities indices (each, a "New Fund") that, except as described in the application, would operate in a manner identical to the existing series of the Trust that are subject to the Prior Order.[2]

3. Each New Fund will invest in a portfolio of securities generally consisting of the component securities of a specified fixed income securities index (each, an "Underlying Index").[3] No entity that creates, compiles, sponsors, or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Adviser, the Distributor, or a promoter of a New Fund.

4. Except for the TIPS Index and the Aggregate Index, all of the Underlying Indices contain fixed-income securities that are eligible for inclusion in the underlying indices for the existing series of the Trust that are subject to the Prior Order. The TIPS Index represents all of the inflation protected public obligations of the United States Treasury. The Aggregate Bond Index includes United States agency mortgage pass-through securities, in addition to fixed-income securities that are included in certain underlying indices for existing series of the Trust. The New Fund that would track the Aggregate Index ("Aggregate Fund") intends to use "to-be-announced" ("TBA") transactions to track the United States agency mortgage pass-through securities in the Aggregate Index.[4] Applicants state that information about the intraday prices for the fixed income securities held by the New Funds (and TBAs held by the Aggregate Fund) is readily available to the marketplace.

5. The investment objective of each New Fund will be to provide investment results that correspond generally to the price and yield performance of its relevant Underlying Index. Each New Fund will utilize as an investment approach a representative sampling strategy where each New Fund will seek to hold a representative sample of the component securities of the Underlying Index. Except for the Aggregate Fund and the New Funds that track the GS 5-Year Index ("GS 5-Year Fund") and the GS 10-Year Index ("GS 10-Year Fund"), each New Fund will invest at least 90% of its assets in the component securities of its Underlying Index and may invest the remainder of its assets in certain futures, options, and swap contracts, cash and cash equivalents, and in bonds not included in its Underlying Index which the Adviser believes will help the New Fund track its Underlying Index. Each of the GS 5-Year Fund and the GS 10-Year Fund generally will invest 90% of its assets in the component securities of its Underlying Index, though at times each of those New Funds may invest up to 20% of its assets in certain futures, options and swap contracts, cash and cash equivalents, as well as in bonds not included in its Underlying Index in order to manage prospective changes to the indices.[5] The Aggregate Bond Fund will have at least 90% of its net assets invested in: (a) Component securities of its Underlying Index and (b) investments that have economic characteristics that are substantially identical to the economic characteristics of the component securities of its Underlying Index (*i.e.*, the TBAs, as discussed above). Applicants expect that each New Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than 5 percent.

6. Applicants state that all discussions contained in the application for the Prior Order are equally applicable to the New Funds, except as specifically noted by applicants (as summarized above). Applicants agree that the amended order will subject applicants to the same conditions as imposed by the Prior Order. Applicants believe that the requested relief continues to meet the necessary exemptive standards.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21447 Filed 8–20–03; 8:45 am]

BILLING CODE 8010–01–P

[2] If the amended order is granted, the New Funds would also be able to rely on an exemptive order granting certain relief from section 24(d) of the Act to the existing series of the Trust that are subject to the Prior Order. *See* iShares, Inc., *et al.*, Investment Company Act Release Nos. 25595 (May 29, 2002) (notice) and 25623 (June 25, 2002) (order).

[3] The Underlying Indices for the New Funds are Lehman Brothers Short U.S. Treasury Index, Lehman Brothers 3–7 Year U.S. Treasury Index, Lehman Brothers 10–20 Year U.S. Treasury Index, Lehman Brothers U.S. Treasury Inflation Notes Index ("TIPS Index"), Lehman Brothers U.S. Credit Index, Lehman Brothers Intermediate U.S. Credit Index, Lehman Brothers Intermediate U.S. Government/Credit Index, Lehman Brothers U.S. Aggregate Index ("Aggregate Index"), Credit Suisse First Boston Liquid U.S. Agency Index, GS $ InvesTop 5-Year Index ("GS 5-Year Index") and GS $ InvesTop 10-Year Index ("GS 10-Year Index").

[4] A TBA transaction essentially is a purchase or sale of a United States agency mortgage pass-through security for future settlement at an agreed upon date. Applicants state that 90% of United States agency mortgage pass-through securities are executed as TBA trades. Applicants state that TBA transactions increase the liquidity and pricing efficiency of transactions in United States agency mortgage pass-through securities since they permit similar United States agency mortgage pass-through securities to be traded interchangeably pursuant to commonly observed settlement and delivery requirements.

[5] The bonds will be bonds that the Adviser believes will help the New Fund track its Underlying Index and which are either: (a) included in the broader index upon which such Underlying Index is based; or (b) new issues entering or about to enter the Underlying Index or the broader index upon which such Underlying Index is based.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27712]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 15, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 10, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A persons who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order is issued in

the matter. After September 10, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70–9343)

Northeast Utilities ("NU"), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, NU's wholly-owned nonutility subsidiary, NU Enterprises, Inc. ("NUEI"), and Northeast Utilities Service Company, both located at 107 Selden Street, Berlin, Connecticut 06037, (collectively, the "Applicants") have filed a post effective amendment to their application-declaration under section 12(b) and rules 45 and 54 under the Act.

By order dated November 12, 1998 (HCAR No. 26939) ("Prior Order"), the Commission Authorized NU and NUEI to, among other things, issue guarantees or provide similar forms of credit support or enhancements (collectively, "Guarantees"), to, or for the benefit of NUEI, NUEI's nonutility subsidiaries, or NU's other to-be-formed direct or indirect energy-related companies, as defined in rule 58 of the Act. The Commission, through subsequent orders in this file, authorized an increase in this Guarantee authority to $500 million and the extension of the date through which Guarantees may be provided through September 30, 2003, under the terms and conditions of the Prior Order. Applicants request in this filing to maintain the Guarantee authority at $500 million and to extend the date through which the Guarantees may be provided through June 30, 2004, under the terms and conditions of the Prior Order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21400 Filed 8–20–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48347; File No. SR–NASD–2003–95]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Arbitrator Classification and Disclosure in NASD Arbitration

August 14, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 12, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Rules 10308 and 10312 of the NASD Code of Arbitration Procedure ("Code") to provide additional assurance that individuals with significant ties to the securities industry may not serve as public arbitrators in NASD arbitrations. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

10100. Code of Arbitration Procedure

* * * * *

Rule 10308. Selection of Arbitrators

This Rule specifies how parties may select or reject arbitrators, and who can be a public arbitrator.

(a) Definitions.

(1)–(3) Unchanged.

* * * * *

(4) "non-public arbitrator"

The term "non-public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and:

(A) is, or within the past *5* [three] years, was:

(i) associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);

(ii) registered under the Commodity Exchange Act;

(iii) a member of a commodities exchange or a registered futures association; or

(iv) associated with a person or firm registered under the Commodity Exchange Act;

(B) is retired from, *or spent a substantial part of a career,* engaging in any of the business activities listed in subparagraph (4)(A);

(C) Is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last 2 years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A); or

(D) Is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities.

(5) "public arbitrator"

(A) The term "public arbitrator" means a person who is otherwise qualified to serve as an arbitrator and [is not]:

(i) *Is not* engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); [or]

(ii) *Was not engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D) for a total of 20 years or more;*

(iii) Is not an investment adviser;

(iv) Is an attorney, accountant, or other professional whose firm derived 10 percent or more of its annual revenue in the past 2 years from any persons or entities listed in paragraph (a)(4)(A); and

(v) Is not the spouse or an immediate family member of a person who is engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

(B) For the purpose of this Rule, the term "immediate family member" means:

(i) *The parent, stepparent, child, or stepchild, of a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);*

(ii) *A member of the household of* [family member who shares a home with] a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D);

(iii) A person who receives financial support of more than 50 percent of his or her annual income from a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D); or

(*iv*[iii]) A person who is claimed as a dependent for federal income tax purposes by a person engaged in the conduct or activities described in paragraphs (a)(4)(A) through (D).

* * * * *

Remainder of (a) through (c) unchanged.

* * * * *

(d) Disqualification and Removal of Arbitrator Due to Conflict of Interest or Bias

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(1) Disqualification by Director

After the appointment of an arbitrator and prior to the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, if the Director or a party objects to the continued service of the arbitrator, the Director shall determine if the arbitrator should be disqualified. If the Director sends a notice to the parties that the arbitrator shall be disqualified, the arbitrator will be disqualified unless the parties unanimously agree otherwise in writing and notify the Director not later than 15 days after the Director sent the notice.

(2) Removal by Director

After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator based only on information that is required to be disclosed pursuant to Rule 10312 and that was not previously disclosed.

(3) The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known a the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

(e) Discretionary Authority

The Director may exercise discretionary authority and make any decision that is consistent with the purposes of this Rule and the Rule 10000 Series to facilitate the appointment of arbitration panels and the resolution of arbitration disputes.

(f) Challenges by Customers

In cases involving public customers, any close questions regarding arbitrator classification or challenges for cause brought by a customer will be resolved in favor of the customer.

* * * * *

Rule 10312. Disclosures Required of Arbitrators and Director's Authority to Disqualify

(a) Each arbitrator shall be required to disclose to the Director of Arbitration any circumstances which might preclude such arbitrator from rendering an objective and impartial determination. Each arbitrator shall disclose:

(1) Any direct or indirect financial or personal interest in the outcome of the arbitration;

(2) Any existing or past financial, business, professional, family, social, or other relationships or circumstances that are likely to affect impartiality or might reasonably create an appearance of partiality or bias. Persons requested to serve as arbitrators *must* [should] disclose any such relationships or circumstances that they have with any party or its counsel, or with any individual whom they have been told will be a witness. They *must* [should] also disclose any such relationship or circumstances involving members of their families or their current employers, partners, or business associates.

(b) Persons who are requested to accept appointment as arbitrators *must* [should] make a reasonable effort to inform themselves of any interests, relationships or circumstances described in paragraph (a) above.

(c) The obligation to disclose interests, relationships, or circumstances that might preclude an arbitrator from rendering an objective and impartial determination described in paragraph (a) is a continuing duty that requires a person who accepts appointment as an arbitrator to disclose, at any stage of the arbitration, any such interests, relationships, or circumstances that arise, or are recalled or discovered.

(d) Removal by Director

(1) The Director may remove an arbitrator based on information that is required to be disclosed pursuant to this Rule.

(2) After the commencement of the earlier of (A) the first pre-hearing conference or (B) the first hearing, the Director may remove an arbitrator based only on information not known to the parties when the arbitrator was selected. The Director's authority under this subparagraph (2) may be exercised only by the Director or the President of NASD Dispute Resolution.

(3) The Director will grant a party's request to disqualify an arbitrator if it is reasonable to infer, based on information known at the time of the request, that the arbitrator is biased, lacks impartiality, or has an interest in the outcome of the arbitration. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD represents that the proposed rule change would amend Rules 10308 and 10312 of the Code to: (1) Modify the definitions of public and non-public arbitrators to further ensure that individuals with significant ties to the securities industry are not able to serve as public arbitrators; (2) provide specific standards for deciding challenges to arbitrators for cause; and (3) clarify that compliance with arbitrator disclosure requirements is mandatory.

Background

In July 2002, the SEC retained Professor Michael Perino to assess the adequacy of NASD (and New York Stock Exchange) arbitrator disclosure requirements, and to evaluate the impact of the recently adopted California Ethics Standards [3] on the current conflict disclosure rules of the self-regulatory organizations (SROs). The SEC released professor Perino's report, *Report to the Securities and Exchange Commission Regarding Arbitrator Conflict Disclosure Requirements in NASD and NYSE Securities Arbitrations (Perino Report), on November 4, 2002.*

The Perino Report concluded that undisclosed conflicts of interest were not a significant problem in SRO-sponsored arbitrations. Specifically, the Perino Report concluded that adoption of the California Ethics Standards by SROs would yield very few benefits to parties, but would impose significant costs and could have significant unintended consequences that might reduce investors' perception of the fairness of SRO arbitrations. However, the Perino Report recommended several amendments to SRO arbitrator classification and disclosure rules that, according to the Perino Report, might "provide additional assurance to investors that arbitrations are in fact neutral and fair."

[3] California Rules of Court, Division VI of the Appendix, entitled, "Ethics Standards for Neutral Arbitrators in Contractual Arbitration."

This rule change would implement those recommendations, as well as several other related changes to the definition of public and non-public arbitrators that are consistent with the Perino Report recommendations.

Definition of Public and Non-Public Arbitrators

The Code classifies arbitrators as public or non-public (*i.e.*, "industry"). When investors have a dispute with member firms or associated persons in NASD arbitration, they are entitled to have their cases heard by a panel consisting of either a single public arbitrator, or a majority public panel consisting of two public arbitrators and one non-public arbitrator, depending on the amount of the claim.

Rule 10308(a)(5) of the Code defines "public" arbitrators as persons who are qualified to serve as arbitrators and who are not either personally engaged in certain activities that would make them non-public, or the immediate family member of a person engaged in such activities. Specifically, under Rule 10308(a)(4) of the Code, a person is currently classified as a non-public arbitrator if he or she:

(A) Is, or within the past three years, was:

- Associated with a broker or a dealer (including a government securities broker or dealer or a municipal securities dealer);
- Registered under the Commodity Exchange Act;
- A member of a commodities exchange or a registered futures association; or
- Associated with a person or firm registered under the Commodity Exchange Act;

(B) Is retired from engaging in any of the business activities listed in subparagraph (4)(A).

(C) Is an attorney, accountant, or other professional who has devoted 20 percent or more of his or her professional work, in the last two years, to clients who are engaged in any of the business activities listed in subparagraph (4)(A);

(D) Is an employee of a bank or other financial institution and effects transactions in securities, including government or municipal securities, and commodities futures or options or supervises or monitors the compliance with the securities and commodities laws of employees who engage in such activities; or

(E) Is the immediate family member of anyone who meets the criteria above.

Rule 10308(a)(5) of the Code currently defines "immediate family member" to include spouses of non-public arbitrators, as well as family members who share a home with, receive substantial financial support from, or are declared as dependents for federal income tax purposes by, non-public arbitrators.

The proposed rule change would amend these definitions in several ways to further ensure that individuals with significant ties to the securities industry are not able to serve as public arbitrators. Specifically, the proposed rule change would amend the definition of non-public arbitrator in Rule 10308(a)(4) of the Code to:

- Increase from three years to five years the period for transitioning from an industry to public arbitrator; and
- Clarify that the term "retired" from the industry includes anyone who spent a substantial part of his or her career in the industry.

In addition, the proposed rule change would amend the definition of public arbitrator in Rule 10308(a)(5)(A) of the Code to:

- Prohibit anyone who has been associated with the industry for at least 20 years from ever becoming a public arbitrator, regardless of how may years ago the association ended;
- Exclude from the definition of public arbitrator attorneys, accountants, and other professionals whose firms have derived 10 percent or more of their annual revenue, in the last two years, from clients involved in the activities defined in the definition of non-public arbitrator; and
- Provide that investment advisers may not serve as public arbitrators, and many only serve as non-public arbitrators if they otherwise qualify unde Rule 10308(a)(4) of the Code.

The proposed rule change would also significantly amend the definition of "immediate family member" in Rule 10308(a)(5)(B) of the Code to further ensure that individuals with significant, albeit indirect, tries to the securities industry may not serve as public arbitrators. The Perino Report recommended that NASD expand the definition of "immediate family member" to include parents and children, even if the parent or child does not share a home with or receive substantial support from, a non-public arbitrator. Although the Perino Report referred only to parents and children, NASD believes that the same rationale applies to stepparents and stepchildren, and therefore recommends including such relationships in the definition as well. And, although the Perino Report did not address the issue, NASD believes that it is consistent with the Perino Report recommendations to amend the definition of the term "immediate family member" to also include anyone, related or not, who is a member of the household of a non-public arbitrator.

Standard for Deciding Challenges for Cause

Rules 10308(d) and 10312(d) of the Code provide that under certain circumstances, the Director of NASD Dispute Resolution may remove an arbitrator upon request of a party or under the Director's own initiative. Rule 10308(d)(1) of the Code provides that, before the first hearing session, if a party objects to the continued service of an arbitrator, the Director may disqualify an arbitrator if the Director determines that the arbitrator should be disqualified. Rule 10312(d)(1) of the Code provides that the Director may remove an arbitrator from a panel based on information that must be disclosed pursuant to the rule. Under both rules, once the first hearing session has begun, the Director may only remove an arbitrator based on information that was required to be disclosed under Rule 10312 of the Code but was not previously disclosed.

The Code does not provide a specific standard for deciding whether an arbitrator should be removed under these provisions. However, the NASD Arbitrator's Manual states that such challenges:

> will be granted where it is reasonable to infer an absence of impartiality, the presence of bias, or the existence of some interest on the part of the arbitrator in the outcome of the arbitration as it affects one of the parties. The interest or bias must be direct, definite, and capable of reasonable demonstration, rather than remote or speculative.[4]

The Perino Report noted that including this standard in the Code would provide greater transparency with respect to challenges for cause, and would enhance the parties' confidence that all challenges for cause will be granted or denied on the same basis. Therefore, NASD is amending Rule 10308(d) of the Code and Rule 10312(d) of the Code to provide that in deciding challenges for cause, the Director will apply the standard described above.

In addition, based on the recommendation of the Perino Report, NASD is amending Rule 10308 of the Code to add a new paragraph (f) providing that, consistent with both NASD current practice and the New York Stock Exchange's Guidelines for Classifying Arbitrators, close questions regarding arbitrator classification or

[4] As the Perino Report noted, this is essentially the same standard followed by the New York Stock Exchange.

challenges for cause brought by a public customer will be resolved in favor of the customer.

Arbitrator Duty To Disclose and Update Conflict Information

Rule 10312(a) of the Code currently provides that arbitrators "shall be required to disclose" any circumstances which might preclude an arbitrator from rendering an objective and impartial determination, and enumerates specific personal, and professional and financial information that "should" be disclosed under the rule. Rule 10312(b) of the Code provides that arbitrators "should" make a reasonable effort to inform themselves of any such conflicts. Rule 10312(c) of the Code provides that the duties imposed by paragraphs (a) and (b) are ongoing, and that arbitrators must disclose at any stage of the proceeding any such information that arises, is recalled or discovered.

While NASD has always interpreted Rule 10312 of the Code to impose a mandatory duty on arbitrators to disclose the required information, and to update their disclosure, the Perino Report noted that the use of the term "should" in paragraphs (a) and (b) of the Rule may create the misimpression that disclosing and updating the information are merely recommended, but not required. Therefore, to eliminate any possible misunderstanding or confusion, NASD is amending Rule 10312(a) and (b) of the Code to clarify that arbitrators "must" disclose the required information and "must" make reasonable efforts to inform themselves of potential conflicts and update their disclosures as necessary.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act[5], which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that, by providing further assurance to parties that individuals with significant ties to the securities industry are not able to serve as public arbitrators in NASD arbitrations, the proposed rule change will enhance investor confidence in the fairness and neutrality of NASD's arbitration forum.

[5] 15 U.S.C. 78*o*–3(b)(6).

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–95 and should be submitted by September 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21402 Filed 8–20–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48358; File No. SR–NASD–2003–111]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Relating to Charges for ViewSuite Services Set Forth in NASD Rule 7010(q)

August 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 17, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On August 11, 2003, Nasdaq filed Amendment No. 1 that entirely replaced the original rule filing.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is proposing a pilot program for a one-year period to reduce the price and simplify the structure of the fees assessed for the Nasdaq ViewSuite products under Rule 7010(q). Nasdaq proposes to implement this rule change effective as of September 15, 2003. Proposed new language is italicized.[4]

* * * * *

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated August 8, 2003.

[4] The Commission made certain edits to the notice submitted by Nasdaq as part of Amendment No. 1 to conform it to the changes made to the Form 19b–4. Telephone conversation between Eleni Constantine, Office of General Counsel, Nasdaq and

Rule 7010. Charges for Services and Equipment

(a)–(p) No Change

(q) Nasdaq Data Entitlement Packages

This subsection (q) sets out the charges for the data entitlement packages collectively known as ViewSuite. Subsections (q)(1) and (q)(2) describe the data entitlement packages and set out the regular charges for each. Subsection (q)(3) describes the Enterprise License Program, a optional pilot program that modifies the regular charges for participants as set out therein. Subsection (q)(4) describes the ViewSuite entitlement, a second pilot program that suspends the regular charges set out in (q)(1) and (q)(2) during its operation. Thus, the monthly charges set out in (q)(1) and (q)(2) below are not in effect during the length of the pilot program set out in (q)(4).

(1) No Change.

(2) No Change

(3) No Change

(4) For a one-year pilot period commencing on September 15, 2003, the DepthView, PowerView and TotalView entitlements described above in (1) and (2) of this subsection (q) shall be offered as a single entitlement, "the ViewSuite entitlement," and not offered separately. The ViewSuite entitlement shall allow a subscriber to see all of the data in DepthView, PowerView and TotalView including the ADAP data feed (aggregated depth at the top five price levels), the NQDS feed, and Prime (aggregated quotes of all participants in the top five price levels).

(A)(i) Except as provided in (4)(A)(ii) below, for the ViewSuite entitlement there shall be a $70 monthly charge for each controlled device, as defined in subsection (q)(1)(A)(i) above.

(ii) A non-professional subscriber, as defined in subsection (q)(1)(A)(ii) above, shall pay $14 per month for each controlled device.

(B) The pilot ViewSuite entitlement shall not affect the distributor charges for ADAP data or Prime data set out in subsections (q)(1)(C) and (q)(2)(A) respectively. Those distributors who are presently receiving only aggregate data may at their option continue to receive that feed at the ADAP distributor charge set out in subsection (q)(1)(C) above.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The launch of SuperMontage, Nasdaq's integrated quotation and execution system, vastly expanded Nasdaq's ability to offer market data to market participants that choose to display trading interest on Nasdaq that goes beyond the best bid and offer: Nasdaq DepthView, PowerView, and TotalView, collectively referred to as the "ViewSuite" products, offer a wide array of quotation information to market data vendors and broker/dealer distributors. DepthView shows the aggregate size, by price level, of all Nasdaq market participants' attributed and unattributed quotations/orders that are in the top five price levels in SuperMontage. PowerView bundles the Nasdaq Quotation Dissemination Service or "NQDS" and DepthView. TotalView offers the PowerView services plus all Nasdaq market participants' attributed quotations/orders that are in the top five price levels in SuperMontage, in addition to the aggregate size of all unattributed quotes/orders at each of the top five price levels.

On November 20, 2002, the Securities and Exchange Commission approved a rule proposal that established fees assessed for the ViewSuite products, which are offered exclusively through distributors.[5] DepthView is offered through distributors to professional subscribers for $50 per month per controlled device[6] and to non-professional subscribers for $25 per month per controlled device, plus $1,000 per distributor per month (a single DepthView/PowerView distributor payment covers distribution of both products to professional and non-professional subscribers).[7] PowerView is offered through distributors to professional subscribers for $75 per month per controlled device and to non-professional subscribers for $29 per month per controlled device, plus $1,000 per month per distributor. TotalView is offered through distributors to professional subscribers for $150 per month per controlled device and to non-professional subscribers for $150 per month per controlled device, plus $7,500 per month per distributor (a single TotalView distributor payment covers distribution of DepthView, PowerView, and TotalView to professional and non-professional subscribers).

It is important to note, however, that the total fees, described above, include fees for NQDS. The NQDS-only fees (incremental to the Level 1 charges) are $30 for professional users and $9 for non-professional users.[8] There is no distributor fee for the NQDS service.

To encourage the broadest possible display of the SuperMontage data contained in the ViewSuite products, Nasdaq then proposed an optional pilot program to offer an enterprise-wide license to distributors.[9] This pilot allows each distributor to provide a ViewSuite product to large numbers of subscribers for a fixed rate based upon a multiple of (1) The incremental cost of the ViewSuite product and (2) the size of that distributor's reported subscriber base for NQDS (in the case of PowerView and TotalView) or for Level 1 (in the case of DepthView) for December 2002. The fee for an Enterprise License will remain the same throughout the pilot, even if its NQDS subscriber base increases or decreases. This Enterprise License Pilot does not apply to the Level 1 or NQDS data services.

Leah Mesfin, Attorney, Division, Commission on August 14, 2003.

[5] *See* Securities Exchange Act Release No. 46843 (Nov. 18, 2002), 67 FR 70471 (Nov. 22, 2002). The term "distributor" is defined in footnote six of Rule 7010(q).

[6] A "controlled device" is defined, in footnote one of Rule 7010(q), as any device that a distributor of the Nasdaq Data Entitlement Package(s) permits to: (a) access the information in the Nasdaq Data Entitlement Package(s); or (b) communicate with the distributor so as to cause the distributor to access the information in the Nasdaq Data Entitlement Package(s).

[7] To comply with the SEC Vendor Display Rule, 17 CFR 240.11Ac1–2, distributors must also provide their controlled devices with the Level 1 entitlement service, separately priced at $20 per professional user and capped at $1 per non-professional user. The Level 1 entitlement includes the UTP Quotation Data Feed (UQDF), the UTP Trade Data Feed (UTDF), and the Level 1 proprietary feed. The Level 1 charges are not included in the fees discussed in this filing.

[8] NQDS fees are separately administered and accounted for within Nasdaq in order to maintain its obligations as Administrator to the UTP Plan. As a result, the $30 per user attributed to NQDS is included in the gross NQDS revenue calculation for UTP revenue sharing.

[9] *See* Securities Exchange Act Release No. 47477 (March 10, 2003), 68 FR 13747 (March 20, 2003). This pilot program was effective as of April 2003 and is in effect through December 2003. To participate, a distributor must have purchased an Enterprise License in the first two months of the program.

Nasdaq believes that the originally approved ViewSuite pricing is reasonably related to the costs of creating and operating the product and reflects its eventual value to subscribers. As SuperMontage becomes established and understood by investors and the trading community, Nasdaq believes that the existing pricing will be appropriate for the ViewSuite product. At present, because SuperMontage and ViewSuite are still new products, Nasdaq is seeking to maximize adoption of the products through lower prices and by simplifying user entitlements for potential new subscribers.

To support broad dissemination of the data and understanding by its customers, Nasdaq proposes to simplify and reduce the pricing for ViewSuite on a pilot basis. The pilot would be for one year. The sole ViewSuite entitlement would include ADAP, Prime. and NQDS service, as those products are defined in Rule 7010(q). Nasdaq does not believe that it is appropriate to offer a stand-alone data package of the incremental ViewSuite data that is not contained in NQDS. This is because the incremental information consists of supplemental quotation and order information (NQDS contains all market participants' best quotes) that might be misleading to subscribers as a stand-alone package.

As with the existing ViewSuite pricing, both professional and non-professional fees would be offered. Monthly controlled device fees for existing ViewSuite subscribers would be reduced, with the exception of professional subscribers to DepthView.[10] Nasdaq believes that the impact of the effective increase in the fees to professional DepthView users will be minimal; Nasdaq's research suggests that, in general, these users will willingly purchase the additional information contained in the ViewSuite entitlement once the charge for this information is reduced.

Nasdaq would continue to distribute both detailed and aggregate data from SuperMontage but decisions on how to display the data would be left to vendors' discretion (subject to the SEC Vendor Display Rule). Any Enterprise License Agreements will remain in effect for their specified term.

[10] Fees would be generally reduced, as follows:

TotalView Professional:	−$80
TotalView Non-Professional:	−$136
PowerView Professional:	−$5
PowerView Non-Professional:	−$15
DepthView Professional:	+$20
DepthView Non-Professional:	−$11

Nasdaq believes that the increase in Depth View pricing reflects the addition of NQDS, which cannot be discounted because it is part of the UTP Plan, as described above.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[11] in general and with section 15A(b)(5) of the Act,[12] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Nasdaq represents that the proposed pilot programs are available to all distributors of the ViewSuite products.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–111 and should be submitted by September 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21448 Filed 8–20–03; 8:45 am]

BILLING CODE 8010–01–P

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(b)(5).

[13] 1917 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48353; File No. SR–NASD–2003–126]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Pilot Period for Rules Relating to Bond Fund Volatility Ratings

August 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The NASD filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The NASD provided written notice of its intention to file the proposed rule change on August 5, 2003. The Commission reviewed the NASD's submission, and told the NASD it was acceptable to file the proposed rule change immediately. The NASD asked the Commission to waive the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to extend the expiration date of the pilot period for the NASD's rules concerning bond mutual fund volatility ratings. The current pilot is scheduled to expire on August 31, 2003. The proposed rule change extends the pilot period until August 31, 2005. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

IM–2210–5. Requirements for the Use of Bond Mutual Fund Volatility Ratings

(This rule and Rule 2210(c)(3) will expire on August 31, [2003] *2005*, unless extended or permanently approved by [the Association] *NASD* at or before such date.)

(a) through (c) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background and Description of the NASD's Rules on Bond Mutual Fund Volatility Ratings. On February 29, 2000, the Commission approved the adoption of NASD Interpretive Material 2210–5, which permits members and their associated persons to include bond fund volatility ratings in supplemental sales literature (mutual fund sales material that is accompanied or preceded by a fund prospectus).[6] The Commission also approved at that time new NASD Rule 2210(c)(3), which sets forth the filing requirements and review procedures applicable to sales literature containing bond mutual fund volatility ratings. Previously, the NASD staff interpreted NASD rules to prohibit the use of bond fund volatility ratings in sales material.

IM–2210–5 permits the use of bond fund volatility ratings only in supplemental sales literature and only if certain conditions are met:

- The word "risk" may not be used to describe the rating.
- The rating must be the most recent available and be current to the most recent calendar quarter ended prior to use.
- The rating must be based exclusively on objective, quantifiable factors.
- The entity issuing the rating must provide detailed disclosure on its rating methodology to investors through a toll-free telephone number, a web site, or both.
- A disclosure statement containing all of the information required by the rule must accompany the rating. The statement must include such information as the name of the entity issuing the rating, the most current rating and the date it was issued, and a description of the rating in narrative form containing certain specified disclosures.

Rule 2210(c)(3) requires members to file bond mutual fund sales literature that includes or incorporates volatility ratings with the Advertising Regulation Department of the NASD ("Department") at least 10 days prior to use for Department approval. If the Department requests changes to the material, the material must be withheld from publication or circulation until the requested changes have been made or the material has been refiled and approved.

IM–2210–5 and the new Rule 2210(c)(3) initially were approved on an 18-month trial basis that was scheduled to expire on August 31, 2001.[7] On August 10, 2001, the NASD filed with the Commission a proposed rule change that was effective upon filing that extended the effectiveness of IM–2210–5 and Rule 2210(c)(3) an additional two years until August 31, 2003.[8]

Proposed Rule Change to Extend the Expiration Date of IM–2210–5 and Rule 2210(c)(3). As indicated in the Commission's order approving IM–2210–5 and Rule 2210(c)(3), the NASD requested the 18-month trial period to provide an opportunity to assess whether the rule had facilitated the dissemination of useful, understandable information to investors, and whether it had prevented the dissemination of inappropriate and misleading information.[9] During the initial 18-month pilot period, the Department received very few filings that contained bond fund volatility ratings. Although these filings generally met the rule's requirements, the staff did not believe that it had received a sufficient number of filings to adequately evaluate the rule's effectiveness. Accordingly, in July 2001, the NASD Regulation, Inc. Board of Directors authorized a rule filing with the Commission to extend the pilot for two years. The NASD subsequently filed with the Commission a proposed rule change, which was effective upon filing, to extend the pilot period until August 31, 2003.[10]

Since August 2001, the Department has continued to receive very few filings under this rule. During the entire period from February 2000, when the rule was first approved, until the present, the NASD has received a total of 41 submissions from three NASD members. In general, these filings met the requirements of IM–2210–5. However, the staff does not believe that it has received a sufficient number of filings to adequately evaluate the rule's effectiveness.

In particular, the NASD believes that, because of the low interest rates over the last two years, bond mutual funds have had little reason to distribute sales material that contains volatility ratings. The NASD believes that it needs to review the rule in an environment in which there is greater demand for sales literature that includes bond mutual fund volatility ratings to determine the rule's effectiveness. The NASD believes there is a reasonable probability that such environment will exist over the next two years.

Accordingly, the NASD proposes to extend the expiration date of IM–2210–5 and Rule 2110(c)(3) for an additional two years, until August 31, 2005, to allow more filings to be made. Before this period expires, the staff will evaluate the rule and determine whether to recommend that the rule be eliminated, modified, or permanently approved as is. The proposal contains no substantive changes to the way in which the pilot has operated during the past two years; it only extends the pilot period by an additional two years.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the

[6] See Securities Exchange Act Release No. 42476 (February 29, 2000), 65 FR 12305 (March 8, 2000) (SR–NASD–97–89).

[7] *Id.*

[8] See Securities Exchange Act Release No. 44737 (August 22, 2001), 66 FR 45350 (August 28, 2001) (SR–NASD–2001–49).

[9] See footnote 6, *supra*.

[10] See footnote 8, *supra*.

Act,[11] which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. The NASD believes that extending the expiration date of IM–2210–5 and Rule 2210(c)(3) will provide the additional experience necessary to fully analyze and evaluate the provisions.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The NASD has asked the Commission to waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the pilot to operate without interruption through August 31, 2005. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

[11] 15 U.S.C. 78o–3(b)(6).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–126 and should be submitted by September 11, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21449 Filed 8–20–03; 8:45 am]

BILLING CODE 8010–01–P

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4454]

Culturally Significant Objects Imported for Exhibition Determinations: Cultural Artifacts From Iraq

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the historic and modern books, documents, parchment scrolls, and other items discovered in early May 2003 in the basement of the Mukhabahrat in Baghdad, most of which pertain to the Jewish community, imported from abroad for temporary exhibition in the United States, including restoration necessary thereto, are of cultural significance. The objects are imported pursuant to an agreement with the foreign owner or custodian. I also determine that their temporary exhibition or display by the National Archives and Records Administration, or another educational or cultural institution, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including available descriptive materials, contact Lorie J. Nierenberg, Assistant Legal Adviser for Public Diplomacy and Public Affairs, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 619–5078). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 18, 2003

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–21573 Filed 8–20–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4453]

Bureau of Political—Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty-eight letters.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202 663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and

36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: August 11, 2003.

Terry L. Davis,

Acting Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political—Military Affairs, Department of State. (TG)

United States Department of State

Washington, DC 20520
June 23, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and defense services to Belgium, Canada, Denmark, France, Germany, Ireland, Italy, Norway and the United Kingdom related to an improved Air Defense Ground Environment (ADGE) System for use by NATO.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 010–03

United States Department of State

Washington, DC 20520
June 23, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data and assistance to Canada for the manufacture of Optomechanical major assemblies components and sub-assemblies for the Stringer Missile Weapons System Launch Tube Assembly. The Optomechanical assemblies will be for end-use in the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 012–03

United States Department of State

Washington, D.C. 20520
June 23, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to South Korea to support the manufacture, assembly and testing of six (6) Mk 45 Mod 4 Naval Gun Mounts for the Government of the Republic of Korea.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 034–03

United States Department of State

Washington, D.C. 20520
June 23, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under the contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical information, hardware and services to Japan to support the manufacture, test and interface of the JQ–70 console for use by the Japanese Defense Agency on Japanese military ships.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 035–03

United States Department of State

Washington, D.C. 20520
June 23, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical information, hardware and services to Japan to support the manufacture, test and interface of the JQ–70 console for use by the Japanese Defense Agency on Japanese military ships.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 036–03

United States Department of State

Washington, D.C. 20520
June 23, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and defense hardware to Japan to support the manufacture of non-significant military equipment including the AN/ASQ–212/CP–2044 Data Processing System for the Japan Defense Agency's P–3C Transition Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 037–03

United States Department of State

Washington, D.C. 20520
June 23, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical information, hardware and services to Israel to support the development of the Israeli Arrow Weapon System (AWS) Program and Modified Arrow Radar Seeker (MARS) Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 038–03

United States Department of State

Washington, D.C. 20520
June 23, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of production, manufacturing hardware and services to Japan to add one additional ship set of the MK 41 Vertical Launching Systems (VLS) to the new Japanese Navy Guided Missile Destroyer, DDG2317.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though, unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 039–03

United States Department of State

Washington, DC 20520
June 23, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense services, technical data and defense articles sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to South Korea of tooling and kits to support the manufacture, assembly and repair abroad of non-significant military equipment associated with the AH–64 Apache helicopter fuselage, fuselage components and spare parts, which will be re-exported back to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 043–03

United States Department of State

Washington, DC 20520
July 7, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense services, technical data and defense articles in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to the NATO AEW&C Programme Management Organization (NAPMO) in The Netherlands of defense services, technical data and defense articles required to upgrade the NATO E–3A fleet with new or enhanced capabilities.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 045–03

United States Department of State

Washington, DC 20520
July 7, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to Greece of F–16 Block–52 Advanced Self Protection Integrated Suites (ASPIS), AN/ALQ–187 Jammers and the retrofit of previously exported AN/ALQ–187 Jammers to Digital RF Memory configuration in support of the Greek F–16 upgrade program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 054–03

United States Department of State

Washington, D.C. 20520
July 7, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under Category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 2,500 9mm pistols and associated equipment to the National Police of Ecuador.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 056–03

United States Department of State

Washington, D.C. 20520
July 9, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major

defense equipment and defense articles in the amount of $25,000,000 or more.

The transaction contained in the attached certification involves the export to Denmark of three C–130J–30 aircraft, a basic logistics support program, spare parts and ground support equipment.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 044–03

United States Department of State

Washington, D.C. 20520
July 9, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under Category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 472 M240 7.62mm caliber machine guns and supporting equipment to the Israeli Ministry of Defense for use by the Israeli Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 046–03

United States Department of State

Washington, DC 20520
July 9, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance for the manufacture of Infrared Detecting Sets in Japan for end-use by the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 047–03

United States Department of State

Washington, DC 20520
July 9, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and assistance in the manufacture of AGM–65 Maverick Weapon System in the United Kingdom for end-use by the United Kingdom Ministry of Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control consideration.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 049–03

United States Department of State

Washington, DC 20520
July 9, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed amendment to a license for the export of defense services, technical data and defense articles abroad in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of United Kingdom of defense services, technical data and defense articles related to the integration of weapon systems in a Tactical Command and Sensor System for the MRA4 Maritime Patrol Aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 052–03

United States Department of State

Washington, D.C. 20520
July 11, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to the United Kingdom to support the manufacture and assembly of the Javelin missile seeker system as part of the United Kingdom Ministry of Defence's Light Forces Anti-Tank Guided Weapon system program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 067–03

United States Department of State

Washington, D.C. 20520
July 14, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical information, hardware and defense services to Saudi Arabia, Norway and France to support the development of the Saudi Ministry of Defense and Aviation (MODA) Command, Control, Communications, Computers and Intelligence (C4I) System (Project Al Diriyah).

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though

unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 016–03

United States Department of State

Washington, D.C. 20520
July 14, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 267 .50 caliber M82A1 Rifle Systems and associated equipment to the Norwegian Armed Forces for use by the Norwegian Army.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 055–03

United States Department of State

Washington, D.C. 20520
July 14, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 1504 of the Emergency Wartime Supplemental Appropriations Act, 2003, P.L. 108–11, I am transmitting, herewith, notification that the Deputy Secretary of State (as delegated by the Secretary of State) has determined that the export to Iraq of the certain body armor, nuclear, biological and chemical protective equipment, and military equipment (such as small arms and ammunition) for use in reconstituting the Iraqi military or police forces (or interim forces), is in the national interest of the United States.

The exports described in the attached notification represent the category of exports for which this notification applies. It includes the specific exports to Iraq of equipment that consists of protective gear under a Department of State contract to help organize effective Iraqi civilian law enforcement, judicial and correctional agencies and small arms and ammunition for use in reconstituting Iraqi military or police forces.

The United States Government is prepared to license the export of such items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal notification that, though unclassified, contains business information ;submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assist Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 01IZ–03

United States Department of State

Washington, D.C. 20520
July 15, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 10,000 M4, 5.56MM caliber, semi-/full automatic carbines and minor associated equipment to the U.A.E. Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicants, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 065–03

United States Department of State

Washington, D.C. 20520
July 17, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense services and defense articles to Jordan for the installation and maintenance of the Integrated Fire Control System (IFCS) for the AB9B1 M60 Tank Upgrade Program for use by the Jordanian Armed Forces.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 032–03

United States Department of State

Washington, D.C. 20520
July 17, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Malaysia of one MEASAT–3 Commercial Communications Satellite.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 051–03

United States Department of State

Washington, D.C. 20520
July 18, 2003.
The Honorable: J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List Sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5,344 Model 37, .38 caliber revolvers to the National Polices Agency of Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, eoncomic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary Legislative Affairs.
Enclosure: Transmittal No. DDTC 084–03

United States Department of State

Washington, D.C. 20520
July 21, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification concerns exports of technical data and defense services for delivery of the JCSAT–9 commercial communications satellite to Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 063–03

United States Department of State

Washington, D.C. 20520
July 21, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $25,000,000 or more.

The transaction contained in the attached certification involves the export of a commercial communications satellite to be launched from an Ariane 5 launch vehicle from Kourou, French Guiana.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 064–03

United States Department of State

Washington, D.C. 20520
July 21, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, technical assistance, and hardware to Egypt related to the refurbishment, maintenance, and operating of Chaparral Air Defense Missile Launch Stations and vehicles for ultimate end use by the Arab Republic of Egypt Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 064–03

[FR Doc. 03–21436 Filed 8–20–03; 8:45 am]
BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4452]

Bureau of Educational and Cultural Affairs Request for Grant Proposals (RFGPs): FY2004 Educational Partnerships Program

SUMMARY: The Office of Global Educational Programs of the Bureau of Educational and Cultural Affairs announces an open competition for the Educational Partnerships Program. Accredited U.S. post-secondary educational institutions meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to support the Program's goals of encouraging mutual understanding, educational reform, economic development, and civil society through educational cooperation in higher education with targeted countries and regions that are of high priority to the Department of State.

Program Overview

To encourage mutual understanding, educational reform, economic development, and civil society in the targeted countries, the Educational Partnerships Program enables U.S. colleges and universities and foreign counterpart institutions to pursue objectives cooperatively through exchange visits of faculty, administrators, highly advanced foreign students, and advanced U.S. graduate students who can demonstrate the ability to work independently. The Educational Partnerships Program is not designed to support study abroad activities for undergraduate students or less advanced graduate students.

Applicants are strongly encouraged to discuss their project ideas during the proposal development process with the relevant Bureau program officer for guidance. (Please see "For further information" section for contact details.)

U.S. and foreign colleges and universities that have hosted, enrolled, or employed State Department sponsored grantees or alumni as professors, students, or administrators are especially encouraged to develop proposals that build on the achievements of these individual grantees and extend their impact.

A separate Request for Grant Proposals under the Freedom Support Educational Partnerships Program with Eurasia has been issued for Fiscal Year 2004 and is accessible on the State Department Web site at *http://exchanges.state.gov/education/rfgps.* For information about the Freedom Support Educational Partnerships Program with Eurasia, which supports partnerships with countries previously recognized as belonging to the Soviet Union, contact the Humphrey Fellowships and Institutional Linkages Branch, Office of Global Educational Programs (ECA/A/S/U), Room 349, U.S. Department of State, State Annex 44, 301 4th Street, SW., Washington, DC 20547, phone: (202) 619–5289, fax: (202) 401–1433.

Additional RFGPs for educational partnerships to be funded in FY2004 with specific world regions may be published later this year or early in 2004 and will be accessible on the State Department Web site at *http://exchanges.state.gov/education/rfgps.*

Foreign Country and Location Eligibility

The eligibility of foreign countries and locations is limited and varies from year to year. Proposals to increase the understanding of the United States in countries and societies with significant Muslim populations are especially encouraged, as are proposals to increase the understanding of these countries and societies in the United States. Except as noted below for the Western Hemisphere and for North Africa and the Middle East, a proposal may not include more than one of the foreign countries or locations listed below.

(1) East Asia and the Pacific

Eligible for FY 2004: Indonesia, Malaysia, Philippines.

We encourage projects that will increase the U.S. understanding of cultures and societies with significant Muslim populations in eligible East Asian countries, and the understanding of U.S. culture and society in East Asia. We also encourage projects that will encourage good governance and responsible administrative practices, and that will provide wider access to education, strengthen civil society, or help to create more transparent, market-oriented economies.

(2) North Africa and the Middle East

Eligible for FY 2004: Algeria, Jordan, Kuwait, Lebanon, Morocco, Oman, Saudi Arabia, Syria, Tunisia, United Arab Emirates. We encourage projects that will increase the U.S. understanding of Muslim cultures and societies in North Africa and the Middle East, and the understanding of U.S. culture and society in the region. We also encourage projects that will strengthen civil society in eligible foreign countries, that will support educational reform through curriculum development or teacher training, or that will encourage economic development or responsible, transparent administration in the public sector. Tunisia is eligible for special funding in FY2004 for projects supporting modernization in higher education or the economy (maximum award $195,000). Proposals for North Africa and the Middle East may include more than one eligible country.

(3) Sub-Saharan Africa

Eligible for FY2004: Botswana, Ethiopia, Nigeria, Senegal,

Tanzania, Uganda. We encourage projects that will increase the U.S. understanding of Muslim cultures and societies in sub-Saharan Africa, and the African understanding of U.S. culture and society. We also encourage projects that will strengthen the role of African institutions of higher education in an eligible country's development and that will encourage increased involvement of African universities with other local and international institutions that contribute to African social, political or economic development.

(4) The Western Hemisphere

Eligible for FY 2004: Barbados, Dominican Republic, Haiti,

Jamaica, Trinidad and Tobago. We encourage projects for the Caribbean basin that will strengthen civil society or effective administration in the public or the private sectors, with special interest in economic development, environmental studies, educational reform and teacher training, journalism, and media studies. Proposals for the Caribbean basin may include more than one eligible country.

(5) South Asia

Eligible for FY 2004: Afghanistan, Bangladesh, India, and

Pakistan. We encourage projects that will increase the U.S. understanding of South Asian cultures and societies with significant Muslim populations, and the South Asian understanding of U.S. culture and society. We also encourage projects that will promote the development of good governance and responsible administrative practices in either the public sector or the private sector in an eligible country; that will provide wider access to education; or that will address issues of social or religious diversity.

(6) Europe and Eurasia

Eligible for FY 2004: Bosnia and Herzegovina, Serbia and Montenegro, Turkey, and the United Kingdom as noted below. In addition, please consult the Request for Grant Proposals for the FY2004 Freedom Support Educational Partnerships Program with Eurasia.

Eligible for special funding in FY 2004 in designated fields and locations are Bosnia and Herzegovina (comparative religious studies or American Studies, maximum request $195,000); Montenegro (university administration or social sciences curriculum reform, maximum request $150,000); and Serbia (journalism curriculum reform, maximum request $195,000).

For Turkey, we encourage proposals in the field of comparative law with a focus on Muslim and Western legal traditions and with particular reference to the approaches to human rights and fair judicial procedures in these traditions.

For the United Kingdom, eligibility is limited to projects that will study inter-ethnic or inter-religious relations and that promote cooperation with immigrant and minority populations in the United Kingdom.

Project Design

The project should be designed to focus on specific institutional objectives that will support the Program's goals of encouraging mutual understanding, educational reform, economic development, and civil society with special reference to the regional needs and U.S. foreign policy priorities described in this document under the heading "Foreign Country and Location Eligibility." The design should include a series of exchange visits that will lead to the achievement of the project's objectives within a three-year period, and should describe a process for evaluating the results of project implementation. The design should also provide for the effective administration of the project.

Statement of Need

To justify a request for support, proposals should demonstrate the need of the participating institutions for the project that they are proposing. Proposals should explain how each participating department and institution will utilize the project to address the institution's needs as well as larger needs in its country and society.

If the proposed partnership would occur within the context of a previous or ongoing project, the proposal should outline distinct objectives and outcomes for the new project and should explain how new Bureau funding would build upon the previously funded activities. Proposals should describe the amounts and sources of support for the earlier projects as well as the results to date.

Project Objectives

Proposals should explain in detail how the project will enable the participating institutions to achieve specific institutional or departmental changes that will support the goals of the Educational Partnerships Program. Proposals should outline a series of activities for meeting specific objectives for each participating institution and society. The benefits of the project to each of the participating institutions may differ significantly in nature and scope based on their respective needs and resource bases. Project objectives may include the development or revision of courses, curricula, and programs of study and outreach at participating institutions to support mutual understanding, educational reform, economic development, or civil society. Proposals may outline the parameters and possible content of new courses; new teaching specializations or methodologies; new or revised curricula; and new programs for outreach to educators, professional groups, or the general public. Proposals may also describe strategies to promote administrative reform through faculty or staff development.

In most cases a limited number of related thematic objectives at each institution will be more feasible to achieve than a larger number of unrelated objectives.

The following fields are eligible if they support the foreign policy goals previously described under the heading "Foreign Country and Location Eligibility":

—The social, political, and economic sciences;
—business administration;
—journalism and media studies;
—law;
—public administration and public policy analysis;
—library science;
—education, continuing education, and educational administration, including Teaching English as a Foreign Language;
—religious studies;
—health policy and administration;
—environmental studies.

Projects in the physical, technical, and medical sciences are not eligible except when pertaining directly to health policy and administration.

Exchange Activities and Project Implementation

Proposals should demonstrate that a project's objectives are feasible to achieve within a three-year period through a series of exchange activities that take into account prevailing conditions in the participating countries. For example, projects focusing on curricular reform should describe the existing curriculum and the courses targeted for revision, and should explain how exchange activities will result in the restructuring of the current content to incorporate the new academic themes. The proposal should describe the topics and content of any new courses or educational materials that will be developed and introduced, and should identify those persons who will be responsible for developing the new courses and for teaching them. If the project proposes to develop a new degree or certificate program, the proposal should outline the steps being taken to secure approval for the new program from the institution itself and from all relevant educational authorities. The proposal should also describe the composition and size of the student population and any other group that will benefit from the innovations to be introduced through the project.

Except for translators, interpreters, and outside evaluators, participation in the exchange visits is limited to teachers, researchers, advanced foreign students, advanced U.S. graduate students, and administrators from the participating institution(s). Advanced graduate students at the U.S. institution(s) are eligible to participate as visiting instructors at a foreign partner institution. Advanced foreign students are eligible to participate in exchange visits if they have teaching or research responsibilities or are preparing for such responsibilities. Applicants planning to submit proposals with advanced foreign students or advanced U.S. graduate students as exchange participants are encouraged to contact the program office to discuss the rationale for their participation.

Foreign participants must be both qualified to receive U.S. J–1 visas and willing to travel to the U.S. under the provisions of a J–1 visa during the exchange visits funded by this Program. Foreign participants may not be U.S. citizens.

Material and Technical Support for Exchange Activities

To increase the feasibility and impact of the project's exchange activities, a proposal may include a request for funding for educational materials (including books and periodical subscriptions) and technical components (including the establishment or maintenance of Internet and/or electronic mail facilities and of interactive technology-based distance-learning programs). The funding requested for educational and technical materials should supplement the project's exchange activities by reinforcing their impact on project objectives. Proposals with distance learning components should describe pertinent course delivery methods, audiences, and technical requirements. Proposals that include the introduction of Internet, electronic mail, and other interactive technologies for long-term use in countries where these technologies are not easily maintained or financed should discuss how the foreign partner institution will cover their costs after the project ends.

Applicants may propose other project components not specifically mentioned in this solicitation document if the activities will increase the impact on project objectives.

Project Duration

Pending the availability of funds, grant activities should begin on or about September 1, 2004 for a three-year period. Grant activities are expected to be completed within the three-year timeframe.

Project Evaluation

Proposals should describe and budget for a methodology for project evaluation. Institutions that are awarded partnership grants must formally submit periodic reports to the Bureau on the project's activities in relation to its objectives. The formal evaluation reports should include an assessment of the current status of each participating department's and institution's needs at the time of program inception with specific reference to project objectives; formative evaluation to allow for mid-course revisions in the implementation strategy; and, at the conclusion of the project, summative evaluation of the degree to which the project's objectives have been achieved. The proposal should discuss how the issues raised throughout the formative evaluation process will be assessed and addressed. The summative evaluation should describe the project's influence on the participating institutions and their surrounding communities or societies. The summative evaluation should also include recommendations about how to build upon project achievements. Evaluative observations by external consultants with appropriate subject, cultural, and regional expertise are especially encouraged. Copies of evaluation reports must be provided to the Department of State.

In addition to the formally scheduled reports, the evaluation strategy should include a mechanism for promptly providing the Bureau with information that will equip the Department of State to summarize and illustrate project activities and achievements as they occur.

Project Administration

Proposals should explain how project activities will be administered both in the U.S. and overseas in ways that will ensure that the project maintains a focus on its objectives while adjusting to changing conditions, assessments, and opportunities.

Institutional Commitment

A U.S. college or university must submit the proposal and must serve as the grant recipient with responsibility for project coordination. Proposals must include letters of commitment from all institutional partners including the institution submitting the proposal. An official who is authorized to commit institutional resources to the project must sign the letter of support. The letters of support as well as the proposal as a whole should demonstrate that the participating institutions understand one another and are committed to mutual support and cooperation in project implementation.

Eligible Institutions

The lead institution and grant recipient in the project must be an accredited U.S. college or university.

Applications from community colleges, institutions serving significant minority populations, undergraduate liberal arts colleges, comprehensive universities, research universities, and combinations of these institutions are

eligible. The lead U.S. organization in a consortium or other combination of cooperating institutions is responsible for submitting the application. Each application must document the lead organization's authority to represent all U.S. cooperating partners. Secondary U.S. partners may include governmental or non-governmental organizations at the federal, state, or local levels as well as non-profit service, community, and professional organizations.

Foreign institutional partners may be recognized institutions of post-secondary education, state-supported universities, independent universities, research institutes, relevant educational authorities, and other public or private non-profit organizations with project-related educational missions.

Costs and Cost-Sharing

The commitment of all partner institutions to the proposed project should be reflected in the cost-sharing which they offer in the context of their respective institutional capacities. Although the contributions offered by institutions with relatively few resources may be less than those offered by applicants with greater resources, all participating institutions should identify appropriate contributions. These costs may include estimated in-kind contributions. U.S. institutions are encouraged to contribute to the international travel expenses of U.S. participants as part of their institutional cost-share. Proposed cost-sharing will be considered an important indicator of the applicant institution's commitment to the project.

The Bureau's support may be used to assist with the costs of the exchange visits as well as the costs of the administration of the project by the U.S. grantee institution, as explained in additional detail in the associated document entitled "Project Objectives, Goals, and Implementation" (POGI). U.S. administrative costs that may be covered by the Bureau, with certain limitations, include administrative salaries, faculty replacement costs, other direct administrative costs, and partial indirect costs. The cost of administering the project at the foreign partner organization(s) is also eligible for the Bureau's support. Although each grant will be awarded to a single U.S. institutional partner, the proposal should make adequate provision for the administrative costs of all partner institutions, including the foreign partner(s), especially if a foreign partner has relatively few resources. See the POGI for additional information on the restrictions and maximum amounts that apply to certain budget categories.

Pending the availability of FY 2004 funds, the maximum award in the FY 2004 competition will be $150,000 for a three-year period with the exceptions noted under the heading "Foreign Country and Location Eligibility." Requests for amounts smaller than the maximum are eligible. Budgets and budget notes should carefully justify the amounts requested. Grants awarded to organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

The response to Requests for Grant Proposals for the support of partnerships in higher education has been unusually strong in recent years. In FY 2002, 99 eligible proposals were submitted to the Educational Partnerships Program, and 17 awards were made. Special FY 2004 funding with higher grant maximums and more favorable grant-to-application ratios is expected for projects in Bosnia and Herzegovina, Serbia and Montenegro, and Tunisia as noted previously under the heading "Foreign Country and Location Eligibility."

Ineligibility

A proposal will be deemed technically ineligible for consideration if:

(1) It does not fully adhere to the guidelines established in this document and in the Solicitation Package;

(2) It is not received by the deadline;

(3) It is not submitted by the U.S. partner;

(4) The U.S. applicant organization is ineligible;

(5) The foreign country or geographic location is ineligible.

Projects must conform with the Bureau's requirements and guidelines outlined in the solicitation package for this RFGP. Proposals that do not follow RFGP requirements and the guidelines appearing in the POGI and PSI will be excluded from consideration due to technical ineligibility.

Announcement Title and Number

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/U–04–03.

For Further Information

For further information, contact the Humphrey Fellowships and Institutional Linkages Branch; Office of Global Educational Programs; Bureau of Educational and Cultural Affairs; ECA/A/S/U, Room 349; U.S. Department of State; SA–44, 301 4th Street, SW.; Washington, DC 20547; phone: (202) 619–5289, fax: (202) 401–1433. Prospective applicants are strongly encouraged to communicate about their proposals with one of the following regional program officers: for North Africa and the Middle East, Michelle Johnson, phone: (202) 205–8434, (e-mail *johnsonmi@pd.state.gov*); for the United Kingdom, Paul Schelp, phone: (202) 205–8266 (e-mail: *pschelp@pd.state.gov*); for the Balkans and the Western Hemisphere, Maria Urbina, phone: (202) 260–6797 (e-mail *murbina@pd.state.gov*); for Turkey, Jonathan Cebra, phone: (202) 205–8379 (e-mail *jcebra@pd.state.gov*); and for sub-Saharan Africa, East Asia, and South Asia, Joan Zaffarano, phone: (202) 401–1323 (e-mail *jzaffara@pd.state.gov*).

Please read the complete Solicitation Package before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The Solicitation Package includes more detailed award criteria, all application forms, and guidelines for preparing proposals, including specific criteria for preparation of the proposal budget. The Solicitation Package includes the POGI and the Proposal Submission Instructions (PSI). The entire Solicitation Package may be downloaded from the Bureau's Web site at: *http://exchanges.state.gov/education/rfgps*. Please read all information before downloading.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC, time on Friday, December 12, 2003. Faxed documents are not acceptable, with the exception of letters of endorsement that are submitted as part of the proposal. Documents postmarked with the due date but received on a later date will not be accepted. Applicants must ensure that their proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the complete application should be sent by the project's lead U.S. college or university to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/U–04–03, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Submission of Electronic Copies

No later than one week after the deadline for receipt of the grant proposal, applicants must also submit the "Proposal Title Page" described in the Project Objectives, Goals, and Implementation document with attachments (the resumes for the U.S. and foreign project directors only and the Participants Statistics Page), the "Executive Summary," and "Proposal Narrative," sections of the proposal as e-mail attachments in Microsoft Word (preferred) or WordPerfect files to the following e-mail address: *partnerships@pd.state.gov*. In the e-mail message subject line, include the following: ECA/A/S/U–04–03 and the country or countries of the foreign partner(s) together with the names of the U.S. and foreign partner institutions. To reduce the time needed to obtain advisory comments from the Public Affairs Sections of U.S. Embassies overseas and Fulbright Commissions, the Bureau will transmit these files electronically to these offices.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, screening and selection of program participants, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting, and other requirements.

The Grantee will be responsible for issuing DS–2019 forms to participants in this program. A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD–SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. All eligible proposals will be evaluated by independent external reviewers. These reviewers, who will be professional, scholarly, or educational experts with appropriate regional and thematic knowledge, will provide recommendations and assessments for consideration by the Bureau. The Bureau will consider for funding only those proposals which are recommended for funding by the independent external reviewers.

Proposals may be reviewed by the Office of the Legal Advisor or by other offices of the U.S. Department of State. In addition, U.S. Embassy or binational Fulbright Commission officers may provide advisory comment. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Proposals must also be approved by the J. William Fulbright Foreign Scholarship Board. Final technical authority for assistance awards (grants or cooperative agreements) will reside with the Bureau's grants officer.

Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package.

Review Criteria

All reviewers will use the criteria below to reach funding recommendations and decisions. Technically eligible applications will be reviewed competitively according to these criteria, which are not rank-ordered or weighted.

(1) *Broad and Enduring Significance of Institutional Objectives:* Project objectives should have significant and ongoing impact on the participating institutions and their surrounding societies, communities, or countries by providing a deepened understanding of critical issues in one or more of the eligible fields. Project objectives should relate clearly to institutional and societal needs as well as to U.S. foreign policy goals.

(2) *Feasibility and Effectiveness of Strategy to Achieve Project Objectives:* Strategies to achieve project objectives should be feasible and realistic within the projected budget and timeframe. Proposals should contain detailed information on specific exchange activities and outline the methodology and timeframe for achieving project goals.

(3) *Institutional Commitment to Cooperation:* Proposals should demonstrate significant understanding by each institution of its own needs and capacities and of the needs and capacities of its proposed partner(s), together with a strong commitment by the partner institutions, during and after the period of grant activity, to cooperate with one another in the mutual pursuit of institutional objectives.

(4) *Project Evaluation:* Proposals should describe a methodology for determining the degree to which a project meets its objectives, both while the project is underway and at its conclusion. The final project evaluation should include an external component and should provide observations about the project's influence within the participating institutions as well as their surrounding communities or societies.

(5) *Cost-effectiveness:* Administrative and program costs should be reasonable and appropriate with cost-sharing provided by all participating institutions within the context of their respective capacities. The Bureau views cost-sharing as a reflection of institutional commitment to the project. Contributions should not be limited to indirect costs.

(6) *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity by explaining how issues of diversity are included in project objectives for all institutional partners. Issues resulting from differences of race, ethnicity, gender, religion, geography, socio-economic status, or physical challenge should be addressed during project implementation. In addition, project participants and administrators should reflect the diversity within the societies, which they represent (see the section of this document on "Diversity, Freedom, and Democracy Guidelines"). Proposals should also discuss how the various institutional partners approach diversity issues in their respective communities or societies.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding for Balkan countries eligible in FY 2004 has previously been provided through SEED legislation. The President's budget request for Educational and Cultural Exchanges for Fiscal Year 2004 includes funding for this purpose.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: August 13, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–21435 Filed 8–20–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4451]

Bureau of Educational and Cultural Affairs Request for Grant Proposals (RFGPs): Fulbright American Studies Institutes for Foreign University Faculty and Secondary Educators; Notice

SUMMARY: The Study of the U.S. Branch, Office of Academic Exchange Programs, Bureau of Educational and Cultural Affairs, announces an open competition for three (3) assistance awards. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(C)(3) may apply to develop and implement one of the following three post-graduate level Fulbright American Studies Institute programs designed for multinational groups of either 18 or 30 experienced foreign university faculty and secondary educators:

A. American Civilization

B. U.S. Political Economy and the Global Economic System

C. American Studies for Foreign Secondary School Educators

These programs are intended to provide participants with a deeper understanding of American life and institutions, past and present, in order to strengthen curricula and to improve the quality of teaching about the United States at universities abroad. Programs should therefore be designed to elucidate the topic or theme of the Institute as well as American civilization as a whole.

Programs are six weeks in length and will be conducted during the Summer of 2004.

The Bureau is seeking detailed proposals from colleges, universities, consortia of colleges and universities, and other not-for-profit academic organizations that have an established reputation in one or more of the following fields: political science, international relations, law, history, sociology, literature, American studies, and/or other disciplines or sub-disciplines related to the program themes.

It is the Bureau's intention to fund one institute in each of the above three thematic areas, subject to the number and quality of proposals received and the availability of funding.

Applicant institutions must demonstrate expertise in conducting post-graduate programs for foreign educators, and *must have a minimum of four years experience in conducting international exchange programs.* Bureau guidelines stipulate that grants to organizations with less than four years experience in conducting international exchanges are limited to $60,000. As it is expected that the budget for these programs will exceed $60,000, organizations that can not demonstrate at least four years experience will not be eligible to apply under this competition.

The project director or one of the key program staff responsible for the academic program must have an advanced degree in one of the fields listed above. Staff escorts traveling under the cooperative agreement must have demonstrated qualifications for this service. Programs must conform with Bureau requirements and guidelines outlined in the Solicitation Package. Bureau programs are subject to the availability of funds.

Program Information

Overview and Objectives: Fulbright American Studies Institutes are intended to offer foreign scholars and teachers whose professional work focuses on the United States the opportunity to deepen their understanding of American society, culture and institutions. Their ultimate goal is to strengthen curricula and to improve the quality of teaching about the U.S. in institutions of higher learning and secondary school systems abroad.

Programs should be six weeks in length and must include an academic residency segment of at least four weeks duration at a U.S. college or university campus (or other appropriate location). A study tour segment of not more than two weeks should also be planned and should directly complement the academic residency segment; the study tour should include visits to one or two additional regions of the United States.

All institutes should be designed as intensive, academically rigorous seminars intended for an experienced group of fellow scholars from outside the United States. The institutes should be organized through an integrated series of lectures, readings, seminar discussions, regional travel and site visits, and they should also include some opportunity for limited but well-directed independent research.

Applicants are encouraged to design thematically coherent programs in ways that draw upon the particular strengths, faculty and resources of their institutions as well as upon the nationally recognized expertise of scholars and other experts throughout the United States. All Fulbright American Studies Institute programs, regardless of their particular thematic focus, should seek to:

1. Provide participants with a view of contemporary scholarship within the institute's governing academic discipline, delineating the current scholarly debates within the field. In this regard, the seminar should indicate how prevailing academic practice in the discipline represents both a continuation of and a departure from past scholarly trends and practices. It is therefore critical that a variety of scholarly viewpoints be represented, including bringing in presenters from other institutions, as appropriate. Please note that the ways these alternative schools of thought will be presented should be clearly described in the proposal;

2. Bring an interdisciplinary or multi-disciplinary focus to bear on the program content if appropriate;

3. Give participants a multi-dimensional examination of U.S. society and institutions that reflects a broad and balanced range of perspectives and responsible views. Programs should include the views not only of scholars, cultural critics and public intellectuals, but also those of other professionals outside the university such as government officials, journalists and others who can substantively contribute to the topics at issue; and,

4. Ensure access to library and material resources that will enable grantees to continue their research, study and curriculum development upon returning to their home institutions.

Program Descriptions

A. American Civilization

The Fulbright American Studies Institute on American Civilization should provide 18 foreign university faculty and scholars with a deeper understanding of U.S. society, culture, values and institutions. While the program will likely examine some of the critical historical epochs, movements, issues and conflicts that have influenced the development of the nation and its people, it should also include a strong contemporary component, particularly current political, social, and economic issues and debates.

The complexity and heterogeneous nature of American society should be highlighted, as should the institutions and values that enable the nation to accommodate that diversity.

The program should be designed to assist foreign university faculty who are attempting to develop or enhance courses focusing on the United States at their home institutions.

The program should draw from a diverse disciplinary base, and should itself be a model of how a foreign university might approach the study of the United States.

B. U.S. Political Economy and the Global Economic System

The Fulbright American Studies Institute on U.S. Political Economy and the Global Economic System should provide 18 experienced foreign university faculty and practitioners with a deeper understanding of the domestic political context of and influences on U.S. economic policymaking, as well as the substance of U.S. domestic and foreign economic policy.

Prospective topics to be treated include: philosophical assumptions and social norms underpinning the U.S.'s democratic market system; the evolution of post-war American economic thought on the role of the market and the state in society (different schools or approaches); roles of Congress and executive branch department and agencies (including *e.g.* the White House, the departments of Commerce, Treasury and State, Office of the U.S. Trade Representative), and the U.S. Federal Reserve, in the formation of U.S. economic policy; role of private corporations, interest groups, trade associations, lobbying organizations, think tanks and research institutes, and other actors in economic policymaking; regulation of the economy, and economic consequences of governmental interventions in pursuit of environmental, health and safety, and other policy concerns; impact of cross-border flows of direct investment, technology and skilled labor on the American economy and politics; role of U.S.-based multinational corporations in the global economic system; role of the United States in regional economic institutions (including, *e.g.*, NAFTA and the proposed Free Trade Area of the Americas) and in multilateral economic institutions (*e.g.*, the IMF, World Bank and WTO); and, current U.S. negotiating strategies in the international economy.

Specific areas of economic policy to be examined should include international trade and finance, U.S. fiscal and monetary policy (especially international spillover effects), and U.S. foreign/development assistance policy.

C. American Studies for Foreign Secondary School Educators

This Fulbright American Studies Institute should provide a multinational group of up to 30 experienced foreign secondary school educators (including teacher trainers, curriculum developers and education ministry officials) with a deeper understanding of U.S. society and culture, past and present. The institute should be organized around a central theme or themes in U.S. civilization and should have a strong contemporary component. Through a combination of traditional, multi-disciplinary and interdisciplinary approaches, program content should be imaginatively integrated in order to elucidate the history and evolution of U.S. institutions and values, broadly defined. The program should also serve to illuminate the contemporary political, social, and economic debates in American society. The program's ultimate goal is to promote the development and improvement of courses and teaching about the U.S. at secondary schools and teacher training institutions abroad.

Program Dates: Ideally, the programs should be 44 days in length (including participant arrival and departure days) and should begin in late June or early July, 2004.

Participants: As specified in the Project Objectives, Goals and Implementation (POGI) guidelines in the solicitation package, programs should be designed for highly-motivated and experienced multinational groups of either 18 foreign university faculty and scholars (for programs A and B above) or 30 secondary educators, including teachers, teacher trainers, curriculum developers and education ministry officials (for program C above). Participants will be interested in participating in an intensive seminar on aspects of U.S. civilization as a means to develop or improve courses and teaching about the United States at their home institutions and school systems.

Participants will be varied in terms of age, professional position, and travel experience abroad. Participants can be expected to come from educational institutions where the study of the U.S. is relatively well-developed as well as from institutions that are just beginning to introduce courses and programs focusing on the United States. While participants may not have in-depth knowledge of the particular institute program theme, they will likely have had exposure to the relevant discipline

and some experience teaching about the United States.

Participants will be drawn from all regions of the world and will be fluent in the English language.

Participants will be nominated by Fulbright Commissions and by U.S. Embassies abroad. Nominations will be reviewed by the Study of the U.S. Branch at the Department of State. Final selection of grantees will be made by the Fulbright Foreign Scholarship Board.

Program Guidelines: While the conception and structure of the institute program is the responsibility of the organizers, it is critically important that proposals provide a full, detailed and comprehensive narrative describing the objectives of the institute; the title, scope and content of each session; and, how each session relates to the overall institute theme. The syllabus must therefore indicate the subject matter for each lecture or panel discussion, confirm or provisionally identify proposed lecturers and discussants, and clearly show how assigned readings will support each session. A calendar of all activities for the program must also be included. Overall, proposals will be reviewed on the basis of their fullness, coherence, clarity, and attention to detail.

Programs must comply with J–1 visa regulations. Please refer to the Solicitation Package for further details on program design and implementation, as well as additional information on all other requirements.

Budget Guidelines: Based on groups of 18 participants, the total Bureau-funded budget (program and administrative) for programs (A) and (B) above should be up to approximately $220,000, and Bureau-funded administrative costs as defined in the budget details section of the solicitation package should be up to approximately $80,000.

Based on a group of 30 participants, the total Bureau-funded budget (program and administrative) for program (C) above should be up to approximately $300,000, and Bureau-funded administrative costs as defined in the budget details section of the solicitation package should be up to approximately $85,000.

Justifications for any costs above these amounts must be clearly indicated in the proposal submission. Proposals should try to maximize cost-sharing in all facets of the program and to stimulate U.S. private sector, including foundation and corporate, support. Applicants must submit a comprehensive budget for the entire program. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program, and availability of U.S. government funding.

Please refer to the "POGI" in the Solicitation Package for complete institute budget guidelines and formatting instructions.

Announcement Name and Number: All communications with the Bureau concerning this announcement should refer to the following titles and reference numbers:

Fulbright American Studies Institute on "American Civilization"—(ECA/A/E/USS–04–02A–Taylor)

Fulbright American Studies Institute on "U.S. Political Economy and the Global Economic System"—(ECA/A/E/USS–04–02B–Benda)

Fulbright American Studies Institute for Foreign Secondary School Educators—(ECA/A/E/USS–04–02C–Taylor)

FOR FURTHER INFORMATION CONTACT: To request a Solicitation Package containing more detailed program information, award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation, applicants should contact: U.S. Department of State, Bureau of Educational and Cultural Affairs, Office of Academic Exchange Programs, Study of the U.S. Branch, State Annex 44, ECA/A/E/USS—Room 252, 301 4th Street, SW., Washington, DC 20547, Attention: Richard Taylor, Telephone number: (202) 619–4578, Fax number: (202) 619–6790, Internet address: *rtaylor@pd.state.gov*.

The Study of the U.S. Branch is willing to consult with potential applicants regarding proposal content and preparation. Please specify Senior Program Officer Richard Taylor on all inquiries and correspondence. Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the office listed above or submitting their proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition in any way with applicants until after the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/RFGPS/*. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, DC time on Monday, November 24, 2003. Faxed documents will NOT be accepted, nor will documents postmarked November 24, 2003 but received at a later date. It is the responsibility of each applicant to ensure that proposal submissions arrive by the deadline.

Submissions: Applicants must follow all instructions in the Solicitation Package. The original and 13 copies of the complete application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Reference: (insert appropriate reference number from above, *e.g.* ECA/A/E/USS–04–02x–Taylor), Program Management Staff, ECA/EX/PM, Room 534, State Annex 44, 301 4th Street, SW., Washington, DC 20547.

Applicants should also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal in text (.txt) format on a PC-formatted disk. If possible, please also include on the disk any program calendar or syllabus addendum to the proposal.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Pub. L. 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Adherence to All Regulations Governing the J Visa

The Bureau of Educational and Cultural Affairs is placing renewed emphasis on the secure and proper

administration of Exchange Visitor (J visa) Programs and adherence by grantees and sponsors to all regulations governing the J visa. Therefore, proposals should demonstrate the applicant's capacity to meet all requirements governing the administration of Exchange Visitor Programs as set forth in 22 CFR 6Z, including the oversight of Responsible Officers and Alternate Responsible Officers, provision of pre-arrival information and orientation to participants, monitoring of participants, proper maintenance and security of forms, record-keeping, reporting and other requirements. ECA will be responsible for issuing DS–2019 forms to participants in this program.

A copy of the complete regulations governing the administration of Exchange Visitor (J) programs is available at *http://exchanges.state.gov* or from: United States Department of State, Office of Exchange Coordination and Designation, ECA/EC/ECD—SA–44, Room 734, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 401–9810, FAX: (202) 401–9809.

Review Process: The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office. Eligible proposals will then be forwarded to panels of senior Bureau officers for advisory review. Proposals may also be reviewed by the Department of State's Office of the Legal Advisor, by other Bureau elements, or by outside experts and/or academics. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (cooperative agreements) resides with the Bureau's Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. More weight will be given to items one and two, and all remaining criteria will be evaluated equally.

1. *Overall Quality:* Proposals should exhibit originality and substance, consonant with the highest standards of American teaching and scholarship. Program design should reflect the main currents as well as the debates within the subject discipline of each institute. Program elements should be coherently and thoughtfully integrated. Lectures, panels, field visits and readings, taken as a whole, should offer a balanced presentation of issues, reflecting both the continuity of the American experience as well as the diversity and dynamism inherent in it.

2. *Program Planning and Administration:* Proposals should demonstrate careful planning. The organization and structure of the institute should be clearly delineated and be fully responsive to all program objectives. A program syllabus (noting specific sessions and topical readings supporting each academic unit) should be included, as should a calendar of activities. The travel component should not simply be a tour, but should be an integral and substantive part of the program, reinforcing and complementing the academic segment. Proposals should provide evidence of continuous administrative and managerial capacity as well as the means by which program activities and logistical matters will be implemented.

3. *Institutional Capacity:* Proposed personnel, including faculty and administrative staff as well as outside presenters, should be fully qualified to achieve the project's goals. Library and meeting facilities, housing, meals, transportation and other logistical arrangements should fully meet the needs of the participants.

4. *Support for Diversity:* Substantive support of the bureau's policy on diversity should be demonstrated.

This can be accomplished through documentation, such as a written statement, summarizing past and/or on-going activities and efforts that further the principle of diversity within the organization and its activities. Program activities that address this issue should be highlighted.

5. *Experience:* Proposals should demonstrate an institutional record of successful exchange program activity, indicating the experience that the organization and its professional staff have had in working with foreign educators.

6. *Evaluation and Follow-up:* A plan for evaluating activities during the Institute and at its conclusion should be included. Proposals should discuss provisions made for follow-up with returned grantees as a means of establishing longer-term individual and institutional linkages.

7. *Cost Effectiveness:* Proposals should maximize cost-sharing through direct institutional contributions, in-kind support, and other private sector support. Overhead and administrative components, including salaries and honoraria, should be kept as low as possible.

Authority: Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world."

Notice: The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of this RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification: Final awards cannot be made until funds have been appropriated by Congress, and allocated and committed through internal Bureau procedures.

Dated: August 13, 2003.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–21434 Filed 8–20–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4410]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 1 PM on Tuesday, September 9, 2003, in Room 4400 of the Department of Transportation Headquarters, 400 Seventh Street SW., Washington, DC 20590–0001. The primary purpose of the meeting is to prepare for the Eighth Session of the International Maritime Organization (IMO) Sub-Committee on Dangerous Goods, Solid Cargoes and Containers to be held at the IMO Headquarters in London, England from September 22 to September 26, 2003.

The primary matters to be considered include:

• Amendments to the International Maritime Dangerous Goods (IMDG) Code and Supplements including harmonization of the IMDG Code with

the United Nations Recommendations on the Transport of Dangerous Goods, and review of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended.

- Review of the Code of Safe Practice for Solid Bulk Cargoes (BC Code), including evaluation of properties of solid bulk cargoes.
- Cargo securing manual.
- Casualty and incident reports and analysis.
- Development of a manual on loading and unloading of solid bulk cargoes for terminal representatives.
- Guidance on serious structural deficiencies in containers.
- Measures to enhance maritime security.
- Ship/terminal interface improvement for bulk carriers.
- Alternative hold loading ban for bulk carriers.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. E. P. Pfersich, U.S. Coast Guard (G–MSO–3), Room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling (202) 267–1217.

Dated: August 15, 2003.

Margaret F. Hayes,

Chairman, Shipping Coordinating Committee, Department of State.

[FR Doc. 03–21433 Filed 8–20–03; 8:45 am]

BILLING CODE 4710–70–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2003–15745]

High Density Traffic Airports

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Disposition of comments on the lottery procedures.

SUMMARY: This notice addresses comments received on the lottery procedures to be used by the FAA in the allocation of limited air carrier and commuter slots at Washington Reagan National Airport on August 12, 2003. Additionally, this notice lists all carriers eligible to participate and provides the carriers' classification for slot selection in the lottery.

DATES: August 11, 2003.

Date/Location of Lottery: The lottery will be held in the Federal Aviation Administration (FAA) Auditorium, 3rd floor, 800 Independence Avenue, SW., Washington, DC 20591 on August 12, 2003, beginning a 1 p.m.

FOR FURTHER INFORMATION CONTACT: Lorelei Peter, Operations and Air Traffic Law Branch, Regulations Division, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number (202) 267–3134.

SUPPLEMENTARY INFORMATION:

Background

On July 9, 2003, the FAA published in the **Federal Register** a notice of lottery and allocation procedures for a limited number of air carrier and commuter slots at Reagan National Airport (DCA) (68 FR 41037). A clarification regarding the applicable definition of a limited incumbent carrier was published in the **Federal Register** on July 18, 2003 (68 FR 42796). On July 24, 2003, the FAA opened a docket for the lottery (FAA–2003–15745) and invited interested parties to comment on issues related to the lottery procedures by July 28, 2003. On July 31, 2003, the FAA issued a notice rescheduling the lottery from July 31, 2003, to August 12, 2003, in order to address these issues and others raised in the comments, prior to the scheduled lottery (68 FR 47378; August 8, 2003).

This notice responds to the comments received, explains the lottery procedures, and classifies the carriers eligible to participate in the lottery under our applicable regulations as new entrants, limited incumbents, and incumbents, as defined in 14 CFR 93.213. We also note which carriers are considered single operators for the purposes of slot allocation.

Discussion of Comments

The FAA received comments from the Metropolitan Washington Airports Authority (MWAA), Air Canada, ATA Airlines (ATA), Spirit Airlines, US Airways, the Air Carrier Association of America (ACAA) and Congressman Regula, as well as several reply comments. The comments identified five major issues, which are discussed below.

1. Definition of New Entrant

Under the applicable regulations, a "new entrant" carrier is an air carrier or commuter operator that does not hold a slot at a particular airport and has neither sold or given up a slot at that airport since December 16, 1985 (14 CFR 93.213(a)(1)) (emphasis added). A limited incumbent carrier is defined in 14 CFR 93.213(a)(5) and is a commuter operator or air carrier operator that holds or operates fewer than 12 air carrier or commuter slots, in any combination, at a particular airport (emphasis added). In determining who qualifies as a limited incumbent carrier, the definition requires that we exclude international slots, Essential Air Service Program slots, or slots allocated at DCA between the local hours of 2200 and 0659. A carrier that holds or operates 12 or more slots at an airport is an incumbent carrier.

There are two carriers requesting to participate in the lottery that do not hold slots at DCA, but have a presence at the airport, and in fact, conduct operations at DCA. Chautauqua and Atlantic Coast Airlines operate slots, which are actually held by larger, incumbent carriers, through codeshare arrangements or by lease and conduct these operations on behalf of the incumbents.

The definitions cited do create something of an anomaly in that a carrier that holds no slots but operates more than 12 cannot be a "limited incumbent" under the lottery rule but could be a "new entrant." Similarly, a carrier could be both a limited incumbent and a new entrant if it operates fewer than 12 slots but holds none. ATA and Air Canada urge the FAA to apply the term "new entrant" as plainly defined and argue that any carrier that does not hold slots in its own right at DCA should be included in the new entrant category regardless of its operations at the airport. ACAA argues that Air Canada and Mesa should not be allowed to participate either as a "new entrant" or "limited incumbent" given that both operate more than 12 slots at the airport. ACAA argues if the regulations preclude a carrier from being a limited incumbent, the carrier logically cannot be a new entrant.

In making the argument that the FAA should veer from the plain language of the regulation, ACAA selects a phrase from section 93.225(e), the provision which sets out the lottery procedures and provides that "any U.S. carrier or foreign carrier where provided for by bilateral agreement, *that is not operating scheduled service at the airport * * * but wishes to initiate scheduled passenger service at the airport,* shall be included in the lottery if it notifies the FAA." (Emphasis added.) ACAA contends that because this provision distinguishes carriers operating at the airport from those who do not, a "new entrant" must mean a carrier that is not already operating at the airport.

A significant difference between a new entrant carrier and a limited incumbent carrier is that slots allocated under the Essential Air Service Program, for international operation or in the low-demand hours at DCA (2200–0659) are counted in determining whether a

carrier is a new entrant. Air Canada and ATA Airlines both hold slots in the low-demand hours. Mesa previously has held EAS slots at DCA. Consequently, Air Canada and Mesa are incumbents and ATA Airlines is a limited incumbent.

For several reason we conclude that the definition of "new entrant" should be applied as written, with the result that carriers who do not hold any slots at the airport according to the FAA's records will be considered new entrants for purposes of this lottery, regardless of whether they also operate any slots at the airport. First, in 1985, when the definition of "new entrant" was promulgated as part of the "buy/sell" rule, (50 FR 52189; December 20, 1985), the industry operated much differently than today. At that time, most commuter service was provided by independent companies who held their own slots and entered into feeder or marketing relationships with the larger carriers. The Department did not want to define "new entrant" in such a way as to create a disincentive toward such arrangements by making it more difficult for carriers to conduct operations at the airport through leased slots to obtain permanent slots of their own. Chautauqua, and Atlantic Coast's access to DCA is a result of lease arrangements and neither of these carriers hold slots outright. The underlying policy goal that was the basis for first defining a new entrant in this way remains a valid consideration today.

Second, leasing a slot that is necessary to enter competition is a far cry from holding the slot outright. Both air carriers who would be adversely affected by an interpretation that equated "operations" with "holdings" are independent companies who have entered into codeshare arrangements with larger carriers to operate commuter flights. We have no information to suggest that these carriers cannot conduct operations on their own, outside of their codeshare arrangements, competing against incumbents.[1] ACAA's proposed interpretation of our rules would potentially inhibit competition.

Lastly, interpreting the definition of "new entrant" in the manner suggested by ACAA—that is, against its literal language—would necessitate a lengthier proceeding that we believe is warranted. It may well be that a review of this definition along with other important questions is justified in view of the changes that have occurred in the industry since 1985, and the plethora of arrangements by which slots are made available under the rule (common ownership, contracts, leases and multiple codeshare arrangements). For now, however, the FAA finds that the public interest lies in allocating these slots promptly. Therefore, the new entrant definition will be applied in its present form.

2. New Entrant Preference

ATA claims that the FAA's intended procedure, by which we will permit the first ranked new entrant carrier to select four of the available six air carrier slots, is inconsistent with the regulatory requirements and fundamentally unfair. ATA contends that the original rationale for our rule allowing new entrants to select four slots in the first sequence of the lottery—*i.e.*, that four slots are minimally necessary for an economically viable operation—is clearly no longer justified. ATA would prefer that we remake the procedures so as to maximize the number of carriers who receive slots in the lottery, by allowing three new entrant carriers to select two slots each.

The regulation governing slot lotteries establishes two preferences for new entrant carriers: (1) In the first selection sequence, 25 percent of the slots available in the lottery, or no less than 2, are reserved for new entrants ("new entrant set-aside"); and (2) new entrant carriers may select four slots, if available in the first sequence. (*See* 14 CFR 93.225(h) and (f) respectively.)

The upcoming lottery offers six slots in the air carrier category. A rank order of all carriers eligible to participate in the lottery will be established at the start of the lottery. Incumbent carriers may only select after all new entrant and limited incumbent carriers have made their selections. After the rank order is established, the first new entrant may select two slots. This will complete the new entrant set-aside. The lottery continues with the first selection sequence by starting at the top of the established rank order and moving to the first new entrant or limited incumbent carrier. If the first carrier in the rank order is a new entrant (that also selected two slots in the new entrant set-aside), that this new entrant is eligible to select only two additional slots, which completes its selection of four slots in the first selection sequence, as provided for in the regulation. Alternatively, after completing the new entrant set-aside selections, if the first non-incumbent carrier in the rank order is a limited incumbent carrier, then that carrier may select two slots. Following the rank order to the next new entrant or limited incumbent carrier, that carrier would in this case select the remaining two slots.

ATA asks the FAA to disregard the governing regulatory provisions referenced above and instead adopt an *ad hoc* allocation approach that ATA argues will better achieve the policy goal of maximizing competitive services at DCA. In promulgating the lottery procedures, the FAA and the Department of Transportation specifically found that the two articulated preferences for new entrants were warranted to further policies enunciated in the Airline Deregulation Act of 1978 (50 FR 52193; December 20, 1985). The resulting lottery provision is quite specific in this regard and the FAA does not find that it has the latitude suggested by ATA to arbitrarily change this provision, or ignore it. Given the limited number of slots available in this lottery relative to the number of participants, it may be that only a few carriers will get to select slots. As discussed below, the FAA and the Department are neither amending nor abandoning the agencies' position that the opportunity for a new entrant carrier to select four slots is preferable in meeting the stated goals.

ATA also argues that all the new entrants already have some slots (or slot exemptions) and that four slots are not economically necessary for new entrants to establish service at the airport. ATA points to service conducted by Alaska Airlines and Frontier Airlines, which have both been successful conducting a single roundtrip at DCA. In recent FAA and Department proceedings however, several new entrant carriers have argued the opposite, contending that even four slots during peak hours are not enough today to launch viable service.

We recognize that ATA successfully operates at DCA using only four peak hour AIR–21 exemption slots and two off-peak hour slots. Likewise, both Alaska Airlines and Frontier Airlines are the recipients of AIR–21 slot exemptions by the Department for beyond the perimeter service at DCA. Frontier Airlines provides the only nonstop DCA/Denver service (Order 2000–7–1) and Alaska Airlines (Order 2001–6–20) provides the only nonstop DCA/Seattle service. That nonstop service from DCA to these markets can be operated successfully in the absence of other non-stop competition is not surprising; new entrant carriers seeking to provide competitive alternatives on city-pairs already served by other

[1] Indeed, very recently one of these carriers—Atlantic Coast announced it anticipates that its longstanding relationship with United Airlines will end, and that it will establish a new, independent low-fare airline. *See http://www.atlanticcoast.com/pressreleasearchive/2003/july/728.htm.*

carriers on a nonstop basis is a different situation.

US Airways objects to any lottery, characterizes the lottery mechanism as "anti-incumbent" and argues that "redistributive lotteries" are not appropriate.

One of the primary purposes of the lottery provision was to enhance competition by affording new entrant and limited incumbent carriers greater access to slot-controlled airports. Thus, the Department believed that allowing incumbent carriers to participate on equal terms with new entrants in seeking permanent allocation of slots would reduce the opportunities for new entrants or limited incumbents to introduce competitive service (57 FR 37309; August 18, 1992). Therefore, in promulgating this rule, the FAA and the Department restricted the permanent allocation of slots to incumbent carriers. Whether or not that policy should be revisited today, in light of the economic condition of incumbent carriers, the FAA is clearly bound to give it its full force and effect and to carry out the intent of our regulations.

US Airways complains that the lottery provision is "anti-incumbent" in that airlines that hold a substantial number of slots may only receive a temporary allocation through the lottery after all new entrant and limited incumbent carriers have finished their selections. However, incumbent carriers such as US Airways received a large base level of slots at the time the allocation rules were adopted in 1985; as a whole, arguably, the provisions benefited incumbents. Today, US Airways and its wholly owned subsidiaries hold 43 percent of the slots at DCA. the next largest slot holder at the airport is Delta and its wholly owned subsidiaries with approximately 14 percent of the slots. Thus, two carrier groups account for nearly 60 percent of the slots at the airport. Despite the buy-sell rule, the lottery provision in the regulations is the only mechanism that specifically addresses competitive access to slot-controlled airports such as DCA.

The need for a lottery also stems from other aspects of our rules. The slots in question have never been allocated permanently, and the lottery allocation provision is the only means of allocating these peak hour slots on a permanent basis. US Airways and other carriers were allocated slots during peak hours on a temporary basis subject to recall by the FAA and distribution by lottery in accordance with the regulations. Consequently, this process is entirely appropriate to allocate available slots.

3. Lottery Allocation in Light of Other Related Proceedings

Spirit Airlines points to the variety of pending proceedings concerning slots and slot exemptions and asks the FAA and the Department to end the practice of allocating slots on a piecemeal basis, saying this practice makes it difficult for any new entrant carrier to evaluate the true economics of potential operations at the airport. Spirit would defer the lottery until other agency actions on slots exemptions and/or the potential exemptions in pending legislation, in particular, H.R. 2115 "Aviation Investment and Revitalization Vision Act," are allocated. Conversely, ATA argues that the public interest requires that slots be allocated whenever they become available and says that slots should be used once allocated. ATA and MWAA also oppose a delay of the lottery to wait for the potential allocation of slot exemptions currently under consideration by Congress. US Airways again questions the basis for any lottery and forecasts that it is likely that slots will become available after the current slot usage waiver terminates and that a lottery should be conducted at that time.

The FAA has discretion to conduct a lottery when it determines that there are sufficient slots available for allocation. The fifteen slots that are available for allocation in this lottery are slots that were previously returned to the FAA or were allocated temporarily to carriers on a first-come, first-served basis on the express condition that they would be recalled when the FAA determines that it is necessary to allocate the slots permanently. Over the past many months the FAA received numerous inquiries and requests for slots at DCA by new entrant carriers. In light of the expressed demand for permanent allocation of the available slots at the airport, we believe that the spirit of our regulations require that we allocate whatever capacity is available at the earliest practical time. As indicted by the number of carriers that filed requests to participate in the lottery and by the comments submitted to the docket, it is evident that there is demand by many carriers for even this limited number of slots.

We have no indication that slots at DCA will be returned to the FAA after the expiration of the slot usage waiver period, instituted in April 2003. (Temporary return of peak-hour slots for non-use during this waiver period has been minimal.) Some AIR–21 slot exemptions were recalled for non-use, however, their reallocation process is not done by lottery. We find it would be inconsistent with the regulatory allocation regime to indefinitely postpone the lottery. Consequently, the FAA will proceed with the lottery on August 12, 2003.

4. Use of Commuter Equipment in Air Carrier Slots

MWAA and the ACAA express concern over the increasing incidence with which air carrier slots are operated by carriers using commuter type aircraft that qualify for commuter slots. These parties argue that this practice has resulted in a decline of passenger activity at DCA even as the number of overall operations at the airport has remained relatively constant. MWAA asks that we require air carriers participating in the lottery not only to have aircraft that meet the definition of the equipment that may be operated in this category of slots, but also to have the stated intention to use these slots for operations with the larger aircraft.

A carrier that wishes to participate in a lottery for either air carrier or commuter slots must hold the appropriate FAA operating authority for the slots the operator seeks to select (14 CFR 93.225a(g)). The FAA has interpreted the existing provisions of § 93.225 to limit participation in air carrier lotteries to carriers capable of operating air carrier equipment within the meaning of 14 CFR 93.123(c) (51 FR 21706; June 13, 1986). After air carrier slots have been allocated, a carrier may use smaller aircraft in air carrier slots in accordance with 14 CFR 93.221(c). While we are sympathetic to MWAA's position, the FAA cannot limit or condition approval on participation in the air carrier lottery in the manner suggested by MWAA, without amending the regulation.

5. "Mandatory Participation"

ATA complains that the FAA plans to include all carriers that currently operate at DCA in the lottery, even if those carriers did not actually notify the FAA that they want to participate in the lottery. ATA says this plan constitutes a "mandatory participation" regime that is not in accordance with either the regulations or the lottery notice.

This argument reflects a misunderstanding of the rule. The rule expressly provides that "participation in a lottery is *open* to each U.S. air carrier or commuter operating at the airport * * * as well as where provided for by bilateral agreement" (14 CFR 93.225(e) (emphasis added). Participation is not mandatory. As a matter of procedure, the FAA includes every carrier at the airport as eligible to participate and each carrier receives a rank order. These

carriers also are not required to submit notice to the FAA of their intention to participate in the lottery; carriers that do not conduct scheduled service at the airport are required to submit notice to the FAA of intention to participate in the lottery no later than the date specified in the **Federal Register** notice, which was July 16. However, it is up each carrier as to whether it ultimately chooses to participate or select slots in the lottery. A carrier may advise the FAA at any time that it does not want to participate or it may simply pass at the lottery by not selecting available slots.

List of Carriers Eligible to Participate in the Lottery by Category

The lottery for the air carrier slots will be conducted first and the lottery for the commuter slots will follow.

Air Carrier Slot Lottery	Category
Air Canada	Incumbent
AirTran Airway	New Entrant
Alaska Airlines	New Entrant
ATA Airlines	Limited Incumbent
Frontier Airlines	New Entrant
Mesa Air Group (Air Midwest, Freedom, Mesa).	Incumbent
Spirit Airlines	New Entrant
America West Airlines	Limited Incumbent
American Airlines	Incumbent
Continental Airlines	Incumbent
Delta Air Lines	Incumbent
Midwest Airlines	Incumbent
Northwest Airlines	Incumbent
United Airlines	Incumbent
US Airways	Incumbent

Commuter Slot Lottery	Category
Air Canada	Incumbent
Atlantic Coast Airlines	New Entrant
Chautauqua Airlines/Shuttle America.	New Entrant
Colgan Air	New Entrant
Corporate Airlines	New Entrant
Mesa Air Group (Air Midwest, Freedom, Mesa).	Incumbent
Allegheny Airlines/Piedmont Airlines/PSA Airlines (US Airways Express).	Incumbent
American Eagle	Incumbent
Atlantic Southwest/Comair (Delta Connection).	Incumbent
Midway Airlines	Incumbent
Skyway Airlines	Incumbent
Trans States Airlines	Incumbent

Issued on August 11, 2003 in Washington, DC.

Andrew B. Steinberg,

Chief Counsel.

[FR Doc. 03–21456 Filed 8–20–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number FRA–2003–15639

Applicant: New Jersey Transit, Mr. William B. Duggan, Vice President and General Manager, Rail Operations, One Penn Plaza East, Newark, New Jersey 07105–2246.

New Jersey Transit (NJT) seeks temporary relief from the requirements of section 236.566 of the Rules, Standard and Instructions, to the extent that NJT be permitted to operate non-equipped New York Susquehanna and Western (NYS&W) steam locomotive number 142, in automatic train control territory, on NJT's Raritan Valley Line between Cranford, New Jersey, milepost 15.0 and High Bridge, New Jersey, milepost 52.2, on Saturday and Sunday, September 13 and 14, 2003, in celebration of the City of Dunellen, New Jersey's event, "Dunellen Railroad Days." In addition, NJT seeks temporary relief from the requirements in section 236.566 to the extent that NJT be permitted to operate non-equipped NYS&W steam locomotive number 142, in automatic train control territory, on NJT's Montclair and Morristown Lines between Newark, New Jersey, milepost 9.0 and Hackettstown, New Jersey, milepost 56.9, on Saturday and Sunday, October 4 and 5, 2003, in celebration of the Borough of Lincoln Park, New Jersey's event, "Lincoln Park Days."

Also, excursion trips are in the planning stages that would either take place on NJT's Main Line to Suffern, New York, then over MTA Metro-North Railroad (MNR) to Port Jervis, New York, or on NJT's Bergen County Line to the NYS&W interchange at BT Interlocking, milepost 14.2. Thus, NJT seeks temporary relief from the requirements in section 236.566 to the extent that NJT be permitted to operate non-equipped NYS&W steam locomotive number 142, in automatic train control territory, on NJT's Main Line between Jersey City, New Jersey, milepost 2.2 and Suffern, New York, milepost 30.5, or on the Bergen County Line between Jersey City, New Jersey, milepost P 2.2 and Ridgewood Junction Interlocking, milepost 19.0, on Saturday and Sunday, October 11 and 12, and October 25 and 26, 2003, for the proposed NYS&W Technical and Historical Society events.

Applicant's justification for relief: The three NJT lines are equipped with automatic block signals and operate under NORAC Rules 251 and 261, and the steam excursion train movements for each event would be limited to no more than four trips daily, would not exceed 50 miles per hour, and would establish an absolute block ahead of each movement.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Since the anticipated operations would take place early next month, communications must be received within 15 days of the date of this notice to be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written

statements, an application may be set for public hearing.

Issued in Washington, DC on August 13, 2003.

George Gavalla,

Associate Administrator for Safety.

[FR Doc. 03–21424 Filed 8–20–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34385]

Palouse River & Coulee City Railroad, Inc.—Lease and Operation Exemption—Union Pacific Railroad Company

Palouse River & Coulee City Railroad, Inc. (PRCC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 *et seq.* to lease, from Union Pacific Railroad company (UP), and operate approximately 11.5 miles of rail line between milepost 0.0 at Arlington, and milepost 11.5 at Gilliam, in Gilliam County, OR. PRCC certifies that its projected annual revenues as a result of this transaction will not exceed $5 million, and thus the transaction will not result in the creation of a Class II or Class I rail carrier.

Consummation of this transaction was expected to occur on or after August 1, 2003, the effective date of the exemption.

It the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleading, referring to STB Finance docket No. 34385, must be filed with the Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Of Counsel, Ball Janik LLP, Suite 225, 1455 F St., NW., Washington, DC 2005.

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: August 14, 2003.

By the Board, David M. Konschink, Director, Office of Proceedings.

Vernon A. Williams,

Secretary

[FR Doc. 03–21297 Filed 8–20–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 14, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 22, 2003, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0129.

Form Number: IRS Form 1120–POL.

Type of Review: Extension.

Title: U.S. Income Tax Return for Certain Political Organizations.

Description: Certain political organizations file Form 1120–POL to report the tax imposed by section 527. The form is used to designate a principal business campaign committee that is subject to a lower rate of tax under section 527(h). IRS uses Form 1120–POL to determine if the proper tax was paid.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/ Recordkeepers: 6,527.

Estimated Burden Hours per Respondent/Recordkeeper:

Recordkeeping—17 hr., 13 min.
Learning about the law or the form—5 hr., 15 min.
Preparing the form—12 hr., 17 min.
Copying, assembling, and sending the form to the IRS—1 hr., 52 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 239,150 hours.

OMB Number: 1545–0935.

Form Number: IRS Form 1120–FSC and Schedule P (1120–FSC).

Type of Review: Revision.

Title: U.S. Income Tax Return of a Foreign Sales Corporation (Form 1120–FSC); and Transfer Price or Commission (Schedule P).

Description: Form 1120–FSC is filed by foreign corporations that have elected to be FSCs or small FSCs. The FSC uses Form 1120–FSC to report income and expenses and to figure its tax liability. IRS uses Form 1120–FSC and Schedule P (Form 1120–FSC) to determine whether the FSC has correctly reported its income and expenses and figured its tax liability correctly.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 5,000.

Estimated Burden Hours per Respondent/Recordkeeper:

	1120–FSC	Schedule P (1120–FSC)
Recordkeeping	94 hr., 13 min	9 hr., 48 min.
Learning about the law or the form	19 hr., 45 min	1 hr., 29 min.
Preparing and sending the form to the IRS	38 hr., 56 min	1 hr., 43 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 1,089,900 hours.

OMB Number: 1545–0956.

Form Number: IRS Form 5500–EZ.

Type of Review: Revision.

Title: Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan.

Description: Form 5500–EZ is an annual return filed by a one-participant or one-participant and spouse pension plan. The IRS uses this data to determine if the plan appears to be operating properly as required under the law or whether the plan should be audited.

Respondents: Business or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 250,000.

Estimated Burden Hours per Respondent/Recordkeeper:

Recordkeeping—18 hr., 10 min.
Learning about the law or the form—2 hr., 49 min.
Preparing the form—5 hr., 6 min.
Copying, assembling, and sending the form to the IRS—32 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 6,660,000 hours.
OMB Number: 1545–1444.
Form Number: IRS Form 8844.
Type of Review: Revision.
Title: Empowerment Zone Employment Credit.
Description: Employers who hire employees who live and work in one of the 11 designated empowerment zones can receive a tax credit for the first $15,000 of wages paid to each employee. The credit is applicable from the date of designation through the year 2004.
Respondents: Business or other for-profit Individuals or households, Not-for-profit institutions, Farms.
Estimated Number of Respondents/ Recordkeepers: 40,000.
Estimated Burden Hours per Respondent/Recordkeeper:
Recordkeeping—10 hr., 2 min.
Learning about the law or the form—2 hr., 10 min.
Preparing and sending the form to the IRS—2 hr., 26 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 586,800 hours.
OMB Number: 1545–1606.
Form Number: IRS Form 8860.
Type of Review: Extension.
Title: Qualified Zone Academy Bond Credit.
Description: A qualified zone academy bond is a taxable bond issued after 1997 by a state or local government, with the proceeds used to improve certain eligible public schools. In lieu of receiving interest payments from the issuer, an eligible holder of the bond is generally allowed an annual income tax credit. Eligible holders of qualified zone academy bonds use Form 8860 to figure and claim this credit.
Respondents: Business or other for-profit, State, local or Tribal Government.
Estimated Number of Respondents/ Recordkeepers: 50.
Estimated Burden Hours per Respondent/Recordkeeper:
Recordkeeping—6 hr., 56 min.
Learning about the law or the form—18 min.
Preparing and sending the form to the IRS—25 min.
Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 383 hours.
Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Mary A. Able,
Departmental Reports, Management Officer.
[FR Doc. 03–21403 Filed 8–20–03; 8:45 am]
BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Notice of Meeting

Date/Time: Thursday, September 18, 2003; 9:30 a.m.–5:30 p.m.

Location: 1200 17th Street, NW., Suite 200, Washington, DC 20036–3011.

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: September 2003 Board Meeting; Approval of Minutes of the One Hundred Tenth Meeting (June 19–20, 2003) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Fiscal Years 2004 and 2005 Budget Review; Approval of 2003 Unsolicited and Solicited Grant; Other General Issues.

Contact: Mr. John Brinkley, Director, Office of Public Outreach, Telephone: (202) 457–1700.

Dated: August 19, 2003.

Harriet Hentges,
Executive Vice President, United States Institute of Peace.
[FR Doc. 03–21542 Filed 8–19–03; 11:25 am]
BILLING CODE 6820–AR–M

Federal Register

Thursday,
August 21, 2003

Part II

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Proposed Changes in Announcement of SAMHSA Discretionary Grant Funding Opportunities; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Proposed Changes in Announcement of SAMHSA Discretionary Grant Funding Opportunities

Authority: Sections 509, 516, and 520A of the Public Health Service Act.

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of proposed changes in announcement of SAMHSA discretionary grant funding opportunities.

SUMMARY: Beginning in Fiscal Year (FY) 2004, the Substance Abuse and Mental Health Services Administration (SAMHSA) plans to change its approach to announcing and soliciting applications for its discretionary grant programs. This notice describes the proposed changes and invites public comment on those changes. This notice will be followed by proposed text for four standard grant announcements (Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service to Science Grants). Comments are invited on the proposed standard grant announcements, as well.

DATES: Submit written comments on this proposal by October 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding SAMHSA's proposed changes in the announcement of discretionary grant funding opportunities to: Office of Policy, Planning and Budget, SAMHSA, Attn: Jennifer Fiedelholtz by fax (301–594–6159) or e-mail (*samhsa_standard_grants@samhsa.gov*). Please include a phone number in your e-mail, so that SAMHSA staff may contact you if there are questions about your comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Fiedelholtz of the Office of Policy, Planning and Budget, SAMHSA, by fax (301–594–6159) or e-mail (*samhsa_standard_grants@samhsa.gov*). If you would like a SAMHSA staff person to call you about your questions, please state this in an e-mail or fax request and provide a telephone number where you can be reached between 8:30 a.m. and 5 p.m., Eastern Standard Time.

SUPPLEMENTARY INFORMATION:

In recent years, SAMHSA has announced funding opportunities for 30–40 discretionary grant programs each year. Despite similarities among these programs, the program requirements described in each grant announcement varied significantly. Some of this variation was necessary due to differences in program goals and objectives. However, much of the variation was unnecessary and significantly limited the ability of potential applicants to anticipate, plan, and lay the essential groundwork for proposed grant projects. The large number of unique grant announcements published each year also required the allocation of substantial staff resources to development of grant announcements. SAMHSA believes that these staff resources could be better used for post-award project management and monitoring.

Starting in FY 2004, SAMHSA plans to change its approach to announcing and soliciting applications for its discretionary grants. SAMHSA plans to issue four standard grant announcements that will describe the general program design and provide application instructions for four types of grants—Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service-to-Science Grants. These standard grant announcements will be posted on SAMHSA's web page and will be available from SAMHSA's clearinghouses on an ongoing basis. The standard announcements will be used in conjunction with brief Notices of Funding Availability (NOFAs) that will announce the availability of funds for specific grant funding opportunities within each of the standard grant programs (*e.g.*, Homeless Treatment grants, Statewide Family Network grants, or HIV/AIDS and Substance Abuse Prevention Planning Grants).

SAMHSA expects that use of these four standard grant announcements will result in the following benefits:

- The field of potential applicants will be able to more effectively anticipate the program requirements for SAMHSA's grant funding opportunities and will be better able to anticipate and plan their proposed grant projects. As a result, applicants will be able to prepare more thorough grant applications, and grantees will be better prepared to begin their grant projects in a timely manner after awards are made.
- SAMHSA's funding opportunities will be published in a more timely manner, with funding opportunities, application deadlines and awards distributed more evenly throughout the fiscal year.
- SAMHSA will be able to more clearly and consistently articulate its mission to external stakeholders.
- SAMHSA will be able to use its staff resources more efficiently and effectively.

The four grant announcements address the following core aspects of SAMHSA's mission:

1. *Services Grants* provide funding to implement substance abuse and mental health services.
2. *Infrastructure Grants* support identification and implementation of systems changes but are not designed to fund services.
3. *Best Practices Planning and Implementation Grants* help communities and providers identify practices to effectively meet local needs, develop strategic plans for implementing/adapting those practices and pilot-test practices prior to full-scale implementation.
4. *Service to Science Grants* document and evaluate innovative practices that address critical substance abuse and mental health service gaps but that have not yet been formally evaluated.

These four grant announcements were designed around several of SAMHSA's core grant programs, including Targeted Capacity Expansion Grants, State Incentive Grants, and Community Action Grants.

The Notices of Funding Availability (NOFAs) announcing the availability of funds for specific grant funding opportunities will be published separately in the **Federal Register**, on the Federal grants Web site (*http://www.grants.gov*) and on the SAMHSA Web site. The NOFAs will:

- Identify any specific target population or issue for the specific grant funding opportunity,
- Identify which of the four standard announcements applicants must use to prepare their applications,
- Specify total funding available for the first year of the grants and the expected size and number of awards,
- Specify the application deadline,
- Note any specific program requirements for each funding opportunity, and
- Include any limitations or exceptions to the general provisions in the standard announcement.

SAMHSA expects that the NOFAs will be brief. Because a primary goal of this effort is to increase the field's ability to anticipate funding opportunities and program requirements, special program requirements and deviations from the standard announcements should be few in number and limited to only those that are necessary, given the nature of the specific funding opportunity. For example, Homeless Treatment grants would likely require applicants not only

to provide substance abuse and mental health services for homeless individuals, but also to link with housing and other support services needed by homeless individuals.

Applicants will need to have both the NOFA and the appropriate standard announcement to prepare their applications. Both documents will be provided, along with application materials, in the application kits available from SAMHSA's clearinghouses as well as on SAMHSA's Web site.

SAMHSA anticipaters that the four standard grant announcements will be used for the majority of its grant funding opportunities. However, there will be some funding opportunities that do not fit the standard announcements. In those instances, separate stand-alone grant announcements will be published and provided to applicants as they have been in the past (*i.e.*, in the **Federal Register**, on the SAMHSA Web site, on the Federal grants Web site, and through SAMHSA's clearinghouses).

The proposed text for each of the four standard announcements and a sample NOFA are provided in separate notices that follow immediately after this notice. In particular, SAMHSA welcomes comment on the following issues:

1. Is the difference between the standard announcement and a NOFA clear?
2. Are the programmatic requirements for each standard announcement clear?
3. Are the goals/objectives for each type of standard grant clear?
4. If you are a potential applicant for a SAMHSA grant, do you believe you will be able to use the standard announcement with the NOFA to prepare your application? Will the ability to anticipate programmatic requirements improve your ability to prepare a solid application? Is the additional benefit "worth" the "cost" of having to use two different documents to prepare your application?

Note: Past applicants for SAMHSA grant programs may notice significant formatting differences between these standard announcements and previous SAMHSA grant announcements. For example, the headings for the different sections of the grant announcements have changed. These formatting differences reflect a new, mandatory outline for all Federal grant solicitations and are not related to the new approach to SAMHSA's grant announcements. These formatting changes are part of a Federal government-wide effort to make it easier for applicants to apply for Federal financial assistance. SAMHSA endorses this effort and notes that all information previously provided in SAMHSA grant announcements is provided in the new announcements, although it may be in a different location or under a different heading.

Dated: August 13, 2003.

Anna Marsh,

Acting Executive Officer.

[FR Doc. 03–21115 Filed 8–20–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Proposed Changes in Announcement of SAMHSA Discretionary Grant Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of proposed standard services grant announcement.

SUMMARY: Beginning in Fiscal Year (FY) 2004, the Substance Abuse and Mental Health Services Administration (SAMHSA) plans to change its approach to announcing and soliciting applications for its discretionary grant programs. The following announcement is a proposed standard announcement for SAMHSA's Services Grants. *It is not an actual grant solicitation.*

Authority: Sections 509, 516, and 520A of the Public Health Service Act.

When published in final, the standard SAMHSA Services Grant announcement will be used by applicants in conjunction with specific Notices of Funding Availability (NOFAs) to prepare applications for certain SAMHSA grants. SAMHSA is providing this draft announcement for public review and comment in order to ensure that the field is aware of the planned change and has an opportunity to identify areas where the announcement is unclear and needs improvement.

DATES: Submit written comments on this proposal by October 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding SAMHSA's proposed standard Services Grant announcement to: Office of Policy, Planning and Budget, SAMHSA, Attn: Jennifer Fiedelholtz by fax (301–594–6159) or email (*samhsa_standard_grants@samhsa.gov*). Please include a phone number in your email, so that SAMHSA staff may contact you if there are questions about your comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Fiedelholtz of the Office of Policy, Planning and Budget, SAMHSA, by fax (301–594–6159) or email (*samhsa_standard_grants@samhsa.gov*). If you would like a SAMHSA staff person to call you about your questions, please state this in an email or fax request and provide a telephone number where you can be reached between 8:30 a.m. and 5 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION: Starting in FY 2004, SAMHSA plans to change its approach to announcing and soliciting applications for its discretionary grants. SAMHSA plans to issue the following Services Grant announcement as one of four standard grant announcements that will describe the general program design and provide application instructions for four types of grants—Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service-to-Science Grants. The standard announcements will be used in conjunction with brief Notices of Funding Availability (NOFAs) that will announce the availability of funds for specific grant funding opportunities within each of the standard grant programs (*e.g.*, Homeless Treatment grants, Statewide Family Network grants, or HIV/AIDS and Substance Abuse Prevention Planning Grants).

A complete description of the proposed process, the other three proposed standard announcements and a sample NOFA are contained in separate notices in this issue of the **Federal Register**.

SAMHSA welcomes public comment on all aspects of the following announcement. In particular, SAMHSA welcomes comment on the following issues:

1. Is the difference between the standard announcement and a NOFA clear?
2. Are the programmatic requirements for SAMHSA's Services Grants clear?
3. Are the goals/objectives for SAMHSA's Services Grants clear?
4. If you are a potential applicant for a SAMHSA Services Grant, do you believe you will be able to use the standard Services Grant announcement with the NOFA to prepare your application? Will the ability to anticipate programmatic requirements through reviewing the standard grant announcements ahead of time improve your ability to prepare a solid application? Is the additional benefit "worth" the "cost" of having to use two different documents to prepare your application?

Text of Proposed Standard Announcement

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Services Grants—SVC 04 (Initial Announcement)

Catalogue of Federal Domestic Assistance (CFDA) No.: 93.243 (unless otherwise specified in a NOFA in the **Federal Register** and on *http://www.grants.gov*).

Authority: Sections 509, 516 and/or 520A of the Public Health Service Act, as amended, and subject to the availability of funds (unless otherwise specified in a NOFA in the **Federal Register** and on *http://www.grants.gov*).

Key Dates

Application Deadline	This Program Announcement provides general instructions and guidelines for multiple funding opportunities. Application deadlines for specific funding opportunities will be published in Notices of Funding Availability (NOFAs) in the **Federal Register** and on *http://www.grants.gov*.
Intergovernmental Review (E.O. 12372)	Letters from State Single Point of Contact (SPOC) are due no later than 60 days after application deadline.
Public Health System Impact Statement (PHSIS)/Single State Agency Coordination.	Applicants must send the PHSIS to appropriate State and local health agencies by application deadline. Comments from Single State Agency are due no later than 60 days after application deadline.

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I. Funding Opportunity Description

A. Introduction

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces its intent to solicit applications for Services Grants. These grants will expand and strengthen effective, culturally appropriate substance abuse and mental health services at the State and local levels. The services implemented through SAMHSA's Services Grants must incorporate the best objective information available from recognized experts regarding effectiveness and acceptability. In general, the services implemented through SAMHSA's Services Grants will have strong evidence of effectiveness. However, depending on the "state of the science" in a given area, services may be funded for which the evidence base, while sound, is limited. SAMHSA expects that the services funded through these grants will be sustained by the grantee beyond the term of the grant.

SAMHSA also funds grants under three other standard grant announcements:

- *Infrastructure Grants* support identification and implementation of systems changes but are not designed to fund services.
- *Best Practices Planning and Implementation Grants* help communities and providers identify practices to effectively meet local needs, develop strategic plans for implementing/adapting those practices and pilot-test practices prior to full-scale implementation.
- *Service to Science Grants* document and evaluate innovative practices that address critical substance abuse and mental health service gaps but that have not yet been formally evaluated.

This announcement describes the general program design and provides application instructions for all SAMHSA Services Grants. The availability of funds for specific Services Grants will be announced in supplementary Notices of Funding Availability (NOFAs) in the **Federal Register** and at *http://www.grants.gov*—the Federal grant announcement Web page.

Typically, funding for Services Grants will be targeted to specific populations and/or issue areas, which will be specified in the NOFAs. The NOFAs will also:

- Specify total funding available for the first year of the grants and the expected size and number of awards;
- Provide the application deadline;
- Note any specific program requirements for each funding opportunity; and
- Include any limitations or exceptions to the general provisions in this announcement (*e.g.*, eligibility, allowable activities).

It is, therefore, critical that you consult the NOFA as well as this announcement in developing your grant application.

B. Expectations

The Services Grant program is designed to address gaps in substance abuse and mental health services and/or to increase the ability of States, units of local government, Indian tribes, tribal organizations and governments, and community- and faith-based organizations to help specific populations or geographic areas with serious, emerging mental health and substance abuse problems. SAMHSA intends that its Services Grants result in

the delivery of services as soon as possible and *no later than 4 months* after award. SAMHSA's Services Grants may include substance abuse prevention, substance abuse treatment and/or mental health services. Throughout this announcement, SAMHSA will use the term "services" to refer to all three types of services. The NOFA will provide guidance on the particular type of service to be provided through each funding opportunity.

1. Documenting the Evidence-Base for Services To Be Implemented

The services implemented through SAMHSA's Services Grants must incorporate the best objective information available from recognized experts regarding effectiveness and acceptability. In general, the services implemented through SAMHSA's Services Grants will have strong evidence of effectiveness. However, because the evidence base is limited in some areas, SAMHSA may fund some services for which the evidence of effectiveness is based on formal consensus among recognized experts in the field and/or evaluation studies that have not been published in the peer reviewed literature.

Applicants proposing to implement practices included in the following sources meet the standard of effectiveness for SAMHSA's Services Grants, and will not be required to provide further documentation of the practice's effectiveness:

- SAMHSA's National Registry of Effective Programs (NREP) (see Appendix D),
- Center for Mental Health Services (CMHS) Evidence Based Practice Tool Kits (see Appendix E),
- List of Effective Substance Abuse Treatment Practices (see Appendix F),
- Additional practices identified in the NOFA for a specific funding opportunity.

Applicants proposing services/practices that have *not* been identified by SAMHSA as meeting the required effectiveness standard must show that the services to be implemented through their proposed projects incorporate the best objective information available from recognized experts regarding effectiveness and acceptability. To do so, applicants must provide a narrative justification that describes the evidence for the services/practices and summarizes the evidence for effectiveness. The evidence may come from various sources, including the published research literature, formal consensus among recognized experts, and studies that have not been published in the peer-reviewed research literature.

2. Services Delivery

SAMHSA's Services Grant funds must be used primarily to support direct services, including the following types of activities:

- Conducting outreach *and* pre-service strategies to expand access to treatment or prevention services to underserved populations. If you propose to provide *only* outreach and pre-service strategies, you must show that your organization is an effective and integral part of a network of service providers.
- Purchasing or providing direct treatment or prevention services for populations at risk. Treatment must be provided in outpatient, day treatment or intensive outpatient, or residential programs.
- Purchasing or providing "wrap-around" services (*e.g.*, child care, vocational, educational and transportation services) designed to improve access and retention.
- Collecting data using specified tools and standards to measure and monitor treatment or prevention services and costs. (No more than 20% of the total grant award may be used for data collection and evaluation.)

3. Infrastructure Development (Maximum 15% of Total Grant Award)

Although SAMHSA expects that its Services Grant funds will be used primarily for direct services, SAMHSA recognizes that infrastructure changes may be needed to support service delivery expansion in some instances. You may use up to 15% of the total Services Grant award for the following types of infrastructure development, if necessary to support the direct service expansion of the grant project.

- Building partnerships to ensure the success of the project and entering into service delivery and other agreements.
- Developing or changing the infrastructure to expand treatment or prevention services.
- Training to assist treatment or prevention providers and community support systems to identify and address mental health or substance abuse issues.

4. Grantee Meetings

You must plan to send a minimum of two people (including the Project Director) to at least one joint grantee meeting in each year of the grant, and you must include funding for this travel in your budget. At these meetings, grantees will present the results of their projects and Federal staff will provide technical assistance. Each meeting will be 3 days. These meetings will usually be held in the Washington, D.C., area, and attendance is mandatory.

5. Data and Performance Measurement

The Government Performance and Results Act of 1993 (Pub. L.103–62, or "GPRA") requires all Federal agencies to:

- Develop strategic plans that specify what they will accomplish over a 3 to 5-year period;
- Set performance targets annually related to their strategic plan; and
- Report annually on the degree to which the previous year's targets were met.

The law further requires agencies to link their performance to their budgets. Agencies are expected to evaluate their programs regularly and to use results of these evaluations to explain their successes and failures.

To meet these requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. You are required to report these GPRA data to SAMHSA on a timely basis so that performance results are available to support budgetary decisions.

In particular, you will be required to provide data on a core set of required measures, depending on the SAMHSA Center that is funding the grant. In your application, you must demonstrate your ability to collect and report on these measures, and you must provide some baseline data.

Appendix A provides the performance indicators for SAMHSA's Services grantees. For complete information on the core measures relating to these indicators and the methodology for data collection and reporting, please consult the following Web sites:

- Center for Mental Health Services-funded grants: *http://www.samhsa.gov/aps/CMHS/GPRA*.
- Center for Substance Abuse Prevention-funded grants: *http://www.samhsa.gov/aps/CSAP/GPRA*.
- Center for Substance Abuse Treatment-funded-grants: *http://www.samhsa.gov/aps/CSAT/GPRA*.

This information will be provided in the hard copy application kits distributed by SAMHSA's Clearinghouses, as well.

In some instances, you may be required to participate in cross-site evaluations and comply with additional data collection requirements. The NOFA will state if participation in a cross-site evaluation is required and will specify additional data collection requirements. Before grant award, a final agreement regarding data collection will be reached. The terms and conditions of the grant award will specify the data to

be submitted and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

6. Evaluation

Grantees must evaluate their projects, and you are required to describe your evaluation plans in your application. The evaluation should be designed to provide regular feedback to the project to improve services. Therefore, the evaluation must include the required performance measures described above. The evaluation must include both process and outcome components. Process and outcome evaluations must measure change relating to project goals and objectives over time compared to baseline information. Control or comparison groups are not required. You must consider your evaluation plan when preparing the project budget.

Process components should address issues such as:

- How closely did implementation match the plan?
- What types of deviation from the plan occurred?
- What led to the deviations?
- What effect did the deviations have on the planned intervention and evaluation?
- Who provided (program, staff) what services (modality, type, intensity, duration), to whom (individual characteristics), in what context (system, community), and at what cost (facilities, personnel, dollars)?

Outcome components should address issues such as:

- What was the effect of treatment on participants?
- What program/contextual factors were associated with outcomes?
- What individual factors were associated with outcomes?
- How durable were the effects?

No more than 20% of the total grant award may be used for evaluation and data collection.

II. Award Information

A. Award Amount

The expected award amount for each funding opportunity will be specified in the NOFA. Typically, SAMHSA's Services Grant awards are expected to be about $500,000 per year for up to 5 years. Awards may range as high as $3.0 million per year for up to 5 years. Regardless of the award amount specified in the NOFA, the actual award amount will depend on the availability of funds.

Applications with proposed budgets that exceed the allowable amount specified in the NOFA in any year of the proposed project will be screened out and will not be reviewed. Annual continuation awards will depend on the availability of funds, grantee progress in meeting project goals and objectives, and timely submission of required data and reports.

B. Funding Mechanism

The NOFA will indicate whether awards for each funding opportunity will be made as grants or cooperative agreements (*see* the Glossary in Appendix C for further explanation of these funding mechanisms). For cooperative agreements, the NOFA will describe the nature of Federal involvement in project performance and specify roles and responsibilities of grantees and Federal staff.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants are domestic public and private *nonprofit* entities. For example, State, local or tribal governments; public or private universities and colleges; community- and faith-based organizations; and tribal organizations may apply. The statutory authority for this program precludes grants to for-profit organizations. The NOFA will indicate any limitations on eligibility.

B. Cost-Sharing

Cost-sharing is not required in this program, and applications will not be screened out on the basis of cost-sharing. However, you may include cash or in-kind contributions in your proposal as evidence of commitment to the proposed project. Reviewers may consider this information in evaluating the quality of the application.

C. Other

1. Additional Eligibility Requirements

SAMHSA applicants must comply with certain program requirements, including:

- Provisions relating to participant protection and the protection of human subjects specified in Section VIII–A of this document;
- Budgetary limitations as specified in Sections I, II, and IV–E of this document;
- Documentation of nonprofit status as required in the PHS 5161–1;
- Requirements relating to provider organization experience and provider organization certification and licensure, described below.

You also must comply with any additional program requirements specified in the NOFA, such as signature of certain officials on the face page of the application and/or required memoranda of understanding with certain signatories.

Applications that do not comply with the specific program requirements for the funding opportunity for which the application is submitted will be screened out and will not be reviewed.

2. Evidence of Experience and Credentials

SAMHSA believes that only existing, experienced, and appropriately credentialed organizations with demonstrated infrastructure and expertise will be able to provide required services quickly and effectively. Therefore, in addition to the basic eligibility requirements specified in this announcement, applicants must meet three additional requirements related to the provision of treatment or prevention services.

The three requirements are:

- A provider organization for direct client services (*e.g.*, substance abuse treatment, substance abuse prevention, mental health services) appropriate to the grant must be involved in each application. The provider may be the applicant or another organization committed to the project. More than one provider organization may be involved;
- Each of the direct service provider organization(s) must have at least 2 years experience providing services in the area(s) covered by the application, as of the due date of the application; and
- The direct service provider organization(s) must comply with all applicable local (city, county) and State/tribal licensing, accreditation, and certification requirements, as of the due date of the application.

Note: The above requirements apply to all service provider organizations. A license from an individual clinician will not be accepted in lieu of a provider organization's license.

In Appendix 1 of the application, you must: (1) Identify at least one experienced, licensed service provider organization; (2) include a list of all direct service provider organizations that have agreed to participate in the proposed project, including the applicant agency if the applicant is a treatment or prevention service provider organization; and (3) include the Statement of Assurance (provided in Appendix G of this announcement), signed by the authorized representative of the applicant organization identified on the face-page of the application, that all participating service provider organizations:

- Meet the 2-year experience requirement;

• Are licensed, accredited, and certified; and,

• If the application is within the funding range, will provide the Government Project Officer (GPO) with the required documentation within the specified timeframe.

If Appendix 1 of the application does not contain these three items, the application will be considered ineligible and will not be reviewed.

In addition, if, following application review, an application's score is within the fundable range for a grant award, the GPO will call the applicant and request that the following documentation be sent by overnight mail:

• A letter of commitment that specifies the nature of the participation and what service(s) will be provided from every service provider organization that has agreed to participate in the project;

• Official documentation that all participating organizations have been providing relevant services for a minimum of 2 years before the date of the application in the area(s) in which the services are to be provided; and

• Official documentation that all participating service provider organizations comply with all applicable local (city, county) and State/tribal requirements for licensing, accreditation, and certification or official documentation from the appropriate agency of the applicable State/tribal, county, or other governmental unit that licensing, accreditation, and certification requirements do not exist.

If the GPO does not receive this documentation within the time specified, the application will be removed from consideration for an award and the funds will be provided to another applicant meeting these requirements.

IV. Application and Submission Information

(To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix B of this document.)

A. Address to Request Application Package

You may request a complete application kit by calling one of SAMHSA's national clearinghouses:

• For substance abuse prevention or treatment grants, call the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686.

• For mental health grants, call the National Mental Health Information Center at 1–800–789–CMHS (2647).

You also may download the required documents from the SAMHSA Web site at *http://www.samhsa.gov*. Click on "grant opportunities."

Additional materials available on this Web site include:

• A technical assistance manual for potential applicants;

• Standard terms and conditions for SAMHSA grants;

• Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, consumer and family participation, and evaluation); and

• Enhanced instructions for completing the PHS 5161–1 application.

B. Content and Form of Application Submission

1. Required Documents

SAMHSA application kits include the following documents:

• PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. Use the PHS 5161–1, unless otherwise specified in the NOFA. Applications that are not submitted on the required application form will be screened out and will not be reviewed.

• Program Announcement (PA)—Includes instructions for the grant application. This document is the PA.

• Notice of Funding Availability (NOFA)—Provides specific information about availability of funds, as well as any exceptions or limitations to provisions in the PA. The NOFAs will be published in the **Federal Register**, as well as on the Federal grants Web site (*http://www.grants.gov*).

You must use all of the above documents in completing your application.

2. Order of Sections

Applications must be complete and contain all information needed for review. In order for your application to be complete, it must include the following sections in the order listed. Applications that do not contain these sections will be screened out and will not be reviewed.

• *Face Page*—Use Standard Form (SF) 424, which is part of the PHS 5161–1.

Note: Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.

• *Abstract*—Your total abstract should not be longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reporting to Congress, or press releases.

• *Table of Contents*—Include page numbers for each of the major sections of your application and for each appendix.

• *Budget Form*—Use SF 424A, which is part of the PHS 5161–1. Fill out Sections B, C, and E of the SF 424A.

• *Project Narrative and Supporting Documentation*—The Project Narrative describes your project. It consists of Sections A through E. Section A may not be longer than 3 pages in length. Sections B–E together may not be longer than 25 pages. More detailed instructions for completing each section of the Project Narrative are provided in "Section V—Application Review Information" of this document.

• The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections F through H. There are no page limits for these sections, except for Section G, the Biographical Sketches/Job Descriptions.

• *Section F*—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project. Be sure to show that no more than 15% of the total grant award will be used for infrastructure development and that no more than 20% of the total grant award will be used for data collection and evaluation.

• *Section G*—Biographical Sketches and Job Descriptions.

• Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.

• Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.

• Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.

• *Section H*—Confidentiality and SAMHSA Participant Protection/Human

Subjects. Instructions for completing Section H of your application are provided below in Section VIII–A of this document.

• *Appendices 1 through 5*—Use only the appendices listed below. Do not use more than 30 pages (excluding data collection instruments and interview protocols) for the appendices. Do not use appendices to extend or replace any of the sections of the Project Narrative unless specifically required in the NOFA. Reviewers will not consider them if you do.

• *Appendix 1:* Letters of commitment/support. Identification of at least one experienced, licensed service provider organization. A list of all direct service provider organizations that have agreed to participate in the proposed project, including the applicant agency, if it is a treatment or prevention service provider organization. The Statement of Assurance (provided in Appendix G of this announcement) signed by the authorized representative of the applicant organization identified on the face page of the application, that assures SAMHSA that all listed providers meet the 2-year experience requirement, are appropriately licensed, accredited, and certified, and that if the application is within the funding range for an award, the applicant will send the GPO the required documentation within the specified time.

• *Appendix 2:* Data Collection Instruments/Interview Protocols.

• *Appendix 3:* Sample Consent Forms.

• *Appendix 4:* Letter to the SSA (if applicable; see Section VIII–C of this document).

• *Appendix 5:* A copy of the State Strategic Plan, a State needs assessment, or a letter from the State indicating that the proposed project addresses a State-identified priority.

• *Assurances*—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1.

• *Certifications*—Use the "Certifications" forms found in PHS 5161–1.

• *Disclosure of Lobbying Activities*—Use Standard Form LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of the information designed to support or defeat legislation pending before the Congress or State legislatures. This includes "grass roots" lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

• *Checklist*—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

3. Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

• Text must be legible.

• Paper must be white and 8.5″ by 11.0″ in size.

• Pages must be typed single-spaced with one column per page.

• Page margins must be at least one inch.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch when measured with a ruler. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Photo reduction or condensation of type cannot be closer than 15 characters per inch or 6 lines per inch.

• The pages cannot have printing on both sides.

• Page limitations specified for the Project Narrative and Appendices cannot be exceeded.

• Information must be sufficient for review.

To facilitate review of your application, follow these additional guidelines:

• Applications should be prepared using black ink. This improves the quality of the copies of applications that are provided to reviewers.

• Use white paper only. Do not use colored, heavy, or light-weight paper or any material that cannot be photocopied using automatic photocopying machines. Odd-sized and oversized attachments, such as posters, will not be copied or sent to reviewers. Do not send videotapes, audiotapes, or CD–ROMs.

• Pages should be numbered consecutively from beginning to end so that information can be located easily during review of the application. For example, the cover page should be labeled "page 1," the abstract page should be "page 2," and the table of contents page should be "page 3." Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue in the sequence.

C. Submission Dates and Times

Deadlines for submission of applications for specific funding opportunities will be included in the NOFAs published in the **Federal Register** and posted on the Federal grants Web site (*http://www.grants.gov*).

Your application must be received by the application deadline. Applications received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

D. Intergovernmental Review (E.O. 12372) Requirements

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. Instructions for this review are included in Section VIII–B of this document. Section VIII–C provides instructions for the Public Health System Impact Statement (PHSIS) and submission of comments from the Single State Agency (SSA).

E. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

• Institutions of Higher Education: OMB Circular A–21.

• State and Local Governments: OMB Circular A–87.

• Nonprofit Organizations: OMB Circular A–122.

• Appendix E Hospitals: 45 CFR Part 74.

In addition, SAMHSA Services Grant recipients must comply with the following funding restrictions:

• No more than 15% of the total grant award may be used for developing the infrastructure necessary for expansion of services.

• No more than 20% of the total grant award may be used for evaluation and data collection.

Service Grant funds must be used for purposes supported by the program and may not be used to:

• Pay for any lease beyond the project period.

• Provide services to incarcerated populations (defined as those persons in jail, prison, detention facilities, or in custody where they are not free to move about in the community).

- Pay for the purchase or construction of any building or structure to house any part of the program. (Applicants may request up to $75,000 for renovations and alterations of existing facilities, if necessary and appropriate to the project.)
- Provide residential or outpatient treatment services when the facility has not yet been acquired, sited, approved, and met all requirements for human habitation and services provision. (Expansion or enhancement of existing residential services is permissible.)
- Pay for housing other than residential mental health and/or substance abuse treatment.
- Provide inpatient treatment or hospital-based detoxification services. Residential services are not considered to be inpatient or hospital-based services.
- Pay for incentives to induce individuals to enter treatment. However, a grantee or treatment provider may provide up to $20 or equivalent (coupons, bus tokens, gifts, child care, and vouchers) to individuals as incentives to participate in required data collection follow-up. This amount may be paid for participation in each required interview.
- Implement syringe exchange programs, such as the purchase and distribution of syringes and/or needles.
- Pay for pharmacologies for HIV antiretroviral therapy, sexually transmitted diseases (STD)/sexually transmitted illnesses (STI), TB, and hepatitis B and C, or for psychotropic drugs.

F. Other Submission Requirements

1. Where To Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857.

Be sure to include the funding announcement number from the NOFA in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

2. How To Send Applications

Mail an original application and 2 copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

A. Evaluation Criteria

Your application will be reviewed and scored against the requirements listed below for developing the Project Narrative (Sections A–E). These sections describe what you intend to do with your project.

- In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the "Program Narrative" instructions found in the PHS 5161–1.
- Be sure to provide references for any literature cited in your application. The reference list will not be counted toward the page limit for these sections. The Project Narrative may be no longer than 28 pages (3 pages for Section A and 25 pages total for Sections B–E).
- You must use the five sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section of the Project Narrative.
- The Supporting Documentation you provide in Sections F–H, Appendices 1–5, and the References list will be considered by reviewers in assessing your response, along with the material in the Project Narrative.
- The number of points after each heading is the maximum number of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within the criterion.

There will be two levels of review for the SAMHSA Services Grants.

- *Level One Review* will consider how well the applicant addresses the requirements in Section A—Evidence of Effectiveness. If the service(s) proposed in the application does not meet the required standard of effectiveness as described below, the application will not move on to Level Two review and will not be considered for funding.
- *Level Two Review* will consider how well the applicant addresses the requirements in Section B (Statement of Need), Section C (Proposed Approach), Section D (Staff, Management and Relevant Experience), and Section E (Evaluation and Data). The applicant's score on Sections B–E combined will be used to determine the applicant's priority score.

1. Level One Review

Section A: Evidence of Effectiveness

Put all information to be considered in Level One review in Section A: Evidence of Effectiveness. Section A may not be longer than 3 pages. During Level One review, reviewers will decide whether the applicant's proposed services/practice meet the required standard for effectiveness. Reviewers will assess Level One review on a pass/fail basis. Applications that do not pass Level One review will not move on to Level Two review.

Applicants proposing to implement services/practices included in the following sources are considered by SAMHSA to have met the effectiveness standard required for SAMHSA's Services Grants. Such applicants are not required to provide further documentation of effectiveness of the services/practices. Such applicants must name the service/practice and indicate which of the following is the source(s) for the proposed service/practice:

- SAMHSA's National Registry of Effective Programs (NREP) (*see* Appendix D to this document).
- Center for Mental Health Services (CMHS) Evidence Based Practice Tool Kits (*see* Appendix E to this document).
- "Effective Substance Abuse Treatment Practices" (*see* Appendix F to this document).
- The NOFA for a specific funding opportunity (provide the name and funding opportunity number from the NOFA).

Applicants who select services/practices that are not identified in any of the sources listed above must provide a narrative justification that shows that the proposed services/practice includes the best objective information available from recognized experts regarding effectiveness and acceptability. The narrative must address the following:

- Describe the proposed services/practice.
- Indicate whether the evidence base for the proposed services/practice includes scientific studies published in the peer-reviewed literature, other studies not published in the peer-reviewed literature, and/or from formal consensus processes among recognized experts in the field.
- *If the evidence base includes scientific studies published in the peer-reviewed literature or other studies that have not been published, describe:*

—The extent to which the services/practice have been evaluated and the quality of the evaluation studies (*e.g.*,

whether they are descriptive, quasi-experimental studies, or experimental studies)
—The extent to which evaluation of the services/practice has demonstrated positive outcomes, and the extent to which positive outcomes have been demonstrated for different populations
—The extent to which evaluation of the services/practice has been studied
—The extent to which evaluation of the services/practice has been replicated
—The extent to which the services/practice have been documented (*e.g.*, through development of guidelines, tool kits, treatment protocols, and/or manuals)
—The extent to which fidelity measures have been developed (*e.g.*, no measures developed, key components identified, or fidelity measures developed)

• *If the evidence-base includes formal consensus processes involving recognized experts in the field, describe:*
—The experts involved in the consensus development activity related to the proposed services/practice (*e.g.*, members of an expert panel formally convened by NIH, the Institute of Medicine or other nationally recognized organization, or members of an informal group of experts, such as faculty at a leading research institution)
—The nature of the consensus that has been reached and the process used to reach consensus
—The extent to which the consensus has been documented (*e.g.*, in a consensus panel report, meeting minutes, or an accepted standard practice in the field)
—Any empirical evidence (whether formally published or not) supporting the effectiveness of the proposed services/practice
—Rationale for concluding that further empirical evidence does not exist to support the effectiveness of the proposed services/practice, if appropriate

In assessing applicants' narratives for Section A/Level One review, reviewers will consider whether the evidence presented in support of the proposed services/practice is, in their expert and professional opinion, commensurate with the best information available regarding effectiveness and acceptability.

Applicants should be aware that passing Level One review does not ensure that the application will be approved for funding, even if the proposed project includes a service/practice that is considered by SAMHSA to have met the standard of effectiveness.

2. Level Two Review

Section B: Statement of Need (10 Points)

• Define the target population (including demographics) and the geographic area to be served.
• Provide baseline data as required in Appendix A of this document.
• Describe the nature of the problem and extent of the need for the target population based on data. The statement of need should include a clearly established baseline for the project. Documentation of need may come from a variety of qualitative and quantitative sources. The quantitative data could come from local data or trend analyses, State data (*e.g.*, from State Needs Assessments), and/or national data (*e.g.*, from SAMHSA's National Household Survey on Drug Abuse and Health or from National Center for Health Statistics/Centers for Disease Control reports). For data sources that are not well known, provide sufficient information on how the data were collected so reviewers can assess the reliability and validity of the data.
• Non-tribal applicants must show that identified needs are consistent with priorities of the State. Include, in Appendix 5, a copy of the State Strategic Plan, a State needs assessment, or a letter from the State indicating that the proposed project addresses a State-identified priority. Tribal applicants must provide similar documentation relating to tribal priorities.

Section C: Proposed Approach (40 Points)

• Clearly state the purpose, goals and objectives of your proposed project. Describe how achievement of goals will produce meaningful and relevant results (*e.g.*, increase access, availability, prevention, outreach, pre-services, treatment, and/or intervention).
• Demonstrate how the proposed services/practice will meet your goals and objectives. Provide a logic model that links need, the services or practice to be implemented, and outcomes.
• Describe how the services or practice will be implemented.
• Clearly state the unduplicated number of individuals you propose to serve (annually and over the entire project period) with grant funds, including the types and numbers of services to be provided and anticipated outcomes. Describe how the target population will be identified, recruited, and retained.
• Describe how the proposed project will address issues of age, race, ethnicity, culture, language, sexual orientation, disability, literacy, and gender in the target population, while retaining fidelity to the chosen practice.
• Describe how members of the target population helped prepare the application, and how they will help plan, implement, and evaluate the project.
• Describe how the project components will be embedded within the existing service delivery system, including other SAMHSA-funded projects, if applicable. Identify any other organizations that will participate in the proposed project. Describe their roles and responsibilities and demonstrate their commitment to the project. Include letters of commitment from community organizations supporting the project in Appendix 1. Identify any cash or in-kind contributions that will be made to the project by the applicant or other partnering organizations.
• Describe the potential barriers to successful conduct of the proposed project and how you will overcome them.

Section D: Staff, Management, and Relevant Experience (35 Points)

• Provide a time line for the project (chart or graph) showing key activities, milestones, and responsible staff. [**NOTE:** The timeline should be part of the Project Narrative. It should not be placed in an appendix.]
• Show that the necessary groundwork (*e.g.*, planning, consensus development, development of memoranda of agreement, identification of potential facilities) has been completed or is near completion so that the project can be implemented and service delivery can begin as soon as possible and no later than 4 months after grant award.
• Discuss the capability and experience of the applicant organization and other participating organizations with similar projects and populations, including experience in providing culturally appropriate/competent services.
• Provide a list of staff who will participate in the project, showing the role of each and their level of effort and qualifications. Include the Project Director and other key personnel, such as the evaluator and treatment/prevention personnel.
• Describe the resources available for the proposed project (*e.g.*, facilities, equipment), and provide evidence that services will be provided in a location that is adequate, accessible, compliant with the Americans with Disabilities Act (ADA), and amenable to the target population.

Section E: Evaluation and Data (15 Points)

- Document your ability to collect and report on the required performance measures for SAMHSA Services Grants. Specify and justify any additional outcome measures you plan to use for your grant project. (*See* Appendix A for required performance indicators.)
- Describe plans for data collection, management, analysis, interpretation and reporting. Describe the project provider's existing approach to the collection of individual, service use, and outcome data, along with any necessary modifications. Be sure to include data collection instruments/interview protocols in Appendix 2.
- Describe the process and outcome evaluation, including assessments of implementation and individual outcomes. Show how the evaluation will be integrated with requirements for collection and reporting of performance data, including data required by SAMHSA to meet GPRA requirements.
- Describe how the evaluation will be used to ensure the fidelity to the practice.
- Provide a per-person or unit cost of the project to be implemented, based on the applicant's actual costs and projected costs over the life of the project.

Note: Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

B. Review and Selection Process

SAMHSA applications are peer-reviewed according to the review criteria listed above. For those programs where the individual award is over $100,000, applications must also be reviewed by the appropriate National Advisory Council.

C. Award Criteria

Decisions to fund a grant are based on:

- The strengths and weaknesses of the application as identified by the peer review committee and, when applicable, approved by the appropriate National Advisory Council;
- Availability of funds; and
- Equitable allocation of grants among the principal geographic regions of the United States. SAMHSA does not intend to award more than 2 grants per State for each funding opportunity.

VI. Award Administration Information

A. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can re-apply if there is another receipt date for the program.

B. Administrative and National Policy Requirements

- You must comply with all terms and conditions of the grant award. SAMHSA's standard terms and conditions are available on the SAMHSA Web site (*http://www.samhsa.gov*).
- Depending on the nature of the specific funding opportunity and/or the proposed project as identified during review, additional terms and conditions may be identified in the NOFA or negotiated with the grantee prior to grant award. These may include, for example:
  - Actions required to be in compliance with human subjects requirements;
  - Requirements relating to additional data collection and reporting;
  - Requirements relating to participation in a cross-site evaluation; or
  - Requirements to address problems identified in review of the application.
- You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.
- In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services "Survey on Ensuring Equal Opportunity for Applicants." This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

C. Reporting Requirements

1. Progress and Financial Reports

- Grantees must provide annual and final progress reports. The final report must summarize information from the annual reports, describe the accomplishments of the project, and describe next steps for implementing plans developed during the grant period.
- Grantees must provide annual and final financial status reports. These reports may be included as separate sections of annual and final progress reports or can be separate documents. Because SAMHSA is extremely interested in ensuring that treatment or prevention services can be sustained, your financial reports should explain plans to ensure the sustainability of efforts initiated under this grant. Initial plans for sustainability should be described in year 01. In each subsequent year, you should describe the status of your project, as well as the successes achieved and obstacles encountered in that year.
- SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

2. Government Performance and Results Act (GPRA)

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. The performance requirements for SAMHSA's Services Grants are described in Section I–B under "Data and Performance Measurement" and listed in Appendix A of this document.

3. Publications

If you are funded under this program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded grant project that are accepted for publication.

In addition, SAMHSA requests that grantees:

- Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.
- Include acknowledgment of the SAMHSA grant program as the source of funding for the project.
- Include a disclaimer stating that the views and opinions contained in the

publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

The NOFAs provide contact information for questions about program issues.

For questions on grants management issues, contact: Stephen Hudak, Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration/OPS, 5600 Fishers Lane, Rockwall II 6th Floor, Rockville, MD 20857, (301) 443–9666, *shudak@samhsa.gov*.

VIII. Other Information

A. SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

You must describe your procedures relating to Confidentiality, Participant Protection and the Protection of Human Subjects Regulations in Section H of your application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of your application may result in the delay of funding.

Confidentiality and Participant Protection: All applicants *must* address each of the following elements relating to confidentiality and participant protection. You must document how you will address these requirements or why they do not apply.

1. Protect Clients and Staff from Potential Risks

- Identify and describe any foreseeable physical, medical, psychological, social, legal, or other risks or adverse affects.
- Discuss risks that are due either to participation in the project itself or to the evaluation activities.
- Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.
- Identify plans to provide help if there are adverse effects to participants.
- Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

2. Fair Selection of Participants

- Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other groups.
- Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, or others who are likely to be vulnerable to HIV/AIDS.
- Explain the reasons for *including or excluding* participants.
- Explain how you will recruit and select participants. Identify who will select participants.

3. Absence of Coercion

- Explain if participation in the project is voluntary or required. Identify possible reasons why it is required, for example, court orders requiring people to participate in a program.
- If you plan to pay participants, state how participants will be awarded money or gifts.
- State how volunteer participants will be told that they may receive services even if they do not participate in the project.

4. Data Collection

- Identify from whom you will collect data (*e.g.*, from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.*, school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.
- Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.
- Provide in Appendix 2, "Data Collection Instruments/Interview Protocols," copies of *all* available data collection instruments and interview protocols that you plan to use.

5. Privacy and Confidentiality

- Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.
- Describe:
- How you will use data collection instruments.
- Where data will be stored.
- Who will or will not have access to information.
- How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

6. Adequate Consent Procedures

- List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used and how you will keep the data private.
- State:
- Whether or not their participation is voluntary.
- Their right to leave the project at any time without problems.
- Possible risks from participation in the project.
- Plans to protect clients from these risks.
- Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must get *written* informed consent.

- Indicate if you will get informed consent from participants or from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?
- Include sample consent forms in your Appendix 3, "Sample Consent Forms." If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

- Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data.
- Additionally, if other consents (*e.g.*, consents to release information to others

or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

7. Risk/Benefit Discussion

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations

Depending on the evaluation and data collection requirements of the particular funding opportunity for which you are applying or the evaluation design you propose in your application, you may have to comply with the Protection of Human Subjects Regulations (45 CFR 46). The NOFA will indicate whether all applicants for a particular funding opportunity must comply with the Protection of Human Subject Regulations.

Applicants must be aware that even if the Protection of Human Subjects Regulations do not apply to all projects funded under a given funding opportunity, the specific evaluation design proposed by the applicant may require compliance with these regulations.

Applicants whose projects must comply with the Protection of Human Subjects Regulations must describe the process for obtaining Institutional Review Board (IRB) approval fully in their applications. While IRB approval is not required at the time of grant award, these applicants will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and the IRB approval has been received prior to enrolling any clients in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the Web at *http://ohrp.osophs.dhhs.gov*. You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301/496–7005).

B. Intergovernmental Review (E.O. 12372) Instructions

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and can be downloaded from the Office of Management and Budget (OMB) Web site at *http://www.whitehouse.gov/omb/grants/spoc.html*.

- Check the list to determine whether your State participates in this program. You do not need to do this if you are a federally recognized Indian tribal government.
- If your State participates, contact your SPOC as early as possible to alert him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.
- For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.
- The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SPOC—Funding Announcement No. [fill in pertinent funding opportunity number from the NOFA].

C. Public Health System Impact Statement (PHSIS)

The Public Health System Impact Statement or PHSIS (Approved by OMB under control no. 0920–0428; see burden statement below) is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to the following Public Health System Reporting Requirements.

Community-based, non-governmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected no later than the pertinent receipt date for applications. This PHSIS consists of the following information:

- A copy of the face page of the application (SF 424); and
- A summary of the project, no longer than one page in length, that provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with appropriate State or local health agencies.

For SAMHSA grants, the appropriate State agencies are the Single State Agencies (SSAs) for substance abuse and mental health. A listing of the SSAs can be found on SAMHSA's Web site at *http://www.samhsa.gov*. If the proposed project falls within the jurisdiction of more than one State, you should notify all representative SSAs.

Applicants who are not the SSA *must* include a copy of a letter transmitting the PHSIS to the SSA in Appendix 4, "Letter to the SSA." The letter must notify the State that, if it wishes to comment on the proposal, its comments should be sent not later than 60 days after the application deadline to:

Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SSA—Funding Announcement No. [fill in pertinent funding opportunity number from NOFA].

In addition:

- Applicants may request that the SSA send them a copy of any State comments.
- The applicant must notify the SSA within 30 days of receipt of an award.

[Public reporting burden for the Public Health System Reporting Requirement is estimated to average 10 minutes per response, including the time for copying the face page of SF 424 and the abstract and preparing the letter for mailing. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0920–0428. Send comments regarding this burden to CDC Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, GA 30333, ATTN: PRA (0920–0428)].

Appendix A—SAMHSA Services Indicators

The purpose of services programs is to implement a service improvement using a proven "evidence based" approach. Domains to be measured are persons served, cost per person, and other individual/system outcomes. This list of indicators and related measures will be updated periodically. The Notice of Funding Availability (NOFA) will specify which indicators are required for a particular funding opportunity. Applicants must provide expected baseline data for *asterisked items in the grant application. Grantees must collect and report data at the interval (*e.g.*, quarterly, annually) specified in the NOFA. Specific instructions for data collection will be provided on SAMHSA's web site and in application kits. Some NOFAs may specify indicators and measures not on this list or may request grantees to

identify measures appropriate to their specific project.

Accountability

Percent of grantees reporting valid data.

Capacity

* Number of persons served (Includes screening and assessment)

CMHS and CSAT grantees: Percent of providers providing services within approved costs (Costs to be proposed in application; to be approved by SAMHSA prior to award. A cost measure for substance abuse prevention is under development).

* Number, type, and capacity of services/product available.

* Percent of persons needing services/product who receive them.

Effectiveness

Participation of persons served and family members in planning, policy and service delivery.

Number of service/systems improvements implemented; maintained post-funding.

* Percent of programs reporting positive individual and systems outcomes.

CSAP grantees: Difference between 30 day substance use of population served by program and comparable local and national rates. CSAT grantees: Number of people who show no past month substance use 6 months post treatment admission.

Grantees also will be required to report on several outcomes from the following list, as specified in the NOFA:

Individual outcomes: Participants (adults or children) disapproving of substance use; perceiving personal health risks associated with substance abuse; increasing age of first use; reporting abstinence at discharge; decreasing substance abuse risk factors related to spread of HIV/AIDS, including risky sexual behavior and sharing needles; improving employment/school attendance; having no criminal justice involvement; having stable living situation; reporting (consumer/family) improvement in behavioral/emotional symptoms.

System outcomes: Percent of referrals from juvenile/adult justice systems to systems of care; decreased days in inpatient/residential facilities; readmission rates; past 30 day utilization of inpatient, outpatient facilities; inpatient, outpatient, or emergency room treatment for physical complaint, mental or emotional difficulties, or alcohol or substance abuse; seclusion/restraint deaths or injuries; number of communities with defined systems/continuum of care; number of persons contacted through outreach who enroll in services; percent of providers, administrators trained who report adopting approved service methods; percent of participants in sponsored events who have used information to change their practices; number of science based programs implemented. Completion and documentation of one or more of the following, depending upon the scope of the project: Needs assessment; revised financing plan for coordinating funding streams; organizational/structural change or quality improvements; coordination and network improvements; workforce improvements; data infrastructure/performance measurement improvements.

Appendix B—Checklist for Application Formatting Requirements

Your application must adhere to these formatting requirements. Failure to do so will result in your application being screened out and returned to you without review. In addition to these formatting requirements, there may be programmatic requirements specified in the NOFA. Please check the NOFA before preparing your application.

- Use the PHS 5161–1 application.
- Include the 10 application components required for SAMHSA applications (*i.e.*, Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist.)
- Provide legible text.
- Use white paper, 8.5″ by 11.0″ in size.
- Type single-spaced text with one column per page.
- Use margins that are at least 1 inch.
- Use type size in the Project Narrative that does not exceed an average of 15 characters per inch when measured with a ruler. Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.
- Do not use photo reduction or condensation of type closer than 15 characters per inch or 6 lines per inch.
- Print only on one side of the paper only; do not print on both sides.
- Do not exceed page limitations specified for the Project Narrative (3 pages for Section A and 25 pages total for Sections B–E) and Appendices (30 pages).
- Provide sufficient information for review.
- Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or postmarked a week prior to the application deadline will not be reviewed.
- Applications that do not comply with the following requirements and any additional program requirements specified in the NOFA, or are otherwise unresponsive to PA guidelines will be screened out and returned to the applicant without review:
- Provisions relating to participant protection and the protection of human subjects specified in Section VIII–A of this document.
- Budgetary limitations as specified in Sections I, II and IV–E of this document.
- Documentation of nonprofit status as required in the PHS 5161–1.
- Requirements relating to provider organization experience and provider organization certification and licensure.

To facilitate review of your application, follow these additional guidelines. Failure to follow these guidelines will not result in your application being screened out. However, following these guidelines will help reviewers to consider your application.

- Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.
- Send the original application and two copies to the mailing address in the PA. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Appendix C: Glossary

Best Practice: Best practices are practices that incorporate the best objective information currently available from recognized experts regarding effectiveness and acceptability.

Cooperative Agreement: A cooperative agreement is a form of Federal grant. Cooperative agreements are distinguished from other grants in that, under a cooperative agreement, substantial involvement is anticipated between the awarding office and the recipient during performance of the funded activity. This involvement may include collaboration, participation, or intervention in the activity. HHS awarding offices use grants or cooperative agreements (rather than contracts) when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

Cost-Sharing or Matching: Cost-sharing refers to the value of allowable non-Federal contributions toward the allowable costs of a Federal grant project or program. Such contributions may be cash or in-kind contributions. For SAMHSA grants, cost-sharing or matching is not required, and applications will not be screened out on the basis of cost-sharing. However, applicants often include cash or in-kind contributions in their proposals as evidence of commitment to the proposed project. This is allowed, and this information may be considered by reviewers in evaluating the quality of the application.

Grant: A grant is the funding mechanism used by the Federal Government when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

In-Kind Contribution: In-kind contributions toward a grant project are non-cash contributions (*e.g.*, facilities, space, services) that are derived from non-Federal sources,

such as State or sub-State non-Federal revenues, foundation grants, or contributions from other non-Federal public or private entities.

Practice: A practice is any activity, or collective set of activities, intended to improve outcomes for people with or at risk for substance abuse and/or mental illness. Such activities may include direct service provision, or they may be supportive activities, such as efforts to improve access to and retention in services, organizational efficiency or effectiveness, community readiness, collaboration among stakeholder groups, education, awareness, training, or any other activity that is designed to improve outcomes for people with or at risk for substance abuse or mental illness.

Practice Support System: This term refers to contextual factors that affect practice delivery and effectiveness in the pre-adoption phase, delivery phase, and post-delivery phase, such as (a) community collaboration and consensus building, (b) training and overall readiness of those implementing the practice, and (c) sufficient ongoing supervision for those implementing the practice.

Stakeholder: A stakeholder is an individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

Target population catchment area: The target population catchment area is the geographic area from which the target population to be served by a program will be drawn.

Wraparound Service: Wraparound services are non-clinical supportive services—such as child care, vocational, educational, and transportation services—that are designed to improve the individual's access to and retention in the proposed project.

Appendix D: National Registry of Effective Programs

To help SAMHSA's constituents learn more about science-based programs, SAMHSA's Center for Substance Abuse Prevention (CSAP) created a National Registry of Effective Programs (NREP) to review and identify effective programs. NREP seeks candidates from the practice community and the scientific literature. While the initial focus of NREP was substance abuse prevention programming, NREP has expanded its scope and now includes prevention and treatment of substance abuse and of co-occurring substance abuse and mental disorders, and psychopharmacological programs and workplace programs.

NREP includes three categories of programs: Effective Programs, Promising Programs, and Model Programs. Programs defined as Effective have the option of becoming Model Programs if their developers choose to take part in SAMHSA dissemination efforts. The conditions for making that choice, together with definitions of the three major criteria, are as follows.

Promising Programs have been implemented and evaluated sufficiently and are scientifically defensible. They have positive outcomes in preventing substance abuse and related behaviors. However, they have not yet been shown to have sufficient rigor and/or consistently positive outcomes required for Effective Program status. Nonetheless, Promising Programs are eligible to be elevated to Effective/Model status after review of additional documentation regarding program effectiveness. Originated from a range of settings and spanning target populations, Promising Programs can guide prevention, treatment, and rehabilitation.

Effective Programs are well-implemented, well-evaluated programs that produce consistently positive pattern of results (across domains and/or replications). Developers of Effective Programs have yet to help SAMHSA/CSAP disseminate their programs, but may do so themselves.

Model Programs are also well-implemented, well-evaluated programs, meaning they have been reviewed by NREP according to rigorous standards of research. Their developers have agreed with SAMHSA to provide materials, training, and technical assistance for nationwide implementation. That helps ensure the program is carefully implemented and likely to succeed.

Programs that have met the NREP standards for each category can be identified by accessing the NREP Model Programs Web site at *http://www.modelprograms.samhsa.gov.*

Appendix E: Center for Mental Health Services Evidence-Based Practice Toolkits

SAMHSA's Center for Mental Health Services and the Robert Wood Johnson Foundation initiated the Evidence-Based Practices Project to: (1) Help more consumers and families access services that are effective, (2) help providers of mental health services develop effective services, and (3) help administrators support and maintain these services. The project is now also funded and endorsed by numerous national, State, local, private and public organizations, including the Johnson & Johnson Charitable Trust, the MacArthur Foundation, and the West Family Foundation.

The project has been developed through the cooperation of many Federal and State mental health organizations, advocacy groups, mental health providers, researchers, consumers and family members. A Web site (*http://www.mentalhealthpractices.org*) was created as part of Phase I of the project, which included the identification of the first cluster of evidence-based practices and the design of implementation resource kits to help people understand and use these practices successfully.

Basic information about the first six evidence-based practices is available on the Web site. The six practices are:

1. Illness Management and Recovery.
2. Family Psychoeducation.
3. Medication Management Approaches in Psychiatry.
4. Assertive Community Treatment.
5. Supported Employment.
6. Integrated Dual Disorders Treatment.

Each of the resource kits contains information and materials written by and for the following groups:

—Consumers
—Families and Other Supporters
—Practitioners and Clinical Supervisors
—Mental Health Program Leaders
—Public Mental Health Authorities

Material on the web site can be printed or downloaded with Acrobat Reader, and references are provided where additional information can be obtained.

Once published, the full kits will be available from National Mental Health Information Center at *http://www.health.org* or 1–800–789–CMHS (2647).

Appendix F: Effective Substance Abuse Treatment Practices

To assist potential applicants, SAMHSA's Center for Substance Abuse Treatment (CSAT) has identified the following listing of current publications on effective treatment practices for use by treatment professionals in treating individuals with substance abuse disorders. These publications are available from the National Clearinghouse for Alcohol and Drug Information (NCADI); Tele: 1–800–729–6686 or *http://www.health.org* and *http://www.samhsa.gov/centers/csat2002/publications.html.*

CSAT Treatment Improvement Protocols (TIPs) are consensus-based guidelines developed by clinical, research, and administrative experts in the field.

- Integrating Substance Abuse Treatment and Vocational Services. TIP 38 (2000) NCADI # BKD381
- Substance Abuse Treatment for Persons with Child Abuse and Neglect Issues. TIP 36 (2000) NCADI # BKD343
- Substance Abuse Treatment for Persons with HIV/AIDS. TIP 37 (2000) NCADI # BKD359
- Brief Interventions and Brief Therapies for Substance Abuse. TIP 34 (1999) NCADI # BKD341
- Enhancing Motivation for Change in Substance Abuse Treatment. TIP 35 (1999) NCADI # BKD342
- Screening and Assessing Adolescents for Substance Use Disorders. TIP 31 (1999) NCADI # BKD306
- Treatment for Stimulant Use Disorders. TIP 33 (1999) NCADI # BKD289
- Treatment of Adolescents with Substance Use Disorders. TIP 32 (1999) NCADI # BKD307
- Comprehensive Case Management for Substance Abuse Treatment. TIP 27 (1998) NCADI # BKD251
- Continuity of Offender Treatment for Substance Use Disorders From Institution to Community. TIP 30 (1998) NCADI # BKD304
- Naltrexone and Alcoholism Treatment. TIP 28 (1998) NCADI # BKD268
- Substance Abuse Among Older Adults. TIP 26 (1998) NCADI # BKD250
- Substance Use Disorder Treatment for People With Physical and Cognitive Disabilities. TIP 29 (1998) NCADI # BKD288
- A Guide to Substance Abuse Services for Primary Care Clinicians. TIP 24 (1997) NCADI # BKD234
- Substance Abuse Treatment and Domestic Violence. TIP 25 (1997) NCADI # BKD239
- Treatment Drug Courts: Integrating Substance Abuse Treatment With Legal Case Processing. TIP 23 (1996) NCADI # BKD205

- Alcohol and Other Drug Screening of Hospitalized Trauma Patients. TIP 16 (1995) NCADI # BKD164
- Combining Alcohol and Other Drug Abuse Treatment With Diversion for Juveniles in the Justice System. TIP 21 (1995) NCADI # BKD169
- Detoxification From Alcohol and Other Drugs. TIP 19 (1995) NCADI # BKD172
- LAAM in the Treatment of Opiate Addiction. TIP 22 (1995) NCADI # BKD170
- Matching Treatment to Patient Needs in Opioid Substitution Therapy. TIP 20 (1995) NCADI # BKD168
- Planning for Alcohol and Other Drug Abuse Treatment for Adults in the Criminal Justice System. TIP 17 (1995) NCADI # BKD165
- Assessment and Treatment of Cocaine-Abusing Methadone-Maintained Patients. TIP 10 (1994) NCADI # BKD157
- Assessment and Treatment of Patients With Coexisting Mental Illness and Alcohol and Other Drug Abuse. TIP 9 (1994) NCADI # BKD134
- Intensive Outpatient Treatment for Alcohol and Other Drug Abuse. TIP 8 (1994) NCADI # BKD139

Other Effective Practice Publications

CSAT Publications

- Anger Management for Substance Abuse and Mental Health Clients: A Cognitive Behavioral Therapy Manual (2002) NCADI # BKD444
- Anger Management for Substance Abuse and Mental Health Clients: Participant Workbook (2002) NCADI # BKD445
- Multidimensional Family Therapy for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 5 (2002) NCADI # BKD388
- Navigating the Pathways: Lessons and Promising Practices in Linking Alcohol and Drug Services with Child Welfare. TAP 27 (2002) NCADI # BKD436
- The Motivational Enhancement Therapy and Cognitive Behavioral Therapy Supplement: 7 Sessions of Cognitive Behavioral Therapy for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 2 (2002) NCADI # BKD385
- Family Support Network for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 3 (2001) NCADI # BKD386
- Identifying Substance Abuse Among TANF-Eligible Families. TAP 26 (2001) NCADI # BKD410
- Motivational Enhancement Therapy and Cognitive Behavioral Therapy for Adolescent Cannabis Users: 5 Sessions. CYT Cannabis Youth Treatment Series Vol. 1 (2001) NCADI # BKD384
- The Adolescent Community Reinforcement Approach for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 4 (2001) NCADI # BKD387
- Substance Abuse Treatment for Women Offenders: Guide to Promising Practices. TAP 23 (1999) NCADI # BKD310
- Addiction Counseling Competencies: The Knowledge, Skills, and Attitudes of Professional Practice. TAP 21 (1998) NCADI # BKD246
- Bringing Excellence to Substance Abuse Services in Rural and Frontier America. TAP 20 (1997) NCADI # BKD220
- Counselor's Manual for Relapse Prevention with Chemically Dependent Criminal Offenders. TAP 19 (1996) NCADI # BKD723
- Draft Buprenorphine Curriculum for Physicians (Note: the Curriculum is in DRAFT form and is currently being updated) *http://www.buprenorphine.samhsa.gov*
- CSAT Guidelines for the Accreditation of Opioid Treatment Programs *http://www.samhsa.gov/centers/csat/content/dpt/accreditation.htm*
- Model Policy Guidelines for Opioid Addiction Treatment in the Medical Office *http://www.samhsa.gov/centers/csat/content/dpt/model_policy.htm*

NIDA Manuals—Available through NCADI

- Brief Strategic Family Therapy. Manual 5 (2003) NCADI # BKD481
- Drug Counseling for Cocaine Addiction: The Collaborative Cocaine Treatment Study Model. Manual 4 (2002) NCADI # BKD465
- The NIDA Community-Based Outreach Model: A Manual to Reduce Risk HIV and Other Blood-Borne Infections in Drug Users. (2000) NCADI # BKD366
- An Individual Counseling Approach to Treat Cocaine Addiction: The Collaborative Cocaine Treatment Study Model. Manual 3 (1999) NCADI # BKD337
- Cognitive-Behavioral Approach: Treating Cocaine Addiction. Manual 1 (1998) NCADI # BKD254
- Community Reinforcement Plus Vouchers Approach: Treating Cocaine Addiction. Manual 2 (1998) NCADI # BKD255

NIAAA Publications—These publications are available in PDF format or can be ordered on-line at *http://www.niaaa.nih.gov/publications/guides.htm*. An order form for the Project MATCH series is available on-line at *http://www.niaaa.nih.gov/publications/match.htm*. All publications listed can be ordered through the NIAAA Publications Distribution Center, P.O. Box 10686, Rockville, MD 20849–0686.

- * Alcohol Problems in Intimate Relationships: Identification and Intervention. A Guide for Marriage and Family Therapists (2003) NIH Pub. No. 03–5284
- * Helping Patients with Alcohol Problems: A Health Practitioner's Guide. (2003) NIH Pub. No. 03–3769
- Cognitive-Behavioral Coping Skills Therapy Manual. Project MATCH Series, Vol. 3 (1995) NIH Pub. No. 94–3724
- Twelve Step Facilitation Therapy Manual. Project MATCH Series, Vol. 1 (1995) NIH Pub. No. 94–3722
- Motivational Enhancement Therapy Manual. Project MATCH Series, Vol. 2 (1994) NIH Pub. No. 94–3723

Appendix G—Statement of Assurance

As the authorized representative of the applicant organization, I assure SAMHSA that if {insert name of organization} application is within the funding range for a grant award, the organization will provide the SAMHSA Government Project Officer (GPO) with the following documents. I understand that if this documentation is not received by the GPO within the specified timeframe, the application will be removed from consideration for an award and the funds will be provided to another applicant meeting these requirements.

- A letter of commitment that specifies the nature of the participation and what service(s) will be provided from every service provider organization, listed in Appendix 1 of the application, that has agreed to participate in the project;
- Official documentation that all service provider organizations participating in the project have been providing relevant services for a minimum of 2 years prior to the date of the application in the area(s) in which services are to be provided. Official documents must definitively establish that the organization has provided relevant services for the last 2 years; and
- Official documentation that all participating service provider organizations are in compliance with all local (city, county) and State/tribal requirements for licensing, accreditation, and certification or official documentation from the appropriate agency of the applicable State/tribal, county, or other governmental unit that licensing, accreditation, and certification requirements do not exist. (Official documentation is a copy of each service provider organization's license, accreditation, and certification. Documentation of accreditation will not be accepted in lieu of an organization's license. A statement by, or letter from, the applicant organization or from a provider organization attesting to compliance with licensing, accreditation and certification or that no licensing, accreditation, certification requirements exist does not constitute adequate documentation.)

Signature of Authorized Representative

Date

Dated: August 13, 2003.

Anna Marsh,

Acting Executive Officer.

[FR Doc. 03–21116 Filed 8–20–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Proposed Changes in Announcement of SAMHSA Discretionary Grant Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of proposed standard infrastructure grant announcement.

SUMMARY: Beginning in Fiscal Year (FY) 2004, the Substance Abuse and Mental Health Services Administration (SAMHSA) plans to change its approach to announcing and soliciting

applications for its discretionary grant programs. The following announcement is a proposed standard announcement for SAMHSA's Infrastructure Grants. *It is not an actual grant solicitation.*

Authority: Sections 509, 516, and 520A of the Public Health Service Act.

When published in final, the standard SAMHSA Infrastructure Grant announcement will be used by applicants in conjunction with specific Notices of Funding Availability (NOFAs) to prepare applications for certain SAMHSA grants. SAMHSA is providing this draft announcement for public review and comment in order to ensure that the field is aware of the planned change and has an opportunity to identify areas where the announcement is unclear and needs improvement.

DATES: Submit written comments on this proposal by October 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding SAMHSA's proposed standard Infrastructure Grant announcement to: Office of Policy, Planning and Budget, SAMHSA, Attn: Jennifer Fiedelholtz by fax (301–594–6159) or e-mail (*samhsa_standard_grants@samhsa.gov*). Please include a phone number in your e-mail, so that SAMHSA staff may contact you if there are questions about your comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Fiedelholtz of the Office of Policy, Planning and Budget, SAMHSA, by fax (301–594–6159) or e-mail (*samhsa_standard_grants@samhsa.gov*). If you would like a SAMHSA staff person to call you about your questions, please state this in an e-mail or fax request and provide a telephone number where you can be reached between 8:30 and 5 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION: Starting in FY 2004, SAMHSA plans to change its approach to announcing and soliciting applications for its discretionary grants. SAMHSA plans to issue the following Infrastructure Grant announcement as one of four standard grant announcements that will describe the general program design and provide application instructions for four types of grants "Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service-to-Science Grants. The standard announcements will be used in conjunction with brief Notices of Funding Availability (NOFAs) that will announce the availability of funds for specific grant funding opportunities within each of the standard grant programs (*e.g.*, Homeless Treatment grants, Statewide Family Network grants, or HIV/AIDS and Substance Abuse Prevention Planning Grants).

A complete description of the proposed process, the other three proposed standard announcements and a sample NOFA are contained in separate notices in this issue of the **Federal Register**.

SAMHSA welcomes public comment on all aspects of the following announcement. In particular, SAMHSA welcomes comment on the following issues:

1. Is the difference between the standard announcement and a NOFA clear?

2. Are the programmatic requirements for SAMHSA's Infrastructure Grants clear?

3. Are the goals/objectives for SAMHSA's Infrastructure Grants clear?

4. If you are a potential applicant for a SAMHSA Infrastructure Grant, do you believe you will be able to use the standard Infrastructure Grant announcement with the NOFA to prepare your application? Will the ability to anticipate programmatic requirements through reviewing the standard grant announcements ahead of time improve your ability to prepare a solid application? Is the additional benefit "worth" the "cost" of having to use two different documents to prepare your application?

Text of Proposed Standard Announcement

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Infrastructure Grants—INF 04 (Initial Announcement)

Catalogue of Federal Domestic Assistance (CFDA) No.: 93.243 (unless otherwise specified in a NOFA in the **Federal Register** and on *http://www.grants.gov*).

Authority: Sections 509, 516 and/or 520A of the Public Health Service Act, as amended, and subject to the availability of funds (unless otherwise specified in a NOFA in the **Federal Register** and on *http://www.grants.gov*).

Key Dates

Application Deadline	This Program Announcement provides general instructions and guidelines for multiple funding opportunities. Application deadlines for specific funding opportunities will be published in Notices of Funding Availability (NOFAs) in the **Federal Register** and on *http://www.grants.gov*.
Intergovernmental Review (E.O. 12372)	Letters from State Single Point of Contact (SPOC) are due no later than 60 days after application deadline.
Public Health System Impact Statement (PHSIS)/SSA Coordination.	Applicants must send the PHSIS to appropriate State and local health agencies by application deadline. Comments from Single State Agency are due no later than 60 days after application deadline.

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I. Funding Opportunity Description

A. Introduction

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces its intent to solicit applications for Infrastructure Grants. These grants will increase the capacity of mental health and/or substance abuse service systems to support effective programs and services. Applicants who seek Federal support to develop or enhance their service system infrastructure in order to support effective substance abuse and/or mental health services should apply for awards under this announcement.

SAMHSA also funds grants under three other standard grant announcements:

- *Services Grants* provide funding to implement substance abuse and mental health services.
- *Best Practices Planning and Implementation Grants* help communities and providers identify practices to effectively meet local needs, develop strategic plans for implementing/adapting those practices and pilot-test practices prior to full-scale implementation.
- *Service to Science Grants* document and evaluate innovative practices that address critical substance abuse and mental health service gaps but that have not yet been formally evaluated.

This announcement describes the general program design and provides application instructions for all SAMHSA Infrastructure Grants. The availability of funds for specific Infrastructure Grants will be announced in supplementary Notices of Funding Availability (NOFAs) in the **Federal Register** and at *http://www.grants.gov*—the Federal grant announcement Web page.

Typically, funding for Infrastructure Grants will be targeted to specific populations and/or issue areas, which will be specified in the NOFAs. The NOFAs will also:

- Specify total funding available for the first year of the grants and the expected size and number of awards;
- Provide the application deadline;
- Note any specific program requirements for each funding opportunity; and
- Include any limitations or exceptions to the general provisions in this announcement (*e.g.*, eligibility, allowable activities).

It is, therefore, critical that you consult the NOFA as well as this announcement in developing your grant application.

B. Expectations

SAMHSA's Infrastructure Grants support an array of activities to help the grantee build a solid foundation for delivering and sustaining effective substance abuse prevention and/or treatment and/or mental health services.

SAMHSA recognizes that each applicant will start from a unique point in developing infrastructure and will serve populations/communities with specific needs. Awardees may pursue diverse strategies and methods to achieve their infrastructure development and capacity expansion goals. Successful applicants will provide a coherent and detailed conceptual "roadmap" of the process by which they have assessed or intend to assess service system needs and plan/implement infrastructure development strategies that meet those needs. The plan put forward in the grant application must show the linkages among needs, the proposed infrastructure development strategy, and increased system capacity that will enhance and sustain effective programs and services.

1. Allowable Activities

SAMHSA's Infrastructure Grants will support the following types of activities:

Infrastructure Development—Infrastructure Grant funds must be used primarily to support infrastructure development, including the following types of activities:

- Needs assessment;
- Strategic planning;
- Financing/coordination of funding streams;
- Organizational/structural change (*e.g.*, to create locus of responsibility for a specific issue/population, or to increase access to or efficiency of services);
- Development of interagency coordination mechanisms;
- Provider/network development;
- Policy development to support needed service system improvements (*e.g.*, rate-setting activities, establishment of standards of care, development/revision of credentialing, licensure, or accreditation requirements);
- Quality improvement efforts;
- Performance measurement development;
- Workforce development (*e.g.*, training, support for licensure, credentialing, or accreditation);
- Data infrastructure/MIS development.

Implementation Pilots (maximum 15 percent of total grant award)—Depending on the scope of the project (see description of award categories below), up to 15 percent of the total grant award may be used for "implementation pilots" to test the effectiveness of the infrastructure changes on services delivery. Funds may not be used to provide direct services except in the context of an implementation pilot.

2. Grantee Meetings

You must plan to send a minimum of two people (including the Project Director) to at least one joint grantee meeting in each year of the grant, and you must include funding for this travel in your budget. At these meetings, grantees will present the results of their projects and Federal staff will provide technical assistance. Each meeting will be 3 days. These meetings will usually be held in the Washington, DC, area, and attendance is mandatory.

3. Data and Performance Measurement

The Government Performance and Results Act of 1993 (Pub. L. 103–62, or "GPRA") requires all Federal agencies to:

- Develop strategic plans that specify what they will accomplish over a 3 to 5-year period;
- Set performance targets annually related to their strategic plan; and
- Report annually on the degree to which the previous year's targets were met.

The law further requires agencies to link their performance to their budgets. Agencies are expected to evaluate their programs regularly and to use results of these evaluations to explain their successes and failures.

To meet these requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. You are required to report these GPRA data to SAMHSA on a timely basis so that performance results are available to support budgetary decisions.

In particular, you will be required to provide data on a core set of required measures, depending on the SAMHSA Center that is funding the grant. In your application, you must demonstrate your ability to collect and report on these measures, and you must provide some baseline data.

Appendix A provides the performance indicators for SAMHSA's Infrastructure grantees. For complete information on the core measures relating to these indicators and the methodology for data collection and reporting, please consult the following Web sites:

- Center for Mental Health Services-funded grants: *http://www.samhsa.gov/aps/CMHS/GPRA*;

• Center for Substance Abuse Prevention-funded grants: *http://www.samhsa.gov/aps/CSAP/GPRA*;

• Center for Substance Abuse Treatment-funded-grants: *http://www.samhsa.gov/aps/CSAT/GPRA*;

This information will be provided in the hard copy application kits distributed by SAMHSA's Clearinghouses, as well.

In some instances, you may be required to participate in cross-site evaluations and comply with additional data collection requirements; if so, this will be specified in the NOFA. Before grant award, a final agreement regarding data collection will be reached. The terms and conditions of the grant award will specify the data to be submitted and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

4. Evaluation

Grantees must evaluate their projects, and applicants are required to describe their evaluation plans in their applications. The evaluation should be designed to provide regular feedback to the project to improve services. Therefore, the evaluation must include the required performance measures described above. The evaluation must include both process and outcome components. Process and outcome evaluations must measure change relating to project goals and objectives over time compared to baseline information. Control or comparison groups are not required. You must consider your evaluation plan when preparing the project budget.

Process components should address issues such as:

• How closely did implementation match the plan?

• What types of deviation from the plan occurred?

• What led to the deviations?

• What impact did the deviations have on the intervention and evaluation?

• Who provided (program, staff) what services (modality, type, intensity, duration), to whom (individual characteristics), in what context (system, community), and at what cost (facilities, personnel, dollars)?

Outcome components should address issues such as:

• What was the effect of infrastructure development on service capacity and other system outcomes?

• What program/contextual factors were associated with outcomes?

• What individual factors were associated with outcomes?

• How durable were the effects?

If the project includes an implementation pilot involving services delivery, the evaluation should include client and system outcomes.

No more than 20% of the total grant award may be used for evaluation and data collection. The evaluation and data collection may be considered "Infrastructure" and/or "Implementation Pilots" expenditures, depending on their purpose.

II. Award Information

A. Award Amount

The NOFA will specify the expected award amount for each funding opportunity. Regardless of the amount specified in the NOFA, actual award amounts will depend on the availability of funds.

Two types of Infrastructure Grants will be made:

Category 1—Small Infrastructure Grants. The Category 1 grants will be limited in scope as specified in the NOFA. For example, allowable activities might be limited to workforce development, data infrastructure, or strategic planning. Implementation pilots are not allowed in Category 1 awards. Category 1 awards are expected to be for a period of 1–3 years in amounts ranging from $250,000–$500,000 per year.

Category 2—Comprehensive Infrastructure Grants. The scope of the Category 2 grants will be much larger. While applicants are not required to include all of the allowable activities in their proposed projects, the proposed projects must encompass multiple domains (*e.g.*, needs assessment, strategic and financial planning, organizational/structural change, and network development). Category 2 awards may use a maximum of 15 percent of the total grant award for implementation pilots. Category 2 awards are expected to be for a period of 3–5 years in amounts ranging from $750,000–$3 million per year.

Applications with proposed budgets that exceed the allowable amount as specified in the NOFA in any year of the proposed project will be screened out and will not be reviewed.

Annual continuation awards will depend on the availability of funds, grantee progress in meeting project goals and objectives, and timely submission of required data and reports.

B. Funding Mechanism

The NOFA will indicate whether awards for each funding opportunity will be made as grants or cooperative agreements (*see* the Glossary in Appendix C for further explanation of these funding mechanisms). For cooperative agreements, the NOFA will describe the nature of Federal involvement in project performance and specify roles and responsibilities of grantees and Federal staff.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants are domestic public and private *nonprofit* entities. For example, State, local or tribal governments; public or private universities and colleges; community- and faith-based organizations; and tribal organizations may apply. The statutory authority for this program precludes grants to for-profit organizations. The NOFA will indicate any limitations on eligibility.

B. Cost-Sharing

Cost-sharing is not required in this program, and applications will not be screened out on the basis of cost-sharing. However, you may include cash or in-kind contributions in your proposal as evidence of commitment to the proposed project. Reviewers may consider this information in evaluating the quality of the application.

C. Other

SAMHSA applicants must comply with certain program requirements, including:

• Provisions relating to participant protection and the protection of human subjects specified in Section VIII–A of this document;

• Budgetary limitations as specified in Sections I, II, and IV–E of this document; and

• Documentation of nonprofit status as required in the PHS 5161–1.

You also must comply with any additional program requirements specified in the NOFA, such as the required signature of certain officials on the face page of the application and/or required memoranda of understanding with certain signatories.

Applications that do not comply with the eligibility and specific program requirements for the funding opportunity for which the application is submitted will be screened out and will not be reviewed.

IV. Application and Submission Information

(To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix B of this document.)

A. Address To Request Application Package

You may request a complete application kit by calling one of SAMHSA's national clearinghouses:

- For substance abuse prevention or treatment grants, call the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686.
- For mental health grants, call the National Mental Health Information Center at 1–800–789–CMHS (2647).

You also may download the required documents from the SAMHSA Web site at *http://www.samhsa.gov*. Click on "grant opportunities."

Additional materials available on this Web site include:

- A technical assistance manual for potential applicants;
- Standard terms and conditions for SAMHSA grants;
- Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, consumer and family participation, and evaluation); and
- Enhanced instructions for completing the PHS 5161–1 application.

B. Content and Form of Application Submission

1. Required Documents

SAMHSA application kits include the following documents:

- PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. You must use the PHS 5161–1 unless otherwise specified in the NOFA. Applications that are not submitted on the required application form will be screened out and will not be reviewed.
- Program Announcement (PA)—Includes instructions for the grant application. This document is the PA.
- Notice of Funding Availability (NOFA)—Provides specific information about availability of funds, as well as any exceptions or limitations to provisions in the PA. The NOFAs will be published in the **Federal Register**, as well as on the Federal grants Web site (*http://www.grants.gov*).

You must use all of the above documents in completing your application.

2. Order of Sections

Applications must be complete and contain all information needed for review. In order for your application to be complete, it must include the following sections in the order listed. Applications that do not contain these sections will be screened out and will not be reviewed.

- *Face Page*—Use Standard Form (SF) 424, which is part of the PHS 5161–1. [**Note:** Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.]
- *Abstract*—Your total abstract should not be longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reporting to Congress, or press releases.
- *Table of Contents*—Include page numbers for each of the major sections of your application and for each appendix.
- *Budget Form*—Use SF 424A, which is part of the 5161–1. Fill out Sections B, C, and E of the SF 424A.
- *Project Narrative and Supporting Documentation*—The Project Narrative describes your project. It consists of Sections A through D. These sections in total may not be longer than 25 pages. More detailed instructions for completing each section of the Project Narrative are provided in "Section V—Application Review Information" of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections E through G. There are no page limits for these sections, except for Section F, Biographical Sketches/Job Descriptions.

- *Section E*—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project. Be sure to show that no more than 20% of the total grant award will be used for data collection and evaluation. If you are proposing a services implementation pilot (only allowed for Category 2 applicants), show that no more than 15% of the total grant award will be used for the pilot.
- *Section F*—Biographical Sketches and Job Descriptions.
- Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.
- Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.
- Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.
- *Section G*—Confidentiality and SAMHSA Participant Protection/Human Subjects. Instructions for completing Section G of your application are provided below in Section VIII–A of this document.
- *Appendices 1 through 5*—Use only the appendices listed below. Do not use more than 30 pages (excluding data collection instruments and interview protocols) for the appendices. Do not use appendices to extend or replace any of the sections of the Project Narrative unless specifically required in the NOFA. Reviewers will not consider them if you do.
- *Appendix 1:* Letters of Support;
- *Appendix 2:* Data Collection Instruments/Interview Protocols;
- *Appendix 3:* Sample Consent Forms;
- *Appendix 4:* Letter to the SSA (if applicable; see Section VIII–C of this document); and
- *Appendix 5:* A copy of the State Strategic Plan, a State needs assessment, or a letter from the State indicating that the proposed project addresses a State-identified priority.
- *Assurances*—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1.
- *Certifications*—Use the "Certifications" forms found in PHS 5161–1.
- *Disclosure of Lobbying Activities*—Use Standard Form LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of the information designed to support or defeat legislation pending before the Congress or State legislatures. This includes "grass roots" lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

• *Checklist*—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

3. Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

• Text must be legible.
• Paper must be white and 8.5 by 11.0 in size.
• Pages must be typed single-spaced with one column per page.
• Page margins must be at least one inch.
• Type size in the Project Narrative cannot exceed an average of 15 characters per inch when measured with a ruler. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)
• Photo reduction or condensation of type cannot be closer than 15 characters per inch or 6 lines per inch.
• The pages cannot have printing on both sides.
• Page limitations specified for the Project Narrative and Appendices cannot be exceeded.
• Information must be sufficient for review.

To facilitate review of your application, follow these additional guidelines:

• Applications should be prepared using black ink. This improves the quality of the copies of applications that are provided to reviewers.
• Use white paper only. Do not use colored, heavy, or light-weight paper or any material that cannot be photocopied using automatic photocopying machines. Odd-sized and oversized attachments, such as posters, will not be copied or sent to reviewers. Do not send videotapes, audiotapes, or CD–ROMs.
• Pages should be numbered consecutively from beginning to end so that information can be located easily during review of the application. For example, the cover page should be labeled "page 1," the abstract page should be "page 2," and the table of contents page should be "page 3." Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue in the sequence

C. Submission Dates and Times

Deadlines for submission of applications for specific funding opportunities will be included in the NOFAs published in the **Federal Register** and posted on the Federal grants Web site (*http://www.grants.gov*).

Your application must be received by the application deadline. Applications sent through postal mail and received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

D. Intergovernmental Review (E.O. 12372) Requirements

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. Instructions for this review are included in Section VIII–B of this document. Section VIII–C provides instructions for the Public Health System Impact Statement (PHSIS) and submission of comments from the Single State Agency (SSA).

E. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

• Institutions of Higher Education: OMB Circular A–21;
• State and Local Governments: OMB Circular A–87;
• Nonprofit Organizations: OMB Circular A–122; and
• Appendix E Hospitals: 45 CFR part 74.

In addition, SAMHSA Infrastructure Grant recipients must comply with the following funding restrictions:

• Infrastructure grant funds must be used for purposes supported by the program.
• If requested project funds exceed $750,000, a maximum of 15% of grant award funds may be used for implementation pilots. Direct services may be funded only in the context of an implementation pilot.
• No more than 20% of the grant award may be used for evaluation and data collection expenses. These expenses may be considered infrastructure or implementation pilot expenses, depending on the nature of the evaluation and data collection.
• Infrastructure funds may not be used to pay for the purchase or construction of any building or structure to house any part of the grant project. Applications may request up to $75,000 for renovations and alterations of existing facilities.

F. Other Submission Requirements

1. Where To Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857.

Be sure to include the funding announcement number from the NOFA in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

2. How To Send Applications

Mail an original application and 2 copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

A. Evaluation Criteria

Your application will be reviewed and scored against the requirements listed below for developing the Project Narrative (Sections A–D). These sections describe what you intend to do with your project.

• In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the "Program Narrative" instructions found in the PHS 5161–1.
• Be sure to provide complete references for any literature cited in your Project Narrative. The reference list will not be counted toward the 25-page limit for these sections.
• You must use the four sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section.
• The Supporting Documentation you provide in Sections E–G, Appendices 1–5, and the references list will be considered by reviewers in assessing your response, along with the material in the Project Narrative.
• The number of points after each heading below is the maximum number

of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within each section.

Section A: Statement of Need (10 Points)

- Define the target population (including demographics) and proposed catchment area.
- Document the need for an enhanced infrastructure to increase the capacity to implement, sustain, and improve effective substance abuse prevention and/or treatment and/or mental health services for the proposed target population in the proposed catchment area. Documentation of need may come from local data or trend analyses, State data (*e.g.*, from State Needs Assessments), and/or national data (*e.g.*, from SAMHSA's National Household Survey on Drug Abuse and Health or from National Center for Health Statistics/Centers for Disease Control reports). For data sources that are not well known, provide sufficient information on how the data were collected so reviewers can assess the reliability and validity of the data.
- Describe the service gaps, barriers, and other problems related to the need for infrastructure development. Describe the stakeholders and resources in the target area that can help implement the needed infrastructure development.
- Non-tribal applicants must show that identified needs are consistent with priorities of the State. Include, in Appendix 5, a copy of the State Strategic Plan, a State needs assessment, or a letter from the State indicating that the proposed project addresses a State-identified priority. Tribal applicants must provide similar documentation relating to tribal priorities.

Section B: Proposed Approach (35 Points)

- Clearly state the purpose of the proposed project, with goals and objectives. Describe how achievement of goals will increase system capacity to support effective substance abuse and/or mental health services.
- Describe the proposed project. Provide evidence that the proposed activities meet the infrastructure needs and show how your proposed infrastructure development strategy will meet the goals and objectives.
- Provide a logic model that demonstrates the linkage between the identified need, the proposed approach, and outcomes.
- If you plan to include an advisory body in your project, describe its membership, roles and functions, and frequency of meetings.
- Describe any other organizations that will participate and their roles and responsibilities. Demonstrate their commitment to the project. Include letters of commitment/coordination/support from these community organizations in Appendix 1 of the application. Identify any cash or in-kind contributions that will be made to the project.
- Describe how the proposed project will address issues of age, race/ethnicity, culture, language, sexual orientation, disability, literacy, and gender in the target population.
- Describe the potential barriers to successful conduct of the proposed project and how you will overcome them.
- Describe how your activities will improve substance abuse prevention and/or treatment and/or mental health services.

Section C: Staff, Management, and Relevant Experience (25 Points)

- Provide a time line for the project (chart or graph) showing key activities, milestones, and responsible staff. [**Note**: The time line should be part of the Project Narrative. It should not be placed in an appendix.]
- Discuss the capability and experience of the applicant organization and other participating organizations with similar projects and populations, including experience in providing culturally appropriate/competent services.
- Provide a list of staff who will participate in the project, showing the role of each and their level of effort and qualifications. Include the Project Director, other key personnel such as the evaluator and treatment/prevention personnel.
- Describe the resources available for the proposed project (*e.g.*, facilities, equipment). If an implementation pilot is proposed that includes direct services, provide evidence that services will be provided in a location that is adequate, accessible, ADA compliant, and amenable to the target population.

Section D: Evaluation and Data (30 Points)

- Describe the process and outcome evaluation. Include specific performance measures and target outcomes related to the goals and objectives identified for the project in Section B of your Project Narrative.
- Document your ability to collect and report required performance data. (*See* Appendix A for required performance indicators.) Identify and justify any additional performance data to be collected.
- Describe plans for data collection, management, analysis, interpretation and reporting. Describe the existing approach to the collection of performance and other data, along with any necessary modifications. Be sure to include data collection instruments/interview protocols in Appendix 2.
- Describe how collection, analysis and reporting of performance data will be integrated into the evaluation activities.

Note: Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

B. Review and Selection Process

SAMHSA applications are peer-reviewed according to the review criteria listed above. For those programs where the individual award is over $100,000, applications must also be reviewed by the appropriate National Advisory Council.

C. Award Criteria

Decisions to fund a grant are based on:

- The strengths and weaknesses of the application as identified by the Peer Review Committee and, when appropriate, approved by the appropriate National Advisory Council;
- Availability of funds; and
- Equitable allocation of grants among the principal geographic regions of the United States. SAMHSA does not intend to award more than 2 grants per State for each funding opportunity.

VI. Award Administration Information

A. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can re-apply if there is another receipt date for the program.

B. Administrative and National Policy Requirements

• You must comply with all terms and conditions of the grant award. SAMHSA's standard terms and conditions are available on the SAMHSA Web site *(http://www.samhsa.gov)*.

• Depending on the nature of the specific funding opportunity and/or the proposed project as identified during review, additional terms and conditions may be identified in the NOFA or negotiated with the grantee prior to grant award. These may include, for example:

• Actions required to be in compliance with human subjects requirements;

• Requirements relating to additional data collection and reporting;

• Requirements relating to participation in a cross-site evaluation; or

• Requirements to address problems identified in review of the application.

• You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.

• In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services "Survey on Ensuring Equal Opportunity for Applicants." This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

C. Reporting Requirements

1. Progress and Financial Reports

• Grantees must provide annual and final progress reports. The final progress report must summarize information from the annual reports, describe the accomplishments of the project, and describe next steps for implementing plans developed during the grant period.

• Grantees must provide annual and final financial status reports. These reports may be included as separate sections of annual and final progress reports or can be separate documents.

Because SAMHSA is extremely interested in ensuring that infrastructure development and enhancement efforts can be sustained, your financial reports must explain plans to ensure the sustainability of efforts initiated under this grant. Initial plans for sustainability should be described in year 1 of the grant. In each subsequent year, you should describe the status of the project, successes achieved and obstacles encountered in that year.

• SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

2. Government Performance and Results Act

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. The performance requirements for SAMHSA's Infrastructure Grants are described in Section I–B under "Data and Performance Measurement" and listed in Appendix A of this document.

3. Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded project that are accepted for publication.

In addition, SAMHSA requests that grantees:

• Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.

• Include acknowledgment of the SAMHSA grant program as the source of funding for the project.

• Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

The NOFAs provide contact information for questions about program issues.

For questions on grants management issues, contact: Stephen Hudak, Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration/OPS, 5600 Fishers Lane, Rockwall II 6th Floor, Rockville, MD 20857, (301) 443–9666, *shudak@samhsa.gov*.

VIII. Other Information

A. SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

You must describe your procedures relating to Confidentiality, Participant Protection and the Protection of Human Subjects Regulations in Section G of your application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of your application may result in the delay of funding.

Confidentiality and Participant Protection: All applicants *must* address each of the following elements relating to confidentiality and participant protection. You must document how you will address these requirements or why they do not apply.

1. Protect Clients and Staff From Potential Risks

• Identify and describe any foreseeable physical, medical, psychological, social, legal, or other risks or adverse affects.

• Discuss risks that are due either to participation in the project itself or to the evaluation activities.

• Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.

• Identify plans to provide help if there are adverse effects to participants.

• Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

2. Fair Selection of Participants

• Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other groups.

• Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, or others who are likely to be vulnerable to HIV/AIDS.

• Explain the reasons for *including or excluding* participants.

• Explain how you will recruit and select participants. Identify who will select participants.

3. Absence of Coercion

• Explain if participation in the project is voluntary or required. Identify possible reasons why it is required, for example, court orders requiring people to participate in a program.

• If you plan to pay participants, state how participants will be awarded money or gifts.

• State how volunteer participants will be told that they may receive services even if they do not participate in the project.

4. Data Collection

• Identify from whom you will collect data (*e.g.*, from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.*, school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.

• Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.

• Provide in Appendix 2, "Data Collection Instruments/Interview Protocols," copies of *all* available data collection instruments and interview protocols that you plan to use.

5. Privacy and Confidentiality

• Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.

• Describe:

• How you will use data collection instruments.

• Where data will be stored.

• Who will or will not have access to information.

• How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

6. Adequate Consent Procedures

• List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used and how you will keep the data private.

• State:

• Whether or not their participation is voluntary.

• Their right to leave the project at any time without problems.

• Possible risks from participation in the project.

• Plans to protect clients from these risks.

• Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must get *written* informed consent.

• Indicate if you will get informed consent from participants or from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?

• Include sample consent forms in your Appendix 3, "Sample Consent Forms." If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

• Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data.

• Additionally, if other consents (*e.g.*, consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

7. Risk/Benefit Discussion

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations

Depending on the evaluation and data collection requirements of the particular funding opportunity for which you are applying or the evaluation design you propose in your application, you may have to comply with the Protection of Human Subjects Regulations (45 CFR 46). The NOFA will indicate whether all applicants for a particular funding opportunity must comply with the Protection of Human Subject Regulations.

Applicants must be aware that even if the Protection of Human Subjects Regulations do not apply to all projects funded under a given funding opportunity, the specific evaluation design proposed by the applicant may require compliance with these regulations.

Applicants whose projects must comply with the Protection of Human Subjects Regulations must describe the process for obtaining Institutional Review Board (IRB) approval fully in their applications. While IRB approval is not required at the time of grant award, these applicants will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and that IRB approval has been received prior to enrolling any clients in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the web at *http://ohrp.osophs.dhhs.gov*. You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301–496–7005).

B. Intergovernmental Review (E.O. 12372) Instructions

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR Part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and can be downloaded from the Office of Management and Budget (OMB) Web site at *http://www.whitehouse.gov/omb/grants/spoc.html*.

• Check the list to determine whether your State participates in this program. You do not need to do this if you are a federally recognized Indian tribal government.

• If your State participates, contact your SPOC as early as possible to alert

him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.

• For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.

• The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SPOC—Funding Announcement No. [fill in pertinent funding opportunity number from the NOFA].

C. Public Health System Impact Statement (PHSIS)

The Public Health System Impact Statement or PHSIS (Approved by OMB under control no. 0920–0428; see burden statement below) is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to the following Public Health System Reporting Requirements.

Community-based, non-governmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected no later than the pertinent receipt date for applications. This PHSIS consists of the following information:

• A copy of the face page of the application (SF 424); and

• A summary of the project, no longer than one page in length, that provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with appropriate State or local health agencies.

For SAMHSA grants, the appropriate State agencies are the Single State Agencies (SSAs) for substance abuse and mental health. A listing of the SSAs can be found on SAMHSA's Web site at *http://www.samhsa.gov*. If the proposed project falls within the jurisdiction of more than one State, you should notify all representative SSAs.

Applicants who are not the SSA *must* include a copy of a letter transmitting the PHSIS to the SSA in Appendix 4, "Letter to the SSA." The letter must notify the State that, if it wishes to comment on the proposal, its comments should be sent not later than 60 days after the application deadline to: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SSA—Funding Announcement No. [fill in pertinent funding opportunity number from NOFA].

In addition:

• Applicants may request that the SSA send them a copy of any State comments.

• The applicant must notify the SSA within 30 days of receipt of an award.

[Public reporting burden for the Public Health System Reporting Requirement is estimated to average 10 minutes per response, including the time for copying the face page of SF 424 and the abstract and preparing the letter for mailing. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0920–0428. Send comments regarding this burden to CDC Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, GA 30333, ATTN: PRA (0920–0428).]

Appendix A—SAMHSA Infrastructure Indicators

The purpose of infrastructure programs is to develop or enhance infrastructure in order to improve services. The primary domain to be measured is systems change (specific to the type of change proposed.) If the grant includes a services pilot, additional domains include persons served, cost per person, and other individual outcomes. This list of indicators and related measures will be updated periodically. The Notice of Funding Availability (NOFA) will specify which indicators are required for a particular funding opportunity. Applicants must provide expected baseline data for *asterisked items in the grant application. Grantees must collect and report data at the interval (*e.g.*, quarterly, annually) specified in the NOFA. Specific instructions for data collection will be provided on SAMHSA's Web site and in application kits. Some NOFAs may specify indicators and measures not on this list or may request grantees to identify measures appropriate to their specific project.

ACCOUNTABILITY

Percent of grantees reporting valid data.

CAPACITY

* Number of persons served (Includes screening and assessment).

CMHS and CST grantees: Percent of providers providing services within approved costs (Only for programs conducting a service pilot. Cost bands to be proposed in application; to be approved by SAMHSA prior to award. A cost measure for substance abuse prevention is under development.)

* Number, type, and capacity of services/product available.

* Percent of persons needing services/product who receive them.

EFFECTIVENESS

Participation of persons served and family members in planning, policy, and service delivery.

Number of service/systems improvements implemented; maintained post-funding.

* Percent of programs reporting positive system outcomes (and individual outcomes, if conducting a service pilot)

Only if service pilot—CSAP grantees: Difference between 30 day substance use of population served by program and comparable local and national rates. CSAT grantees: Number of people who show no past month substance use 6 months post treatment admission.

Grantees also will be required to report on several outcomes from the following list, as specified in the NOFA:

Individual outcomes: Participants (adults or children) disapproving of substance use; perceiving personal health risks associated with substance abuse; increasing age of first use; reporting abstinence at discharge; decreasing substance abuse risk factors related to spread of HIV/AIDS, including risky sexual behavior and sharing needles; improving employment/school attendance; having no criminal justice involvement; having stable living situation; reporting (consumer/family) improvement in behavioral/emotional symptoms.

System outcomes: Percent of referrals from juvenile/adult justice systems to systems of care; decreased days in inpatient/residential facilities; readmission rates; past 30 day utilization of inpatient, outpatient facilities; inpatient, outpatient, or emergency room treatment for physical complaint, mental or emotional difficulties, or alcohol or substance abuse; seclusion/restraint deaths or injuries; number of communities with defined systems/continuum of care; number of persons contacted through outreach who enroll in services; percent of providers, administrators trained who report adopting approved service methods; percent of participants in sponsored events who have used information to change their practices; number of science based programs implemented. Completion and documentation of one or more of the following, depending upon the scope of the project: Needs assessment; revised financing plan for coordinating funding streams; organizational/structural change or quality improvements; coordination and network improvements; workforce improvements; data infrastructure/performance measurement improvements.

Appendix B—Checklist for Application Formatting Requirements

Your application must adhere to these formatting requirements. Failure to do so will result in your application being screened out and returned to you without review. In addition to these formatting requirements, there may be programmatic requirements specified in the NOFA. Please check the NOFA before preparing your application.

- Use the PHS 5161–1 application.
- Include the 10 application components required for SAMHSA applications (*i.e.*, Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist.)
- Provide legible text.
- Use white paper, 8.5″ by 11.0″ in size.
- Type single-spaced text with one column per page.
- Use margins that are at least 1 inch.
- Use type size in the Project Narrative that does not exceed an average of 15 characters per inch when measured with a ruler. Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.
- Do not use photo reduction or condensation of type closer than 15 characters per inch or 6 lines per inch.
- Print on one side of the paper only; do not print on both sides.
- Do not exceed page limitations specified for the Project Narrative (25 pages) and Appendices (30 pages).
- Provide sufficient information for review.
- Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or postmarked a week prior to the application deadline will not be reviewed.
- Applications that do not comply with the following requirements and any additional program requirements specified in the NOFA, or are otherwise unresponsive to PA guidelines will be screened out and returned to the applicant without review:
- Provisions relating to participant protection and the protection of human subjects specified in Section VIII–A of this document.
- Budgetary limitations as specified in Sections I, II and IV–E of this document.
- Documentation of nonprofit status as required in the PHS 5161–1.

To facilitate review of your application, follow these additional guidelines. Failure to follow these guidelines will not result in your application being screened out. However, following these guidelines will help reviewers to consider your application.

- Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.
- Send the original application and two copies to the mailing address in the PA. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Appendix C—Glossary

Best Practice: Best practices are practices that incorporate the best objective information currently available from recognized experts regarding effectiveness and acceptability.

Cooperative Agreement: A cooperative agreement is a form of Federal grant. Cooperative agreements are distinguished from other grants in that, under a cooperative agreement, substantial involvement is anticipated between the awarding office and the recipient during performance of the funded activity. This involvement may include collaboration, participation, or intervention in the activity. HHS awarding offices use grants or cooperative agreements (rather than contracts) when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

Cost-Sharing or Matching: Cost-sharing refers to the value of allowable non-Federal contributions toward the allowable costs of a Federal grant project or program. Such contributions may be cash or in-kind contributions. For SAMHSA grants, cost-sharing or matching is not required, and applications will not be screened out on the basis of cost-sharing. However, applicants often include cash or in-kind contributions in their proposals as evidence of commitment to the proposed project. This is allowed, and this information may be considered by reviewers in evaluating the quality of the application.

Grant: A grant is the funding mechanism used by the Federal Government when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

In-Kind Contribution: In-kind contributions toward a grant project are non-cash contributions (*e.g.*, facilities, space, services) that are derived from non-Federal sources, such as State or sub-State non-Federal revenues, foundation grants, or contributions from other non-Federal public or private entities.

Practice: A practice is any activity, or collective set of activities, intended to improve outcomes for people with or at risk for substance abuse and/or mental illness. Such activities may include direct service provision, or they may be supportive activities, such as efforts to improve access to and retention in services, organizational efficiency or effectiveness, community readiness, collaboration among stakeholder groups, education, awareness, training, or any other activity that is designed to improve outcomes for people with or at risk for substance abuse or mental illness.

Practice Support System: This term refers to contextual factors that affect practice delivery and effectiveness in the pre-adoption phase, delivery phase, and post-delivery phase, such as (a) community collaboration and consensus building, (b) training and overall readiness of those implementing the practice, and (c) sufficient ongoing supervision for those implementing the practice.

Stakeholder: A stakeholder is an individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

Target population catchment area: The target population catchment area is the geographic area from which the target population to be served by a program will be drawn.

Wraparound Service: Wraparound services are non-clinical supportive services—such as child care, vocational, educational, and transportation services—that are designed to improve the individual's access to and retention in the proposed project.

Dated: August 13, 2003.

Anna Marsh,

Acting Executive Officer.

[FR Doc. 03–21117 Filed 8–20–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Proposed Changes in Announcement of SAMHSA Discretionary Grant Funding Opportunities

Authority: Sections 509, 516, and 520A of the Public Health Service Act.

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of proposed standard best practices planning and implementation grant announcement.

SUMMARY: Beginning in Fiscal Year (FY) 2004, the Substance Abuse and Mental Health Services Administration (SAMHSA) plans to change its approach to announcing and soliciting applications for its discretionary grant programs. The following announcement is a proposed standard announcement for SAMHSA's Best Practices Planning and Implementation (BPPI) Grants. *It is not an actual grant solicitation.*

When published in final, the standard SAMHSA BPPI Grant announcement will be used by applicants in conjunction with specific Notices of Funding Availability (NOFAs) to prepare applications for certain SAMHSA grants. SAMHSA is providing this draft announcement for public review and comment in order to ensure that the field is aware of the planned

change and has an opportunity to identify areas where the announcement is unclear and needs improvement.

DATES: Submit written comments on this proposal by October 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding SAMHSA's proposed standard BPPI Grant announcement to: Office of Policy, Planning and Budget, SAMHSA, Attn: Jennifer Fiedelholtz by fax (301–594–6159) or e-mail (*samhsa_standard_grants@samhsa.gov*). Please include a phone number in your e-mail, so that SAMHSA staff may contact you if there are questions about your comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Fiedelholtz of the Office of Policy, Planning and Budget, SAMHSA, by fax (301–594–6159) or e-mail (*samhsa_standard_grants@samhsa.gov*). If you would like a SAMHSA staff person to call you about your questions, please state this in an email or fax request and provide a telephone number where you can be reached between 8:30 and 5 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION: Starting in FY 2004, SAMHSA plans to change its approach to announcing and soliciting applications for its discretionary grants. SAMHSA plans to issue the following BPPI Grant announcement as one of four standard grant announcements that will describe the general program design and provide application instructions for four types of grants—Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service-to-Science Grants. The standard announcements will be used in conjunction with brief Notices of Funding Availability (NOFAs) that will announce the availability of funds for specific grant funding opportunities within each of the standard grant programs (*e.g.*, Homeless Treatment grants, Statewide Family Network grants, or HIV/AIDS and Substance Abuse Prevention Planning Grants).

A complete description of the proposed process, the other three proposed standard announcements and a sample NOFA are contained in separate notices in this issue of the **Federal Register**.

SAMHSA welcomes public comment on all aspects of the following announcement. In particular, SAMHSA welcomes comment on the following issues:

1. Is the difference between the standard announcement and a NOFA clear?

2. Are the programmatic requirements for SAMHSA's BPPI Grants clear?

3. Are the goals/objectives for SAMHSA's BPPI Grants clear?

4. If you are a potential applicant for a SAMHSA BPPI Grant, do you believe you will be able to use the standard BPPI Grant announcement with the NOFA to prepare your application? Will the ability to anticipate programmatic requirements through reviewing the standard grant announcements ahead of time improve your ability to prepare a solid application? Is the additional benefit "worth" the "cost" of having to use two different documents to prepare your application?

Text of Proposed Standard Announcement

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Best Practices Planning and Implementation Grants BPPI 04 (Initial Announcement)

Catalogue of Federal Domestic Assistance (CFDA) No.: 93.243 (unless otherwise specified in a NOFA in the **Federal Register** and on *http://www.grants.gov*)

Authority: Sections 509, 516 and/or 520A of the Public Health Service Act, as amended and subject to the availability of funds (unless otherwise specified in a NOFA in the **Federal Register** and on *http://www.grants.gov*)

Key Dates

Application Deadline	This Program Announcement provides instructions and guidelines for multiple funding opportunities. Application deadlines for specific funding opportunities will be published in Notices of Funding Availability (NOFAs) in the **Federal Register** and on *http://www.grants.gov*.
Intergovernmental Review (E.O. 12372)	Letters from State Single Point of Contact (SPOC) are due 60 days after application deadline.
Public Health System Impact Statement (PHSIS)/Single State Agency Coordination.	Applicants must send the PHSIS to appropriate State and local health agencies by application deadline. Comments from Single State Agency are due 60 days after application deadline.

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I. Funding Opportunity Description

A. Introduction

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces its intent to solicit applications for Best Practices Planning and Implementation (BPPI) grants for substance abuse prevention, substance abuse treatment, and mental health services. These grants will help communities and providers identify substance abuse prevention, substance abuse treatment, and/or mental health practices, develop strategic plans for implementing/adapting those practices, and pilot-test the practices. The practices proposed by applicants for SAMHSA's BPPI grants must incorporate the best objective information available from recognized experts regarding effectiveness and acceptability. Often, these practices will have strong evidence of effectiveness.

However, because the evidence base is limited in some areas, SAMHSA may fund some practices for which the evidence of effectiveness is based on formal consensus among recognized experts in the field and/or evaluation studies that have not been published in the peer reviewed literature.

SAMHSA also funds grants under three other standard grant announcements:

- *Services Grants* provide funding to implement substance abuse and mental health services.
- *Infrastructure Grants* support identification and implement systems changes but are not designed to fund services.
- *Service to Science Grants* document and evaluate innovative practices that address critical substance abuse and mental health service gaps but that have not yet been formally evaluated.

This announcement describes the general program design and provides application instructions for all SAMHSA BPPI Grants. The availability of funds for specific BPPI Grants will be announced in supplementary Notices of Funding Availability (NOFAs) in the **Federal Register** and at *http://www.grants.gov*—the Federal grant announcement Web page.

Typically, funding for BPPI Grants will be targeted to specific populations and/or issue areas, which will be specified in the NOFAs. The NOFAs will also:

- Specify total funding available for the first year of the grants and the expected size and number of awards;
- Provide the application deadline;
- Note any specific program requirements for each funding opportunity; and
- Include any limitations or exceptions to the general provisions in this announcement (*e.g.*, eligibility, award size, allowable activities).

It is, therefore, critical that you consult the NOFA as well as this announcement in developing your grant application.

B. Expectations

SAMHSA's BPPI program promotes the use of practices that incorporate the best objective information available from recognized experts regarding effectiveness and acceptability. SAMHSA refers to these as "best practices." BPPI grants may address needs in the areas of substance abuse prevention, substance abuse treatment and/or mental health services. SAMHSA understands that the "best practices" proposed for BPPI grants may need to be adapted to certain populations. Therefore, SAMHSA's BPPI grants support adaptation and evaluation of best practices in addition to planning and implementation.

1. Documenting the Evidence-Base for Selected Practices

Applicants must show that their proposed practices meet the standard for effectiveness. The practices proposed by applicants for SAMHSA's BPPI grants must incorporate the best objective information available from recognized experts regarding effectiveness and acceptability. Often, these practices will have strong evidence of effectiveness. However, applicants may propose practices with a sound, but limited, evidence base.

Applicants proposing to implement practices included in the following sources meet the standard of effectiveness for SAMHSA's BPPI Grants, and will not be required to provide further documentation of the practice's effectiveness:

- SAMHSA's National Registry of Effective Programs (NREP) (see Appendix D);
- Center for Mental Health Services (CMHS) Evidence Based Practice Tool Kits (see Appendix E);
- List of Evidence-Based Substance Abuse Treatment Practices (see Appendix F); and
- Additional practices identified in the NOFA for a specific funding opportunity.

Applicants for Phase II awards that have already received Phase I awards also have met the standard for effectiveness.

Applicants proposing practices that have *not* been identified by SAMHSA as meeting the required effectiveness standard must show that their proposed practice incorporates the best objective information available from recognized experts regarding effectiveness and acceptability. Such applicants must provide a narrative justification that describes the evidence base for the practice and summarizes the evidence for effectiveness. The evidence may come from a variety of sources, including the published research literature, formal consensus among recognized experts, and other studies that have not been published in the peer-reviewed research literature.

2. Program Design

SAMHSA will fund BPPI grants in two phases. Phase I is a planning and consensus-building phase that supports grantees for up to 18 months. Phase II is a pilot, adaptation, implementation, and evaluation phase that supports grantees for up to 3 years.

Phase I: Planning and Consensus Building

The goal of Phase I is to achieve consensus among community stakeholders to adopt a best practice and engage in strategic planning for its implementation. Phase I grants may include, but are not limited to, the following types of activities:

- Build and maintain a coalition of stakeholders to fund, oversee, use, and provide a sustainable best practice.
- Train and educate key stakeholders about the best practice.
- Consult experts about the practice.
- Consult leaders from other communities about their experiences in implementing the practice.
- Reimburse stakeholders for their transportation or child care costs.
- Engage professionals to help build consensus and plan strategy.
- Adapt the best practice to community needs without sacrificing its effectiveness.
- Identify and obtain the commitment of permanent sources to fund the best practice.
- Design the evaluation of the best practice.
- Evaluate the process of consensus building among stakeholders (required).

Phase II: Pilot Test, Adaptation, Implementation, and Evaluation

The goals of Phase II grants are to pilot test and evaluate the best practices before full implementation, modify strategic/financial plans, and prepare for full-scale implementation. The following are examples of activities that can be funded during Phase II:

- Pilot test the practice on a sample of service recipients and evaluate the pilot test.
- Modify the best practice based on consultation with stakeholders and practice experts, other community experiences, and pilot test results.
- Revise the manual or documentation that describes in detail how the best practice was modified.
- Maintain the coalition of stakeholders to oversee Phase II activities.
- Secure consultants to make changes required to implement and finance the best practice.
- Make organizational changes (*e.g.*, hiring staff) necessary to implement the best practice.
- Provide necessary education, training, and technical assistance for staff.

Up to 25% of the Phase II grant award may be used to evaluate the pilot test of the best practice. During the course of a Phase II award, SAMHSA will provide

funding for direct services as part of the pilot test.

3. Performance Requirements

All grantees will be required to meet the following evaluation and performance requirements. Applicants are not required to receive a Phase I award before applying for a Phase II award. However, all Phase II applicants must meet the Phase I performance requirements (*i.e.*, documentation that consensus has been achieved and that a strategic plan is in place) before applying for a Phase II award.

Phase I: Planning and Consensus Building

By the end of Phase I, grantees will be required to provide documentation that consensus has been achieved for adopting a best practice. That documentation must include:

- A report that summarizes the evaluation of the consensus building process.
- A description of how key stakeholders were included in the consensus building.
- Letters of support or other demonstration of stakeholders' commitment to adopt the practice.
- A strategic plan for implementing the best practice that includes a financing plan, signed by the funding source(s) that will provide the resources necessary to address barriers and implement a sustainable best practice. [**Note:** If it is not possible for a grantee to complete a strategic plan, grantees will be required to provide an analysis of progress made and barriers to completing the strategic plan instead.]

Phase II: Pilot Test, Adaptation, Implementation, and Evaluation

By the end of Phase II, grantees must provide the following information:

- Pilot test results.
- A manual describing the modified practice in detail for replication of the practice.
- Documentation that staff are trained in the practice and of a mechanism for training new staff.
- Process evaluation results that describe how the practice was operationalized, including changes in the organizational infrastructure, permanent funding sources, and staff consultation and training activities.
- Outcome evaluation results that describe:
- Demographic characteristics of the clients served;
- Service utilization
- Practice outcomes
- Client satisfaction
- Fidelity of the modified practice with the best practice
- Sustainability of the best practice.

4. Performance Measurement

The Government Performance and Results Act of 1993 (Pub. L. 103–62, or "GPRA") requires all Federal agencies to:

- Develop strategic plans that specify what they will accomplish over a 3 to 5-year period;
- Set performance targets annually related to their strategic plan; and
- Report annually on the degree to which the previous year's targets were met.

The law further requires agencies to link their performance to their budgets. Agencies are expected to evaluate their programs regularly and to use results of these evaluations to explain their successes and failures.

To meet these requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. You are required to report these GPRA data to SAMHSA on a timely basis so that performance results are available to support budgetary decisions.

In particular, you will be required to provide data on a core set of required measures, depending on the SAMHSA Center that is funding the grant. In your application, you must demonstrate your ability to collect and report on these measures, and you must provide some baseline data.

Appendix A provides the performance indicators for SAMHSA's BPPI grantees. For complete information on the core measures relating to these indicators and the methodology for data collection and reporting, please consult the following web sites:

- Center for Mental Health Services-funded grants: *http://www.samhsa.gov/aps/CMHS/GPRA*.
- Center for Substance Abuse Prevention-funded grants: *http://www.samhsa.gov/aps/CSAP/GPRA*.
- Center for Substance Abuse Treatment-funded-grants: *http://www.samhsa.gov/aps/CSAT/GPRA*.

This information will be provided in the hard copy application kits distributed by SAMHSA's Clearinghouses, as well.

In some instances, grantees may be required to participate in cross-site evaluations and comply with additional data collection requirements. The NOFA will indicate whether participation in a cross-site evaluation is required and will identify any additional data collection requirements.

Applicants may propose to collect additional information (*i.e.*, beyond the required performance data) regarding both the nature and success of their process and outcomes. If grant funding is requested to support the additional data collected, this must be clearly justified in the application. Prior to grant award, a final agreement regarding data collection will be reached. The terms and conditions of award will specify the data to be submitted and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

5. Grantee Meetings

You must plan to send a minimum of two people (including the Project Director) to at least one joint grantee meeting in each year of the grant, and you must include funding for this travel in your budget. At these meetings, grantees will present the results of their projects and Federal staff will provide technical assistance. Each meeting will be 3 days. These meetings will usually be held in the Washington, DC, area, and attendance is mandatory.

II. Award Information

A. Award Amount

The NOFA will specify the expected award amount for each funding opportunity. Regardless of the amount specified, the actual award amount will depend on the availability of funds.

Awards for SAMHSA's BPPI grants will be made in two phases:

Phase I—Phase I awards are expected to range from $150,000–$200,000 in total costs (direct and indirect) for a project period of up to 18 months.

Phase II—Phase II awards will range from $300,000–$500,000 per year in total costs (direct and indirect) for a project period of up to 3 years.

Applications with proposed budgets that exceed the allowable amount as specified in the NOFA in any year of the proposed project will be screened out and will not be reviewed. Annual continuation awards will depend on the availability of funds, grantee progress in meeting project goals and objectives, and timely submission of required data and reports.

B. Funding Mechanism

The NOFA will indicate whether awards for each funding opportunity will be made as grants or cooperative agreements (see the Glossary in Appendix C for further explanation of these funding mechanisms). For cooperative agreements, the NOFA will describe the nature of Federal involvement in project performance and specify roles and responsibilities of grantees and Federal staff.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants are domestic public and private *nonprofit* entities. For example, State, local or tribal governments; public or private universities and colleges; community- and faith-based organizations; and tribal organizations may apply. The statutory authority for this program precludes grants to for-profit organizations. The NOFA will indicate any limitations on eligibility.

B. Cost-Sharing

Cost-sharing is not required in this program, and applications will not be screened out on the basis of cost-sharing. However, you may include cash or in-kind contributions in your proposal as evidence of commitment to the proposed project. Reviewers may consider this information in evaluating the quality of the application.

C. Other

SAMHSA applicants must comply with certain program requirements, including:

- Provisions relating to participant protection and the protection of human subjects specified in Section VIII–A of this document;
- Budgetary limitations as specified in Sections I, II, and IV–E of this document; and
- Documentation of nonprofit status as required in the PHS 5161–1.

You also must comply with any additional program requirements specified in the NOFA, such as the required signature of certain officials on the face page of the application and/or required memoranda of understanding with certain signatories.

Applications that do not comply with the eligibility and specific program requirements for the funding opportunity for which the application is submitted will be screened out and will not be reviewed.

IV. Application and Submission Information

(To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix B of this document.)

A. Address To Request Application Package

You may request a complete application kit by calling one of SAMHSA's national clearinghouses:

- For substance abuse prevention or treatment grants, call the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686.
- For mental health grants, call the National Mental Health Information Center at 1–800–789–CMHS (2647).

You also may download the required documents from the SAMHSA Web site at *http://www.samhsa.gov*. Click on "grant opportunities."

Additional materials available on this Web site include:

- A technical assistance manual for potential applicants;
- Standard terms and conditions for SAMHSA grants;
- Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, consumer and family participation, and evaluation); and
- Enhanced instructions for completing the PHS 5161–1 application.

B. Content and Form of Application Submission

1. Required Documents

SAMHSA application kits include the following documents:

- PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. Applicants must use the PHS 5161–1 for their application, unless otherwise specified in the NOFA. Applications that are not submitted on the required application form (*i.e.*, the PHS 5161–1 in most situations) will be screened out and will not be reviewed.
- Program Announcement (PA)—Includes instructions for the grant application. This document is the PA.
- Notice of Funding Availability (NOFA)—Provides specific information about availability of funds, as well as any exceptions or limitations to provisions in the PA.

The NOFAs will be published in the **Federal Register** as well as on the Federal grants Web site (*http://www.grants.gov*).

You must use all of the above documents in completing your application.

2. Order of Sections

Applications must be complete and contain all information needed for review. In order for your application to be complete, it must include the following sections in the order listed. Applications that do not contain these sections will be screened out and will not be reviewed.

- *Face Page*—Use Standard Form (SF) 424, which is part of the PHS 5161–1. [**Note:** Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.]
- *Abstract*—Your total abstract should be no longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reporting to Congress, or press releases.
- *Table of Contents*—Include page numbers for each of the major sections of your application and for each appendix.
- *Budget Form*—Use SF 424A, which is part of the PHS 5161–1. Fill out Sections B, C, and E of the SF 424A.
- *Project Narrative and Supporting Documentation*—The Project Narrative describes your project. It consists of Sections A through E. Section A may not be longer than 3 pages in length. Sections B–E together may not be longer than 25 pages. More detailed instructions for completing each section of the Project Narrative are provided in "Section V—Application Review Information" of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections F through H. There are no page limits for these sections, except for Section G, the Biographical Sketches/Job Descriptions.

- *Section F*—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project. If you are applying for a Phase II award, show that no more than 25% of the total grant award will be used for evaluation of the pilot test of the best practice.
- *Section G*—Biographical Sketches and Job Descriptions.
- Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.

• Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.

• Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.

• *Section H*—Confidentiality and SAMHSA Participant Protection/Human Subjects. Instructions for completing Section H of your application are provided below in Section VIII–A of this document.

• *Appendices 1 through 5*—Use only the appendices listed below. Do not use more than 30 pages (excluding instruments) for the appendices. Do not use appendices to extend or replace any of the sections of the Project Narrative unless specifically required in the NOFA. Reviewers will not consider them if you do.

• *Appendix 1:* Letters of Support.

• *Appendix 2:* Data Collection Instruments/Interview Protocols.

• *Appendix 3:* Sample Consent Forms.

• *Appendix 4:* Letter to the SSA (if applicable; see Section VIII–C of this document).

• *Appendix 5:* A copy of the State Strategic Plan, a State needs assessment, or a letter from the State indicating that the proposed project addresses a State-identified priority.

• *Appendix 6:* Evidence of Intent to Adopt (Phase II only).

• *Assurances*—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1.

• *Certifications*—Use the "Certifications" forms found in PHS 5161–1.

• *Disclosure of Lobbying Activities*—Use Standard Form LLL found in PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of information designed to support or defeat legislation pending before the Congress or State legislatures. This includes "grass roots" lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

• *Checklist*—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

3. Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

• Text must be legible.

• Paper must be white and 8.5″ by 11.0″ in size.

• Pages must be typed single-spaced with one column per page.

• Page margins must be at least one inch.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch when measured with a ruler. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Photo reduction or condensation of type cannot be closer than 15 characters per inch or 6 lines per inch.

• The pages cannot have printing on both sides.

• Page limitations specified for the Project Narrative and Appendices cannot be exceeded.

• Information must be sufficient for review.

To facilitate review of your application, follow these additional guidelines:

• Applications should be prepared using black ink. This improves the quality of the copies of applications that are provided to reviewers.

• Use white paper only. Do not use colored, heavy, or light-weight paper or any material that cannot be photocopied using automatic photocopying machines. Odd-sized and oversized attachments, such as posters, will not be copied or sent to reviewers. Do not send videotapes, audiotapes, or CD–ROMs.

• Pages should be numbered consecutively from beginning to end so that information can be easily located during review of the application. For example, the cover page should be labeled "page 1," the abstract page should be "page 2," and the table of contents page should be "page 3." Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue in the sequence.

C. Submission Dates and Times

Deadlines for submission of applications for specific funding opportunities will be published in NOFAs in the **Federal Register** and on the Federal grants Web site (*http://www.grants.gov*).

Your application must be received by the application deadline. Applications received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

D. Intergovernmental Review (E.O. 12372) Requirements

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. Instructions for this review are included in Section VIII–B of this document. Section VIII–C provides instructions for the Public Health System Impact Statement (PHSIS) and submission of comments from the Single State Agency (SSA).

E. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

• Institutions of Higher Education: OMB Circular A–21.

• State and Local Governments: OMB Circular A–87.

• Nonprofit Organizations: OMB Circular A–122.

• Appendix E Hospitals: 45 CFR part 74.

In addition, SAMHSA BPPI Grant recipients must comply with the following funding restrictions:

• No more than 25% of Phase II funding may be used to evaluate the pilot test.

BPPI grant funds may not be used to:

• Pay for any lease beyond the project period.

• Provide services to incarcerated populations (defined as those persons in jail, prison, detention facilities, or in custody where they are not free to move about in the community).

• Pay for the purchase or construction of any building or structure to house any part of the program. (Applicants may request no more than $75,000 for renovations and alterations of existing facilities, if appropriate and necessary to the project.)

• Provide residential or outpatient treatment services when the facility has not yet been acquired, sited, approved, and met all requirements for human habitation and services provision. (Expansion or enhancement of existing residential services is permissible.)

• Pay for housing other than residential mental health and/or substance abuse treatment.

• Provide inpatient treatment or hospital-based detoxification services.

• Pay for incentives to induce clients to enter treatment. However, a grantee or treatment provider may provide up to $20 or equivalent (coupons, bus tokens, gifts, childcare, and vouchers) to clients as incentives to participate in required data collection follow-up. This amount may be paid for participation in each required interview.

• Implement syringe exchange programs, such as the purchase and distribution of syringes and/or needles.

• Pay for pharmacologies for HIV antiretroviral therapy, sexually transmitted diseases (STDs)/sexually transmitted illness (STI), TB, and hepatitis B and C, or for psychotropic drugs.

F. Other Submission Requirements

1. Where To Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857.

Be sure to include the funding announcement number from the NOFA in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

2. How To Send Applications

Mail an original application and 2 copies (including appendices) to the mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

A. Evaluation Criteria

Your application will be reviewed and scored against the requirements listed below for developing the Project Narrative (Sections A–E). These sections describe what you intend to do with your project.

• In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the "Program Narrative" instructions found in the PHS 5161–1.

• Be sure to provide references for any literature cited in your application. The reference list will not be counted toward the page limit for these sections. The Project Narrative may be no longer than 28 pages (3 pages for Section A and 25 pages total for Sections B–E).

• You must use the five sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section of the Project Narrative.

• The Supporting Documentation you provide in Sections F–H, Appendices 1–5, and the References list will be considered by reviewers in assessing your response, along with the material in the Project Narrative.

• The number of points after each heading is the maximum number of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within the criterion.

For both Phase I and Phase II of SAMHSA's BPPI Grants there will be two levels of review.

• *Level One Review* will consider how well the applicant addresses the requirements in Section A—Evidence of Effectiveness. If the practice proposed in the application does not meet the required standard for effectiveness as described below, the application will not move on to Level Two review and will not be considered for funding.

• *Level Two Review* will consider how well the applicant addresses the requirements in Section B (Statement of Need), Section C (Proposed Approach), Section D (Staff, Management and Relevant Experience), and Section E (Evaluation and Data). The applicant's score on Sections B–E combined will be used to determine the applicant's priority score.

1. Phase I Criteria

Level One Review

Section A: Evidence of Effectiveness

Put all information to be considered in Level One in Section A: Evidence of Effectiveness. Section A may not be longer than 3 pages. During Level One review, reviewers will decide whether the applicant's proposed practice meets the required standard for effectiveness. Reviewers will assess Level One review on a pass/fail basis. Applications that do not pass Level One review will not move on to Level Two review.

Applicants proposing to implement practices included in the following sources are considered by SAMHSA to have met the effectiveness standard for SAMHSA's BPPI Grants. Such applicants are not required to provide further documentation of effectiveness of the services/practices. Such applicants must name the practice and indicate which of the following is the source(s) for the proposed practice:

• SAMHSA's National Registry of Effective Programs (NREP) (see Appendix D to this document).

• Center for Mental Health Services (CMHS) Evidence Based Practice Tool Kits (*see* Appendix E to this document).

• Effective Substance Abuse Treatment Practices (see Appendix F to this document).

• The NOFA for a specific funding opportunity (provide the name and funding opportunity number from the NOFA).

Applicants who select practices that are not identified in any of the sources listed above must provide a narrative justification that shows that the proposed practice includes the best objective information available from recognized experts regarding effectiveness and acceptability. The narrative must address the following:

• Describe the proposed practice.

• Indicate whether the evidence base for the proposed practice includes scientific studies published in the peer-reviewed literature, other studies not published in the peer-reviewed literature, and/or from formal consensus processes involving recognized experts in the field.

• *If the evidence base includes scientific studies published in the peer-reviewed literature or other studies that have not been published, describe:*

—The extent to which the practice has been evaluated and the quality of the studies (*e.g.*, whether they are descriptive, quasi-experimental studies, or experimental studies)

—The extent to which evaluation of the practice has demonstrated positive outcomes, and the extent to which positive outcomes have been demonstrated for different populations

—The extent to which evaluation of the practice has been studied

—The extent to which evaluation of the practice has been replicated

—The extent to which the practice has been documented (*e.g.*, through guidelines, tool kits, treatment protocols, and/or manuals)

—The extent to which fidelity measures have been developed (*e.g.*, no measures developed, key components identified, or fidelity measures developed)

• *If the evidence includes formal consensus involving recognized experts, describe:*

—The experts involved in the consensus development on the proposed services/practice (*e.g.*, members of an expert panel formally convened by NIH, the Institute of Medicine or other nationally recognized organization, or members of an informal group of experts, such as faculty at a leading research institution)
—The nature of the consensus and how it was reached the process used to reach consensus
—The extent to which the consensus has been documented (*e.g.*, in a consensus panel report, meeting minutes, or an accepted standard practice in the field)
—Any empirical evidence, formally published or not, supporting the effectiveness of the proposed practice
—Rationale for concluding that further empirical evidence does not exist to support the effectiveness of the proposed practice, if appropriate

In assessing applicants' narratives for Section A/Level One review, reviewers will consider whether the evidence presented in support of the proposed practice is, in their expert and professional opinion, commensurate with the best information available regarding effectiveness and acceptability.

Applicants should be aware that passing Level One review does not ensure that the application will be approved for funding, even if the proposed project includes a service/practice that is considered by SAMHSA to have met the standard of effectiveness.

Level Two Review

All information to be considered in Level Two review must be placed in Sections B through E, as described below. Only applications that pass Level One review will undergo Level Two review.

Section B: Need (10 Points)

- Describe the environment (organization, community, city, or State) where the project will be implemented.
- Describe the target population.
- Describe the problem the project will address. Documentation of the problem may come from local data or trend analyses, State data, and/or national data. For data sources that are not well known, provide sufficient information on how the data were collected so that its reliability and validity can be assessed.
- Non-tribal applicants must show that identified needs are consistent with the priorities of the State. Include, in Appendix 5, a copy of the State Strategic Plan, a State needs assessment, or a letter from the State indicating that the proposed project addresses a State-identified priority. Tribal applicants must provide similar documentation relating to tribal priorities.
- Describe the best practice selected and how it will impact the problem.

Section C: Proposed Approach (40 Points)

- Describe the goals of the project, including consensus building and strategic planning.
- Describe the strategies or models used to build consensus. Describe how key stakeholders will be educated about the best practice.
- Describe the process for developing a strategic plan to implement the best practice.
- Describe the key stakeholders and how they represent the community.
- Describe the involvement of key stakeholders in the proposed project, including roles and responsibilities of each stakeholder. Clearly demonstrate each stakeholder's commitment to the consensus building and strategic planning processes. Attach letters of support and other documents showing stakeholder commitment in Appendix 1: Letters of Support. Identify any cash or in-kind contributions that will be made to the project.
- Describe the involvement of representatives of the target population in the conceptualization and planning of the consensus building process.
- Describe how the proposed project will address issues of age, race/ethnicity, culture, language, sexual orientation, disability, literacy, and gender in the target population.
- Describe potential barriers to achieving consensus among stakeholders. What resources and plans will you use to overcome these barriers?
- Identify potential funding source(s) that will help implement the best practice. Describe how the funder(s) will join in the consensus building and strategic planning.

Section D: Management Plan and Staffing (35 Points)

- Provide a time line for the project (chart or graph) showing key activities, milestones, and responsible staff. [**Note:** The timeline should be part of the Project Narrative. It should not be placed in an appendix.]
- Discuss the capability and experience of the applicant organization and other participating organizations with similar projects and populations, including experience in providing culturally competent services.
- Provide a list of staff members who will conduct the project. Describe the role, effort and qualifications of each. Include the Project Director and other key personnel, including evaluators and database management personnel.
- If you plan to have an advisory body, describe its composition, roles, and frequency of meetings.
- Describe the resources available for the proposed project (*e.g.*, facilities, equipment), and provide evidence that services will be provided in a location that is adequate, accessible, Americans with Disabilities Act (ADA) compliant, and amenable to the target population.

Section E: Evaluation Design and Analysis (15 Points)

- Describe the design for evaluating the consensus building and strategic planning processes. Include a detailed discussion of how all variables (*e.g.*, community representation and stakeholder support) will be defined and measured. Explain how the evaluation plan will ensure that the decision to adopt is an accurate reflection of the stakeholders' intent.
- Document your ability to collect and report on the required performance measures for SAMHSA's BPPI Grants. Specify and justify any additional outcome measures you plan to use for your grant project. (See Appendix A for required indicators.)
- Describe the process for providing regular feedback from evaluation activities to the Project Director and participants.
- Describe plans for data collection, management, analysis, interpretation and reporting. Describe the current approach to collection of relevant data, along with any necessary modifications.
- Be sure to include data collection instruments/interview protocols in Appendix 2.

2. Phase II Criteria

Level One Review

Phase II applicants who were not Phase I grantees will go through a Level One review to determine if the selected practice meets SAMHSA's criteria as a best practice before they are reviewed for technical merit. This review process is identical to the Level One Review described for Phase I applicants. You must provide all information for Level One Review in Section A of the Project Narrative.

Phase II applicants who were Phase I grantees will undergo Level Two review only. If so, you should state in Section A that you were a Phase I grantee and provide the grant number.

Level Two Review

All information to be considered in Level Two review must be placed in

Sections B through E, as described below. Only applications that pass Level One review will undergo Level Two review.

Section B: Need and Readiness (30 Points)

- Describe the target population and setting. If applicant was a Phase I grantee, describe and explain any changes in the target population or setting.
- Provide baseline data as required in Appendix A of this document.
- Describe briefly the best practice approved under Level One Review.
- Provide evidence that the community of stakeholders achieved a "decision to adopt" the practice. Attach a copy of the Phase I process evaluation or other evidence including contracts, memoranda of agreement, administrative memos, or other documents signed by key stakeholders that show their firm commitment to support the practice. Attach these supporting documents in Appendix 6: Evidence of Intent to Adopt.
- Provide and describe the financing plan. Include anticipated costs and sources of revenue that will maintain the practice. Attach the financing plan, signed by the funding source(s), stating their intent to fund in Appendix 6: Evidence of Intent to Adopt.

Section C: Proposed Approach (25 Points)

- Provide a strategic plan (including key action steps and a timeline) that addresses each of the following elements, as appropriate: pilot testing the best practice, evaluating the pilot test, modifying the best practice based on the pilot test, developing training materials, hiring/training staff, and securing funding to sustain services beyond the project period.
- Describe the involvement of key stakeholders in the proposed project, including roles and responsibilities of each stakeholder. Demonstrate each stakeholder's commitment to the proposed project. Attach letters of support and similar documents showing stakeholder commitment in Appendix 1: Letters of Support. Identify any cash or in-kind contributions that will be made to the project.
- Describe how the proposed project will address issues of age, race/ethnicity, culture, language, sexual orientation, disability, literacy, and gender in the target population.
- Describe potential barriers to the successful conduct of the proposed project. What resources and plans will you use to overcome these barriers?
- Describe oversight or feedback mechanisms to ensure that the implemented practice is consistent with the best practice model.

Section D: Management Plan and Staffing (25 Points)

- Provide a time line for the project (chart or graph) showing key activities, milestones, and responsible staff. [**Note:** The timeline should be part of the Project Narrative. It should not be placed in an appendix.]
- Discuss the capability and experience of the applicant organization and other participating organizations with similar projects and populations, including experience in providing culturally appropriate/competent services.
- Provide a list of staff members who will conduct the project, showing the role of each and their level of effort and qualifications. Include the Project Director and other key personnel, including evaluators and database managers.
- Describe the resources available for the proposed project (*e.g.*, facilities, equipment), and provide evidence that services will be provided in a location that is adequate, accessible, Americans with Disabilities Act (ADA) compliant, and is amenable to the target population.

Section E: Evaluation Design and Analysis (20 Points)

- Document your ability to collect and report on the required performance measures for Phase II Local Best Practices Grants. Specify and justify any additional measures you plan to use for your grant project. (See Appendix A for required indicators.)
- Provide a logic model for the evaluation of the pilot test of the best practice as well as other implementation activities (*e.g.*, training, securing financing).
- Provide a plan for evaluating the pilot test of the best practice and other implementation activities that includes both process and client outcome measures. Describe the recruitment plan and sample size for your project. Describe any literature or pilot testing done to verify the validity and reliability of the instruments to be used. Attach instrumentation in Appendix 2: Data Collection Instruments.
- Describe how the adaptations of the best practice will be documented. Demonstrate its fidelity to the best practice model. If no fidelity scale exists for the practice, describe how you will develop one.
- Describe the process for providing regular feedback from evaluation activities to the Project Director and participants.
- Describe the database management system that will be developed.

Note: Although the budget for the proposed project is not a review criterion, the Review Group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

B. Review and Selection Process

SAMHSA applications are peer-reviewed according to the review criteria listed above. For those programs where the individual award is over $100,000, applications must also be reviewed by the appropriate National Advisory Council.

C. Award Criteria

Decisions to fund a grant are based on:

- The strengths and weaknesses of the application as identified by the Peer Review Committee and, when appropriate, approved by the appropriate National Advisory Council;
- Availability of funds; and
- Equitable allocation of grants among the principal geographic regions of the United States. SAMHSA does not intend to award more than 2 grants per State for each funding opportunity.

VI. Award Administration Information

A. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can re-apply if there is another receipt date for the program.

B. Administrative and National Policy Requirements

- You must comply with all terms and conditions of the grant award. SAMHSA's standard terms and conditions are available on the SAMHSA Web site (*http://www.samhsa.gov*).
- Depending on the nature of the specific funding opportunity and/or the proposed project as identified during

review, additional terms and conditions may be identified in the NOFA or negotiated with the grantee prior to grant award. These may include, for example:

- Actions required to be in compliance with human subjects requirements;
- Requirements relating to additional data collection and reporting;
- Requirements relating to participation in a cross-site evaluation; or
- Requirements to address problems identified in review of the application.
- You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.
- In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services "Survey on Ensuring Equal Opportunity for Applicants." This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

C. Reporting

1. Progress and Financial Reports

- Grantees must provide annual and final progress reports. The final progress report must summarize information from the annual reports, describe the accomplishments of the project, and describe next steps for implementing plans developed during the grant period.
- Grantees must provide annual and final financial status reports. These reports may be included as separate sections of annual and final progress reports or can be separate documents. Because SAMHSA is extremely interested in ensuring that its best practices efforts can be sustained, your financial reports must explain plans to ensure the sustainability of efforts initiated under this grant. Initial plans for sustainability should be described in year 1 of the grant. In each subsequent year, you should describe the status of the project, successes achieved and obstacles encountered in that year.
- SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

2. Government Performance and Results Act

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. The performance requirements for SAMHSA's BPPI Grants are described in Section I-B under "Performance Measurement" and listed in Appendix A of this document.

3. Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded project that are accepted for publication.

In addition, SAMHSA requests that grantees:

- Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.
- Include acknowledgment of the SAMHSA grant program as the source of funding for the project.
- Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

The NOFAs provide contact information for questions about program issues.

For questions on grants management issues, contact: Stephen Hudak, Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration/OPS, 5600 Fishers Lane, Rockwall II 6th Floor, Rockville, MD 20857, (301) 443–9666, *shudak@samhsa.gov*.

VIII. Other Information

A. SAMHSA Confidentiality and Participant Protection Requirements and Protection of Human Subjects Regulations

You must describe your procedures relating to Confidentiality, Participant Protection and the Protection of Human Subjects Regulations in Section G of your application, using the guidelines provided below. Problems with confidentiality, participant protection, and protection of human subjects identified during peer review of your application may result in the delay of funding.

Confidentiality and Participant Protection: All applicants *must* address each of the following elements relating to confidentiality and participant protection. You must document how you will address these requirements or why they do not apply.

1. Protect Clients and Staff From Potential Risks

- Identify and describe any foreseeable physical, medical, psychological, social, legal, or other risks or adverse affects.
- Discuss risks that are due either to participation in the project itself or to the evaluation activities.
- Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.
- Identify plans to provide help if there are adverse effects to participants.
- Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

2. Fair Selection of Participants

- Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other groups.
- Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, or others who are likely to be vulnerable to HIV/AIDS.
- Explain the reasons for *including or excluding* participants.
- Explain how you will recruit and select participants. Identify who will select participants.

3. Absence of Coercion

- Explain if participation in the project is voluntary or required. Identify

possible reasons why it is required, for example, court orders requiring people to participate in a program.

• If you plan to pay participants, state how participants will be awarded money or gifts.

• State how volunteer participants will be told that they may receive services even if they do not participate in the project.

4. Data Collection

• Identify from whom you will collect data (*e.g.*, from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.*, school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.

• Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.

• Provide in Appendix 2, "Data Collection Instruments/Interview Protocols," copies of *all* available data collection instruments and interview protocols that you plan to use.

5. Privacy and Confidentiality

• Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.

• Describe:

• How you will use data collection instruments.

• Where data will be stored.

• Who will or will not have access to information.

• How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

6. Adequate Consent Procedures

• List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used and how you will keep the data private.

• State:

• Whether or not their participation is voluntary.

• Their right to leave the project at any time without problems.

• Possible risks from participation in the project.

• Plans to protect clients from these risks.

• Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must get *written* informed consent.

• Indicate if you will get informed consent from participants or from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?

• Include sample consent forms in your Appendix 3, "Sample Consent Forms." If needed, give English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

• Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data.

• Additionally, if other consents (*e.g.*, consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

7. Risk/Benefit Discussion

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations: All applicants proposing a pilot test of the best practice as part of a Phase II project must comply with the Protection of Human Subjects Regulations (45 CFR part 46).

Even if you are not proposing a Phase II pilot test of the best practice, the Protection of Human Subjects Regulations could apply depending on the evaluation you propose.

If you are a Phase II applicant proposing a pilot test or your project otherwise falls under the Protection of Human Subjects Regulations, you must describe the process for obtaining Institutional Review Board (IRB) approval in your application. While IRB approval is not required at the time of grant award, you will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and the IRB approval has been received before enrolling clients in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the web at *http://ohrp.osophs.dhhs.gov*. You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301–496–7005).

B. Intergovernmental Review (E.O. 12372) Instructions

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and can be downloaded from the Office of Management and Budget (OMB) Web site at *http://www.whitehouse.gov/omb/grants/spoc.html*.

• Check the list to determine whether your State participates in this program. You do not need to do this if you are a federally recognized Indian tribal government.

• If your State participates, contact your SPOC as early as possible to alert him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.

• For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.

• The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline: Substance Abuse and Mental Health Services Administration Office of Program Services, Review Branch 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SPOC—Funding Announcement No. [fill in pertinent funding opportunity number from the NOFA].

C. Public Health System Impact Statement (PHSIS)

The Public Health System Impact Statement or PHSIS (Approved by OMB

under control no. 0920–0428; see burden statement below) is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to the following Public Health System Reporting Requirements.

Community-based, non-governmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected no later than the pertinent receipt date for applications. This PHSIS consists of the following information:

- A copy of the face page of the application (SF 424); and
- A summary of the project, no longer than one page in length, that provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with appropriate State or local health agencies.

For SAMHSA grants, the appropriate State agencies are the Single State Agencies (SSAs) for substance abuse and mental health. A listing of the SSAs can be found on SAMHSA's Web site at *http://www.samhsa.gov*. If the proposed project falls within the jurisdiction of more than one State, you should notify all representative SSAs.

Applicants who are not the SSA *must* include a copy of a letter transmitting the PHSIS to the SSA in Appendix 4, "Letter to the SSA." The letter must notify the State that, if it wishes to comment on the proposal, its comments should be sent not later than 60 days after the application deadline to: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SSA—Funding Announcement No. [fill in pertinent funding opportunity number from NOFA].

In addition:

- Applicants may request that the SSA send them a copy of any State comments.
- The applicant must notify the SSA within 30 days of receipt of an award.

[Public reporting burden for the Public Health System Reporting Requirement is estimated to average 10 minutes per response, including the time for copying the face page of SF 424 and the abstract and preparing the letter for mailing. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0920–0428. Send comments regarding this burden to CDC Clearance Officer, 1600 Clifton Road, MS D–24, Atlanta, GA 30333, ATTN: PRA (0920–0428).]

Appendix A—SAMHSA BPPI Indicators

The purpose of the Best Practices Planning and Implementation grant program is to help communities plan for, adapt, pilot test, and evaluate best practices. Domains to be measured are the quality of the process and outcome evaluation, and individual/systems outcomes pertinent to the service improvement. This list of indicators and related measures will be updated periodically. The Notice of Funding Availability (NOFA) will specify which indicators are required for a particular funding opportunity. Applicants must provide expected baseline data for *asterisked items in the grant application. Grantees must collect and report data at the interval (*e.g.*, quarterly, annually) specified in the NOFA. Specific instructions for data collection will be provided on SAMHSA's Web site and in application kits. Some NOFAs may specify indicators and measures not on this list or may request grantees to identify measures appropriate to their specific project.

ACCOUNTABILITY

Percent of grantees reporting valid data. (Phase 1, 2)

CAPACITY

* Number of persons served (Includes screening and assessment) (Phase 1, 2)

CMHS and CSAT grantees: Percent of providers providing services within approved costs (Costs to be proposed in application; to be approved by SAMHSA prior to award. A cost measure for substance abuse prevention is under development.) (Phase 1, 2)

* Number, type, and capacity of services/product available (Phase 1, 2)

* Percent of persons needing services/product who receive them (Phase 1, 2)

EFFECTIVENESS

Participation of persons served and family members in planning, policy, and service delivery (Phase 2)

Number of service/systems improvements implemented; maintained post-funding (Phase 2)

* Percent of programs reporting positive individual and systems outcomes (Phase 2)

CSAP grantees: Difference between 30 day substance use of population served by program and comparable local and national rates. CSAT grantees: Number of people who show no past month substance use 6 months post treatment admission. (Phase 2)

Grantees also will be required to report on several outcomes from the following list, as specified in the NOFA:

Individual outcomes: Participants (adults or children) disapproving of substance use; perceiving personal health risks associated with substance abuse; increasing age of first use; reporting abstinence at discharge; decreasing substance abuse risk factors related to spread of HIV/AIDS, including risky sexual behavior and sharing needles; improving employment/school attendance; having no criminal justice involvement; having stable living situation; reporting (consumer/family) improvement in behavioral/emotional symptoms. (Phase 2)

System outcomes: Percent of referrals from juvenile/adult justice systems to systems of care; decreased days in inpatient/residential facilities; readmission rates; past 30 day utilization of inpatient, outpatient facilities; inpatient, outpatient, or emergency room treatment for physical complaint, mental or emotional difficulties, or alcohol or substance abuse; seclusion/restraint deaths or injuries; number of communities with defined systems/continuum of care; number of persons contacted through outreach who enroll in services; percent of providers, administrators trained who report adopting approved service methods; percent of participants in sponsored events who have used information to change their practices; number of science-based programs implemented. Completion and documentation of one or more of the following, depending upon the scope of the project: Needs assessment; revised financing plan for coordinating funding streams; organizational/structural change or quality improvements; coordination and network improvements; workforce improvements; data infrastructure/performance measurement improvements. (Phase 2)

Appendix B—Checklist for Application Formatting Requirements

Your application must adhere to these formatting requirements. Failure to do so will result in your application being screened out and returned to you without review. In addition to these formatting requirements, there may be programmatic requirements specified in the NOFA. Please check the NOFA before preparing your application.

- Use the PHS 5161–1 application.
- Include the 10 application components required for SAMHSA applications (*i.e.*, Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist.)
- Provide legible text.
- Use white paper, 8.5" by 11.0" in size.
- Type single-spaced text with one column per page.
- Use margins that are at least 1 inch.
- Use type size in the Project Narrative that does not exceed an average of 15 characters per inch when measured with a ruler. Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.
- Do not use photo reduction or condensation of type closer than 15 characters per inch or 6 lines per inch.
- Print only on one side of the paper only; do not print on both sides.
- Do not exceed page limitations specified for the Project Narrative (3 pages for Section

A and 25 pages total for Sections B–E) and Appendices (30 pages).

• Provide sufficient information for review.

• Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked by a week prior to the application deadline will not be reviewed.

• Applications that do not comply with the following program requirements, any additional program requirements specified in the NOFA, or are otherwise unresponsive to PA guidelines will be screened out:

• Provisions relating to participant protection and the protection of human subjects specified in Section VIII–A of this document;

• Budgetary limitations as specified in Sections I, II and IV–E of this document;

• Documentation of nonprofit status as required in the PHS 5161–1;

To facilitate review of your application, follow these additional guidelines. Failure to follow these guidelines will not result in your application being screened out. However, following these guidelines will help reviewers to consider your application.

• Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

• Send the original application and two copies to the mailing address in the PA. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROM.

Appendix C: Glossary

Best Practice: Best practices are practices that incorporate the best objective information currently available from recognized experts regarding effectiveness and acceptability.

Cooperative Agreement: A cooperative agreement is a form of Federal grant. Cooperative agreements are distinguished from other grants in that, under a cooperative agreement, substantial involvement is anticipated between the awarding office and the recipient during performance of the funded activity. This involvement may include collaboration, participation, or intervention in the activity. HHS awarding offices use grants or cooperative agreements (rather than contracts) when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

Cost-Sharing or Matching: Cost-sharing refers to the value of allowable non-Federal contributions toward the allowable costs of a Federal grant project or program. Such contributions may be cash or in-kind contributions. For SAMHSA grants, cost-sharing or matching is not required, and applications will not be screened out on the basis of cost-sharing. However, applicants often include cash or in-kind contributions in their proposals as evidence of commitment to the proposed project. This is allowed, and this information may be considered by reviewers in evaluating the quality of the application.

Grant: A grant is the funding mechanism used by the Federal Government when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

In-Kind Contribution: In-kind contributions toward a grant project are non-cash contributions (*e.g.*, facilities, space, services) that are derived from non-Federal sources, such as State or sub-State non-Federal revenues, foundation grants, or contributions from other non-Federal public or private entities.

Practice: A practice is any activity, or collective set of activities, intended to improve outcomes for people with or at risk for substance abuse and/or mental illness. Such activities may include direct service provision, or they may be supportive activities, such as efforts to improve access to and retention in services, organizational efficiency or effectiveness, community readiness, collaboration among stakeholder groups, education, awareness, training, or any other activity that is designed to improve outcomes for people with or at risk for substance abuse or mental illness.

Practice Support System: This term refers to contextual factors that affect practice delivery and effectiveness in the pre-adoption phase, delivery phase, and post-delivery phase, such as (a) community collaboration and consensus building, (b) training and overall readiness of those implementing the practice, and (c) sufficient ongoing supervision for those implementing the practice.

Stakeholder: A stakeholder is an individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

Target population catchment area: The target population catchment area is the geographic area from which the target population to be served by a program will be drawn.

Wraparound Service: Wraparound services are non-clinical supportive services—such as child care, vocational, educational, and transportation services—that are designed to improve the individual's access to and retention in the proposed project.

Appendix D: National Registry of Effective Programs

To help SAMHSA's constituents learn more about science-based programs, SAMHSA's Center for Substance Abuse Prevention (CSAP) created a National Registry of Effective Programs (NREP) to review and identify effective programs. NREP seeks candidates from the practice community and the scientific literature. While the initial focus of NREP was substance abuse prevention programming, NREP has expanded its scope and now includes prevention and treatment of substance abuse and of co-occurring substance abuse and mental disorders, and psychopharmacological programs and workplace programs.

NREP includes three categories of programs: Effective Programs, Promising Programs, and Model Programs. Programs defined as Effective have the option of becoming Model Programs if their developers choose to take part in SAMHSA dissemination efforts. The conditions for making that choice, together with definitions of the three major criteria, are as follows.

Promising Programs have been implemented and evaluated sufficiently and are scientifically defensible. They have positive outcomes in preventing substance abuse and related behaviors. However, they have not yet been shown to have sufficient rigor and/or consistently positive outcomes required for Effective Program status. Nonetheless, Promising Programs are eligible to be elevated to Effective/Model status after review of additional documentation regarding program effectiveness. Originated from a range of settings and spanning target populations, Promising Programs can guide prevention, treatment, and rehabilitation.

Effective Programs are well-implemented, well-evaluated programs that produce consistently positive pattern of results (across domains and/or replications). Developers of Effective Programs have yet themselves.

Model Programs are also well-implemented, well-evaluated programs, meaning they have been reviewed by NREP according to rigorous standards of research. Their developers have agreed with SAMHSA to provide materials, training, and technical assistance for nationwide implementation. That helps ensure the program is carefully implemented and likely to succeed.

Programs that have met the NREP standards for each category can be identified by accessing the NREP Model Programs Web site at *http://www.modelprograms.samhsa.gov.*

Appendix E: Center for Mental Health Services Evidence-Based Practice Toolkits

SAMHSA's Center for Mental Health Services and the Robert Wood Johnson Foundation initiated the Evidence-Based Practices Project to: (1) Help more consumers and families find effective services, (2) help providers of mental health services develop effective services, and (3) help administrators support and maintain these services. The project is now also funded and endorsed by numerous national, State, local, private and

public organizations, including the Johnson & Johnson Charitable Trust, MacArthur Foundation, and the West Family Foundation.

The project has been developed through the cooperation of many Federal and State mental health organizations, advocacy groups, mental health providers, researchers, consumers and family members. A Web site (*http://www.mentalhealthpractices.org*) was created as part of Phase I of the project, which included the identification of the first cluster of evidence-based practices and the design of implementation resource kits to help people understand and use these practices successfully.

Basic information about the first six evidence-based practices is available on the Web site. The six practices are:

1. Illness Management and Recovery
2. Family Psychoeducation
3. Medication Management Approaches in Psychiatry
4. Assertive Community Treatment
5. Supported Employment
6. Integrated Dual Disorders Treatment

Each of the resource kit contains information and materials written by and for the following groups:

—Consumers
—Families and Other Supporters
—Practitioners and Clinical Supervisors
—Mental Health Program Leaders
—Public Mental Health Authorities

Material on the Web site can be printed or downloaded with Acrobat Reader, and references are provided where additional information can be obtained.

Once published, the full kits will be available from National Mental Health Information Center at *http://www.health.org* or 1–800–789–CMHS (2647).

Appendix F: Effective Substance Abuse Treatment Practices

To assist potential applicants, SAMHSA's Center for Substance Abuse Treatment (CSAT) has identified the following listing of current publications on effective treatment practices for use by treatment professionals in treating individuals with substance abuse disorders. These publications are available from the National Clearinghouse for Alcohol and Drug Information (NCADI); Tele: 1–800–729–6686 or *http://www.health.org* and *http://www.samhsa.gov/centers/csat2002/publications.html*.

CSAT Treatment Improvement Protocols (TIPs) are consensus-based guidelines developed by clinical, research, and administrative experts in the field.

- Integrating Substance Abuse Treatment and Vocational Services. TIP 38 (2000) NCADI #BKD381
- Substance Abuse Treatment for Persons with Child Abuse and Neglect Issues. TIP 36 (2000) NCADI #BKD343
- Substance Abuse Treatment for Persons with HIV/AIDS. TIP 37 (2000) NCADI # BKD359
- Brief Interventions and Brief Therapies for Substance Abuse. TIP 34 (1999) NCADI # BKD341
- Enhancing Motivation for Change in Substance Abuse Treatment. TIP 35 (1999) NCADI # BKD342
- Screening and Assessing Adolescents for Substance Use Disorders. TIP 31 (1999) NCADI # BKD306
- Treatment for Stimulant Use Disorders. TIP 33 (1999) NCADI # BKD289
- Treatment of Adolescents with Substance Use Disorders. TIP 32 (1999) NCADI # BKD307
- Comprehensive Case Management for Substance Abuse Treatment. TIP 27 (1998) NCADI # BKD251
- Continuity of Offender Treatment for Substance Use Disorders From Institution to Community. TIP 30 (1998) NCADI # BKD304
- Naltrexone and Alcoholism Treatment. TIP 28 (1998) NCADI # BKD268
- Substance Abuse Among Older Adults. TIP 26 (1998) NCADI # BKD250
- Substance Use Disorder Treatment for People With Physical and Cognitive Disabilities. TIP 29 (1998) NCADI # BKD288
- A Guide to Substance Abuse Services for Primary Care Clinicians. TIP 24 (1997) NCADI # BKD234
- Substance Abuse Treatment and Domestic Violence. TIP 25 (1997) NCADI # BKD239
- Treatment Drug Courts: Integrating Substance Abuse Treatment With Legal Case Processing. TIP 23 (1996) NCADI # BKD205
- Alcohol and Other Drug Screening of Hospitalized Trauma Patients. TIP 16 (1995) NCADI # BKD164
- Combining Alcohol and Other Drug Abuse Treatment With Diversion for Juveniles in the Justice System. TIP 21 (1995) NCADI # BKD169
- Detoxification From Alcohol and Other Drugs. TIP 19 (1995) NCADI # BKD172
- LAAM in the Treatment of Opiate Addiction. TIP 22 (1995) NCADI # BKD170
- Matching Treatment to Patient Needs in Opioid Substitution Therapy. TIP 20 (1995) NCADI # BKD168
- Planning for Alcohol and Other Drug Abuse Treatment for Adults in the Criminal Justice System. TIP 17 (1995) NCADI # BKD165
- Assessment and Treatment of Cocaine-Abusing Methadone-Maintained Patients. TIP 10 (1994) NCADI # BKD157
- Assessment and Treatment of Patients With Coexisting Mental Illness and Alcohol and Other Drug Abuse. TIP 9 (1994) NCADI # BKD134
- Intensive Outpatient Treatment for Alcohol and Other Drug Abuse. TIP 8 (1994) NCADI # BKD139

Other Effective Practice Publications

CSAT Publications—

- Anger Management for Substance Abuse and Mental Health Clients: A Cognitive Behavioral Therapy Manual (2002) NCADI # BKD444
- Anger Management for Substance Abuse and Mental Health Clients: Participant Workbook (2002) NCADI # BKD445
- Multidimensional Family Therapy for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 5 (2002) NCADI # BKD388
- Navigating the Pathways: Lessons and Promising Practices in Linking Alcohol and Drug Services with Child Welfare. TAP 27 (2002) NCADI # BKD436
- The Motivational Enhancement Therapy and Cognitive Behavioral Therapy Supplement: 7 Sessions of Cognitive Behavioral Therapy for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 2 (2002) NCADI # BKD385
- Family Support Network for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 3 (2001) NCADI # BKD386
- Identifying Substance Abuse Among TANF-Eligible Families. TAP 26 (2001) NCADI # BKD410
- Motivational Enhancement Therapy and Cognitive Behavioral Therapy for Adolescent Cannabis Users: 5 Sessions. CYT Cannabis Youth Treatment Series Vol. 1 (2001) NCADI # BKD384
- The Adolescent Community Reinforcement Approach for Adolescent Cannabis Users. CYT Cannabis Youth Treatment Series Vol. 4 (2001) NCADI # BKD387
- Substance Abuse Treatment for Women Offenders: Guide to Promising Practices. TAP 23 (1999) NCADI # BKD310
- Addiction Counseling Competencies: The Knowledge, Skills, and Attitudes of Professional Practice. TAP 21 (1998) NCADI # BKD246
- Bringing Excellence to Substance Abuse Services in Rural and Frontier America. TAP 20 (1997) NCADI # BKD220
- Counselor's Manual for Relapse Prevention with Chemically Dependent Criminal Offenders. TAP 19 (1996) NCADI # BKD723
- Draft Buprenorphine Curriculum for Physicians (Note: the Curriculum is in DRAFT form and is currently being updated) *http://www.buprenorphine.samhsa.gov*
- CSAT Guidelines for the Accreditation of Opioid Treatment Programs *http://www.samhsa.gov/centers/csat/content/dpt/accreditation.htm*
- Model Policy Guidelines for Opioid Addiction Treatment in the Medical Office *http://www.samhsa.gov/centers/csat/content/dpt/model_policy.htm*

NIDA Manuals—Available through NCADI

- Brief Strategic Family Therapy. Manual 5 (2003) NCADI # BKD481
- Drug Counseling for Cocaine Addiction: The Collaborative Cocaine Treatment Study Model. Manual 4 (2002) NCADI # BKD465
- The NIDA Community-Based Outreach Model: A Manual to Reduce Risk HIV and Other Blood-Borne Infections in Drug Users. (2000) NCADI # BKD366
- An Individual Counseling Approach to Treat Cocaine Addiction: The Collaborative Cocaine Treatment Study Model. Manual 3 (1999) NCADI # BKD337
- Cognitive-Behavioral Approach: Treating Cocaine Addiction. Manual 1 (1998) NCADI # BKD254
- Community Reinforcement Plus Vouchers Approach: Treating Cocaine Addiction. Manual 2 (1998) NCADI # BKD255

NIAAA Publications—* These publications are available in PDF format or can be ordered on-line at *http://www.niaaa.nih.gov/publications/guides.htm*. An order form for the Project MATCH series is available on-line at *http://www.niaaa.nih.gov/publications/*

match.htm. All publications listed can be ordered through the NIAAA Publications Distribution Center, P.O. Box 10686, Rockville, MD 20849–0686.

- * Alcohol Problems in Intimate Relationships: Identification and Intervention. A Guide for Marriage and Family Therapists (2003) NIH Pub. No. 03–5284
- * Helping Patients with Alcohol Problems: A Health Practitioner's Guide. (2003) NIH Pub. No. 03–3769
- Cognitive-Behavioral Coping Skills Therapy Manual. Project MATCH Series, Vol. 3 (1995) NIH Pub. No. 94–3724
- Twelve Step Facilitation Therapy Manual. Project MATCH Series, Vol. 1 (1995) NIH Pub. No. 94–3722
- Motivational Enhancement Therapy Manual. Project MATCH Series, Vol. 2 (1994) NIH Pub. No. 94–3723

Dated: August 13, 2003.

Anna Marsh,

Acting Executive Officer.

[FR Doc. 03–21118 Filed 8–20–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Proposed Changes in Announcement of SAMHSA Discretionary Grant Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of proposed standard service-to-science grant announcement.

SUMMARY: Beginning in Fiscal Year (FY) 2004, the Substance Abuse and Mental Health Services Administration (SAMHSA) plans to change its approach to announcing and soliciting applications for its discretionary grant programs. The following announcement is a proposed standard announcement for SAMHSA's Service-to-Science Grants. *It is not an actual grant solicitation.*

Authority: Sections 509, 516, and 520A of the Public Health Service Act.

When published in final, the standard SAMHSA Service-to-Science Grant announcement will be used by applicants in conjunction with specific Notices of Funding Availability (NOFAs) to prepare applications for certain SAMHSA grants. SAMHSA is providing this draft announcement for public review and comment in order to ensure that the field is aware of the planned change and has an opportunity to identify areas where the announcement is unclear and needs improvement.

DATES: Submit written comments on this proposal by October 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding SAMHSA's proposed standard Service-to-Science Grant announcement to: Office of Policy, Planning and Budget, SAMHSA, Attn: Jennifer Fiedelholtz by fax (301–594–6159) or e-mail (*samhsa_standard_grants@samhsa.gov*). Please include a phone number in your e-mail, so that SAMHSA staff may contact you if there are questions about your comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Fiedelholtz of the Office of Policy, Planning and Budget, SAMHSA, by fax (301–594–6159) or e-mail (*samhsa_standard_grants@samhsa.gov*). If you would like a SAMHSA staff person to call you about your questions, please state this in an e-mail or fax request and provide a telephone number where you can be reached between 8:30 and 5 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION: Starting in FY 2004, SAMHSA plans to change its approach to announcing and soliciting applications for its discretionary grants. SAMHSA plans to issue the following Service-to-Science Grant announcement as one of four standard grant announcements that will describe the general program design and provide application instructions for four types of grants—Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service-to-Science Grants. The standard announcements will be used in conjunction with brief Notices of Funding Availability (NOFAs) that will announce the availability of funds for specific grant funding opportunities within each of the standard grant programs (*e.g.*, Homeless Treatment grants, Statewide Family Network grants, or HIV/AIDS and Substance Abuse Prevention Planning Grants).

A complete description of the proposed process, the other three proposed standard announcements and a sample NOFA are contained in separate notices in this issue of the **Federal Register**.

SAMHSA welcomes public comment on all aspects of the following announcement. In particular, SAMHSA welcomes comment on the following issues:

1. Is the difference between the standard announcement and a NOFA clear?

2. Are the programmatic requirements for SAMHSA's Service-to-Science Grants clear?

3. Are the goals/objectives for SAMHSA's Service-to-Science Grants clear?

4. If you are a potential applicant for a SAMHSA Service-to-Science Grant, do you believe you will be able to use the standard Service-to-Science Grant announcement with the NOFA to prepare your application? Will the ability to anticipate programmatic requirements through reviewing the standard grant announcements ahead of time improve your ability to prepare a solid application? Is the additional benefit "worth" the "cost" of having to use two different documents to prepare your application?

Text of Proposed Standard Announcement

Department of Health and Human Services

Substance Abuse and Mental Health Services Administration

Service-to-Science Grants—STS 04 (Initial Announcement)

Catalogue of Federal Domestic Assistance (CFDA) No.: 93.243 (unless otherwise specified in a NOFA in the **Federal Register** and on *http://www.grants.gov*)

Authority: Sections 509, 516 and/or 520A of the Public Health Service Act, as amended and subject to the availability of funds (unless otherwise specified in a NOFA in the **Federal Register** and on *http://www.grants.gov*)

KEY DATES

Application Deadline	This Program Announcement provides instructions and guidelines for multiple funding opportunities. Application deadlines for specific funding opportunities will be published in Notices of Funding Availability (NOFAs) in the **Federal Register** and on *http://www.grants.gov*.
Intergovernmental Review (E.O. 12372)	Letters from State Single Point of Contact (SPOC) are due 60 days after application deadline.

KEY DATES—Continued

Public Health System Impact Statement (PHSIS)/ Single State Agency Coordination.	Applicants must send the PHSIS to appropriate State and local health agencies by application deadline. Comments from Single State Agency are due 60 days after application deadline.

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I. Funding Opportunity Description

A. Introduction

The Substance Abuse and Mental Health Services Administration (SAMHSA) announces its intent to solicit applications for Service-to-Science grants. These grants will document and evaluate innovative practices that address critical substance abuse and mental health service gaps but have not yet been formally evaluated. Applicants who seek to stabilize, document, and evaluate promising practices for mental health and/or substance abuse treatment, prevention, and support services should apply for awards under this announcement.

SAMHSA also funds grants under three other standard grant announcements:

- *Services Grants* provide funding to implement substance abuse and mental health services.
- *Infrastructure Grants* identify and implement systems changes but are not designed to fund services.
- *Best Practices Planning and Implementation Grants* help communities and providers identify practices to effectively meet local needs, develop strategic plans for implementing/adapting those practices and pilot-test practices prior to full-scale implementation.

This announcement describes the general program design and provides application instructions for all SAMHSA Service-to-Science Grants. The availability of funds for specific Service-to-Science Grants will be announced in supplementary Notices of Funding Availability (NOFAs) in the **Federal Register** and at *http://www.grants.gov*—the Federal grant announcement Web page.

Typically, funding for Service-to-Science Grants will be targeted to specific populations and/or issue areas, which will be specified in the NOFAs. The NOFAs will also:

- Specify total funding available for the first year of the grants and the expected size and number of awards;
- Provide the application deadline;
- Note any specific program requirements for each funding opportunity; and
- Include any limitations or exceptions to the general provisions in this announcement (*e.g.*, eligibility, award size, allowable activities).

It is, therefore, critical that you consult the NOFA as well as this announcement in developing your grant application.

B. Expectations

While there is a well-established evidence base for many behavioral health practices, critical service gaps exist for which there is no formal evidence base. Stakeholders have developed many innovative practices to fill these gaps, but they may lack the expertise and/or resources to formally document and evaluate their practices. Consequently, it is not clear whether these innovative practices are effective, and they are not disseminated widely. SAMHSA seeks to encourage continued development of evidence-based practices to fill service gaps by documenting and evaluating promising stakeholder-initiated practices. This program will help organizations that have identified promising new practices to evaluate and package those innovations for review and inclusion in the National Registry of Effective Programs (NREP) as well as for further research.

1. Program Design

SAMHSA will fund Service-to-Science grants in two phases. You may apply for Phase I and II combined or for Phase II alone. Applications for Phase I alone will not be accepted.

Phase I provides support for up to 2 years to stabilize and document an existing practice that fills an identified gap. During Phase I, you may:

- Further develop or refine the promising practice;
- Develop training and practice manuals;
- Train persons who are implementing the practice;
- More systematically implement the practice;
- Develop measurement instruments; and
- Ensure that the intended target population is being reached by the practice.

The desired endpoint of Phase I is readiness to conduct a high-quality, systematic evaluation.

Phase II provides support for 1–3 years to evaluate the success of the practice. The purpose of Phase II is to conduct a high-quality, systematic evaluation to document short-term outcomes and demonstrate that the practice is worthy of an experimental study. On the basis of the evaluation, you may need to further refine the practice and further refine the practice manual. The evaluation may use a pre-post approach, an open trial model, other quasi or non-experimental model, or an experimental model.

The desired endpoint for Phase II is readiness to submit the practice for inclusion in SAMHSA's NREP and/or to submit applications to various research institutions for additional research.

SAMHSA's Service-to-Science grants will provide support to stabilize practices so that they may be

documented and evaluated. However, these grants are not intended to support development of entirely new practices. The practices must be in place and operational prior to application, and you must have at least anecdotal evidence that the practice is effective.

You may apply for a combination of Phases I and II in a single grant application if you have identified a priority gap for which a fully developed and documented practice currently does not exist.

- During Phase I, you will further develop and document the practice.
- During Phase II, you will evaluate the practice.

At the conclusion of Phase I, SAMHSA staff will review your progress to determine whether Phase II is warranted. This decision will be based on review of the documentation required by the end of Phase I, as described under the Performance Expectations section below. You must provide compelling evidence that the practice has been sufficiently developed and documented to be evaluated and has produced positive results.

For practices that are already fully developed, implemented, stabilized, and documented but that have not yet been formally evaluated, you may apply for Phase II only. Applications for Phase I alone will not be accepted.

Depending on your readiness, you may receive a combination of Phases I and II for a period of up to, but not more than, 5 years. You may apply for a shorter grant period than the maximum, and SAMHSA may award a grant for a shorter time period than you request.

2. Establishing Need

Service-to-Science grants are intended to develop solutions to widespread needs. This grant program is not intended to address a local community's need for funds to solve a local problem. Therefore, you must demonstrate that the broader substance abuse and/or mental health field—not just your local community—has a need for the practice. You must also show that no well-documented solution to the problem exists, and that your local community can support an evaluation that will increase the knowledge base of the field.

3. Allowable Activities

Phase I: Practice Development and Documentation

In Phase I, you will further develop and document the practice. The types of activities that may be needed and that are allowable include, but are not limited to, the following:

- Strategic planning
- Convening stakeholder meetings
- Training of practitioners
- Efforts to overcome policy and funding barriers to practice stability
- Development of an action plan for systematizing and stabilizing the practice
- Development of a practice support system
- Developing needed partnerships for ongoing implementation
- Logic model development
- Documentation of core elements of the practice
- Practice manual development
- Measurement instrument development/selection
- Participant recruitment
- Development of quality assurance and accountability mechanisms
- Implementation and refinement of the practice
- Implementation process evaluation
- Management information system development
- Collection of pilot outcome data

Phase II: Practice Evaluation

During Phase II, SAMHSA will (if necessary) continue to fund implementation of the practice being evaluated. Other types of allowable activities include, but are not limited to, the following:

- Convening relevant stakeholder meetings
- Alignment of management information systems with data collection needs
- Training evaluators
- Measurement instrument development/selection
- Data collection
- Database management
- Data and cost analysis
- Dissemination of results
- Refinement of logic model and practice manual based on evaluation results

4. Performance Expectations

All grantees will be expected to meet the following performance requirements by the end of their grant projects.

Phase I

By the end of Phase I, documentation for the practice must include:

- A logic model depicting the theory underlying the practice.
- A manual describing the practice in detail that would allow others to replicate the practice.
- Documentation of how critical stakeholders were included in the development of the practice.
- A detailed description of the population that the practice is designed to serve, and demographic characteristics of the people served by the practice over the past year.
- Documentation that the number of people being served by the practice has been stabilized.
- Documentation of the number and percentage of staff trained in the practice, and a mechanism for ongoing training for any new staff.
- A process evaluation demonstrating that the practice is in full operation and that a routine service delivery process is in place.
- Pilot outcome results. (Note: Collection of these data need not include an extensive set of outcomes systematically collected on all participants, but quantitative project data should provide some indication that key outcomes are being achieved.)

Phase II

By the end of Phase II, the evaluation of the practice must have demonstrated that:

- Key outcome measures have been clearly identified and defined.
- Participant data collection systems are in place that include:
  - Demographic characteristics;
  - Practice outcomes;
  - Service utilization;
  - Service delivery costs; and
  - Satisfaction with services.
- Demographic characteristics of participants, as well as the types of services that participants have received, are consistent with expectations based on the logic model for the practice.
- Service delivery patterns are stable.
- A fidelity scale has been developed for assessing the integrity of the practice, and the practice has been implemented with fidelity according to the scale.
- Systematically collected short-term outcome measures indicate meaningful results.
- Consumers, family members, and other critical stakeholders are satisfied with the practice.

In addition, at the end of Phase II, grantees must:

- Demonstrate how consumers, family members, and other critical stakeholders participated in the evaluation of the practice.
- Demonstrate how the practice will be sustained over the 5 years following the end of the grant period.
- As appropriate, submit the practice to the SAMHSA National Registry of Effective Programs (NREP).
- Demonstrate the willingness of those who initiated the practice to participate in rigorous research over the next 5 years (*e.g.*, through submission of grant applications to the National Institutes of Health, private foundations, or other research funding sources;

through formal agreements between practice initiators and researchers; etc.)

5. Data and Performance Measurement

The Government Performance and Results Act of 1993 (Pub. L.103–62, or "GPRA") requires all Federal agencies to:

- Develop strategic plans that specify what they will accomplish over a 3 to 5-year period;
- Set performance targets annually related to their strategic plan; and
- Report annually on the degree to which the previous year's targets were met.

The law further requires agencies to link their performance to their budgets. Agencies are expected to evaluate their programs regularly and to use results of these evaluations to explain their successes and failures.

To meet these requirements, SAMHSA must collect performance data (*i.e.*, "GPRA data") from grantees. You are required to report these GPRA data to SAMHSA on a timely basis so that performance results are available to support budgetary decisions.

In particular, you will be required to provide data on a core set of required measures, depending on the SAMHSA Center that is funding the grant. In your application, you must demonstrate your ability to collect and report on these measures, and you must provide some baseline data.

Appendix A provides the performance indicators for SAMHSA's Service-to-Science grantees. For complete information on the core measures relating to these indicators and the methodology for data collection and reporting, please consult the following Web sites:

- Center for Mental Health Services-funded grants: *http://www.samhsa.gov/aps/CMHS/GPRA*
- Center for Substance Abuse Prevention-funded grants: *http://www.samhsa.gov/aps/CSAP/GPRA*
- Center for Substance Abuse Treatment-funded grants: *http://www.samhsa.gov/aps/CSAT/GPRA.*

This information will be provided in the hard copy application kits distributed by SAMHSA's Clearinghouses, as well.

In some instances, you may be required to participate in cross-site evaluations and comply with additional data collection requirements; if so, this will be specified in the NOFA. Before grant award, a final agreement regarding data collection will be reached. The terms and conditions of the grant award will specify the data to be submitted and the schedule for submission. Grantees will be required to adhere to these terms and conditions of award.

6. Grantee Meetings

You must plan to send a minimum of two people (including the Project Director) to at least one joint grantee meeting in each year of the grant, and you must include funding for this travel in your budget. At these meetings, grantees will present the results of their projects and Federal staff will provide technical assistance. Each meeting will be 3 days. These meetings will usually be held in the Washington, DC, area, and attendance is mandatory.

II. Award Information

A. Award Amount

The NOFA will specify the expected award amount for each funding opportunity. Regardless of the amount specified in the NOFA, the actual award amount will depend on the availability of funds.

You may apply for either a combined Phase I & II grant or for a Phase II only grant.

- Awards for Phase I of the combined grants are for up to $150,000 per year for up to 2 years.
- Awards for Phase II are $300,000–$500,000 per year for 1–3 years.
- Awards for combined Phase I and II grants may not exceed 5 years.

Phase II funding will be approved only if you provide compelling evidence that the practice has been sufficiently developed and documented to be evaluated and has produced positive results.

Applications with proposed budgets that exceed the allowable amount as specified in the NOFA in any year of the proposed project will be screened out and will not be reviewed. Annual continuation awards will depend on the availability of funds, grantee progress in meeting project goals and objectives, and timely submission of required data and reports.

Summary Table:

Phase	Activity focus	Years of support	Application requirement	Funding level
I	Practice Development and Documentation.	0–2	Optional	Up to $150,000 per year.
II	Practice Evaluation	1–3	Required	$300,000–500,000 per year.
Total		1–5		

B. Funding Mechanism

The NOFA will indicate whether awards for each funding opportunity will be made as grants or cooperative agreements (see the Glossary in Appendix C for further explanation of these funding mechanisms). For cooperative agreements, the NOFA will describe the nature of Federal involvement in project performance and specify roles and responsibilities of grantees and Federal staff.

III. Eligibility Information

A. Eligible Applicants

Eligible applicants are domestic public and private *nonprofit* entities. For example, State, local or tribal governments; public or private universities and colleges; community- and faith-based organizations; and tribal organizations may apply. The statutory authority for this program precludes grants to for-profit organizations. The NOFA will indicate any limitations on eligibility.

Though not required, SAMHSA encourages community-based providers and independent researchers to partner when applying for Service-to-Science grants. Such partnerships will use the expertise of each partner to ensure sound service delivery, high-quality evaluation, independent results, and relevance of the evaluation design to service delivery outcomes.

B. Cost-Sharing

Cost-sharing is not required in this program, and applications will not be screened out on the basis of cost-sharing. However, you may include cash or in-kind contributions in your proposal as evidence of commitment to the proposed project. Reviewers may

consider this information in evaluating the quality of the application.

C. Other

SAMHSA applicants must comply with certain program requirements, including:

- Provisions relating to participant protection and the protection of human subjects specified in Section VIII–A of this document;
- Budgetary limitations as specified in Sections I, II, and IV–E of this document; and
- Documentation of nonprofit status as required in the PHS 5161–1.

You also must comply with any additional program requirements specified in the NOFA, such as the required signature of certain officials on the face page of the application and/or required memoranda of understanding with certain signatories.

Applications that do not comply with the eligibility and specific program requirements for the funding opportunity for which the application is submitted will be screened out and will not be reviewed.

IV. Application and Submission Information

(To ensure that you have met all submission requirements, a checklist is provided for your use in Appendix B of this document.)

A. Address To Request Application Package

You may request a complete application kit by calling one of SAMHSA's national clearinghouses:

- For substance abuse prevention or treatment grants, call the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686.
- For mental health grants, call the National Mental Health Information Center at 1–800–789–CMHS (2647).

You also may download the required documents from the SAMHSA Web site at *http://www.samhsa.gov*. Click on "grant opportunities."

Additional materials available on this Web site include:

- A technical assistance manual for potential applicants;
- Standard terms and conditions for SAMHSA grants;
- Guidelines and policies that relate to SAMHSA grants (*e.g.*, guidelines on cultural competence, consumer and family participation, and evaluation); and
- Enhanced instructions for completing the PHS 5161–1 application.

B. Content and Form of Application Submission

1. Required Documents

SAMHSA application kits include the following documents:

- PHS 5161–1 (revised July 2000)—Includes the face page, budget forms, assurances, certification, and checklist. You must use the PHS 5161–1 unless otherwise specified in the NOFA. Applications that are not submitted on the required application form will be screened out and will not be reviewed.
- Program Announcement (PA)—Includes instructions for the grant application. This document is the PA.
- Notice of Funding Availability (NOFA)—Provides specific information about availability of funds, as well as any exceptions or limitations to provisions in the PA. The NOFAs will be published in the **Federal Register** as well as on the Federal grants Web site (*http://www.grants.gov*).

You must use all of the above documents in completing your application.

2. Order of Sections

Applications must be complete and contain all information needed for review. In order for your application to be complete, it must include the following sections in the order listed. Applications that do not contain these sections will be screened out and will not be reviewed.

- *Face Page*—Use Standard Form (SF) 424, which is part of the PHS 5161–1. [Note: Beginning October 1, 2003, applicants will need to provide a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. SAMHSA applicants will be required to provide their DUNS number on the face page of the application. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access the Dun and Bradstreet Web site at *http://www.dunandbradstreet.com* or call 1–866–705–5711. To expedite the process, let Dun and Bradstreet know that you are a public/private nonprofit organization getting ready to submit a Federal grant application.]
- *Abstract*—Your total abstract should be no longer than 35 lines. In the first five lines or less of your abstract, write a summary of your project that can be used, if your project is funded, in publications, reporting to Congress, or press releases.
- *Table of Contents*—Include page numbers for each of the major sections of your application and for each appendix.
- *Budget Form*—Use SF 424A, which is part of the PHS 5161–1. Fill out Sections B, C, and E of the SF 424A.
- *Project Narrative and Supporting Documentation*—The Project Narrative describes your project. It consists of Sections A through D. These sections in total may be no longer than 25 pages. More detailed instructions for completing each section of the Project Narrative are provided in "Section V—Application Review Information" of this document.

The Supporting Documentation provides additional information necessary for the review of your application. This supporting documentation should be provided immediately following your Project Narrative in Sections E through G. There are no page limits for these sections, except for Section F, the Biographical Sketches/Job Descriptions.

- *Section E*—Budget Justification, Existing Resources, Other Support. You must provide a narrative justification of the items included in your proposed budget, as well as a description of existing resources and other support you expect to receive for the proposed project.
- *Section F*—Biographical Sketches and Job Descriptions.
- Include a biographical sketch for the Project Director and other key positions. Each sketch should be 2 pages or less. If the person has not been hired, include a letter of commitment from the individual with a current biographical sketch.
- Include job descriptions for key personnel. Job descriptions should be no longer than 1 page each.
- Sample sketches and job descriptions are listed on page 22, Item 6 in the Program Narrative section of the PHS 5161–1.
- *Section G*—Confidentiality and SAMHSA Participant Protection/Human Subjects. Instructions for completing Section G of your application are provided in Section VIII–A of this document.
- *Appendices 1 through 5*—Use only the appendices listed below. Do not use more than 30 pages total for Appendices 1, 4, and 5. Do not use appendices to extend or replace any of the sections of the Project Narrative unless specifically required in the NOFA. Reviewers will not consider them if you do.
- *Appendix 1:* Letters of Support
- *Appendix 2:* Documentation of the Practice (*Phase II only* applicants)
- *Appendix 3:* Data Collection Instruments/Interview Protocols
- *Appendix 4:* Sample Consent Forms

• *Appendix 5:* Letter to the SSA (if applicable; see Section VIII–C of this document)

• *Assurances*—Non-Construction Programs. Use Standard Form 424B found in PHS 5161–1.

• *Certifications*—Use the "Certifications" forms found in PHS 5161–1.

• *Disclosure of Lobbying Activities*—Use form SF LLL found in the PHS 5161–1. Federal law prohibits the use of appropriated funds for publicity or propaganda purposes, or for the preparation, distribution, or use of the information designed to support or defeat legislation pending before the Congress or State legislatures. This includes "grass roots" lobbying, which consists of appeals to members of the public suggesting that they contact their elected representatives to indicate their support for or opposition to pending legislation or to urge those representatives to vote in a particular way.

• *Checklist*—Use the Checklist found in PHS 5161–1. The Checklist ensures that you have obtained the proper signatures, assurances and certifications and is the last page of your application.

3. Application Formatting Requirements

Applicants also must comply with the following basic application requirements. Applications that do not comply with these requirements will be screened out and will not be reviewed.

• Text must be legible.

• Paper must be white and 8.5″ by 11.0″ in size.

• Pages must be typed single-spaced with one column per page.

• Page margins must be at least one inch.

• Type size in the Project Narrative cannot exceed an average of 15 characters per inch when measured with a ruler. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)

• Photo reduction or condensation of type cannot be closer than 15 characters per inch or 6 lines per inch.

• The pages cannot have printing on both sides.

• Page limitations specified for the Project Narrative and Appendices cannot be exceeded.

• Information must be sufficient for review.

To facilitate review of your application, follow these additional guidelines:

• Applications should be prepared using black ink. This improves the quality of the copies of applications that are provided to reviewers.

• Use white paper only. Do not use colored, heavy, or light-weight paper or any material that cannot be photocopied using automatic photocopying machines. Odd-sized and oversized attachments, such as posters, will not be copied or sent to reviewers. Do not send videotapes, audiotapes, or CD–ROMs.

• Pages should be numbered consecutively from beginning to end so that information can be located easily during review of the application. For example, the cover page should be labeled "page 1," the abstract page should be "page 2," and the table of contents page should be "page 3." Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue in the sequence.

C. Submission Dates and Times

Deadlines for submission of applications for specific funding opportunities will be published in NOFAs in the **Federal Register** and on the Federal grants Web site (*http://www.grants.gov*).

Your application must be received by the application deadline. Applications received after this date must have a proof-of-mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing.

You will be notified by postal mail that your application has been received.

Applications not received by the application deadline or not postmarked by a week prior to the application deadline will be screened out and will not be reviewed.

D. Intergovernmental Review (E.O. 12372) Requirements

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. Instructions for this review are included in Section VIII–B of this document. Section VIII–C provides instructions for the Public Health System Impact Statement (PHSIS) and submission of comments from the Single State Agency (SSA).

E. Funding Limitations/Restrictions

Cost principles describing allowable and unallowable expenditures for Federal grantees, including SAMHSA grantees, are provided in the following documents:

• Institutions of Higher Education: OMB Circular A–21

• State and Local Governments: OMB Circular A–87

• Nonprofit Organizations: OMB Circular A–122

• Appendix E Hospitals: 45 CFR part 74

In addition, SAMHSA Service-to-Science grant funds may not be used to:

• Pay for any lease beyond the project period.

• Provide services to incarcerated populations (defined as those persons in jail, prison, detention facilities, or in custody where they are not free to move about in the community).

• Pay for the purchase or construction of any building or structure to house any part of the program. (Applicants may request up to $75,000 for renovations and alterations of existing facilities, if necessary and appropriate to the project.)

• Provide residential or outpatient treatment services when the facility has not yet been acquired, sited, approved, and met all requirements for human habitation and services provision. (Expansion or enhancement of existing residential services is permissible.)

• Pay for housing other than residential mental health and/or substance abuse treatment.

• Provide inpatient treatment or hospital-based detoxification services.

• Pay for incentives to induce clients to enter treatment. However, a grantee or treatment provider may provide up to $20 or equivalent (coupons, bus tokens, gifts, childcare, and vouchers) to clients as incentives to participate in required data collection follow-up. This amount may be paid for participation in each required interview.

• Implement syringe exchange programs, such as the purchase and distribution of syringes and/or needles.

• Pay for pharmacologies for HIV antiretroviral therapy, sexually transmitted diseases (STDs)/sexually transmitted illnesses (STI), TB, and hepatitis B and C, or for psychotropic drugs.

F. Other Submission Requirements

1. Where To Send Applications

Send applications to the following address: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857.

Be sure to include the funding announcement number from the NOFA in item number 10 on the face page of the application. If you require a phone number for delivery, you may use (301) 443–4266.

2. How To Send Applications

Mail an original application and 2 copies (including appendices) to the

mailing address provided above. The original and copies must not be bound. Do not use staples, paper clips, or fasteners. Nothing should be attached, stapled, folded, or pasted.

You must use a recognized commercial or governmental carrier. Hand carried applications will not be accepted. Faxed or e-mailed applications will not be accepted.

V. Application Review Information

A. Evaluation Criteria

Your application will be reviewed and scored against the requirements listed below for developing the Project Narrative (Sections A–D). These sections describe what you intend to do with your project.

- In developing the Project Narrative section of your application, use these instructions, which have been tailored to this program. These are to be used instead of the "Program Narrative" instructions found in the PHS 5161–1.
- Be sure to provide complete references for any literature cited in your Project Narrative. The reference list will not be counted toward the 25-page limit for these sections.
- You must use the four sections/headings listed below in developing your Project Narrative. Be sure to place the required information in the correct section, or it will not be considered. Your application will be scored according to how well you address the requirements for each section.
- The Supporting Documentation you provide in Sections E–G, Appendices 1 through 5, and the Reference list will be considered by reviewers in assessing your response, along with the material in the Project Narrative.
- The number of points after each heading below is the maximum number of points a review committee may assign to that section of your Project Narrative. Bullet statements in each section do not have points assigned to them. They are provided to invite the attention of applicants and reviewers to important areas within each section.

Section A: Need (20 points)

- Describe the problem the project will address. Describe the national significance of the problem. Documentation of need may come from a variety of qualitative and quantitative sources in the professional literature. The quantitative data could also come from national data available regarding mental health and substance use needs, gaps, and priorities. For example:
- Applications focusing on substance abuse might draw from SAMHSA's National Household Survey on Drug Use and Health (NHSDUH); Drug Abuse Warning Network (DAWN); and Drug and Alcohol Services Information System (DASIS), which includes the Treatment Episode Data Set (TEDS).
- Applications focusing on mental health might draw on data available from the National Association of State Mental Health Program Directors (NASMHPD), SAMHSA (*http://www.samhsa.gov/cmhs/MentalHealthStatistics*), or other sources.

Qualitative sources may also include conclusions of conferences and events of national significance.

- Describe the target population for the practice.
- Review the literature that demonstrates a need to develop or adapt an effective practice for the target population. Demonstrate through the literature review that current evidence-based approaches to the problem do not exist or have not been evaluated for the specific target populations, or that approaches of greater clinical or cost effectiveness are needed.
- Demonstrate that the need in the community in which the project will be carried out is of sufficient magnitude that an adequate evaluation of the practice can be conducted. To the extent possible, use locally generated data or State data such as that available through State needs assessments.

Section B: Proposed Approach (30 points)

- Describe the practice proposed for evaluation.
- Describe how the proposed practice will respond to the needs described in Section A of your Project Narrative.
- Discuss the potential effectiveness of the practice proposed for evaluation. Why has this practice been selected? Present the theoretical underpinnings, core principles, and major assumptions of the proposed practice. Outline the key operational elements of the practice and summarize any relevant literature.
- Identify any necessary collaborators on the project, including their roles and responsibilities. Demonstrate their commitment to the project. Include letters of support in Appendix 1: Letters of Support. Identify any cash or in-kind contributions to the project.
- If applying for combined Phase I and II, describe the extent to which the practice has been previously developed, implemented, stabilized, and documented. Include a description of the support system needed for full implementation of the proposed practice—*e.g.*, community collaboration and consensus building, training and overall readiness of those implementing the practice, and involvement of families and consumers in the project.
- If applying for Phase II only, show that the practice is ready for systematic evaluation by providing, in Appendix 2, the documentation for the practice described in the Performance Measurement section of this PA for Phase I, including all of the following:
- A logic model depicting the theory underlying the practice.
- A manual describing the practice in detail that would allow others to replicate the practice.
- Documentation of how critical stakeholders were included in the development of the practice.
- A detailed description of the population that the practice is designed to serve, and demographic characteristics of the people served by the practice over the past year.
- Demonstration of stability in the number of people being served by the practice.
- Documentation that staff are trained in the practice (via the number and percentage of staff trained), and a mechanism for ongoing training for any new staff.
- Evidence demonstrating that the practice is in full operation and that a routine service delivery process is in place.
- Pilot outcome results. (**Note:** Collection of these data need not include an extensive set of outcomes systematically collected on all participants, but quantitative project data should provide some indication that key outcomes are being achieved.)
- Present the goals and measurable objectives of the project. Describe why the practice can better be evaluated for effectiveness following completion of the grant activities. For applications that include Phase I, include in your description how achievement of your goals will fulfill the Performance Expectations cited above and in Section I–B of this document.
- Describe the action steps to accomplish the goals and objectives. Demonstrate that the action steps will lead to successful accomplishment of the goals and objectives.
- Describe the potential barriers to successful conduct of the proposed project and how you will overcome them.
- Describe how the project will address issues of age, race/ethnicity, culture, language, sexual orientation, disability, literacy, and gender in the target population.

Section C: Evaluation Design and Analysis (30 points)

- Describe in detail your evaluation design for determining the effectiveness of the practice. For applications that include Phase I, describe your process evaluation to determine that the practice is in full operation, as well as how you will track the number and percentage of staff fully trained in the practice.
- Describe the evaluation protocol you intend to use. Include in Appendix 3 evaluation instruments to be used. Describe any literature or pilot testing done to verify the validity and reliability of the instruments to be used or how you plan to develop the instruments during the grant period.
- Describe how you will develop and manage a database management system to record participant demographic characteristics, practice outcomes, service utilization, practice costs, and satisfaction of stakeholders with the practice.
- Describe how the integrity of the practice will be assessed using a fidelity scale. If no fidelity scale currently exists for the practice, describe the process by which you will develop one during the grant period.
- Document your ability to collect and report on the required program measures for SAMHSA Service-to-Science Grants. Specify and justify the outcome measures you plan to use for your grant project. Identify any required program measures that you believe are inappropriate for your project and provide a rationale for excluding them. (See Appendix A for required program measures.)
- Describe how you will analyze the data collected. Include any analyses that will be done to determine the effectiveness of the practice for diverse subgroups, as well as the satisfaction of various stakeholder groups with the practice.
- Describe how you will document the role of critical stakeholders in the development and/or evaluation of the practice.

Section D: Management Plan and Staffing (20 points)

- Provide a time line for the project (chart or graph) showing key activities, milestones, and responsible staff.
- Discuss the capability and experience of the applicant organization and other participating organizations with similar projects and populations, including experience in providing culturally appropriate/competent services.
- Provide a list of staff members who will conduct the project, showing the role of each and their level of effort and qualifications. The Project Director and other key personnel, including evaluators and database management personnel, must be included.
- If you plan to include an advisory body in your project, describe the composition, roles/functions, and frequency of meetings of the proposed advisory body.
- Describe the resources available for the proposed project (*e.g.*, facilities, equipment), and provide evidence that resources are adequate for conducting a high-quality evaluation of the identified practice.

Note: Although the budget for the proposed project is not a review criterion, the review group will be asked to comment on the appropriateness of the budget after the merits of the application have been considered.

B. Review and Selection Process

SAMHSA applications are peer-reviewed according to the review criteria listed above. For those programs where the individual award is over $100,000, applications must also be reviewed by the appropriate National Advisory Council.

C. Award Criteria

Decisions to fund a grant are based on:

- The strengths and weaknesses of the application as identified by the peer review committee and approved by the appropriate National Advisory Council; and
- Availability of funds.

VI. Award Administration Information

A. Award Notices

After your application has been reviewed, you will receive a letter from SAMHSA through postal mail that describes the general results of the review, including the score that your application received.

If you are approved for funding, you will receive an additional notice, the Notice of Grant Award, signed by SAMHSA's Grants Management Officer. The Notice of Grant Award is the sole obligating document that allows the grantee to receive Federal funding for work on the grant project. It is sent by postal mail and is addressed to the contact person listed on the face page of the application.

If you are not funded, you can re-apply if there is another receipt date for the program.

B. Administrative and National Policy Requirements

- You must comply with terms and conditions of the grant award. Standard SAMHSA terms and conditions are available on SAMHSA's Web site (*http://www.samhsa.gov*).
- Depending on the nature of the specific funding opportunity and/or the proposed project as identified during review, additional terms and conditions may be identified in the NOFA or negotiated with the grantee prior to grant award. These may include, for example:
  - Actions required to be in compliance with human subjects requirements;
  - Requirements relating to additional data collection and reporting;
  - Requirements relating to participation in a cross-site evaluation; or
  - Requirements to address problems identified in review of the application.
- You will be held accountable for the information provided in the application relating to performance targets. SAMHSA program officials will consider your progress in meeting goals and objectives, as well as your failures and strategies for overcoming them, when making an annual recommendation to continue the grant and the amount of any continuation award. Failure to meet stated goals and objectives may result in suspension or termination of the grant award, or in reduction or withholding of continuation awards.
- In an effort to improve access to funding opportunities for applicants, SAMHSA is participating in the U.S. Department of Health and Human Services "Survey on Ensuring Equal Opportunity for Applicants." This survey is included in the application kit for SAMHSA grants. Applicants are encouraged to complete the survey and return it, using the instructions provided on the survey form.

C. Reporting

1. Progress and Financial Reports

- Grantees must provide annual and final progress reports. The final progress report must summarize information from the annual reports, describe the accomplishments of the project, and describe next steps for implementing plans developed during the grant period.
- Grantees must provide annual and final financial status reports. These reports may be included as separate sections of annual and final progress reports or can be separate documents. Because SAMHSA is extremely interested in ensuring that treatment or prevention service efforts are sustained, your financial reports should explain plans to ensure the sustainability of

efforts initiated under this grant. Initial plans for sustainability should be described in year 1 of the grant. In each subsequent year, you should describe the status of the project, successes achieved and obstacles encountered in that year.

• SAMHSA will provide guidelines and requirements for these reports to grantees at the time of award and at the initial grantee orientation meeting after award. SAMHSA staff will use the information contained in the reports to determine the grantee's progress toward meeting its goals.

2. Government Performance and Results Act (GPRA)

The Government Performance and Results Act (GPRA) mandates accountability and performance-based management by Federal agencies. The performance requirements for SAMHSA's Service-to-Science Grants are described in Section I–B under "Data and Performance Measurement" and listed in Appendix A of this document.

3. Publications

If you are funded under this grant program, you are required to notify the Government Project Officer (GPO) and SAMHSA's Publications Clearance Officer (301–443–8596) of any materials based on the SAMHSA-funded project that are accepted for publication.

In addition, SAMHSA requests that grantees:

• Provide the GPO and SAMHSA Publications Clearance Officer with advance copies of publications.

• Include acknowledgment of the SAMHSA grant program as the source of funding for the project.

• Include a disclaimer stating that the views and opinions contained in the publication do not necessarily reflect those of SAMHSA or the U.S. Department of Health and Human Services, and should not be construed as such.

SAMHSA reserves the right to issue a press release about any publication deemed by SAMHSA to contain information of program or policy significance to the substance abuse treatment/substance abuse prevention/mental health services community.

VII. Agency Contacts

The NOFAs provide contact information for questions about program issues.

For questions on grants management issues, contact: Stephen Hudak, Office of Program Services, Division of Grants Management, Substance Abuse and Mental Health Services Administration/OPS, 5600 Fishers Lane, Rockwall II 6th Floor, Rockville, MD 20857, (301) 443–9666, *shudak@samhsa.gov*.

VIII. Other Information

A. Human Subjects Protection

You must describe your procedures relating to Confidentiality and the Protection of Human Subjects Regulations in Section G of your application, using the guidelines provided below. Problems with confidentiality and protection of human subjects identified during peer review of your application may result in the delay of funding.

Confidentiality and Participant Protection: All applicants *must* address each of the following elements relating to confidentiality and participant protection. You must document how you will address these requirements or why they do not apply.

1. Protect Clients and Staff from Potential Risks

• Identify and describe any foreseeable physical, medical, psychological, social, legal, or other risks or adverse affects.

• Discuss risks that are due either to participation in the project itself or to the evaluation activities.

• Describe the procedures you will follow to minimize or protect participants against potential risks, including risks to confidentiality.

• Identify plans to provide help if there are adverse effects to participants.

• Where appropriate, describe alternative treatments and procedures that may be beneficial to the participants. If you choose not to use these other beneficial treatments, provide the reasons for not using them.

2. Fair Selection of Participants

• Describe the target population(s) for the proposed project. Include age, gender, and racial/ethnic background and note if the population includes homeless youth, foster children, children of substance abusers, pregnant women, or other groups.

• Explain the reasons for including groups of pregnant women, children, people with mental disabilities, people in institutions, prisoners, or others who are likely to be vulnerable to HIV/AIDS.

• Explain the reasons for *including or excluding* participants.

• Explain how you will recruit and select participants. Identify who will select partIcipants.

3. Absence of Coercion

• Explain if participation in the project is voluntary or required. Identify possible reasons why it is required, for example, court orders requiring people to participate in a program.

• If you plan to pay participants, state how participants will be awarded money or gifts.

• State how volunteer participants will be told that they may receive services even if they do not participate in the project.

4. Data Collection

• Identify from whom you will collect data (*e.g.*, from participants themselves, family members, teachers, others). Describe the data collection procedures and specify the sources for obtaining data (*e.g.*, school records, interviews, psychological assessments, questionnaires, observation, or other sources). Where data are to be collected through observational techniques, questionnaires, interviews, or other direct means, describe the data collection setting.

• Identify what type of specimens (*e.g.*, urine, blood) will be used, if any. State if the material will be used just for evaluation or if other use(s) will be made. Also, if needed, describe how the material will be monitored to ensure the safety of participants.

• Provide in Appendix 3: Data Collection Instruments/Interview Protocols, copies of *all* available data collection instruments and interview protocols that you plan to use.

5. Privacy and Confidentiality

• Explain how you will ensure privacy and confidentiality. Include who will collect data and how it will be collected.

• Describe:

• How you will use data collection instruments.

• Where data will be stored.

• Who will or will not have access to information.

• How the identity of participants will be kept private, for example, through the use of a coding system on data records, limiting access to records, or storing identifiers separately from data.

Note: If applicable, grantees must agree to maintain the confidentiality of alcohol and drug abuse client records according to the provisions of Title 42 of the Code of Federal Regulations, Part II.

6. Adequate Consent Procedures

• List what information will be given to people who participate in the project. Include the type and purpose of their participation. Identify the data that will be collected, how the data will be used, and how you will keep the data private.

• State:

- Whether or not their participation is voluntary.
- Their right to leave the project at any time without problems.
- Possible risks from participation in the project.
- Plans to protect clients from these risks.
- Explain how you will get consent for youth, the elderly, people with limited reading skills, and people who do not use English as their first language.

Note: If the project poses potential physical, medical, psychological, legal, social or other risks, you must get *written* informed consent.

- Indicate if you will get informed consent from participants or from their parents or legal guardians. Describe how the consent will be documented. For example: Will you read the consent forms? Will you ask prospective participants questions to be sure they understand the forms? Will you give them copies of what they sign?
- Include sample consent forms in your Appendix 4: Sample Consent Forms. If consent forms are in languages other than English, provide English translations.

Note: Never imply that the participant waives or appears to waive any legal rights, may not end involvement with the project, or releases your project or its agents from liability for negligence.

- Describe if separate consents will be obtained for different stages or parts of the project. For example, will they be needed for both participant protection in treatment intervention and for the collection and use of data?
- Additionally, if other consents (*e.g.*, consents to release information to others or gather information from others) will be used in your project, provide a description of the consents. Will individuals who do not consent to having individually identifiable data collected for evaluation purposes be allowed to participate in the project?

7. Risk/Benefit Discussion

Discuss why the risks are reasonable compared to expected benefits and importance of the knowledge from the project.

Protection of Human Subjects Regulations

All applicants for Service-to-Science grants must comply with the Protection of Human Subjects Regulations (45 CFR part 46).

Applicants must describe the process for obtaining Institutional Review Board (IRB) approval fully in their applications. While IRB approval is not required at the time of grant award, you will be required, as a condition of award, to provide the documentation that an Assurance of Compliance is on file with the Office for Human Research Protections (OHRP) and that IRB approval has been received prior to enrolling any participants in the proposed project.

Additional information about Protection of Human Subjects Regulations can be obtained on the web at *http://ohrp.osophs.dhhs.gov*. You may also contact OHRP by e-mail (*ohrp@osophs.dhhs.gov*) or by phone (301–496–7005).

B. Intergovernmental Review (E.O. 12372) Instructions

Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and can be downloaded from the Office of Management and Budget (OMB) Web site at *http://www.whitehouse.gov/omb/grants/spoc.html*.

- Check the list to determine whether your State participates in this program. You do not need to do this if you are a federally recognized Indian tribal government.
- If your State participates, contact your SPOC as early as possible to alert him/her to the prospective application(s) and to receive any necessary instructions on the State's review process.
- For proposed projects serving more than one State, you are advised to contact the SPOC of each affiliated State.
- The SPOC should send any State review process recommendations to the following address within 60 days of the application deadline: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SPOC—Funding Announcement No. [fill in pertinent funding opportunity number from the NOFA].

C. Public Health System Impact Statement (PHSIS)

The Public Health System Impact Statement or PHSIS (approved by OMB under control no. 0920–0428; see burden statement below) is intended to keep State and local health officials informed of proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to the following Public Health System Reporting Requirements.

Community-based, non-governmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected no later than the pertinent receipt date for applications. This PHSIS consists of the following information:

- A copy of the face page of the application (SF 424); and
- A summary of the project, no longer than one page in length, that provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with appropriate State or local health agencies.

For SAMHSA grants, the appropriate State agencies are the Single State Agencies (SSAs) for substance abuse and mental health. A listing of the SSAs can be found on SAMHSA's Web site at *http://www.samhsa.gov*. If the proposed project falls within the jurisdiction of more than one State, you should notify all representative SSAs.

Applicants who are not the SSA *must* include a copy of a letter transmitting the PHSIS to the SSA in Appendix 5: Letter to the SSA. The letter must notify the State that, if it wishes to comment on the proposal, its comments should be sent not later than 60 days after the application deadline to: Substance Abuse and Mental Health Services Administration, Office of Program Services, Review Branch, 5600 Fishers Lane, Room 17–89, Rockville, Maryland, 20857, ATTN: SSA—Announcement No. [fill in pertinent funding opportunity number from NOFA].

In addition:

- Applicants may request that the SSA send them a copy of any State comments.
- The applicant must notify the SSA within 30 days of receipt of an award.

[Public reporting burden for the Public Health System Reporting Requirement is estimated to average 10 minutes per response, including the time for copying the face page of SF 424 and the abstract and preparing the letter for mailing. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this project is 0920–0428. Send comments regarding this burden to CDC Clearance

Officer, 1600 Clifton Road, MS D–24, Atlanta, GA 30333, ATTN: PRA (0920–0428)].

Appendix A—SAMHSA Service to Science Indicators

The purpose of "service to science" grant program is to document and evaluate innovative practices with potential for broad application. The domain measured to determine success of these programs is the quality of the documentation and evaluation of the practice. This assessment is conducted by SAMHSA based upon information submitted by the grantee. Individual/systems outcomes pertinent to the service improvement are part of the grantee's outcome evaluation. This list of indicators and related measures will be updated periodically. The Notice of Funding Availability (NOFA) will specify which indicators are required for a particular funding opportunity. Applicants must provide expected baseline data for *asterisked items in the grant application. Grantees must collect and report data at the interval (*e.g.*, quarterly, annually) specified in the NOFA. Specific instructions for data collection will be provided on SAMHSA's Web site and in application kits. Some NOFAs may specify indicators and measures not on this list or may request grantees to identify measures appropriate to their specific project.

ACCOUNTABILITY

Percent of grantees reporting valid data.

CAPACITY

* Number of persons served (*Includes screening and assessment*).

Percent of providers providing services within expected costs.

* Number, type, and capacity of services/product ready for designation as "best practices"; number ready for further research.

* Percent of persons needing services/product who receive them.

EFFECTIVENESS

Participation of persons served and family members in planning, policy, and service delivery.

* Percent of programs reporting positive individual and system outcomes.

CSAP grantees: Difference between 30 day substance use of population served by program and comparable local and national rates. CSAT grantees: Number of people who show no past month substance use 6 months post treatment admission.

Grantees also will be required to report on several outcomes from the following list, as specified in the NOFA:

Individual outcomes: Participants (adults or children) disapproving of substance use; perceiving personal health risks associated with substance abuse; increasing age of first use; reporting abstinence at discharge; decreasing substance abuse risk factors related to spread of HIV/AIDS, including risky sexual behavior and sharing needles; improving employment/school attendance; having no criminal justice involvement; having stable living situation; reporting (consumer/family) improvement in behavioral/emotional symptoms.

System outcomes: Percent of referrals from juvenile/adult justice systems to systems of care; decreased days in inpatient/residential facilities; readmission rates; past 30 day utilization of inpatient, outpatient facilities; inpatient, outpatient, or emergency room treatment for physical complaint, mental or emotional difficulties, or alcohol or substance abuse; seclusion/restraint deaths or injuries; number of communities with defined systems/continuum of care; number of persons contacted through outreach who enroll in services; percent of providers, administrators trained who report adopting approved service methods; percent of participants in sponsored events who have used information to change their practices. Completion and documentation of one or more of the following, depending upon the scope of the project: Needs assessment; revised financing plan for coordinating funding streams; organizational/structural change or quality improvements; coordination and network improvements; workforce improvements; data infrastructure/performance measurement improvements

Appendix B—Checklist for Application Formatting Requirements

Your application must adhere to these formatting requirements. Failure to do so will result in your application being screened out and returned to you without review. In addition to these formatting requirements, there may be programmatic requirements specified in the NOFA. Please check the NOFA before preparing your application.

- Use the PHS 5161–1 application.
- Include the 10 application components required for SAMHSA applications (*i.e.*, Face Page, Abstract, Table of Contents, Budget Form, Project Narrative and Supporting Documentation, Appendices, Assurances, Certifications, Disclosure of Lobbying Activities, and Checklist.)
- Provide legible text.
- Use white paper, 8.5″ by 11.0″ in size.
- Type single-spaced text with one column per page.
- Use margins that are at least 1 inch.
- Use type size in the Project Narrative that does not exceed an average of 15 characters per inch when measured with a ruler. Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.
- Do not use photo reduction or condensation of type closer than 15 characters per inch or 6 lines per inch.
- Do not exceed page limitations specified for the Project Narrative (25 pages) and Appendices (30 pages).
- Provide sufficient information for review.
- Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or postmarked a week prior to the application deadline will not be reviewed.
- Applications that do not comply with the following requirements and any additional program requirements specified in the NOFA, or are otherwise unresponsive to PA guidelines will be screened out and returned to the applicant without review:
- Compliance with the Human Subjects Regulations.
- Budgetary limitations as specified in Section I, II, and IV-E of this document.
- Documentation of nonprofit status as required in the PHS 5161–1;

To facilitate review of your application, follow these additional guidelines. Failure to follow these guidelines will not result in your application being screened out. However, following these guidelines will help reviewers to consider your application.

- Please use black ink and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.
- Send the original application and two copies to the mailing address in the PA. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

Appendix C—Glossary

Best Practice: Best practices are practices that incorporate the best objective information currently available from recognized experts regarding effectiveness and acceptability.

Cooperative Agreement: A cooperative agreement is a form of Federal grant. Cooperative agreements are distinguished from other grants in that, under a cooperative agreement, substantial involvement is anticipated between the awarding office and the recipient during performance of the funded activity. This involvement may include collaboration, participation, or intervention in the activity. HHS awarding offices use grants or cooperative agreements (rather than contracts) when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

Cost-Sharing or Matching: Cost-sharing refers to the value of allowable non-Federal contributions toward the allowable costs of a Federal grant project or program. Such contributions may be cash or in-kind contributions. For SAMHSA grants, cost-sharing or matching is not required, and applications will not be screened out on the basis of cost-sharing. However, applicants often include cash or in-kind contributions in their proposals as evidence of commitment to the proposed project. This is allowed, and this information may be considered by

reviewers in evaluating the quality of the application.

Grant: A grant is the funding mechanism used by the Federal Government when the principal purpose of the transaction is the transfer of money, property, services, or anything of value to accomplish a public purpose of support or stimulation authorized by Federal statute. The primary beneficiary under a grant or cooperative agreement is the public, as opposed to the Federal Government.

In-Kind Contribution: In-kind contributions toward a grant project are non-cash contributions (*e.g.*, facilities, space, services) that are derived from non-Federal sources, such as State or sub-State non-Federal revenues, foundation grants, or contributions from other non-Federal public or private entities.

Practice: A practice is any activity, or collective set of activities, intended to improve outcomes for people with or at risk for substance abuse and/or mental illness. Such activities may include direct service provision, or they may be supportive activities, such as efforts to improve access to and retention in services, organizational efficiency or effectiveness, community readiness, collaboration among stakeholder groups, education, awareness, training, or any other activity that is designed to improve outcomes for people with or at risk for substance abuse or mental illness.

Practice Support System: This term refers to contextual factors that affect practice delivery and effectiveness in the pre-adoption phase, delivery phase, and post-delivery phase, such as (a) community collaboration and consensus building, (b) training and overall readiness of those implementing the practice, and (c) sufficient ongoing supervision for those implementing the practice.

Stakeholder: A stakeholder is an individual, organization, constituent group, or other entity that has an interest in and will be affected by a proposed grant project.

Target population catchment area: The target population catchment area is the geographic area from which the target population to be served by a program will be drawn.

Wraparound Service: Wraparound services are non-clinical supportive services—such as child care, vocational, educational, and transportation services—that are designed to improve the individual's access to and retention in the proposed project.

Dated: August 13, 2003.

Anna Marsh,

Acting Executive Officer.

[FR Doc. 03–21119 Filed 8–20–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Proposed Changes in Announcement of SAMHSA Discretionary Grant Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Sample Notice of Funding Availability (NOFA) for a SAMHSA Services Grant Funding Opportunity.

SUMMARY: Beginning in Fiscal Year (FY) 2004, the Substance Abuse and Mental Health Services Administration (SAMHSA) plans to change its approach to announcing and soliciting applications for its discretionary grant programs. The following is a sample Notice of Funding Availability (NOFA) that would be used in conjunction with SAMHSA's standard Services Grant announcement. Although based on an actual SAMHSA grant program, this is a hypothetical NOFA. *It is not an actual grant solicitation.*

Authority: Sections 509, 516, and 520A of the Public Health Service Act.

When published in final, NOFAs similar to the following NOFA will be used by applicants in conjunction with the standard SAMHSA Services Grant announcement to prepare applications for certain SAMHSA grants. SAMHSA is providing this sample NOFA for public review and comment in order to ensure that the field is aware of the planned change and has an opportunity to identify areas where the standard announcements and NOFA are unclear and need improvement.

DATES: Submit written comments on this proposal by October 20, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding SAMHSA's sample NOFA to: Office of Policy, Planning and Budget, SAMHSA, Attn: Jennifer Fiedelholtz, by fax (301–594–6159) or e-mail (*samha_standard_grants@samhsa.gov*). Please include a phone number in your e-mail, so that SAMHSA staff may contact you if there are questions about your comments.

FOR FURTHER INFORMATION CONTACT: Jennifer Fiedelholtz of the Office of Policy, Planning and Budget, SAMHSA, by fax (301–594–6159) or e-mail (*samhsa_standard_grants@samhsa.gov*). If you would like a SAMHSA staff person to call you about your questions, please state this is an e-mail or fax request and provide a telephone number where you can be reached between 8:30 a.m. and 5 p.m. Eastern Standard Time.

SUPPLEMENTARY INFORMATION: Starting in FY 2004, SAMHSA plans to change its approach to announcing and soliciting applications for its discretionary grants. SAMHSA plans to issue NOFAs similar to the following sample NOFA to announce specific funding opportunities within four standard grant programs (Services Grants, Infrastructure Grants, Best Practices Planning and Implementation Grants, and Service-to-Science Grants). The standard grant announcements will describe the general program design and provide application instructions for each type of grant. The NOFA's will:

- Identify any specific target population or issue for the specific grant funding opportunity,
- Identify which of the four standard announcements applicants must use to prepare their applications,
- Specify total funding available for the first year of the grants and the expected size and number of awards,
- Specify the application deadline,
- Note any specific program requirements for each funding opportunity, and
- Include any limitations or exceptions to the general provisions in the standard announcement.

A complete description of the proposed process and the four proposed standard announcements are contained in separate notices in this issue of the **Federal Register**.

SAMHSA welcomes public comment on all aspects of the sample NOFA. In particular, SAMHSA welcomes comment on the following issues:

1. Is the difference between the standard announcement and a NOFA clear?

2. Are the special programmatic requirements for the hypothetical funding opportunity clear?

3. If you are a potential applicant for a SAMHSA grant, do you believe you will be able to use the standard grant announcements with the NOFAs to prepare your application? Will the ability to anticipate programmatic requirements improve your ability to prepare a solid application? Is the additional benefit "worth" the "cost" of having to use two different documents to prepare your application?

Sample NOFA Text [**Note:** The following is not an actual funding opportunity. Certain information, such as size and number of awards, has been deliberately left out. This NOFA is provided as an opportunity for public comment on SAMHSA's proposed

approach to announcing and soliciting applications for discretionary grant funding opportunities in FY 2004.]: The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), announces the availability of FY [XXXX] funds for the grant program described below. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: *http://www.fedgrants.gov.*

This notice is not a complete description of the program. Potential applicants must obtain a copy of SAMHSA's standard Services Grants Program Announcement (SVC–04 PA), and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application. The SVC–04 PA describes the general program design and provides instructions for applying for most SAMHSA Services Grants. Additional instructions and specific requirements for this funding opportunity are described below.

Funding Opportunity Title: Development of Comprehensive Drug/Alcohol and Mental Health Treatment Systems for Persons Who Are Homeless—Short Title: Treatment for Homeless.

Announcement Type: Initial.

Funding Opportunity Number: TI 04–XX.

Catalog of Federal Domestic Assistance (CFDA) Number: 93.243.

Due Date for Applications: TBA.

Funding Instrument: Grant.

Funding Opportunity Description: SAMHSA's Services Grants provide funds to expand and strengthen effective, culturally appropriate substance abuse and mental health services at the State and local levels. Services grants must be used primarily to support service delivery. The services implemented through SAMHSA's Services Grants must incorporate the best objective information available from recognized experts regarding effectiveness and acceptability.

Treatment of Homeless is one of SAMHSA's Services Grants programs. The purpose of this funding opportunity is to enable communities to expand and strengthen their treatment services for homeless individuals with substance abuse disorders, mental illness, or with co-occurring substance abuse disorders and mental illness. "Homeless" persons are those who lack a fixed, regular, adequate nighttime residence, including persons whose primary nighttime residence is: a supervised public or private shelter designed to provide temporary living accommodations; a time-limited/nonpermanent transitional housing arrangement for individuals engaged in mental health and/or substance abuse treatment; or a public or private facility not designed for, or ordinarily used as, a regular sleeping accommodation. "Homeless" also includes "doubled-up"—a residential status that places individuals at imminent risk for becoming homeless—defined as sharing another person's dwelling on a temporary basis where continued tenancy is contingent upon the hospitality of the primary leaseholder or owner and can be rescinded at any time without notice.

Exceptions to the SVC–04 PA and Other Special Requirements: Applicants for Treatment for Homeless grants *must address* the following requirement(s) in the Project Narrative of their application:

- In Section C of the Project Narrative, applicants must comprehensively describe how treatment services are linked with housing programs and other services for homeless persons, *e.g.*, primary health care.
- In Section C of the Project Narrative, applicants must describe how the proposed project will be coordinated with other existing SAMHSA-funded grant projects in the target area, if there are any. The application must clearly state that there are no existing SAMHSA-funded grant projects in the target area, if this is the case.
- All grantees are required to report on the following client outcomes for their grant-funded projects, and applicants must document their ability to collect and report on these client outcomes in Section E of the Project Narrative: participants reporting abstinence at discharge; participants improving employment/school attendance; participants having no criminal justice involvement; participants having stable living situations; and participants reporting (consumer/family) improvement in behavioral/emotional symptoms.

Estimated Funding Available/Number of Awards: It is expected that [$$] million will be available to fund [##] awards in FY [XXXX]. The awards will be up to [$$] in total costs (direct and indirect) per year. Applications with proposed budgets that exceed [$$] in any year will be returned without review.

Period of Support: Up to five years, with annual continuations depending on the availability of funds, grantee progress in meeting program goals and objectives, and timely submission of required data and reports.

Eligible Applicants: Eligibility is restricted by statute to community-based public and private non-profit entities. These include county governments, city or township governments, Native American tribal governments (Federally recognized), public housing authorities/Indian housing authorities, nonprofits other than institutions of higher education with 501(c)(3) IRS status, nonprofits other than institutions of higher education without 501(c)(3) IRS status, and private institutions of higher education. State-supported, non-governing, community-based entities such as colleges, universities, and hospitals whose State support is for education and/or treatment services are eligible if such services are provided only to the local community. States are not eligible to apply under this statute.

Additional information regarding eligibility (including experience, licensing, accreditation, and certification requirements), program requirements, and formatting requirements is provided in the SVC–04 PA. Applications that do not comply with these requirements will be screened out and will not be reviewed.

Is Cost Sharing or Matching Required: No.

How To Get Full Announcement and Application Materials: Complete application kits may be obtained from: the National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686. When requesting an application kit, the applicant must specify the funding opportunity title and number for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, is included in the application kit. The PHS 5161–1 application form and the full text of the program announcement are also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov.* (Click on 'Grant Opportunities'.)

When submitting an application, be sure to type "TI 04–XX, Treatment for Homeless" in Item Number 10 on the face page of the application form.

Intergovernmental Review: Executive Order 12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. Instructions for complying with E.O. 12372 are provided in the SVC–04 PA.

Public Health System Impact Statement: The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials informed of proposed health services

grant applications submitted by community-based, non-governmental organizations within their jurisdictions. State and local governments and Indian tribal government applicants are not subject to the Public Health System Reporting Requirements. Instructions for complying with the PHSIS are provided in the SVC–04 PA.

Application Review Information: In compliance with Sec. 506 of the Public Health Service Act, in making award decisions, SAMHSA will give preference to entities that provide *integrated* primary health, substance abuse, *and* mental health services to homeless individuals, and to entities that have experience in providing substance abuse *and* mental health services to homeless individuals. Additional information concerning evaluation criteria, the review and selection process, and award criteria is available in the SVC–04 PA.

Award Administration: Award information, including information about award notices, administrative requirements and reporting requirements is included in the SV–04 PA.

Contact for Additional Information: [NAME], [ADDRESS], [PHONE], [E-MAIL].

Dated: August 13, 2003.

Anna Marsh,

SAMHSA, Acting Executive Officer.

[FR Doc. 03–21120 Filed 8–20–03; 8:45 am]

BILLING CODE 4162–20–P

Federal Register

Thursday,
August 21, 2003

Part III

Department of Energy

10 CFR Part 600
Financial Assistance Regulations; Final Rule

DEPARTMENT OF ENERGY

10 CFR Part 600

RIN 1991–AB57

Financial Assistance Regulations

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its Assistance Regulations by adding a new subpart, making minor amendments to existing subparts to reflect this change, and eliminating a section that contains internal procedures for DOE officials or requirements that are contained in other sections. The new subpart establishes administrative requirements for awards to for-profit organizations and eliminates the need to apply existing uniform administrative requirements, applicable to institutions of higher education, hospitals, and other nonprofit organizations, to awards with for-profit organizations.

EFFECTIVE DATE: This rule will become effective October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Trudy Wood, Office of Procurement and Assistance Policy, Department of Energy, at (202) 586-5625.

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Public Comments
III. Revisions Incorporated in This Final Rule
IV. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Review Under the Treasury and General Government Appropriations Act, 2001
J. Review Under Executive Order 13211
K. Review Under the Small Business Regulatory Enforcement Fairness Act
V. Approval of the Office of the Secretary of Energy

I. Background

Office of Management and Budget (OMB) Circular A–110 provides uniform requirements for the administration of grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations. OMB Circular A–110 also states that "Federal agencies may apply the provisions of this Circular to commercial organizations. * * *" Consistent with this guidance, when DOE implemented the rrequirments of Circular A–110 in its financial assistance regulations at 10 CFR part 600, subpart B, the Department, as a matter of discretion, also applied the provisions of the Circular to commerical organizations.

This rulemaking began with DOE publishing a notice in the **Federal Register** on May 8, 2001, 66 FR 23197, requesting comments on whether DOE should initiate a rulemaking to establish administrative requirements for financial assistance awards tailored specifically to for-profit organizations. Respondents strongly endorsed the concept of administrative requirements specifically tailored to for-profit organizations.

DOE published a Notice of Proposed Rulemaking (NOPR) in the **Federal Register** on August 26, 2002, 67 FR 54850. The NOPR proposed adding a new subpart D—Uniform Administrative Requirements for Grants and Cooperative Agreements With For-Profit Organizations. This subpart contained provisions similar to those in subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, Other Nonprofit Organizations and Commercial Organizations, but the provisions had been tailored specifically for awards to for-profits organizations. The NOPR also proposed that for-profit organizations subject to subpart D be relieved of obligations that would otherwise apply under subpart B.

The following section presents a summary of the major comments grouped by subject, and the responses to the comments. Where appropriate, the responses explain how we have changed the proposed subpart D in the final rule.

I. Discussion of Public Comments

Comments on Audit Requirements

Comment: The proposed section 600.316 is helpful from the point of view of publicly held firms but may be an additional and unnecessary burden for non-publicly held companies. The benefit in terms of assurance of proper use of the public funds might not be produced in a way that is proportional to the cost and effort involved. The contracting officer should be empowered to require the recipient to have an independent auditor arrange for a precise checking of the financial details and non-financial activities needed to assure the proper use of the public funds. For example, if the recipient is working under a cost-share arrangement, where the contractor is furnishing service for which a price per hour or day has been agreed, an audit of costs and general accounting practices would return no value but an audit of whether the services had been provided as reported would be of high value. The requirement should be revised to allow this type of practice rather than a full scale audit.

Response: Proposed section 600.316 would not require a full scale audit. It would require a recipient that expends $500,000 or more in a year under Federal awards to have an audit made for that year by an independent auditor in accordance with the requirements in paragraph (b) of that section. These requirements are similar to the requirements of the Single Audit Act, as implemented by the Office of Management and Budget Circular A–133, "Audits of States, Local Governments, and Non-profit Organizations." In addition, the recipient may elect to have the award separately audited if it is more economical, unless the award terms and conditions or Federal laws or regulations specify otherwise. For both cost shared and non-cost shared awards, the Government needs reasonable assurance that the recipient has an effective internal control structure (*e.g.*, control over and accountability for cash and property) and is complying with Federal laws and regulations and the terms and conditions of the award (*e.g.*, whether the services have been provided as reported).

Comment on Property Management Requirements

Comment: The requirements under proposed section 600.323, "Property management system," appear to be the same as the property requirements for assistance agreements with institutions of higher education, hospitals, and other non-profit organizations. These requirements would involve special record keeping that is similar to the Federal Acquisition Regulation (FAR) property clauses. It is requested that these requirements be further aligned with the voluntary standard that commercial organizations already follow.

Response: The voluntary standard for customer property management systems, established by the International Organization for Standardization (commonly referred to as the ISO), merely provides that organizations: (1) Exercise care with customer property; (2) identify, verify, protect and safeguard customer property; and (3) if property is lost, damaged or found unsuitable for use, report to the customer and maintain records. To

ensure uniformity and consistency in the management of property under financial assistance awards, DOE believes more specificity is needed. Using the OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations" as a guide, the Department developed and incorporated into proposed section 600.323 a streamlined set of requirements. We believe that this set of requirements is the minimum necessary to ensure the proper stewardship of property under financial assistance awards.

Comments on Intellectual Property Matters

Comment: Paragraph (c)(1) of proposed section 600.325 would provide that if a recipient is a large business, the agreement must include the clause giving ownership of inventions to DOE, unless there is an advance waiver. DOE should relieve the parties of the burden of justifying an advance waiver on a case-by-case basis, and provide to large business recipients treatment similar to that provided to small business, *i.e.*, title waived but Government purpose license retained.

Response: DOE operates under statutory mandates to obtain title to subject inventions, unless a patent waiver is granted (42 U.S.C. 2182; 42 U.S.C. 5908(c)). Patent waivers are to be granted only upon consideration of a number of factors specified by statute. While DOE has granted "class waivers" where appropriate for specific programs, DOE does not believe it has authority to grant a "class waiver" for all assistance programs, as requested by the commenter. Nevertheless, DOE is considering mechanisms for "streamlining" the patent waiver process to minimize time and paperwork burdens on DOE and recipients. In addition, DOE is considering issuance of class waivers of broader scope than previously granted. It should be noted that using the case-by-case patent waiver process may allow a recipient to obtain greater rights, *e.g.*, rights to subcontractor inventions, than would normally be available under the Patent Rights (Small Business Firms and Nonprofit Organization) clause.

Comment: Paragraph (c)(3) of proposed section 600.325 states that background patent and data provisions will not normally be required. Background patent and data provisions should be included only in circumstances where there is an extraordinary risk that the intended technological advance would not be commercialized, and only upon mutual agreement between recipient and the Contracting Officer.

Response: Proposed section 600.325, paragraph (c)(3) and the preamble of the proposed regulation stated that background rights to assure commercialization may be included, but only under special circumstances, for example, to provide heightened assurance of commercialization. It is expected that these "special circumstances" will be rare. Paragraph (c)(3) has been modified to expressly state that inclusion of background invention (and data) provisions to assure commercialization will be done only with the written concurrence of the DOE program official setting forth the need for heightened assurance of commercialization, and that the scope of any such background licensing provisions is subject to negotiation.

Comment: Paragraph (g) of proposed section 600.325 would make the inclusion of the "Authorization and Consent" clause an exception available only under fairly narrow circumstances. Inclusion of the "Authorization and Consent" clause should be reconsidered. The Contracting Officer should have increased flexibility to include the clause, or at the very least, the rule should be more specific regarding factors to be considered for inclusion of the "Authorization and Consent" clause (and the ancillary clauses such as "Notice and Assistance").

Response: The proposed rule stated that work performed by the recipient was not subject to authorization and consent to the use of a patented invention except in certain limited circumstances, such as a cooperative agreement for research related to homeland security or the clean up of a DOE facility. The intent was that DOE would assume no liability for patent infringement except in those special circumstances where DOE was a secondary beneficiary and could derive some use or benefit from the project. DOE generally awards cooperative agreements for such projects because DOE's substantial involvement in and contribution to the technical aspects of the effort are necessary to accomplish the objectives. The proposed rule invited the public to comment on whether an authorization and consent provision should be included routinely in assistance awards. As a result of our consideration of this comment, we have decided to be more specific regarding the use of this clause. The final rule includes a revised paragraph (g) to specify that the "Authorization and Consent" clause will not be included in grants, but will be included in all cooperative-agreements. DOE decided to include the "Authorization and Consent" clause in cooperative agreements because these awards are virtually always cost-shared, and inclusion of this clause serves as a necessary incentive to secure participant cost-sharing. A new parargraph (g)(3) has been added to this section. This paragraph establishes the policy and clauses for inclusion of "ancillary" matters such as patent indemnity and notice and assistance. These clauses, if included, must be consistent with those in 48 CFR part 927 for acquisition.

Comment: The "Rights in Data—General" clause in Appendix A to subpart D continues to give to the Government unlimited rights in "data first produced in the performance of the agreement". Further, paragraph (i), "Additional data requirements", of this clause exposes the recipient to a disclosure requirement for any data "first produced or specifically used in the performance of the agreement". DOE should have the right to receive only that data that the agreement specifies as the deliverable data, so that incidental developments such as basic proprietary process improvements, the development of which was not a requirement under the agreement, are not at risk.

Response: Both acquisitions, under the Federal Acquisition Regulation (FAR) and the Department of Energy Acquisition Regulation (DEAR), and financial assistance, under 10 CFR part 600, give DOE rights in data "first produced" under an award, *e.g.*, 10 CFR 600.136 gives DOE the right to "obtain, reproduce, publish or otherwise use 'the data first produced' under an award to an educational and other nonprofit organization". In addition DOE has statutory technical data dissemination obligations (*e.g.*, 42 U.S.C. 205(d); 42 U.S.C. 5817(e)). Data that is "specifically used," but not first produced in performance of an agreement, may be protected by the recipient's invoking of the withholding or marking provisions of paragraph (g) "Protection of limited rights data and restricted computer software" of the Rights in Data—General clause. Any delivery to the Government of limited rights data or restricted computer software is subject to negotiation. The fact that the Government has unlimited rights to data first produced or specifically used, which does not qualify as limited or restricted, does not mean that all data must be delivered. The amount of data to be delivered is determined by the program official and is subject to negotiation.

Comment: The requirement in 10 CFR part 784 for substantial manufacture in the United States for a patent title waiver remains unchanged. DOE should consider loosening this restriction, since most large for-profit corporations today are global and have partnerships with many overseas suppliers.

Response: The requirement for substantial manufacture in the United States for assignees and exclusive licensees of a waived invention is embodied in a "Preference for U.S. Industry" clause implementing a statutory requirement applicable to funding agreements with small business and nonprofits (35 U.S.C. 204) and made applicable to for-profit large businesses by the FAR and DOE Patent Waiver regulations, 10 CFR part 784. That "preference for U.S. Industry" provision includes authority for a waiver, under certain circumstances. In addition, DOE generally requires a "U.S. Competitiveness" provision as an additional condition for a patent waiver. This "U.S. Competitiveness" provision is negotiable, depending on circumstances surrounding the particular technology involved and DOE programmatic concerns. Inclusion of the "U.S. Competitiveness" provision is a programmatic decision, and therefore may be deleted with the concurrence of the DOE program official. However, where commercialization of DOE supported technology is the goal, promoting a U.S. economic benefit is an essential consideration.

III. Revisions Incorporated in This Final Rule

In addition to the changes made in response to public comments, DOE made the following revisions:

1. In the proposed rule, section 600.311 encouraged recipients to use existing financial management systems established for doing business in the commercial marketplace to the extent that the systems comply with Generally Accepted Accounting Principles (GAAP) and the minimum standards in this section. In the final rule, we have deleted the words "established for doing business in the commercial marketplace." Recipients are encouraged to use any existing systems (*i.e.*, systems used in the commercial marketplace or systems established for other government business) as long as the systems comply with GAAP and the standards in this section.

2. In the proposed rule, section 600.316 would require recipients that expend $500,000 or more in a year under Federal awards to have an audit made for that year by an independent auditor. We have added language to paragraph (a) of that section to clarify that if a recipient is performing under another Federal award that requires an audit by its Federal cognizant agency (*e.g.*, Defense Contract Audit Agency), the recipient must also use that agency to conduct the audit of the DOE award. The recipient and its Federal cognizant agency should develop a coordinated audit approach to ensure that the DOE award is included in the recipient's annual Federal audit.

3. In the proposed rule, section 600.325, paragraph (b) is entitled, "Patent rights—small business concerns and nonprofit organizations." As this paragraph is within subpart D, which applies to for-profit organizations, the title may be misleading or confusing. The final rule deletes the references to nonprofit organizations in the title and first sentence of paragraph (b), but retains the reference in the title of the clause in Appendix A, because this clause implements the Bayh-Dole Act (35 U.S.C. 206) and will be used by both small businesses and nonprofit organizations.

4. In section 600.325, paragraph (c)(1) the words "a large business" have been changed to "a for-profit organization other than a small business concern, as defined in 35 U.S.C. 201(h)" to comfort with the language in the statute. In addition, the words "pursuant to statute" have been added to clarify that this is a statutory requirements.

5. In the proposed rule, appendix A to subpart D, "Patent Rights (Small Business Firms and Nonprofit Organizations)" clause, paragraph (g)(2) made a reference to, but did not identify, the "DOE implementing regulations" and did not clearly address subcontracting requirements and rights. The final rule clarifies paragraph (g)(2) by deleting the reference to "DOE implementing regulations" and inserting "10 CFR 600.355(c)." In addition, a new paragraph (g)(3) has been added to this clause to establish requirements for subawards, as follows: "(3) In the case of subawards/contracts at any tier, DOE, the Recipient, and the subrecipeint/contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by the clause."

6. In appendix A to subpart D, "Rights in Data—Programs Covered Under Special Protected Data Statutes" clause, paragraph (g)(1) has been modified to add the following phrase to the end of the first sentence: "that would have been treated as a trade secret if developed at private expense." This change was made because the Energy Policy Act of 1992 limits such protection to data that would have been treated as trade secret if developed at private expense (42 U.S.C. 13293).

7. In the proposed rule, section 600.351(a)(4) allowed DOE to terminate a cooperative agreement for convenience of the government. While the Federal Acquisition Regulation includes a termination for convenience requirement, this is not a standard requirement in financial assistance. Neither OMB Circular A–110 nor A–102 includes a termination for convenience requirement. After further consideration, we have decided to delete paragraph (a)(4) in section 600.351 because DOE cooperative agreements are virtually always cost-shared, and applicants, lenders, and equity contributors may be reluctant to finance these projects if the award includes such a provision. We do not want to unnecessarily reduce the number of applicants applying for DOE assistance programs.

8. Minor editorial corrections were made to sections 600.302, 600.304, and 600.325.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because DOE is not required by the Administrative procedure Act (5 U.S.C. 553) or any other law to propose financial assistance rules for public comment, DOE did not prepare a regulatory flexibility analysis for this rule.

C. Review Under the Paperwork Reduction Act

This regulatory action will not impose any new reporting or record keeping requirements under the Paperwork Reduction Act. Reporting and record keeping requirements in subpart D have

been previously cleared under Office of Management and Budget Paperwork Clearance Package Numbers 1910–0400 and 1910–0800 or are those promulgated by OMB Circular A–110, which the Office of Management and Budget proposed in August 1992 (57 FR 39018), asking for public comments, and finalized in November 1993 (58 FR 62992). No new collection of information is imposed by this final rule.

D. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule deals only with agency procedures, and, therefore, is covered under the Categorical Exclusion in paragraph A6 to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies are regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's final rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Execution Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulations: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulations; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of a Federal regulatory action on State, local, and tribal governments, and the private sector. The Department has determined that today's regulatory action does not impose a Federal mandate on State, local or tribal governments or on the private sector.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001, 44 U.S.C. 3516, note, provides for agencies to review most disseminations of information to the public under implementing guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice of final rulemaking under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. Today's regulatory action is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Small Business Regulatory Enforcement Fairness Act

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of today's rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

V. Approval of the Office of the Secretary of Energy

The Office of the Secretary has approved the issuance of this rule.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management/Office of Management, Budget and Evaluation, Department of Energy.

Robert C. Braden,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

■ Part 600 of chapter II, title 10 of the Code of Federal Regulations, is amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

■ 1. The authority citation for part 600 continues to read as follows:

Authority: 42 U.S.C. 7101 *et seq*; 31 U.S.C. 6301–6308; 50 U.S.C. 2401 *et seq.* unless otherwise noted.

■ 2. Section 600.3 is amended by revising the definition of "nonprofit organization" to read as follows:

§ 600.3 Definitions.

* * * * *

Nonprofit organization means any corporation, trust, foundation, or institution which is entitled to exemption under section 501(c)(3) of the Internal Revenue Code, or which is not organized for profit and no part of the net earnings of which inure to the benefit of any private shareholder or individual (except that the definition of "nonprofit organization" at 48 CFR 27.301 shall apply for patent matters set forth at §§ 600.136 and 600.325).

* * * * *

§ 600.4 [Amended]

■ 3. Section 600.4 is amended as follows:

■ a. Paragraph (a)(1), the last sentence is amended by removing "or the patent requirements of § 600.27."

■ b. Paragraph (c)(2)(i), the last sentence is removed.

■ c. Paragraph (c)(2)(ii), the last sentence is removed.

§ 600.15 [Amended]

■ 4. Section 600.15 is amended by removing paragraphs (b)(4) and (5).

§ 600.27 [Removed and Reserved]

■ 5. Section 600.27 is removed and reserved.

■ 6. The title of subpart B is revised to read as follows:

Subpart B—Uniform Administrative Requirements for Grants and Cooperative Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations

§ 600.100 [Amended]

■ 7. Section 600.100 is amended by removing "and commercial" in the first and second sentences.

§ 600.104 [Amended]

■ 8. Section 600.104 is amended by removing "or commercial" in the first sentence and by adding a sentence at the end of the paragraph to read as follows:

§ 600.104 Subawards.

* * * For-profit subrecipients are subject to the provisions of 10 CFR part 600, subpart D, Administrative Requirements for Grants and Cooperative Agreements with For-Profit Organizations.

■ 9. Section 600.126 is amended by removing paragraphs (d) and (e) and revising paragraph (c) to read as follows:

§ 600.126 Non-Federal audits.

* * * * *

(c) For-profit organizations that are subrecipients are subject to the audit requirements specified in 10 CFR 600.316.

§ 600.127 [Amended]

■ 10. Section 600.127 is amended in paragraph (c) by removing "except for SBIR recipients as provided in § 600.18(d)(3)."

■ 11. Section 600.136 is amended as follows:

■ a. Paragraph (a), the first sentence is amended by removing "that are institutions of higher education, hospitals, and other nonprofit organizations,"

■ b. Paragraph (b) is revised.

■ c. Paragraph (d)(3) is removed.

■ d. Paragraph (e), the first sentence is amended by removing "For recipients that are institutions of higher education, hospitals, and other nonprofit organizations."

■ The revision reads as follows:

§ 600.136 Intangible property.

* * * * *

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

* * * * *

§§ 600.180–600.181 [Removed and Reserved]

■ 12. Sections 600.180 and 600.181 are removed.

■ 13. Subpart D is added in part 600 to read as follows:

Subpart D—Uniform Administrative Requirements for Grants and Cooperative Agreemenets With For-Profit Organizations

General

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Reports and Records

600.340 Purpose of reports and records.
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600.350 Purpose of termination and enforcement.
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Appendix A to Subpart D to Part 600—Patent and Data Rights Provisions
Appendix B to Subpart D to Part 600—Contract Provisions

Subpart D—Administrative Requirements for Grants and Cooperative Agreements With For-Profit Organizations

General

§ 600.301 Purpose.

(a) This subpart prescribes administrative requirements for awards to for-profit organizations.

(b) Applicability to prime awards and subawards is as follows:

(1) *Prime awards:* DOE contracting officers must apply the provisions of this part to awards to for-profit organizations. Contracting officers must not impose requirements that are in addition to, or inconsistent with, the requirements provided in this part, except:

(i) In accordance with the deviation procedures or special award conditions in § 600.303 or § 600.304, respectively; or

(ii) As required by Federal statute, Executive order, or Federal regulation implementing a statute or Executive order.

(2) *Subawards.* (i) Any legal entity (including any State, local government, university or other nonprofit organization, as well as any for-profit entity) that receives an award from DOE must apply the provisions of this part to subawards with for-profit organizations.

(ii) For-profit organizations that receive prime awards covered by this part must apply to each subaward the administrative requirements that are applicable to the particular type of subrecipient (*e.g.*, 10 CFR part 600, subpart B, contains requirements for institutions of higher education, hospitals, or other nonprofit organizations and 10 CFR part 600, subpart C, specifies requirements for subrecipients that are States or local governments).

§ 600.302 Definitions.

In addition to the definitions used in subpart A of this part, the following are definitions of terms as used in this subpart:

Advance means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

Applied research means efforts that seek to determine and exploit the potential of scientific discoveries or improvements in technology, and is directed toward the development of new materials, devices, methods, and processes.

Basic research means efforts directed solely toward increasing knowledge or understanding in science and engineering.

Cash contributions means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

Closeout means the process by which DOE determines that all applicable administrative actions and all required work of the award have been completed by the recipient and DOE.

Cost sharing or matching means that portion of project or program costs not borne by the Federal Government.

Demonstration means a project designed to determine the technical feasibility and economic potential of a technology on either a pilot plant or a prototype scale.

Development means efforts to create or advance new technology or demonstrate the viability of applying existing technology to new products and processes.

Disallowed costs means those charges to an award that the DOE contracting officer determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

DOE means the Department of Energy, including the National Nuclear Security Administration (NNSA).

Equipment means tangible, nonexpendable personal property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Excess property means property under the control of any DOE Headquarters or field office that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

Federal funds authorized: means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods.

Federally owned property means property in the possession of, or directly acquired by, the Government and subsequently made available to the recipient.

Funding period means the period of time when Federal funding is available for obligation by the recipient.

Incremental funding means a method of funding a grant or cooperative agreement where the funds initially obligated to the award are less than the total amount of the award, and DOE anticipates making additional obligations of funds when appropriated funds become available.

Obligations means the amount of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

Outlays or expenditures means charges made to the project or program. They may be reported on cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees, and for other amounts becoming owed under programs for which no current services or performance are required.

Personal property means property of any kind except real property. It may be:

(1) Tangible, having physical existence (*i.e.*, equipment and supplies); or

(2) Intangible, having no physical existence, such as patents, copyrights, data, and software.

Prior approval means written or electronic approval by an authorized official evidencing prior consent.

Program income means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in program regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

Project costs means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

Property means real property and personal property (equipment, supplies, and intellectual property), unless otherwise stated.

Real property means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

Small award means an award not exceeding the simplified acquisition threshold fixed at 41 U.S.C. 403(11) (currently $100,000).

Small business concern means a small business as defined at section 2 of Pub. L. 85–536 (16 U.S.C. 632) and the implementing regulations of the Administrator of the Small Business Administration. The criteria and size standards for small business concerns are contained in 13 CFR part 121.

Subaward means financial assistance in the form of money, or property in lieu of money, provided under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by an legal agreement, even if the agreement is called a contract, but the term does not include procurement of goods and services or any form of assistance which is not included in the definition of "award" in this part.

Subrecipient means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds or property provided.

Supplies means tangible, expendable personal property that is charged directly to the award and that has a useful life of less than one year or an acquisition cost of less than $5,000 per unit.

Suspension means an action by DOE that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by DOE. Suspension of an award is a separate action from suspension of a recipient under 10 CFR part 1036.

Termination means the cancellation of an award, in whole or in part, under an agreement at any time prior to either:

(1) The date on which all work under an award is completed; or

(2) The date on which Federal sponsorship ends, as provided in the award document or any supplement or amendment thereto.

Third party in-kind contributions means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

Unobligated balance means the portion of the funds authorized by DOE that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

§ 600.303 Deviations.

(a) *Individual deviations.* Individual deviations affecting only one award are subject to the procedures stated in 10 CFR 600.4

(b) *Class deviations.* Class deviations affecting more than one financial assistance transaction are subject to the procedures states in 10 CFR 600.4.

§ 600.304 Special award conditions.

(a) Contracting officers may impose additional requirements as needed, over and above those provided in this subpart, if an applicant or recipient:

(1) Has a history of poor performance;

(2) Is not financially stable;

(3) Has a management system that does not meet the standards prescribed in this subpart;

(4) Has not conformed to the terms and conditions of a previous award; or

(5) Is not otherwise responsible.

(b) Before imposing additional requirements, DOE must notify the applicant or recipient in writing as to:

(1) The nature of the additional requirements;

(2) The reason why the additional requirements are being imposed;

(3) The nature of the corrective action needed;

(4) The time allowed for completing the corrective actions; and

(5) The method for requesting reconsideration of the additional requirements imposed.

(c) The contracting officer must remove any special conditions if the circumstances that prompted them have been corrected.

§ 600.305 Debarment and suspension.

Recipients must comply with the nonprocurement debarment and suspension common rule implemented in 10 CFR part 1036. This common rule restricts subawards and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 600.306 Metric system of measurement.

(a) The Metric Conversion Act of 1975, as amended by the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 205) and implemented by Executive Order 12770, states that:

(1) The metric system is the preferred measurement system for U.S. trade and commerce.

(2) The metric system of measurement will be used, to the extent economically feasible, in Federal agencies' procurements, grants, and other business-related activities.

(3) Metric implementation is not required if such use is likely to cause significant inefficiencies or loss of markets to United States firms.

(b) Recipients are encouraged to use the metric system to the maximum extent practicable in measurement-sensitive activities and in measurement-sensitive outputs resulting from DOE funded programs.

Post-Award Requirements

Financial and Program Management

§ 600.310 Purpose of financial and program management.

Sections 600.311 through 600.318 prescribe standards for financial management systems; methods for making payments; and rules for cost sharing and matching, program income, revisions to budgets and program plans, audits, allowable costs, and fee and profit.

§ 600.311 Standards for financial management systems.

(a) Recipients are encouraged to use existing financial management systems to the extent that the systems comply with Generally Accepted Accounting Principles (GAAP) and the minimum standards in this section. At a minimum, a recipient's financial management system must provide:

(1) Effective control of all funds. Control systems must be adequate to ensure that costs charged to Federal funds and those counted as the recipient's cost share or match are consistent with requirements for cost reasonableness, allowability, and allocability in the applicable cost principles (*see* § 600.317) and in the terms and conditions of the award.

(2) Accurate, current and complete records that document, for each project funded wholly or in part with Federal funds, the source and application of the Federal funds and the recipient's required cost share or match. These records must:

(i) Contain information about receipts, authorizations, assets, expenditures, program income, and interest.

(ii) Be adequate to make comparisons of outlays with amounts budgeted for each award (as required for programmatic and financial reporting under § 600.341). Where appropriate, financial information should be related to performance and unit cost data.

(3) To the extent that advance payments are authorized under § 600.312, procedures that minimize the time elapsing between the transfer of funds to the recipient from the Government and the recipient's disbursement of the funds for program purposes.

(4) A system to support charges to Federal awards for salaries and wages, whether treated as direct or indirect costs. If employees work on multiple activities or cost objectives, a distribution of their salaries and wages must be supported by personnel activity reports which:

(i) Reflect an after the fact distribution of the actual activity of each employee.

(ii) Account for the total activity for which each employee is compensated.

(iii) Are prepared at least monthly, and coincide with one or more pay periods.

(b) If the Federal Government guarantees or insures the repayment of money borrowed by the recipient, DOE, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(c) DOE may require adequate fidelity bond coverage if the recipient lacks sufficient coverage to protect the Federal Government's interest.

(d) If bonds are required in the situations described in paragraphs (b) and (c) of this section, the bonds must be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 600.312 Payment.

(a) *Methods available.* Payment methods for awards with for-profit organizations are:

(1) *Reimbursement.* Under this method, the recipient requests reimbursement for costs incurred during a particular time period. In cases where the recipient submits requests for payment to the contracting officer, the DOE payment office reimburses the recipient by electronic funds transfer after approval of the request by the designated contracting officer.

(2) *Advance payments.* Under this method, DOE makes a payment to a recipient based upon projections of the recipient's cash needs. The payment generally is made upon the recipient's request, although predetermined payment schedules may be used when the timing of the recipient's needs to disburse funds can be predicted in advance with sufficient accuracy to ensure compliance with paragraph (b)(2)(iii) of this section.

(b) *Selecting a method.* (1) The preferred payment method is the reimbursement method, as described in paragraph (a)(1) of this section.

(2) Advance payments, as described in paragraph (a)(2) of this section, may be used in exceptional circumstances, subject to the following conditions:

(i) The contracting officer, in consultation with the program official, determines in writing that advance payments are necessary or will materially contribute to the probability of success of the project contemplated under the award (*e.g.*, as startup funds for a project performed by a newly formed company).

(ii) Cash advances must be limited to the minimum amounts needed to carry out the program.

(iii) Recipients and DOE must maintain procedures to ensure that the timing of cash advances is as close as is administratively feasible to the recipients' disbursements of the funds for program purposes, including direct program or project costs and the proportionate share of any allowable indirect costs.

(iv) Recipients must maintain advance payments of Federal funds in interest-bearing accounts, and remit annually the interest earned to the contracting officer for return to the Department of Treasury's miscellaneous receipts account, unless one of the following applies:

(A) The recipient receives less than $120,000 in Federal awards per year.

(B) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(C) The depository would require an average or minimum balance so high that establishing an interest bearing account would not be feasible, given the expected Federal and non-Federal cash resources.

(c) *Frequency of payments.* For either reimbursements or advance payments, recipients may submit requests for payment monthly, or more often if authorized by the contracting officer.

(d) *Forms for requesting payment.* DOE may authorize recipients to use the SF–270, "Request for Advance or Reimbursement;" the SF–271, "Outlay Report and Request for Reimbursement for Construction Programs;" or prescribe other forms or formats as necessary.

(e) *Timeliness of payments.* Payments normally will be made within 30 calendar days of the receipt of a recipient's request for reimbursement or advance by the office designated to receive the request, unless the billing is improper.

(f) *Precedence of other available funds.* Recipients must disburse funds available from program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on such funds before requesting additional cash payments.

(g) *Withholding of payments.* Unless otherwise required by statute, contracting officers may not withhold payments for proper charges made by recipients during the project period for reasons other than the following:

(1) A recipient failed to comply with project objectives, the terms and conditions of the award, or Federal reporting requirements, in which case the contracting officer may suspend payments in accordance with § 600.352.

(2) The recipient is delinquent on a debt to the United States (*see* definitions of "debt" and "delinquent debt" in 32 CFR 22.105). In that case, the contracting officer may, upon reasonable notice, withhold payments to the recipient until the debt owed is resolved.

§ 600.313 Cost sharing or matching.

(a) *Acceptable contributions.* All contributions, including cash contributions and third party in-kind contributions, must be accepted as part of the recipient's cost sharing or matching if such contributions meet all of the following criteria:

(1) They are verifiable from the recipient's records.

(2) They are not included as contributions for any other federally-assisted project or program.

(3) They are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) They are allowable under § 600.317.

(5) They are not paid by the Federal Government under another award unless authorized by Federal statute to be used for cost sharing or matching.

(6) They are provided for in the approved budget.

(7) They conform to other provisions of this part, as applicable.

(b) *Valuing and documenting contributions.*

(1) *Valuing recipient's property or services of recipient's employees.* Values are established in accordance with the applicable cost principles in § 600.317,

which means that amounts chargeable to the project are determined on the basis of costs incurred. For real property or equipment used on the project, the cost principles authorize depreciation or use charges. The full value of the item may be applied when the item will be consumed in the performance of the award or fully depreciated by the end of the award. In cases where the full value of a donated capital asset is to be applied as cost sharing or matching, that full value must be the lesser or the following:

(i) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation; or

(ii) The current fair market value. If there is sufficient justification, the contracting officer may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project. The contracting officer may accept the use of any reasonable basis for determining the fair market value of the property.

(2) *Valuing services of others' employees.* If an employer other than the recipient furnishes the services of an employee, those services are valued at the employee's regular rate of pay plus an amount of fringe benefits and overhead (at an overhead rate appropriate for the location where the services are performed), provided these services are in the same skill for which the employee is normally paid.

(3) *Valuing volunteer services.* Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services must be consistent with those paid for similar work in the recipient's organization. In those markets in which the required skills are not found in the recipient organization, rates must be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(4) *Valuing property donated by third parties.*

(i) Donated supplies may include such items as office supplies or laboratory supplies. Value assessed to donated supplies included in the cost sharing or matching share must be reasonable and must not exceed the fair market value of the property at the time of the donation.

(ii) Normally only depreciation or use charges for equipment and buildings may be applied. However, the fair rental charges for land and the full value of equipment or other capital assets may be allowed, when they will be consumed in the performance of the award or fully depreciated by the end of the award, provided that the contracting officer has approved the charges. When use charges are applied, values must be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

(A) The value of donated space must not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(B) The value of loaned equipment must not exceed its fair rental value.

(5) *Documentation.* The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services must be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal services and property must be documented.

§ 600.314 Program income.

(a) DOE must apply the standards in this section to the disposition of program income from projects financed in whole or in part with Federal funds.

(b) Unless program regulations or the terms and conditions of the award provide otherwise, recipients, without any further accounting to DOE, may retain program income earned:

(1) From license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award.

(2) After the end of the project period.

(c) Unless program regulations or the terms and conditions of the award provide otherwise, costs incident to the generation of program income for which there is some obligation to the Government may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(d) Other than any program income excluded pursuant to paragraph (b) and (c) of this section, program income earned during the project period must be retained by the recipient and used in one or more of the following ways, as specified in program regulations or the terms and conditions of the award:

(1) Added to funds committed to the project by DOE and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(e) If the program regulation or terms and conditions of an award authorize the disposition of program income as described in paragraph (d)(1) or (d)(2) of this section, and stipulate a limit on the amounts that may be used in those ways, program income in excess of the stipulated limits must be used in accordance with paragraph (d)(3) of this section.

(f) In the event that the program regulation or terms and conditions of the award do not specify how program income is to be used, paragraph (d)(3) of this section applies automatically to all projects or programs except research. For awards that support basic or applied research, paragraph (d)(1) of this section applies automatically unless the terms and conditions specify another alternative or the recipient is subject to special award conditions, as indicated in § 600.304.

(g) Proceeds from the sale of property that is acquired, rather than fabricated, under an award are not program income and must be handled in accordance with the requirements of §§ 600.320 through 600.325 of this part.

§ 600.315 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It includes the sum of the Federal and non-Federal shares when there are cost sharing requirements. The budget plan must be related to performance for program evaluation purposes, whenever appropriate.

(b) The recipient must obtain the contracting officer's prior approval if a revision is necessary for either of the following two reasons:

(1) A change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) A need for additional Federal funding.

(c) The recipient must obtain the contracting officer's prior approval if a revision is necessary for any of the following six reasons, unless the requirement for prior approval is specifically waived in the program regulation or terms and conditions of the award:

(1) A change in the approved project director, principal investigator, or other

key person specified in the application or award document.

(2) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(3) The inclusion of any additional costs that require prior approval in accordance with the applicable costs principles for Federal funds and the requirements applicable to the recipient's cost share or match, as provided in § 600.313 and § 600.317, respectively.

(4) The inclusion of pre-award costs for periods greater than the 90 calendar days immediately preceding the effective date of the award.

(5) A "no-cost" extension of the project period.

(6) Any subaward, transfer, or contracting out of substantive program performance under an award, unless described in the application and funded in the approved awards.

(d) If specifically required in the program regulation or the terms and conditions of the award, the recipient must obtain the contracting officer's prior approval for the following revisions:

(1) The transfer of funds among direct cost categories, functions, and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by DOE.

(2) For awards that provide support for both construction and nonconstruction work, any fund or budget transfers between the two types of work supported.

(e) Within 30 calendar days from the date of receipt of the recipient's request for budget revisions, the contracting officer must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the contracting officer must inform the recipient in writing of the date when the recipient may expect the decision.

§ 600.316 Audits.

(a) Any recipient that expends $500,000 or more in a year under Federal awards must have an audit made for that year by an independent auditor, in accordance with paragraph (b) of this section. If a recipient is currently performing under a Federal award that requires an audit by its Federal cognizant agency, that auditor must perform the independent audit. The audit generally should be made a part of the regularly scheduled, annual audit of the recipient's financial statements. However, it may be more economical in some cases to have Federal awards separately audited, and a recipient may elect to do so, unless that option is precluded by award terms and conditions or by Federal laws or regulations applicable to the program(s) under which the awards were made.

(b) The auditor must determine and report on whether:

(1) The recipient has an internal control structure that provides reasonable assurance that it is managing Federal awards in compliance with Federal laws and regulations and the terms and conditions of the awards.

(2) Based on a sampling of Federal award expenditures, the recipient has complied with laws, regulations, and award terms that may have a direct and material effect on Federal awards.

(c) The recipient must make the auditor's report available to the DOE contracting officers whose awards are affected.

(d) Before requesting an audit in addition to the independent audit, the contracting officer must:

(1) Consider whether the independent audit satisfies his or her requirements;

(2) Limit the scope of such additional audit to areas not adequately addressed by the independent audit; and

(3) If DOE is not the Federal agency with the predominant fiscal interest in the recipient, coordinate with the agency that has the predominant fiscal interest.

(e) The recipient and its Federal cognizant agency for audit should develop a coordinated audit approach to minimize duplication of audit work.

(f) Audit costs (including a reasonable allocation of the costs of the audit of the recipient's financial statement, based on the relative benefit to the Government and the recipient) are allowable costs of DOE awards.

§ 600.317 Allowable costs.

(a) DOE determines allowability of costs in accordance with the cost principles applicable to the type of entity incurring the cost as follows:

(1) *For-profit organizations.* Allowability of costs incurred by for-profit organizations and those nonprofit organizations listed in Attachment C to OMB Circular A–122 is determined in accordance with the for-profit costs principles in 48 CFR part 31 in the Federal Acquisition Regulation, except that patent prosecution costs are not allowable unless specifically authorized in the award document.

(2) *Other types of organizations.* Allowability of costs incurred by other types of organizations that may be subrecipients under a prime award to a for-profit organization is determined as follows:

(i) *Institutions of higher education.* Allowability is determined in accordance with OMB Circular A–21, "Cost Principles for Educational Institutions."

(ii) *Other nonprofit organizations.* Allowability is determined in accordance with OMB Circular A–122, "Cost Principles for Nonprofit Organizations."

(iii) *Hospitals.* Allowability is determined in accordance with the provisions of 45 CFR part 74, Appendix E, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals."

(iv) *Governmental organizations.* Allowability for State, local, or federally recognized Indian tribal government is determined in accordance with OMB Circular A–87, "Cost Principles for State and Local Governments."

(b) *Pre-award costs.* If a recipient incurs pre-award costs without the prior approval of the contracting officer, DOE may pay those costs incurred within the ninety calendar day period immediately preceding the effective date of the award, if such costs are:

(1) Necessary for the effective and economical conduct of the project;

(2) Otherwise allowable in accordance with the applicable cost principles; and

(3) Less than the total value of the award.

§ 600.318 Fee and profit.

(a) Grants and cooperative agreements may not provide for the payment of fee or profit to recipients or subrecipients, except for awards made pursuant to the Small Business Innovation Research or Small Business Technology Transfer Research programs.

(b) A recipient or subrecipient may pay a fee or profit to a contractor providing goods or services under a contract.

Property Standards

§ 600.320 Purpose of property standards.

Sections 600.321 through 600.325 set forth uniform standards for management, use, and disposition of property. DOE encourages recipients to use existing property-management systems to the extent that the systems meet these minimum requirements.

§ 600.321 Real property and equipment.

(a) *Prior approvals for acquisition with Federal funds.* Recipients may purchase real property or equipment in whole or in part with Federal funds

under an award only with the prior approval of the contracting officer.

(b) *Title.* Unless a statute specifically authorizes and the award specifies that title to property vests unconditionally in the recipient, title to real property or equipment vests in the recipient subject to the conditions that the recipient:

(1) Use the real property or equipment for the authorized purposes of the project until funding for the project ceases, or until the property is no longer needed for the purposes of the project;

(2) Not encumber the property without approval of the contracting officer; and

(3) Use and dispose of the property in accordance with paragraphs (d) and (e) of this section.

(c) *Federal interest in real property or equipment offered as cost-share.* A recipient may offer the full value of real property or equipment that is purchased with recipient's funds or that is donated by a third party to meet a portion of any required cost sharing or matching, subject to the requirements in § 600.313. If a resulting award includes such property as a portion of the recipient's cost share, the Government has a financial interest in the property, (*i.e.*, a share of the property value equal to the Federal participation in the project). The property is considered as if it had been acquired in part with Federal funds, and is subject to the provisions of paragraphs (b)(1), (b)(2), and (b)(3) of this section and to the provisions of § 600.323.

(d) *Insurance.* Recipients must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with DOE funds as provided to property owned by the recipient.

(e) *Use.* If real property or equipment is acquired in whole or in part with Federal funds under an award and the award does not specify that title vests unconditionally in the recipient, the real property or equipment is subject to the following:

(1) During the time that the real property or equipment is used on the project or program for which it was acquired, the recipient must make it available for use on other projects or programs, if such other use does not interfere with the work on the project or program for which the real property or equipment was originally acquired. Use of the real property or equipment on other projects is subject to the following order of priority:

(i) Activities sponsored by DOE grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts or activities not sponsored by any Federal agency. If so used, use charges must be assessed to those activities. For real property or equipment, the use charges must be at rates equivalent to those for which comparable real property or equipment may be leased.

(2) After Federal funding for the project ceases or if the real property or equipment is no longer needed for the purposes of the project, the recipient may use the real property or equipment for other projects, insofar as:

(i) There are Federally sponsored projects for which the real property or equipment may be used. If the only use for the real property or equipment is for projects that have no Federal sponsorship, the receipt must proceed with disposition of the real property or equipment, in accordance with paragraph (f) of this section.

(ii) The recipient obtains written approval from the contracting officer to do so. The contracting officer must ensure that there is a formal change of accountability for the real property or equipment to a currently funded, Federal award.

(iii) The recipient's use of the real property or equipment for other projects is in the same order of priority as described in paragraph (e)(1) of this section.

(f) *Disposition.*

(1) If an item of real property or equipment is no longer needed for Federally sponsored projects, the recipient has the following options:

(i) If the property is equipment with a current per unit fair market value of less than $5,000, it may be retained, sold, or otherwise disposed of with no further obligation to DOE.

(ii) If the property that is no longer needed is equipment (rather than real property), the recipient may wish to replace it with an item that is needed currently for the project by trading in or selling to offset the costs of the replacement equipment, subject to the approval of the contracting officer.

(iii) The recipient may elect to retain title, without further obligation to the Federal Government, by compensating the Federal Government for that percentage of the current fair market value of the real property or equipment that is attributable to the Federal participation in the project.

(iv) If the recipient does not elect to retain title to real property or equipment or does not request approval to use equipment as trade-in or offset for replacement equipment, the recipient must request disposition instructions from the responsible agency.

(2) If a recipient requests disposition instructions, the contracting officer must:

(i) For equipment (but not real property), consult with the DOE Project Director to determine whether the condition and nature of the equipment warrant excess screening within DOE. If screening is warranted, the equipment will be made available for reutilization within DOE through the Energy Asset Disposal System (EADS). If no DOE requirement is identified within a 30-day period, EADS automatically reports the availability of the equipment to the General Services Administration, to determine whether a requirement for the equipment exists in other Federal agencies.

(ii) For either real property or equipment, issue instructions to the recipient for disposition of the property no later than 120 calendar days after the recipient's request. The contracting officer's options for disposition are to direct the recipient to:

(A) Transfer title to the real property or equipment to the Federal Government or to an eligible third party provided that, in such cases, the recipient is entitled to compensation for its attributable percentage of the current fair market value of the real property or equipment, plus any reasonable shipping or interim storage costs incurred.

(B) Sell the real property or equipment and pay the Federal Government for that percentage of the current fair market value of the property that is attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). If the recipient is authorized or required to sell the real property or equipment, the recipient must use competitive procedures that result in the highest practicable return.

(3) If the responsible agency fails to issue disposition instructions within 120 calendar days of the recipient's request, the recipient must dispose of the real property or equipment through the option described in paragraph (f)(2)(ii)(B) of this section.

§ 600.322 Federally owned property.

(a) *Annual inventory.* The recipient must submit annually to the contracting officer an inventory listing of all Federally owned property in its custody, i.e., property furnished by the Federal Government, rather than acquired by the recipient with Federal funds under the award.

(b) *Insurance.* The recipient may not insure Federally owned property unless required by the terms and conditions of the award.

(c) *Use on other activities.* (1) Use of federally owned property on other activities is permissible, if authorized by the contracting officer responsible for administering the award to which the property currently is charged.

(2) Use on other activities must be in the following order of priority:

(i) Activities sponsored by DOE grants, cooperative agreements, or other assistance awards;

(ii) Activities sponsored by other Federal agencies' grants, cooperative agreements, or other assistance awards;

(iii) Activities under Federal procurement contracts or activities not sponsored by any Federal agency. If so used, use charges must be assessed to those activities. For real property or equipment, the use charges must be at rates equivalent to those for which comparable real property or equipment may be leased.

(d) *Disposition or property.* Upon completion of the award, the recipient must submit to the contracting officer a final inventory of Federal owned property. DOE may:

(1) Use the property to meet another Federal Government need (*e.g.*, by transferring accountability for the property to another Federal award to the same recipient, or by directing the recipient to transfer the property to a Federal agency that needs the property or to another recipient with a currently funded award).

(2) Declare the property to be excess property and either:

(i) Report the property to the General Services Administration through EADS, in accordance with the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483(b)(2)), as implemented by General Services Administration regulations at 41 CFR 101–47.202; or

(ii) Dispose of the property by alternative methods, if there is authority under law, such as 15 U.S.C. 3710(i).

§ 600.323 Property management system.

The recipient's property management system must include the following:

(a) Property records must be maintained, to include the following information for property that is Federally owned, equipment that is acquired in whole or in part with Federal funds, or property or equipment that is used as cost sharing or matching:

(1) A description of the property.

(2) Manufacturer's serial number, model number, Federal stock number, national stock number, or any other identification number.

(3) Source of the property, including the award number.

(4) Whether title vests in the recipient or the Federal Government.

(5) Acquisition date (or date received, if the property was furnished by the Federal Government) and cost.

(6) Information from which one can calculate the percentage of Federal participation in the cost of the property (not applicable to property furnished by the Federal Government).

(7) The location and condition of the property and the date the information was reported.

(8) Ultimate disposition data, including data of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal Government for its share.

(b) Federal owned equipment must be marked to indicate Federal ownership.

(c) A physical inventory must be taken and the results reconciled with the property records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records must be investigated to determine the causes of the difference. The recipient must, in connection with the inventory, verify the existence, current utilization, and continued need for the property.

(d) A control system must be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of property must be investigated and fully documented. If the property is owned by the Federal Government, the recipient must promptly notify the Federal agency responsible for administering the property.

(e) Adequate maintenance procedures must be implemented to keep the property in good condition.

§ 600.324 Supplies.

(a) Title vests in the recipient upon acquisition of supplies acquired with Federal funds under an award.

(b) Upon termination or completion of the project or program, the recipient may retain any unused supplies. If the inventory of unused supplies exceeds $5,000 in total aggregate value and the items are not needed for any other Federally sponsored project or program, the recipient may retain the items for use on non-Federal sponsored activities or sell them, but must, in either case, compensate the Federal Government for its share.

§ 600.325 Intellectual property.

(a) *Scope.* This section sets forth the policies with regard to disposition of rights to data and to inventions conceived or first actually reduced to practice in the course of, or under, a grant or cooperative agreement with DOE.

(b) *Patents right—small business concerns.* In accordance with 35 U.S.C. 202, if the recipient is a small business concern and receives a grant, cooperative agreement, subaward, or contract for research, developmental, or demonstration activities, then, unless there are "exceptional circumstances" as described in 35 U.S.C. 202(e), the award must contain the standard clause in Appendix A to this subpart, entitled "Patents Rights (Small Business Firms and Nonprofit Organizations" which provides to the recipient the right to elect ownership of inventions made under the award.

(c) *Patent rights—other than small business concerns, e.g., large businesses.*

(1) *No Patent Waiver.* Except as provided by paragraph (c)(2) of this section, if the recipient is a for-profit organization other than a small business concern, as defined in 35 U.S.C. 201(h) and receives an award or a subaward for research, development, and demonstration activities, then, pursuant to statute, the award must contain the standard clause in Appendix A to this subpart, entitled "Patent Rights (Large Business Firms)—No Waiver" which provides that DOE owns the patent rights to inventions made under the award.

(2) *Patent Waiver Granted.* Paragraph (c)(1) of this section does not apply if:

(i) DOE grants a class waiver for a particular program under 10 CFR part 784;

(ii) The applicant requests and receives an advance patent waiver under 10 CFR part 784; or

(iii) A subaward is covered by a waiver granted under the prime award.

(3) *Special Provision.* Normally, an award will not include a background patent and data provision. However, under special circumstances, in order to provide heightened assurance of commercialization, a provision providing for a right to require licensing of third parties to background inventions, limited rights data and/or restricted computer software, may be included. Inclusion of a background patent and/or a data provision to assure commercialization will be done only with the written concurrence of the DOE program official setting forth the need for such assurance. An award may include the right to license the Government and third party contractors for special Government purposes when future availability of the technology would also benefit the government, *e.g.*,

clean-up of DOE facilities. The scope of any such background patent and/or data licensing provision is subject to negotiation.

(d) *Rights in data—general rule.*

(1) Subject to paragraphs (d)(2) and (3) of this section, and except as otherwise provided by paragraphs (e) and (f) of this section or other law, any award under this subpart must contain the standard clause in Appendix A to this subpart, entitled "Rights in Data—General".

(2) Normally, an award will not require the delivery of limited rights data or restricted computer software. However, if the contracting officer, in consultation with DOE patent counsel and the DOE program official, determines that delivery of limited rights data or restricted computer software is necessary, the contracting officer, after negotiation with the applicant, may insert in the award the standard clause as modified by Alternates I and/or II set forth in Appendix A to this subpart.

(3) If software is specified for delivery to DOE, or if other special circumstances exist, *e.g.*, DOE specifying "open-source" treatment of software, then the contracting officer, after negotiation with the recipient, may include in the award special provisions requiring the recipient to obtain written approval of the contracting officer prior to asserting copyright in the software, modifying the retained Government license, and/or otherwise altering the copyright provisions.

(e) *Rights in data—programs covered under special protected data statutes.*

(1) If a statute, other than those providing for the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR) programs, provides for a period of time, typically up to five years, during which data produced under an award for research, development, and demonstration may be protected from public disclosure, then the contracting officer must insert in the award the standard clause in Appendix A to this subpart entitled "Rights in Data—Programs Covered Under Special Protected Data Statutes" or, as determined in consultation with DOE patent counsel and the DOE program official, a modified version of such clause which may identify data or categories of data that the recipient must make available to the public.

(2) An award under paragraph (e)(1) of this section is subject to the provisions of paragraphs (d)(2) and (3) of this section.

(f) *Rights in data—SBIR/STTR programs.* (1) If an applicant receives an award under the SBIR or STTR program, then the contracting officer must insert in the award the standard data clause in the General Terms and Conditions for SBIR Grants, entitled "Rights in Data—SBIR Program".

(2) The data rights provisions for SBIR/STTR grants are contained in the award terms and conditions for SBIR grants located at *http://e-center.doe.gov* on the Professionals Homepage under Financial Assistance, Regulations and Guidance.

(g) *Authorization and consent.* (1) Work performed by a recipient under a grant is not subject to authorization and consent to the use of a patented invention, and the Government assumes no liability for patent infringement by the recipient under 28 U.S.C. 1498.

(2) Work performed by a recipient under a cooperative agreement is subject to authorization and consent to the use of a patented invention consistent with the principles set forth in 48 CFR 27.201–1.

(3) The contracting officer, in consultation with patent counsel, may also include clauses in the cooperative agreement addressing other patent matters related to authorization and consent, such as patent indemnification of the Government by recipient and notice and assistance regarding patent and copyright infringement. The policies and clauses for these other patent matters will be the same or consistent with those in 48 CFR part 927.

Procurement Standards

§ 600.330 Purpose of procurement standards.

Section 600.331 sets forth requirements necessary to ensure:

(a) Recipients' procurements that use Federal funds comply with applicable Federal statutes, regulations, and executive orders.

(b) Proper stewardship of Federal funds used in recipients' procurements.

§ 600.331 Requirements.

The following requirements pertain to recipients' procurements funded in whole or in part with Federal funds or with recipients' cost-share or match:

(a) *Reasonable cost.* Recipients' procurement procedures must use best commercial practices to ensure reasonable cost for procured goods and services. Recipients are encouraged to buy commercial items, if practicable.

(b) *Pre-award review of certain procurements.* If the contracting officer determines that there is a compelling need to perform a pre-award review of a specific transaction and the terms of the award identify the specific transaction and provide for such a review, then the recipient must obtain the contracting officer's approval prior to awarding the transaction and must provide the contracting officer the following documents to review:

(1) Request for proposals or invitation to bid, if any;

(2) Cost estimate;

(3) Proposal/bid;

(4) Proposed award document; and

(5) Summary of negotiations or justification for award.

(c) *Contract provisions.* (1) Contracts in excess of the simplified acquisition threshold must contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(2) All contracts in excess of the simplified acquisition threshold must contain suitable provisions for termination for default by the recipient and for termination due to circumstances beyond the control of the contractor.

(3) All negotiated contracts in excess of the simplified acquisition threshold must include a provision permitting access of DOE, the Inspector General, the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and records of the contractor that are directly pertinent to a specific programs, for the purpose of making audits, examinations, excerpts, transcriptions, and copies of such documents.

(4) All contracts, including those for amounts less than the simplified acquisition threshold, awarded by recipients and their contractors must contain the procurement provisions of Appendix B to this subpart, as applicable.

(d) *Recipient responsibilities.* The recipient is the responsible authority, without recourse to DOE, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. The recipient should refer matters concerning violations of statutes to such Federal, State or local authority as may have proper jurisdiction.

Reports and Records

§ 600.340 Purpose of reports and records.

Sections 600.341 and 600.342 prescribe requirements for monitoring

and reporting financial and program performance and for records retention.

§ 600.341 Monitoring and reporting program and financial performance.

(a) The terms and conditions of the award prescribe the reporting requirements, the frequency, and the due dates for reports. At a minimum, requirements must include:

(1) Periodic progress reports (at least annually, but no more frequently than quarterly) addressing both program status and business status, as follows:

(i) The program portions of the reports must address progress toward achieving program performance goals and milestones, including current issues, problems, or developments.

(ii) The business portions of the reports must provide summarized details on the status of resources (Federal funds and non-Federal cost sharing or matching), including an accounting of expenditures for the period covered by the report. The report should compare the resource status with any payment and expenditure schedules or plans provided in the original award, explain any major deviations from those schedules, and discuss actions that will be taken to address the deviations.

(2) A final technical report if the award is for research and development.

(b) If the contracting officer previously authorized advance payments, pursuant to § 600.312(a)(2), he/she should consult with the DOE project director and consider whether program progress reported in the periodic progress report, in relation to reported expenditures, is sufficient to justify continued authorization of advance payments.

§ 600.342 Retention and access requirements for records.

(a) This section sets forth requirements for records retention and access to records for awards to recipients and subrecipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award must be retained for a period of three years from the date of submission of the final expenditure report. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.

(3) If records are transferred to or maintained by DOE, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocation plans, and related records must be retained in accordance with the requirements specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the contracting officer.

(d) The contracting officer may request that recipients transfer certain records to DOE custody if he or she determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a contracting officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) DOE, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but must last as long as records are retained.

(f) Unless required by statute, DOE must not place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when DOE can demonstrate that such records would be kept confidential and would be exempt from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records belonged to DOE.

(g) Indirect cost proposals, cost allocation plans, and other cost accounting documents (such as documents related to computer usage chargeback rates), along with their supporting records, must be retained for a 3-year period, as follows:

(1) If the recipient or the subrecipient is required to submit an indirect-cost proposal, cost allocation plan, or other computation to the cognizant Federal agency for purposes of negotiating an indirect cost rate or other rates, the 3-year retention period starts on the date of the submission.

(2) If the recipient or the subrecipient is not required to submit the documents or supporting records for negotiating an indirect cost rate or other rates, the 3-year retention period for the documents and records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

(h) If the information described in this section is maintained on a computer, recipients must retain the computer data on a reliable medium for the time periods prescribed. Recipients may transfer computer data in machine readable form from one reliable computer medium to another. Recipients' computer data retention and transfer procedures must maintain the integrity, reliability, and security of the original computer data. Recipients must also maintain an audit trail describing the data transfer. For the record retention time periods prescribed in this section, recipients must not destroy, discard, delete, or write over such computer data.

Termination and Enforcement

§ 600.350 Purpose of termination and enforcement.

Sections 600.351 through 600.353 set forth uniform procedures for suspension, termination, enforcement, and disputes.

§ 600.351 Termination.

(a) Awards may be terminated in whole or in part only in accordance with one of the following:

(1) By the contracting officer, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the contracting officer with the consent of the recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the contracting officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. The recipient must provide such notice at least 30 calendar days prior to the effective date of the termination. However, if the contracting officer determines in the case of partial termination that the reduced or modified portion of the award will not accomplish the purposes for which the award was made, he or she may terminate the award in its entirety.

(b) If the recipient incurred allowable costs prior to the termination, the responsibilities of the recipient referred to in § 600.361(b), including those related to property, apply to the termination of the award, and provision must be made for continuing

responsibilities of the recipient after termination, as appropriate.

§ 600.352 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the contracting officer may, in addition to imposing any of the special conditions outlined in § 600.304, take one or more of the following actions, as appropriate:

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the contracting officer.

(2) Disallow (that is, deny both the use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Apply other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, DOE must provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable, unless the contracting officer expressly authorizes them in the notice of suspension or termination or subsequently authorizes such costs. Other recipient costs during suspension or after termination, which are necessary and not reasonably avoidable, are allowable if the costs:

(1) Result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable; and

(2) Would be allowable if the award expired normally at the end of the funding period.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under 10 CFR part 1036.

§ 600.353 Disputes and appeals.

Consistent with 10 CFR 600.22 and part 1024, recipients have the right to appeal certain decisions by contracting officers.

After-the-Award Requirements

§ 600.360 Purpose.

Sections 600.361 through 600.363 contain procedures for closeout and for subsequent disallowances and adjustments.

§ 600.361 Closeout procedures.

(a) Recipients must submit, within 90 calendar days after the date of completion of the award, all reports required by the terms and conditions of the award. DOE may approve extensions when requested by the recipient.

(b) The following provisions must apply to the closeout:

(1) Unless DOE authorizes an extension, a recipient must liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion of the award as specified in the terms and conditions of the award or in agency implementing instructions.

(2) DOE must make prompt, final payments to a recipient for allowable reimbursable costs under the award being closed out.

(3) The recipient must promptly refund any unobligated balances of cash that DOE has advanced or paid and that are not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(4) When authorized by the terms and conditions of the award, the contracting officer must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(5) The recipient must account for any real property and equipment acquired with Federal funds or received from the Federal Government in accordance with §§ 600.321 through 600.325.

(6) If a final audit is required and has not been performed prior to the closeout of an award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 600.362 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of DOE to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 600.316.

(4) Property management requirements in §§ 600.321 through 600.325.

(5) Records retention requirements in § 600.342.

(b) After closeout of an award, the continuing responsibilities under an award may be modified or ended in whole or in part with the consent of the contracting officer and the recipient, provided property management requirements are considered and provisions made for the continuing responsibilities of the recipient, as appropriate.

§ 600.363 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within 30 days after the demand for payment, DOE may reduce the debt in accordance with the procedures and techniques described in 10 CFR part 1015 and OMB Circular A–129, including:

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute or regulation.

(b) Except as otherwise provided by law, DOE may charge interest and administrative fees on an overdue debt in accordance with 31 CFR Chapter IX, parts 900–904, "Federal Claims Collection Standards."

Additional Provisions

§ 600.380 Purpose.

The purpose of "Additional Provisions" is to provide alternative requirements for recipients otherwise covered by this subpart D, when they are performing under Small Business Innovation Research grants.

§ 600.381 Special provisions for Small Business Innovation Research Grants.

(a) *General.* This section contains provisions applicable to the Small Business Innovation Reserach (SBIR) Program.

(b) *Provisions Applicable to Phase I SBIR Awards:* Phase I SBIR awards may be made on a fixed obligation basis, subject to the following requirements.

(1) While proposed costs must be analyzed in detail to ensure consistency with applicable cost principles, incurred costs are not subject to review under the standards of cost allowability.

(2) Although detailed budgets are submitted by a recipient and reviewed by DOE for purposes of establishing the

amount to be awarded, budget categories are not stipulated in making an award;

(3) Prior approval from the DOE for rebudgeting among categories by the recipient is not required. Prior approval from DOE is required for any variation from the requirement that no more than one-third of Phase I work can be done by subcontractors or consortium partners;

(4) Pre-award expenditure approval is not required;

(5) Payments are to be made in the same manner as other financial assistance (*see* § 600.312), except that, when determined appropriate by the cognizant program official and contracting officer, a lump sum payment may be made. If a lump sum payment is made, the award must contain a condition that requires the recipient to return to DOE amounts remaining unexpended at the end of the project if those amounts exceed $500;

(6) Recipients will certify in writing to the Contracting Officer at the end of the project that the activity was completed or the level of effort was expended. Should the activity or effort not be carried out, the recipeint would be expected to make appropriate reimbursements;

(7) Requirements for periodic reports may be established for each award so long as they are consistent with § 600.341;

(8) Changes in principal investigator or project leader, scope of effort, or institution, require the prior approval of DOE.

(c) *Provision Applicable to Phase II SBIR Awards.* Phase II SBIR awards may be made for a single budget period of 24 months.

(d) *Provisions Applicable to Phase I and Phase II SBIR Awards.*

(1) The prior approval of the cognizant DOE Contracting Officer is required before the final budget period of the project period may be extended without additional funds.

(2) A fee or profit may be paid to SBIR recipients.

Appendix A to Subpart D to Part 600—Patent and Data Provisions

1. Patent Rights (Small Business Firms and Nonprofit Organizations)
2. Patent Rights (Large Business Firms)—No Waiver
3. Rights in Data—General
4. Rights in Data—Programs Covered Under Special Protected Data Statutes

Patent Rights (Small Business Firms and Nonprofit Organizations)

(a) Definitions

Invention means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321 *et seq.*).

Made when used in relation to any invention means the conception or first actual reduction to practice of such invention.

Nonprofit organization means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a State nonprofit organization statute.

Practical application means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are to the extent permitted by law or Government regulations available to the public on reasonable terms.

Small business firm means a small business concern as defined at section 2 of Public Law 85–536 (16 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3 through 121.8 and 13 CFR 121.3 through 121.12, respectively, will be used.

Subject invention means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this award, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d) must also occur during the period of award performance.

(b) Allocation of Principal Rights

The Recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights clause and 35 U.S.C. 203. With respect to any subject invention in which the Recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world.

(c) Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient

(1) The Recipient will disclose each subject invention to DOE within two months after the inventor discloses it in writing to Recipient personnel responsible for the administration of patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient will promptly notify DOE of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Recipient.

(2) The Recipient will elect in writing whether or not to retain title to any such invention by notifying DOE within two years of disclosure to DOE. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the U.S., the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Recipient will file its initial patent application on an invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the U.S. after a publication, on sale, or public use. The Recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure to DOE, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of DOE, be granted.

(d) Conditions When the Government May Obtain Title

The Recipient will convey to DOE, upon written request, title to any subject invention:

(1) If the Recipient fails to disclose or elect the subject invention within the times specified in paragraph (c) of this patent rights clause, or elects not to retain title; provided that DOE may only request title within 60 days after learning of the failure of the Recipient to disclose or elect within the specified times;

(2) In those countries in which the Recipient fails to file patent applications within the times specified in paragraph (c) of this Patent Rights clause; provided, however, that if the Recipient has filed a patent application in a country after the times specified in paragraph (c) of this Patent Rights clause, but prior to its receipt of the written request of DOE, the Recipient shall continue to retain title in that country; or

(3) In any country in which the Recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum Rights to Recipient and Protection of the Recipient Right To File

(1) The Recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Recipient fails to disclose the subject invention within the times specified in paragraph (c) of this Patent Rights clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a party and includes the right to grant sublicenses of the same scope of the extent the Recipient was legally obligated to do so at the time the award was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR part 404 and the agency's licensing regulation, if any. This license will not be revoked in that field of use or the geographical areas in which the Recipient has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at discretion of the funding Federal agency to the extent the Recipient, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Recipient a written notice of its intention to revoke or modify the license, and the Recipient will be allowed thirty days (or such other time as may be authorized by DOE for good cause shown by the Recipient) after the notice to show cause why the license should not be revoked or modified. The Recipient has the right to appeal, in accordance with applicable regulations in 37 CFR part 404 and the agency's licensing regulations, if any, concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(f) Recipient Action To Protect Government's Interest

(1) The Recipient agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to:

(i) Establish or confirm the rights the Government has throughout the world in those subject inventions for which the Recipient retains title; and

(ii) Convey title to DOE when requested under paragraph (d) of this Patent Rights clause, and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under this award in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this Patent Rights clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph (c)(1) of this Patent Rights clause. The Recipient shall instruct such employees through the employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Recipient will notify DOE of any decision not to continue prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Recipient agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a subject invention, the following statement: "This invention was made with Government support under (identify the award) awarded by (identify DOE). The Government has certain rights in this invention."

(g) Subaward/Contract

(1) The Recipient will include this Patent Rights clause, suitably modified to identify the parties, in all subawards/contracts, regardless of tier, for experimental, developmental or research work to be performed by a small business firm or nonprofit organization. The subrecipient/contractor will retain all rights provided for the Recipient in this Patent Rights clause, and the Recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors' subject inventions.

(2) The Recipient will include in all other subawards/contracts, regardless of tier, for experimental, developmental or research work, the patent rights clause required by 10 CFR 600.325(c).

(3) In the case of subawards/contracts at any tier, DOE, the Recipient, and the subrecipient/contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by the clause.

(h) Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient and such other data and information as DOE may reasonably specify. The Recipient also agrees to provide additional reports in connection with any march-in proceeding undertaken by DOE in accordance with paragraph (j) of this Patent Rights clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without the permission of the Recipient.

(i) Preference for United States Industry.

Notwithstanding any other provision of this Patent Rights clause, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U.S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the U.S. or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in-Rights

The Recipient agrees that with respect to any subject invention in which it has acquired title, DOE has the right in accordance with procedures at 37 CFR 401.6 and any supplemental regulations of the Agency to require the Recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances and if the Recipient, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that:

(1) Such action is necessary because the Recipient or assignee has not taken or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensee; or

(4) Such action is necessary because the agreement required by paragraph (i) of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U.S. is in breach of such agreement.

(k) Special Provisions for Awards With Nonprofit Organizations

If the Recipient is a nonprofit organization, it agrees that:

(1) Rights to a subject invention in the U.S. may not be assigned without the approval of DOE, except where such assignment is made

to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Recipient;

(2) The Recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Recipient with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific or engineering research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms and that it will give preference to a small business firm if the Recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the Recipient is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Recipient. However, the Recipient agrees that the Secretary of Commerce may review the Recipient's licensing program and decisions regarding small business applicants, and the Recipient will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the Recipient could take reasonable steps to implement more effectively the requirements of this paragraph (k)(4).

(l) Communications

All communications required by this Patent Rights clause should be sent to the DOE Patent Counsel address listed in the Award Document.

(m) Electronic Filing

Unless otherwise Specified in the award, the information identified in paragraphs (f)(2) and (f)(3) may be electronically filed.

[End of clause]

Patent Rights (Large Business Firms)—No Waiver

(a) Definitions

DOE patent waiver regulations, as used in this clause, means the Department of Energy patent waiver regulations in effect on the date of award. See 10 CFR part 784.

Invention, as used in this clause, means any invention or discovery which is or may be patentable of otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, *et seq.*).

Patent Counsel, as used in this clause, means the Department of Energy Patent Counsel assisting the awarding activity.

Subject invention, as used in this clause, means any invention of the Recipient conceived or first actually reduced to practice in the course of or under this agreement.

(b) Allocations of Principal Rights

(1) Assignment to the Government. The Recipient agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Recipient under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations. The Recipient, or an employee-inventor after consultation with the Recipient, may request greater rights than the nonexclusive license an the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulation. Each determination of greater rights under this agreement shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(c) Minimum Rights Acquired by the Government

With respect to each subject invention to which the Department of Energy grants the Recipient principal or exclusive rights, the Recipient agrees to grant to the Government: A nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency); "march-in rights" as set forth in 37 CFR 401.14(a)(J)); preference for U.S. industry as set forth in 37 CFR 401.14(a)(I); periodic reports upon request, no more frequently than annually, on the utilization or intent of utilization of a subject invention in a manner consistent with 35 U.S.C. 202(c)(50; and such Government rights in any instrument transferring rights in a subject invention.

(d) Minimum Rights to the Recipient

(1) The Recipient is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Recipient fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Recipient is a part and includes the right to grant sublicenses of the same scope to the extent the Recipient was legally obligated to do so at the time the agreement was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Recipient's business to which the invention pertains.

(2) The Recipient may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the minimum rights acquired by the Government similar to paragraph (c) of this clause. Such request must be made in writhing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(e) Invention Identification, Disclosures, and Reports

(1) The Recipient shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Recipient personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this agreement. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Recipient shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Recipient shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Recipient personnel responsible for patent matters or, if earlier, within 6 months after the Recipient becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Recipient. The disclosure to DOE shall be in the form of a written report and shall identify the agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Recipient shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on-sale or public use planned by the Recipient. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Recipient contends in writing at the time the invention is disclosed that it was not so made.

(3) The Recipient shall furnish the Contracting Officer a final report, within 3 months after completion of the work listing all subject inventions or containing a statement that there were no such inventions,

and listing all subawards/contracts at any tier containing a patent rights clause or containing a statement that there were no such subawards/contracts.

(4) The Recipient agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient each subject invention made under subaward/contract in order that the Recipient can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Recipient agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of Records Relating to Inventions

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this agreement, have the right to examine any books (including laboratory notebooks), records, and documents of the Recipient relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this agreement to determine whether—

(i) Any such inventions are subject inventions;

(ii) The Recipient has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;

(iii) The Recipient and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Recipient invention which the Contracting Officer believes may be a subject invention, the Recipient may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Subaward/Contract

(1) The recipient shall include the clause PATENT RIGHTS (SMALL BUSINESS FIRMS AND NONPROFIT ORGANIZATIONS) (suitably modified to identify the parties) in all subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subaward/contract is subject to an Exceptional Circumstances Determination by DOE. In all other subawards/contracts, regardless of tier, for experimental, developmental, demonstration, or research work, the Recipient shall include this clause (suitably modified to identify the parties), or an alternate clause as directed by the contracting officer. The Recipient shall not, as part of the consideration for awarding the subaward/contract, obtain rights in the subrecipient's/contractor's subject inventions.

(2) In the event of a refusal by a prospective subrecipient/contractor to accept such a clause the Recipient:

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subrecipient/contractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subaward/contract without the written authorization of the Contracting Officer.

(3) In the case of subawards/contracts at any tier, DOE, the subrecipient/contractor, and Recipient agree that the mutual obligations of the parties created by this clause constitute a contract between the subrecipient/contractor and DOE with respect to those matters covered by this clause.

(4) The Recipient shall promptly notify the Contracting Officer in writing upon the award of any subaward/contract at any tier containing a patent rights clause by identifying the subrecipient/contractor, the applicable patent rights clause, the work to be performed under the subaward/contract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Recipient shall furnish a copy of such subaward/contract, and, no more frequently than annually, a listing of the subawards/contracts that have been awarded.

(5) The Recipient shall identify all subject inventions of a subrecipient/contractor of which it acquires knowledge in the performance of this agreement and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(h) Atomic Energy

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this agreement.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Recipient will obtain patent agreements to effectuate the provisions of subparagraph (h)(1) of this clause from all persons who perform any part of the work under this agreement, except nontechnical personnel, such as clerical employees and manual laborers.

(i) Publication

It is recognized that during the course of the work under this agreement, the Recipient or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this agreement. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Recipient, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(j) Forfeiture of Rights in Unreported Subject Inventions

(1) The Recipient shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Recipient fails to report to Patent Counsel within six months after the time the Recipient:

(i) Files or causes to be filed a United States or foreign patent application thereon; or

(ii) Submits the final report required by subparagraph (e)(3) of this clause, whichever is later.

(2) However, the Recipient shall not forfeit rights in a subject invention if, within the time specified in subparagraph (e)(2) of this clause, the Recipient:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the agreement and delivers the decision to Patent Counsel, with a copy to the Contracting Officer, or

(ii) Contending that the invention is not a subject invention, the Recipient nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy of the Contracting Officer; or

(iii) Establishes that the failure to disclose did not result from the Recipient's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this agreement), the Recipient shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (j) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

(End of clause)

Rights in Data—General

(a) Definitions

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae, and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include

information incidental to administration, such as financial, administrative, cost or pricing, or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, as well as data identifying source, size, configuration, mating, and attachment characteristics, functional characteristics, and performance requirements; except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights, as used in this clause, means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of subparagraph (g)(2) if included in this clause.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and is confidential or privileged; or is published copyrighted computer software; including minor modifications of such computer software.

Restricted rights, as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of subparagraph (g)(3) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

Technical data, as used in this clause, means data (other than computer software) which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocations of Rights

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this agreement;

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Recipient shall have the right to—

(i) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, unless provided otherwise in paragraph (d) of this clause;

(ii) Protect from unauthorized disclosure and use those data which are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause;

(iii) Substantiate use of, add or correct limited rights, restricted rights, or copyright notices and to take over appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright

(1) Data first produced in the performance of this agreement. Unless provided otherwise in paragraph (d) of this clause, the Recipient may establish, without prior approval of the Contracting Officer, claim to copyright subsisting in data first produced in the performance of this agreement. When claim to copyright is made, the Recipient shall affix the applicable copyright notices of 17 U.S.C. 401 or 402 and acknowledgement of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data not first produced in the performance of this agreement and which contains the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software the Government shall acquire a copyright license as set forth in subparagraph (g)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated in or made part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data

(1) The Recipient shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this agreement, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise provided in this paragraph of this clause or expressly set forth in this agreement.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this award, which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the contracting officer.

(e) Unauthorized Marking of Data

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subparagraph (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subparagraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure

prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or Incorrect Markings

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery or such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient:

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

(i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized, or

(ii) Correct any incorrect notices.

(g) Protection of Limited Rights Data and Restricted Computer Software

When data other than that listed in subparagraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and qualify as either limited rights data or restricted computer software, if the Recipient desires to continue protection of such data, the Recipient shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding, the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof. Limited rights data that are formatted as a computer data base for delivery to the Government are to be treated as limited rights data and not restricted computer software.

(h) Subaward/Contract

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with the subaward/contract award without further authorization.

(i) Additional Data Requirements

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at anytime during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause, or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(j) The recipient agrees, except as may be otherwise specified in this award for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this award, inspect at the Recipient's facility any data withheld pursuant to paragraph (g) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 600.325(d)(1), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I:

(g)(2) Notwithstanding subparagraph (g)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, in accordance with such Notice:

LIMITED RIGHTS NOTICE

(a) These data are submitted with limited rights under Government agreement No. _____ (and subaward/contract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(3) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Recipient is a part for information or use (except for manufacture) in connection with the work performed under their awards and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(4) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate II:

(g)(3)(i) Notwithstanding subparagraph (g)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (e) and (f) of this clause, in accordance with the Notice.

RESTRICTED RIGHTS NOTICE

(a) This computer software is submitted with restricted rights under Government Agreement No. _____ (and subaward/contract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (b) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

(1) Used or copies for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copied for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archiv3es) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by support service Recipients in accordance with subparagraph (b)(1) through (4) of this

clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copied for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated, in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE

Use, reproduction, or disclosure is subject to restrictions set forth in agreement No. _____ (and subaward/contract _____, If appropriate) with _____ (name of Recipient and subrecipient/contractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: "Unpublished—rights reserved under the Copyright Laws of the United States."

(End of clause)

Rights in Data—Programs Covered Under Special Data Statutes

(a) Definitions

Computer Data Bases, as used in this clause, means a collection of data in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

Computer software, as used in this clause, means (i) computer programs which are data comprising a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations and (ii) data comprising source code listings, design details, algorithms, processes, flow charts, formulae and related material that would enable the computer program to be produced, created or compiled. The term does not include computer data bases.

Data, as used in this clause, means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to administration, such as financial, administrative, cost or pricing or management information.

Form, fit, and function data, as used in this clause, means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability as well as data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements except that for computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithm, process, formulae, and flow charts of the software.

Limited rights data, as used in this clause, means data (other than computer software) developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Restricted computer software, as used in this clause, means computer software developed at private expense and that is a trade secret; is commercial or financial and confidential or privileged; or is published copyrighted computer software; including modifications of such computer software.

Protected data, as used in this clause, means technical data or commercial or financial data first produced in the performance of the award which, if it had been obtained from and first produced by a non-federal party, would be a trade secret or commercial or financial information that is privileged or confidential under the meaning of 5 U.S.C. 552(b)(4) and which data is marked as being protected data by a party to the award.

Protected-rights, as used in this clause, mean the rights in protected data set forth in the Protected Rights Notice of paragraph (g) of this clause.

Technical data, as used in this clause, means that data which are of a scientific or technical nature. Technical data does not include computer software, but does include manuals and instructional materials and technical data formatted as a computer data base.

Unlimited rights, as used in this clause, means the right of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose whatsoever, and to have or permit others to do so.

(b) Allocation of Rights

(1) Except as provided in paragraph (c) of this clause regarding copyright, the Government shall have unlimited rights in—

(i) Data specifically identified in this agreement as data to be delivered without restriction;

(ii) Form, fit, and function data delivered under this agreement;

(iii) Data delivered under this agreement (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this agreement; and

(iv) All other data delivered under this agreement unless provided otherwise for protected data in accordance with paragraph (g) of this clause or for limited rights data or restricted computer software in accordance with paragraph (h) of this clause.

(2) The Recipient shall have the right to—

(i) Protect rights in protected data delivered under this agreement in the manner and to the extent provided in paragraph (g) of this clause;

(ii) Withhold from delivery those data which are limited rights data or restricted computer software to the extent provided in paragraph (h) of this clause;

(iii) Substantiate use of, add, or correct protected rights or copyrights notices and to take other appropriate action, in accordance with paragraph (e) of this clause; and

(iv) Establish claim to copyright subsisting in data first produced in the performance of this agreement to the extent provided in subparagraph (c)(1) of this clause.

(c) Copyright

(1) Data first produced in the performance of this agreement. Except as otherwise specifically provided in this agreement, the Recipient may establish, without the prior approval of the Contracting Officer, claim to copyright subsisting in any data first produced in the performance of this agreement. If claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including agreement number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. For such copyrighted data, including computer software, the Recipient grants to the Government, and others acting on its behalf, a paid-up nonexclusive, irrevocable, worldwide license to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government, for all such data.

(2) Data not first produced in the performance of this agreement. The Recipient shall not, without prior written permission of the Contracting Officer, incorporate in data delivered under this agreement any data that are not first produced in the performance of this agreement and that contain the copyright notice of 17 U.S.C. 401 or 402, unless the Recipient identifies such data and grants to the Government, or acquires on its behalf, a license of the same scope as set forth in subparagraph (c)(1) of this clause; provided, however, that if such data are computer software, the Government shall acquire a copyright license as set forth in subparagraph (h)(3) of this clause if included in this agreement or as otherwise may be provided in a collateral agreement incorporated or made a part of this agreement.

(3) Removal of copyright notices. The Government agrees not to remove any copyright notices placed on data pursuant to this paragraph (c), and to include such notices on all reproductions of the data.

(d) Release, Publication and Use of Data

(1) The Receipt shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Recipient in the performance of this contract, except to the extent such data may be subject to the Federal export control or national security laws or regulations, or unless otherwise

provided in this paragraph of this clause or expressly set forth in this contract.

(2) The Recipient agrees that to the extent it receives or is given access to data necessary for the performance of this agreement which contain restrictive markings, the Recipient shall treat the data in accordance with such markings unless otherwise specifically authorized in writing by the Contracting Officer.

(e) Unauthorized Marking of Data

(1) Notwithstanding any other provisions of this agreement concerning inspection or acceptance, if any data delivered under this agreement are marked with the notices specified in subparagraph (g)(2) or (g)(3) of this clause and use of such is not authorized by this clause, or if such data bears any other restrictive or limiting markings not authorized by this agreement, the Contracting Officer may at any time either return the data to the Recipient or cancel or ignore the markings. However, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer shall make written inquiry to the Recipient affording the Recipient 30 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Recipient fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 30-day period (or a longer time not exceeding 90 days approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Recipient provides written justification to substantiate the propriety of the markings within the period set in subdivision (e)(1)(i) of this clause, the Contracting Officer shall consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings are authorized, the Recipient shall be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer shall furnish the Recipient a written determination, which determination shall become the final agency decision regarding the appropriateness of the markings unless the Recipient files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government shall continue to abide by the markings under this subdivision (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination become final (in which instance the Government shall thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in subparagraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(f) Omitted or Incorrect Markings

(1) Data delivered to the Government without either the limited rights or restricted rights notice as authorized by paragraph (g) of this clause, or the copyright notice required by paragraph (c) of this clause, shall be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use, or reproduction of such data. However, to the extent the data has not been disclosed without restriction outside the Government, the Recipient may request, within 6 months (or a longer time approved by the Contracting Officer for good cause shown) after delivery of such data, permission to have notices placed on qualifying data at the Recipient's expense, and the Contracting Officer may agree to do so if the Recipient—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the use of the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability with respect to the disclosure, use, or reproduction of any such data made prior to the addition of the notice or resulting from the omission of the notice.

(2) The Contracting Officer may also:

(i) Permit correction at the Recipient's expense of incorrect notices if the Recipient identifies the data on which correction of the notice is to be made, and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Rights to Protected Data

(1) The Recipient may, with the concurrence of DOE, claim and mark as protected data, any data first produced in the performance of this award that would have been treated as a trade secret if developed at private expense. Any such claimed "protected data" will be clearly marked with the following Protected Rights Notice, and will be treated in accordance with such Notice, subject to the provisions of paragraphs (e) and (f) of this clause.

PROTECTED RIGHTS NOTICE

These protected data were produced under agreement no. _____ with the U.S. Department of Energy and may not be published, disseminated, or disclosed to others outside the Government until (**Note:**) The period of protection of such data is fully negotiable, but cannot exceed the applicable statutorily authorized maximum), unless express written authorization is obtained from the recipient. Upon expiration of the period of protection set forth in this Notice, the Government shall have unlimited rights in this data. This Notice shall be marked on any reproduction of this data, in whole or in part.

(End of notice).

(2) Any such marked Protected Data may be disclosed under obligations of confidentiality for the following purposes:

(a) For evaluation purposes under the restriction that the "Protected Data" be retained in confidence and not be further disclosed; or

(b) To subcontractors or other team members performing work under the Government's (insert name of program or other applicable activity) program of which this award is a part, for information or use in connection with the work performed under their activity, and under the restriction that the Protected Data be retained in confidence and not be further disclosed.

(3) The obligations of confidentiality and restrictions on publication and dissemination shall end for any Protected Data.

(a) At the end of the protected period;

(b) If the data becomes publicly known or available from other sources without a breach of the obligation of confidentiality with respect to the Protected Data;

(c) If the same data is independently developed by someone who did not have access to the Protected Data and such data is made available without obligations of confidentiality; or

(d) If the Recipient disseminates or authorizes another to disseminate such data without obligations of confidentiality.

(4) However, the Recipient agrees that the following types of data are not considered to be protected and shall be provided to the Government when required by this award without any claim that the data are Protected Data. The parties agree that notwithstanding the following lists of types of data, nothing precludes the Government from seeking delivery of additional data in accordance with this award, or from making publicly available additional non-protected data, nor does the following list constitute any admission by the Government that technical data not on the list is Protected Data. (**Note:** It is expected that this paragraph will specify certain types of mutually agreed upon data that will be available to the public and will not be asserted by the recipient/contractor as limited rights or protected data).

(5) The Government's sole obligation with respect to any protected data shall be as set forth in this paragraph (g).

(h) Protection of Limited Rights Data

When data other than that listed in subparagraphs (b)(1)(i), (ii), and (iii) of this clause are specified to be delivered under this agreement and such data qualify as either limited rights data or restricted computer software, the Recipient, if the Recipient desires to continue protection of such data, shall withhold such data and not furnish them to the Government under this agreement. As a condition to this withholding the Recipient shall identify the data being withheld and furnish form, fit, and function data in lieu thereof.

(i) Subaward/Contract

The Recipient has the responsibility to obtain from its subrecipients/contractors all data and rights therein necessary to fulfill the Recipient's obligations to the Government under this agreement. If a subrecipient/contractor refuses to accept terms affording the Government such rights, the Recipient shall promptly bring such refusal to the attention of the Contracting Officer and not proceed with subaward/contract award without further authorization.

(j) Additional Data Requirements

In addition to the data specified elsewhere in this agreement to be delivered, the Contracting Officer may, at anytime during agreement performance or within a period of 3 years after acceptance of all items to be delivered under this agreement, order any data first produced or specifically used in the performance of this agreement. This clause is applicable to all data ordered under this subparagraph. Nothing contained in this subparagraph shall require the Recipient to deliver any data the withholding of which is authorized by this clause or data which are specifically identified in this agreement as not subject to this clause. When data are to be delivered under this subparagraph, the Recipient will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(k) The Recipient agrees, except as may be otherwise specified in this agreement for specific data items listed as not subject to this paragraph, that the Contracting Officer or an authorized representative may, up to three years after acceptance of all items to be delivered under this contract, inspect at the Recipient's facility any data withheld pursuant to paragraph (h) of this clause, for purposes of verifying the Recipient's assertion pertaining to the limited rights or restricted rights status of the data or for evaluating work performance. Where the Recipient whose data are to be inspected demonstrates to the Contracting Officer that there would be a possible conflict of interest if the inspection were made by a particular representative, the Contracting Officer shall designate an alternate inspector.

As prescribed in 600.325(e)(2), the following Alternate I and/or II may be inserted in the clause in the award instrument.

Alternate I:

(h)(2) Notwithstanding subparagraph (h)(1) of this clause, the agreement may identify and specify the delivery of limited rights data, or the Contracting Officer may require by written request the delivery of limited rights data that has been withheld or would otherwise be withholdable. If delivery of such data is so required, the Recipient may affix the following "Limited Rights Notice" to the data and the Government will thereafter treat the data, in accordance with such Notice:

LIMITED RIGHTS NOTICE

(a) These data are submitted with limited rights under Government agreement No. _____ (and subaward/contract No. _____, if appropriate). These data may be reproduced and used by the Government with the express limitation that they will not, without written permission of the Recipient, be used for purposes of manufacture nor disclosed outside the Government; except that the Government may disclose these data outside the Government for the following purposes, if any, provided that the Government makes such disclosure subject to prohibition against further use and disclosure:

(1) Use (except for manufacture) by Federal support services contractors within the scope of their contracts;

(2) This "limited rights data" may be disclosed for evaluation purposes under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(3) This "limited rights data" may be disclosed to other contractors participating in the Government's program of which this Recipient is a part for information or use (except for manufacture) in connection with the work performed under their awards and under the restriction that the "limited rights data" be retained in confidence and not be further disclosed;

(4) This "limited rights data" may be used by the Government or others on its behalf for emergency repair or overhaul work under the restriction that the "limited rights data" be retained in confidence and not be further disclosed; and

(5) Release to a foreign government, or instrumentality thereof, as the interests of the United States Government may require, for information or evaluation, or for emergency repair or overhaul work by such government. This Notice shall be marked on any reproduction of this data in whole or in part.

(b) This Notice shall be marked on any reproduction of these data, in whole or in part.

(End of notice)

Alternate II:

(h)(3)(i) Notwithstanding subparagraph (h)(1) of this clause, the agreement may identify and specify the delivery of restricted computer software, or the Contracting Officer may require by written request the delivery of restricted computer software that has been withheld or would otherwise be withholdable. If delivery of such computer software is so required, the Recipient may affix the following "Restricted Rights Notice" to the computer software and the Government will thereafter treat the computer software, subject to paragraphs (d) and (e) of this clause, in accordance with the Notice:

RESTRICTED RIGHTS NOTICE

(a) This computer software is submitted with restricted rights under Government Agreement No. _____ (and subaward/contract _____, if appropriate). It may not be used, reproduced, or disclosed by the Government except as provided in paragraph (c) of this Notice or as otherwise expressly stated in the agreement.

(b) This computer software may be—

(1) Used or copied for use in or with the computer or computers for which it was acquired, including use at any Government installation to which such computer or computers may be transferred;

(2) Used or copies for use in a backup computer if any computer for which it was acquired is inoperative;

(3) Reproduced for safekeeping (archives) or backup purposes;

(4) Modified, adapted, or combined with other computer software, provided that the modified, combined, or adapted portions of the derivative software are made subject to the same restricted rights;

(5) Disclosed to and reproduced for use by Federal support service Contractors in accordance with subparagraphs (b)(1) through (4) of this clause, provided the Government makes such disclosure or reproduction subject to these restricted rights; and

(6) Used or copies for use in or transferred to a replacement computer.

(c) Notwithstanding the foregoing, if this computer software is published copyrighted computer software, it is licensed to the Government, without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause.

(d) Any other rights or limitations regarding the use, duplication, or disclosure of this computer software are to be expressly stated in, or incorporated in, the agreement.

(e) This Notice shall be marked on any reproduction of this computer software, in whole or in part.

(End of notice)

(ii) Where it is impractical to include the Restricted Rights Notice on restricted computer software, the following short-form Notice may be used in lieu thereof:

RESTRICTED RIGHTS NOTICE

Use, reproduction, or disclosure is subject to restrictions set forth in Agreement No. _____ (and subaward/contract _____, if appropriate) with _____ (name of Recipient and subrecipient/contractor).

(End of notice)

(iii) If restricted computer software is delivered with the copyright notice of 17 U.S.C. 401, it will be presumed to be published copyrighted computer software licensed to the Government without disclosure prohibitions, with the minimum rights set forth in paragraph (b) of this clause, unless the Recipient includes the following statement with such copyright notice: "Unpublished—rights reserved under the Copyright Laws of the United States."

(End of clause)

Appendix B to Subpart D to Part 600—Contract Provisions

All contracts awarded by a recipient, including those for amounts less than the simplified acquisition threshold, must contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts must contain a provision requiring compliance with E.O. 11246 (3 CFR, 1964–1965 Comp., p. 339), "Equal Employment Opportunity," as amended by E.O. 11375 (3 CFR, 1966–1970 Comp., p. 684), "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR chapter 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subawards in excess of $2,000 for construction or repair awarded by recipients and subrecipients must include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans

or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient must report all suspected or reported violations to the responsible DOE contracting officer.

3. *Contact Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $100,000 for construction and other purposes that involve the employment of mechanics or laborers must include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor is required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic is required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. *Rights to Inventions and Data Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, development, or research work must provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 10 CFR 600.325 and Appendix A—Patent and Data Rights to Subpart D, Part 600.

5. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subawards of amounts in excess of $100,000 must contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (41 U.S.C. 7401 *et seq.*) and the Federal Water Pollution control act as amended (33 U.S.C. 1251 *et seq.*). Violations must be reported to the responsible DOE contracting officer and the Regional Office of the Environmental Protection Agency (EPA).

6. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C.1352. Each tier must also disclose any lobbing with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

7. *Debarment and Suspension (E.O.s 12549 and 12689*—Contract awards that exceed the simplified acquisition threshold and certain other contract awards must not be made to parties listed on nonprocurement portion of the General Services Administration's Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs in accordance with E.O.s 12549 (3 CFR, 1986 Comp., p. 189) and 12689 (3 CFR, 1989 Comp., p. 235),"Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold must provide the required certification regarding its exclusion status and that of its principals.

8. *Davis-Bacon Act (40 U.S.C. 276a)*—As a general rule, it is unlikely that the Davis-Bacon Act, which among other things requires payment of prevailing wages on projects for the construction of public works, would apply to financial assistance awards. However, the presence of certain factors (*e.g.*, requirement of particular program statues; title to a construction facility resting in the Government) might necessitate a closer analysis of the award, to determine if the Davis-Bacon Act would apply in the particular factual situation presented.

[FR Doc. 03–21172 Filed 8–20–03; 8:45 am]

BILLING CODE 6450–01–P

Federal Register

Thursday,
August 21, 2003

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 210

Federal Government Participation in the Automated Clearing House; Proposed Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 210

RIN 1510–AA93

Federal Government Participation in the Automated Clearing House

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Proposed rule with request for comment.

SUMMARY: We are proposing to amend our regulation at 31 CFR part 210, which governs the use of the Automated Clearing House (ACH) system by Federal agencies (agencies). Part 210 adopts, with some exceptions, the ACH rules (ACH Rules) developed by NACHA—The Electronic Payments Association (NACHA) as the rules governing the use of the ACH system by agencies.

The proposed rule addresses the circumstances in which checks presented or delivered to agencies may be converted to ACH debit entries. The proposed rule also addresses issues relating to the reclamation of Federal benefit payments and the receipt of misdirected Federal payments. We are requesting comment on all aspects of the proposed rule.

DATES: Comments on the proposed rule must be received by October 20, 2003.

ADDRESSES: You can download the proposed rule at the following World Wide Web address: *http://www.fms.treas.gov/ach*. You may also inspect and copy the proposed rules at: Treasury Department Library, Freedom of Information Act (FOIA) Collection, Room 1428, Main Treasury Building, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Before visiting, you must call (202) 622–0990 for an appointment.

You may send comments on the proposed rule electronically to the following address: *210comments@fms.treas.gov*. You may also mail your comments to Stephen M. Vajs, Director, Risk Management Division, Financial Management Service, U.S. Department of the Treasury, Room 423, 401 14th Street, SW., Washington, DC 20227.

FOR FURTHER INFORMATION CONTACT: John Galligan, Program Advisor, at (202) 874–6657 or *john.galligan@fms.treas.gov;* Natalie H. Diana, Senior Counsel, at (202) 874–6680 or *natalie.diana@fms.treas.gov;* or Donald J. Skiles, Senior Financial Program Specialist, at (202) 874–6994 or *donald.skiles@fms.treas.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Part 210 governs the use of the ACH system by agencies. The ACH system is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of credit and debit transactions and for the exchange of information among participating financial institutions. Part 210 incorporates the ACH Rules adopted by NACHA, with certain exceptions.

We are issuing a proposed rule to amend part 210 in order to address the circumstances in which checks presented or delivered to agencies may be converted to ACH debit entries. In addition, the proposed rule amends several provisions of part 210 that address the reclamation of Federal benefit payments issued to deceased recipients and the receipt of misdirected Federal payments. We are requesting comment on the proposed rule.

II. Summary

A. Check Conversion

On April 11, 2002, we published a final rule that amended part 210 by permitting agencies that receive checks at points-of-purchase, dropboxes and via the mail to convert those checks to ACH debit entries. 67 FR 17895. The rule modified the ACH Rules governing check conversion to provide that presentment to an agency of a completed and signed check, following notice that the check will be converted, constitutes authorization for the conversion of the check to an ACH debit entry. The rule, which permits the conversion of both consumer and business checks, requires that agencies provide standard disclosures in connection with point-of-purchase and accounts receivable check conversion.

Since we published the final rule, we have continued to develop and implement initiatives to promote check conversion. These initiatives have demonstrated that point-of-purchase and accounts receivable check conversion can result in substantial cost-savings and efficiencies for the Federal government. However, we have identified certain barriers that our current rule poses for the wider use of check conversion by agencies. We are therefore proposing several amendments to part 210 to eliminate these barriers. The proposed amendments support the continuation of the efforts of the Financial Management Service (Service) and agencies to move to an all-electronic environment for the processing of payments and collections.

1. Revised Accounts Receivable Disclosure

Currently agencies that receive checks via the mail or at a dropbox may convert those checks to debit entries if the notice set forth at Appendix C to part 210 has been provided to the check writer. A number of agencies have indicated that the standard disclosure set forth in Appendix C is too lengthy to be included on many invoices and remittance documents. We recognize that there are space constraints on agency forms, which in many cases preclude the addition of several paragraphs of disclosure. We also believe that as check conversion and the use of electronic debits become more common, there is less of a need for very detailed disclosure. At the same time, it is important that consumers understand what is happening to their checks, particularly since an individual who sends a check to an agency is deemed to have authorized its conversion to an ACH debit on the basis of having been provided with prior notice of its conversion. We are requesting comment on whether the proposed disclosure strikes the appropriate balance between the need for a shorter notice and the need to ensure that consumers understand what is happening to their checks. We are also soliciting comment on whether the wording of the proposed notice is clear and understandable.

2. Expanded Accounts Receivable Check Conversion Applications

Currently, part 210 permits agencies to originate ACH debit entries using checks received at points-of-purchase, dropboxes and via the mail. However, agencies accept or cash checks in a broad array of circumstances that fall outside typical commercial settings, *e.g.*, retail sales locations and lockboxes. We have been asked to address a number of situations in which agencies accept or cash checks in circumstances that do not fall within the generally understood meanings of "point-of-purchase," "dropbox," or "lockbox." For example, Army pay officers sometimes travel to remote, off-base locations in order to cash checks for soldiers. In those situations, pay officers cannot bring along the necessary equipment to scan and convert the check. Similarly, some National Park Service rangers collect park entrance fees at park entrances where check conversion equipment cannot be set up because there is not electric power or adequate enclosed and protected space. Additionally, in some situations checks are collected by agency representatives as an incident to their performance of ceremonial duties,

inspections or other responsibilities. These individuals may not have the authority to process payments, or it may not be appropriate to process the payments when they are received in light of the nature of the circumstances. In all of these situations, it is not possible to scan and return the voided check as required under the point-of-purchase check conversion rules (31 CFR 210.6(g)), and we therefore have been asked whether these checks can be converted under the accounts receivable check conversion rules (31 CFR 210.6(h)).

It is unclear whether situations such as those described above are more in the nature of a point-of-purchase or a dropbox transaction. The ACH Rules define a Point-of-Purchase (POP) entry as a debit entry initiated pursuant to a single entry authorization and a source document, provided to the Originator [1] by the Receiver [2] at the point-of-purchase to effect a transfer of funds. *See* ACH Rule 13.1.42. When we amended 31 CFR 210.6(g) to address point-of-purchase check conversion, we stated that the term "point-of-purchase" was intended to mean "any location where an agency accepts checks as payment in connection with a contemporaneous transaction or any location where an agency cashes checks for employees or the public." 67 FR 17901.

The ACH Rules define an Accounts Receivable (ARC) entry as a "debit entry initiated pursuant to a source document provided to the Originator by the Receiver via the U.S. mail or at a dropbox location." When we amended 31 CFR 210.6(h) to address accounts receivable check conversion, we stated, "A dropbox is similar to a lockbox except that a payor delivers a payment to a dropbox in person rather than mailing the payment." 67 FR 17901.

When we amended part 210 to address check conversion, we envisioned check conversion as occurring at on-site agency locations—either agency locations where, in the usual course of business, checks are cashed or goods or services are sold (points-of-purchase) or locations where payments for accounts receivable are routinely received. We did not necessarily intend to preclude the conversion of checks in scenarios that do not precisely fit one of these two models; rather, we had not been presented with other potential scenarios at that time.

Because it is not possible to comply with the point-of-purchase rules in converting checks in the situations discussed above, whereas it is possible to comply with the accounts receivable check conversion rules, we believe that the most reasonable approach to these situations is to treat them as accounts receivable check conversion. Under this approach, these checks would be converted using an ARC code (for consumer checks) or a Cash Concentration or Disbursement (CCD) code (for business checks), and the checks would be destroyed rather than returned to the check writer. We believe that the check writer's interests would be adequately protected by applying the accounts receivable rules because the check writer will receive prior written notice in the form of Appendix C to part 210 (with minor alterations, as appropriate) and because the physical check will be destroyed. We are requesting comment on this approach.

3. Conversion of Additional Instruments

Part 210 incorporates the restrictions imposed under ACH Rules 3.6.2 and 3.7.1 on the kinds of source documents that can be used to originate ARC and POP entries. In contrast to the ACH Rules, part 210 does permit agencies to convert business checks received at points-of-purchase, dropboxes and via the mail. However, agencies currently are not permitted to originate ACH debit entries using as a source document various other kinds of payment instruments, such as money orders, traveler's checks, certified bank checks, and credit card checks. A number of agencies routinely receive these kinds of payment instruments in addition to personal and business checks. In these instances it becomes a significant operational burden to sort these payments and process them separately. Some agencies have elected not to participate in check conversion for this reason. We are proposing to amend part 210 to eliminate the regulatory prohibition against converting to ACH debit entries certain types of payment instruments that are commonly received at lockboxes and points-of-purchase.

We recognize that there are significant operational barriers that currently prevent the conversion of money orders and similar instruments, including debit blocks or filters on the accounts on which these items are drawn. However, removing regulatory obstacles to the conversion of these instruments will enable agencies to be positioned to convert these instruments once it becomes operationally feasible to do so without the need to undertake an additional rulemaking process. Until conversion of these instruments is possible, we may use stored item images to create paper drafts of any items returned due to debit blocks or similar mechanisms and process these drafts through the check processing system. In most cases, the use of a paper draft makes possible many of the same efficiencies as check conversion (*i.e.*, elimination of paper to process and deposit, enhanced reporting, archiving of documentation, increased speed of presentment and deposit of funds). In this regard, although we are not proposing to include U.S. Treasury checks among the items eligible for conversion, legislation currently in Congress would, if enacted, treat paper drafts created from images of U.S. Treasury checks as legally equivalent to the original checks.

We are aware that authorization issues can arise in connection with converting these instruments because an individual presenting such an item to an agency does not have authority to act with respect to the account on which the check is drawn and therefore cannot authorize conversion of the item. However, we believe that the ACH Rules incorporated in part 210 provide an adequate framework to enable a Receiver to pursue recovery of an unauthorized debit to the Receiver's account.

4. Re-Presented Check Entry Service Fees

Under the ACH Rules incorporated in part 210, agencies may use a Re-presented Check (RCK) entry to electronically re-present, via the ACH Network, a consumer check that has been returned unpaid due to insufficient funds. Some agencies that originate RCK entries also wish to use the ACH Network to collect a service fee from the issuer of the returned item. To collect such a fee, agencies must obtain the consumer's explicit authorization for the debit and must initiate a separate debit entry to the consumer's account. (Part 210 and the ACH Rules prohibit the addition of any service fee to the amount of the RCK entry.) Agencies often do not find it cost effective or customer friendly to obtain a written authorization from every check-writer to collect a service fee electronically because only a small percentage of checks are returned unpaid.

Regulation E, 12 CFR part 205, is the Federal Reserve's regulation governing

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[1] In an ACH debit transaction, the Originator is the person or entity originating the debit entry to the account of the payor. In the transactions discussed in this section of the notice, the Originator is the agency collecting payment.

[2] In an ACH debit transaction, the Receiver is the person or entity making the payment (*i.e.*, the payor) by authorizing a debit to an account. In this document, we may refer to a person or entity making a payment to a Federal agency as a payor, a Receiver, a customer, or a consumer, as appropriate.

Electronic Fund Transfer (EFT) payments. The Official Staff Commentary on Regulation E (Commentary) states that the electronic re-presentment of a returned check is not covered by Regulation E because the transaction is originated by check. Commentary, Section 205.3, Paragraph 3(c)(1). Regulation E does apply, however, to any fee authorized by the consumer to be debited electronically from the consumer's account because the check was returned for insufficient funds. Accordingly, such a fee may be collected by ACH debit only if authorized by the consumer. The Commentary states that a consumer authorizes a one-time EFT where the consumer receives notice that the transaction will be processed as an EFT and completes the transaction. Commentary, Section 205.3, Paragraph 3(b).

Part 210 currently provides that agencies may collect a service fee by ACH debit in the case of accounts receivable and point-of-purchase entries that are returned for insufficient funds, provided that notice of the fee has been included in the required disclosure.[3] We are proposing to expand this provision to allow agencies to originate an ACH debit entry in order to collect a service fee related to an RCK entry if notice of the fee is given to the Receiver before the agency accepts the Receiver's check.

B. Reclamations; Misdirected Payments

We are proposing to amend part 210 to address certain issues relating to the reclamation of Federal benefit payments and the receipt of misdirected Federal payments. The changes that we are proposing to make are:

(1) To require financial institutions that learn that an account holder has died to return any subsequent Federal benefit payments using return reason code R15 (Beneficiary or Account Holder Deceased) or R14 (Representative Payee Deceased), as appropriate;

(2) To provide that financial institutions are not liable for post-death benefit payments to which the recipient was entitled;

(3) To require a financial institution that becomes aware that a Federal benefit payment was misdirected to notify the agency that sent the payment of the error;

(4) To prohibit agencies from reclaiming payments that were made more than seven years prior to the date of the notice of reclamation;

(5) To limit the information that agencies may request from financial institutions, in accordance with the Right to Financial Privacy Act; and

(6) To allow financial institutions to notify an account owner of the receipt of a notice of reclamation "promptly" rather than "immediately."

We are also making several non-substantive changes to the wording of the reclamation provisions of part 210 in order to correct typographical errors and clarify its operation.

1. Mandatory Use of R15 or R14 Return Reason Code

A financial institution is required to return any Federal benefit payment received after the institution learns of the death of the recipient. *See* 31 CFR 210.10(a). However, part 210 does not specify what ACH return reason code financial institutions must use in effecting these returns. In some cases, financial institutions use an R02 (Account Closed) code, whereas in other cases financial institutions use an R15 (Beneficiary or Account Holder Deceased) or R14 (Representative Payee Deceased) code. Most Federal paying agencies that receive payments returned with an R15 code automatically stop payments to the recipient and begin an investigation. In contrast, when a payment is returned using an R02 or other non-death code, agencies may only temporarily suspend the payment rather than terminating further payments to the recipient. Thus, the use of the R02 or other non-death code to return a payment made to a deceased recipient may result in further payments being issued to the deceased beneficiary, creating a risk of loss of additional public funds.

We are proposing to require financial institutions to return benefit payments using an R15 or R14 code, as appropriate, if the financial institution is aware that the recipient is deceased. This requirement would not impose any additional burden on financial institutions to take steps to learn of the death of account holders, but would simply require that, in circumstances where the financial institution is aware of the death of the recipient, the R15 or R14 code be used to return payments. We are also proposing to amend the regulation to provide that a Receiving Depository Financial Institution (RDFI) that returns a payment using the R15 or R14 code is deemed to have satisfied the requirement to notify an agency of the death of a payment recipient if the RDFI learns of the death from a source other than notice from the agency. We believe that the use of the R15 and R14 codes is an efficient means of notifying agencies that a recipient is deceased because of the stop on subsequent payments and investigation that is automatically triggered when an agency receives an R15 returned payment. We request comment both from agencies and from financial institutions on this proposed rule change.

2. Post-Death Payments to Which Recipient Is Entitled

We are proposing to amend part 210 to provide an exception to the general rule that an RDFI is liable to the Federal government for all post-death benefit payments unless the RDFI has the right to limit its liability. Currently, part 210 imposes on RDFIs partial or full liability for benefit payments received after the death or legal incapacity of a recipient. The allocation of this liability to RDFIs is based on the presumption that a post-death payment is improper because the recipient is not entitled to the payment. However, we have become aware that there are certain types of payments to which a recipient (or his or her estate) is legally entitled, and which an agency may not have the legal obligation or authority to recover, notwithstanding that the payment was issued following the recipient's death. For example, agencies sometimes issue payments that represent retroactive benefits owed to the recipient. The recipient's legal entitlement to such a payment does not necessarily end upon death.

One of the premises underlying the allocation of liability to financial institutions for payments that agencies issue to deceased recipients is that because these payments are improper, there is a loss of public funds unless the payments are recovered. We do not believe that it is equitable to impose liability on a financial institution where there is no loss of public funds because the agency that certified the payment has determined that the payment was properly issued notwithstanding its issuance following the recipient's death. Accordingly, we are proposing to amend part 210 to address these situations. In determining whether to reclaim post-death payments, we will rely on the determination of the certifying agency as to whether a recipient is entitled to a post-death payment. It is our understanding that, for the vast majority of Federal benefit payments, death does in fact end the recipient's legal entitlement to the payments. Therefore, as a practical matter, the effect of this amendment would be that financial institutions may expect that a small

[3] Any agency that seeks to collect a service fee from the issuer of a returned check must have independent authority to do so. Part 210 does not authorize the collection of a service fee, but only provides an electronic means through which such a fee can be collected if authority exists.

number of post-death payments will not be the subject of a notice of reclamation. We request comment both from financial institutions and from agencies on this proposal.

3. Misdirected Federal Payments

Although the vast majority of electronic Federal payments are delivered without incident to the intended recipient, on rare occasions a Federal payment is delivered to an account that does not belong to the entitled payee. This can occur, for example, if the payee mistakenly provides an incorrect account or routing number to the paying agency. RDFIs may rely on the account number alone in posting a payment, and have no obligation to verify that the payee name matches the name of the account holder on the RDFI's records.

In some cases, the owner of an account to which a Federal payment was erroneously delivered has brought the erroneous payment to the attention of the RDFI. Sometimes the RDFI contacts the agency that originated the payment. In other instances, rather than notifying the agency, RDFIs have handled such errors by removing the funds from the account to which they were credited and crediting the funds to the account of the intended payee, based on the payee name and/or the individual identification number in the ACH information accompanying the payment. When this approach is taken, the agency that originated the payments remains unaware of any problem, meaning that the agency may continue to direct subsequent payments to the wrong account.

The repeated delivery of payments to the wrong account, particularly where the account owner has taken steps to bring the mistake to the attention of the bank, undermines public confidence in the Federal government's use of the ACH system. We do not believe that it is unduly burdensome to require financial institutions to contact paying agencies in the small number of cases in which financial institutions are made aware that a Federal payment has been misdirected. We are requesting comment on this proposed amendment to part 210, including the means by which this notice to agencies could be most conveniently and effectively provided.

4. Seven Year Limit on Reclamations

We are proposing to amend the limitation on the age of payments that an agency may reclaim. Part 210 currently prohibits (subject to one exception) an agency from reclaiming any post-death or post-incapacity payment made more than six years prior to the most recent payment made by the agency to the recipient's account. There have, however, been situations in which the most recent payment that an agency made to a recipient's account took place several years before the reclamation was initiated. Thus, notwithstanding the existing limitation, there have been reclamations initiated by agencies for payments made many years ago. Although these reclamations are infrequent, they are particularly difficult and time-consuming to process because neither agencies nor financial institutions retain records indefinitely, meaning that very old payment records or related account information frequently is not available. We therefore are proposing to prohibit agencies from reclaiming any payment that was made more than seven years prior to the date of the notice of reclamation. The only exception to this limitation would be in a situation in which the account balance exceeds the total amount of the payments that the agency would otherwise be permitted to reclaim after applying the seven-year limitation.

5. Right to Financial Privacy Act Changes

Part 210 currently provides that in order to limit its liability in a reclamation, a financial institution must respond to a notice of reclamation by providing the names, addresses, and "any other relevant information" regarding account co-owners and other persons who withdrew, or were authorized to withdraw, funds from the recipient's account after the death or legal incapacity of the recipient. 31 CFR 210.11(b)(3)(i). This information is used by paying agencies to pursue the recovery of the payments from persons who have made use of the funds but who were not entitled to them.

The information that an agency may obtain from a financial institution in connection with a reclamation is limited by the Right to Financial Privacy Act, 12 U.S.C. 3401 *et seq.* (Financial Privacy Act). The Financial Privacy Act prohibits, subject to some exceptions, agencies from obtaining from financial institutions any information contained in or derived from the financial records of any customer, except pursuant to an administrative or judicial subpena, a search warrant, or other method prescribed by the Act. The Financial Privacy Act contains two exceptions that permit agencies to obtain from a financial institution certain information related to an account to which an erroneous Social Security Federal Old-Age, Survivors, and Disability Insurance benefit payment, or a benefit payment made by the Railroad Retirement Board or Department of Veterans' Affairs (VA), was sent without following the Act's procedural requirements. The exceptions permit disclosure by a financial institution of the name and address of any customer "where the disclosure of such information is necessary to, and such information is used solely for the purpose[s] of, the proper administration of" title II of the Social Security Act (42 U.S.C. 401 *et seq.*), the Railroad Retirement Act (45 U.S.C. 231 *et seq.*) or benefits programs under laws administered by VA. 12 U.S.C. 3413(k), (p). These exceptions permit disclosure only of names and addresses—not of other transaction information, such as dates and times of withdrawals.

In order to clarify that the information that financial institutions are required to provide in connection with a reclamation is limited to the information specified in the Financial Privacy Act, we are proposing to revise the wording of subsection 210.11(b)(3)(i).

6. Notification to Account Owners

We are proposing to revise § 210.13 in order to allow financial institutions to notify an account owner of the receipt of a notice of reclamation "promptly" rather than "immediately." We do not believe that the need to notify account owners of a reclamation is so urgent as to require immediate notification. This change is intended to reduce an unnecessary burden on financial institutions.

III. Section-by-Section Analysis

Section 210.2(d)

We are proposing to revise the definition of Applicable ACH Rules at § 210.2(d) by adding a new subparagraph (8) in order to exclude ACH Rules 3.6.2 and 3.7.1 from the definition. ACH Rules 3.6.2 and 3.7.1, respectively, prohibit the origination of ARC entries and POP entries using, among other things, third-party checks, credit card checks, obligations of financial institutions (*e.g.*, traveler's checks, cashier's checks, official checks, money orders, etc.), and checks drawn on a state or local government.

Section 210.2(i)

We are proposing to add a new definition of "business check" to § 210.2. The definition would include not only any check drawn on a corporate or business deposit account (including a third-party check), but also credit card checks; negotiable instruments issued by a financial

institution (*e.g.*, traveler's checks, cashier's checks, official checks, money orders, etc.); and checks drawn on a state or local government. The new definition is used in proposed § 210.6(g) and (h) in order to permit agencies to use these instruments as source documents in originating ACH debit entries.

Section 210.6(g)

We are proposing to amend § 210.6(g) in order to permit the origination of ACH debit entries at agency points-of-purchase using as source documents instruments included under the new definition of "business check" set forth at proposed § 210.2(i).

Section 210.6(h)

We are proposing to revise § 210.6(h) in order to provide that agencies may originate ACH debit entries using checks that are (1) received via the mail; (2) received at a dropbox; and (3) delivered in person in circumstances in which it is impossible or impractical for the agency to image and return the check at the time the check is delivered. In all cases, the disclosure set forth at Appendix C must be provided to the Receiver before the check is delivered. In situations in which the check is being delivered in person, the disclosures must be posted or handed to the Receiver. Proposed § 210.6(h) uses the new term "business check," as defined in proposed § 210.2(i), in order to permit the conversion of certain instruments that agencies currently are not permitted to convert.

Section 210.6(i)

We are proposing to revise § 210.6(i) in order to permit agencies to originate ACH debit entries to collect one-time service fees in connection with RCK entries if prior notice of the fee is given. Section 210.6(i) would override the requirement in the ACH Rules that a Receiver authorize, in writing, the collection of a service fee and instead require that, prior to accepting the Receiver's check or source document, the agency disclose to the Receiver that a service fee may be collected. This provision does not create for agencies the authority to impose a service fee; rather, it permits an agency that has the authority to impose such a fee to collect the fee by ACH debit without a written authorization.

Section 210.8(d)

We are proposing to add a new subsection to § 210.8 in order to require an RDFI to promptly notify an agency if the RDFI becomes aware that the agency has originated an ACH credit entry to an account that is not owned by the payee whose name appears in the ACH payment information. "Promptly" will normally mean no later than two business days after the error has come to the RDFI's attention. An RDFI that fails to provide the notice may be liable to the Federal government for loss resulting from its failure to notify the paying agency pursuant to the general liability provision of 210.11(d).

This subsection does not impose any duty on RDFIs to verify the account numbers on incoming payments against the receiver names. It does, however, require that if such an error is brought to the attention of an RDFI, the RDFI must notify the agency that originated the payment.

Section 210.10

We are proposing to revise paragraph (a) of § 210.10 to require that an RDFI use return reason code R15 (Beneficiary or Account Holder Deceased) or R14 (Representative Payee Deceased), as appropriate, to return any benefit payments received after the RDFI becomes aware of the death of a recipient or beneficiary. We are also proposing to add a sentence stating that the use of an R15 or R14 code will satisfy the RDFI's obligation to notify the agency after learning of the death of a recipient or beneficiary from a source other than notice from the agency.

We are proposing to revise § 210.10(c) to provide that an RDFI is not liable for a benefit payment received after the death of a recipient or beneficiary if the agency that certified the disbursement of the payment determines that the recipient or beneficiary is entitled to the post-death payment. It is the responsibility of the agency certifying the payment to make a determination regarding its legal obligation or authority to recover a post-death benefit payment. The Service will act in accordance with the agency's direction, as set forth at § 210.9(b). ("In processing reclamations pursuant to this subpart, the Service shall act pursuant to the direction of the agency that certified the benefit payment(s) being reclaimed.")

We are proposing to revise § 210.10(d) in order to amend the limitation on the age of payments that an agency may reclaim. Section 210.10(d) currently prohibits, subject to one exception, an agency from reclaiming any post-death or post-incapacity payment made more than six years prior to the most recent payment made by the agency to the recipient's account. Proposed § 210.10(d) would prohibit agencies from reclaiming any payment that was made more than seven years prior to the date of the notice of reclamation. The only exception to this limitation would be in a situation in which the account balance exceeds the total amount of the payments that the agency would otherwise be permitted to reclaim.

Additional wording changes have been made to proposed § 210.10(d). The first sentence of § 210.10(d) currently provides that an agency must initiate a reclamation within 120 calendar days after it receives notice of the death or legal incapacity of a recipient or death of a beneficiary. We are proposing to revise the wording of that sentence in order to provide that the 120 day period begins when an agency receives "actual or constructive knowledge" of the death or legal incapacity. This is the standard to which financial institutions are subject as a condition of limiting their liability for a reclamation under § 210.11. In addition, the second sentence of proposed § 210.10(d)(1) has been reworded in order to make it more clear that a notice of reclamation applies only to the type of payments which are the subject of the notice, and does not preclude reclamation actions by other agencies that may have issued payments to the recipient or by the same agency with respect to a different type of payment issued to the recipient. For example, the Social Security Administration issues two different types of benefit payments: Social Security Federal Old-Age, Survivors, and Disability Insurance (SSA) payments and Supplemental Security Income (SSI) payments. Some recipients receive both of these types of benefit payments. A notice of reclamation regarding SSA payments is separate from, and does not affect the potential liability of a financial institution under, a notice of reclamation for SSI payments issued to the same recipient.

Section 210.11

We are proposing to revise § 210.11 to limit the information that an RDFI is required to provide in order to limit its liability in a reclamation. First, the information regarding withdrawers and co-owners is limited to the name and address of these individuals. Second, the information is to be provided only in cases involving the reclamation of Social Security Federal Old-Age, Survivors, and Disability Insurance benefit payments, or benefit payments certified by the Railroad Retirement Board or Department of Veterans' Affairs.

Section 210.13

We are proposing to revise § 210.13 to provide that an RDFI must promptly (rather than "immediately," as currently

provided) notify account owner(s) of the receipt of a notice of reclamation.

Section 210.14

We are proposing to correct an error in § 210.14 by changing the word "direct" to "directed."

Appendix C

We are proposing to amend Appendix C to the regulation by shortening the disclosure that agencies must provide in connection with ACH debit entries that they originate pursuant to § 210.6(h).

IV. Procedural Requirements

Request for Comment on Plain Language

Executive Order 12866 requires each agency in the Executive branch to write regulations that are simple and easy to understand. We invite comment on how to make the proposed rule clearer. For example, you may wish to discuss: (1) Whether we have organized the material to suit your needs; (2) whether the requirements of the rules are clear; or (3) whether there is something else we could do to make these rules easier to understand.

Executive Order 12866

The proposed rule does not meet the criteria for a "significant regulatory action" as defined in Executive Order 12866. Therefore, the regulatory review procedures contained therein do not apply.

Regulatory Flexibility Act Analysis

It is hereby certified that the proposed rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act (5 U.S.C. 601 et seq) is not required.

Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. We have determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, we have not prepared a budgetary impact statement or specifically addressed any regulatory alternatives.

Executive Order 13132—Federalism Summary Impact Statement

Executive Order 13132 requires agencies, including the Service, to certify their compliance with that Order when they transmit to the Office of Management and Budget (OMB) any draft final regulation that has federalism implications. Under the Order, a regulation has federalism implications if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." In the case of a regulation that has federalism implications and that preempts State law, the Order imposes certain specific requirements that the agency must satisfy, to the extent practicable and permitted by law, prior to the formal promulgation of the regulation.

In general, the Executive Order requires the agency to adhere strictly to Federal constitutional principles in developing rules that have federalism implications; provides guidance about an agency's interpretation of statutes that authorize regulations that preempt State law; and requires consultation with State officials before the agency issues a final rule that has federalism implications or that preempts State law.

The proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 31 CFR Part 210

Automated Clearing House, Electronic funds transfer, Financial institutions, Fraud, and Incorporation by reference.

Authority and Issuance

For the reasons set forth in the preamble, we propose to amend part 210 of title 31 of the Code of Federal Regulations as follows:

PART 210—FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARING HOUSE

1. The authority citation for part 210 continues to read as follows:

Authority: 5 U.S.C. 5525; 12 U.S.C. 391; 31 U.S.C. 321, 3301, 3302, 3321, 3332, 3335, and 3720.

2. Amend § 210.2 as follows:

A. Revise paragraph (d);

B. Redesignate paragraphs (i) through (r) as (j) through (s);

C. Add new paragraph (i).

The revised and added text reads as follows:

§ 210.2 Definitions.

* * * * *

(d) *Applicable ACH Rules* means the ACH Rules with an effective date on or before June 13, 2003, as published in Parts II, III, and IV of the "2003 ACH Rules: A Complete Guide to Rules & Regulations Governing the ACH Network," including the supplement thereto approved February 27, 2003 and effective June 13, 2003, except:

(1) ACH Rule 1.1 (limiting the applicability of the ACH Rules to members of an ACH association);

(2) ACH Rule 1.2.2 (governing claims for compensation);

(3) ACH Rule 1.2.4; 2.2.1.10; Appendix Eight and Appendix Eleven (governing the enforcement of the ACH Rules, including self-audit requirements);

(4) ACH Rules 2.2.1.8; 2.6; and 4.7 (governing the reclamation of benefit payments);

(5) ACH Rule 8.3 and Appendix Two (requiring that a credit entry be originated no more than two banking days before the settlement date of the entry—*see* definition of "Effective Entry Date" in Appendix Two);

(6) ACH Rule 2.10.2.2 (requiring that originating depository financial institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries);

(7) ACH Rule 2.11.3 (requiring reporting regarding unauthorized Telephone-initiated entries); and

(8) ACH Rules 3.6.2 and 3.7.1 (restricting source documents for Accounts Receivable entries and Point-of-Purchase entries).

* * * * *

(i) *Business check* means:

(1) A check drawn on corporate or business deposit account, including a third-party check,

(2) A credit card check,

(3) A negotiable instrument issued by a financial institution (*e.g.*, a traveler's check, cashier's check, official check, money order, *etc.*), and

(4) A check drawn on a state or local government.

* * * * *

3. Revise §§ 210.6(g), (h) and (i) to read as follows:

§ 210.6 Agencies.

* * * * *

(g) *Point-of-purchase debit entries.* An agency may originate an ACH debit entry using a business check or a check

drawn on a consumer account that is presented at a point-of-purchase. Agencies shall use the Point-of-Purchase (POP) Standard Entry Class (SEC) code for entries to consumer accounts and the Cash Concentration or Disbursement (CCD) SEC code for entries to business accounts. The requirements of ACH Rules 2.1.2 and 3.4 shall be met for such an entry if the Receiver presents the check at a location where the agency has posted a conspicuous notice at the point-of-purchase containing the disclosure set forth at Appendix A to this part and the agency makes available to the Receiver at the same location, in a form that the Receiver can retain, the disclosure set forth at Appendix B to this part. For purposes of ACH Rules 3.10 and 4.1.1, authorization shall consist of a copy of the notice and a copy of the Receiver's source document.

(h) *Accounts receivable check conversion.*

(1) Conversion of consumer checks. An agency may originate an Accounts Receivable (ARC) entry using a check drawn on a consumer account that is received via the mail or at a dropbox, or that is delivered in person in circumstances in which the agency cannot contemporaneously image and return the check. The notice and authorization requirements of ACH Rules 2.1.4 and 3.6.1 shall be met for an ARC entry only if an agency has provided the Receiver with the disclosure set forth at Appendix C to this part.

(2) Conversion of business checks. An agency may originate an ACH debit using a business check that is received via the mail or at a dropbox, or that is delivered in person in circumstances in which the agency cannot contemporaneously image and return the check. The agency shall use the CCD SEC code for such entries, which shall be deemed to meet the requirements of ACH Rule 2.1.2 if the agency has provided the disclosure set forth at Appendix C to this part. For purposes of ACH Rules 3.10 and 4.1.1, authorization shall consist of a copy of the notice and a copy of the Receiver's source document.

(i) *Returned item service fee.* An agency may originate an ACH debit entry to collect a one-time service fee in connection with a Re-presented Check (RCK) entry or an ACH debit entry originated pursuant to paragraph (g) or (h) of this section that is returned due to insufficient funds. An entry originated pursuant to this paragraph shall meet the requirements of ACH Rules 2.1.2 and 3.4 if the agency has disclosed the collection of the fee to the Receiver as part of the disclosures required under paragraph (g) or (h) of this section or, in the case of a fee in connection with an RCK entry, prior to the acceptance of the check to which an RCK entry relates. For purposes of ACH Rule 3.10 and 4.1.1, authorization shall consist of a copy of the disclosure of the collection of the fee and a copy of the Receiver's check or source document.

4. Add a new paragraph (d) to § 210.8 to read as follows:

§ 210.8 Financial institutions.

* * * * *

(d) *Notice of misdirected payment.* An RDFI shall promptly notify an agency if the RDFI becomes aware that the agency has originated an ACH credit entry to an account that is not owned by the payee whose name appears in the ACH payment information.

5. Amend § 210.10 by revising paragraphs (a), (c) and (d) to read as follows:

§ 210.10 RDFI liability.

(a) *Full liability.* An RDFI shall be liable to the Federal Government for the total amount of all benefit payments received after the death or legal incapacity of a recipient or the death of a beneficiary unless the RDFI has the right to limit its liability under 210.11 of this part. An RDFI shall return any benefit payments received after the RDFI becomes aware of the death or legal incapacity of a recipient or the death of a beneficiary, regardless of the manner in which the RDFI discovers such information, using return reason code R15 (Beneficiary or Account Holder Deceased) or R14 (Representative Payee Deceased), as appropriate, in the case of a deceased recipient or beneficiary. If the RDFI becomes aware of the death or legal incapacity of a recipient or death of a beneficiary from a source other than notice from the agency issuing payments to the recipient, the RDFI shall immediately notify the agency of the death or incapacity. The use of the R15 or R14 return reason code shall be deemed to constitute such notice.

* * * * *

(c) *Exceptions to liability rule.*

(1) An RDFI shall not be liable for post-death benefit payments sent to a recipient acting as a representative payee or fiduciary on behalf of a beneficiary, if the beneficiary was deceased at the time the authorization was executed and the RDFI did not have actual or constructive knowledge of the death of the beneficiary.

(2) An RDFI shall not be liable for a benefit payment received after the death of a recipient or beneficiary if the agency that certified the disbursement of the payment determines that the recipient or beneficiary was entitled to the post-death payment.

(d) *Time limits.* An agency that initiates a request for a reclamation must do so within 120 calendar days after the date that the agency first has actual or constructive knowledge of the death or legal incapacity of a recipient or the death of a beneficiary. An agency may not reclaim any post-death or post-incapacity payment made more than seven years prior to the date of the notice of reclamation; provided, however, that if the account balance at the time the RDFI receives the notice of reclamation exceeds the total amount of post-death or post-incapacity payments made by the agency during such seven year period, this limitation shall not apply and the RDFI shall be liable for the total amount of all post-death or post-incapacity payments made, up to the amount in the account at the time the RDFI receives the notice of reclamation and has had a reasonable opportunity (not to exceed one business day) to act on the notice.

* * * * *

6. Amend § 210.11 by revising paragraph (b)(3)(i) to read as follows:

§ 210.11 Limited liability.

* * * * *

(b) *Qualification for limited liability.*

* * * * *

(3)(i) In cases involving the reclamation of Social Security Federal Old-Age, Survivors, and Disability Insurance benefit payments, or benefit payments certified by the Railroad Retirement Board or the Department of Veterans' Affairs, provide the name and address of the following person(s):

(A) The recipient (last known address) and any co-owner(s) of the recipient's account;

(B) All other person(s) authorized to withdraw funds from the recipient's account; and

(C) Person(s) who withdrew funds from the recipient's account after the death or legal incapacity of the recipient or death of the beneficiary.

* * * * *

7. Revise § 210.13 to read as follows:

§ 210.13 Notice to account owners.

Provision of notice by RDFI. Upon receipt by an RDFI of a notice of reclamation, the RDFI promptly shall mail to the last known address of the account owner(s) or otherwise provide to the account owner(s) a copy of any notice required by the Service to be provided to account owners as specified in the Green Book. Proof that this notice was sent may be required by the Service.

8. Amend § 210.14 by revising paragraph (a) to read as follows:

§ 210.14 Erroneous death information.

(a) *Notification of error to the agency.* If, after the RDFI responds fully to the notice of reclamation, the RDFI learns that the recipient or beneficiary is not dead or legally incapacitated or that the date of death is incorrect, the RDFI shall inform the agency that certified the underlying payment(s) and directed the Service to reclaim the funds in dispute.

* * * * *

9. Revise Appendix C to part 210 to read as follows:

C. Appendix C to Part 210—Standard Disclosure for Accounts Receivable Conversion—Notice

If you send us a check, it will be converted into an electronic fund transfer (EFT). This means we will copy your check and use the account information on it to electronically debit your account for the amount of the check. The debit from your account will usually occur within 24 hours, and will be shown on your regular account statement.

You will not receive your original check back. We will destroy your original check, but we will keep the copy of it. If the EFT cannot be processed for technical reasons, you authorize us to process the copy in place of your original check. If the EFT cannot be completed because of insufficient funds, we may try to make the transfer up to 2 times [and we will charge you a one-time fee of $_____, which we will also collect by EFT].

Note: *This disclosure must be conspicuous. This means that it should be printed in reasonably large typeface. If this disclosure is combined with other information, it should be set off by contrasting color, by surrounding it with a box, or by using other means to ensure that it is prominently featured.*

* * * * *

Dated: August 14, 2003.

Richard L. Gregg,

Commissioner.

[FR Doc. 03–21203 Filed 8–20–03; 8:45 am]

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H.R. 1018/P.L. 108–70

To designate the building located at 1 Federal Plaza in New York, New York, as the "James L. Watson United States Court of International Trade Building". (Aug. 14, 2003; 117 Stat. 886)

H.R. 1761/P.L. 108–71

To designate the facility of the United States Postal Service located at 9350 East Corporate Hill Drive in Wichita, Kansas, as the "Garner E. Shriver Post Office Building". (Aug. 14, 2003; 117 Stat. 887)

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(ISSN 0097-6326)

Federal Register

8–22–03 Friday
Vol. 68 No. 163 Aug. 22, 2003
Pages 50681–50962

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Federal Register
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Friday, August 22, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–98–304]

United States Standards for Grades of Pistachio Nuts in the Shell, and United States Standards for Grades of Shelled Pistachio Nuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule revises the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts. The revisions will modify the standards to more closely align grade names with other tree-nut commodities and current industry-recognized marketing terms, reduce the tolerance for internal defects for the purpose of providing a higher degree of quality assurance, relax tolerances of the level of light stain on the shell in the various grade levels based on consumer preferences, more objectively define when nuts are damaged by various factors, and include two in-shell grade specifications which reflect the industry's byproduct. These standards are issued under the Agricultural Marketing Act of 1946. These changes will promote greater uniformity and consistency in the standards, as well as provide consistency with current marketing practices.

EFFECTIVE DATE: September 22, 2003.

FOR FURTHER INFORMATION CONTACT: David L. Priester, Standardization Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 1661, South Building, STOP 0240, Washington, DC 20250–0240, fax (202) 720–8871, e-mail *David.Priester@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Orders 12988 and 12866

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of the rule. The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

Regulatory Flexibility Act

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Accordingly, AMS has prepared this initial regulatory flexibility analysis. Interested parties are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Available information provided by the California Pistachio Commission (CPC) show that there are 647 California pistachio producers and 19 California handlers of pistachio nuts, most of which are also growers or have grower members. Additional information provided by CPC show that 445 California pistachio producers (69% of the total) produce less than 100,000 pounds per year; 100 producers (15%) produce more than 100,000 and less than 250,000 pounds; 43 growers (7%) produce more than 250,000 and less than 500,000 pounds; and 59 producers (9%) grow more than 500,000 pounds. U.S. grade standards for pistachios would normally be used at the sales level of marketing, which is ordinarily carried out at the processor/packer level or after processing has been completed. Pistachio nuts may be marketed by multiple commodity marketing firms.

The California Department of Food and Agriculture Resource Directory 2002, reports that California accounted for more than 99 percent of domestic pistachio production. More current information available to the Department indicates that California has 97 percent of domestic production with Arizona at 2 percent and New Mexico with less than 1 percent.

Small agricultural service firms, which include handlers (packers, brokers, distributors, importers, *etc.*), have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000 and small agricultural producers are defined as those having annual receipts of less than $750,000. The pistachio industry is characterized by growers that produce from .1 to more than 500 acres. Approximately 9 percent of the California pistachio growers receive more than $550,000 annually. Only a portion of these producers would meet SBA's definition of a small agricultural producer. At least 12 of the California pistachio handlers (or 63 percent of the total) could be considered small businesses under SBA's definition. We would expect that similar size determinations would hold for the remainder of domestic production.

This rule will: More closely align the grade names with other tree nut commodities and current industry recognized marketing terms, reduce the tolerance for internal defects for the purpose of providing a higher degree of quality assurance to consumers, relax the level of light stain on the shell, more objectively define when nuts are damaged by various factors, and establish two additional grades which reflect the industry's marketing of in-shell byproducts. The benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for large entities.

This action will make the standards more consistent and uniform with current industry terms and practices. This action would not impose substantial direct economic cost, record keeping, or personnel workload changes on small entities, and it would not alter the market share or competitive position of these entities relative to large businesses. USDA has not identified any Federal rules that currently duplicate, overlap, or conflict with this rule. In addition, under the Agricultural

Marketing Act of 1946, the use of these standards is voluntary.

Alternatives were considered for this action. One alternative would be to not issue a rule. However, the need for revisions have increased as a result of changing marketing characteristics by industry, several years of work with the industry to assess market and grower implications, and other input from all sectors of the pistachio industry and government. Since the purpose of these standards is to expedite the marketing of pistachio nuts in the U.S., not revising the standards would result in disuse of national standards and confusion in terms of industry marketing and the proper application of the grade standards.

The proposed rule, the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts was published in the **Federal Register** on May 23, 2003 (68 FR 28141). A comment period of thirty days was issued which closed on June 23, 2003.

Final Rule and Comments

One e-mail comment was received. The commenter stated that the United States Standards for Grades of Pistachio Nuts in the Shell contain a tolerance for "damage by other means," but do not contain a definition for "damage by other means." However, "damage by other means" is not a specific defect. This tolerance is provided for all defects that are not specifically covered by other tolerances. Therefore, a definition for "damage by other means" is not necessary.

This rule would revise the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts that were issued under the Agricultural Marketing Act of 1946. These standards are voluntarily used by industry as a common trading language to market pistachio nuts under established and known specifications. In some transactions, the buyer and seller may establish their own specifications for the sale, use portions of the U.S. standards while altering other portions to fit the sale and needs of the parties, or use the U.S. standards as written.

At the time of its 1998 request to AMS, the CPC issued "industry standards" based on the requested changes and encouraged California pistachio nuts to be marketed under those standards. The use of the voluntary "industry standards" for national and international marketing with official certification by USDA inspectors based on these standards has continued for three marketing seasons. The changes herein are based on the standards currently being used by the industry to market U.S. grown pistachio nuts nationally and internationally.

Background

The United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts were developed in 1986 and 1990, respectively. At that time, the U.S. pistachio industry was beginning to compete in a global market. As the industry has grown in numbers of growers and processors and in volume, the current grade standards have been regularly used as a basis of marketing. In recent years, foreign and domestic buyers have developed customers that have uses for nuts which have specifications outside the scope of the U.S. grade standards. In addition, U.S. marketers have begun to offer for sale byproduct forms of pistachio nuts for which there are no uniform marketing specifications in the form of recognized grade standards.

AMS received a request to update and revise the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts from the CPC. The CPC is the State-approved marketing agent for the California pistachio industry and represents nearly all commercial pistachio producers and handlers in California. AMS and its State cooperator in California have been closely working with CPC and its members since 1994 to review and update the industry grade standards. Official inspection services, with these U.S. grade standards as the basis, have been used by the industry since the inception of the standards.

Currently, the majority of U.S. pistachio production, and more than 30 percent of worldwide pistachio production, originates from California. The California industry, in cooperation with the CPC, began a comprehensive review of the current standards in 1994. As this process evolved, the industry tested possible revision theories through hands-on testing in the packing plants, through consumer preference studies, and through public meetings with processors, growers and other interested parties. This was initiated in order to review the standards and meet the marketing needs of the U.S. pistachio industry and the preferences of industry buyers and the general public. As a result of this study, the CPC, acting on behalf of California growers and shippers, requested an amendment to the standards.

This rule revises the standards to more closely align the grade names with other tree nut commodities and current industry recognized marketing terms, reduce the tolerance for internal defects for the purpose of providing a higher degree of quality assurance to consumers, relax the level of light stain on the shell, more objectively define when nuts are damaged by various factors, and establish two additional grades which reflect the industry's marketing of in-shell byproducts. These changes are intended to update the standards to maintain their usefulness as they are applied to today's marketing challenges, both nationally and internationally.

Therefore, AMS amends the United States Standards for Grades of Pistachio Nuts in the Shell and the United States Standards for Grades of Shelled Pistachio Nuts as follows:

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

PART 51—[AMENDED]

■ For reasons set forth in the preamble, 7 CFR part 51 is amended as follows:

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 2. Section 51.2541 is revised to read as follows:

Subpart—United States Standards for Grades of Pistachio Nuts in the Shell Grades

§ 51.2541 U.S. Fancy, U.S. Extra No. 1, U.S. No. 1 And U.S. Select Grades.

"U.S. Fancy," "U.S. Extra No. 1," "U.S. No. 1," and "U.S. Select" consists of pistachio nuts in the shell which meet the following requirements:

(a) Basic requirements:
(1) Free from:
(i) Foreign material;
(ii) Loose kernels;
(iii) Shell pieces;
(iv) Particles and dust; and,
(v) Blanks.
(b) Shells:
(1) Free from:
(i) Non-split shells; and,
(ii) Shells not split on suture.
(2) Free from damage by:
(i) Adhering hull material;
(ii) Light stained;
(iii) Dark stained; and,
(iv) Other External (shell) defects.
(c) Kernels:

(1) Well dried, or, very well dried when specified in connection with the grade.
(2) Free from damage by:
(i) Immature kernels;
(ii) Kernel spotting; and,
(iii) Other Internal (kernel) defects.
(3) Free from serious damage by:
(i) Minor insect or vertebrate injury;
(ii) Insect damage;
(iii) Mold;
(iv) Rancidity;
(v) Decay; and,
(vi) Other Internal (kernel) defects.
(d) The nuts are of a size not less than 30/64 inch in diameter as measured by a round hole screen.
(e) For tolerances, see § 51.2544.

■ 3–4. Section 51.2542 is revised to read as follows:

§ 51.2542 U.S. Artificially Opened.

"U.S. Artificially Opened" consists of artificially opened pistachio nuts in the shell which meet the following requirements:
(a) Basic Requirements:
(1) Free from:
(i) Foreign material;
(ii) Loose kernels;
(iii) Shell pieces;
(iv) Particles and dust; and,
(v) Blanks.
(b) Shells:
(1) Free from:
(i) Non-split shells; and,
(ii) Shells not split on suture.
(2) Free from damage by:
(i) Adhering hull material;
(ii) Light stained;
(iii) Dark stained; and,
(iv) Other External (shell) defects.
(c) Kernels:
(1) Well dried, or, very well dried when specified in connection with the grade.
(2) Free from damage by:
(i) Immature kernels;
(ii) Kernel spotting; and,
(iii) Other Internal (kernel) defects.
(3) Free from serious damage by:
(i) Minor insect or vertebrate injury;
(ii) Insect damage;
(iii) Mold;
(iv) Rancidity;
(v) Decay; and,
(vi) Other Internal (kernel) defects.
(d) The nuts are of a size not less than 30/64 inch in diameter as measured by a round hole screen.
(e) For tolerances, see § 51.2544.

■ 5. Section 51.2543 is revised to read as follows:

§ 51.2543 U.S. Non-Split.

"U.S. Non-Split" consists of non-split pistachio nuts in the shell which meet the following requirements:
(a) Basic requirements:
(1) Free from:
(i) Foreign material;
(ii) Loose kernels;
(iii) Shell pieces;
(iv) Particles and dust; and,
(v) Blanks.
(b) Shells:
(1) Free from damage by:
(i) Adhering hull material; and,
(ii) Dark stain.
(c) Kernels:
(1) Well dried, or very well dried when specified in connection with the grade.
(2) Free from damage by:
(i) Immature kernels;
(ii) Kernel spotting; and,
(iii) Other internal (kernel) defects.
(3) Free from serious damage by:
(i) Minor insect or vertebrate injury;
(ii) Insect damage;
(iii) Mold;
(iv) Rancidity;
(v) Decay; and,
(vi) Other Internal (kernel) defects.
(d) The nuts are of a size not less than 30/64 inch in diameter as measured by a round hole screen.
(e) For Tolerances, see § 51.2544.

■ 6. Section 51.2544 is revised to read as follows:

§ 51.2544 Tolerances.

(a) In order to allow for variations incident to proper grading and handling, the tolerances in Tables I, II, and III of this section are provided.

TABLE I.—TOLERANCES

[Percent]

Factor	U.S. fancy	U.S. extra No. 1	U.S. No. 1	U.S. select	U.S. artificially opened	U.S. non-split
External (shell) Defects (tolerances by weight):						
(a) Non-split and not split on suture	2	3	6	10	10	N/A
(1) Non-split included in (a)	1	2	3	4	4	N/A
(b) Adhering hull material	1	1	1	2	2	2
(c) Light stained	7	12	25	N/A	N/A	N/A
(1) Dark stained, included in (c)	2	3	3	3	3	3
(d) Damage by other means	1	1	2	3	10	N/A
(e) Total External Defects	9	16	N/A	N/A	N/A	N/A
(f) Undersized (Less than 30/64 inch in diameter)	5	5	5	5	4	5

TABLE II.—TOLERANCES

[Percent]

Factor	U.S. fancy	U.S. extra No. 1	U.S. No. 1	U.S. select	U.S. artificially opened	U.S. non-split
Internal (Kernel) Defects (tolerances by weight):						
(a) Damage	3	6	6	6	6	6
(b) Serious Damage	3	4	4	4	4	4
(1) Insect Damage, Mold, Rancid, Decay, included in (b)	1	2	2	2	2	2
(c) Total Internal Defects	4	8	9	9	9	9

TABLE III.—TOLERANCES

[Percent]

Factor	U.S. fancy	U.S. extra No. 1	U.S. No. 1	U.S. select	U.S. artificially opened	U.S. non-split
Other Defects (tolerances by weight):						
(a) Shell pieces and blanks	2	2	2	2	2	2
(1) Blanks, included in (a)	1	1	1	1	1	1
(b) Foreign material (No glass, metal or live insects shall be permitted)	.25	.25	.25	.25	.25	.25
(c) Particles and dust	.25	.25	.25	.25	.25	.25
(d) Loose kernels	4	5	6	6	6	6

■ 7. Section 51.2545 is revised to read as follows:

§ 51.2545 Application of tolerances.

The tolerances for the grades apply to the entire lot and shall be based on a composite sample drawn from containers throughout the lot. Any container or group of containers which have nuts obviously different in quality or size from those in the majority of the containers shall be considered a separate lot and shall be sampled separately.

■ 8. Section 51.2546 is revised to read as follows:

§ 51.2546 Size.

Nuts may be considered as meeting a size designation specified in Table IV or a range in number of nuts per ounce, provided, the weight of 10 percent, by count, of the largest nuts in a sample does not exceed 1.50 times the weight of 10 percent, by count, of the smallest and the average number of nuts per ounce is not more than one-half nut above or below the extremes of the range specified.

TABLE IV.—NUT SIZE

Size designations	Average number of nuts per ounce [1]
Colossal	Less than 18.
Extra Large	18 to 20.
Large	21 to 25.
Medium	26 to 30.
Small	More than 30.

[1] Before Roasting.

■ 9. Section 51.2547 is revised to read as follows:

§ 51.2547 Definitions.

(a) *Well dried* means the kernel is firm and crisp.

(b) *Very well dried* means the kernel is firm and crisp and the average moisture content of the lot does not exceed 7.00 percent or is specified. (See § 51.2548.)

(c) *Loose kernels* means edible kernels or kernel portions which are out of the shell and which cannot be considered particles and dust.

(d) *External (shell) defects* means any blemish affecting the hard covering around the kernel. Such defects include, but are not limited to, non-split shells, shells not split on suture, adhering hull material, light stained, or dark stained.

(1) *Damage* by external (shell) defects means any specific defect described in paragraphs (d)(1) (i) through (v) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual shell or of the lot. (For tolerances see § 51.2544, Table I.)

(i) *Non-split shells* means shells are not opened or are partially opened and will not allow an 18/1000 (.018) inch thick by ¼ (.25) inch wide gauge to slip into the opening.

(ii) *Not split on suture* means shells are split other than on the suture and will allow an 18/1000 (.018) inch thick by ¼ (.25) inch wide gauge to slip into the opening.

(iii) *Adhering hull material* means an aggregate amount covers more than one-eighth of the total shell surface, or when readily noticeable on dyed shells.

(iv) *Light stained* on raw or roasted nuts, means an aggregate amount of yellow to light brown or light gray discoloration is noticeably contrasting with the predominate color of the shell and affects more than one-fourth of the total shell surface or, on dyed nuts, when readily noticeable.

(v) *Dark stained* on raw or roasted nuts, means an aggregate amount of dark brown, dark gray or black discoloration affects more than one-eighth of the total shell surface, or, on dyed nuts, when readily noticeable, provided that speckled appearing stain located within the area of one-fourth of the shell nearest the stem end shall be disregarded.

(e) *Internal (kernel) defects* means any blemish affecting the kernel. Such defects include, but are not limited to evidence of insects, immature kernels, rancid kernels, mold, or decay.

(1) *Damage* by internal (kernel) defects means any specific defect described in paragraphs (e)(1)(i) through (ii) of this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2544, Table II.)

(i) *Immature kernels* are excessively thin or when a kernel fills less than three-fourths, but not less than one-half the shell cavity.

(ii) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(2) *Serious damage* by internal (kernel) defects means any specific defect described in paragraphs (e)(2)(i) through (v) of this section; or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or the marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2544, Table II.)

(i) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(ii) *Insect damage* is an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(iii) *Mold* which is readily visible on the shell or kernel.

(iv) *Rancidity* means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(v) *Decay* means one-sixteenth or more of the kernel surface is decomposed.

(f) *Other defects* means defects which cannot be considered internal defects or external defects. Such defects include, but are not limited to shell pieces, blanks, foreign material or particles and dust. The following shall be considered other defects. (For tolerances see § 51.2544, Table III.)

(1) *Shell pieces* means open in-shell nuts not containing a kernel, half shells or pieces of shell which are loose in the sample.

(2) *Blank* means a non-split shell not containing a kernel or containing a kernel that fills less than one-half the shell cavity.

(3) *Foreign material* means leaves, sticks, loose hulls or hull pieces, dirt, rocks, insects or insect fragments not attached to nuts, or any substance other than pistachio shells or kernels. Glass, metal or live insects shall not be permitted.

(4) *Particles and dust* means pieces of nut kernels which will pass through a 5/64 inch round opening.

(5) *Undersize* means pistachio nuts in the shell which fall through a 30/64 inch round hole screen.

■ 10. Section 51.2548 is added to read as follows:

§ 51.2548 Average moisture content determination.

(a) Determining average moisture content of the lot is not a requirement of the grades, except when nuts are specified as "very well dried." It may be carried out upon request in connection with grade analysis or as a separate determination.

(b) Nuts shall be obtained from a randomly drawn composite sample. Official certification shall be based on the air-oven method or other officially approved methods or devices. Results obtained by methods or devices not officially approved may be reported and shall include a description of the method or device and the owner of any equipment used.

■ 11. Section 51.2549 is added to read as follows:

§ 51.2549 Metric conversion table.

Use the following table for metric conversion:

Inches	Millimeters
5/64	1.98
18/100	.46
1/4	6.35
30/64	11.88
Ounces	**Grams**
1	28.35
2	56.70

Subpart—United States Standards for Grades of Shelled Pistachio Nuts

■ 12. In § 51.2555, paragraph (b) is revised to read as follows:

§ 51.2555 General.

* * * * *

(b) These standards are applicable to raw, roasted, salted or salted/roasted pistachio kernels.

TABLE 1.—TOLERANCES

[Percent]

Factor (tolerances by weight)	U.S. fancy	U.S. extra No. 1	U.S. No. 1
(a) Damage	2.0	2.5	3.0
(b) Serious Damage	1.5	2.0	2.5
(1) Insect Damage, mold, rancid, decay, included in (b)	.3	.4	.5
(c) Foreign Material	.03	.05	.1

■ 13. Section 51.2556 is revised to read as follows:

§ 51.2556 Grades.

(a) "U.S. Fancy," "U.S. Extra No. 1," and "U.S. No. 1" consist of pistachio kernels which meet the following requirements:

(1) Well dried, or very well dried when specified in connection with the grade.

(2) Free from:

(i) Foreign material, including in-shell nuts, shells, or shell fragments.

(3) Free from damage by:

(i) Immature kernels;

(ii) Kernel spotting; and

(iii) Other defects.

(4) Free from serious damage by:

(i) Mold;

(ii) Minor insect or vertebrate injury;

(iii) Insect damage;

(iv) Rancidity;

(v) Decay; and,

(vi) Other defects.

(5) Unless otherwise specified, kernels shall meet the size classification of Jumbo Whole Kernels (See § 51.2559).

(b) [Reserved]

■ 14. In § 51.2557, Table 1 is revised to read as follows:

§ 51.2557 Tolerances.

* * * * *

■ 15. Section 51.2559 is revised to read as follows:

§ 51.2559 Size classifications.

(a) The size of pistachio kernels may be specified in connection with the grade in accordance with one of the following size classifications.

(1) Jumbo Whole Kernels: 80 percent or more by weight shall be whole kernels and not more than 5 percent of the total sample shall pass through a 24/64 inch round hole screen with not more than 1 percent passing through a 16/64 inch round hole screen.

(2) Large Whole Kernels: 80 percent or more, by weight, shall be whole kernels and not more than 2 percent of the total sample shall pass through a 16/64 inch round hole screen.

(3) Large Split Kernels: 75 percent or more, by weight, shall be half kernels split lengthwise and not more than 5 percent of the total sample shall pass through a 16/64 inch round hole screen.

(4) Whole and Broken Kernels: means a mixture of any combination of whole kernels or pieces. The percentage of whole kernels and/or pieces may be specified. Not more than 5 percent of the total sample shall pass through a 5/64 inch round hole screen.

(b) [Reserved]

■ 16. Section 51.2560 is revised to read as follows:

§ 51.2560 Definitions.

(a) *Well dried* means the kernel is firm and crisp.

(b) *Very well dried* means the kernel is firm and crisp and the average moisture content of the lot does not exceed 7 percent or is specified (See § 51.2561).

(c) *Foreign material* means leaves, sticks, in-shell nuts, shells or pieces of shells, dirt, or rocks, or any other substance other than pistachio kernels. No allowable tolerances for metal or glass.

(d) *Whole kernel* means ¾ of a kernel or more.

(e) *Splits* means more than ¾ of a half kernel split lengthwise.

(f) *Damage* means any specific defect described in paragraph (f) (1) through (2) of this section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the

individual kernel or of the lot. (For tolerances, see § 51.2557, Table I.)

(1) *Immature kernels* are excessively thin kernels and can have black, brown or gray surface with a dark interior color and the immaturity has adversely affected the flavor of the kernel.

(2) *Kernel spotting* refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(g) *Serious damage* means any specific defect described in paragraph (g) (1) through (5) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2557 Table I.)

(1) *Mold* which is readily visible on the kernel.

(2) *Minor insect or vertebrate injury* means the kernel shows conspicuous evidence of feeding.

(3) *Insect damage* is an insect, insect fragment, web or frass attached to the kernel. No live insects shall be permitted.

(4) *Rancidity* means the kernel is distinctly rancid to taste. Staleness of flavor shall not be classed as rancidity.

(5) *Decay* means one-sixteenth or more of the kernel is decomposed.

■ 17. Section 51.2562 is added to read as follows:

§ 51.2562 Metric Conversion Table.

Use the following table for metric conversion:

Inches	Millimeters
5/64	1.98
16/64	6.35
24/64	9.53
Ounces	Grams
1	28.35
2	56.7

Dated: August 19, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–21547 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1030

[Docket No. DA–01–03; AO–361–A35]

Milk in the Upper Midwest Marketing Area: Order Amending the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, without change an interim final rule concerning pooling provisions of the Upper Midwest Federal milk order. Specifically, this final rule continues to prohibit the ability to simultaneously pool the same milk on the Upper Midwest Federal milk order and a State-operated milk order that has market-wide pooling. Additionally, the final rule limits the amount of milk that can be diverted to nonpool plants from pool distributing plants regulated under the order. More than the required number of producers in the Upper Midwest marketing area have approved the issuance of the final order amendments.

EFFECTIVE DATE: September 1, 2003.

FOR FURTHER INFORMATION CONTACT: Gino Tosi, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Stop 0231–Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–1366, e-mail: *gino.tosi@usda.gov.*

SUPPLEMENTARY INFORMATION: This administrative rule is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

In June 2001, there were 12,748 producers pooled on, and 57 handlers regulated by, the Upper Midwest order. Based on these criteria, the vast majority of the producers and handlers would be considered as small businesses. The adoption of the proposed pooling standards serves to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the Upper Midwest milk marketing area and are not associated with other market-wide pools concerning the same milk. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those that are eligible to share in the revenue that arises from the

classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget (OMB) beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior documents in this proceeding:

Notice of Hearing: Issued June 5, 2001; published June 11, 2001 (66 FR 31185).

Tentative Final Decision: Issued February 8, 2002; published February 14, 2002 (67 FR 7040).

Interim Final Rule: Issued April 16, 2002; published April 22, 2002 (67 FR 19507).

Final Decision: Issued June 18, 2003; published June 24, 2003 (68 FR 37674).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Upper Midwest order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Upper Midwest order:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Upper Midwest marketing area.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Upper Midwest order, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the order, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Upper Midwest order, as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* It is necessary in the public interest to make these amendments to the Upper Midwest order effective September 1, 2003. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing area.

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on June 18, 2003. These proposed amendments are identical to the amendments in the Interim Final Rule published in the **Federal Register** on April 22, 2002 (67 FR 19507) regulating the handing of milk in the Upper Midwest marketing area.

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective September 1, 2003. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Upper Midwest order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order(s) as hereby amended;

(3) The issuance of the order amending the Upper Midwest order is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Parts 1030

Milk marketing orders.

Order Relative to Handling

■ *It is therefore ordered,* that on and after the effective date of this document, the handling of milk in the Upper Midwest marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby further amended, as follows:

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

■ The interim final rule amending 7 CFR part 1030 which was published at (67 FR 19507) on April 16, 2002, is adopted as a final rule without change.

Dated: August 18, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–21530 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–02–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 430

[Docket No. 03–029N]

Listeria Monocytogenes Workshops for Small and Very Small Plants

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of workshops.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold five workshops from September through October, 2003, to discuss the upcoming implementation of the interim final rule, "Control of Listeria monocytogenes in Ready-to-Eat Meat and Poultry Products," (68 FR 34208), which is effective on October 6, 2003. The provisions of the rule require official establishments that produce certain ready-to-eat (RTE) meat and poultry products to prevent product adulteration by the pathogenic environmental contaminant Listeria monocytogenes (L. monocytogenes).

The focus of the upcoming workshops will be on how small and very small plants can comply with the new regulations. Key elements of the implementation of the final rule will be addressed, and there will be an opportunity to ask questions and seek additional information. FSIS has held similar workshops in the past for small and very small plants as a means of helping such plants, which may have fewer resources than large plants, to comply with FSIS requirements.

DATES: The workshops will be held on September 13, 20, and October 4, 2003.

ADDRESSES: On September 13, workshops will be held in Raleigh, North Carolina and Bridgeport, Connecticut; on September 20, a workshop will be held in Kansas City, Kansas; and on October 4, workshops will be held in Albuquerque, New Mexico and Oakland, California. (Additional information will be provided at a later date.)

FOR FURTHER INFORMATION CONTACT: Pre-registration for the workshops is suggested. To register, please contact Ms. Sheila Johnson of the FSIS Strategic Initiatives, Partnership and Outreach Staff at (202) 690–6498, fax: (202) 690–6500, or e-mail: *Sheila.Johnson@fsis.usda.gov*. For technical information, please contact Michaelle Fisher at (401) 221–7400, or email: *michaelle.fisher@fsis.usda.gov*. If a sign language interpreter or other special accommodations are required, please contact Ms. Sheila Johnson, no later than September 5.

SUPPLEMENTARY INFORMATION: On June 6, 2003, FSIS published an interim final rule, "Control of Listeria monocytogenes in Ready-to-Eat Meat and Poultry Products," (68 FR 34208), which will become effective October 6, 2003. The rule establishes regulations that require official establishments that produce RTE meat and poultry products to prevent product adulteration by the pathogenic environmental contaminant L. monocytogenes. Under the new regulations, all establishments that produce RTE meat and poultry products that are exposed to the environment after lethality treatments and that support the growth of L. monocytogenes are to have controls that prevent product adulteration by L. monocytogenes in their hazard analysis and critical control point (HACCP) plans, in their sanitation standard operating procedures, or in prerequisite programs. Establishments are also required to maintain and share with FSIS data and information relevant to their controls for L. monocytogenes. Additionally, the new regulations permit an establishment to make claims on the labels of the RTE products regarding the processes used to eliminate or reduce L. monocytogenes or suppress or limit its growth in the products.

The workshops are designed to provide an overview of the final rule to owners and managers of small and very small Federal and State establishments. In addition, the workshops will give all stakeholders a more in-depth understanding of the three compliance alternatives, the sampling provisions, recordkeeping requirements, the use of labeling claims, how to comply with the validation provisions of the regulations, and how to prepare supporting documentation for their hazard analyses. The meeting will also provide the opportunity to discuss additional ways of ensuring that small and very small plants receive the assistance they need to successfully respond to the final rule.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and Web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC on August 18, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–21483 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2003–15]

Statement of Policy Regarding Deposition Transcriptions in Nonpublic Investigations

AGENCY: Federal Election Commission.

ACTION: Statement of policy.

SUMMARY: The Federal Election Commission announces an alteration to its historic practice with regard to transcripts of depositions in enforcement matters to permit deponents to obtain a copy of the transcript of their own deposition so long as there is no good cause to limit the deponent to an opportunity to review and sign the transcript.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Lawrence L. Calvert, Deputy Associate General Counsel for Enforcement, Federal Election Commission, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: When Federal Election Commission attorneys take a deponent's sworn testimony at an enforcement deposition authorized by 2 U.S.C. 437d(a)(4), only the deponent and his or her counsel may attend. Under historic practice, the deponent has the right to review and sign the transcript. 11 CFR 111.12(c) (applying Fed. R. Civ. P. 30(e) to Commission enforcement depositions). However, a deponent who is also a respondent is not currently allowed to obtain a copy of, or take notes when reviewing, his or her own transcript unless and until the General Counsel has transmitted, pursuant to 2 U.S.C. 437g(a)(3), a brief

recommending that the Commission find probable cause to believe that the respondent has violated or is about to violate the Federal Election Campaign Act of 1971, as amended ("the Act"), or Chapters 95 or 96 of Title 26, U.S. Code. The Office of General Counsel does not currently offer other deponents an opportunity to obtain their transcripts; once the entire matter has been closed, other deponents can copy the transcript at their own expense if the transcript is made part of the public record.

The Commission recently invited the public to comment on various aspects of the agency's enforcement practices, including whether and when transcripts of depositions should be released and to whom. *See* "Enforcement Procedures," Notice 2003–9, 68 FR 23311 (May 1, 2003). One possible change in practice included in the notice was for the Office of General Counsel to routinely allow deponents who are also respondents to procure immediately a copy of their own transcripts unless, on a case-by-case basis, the General Counsel concluded (or the Commission concluded, on the recommendation of the General Counsel) that it was necessary to the successful completion of the investigation to withhold the transcript until completion of the investigation.

On June 11, 2003, the Commission held a public hearing on its enforcement practices. At the hearing, counsel for the regulated community suggested changes to the agency's enforcement procedures, including its deposition policy. Some of those testifying suggested that deponents be allowed to obtain copies of their own depositions immediately after the deposition, contrary to the historic practice. Several of these commenters also noted that the Commission's practice regarding depositions contrasts with that of some other civil law enforcement agencies during the investigative stage of their proceedings.

The Commission is governed, in part, by the Administrative Procedure Act (APA). Under the APA, "[a] person compelled to submit data or evidence is entitled to retain or, on payment of lawfully proscribed costs, procure a copy or transcript thereof, except that in a nonpublic investigatory proceeding the witness may for good cause be limited to inspection of the official transcript of his testimony." 5 U.S.C. 555(c). One example of "good cause" recognized by courts is a concern that witnesses still to be examined might be coached. *See Commercial Capital Corp.* v. *SEC*, 360 F.2d 856, 858 (7th Cir. 1966). In the past, all open investigations have been considered as falling within the APA's good-cause exception based on the potential for deponents to share their testimony with third parties. The Commission and its Office of General Counsel have also been mindful of the Federal Election Campaign Act's requirement that ongoing investigations be kept confidential.[1]

Other federal agencies that conduct nonpublic investigations have adopted policies that interpret the APA's good-cause exception more narrowly. For example, in 1964 the Federal Communications Commission adopted a policy whereby: "In any matter pending before the Commission, any person submitting data or evidence, whether acting under compulsion or voluntarily, shall have the right to retain a copy thereof, or to procure a copy * * * of any transcript made of his testimony, upon payment of the charges therefor to the person furnishing the same, which person may be designated by the Commission. The Commission itself shall not be responsible for furnishing the copies." 47 CFR 1.10. In 1972, the Securities and Exchange Commission adopted its current rule on this subject, which is similar to the FCC's. *See* 17 CFR 203.6. Likewise, the practice of the Commodity Futures Trading Commission is governed by 17 CFR 11.7(b), which states: "A person compelled to submit data or evidence in the course of an investigatory proceeding shall be entitled to retain or, upon payment of appropriate fees * * * procure a copy or transcript thereof, except that the witness may for good cause be limited to inspection of the official transcript of his testimony."

After carefully reviewing the comments submitted to it on this matter and considering the experience of other federal agencies regarding deposition transcripts in nonpublic investigations, the Commission hereby announces that, from the date of publication of this notice, it will permit deponents in enforcement matters to obtain, upon request to the Office of General Counsel, a copy of the transcript of their own deposition. The Commission has determined that it can maintain the integrity of its investigations even if current practice is altered, so long as access to transcripts may still be denied upon determination that good cause exists for doing so, and so long as third-party witnesses (or deponents who are also respondents in matters with multiple respondents) are granted access to their transcripts subject to the confidentiality requirements of the Act.

Accordingly, in all matters open and pending before the Commission on or after the date of publication of this notice, a deponent may, in writing, request a copy of his or her own deposition transcript. The request may be made at any time after the deposition concludes. The Office of General Counsel will review the request and, absent good cause to the contrary, it will notify the deponent and the court reporter in writing that the deponent may obtain a copy of the transcript, at his or her own cost, from the court reporter. If the Associate General Counsel or her deputy determined that there was reason to invoke the good-cause exception, this Office would notify the deponent and the Commission. This change would not in any way affect 11 CFR 111.12(c).

Dated: August 18, 2003.

Michael E. Toner,

Commissioner, Federal Election Commission.

[FR Doc. 03–21543 Filed 8–21–03; 8:45 am]

BILLING CODE 6715–01–P

[1] Under 2 U.S.C. 437g(a)(12): "Any notification or investigation made under this section shall not be made public by the Commission or by any person without the written consent of the person receiving such notification or the person with respect to whom such investigation is made. Any member or employee of the Commission, or any other person, who violates the provisions * * * shall be fined not more than $2,000. Any such member, employee, or other person who knowingly and willfully violates the provisions * * * shall be fined not more than $5,000."

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–17–AD; Amendment 39–13279; AD 2003–17–05]

RIN 2120–AA64

Airworthiness Directives; Short Brothers and Harland Ltd. Models SC–7 Series 2 and SC–7 Series 3 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Short Brothers and Harland Ltd. (Shorts) Models SC–7 Series 2 and SC–7 Series 3 airplanes. This AD establishes a technical service life for these airplanes and allows you to incorporate modifications, inspections, and replacements of certain life limited items to extend the life limits of these airplanes. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for

the United Kingdom. The actions specified by this AD are intended to prevent failure of critical structure of the aircraft caused by fatigue.

DATES: This AD becomes effective on September 29, 2003.

The Director of the **Federal Register** approved the incorporation by reference of certain publications listed in the regulations as of September 29, 2003.

ADDRESSES: You may get the service information referenced in this AD from Short Brothers PLC, PO Box 241, Airport Road, Belfast BT3 9DZ Northern Ireland; telephone: +44 (0) 28 9045 8444; facsimile: +44 (0) 28 9073 3396. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–17–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified FAA that an unsafe condition may exist on all Shorts Models SC–7 Series 2 and SC–7 Series 3 airplanes. The CAA reports that the Model SC–7 airframe has undergone structural evaluations that have resulted in the establishment of an airplane service life limit.

Modifications, inspections, and replacements of certain life limited items have been identified to further extend the life of the aircraft.

What is the potential impact if FAA took no action? The life limits, if not complied with, could result in failure of the primary structural components and possibly result in structural failure during flight.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Shorts Models SC–7 Series 2 and SC–7 Series 3 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 13, 2002 (67 FR 68779). The NPRM proposed to establish a technical service life for these airplanes and allow you to incorporate modifications, inspections, and replacements of certain life limited items to extend the life limits of these airplanes.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: AD Is Not Needed

What is the commenter's concern? One commenter states that the proposed issuance of this AD serves no safety benefit since all of the U.S. registered airplanes affected are already in compliance with the referenced service information, and no accidents have been reported as a result of any structural failures. The commenter recommends that FAA not issue this AD. We infer that the commenter recommends that FAA withdraw the NPRM.

What is FAA's response to the concern? We do not concur that the AD serves no safety benefit and that we should withdraw the NPRM. The FAA does not have confirmation that all of the U.S. registered airplanes are in compliance with the referenced service information. In addition, imported aircraft need to have the AD stated for a records checks during issuance of an airworthiness certificate. The actions referenced in the service information are not required when the service life limits are reached, unless required by AD.

Therefore, the AD is necessary to ensure the life limits are required. We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 2: Economic Hardship

What is the commenter's concern? Ten commenters state that issuing the AD would result in economic hardship to them. Specifically, these commenters communicated the following:

—Seven commenters state that issuing the AD would result in a prohibitive cost increase for their use of the aircraft or result in the loss of the aircraft. We infer that "by loss of the use of the aircraft" that the owner/operator of the affected airplane would choose to retire the airplane from service.

—Three commenters state that issuing the AD would reduce the remaining time-in-service of the affected airplanes and result in airplanes with no resale value. We infer that owners/operators would choose to withdraw airplanes from service rather than work with the manufacturer to develop a life extension program for the affected airplanes.

We infer that the 10 commenters want FAA to withdraw the NPRM.

What is FAA's response to the concern? The FAA does not concur that the NPRM should be withdrawn because of economic impact. We have no way of determining the number or extent of inspections, repairs, and replacements that would be necessary based on the owner/operator and manufacturer developed life extension program for the affected airplanes noted in the NPRM. Further, it is the owners'/operators' responsibility to propose an alternative method of compliance that provides an acceptable level of safety.

We are not changing the final rule AD action as a result of theses comments.

Comment Issue No. 3: Insufficient Comment Time

What is the commenter's concern? Five commenters state that the comment period length was insufficient, that additional time is necessary to obtain technical information from the manufacturer, that there is no urgent safety condition indicating the need for this AD, and that more time is needed to propose a more comprehensive inspection program.

We infer that the five commenters want FAA to extend the comment period of the NPRM and delay issuance of the AD.

What is FAA's response to the concern? We disagree that the comment period for the NPRM should be extended. The comment period ended on December 23, 2002. However, FAA has always accepted late comments. Based on the timing of the final rule, the public had more than six extra months to comment on the NPRM. The FAA agrees that no urgent safety of flight condition existed; if an urgent safety of flight condition exists for this type design, we would have determined that this regulation is an emergency regulation that must be issued immediately and that must become effective prior to public comment. Owners/operators who want to propose a more comprehensive inspection program are free to work with the manufacturer to develop a life extension program for the affected airplane(s) and submit a plan to the FAA as an alternative method of compliance.

We are not changing the final rule AD action as a result of these comments.

Comment Issue No. 4: Inadequate/Incorrect Supporting Data

What is the commenter's concern? Six commenters state that inadequate/incorrect supporting data had been cited

or used in the development of the NPRM, as follows:

—Several commenters state that FAA should require the manufacturer or others to submit data for review.
—Two commenters state that the aircraft's characteristics make it the most safe for their use. The FAA infers that the commenters prefer this type design to other type designs.
—Three commenters state that several airplanes have not been subject to operations that would reduce life limits. We infer that the commenters believe these airplanes are eligible for life extension programs.

What is FAA's response to the concern? The FAA disagrees that inadequate or incorrect supporting data has been considered in the development of the NPRM. Under the bilateral airworthiness agreement between the United Kingdom and the United States, the airworthiness authority (after coordination with the manufacturer), notified FAA that an unsafe condition exists or could develop on all Shorts Models SC–7 Series 2 and SC–7 Series 3 airplanes. The airworthiness authority reported that the Model SC–7 airframe has undergone structural evaluations that have resulted in the establishment of an airplane service life limit. Modifications, inspections, and replacements of certain life limited items were identified to further extend the life of the aircraft.

We have reviewed the available data and found the data adequate and correct. Therefore, we are not changing the final rule AD action as a result of these comments.

Comment Issue No. 5: Service Difficulty History Does Not Justify AD Action

What is the commenter's concern? Several commenters state that the service difficulty history shows no structural problems of the type stated in the NPRM. We infer that the commenters feel the lack of a service difficulty history for the type design warrants the withdrawal of the NPRM.

What is FAA's response to the concern? The FAA disagrees that the lack of a service difficulty history is sufficient to justify the withdrawal of the NPRM. The manufacturer and the airworthiness authority have stated that the life limit should be reduced based on their analyses and technical expertise.

The FAA has examined these findings, reviewed all available information, and determined that AD action should be taken. Therefore, we are not changing the final rule AD action as a result of these comments.

Comment Issue No. 6: Operational Profile (Gross Weight Penalty)

What is the commenter's concern? Two commenters state that certain airplanes have an operational history profile (operating at lesser gross weight than considered by the manufacturer and foreign airworthiness authority) that does not warrant reduction in life limits as would be required in the AD. The FAA infers that commenters want the withdrawal of the proposed NPRM or adjustment of the life limits for certain aircraft of the affected type design.

What is FAA's response to the concern? The FAA disagrees that certain airplanes' operational history profiles warrant withdrawal of the NPRM or changes in the life limits. The manufacturer and the foreign airworthiness authority have determined that AD action is needed, and FAA confirms this need for AD action.

The owners/operators of affected airplanes are free to work with the manufacturer to develop a life extension program for the affected airplanes and submit a plan to the FAA.

We are not changing the final rule AD action as a result of these comments.

Comment Issue No. 7: Safe Life Principle

What is the commenter's concern? The commenter states the argument that the manufacturer should not be using a 35-year old safe life process to determine life limits for aircraft of this type design. Further, newer non-destructive inspection (NDI) techniques are available. The FAA infers that the commenter wants the NPRM withdrawn or increased life limits for certain aircraft.

What is FAA's response to the concern? We disagree that the NPRM should be withdrawn or that there should be increased life limits for certain aircraft. Although newer NDI techniques do exist, no NDI procedures have been proposed for this issue that we have determined will detect the fatigue before it occurs. We will consider NDI procedures proposed as part of an alternative method of compliance.

We are not changing the final rule AD action as a result of this comment.

Comment Issue No. 8: Freedom of Information Act (FOIA) Request Not Fulfilled

What is the commenter's concern? One commenter states that FAA has not provided FOIA requested information. We infer that the commenter wants the NPRM withdrawn or a supplemental NPRM issued with the public allowed to review the requested information and to provide public comments with a new comment period.

What is FAA's response to the concern? The FAA disagrees that the NPRM should be withdrawn or a supplemental NPRM issued. The FAA handles FOIA requests independently of ADs. We have determined that an unsafe condition exists and that AD action is necessary to correct it.

Therefore, we are not changing the final rule AD action as a result of this comment.

Comment Issue No. 9: Service Bulletins Already Incorporated

What is the commenter's concern? Commenters state that all affected airplanes have incorporated the requirements of the referenced service information. Also, one service bulletin was issued in 1978. FAA infers that the commenters believe the NPRM should be withdrawn because they believe all airplanes in the United States have complied with the service information and the service bulletin issued in 1978 without a related AD action until now.

What is FAA's response to the concern? The FAA disagrees that the NPRM should be withdrawn. Assurance that all airplanes are in compliance with service information is not justification to not issue an AD. The original type certificate did not include service life limits. The only way to mandate these limits on all airplanes, including those getting future airworthiness certificates, is through AD action.

We are not changing the final rule AD action as a result of these comments.

Comment Issue No. 10: AD Action Should Not Apply to Aircraft Used in Part 91 Operations

What is the commenter's concern? The commenter states that, because the aircraft looks good and has been operated under favorable conditions, (1) there should be an in-depth study of the AD; (2) initial life limits for the aircraft should be 30,000 cycles; and (3) a recommended plan of inspection should be implemented. The FAA infers that the commenter wants the NPRM withdrawn or a supplemental NPRM issued with a life limit of 30,000 cycles and a recommended plan of inspection proposed.

What is FAA's response to the concern? We disagree that the NPRM should be withdrawn or a supplemental NPRM issued. We have determined that the AD as proposed addresses the unsafe condition. The referenced life extension program could be proposed as an alternative method of compliance

provided details are included that show an acceptable level of safety. A detailed method and thresholds for cracks and inspection intervals would have to be proposed.

We are not changing the final rule AD action as a result of these comments.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 22 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes? The impact of this AD will be not being able to operate the airplane past the established service life limit. The following paragraphs present cost if you choose to extend the life limit.

We estimate the following costs to accomplish the aircraft life extension prescribed in Shorts Service Bulletin No. 51–51 on 19 aircraft:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
350 workhours × $60 per hour = $21,000	$90,000	$111,000	$2,109,000

We estimate the following to accomplish the aircraft life extension prescribed in Shorts Service Bulletin No. 51–52 for the 6 aircraft serial numbers 1845, 1847, 1883, 1889, 1943, and 1960:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
120 workhours × $60 per hour = $7,200	$22,000	$29,200	$175,200

Three of these 6 airplanes will also incorporate Shorts Service Bulletin No. 51–51 and are part of the 19 airplanes subset of the total set of 22 airplanes in the U.S. registry.

Compliance Time of This AD

What would be the compliance time of this AD? The compliance time of this AD is upon accumulating the applicable life limit or within the next 90 days after the effective date of this AD, whichever occurs later.

Why is the compliance time of this AD presented in flights, hours TIS and calendar time? The unsafe condition on these airplanes is a result of the combination of the number of times the airplane is operated and how the airplane is operated (for example, weight carried). Airplane operation varies among operators. For example, one operator may operate the airplane 100 flights or 50 hours TIS in 3 months and carrying low weights while it may take another operator 12 months or more to accumulate 100 flights or 50 hours TIS while carrying heavy weights. For this reason, we have determined that the compliance time of this AD will be specified in flights, hours time-in-service (TIS), and calendar time in order to assure this condition is not allowed to go uncorrected over time.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–17–05 Short Brothers and Harland Ltd.: Amendment 39–13279; Docket No. 2000–CE–17–AD.

(a) *What airplanes are affected by this AD?* This AD affects Models SC–7 Series 2 and SC–7 Series 3 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of critical structure of the aircraft caused by fatigue.

(d) *What must I do to comply with this AD?* Do not operate the airplane upon accumulating the applicable life limit or within the next 90 days after September 29, 2003 (the effective date of this AD), whichever occurs later. The following table presents the life limits:

Serial number	Life limit
(1) SH1845 and SH1883.	10,000 hours time-in-service (TIS).
(2) SH1847	15,200 hours TIS.

Serial number	Life limit
(3) SH1889	13,805 flights.
(4) SH1943	11,306 flights.
(5) SH1960	4,142 flights.
(6) All airplanes that do not have serial number SH1845, SH1883, SH1847, SH1889, SH1943, or SH1960.	20,000 flights.

Note 1: For owners/operators that do not have a record of the number of flights on the aircraft, assume the number of flights on the basis of two per operating hour.

(e) *What must I do to extend the life limits for airplanes with serial number SH1845, SH1847, SH1883, SH1889, SH1943, or SH1960?* To extend the life limit on one of these airplanes, you must accomplish the actions of Shorts Service Bulletin No. 51–52, Original Issue: September 1, 1981 (latest version at Revision No.: 4, dated: July 16, 2002), and Shorts Skyvan Maintenance Program 1, not dated. The following table presents the extended life limit:

Serial number	Extended life limit
(1) SH1845:	13,456 hours TIS.
(2) SH1847:	20,200 hours TIS.
(3) SH1883:	15,000 hours TIS.
(4) SH1889:	20,094 flights.
(5) SH1943:	17,325 flights.
(6) SH1960:	8,449 flights.

(f) *What must I do to extend the life limit for my airplanes that do not have serial number SH1845, SH1883, SH1847, SH1889, SH1943, or SH1960?* You can extend the life limit to 27,000 flights by accomplishing the actions of Shorts Service Bulletin No. 51–51, Original Issue: June 6, 1978 (latest version at Revision No.: 6, dated: March 14, 1983), and Shorts Skyvan Maintenance Program 1, not dated.

Note 2: These life limits described in paragraph (e) are the final life limits of each aircraft unless the owner/operator works with Shorts Brothers PLC to develop a life extension program. Submit a plan to the FAA (address specified in paragraph (g) of this AD) for the proposed life extension program. Accomplishment of Shorts Service Bulletin No. 51–51, Original Issue: June 6, 1978 (latest version at Revision No.: 6, dated: March 14, 1983), does not extend the service life beyond the life limits described in paragraph (e).

(g) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Standards Office Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Standards Office Manager.

Note 3: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(h) *Where can I get information about any already-approved alternative methods of compliance?* Contact Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

(i) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(j) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Shorts Service Bulletin No. 51–51, Revision No.: 6, dated: March 14, 1983; and Shorts Service Bulletin No. 51–52, Revision No.: 4, dated: July 16, 2002). The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from Short Brothers PLC, P.O. Box 241, Airport Road, Belfast BT3 9DZ Northern Ireland; telephone: +44 (0) 28 9045 8444; facsimile: +44 (0) 28 9073 3396. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British AD Number 019–09–81, not dated.

(i) *When does this amendment become effective?* This amendment becomes effective on September 29, 2003.

Issued in Kansas City, Missouri, on August 12, 2003.

Diane K. Malone,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20983 Filed 8–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–30–AD; Amendment 39–13277; AD 2003–17–03]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A. Model P–180 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document supersedes Airworthiness Directive (AD) 2003–03–14, which applies to all PIAGGIO AERO INDUSTRIES S.p.A. (PIAGGIO) Model P–180 airplanes. AD 2003–03–14 currently requires you to inspect and determine whether any firewall shutoff or crossfeed valve with a serial number in a certain range is installed and requires you to replace or modify any valve that has a serial number within this range. The modification consisted of reworked valves that were re-identified with an "A" at the end of the serial number. AD 2003–03–14 allows the pilot to check the logbook and does not require the inspection and replacement requirement if the check shows that one of these valves is definitely not installed. Since AD 2003–03–14 became effective, the Federal Aviation Administration (FAA) has found that the valve manufacturer was not correctly incorporating the modification on reworked valves. Consequently, the installation of modified fuel valves installed per AD 2003–03–14 could allow the unsafe condition to remain on the affected airplanes. This AD would require you to replace any firewall shutoff or crossfeed valve with a serial number in a certain range even if it has been modified per AD 2003–03–14. The actions specified by this AD are intended to prevent a faulty firewall shutoff or crossfeed valve from developing cracks and leaking fuel. This could result in an engine fire.

DATES: This AD becomes effective on September 3, 2003.

The Director of the **Federal Register** approved the incorporation by reference

of certain publications listed in the regulation as of September 3, 2003.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before September 17, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–30–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–30–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from PIAGGIO AERO INDUSTRIES S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–30–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the *Office of the Federal Register*, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

Has FAA taken any action to this point? A ground fire on the left-hand engine nacelle caused by a cracked crossfeed valve that had leaked fuel on a PIAGGIO Model P–180 airplane caused FAA to issue AD 2003–03–14, Amendment 39–13038 (68 FR 5815, February 5, 2003).

AD 2003–03–14 currently requires you to inspect and determine whether any firewall shutoff or crossfeed valve with a serial number in a certain range is installed and requires you to replace or modify any valve that has a serial number within this range. The modification consisted of reworked valves that were re-identified with an "A" at the end of the serial number. This AD allows the pilot to check the logbook and does not require the inspection and replacement requirement if the check shows that one of these valves is definitely not installed.

What has happened since AD 2003–03–14 to initiate this proposed action? The Ente Nazionale per l' Aviazione Civile (ENAC), which is the airworthiness authority for Italy, recently notified FAA of the need to change AD 2003–03–14. The ENAC reports that the valve manufacturer was not correctly incorporating the modification on reworked valves and that these modified valves need to be replaced.

Is there service information that applies to this subject? PIAGGIO has issued Service Bulletin No. ASB80–0191, dated February 27, 2003. Included as part of this service bulletin is Electromech Technologies SB 484–3 AB, dated February 18, 2003.

What are the provisions of this service information? The service information includes:

—A list of those Electromech part number (P/N) fuel valves that are affected by the unsafe condition;

—Procedures for determining whether one of the affected fuel valves is installed; and

—Instructions for replacing or modifying any affected fuel valve.

What action did the ENAC take? The ENAC classified this service bulletin as mandatory and issued Italian RAI–AD 2003–119, dated April 3, 2003, in order to ensure the continued airworthiness of these airplanes in Italy.

Was this in accordance with the bilateral airworthiness agreement? This airplane model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement.

Pursuant to this bilateral airworthiness agreement, the ENAC has kept FAA informed of the situation described above.

The FAA's Determination and an Explanation of the Provisions of This AD

What has FAA decided? The FAA has examined the findings of the ENAC; reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other PIAGGIO Model P–180 airplanes of the same type design that are on the U.S. registry;

—The fuel valves modified per AD 2003–03–14 should also be replaced;

—The actions specified in the previously-referenced service information should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What does this AD require? This AD supersedes AD 2003–03–14 with a new AD that requires you to replace any firewall shutoff or crossfeed valve with a serial number in a certain range even if it has been modified per AD 2003–03–14.

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Will I have the opportunity to comment prior to the issuance of the rule? Because the unsafe condition described in this document could result in an engine fire, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How do I comment on this AD? Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How can I be sure FAA receives my comment? If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–30–AD." We will date stamp and mail the postcard back to you.

Compliance Time of This AD

Why is the compliance time presented in calendar time instead of hours time-in-service (TIS)? The compliance of this AD is presented in calendar time instead of hours TIS because the affected shutoff and crossfeed valves are unsafe as a result of a quality control problem. The problem has the same chance of existing on an airplane with 50 hours TIS as it would for an airplane with 1,000 hours TIS. Therefore, FAA has determined that the compliance time of this AD should be presented in calendar time.

Regulatory Impact

Does this AD impact various entities? These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2003–03–14, Amendment 39–13038 (68 FR 5815, February 5, 2003), and by adding a new AD to read as follows:

2003–17–03 Piaggio Aero Industries S.p.A.: Amendment 39–13277; Docket No. 2003–CE–30–AD; Supersedes AD 2003–03–14, Amendment 39–13038.

(a) *What airplanes are affected by this AD?* This AD affects Model P–180 airplanes, all serial numbers, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent a faulty firewall shutoff or crossfeed valve from developing cracks and leaking fuel. This could result in an engine fire.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) *Maintenance Records Check:* (i) Check the maintenance records to determine whether an Electro Mech part number (P/N) EM484–3 firewall shutoff or crossfeed valve with a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number) is installed. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may perform this check.	Within 5 days after September 3, 2003 (the effective date of this AD), unless already accomplished.	No special procedures necessary to check the logbook.
(ii) If, by checking the maintenance records, the owner/operator can definitely show that no Electro Mech P/N EM484–3 firewall shutoff or crossfeed valves with a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number) are installed, then the inspection requirement of paragraph (d)(2) of this AD and the replacement requirement of paragraph (d)(3) of this AD do not apply. You must make an entry into the aircraft records that shows compliance with these portions of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).	.....	
(2) *Inspection:* Inspect the three Electro Mech P/N EM484–3 firewall shutoff and crossfeed valves to determine whether they incorporate a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number).	Within 5 days after September 3, 2003 (the effective date of this AD), unless already accomplished.	In accordance with PIAGGIO Aero Industries S.p.A. Service Bulletin No. ASB80–0191, dated February 27, 2003; and Electromech Technologies SB 484–3 AB, dated February 18, 2003.

Actions	Compliance	Procedures
(3) *Replacement/Modification:* If any Electro Mech P/N EM484–3 firewall shutoff or crossfeed valve is found that incorporates a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number), accomplish one of the following:	Accomplish any necessary replacements or modifications prior to further flight after the inspection required by paragraph (d)(2) of this AD, unless already accomplished.	Replace in accordance with the applicable maintenance manual. Modify in accordance with PIAGGIO Aero Industries S.p.A. Service Bulletin No. ASB80–0191, dated February 27, 2003; and Electromech Technologies SB 484–3 AB, dated February 18, 2003.
(i) Install valve(s) that does not (do not) incorporate a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number); or (ii) Have any valve(s) modified that incorporates (incorporate) a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number). The valve will be re-identified with a "B" at the end of the serial number.		
(4) *Valves Modified per AD 2003–03–14:* Any valve modified per AD 2003–03–14 and re-identified with an "A" at the end of the serial number must be replaced or modified per paragraph (d)(3)(i) or (d)(3)(ii) of this AD, respectively.	Within 5 days after September 3, 2003 (the effective date of this AD), unless already accomplished.	In accordance with PIAGGIO Aero Industries S.p.A. Service Bulletin No. ASB80–0191, dated February 27, 2003; and Electromech Technologies SB 484–3 AB, dated February 18, 2003.
(5) *Spares:* Do not install, on any airplane, any Electro Mech P/N EM484–3 firewall shutoff or crossfeed valve that incorporates a serial number in the range of 148 through 302 (with or without an "A" at the end of the serial number), unless it has been modified as specified in paragraph (d)(3)(ii) of this AD.	As of September 3, 2003 (the effective date of this AD).	Not applicable.

(e) *Can I comply with this AD in any other way?*

(1) To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.13. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–4090.

(2) Alternative methods of compliance approved in accordance with AD 2003–03–14, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with PIAGGIO Aero Industries S.p.A. Service Bulletin No. ASB80–0191, dated February 27, 2003; and Electromech Technologies SB 484–3 AB, dated February 18, 2003. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from PIAGGIO AERO INDUSTRIES S.p.A, Via Cibrario 4, 16154 Genoa, Italy; telephone: +39 010 6481 856; facsimile: +39 010 6481 374. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2003–03–14, Amendment 39–13038.

Note: The subject of this AD is addressed in Italian RAI–AD 2003–119, dated April 3, 2003.

(h) This AD becomes effective on September 3, 2003.

Issued in Kansas City, Missouri, on August 12, 2003.

Diane K. Malone,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–20963 Filed 8–21–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM03–11–000]

Annual Update of Filing Fees

August 18, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; annual update of Commission filing fees.

SUMMARY: In accordance with 18 CFR 381.104, the Commission issues this update of its filing fees. This notice provides the yearly update using data in the Commission's Management, Administrative, and Payroll System to calculate the new fees. The purpose of updating is to adjust the fees on the basis of the Commission's costs for Fiscal Year 2002.

EFFECTIVE DATE: September 22, 2003.

FOR FURTHER INFORMATION CONTACT: Troy Cole, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street, NE., Room 4R–01, Washington, DC 20426, (202) 502–6161.

SUPPLEMENTARY INFORMATION: *Document Availability:* In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

User assistance is available for FERRIS and the FERC's Web site during normal business hours from our Help line at (202) 502–8222 or the Public

Reference Room at (202) 502–8371 Press 0, TTY (202) 502–8659. E-Mail the Public Reference Room at *public.referenceroom@ferc.gov*.

The Federal Energy Regulatory Commission (Commission) is issuing this notice to update filing fees that the Commission assesses for specific services and benefits provided to identifiable beneficiaries. Pursuant to 18 CFR 381.104, the Commission is establishing updated fees on the basis of the Commission's Fiscal Year 2002 costs. The adjusted fees announced in this notice are effective September 22, 2003. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this final rule is not a major rule within the meaning of section 251 of Subtitle E of Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The Commission is submitting this final rule to both houses of the United States Congress and to the Comptroller General of the United States.

The new fee schedule is as follows:

Fees Applicable to the Natural Gas Policy Act	
1. Petitions for rate approval pursuant to 18 CFR 284.123(b)(2). (18 CFR 381.403)	$9,480
Fees Applicable to General Activities	
1. Petition for issuance of a declaratory order (except under Part I of the Federal Power Act). (18 CFR 381.302(a))	19,040
2. Review of a Department of Energy remedial order:	
Amount in controversy	
$0–9,999. (18 CFR 381.303(b))	$100
$10,000–29,999. (18 CFR 381.303(b))	$600
$30,000 or more. (18 CFR 381.303(a))	27,800
3. Review of a Department of Energy denial of adjustment:	
Amount in controversy	
$0–9,999. (18 CFR 381.304(b))	$100
$10,000–29,999. (18 CFR 381.304(b))	$600
$30,000 or more. (18 CFR 381.304(a))	14,580
4. Written legal interpretations by the Office of General Counsel. (18 CFR 381.305(a))	$5,460
Fees Applicable to Natural Gas Pipelines	
1. Pipeline certificate applications pursuant to 18 CFR 284.224. (18 CFR 381.207(b))	1,000 *
Fees Applicable to Cogenerators and Small Power Producers	
1. Certification of qualifying status as a small power production facility. (18 CFR 381.505(a))	16,370
2. Certification of qualifying status as a cogeneration facility. (18 CFR 381.505(a))	18,540
3. Applications for exempt wholesale generator status. (18 CFR 381.801)	870

* This fee has not been changed.

List of Subjects in 18 CFR Part 381

Electric power plants, Electric utilities, Natural gas, Reporting and recordkeeping requirements.

Thomas R. Herlihy,

Executive Director.

■ In consideration of the foregoing, the Commission amends part 381, chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 381—FEES

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 16 U.S.C. 791–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

§ 381.302 [Amended]

■ 2. In 381.302, paragraph (a) is amended by removing "18,260" and adding "$19,040" in its place.

§ 381.303 [Amended]

■ 3. In 381.303, paragraph (a) is amended by removing "$26,660" and adding "$27,800" in its place.

§ 381.304 [Amended]

■ 4. In 381.304, paragraph (a) is amended by removing "$13,980" and adding "$14,580" in its place.

§ 381.305 [Amended]

■ 5. In 381.305, paragraph (a) is amended by removing "$5,240" and adding "$5,460" in its place.

§ 381.403 [Amended]

■ 6. Section 381,403 is amended by removing "$9,090" and adding "$9,480" in its place.

§ 381.505 [Amended]

■ 7. In 381.505, paragraph (a) is amended by removing "$15,700" and adding "$16,370" in its place and by removing "$17,770" and adding "$18,540" in its place.

§ 381.801 [Amended]

■ 8. Section 381.801 is amended by removing "$990" and adding "$870" in its place.

[FR Doc. 03–21551 Filed 8–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 122

[CBP Dec. 03–22]

User Fee Airports

AGENCY: Customs and Border Protection, Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the designation of Williams Gateway Airport in Mesa, Arizona and Roswell Industrial Air Center in Roswell, New Mexico as user fee airports and to correct an error regarding the city in Texas in which the McKinney Airport user fee airport is located. A user fee airport is one which while not qualifying for designation as an international or landing rights airport, has been approved by the Commissioner of the Bureau of Customs and Border Protection (CBP) to receive, for a fee, the services of a CBP officer for the processing of aircraft entering the United States and their passengers and cargo.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Balaban, Office of Field Operations, 202–927–0031.

SUPPLEMENTARY INFORMATION:

Background

Generally, a civil aircraft arriving from a place outside of the United States is required to land at an airport designated as an international airport. Alternatively, the pilot of a civil aircraft may request permission to land at a specific airport and if landing rights are granted, the civil aircraft may land at that landing rights airport.

Section 236 of Pub. L. 94–573 (the Trade and Tariff Act of 1984), codified at 19 U.S.C. 58b, created an option for civil aircraft desiring to land at an airport other than an international or landing rights airport. A civil aircraft arriving from a place outside of the United States may ask for permission to land at an airport designated by the Secretary of the Treasury as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Secretary of the Treasury determines that the volume of business at the airport is insufficient to justify the availability of customs services at the airport and the governor of the state in which the airport is located approves the designation. Generally, the type of aircraft that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

As the volume of business anticipated at this type of airport is insufficient to justify its designation as an international or landing rights airport, the availability of customs services is not paid for out of appropriations from the general treasury of the United States. Instead, the customs services are provided on a fully reimbursable basis to be paid for by the user fee airport on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall be paid by each person using the customs services at the airport and shall be in the amount equal to the expenses incurred by the Secretary of the Treasury in providing customs services which are rendered to such person at such airport, including the salary and expenses of those employed by the Secretary of the Treasury to provide the customs services. To implement this provision, generally, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay a flat fee annually and the users of the airport are to reimburse that airport/airport authority. The airport/airport authority agrees to set and periodically to review the charges to ensure that they are in accord with the airport's expenses.

Sections 403(1) and 411 of the Homeland Security Act of 2002 ("the Act," Pub. L. 107–296) transferred the United States Customs Service and its functions from the Department of the Treasury to the Department of Homeland Security; pursuant to section 1502 of the Act, the President renamed the "Customs Service" as the "Bureau of Customs and Border Protection," also referred to as the "CBP."

The Commissioner of CBP, pursuant to § 122.15, Customs Regulations (19 CFR 122.15) designates airports as user fee airports pursuant to 19 U.S.C. 58b. Section 122.15 sets forth the list of designated user fee airports.

Thirty seven airports are currently listed in § 122.15. This document revises the list of user fee airports. It adds Williams Gateway Airport in Mesa, Arizona, and Roswell Industrial Air Center in Roswell, New Mexico, to this listing of designated user fee airports. It also corrects the location of McKinney Municipal Airport from Dallas, Texas, to McKinney, Texas.

Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required for this final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Agency organization matters such as this amendment are exempt from consideration under Executive Order 12866.

Inapplicability of Public Notice and Delayed Effective Date Requirements

Because this amendment merely updates and corrects the list of user fee airports designated by the Commissioner of CBP in accordance with 19 U.S.C. 58b and neither imposes any additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3) a delayed effective date is not required.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, CBP. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

Amendments to the Regulations

■ Part 122, Customs Regulations (19 CFR Part 122) is amended as set forth below.

PART 122—AIR COMMERCE REGULATIONS

■ 1. The authority citation for part 122, Customs Regulations, continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1431, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

* * * * *

■ 2. The listing of user fee airports in section 122.15(b) is amended:

■ a. By adding, in alphabetical order, in the "Location" column, "Mesa, Arizona" and by adding on the same line, in the "Name" column, "Williams Gateway Airport;"

■ b. By adding, in alphabetical order, in the "Location" column, "Roswell, New Mexico" and by adding on the same line, in the "Name" column, "Roswell Air Industrial Center;" and

■ c. On the same line as the "McKinney Airport" in the "Name" column, by removing in the "Location" column "Dallas, Texas" and by adding in its place" McKinney, Texas."

Dated: August 19, 2003.

Robert C. Bonner,

Commissioner, Bureau of Customs and Border Protection.

[FR Doc. 03–21576 Filed 8–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

19 CFR Part 148

[CBP Dec. 03–21]

Changes to Customs and Border Protection List of Designated Public International Organizations

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by updating the list of designated public international organizations entitled to certain free entry privileges provided for under provisions of the International Organizations Immunities Act. The last time the list was updated was in 1996 and since then the President has issued several Executive Orders, which have designated certain organizations as entitled to certain free entry privileges. Accordingly, Customs and Border

Protection deems it appropriate to update the list at this time.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Dennis Sequeira, Director, International Organizations & Agreements Division, Office of International Affairs, (202) 927–1480.

SUPPLEMENTARY INFORMATION:

Background

The International Organizations Immunities Act (the Act) (22 U.S.C. 288 *et seq.*) generally provides that certain international organizations, agencies, and committees, in which the United States participates or otherwise has an interest and which have been designated by the President through appropriate Executive Order as public international organizations, are entitled to enjoy certain privileges, exemptions, and immunities conferred by the Act. The Department of State lists the public international organizations, designated by the President as entitled to enjoy any measure of the privileges, exemptions, and immunities conferred by the Act, in the notes following the provisions of Section 288.

One of the privileges provided for under the Act at 22 U.S.C. 288a is that the baggage and effects of alien officers, employees, and representatives—and their families, and servants—to the designated organization, are admitted free of duty and without entry. Those designated organizations entitled to this duty-free entry privilege are delineated at § 148.87(b), Customs Regulations (19 CFR 148.87(b)). Thus, the list of public international organizations maintained by Customs and Border Protection (CBP) is for the limited purpose of identifying those organizations entitled to the duty-free entry privilege; it does not necessarily include all of the organizations that are on the list maintained by the Department of State, which delineates all of the international organizations designated by the President regardless of the extent of the privileges conferred.

The last revision of the list of public international organizations at § 148.87(b) was in 1996 (T.D. 96–23), when the total number of designated international organizations became 69. Since 1996, eight Executive Orders have been issued each designating a new public international organization, as follows:

1. Executive Order 12956 of March 13, 1995, 60 FR 14199, 3 CFR 1996 Comp., p. 332, 31 Weekly Comp.Pres.Doc. 408, designated the Israel-United States Binational Industrial Research and Development Foundation;

2. Executive Order 12986 of January 18, 1996, 61 FR 1693, 3 CFR 1997 Comp., p. 156, 32 Weekly Comp.Pres.Doc. 77, designated the International Union for Conservation of Nature and Natural Resources with limited privileges; certain privileges, regarding immunity from suit and judicial process and search and seizure, were not extended;

3. Executive Order 12997 of April 1, 1996, 61 FR 14949, 3 CFR 1997 Comp., p. 179, 32 Weekly Comp.Pres.Doc. 596, designated the Korean Peninsula Energy Development Organization;

4. Executive Order 13042 of April 9, 1997, 62 FR 18017, 73 CFR 1998 Comp., p. 194, 33 Weekly Comp.Pres.Doc. 492, designated the World Trade Organization;

5. Executive Order 13049 of June 11, 1997, 62 FR 32472, 3 CFR 1998 Comp., p. 206, 33 Weekly Comp.Pres.Doc. 857, designated the Organization for the Prohibition of Chemical Weapons;

6. Executive Order 13052 of June 30, 1997, 62 FR 35659, 3 CFR 1998 Comp., p. 210, 33 Weekly Comp.Pres.Doc. 998, designated the Hong Kong Economic and Trade Offices;

7. Executive Order 13097 of August 7, 1998, 63 FR 43065, 3 CFR 1999 Comp., p. 205, 34 Weekly Comp.Pres.Doc. 1588, designated the Interparliamentary Union; and

8. Executive Order 13240 of December 18, 2001, 66 FR 66257, 3 CFR 2002 Comp., p. 824, 37 Weekly Comp.Pres.Doc. 1813, designated the Council of Europe in Respect of the Group of States Against Corruption (GRECO).

This brings the total number of designated international organizations listed at § 148.87(b) to 77. Accordingly, CBP is amending its list of designated public international organizations at § 148.87(b) to account for these eight additions.

This document also corrects an editorial error, *i.e.*, an international organization designated by T.D. 96–13 is incorrectly referenced; thus, the reference to the Border Environmental Cooperation Commission should read the Border Environment Cooperation Commission.

Inapplicability of Public Notice and Comment Requirements, Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Because this amendment merely corrects the listing of designated organizations entitled by law to free entry privileges as public international organizations, pursuant to 5 U.S.C. 553(b)(B), good cause exists for dispensing with notice and public procedure thereon as unnecessary. For the same reason, good cause exists for dispensing with a delayed effective date under 5 U.S.C. 553(d) (1) and (3). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document does not meet the criteria for a "'significant regulatory action'" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings.

List of Subjects in 19 CFR Part 148

Customs duties and inspection, Executive orders, Foreign officials, Government employees, International organizations, Privileges and immunities, Taxes.

Amendment to the Regulations

■ For the reasons stated above, part 148, Customs Regulations (19 CFR part 148), is amended as set forth below:

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

■ 1. The general authority citation for part 148 and the specific authority citation for § 148.87 continue to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 23, Harmonized Tariff Schedule of the United States);

* * * * *

Section 148.87 also issued under 22 U.S.C. 288.

■ 2. Section 148.87(b) is amended by removing in the "Organization" column the name "Border Environmental Cooperation Commission" and adding in its place "Border Environment Cooperation Commission" and by adding the following, in appropriate alphabetical order, to the table, to read as follows:

§ 148.87 Officers and employees of, and representatives to, public international organizations.

* * * * *

(b) * * *

Organization	Executive Order	Date
* * * * *	*	*
Council of Europe in Respect of the Group of States Against Corruption (GRECO)	13240	Dec. 18, 2001.
* * * * *	*	*
Hong Kong Economic and Trade Offices	13052	June 30, 1997.
* * * * *	*	*
International Union for Conservation of Nature and Natural Resources—Limited privileges	12986	Jan. 18, 1996.
* * * * *	*	*
Interparliamentary Union	13097	Aug. 7, 1998.
Israel-United States Binational Industrial Research and Development Foundation	12956	Mar. 13, 1995.
Korean Peninsula Energy Development Organization	12997	Apr. 1, 1996.
* * * * *	*	*
Organization for the Prohibition of Chemical Weapons.	13049	June 11, 1997.
* * * * *	*	*
World Trade Organization	13042	Apr. 9, 1997.

Dated: August 18, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–21577 Filed 8–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 191

[CBP Dec. 03–23]

RIN 1515–AD02

Manufacturing Substitution Drawback: Duty Apportionment

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with changes, the interim rule amending the Customs Regulations that was published in the **Federal Register** on July 24, 2002, as T.D. 02–38. The interim rule amended the regulations to provide the method for calculating manufacturing substitution drawback where imported merchandise, which is dutiable on its value, contains a chemical element and amounts of that chemical element are used in the manufacture or production of articles which are either exported or destroyed under Customs supervision. Recent court decisions have held that a chemical element that is contained in an imported material that is subject to an *ad valorem* rate of duty may be designated as same kind and quality merchandise for drawback purposes. The amendment provides the method by which the duty attributable to the chemical element can be apportioned and requires a drawback claimant, where applicable, to make this apportionment calculation.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Chief, Duty and Refund Determinations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection, Tel. (202) 572–8807.

SUPPLEMENTARY INFORMATION:

Background

Drawback—19 U.S.C. 1313

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant upon the exportation, or destruction under Customs supervision, of eligible articles. The purpose of drawback is to place U.S. exporters on equal footing with foreign competitors by refunding most of the duties paid on imports used in domestic manufactures intended for export.

Substitution for Drawback Purposes—19 U.S.C. 1313(b)

There are several types of drawback. Under section 1313(b), a manufacturer can recoup duties paid for imported merchandise if it uses merchandise of the same kind and quality to produce exported articles pursuant to the terms of the statute. Section 1313(b) reads, in pertinent part:

> (b) *Substitution for drawback purposes.* If imported duty-paid merchandise and any other merchandise (whether imported or domestic) of the same kind and quality are used in the manufacture or production of articles within a period not to exceed three years from the receipt of such imported merchandise by the manufacturer or producer of such articles, there shall be allowed upon the exportation, or destruction under customs supervision, of any such articles, notwithstanding the fact that none of the imported merchandise may actually have been used in the manufacture or production of the exported or destroyed articles, an amount of drawback equal to that which would have been allowable had the merchandise used therein been imported * * *.

Manufacturing substitution drawback is intended to alleviate some of the difficulties in accounting for whether imported merchandise has, in fact, been used in a domestic manufacture. Section 1313(b) permits domestic or other imported merchandise to be used to make the export article, instead of the actual imported merchandise, so long as the domestic or other imported merchandise is of the "same kind and quality" as the actual imported merchandise.

Several recent court cases have examined the scope of the term "same kind and quality" as used in 19 U.S.C. 1313(b). *See E.I. DuPont De Nemours and Co.* v. *United States,* 116 F. Supp. 2d 1343 (Ct. Int'l Trade 2000). *See also International Light Metals* v. *United States,* 194 F.3d 1355 (Fed. Cir. 1999). In these cases, the courts held that a chemical element that is contained in an imported material that is dutiable on its value may be designated as same kind

and quality merchandise for purposes of manufacturing substitution drawback pursuant to 19 U.S.C. 1313(b). The holding in *DuPont* necessitates apportionment as a necessary method of claiming a drawback entitlement under these circumstances. *DuPont*, 116 F. Supp. 2d at 1348–49.

Amendment to § 191.26(b) of the Customs Regulations

On July 24, 2002, Customs and Border Protection (CBP), as its predecessor agency, the Customs Service, promulgated interim amendments to the Customs Regulations, published in the **Federal Register** (67 FR 48368) as T.D. 02–38, to implement the courts' holdings in *DuPont* and *ILM*. The interim amendments to the Customs Regulations were made to § 191.26 (19 CFR 191.26), which sets forth the recordkeeping requirements for manufacturing drawback. Paragraph (b) of this section describes the recordkeeping requirements for substitution drawback.

To implement the courts' interpretation of 19 U.S.C. 1313(b), T.D. 02–38 amended § 191.26(b) by adding language that explains how to apportion the duty attributable to same kind and quality chemical elements contained in *ad valorem* duty-paid imported materials for purposes of manufacturing substitution drawback. T.D. 02–38 also amended § 191.26(b) to provide an example of apportionment calculations.

Duty Apportionment Calculation

In order for a drawback claimant to be able to ascertain what portion of the *ad valorem* duty paid on imported merchandise is attributable to a chemical element contained in the merchandise, an apportionment calculation is necessary. First, if the imported duty-paid material is a compound with other constituents, including impurities, and the purity of the compound in the imported material is shown by satisfactory analysis, that purity, converted to a decimal equivalent of the percentage, is multiplied against the entered amount of the material to establish the amount of pure compound. The amount of the element in the pure compound is to be determined by use of the atomic weights of the constituent elements, converting to the decimal equivalent of their respective percentages, and multiplying that decimal equivalent against the above-determined amount of pure compound. Second, the amount claimed as drawback based on a contained element must be taken into account and deducted from the duty paid on the imported material that may be claimed on any other drawback claim.

Discussion of Comments

Five commenters responded to the solicitation of public comment published in T.D. 02–38. A description of the comments received, together with CBP's analyses, is set forth below.

Comment: Several commenters disagreed with CBP's interpretation that the court decisions in *DuPont* and *ILM* require an apportionment calculation to determine the proper drawback entitlement.

CBP's response: CBP maintains its view that the holdings in *DuPont* and *ILM* necessitate apportionment of the duty attributable to a chemical element contained in an *ad valorem* duty-paid imported material if this chemical element is the designated good in a drawback claim under 19 U.S.C. 1313(b). As noted above, the CAFC in *ILM* and the CIT in *DuPont* examined the scope of the term "same kind and quality" as used in 19 U.S.C. 1313(b) and determined that a chemical element contained in an imported material that is dutiable on its value may be designated as same kind and quality merchandise for purposes of manufacturing substitution drawback. In *ILM*, the CAFC stated that as there was "* * * no dispute as to the amount of titanium that was used in the scrap * * * the amount of drawback to which ILM would be entitled based upon the titanium in that scrap and the titanium in the imported sponge could be precisely determined." Similarly, in *DuPont*, the CIT noted that because the amount of titanium in the feedstocks can be accurately determined, substitution of another feedstock for synthetic rutile is permitted. If either the CAFC or the CIT intended drawback to be permitted on all the titanium-containing raw materials, the courts would not have emphasized that calculation of the amount of titanium contained in the raw materials entitled the claimant to a specific amount of drawback. The courts clearly recognized that apportionment by relative weight was necessary to prevent the overpayment of drawback.

Comment: Several commenters noted that if apportionment is required, apportionment by relative value is a more appropriate calculation method than apportionment by relative weight. In a related comment, one commenter suggested that a drawback claimant should have the option to apportion duty using either relative value or relative weight.

CBP's response: CBP disagrees. As discussed above, the courts in both *ILM* and *DuPont* require apportionment by relative weight. Both of these courts held that the quantity, and not the value, of the sought material (the titanium) could be determined and consequently the amount of drawback could be determined. Moreover, there is no authority to apportion duty by relative value for a drawback claim per 19 U.S.C. 1313(b) when only one good results from the processing of the imported merchandise. If the sought material, *i.e.*, the titanium, was divided to make two articles, then relative value apportionment would be required.

Comment: One commenter submitted that apportionment by relative weight contradicts the drawback statute (19 U.S.C. 1313) because this section, at paragraph (a), provides drawback upon the "exportation or destruction under custom supervision of articles manufactured or produced in the United States with the use of imported merchandise, * * *." The commenter noted that the sought element in *DuPont* (the titanium) is neither "used" nor "imported" because it is the feedstock containing the titanium that is "imported" and "used" within the meaning of section 1313(b). Another commenter stated that section 1313(b) provides no legal basis for apportionment under these circumstances.

CBP's response: CBP disagrees. The plain language of 19 U.S.C. 1313(b) permits drawback to be paid only on the sought element, and the sought element in both *ILM* and *DuPont* was the titanium. Section 1313(b) provides that an amount of drawback equal to that which would have been allowable had the *merchandise* used therein been imported is payable if imported duty-paid *merchandise* and any other *merchandise* (whether imported or domestic) of the *same kind or quality* are used in the manufacture or production of articles subsequently exported or destroyed. Clearly, per 19 U.S.C. 1313(b), the merchandise upon which drawback may be paid is the merchandise characterized as "same kind and quality." It cannot be said that the various feedstocks used to provide the sought element in those cases are of the "same kind and quality," but only that the titanium, as a discrete element contained in the feedstocks, was of the "same kind and quality" as required by section 1313(b). In *ILM*, the CAFC makes clear that the merchandise of the "same kind and quality" required by 19 U.S.C. 1313(b) was the sought element, titanium, and not the various feedstocks. *ILM*, 194 F.3d 1355 at 1367. Additionally, in applying the three

factors promulgated by the CAFC in *ILM*, the CIT in *Dupont* stated:

> * * * the [ILM] court reasoned that the phrase "same kind and quality" should be applied only to the sought element contained in a source material, and not to the source material as a whole or the impurities contained therein * * *. Thus, although different ores may be made up of a number of elements, the "same kind and quality" standard applies only to the element used in manufacturing the exported article.

Dupont, at 1348. Therefore, the court held that the titanium is the designated merchandise. Since titanium is an element, and an element is measured by its weight, apportionment by relative weight is required. Consequently, the apportionment of the duty attributable to a chemical element contained in *ad valorem* duty-paid imported merchandise must be calculated by the relative weights of the sought element and the feedstock used.

Comment: One commenter stated that since T.D. 82–36 (16 Cust. B. & Dec. 97, February 26, 1982) is specific as to "how to determine the quantity of imported merchandise to be designated, and therefore, the basis for the allowance of drawback," apportionment by weight is not mandated by the court decisions.

CBP's response: CBP disagrees. The CAFC in *ILM* stated:

> * * * we find little assistance in the facts of T.D. 82–36. That ruling dealt with a substitution of copper ores, in which each ore contained impurities and a single sought element, copper * * * In this case, the scrap contains several sought elements, and no impurities have been identified as such.

ILM at 1363.

It is additionally noted that the *ILM* and the *Dupont* Courts found that the designated material was titanium, an element. The amount of an element is calculated by its weight.

Comment: One commenter suggested that since the drawback claimant does not separate the sought element from the feedstock, then it is the feedstock and not the sought element that must be the imported merchandise designated for drawback.

CBP response: CBP disagrees. The courts in *ILM* and *Dupont* held that the element was the material that met the same kind and quality requirement and therefore the element was the designated merchandise. The CAFC in *ILM* noted that it was not necessary to extract the sought element from the feedstock, and stated "* * * we see no reason why ILM should be required to undertake such an additional step [of extracting the titanium from the scrap] * * *" Both the *ILM* and *Dupont* Courts determined that since the amount of the sought element (the titanium) could be precisely determined, it was unnecessary to require that it be extracted as a discrete element before drawback was payable.

Comment: One commenter stated that CBP was incorrectly using the "same kind and quality" test to apportion the duties because this standard is only used for determining whether imported goods may be substituted for other goods.

CBP response: CBP disagrees. As discussed above, the only merchandise upon which drawback may be paid as per 19 U.S.C. 1313(b) is the imported duty-paid and designated merchandise characterized as "same kind and quality." In *ILM*, the CAFC unequivocally stated that the merchandise of the "same kind and quality" required by section 1313(b) is the sought element—not the various feedstocks. *ILM* at 1367. Therefore, the CAFC found that the sought element, the titanium, was of the same kind and quality and thus only the titanium could be the designated merchandise.

Comment: One commenter stated that CBP's example of the apportionment calculation set forth in § 191.26(b)(4) is incorrect, and noted that CBP applies the $0.011 factor to each pound of titanium. The commenter submits that, in fact, each pound of material in the imported synthetic rutile, be it titanium, oxygen, or impurities, bears the same $0.02 duty.

CBP response: CBP agrees. The example in the interim amendments to § 191.26(b)(4), set forth in T.D. 02–38, is inconsistent with the liquidation instructions on which it was to have been based. Since the total duty on the imported synthetic rutile includes duty on its titanium content, the calculation should be $600 duty paid divided by 30,000 pounds synthetic rutile ($600 ÷ 30,000 = .02) duty per pound of imported rutile. Therefore, the example set forth in § 191.26(b)(4) is amended accordingly and set forth below in the regulatory text section of this document.

Comment: One commenter suggested that apportioning duty based on weight "encourages uneconomical activities, such as the export of waste and impurities in order to obtain drawback that would be due under value based methodologies." The same commenter noted that this exportation of waste would result in an overpayment of duty and a doubling of drawback claims because each drawback claimant would file an additional claim for waste.

CBP response: CBP disagrees. No waste is generated from the designated merchandise, *i.e.*, the titanium. Additionally, even if waste were generated, it has been CBP's position based on long-standing court decisions that drawback is not allowable on the exportation of waste. In *United States* v. *Dean Linseed-Oil Co.*, 87 Fed. 453, 456 (2nd Cir. 1898), *cert. den.*, 172 U.S. 647 (1898), the court implicitly accepted the government's position that drawback was unavailable on the exportation of waste. CBP has continuously followed this position. *See Precision Specialty Metals, Inc.* v. *United States*, 116 F.Supp. 2d 1350 (Ct. Int'l Trade (2001).

Comment: One commenter stated that apportioning the duty by weight will be administratively difficult and burdensome. Another commenter stated that all the information necessary to perform the duty calculation required by § 191.26(b), as amended by T.D. 02–38, is not on the manufacturing certificate.

CBP response: The court instructed CBP to make the calculation to properly administer the statute. Therefore, CBP must follow the court's decision regardless of whether the requisite calculation is burdensome.

Conclusion

After analysis of the comments and further review of the matter, CBP has determined to adopt as a final rule, with the changes mentioned in the comment discussion and with additional non-substantive editorial changes, the interim rule published in the **Federal Register** (67 FR 48368) on July 24, 2002, as T.D. 02–38.

Inapplicability of Delayed Effective Date

These regulations serve to add apportionment language to the Customs Regulations necessitated by recent decisions of the Court of International Trade and the Court of Appeals for the Federal Circuit, and to finalize an interim rule that is already in effect. In addition, the regulatory changes serve to benefit the public by providing specific information as to how a drawback claimant is to correctly make the requisite duty apportionment calculations when claiming manufacturing substitution drawback for a chemical element contained in *ad valorem* duty-paid imported merchandise. For these reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), CBP finds that there is good cause for dispensing with a delayed-effective date.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking was required, the provisions of the Regulatory Flexibility Act (5

U.S.C. 601 *et seq.*) do not apply. Further, these amendments do not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury, Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection. However, personnel from other offices participated in its development.

List of Subjects 19 CFR Part 191

Claims, Commerce, Customs duties and inspection, Drawback, Reporting and recordkeeping requirements.

Amendment to the Regulations

■ For the reasons stated above, the interim rule amending part 191 of the Customs Regulations (19 CFR part 191), which was published at 67 FR 48368–48370 on July 24, 2002, is adopted as a final rule with the change set forth below.

PART 191—DRAWBACK

■ 1. The general authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

* * * * *

■ 2. In § 191.26, the example to paragraph (b)(4) is amended to read as follows:

§ 191.26 Recordkeeping for manufacturing drawback.

* * * * *

(b) *Substitution manufacturing.* * * *

(4) * * *

Example to paragraph (b)(4).

Synthetic rutile that is shown by appropriate analysis in the entry papers to be 91.7% pure titanium dioxide is imported and dutiable at a 5% *ad valorem* duty rate. The amount of imported synthetic rutile is 30,000 pounds with an entered value of $12,000. The total duty paid is $600. Titanium in the synthetic rutile is designated as the basis for a drawback claim under 19 U.S.C. 1313(b). The amount of titanium dioxide in the synthetic rutile is determined by converting the purity percentage (91.7%) to its decimal equivalent (.917) and multiplying the entered amount of synthetic rutile (30,000 pounds) by that decimal equivalent (.917 × 30,000 = 27,510 pounds of titanium dioxide contained in the 30,000 pounds of imported synthetic rutile). The titanium, based on atomic weight, represents 59.93% of the constituents in titanium dioxide. Multiplying that percentage, converted to its decimal equivalent, by the amount of titanium dioxide determines the titanium content of the imported synthetic rutile (.5993 × 27,510 pounds of titanium dioxide = 16,486.7 pounds of titanium contained in the imported synthetic rutile). Therefore, up to 16,486.7 pounds of titanium is available to be designated as the basis for drawback. As the per-unit duty paid on the synthetic rutile is calculated by dividing the duty paid ($600) by the amount of imported synthetic rutile (30,000 pounds), the per-unit duty is two cents of duty per pound of the imported synthetic rutile ($600 ÷ 30,000 = $0.02). The duty on the titanium is calculated by multiplying the amount of titanium contained in the imported synthetic rutile by two cents of duty per pound (16,486.7 × $0.02 = $329.73 duty apportioned to the titanium). The product is then multiplied by 99% to determine the maximum amount of drawback available ($329.73 × .99=$326.44). If an exported titanium alloy ingot weighs 17,000 pounds, in which 16,000 pounds of titanium was used to make the ingot, drawback is determined by multiplying the duty per pound ($0.02) by the weight of the titanium contained in the ingot (16,000 pounds) to calculate the duty available for drawback ($0.02 × 16,000 = $320.00). Because only 99% of the duty can be claimed, drawback is determined by multiplying this available duty amount by 99% (.99 × $320.00 = $316.80). As the oxygen content of the titanium dioxide is 45% of the synthetic rutile, if oxygen is the designated merchandise on another drawback claim, 45% of the duty claimed on the synthetic rutile would be available for drawback based on the substitution of oxygen.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: August 19, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–21575 Filed 8–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1225

[Docket No. NHTSA–2002–13680]

RIN 2127–AI44

Operation of Motor Vehicles by Intoxicated Persons

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule implements a program enacted by the Department of Transportation and Related Agencies Appropriations Act, 2001 (DOT Appropriations Act of FY 2001), which requires the withholding of Federal-aid highway funds, beginning in fiscal year (FY) 2004, from any State that has not enacted and is not enforcing a law that provides that any person with a blood or breath alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. This final rule defines what constitutes a conforming 0.08 BAC law for purposes of this statute.

DATES: *Effective Date:* This final rule becomes effective on October 21, 2003.

Compliance Date: To meet the requirements of the 0.08 BAC sanction program, States must enact and enforce a conforming Section 163 law on or before September 30, 2003.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Jo Ann Moore, Office of Injury Control Operations & Resources, NTI–200, telephone (202) 366–2121, fax (202) 366–7394; Ms. Carmen Hayes, Office of Injury Control Operations & Resources, NTI–200, telephone (202) 366–2121; Ms. Tyler Bolden, Office of Chief Counsel, NCC–113, telephone (202) 366–1834, fax (202) 366–3820.

In FHWA: Mr. Rudy Umbs, Office of Safety, HSA–1, telephone (202) 366–2177, fax (202) 366–3222; Mr. Raymond W. Cuprill, Office of Chief Counsel, HCC–30, telephone (202) 366–0791, fax (202) 366–7499; or Mr. Byron E. Dover, Office of Safety, HSA–10, telephone (202) 366–2161, fax (202) 366–2249.

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I. Background

A. TEA–21, Section 163 Incentive Grant Program

On June 9, 1998, the Transportation Equity Act for the 21st Century (TEA–21) was signed into law. Section 1404 of the Act established a $500 million incentive grant program under 23 U.S.C. 163 to encourage States to adopt effective 0.08 BAC laws. Section 163 provided that the Secretary of Transportation shall make a grant to any State that has enacted and is enforcing a law that provides that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense.

On September 3, 1998, NHTSA and the FHWA (the agencies) published a joint interim final rule, establishing the criteria that States must meet and the procedures they must follow to qualify for an incentive grant. *See* 63 FR 46881. On July 1, 1999, after considering the comments filed in response to the interim final rule, the agencies published a final rule implementing the Section 163 incentive grant program. *See* 64 FR 35568.

B. Effects of Section 163 Incentive Grant Program

Before the Section 163 incentive grant program was signed into law, only 16 States had enacted laws that established 0.08 BAC as their *per se* limit. Between June 1998 and October 2000, only two additional States and the District of Columbia enacted and began enforcing 0.08 BAC laws that met all the Section 163 criteria.

C. DOT Appropriations Act for FY 2001—Sanction Program

In an effort to further reduce impaired driving injuries and fatalities, Congress created a new 0.08 BAC program in the DOT Appropriations Act of FY 2001. *See* Public Law 106–346—Appendix, sec. 351, 114 Stat. 1356A–34, 35. Section 351 of Public Law 106–346–Appendix (Section 351) provides for the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC law by the beginning of FY 2004. This legislation did not alter the incentive grant program, which was established in TEA–21. That program will continue through FY 2003.

The DOT Appropriations Act of FY 2001 was signed into law on October 23, 2000. Since that date, twenty-six additional States have enacted conforming 0.08 BAC laws. As of August 15, 2003, forty-four States, the District of Columbia and the Commonwealth of Puerto Rico have enacted 0.08 BAC laws that meet all the requirements of Section 163.[1] *See* Table 1.

TABLE 1.—STATES WITH 0.08 BAC LAWS THAT MEET SECTION 163 CRITERIA

[as of August 15, 2003]

State	Enactment date	Effective date
Alabama	07/31/95	10/01/95
Alaska	07/03/01	09/01/01
Arizona	04/11/01	08/31/01
Arkansas	03/06/01	08/13/01
California	1989	01/01/90
Connecticut	07/01/02	07/01/02
District of Columbia	12/01/98	04/13/99
Florida	04/27/93	01/01/94
Georgia	04/16/01	07/01/01
Hawaii	06/30/95	06/30/95
Idaho	03/17/97	07/01/97
Illinois	07/02/97	07/02/97
Indiana	05/09/01	07/01/01
Iowa	04/24/03	07/01/03
Kansas	04/22/93	07/01/93
Kentucky	04/21/00	10/01/00
Louisiana	06/26/01	09/30/03
Maine	04/28/88	08/04/88
Maryland	04/10/01	09/30/01
Massachusetts	06/30/03	06/30/03
Michigan	07/15/03	09/30/03
Mississippi	03/11/02	07/01/02
Missouri	06/12/01	09/29/01
Montana	04/15/03	04/15/03
Nebraska	03/01/01	09/01/01
Nevada	06/10/03	09/23/03
New Hampshire	04/15/93	01/01/94
New Mexico	03/19/93	01/01/94
New York	12/30/02	11/01/03
North Carolina	07/05/93	10/01/93
North Dakota*	04/07/03	08/01/03
Ohio	03/31/03	07/01/03
Oklahoma	06/08/01	07/01/01
Oregon	08/04/83	10/15/83
Puerto Rico	01/10/00	01/10/01
Rhode Island	07/02/03	07/02/03
South Carolina	06/19/03	08/19/03
South Dakota	02/27/02	07/01/02
Tennessee	06/27/02	07/01/03
Texas	05/28/99	09/01/99
Utah	03/19/83	08/01/83
Vermont	06/06/91	07/01/91
Virginia	04/06/94	07/01/94
Washington	03/30/98	01/01/99
Wisconsin	07/03/03	09/30/03
Wyoming	03/11/02	07/01/02

Total: 44 States, plus the District of Columbia and Puerto Rico

* North Dakota's 0.08 BAC law, which was scheduled to go into effect on August 1, 2003, was suspended by submission of a referendum petition, and the future status of this law is currently uncertain.

[1] To date, the following States have not enacted conforming 0.08 BAC laws: Colorado, Delaware, Minnesota, New Jersey, Pennsylvania and West Virginia.

II. Notice of Proposed Rulemaking for the 0.08 BAC Sanction Program

On February 6, 2003, the agencies published a notice of proposed rulemaking (NPRM) in the **Federal Register** to define the criteria to be applied to determine what constitutes a valid 0.08 BAC law for purposes of the statute (68 FR 6091). The statute requires the Secretary to withhold from apportionment a portion of Federal-aid highway funds from any State that does not meet the Section 163 requirements, beginning on October 1, 2003. To avoid such withholding, a State must enact and enforce a law that provides that any person with a BAC of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. The Secretary has delegated the authority to define conforming 0.08 BAC laws to NHTSA and the authority to implement the 0.08 BAC sanction program to the FHWA.

As required by statute, if any State has not enacted and is not enforcing a conforming 0.08 BAC law by October 1,

2003, two percent of its FY 2004 Federal-aid highway apportionment under 23 U.S.C. 104(b)(1), 104(b)(3) and 104(b)(4) shall be withheld. These sections relate to the apportionments for the National Highway System, the Surface Transportation Program and the Interstate System (including resurfacing, restoring, rehabilitating and reconstructing the interstate system). The amount withheld would increase by two percent each year, until it reaches eight percent in FY 2007 and thereafter.

A. Compliance Criteria

In the NPRM, the agencies proposed that the same criteria that had been applied since 1998 to determine whether a State had enacted and made effective a conforming 0.08 BAC law under the Section 163 incentive grant program, be applied also to the Section 163 sanction program. *See* 64 FR 35568. To meet the Section 163 criteria, a conforming 0.08 BAC law must contain the following elements:

1. Any Person

A State must enact and enforce a law that establishes a BAC limit of 0.08 or greater that applies to *all persons*. The law can provide for no exceptions.

2. Blood or Breath Alcohol Concentration (BAC) of 0.08 Percent

A State must set a level of no more than 0.08 percent as the *per se* limit for blood or breath alcohol concentration, thereby making it an offense for any person to have a BAC of 0.08 or greater while operating a motor vehicle.

3. *Per Se* Law

A State must consider persons who have a BAC of 0.08 percent or greater while operating a motor vehicle in the State to have committed a *per se* offense of driving while intoxicated. In other words, States must establish a 0.08 *"per se"* law, that makes operating a motor vehicle with a BAC of 0.08 percent or above, in and of itself, an offense.

4. Primary Enforcement

A State must enact and enforce a 0.08 BAC law that provides for primary enforcement. Under a primary enforcement law, law enforcement officials have the authority to enforce the law without, for example, the need to show that they had probable cause or had cited the offender for a violation of another offense. Any State with a law that provides for secondary enforcement of its 0.08 BAC provision will not meet the requirements of this part.

5. Both Criminal and ALR Laws

A State must establish a 0.08 BAC *per se* level under its criminal code. In addition, if the State has an administrative license revocation or suspension (ALR) law, the State must establish an 0.08 BAC *per se* level under its *ALR law*, as well.

6. Standard Driving While Intoxicated Offense

The State's 0.08 BAC *per se* law must be deemed to be or be equivalent to the State's standard driving while intoxicated offense; that is, the State's non-BAC *per se* driving while intoxicated offense in the State.

A more detailed discussion of the six elements described above is contained in the rulemaking for the incentive grant program. *See* 64 FR at 46883–84.

B. Demonstrating Compliance

To demonstrate compliance with this rulemaking, the agencies proposed that States be required to submit conforming certifications to the appropriate NHTSA Regional Administrator on or before July 15, to receive an incentive grant in FY 2003; and on or before September 30, to avoid the withholding of funds in FY 2004 and subsequent fiscal years.

In addition, the NPRM proposed not to require States in compliance with the Section 163 incentive grant program in FY 2003 to submit additional certifications for FY 2004, unless their law/s had changed in the interim.

Each State initially determined to be in noncompliance would, under the proposal, have until September 30 to rebut the initial determination or to come into compliance. The State would be notified of the agencies' final determination of compliance or noncompliance and the amount of funds to be withheld as part of the final notice of apportionments (which normally is issued on October 1 of each year).

C. Period of Availability of Funds

The NPRM proposed an incremental approach to the withholding of funds apportionment for noncompliance. Specifically, the NPRM proposed that if a State is found to be in noncompliance on October 1, 2003, the State would be subject to a two percent withholding of its FY 2004 apportionment on that date. If a State is found to be in noncompliance on October 1 of any subsequent fiscal year, the withholding percentage would increase by two percent each year, until it reached eight percent in FY 2007 and thereafter. *See* Table 2.

In addition, the NPRM proposed that any State that comes into compliance with the requirements of Section 163 on or before September 30, 2007, would have their withheld funds restored to them. However, if a State is not in compliance with the requirements of Section 163 on October 1, 2007, any funds withheld from apportionment to the State would begin to lapse and would no longer be available for apportionment.

TABLE 2.—EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

Fiscal year	Withhold (percent)	Lapse
2004 ...	2	
2005 ...	4	
2006 ...	6	
2007 ...	8	
2008 ...	8	2% withheld in FY04.
2009 ...	8	4% withheld in FY05.
2010 ...	8	6% withheld in FY06.
2011 ...	8	8% withheld in FY07.
2012 ...	8	8% withheld in FY08.

III. Comments

The NPRM was published on February 6, 2003. The agencies received five comments in response to it. Comments were received from two State agencies and three concerned individuals. The State comments were submitted by Judy E. Brown, Chief of the Texas Department of Public Safety (TXDPS), Driver License Division, and Frank J. Busalacchi, Secretary for the Wisconsin Department of Transportation (WIDOT).

A. Federalism

To ensure that States had a full opportunity to raise any Federalism concerns, the agencies conducted an outreach program aimed at eliciting comments on the possible Federalism implications of this rule.

Since the incentive grant program was signed into law, States have had continuous contact with the agencies. States that were considering passing 0.08 BAC legislation were encouraged to submit copies of their proposals to the agencies' regional offices for review and initial comment. These legislative proposals were then forwarded to NHTSA's Office of Chief Counsel (OCC) to determine compliance with the requirements of Section 163. During this review process, OCC staff and staff from the Office of Injury Control Operations and Resources (ICOR) interacted with different State employees and officials by telephone and through electronic mail. These communications, both formal and informal, provided substantial opportunities for State and local officials to discuss and comment

on program compliance and policy issues. Following a full review of all applicable State laws and implementing regulations, OCC notified States of their compliance with Section 163 by letter. Any State found not to be in compliance with Section 163 was notified of the reasoning behind this determination and reminded of the impending sanction program becoming effective in FY 2004.

The agencies also solicited comments in the NPRM, and following its publication, sent letters requesting comments on possible Federalism implications to several National organizations representing State and local officials. The six organizations included: The National Governors Association, National Conference of State Legislatures, International Association of Chiefs of Police, Governors Highway Safety Association, National Sheriff's Association, and the American Association of State Highway and Transportation Officials. NHTSA has not received any indication of concerns about the Federalism implications of this rulemaking from these representatives. In addition, none of these groups submitted comments in response to the NPRM.

In sum, the agencies have considered the impact of this action on State and local agencies. We have concluded that the effects on States and local agencies will be minimal and consist of changes that States make as a matter of course when amending a State law. Furthermore, the agencies received no comments from State or local agencies to indicate otherwise. Accordingly, the agencies do not believe that this final rule raises any Federalism issues and no changes to this document are required.

B. Comments Regarding Compliance Criteria

The agencies received few comments to the NPRM. In particular, the agencies received no comments or objections to the compliance criteria proposed in the NPRM. Accordingly, these portions of the NPRM are being adopted without change.

C. Comments Regarding Procedures

The agencies received some comments and questions regarding procedural aspects of the NPRM. Texas, which has had a conforming 0.08 BAC law since September 1, 1999, commented on the proposed certification process. Specifically, the TXDPS commented favorably on the proposed certification process, stating that the "proposed certifications will legitimately serve NHTSA's goal of ascertaining state compliance for the purpose of Federal-aid highway and grant funds distribution." Accordingly, TXDPS indicated that it has no objections or additional comments regarding the agencies' proposal.

WIDOT requested clarification regarding "the mechanics and timeline of the process to restore withheld funding." Specifically, WIDOT noted that Section 1225.9 of the proposed rule did not specify "the manner in which withheld funds would be restored to a state that comes into compliance following September 30, 2003." In its comments, WIDOT indicated that it presumed that the certification process detailed in Section 1225.7 of the proposed rule would be used for restoration of withheld funds. However, WIDOT noted that the rule did not specify that this would be the case. In addition, it remarked that the NPRM did not indicate "how quickly the restored funding will be available to a compliant state."

In response to these comments, the agencies have decided to modify the regulation by adding new provisions to the sections regarding "Certification requirements for sanction program" and "Period of availability of withheld funds." The agencies have determined that no other changes to the regulation are needed.

These new provisions specify the certification process that should be followed for States that comply with the requirements of Section 163 in FY 2004 or thereafter. These new provisions also clarify that States that are seeking compliance with Section 163, following a withholding of funds under Section 1225.8, should contact their appropriate NHTSA Regional Administrator and inform them that they have enacted a 0.08 BAC law they believe to be conforming. The new law and subsequent certification of compliance will be reviewed by NHTSA. If NHTSA determines, based on the State's law and its certification, that the State is now in compliance with Section 163 and these implementing regulations, NHTSA will inform the FHWA of its determination and the FHWA will restore all withheld apportionment funds to the State's appropriate apportionment categories as quickly as possible.

Three individuals also commented on the proposal, expressing support and opposition to the federal policy underlying the Congressional mandate and raising concerns about the constitutionality of the proposal and the ability of States to receive incentive grants in FY 2003.

Similar programs, such as the National Minimum Drinking Age and the National Maximum Speed Limit programs, have been found constitutional in the past and we consider this program to fall within the ambit of those judicial rulings. *See, South Dakota* v. *Dole*, 483 U.S. 203 (1987) (upholding the withholding of funds from States without a conforming minimum drinking age act under the spending clause and the Twenty-first Amendment) and *The People* v. *Williams*, 175 Cal. App. 3d Supp. 16 (1985) (finding that the Federal withholding of funds from States without a conforming maximum speed limit was an appropriate exercise of Congress' authority under the spending clause and that the authority was not limited by the Tenth Amendment).

The agencies also note that a commenter from Texas expressed concern about this rulemaking because of "a potential Procedural Due Process problem." She asserted that, "according to a literal reading of § 1225.5(a)(1), Louisiana's 0.08 BAC law must be enforced (and therefore must also be effective) when Louisiana sends in its certification letter * * * [yet] [t]he last day that Louisiana can send a certification letter is July 15, 2003—a full 2½ months before its 0.08 BAC law will be effective and enforced."

To address this concern, the commenter suggested certain revisions to the certification statements to allow Louisiana to qualify for an incentive grant fund in FY 2003. Specifically, the commenter suggested that the agencies amend the certification statement contained in Section 1225.5(a)(1) to allow States to submit certifications by July 15, 2003, if the newly enacted laws become effective before the end of the fiscal year.

While it is clear that States have no property interest in receiving TEA–21 funds, the comment raises a legitimate question regarding the manner in which States, such as Louisiana, are to certify that they qualify for an incentive grant if they enact a law prior to July 15 (when certifications are due to be submitted), and their law becomes effective on or before September 30, but after July 15. This issue had already been addressed in the 0.08 incentive grant regulations. *See* 64 FR at 35572.

In particular, the regulations provide that, "If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to

State law), and will become effective and be enforced as of (effective date of the law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs." 23 CFR 1225.5(a)(1)(ii).

Since the start of the incentive grant program in 1998, the agencies have received and accepted certifications from a number of States using this type of certification statement. Given that the State of Louisiana enacted a conforming 0.08 BAC *per se* law prior to July 15, 2003, and it will become effective on September 30, 2003, the State should be able to submit this type of certification, in conformance with the current regulation.

The agencies did not propose to change this aspect of the regulation. However, after consideration of the comments received in response to this action, the agencies have decided to modify the certification requirements for the sanction program by adopting a similarly worded certification for States that are seeking to demonstrate conformance with the sanction program based on an enacted law that has not yet become effective.

IV. Regulatory Analyses and Notices

A. Executive Order 12988 (Civil Justice Reform)

This final rule will not have any preemptive or retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

B. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The agencies have determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and is significant within the meaning of the Department of Transportation Regulatory Policies and Procedures. This determination is based on the fact that the withholding of Federal-aid highway funds under the 0.08 BAC sanction program is a matter of substantial interest to the public and to Congress. Further, there is a possibility that the State withholdings resulting from this action could total from $34 million to over $137 million. Accordingly, a final regulatory evaluation was prepared in conjunction with this rule.

The final regulatory evaluation concludes that, aside from advertising costs, the costs for implementing this rulemaking action are minimal and consist of changes that States make as a matter of course when amending a State law. A complete discussion of the economic impact of this rule is contained in the final regulatory evaluation, which is in the docket.

C. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agencies have evaluated the effects of this action on small entities. As a sanction program, this rule will have different consequences depending on whether the States enact and enforce a conforming 0.08 BAC law or whether they choose to accept the sanction for not enacting and enforcing a conforming law.

In States that have enacted 0.08 BAC laws, consumption of beer has dropped 3.5 percent on average. By contrast, consumption of wine and spirits do not correlate with the number of drinking drivers in fatal crashes. Thus, if a State passes a 0.08 law, all businesses, large and small, that sell and serve beer are likely to experience a small reduction in sales. However, most businesses sell other products, such as food or other beverages. Therefore, the overall impact on those businesses would be significantly less than 3.5 percent. For some businesses, such as beer distributors (where a small business is defined as 100 employees or less), the decline may approach the 3.5 percent range.

States that do not enact and enforce conforming 0.08 BAC laws will lose Federal-aid highway funds. This loss may impact highway construction firms, where a small business is defined as $28.5 million in annual gross income. The precise number of small businesses that may be affected cannot be determined, since it is assumed that any impact is just as likely to impact businesses of any size. In addition, the penalty affects only Federal highway funds, which make up, on average in the 6 States affected, only 15 percent of all State highway expenditures. Accordingly, even if the sanction were imposed at the highest rate of 8 percent, the maximum reductions in highway expenditures in the relevant States would be within a range of only 1.09 percent (in Minnesota or New Jersey) to 1.93 percent (in Delaware). Further, most of these businesses do not rely totally on highway construction contracts for their revenue.

Based on these considerations, we hereby certify that this action will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as implemented by the Office of Management and Budget (OMB) in 5 CFR part 1320.

E. National Environmental Policy Act

The agencies have reviewed this action for the purpose of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have determined that it will not have any significant impact on the quality of the human environment.

F. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires agencies to prepare a written assessment of the costs, benefits and other effects of rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This final rule does not require an assessment under this law. The costs to States to enact and make effective conforming 0.08 BAC laws will not result in annual expenditures that exceed the $100 million threshold. Moreover, States that enact 0.08 BAC laws will avoid the loss of millions of dollars in Federal-aid highway funds.

G. Executive Order 13132 (Federalism Summary Impact Statement)

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have "federalism implications," agencies are directed to provide "a description of the extent of the agency's prior consultation with State and local officials; a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation; and a statement of the extent to which the concerns of the State and local officials have been met."

For the reasons cited earlier in the preamble, the agencies conclude that the effects of this rule on States and local agencies will be minimal and consist of changes that States make as a matter of course when amending a State law. Furthermore, the agencies note that Congress created the 0.08 BAC sanction program in Public Law 106–346–Appendix, and the agencies are required to carry out this program in accordance with the principles established by Congress.

Accordingly, the agencies do not believe that this final rule raises any Federalism issues and no changes to this document are required.

H. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

The agencies have analyzed this action under Executive Order 13175, and believe that this final rule will not have a substantial direct effect on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory section listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this section with the Unified Agenda.

List of Subjects in 23 CFR Part 1225

Alcohol and alcoholic beverages, Transportation, Highway safety.

■ In accordance with the foregoing, 23 CFR Part 1225 is revised to read as follows:

PART 1225—OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS

Sec.

1225.1 Scope.
1225.2 Purpose.
1225.3 Definitions.
1225.4 Adoption of 0.08 BAC *per se* law.
1225.5 General requirements for incentive grant program.
1225.6 Award procedures for incentive grant program.
1225.7 Certification requirements for sanction program.
1225.8 Funds withheld from apportionment.
1225.9 Period of availability of withheld funds.
1225.10 Apportionment of withheld funds after compliance.
1225.11 Notification of compliance.
1225.12 Procedures affecting States in noncompliance.
Appendix A to Part 1225—Effects of the 0.08 BAC Sanction Program on Non-Complying States

Authority: 23 U.S.C. 163; sec. 351, Pub. L. 106–346—Appendix, 114 Stat. 1356A–34, 35; delegation of authority at 49 CFR 1.48 and 1.50.

§ 1225.1 Scope.

This part prescribes the requirements necessary to implement 23 U.S.C. 163, which encourages States to enact and enforce 0.08 BAC *per se* laws through the use of incentive grants and Section 351 of Public Law 106–346—Appendix, which requires the withholding of Federal-aid highway funds from any State that has not enacted and is not enforcing a 0.08 BAC *per se* law as described in 23 U.S.C. 163.

§ 1225.2 Purpose.

The purpose of this part is to specify the steps that States must take to qualify for incentive grant funds in accordance with 23 U.S.C. 163; and the steps that States must take to avoid the withholding of funds as required by Section 351 of Public Law 106–346—Appendix.

§ 1225.3 Definitions.

As used in this part:

(a) *Alcohol concentration* means either grams of alcohol per 100 milliliters of blood or grams of alcohol per 210 liters of breath.

(b) *ALR* means either administrative license revocation or administrative license suspension.

(c) *BAC* means either blood or breath alcohol concentration.

(d) *BAC per se law* means a law that makes it an offense, in and of itself, to operate a motor vehicle with an alcohol concentration at or above a specified level.

(e) *Citations to State law* means citations to all sections of the State's law relied on to demonstrate compliance with 23 U.S.C. 163, including all applicable definitions and provisions of the State's criminal code and, if the State has an ALR law, all applicable provisions of the State's ALR law.

(f) *Has enacted and is enforcing* means the State's law is in effect and the State has begun to implement the law.

(g) *Operating a motor vehicle* means driving or being in actual physical control of a motor vehicle.

(h) *Standard driving while intoxicated offense* means the non-BAC *per se* driving while intoxicated offense in the State.

(i) *State* means any one of the 50 States, the District of Columbia, or Puerto Rico.

§ 1225.4 Adoption of 0.08 BAC per se law.

In order to avoid the withholding of funds as specified in § 1225.8 of this part, and to qualify for an incentive grant under § 1225.5 of this part, a State must demonstrate that it has enacted and is enforcing a law that provides that any person with a blood or breath alcohol concentration (BAC) of 0.08 percent or greater while operating a motor vehicle in the State shall be deemed to have committed a *per se* offense of driving while intoxicated or an equivalent *per se* offense. The law must:

(a) Apply to all persons;

(b) Set a BAC of not higher than 0.08 percent as the legal limit;

(c) Make operating a motor vehicle by an individual at or above the legal limit a *per se* offense;

(d) Provide for primary enforcement;

(e) Apply the 0.08 BAC legal limit to the State's criminal code and, if the State has an administrative license suspension or revocation (ALR) law, to its ALR law; and

(f) Be deemed to be or be equivalent to the standard driving while intoxicated offense in the State.

§ 1225.5 General requirements for incentive grant program.

(a) *Certification requirements.* (1) To qualify for a first-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official, that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and § 1225.4 of this part and that the funds will be used for eligible projects and programs.

(i) If the State's 0.08 BAC *per se* law is currently in effect and is being enforced, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has enacted a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and will become effective and be enforced as of (effective date of the law), and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(2) To qualify for a subsequent-year grant under 23 U.S.C. 163, a State must submit a certification by an appropriate State official.

(i) If the State's 0.08 BAC *per se* law has not changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has not changed and is enforcing a 0.08 BAC *per se* law, which conforms to 23 U.S.C. 163 and 23 CFR 1225.4, and that the funds received by the (State or Commonwealth) of _____ under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(ii) If the State's 0.08 BAC *per se* law has changed since the State last qualified for grant funds under this program, the certification shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____ has amended and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and that the funds received by the (State or Commonwealth) of _____, under 23 U.S.C. 163 will be used for projects eligible for assistance under title 23 of the United States Code, which include highway construction as well as highway safety projects and programs.

(3) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each Regional Administrator will forward the certifications it receives to appropriate NHTSA and FHWA offices.

(4) Each State that submits a certification will be informed by the agencies whether or not it qualifies for funds.

(5) To qualify for grant funds in a fiscal year, certifications must be received by the agencies not later than July 15 of that fiscal year.

(b) Limitation on grants. A State may receive grant funds, subject to the following limitations:

(1) The amount of a grant apportioned to a State under § 1225.4 of this part shall be determined by multiplying:

(i) The amount authorized to carry out section 163 of 23 U.S.C. for the fiscal year; by

(ii) The ratio that the amount of funds apportioned to each such State under section 402 for such fiscal year bears to the total amount of funds apportioned to all such States under section 402 for such fiscal year.

(2) A State may obligate grant funds apportioned under this Part for any project eligible for assistance under title 23 of the United States Code.

(3) The Federal share of the cost of a project funded with grant funds awarded under this part shall be 100 percent.

§ 1225.6 Award procedures for incentive grant program.

(a) In each Federal fiscal year, grant funds will be apportioned to eligible States upon submission and approval of the documentation required by § 1225.5(a) and subject to the limitations in § 1225.5(b). The obligation authority associated with these funds is subject to the limitation on obligation pursuant to section 1102 of the Transportation Equity Act for the 21st Century (TEA–21).

(b) As soon as practicable after the apportionment in a fiscal year, but in no event later than September 30 of the fiscal year, the Governor's Representative for Highway Safety and the Secretary of the State's Department of Transportation for each State that receives an apportionment shall jointly identify, in writing to the appropriate NHTSA Regional Administrator, the amounts of the State's apportionment that will be obligated to highway safety program areas and to Federal-aid highway projects. Each NHTSA Regional Administrator will forward copies of the joint letters to the appropriate NHTSA and FHWA offices.

(c) Apportionments will not be made by the NHTSA and FHWA unless this letter from the State is received.

§ 1225.7 Certification requirements for sanction program.

(a) Beginning with FY 2004, to avoid the withholding of funds, each State shall certify to the Secretary of Transportation, before the last day of the previous fiscal year, that it meets all the requirements of 23 U.S.C. 163 and this part.

(b) The certification shall contain a statement from an appropriate State official that the State has enacted and is enforcing a 0.08 BAC *per se* law that conforms to 23 U.S.C. 163 and 23 CFR part 1225.

(1) If the State's 0.08 BAC *per se* law is currently in effect and is being enforced, the certification shall be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted and is enforcing a 0.08 BAC *per se* law that conforms to the requirements of 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law).

(2) If the State's 0.08 BAC *per se* law is not currently in effect, but will become effective and be enforced before the end of the current fiscal year, the certification shall be worded as follows:

I, (name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, has enacted a 0.08 BAC *per se* law that conforms to the requirements of 23 U.S.C. 163 and 23 CFR 1225.4, (citations to State law), and will become effective and be enforced as of (effective date of the law).

(c) An original and four copies of the certification shall be submitted to the appropriate NHTSA Regional Administrator. Each NHTSA Regional Administrator will forward copies of the certifications received to the appropriate NHTSA and FHWA offices.

(d) Once a State has been determined to be in compliance with the requirements of 23 U.S.C. 163 and this part, it is not required to submit additional certifications, except that the State shall promptly submit an amendment or supplement to its certification provided under this section if the State's 0.08 BAC *per se* law changes.

(e) *Certifications submitted in FY 2003.* (1) Any State that submits a certification of compliance under § 1225.5 of this part, in conformance with the requirements of 23 U.S.C. 163, on or before July 15, 2003, will qualify for an incentive grant in FY 2003 and will avoid the withholding of funds in FY 2004. All certifications submitted in conformance with the incentive grant program will meet the certification requirements of the sanction program.

(2) Any State that submits a certification of compliance under this section, in conformance with the requirements of 23 U.S.C. 163, between July 16, 2003 and September 30, 2003, will not qualify for an incentive grant in FY 2003, but will meet the certification requirements of the sanction program, thereby avoiding the withholding of funds in FY 2004.

(f) *Certifications submitted in FY 2004 or thereafter.* Any State that has been in noncompliance with the requirements of 23 U.S.C. 163 and this part, in or after FY 2004, will initially be subject to a withholding of funds in accordance with § 1225.8 of this part. Following the submission of a conforming certification of compliance by such States, all withheld funds will be restored to a States' appropriate apportionment categories in accordance with § 1225.9 of this part.

§ 1225.8 Funds withheld from apportionment.

(a) Beginning in fiscal year 2004, the Secretary shall withhold 2 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(b) In fiscal year 2005, the Secretary shall withhold 4 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(c) In fiscal year 2006, the Secretary shall withhold 6 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(d) In fiscal year 2007, and in each fiscal year thereafter, the Secretary shall withhold 8 percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

§ 1225.9 Period of availability of withheld funds.

If a State meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part within 4 years from the date that a State's apportionment is reduced under § 1225.8, the apportionment for such State shall be increased by an amount equal to the reduction, as illustrated by appendix A of this part. The restored apportionment will be available to a State, as quickly as possible, upon a determination by NHTSA that the State is in conformance and notification to the FHWA.

§ 1225.10 Apportionment of withheld funds after compliance.

If a State has not met the requirements of 23 U.S.C. 163 and § 1225.4 of this part by October 1, 2007, the funds withheld under § 1225.8 shall begin to lapse and will no longer be available for apportionment to the State, in accordance with appendix A of this part.

§ 1225.11 Notification of compliance.

(a) Beginning with FY 2004, NHTSA and FHWA will notify States of their compliance or noncompliance with the statutory and regulatory requirements of 23 U.S.C. 163 and this part, based on a review of certifications received. States will be required to submit their certifications on or before September 30, to avoid the withholding of funds in a fiscal year.

(b) This notification of compliance will take place through FHWA's normal certification of apportionments process. If the agencies do not receive a certification from a State, by June 15 of any fiscal year, or if the certification does not conform to the requirements of 23 U.S.C. 163 and this part, the agencies will make an initial determination that the State is not in compliance.

§ 1225.12 Procedures affecting States in noncompliance.

(a) Each fiscal year, each State determined to be in noncompliance with 23 U.S.C. 163 and this part, based on NHTSA and FHWA's preliminary review of its certification, will be advised of the amount of funds expected to be withheld under § 1225.8 from apportionment, as part of the advance notice of apportionments required under 23 U.S.C. 104(e), which is ordinarily issued on July 1 of each fiscal year.

(b) If NHTSA and FHWA determine that any State is not in compliance with 23 U.S.C. 163 and this part, based on the agencies' preliminary review, the State may submit documentation showing why it is in compliance. States will have until September 30 to rebut the initial determination or to come into compliance with 23 U.S.C. and this part. Documentation shall be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 163 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1225.8 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

Appendix A to Part 1225—Effects of the 0.08 BAC Sanction Program on Non-Complying States

EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES

Fiscal year	Withhold	Lapse
2004 ...	2%	
2005 ...	4	
2006 ...	6	
2007 ...	8	
2008 ...	8	2% withheld in FY04.
2009 ...	8	4% withheld in FY05.
2010 ...	8	6% withheld in FY06.
2011 ...	8	8% withheld in FY07.
2012 ...	8	8% withheld in FY08.

Issued on: August 18, 2003.

Mary E. Peters,

Administrator, Federal Highway Administration.

Jeffrey W. Runge,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 03–21492 Filed 8–21–03; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9080]

RIN 1545–BC47

Reduction of Tax Attributes Due to Discharge of Indebtedness; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations relating to the reduction of tax attributes under sections 108 and 1017 of the Internal Revenue Code. These temporary regulations affect taxpayers that excluded discharge of under section 108. This document was published in the **Federal Register** on July 18, 2003 (68 FR 42590).

EFFECTIVE DATE: This correction is effective July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Theresa M. Kolish (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections are under

sections 108 and 1017 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 9080) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final regulations (TD 9080), which is the subject of FR Doc. 03–18145, is corrected as follows:

§ 1.108–7T [Corrected]

■ 1. On page 42592, column 3, § 1.108–7T, paragraph (a)(2), line 2, the language "section 108(b)(5), however, to reduce" is corrected to read "section 108(b)(5), however, to apply any portion of the excluded COD income to reduce".

■ 2. On page 42592, column 3, § 1.108–7T, paragraph (a)(2), lines 3 thru 7, the language "first the basis of depreciable property to the extent of the excluded COD income. If the basis of depreciable property is insufficient to offset the entire amount of the excluded COD, the" is corrected to read "first the basis of depreciable property to the extent the excluded COD income is not so applied, the".

■ 3. On page 42593, column 1, § 1.108–7T, paragraph (d)(ii), of *Example 3*, line 3, the language "trade debts of $200,000 and a depreciable", is corrected to read "debts of $200,000 and a depreciable".

■ 4. On page 42592, column 1, § 1.108–7T, paragraph (d)(ii), of *Example 3*, line 14, the language "trade debts of $200,000 and a depreciable", is corrected to read "debts of $200,000 and a depreciable".

■ 5. On page 42593, column 1, § 1.108–7T, paragraph (d)(ii), of *Example 3*, line 19, the language "requirements of section 354(a)(1)(A) and (B)." is corrected to read "requirements of section 354(b)(1) (A) and (B).".

■ 6. On page 42593, column 1, § 1.108–7T, paragraph (ii), of *Example 3*, line 2, the language "to X's trade creditors, under section", is corrected to read "to X's creditors, under section".

■ 7. On page 42593, column 1, § 1.108–7T, paragraph (ii), of *Example 3*, line 7, the language "owed the trade creditors for $100,000, the fair" is corrected to read "owed the creditors for $100,000, the fair".

■ 8. On page 42593, column 2, § 1.108–7T, paragraph (ii), of *Example 4*, line 2, the language "distribution of Y stock to X's trade creditors," is corrected to read "distribution of Y stock to X's creditors,".

LaNita Van Dyke,

Acting Chief, Regulations Unit, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–21469 Filed 8–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Francisco Bay 03–021]

RIN 1625–AA00

Security Zone; Suisun Bay, Concord, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone in the navigable waters of the United States adjacent to the Military Ocean Terminal Concord (MOTCO), California (formerly United States Naval Weapons Center Concord, California). The security zone is required to safely onload/offload military equipment. The required security zone is based on recent terrorist actions against the United States and for national security reasons to protect the public and areas surrounding MOTCO from potential terrorist attacks. The security zone will prohibit all persons and vessels from entering, transiting through or anchoring within a portion of the Suisun Bay surrounding MOTCO unless authorized by the Captain of the Port (COTP), or his designated representative.

DATES: This regulation is effective from 9 a.m. PDT on August 20, 2003 to 11:59 p.m. PDT on August 25, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Francisco Bay 03–021] and are available for inspection or copying at Coast Guard Marine Safety Office San Francisco Bay, Coast Guard Island, Alameda, California, 94501, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Doug Ebbers, U.S. Coast Guard Marine Safety Office San Francisco Bay, at (510) 437–3073.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Additionally, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** as the schedule and other logistical details were not known until a date fewer than 30 days prior to the start date of the military operation. Publishing a NPRM and delaying its effective date would be contrary to the public interest since the safety and security of the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas would be jeopardized without the protection afforded by this security zone. Any delay in implementing this rule would be contrary to the public interest since immediate action is necessary to ensure the protection of all cargo vessels, their crews, the public and national security.

Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

Additionally, the threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: Operators of U.S. Flag and Effective U.S. controlled Vessels and other Maritime Interests, detailing the

current threat of attack, MARAD 02–07 (October 10, 2002).

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, United States Army officials have requested that the Captain of the Port, San Francisco Bay, California establish a temporary security zone in the navigable waters of the United States surrounding the Military Ocean Terminal Concord (MOTCO), California, to safeguard vessels, cargo and crew engaged in military operations. This temporary security zone is necessary to safeguard the MOTCO terminal and the surrounding property from sabotage or other subversive acts, accidents, criminal actions, or other causes of similar nature. This zone is also necessary to protect military operations from compromise and interference and to specifically protect the people, ports, waterways, and properties of the Port Chicago and Suisun Bay areas.

Discussion of Rule

In this temporary rule, the Coast Guard is establishing a fixed security zone around Military Ocean Terminal Concord (MOTCO), California, under 33 CFR 165.T11–093, encompassing the navigable waters, extending from the surface to the sea floor, bounded by a line connecting the following coordinates: latitude 38°03′07″ N and longitude 122°03′00″ W; thence to latitude 38°03′15″ N and longitude 122°03′04″ W; thence to latitude 38°03′30″ N and longitude 122°02′35″ W; thence to latitude 38°03′50″ N and longitude 122°01′15″ W; thence to latitude 38°03′43″ N and longitude 122°00′28″ W; thence to latitude 38°03′41″ N and longitude 122°00′03″ W; thence to latitude 38°03′18″ N and longitude 121°59′31″ W, and along the shoreline back to the beginning point.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce this zone and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

Although this regulation restricts access to the zone, the effect of this regulation will not be significant because the zone will encompass only a small portion of the waterway for a short duration. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative.

The size of the zone is the minimum necessary to provide adequate protection for MOTCO, vessels engaged in operations at MOTCO, their crews, other vessels operating in the vicinity, their crews and passengers, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting to or from Suisun Bay via the Port Chicago Reach section of the channel.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because, although the security zone will occupy a section of the navigable channel (Port Chicago Reach) adjacent to the Marine Ocean Terminal Concord (MOTCO), vessels may receive authorization to transit through the zone by the Captain of the Port or his designated representative on a case-by-case basis. Additionally, vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zone to engage in these activities. Small entities and the maritime public will be advised of this security zone via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where located under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 is revised to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T11–093 to read as follows:

§ 165.T11–093 Security Zone; Navigable Waters of the United States Surrounding Military Ocean Terminal Concord (MOTCO), Concord, California.

(a) *Location.* The security zone, which will be marked by lighted buoys, will encompass the navigable waters, extending from the surface to the sea floor, surrounding the Military Ocean Terminal Concord, Concord, California, bounded by a line connecting the following coordinates: latitude 38°03′07″ N and longitude 122°03′00″ W; thence to latitude 38°03′15″ N and longitude 122°03′04″ W; thence to latitude 38°03′30″ N and longitude 122°02′35″ W; thence to latitude 38°03′50″ N and longitude 122°01′15″ W; thence to latitude 38°03′43″ N and longitude 122°00′28″ W; thence to latitude 38°03′41″ N and longitude 122°00′03″ W; thence to latitude 38°03′18″ N and longitude 121°59′31″ W, and along the shoreline back to the beginning point.

(b) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entering, transiting through or anchoring in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Patrol Commander on scene on VHF-FM channel 13 or 16 or the Captain of the Port at telephone number 415–399–3547 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement and the MOTCO police as necessary.

(e) *Effective period.* This section becomes effective at 9 a.m. PDT on August 20, 2003, and will terminate at 11:59 p.m. PDT on August 25, 2003.

Dated: August 13, 2003.

Steven J. Boyle,

Commander, Coast Guard, Acting Captain of the Port, San Francisco Bay, California.

[FR Doc. 03–21486 Filed 8–21–03; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7547–7]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Direct final deletion of the Resin Disposal Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III is publishing a direct final notice of deletion of the Resin Disposal Superfund Site (Site) located in the Borough of Jefferson, Allegheny County, Pennsylvania, from the National Priorities List (NPL).

The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This direct final notice of deletion is being published by EPA with the concurrence of the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), because EPA has determined that all appropriate response actions under CERCLA have been completed at the Site and, therefore, further remedial action at the Site pursuant to CERCLA is not appropriate.

DATES: This direct final deletion will be effective October 21, 2003, unless EPA receives adverse comments by September 22, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final deletion in the **Federal Register** informing the public that the deletion will not take effect.

ADDRESSES: Comments may be mailed to: Trish Taylor, Community Involvement Coordinator, (3HS43), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–5539, *taylor.trish@epa.gov*.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site Information Repositories at the following locations: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street, Philadelphia, PA 19103, (215) 814–5364, Monday through Friday 8 a.m. to 4:30 p.m.; the Jefferson Borough Library (contact, Ann Reschenthaler), Municipal Building, 925 Old Clairton Road, Jefferson Borough, Pennsylvania 15025 (412) 655–7741, Monday through Thursday 11 a.m. to 8:30 p.m.; and the Pennsylvania Department of Environmental Protection, Pittsburgh Office, 400 Waterfront Drive, Pittsburgh, PA 15222 (412) 442–4197.

FOR FURTHER INFORMATION CONTACT: Rashmi Mathur, Remedial Project Manager (3HS22), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–5234, *mathur.rashmi@epa.gov*.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Site Deletion
V. Deletion Action

I. Introduction

EPA Region III is publishing this direct final deletion of the Resin Disposal Superfund Site from the NPL.

EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, a site deleted from the NPL remains eligible for remedial actions if conditions at the site warrant such actions.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective October 21, 2003 unless EPA receives adverse comments by September 22, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will, as appropriate, prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the Resin Disposal Superfund Site and demonstrates how it meets the deletion criteria. Section V discusses EPA's action to delete the Site from the NPL unless adverse comments are received during the public comment period.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed (Hazardous Substance Superfund Response Trust Fund) response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at a site, CERCLA section 121(c), 42 U.S.C. 9621(c) requires that a subsequent review of the site be conducted at least every five years after the initiation of the remedial action at the deleted site to ensure that the action remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without application of the hazard ranking system.

III. Deletion Procedures

The following procedures apply to deletion of the Site:

(1) EPA consulted with PADEP on the deletion of the Site from the NPL prior to developing this direct final notice of deletion.

(2) PADEP concurred with the deletion of the Site from the NPL.

(3) Concurrently with the publication of this direct final deletion, a notice of the availability of the parallel notice of intent to delete published today in the "Proposed Rules" section of the **Federal Register** is being published in a major local newspaper of general circulation at or near the Site and is being distributed to the appropriate federal, state, and local government officials and other interested parties; the newspaper notice announces the 30-day public comment period concerning the notice of intent to delete the Site from the NPL.

(4) EPA placed copies of documents supporting the deletion in the Site information repositories identified above.

(5) If adverse comments are received within the 30-day public comment period on this notice to delete also published in today's **Federal Register**, EPA will publish a timely withdrawal of this direct final deletion before its effective date and will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received.

Deletion of a Site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Deletion of a site from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist EPA management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions, should future conditions warrant such actions.

IV. Basis for Site Deletion

The following information provides EPA's rationale for deleting the Site from the NPL:

A. Site Location

The Site is located about one half mile west of the town of West Elizabeth in Jefferson Borough, Allegheny County, Pennsylvania and comprises approximately 26 acres. The Site contains a 2-acre landfill which is located in the head of a narrow valley on the site of a former coal mine. The Site overlies a bedrock aquifer, and is also in contact with the Pittsburgh Coal formation, a source of non-potable ground water.

B. Site History

Between 1950 to 1964, the Pennsylvania Industrial Chemical Corporation (PICCO) deposited approximately 85,000 tons of process wastes consisting of petroleum and coal derived chemicals mixed with clay in the onsite landfill. Prior to 1950, the area on which the landfill came to be located had been used for coal strip and deep mining operations. At the location of the landfill, PICCO deposited approximately 20 feet of waste in place of the mined coal.

PICCO deposited the waste into the landfill as a slurry which collected behind an earthen dike constructed across the upper end of the strip-mined valley. Precipitation runoff from the surrounding hillsides along with any free water from the waste materials collected within the active landfill behind the dike. After PICCO stopped depositing waste in the landfill, it placed a poorly graded, native clay soil cover, ranging in thickness from four to ten feet, over the surface of the landfill. As a result, the direct precipitation and run off from the surrounding hills ponded at times on the landfill cover. Some of the water infiltrated the cover, recharging the waste material and adjacent ground water system. The remainder of the water evaporated or ran off to an unnamed stream. Over time residual product oils decanted from the waste materials as free product. The free product and infiltrated water migrated southeast through the landfill dike into downslope soils and also southwest into mine voids in the adjacent Pittsburgh Coal Formation.

In 1972, Hercules, Incorporated purchased the Site. Between 1980 and 1984, Hercules conducted field investigations of the ground water conditions in the coal formation, deep bedrock, and the extent of contaminated soils downslope of the landfill. Those investigations revealed that there were contaminants in ground water in the Pittsburgh Coal Formation and in downslope soils and perched ground water. In 1983, as a result of those investigations, Hercules installed a leachate collection trench below the lower landfill dike to collect leachate and ground water. The trench is still operating. Liquids collected in the trench are directed to an oil/water separator. The oil is collected and is burned at the Hercules Jefferson Plant boiler. The water is discharged to the Jefferson Borough Sanitary Sewer System and, then, to the West Elizabeth sewage treatment plant.

EPA completed a Superfund Site Investigation in April 1982. The Site received a Hazard Ranking System score of 37.69 in December 1982, was proposed for the National Priorities List (NPL) in December 1982 and was placed on the NPL in September 1983.

Remedial Investigation and Feasibility Study

In November 1987, Hercules entered into a Consent Order and Agreement with the Pennsylvania Department of Environmental Resources (PADER), the name of which was subsequently changed to PADEP, to conduct a Remedial Investigation (RI)/Feasibility Study (FS) (collectively, RI/FS) in order to characterize the Site for potential remediation. In March 1988, Hercules began work under an EPA-approved RI, which included conducting an extensive study of the extent of contamination of the soils, ground water, and surface water associated with the landfill. Hercules submitted a final RI Report which provided a detailed analysis of no action, containment, and treatment options to PADER and EPA in March 1991, and submitted the final FS to PADER and EPA in May 1991.

Characterization of Risk

The primary contaminants of concern affecting soil, debris, and ground water at the Site are volatile organic compounds (VOCs) including benzene, toluene, and xylenes and other organics including napthalene, poly-aromatic hydrocarbons (PAHs) and phenols. Federal Maximum Contaminant Levels (MCLs) for drinking water established pursuant to the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*, were exceeded for benzene, benzə (a) pyrene, ethylbenzene, 2-methylnapthalene, 4-methylphenol, naphthalene, tolulene, and xylene. The exposure route which made the greatest contribution to the trespasser scenario was the inhalation of Ethylbenzene and 4-methyl-2pentanone (VOC) vapors. The VOCs, napthalene, PAHs and phenols are "hazardous substances" as defined in section 101(14) of CERCLA.

After reviewing the results of the original RI/FS, EPA categorized the Site into two operable units. Operable Unit One (OU–1) addresses remediation of the landfill, the adjacent contaminated soils, non-aqueous floating product present in the subsurface mine voids of the Pittsburgh Coal Formation, and monitoring of onsite ground water. Operable Unit Two (OU–2) addresses offsite ground water, seeps and residential wells.

Record of Decision Findings for OU–1

A June 28, 1991 Record of Decision (ROD) documented the selected remedial action for OU–1 which included: installation of a multi-layer cap; reinforcement and upgrading of the lower landfill dike to increase its stability; installation of an upgraded oil/water separator downslope of the leachate collection system, with discharge of aqueous phases to a publicly owned treatment works; relocation of a sanitary sewer; implementation of institutional controls which include deed restrictions to alert prospective buyers to the presence of hazardous substances onsite and to prohibit future development; construction of a fence around the perimeter of the Site property to prevent unauthorized access; offsite reclamation of non-aqueous phase liquids (NAPLS) through skimmer wells for use as an energy source; and implementation of a Site maintenance and long-term ground water monitoring program.

Response Actions for OU–1

In February 1992, Hercules signed a Consent Decree with EPA to perform the Remedial Design (RD)/Remedial Action (RA) (collectively RD/RA) at this Site. EPA approved the final RD Work Plan on December 4, 1992; the Final Oil/Water Separator Design on December 21, 1994 and the Final Design for the landfill cap and the fence on September 29, 1995.

As part of the RA, Hercules performed the following activities, among others: replaced the oil/water separator; reinforced the lower landfill dike with approximately 5,000 tons of clean soil, and then regraded and hydroseeded; placed a multi-layer cap on the onsite landfill; installed infiltration controls around the perimeter of the landfill; placed a six inch layer of topsoil on top of the cap; and hydroseeded the landfill; erected fences around the perimeter of the Site and also around the onsite landfill; and installed and currently operates a well skimmer system down gradient of the landfill to collect floating product in ground water that may otherwise migrate offsite via the mine voids and monitored ground water quarterly for three years and semiannually until the Five-Year Review. Hercules completed the RA activities in October 1996.

Record of Decision Findings for OU–2

In September 1995, EPA issued a No Further Action ROD for OU–2 which required long-term onsite and offsite monitoring of the ground water. Hercules is monitoring the onsite ground water pursuant to the RA selected in the ROD for OU1. Under OU–2, Hercules monitored offsite ground water quarterly for three years and then semiannually until the five-year review was completed. The Five-Year Review recommendations included quarterly monitoring for TW–13 until the second Five-Year Review or until EPA determines that further monitoring is unnecessary.

Under the OU–2 ROD, offsite monitoring includes sampling of the offsite monitoring wells, as well as monitoring the seeps, sampling of an unnamed tributary and sampling of residential wells near the Site. EPA discontinued the requirement that Hercules monitor residential wells after it determined that, based on ground water monitoring during the RI and the 1999 ground water monitoring events, residential water users are not affected by Site related contaminants. EPA also discontinued the requirement that Hercules conduct bi-monthly surface water sampling because repeated surface water sampling from 1991 to 1998 showed levels of contaminants of concern at or well below Maximum Contaminant Levels for the "Drinking Water Regulations and Health Advisories" in the unnamed stream. EPA determined that the decrease in levels of contaminants of concern in the stream were a result of the following remedial actions: buttressing of the landfill, construction of a multi-layer cover system over the landfill area, upgrading of an oil/water separator and routine product recovery from a network of down gradient product recovery wells.

C. Future Activity

Operation and Maintenance

Hercules is required to perform the following Operation and Maintenance (O&M) activities with EPA oversight: periodic inspections of the landfill cover system and the fence, ground water monitoring, light non-aqueous phase liquids (LNAPLS) recovery through the skimmer wells, maintenance of the oil/water separator and any other activities necessary to ensure continued protection of public health and the environment. Until the next five-year review or until EPA determines that further monitoring efforts are unnecessary, Hercules is required to continue semi-annual ground water monitoring in selected monitoring wells; quarterly monitoring for TW–13 and quarterly LNAPL recovery. The LNAPL recovery, in conjunction with long-term ground water monitoring, will continue to ensure the effectiveness of the completed remedy at the Resin Disposal Site.

Five-Year Review

CERCLA requires a five-year review of all sites at which hazardous substances, pollutants or contaminants remain at the Site. Since residual organic solvents, resin cakes and oils from a resin manufacturing process and ground water contamination remain at the Site, the five-year review process will be used to ensure that the selected remedy continues to be protective of human health and the environment. EPA completed the first five-year review of the Resin Disposal Site on September 19, 2000. In that five-year review, EPA determined that the remedy was not completely protective of human health and the environment because institutional controls on future land use at the Site had not yet been implemented. In July 2002, EPA implemented institutional controls to limit future land use at the Resin Disposal Site. Those institutional controls were recorded at the Allegheny County Courthouse, Recorder of Deeds Office, in Jefferson Borough, Pennsylvania. These controls include alerting prospective buyers to the presence of hazardous substances onsite and recite Herules' obligation under the Consent Decree to limit future development. EPA has determined that all requirements of the RODs for OU–1 and OU–2 have been achieved at the Site and the remedies selected in those RODs are protective of human health and the environment. EPA plans to complete the next five-year review prior to September 19, 2005.

D. Community Involvement

Public participation activities have been satisfied as required in CERCLA section 113(k), 42 U.S.C. 9613(k), and CERCLA section 117, 42 U.S.C. 9617. Documents in the deletion docket which EPA relied on for recommendation of the deletion from the NPL are available to the public in the information repositories.

V. Deletion Action

The EPA, with the concurrence of the Commonwealth of Pennsylvania, has determined that all appropriate responses under CERCLA have been completed, and that no further response actions, under CERCLA, other than O&M and five-year reviews, are necessary. Therefore, EPA is deleting the Site from the NPL.

Because EPA considers this action to be noncontroversial and routine, EPA is taking it without prior publication of a notice of intent to delete. This action will be effective October 21, 2003 unless EPA receives adverse comments by September 22, 2003 on this document. If adverse comments are received within the 30-day public comment period on this document to delete, EPA will publish a timely withdrawal of this direct final deletion before the effective date of the deletion and the deletion will not take effect. EPA will prepare a response to comments and continue with the deletion process on the basis of the notice of intent to delete and the comments already received. There will be no additional opportunity to comment.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 4, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

■ For the reasons set out in this document, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

■ 2. Table 1 of Appendix B to Part 300 is amended by removing the site for "Resin Disposal, Jefferson Borough, PA."

[FR Doc. 03–21596 Filed 8–21–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 413

[CMS–1199–F]

RIN 0938–AL51

Medicare Program; Electronic Submission of Cost Reports

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule amends regulation by requiring that, for cost reporting periods ending on or after December 31, 2004, all hospices, organ procurement organizations, rural health clinics, Federally qualified health centers, community mental health centers, and end-stage renal disease facilities must submit cost reports currently required under the Medicare regulations in a standardized electronic format. This rule also allows a delay or waiver of this requirement when implementation would result in financial hardship for a provider. The provisions of this rule allow for more accurate preparation and more efficient processing of cost reports.

DATES: *Effective Date:* The provisions of this final rule are effective September 22, 2003.

Applicability Date: The provisions of this final rule are effective for cost reporting periods ending on or after December 31, 2004.

FOR FURTHER INFORMATION CONTACT: Larry Stevenson, (410) 786–5529.

SUPPLEMENTARY INFORMATION: Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The website address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

Generally, under the Medicare program, hospices, organ procurement organizations (OPOs), rural health clinics (RHCs), Federally qualified health centers (FQHCs), community mental health centers (CMHCs), and end-stage renal disease (ESRD) facilities are paid for the reasonable costs of the covered items and services they furnish to Medicare beneficiaries. Sections 1815(a) and 1833(e) of the Social Security Act (the Act) provided that no payments will be made to a provider unless it has furnished the information, requested by the Secretary of the Department of Health and Human Services (the Secretary), needed to determine the amount of payments due the provider. In general, providers submit this information through cost reports that cover a 12-month period. Rules governing the submission of cost reports are set forth in title 42 of the Code of Federal Regulations (CFR) 413.20 and 413. 24.

Under § 413.20(a), all providers participating in the Medicare program are required to maintain sufficient financial records and statistical data for proper determination of costs payable under the program. In addition, providers must use standardized definitions and follow accounting, statistical, and reporting practices that are widely accepted in the health care industry and related fields. Under § 413.20(b) and § 413.24(f), providers are required to submit cost reports annually, with the reporting period based on the provider's accounting year. Additionally, under § 412.52, all hospitals participating in the prospective payment system must meet cost reporting requirements set forth at § 413.20 and § 413.24.

Section 1886(f)(l)(B)(i) of the Act requires the Secretary to establish a standardized electronic cost reporting system for all hospitals participating in the Medicare program. This provision was effective for hospital cost reporting periods beginning on or after October 1, 1989. On January 2, 1997, we revised our regulations at § 413.24(f)(4)(ii) to extend the electronic cost reporting requirement to skilled nursing facilities (SNFs) and home health agencies (HHAs) (62 FR 26–31).

The required cost reports must be electronically transmitted to the intermediary in American Standard Code for Information Interchange (ASCII) format. In addition to the electronic file, hospitals, SNFs, and HHAs were initially required to submit a hard copy of the full cost report. We later revised our regulations in § 413.24(f)(4)(iv) to state that providers were required to submit, instead, a hard copy of a one-page settlement summary, a statement of certain worksheet totals found in the electronic file, and a statement signed by the provider's administrator or chief financial officer certifying the accuracy of the electronic file. In order to preserve the integrity of the electronic file, in the January 1997 final rule we specified procedures regarding the processing of the electronic cost report once it is submitted to the intermediary (62 FR 27).

II. Provisions of the Proposed Regulations

With the exception of revising the first cost reporting period affected from those ending on or after December 31, 2002 to those ending on or after December 31, 2004, we have adopted the provisions as set forth in our proposed rule, published in the **Federal Register** on July 26, 2002 (67 FR 48840–48844). We revised the cost reporting periods affected to take into account the publication date for this final rule. We discuss the finalized provisions in section IV of this final rule.

III. Analysis of and Responses to Public Comments

We received approximately 20 comments on the proposed electronic submission of cost reports requirements. These comments were from providers, professional organizations, trade associations, vendors and individuals. Summaries of the public comments

received and our responses to those comments are set forth below.

Comment: Several commenters requested that we add language to the regulation that would prohibit fiscal intermediaries (FIs) from requesting paper copies of the Medicare cost report, in addition to the electronic cost report.

Response: According to our CMS manual provisions (Provider Reimbursement Manual 15–2, chapter 1, sections 131 and 132), the electronic cost report file is considered the official cost report by the FI and, as a result, must be accepted by the FI. Since March 31, 1993, hospitals have not been required to submit a paper copy of the cost report to the FI . Similarly, since March 31, 2000, SNFs and HHAs have not been required to submit a paper copy of the cost report to the FI. We have, however, provided a two-year phase-in period for the providers that are subject to this regulation. During this two-year phase-in period, the paper copy of the cost report will be considered the official copy. After the expiration of the two-year period, though, a paper copy of the cost report will not be required to be submitted to the FI. We believe this phase-in period is necessary, so that providers are familiar with the requirements of electronic cost reporting.

Comment: We received several comments concerning our proposal to distribute free electronic cost reporting software to providers who can demonstrate that it would be a financial hardship to purchase software from vendors. One comment, from a software vendor, requested that we add language that would preclude the distribution of free software because it would be "unfair" to small vendors and the software would be poor quality. Another commenter asked that we specify a date that the free software would be available to providers. Also, we received a comment that the CMS-provided software would not allow providers to determine final settlement and that providers would still have to complete the cost report manually.

Response: With regard to the comment concerning adding language to the regulation that would preclude the distribution of free software, free software is made available to the providers based upon financial need only. The provider must demonstrate to the FI that the provider is financially unable to purchase commercial software. It has been our experience, with the hospitals, SNFs, and HHAs currently required to file electronically, that relatively few providers request the free software. If, however, the provider requests the free software and can demonstrate to the FI that it would be a financial hardship to purchase the software from a vendor, we will provide the software so that the provider can comply with the provisions of this rule. The quality of the software will be sufficient to allow the provider to comply with all provisions of this rule in a timely and efficient manner.

With regard to the comment concerning the projected date that the free software will be available, we expect that it should be available by September 30, 2004.

The comment that the CMS-provided software would not allow providers to determine final settlement and, as a result, that providers would still have to complete the cost report manually, is correct. The software allows the provider to create an electronic cost report file only for use by the FI and a final settlement amount is not necessary in this instance. Providers who use free software are always required to manually complete the cost report and to manually determine the final settlement.

Comment: We received a comment that the final regulation should also require that Comprehensive Outpatient Rehabilitation Facilities (CORFs) and Outpatient Physical Therapy providers (OPTs) file cost reports electronically.

Response: We are not requiring CORFs and OPTs to file electronically because CORFs are paid on a fee schedule for services furnished on or after April 1, 2001 and OPTs will be paid on a fee schedule for services furnished on or after July 1, 2003. For those providers with cost reporting periods beginning on or after the aforementioned dates, cost reports will no longer be required. We believe that it would be administratively burdensome as well as not economically feasible to require these providers to meet the electronic filing requirements for such a short period of time.

Comment: We received a comment that the final rule should include an exemption from the electronic filing requirement for no or low utilization providers because it appears that these providers are exempt from such filing requirements in § 413.24(h).

Response: Section 413.24(h) does not address the electronic filing requirement but it does provide that an FI may waive the requirement that a provider submit a full cost report if it qualifies as low utilization or no cost Medicare provider. Thus, based upon a waiver by the FI, under § 413.24(h), a low utilization or no Medicare utilization provider would not be required to file an electronic cost report. Because our current regulations clearly state that a full cost report need not be filed by a low utilization or no Medicare utilization provider, we believe that an exception, such as the one requested by the commenter, is not necessary for this final rule.

Comment: We received a comment that we should clarify the minimum requirements of what constitutes a financial hardship for the purposes of qualifying for the waiver and/or free software.

Response: Given the wide spectrum of the providers affected, we believe it is best to determine financial hardship on a case-by-case basis. Some examples of financial hardship include cash flow problems, previous year's net operating loss, and a required repayment of the past year's overpayment. These are some examples of financial hardship but should not be seen as all-encompassing. The flexibility to make these determinations is necessary as the providers differ greatly in terms of size, location, expenses, and services provided. The FI will need to have this flexibility in order to make a fair and reasonable determination for each provider.

Comment: We received several comments concerning the one-time pass through of costs (direct reimbursement on a dollar-for-dollar basis) for RHCs and FQHCs rather than reimbursing those providers based on the determination of the total allowable costs of the RHCs and FQHCs.

Response: We are unable to reimburse RHCs and FQHCs in a way other than direct reimbursement because to do so would require a statutory change in the method of reimbursement for the RHCs and FQHCs.

Comment: We received a comment reflecting concern that the cost of dial up Internet service required to file electronically would be a burden for rural providers.

Response: There is no requirement to use the Internet to electronically file a cost report. The medium for transfer of cost reports submitted electronically to FIs is a 3½" diskette.

Comment: We received two comments expressing concern about the phase-in period. One concern was that the two-year phase-in period was too long. Another concern was that the two-year period should be extended to three years.

Response: We believe that the two-year phase-in period is necessary to allow providers to become familiar with the requirements of electronic filing and that a shorter phase-in period would be insufficient to accomplish this.

Similarly, prior experience with the hospital cost report, the SNF cost report,

and the HHA cost report indicate that the two-year phase-in period provides ample time for the providers to adjust to the electronic methods for filing the cost report, and a longer period is not necessary.

Comment: We received a comment that we should delay the implementation of the electronic filing requirement for FQHCs from December 31, 2002 until June 30, 2003 to allow those providers more time for implementation.

Response: We are revising the implementation date to December 31, 2004 to allow all providers more time to implement the rule.

Comment: We received a comment that recommended that we have a pilot testing period before implementing the electronic filing requirement.

Response: Electronic filing of cost reports has been required since March 31, 1993 for hospitals and for SNFs and HHAs since March 31, 2000 and, based on our experiences with hospitals, SNFs, and HHAs, we believe that the electronic filing requirements will be implemented by hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities, as efficiently as has been the case with the other providers mentioned. Moreover, the two-year phase-in period, which will end May 31, 2007, will allow sufficient time for the providers subject to this regulation to adapt to the electronic filing requirement. The hard copy of the cost report is the official copy during the two-year transition period. For this two-year phase-in period, no cost report will be rejected but the FIs will make the provider aware of the edits that the provider did not pass. This flexibility will allow the provider to correct any problems that the provider has encountered with electronic filing before the phase-in period ends.

Comment: We received a comment that a correction period of 60 days be allowed for providers to resubmit electronic cost reports that are rejected by the FI.

Response: While it is the responsibility of the provider to submit an acceptable cost report to the FI by the required due date of the cost report, we have established a two-year phase-in period where the hardcopy of the cost report will be the official cost report and will not be rejected by the FI—a concern of the commenter. The two-year phase-in period has been established to allow the provider sufficient time to familiarize itself with the electronic filing requirements. Also, during this two-year phase-in period, the FI will inform the provider concerning any problems that the provider may encounter with the electronic filing requirement that would cause rejection in the future. It should be noted, as well, that there already exists a 30-day period during which providers can correct errors and resubmit electronic cost reports to the FI (*See* Provider Reimbursement Manual 15–II, Chapter 1, section 140).

Comment: We received a comment that all current cost reports should be settled by the FIs before the implementation of the electronic filing requirement.

Response: The settlement of cost reports is not governed by this final rule and any changes regarding the settlement of cost reports are beyond the scope of this rule which is concerned solely with electronic filing requirements.

Comment: We received a comment that we should provide electronic Provider Statistical Reimbursement & Report data (PS&R)—reimbursement and statistical data that we prepare—to providers.

Response: Although this comment does not fall within the scope of this rule, we believe that it may be helpful to address this process issue. We note, therefore, that this information is used by the FI for the settlement of cost reports. The detailed PS&R, however, is available from the FI upon written request from the provider if there are any discrepancies between the provider's data and the PS&R summary report. The FI is required to send the summary PS&R report to the provider 30 days before the due date of the cost report.

Comment: A commenter requested that we not extend the "complex" and "punitive" criteria for acceptable cost reports currently imposed on hospitals, SNFS, and HHAs to the other providers affected by this final rule.

Response: We do not believe that acceptability criteria for electronic cost report filings are complex and they certainly are not intended to be punitive. We developed these criteria both to help the provider and to ensure that the provider is aware of what is required to file an acceptable cost report. We believe these criteria, which we attempt to keep at a minimum, will help ensure accuracy and save time to both the provider and the FI. Generally included in the criteria, for example, are the level one electronic edits that all cost reports must pass in order for the cost report to be acceptable. By clearly enumerating these level one edits in our criteria—the criteria most critical in the filing of an acceptable electronic cost report—we believe providers will have every opportunity to meet the requirements in a timely and accurate manner.

IV. Provisions of the Final Rule

In this final rule, we are applying the current hospital, SNF, and HHA electronic cost reporting requirements to hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities with the exception that, for the first 2 years, the hard copy of the cost report must be submitted with the electronic cost report. Over that 2-year period (until May 31, 2007) the hard copy will continue to be the official copy. We believe that the use of electronically prepared cost reports will be beneficial for hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities because the cost reporting software for these reports will virtually eliminate computational errors and substantially reduce preparation time. Moreover, the use of cost reporting software will save time whenever the provider needs to change individual entries in a cost report.

This rule provides that a hospice, organ procurement organization, RHC, FQHC, CMHC, or ESRD facilities may submit a written request for a waiver or a delay of these requirements if it believes that implementation of the electronic submission requirement would cause a financial hardship. Consistent with the existing regulations (*see* § 413.24(h)), we are continuing to allow providers with low or no Medicare utilization to request a waiver of full or simplified cost reporting.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA 1995), we are required to provide 30 days notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. However, the requirements referenced and discussed below are currently approved by OMB.

Section 413.24 Adequate Cost Data and Cost Finding

Currently, § 413.24 requires hospitals, SNFs, and HHAs to submit electronic cost reports. However, as proposed in the regulation, hospices, OPOs, RHCs, FQHCs, CMHCs, or ESRD facilities will no longer have the option of submitting either a hard copy or electronic cost report. In addition to the electronic cost report, these providers will also continue to be required to submit to the appropriate FI, hard copies of a settlement summary, statement of certain worksheet totals, and the Federally prescribed statement signed

by its administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. We believe that these electronic filing requirements will initially increase the burden by approximately 40 hours and cost approximately $5000 for each cost reporting period. We expect that this burden will decrease as the providers become familiar and proficient in electronic filing.

However, as currently approved, these providers may request a delay or waiver of the electronic submission requirement in paragraph (f)(4)(ii) of this section if this requirement would cause a financial hardship.

As noted above, while all the above reporting requirements are subject to the PRA, they are currently approved under OMB approval numbers 0938–0050, "Hospital/Healthcare Complex Cost Report," with a current expiration date of November 30, 2005, 0938–0463; "Skilled Nursing Facility Cost Report," with a current expiration date of May 31, 2004; 0938–0022, "Home Health Agency Cost Report," with a current expiration date of May 31, 2004; 0938–0758, "Hospice Cost Report," with a current expiration date of March 31, 2005; 0938–0102, "Organ Procurement Agency/Laboratory Statement of Reimbursable Costs," with a current expiration date of October 31, 2003, which is currently at OMB awaiting re-approval; 0938–0107, "Independent Rural Health Clinic/Freestanding Federally Qualified Health Center Cost Report," with a current expiration date of October 31, 2005; 0938–0236, "Medicare Independent Renal Dialysis Facility Cost Report," with a current expiration date of August 31, 2004; and 0938–0657, "End Stage Renal Disease Network Cost Report," with a current expiration date of December 31, 2003, which is currently in the re-approval process.

VI. Regulatory Impact Statement

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980 Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1955 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually). This rule will not have a significant economic impact on hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities, and, therefore, is not a major rule. There are no requirements for hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities to initiate new processes of care, and reporting; to increase the amount of time spent on providing or documenting patient care services; or to purchase computer software.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having annual receipts of $6 million to $29 million or less annually (*see* 65 FR 69432). For purposes of the RFA, all providers and small businesses that distribute cost-report software to providers are considered small entities. We do not believe that this rule will have a significant impact on these providers as no or low utilization providers already have the ability to file for a waiver of the electronic filing requirement. In demonstrated cases of financial hardship, however, we will provide free software. With computers so common in the work place today it is hard to imagine that a provider does not already access to a computer and, in the rare instance when a provider would have to purchase a computer, we believe the cost would be neglible. In addition, the providers have a period of almost two years to familiarize themselves with the electronic filing requirements, since the first cost reports will not be due until May 31, 2005. Our intermediaries are not considered small entities for the purposes of the RFA. Individuals and States are not included in the definition of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

As stated above, under § 413.20(b) and § 413.24(f), providers are required to submit cost reports annually, with reporting periods based on the provider's accounting year. This final rule requires hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities, like hospitals, SNFs and HHAs, to submit their Medicare cost reports in a standardized electronic format. This requirement will take effect for cost reporting periods ending on or after December 31, 2004, meaning that the first electronic cost reports will be due May 31, 2005.

Currently, approximately 55 percent of all hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities submit a hard copy of an electronically prepared cost report to the intermediary. We believe that the provisions of this final rule will have little or no effect on these providers, except to reduce the time involved in copying and collating a hard copy of the report for intermediaries. Under this rule, instead of submitting a complete hard copy of the report, providers will be required to submit only hard copies of a settlement summary, statement of certain worksheet totals, and a statement signed by the administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. In addition to the 55 percent of providers that currently use electronic cost reporting, this rule will not affect those providers that do not file a full cost report and, as stated above, would not be required to submit cost reports electronically.

This rule may have an impact on those providers who do not prepare electronic cost reports, some of whom may have to purchase computer equipment, obtain the necessary software, and train staff to use the software. However, as discussed below, we believe that the potential impact of this final rule on those providers who do not prepare electronic cost reports will be insignificant.

First, a small number of the 45 percent of providers that do not submit electronic cost reports may have to purchase computer equipment to comply with the provisions of this rule. These providers are generally owned

and operated by one or two individuals and are often located in rural areas. They include approximately 1,500 RHCs and 1,500 FQHCs. We estimate that 1,350 of the 3000 RHCs and FQHCs may not have the necessary computer equipment. We believe, however, that most providers already have access to computer equipment, which they are now using for internal record keeping purposes, as well as for submitting electronically generated bills to their fiscal intermediaries, for example. Thus, we do not believe that obtaining computer equipment will be a major obstacle to electronic cost reporting for most providers. For those providers that may have to purchase computer equipment, we note that, in accordance with current regulations governing payment of provider costs, we will pay for the cost of the equipment as an overhead cost. Rural health clinics and FQHCs will be reimbursed subject to a payment limit; OPOs reimbursed based on costs; hospices reimbursed according to fee schedule; ESRDs paid a composite rate, and CMHCs will be reimbursed through a blend of prospective payment (PPS) and cost.

We recognize that a potential cost for providers that do not submit electronic cost reports will be that of training staff to use the software. Since most hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities currently use computers, we do not believe that training staff to use the new software will impose a large burden on providers. An additional cost would be the cost of the software offered by commercial vendors. However, providers could eliminate this cost by obtaining the necessary software from us, free of charge. In those instances when these requirements may cause hardship, a waiver can be granted.

The requirement that hospitals submit cost reports in a standardized electronic format has been in place since October 1989. Since that time, the accuracy of cost reports has increased and we have received very few requests for waivers. Additionally, we have not received any comments from the hospital industry indicating that the use of electronic cost reporting is overly burdensome. We believe that electronic cost reporting will be equally effective for hospices, OPOs, RHCs, FQHCs, CMHCs, and ESRD facilities, with the benefits (such as increased accuracy and decreased preparation time) outweighing the costs of implementation for most providers.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, that exceeds the inflation-adjusted threshold of $110 million. This rule does not impose any costs that would exceed the $110 million threshold on the governments mentioned, or the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have examined this final rule and have determined that this rule will not have an impact on the rights, roles, and responsibilities of State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid amends 42 CFR chapter IV part 413 as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ 1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i) and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

■ 2. Section 413.24 is amended by revising existing paragraphs (f)(4)(i) through (f)(4)(v) to read as follows:

§ 413.24 Adequate cost data and cost finding.

* * * * *

(f) *Cost reports.* * * *

(4) *Electronic submission of cost reports.*

(i) As used in this paragraph, "provider" means a hospital, skilled nursing facility, home health agency, hospice, organ procurement organization, rural health clinic, Federally qualified health clinic, community mental health center, or end-stage renal disease facility.

(ii) Effective for cost reporting periods beginning on or after October 1, 1989 for hospitals, cost reporting periods ending on or after December 31, 1996 for skilled nursing facilities and home health agencies, and cost reporting periods ending on or after December 31, 2004 for hospices, organ procurement organizations, rural health clinics, Federally qualified health centers, community mental health centers, and end-stage renal disease facilities, a provider is required to submit cost reports in a standardized electronic format. The provider's electronic program must be capable of producing the CMS standardized output file in a form that can be read by the fiscal intermediary's automated system. This electronic file, which must contain the input data required to complete the cost report and to pass specified edits, must be forwarded to the fiscal intermediary for processing through its system.

(iii) The fiscal intermediary stores the provider's as-filed electronic cost report and may not alter that file for any reason. The fiscal intermediary makes a "working copy" of the as-filed electronic cost report to be used, as necessary, throughout the settlement process (that is, desk review, processing audit adjustments, and final settlement). The provider's electronic program must be able to disclose if any changes have been made to the as-filed electronic cost report after acceptance by the intermediary. If the as-filed electronic cost report does not pass all specified edits, the fiscal intermediary must return it to the provider for correction. For purposes of the requirements in paragraph (f)(2) of this section concerning due dates, an electronic cost report is not considered to be filed until it is accepted by the intermediary.

(iv) Effective for cost reporting periods ending on or after September 30, 1994 for hospitals, cost reporting periods ending on or after December 31, 1996 for skilled nursing facilities and home health agencies, and cost reporting periods ending on or after December 31, 2004 for hospices, organ procurement organizations, rural health clinics, Federally qualified health centers, community mental health centers, and end-stage renal disease facilities, a provider must submit a hard copy of a settlement summary, a statement of certain worksheet totals found within the electronic file, and a statement signed by its administrator or chief financial officer certifying the accuracy of the electronic file or the manually prepared cost report. During a transition period (first two cost-reporting periods on or after December 31, 2004), hospices, organ procurement

organizations, rural health clinics, Federally qualified health centers, community mental health centers, and end-stage renal disease facilities must submit a hard copy of the completed cost report forms in addition to the electronic file. The following statement must immediately precede the dated signature of the provider's administrator or chief financial officer:

I hereby certify that I have read the above certification statement and that I have examined the accompanying electronically filed or manually submitted cost report and the Balance Sheet Statement of Revenue and Expenses prepared by _____(Provider Name(s) and Number(s)) for the cost reporting period beginning _____ and ending _____ and that to the best of my knowledge and belief, this report and statement are true, correct, complete and prepared from the books and records of the provider in accordance with applicable instructions, except as noted. I further certify that I am familiar with the laws and regulations regarding the provision of health care services, and that the services identified in this cost report were provided in compliance with such laws and regulations.

(v) A provider may request a delay or waiver of the electronic submission requirement in paragraph (f)(4)(ii) of this section if this requirement would cause a financial hardship or if the provider qualifies as a low or no Medicare utilization provider. The provider must submit a written request for delay or waiver with necessary supporting documentation to its intermediary no later than 30 days after the end of its cost reporting period. The intermediary reviews the request and forwards it, with a recommendation for approval or denial, to CMS central office within 30 days of receipt of the request. CMS central office either approves or denies the request and notifies the intermediary within 60 days of receipt of the request.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: February 21, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 24, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–21441 Filed 8–21–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Centers for Disease Control and Prevention

42 CFR Part 493

[CMS–2226–CN]

RIN 0938–AK24

Medicare, Medicaid, and CLIA Programs; Laboratory Requirements Relating to Quality Systems and Certain Personnel Qualifications; Correction

AGENCY: Centers for Disease Control and Prevention (CDC) and Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; correction.

SUMMARY: This document corrects technical errors that appeared in the final rule published in the **Federal Register** on January 24, 2003, entitled "Medicare, Medicaid and CLIA Programs; Laboratory Requirements Relating to Quality Systems and Certain Personnel Qualifications." This document is a supplement to the January 24, 2003 final rule.

EFFECTIVE DATE: September 22, 2003.

FOR FURTHER INFORMATION CONTACT:

Rhonda S. Whalen (CDC), (770) 488–8155.

Judith A. Yost (CMS), (410) 786–3531.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 03–1230 of January 24, 2003 (68 FR 3640), there were several technical errors that are identified and corrected in the "Correction of Errors" section below. The corrections described below are effective September 22, 2003.

Specifically, this document corrects errors of omission, clarifies ambiguities, and corrects erroneous references and typographical errors. We would ordinarily publish these changes in a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. This notice and comment rulemaking procedure can be waived, however, if an agency finds good cause to do so (that is, notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest) and it incorporates a statement of the finding and its reasons therefore in the final rule. We find good cause to waive notice and comment procedures for the corrections contained in this final rule for the reasons set forth in section III of this notice.

II. Correction of Errors

A. Preamble Corrections

■ In the final rule published on January 24, 2003 (68 FR 3640), make the following corrections:

■ On page 3641, in column three, in line seven from the bottom of the page, "Establish" is corrected to read "establish".

■ On page 3642, in column two, in the first paragraph carried over from column one, in lines 13 and 14, the words "the National Registry for Clinical Chemistry" are corrected to read "the National Registry of Certified Chemists (formerly known as the National Registry in Clinical Chemistry)".

■ On page 3643, in column two of the Table, in lines 18, 21, and 24, "systems" is corrected to read "system".

■ On page 3648, in column three of the Table, in line 14, "§§ 493.1274(e)(1)(i) through (e)(1)(v), and (e)(2)" is corrected to read "§§ 493.1274(e)(1)(i) through (e)(1)(iii), and (e)(2)".

■ On page 3650, in column two of the Table, in lines 2, 4, 5, 7, 9, 10, 12, 13, 14, 15, 16, 17, 19, 20, 22, 23, 24, 25, 28, 32, 38, 40, 42, 44, 45, 46, 47, 48, and 50 (twice), add the word "quality" before "assessment".

■ On page 3650, in column three of the Table, in line 18, "§§ 493.1230; 493.1236(a)(1); 493.1239(a) and (b)" is corrected to read "§§ 493.1230; 493.1236(a); 493.1239(a) and (b)".

■ On page 3671, in column two, in the first paragraph of the response, "the American Board of Medical Immunology" is corrected to read "the American Board of Medical Laboratory Immunology."

■ On page 3671, in column two, in the first paragraph of the response, "the National Registry for Clinical Chemistry" is corrected to read "the National Registry of Certified Chemists (formerly known as the National Registry in Clinical Chemistry)".

■ On page 3673, in column three, in the first paragraph of the response, in line 16, "quality systems include" is corrected to read "a quality system includes".

■ On page 3674, in column two, in Subpart A—General Provisions (Definitions), in the first bullet point under that heading, add the words "nonwaived test" and "waived test" in alphabetical order.

■ On page 3674, in column two, in Subpart A—General Provisions (Definitions), add, above the third bullet, a new bullet with the words "We revised

§ 493.19(e)(1) by removing the reference to the former Subpart P."

■ On page 3675, in column one, in the first paragraph carried over from the preceding page, "Systems" is corrected to read "System".

■ On page 3675, in column two, in the section heading and in bullets number one and three, remove the "s" from the word "systems".

■ On page 3694, in column two, in the last paragraph, and on page 3696, in column one, in the last paragraph of the page, "(Eisenberg, 1998)" is corrected to read "(Isenberg, 1998)".

■ On page 3701, in column three, in the "References" section, "Eisenberg, Henry D., Ed." is corrected to read "Isenberg, Henry D., Ed." and is placed in alphabetical order.

B. Omitted Regulatory Text

The January 24, 2003 final rule (68 FR 3640) utilized a couple of terms that have never been formally defined in the CLIA regulations. We believe that any ambiguities about "nonwaived test" and "waived test" would be resolved by defining them at § 493.2.

The definition of "waived test" need not be subject to notice and comment rulemaking as the definition merely cites to the statutory criteria for waiver as specified in section 353(d)(3) of the Public Health Service Act (PHS). "Non-waived tests" is likewise defined in terms of the statutory criteria for waiver. As notice and comment rulemaking is unnecessary, we are adding these definitions to § 493.2.

In addition, we explained in the January 24, 2003 final rule that we were renaming, reorganizing, and consolidating similar requirements into one section, deleting duplicate requirements, and rewording numerous requirements to maintain and/or clarify their original intent, making the revised regulations easier to read and understand. As part of this effort, we removed "subpart P", but neglected to remove references to subpart P in §§ 493.19(e)(1), 493.20(c), 493.25(d), 493.47(c)(2), and 493.1359(b)(2). As section "P" no longer exists, it is unnecessary to seek comments on these deletions as no purpose or interests would be served if they were maintained. As such, these references to subpart "P" are deleted by this final rule.

C. Regulatory Text Corrections

■ In FR Doc. 03–1230 of January 24, 2003 (65 FR 3640):

PART 493—LABORATORY REQUIREMENTS

■ The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following sections 1861(s)(11) through 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), and the sentence following 1395x(s)(11) through 1395x(s)(16)).

■ In § 493.2, the following definitions are added in alphabetical order to read as follows:

§ 493.2 Definitions.

* * * * *

Nonwaived test means any test system, assay, or examination that has not been found to meet the statutory criteria specified at section 353(d)(3) of the Public Health Service Act.

* * * * *

Waived test means a test system, assay, or examination that HHS has determined meets the CLIA statutory criteria as specified for waiver under section 353(d)(3) of the Public Health Service Act.

■ In § 493.19, paragraph (e)(1) is revised to read as follows:

§ 493.19 Provider-performed microscopy procedures.

* * * * *

(e) * * *

(1) Meet the applicable requirements in subpart C or subpart D, and subparts F, H, J, K, and M of this part.

* * * * *

■ In § 493.20, paragraph (c) is revised to read as follows:

§ 493.20 Laboratories performing tests of moderate complexity.

* * * * *

(c) If the laboratory also performs waived tests, compliance with subparts H, J, K, and M of this part is not applicable to the waived tests. However, the laboratory must comply with the requirements in §§ 493.15(e), 493.1773, and 493.1775.

■ In § 493.25, paragraph (d) is revised to read as follows:

§ 493.25 Laboratories performing tests of high complexity.

* * * * *

(d) If the laboratory also performs waived tests, the requirements of subparts H, J, K, and M are not applicable to the waived tests. However, the laboratory must comply with the requirements in §§ 493.15(e), 493.1773, and 493.1775.

■ In § 493.47, paragraph (c)(2) is revised to read as follows:

§ 493.47 Requirements for a certificate for provider-performed microscopy (PPM) procedures.

* * * * *

(c) * * *

(2) The applicable requirements of this subpart and subparts H, J, K, and M of this part; and

* * * * *

Table of Contents for Subparts J and K of Part 493 [Corrected]

■ On page 3703 in column one, in the heading of the Table of Contents for Subpart K, the word "Systems" is corrected to read "System".

■ On page 3703, in column one, in the Table of Contents for Subpart K—Quality System for Nonwaived Testing, line 18, "§ 493.1125" is corrected to read "§ 493.1225".

■ On page 3703, in column one, in the Table of Contents for Subpart K—Quality System for Nonwaived Testing; General Laboratory Systems, in line 15, add the word "quality" before "assessment."

■ On page 3703, in column one, in the Table of Contents for Subpart K—Quality System for Nonwaived Testing, Preanalytic Systems, in line 5, add the word "quality" before "assessment."

■ On page 3703, in column two, in the Table of Contents for Subpart K—Quality System for Nonwaived Testing, Analytic Systems, in line 22, "§ 493.1189" is corrected to read "§ 493.1289" and the word "quality" is added before "assessment."

■ On page 3703, in column two, in the Table of Contents for Subpart K—Quality System for Nonwaived Testing, Postanalytic Systems, in line three, add the word "quality" before "assessment."

§ 493.1105 [Corrected]

■ On page 3704, in column one, in paragraph (a)(3), in line four, "all analytic systems" is corrected to read "records documenting all analytic systems".

■ On page 3704, in column one, in paragraph (a)(3)(ii), in line four, "CFR 606.160(b)(3)(ii), (b)(3)(v), and (d)" is corrected to read "CFR 606.160(b)(3)(ii), (b)(3)(iv), (b)(3)(v), and (d)".

■ On page 3704, in column one, in paragraph (a)(5), in line one, the heading is corrected to read "*Quality system assessment records.*"

■ On page 3704, in column one, in paragraph (a)(6)(i), in lines two and three, "21 CFR 606.160(b)(3)(ii), (b)(3)(iv), and (d)" is corrected to read "21 CFR 606.160(d)."

■ On page 3704, in column one, in paragraph (b), in line five, "maintained" is corrected to read "retained".

Subpart K—[Corrected]

■ On page 3704, in column one, in the section heading for Subpart K, the word "Systems" is corrected to read "System".

§ 493.1200 [Corrected]

■ On page 3704, in column one, in paragraph (a), in line five, "quality systems" is corrected to read "a quality system".
■ On page 3704, in column two, in paragraph (b), in line one, remove the words "Each of", and capitalize the letter "T" in the word "The".
■ On page 3704, in column two, in paragraph (b), in line two, "an assessment" is corrected to read "a quality assessment".
■ On page 3704, in column two, in paragraph (c), in line two, the word "systems" is corrected to read "system".

§ 493.1208 [Corrected]

■ On page 3704, in column three, in line two, "§§ 93.1281" is corrected to read "§§ 493.1281".

§ 493.1234 [Corrected]

■ On page 3705, in column two, in line six, "individual" is corrected to read "person".

§ 493.1239 [Corrected]

■ On page 3705, in column two, in the section heading, add the word "quality" before "assessment."
■ On page 3705, in column three, in paragraph (a), in line three, "system requirements" is corrected to read "systems requirements".
■ On page 3705, in column three, in paragraph (b), lines one and seven, add the word "quality" before "assessment".
■ On page 3705, in column three, in paragraph (c), in line two, add the word "quality" before "assessment".

§ 493.1249 [Corrected]

■ On page 3706, in column one, in the heading of § 493.1249 add the word "quality" before "assessment."
■ On page 3706, in columns one and two, in paragraph (b), in lines one and seven, add the word "quality" before "assessment".
■ On page 3706, in column two, in paragraph (c), in line two, add the word "quality" before "assessment".

§ 493.1251 [Corrected]

■ On page 3706, in column two, in paragraph (b)(11), in line two, "results or panic or alert values" is corrected to read "results, or panic or alert values".
■ On page 3706, in column three, in paragraph (b)(13), in lines five and six, "reporting imminent life threatening results, or panic, or alert values" is corrected to read "reporting imminently life-threatening results, or panic or alert values".

§ 493.1253 [Corrected]

■ On page 3707, in column one, in paragraph (b)(2), in lines eight through ten, remove the words "Gram stain, or potassium hydroxide preparations".

§ 493.1256 [Corrected]

■ On page 3707, in column three, in paragraph (a), in line four, the word "analytical" is corrected to read "analytic".
■ On page 3708, in column two, in paragraph (e)(1), in line four, add the phrase "(except those specifically referenced in § 493.1261(a)(3))" before the word "and".

§ 493.1271 [Corrected]

■ On page 3709, in column three, in paragraph (f), in line one, the heading "Documentation." is added.

§ 493.1273 [Corrected]

On page 3709, in column three, in paragraph (a), in line one, the phrase "As specified in § 493.1256(e)(3)," is added at the beginning of the first sentence, and the word "Fluorescent" is corrected to be lower-case.

§ 493.1274 [Corrected]

■ On page 3710, in column three, in paragraph (d)(2)(iii), in line one, "Nongynecologic slide preparation" is corrected to read "Nongynecologic slide preparations".
■ On page 3711, in column two, in paragraph (h), in line one, the heading "*Documentation.*" is added.

§ 493.1276 [Corrected]

■ On page 3711, in column two, in paragraph (d), in line five, "System of Cytogenetic Nomenclature" is corrected to read "System for Human Cytogenetic Nomenclature".

§ 493.1278 [Corrected]

■ On page 3712, in column two, in paragraph (g), in line one, the heading "Documentation." is added.

§ 493.1289 [Corrected]

■ On page 3713, in the heading of § 493.1289, add the word "quality" before "assessment".
■ On page 3713, in column one, in paragraph (b), in lines one and seven, add the word "quality" before "assessment".
■ On page 3713, in column one, in paragraph (c), in line two, add the word "quality" before "assessment."

§ 493.1291 [Corrected]

■ On page 3713, in column one, in paragraph (a), in line one, add the word "an" before the word "adequate".
■ On page 3713, in column one, in paragraph (a), in line two, "systems" is corrected to read "system(s)".
■ On page 3713, in column two, in paragraph (c)(1), in line three, "or an unique" is corrected to read "or a unique".
■ On page 3713, in column two, in paragraph (g), in line six, "imminent" is corrected to read "imminently".

§ 493.1299 [Corrected]

■ On page 3713, add the word "quality" before "assessment": in the section heading; in column three, in paragraph (b), in lines one and seven; and in column three, in paragraph (c), in line two.

§ 493.1359 [Amended]

■ In § 493.1359, paragraph (b)(2) is revised to read as follows:

* * * * *

(b) * * *

(2) Is performed in accordance with applicable requirements in subparts H, J, K, and M of this part.

III. Waiver of Proposed Rulemaking

We ordinarily publish these changes in a notice of proposed rulemaking in the **Federal Register** and invite public comment before final changes are adopted. However, we can waive this notice and comment rulemaking if we find good cause to do so (that is, notice and comment procedure is impracticable, unnecessary, or contrary to the public interest) and the agency incorporates a statement of the finding and the reasons therefore in the final rule that is published.

In this case, we believe that it is unnecessary to undertake notice and comment rulemaking procedures because the changes this notice adopts have no substantive effect. Specifically, in this notice, the two definitions that have been adopted merely refer the reader back to the statutory criteria for waiver. The correction and/or update of names of entities and persons does not alter to whom the regulations are referring. The citations that have been removed were to non-existent regulatory cites. The addition of the word "quality" throughout the regulations merely provides clarification as to what the regulated entity is ultimately assessing without altering the means to be used for such assessments or the parties that must conduct those assessments. The relocation of one requirement from under one heading to

another did not alter what was required of whom. Also, the grammatical and capitalization changes that have been made had no effect on the meaning of the provisions that contain them. As the substance of the regulatory text itself governs regulated entities, the substantive alteration of the preamble to make it conform to the regulatory text had no substantive effect.

As these changes do not have any substantive effect, we believe that no benefit would come of submitting these changes to public comment. We therefore find that it is "unnecessary" to submit these changes to notice and comment rulemaking as that term is used in section 553(b)(B) of the Administrative Procedure Act. Thus, we find good cause to waive notice and comment rulemaking procedures.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 18, 2003.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 03–21549 Filed 8–21–03; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[PP Docket No. 00–67; FCC 00–342]

Compatibility Between Cable Systems and Consumer Electronics Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission adopted new rules on the labeling of digital television receivers and other consumer electronics receiving devices. Certain rules contained new and modified information collection requirements and were published in the **Federal Register** on October 27, 2000. This document announces the effective date of these published rules.

DATES: The amendments to §§ 15.3, 15.19 and 15.18 published at 65 FR 64388, October 27, 2000. became effective on May 1, 2001.

FOR FURTHER INFORMATION CONTACT: Nancy J. Brooks, Office of Engineering and Technology, Policy and Rules Division, (202) 418–2454.

SUPPLEMENTARY INFORMATION: On May 1, 2001, the Office of Management and Budget (OMB) approved the information collection requirements contained in Sections 15.3; 15.19; and 15.118 pursuant to OMB Control No. 3060–0959. Accordingly, the information collection requirements contained in these rules became effective on May 1, 2001.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21506 Filed 8–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2350; MB Docket No. 03–25, RM–10637]

Radio Broadcasting Services; Basin City and Othello, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Wheeler Broadcasting, Inc., substitutes Channel 248C2 for Channel 248C3 at Othello, Washington, reallots Channel 248C2 to Basin City, Washington, and modifies Station KLZN's license accordingly. Channel 248C2 can be allotted to Basin City, Washington, in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.2 km (4.5 miles) north of Basin City. The coordinates for Channel 248C2 at Basin City, Washington, are 46–39–26 North Latitude and 119–10–23 West Longitude.

DATES: Effective September 29, 2003.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–25, adopted July 23, 2003, and released July 24, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Basin City, Channel 248C2, and by removing Othello, Channel 248C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–21505 Filed 8–21–03; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 68, No. 163
Friday, August 22, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 334

RIN 3206–AJ94

Temporary Assignment of Employees Between the Federal Government and State, Local, and Indian Tribal Governments, Institutions of Higher Education, and Other Eligible Organizations

AGENCY: Office of Personnel Management (OPM).

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is proposing a plain language rewrite of its regulations regarding the Intergovernmental Personnel Act (IPA) Mobility Program as part of a broader review of OPM's regulations. The purpose of the revision is to make the regulations more readable.

DATES: Comments must be received on or before October 21, 2003.

ADDRESSES: Send or deliver comments to Susan M. Barker, Manager, Recruitment, Examining, and Assessment Group, Office of Personnel Management, Room 6500, 1900 E Street NW., Washington, DC, 20415, fax: (202) 606–0390, or e-mail them to *smbarker@opm.gov*.

FOR FURTHER INFORMATION CONTACT: Susan M. Barker by telephone at (202) 606–2226; by fax at (202) 606–0390; or by e-mail at *smbarker@opm.gov*.

SUPPLEMENTARY INFORMATION: OPM is issuing proposed regulations implementing the provisions in 5 U.S.C. 3371–3376 that concern the temporary assignment of employees to and from States. The purpose of these proposed revisions to part 334 is not to make substantive changes, but rather to enhance the clarity and improve the readability of the regulations. To achieve these ends, we have converted the regulations to a question-and-answer format. In addition, to further clarify this rule, we are soliciting comment on whether certain entities define themselves as: (1) an "instrumentality or authority of a state or states or local government" as cited in 5 U.S.C. 3371; and/or (2) a "Federal-State authority or instrumentality" as cited in 5 U.S.C. 3371.

E. O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E. O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR part 334

Colleges and universities, Government employees, Indians, Intergovernmental relations.

Kay Coles James,
Director, Office of Personnel Management.

Accordingly, OPM is proposing to revise 5 CFR part 334 to read as follows:

PART 334—TEMPORARY ASSIGNMENT OF EMPLOYEES BETWEEN THE FEDERAL GOVERNMENT AND STATE, LOCAL, AND INDIAN TRIBAL GOVERNMENTS, INSTITUTIONS OF HIGHER EDUCATION, AND OTHER ELIGIBLE ORGANIZATIONS

Sec.

334.101 What is the purpose of this part?
334.102 Definitions.
334.103 What are the requirements for an organization to participate in this program?
334.104 What is the duration of an assignment in this program?
334.105 Must Federal employees return to the Government at the end of an assignment?
334.106 Is there a requirement for a written agreement?
334.107 What are the rules for terminating an assignment?
334.108 Are any reports required with this program?

Authority: 5 U.S.C. 3376; E.O. 11589, 3 CFR 557 (1971–1975).

§ 334.101 What is the purpose of this part?

The purpose of this part is to implement the objectives of title IV of the Intergovernmental Personnel Act of 1970 and title VI of the Civil Service Reform Act. These statutes authorize the temporary assignment of employees between the Federal Government and State, local, and Indian tribal governments, institutions of higher education and other eligible organizations.

§ 334.102 Definitions.

In this part:

Assignment means a period of service under chapter 33, subchapter VI of title 5, United States Code;

Employee, for purposes of participation in this program, means an individual serving in a Federal agency under a career or career-conditional appointment, including career appointees in the Senior Executive Service, individuals under appointments of equivalent tenure in excepted service positions (including, *e.g.*, Presidential Management Intern program, the Federal Career Intern program, Student Career Experience program, and Veterans' Recruitment Appointments (VRA)); or an individual employed for at least 90 days in a career position with a State, local, or Indian tribal government, institution of higher education, or other eligible organization;

Federal agency has the same meaning as in 5 U.S.C. 3371(3);

Indian tribal government has the same meaning as in 5 U.S.C. 3371(2)(C);

Institution of higher education means a domestic, accredited public or private 4-year college or university, or a technical or junior college;

Local government has the same meaning as in 5 U.S.C. 3371(2)(A) and (B);

Other organization has the same meaning as in 5 U.S.C. 3371(4); and

State has the same meaning as in 5 U.S.C. 3371(1).

334.103 What are the requirements for an organization to participate in this program?

(a) Organizations interested in participating in the mobility program as an instrumentality or authority of a State or local government or as an "other organization" as set out in this part must have their eligibility certified by the Federal agency with which they are entering into an assignment.

(b) Written requests for certification should include a copy of the organization's:

(1) Articles of incorporation;

(2) Bylaws;

(3) Internal Revenue Service nonprofit statement; and

(4) Any other information which indicates that the organization has as a principal function the offering of professional advisory, research, educational, or development services, or related services to governments or universities concerned with public management.

(c) Federally funded research and development centers which appear on a master list maintained by the National Science Foundation are eligible to participate in the program.

(d) An organization denied certification by an agency may request reconsideration by the Office of Personnel Management (OPM).

§ 334.104 What is the duration of an assignment in this program?

(a) The head of a Federal agency, or his or her designee, may make an assignment for up to 2 years, which may be extended for up to 2 more years if the parties agree.

(b) A Federal agency may not send an employee on an assignment if that person is a Federal employee and has participated in this program for more than a total of 6 years during his or her Federal career. OPM may waive this provision upon the written request of the agency head, or his or her designee.

(c) A Federal agency may not send or receive an employee on an assignment if the employee has participated in this program for 4 continuous years without at least a 12-month return to duty with the organization from which the employee was originally assigned.

§ 334.105 Must Federal employees return to the Government at the end of an assignment?

(a) A Federal employee assigned under this subchapter must agree, as a condition of accepting an assignment, to serve with the Federal Government upon completion of the assignment for a period equal to the length of the assignment.

(b) If the employee fails to carry out this agreement, he or she must reimburse the Federal agency for its share of the costs of the assignment (exclusive of salary and benefits). The head of the Federal agency, or his or her designee, may waive this reimbursement for good and sufficient reason.

§ 334.106 Is there a requirement for a written agreement?

(a) Before the assignment begins, the assigned employee and the Federal agency, the State, local, or Indian tribal government, institution of higher education, or other eligible organization shall enter into a written agreement recording the obligations and responsibilities of the parties, as specified in 5 U.S. Code 3373–3375.

(b) Federal agencies must maintain a copy of each assignment agreement form as well as any modification to the agreement.

§ 334.107 What are the rules for terminating an assignment?

(a) An assignment may be terminated at any time at the request of the Federal agency or the State, local, or Indian tribal government, institution of higher education, or other organization participating in this program. Where possible, the party terminating the assignment prior to the agreed upon date should provide 30-days advance notice along with a statement of reasons to the other parties to the agreement.

(b) Federal assignees continue to encumber the positions they occupied prior to assignment, and the position is subject to any personnel actions that might normally occur. At the end of the assignment, the employee must be allowed to resume the duties of his/her position or must be reassigned to another position of like pay and grade.

(c) An assignment is terminated automatically when the employer/employee relationship ceases to exist between the assignee and his/her original employer

(d) The Office of Personnel Management shall have the authority to direct Federal agencies to terminate assignments or take other corrective actions when assignments are found to have been made in violation of the requirements of the Intergovernmental Personnel Act and/or this part.

§ 334.108 Are any reports required with this program?

A Federal agency which assigns an employee to, or receives an employee from, a State, local, or Indian tribal government, institution of higher education or other eligible organization in accordance with this part shall submit to the Office of Personnel Management such reports as the Office of Personnel Management may request.

[FR Doc. 03–21417 Filed 8–21–03; 8:45 am]

BILLING CODE 6325–43–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ78

Prevailing Rate Systems; Redefinition of the North Dakota and Duluth, MN, Appropriated Fund Wage Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing a proposed rule that would redefine the North Dakota and Duluth, MN, Federal Wage System (FWS) appropriated fund wage areas. The proposed rule would redefine Clearwater and Mahnomen Counties and the White Earth Indian Reservation portion of Becker County from the North Dakota FWS wage area to the Duluth FWS wage area. These changes would assign all blue-collar Federal employees working in Indian Health Service facilities in northern Minnesota to one FWS wage schedule.

DATES: We must receive comments on or before September 22, 2003.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Strategic Human Resources Policy Division, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, e-mail *payleave@opm.gov*, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Mark A. Allen at (202) 606–2848, e-mail *maallen@opm.gov*, or FAX: (202) 606–4264.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is proposing to redefine the North Dakota and Duluth, MN, Federal Wage System (FWS) appropriated fund wage areas. This proposed rule would redefine Clearwater and Mahnomen Counties and the White Earth Indian Reservation portion of Becker County from the North Dakota FWS wage area to the Duluth FWS wage area. We are taking this action because FWS employees who work for closely related Bemidji Area Indian Health Service (IHS) facilities in northern Minnesota are currently in two separate FWS wage areas. The Department of Health and Human Services has requested that OPM redefine the North Dakota and Duluth wage areas so that blue-collar employees of its IHS facilities in northern Minnesota would be covered by one wage schedule.

OPM considers the following regulatory criteria under 5 CFR 532.211 when defining FWS wage area boundaries:

(i) Distance, transportation facilities, and geographic features;

(ii) Commuting patterns; and

(iii) Similarities in overall population, employment, and the kinds and sizes of private industrial establishments.

Based on our analysis of the regulatory criteria for defining appropriated fund FWS wage areas, we find that the criteria for Clearwater, Mahnomen, and Becker Counties do not strongly favor defining the counties to one FWS wage area more than another. However, the IHS medical centers in northern Minnesota are in an unusual situation in that they are in a rural area that is economically and socially integrated by the local reservation system and not strongly integrated with the labor markets in either the North Dakota or Duluth FWS survey areas. It is desirable to have IHS employees aligned under one wage schedule because the area and population serviced by the medical centers serves as a unique labor market. However, there is insufficient private sector industry and FWS employment in northern Minnesota to meet OPM's regulatory requirements for establishing a separate FWS wage area for the IHS employees there. Because it is not feasible to establish a separate FWS wage area for IHS employees in northern Minnesota, the FWS employment locations must be defined to the area of application of an existing FWS wage area.

Analysis of OPM's regulatory criteria for defining FWS wage areas shows that the majority of IHS employment locations under the Bemidji Area in northern Minnesota are more closely aligned with the Duluth wage area than the North Dakota wage area. The White Earth, Red Lake, and Cass Lake Indian Health Centers are part of the Bemidji Area but their associated reservations are not entirely within the Duluth wage area. The White Earth Indian Reservation occupies the northern portion of Becker County and most of Mahnomen County, while the Red Lake and Cass Lake Indian Reservations occupy the northern portions of Clearwater County. We therefore propose that Clearwater and Mahnomen Counties be redefined from the North Dakota wage area to the Duluth wage area. We also propose that the White Earth Indian Reservation portion of Becker County be redefined from the North Dakota wage area to the Duluth wage area.

There are 11 IHS employees in Becker County, and none in Clearwater or Mahnomen Counties. There are several FWS employees stationed in the part of Becker County that we do not propose to define to the Duluth wage area. We believe the mixed nature of the regulatory analysis findings for Becker County indicates that the non-IHS employment locations in Becker County should remain appropriately defined to the North Dakota wage area. The affected IHS employees in Becker County would be placed on the wage schedule for the Duluth wage area after we publish final regulations in the **Federal Register**.

The Federal Prevailing Rate Advisory Committee (FPRAC), the national labor-management committee that advises OPM on FWS pay matters, reviewed and recommended these changes by consensus. Based on its review of the regulatory criteria for defining FWS wage areas, FPRAC recommended no other changes in the geographic definitions of the North Dakota and Duluth wage areas.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Kay Coles James,

Director, U.S. Office of Personnel Management.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. In appendix C to subpart B, the wage area listing for the State of Minnesota is amended by revising the listing for Duluth; and for the State of North Dakota, to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

MINNESOTA
Duluth
Survey Area

Minnesota:
Carlton
St. Louis
Wisconsin:
Douglas

Area of Application. Survey area plus:

Minnesota:
Aitkin
Becker (Including the White Earth Indian Reservation portion only)
Beltrami
Cass
Clearwater
Cook
Crow Wing
Hubbard
Itasca
Koochiching
Lake
Lake of the Woods
Mahnomen
Pine
Wisconsin:
Ashland
Bayfield
Burnett
Iron
Sawyer
Washburn

* * * * *

NORTH DAKOTA
Survey Area

North Dakota:
Burleigh
Cass
Grand Forks
McLean
Mercer
Morton
Oliver
Traill
Ward
Minnesota:
Clay
Polk

Area of Application. Survey area plus:

North Dakota:
Adams
Barnes
Benson
Billings
Bottineau
Bowman
Burke
Cavalier
Dickey
Divide
Dunn
Eddy
Emmons
Foster
Golden Valley
Grant
Griggs
Hettinger
Kidder
La Moure
Logan
McHenry
McIntosh
McKenzie
Mountrail
Nelson
Pembina

Pierce
Ramsey
Ransom
Renville
Richland
Rolette
Sargent
Sheridan
Sioux
Slope
Stark
Steele
Stutsman
Towner
Walsh
Wells
Williams
Minnesota:
Becker (Excluding the White Earth Indian Reservation portion)
Kittson
Marshall
Norman
Otter Tail
Pennington
Red Lake
Roseau
Wilkin

* * * * *

[FR Doc. 03–21415 Filed 8–21–03; 8:45 am]
BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–159–AD]
RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) to prohibit operations into known or forecast icing conditions under certain conditions. That AD also requires an inspection to detect damage of the wing anti-ice (WAI) ducts to determine if the external shrouds of the ducts are open or cracked, and replacement of any damaged duct with a new duct or a duct with the same part number, and an optional terminating action. This action would require accomplishment of the previously optional terminating action for the AFM revision and inspection. The actions specified by the proposed AD are intended to prevent the WAI ducts from collapsing, cracking, or rupturing, which could cause leakage of hot air in the under-floor pressurized area of the fuselage when the anti-ice system is turned on. Such leakage of hot air results in insufficient heat for the anti-ice system and consequent aerodynamic degradation. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 22, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–159–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–159–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Parrillo, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7505; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–159–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–159–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 5, 2003, the FAA issued AD 2003–12–06, amendment 39–13191 (68 FR 35152, June 12, 2003), applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes, to require a revision to the Airplane Flight Manual (AFM) to prohibit operations into known or forecast icing conditions under certain conditions. That AD also requires an inspection to detect damage of the wing anti-ice (WAI) ducts to determine if the external shrouds of the ducts are open or cracked, and replacement of any damaged duct with a new duct or a duct with the same part number, and an optional terminating action. That action was prompted by several reports of failure of the WAI ducts. The

requirements of that AD are intended to prevent the WAI ducts from collapsing, cracking, or rupturing, which could cause leakage of hot air in the under-floor pressurized area of the fuselage when the anti-ice system is turned on. Such leakage of hot air results in insufficient heat for the anti-ice system and consequent aerodynamic degradation.

Actions Since Issuance of Previous Rule

In the preamble of AD 2003–12–06, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered to require replacement of all four WAI ducts with new ducts per CRJ 700/900 Series Regional Jet (Bombardier) Alert Service Bulletin A670BA–30–007, which would terminate the inspection and AFM requirements of that AD. We now have determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

The manufacturer has issued CRJ 700/900 Series Regional Jet (Bombardier) Alert Service Bulletin A670BA–30–007, Revision A, dated April 15, 2003 (referenced in AD 2003–12–06 as the appropriate source of service information for doing the required actions). The alert service bulletin describes procedures for a detailed inspection to detect damage of the four WAI ducts and to determine if the external shrouds of the ducts are open or cracked, and replacement of any damaged duct with a new duct or a duct with the same part number (P/N) that is free of any dent or other handling damage. The alert service bulletin also describes procedures for eventual replacement of all four WAI ducts with new ducts.

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, classified this service bulletin as mandatory and issued Canadian airworthiness directive CF–2003–07 to ensure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2003–12–06 to continue to require the following actions:

- A revision to the Limitations Section of the AFM to prohibit operations into known or forecast icing conditions under certain conditions;
- An inspection to detect damage of the WAI ducts to determine if the external shrouds of the ducts are open or cracked; and
- Replacement of any damaged duct with a new duct or a duct with the same part number.

The proposed AD also would require accomplishment of the previously optional terminating action for the AFM revision and inspection. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Cost Impact

There are approximately 55 airplanes of U.S. registry that would be affected by this proposed AD.

The AFM revision that is currently required by AD 2003–12–06 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required AFM revision on U.S. operators is estimated to be $3,575, or $65 per airplane.

The inspection that is currently required by AD 2003–12–06 takes approximately 4 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $14,300, or $260 per airplane.

The terminating action that is proposed in this AD action would take approximately 48 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed terminating action in this AD on U.S. operators is estimated to be $171,600, or $3,120 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with the proposed inspection in this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–13191 (68 FR 35152, June 12, 2003), and by adding a new airworthiness directive (AD), to read as follows:

Bombardier, Inc. (Formerly Canadair): Docket 2003–NM–159–AD. Supersedes AD 2003–12–06, Amendment 39–13191.

Applicability: Model CL–600–2C10 (Regional Jet Series 700 & 701) series airplanes, serial numbers 10004 through 10119 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the wing anti-ice (WAI) ducts from collapsing, cracking, or rupturing, consequent leakage of hot air in the under-floor pressurized area of the fuselage when the anti-ice system is turned on, insufficient heat for the anti-ice system, and aerodynamic degradation, accomplish the following:

Referenced Service Information

(a) The term "service bulletin," as used in this AD, means the Accomplishment Instructions of CRJ 700/900 Series Regional Jet (Bombardier) Alert Service Bulletin A670BA–30–007, Revision A, dated April 15, 2003, including Appendices A and B, dated March 18, 2003.

Restatement of Requirements of AD 2003–12–06, Amendment 39–13191

Airplane Flight Manual (AFM) Revision

(b) Within 48 hours after June 27, 2003 (the effective date of AD 2003–12–06, amendment 39–13191), revise the Limitations Section of the CRJ 700 AFM to include the following (this may be accomplished by inserting a copy of this AD into the AFM):

"1. Anti-Ice Bleed Leak Detection Controller (AILC) Channels (*see* **Note 1**):

Flight with "WING A/I FAULT" status message on the engine indication and crew alerting system (EICAS) is not authorized, except as follows:

One may be inoperative as indicated by "WING A/I FAULT" status message on EICAS provided:

(a) Wing Anti-Ice switch is selected OFF, and

(b) Operations are not conducted into known or forecast icing conditions.

2. Wing/Fuselage Anti-Ice Bleed Leak Detection Loops (*see* **Note 1**):

Flight with Wing/Fuselage Anti-Ice Bleed Leak Detection Loops inoperative is not authorized, except as follows:

One loop (A or B) may be inoperative provided:

(a) Wing Anti-Ice switch is selected OFF, and

(b) Operations are not conducted into known or forecast icing conditions.

Note 1: This limitation supersedes the Master Minimum Equipment List (MMEL)."

Detailed Inspection and Corrective Actions if Necessary

(c) Within 150 flight hours after June 27, 2003, do a detailed inspection to detect damage of the four WAI ducts and to determine if the external shrouds of the WAI ducts are open or cracked, per the alert service bulletin.

(1) If no discrepancy is found, no further action is required by this paragraph.

(2) If any external shroud of a WAI duct is found open or cracked, before further flight, inspect the surrounding equipment and structure per a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, or Transport Canada Civil Aviation (TCCA) (or its delegated agent).

(3) If any damaged WAI duct is found, before further flight, replace the WAI duct with a new duct or a duct with the same part number (P/N) that is free of any dent, crease, or other handling damage, per the alert service bulletin.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required."

Reporting Requirement

(d) Submit a report of the results of the inspection required by paragraph (c) of this AD per the alert service bulletin specified in paragraph (c) of this AD. Information collection requirements contained in this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) If the inspection was done after June 27, 2003: Submit the report within 14 days after the inspection.

(2) If the inspection was accomplished prior to June 27, 2003: Submit the report within 14 days after June 27, 2003.

New Requirements of This AD

Terminating Action

(e) Within 1,500 flight hours after the effective date of this AD, replace all four WAI ducts with new ducts having P/N GG670–80504–5 or –6, or P/N GG670–80312–3 or –4, as applicable, per the service bulletin. Replacement of all four WAI ducts terminates the requirements of this AD. After doing the replacement, the AFM revision required by paragraph (b) of this AD may be removed.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, New York ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Canadian airworthiness directive CF–2003–07, effective on March 25, 2003.

Issued in Renton, Washington, on August 18, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21523 Filed 8–21–03; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–15–AD]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332C, C1, L, L1, AS350B, BA, B1, B2, B3 and D, and AS355E, F, F1, F2 and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters that have a Breeze 300-pound electric hoist (hoist) installed. This proposal would require modifying and re-identifying the hoist operator control unit and replacing certain fuses. This proposal is prompted by a test of a hoist that revealed an anomaly in the electrical control circuit. The actions specified by this proposed AD are intended to prevent failure of the hoist pyrotechnic squib electrical control unit, lack of adequate current to activate the hoist pyrotechnic squib, an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before October 21, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the

Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–15–AD, 2601 Meacham Blvd., Room 663, Forth Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5120, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this document may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003–SW–15–AD." The postcard will be date stamped and returned to the commenter.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS332C, C1, L, L1, Model AS350B, BA, BB, B1, B2, B3 and D, and Model AS355E, F, F1, F2 and N helicopters. The DGAC advises of the discovery of a case of failure of a rescue hoist emergency release control system to operate due to an anomaly in the electrical control circuit.

Eurocopter has issued Alert Service Bulletin (ASB) No. 25.00.71, for Model AS355E, F, F1, F2, and N helicopters; and ASB No. 25.00.79, for Model AS350B, BA, BB, B1, B2, B3, and D helicopters. Both ASBs are dated November 12, 2002, and specify embodiment of MOD 07 3190 on helicopters equipped with the fixed parts for the hoist. MOD 07 3190 consists of (1) eliminating resistor 27M in the hoist operator's control unit 26M and (2) replacing the 25A quick-response fuses on the Honeywell unit at 31 alpha or 21 delta for the Model AS350 or on the distribution panel 10 alpha for the Model 355 helicopters. Eurocopter has also issued alert Service Bulleting No. 25.01.18, dated November 12, 2002, for Model AS332C, C1, L, and L1 helicopters. Modification 332PCS 78 288 consists of eliminating resistor 81M in hoist box 91M and re-identifying the hoist box as 332P67–2894–01, –02, –03, or –04, depending on which electrical wiring assembly is installed in the helicopter. The DGAC has classified these ASBs as mandatory and issued AD 2002–585(A) and AD 2002–584(A), both dated November 27, 2002, to ensure the continued airworthiness of these helicopters in France.

This AD would require correction of an anomaly between the Eurocopter hoist control box electrical circuits and the Breeze 300 lb. hoist. The Eurocopter hoist control box supplies 2 amperes to the hoist pyrotechnic squib, however the Breeze 300 lb. hoist requires 10 amperes to activate the pyrotechnic squib. The TRW (LUCAS and Air Equipment) hoists require only 1 ampere to activate their pyrotechnic squibs. Therefore, this AD would not apply to the TRW (LUCAS and Air Equipment) hoist installations even though DGAC AD 2002–585(A) applied to these hoists.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

This previously described unsafe condition is likely to exist or develop on other helicopters of these same type designs registered in the United States. Therefore, the proposed AD would require, within 100 hours time-in-service (TIS) or 2 months, whichever comes first, modifying and re-identifying the hoist operator control unit and replacing certain fuses. The actions would be required to be accomplished in accordance with the ASBs described previously.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this proposed AD would affect 58 helicopters of U.S. registry (50 Model AS350 helicopters and 8 Model AS355 helicopters, and no Model AS332 helicopters) and the proposed actions would take approximately 3.5 work hours per helicopter to accomplish at an average labor rate of $60 per work hour. Required parts would cost approximately $10 for a time-delay fuse for Model AS350 series helicopters, or $20 for two time-delay fuses for Model AS355 series helicopters. Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators would be $12,840 to modify each hoist in the entire fleet.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 2003–SW–15–AD.

Applicability: Model AS332C, C1, L, and L1, AS350B, BA, B1, B2, B3 and D, and AS355E, F, F1, F2 and N helicopters with a Breeze 300-pound electric hoist (hoist) and hoist operator control unit 26M, part number (P/N) 350A63–1136–00 or 350A63–1136–01, and hoist electric box 91M, P/N 332A67–2875–00, installed, certificated in any category.

Compliance: Required within 100 hours time-in-service or within 2 months, whichever occurs first, unless accomplished previously.

To prevent failure of the hoist pyrotechnic squib electrical control unit, lack of adequate current to activate the hoist pyrotechnic squib, an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency, and subsequent loss of control of the helicopter, accomplish the following:

(a) Modify and re-identify the hoist operator control unit; replace the fuses; and functionally test the hoist operation and the emergency jettison controls in accordance with the Accomplishment Instructions, paragraph 2B, Operational Procedure, of Alert Service Bulletin (ASB) No. 25.00.71 for Model AS355E, F, F1, F2, and N helicopters; ASB No. 25.00.79 for Model AS350B, BA. B1, B2, B3, and D helicopters; and ASB No. 25.01.18 for Model AS332 C, C1, L, and L1 helicopters, all dated November 12, 2002, as applicable.

(b) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Safety Management Group, Rotorcraft Directorate, FAA, for information about previously approved alternative methods of compliance.

Note: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 2002–584(A) and AD 2002–585(A), both dated November 27, 2002.

Issued in Fort Worth, Texas, on August 8, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–21522 Filed 8–21–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 141

RIN 1515–AC15

Anticounterfeiting Consumer Protection Act: Entry Documentation

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of withdrawal of proposed rulemaking.

SUMMARY: This document informs the public that the Bureau of Customs and Border Protection (CBP) has decided to withdraw the proposal to require importers to provide on the invoice a listing of all trademarks appearing on imported merchandise and its packaging. The proposal was intended to provide a means to determine whether imported merchandise bears an infringing trademark in violation of law. The authority for the proposal was section 12 of the Anticounterfeiting Consumer Protection Act. Based on the comments received in response to the proposal and further evaluation of the proposal, CBP has determined that the proposed rule would not be an efficient and effective way to combat counterfeiting and is withdrawing the proposal.

DATES: As of August 22, 2003, the proposed rule published on September 13, 1999 (64 FR 49423) is withdrawn.

FOR FURTHER INFORMATION CONTACT: George F. McCray, Esq., Chief, Intellectual Property Branch, Office of Regulations and Rulings, Customs and Border Protection, (202) 572–8710.

SUPPLEMENTARY INFORMATION:

Background

On September 13, 1999, Customs (then exclusively under the Department of the Treasury; as of March 1, 2003, the U.S. Customs Service was transferred to the Department of Homeland Security, and became redesignated as the Bureau of Customs and Border Protection (CBP)) published a document in the **Federal Register** (64 FR 49423) proposing to amend the Customs Regulations to require all importers to provide on each invoice of imported merchandise a listing of any trademark information appearing on the imported merchandise, including packaging. The proposal was intended to provide a means to determine whether imported merchandise bears an infringing trademark in violation of law. The authority for the proposal was section 12 of the Anticounterfeiting Consumer Protection Act of 1996 (ACPA)(19 U.S.C. 1484(d)).

Comments on the proposed amendment were solicited for 60 days.

The comment period closed November 13, 1999. Fifty-seven comments were received. Most were against the proposal. Among the reasons cited were that this requirement would present an overwhelming burden to importers, trademark owners, manufacturers and suppliers, and establish unrealistic recordkeeping requirements. Further, the requirement would likely not be complied with by counterfeiters. Additionally, it was stated that the proposal would not provide Customs with any new enforcement tools to combat the importation of infringing goods into the United States.

The following summarized comments supporting the withdrawal of the proposal are noted.

Costs of Compliance Would Be Enormous

The administrative costs associated with complying with this requirement would be enormous. The proposed amendment would cause severe and unreasonable burdens to trade and provide only minimal, if any, benefit to CBP enforcement.

The statement in the notice that the proposal would require importers to "identify information of a sort that is already maintained by the importer" is incorrect. The proposal would require importers to expend extraordinary efforts canvassing their suppliers—and their suppliers' third-party suppliers—in order to develop required trademark lists. Additionally, even more effort would be required to ensure that the lists are up to date and accurately reflect the components contained in the merchandise covered by each specific invoice.

Creating and maintaining this database would force importers to create new administrative procedures devoted solely to tracking trademarks on components contained within final products. It would also force importers to devote resources to policing suppliers of such components.

Unrealistic Recordkeeping Requirements

The proposed requirement would also place difficult recordkeeping obligations on foreign suppliers and importers who do not have direct knowledge of product components or parts. It would be extremely difficult to effectively monitor invoicing practices of thousands of different foreign vendors to ensure that trademark information is accurately listed on invoices. Additionally, many imported products incorporate parts and components which are themselves trademarked merchandise. Obtaining information as to the trademark status of parts and components would require considerable effort from both vendors and importers, and in certain instances would be unavailable in any event.

Most businesses (particularly those in the areas of high technology and communications) have very rapidly changing product specifications, often changing in-box components bearing trademarks during a production run. The logistics of managing exactly which trademarks are included in which box on which shipment would add enormous complexity and cost to the supply chain.

No New Enforcement Tools

Furthermore, it was stated that the proposed regulation would do nothing to enhance Customs ability to enforce ACPA. Requiring trademark information to be printed on each invoice would not address the principal problem, which is mis-declaration by counterfeiters. Listing trademarks on an invoice does not help a Customs inspector determine whether or not the merchandise bears an infringing trademark. Generally, the only method of determining this is through actual inspection of the merchandise; in fact, without such inspections, substantiating the veracity of the information contained in these commercial invoices is extremely difficult.

Trademarked Merchandise Will Be Identified for Criminals and Counterfeiters Who Will Not Comply With New Requirements

The fact that a shipment consists of branded apparel is not necessarily apparent from commercial and transportation documents and the identity of the trademarks is not always apparent from the name of the seller or consignee. This present circumstance makes it difficult for criminals to identify shipments of interest. The proposed entry documentation requirements would eliminate this margin of safety and make it easier for this class of individual to target shipments.

Increased Penalties

The proposal creates the likelihood that importers of legitimate product could be penalized for inadvertent omissions of some protected trademarks from the invoice. The regulatory proposal would create an affirmative obligation on the part of exporters and importers to list all trademarks appearing on the merchandise to be imported into the United States, and the omission of information on any trademarked goods would impose liability, under 19 U.S.C. 1592(a) for any "material omission".

Conclusion

CBP has determined that the proposed rulemaking should be withdrawn. After consideration of the comments and further review, CBP agrees with the majority of commenters that the proposed approach would not be an effective or efficient way to combat counterfeiting. Since section 12 of the ACPA does not mandate revision of the Customs Regulations, but rather provides authority for CBP to require such additional information as the agency determines "may be necessary" to determine whether imported merchandise bears infringing trademarks, CBP does not believe amendment of the Customs Regulations is required; Customs already has access to information from other sources which effectively serves to identify imported merchandise bearing violative trademarks. Accordingly, CBP is withdrawing the proposal published in the **Federal Register** (64 FR 49423) on September 13, 1999. If, in the future, a more effective and efficient method of data collection is developed to aid in determining whether imported merchandise bears an infringing trademark, CBP will consider implementation of such measures at that time.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

Approved: August 18, 2003.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–21574 Filed 8–21–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 14a

[REG–122917–02]

RIN 1545–BA75

Statutory Stock Options; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed rulemaking relating to statutory stock options.

DATES: The public hearing originally scheduled for Tuesday, September 2, 2003, at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Guy R. Traynor of the Legal Processing Division, Associate Chief Counsel, at (202) 622–3693 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on June 9, 2003 (68 FR 34344), announced that a public hearing was scheduled for September 2, 2003 at 10 a.m., in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the Public hearing is proposed regulations under sections 421, 422, 423, 424, 425 and 6039, of the Internal Revenue Code. The public comment period for these proposed regulations expired on August 12, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of topics to be addressed. As of August 18, 2003, no one has requested to speak. Therefore, the public hearing scheduled for September 2, 2003 is cancelled.

LaNita Van Dyke,

Acting Chief, Legal Publishing Division, Associate Chief Counsel (Procedure & Administration).

[FR Doc. 03–21470 Filed 8–21–03; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7547–8]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to delete the Resin Disposal Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) Region III is issuing a notice of intent to delete the Resin Disposal Superfund Site (Site) located in the Borough of Jefferson, Allegheny County, Pennsylvania, from the National Priorities List (NPL) and requests public comments on this notice of intent. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, is found at appendix B of 40 CFR part 300 of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). EPA and the Commonwealth of Pennsylvania, through the Pennsylvania Department of Environmental Protection (PADEP), have determined that all appropriate response actions under CERCLA, other than operation and maintenance and five-year reviews, have been completed. However, this deletion does not preclude future actions under Superfund.

In the "Rules and Regulations" Section of today's **Federal Register**, we are publishing a direct final notice of deletion of the Resin Disposal Superfund Site without prior notice of intent to delete, because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this deletion in the preamble to the direct final deletion. If we receive no adverse comment(s) on the direct final notice of deletion, we will not take further action on this notice of intent to delete. If we receive adverse comment(s), we will withdraw the direct final notice of deletion and it will not take effect. We will, as appropriate, address all public comments in a subsequent final deletion notice based on this notice of intent to delete. We will not institute a second comment period on this notice of intent to delete. Any parties interested in commenting must do so at this time. For additional information, see the direct final notice of deletion which is located in the Rules Section of this **Federal Register**.

DATES: Comments concerning this Site must be received by September 22, 2003.

ADDRESSES: Written comments should be addressed to: Trish Taylor, Community Involvement Coordinator, (3HS43), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–5528, *taylor.trish@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Rashmi Mathur, Remedial Project Manager (3HS22), U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–5234, *mathur.rashmi@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, *see* the Direct Final Notice of Deletion which is located in the Rules Section of this **Federal Register**.

Information Repositories: Comprehensive information about the Site is available for viewing and copying at the Site Information Repositories at the following locations: U.S. EPA Region III, Regional Center for Environmental Information (RCEI), 1650 Arch Street, Philadelphia, PA 19103, (215) 814–5364, Monday through Friday 8 a.m. to 4:30 p.m.; the Jefferson Borough Library (contact, Ann Reschenthaler), Municipal Building, 925 Old Clairton Road, Jefferson Borough, Pennsylvania 15025 (412) 655–7741, Monday through Thursday 11:00 a.m. to 8:30 p.m.; and the Pennsylvania Department of Environmental Protection, Pittsburgh Office, 400 Waterfront Drive, Pittsburgh, PA 15222 (412) 442–4197.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: August 4, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–21597 Filed 8–21–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 414

[CMS–1167–P]

RIN 0938–AL27

Medicare Program; Payment for Respiratory Assist Devices With Bi-level Capability and a Back-up Rate

AGENCY: Center for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would clarify that respiratory assist devices with bi-level capability and a back-up rate must be paid as capped rental items and not paid as items requiring frequent and substantial servicing (FSS), as defined in section 1834(a)(3) of the Social Security Act. This action would correct coding and payment errors, which began in 1994, when some Medicare contractors misinterpreted our statutorily prescribed policy and allowed these devices to be paid under the category for items requiring FSS.

DATES: *Comment Date:* Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 21, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1167–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail.

Mail written comments (one original and two copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1167–P, P.O. Box 8017, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are

encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joel Kaiser, (410) 786–4499.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone (410) 786–7195.

Copies: This **Federal Register** document is available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. The web site address is: *http://www.access.gpo.gov/nara/index.html.*

I. Background

A. DME Fee Schedule Payment Methodology

The Medicare Part B (Supplementary Medical Insurance) payment rules for durable medical equipment (DME) are located in section 1834(a) of the Social Security Act (the Act). In accordance with section 1834(a) of the Act, payment for DME is made on a fee schedule basis with items falling into several different payment categories, each with its own unique payment rules. The respiratory assist devices with bi-level capability would be placed in the category for other items of durable medical equipment, or capped rental items, as defined in section 1834(a)(7) of the Act.

Section 1834(a) of the Act provides that Medicare payment for DME is equal to 80 percent of the lesser of the actual charge for the item or the fee schedule amount for the item. It classifies DME into the following payment categories:

- Inexpensive or other routinely purchased DME.
- Items requiring frequent and substantial servicing (FSS).
- Customized items.
- Oxygen and oxygen equipment.
- Other covered items (other than DME).
- Other items of DME (capped rental items).

There are different payment rules for each category of DME. With the exception of customized items, fee schedule amounts are calculated for each item of DME, identified by codes in the Healthcare Common Procedure Coding System (HCPCS). The Medicare payment amount for a customized item of DME is based on the Medicare carrier's individual consideration of that item.

In general, the fee schedule amounts for DME are calculated on a statewide basis using average Medicare payments made in each State from 1986 and 1987 under the former reasonable charge payment methodology. The fee schedule amounts are generally adjusted annually by the change in the Consumer Price Index for all Urban Consumers (CPI–U) for the 12-month period ending June 30 of the preceding year. The fee schedule amounts are limited by a ceiling (upper limit) and floor (lower limit) equal to 100 percent and 85 percent, respectively, of the median of the statewide fee schedule amounts.

Section 13543 of the Omnibus Budget Reconciliation Act of 1993 (OBRA of 1993) (Pub. L. 103–66) amended section 1834(a)(3)(A) of the Act to remove certain ventilators, namely "intermittent assist devices with continuous airway pressure devices," from the DME payment category for items requiring FSS. Payment for an item in the FSS category is made on a monthly rental basis, with rental payments continuing as long as the item remains medically necessary. The conference report for OBRA of 1993 states that "this category is intended to include items which require frequent servicing in order to avoid imminent danger to a beneficiary's health." Those ventilators which were excluded from the FSS category by OBRA of 1993 fall into the payment category for capped rental (CR) items. Payment for items in the CR category is made on a monthly rental basis, with rental payments being capped at 15 months or 13 months, depending on whether the beneficiary, based upon an option that must be offered by the supplier in the 10th rental month, chooses to continue renting the item or take over ownership of the item via the "purchase option" provided by the statute. If the beneficiary chooses the "purchase option," then rental payments continue through the 13th month of use and the title for the equipment transfers from the supplier to the beneficiary. Medicare would then make payments for any necessary maintenance and servicing of the patient-owned equipment. If the beneficiary chooses to continue renting the equipment, then rental payments continue through the 15th month of use, and the supplier continues to own the equipment. The supplier must continue to supply the rented item to the beneficiary as long as medically necessary. The supplier is entitled to receive a semi-annual maintenance and servicing payment in an amount not to exceed 10 percent of the purchase price for the equipment as determined by the statute. Total Medicare payments made through the 13th and 15th months of rental equal 105 and 120 percent, respectively, of the statutory purchase price for the equipment.

Suppliers of DME must meet the standards specified in 42 CFR 414.57. These standards specify that the supplier "must maintain and replace at no charge or repair directly, or through a service contract with another company, Medicare-covered items it has rented to beneficiaries." This requirement applies to items in both the FSS and CR payment categories. Therefore, for rental items in either category, the supplier is responsible for ensuring that the equipment is in good working order. In the case of items for which the patient has selected the purchase option, the patient arranges for the servicing and repair of the patient-owned equipment. Medicare payments are made as needed for maintenance and servicing of patient-owned equipment in the CR category.

It is not necessary for a respiratory therapist to perform the maintenance and servicing of respiratory assist devices. If DME suppliers perform maintenance and servicing of equipment, they are paid by Medicare for this service, regardless of whether the item is in the FSS or CR category. We are confident that this change in payment category will not result in a decrease in the current level of service being provided to the beneficiaries.

B. HCPCS Coding for Respiratory Assist Devices

On January 1, 1992, code E0452 with the description of "intermittent assist device with continuous positive airway pressure device (CPAP)" was added and became effective in the HCPCS. This code was added to describe respiratory assist devices with bi-level air pressure capability, with or without a back-up rate, and with the ability to switch to CPAP mode. Bi-level pressure capability means that the device can deliver a lower level of pressure when the patient exhales than when the patient inhales, as opposed to CPAP, which is the

continuous delivery of a single level of positive air pressure. A back-up rate feature enables the device to automatically switch between the two levels of pressure at pre-determined intervals. The original manufacturer of bi-level respiratory assist devices submitted documentation to us as part of its HCPCS coding recommendation. The manufacturer stated the following in the documentation:

- The word "intermittent" refers to devices that are designed to be used by the patient for only part of the day, usually during the hours of sleep.
- The bi-level equipment requires very little maintenance and servicing.
- Other than monthly replacement of the air inlet filter on the front of the system, there is no routine maintenance required.
- Recommends that a performance verification be performed after each year of operation to ensure that the device is functioning properly.

In accordance with OBRA of 1993, intermittent assist devices are excluded from the FSS payment category and, therefore, fall into the CR payment category.

On January 1, 1992, code E0453 with the description of "therapeutic ventilator; suitable for use 12 hours or less per day" was added and became effective in the HCPCS. This code was added to describe ventilators that are used on a part time basis by patients who are dependent on volume ventilators (HCPCS code E0450) for more than 12 hours a day. The premise behind the therapeutic ventilator (code E0453) is similar to the portable oxygen equipment. The stationary volume ventilator (E0450), like stationary oxygen equipment, would be the primary equipment used by the patient. The portable therapeutic ventilator, like portable oxygen equipment, would be used part of the day by the patient to move about in order to exercise muscles, prevent decubitus ulcers, and achieve other therapeutic goals. Therapeutic ventilators were properly classified in the FSS payment category.

Beginning as early as May 25, 1992, some Medicare carriers issued erroneous guidance to suppliers that intermittent assist devices with a back-up rate should be billed for using the HCPCS code E0453 for therapeutic ventilators (FSS payment category) instead of the HCPCS code E0452 for intermittent assist devices (CR payment category). We are not certain to what degree carriers and suppliers were using code E0453 as opposed to code E0452 to bill for intermittent assist devices with a back-up rate. However, this practice continued to some extent through 1993 and 1994, the respective years in which the OBRA of 1993 change in payment categories for intermittent assist devices was enacted and implemented. Responsibility for processing DME claims was transferred during this time from 34 local carriers to 4 regional carriers known as Durable Medical Equipment Regional Carriers (DMERCs). The DMERCs also issued erroneous guidance to suppliers that the intermittent assist devices with a back-up rate should be billed for using code E0453 instead of code E0452.

The classification of intermittent assist devices with a back-up rate under the FSS payment category versus the CR payment category results in a substantial increase in Medicare payments. For example, comparing cost of E0453 over 5 years using the 2000 fee schedule ceiling of $612.52, total Medicare payments under the FSS payment category would be $36,751.20 after 5 years as opposed to $7,778.99 if the device was classified under the CR payment category.[1] Based on retail prices we obtained, we determined for the year 2000, that the purchase prices for intermittent assist devices with a back-up rate range from approximately $3,000 to $6,000. This highlights the fact that the correct classification of these devices for Medicare payment purposes is a significant issue in terms of safeguarding the Medicare trust fund. That is, placing these devices in the FSS payment category instead of the CR category results in Medicare paying every 5 years approximately $36,700 rather than $7,700 for an item that can be purchased for $6,000 or less.

In 1998, for the first time, the DMERCs conducted an in-depth review of the use of intermittent assist devices with CPAP. As a result, in July 1998, the DMERCs issued proposed medical review policies on intermittent assist devices with CPAP, which called for a revision to the HCPCS codes for these devices and the adoption of more specific nomenclature to describe respiratory assistance technology. The term "respiratory assist device, bi-level pressure capability" was proposed to replace the HCPCS wording of "intermittent assist device with CPAP," and separate HCPCS codes were proposed to differentiate between devices with a back-up rate and devices without a back-up rate.

[1] The CR payment of $7,778.99 includes the 15 monthly rental payments plus 7 payments of $61.25 for maintenance and servicing that can be billed every 6 months beginning 6 months after the 15th rental payment has been made.

C. Public Meeting on Payment for Respiratory Assist Devices

During the course of reviewing the DMERC medical review policies on respiratory assist devices, we became aware that the carriers and DMERCs had been allowing HCPCS code E0453 to be used primarily for the billing of respiratory assist devices with a back-up rate. As a result, we intended to take action to clarify that these devices belonged in the CR payment category. Because of concerns raised by the industry on the appropriate coding and payment classification for these devices, we announced in the **Federal Register** on June 4, 1999 that a public meeting would be held on June 25, 1999 to get input from the supplier community regarding the appropriate DME payment category for respiratory assist devices with a back-up rate. We made presentations at the June 25, 1999 public meeting, in addition to the Food and Drug Administration, the National Institutes of Health, respiratory assist device manufacturers, suppliers, clinicians, beneficiaries, and others.

The testimony at the public meeting that was given to support the claim that there is a need for FSS of respiratory devices with bi-level capability and a back-up rate described the need to have a respiratory therapist visit the beneficiary to make sure that the device is being used appropriately by the beneficiary and that the beneficiary is complying with the treatment. After the respiratory therapist performs an assessment of the beneficiary and has consulted with the beneficiary's physician, it may be determined that the pressure setting on the equipment needs to be adjusted. However, no information was presented at the public meeting that would indicate that the equipment itself requires FSS as required by section 1834(a)(3)(A) of the Act.

The DMERC medical review policies on respiratory assist devices were implemented on October 1, 1999. The following HCPCS codes were added as part of these new policies:

K0532 Respiratory Assist Device, Bi-Level Pressure Capability, Without Back-up Rate Feature, Used With Noninvasive Interface, E.G., Nasal Or Facial Mask (Intermittent Assist Device With Continuous Positive Airway Pressure Device)

K0533 Respiratory Assist Device, Bi-Level Pressure Capability, With Back-up Rate Feature, Used With Noninvasive Interface, E.G., Nasal Or Facial Mask (Intermittent Assist Device With Continuous Positive Airway Pressure Device)

K0534 Respiratory Assist Device, Bi-Level Pressure Capability, With Back-up Rate Feature, Used With Invasive Interface, E.G., Tracheostomy Tube (Intermittent Assist Device With Continuous Positive Airway Pressure Device)

These codes were added to better describe those respiratory assist devices, or intermittent assist devices with CPAP, that had been coded under codes E0452 and E0453 of the HCPCS since 1992. Code K0532 describes those intermittent assist devices with CPAP that did not have a back-up rate and were previously coded under code E0452 (CR payment category). Codes K0533 and K0534 describe those intermittent assist devices with CPAP that did have a back-up rate but had been coded under code E0453 (FSS payment category). It was also decided that no code was needed for therapeutic ventilators, the devices originally intended to fall under code E0453. Although the DMERC medical review policies were implemented on October 1, 1999, the decision regarding the appropriate DME payment category for devices with the back-up rate (codes K0533 and K0534) was delayed until now to allow more time for consideration of comments made at the June 25, 1999 public meeting.

After reviewing all of the information presented at the June 25, 1999 public meeting, we conclude that respiratory assist devices with bi-level pressure capability and a back-up rate do not require FSS payment. We also conclude that these devices are a type of intermittent assist device with CPAP and are therefore excluded from the FSS payment category by section 1834(a)(3)(A) of the Act. We conclude that all payments made for these devices in the past under the FSS payment category were erroneous.

D. Office of Inspector General (OIG) Report on Respiratory Assist Devices

In 1999, the OIG began an inspection to determine if respiratory assist devices with a back-up rate receive FSS. During the course of their inspection, the OIG conducted surveys of beneficiaries, suppliers, manufacturers, and accreditation agencies. In June 2001 (OEI–07–99–00440), the OIG issued their report on respiratory assist devices with a back-up rate, recommending that these devices be moved from the FSS payment category to the CR payment category. This recommendation is based on information gathered from the surveys conducted by the OIG that resulted in the following findings listed in the report:

- Supplier services consist primarily of routine maintenance and patient monitoring.
- For most beneficiaries, visits (from suppliers) do not meet supplier protocols for frequency.
- Contrary to supplier protocols, the number of beneficiaries receiving visits declines over time.
- Covering the respiratory assist device with back-up rate under capped rental would have saved Medicare $11.5 million annually.

Therefore, the OIG, after conducting a detailed inspection, has determined that respiratory assist devices with a back-up rate do not receive FSS.

II. Provisions of the Proposed Regulations

For the reasons stated above, we propose to include respiratory assist devices billed using HCPCS codes K0533 and K0534 in the DME fee schedule payment category for other items of DME, or capped rental items, as defined in section 1834(a)(7) of the Act. Rental claims received on or after the effective date of this provision would be claims considered for the initial month of rental for capped rental payment purposes.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

V. Regulatory Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We estimate that the reductions in annual expenditures that would occur as a result of moving respiratory assist devices with a back-up rate to the CR payment category will be approximately $10 million, based on the payment differential between the CR and FSS payment categories. This estimate is based on estimated annual savings of $11.5 million from the OIG report, rounded to the nearest $10 million. The OIG found that the average number of months a beneficiary used the device between January 1996 and September 1999 was 16 months. We estimate that Medicare beneficiaries utilize 10,000 to 12,000 devices each year. Since this rule would result in reductions in total expenditures of less than $100 million per year, this rule is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities either by nonprofit status or by having revenues of $6 million to $29 million or less in any 1 year. For purposes of the RFA, approximately 98 percent of suppliers of DME and prosthetic devices are considered small businesses according to the Small Business Administration's (SBA) size standards. Individuals and States are not included in the definition of a small entity. We estimate that 106,000 entities bill Medicare for DME, prosthetics, orthotics, surgical dressings, and other equipment and supplies each year. We believe the impact on the DME industry and small businesses in general would be minimal because most companies supply many different types of equipment. Total Medicare expenditures for DME are approximately $7 billion per year.

The OIG estimates that moving respiratory assist devices with a back-up rate to the CR payment category would result in payment reductions of

approximately $11.5 million per year. Therefore, the overall impact on the total industry annual receipts would be small, that is, less than 1 percent reduction in Medicare revenue. However, while the overall impact is small, some suppliers would be seriously affected as a result of the mix of DME that they furnish to Medicare beneficiaries. Namely, suppliers who specialize in furnishing respiratory assist devices would be seriously affected by this rule. To estimate how many suppliers could be seriously affected by this rule, we analyzed data for the top 30 suppliers of RADs with a back-up rate, which account for approximately 50 percent of Medicare expenditures for code K0533. Total allowed charges for code K0533 were $77 million in 2002. Therefore, a $10 million reduction in annual expenditures resulting from this proposed rule equates to a 13 percent reduction in revenue for suppliers for code K0533. These top 30 suppliers were ranked in terms of total allowed charges attributed to them for claims received for HCPCS code K0533 from October 1, 2002 through December 31, 2002. Five of the top 30 suppliers would not be considered small entities by SBA standards. These 5 suppliers account for approximately 40 percent of total expenditures for K0533. Twenty-five suppliers in the top 30 could be considered small entities if such a determination was based solely on Medicare expenditures (data on revenue attributed to sources other than Medicare has not been obtained for these companies as part of this analysis). Therefore, the total reduction in revenue for potential small entities as a result of this proposed rule would be approximately $6 million. The percentage of Medicare DME business that K0533 devices represent for 9 of the 25 potential small entities is 5 percent or less. For the remaining 16 potential small entities, the percentage of Medicare DME business that K0533 devices represent ranges from 17 to 98 percent. Therefore, these 16 suppliers would be seriously affected by this rule. Other K0533 suppliers not in the list of top 30 suppliers could also be small entities and could be seriously affected by this rule. The total allowed charges per year for these suppliers for code K0533 are less than $250,000.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing a rural impact analysis since we have determined that this rule would not have a significant economic impact on the operation of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal government, in the aggregate, or by the private sector of $110 million. This rule would not have an effect on the governments mentioned, and private sector costs would be less than the $110 million threshold.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this rule does not significantly affect State or local governments.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 414

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

For the reasons stated in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR part 414 as follows:

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1871, and 1881(b)(1) of the Social Security Act (42 U.S.C. 1302, 1395hh, and 1395rr (b)(1)).

2. In § 414.222 paragraph (a)(1) is revised to read as follows:

§ 414.222 Items requiring FSS.

(a) *Definition.* * * *

(1) Ventilators (except those that are either continuous airway pressure devices or respiratory assist devices with bi-level pressure capability with or without a back-up rate, previously referred to as intermittent assist devices with continuous airway pressure devices).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: April 15, 2003.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 24, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–21443 Filed 8–21–03; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET 03–158; MB 03–159; FCC 03–165]

Use of Television Channel 16 by the New York Police Department and NYMAC for Public Safety Services

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the rules of the Federal Communications Commission (FCC) to reallocate television channel 16 to the land mobile service in order to permit the New York Police Department and New York Metropolitan Advisory Committee (NYMAC) to utilize the channel for public safety services.

DATES: Submit comments on or before September 22, 2003. Reply comments are due on or before October 6, 2003.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for filing instructions.

FOR FURTHER INFORMATION CONTACT: Dave Roberts (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Notice of Proposed Rulemaking, (NPRM) FCC 03–165, adopted on July 7, 2003, and released on July 10, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternative formats are available to persons with disabilities by

contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov*.

By this NPRM, the FCC initiates a rulemaking to determine whether to reallocate television channel 16 to the land mobile service for use by the New York Police Department and NYMAC for public safety use in the New York metropolitan area. Comments are sought on the technical impact of this proposal.

This matter shall be treated as a "permit—but-disclose" proceeding in accordance with the Commission's ex parte rules. 47 CFR 1.200, 1.1206. Members of the public are advised that ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided under the Commission's rules. *See generally* 47 CFR 1.1203 and 1.1206(a).

Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before September 22, 2003 and reply comments on or before October 6, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

Comments filed using ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. When completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties also may submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.

- The filing hours at this location are 8 a.m. to 7 p.m.
- All hand deliveries must be held together with rubber bands or fasteners.
- Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, § 73.606(b) of the Commission's rules. *See* Certification That §§ 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

Accordingly, it is ordered that pursuant to the authority contained in Sections 1, 4(i), 4(j), 301, 303, 308, 309(j), and 337 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(j), 157(a), 301, 303, 308, 309(j), and 337 this Notice of Proposed Rulemaking is adopted.

List of Subjects in 47 CFR Part 2

Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 2 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

2. Section 2.106, the Table of Frequency Allocations, is amended by revising footnote NG66 to read as follows.

§ 2.106 Table of Frequency Allocations.

* * * * *

NON-FEDERAL GOVERNMENT (NG) FOOTNOTES

* * * * *

NG66 The use of the land mobile service in the band 470–512 MHz is available for assignment to licensees in the Public Mobile Services, the Public Safety Radio Pool, and the Industrial/Business Radio Pool at, or in the vicinity of 11 urbanized areas, as set forth in the following table. Additionally, the band 482–488 MHz (TV channel 16) is available for assignment to licensees in the Public Safety Radio Pool at, or in the vicinity of, Los Angeles and at, or in the vicinity of, New York City and Nassau and Suffolk Counties, New York. Such use in the land mobile service is subject to the conditions set forth in 47 CFR parts 22 and 90.

Urbanized area	Frequencies (MHz)	TV channel
New York, NY-Northeastern New Jersey.	470–482	14, 15
Chicago, IL-Northwestern Indiana.	470–482	14, 15
Boston, MA	470–476 and 482–488.	14, 16
Pittsburgh, PA	470–476 and 494–500.	14, 18
Los Angeles, CA	470–476 and 506–512.	14, 20
Miami, FL	470–476	14
San Francisco-Oakland, CA.	482–494	16, 17
Dallas, TX	482–488	16
Washington, D.C.-Maryland-Virginia.	488–500	17, 18
Houston, TX	488–494	17
Philadelphia, PA-New Jersey.	500–512	19, 20

* * * * *

[FR Doc. 03–21507 Filed 8–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2574; MB Docket No. 03–181; RM–10758]

Radio Broadcasting Services; Blanchard and Weatherford, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Audio Division requests comment on a petition filed by Wright Broadcasting Systems, Inc., licensee of FM Station KWEY, Channel 247C1,

Weatherford, Oklahoma. Petitioner proposes to change the community of license for KWEY–FM from Weatherford to Blanchard, Oklahoma, as a first local service, to change the corresponding channel allotment from Channel 247C1 to Channel 247A, and to modify the license of KWEY–FM accordingly. Channel 247A can be allotted to Blanchard in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.1 km (1.3 miles) southwest of Blanchard. The coordinates for Channel 247A at Blanchard are 35–07–21 North Latitude and 97–40–18 West Longitude.

DATES: Comments must be filed on or before September 22, 2003, and reply comments on or before October 7, 2003.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: John C. Trent, Putbrese, Hunsaker & Trent, P.C., 100 Carpenter Drive, Suite 100, Post Office Box 217, Sterling, Virginia 20167–0217.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 03–181, adopted July 30, 2003 and released August 1, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oklahoma, is amended by adding Blanchard, Channel 247A, and by removing Channel 247C1 at Weatherford.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 03–21504 Filed 8–21–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 68, No. 163
Friday, August 22, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Doc. No. TB–03–11]

Request for an Extension of and Revision to a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from the Office of Management and Budget, for an extension of and revision to the currently approved information collection in support of the Dairy and Tobacco Adjustment Act of 1983, the Rural Development, Food and Drug Administrative, and Related Agencies Appropriations Act for 2002 (Appropriations Act), and the Tobacco Inspection Act and Regulations Governing the Tobacco Standards.

DATES: Comments received by October 21, 2003, will be considered.

ADDITIONAL INFORMATION OR COMMENTS: Contact Kenneth E. Wall, Chief, Standardization and Review Branch, Tobacco Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 511 Cotton Annex Building, Stop 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, Telephone (202) 205–0744 and Fax (202) 250–1191.

SUPPLEMENTARY INFORMATION:

Title: Reporting and Recording Requirements for 7 CFR Part 29.

OMB Number: 0581–0056.

Expiration Date of Approval: May 31, 2004.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Tobacco Inspection Act (7 U.S.C. 511 *et seq.*) requires that all tobacco sold at designated auction markets in the U.S. be inspected and graded. Provision is also made for interested parties to request inspection and grading services on an as needed basis. The Appropriations Act (7 U.S.C. 511s) requires that all tobacco eligible for price support in the U.S. be inspected and graded. Also, the Dairy and Tobacco Adjustment Act of 1983 (7 U.S.C. 511r) requires the Secretary to inspect all tobacco offered for importation into the United States for grade and quality, except cigar and oriental tobacco, which must be certified by the importer as to kind and type, and in the case of cigar tobacco, that such tobacco will be used solely in the manufacture of cigars.

The information collection requirements authorized for the programs under the Tobacco Inspection Act, Appropriations Act, and the Dairy Tobacco Adjustment Act of 1983 include: Application for inspection of tobacco, application and other information used in the approval of new auction markets or the extension of services to designated tobacco markets, and information required to be provided in connection with auction and non-auction sales.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.56 hours per response.

Respondents: Primarily tobacco companies, tobacco manufacturers, import inspectors, and small business or organizations.

Estimated Number of Respondents: 634.

Estimated Number of Responses per Respondent: 13.

Estimated Number of Responses: 8057.

Estimated Total Annual Burden on Respondents: 4,547.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Kenneth E. Wall, Chief, Standardization and Review Branch, Tobacco Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 511 Cotton Annex Building, Stop 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: August 18, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–21531 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Office of the Under Secretary, Research, Education, and Economics

Notice of the Advisory Committee on Biotechnology and 21st Century Agriculture Meeting

AGENCY: Agricultural Research Service.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces a meeting of the Advisory Committee on Biotechnology and 21st Century Agriculture (AC21).

DATES: September 15–16, 2003, 8:30 a.m. to 5 p.m. both days.

ADDRESSES: The Meeting will take place at the Waugh Auditorium, USDA Economic Research Service, Third Floor, South Tower, 1800 M St., NW., Washington, DC 20036. Members of the public wishing to make oral statements should send request, in writing or by e-mail, to the contact person identified herein. Written requests may be sent to the contact person at: USDA, Office of the Deputy Secretary, 202B Jamie L. Whitten Federal Building, 12th and

Independence Avenue, SW., Washington, DC 20250. Request should be received at least 3 business days before the meeting.

FOR FURTHER INFORMATION CONTACT: Michael Schechtman, Designated Federal Official, Office of the Deputy Secretary, Telephone (202) 720–3817; Fax (202) 690–4265; e-mail *mschechtman@ars.usda.gov.*

SUPPLEMENTARY INFORMATION: The second meeting of the AC21 has been scheduled for September 15–16, 2003. The AC21 consists of 18 members representing the biotechnology industry, the seed industry, international plant genetics research, farmers, food manufacturers, commodity processors and shippers, environmental and consumer groups, along with academic researchers including a bioethicist. In addition, representatives from the Departments of Commerce, Health and Human Services, and State, and the Environmental Protection Agency, the Council on Environmental Quality, and the Office of the United States Trade Representative serve as "ex officio" members. The Committee meeting will be held from 8:30 am to 5 p.m. on each day. The topics to be discussed will include: (1) Approval of a framework for the AC21's main report; (2) review of a draft outline for the introduction to that report; (3) development of a plan for the preparation of the report and organization of work groups; and (4) continuation of discussion on impacts of biotechnology along the overall food production and distribution system, focusing on potential impacts of new value-added biotechnology products with direct consumer benefits.

Background information regarding the work of the AC21 will be available on the USDA Web site at *http://www.usda.gov/agencies/biotech/ac21.html.* On September 15, 2003, if time permits, reasonable provision will be made for oral presentations of no more than five minutes each in duration. The meeting will be open to the public, but space is limited. If you would like to attend the meetings, you must register by contacting Ms. Dianne Harmon at (202) 720–4074, by fax at (202) 720–3191 or by e-mail at *dharmon@ars.usda.gov* at least 5 days prior to the meeting. Please provide your name, title, business affiliation, address, telephone, and fax number when you register. If you require a sign language interpreter or other special accommodation due to disability, please indicate those needs at the time of registration.

Edward B. Knipling,

Acting Administrator.

[FR Doc. 03–21484 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Extension of a Currently Approved Information Collection—Certified State Mediation Program

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to request an extension of approval for the information collection used in support of the Certified State Mediation Program under title 7 of the Code of Federal Regulations part 785. The collection of information is used by FSA to determine whether a State meets the eligibility criteria to be a recipient of grant funds, and to determine if the grant is being administered appropriately. Lack of adequate information to make these determinations could result in the improper administration and appropriation of Federal grant funds.

DATES: Comments must be received on or before October 21, 2003 to be assured consideration.

ADDRESSES: Comments concerning this notice should be address to Chester Bailey, Mediation Coordinator, USDA, FSA, Outreach Staff, Room 3716–S, Stop 0511, 1400 Independence Avenue, SW., Washington, DC 20250 and to: the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Comments may be submitted by e-mail to *chester.bailey@wdc.usda.gov.* Copies of the information collection may be obtained by contacting Chester Bailey at (202) 720–1471.

FOR FURTHER INFORMATION CONTACT: Chester Bailey, FSA, Outreach Staff, telephone (202) 720–1471.

SUPPLEMENTARY INFORMATION:

Title: Certified Mediation Program.

OMB Control Number: 0560–0165.

Expiration Date of Approval: September 10, 2003.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: This information is needed by FSA to effectively administer the Certified State Mediation Program in accordance with Subtitles A and B of Title V of the Agricultural Credit Act of 1987 (Pub. L. 100–233). FSA collects the information by mail, phone, fax, in person, or via the Internet. Although other institutions, public and private, generally require and collect information similar to that requested by FSA, there is a wide diversity in reporting practices.

The information to be collected includes an application for certification, re-verification for subsequent annual approval, SF–424 Application for Federal Assistance, audit reports and financial management systems and reporting requirements.

The information requested is reported annually and is necessary for the FSA to determine eligibility, and to administer the mediation grant program in an equitable and cost-effective manner.

Estimate of Burden: The public reporting burden for this information collection is estimated to average 34 hours per respondent.

Respondents: State agencies.

Estimated Number of Respondents: 29.

Estimate Number of Responses per Respondent: 6.

Estimated Total Annual Burden on Respondents: 986 hours.

Comment is invited on: (a) Whether the collection of information is necessary for the above stated purposes and the proper performance of FSA, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information being collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automate, electronic, mechanical, or other technological collation techniques or other forms of information technology.

Comments will be summarized and included in the request for Office of Management and Budget approval.

Signed in Washington, DC, on August 15, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–21490 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection—Farm Loan Programs Account Servicing Policies

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request an extension of a currently approved information collection for "Farm Loan Programs Account Servicing Policies" used in support of the FSA, Farm Loan Programs (FLP). This renewal does not involve any revisions to the program regulations.

DATES: Comments on this notice must be received on or before October 21, 2003 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Bashir Duale, Senior Loan Officer, USDA, Farm Service Agency, Loan Servicing and Property Management Division, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250–0523; Telephone (202) 720–1645; Electronic mail: *bashir_duale@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Farm Loan Programs Account Servicing Policies.

OMB Control Number: 0560–0161.

Expiration Date of Approval: March 31, 2004.

Type of Request: Extension of Currently Approved Information Collection.

Abstract: The regulation describes the policies and procedures the Agency will use in servicing delinquent FLP loans. Servicing of the accounts is administered in accordance with the provisions of the Consolidated Farm and Rural Development Act (CONACT), as amended. The CONACT establishes required notification by the Agency and response time frame requirements for the borrower and Agency actions on the borrower's request. Specifically, it requires a borrower to document that they can meet family living and farm operating expenses and service all debts, including the loan they are proposing to be restructured by the Agency. This information submitted by the borrowers to the Agency is used by the Agency officials to consider a financially distressed or delinquent borrower's request for debt restructuring, including rescheduling, re-amortization, consolidation, deferral, and write down.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 45 minutes per response.

Respondents: Individuals or households, businesses or other for profit and farms.

Estimated Number of Respondents: 11,672.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 25,302.

Comments are sought on these requirements including: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Bashir Duale, USDA, FSA, Farm Loan Programs, Loan Servicing and Property Management Division, 1400 Independence Avenue, SW., STOP 0523, Washington, DC 20250–0523. Copies of the information collection may be obtained from Bashir Duale at the above address.

All responses to this notice will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, DC, on August 15, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–21491 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection: Minority Farm Register

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the collection of information for a Minority Farm Register, which is a voluntary register of minority farm or ranch operators, landowners, tenants and others with farming or reaching interest. The Minority Farm register will provide a listing to be used by USDA's Office of Outreach and other minority outreach organizations to better serve minority farmers and help abate the decline of minority farmers throughout the country.

DATES: Comments on this notice must be received on or before October 21, 2003 to be assured consideration. Comments received after that date will be considered to the extent practicable. Comments should reference the OMB number and title of the information collection to which they pertain.

ADDRESSES: Comments should be sent to Ronald W. Holling, Assistant to the Director, Office of Business and Program Integration, Farm Service Agency, STOP 0501, 1400 Independence Avenue, SW., Washington, DC 20250–0501, (202) 720–8530; e-mail *Ronald Holling@usda.gov,* and to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. All comments will become a matter of public record. For further information, contact Ronald Holling at the address listed above.

SUPPLEMENTARY INFORMATION:

Title: USDA Minority Farm Register.

OMB Number: 0560–NEW.

Type of Request: Request for Approval of a New Information Collection.

Abstract: The purpose of this information collection is to create a Minority Farm Register, which is a voluntary register of minority farm or ranch operators, landowners, tenants and others with farming or ranching interest. The information to be collected will be name, address, Social Security Number, phone number, race, ethnicity and gender. The names and addresses will be the only required information. Providing Social Security Numbers, phone numbers, race, ethnicity and gender will be completely voluntary. The Register will provide a listing to be used by USDA's Office of Outreach to help minority farm and ranch operators who are not land owners to be introduced to FSA's land ownership and farm loan programs to acquire land

and position minority owners of farm and ranch land to be informed of FSA and other USDA farm programs. Except for Social Security Numbers, information on the list may be shared with community-based outreach organizations. The Social Security Numbers, when provided, will only be used internally by USDA to match the person with their farm program records in order to better target outreach efforts. Race, ethnicity and gender, when provided, will be used by USDA and minority outreach organizations that serve the particular clientele.

The Minority Farm Register will be established by FSA and jointly administered with USDA's Office of Outreach. A specific register sign-up form will be issued in Spanish and English. Informational registration material will be distributed to community-based organizations, minority-serving educational institutions, and government agencies assisting minorities with land retention and acquisition, and will be available on the internet to ensure the program is widely publicized and accessible to all. Community-based organizations, minority-serving educational institutions and other groups serving minority clientele will be partnered with as needed. The USDA is requesting a 3-year extension of approval.

This information collection was previously approved by OMB for USDA's Office of Outreach under OMB Control Number 0508–0004. The collection is being transferred to FSA and approval is being sought as a new collection of information.

Respondents: Individuals and households.

Estimated annual number of respondents: 54,000.

Estimated annual number of forms filed per person: 1.

Estimated average time to respond: 5 minutes (0.083 hours).

Estimated total annual burden hours: 4,500.

Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for OMB approval.

Dated: Signed at Washington, DC, on July 10, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–21532 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Timber Sale Operating Plans

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a previously approved information collection for Timber Sale Operating Plans. The collected information will help the Forest Service facilitate contract administration of timber sales on National Forest System lands. Information will be collected from purchasers of this timber.

DATES: Comments must be received in writing on or before October 21, 2003.

ADDRESSES: All comments should be addressed to Rex Baumback, Forest and Rangelands Management, 1400 Independence Avenue, SW., Mail Stop 1105, Washington, DC 20250–1105.

Comments also may be submitted via facsimile to (202) 205–1045 or by e-mail to: *rbaumback@fs.fed.us.*

The public may inspect comments received in the Office of the Director, Forest and Rangelands Management Staff, Forest Service, USDA, Room 3NW, Yates Building, 1400 Independence Avenue, SW., Washington, DC. Visitors are urged to call ahead to (202) 205–0855 facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Rex Baumback, Timber Sale Contract Administration Specialist, Forest and Rangelands Management, at (202) 205–0855.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

The following describes the information collection to be extended:

Title: Timber Operating Plans.

OMB Number: 0596–0086.

Expiration Date of Approval: January 31, 2004.

Type of Request: Extension of an information collection previously approved by the Office of Management and Budget.

Abstract: The information collected is used by the agency to plan agency timber sale contract administration workload and to determine whether timber sale purchasers had scheduled operations delayed and; therefore, are eligible for an extension of the contract termination date. The information is required by timber sale contract provisions in Form FS 2400–6, Timber Sale Contract, and Form FS 2400–6T, Timber Sale Contract.

Respondents are National Forest System land timber sale purchasers who prepare a chart or letter within 60 days of a timber sale contract award, and annually thereafter until the contract is completed. The timber sale purchaser outlines timeframes and methods of accomplishing road construction, timber harvesting, and other contract requirements.

Forest Service personnel evaluate the collected information to facilitate timber sale contract administration and to determine eligibility for National Forest System land timber sale contract term extensions. Data gathered in this information collection are not available from other sources.

Estimate of Annual Burden: 30 minutes per response.

Type of Respondents: Purchasers of National Forest System timber.

Estimated Annual Number of Respondents: 2500.

Estimated Annual Number of Responses per Respondent: 1.5.

Estimated Total Annual Burden on Respondents: 1,875 hours.

Comment Is Invited

The agency invites comments on the following: (a) The necessity of the information collection for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the information collection burden on respondents, including the use of automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: August 15, 2003.

Abigail R. Kimbell,

Associate Deputy Chief, National Forest System.

[FR Doc. 03–21579 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Beaverhead-Deerlodge National Forest Land and Resource Management Plan Revision. Beaverhead-Deerlodge National Forest in Beaverhead, Butte-Silver Bow; Anaconda-Deer Lodge, Granite, Jefferson, Powell, Madison and Gallatin Counties, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The USDA, Forest Service, Beaverhead-Deerlodge National Forest, will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of the proposed action to revise and combine Land and Resource Management Plans for the Beaverhead and Deerlodge National Forests. The proposal seeks to integrate resource management and incorporate larger place-based management areas. A Notice of Intent was published May 3, 2002, in the **Federal Register**, Vol. 67, No. 86, p. 22396. This is a revision of that notice in order to provide a detailed proposed action for public review and comment.

PUBLIC INVOLVEMENT: The public is invited to comment on the Proposed Action or meet with Marty Gardner at any point in time during the 90-day comment period beginning on August 22, 2003. Contact Marty at (406) 683–3680 or e-mail *mgardner@fs.fed.us*, to schedule a meeting. To get on the mailing list contact Jack Degolia (406) 683–3984, or e-mail *jdegolia@fs.fed.us*.

DATES: Initial comments concerning the proposed action should be received in writing, no later than 90 days from the publication of this notice of intent.

ADDRESSES: Please send comments to Herrera Environmental Consultants, 101 E. Broadway, Missoula, MT 59802. Comments may also be electronically submitted to *shopkins@herrerainc.com*.

FOR FURTHER INFORMATION CONTACT: Marty Gardner, Interdisciplinary Team Leader, Beaverhead-Deerlodge National Forest, 420 Barrett, Dillon, MT 59725, phone (406) 683–3860, or e-mail *mgardner@fs.fed.us*.

Responsible Official: Bradley E. Powell, Regional Forest, Northern Region, 200 E. Broadway, Missoula, MT 59807

SUPPLEMENTARY INFORMATION: We are revising the original Notice of Intent (**Federal Register**, Vol. 67, No. 86, page 22396, May 3, 2002), in order to provide a detailed proposed action for public review and comment. We are coordinating efforts with the Bureau of Land Management, Tribes, Montana Fish, Wildlife, and Parks as well as County Commissioners. In order to generate meaningful dialogue with the public we hope to meet with any interested groups or individuals upon request. To request a presentation for meetings at any time during the analysis and prior to the Draft Environmental Impact Statement call Marty Gardner at (406) 683–3860 or e-mail *mgardner@fs.fed.us*. We plan no formal public hearings at this time.

To assist the Forest Service with identification and consideration of issues and concerns regarding the proposed action, comments should be as specific as possible. It is also helpful if comments refer to specific pages or sections of the proposed action. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementation of procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3.

Additional public comment will be accepted after publication of the DEIS anticipated by December 2004. The Environmental Protection Agency will publish the Notice of Availability of the Draft Environmental Impact Statement in the **Federal Register**. The Forest will also publish a legal notice of availability in the Montana Standard Newspaper, Butte, Montana. The comment period on the Draft EIS will begin the day after the legal notice is published. The Final EIS and Decision are expected late in 2005.

Dated: August 6, 2003.

Bradley E. Powell,

Regional Forester.

[FR Doc. 03–20989 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Curry and Hill Private Property Access, Medicine Bow-Routt National Forests, Jackson County, CO

AGENCY: USDA, Forest Service.

ACTION: Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to assess and disclose the environmental effects of issuing a road easement to allow motorized access to private property surrounding Matheson Reservoir. Matheson Reservoir and the Curry and Hill private property are located in Township 4 North, Range 79 West, Section 19 on the Parks Ranger District of the Routt National Forest in Colorado.

Proponents have requested a road easement for year-round motorized access across National Forest System (NSF) lands to their property for non-commercial purposes. Access would be granted through the Alaska National Interest Lands Conservation Act of 1980 (Pub. L. 96–487). As proposed, the proponents would access NFS lands in Township 3 North, Range 79 West, Section 8 and proceed north approximately 5 miles to Township 4 North, Range 79 West, Section 19 utilizing National Forest System Trail 58, also known as the Grimes Trail. The Grimes Trail has been closed to motorized use since 1994, and major improvements would be necessary to accommodate full-size vehicles.

The portion of the Grimes Trail that accesses the private land is located in a non-motorized management area prescription (1.32, Backcountry Recreation, Non-motorized). It is also located in the Troublesome Inventoried Roadless Area. For these reasons, authorization of a road easement would require an amendment to the Routt National Forest Land and Resource Management Plan (Forest Plan, 1997).

The purpose for this action is to decide the type of access Curry and Hill need to secure reasonable use and enjoyment of their land in Section 19, T4N, R79W. Reasonable use per 36 CFR 251.114(a) is "based on contemporaneous uses made of similarly situated lands in the area."

The need for the action is to respond to Curry and Hill's request that the Forest Service issue an easement for motorized use of the Grimes Trail. The Forest Service must also determine the terms and conditions under which the proponents may access the Curry and

Hill private property while protecting National Forest resources and improvements.

The Forest Service is giving notice that it is beginning a full environmental analysis and decision-making process for this proposal so that potentially interested or affected individuals, agencies, or organizations can participate in the process and contribute to the final decision. All comments and suggestions on the scope of the analysis and decision-making process are welcome.

DATES: Public scoping to determine the effects of issuing a road easement for the Grimes Trail is initiated through publication of this Notice of Intent in the **Federal Register.** Written comments and suggestions should be postmarked within 30 days of the day after this notice is published in the **Federal Register** to receive consideration. A draft EIS that will have a 45-day public comment period is expected in November 2003. A final decision is expected in March 2004.

ADDRESSES: Send written comments to Melissa Martin, Medicine Bow-Routt National Forests Supervisor's Office, 2468 Jackson Street, Wyoming 82070. Electronic mail (e-mail) may be sent to *mmmartin@fs.fed.us* and FAX may be sent to (307) 745–2398. Telephone: (307) 745–2371.

FOR FURTHER INFORMATION CONTACT: Tom Florich, Recreation and Lands Program Manager, Medicine Bow-Routt National Forests, 2468 Jackson Street, Laramie, Wyoming 82070. Telephone: (307) 745–2435.

SUPPLEMENTARY INFORMATION: Curry and Hill had been accessing their private land north off of County Road 2, located in Jackson County, Colorado, through another private landowner's property, through BLM land, onto NFS land. Although Curry and Hill claim access was deeded through the other private landowner on April 30, 1918, the private landowner has been denying Curry and Hill access. Litigation is currently pending to determine whether or not Curry and Hill have legal access across this private land. The Grimes Trail has been closed to motorized use since 1994.

Since the matter of reasonable access to this inholding must be resolved, subject to rules and regulations, the Forest Service has decided that it would be prudent to address the proposal at this time.

Preliminary Alternatives: Proposed Action—Road Easement

Authorization: Under the Proposed Action, the Forest Service would issue a road easement for year-round motorized access across National Forest System (NFS) lands to the Curry and Hill private property for non-commercial purposes. As proposed, the proponents would access NFS lands in Township 3 North, Range 79 West, Section 8 and proceed north approximately 5 miles to Township 4 North, Range 79 West, Section 19 utilizing National Forest System Trail 58, also known as the Grimes Trail. The Grimes Trail has been closed to motorized use since 1994, and major improvements would be necessary to accommodate full-size vehicles.

The portion of the Grimes Trail that accesses the private land is located in a non-motorized management area prescription (1.32, Backcountry Recreation, Non-motorized). It is also located in the Troublesome Inventoried Roadless Area. For these reasons, authorization of a road easement would require an amendment to the Routt National Forest Land and Resource Management Plan (Forest Plan, 1997).

Alternative Access: The Forest Service would authorize access to the private land from the north in a motorized portion of National Forest. Access would be off of State Highway 125 to National Forest Service Road (NFSR) 106, also known as the Willow Creek Road. From there, access would be off of NFSR 730 to NFSR 107. NFSR 107 terminates where it intersects Sheep Creek and connects with Trail 57 on the other side. Trail 57 crosses a riparian area before entering the private land. To avoid the riparian area, roughly ¾ of a mile of road construction would be necessary.

No Action: The Forest Service would deny request for the easement and would issue an Off-road Vehicle Use permit for limited use of All Terrain Vehicles (ATVs) on the Grimes Trail. No improvements to the Grimes Trail would be necessary.

Preliminary Issues: The following preliminary issues have been identified:

- Roadless area road construction/reconstruction (motorized access in a non-motorized prescription).

Decisions To Be Made: The Forest Service is required to provide, subject to reasonable rules and regulations, access across NFS lands as deemed adequate for landowner's reasonable enjoyment of their property. However, the Forest Service is not required to provide the most direct, economical, or convenient route for the landowner. The Forest Service must assure that the access provided is acceptable within the guidelines of the Forest Plan.

Based on the above information, the environmental effects of the alternatives, and the comments submitted during the public participation process, the responsible official must decide:

- Whether or not to provide access across NFS land currently located in a non-motorized management area prescription (Proposed Action) or to require alternate access; and
- The terms and conditions under which the proponents may access the Curry and Hill private property while also protecting the surface natural resources in the area.

Reviewer Obligations: The comment period for this proposal will be 30 days from the day after this Notice of Intent is published in the **Federal Register.**

Release of Names: Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this Proposed Action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within ten (10) days.

Responsible Official: The responsible official is the Forest Supervisor of the Medicine Bow-Routt National Forests.

As the Responsible Official, I will decide which, if any, of the alternatives to be described in the draft Environmental Impact Statement will implemented. I will document the decision and reasons for my decision in a Record of Decision.

Dated: August 15, 2003.

Mary H. Peterson,

Medicine Bow-Routt National Forests.

[FR Doc. 03–21567 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–GM–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Availability of a Finding of No Significant Impact (FONSI)

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of availability of a Finding of No Significant Impact for a project on Conrad Creek for review and comment.

SUMMARY: The NRCS has issued a Finding of No Significant Impact (FONSI) for a stream restoration project on a private landowner's land on Conrad Creek. A copy of the FONSI and the final Environmental Assessment (EA) is available for public review at the following locations:

- NRCS Office, 157 NW. 15th, Unit 1, Newport, OR 97365;
- Siuslaw Soil and Water Conservation District Office, 1525 12th Street, Suite F, Florence, OR 97439;
- Florence Public Library, 1460 9th Street, Florence, OR 97439;
- Additional copies may be obtained by contacting Kate Danks, NRCS, 541–265–2631.

DATES: Comments will be received on or before September 22, 2003.

ADDRESSES: Address all requests and comments to Kate Danks, District Conservationist, Natural Resources Conservation Service (NRCS), 157 NW. 15th, Unit 1, Newport, OR 97365; (541)–265–9351 (fax).

FOR FURTHER INFORMATION CONTACT: Kate Danks, NRCS, 541–265–2631.

Dated: August 11, 2003.

Bob Graham,

State Conservationist, Portland, OR.

[FR Doc. 03–21494 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Rehabilitation of Floodwater Retarding Structure Nos. 3D, 3E, and 5A of the East Fork Above Lavon Watershed of the Trinity River Watershed, Collin County, TX

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the rehabilitation of Floodwater Retarding Structure Nos. 3D, 3E, and 5A of the East Fork Above Lavon Watershed of the Trinity River Watershed.

FOR FURTHER INFORMATION CONTACT: Larry D. Butler, State Conservationist, Natural Resources Conservation Service, 101 South Main, Temple, Texas 76501–7682, Telephone (254) 742–9800.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Larry D. Butler, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project will rehabilitate Floodwater Retarding Structure (FRS) Nos. 3D, 3E, and 5A to maintain the present level of flood control benefits and comply with the current performance and safety standards.

Rehabilitation of FRS Nos. 3D, 3E, and 5A will require the disturbance of 14.2 acres. The modification of FRS Nos. 3D, 3E, and 5A will include the addition of principal spillway and auxiliary spillway capacity to each structure to meet current performance and safety standards for high hazard dams. The disturbed areas will be planted to plants that have wildlife values. The proposed work will not affect any prime farmland, endangered or threatened species, wetlands, or cultural resources.

Federal assistance will be provided under authority of the Small Watershed Rehabilitation Amendments of 2000 (section 313, Pub. L. 106–472). Total project costs is estimated to be $3,289,715, of which $2,250,485 will be paid from the Small Watershed Rehabilitation funds and $1,039,230 from local funds.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Larry D. Butler, Ph.D, State Conservationist.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Dated: July 31, 2003.

Larry D. Butler,

State Conservationist.

[FR Doc. 03–21493 Filed 8–21–03; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 21, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 2, and December 6, 2002, May 2, May 9, May 30, June 20, and June 27, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (67 FR 50416, and 72640, 68 FR 23441, 24919, 32458, 36972, and 38288) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small

organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement Lists:

Products

Product/NSN: Rochester Midland Envirocare Products
7930–00–NIB–0253, Carpet & Upholstery Cleaner
7930–00–NIB–0254, Food Service Cleaner
7930–00–NIB–0255, Glass Cleaner
7930–00–NIB–0256, Hand Soap
7930–00–NIB–0257, LiquiBac
7930–00–NIB–0258, Low Foam All Purpose Cleaner
7930–00–NIB–0259, Neutral Disinfectant
7930–00–NIB–0260, Tough Job
7930–00–NIB–0261, Washroom & Fixture Cleaner
NPA: Lighthouse for the Blind, St. Louis, Missouri
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York

Services

Service Type/Location: Administrative Services, INS, Secure Electronic Network for the Traveler's Rapid Inspection, (SENTRI) Enrollment Center, Otay Mesa, California
NPA: Job Options, Inc., San Diego, California
Contract Activity: Immigration and Naturalization Service, DOJ
Service Type/Location: Catering Service, Military Entrance Processing Station, Albany, New York
NPA: Albany County Chapter, NYSARC, Inc., Slingerlands, New York
Contract Activity: Directorate of Contracting, Fort Knox, Kentucky
Service Type/Location: Custodial Service
Aguadilla Customhouse, Aguadilla, Puerto Rico
CARIT Building, Guynabo, Puerto Rico
Cruise Ship Piers (1, 4, 6 & Front Pier), Old San Juan, Puerto Rico
Fajardo Customhouse, Fajardo, Puerto Rico
ICAT Airport, Louis Munoz Marin International Airport Carolina, Puerto Rico
Isla Grande Airport, Isla Grande, Puerto Rico
Mayaguez Customhouse, Mayaguez, Puerto Rico
Mayaguez Customhouse, San Juan, Puerto Rico
Miramar Customhouse, San Juan, Puerto Rico
Panamerican Dock, Isla Grande, Puerto Rico
Ponce Customhouse, Ponce, Puerto Rico
San Juan Customhouse, San Juan, Puerto Rico
NPA: The Corporate Source, Inc., New York, New York
Contract Activity: U.S. Customs Service, Indianapolis, Indiana
Service Type/Location: Custodial Services, Defense Finance and Accounting Service (DFAS)—Denver Center, Denver, Colorado
NPA: North Metro Community Services for Developmentally Disabled, Westminister, Colorado
Contract Activity: 460th Air Base Wing, Buckley AFB, Colorado
Service Type/Location: Dining Facility Attendant Services
29th Engineering Battalion, Building 503B, Fort Shafter, Hawaii
65th Engineering Battalion, Building 1492, Schofield Barracks, Hawaii
NPA: Opportunities for the Retarded, Inc., Wahiawa, Hawaii
Contract Activity: U.S. Army Support Command, Fort Shafter, Hawaii
Service Type/Location: Facilities/ Grounds Maintenance, Addicks Field Office and Compound Storage Yard, Barker Visitors Areas, Dams, Reservoirs & Related Facilities, Houston, Texas
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, Texas
Contract Activity: U.S. Army Corps of Engineers, Galveston, Texas
Service Type/Location: Janitorial & Related Services, New Federal Building, Youngtown, Ohio
NPA: Youngstown Area Goodwill Industries, Youngstown, Ohio
Contract Activity: GSA, Public Buildings Service (5P), Chicago, Illinois
Service Type/Location: Janitorial/ Custodial, Childcare Development Center Andersen AFB, Guam
NPA: Able Industries of the Pacific, Tamuning, Guam
Contract Activity: 36th CONS/LGCD, Andersen AFB, Guam
Service Type/Location: Janitorial/ Custodial
Fort Shafter, Buildings 344 and 1507, Hawaii
Schofield Barracks, Buildings 690, 692 and 1087, Hawaii
NPA: Network Enterprises, Inc., Honolulu, Hawaii
Contract Activity: U.S. Army Support Command, Fort Shafter, Hawaii
Service Type/Location: Janitorial/ Custodial, U.S. Customs Service, 8855 NE Airport Way, Portland, Oregon
NPA: Portland Habilitation Center, Inc., Portland, Oregon
Contract Activity: U.S. Customs Service, Indianapolis, Indiana
Service Type/Location: Janitorial/ Custodial, Western Area Power Administration, Devils Lake Substation, Devils Lake, North Dakota
NPA: Lake Region Corporation, Devils Lake, North Dakota
Contract Activity: Western Area Power Administration, Bismarck, North Dakota
Service Type/Location: Janitorial/ Grounds Maintenance
Bureau of Customs and Border Protection, McAllen Sector Quonset Hut, McAllen, Texas
Bureau of Customs and Border Protection, Traffic Checkpoint (Sarita)—McAllen Sector, Kingsville, Texas
Bureau of Customs and Border Protection, Traffic Checkpoint—McAllen Sector, Brownsville, Texas
Bureau of Customs and Border Protection, Traffic Checkpoint—McAllen Sector, Falfurrias, Texas
Bureau of Customs and Border Protection, Traffic Checkpoint (Mercedes)—McAllen Sector, Weslaco, Texas
Bureau of Customs and Border Protection Station, Electronic/ Technical McAllen Sector, Kingsville, Texas
Bureau of Customs and Border Protection Station, McAllen Sector, Corpus Christi, Texas
Bureau of Customs and Border Protection Station (McAllen Sector) Falfurrias, Texas
Bureau of Customs and Border Protection Station (McAllen Sector) Harlingen, Texas
Bureau of Customs and Border Protection Station (McAllen Sector) Rio Grande City, Texas
NPA: Training, Rehabilitation, & Development Institute, Inc., San Antonio, Texas
Contract Activity: Immigration and Naturalization Service, DOJ
Service Type/Location: Office Supply Store, Department of Housing and Urban Development, St. Louis, Missouri

NPA: Alphapointe Association for the Blind, Kansas City, Missouri
Contract Activity: U.S. Department of Housing and Urban Development, St. Louis, Missouri

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–21562 Filed 8–21–03; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Addition to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 21, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.
2. If approved, the action will result in authorizing small entities to furnish the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for addition to Procurement List for production by the nonprofit agencies listed:

Service

Service Type/Location: Custodial Services, Whidbey Island Naval Air Station, Building 2644, Oak Harbor, Washington
NPA: News Leaf, Inc., Oak Harbor, Washington
Contract Activity: Naval Facilities Engineering Command, Oak Harbor, Washington

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–21563 Filed 8–21–03; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Regulations and Procedures Technical Advisory Committee; Notice of Open Meeting

The Regulations and Procedures Technical Advisory Committee will meet on September 9, 2003, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on pending regulations.
4. Discussion on penalty guidelines.
5. Discussion on the Enhanced Proliferation Control Initiative.
6. Discussion on deemed export licensing.
7. Discussion on Automated Export System filer licensing proposal and revised option 4 criteria.
8. Discussion on technology controls.
9. Discussion on Transshipment Country Export Control Initiative "best practices".
10. Reports from working groups.

The meeting will be open to the public and a limited number of seats will be available. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the Committee suggests that presenters forward the public presentation materials, two weeks prior to the meeting date, to the following address: Ms. Lee Ann Carpenter, OSIES/EA/BIS MS: 3876, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, DC 20230.
For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: August 19, 2003.

Lee Ann Carpenter,
Committee Liaison Officer.
[FR Doc. 03–21526 Filed 8–21–03; 8:45 am]
BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke three antidumping duty orders in part.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration,

U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4737.

SUPPEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(2002), for administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on Silicon Metal from Brazil, Canned Pineapple Fruit from Thailand and Bulk Aspirin from the People's Republic of China.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than July 31, 2004.

	Period to be reviewed
Antidumping Duty Proceedings	
Brazil: Silicon Metal, A–351–806	7/1/02–6/30/03
Companhia Brasileira Carbureto De Caicio	
Companhia Ferroligas Minas Gerais-Minasligas	
Chile: Individual Quick Frozen Red Raspberries, A–337–806	12/31/01–6/30/03
Agricola Nova Ltda.	
Agroindustrial Frisac Ltda.	
Agroindustrial Merco Trading Ltda.	
Agroindustria Sagrada Familia Ltda.	
Agroindustrial Frutos del Maipo Ltda.	
Agross S.A.	
Alimentos Proeteo Ltda.	
Alimentos Frutos S.A.	
Andesur S.A.	
Arvalan S.A.	
Armijo Carrasco, Claudio del Carmen	
Bajo Cero S.A.	
Certified Pure Ingredients (Chile) Inc. y Cia. Ltda.	
Chile Andes Foods S.A.	
Angloeuro Comercio Exterior S.A.	
Comercializadora Agricola Berries & Fruit Ltda.	
Comercializadora de Alimentos del Sur Ltda.	
Comercio y Servicios S.A.	
Copefrut S.A.	
C y C Group S.A.	
Exportaciones Meyer S.A.	
Multifrigo Valparaiso S.A.	
Exportadora Pentagro S.A.	
Agroindustria Framberry Ltda.	
Francisco Nancuvilu Punsin	
Frigorifico Ditzler Ltda.	
Frutas de Guaico S.A.	
Fruticola Olmue S.A.	
Fruticola Viconto S.A.	
Hassler Monckeberg S.A.	
Hortifrut S.A.	
Interagro Comercio Y Ganado S.A.	
Kugar Export Ltda.	
Maria Teresa Ubilla Alarcon	
Prima Agrotrading Ltda.	
Procesadora y Exportadora de Frutas y Vegetales Ltda.	
Santiago Comercio Exterior Exportaciones Ltda.	
Sociedad Agricola Valle del Laja Ltda.	
Sociedad Exportaciones Antiquino Ltda.	
Sociedad San Ernesto Ltda.	
Terra Natur S.A.	
Terrazas Export S.A.	
Uren Chile S.A.	
Valles Andinos S.A.	
Vital Berry Marketing S.A.	
Rio Teno S.A.	
Nevada Export S.A.	
Agroindustrias San Francisco Ltda.	
Agroindustria Niquen Ltda.	
Agroindustria y Frigorifico M y M Ltda.	
Agrocomercial Las Tinajas Ltda.	
France: Stainless Steel Sheet and Strip in Coils, A–427–814	7/1/02–6/30/03
Ugine & ALZ France S.A.	
Germany: Industrial Nitrocellulos, A–428–803	7/1/02–6/30/03
Hagedorn AG	
Wolff Walsrode AG	
Germany: Stainless Steel Sheet and Strip in Coils A–428–825	7/1/02–6/30/03

	Period to be reviewed
Krupp Thyssen Nirosta GmbH	
Thyssen Krupp VDM GmbH	
India: Polyethylene Terephthalate (PET) Film, A–533–824	12/21/01–6/30/03
Jindal Polyester Limited of India	
Iran: In-Shell Pistachios, A–507–502	7/1/02–6/30/03
Nima Trading Company	
Italy: Certain Pasta, A–475–818	7/1/02–6/30/03
Barilla Alimentare, S.p.A.	
Rummo S.p.A. Molino e Pastificio	
Pastificio Antonio Pallante S.r.L.	
Industrie Alimentari Molisane S.r.l.	
Pastifico Fratelli Pagani S.p.A.	
Prodotti Alimentari Meridionali	
Pastificio Guido Ferrara S.r.L.	
Pastificio Garofalo S.p.A.	
Industrie Alimentare Colavita, S.p.A.	
Pastificio Riscossa F. Illi Mastromauro, S.r.L.	
Pastificio Carmine Russo S.p.A./Pastificio Di Nola S.p.A.	
Corticella Molini e Pasrifici S.p.a./Pasta Combattenti S.p.a.	
La Molisana Industrie Alimentari S.p.a.	
Pasta Lensi S.r.l. (successor to IAPC Italia S.r.l.)	
Molino e Pastificio Tomasello S.r.l.	
Italy: Stainless Steel Sheet Strip in Coils, A–475–824	7/1/02–6/30/03
Thyssen Krupp Acciai Speciali S.p.A.	
Japan: Stainless Steel Sheet and Strip in Coils, A–588–845	7/1/02–6/30/03
Kawasaki Steel Corporation	
Mexico: Stainless Steel Sheet and Strip in Coils, A–201–822	7/1/02–6/30/03
Thyssen Krupp Mexinox S.A. de C.V.	
Republic of Korea: Stainless Steel Sheet and Strip in Coils, A–580–834	7/1/02–6/30/03
Dai Yang Metal Co., Ltd.	
Taiwan: Polyethylene Terephthalate Film, & Strip, A–583–837	12/21/01–6/30/03
Nan Ya Plastics Corporation, Ltd.	
Shinkong Synthetic Fibers Corporation	
Taiwan: Stainless Steel Sheet and Strip in Coils, A–583–831	7/1/02–6/30/03
Ta Chen Stainless Pipe Co., Ltd.	
Tung Mung Development Co., Ltd.	
Yieh United Steel Corporation	
China Steel Corporation	
Tang Eng Iron Works	
PFP Taiwan Co., Ltd.	
Yieh Loong Enterprise Co., Ltd.	
Yieh Trading Corp.	
Goang Jau Shing Enterprise Co., Ltd.	
Yieh Mau Corp.	
Chien Shing Stainless Co.	
Chain Chon Industrial Co., Ltd.	
Thailand: Canned Pineapple, A–549–813	7/1/02–6/30/03
Dole (Thailand) Ltd./Dole Package Foods Co./Dole Food Co.	
Kuiburi Fruit Canning Company Limited	
Malee Sampran Public Company, Ltd.	
The Prachuab Fruit Canning Company	
Siam Fruit Canning (1988) Co., Ltd.	
Thai Pineapple Canning Industry Corporation	
The Thai Pineapple Public Co., Ltd.	
Vita Food Factory (1989) Co., Ltd.	
The People's Republic of China: Bulk Aspirin [1], A–570–853	7/1/02–6/30/03
Jilin Henghe Pharmaceutical Co., Ltd.	
Shandong Xinhua Pharmaceutical Co., Ltd.	
The People's Republic of China: Persulfates [2], A–570–847	7/1/02–6/30/03
Degussa-AJ (Shanghai) Initiators Co.	
Shanghai AJ Import and Export Corporation	
The People's Republic of China: Sebacic Acid [3], A–570–825	7/1/02–6/30/03
Tianjin Chemicals Import & Export Corporation and manufactured by any compoany other than Hengshui Dongfeng Chemical Co., Ltd.	
Guangdong Chemicals Import and Export Corporation.	
Turkey: Certain Pasta, A–489–805	7/1/02–6/30/03
Beslen Makarna Gida Sanayi ve Ticaret A.S./Beslen Pazarlama Gida Sanayi ve Ticaret, A.S.	
Filiz Gida Sanayi ve Ticaret A.S.	
Gidasa Sabanci Gida Sanayi ve ticaret, A.S. (successor to Maktas Makarnacilik ve Ticaret, A.S.)	
Oba Makarnacilik Sanayi ve Ticaret, A.S.	
Pastavilla Makarnacilik Sanayi ve Ticaret, A.S.	
The United Kingdom: Industrial Nitrocellulose, A–412–803	7/1/02–6/30/03

	Period to be reviewed
Imperial Chemical Industries PLC/Nobel's Explosives Company, Ltd.	
Troon Investsments Limited/Nobel Enterprises	
Countervailing Duty Proceedings	
Italy: Certain Pasta, C–475–819	1/1/02–12/31/02
Pastificio Carmine Russo S.p.A./Pastificio Di Nola S.p.A.	
Pastificio Antonio Pallante S.r.L	
Pastifico Fratelli Pagani S.p.A.	
Corticella Molini e Pastifici S.p.a/Pasta Combattenti S.p.a.	
Pasta Lensi S.r.l. (successor to IAPC Italia S.r.l.)	
Pasta Zara S.p.a.	
India: Polyethylene Terephthalate (PET) Film, C–533–825	10/22/01–12/31/02
Gareware Polyester Limited	
Jindal Polyester Limited of India	
Polyplex Corporation Limited	
Turkey: Certain Pasta, C–489–806	1/1/02–12/31/02
Gidasa Sabanci Gida Sanayi ve Ticaret A.S.	
Suspension Agreements	
None.	

[1] If one of the above named companies does not qualify for a separate rate, all other exporters of bulk aspirin fromthe People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[2] If one of the above named companies does not qualify for a separate rate, all other exporters of persulfates from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

[3] If one of the above named companies does not qualify for a separate rate, all other exporters of sebacic acid from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumpting order under section 351.211 or a determination under section 351.218(f)(4) to continue an order or suspended investigation (after sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 USC 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 19, 2003.

Holly A Kuga,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–21578 Filed 8–21–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

District Export Council Nomination Opportunity

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of opportunity to serve as a member of one of the fifty-eight District Export Councils.

SUMMARY: The U.S. Department of Commerce is currently seeking expressions of interest from individuals in serving as a member of one of the fifty-eight District Export Councils (DECs) nationwide. The DECs are closely affiliated with the U.S. Export Assistance Centers of the U.S. Commercial Service. DECs combine the energies of more than 1,500 exporters and export service providers who promote U.S. exports. DEC members volunteer at their own expense.

DATES: Applications for nomination to a DEC must be received by the designated local USEAC representative by September 1, 2003.

FOR FURTHER INFORMATION: Contact: Cory Simek, National DEC Program Manager, the U.S. Commercial Service, tel. 314–425–3300.

SUPPLEMENTARY INFORMATION: DECs sponsor and participate in numerous trade promotion activities, as well as supply specialized expertise to small and medium-sized businesses that are interested in exporting.

Selection Process: About half of the approximately 30 positions on each of the 58 DECs are open for nominations for the term that ends December 31, 2007. Nominees are recommended by the local U.S. Export Assistance Center Director, in consultation with the DEC and other local export promotion partners. After a review process, nominees are selected and appointed to a DEC by the Secretary of Commerce.

Membership Criteria: Each DEC is interested in nominating highly-motivated people. Appointment is based upon an individual's energetic leadership, position in the local business community, knowledge of day-to-day international operations, interest in export development, and willingness and ability to devote time to council activities. Members include exporters, export service providers and others whose profession supports U.S. export promotion efforts.

Authority: 15 U.S.C. 1501 *et seq.*, 15 U.S.C. 4721.

Dated: August 11, 2003.

Bruce W. Blakeman,

Deputy Assistant Secretary for Domestic Operations, U.S. and Foreign Commercial Service.

[FR Doc. 03–21509 Filed 8–21–03; 8:45 am]

BILLING CODE 3570–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of revocation of Export Trade Certificate of Review No. 99–00004.

SUMMARY: The Secretary of Commerce issued an Export Trade Certificate of Review to USXT, Inc. on November 17, 1999. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to USXT, Inc.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on November 17, 1999 to USXT, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (section 308 of the Act, 15 U.S.C. 4018, section 325.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (sections 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On November 7, 2002, the Department of Commerce sent to USXT, Inc. a letter containing annual report questions with a reminder that its annual report was due on January 1, 2003. Additional reminders were sent on March 31, 2003 and on April 11, 2003. The Department has received no written response from USXT, Inc. to any of these letters.

On May 5, 2003, and in accordance with section 325.10(c)(2) of the Regulations, (15 CFR 325.10 (c)(2)), the Department of Commerce sent a letter by certified mail to notify USXT, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing USXT, Inc. thirty days to respond was published in the **Federal Register** on July 17, 2003 at 68 FR 42397. Pursuant to 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of USXT, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to USXT, Inc. for its failure to file an annual report. The Department has sent a letter, dated August 19, 2003, to notify USXT, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** 325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11 of the Regulations, 15 CFR 325.10(c)(4) and 325.11.

Dated: August 19, 2003.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–21559 Filed 8–21–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of revocation of Export Trade Certificate of Review No. 01–00005.

SUMMARY: The Secretary of Commerce issued an Export Trade Certificate of Review to Vinex International, Inc. on January 7, 2002. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Vinex International, Inc.

FOR FURTHER INFORMATION CONTACT: Jeffrey Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ("the Regulations") are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on January 7, 2002 to Vinex International, Inc.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (section 308 of the Act, 15 U.S.C. 4018, § 325.14(a) of the Regulations, 15 CFR 325.14(a)). The annual report is due within 45 days after the anniversary date of the issuance of the Certificate of Review (§§ 325.14(b) of the Regulations, 15 CFR 325.14(b)). Failure to submit a complete annual report may be the basis for revocation (§§ 325.10(a)(3) and 325.14(c) of the Regulations, 15 CFR 325.10(a)(3) and 325.14(c)).

On December 23, 2002, the Department of Commerce sent to Vinex International, Inc. a letter containing annual report questions with a reminder that its annual report was due on February 21, 2003. Additional reminder letters were sent on March 28, 2003, and May 2, 2003. The Department has received no written response from Vinex International, Inc. to any of these letters.

On July 11, 2003, and in accordance with § 325.10(c)(2) of the Regulations, (15 CFR 325.10(c)(2)), the Department of Commerce sent a letter by certified mail to notify Vinex International, Inc. that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Vinex International, Inc. thirty days to respond was published in the **Federal Register** on July 17, 2003 (68 FR 42396). Pursuant to 325.10(c)(2) of the Regulations (15 CFR 325.10(c)(2)), the Department considers the failure of Vinex International, Inc. to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Vinex International, Inc. for its failure to file an annual report. The Department has sent a letter, dated August 19, 2003, to notify Vinex International, Inc. of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (325.10(c)(4) and 325.11 of the Regulations, 15 CFR 324.10(c)(4) and 325.11).

Dated: August 19, 2003.

Jeffrey Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 03–21560 Filed 8–21–03; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

August 18, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for special shift, carryover, and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63627, published on October 15, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 18, 2003.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on August 22, 2003, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Levels in Group I	
200	1,476,997 kilograms.
219	15,270,125 square meters.
225	11,489,214 square meters.
300/301	7,021,187 kilograms.
313–O [2]	31,260,345 square meters.
314–O [3]	98,121,165 square meters.
315–O [4]	40,551,401 square meters.
317–O [5]/617/326–O [6]	34,314,569 square meters of which not more than 6,740,952 square meters shall be in Category 326–O.
331pt./631pt. [7]	1,849,575 dozen pairs.
336/636	1,171,892 dozen.
338/339	2,289,763 dozen.
340/640	2,704,896 dozen.
341	1,701,611 dozen.
342/642	647,472 dozen.
345	789,268 dozen.
347/348	3,101,896 dozen.
359–C/659–C [8]	2,425,501 kilograms.
359–S/659–S [9]	2,714,167 kilograms.
360	2,272,301 numbers.
361	2,272,301 numbers.
369–S [10]	1,567,240 kilograms.
433	13,085 dozen.
443	97,075 numbers.
445/446	68,696 dozen.
447	20,505 dozen.
448	25,606 dozen.
604–A [11]	1,218,956 kilograms.
611–O [12]	5,644,173 square meters.
613/614/615	38,276,032 square meters.
618–O [13]	8,212,635 square meters.
619/620	15,829,582 square meters.
638/639	2,444,580 dozen.
641	4,003,033 dozen.
643	568,078 numbers.
644	770,921 numbers.
645/646	1,316,294 dozen.
647/648	5,096,526 dozen.
Group II	
201, 218, 220, 224, 226, 227, 237, 239pt. [14], 332, 333, 352, 359–O [15], 362, 363, 369–O [16], 400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. [17], 469pt. [18], 603, 604–O [19], 624, 633, 652, 659–O [20], 666pt. [21], 845, 846 and 852, as a group	153,665,221 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 434, 435, 436, 438, 440, 442, 444, 459pt. and 469pt., as a group	3,618,316 square meters equivalent.
In Group II subgroup	
435	56,808 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[7] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[8] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[9] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 369–S: only HTS number 6307.10.2005.

[11] Category 604–A: only HTS number 5509.32.0000.

[12] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[13] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[14] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[15] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545 (Category 359pt.).

[16] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302.51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[17] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[18] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010, 6304.19.3040, 6304.91.0050, 6304.99.1500, 6304.99.6010, 6308.00.0010 and 6406.10.9020.

[19] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[20] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[21] Category 666pt.: all HTS numbers except 5805.00.4010, 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010, 6302.53.0010, 6302.53.0020, 6302.53.0030, 6302.93.1000, 6302.93.2000, 6303.12.0000, 6303.19.0010, 6303.92.1000, 6303.92.2010, 6303.92.2020, 6303.99.0010, 6304.11.2000, 6304.19.1500, 6304.19.2000, 6304.91.0040, 6304.93.0000, 6304.99.6020, 6307.90.9884, 9404.90.8522 and 9404.90.9522.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–21557 Filed 8–21–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Nepal

August 18, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting a limit.

EFFECTIVE DATE: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 347/348 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63631, published on October 15, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 18, 2003.

Commissioner,

Bureau of Customs and Border Protection,

Washington, DC 20229

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 8, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on August 25, 2003, you are directed to increase the current limit for Categories 347/348 to 1,233,798 dozen [1], as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–21558 Filed 8–21–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Missile Defense Agency Record of Decision Supplemental Environmental Impact Statement for the Airborne Laser Program

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, Public Law (Pub. L.) 91–90 (as amended) and the regulations promulgated by the Council on Environmental Quality at 40 CFR 1505.2, the Department of Defense (DOD), Missile Defense Agency (MDA), has prepared the following Record of Decision (ROD) on the Supplemental Environmental Impact Statement (SEIS) for the Airborne Laser (ABL) Program. The ROD contains the statement of decision, identifies the alternatives considered, and discusses the factors on which the decision was based, and any mitigating measures deemed necessary

[1] The limit has not been adjusted to account for any imports exported after December 31, 2002.

to avoid or minimize environmental impacts.

FOR FURTHER INFORMATION CONTACT: Mr. K. Rock, 703–697–5506.

SUPPLEMENTARY INFORMATION:

Overview

The United States (U.S.) requires a more accurate and effective defense against ballistic missiles by destroying them during the boost phase, just after launch. Currently, the U.S. and its allies are limited to defense of troops of high-value assets within a small area of a theater of operations as the missile nears its target. Improvements in missile range and accuracy and the rapid increase in the number of missile-capable nations increase the threat. The ABL aircraft is a modified Boeing 747 aircraft that accommodates a laser-weapon system and laser fuel storage tanks. The ABL aircraft incorporates an Active Ranging System (ARS) laser, a Track Illuminator Laser (TILL), and a Beacon Illuminator Laser (BILL); a laser-beam control system designed to focus the beam on target; and a High-Energy Laser (HEL) (*i.e.*, chemical, oxygen, iodine laser [COIL]) designed to negate the target. The ARS is a lower-power gas laser, and the BILL and TILL are lower-power solid-state lasers. An onboard Battle Management Command Center provides computerized control of aspects of the laser-weapon system, communications, and intelligence. The ABL aircraft would fly at high altitudes and would detect and track launches of ballistic missile using onboard sensors. During flight-test activities, active tracking of the missile with the BILL and TILL would begin at approximately 35,000 feet above mean sea level.

The ABL program is one of the elements of the MDA Ballistic Missile Defense System (BMDS) that is intended to provide an effective defense for the U.S., its deployed forces, and its friends and allies from limited missile attack during all segments of an attacking missile's flight. The ABL element of the BMDS is being developed to provide an effective defense to limited ballistic missile threats during the boost segment of an attacking missile's flight.

The *Final Environmental Impact Statement for the Program Definition and Risk Reduction Phase of the Airborne Laser Program* (FEIS) was published in April 1997, The 1997 FEIS analyzed several alternatives for establishing the Home Base, the Diagnostic Test Range, and the Extended-Area Test Range that are required to effectively demonstrate the ability of the ABL system. The 1997 FEIS considered Edwards Air Force Base (AFB), California, and Kirtland AFB, New Mexico, as possible Home Base locations; White Sands Missile Range (WSMR), New Mexico, and China Lake Naval Air Warfare Center, California, as the Diagnostic Test Range; and the Western Range, including Vandenberg AFB and/or Point Mugu Naval Air Warfare Center Weapons Division, both in California, as the Extended-Area Test Range.

The ROD for the 1997 FEIS identified Edwards AFB as the Home Base (to support the ABL aircraft and conduct ground-test activities of the ABL system), WSMR as the Diagnostic Test Range, and the Western Range as the Expanded-Area Test Range (both for supporting proposed flight-test activities of the ABL systems). Based upon operational and environmental concerns in that FEIS, Edwards AFB was chosen as the primary location for conducting ground-test activities. Kirtland AFB and WSMR were identified as alternative ground-test locations in the event that ground testing was not possible at Edwards AFB.

Purpose and Need

The SEIS sets forth the supplemental environmental analysis required based on changes in the proposed test program that have occurred since the 1997 FEIS was completed and examines proposed test activities at Edwards AFB, Kirtland AFB, WSMR/Holloman AFB, and Vandenberg AFB. Holloman AFB is a U.S. Air Force installation that shares most of its boundary with WSMR. The 1997 FEIS previously examined test activities and test locations and is considered the No-Action Alternative for this SEIS. The following is a list of new or refined actions that require the preparation of an SEIS:

- Testing of two ABL aircraft (referred to as the Block 2004 aircraft and an improved follow-on aircraft, the Block 2008) rather than the individual aircraft addressed in the 1997 FEIS
- Proposed ground testing that was not considered in detail in the 1997 FEIS
- Potential effects due to off-range lasing during test activities
- Potential effects of lowering the test altitude of the ABL aircraft from 40,000 feet to 35,000 feet or higher
- Testing of the ARS laser, the BILL, the TILL, and the Surrogate High-Energy Laser (SHEL) systems that were not considered in detail in the 1997 FEIS
- Refinement of proposed ABL test activities (*i.e.*, location of tests, types of tests, and number of tests).

These new or refined actions will maximize testing efficiencies and realism, and provide further clarification of the ABL weapon system test program.

Decision

The MDA will proceed with the Proposed Action as described in the SEIS and summarized below. Appropriate management plans and regulations would be adhered to and suitable mitigation measures would be initiated to minimize potential adverse effects.

Proposed Action and Alternatives

The Proposed Action is to conduct test activities of the ABL system at test ranges associated with Edwards AFB and Vandenberg AFB, California, and Kirtland AFB and WSMR/Holloman AFB, New Mexico. Test activities would involve testing the laser components on the ground and in flight to verify that laser components operate together safely and effectively. Two ABL aircraft (Block 2004 and Block 2008) would be utilized during test activities. Software upgrades to the Block 2004 aircraft would be tested and added to that test aircraft under a Block 2006 effort. Once upgraded with the newer operating system, the Block 2004 would be designated as the Block 2006 aircraft. Ground testing of the ABL system is proposed at Edwards AFB. Kirtland AFB and WSMR/Holloman AFB have been identified as alternative ground-test locations if ground tests cannot be conducted at Edwards AFB. Flight testing is proposed at the R–2508 Airspace Complex (Edwards AFB), Western Range (Vandenberg AFB), and WSMR (including Federal Aviation Administration [FAA]-controlled airspace and airspace utilized by Fort Bliss).

The ABL aircraft would be housed at an existing hanger at Edwards AFB. Edwards AFB is also the location where the laser systems would be integrated into the aircraft, where ground tests would occur, and is the location for initial aircraft flight test. Although flight testing of the ABL system would occur within the R–2508 Airspace Complex, Western Range and WSMR, ABL test flights would begin and end at Edwards AFB. The ABL aircraft could be used to support other BMDS incidental exercises and deployments from other locations. These operations would be supported by other environmental analysis as appropriate.

Ground-Testing Activities. Ground testing of the lower-power laser systems (*i.e.*, ARS, BILL, TILL, and SHEL) would be performed at Edwards AFB. Ground-testing activities would be conducted from an aircraft parking pad or the end of a runway with the laser beam

directed over open land toward ground targets with natural features (*e.g.*, mountains, hills, buttes) or earthen berms as a backstop. Lower-power lasers could also be fired from the System Integration Laboratory (SIL) at the Birk Flight Test Facility to range targets for atmospheric testing. Appropriate automatic hard-stop limits and beam path restrictors would be incorporated into the test design to ensure that laser energy does not extend beyond natural features and backstops. Additionally, the proposed ground test area would be cleared of personnel prior to initiating test activities. The ground-testing activities could also be conducted using a ground-based simulator within Building 151 at Edwards AFB. No open range testing of the HEL (COIL) would be conducted. Ground testing of the HEL would be conducted at Edwards AFB within Building 151 and the SIL using a ground-based simulator or an enclosed test cell. In the event that ground testing is not possible at Edwards AFB, ground testing of the ARS, BILL, TILL, and SHEL systems only could be conducted at Kirtland AFB or Holloman AFB/WSMR.

Flight-Testing Activities. Flight tests at ranges associated with WSMR (including FAA-controlled airspace and airspace utilized by Fort Bliss), Edwards AFB (R–2508 Airspace Complex), and Vandenberg AFB (Western Range) would be used to test the ARS, BILL, TILL, SHEL, and HIL systems.

The ABL tests would include acquisition and tracking of targets at short-range as well as high-energy tests. These tests would be conducted against instrumented diagnostic target boards carried by balloons, missiles, or aircraft. Missiles would incorporate a flight-termination system, when required, to ensure that debris would be contained on the range in the event the target must be destroyed during flight. Proteus aircraft (a manned aircraft with a target board attached) and Missile Alternative Range Target Instrument (MARTI) drops (balloon with a target board attached) would be utilized for testing of the lower-power laser systems (*i.e.*, ARS, BILL, TILL, and SHEL). MARTI drops would also be used for testing the HEL.

The MARTI is a diagnostic target for ABL that is similar in size and geometry to a ballistic missile. The basic construction consists of a shell of aluminum with aluminum fins attached, coated with paint selected to represent the properties of the paint on ballistic missiles (no fuel would be onboard). The balloon would rise to an approximate height of 100,000 feet and may pass over private and BLM-managed lands, depending on wind conditions aloft. When the balloon is over the target drop box and at the desired altitude the MARTI payload would be released. The MARTI would free-fall to 50,000 feet allowing approximately 55 seconds of engagement time, allowing multiple engagements on each drop. A nominal three engagements per MARTI drop are planned. Approximately 60 pounds of flare attached to the MARTI would burn during the entire ABL engagement to provide an infrared source for the ARS. The flare would be exhausted prior to the MARTI reaching the ground. After the ABL engagement is complete, a parachute system would be deployed to slow down and recover the complete MARTI unit for reuse.

During flight tests with the ABL aircraft, up to two "chase aircraft" may be utilized to monitor test activities. The ABL aircraft would fly at an altitude of 35,000 feet or higher. The laser systems would be directed above horizontal in an upward direction to minimize potential ground impact or potential contact with other aircraft. The energy from the HEL would heat the missile's booster components and cause a stress fracture, which would destroy the missile.

Missile debris would be contained within the range boundaries. The geometry of the tests would preclude operation of the laser except at an angle that is above the horizon. The onboard sensors and laser clearinghouse data would be used to confirm that no other aircraft or satellites are within the potential path of the beam, although controlled airspace would be utilized during ABL test activities and would be verified cleared. Airborne diagnostic testing would revalidate and expand on-the-ground test activities, confirm computer model predictions, and enable complete system tests.

No-Action Alternative. The No-Action Alternative is to proceed with ABL testing activities as addressed in the 1997 FEIS and associated ROD.

NEPA Process

The Notice of Intent (NOI) to prepare an SEIS for ABL Program test actions was published in the **Federal Register** on March 22, 2002, initiating the public scoping process. Public scoping meetings were held in April 2002 in communities perceived to be affected by the ABL tests. The Notice of Availability (NOA) of the ABL Draft SEIS was published in the **Federal Register** in September 2002. This initiated a public review and comment period for the Draft SEIS. Four public hearings were held in October 2002 in the same locations as the public scoping meetings. Comments on the Draft SEIS were considered in the preparation of the Final SEIS. A Department of Defense NOA for the Final SEIS was published in the **Federal Register** on June 16, 2003. An Environmental Protection Agency NOA for the Final SEIS was published on July 3, 2003, initiating an additional 30-day comment period. Comments were considered in the decision process, culminating in this ROD.

Environmental Issues

The proposed activities addressed in the SEIS do not change the scope, quantity, or quality of the actions analyzed in the 1997 FEIS; therefore, only the following resources were analyzed in the SEIS for potential impacts: airspace, hazardous materials and hazardous waste management, health and safety, air quality, noise, biological resources, cultural resources, and socioeconomics. Environmental issues identified during the analysis are summarized below. The complete SEIS is available at the following Web site: *http://www.afcee.brooks.af.mil/ec/eiap/eis/abl/ABL_F-SEIS_Apr_03.pdf.*

Environmental Effects of the Proposed Action. The current regional airspace restrictions would continue due to ABL testing activities. Flight-testing activities occurring within FAA-controlled airspace would be coordinated with the FAA prior to conducting test activities. Hazardous materials used and hazardous waste generated during ABL testing activities would be managed in accordance with applicable federal, state, DOD, and Air Force regulations regarding the use, storage, and handling of hazardous materials, hazardous waste, and hazardous chemicals identified under the hazardous Materials Management Plan. ABL testing activities would involve ground-level and in-flight lasing. Performance of ABL testing activities in accordance with appropriate safety measures would reduce the potential for health and safety impacts. There would be short-term, negligible increases in pollutant emissions due to ground- and flight-testing activities. The minimal increases would not delay regional progress toward attainment of any air quality standard. The negligible increases in pollutants would not exceed the *de minimus* threshold of any regional air basin. Due to the location of the ground-test activities and the altitude of the flight-test activities, no residential areas would be exposed to continuous noise levels exceeding 65 decibels (dBA). Because ABL testing activities would be conducted in accordance with the applicable regulations and existing

standard operating procedures for debris recovery, adverse biological resource and cultural resource impacts are not anticipated. The proposed ABL testing activities would require a long-term increase of approximately 750 personnel at Edwards AFB to support the ABL program and a short-term increase of up to 50 program related temporary personnel during test activities. These personnel would provide a small, positive, yet largely unnoticeable effect on population, income, and employment in the vicinity of the installations.

Environmental Effects of the No-Action Alternative. ABL test activities would continue in accordance with those actions addressed in the 1997 FEIS and associated ROD. The regional airspace restrictions at the installations would continue due to ongoing mission activities. Management of hazardous materials and waste at the installations would continue to in accordance with current practices. Current range safety measures at the installations would continue with current practices. Current range safety measures at the installations would continue to ensure public safety and the environment are protected. Based on the 1997 FEIS, no adverse air quality, noise, biological, cultural, or socioeconomic impacts are anticipated.

Preferred Alternative. The Proposed Action is the preferred alternative. This would involve conducting test activities of the ABL system at test ranges associated with Edwards AFB and Vandenberg AFB, California, and Kirtland AFB and WSMR/Holloman AFB, New Mexico. Test activities would involve testing the laser components on the ground and in flight to verify that laser components operate together safely and effectively. Edwards AFB has been selected as the Home Base and will be the primary location for ground-testing activities. White Sands Missile Range has been selected as the Diagnostic Test Range and the Western Range has been selected as the Expanded-Area Test Range.

Environmentally Preferred Alternative. The environmentally preferred alternative is the no-action alternative.

Cumulative Impacts. The SEIS found no cumulative impacts on the human environment from proposed ABL testing activities. However, due to the nature of test activities at the Western Range and and WSMR, other missile test and rocket launch activities at the Western Range and WSMR, other missile test and rocket launch activities within the ranges to support other military and commercial functions would be occurring. These missile tests and rocket launches have been addressed in Environmental Assessments (EAs) and Environmental Impact Statements (EISs) that limit the number of launches and are carefully scheduled/coordinated to prevent conflicts with overlapping missions.

In the event that ground tests are conducted at Holloman AFB, potential mission conflicts could occur at Holloman AFB due to parking the ABL aircraft and associated support equipment at the western end of the base runway. This arrangement would prevent aircraft from taking-off or landing (*i.e.*, require closure of the runway). In order to avoid mission conflicts at Holloman AFB, other less frequently or unused runways, taxiways, or aircraft apron locations could be identified/dedicated to support the ABL aircraft during the short period of ground-test activities. If a suitable ground-test location that avoids Holloman AFB mission activities cannot be identified, the ABL ground-test program would be postponed until conditions at Edwards AFB or Kirkland AFB are suitable. In addition, during ABL flight-test activities, conflicts with the Holloman AFB flying mission could occur due to the ABL test activities using restricted airspace that is also used by Holloman AFB aircraft. This potential concern would be avoided through scheduling of test activities so that mission conflicts would not occur.

Measures to Minimize Impacts. All practicable means to avoid, minimize, or mitigate harm to the environment would be taken under the selected alternative. Because of the negligible impacts that ABL test activities would have on most environmental factors and measures already taken by the MDA, Air Force, and Army, no separate mitigation plan beyond adherence to applicable laws, regulations, and DOD guidelines is deemed necessary. ABL test activities would comply with applicable federal, state, DOD, Air Force, and Army regulations regarding the management of hazardous materials and hazardous waste. Evacuation plans and emergency response plans will be developed and implemented as required. Emergency planning documents will be updated and emergency response personnel trained and equipped prior to introduction of new hazardous materials.

To minimize potential laser hazards, multiple controls would be used to reduce the potential for off-range lasing and accidental lasing of unsuspecting receptors. These controls include the use of backdrops and enclosures, horizontal and vertical buffer zones, administrative controls, and removal of mirror-like reflecting surfaces from the test area. Safety interlocks associated with the laser systems are in place to stop lasing activities in the event that the beam control steers the beam from the anticipated beam path. Evacuations, clearances, and road closures would be implemented to ensure worker and public health and safety. Any debris from target missile impact areas would be recovered in accordance with established Standard Operating Procedures (SOPs) and regulations.

Consultation with appropriate federal and state agencies (*e.g.*, U.S. Fish and Wildlife Service, SHPO) will be completed. Notice of launch activities will be provided to any concerned agencies, local communities, and recreational users. Efforts will be made to schedule ABL test activities to avoid impacts on other activities at the installations.

With regard to airspace, avoidance of the R–5119 Restricted Area associated with WSMR would mitigate the potential impact to the J13 and J57 high-altitude jet routes that transit through the Restricted Area. In order to avoid operational impacts at Holloman AFB, other less frequently used or unused runways, taxiways, or aircraft apron locations could be identified/dedicated to support the ABL aircraft during the short period of ground-test activities. If a suitable ground-test location that avoids Holloman AFB mission activities cannot be identified, the ABL ground-test program would be postponed until conditions at Edwards AFB or Kirtland AFB are suitable.

In the event that target debris affects White Sands pupfish habitat, specific operational steps for emergency responses would be determined on a case-by-case basis in accordance with the WSMR Missile Mishap Plan, Annex P to the Disaster Control Plan.

Conclusion

The refinements in the original testing program analyzed in the SEIS serve to increase testing efficiencies and realism, and provide further advancement of the ABL testing program.

The factors and considerations offered above justify the selection by MDA of the Proposed Action as presented in the *Final Supplemental Environmental Impact Statement for the Airborne Laser Program.*

Dated: August 18, 2003.

Signed By Ronald T. Kadish, Lieutenant General, USAF, Director.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–21478 Filed 8–21–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Force Sustainment Division announces the proposed extension to AF Form 2800, Family Center Individual/Family Data Card; AF Form 2801, Family Support Center Interview and Follow-up Summary; AF Form 2805, Family Support Center Volunteer Data and Service Record. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, unity, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 21, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to HQ USAF/DPDF, 1040 Air Force Pentagon, Room 5C238, Washington, DC 20330–1040, ATTN: Major Jay Doherty.

FOR FURTHER INFORMATION CONTACT: To request more information on these proposed data collection instruments, please write to the above address or call (703) 697–4720.

Title, Associated Form, and OMB Number: Family Support Center Individual/Family Data Card, AF Form 2800, Family Support Center Interview and Follow Up Summary, AF Form 2801; Family Support Center Volunteer Data and Service Record, AF Form 2805, OMB Number 0701–0070.

Needs and Uses: The information collection requirement is necessary to obtain demographic data about individuals and family members who utilize the services of the Family Support Center. It is also a mechanism for tracking the services provided in order to determine program usage and trends as well as program evaluation, service targeting, and future budgeting. It also provides demographic data on volunteers and tracks volunteer service.

Affected Public: All those eligible for services provided by Family Support Centers (all Department of Defense personnel and their families) and those who volunteer in the Family Support Center.

Annual Burden Hours: 750.

Number of Respondents: 10,000.

Responses per Respondent: 3.

Average Burden per Response: 5 Minutes.

Frequency: Once.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents could be all those eligible for services, *i.e.*, all Department of Defense personnel and their families. The completed form is used to gather demographic data on those who use Family Support Centers, track what programs or services they use and how often. The elements in this form are the basis for quarterly data gathering which is forwarded through the Major Commands to the Air Staff.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–21479 Filed 8–21–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Headquarters Air Force Recruiting Service announces the proposed extension of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the propsed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by (to be determined).

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Department of Defense, HQ AFRS/RSOP, 550 D Street West, Suite 1, Randolph AFB, TX 78150–4527.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Headquarters AFRS/RSOP, Enlisted Accessions Branch, at (21)–652–6188.

Title, Associated Form, and OMB Number: non-Prior Service and Prior Service Accessions, AETC Forms 1319, 1325, and 1419 and OMB Number 0701–0079.

Needs and Uses: The information collection requirement is necessary for recruiters to determine applicant qualifications when conducting an interview. Information from the interview will determine if additional documents on law violations, citizenship verification, and educations are needed. Applicants who have reached a certain age, marital status or classification are required to submit financial information. The AETC 1419 is used to collect police reports, law violation disposition reports, and court documents used to determine an applicant's moral qualification.

Affected Public: Individuals or households.

Annual Burden Hours: 69,105.

Number of Respondents: 110,231.

Responses Per Respondent: 1.

Average Burden per Response: 1.05 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are civilian non-prior and prior service personnel applying for enlistment into the Air Force as enlisted members. The completed forms are used by the recruiter to establish eligibility status of applicants and determine what additional forms are needed to obtain the required information. If the forms are not included in the case file, individuals reviewing the file cannot be

readily assured of the qualifications of the applicant.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–21480 Filed 8–21–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions announces the proposed reinstatement of a public information collection and seeks public comment on provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, unity, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 27, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the United States Air Force Academy, Office of Admissions, 2304 Cadet Drive, Suite 236, USAFA, CO 80840.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to above address, or call the United States Air Force Academy, Office of Admissions, (719) 333–7291.

Title, Associated Form, and OMB Number: Air Force Academy Candidate Activities Records, USAFA Form 147, OMB Number 0701–0063.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 5,258.

Number of Respondents: 7,010.

Responses per Respondent: 1.

Average Burden per Response: 45 Minutes.

Frequency: 1.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–21481 Filed 8–21–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 21, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 19, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Chief Financial Officer

Type of Review: Revision.

Title: U.S. Department of Education Budget Information—Non-Construction Programs Form and Grant Performance Report Form.

Frequency: Annually and One-Time (New Awards—ED524).

Affected Public: Businesses or other for-profit; not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 23,835.

Burden Hours: 457,501.

Abstract: This collection is necessary for the award and administration of discretionary and some formula grants. The Budget Information Non-Construction Programs (ED Form 524) enables the review of all years of a multi-year budget at the time of the initial award. The U.S. Department of Education Grant Performance Report (ED Form 524B) is one of the monitoring tools used by ED staff in the Post-Award and Grant Closeout functions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2336. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address

vivian_reese@ed.gov. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–21561 Filed 8–21–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Advisory Board; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 18th and Friday, September 19th, 2003.

ADDRESSES: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW., (Room 6E–069), Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Director of the Environmental Management Advisory Board, (EM–10), 1000 Independence Avenue SW., (Room 5B–171), Washington, DC 20585. The telephone number is 202–586–4400. The Internet address is *james.melillo@em.doe.gov*.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on corporate issues confronting the Environmental Management Program. The Board will contribute to the effective operation of the Environmental Management Program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing the Office of Environmental Management and by helping to secure consensus recommendations on those issues.

Tentative Agenda

Thursday, September 18, 2003

1 p.m. Public Meeting Open
—Welcome
—Opening Remarks
—Program Briefings
—EM Budget Briefings
5 p.m. Public Comment Period and Adjournment

Friday, September 19, 2003

9 a.m. Opening Remarks
—EMAB Project Team Updates
—Board Discussions
3 p.m. Public Comment Period and Adjournment

Public Participation: This meeting is open to the public. If you would like to file a written statement with the Board, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, please contact Mr. Melillo at the address or telephone number listed above, or call the Environmental Management Advisory Board office at 202–586–4400, and we will reserve time for you on the agenda. Those who call in and or register in advance will be given the opportunity to speak first. Others will be accommodated as time permits. The Board Chair will conduct the meeting in a manner that permits the orderly conduct of business.

Minutes: We will make the minutes of the meeting available for public review and copying by December 20, 2003. The minutes and transcript of the meeting will be available for viewing at the Freedom of Information Public Reading Room (1E–190) in the Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. The Room is open Monday through Friday from 9 a.m.–4 p.m. except on Federal holidays.

Issued in Washington, DC on August 19, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–21546 Filed 8–21–03; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Office of Science; High Energy Physics Advisory Panel; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, September 29, 2003; 9 a.m. to 6 p.m. and Tuesday, September 30, 2003; 8:30 a.m. to 4 p.m.

ADDRESSES: Hilton Washington Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Bruce Strauss, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; SC–22/Germantown Building, 1000 Independence Avenue, SW., Washington, DC 20585–1290; Telephone: 301–903–3705.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda: Agenda will include discussions of the following:

Monday, September 29, 2003, and Tuesday, September 30, 2003

- Discussion of the DOE/NSF HEPAP Subpanel on Particle Physics Project Prioritization Panel (P5) Report.
- Discussion of Department of Energy High Energy Physics Programs.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Discussion of the High-Energy Physics Facilities Recommended For the DOE Office of Science Twenty-Year Roadmap Report.
- Discussion of High Energy Physics University Programs.
- Reports on and Discussion of U.S. Large Hadron Collider Activities.
- Reports on and Discussion of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Bruce Strauss, 301–903–3705 or *Bruce.Strauss@science.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 90 days at the Freedom of Information Public Reading Room;

Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on August 19, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management.

[FR Doc. 03–21545 Filed 8–21–03; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–120–000, et al.]

Virginia Electric and Power Company, et al.; Electric Rate and Corporate Filings

August 13, 2003.

1. Virginia Electric and Power Company

[Docket No. EC03–120–000]

Take notice that on August 8, 2003, Virginia Electric and Power Company (Dominion Virginia Power), tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 203 of the Federal Power Act and part 33 of the Commission's regulations, an application (Application) requesting Commission authorization for the Applicant's proposed purchase of an approximately 240 MW cogeneration facility and its appurtenant transmission facilities located in Gordonsville, Virginia.

Dominion Virginia Power states that copies of the filing were served upon Dominion Virginia Power's wholesale requirements customers, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: August 29, 2003.

2. Hardee Power Partners, Limited Invenergy Investment Company LLC GTCR Fund VIII, L.P., GTCR Fund VIII/B, L.P., Hardee GP LLC, Hardee LP LLC

[Docket No. EC03–121–000]

Take notice that on August 8, 2003, Hardee Power Partners, Limited (Hardee Power), Invenergy Investment Company LLC, GTCR Fund VIII, L.P., GTCR Fund VIII/B, L.P., Hardee GP LLC and Hardee LP LLC (the Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of the transfer of 100% of the partnership interests in Hardee Power to Hardee GP LLC and Hardee LP LLC (the "Acquirers") so that upon consummation of the proposed transaction, the Acquirers will own 100% of Hardee Power. Applicants request confidential treatment for the documents contained in Exhibit I.

Comment Date: August 29, 2003.

3. Carolina Power & Light Company and Florida Power Company

[Docket Nos. ER01–1807–012 and ER01–2020–009]

Take notice that on August 8, 2003, Carolina Power & Light Company and Florida Power Corporation tendered for filing with the Federal Energy Regulatory Commission modifications to their Open Access Transmission Tariffs (OATT) that modify the compliance filing that they made on June 16, 2003 in Docket Nos. ER01–1807–011 and ER01–2020–008. Carolina Power & Light Company states that copies of the filing were served upon the public utility's jurisdictional customers, the North Carolina Utilities Commission and the Florida Public Service Commission.

Comment Date: August 29, 2003.

4. Ameren Services Company

[Docket No. ER02–2233–007]

Take notice that on August 7, 2003, the GridAmerica Participants and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed a compliance filing in accordance with the Commission's Orders issued on July 23, 2003 and July 31, 2003 in the Docket No. ER02–2233–002 *et al. See* Ameren Services Company, 104 FERC ¶ 61,097 (July 23 Order); Ameren Services Company, 104 FERC ¶ 61,178 (July 31 Order).

The Midwest ISO has requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: August 28, 2003.

5. Ameren Services Company

[Docket Nos. ER02–2233–008]

Take notice that on August 8, 2003, the GridAmerica Participants and the Midwest Independent Transmission System Operator, Inc. (jointly, the Applicants) filed a compliance filing in accordance with the Commission's order issued on July 31, 2003 in Docket No. ER02–2233–002, *et al. See* Ameren Services Company, 104 FERC ¶ 61,178 (July 31 Order).

The Applicants have requested waiver of the requirements set forth in 18 CFR 385.2010. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: August 29, 2003.

6. Entergy Services, Inc.

[Docket No. ER03–1037–001]

Take notice that on August 8, 2003, Entergy Services, Inc., (Entergy Services) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., tendered for filing fully executed copies of an Amendment to the Service Agreement for Network Integration Transmission Service and Network Operating Agreement between Entergy Services and the City of North Little Rock, Arkansas, which had been previously submitted for filing in Docket No. ER03–1037–000 on July 3, 2003.

Comment Date: August 29, 2003.

7. PJM Interconnection, L.L.C.

[Docket No. ER03–1173–000]

Take notice that on August 7, 2003, PJM Interconnection, L.L.C. (PJM), submitted amendments to Schedule 2 of the PJM Open Access Transmission Tariff (PJM Tariff) to reflect revised WPS Westwood Generation, LLC (Westwood) revenue requirements for Reactive Supply and Voltage Control from Generation Sources Service as a result of a settlement agreement accepted by the Commission in Dockets No. ER02–2361–000 and ER02–2361–001, 103 FERC ¶ 61,298.

PJM states that copies of this filing have been served on all PJM members, Westwood, and each state electric utility regulatory commission in the PJM region.

Comment Date: August 28, 2003.

8. Pacific Gas and Electric Company

[Docket No. ER03–1175–000]

Take notice that on August 7, 2003, Pacific Gas and Electric Company (PG&E) tendered for filing revised Generator Special Facilities Agreements, Generator Interconnection Agreements, Supplemental Letter Agreements and Amendments between PG&E and the following Calpine-owned parties: Los Esteros Critical Energy Facility, LLC (Los Esteros); Yuba City Energy Center, LLC (Yuba City); Gilroy B Feather River Energy Center, LLC (Gilroy B Feather River); and Riverview Energy Center, LLC (Riverview).

PG&E has requested certain waivers. PG&E states that copies of this filing have been served upon Calpine, Los Esteros, Yuba City, Gilroy B Feather River, Riverview, the California Independent System Operator Corporation and the CPUC.

Comment Date: August 28, 2003.

9. PJM Interconnection, L.L.C.

[Docket No. ER03–1176–000]

Take notice that on August 7, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an amended interconnection service agreement among PJM, Marina Energy, L.L.C., and Atlantic City Electric Company d/b/a Conectiv Power Delivery.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 9, 2003 effective date for the agreement. PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: August 28, 2003.

10. PJM Interconnection, L.L.C.

[Docket No. ER03–1177–000]

Take notice that on August 7, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interim interconnection service agreement among PJM, Pleasants Energy, L.L.C., and Allegheny Power.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 29, 2003 effective date for the agreement. PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: August 28, 2003.

11. PJM Interconnection, L.L.C.

[Docket No. ER03–1178–000]

Take notice that on August 7, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, Conectiv Bethlehem, L.L.C., and PPL Electric Utilities Corporation and a notice of cancellation of an Interim ISA that has been superseded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 16, 2003 effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: August 28, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21565 Filed 8–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Soliciting Comments

August 13, 2003.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project No.:* 2205–006.

c. *Date Filed:* July 3, 2003.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Lamoille River Hydroelectric Project.

f. *Location:* Located on the Lamoille River, in Franklin, Lamoille, and Chittenden Counties, Vermont.

g. Filed Pursuant to: Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Mr. Michael J. Scarzello, Engineer, Central Vermont Public Service Corp., 77 Grove St., Rutland, VT 05701–3403 (802) 247–5207.

i. *FERC Contact:* Jack Duckworth at (202) 502–692, or by e-mail at jack.duckworth@ferc.gov.

j. Deadline for Filing Comments: The deadline for filing comments on the Settlement Agreement is 20 days from the date of this notice. The deadline for filing reply comments is 30 days from the date of this notice. All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Under the Commission's Rules of Practice, intervenors in the relicensing proceeding filing documents with the Commission must serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions of the Commission's Web site (*http://www.ferc.gov*) under the "e-filing" link.

k. Central Vermont Public Service Corporation filed the Comprehensive Settlement Agreement on behalf of itself and 5 other stakeholders. The purpose of the Settlement Agreement is to resolve, among the signatories, all water resource related issues of Central Vermont Public Service Corporation's pending Application for New License for the Lamoille River Hydroelectric Project. The relicensing issues resolved through the settlement include requirements for reservoir drawdowns, bypass flows, downstream flows, and fish passage. Central Vermont Public Service Corporation requests that the Commission approve the Settlement Agreement and incorporate the proposed project operation restrictions and requirements in Appendix A of the

Settlement Agreement into a new license for the project.

l. A copy of the Settlement Agreement is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above. Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–21502 Filed 8–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2169–022]

Notice of Applications for Non-Project Use of Project Lands and Soliciting Comments, Motions To Intervene, and Protests

August 18, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Non-Project Use of Project Lands.

b. *Project No*: 2169–022.

c. *Date Filed:* March 13, 2003.

d. *Applicant:* Alcoa Power Generating Inc., Tapoco Division (Tapoco).

e. *Name of Project:* Tapoco Hydroelectric Project.

f. *Location:* The project is located on the Cheoah and Little Tennessee Rivers, in Blount and Monroe Counties, Tennessee, and Graham and Swain Counties, North Carolina. The project consists of four developments: Chilhowee, Cheoah, Santeetlah, and Calderwood.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791 (a) 825(r) and 799 and 801.

h. *Applicant Contact:* Mr. J. E. Adams, Tapoco, Inc., 300 N. Hall Road, Alcoa, TN 37701, (423) 977–3333.

i. *FERC Contact:* Any questions on this notice should be addressed to Ms. Shana High at (202) 502–8674, or e-mail address: *shana.high@ferc.gov.*

j. *Deadline for filing comments and or motions*: September 2, 2003.

All documents (original and eight copies) should be filed with: Ms. Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–2169–022) on any comments or motions filed. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages e-filings.

k. *Description of Request*: Tapoco is seeking Commission authorization to issue a permit for non-project use of project lands and waters. The permit would be issued to modify the existing Santeetlah Marina, LLC. The proposed modification would increase mooring capacity from 100 to 180 watercraft, as needed, and would authorize construction of a new marina store. Santeetlah Marina, LLC is located on the Santeetlah Development, on the Cheoah and Little Tennessee Rivers in Graham and Swain Counties, North Carolina.

l. *Location of the Applications*: The filings are available for review at the Commission in the Public Reference Room , located at 888 First Street, NE., Room 2A, Washington, DC 20426, or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please call the Helpline at (866) 208–3676 or contact *FERCONLINESUPPORT@ferc.gov*. For TTY, contact (202) 502–8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21528 Filed 8–21–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meeting and Soliciting Scoping Comments for an Applicant Prepared Environmental Assessment Using the Alternative Licensing Process

August 18, 2003.

a. *Type of Application:* Alternative Licensing Process.

b. *Project No.:* 2101.

c. *Applicant:* Sacramento Municipal Utility District (SMUD).

d. *Name of Project:* Upper American River Project.

e. *Location:* In the Rubicon River, Silver Creek, and South Fork American River watersheds in El Dorado and Sacramento counties, California. The project occupies federal lands within the El Dorado National Forest.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contact:* David F. Hanson, Project Manager, Hydro Relicensing at (916) 732–6703.

h. *FERC Contact:* James Fargo at (202) 502–6095; e-mail *james.fargo@ferc.gov*.

j. *Deadline for filing scoping comments:* September 17, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) using the "e-library" link.

k. The Upper American River Project facilities consist of several existing reservoirs, a series of powerhouses and about 180 miles of transmission line. The project has a total installed capacity of 688,000 kilowatts.

Scoping Process

SMUD will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

SMUD expects to file the APEA and the license application for the Upper American River Project with the Commission by July 2005. Although SMUD's intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming scoping meetings identified below, and to solicit your scoping comments.

Scoping Meetings

SMUD and the Commission staff will hold three scoping meetings, (1) in the daytime and (2) in the evening, to help us identify the scope of issues to be addressed in the APEA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meetings are primarily for public input. All interested individuals, organizations, and agencies are invited to attend any of the meetings, and to help the staff in identifying the environmental issues that should be analyzed in the APEA. The times and locations of these meetings are as follows:

Date	Time	Location
September 9, Tuesday	6 p.m.–8 p.m	SMUD Customer Services Center, 6301 S Street, Sacramento.
September 10, Wednesday	9 a.m.–4 p.m	SMUD Customer Services Center, 6301 S Street, Sacramento.
September 11, Thursday	6 p.m.–8 p.m	Building C, County Government Center, 2850 Fairlane Court, Placerville.

To help focus discussions, Scoping Document 1 is available for public review at the Sacramento Public Library (828 I Street), the El Dorado County Library (345 Fair Lane, Placerville) and on SMUD's hydro relicensing Web page *http://www.smud.org/relicensing*. Scoping Document 1 outlines the subject areas to be addressed in the APEA.

SD1 is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Based on all written comments received, a Scoping Document 2 (SD2) may be issued. SD2 will include a revised list of issues, based on the scoping sessions.

Objectives

At the scoping meetings, the SMUD and FERC staff will: (1) Summarize the environmental issues tentatively identified for analysis in the APEA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the APEA, including viewpoints in opposition to, or in support of, the staffs' preliminary views; (4) determine the resource issues to be addressed in the APEA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to help define and clarify the issues to be addressed in the APEA.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21529 Filed 8–21–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7548–5]

Environmental Laboratory Advisory Board; New Membership

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

The Charter for the Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) has

been renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 section 9(c). The purpose of ELAB is to provide advice and recommendations to the Administrator of EPA on issues associated with the systems and standards of accreditation for environmental laboratories. ELAB is composed of representatives of non-Federal interest that were selected from among, but not limited to, trade associations for the environmental laboratory industry, trade associations from EPA's regulated community, environmental public interest groups, academia, local and tribal governments, and laboratory assessment bodies. ELAB is currently seeking additional membership from these areas of interest, or others, with experience in the systems and standards of accreditation for environmental laboratories.

Resumes and letters of interest may be directed to Lara P. Autry, NELAC/NELAP Director, U.S. Environmental Protection Agency, Office of Research and Development, National Exposure Research Laboratory, Environmental Sciences Division, Landscape Characterization Branch (E243–05), Research Triangle Park, NC 27711 or by e-mail: *autry.lara@epa.gov*. Inquiries must be submitted by August 15, 2003 for consideration.

Dated: July 30, 2003.

Henry L. Longest,

Acting Assistant Administrator, Office of Research and Development.

[FR Doc. 03–21599 Filed 8–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7548–6]

Environmental Laboratory Advisory Board; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

The Charter for the Environmental Protection Agency's Environmental Laboratory Advisory Board (ELAB) has been renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2 section 9(c). The purpose of ELAB is to provide advice and recommendations to the Administrator of EPA on issues associated with the systems and standards of accreditation for environmental laboratories.

It is determined that ELAB is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Lara P. Autry, NELAC/NELAP Director, U.S. Environmental Protection Agency, Office of Research and Development, National Exposure Research Laboratory, Environmental Sciences Division, Landscape Characterization Branch (E243–05), Research Triangle Park, NC 27711 or by e-mail: *autry.lara@epa.gov*.

Dated: July 30, 2003.

Henry L. Longest,

Acting Assistant Administrator, Office of Research and Development.

[FR Doc. 03–21600 Filed 8–21–03; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6643–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–J70021–SD Rating EC2, Prairie Project Area (Lower Rapid Creek Area), Multiple Resource Management Actions, Implementation, Black Hills National Forest, Mystic Ranger District, Pennington County, ID.

Summary: EPA has environmental concerns about potential soil erosion, runoff and degradation of water quality and stream habitat, stream sedimentation, and impacts to wildlife and sensitive species. EPA recommended the final EIS include measures to minimize impacts to important wildlife habitat and private property when harvesting on the Forest Service-private land interface.

ERP No. D–FHW–E40797–MS Rating LO, Airport Parkway Extension, Improvements to MS–475 from I–20 to Old Brandon Road, U.S. Army COE Section 404 Permit Issuance, Rankin County, MS.

Summary: EPA has lack of objections to the proposed action.

However, EPA recommends that further information regarding project description, project need and adequate mitigation be included in the FEIS.

ERP No. D–FHW–F40413–IL Rating EC2, US 20 (FAP 301) Construction Project, IL–84 north of Galena to Bolton Road northwest of Freeport, Funding, NPDES Permit and U.S. Army COE Section 404 Permit Issuance, Jo Davies and Stephenson Counties, IL.

Summary: EPA has environmental concerns with the proposed project relating to: (1) Karst areas and groundwater contamination, (2) impaired water impacts, (3) neotropical migrant impacts, and (4) forest impact mitigation.

ERP No. D–FHW–F40414–OH Rating EC2, Butler County, OH–63 Extension to U.S. 127 (Trenton Area Access), Construction of a Multi-Lane Limited Access, Divided Highway on New Alignment from east of OH–41/OH–63 Interchange in the City of Monroe, Funding, Butler County, OH.

Summary: EPA has environmental concerns with the proposed project regarding potential ground water contamination in a federally-designated sole source aquifer (the Great Miami/Little Miami Buried Valley Aquifer System). EPA also asks that more information be provided on wetlands mitigation and impacts to surface water.

ERP No. D–FHW–F40415–IN Rating EC2, US 31 Improvement Project (I–465 to IN–38) between I–465 North Leg and IN–38, Funding, NPDES Permit and U.S. Army Section 10 and 404 Permits Issuance, Hamilton County, IN.

Summary: EPA has environmental concerns with the preferred alternative regarding potentially adverse impacts to public drinking water supplies, forests, wetlands, streams and floodplains. EPA recommends the FEIS include specific mitigation measures to minimize and/or compensate for these impacts.

ERP No. D–FHW–G40174–TX Rating LO, Eastern Extension of the President George Bush Turnpike (PGBT) from TX–78 to I–30, New Controlled Access Tollway Construction at a New Location, Cities of Garland, Sachse, Rowlett and Dallas, Dallas County, TX.

Summary: EPA has no objections to the project as proposed. EPA recommends additional information regarding the areas of air quality and floodplain mitigation be included in the FEIS.

ERP No. D–NPS–G65086–TX Rating LO, Big Bend National Park General Management Plan, Implementation, Brewster County, TX.

Summary: EPA has no objections to the selection of the preferred alternative as described.

ERP No. D–NPS–J65384–MT Rating EC2, Glacier National Park Commercial Services Plan, and General Management Plan, Implementation, Glacier National Park, a Portion of Waterton-Glacier International Peace Park, Flathead and Glacier Counties, MT.

Summary: EPA expressed environmental concerns with potential impacts to outstanding resource waters within Glacier National Park from stream channel maintenance activities and construction. EPA believes additional information should be presented to fully assess and mitigate all potential impacts of the management actions.

Final EISs

ERP No. F–AFS–K65249–CA, Stream Fire Restoration Project, Implementation, Plumas National Forest, Mt. Hough Ranger District, Plumas County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–BLM–K61155–CA, Imperial Sand Dunes Recreation Area Management Plan Revision and Update and Amendment to the California Desert Conservation Area Plan, Implementation, Imperial County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–COE–G39036–TX, North Padre Island Storm Damage Reduction and Environmental Restoration Project, Construction of a Channel between the Laquna Madre and the Gulf of Mexico across North Padre Island referred to as Packery Channel Project, Nueces County, TX.

Summary: EPA had no objections to the proposed action.

ERP No. F–DOE–L08055–WA, Kangley—Echo Lake Transmission Line Project, New 500-kilovolt (kV) Transmission Line Construction, U.S. Army COE Section 10 and 404 Permits Issuance, King County, WA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–DOE–L08063–WA, Plymouth Generating Facility, Construction and Operation of a 307-megawatt (MW) Natural Gas-Fired Combined Cycle Power Generation Facility on a 44.5 Acre Site, Conditional Use/Special Use Permit Issuance, Benton County, WA.

Summary: EPA continues to have environmental concerns with the lack of a comprehensive air quality cumulative effects analysis.

ERP No. F–FHW–K40253–CA, Riverside County Integrated Project, Winchester to Temecula Corridor, Construction of a New Multi-Modal Transportation Facility, Route Location and Right-of-Way Preservation, Riverside County, CA.

Summary: EPA has environmental concerns regarding the preferred alternative's contribution to habitat fragmentation, and impacts to endangered species, waters of the United States, water quality and air quality. EPA requests clarifications in the Record of Decision, and commitments that these key issues be addressed in the Tier 2 project level evaluation.

ERP No. F–USN–K11107–CA, Naval Station Treasure Island Disposal and Reuse Property, Implementation, Local Redevelopment Authority (LRA), City of San Francisco, San Francisco County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–COE–G39002–00, Red River Chloride Control Project, Authorization to Reduce the Natural Occurring Levels of Chloride in the Wichita River Portion Only, North, Middle and South Forks, Wichita River and Red River, Implementation, Tulsa District, Wichita County, TX.

Summary: EPA had no objections to the preferred alternative.

ERP No. FS–UAF–K11076–00, Airborne Laser (ABL) Program, Conducting Test Activities at Kirtland Air Force Base (AFB) and White Sands Missile Range/Holloman AFB, New Mexico; and Edwards AFB and Vandenberg AFB, California, NM and CA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: August 19, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–21601 Filed 8–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6643–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed August 11, 2003 Through August 15, 2003

Pursuant to 40 CFR 1506.9.

EIS No. 030376, DRAFT EIS, FHW, AK, Gravina Access Project, Improve Surface Transportation between Revillagigedo Island and Gravina Island, Ketchikan Gateway Borough, Funding by (TEA–21), Endangered Species Act Section 7, NPDES, U.S. Army COE Section 404 Permit, AK, Comment Period Ends: October 6, 2003, Contact: Tim A. Haugh (907) 586–7418. This document is available on the Internet at: *http://www.gravina-access.com.*

EIS No. 030377, DRAFT EIS, AFS, MT, North Belts Travel Plan and the Dry Range Project, Provide Motorized and Non-motorized Recreation, Helena National Forest, Broadwater, Lewis & Clark and Meagher Counties, MT, Comment Period Ends: October 6, 2003, Contact: Beth Ihle (406) 266–3425. This document is available on the Internet at: *http://www.fs.fed.us/r1/helena/projects.*

EIS No. 030378, FINAL EIS, FRC, LA, Hackberry Liquified Natural Gas (LNG) Terminal and Natural Gas Pipeline Facilities, Construction and Operation, Cameron, Calcasieu, and Beauregard Parishes, LA, Wait Period Ends: September 22, 2003, Contact: Thomas Russo (800) 208–3372.

EIS No. 030379, FINAL EIS, BLM, WY, Pittsburg and Midway Coal Mining Proposal (WYW148816), Exchange of Private Owned Land P&M for Federally-Owned Coal, Lincoln, Carbon and Sheridan Counties, WY, Wait Period Ends: September 22, 2003, Contact: Nancy Doelger (307) 261–7627. This document is available on the Internet at: *http://www.wy.blm.gov.*

EIS No. 030380, REVISED DRAFT EIS, COE, CA, Port of Long Beach Pier J South Terminal Expansion Project, Additional Cargo Requirements Associated with Growing Export and Import Volumes, Port Master Plan (PMP) Amendment, COE Section 404, 401 and 10 Permits, City of Long Beach, CA, Comment Period Ends: October 6, 2003, Contact: Dr. Aaron O. Allen (805) 585–2148.

EIS No. 030381, FINAL EIS, NRC, NB, GENERIC EIS—Fort Calhoun Station, Unit 1, Renewal of the Operating Licenses (OLs) for an Additional 20 Years, Supplement 12 (NUREG–1437) Omaha Public Power District, Washington County, NB, Wait Period Ends: September 22, 2003, Contact: Jack Cushing (301) 415–1424.

EIS No. 030382, FINAL EIS, AFS, OR, ID, OR, ID, Hells Canyon National Recreation Area (HCNRA), Comprehensive Management Plan, Implementation, Wallowa-Whitman National Forest, Nez Perce and

Payette National Forests, Bake and Wallowa Counties, OR and Nez Perce and Adam Counties, ID, Wait Period Ends: September 22, 2003; Contact: Elaine Kohrman (541) 523–1331. This document is available on the Internet at: *http://www.fs.fed.us/hellscanyon/.*

EIS No. 030383, FINAL EIS, AFS, OR, Silvies Canyon Watershed Restoration Project, Additional Information concerning Ecosystem Health Improvements in the Watershed, Grant and Harney Counties, OR, Wait Period Ends: September 22, 2003, Contact: Lori Bailey (541) 573–4300.

EIS No. 030384, FINAL EIS, FHW, ND, Liberty Memorial Bridge Replacement Project, Poor and Deteriorating Structural Rehabilitation or Reconstruction, U.S. Coast Guard and U.S. Army COE Section 10 and 404 Permits Issuance, Missouri River, Bismarck and Mandan, ND, Wait Period Ends: September 22, 2003, Contact: Mark Schrader (701) 250–4348.

EIS No. 030385, FINAL EIS, SFW, PROGRAMMATIC EIS–Double crested Cormorant (DCCQs) Management Plan, Reduction of Resource Conflicts, Flexibility Enhancements of Natural Resource Agencies in dealing with DCCO Related Resource Conflicts and to ensure the Conservation of Healthy, Viable DCCO Population, Implementation, The Contiguous United States, Wait Period Ends: September 22, 2003, Contact: Shauna Hanisch (703) 358–1714.

EIS No. 030386, DRAFT EIS, DOE, AZ, Sahuartia-Nogales Transmission Line, Construction and Operation of a 345,00-volt (345 kV) Electric Transmission Line across the United States Border with Mexico, Application for Presidential Permit, Tucson Electric Power (TEP), Nogales, AZ, Comment Period Ends: October 14, 2003, Contact: Dr. Jerry Pell (202) 586–3362. This document is available on the Internet at: *http://tis.eh.doe.gov/nepa/documentspub.htm1.*

Amended Notices

EIS No. 030309, DRAFT SUPPLEMENT, FAA, CA, Los Angeles International Airport Proposed Master Plan Improvements, New Alternative, Enhanced Safety and Security Plan, Los Angeles County, CA, Comment Period Ends: November 7, 2003, Contact: David Kessler (310) 725–3615. Revision of FR Notice Published on 7/11/2003: CEQ Comment Period Ending 8/25/2003 has been Extended to 11/7/2003.

EIS No. 030266, DRAFT EIS, EPA, KY, VA, TN, WV, Programmatic—Mountaintop Mining and Valley Fills Program Guidance, Policies or Regulations to Minimize Adverse Environmental Effects to Waters of the U.S. and Fish and Wildlife Resources, Implementation, Appalachia, Appalachian Study Area, WV, KY, VA and TN, Comment Period Ends: January 6, 2004, Contact: John Forren (EPA) (215) 814–2705. Revision of FR Notice Published on 6/13/2003: CEQ Comment Period Ending 8/29/2003 has been Extended to 9/6/2004.

Dated: August 18, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–21602 Filed 8–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7548–7]

Office of Research and Development; Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App.2) notification is hereby given that the Environmental Protection Agency, Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold an Executive Committee Meeting.

DATES: The Meeting will be held on September 11–12, 2003. On Thursday, September 11, the meeting will begin at 8:30 a.m., and will recess at 4:30 p.m. On Friday, January 12, the meeting will reconvene at 9 a.m. and will adjourn at approximately 2 p.m. All times noted are Eastern Time.

ADDRESSES: The Meeting will be held at the Lowe's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

SUPPLEMENTARY INFORMATION: Agenda items to include, but not be limited to: Homeland Security Research Strategy Report, Briefing on EPA's Report on the Environment, Discussion of BOSC Future Issues and Plans, and BOSC Communications Ad-Hoc Committee Draft Report.

Anyone desiring a draft BOSC agenda may fax their request to Shirley R Hamilton (202) 565–2444. The meeting is open to the public. Any member of the public wishing to make a presentation at the meeting should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; or by telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Research (MC 8701R), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 564–6853.

Dated: August 18, 2003.

John C. Puzak,

Acting Director, National Center for Environmental Research.

[FR Doc. 03–21598 Filed 8–21–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7547–3]

Connecticut Marine Sanitation Device Standard; Notice of Determination for the Connecticut Portion of the Pawcatuck River, Little Narragansett Bay, Portions of Fishers Island Sound and All of Stonington Harbor

On January 29, 2003 notice was published that the State of Connecticut had petitioned the Regional Administrator, Environmental Protection Agency (EPA), to determine that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for all waters of the "Connecticut portion of the Pawcatuck River, Little Narragansett Bay, portions of Fishers Island Sound and all of Stonington Harbor." The petition was filed pursuant to section 312 (f) (3) of Pub. L. 92–500, as amended by Pub. L. 95–217 and 100–4, for the purpose of declaring these waters a "No Discharge Area" (NDA).

Section 312 (f) (3) states: "After the effective date of the initial standards and regulations promulgated under this section, if any State determines that the protection and enhancement of the quality of some or all of the waters within such States require greater environmental protection, such State may completely prohibit the discharge from all vessels of any sewage, whether treated or not, into such waters, except that no such prohibition shall apply

until the Administrator determines that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for such water to which such prohibition would apply."

The information submitted to me by the State of Connecticut certifies that there are three disposal facilities available to service vessels operating in the "Connecticut portion of the Pawcatuck River, Little Narragansett Bay, portions of Fishers Island Sound and all of Stonington Harbor." A table with the facilities' locations, contact information, hours of operation, and fees is appended at the end of this notice.

Based on an examination of the petition and its supporting information, which included site visits by EPA New England staff, I have determined that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the area covered under this determination which includes the "Connecticut portion of the Pawcatuck River, Little Narragansett Bay, portions of Fishers Island Sound and all of Stonington Harbor."

The area covered under this petition extends from Wamphassuc Point (41° 19′ 40.63″ N by 71° 55′ 15.75″ W) due south past Noyes Shoal to the boundary between Connecticut and New York (41° 18′ 28.99″ N by 71° 55′ 15.75″ W), easterly following the boundary between Connecticut an New York to the intersection of the Connecticut, New York and Rhode Island State lines (41° 18′ 16.69″ N by 71° 54′ 27.23″ W) and following the boundary between Connecticut and Rhode Island to U. S. Route 1 over the Pawcatuck River and including all Connecticut waters seaward of U.S. Route 1.

This determination is made pursuant to section 312 (f) (3) of Pub. L. 92–500, as amended by Pub. L. 95–217 and 100–4. 0000

A Response to Comments was prepared for the nine communications EPA New England received during the 30 day comment period, and may be requested from EPA by written request to:

Ann Rodney, U.S. EPA New England, 1 Congress Street, Suite 1100, CWQ, Boston, MA 02114–2023.

Dated: August 12, 2003.

Robert W. Varney,

Regional Administrator, Region 1.

Location	Contact Information	Hours of Operation (Call Ahead)	Mean Low Water Depth	Fee
Dodson Boatyard Stonington, CT	VHF CH 78 (860) 535–1507.	Mar–Oct 8–10	6–7 feet	$5
Norwest Marina Pawcatuck, CT	VHF CH 78 (860) 599–2442.	Apr–Nov 8–6	6–7 feet	$5
Westerly Pumpout Boat (mobile)	VHF CH 9 (401) 348–2538.	Apr–Oct 10–4	N/A	$5

[FR Doc. 03–21427 Filed 8–21–03; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

August 18, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments by October 21, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0202.

Title: Section 87.37, Developmental License.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for profit, not-for-profit institutions, and State, local, or Tribal government.

Number of Respondents: 12.

Estimated Time Per Response: 8 hours.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 96 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The requirement in section 87.37 is necessary to enable the Commission to gather data on the results of developmental programs conducted in the Aviation Service for which developmental authorizations have been issued. The data is required to determine whether such developmental authorizations should be renewed and/or whether rulemaking proceedings should be initiated to provide generally for such operations in the Aviation Service. The information is used by Commission staff to determine the merits of the program for which a developmental authorization was granted. If such information were not collected, the value of developmental programs in the Aviation Service would be severely limited. The Commission would have little, if any, information

available regarding the advantages and disadvantages of the subject developmental operations.

OMB Control No.: 3060–0222.

Title: Section 97.213, Remote Control of a Station.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit entities.

Number of Respondents: 500.

Estimated Time Per Response: .2 hours (12 minutes).

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 100 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The recordkeeping requirement contained in section 97.213 consists of posting a photocopy of the amateur station license, a label with the name, address, and telephone number of the station licensee, and the name of at least one authorized control operator. This requirement is necessary so that quick resolution of any harmful interference problems can be identified and to ensure that the station is operating in accordance with the Communications Act of 1934, as amended. The information is used by FCC staff during inspections and investigations to assure that remotely controlled amateur radio stations are licensed in accordance with applicable rules, statutes and treaties. In the absence of this recordkeeping requirement, field inspections and investigations related to harmful interference could be severely hampered and needlessly prolonged due to inability to quickly obtain vital information about a remotely controlled station.

OMB Control No.: 3060–0259.

Title: Section 90.263, Substitution of Frequencies Below 25 MHz.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, and State, local, or Tribal governments.

Number of Respondents: 60.

Estimated Time Per Response: .5 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 30 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: Section 90.263 requires applicants proposing operations in certain frequency bands below 25 MHz to submit supplemental information showing such frequencies are necessary from a safety of life standpoint, and information regarding minimum necessary hours of operation. This requirement will be used by Commission staff in evaluating the applicant's need for such frequencies and the interference potential to other stations operating on the proposed frequencies.

OMB Control No.: 3060–0264.

Title: Section 80.413, On-Board Station Equipment Records.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for profit, not-for-profit institutions, and State, local, or Tribal government.

Number of Respondents: 1,000.

Estimated Time Per Response: 2 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 2,000 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The recordkeeping requirement contained in section 80.413 is necessary to document the number and type of transmitters operating under an on-board station license. The information is used by FCC staff during inspections and investigations to determine what mobile units and repeaters are associated with on-board stations aboard a particular vessel. If this information were not collected, no means would be available to determine if this type of radio equipment is authorized or who is responsible for its operation. Enforcement and frequency management programs would be negatively affected.

OMB Control No.: 3060–0297.

Title: Section 80.503, Cooperative Use of Facilities.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other-for-profit, not-for-profit institutions, and State, local, or Tribal government.

Number of Respondents: 100.

Estimated Time Per Response: 16 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 1,600 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Needs and Uses: The recordkeeping requirements contained in section 80.503 are necessary to ensure licensees which share private facilities operate within the specified scope of service, on a non-profit basis, and do not function as communications common carriers providing ship-shore public correspondence services. The information is used by FCC staff during inspections and investigations to insure compliance with applicable rules. If this information was not available, enforcement efforts could be hindered, frequency congestion in certain bands could increase, and the financial viability of some public coast radiotelephone stations could be threatened.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21503 Filed 8–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 03–152; FCC 03–156]

William L. Zawila, Avenal Educational Services, Inc., Central Valley Educational Services, Inc., H.L. Charles d/b/a Ford City Broadcasting, Linda Ware d/b/a/ Lindsay Broadcasting, and Western Pacific Broadcasting, Inc.—Order To Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission issued an Order to Show Cause why the construction permits of broadcast stations KNGS(FM), Coalinga, California, KAAX(FM), Avenal, California, KAJP(FM), Firebaugh, California, and KZPE(FM), Ford City, California, and the license of broadcast station KZPO(FM), Lindsay, California, should not be revoked, and Notice of Opportunity for Hearing, and an Order designating for hearing the application for renewal of license of broadcast station KKFO(AM), Coalinga, California.

DATES: Petitions by persons desiring to participate as a party in the hearing may be filed not later than September 22, 2003, pursuant to 47 CFR 1.223. See **SUPPLEMENTARY INFORMATION** for dates that named parties should file appearances.

ADDRESSES: Federal Communications Commission, Enforcement Bureau, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: William Freedman, Deputy Chief,

Enforcement Bureau, Investigations and Hearings Division, (202) 418–1420; Thomas Nessinger, Attorney-Advisor, Media Bureau, Audio Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order, FCC 03–158, released July 16, 2003.

In the Order to Show Cause, the Commission set forth facts supporting the conclusion that the construction permits of broadcast stations KNGS(FM), Coalinga, California, KAAX(FM), Avenal, California, KAJP(FM), Firebaugh, California, and KZPE(FM), Ford City, California, and the license of broadcast station KZPO(FM), Lindsay, California, should be revoked, and offered the permittees/licensees of those broadcast stations the opportunity for hearing on the issues specified. In the Hearing Designation Order, the Commission determined there was a substantial and material question of fact as to whether the application of Western Pacific Broadcasting, Inc. ("WPBI") for renewal of the license of broadcast station KKFO(AM), Coalinga, California, should be denied, and designated for hearing the KKFO(AM) application for renewal of license.

Station KNGS(FM), Coalinga, California (permitted to William L. Zawila ["Zawila"]) and station KAAX(FM), Avenal, California (permitted to Avenal Educational Services, Inc.) were to have constructed a 91-meter tower near Avenal, California, on which the antennas for both stations were to be located. Both applicants filed license applications representing that both stations had been constructed as authorized. An informal objector presented evidence, confirmed by Commission investigation, that one month after the license applications were filed, the actual transmitting facilities consisted of two 50-foot telephone poles with no main studio facilities. Upon inquiry, Zawila represented that the 91-meter tower had been constructed but was destroyed by vandalism. Commission investigation indicated that Zawila's representations were false, and that the facilities of KNGS(FM) and KAAX(FM) were not constructed according to the permits.

Commission investigation of station KAJP(FM), Firebaugh, California (permitted to Central Valley Educational Services, Inc., of which Zawila is an officer) yielded substantial and material questions of fact as to whether the original antenna was constructed according to the station's construction permit. Investigation also revealed no program origination or Emergency Alert System ("EAS") equipment at the KAJP(FM) studio. The facilities of station KZPE(FM), Ford City, California (permitted to H.L. Charles d/b/a Ford City Broadcasting) were non-operational, consisting of an antenna mounted on a telephone pole, no main studio facilities, non-operational transmission equipment, and a site that had no power and which was so remote that gasoline to operate a power generator could not be delivered. H.L. Charles, the permittee, referred all questions regarding the station's operation to her "manager," Zawila. Station KZPO(FM), Lindsay, California, is licensed to Linda Ware d/b/a Lindsay Broadcasting. In response to the Commission's pre-hearing inquiry, Zawila represented that Ms. Ware was deceased, but did not provide a date of death, and no application for transfer of control to the administrator of Ms. Ware's estate has been filed. Commission investigators found KZPO(FM)'s main studio is not located as indicated in its license, and that the main studio is not properly staffed. Investigators also determined that KZPO(FM)'s public file is incomplete, that there was no EAS equipment at the transmitter site or main studio, and that transmitter power output was in excess of that authorized.

In the Hearing Designation Order, the Commission set forth facts raising a substantial and material question of fact as to whether Zawila, as sole shareholder of WPBI, misrepresented facts to and/or lacked candor with the Commission by, among other things, representing that KKFO(AM) had lost its site due to redevelopment by the City of Coalinga, and representing that he was in negotiations with the City for return to the site, when in fact City officials denied such representations. The Commission also determined through investigation that WPBI failed to maintain properly staffed main studios for KKFO(AM); failed to maintain station logs or to make station logs and station facilities available for inspection by Commission representatives; failed to provide records and information to Commission representatives on request; failed timely to notify the Commission that KKFO(AM) was not adhering to a minimum operating schedule or failed to make an informal written request for additional time to restore a minimum operating schedule; failed to maintain a complete public file at the main studio of KKFO(AM) or at an accessible place in the community of license; failed to make equipment performance measurements upon installation of a new or replacement main transmitter and annually thereafter; failed to maintain and operate KKFO(AM) in a manner that complies with the technical rules set forth in Commission rules and in accordance with the KKFO(AM) station authorization; and failed to transmit broadcast signals for a period of over twelve consecutive months, causing the expiration of the KKFO(AM) license as a matter of law. Pursuant to sections 312(a) and 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a) and (c), and 47 CFR 1.91(a), William L. Zawila, Avenal Educational Services, Inc. ("AES"), Central Valley Educational Services, Inc. ("CVES"), and H.L. Charles d/b/a Ford City Broadcasting ("FCB") are directed to show cause why the construction permits for KNGS(FM), Coalinga, California; KAAX(FM), Avenal, California; KAJP(FM), Firebaugh, California; and KZPE(FM), Ford City, California, should not be revoked and all authority to operate said stations terminated, at a hearing before an F.C.C. Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether William L. Zawila, individually and/or as an officer of AES and CVES, or on behalf of FCB, misrepresented facts to and/or lacked candor with the Commission in his statements regarding the construction and/or operation of the facilities of KNGS(FM), KAAX(FM), KAJP(FM), and KZPE(FM), and in his statements in response to official Commission inquiries regarding the operation of said stations, in violation of section 312(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a)(1), and/or 47 CFR 73.1015;

2. To determine whether William L. Zawila, individually and/or as an officer of AES and CVES, or on behalf of FCB, willfully or repeatedly violated 47 CFR 73.1690(b)(2) by moving the antennas of KNGS(FM), KAAX(FM), KAJP(FM), or KZPE(FM) to different towers without a construction permit;

3. To determine whether William L. Zawila, AES, CVES and/or FCB willfully or repeatedly violated 47 CFR 73.1125 of the rules, by failing to maintain properly staffed main studios for KNGS(FM), KAAX(FM), KAJP(FM), and KZPE(FM), and by failing to have a local telephone number in the communities of license for KNGS(FM) and KAAX(FM), or toll-free telephone numbers for those stations;

4. To determine whether William L. Zawila, AES, CVES, and/or FCB

willfully or repeatedly violated 47 CFR 73.3526, by failing to maintain proper public inspection files for KNGS(FM), KAAX(FM), KAJP(FM), and KZPE(FM);

5. To determine whether William L. Zawila, AES, and/or CVES willfully or repeatedly violated 47 CFR 17.57, by failing to notify the Commission within 24 hours of completion of construction of towers for which Antenna Registration Numbers had been assigned, or of changes in the structures' heights, for the towers on which the antennas of KNGS(FM), KAAX(FM), and KAJP(FM) were to have been mounted;

6. To determine whether William L. Zawila was an undisclosed real party in interest in FCB's application for license, or whether William L. Zawila and/or FCB willfully or repeatedly violated section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. 310(d), and/or 47 CFR 73.3540(a), by Zawila's assuming control of KZPE(FM) without prior Commission authorization; and

7. To determine, in light of the evidence adduced under the foregoing issues, whether William L. Zawila, AES, CVES, and/or FCB possess the requisite qualifications to be or remain permittees of their respective radio stations.

Pursuant to sections 312(a) and 312(c) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a) and (c), and 47 CFR 1.91(a), William L. Zawila and Linda Ware d/b/a Lindsay Broadcasting ("LB") or her successor(s) in interest are directed to show cause why the license for KZPO(FM), Lindsay, California should not be revoked and all authority to operate said station terminated, at a hearing before an F.C.C. Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether William L. Zawila, individually and/or on behalf of LB, misrepresented facts to and/or lacked candor with the Commission in his statements regarding the construction and operation of the facilities of KZPO(FM), and in his statements in response to official Commission inquiries regarding the operation of said station, in violation of section 312(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a)(1), and/or 47 CFR 73.1015;

2. To determine whether William L. Zawila and/or LB willfully or repeatedly violated section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. 310(d) and/or 47 CFR 73.3540(a) of the rules, by Zawila's assuming control of KZPO(FM) without prior Commission authorization;

3. To determine whether Zawila and/or LB willfully or repeatedly violated 47 CFR 11.15, 11.35(a), 11.35(c), and 11.52(d), by failing to maintain proper EAS equipment and proper EAS logs;

4. To determine whether William L. Zawila and/or LB willfully or repeatedly violated 47 CFR 73.1125 by failing to maintain a properly staffed main studio for KZPO(FM);

5. To determine whether Zawila and/or LB willfully or repeatedly violated 47 CFR 73.1800(a), 73.1225(a), 73.1225(c)(5), and 73.1226(a), by failing to maintain station logs and to make station logs and facilities available on request for inspection by the Commission;

6. To determine whether Zawila and/or LB willfully or repeatedly violated 47 CFR 73.1560(b), by operating station KZPO(FM) at a transmitter output power greater than 105% of authorized power;

7. To determine whether Zawila and/or LB willfully or repeatedly violated 47 CFR 73.1225(c)(2), 73.1226(c)(4), 73.1870(b)(3), and 73.1870(c)(3), by failing to maintain and make available for inspection records pertaining to the chief operator of station KZPO(FM), to post the written designation of chief operator, to maintain in the public inspection file agreements with the chief operator, and to have the chief operator review and sign station records and logs;

8. To determine whether Zawila and/or LB willfully or repeatedly violated 47 CFR 73.1350(a), by failing to maintain and operate KZPO(FM) in a manner that complies with the technical rules set forth in our rules and in accordance with its station authorization; and

9. To determine, in light of the evidence adduced under the foregoing issues, whether William L. Zawila and/or LB possess the requisite qualifications to be or remain licensees of KZPO(FM).

Pursuant to section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e), the application of Western Pacific Broadcasting, Inc. ("WPBI") for renewal of license for KKFO(AM), Coalinga, California, File No. BR–19970804YJ, is designated for hearing before an F.C.C. Administrative Law Judge, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether William L. Zawila, individually and/or on behalf of WPBI, misrepresented facts to and/or lacked candor with the Commission in his statements regarding the operation of the facilities of KKFO(AM), and in his statements in response to official Commission inquiries regarding the operation of said station, in violation of section 312(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. 312(a)(1), and/or 47 CFR 73.1015;

2. To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated 47 CFR 73.1125, by failing to maintain properly staffed main studios for KKFO(AM);

3. To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated 47 CFR 73.1800(a), 73.1225(a), 73.1225(c)(5), and 73.1226(a), by failing to maintain station logs and to make station logs available on request for inspection by the Commission, by failing to make KKFO(AM) available for inspection by representatives of the Commission during the station's business hours, and by failing to provide records and information to Commission representatives upon request;

4. To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated 47 CFR 73.1740(a)(4), by failing to notify the Commission not later than the tenth day of limited or discontinued operation that KKFO(AM) was not adhering to a minimum operating schedule, or by failing to make an informal written request for such additional time as may be necessary to restore the minimum operating schedule;

5. To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated 47 CFR 73.3526, by failing to maintain a complete public file at the main studio of KKFO(AM) or at an accessibly place in the community of license, which is available for public inspection at any time during regular business hours;

6. To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated 47 CFR 73.1590, by failing to make equipment performance measurements upon installation of a new or replacement main transmitter, and annually thereafter;

7. To determine whether William L. Zawila, individually and/or on behalf of WPBI, willfully or repeatedly violated 47 CFR 73.1350(a); by failing to maintain and operate KKFO(AM) in a manner that complies with the technical rules set forth in the Commission's rules and in accordance with its station authorization;

8. To determine whether station KKFO(AM) failed to transmit broadcast signals for a period of over twelve consecutive months, thus causing expiration of its license under section 312(g) of the Communications Act of 1934, as amended, 47 U.S.C. 312(g), and 47 CFR 73.1740(c); and

9. To determine, in light of the evidence adduced under the foregoing issues, whether the license for KKFO(AM) has expired pursuant to section 312(g) of the Communications Act of 1934, as amended, 47 U.S.C. 312(g), and 47 CFR 73.1740(c), or whether William L. Zawila and/or WPBI possess the requisite qualifications to be or remain licensees of KKFO(AM).

Appearances by Parties: William L. Zawila, Avenal Educational Services, Inc., Central Valley Educational Services, Inc., H.L. Charles d/b/a Ford City Broadcasting, and Linda Ware d/b/a/ Lindsay Broadcasting shall, within thirty (30) days of July 16, 2003, file a written appearance stating that they will appear at the hearing and present evidence on the matters specified in the Order to Show Cause.

Western Pacific Broadcasting, Inc. must, within twenty (20) days of mailing of notice of its designation as a party, file a written appearance in triplicate, stating that it will appear at the hearing on the date fixed for hearing and will present evidence on the issues specified in the Hearing Designation Order.

The full text of the Order to Show Cause, Notice of Opportunity for Hearing, and Hearing Designation Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–03–158A1.pdf*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21508 Filed 8–21–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P5–03]

Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Limited Exemption From Certain Tariff Requirements of the Shipping Act of 1984; Extension of Time

The Commission published notice of Petition No. P5–03 filed by the National Customs Brokers and Forwarders Association of America, Inc. ("NCBFAA"), in the **Federal Register** on August 19, 2003 (68 FR 49775). That notice requested comments to the Petition by September 5, 2003. The World Shipping Counsel ("WSC") has requested an extension of time until September 24, 2003, for all parties to file comments in reply to this Petition. WSC advises that it has been authorized by NCBFAA's counsel to state that the Petitioner does not object to the requested extension. The Commission has determined to grant the request. Accordingly, comments are now due by September 24, 2003.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–21580 Filed 8–21–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

[Petition No. P3–03]

Petition of United Parcel Service, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts; Extension of Time

The Commission published notice of Petition No. P3–03 filed by United Parcel Service, Inc. ("UPS"), in the **Federal Register** on August 4, 2003 (68 FR 45820). That notice requested comments to the Petition by August 22, 2003. The World Shipping Counsel ("WSC") has requested an extension of time until September 24, 2003, for all parties to file comments in reply to this Petition. WSC advises that it has been authorized by UPS's counsel to state that the Petitioner does not object to the requested extension. The Commission has determined to grant the request. Accordingly, comments are now due by September 24, 2003.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–21581 Filed 8–21–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 24–25, 2003

In accordance with § 271.25 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 24–25, 2003.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. To further its long–run objectives, the Committee in the immediate future seeks conditions in reserve markets consistent with reducing the federal funds rate at an average of around 1 percent.

By order of the Federal Open Market Committee, August 18, 2003.

Vincent R. Reinhart,

Secretary, Federal Open Market Committee.

[FR Doc. 03–21568 Filed 8–21–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

[1] Copies of the Minutes of the Federal Open Market Committee meeting on June 24–25, 2003, which includes the domestic policy directive issued at the meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 15, 2003.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Prosperity Bancshares, Inc. Houston, Texas; to merge with MainBancorp, Inc., Austin, Texas, and thereby indirectly acquire voting shares of Main Bank, National Association, Dallas, Texas.

Board of Governors of the Federal Reserve System, August 18, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21570 Filed 8–21–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on September 4–5, 2003

AGENCY: The President's Council on Bioethics, HHS.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics will hold its thirteenth meeting, at which, among other things, it will hear and discuss presentations on the ethics and implementation of embryonic stem cell research funding, including testimony by Elias Zerhouni, MD, director, U.S. National Institutes of Health (NIH), Mark B. McClellan, MD, commissioner, U.S. Food and Drug Administration (FDA), and several interested parties from the private sector. The Council will also continue discussion of its "beyond therapy" and "biotechnology and public policy" projects. Subjects discussed at past Council meetings (and potentially touched on at this meeting) include: human cloning, embryo research, lifespan-extension research, organ procurement for transplantation, and extra-therapeutic powers to enhance or improve human mood, memory, or muscles. The Council may also discuss issues surrounding the regulation of assisted reproduction and reproductive genetics (including IVF, ICSI, PGD; sex selection, inheritable genetic modification; and the patentability of human genes, tissues, and organisms).

DATES: The meeting will take place Thursday, September 4, 2003, from 9 a.m. to 5:15 pm ET; and Friday, September 5, 2003, from 8:30 am to 12:30 pm ET.

ADDRESSES: Hotel Wyndham Washington DC, 1400 M Street NW., Washington, DC 20005.

Public Comments: The meeting agenda will be posted at *http://www.bioethics.gov*. Members of the public may comment, either in person or in writing. A period of time will be set aside during the meeting to receive comments from the public, beginning at 11:30 am, on Friday, September 5. Comments will be limited to no more than five minutes per speaker or organization. Please inform Ms. Diane Gianelli, Director of Communications, in advance of your intention to make a public statement, and please give her your name, affiliation, and a brief description of the topic or nature of your comments. To submit a written statement, mail or e-mail it to Ms. Gianelli at one of the addresses given below.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Gianelli, Director of Communications, The President's Council on Bioethics, Suite 700, 1801 Pennsylvania Avenue, Washington, DC 20006. Telephone: 202/296–4669. e-mail: *info@bioethics.gov*. Web site: *http://www.bioethics.gov*.

Dated: August 11, 2003.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 03–21476 Filed 8–21–03; 8:45 am]

BILLING CODE 4161–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease

Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry, of the Department of Health and Human Services, has been renewed for a 2-year period extending through July 28, 2005.

For further information, contact Robert Spengler, Sc.D., Executive Secretary, Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., M/S E–28, Atlanta, Georgia 30333, telephone 404/498–0003 or fax 404/498–0081.

The Director, Management and Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 18, 2003.

Diane C. Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–21511 Filed 8–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–111]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Prevention Research Center Information System—New —National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The Prevention Research Center Information System will collect in electronic format: (a) Data needed to measure progress toward, or achievement of, newly developed performance indicators, (b) information on Prevention Research Centers that is currently being reported in hard-copy documents, and (c) data on research projects that are currently submitted electronically via a spreadsheet.

In 1984, Congress passed Public Law 98–551 directing the Department of Health and Human Services (DHHS) to establish Centers for Research and Development of Health Promotion and Disease Prevention. In 1986, CDC was given lead responsibility for this program, referred to now as the Prevention Research Centers program. Currently, CDC provides funding to 28 Prevention Research Centers (PRCs) selected through competitive peer review process and managed as CDC cooperative agreements. Awards are made for five (5) years and may be renewed through a competitive RFA process. PRCs (which can be housed in a school of public health, medicine, or osteopathy) conduct multi-disciplinary, community-based, outcomes-oriented research on a broad range of topics related to health promotion and disease prevention.

In spring 2003, CDC published RFA #04003 (FY20004–20009) for the Prevention Research Centers program. The RFA introduces a set of performance indicators that have developed collaboratively with the PRCs and other program stakeholders and are consistent with federal requirements that all agencies, in response to the Government Performance and Results Act of 1993, prepare performance plans and collect program-specific performance measures.

An Internet-based information system will allow CDC to monitor, and report on, PRC activities more efficiently. Data reported to CDC through the PRC information system will be used by CDC to identify training and technical assistance needs, monitor compliance with cooperative agreement requirements, evaluate the progress made in achieving center-specific goals, and obtain information needed to respond to Congressional and other inquiries regarding program activities and effectiveness.

There are no costs to respondents.

Respondents	No. of respondents	No. of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Clerical	28	2	164/60	153
Directors	28	2	90/60	84
Total				237

Dated: August 18, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–21515 Filed 8–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–61–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

School Associated Violent Death Surveillance System—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

The Division of Violence Prevention (DVP), National Center for Injury Prevention and Control (NCIPC) proposes to develop a system for the surveillance of school-associated homicides and suicides. The system will rely on existing public records and interviews with law enforcement officials and school officials. The purpose of the system is to (1) estimate the rate of school-associated violent death in the United States and (2) identify common features of school-associated violent deaths. The proposed system will contribute to the understanding of fatal violence associated with schools, guide further research in the area, and help direct ongoing and future prevention programs.

Violence is the leading cause of death among young people, and increasingly recognized as an important public health and social issue. In 1998, over 3,500 school aged children (5 to 18 years old) in the United States died violent deaths due to suicide, homicide, and unintentional firearm injuries. The vast majority of these fatal injuries were not school associated. However, whenever a homicide or suicide occurs in or around school, it becomes a matter of particularly intense public interest and concern. NCIPC conducted the first scientific study of school-associated violent deaths during the 1992–99 academic years to establish the true extent of this highly visible problem.

Despite the important role of schools as a setting for violence research and prevention interventions, relatively little scientific or systematic work has been done to describe the nature and level of fatal violence associated with schools. Until NCIPC conducted the first nationwide investigation of violent deaths associated with schools, public health and education officials had to rely on limited local studies and estimated numbers to describe the extent of school-associated violent death.

The proposed system will draw cases from the entire United States in attempting to capture all cases of school-associated violent deaths that have occurred. Investigators will review public records and published press reports concerning each school-associated violent death. For each identified case, investigators will also interview an investigating law enforcement official (defined as a police officer, police chief, or district attorney), and a school official (defined as a school principal, school superintendent, school counselor, school teacher, or school

support staff) who are knowledgeable about the case in question. Researchers will request information on both the victim and alleged offender(s)—including demographic data, their academic and criminal records, and their relationship to one another. They will also collect data on the time and location of the death; the circumstances, motive, and method of the fatal injury; and the security and violence prevention activities in the school and community where the death occurred, before and after the fatal injury event. The total burden hours are estimated to be 70.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)
School Officials	35	1	1
Police Officials	35	1	1

Dated: August 18, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–21516 Filed 8–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 Day–65–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Levels of Selected Drinking Water Disinfection By-products in Whole Blood after Showering: The Effect of Genetic Polymorphisms—NEW—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

Chlorine is the most commonly used chemical for disinfecting U.S. water supplies; however, chlorine reacts with organic compounds in the water to produce halogenated hydrocarbon by-products. Exposure to these disinfection by-products(DBPs) has been associated with liver and bladder cancer in humans and is suspected of other adverse health outcomes. We recently completed a study of household exposure to one class of DBPs in tap water, trihalomethanes (THMs) (Backer *et al.*, 2000). We found an increase in whole blood levels of one class of (THMs) after people showered or bathed in tap water. We also found that the increases fell roughly into two groups; one group was clustered around a higher level, the other a lower level. It is possible that this clustering is the result of individual variations in physiological characteristics or it could be the result of differences in the ability to metabolize THMs.

Since several polymorphically expressed enzymes are linked to the metabolism of DBPs, these physiologic and genetic differences may be important in determining an individual's risk for cancer and other health risks associated with exposure to these compounds. We plan to measure the change in blood concentration of DBPs after showering. We will then examine the association between people with different enzyme variants and post-exposure blood THM levels. The study will be conducted in two parts. Part 1 will involve recruiting 250 volunteers who do not have a history of lung problems and who are willing to participate in all aspects of the study. These 250 will be asked to provide some demographic information. They will also provide a buccal cell sample that will be analyzed in order to find a pool of 100 volunteers who have the genetic polymorphisms of interest. Part 2 will involve the 100 study subjects giving three blood samples before and three blood samples after taking a shower. A urine sample will be collected and stored for future use in evaluating urine levels of haloacetic acids (HAAs), another important class of drinking water DBPs. Air and water samples will also be collected.

Subjects will complete a brief questionnaire in order to obtain personal information that might impact the dose of volatized DBPs they receive. This data will be analyzed to determine whether the physiologic and genetic differences among individuals result in differences in blood THM levels after similar exposure. There are no costs to respondents.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hours)
Screening Interview	250	1	20/60
Consent Form	100	1	20/60
Questionnaire	100	1	20/60
Blood Samples	100	6	5/60
Shower	100	1	20/60
Urine Sample	100	2	10/60
Tap Water Sample	100	1	10/60
Misc. Study Activities	100	1	40/60
Remain at Study Site	100	1	2

Dated: August 18, 2003.

Nancy E. Cheal,

Acting Deputy Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–21517 Filed 8–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04011]

Grants for Injury Control Research Centers; Notice of Availability of Funds

Application Deadline: September 22, 2003.

A. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 391(a) of the Public Health Service Act, (42 U.S.C. sections 280b(a) and 391(a)), as amended. The Catalog of Federal Domestic Assistance number is 93.136.

B. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for grants for Injury Control Research Centers (ICRC). This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention. A copy of "Healthy People 2010" is available at the following Internet address: *http://www.health.gov/healthypeople.*

The purposes of this program are:

1. To support injury prevention and control research on priority issues as delineated in: "Healthy People 2010"; "Reducing the Burden of Injury: Advancing Prevention and Treatment"; and the research priorities published in the CDC Injury Research Agenda, located at *http://www.cdc.gov/ncipc.*

2. To integrate, in the context of a national program, the disciplines of epidemiology, medicine, biomechanics and other engineering, biostatistics, public health, law and criminal justice, and behavioral and social sciences in order to prevent and control injuries more effectively.

3. To define the injury problem; identify risk and protective factors; develop and evaluate prevention and control interventions and strategies; and ensure widespread adoption of effective interventions and strategies.

4. To provide technical assistance to injury prevention and control programs within a geographic region.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control (NCIPC): Develop new or improved approaches for preventing and controlling death and disability due to injuries.

C. Eligible Applicants

This announcement will provide funding for applicants in regions that do not have funded Injury Control Research Centers (ICRCs) and for applicants in regions that have funded Centers that must re-compete for funding.

Eligible applicants include nonprofit and for-profit organizations. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, faith-based organizations, tribal organizations, State, Tribal, and local health departments, and small, minority and/or women-owned businesses are eligible for these grants. Non-academic applicant institutions should provide evidence of a collaborative relationship with an academic institution.

Eligible applicants are limited to organizations in Department of Health and Human Services (DHHS) Region II (New Jersey, New York, Puerto Rico, and Virgin Islands), Region III (Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia), Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee), Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, and Texas), Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Guam, Mariana Islands, Marshall Islands, Micronesia, and Palau), and Region X (Alaska, Idaho, Oregon, and Washington).

Note: ICRC grant awards are made to the applicant institution/organization, not the Principal Investigator. Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

B. Funding

Availability of Funds

Approximately $4,527,500 is expected to be available in FY 2004 to fund five awards. It is expected that each award will be $905,500 (total of direct and indirect costs). Applicants will be allowed to apply for $1,055,500 ($150,000 above the expected award amount to allow for the inclusion of the description of an additional large project as described in Section F. Content 4.b. (2).), but each award will be no more than $905,500 (total of direct and indirect costs). It is expected that each award will begin on or about September 1, 2004, and will be made for a 12-month budget period within a project period of up to five years. Applications that exceed the funding cap noted above will be excluded from the competition and returned to the applicant. Funding estimates may change.

Consideration will also be given to current grantees that submit a competitive supplement requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant and are based on the availability of funds.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Center funding is to be designated for two types of activities. One type of activity is considered core and includes administration, management, general support services (*e.g.*, statistical, library, media relations, and advocacy) as well as activities associated with research development, technical assistance, and education (*e.g.*, seed projects, training activities, and collaborative and technical assistance activities with other groups). Funds may be allocated for trainee stipends, tuition remission, and trainee travel in accordance with the current rates for the United States Public Health Service agencies. Indirect costs for these trainee-related activities are limited to eight percent.

Defined research projects constitute the second type of activity, and ICRCs are encouraged to work toward addressing the breadth of the field. Core activities and defined research projects may each constitute between 25 percent and 75 percent of the operating budget, and should be balanced in such a way that the ICRC demonstrates productivity in research as well as teaching and service. Applicants with less demonstrated expertise in research are encouraged to devote a larger percentage of funds to defined research projects in order to establish their capability as research centers of excellence.

Grant funds will not be made available to support the provision of direct care. Studies may be supported

which evaluate methods of acute care and rehabilitation for potential reductions in injury effects and costs. Studies may be supported which identify the effect on injury outcomes and cost of systems for pre-hospital, hospital, and rehabilitative care and independent living.

Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

Funding Preferences

At the discretion of the Director, NCIPC, additional consideration may be given to re-competing ICRCs. These centers represent a long-term investment for NCIPC and an established resource for injury control-related issues for their States and regions.

Recipient Financial Participation

Matching funds are not required for this program announcement, however other sources of funding must be documented.

E. Program Requirements

In conducting activities to achieve the purpose of this program, applicants will be responsible for the following activities.

1. Applicants must demonstrate expertise and experience in conducting and publishing injury research in at least one of the three phases of injury control (prevention, acute care, or rehabilitation) and are encouraged to be comprehensive.

2. Applicants must document ongoing injury control-related research projects and activities currently supported by other sources of funding.

3. Applicants must provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to an appropriate institutional official, *e.g.*, dean of a school, vice president of a university, or commissioner of health. The director must have no less than thirty percent effort devoted solely to this project with an anticipated range of thirty percent to fifty percent.

4. Applicants must provide evidence of working relationships, including consultation and technical assistance, with outside agencies and other entities in the region in which the ICRC is located which will allow for implementation and evaluation of any proposed intervention activities.

5. Applicants must provide evidence of involvement of specialists or experts in medicine, biomechanics and other engineering, epidemiology, law and criminal justice, behavioral and social sciences, biostatistics, and public health as needed to complete the plans of the center. These are considered the disciplines and fields for ICRCs.

6. Applicants must have established curricula and graduate training programs in disciplines relevant to injury control (See Section E.5).

7. Applicants must disseminate injury control research findings, translate them into interventions (*i.e.*, programs or policies), and evaluate their effectiveness.

F. Content

Letter of Intent (LOI)

A LOI is strongly encouraged for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than two single-spaced pages, printed on one side, with one-inch margins, and unreduced 12-point font. The letter should identify the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Application

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications should include the following information, detailing activities to be conducted for the first budget year, while briefly addressing activities to be conducted over the entire five-year project period.

1. Face page

2. Description (abstract) and personnel

3. Table of contents

4. Detailed budget for the initial budget period: The budget should reflect the composite figures for the grant. In addition, separate budgets (direct and indirect costs) and justifications should be provided for the following categories of activities:

a. Core activities, including management and administrative functions, other non-research activities (*e.g.*, education/training, consultation, technical assistance, translation/dissemination, program and policy development and evaluation, advocacy, and media activities, etc.), and small seed projects of less than $25,000 (total of direct and indirect costs) for one year or less.

b. Research Studies:

(1) Small studies of $25,000–150,000/year (total of direct and indirect costs) for one to three years duration. These projects might be expansions of seed projects, either further developing methods or hypotheses in preparation for a larger investigation leading to the submission of an RO1 level proposal, or might be stand-alone investigations sufficient to yield results worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(2) Larger scale studies with annual budgets exceeding $150,000/year (total of direct and indirect costs) and lasting up to five years. These projects typically will test hypotheses and employ more sophisticated methodologies and/or larger sample sizes than small studies.

For seed projects, only modest budget descriptions are required within the application. More detailed budget descriptions, commensurate with costs, are required for both small studies and large research projects.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application that are made available to outside reviewing groups. To exercise this option: on the original and two copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

5. Budget for entire proposed project period including budgets pertaining to consortium/contractual arrangements.

6. Biographical sketches of key personnel, consultants, and collaborators, beginning with the Principal Investigator and core faculty.

7. Other support: This listing should include all other funds or resources pending or currently available. For each grant or contract include source of funds, amount of funding (indicate whether pending or current), date of funding (initiation and termination), and relationship to the proposed program.

8. Resources and environment.

9. Research plan:

a. ICRCs are to develop a range of research and other non-research

activities that are designed to advance the field of injury control through development of new scientific or surveillance methods, creation of new knowledge, and translation of knowledge into training, program and policy development and evaluation activities or other applications that will ultimately reduce injuries or their effects. ICRC applications should articulate how the activities of their program are integrated with each other.

b. A detailed research plan (design and methods), in accordance with NCIPC's performance goal as stated in section "B. Purpose", including hypothesis, expected outcome, value to the field, and measurable and time-framed objectives consistent with the activities for each project within the proposed grant.

(1) Initial seed projects require a short write-up describing the injury control context of the study, the objective, the design, the setting and participants, the intervention being addressed, main outcome measurements, expected results, time lines, cost (total of direct and indirect costs), plans for translation/dissemination, and clear definition of procedures used to select the projects. Clear definitions of procedures used to select future out-year seed projects are also required.

(2) Small research projects require a ten to fifteen page summary describing the accomplishment of all the steps, including a description of the significance of the project, the development and testing of methods and instruments, and the collection of preliminary data needed to take an innovative approach and develop it to the level of a larger investigation leading to the submission of an RO1 level proposal or a stand-alone investigation sufficient to yield results worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(3) Large research projects require an RO1 level summary as described in the PHS 398 (Revised 5/01 and updated 6/28/02) guidelines (See Attachment 2, as posted on the CDC website). The summary should be included as an appendix of the application.

In the research plan section of the application include a description for each small and large research project:

(a) Title of Project

(b) Project Director/Lead Investigator

(c) Institution(s)

(d) Categorization as Prevention, Acute Care, Rehabilitation, or Biomechanics

(e) Categorization as to which NCIPC research agenda priority area the project addresses. Also, a brief description on how it addresses that priority area. If a priority area is not addressed, provide an explanation of why it is important.

(f) Categorization as Seed Project, Small Project, or Large Project

(g) Categorization as New or Ongoing Project

(h) Cost/Year (total of direct and indirect costs)

(i) Research Training: Names, Degrees of Persons Trained or in Training

(j) Key Words

(k) Brief Summary of Project including Intended Application of Finding (Abstract)

c. A description of the core faculty and their roles in implementing and evaluating the proposed programs. The applicant should clearly specify how disciplines will be integrated to achieve the ICRCs objectives.

d. Charts showing the proposed organizational structure of the ICRC and its relationship to the broader institution of which it is a part and, where applicable, to affiliate institutions or collaborating organizations. These charts should clearly detail the lines of authority as they relate to the center, both structurally and operationally. ICRC directors should report to an appropriate organizational level (*e.g.* dean of a school, vice president of a university, or commissioner of health), demonstrating strong institution-wide support of ICRC activities and ensuring oversight of the process of interdisciplinary activity.

e. Documentation of the public health agencies and other public and private sector entities to be involved in the proposed program, including letters that detail commitments of support and a clear statement of the role, activities, and participating personnel of each agency or entity.

Beginning October 1, 2003, applicants will be required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

You are encouraged to obtain a DUNS now if you believe you will be submitting an application to any Federal agency on or after October 1, 2003. Proactively obtaining a DUNS number at the current time will facilitate the receipt and acceptance of applications after September 2003.

To obtain a DUNS number, access the following web site: *www.dunandbradstreet.com* OR call 1–866–705–5711.

G. Submission and Deadline

Letter of Intent (LOI) Submission

On or before September 8, 2003, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application Forms

Submit the original and two copies of PHS 398 (OMB Number 0925–0001) and one electronic disk copy and adhere to the instructions on the Errata Instruction sheet for PHS 398. Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section at: 770–488–2700. Application forms can be mailed to you.

Submission Date, Time, and Address

The application must be received by 4:00 p.m. Eastern Time, November 20, 2003. Submit the application to: Technical Information Management Section–PA04011–CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, Georgia 30341. Applications may not be submitted electronically.

CDC Acknowledgment of Application Receipt

A postcard will be mailed by PGO-TIM, notifying you that CDC has received your application.

Deadline

Letters of intent and applications shall be considered as meeting the deadline if they are received before 4 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

A. Evaluation Criteria

Application

Applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the previous heading Program Requirements. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration.

Applications which are complete and responsive will be subjected to a preliminary evaluation (streamline review) by the Injury Research Grant Review Committee (IRGRC) to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC. Applications that are determined noncompetitive will not be considered, and NCIPC will promptly notify the investigator/program director and the official signing for the applicant organization. Applications determined to be competitive will be evaluated by a dual review process.

Competing supplemental grant awards may be made, when funds are available, to support research work or activities not previously approved by the IRGRC. Applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

Awards will be made based on priority scores assigned to applications by the IRGRC, programmatic priorities and needs determined by a secondary review committee (the Advisory Committee for Injury Prevention and Control), and the availability of funds.

1. Review by IRGRC

An initial streamline peer-review of ICRC grant applications will be conducted by the IRGRC. The IRGRC may recommend the application for a site visit review. For those applications recommended for a site visit review, a team of peer reviewers, including members of the IRGRC, will conduct on-site visits at each applicant institution, generate summary statements for the visits, and report the assessment to the IRGRC.

Factors to be considered by the IRGRC include:

a. The specific aims of the application, *e.g.*, the long-term objectives and intended accomplishments. Approval of small and large research projects (including new research projects proposed during the five-year funding cycle), in accordance with NCIPC's performance goal as stated in section "B. Purpose", is subject to peer review.

(1) Seed projects will be evaluated collectively on the mechanism for solicitation of projects and on their technical/scientific merit review. Evaluation criteria have equal value.

(2) Small projects will be evaluated individually on the significance of the project, the innovative approach, and the proposed methods for achieving an investigation sufficient to support a submission of an RO1 level proposal and/or worthy of publication in a peer-reviewed journal and/or a technical report for a legislative body, governmental agency, or injury control program.

(3) Large projects will be evaluated individually according to existing RO1 level project standards as described in the PHS 398 (Revised 5/01 and updated 6/28/02) guidelines (See Attachment 2, as posted on the CDC website). The application must have a minimum of one large research project approved in order to be recommended for further consideration.

(4) At least 80 percent of the costs (total direct and indirect costs) of the approved small and large research projects must be in alignment with the "CDC Injury Research Agenda," *http://www.cdc.gov/ncipc* in order to be recommended for further consideration.

b. The scientific and technical merit of the overall application, including the significance and originality (*e.g.*, new topic, new method, new approach in a new population, or advancing understanding of the problem) of the proposed research.

c. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives. Does the application specify how the effectiveness of the program will be measured?

d. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

e. The soundness of the proposed budget in terms of adequacy of resources and their allocation.

f. In addition to conducting defined research projects, ICRCs are expected to devote substantial attention to advancing the field through other activities that are designed to improve research capabilities and translate research into practice. Examples of activities include: consultation and technical assistance that are responsive to regional, State, national, or international priorities; professional training for researchers and practitioners; program development; and evaluation endeavors. The degree of effort devoted to these aspects of an ICRCs program should be clearly stated in the justification and the budget. The degree of effort may be varied and should reflect the specific focus and goals of the ICRC.

g. Details of progress in the most recent funding period should be provided in the application if the applicant is submitting a re-competing application. Documented examples of success include: development of pilot projects; completion of high quality research projects; publication of findings in peer reviewed scientific and technical journals; number of professionals trained; awards received; ongoing provision of consultation and technical assistance; integration of disciplines; translation of research into implementation; and impact on injury control outcomes including legislation, regulation, treatment, and behavior modification interventions.

h. Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

i. Does the applicant meet the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

(1) The proposed plan for the inclusion of both sexes, racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or communities and recognition of mutual benefits.

j. Does the application adequately address the requirements of the "PHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions?"

k. Does the application include measures that are in accordance with CDC's performance plans?

2. Review by the CDC Advisory Committee for Injury Prevention and Control (ACIPC)

Secondary review of ICRC grant applications with a priority score of 350 or better from the initial peer-review by the IRGRC will be conducted by the Science and Program Review Section (SPRS) of the ACIPC. The SPRS consists of ACIPC members, Federal Ex Officio participants, and organizational liaisons. The Federal Ex Officio participants will be responsible for

identifying proposals in overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided. The NCIPC Division Associate Directors for Science (ADS) or their designees will address the SPRS to assure that research priorities of the announcement are understood and to provide background regarding current research activities. The SPRS recommendations will be presented to the entire ACIPC in the form of a report by the Chairman of the SPRS. The ACIPC will vote to approve, disapprove, or modify these recommendations for funding consideration.

Factors to be considered by the ACIPC include:

a. The results of the peer-review.

b. The significance of the proposed activities as they relate to national program priorities, geographic balance, and the achievement of national objectives.

c. The overall balance of the ICRC program in addressing the three phases of injury control (prevention, acute care, and rehabilitation); the control of injury among populations who are at increased risk, including racial/ethnic minority groups, the elderly and children; the major causes of intentional and unintentional injury; and the major disciplines of injury control.

d. Budgetary considerations. The ACIPC will recommend annual funding levels as detailed in section "D. Funds" of this announcement.

These recommendations, based on the results of the peer review by the IRGRC, the relevance and balance of the proposed research relative to the NCIPC programs and priorities, and the assurance of no duplication of federally-funded research, are presented to the Director, NCIPC, for funding decisions.

3. Continued Funding

Continuation awards within the project period will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments of the current budget period show that the applicant's objectives as prescribed in the yearly work plans are being met.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan allows management to monitor whether the methods are effective by having clearly defined process, impact, and outcome objectives, and the applicant demonstrates progress in implementing the evaluation plan.

e. The budget request is clearly explained, adequately justified, reasonable, and consistent with the intended use of grant funds.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Annual progress report. The progress report will include a data requirement that demonstrates measures of effectiveness.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment 1 of this announcement as posted on the CDC home Web site.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–20 Conference Activities within Grants/Cooperative Agreements
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

Executive Order 12372 does not apply to this program.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements".

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Rd Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Nancy Pillar, Grants Management Specialist, CDC Procurement and Grants Office 2920 Brandywine Rd, Atlanta, GA 30341–4146, Telephone: 770–488–2721, E-mail: *nfp6@cdc.gov*.

For business management and budget assistance in the territories, contact:

Charlotte Flitcraft, CDC Procurement and Grants Office 2920 Brandywine Rd., Atlanta, GA 30341–4146, Telephone: 770–488–2780, E-mail: *caf5@cdc.gov*.

For program technical assistance, contact: Tom Voglesonger, Program Manager, Office of the Associate Director for Science, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., (K58), Atlanta, GA 30341–3724, Telephone: 770–488–4823, E-mail: *tdv1@cdc.gov*.

Dated: August 18, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–21514 Filed 8–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee (SRSHES).

Time and Date: 8 a.m.—4:45 p.m., September 4, 2003. 8 a.m.—10:15 a.m., September 5, 2003.

Place: Westin Savannah Harbor, One Resort Drive, P.O. Box 427, Savannah, Georgia 31421, telephone 912–201–2000, fax 912–201–2077.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE, and replaced by MOUs signed in 1996 and 2000, the Department of Health and Human Services (HHS) was given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards

from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992, 1996, and in 2000, between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator ATSDR, regarding community concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community interaction and serve as a vehicle for community concerns to be expressed as advice and recommendations to CDC and ATSDR.

Matters to be Discussed: Agenda items include: Advanced Technology Laboratory Research Update; Update on Results from Regulatory Air and Water Sampling Data by the South Carolina Department of Health and Environmental Control; Logistics of an Epidemiologic Study, Screening, and Studies of Radionuclides at Sites other than SRS; and ATSDR Update and SRS Brochure. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Phillip Green, Executive Secretary, SRSHES, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 1600 Clifton Road, N.E. (E–39), Atlanta, Georgia 30333, telephone (404)498–1800, fax (404)498–1811.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and ATSDR.

Dated: August 18, 2003.

Diane C. Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–21512 Filed 8–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors, National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 9:00 a.m.—2:45 p.m., September 11, 2003.

Place: Washington Court Hotel on Capitol Hill, 525 New Jersey Avenue, NW., Washington, DC 20001, telephone (202) 628–2100, fax (202) 879–7938.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation the Director, CDC are authorized under sections 301 of the Public Health Service Act to conduct directly or by grants or contracts, research, experiments, and demonstrations relating to occupational safety and health and to mine health. The Board of Scientific Counselors, NIOSH shall provide advice to the Director, National Institute for Occupational Safety and Health on research and preventions programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of NIOSH: (1) Conform to appropriate scientific standards, (2) address current, relevant needs, and (3) produce intended results.

Matters to be Discussed: Agenda items include a report from the Director of NIOSH; evaluation options of the National Occupational Research Agenda (NORA); update on NIOSH Traumatic Injury Research; approaches to promoting a healthier U.S. Workforce; update on NIOSH Aerosols Research; and closing remarks.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Roger Rosa, Executive Secretary, BSC, NIOSH, CDC, 200 Independence Avenue, SW., Room 715H, Washington, DC 20201, telephone (202) 205–7856, fax (202) 260–4464.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 18, 2003.

Diane C. Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–21510 Filed 8–21–03; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Fees for Sanitation Inspections of Cruise Ships

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces fees for vessel sanitation inspections for fiscal year 2004 (October 1, 2003, through September 30, 2004).

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: David L. Forney, Chief, Vessel Sanitation Program, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–16, Atlanta, Georgia 30341–3724, telephone (770) 488–7333, E-mail: *Dforney@cdc.gov.*

SUPPLEMENTARY INFORMATION:

Purpose and Background

The fee schedule for sanitation inspections of passenger cruise ships inspected under the Vessel Sanitation Program (VSP) was first published in the **Federal Register** on November 24, 1987 (52 FR 45019), and CDC began collecting fees on March 1, 1988. Since then, CDC has published the fee schedule annually. This notice announces fees effective October 1, 2003.

The formula used to determine the fees is as follows:

$$\text{Average cost per inspection} = \frac{\text{Total cost of VSP}}{\text{Weighted number of annual inspections}}$$

The average cost per inspection is multiplied by a size/cost factor to determine the fee for vessels in each size category. The size/cost factor was established in the proposed fee schedule published in the **Federal Register** on July 17, 1987 (52 FR 27060), and revised in a schedule published in the **Federal Register** on November 28, 1989 (54 FR 48942). The revised size/cost factor is presented in Appendix A.

Fee: The fee schedule (Appendix A) will be effective October 1, 2003, through September 30, 2004. The fee schedule, which became effective October 1, 2001, will remain the same in 2004. If travel expenses continue to increase, the fees may need adjustment before September 30, 2004, because travel constitutes a sizable portion of VSP's costs. If an adjustment is necessary, a notice will be published in the **Federal Register** 30 days before the effective date.

Applicability: The fees will apply to all passenger cruise vessels for which inspections are conducted as part of CDC's VSP.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 18, 2003.

Diane C. Allen,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–21513 Filed 8–21–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10085]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection; *Type of Information Collection:* Medicaid Program: Demonstration to Improve the Direct Service Workforce; *CMS Form Number:* CMS–10085 (OMB# 0938–0896); *Use:* Executive Order 13217, "Community-Based Alternatives for Individuals with Disabilities" provides for the establishment of grants for states and community groups that develop and implement demonstration programs designed to increase the pool of direct care service workers, who help support people with disabilities in the community, through recruitment and retention strategies. State agencies and community groups will be applying for these grants; *Frequency:* On occasion; *Affected Public:* State, local, or tribal government; Not-for-profit institutions; *Number of Respondents:* 100; *Total Annual Responses:* 107; *Total Annual Burden Hours:* 6140.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 14, 2003.

Dawn Willinghan,

Acting, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–21482 Filed 8–21–03; 8:45 am]

BILLING CODE 4120–03–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2166–N]

RIN 0938–ZA17

State Children's Health Insurance Program; Final Allotments to States, the District of Columbia, and U.S. Territories and Commonwealths for Fiscal Year 2004

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: Title XXI of the Social Security Act (the Act) authorizes payment of Federal matching funds to States, the District of Columbia, and U.S. Territories and Commonwealths to initiate and expand health insurance coverage to uninsured, low-income children under the State Children's Health Insurance Program (SCHIP). This notice sets forth the final allotments of Federal funding available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year 2004. States may implement SCHIP through a separate State program under title XXI of the Act, an expansion of a State Medicaid program under title XIX of the Act, or a combination of both.

EFFECTIVE DATE: This notice is effective on September 22, 2003. Final allotments are available for expenditures after October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Strauss, (410) 786–2019.

SUPPLEMENTARY INFORMATION:

I. Purpose of This Notice

This notice sets forth the allotments available to each State, the District of Columbia, and each U.S. Territory and Commonwealth for fiscal year (FY) 2004 under Title XXI of the Social Security Act (the Act). Final allotments for a fiscal year are available to match expenditures under an approved State child health plan for 3 fiscal years, including the year for which the final allotment was provided. The FY 2004 allotments will be available to States for FY 2004, and unexpended amounts may

be carried over to 2005 and 2006. Federal funds appropriated for title XXI are limited, and the law specifies a formula to divide the total annual appropriation into individual allotments available for each State, the District of Columbia, and each U.S. Territory and Commonwealth with an approved child health plan.

Section 2104(b) of the Act requires States, the District of Columbia, and U.S. Territories and Commonwealths to have an approved child health plan for the fiscal year in order for the Secretary to provide an allotment for that fiscal year. All States, the District of Columbia, and U.S. Territories and Commonwealths have approved plans for FY 2004. Therefore, the FY 2004 allotments contained in this notice pertain to all States, the District of Columbia, and U.S. Territories and Commonwealths.

II. Methodology for Determining Final Allotments for States, the District of Columbia, and U.S. Territories and Commonwealths.

This notice specifies, in the Table under section III, the final FY 2004 allotments available to individual States, the District of Columbia, and U.S. Territories and Commonwealths for either child health assistance expenditures under approved States child health plans or for claiming an enhanced Federal medical assistance percentage rate for certain SCHIP-related Medicaid expenditures. As discussed below, the FY 2004 final allotments have been calculated to reflect the methodology for determining an allotment amount for each State, the District of Columbia, and each U.S. Territory and Commonwealth as prescribed by section 2104(b) of the Act.

Section 2104(a) of the Act provides that, for purposes of providing allotments to the 50 States and the District of Columbia, the following amounts are appropriated: $4,295,000,000 for FY 1998; $4,275,000,000 for each FY 1999 through FY 2001; $3,150,000,000 for each FY 2002 through FY 2004; $4,050,000,000 for each FY 2005 through FY 2006; and $5,000,000,000 for FY 2007. However, under section 2104(c) of the Act, 0.25 percent of the total amount appropriated each year is available for allotment to the U.S. Territories and Commonwealths of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. The total amounts are allotted to the U.S. Territories and Commonwealths according to the following percentages: Puerto Rico, 91.6 percent; Guam, 3.5 percent; the Virgin Islands, 2.6 percent; American Samoa, 1.2 percent; and the Northern Mariana Islands, 1.1 percent.

Section 2104(c)(4)(B) of the Act provides for additional amounts for allotment to the Territories and Commonwealths: $34,200,000 for each FY 2000 through FY 2001; $25,200,000 for each FY 2002 through FY 2004; $32,400,000 for each FY 2005 through FY 2006; and $40,000,000 for FY 2007. Since, for FY 2004, title XXI of the Act provides an additional $25,200,000 for allotment to the U.S. Territories and Commonwealths, the total amount available for allotment to the U.S. Territories and Commonwealths in FY 2004 is $33,075,000; that is, $25,200,000 plus $7,875,000 (0.25 percent of the FY 2004 appropriations of $3,150,000,000).

Therefore, the total amount available nationally for allotment for the 50 States and the District of Columbia for FY 2004 was determined in accordance with the following formula:

$A_T = S_{2104(a)} - T_{2104(c)}$

A_T = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year.

$S_{2104(a)}$ = Total appropriation for the fiscal year indicated in section 2104(a) of the Act. For FY 2004, this is $3,150,000,000.

$T_{2104(c)}$ = Total amount available for allotment for the U.S. Territories and Commonwealths; determined under section 2104(c) of the Act as 0.25 percent of the total appropriation for the 50 States and the District of Columbia. For FY 2004, this is: $.0025 \times \$3,150,000,000 = \$7,875,000$.

Therefore, for FY 2004, the total amount available for allotment to the 50 States and the District of Columbia is $3,142,125,000. This was determined as follows:

A_T ($3,142,125,000) = $S_{2104(a)}$ ($3,150,000,000) − $T_{2104(c)}$ ($7,875,000)

For purposes of the following discussion, the term "State," as defined in section 2104(b)(1)(D)(ii) of the Act, "means one of the 50 States or the District of Columbia."

Under section 2104(b) of the Act, the determination of the number of children applied in determining the SCHIP allotment for a particular fiscal year is based on the three most recent March supplements to the Current Population Survey (CPS) of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The determination of the State cost factor is based on the annual average wages per employee in the health services industry, which is determined using the most recent 3 years of such wage data as reported and determined as final by the Bureau of Labor Statistics (BLS) of the Department of Labor to be officially available before the beginning of the calendar year in which the fiscal year begins. Since FY 2004 begins on October 1, 2003 (that is, in calendar year 2003), in determining the FY 2004 SCHIP allotments, we are using the most recent official data from the Bureau of the Census and the BLS, respectively, available before January 1 of calendar year 2003 (that is, through the end of December 31, 2002).

Number of Children

For FY 2004, as specified by section 2104(b)(2)(A)(iii) of the Act, the number of children is calculated as the sum of 50 percent of the number of low-income, uninsured children in the State, and 50 percent of the number of low-income children in the State. The number of children factor for each State is developed from data provided by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in the annual CPS on these topics. As part of a continuing formal process between the Centers for Medicare & Medicaid Services (CMS) and the Bureau of the Census, each fiscal year we obtain the number of children data officially from the Bureau of the Census.

Under section 2104(b)(2)(B) of the Act, the number of children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income children with no health insurance as calculated from the three most recent March supplements to the CPS officially available from the Bureau of the Census before the beginning of the 2003 calendar year. In particular, through December 31, 2002, the most recent official data available from the Bureau of the Census on the numbers of children were data from the three March CPSs conducted in March 2000, 2001, and 2002 (representing data for years 1999, 2000, and 2001).

State Cost Factor

The State cost factor is based on annual average wages in the health services industry in the State. The State cost factor for a State is equal to the sum of: 0.15 and 0.85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee

in the health industry for the 50 States and the District of Columbia.

Under section 2104(b)(3)(B) of the Act, as amended by the Balanced Budget Refinement Act of 1999 (BBRA) Pub. L. 106–113, enacted on November 29, 1999, the State cost factor for each State for a fiscal year is calculated based on the average of the annual wages for employees in the health industry for each State using data for each of the most recent 3 years as reported and determined as final by the BLS in the Department of Labor and available before the beginning of the calendar year in which the fiscal year begins. Therefore, the State cost factor for FY 2004 is based on the most recent 3 years of BLS data officially available as final before January 1, 2003 (the beginning of the calendar year in which FY 2004 begins); that is, it is based on the BLS data available as final through December 31, 2002. In accordance with these requirements, we used the final State cost factor data available from BLS for 1999, 2000, and 2001 in calculating the FY 2004 final allotments.

The State cost factor is determined based on the calculation of the ratio of each State's average annual wages in the health industry to the national average annual wages in the health care industry. Since BLS is required to suppress certain State-specific data in providing us with the State-specific average wages per health services industry employee due to the Privacy Act, we calculated the national average wages directly from the State-specific data provided by BLS. As part of a continuing formal process between CMS and the BLS, each fiscal year CMS obtains these wage data officially from the BLS.

Section 2104(b)(3)(B) of the Act, as amended by the BBRA, refers to wage data as reported by BLS under the "Standard Industrial Classification" (SIC) system. However, in calendar year 2002, BLS phased-out the SIC wage and employment reporting system and replaced it with the "North American Industry Classification System" (NAICS). In accordance with section 2104(b)(3)(B) of the Act, for purposes of calculating the FY 2004 allotments, BLS would need to provide wage data for the 3 most recent years as available through December 31, 2002; in this case, the 3 years of wage data are 1999, 2000, and 2001. However, because of the change from the SIC system to NAICS, wage data for 2001 are not available under the SIC reporting system. Wage data for 1999 and 2000 under the SIC reporting system are available from BLS. Therefore, the BLS wage data used in calculating the FY 2004 SCHIP allotments necessarily reflect 2 years of SIC system data (1999 and 2000) and one year of NAICS data (2001) to obtain the 3-year average required for the allotments.

Under the SIC system, BLS provided CMS with wage data for each State under the SIC Code 80 for the years 1999 and 2000. However, the wage data codes under the SIC system do not map exactly to the wage data codes under the NAICS. As a result, for the year 2001 BLS provided us with wage data using three NAICS wage data codes that represent approximately 98 percent of the wage data that would have been provided under the related SIC Code 80. Specifically, in lieu of SIC Code 80 data, for the year 2001 BLS provided CMS data that are based on the following three NAICS codes: NAICS Code 621 (Ambulatory health care services), Code 622 (Hospitals), and Code 623 (Nursing and residential care facilities).

Under section 2104(b)(4) of the Act, each State and the District of Columbia is allotted a "proportion" of the total amount available nationally for allotment to the States. The term "proportion" is defined in section 2104(b)(4)(D)(i) of the Act and refers to a State's share of the total amount available for allotment for any given fiscal year. In order for the entire total amount available to be allotted to the States, the sum of the proportions for all States must exactly equal one. Under the statutory definition, a State's proportion for a fiscal year is equal to the State's allotment for the fiscal year divided by the total amount available nationally for allotment for the fiscal year. In general, a State's allotment for a fiscal year is calculated by multiplying the State's proportion for the fiscal year by the national total amount available for allotment for that fiscal year in accordance with the following formula:

$SA_i = P_i \times A_T$

SA_i = Allotment for a State or District of Columbia for a fiscal year.

P_i = Proportion for a State or District of Columbia for a fiscal year.

A_T = Total amount available for allotment to the 50 States and the District of Columbia for the fiscal year. For FY 2004, this is $3,142,125,000.

In accordance with the statutory formula for determining allotments, the State proportions are determined under two steps, which are described below in further detail.

Under the first step, each State's proportion is calculated by multiplying the State's Number of Children and the State Cost Factor to determine a "product" for each State. The products for all States are then summed. Finally, the product for a State is divided by the sum of the products for all States, thereby yielding the State's preadjusted proportion.

Application of Floors and Ceilings

Under the second step, the preadjusted proportions are subject to the application of proportion floors, ceilings, and a reconciliation process, as appropriate. The SCHIP statute specifies three proportion floors, or minimum proportions, that apply in determining States' allotments. The first proportion floor is equal to $2,000,000 divided by the total of the amount available nationally for the fiscal year. This proportion ensures that a State's minimum allotment would be $2,000,000. For FY 2004, no State's preadjusted proportion is below this floor. The second proportion floor is equal to 90 percent of the allotment proportion for the State for the previous fiscal year; that is, a State's proportion for a fiscal year must not be lower than 10 percent below the previous fiscal year's proportion. The third proportion floor is equal to 70 percent of the allotment proportion for the State for FY 1999; that is, the proportion for a fiscal year must not be lower than 30 percent below the FY 1999 proportion.

Each State's allotment proportion for a fiscal year is also limited by a maximum ceiling amount, equal to 145 percent of the State's proportion for FY 1999; that is, a State's proportion for a fiscal year must be no higher than 45 percent above the State's proportion for FY 1999. The floors and ceilings are intended to minimize the fluctuation of State allotments from year to year and over the life of the program as compared to FY 1999. The floors and ceilings on proportions are not applicable in determining the allotments of the U.S. Territories and Commonwealths; they receive a fixed percentage specified in the statute of the total allotment available to the U.S. Terrorities and Commonwealths.

As determined under the first step for determining the States' preadjusted proportions, which is applied before the application of any floors or ceilings, the sum of the proportions for all the States and the District of Columbia will be equal to exactly one. However, the application of the floors and ceilings under the second step may change the proportions for certain States; that is, some States' proportions may need to be raised to the floors, while other States' proportions may need to be lowered to the maximum ceiling. If this occurs, the sum of the proportions for all States and the District of Columbia may not exactly

equal one. In that case, the statute requires the proportions to be adjusted, under a method that is determined by whether the sum of the proportions is greater or less than one.

The sum of the proportions would be greater than one if the application of the floors and ceilings resulted in raising the proportions of some States (due to the application of the floors) to a greater degree than the proportions of other States were lowered (due to the application of the ceiling). If, after application of the floors and ceiling, the sum of the proportions is greater than one, the statute requires the Secretary to determine a maximum percentage increase limit, which, when applied to the State proportions, would result in the sum of the proportions being exactly one.

If, after the application of the floors and ceiling, the sum of the proportions is less than one, the statute requires the States' proportions to be increased in a "pro rata" manner so that the sum of the proportions again equals one. Finally, it is also possible, although unlikely, that the sum of the proportions (after the application of the floors and ceiling) will be exactly one; in that case, the proportions would require no further adjustment.

Determination of Preadjusted Proportions

The following is an explanation of how we applied the two State-related factors specified in the statute to determine the States' "preadjusted" proportions for FY 2004. The term "preadjusted," as used here, refers to the States' proportions before the application of the floors and ceiling and adjustments, as specified in the SCHIP statute. The determination of each State and the District of Columbia's preadjusted proportion for FY 2004 is in accordance with the following formula:

$PP_i = (C_i \times SCF_i) / \sigma(C_i \times SCF_i)$

PP_i = Preadjusted proportion for a State or District of Columbia for a fiscal year.

C_i = *Number of children* in a State (section 2104(b)(1)(A)(i) of the Act) for a fiscal year. This number is based on the number of low-income children for a State for a fiscal year and the number of low-income uninsured children for a State for a fiscal year determined on the basis of the arithmetic average of the number of such children as reported and defined in the three most recent March supplements to the CPS of the Bureau of the Census, officially available before the beginning of the calendar year in which the fiscal year begins. (*See* section 2104(b)(2)(B) of the Act.)

For fiscal year 2004, the number of children is equal to the sum of 50 percent of the number of low-income uninsured children in the State for the fiscal year and 50 percent of the number of low-income children in the State for the fiscal year. (*See* section 2104(b)(2)(A)(iii) of the Act.)

SCF_i = *State Cost Factor* for a State (section 2104(b)(1)(A)(ii) of the Act). For a fiscal year, this is equal to: $0.15 + 0.85 \times (W_i/W_N)$.

W_i = The annual average wages per employee for a State for such year (section 2104(b)(3)(A)(ii)(I) of the Act).

W_N = The annual average wages per employee for the 50 States and the District of Columbia (section 2104(b)(3)(A)(ii)(II) of the Act). The annual average wages per employee for a State or for all States and the District of Columbia for a fiscal year is equal to the average of such wages for employees in the health services industry, as reported and determined as final by the BLS of the Department of Labor for each of the most recent 3 years officially available before the beginning of the calendar year in which the fiscal year begins. (*See* section 2104(b)(3)(B) of the Act).

$\Sigma(C_i \times SCF_i)$ = The sum of the products of $(C_i \times SCF_i)$ for each State (section 2104(b)(1)(B) of the Act).

The resulting proportions would then be subject to the application of the floors and ceilings specified in the SCHIP statute and reconciled, as necessary, to eliminate any deficit or surplus of the allotments because the sum of the proportions was either greater than or less than one.

Section 2104(e) of the Act requires that the amounts allotted to a state for a fiscal year be available to the State for a total of 3 years; the fiscal year for which the amounts are allotted, and the 2 following fiscal years.

III. Table of State Children's Health Insurance Program Final Allotments for FY 2004

Key to Table

Column/Description

Column A = *State*. Name of State, District of Columbia, U.S. Commonwealth or Territory.

Column B = *Number of Children*. The number of children for each State (provided in thousands) was determined and provided by the Bureau of the Census based on the arithmetic average of the number of low-income children and low-income uninsured children, and is based on the three most recent March supplements to the CPS of the Bureau of the Census officially available before the beginning of the calendar year in which the fiscal year begins. The FY 2004 allotments were based on the 2000, 2001, and 2002 March supplements to the CPS. These data represent the number of people in each State under 19 years of age whose family income is at or below 200 percent of the poverty threshold appropriate for that family, and who are reported to be without health insurance coverage. The number of children for each State was developed by the Bureau of the Census based on the standard methodology used to determine official poverty status and uninsured status in its annual March CPS on these topics.

For FY 2004, the number of children is equal to the sum of 50 percent of the number of low-income uninsured children in the State and 50 percent of the number of low-income children in the State.

Column C = *State Cost Factor*. The State cost factor for a State is equal to the sum of: 0.15, and 0.85 multiplied by the ratio of the annual average wages in the health industry per employee for the State to the annual wages per employee in the health industry for the 50 States and the District of Columbia. The State cost factor for each State was calculated based on such wage data for each State as reported and determined as final by the BLS in the Department of Labor for each of the most recent 3 years and available before the beginning of the calendar year in which the fiscal year begins. The FY 2004 allotments were based on final BLS wage data for 1999, 2000, and 2001.

Column D = *Product*. The Product for each State was calculated by multiplying the Number of Children in Column B by the State Cost Factor in Column C. The sum of the Products for all 50 States and the District of Columbia is below the Products for each State in Column D. The Product for each State and the sum of the Products for all States provides the basis for allotment to States and the District of Columbia.

Column E = *Proportion of Total*. This is the calculated percentage share for each State of the total allotment available to the 50 States and the District of Columbia. The Percent Share of Total is calculated as the ratio of the Product for each State in Column D to the sum of the Products for all 50 States and the District of Columbia below the Products for each State in Column D.

Column F = *Adjusted Proportion of Total*. This is the calculated percentage share for each State of the total allotment available after the application

of the floors and ceilings and after any further reconciliation needed to ensure that the sum of the State proportions is equal to one. The three floors specified in the statute are: (1) The percentage calculated by dividing $2,000,000 by the total of the amount available for all allotments for the fiscal year; (2) an annual floor of 90 percent of (that is, 10 percent below) the preceding fiscal year's allotment proportion; and (3) a cumulative floor of 70 percent of (that is, 30 percent below) the FY 1999 allotment proportion. There is also a cumulative ceiling of 145 percent of (that is, 45 percent above) the FY 1999 allotment proportion.

Column G = *Allotment*. This is the SCHIP allotment for each State, Commonwealth, or Territory for the fiscal year. For each of the 50 States and the District of Columbia, that is determined as the Adjusted Proportion of Total in Column F for the State multiplied by the total amount available for allotment for the 50 States and the District of Columbia for the fiscal year.

For each of the U.S. Territory and Commonwealths, the allotment is determined as the Proportion of Total in Column E multiplied by the total amount available for allotment to the U.S. Territories and Commonwealths. For the U.S. Territories and Commonwealths, the Proportion of Total in Column E is specified in section 2104(c) of the Act. The total amount is then allotted to the U.S. Territories and Commonwealths according to the percentages specified in section 2104 of the Act. There is no adjustment made to the allotments of the U.S. Territories and Commonwealths as they are not subject to the application of the floors and ceiling. As a result, Column F in the table, the Adjusted Proportion of Total, is empty for the U.S. Territories and Commonwealths.

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STATE CHILDREN'S HEALTH INSURANCE PROGRAM ALLOTMENTS FOR FEDERAL FISCAL YEAR: 2004						
A	B	C	D	E	F	G
STATE	NUMBER OF CHILDREN (000)	STATE COST FACTOR	PRODUCT	PROPORTION OF TOTAL (3)	ADJUSTED PROPORTION OF TOTAL (3)	ALLOTMENT (1)
ALABAMA	314	0.9651	302.5447	1.7328%	1.7402%	$54,679,333
ALASKA	38	1.0421	39.5996	0.2268%	0.2278%	$7,156,891
ARIZONA	453	1.0629	481.5081	2.7578%	2.7696%	$87,023,654
ARKANSAS	215	0.9047	194.0635	1.1115%	1.1162%	$35,073,372
CALIFORNIA	2,701	1.0941	2,954.6099	16.9220%	16.9946%	$533,998,797
COLORADO	241	1.0301	248.2437	1.4218%	1.4279%	$44,865,429
CONNECTICUT	141	1.1017	154.7884	0.8865%	0.8903%	$27,975,129
DELAWARE	35	1.1199	39.1972	0.2245%	0.2488%	$7,817,461
DISTRICT OF COLUMBIA	33	1.2070	39.8323	0.2281%	0.2291%	$7,198,952
FLORIDA	1,054	1.0169	1,071.2850	6.1356%	6.1619%	$193,614,837
GEORGIA	574	1.0023	574.8473	3.2923%	3.3065%	$103,892,954
HAWAII	66	1.1178	73.7720	0.4225%	0.3071%	$9,647,963
IDAHO	106	0.8894	93.8299	0.5374%	0.5397%	$16,958,802
ILLINOIS	661	1.0134	669.3338	3.8335%	3.8499%	$120,969,643
INDIANA	317	0.9445	298.9336	1.7121%	1.7194%	$54,026,680
IOWA	125	0.8722	109.0205	0.6244%	0.6271%	$19,703,423
KANSAS	147	0.8891	130.2592	0.7460%	0.7492%	$23,541,920
KENTUCKY	232	0.9396	217.3764	1.2450%	1.2503%	$39,286,749
LOUISIANA	407	0.8772	357.0114	2.0447%	2.0535%	$64,523,178
MAINE	57	0.9197	52.4233	0.3002%	0.3015%	$9,474,540
MARYLAND	192	1.0437	199.8620	1.1447%	1.1496%	$36,121,348
MASSACHUSETTS	279	1.0651	297.1598	1.7019%	1.4704%	$46,201,047
MICHIGAN	488	1.0107	493.2086	2.8248%	2.8369%	$89,138,280
MINNESOTA	171	1.0074	171.7662	0.9838%	0.9747%	$30,626,504
MISSISSIPPI	229	0.8915	204.1556	1.1693%	1.1743%	$36,897,326
MISSOURI	250	0.9279	231.9657	1.3285%	1.3342%	$41,923,481
MONTANA	66	0.8587	56.2440	0.3221%	0.3244%	$10,193,881
NEBRASKA	85	0.8925	75.8655	0.4345%	0.4415%	$13,872,884
NEVADA	149	1.1612	172.4324	0.9876%	0.9918%	$31,163,957
NEW HAMPSHIRE	42	1.0108	41.9467	0.2402%	0.2550%	$8,013,366
NEW JERSEY	322	1.1082	356.2728	2.0405%	2.0492%	$64,389,677
NEW MEXICO	186	0.9383	174.5154	0.9995%	1.0435%	$32,788,606
NEW YORK	1,130	1.0604	1,197.6656	6.8594%	6.8888%	$216,455,790
NORTH CAROLINA	511	0.9905	505.6368	2.8959%	2.7292%	$85,753,907
NORTH DAKOTA	35	0.8665	30.3277	0.1737%	0.1730%	$5,436,695
OHIO	602	0.9549	574.3513	3.2895%	3.3036%	$103,803,316
OKLAHOMA	257	0.8593	220.8462	1.2649%	1.4201%	$44,621,756
OREGON	208	1.0124	210.5710	1.2060%	1.2112%	$38,056,795
PENNSYLVANIA	556	0.9836	546.3788	3.1293%	3.1427%	$98,747,889
RHODE ISLAND	43	0.9608	40.8340	0.2339%	0.2349%	$7,379,988
SOUTH CAROLINA	241	0.9974	239.8867	1.3739%	1.3798%	$43,355,057
SOUTH DAKOTA	36	0.8899	32.0373	0.1835%	0.1843%	$5,790,144
TENNESSEE	320	1.0021	320.6857	1.8367%	1.8445%	$57,957,983
TEXAS	1,937	0.9451	1,830.6255	10.4846%	10.5295%	$330,851,514
UTAH	148	0.9007	133.2978	0.7634%	0.7667%	$24,091,106
VERMONT	27	0.8961	23.7474	0.1360%	0.1214%	$3,813,156
VIRGINIA	314	0.9818	308.2741	1.7656%	1.7732%	$55,714,814
WASHINGTON	306	0.9662	295.1792	1.6906%	1.6017%	$50,326,484
WEST VIRGINIA	116	0.8948	103.8024	0.5945%	0.5971%	$18,760,354
WISCONSIN	248	0.9726	240.7161	1.3787%	1.3846%	$43,504,958
WYOMING	30	0.9133	27.4004	0.1569%	0.1576%	$4,952,110
TOTAL STATES ONLY			17,460.1388	100.0000%	100.0000%	$3,142,125,000
ALLOTMENTS FOR COMMONWEALTHS AND TERRITORIES (2)						
PUERTO RICO				91.6%		$30,296,700
GUAM				3.5%		$1,157,625
VIRGIN ISLANDS				2.6%		$859,950
AMERICAN SAMOA				1.2%		$396,900
N. MARIANA ISLANDS				1.1%		$363,825
TOTAL COMMONWEALTHS AND TERRITORIES ONLY				100.0%		$33,075,000
TOTAL STATES AND COMONWEALTHS AND TERRITORIES						$3,175,200,000

FOOTNOTES

The numbers in Columns B - F are rounded for presentation purposes; the actual numbers used in the allotment calculations are not rounded

(1) Total amount available for allotment to the 50 States and the District of Columbia is $3,142,125,000; determined as the fiscal year appropriation ($3,150,000,000) reduced by the total amount available for allotment to the Commonwealths and Territories under section 2104(c) of the Act ($7,875,000)

(2) Total amount available for allotment to the Commonwealths and Territories is $7,875,000 (.25 percent of $3,150,000,000, the fiscal year appropriation), plus $25,200,000, as specified in section 2104(c)(4)(B) of the Act

(3) Percent share of total amount available for allotment to the Commonwealths and Territories is as specified in section 2104(c) of the Act

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IV. Impact Statement

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded

Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

We examined the impact of this notice as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rules are necessary, to select regulatory approaches that maximize net benefits (including potential economic environments, public health and safety, other advantages, distributive impacts, and equity). We believe that this notice is consistent with the regulatory philosophy and principles identified in the Executive Order. The formula for the allotments is specified in the statute. Since the formula is specified in the statute, we have no discretion in determining the allotments. This notice merely announces the results of our application of this formula, and therefore does not reach the economic significance threshold of $100 million in any one year.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any one year. Individuals and States are not included in the definition of a small entity; therefore, this requirement does not apply.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds.

The Unfunded Mandates Reform Act of 1995 requires that agencies prepare an assessment of anticipated costs and benefits before publishing any notice that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $110 million or more (adjusted each year for inflation) in any one year. This notice will not create an unfunded mandate on States, tribal, or local governments because it merely notifies states of their SCHIP allotment for FY 2004 and does not mandate any additional expenditures by these governments. Therefore, we are not required to perform an assessment of the costs and benefits of this notice, in accordance with the Unfunded Mandates Reform Act.

Low-income children will benefit from payments under SCHIP through increased opportunities for health insurance coverage. We believe this notice will have an overall positive impact by informing States, the District of Columbia, and U.S. Territories and Commonwealths of the extent to which they are permitted to expend funds under their child health plans using their FY 2004 allotments.

Under Executive Order 13132, we are required to adhere to certain criteria regarding Federalism. We have reviewed this notice and determined that it does not significantly affect States' rights, roles, and responsibilities because it does not set forth any new policies.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

(Section 1102 of the Social Security Act (42 U.S.C. 1302))

(Catalog of Federal Domestic Assistance Program No. 93.767, State Children's Health Insurance Program)

Dated: April 2, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 29, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–21439 Filed 8–21–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–2136–FN]

RIN 0938–AL79

Medicaid Program; State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals: Federal Fiscal Year 2002

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final notice.

SUMMARY: In this notice, we are adopting as final the proposed expenditures allotted under sections 1902(a)(10)(E)(iv)(I) and (II) of the Social Security Act (the Act) to participating State agencies to pay all, or some portion of, Medicare Part B premium costs for a specified category of eligible low-income Medicare beneficiaries called qualifying individuals (QIs) during Federal fiscal year 2002. The proposed notice announcing the update was published in the August 30, 2002 **Federal Register**. Federal fiscal year 2002 is the final year that these allotments are authorized under the Act. However, the Congress has extended funding at the same level for one group of QIs for fiscal year 2003.

EFFECTIVE DATE: This final notice is effective on October 21, 2003.

FOR FURTHER INFORMATION CONTACT: Robert Nakielny, (410) 786–4466.

I. Background

A. Before the Balanced Budget Act of 1997

Before enactment of the Balanced Budget Act of 1997 (BBA), section 1902(a)(10)(E) of the Social Security Act specified that State Medicaid plans must provide Medicare cost-sharing for three groups of eligible low-income Medicare beneficiaries. These three groups include: qualified Medicare beneficiaries (QMBs), specified low-income Medicare beneficiaries (SLMBs), and qualified disabled and working individuals (QDWIs).

A QMB is an individual entitled to Medicare Part A (Hospital Insurance) with an income that falls at or below the Federal poverty level and resources below $4,000 for an individual and $6,000 for a couple. An SLMB is an individual who meets the QMB criteria, except that his or her income is between a State-established level (at or below the Federal poverty level) and 120 percent of the Federal poverty level. A QDWI is an individual who is entitled to enroll in Medicare Part A, whose income does not exceed 200 percent of the Federal poverty level for a family of the size involved, whose resources do not exceed twice the amount allowed under the Supplementary Security Income program, and who is not otherwise eligible for Medicaid.

The definition of Medicare cost-sharing at section 1905(p)(3) of the Act includes payment for Medicare premiums, although QDWIs only qualify to have Medicaid pay their Medicare Part A premiums, and SLMBs only qualify to have Medicaid pay their Medicare Part B premiums.

B. After Enactment of the Balanced Budget Act of 1997

Section 4732 of the BBA amended section 1902(a)(10)(E) of the Act to require that States provide for Medicaid payment of all, or a portion of, Medicare Part B (Supplementary Medical Insurance) premiums, during the period beginning January 1998 through December 2002, for selected members of two eligibility groups of low-income Medicare beneficiaries, referred to as qualifying individuals (QIs).

Under section 1902(a)(10)(E)(iv)(I) of the Act, State agencies are required to pay the full amount of the Medicare Part B premium for selected QIs who would be QMBs except that their income level is at least 120 percent but less than 135 percent of the Federal poverty level for a family of the size involved. These individuals cannot otherwise be eligible for medical assistance under the approved State Medicaid plan.

The second group of QIs, under section 1902(a)(10)(E)(iv)(II) of the Act, includes Medicare beneficiaries who would be QMBs except that their income is at least 135 percent but less than 175 percent of the Federal poverty level for a family of the size involved. These QIs may not be otherwise eligible for Medicaid under the approved State plan, but are eligible for a portion of Medicare cost-sharing consisting only of a percentage of the increase in the Medicare Part B premium attributable to the shift of Medicare home health coverage from Part A to Part B (as provided in section 4611 of the BBA).

Section 4732(c) of the BBA also added section 1933 of the Act, which specifies the provisions for State coverage of the Medicare cost-sharing for additional low-income Medicare beneficiaries.

Section 1933(a) of the Act specifies that a State agency must provide, through a State plan amendment, for medical assistance to pay for the cost of Medicare cost-sharing on behalf of QIs who are selected to receive assistance.

Section 1933(b) of the Act sets forth the rules that State agencies must follow in selecting QIs and providing payment for Medicare Part B premiums. Specifically, the State agency must permit all QIs to apply for assistance and must select individuals on a first-come, first-served basis in the order in which they apply.

Section 1933(c) of the Act limits the total amount of Federal funds available for payment of Part B premiums each fiscal year and specifies the formula to be used to determine an allotment for each State from this total amount. For State agencies that execute a State plan amendment in accordance with section 1933(a) of the Act, a total of $1.5 billion was allocated over 5 years as follows: $200 million in FY 1998; $250 million in FY 1999; $300 million in FY 2000; $350 million in FY 2001; and $400 million in FY 2002.

The Federal matching rate for Medicaid payment of Medicare Part B premiums for QIs is 100 percent for expenditures up to the amount of the State's allotment. No Federal matching funds are available for expenditures in excess of the State's allotment amount. Administrative expenses associated with the payment of Medicare Part B premiums for QIs remain at the 50 percent matching level and may not be taken from the State's allotment.

The amount available for each fiscal year was allocated among States according to the formula set forth in section 1933(c)(2) of the Act.

II. Provisions of the Proposed Notice

The August 30, 2002 (67 FR 55851) proposed notice announced the proposed allotments that were made available to individual States for Federal fiscal year 2002 for the Medicaid payment of Medicare Part B premiums for QIs identified under sections 1902(a)(10)(E)(iv)(I) and (II) of the Act. Specifically, the Federal fiscal year 2002 allotments have been calculated as follows:

A_T = Total amount to be allocated
$M1_i$ = 3-year average of the number of Medicare beneficiaries in State i who are not enrolled in Medicaid and whose incomes are at least 120 percent but less than 135 percent of Federal poverty line
$M2_i$ = 3-year average of the number of Medicare beneficiaries in State i who are not enrolled in Medicaid and whose incomes are at least 135 percent but less than 175 percent of Federal poverty line.

Then, the allotment reserved for State i is determined by the following formula:

$$A_i = \left[\frac{2 \cdot M1_i + M2_i}{\sum_j \left(2 \cdot M1_j + M2_j\right)} \right] \cdot A_T$$

We note that the formula used to calculate these allotments is the same we have used since 1998 for calculating the annual QI allotments. In applying the formula for the allotments presented in this document, we have used the latest data available to us as of August 30, 2002, the date we published our proposed allotments for Fiscal Year 2002.

FY 2002 STATE ALLOTMENTS FOR PAYMENT OF PART B PREMIUMS UNDER SEC. 4732 OF THE BBA OF 1997

State	(a) M1[1]	(b) M2[2]	(c) 2 × (a) + (b)	State Share of (c)	State FY 2002 allocation ($000)
AK	1	3	5	0.08%	321
AL	25	69	118	1.90	7,584
AR	23	46	92	1.48	5,913
AZ	20	63	103	1.65	6,620
CA	114	307	535	8.60	34,383
CO	11	37	59	0.95	3,792
CT	11	55	77	1.24	4,949
DC	3	5	11	0.18	707
DE	5	10	20	0.32	1,285
FL	114	249	477	7.66	30,656
GA	31	69	131	2.10	8,419
HI	3	13	19	0.31	1,221
IA	20	49	89	1.43	5,720
ID	7	18	32	0.51	2,057
IL	38	138	214	3.44	13,753
IN	46	88	180	2.89	11,568
KS	12	33	57	0.92	3,663
KY	19	65	103	1.65	6,620

FY 2002 STATE ALLOTMENTS FOR PAYMENT OF PART B PREMIUMS UNDER SEC. 4732 OF THE BBA OF 1997—Continued

State	(a) M1[1]	(b) M2[2]	(c) 2 × (a) + (b)	State Share of (c)	State FY 2002 allocation ($000)
LA	27	57	111	1.78	7,134
MA	40	85	165	2.65	10,604
MD	26	49	101	1.62	6,491
ME	7	23	37	0.59	2,378
MI	42	127	211	3.39	13,560
MN	27	46	100	1.61	6,427
MO	29	60	118	1.90	7,584
MS	17	44	78	1.25	5,013
MT	5	11	21	0.34	1,350
NC	49	89	187	3.00	12,018
ND	5	13	23	0.37	1,478
NE	9	34	52	0.84	3,342
NH	3	14	20	0.32	1,285
NJ	35	109	179	2.88	11,504
NM	11	28	50	0.80	3,213
NV	7	23	37	0.59	2,378
NY	92	233	417	6.70	26,799
OH	52	167	271	4.35	17,416
OK	14	65	93	1.49	5,977
OR	15	32	62	1.00	3,985
PA	81	187	349	5.61	22,429
RI	7	13	27	0.43	1,735
SC	34	58	126	2.02	8,098
SD	4	13	21	0.34	1,350
TN	37	61	135	2.17	8,676
TX	82	218	382	6.14	24,550
UT	7	16	30	0.48	1,928
VA	45	83	173	2.78	11,118
VT	3	8	14	0.22	900
WA	21	56	98	1.57	6,298
WI	24	87	135	2.17	8,676
WV	11	44	66	1.06	4,242
WY	3	7	13	0.21	835
Total	1374	3476	6224	100.00	$400,000

[1] Three-year average (1999–2001) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 120% but less than 135% of the Federal Poverty Level (FPL).

[2] Three-year average (1999–2001) of number (000) of Medicare beneficiaries in State who are not enrolled in Medicaid but whose incomes are at least 135% but less than 175% of the Federal Poverty Level (FPL).

III. Analysis of and Responses to Public Comments and Provisions of the Final Notice

We received no public comments on the August 30, 2002 **Federal Register** proposed notice. We are adopting the provisions of the proposed notice as final.

IV. Regulatory Impact Statement

We have examined the impacts of this final notice as required by Executive Order 12866 (September 1993, Regulatory planning and review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We have determined this notice is not a major rule because we are simply giving notice of FY 2002 allotments that were available to States of up to $400 million for a specialized category of low-income Medicare beneficiaries. We note that these funds were already budgeted and expended. In fact, State expenditures claimed for fiscal year 2002 were less than 25 percent of the total amount allotted, which is below the $100 million threshold for economically significant rulemaking under Executive Order 12866. Therefore, consistent with Executive Order 12866, we are not providing an impact analysis.

The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity.

This final notice will allocate, among the States, Federal funds to provide Medicaid payment for Medicare Part B premiums for QIs. The total amount of Federal funds available during a Federal fiscal year and the formula for determining individual State allotments are specified in the law. Because the formula for determination of State

allotments is specified in the statute, there were no other options to be considered. Therefore, we have applied the statutory formula for the State allotments except for the use of specified data. Because the data specified in the law were not available, we have used comparable data from the United States Census Bureau on the number of possible QIs in the States, as described in detail in the January 26, 1998 **Federal Register**. Since the statutory formula calls for an estimate of individuals who could qualify for QI status rather than the number of individuals who actually have that status, the exact numbers of those individuals will always be uncertain. These new allotments for FY 2002 incorporated the latest data from the United States Census Bureau from 1999 to 2001, as specified in the footnotes to the preceding table.

We believe that announcing the final allocations in this notice will have a positive effect on States and individuals. Federal funding at the 100 percent matching rate was available for Medicare Part B premiums (or for a portion of those premiums) for QIs.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 100 beds.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or any the private sector, of $110 million. This final notice does not mandate expenditure by State, local or tribal governments in the aggregate or the private sector of $110 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

Because this final notice provides notice of funding ceilings, as determined under the statute, we have determined that this final notice will not significantly affect the rights, roles, and responsibilities of States.

We are not preparing analyses for either the RFA or section 1102(b) of the Act, because we have determined, and we certify, that this final notice will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this final notice was reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: April 18, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: May 13, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–21440 Filed 8–21–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–4053–N]

Medicare Program: Meeting of the Advisory Panel on Medicare Education—September 18, 2003

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix 2, section 10(a) (Public Law 92–463), this notice announces a meeting of the Advisory Panel on Medicare Education (the Panel) on September 18, 2003. The Panel advises and makes recommendations to the Secretary of the Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program. This meeting is open to the public.

DATES: The meeting is scheduled for September 18, 2003 from 9:15 a.m. to 4 p.m., e.d.t.

Deadline for Presentations and Comments: September 11, 2003, 12 noon, e.d.t.

ADDRESSES: The meeting will be held at the Wyndham Washington Hotel, 1400 M Street, NW., Washington, DC 20005, (202) 429–1700.

FOR FURTHER INFORMATION CONTACT: Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, mail stop S2–23–05, Baltimore, MD 21244–1850, (410) 786–0090. Please refer to the CMS Advisory Committees' Information Line (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet (*http://www.cms.hhs.gov/faca/apme/default.asp*) for additional information and updates on committee activities, or contact Ms. Johnson via e-mail at *ljohnson3@cms.hhs.gov*. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: Section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended, grants to the Secretary of the Department of Health and Human Services (the Secretary) the authority to establish an advisory panel if the Secretary finds the panel necessary and in the public interest. The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7849), and approved the renewal of the charter on January 21, 2003. The Panel advises and makes recommendations to the Secretary and the Administrator of the Centers for Medicare & Medicaid Services (CMS) on opportunities to enhance the effectiveness of consumer education strategies concerning the Medicare program.

The goals of the Panel are as follows:

- To develop and implement a national Medicare education program that describes the options for selecting a health plan under Medicare.
- To enhance the Federal government's effectiveness in informing the Medicare consumer, including the appropriate use of public-private partnerships.
- To expand outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of a national Medicare education program.
- To assemble an information base of best practices for helping consumers evaluate health plan options and build a community infrastructure for information, counseling, and assistance.

The current members of the Panel are: Dr. Jane Delgado, Chief Executive Officer, National Alliance for Hispanic Health; Joyce Dubow, Senior Policy Advisor, Public Policy Institute, American Association of Retired Persons (AARP); Clayton Fong, President and Chief Executive Officer,

National Asian Pacific Center on Aging; Timothy Fuller, Executive Director, National Gray Panthers; John Graham IV, Chief Executive Officer, American Diabetes Association; Dr. William Haggett, Senior Vice President, Government Programs, Independence Blue Cross; Thomas Hall, Chairman and Chief Executive Officer, Cardio-Kinetics, Inc.; David Knutson, Director, Health System Studies, Park Nicollet Institute for Research and Education; Brian Lindberg, Executive Director, Consumer Coalition for Quality Health Care; Katherine Metzger, Director, Medicare and Medicaid Programs, Fallon Community Health Plan; Dr. Laurie Powers, Co-Director, Center on Self-Determination, Oregon Health Sciences University; Dr. Marlon Priest, Professor of Emergency Medicine, University of Alabama at Birmingham; Dr. Susan Reinhard, Co-Director, Center for State Health Policy, Rutgers University and Chairperson of the Advisory Panel on Medicare Education; Dr. Everard Rutledge, Vice President of Community Health, Bon Secours Health Systems, Inc.; Jay Sackman, Executive Vice President, 1199 Service Employees International Union; Dallas Salisbury, President and Chief Executive Officer, Employee Benefit Research Institute; Rosemarie Sweeney, Vice President, Socioeconomic Affairs and Policy Analysis, American Academy of Family Physicians; and Bruce Taylor, Director, Employee Benefit Policy and Plans, Verizon Communications.

The agenda for the September 18, 2003 meeting will include the following:

- Recap of the previous (May 21, 2003) meeting.
- Centers for Medicare & Medicaid Services Update and Center for Beneficiary Choices Update.
- CMS Demonstrations.
- Medicare Reform Update.
- Research and Evaluation: Sharing Research with Stakeholders.
- Public Comment.
- Listening Session with CMS Leadership.
- Next Steps.

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to Lynne Johnson, Health Insurance Specialist, Division of Partnership Development, Center for Beneficiary Choices, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mail stop S2–23–05, Baltimore, MD 21244–1850 or by e-mail at *ljohnson3@cms.hhs.gov* no later than 12 noon, e.d.t., September 11, 2003. The number of oral presentations may be limited by the time available. Individuals not wishing to make a presentation may submit written comments to Ms. Johnson by 12 noon, September 11, 2003. The meeting is open to the public, but attendance is limited to the space available.

Special Accommodation: Individuals requiring sign language interpretation or other special accommodations should contact Ms. Johnson at least 15 days before the meeting.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3).

(Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 7, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–21438 Filed 8–21–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1236–N]

Medicare Program; September 15 and 16, 2003, Meeting of the Practicing Physicians Advisory Council and Request for Nominations

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council (the Council) and invites all organizations representing physicians to submit nominees for membership on the Council. There will be several vacancies on the Council as of February 28, 2004. The Council will be meeting to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary of the Department of Health and Human Services (the Secretary). These meetings are open to the public.

Meeting Registration: Persons wishing to attend this meeting must register for the meeting at least 72 hours in advance by contacting one of the Designated Federal Officials (DFO): Diana Motsiopoulos, by e-mail at *dmotsiopoulos@cms.hhs.gov*, or by telephone at (410) 786–3379; or Keri Boston, by e-mail at *kboston@cms.hhs.gov*, or by telephone at 410–786–6631. Persons who are not registered in advance will not be permitted into the Humphrey Building, and thus will not be able to attend the meeting. Persons attending the meeting will be required to show a photographic identification, preferably a valid driver's license, before entering the building.

DATES: The meeting is scheduled for September 15, 2003 from 8:30 a.m. until 5 p.m. e.d.t. and September 16, 2003 from 8:30 a.m. until 1 p.m. e.d.t.

ADDRESSES: The meeting will be held in Room 800, at the Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Nominations: Nominations will be considered if received at the appropriate address, no later than 5 p.m. e.d.t., September 30, 2003. Mail or deliver nominations to the following address: Centers for Medicare & Medicaid Services, Center for Medicare Management, Division of Provider Relations and Evaluations, Attention: Diana Motsiopoulos, Designated Federal Official, Practicing Physicians Advisory Council, 7500 Security Boulevard, Mail Stop C4–11–27, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT: Kenneth Simon, M.D., Executive Director, Practicing Physicians Advisory Council, 7500 Security Boulevard, Mail Stop C4–10–07, Baltimore, MD 21244–1850, (410) 786–3379. Please refer to the CMS Advisory Committees Information Line: (1–877–449–5659 toll free)/(410–786–9379 local) or the Internet at *http://www.cms.hhs.gov/faca/ppac/default.asp* for additional information and updates on committee activities. News media representatives should contact the CMS Press Office, (202) 690–6145.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act (the Act) to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Centers for

Medicare & Medicaid Services not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members of the Council must be physicians described in section 1861(r)(1) of the Act; that is, State-licensed doctors of medicine or osteopathy. The remaining 4 members may include dentists, podiatrists, optometrists, and chiropractors. Members serve for overlapping 4-year terms; terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before its termination. Section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians.

The Council held its first meeting on May 11, 1992. The current members are: James Bergeron, M.D.; Ronald Castallanos, M.D.; Rebecca Gaughan, M.D.; Carlos R. Hamilton, M.D.; Joseph Heyman, M.D.; Dennis K. Iglar, M.D.; Christopher Leggett, M.D.; Joe Johnson, D.O.; Barbara McAneny, M.D.; Angelyn L. Moultrie-Lizana, D.O.; Laura B. Powers, M.D.; Michael T. Rapp, M.D.; Amilu Rothhammer, M.D.; Robert L. Urata, M.D.; and Douglas L. Wood, M.D. Council members will be updated on the status of recommendations made during the past year.

The agenda will provide for discussion and comment on the following topics:

- Physician's Regulatory Issues Team (PRIT) update.
- Physicians Group Practice Demonstrations and proposals for future demonstrations.
- Lowering Medicare Costs: Regions or Beneficiaries?
- Provider Enrollment.
- Authority for Policies on Coverage Procedures and Devices Results in Inequities.
- Practice Patterns for Physicians.
- Doctors' Office Quality Update.
- Overview Prescription Drug Benefit.
- Health Insurance Portability and Accountability Act.
- Limited English Proficiency Requirement.
- Revisions to the Average Wholesale Price Methodology Regulation.

For additional information and clarification on the topics listed, call the contact person in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Individual physicians or medical organizations that represent physicians wishing to make 5-minute oral presentations on agenda issues should contact one of the Designated Federal Officials by 12 noon, Friday, September 5, 2003, to be scheduled. Testimony is limited to agenda topics. The number of oral presentations may be limited by the time available. A written copy of the presenter's oral remarks should be submitted to Diana Motsiopoulos at *dmotsiopoulos@cms.hhs.gov* no later than 12 noon, September 5, 2003, for distribution to Council members for review before the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and Council members. The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired or other special accommodation should contact Diana Motsiopoulos at *dmotsiopoulos@cms.hhs.gov* or (410) 786–3379 at least 10 days before the meeting.

This notice also serves as an invitation to all organizations representing physicians to submit nominees for membership on the Council. Each nomination must state that the nominee has expressed a willingness to serve as a Council member and must be accompanied by a short resume or description of the nominee's experience. To permit an evaluation of possible sources of conflicts of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts. Section 1868(b) of the Act provides that the Council meet quarterly to discuss certain proposed changes in regulations and manual issuances that relate to physicians' services, identified by the Secretary. Council members are expected to participate in all meetings. Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided members of other advisory committees. In addition to making these payments, the Department of Health and Human Services/Centers for Medicare & Medicaid Services provides management and support services to the Council. The Secretary will appoint new members to the Council from among those candidates determined to have the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of the Council's membership.

Authority: (Sec. 1868 of the Social Security Act (42 U.S.C. 1395ee) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sects. 10(a) and 14).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 7, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–21442 Filed 8–21–03; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

Privacy Act of 1974; Report of New System

AGENCY: Centers for Medicare and Medicaid Services (CMS), Department of Health and Human Services (HHS).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records. The proposed system is titled, "ASPEN Complaints/Incidents Tracking System (ACTS), HHS/CMS/CMSO, 09–70–1519." The primary purpose of the system of records is to track and process complaints and incidents reported against Medicare/Medicaid/CLIA providers and suppliers, and to maintain information on laboratory directors and owners. ACTS is a windows-based, program designed to track and process complaints and incidents reported against health care facilities regulated by the Centers for Medicare and Medicaid Services (CMS). It is designed to manage all operations associated with complaint/incident tracking and processing, from initial intake and investigation through the final disposition. ACTS allows CMS to track complaints/incidents, allegations, investigations, disposition and certain information for CLIA laboratories.

Information retrieved from this system of records will also be used to aid in the administration of the survey and certification of Medicare/Medicaid/CLIA providers and suppliers; support agencies of the State governments to determine, evaluate and assess overall effectiveness and quality of provider/supplier services provided in the State; aid in the administration of Federal and

State programs within the State; support constituent requests made to a Congressional representative, support litigation involving the agency, and facilitate research on the quality and effectiveness of care provided. We have provided background information about the proposed system in the **SUPPLEMENTARY INFORMATION** section below. Although the Privacy Act requires only that the "routine use" portion of the system be published for comment, CMS invites comments on all portions of this notice. See **EFFECTIVE DATES** section for comment period.

EFFECTIVE DATES: CMS filed a new system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on August 8, 2003.

ADDRESSES: The public should address comments to: Director, Division of Privacy Compliance Data Development (DPCDD), CMS, Room N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern time zone.

FOR FURTHER INFORMATION CONTACT: Wayne Smith, Finance, Systems and Budget Group, Center for Medicaid and State Operations, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Room S3–18–11, Baltimore, Maryland 21244–1850, Telephone Number: (410) 786–3258.

Steven Pelovitz, Survey and Certification Group, Center for Medicaid and State Operations, Centers for Medicare and Medicaid Services, 7500 Security Boulevard, Room S2–12–25, Baltimore, Maryland 21244–1850, Telephone Number: (410) 786–3160..

SUPPLEMENTARY INFORMATION:

I. Description of the Proposed System of Records

A. Glossary of Terms

ACTS—ASPEN Complaints/Incidents Tracking System.

ASPEN—Automated Survey Processing Environment.

CLIA—Clinical Laboratory Improvement Amendments of 1988.

OSCAR—Online Survey Certification and Reporting System.

B. Background

The implementation of ACTS is critical to CMS's mission of assuring that beneficiaries receive quality care in a safe environment. Several reports in recent years have highlighted this need. In March 1999, the General Accounting Office (GAO) issued a report entitled, "Complaint Investigation Processes Often Inadequate to Protect Residents." GAO assessed the effectiveness of State complaint investigation practices and the role of CMS in establishing standards and conducting oversight. The GAO recommended stronger requirements, increased federal monitoring and improved tracking of findings for complaints. In addition, in 1999, the Office of the Inspector General (OIG) issued a report entitled "The External Review of Hospital Quality." OIG recommended that CMS hold accreditation agencies and State agencies more fully accountable for their performance in reviewing hospitals. One of the areas that OIG made specific recommendations about was the handling of complaints. ACTS is part of CMS" response to these recommendations.

The ACTS responds to the concerns and problems found by the GAO, OIG and CMS" own needs. The ability to capture data that are useful, analyze data in a meaningful way, and use the products of the analysis to make refinements and improvements is critical to continuous quality improvement. Before ACTS, complaint data was maintained in the OSCAR Complaint System. The OSCAR Complaint System collected a minimal amount of data that was the result of an onsite survey. The data in ACTS is much more comprehensive than data that was maintained in the OSCAR Complaint System. ACTS automates complaint management operations. ACTS is a windows-based, client-server application that tracks, processes, and reports on complaints/incidents made against certified health care providers and suppliers. It is designed to manage all operations associated with complaints/incidents processing, from initial intake and investigation through final disposition. It is fully integrated into the ASPEN standard system architecture. Specific fields are configurable by individual states to accommodate a variety of operations environments.

ACTS is a national tracking system used by all States. It permits the collection procedures for complaints to be timely, consistent and complete. ACTS will eliminate redundant data collection systems, and it takes advantage of new technology and open systems architecture. ACTS will be used for all certified providers and suppliers. These providers and suppliers include: Skilled nursing facilities, nursing facilities, hospitals, home health agencies, end-stage renal disease facilities, hospices, rural health clinics, comprehensive outpatient rehabilitation facilities, outpatient physical therapy services, community mental health centers, federally qualified health centers, ambulatory surgical centers, portable X-Ray facilities, intermediate care facilities for persons with mental retardation, and CLIA laboratories. Data in ACTS is collected and entered by the State Survey Agencies and CMS Regional Offices.

C. Statutory and Regulatory Basis for System of Records

Section 1864 of the Social Security Act (the Act) states the Secretary may use State agencies to determine compliance by providers of services with the conditions of participation. Under section 1864(a) the Act, the Secretary uses the help of State health agencies, or other appropriate agencies, when determining whether health care entities meet Federal Medicare standards. Also, section 1902(a)(9)(A) of the Act requires that a State use this same agency to set and maintain additional standards for the State Medicaid program. Section 1902(a)(33)(B) requires that the State use the agency utilized for Medicare or, if such agency is not the State agency responsible for licensing health institutions, the State use the agency responsible for such licensing to determine whether institutions meet all applicable Federal health standards for Medicaid participation, subject to validation by the Secretary. The State survey agencies perform both Federal certification and State licensure functions, including the investigation of complaints and entity-reported incidents. Sections 1819(d) and 1919(d) of the Act require licensure under applicable State and local laws.

Sections 1864 (c) and 1865 of the Act provides the basis for conducting complaint surveys of accredited hospitals and establishes the basic framework of complaint surveys for virtually all other accredited providers and suppliers. Regulations authorizing such surveys are found in 42 CFR 488.7(a)(2). 42 CFR 488.332 authorizes investigation of complaints of violations and monitoring of compliance. 42 CFR 488.335 authorizes actions on complaints of resident neglect and abuse, and misappropriation of resident property for nursing homes. 42 CFR 482.13(f) requires a hospital to report any death that occurs while a patient is restrained or in seclusion for behavior management, or where it is reasonable to assume that a patient's death is a

result of restraint or seclusion. 42 CFR 483.13 also requires nursing homes to ensure that all alleged violations involving mistreatment, neglect, abuse, including injuries of unknown source, and misappropriation of resident property are reported immediately to the administrator of the facility and to other officials in accordance with State law through established procedures, including to the State survey and certification agency. Section 353 of the Public Health Service Act (42 U.S.C. 263a) authorizes collection of information from any person or entity seeking certification under CLIA.

The Privacy Act of 1974 requires Federal agencies to implement and publish procedures for the collection, maintenance, and storage of personal information. It requires that the information be gathered only for lawful purposes and that the disclosure of personally identifiable records must be limited and safeguarded. The Privacy Act allows disclosure of an individual's data without consent, given that the data will be used for a purpose that is compatible with the purpose for which the information was collected.

II. Collection and Maintenance of Data in the System

A. Scope of the Data Collected

ACTS tracks allegations of complaints made against providers and suppliers. ACTS includes demographic data for identification of providers/suppliers, such as the Medicare identification number, name of the facility, address, city, state and ZIP code. ACTS contains data for identification of complainants, residents/patients, contacts/witnesses, alleged perpetrators, survey team members, laboratory directors, and laboratory owners. Complainant information includes: Name, title, address, city, state, ZIP code, telephone numbers, e-mail address, and relationship to beneficiary, if applicable. Contacts/Witnesses information includes: Name, title, address, city, state, ZIP code, telephone numbers, fax, and a field to indicate if the individual is a possible witness. Resident/patient information includes: Name, title, date of birth, gender, date admitted, date discharged, location, and room. ACTS also contains information related to any resident/patient deaths that are associated with the use of restraints or seclusion. This information includes: Name, death type (restraint or seclusion) and date of death. Alleged Perpetrator information includes: Name, title, address, city, state, ZIP code, telephone numbers, license number, social security number and Alias name, if any. Survey Team information includes: Name, title, and surveyor identification number. Contact/Witnesses, Resident/Patient and Alleged Perpetrator are not mandatory fields in the ACTS database. These are optional data fields. ACTS will also maintain information for CLIA laboratories. Identifiable information for CLIA laboratories includes: Laboratory director's name, laboratory owner's name and Federal Tax Identification Number.

ACTS will maintain Federal complaint information, as well as state licensure complaint information. State licensure information is both relevant and necessary to meet CMS' purposes. Under section 1864(a) of the Social Security Act (the Act), the Secretary uses the help of State health agencies, or other appropriate agencies, when determining whether health care entities meet Federal Medicare standards. Also, section 1902(a)(9)(A) of the Act requires that a State use this same agency to set and maintain additional standards for the State Medicaid program. Section 1902(a)(33)(B) requires that the State use the agency utilized for Medicare or, if such agency is not the State agency responsible for licensing health institutions, the State use the agency responsible for such licensing to determine whether institutions meet all applicable Federal health standards for Medicaid participation, subject to validation by the Secretary. The State survey agencies perform both Federal certification and State licensure functions, including the investigation of complaints and entity-reported incidents. In fact, sections 1819(d) and 1919(d) of the Act require licensure under applicable State and local laws. In order to encourage efficiency in State operations, ACTS permits collection of Federal and State information, so that the States may maintain only one database, instead of multiple systems. CMS does seek to eliminate duplicative processes and unnecessary burden, to the extent possible, so that the States can achieve more effective management of their certification and licensure responsibilities.

There are mechanisms in ACTS that allow users to distinguish between information that is collected for the purpose of meeting the 1864 Agreement from information that is collected for State licensure purposes. ACTS supports the entry of both Federal and State licensure information, thus reflecting the actual business practices of State agencies as they track complaints and incidents. In many areas, ACTS allows entry of both types of information while still maintaining discrete records to support separate and different views, reports and statistics. Federal and State licensure data are stored in the same tables in the database. However, Federal and State licensure data is easily discernable and separate. For reporting purposes, ACTS allows users to exclude complaint and incidents against state licensure only facilities using Facility Type filters. Report customization features in ACTS also allow users to include or exclude complaints or incidents that contain only State-licensure elements.

B. Agency Policies, Procedures, and Restrictions on the Routine Use

The Privacy Act permits us to disclose information without an individual's consent if the information is to be used for a purpose, which is compatible with the purpose(s) for which the information was collected. Any such disclosure of data is known as a "routine use." CMS has the following policies, procedures and restrictions on routine use disclosures of information that will be maintained in the system. In general, disclosure of information from the system of records will be approved only for the minimum information necessary to accomplish the purpose of the disclosure after CMS:

(a) Determines that the use or disclosure is consistent with the reason that the data is being collected, *e.g.*, track and process complaints and incidents reported against Medicare/Medicaid/CLIA providers and suppliers, and to maintain information on laboratory directors and owners.

(b) Determines:

(1) That the purpose for which the disclosure is to be made can only be accomplished if the record is provided in individually identifiable form;

(2) That the purpose for which the disclosure is to be made is of sufficient importance to warrant the effect and/or risk on the privacy of the individual that additional exposure of the record might bring; and

(3) That there is a strong probability that the proposed use of the data would in fact accomplish the stated purpose(s).

(c) Requires the information recipient to:

(1) Establish administrative, technical, and physical safeguards to prevent unauthorized use of disclosure of the record;

(2) Remove or destroy at the earliest time all patient-identifiable information; and

(3) Agree not to use or disclose the information for any purpose other than the stated purpose under which the information was disclosed.

(d) Determines that the data are valid and reliable.

(e) Secure a written statement or agreement from the prospective recipient if the information whereby the prospective recipient attests to an understanding of, and willingness to abide by, the foregoing provisions and any additional provisions that CMS deems appropriate in the particular circumstance.

III. Proposed Routine Use Disclosures of Data in the System

A. Entities Who May Receive Disclosure Under Routine Use

The routine use disclosures of identifiable data for ACTS may occur to the following categories of entities. In addition, our policy will be to prohibit release even of non-identifiable data beyond the listed categories, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes.

1. To the Department of Justice (DOJ), court or adjudicatory body when

(a) The agency or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity whether the DOJ has agreed to represent the employee; or

(d) The United States Government is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

Whenever CMS is involved in litigation, and occasionally when another party is involved in litigation and CMS' policies or operations could be affected by the outcome of the litigation, CMS would be able to disclose information to the DOJ, court or adjudicatory body involved. A determination would be made in each instance that, under the circumstances involved, the purposes served by the use of the information in the particular litigation is compatible with a purpose for which CMS collects the information.

2. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity. Recipients shall be required to comply with the requirements of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 52a(m).

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this system of records. CMS occasionally contracts out certain of its functions when doing so would contribute to effective and efficient operations. CMS must be able to give a contractor whatever information is necessary for the contractor to fulfill its duties. In these situations, safeguards are provided in the contract prohibiting the contractor from using or disclosing the information for any purpose other than that described in the contract and requires the contractor to return or destroy all information at the completion of the contract.

3. To a CMS contractor (including, but not limited to fiscal intermediaries and carriers) that assists in the administration of a CMS administered health benefits program, or to a grantee of a CMS administered grant program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

We contemplate disclosing information under this routine use only in situations in which CMS may enter into a contract or similar agreement with a third party to assist in accomplishing CMS functions relating to purposes for this system of records.

4. To a Quality Improvement Organization (QIO) in order to assist the QIO to perform Title XI and Title XVIII functions relating to assessing and improving quality of care. QIO's work to implement quality improvement programs; provide consultation to CMS, its contractors, and to State agencies. The QIO's provide a supportive role to health care facilities in their endeavors to comply with Medicare Conditions of Participation; assist State agencies in related monitoring and enforcement efforts; assist CMS in program integrity assessment; and prepare summary information about the nation's health care for release to beneficiaries.

5. To the agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing overall or aggregate cost, effectiveness, and/or the quality of services provided in the State; for developing and operating Medicaid reimbursement systems; or for the purpose of administration of Federal/State program within the State. Data will be released to the State only on those individuals who are either patients within the State, or are legal residents of the State, regardless of the location of the facility in which the patient is receiving services.

6. To a Federal or State agency (*e.g.*, State Medicaid agencies) to contribute to the accuracy of CMS's health insurance operations (payment, treatment and coverage) and/or to support State agencies in the evaluation and monitoring of care. Data may be released to State agencies such as State Ombudsmen, State Licensing Boards, and Adult Protective Services.

Other Federal or State agencies in their administration of a Federal health program may require ACTS information in order to support evaluations and monitoring of Medicare claims information of beneficiaries. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purpose for which CMS collects the information.

7. To another Federal agency (*e.g.*, Office of the Inspector General, General Accounting Office) or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency), that administers, or that has the authority to investigate potential fraud or abuse in, a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

Other agencies (*e.g.*, Medicaid Fraud Control Units) may require ACTS information for combating fraud and abuse in such federally funded programs. Releases of information would be allowed if the proposed use(s) for the information proved compatible with the purposes of collecting the information.

8. To an individual or organization for research, evaluation, or epidemiological project related to the prevention of disease or disability, or the restoration or maintenance of health, and for payment related projects.

CMS anticipates that many researchers will have legitimate requests to use these data in projects that could ultimately improve the care provided to Medicare and Medicaid patients and the policy that governs the care. CMS understands the concerns about the privacy and confidentiality of the release of data for a research use. Disclosure of ACTS data for research and evaluation purposes will usually involve aggregate data rather than individual-specific data.

9. To a member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

Beneficiaries, as well as other individuals, may request the help of a member of Congress in resolving an issue relating to a matter before CMS. The member of Congress then writes CMS, and CMS must be able to give sufficient information to be responsive to the inquiry.

10. To a national accreditation organization that has been granted deeming authority by CMS for the purpose of improving the quality of care provided through the provision of health care accreditation and related services that support performance improvement and monitors the quality of deemed providers/suppliers through the investigation of complaints (*e.g.*, JCAHO, AOA, AAAASF, AAAHC, AABB, ASHI, CAP, CARF, CHAP, COLA).

11. To a Protection and Advocacy Group that provides legal representation and other advocacy services for the purposes of monitoring, investigating and attempting to remedy adverse conditions, and for responding to allegations of abuse, neglect and violations of the rights of persons with disabilities.

12. To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local law enforcement agencies) for a civil or criminal law enforcement activity (*e.g.*, police, FBI, State Attorney General's office).

B. Additional Provisions Affecting Routine Use Disclosures

In addition, CMS policy will be to prohibit release even of non-identifiable data, except pursuant to one of the routine uses, if there is a possibility that an individual can be identified through implicit deduction based on small cell sizes (instances where the patient population is so small that individuals who are familiar with the enrollees could, because of the small size, use this information to deduce the identity of the beneficiary).

This System of Records contains Protected Health Information as defined by the Department of Health and Human Services' regulation "Standards for Privacy of Individually Identifiable Health Information" (45 CFR parts 160 and 164, 65 FR 82462 (12–28–00), subparts A and E. Disclosures of Protected Health Information authorized by these routine uses may only be made if, and as, permitted or required by the "Standards for Privacy of Individually Identifiable Health Information."

IV. Safeguards

The ACTS system conforms to applicable laws and policy governing the privacy and security of Federal automated information systems. These include but are not limited to: the Privacy Act of 1974, Computer Security Act of 1987, the Paperwork Reduction Act of 1995, the Clinger-Cohen Act of 1996, and OMB Circular A–130, Appendix III, "Security of Federal Automated Information Resources". CMS has prepared a comprehensive System Security Plan as required by OMB Circular A–130, Appendix III. This plan conforms to guidance issued by the National Institute for Standards and Technology (NIST) in NIST Special Publication 800–18, "Guide for Developing Security Plans for Information Technology Systems." Paragraphs A–C of this section highlight some of the specific methods that CMS is using to ensure the security of this system and the information within it.

A. Authorized Users and Access Control

Personnel having access to the system have been trained in Privacy Act and system security requirements. Employees and contractors who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data. In addition, CMS monitors authorized users to ensure against excessive or unauthorized use. Records are used in a designated work area and system location is attended at all times during working hours.

To ensure security of the data, authentication and access control profiles are maintained within both the database and the ACTS application system used to view information in the database. Within the database access, control is implemented by assigning the proper access profile for each individual user as determined at the State agency level. This prevents unauthorized users from accessing and modifying critical data using other system tools not provided by CMS.

Database-level Protections: The State database upon which ACTS operates includes five classes of database users:

- Database Administrator class owns the database objects; *e.g.*, tables, triggers, indexes, stored procedures, packages and has database administration privileges to these objects;
- Quality Control Administrator class has read and write access to key fields in the database;
- ASPEN User class provides read and write access to tables and fields, which are required to support complaint, survey and related activities.
- Quality Indicator Report Generator class has read-only access to all fields and tables;
- Policy Research class has query access to tables, but are not allowed to access confidential patient identification information.

ACTS Application-Level Protections: All ASPEN applications, including ACTS, provide user login/password authentication, which is tied directly to each State's internal network user login process. Internal application access controls, which secure system functions to pre-approved user groups, are also a key safeguard controlling user access to functions and data. ACTS application and related database safeguards include:

- *Application login:* All ASPEN users must be authenticated to their State or CMS regional office network as a pre-requisite for starting an ASPEN application. This is enforced internally by the ASPEN application. Thus, only known, pre-authenticated users may start an ASPEN application.
- *Application access control:* Once authenticated, ASPEN users may only view information and perform tasks according to pre-assigned security and access control profiles determined by the system administrator. Security profiles may be assigned down to the level of individual menu functions, action buttons and form displays. This means ASPEN allows State and CMS RO administrators to finely tune which users may view certain information and perform specific tasks within the system (such as adding or modifying complaint information). Thus, while a complaint investigator may be able to update findings for a specific complaint, they may be prohibited through their security profile from removing complaints from the system.
- *Provider Type Access Control:* In addition to the data and access control security just described, ASPEN allows administrators to specify user access to information based on provider category. For example, while an investigator may have a security profile that enables the investigator to add findings to a complaint, the system administrator may limit this user to specific categories of providers/suppliers, such as nursing homes—thus, preventing the user from changing findings of complaints for other types of providers/suppliers. An

ASPEN user must have both a security profile that allows a specific function to be performed, and be assigned to appropriate Provider Type access before a specific system action may be taken against a provider/supplier type.

• *Secondary Database Access Control:* Since ASPEN provides an Application-centric security model, it is not necessary to assign each ASPEN user an individual Oracle user name, password and Oracle profile. Instead, all ASPEN users share a single Oracle login whose password is known only by CMS. This protects against a significant threat to data integrity: access to the Oracle database using non-ASPEN system tools; thus, preventing accidental or malicious bypassing of the ASPEN security controls through third-party system tools which may be capable of connecting to Oracle databases. ACTS users may only access ASPEN data via the security-controlled environment of the ACTS application.

• *Audit trail:* ACTS maintains an audit trail for key information elements in the database. Any changes made to these elements via the ACTS system are logged. The log includes information on which element was changed, who changed it, the time of change and prior and current values for the element.

B. Physical Safeguards

All server sites have implemented the following minimum requirements to assist in reducing the exposure of computer equipment and thus achieve an optimum level of protection and security for the ACTS system:

Access to all servers is controlled, with access limited to only those support personnel with a demonstrated need for access. Servers are to be kept in a locked room accessible only by specified management and system support personnel. Each server requires a specific log-on process. All entrance doors are identified and marked. A log is kept of all personnel who were issued a security card, key and/or combination that grants access to the room housing the server, and all visitors are escorted while in this room. All servers are housed in an area where appropriate environmental security controls are implemented, which include measures implemented to mitigate damage to Automated Information Systems resources caused by fire, electricity, water and inadequate climate controls.

Protection applied to the system administration workstations and the Windows 2000 servers, which house the ACTS Oracle database, include:

• User Log-ons—Authentication is performed by the Windows 2000 Primary Domain Controller/Backup Domain Controller of the log-on domain.

• Workstation Names—Workstation naming conventions may be defined and implemented at the State agency level.

• Hours of Operation—May be restricted by Windows 2000. When activated all applicable processes will automatically shut down at a specific time and not be permitted to resume until the predetermined time. The appropriate hours of operation are determined and implemented at the State agency level.

• Inactivity Log-out—Access to the 2000 workstation is automatically logged out after a specified period of inactivity.

• Warnings—Legal notices and security warnings display on all servers and workstations.

There are several levels of security found in the overall ASPEN system. Windows 2000 servers provide much of the overall system security. The Windows 2000 security model is designed to meet the C2-level criteria as defined by the U.S. Department of Defense's Trusted Computer System Evaluation Criteria document (DoD 5200.28–STD, December 1985). Other non-ACTS CMS functions are supported on the same Windows 2000/Oracle servers as ACTS—such as MDS submission from facilities. Such operations are performed via separate Netscape Enterprise Server, which provides an additional layer of user authentication, security and access control. In this case, Netscape controls all CMS information access requests. Anti-virus system is applied at both the system administration workstation and Windows 2000 server levels.

Access to different areas on the Windows NT server is maintained through the use of file, directory and share level permissions. These different levels of access control provide security that is managed at the user and group level within the Windows 2000 server domain. The file and directory level access controls rely on the presence of a Windows NT File System (NTFS) hard drive partition. This provides the most robust security and is tied directly to the file system. Windows 2000 security is applied at both the workstation and Windows 2000 server levels.

Firewalls have been installed on each State server. Appendix A lists the location of each State server. A firewall is a security feature that does not allow unwanted or unsolicited network traffic to flow to certain parts of the system. A Cisco 3640 router is installed at each state. These routers have been programmed to allow the state IP addresses to access certain locations within the CMS network. CMS contractors set up and manage the routers. Using CMS specifications, they have installed the allowed IP's to the router tables. If an unauthorized IP tries to access the CMS data, the firewall (router) will pass the request away from its intended destination. That is, if the firewall does not match the IP of the request to an allowed IP in its table, the request will not be fulfilled. CMS contractors monitor the firewalls and review them for anomalies that could represent a hacking attempt or a hardware problem.

C. Procedural Safeguards

All automated systems must comply with Federal and State laws, guidance, and policies for information systems security, as stated previously in this section. Each State must ensure a level of security commensurate with the level of sensitivity of the data, risk, and magnitude of the harm that may result from the loss, misuse, disclosure, or modification of the information contained in the system.

V. Effects of the Proposed System of Records on Individual Rights

CMS proposes to establish this system in accordance with the principles and requirements of the Privacy Act and will collect, use, and disseminate information only as prescribed therein. Data in this system will be subject to the authorized releases in accordance with the routine uses identified in this system of records. CMS and the State Survey Agencies will monitor the collection and reporting of ACTS data.

CMS and the State Survey Agencies will take precautionary measures to minimize the risks of unauthorized access to the records and the potential harm to individual privacy or other personal or property rights of individuals whose data are maintained in the system. CMS will collect only that information necessary to perform the system's functions.

To ensure data that resides in a CMS Privacy Act System of Records; to ensure the integrity, security, and confidentiality of information maintained by CMS; and to permit appropriate disclosure and use of such data as permitted by law, CMS and the non-CMS recipient of the data, hereafter termed "User," enter into an agreement to comply with the following specific requirements. The agreement addresses the conditions under which CMS will disclose and the user will obtain and use the information contained in the system of records. The parties mutually agree that CMS retains ownership rights to the data and that the user does not

obtain any right, title, or interest in any of the data furnished by CMS. The user represents and warrants further that the facts and statements made in any study or research protocol or project plan submitted to CMS for each purpose are complete and accurate. The user shall not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data disclosed from the system of records to any person. The user agrees that access to the data shall be limited to the minimum number of individuals necessary to achieve the purpose stated in the protocol and to those individuals on a need to know basis only. If CMS determines or has reasonable belief that the user has made an unauthorized disclosure of the data, CMS in its sole discretion may require the user to: (a) Promptly investigate and report to CMS any alleged or actual unauthorized disclosures; (b) promptly resolve any problems identified by the investigation; (c) submit a formal response to any allegation of unauthorized disclosures; (d) submit a corrective action plan with steps to prevent any future unauthorized disclosures; and (e) return data files to CMS. If CMS determines or has reasonable belief that unauthorized disclosures have taken place, CMS may refuse to release further CMS data to the user for a period to be determined by CMS.

The Privacy Act provides criminal penalties for certain violations. The Act provides that "Any officer or employee of an agency, who by virtue of his (or her) employment or official position, has possession of, or access to agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established there under, and who knowing that disclosure of the specific materials is so prohibited, willfully discloses the material in any manner to a person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000" (5 U.S.C. 552a(i)(1)). The Act also provides that "Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000" (5 U.S.C. 552a(i)(3)). The agency's contractor and any contractors' employees who are covered by 5 U.S.C. 552a(m)(1) are considered employees of the agency for the purposes of these criminal penalties.

CMS, therefore, does not anticipate an unfavorable effect on individual privacy as a result of the disclosure of information relating to individuals.

Dated: August 8, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

System No. 09–70–1519

SYSTEM NAME:

ASPEN Complaints/Incidents Tracking System (ACTS).

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive Data.

SYSTEM LOCATION:

CMS Data Center, 7500 Security Boulevard, North Building, First Floor, Baltimore, Maryland 21244–1850. Federal Servers are located at each State agency. Appendix A lists the location of each State server.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Identifiable information will be retained in the system of records for individuals who are complainants, residents/clients, contacts/witnesses, alleged perpetrators, survey team members, laboratory directors, and laboratory owners.

CATEGORIES OF RECORDS IN THE SYSTEM:

ACTS contains information related to allegations of complaints and incidents filed against Medicare, Medicaid or CLIA certified providers or suppliers. The system contains demographic and identifying data, as well as survey and deficiency data. Identifying data includes: Names, title, address, city, state, ZIP code, e-mail address, telephone numbers, fax number, licensure number, social security number, Federal tax identification number, alias names, date of birth, gender, date admitted and/or date discharged.

ACTS maintains Federal complaint information, as well as state licensure complaint information. State licensure information is both relevant and necessary to meet CMS" purposes. CMS uses the help of State health agencies, or other appropriate agencies, when determining whether health care entities meet Federal Medicare standards. The State survey agencies perform both Federal certification and State licensure functions, including the investigation of complaints and entity-reported incidents. The Social Security Act requires that providers/suppliers receive licensure under applicable State and local laws. In order to encourage efficiency in State operations, ACTS permits collection of Federal and State information. ACTS allows users to distinguish between Federal information and information that is collected for State licensure purposes. ACTS supports the entry of both Federal and state licensure information; thus reflecting the actual business practices of state agencies as they track complaints and incidents. In many areas, ACTS allows entry of both types of information while still maintaining discrete records to support separate and different views, reports and statistics.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 11819(d), 1864, 1865, 1902(a)(9)(A), 1902(a)(33)(B), and 1919(d) of the Social Security Act. Section 353 of the Public Health Service Act (42 U.S.C. 263a), 42 CFR 482.13(f), 42 CFR 483.13, 42 CFR 488.7(a)(2), 42 CFR 488.332, and 42 CFR 488.335.

PURPOSE(S):

The primary purpose of the system of records is to track and process complaints and incidents reported against Medicare/Medicaid/CLIA providers and suppliers, and to maintain information on laboratory directors and owners.

ACTS provides access to survey and provider/supplier information for data-driven analysis and evaluation. This system will improve CMS's ability to monitor the performance of State Survey Agencies including analyzing program variations and more effectively managing program costs. Information retrieved from this system of records will be used to aid in the administration of the survey and certification of Medicare/Medicaid/CLIA providers and suppliers; support agencies of the State governments to determine, evaluate and assess overall effectiveness and quality of provider/supplier services provided in the State; aid in the administration of Federal and State programs within the State; support constituent requests made to a Congressional representative, support litigation involving the agency, and facilitate research on the quality and effectiveness of care provided.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OR USERS AND THE PURPOSES OF SUCH USES:

The Privacy Act allows us to disclose information without an individual's consent if the information is to be used for a purpose that is compatible with the purpose(s) for which the information was collected. We are proposing to establish the following routine use disclosures of information maintained in the system:

1. To the Department of Justice (DOJ), court or adjudicatory body when:

(a) The agency or any component thereof; or

(b) Any employee of the agency in his or her official capacity; or

(c) Any employee of the agency in his or her individual capacity when the DOJ has agreed to represent the employee; or

(d) The United States Government; is a party to litigation or has an interest in such litigation, and by careful review, CMS determines that the records are both relevant and necessary to the litigation and the use of such records by the DOJ, court or adjudicatory body is therefore deemed by the agency to be for a purpose that is compatible with the purpose for which the agency collected the records.

2. To agency contractors, or consultants who have been engaged by the agency to assist in the performance of a service related to this system of records and who need to have access to the records in order to perform the activity.

3. To a CMS contractor (including, but not necessarily limited to fiscal intermediaries and carriers) that assists in the administration of a CMS-administrated health benefits program, or to a grantee of a CMS-administered health benefits program, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such program.

4. To a Quality Improvement Organization (QIO) in order to assist the QIO to perform Title XI and Title XVIII functions relating to assessing and improving quality of care.

5. To the agency of a State Government, or established by State law, for purposes of determining, evaluating and/or assessing overall or aggregate cost, effectiveness, and/or the quality of services provided in the State; for developing and operating Medicaid reimbursement systems; or for the purpose of administration of Federal/State programs within the State.

6. To a Federal or State agency (*e.g.*, State Medicaid agencies) to contribute to the accuracy of CMS's health insurance operations (payment, treatment and coverage) and/or to support State agencies in the evaluation and monitoring of care.

7. To another Federal agency (*e.g.*, Office of the Inspection General, General Accounting Office, Medicaid Fraud Control Unit) or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local governmental agency) that administers, or that has the authority to investigate potential fraud or abuse in a health benefits program funded in whole or in part by Federal funds, when disclosure is deemed reasonably necessary by CMS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

8. To an individual or organization for research, evaluation, or epidemiological project related to the prevention of disease or disability, the restoration or maintenance of health, or payment related projects.

9. To a member of Congress or to a congressional staff member in response to an inquiry of the Congressional Office made at the written request of the constituent about whom the record is maintained.

10. To a national accreditation organization that has been granted deeming authority by CMS for the purpose of improving the quality of care provided through the provision of health care accreditation and related services that support performance improvement and monitors the quality of deemed providers/suppliers through the investigation of complaints.

11. To a Protection and Advocacy Group that provides legal representation and other advocacy services for the purposes of monitoring, investigating and attempting to remedy adverse conditions, and for responding to allegations of abuse, neglect, and violations of the rights of persons with disabilities.

12. To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States (including any State or local law enforcement agencies) for a civil or criminal law enforcement activity (*e.g.*, police, FBI, State Attorney General's office).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

All records are stored on the magnetic disk sub-system of the Windows 2000 server. Furthermore, these records are saved to magnetic tape backup on a nightly basis.

RETRIEVABILITY:

The Medicare, Medicaid, and CLIA records are retrieved by name of provider/supplier, Medicare provider number, ACTS Complaint number, State assigned Medicaid number, or other CMS assigned numbers, complainant's name, resident/patient's name, contact/witnesses name, alleged perpetrator's name, survey team member's name, surveyor identification number, laboratory director's name, laboratory owner's name or federal tax identification number.

SAFEGUARDS:

CMS has safeguards for authorized users and monitors such users to ensure against excessive or unauthorized use. Personnel having access to the system have been trained in the Privacy Act and systems security requirements. Employees who maintain records in the system are instructed not to release any data until the intended recipient agrees to implement appropriate administrative, technical, procedural, and physical safeguards sufficient to protect the confidentiality of the data and to prevent unauthorized access to the data.

In addition, CMS has physical safeguards in place to reduce the exposure of computer equipment and thus achieve an optimum level of protection and security for the ACTS system. For computerized records, safeguards have been established in accordance with the Department Health and Human Services standards and National Institute of Standards and Technology guidelines, *e.g.*, security codes will be used, limiting access to authorized personnel. System securities are established in accordance with HHS, Information Resource Management Circular #10, Automated Information System Security Program; CMS Automated Information Systems (AIS) Guide, Systems Securities Policies, and OMB Circular No. A–130 (revised), Appendix III.

RETENTION AND DISPOSAL:

CMS will retain identifiable ACTS data for a total period not to exceed 15 years.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Finance, Systems and Budget Group, Center for Medicaid and State Operations, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Director, Survey and Certification Group, Center for Medicaid and State Operations, Center for Medicaid and State Operations, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

NOTIFICATION PROCEDURE:

For the purpose of accessing records based on individual identifiable data, the subject individual should write to the system manager who will require the system name, Medicare provider/supplier identification number, provider/supplier's name and address, and for verification purposes the subject

individual's name, social security number (SSN) (furnishing the SSN is voluntary, but it may make searching for a record easier and prevent delay), address, date of birth and sex.

RECORD ACCESS PROCEDURE:

For accessing records based on individual identifiable data, use the same procedures outlined in Notification Procedures above. Requestors should also reasonably specify the record contents being sought. (These procedures are in accordance with Department regulation 45 CFR 5b.5(a)(2).)

CONTESTING RECORD PROCEDURES:

The subject individual should contact the system manager named above, and reasonably identify the record and specify the information to be contested. State the corrective action sought and the reasons for the correction with supporting justification. (These procedures are in accordance with Department regulation 45 CFR 5b.7).

RECORD SOURCE CATEGORIES:

The following forms and the ACTS software are used to collect ACTS data.

Medicare/Medicaid/CLIA Complaint Form (CMS–562).

Statement of Deficiencies and Plan of Correction (CMS–2567).

Post-Certification Revisit Report (CMS–2567B).

Survey Team Composition and Workload Report (CMS–670).

Request for Validation of Accreditation Survey for Hospital (CMS–2802).

Request for Validation of Accreditation Survey for Laboratory (CMS–2802A).

Request for Validation of Accreditation Survey for Hospice (CMS–2802B).

Request for Validation of Accreditation Survey for Home Health Agency (CMS–2802C).

Request for Validation of Accreditation Survey for Ambulatory Surgical Center (CMS–2802D).

Request for Survey of 489.20 and 489.24 Essentials of Provider Agreements:

Responsibilities of Medicare Participating Hospitals in Emergency Cases (CMS–1541A).

CMS–116—CLIA Laboratory Application.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Waiver of 40 day waiting period.

Appendix A Location of State Servers

North Dakota Department of Health Resources, 600 East Boulevard Avenue, Suite 206, Bismarck, ND 58505.

Department of Health, Facility Licensing and Certification Bureau, 2040 South Pacheco, Colgate Building 2nd Floor, Santa Fe, NM 87505.

Utah Department of Health, M/M Program Certification, 288 North, 1460 West, Salt Lake City, UT 84114–2905.

Department of Public Health and Human Services, Senior and Long Term Care Division, 111 Sanders Avenue, Suite 210, P.O. Box 4210, Helena, MT 59601.

Division of Medicaid, Bureau of Facility Standards, Myers & Stauffer, 8555 West Hackamore Dr., Suite 100, Boise, ID 83709–1665.

Rhode Island Department of Health, Three Capitol Hill, Cannon Building, Room 306, Providence, RI 02908–5097.

State of Connecticut, Department of Public Health, 410 Capitol Avenue MS#13DPR, P.O. Box 340308, Hartford, CT 06134–0308.

Minnesota Department of Health, F&PC Division, 85 East 7th Place-Suite 300, P.O. Box 64900, St. Paul, MN 55101.

Bureau of Quality Assurance, Department of Health and Family Services, 1 West Wilson Street, Suite 150, P.O. Box 7850, Madison, WI 53701–0309.

Louisiana Department of Health and Hospitals, Health Standards Section, 500 Laurel Street, Suite 100, Baton Rouge, LA 70801.

Texas Department of Human Services (TDHS), 701 West 51st Street, P.O. Box 149030, MC W–519, Austin, TX 78751.

Alabama Department of Public Health, Division of Health Care Facilities, 201 Monroe Street, Suite 840, P.O. Box 303017, Montgomery, AL 36104–3017.

Division of Emergency Medical Services, 570 East Woodrow Wilson Blvd., Third Floor A–300, Jackson, MS 39215.

State of New Jersey, Department of Health and Senior Services Long Term Care. Systems Development and Quality, 120 S Stockton Street, lower level, Trenton, NJ 08625.

Office of Health Facilities Licensing and Certification, LTC Residents Protection, Three Mill Road, Suite 308, Wilmington, DE 19806.

Colorado Department of Public Health and Environment, Health Facilities Division, HFD–a2, 4300 Cherry Creek Drive, South, Second Floor, Denver, CO 80246–1530.

Office of Health Quality, 2020 Carey Avenue, First Bank Building, 8th Floor, Cheyenne, WY 82002.

Department of Health & Human Services Division of Facility Services Licensure and Certification Section, 805 Briggs Drive, Raleigh, NC 27603.

SCDHEC, Division of Certification, 1777 Saint Julian Place, Suite 302, Columbia, SC 29204.

Seniors and People with Disabilities, 875 Union St.—4th Fl., Salem, OR 97310.

AASA—Division of Residential Services, 0B2 1115 North Washington, Olympia, WA 98503.

Myers and Stauffer, 6380 Flank Drive, Suite 100, Harrisburg, PA 17112.

DHHR, Management Information Services, 350 Capital Street, Room 206, Third Floor Computer Room, Charleston, WV 25301–3178.

Office of Regulatory Services, Georgia Department of Human Resources, 2 Peachtree Street North West, Suite 24, Atlanta, GA 30303–3167.

Management Information Systems, Agency for Health Care Administration, 2727 Mahan Dr, Fort Knox, Bldg 3; Room 100, MS9a, Tallahassee, FL 32308–5403.

Illinois Department of Public Aid, Division of Medical Programs, 201 South Grand Avenue, East, Prescott Bloom Bldg. 2nd floor, Springfield, IL 62763.

Indiana State Department of Health, 2 North Meridian Street, Indianapolis, IN 46204.

Cabinet for Health Services Office of Inspector General, 275 East Main Street 5E–A, Frankfurt, KY 40621.

Tennessee Department of Health, Division of Health Care Facilities, 426 5th Avenue, North, Cordell Hull Building, 1st Floor, Nashville, TN 37247–0508.

Massachusetts Department of Public Health, Division of Health Care Quality, 10 West Street, 5th floor; Boston, MA 02111.

Division of Licensing and Protection, 103 South Main Street, Ladd Hall room 898, Waterbury, VT 05671.

Missouri Department of Social Services, Division of Aging, 615 Howerton Court, Jefferson City, MO 65109.

Department of Human Services DMS/ OLTC/ Reimbursement Unit, 700 Main, 4th Floor, PO Box 8059—Slot 407, Little Rock, AR 72203–8059.

Oklahoma State Department of Health, SHS, 1000 North East 10th Street, Oklahoma City, OK 73117–1299.

Myers & Stauffer Consulting Services, 4123 Southwest Gage Center Drive, Suite 200, Topeka, KS 66604.

Bureau of Licensure and Certification, 1550 East College Parkway, Suite 158, Carson City, NV 89706.

Arizona Department of Health Services, 1647 East Morten Ave., Suite 200, Phoenix, AZ 85020.

Virginia Department of Health, 1500 East Main Street, Room 211, Main Street Station, Richmond, VA 23219.

Department of Consumer and Regulatory Affairs, Service Facility Regulation Administration, 825 N Capitol Street NE., 2nd Floor LRA—Room 221, Washington, DC 20002.

Michigan Department of Community Health, 300 East Michigan, Chandler River Plaza Building, Lansing, MI 48933.

Ohio Department of Health, 246 N. High St., 3rd Floor, Columbus, OH 43215.

Dept of Human Services, 442 Civic Center Drive, Augusta, ME 04330.

Department of Health and Human Services, Office of Program Support, Office of Information Systems, 129 Pleasant Street, Brown Bldg., Concord, NH 03301–3857.

Office of Health Care Assurance, 601 Kamokila, RM 395, Kapolei, HI 96707.

South Dakota Department of Social Services, Office of Adult Services and Aging, 700 Governors Drive, Pierre, SD 57501.

California Department of Health Services, Licensing and Certification, 630 Bercut Dr. Suite B, Sacramento, CA 95814.

State of Maryland, Department of Health Care Quality, 55 Wade Avenue, Spring Grove

Center, Bland Bryant Bldg., Fourth Floor, Catonsville, MD 21228.

Department of Health and Human Services, Medicaid Division, P.O. Box 95026—301 Centennial Mall, South, 5th Floor, Lincoln, NE 68509.

DHHS Div of Med. Assistance Heath Facilities Licensing and Certification, 4730 Business Park Boulevard, Suite 18, Anchorage, AK 99503.

NYS Dept. of Health, Empire State Plaza, Concourse Room 148, Albany, NY 12237.

Virgin Islands, IFMC, 6000 Westown Parkway, West Des Moines, IA 50266.

Puerto Rico Department of Health, Assistant Secretariat for the Regulation and Accreditation of Health Facilities, Former Ruez Soler Hospital Road #2, Bayamon, PR 00959.

[FR Doc. 03–21444 Filed 8–21–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 1999D–4577]

Guidance for Industry: Application of Current Statutory Authority to Nucleic Acid Testing of Pooled Plasma; Withdrawal of Draft Guidance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal of a draft guidance entitled "Guidance for Industry: Application of Current Statutory Authority to Nucleic Acid Testing of Pooled Plasma" dated November 1999, that was announced in the **Federal Register** on November 26, 1999. In the draft guidance, FDA sought public comment on the development and implementation of nucleic acid testing (NAT) for infectious diseases.

DATES: Effective September 22, 2003.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 26, 1999 (64 FR 66481), FDA announced the availability of a draft guidance entitled "Guidance for Industry: Application of Current Statutory Authority to Nucleic Acid Testing of Pooled Plasma" dated November 1999. This draft guidance responded to industry's request for guidance in the development and implementation of NAT of pooled plasma in further improving the safety of the nation's blood products. No NAT test kit manufacturers were licensed at that time. A number of manufacturers have subsequently been licensed for NAT, making the request for guidance in the development of NAT testing of pooled plasma for infectious agents now moot. This draft guidance is therefore being withdrawn as of September 22, 2003, because it is obsolete.

Dated: August 14, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–21477 Filed 8–21–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Applications for Permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by September 22, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Miami Metrozoo, Miami, FL, PRT–069826.

The applicant requests a permit to export one male captive-born Baird's tapir (*Tapirus bairdii*) to the Parque Ecoarqueologico Xcaret, Mexico, for the purpose of enhancement of the survival of the species through captive propagation and conservation education.

Applicant: Yale University, New Haven, CT, PRT–072747.

The applicant requests a permit to import biological samples from sifaka (*Propithecus verreauxi verreauxi*) collected in the wild in Madagascar, for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Texas Memorial Museum, Austin, TX, PRT–072019.

The applicant requests a permit to import biological samples from Coahuilan box turtles (*Terrapene coahuila*) collected in the wild in Mexico, for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Susan C. Gardner, c/o U.S. Environmental Protection Agency, Cincinnati, OH, PRT–073075.

The applicant requests a permit to import samples and non-viable eggs obtained from green sea turtle (*Chelonia mydas*), olive ridley sea turtle (*Lepidochelys olivacea*), hawksbill sea turtle (*Eretmochelys imbricata*), and leather back sea turtle (*Dermochelys coriacea*), in Mexico, for the purpose of enhancement of the species through scientific research. This notification covers activities to be conducted by the applicant over a five year period.

Applicant: Dr. Lisa K.Yon, University of California, Davis, CA, PRT–075293.

The applicant requests a permit to import serum, urine, and fecal samples obtained from 6 bull Asian elephants (*Elephas maximus*) captive-held at the Ayutthaya Elephant Palace and Royal Kraal, Thailand, for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Florida Museum of Natural History, Gainesville, FL, PRT–677336.

The applicant requests renewal of their permit to import export and re-export non-living museum specimens of endangered and threatened species of plants and animals previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: Adam M. Vinatieri, North Attleboro, MA, PRT–075567.

The applicant request a permit to import the sport hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete application or requests for a public hearing on this application should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: U.S. Geological Survey, Western Ecological Research Center, San Simeon, CA, PRT–672624.

The applicant request a permit to increase the number of animals out of 500 takes for drugging, vestigial tooth extraction and blood taking; for surgical implant of radio transmitters; and for TDR implants for the purpose of scientific research. This notification covers activities to be conducted by the applicant until October 5, 2007.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Dated: August 8, 2003.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–21488 Filed 8–21–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY920–1430FM, WYW148816]

Notice of availability of a Final Environmental Impact Statement on the Proposed Pittsburg and Midway Coal Mining Company Coal Exchange

AGENCY: Bureau of Land Management, Interior. Cooperating Agencies—Forest Service, Agriculture; Office of Surface Mining, Interior.

ACTION: Notice of Availability of a Final Environmental Impact Statement (FEIS) on the proposed Pittsburg and Midway Coal Mining Company Coal Exchange; Lincoln, Carbon, and Sheridan Counties, Wyoming.

SUMMARY: Under the National Environmental Policy Act (NEPA), the Federal Policy and Management Act of 1976 (FLPMA) and associated regulations, the Bureau of Land Management (BLM) announces the availability of a FEIS that evaluates, analyzes, and discloses to the public direct, indirect, and cumulative environmental impacts of a proposed land-for-coal exchange between the Pittsburg and Midway (P&M) Coal Mining Company, the USDA Forest Service Bridger-Teton National Forest, and the Wyoming BLM, (Serial Number WYW148816).

The FEIS analyzes a proposal made by P&M to exchange approximately 5,859 acres of privately owned surface and coal resources for an amount of Federal coal of approximately equal value underlying privately owned lands. For all, or some portion, of an estimated 107 million tons of Federal coal in Sheridan County, Wyoming, P&M would exchange to the United States private land and mineral resources in Lincoln, Carbon, and Sheridan Counties, Wyoming. The USDA Forest Service and the Office of Surface Mining are cooperating agencies.

DATES: Comments on the FEIS will be accepted for 30 days following the date that the Environmental Protection Agency (EPA) publishes their notice of availability of the FEIS in the **Federal Register**. The BLM asks that those submitting comments on the FEIS make them as specific as possible with reference to page numbers and chapters of the document. Comments that contain only opinions, or preferences, will not receive a formal response, however, they will be considered, and included, as part of the BLM decision-making process. Comments, including names and street addresses of respondents, will be available for public review at the Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the Final EIS.

ADDRESSES: Please address questions, comments, or requests for copies of the FEIS to the Casper Field Office, Bureau of Land Management, Attn: Nancy Doelger, 2987 Prospector Drive, Casper, Wyoming 82604; or you may mail them electronically to the attention of Nancy Doelger at *casper_wymail@blm.gov;* or fax them to (307) 261–7587. A copy of the FEIS has been sent to affected Federal, State, local government agencies, and to those persons who responded to the BLM indicating that they wished to receive a copy of the FEIS. Copies of the FEIS are available for public inspection at the following BLM and USDA Forest Service office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, WY 82009
- Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604–2968
- Bureau of Land Management, Pinedale Field Office, 432 E. Mill Street, Pinedale, WY 82941
- Bureau of Land Management, Rawlins Field Office, 1300 N. Third Street, Rawlins, WY 82301
- USDA Forest Service, Intermountain Region, 324 25th Street, Ogden, UT 84401
- USDA Bridger-Teton National Forest, Kemmerer Ranger District, 308 Highway 189 North, Kemmerer, WY 83101
- Bureau of Land Management, Buffalo Field Office, 1425 Fort Street, Buffalo, WY 82834

FOR FURTHER INFORMATION CONTACT: Nancy Doelger or Mike Karbs at the above Casper Field Office address, or telephone: (307) 261–7600.

SUPPLEMENTARY INFORMATION: The FEIS analyzes a proposal by P&M to exchange privately owned land and some mineral resources for Federal coal. The proposed exchange includes the surface and mineral estate on the parcels that would become Federal estate administered by the USDA Forest Service, Bridger-Teton National Forest (BTNF), (2,447.88 acres); and on 638.37 acres to be administered by BLM and adjacent to the BTNF. BLM would acquire 2,772.25 acres of surface to be administered in the Rawlins and Buffalo Field Offices and 807.69 acres of coal to be administered by the Buffalo Field Office. A description of the lands and resources offered to the United States Government by P&M and the tract of Federal coal selected by P&M follows.

Bridger Lands, Lincoln County, Wyoming

Of the parcels north of Kemmerer, Wyoming, known as "the Bridger Lands," approximately 2,447 acres are inholdings within in the administrative

boundaries of the Bridger-Teton National Forest, Kemmerer Ranger District, Wyoming. The addition of this acreage to the National Forest System (NFS) would be consistent with, and managed under, the *Bridger-Teton National Forest Land and Resource Management Plan*, (1990). This would also be consistent with USDA Forest Service national policy to acquire private in-holdings whenever possible to facilitate management and administration of NFS lands and resources. Acquisition of these parcels would be beneficial to wildlife species, would increase public recreation opportunities, and protect surrounding NFS lands from the impacts of human development.

The remaining parcels in Lincoln County are located outside of, and immediately adjacent to the Bridger-Teton National Forest and are contiguous to the 2,447 acres that would become part of NFS lands. The approximately 638 acres are due west of LaBarge, Wyoming, and would become public lands administered by the BLM, Pinedale Field Office. If the exchange is completed and BLM acquires the 638 acres of land, the Pinedale Resource Management Plan (1988) would be maintained to extend existing management direction to the Bridger Lands.

Lands and Surface Resources To Be Administered by USDA Forest Service

6th Principal Meridian, Wyoming

T. 26 N., R. 116 W.,
Tracts 39, 41, and 42.
T. 26 N., R. 117 W.,
Tracts 37–43
T. 27 N., R. 117 W.,
Tracts 37–42.

Containing 2,447.88 acres more or less.

Lands and Minerals To Be Administered by BLM

6th Principal Meridian, Wyoming

T. 26 N., R. 115 W.,
Tracts 49, 57, and 71.

Containing 638.37 acres more or less.

JO Ranch Lands, Carbon County, Wyoming

P&M is offering the parcel (1,233.55 acres) known as the "JO Ranch Lands" to the United States Government. The JO Ranch Lands are southwest of Rawlins, Wyoming. Cow Creek, an ephemeral drainage that drains the west foothills of the Sierra Madre Mountains, flows through the JO Ranch Lands. This section of Cow Creek has riparian grassland habitat, and provides mule deer and elk crucial winter range. The JO Ranch Lands also include the JO Ranch or Rankin Ranch buildings, which are eligible for National Historic Site status. The JO Ranch Lands offered by P&M are surrounded by public lands and resources administered by the BLM Rawlins Field Office. If the exchange is completed and BLM acquires these lands, the Great Divide Resource Management Plan, (1990) would be maintained to extend existing management direction to the 1,233.55 acres of JO Ranch Lands.

Because P&M does not own, and therefore cannot offer, any of the mineral estate underlying the JO Ranch lands, the subsurface estate and its resources would remain in private ownership.

Lands To Be Administered by BLM

6th Principal Meridian, Wyoming

T. 16 N., R. 90 W.,
Sec. 6, lots 20, 23, 24, 27, NE¼SW¼;
Sec. 17, SW¼SW¼;
Sec. 18, NE¼SE¼;
Tract 46.
T. 16 N., R. 91 W.,
Sec. 12, NE¼NE¼, SW¼NE¼, SW¼SW¼, E½SW¼, W½ SE¼;
Sec. 13, W½NW¼, SE¼NW¼, NW¼SW¼;
Sec. 14, SE¼NE¼, NE¼SE¼, S½SE¼;
Sec. 22, SE¼SE¼, SE¼SE¼, SW¼SE¼;
Sec. 23, W½NE¼, S½NW¼, N½4SW¼, SW¼SW¼

Containing 1,233.55 acres more or less.

Welch Ranch Lands, Sheridan County, Wyoming

P&M is offering the United States Government the Welch Ranch parcel, approximately (1,538.70 acres). Approximately 1.5 miles of Tongue River frontage would be included. The Tongue River area of the "Welch Lands" contains significant wildlife and fisheries habitat and would provide the public access to the Tongue River and these resources. The Welch Lands are surrounded by private lands and private and Federal minerals that are administered by the BLM Buffalo Field Office. In addition to the identified Welch Lands, the United States Government would acquire ownership of about 807.69 acres of the coal estate currently owned by P&M. Upon acquisition, the coal would be administered by the BLM Buffalo Field Office. If the exchange is completed and the Welch Lands become public lands, BLM will prepare a site-specific plan for the 1,538.70 acres of Welch Ranch Lands that would amend the Buffalo Resource Management Plan (1985, updated 2001).

Lands To Be Administered by BLM

6th Principal Meridian, Wyoming

T. 57 N., R. 84 W.,
Sec. 1, S½NE¼, SE¼NW¼, N½SW¼, SW¼SW¼;
Sec. 2, lots 2, 3, S½N½, S½;
Sec. 3, lots 3, 4, S½N½, N½S½, SE¼SE¼;
Sec. 4, lots 1–4, S½NE¼, SE¼NW¼, N½SE¼.

Containing approximately 1,538.7 acres more or less.

Minerals To Be Administered by BLM

P&M owns and is offering to exchange the coal estate underlying the following lands:

6th Principal Meridian, Wyoming

T. 57 N., R. 84 W.,
Sec. 1, S½NE¼ (excluding 25.51 acres), SE¼NW¼, N½SW¼ (excluding 1.2 acres);
Sec. 2, S½NW¼, S½ (excluding 5.6 acres);
Sec. 3, S½NE¼, SE¼NW¼, N½SE¼, SE¼SE¼.

Containing 807.69 acres, more or less.

P&M does not own, and is not offering, to exchange any other mineral rights underlying the Welch lands.

In exchange for the above described lands, P&M proposes to acquire some portion of the Federal coal in the PSO Tract, described below. There are 6.41 acres of publicly owned surface estate included in the PSO Tract, which is not included in the exchange proposal. The remainder of the surface estate included in the tract is privately owned, primarily by P&M.

PSO Tract, Sheridan County, Wyoming

The Federal coal that P&M is proposing to acquire is located immediately north of the Welch Ranch, underlying mostly P&M's private surface ("PSO Tract") in Sheridan County. The Federal coal is found in two mineable coal seams, the Dietz 1, and Dietz 3. Recent exploration samples indicate that the Dietz 1 coal seam has an average BTU value of 9,279, and that the Dietz 3 has an average BTU value of 9,352. Up to approximately 107 million tons of Federal coal may be exchanged depending on the final appraised value of both the land and coal resources that the United States Government would receive from P&M, and the value of the Federal coal.

The legal description of the Federal coal being considered for exchange is as follows:

6th Principal Meridian, Wyoming

T. 58 N., R. 84 W.,
Sec. 15, lot 1;
Sec. 20, SE¼;
Sec. 21, E½NE¼, S½;
Sec. 22, NW¼, W½SW¼;
Sec. 23, lots 3 and 4;
Sec. 27, W½NW¼, W½SW¼;
Sec. 28, All;
Sec. 29, NE¼, NE¼SE¼;
Sec. 33, N½NE¼;
Sec. 34, SW¼NE¼, NW¼NW¼.

Containing 2,045.53 acres more or less.

The FEIS evaluates the site-specific and cumulative environmental impacts of exchanging the land and coal resources offered by P&M for Federal coal. P&M proposes to mine the coal in the PSO Tract if the exchange is completed as proposed and they acquire ownership of the coal resources in the Tract. Therefore, the FEIS considers the environmental impacts of mining the Federal coal as a possible consequence of executing the proposed exchange. If the land-for-coal exchange is approved, neither the Record of Decision (ROD) nor the Final EIS would constitute authorization for commencement of mining operations.

Before land exchanges can be approved, they must meet two criteria: The exchange must be in the public interest as required under 43 CFR 2200.0–6(b); and the value of the interests being exchanged must be equal as required under 43 CFR 2200.0–6(c). This environmental analysis is being prepared as required under 43 CFR 2200.0–6(h). It will be used as a supporting study in making a determination as to whether this exchange is in the public interest. Following completion of this environmental analysis but prior to the issuance of ROD, a public meeting will be held to receive public comment on the public interest factors of the proposed exchange as required under 43 CFR 2203.3.

Both the USDA Forest Service and USDI BLM national land exchange review boards have technically reviewed P&M's proposal to exchange land for coal. Prior to a decision to approve, or disapprove, the exchange following the public interest determination meeting, the exchange will be subject to final review by each agency's national land exchange board, and the BLM Director, as well as the Department of Justice.

The FEIS analysis assumes that all the Federal coal within the PSO Tract as proposed by P&M would be exchanged for all of the lands being offered by P&M. In accordance with 43 CFR 2200 the actual amount of Federal coal offered for exchange would be the amount required to equal the value of the lands offered to the United States Government by P&M. To ensure that the lands, or interests, being exchanged are of equal value, the fair market value of the respective properties must be evaluated. In this case, the fair market value of the P&M lands will be determined through a fee appraisal by a BLM-approved qualified appraiser. BLM will determine the fair market value of the Federal coal. An independent contract appraiser will review all appraisals.

The EIS analyzes two alternatives, the Proposed Action and Alternative 1, No Action. Under the Proposed Action, the exchange would be completed and the Bridger, JO Ranch, and Welch Lands would become Federal lands administered by the USDA Forest Service and BLM. BLM is considering several options to the Proposed Action that would modify the Welch Lands to exclude an active underground coal seam fire on those lands. Under the proposed action, or any option, P&M would acquire an amount of Federal coal underlying the PSO Tract that would be equal in value to the Bridger, JO Ranch, and Welch Lands. Alternative 1 is the No Action Alternative, which assumes that the proposal to exchange would be rejected.

Agency-Preferred Alternative: The BLM's preferred alternative is the Proposed Action. Because the Bridger Lands in Lincoln County include most of the remaining parcels of private land within the Bridger-Teton National Forest, Kemmerer Ranger District, the USDA Forest Service is a cooperating agency in the preparation of this FEIS. The USDA Forest Service's preferred alternative is the Proposed Action.

The Office of Surface Mining Reclamation and Enforcement (OSM) is an additional cooperating agency. OSM has primary responsibility to administer programs that regulate surface coal mining and the surface effects of underground coal mining operations. If the exchange is completed, the coal would no longer be Federally owned, however; OSM would retain some oversight responsibilities for the regulation of the proposed surface coal mine.

Land Use Plans

If the exchange is completed, the United States Government would acquire ownership of the lands and minerals offered by P&M for exchange. At that time, the USDA Forest Service would use the analysis documented in this FEIS to revise the land ownership status maps and extend management direction to the Bridger Lands that would become NFS lands. The BLM would use the analyses documented in this FEIS to maintain the Pinedale RMP and Rawlins RMP to extend management direction to the Bridger Lands and JO Ranch Lands that would become public land. The Buffalo Field Office would use the analyses to identify the isolated parcel (the Welch Ranch Lands) as public lands administered by the BLM under the Buffalo RMP. In addition, Buffalo Field Office intends to use the analysis to prepare a site-specific plan for the Welch Lands to amend the BLM Buffalo RMP (1985, amended 2001).

Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submission from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: June 11, 2003.

Robert A. Bennett,

State Director.

[FR Doc. 03–21636 Filed 8–21–03; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Pacific OCS Region, Environmental Document Prepared for Development of the Eastern Half of Lease OCS–P 0451

AGENCY: Minerals Management Service (MMS).

ACTIONS: Notice of availability of Environmental Assessment (EA) and Finding of No Significant Impact (FONSI).

SUMMARY: The MMS Pacific OCS Region has prepared an EA for Arguello Inc.'s revisions to the Point Arguello Field Development and Production Plans to include development of the eastern half of Lease OCS–P 0451 pursuant to the requirements of the National Environmental Policy Act (NEPA).

DATES: MMS completed the EA and issued a Finding of No Significant Impact (FONSI) on June 19, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Maurice Hill, Minerals Management Service, Pacific OCS Region, 770 Paseo Camarillo, Camarillo, CA 93010, telephone (805) 389–7815. A digital copy of the EA on a Compact Disk may be requested by calling 1–800–6–PAC–OCS (1–800–672–2627), or by sending a request to the above address.

SUPPLEMENTARY INFORMATION: The MMS prepares EA's and Findings for Outer Continental Shelf (OCS) oil and gas exploration and development activities and other operations on the Pacific OCS. Arguello Inc. proposes to develop the

eastern half of Federal Lease OCS–P 0451 by drilling a maximum of eight extended-reach wells from two existing OCS platforms in the Point Arguello Unit, Platforms Hermosa and Hidalgo. The project area is located offshore about 13 km (8 mi) northwest of Point Conception, Santa Barbara County, California. Lease OCS–P 0451 is considered a developed lease by virtue of the existing production on the western half, in the Point Arguello Unit. Previously, the eastern half of Lease OCS–P 0451 was part of the Rocky Point Unit, but has since been contracted out of the Unit. Therefore, it is no longer unitized with the undeveloped leases of the Rocky Point Unit, and production from this portion of the lease will have no effect on holding the Rocky Point Unit leases, nor will it cause production of the undeveloped Rocky Point Unit leases.

The MMS distributed a copy of Arguello Inc.'s proposal for review and comment to five State agencies, eight Federal agencies, two local agencies, and two non-governmental organizations. The EA examines the potential environmental effects of Arguello Inc.'s proposed action and presents MMS findings regarding the significance of those effects. The MMS prepares EA's to determine whether proposed projects constitute a major Federal action that significantly affects the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where the MMS finds that approval will not result in significant effects on the quality of the human environment. The FONSI briefly presents the basis for that finding and includes a summary or copy of the EA. The MMS completed an EA and issued a FONSI for Arguello Inc.'s proposed action on June 19, 2003. This notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: July 3, 2003.

Peter L. Tweedt,

Regional Manager, Pacific OCS Region, Minerals Management Service.

[FR Doc. 03–21496 Filed 8–21–03; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. TA–131–25 and TA–2104–5]

U.S.-Dominican Republic Free Trade Agreement: Advice Concerning the Probable Economic Effect

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: August 15, 2003.

SUMMARY: Following receipt of a request on August 6, 2003, from the United States Trade Representative (USTR), the Commission instituted investigation Nos. TA–131–25 and TA–2104–5, *U.S.-Dominican Republic Free Trade Agreement: Advice Concerning the Probable Economic Effect*, under section 131 of the Trade Act of 1974 and section 2104(b)(2) of the Trade Act of 2002.

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from George Serletis, Project Leader, (202) 205–3315; *gserletis@usitc.gov*, or Vincent Honnold, Deputy Project Leader, (202) 205–3314; *vhonnold@usitc.gov*, Office of Industries, United States International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel, (202) 205–3091; *wgearhart@usitc.gov*. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

Background

As requested by the USTR pursuant to section 131 of the Trade Act of 1974 (19 U.S.C. 2151), in its report the Commission will provide advice as to the probable economic effect of providing duty-free treatment for imports of products of the Dominican Republic (i) on industries in the United States producing like or directly competitive products, and (ii) on consumers. The import analysis will consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States for which U.S. tariffs will remain after the United States fully implements its Uruguay Round tariff commitments. The import advice will be based on the 2003 Harmonized Tariff System nomenclature and 2002 trade data. The advice with respect to the removal of U.S. duties on imports from the Dominican Republic will assume that any known U.S. non-tariff barrier will not be applicable to such imports. The Commission will note in its report any instance in which the continued application of a U.S. non-tariff barrier to such imports would result in different advice with respect to the effect of the removal of the duty.

As also requested, pursuant to section 2104(b)(2) of the Trade Act of 2002 (19 U.S.C. 3804(b)(2)), the Commission will provide advice as to the probable economic effect of eliminating tariffs on imports of certain agricultural products of the Dominican Republic on (i) industries in the United States producing the product concerned, and (ii) the U.S. economy as a whole.

USTR indicated that the Commission's report will be classified and considered to be an inter-agency memorandum containing pre-decisional advice and subject to the deliberative process privilege. The Commission expects to provide its report to USTR by December 8, 2003.

Public Hearing

A public hearing in connection with this investigation will be held at the United States International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on October 7, 2003. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than 5:15 p.m., September 22, 2003. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., September 25, 2003; the deadline for filing post-hearing briefs or statements is 5:15 p.m., October 16, 2003. In the event that, as of the close of business on September 22, 2003, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1806) after September 22, 2003, for information concerning whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies)

concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include such confidential business information in the report it sends to the USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on October 16, 2003. All submissions should be addressed to the Secretary at the Commission's office in Washington, DC. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's Rules (19 CFR 201.8) (see Handbook for Electronic Filing Procedures, *ftp://usitc.gov/pub/reports/electronic_filing_handbook.pdf*).

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

By order of the Commission.
Issued: August 18, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21495 Filed 8–21–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of The Secretary; Solicitation for Grant Application (SGA) 03–20; Strengthening Labor Systems in Central America

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Notice of correction.

SUMMARY: In the **Federal Register**, Vol. 68, No. 139, Monday, July 21, 2003 the competition was announced and the SGA printed in its entirety. The recent power outage in several states has caused the preparation and submission of proposals to be adversely affected. Due to this interruption, the deadline for submission of applications is extended. All applications must now be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 pm EDT, August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, Department of Labor, Telephone (202) 693–4570, e-mail: *harvey-Lisa@do.gov.*

Signed at Washington, DC this 18th day of August, 2003.

Lawrence J. Kuss,

Director, Procurement Services Center.

[FR Doc. 03–21554 Filed 8–21–03; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Office of the Secretary; Solicitation for Grant Applications (SGA) 03–18; Strengthening the Capacity of the Moroccan Labor Ministry

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Notice of correction.

SUMMARY: In the **Federal Register**, Vol. 68, No. 139, Monday, July 21, 2003 the competition was announced and the SGA printed in its entirety. The recent power outage in several states has caused the preparation and submission of proposals to be adversely affected. Due to this interruption, the deadline for submission of applications is extended. All applications must now be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW. Washington, DC 20210, not later than 4:45 p.m. EDT, August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, Department of Labor, Telephone (202) 693–4570, e-mail: *harvey-lisa@dol.gov.*

Signed at Washington, DC this 18th day of August, 2003.

Lawrence J. Kuss,

Director, Procurement Services Center.

[FR Doc. 03–21553 Filed 8–21–03; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Office of the Secretary; Solicitation for Grant Applications (SGA) 03–21; Strengthening the Labor Systems in Southern Africa; Correction

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Notice of correction.

SUMMARY: In the **Federal Register**, Vol. 68, No. 139, Monday, July 21, 2003 the competition was announced and the SGA printed in its entirety. The recent power outage in several states has caused the preparation and submission of proposals to be adversely affected. Due to this interruption, the deadline for submission of applications is extended. All applications must now be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. EDT, August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, Department of Labor, Telephone (202) 693–4570, e-mail: *harvey-lisa@dol.gov.*

Signed at Washington, DC this 18th day of August, 2003.

Lawrence J. Kuss,

Director, Procurement Services Center.

[FR Doc. 03–21552 Filed 8–21–03; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended,

40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None.

Volume II

None.

Volume III

None.

Volume IV

None.

Volume V

None.

Volume VI

None.

Volume VII

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, *etc.*

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 14th day of August, 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–21243 Filed 8–21–03; 8:45 am]

BILLING CODE 4510–27–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field support and safety camps ashore while filming on the ice. The vessel Kapitan Dranitsyn will provide the main support of the expedition. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by September 22, 2003. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene Kennedy at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for

the operation of an expedition to Antarctica. EZ Productions, Inc. will conduct filming operations in Antarctica using the Kapitan Dranitsyn as the main support platform. Basic toilet facilities will be taken onto the sea ice for use during filming and in case of emergency. Food preparation will mainly take place on the ship. Snacks and buffet style food will be taken to the filming locations during the day. This application is for all wastes generated off the ship, associated with the filming work at Cape Washington and environs (or alternate location at Coulman Island). Anything taken ashore will be removed from Antarctica and disposed of in a substitutable port of disembarkation. Cooking stoves/fuel will be used only in an emergency. Conditions of the permit would include requirements to report on the removal of materials and any accidental releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Application for the permit is made by: Hawk Koch, Co-Producer, EZ Productions, Inc., 9100 Wilshire Boulevard, Suite 401E, Beverly Hills, California 90212.

Location: Antarctic Peninsula Area.

Dates: November 01, 2003 to March 31, 2006.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–21473 Filed 8–21–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Extension of the Public Comment Period for Scoping Process To Prepare an Environmental Impact Statement for the License Renewal of Nuclear Power Plants

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has extended the public comment period for the scoping process on the update to the "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants", NUREG–1437 (May 1996) and Addendum 1 (August 1999). The public comment period is extended to September 17, 2003.

The GEIS and Addendum 1 to the GEIS were prepared pursuant to 10 CFR part 51 and are available for public inspection at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of NRC's Agencywide Documents Access and Management System (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Public Electronic Reading Room (PERR) link. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *PDR@nrc.gov*. The GEIS, Addendum 1, and Supplements may also be viewed on the Internet at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1437/*. The NRC prepares site-specific supplements to the GEIS for each license renewal application assessing the environmental impacts specific to that power plant location; these reports may be useful to scoping participants to understand the environmental review process and the environmental issues associated with the review for license renewal. The Supplements to the GEIS can also be viewed on the Internet in the context for each project and are listed by project at: *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*. The update of the GEIS is a generic activity and, therefore, is not the appropriate forum to consider site-specific issues or concerns.

Any interested party may send written comments on the environmental scope of the GEIS Update Project to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail stop T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Comments may also be delivered to Room T–6 D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by September 17, 2003. Electronic comments may be sent by e-mail to the NRC at *LRGEISUpdate@nrc.gov*. Electronic submissions should be sent no later than September 17, 2003, to be considered timely in the scoping process. All comments received by the NRC will be available electronically and accessible through the NRC's PERR link at *http://www.nrc.gov/reading-rm/adams.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Zalcman, Environmental Section, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Zalcman may be contacted by telephone at 1–800–368–5642, extension 2419, or by e-mail at *LRGEISUpdate@nrc.gov*.

Dated at Rockville, Maryland, this 15th day of August, 2003.

For the Nuclear Regulatory Commission.

John R. Tappert,

Acting Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 03–21524 Filed 8–21–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards (ACRS) will hold a meeting on September 10–13, 2003, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Monday, November 20, 2002 (67 FR 70094).

Wednesday, September 10, 2003

[The meeting on Wednesday, September 10, 2003 will be closed pursuant to 5 U.S.C. 552b(c)(1)]

10:15 a.m.–7 p.m.: Safeguards and Security (Closed)—The Committee will meet with representatives of the Office of Nuclear Regulatory Research and the Office of Nuclear Security and Incident Response to discuss safeguards and security matters. Also, the Committee will discuss a proposed ACRS report on safeguards and security matters.

Thursday, September 11, 2003, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–10 a.m.: Final Review of the St. Lucie License Renewal Application (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff and Florida Power and Light Company regarding the St. Lucie license renewal application and the associated Final Safety Evaluation Report prepared by the staff.

10:15 a.m.–11:30 a.m.: Draft Final Regulatory Guide DG–1122, "Determining the Technical Adequacy of PRA Results for Risk-Informed Activities" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final version of Regulatory Guide DG–1122.

12:30 p.m.–2 p.m.: Technical Assessment and Proposed Recommendations for Resolving GSI–186, "Potential Risk and Consequences of Heavy Load Drops in Nuclear Power Plants" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the technical assessment and recommendations proposed by the Office of Nuclear Regulatory Research for resolving GSI–186.

2:15 p.m.–3:45 p.m.: Draft Final Review Standard for Reviewing Core Power Uprate Applications (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final review standard to be used by the staff for reviewing core power uprate applications.

4 p.m.–5:15 p.m.: Draft Final Revision 3 to Regulatory Guide 1.82 (DG–1107), "Water Sources for Long-Term Recirculation Cooling Following a LOCA" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding draft final revision 3 to Regulatory Guide 1.82 (DG–1107) including resolution of public comments, and related matters.

5:15 p.m.–6 p.m.: Review of PIRT Process (Open)—The Committee will hear a presentation by Dr. Nourbakhsh, ACRS Senior Fellow, regarding his review of the phenomena identification and ranking table (PIRT) process.

6:15 p.m.–7:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on safeguards and security matters (Closed).

Friday, September 12, 2003, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 a.m.–9:30 a.m.: Draft Final Revision 1 to Regulatory Guide 1.53, "Application of the Single Failure Criterion to Safety Systems" (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the draft final revision 1 to Regulatory Guide 1.53.

9:30 a.m.–11:15 a.m.: Preparation for Meeting with the NRC Commissioners (Open)—The Committee will discuss proposed topics for discussion during the ACRS meeting with the NRC Commissioners which is scheduled to be held on Wednesday, October 1, 2003, between 9:30 and 11:30 a.m.

11:15 a.m.–11:30 a.m.: Subcommittee Report on Fire Protection Issues (Open)—The Fire Protection Subcommittee Chairman will provide a brief report on matters discussed during the September 9, 2003 meeting.

11:30 a.m.–12:15 p.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings. Also, it will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business, including anticipated workload and member assignments.

12:15 p.m.–12:30 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

1:30 p.m.–7:30 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will discuss proposed ACRS reports on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on safeguards and security (Closed).

Saturday, September 13, 2003, Conference Room T–2B3, Two White Flint North, Rockville, Maryland

8:30 a.m.–1 p.m.: Preparation of ACRS Reports (Open/Closed)—The Committee will continue discussion of the proposed ACRS reports.

1 p.m.–1:15 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63460). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting. Persons desiring to make oral statements should notify the Associate Director for Technical Support named below five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Associate Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Associate Director for Technical Support if such rescheduling would result in major inconvenience.

In accordance with subsection 10(d) Public Law 92–463, I have determined that it is necessary to close portions of this meeting noted above to discuss and protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, as well as the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting Dr. Sher Bahadur, Associate Director for Technical Support (301–415–0138), between 7:30 a.m. and 4:15 p.m., e.t.

ACRS meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., e.t., at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: August 18, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–21525 Filed 8–21–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for a Revised Information Collection: SF–15, Application for 10-Point Veteran Preference

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. The Application for 10-Point Veteran Preference (Standard Form 15) is used by agencies, OPM examining offices, and agency appointing officials to adjudicate individuals' claims for veterans' preference in accordance with the Veterans' Preference Act of 1944. OPM intends to update the form to reflect elimination of the Federal Personnel Manual and Standard Form 171 (Application for Federal Employment), and revised forms issued by the

Department of Veterans Affairs used to document service-connected disabilities.

Approximately 4,500 forms are completed annually. Each form takes approximately 10 minutes to complete. The annual estimated burden is 750 hours.

Comments are particularly invited on: Whether this information is necessary for the proper performance of functions of OPM, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or e-mail to *mbtoomey@opm.gov*. Please be sure to include a mailing address with your request.

DATES: We will consider comments received on or before October 21, 2003.

ADDRESSES: Send or deliver written comments to: Leah Meisel, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, 1900 E Street NW., Room 6551, Washington, DC 20415.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–21416 Filed 8–21–03; 8:45 am]

BILLING CODE 6325–38–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48355; File No. SR–BSE–2002–15]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 3 to the Proposed Rule Change by the Boston Stock Exchange, Inc. Establishing Trading Rules for the Boston Options Exchange Facility

August 15, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 15, 2003, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") Amendment No. 3 to the proposed rule change, as described in Items I, II, and III below, which Items have been prepared by the Exchange. The BSE submitted the proposed rule change to the Commission on October 31, 2002. On December 18, 2002, the BSE filed Amendment No. 1 that entirely replaced the original rule filing.[3] On January 9, 2003, the BSE filed Amendment No. 2 that entirely replaced the original rule filing and Amendment No. 1.[4] Amendment No. 2 was published in the **Federal Register** on January 22, 2003 ("BOX Proposing Release").[5] The Commission received 43 comment letters.[6] In response to the concerns raised in the comment letters and discussions with Commission staff, the BSE filed Amendment No. 3. The Commission is publishing this notice to solicit comments on Amendment No. 3 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As described in the BOX Proposing Release, the BSE proposes to create a new electronic options trading facility of the Exchange, called the Boston Options Exchange ("BOX"). The text of Amendment No. 3 to the proposed rule change is available for inspection at the Office of the Secretary, the BSE, the Commission's Public Reference Room, and on the Commission's Internet Web site (*http://www.sec.gov/rules/sro/shtml*).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As discussed in detail in the BOX Proposing Release,[7] the BSE proposes to

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, to Annette Nazareth, Director, Division of Market Regulation ("Division"), Commission, dated December 18, 2002 ("Amendment No. 1").

[4] *See* Letter from George W. Mann, Jr., Executive Vice President and General Counsel, BSE, to Annette Nazareth, Director, Division, Commission, dated January 8, 2003 ("Amendment No. 2").

[5] Securities Exchange Act Release No. 47186 (January 14, 2003), 68 FR 3062 ("BOX Proposing Release").

[6] *See* Letters to Jonathan G. Katz, Secretary, Commission, from Paul Fred, CEO, PFTC Trading, LLC, dated January 24, 2003; Myron Wood, Statistician, Changes, LLC, dated January 30, 2003; Mike Ianni, dated February 2, 2003; Shawn Gibson, Senior VP, Equity Derivatives, Scott & Stringfellow, dated February 6, 2003; CSFB Next Fund, Inc., Interactive Brokers Group, LLC, LabMorgan Corporation, Salomon Brothers Holding Company, Inc., UBS (USA) Inc., dated February 6, 2003; Sallerson-Troob, LLC, dated February 9, 2003; Christopher D. Bernard, dated February 10, 2003; George Papa, Director, PEAK6 Investments, dated February 10, 2003; Frank Hirsch, CBOE Market Maker, dated February 10, 2003; Richard W. Cusack, Operations Manager, Sparta Group of Chicago, LP, dated February 11, 2003; Paul Britton, CEO, MAKO Global Derivatives LLC, dated February 11, 2003; John Colletti, Samuelson Trading, dated February 11, 2003; Robert S. Smith, Chief Technology Officer, GETCO, LLC, dated February 11, 2003; Phillip Sylvester, CBOE Market Maker, dated February 11, 2003; Keith Fishe, DRW Holdings, LLC, dated February 11, 2003; Daniel C. Bigelow, president, Monadnock Capital Management, dated February 11, 2003; Erich Tengelsen, Chicago Trading Company, dated February 12, 2003; Thomas Peterffy, Chairman, David M. Battan, Vice President and General Counsel, Interactive Brokers LLC, dated February 12, 2003; John T. Thomas, Van Der Moolen USA LLC, dated February 12, 2003; Robert C. Sheehan, Electronic Brokerage Systems LLC, dated February 12, 2003; Thomas J. Murphy, TJM Investments, LLC, dated February 12, 2003; Meyer S. Frucher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, Inc., dated February 12, 2003; Michael Resch, dated February 12, 2003; Todd Silverberg, General Counsel, Susquehanna International Group LLP, dated February 12, 2003; Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc. ("ISE"), dated February 12, 2003; Juan Carlos Pinilla, Managing Director, Equity Derivatives Trading, JP Morgan, dated February 12, 2003; Marc J. Liu, Options Specialist, AGS Specialist Partners, dated February 12, 2003; Jan-Joris Hoefnagel, President, Optiver Derivatives Trading, dated February 13, 2003; Steve Tumen, CEO, and David Barclay, General Counsel, Equitec Group, LLC, dated February 14, 2003; Michael J. Ryan, Jr., Executive Vice President & General Counsel, American Stock Exchange LLC ("Amex"), dated February 14, 2003; Williams J. Brodsky, Chairman and Chief Executive Officer, Chicago Board Options Exchange, Inc. ("CBOE"), dated February 14, 2003; Paul Roesler, Lead Market Maker, Pacific Exchange, Inc. ("PCX"), dated February 14, 2003; Andrew W. Lo, dated February 15, 2003; Nicholas Bonn, Executive Vice President, State Street Global Markets, LLC, dated February 21, 2003; Robert Bellick, Christopher Gust, Wolverine Trading, LLC, dated February 27, 2003; Philip D. DeFeo, Chairman and CEO, PCX, dated February 27, 2003; Thomas N. McManus, Executive Director and Counsel, Morgan Stanley, dated March 3, 2003; Philip C. Smith, Jr., Vice President, Options, The Interstate Group, dated March 7, 2003; Bryan Rule, dated March 11, 2003; Michael J. Ryan, Jr., Executive Vice President & General Counsel, Amex, dated March 13, 2003; David Hultman, dated March 25, 2003; Stephen D. Barret, dated March 26, 2003; and John Welker, June 11, 2003.

[7] *See supra* note 5.

establish rules for BOX,[8] a new exchange facility, as that term is defined in Section 3(a)(2) of the Act.[9] BOX would be operated by Boston Options Exchange Group, LLC ("BOX LLC"). BOX would administer a fully automated trading system for standardized equity options intended for the use of Options Participants.[10] It would conduct an auction market similar to the ones conducted by the options exchange markets currently in operation, although the BOX auction would occur electronically and not on a floor. BOX would provide automatic order execution capabilities in the options securities listed or traded on the BSE.

In Amendment No. 3, the BSE has made certain minor changes, like renumbering and fixing typographical errors. In addition, the BSE also proposes the following, more substantive changes to the proposed rules set forth in the BOX Proposing Release. For ease of reference, the BSE has referenced each section or paragraph, which has been added to, or changed, in any substantial way.

Proposed Chapter I, Section 1 The BSE proposes to add or amend the following definitions:

Proposed definition (21) has been amended to state "The term "Directed Order" means any Customer Order to buy or sell which has been directed to a particular Market Maker by an OFP." This definition was added in order to clarify that an OFP may send an order to BOX and have it routed to a particular Market Maker for an opportunity for price improvement pursuant to proposed Chapter VI, Section 5.

Proposed definition (46) has been amended to state that "The terms 'Order Flow Provider' or 'OFP' mean those Options Participants representing as agent Customer Orders on BOX and those non-Market Maker Participants conducting proprietary trading." This definition was amended in order to clarify that OFPs may conduct business with the public on an agency basis and may also conduct a proprietary trading business or may conduct only either business.

Proposed definition (54) has been amended to state that "The term "Request for Quote" or "RFQ" shall mean a message that may be issued by an Options Participant in order to signal an interest in an options series and request a response from other Participants. The RFQ contains only the series symbol and quantity and is broadcast to all Participants." This definition was added in order to delineate the meaning of the RFQ function pursuant to its use under Chapter VI, Section 6(b)(ii).

Proposed Chapter II, Section 2(b)—In order to eliminate any confusion that may have arisen from the interpretation of this rule regarding customer-carrying firms, the BSE has amended this paragraph so that Options Participants must be registered as broker-dealers. Additionally, as also discussed below under proposed Chapter XI, the BSE has clarified that its sales practice rules ("Doing Business with the Public") apply only to those Options Participants who are permitted under the BOX Rules to deal directly with the public, that is, OFPs. It was never the intention that participation in BOX be limited to customer-carrying firms.

Proposed Chapter II, Section 2(e), (g), and (h)—In several places, the BSE has added requirements regarding Options Participants. Primarily for the purpose of examinations, the BSE has set forth requirements for Options Participants who, though they must be U.S. registered broker-dealers, do not maintain an office within the United States and are responsible for preparing and maintaining financial and other reports required to be filed with the Commission, BOXR, and the Exchange. In such cases, the Options Participant must maintain all such documents in English and U.S. dollars, provide an individual fluent in English and knowledgeable in securities and financial matters, and reimburse the Exchange for any expense incurred in connection with examinations of the Participant to the extent that such expenses exceed the cost of examining a Participant located within the continental United States.

Also, the BSE has set forth that Options Participants must have as the principal purpose of being an Options Participant the conduct of a public securities business. These requirements are consistent with those in place on other options exchanges and which have been previously approved by the Commission.[11] In light of the current focus in the market place on corporate governance, and non-U.S. based market participants, the BSE has determined that these provisions would serve to add important investor protections to the BOX Market, while not limiting or inhibiting the low barriers to access unique to BOX vis a vis the other options markets.

Proposed Chapter V, Section 9—The BSE realizes that in this section it had made a typographical error and used the term "Market-On-Open" Order, while in Chapter V, Section 14, the same order is called a "Market-On-Opening" Order. The BSE has corrected this error so that the name of the order in Section 9 is also "Market-On-Opening." In addition, the BSE notes that it has not changed any other parts of this section, including paragraph (b), which states "BOX will determine a single price at which a particular series will be opened."

Proposed Chapter V, Section 14—In this section, the BSE has changed the name of the Market Order. Formerly, the BSE proposed to define a Market Order as an order, which is "entered into the BOX Book and executed at the best price available in the market for the total quantity available from any contra bid(offer). Any residual volume is automatically converted to a limit order at the price at which the original market order was exhausted." Since this definition differs from the commonly used concept of "market order" in the U.S.-based options market, the BSE has changed the name of this order type to "BOX-Top" Order, to eliminate the possibility of confusion on the part of investors and other options market participants. The BOX Market will not have a "market order," as that term is typically used, that can be executed at successive price levels. A BOX-Top Order will not receive a price inferior to that which a typical market order would have received in the BOX Market. Moreover, as a result of BOX's trade-through filter process (see discussion below of Chapter V, Section 16(b)) and the Intermarket Linkage, no BOX-Top Order will receive a price inferior to the national best bid or offer ("NBBO"). Indeed, due to BOX's Price Improvement Period mechanism, orders submitted to BOX have the potential to be executed at a price superior to the NBBO.

In addition, the BSE has clarified the definition of Market-on-Opening Order by adding "any residual volume left after part of a Market-on-Opening Order has been executed is automatically converted to a limit order at the price at which the original Market-on-Opening Order was executed."

[8] The term "BOX" means the Boston Options Exchange or Boston Stock Exchange Options Exchange, an options trading facility of the Exchange under Section 3(a)(2) of the Act. Proposed BOX Rules, Chapter I, General Provisions, Section 1(a)(6) (definition of "BOX").

[9] 15 U.S.C. 78c(a)(2).

[10] The term "Options Participant" or "Participant" means a firm, or organization that is registered with the Exchange pursuant to Chapter II of the BOX Rules for purposes of participating in options trading on BOX as an "Order Flow Provider" or "Market Maker". See Proposed BOX Rules, Chapter I, General Provisions, Section 1(a)(39) (definition of "Options Participant").

[11] *See e.g.*, ISE Rule 301.

Proposed Chapter V, Section 16(b)— The BSE has added to this section rules governing the BSE's proposed filtering of in-bound orders to prevent executions on the BOX at prices inferior to the NBBO. All in-bound orders to BOX from Customers as well as inbound Principal ("P") and Principal as Agent ("P/A") orders received via the InterMarket Linkage will be filtered by BOX prior to entry on the BOX Book in order to ensure that these orders will not execute at a price outside the current NBBO ("trade-throughs"). In this manner, the BSE believes that it has added an extra level of efficiency to its BOX trading engine, which will serve to enhance both the best execution of orders as well as BOX's participation in the Intermarket Linkage. The filter will operate by analyzing each in-bound Customer Order, P Order or P/A Order as follows:

Step 1: The filter will determine if the order is executable against the NBBO (by definition the answer is "yes" in the case of a BOX-Top Order).

- If NO, then the order would be placed on the BOX Book.
- If YES, then the filter will proceed to Step 2.

Step 2: The filter will determine whether there is a quote on BOX, which is equal to the NBBO.

- If NO, then the order is exposed on the BOX Book at the NBBO for a period of three seconds, during which time any Options Participant may execute against the order. At the conclusion of the three-second period, if there is any remaining quantity, the filter will proceed to Step 3.
- If YES, then the order would execute against the quote/orders on the BOX Book.

Step 3: If there is any unexecuted quantity at the end of three seconds, then:

- In the case of Public Customer orders, a P/A Order will be generated and sent to the away exchange that is displaying the NBBO.
- In the case of P and P/A Orders, any unexecuted portion will be returned to the originating exchange.

In determining the length of time for an exposure period for orders which might otherwise trade through NBBO, but are "caught" by the filter, the BSE has determined that three seconds is ample time, in an electronic trading environment, for an Options Participant to match the NBBO in those instances in which BOX is not quoting at the NBBO. This exposure period will give all the BOX Market Makers, as well as Participants in general, an opportunity to trade at the NBBO should they choose to do so.

Proposed Chapter V, Section 17 (c)— The BSE has eliminated the provision, which imposed a surcharge on Options Participants that submitted orders on behalf of broker-dealers in excess of two times the number of Public Customer contracts they executed in a given month. Similar to the rationale for the elimination of a charge to Market Makers set forth in Chapter VI, Section 4(e), discussed below, the BSE is concerned that such surcharges could be construed as a barrier to entry to BOX's flat and open marketplace.

Proposed Chapter V, Section 17, Supplementary Material .03— Concurrent with changes to certain sections regarding Information Barriers and Directed Orders (see discussion below of Chapter VI, Section 5(c)), the BSE has added a provision detailing the obligations of OFPs and Market Makers in regards to communications of information about orders being submitted to the PIP, or otherwise directed. The obligations are set forth as follows:

> Prior to submitting an order to a PIP, an OFP cannot inform an Options Participant of any of the terms of the order, except as provided for in Chapter VI, Section 5(c) of these Rules. (*See* BSE Rules, Chapter II, "Dealings on the Exchange", Section 36, "Specialist Member Organizations Affiliated with an Approved Person").

The BSE is confident that these measures, along with other protections set forth elsewhere in the BOX Rules, will ensure that adequate measures are in place to protect against the use or misuse of any material, non-public information by any BOX Participant in regard to any order entrusted to him/her.

Proposed Chapter V, Section 18(b)— The Exchange is not changing or adding language to this section, but notes that this section is not intended to replace best execution principles. Rather, the BSE is supplementing best execution standards by the language set forth herein.

Proposed Chapter V, Section 18(c)— Similar to the above discussion, the BSE has added language in this section regarding orders for which matching business has been found. Previously, the provision limited Participants to only utilizing the PIP for these types of orders. To allow more flexibility to OFPs, the BSE has determined that OFPs can execute such orders on the BOX Book, but only after one of the following two prerequisites have been met "(i) agency orders are first exposed to the BOX book for at least thirty (30) seconds, or (ii) the OFP has been bidding or offering on BOX for at least thirty (30) seconds prior to receiving an agency order that is executable against such bid or offer." These two alternatives are not applicable to Market Makers, rather they must abide by the requirements of Chapter VI, Section 5(b) and (c), regarding Directed Orders, discussed below. The first alternative in this section requires exposing the order on the BOX Book for a period of thirty seconds before attempting to execute against it. Under the second alternative, the OFP can execute the order immediately on the BOX Book if that OFP has been bidding or offering on the BOX Book for at least thirty seconds prior to receiving an agency order that is executable against such bid or offer. Additionally, the provisions state that an OFP must not otherwise deliberately attempt to effect a transaction, either under a single Participant or between two Participants, without following PIP procedures. With these provisions, the BSE is offering an OFP the flexibility of best-execution decision making, coupled with protections to ensure that Information Barriers are not breached, and that Participants are not acting in any way contrary to their customer's best interests.

Proposed Chapter V, Section 18(e)— In order to maximize the potential for price improvement of orders submitted to the PIP (which already, by definition, price improves all orders by at least one cent better than the NBBO), the BSE is requiring that in order for a PIP to commence there be at least three Market Makers quoting in a relevant series at the time a Participant submits a Primary Improvement Order to initiate a PIP. The BSE is confident that this requirement will be easily satisfied, given the accessibility to the BOX Market for Market Makers. Additionally, the BSE has clarified that a PIP will commence upon the dissemination of a broadcast message by BOX, which states "(1) that a Primary Improvement Order has been processed by BOX, (2) which contains information concerning series, size, price and side of market, and (3) states when a PIP will conclude."

Proposed Chapter V, Section 18(g)— The BSE has added a new paragraph to Chapter V, Section 18. This new paragraph provides that OFPs may access the PIP on behalf of customers that are not broker-dealers (*i.e.*, Public Customers) via a new order type, the Customer PIP Order, or "CPO." CPOs shall include terms that state a price in standard increments (five or ten cents) at which the order will be placed on the BOX Book, as well as a price in pennies at which the Public Customer wishes to participate in any PIPs that may occur while his/her order is on the BOX Book. In order for a CPO to be eligible for

participation in a PIP, the CPO must be priced at or better than the NBBO. If a PIP commences in a relevant series and the CPO is at or better than the NBBO, then the OFP may, on behalf of the Public Customer, submit the CPO to the PIP for participation. Upon submission, the CPO will be treated similar to a Market Maker Improvement Order in the PIP; however, its terms cannot be cancelled or amended during the PIP.

The BSE believes that this provision will permit Public Customers greater control and flexibility in how their orders are handled on BOX. Public Customers will now be able to participate in PIPs. In addition, the BSE believes that offering to OFPs the prospect of this service on behalf of Public Customers will serve to increase the number of Participants competing in PIPs, ultimately leading to greater price improvement for orders on BOX.

The additions are as follows:

(a) "OFPs may provide access to the PIP on behalf of a customer that is not a broker-dealer ("Public Customer") in the form of a Customer PIP Order ("CPO") provided that:

i. The terms of each CPO shall include a price stated in rounded five cent or ten cent increments, as appropriate, ("standard tick") at which the order shall be placed in the BOX Book ("BOX Book Reference Price") as well as a specific price stated in one cent increments ("penny tick") at which the Public Customer wishes to participate in any PIPs ("CPO PIP Reference Price") that may occur while his order is on the BOX Book and displayed at the BOX Book Reference Price;

ii. The terms of each CPO shall include a specific order size ("CPO Total Size"). The number of contracts that may be entered into a PIP must be equal to the lesser of (a) the CPO Total Size remaining on the BOX Book or (b) the size of the Primary Improvement Order submitted to the PIP;

iii. In order for the CPO to be eligible for participation in a PIP in the subject options series, the BOX Book Reference Price for a CPO at the time a PIP commences must be equal to the NBBO.

iv. The CPO may only participate in a PIP on the same side of the market as the Primary Improvement Order.

v. Upon initiation of a PIP for which a CPO is eligible to participate pursuant to paragraphs (i)–(iv) above, the OFP who submitted the CPO to the BOX Book must submit a CPO to the PIP at the CPO PIP Reference Price.

vi. The terms of any CPO submitted to a PIP may not be amended or cancelled at any time during a PIP."

Proposed Chapter V, Section 19(a)—To clarify that a Market Maker Prime cannot be both the Market Maker Prime and the party who initiated the process in the same PIP, thereby guarantying receipt of more than 40% of any allocation resulting from that PIP, the BSE has added a provision that "the Market Maker Prime must not have submitted the Primary Improvement Order to commence the relevant PIP."

Proposed Chapter V, Section 27(b)(i)—In order to remain consistent with similar rules regarding Complex Orders on other options exchanges, the BSE has added an exception which sets forth that Complex Orders with net price increments that are not multiples of the minimum increments are not entitled to trade ahead of other interest at the BOX best bid and offer.

Proposed Chapter VI, Section 4 (e)—The BSE deleted the provision, which imposed a monetary penalty on Market Makers who transacted business in classes outside of their appointments. Rather than a specific monetary penalty, which may have been construed as a barrier to entry to the BOX Market, the BSE has chosen to mirror provisions common on other options exchanges that permit Market Makers to trade outside of their appointments. This amendment also sets forth an execution percentage requirement that Market Makers must meet within the classes to which they are appointed. The additions are as follows:

> Market Makers may transact business outside of their appointments, but the total number of contracts executed during a quarter by a Market Maker in options classes to which it is not appointed may not exceed twenty-five percent (25%) of the total number of contracts traded by such Market Maker.

Proposed Chapter VI, Section 5(b) and (c); Section 10(g) and (h)—To clarify the intention that Market Makers would be able to handle orders on an agency basis directed to them by OFPs, the BSE has changed "Customer Order" to "Directed Order" throughout Section 5, as well as in Section 10, which addresses Information Barriers. As previously discussed above, in the Definitions section of Chapter I, a Directed Order would be defined as an order directed to a Market Maker by an OFP. An OFP would send a Directed Order to BOX with a designation of the Market Maker to whom the order is to be directed. BOX would route the Directed Order to the appropriate Market Maker.

Proposed Sections 5(b) and (c) concern the requirements for a Market Maker who would handle a Directed Order. To address any concerns regarding informational barriers and the transfer of information, intended or not, which may accompany a Directed Order, under proposed Section 5(c)(i) the BSE would prohibit a Market Maker from rejecting a Directed Order. Under proposed Section 5(c)(ii), a Market Maker has only two choices when he receives a Directed Order: (1) submit the order to the PIP process; or (2) send the order back to BOX for placement onto the BOX Book. If a Market Maker chooses to submit the Directed Order to the PIP process and he is currently quoting at a price equal to the NBBO, he must not adjust his quote prior to submitting such Directed Order to the PIP process.

Proposed Section 5(c)(iii) addresses the requirements when a Market Maker chooses not to enter the Directed Order into the PIP process, and therefore, must send the Directed Order to BOX for placement on the BOX Book. The following steps describe the Directed Order process from this point:

Step 1: Does the Market Maker who is sending the Directed Order to BOX have a quote on the opposite side of the Directed Order equal to the NBBO?

- If YES, then proceed to Step 4.
- If NO, then proceed to Step 2.

Step 2: The Market Maker would submit the Directed Order to BOX. The BOX trading engine would determine if the Directed Order were executable against the NBBO (the answer is "yes" in the case of a Directed Order that is also a BOX-Top Order).

- If NO, then BOX would place the Directed Order on the BOX Book to be treated as any other order.
- If YES, then BOX would proceed to Step 3.

Step 3: BOX would determine whether there are any quotes/orders on the BOX Book, which are equal to the NBBO.

- If NO, then BOX would submit the Directed Order to the trade-through filter process pursuant to proposed Chapter V, Section 16(b), described above.
- If YES, then BOX would execute the Directed Order against the quotes/orders on the BOX Book. If there is still any quantity remaining of the Directed Order, it would be filtered against trading through the NBBO according to the procedures set forth in Chapter V, Section 16(b) of these Rules and, if applicable, placed on the BOX Book.

Step 4: If a Market Maker's quote on the opposite side of the market from the Directed Order is equal to the NBBO, then the Market Maker would determine if the Directed Order is executable against the NBBO.

- If NO, then the Market Maker must send the Directed Order to BOX for placement on the BOX Book to be treated as any other order.

• If YES, then the Market Maker must guarantee execution of the Directed Order at the current NBBO for at least the size of his current quote. This guarantee would be defined as a Guaranteed Directed Order ("GDO").

Step 5: The Market Maker must then immediately send the Directed Order and the GDO to BOX.

Step 6: Upon receipt of the Directed Order and the GDO, BOX would execute the Directed Order against any quotes/orders already on the BOX Book, except the quote of the Market Maker who submitted the Directed Order and GDO.

Step 7: If there were any quantity remaining of the Directed Order, then BOX would send to all BOX Participants a Directed Order Broadcast ("DOB") message indicating the side (buy/sell), remaining size, and guaranteed price of the Directed Order.

Step 8: The Market Maker would be prohibited from executing for his proprietary account against the Directed Order for at least three seconds. During that time the Market Maker would not be allowed to decrement the size or worsen the price of his GDO. However, he would be able to increase the size of his GDO or improve its price (in standard five or ten cent increments only). During that period, any BOX Participant, except the Market Maker who submitted the Directed Order to BOX, may submit an order to the BOX Book in response to the DOB. Such a DOB response order would be treated as a BOX Limit Order. During that three-second period, any order submitted to the BOX Book that matches any order(s) on the BOX Book, except the Market Maker's GDO, would be executed.

If the Market Maker received a subsequent Directed Order during this period, pursuant to subparagraphs (c)(ii) and (iii), he would be able to either submit it to the PIP process or send it to the BOX Book, following the same process as for the first Directed Order. BOX would process any subsequent Directed Orders in sequence as they are submitted to BOX for either the PIP process or for placement on the BOX Book. Any remaining quantity of a Directed Order that may be placed on the BOX Book, such as at the end of either step 3 (above) or step 9 (below), is treated like other orders placed on the BOX Book. Therefore, the remaining quantity may execute against another Directed Order on the opposite side of the market, whether that second Directed Order is submitted to the PIP process or placed on the BOX Book.

Step 9: Three seconds after sending the DOB, BOX would release the remaining quantity of the Directed Order to the BOX Book. At that time, BOX would immediately execute any orders on the BOX Book, including those submitted in response to the DOB, against the Directed Order on a price-time priority basis. However, the BOX trading engine would ensure that the GDO would yield priority to all such competing orders at the same price. If there is still any quantity remaining of the Directed Order, it would be filtered against trading through the NBBO according to the procedures set forth in Chapter V, Section 16(b) of these Rules and, if applicable, placed on the BOX Book.

The BSE believes that use of the DOB and the exposure of the Directed Order to the BOX market will serve to ensure that a Market Maker would not be able to act against the Directed Order using any privileged or other information regarding that order. In addition, the BSE has eliminated the exemption in Section 10(g) and amended Section 10(h) in order to clarify that Market Makers must comply with all provisions of the Section 10 when they receive and handle Directed Orders. In total, these amendments will ensure that Directed Orders are not disadvantaged or treated inconsistent with the BOX or BSE Rules.

The pertinent rule additions are as follows: Section 5—

(c) When acting as agent for a Directed Order, a Market Maker must comply with subparagraphs (i)–(iii) of this Paragraph (c).

i. A Market Maker that receives a Directed Order shall not, under any circumstances, reject the Directed Order.

ii. Upon receipt of a Directed Order a Market Maker must either:

(1) Submit the Directed Order to the PIP process, pursuant to Chapter V, Section 18 of these Rules. Under this option, if the Market Maker is currently quoting at a price on the opposite side of the Directed Order equal to the NBBO, he is prohibited from adjusting his quotation prior to submitting the Directed Order to the PIP process.

-or-

(2) Send the Directed Order to the BOX Book pursuant to subparagraph (c)(iii) below.

iii. When a Market Maker chooses not to enter the Directed Order into the PIP process, and therefore, must send the Directed Order to BOX for placement on the BOX Book, the following requirements shall apply:

(1) If the Market Maker's quotation on the opposite side of the market from the Directed Order is not equal to the NBBO, then the Market Maker must send the Directed Order to BOX.

a. The Trading Host will determine if the Directed Order is executable against the NBBO.

1. If the order is not executable against the NBBO, then the Trading Host will enter the Directed Order onto the BOX Book for processing consistent with all non-executable orders.

2. If the Directed Order is executable against the NBBO, then the Trading Host will determine if there are any orders on the BOX Book equal to the NBBO.

i. If there are no orders on the BOX Book equal to the NBBO, then the Trading Host will filter the Directed Order against trading through the NBBO according to the procedures set forth in Chapter V, Section 16(b) of these Rules.

ii. If there are orders on the BOX Book equal to the NBBO, then the Trading Host will execute the Directed Order against those orders. Any remaining quantity will be filtered against trading through the NBBO according to the procedures set forth in Chapter V, Section 16(b) of these Rules and, if applicable, placed on the BOX Book.

(2) If the Market Maker's quotation on the opposite side of the market from the Directed Order is equal to the NBBO, then the Market Maker will determine if the Directed Order is executable against the NBBO.

a. If the order is not executable against the NBBO, then the Market Maker must send the Directed Order to BOX for placement on the BOX Book for processing consistent with all non-executable orders.

b. If the order is executable against the NBBO, then the Market Maker shall guarantee execution of the Directed Order at the current NBBO for at least the size of his quote. This guarantee shall be called a Guaranteed Directed Order ("GDO"). The Market Maker must immediately send the Directed Order with the GDO to the Trading Host.

1. The Market Maker who submitted the Directed Order and the GDO to the Trading Host:

i. Shall not submit to the BOX Book a contra order to the Directed Order for his proprietary account until the Directed Order is released to the BOX Book pursuant to subparagraph (c)(iii)(2)(b)(4) below.

ii. Shall not decrement the size or worsen the price of his GDO.

iii. May increase the size of his GDO.

iv. May improve the price of his GDO (only in five or ten cent minimum trading increments, as applicable pursuant to Chapter V, Section 6 of these Rules).

v. Upon receipt of a subsequent Directed Order, may either submit it to the PIP process or send it to the BOX

Book pursuant to subparagraphs (c)(ii) and (iii).

2. Upon receipt of the Directed Order, the Trading Host will execute the Directed Order against any matching orders on the BOX Book, except the order of the Market Maker who submitted the Directed Order.

3. If there is any quantity remaining of the Directed Order, then BOX will send to all BOX Participants a Directed Order Broadcast ("DOB") message indicating the side (buy/sell), remaining size, and guaranteed price of the Directed Order. For the following three seconds, any BOX Participant, except the Market Maker who submitted the Directed Order, may submit an order to the BOX Book in response to the DOB. Such a DOB response order will be treated as a BOX Limit Order.

4. During the three-second period following the DOB, any order submitted to the BOX Book that matches an order already on the BOX Book will be executed. Three seconds after the DOB, the Trading Host will release the remaining quantity of the Directed Order to the BOX Book. At that time, the Trading Host will immediately execute any orders on the BOX Book against the Directed Order on a price-time priority basis. The GDO shall yield priority to all such competing orders at the same price. Any remaining quantity of the Directed Order will be filtered against trading through the NBBO according to the procedures set forth in Chapter V, Section 16(b) of these Rules and, if applicable, placed on the BOX Book.

Proposed Chapter VI, Section 6(b) and (f)—BOX Market Makers undertake a meaningful obligation to provide continuous two-sided markets. These obligations include the requirement that quotations be for a size of at least ten contracts, and within the legal width of the market. Under the amendments to the proposed rules, a Market Maker must respond to a Request for Quote ("RFQ") message within fifteen seconds, with a similarly valid quotation. The Exchange believes that this fifteen-second period is ample time for a Market Maker to respond in an automated market, particularly given other BOX features, such as the PIP, which require a much shorter response time. Nevertheless, realizing that an RFQ may require a Market Maker to furnish a quote where he might not otherwise choose to, the BSE is proposing that fifteen seconds is a sufficient amount of time in which to enable a Market Maker to generate a meaningful quotation response. Although the BSE is confident that it has provided a marketplace, which will be robust and liquid, the delineated responsibilities added to this section will serve to guarantee that Market Makers provide liquidity to the market, and do so on a continuous basis.

The added language to Section 6(b) is set forth as follows:

> ii. If a Market Maker is not already posting a valid (*i.e.* for ten contracts, within the legal width of the market, as applicable) two-sided quote in a series in a class in which he is appointed as Market Maker, he must post a valid two-sided quote within fifteen (15) seconds of receiving any RFQ message issued. The valid two-sided quote so posted must be retained by the Market Maker for at least thirty (30) seconds.
>
> iii. Every RFQ message issued, and every responsive quote, must be for a minimum size of at least ten contracts, and must be within the legal width of the market, as applicable.

In paragraph (f) the BSE has changed the time period to six months for which the Board would have exemptive authority to grant Market Makers exemptions from the requirements of paragraph (e)(iii) of this Section 6.

Proposed Chapter VIII, Section 7—The BSE has added anti-money laundering provisions similar to the rules in place on other exchanges.

Proposed Chapter XI—To clarify that OFPs, as opposed to Options Participants generally, are the only types of Participants that can deal directly with the public, the BSE has changed the references to "Options Participants" to "OFPs" throughout Chapter XI, "Doing Business with the Public."

Proposed Chapter XII—As with all options exchanges, the BSE is adding Intermarket Linkage Rules to the BOX Rules. These rules are substantially similar to the rules in place on all of the options exchanges. Several Comment Letters expressed concern regarding BOX's participation in the Intermarket Linkage Plan. Subject to Commission approval, BOX, through the BSE, would become a full participant in the Intermarket Linkage Plan ("Linkage" or "Plan") for the options markets. As such, BSE would comply with the obligations of the Plan and has added Intermarket Linkage Rules to the BOX Rules. The following is an overview of how the BOX Market would interact in the Plan and is not intended to be a comprehensive discussion of how the proposed Intermarket Linkage Rules of Chapter XII of the BOX Rules [12] apply to Options Participants:

Principal ("P") Orders Sent From BOX to Away Markets. A BOX Eligible Market Maker ("BEMM") [13] may submit a P order to the BOX trading engine for routing to one or more away markets provided the following conditions are satisfied:

- The BEMM is a BOX Market Maker on the class for which the P order is submitted.
- The BEMM has complied with the Plan's "80/20 rule" for the previous calendar quarter.
- Prior to sending the P order, the BEMM is posting a bid and an offer for at least ten contracts within the allowable price spread for the class.

Provided the above conditions are met, the BOX trading engine would automatically route the BEMM's P order to the designated exchange and transmit back any responses (*e.g.*, order executions, rejections) that BOX receives from the away market via OCC.

P Orders Sent From Away Markets to BOX. Orders sent to BOX by Eligible Market Makers (as set forth in the Plan) from away exchanges via the Linkage are processed as though they were orders received directly from a BOX Participant. That is, these orders would execute automatically on the BOX trading engine against any orders on the BOX Book up to either the quantity on the BOX Book at that price or the actual quantity of the P order, whichever is less, but in no event for less than ten contracts. BOX would automatically attempt to fill any remaining quantity by exposing the unexecuted portion at the NBBO for three seconds to all BOX Participants.

Principal-as-Agent ("PA") Orders Sent From BOX to Away Markets. To ensure that there is an Eligible Market Maker per Eligible Class (as those terms are defined in the Plan) for the submission of PA and Satisfaction orders to away markets, BOX would specifically designate a BEMM in each Eligible Class traded on BOX responsible for such orders. The BEMM would adhere to the responsibilities of an Eligible Market Maker as set forth in the Plan.

Only orders submitted by BOX Participants on behalf of Public Customer accounts may generate a PA order. Each Public Customer order is checked against the NBBO using BOX's trade-through filter mechanism as set forth in chapter V, section 16(b) (described above). If BOX is not matching the away best price, the order is exposed to BOX Participants for three seconds at the NBBO price.

At the end of this three-second period, if the order is not fully executed

[12] *See* Proposed BOX Rules, Chapter XII (Intermarket Linkage Rules).

[13] A BOX Market Maker who meets the requirements of an Eligible Market Maker as set forth in the Plan.

and a better price exists at an away exchange(s), a PA order is generated automatically by the BOX and routed to the away exchange with the required BEMM, clearing and valid-clearing-firm ("VCF") information included. Each execution received from an away exchange results in the automatic generation of a trade execution on BOX between the original Public Customer Order and the BEMM.

PA Orders Sent From Away Markets to BOX. In the case when BOX receives PA orders from away markets, but BOX is no longer quoting at the NBBO, then such PA orders are filtered against trade-throughs in the same manner as Public Customer orders submitted by BOX Participants as set forth in Chapter V, section 16(b), described above. If their execution would cause a trade-through, the PA orders are exposed to BOX Participants for three seconds at the NBBO price. If PA orders are not fully executed at the end of this period, the residual quantity is canceled back to the originating away exchange. In this manner, PA orders are afforded the same opportunity for execution as Box Public Customer orders.

Satisfaction ("S") Orders Sent From BOX to Away Markets. Each BOX Participant may request, on behalf of a Public Customer, that BOX route an S order to an away market for orders on BOX that were traded through by the away market. BOX would systemically verify the validity of the request (*e.g.*, as to Public Customer status, time stamp of order prior to report of trade-through), and, if valid, generate an S order with the required BEMM, clearing and VCF information included. As execution confirmation is received from the away market, the BOX trading engine would automatically generate offsetting trades between the original BOX Public Customer order and the BEMM.

Satisfaction Orders Sent From Away Markets to BOX. S orders received from away markets are systemically verified (*e.g.*, as to Public Customer status, time of trade-through on BOX). Once verified, the BOX Participant that caused the trade-through is identified and, within three minutes, the S order is executed against that BOX Participant. Where there were multiple S orders, the executions are made pro rata with the total not to exceed the lesser of the trade, which caused the trade-through or the total quantity of the S orders.

Proposed Chapter XIII—The BSE is adding a new Chapter, entitled "Margin Requirements," to its proposed BOX Rules. Similar to the approach of at least one other options exchange,[14] the BSE proposes to require that BOX Participants and associated persons, among other things, adhere to the requirements of either the New York Stock Exchange ("NYSE") or the Chicago Board Options Exchange ("CBOE"), as those rules may be in existence from time to time. Additionally, in order to ensure that the BOX Rules adequately address situations involving Joint Back Office ("JBO") arrangements for Participants who are not an NYSE member and have elected to be bound by CBOE margin requirements, the BSE has included in the BOX margin requirements a set of rules specifically addressing JBO arrangements. In this way, the Exchange is ensuring that its margin rules cross-reference other exchanges' rules as appropriate, and, where not sufficient, adequately provide for the necessary requirements.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the requirements under Section 6(b) of the Act,[15] in general, and furthers the objective of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change, as amended.

[14] *See e.g.*, ISE Rule 1202.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–BSE–2002–15 and should be submitted by September 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21450 Filed 8–21–03; 8:45 am]

BILLING CODE 8010–01–P

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48342; File No. SR–PCX–2002–01]

Self Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Pacific Exchange, Inc., Relating to Procedures for Obvious Errors in Options Transactions

August 14, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 3, 2002, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On July 28, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On August 8, 2003, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to define an "obvious error" for options transactions and establish a procedure to follow in the event of an obvious error. Proposed new language is *italicized;* proposed deletions are in brackets.

* * * * *

Rule 6.87 (g) *Trade Nullification and Price Adjustment Procedures* [Price Adjustments. Due to instantaneous execution, an incorrect quote appearing on a screen may result in an Auto-Ex trade at an incorrect price. An Auto-Ex trade executed at an erroneous quote should be treated as a trade reported at an erroneous price. The price of the Auto-Ex trade should be adjusted to reflect accurately the market quote at the time of execution. This will result in public customers and market makers receiving correct fills at prevailing market quotes through Auto-Ex.]

(1) *Mutual Agreement:* The determination as to whether an Auto-Ex trade was executed at an erroneous price may [is to] be made by *mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree. In the absence of mutual agreement by the parties, a particular trade may only be nullified or adjusted when the transaction results from an Obvious Error as provided in this Rule.* [two Floor Officials. In making their determination, the Floor Officials should consider such factors as:

(1) the length of time the allegedly incorrect quote was displayed;

(2) whether any non-Auto-Ex tracks were effected at the same price as the Auto-Ex transaction; and

(3) whether any members of the trading crowd were aware of orders actively being represented in the trading crowd that appear to have been "printed through" by the Auto-Ex trade.]

(2) *Obvious Error Subject to Trade Nullification or Price Adjustment: Absent mutual agreement as provided in Rule 6.87(g)(1), parties to a trade may have a trade nullified or its price adjusted if: (i) any such party makes a documented request within the time specified in Rule 6.87(g)(3); and (ii) one of the conditions below is met:*

A. The trade resulted from a verifiable disruption or malfunction of an Exchange execution, dissemination, or communication system that caused a quote/order to trade in excess of its disseminated size (e.g. a quote/order that is frozen, because of an Exchange system error, and repeatedly traded) in which case trades in excess of the disseminated size may be nullified; or

B. The trade resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order; or

C. The trade resulted from an erroneous print disseminated by the underlying market which is later cancelled or corrected by the underlying market where such erroneous print resulted in a trade higher or lower than the average trade in the underlying security during the time period encompassing two minutes before and after the erroneous print, by an amount at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the erroneous print. For purposes of this Rule, the average trade in the underlying security shall be determined by adding the prices of each trade during the four minute time period referenced above (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question); or

D. The trade resulted from an erroneous quote in the Primary Market (as defined in Rule 6.1(b)(27)) for the underlying security that has a width of at least $1.00 and that width is at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For the purposes of this rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question); or

E. The execution price of the trade is higher or lower than the mid-point of the Best Bid and Offer (among all of the exchanges other than the PCX) by an amount equal to at least the bid/ask spread provided in Rule 6.37(b)(1), or, in the event where the bid/ask spread in the underlying is greater than the bid/ask spread set forth in Rule 6.37(b)(1), by an amount as set forth in Rule 6.37 (b)(3). For the purpose of this calculation, the Exchange will not apply a wider bid/ask spread as provided for LEAPS or for options subject to unusual market conditions;

F. The trade resulted in an execution price in a series quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution.

G. The trade is automatically executed at a price where the Market Maker sells $0.10 or more below parity. Parity describes an option contract's total premium when that premium is equal to its intrinsic value. Parity for calls is measured by reference to the offer price of the underlying security in the primary market at the time of the transaction minus the strike price for the call. Parity for puts is measured by the strike price of an underlying security minus its bid price in the primary market at the time of the transaction.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, Exchange, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated July 25, 2003 ("Amendment No. 1"). Amendment No. 1 supersedes and replaces the proposed rule change in its entirety.

[4] *See* Letter from Mai S. Shiver, Senior Attorney, Regulatory Policy, Exchange, to Nancy J. Sanow, Assistant Director, Division, Commission, dated August 7, 2003 ("Amendment No. 2"). Amendment No. 2 supersedes and replaces the proposed rule change and Amendment No. 1 in their entirety.

(3) Obvious Error Procedure. Two Floor Officials will administer the application of this Rule as follows:

A. Notification. If a Member on the Exchange believes that it participated in a transaction that was the result of an Obvious Error, it must notify two Floor Officials within five (5) minutes of the execution. If an Order Entry Firm representing a public customer believes an order it executed on the Exchange was the result of an Obvious Error, it must notify the Exchange within twenty (20) minutes of the execution. Absent unusual circumstances, two Floor Officials will not grant relief under this Rule unless notification is made within the prescribed time periods.

B. Adjust or Nullify. Two Floor Officials will determine whether the execution is subject to a trade nullification or price adjustment. If two Floor Officials determine that one of the conditions of Rule 6.87(g)(2) has been met and that the complaining party has timely documented a request for relief, then a trade will be adjusted or nullified as follows:

(1) Where each party to the transaction is a Market Maker on the Exchange, or the trade involves a limit order that may be adjusted to its limit, the Exchange will adjust the execution price of the transaction within ten (10) minutes of two Floor Officials making such determination. In such case, the adjusted price will be the last bid (offer) price, just prior to the trade, from the exchange providing the highest total contract volume in the option for the previous sixty (60) days with respect to an erroneous bid (offer) entered on the Exchange. If there is no quote for comparison purposes, then the adjusted price of an option will be determined by two Floor Officials; or

(2) Where at least one party to the transaction is not a Market Maker on the Exchange or where the trade does not involve a limit order that may be adjusted to its limit, the Exchange will nullify the transaction within ten (10) minutes of two Floor Officials making such determination.

(3) Upon taking final action, the two Floor Officials will promptly notify both parties to the trade.

Commentary

.01 In no case will the two Floor Officials involved in an obvious error determination include a person related to a party to the trade in question.

.02 All determinations made by the two Floor Officials under subsection (g)(2) will be rendered without prejudice as to the rights of the parties to the transaction to submit a dispute to arbitration.

.03 Nothing in this rule prevents a potentially aggrieved party from appealing the decision of two Floor Officials pursuant to Rule 11 of the Exchange rules.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

While the Exchange believes that it would be detrimental to allow market participants to adjust or nullify trades simply because they are based on poor trading decisions, it does believe that just and equitable principles of trade permit such adjustments or trade nullifications where one market participant would receive a windfall at the expense of another market participant that made an obvious error. In promulgating the basis for determining whether to adjust or nullify trades based upon obvious error, the Exchange believes that it must rely on objective standards to establish when a transaction was clearly the result of an obvious error, under what circumstances a trade will be adjusted or nullified, and to what price a trade will be adjusted if adjustment is appropriate under the circumstances.

As proposed, the affected parties to a particular transaction may determine, by mutual agreement, that an electronic trade was executed at an erroneous price and they may adjust the terms or nullify the trade as they agree. In the absence of mutual agreement by the parties, the proposed rule provides that two trading officials may nullify or adjust a trade if an affected party provides a documented request for relief within five minutes of the execution (or 20 minutes if the request is on behalf of a public customer) of the trade so long as one of following conditions is met:

- The trade resulted from a verifiable disruption or malfunction of an Exchange execution, dissemination, or communication system that caused a quote/order to trade in excess of its disseminated size (*e.g.*, a quote/order that is frozen, because of an Exchange system error, and repeatedly traded) in which case trades in excess of the disseminated size may be nullified; or
- The trade resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order; or
- The trade resulted from an erroneous print disseminated by the underlying market which is later cancelled or corrected by the underlying market where such erroneous print resulted in a trade higher or lower than the average trade in the underlying security during the time period encompassing two minutes before and after the erroneous print, by an amount at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the erroneous print. For purposes of the proposed rule, the average trade in the underlying security shall be determined by adding the prices of each trade during the four minute time period referenced above (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question); or
- The trade resulted from an erroneous quote in the Primary Market (as defined in Rule 6.1(b)(27)) for the underlying security that has a width of at least $1.00 and that width is at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of the proposed rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question); or
- The execution price of the trade is higher or lower than the mid-point of the Best Bid and Offer (among all of the exchanges other than the PCX) by an amount equal to at least the bid/ask spread provided in Rule 6.37(b)(1), or, in the event where the bid/ask spread in the underlying is greater than the bid/

ask spread set forth in Rule 6.37(b)(1), by an amount as set forth in Rule 6.37 (b)(3). For the purpose of this calculation, the Exchange will not apply a wider bid/ask spread as provided for LEAPS or for options subject to unusual market conditions; or

• The trade resulted in an execution price in a series quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution; or

• The trade is automatically executed at a price where the Market Maker sells $0.10 or more below parity. Parity describes an option contract's total premium when that premium is equal to its intrinsic value. Parity for calls is measured by reference to the offer price of the underlying security in the primary market at the time of the transaction minus the strike price for the call. Parity for puts is measured by the strike price of an underlying security minus its bid price in the primary market at the time of the transaction.

Under the proposed rule change, when a Market Maker on the Exchange believes that it participated in a transaction that was the result of an obvious error, it must notify two Floor Officials [5] within five minutes of the execution. If an Order Entry Firm representing a public customer believes an order it executed on the Exchange was the result of an Obvious Error, it must notify the Exchange within twenty (20) minutes of the execution. Absent unusual circumstances, two Floor Officials will not grant relief under the proposed rule change unless notification is made within the prescribed time periods.

As proposed, two Floor Officials will determine whether the execution is subject to a trade nullification or price adjustment. If two Floor Officials determine that one of the above-stated conditions has occurred, and the complaining party has timely documented a request for relief, then the Floor Officials will take one of the following actions:

(1) Where each party to the transaction is a Market Maker on the Exchange or the trade involves a limit order than may be adjusted to its limit, the execution price of the transaction will be adjusted within ten minutes of the Floor Officials making such a determination. In such case, the adjusted price will be the last bid (offer) price just prior to trade from the exchange providing the highest total contract volume for the previous sixty (60) days in the option with respect to an erroneous bid (offer) entered on the Exchange. If there is no quote for comparison purposes, then the adjusted price of the option will be determined by two Floor Officials.

(2) If at least one party to the transaction is not a Market Maker on the Exchange or where the trade does not involve a limit order that may be adjusted to its limit, the trade will be nullified within ten (10) minutes of two Floor Officials making such determination.

All determinations made by the two Floor Officials under the proposed rule change will be rendered without prejudice as to the rights of the parties to the transaction to submit a dispute to arbitration. The Exchange believes that the rule proposal promotes fair and equitable resolutions of erroneous trades.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act [6] in general, and furthers the objectives of Section 6(b)(5) [7] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–2002–01 and should be submitted by September 12, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21540 Filed 8–21–03; 8:45 am]

BILLING CODE 8010–01–P

[5] In no case will the two Floor Officials involved in an obvious error determination include a person related to a party to the trade in question.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48351; File No. SR–PCX–2003–34]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc., and Amendment No. 1 Thereto, Relating to its Arbitration Program

August 15, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 9,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On August 13, 2003, the Exchange filed Amendment No.1 to the proposed rule change.[3] The Commission received one comment letter regarding the proposed rule change in anticipation of its filing.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons described below, the Commission is granting accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX, on its own behalf and through its wholly-owned subsidiary PCX Equities, Inc. ("PCXE), pursuant to delegated authority, is proposing to amend the PCX and PCXE arbitration rules. The proposed rule change will expand the applicability of the waiver requirements imposed in SR–PCX–2003–13[5] from certain pending PCX arbitrations to all PCX and PCXE arbitrations. Specifically, the proposed rule changes would require all parties to an arbitration filed pursuant to PCX or PCXE Rule 12 (other than those described below) to waive (1) the application of the California Rules of Court, Division VI of the Appendix, entitled "Ethics Standards of Neutral Arbitrations in Contractual Arbitration" (the "California Standards"), and (2) any claims against the PCX or PCXE that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 ("CCCP Claims"). However, the parties would not be required to waive the CCCP claims in arbitrations solely between or among members, member organizations and persons associated therewith (or, as the case may be, solely between ETP Holders and persons associated therewith) that do not involve consumer-related or employment-related claims.[6] Both waivers (where required) must be made without condition and in the form required by the PCX and PCXE.[7] If any party to an arbitration fails to the sign the required waivers, the PCX will decline jurisdiction over, dismiss and refund fees paid to PCX or PCXE by the parties for, that arbitration. Furthermore, it will be considered conduct inconsistent with just and equitable principles of trade for any member, member organization, ETP Holder or associated person therewith who is a party to a PCX or PCXE arbitration to fail to waive the California Standards and the CCCP Claims, where required.

Below is the text of the proposed rule change. Proposed new language is italicized, deleted text is in [brackets].

* * * * *

PCX RULE 12

Arbitration

Matters Subject to Arbitration

Rule 12.1(a)–(g)—No change.

Commentary:

.01 No change.

.02 It may be deemed conduct inconsistent with just and equitable principles of trade for a member, a member organization or a person associated with a member or member organization to:

(a) No change.

(b) Fail to waive the California Rules of Court, Division VI of the Appendix, entitled "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), *if the member, member organization or person associated with a member or member organization is a party to an arbitration filed pursuant to this Rule 12* [if all the parties in the case who are customers have waived application of the California Standards in that case; or to fail to waive the California Standards if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case];

(c) fail to waive any claims against the Exchange that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 ("CCCP Claims"), *if the member, member organization or person associated with a member or member organization is a party to an arbitration filed pursuant to this Rule 12 (other than arbitrations solely between or among members, member organizations and/or persons associated with a member or member organization that do not involve consumer-related or employment-related claims)* [if all the parties in the case who are customers have waived the CCCP Claims in that case; or to fail to waive the CCCP Claims if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived the CCCP Claims in that case];

(d) No change.

(e) No change.

.03 No change.

* * * * *

Rule 12.35 [Applicability of Arbitration Rules] Waivers

[(a) Reserved.]

[(b) Arbitrations Filed Prior to May 1, 2003. Arbitration claims that were filed prior to May 1, 2003 and remain pending will be administered as follows:]

[(i) The arbitration] *Arbitration* claims will be administered in accordance with this Rule[s] 12[.1 through 12.34] *only* [if]:

[(A) arbitrator(s) have been appointed as of May 1, 2003; and]

[(B)]all parties to the arbitration have waived, without condition and in the form required by the Exchange, the application of the California Standards and the CCCP Claims (as defined in Commentary .02 of Rule 12.1); *provided, however, that the parties are not required to waive the CCCP claims in arbitrations solely between or among members, member organizations and/or persons associated with a member or member organization that do not involve consumer-related or employment-related claims. PCX will decline jurisdiction over, dismiss and*

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[3] *See* letter from Kathryn Beck, Senior Vice President, General Counsel, Chief Regulatory Officer and Corporate Secretary, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated August 12, 2003. In Amendment No. 1, PCX altered its description of the proposed rule change to reflect that a failure to execute required waivers by an industry party to arbitration would be referred for disciplinary action.

[4] *See* letter to the Secretary, SEC, from Raghavan Sathianathan, dated July 2, 2003. The commenter expressed concerns regarding PCX's administration of an arbitration in which he was a co-respondent, alleging that PCX did not follow its arbitration rules. The commenter asserted that the PCX had lost its right to make rule changes based on its administration of his arbitration. PCX submitted a letter in response in which it asserted that the commenter's case had been administered properly and in accordance with its rules. PCX also asserted that the proposed rule change reflects PCX's desire to provide an arbitration forum with a reduced risk of subsequent legal exposure to the organization. *See* letter dated July 30, 2003 from Kathryn Beck, Senior Vice President, PCX, to Florence Harmon, Senior Special Counsel, Division of Market Regulation, SEC.

[5] *See* Securities Exchange Act Release No. 47734 (April 24, 2003), 68 FR 23351 (May 1, 2003).

[6] PCX and PCXE believe that such arbitrations would not be considered "consumer arbitrations" as that term is used in the California Code of Civil Procedure.

[7] Copies of the prescribed waiver forms were filed as Exhibits A and B to the proposed rule change. These are the same as the waiver forms that were attached to rule filings previously approved by the Commission. *See* Securities Exchange Act Release No. 46881 (November 21, 2002), 67 FR 71224 (November 29, 2002) (waiver of California Standards); Securities Exchange Act Release No. 47734 (April 24, 2003), 68 FR 23351 (May 1, 2003) (waiver of CCCP Claims).

refund fees paid to PCX by the parties for, any arbitration claims in which any of the parties to arbitration fail to sign both waivers, where required.

* * * * *

PCXE Rule 12

Arbitration

* * * * *

Rule 12.2(a)–(g)—No change.

(h) It may be deemed conduct inconsistent with just and equitable principles of trade for an ETP Holder or a person associated with an ETP Holder to:

(i) fail to submit to arbitration on demand under the provisions of this Rule[, or];

(ii) to fail to waive the California Rules of Court, Division VI of the Appendix, entitled "Ethics Standards for Neutral Arbitrators in Contractual Arbitration" (the "California Standards"), *if the ETP Holder or person associated with an ETP Holder is a party to an arbitration filed pursuant to this Rule 12* [if all the parties in the case who are customers have waived application of the California Standards in that case; or to fail to waive the California Standards if all associated persons with a claim alleging employment discrimination, including a sexual harassment claim, in violation of a statute have waived application of the California Standards in that case]; [or]

(iii) fail to waive any claims against the PCXE that the conduct of the arbitration violates the California Code of Civil Procedure Section 1281.92 ("CCCP Claims"), if the ETP Holder or person associated with an ETP Holder is a party to an arbitration filed pursuant to this Rule 12 (other than arbitrations solely between or among ETP Holders and/or persons associated with an ETP Holder that do not involve consumer-related or employment-related claims);

(iv) to fail to appear or to provide any document in his or her or its possession or control as directed pursuant to the provisions of this Rule; or

(v) to fail to honor an award of arbitrators properly rendered pursuant to the provisions of this Rule where a timely motion has not been made to vacate or modify such award pursuant to applicable law.

(i)–(j) No change.

* * * * *

Rule 12.35 Waivers

Arbitration claims will be administered in accordance with this Rule 12 provided all parties to the arbitration have waived, without condition and in the form required by the PCXE, the application of the California Standards and the CCCP Claims (as defined in Rule 12.1(h)); provided, however, that the parties are not required to waive the CCCP claims in arbitrations solely between or among ETP Holders and/or persons associated with an ETP Holder that do not involve consumer-related or employment-related claims. PCXE will decline jurisdiction over, dismiss and refund fees paid to PCXE by the parties for, any arbitration claims in which any of the parties to arbitration fail to sign both waivers, where required.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change.[8] The text of these statements may be examined at the places specified in Item III below. PCX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

PCX states that it makes every effort to serve investors who bring their claims to PCX by providing a fair, efficient, and economical arbitration forum. Recent changes in California law and the attendant litigation, however, have caused PCX to reevaluate how it administers its arbitration programs. Specifically, California recently adopted (1) Section 1281.92 of the California Code of Civil Procedure ("CCCP 1281.92"), which prohibits private arbitration providers from administering arbitrations, or providing any other services related to arbitration, if any party or attorney for a party has, or has had within the preceding year, any type of financial interest in the arbitration provider, and (2) the California Standards, which require arbitration providers to implement and maintain substantial new recordkeeping and disclosure requirements. Since their adoption, CCCP 1281.92 and the California Standards have become the subject of controversy or, in some cases, litigation regarding their interpretation and application to arbitration programs administered by self-regulatory organizations.[9] To minimize any potential financial and litigation risk associated with these new provisions, PCX and PCXE have decided to require parties to PCX and PCXE arbitrations to waive the California Standards and CCCP Claims in order for the arbitrations to continue pursuant to PCX and PCXE Rule 12.

Once this proposed rule filing is effective, PCX and PCXE will notify parties to PCX and PCXE arbitrations of the rule change and provide them with the waiver forms and the opportunity to speak with PCX staff if they desire more information regarding the waivers. Industry parties to the arbitrations will be required to execute the waiver agreements. An industry party's failure to sign the waiver as required by the proposed rule change will be referred for disciplinary action.

2. Statutory Basis

PCX believes that this proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5),[11] which requires that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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[8] The discussion in this section represents the Exchange's views on the situation in California and does not in any way represent a Commission position on this issue.

[9] See, *e.g.*, Brief of the Securities and Exchange Commission, Amicus Curiae, in Support of Plaintiffs' Motion for Declaratory Judgment, *NASD Dispute Resolution, Inc. and New York Stock Exchange, Inc.*, v. *Judicial Council of California*, C023486 (No. District of California, September 18, 2002) (arguing that the California Standards conflict with, and thus are preempted by, the Commission's regulation of SRO arbitration under the Exchange Act and by the Federal Arbitration Act). The brief is available on the Commission Web site at: *www.sec.gov/litigation/briefs/nasddispute.pdf*. *See also* Securities Exchange Act Release No. 46881 (Nov. 21, 2002), 67 FR 71224 (Nov. 29, 2002) (describing the controversy regarding new California arbitration provisions).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received by PCX. However, the SEC received one comment letter on the proposed rule change.[12]

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–34 and should be submitted by September 12, 2003.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change, as Amended

The PCX requests that the Commission find good cause to accelerate effectiveness of this proposed rule change, as amended, pursuant to Section 19(b)(2) of the Act.[13] After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6 of the Act.[14] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act, which requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, as well as to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.[15] The Commission believes that the proposed rules are designed to provide investors with a mechanism to help resolve their disputes with broker-dealers in an expeditious manner, and are designed to help ensure the certainty and finality of arbitration awards. Additionally, the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval is appropriate in that it will permit the PCX to make its forum for the resolution of such disputes available immediately.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–PCX–2003–34), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21541 Filed 8–21–03; 8:45 am]

BILLING CODE 8010–01–P

[12] *See* n. 4, *supra.*

[13] 15 U.S.C. 78s(b)(2).

[14] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for Office of Management and Budget (OMB) review; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523 (SC: 000YRFB).

Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than September 22, 2003.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission, proposal to reinstate, with change, a previously approved collection for which approval has expired.

Title of Information Collection: Farmer Questionnaire—Vicinity of Nuclear Power Plants.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, and farms.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 150.

Estimated Total Annual Burden Hours: 40.

Estimated Average Burden Hours per Response: 0.25.

Need for and Use of Information: This survey is used to locate, for monitoring purposes, rural residents, home gardens, and milk animals within a five mile radius of a nuclear power plant. The monitoring program is a mandatory requirement of the Nuclear Regulatory Commission set out in the technical specifications when the plants were licensed.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 03–21518 Filed 8–21–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

[Docket No. OST–2003–15962]

Office of the Secretary; Notice of Request for Renewal of a Previously Approved Collection

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Department of Transportation's (DOT) intention to request extension of a previously approved information collection.

DATES: Comments on this notice must be received by October 21, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number OST–2003–15962 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting

comments on the DOT electronic docket site.

- Fax 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington DC, between 9 am and 5 pm, Monday through Friday, except on Federal holidays.

Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notes.

Docket: For access to the docket to read background documents or comments received, go to *http://dms,dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Delores King, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

SUPPLEMENTARY INFORMATION:

Title: Procedures and Evidence Rules For Air Carrier Authority Applications:

14 CFR Part 201—Air Carrier Authority under Subtitle VII of title 49 of the United States Code—(Amended);

14 CFR Part 204—Data to Support Fitness Determinations;

14 CFR Part 291—Cargo Operations in Interstate Air Transportation.

OMB Control Number: 2106–0023.

Type of Request: Extension without change, of previously approved collection.

Abstract: In order to determine the fitness of persons seeking authority to engage in air transportation, the Department collects information from them about their ownership, citizenship, managerial competence, operating proposal, financial condition, and compliance history. The specific information to be filed by respondents is set forth in 14 CFR parts 201 and 204.

Respondents: Persons seeking initial or continuing authority to engage in air transportation of persons, property, and/or mail.

Estimated Number of Respondents: 127.

Estimated Total Burden on Respondents: 4,604 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information collection; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on August 15, 2003.

Randall D. Bennett,

Director, Office of Aviation Analysis.

[FR Doc. 03–21487 Filed 8–21–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket OST–02–12148]

Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee; Meeting

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given that the Department of Transportation (DOT) Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee will meet for the third time in a public session on September 22–23, 2003, at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA 22209, (703) 524–6400, Guest Fax: (703) 524–8964. The purpose of the Committee is to recommend to the Department the type and level of electronic security that should be used for the transmission and storage of drug testing information, to assess the type of format and methodology that would be appropriate, and to recommend the level and type of electronic signature technology that would support the procedures used in the DOT drug and alcohol program. The Committee has held two previous meetings. A list of the committee members and a copy of both meeting's transcripts are available in the docket posted on the Internet at *http://dms.dot.gov/search/;* the docket number is 12148.

FOR FURTHER INFORMATION CONTACT: Kenneth Edgell or Minnie McDonald, Office of Drug and Alcohol Policy and Compliance (ODAPC), Office of the Secretary, Department of Transportation at voice (202) 366–3784, fax (202) 366–3897.

SUPPLEMENTARY INFORMATION: Since the beginning of drug testing, the DOT has sought ways to reduce the significant amount of paper documentation generated for the forensic accountability of drug test results. We are now in an era of various electronic capabilities that can further reduce the paper work burden. The transportation industry is asking us to move more in that direction. We want to accommodate this request, but we want to make sure that the integrity and confidentiality requirements of the program are maintained.

The Department made modest changes when 49 CFR Part 40 was updated and republished on December 19, 2000. We permitted greater use of faxes and scanned computer images for reporting test results. Additionally, for negative test results we permitted laboratories to send electronic reports to MROs, provided the laboratory and MRO ensured that the information is accurate and can be transmitted in such a manner as to prevent unauthorized access or release while it is transmitted or stored.

The Department believes that the increased use of electronic reporting is both inevitable and beneficial. At the same time, we want to make sure that there are good, consistent minimum standards for the use of this technology, in order to protect the important integrity and confidentiality requirements of the program. For these reasons, DOT established the Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee. The purpose of the Committee is to recommend regulatory modifications it deems necessary if Part 40 is to accommodate newer electronic technology. The Committee will assess

the current status of electronic security technology and will make recommendations about consistent minimum standards for its use in the transmission and storage of drug testing results. Additionally, the Committee will examine the formats and methodologies used in transmitting electronic information, as well as the concept, parameters, and procedures used in implementing electronic signature technology within the frame work of the DOT drug and alcohol testing program. The Committee will advise DOT regarding these findings. The Department anticipates that, following the receipt of the Committee's final recommendations, DOT will propose changes to Part 40 through a notice of proposed rulemaking that will result in minimum standards for security in transmission and storage of drug testing information and would result in a more widespread use of electronic technology in the program.

The Committee held its first public meeting on June 18–19, 2002 in Washington, DC and the second on April 7–8, 2003 in Arlington, VA. The first meeting was used to introduce the Committee Members, review the purpose of the Committee, and to review some of the issues that the Committee needed to address as part of the process to develop appropriate recommendations to the DOT. Presentations from the major sections of interested stakeholders were conducted by Committee members, invited guests, and by the general public. Additionally, three sub-committees composed of Committee members were established to research, develop, and provide information to the whole Committee at future meetings. These sub-committees addressed the following three areas: 1. Format of electronic reports; 2. Security of electronic transmission and digital signatures; and 3. Storage security of electronic information. The second meeting focused on specific findings, issues, and recommendations of the sub-committees related to these three areas. A complete transcription of all discussions for both meetings is available at the above-cited Internet web site. Opportunity will be available at the upcoming meeting for the general public to comments on information presented by the committee members.

Tentative agenda: Monday, September 22, 2003, 08:30 a.m.–12 p.m.: General presentations by the sub-committee chairpersons, 12 p.m.–1:15 p.m.: Lunch, 1:15 p.m.–3:30 p.m.—Continued presentations, 3:30 p.m.–5 p.m.: Public Comments or Presentations, 5 p.m.—End of First Day. Tuesday, September 23, 2003, 08:30 a.m.–12:00 p.m.: Discussion of Options and Future Committee Actions, 12 p.m.—Closing Comments, 2 p.m.—End of Meeting. A final agenda will be available to the public prior to the beginning of the meeting.

The meeting will be open to the public on a first-come first-seated basis. Anyone needing special accommodations for persons with disabilities please notify Minnie McDonald at (202) 366–3784 at least two weeks prior to the meeting.

Members of the public wishing to file a written statement with the DOT Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee may do so by submitting comments by mail or by delivering them to the Docket Clerk, Attn: Docket No. OST–02–12148, Department of Transportation, 400 7th Street, SW., Room PL401, Washington, DC, 20590. Comments may also be faxed to the Docket Clerk at (202) 493–2251. Persons wishing their comments to be acknowledged should enclose a stamped, self-addressed postcard with their comments. The docket clerk will date stamp the postcard and return it to the sender. For the convenience of persons wishing to review the docket, it is requested that paper comments be sent in triplicate in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Comments may be reviewed at the above address from 9 a.m. through 5 p.m. Monday through Friday. Commenters may also submit their comments electronically. Instructions for electronic submission may be found at the following Web address: *http://dms.dot.gov/submit/*. The public may also review docket comments electronically (docket number is 12148). The following web address provides instructions and access to the DOT electronic docket: *http://dms.dot.gov/search/*. Please use only one method for submission of your comments. Please do not send duplicates by submitting a written and an electronic version.

There will be a time allocated for the public to speak on any of the above agenda items. Please make your request for the opportunity to make a public comment in writing to Minnie McDonald, ODAPC, at (202) 366–3784, FAX (202) 366–3897, or e-mail address: *minnie.mcdonald@ost.dot.gov/* two weeks prior to the meeting. Your notification should contain your name and corporate designation, consumer affiliation, or government designation. Please include your address, telephone number and e-mail in case there is reason to contact you regarding your presentation. Those wanting to make a verbal statement should also include a short statement describing the topic to be addressed. Requestors will ordinarily be allowed up to 10 minutes to present a topic, however, the time may be limited depending on the number of requestors. If you have submitted a written statement to the docket, there is no need to subsequently duplicate this information by an oral presentation.

The Committee meeting will be recorded and transcribed. Within a short time after the meeting, copies of the transcripts will be available on the DOT electronic docket.

DATES AND TIME: The Electronic Transmission and Storage of Drug Testing Information Federal Advisory Committee will meet in open session on September 22, 2003, from 8:30 a.m. to 5 p.m. and on September 23, 2003, from 8:30 a.m. to 2 p.m.

ADDRESSES: The meeting will take place at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA 22209, (703) 524–6400, Guest Fax: (703) 524–8964. The hotel is close to the Rosslyn, VA METRO stops and can be reached via the blue or yellow lines. Attendees, other than Committee members, who need lodging, may obtain a discounted room rate directly from the hotel by referring to the "DOT Federal Advisory Committee" meeting. The hotel reservation telephone number is (800) 228–9290. A limited number of rooms will be available at the discounted rate and reservations must be made by September 11, 2003.

Dated: August 18, 2003.

Kenneth C. Edgell,

Acting Director, Office of Drug and Alcohol, Policy and Compliance, Department of Transportation.

[FR Doc. 03–21603 Filed 8–21–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Preparation of Alternatives Analysis and Environmental Impact Statement for the Commuter Rail Project in Sonoma and Marin Counties, California

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of Intent to prepare an Alternatives Analysis and Draft Environmental Impact Statement (AA/DEIS).

SUMMARY: The Federal Transit Administration (FTA) as lead agency and the Sonoma Marin Area Rail Transit (SMART) Commission intend to

conduct an Alternatives Analysis and prepare a Draft Environmental Impact Statement (AA/DEIS) on a proposal by SMART for the proposed introduction of commuter rail service along an existing railroad right-of-way extending approximately 75-miles from Cloverdale in Sonoma County to a San Francisco/East Bay bound ferry terminal in Marin County. The EIS will be prepared as a joint EIS and Environmental Impact Report (EIR) to satisfy the requirements of both the National Environmental Policy Act of 1969 (NEPA) and the California Environmental Quality Act (CEQA).

The purpose of this notice is to notify interested individuals, organizations, and business entities, affected Native American Tribes and Federal, State, and local government agencies of the intent to prepare an AA/DEIS and to invite participation in the study. At present three alternatives are proposed for evaluation in the EIS/EIR. In addition, reasonable alternatives identified through the scoping process will be evaluated in the EIS/EIR.

Scoping will be accomplished through correspondence and discussion with interested persons, organizations, and Federal, State and local agencies, and through public and agency meetings.

DATES: *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be received no later than October 1, 2003. Written comments should be sent to the SMART AA/DEIS/DEIR Outreach at the address given below in **ADDRESSES**.

Scoping Meeting Dates: Two public open-house scoping meetings will be held from 6 p.m. to 8 p.m. on September 4 and 10, 2003 at the location given below in **ADDRESSES**. An interagency scoping meeting will also be held on September 17, 2003 from 10 a.m. to 12 noon at Novato City Council Chambers located at 917 Sherman Avenue, Novato, California 94947.

The two scoping meetings will be held at the following dates and locations:

1. September 4, 2003 from 6 p.m. to 8 p.m. at the San Rafael Corporate Center located at 750 Lindaro Street, San Rafael, California 94901.

2. September 10, 2003 from 6 p.m. to 8 p.m. at the Petaluma Community Center located at 320 N. McDowell Boulevard, Petaluma, California 94954.

All locations are accessible to people with disabilities.

ADDRESSES: Written comments should be sent to Ms. Lillian Hames, Project Director SMART (Sonoma Marin Area Rail Transit), 520 Mendocino Avenue, Suite 240, Santa Rosa, California 95401. Phone: 415–461–00630 Fax: 415–464–1285. E-mail: *LHames@sonomamarintrain.org*. To be added to the mailing list, contact Ms. Hames at the address listed above. Please specify the mailing list for the SMART Alternatives Analysis/Draft Environmental Impact Statement/Report (SMART AA/DEIS/R). Persons with special needs should leave a message at either of the phone numbers indicated above.

FOR FURTHER INFORMATION CONTACT: Ms. Lorraine Lerman, Community Planner, FTA Region IX, 201 Mission Street, Suite 2210, San Francisco, CA 94105. Phone: (415) 744–2735 Fax: (415) 744–2726. Information about the project can also be obtained from the SMART Web site, *http://www.sonomamarintrain.org/*.

SUPPLEMENTARY INFORMATION:

I. Description of Study Area

The FTA, as joint lead agency with the SMART Commission, will prepare an AA/DEIS/DEIR on a proposal to provide commuter rail service along an existing railroad right-of-way extending approximately 75-miles in Sonoma and Marin counties. The study area begins in Coverdale in Sonoma County. The southern terminus of the project area is in Marin County at a San Francisco/East Bay bound ferry terminal. Along the project route, the rail right-of-way runs parallel to Highway 101. The rail right-of-way south of Healdsburg has been transferred to a new statutorily-created entity, the Sonoma Marin Area Rail Transit District. North of Healdsburg the North Coast Railroad Authority (NCRA) owns it. The project area also includes the locations of up to 15 stations and maintenance facility sites. Conceptual engineering of the rail alignment, a pedestrian and bicycle path, the station facilities, and the maintenance facility will be included in AA/DEIS/DEIR that satisfies both NEPA and CEQA requirements. In addition, a financial plan will be developed that examines the capital and operating funding needs and sources.

II. Purpose and Need

Highway 101 is the primary mode of north-south movement connecting Sonoma and Marin counties with the City and County of San Francisco. The existing congested conditions in this corridor are expected to worsen as the area's population and job base continue to grow. The SMART corridor offers an opportunity to provide additional transportation capacity along a currently congested corridor. Implementation of the proposed actions will provide transit service to key employment areas along the corridor, maximize and maintain the viability of residential communities, encourage smart growth in city centers along the corridor, and reduce reliance on private automobile usage and the congested Highway 101 corridor.

III. Alternatives

Alternatives proposed for evaluation include but are not limited to:

(1) No-build alternative, which consists of the existing highway and transit systems plus any ongoing or programmed improvements. It serves as the baseline condition against which the transportation, environmental, and community impacts of the other alternatives are compared.

(2) Introduction of commuter rail service along an existing railroad right-of-way extending approximately 75-miles from Cloverdale in Sonoma County to a San Francisco/East Bay bound ferry terminal in Marin County.

(3) Enhanced bus service on Highway 101 from Cloverdale in Sonoma County to Larkspur in Marin County, including bus enhancements and capital improvements along the Highway 101 corridor.

IV. Probable Effects

The purpose of the EIS/EIR is to fully disclose the environmental consequences of building and operating a major capital investment in the SMART corridor in advance of any decisions to commit substantial financial or other resources towards its implementation. The EIS/EIR will examine the transportation benefits and environmental impacts of the alternatives that emerge from the scoping process. In addition, it will discuss actions to reduce or eliminate such impacts.

Environmental issues to be analyzed in the EIS/EIR include: potential consistency with local plans and policies with regard to possible station sites; possible flooding along portions of the rail line and stations; potential traffic delays and change in traffic levels of service at several rail crossings; potential impacts to wetland areas paralleling the corridor; increased noise to sensitive receptors adjacent to the track; changes in views and vistas due to elevated structures; and potential impacts to historic and cultural resources. In addition, the EIS/EIR will examine potential impacts to population and housing; air quality; energy and mineral resources; contaminated property; public services; utilities; and recreation features; as well as

cumulative and growth-inducing impacts. Impacts will be evaluated for both the temporary construction period and for the long-term operation of each alternative. Measures to mitigate any adverse impacts will also be identified.

To ensure that the full range of issues related to this proposed action will be addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS/EIR should be directed to the SMART Project Director as noted in the **ADDRESSES** section above.

V. FTA Procedures

To streamline the NEPA process and to avoid duplication of effort, the agencies involved in the scoping process will consider the results of any previous planning studies or financial feasibility studies prepared in support of the decision by the Metropolitan Transportation Commission (MTC) to include a particular alternative in the regional transportation plan. Prior transportation planning studies may be pertinent to establishing the purpose and need for the proposed action and the range of alternatives to be evaluated in detail in the EIS/EIR. The Draft EIS/EIR will be prepared simultaneously with conceptual engineering for the alternatives, including station and alignment options. The Draft EIS/EIR process will address the potential use of federal funds for the proposed action, as well as assessing social, economic, and environmental impacts of the station and alignment alternatives. Station designs and alignment alternatives will be refined to minimize and mitigate any adverse impacts. After publication, the Draft EIS/EIR will be available for public and agency review and comment, and a public hearing will be held. Based on the Draft EIS/EIR and comments received, SMART will select a Locally Preferred Alternative for further assessment in the Final EIS/EIR and will apply for FTA approval to initiate Preliminary Engineering of the preferred alternative.

Issued on: August 19, 2003.

Leslie T. Rogers,

Regional Administrator.

[FR Doc. 03–21604 Filed 8–21–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 30186 (Sub-No. 3)]

Tongue River Railroad Co.—Construction and Operation—Western Alignment

AGENCY: Surface Transportation Board.

ACTION: Amended Final Scope of the Supplemental Environmental Impact Statement.

SUMMARY: On April 27, 1998, the Tongue River Railroad Company (TRRC) filed an application with the Surface Transportation Board (Board) under U.S.C. 10901 and 49 CFR 1150.1 through 1150.10 seeking authority to construct and operate a 17.3-mile line of railroad in Rosebud and Big Horn Counties, Montana, known as the "Western Alignment." The line that is the subject of this application is an alternative routing for the portion of the 41-mile Ashland to Decker, Montana rail line that was approved by the Board on November 8, 1996 in Finance Docket No. 30186 (Sub-No. 2), referred to as the "Four Mile Creek Alternative." On July 10, 1998, the Board's Section of Environmental Analysis (SEA) served a Notice of Intent to prepare a Supplemental Environmental Impact Statement (SEIS) to evaluate and consider the potential environmental impacts that might result from the construction and operation of the Western Alignment, and requested comments on the scope of the SEIS. SEA served its final scope of the SEIS on February 3, 1999. On March 2, 2000, before SEA completed its Draft SEIS, TRRC requested that SEA suspend its environmental work. On December 19, 2002, TRRC advised SEA that it was now in a position to move forward and asked SEA to resume its environmental review of the application. On January 17, 2003, TRRC filed a request with the Board seeking to update its previously submitted evidence on the transportation merits. The Board served its decision allowing TRRC to file its supplemental evidence on the transportation merits on March 11, 2003. On March 26, 2003, SEA served an amended Notice of Intent to prepare a SEIS and requested comments on the adequacy of the final scope of the SEIS dated February 3, 1999. SEA has reviewed and considered all eight of the comments received in preparing the amended final scope of the SEIS, which is discussed below.

FOR FURTHER INFORMATION CONTACT: Kenneth Blodgett, (202) 565–1554. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Proposed Action and Background

This proceeding involves an alternate route (the Western Alignment) to the route the Board previously approved (the Four Mile Creek Alternative) for the southernmost 17.3-mile portion of the Ashland to Decker, Montana line in *Tongue River II*.

In 1983, TRRC sought approval from the Interstate Commerce Commission (ICC, the Board's predecessor agency) to construct and operate 89 miles of railroad between Miles City, Montana, and two termini located near Ashland, Montana, subsequently referred to as *Tongue River I*. In a decision served May 9, 1986, the ICC approved *Tongue River I*. TRRC then sought, in *Tongue River II*, approval to construct a contiguous 41-mile line from Ashland to Decker, Montana. The Board approved *Tongue River II*, via the Four Mile Creek Alternative, in November 1996.[1]

The ICC/Board's environmental staff, now the Section of Environmental Analysis (SEA), prepared Environmental Impact Statements (EISs) for both *Tongue River I* and *Tongue River II*. TRRC has reported to the Board that it has conducted various preconstruction activities on both segments, but actual construction has not yet begun.

On April 27, 1998, TRRC filed an application with the Board in Finance Docket No. 30186 (Sub-No. 3) seeking authority to construct and operate the Western Alignment subsequently referred to as *Tongue River III*. In *Tongue River I* and *Tongue River II*, the Board determined that the public convenience and necessity required or permitted TRRC's proposed rail line construction and operation, in accordance with former 49 U.S.C. 10901, and the Board does not intend to reopen the transportation merits of the authority granted in these proceedings. The action proposed to be taken in *Tongue River III* necessitates SEA's review of associated potential environmental impacts and a subsequent decision by the Board as to whether the proposed Western Alignment satisfies the criteria of 49 U.S.C. 10901, as amended in the ICC Termination Act of 1995 (ICCTA).[2]

[1] Petitions for review of *Tongue River II* are pending in the Ninth Circuit. Those cases are being held in abeyance until this case is decided.

[2] Pub. L. 104–88 109 stat. 803 (1995). In ICCTA, Congress abolished the ICC and transferred its rail regulatory functions and proceedings to the Board. Section 10901(c), as amended by ICCTA, now

Continued

Environmental Review Process and Course of Proceedings in Tongue River III

After the application in *Tongue River III* was filed, SEA and three cooperating agencies [3] began the environmental review process. On July 10, 1998, SEA issued a Notice of Intent (NOI) to prepare a SEIS to consider the potential environmental impacts of the proposed Western Alignment routing. The NOI also sought comments from the public on the scope of the SEIS. SEA received 34 comments from Federal, state, and local agencies, as well as TRRC, individual property owners, and community representatives. SEA published its final scope of the SEIS on February 3, 1999. That notice specified that the SEIS would evaluate the Western Alignment in full, as well as refinements to the alignments previously considered in *Tongue River I* and *Tongue River II*, where there have been significantly changed circumstances indicating that what was done before is no longer adequate.

On March 2, 2000, before SEA completed its Draft SEIS, TRRC requested that SEA suspend its environmental work. Almost three years later, on December 19, 2002, TRRC advised SEA that it was now in a position to move forward and asked SEA to resume its environmental review of *Tongue River III*. Shortly thereafter, on January 17, 2003, TRRC filed a request with the Board seeking to update its previously submitted evidence on the transportation aspects of the *Tongue River III* application. On March 11, 2003, the Board authorized TRRC to file the updated evidence. In its supplemental evidence filed on May 1, 2003, TRRC updated the record in the following five areas: (1) Transfer of the Otter Creek Tracts 1, 2, and 3 to the State of Montana; (2) tonnage forecasts, financial forecasts, and estimated construction costs; (3) TRRC's business structure, proposed financial structure, and plan for raising the funds required for construction; (4) supporting statements from Montana officials; and (5) the effects of the Board's recent approval of the Dakota, Minnesota, and Eastern Railroad's proposed construction of a new rail line to serve the southern Powder River Basin in Wyoming. See *Dakota, Minnesota & Eastern Railroad Corporation Construction into the Powder River Basin*, STB Finance Docket No. 33407 (STB served Jan. 30, 2002), *appeal filed, Mid States Coalition for Progress, et al.*, v. *Surface Transportation Board*, No. 02–1359 *et al.* (8th Cir. Filed Feb 7, 2002). In addition, TRRC provided insight into its relationship with The Burlington Northern and Santa Fe Railway Company, with which the proposed line connects. The Draft SEIS will reflect the updated information that TRRC has submitted. The Board served a decision on July 7, 2003, establishing a procedural schedule for replies.

With respect to the environmental review process, on March 26, 2003, SEA served an amended NOI that announced that the environmental review of the *Tongue River III* application would now go forward. The amended NOI solicited comments from the public on the scope of the SEIS and asked whether the public had any new information to include in the SEIS. SEA received eight comments from Federal, state, and local agencies, individual property owners, and community representatives. A brief summary of the main points raised in the comment letters is provided below.

The Environmental Protection Agency (EPA), Region 8, commented on a variety of issues including the identification and discussion of water bodies with impaired uses; cumulative effects including coal bed methane development; potential air quality impacts on the Class I Northern Cheyenne Indian Reservation; required consultation with tribal governments and the need to assess all impacts on tribal trust lands; wetlands and riparian areas; and address pollution prevention, preferably at the source. Finally, EPA stated that the SEIS should include an effective strategy for public involvement of minority and low-income populations.

The Montana Natural Heritage Program (MNHP) commented that all state plant and animal species of concern should be discussed in the SEIS, in particular the bald eagle, snapping turtle, spiny softshell, woolly twinpod, Barr's milkvetch and nuttall desert-parsley. The MNHP also recommended that SEA contact the U.S. Fish and Wildlife Service for a current listing of threatened and endangered plant and animal species.

The Northern Plains Resource Council (NPRC) commented on the need for a discussion of cumulative effects, including coal bed methane well development. NPRC also indicated that there is a need to assess potentially impaired water bodies, including the total maximum daily load (TMDL) designations currently being developed and assigned for the Tongue River area by the State of Montana. NPRC asked that the SEIS discuss any new species of concern that have been identified since 1999, and indicated that the Board should consider if there is any public convenience and necessity that justifies construction and operation of the project. Finally, NPRC suggested that a new NEPA document should be prepared that covers the entire 130-mile line between Miles City and Decker.

The Montana Environmental Information Center noted that wildlife inventories that were not performed for *Tongue River II* should be completed at this time. In addition, it requested that the SEIS assess the entire line for potential impacts to increased elk populations; discuss coal bed methane development and its ability to alter the character of the physical environment; and address when and if construction will actually occur. Furthermore, it indicated that SEA should conduct its own analysis of the economic merits of the proposal and that *Tongue River III* should not be examined as a supplement to the previous EISs, but that the entire 130-mile route from Miles City to Decker should be reexamined.

Terry Punt and Jeanie Alderson of the Bones Brothers Ranch commented that the purpose and need for the railroad line needs to be reassessed in light of the following factors: *Tongue River I* was proposed to serve the Montco mine, but this mine lost its permit in the 1990s; the recently-approved Dakota, Minnesota & Eastern (DM&E) rail line is meeting the current transportation need of the region and recent layoffs indicate a slower coal market; and Otter Creek coal is high in sodium and is not profitable. These commenters also echoed the need for coal bed methane well development to be taken into account.

Mark Fix commented that the impacts from the coal bed methane project are overwhelming and, with the proposed Tongue River railroad, would result in unacceptable environmental conditions. Mr. Fix also suggests that there is a need for a new NEPA document that covers the entire Tongue River railroad route as one project.

Beth Kaeding commented that the impacts of connected actions, including the coal bed methane development in Wyoming and Montana, new power plants in Wyoming, expanded coal mining in Wyoming, and proposed power plants in Montana need to be

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provides that the Board shall authorize the construction and operation of a proposed new rail line "unless the Board finds that such activities are inconsistent with the public convenience and necessity." Thus, there is now a presumption that a rail construction proposal will be approved.

[3] As dicussed in more detail below, the cooperating agencies are the U.S. Army Corps of Engineers (Corps); the U.S. Department of the Interior, Bureau of Land Management (BLM); and the Montana Department of Natural Resources (MT DNRC). Future references to "SEA" encompass the efforts of the cooperating agencies.

considered cumulatively. Ms. Kaeding also commented that inventories for wildlife, fish, and plant species should be prepared from field studies. Ms. Kaeding expressed concerns about a variety of issues, including the amount of earth that would need to be moved for this project and the potential impacts from erosion and sedimentation; the amount of water required for the proposed construction and potential impacts to streams and the water table; and the amount of earth that will be exposed to the introduction of noxious weeds. Additional concerns include fire hazards from rail operations, death of livestock on the rail lines, noise, economic viability of the applicant, impacts to residents and land use in the event of a future abandonment, and impacts on the character of the region.

The State of Arkansas, Technical Review Committee, submitted form letters indicating that it does not have any comments on the proposed final scope of work for the SEIS.

SEA has prepared this amended final scope for the SEIS based on a careful review of all the comments to the amended NOI, consultations with appropriate Federal and state agencies, and review of the environmental documents and studies previously prepared in *Tongue River I* and *Tongue River II*. With one exception, the final scope has been amended, where necessary, to encompass all of the points raised in the comment letters. Regarding the request expressed by several commenters that a new NEPA document should be prepared which addresses the entire 130-mile line from Miles City to Decker, the Board does not believe it is necessary or appropriate to reopen and reconsider in their entirety the authority granted in *Tongue River I* and *Tongue River II*, both of which have long since become administratively final. Rather in the SEIS, SEA will evaluate the Western Alignment in full, as well as refinements to the alignments previously considered in *Tongue River I* and *Tongue River II*, where there have been significantly changed circumstances indicating that what was done before is no longer adequate.

The amended scope of this SEIS has been developed in consultation with the three cooperating agencies discussed above. The cooperating agencies have decision-making authority over *Tongue River III*, independent of the Board, and are the three principal agencies from whom TRRC must obtain separate approvals. To help these agencies fulfill their regulatory responsibilities and functions, and to avoid duplicative environmental analysis, SEA will include in the SEIS environmental review of certain issues specifically requested by the cooperating agencies.

After completing their independent environmental analysis of the Western Alignment and those portions of *Tongue River I* and *Tongue River II* that need to be updated, SEA and the cooperating agencies will serve a Draft SEIS on all the names on the Board's service list for this proceeding and on appropriate Federal, state, and local agencies, and will publish notice of this document in the **Federal Register**. The public will be invited to review and comment on all aspects of the Draft SEIS. SEA and the cooperating agencies will then carefully consider all the timely comments received on the Draft SEIS, conduct any further environmental review that may be necessary, and will then prepare and issue a Final SEIS. A notice of the Final SEIS will also be published in the **Federal Register**. The Board will then take into account the Draft SEIS, the Final SEIS, and all comments received in issuing its final written decision in *Tongue River III*.

Final Amended Scope for the SEIS

The amended scope of the SEIS for the construction and operation of the Western Alignment will involve a detailed environmental analysis of the proposed new routing. The SEIS will discuss alternatives to the proposed new routing and will compare the potential effects of the Western Alignment to the Four Mile Creek Alternative approved in *Tongue River II*. SEA's analysis will include discussion of the following topics: biological and aquatic resources, land use, cultural resources, water quality, socioeconomics, environmental justice, transportation and safety, soils and geology, air quality, aesthetics, noise and vibration effects, recreation, and cumulative effects. Impacts on Native Americans, including sites of importance to them, will also be addressed.

The Draft SEIS will also incorporate the supplemental evidence submitted by TRRC on May 1, 2003, where it relates to the project description, the project's purpose and need, and/or the potential environmental impacts of the construction and operation of the proposed rail line.

Format of the SEIS

The Draft SEIS will be organized into three separate sections. The first section will evaluate the potential impacts associated with the proposed Western Alignment in *Tongue River III*. The second section will provide the updated analysis relating to *Tongue River I* and *Tongue River II*, as discussed above. A third section will discuss cumulative effects associated with the construction and operation of the entire line from Miles City to Decker, Montana from both the Four Mile Creek Alternative and the Western Alignment. At their request, and to assist the cooperating agencies in their permitting processes, SEA will provide appendices that address further environmental issues needed by the individual cooperating agencies.

Assumptions

- To avoid duplication, the SEIS will refer to, utilize, and incorporate by reference the environmental analyses prepared for *Tongue River I* and *Tongue River II*, as appropriate.
- The SEIS will evaluate the impacts of the proposed Western Alignment in *Tongue River III*, and will compare those impacts to the impacts related to the Four Mile Creek Alternative approved in *Tongue River II*; the Four Mile Creek Alternative is the No-Build Alternative in *Tongue River III* because it has already been approved.

Section I

Tongue River III

Potential Environmental Impacts Associated With the Construction and Operation of the Western Alignment

1. Transportation and Safety

The SEIS will:

A. Evaluate the safety aspects of proposed crossings of the County Road at Four Mile Creek (proposed as a grade separated crossing), and where the Western Alignment would connect with the approved *Tongue River II* route at the north end (proposed as an at-grade crossing).

B. Assess the potential for hazardous materials transport through the corridor, and the potential for the movement of more trains and coal than was envisioned in the July 17, 1992 Draft or Final EIS for *Tongue River II*.

C. Assess the potential for train derailments and grade crossing accidents.

D. Assess the safety, operational, and maintenance advantages submitted by TRRC regarding the Western Alignment as compared to the Four Mile Creek Alternative, including TRRC's improved overall grade, shorter travel distance, reduced long-term operating and maintenance costs, and reduced need for helper engines.

E. Assess the opportunities for access by local property owners.

F. Evaluate concerns regarding fire prevention and suppression.

G. Discuss the terms of the Memorandum of Agreement between

the Montana Department of Transportation and TRRC that relate to potential environmental impacts and the implementation of mitigation measures.

H. Develop any appropriate mitigation.

2. Land Use

The SEIS will:

A. Evaluate impacts to property owners along the Western Alignment in terms of property acquisition, agricultural productivity, and recreational activities.

B. Evaluate the impact to parcels with a future potential for mechanical irrigation.

C. Evaluate indirect or secondary impacts to land uses such as homes located upstream from creek and river crossings.

D. Evaluate the impact of sidings as well as the rail line itself.

E. Develop appropriate mitigation to address issues such as fencing, weed protection, cattle passes, and compensation for livestock killed by trains.

3. Biological and Aquatic Resources

The SEIS will:

A. Establish a baseline for diversity of species for the Tongue River Region. The SEIS will map existing habitats using aerial photography and will describe the existing resources in the Tongue River Valley, including vegetative communities, wildlife and wildlife movement (especially pronghorn, elk, and deer migration, and also the impact to the movement of smaller species such as turtles and other amphibians), fisheries, and Federally threatened or endangered species. Wildlife inventories will be verified through field surveys when and if acquisition of the project right-of-way is completed.

B. Include a Biological Assessment of species, updating information from *Tongue River II* as appropriate. Specifically, the assessment will investigate species identified by the U.S. Fish and Wildlife Service in the species list recently provided for this project.

C. Include a delineation of all prairie dog colonies to assist in determining the presence of the Black-Footed Ferret.

D. Include a survey of sensitive plant species, including the woolly twinpod, Barr's milkvetch, and nuttall desert-parsley.

E. Include wetland analysis for all wetlands, riparian areas, and waters of the U.S., including creek and river crossings.

F. Develop appropriate mitigation to address potential impacts to livestock and to wildlife migration along the project corridor.

G. Develop appropriate mitigation to ensure adequate protection from the introduction and spread of noxious weeds.

H. Develop an appropriate mitigation plan for all wetlands and waters of the United States.

I. Develop appropriate mitigation plans for erosion control, riverbank stabilization, and the reclamation and replanting of cut/fill slopes.

4. Soils and Geology

The SEIS will:

A. Evaluate the potential for soil erosion during construction and long-term operation.

B. Evaluate soil composition and the need for blasting.

C. Evaluate the effect of blasting on the Tongue River Reservoir dam, and require a mitigation blasting plan if such activity is found to be necessary.

D. Evaluate the effect of topography changes on runoff and flooding.

E. Evaluate proposed engineering of bridges and culverts.

F. Develop any appropriate mitigation.

5. Water Quality

The SEIS will:

A. Include a hydrological analysis of the *Tongue River* and the potential impact of the construction and operation of *Tongue River III* upon it.

B. Evaluate the specific potential of erosion from cut/fill slopes to degrade the current water quality of the *Tongue River* and tributary streams, specifically as it relates to Total Maximum Daily Loads (TMDLs) established for these water bodies.

C. Develop any appropriate mitigation.

6. Cultural Resources

The SEIS will:

A. Evaluate potential impacts to cultural and paleontological resources.

B. Include the final terms of the Programmatic Agreement between the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, the Board, and TRRC. The Programmatic Agreement will provide a means for identifying and addressing impacts on cultural resources, including Native American resources.

C. Discuss the results of consultation with Native American tribal governments, specifically the Northern Cheyenne and the Crow, taking into consideration the following regulatory provisions and directives: The National Historic Preservation Act (as amended in 1992); The American Indian Religious Freedom Act (as amended in 1993); The Religious Freedom Restoration Act (enacted in 1993); The Sacred Sites Executive Order (released in 1996).

D. Provide the results of consultation with representatives from the Northern Cheyenne and Crow tribes to solicit information about known properties, burials, or traditional use areas on or adjacent to *Tongue River III*.

E. Discuss the eligibility of the Spring Creek Archeological District for the National Register of Historic Places, and potential impacts to this resource resulting from construction and operation of *Tongue River III*.

7. Energy

The SEIS will evaluate potential impacts to energy resources, and develop any appropriate mitigation.

8. Air Quality

The SEIS will:

A. Evaluate construction-period dust emissions from project construction.

B. Evaluate the effect of dust emissions from the long-term operation of the railroad on local recreation areas, farms, and homes.

C. Evaluate particulate emission from locomotive operation, and potential air quality impacts on the Class I Northern Cheyenne Indian Reservation.

D. Develop any appropriate mitigation.

9. Noise and Vibration Effects

The SEIS will:

A. Evaluate the project's effect on local property owners, residences, and ranch operations.

B. Evaluate the project's effect on local recreational activities.

C. Evaluate the project's effect on livestock and wildlife.

D. If blasting is necessary for construction, evaluate the effect of such blasting and vibration for the project on the Tongue River Reservoir dam.

E. Develop any appropriate mitigation.

10. Socioeconomics

The SEIS will:

A. Using Census 2000 data, evaluate potential impacts of *Tongue River III* on local social and economic patterns derived from physical changes. More detailed analysis of socioeconomics can be addressed by the cooperating agencies in their own review process. This could include, as appropriate, potential impacts of the project on local population changes in terms of short-term and long-term employment; impacts of new students generated as a

result of construction workers moving into the region; increase in Taxable Value for each of the alternatives; any additional analysis conducted by BLM.

B. Develop any appropriate mitigation.

11. Recreation

The SEIS will evaluate impacts to the Tongue River State Recreation Area, and develop any appropriate mitigation.

12. Aesthetics

The SEIS will:

A. Evaluate the visibility of the project from the Tongue River State Recreation Area.

B. Evaluate the visibility of the project from county roads in the area.

C. Evaluate the visibility of the project and resulting impacts to aesthetics to local residents, Native Americans, hunters, recreational users, sightseers, *etc.*

D. Develop any appropriate mitigation.

13. Environmental Justice

The SEIS will include analysis as required of potential environmental justice effects from construction and operation of the Western Alignment, particularly focused on impacts to Native Americans, including the Northern Cheyenne, and develop any appropriate mitigation. Pursuant to guidance provided by the Council on Environmental Quality, the preparation of the SEIS will include public outreach to ensure appropriate coordination with affected low-income and minority populations. The public outreach will ensure that affected communities have adequate opportunities for public participation and comment on the Draft SEIS.

Section II

Tongue River I and Tongue River II

Tongue River I

Tongue River I is TRRC's original application for construction and operation of 89 miles of railroad between Miles City, Montana, and two termini in Ashland, Montana, which was approved by the Board's predecessor agency in 1986.

The SEIS will:

A. Include a wetland analysis for all wetlands and waters of the U.S. including creek and river crossings because there was no requirement that one be done when the EIS in *Tongue River I* was prepared.

B. Update Biological Assessment information based on consultation with the U.S. Fish and Wildlife Service.

C. In consultation with the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, and TRRC, finalize and implement an appropriate Programmatic Agreement which will apply to the entire line from Miles City to Decker, Montana.

D. As requested by MT DNRC, the Northern Cheyenne, and the Northern Plains Resource Council, provide a limited additional analysis of water quality to include a discussion of the designation of Otter Creek, and the upper and lower Tongue River as impaired water bodies by the state of Montana.

E. Evaluate effects on BLM property in the areas of wildlife habitat; vegetation; riparian/wetlands; livestock grazing; soil, water, and air; cultural resources; recreation; socioeconomic; access; wilderness; and, environmental justice.

F. Include an analysis of potential impacts to the sturgeon chub, and the sicklefin chub, and include mitigation to avoid construction during spawning/incubation periods.

G. Include additional analysis related to the proposed changes in the alignment that may result in potential impacts to the Miles City Fish Hatchery. The analysis will also consider changes to the hatchery, specifically the increase in the number of hatchery ponds and the initiation of a new recovery program for the pallid sturgeon.

Tongue River II

TRRC sought in *Tongue River II* to extend the rail line approved in *Tongue River I* another 41 miles from Ashland to Decker, Montana. In 1996, the Board approved *Tongue River II* via the Four Mile Creek Alternative.

The SEIS will:

A. Based on consultation with the Corps, update the existing wetland delineation and functional analysis information for all creek and river crossings to the extent necessary in connection with the Corps' permitting process.

B. Based on consultation with the U.S. Fish and Wildlife Service, update biological assessment information to the extent deemed necessary.

C. In consultation with the Montana State Historic Preservation Office, the Advisory Council on Historic Preservation, BLM, MT DNRC, the Corps, and TRRC finalize an appropriate Programmatic Agreement, which will apply to the entire line from Miles City to Decker, Montana.

D. As requested by the MT DNRC, the Northern Cheyenne, and the Northern Plains Resource Council, provide a limited analysis of water quality, to include a discussion of the designation of Hanging Woman Creek, and the upper and lower Tongue River as impaired water bodies by the state of Montana.

E. Include additional analysis, as required, of potential environmental justice effects from construction and operation of *Tongue River II* on *Tongue River III* and the Four Mile Creek Alternative, particularly focused on impacts to Native Americans, including the Northern Cheyenne.

Section III

Cumulative Effects

Cumulative effects of the construction and operation of the entire line from Miles City to Decker, MT will be discussed in the SEIS. This cumulative impacts discussion will update the previous information contained in *Tongue River I* and *Tongue River II* to include Custer Forest timber sales projections, as well as a discussion of reasonably foreseeable developments, including BLM's recently approved management plan relating to the development of coal bed methane wells, as well as expanded coal mine development in Wyoming, new power plants construction in Wyoming and Montana, and the recently approved Dakota, Minnesota and Eastern rail line. In addition, more general information will be provided regarding future coal mine development in the Ashland, MT area and the air quality effects of the use of low sulfur coal in power production. Impacts to Native Americans will also be addressed.

By the Board, Victoria Rutson, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 03–21550 Filed 8–21–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34368]

Union Pacific Railroad Company—Trackage Rights Exemption—Omaha Public Power District

Pursuant to a trackage rights agreement dated July 25, 2003,[1] between Union Pacific Railroad Company (UP)

[1] A redacted version of the trackage rights agreement between UP and OPPD was filed with the notice of exemption. The full version of the agreement, as required by 49 CFR 1180.6(a)(7)(ii), was concurrently filed under seal along with a motion for protective order. A protective order was served on August 14, 2003.

and Omaha Public Power District (OPPD), OPPD has agreed to grant to UP local trackage rights on OPPD's entire line of railroad between milepost 6.0 near Arbor, NE, and milepost 56.3 near College View, NE, a distance of approximately 56.65 miles.[2]

The transaction is scheduled to be consummated on January 1, 2004.

The purpose of the trackage rights is to permit UP to provide service to OPPD's Nebraska City Power Station and to other shippers located along the rail line.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34388, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, General Commerce Counsel, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 14, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–21298 Filed 8–21–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 11, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 22, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0089.

Form Number: IRS Form 1040NR.

Type of Review: Revision.

Title: U.S. Nonresident Alien Income Tax Return.

Description: Form 1040NR is used by nonresident alien individuals and foreign estates and trusts to report their income subject to tax and compute the correct tax liability. The information on the return is used to determine whether income, deductions, credits, payments, *etc.*, are correctly figured. Affected public are nonresident alien individuals, estates, and trusts.

Respondents: Individuals or households, Business of other for-profit, Farms.

Estimated Number of Respondents/Recordkeepers: 309,170.

Estimated Burden Per Respondent/Recordkeeper:

Recordkeeping	6 hr., 33 min.
Learning about the law or the form.	1 hr., 19 min.
Preparing the form	.6 hr., 28 min.
Copying, assembling, and sending the form to the IRS.	1 hr., 16 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 4,790,964 hours.

OMB Number: 1545–0123.

Form Number: IRS Form 1120 and Schedule D, H, N, and PH.

Type of Review: Extension.

Title: For 1120, U.S. Corporation Income Tax Return; Schedule D, Capital Gains and Losses; Schedule H, Section 280H Limitations for a Personal Service Corporation (PSC); Schedule N, Foreign Operations of the U.S. Corporations; and Schedule PH, U.S. Personal Holding.

Description: Form 1120 is used by corporations to compute their taxable income and tax liability. Schedule D (Form 1120) is used by corporations to report gains and losses from the sale of capital assets. Schedule PH (Form 1120) is used by personal holding companies to figure the personal holding company tax under section 541. Schedule H (Form 1120) is used by personal service corporations to determine if they have met the minimum distribution requirements of section 280H. Schedule N (Form 1120) is used by corporations that have assets in or business operations in a foreign country or a U.S. possession. The IRS uses these forms to determine whether corporations have correctly computed their tax liability.

Respondents: Business or other for-profit, Farms.

Estimated Number of Respondent/Recordkeepers: 1,990,783.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying assembling, and sending the form to the IRS
1120	70 hr., 47 min	42 hr., 1 min	72 hr., 56 min	8 hr., 2 min.
1120–A	43 hr., 45 min	24 hr., 34 min	49 hr., 3 min	5 hr., 5 min.
Schedule D (1120)	6 hr., 56 min	3 hr., 55 min	6 hr., 3 min	32 min.
Schedule H (1120)	65 hr., 58 min	35 min	43 min	
Schedule N (1120)	3 hr., 35 min	1 hr., 7 min	3 hr., 6 min	32 min.
Schedule PH (1120)	15 hr., 18 min	6 hr., 12 min	8 hr., 35 min	32 min.

[2] UP indicates that the milepost designations of the end points do not reflect the actual length of the trackage rights segment because the trackage rights segment includes two line segments with noncontiguous mileposts; a 5.3-mile segment from milepost 6.0 near Arbor to milepost 0.7 near Nebraska City, and a connecting 51.35-mile segment from milepost 4.95 near Nebraska City to milepost 56.3 near College View.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 367,686,291 hours.
OMB Number: 1545–0130.
Form Number: IRS Form 1120S, Schedule D, and Schedule K–1.
Type of Review: Revision.
Title: Form 1120S, Income Tax Return for an S Corporation; Schedule D (Form 1120S), Capital Gains and Losses and Built-In Gains; and Schedule K–1 (Form 1120S), Shareholder's Share of Income, Credits, Deductions, *etc.*
Description: Form 1120S, Schedule D (Form 1120S), and Schedule K–1 (Form 1120S) are used by an S Corporation to figure its tax liability, and income and other tax-related information to pass through to its shareholders. Schedule K–1 is used to report to shareholders their share of the corporation's income, deductions, credits, *etc.* IRS uses the information to determine the correct tax for the S corporation and its shareholders.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/ Recordkeepers: 1,880,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying assembling, and sending the form to the IRS
1120 S	64 hr., 5 min	24 hr., 24 min	46 hr., 58 min	5 hr., 54 min.
1120 D (1120S)	10 hr., 2 min	4 hr., 31 min	9 hr., 32 min	1 hr., 20 min.
Schedule K-1 (1120S)	16 hr., 58 min	10 hr., 36 min	15 hr., 4 min	1 hr., 4 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 486,292,100 hours.
OMB Number: 1545–0975.
Form Number: Form 1120–W.
Type of Review: Revision.
Title: Estimated Tax for Corporations.
Description: Form 1120–W is used by corporations to figure estimated tax liability and the amount of each installment payment. Form 1120–W is a worksheet only. It is not to be filed with the Internal Revenue Service.
Respondents: Business or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 900,000.
Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form
1120–W	8 hr., 7 min.	1 hr., 0 min.	1 hr., 10 min.
1120–W, Schedule. A (Part I)	22 hr., 43 min.	6 min.	28 min.
1120–W, Schedule A (Part II)	10 hr., 31 min.	35 min.	48 min.
1120–W, Schedule A (Part III)	6 hr., 13 min.		6 min.

Frequency of Response: Annually.
Estimated Total Reporting/ Recordkeeping Burden: 9,316,190 hours.
Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Treasury PRA Clearance Officer.

[FR Doc. 03–21536 Filed 8–21–03; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 13, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before September 22, 2003 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–0945.
Regulation Project Number: F1–255–82 NPRM and Temporary.
Type of Review: Extension.
Title: Registration Requirements With Respect to Debt Obligations.
Description: The rule requires an issuer of a registration-required obligation and any person holding the obligation as a nominee or custodian on behalf of another to maintain ownership records in a manner which will permit examination by the IRS in connection with enforcement of the Internal Revenue laws.
Respondents: Business of other for-profit.
Estimated Number of Recordkeepers: 50,000.
Estimated Burden Hours Recordkeeper: 1 hour.
Estimated Total Recordkeeping Burden: 50,000 hours.
OMB Number: 1545–0950.
Form Number: IRS Form 23.
Type of Review: Extension.
Title: Application for Enrollment to Practice Before the Internal Revenue Service.
Description: Form 23 must be completed by those who desire to be enrolled to practice before the Internal Revenue Service. The information on the form will be used by the Director of Practice to determine the qualifications and eligibility of applicants for enrollment.
Respondents: Individuals or households, Federal Government.
Estimated Number of Respondents: 2,400.
Estimated Burden Hours Per Respondent: 1 hour.
Estimated Total Reporting Burden: 2,400 hours.
OMB Number: 1545–1538.

Notice Number: Notice 97–34.

Type of Review: Extension.

Title: Information Reporting on Transactions With Foreign Trust and on Large Foreign Gifts.

Description: This notice provides guidance on the foreign trust and foreign gift information reporting provisions contained in the Small Business Job Protection Act of 1996.

Respondents; Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 5,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 45 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 3,750 hours.

OMB Number: 1545–1556.

Regulation Project Number: REG–251985–96 Final.

Type of Review: Extension.

Title: Source of Income From Sales of Inventory Partly From Sources Within a Possession of the United States; Also, Source of Income Derived From Certain Purchases From a Corporation Electing Section 936.

Description: The information requested in section 1.863–3(f)(6) is necessary for the Service to audit taxpayers' returns to ensure taxpayers are properly determining the source of their income.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 2 hours and 30 minutes.

Estimated Total Reporting Burden: 500 hours.

OMB Number: 1545–1840.

Regulation Project Number: REG–107618 NPRM and Temporary.

Type of Review: Extension.

Title: Automatic Extension of Time to File Certain Information Returns and Exempt Organizations Returns.

Description: The regulations provide an automatic extension of time to file certain information returns and exempt organization returns. The regulations remove the requirement for a signature and an explanation to obtain an automatic extension of time to file information returns; they also remove the requirement for a signature and an explanation to obtain an automatic extension of time to file exempt organization returns. The regulations affect taxpayers required to file certain information returns and/or exempt organization returns who need an extension of time to file.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Glenn Kirkland (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–21537 Filed 8–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the State of California)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 7 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Monday, September 23rd, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Peterson O'Brien at 1–888–912–1227, or 206–220–6098.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Monday, September 23rd, 2003 from Noon Pacific Time to 1 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or (206) 220–6098, or write to Mary Peterson O'Brien, TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Mary Peterson O'Brien. Ms. O'Brien can be reached at 1–888–912–1227 or (206) 220–6098.

The agenda will include the following: Various IRS issues.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–21605 Filed 8–21–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Notice of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer program matching Internal Revenue Service (IRS) records with VA pension and parents' dependency and indemnity compensation (DIC) records.

The purpose of this match is to compare income status as reported to VA with records maintained by IRS. The legal authority for this match is section 6103(l)(7) of the Internal Revenue Code (26 U.S.C. 6103(l)(7)) and 38 U.S.C. 5317.

VA plans to match records of veterans, surviving spouses and children who receive pension, and parents who receive DIC, with data from the IRS income tax return information as it relates to unearned income.

VA will use this information to adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to ensure accurate reporting of income.

Records To Be Matched: VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22). The IRS records will come from the Wage and Information Returns (IRP) Processing File, Treas/IRS 22.061, hereafter referred to as the Information Return Master File (IRMF), as published at 66 FR 63797 (December 10, 2001) through the Disclosure of Information to Federal, State and Local Agencies (DIFSLA) program. In accordance with Title 5 U.S.C. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget (OMB).

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by P.L. 100–503.

DATES: The match will start no sooner than 30 days after publication of this

Notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties are submitted to Congress and OMB, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs within three months of the ending date of the original match that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Mail or hand-deliver written comments to: Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1158, 810 Vermont Avenue, NW., Washington, DC 20420, between 8 a.m. and 4:30 p.m., Monday through Friday except holidays.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge (212B), (202) 273–7218.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and OMB.

Approved: August 4, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–21566 Filed 8–21–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 163

Friday, August 22, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA-2003-13850; Airspace Docket No. 02-AEA-19]

RIN 2120-AA66

Proposed Amendment of Restricted Areas R–5802A and B; and Establishment of Restricted Areas R–5802C, D, and E, Fort Indiantown Gap, PA

Correction

In proposed rule document 03–20772 beginning on page 48579 in the issue of Thursday, August 14, 2003, make the following correction:

§73.58 [Amended]

On page 48581, in the first column, in §73.58, under the paragraph titled, "**R–5802E Fort Indiantown Gap, PA [New],**" in the second line, "long. 74°42′59″ W." should read "long. 76°42′59″ W.".

[FR Doc. C3–20772 Filed 8–21–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
August 22, 2003

Part II

Department of Health and Human Services

Centers for Medicare and Medicaid Services

42 CFR Parts 409, 417, and 422
Medicare Pragram; Modifications to Managed Care Rules; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 409, 417, and 422

[CMS–4041–F]

RIN 0938–AK71

Medicare Program; Modifications to Managed Care Rules

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule responds to comments that we received on a proposed rule that was published in the **Federal Register** on October 25, 2002. It implements certain provisions relating to the Medicare+Choice (M+C) program that were enacted in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection (BIPA) Act of 2000. It also addresses comments on, and makes revisions to, regulations that were discussed in the October 2002 proposed rule that were based on M+C program experience and feedback from M+C organizations.

EFFECTIVE DATES: This final rule is effective on September 22, 2003.

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SUPPLEMENTARY INFORMATION:

I. Background

A. Balanced Budget Act of 1997

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33), added sections 1851 through 1859 to the Social Security Act (the Act) establishing a new Part C of the Medicare program, known as the Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Part B, except for individuals with end-stage renal disease, could elect to receive benefits either through the original Medicare fee-for-service program or a M+C plan, if one was offered where he or she lived.

The primary goal of the M+C program was to provide Medicare beneficiaries with a wider range of health plan choices through which to obtain their Medicare benefits. The BBA authorized a variety of private health plan options for beneficiaries, including both the traditional managed care plans (such as those offered by health maintenance organizations (HMOs)) that had been offered under section 1876 of the Act, and new options that were not previously authorized. Three types of M+C plans were authorized under the new Part C, as follows:

- M+C coordinated care plans, including HMO plans (with or without point-of-service options), provider-sponsored organization (PSO) plans, and preferred provider organization (PPO) plans.
- M+C medical savings account (MSA) plans (combinations of a high-deductible M+C health insurance plan and a contribution to an M+C MSA).
- M+C private fee-for-service plans.

B. Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA) (Pub. L. 106–113) amended the M+C provisions of the Act. In a final rule that we published in the **Federal Register** on June 29, 2000 (65 FR 40170), we invited comments on many of the BBRA amendments. We noted in the October 25, 2002, proposed rule that we would respond to the comments relating to these BBRA provisions in this final rule.

We received comments from five organizations. Most of the comments were supportive of the changes brought about by the BBRA amendments and do not require our response. Most of the other comments addressed provisions other than the BBRA amendments. Rather they focused on the provisions of the final rules dealing with the BBA published on June 29, 2000. The following discussion responds to the comments made on BBRA.

Comment: Two major organizations commented on risk adjustment. One organization expressed concern that the collection of encounter data from physicians would be burdensome to physicians. A second organization indicated that they did not want to see a delay in implementation of the risk adjustment schedule as contained in BBRA.

Response: Legislation has determined the specifics of the schedules that CMS has implemented as to risk adjustment and the collection of encounter data. Section 511(a) of the BBRA amended section 1853(a) of the Act by providing for a risk adjustment transition schedule for calendar years (CY) 2000 and 2001 that differed from the one that we had provided as part of our risk adjustment methodology. The schedule was again modified in the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA). Other BBRA provisions were also changed by the BIPA.

The final rule published on March 22, 2002 revised the regulations to reflect the changes to the BBRA provided in sections 502, 511, and 512 of the BIPA.

C. Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (the BIPA) (Pub. L. 106–554), enacted December 21, 2000, further amended the M+C provisions of the Act. The final rule published on March 22, 2002 amended the regulations to reflect changes made by certain provisions of the BIPA, including those discussed in section I.B of this preamble, that amended provisions enacted in the BBRA. We published a proposed rule in the **Federal Register** on October 25, 2002 (67 FR 65672) that would revise M+C regulations to implement sections 605, 606, 611, 612, 615, 617, 620, 621, and 623 of the BIPA. In the October 2002 proposed rule, we also proposed modifying certain M+C regulatory provisions in response to program experience and feedback from M+C organizations.

D. Organization of the Preamble

The discussion of various policy issues in this final rule corresponds with the discussion of regulatory revisions that were presented in the October 2002 proposed rule. For the convenience of the reader, the analysis of comments and our responses are integrated with the discussion of each issue.

To accommodate the preamble's organization, we modified the numbering scheme accordingly. For example, roman numeral II is now Analysis of and Responses to Public Comments (instead of Provisions of this Proposed Rule), roman numeral III is Provisions of this Final Rule, and so forth.

We have also included a new section (II–A–10) discussing the fact that this final rule makes revisions to the regulations text to reflect changes to the statute made by section 616, which focuses on eliminating health disparities in the M+C program. We have provided a good cause statement for the inclusion of these revisions in this final rule to waive the requirement for notice and comment. As in the case of the revisions to the regulations made in the final rule published on March 22, 2002, notice and comment are not necessary since these revisions have no legal effect. Rather, they simply amend the text of the regulations to reflect statutory provisions whose applicability is

unaffected by these changes in regulation text. Although we are still sorting through implementation issues associated with this provision, we wanted to ensure that Congressional intent on this issue is reflected in M+C regulations.

In addition, we have made some minor revisions to Subpart O in an attempt to clarify information concerning our sanction authority. These changes do not add any new requirements, but serve to improve the regulatory language to more clearly affect the intent of the existing regulations (and statutory intent). We discuss these changes in the preamble and have modified the regulations accordingly.

II. Analysis of and Responses to Public Comments

In addition to the Response to Comments made above in reference to the BBRA, we received 10 letters containing over 100 specific comments. Comment letters were received from trade associations that represent providers and consumers, managed care organizations, and one individual. Below is a list of the areas that generated the most concern.

- Part 422 Subpart M—Grievances, Organization Determinations, and Appeals
- Part 422 Subpart C—Benefits and Beneficiary Protections
- Part 422 Subpart B—Eligibility, Election, and Enrollment
- Part 417 Subpart L—Medicare Contract Requirements.

A. Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000

1. Revision of Payment Rates for End-Stage Renal Disease (ESRD) Patients Enrolled in Medicare+Choice Plans

Section 605(a) of the BIPA amended section 1853(a)(1)(B) of the Act by requiring us to provide for appropriate adjustments to the M+C ESRD payment rates, effective January 1, 2002, to reflect the demonstration rate (including the risk adjustment methodology associated with the demonstration rate) of the social health maintenance organization ESRD capitation demonstration. This demonstration assessed whether it would be feasible to allow Medicare ESRD patients of all ages to enroll in M+C plans and to test risk-adjusted capitation payments for ESRD beneficiaries.

Before January 1, 2002, M+C ESRD capitation payments were based on State level base rates that were not risk-adjusted. The base payment rates were based on a base year (1997) amount that represented 95 percent of projected State average fee-for-service costs, as determined at that time.

Under section 605(c) of the BIPA, we were required to publish for public comment a description of the adjustments we proposed to make in accordance with section 605(a) of the BIPA. We published a proposed notice on May 1, 2001 (66 FR 21770) soliciting comments on the proposed adjustments. Section 605(c) of the BIPA further required us to publish these adjustments in final form so that the amendment made by section 605(a) of the BIPA would be implemented consistent with section 605(b) of the BIPA (which provided that the adjustments were to become effective with payments made for January 2002). We published this final notice in the **Federal Register** on October 1, 2001 (66 FR 49958). The foregoing process was separate from this rulemaking. In the October 2002 proposed rule, however, we proposed revisions to § 422.250(a)(2)(i)(B) to reflect our approach to implementing the requirements of section 605(a) of the BIPA.

The new ESRD payment methodology set forth in the final notice published on October 1, 2001—

- Increased the ESRD base payment rate for CY 2002 by 3 percent. We determined in the final notice that a 3 percent increase in the base rate was the most appropriate proxy for 100 percent of the estimated per capita fee-for-service expenditures for ESRD beneficiaries, and the most appropriate way to reflect the demonstration rates; and
- Adjusted State per capita rates by age and sex factors, in order to reflect differences in costs among ESRD patients.

These adjustment factors and rates for CY 2002 for enrollees with ESRD can be found on our Web site at *http:www.cms.gov/stats/hmorates/aapccpg.htm#2002rates*.

For the purpose of M+C payment, ESRD beneficiaries include all beneficiaries with ESRD, whether entitled to Medicare because of ESRD, disability, or age. Under the new M+C ESRD payment methodology published on October 1, 2001, rates would continue to include the costs of beneficiaries with Medicare as Secondary Payer (MSP) status. (Costs to Medicare of M+C ESRD enrollees with MSP status do not include payments made by other primary payers such as employer group health plans or other insurers.)

Several organizations commented on the revision of § 422.250(a)(2)(i).

Comment: Several commenters believe that the proposed revision to ESRD rates at § 422.250(a)(2)(i) should include payments made by primary payers other than Medicare, such as employer group health plans or other insurers. Since the M+C ESRD rates include the costs of beneficiaries with Medicare as Secondary Payer (MSP) status but exclude payments made by other primary payers such as employer group health plans or other insurers, the M+C ESRD rates are artificially low and do not reflect the actual health care costs. Two commenters also contended that the proposed payment methodology appears to be contrary to the provisions set forth in section 605(a) of the BIPA, which requires us to "provide for appropriate adjustments to the M+C ESRD payment rates * * * to reflect the demonstration rate of the social health maintenance organization ESRD capitation demonstration." These commenters refer to a statement in the proposed Notice that the Demonstration rates were about 20 percent over rates paid outside the Demonstration because beneficiaries with MSP were not allowed to enroll in the Demonstration. The commenters conclude that the revisions to the ESRD payment methodology will significantly decrease the payment rates for M+C ESRD enrollees.

Response: As we stated in the October 1, 2001 final notice, we recognize that MSP for M+C ESRD enrollees is an issue. We noted that we would explore options within our payment system for addressing MSP status while proceeding to implement in CY 2002 the 3 percent base rate increase and the age and sex adjusters.

The ESRD Demonstration did not allow ESRD beneficiaries with MSP to enroll, and thus these beneficiaries were excluded from calculation of Demonstration payment rates. We are unable to exclude from the M+C program any beneficiaries with MSP who develop ESRD. Thus, we had to find a way to adapt the ESRD demonstration methodology to this different population. The provision for "adjustments" to "reflect" the demonstration rates and methodology does not mean that we must necessarily pay the same amount where the applicable circumstances, in this case the presence of beneficiaries with MSP, are different.

To assess whether the proposed M+C ESRD payment rates would increase or decrease payments to M+C organizations, the appropriate comparison would be M+C ESRD rates in effect prior to 2002, not the rates paid the ESRD Demonstration sites. The M+C

ESRD rates in effect prior to CY 2002 included the costs of beneficiaries with MSP, and we continued this approach. Two commenters are not correct in stating that the proposed M+C ESRD payment rates will significantly decrease payments to M+C organizations. In fact, the base rates were increased 3 percent under the method effective CY 2002. As we stated in the final notice, given current enrollment restrictions, we estimate that the age- and sex-adjusted average ESRD payment per beneficiary will result in a significant increase in payments to M+C organizations for their ESRD enrollees.

Accordingly, we are retaining the language we proposed which reflects the methodology we adopted through the 2001 notice process.

2. Permitting Premium Reductions as Additional Benefits Under Medicare+Choice Plans

Section 606 of the BIPA amended section 1854(f)(1) of the Act to permit M+C organizations to elect to reduce or eliminate standard Part B premiums for their M+C Medicare enrollees, as an additional benefit, if the M+C organization has an adjusted excess amount, as defined in § 422.312(a)(2), for that plan in a contract year, beginning in CY 2003. Under section 606 of the BIPA, M+C organizations can elect to accept lower payments from us and apply 80 percent of the reduction to reduce the standard Part B premiums of M+C beneficiaries enrolled in that plan. The amount of the reduction in payments to the M+C organizations may not exceed 125 percent of the Medicare standard Part B premium rate set by us for that year, which is the amount that would result in eliminating the average enrollee's liability for the Part B premium entirely. The reduction must be applied uniformly to all similarly situated enrollees of the M+C plan.

In addition, section 606 of the BIPA required that the list of information made available to each enrollee electing an M+C plan must also include a description of any reduction in the Part B premiums. We proposed revising § 422.2, § 422.111(f), § 422.250(a)(1), and § 422.312 to reflect these provisions in the regulations. We received one comment in support of these regulations and are finalizing them as proposed.

3. Payment of Additional Amounts for New Benefits Covered During a Contract Term

Section 611 of the BIPA amended sections 1852(a)(5) and 1853(c)(7) of the Act with the intent of limiting the financial impact on M+C organizations of new coverage requirements adopted by the Congress. Before the enactment of the BIPA, section 1852(a)(5) provided that if a national coverage determination (NCD) of the Secretary which took effect after M+C payment rates were announced for a particular year, and that NCD would result in "a significant change in the costs to a Medicare+Choice organization," M+C organizations were not required to cover them under their contracts, but the services were instead paid for on a fee-for-service basis through our fiscal intermediaries or carriers, until the next annual M+C payment announcement is made following the coverage change. Under the pre-BIPA version of section 1853(c)(7) of the Act, if an NCD resulted in "significant" costs, we were required to "adjust appropriately" capitation payments to reflect the new costs.

Section 611 of BIPA extended these provisions to changes in coverage resulting from legislation, in addition to those resulting from NCDs. We proposed revisions to § 422.109 to reflect these amendments. We received several comments on our proposed revised regulations.

Comment: Several commenters expressed concern that people enrolled in M+C organizations may not understand that new benefits or services available as a result of a national coverage determination (NCD) or legislative change in benefits may be paid in a different manner than other covered benefits when we determine that the costs of NCDs or legislative changes in benefits are "significant." The commenters suggested that we publicize when new coverage is available, require M+C organizations to notify their members of the availability of the new benefits or services, and require M+C organizations to notify their members about the manner in which Medicare coverage and payment would take place. It was recommended that the notification should include a clear explanation of whether, and how much, the beneficiary might have to pay for the benefit or service until it is included in the M+C organization's capitation payment.

Response: We will continue to require M+C organizations to notify plan members when there is an NCD. If the NCD meets the "significant cost" threshold when the coverage is not included in the services, M+C organizations must cover the NCD under their contract in exchange for a monthly capitation payment. The M+C organization must notify plan members that original Medicare fee-for-service cost-sharing rules apply. M+C organizations are required to include an explanation of new NCDs in their next regularly scheduled beneficiary communication. If the new NCD or legislative change in benefits meets the "significant cost" threshold per § 422.109(a), the written explanation to beneficiaries about the new coverage will include the fact that the service will be paid in accordance with original Medicare payment rules and will include information on financial liability enrollees will have.

Comment: One commenter suggested that the final rule require M+C organizations to provide a statement in their *Summary of Benefits* that new Medicare benefits will be paid under traditional Medicare. It was also suggested that an explanation of the method by which enrollees in an M+C plan can access new benefits and services be included in the model *Evidence of Coverage*.

Response: It would be misleading to state that any new Medicare benefits would be paid under traditional Medicare rules. Unless new benefits meet the "significant" cost threshold, the M+C organization is required to cover them under its contract in exchange for its capitation payment. As stated above, M+C organizations are already held responsible for notifying enrollees of new coverage and of any cost sharing liability related to a new service, if the new service meets the "significant cost" threshold. Therefore, we do not believe it is feasible or even necessary to include the notification with respect to specific NCDs in the standardized *Summary of Benefits* or the annual *Evidence of Coverage*, because NCDs can be effective at any time during the year. We believe our current policy of having M+C organizations inform enrollees of NCDs when they occur both protects beneficiaries and prevents confusion.

Comment: One commenter suggested that we explain, in our program memoranda on new benefits, the procedures for direct reimbursement by the fiscal intermediary and the carrier in cases that meet the "significant cost" threshold and therefore are not covered by the M+C organization.

Response: We will make every effort to provide the suggested explanation in program memoranda on new benefits, if direct reimbursement by fiscal intermediaries and carriers is required because the new coverage meets the "significant cost" threshold. However, because program memoranda about new benefits are sometimes released independent of, and prior to, a determination that the new benefits meet the "significant cost" threshold described in § 422.109(a), it is not always possible to include such an

explanation in these program memoranda.

Comment: One commenter requested that we clarify that enrollees in an M+C plan are entitled to receive a new benefit if it is medically necessary, and that the M+C organization is responsible for ensuring access to, but not necessarily payment for, all new benefits.

Response: In accordance with section 1852 of the Act and regulations at § 422.101, M+C organizations must provide coverage of all Medicare-covered benefits that are available to beneficiaries residing in the plan's service area by furnishing, arranging for, or making payment for the services.

If an NCD or legislative change in benefits *does not* meet the "significant cost" threshold described in § 422.109(a), the M+C organization is required to provide coverage of the NCD or legislative change in benefits by furnishing, arranging for, or making payment for the services as of the effective date stated in the NCD or specified in the legislation. The M+C organization must also assume risk for the costs of that service or benefit as of the effective date stated in the NCD or specified in the legislation.

If an NCD or legislative change in benefits *does* meet the "significant cost" threshold described in § 422.109(a), the M+C organization must provide coverage of the NCD or legislative change in benefits by furnishing or arranging for the NCD service or legislative change in benefits. However, the M+C organization is not required to pay or assume risk for the costs of that service or benefit until the contract year for which payments are adjusted to take into account the cost of the NCD service or legislative change in benefits. Medicare fee-for-service payment for the service is in addition to the capitation payment to the M+C organization and made directly by the fiscal intermediary and carrier to the M+C organization (or its designee, which may be the provider) in accordance with original Medicare payment rules, methods, and requirements.

Comment: One commenter recommended that we include the total costs resulting from all NCDs and legislative changes in benefits when making the "significant cost" determination. The commenter suggested that, if there is insufficient data for us to develop a reasonably reliable cost estimate for any NCD or legislatively mandated coverage, we should conclude that the costs for that new coverage have not been included in current M+C rates and that Medicare fee-for-service payment should be available for such coverage.

Response: We agree with the commenter's first point that several NCDs or legislative changes in benefits that do not individually trigger the existing regulatory definition of "significant" could potentially impose a greater burden than a single change that meets this definition. It would not be practical, however, to attempt to aggregate the costs of NCDs or statutory coverage changes during the "transition" year governed by section 1852(a)(5) of the Act, before capitation payments are "adjust[ed] appropriately" by us in the next payment announcement as required under section 1853(c)(7) of the Act. In part, this is because it would not be clear whether any aggregate test has been met until the last NCD or legislative change in benefits to be aggregated is issued. By that time, it would be too late to make any adjustment with respect to the M+C organization's obligation to cover earlier NCDs.

More importantly, the period prior to an adjustment in capitation rates is by definition "temporary" and limited to a period of less than 12 months. We believe that costs that may not be "significant" when the M+C organization knows they are being incurred for a temporary period of a few months would become "significant" if left unaccounted for in future payments indefinitely. Accordingly, we believe that it is reasonable to adopt a different interpretation of "significant" for purposes of deciding under section 1852(a)(5) of the Act whether to make temporary fee-for-service payments than for purposes of deciding whether, under section 1853(c)(7), to permanently "adjust appropriately" capitation payments. Given the temporary nature of partial year costs, we believe that the existing definition of significant costs in § 422.109(c) is appropriate for purposes of deciding whether to pay for services on a fee-for-service basis until an adjustment can be made to capitation payments. We believe that an M+C organization could bear the cost of any individual NCD or legislative change that does not meet this definition for the limited period of time involved prior to an appropriate adjustment being made to capitation rates.

However we believe that costs of NCDs and legislative changes that may not be significant when only in place for a few months could, when considered in the aggregate, be quite significant if left unaccounted for indefinitely in future capitation payments. Thus, in response to the commenters suggestion that the costs of NCDs and legislative changes be aggregated, we are providing for a different definition of "significant" costs to be used for purposes of the determination as to whether to make an adjustment under section 1853(c)(7) than applies for purposes of whether to pay on a fee-for-service basis under section 1852(a)(5) of the Act. We have revised the definition of significant cost (which was in § 422.109(c), but is now in § 422.109(a)) to provide that, for purposes of determining whether to make an adjustment under § 422.256, the tests in the definition of "significant cost" are applied to the aggregate costs of all NCDs and legislative changes in benefits made in the contract year. Under this test, the "average cost" of every NCD and legislative change in benefits would be added together. If the sum of all these average amounts exceeds the threshold under § 422.109(a)(1), then an adjustment to payment will be made under § 422.256 to reflect these costs. Alternatively, if the costs of the NCDs and legislative changes in benefits, in the aggregate, exceed the level set forth in § 422.109(a)(2), an adjustment to payment will be made under § 422.256.

We note that even when the "significant cost" threshold has been met under the existing definition, the current methodology for making the adjustment required under section 1853(c)(7) of the Act does not result in any adjustment in counties paid based on the minimum update rate (the so-called "2 percent minimum update" counties). The annual growth rate used to update M+C rates each year includes estimates of expenditures for new mid-year benefits. However, according to section 1853(c) of the Act, our Office of the Actuary uses the annual growth rate to update only the floor and blended rates, so the minimum 2 percent update rate does not reflect the costs of new benefits effective in the middle of the previous payment year. The impact is substantial because 64 percent of the 100 counties with the highest M+C enrollment in 2002 received the minimum update rate in the last three years, 2001 through 2003. The result is that M+C organizations have paid for almost all new benefits out of capitation payments that do not include payment for these new benefits.

We believe the Congress intended, in enacting section 1853(c)(7) of the Act, that payments to M+C organizations be adjusted to reflect the costs of new benefits when they are added through an NCD or legislative change. Since this does not occur under the current approach in the case of 2 percent counties, we are changing our method of making adjustments under section

1853(c)(7) of the Act. When the costs of NCDs and statutory coverage changes in a given year are determined to be "significant" under the new definition described above, these costs will be included in an "NCD adjustment factor" that will be added to the county rates in counties that will receive a 2 percent update. In other words, the 2 percent update will be applied to the newly adjusted rates. (The assumption is that the floor and blended rates are appropriately adjusted for new benefits because they are increased by the M+C growth rate that includes NCD and legislative changes in benefits estimates.) The "NCD adjustment factor" will be applied prospectively to the rate calculation for the year following the year after the NCDs and legislative benefit changes are effective. For example, NCDs and legislative changes determined to be significant in 2003 will be aggregated, and the "NCD adjustment factor" computed will be used to adjust payments for 2005. We have modified § 422.256(b) to codify in regulation this additional NCD adjustment factor adjustment to the M+C capitation rates.

Comment: One commenter supported the proposed rule and also asked whether the term "significant" would be defined as currently provided for in M+C regulations with a defined cost threshold.

Response: As discussed above, the proposed language at § 422.109(a) defining "significant cost" as it relates to the decision whether to make fee-for-service payment pursuant to section 1852(a)(5) of the Act is being retained.

As discussed above we are revising § 422.109 to provide that this definition will be applied to NCDs and legislative changes in benefits in the aggregate for purposes of the adjustments under § 422.256

4. Restriction on Implementation of Significant New Regulatory Requirements Midyear

Section 612 of the BIPA amended section 1856(b) of the Act to prohibit us from imposing significant new regulatory requirements on an M+C organization or plan, other than at the beginning of a calendar year. Comments on this issue and our responses follow.

Comment: One commenter asked that we use the term "requirements" instead of "regulations" in § 422.521. The commenter's reasoning for suggesting the use of "requirements" was that most documents from our agency that impose significant new cost or burdens are not in the form of regulations but are in the form of memoranda, guidance, manual chapters and the like.

Response: We agree with the commenter that requirements are often imposed through vehicles other than regulations. Therefore, in response to this comment, we are revising § 422.521 to extend the prohibition in section 612 of the BIPA to all requirements, not just those imposed in regulations. We note that we had previously made this commitment administratively.

Comment: One commenter requested that we define significant cost or burden as it is used in § 422.521. The commenter also suggested that we base the definition on cost or operational assessments conducted by us and by M+C organizations.

Response: We generally agree with the commenter and will explore methods to better define the meaning of "cost and burden" as those terms are used in § 422.521. However, we are leaving the text of § 422.521 unchanged.

5. Election of Uniform Local Coverage Policy for a Medicare+Choice Plan Covering Multiple Localities

Section 615 of the BIPA amended section 1852(a)(2) of the Act by adding a section that allows M+C organizations to achieve greater consistency of benefits for M+C plans covering multiple localities. In providing Medicare covered benefits to its enrollees, each M+C organization ordinarily must comply with, among other things, written coverage decisions of local carriers and intermediaries with jurisdiction for claims in the geographic area in which the services are covered under the M+C plan. Some M+C organizations have plans that cover a large area, either a State or multiple counties in a State. Section 615 of the BIPA allows M+C organizations that offer a plan in a geographic area to which more than one local coverage policy applies, to uniformly apply the local coverage policy that is most advantageous to M+C enrollees in the plan. We will make the final determination as to which local coverage policy is most beneficial to M+C enrollees.

By electing to use this uniform coverage policy, M+C organizations can benefit from economies of scale when printing and distributing marketing materials and descriptions of benefits for their M+C plans. This policy will also enable M+C organizations to standardize coverage decisions and provider contracts across entire plans, rather than having different policies apply in different geographic areas of the same plan. We received three comments on our proposed revision.

Comment: Two commenters suggested that we apply the newly allowed uniform coverage policy rule across all M+C plans offered by an M+C organization and/or its subsidiaries. One commenter argued that such an expansion of the rule would serve both consistency and uniformity, as well as provide for significant cost-savings for multi-state M+C organizations.

Response: Section 615 of the BIPA is clear in restricting our authority to permit an M+C organization's election of a uniform local coverage policy to a specific plan offered by an M+C organization. The statute does not permit application of the uniform local coverage policy across different plans offered by a single M+C organization and/or its subsidiaries.

Comment: One commenter requested further guidance on the criteria that we will use to determine the local coverage policy that is most beneficial to M+C enrollees in a plan whose service area encompasses more than one local coverage policy area. The commenter also suggested allowing the M+C organization to identify the local coverage policy that it believes would be most beneficial to its enrollees. The M+C organization would notify us, providing justification for the local medical review policy selected as the most beneficial to its enrollees. If we did not disagree within 60 days of receipt of notice, the M+C organization's proposal would be deemed approved.

Response: We agree that clarification is needed for both the criteria that we will use in evaluating the local coverage policies that are most beneficial to M+C enrollees and the time frame within which that evaluation will occur. Since the benefits covered by a plan are essential to preparation of the adjusted community rate (ACR) proposal related to that plan (see § 422.306), an M+C organization proposing to adopt a uniform coverage policy for a plan must notify us 60 days prior to the date the ACR proposal for that plan is due. We believe that a 60-day window will permit us sufficient time to fully evaluate the proposed uniform coverage policy election related to a plan, and to notify the M+C organization of our decision, while still allowing sufficient time for the M+C organization to prepare and submit its ACR proposal in a timely manner. Therefore, we have added a new section § 422.101(b)(3)(i) which explains the time frame within which an M+C organization must notify us of its intent to adopt a uniform local coverage policy for a plan. In addition, we have added § 422.101(b)(3)(ii) which establishes the factors we will consider to evaluate the local coverage policy that is most beneficial to M+C enrollees. We, in turn, will notify the M+C

organization of our determination as to the most advantageous local coverage policy. The statute is clear in requiring us "to identify" the most advantageous local coverage policy; we therefore do not believe we could take the passive role of deeming approval through a non-response. Additionally, a positive response from us ensures that there can be no ambiguity as to which of the competing local coverage policies actually applies to all enrollees of the plan.

6. Medicare+Choice Program Compatibility With Employer or Union Group Health Plans

Section 617 of the BIPA amended section 1857 of the Act by adding a new subsection (i), which provides us broad authority to waive or modify requirements that hinder the design of, the offering of, or the enrollment in M+C plans under contracts between M+C organizations and employers, labor organizations, or the trustees of a fund established to furnish benefits to an entity's employees.

Previously, M+C organizations that contracted with an employer group or with a State Medicaid agency to provide benefits had to comply with all requirements of the regulations found in part 422. The authority in section 617 of the BIPA was first available for CY 2001. We informed M+C organizations that, in order to facilitate the offering of M+C plans under contracts with employers, labor organizations, or the trustees of a benefits trust fund, upon receiving a written request from an M+C organization, we have the option to waive or modify those requirements in part 422 of the regulations that would hinder the design of, the offering of, or the enrollment in an M+C plan. As indicated in the proposed rule, after we have approved a request for a waiver, the requesting M+C plan, and any other M+C organization, will be able to use the waiver in developing their ACR proposal. Any M+C plan using the waiver must include that information in the cover letter of its ACR proposal submission to us. The waiver or modification will take effect once the ACR proposal has been approved.

To date, we have approved the following three types of waivers under the authority granted us in section 617 of the BIPA:

- *Employer-Only Plans:* We are allowing M+C organizations to offer employer-only plans (that is, M+C plans not available to the individual market). M+C organizations are not required to market these plans to individuals. In addition, M+C organizations will not be required to submit the marketing materials for employer-only plans for our pre-review and approval.
- Actuarial Swaps: We are allowing M+C organizations to swap benefits not covered by Medicare of approximately equal value when an employer asks for a benefit package that differs from the package offered by the M+C organization to the individual market.
- Actuarial Equivalence: We are allowing M+C organizations to raise the co-payments for certain benefits but to provide a higher benefit level or a modification to the premium charged, as long as projected beneficiary liability was actuarially equivalent.

We received two substantive comments on the employer group waiver provisions.

Comment: A commenter asked that we confirm whether our waiver authority can be used in areas such as ACR proposals, and enrollment and disenrollment processes (for example, the use of electronic enrollment and disenrollment for employer group members). The commenter also suggested that we revise the regulation to ensure that it is flexible enough to accommodate such waivers, including clarification that requests to use approved waivers that are not related to benefit and rate proposals may be submitted at any time during the year.

Response: As noted above, Section 617 of the BIPA provides broad authority for us to waive or modify requirements that hinder the design of, the offering of, or the enrollment in M+C plans under contracts between M+C organizations and employers or unions. Accordingly, under this authority, we have broad discretion to approve employer group waivers in all areas of the M+C program, including both enrollment and disenrollment and benefit and rate proposals. We do not believe that any change to the regulatory language implementing the waiver authority is necessary. The regulatory language implementing this waiver authority is consistent with the statutory language in section 1857(i) of the Act, which provides us wide latitude to approve appropriate waivers. In reviewing proposed waivers, we will balance the objective of promoting M+C enrollment by employer group members with the need to ensure that adequate protections are in place to ensure that employer group members enrolled in M+C plans have access to the Medicare covered benefits consistent with Medicare standards. Waiver requests by M+C organizations may be submitted at any time of the year.

Comment: Another commenter asked for clarification of § 422.106(a)(2) which states that employer group benefits that "complement" an M+C plan and the marketing materials associated with those benefits are not subject to our approval. The commenter was not clear as to what "complement" means in this context. The commenter further notes that paragraph (a)(2) continues, "M+C plan benefits provided to enrollees of the employer * * * and the associated marketing materials, are subject to CMS review and approval." According to the commenter, these two sentences within paragraph (a)(2) are internally inconsistent and confusing, and the commenter suggested that the benefit package of an employer-only M+C plan was subject to our review and approval. The commenter also requested that we clarify that employer group benefits or marketing materials will not be subject to prior review as long as the M+C organization certifies, in its ACR, that an employer-only M+C plan benefit package contains all Medicare-covered items and services. The commenter also suggested that M+C organizations should not be required to send copies of employer group-marketing materials to us after printing.

Response: We agree that § 422.106 (a)(1) and (a)(2) need to be clarified. The purpose of § 422.106(a)(2) is to highlight the fact that the M+C regulations apply to those benefits that are included under our approved M+C benefit package and that the regulations do *not* apply to what are referred to in the regulation as "complementary" benefits. Complementary benefits are employer-sponsored benefits, which are outside of the ACR proposal and are independently arranged by an employer on behalf of its employer group members for the purpose of enhancing the M+C benefit package. Therefore, we have modified § 422.106(a)(2) to clarify that we do not regulate or approve employer-sponsored benefits.

Employer group plans are required to provide an ACR proposal that includes all Medicare Part A and Part B services. There are no additional "prior review" requirements for approving the M+C benefit package for employer group members. We have already approved a waiver related to prior review of marketing material of employer-only plans. However, all M+C organizations will continue to be required to send informational copies of the employer-only plan's marketing materials to our Regional Office that is the "lead region." The employer group waivers are posted at our website at the following web address: *http://www.cms.hhs.gov/healthplans/employers/*.

7. Permitting End-Stage Renal Disease Beneficiaries To Enroll in Another Medicare+Choice Plan if the Plan in Which They Are Enrolled Is Terminated

Section 620 of the BIPA amended section 1851(a)(3)(B) of the Act to permit beneficiaries with end-stage renal disease (ESRD) to enroll in any other available M+C plan if the plan in which they are enrolled is terminated or the M+C organization discontinues the plan in the area in which the beneficiary lives. Before the BIPA, beneficiaries with ESRD who were affected by an M+C plan termination were only able to elect another plan offered by the same M+C organization or return to the original Medicare fee-for-service program.

Under this provision, if the beneficiary enrolls in another M+C plan, and that plan is subsequently terminated, he or she is able to elect another M+C plan (offered by the same M+C organization or a different organization) based upon that termination. This would be true for any subsequent M+C plan terminations or discontinuations that result in the enrollee's disenrollment. Thus, if the enrollee's plan is subsequently terminated or discontinued, the individual would have another opportunity to elect another M+C plan. The individual may use this election immediately, or may do so during a subsequent election period. Once the individual has made such an election, he or she may not join another M+C plan offered by another M+C organization unless his or her plan is terminated or discontinued. Thus, if the beneficiary exhausts his or her one election, and then later seeks to disenroll from the plan for reasons other than its termination, he or she may only enroll in another M+C plan offered by the same M+C organization, or return to original fee-for-service Medicare. If the beneficiary returns to original Medicare, he or she will not be able to later enroll in an M+C plan.

Comment: One commenter expressed concern that the preamble to the proposed rule could be misconstrued to mean that a beneficiary who is enrolled in an M+C plan and subsequently disenrolls from the plan for reasons other than the plan's termination or discontinuation can return to the original fee-for-service Medicare program and at some future date reenroll in a different plan offered by the same M+C organization.

Response: As explained above, we are clarifying that a beneficiary who elects another M+C plan as provided for under section 620 of the BIPA and later decides to disenroll from the plan for reasons other than its termination or discontinuation, may only elect another M+C plan offered by the same M+C organization at the time he or she is enrolled with that organization under some health plan it offers. In the commenters example, the beneficiary has spent time in original fee-for-service Medicare while not an enrollee with the organizations under any option. Under this circumstance, the enrollee would not be eligible to enroll in any M+C plan, including one offered by the M+C organization with which he or she was formerly enrolled.

Comment: Several commenters requested clarification as to whether or not the beneficiary had to elect a new M+C plan within a certain time frame. One commenter supported the establishment of a time limit, while others opposed any such time limit.

Response: In the preamble to the proposed rule, we indicated that we do not interpret section 1851(a)(3)(B) of the Act to require an enrollee to elect a new M+C plan immediately upon the termination or discontinuation of the M+C plan in which he or she is enrolled. This is based on section 620(b)(2) of the BIPA, which specifically extends this provision to individuals who had been enrolled in terminating or discontinued plans any time after December 31, 1998. In accordance with this section, and section 620(a) of the BIPA, these individuals are treated as M+C eligible individuals for purposes of electing to continue enrollment in another M+C plan. Because the statute clearly contemplates enrollment by individuals not currently enrolled in an M+C plan, we believe that the phrase "continue enrollment" in section 620(a) of the BIPA does not necessarily mean "continue without interruption" and, therefore, should not be time-limited. As stated above, the beneficiary may use his or her election immediately upon the plan's termination, or may use this election during a subsequent election period.

8. Providing Choice for Skilled Nursing Facility Services Under the Medicare+Choice Program

Section 621 of the BIPA amended section 1852 of the Act by adding a new subsection (l). This new subsection ensures that an M+C organization will give a Medicare beneficiary who is a resident of a skilled nursing facility (SNF) the option of returning to his or her "home SNF" for post-hospital extended care services upon discharge from a hospital when certain conditions are met.

The term "home skilled nursing facility" is defined as—

- The SNF in which the beneficiary resided at the time of admission to the hospital;
- A SNF providing post-hospital extended care services through a continuing care retirement community that provided residence to the beneficiary at the time of admission to the hospital; or
- The SNF in which the spouse of the beneficiary is residing at the time of discharge from the hospital.

In order for a home SNF to be offered under this section, the SNF to which the beneficiary will be returned must either have a contract with the M+C organization to provide post-hospital services or must agree to accept substantially similar payment under the same terms and conditions that apply to SNFs under contract with the M+C organization. The coverage provided must be no less favorable to the beneficiary than coverage of post-hospital services that are otherwise covered under the M+C plan.

The requirement to return the beneficiary to his or her home SNF would not apply if the applicable SNF is not qualified to provide benefits under Medicare Part A to beneficiaries not enrolled in an M+C plan. A SNF that is not contractually bound to do so could refuse to accept an M+C beneficiary or impose conditions on the acceptance of the beneficiary for post-hospital extended care services.

The requirements of this new subsection (l) first became applicable under contracts entered into or renewed on or after December 20, 2000.

We received one comment relating to this provision.

Comment: The commenter expressed concern regarding potential quality issues when a plan member uses the "return home" benefit to enter a non-plan SNF. In addition, the commenter believes that this provision "binds" the internal operations of an M+C organization and could set a precedent for other areas of care in the future.

Response: We agree that an M+C organization does not have the same ability to verify the quality of non-contract SNFs as it does contract SNFs. For this reason, we will allow an M+C organization to advise members who are obtaining services in a non-contract SNF under the "return home" benefit that the M+C plan cannot guarantee the quality of care that members will receive in the non-contract SNF. However, we also note that an M+C organization can only refer members to Medicare certified SNFs. The "return home" SNF benefit was established

legislatively and, thus, does not set a precedent for other benefits of this type unless the Congress extends the benefit to other benefits by similar legislation.

9. Increased Civil Money Penalty for Medicare+Choice Organizations That Terminate Contracts Mid-Year

Section 1857(g)(3) of the Act provides us with the authority to impose intermediate sanctions, including civil money penalties, on M+C organizations for the same reasons for which we can terminate an M+C organization's contract. Section 1857(c)(2) of the Act provides that we may, at any time, terminate an M+C organization's contract if we determine that the M+C organization—

- Failed substantially to carry out the contract;
- Is carrying out the contract in a manner inconsistent with the efficient and effective administration of the M+C program; or
- No longer substantially meets the applicable conditions of the M+C program.

Section 623 of the BIPA amended section 1857(g)(3) of the Act by providing us the authority to establish and levy separate and distinct civil money penalties when we determine that an M+C organization has failed to substantially carry out the terms of its contract based upon the M+C organization's termination of its contract with us in a manner other than that provided in the M+C contract and in § 422.512.

Under section 1857(g)(3)(D) of the Act, in such cases, we may impose a civil money penalty of "$100,000 or such higher amount as the Secretary may establish by regulation." We believe that the Congress provided us with the authority to provide for a higher civil money penalty amount than $100,000 in recognition of the fact that the $100,000 specified in the Act may not provide an effective deterrent in some instances to discourage M+C organizations from terminating their contracts in a manner inconsistent with the procedures described in the regulations. In developing regulations providing for a potentially higher civil money penalty amount, it is appropriate for us to consider the number of Medicare beneficiaries who could be adversely affected by an M+C organization's decision to terminate its contract with us in a manner that violates M+C rules.

Thus, we proposed to establish the amount of this civil money penalty as either $250 per Medicare member enrolled in the terminated M+C plan or plans at the time the M+C organization terminated its contract with us, or $100,000, whichever is greater. We added the "whichever is greater" provision to discourage violations of the contract termination provisions by M+C organizations with lower M+C plan enrollment. In either instance, this new civil money penalty represents a substantial increase over the current civil money penalty of $25,000 for similar violations, and serves as an effective deterrent against M+C contract terminations violations that could potentially harm Medicare beneficiaries.

We received one comment on this change in civil money penalties.

Comment: The commenter seeks affirmation that we will not impose civil money penalties when the mid-year termination is caused by an event that is not within the control of the M+C organization (for example, substantial loss of network capability).

Response: We will not create an exception to waive the civil money penalties at § 422.758(b) because an M+C organization is experiencing network problems. If an M+C organization loses network capacity during the year, we expect that the M+C organization will establish new provider contracts or pay for services on a fee-for-service basis. There may be situations that require us to terminate a contract mid-year. For example, we have used our immediate termination authority at § 422.510(a)(5) to protect beneficiary access to health care when an M+C organization experiences financial difficulties so severe that access to health care is endangered. Section 623 of the BIPA was not written to permit us to levy a civil money penalty if we, not the M+C organization, take the termination action. The law was designed to prohibit M+C organizations from inappropriately ending their contractual commitments without our consent.

10. Eliminating Health Disparities in Medicare+Choice Program

Section 616 of the BIPA amended section 1852(e) of the Act by requiring that an M+C organization's Quality Assurance Program have a separate focus on racial and ethnic minorities. This provision was not included in the October 2002 proposed rule because we had not developed any policies to propose. Although we are still evaluating implementation issues, we are adding a new paragraph (4) to § 422.152(f) to reflect this BIPA provision. Prior notice and comment is not necessary in the case of this change, because merely adding the statutory requirements to the regulations text has no legal effect. We have included a good cause statement below for waiving prior notice and comment with respect to this change.

B. Skilled Nursing Facility Care Under Medicare+Choice

Under section 1814(a)(2)(B) of the Act, the Medicare extended care skilled nursing facility (SNF) benefit covers skilled nursing care or other skilled rehabilitation services that the beneficiary requires on a daily basis and that are only available in a SNF on an inpatient basis.

Generally, we will only cover this benefit following a hospital stay of not less than 3 days. Under section 1812(f) of the Act, however, we may authorize coverage of SNF care without a prior hospital stay if two conditions are met. First, the coverage of these services must not result in any increase in Medicare program payments, and second, the coverage must not alter the acute care nature of the benefit.

We have determined that these conditions are met in the case of SNF services furnished by an M+C organization that covers SNF services. Accordingly, we proposed changes in the regulations to reflect this determination, specifically, adding a new § 409.20(c)(4), revising § 409.30(b) and § 409.31(b), and adding a new § 422.101(c).

Several organizations, representing both providers and consumers, stated that they agreed with our proposed changes.

Comment: One commenter recommended that we clarify that after voluntarily disenrolling from the M+C program, the beneficiary may receive Part A SNF care if he or she meets the skilled level of care requirement.

Response: The commenter is correct that under this final rule, Part A SNF care would be covered for an individual who meets the skilled level of care requirement if he or she voluntarily disenrolls from a M+C program that was covering the care without a prior 3-day hospital stay. We believe that § 409.30(b)(2)(ii) makes this sufficiently clear that no further clarification is needed.

Comment: A major organization recommended that we clarify that when a beneficiary converts from a M+C stay in a SNF to a fee-for-service stay, a new 100 day period begins, unless the prior days under M+C were skilled care.

Response: We agree with this recommendation. If skilled care is provided to the beneficiary while he or she is enrolled in the M+C organization, then this time period counts towards the 100 days. If it is unknown whether or not skilled care is provided or the care

is unskilled, then the 100 days starts when the fee-for-service stay begins. We will clarify this provision in the Intermediary Manual.

Comment: Two commenters proposed that the waiver of the 3-day hospital requirement for SNF care also be applied to cost contractors (health maintenance organizations and competitive medical plans) under section 1876 of the Act. One commenter argued "* * * that expanding the provision to cost contractors will result in a substantial reduction in Medicare costs for inpatient hospitalization. These savings will more than counterbalance any increases in SNF costs. We believe that inpatient admissions may occur when perhaps the more appropriate level of care is in a skilled nursing facility. We believe that allowing an exception to the three-day prior hospitalization requirement will result in net savings to the Medicare program."

Another commenter noted that, "Organizations participating in the Medicare program as cost plans are structured in the same manner as M+C organizations and have the same inherent incentives for the provision of quality care in the most appropriate setting. Since this structure promotes similar patterns of practice regardless of the type of Medicare contract, we believe that the criteria described above would be met if this policy were applied to cost plans."

Response: M+C organizations are paid on a capitated basis, so they have an incentive to contain costs. However, cost contractors under section 1876 of the Act do not have such an incentive. We have no evidence to indicate that they would reduce hospital admissions if we were to waive the 3-day prior hospital stay requirement. Therefore, we have decided not to accept this recommendation at this time.

C. Disenrollment by the M+C Organization

Section 422.74(d)(4) provides that, except where continuation of enrollment under § 422.54 applies, an individual must be disenrolled from an M+C plan if he or she is out of the service area for over 6 months. The proposed rule included a revision to § 422.74(d)(4) creating an exception to this 6-month rule for "visitor" or "traveler" type programs. Under the proposed exception, M+C organizations could continue to offer extended "visitor" or "traveler" programs to members who have been out of the service area for up to 12 months, provided that the plan included the full range of services available to other members. M+C organizations offering these programs may limit their availability to certain areas and may impose restrictions on obtaining benefits, except for urgent, emergent, and post-stabilization care, and renal dialysis. These organizations do not have to disenroll members in these extended programs who remain out of the service area for up to 12 months. However, those M+C organizations without this program must continue to disenroll members once they have been out of the service area for more than 6 months. We received one comment supporting this change, and are adopting it as proposed.

D. Reporting Requirements for Physician Incentive Plans

Section 1852(j)(4)(A)(iii) of the Act requires M+C organizations to provide us with descriptive information regarding their physician incentive plans (PIP) sufficient to permit us to determine whether the plan is in compliance with the applicable requirements. The current regulations interpreted this provision to require that an M+C organization submit the CMS PIP Disclosure Form (OMB No. 0938–0700) to us with its contract application and annually thereafter. We are changing the reporting requirement to allow M+C organizations to maintain the required PIP information in their files and submit that information to us upon request. Several commenters agreed with this change.

Comment: A commenter requested that we provide clear guidance on what information managed care organizations should maintain in their files.

Response: Section 417.479(h)(3) and § 422.210(b) provide details on the information that should be maintained in either the contractor or subcontractor files for purposes of responding to inquiries from beneficiaries. Since there will no longer be routine reporting of PIP information to us, the cost-contracting health maintenance organizations/competitive medical plans and M+C organizations should simply maintain sufficient information "...to permit CMS to determine whether the plan is in compliance with the applicable requirements," should we request it.

Comment: A commenter requested that, under the cost program, two types of entities, health maintenance organizations and competitive medical plans, are eligible for contracting. The proposal omits a reference to competitive medical plans.

Response: We will revise the regulation to cover competitive medical plans.

Comment: A commenter suggested that the instructions for amending § 417.479(h) appear incorrect. The disclosure to beneficiaries provision is in paragraph (h)(3), not (h)(2). Thus, we should replace paragraph (h)(1) and (h)(2) with the new (h)(1). Then paragraph (h)(3) would be designated (h)(2).

Response: The commenter is correct in noting an inconsistency in our proposed revision. Therefore, § 417.479(h)(1) will remain as written in the proposed regulation, with the addition of a reference to competitive medical plans, as noted above. Section 417.479(h)(2) will be revised to include only the rules on pooling of patients. Finally, § 417.479(h)(3), related to disclosure to Medicare beneficiaries, will remain as part of the regulation with a minor, editorial change.

E. M+C Appeals Process

1. Defining Who Can Request Organization Determinations

Currently, the M+C regulations at § 422.566(c) specify that any of the parties listed in § 422.574 can request an M+C organization determination. It has come to our attention that, in some cases, the use of this cross-reference has been misconstrued to mean that, in order to request an organization determination on behalf of an enrollee, an affiliated provider would need to be an authorized representative, and a non-affiliated provider would need to be an assignee. Although we discussed this issue in our June 29, 2000 final rule (65 FR 40282), some confusion has continued.

We have always intended for requests for organization determinations to be more inclusive than requests for appeals. To clarify this point, we have eliminated the existing cross-reference to § 422.574 and we are listing those who may request an M+C organization determination under § 422.566(c). Determination requests may be made by—

- The enrollee (including his or her authorized representative);
- Any provider that furnished, or intends to furnish, services to the enrollee; or
- The legal representative of a deceased enrollee's estate.

The fact that an individual or entity may request an organization determination does not necessarily entitle that individual or entity the right to request an appeal, unless the conditions for party status under § 422.574 are met.

Comment: We received two comments regarding who can request an

organization determination under § 422.566(c). One commenter supported the elimination of the cross-reference with the provision that only treating or attending providers involved with the enrollee's health care should be allowed to request organization determinations.

Another commenter believed that in an effort to discourage inappropriate use of the process, providers should only be allowed to make requests for organization determinations with the full knowledge and agreement of the enrollee. The commenter recommended that we establish this distinction in the preamble or regulation, and, if an enrollee indicates that a requested organization determination is inconsistent with his or her wishes, then the M+C organization should be able to cease action on the request.

Response: We believe that the text, "any provider that furnishes, or intends to furnish, services to the enrollee," already addresses the commenter's concern that the provider requesting an organization determination be involved with the enrollee's health care. Because enrollees in some M+C plans are free to seek care from providers within or outside of the M+C organization's network and all enrollees may go out of network for emergency and certain other services, we believe it is appropriate to use the all-inclusive term "any," instead of "treating," to describe the providers furnishing, or intending to furnish, services to enrollees.

We agree with the second commenter that providers should request organization determinations only with the full knowledge and agreement of enrollees. This is particularly important for unaffiliated providers that might seek payment for services already furnished to enrollees. In addition, an M+C organization may cease action on a provider's request for an organization determination that is inconsistent with an enrollee's wishes.

2. Effectuation Times When M+C Organizations File Appeals

The current regulations at § 422.618 and § 422.619 establish effectuation times when an M+C organization's denial of coverage or payment is overturned, either through its own reconsideration process or by an independent outside entity. Effectuate means to authorize, pay for, or provide coverage. The M+C organization may not appeal the independent outside entity's decision. Section 422.618 also requires that, if the independent outside entity's determination is reversed (in whole or in part) by an administrative law judge (ALJ), or at a higher level of appeal, the M+C organization must pay for, authorize, or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days from the date the M+C organization receives notice reversing the determination. In these situations, the M+C organization, like an enrollee, has 60 days to appeal.

The ambiguity in the current regulations, which require effectuation of a determination within 60 days, but also permit further appeal within the same time frame, results in confusion. To reconcile these two regulatory provisions, we proposed to revise the rules so that M+C organizations may await the outcome of a Departmental Appeals Board (the Board) review before effectuating a decision of an ALJ. This change would serve to balance the M+C organization's right to appeal with the need to ensure that an enrollee would not be faced with a potentially large debt in the event that the Board overturns the ALJ after the service has been furnished to the enrollee.

In § 422.618(c), we proposed to retain, as the general rule, the 60-day effectuation requirement for reversals by an ALJ or higher level of appeal. This is because we did not want to effectively negate the M+C organization's 60-day right to request an appeal to the Board or higher level. However, our expectation was that M+C organizations would not take the maximum 60 days to effectuate a decision they do not intend to appeal. We proposed to redesignate the current § 422.618(c), as § 422.618(c)(1) and provide that the 60-day deadline for effectuation was the "general rule." We then proposed to add a new § 422.618(c)(2) which would allow for an exception to the 60-day standard if the M+C organization decided to request a Board review consistent with § 422.608. We proposed to allow the M+C organization to await the outcome of the Board review before it pays for, authorizes, or provides the service under dispute. Under the provision, we would require an M+C organization that files an appeal with the Board concurrently to send a copy of its request and any accompanying documents to the enrollee. Additionally, in the proposed rule, the M+C organization was required to notify the independent review entity of the requested appeal.

Consistent with this change, we also proposed to revise § 422.619(c) with regard to effectuating expedited reconsidered determinations. As in standard appeals, we proposed to allow an exception for the M+C organization to await the outcome of the Board's review before the M+C organization authorizes or provides the service under dispute. Additionally, an M+C organization that files an appeal with the Board would be required concurrently to send a copy of its request and any accompanying documents to the enrollee, as well as notifying the independent review entity of the requested appeal.

Comment: Some commenters believe that the 60-day time frame for an M+C organization to decide whether to appeal (and ultimately pay for or provide a service) is too long. One commenter suggested that the time frame to allow an M+C organization to appeal to the Departmental Appeals Board (DAB) should be reduced to 30 days. Another commenter believes that M+C organizations generally know well before 60 days whether they intend to appeal an administrative law judge's (ALJ's) decision. Instead, an M+C organization more likely would need a 60-day time frame to gather evidence in support of an appeal. The commenter argued that, since enrollees already wait a long time for ALJ decisions, enrollees should not be made to wait another 60 days to receive care.

Other commenters supported our attempt to reconcile the provisions that, on the one hand, allow an M+C organization the right to appeal an ALJ's decision, but, on the other hand, require the M+C organization to effectuate the decision before a final DAB decision. One commenter supported a 60-day, rather than a 72-hour, effectuation time frame for expedited reviews.

Response: Currently, § 422.618(c)(1) and § 422.619(c)(1) require an M+C organization to pay for, authorize, or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days from the date that the M+C organization receives a decision reversing a determination. Section 422.608 also provides for an appeal by the M+C organization within the same 60-day time period that effectuation must occur. While we appreciate the commenters' concerns that 60 days seems like a long time for M+C organizations to appeal, we believe that we should allow M+C organizations the same 60-day time frame afforded to other parties when they file appeals. Thus, we will maintain the current 60-day standard at § 422.608 for all parties seeking review by the DAB.

We recognize that an enrollee may encounter a delay in obtaining a service if an M+C organization appeals; however, both the DAB and the ALJ hearing offices have procedures to screen cases and to give priority to pre-service denial cases, including immediate assignment and resolution of

cases involving imminent health risks. Thus, as proposed, we are adding § 422.618(c)(2) and § 422.619(c)(2) to allow for an exception to the 60-day effectuation standard when an M+C organization requests DAB review. An M+C organization may await the outcome of the DAB's review before it pays for, authorizes or provides the service under dispute.

Comment: One commenter was concerned with our statement that "* * * the M+C organization would have to meet the medical exigency standard for providing or authorizing services as expeditiously as the enrollee's health condition requires regardless of the 60-day time frame." The commenter interpreted this statement to mean that a M+C organization that intends to appeal an ALJ decision would still have to apply the medical exigency standard, and provide services if warranted under this standard notwithstanding the filing of a DAB appeal. The commenter thought that this would undercut the exception to the effectuation time frames and undermine a M+C organization's right under both the appeals process and, though it is not clear to us why, the Administrative Procedure Act (APA). Instead, the commenter recommends that we permit the exception to the effectuation rule under all circumstances, and promulgate an expedited review process for the DAB to follow in medically exigent cases. Another commenter urged us to monitor whether M+C organizations take the maximum 60 days to implement a decision that they do not intend to appeal.

Response: The section of the proposed rule that the commenter references is a discussion about our reason for maintaining a 60-day effectuation requirement for expedited appeals, as opposed to 72 hours. We wanted to make clear that, despite our intention to maintain the 60-day requirement, M+C organizations still would be held to the medical exigency standard if they did not intend to pursue an appeal of an ALJ decision. In other words, just because we had retained the 60-day time-frame for appealing, this did not mean that an M+C organization could take 60 days to effectuate if it was not pursuing an appeal. Rather, in this instance, it must authorize or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days from the date it receives notice reversing the determination.

We agree with the commenter, however, that when a M+C organization is appealing the ALJ decision, it should not be required to effectuate the ALJ decision, and would not apply the medical exigency standard until it was time to effectuate a decision from the DAB. We also agree with the commenter that the DAB should expedite cases in which there is a medical exigency, and inform the commenter that the DAB has procedures in place to do so. Finally, with respect to monitoring, we agree that M+C organizations should be monitored to see whether they are delaying effectuation 60 days in cases in which they are not appealing the ALJ decision.

Comment: Some commenters were pleased with our proposal that M+C organizations notify enrollees and the independent review entity (IRE) in the event of an appeal to the DAB. They believed that such notification would enable enrollees to file evidence, arguments or legal memoranda to the DAB in support of an ALJ decision.

Response: We agree with the commenters and are retaining this proposal which requires a M+C organization to concurrently send a copy of its appeal request and the accompanying documents to the enrollee and the IRE at § 422.618(c)(2) and § 422.619(c)(2) in this final rule.

Comment: One commenter recommended that we apply an exception to the effectuation provision for cases in which the M+C organization intends to dispute determinations made by the IRE.

Response: The regulations only provide for appeals by M+C organizations at the ALJ level or higher. The only way for an M+C organization to "challenge" the IRE's decision is to request a reopening in accordance with § 422.616. A reopening is an administrative action outside of the realm of the appeals process and we do not believe that delaying effectuation under these circumstances is warranted.

F. Requiring Health Care Prepayment Plans (HCPPs) and Remaining Cost Plans To Follow the M+C Appeals Process

In the proposed rule, we solicited comments on whether HCPPs and the remaining cost plans should follow the M+C appeals and grievance processes under subpart M of part 422. We have not included these provisions in this final regulation, because we need more time to analyze the comments and evaluate implementation issues.

G. Technical Clarifications

1. Grace Period for Late Premium Payments

We are making a technical change to address concerns that M+C organizations have raised concerning the starting date for the 90-day grace period for late premium payments. Section 422.74(d)(1)(ii) provides that an M+C organization may disenroll a Medicare beneficiary when the organization has not received payment within 90 days after it has sent a written notice of nonpayment to the individual. Several M+C organizations requested that the 90-day grace period start on the day the premium payment was due, rather than the day the notice was sent. Since the notice has to be provided within 20 days of the premium due date, starting the grace period on the premium due date would ensure that the beneficiary has at least 70 days following receipt of the notice to pay the premium and avoid disenrollment. We believe that this constitutes an appropriate grace period and proposed to change the regulation accordingly. We received one comment supporting this change and are adopting it as proposed.

2. Payment for Hospice Care

In the proposed rule, we proposed to clarify information concerning changes in M+C payments when an individual has elected hospice care.

Specifically, we proposed to revise § 422.266(d) to make clear that when enrollees of M+C plans elect to receive hospice care under § 418.24, we will not make any payment for the hospice care to the M+C plan beginning with the next month's payment after the election, except for the portion of the payment applicable to additional benefits, as described in § 422.312. Currently, the regulation refers to capitation payments being reduced to this amount which produces the same result. However, this language was changed from the language that applies to health maintenance organizations and competitive medical plans, and we believe the latter language makes the policy clearer.

We received no comments on this change and have revised § 422.266(c) to reflect this clarification.

3. Clarification of Subpart O to Effectuate Statutory Intent

We are making minor changes to Subpart O in an attempt to clarify information regarding our sanction authority. These changes do not add any new requirements. They serve to improve the wording of certain areas to more clearly reflect statutory intent.

Section 1857(g)(1) of the Act contemplates violations that are generally considered "fraud and abuse." This section further states, "* * * the Secretary may provide, in addition to

any other remedies authorized by law, for any of the remedies described in paragraph (2) * * * *." Because the OIG has the traditional authority to investigate fraud complaints, the regulation should ensure that it is understood that the OIG stands in the place of "the Secretary" when civil money penalties are imposed for such violations. We (CMS) would have authority for other intermediate sanctions under M+C. Currently, § 422.752(a) states, "For the violations listed below, CMS may impose *any* of the sanctions specified in § 422.750 * * *." *Any* of the sanctions presupposes that we may freeze marketing, enrollment, payment *and impose civil money penalties*. This stands in contrast to the statutory intent and it clearly contrasts with § 422.756(f)(2) where, in discussing civil money penalties, the regulation currently reads, "In the case of a violation described in § 422.752(a) * * * in accordance with 42 CFR parts 1003 and 1005, the OIG may impose CMPs on M+C organizations * * *" We are changing § 422.752(a) to clarify when the OIG has the sole authority to impose civil money penalties.

Section 422.756(f)(3) references the OIG's regulations at parts 1003 and 1005. This cross-reference creates confusion without further clarification. The civil money penalty provisions included in the OIG's regulations at parts 1003 and 1005 implement section 1876 of the Act, not the M+C program under the BBA. We are proposing a regulatory change to eliminate any reference to part 1003 for information about which level of civil money penalty might apply.

Section 422.758 states that civil money penalties can be $25,000 or $10,000 per each determination. According to the statute at section 1857(g) of the Act, the actual amount could be lower. For example, section 1857(g)(3)(A) of the Act states that we may impose civil money penalties "of not more than $25,000." The same applies to § 422.758(b), which references "up to $10,000" not "$10,000." Section 422.750 states that the OIG can impose civil money penalties ranging from $10,000 to $100,000. Section 1128A of the Act continually uses the "up to" language. We are revising the regulatory language to clarify statutory intent.

4. Correcting a Cross-Reference in Subpart E (Relationships With Providers)

In § 422.202(a)(4), a change is needed to correct a cross-reference. Specifically, the text "must conform to the rules in § 422.204(c)" is being revised to read "must conform to the rules in § 422.202(d)." (§ 422.204(c) does not exist.)

III. Provisions of This Final Rule

The provisions of this final rule are as follows:

- In § 409.20, we added paragraph (c)(4) to define the term "post-hospital SNF care" to include SNF care that does not follow a hospital stay if the beneficiary is enrolled in an M+C plan.
- In § 409.30, we revised paragraph (b)(2) to add an exception to the preadmission requirements for enrollees of M+C organization plans.
- In § 409.31, we added paragraph (b)(2)(iii) to add a condition to the level of care requirements which states that, for an M+C enrollee, a physician has determined that a direct admission to a SNF without an inpatient hospital stay would be medically appropriate.
- In § 417.479, we revised paragraph (h) to modify the reporting requirements concerning physician incentive plans.
- In § 422.2, we revised the definition of additional benefits to include a reduction in the Medicare beneficiary's standard Part B premium.
- In § 422.50, we revised paragraph (a)(2) to include a new condition in the exception that a beneficiary with ESRD is not eligible to elect an M+C plan. An individual with ESRD whose enrollment in an M+C plan is discontinued because we or the M+C organization terminated the organization's contract for the plan, is now eligible to elect another M+C plan, if the original enrollment was terminated after December 31, 1998.
- In § 422.74, we revised paragraph (d)(1)(ii) to reflect that an M+C organization may only disenroll a Medicare enrollee when the organization has not received payment within 90 days after the date the premium payment was due.
- In § 422.74, we revised paragraph (d)(4) to allow M+C organizations to operate "visitor" or "traveler" programs that provide benefits beyond urgent and emergent care to their enrollees who are out of the service area for more than 6 months but less than 12 months.
- In § 422.101, we revised paragraph (b)(3) to reflect the provisions in section 1852(a)(2)(C) of the Act that permit M+C organizations with plans that cover large areas encompassing more than one local coverage policy area to elect to have the local coverage policy for the part of the area that is the most beneficial to the M+C enrollees apply to all M+C enrollees in the plan. his policy allows M+C organizations to standardize coverage decisions and provider contracts across the entire plan, rather than having different policies apply to different geographic areas of the same plan.
- In § 422.101, we added paragraph (c) to include in the requirements relating to Medicare covered benefits the option to provide for coverage as a Medicare benefit post-hospital SNF care in the absence of a prior hospital stay.
- In § 422.106, we added new paragraph (c) to reflect the provisions in section 1857(i) of the Act that permits us to grant a waiver or modification of requirements in part 422 that hinder the design of, the offering of, or the enrollment in, M+C plans under contracts between M+C organizations and employers, labor organizations, or the trustees of benefits funds.
- In § 422.109, we revised the definition of "significant cost" (which was in § 422.109(c), but is now in § 422.109(a)) to provide that, for purposes of determining whether to make an adjustment under § 422.256, the tests in definition of "significant cost" are applied to the aggregate costs of all NCDs and legislative changes in benefits made in the contract year. Under this test, the "average cost" of every NCD and legislative change in benefits would be added together. If the sum of all these average amounts exceeds the threshold under § 422.109(a)(1), then an adjustment to payment will be made under § 422.256 to reflect these costs. Alternatively, if the costs of the NCDs and legislative changes in benefits, in the aggregate, exceed the level set forth in § 422.109(a)(2), an adjustment to payment will be made under § 422.526. We also added language to explain that an NCD or legislative change in benefits that does not meet the "significant cost" threshold must be provided, and paid for, by the M+C organization as of the effective date of the NCD or legislative change in benefits.
- In § 422.111, we added paragraph (f)(8)(iii) to add any reduction in Part B premiums to the list of information that must be disclosed to each enrollee electing an M+C plan.
- We added § 422.133 to contain the new requirement that M+C organizations return residents of SNFs to their home SNF for post-hospital extended care services after discharge from a hospital. This new section contains the definition of home SNF, the requirements for return to the home SNF, and the exceptions to the general rule.
- In § 422.152(f), we added section (4) to reflect the requirement that M+C organizations' Quality Assurance Programs have a separate focus on racial and ethnic minorities.

- In § 422.202(a)(4), we corrected a cross-reference.
- In § 422.210, we revised paragraph (a) to reflect changes to the reporting requirements concerning physician incentive plans.
- In § 422.250, we revised paragraph (a)(1) to reflect that, beginning with the initial payment for CY 2003, monthly payments to M+C organizations may be reduced by the amount described in new § 422.312(d) for the reduction of the beneficiary's standard Part B premium.
- In § 422.250, we also revised paragraph (a)(2) to redesignate paragraph (a)(2)(i)(B) as (a)(2)(i)(C) and to add new paragraph (a)(2)(i)(B) to reflect that, when we establish ESRD rates, we will apply appropriate adjustments, including risk adjustment factors.
- In § 422.256, we revised paragraph (b) to reflect that we will make appropriate payment adjustments for new benefits covered during a contract term due to NCDs and legislative changes in benefits that result in a significant increase in costs to M+C organizations, based on an analysis by our chief actuary. We also revised this section to reflect that we will apply a "NCD adjustment factor" in calculating rates for counties receiving the two percent minimum update. This factor will represent the percent of total Medicare cost attributed to the aggregate costs of all NCDs and legislative changes in benefits in the previous year.
- In § 422.266, we revised paragraph (c) to clarify that when enrollees of M+C plans elect to receive hospice care under § 418.24, we will not make any payment for the hospice care to the M+C plan beginning with the next month's payment after the election, except for the portion of the payment applicable to additional benefits, as described in § 422.312.
- In § 422.312, we redesignated paragraph (d) as paragraph (e) and added new paragraph (d) to reflect that an M+C organization may apply adjusted excess amounts to additional benefits and accept lower payments from us, which would allow a reduction of standard Part B premiums for its enrollees. The reduction in standard Part B premiums could not equal more than 80 percent of the reduction in payments to the M+C organization and the payment reduction could not exceed 125 percent of the standard Part B premium. In addition, the reduction in premium would have to be applied uniformly to all similarly situated enrollees.
- We added new § 422.521 to indicate that we will not implement, other than at the beginning of a calendar year, requirements that would impose new cost or burden on M+C organizations or plans, unless a different effective date is required by statute.
- In § 422.566, we revised paragraph (c) to delete the cross-reference to § 422.574 and to delineate who can request an organization determination.
- In § 422.618, we revised paragraph (c) to add an effectuation exception when the M+C organization files an appeal with the DAB in the case of a standard reconsidered determination.
- In § 422.619, we revised paragraph (c) to add an effectuation exception when the M+C organization files an appeal with the DAB in the case of an expedited reconsidered determination.
- In § 422.758, we revised paragraph (b) to include the new maximum amount of the civil money penalties that we would impose on M+C organizations that terminate their contracts in a manner other than that described in § 422.512. The new penalty amount will be $100,000 or $250 per Medicare enrollee from the terminated plan or plans, whichever is greater.

IV. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on revisions to regulations. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. We followed this procedure with respect to all but one of the regulatory revisions made in this final rule. As noted above, the proposed rule did not include the revision to § 422.152(f) that we are making in this final rule that adds a new paragraph (4) reflecting the provisions of section 616 of the BIPA. The requirement that we issue regulations in proposed form for public comment can be waived, however, if an agency finds good cause that notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, and it incorporates a statement of the finding and its reasons in the rule issued.

We find that publishing the new paragraph (4) in § 422.152(f) in proposed form is unnecessary, because this provision only revises the regulations text to reflect the provisions of section 616 of the BIPA, and has no legal effect. These provisions were enacted by the Congress, and took effect on the date mandated by the legislation without regard to whether they are reflected in conforming changes to the regulation text. In the new § 422.152(f)(4), we merely have revised the regulation text to reflect section 616. Therefore, we do not believe that publishing a notice of proposed rulemaking is necessary and we find good cause to waive the notice of proposed rulemaking and to issue this final rule.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section *417.479(h)—Physician Incentive Plans.* In this final rule, we require HMOs to provide us, upon request, information concerning its physician incentive plans. HMOs are also required to provide this information to any Medicare beneficiary who requests it. While this requirement is subject to the PRA, the burden associated with this requirement is captured in approved collection 0938–0700.

Section 422.50(a)(2)—In this final rule, this section states that an individual who develops end-stage renal disease while enrolled in an M+C plan or in a health plan offered by an M+C organization is eligible to elect an M+C plan offered by that organization. Also, an individual with end-stage renal disease whose enrollment in an M+C plan is terminated or discontinued after December 31, 1998 because we or the M+C organization terminated the M+C organization's contract for the plan or discontinued the plan in the area in which the individual resides is eligible to elect another M+C plan. An individual who elects an M+C plan under paragraph (a)(2)(ii) of this section may elect another M+C plan if the plan elected under paragraph (a)(2)(ii) also is terminated or discontinued in the area in which the individual resides.

The burden associated with this requirement is the time and effort for the individual to submit a new election form. While this section is subject to the PRA, this burden is currently captured in approved collection 0938–0753.

Section 422.74(d)(4)(i)—In the final rule, this section states that unless continuation of enrollment is elected under § 422.54, the M+C organization must disenroll an individual if the M+C organization establishes, on the basis of a written statement from the individual or other evidence acceptable to us, that the individual has permanently moved.

This section requires that the individual must prepare and provide a written statement to the M+C organization that he or she has permanently moved. While this requirement is subject to the PRA, the burden associated with this requirement is captured in approved collection 0938–0753.

Section 422.106(c)(1)—M+C organizations may request, in writing, a waiver or modification of those requirements in part 422 that hinder the design of, the offering of, or the enrollment in, M+C plans under contracts between M+C organizations and employers, labor organizations, or the trustees of benefits funds.

We believe that the burden associated with this requirement is minimal. We anticipate approximately 100 requests for waivers or modifications submitted on an annual basis and that it will take approximately 2 hours to prepare each request. The total annual burden associated with this requirement is estimated to be 200 hours.

Section 422.106(c)(2)—In this final rule, this section states that approved waivers or modifications under this paragraph may be used by any M+C organization on developing its ACR proposal. Any M+C organization using a waiver or modification must include that information in the cover letter of its ACR proposal submission.

The burden associated with this requirement is the time and effort for the M+C organization to include the information in the cover letter of its ACR proposal submission. Although this requirement is subject to the PRA, the burden is minimal; therefore, the burden is captured in the analysis for § 422.106(c)(1).

Section 422.111(f)(8)(iii)—In this final rule, this section has been revised to add any reduction in Part B premiums to the list of information that must be disclosed to each enrollee electing an M+C plan.

The burden associated with this requirement is the time and effort for the M+C organization to disclose information to each enrollee electing an M+C plan. Although this requirement is subject to the PRA, the burden associated with this requirement is captured in approved collection 0938–0778.

Section 422.152(f)(4)—We have added this section to reflect the statutory provision of requiring M+C organizations' quality assurance programs to have a separate focus on racial and ethnic minorities. We estimate that it will take each M+C organization approximately 2 hours to add a separate focus on racial and ethnic minorities to its quality assurance program. Since there are approximately 150 M+C organizations, we estimate the annual burden associated with this requirement to be approximately 300 hours.

Section 422.210(a)(1)—In the final rule, this section states that each M+C organization must provide to us upon request, descriptive information about its physician incentive plan in sufficient detail to enable us to determine whether that plan complies with the requirements of § 422.208.

This section requires the M+C organization to prepare and submit, upon request, descriptive information to us. While this requirement is subject to the PRA, the burden associated with this requirement is captured in approved collection 0938–0700.

Section 422.266(a)—In this final rule, an M+C organization that has a contract under subpart K of this part must inform each Medicare enrollee eligible to select hospice care under § 418.24 of this chapter about the availability of hospice care (in a manner that objectively presents all available hospice providers, including a statement of any ownership interest in a hospice held by the M+C organization or a related entity).

While this requirement is subject to the PRA, the burden associated with it is captured in approved collection 0938–0753.

In summary, the total burden hours for this proposed rule is calculated to be 500 hours. The breakdown is as follows:

§ 417.479(h)—burden captured in 0938–0700
§ 422.50(a)(2)—burden captured in 0938–0753
§ 422.74(d)(4)(i)—burden captured in 0938–0753
§ 422.106(c)(1)—200 hours
§ 422.106(c)(2)—burden captured in 422.106(c)(1)
§ 422.111(f)(8)(iii)—burden captured in 0938–0753
§ 422.152(f)(4)—300 hours
§ 422.210(a)(1)—burden captured in 0938–0700
§ 422.266(a)—burden captured in 0938–0753
0938–0700 is approved for 450 hours and expires on April 30, 2004 and 0938–0753 is approved for 2,120,006 hours and expires on October 31, 2005.

VI. Regulatory Impact Statement

A. Overall Impact

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more annually).

This final rule, which changes M+C regulations in accordance with provisions set forth in the BIPA, is not a major rule with economically significant effects as defined in Title 5, U.S.C. section 804(2) and is not an economically significant rule under Executive Order 12866. This final rule will result in increases in total expenditures of less than $100 million per year.

The budgetary impact of section 605 of the BIPA, which mandated revised ESRD payments, was estimated to be $270 million over the 5 years between FY 2002 to FY 2006, based on the FY 2002 President's budget. These payments are in the current baseline and have no impact on the budget. In addition, these provisions have already been implemented through our 2002 annual payment notice. The additional cash expenditures for these M+C ESRD beneficiaries under this provision of the BIPA affected those M+C organizations that enrolled the approximately 18,000 ESRD beneficiaries in their plans. Additional expenditures for this provision have been incorporated into the M+C payment rates from CY 2002 forward.

This estimate assumed continuation of the current restrictions on enrollment in the M+C program for ESRD beneficiaries. This estimate also included the impact of adjusting for age and sex and the impact of raising the ESRD base rates by 3 percent. We estimate that the change in policy for

NCDs in this rule adds approximately $48 million per year to the Federal budget.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status, or by having revenues of between $6 million and $29 million or less annually. (For details, see the Small Business Administration publication that sets forth size standards for health care industries at 65 FR 69432.) Individuals and States are not included in the definition of small entities.

For purposes of the RFA, most managed care organizations are not considered to be small entities. We estimate that fewer than 5 out of 177 M+C organization contractors have annual revenues of $7.5 million or less. Approximately 35 percent of M+C organization contractors have tax-exempt status, and thus, for purposes of the RFA, are considered to be small entities. We have examined the economic impact of this final rule on M+C organizations, including those that are tax-exempt, and, therefore, small entities. We find that overall the economic impact is positive, due to the revised ESRD rates mandated by section 605 of the BIPA, which are generating an increase in payments; the increase in payments due to the revised policy on NCDs, and the reductions in regulatory burden due to the premium reductions in section 606, the waivers of M+C rules specified in section 606 for employers and related organizations, the waiver of the 3 day hospital stay for SNF admissions, and the reduction of the physician incentive reporting requirements. Therefore, we certify that this final rule will not have a significant impact on a substantial number of small businesses. The data available do not allow us to determine the distributional effects of this increase. We have not considered alternatives to lessen the economic impact or regulatory burden of this final rule because the regulatory burden is reduced and payment to the plans is increased by this rule. The major change between the proposed and final rule is the method for computing a significant national coverage determination. This change will have a net benefit to M+C organizations. We certify that this final rule will not have a significant impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a final rule has a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds. Almost 2 percent of M+C enrollees reside in payment areas outside MSAs. Because information on the payment terms in contracts between M+C organizations and their providers is not available, data are not available on the level of this economic impact.

B. The Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1998 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We have determined, and we certify that this final rule has no consequential effect on State, local, or tribal governments.

C. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed or final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This final rule will impose no direct requirement costs on State and local government, will not preempt State law, or have any Federalism implications.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 409

Health facilities, Medicare.

42 CFR Part 417

Administrative practice and procedure, Grants programs-health, Health care, Health insurance, Health maintenance organizations (HMO), Loan programs-health, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health Maintenance Organizations (HMO), Medicare+Choice, Penalties, Privacy, Provider-sponsored organizations (PSO), Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 409—HOSPITAL INSURANCE BENEFITS

■ 1. The authority citation for part 409 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart C—Posthospital SNF Care

■ 2. In § 409.20, the following amendments are made as set forth below:
■ a. Paragraph (c)(3) is revised.
■ b. Paragraph (c)(4) is added.

§ 409.20 Coverage of services.

* * * * *

(c) * * *

(3) The term *swing-bed hospital* includes a CAH with swing-bed approval under subpart F of part 485 of this chapter.

(4) The term *post-hospital SNF care* includes SNF care that does not follow a hospital stay when the beneficiary is enrolled in a plan, as defined in § 422.4 of this chapter, offered by a Medicare+Choice (M+C) organization, that includes the benefits described in § 422.101(c) of this chapter.

Subpart D—Requirements for Coverage of Posthospital SNF Care

■ 3. In § 409.30, paragraph (b)(2) is revised to read as follows:

§ 409.30 Basic requirements.

* * * * *

(b) * * *

(2) The following exceptions apply—

(i) A beneficiary for whom posthospital SNF care would not be medically appropriate within 30 days after discharge from the hospital or CAH, or a beneficiary enrolled in a Medicare+Choice (M+C) plan, may be admitted at the time it would be medically appropriate to begin an active course of treatment.

(ii) If, upon admission to the SNF, the beneficiary was enrolled in an M+C plan, as defined in § 422.4 of this chapter, offering the benefits described in § 422.101(c) of this chapter, the beneficiary will be considered to have met the requirements described in paragraphs (a) and (b) of this section, and also in § 409.31(b)(2), for the duration of the SNF stay.

■ 4. In § 409.31 paragraph (b)(2)(ii) is revised, and a new paragraph (b)(2)(iii) is added to read as follows:

§ 409.31 Level of care requirement.

* * * * *

(b) * * *

(2) * * *

(ii) Which arose while the beneficiary was receiving care in a SNF or swing-bed hospital or inpatient CAH services; or

(iii) For which, for an M+C enrollee described in § 409.20(c)(4), a physician has determined that a direct admission to a SNF without an inpatient hospital or inpatient CAH stay would be medically appropriate.

* * * * *

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

■ 5. The authority citation for part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9), and 31 U.S.C. 9701.

Subpart L—Medicare Contract Requirements

§ 417.479 [Amended]

■ 6. In § 417.479, the following amendments are made as follows:

■ a. In paragraph (g)(2)(ii), the reference in the second sentence to "(h)(1)(v)" is removed and "(h)(2)" is inserted in its place.

■ b. The heading for paragraph (h) is revised.

■ c. Paragraph (h)(1) is revised.

■ d. Paragraph (h)(2) is revised.

■ e. The introductory text to paragraph (h)(3) is revised.

§ 417.479 Requirements for physician incentive plans.

* * * * *

(h) *Disclosure and other requirements for organizations with physician incentive plans.* (1) Disclosure to CMS. Each health maintenance organization or competitive medical plan must provide to CMS information concerning its physician incentive plans as requested.

(2) *Pooling of patients.* Pooling of patients is permitted only if—(i) It is otherwise consistent with the relevant contracts governing the compensation arrangements for the physician or physician group;

(ii) The physician or physician group is at risk for referral services with respect to each of the categories of patients being pooled;

(iii) The terms of the compensation arrangements permit the physician or physician group to spread the risk across the categories of patients being pooled;

(iv) The distribution of payments to physicians from the risk pool is not calculated separately by patient category; and

(v) The terms of the risk borne by the physicians or physician group are comparable for all categories of patients being pooled.

(3) *Disclosure to Medicare beneficiaries.* Each health maintenance organization or competitive medical plan must provide the following information to any Medicare beneficiary who requests it:

* * * * *

PART 422—MEDICARE+CHOICE PROGRAM

■ 7. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

■ 8. In § 422.2, the introductory text is republished, and the definition of *Additional benefits* is revised to read as follows:

§ 422.2 Definitions.

As used in this part—

* * * * *

Additional benefits are health care services not covered by Medicare, reductions in premiums or cost-sharing for Medicare covered services, and reductions in the Medicare beneficiary's standard Part B premium, funded from adjusted excess amounts as calculated in the ACR.

* * * * *

Subpart B—Eligibility, Election, and Enrollment

■ 9. In § 422.50, paragraph (a)(2) is revised to read as follows:

§ 422.50 Eligibility to elect an M+C plan.

(a) * * *

(2) Has not been medically determined to have end-stage renal disease, except that—

(i) An individual who develops end-stage renal disease while enrolled in an M+C plan or in a health plan offered by the M+C organization is eligible to elect an M+C plan offered by that organization; and

(ii) An individual with end-stage renal disease whose enrollment in an M+C plan was terminated or discontinued after December 31, 1998, because CMS or the M+C organization terminated the M+C organization's contract for the plan or discontinued the plan in the area in which the individual resides, is eligible to elect another M+C plan. If the plan so elected is later terminated or discontinued in the area in which the individual resides, he or she may elect another M+C plan.

* * * * *

■ 10. In § 422.74, the following amendments are made as set forth below:

■ a. Paragraph (d)(1)(ii) is revised.

■ b. Paragraph (d)(4) is revised.

§ 422.74 Disenrollment by the M+C organization.

* * * * *

(d) * * *

(1) * * *

(ii) The M+C organization has not received payment within 90 days after the date the premium was due.

* * * * *

(d) * * *

(4) *Individual no longer resides in the M+C plan's service area.* (i) *Basis for disenrollment.* Unless continuation of enrollment is elected under § 422.54, the M+C organization must disenroll an individual if the M+C organization establishes, on the basis of a written statement from the individual or other evidence acceptable to CMS, that the individual has permanently moved—

(A) Out of the M+C plan's service area; or

(B) From the residence in which the individual resided at the time of enrollment in the M+C plan to an area outside the M+C plan's service area, for those individuals who enrolled in the M+C plan under the eligibility requirements at § 422.50(a)(3)(ii) or (a)(4).

(ii) *Special rule.* If the individual has not moved from the M+C plan's service area (or residence, as described in paragraph (d)(4)(i)(B) of this section), but has left the service area (or residence) for more than 6 months, the M+C organization must disenroll the individual from the plan, unless the exception in paragraph (d)(4)(iii) of this section applies.

(iii) *Exception.* If the M+C plan covers services other than emergent, urgent, maintenance and poststabilization, and renal dialysis services (as described in § 422.100(b)(1)(iv) and § 422.113) when the individual is out of the service area for a period of consecutive days longer than 6 months but less than 12 months, but within the United States (as defined in § 400.200 of this chapter), the M+C organization may elect to offer to the individual the option of remaining enrolled in the M+C plan if—

(A) The individual is disenrolled on the first day of the 13th month after the

individual left the service area (or residence, if paragraph (d)(4)(i)(B) of this section applies);

(B) The individual understands and accepts any restrictions imposed by the M+C plan on obtaining these services while absent from the M+C plan's service area for the extended period; and

(C) The M+C organization makes this option available to all Medicare enrollees who are absent for an extended period from the M+C plan's service area. However, M+C organizations may limit this option to enrollees who travel to certain areas, as defined by the M+C organization, and who receive services from qualified providers who directly provide, arrange for, or pay for health care.

(iv) *Notice of disenrollment.* The M+C organization must give the individual a written notice of the disenrollment that meets the requirements set forth in paragraph (c) of this section.

* * * * *

Subpart C—Benefits and Beneficiary Protections

■ 11. In § 422.101, the following amendments are made as follows:
■ a. Paragraph (b)(3) is revised.
■ b. Paragraph (c) is added.

§ 422.101 Requirements relating to basic benefits.

* * * * *

(b) * * *

(3) Written coverage decisions of local carriers and intermediaries with jurisdiction for claims in the geographic area in which services are covered under the M+C organization. If an M+C organization covers geographic areas encompassing more than one local coverage policy area, the M+C organization may elect to uniformly apply to plan enrollees in all areas the coverage policy that is the most beneficial to M+C enrollees. M+C organizations that elect this option must notify CMS before selecting the area that has local coverage policies that are most beneficial to M+C enrollees as follows:

(i) An M+C organization electing to adopt a uniform local coverage policy for a plan or plans must notify CMS at least 60 days before the date specified in § 422.306(a), which is 60 days before the date adjusted community rate proposals are due for the subsequent year. Such notice must identify the plan or plans and service area or services areas to which the uniform local coverage policy or policies will apply, the competing local coverage policies involved, and a justification explaining why the selected local coverage policy or policies are most beneficial to M+C enrollees.

(ii) CMS will review notices provided under paragraph (b)(3)(i) of this section, evaluate the selected local coverage policy or policies based on such factors as cost, access, geographic distribution of enrollees, and health status of enrollees, and notify the M+C organization of its approval or denial of the selected uniform local coverage policy or policies.

(c) M+C organizations may elect to furnish, as part of their Medicare covered benefits, coverage of posthospital SNF care as described in subparts C and D of this part, in the absence of the prior qualifying hospital stay that would otherwise be required for coverage of this care.

■ 12. In § 422.106, the following amendments are made as follows:
■ a. The section heading is revised.
■ b. Paragraphs (a) introductory text, (a)(1), and (a)(2) are revised.
■ c. Paragraph (b) introductory text is revised.
■ d. A new paragraph (c) is added.

§ 422.106 Coordination of benefits with employer or union group health plans and Medicaid.

(a) *General rule.* If an M+C organization contracts with an employer, labor organization, or the trustees of a fund established by one or more employers or labor organizations that cover enrollees in an M+C plan, or contracts with a State Medicaid agency to provide Medicaid benefits to individuals who are eligible for both Medicare and Medicaid, and who are enrolled in an M+C plan, the enrollees must be provided the same benefits as all other enrollees in the M+C plan, with the employer, labor organization, fund trustees, or Medicaid benefits supplementing the M+C plan benefits. Jurisdiction regulating benefits under these circumstances is as follows:

(1) All requirements of this part that apply to the M+C program apply to the M+C plan coverage and benefits provided to enrollees eligible for benefits under an employer, labor organization, trustees of a fund established by one or more employers or labor organizations, or Medicaid contract.

(2) Employer benefits that complement an M+C plan, which are not part of the M+C plan, are not subject to review or approval by CMS.

* * * * *

(b) *Examples.* Permissible employer, labor organization, benefit fund trustee, or Medicaid plan benefits include the following:

* * * * *

(c) *Waiver or modification.* (1) M+C organizations may request, in writing, from CMS, a waiver or modification of those requirements in this part that hinder the design of, the offering of, or the enrollment in, M+C plans under contracts between M+C organizations and employers, labor organizations, or the trustees of funds established by one or more employers or labor organizations to furnish benefits to the entity's employees, former employees, or members or former members of the labor organizations.

(2) Approved waivers or modifications under this paragraph may be used by any M+C organization in developing its Adjusted Community Rate (ACR) proposal. Any M+C organization using a waiver or modification must include that information in the cover letter of its ACR proposal submission.

■ 13. Section 422.109 is revised to read as follows:

§ 422.109 Effect of national coverage determinations (NCDs) and legislative changes in benefits.

(a) *Definitions.* The term *significant cost,* as it relates to a particular NCD or legislative change in benefits, means either of the following:

(1) The average cost of furnishing a single service exceeds a cost threshold that—

(i) For calendar years 1998 and 1999, is $100,000; and

(ii) For calendar year 2000 and subsequent calendar years, is the preceding year's dollar threshold adjusted to reflect the national per capita growth percentage described in § 422.254(b).

(2) The estimated cost of all Medicare services furnished as a result of a particular NCD or legislative change in benefits represents at least 0.1 percent of the national standardized annual capitation rate, as described in § 422.254(f), multiplied by the total number of Medicare beneficiaries for the applicable calendar year. For purposes of § 422.256 only, this test is applied to all NCDs or legislative changes in benefits, in the aggregate, for a given year. If the sum of the average cost of each NCD or legislative change in benefits exceeds the amount in paragraph (a)(1) of this section, or the aggregate costs of all NCDs and legislative changes for a year exceeds the percentage in paragraph (a)(2) of this section, the costs are considered "significant."

(b) *General rule.* If CMS determines and announces that an individual NCD or legislative change in benefits meets the criteria for significant cost described

in paragraph (a) of this section, a M+C organization is not required to assume risk for the costs of that service or benefit until the contract year for which payments are appropriately adjusted to take into account the cost of the NCD service or legislative change in benefits. If CMS determines that an NCD or legislative change in benefits does not meet the "significant cost" threshold described in § 422.109(a), the M+C organization is required to provide coverage for the NCD or legislative change in benefits and assume risk for the costs of that service or benefit as of the effective date stated in the NCD or specified in the legislation.

(c) *Before payment adjustments become effective.* Before the contract year that payment adjustments that take into account the significant cost of the NCD service or legislative change in benefits become effective, the service or benefit is not included in the M+C organization's contract with CMS, and is not a covered benefit under the contract. The following rules apply to these services or benefits:

(1) Medicare payment for the service or benefit is made directly by the fiscal intermediary and carrier to the provider furnishing the service or benefit in accordance with original Medicare payment rules, methods, and requirements.

(2) Costs for NCD services or legislative changes in benefits for which CMS intermediaries and carriers will not make payment and are the responsibility of the M+C organization are—

(i) Services necessary to diagnose a condition covered by the NCD or legislative changes in benefits;

(ii) Most services furnished as follow-up care to the NCD service or legislative change in benefits;

(iii) Any service that is already a Medicare-covered service and included in the annual M+C capitation rate or previously adjusted payments; and

(iv) Any service, including the costs of the NCD service or legislative change in benefits, to the extent the M+C organization is already obligated to cover it as an additional benefit under § 422.312 or supplemental benefit under § 422.102.

(3) Costs for significant cost NCD services or legislative changes in benefits for which CMS fiscal intermediaries and carriers will make payment are—

(i) Costs relating directly to the provision of services related to the NCD or legislative change in benefits that were noncovered services before the issuance of the NCD or legislative change in benefits; and

(ii) A service that is not included in the M+C capitation payment rate.

(4) Beneficiaries are liable for any applicable coinsurance amounts.

(d) *After payment adjustments become effective.* For the contract year in which payment adjustments that take into account the significant cost of the NCD service or legislative change in benefits are in effect, the service or benefit is included in the M+C organization's contract with CMS, and is a covered benefit under the contract. Subject to all applicable rules under this part, the M+C organization must furnish, arrange, or pay for the NCD service or legislative change in benefits. M+C organizations may establish separate plan rules for these services and benefits, subject to CMS review and approval. CMS may, at its discretion, issue overriding instructions limiting or revising the M+C plan rules, depending on the specific NCD or legislative change in benefits. For these services or benefits, the Medicare enrollee will be responsible for M+C plan cost sharing, as approved by CMS or unless otherwise instructed by CMS.

■ 14. In § 422.111, a new paragraph (f)(8)(iii) is added to read as follows:

§ 422.111 Disclosure requirements.

* * * * *

(f) * * *

(8) * * *

(iii) The reduction in Part B premiums, if any.

* * * * *

■ 15. A new § 422.133 is added to subpart C to read as follows:

§ 422.133 Return to home skilled nursing facility.

(a) *General rule.* M+C plans must provide coverage of posthospital extended care services to Medicare enrollees through a home skilled nursing facility if the enrollee elects to receive the coverage through the home skilled nursing facility, and if the home skilled nursing facility either has a contract with the M+C organization or agrees to accept substantially similar payment under the same terms and conditions that apply to similar skilled nursing facilities that contract with the M+C organization.

(b) *Definitions.* In this subpart, *home skilled nursing facility* means—

(1) The skilled nursing facility in which the enrollee resided at the time of admission to the hospital preceding the receipt of posthospital extended care services;

(2) A skilled nursing facility that is providing posthospital extended care services through a continuing care retirement community in which the M+C plan enrollee was a resident at the time of admission to the hospital. A continuing care retirement community is an arrangement under which housing and health-related services are provided (or arranged) through an organization for the enrollee under an agreement that is effective for the life of the enrollee or for a specified period; or

(3) The skilled nursing facility in which the spouse of the enrollee is residing at the time of discharge from the hospital.

(c) *Coverage no less favorable.* The posthospital extended care scope of services, cost-sharing, and access to coverage provided by the home skilled nursing facility must be no less favorable to the enrollee than posthospital extended care services coverage that would be provided to the enrollee by a skilled nursing facility that would be otherwise covered under the M+C plan.

(d) *Exceptions.* The requirement to allow an M+C plan enrollee to elect to return to the home skilled nursing facility for posthospital extended care services after discharge from the hospital does not do the following:

(1) Require coverage through a skilled nursing facility that is not otherwise qualified to provide benefits under Part A for Medicare beneficiaries not enrolled in the M+C plan.

(2) Prevent a skilled nursing facility from refusing to accept, or imposing conditions on the acceptance of, an enrollee for the receipt of posthospital extended care services.

Subpart D—Quality Assurance

■ 16. In § 422.152, a new paragraph (f)(4) is added to read as follows:

§ 422.152 Quality assessment and performance improvement program.

* * * * *

(f) * * *

(4) *Focus on racial and ethnic minorities.* The M+C organization's Quality Assurance program must include a separate focus on racial and ethnic minorities.

Subpart E—Relationships With Providers

■ 17. In § 422.202, paragraph (a)(4) is revised to read as follows:

§ 422.202 Participation procedures.

(a) * * *

(4) A process for appealing adverse participation procedures, including the right of physicians to present information and their views on the decision. In the case of termination or suspension of a provider contract by the

M+C organization, this process must conform to the rules in § 422.202(d).

■ 18. In § 422.210, paragraph (a) and the introductory text to paragraph (b) are revised to read as follows:

§ 422.210 Disclosure of physician incentive plans.

(a) *Disclosure to CMS.* Each M+C organization must provide to CMS information concerning its physician incentive plans as requested.

(b) *Disclosure to Medicare beneficiaries.* Each M+C organization must provide the following information to any Medicare beneficiary who requests it:

* * * * *

Subpart F—Payments to Medicare+Choice Organizations

■ 19. In § 422.250, the following amendments are made as follows:

■ a. Paragraph (a)(1) is revised.

■ b. Paragraph (a)(2)(i)(B) is redesignated as (a)(2)(i)(C).

■ c. A new paragraph (a)(2)(i)(B) is added.

§ 422.250 General provisions.

(a) *Monthly payments*—(1) *General rule.* (i) Except as provided in paragraphs (a)(2) or (f) of this section, CMS makes advance monthly payments equal to 1/12th of the annual M+C capitation rate for the payment area described in paragraph (c) of this section adjusted for such demographic risk factors as an individual's age, disability status, sex, institutional status, and other factors as it determines to be appropriate to ensure actuarial equivalence.

(ii) Effective January 1, 2000, CMS adjusts for health status as provided in § 422.256(c). When the new risk adjustment is implemented, 1/12th of the annual capitation rate for the payment area described in paragraph (c) of this section will be adjusted by the risk adjustment methodology under § 422.256(d).

(iii) Effective January 1, 2003, monthly payments may be reduced by the adjusted excess amount, as described in § 422.312(a)(2), and 80 percent of the reduction in monthly payments used to reduce the Medicare beneficiary's Part B premium, up to a total of 125 percent of Part B premium amount.

(2) * * *

(i) * * *

(B) CMS applies appropriate adjustments when establishing the rates, including risk adjustment factors. CMS also establishes annual changes in capitation rates using the methodology described in § 422.252. Effective 2002, a special adjustment is made to increase ESRD rates to 100 percent of estimated per capita fee-for-service expenditures and rates are adjusted for age and sex. In subsequent years, rates are adjusted for age, sex, and other factors, if appropriate.

* * * * *

■ 20. In § 422.256, paragraph (b) is revised to read as follows:

§ 422.256 Adjustments to capitation rates and aggregate payments.

* * * * *

(b) *Adjustment for national coverage determination (NCD) services and legislative changes in benefits.* If CMS determines that the cost of furnishing an NCD service or legislative change in benefits is significant, as defined in § 422.109, CMS will adjust capitation rates or make other payment adjustments, to account for the cost of the service or legislative change in benefits. Until the new capitation rates are in effect, the M+C organization will be paid for the significant cost NCD service or legislative change in benefits on a fee-for-service basis as provided under § 422.109(b). The Office of the Actuary in CMS will apply a new NCD adjustment factor each year that reflects significant costs of NCDs and legislative changes in benefits for coverage effective in the second prior year. The new NCD adjustment factor will be applied to the 2 percent minimum update rate described in § 422.252(c).

* * * * *

■ 21. In § 422.266, the following amendments are made as follows:

■ a. Paragraph (a) introductory text is revised.

■ b. Paragraph (c) is revised.

§ 422.266 Special rules for hospice care.

(a) *Information.* An M+C organization that has a contract under subpart K of this part must inform each Medicare enrollee eligible to select hospice care under § 418.24 of this chapter about the availability of hospice care (in a manner that objectively presents all available hospice providers, including a statement of any ownership interest in a hospice held by the M+C organization or a related entity) if—

* * * * *

(c) *Payment.* (1) No payment is made to an M+C organization on behalf of a Medicare enrollee who has elected hospice care under § 418.24 of this chapter except for the portion of the payment applicable to the additional benefits described in § 422.312. This no-payment rule is effective from the first day of the month following the month of election to receive hospice care, until the first day of the month following the month in which the election is terminated.

(2) During the time the hospice election is in effect, CMS's monthly capitation payment to the M+C organization is reduced to an amount equal to the adjusted excess amount determined under § 422.312. In addition, CMS pays through the original Medicare program (subject to the usual rules of payment)—

(i) The hospice program for hospice care furnished to the Medicare enrollee; and

(ii) The M+C organization, provider, or supplier for other Medicare-covered services to the enrollee.

Subpart G—Premiums and Cost-Sharing

■ 22. In § 422.312, the following amendments are made as follows:

■ a. Paragraph (d) is redesignated as paragraph (e).

■ b. A new paragraph (d) is added.

§ 422.312 Requirement for additional benefits.

* * * * *

(d) *Reduction in payments.* As of January 1, 2003, as a part of providing additional benefits under paragraph (b) of this section, if there is an adjusted excess amount for the plan it offers, the M+C organization—

(1) May elect to receive a reduction (not to exceed 125 percent of the standard Part B premium amount) in its payments under § 422.250(a)(1), 80 percent of which will be applied to reduce the Part B premiums of its Medicare enrollees; and

(2) Must apply the reduction uniformly to all similarly situated enrollees of the M+C plan.

* * * * *

Subpart K—Contracts With Medicare+Choice Organizations

■ 23. A new § 422.521 is added as set forth below:

§ 422.521 Effective date of new significant regulatory requirements.

CMS will not implement, other than at the beginning of a calendar year, requirements under this part that impose a new significant cost or burden on M+C organizations or plans, unless a different effective date is required by statute.

Subpart M—Grievances, Organization Determinations and Appeals

■ 24. In § 422.566, paragraph (c) is revised to read as set forth below:

§ 422.566 Organization determinations.

* * * * *

(c) *Who can request an organization determination.* (1) Those individuals or entities who can request an organization determination are—

(i) The enrollee (including his or her authorized representative);

(ii) Any provider that furnishes, or intends to furnish, services to the enrollee; or

(iii) The legal representative of a deceased enrollee's estate.

(2) Those who can request an expedited determination are—

(i) An enrollee (including his or her authorized representative); or

(ii) A physician (regardless of whether the physician is affiliated with the M+C organization).

■ 25. In § 422.618, paragraph (c) is revised to read as set forth below:

§ 422.618 How an M+C organization must effectuate standard reconsidered determinations or decisions.

* * * * *

(c) *Reversals other than by the M+C organization or the independent outside entity.*—(1) *General rule.* If the independent outside entity's determination is reversed in whole or in part by the ALJ, or at a higher level of appeal, the M+C organization must pay for, authorize, or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 calendar days from the date it receives notice reversing the determination. The M+C organization must inform the independent outside entity that the organization has effectuated the decision or that it has appealed the decision.

(2) *Effectuation exception when the M+C organization files an appeal with the Departmental Appeals Board.* If the M+C organization requests Departmental Appeals Board (the Board) review consistent with § 422.608, the M+C organization may await the outcome of the review before it pays for, authorizes, or provides the service under dispute. A M+C organization that files an appeal with the Board must concurrently send a copy of its appeal request and any accompanying documents to the enrollee and must notify the independent outside entity that it has requested an appeal.

■ 26. In § 422.619, paragraph (c) is revised to read as set forth below:

§ 422.619 How a M+C organization must effectuate expedited reconsidered determinations.

* * * * *

(c) *Reversals other than by the M+C organization or the independent outside entity.*—(1) *General rule.* If the independent outside entity's expedited determination is reversed in whole or in part by the ALJ, or at a higher level of appeal, the M+C organization must authorize or provide the service under dispute as expeditiously as the enrollee's health condition requires, but no later than 60 days from the date it receives notice reversing the determination. The M+C organization must inform the independent outside entity that the organization has effectuated the decision.

(2) *Effectuation exception when the M+C organization files an appeal with the Departmental Appeals Board.* If the M+C organization requests Departmental Appeals Board (the Board) review consistent with § 422.608, the M+C organization may await the outcome of the review before it authorizes or provides the service under dispute. A M+C organization that files an appeal with the Board must concurrently send a copy of its appeal request and any accompanying documents to the enrollee and must notify the independent outside entity that it has requested an appeal.

Subpart O—Intermediate Sanctions

■ 27. In § 422.756, the following amendments are made as set forth below:

■ a. Paragraph (f)(2) is revised.

■ b. Paragraph (f)(3) is revised.

§ 422.756 Procedures for imposing sanctions.

* * * * *

(f) * * *

(2) In the case of a violation described in paragraph (a) of § 422.752, or a determination under paragraph (b) of § 422.752 based upon a violation under § 422.510(a)(4) (involving fraudulent or abusive activities), in accordance with the provisions of part 1005 of this title, the OIG may impose civil money penalties on the M+C organization in accordance with part 1005 of this title in addition to, or in place of, the sanctions that CMS may impose under paragraph (c) of this section.

(3) In the case of a determination under paragraph (b) of § 422.752 other than a determination based upon a violation under § 422.510(a)(4), in accordance with the provisions of part 1005 of this title, CMS may impose civil money penalties on the M+C organization in the amounts specified in § 422.758 in addition to, or in place of, the sanctions that CMS may impose under paragraph (c) of this section.

■ 28. In § 422.758, the following amendments are made as set forth below:

■ a. The introductory text is designated as paragraph (a) introductory text.

■ b. Paragraph (a) is redesignated as paragraph (a)(1) and is revised.

■ c. Paragraph (b) is redesignated as paragraph (a)(2) and is revised.

■ d. A new paragraph (b) is added.

§ 422.758 Maximum amount of civil money penalties imposed by CMS.

(a) * * *

(1) For the violations listed below, CMS may impose the sanctions specified in § 422.750(a)(2), (a)(3), or (a)(4) on any M+C organization that has a contract in effect. The M+C organization may also be subject to other applicable remedies available under law.

(2) For each week that a deficiency remains uncorrected after the week in which the M+C organization receives CMS's notice of the determination—up to $10,000.

(b) If CMS makes a determination under § 422.752(b) and § 422.756(f)(3), based on a determination under § 422.510(a)(1) that an M+C organization has terminated its contract with CMS in a manner other than described under § 422.512—$250 per Medicare enrollee from the terminated M+C plan or plans at the time the M+C organization terminated its contract, or $100,000, whichever is greater.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 3, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: June 3, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–20995 Filed 8–13–03; 3:19 pm]

BILLING CODE 4120–01–P

Federal Register

Friday,
August 22, 2003

Part III

Department of Housing and Urban Development

Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–34]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Shirley Kramer, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *ARMY:* Ms. Julie Jones-Conte, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, Attn: DAIM–ME, Room 1E677, 600 Army Pentagon, Washington, DC 20310–0600; (703) 692–9223; *COE:* Ms. Shirley Middleswarth, Army Corps of Engineers, Civil Division, Directorate of Real Estate, 441 G Street, NW., Washington, DC 20314–1000; (202) 761–7425; *COAST GUARD:* United States Coast Guard, Attn: Teresa Sheinberg, Room 6109, 2100 Second Street, SW., Washington DC 20593–0001; (202) 267–6142; *ENERGY:* Mr. Tom Knox, Department of Energy, Office of Engineering & Construction Management, CR–80, Washington, DC 20585; (202) 586–8715; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; *INTERIOR:* Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS5512, Washington, DC 20240; (202) 219–0728; *NAVY:* Mr. Charles C. Cocks, Director, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; *VA:* Ms. Amelia E. McLellan, Director, Real Property Service (183C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 419, Washington, DC 20420; (202) 565–5398; (These are not toll-free numbers).

Dated: August 14, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 8/22/03

Suitable/Available Properties

Buildings (by State)

California

SSA Building
1230 12th Street
Modesto Co: CA 95354–
Landholding Agency: GSA
Property Number: 54200330003
Status: Surplus
Comment: 11,957 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—office
GSA Number: 9–G–CA–1610

Georgia

Bldgs. 00064, 00065
Camp Frank D. Merrill
Dahlonega Co: Lumpkin GA 30597–
Landholding Agency: Army
Property Number: 21200330108
Status: Unutilized
Comment: 648 sq. ft. each, concrete block, most recent use—water support treatment bldg., off-site use only

Idaho

Bldg. CF603
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–

Landholding Agency: Energy
Property Number: 41200020004
Status: Excess
Comment: 15,005 sq ft. cinder block, presence of asbestos/lead paint, major rehab, off-site use only

Indiana

Bldg. 105, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230006
Status: Excess
Comment: 310 sq. ft., 1 story stone structure, no sanitary or heating facilities, Natl Register of Historic Places

Bldg. 140, VAMC
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230007
Status: Excess
Comment: 60 sq. ft., concrete block bldg., most recent use—trash house

Bldg. 7
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810001
Status: Underutilized
Comment: 16,864 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 10
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810002
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 11
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810003
Status: Underutilized
Comment: 16,361 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 18
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810004
Status: Underutilized
Comment: 13,802 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 25
VA Northern Indiana Health Care System
Marion Campus, 1700 East 38th Street
Marion Co: Grant IN 46953–
Landholding Agency: VA
Property Number: 97199810005
Status: Unutilized
Comment: 32,892 sq. ft., presence of asbestos, most recent use—psychiatric ward, National Register of Historic Places

Bldg. 1
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310001
Status: Unutilized
Comment: 20,287 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 3
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310002
Status: Unutilized
Comment: 20,550 sq. ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 4
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310003
Status: Unutilized
Comment: 20,550 sq .ft., needs extensive repairs, presence of asbestos, most recent use—patient ward

Bldg. 13
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310004
Status: Unutilized
Comment: 8971 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 19
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310005
Status: Unutilized
Comment: 12,237 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 20
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310006
Status: Unutilized
Comment: 14,039 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office/storage

Bldg. 42
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310007
Status: Unutilized
Comment: 5025 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 60
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310008
Status: Unutilized
Comment: 18,126 sq. ft., needs extensive repairs, presence of asbestos, most recent use—office

Bldg. 122
N. Indiana Health Care System
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97200310009
Status: Unutilized
Comment: 37,135 sq. ft., needs extensive repairs, presence of asbestos, most recent use—dining hall/kitchen

Kentucky

Green River Lock & Dam #3
Rochester Co: Butler KY 42273–
Location: SR 70 west from Morgantown, KY., approximately 7 miles to site.
Landholding Agency: COE
Property Number: 31199010022
Status: Unutilized
Comment: 980 sq. ft.; 2 story wood frame; two story residence; potential utilities; needs major rehab.

Louisiana

SSA Baton Rouge Dist. Ofc.
350 Donmoor Avenue
Baton Rouge Co: LA 70806–
Landholding Agency: GSA
Property Number: 54200330005
Status: Surplus
Comment: 9456 sq. ft., most recent use—office
GSA Number: 7–G–LA–0567

Maryland

Bldg. 2728
Fort Meade
Ft. Meade Co: Anne Arundel MD 20755–
Landholding Agency: Army
Property Number: 21200330109
Status: Unutilized
Comment: 4072 sq. ft., most recent use—storage, off-site use only

Bldgs. 00264, 00265
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330110
Status: Unutilized
Comment: 1322/1048 sq. ft., needs, rehab, most recent use—storage, off-site use only

Bldg. 00435
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330111
Status: Unutilized
Comment: 1191 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 0449A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330112
Status: Unutilized
Comment: 143 sq. ft., needs rehab, most recent use—substation switch bldg., off-site use only

Bldgs. 00458, 00464
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330113
Status: Unutilized
Comment: 900/2647 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 0460
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–

Landholding Agency: Army
Property Number: 21200330114
Status: Unutilized
Comment: 1800 sq. ft., needs rehab, most recent use—electrical EQ bldg., off-site use only

Bldgs. 00506, 00509, 00605
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330115
Status: Unutilized
Comment: 38,690/1137 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00724
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330116
Status: Unutilized
Comment: off-site use only

Bldgs. 00728, 00784
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330117
Status: Unutilized
Comment: 2100/232 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00914
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330118
Status: Unutilized
Comment: needs rehab, most recent use—safety shelter, off-site use only

Bldg. 00915
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330119
Status: Unutilized
Comment: 247 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00931
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330120
Status: Unutilized
Comment: 1400 sq. ft., needs rehab, off-site use only

Bldg. 01050
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330121
Status: Unutilized
Comment: 1050 sq. ft., needs rehab, most recent use—transmitter bldg., off-site use only

Bldg. 1101A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330122
Status: Unutilized
Comment: 1800 sq. ft., needs rehab, most recent use—ordnance bldg., off-site use only

Bldg. 01169
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330123
Status: Unutilized
Comment: 440 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 01170
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330124
Status: Unutilized
Comment: 600 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldg. 01171
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330125
Status: Unutilized
Comment: 2412 sq. ft., needs rehab, most recent use—changing facility, off-site use only

Bldg. 01189
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330126
Status: Unutilized
Comment: 800 sq. ft., needs rehab, most recent use—range bldg., off-site use only

Bldg. E1413
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330127
Status: Unutilized
Comment: needs rehab, most recent use—observation tower, off-site use only

Bldgs. E1418, E2148
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330128
Status: Unutilized
Comment: 836/1092 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E1486
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330129
Status: Unutilized
Comment: 388 sq. ft., needs rehab, most recent use—ordnance facility, off-site use only

Bldg. E2314
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330130
Status: Unutilized
Comment: 11,279 sq. ft., needs rehab, most recent use—high explosive bldg., off-site use only

Bldgs. 02350, 02357
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330131
Status: Unutilized
Comment: 163/920 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E2350A
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330132
Status: Unutilized
Comment: 325 sq. ft., need rehab, most recent use—oil storage, off-site use only

Bldg. 2456
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330133
Status: Unutilized
Comment: 4720 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. E3175
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330134
Status: Unutilized
Comment: 1296 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

4 Bldgs
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Location: E3224, E3228, E3230, E3232, E3234
Landholding Agency: Army
Property Number: 21200330135
Status: Unutilized
Comment: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only

Bldg. E3241
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330136
Status: Unutilized
Comment: 592 sq. ft., needs rehab, most recent use—medical res bldg., off-site use only

Bldgs. E3265, E3266
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330137
Status: Unutilized
Comment: 5509/5397 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldgs. E3269, E3270
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330138
Status: Unutilized
Comment: 200/1200 sq. ft., needs rehab, most recent use—flam. storage, off-site use only

Bldg. E3300
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330139
Status: Unutilized
Comment: 44,352 sq. ft., needs rehab, most recent use—chemistry lab, off-site use only

Bldg. E3320
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330140
Status: Unutilized
Comment: 50,750 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. E3322
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330141
Status: Unutilized
Comment: 5906 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E3326
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330142
Status: Unutilized
Comment: 2184 sq. ft., needs rehab, most recent use—admin., off-site use only

5 Bldgs.
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Location: E3329, E3334, E3344, E3350, E3370
Landholding Agency: Army
Property Number: 21200330143
Status: Unutilized
Comment: sq. ft. varies, needs rehab, most recent use—lab test bldgs., off-site use only

Bldg. E3335
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330144
Status: Unutilized
Comment: 400 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. E3360, E3362, E3464
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330145
Status: Unutilized
Comment: 3588/236 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E3514
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330146
Status: Unutilized
Comment: 4416 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. E3517, E3525
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005
Landholding Agency: Army
Property Number: 21200330147
Status: Unutilized
Comment: 1001/2175 sq. ft., needs rehab, most recent use—nonmet matl facility, off-site use only

Bldg. E3542
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330148
Status: Unutilized
Comment: 1146 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldgs. 03554, 03556
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330149
Status: Unutilized
Comment: 18,000/9,000 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. E3863, E3864, E4415
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330150
Status: Unutilized
Comment: sq. ft. varies needs rehab, most recent use—admin., off-site use only

Bldg. E4420
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330151
Status: Unutilized
Comment: 14,997 sq. ft., needs rehab, most recent use—police bldg., off-site use only

Bldg. E4733
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330152
Status: Unutilized
Comment: 2252 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldg. E4734
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330153
Status: Unutilized
Comment: 1114 sq. ft., needs rehab, most recent use—private club, off-site use only

4 Bldgs.
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Location: E5005, E5049, E5050, E5051
Landholding Agency: Army
Property Number: 21200330154
Status: Unutilized
Comment: sq. ft. varies, needs rehab, most recent use—storage, off-site use only

Bldg. E5068
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330155
Status: Unutilized
Comment: 1200 sq. ft., needs rehab, most recent use—fire station, off-site use only

4 Bldgs.
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Location: E5107, E5181, E5182, E5269
Landholding Agency: Army
Property Number: 21200330156
Status: Unutilized
Comment: sq. ft. varies, needs rehab, most recent use—storage, off-site use only

Bldgs. E5329, E5374
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330157
Status: Unutilized
Comment: 1001/308 sq. ft., needs rehab, most recent use—fuel POL bldg., off-site use only

Bldgs. E5425, 05426
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330158
Status: Unutilized
Comment: 1363/3888 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 05446
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330159
Status: Unutilized
Comment: 1991 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. 05447
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330160
Status: Unutilized
Comment: 2464 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldgs. 05448, 05449
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330161
Status: Unutilized
Comment: 6431 sq. ft., needs rehab, most recent use—enlisted UHP, off-site use only

Bldg. 05450
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330162
Status: Unutilized
Comment: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. 05451, 05455
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330163
Status: Unutilized
Comment: 2730/6431 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 05453
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330164
Status: Unutilized
Comment: 6431 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldgs. 05456, 05459, 05460
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330165
Status: Unutilized
Comment: 6431 sq. ft., needs rehab, most recent use—enlisted bldg., off-site use only

Bldgs. 05457, 05458
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330166
Status: Unutilized
Comment: 2730 sq. ft., needs rehab, most recent use—admin., off-site use only

Bldg. E5609
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330167
Status: Unutilized
Comment: 2053 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5611
Aberdeen Proving Grounds

Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330168
Status: Unutilized
Comment: 11,242 sq. ft., needs rehab, most recent use—hazard bldg., off-site use only

Bldg. E5634
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330169
Status: Unutilized
Comment: 200 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldgs. E5648, E5697
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330170
Status: Unutilized
Comment: 6802/2595 sq. ft., needs rehab, most recent use—lab test bldg., off-site use only

Bldg. E5654
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330171
Status: Unutilized
Comment: 21,532 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5779
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330172
Status: Unutilized
Comment: 174 sq. ft., needs rehab, most recent use—wash rack bldg., off-site use only

Bldgs. E5782, E5880
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330173
Status: Unutilized
Comment: 510/1528 sq. ft., needs rehab, most recent use—flammable storage, off-site use only

Bldg. E5854
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330174
Status: Unutilized
Comment: 5166 sq. ft., needs rehab, most recent use—eng/MTN bldg., off-site use only

Bldgs. E5870, E5890
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330175
Status: Unutilized
Comment: 1192/11,279 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E5942
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330176
Status: Unutilized
Comment: 2147 sq. ft., needs rehab, most recent use—igloo storage, off-site use only

Bldgs. E5952, E5953
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330177
Status: Unutilized
Comment: 100/24 sq. ft., needs rehab, most recent use—compressed air bldg., off-site use only

Bldgs. E7401, E7402
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330178
Status: Unutilized
Comment: 256/440 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E7407, E7408
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330179
Status: Unutilized
Comment: 1078/762 sq. ft., needs rehab, most recent use—decon facility, off-site use only

Bldg. E7500
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330180
Status: Unutilized
Comment: 256 sq. ft., needs rehab, most recent use—changing bldg., off-site use only

Bldgs. E7501, E7502
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330181
Status: Unutilized
Comment: 256/77 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. E7931
Aberdeen Proving Grounds
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21200330182
Status: Unutilized
Comment: needs rehab, most recent use—sewer treatment, off-site use only

Mississippi

Quonset Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220010
Status: Unutilized
Comment: 26,250 sq. ft., presence of asbestos/lead paint, most recent use—storage/office, off-site use only

Storage Bldg. #1
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220011
Status: Unutilized
Comment: 32,502 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Storage Bldg. #2
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220012
Status: Unutilized
Comment: 16,170 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Yellow Office Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220013
Status: Unutilized
Comment: 1820 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Storage Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220014
Status: Unutilized
Comment: 1820 sq. ft., presence of asbestos/lead paint, most recent use—office, off-site use only

Container Bldg.
Greenville Casting Plant
Greenville Co: Washington MS 38701–
Landholding Agency: COE
Property Number: 31200220015
Status: Unutilized
Comment: 270 sq. ft. presence, of lead paint, most recent use—storage, off-site use only

Montana

Bldg. 1
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040010
Status: Unutilized
Comment: 22799 sq. ft., presence of asbestos, most recent use—cold storage, off-site use only

Bldg. 2
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040011
Status: Unutilized
Comment: 3292 sq. ft., most recent use—cold storage, off-site use only

Bldg. 3
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040012
Status: Unutilized
Comment: 964 sq. ft., most recent use—cold storage, off-site use only

Bldg. 4
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040013
Status: Unutilized
Comment: 72 sq. ft., most recent use—cold storage, off-site use only

Bldg. 5
Butte Natl Guard
Butte Co: Silverbow MT 59701–
Landholding Agency: COE
Property Number: 31200040014
Status: Unutilized
Comment: 1286 sq. ft., most recent use—cold storage, off-site use only

Nevada

Young Fed Bldg/Courthouse

300 Booth Street
Reno Co: NV 89502–
Landholding Agency: GSA
Property Number: 54200330006
Status: Surplus
Comment: 133,439 sq. ft. (85,637 sq. ft. available), presence of asbestos/lead paint
GSA Number: 9–G–NV–529

New York

Maint/Office Building
Upper Lisle Road
Whitney Point Co: Broome NY 23862–
Landholding Agency: COE
Property Number: 31200330005
Status: Unutilized
Comment: 3820 sq. ft., & 2160 sq. ft., steel frame, off-site use only

North Dakota

Office Bldg.
Lake Oahe Project
3rd & Main
Ft. Yates Co: Sioux ND 58538–
Landholding Agency: COE
Property Number: 31200020001
Status: Unutilized
Comment: 1200 sq. ft., 2-story wood, off-site use only

Ohio

Barker Historic House
Willow Island Locks and Dam
Newport Co: Washington OH 45768–9801
Location: Located at lock site, downstream of lock and dam structure
Landholding Agency: COE
Property Number: 31199120018
Status: Unutilized
Comment: 1600 sq. ft. bldg. with ½ acre of land, 2 story brick frame, needs rehab, on Natl Register of Historic Places, no utilities, off-site use only

Residence
506 Reservoir Rd.
Paint Creek Lake
Bainbridge Co: Highland OH 45612–
Landholding Agency: COE
Property Number: 31200210008
Status: Unutilized
Comment: 1200 sq. ft., needs repair, off-site use only

Pennsylvania

Mahoning Creek Reservoir
New Bethlehem Co: Armstrong PA 16242–
Landholding Agency: COE
Property Number: 31199210008
Status: Unutilized
Comment: 1015 sq. ft., 2 story brick residence, off-site use only

Dwelling
Lock & Dam 6, Allegheny River, 1260 River Rd.
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199620008
Status: Unutilized
Comment: 2652 sq. ft., 3-story brick house, in close proximity to Lock and Dam, available for interim use for nonresidential purposes

Govt. Dwelling
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 31199640002
Status: Unutilized
Comment: 421 sq. ft., 2-story brick w/ basement, most recent use—residential

Dwelling
Lock & Dam 4, Allegheny River
Natrona Co: Allegheny PA 15065–2609
Landholding Agency: COE
Property Number: 31199710009
Status: Unutilized
Comment: 1664 sq. ft., 2-story brick residence, needs repair, off-site use only

Dwelling #1
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740002
Status: Excess
Comment: 2030 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Crooked Creek Lake
Ford City Co: Armstrong PA 16226–8815
Landholding Agency: COE
Property Number: 31199740003
Status: Excess
Comment: 3045 sq. ft., most recent use—residential, good condition, off-site use only

Govt Dwelling
East Branch Lake
Wilcox Co: Elk PA 15870–9709
Landholding Agency: COE
Property Number: 31199740005
Status: Underutilized
Comment: approx. 5299 sq. ft., 1-story, most recent use—residence, off-site use only

Dwelling #1
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740006
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Loyalhanna Lake
Saltsburg Co: Westmoreland PA 15681–9302
Landholding Agency: COE
Property Number: 31199740007
Status: Excess
Comment: 1996 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #1
Woodcock Creek Lake
Saegertown Co: Crawford PA 16433–0629
Landholding Agency: COE
Property Number: 31199740008
Status: Excess
Comment: 2106 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Lock & Dam 6, 1260 River Road
Freeport Co: Armstrong PA 16229–2023
Landholding Agency: COE
Property Number: 31199740009
Status: Excess
Comment: 2652 sq. ft., most recent use—residential, good condition, off-site use only

Dwelling #2
Youghiogheny River Lake
Confluence Co: Fayette PA 15424–9103
Landholding Agency: COE
Property Number: 31199830003
Status: Excess
Comment: 1421 sq. ft., 2-story + basement, most recent use—residential

Bldg. 3, VAMC
1700 South Lincoln Avenue
Lebanon Co: Lebanon PA 17042–
Landholding Agency: VA
Property Number: 97199230012
Status: Underutilized
Comment: portion of bldg. (4046 sq. ft.), most recent use—storage, second floor—lacks elevator access

South Dakota

Residence
Tract 514
Ft. Pierre Co: Stanley SD
Landholding Agency: COE
Property Number: 31200240006
Status: Excess
Comment: 1426 sq. ft., off-site use only

Residence
Tract 516
Ft. Pierre Co: Stanley SD
Landholding Agency: COE
Property Number: 31200240007
Status: Excess
Comment: 2264 sq. ft., off-site use only

Residence/Tract 120
Pierre Co: SD 57532–
Landholding Agency: COE
Property Number: 31200330007
Status: Excess
Comment: 1104 sq. ft., off-site use only

Residence/Tract 143
Pierre Co: SD 57532–
Landholding Agency: COE
Property Number: 31200330008
Status: Excess
Comment: 960 sq. ft., off-site use only

Residence/Tract 157
Pierre Co: SD 57532–
Landholding Agency: COE
Property Number: 31200330009
Status: Excess
Comment: 988 sq. ft., off-site use only

Residence/Tract 300
Pierre Co: SD 57532–
Landholding Agency: COE
Property Number: 31200330010
Status: Excess
Comment: 960 sq. ft., off-site use only

Residence/Tract 413
Pierre Co: SD 57532–
Landholding Agency: COE
Property Number: 31200330011
Status: Excess
Comment: 960 sq. ft., off-site use only

Residence/Tract 420
Pierre Co: SD 57532–
Landholding Agency: COE
Property Number: 31200330012
Status: Excess
Comment: 1680 sq. ft., off-site use only

Texas

Bldgs. P6220, P6222
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX–
Landholding Agency: Army
Property Number: 21200330197

Status: Unutilized
Comment: 384 sq. ft., most recent use—carport/storage, off-site use only

Bldgs. P6224, P6226
Fort Sam Houston
Camp Bullis
San Antonio Co: Bexar TX
Landholding Agency: Army
Property Number: 21200330198
Status: Unutilized
Comment: 384 sq. ft., most recent use—carport/storage, off-site use only

Utah

Federal Center Warehouse
Clearfield Federal Depot
Clearfield Co: UT 84016–
Landholding Agency: GSA
Property Number: 54200330008
Status: Excess
Comment: 118,320 sq. ft., roof replacement necessary, presence of asbestos, most recent use—storage
GSA Number : 7–G–UT–414–2

Virginia

Bldg. T–707
Fort Eustis
Ft. Eustis Co: VA 23604–
Landholding Agency: Army
Property Number: 21200330199
Status: Unutilized
Comment: 3763 sq. ft., most recent use—chapel, off-site use only

Metal Bldg.
John H. Kerr Dam & Reservoir
Co: Boydton VA
Landholding Agency: COE
Property Number: 31199620009
Status: Excess
Comment: 800 sq. ft., most recent use—storage, off-site use only

Wisconsin

Former Lockmaster's Dwelling
Cedar Locks
4527 East Wisconsin Road
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011524
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access.

Former Lockmaster's Dwelling
Appleton 4th Lock
905 South Lowe Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011525
Status: Unutilized
Comment: 908 sq. ft.; 2 story wood frame residence; needs rehab

Former Lockmaster's Dwelling
Kaukauna 1st Lock
301 Canal Street
Kaukauna Co: Outagamie WI 54131–
Landholding Agency: COE
Property Number: 31199011527
Status: Unutilized
Comment: 1290 sq. ft.; 2 story wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster's Dwelling
Appleton 1st Lock
905 South Oneida Street
Appleton Co: Outagamie WI 54911–
Landholding Agency: COE
Property Number: 31199011531
Status: Unutilized
Comment: 1300 sq. ft.; potential utilities; 2 story wood frame residence; needs rehab; secured area with alternate access

Former Lockmaster's Dwelling
Rapid Croche Lock
Lock Road
Wrightstown Co: Outagamie WI 54180–
Location: 3 miles southwest of intersection State Highway 96 and Canal Road
Landholding Agency: COE
Property Number: 31199011533
Status: Unutilized
Comment: 1952 sq. ft.; 2 story wood frame residence; potential utilities; needs rehab

Former Lockmaster's Dwelling
Little KauKauna Lock
Little KauKauna
Lawrence Co: Brown WI 54130–
Location: 2 miles southeasterly from intersection of Lost Dauphin Road (County Trunk Highway "D") and River Street
Landholding Agency: COE
Property Number: 31199011535
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab

Former Lockmaster's Dwelling
Little Chute, 2nd Lock
214 Mill Street
Little Chute Co: Outagamie WI 54140–
Landholding Agency: COE
Property Number: 31199011536
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; potential utilities; needs rehab; secured area with alternate access

Bldg. 8
VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 97199010056
Status: Underutilized
Comment: 2200 sq. ft., 2 story wood frame, possible asbestos, potential utilities, structural deficiencies, needs rehab

Land (by State)

Alabama

VA Medical Center
VAMC
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199010053
Status: Underutilized
Comment: 40 acres, buffer to VA Medical Center, potential utilities, undeveloped

Arkansas

Parcel 01
DeGray Lake
Section 12
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010071
Status: Unutilized
Comment: 77.6 acres

Parcel 02
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010072
Status: Unutilized
Comment: 198.5 acres

Parcel 03
DeGray Lake
Section 18
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010073
Status: Unutilized
Comment: 50.46 acres

Parcel 04
DeGray Lake
Section 24, 25, 30 and 31
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010074
Status: Unutilized
Comment: 236.37 acres

Parcel 05
DeGray Lake
Section 16
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010075
Status: Unutilized
Comment: 187.30 acres

Parcel 06
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010076
Status: Unutilized
Comment: 13.0 acres

Parcel 07
DeGray Lake
Section 34
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010077
Status: Unutilized
Comment: 0.27 acres

Parcel 08
DeGray Lake
Section 13
Arkadelphia Co: Clark AR 71923–9361
Landholding Agency: COE
Property Number: 31199010078
Status: Unutilized
Comment: 14.6 acres

Parcel 09
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010079
Status: Unutilized
Comment: 6.60 acres

Parcel 10
DeGray Lake
Section 12
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010080
Status: Unutilized
Comment: 4.5 acres

Parcel 11
DeGray Lake
Section 19
Arkadelphia Co: Hot Spring AR 71923–9361
Landholding Agency: COE
Property Number: 31199010081

Status: Unutilized
Comment: 19.50 acres

Lake Greeson
Section 7, 8 and 18
Murfreesboro Co: Pike AR 7195COE
Property Number: 31199010083
Status: Unutilized
Comment: 46 acres

California

Land
4150 Clement Street
San Francisco Co: San Francisco CA 94121–
Landholding Agency: VA
Property Number: 9719924000
Comment: 4 acres; landslide area

Iowa

Former Army Natl Guard
Waverly Co: Bremer IA 50677–
Landholding Agency: GSA
Property Number: 54200330004
Status: Surplus
Comment: 4.13 acres with 1.88 acres of easements
GSA Number : 7–D–IA–0463C

40.66 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Landholding Agency: VA
Property Number: 97199740002
Status: Unutilized
Comment: golf course, easement requirements

Kansas

Parcel 1
El Dorado Lake
Section 13, 24, and 18
(See County) Co: Butler KS
Landholding Agency: COE
Property Number: 31199010064
Status: Unutilized
Comment: 61 acres; most recent use—recreation

Kentucky

Tract 2625
Barkley Lake, Kentucky, and Tennessee
Cadiz Co: Trigg KY 42211–
Location: Adjoining the village of Rockcastle.
Landholding Agency: COE
Property Number: 31199010025
Status: Excess
Comment: 2.57 acres; rolling and wooded

Tract 2709–10 and 2710–2
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle.
Landholding Agency: COE
Property Number: 31199010026
Status: Excess
Comment: 2.00 acres; steep and wooded

Tract 2708–1 and 2709–1
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 2½ miles in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010027
Status: Excess
Comment: 3.59 acres; rolling and wooded; no utilities

Tract 2800
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 4½ miles in a southeasterly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010028
Status: Excess
Comment: 5.44 acres; steep and wooded

Tract 2915
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 6½ miles west of Cadiz
Landholding Agency: COE
Property Number: 31199010029
Status: Excess
Comment: 5.76 acres; steep and wooded; no utilities

Tract 2702
Barkley Lake, Kentucky and Tennessee
Cadiz Co: Trigg KY 42211–
Location: 1 mile in a southerly direction from the village of Rockcastle
Landholding Agency: COE
Property Number: 31199010031
Status: Excess
Comment: 4.90 acres; wooded; no utilities

Tract 4318
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: Trigg Co. adjoining the city of Canton, KY, on the waters of Hopson Creek
Landholding Agency: COE
Property Number: 31199010032
Status: Excess
Comment: 8.24 acres; steep and wooded

Tract 4502
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 3½ miles in a southerly direction from Canton, KY
Landholding Agency: COE
Property Number: 31199010033
Status: Excess
Comment: 4.26 acres; steep and wooded

Tract 4611
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 5 miles south of Canton, KY
Landholding Agency: COE
Property Number: 31199010034
Status: Excess
Comment: 10.51 acres; steep and wooded; no utilities

Tract 4619
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199010035
Status: Excess
Comment: 2.02 acres; steep and wooded; no utilities

Tract 4817
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 6½ miles south of Canton, KY
Landholding Agency: COE
Property Number: 31199010036
Status: Excess
Comment: 1.75 acres; wooded

Tract 1217
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: On the north side of the Illinois Central Railroad
Landholding Agency: COE
Property Number: 31199010042
Status: Excess
Comment: 5.80 acres; steep and wooded

Tract 1906
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010044
Status: Excess
Comment: 25.86 acres; rolling steep and partially wooded; no utilities

Tract 1907
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038
Location: On the waters of Pilfen Creek, 4 miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010045
Status: Excess
Comment: 8.71 acres; rolling steep and wooded; no utilities

Tract 2001 #1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010046
Status: Excess
Comment: 47.42 acres; steep and wooded; no utilities

Tract 2001 #2
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 4½ miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010047
Status: Excess
Comment: 8.64 acres; steep and wooded; no utilities

Tract 2005
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 5½ miles east of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010048
Status: Excess
Comment: 4.62 acres; steep and wooded; no utilities

Tract 2307
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: Approximately 7½ miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010049
Status: Excess
Comment: 11.43 acres; steep; rolling and wooded; no utilities

Tract 2403
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 7 miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010050
Status: Excess
Comment: 1.56 acres; steep and wooded; no utilities

Tract 2504

Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 9 miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010051
Status: Excess
Comment: 24.46 acres; steep and wooded; no utilities

Tract 214
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of the Illinois Central Railroad, 1 mile east of the Cumberland River.
Landholding Agency: COE
Property Number: 31199010052
Status: Excess
Comment: 5.5 acres; wooded; no utilities

Tract 215
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199010053
Status: Excess
Comment: 1.40 acres; wooded; no utilities

Tract 241
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199010054
Status: Excess
Comment: 1.26 acres; steep and wooded; no utilities

Tracts 306, 311, 315 and 325
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 2.5 miles southwest of Kuttawa, KY on the waters of Cypress Creek
Landholding Agency: COE
Property Number: 31199010055
Status: Excess
Comment: 38.77 acres; steep and wooded; no utilities

Tracts 2305, 2306, and 2400–1
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42030–
Location: 6½ miles southeasterly of Eddyville, KY
Landholding Agency: COE
Property Number: 31199010056
Status: Excess
Comment: 97.66 acres; steep rolling and wooded; no utilities

Tracts 5203 and 5204
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: Village of Linton, KY state highway 1254.
Landholding Agency: COE
Property Number: 31199010058
Status: Excess
Comment: 0.93 acres; rolling, partially wooded; no utilities

Tract 5240
Barkley Lake, Kentucky and Tennessee
Linton Co: Trigg KY 42212–
Location: 1 mile northwest of Linton, KY
Landholding Agency: COE
Property Number: 31199010059
Status: Excess
Comment: 2.26 acres; steep and wooded; no utilities

Tract 4628
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY
Landholding Agency: COE
Property Number: 31199011621
Status: Excess
Comment: 3.71 acres; steep and wooded; subject to utility easements

Tract 4619–B
Barkley Lake, Kentucky and Tennessee
Canton Co: Trigg KY 42212–
Location: 4½ miles south from Canton, KY.
Landholding Agency: COE
Property Number: 31199011622
Status: Excess
Comment: 1.73 acres; steep and wooded; subject to utility easements

Tract 2403–B
Barkley Lake, Kentucky and Tennessee
Eddyville Co: Lyon KY 42038–
Location: 7 miles southeasterly from Eddyville, KY
Landholding Agency: COE
Property Number: 31199011623
Status: Unutilized
Comment: 0.70 acres, wooded; subject to utility easements

Tract 241–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: South of Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199011624
Status: Excess
Comment: 11.16 acres; steep and wooded; subject to utility easements

Tracts 212 and 237
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: Old Henson Ferry Road, 6 miles west of Kuttawa, KY
Landholding Agency: COE
Property Number: 31199011625
Status: Excess
Comment: 2.44 acres; steep and wooded; subject to utility easements

Tract 215–B
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011626
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements

Tract 233
Barkley Lake, Kentucky and Tennessee
Grand Rivers Co: Lyon KY 42045–
Location: 5 miles southwest of Kuttawa
Landholding Agency: COE
Property Number: 31199011627
Status: Excess
Comment: 1.00 acres; wooded; subject to utility easements

Tract N–819
Dale Hollow Lake & Dam Project
Illwill Creek, Hwy 90
Hobart Co: Clinton KY 42601–
Landholding Agency: COE
Property Number: 31199140009
Status: Underutilized
Comment: 91 acres, most recent use—hunting, subject to existing easements

Portion of Lock & Dam No. 1
Kentucky River
Carrolton Co: Carroll KY 41008–0305
Landholding Agency: COE
Property Number: 31199320003
Status: Unutilized
Comment: approx. 3.5 acres (sloping), access monitored

Tract No. F–610
Buckhorn Lake Project
Buckhorn Co: KY 41721–
Landholding Agency: COE
Property Number: 31200240001
Status: Unutilized
Comment: 0.64 acres, encroachments, most recent use—flood control purposes

Louisiana

Wallace Lake Dam and Reservoir
Shreveport Co: Caddo LA 71103–
Landholding Agency: COE
Property Number: 31199011009
Status: Unutilized
Comment: 10.81 acres; wildlife/forestry; no utilities

Bayou Bodcau Dam and Reservoir
Haughton Co: Caddo LA 71037–9707
Location: 35 miles Northeast of Shreveport, La.
Landholding Agency: COE
Property Number: 31199011010
Status: Unutilized
Comment: 203 acres; wildlife/forestry; no utilities

Maryland

VA Medical Center 9600 North Point Road
Fort Howard Co: Baltimore MD 21052–
Landholding Agency: VA
Property Number: 97199010020
Status: Underutilized
Comment: Approx. 10 acres, wetland and periodically floods, most recent use—dump site for leaves

Mississippi

Parcel 7
Grenada Lake
Sections 22, 23, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011019
Status: Underutilized
Comment: 100 acres; no utilities; intermittently used under lease—expires 1994

Parcel 8
Grenada Lake
Section 20, T24N
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011020
Status: Underutilized
Comment: 30 acres; no utilities; intermittently used under lease—expires 1994

Parcel 9
Grenada Lake
Section 20, T24N, R7E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011021

Status: Underutilized
Comment: 23 acres; no utilities; intermittently used under lease—expires 1994

Parcel 10
Grenada Lake
Sections 16, 17, 18 T24N R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 31199011022
Status: Underutilized
Comment: 490 acres; no utilities; intermittently used under lease—expires 1994

Parcel 2
Grenada Lake
Section 20 and T23N, R5E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011023
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management

Parcel 3
Grenada Lake
Section 4, T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011024
Status: Underutilized
Comment: 120 acres; no utilities; most recent use—wildlife and forestry management; (13.5 acres/agriculture lease)

Parcel 4
Grenada Lake
Section 2 and 3. T23N, R5E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011025
Status: Underutilized
Comment: 60 acres; no utilities; most recent use—wildlife and forestry management

Parcel 5
Grenada Lake
Section 7, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011026
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management; (14 acres/agriculture lease)

Parcel 6
Grenada Lake
Section 9, T24N, R6E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 31199011027
Status: Underutilized
Comment: 80 acres; no utilities; most recent use—wildlife and forestry management

Parcel 11
Grenada Lake
Section 20, T24N, R8E
Grenada Co: Calhoun MS 38901–0903
Landholding Agency: COE
Property Number: 31199011028
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management

Parcel 12
Grenada Lake
Section 25, T24N, R7E
Grenada Co: Yalobusha MS 38390–0903
Landholding Agency: COE
Property Number: 31199011029
Status: Underutilized
Comment: 30 acres; no utilities; most recent use—wildlife and forestry management

Parcel 13
Grenada Lake
Section 34, T24N, R7E
Grenada Co: Yalobusha MS 38903–0903
Landholding Agency: COE
Property Number: 31199011030
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management; (11 acres/agriculture lease)

Parcel 14
Grenada Lake
Section 3, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011031
Status: Underutilized
Comment: 15 acres; no utilities; most recent use—wildlife and forestry management

Parcel 15
Grenada Lake
Section 4, T24N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011032
Status: Underutilized
Comment: 40 acres; no utilities; most recent use—wildlife and forestry management

Parcel 16
Grenada Lake
Section 9, T23N, R6E
Grenada Co: Yalobusha MS 38901–0903
Landholding Agency: COE
Property Number: 31199011033
Status: Underutilized
Comment: 70 acres; no utilities; most recent use—wildlife and forestry management

Parcel 17
Grenada Lake
Section 17, T23N, R7E
Grenada Co: Grenada MS 28901–0903
Landholding Agency: COE
Property Number: 31199011034
Status: Underutilized
Comment: 35 acres; no utilities; most recent use—wildlife and forestry management

Parcel 18
Grenada Lake
Section 22, T23N, R7E
Grenada Co: Grenada MS 28902–0903
Landholding Agency: COE
Property Number: 31199011035
Status: Underutilized
Comment: 10 acres; no utilities; most recent use—wildlife and forestry management

Parcel 19
Grenada Lake
Section 9, T22N, R7E
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011036
Status: Underutilized
Comment: 20 acres; no utilities; most recent use—wildlife and forestry management

Missouri

Harry S Truman Dam & Reservoir
Warsaw Co: Benton MO 65355–
Location: Triangular shaped parcel southwest of access road "B", part of Bledsoe Ferry Park Tract 150.
Landholding Agency: COE
Property Number: 31199030014
Status: Underutilized
Comment: 1.7 acres; potential utilities

Oklahoma

Pine Creek Lake
Section 27
(See County) Co: McCurtain OK
Landholding Agency: COE
Property Number: 31199010923
Status: Unutilized
Comment: 3 acres; no utilities; subject to right of way for Oklahoma State Highway 3

Pennsylvania

Mahoning Creek Lake
New Bethlehem Co: Armstrong PA 16242–9603
Location:Route 28 north to Belknap, Road #4
Landholding Agency: COE
Property Number: 31199010018
Status: Excess
Comment: 2.58 acres; steep and densely wooded

Tracts 610, 611, 612
Shenango River Lake
Sharpsville Co: Mercer PA 16150–
Location: I–79 North, I–80 West, Exit Sharon, R18 North 4 miles, left on R518, right on Mercer Avenue
Landholding Agency: COE
Property Number: 31199011001
Status: Excess
Comment: 24.09 acres; subject to flowage easement

Tracts L24, L26
Crooked Creek Lake
Co: Armstrong PA 03051–
Location: Left bank—55 miles downstream of dam.
Landholding Agency: COE
Property Number: 31199011011
Status: Unutilized
Comment: 7.59 acres; potential for utilities

Portion of Tract L–21A
Crooked Creek Lake, LR 03051
Ford City Co: Armstrong PA 16226–
Landholding Agency: COE
Property Number: 31199430012
Status: Unutilized
Comment: Approximately 1.72 acres of undeveloped land, subject to gas rights

3.5 acres
Joseph Road
Tract RA34
New Salem Co: York PA 17403–
Landholding Agency: COE
Property Number: 31200330006
Status: Unutilized
Comment: approx. 3.5 acres, road access easement, habitat for wildlife management

Tennessee

Tract 6827
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles west of Dover, TN
Landholding Agency: COE
Property Number: 31199010927
Status: Excess
Comment: .57 acres; subject to existing easements

Tracts 6002–2 and 6010
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3½ miles south of village of Tabaccoport
Landholding Agency: COE
Property Number: 31199010928
Status: Excess
Comment: 100.86 acres; subject to existing easements

Tract 11516
Barkley Lake
Ashland City Co: Dickson TN 37015–
Location: ½ mile downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010929
Status: Excess
Comment: 26.25 acres; subject to existing easements

Tract 2319
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130–
Location: West of Buckeye Bottom Road
Landholding Agency: COE
Property Number: 31199010930
Status: Excess
Comment: 14.48 acres; subject to existing easements

Tract 2227
J. Percy Priest Dam and Resorvoir
Murfreesboro Co: Rutherford TN 37130–
Location: Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010931
Status: Excess
Comment: 2.27 acres; subject to existing easements

Tract 2107
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: Across Fall Creek near Fall Creek camping area
Landholding Agency: COE
Property Number: 31199010932
Status: Excess
Comment: 14.85 acres; subject to existing easements

Tracts 2601, 2602, 2603, 2604
Cordell Hull Lake and Dam Project
Doe Row Creek
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 56
Landholding Agency: COE
Property Number: 31199010933
Status: Unutilized
Comment: 11 acres; subject to existing easements

Tract 1911
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: East of Lamar Road
Landholding Agency: COE
Property Number: 31199010934
Status: Excess
Comment: 6.92 acres; subject to existing easements

Tract 7206
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 2½ miles SE of Dover, TN
Landholding Agency: COE
Property Number: 31199010936
Status: Excess
Comment: 10.15 acres; subject to existing easements

Tracts 8813, 8814
Barkley Lake
Cumberland Co: Stewart TN 37050–
Location: 1½ miles East of Cumberland City
Landholding Agency: COE
Property Number: 31199010937
Status: Excess
Comment: 96 acres; subject to existing easements

Tract 8911
Barkley Lake
Cumberland City Co: Montgomery TN 37050–
Location: 4 miles east of Cumberland City
Landholding Agency: COE
Property Number: 31199010938
Status: Excess
Comment: 7.7 acres; subject to existing easements

Tract 11503
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2 miles downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010939
Status: Excess
Comment: 1.1 acres; subject to existing easements

Tracts 11523, 11524
Barkley Lake
Ashland City Co: Cheatham TN 37015–
Location: 2½ miles downstream from Cheatham Dam
Landholding Agency: COE
Property Number: 31199010940
Status: Excess
Comment: 19.5 acres; subject to existing easements

Tract 6410
Barkley Lake
Bumpus Mills Co: Stewart TN 37028–
Location: 4½ miles SW. of Bumpus Mills
Landholding Agency: COE
Property Number: 31199010941
Status: Excess
Comment: 17 acres; subject to existing easements.≤

Tract 9707
Barkley Lake
Palmyer Co: Montgomery TN 37142–
Location: 3 miles NE of Palmyer, TN. Highway 149
Landholding Agency: COE
Property Number: 31199010943
Status: Excess
Comment: 6.6 acres; subject to existing easements

Tract 6949
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 1½ miles SE of Dover, TN.
Landholding Agency: COE
Property Number: 31199010944
Status: Excess
Comment: 29.67 acres; subject to existing easements

Tracts 6005 and 6017
Barkley Lake
Dover Co: Stewart TN 37058–
Location: 3 miles south of Village of Tobaccoport.
Landholding Agency: COE
Property Number: 31199011173
Status: Excess
Comment: 5 acres; subject to existing easements

Tracts K–1191, K–1135
Old Hickory Lock and Dam
Hartsville Co: Trousdale TN 37074–
Landholding Agency: COE
Property Number: 31199130007
Status: Underutilized
Comment: 54 acres, (portion in floodway), most recent use—recreation

Tract A–102
Dale Hollow Lake & Dam Project
Canoe Ridge, State Hwy 52
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 31199140006
Status: Underutilized
Comment: 351 acres, most recent use—hunting, subject to existing easements

Tract A–120
Dale Hollow Lake & Dam Project
Swann Ridge, State Hwy No. 53
Celina Co: Clay TN 38551–
Landholding Agency: COE
Property Number: 31199140007
Status: Underutilized
Comment: 883 acres, most recent use—hunting, subject to existing easements

Tract D–185
Dale Hollow Lake & Dam Project
Ashburn Creek, Hwy No. 53
Livingston Co: Clay TN 38570–
Landholding Agency: COE
Property Number: 31199140010
Status: Underutilized
Comment: 97 acres, most recent use—hunting, subject to existing easements

Texas

Former VORTAC Facility
Acton Co: Hood TX 76234–
Landholding Agency: GSA
Property Number: 54200330007
Status: Surplus
Comment: 73.76 acres, limited access, numerous easements & lease restrictions
GSA Number: 7–U–TX–1075

Land
Olin E. Teague Veterans Center
1901 South 1st Street
Temple Co: Bell TX 76504–
Landholding Agency: VA
Property Number: 97199010079
Status: Underutilized
Comment: 13 acres, portion formerly landfill, portion near flammable materials, railroad crosses property, potential utilities

Wisconsin

VA Medical Center
County Highway E
Tomah Co: Monroe WI 54660–
Landholding Agency: VA
Property Number: 97199010054
Status: Underutilized
Comment: 12.4 acres, serves as buffer between center and private property, no utilities

Suitable/Unavailable Properties

Buildings (by State)

Georgia

Bldgs. 00960, 00961, 00963

Fort Benning
Ft. Benning Co: Chattahoochee GA
Landholding Agency: Army
Property Number: 21200330107
Status: Unutilized
Comment: 11,110 sq. ft., most recent use—housing, off-site use only

Idaho

Bldg. CFA–613
Central Facilities Area
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199630001
Status: Unutilized
Comment: 1219 sq. ft., most recent use—sleeping quarters, presence of asbestos, off-site use only

Illinois

Bldg. 7
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010001
Status: Unutilized
Comment: 900 sq. ft.; 1 floor wood frame; most recent use—residence

Bldg. 6
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010002
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 5
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010003
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 4
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010004
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 3
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010005
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame

Bldg. 2
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010006
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Bldg. 1
Ohio River Locks & Dam No. 53
Grand Chain Co: Pulaski IL 62941–9801
Location: Ohio River Locks and Dam No. 53 at Grand Chain
Landholding Agency: COE
Property Number: 31199010007
Status: Unutilized
Comment: 900 sq. ft.; one floor wood frame; most recent use—residence

Montana

VA MT Healthcare
210 S. Winchester
Miles City Co: Custer MT 59301–
Landholding Agency: VA
Property Number: 97200030001
Status: Underutilized
Comment: 18 buildings, total sq. ft. = 123,851, presence of asbestos, most recent use—clinic/office/food production

New York

Bldg. 0158
Brookhaven National Lab
Upton Co: Suffolk NY 11973–
Landholding Agency: Energy
Property Number: 41200310005
Status: Unutilized
Comment: 12,436 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Ohio

Bldg.—Berlin Lake
7400 Bedell Road
Berlin Center Co: Mahoning OH 44401–9797
Landholding Agency: COE
Property Number: 31199640001
Status: Unutilized
Comment: 1420 sq. ft., 2-story brick w/garage and basement, most recent use—residential, secured w/alternate access

Pennsylvania

Bldg. 00001
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330183
Status: Unutilized
Comment: 225,400 sq. ft., needs rehab, most recent use—admin/storage/misc, off-site use only

Bldg. 00002
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330184
Status: Unutilized
Comment: 44,800 sq. ft., needs rehab, most recent use—shop/storage, off-site use only

Bldgs. 00004, 00005, 00006
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330185
Status: Unutilized
Comment: 201,600 sq. ft. each, needs rehab, most recent use—warehouse/storage, off-site use only

Bldg. 00013
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330186
Status: Unutilized
Comment: 1200 sq. ft., needs rehab, off-site use only

Bldg. 00024
Defense Distribution Depot
New Cumberland Co: York PA 17070–500
Landholding Agency: Army
Property Number: 21200330187
Status: Unutilized
Comment: 3100 sq. ft., needs rehab, most recent use—eng/housing mnt, off-site use only

Bldg. 00025
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330188
Status: Unutilized
Comment: 2640 sq. ft., needs rehab, most recent use—salt shed, off-site use only

Bldg. 00028
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330189
Status: Unutilized
Comment: 12,352 sq. ft., needs rehab, most recent use—vehicle maint shop, off-site use only

Bldg. 00064
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330190
Status: Unutilized
Comment: 900 sq. ft., needs rehab, off-site use only

Bldg. 00068
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330191
Status: Unutilized
Comment: 717 sq. ft., needs rehab, off-site use only

Bldg. 00078
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330192
Status: Unutilized
Comment: 32 sq. ft., needs rehab, off-site use only

Bldg. 00095
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330193
Status: Unutilized
Comment: 480 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00096
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330194
Status: Unutilized
Comment: 1824 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 00097
Defense Distribution Depot

New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330195
Status: Unutilized
Comment: most recent use—open storage, off-site use only

Bldg. 02010
Defense Distribution Depot
New Cumberland Co: York PA 17070–5002
Landholding Agency: Army
Property Number: 21200330196
Status: Unutilized
Comment: 288 sq. ft., needs rehab, off-site use only

Tract 353
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430019
Status: Unutilized Comment: 812 sq. ft., 2-story, log structure, needs repair, most recent use–residential, if used for habitation must be flood proofed or removed off-site

Tract 403A
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430021
Status: Unutilized
Comment: 620 sq. ft., 2-story, needs repair, most recent use–residential, if used for habitation must be flood proofed or removed off-site

Tract 403B
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430022
Status: Unutilized
Comment: 1600 sq. ft., 2-story, brick structure, needs repair, most recent use—residential, if used for habitation must be flood proofed or removed off-site

Tract 403C
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430023
Status: Unutilized
Comment: 672 sq. ft., 2-story carriage house/stable barn type structure, needs repair, most recent use—storage/garage, if used for habitation must be flood proofed or removed

Tract 434
Grays Landing Lock & Dam Project
Greensboro Co: Greene PA 15338–
Landholding Agency: COE
Property Number: 31199430024
Status: Unutilized
Comment: 1059 sq. ft., 2-story, wood frame, 2 apt. units, historic property, if used for habitation must be flood proofed or removed off-site

Tract No. 224
Grays Landing Lock & Dam Project
Greensboro Co: Green PA 15338–
Landholding Agency: COE
Property Number: 31199440001
Status: Unutilized
Comment: 1040 sq. ft., 2 story bldg., needs repair, historic struct., flowage easement, if habitation is desired property will be required to be flood proofed or removed off site

Wisconsin

Former Lockmaster's Dwelling
DePere Lock
100 James Street
De Pere Co: Brown WI 54115–
Landholding Agency: COE
Property Number: 31199011526
Status: Unutilized
Comment: 1224 sq. ft.; 2 story brick/wood frame residence; needs rehab; secured area with alternate access

Bldg. 2
VA Medical Center
5000 West National Ave.
Milwaukee WI 53295–
Landholding Agency: VA
Property Number: 97199830002
Status: Underutilized
Comment: 133,730 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage

Land (by State)

Illinois

Lake Shelbyville
Shelbyville Co: Shelby & Moultrie IL 62565–9804
Landholding Agency: COE
Property Number: 31199240004
Status: Unutilized
Comment: 5 parcels of land equalling 0.70 acres, improved w/4 small equipment storage bldgs. and a small access road, easement restrictions

Iowa

38 acres
VA Medical Center
1515 West Pleasant St.
Knoxville Co: Marion IA 50138–
Landholding Agency: VA
Property Number: 97199740001
Status: Unutilized
Comment: golf course

Michigan

VA Medical Center 5500 Armstrong Road
Battle Creek Co: Calhoun MI 49016–
Landholding Agency: VA
Property Number: 97199010015
Status: Underutilized
Comment: 20 acres, used as exercise trails and storage areas, potential utilities

New York

VA Medical Center
Fort Hill Avenue
Canandaigua Co: Ontario NY 14424–
Landholding Agency: VA
Property Number: 97199010017
Status: Underutilized
Comment: 27.5 acres, used for school ballfield and parking, existing utilities easements, portion leased

Pennsylvania

East Branch Clarion River Lake
Wilcox Co: Elk PA
Location: Free camping area on the right bank off entrance roadway
Landholding Agency: COE
Property Number: 31199011012
Status: Underutilized
Comment: 1 acre; most recent use—free campground

Dashields Locks and Dam
(Glenwillard, PA)
Crescent Twp. Co: Allegheny PA 15046–0475
Landholding Agency: COE
Property Number: 31199210009
Status: Unutilized
Comment: 0.58 acres, most recent use—baseball field

VA Medical Center
New Castle Road
Butler Co: Butler PA 16001–
Landholding Agency: VA
Property Number: 97199010016
Status: Underutilized
Comment: Approx. 9.29 acres, used for patient recreation, potential utilities

Land No. 645
VA. Medical Center
Highland Drive
Pittsburgh Co: Allegheny PA 15206–
Location: Between Campania and Wiltsie Streets
Landholding Agency: VA
Property Number: 97199010080
Status: Unutilized
Comment:
90.3 acres, heavily wooded, property includes dump area and numerous site storm drain outfalls

Land—34.16 acres
VA Medical Center
1400 Black Horse Hill Road
Coatesville Co: Chester PA 19320–
Landholding Agency: VA
Property Number: 97199340001
Status: Underutilized
Comment: 34.16 acres, open field, most recent use—recreation/buffer

Suitable/To Be Excessed

Buildings (by State)

Massachusetts

Cuttyhunk Boathouse
South Shore of Cuttyhunk Pond
Gosnold Co: Dukes MA 02713–
Landholding Agency: DOT
Property Number: 87199310001
Status: Unutilized
Comment: 2700 sq. ft., wood frame, one story, needs rehab, limited utilities, off-site use only.

Nauset Beach Light
Nauset Beach Co: Barnstable MA
Landholding Agency: DOT
Property Number: 87199420001
Status: Unutilized
Comment: 48 foot tower, cylindrical cast iron, most recent use—aid to navigation

Light Tower, Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430005
Status: Excess
Comment: 66 ft. tower, 14'9" diameter, brick structure, scheduled to be vacated 9/94

Keepers Dwelling
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430006
Status: Excess

Comment: 1160 sq. ft., 2-story wood frame, attached to light tower, scheduled to be vacated 9/94
Duplex Housing Unit
Highland Light
Near Rt. 6, 9 miles south of Race Point
North Truro Co: Barnstable MA 02652–
Landholding Agency: DOT
Property Number: 87199430007
Status: Excess
Comment: 2 living units, 930 sq. ft. each, 1-story each, located on eroding ocean bluff, scheduled to be vacated 9/94
Nahant Towers
Nahant Co: Essex MA
Landholding Agency: DOT
Property Number: 87199530001
Status: Unutilized
Comment: 196 sq. ft., 8-story observation tower
Land (by State)
Georgia
Lake Sidney Lanier
Co: Forsyth GA 30130–
Location: Located on Two Mile Creek adj. to State Route 369
Landholding Agency: COE
Property Number: 31199440010
Status: Unutilized
Comment: 0.25 acres, endangered plant species
Lake Sidney Lanier-3 parcels
Gainesville Co: Hall GA 30503–
Location:
Between Gainesville H.S. and State Route 53 By-Pass
Landholding Agency: COE
Property Number: 31199440011
Status: Unutilized
Comment: 3 parcels totalling 5.17 acres, most recent use—buffer zone, endangered plant species
Kansas
Parcel #1
Fall River Lake
Section 26
Co: Greenwood KS
Landholding Agency: COE
Property Number: 31199010065
Status: Unutilized
Comment: 126.69 acres; most recent use—recreation and leased cottage sites
Parcel No. 2, El Dorado Lake
Approx. 1 mi east of the town of El Dorado
Co: Butler KS
Landholding Agency: COE
Property Number: 31199210005
Status: Unutilized
Comment: 11 acres, part of a relocated railroad bed, rural area
Massachusetts
Buffumville Dam
Flood Control Project
Gale Road
Carlton Co: Worcester MA 01540–0155
Location: Portion of tracts B–200, B–248, B–251, B–204, B–247, B–200 and B–256
Landholding Agency: COE
Property Number: 31199010016
Status: Excess
Comment: 1.45 acres.
Tennessee
Tract D–456
Cheatham Lock and Dam
Ashland Co: Cheatham TN 37015—
Location: Right downstream bank of Sycamore Creek.
Landholding Agency: COE
Property Number: 31199010942
Status: Excess
Comment: 8.93 acres; subject to existing easements.
Texas
Corpus Christi Ship Channel
Corpus Christi Co: Neuces TX
Location: East side of Carbon Plant Road, approx. 14 miles NW of downtown Corpus Christi
Landholding Agency: COE
Property Number: 31199240001
Status: Unutilized
Comment: 4.4 acres, most recent use—farm land.

Unsuitable Properties

Buildings (by State)

Alabama
Dwelling A
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120001
Status: Excess
Reason: Floodway
Dwelling B
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120002
Status: Excess
Reason: Floodway
Oil House
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120003
Status: Excess
Reason: Floodway
Garage
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120004
Status: Excess
Reason: Floodway
Shop Building
USCG Mobile Pt. Station
Ft. Morgan
Gulfshores Co: Baldwin AL 36542–
Landholding Agency: DOT
Property Number: 87199120005
Status: Excess
Reason: Floodway
Bldg. 7
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730001
Status: Underutilized
Reason: Secured Area
Bldg. 8
VA Medical Center
Tuskegee Co: Macon AL 36083–
Landholding Agency: VA
Property Number: 97199730002
Status: Underutilized
Reason: Secured Area
Alaska
Bldg. B001
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140003
Status: Excess
Reasons: Secured Area, Extensive deterioration
Bldg. B002
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140004
Status: Excess
Reasons: Secured Area, Extensive deterioration
Bldg. B003
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140005
Status: Excess
Reasons: Secured Area, Extensive deterioration
Bldg. B004
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140006
Status: Excess
Reason: Secured Area
Bldg. B006
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140007
Status: Excess
Reasons: Secured Area, Extensive deterioration
Bldg. B008
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140008
Status: Excess
Reasons: Secured Area, Extensive deterioration
Bldg. B009
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140009
Status: Excess
Reasons: Secured Area, Extensive deterioration
Bldg. B011
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140010
Status: Excess
Reasons: Secured Area, Extensive deterioration
Bldg. B012
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140011

Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. B000
Point Higgins
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200140012
Status: Excess
Reason: Extensive deterioration

Bldg. B01
Coast Guard Cutter Sycamore
Cordova Co: AK 99574–
Landholding Agency: DOT
Property Number: 87200310001
Status: Unutilized
Reason: Extensive deterioration

Fuel Tank Facility
USCG LORAN Station
Ketchikan Co: AK 99901–
Landholding Agency: DOT
Property Number: 87200310008
Status: Unutilized
Reason: Extensive deterioration

Arkansas

Dwelling
Bull Shoals Lake/Dry Run Road
Oakland Co: Marion AR 72661–
Landholding Agency: COE
Property Number: 31199820001
Status: Unutilized
Reason: Extensive deterioration

Helena Casting Plant
Helena Co: Phillips AR 72342–
Landholding Agency: COE
Property Number: 31200220001
Status: Unutilized
Reason: Extensive deterioration

California

Soil & Materials Testing Lab
Sausalito Co: CA 00000–
Landholding Agency: COE
Property Number: 31199920002
Status: Excess
Reason: Contamination

Bldgs. MO3, MO14, MO17
Sandia National Lab
Livermore Co: Alameda CA 94550–
Landholding Agency: Energy
Property Number: 41200220001
Status: Excess
Reason: Extensive deterioration

Bldg. 436
Yosemite National Park
Yosemite Co: Mariposa CA 95389–
Landholding Agency: Interior
Property Number: 61200330022
Status: Unutilized
Reason: Extensive deterioration

Bldg. 742
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330015
Status: Excess
Reason: Secured Area

Bldg. 743
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330016
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 744
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330017
Status: Excess
Reason: Secured Area

Bldg. 745
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330018
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 746
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330019
Status: Excess
Reason: Secured Area

Bldg. 751
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330020
Status: Excess
Reason: Secured Area

Bldg. 754
Naval Air Station
Lemoore Co: CA
Landholding Agency: Navy
Property Number: 77200330021
Status: Excess
Reason: Secured Area, Extensive deterioration

Bldg. 483
Naval Air Station
North Island
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200330022
Status: Excess
Reason: Extensive deterioration

Bldg. 490
Naval Air Station
North Island
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200330023
Status: Excess
Reason: Extensive deterioration

Bldg. 606
Naval Air Station
North Island
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330024
Status: Excess
Reasons: Secured Area
Extensive deterioration

Bldg. 620
Naval Air Station
North Island
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200330025
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 697
Naval Air Station
North Island
San Diego Co: CA 92135–7040
Landholding Agency: Navy
Property Number: 77200330026
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 76
Space & Naval Warfare
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330027
Status: Excess
Reason: Extensive deterioration

Bldgs. 15 & 16
Fleet ASW Training Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330028
Status: Excess
Reason: Extensive deterioration

Bldgs. 20 & 21
Fleet ASW Training Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330029
Status: Excess
Reason: Extensive deterioration

Bldg. 23
Fleet ASW Training Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330030
Status: Excess
Reason: Extensive deterioration

Bldg. 28
Fleet ASW Training Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330031
Status: Excess
Reason: Extensive deterioration

Bldg. 32
Fleet ASW Training Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330032
Status: Excess
Reason: Extensive deterioration

Bldgs. 37 & 39
Fleet ASW Training Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330033
Status: Excess
Reason: Extensive deterioration

Bldg. 63
Fleet ASW Training Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330034
Status: Excess
Reason: Extensive deterioration

Bldg. 69
Fleet ASW Training Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330035
Status: Excess
Reason: Extensive deterioration

Bldg. 2043
Fleet ASW Training Center
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330036

Status: Excess
Reason: Extensive deterioration
Bldg. 116
Naval Submarine Base
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330037
Status: Excess
Reason: Extensive deterioration
Bldg. 508
Naval Submarine Base
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330038
Status: Excess
Reason: Extensive deterioration
Bldg. 19
Naval Submarine Base
San Diego Co: CA
Landholding Agency: Navy
Property Number: 77200330039
Status: Excess
Reason: Extensive deterioration
Bldgs. 62341 & 62342
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200330040
Status: Excess
Reason: Extensive deterioration
Bldg. 34
Coast Guard Integrated Support Command
Alameda Co: CA
Landholding Agency: DOT
Property Number: 87200240006
Status: Unutilized
Reason: Secured Area

Colorado

Bldg. 34
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540001
Status: Underutilized
Reasons: Contamination, Secured Area
Bldg. 35
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540002
Status: Underutilized
Reasons: Contamination, Secured Area
Bldg. 36
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540003
Status: Underutilized
Reasons: Contamination, Secured Area
Bldg. 2
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610039
Status: Unutilized
Reasons: Contamination, Secured Area
Bldg. 7
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610040
Status: Unutilized
Reasons: Contamination, Secured Area
Bldg. 31–A
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610041
Status: Unutilized
Reasons: Contamination, Secured Area
Bldg. 33
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610042
Status: Unutilized
Reasons: Contamination, Secured Area
Bldg. 727
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 729
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 779
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area
Bldg. 780
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area
Bldg. 780A
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 780B
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 782
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 783
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 784(A–D)
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 785
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 786
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 787(A–D)
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 875
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 880
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 886
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 308A
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 788
Rocky Flats Env. Tech. site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910017
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 888
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 714 A/B
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930021
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 717
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930022
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 770
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930023
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 771.
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930024
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 771B
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930025
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 771C
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930026
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 772–772A
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930027
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 773
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930028
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 774
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199930029
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 776
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 777
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 778
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Structure 712–712A
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Structure 713–713A
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Structure 771 TUN
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Structure 776A–781
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200010007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 111, 111B
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200030001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 125
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 333
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 762
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 762A
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 792
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 792A
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200120006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 124, 129
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 371, 374, 374A
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 376–378, 381
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 441–443, 452
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220005
Status: Excess

Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 557, 559
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 561, 562
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 564, 566/A, 569
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220008
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 662, 663
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 666, 681
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220010
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 701, 705–708
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220011
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 714, 715, 718
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 731, 732
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220013
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 750, 763–765
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220014
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 778, 790
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220015
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 850, 864–865
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220016
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 869, 879
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220017
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 881, 881F, 881H
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 883–885, 887
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220019
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. 891
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldgs. 906, 991, 995
Rocky Flats Env. Tech. Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41200220021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Alemeda Facility 350 S. Santa Fe Drive
Denver Co: Denver CO 80223–
Landholding Agency: DOT
Property Number: 87199010014
Status: Unutilized
Reason: Other environmental
Comment: Contamination

Connecticut

Hezekiah S. Ramsdell Farm
West Thompson Lake
North Grosvenordale Co: Windham CT 06255–9801
Landholding Agency: COE
Property Number: 31199740001
Status: Unutilized
Reasons: Floodway, Extensive deterioration
Bldgs. 25 and 26
Prospect Hill Road
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199440003
Status: Excess
Reason: Secured Area
9 Bldgs.
Knolls Atomic Power Lab, Windsor Site
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199540004
Status: Excess
Reason: Secured Area
Bldg. 8, Windsor Site
Knolls Atomic Power Lab
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199830006
Status: Unutilized
Reason: Extensive deterioration
Falkner Island Light
U.S. Coast Guard
Guilford Co: New Haven CT 06512–
Landholding Agency: DOT
Property Number: 87199240031
Status: Unutilized
Reason: Floodway

Florida

Bldg. #3, Recreation Cottage
USCG Station
Marathon Co: Monroe FL 33050–
Landholding Agency: DOT
Property Number: 87199210008
Status: Unutilized
Reasons: Floodway, Secured Area
Bldg. 103, Trumbo Point
Key West Co: Monroe FL 33040–
Landholding Agency: DOT
Property Number: 87199230001
Status: Unutilized
Reasons: Floodway, Secured Area
Exchange Building
St. Petersburg Co: Pinellas FL 33701–
Landholding Agency: DOT
Property Number: 87199410004
Status: Unutilized
Reason: Floodway
9988 Keepers Quarters A
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440009
Status: Underutilized
Reasons: Floodway, Secured Area
9989 Keepers Quarters B
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440010
Status: Underutilized
Reasons: Floodway, Secured Area
9990 Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440011
Status: Underutilized
Reasons: Floodway, Secured Area
9991 Plant Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440012
Status: Underutilized
Reasons: Floodway, Secured Area

9992 Shop Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440013
Status: Underutilized
Reasons: Floodway, Secured Area

9993 Admin. Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440014
Status: Underutilized
Reasons: Floodway Secured Area

9994 Water Pump Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440015
Status: Underutilized
Reasons: Floodway, Secured Area

Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440016
Status: Underutilized
Reasons: Floodway, Secured Area

9999 Storage Bldg.
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440017
Status: Underutilized
Reasons: Floodway, Secured Area

3 Bldgs. and Land
Peanut Island Station
Riveria Beach Co: Palm Beach FL 33419–0909
Landholding Agency: DOT
Property Number: 87199510009
Status: Unutilized
Reasons: Floodway, Secured Area

Cape St. George Lighthouse
Co: Franklin FL 32328–
Landholding Agency: DOT
Property Number: 87199640002
Status: Unutilized
Reason: Extensive deterioration

Maint/Carpentry Shop
USCG Station
St. Petersburg Co: Pinellas FL 33701–
Landholding Agency: DOT
Property Number: 87200120001
Status: Excess
Reasons: Secured Area, Extensive deterioration

Georgia

Prop. ID HAR18015
Hartwell Project
Hartwell Co: GA 30643–
Landholding Agency: COE
Property Number: 31200310001
Status: Unutilized
Reason: Extensive deterioration

Prop. ID RBR17830
Russell Dam Dr.
Elberton Co: GA 30635–
Landholding Agency: COE
Property Number: 31200310002
Status: Unutilized
Reason: Secured Area

Prop. ID RBR17832
Russell Dam Drive
Elberton Co: GA 30635–
Landholding Agency: COE
Property Number: 31200310003
Status: Unutilized
Reason: Secured Area

Coast Guard Station
St. Simons Island
Co: Glynn GA 31522–0577
Landholding Agency: DOT
Property Number: 87199540002
Status: Unutilized
Reason: Extensive deterioration

Idaho

Bldg. AFD0070
Albeni Falls Dam
Oldtown Co: Bonner ID 83822–
Landholding Agency: COE
Property Number: 31199910001
Status: Unutilized
Reason: Extensive deterioration

Bldg. PBF–621
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610001
Status: Unutilized
Reason: Secured Area

Bldg. CPP–691
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610003
Status: Unutilized
Reason: Secured Area

Bldg. CPP–625
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610004
Status: Unutilized
Reason: Secured Area

Bldg. CPP–650
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610005
Status: Unutilized
Reason: Secured Area

Bldg. CPP–608
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610006
Status: Unutilized
Reason: Secured Area

Bldg. TAN–660
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610007
Status: Unutilized
Reason: Secured Area

Bldg. TAN–636
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610008
Status: Unutilized
Reason: Secured Area

Bldg. TAN–609
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610009
Status: Unutilized
Reason: Secured Area

Bldg. TAN–670
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610010
Status: Unutilized
Reason: Secured Area

Bldg. TAN–661
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610011
Status: Unutilized
Reason: Secured Area

Bldg. TAN–657
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610012
Status: Unutilized
Reason: Secured Area

Bldg. TRA–669
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610013
Status: Unutilized
Reason: Secured Area

Bldg. TAN–637
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610014
Status: Unutilized
Reason: Secured Area

Bldg. TAN–635
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610015
Status: Unutilized
Reason: Secured Area

Bldg. TAN–638
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610016
Status: Unutilized
Reason: Secured Area

Bldg. TAN–651
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610017
Status: Unutilized
Reason: Secured Area

Bldg. TRA–673
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610018
Status: Unutilized
Reason: Secured Area

Bldg. PBF–620
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610019
Status: Unutilized
Reason: Secured Area

Bldg. PBF–616
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610020
Status: Unutilized
Reason: Secured Area

Bldg. PBF–617
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610021
Status: Unutilized
Reason: Secured Area

Bldg. PBF–619
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610022
Status: Unutilized
Reason: Secured Area

Bldg. PBF–624
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610023
Status: Unutilized
Reason: Secured Area

Bldg. PBF–625
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610024
Status: Unutilized
Reason: Secured Area

Bldg. PBF–629
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610025
Status: Unutilized
Reason: Secured Area

Bldg. PBF–604
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610026
Status: Unutilized
Reason: Secured Area

Bldg. TRA–641
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610034
Status: Unutilized
Reason: Secured Area

Bldg. CF–606
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610037
Status: Unutilized
Reason: Secured Area

TAN 602, 631, 663, 702, 724
Idaho Natl Engineering & Environmental Lab
Test Area North
Scovile Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199830002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration
8 Bldgs.

Idaho Natl Engineering & Environmental Lab
Test Reactor North
Scovile Co: Butte ID 83415–
Location: TRA 643, 644, 655, 660, 704–706, 755
Landholding Agency: Energy
Property Number: 41199830003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. TAN 616
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200320007
Status: Excess
Reason: Contamination

Illinois

Calumet Harbor Station
U.S. Coast Guard
Chicago Co: Cook IL
Landholding Agency: DOT
Property Number: 87199310005
Status: Excess
Reason: Secured Area

Indiana

Bldg. 12
Naval Air Warfare
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200330041
Status: Excess
Reason: Extensive deterioration

Bldg. 2517
Naval Air Warfare
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200330042
Status: Excess
Reason: Extensive deterioration

Bldg. BH2
Naval Air Warfare
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200330043
Status: Excess
Reason: Extensive deterioration

Bldg. 21, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230001
Status: Excess
Reason: Extensive deterioration

Bldg. 22, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230002
Status: Excess
Reason: Extensive deterioration

Bldg. 62, VA Medical Center
East 38th Street
Marion Co: Grant IN 46952–
Landholding Agency: VA
Property Number: 97199230003
Status: Excess
Reason: Extensive deterioration

Iowa

Treatment Plant
South Fork Park
Mystic Co: Appanoose IA 52574–
Landholding Agency: COE
Property Number: 31200220002
Status: Excess
Reason: Extensive deterioration

Storage Bldg.
Rathbun Project
Moravia Co: Appanoose IA 52571–
Landholding Agency: COE
Property Number: 31200330001
Status: Excess
Reason: Extensive deterioration

Bldg.
Island View Park
Rathbun Project
Centerville Co: Appanoose IA 52544–
Landholding Agency: COE
Property Number: 31200330002
Status: Excess
Reason: Extensive deterioration

Kansas

No. 01017
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200210001
Status: Unutilized
Reason: Extensive deterioration

No. 01020
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200210002
Status: Unutilized
Reason: Extensive deterioration

No. 61001
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200210003
Status: Unutilized
Reason: Extensive deterioration

Bldg. #1
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200220003
Status: Excess
Reason: Extensive deterioration

Bldg. #2
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200220004
Status: Excess
Reason: Extensive deterioration

Bldg. #4
Kanopolis Project
Marquette Co: Ellsworth KS 67456–
Landholding Agency: COE
Property Number: 31200220005
Status: Excess
Reason: Extensive deterioration

Comfort Station
Clinton Lake Project
Lawrence Co: Douglas KS 66049–
Landholding Agency: COE
Property Number: 31200220006
Status: Excess
Reason: Extensive deterioration

Privie
Perry Lake
Perry Co: Jefferson KS 66074–
Landholding Agency: COE
Property Number: 31200310004

Status: Unutilized
Reason: Extensive deterioration

Shower
Perry Lake
Perry Co: Jefferson KS 66073–
Landholding Agency: COE
Property Number: 31200310005
Status: Unutilized
Reason: Extensive deterioration

Tool Shed
Perry Lake
Perry Co: Jefferson KS 66073–
Landholding Agency: COE
Property Number: 31200310006
Status: Unutilized
Reason: Extensive deterioration

Bldg. M37
Minooka Park
Sylvan Grove Co: Russell KS 67481–
Landholding Agency: COE
Property Number: 31200320002
Status: Excess
Reason: Extensive deterioration

Bldg. M38
Minooka Park
Sylvan Grove Co: Russell KS 67481–
Landholding Agency: COE
Property Number: 31200320003
Status: Excess
Reason: Extensive deterioration

Bldg. L19
Lucas Park
Sylvan Grove Co: Russell KS 67481–
Landholding Agency: COE
Property Number: 31200320004
Status: Unutilized
Reason: Extensive deterioration

2 Bldgs.
Tuttle Creek Lake
Near Shelters #3 & #4
Riley Co: KS 66502–
Landholding Agency: COE
Property Number: 31200330003
Status: Excess
Reason: Extensive deterioration

Kentucky

Spring House
Kentucky River Lock and Dam No. 1
Highway 320
Carrollton Co: Carroll KY 41008–
Landholding Agency: COE
Property Number: 21199040416
Status: Unutilized
Reason: Spring House

6-Room Dwelling
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120010
Status: Unutilized
Reason: Floodway

2-Car Garage
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120011
Status: Unutilized
Reason: Floodway

Office and Warehouse
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120012
Status: Unutilized
Reason: Floodway

2 Pit Toilets
Green River Lock and Dam No. 3
Rochester Co: Butler KY 42273–
Landholding Agency: COE
Property Number: 31199120013
Status: Unutilized
Reason: Floodway

Dwelling
USCG Shoreside Detachment
Owensboro Co: Daviess KY
Landholding Agency: DOT
Property Number: 87200230010
Status: Unutilized
Reason: Extensive deterioration

Louisiana

Weeks Island Facility
New Iberia Co: Iberia Parish LA 70560–
Landholding Agency: Energy
Property Number: 41199610038
Status: Underutilized
Reason: Secured Area

Maine

Supply Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240005
Status: Unutilized
Reason: Floodway

Base Exchange, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240006
Status: Unutilized
Reason: Floodway

Engineering Shop, Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240007
Status: Unutilized
Reason: Floodway

Storage Bldg., Coast Guard
Southwest Harbor
Southwest Harbor Co: Hancock ME 04679–5000
Landholding Agency: DOT
Property Number: 87199240008
Status: Unutilized
Reason: Floodway

Squirrel Point Light
U.S. Coast Guard
Phippsburg Co: Sayadahoc ME 04530–
Landholding Agency: DOT
Property Number: 87199240032
Status: Unutilized
Reason: Floodway

Keepers Dwelling
Heron Neck Light, U.S. Coast Guard
Vinalhaven Co: Knox ME 04841–
Landholding Agency: DOT
Property Number: 87199240035
Status: Unutilized
Reason: Extensive Deterioration

Fort Popham Light
Phippsburg Co: Sagadahoc ME 04562–
Landholding Agency: DOT
Property Number: 87199320024
Status: Unutilized
Reason: Extensive Deterioration

Nash Island Light
U.S. Coast Guard
Addison Co: Washington ME 04606–
Landholding Agency: DOT
Property Number: 87199420005
Status: Unutilized
Reason: Inaccessible

Bldg.—South Portland Base
U.S. Coast Guard
S. Portland Co: Cumberland ME 04106–
Landholding Agency: DOT
Property Number: 87199420006
Status: Unutilized
Reason: Secured Area

Garage—Boothbay Harbor Stat.
Boothbay Harbor Co: Lincoln ME 04538–
Landholding Agency: DOT
Property Number: 87199430001
Status: Unutilized
Reason: Secured Area

Maryland

Bldgs. 38–39, 41, 43–46, 56
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87199540005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive Deterioration

Bldg. 53
U.S. Coast Guard Yard
Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87199540006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive Deterioration

Bldg. 6
U.S. Coast Guard Yard, 2401 Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 87199620001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 59
U.S. Coast Guard Yard, 2401 Hawkins Point Rd.
Baltimore MD 21226–1797
Landholding Agency: DOT
Property Number: 87199620002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
USCG Yard
#9, 21, 23, 52, 57
Baltimore Co: MD 21226–
Landholding Agency: DOT
Property Number: 87200120002
Status: Unutilized
Reason: Extensive Deterioration

Bldg. #81

U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210001
Status: Underutilized
Reason: Secured Area

Bldg. #85
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210002
Status: Underutilized
Reason: Secured Area

Bldg. #86
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210003
Status: Underutilized
Reason: Secured Area

Bldg. #86D
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210004
Status: Underutilized
Reason: Secured Area

Bldg. #149
U.S. Coast Guard YARD
Baltimore Co: Baltimore MD 21226–
Landholding Agency: DOT
Property Number: 87200210005
Status: Underutilized
Reason: Secured Area

Massachusetts

Bldg. 4, USCG Support Center
Commercial Street
Boston Co: Suffolk MA 02203–
Landholding Agency: DOT
Property Number: 87199240001
Status: Underutilized
Reason: Secured Area

Eastern Point Light
U.S. Coast Guard
Gloucester Co: Essex MA 01930–
Landholding Agency: DOT
Property Number: 87199240029
Status: Unutilized
Reasons: Floodway, Secured Area

Storage Shed
Highland Light
N. Truro Co: Barnstable MA 02652–
Location: DeSoto Johnson KS 66018–
Landholding Agency: DOT
Property Number: 87199430004
Status: Unutilized
Reason: Extensive deterioration

Westview Street Wells
Lexington Co: MA 02173–
Landholding Agency: VA
Property Number: 97199920001
Status: Unutilized
Reason: Extensive deterioration

Michigan

Station Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120003
Status: Unutilized
Reasons: Floodway, Secured Area

Garage Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120004
Status: Unutilized
Reasons: Floodway, Secured Area

Shed/Pump Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120005
Status: Unutilized
Reasons: Floodway, Secured Area

Storage Bldg.
USCG Station
Manistee Co: MI 49660–
Landholding Agency: DOT
Property Number: 87200120006
Status: Unutilized
Reasons: Floodway, Secured Area

Station/boathouse Bldg.
USCG Harbor Beach Station
Harbor Beach Co: Huron MI 48441–
Landholding Agency: DOT
Property Number: 87200130001
Status: Unutilized
Reasons: Floodway, Extensive deterioration

Buoy Shed
U.S. Coast Guard Station
Sault Ste. Marie Co: Chippewa MI 49783–9501
Landholding Agency: DOT
Property Number: 87200320001
Status: Excess
Reason: Secured Area

Warehouse Bldg.
U.S. Coast Guard
Charlevoix Co: MI 49720–
Landholding Agency: DOT
Property Number: 87200320002
Status: Excess
Reason: Secured Area

Mississippi

Natchez Moorings
82 L.E. Berry Road
Natchez Co: Adams MS 39121–
Landholding Agency: DOT
Property Number: 87199340002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6, Boiler Plant
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410001
Status: Unutilized
Reason: Floodway

Bldg. 67
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 68
Biloxi VA Medical Center
Gulfport Co: Harrison MS 39531–
Landholding Agency: VA
Property Number: 97199410009
Status: Unutilized
Reason: Extensive deterioration

Missouri

Rec Office
Harry S. Truman Dam & Reservoir
Osceola Co: St. Clair MO 64776–
Landholding Agency: COE
Property Number: 31200110001
Status: Unutilized
Reason: Extensive deterioration

Privy/Nemo Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120001
Status: Excess
Reason: Extensive deterioration

Privy No. 1/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120002
Status: Excess
Reason: Extensive deterioration

Privy No. 2/Bolivar Park
Pomme de Terre Lake
Hermitage Co: MO 65668–
Landholding Agency: COE
Property Number: 31200120003
Status: Excess
Reason: Extensive deterioration

#07004, 60006, 60007
Crabtree Cove/Stockton Area
Stockton Co: MO 65785–
Landholding Agency: COE
Property Number: 31200220007
Status: Excess
Reason: Extensive deterioration

Bldg.
Old Mill Park Area
Stockton Co: MO 65785–
Landholding Agency: COE
Property Number: 31200310007
Status: Excess
Reason: Extensive deterioration

Stockton Lake Proj. Ofc.
Stockton Co: Cedar MO 65785–
Landholding Agency: COE
Property Number: 31200330004
Status: Unutilized
Reason: Extensive deterioration

Nebraska

Vault Toilets
Harlan County Project
Republican Co: NE 68971–
Landholding Agency: COE
Property Number: 31200210006
Status: Unutilized
Reason: Extensive deterioration

Patterson Treatment Plant
Harlan County Project
Republican Co: NE 68971–
Landholding Agency: COE
Property Number: 31200210007
Status: Unutilized
Reason: Extensive deterioration

#30004
Harlan County Project
Republican Co: Harlan NE 68971–
Landholding Agency: COE
Property Number: 31200220008
Status: Unutilized
Reason: Extensive deterioration

#3005, 3006
Harlan County Project
Republican Co: Harlan NE 68971–
Landholding Agency: COE
Property Number: 31200220009

Status: Unutilized
Reason: Extensive deterioration

Nevada

28 Facilities
Nevada Test Site
Mercury Co: Nye NV 89023–
Landholding Agency: Energy
Property Number: 41200310018
Status: Excess
Reasons: contamination, Secured Area

Air Traffic Control Tower
Perimeter Road
Las Vegas Co: NV
Landholding Agency: DOT
Property Number: 87200310002
Status: Unutilized
Reason: Within airport runway clear zone

New Jersey

Piers and Wharf
Station Sandy Hook
Highlands Co: Monmouth NJ 07732–5000
Landholding Agency: DOT
Property Number: 87199240009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Chapel Hill Front Range Light Tower
Middletown Co: Monmouth NJ 07748–
Landholding Agency: DOT
Property Number: 87199440002
Status: Unutilized
Reason: Skeletal tower

Bldg. 103
U.S. Coast Guard Station Sandy Hook
Middleton Co: Monmouth NJ 07737–
Landholding Agency: DOT
Property Number: 87199610002
Status: Unutilized
Reason: Secured Area

Ship Stg. Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110018
Status: Excess
Reason: Secured Area

Exchange Whse.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110019
Status: Excess
Reason: Secured Area

Patrol Boat Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110020
Status: Excess
Reason: Secured Area

Station Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110021
Status: Excess
Reason: Secured Area

ANT Bldg.
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200110022
Status: Excess
Reason: Secured Area

Quarters C
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200120012
Status: Excess
Reason: Secured Area

Central Heating Plant
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200120013
Status: Excess
Reason: Secured Area

Hangar/Shop
USCG Training Center
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200120014
Status: Excess
Reason: Secured Area

Bldg. 195
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220001
Status: Excess
Reason: Secured Area

Bldg. 204
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220002
Status: Excess
Reason: Secured Area

Bldg. 208
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220003
Status: Excess
Reason: Secured Area

Bldg. 209
U.S. Coast Guard
Cape May Co: NJ 08204–5002
Landholding Agency: DOT
Property Number: 87200220004
Status: Excess
Reason: Secured Area

Sheds OV1, OV2, OV3
U.S. Coast Guard
Shark River
Avon by the Sea Co: Monmouth NJ 13640–
Landholding Agency: DOT
Property Number: 87200240001
Status: Unutilized
Reason: Secured Area

Unit 13
USCG Station Barnegat Light
Station Barnegat Co: Ocean NJ
Landholding Agency: DOT
Property Number: 87200240002
Status: Unutilized
Reason: Secured Area

Units 9–12
USCG Station Barnegat Light
Station Barnegat Co: Ocean NJ
Landholding Agency: DOT
Property Number: 87200240003
Status: Unutilized
Reason: Secured Area

Bldg. 019
Coast Guard Training Center
Cape May Co: NJ 08204–
Landholding Agency: DOT
Property Number: 87200310003
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 022
Coast Guard Training Center
Cape May Co: NJ 08204–
Landholding Agency: DOT
Property Number: 87200310004
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 192
Coast Guard Training Center
Cape May Co: NJ 08204–
Landholding Agency: DOT
Property Number: 87200310005
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 193
Coast Guard Training Center
Cape May Co: NJ 08204–
Landholding Agency: DOT
Property Number: 87200310006
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 207
Coast Guard Training Center
Cape May Co: NJ 08204–
Landholding Agency: DOT
Property Number: 87200310007
Status: Excess
Reasons: Secured Area, Extensive deterioration

New Mexico

Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41199430002
Status: Unutilized
Reason: Extensive deterioration

Tech Area II
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87105–
Landholding Agency: Energy
Property Number: 41199630004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 1, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 24, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–

Landholding Agency: Energy
Property Number: 41199810003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 26, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 86, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 88, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 89, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810008
Status: Underutilized
Reason: Secured Area

Bldg. 5, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810011
Status: Unutilized
Reason: Secured Area

Bldg. 21, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810012
Status: Unutilized
Reason: Secured Area

Bldg. 116, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810013
Status: Unutilized
Reason: Secured Area

Bldg. 212, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810014
Status: Unutilized
Reason: Secured Area

Bldg. 228, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810015
Status: Unutilized
Reason: Secured Area

Bldg. 286, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810016
Status: Unutilized
Reason: Secured Area

Bldg. 63, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldg. 515, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 516, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 517, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 518, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 519, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 520, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810025
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 18, TA–16
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199840001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 31
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 4, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930004
Status: Unutilized
Reason: Secured Area

Bldg. 50, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930005
Status: Unutilized
Reason: Secured Area

Bldg. 88, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930006
Status: Unutilized
Reason: Secured Area

Bldg. 89, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930007
Status: Unutilized
Reason: Secured Area

Bldg. 21, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940001
Status: Unutilized
Reason: Secured Area

Bldg. 57, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940002
Status: Unutilized
Reason: Secured Area

Bldg. 28, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940003
Status: Unutilized
Reason: Secured Area

Bldg. 38, TA–14
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 8, TA–15

Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940006
Status: Unutilized
Reason: Secured Area

Bldg. 22, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940007
Status: Unutilized
Reason: Secured Area

Bldg. 141, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940008
Status: Unutilized
Reason: Secured Area

Bldg. 44, TA–15
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940009
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 186, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 188, TA–18
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 254, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 44, TA–36
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 45, TA–36
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 19, TA–40
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 43, TA–40
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940018
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 258, TA–46
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199940019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

TA–2, Bldg. 1
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010008
Status: Unutilized
Reason: Secured Area

TA–2, Bldg. 44
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

TA–3, Bldg. 208
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

TA–6, Bldg. 1
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

TA–6, Bldg. 2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

TA–6, Bldg. 3
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

TA–6, Bldg. 5
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

TA–6, Bldg. 6
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010015
Status: Unutilized
Reason: Secured Area

TA–6, Bldg. 7
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010016
Status: Unutilized
Reason: Secured Area

TA–6, Bldg. 8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

TA–6, Bldg. 9
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010018
Status: Unutilized
Reason: Secured Area

TA–14, Bldg. 5
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010019
Status: Unutilized
Reason: Secured Area

TA–21, Bldg. 150
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010020
Status: Unutilized
Reason: Secured Area

Bldg. 149, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010024
Status: Unutilized
Reason: Secured Area

Bldg. 312, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–

Landholding Agency: Energy
Property Number: 41200010025
Status: Unutilized
Reason: Secured Area

Bldg. 313, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010026
Status: Unutilized
Reason: Secured Area

Bldg. 314, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010027
Status: Unutilized
Reason: Secured Area

Bldg. 315, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010028
Status: Unutilized
Reason: Secured Area

Bldg. 1, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010029
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010030
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 51, TA–9
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020002
Status: Unutilized
Reason: Secured Area

Bldg. 30, TA–14
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020003
Status: Unutilized
Reason: Secured Area

Bldg. 16, TA–3
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020009
Status: Unutilized
Reason: Secured Area

Bldg. 339, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020010
Status: Unutilized
Reason: Secured Area

Bldg. 340, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020011
Status: Unutilized
Reason: Secured Area

Bldg. 341, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020012
Status: Unutilized
Reason: Secured Area

Bldg. 342, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020013
Status: Unutilized
Reason: Secured Area

Bldg. 343, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020014
Status: Unutilized
Reason: Secured Area

Bldg. 345, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020015
Status: Unutilized
Reason: Secured Area

Bldg. 16, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020016
Status: Unutilized
Reason: Secured Area

Bldg. 48, TA–55
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020017
Status: Unutilized
Reason: Secured Area

Bldg. 125, TA–55
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020018
Status: Unutilized
Reason: Secured Area

Bldg. 162, TA–55
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020019
Status: Unutilized
Reason: Secured Area

Bldg. 22, TA–33
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020022
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 23, TA–49
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020023
Status: Unutilized
Reason: Secured Area

Bldg. 37, TA–53
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020024
Status: Unutilized
Reason: Secured Area

Bldg. 121, TA–49
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200020025
Status: Unutilized
Reason: Secured Area

Bldg. 30, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200040001
Status: Unutilized
Reason: Secured Area

Bldg. 152 TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200040002
Status: Unutilized
Reason: Secured Area

Bldg. 105, TA–3
Los Alamos Natl Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200120007
Status: Excess
Reason: Secured Area

Bldg. 452, TA–3
Los Alamos Natl Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200120008
Status: Excess
Reason: Secured Area

5 Bldgs.
Kirtland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 9927, 9970, 6730, 6731, 6555
Landholding Agency: Energy
Property Number: 41200210014
Status: Excess
Reason: Extensive deterioration

6 Bldgs.
Kirtland AFB
Sandia Natl Lab
Albuquerque Co: Bernalillo NM 87185–
Location: 6725, 841, 884, 892, 893, 9800
Landholding Agency: Energy
Property Number: 41200210015
Status: Excess
Reason: Extensive deterioration

TA–53, Bldg. 61
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200220023
Status: Unutilized
Reason: Extensive deterioration

TA–53, Bldg. 63

Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200220024
Status: Unutilized
Reason: Extensive deterioration

TA–53, Bldg. 65
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200220025
Status: Unutilized
Reason: Extensive deterioration

Bldg. B117
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy
Property Number: 41200220032
Status: Excess
Reason: Extensive deterioration

Bldg. B118
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy
Property Number: 41200220033
Status: Excess
Reason: Extensive deterioration

Bldg. B119
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117–
Landholding Agency: Energy
Property Number: 41200220034
Status: Excess
Reason: Extensive deterioration

Bldg. 6721
Kirtland AFB
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200220042
Status: Unutilized
Reason: Extensive deterioration

6 Bldgs.
Kirtland Air Force Base #852, 874, 9939A, 6336, 6636, 833A
Albuquerque Co: NM 87185–
Landholding Agency: Energy
Property Number: 41200230001
Status: Excess
Reason: Secured Area

Bldg. 805
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200240001
Status: Unutilized
Reason: Secured Area

Bldg. 8898
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41200240002
Status: Unutilized
Reason: Secured Area

8 Bldgs., TA–16
Los Alamos National Lab 195, 220–226
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240003
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–11
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240004
Status: Unutilized
Reason: Secured Area

Bldg. 4, TA–41
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240005
Status: Unutilized
Reason: Secured Area

Bldg. 16, TA–41
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240006
Status: Unutilized
Reason: Secured Area

Bldg. 30, TA–41
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240007
Status: Unutilized
Reason: Secured Area

Bldg. 53, TA–41
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200240008
Status: Unutilized
Reason: Secured Area

Bldg. 2, TA–33
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200310001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 228, 286, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200310002
Status: Unutilized
Reason: Secured Area

Bldg. 116, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200310003
Status: Unutilized
Reason: Secured Area

Bldgs. 1, 2, 3, 4, 5, TA–28
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200310004
Status: Unutilized
Reason: Secured Area

New York

Warehouse
Whitney Lake Project
Whitney Point Co: Broome NY 13862–0706
Landholding Agency: COE
Property Number: 31199630007
Status: Unutilized
Reason: Extensive deterioration

2 Buildings
Ant Saugerties
Saugerties Co: Ulster NY 12477–
Landholding Agency: DOT
Property Number: 87199230005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 606, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240020
Status: Unutilized
Reason: Secured Area

Bldg. 607, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240021
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 605, Fort Totten
New York Co: Queens NY 11359–
Landholding Agency: DOT
Property Number: 87199240022
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Eatons Neck Station
U.S. Coast Guard
Huntington Co: Suffolk NY 11743–
Landholding Agency: DOT
Property Number: 87199310003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 517, USCG Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199320025
Status: Unutilized
Reason: Secured Area

Bldg. 138
U.S. Coast Guard Support Center
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199410003
Status: Unutilized
Reason: Secured Area

Bldg. 830
U.S. Coast Guard
Governors Island Co: Manhattan NY 10004–
Landholding Agency: DOT
Property Number: 87199420004
Status: Unutilized
Reason: Secured Area

Bldg. 8
Rosebank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199530009
Status: Unutilized
Reason: Secured Area

Bldg. 7
Rosebank—Coast Guard Housing
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199530010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 222
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620003
Status: Unutilized
Reason: Secured Area

Bldg. 223

Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620004
Status: Unutilized
Reason: Secured Area

Bldg. 205
Fort Wadsworth
Staten Island Co: Richmond NY 10305–
Landholding Agency: DOT
Property Number: 87199620005
Status: Unutilized
Reason: Secured Area

Bldg. 9
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630027
Status: Excess
Reason: Secured Area

Bldg. 10
U.S. Coast Guard—Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630028
Status: Excess
Reason: Secured Area

Bldg. 206, Rosebank
Staten Island Co: Richmond NY 10301–
Landholding Agency: DOT
Property Number: 87199630029
Status: Excess
Reason: Secured Area

Bldg. OG2
Coast Guard Station
Alexandria Bay Co: Jefferson NY 13640–
Landholding Agency: DOT
Property Number: 87200210021
Status: Unutilized
Reason: Secured Area

North Carolina

Prop. ID WKS20350
Scott Reservoir Project
Wilkesboro Co: NC 28697–7462
Landholding Agency: COE
Property Number: 31200310008
Status: Unutilized
Reason: Extensive deterioration

Prop. ID WKS18652
Scott Reservoir Project
Wilkesboro Co: NC 28697–7462
Landholding Agency: COE
Property Number: 31200310009
Status: Unutilized
Reason: Extensive deterioration

10 Facilities
Wilkes County Recreation Area
Wilkesboro Co: NC
Landholding Agency: COE
Property Number: 31200320001
Status: Unutilized
Reason: Extensive deterioration

Group Cape Hatteras
Boiler Plant
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199240018
Status: Unutilized
Reason: Secured Area

Group Cape Hatteras
Bowling Alley
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199240019
Status: Unutilized
Reason: Secured Area

Bldg. 54
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340004
Status: Unutilized
Reason: Secured Area

Bldg. 83
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340005
Status: Unutilized
Reason: Secured Area

Water Tanks
Group Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87199340006
Status: Unutilized
Reason: Secured Area

USCG Gentian (WLB 290)
Fort Macon State Park
Atlantic Beach Co: Carteret NC 27601–
Landholding Agency: DOT
Property Number: 87199420007
Status: Excess
Reason: Secured Area

Unit #71
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530011
Status: Unutilized
Reason: Floodway

Unit #72
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530012
Status: Unutilized
Reason: Floodway

Unit #73
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530013
Status: Unutilized
Reason: Floodway

Unit #74
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530014
Status: Unutilized
Reason: Floodway

Unit #75
Buxton Annex, Cape Kendrick Circle
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530015
Status: Unutilized
Reason: Floodway

Unit #63
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530016
Status: Unutilized
Reason: Floodway

Unit #64
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530017
Status: Unutilized
Reason: Floodway

Unit #76
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530018
Status: Unutilized
Reason: Floodway

Unit #68
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530019
Status: Unutilized
Reason: Floodway

Unit #69
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530020
Status: Unutilized
Reason: Floodway

Unit #70
Buxton Annex, Anna May Court
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530021
Status: Unutilized
Reason: Floodway

Unit #77
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530022
Status: Unutilized
Reason: Floodway

Unit #78
Buxton Annex, Old Lighthouse Road
Buxton Co: Dare NC 27920–
Landholding Agency: DOT
Property Number: 87199530023
Status: Unutilized
Reason: Floodway

Bldg. 53
Coast Guard Support Center
Elizabeth City Co: Pasquotank NC 27909–5006
Landholding Agency: DOT
Property Number: 87199630022
Status: Unutilized
Reason: Secured Area

Bldg. OV1 (033)
USCG Cape Hatteras
Buxton Co: Dare NC 27902–0604
Landholding Agency: DOT
Property Number: 87200210012
Status: Underutilized
Reason: Secured Area

Storage Bldg.
USCG Loran Station
Carolina Beach Co: New Hanover NC
Landholding Agency: DOT
Property Number: 87200210013
Status: Underutilized
Reason: Secured Area

Frying Pan Shoals Light
USCG
Cape Fear Co: NC
Landholding Agency: DOT

Property Number: 87200240004
Status: Unutilized
Reason: Secured Area

Diamond Shoals Light
USCG
Cape Hatteras Co: NC
Landholding Agency: DOT
Property Number: 87200240005
Status: Unutilized
Reason: Secured Area

Bldg. 9
VA Medical Center
1100 Tunnel Road
Asheville Co: Buncombe NC 28805–
Landholding Agency: VA
Property Number: 97199010008
Status: Unutilized
Reason: Extensive deterioration

Ohio

Bldg. 77
Fernald Environmental Management Project
Fernald Co: Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41199840003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 82A
Fernald Environmental Mgmt Project
Fernald Co: Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41199910018
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 16
RMI Environmental Services
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41199930016
Status: Unutilized
Reason: Secured Area

Bldg. 22B
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–9402
Landholding Agency: Energy
Property Number: 41200020026
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 53A
Fernald Env. Mgmt. Project
Fernald Co: Hamilton OH 45013–9402
Landholding Agency: Energy
Property Number: 41200120009
Status: Excess
Reason: Secured Area

Bldg. 8G
Fernald Environmental Mgmt Project
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200210003
Status: Excess
Reason: Secured Area

Bldg. 8H
Fernald Environmental Mgmt Project
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200210004
Status: Excess
Reason: Secured Area

Bldg. 94A
Fernald Environmental Mgmt Project
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200210005
Status: Excess
Reason: Secured Area

Bldg. 11
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220026
Status: Excess
Reason: Secured Area

Bldg. 14A
Fernald Env. Mgmt. Proj
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220027
Status: Excess
Reason: Secured Area

Bldg. 15A
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220028
Status: Excess
Reason: Secured Area

Bldg. 15C
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220029
Status: Excess
Reason: Secured Area

Bldg. 20K
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220030
Status: Excess
Reason: Secured Area

Bldg. 53B
Fernald Env. Mgmt. Proj.
Hamilton Co: OH 45013–
Landholding Agency: Energy
Property Number: 41200220031
Status: Excess
Reason: Secured Area

Modular Ofc. Bldg.
RMI
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41200310008
Status: Excess
Reason: Contamination

Modular Lab Bldg.
RMI
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41200310009
Status: Excess
Reason: Contamination

Soil Storage Bldg.
RMI
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41200310010
Status: Excess
Reason: Contamination

Soil Washing Bldg.
RMI
Ashtabula Co: OH 44004–
Landholding Agency: Energy
Property Number: 41200310011
Status: Excess
Reason: Contamination

Bldg. 16B
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310012
Status: Excess
Reasons: Contamination, Secured Area

Bldg. 24C
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310013
Status: Excess
Reasons: Contamination, Secured Area

Bldg. 25K
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310014
Status: Excess
Reasons: Contamination, Secured Area

Bldg. 50
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310015
Status: Excess
Reasons: Contamination, Secured Area

Bldg. 52A
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310016
Status: Excess
Reasons: Contamination, Secured Area

Bldg. 52B
Fernald Env. Mgmt. Proj.
Hamilton Co: Butler OH 45013–
Landholding Agency: Energy
Property Number: 41200310017
Status: Excess
Reasons: Contamination, Secured Area

Bldg. 116
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 402
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency: VA
Property Number: 97199920004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 105
VA Medical Center
Dayton Co: Montgomery OH 45428–
Landholding Agency:
VA
Property Number: 97199920005
Status: Unutilized
Reason: Extensive deterioration

Oklahoma

Comfort Station
LeFlore Landing PUA
Sallisaw Co: LeFlore OK 74955–9445
Landholding Agency: COE
Property Number: 31200240008
Status: Excess
Reason: Extensive deterioration

Comfort Station
Braden Bend PUA
Sallisaw Co: LeFlore OK 74955–9445
Landholding Agency: COE
Property Number: 31200240009
Status: Excess
Reason: Extensive deterioration

Water Treatment Plant
Salt Creek Cove
Sawyer Co: Choctaw OK 74756–0099
Landholding Agency: COE
Property Number: 31200240010
Status: Excess
Reason: Extensive deterioration

Water Treatment Plant
Wilson Point
Sawyer Co: Choctaw OK 74756–0099
Landholding Agency: COE
Property Number: 31200240011
Status: Excess
Reason: Extensive deterioration

2 Comfort Stations
Landing PUA/Juniper Point PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240012
Status: Excess
Reason: Extensive deterioration

Filter Plant/Pumphouse
South PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240013
Status: Excess
Reason: Extensive deterioration

Filter Plant/Pumphouse
North PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240014
Status: Excess
Reason: Extensive deterioration

Filter Plant/Pumphouse
Juniper Point PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240015
Status: Excess
Reason: Extensive deterioration

Comfort Station
Juniper Point PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240016
Status: Excess
Reason: Extensive deterioration

Comfort Station
Brooken Cove PUA
Stigler Co: McIntosh OK 74462–9440
Landholding Agency: COE
Property Number: 31200240017
Status: Excess
Reason: Extensive deterioration

Pennsylvania

Z-Bldg.
Bettis Atomic Power Lab
West Mifflin Co: Allegheny PA 15122–0109
Landholding Agency: Energy
Property Number: 41199720002
Status: Excess
Reason: Extensive deterioration

Puerto Rico

NAFA Warehouse
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 87199310011
Status: Unutilized
Reason: Secured Area

Storage Equipment Bldg.
U.S. Coast Guard Air Station Borinquen
Aquadilla PR 00604–
Landholding Agency: DOT
Property Number: 87199330001
Status: Unutilized
Reason: Secured Area

Bldg. 115
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510001
Status: Unutilized
Reason: Secured Area

Bldg. 117
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510002
Status: Unutilized
Reason: Secured Area

Bldg. 118
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510003
Status: Unutilized
Reason: Secured Area

Bldg. 119
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510004
Status: Unutilized
Reason: Secured Area

Bldg. 120
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510005
Status: Unutilized
Reason: Secured Area

Bldg. 122
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510006
Status: Unutilized
Reason: Secured Area

Bldg. 128
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510007
Status: Unutilized
Reason: Secured Area

Bldg. 129
U.S. Coast Guard Base
San Juan PR 00902–2029
Landholding Agency: DOT
Property Number: 87199510008
Status: Unutilized
Reason: Secured Area

Rhode Island

Station Point Judith Pier
Narranganset Co: Washington RI 02882–
Landholding Agency: DOT
Property Number: 87199310002
Status: Unutilized
Reason: Extensive deterioration

South Carolina

Prop. ID JST18895
Thurmond Project
Clarks Hill Co: McCormick SC
Landholding Agency: COE
Property Number: 31200310010
Status: Unutilized
Reason: Extensive deterioration

5 Bldgs.
Thurmond Project
Clarks Hill Co: McCormick SC
Location: JST15781, JST15784, JST15864, JST15866, TST15868
Landholding Agency: COE
Property Number: 31200310011
Status: Unutilized
Reason: Extensive deterioration

Prop. ID JST17133
Thurmond Project
Clarks Hill Co: McCormick SC
Landholding Agency: COE
Property Number: 31200310012
Status: Unutilized
Reason: Extensive deterioration

Prop. ID JST18428
Thurmond Project
Clarks Hill Co: McCormick SC
Landholding Agency: COE
Property Number: 31200310013
Status: Unutilized
Reason: Extensive deterioration

South Dakota

Mobile Home
Tract L–1295
Oahe Dam
Potter Co: SD 00000–
Landholding Agency: COE
Property Number: 31200030001
Status: Excess
Reason: Extensive deterioration

Tennessee

Bldg. 204
Cordell Hull Lake and Dam Project
Defeated Creek Recreation Area
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 31199011499
Status: Unutilized
Reason: Floodway

Tract 2618 (Portion)
Cordell Hull Lake and Dam Project
Roaring River Recreation Area
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 135
Landholding Agency: COE
Property Number: 31199011503
Status: Underutilized
Reason: Floodway

Water Treatment Plant
Dale Hollow Lake & Dam Project
Obey River Park, State Hwy 42
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140011
Status: Excess
Reason: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project

Lillydale Recreation Area, State Hwy 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140012
Status: Excess
Reason: Water treatment plant

Water Treatment Plant
Dale Hollow Lake & Dam Project
Willow Grove Recreational Area, Hwy No. 53
Livingston Co: Clay TN 38351–
Landholding Agency: COE
Property Number: 31199140013
Status: Excess
Reason: Water treatment plant

Bldg. 3004
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199710002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3004
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199720001
Status: Excess
Reason: Extensive deterioration

Bldgs. 9714–3, 9714–4, 9983–AY
Y–12 Pistol Range
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199720004
Status: Unutilized
Reason: Secured Area

5 Bldgs.
K–724, K–725, K–1031, K–1131, K–1410
East Tennessee Technology Park
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199730001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9418–1
Y–12 Plant
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199810026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9825
Y–12 Plant
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199810027
Status: Unutilized
Reason: Secured Area

Bldg. 3026
Oak Ridge Natl Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199830001
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 3505
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199940020
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

9 Bldgs.
E. Tennessee Tech Park
Oak Ridge Co: Roane TN 37831–
Location: K–1001, K–1301, K–1302, K–1303, K–1404, K–1405–6, K–1407, K–1408A, K–1413
Landholding Agency: Energy
Property Number: 41200010023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9723–16
National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200120010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Oak Ridge National Lab
#7811, 7819, 7833, 7852, 7860
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41200130001
Status: Unutilized
Reasons: Contamination, Secured Area, Extensive deterioration

Bldg. 81–22
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9409–26
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9723–4
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9733–4
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

4 Bldgs.
Y–12 National Security Complex
#9929–1, 9823, 9827 & shed
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9949–1
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200140006
Status: Unutilized
Reason: Secured Area

Bldg. 9949–31
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200210001
Status: Unutilized
Reason: Secured Area

Bldg. SC–14
ORISE Scarboro Operations Site
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200210002
Status: Excess
Reason: Secured Area

Bldg. 9723–18
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200210006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9728
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200210007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9404–03
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220035
Status: Unutilized
Reason: Secured Area

Bldg. 9404–07
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220036
Status: Unutilized
Reason: Secured Area

Bldg. 9404–08
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220037
Status: Unutilized
Reason: Secured Area

4 Bldgs.
Y–12 Natl Security Complex
9418–4, 9418–5, 9418–6, 9418–9
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220038
Status: Unutilized
Reason: Secured Area

Bldg. 9620–2
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220039
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 9769, 9770–3
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220040

Status: Unutilized
Reason: Secured Area

Bldgs. 9720–1, 9720–2
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9723–21
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220043
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 9205, 9208
Y–12 Natl Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200220059
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 2013, 2506, 6003
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41200220060
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9720–14
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41200230002
Status: Excess
Reason: Secured Area

6 Bldgs.
Y–12 National Security Complex
Oak Ridge Co: Anderson TN 37831–
Location: 9983–62, 9983–63, 9983–64, 9983–65, 9983–71, 9983–72
Landholding Agency: Energy
Property Number: 41200230003
Status: Excess
Reason: Secured Area

17 Bldgs.
Oak Ridge Tech Park
Oak Ridge Co: Roane TN 37831–
Location: K–801, A–D, H, K–891, K–892, K1025A–E, K–1064B–E, H, K, L, K1206–E
Landholding Agency: Energy
Property Number: 41200310007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

4 Bldgs.
Oak Ridge National Lab 0954, 0961, 2093, 3013
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41200310019
Status: Unutilized
Reason: Secured Area

5 Bldgs.
Naval Support Activity
430, 434, 762, 1765, 397
Millington Co: TN 38054–
Landholding Agency: Navy
Property Number: 77200330045
Status: Excess
Reason: Secured Area

Texas

Comfort Station
Overlook PUA
Powderly Co: Lamar TX 75473–9801
Landholding Agency: COE
Property Number: 31200240018
Status: Excess
Reason: Extensive deterioration

Zone 5, Bldg. FS–18
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220044
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Zone 11, Bldg. 11–001
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220045
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Zone 11, 3 Bldgs.
11–015, 11–015B, 11–046
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220046
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Zone 11, Bldg. 11–041
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220047
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 11, Bldg. 11–044
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220048
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–003P
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220049
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–05G1
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220050
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, 11 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 12–010, 12–010V1, 12–010V2, 12–010L, 12–R–010, 12–012, 12–R–012, 12–012V, 12–R–013, 12–R–013RR, 12–13V
Landholding Agency: Energy
Property Number: 41200220051
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–017C
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220052
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–20
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, 8 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 12–024, 12–024A, 12–02455, 12–025, 12–R–025, 12–030, 12–043, 12–043A
Landholding Agency: Energy
Property Number: 41200220054
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–27
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220055
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, Bldg. 12–038
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200220056
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 12, 2 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 12–076, 12–076A
Landholding Agency: Energy
Property Number: 41200220057
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Zone 13, 6 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 13–041, 13–042, 13–043, 13–044, 13–045, 13–046
Landholding Agency: Energy
Property Number: 41200220058
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

10 Bldgs.
DOE Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 11–023, 024, 034, 036, 036SS, 039, 039SS, 11–R–014, 11–R–020, 11–R–039
Landholding Agency: Energy
Property Number: 41200310020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

5 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 12–091, 15–023, 15–023A, 16–006, FS–008
Landholding Agency: Energy
Property Number: 41200310021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

6 Bldgs.
Pantex Plant
Amarillo Co: Carson TX 79120–
Location: 12–008, 12–R–008, 12–059, 12–059E, 12–059V, 12–R–059
Landholding Agency: Energy
Property Number: 41200320009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 12–017E, 12–019E
Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200320010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 1302
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200330046
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1320
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200330047
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1509
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–
Landholding Agency: Navy
Property Number: 77200330048
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Old Exchange Bldg.
U.S. Coast Guard
Galveston Co: Galveston TX 77553–3001
Landholding Agency: DOT
Property Number: 87199310012
Status: Unutilized
Reason: Secured Area

WPB Building
Station Port Isabel
Coast Guard Station
South Padre Island Co: Cameron TX 78597–6497
Landholding Agency: DOT
Property Number: 87199530002
Status: Unutilized
Reason: Floodway

Aton Shops Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

WPB Storage Shed
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Flammable Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Battery Storage Building
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Boat House
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Small Boat Pier
USCG Station Sabine
Sabine Co: Jefferson TX 77655–
Landholding Agency: DOT
Property Number: 87199530008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 108
Fort Crockett/43rd St. Housing
Galveston Co: Galveston TX 77553–
Landholding Agency: DOT
Property Number: 87199630008
Status: Unutilized
Reason: Extensive deterioration

Vermont

Depot Street
Downtown at the Waterfront
Burlington Co: Chittenden VT 05401–5226
Landholding Agency: DOT
Property Number: 87199220003
Status: Excess
Reason: Floodway

Virginia

Ferris Property
Yorktown Co: VA 23690–
Landholding Agency: Interior
Property Number: 61200330023
Status: Excess
Reason: Extensive deterioration

Bldg. A–102
Naval Station
Norfolk Co: VA 23511–3095
Landholding Agency: Navy
Property Number: 77200330049
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. A–102A
Naval Station
Norfolk Co: VA 23511–3095
Landholding Agency: Navy
Property Number: 77200330050
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. A–103
Naval Station
Norfolk Co: VA 23511–3095
Landholding Agency: Navy
Property Number: 77200330051
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 435
Naval Weapons Station
Yorktown Co: VA
Landholding Agency: Navy
Property Number: 77200330052
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1347
Naval Weapons Station
Yorktown Co: VA
Landholding Agency: Navy
Property Number: 77200330053
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1350
Naval Weapons Station
Yorktown Co: VA
Landholding Agency: Navy
Property Number: 77200330054
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1374
Naval Weapons Station
Yorktown Co: VA
Landholding Agency: Navy
Property Number: 77200330055
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 1810
Naval Weapons Station
Yorktown Co: VA
Landholding Agency: Navy
Property Number: 77200330056
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 052 & Tennis Court
USCG Reserve Training Center
Yorktown Co: York VA 23690–
Landholding Agency: DOT
Property Number: 87199230004
Status: Excess
Reason: Secured Area

Admin. Bldg.
Coast Guard, Group Eastern Shores
Chincoteague Co: Accomack VA 23361–510
Landholding Agency: DOT
Property Number: 87199240014
Status: Unutilized
Reason: Secured Area

Little Creek Station
Navamphib Base, West Annex, U.S. Coast Guard
Norfolk Co: Princess Anne VA 23520–
Landholding Agency: DOT
Property Number: 87199310004
Status: Unutilized
Reason: Secured Area

Operations Bldg.
U.S. Coast Guard Group Hampton Roads
Portsmouth VA 23703–
Landholding Agency: DOT
Property Number: 87199710003
Status: Unutilized
Reason: Secured Area

Bldgs. 63, 115
USCG Training Center
Yorktown Co: York VA 23690–5000
Landholding Agency: DOT
Property Number: 87200110037
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 156
USCG Training Center Yorktown
Yorktown Co: York VA 23690–5000
Landholding Agency: DOT
Property Number: 87200120015
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 002
USCG Eastern Shore
Chincoteague Co: Accomak VA 23336–
Landholding Agency: DOT,
Property Number: 87200220007
Status: Excess
Reason: Secured Area

Washington

Rec Storage Bldg.
Richland Parks
Richland Co: Benton WA 99352–
Landholding Agency: COE
Property Number: 31200240019
Status: Unutilized
Reason: Extensive deterioration

Garage/No.804
Columbia Basin
George Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 61200330024
Status: Unutilized
Reason: Extensive deterioration

Residence No. 804
Columbia Basin
George Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 61200330025
Status: Unutilized
Reason: Extensive deterioration

Garage/No. 801
Columbia Basin
George Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 61200330026
Status: Unutilized
Reason: Extensive deterioration

Residence No. 801
Columbia Basin
George Co: Grant WA 98848–
Landholding Agency: Interior
Property Number: 61200330027
Status: Unutilized
Reason: Extensive deterioration

Garage/No. 305
Columbia Basin
Soap Lake Co: Grant WA 98851–
Landholding Agency: Interior
Property Number: 61200330028
Status: Unutilized
Reason: Extensive deterioration

Residence No. 305
Columbia Basin
Soap Lake Co: Grant WA 98851–
Landholding Agency: Interior
Property Number: 61200330029
Status: Unutilized
Reason Extensive deterioration

Garage/Residence No. 304
Columbia Basin
Soap Lake Co: Grant WA 98851–
Landholding Agency: Interior
Property Number: 61200330030
Status: Unutilized
Reason: Extensive deterioration

Residence No. 304
Columbia Basin
Soap Lake Co: Grant WA 98851–
Landholding Agency: Interior
Property Number: 61200330031
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

Rawley Point Light
Two Rivers Co: Manitowoc WI
Landholding Agency: DOT
Property Number: 87199540004
Status: Unutilized
Reason: Secured Area; Extensive deterioration

LAND (by State)

Arizona

58 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630001
Status: Unutilized
Reason: Floodway

20 acres
VA Medical Center
500 Highway 89 North
Prescott Co: Yavapai AZ 86313–
Landholding Agency: VA
Property Number: 97190630002
Status: Underutilized
Reason: Floodway

Florida

Land—approx. 220 acres
Cape San Blas
Port St. Joe Co: Gulf FL
Landholding Agency: DOT
Property Number: 87199440018
Status: Underutilized
Reasons: Floodway; Secured Area

Wildlife Sanctuary, VAMC
10,000 Bay Pines Blvd.
Bay Pines Co: Pinellas FL 33504–
Landholding Agency: VA
Property Number: 97199230004
Status: Underutilized
Reason: Inaccessible

Kentucky

Tract 4626
Barkley Lake, Kentucky and Tennessee
Donaldson Creek Launching Area
Cadiz Co: Trigg KY 42211–
Location: 14 miles from U.S. Highway 68.
Landholding Agency: COE
Property Number: 31199010030
Status: Underutilized
Reason: Floodway

Tract AA–2747
Wolf Creek Dam and Lake Cumberland
US HWY. 27 to Blue John Road
Burnside Co: Pulaski KY 42519–
Landholding Agency: COE
Property Number: 31199010038
Status: Underutilized
Reason: Floodway

Tract AA–2726
Wolf Creek Dam and Lake Cumberland
KY HWY. 80 to Route 769
Burnside Co: Pulaski KY 42519–.
Landholding Agency: COE
Property Number: 31199010039
Status: Underutilized
Reason: Floodway

Tract 1358
Barkley Lake, Kentucky and Tennessee
Eddyville Recreation Area
Eddyville Co: Lyon KY 42038–
Location: US Highway 62 to state highway 93.
Landholding Agency: COE
Property Number: 31199010043
Status: Excess
Reason: Floodway

Red River Lake Project
Stanton Co: Powell KY 40380–
Location: Exit Mr. Parkway at the Stanton and Slade Interchange, then take SR Hand 15 north to SR 613.
Landholding Agency: COE
Property Number: 31199011684
Status: Unutilized
Reason: Floodway

Barren River Lock & Dam No. 1
Richardsville Co: Warren KY 42270–
Landholding Agency: COE
Property Number: 31199120008
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 3
Rochester Co: Butler KY 42273–
Location: Off State Hwy. 369, which runs off of Western Ky. Parkway
Landholding Agency: COE
Property Number: 31199120009
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 4
Woodbury Co: Butler KY. 42288–
Location: Off State Hwy 403, which is off State Hwy 231
Landholding Agency: COE
Property Number: 31199120014
Status: Underutilized
Reason: Floodway

Green River Lock & Dam No. 5
Readville Co: Butler KY 42275–
Location: Off State Highway 185
Landholding Agency: COE
Property Number: 31199120015
Status: Unutilized
Reason: Floodway

Green River Lock & Dam No. 6
Brownsville Co: Edmonson KY 42210–

Location: Off State Highway 259
Landholding Agency: COE
Property Number: 31199120016
Status: Underutilized
Reason: Floodway

Vacant land west of locksite
Greenup Locks and Dam 5121 New Dam Road
Rural Co: Greenup KY 41144–
Landholding Agency: COE
Property Number: 31199120017
Status: Unutilized
Reason: Floodway

Maryland

Tract 131R
Youghiogheny River Lake, Rt. 2, Box 100
Friendsville Co: Garrett MD
Landholding Agency: COE
Property Number: 31199240007
Status: Underutilized
Reason: Floodway

Land/10,000 sq. ft.
Indian Head Division
Indian Head Co: Charles MD 20646–
Landholding Agency: Navy
Property Number: 77200330044
Status: Underutilized
Reason: Secured Area

Michigan

Middle Marker Facility
Yipsilanti Co: Washtenaw MI 48198–
Location: 549 ft. north of intersection of Coolidge and Bradley Ave. on East side of street
Landholding Agency: DOT
Property Number: 87199120006
Status: Unutilized
Reason: Within airport runway clear zone

Minnesota

3.85 acres (Area #2)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740004
Status: Unutilized
Reason: Landlocked

7.48 acres (Area #1)
VA Medical Center
4801 8th Street
St. Cloud Co: Stearns MN 56303–
Landholding Agency: VA
Property Number: 97199740005
Status: Underutilized
Reason: Secured Area

Mississippi

Parcel 1
Grenada Lake
Section 20
Grenada Co: Grenada MS 38901–0903
Landholding Agency: COE
Property Number: 31199011018
Status: Underutilized
Reason: Within airport runway clear zone

Missouri

Ditch 19, Item 2, Tract No. 230
St. Francis Basin Project 2½ miles west of Malden Co: Dunklin MO
Landholding Agency: COE
Property Number: 31199130001
Status: Unutilized
Reason: Floodway

New York

Tract 1
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010011
Status: Unutilized
Reason: Secured Area

Tract 2
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010012
Status: Underutilized
Reason: Secured Area

Tract 3
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010013
Status: Underutilized
Reason: Secured Area

Tract 4
VA Medical Center
Bath Co: Steuben NY 14810–
Location: Exit 38 off New York State Route 17.
Landholding Agency: VA
Property Number: 97199010014
Status: Unutilized
Reason: Secured Area

Ohio

Mosquito Creek Lake
Everett Hull Road Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440007
Status: Underutilized
Reason: Floodway

Mosquito Creek Lake
Housel—Craft Rd., Boat Launch
Cortland Co: Trumbull OH 44410–9321
Landholding Agency: COE
Property Number: 31199440008
Status: Underutilized
Reason: Floodway

36 Site Campground
German Church Campground
Berlin Center Co: Portage OH 44401–9707
Landholding Agency: COE
Property Number: 31199810001
Status: Unutilized
Reason: Floodway

Pennsylvania

Lock and Dam #7
Monongahela River
Greensboro Co: Greene PA
Location: Left hand side of entrance roadway to project.
Landholding Agency: COE
Property Number: 31199011564
Status: Unutilized
Reason: Floodway

Mercer Recreation Area
Shenango Lake
Transfer Co: Mercer PA 16154–
Landholding Agency: COE
Property Number: 31199810002
Status: Unutilized
Reason: Floodway

Tract No. B–212C
Upstream from Gen. Jadwin Dam & Reservoir
Honesdale Co: Wayne PA 18431–
Landholding Agency: COE
Property Number: 31200020005
Status: Unutilized
Reason: Floodway

Tennessee

Brooks Bend
Cordell Hull Dam and Reservoir
Highway 85 to Brooks Bend Road
Gainesboro Co: Jackson TN 38562–
Location: Tracts 800, 802–806, 835–837, 900–902, 1000–1003, 1025
Landholding Agency: COE
Property Number: 21199040413
Status: Underutilized
Reason: Floodway

Cheatham Lock and Dam
Highway 12
Ashland City Co: Cheatham TN 37015–
Location: Tracts E–513, E–512–1 and E–512–2
Landholding Agency: COE
Property Number: 21199040415
Status: Underutilized
Reason: Floodway

Tract 2321
J. Percy Priest Dam and Reservoir
Murfreesboro Co: Rutherford TN 37130–
Location: South of Old Jefferson Pike
Landholding Agency: COE
Property Number: 31199010935
Status: Excess
Reason: Landlocked

Tract 6737
Blue Creek Recreation Area
Barkley Lake, Kentucky and Tennessee
Dover Co: Stewart TN 37058–
Location: U.S. Highway 79/TN Highway 761
Landholding Agency: COE
Property Number: 31199011478
Status: Underutilized
Reason: Floodway

Tracts 3102, 3105, and 3106
Brimstone Launching Area
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011479
Status: Excess
Reason: Floodway

Tract 3507
Proctor Site
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 52
Landholding Agency: COE
Property Number: 31199011480
Status: Unutilized
Reason: Floodway

Tract 3721
Obey
Cordell Hull Lake and Dam Project
Celina Co: Clay TN 38551–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011481
Status: Unutilized
Reason: Floodway

Tracts 608, 609, 611 and 612
Sullivan Bend Launching Area
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011482
Status: Underutilized
Reason: Floodway

Tract 920
Indian Creek Camping Area
Cordell Hull Lake and Dam Project
Granville Co: Smith TN 38564–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011483
Status: Underutilized
Reason: Floodway

Tracts 1710, 1716 and 1703
Flynns Lick Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Whites Bend Road
Landholding Agency: COE
Property Number: 31199011484
Status: Underutilized
Reason: Floodway

Tract 1810
Wartrace Creek Launching Ramp
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011485
Status: Underutilized
Reason: Floodway

Tract 2524
Jennings Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011486
Status: Unutilized
Reason: Floodway

Tracts 2905 and 2907
Webster
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38551–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011487
Status: Unutilized
Reason: Floodway

Tracts 2200 and 2201
Gainesboro Airport
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: Big Bottom Road
Landholding Agency: COE
Property Number: 31199011488
Status: Underutilized
Reasons: Within airport runway clear zone; Floodway

Tracks 710C and 712C
Sullivan Island
Cordell Hull Lake and Dam Project
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011489
Status: Unutilized
Reason: Floodway

Track 2403, Hensley Creek
Cordell Hull Lake and Dam Project
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 85
Landholding Agency: COE
Property Number: 31199011490
Status: Unutilized
Reason: Floodway

Tracks 2117C, 2118 and 2120
Cordell Hull Lake and Dam Project
Trace Creek
Gainesboro Co: Jackson TN 38562–
Location: Brooks Ferry Road
Landholding Agency: COE
Property Number: 31199011491
Status: Unutilized
Reason: Floodway

Tracks 424, 425 and 426
Cordell Hull Lake and Dam Project
Stone Bridge
Carthage Co: Smith TN 37030–
Location: Sullivan Bend Road
Landholding Agency: COE
Property Number: 31199011492
Status: Unutilized
Reason: Floodway

Track 517
J. Percy Priest Dam and Reservoir
Suggs Creek Embayment
Nashville Co: Davidson TN 37214–
Location: Interstate 40 to S. Mount Juliet Road.
Landholding Agency: COE
Property Number: 31199011493
Status: Underutilized
Reason: Floodway

Track 1811
West Fork Launching Area
Smyrna Co: Rutherford TN 37167–
Location: Florence road near Enon Springs Road
Landholding Agency: COE
Property Number: 31199011494
Status: Underutilized
Reason: Floodway

Track 1504
J. Perry Priest Dam and Reservoir
Lamon Hill Recreation Area
Smyrna Co: Rutherford TN 37167–
Location: Lamon Road
Landholding Agency: COE
Property Number: 31199011495
Status: Underutilized
Reason: Floodway

Track 1500
J. Perry Priest Dam and Reservoir
Pools Knob Recreation
Smyrna Co: Rutherford TN 37167–
Location: Jones Mill Road
Landholding Agency: COE
Property Number: 31199011496
Status: Underutilized
Reason: Floodway

Tracks 245, 257, and 256
J. Perry Priest Dam and Reservoir
Cook Recreation Area
Nashville Co: Davidson TN 37214–
Location: 2.2 miles south of Interstate 40 near Saunders Ferry Pike.
Landholding Agency: COE
Property Number: 31199011497
Status: Underutilized
Reason: Floodway

Tracks 107, 109 and 110
Cordell Hull Lake and Dam Project
Two Prong
Carthage Co: Smith TN 37030–
Location: US Highway 85
Landholding Agency: COE
Property Number: 31199011498
Status: Unutilized
Reason: Floodway

Tracks 2919 and 2929
Cordell Hull Lake and Dam Project
Sugar Creek
Gainesboro Co: Jackson TN 38562–
Location: Sugar Creek Road
Landholding Agency: COE
Property Number: 31199011500
Status: Unutilized
Reason: Floodway

Tracks 1218 and 1204
Cordell Hull Lake and Dam Project
Granville—Alvin Yourk Road
Granville Co: Jackson TN 38564-
Landholding Agency: COE
Property Number: 31199011501
Status: Unutilized
Reason: Floodway

Track 2100
Cordell Hull Lake and Dam Project
Galbreaths Branch
Gainesboro Co: Jackson TN 38562–
Location: TN Highway 53
Landholding Agency: COE
Property Number: 31199011502
Status: Unutilized
Reason: Floodway

Track 104 et. al.
Cordell Hull Lake and Dam Project
Horshoe Bend Launching Area
Carthage Co: Smith TN 37030–
Location: Highway 70 N
Landholding Agency: COE
Property Number: 31199011504
Status: Underutilized
Reason: Floodway

Tracts 510, 511, 513 and 514
J. Percy Priest Dam and Reservoir Project
Lebanon Co: Wilson TN 37087–
Location: Vivrett Creek Launching Area, Alvin Sperry Road
Landholding Agency: COE
Property Number: 31199120007
Status: Underutilized
Reason: Floodway

Tract A–142, Old Hickory Beach
Old Hickory Blvd.
Old Hickory Co: Davidson TN 37138–
-Landholding Agency: COE
Property Number: 31199130008
Status: Underutilized
Reason: Floodway

Tract D, 7 acres
Cheatham Lock & Dam
Nashville Co: Davidson TN 37207–
Landholding Agency: COE
Property Number: 31200020006
Status: Underutilized
Reason: Floodway

Texas

Tracts 104, 105–1, 105–2 & 118
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010397
Status: Underutilized
Reason: Floodway

Part of Tract 201–3

Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010398
Status: Underutilized
Reason: Floodway

Part of Tract 323
Joe Pool Lake
Co: Dallas TX
Landholding Agency: COE
Property Number: 31199010399
Status: Underutilized
Reason: Floodway

Tract 702–3
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010401
Status: Unutilized
Reason: Floodway

Tract 706
Granger Lake
Route 1, Box 172
Granger Co: Williamson TX 76530–9801
Landholding Agency: COE
Property Number: 31199010402
Status: Unutilized
Reason: Floodway

Washington

2.8 acres
Tract P–1003
Kennewick Co: Benton WA 99336–
Landholding Agency: COE
Property Number: 31200240020
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

West Virginia

Morgantown Lock and Dam
Box 3 RD # 2
Morgantown Co: Monongahelia WV 26505–
Landholding Agency: COE
Property Number: 31199011530
Status: Unutilized
Reason: Floodway

London Lock and Dam
Route 60 East
Rural Co: Kanawha WV 25126–
Location: 20 miles east of Charleston, W. Virginia.
Landholding Agency: COE
Property Number: 31199011690
Status: Unutilized
Reason: .03 acres; very narrow strip of land

Portion of Tract #101
Buckeye Creek
Sutton Co: Braxton WV 26601–
Landholding Agency: COE
Property Number: 31199810006
Status: Excess
Reason: inaccessible

[FR Doc. 03–21363 Filed 8–21–03; 8:45 am]

BILLING CODE 4210–29–P

Federal Register

Friday,
August 22, 2003

Part IV

Department of Defense

32 CFR Part 179

Munitions Response Site Prioritization Protocol; Proposed Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 179

Munitions Response Site Prioritization Protocol

AGENCY: Department of Defense.

ACTION: Proposed rule.

SUMMARY: The Department of Defense (DoD) is proposing a rule that establishes the Munitions Response Site Prioritization Protocol (hereinafter referred to as the "Protocol"). The purpose of the Protocol is to assign a relative priority for munitions responses to each location in the inventory of munitions response sites known or suspected of containing unexploded ordnance, discarded military munitions, or munitions constituents.

DATES: Written comments on this proposed rule will be accepted until November 20, 2003.

ADDRESSES: Written comments should be mailed to: Munitions Response Site Prioritization Protocol, P.O. Box 4231, McLean, Virginia 22103–4231. Comments will also be accepted via electronic mail ("e-mail") at *mmrp@www.denix.osd.mil* or via the World Wide Web at *http://www.denix.osd/mil/MMRP*. For comments submitted via electronic mail, please include in the subject line the statement "Comments on Proposed Protocol."

FOR FURTHER INFORMATION CONTACT: If there are specific questions, please contact Ms. Patricia Ferrebee, Office of the Deputy Under Secretary of Defense (Installations & Environment) (ODUSD(I&E)), 703–695–6107. This proposed rule along with relevant background information is available on the World Wide Web at the Defense Environmental Network & Information eXchange Web site, *http://www.denix.osd.mil/MMRP*.

SUPPLEMENTARY INFORMATION:

I. Protocol

The Protocol reflects the statement in 10 U.S.C. 2710(b)(2) that the priority assigned should be based on the overall conditions at each location, taking into consideration various factors relating to safety and environmental hazard potential. As required under 10 U.S.C. 2710(b)(1), the priority assigned to each munitions response site will be included with the inventory information made publicly available. The requirement for an inventory of munitions response sites known or suspected of containing unexploded ordnance, DMM, or MCs is found at 10 U.S.C. 2710(a). The assigned priority will be updated annually to reflect new information that becomes available.

The Protocol evaluates the following potential explosive safety and environmental hazards:

- Explosive hazards posed by unexploded ordnance (UXO) and discarded military munitions (DMM)
- Hazards associated with the effects of chemical warfare materiel (CWM)
- The chronic health and environmental hazards posed by munitions constituents (MC) or other chemical constituents.

DoD recognizes the different hazards inherent to each class of materials. To address these differences, the Protocol has three hazard evaluation modules, each of which is specific to one type of hazard, specifically:

- Explosive hazards are evaluated using the Explosives Hazard Evaluation (EHE) module.
- CWM-related hazards are evaluated using the Chemical Warfare Materiel Hazard Evaluation (CHE) module.
- Health and environmental hazards posed by MC are evaluated using the Relative Risk Site Evaluation (RRSE) module.

DoD recognizes that sufficient data to apply all three of the hazard evaluation modules may not be immediately available for some munitions response sites. In such cases where data are available for only one or two of the modules, the priority will be assigned based on the modules for which sufficient data are available. This initial priority may change when additional data are collected and all three modules are evaluated. Modules for which there are insufficient data will be assigned a status of "evaluation pending."

Upon completion of all necessary munitions responses at a munitions response site, the status "prioritization no longer required" will be assigned. The sequencing of munitions response sites for environmental restoration activities will be based primarily on the priority assigned using this Protocol, but may also reflect other relevant information, such as stakeholder concerns, economic issues, and program management considerations.

DoD is proposing to promulgate this Protocol as a Federal regulation. When promulgated as a Federal regulation, per 10 U.S.C. 2710(b)(3), the priority assigned to each munitions response site "* * * shall not impair, alter, or diminish any applicable Federal or State authority to establish requirements for the investigation of, and response to, environmental problems" at the munitions response site. It is also important to note that the priority assigned does not impact the actions taken during a munitions response. All munitions response sites known or suspected to contain UXO, DMM, or MC will be investigated and, as required by site-specific conditions, the UXO, DMM, or MC present will be addressed through removal actions, remedial actions, or a combination of removal and remedial actions.

II. Legal Authority

This part is proposed under the authority of 10 U.S.C. 2710(b).

III. Background

Through the Defense Environmental Restoration Program (DERP), the Department of Defense (DoD) is protecting human health and the environment at its active and closing installations, as well as at Formerly Used Defense Sites. In all 50 States, the District of Columbia, and U.S. territories, DoD is making measurable progress in cleaning up chemical contamination from past defense activities to protect its forces, their families, and civilian neighbors from environmental health and safety hazards. DoD is now beginning to undertake similar efforts under the DERP to address potential health and safety hazards associated with its past use of military munitions.

A. Scope of the Defense Environmental Restoration Program

Section 211 of the Superfund Amendments and Reauthorization Act (SARA) of 1986 [1] (codified at 10 U.S.C. 2701) established the DERP. Per the provisions in 10 U.S.C. 2701(a), the "Secretary of Defense shall carry out a program of environmental restoration at facilities under the jurisdiction of the Secretary." The phrase "under the jurisdiction of the Secretary" is further described by 10 U.S.C. 2701(c), which states: "The Secretary shall carry out (in accordance with the provisions of this chapter and CERCLA) all response actions with respect to releases of hazardous substances from each of the following: (A) Each facility or site owned by, leased to, or otherwise possessed by the United States and under the jurisdiction of the Secretary. (B) Each facility or site which was under the jurisdiction of the Secretary and owned by, leased to, or otherwise

[1] SARA was signed into law on October 17, 1986, amending the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 U.S.C. 9601 *et seq.* Related sections in Title 10 of the United States Code, 10 U.S.C. 2702–2710 and 2810–2811, further define the DERP.

possessed by the United States at the time of actions leading to contamination by hazardous substances. (C) Each vessel owned or operated by the Department of Defense."

The scope of the DERP is defined at 10 U.S.C. 2701(b), which states: "Goals of the program shall include the following: (1) The identification, investigation, research and development, and cleanup of contamination from hazardous substances, and pollutants and contaminants. (2) Correction of other environmental damage (such as detection and disposal of unexploded ordnance) which creates an imminent and substantial endangerment to the public health or welfare or to the environment.* * *"

B. Military Munitions Use

Military munitions are used in training for combat, in munitions testing, and in weapons research, development, testing, and evaluation. When a military munition is used, but remains unexploded either by malfunction, design, or any other cause, it is called unexploded ordnance (UXO) and may pose an explosive hazard. Other military munitions may have been disposed of or abandoned, becoming what is known as a discarded military munitions (DMM). DMM are sometimes disposed of or abandoned through an attempt at treatment by burning or open detonation; other times DMM are directly disposed of or abandoned. When UXO or DMM are present at a location where DoD no longer intends to use military munitions, there are potential hazards. DoD established the Military Munitions Response program (MMRP) as part of the DERP specifically to address potential explosive and environmental hazards associated with UXO, DMM, and the chemical constituents of these munitions (*i.e.*, munitions constituents). The purpose of this Protocol is to assign a relative priority to locations where a munitions response is needed to mitigate these potential hazards.

C. Implementing Guidance for the DERP

DoD's primary implementing guidance for the DERP is the Management Guidance for the Defense Environmental Restoration Program (September 28, 2001), hereinafter referred to as the Management Guidance. The Management Guidance is issued by the Deputy Under Secretary of Defense (Installations & Environment) (DUSD (I&E)) and is available on the World Wide Web at *http://www.dtic.mil/envirodod/Policies/PDDERP.html*. The Management Guidance defines the basic program structure for DoD's environmental restoration activities and includes specific provisions addressing munitions responses. These provisions include:

- Establishing the Military Munitions Response program category within the DERP to implement and track munitions responses
- Defining munitions responses as actions, including investigation, removal actions, and remedial actions, to address the explosives safety, human health, or environmental risks presented by UXO, DMM, or MC
- Directing the DoD Components to identify and establish an inventory of certain locations where a munitions response may be required
- Requiring DoD Components to evaluate the hazards posed where the presence of UXO, DMM, or MC are known or suspected to be present, and to conduct an appropriate munitions response
- Requiring the DoD Components to conduct munitions responses in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. 9601 *et seq.*), Executive Order (E.O.) 12580, Superfund Implementation (January 23, 1986) and E.O. 13016 Superfund Amendments (August 28, 1996), and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) (40 CFR part 300).

D. The National Defense Authorization Act for Fiscal Year 2002

As DoD began to implement these requirements, Congress passed and the President signed into law several new requirements related to UXO, DMM, and MC. These provisions, found in the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107), Sections 311–313, were codified 10 U.S.C. 2703 and 2710.

One of these requirements, specifically 10 U.S.C. 2710(a), directed the Secretary of Defense to develop an inventory of munitions response sites that are known or suspected to contain UXO, DMM, or MC. Per 10 U.S.C. 2710(b), DoD is also required to develop, in consultation with representatives of the States and Indian Tribes, a proposed protocol for assigning to each munitions response site in this inventory a relative priority for response activities related to UXO, DMM, and MC based on the overall conditions at the munitions response site. Further, after public notice and comment on the proposed protocol, DoD is to issue a final protocol and apply the final protocol to all munitions response sites listed on the inventory.

The statute specifically excludes from the inventory required under 10 U.S.C. 2710(a) and, therefore, from application of this Protocol all locations that are:

- Not currently or were not previously owned by, leased to, or otherwise possessed or used by DoD (excluded because these locations do not meet the definition of a defense site)
- Not known or suspected of containing UXO, DMM, or MC (excluded because these locations are not included in the inventory)
- Outside the United States (excluded per 10 U.S.C. 2710(d)(1))
- Locations where the presence of military munitions is a result of combat operations (excluded per 10 U.S.C. 2710(d)(2))
- An operating storage or manufacturing facility (excluded per 10 U.S.C. 2710(d)(3))
- Used for, or were permitted for, the treatment or disposal of military munitions (excluded per 10 U.S.C. 2710(e)(1))
- An operational range (excluded per 10 U.S.C. 2710(d)(4) and 10 U.S.C. 2710(e)(1)).

As of the end of FY02, DoD has identified 2,307 munitions response sites in the inventory, an increase of 553 from the number DoD initially reported at the end of FY01. The FY02 inventory is comprised of 1,691 munitions response sites at FUDS, 542 at active installations, and 74 at installations subject to closure as part of the Base Realignment and Closure program. The current estimate of the costs of munitions responses for munitions response sites in the inventory exceeds $11.5 billion. More detailed information on the inventory can be found in the Fiscal Year 2002 Defense Environmental Restoration Program Annual Report to Congress. This report can be accessed via the World Wide Web at *http://www.dtic.mil/envirodod/DERP/DERP.htm*.

IV. Development of the Protocol

Soon after enactment of 10 U.S.C. 2710, the Office of the Deputy Under Secretary of Defense (Installations & Environment) convened a working group with representatives from the DoD Components knowledgeable in explosive safety or environmental restoration. This DoD work group led the effort to develop the Protocol for prioritizing munitions response sites, including conducting preliminary discussions and interviews, constructing and testing the Protocol, and consulting with stakeholders

throughout the process to gain their input and address their concerns.

A. Preliminary Interviews

As part of the initial effort in the development of the Protocol, the DoD work group conducted a small number of preliminary interviews of people within and outside DoD, including representatives of the DoD Components, other Federal and State agencies, American Indian and Alaska Native Tribes, and the public. The intent of these preliminary interviews was to query a small number of people familiar with or interested in the prioritization of DoD's munitions response sites to establish a baseline for the development effort. Approximately 100 people were interviewed.

The interviews involved a standard questionnaire requiring a combination of structured (*e.g.*, multiple choice) and narrative answers related to four areas the work group thought important to developing the Protocol:

- General characteristics for the Protocol
- The respondents' knowledge of the requirements for developing the Protocol, as those requirements were detailed in 10 U.S.C. 2701(b)
- The respondents' views on the importance of various data elements found in similar priority setting models, and
- Whether or not the respondent had any additional comments not covered in the structured questions

In general, the responses indicated that the Protocol should:

- Be simple in approach and operation
- Be easy to understand
- Have standardization of application
- Provide consistent and repeatable results
- Prioritize all munitions response sites into between 3 and 6 categories, and
- Keep the evaluation of the explosive hazards and the environmental hazards separate

The information gathered during these interviews provided the DoD work group with ideas for the initial characteristics that the Protocol should and should not contain. The work group considered these characteristics throughout the process of constructing the Protocol, including during the review of selected priority setting models.

B. Review of Selected Priority-Setting Models

Reflecting on the preferred characteristics identified during the preliminary interviews, DoD reviewed six existing tools used to prioritize sites for environmental restoration activities and analyzed the characteristics of each. Among the characteristics reviewed, the DoD work group sought to understand the means each tool used to balance differing concerns so that no one type of information dominated the model. One characteristic that became readily apparent was the number of major factors considered. Adopting the term "axis" to describe each major factor in the construct of the models reviewed, the work group sought to determine the number of axes the Protocol should have as the number of axes determines or limits the weight that can be applied to any one type of information. To achieve sufficient differentiation among sites, it is important that no one axis dominate the method.

Risk Assessmeht Code (RAC). Since 1990, the U.S. Army Corps of Engineers (USACE) has applied the RAC at both Formerly Used Defense Sites (FUDS) and Base Realignment and Closure installations as a tool for prioritizing ordnance and explosives response actions. In the Management Guidance, DoD adopted the RAC as an interim tool for prioritizing munitions response sites. The RAC is a two-axis model that assumes risk is a function of (1) exposure and (2) the hazard posed by the munitions present. The RAC assigns sites to one of five classes from high risk (RAC Score 1) to negligible risk (RAC score 5). It is a simple model that can be applied with limited information.

Range Rule Risk Methodology (R3M). The R3M was developed during DoD's effort to promulgate the DoD Range Rule. The Qualitative Risk Evaluation (QRE) is the first of three evaluations under the R3M. It is a three-axis, qualitative system designed as a screening tool for determining which sites required additional risk evaluation for explosive hazards. Its three factors (*i.e.*, axes) are UXO density, frequency of entry to the site, and UXO type. The Detailed and Streamlined Risk Evaluation (DRE and SRE) are the other two elements of the R3M and are applied to sites that were not screened out by the QRE. The SRE estimates the maximum quantitative degree of UXO risk to which receptors may be exposed. The DRE is a comprehensive assessment that uses site characterization data. The SRE and the DRE essentially are one-axis, quantitative models that focus on the probability of exposure.

Former Lowry Bombing and Gunnery Range Prioritization Tool. USACE and stakeholders developed this site-specific model to prioritize sites that encompass a very large FUDS. It is a one-axis system with multiple data elements. It requires extensive information and input from internal and external stakeholders.

Interim Range Rule Risk Methodology (IR3M) Baseline Explosives Hazard Evaluation. The IR3M baseline explosives risk evaluation tool was derived from the R3M and focused on the comparative evaluation of response alternatives against the baseline (*i.e.*, the amount of potential risk prior to response). It is a three-axis system, which assigns sites to one of five classes. The three axes are accessibility, overall hazard, and exposure. Modeling has suggested that application of the IR3M to sites results in reasonable distribution among the five classes.

Native American Lands Environmental Mitigation Program (NALEMP) Model. DoD developed this model to assist in prioritizing actions to be conducted under the NALEMP. It is a three-axis, quantitative system, specifically designed to consider risk and non-risk-based factors, such as life ways, programmatic, government-to-government, and economic considerations that are unique to Indian lands. The NALEMP model uses RRSE and RAC for the risk evaluation components. It also takes into consideration a range of potential impacts affecting traditional and customary uses of land and cultural and ecological resources vital to American Indian and Alaska Native life ways.

Hazard Ranking System (HRS). The U.S. Environmental Protection Agency developed this system to score sites for inclusion on the National Priorities List. It is a quantitative system that assigns a numerical score to each site based on the contaminant hazards in the groundwater, surface water, soil, and air. The HRS requires extensive data to operate and does not address explosive hazards.

While the USACE has used RAC for 13 years as a means of assigning a relative priority to FUDS, the DoD work group determined that neither RAC nor any of the other models reviewed provided the characteristics necessary to meet all the requirements in 10 U.S.C. 2710(b). The analysis of each model's strengths and weaknesses provided DoD with critical information regarding the characteristics the Protocol should possess. Based on information from this review and the preliminary interviews, the DoD work group began constructing a new model (*i.e.*, the Protocol) to more effectively evaluate the explosive safety and environmental hazards posed by UXO, DMM, and MC at munitions response sites.

C. Consultation With States, Tribes, and Others

As DoD worked to develop this Protocol, it engaged in extensive consultation with States, Tribes, and other Federal agencies. DoD also provided opportunity for interested members of the public to provide input during the development. DoD's efforts to engage stakeholders in the development process are summarized in a subsequent section. Although DoD notified all American Indian and Alaska Native Tribes of the Protocol development effort, DoD's consultation concentrated on those Tribes with interest in lands that are known or suspected of containing UXO, DMM, or MC.

V. Scope and Applicability

A. Terms Pertinent to the Protocol

In developing the Protocol, DoD realized the need for a term to describe the universe of locations subject to inclusion in the inventory and prioritization using the Protocol. DoD is creating the term "munitions response site" for this purpose. Although 10 U.S.C. 2710 had introduced the term "defense site," this term is not considered appropriate for the purposes of prioritization as not all locations that meet the definition of defense sites are known or suspected to contain UXO, DMM, or MC. By definition, the term "defense site" refers to all locations that are or were owned, leased, or otherwise used by DoD (and contains several exclusions related to the types of activities occurring at the location). For a specific location to be included in the inventory (*i.e.*, a munitions response site), it must be (1) a location that is, or was, owned by, leased to, or otherwise possessed or used by DoD (*i.e.*, a defense site), and (2) known or suspected to contain UXO, DMM, or MC.

DoD formally established its Military Munitions Response program, a subset of the DERP, in September 2001. DoD is working to build the MMRP into a robust program to address the safety and environmental hazards associated with UXO, DMM, and MC. With the exception of FUDS properties, which have been further characterized, DoD is just beginning to identify the locations where it knows of or suspects the presence of UXO, DMM, and MC remaining from its past use of military munitions. In many cases, the identified locations are large geographic areas, sometimes encompassing an entire former range. Former ranges, often comprising hundreds of thousands of acres, supported various activities on different parts of the range. These locations meet the criteria for inclusion in the inventory, as they are (1) defense sites, and (2) known or suspected to contain UXO, DMM, or MC. DoD proposes to use the term "munitions response area (MRA)" for these large locations. MRA is defined as ". . . any area on a defense site that is known or suspected to contain UXO, DMM, or MC. Examples are former ranges or munitions burial areas. A munitions response area is comprised of one or more munitions response sites."

Because an MRA may be large and complex, DoD will work to characterize each MRA and subdivide it into discrete locations so that munitions responses specific to local conditions can be conducted. Subdivision of an MRA is not required, but permitted as needed for purposes of implementing a munitions response. A munitions response site (MRS) is defined as ". . . a discrete location within an MRA that is known to require a munitions response." Because every MRA is associated with at least one MRS and the MRS is defined by the need for a munitions response, consistent with the statutory requirement to assign a priority for response activities, the Protocol will be applied to MRS.

DoD will track the acreage of the MRA as well as each MRS to ensure that all acreage is accounted for regardless of whether or not an MRA is subdivided into more than one MRS. The total acreage of all MRS associated with the MRA must equal the total acreage of the MRA. Information about the size of each MRA and each MRS will be included with the other information in the inventory disclosed in response to the requirements of 10 U.S.C. 2710(a)(2).

B. Definitions

This proposed rule includes definitions for terms that describe the scope and applicability of the Protocol as well as terms that are integral to the hazard evaluation modules that comprise the Protocol. These definitions, unless codified elsewhere in the U.S. Code or Code of Federal Regulations (CFR) apply only to this part. Many of the terms relevant to this part are already defined in 10 U.S.C. 2710(e) and the CFR. Where this is the case, the existing statutory and regulatory definitions will be adopted for use in this part and are repeated here strictly for ease of reference.

American Indian and Alaska Native Tribes are any Federally recognized American Indian and Alaska Native tribal entity as defined by the most current Department of Interior/Bureau of Indian Affairs list of tribal entities published in the **Federal Register** pursuant to section 104 of the Federally Recognized Tribe Act.

Barrier means a natural obstacle or obstacles (*e.g.*, difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (*e.g.*, fencing), or a combination of natural and man-made obstacles.

Chemical agent identification sets (CAIS) are military training aids containing small quantities of various chemical warfare agents and other chemicals.

Chemical warfare agents (CWA) are the V- and G-series nerve agents, H-series (*i.e.*, "mustard" agents) and L-series (*i.e.*, lewisite) blister agents, and certain industrial chemicals used by the military as weapons, including hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG)). CWA do not include riot control agents (*e.g.*, w-chloroacetophenone (CN) and o-chlorobenzylidenemalononitrile (CS) tear gas), chemical herbicides, smoke or incendiary compounds, and industrial chemicals that are not configured as a military munition.

Chemical Warfare Material (CWM) is a general term that includes four subcategories of specific materials:

- *CWM, explosively configured* are all munitions that contain a CWA fill and any explosive component. Examples include M55 rockets with CWA, the M23 VX mine, and the M360 105-millimeter GB artillery cartridge.
- *CWM, nonexplosively configured* are all munitions that contain a CWA fill but that do not include any explosive components. Examples include any chemical munition that does not contain an explosive component and VX or mustard agent spray canisters.
- *CWM, bulk container* are all non-munitions-configured containers of CWA (*e.g.*, a ton container).
- *Chemical agent identification sets (CAIS).* All forms of CAIS are scored the same except for CAIS K941, toxic gas set M–1; and K942, toxic gas set M–2/E11, which are scored higher due to the relatively large quantities of agent they contain.

In the Protocol, the general term "CWM" means all four subcategories. Where the name of one or more of the subcategories is used, the statement is specific to the subcategories specified.

Cultural resources means there are recognized cultural, traditional, spiritual, religious, or historical features or properties (*e.g.*, structures, artifacts, symbolism) on the munitions response site. For example, American Indians and Alaska Natives deem portions of or the entire munitions response site sacred.

Another example of cultural resources are areas that American Indians and Alaska Natives use for subsistence activities (*e.g.*, hunting, fishing). (**Note:** Specific requirements for determining if a particular feature is a cultural resource may be found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act.).

Defense site means locations that are or were owned by, leased to, or otherwise possessed or used by the Department of Defense. The term does not include any operational range, operating storage or manufacturing facility, or facility that is used for or was permitted for the treatment or disposal of military munitions. (10 U.S.C. 2710(e)(1)).

Department of Defense (DoD) Components means the Office of the Secretary of Defense, the Military Departments, the Defense Agencies, the DoD Field Activities, and any other DoD organizational entity or instrumentality established to perform a government function.

Discarded military munitions (DMM) means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of, consistent with applicable environmental laws and regulations. (10 U.S.C. 2710(e)(2)).

Ecological resources means: (1) A threatened or endangered species (designated under the Endangered Species Act (ESA)) is present on the munitions response site; or (2) the munitions response site is designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the munitions response site.

Former (as in "former range") means the munitions response site is a location that was: (1) Closed by a formal decision made by the DoD Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.

Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

In the subsurface means the munition or CWM is: (1) Entirely beneath the ground surface, or (2) fully submerged in a water body.

Military munitions means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard. The term includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, except that the term does include non nuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) have been completed. (10 U.S.C. 2710(e)(3) and 40 CFR 260.10)

Military range means designated land and water areas set aside, managed, and used to research, develop, test, and evaluate military munitions, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas. (40 CFR 266.201).

Munitions constituents (MC) means any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and non-explosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions. (10 U.S.C. 2710(e)(4))

Munitions response means response actions, including investigation, removal actions, and remedial actions, to address the explosives safety, human health, or environmental risks presented by UXO, DMM, or MC.

Munitions response area (MRA) means any area on a defense site that is known or suspected to contain UXO, DMM, or MC. Examples include former ranges or munitions burial areas. An MRA is comprised of one or more munitions response sites.

Munitions response site (MRS) means a discrete location within an MRA that is known to require a munitions response.

On the surface means the munition or CWM is: (1) Entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (*e.g.*, as a result of tidal activity).

Operational range means a military range that is used for range activities, or a military range that is not currently being used but that is still considered by the Secretary to be a range area, is under the jurisdiction, custody, or control of the Department of Defense, and has not been put to a new use that is incompatible with range activities. (10 U.S.C. 2710(e)(5)).

Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

Practice munitions means munitions that contain an inert filler (*e.g.*, wax, sand, concrete), a spotting charge (*i.e.*, a pyrotechnic charge), and a fuze. For a munition to be classified as a "practice munition," the fuze cannot be considered "sensitive."

Range activities means research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and the training of military personnel in the use and handling of military munitions, other ordnance, and weapons systems.

Small arms ammunition means ammunition that is .50 caliber or smaller and shotgun shells.

Unexploded ordnance (UXO) means military munitions that: (1) Have been primed, fuzed, armed, or otherwise prepared for action; (2) have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and (3) remain unexploded either by malfunction, design, or any other cause. (10 U.S.C. 2710(e)(9) and 40 CFR 266.201).

United States means, in a geographic sense, the States, territories, and possessions and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States. (10 U.S.C. 2710(e)(10).

I. Application of the Munitions Response Site Prioritization Protocol

A. General Requirements

There are a number of activities that the DoD Components must undertake as part of the application of the Protocol. Among other requirements, the DoD Components will:

(1) Ensure the total acreage of each MRA is evaluated and apply the Protocol to all MRS under their administrative control.

(2) Involve the local community in the munitions response process as early as possible and seek continued involvement of the local community throughout the process.

(3) Use a team approach, where each team includes members with the expertise needed to apply the Protocol at a specific MRS. Each team should be comprised of DoD Component representatives from required functional areas (*e.g.*, explosives or chemical safety, environmental) and EPA, State regulators, and other Federal land managers, where appropriate. The DoD Component is also expected to seek involvement from American Indian or Alaskan Native Tribes when any portion of the MRS affects tribal lands, the affected local restoration advisory board (RAB) or technical review committee (TRC), and local stakeholders in the application of the Protocol. DoD is committed to working with Tribes on a government-to-government basis in recognition of their sovereignty and in a continuing effort to implement the 1998 DoD American Indian and Alaska Native Policy. To ensure American Indian and Alaskan Native Tribes, EPA, other Federal agency, State regulatory agencies, and local government officials are aware of the opportunity to participate in the application of the Protocol, the DoD Component organization responsible for implementing a munitions response at the MRS will send a certified letter to the heads of these organizations (or their designated point-of-contact), as appropriate, seeking their involvement. A copy of these letters will be placed in the Administrative Record and Information Repository for the MRS.

(4) Develop and maintain records on the application of this Protocol for each MRS. At a minimum, the records will contain references to all information and documents used for the evaluation (*e.g.*, data from preliminary assessments, worksheets). These records will be included in the Administrative Record and the Information Repository for the MRS.

(5) Document in a Management Action Plan (MAP) or its equivalent all aspects of the munitions responses required at all MRS for which that MAP is applicable. DoD guidance requires that MAPs are developed and maintained at an installation (or FUDS property) level. For the FUDS program, a State-wide MAP may also be developed.

(6) Establish a quality assurance panel to review all MRS prioritization decisions. To ensure objectivity, this panel will not include any person that was directly involved with the application of the Protocol to a specific MRS. If the panel concludes that a different priority should be assigned to a given MRS, the DoD Component will report the rationale for this change to ODUSD(I&E) with their inventory data. The DoD Component will also provide this rationale to the appropriate regulators and stakeholders for review and comment before finalizing the change.

(7) Update the priority as necessary to reflect new information that has become available.

(8) Following the panel review, report the priority for each MRS and the ratings for each hazard evaluation module to ODUSD (I&E) (or successor organizations) for inclusion in the inventory of MRS that is made publicly available.

A. Application of the Protocol

Components will apply the Protocol at an MRS when there are sufficient data to populate all the data elements in at least one of the three hazard evaluation modules (*i.e.*, the Explosive Hazard Evaluation, the CWM Hazard Evaluation, and Relative Risk Site Evaluation modules) that comprise the Protocol. It is expected that this will occur after the CERCLA preliminary assessment phase is completed but before the CERCLA site inspection phase is completed.

Any hazard evaluation module for which there is insufficient information to complete the evaluation will be assigned the "evaluation pending" rating for that module, and the MRS's relative priority will be assigned based on the ratings of the hazard evaluation modules for which sufficient data are available to complete the hazard evaluation. The Protocol will be reapplied as soon as the data to run the hazard evaluation modules assigned "evaluation pending" ratings becomes available.

The Protocol will be reapplied at a MRS under the following circumstances:

(1) Upon completion of a response action that could change the site conditions evaluated by the hazard evaluation modules at the MRS.

(2) To update or validate a previously rated hazard evaluation module when new information is available.

(3) To update or validate an MRS priority that was previously assigned based on evaluation of only one or two of the three hazard evaluation modules.

(4) Upon further delineation and characterization of an MRA into MRS.

(5) To categorize MRS previously classified as "evaluation pending."

When a munitions response is fully completed and no additional munition response is required, as agreed to by appropriate Federal and State regulatory agencies, the MRS will be assigned the rating "no longer required."

It is important to note that the Protocol is a prioritization tool only and does not impact the actions taken at an MRS. The responsible DoD Component will thoroughly investigate all MRS known or suspected to contain UXO, DMM, or MC and, as required by site-specific conditions, address any UXO, DMM, or MC through removal actions, remedial actions, or a combination or removal and remedial actions.

VII. The Hazard Evaluation Modules

The three modules that evaluate the potential hazards present at an MRS are the central feature of the Protocol. Using a hazard evaluation module developed specifically to address the unique characteristics of each type of hazard, DoD will evaluate each MRS in three distinct areas:

- Explosive hazards posed by UXO and DMM through the Explosives Hazard Evaluation (EHE) module,
- Chemical hazards associated with the physiological effects of CWM through the Chemical Warfare Materiel Hazard Evaluation (CHE) module, and
- Health and environmental hazards posed by MC using the Relative Risk Site Evaluation (RRSE) module.

Each hazard evaluation module is constructed using three categories, or factors, of information. As discussed earlier in the Preamble, this is a three-axis construct as three primary factors of information are used to derive the results of each hazard evaluation module. This characteristic is important as it limits the influence of any one factor on the outcome. Although the specifics of the three factors vary for each of the three hazard evaluation modules, each module is comprised of standard factors for source of hazard, pathways for exposure, and receptors. Further, each factor is comprised of multiple data elements that are intended to capture site-specific information. While developing the data elements, the

DoD work group worked to ensure that each data element within the three modules was:

- Essential for characterization of site conditions;
- Easily collected during the early phases of the CERCLA process; and
- Sufficiently defined to ensure consistent, repeatable, and supportable results for prioritizing an MRS.

The structure, application, and output of each of these modules are discussed in detail in the following parts of this section. Figure 1 is an illustration of the structure of the Protocol.

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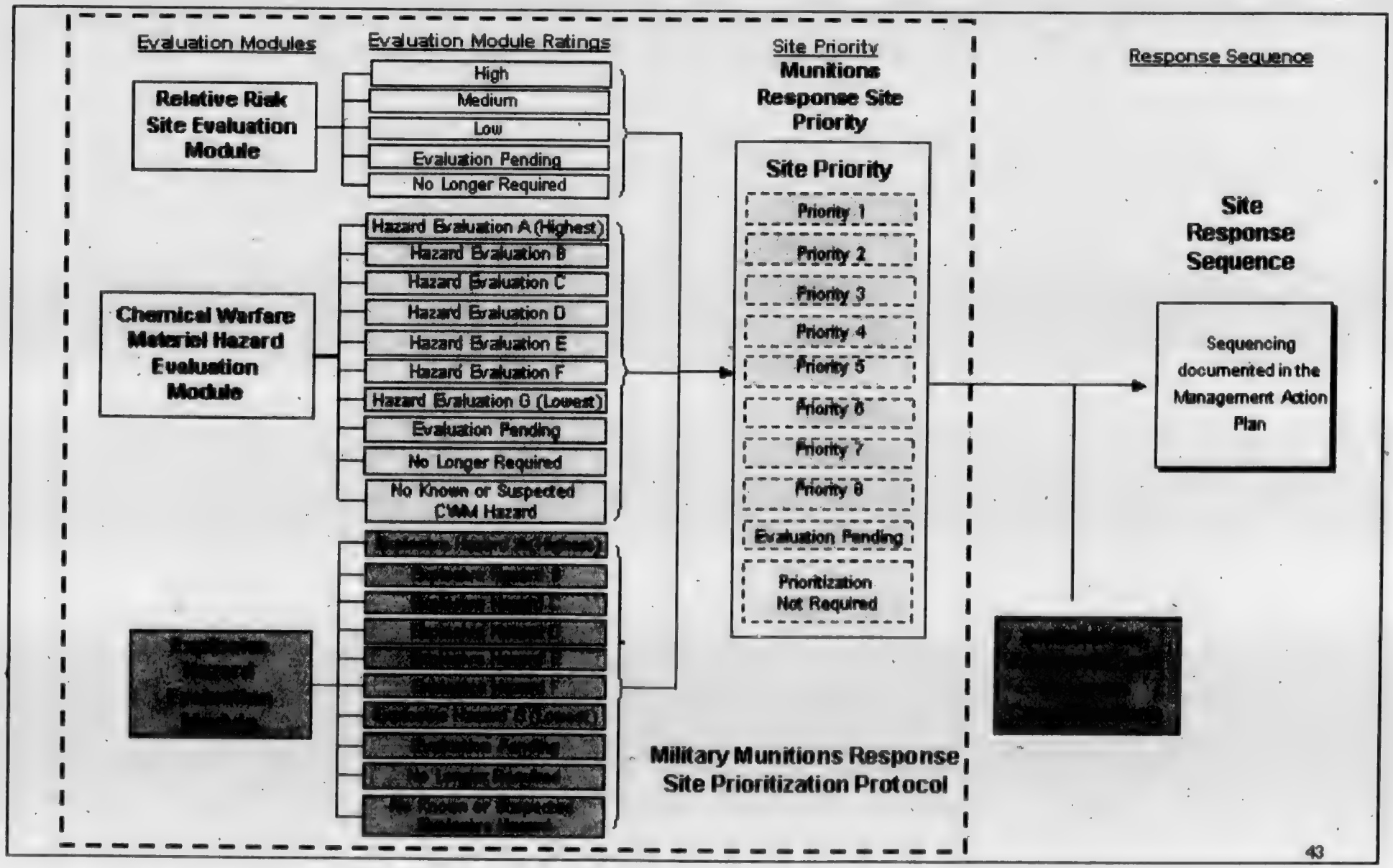

Figure 1: Overall Protocol Structure

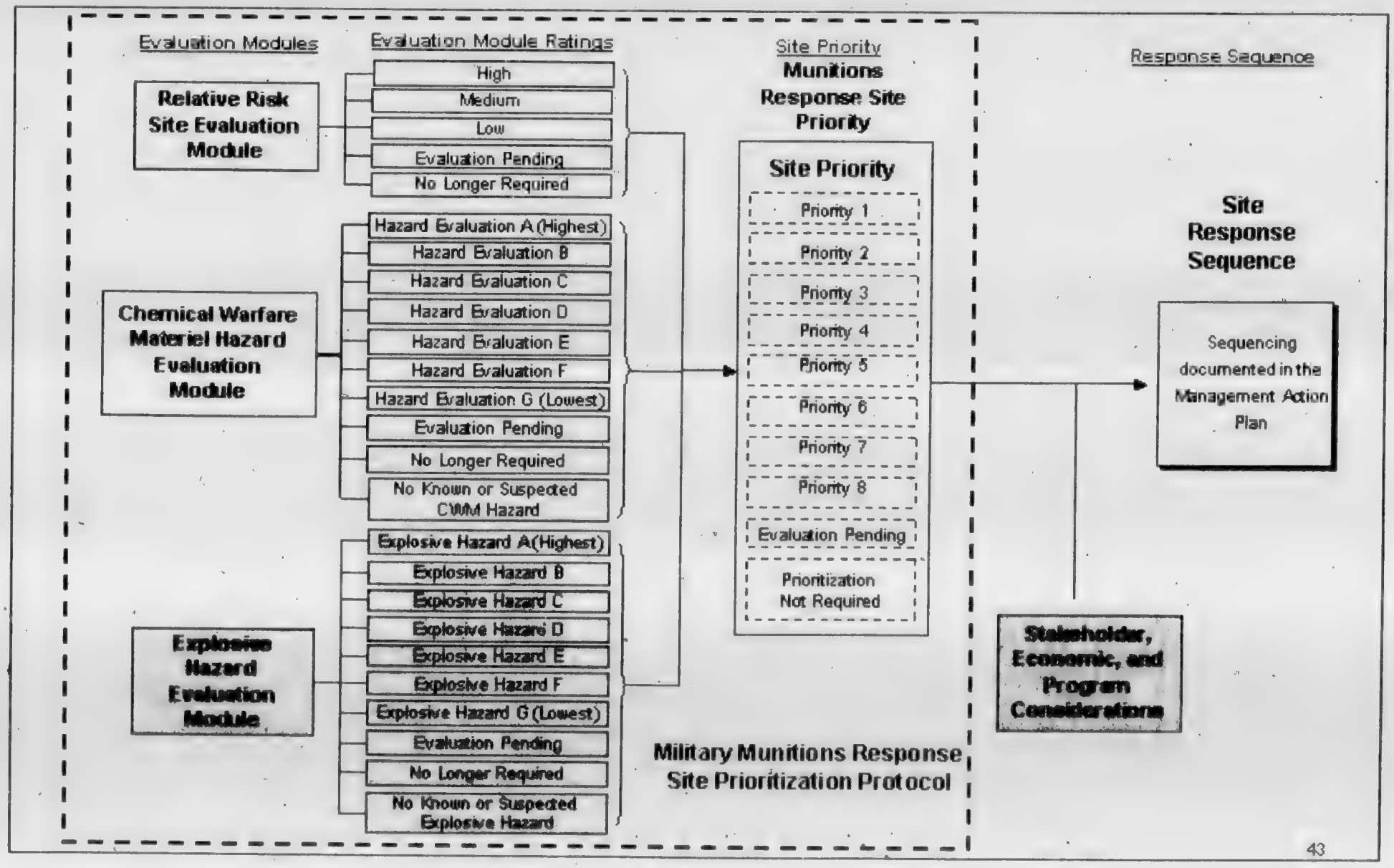

Figure 1: Overall Protocol Structure

A. The Explosive Hazard Evaluation (EHE) Module

The EHE module is used to conduct a relative comparison of the potential explosive hazards posed by UXO or DMM at an MRS. The EHE module determines the explosive hazard through evaluation of three general factors (*i.e.*, categories of information), each of which is comprised of two to four specific data elements. The factors comprising the EHE module are:

- Explosive hazard, which has the elements Munitions Type and Source of Hazard and characterizes the cause of the hazard;
- Accessibility, which has the elements Information on the Location of Munitions, Ease of Access, and Status of Property and characterizes the pathway or means by which a receptor can encounter the hazard; and
- Receptors, which has the elements Population Density, Population Near Hazard, Types of Activities/Structures, and Ecological and/or Cultural Resources and accounts for any receptors likely to be impacted by exposure to the hazard.

Each data element is assigned a maximum numerical value and consists of several classifications (each of which is assigned a numeric value ranging up to the maximum value of the data element) that are intended to capture certain site-specific conditions. The DoD work group developed these values based on the knowledge of technical experts within DoD and comments received from stakeholders. The values were adjusted based on the results of extensive testing of the Protocol and stakeholders' comments. The total value assigned to each data element as well as the value of the specific classifications within each element are relative evaluations of each element's contribution to the overall explosive hazard. The sum of these values is the EHE module score for the MRS, which is used to derive the EHE module hazard evaluation rating. Additional information on each factor and data element is provided in the text.

(1) Explosive Hazard Factor

The Explosive Hazard factor of the EHE module is comprised of two data elements, Munitions Type and Source of Hazard, and constitutes 40 percent of the numerical score of the EHE module.

The Munitions Type data element classifies munitions according to their potential to detonate and their inherent explosive power. Portability, the ability for a munition to be readily transported, is indirectly accounted for in this element. The DoD work group initially considered including portability as a distinct data element under the Accessibility factor, but because UXO can be found in many different configurations (*e.g.*, intact warheads, fuzes or other components that have separated from the munitions) that would be considered portable, DoD found it too difficult to define the criteria necessary to address portability separately in the EHE module.

In developing the data elements within this factor, the DoD work group determined the need for separate classifications for many common munitions types but also recognized that there are exceptions to several categories. For example, although there is a separate classification for practice munitions, when the associated fuze is determined to be sensitive by a technically qualified individual, the munition will be classified as sensitive not as practice to more accurately reflect the greater explosive hazard presented by sensitive fuzes. Similarly, while the Protocol provides a separate classification for small arms ammunition to reflect the limited explosives hazard they posed because they lack an explosive charge. To select the small arms ammunition classification, there must be evidence that only small arms ammunition was used at the MRS. If there is evidence that munitions other than small arms ammunition were used or could be present on the MRS, the munition type with the highest numeric value (*i.e.*, the greatest potential hazard) is used for the evaluation. DoD has also included an "evidence of no munitions" classification, which can only be used if, after investigation, there is physical or historical evidence that indicates there are no munitions present. The definition for "evidence of no munitions" is important as it requires DoD to investigate all MRS for the presence of UXO or DMM. Further, DoD adopted the criteria for physical and historical evidence as an affirmation that the DoD Components will collect information upon which to base decisions. This approach to physical or historical evidence is intended to preclude decisions based on the logic that "* * * there is no physical/historical evidence of * * *," which could mean there is an absence of information on what physical or historical evidence is available.

The classifications, the definition for each classification, and associated numerical scores for the Munitions Type data element are presented in Table 1.

TABLE 1.—CLASSIFICATIONS WITHIN THE EHE MODULE TYPE DATA ELEMENT

Classification	Description	Score
Sensitive	• All UXO that are considered likely to function upon any interaction with exposed persons, including: submunitions, cluster munitions, 40mm high-explosive grenades, white phosphorus (WP) munitions (including practice munitions with sensitive fuzes, but excluding all other practice munitions), and high-explosive antitank (HEAT) munitions. • All hand grenades containing an explosive filler.	30
High explosive (used or damaged)	• All UXO containing a high-explosive filler (*e.g.*, RDX, Composition B) that are not considered "sensitive". • All DMM containing a high-explosive filler that have been damaged by burning or detonation. • All DMM containing a high-explosive filler that have deteriorated to the point of instability.	25
Pyrotechnic	• All UXO containing pyrotechnic fillers other than white phosphorous (*e.g.*, flares, signals, simulators, smoke grenades). • All DMM containing pyrotechnic fillers other than white phosphorous (*e.g.*, flares, signals, simulators, smoke grenades) that have been damaged by burning or detonation or that have deteriorated to the point of instability.	20

TABLE 1.—CLASSIFICATIONS WITHIN THE EHE MODULE TYPE DATA ELEMENT—Continued

Classification	Description	Score
High explosive (unused)	• All DMM containing a high-explosive filler that have not been damaged by burning or detonation..	15
	• All DMM containing a high explosive filler that are not deteriorated to the point of instability.	
Propellant	• All UXO containing only a single-, double-, or triple-based propellant, or composite propellants (*e.g.*, a rocket motor).	15
	• All DMM containing only a single-, double-, or triple-based propellant, or composite propellants (*e.g.*, a rocket motor).	
Bulk HE, pyrotechnics, or propellant	• Bulk high explosives, including: demolition charges (*e.g.*, C4 blocks), high explosives not contained in a munition, and concentrated mixtures of high explosives or other munitions constituents mixed with environmental media or debris in concentrations that result in the mixture being explosive (*e.g.*, "explosive soil").	10
	• All pyrotechnic material that is not contained in a munition (*i.e.*, "bulk pyrotechnics").	
	• All single-, double-, or triple-based propellant, or composite propellants that are not contained in a munition (*i.e.*, "bulk propellant").	
Practice	• All UXO that are a practice munition not associated with a sensitive fuze	5
	• All DMM that are a practice munition not associated with a sensitive fuze that have been damaged by burning or detonation.	
	• All DMM that are a practice munition not associated with a sensitive fuze that have deteriorated to the point of instability.	
Riot control	• All UXO or DMM containing only a riot control agent (*e.g.*, tear gas)	3
Small arms	• All UXO or DMM that are classified as small arms ammunition. Evidence that no other munitions type (*e.g.*, grenades, subcaliber training rockets, demolition charges) was used or is present on the MRS is required for selection of this category.	2
Evidence of no munitions	• Following investigation of the MRS, there is physical evidence there are no UXO or DMM present or there is historical evidence indicating that no UXO or DMM are present.	0

Notes:

• Former (as in "former range") means the MRS is a location that was: (1) Closed by a formal decision made by the DoD Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.

• Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

• Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

• Practice munitions means munitions that contain an inert filler (*e.g.*, wax, sand, concrete), a spotting charge (*i.e.*, a pyrotechnic charge), and a fuze.

• The term small arms ammunition means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

The Source of Hazard data element considers the previous uses of the MRS. It reflects the type of munitions that may be present and the manner and extent munitions were used or disposed of at the MRS. The classifications provided are the common locations where a munition can be found during its lifecycle.

The classification former range has the maximum value within the Source of Hazard data element. Former ranges will have supported live-fire training and testing and consist of locations, such as impact areas, that are expected to contain large concentrations of UXO and, therefore, pose the greatest potential explosive hazard. Although some areas on a former range are not expected to contain high concentrations of UXO (*e.g.*, the firing point), there is still a potential for UXO or DMM to be present. The DoD work group provided a distinct classification for firing points that are separated from other parts of a former range.

Other classifications within Source of Hazard include manufacturing, storage, and transfer facilities—reflecting the early parts of the munition lifecycle—and treatment units and burial pits, which represent the end of the lifecycle. As with the Munitions Type data element, DoD has provided an "evidence of no munitions" classification for the Source of Hazard data element. This classification can only be selected if an investigation finds there is physical or historical evidence indicating there is no UXO or DMM present. The definition for "evidence of no munitions" is important as it requires DoD to investigate all MRS for the presence of UXO or DMM. Further, DoD adopted the criteria for physical and historical evidence as an affirmation that the DoD Components will collect information upon which to base decisions. This approach to physical or historical evidence is intended to preclude decisions based on the logic that "* * * there is no physical/historical evidence of * * *" which could mean there is an absence of information on what physical or historical evidence is available.

The eleven classifications, the definition for each classification, and associated numerical scores for the Source of Hazard data element are presented in Table 2.

TABLE 2.—CLASSIFICATIONS WITHIN THE EHE MODULE SOURCE OF HAZARD DATA ELEMENT

Classification	Description	Score
Former range	• The MRS is a former military range where munitions (including practice munitions with sensitive fuzes) have been used. Such areas include: impact or target areas, associated buffer and safety zones, firing points, and live-fire maneuver areas.	10
Former munitions treatment (i.e., OB/OD) unit.	• The MRS is a location where UXO or DMM (*e.g.*, munitions, bulk explosives, bulk pyrotechnic, or bulk propellants) were burned or detonated for the purpose of treatment prior to disposal.	8
Former practice munitions range	• The MRS is a former range on which only practice munitions without sensitive fuzes were used.	6
Former maneuver area	• The MRS is a former maneuver area where no munitions other than flares, simulators, smokes, and blanks were used. There must be evidence that no other munitions were used at the location to place an MRS into this category.	5
Former burial pit or other disposal area	• The MRS is a location where DMM were buried or disposed of (*e.g.*, disposed of into a water body) without prior thermal treatment.	5
Former industrial operating facilities	• The MRS is a location that is a former munitions manufacturing or demilitarization facility.	4
Former firing points	• The MRS is a firing point, when the firing point is delineated as an MRS separate from the rest of a former range.	4
Former missile or air defense artillery emplacements.	• The MRS is a former missile defense or air defense artillery (ADA) emplacement not associated with a range.	2
Former storage or transfer points	• The MRS is a location where munitions were stored or handled for transfer between modes (*e.g.*, rail to truck, truck to weapon system).	2
Former small arms range	• The MRS is a former military range where only small arms were used. There must be evidence that no other type of munitions (*e.g.*, grenades) were used or are present at the location to place an MRS into this category.	1
Evidence of no munitions	• Following investigation of the MRS, there is physical evidence that no UXO or DMM are present, or there is historical evidence indicating that no UXO or DMM are present.	0

Notes:

• Former (as in "former range") means the MRS is a location that was: (1) closed by a formal decision made by the DoD Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.

• Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

• Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

• Practice munitions means munitions that contain an inert filler (*e.g.*, wax, sand, concrete), a spotting charge (*i.e.*, a pyrotechnic charge), and a fuze.

• The term small arms ammunition means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

(2) Accessibility Factor

The Accessibility factor of the EHE module focuses on the potential for receptors to encounter the UXO or DMM that may be present on a MRS. This factor consists of three data elements that constitute 40 percent of the numerical score of the EHE module.

The data element Information on the Location of Munitions is an evaluation of the following three conditions that were combined into one data element to best represent the potential for encountering munitions.

• The confirmed or suspected presence of munitions based on physical evidence (*e.g.*, presence or absence of munitions, fragments, firing records, anecdotal information)

• The likelihood for direct contact with the munition based on its proximity to the surface

• The potential for the munitions to be brought to the surface by dynamic site conditions (*e.g.*, erosion).

This data element differentiates among MRS where intact UXO or DMM are present, as opposed to the MRS where only munitions fragments are found. This data element also differentiates between "confirmed" versus "suspected" evidence. As with both data elements in the Explosive Hazard factor, this data element has an "evidence of no munitions" classification, which can only be used if, after investigation, there is physical or historical evidence that indicates there are no munitions present. The definition for "evidence of no munitions" is important as it requires DoD to investigate all MRS for the presence of UXO or DMM. Further, DoD adopted the criteria for physical and historical evidence as an affirmative that the DoD Components will collect information upon which to base decisions. This approach to physical or historical evidence is intended to preclude decisions based on the logic that "* * * there is no physical/historical evidence of * * *, which could mean there is an absence of information on what physical or historical evidence is available.

The classifications, the definition for each classification, and associated numerical scores for the Information on the Location of Munitions data element are presented in Table 3.

TABLE 3.—CLASSIFICATIONS WITHIN THE EHE INFORMATION ON THE LOCATION OF MUNITIONS DATA ELEMENT

Classification	Description	Score
Confirmed surface	• Physical evidence indicates there are UXO or DMM on the surface of the MRS ..... • Historical evidence (*e.g.*, a confirmed incident report or accident report) indicates there are UXO or DMM on the surface of the MRS.	25

TABLE 3.—CLASSIFICATIONS WITHIN THE EHE INFORMATION ON THE LOCATION OF MUNITIONS DATA ELEMENT—Continued

Classification	Description	Score
Confirmed, subsurface, active	• Physical evidence indicates the presence of UXO or DMM in the subsurface of the MRS and the geological conditions at the MRS are likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena (*e.g.*, drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (*e.g.*, plowing, construction, dredging) at the MRS that are likely to expose UXO or DMM. • Historical evidence indicates that UXO or DMM are located in the subsurface of the MRS and the geological conditions at the MRS are likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena (*e.g.*, drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (*e.g.*, plowing, construction, dredging) at the MRS that are likely to expose UXO or DMM.	20
Confirmed subsurface, stable	• Physical evidence indicates the presence of UXO or DMM in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause UXO or DMM to be exposed. • Historical evidence indicates that UXO or DMM are located in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause UXO or DMM to be exposed	15
Suspected (physical physical evidence)	• There is physical evidence other than the documented presence of UXO or DMM, indicating that UXO or DMM may be present at the MRS.	10
Suspected (historical evidence)	• There is historical evidence indicating that UXO or DMM may be present at the MRS.	5
Subsurface, physical constraint	• There is physical or historical evidence indicating the UXO or DMM may be present in the subsurface, but there is a physical constraint (*e.g.*, pavement, water depth over 120 feet) preventing direct access to the UXO or DMM.	2
Small arms (regardless of location)	• The presence of small arms ammunitions is confirmed or suspected, regardless of other factors such as geological stability. There must be evidence that no other types of munitions (*e.g.*, grenades) were used or are present at the MRS to include it in this category.	1
Evidence of no munitions	• Following investigation of the MRS, there is physical evidence there are no UXO or DMM present or there is historical evidence indicating that no UXO or DMM are present.	0

Notes:

• Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

• Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

• In the subsurface means the munition (*i.e.*, a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.

• On the surface means the munition (*i.e.*, a DMM or UXO) is: (1) entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (*e.g.*, as a result of tidal activity).

• The term small arms ammunition means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

The *Ease of Access* data element focuses on the means for a receptor to encounter a munition based on the extent of controls preventing access or entry to the MRS. Both natural obstacles (*e.g.*, dense vegetation, rugged terrain, water) and man-made controls (*e.g.*, fencing) are considered in this analysis. DoD initially deliberated over numerous data elements and associated definitions to best capture these conditions. DoD found the conditions within this data element difficult to capture, especially for large MRS that have not been fully characterized and have varying conditions across the MRS (*e.g.*, short grass and dense swamp).

The classifications, the definition for each classification, and associated numerical scores for the *Ease of Access* element are presented in Table 4.

TABLE 4.—CLASSIFICATIONS WITHIN THE EHE EASE OF ACCESS DATA ELEMENT

Classification	Description	Score
No barrier	• There is no barrier preventing access to all parts of the MRS (*i.e.*, all parts of the MRS are accessible).	10
Barrier to MRS access is incomplete	• There is a barrier preventing access to parts of the MRS but not the entire MRS	8
Barrier to MRS access is complete but not monitored.	• There is a barrier preventing access to all parts of the MRS, but there is no surveillance (*e.g.*, by a guard) to ensure that the barrier is effectively preventing access to all parts of the MRS.	5

TABLE 4.—CLASSIFICATIONS WITHIN THE EHE EASE OF ACCESS DATA ELEMENT—Continued

Classification	Description	Score
Barrier to MRS access is is complete and monitored.	• There is a barrier preventing access to all parts of the MRS, and there is active, continual surveillance (*e.g.*, by a guard, video monitoring) to ensure that the barrier is effectively preventing access to all parts of the MRS.	0

Notes: Barrier means a natural obstacle or obstacles (*e.g.*, difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (*e.g.*, fencing), or a combination of natural and man-made obstacles.

The last data element in the *Accessibility* factor is *Status of Property*. Its purpose is to differentiate between MRS that DoD controls and MRS that DoD does not control. Based on input received during the development of the Protocol, DoD revised the definition of Non-DoD control to specifically include all Indian lands (*i.e.*, trust lands, allotments, and Alaska Native Claims Settlement Act (ANCSA)-conveyed property). DoD also included property transferring from DoD control within 3 years in this data element to address those MRS that may be currently controlled by DoD but are planned for transfer to non-DoD entities in the near future. There are three property classifications, *DoD control, Scheduled for transfer from DoD control,* and *Non-DoD control.*

The classifications, the definition for each classification, and associated numerical values for the *Status of Property* data element are presented in Table 5.

TABLE 5.—CLASSIFICATIONS WITHIN THE EHE STATUS OF PROPERTY DATA ELEMENT

Classification	Description	Score
Non-DoD control	• The MRS is at a location that is no longer owned by, leased to, or otherwise possessed or used by the DoD. Examples are privately owned land or water bodies; land or water bodies owned or controlled by American Indian or Alaskan Native Tribes, or State or local governments; and lands or water bodies managed by other Federal agencies.	5
Scheduled for transfer from DoD control	• The MRS is on land or is a water body that is owned, leased, or otherwise possessed by DoD, and DoD plans to transfer that land or water body to the control of another entity (*e.g.*, a State, American Indian, Alaskan Native, or local government; a private party; or another Federal agency) within 3 years from the date the Protocol is applied.	3
DoD control	• The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the DoD. With respect to property that is leased or otherwise possessed, DoD must control access to the MRS 24-hours per day, every day of the calendar year.	0

(3) Receptor Factor

The *Receptor* factor focuses on the human and ecological populations that may be impacted by the presence of UXO or DMM. Its four data elements constitute 20 percent of the numerical score of the EHE module.

The *Population Density* data element is used to assess the number of persons that could potentially access the MRS and potentially be at risk from any known or suspected UXO or DMM present. Using U.S. Census Bureau statistics, *Population Density* is based on the number of people per square mile in the county in which the MRS is located. If the MRS is located in more than one county, DoD will use the largest population value among the counties. DoD selected county population density for this data element because city population information was not consistently available for all MRS, especially those in rural or remote locations. If the MRS is within or borders on city limits, the population density of the city should be used instead of the county population density. During consultation with States, Tribes, and other Federal agencies, some agencies expressed a desire to use alternate and other readily available data (*e.g.*, daily visitor counts to national recreational areas) in place of census data. DoD considered this approach but, for consistency in the Protocol's application, determined that such site-specific data would best be addressed through implementation guidance or possibly considered as "risk plus" or "other" factors when determining the sequencing for MRS. DoD also initially considered differentiating between on-site and off-site populations but found such an approach unworkable.

The classifications, the definition for each classification, and associated numerical scores for the *Population Density* data element are presented in Table 6.

TABLE 6.—CLASSIFICATIONS WITHIN THE EHE POPULATION DENSITY DATA ELEMENT

Classification	Description	Score
> 500 persons per square mile	• There are more than 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.	5
100–500 persons per square mile	• There are 100 to 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.	3
< 100 persons per square mile	• There are fewer than 100 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.	1

Notes: If an MRS is in more that one county, the DoD Component will use the largest population value among the counties. If the MRS is within or borders a city or town, the population density for the city or town instead of the county population density is used.

The *Population Near Hazard* data element is estimated based on the number of inhabited structures [2] on the MRS and within a 2-mile distance, extending out from the boundary of the MRS. Although this data element is defined based on the number of inhabited structures, DoD's focus is on the potential for people to be present in the structures, not on the structures themselves.

The classifications, the definition for each classification, and associated numerical scores for the *Population Near Hazard* data element are presented in Table 7.

TABLE 7.—CLASSIFICATIONS WITHIN THE EHE POPULATION NEAR HAZARD DATA ELEMENT

Classification	Description	Score
26 or more structures	• There are 26 or more inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	5
16 to 25	• There are 16–25 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	4
11 to 15	• There are 11–15 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	3
6 to 10	• There are 6–10 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	2
1 to 5	• There are 1–5 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	1
0	• There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	0

Notes: The term inhabited structures means permanent or temporary structures, other than DoD munitions-related structures, that are routinely occupied by one or more persons for any portion of a day.

The *Types of Activities/Structures* data element is used to assess the nature of the population near the hazard. Through this element, DoD strives to address multiple factors, including the amount, type, and intrusiveness of activities that may result in an encounter with UXO or DMM and the likelihood of people to congregate on-site and within a 2-mile radius of the MRS. Residential and recreational areas are weighted highest to reflect the greater number and types of activities and population that may be in their vicinity. In response to Tribal comments, DoD also included subsistence issues in the highest classification.

The classifications, the definition for each classification, and associated numerical scores for the Types of Activities/Structures data element are presented in Table 8.

TABLE 8.—CLASSIFICATIONS WITHIN THE EHE TYPES OF ACTIVITIES/STRUCTURES DATA ELEMENT

Classification	Description	Score
Residential, educational, commercial, or subsistence.	• Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or, within the MRS's boundary that are associated with any of the following purposes: residential, educational, child care, critical assets (*e.g.*, hospitals, fire and rescue, police stations, dams), hotels, commercial, shopping centers, play grounds, community gathering areas, religious sites, or sites used for subsistence hunting, fishing, and gathering.	5
Parks and recreational areas	• Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with parks, nature preserves or other recreational uses.	4
Agricultural, forestry	• Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with agriculture or forestry.	3
Industrial or warehousing	• Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with industrial activities or warehousing.	2
No known or recurring activities	• There are no known or recurring activities occurring up to 2 miles from the MRS's boundary or within the MRS's boundary.	1

Notes:
• The term *inhabited structures* means permanent or temporary structures, other than DoD munitions-related structures, are routinely occupied by one or more persons for any portion of a day.

Through the *Ecological and/or Cultural Resources* data element, DoD recognizes the importance of ecological and cultural resources present on an MRS. This data element considers threatened and endangered species, critical habitat, sensitive ecosystems, natural resources, historical sites, historic properties, cultural items, archaeological resources, and American Indian and Alaska Native sacred sites. Requirements for determining if a particular feature is a cultural resource are found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, Executive Order 13007, and the

[2] Under the DoD Explosives Safety Standards, inhabited structures are considered as structures, including schools, churches, residences, aircraft passenger terminals, stores, shops, factories, hospitals, and theaters, other than DoD munitions-related structures, routinely occupied for any portion of the day, both within and outside of DoD facilities. Occupied temporary structures are also included.

American Indian Religious Freedom Act. The greatest weight is awarded to MRS with both cultural and ecological resources.

The classifications, the definition for each classification, and associated numerical scores for the *Ecological and/or Cultural Resources* data element are presented in Table 9.

TABLE 9.—CLASSIFICATIONS WITHIN THE EHE ECOLOGICAL AND/OR CULTURAL RESOURCES DATA ELEMENT

Classification	Description	Score
Ecological and cultural resources present	• There are both ecological and cultural resources present on the MRS	5
Ecological resources present	• There are ecological resources present on the MRS	3
Cultural resources present	• There are cultural resources present on the MRS	3
No ecological or cultural resources present.	• There are no ecological resources or cultural resources present on the MRS	0

Notes:

• Ecological resources means that: (1) A threatened or endangered species (designated under the Endangered Species Act (ESA)) is present on the MRS; or (2) the MRS id designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the MRS.

• Cultural resources means there are recognized cultural, traditional, spiritual, religious, or historical features (*e.g.*, structures, artifacts, symbolism) on the MRS. For example, American Indians or Alaska Natives deem the MRS to be of religious significance or there are areas that are used by American Indians or Alaska Natives for subsistence activities (*e.g.*, hunting, fishing). Requirements for determining if a particular feature is a cultural resource are found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archaeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act.

(4) EHE Module Rating

As described earlier in discussion of the EHE module, each data element provides a numeric value that contributes to the EHE module score. The sum of the nine data elements is the EHE module score.

There are seven EHE module ratings derived from the EHE module scores, as illustrated in Table 10, plus three alternatives to account for the explosive hazard potential at an MRS.

TABLE 10.—DETERMINING THE EHE RATING FROM THE EHE MODULE SCORE

Overall EHE Module Score	EHE Rating
The MRS has an overall EHE module score from 92 to 100	EHE Rating A
The MRS has an overall EHE module score from 82 to 91	EHE Rating B
The MRS has an overall EHE module score from 71 to 81	EHE Rating C
The MRS has an overall EHE module score from 60 to 70	EHE Rating D
The MRS has an overall EHE module score from 48 to 59	EHE Rating E
The MRS has an overall EHE module score from 38 to 47	EHE Rating F
The MRS has an overall EHE module score less than 38	EHE Rating G

In addition, there are three other possible outcomes:

• *Evaluation pending.* This category is used when UXO or DMM are believed or known to be present at an MRS, but sufficient information is not available to conduct the evaluation.

• *No longer required.* Within the EHE module, this category is reserved for MRS that no longer require evaluation for an explosives hazard potential because DoD has conducted a response, all response objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

• *No known or suspected explosive hazard.* This category is reserved for MRS that do not require evaluation under the EHE module because no potential explosive hazard was identified.

B. The Chemical Warfare Materiel Hazard Evaluation (CHE) Module

The second hazard evaluation module comprising an MRS priority is evaluation of the chemical hazards associated with the physiological effects of chemical warfare materiel (CWM). The CHE module is used only when CWM are known or suspected of being present at an MRS.

CWM is a general term that is comprised of four subcategories:

• *CWM, explosively configured* are all munitions that contain a CWA fill and any explosive component. Examples are M55 rockets with CWA, the M23 VX mine, and the M360 105-millimeter GB artillery cartridge.

• *CWM, nonexplosively configured* are all munitions that contain a CWA but that do not include any energetic material. Examples are any chemical munition that does not contain explosive components (*e.g.*, a burster, fuze), and VX or mustard agent spray canisters.

• *CWM, bulk container* are all non-munitions-configured containers of CWA (*e.g.*, ton containers).

• *Chemical agent identification sets (CAIS)* are military training aids containing small quantities of various CWA and other chemicals. All forms of CAIS are scored the same in this Protocol, except CAIS K941, toxic gas set M–1; and K942, toxic gas set M–2/E11, which are scored higher due to the relatively large quantities of agent they contain.

The CWA contained in each of the subcategories of CWM are chemicals chosen for military applications, and are intended to kill, seriously injure, or incapacitate a person through physiological effects. CWA is comprised of V- and G-series nerve agents, H-series (*i.e.*, "mustard" agents) and L (*i.e.*, lewisite) blister agents, and certain industrial chemicals used by the military as weapons, including phosgene, hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG). CWA does not include riot control agents (*e.g.*, w-chloroacetophenone (CN) and o-chlorobenzylidenemalononitrile (CS) tear gas), chemical herbicides, smoke or incendiary compounds, and

industrial chemicals that are not configured as military munitions.

Some CWM will be UXO (*e.g.*, a fired Stoke's mortar round that contains a phosgene fill); some will be DMM (*e.g.*, a discarded munition containing a chemical fill, or CAIS that were buried as a means of disposal).

This module is not used to evaluate environmental media and debris containing chemical warfare agents (*i.e.*, CWA-media and CWA-debris), as they are evaluated using the Relative Risk Site Evaluation module.

Under the CHE module, nine data elements of MRS information comprising three areas are evaluated: *CWM Hazard, Accessibility,* and *Receptors.* The CWM Hazard factor is structured to evaluate the unique characteristics of CWM. The data elements in the *Accessibility* factor and *Receptor* factor are identical with those in the EHE module.

(1) CWM Hazard Factor

The *CWM Hazard* factor is comprised of two data elements, CWM *Configuration* and *Sources of CWM,* and constitutes 40 percent of the CHE module score. The *CWM Hazard* factor is similar to the *Explosive Hazard* factor of the EHE module, but has been modified to address the unique characteristics of CWM.

The *CWM Configuration* data element estimates the potential hazard based on the amount of CWA that may be contained in the munition, its likelihood to be dispersed, and the condition of the munition. Similar to the *Munitions Type* data element in the EHE module, DoD has also included an "evidence of no CWM" classification, which can only be used if, after investigation, there is physical or historical evidence that indicates there is no CWM present. The definition for "evidence of no CWM" is important as it requires DoD to investigate all MRS for the presence of CWM. Further, DoD's adoption of the criteria for physical and historical evidence serves as an affirmation that the DoD Components will collect information upon which to base decisions. This approach to physical or historical evidence is intended to preclude decisions based on the logic that "* * * there is no physical/historical evidence of * * *" where the phrase could mean that there is an absence of information on what physical or historical evidence is available.

The classifications, the definition for each classification, and associated numerical scores for the *CWM Configuration* data element are presented in Table 11.

TABLE 11.—CLASSIFICATIONS WITHIN THE CHE CWM CONFIGURATION DATA ELEMENT

Classification	Description	Score
CWM, explosive configuration, either UXO or damaged DMM.	The CWM known or suspected of being present at the MRS is: ..... • Explosively configured CWM that are UXO (*i.e.*, CWM/UXO). • Explosively configured CWM that are DMM that have been damaged (CWM/DMM)	30
CWM mixed with UXO	• The CWM known or suspected of being present at the MRS are CWM/DMM that are co-mingled with conventional munitions that are UXO.	25
CWM, explosive configuration that are DMM (unused).	• The CWM known or suspected of being present at the MRS are explosively configured CWM/DMM that have not been damaged.	20
CWM, not-explosively configured or CWM, bulk container.	The CWM known or suspected of being present at the MRS is: ..... • Non-explosively configured CWM/DMM • Bulk CWM/DMM (*e.g.*, ton container)	15
CAIS K941 and CAIS K942	• The CWM/DMM known or suspected of being present at the MRS is CAIS K941-toxic gas set M–1 or CAIS K942-toxic gas set M–2/E11.	12
CAIS (chemical agent identification sets) ..	• The CWM known or suspected of being present at the MRS are only CAIS/DMM. The CAIS present cannot include CAIS K941, toxic gas set M–1; and K942, toxic gas set M–2/E11 for the MRS to be assigned this rating.	10
Evidence of no CWM	• Following investigation, the physical evidence indicates that CWM are not present at the MRS, or the historical evidence indicates that CWM are not present at the MRS.	0

Notes:
- The notation CWM/DMM means CWM that are DMM.
- The term CWM /UXO means CWM that are UXO.
- Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

The *Sources of CWM* data element addresses the type of activities that were conducted at the MRS and how and to what extent CWM were used or may be present. The source expected to pose the greatest hazard is a range that supported live-fire testing or training using explosively configured CWM. MRS where chemical munitions were only stored or transferred during transport pose the least hazard. As with the *CWM Configuration* data element, DoD has provided an "evidence of no CWM" classification for the *Sources of CWM* data element.

The classifications, the definition for each classification, and associated numerical scores for the *Sources of CWM* data element are presented in Table 12.

TABLE 12.—CLASSIFICATIONS WITHIN THE CHE SOURCES OF CWM DATA ELEMENT

Classification	Description	Score
Live-fire involving CWM	• The MRS is a range that supported live-fire of explosively configured CWM, and the CWM/UXO are known or suspected of being present on the surface or in the subsurface • The MRS is a range that supported live-fire with conventional munitions, and CWM/DMM are on the surface or in the subsurface co-mingled with conventional munitions that are UXO	10
Damaged CWM/DMM or CAIS/DMM, surface or subsurface.	• There are damaged CWM/DMM on the surface or in the subsurface at the MRS	10
Undamaged CWM/DMM or CAIS/DMM, surface.	• There are undamaged CWM/DMM on the surface at the MRS	10
Undamaged CWM/DMM, or CAIS/DMM, subsurface.	• There are undamaged CWM/DMM in the subsurface at the MRS	5
Production facilities of CWM or CAIS	• The MRS is a facility that engaged inproduction of CWM, and there are CWM/DMM suspected of being present on the surface or in the subsurface	3
Research, Development, Testing, and Evaluation (RDT&E) facility using CWM or CAIS.	• The MRS is at a facility that was involved in non-live fire RDT&E activities (including static testing) involving CWM, and there are CWM/DMM suspected of being present on the surface or in the subsurface	3
Training facility using CWM or CAIS	• The MRS is a location that was involved in training activities involving CWM and/or CAIS (*e.g.*, training in recognition of CWA, decontamination training), and CWM/DMM are suspected of being present on the surface or in the subsurface	2
Storage or transfer points of CWM	• The MRS is a former storage facility or transfer point (*e.g.*, inter-modal transfer) for CWM	1
Evidence of no CWM	• Following investigation, the physical evidence indicates that CWM are not present at the MRS, or the historical evidence indicates that CWM are not present at the MRS	0

Notes:
- The notation CWM/DMM means CWM that are DMM.
- The term CWM /UXO means CWM that are UXO.
- Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.
- Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.
- In the subsurface means the CWM (*e.g.*, a DMM or UXO) is: (1) Entirely beneath the ground surface, or (2) fully submerged in a water body.
- On the surface means the CWM (*i.e.*, a DMM or UXO) is: (1) Entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (*e.g.*, as a result of tidal activity).

(2) Accessibility Factor

The *Accessibility* factor of the CHE module focuses on the potential for receptors to encounter the CWM known or suspected to be present on a MRS. This factor consists of three elements that constitute 40 percent of the CHE module numerical score.

The data element *Information on the Location of CWM* is an evaluation of the following three conditions that were combined into one data element to best represent the potential for encountering CWM:

- The confirmed or suspected presence of CWM based on physical evidence (*e.g.*, presence or absence of munitions fragments, firing records, anecdotal information)
- The likelihood for direct contact with CWM based on its proximity to the surface
- The potential for the CWM to reach the surface due to dynamic site conditions (*e.g.*, erosion).

This data element attempts to differentiate MRS where a true hazard is present opposed to the numerous MRS where only CWM fragments remain or where CWM were only transferred or stored. It also differentiates between "known" versus "suspected" evidence.

The classifications, the definition for each classification, and associated numerical scores for the Information on the Location of CWM element are presented in Table 13.

TABLE 13.—CLASSIFICATIONS WITHIN THE CHE INFORMATION ON THE LOCATION OF CWM DATA ELEMENT

Classification	Description	Score
Confirmed surface	• Physical evidence indicates there are CWM on the surface of the MRS • Historical evidence (*e.g.*, a confirmed incident report or accident report) indicates there are CWM on the surface of the MRS.	25
Confirmed subsurface, active	• Physical evidence indicates the presence of CWM in the subsurface of the MRS and the geological conditions at the MRS are likely to cause CWM to be exposed in the future by naturally occurring phenomena (*e.g.*, drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (*e.g.*, plowing, construction) at the MRS that are likely to expose CWM. • Historical evidence indicates that CWM are located in the subsurface of the MRS and the geological conditions at the MRS are likely to cause CWM to be exposed in the future by naturally occurring phenomena (*e.g.*, drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (*e.g.*, plowing, construction, dredging) at the MRS that are likely to cause CWM.	20

TABLE 13.—CLASSIFICATIONS WITHIN THE CHE INFORMATION ON THE LOCATION OF CWM DATA ELEMENT—Continued

Classification	Description	Score
Confirmed subsurface, stable	• Physical evidence indicates the presence of CWM in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause CWM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause CWM to be exposed.. • Historical evidence indicates that CWM are located in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause CWM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause CWM to be exposed.	15
Suspected (physical evidence)	• There is physical evidence other than the documented presence of CWM, indicating that CWM may be present at the MRS.	10
Suspected (historical evidence)	• There is historical evidence indicating that CWM may be present at the MRS	10
Subsurface, physical constraint	• There is physical or historical evidence indicating the CWM may be present in the subsurface, but there is a physical constraint (*e.g.*, pavement, water depth over 120 feet) preventing direct access to the CWM.	2
Evidence of no CWM	• Following investigation of the MRS, there is physical evidence there is no CWM present, or there is historical evidence indicating that no CWM are present.	0

Notes:

• *Historical evidence* means that the investigation: (1) found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

• *Physical evidence* means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

• *In the subsurface* means the munition (*i.e.*, a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.

• *On the surface* means the CWM (*e.g.*, a DMM or UXO) is (1) entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (*e.g.*, as a result of tidal activity).

• The term *small arms ammunition* means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

The Ease of Access data element focuses on the means for an encounter with CWM based on the extent of controls preventing access or entry to the MRS. Both natural obstacles (*e.g.*, dense vegetation, rugged terrain, water) and man-made controls (*e.g.*, fencing) are considered in this analysis. DoD deliberated over numerous data elements and associated definitions to best capture these conditions. DoD found the conditions within this data element difficult to capture, especially for large MRS that have not been characterized and had varying conditions across the MRS (*e.g.*, short grass and dense swamp).

The classifications, the definition for each classification, and associated numerical scores for the Ease of Access data element are presented in Table 14.

TABLE 14.—CLASSIFICATIONS WITHIN THE CHE EASE OF ACCESS DATA ELEMENT

Classification	Description	Score
No barrier	• There is no barrier preventing access to all parts of the MRS (*i.e.*, all parts of the MRS are accessible).	10
Barrier to MRS access is incomplete	• There is a barrier preventing access to parts of the MRS but not the entire MRS	8
Barrier to MRS access is complete but not monitored.	• There is a barrier preventing access to all parts of the MRS, but there is no surveillance (*e.g.*, by a guard) to ensure that the barrier is effectively preventing access to all parts of the MRS.	5
Barrier to MRS access is complete and monitored.	• There is a barrier preventing access to all parts of the MRS, and there is active continual surveillance (*e.g.*, by a guard, video monitoring) to ensure that the barrier is effectively preventing access to all parts of the MRS.	0

Notes: Barrier means a natural obstacle or obstacles (*e.g.*, difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (*e.g.*, fencing), or a combination of natural and man-made obstacles.

The last data element in the *Accessibility* factor is *Status of Property*. Its purpose is to differentiate between MRS that DoD controls and MRS that DoD does not control. Based on comments received during the consultation with the Tribes, DoD revised the definition of Non-DoD control to specifically include all Indian lands (*i.e.*, trust lands, allotments, and Alaska Native Claims Settlement Act (ANCSA)-conveyed property). DoD also included property transferring from DoD control within 3 years in this data element to address those MRS that may be currently controlled by DoD but are planned for transfer to non-DoD entities in the near future. There are three classifications, *DoD control, Scheduled for transfer from DoD control,* and *Non-DoD control.*

The classifications, the definition for each classification, and associated numerical scores for the Status of Property data element are presented in Table 15.

TABLE 15.—CLASSIFICATIONS WITHIN THE CHE STATUS OF PROPERTY DATA ELEMENT

Classification	Description	Score
Non-DoD control	• The MRS is at a location that is no longer owned by, leased to, or otherwise possessed or used by the DoD. Examples are privately owned land or water bodies; land or water bodies owned or controlled by American Indian or Alaskan Native Tribes, or State or local governments; and lands or water bodies managed by other Federal agencies.	5
Scheduled for transfer from DoD control	• The MRS is on land or is a water body that is owned, leased, or otherwise possessed by control DoD, and DoD plans to transfer that land or water body to control of another entity (*e.g.*, a State, American Indian, Alaskan Native, or local government; a private party; another Federal agency) within 3 years from the date the Protocol is applied.	3
DoD control	• The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the DoD. With respect to property that is leased or otherwise possessed, DoD controls access to the property 24-hours per day, every day of the calendar year.	0

(3) Receptor Factor

The Receptor factor focuses on the human and ecological populations that may be impacted by the presence of CWM. Its four data elements constitute 20 percent of numerical score of the CHE module.

The *Population Density* data element is used to both assess the number of persons that could potentially access the MRS and potentially be at risk from known or suspected CWM present at the MRS. Using U.S. Census Bureau data, it is based on the number of people per square mile in the county in which the MRS is located. If the MRS is located in more than one county, DoD will use the largest population value among the counties. DoD selected county population density for this element because city population information was not consistently available for all MRS, especially those in more rural or remote locations. If the MRS is within or borders on city limits, the population density of the city should be used instead of the county population density. During consultation with States, Tribes, and other Federal agencies, some agencies expressed a desire to use alternate and other readily available data (*e.g.*, daily visitor counts to national recreational areas) in place of census data. DoD considered this approach but, for consistency in the Protocol's application, determined that such site-specific data would best be addressed in implementation guidance or considered as "risk plus" or "other" factors when determining the sequencing for MRS. DoD also initially considered differentiating between on-site and off-site populations but found such an approach unworkable.

The classifications, the definition for each classification, and associated numerical scores for the *Population Density* data element are presented in Table 16.

TABLE 16.—CLASSIFICATIONS WITHIN THE CHE POPULATION DENSITY DATA ELEMENT

Classification	Definition	Score
> 500 persons per square mile	• There are more than 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.	5
100-500 persons per square mile	• There are 100 to 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.	3
< 100 persons per square mile	• There are fewer than 100 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data.	1

Notes:
• If an MRS is in more that one county, the DoD Component will use the largest population value among the counties. If the MRS is within or borders a city or town, the population density for the city or town instead of the county population density is used.

The *Population Near Hazard* data element is estimated based on the number of inhabited structures [3] on the MRS and within a 2-mile distance extending out from the boundary of the MRS. Although this element is defined based on the number of inhabited structures, DoD's focus is on the potential for human populations within the structures, not on the structures themselves.

The classifications, the definition for each classification, and associated numerical scores for the *Population Near Hazard* data element are presented in Table 17.

TABLE 17.—CLASSIFICATIONS WITHIN THE CHE POPULATION NEAR HAZARD DATA ELEMENT

Classification	Description	Score
26 or more structures	• There are 26 or more inhabitated structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	5
16 to 25	• There are 16 — 25 inhabitated structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	4

[3] Under the DoD Explosive Safety Standards, inhabited structures are considered as structures, including schools, churches, residences, aircraft passenger terminals, stores, shops, factories, hospitals, and theaters, other than DoD munitions-related structures, routinely occupied for any portion of the day, both within and outside of DoD facilities. Occupied temporary structures are also included.

TABLE 17.—CLASSIFICATIONS WITHIN THE CHE POPULATION NEAR HAZARD DATA ELEMENT—Continued

Classification	Description	Score
11 to 15	• There are 11 — 15 inhabitated structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	3
6 to 10	• There are 6 — 10 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	2
1 to 5	• There are 1 —5 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	1
0	• There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both.	

Notes: The term inhabited structures means permanent or temporary structures, other than DoD munitions-related structures, that are routinely occupied by one or more persons for any portion of a day.

The *Types of Activities/Structures* data element is used to assess information about the population and activities near the hazard. Through this data element, DoD strives to address multiple factors, including the amount, type, the intrusiveness of activities, and the likelihood of people to congregate onsite and within a 2-mile radius of the MRS. Consideration is made to reflect the nature of the activities that may result in an encounter with CWM. Residential and recreational areas are weighted highest to reflect the types of activities and population (*e.g.*, children) that may be in their vicinity. In response to Tribal comments, DoD included subsistence issues in the highest classification.

The classifications, the definition for each classification, and associated numerical scores for the *Types of Activities/Structures* element are presented in Table 18.

TABLE 18.—CLASSIFICATIONS WITHIN THE CHE TYPES OF ACTIVITIES/STRUCTURES DATA ELEMENT

Classification	Description	Score
Residential, educational, commerical, or subsistence.	• Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary, or within the MRS's boundary that are associated with any of the following purposes; residential, educational, child care, critical assets (e.g., hospitals, fire and rescue, police stations, dams), hotels, commercial shopping centers, playgrounds, community gathering areas, religious sites or sites used for subsistence hunting, fishing, and gathering.	5
Parks and recreational areas	• Activities are conducted or inhibited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that area associated with parks, nature preserves or other recreational uses.	4
Agricultural, forestry	• Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary, within the MRS's boundary that are associated with agriculture or forestry.	3
Industrial or warehousing	• Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary, within the MRS's boundary that are associated with industrial activities or warehousing.	2
No known or recurring activities	• There are no known of recurring recurring activities occurring up to 2 activities miles from the MRS's boundary or within the MRS's boundary.	1

Notes: The term inhabited structures means permanent or temporary structures, other than DoD munitions-related structures, are routinely occupied by one or more persons for any portion of a day.

Through the *Ecological and/or Cultural Resources* data element, DoD recognizes the importance of the ecological and cultural resources present on an MRS. This data element considers threatened and endangered species, critical habitat, sensitive ecosystems, natural resources, historical sites, historic properties, cultural items, archeological resources, and American Indians or Alaska Natives spiritual sites (*e.g.*, the MRS is deemed by American Indian or Alaska Natives to be of spiritual significance, or there are areas that are used by American Indian and Alaska Natives for subsistence activities, such as hunting or fishing). Requirements for determining if a particular feature is a cultural resource are found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act. The greatest weight is awarded to MRS with both cultural and ecological resources.

The classifications, the definition for each classification, and associated numerical scores for the Ecological and/or Cultural Resources data element are presented in Table 19.

TABLE 19.—CLASSIFICATIONS WITHIN THE CHE ECOLOGICAL AND/OR CULTURAL RESOURCES DATA ELEMENT

Classification	Description	Score
Ecological and cultural resources present	• There are both ecological and cultural resources present on the MRS	5
Ecological resources present	• There are ecological resources present on the MRS	3
Cultural resources present	• There are cultural resources present on the MRS	3

TABLE 19.—CLASSIFICATIONS WITHIN THE CHE ECOLOGICAL AND/OR CULTURAL RESOURCES DATA ELEMENT—Continued

Classification	Description	Score
No ecological or cultural resources present.	• There are no ecological resources or cultural resources present on the MRS	0

Notes:

• Ecological resources means that: (1) A threatened or endangered species (designated under the Endangered Species Act (ESA)) is present on the MRS; or (2) the MRS is designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the MRS.

• Cultural resources means there are recognized cultural, spiritual, traditional, religious, or historical features (*e.g.*, structures, artifacts, symbolism) on the MRS. For example, American Indians or Alaska Natives deem the MRS to be of spiritual significance or there are areas that are used by American Indians or Alaska Natives for subsistence activities (*e.g.*, hunting, fishing). Requirements for determining if a particular feature is a cultural resource are found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act.

(4) CHE Module Rating

As described earlier in discussion of the CHE module, each data element provides a numeric value that contributes to the CHE module score. The sum of the nine data elements is the CHE module score.

There are seven CHE module ratings derived from the CHE module scores, as illustrated in Table 20, plus three alternatives to account for the chemical hazard potential at an MRS.

TABLE 20.—DETERMINING THE CHE RATING FROM THE CHE MODULE SCORE

Overall CHE module score	CHE rating
The MRS has an overall CHE module score from 92 to 100.	CHE Rating A
The MRS has an overall CHE module score from 82 to 91	CHE Rating B
The MRS has an overall CHE module score from 71 to 81	CHE Rating C
The MRS has an overall CHE module score from 60 to 70	CHE Rating D
The MRS has an overall CHE module score from 48 to 59	CHE Rating E
The MRS has an overall CHE module score from 38 to 47	CHE Rating F
The MRS has an overall CHE module score less than 38	CHE Rating G

In addition, there are three other possible outcomes:

• *Evaluation pending.* This category is used when CWM is believed or known to be present but sufficient information is not available to conduct the evaluation.

• *No longer required.* This category is reserved for MRS that no longer require an evaluation for a potential CWM hazard because DoD has conducted a response, all response objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

• *No known or suspected CWM Hazard.* This category is reserved for MRS that do not require evaluation under the CHE module.

C. The Relative Risk Site Evaluation (RRSE) Hazard Module

In 1994, the DoD Inter-Service Relative Risk Working Group, comprised of representatives from the DoD Components, developed the RRSE framework for use in prioritizing sites under the Installation Restoration program (IRP) category of the DERP. The RRSE framework addresses chronic health and environmental effects of many of the chemicals known to have been released into the environment from activities at DoD installations and FUDS. The RRSE was revised in 1997, to address questions, comments, and DoD initiatives that arose during the first twenty months of implementation.

DoD will use the RRSE module to evaluate the potential hazards posed by munitions constituents or CWA at a MRS relative to the hazard potential at other MRS. The grouping of MRS into *high, medium,* or *low* relative risk categories is not a substitute for a baseline risk assessment or health assessment, nor is it a means for selecting a remedy or placing MRS into a Response Complete/No Further Action category.

DoD has elected to apply the RRSE framework to evaluate the potential chronic health and environmental effects of munitions consfituents at MRS because it has been successfully used at sites in the IRP. Using the same framework to evaluate IRP sites and MRS ensures consistency in the approach taken to evaluate chronic health and environmental effects of chemicals released to the environment.

In the RRSE module, MRS with releases of munitions constituents or CWA are grouped in high, medium, and low priority categories based on an evaluation of MRS information using three factors and four media and their exposure endpoints:

• Factors:
  —Contaminant hazard factor (CHF)
  —Migration pathway factor (MPF)
  —Receptor factor (RF)
• Endpoints:
  —Groundwater, considering only a human receptor endpoint
  —Surface water, using both a human and an ecological endpoint
  —Sediments, using both a human and an ecological endpoint
  —Surface soils (*i.e.*, soils in the depth range of 0–6 inches) using a human endpoint.

Each environmental medium is evaluated using three factors that relate to the three structural components of the conceptual site model used in environmental risk assessments: source, pathway, and receptor. In the RRSE, the CHF (relationship of contaminants to comparison values) is the source term; MPF (likelihood/extent of contaminant migration) is the pathway term; and RF (likelihood of receptor exposure to contamination) is the receptor term.

Each of these three factors is rated on a scale of three values (*e.g.*, the scale for the contaminant hazard factor is *significant, moderate,* or *minimal*) based on up-to-date and representative MRS information. For each environmental medium, factor ratings are combined to determine the environmental medium-specific rating of *high, medium,* or *low.* The MRS is then placed in an overall priority category of high, medium, or low, based on the highest medium-specific rating.

(1) Contaminant Hazard Factor

The CHF is based on the ratio of the maximum concentration of a contaminant detected in an environmental medium to an established risk-based comparison value for the contaminant in that medium. The CHF is rated significant, moderate or minimal. A significant rating is given when the sum of ratios of the maximum concentration of a contaminant detected

to the comparison value is greater than 100. A moderate rating is given when the ratios are greater than 2 but less than 100. A minimal rating is assigned when the ratios are less than 2. The framework uses available site information to evaluate three media of concern: groundwater, surface water and sediment, and surface soils.

The calculation is shown in Figure 2.

Contaminants		Calculation*****		Rating
Carcinogen A: Carcinogen B: Non-carcinogen C:	$[A]^*_{max}$ $[B]_{max}$ $[C]_{max}$	$\frac{[A]^*_{max}}{Std^{**}} + \frac{[B]_{max}}{Std^{**}} + \frac{[C]_{max}}{Std^{***}} = X_1$		>100 = Significant CHF 2-100 = Moderate CHF <2 = Minimal CHF
Ecological D:	$[D]_{max}$	$\frac{[D]_{max}}{Std^{****}} = X_2$		

[A]* - Maximum concentration in medium
Std** - Comparison value based on 10^{-4} human cancer incidence
Std*** - Comparison value based on reference dose for humans
Std**** - Comparison value for ecological receptors where available

*****Use comparison values in Appendix B

Note: Contaminants posing a threat to ecological receptors (i.e., ecological contaminants) must be evaluated separately from those posing a threat to human receptors

Figure 2: Contaminant Hazard Factor Calculation

The comparison values used for this evaluation are provided in the Relative Risk Site Evaluation Primer (Summer 1997, Revised Edition), which can be referenced through the World Wide Web in the publications sections at *http://www.dtic.mil/envirodod*. DoD will update these values on an as needed basis to reflect the latest information available from sources such as the Integrated Risk Information System (IRIS) maintained by the EPA or the EPA Region IX Preliminary Remediation Goals (PRGs).

(2) Migration Pathway Factor

The MPF represents the likelihood of transport of contaminants through groundwater, surface water and sediment, and soil. The MPF is determined by matching available site information on pathways with the corresponding definitions about the likelihood of contaminant migration. The MPF is rated evident, potential, or confined according to the following definitions about the likelihood of contaminant migration for each environmental medium:

(a) Groundwater

- *Evident*—Analytical data or observable evidence indicates that contamination in the groundwater is moving or has moved away from the source area.
- *Potential*—Contamination in the groundwater has moved only slightly beyond the source (*i.e.*, tens of feet), could move but is not moving appreciably, or information is not sufficient to make a determination of Evident or Confined.
- *Confined*—Information indicates that the potential for contaminant migration from the source via the groundwater is limited (due to geological structures or physical controls).

(a) Surface Water and Sediment

- *Evident*—Analytical data or observable evidence indicates that contamination in surface water and/or sediment is present at, moving toward, or has moved to a point of exposure.
- *Potential*—Contamination in surface water or sediment has moved only slightly beyond the source (*i.e.*, tens of feet), could move but is not moving appreciably, or information is not sufficient to make a determination of Evident or Confined.
- *Confined*—Information indicates a low potential for contaminant migration from the surface water or sediment source to a potential point of exposure (could be due to presence of geological structures or physical controls).

(c) Soils

- *Evident*—Analytical data or observable evidence that contamination in the soil is present at, is moving toward, or has moved to a point of exposure.
- *Potential*—Contamination in the soil has moved only slightly beyond the source (*i.e.*, tens of feet), could move but is not moving appreciably, or information is not sufficient to make a determination of Evident or Confined.
- *Confined*—Information indicates a low possibility for contamination to be present at or migrate to a point of exposure.

(3) Receptor Factor

Information about the present or future likelihood of receptors for each MRS is summarized as the Receptor Factor (RF). RF of identified, potential, or limited are determined by analysis of available information on receptors at MRS. Human and ecological receptors (*i.e.*, endpoints for exposure) to be considered are as follows:

(a) Groundwater

Human receptors include those individuals that may be exposed to groundwater contamination via onsite and down gradient water supply wells used for human consumption or in food production. Groundwater is classified using the EPA's *Guidelines for Groundwater Classification Under the EPA Groundwater Protection Strategy*, Office of Groundwater Protection, 1986. Ecological receptors are not evaluated.

(b) Surface Water and Sediment

These two media are discussed together since they potentially affect the same receptors. Human receptors for

surface water and sediment share the same migration pathway and, therefore, include those individuals that may be exposed to surface water or sediment contamination through onsite and down gradient water supplies and recreational areas. Receptors include down gradient water supplies used for drinking water, irrigation of food crops, watering of livestock, aquaculture, and recreational activities such as fishing. Ecological receptors for surface water and sediment are limited to critical habitats and other similar environments that are reasonably expected to be impacted by a MRS.

(c) Surface Soil.

Human receptors include residents, people in schools and daycare, and workers who have direct access to contamination on a frequent basis. Ecological receptors are not considered for evaluation of the surface soil since ecological standards are generally not available for the CHF calculation; however, ecological receptors may be incorporated into the soil evaluation if ecological standards become available.

(4) Calculation of the RRSE Module Rating

For each medium at a MRS, the CHF, MPF, and RF are combined to obtain the relative risk (high, medium, or low) for that medium. The highest RRSE result for a medium determines the RRSE designation for the MRS. If there is insufficient information to complete the RRSE evaluation, the MRS is assigned a value of "evaluation pending." DoD will determine each MRS's relative priority after combining its RRSE rating with the ratings determined from the EHE and CHE modules.

The matrix for assigning the overall RRSE hazard rating is provided in Table 21.

TABLE 21.—RELATIVE RISK SITE EVALUATION MODULE HAZARD RATING

Contaminant hazard factor and receptor factor	Migration pathway		
	Evident	Potential	Confined
Significant:			
Identified	High	High	Medium.
Potential	High	High	Medium.
Limited	Medium	Medium	Low.
Moderate:			
Identified	High	High	Low.
Potential	High	Medium	Low.
Limited	Medium	Low	Low.
Minimal:			
Identified	High	Medium	Low.
Potential	Medium	Low	Low.
Limited	Low	Low	Low.

D. Assigning the MRS Priority—Integrating the EHE, CHE, and RRSE Module Ratings

As illustrated in Table 22, DoD proposes a MRS prioritization concept for comment that considers the results of the three hazard evaluation modules. The concept involves comparing the individual evaluation of the EHE, CHE, and RRSE modules using Table 22. Once the appropriate ratings are selected for each hazard evaluation module, the module with the lowest numerical value (*e.g.*, Priority 1 versus Priority 5) determines the MRS priority. For example, if the EHE module rating for an MRS is Hazard Rating A, the CHE module rating is Hazard Rating E, and the RRSE module rating is medium, the MRS would be assigned to Priority 2, based on the EHE module rating.

TABLE 22.—MRS PRIORITY BASED ON HIGHEST HAZARD EVALUATION MODULE RATING

EHE module rating	Priority	CHE module rating	Priority	RRSE module rating	Priority
		Hazard Evaluation A (Highest)	1		
Hazard Evaluation A (Highest)	2	Hazard Evaluation B	2	High (highest)	2
Hazard Evaluation B	3	Hazard Evaluation C	3		
Hazard Evaluation C	4	Hazard Evaluation D	4		
Hazard Evaluation D	5	Hazard Evaluation E	5	Medium	5
Hazard Evaluation E	6	Hazard Evaluation F	6		
Hazard Evaluation F	7	Hazard Evaluation G (Lowest)	7		
Hazard Evaluation G (Lowest)	8			Low	8
No Longer Required		No Longer Required		No Longer Required	
Evaluation Pending		Evaluation Pending		Evaluation Pending	
No Known or Suspected Explosive Hazard.		No Known or Suspected CWM Hazard.			N/A

Each MRS will ultimately be assigned one of eight MRS priorities based on the ratings of the three hazard evaluation modules. Only MRS with a potential CWM hazard can be assigned to Priority 1, and no MRS with CWM can be assigned to Priority 8. A "prioritization no longer required" designation is used to indicate that a MRS no longer requires prioritization. This designation is used only when all three hazard evaluation modules are rated as "no longer required" or "no known or suspected explosive hazard" or "no known or suspected CWM hazard."

As described previously, any hazard evaluation module for which there is insufficient information to complete the hazard evaluation will be placed into an "evaluation pending" rating for that

module, and the MRS priority will be assigned based on the modules (if any) for which sufficient data were available for a complete evaluation of the hazard. The Protocol will be reapplied to the MRS when data to complete evaluation of the remaining modules is obtained.

DoD Components will review each MRS priority at least annually and update the priority as necessary to reflect new information that has become available. The Protocol will be reapplied at a MRS under the following circumstances:

(1) Upon completion of a response action that could change the site conditions evaluated by the hazard evaluation modules at the MRS.

(2) To update or validate a previous module evaluation at an MRS when new information is available.

(3) To update or validate an MRS priority that was previously assigned based on evaluation of only one or two of the three hazard evaluation modules.

(4) Upon further delineation and characterization of an MRA into MRS.

(5) To categorize MRS previously classified as "evaluation pending."

DoD Components are directed to develop and maintain records on the application of the Protocol for each MRS. At a minimum, the records shall contain references to all information and documents used for the evaluation (*e.g.*, field logs, data from preliminary assessments, site inspections, or remedial investigations/feasibility studies, risk assessments), evaluation documentation (*e.g.*, worksheets), and database records. These records will be included in the Administrative Record for the MRS.

DoD Components will also report the MRS priority and the ratings for each hazard evaluation module to the Office of the Deputy Under Secretary of Defense (Installations & Environment) for inclusion in the DERP Annual Report to Congress.

IX. Schedule for Application of the Protocol and for Addressing MRS Assigned a Rating of "Evaluation Pending"

DoD intends that the Protocol be applied to any given MRS as soon as the information required to populate any of the modules is available. Where a DoD Component has some, but not all the data to apply any of the modules, DoD believes it appropriate to establish programmatic goals and specific milestones for applying the Protocol. For example, the Formerly Used Defense Sites (FUDS) program has most of the data required for application of the EHE and CHE modules at a significant number of FUDS. This is known because FUDS have been evaluated using the risk assessment code, one of the two interim tools DoD adopted to prioritize munitions responses. There are also a much smaller number of sites that have been evaluated using the RRSE tool, the other interim tool DoD adopted in the Management Guidance to prioritize munitions responses. DoD also realizes that it does not have any of the data required to apply the Protocol at other MRS. These MRS will be initially assigned the rating of "evaluation pending."

DoD intends to establish specific milestones for applying the Protocol that differentiate among MRS that have undergone a RAC or RRSE evaluation, MRS with a status of "evaluation pending," and MRS identified after May 31, 2003. While DoD does not intend to include such goals and milestones in the final regulation, DoD believes that input from interested parties may prove valuable in determining an appropriate time frame for application of this Protocol to the MRS in the inventory, and suggests the following goals are appropriate:

- For each MRS in the inventory as of May 31, 2003, that has not been evaluated using the RAC or RRSE tools and which is assigned a status of "evaluation pending:"
  - —A priority will be assigned based on an evaluation using at least one hazard evaluation module by May 31, 2007.
  - —A priority will be assigned based on an evaluation using all hazard evaluation modules by May 31, 2012.
- For each MRA or MRS identified after May 31, 2003:
  - —A priority will be assigned based on an evaluation using at least one hazard module within 2 years of identification or by May 31, 2007, whichever is later.
  - —A priority will be assigned based on an evaluation using all hazard modules within 4 years of identification or by May 31, 2012, whichever is later.

X. Protocol Testing Methodology

In developing the Protocol, DoD conducted extensive testing of various alternative constructions. This testing helped DoD develop the numeric values for the data elements and factors, achieve consistent and repeatable results, ensure an appropriate spread of MRS across the priority outcomes, and ensure MRS were assigned appropriate outcomes based on site conditions.

A. Selection of Sites

During development of the Protocol, more than 70 MRS were tested using the Protocol. The majority of MRS selected for testing were FUDS because DoD had the most data for these MRS. Within FUDS, MRS ranging from a minimal hazard to the highest hazard were tested. In addition, DoD selected MRS known to contain multiple hazards (*i.e.*, EHE, CHE, and/or RRSE) as a means to test the logic of the evaluation of each hazard module and the overall Protocol.

B. Testing Format

DoD tested the Protocol on numerous occasions. Testing was completed during presentations to stakeholders, during weekly internal working group meetings, and during several concentrated testing sessions with DoD personnel. Testing working groups typically consisted of a small group of DoD experts knowledgeable in munitions response and environmental restoration. The majority of testing was conducted by a core group of participants to promote consistency.

The group testing the model typically scored three to five MRS at a time, reviewing available data and documenting their findings in a worksheet developed specifically for the testing. Worksheets were developed specific to each module. Other personnel compiled the scores as the group testing the model completed each grouping of MRS. The compiled scores facilitated discussion held after every three to five MRS to give the group a chance to discuss any significant issues or problems encountered. As revisions were made to the Protocol, additional testing was performed to ensure the validity of the changes.

C. Testing Conclusions

After the final testing session, DoD performed a detailed data analysis on both the results received from hands-on testing, as well extensive modeling analysis. Testing was completed to ensure that there was a logical spread across MRS, and that the scores themselves were logical for each MRS. Modeling was conducted as a final step to analyze the logic in the scorings and weightings. Upon completion of the analysis, the DoD work group discussed the results and made the necessary modifications.

DoD is confident that the testing conducted indicated the Protocol provides a useful tool for prioritizing MRS. The testing and the comments received from stakeholders were critical in assisting DoD with developing this proposal.

XI. Determination of Site Sequencing

DoD believes that the sequencing of MRS for implementation of response actions should be based primarily on the relative priority assigned by the Protocol, but may also consider other factors. This approach to decision making is embodied in the current Management Guidance and grew out of the recommendations of the Federal Facilities Environmental Restoration Dialogue Committee (FFERDC). One of the main issues the Committee considered was need to set priorities due to the magnitude of the challenge of environmental restoration at Federal facilities. The Committee believed that priority setting and funding allocation must be done in a manner that stakeholders perceive fair and inclusive. The Committee developed consensus policy recommendations aimed at improving the process by which Federal facility environmental restoration decisions are made, such that these decisions reflect the priorities and concerns of all stakeholders. In the area of consideration of human health and environmental risk and other factors in Federal facility environmental restoration decision making, the Committee made the following recommendation:

Risk to human health and the environment is an important and well-established factor that should continue to be a primary consideration in Federal facility cleanup decision making, including setting environmental cleanup priorities and milestones. However:

(a) Human health and environmental risk assessments and other analytical tools used to evaluate risks to human health (including non-cancer as well as cancer health effects) and the environment all have scientific limitations and require assumptions in their development. As decision-aiding tools, risk assessments should only be used in a manner that recognizes those limitations and assumptions. Moreover, risk assessments ought not be used by any party as a basis for unilaterally setting aside legal requirements that embody public health principles and other important societal values.

(b) In addition to human health and environmental risk, other factors that warrant consideration in setting environmental cleanup priorities and milestones include:

- Cultural, social, and economic factors, including environmental justice considerations,
- Short-term and long-term ecological effects and environmental impacts in general, including damage to natural resources and lost use,
- Making land available for other uses,
- Acceptability of the action to regulators, Tribes, and public stakeholders,
- Statutory requirements and legal agreements,
- Life cycle costs,
- Pragmatic considerations, such as the ability to execute cleanup projects in a given year, and the feasibility of carrying out the activity in relation to other activities at the facility,
- Overall cost and effectiveness of a proposed activity, and
- Actual and anticipated funding availability.

The sequencing process described in this regulation builds on DoD's experience in implementing the FFERDC recommendations over the past 10 years. In addition, DoD received comments from a wide range of stakeholders supporting a decision making process that considers other factors in making sequencing decisions.

Generally, MRS that present a greater relative risk to human health, safety, or the environment will be addressed before MRS that present a lesser risk; however, in evaluating other factors as part of making sequencing decisions, DoD will consider a broad range of factors. These "risk-plus" or "other management" factors do not influence or change the prioritization results but may influence the sequence in which MRS are addressed. Specific examples of factors DoD may consider include:

- Concerns expressed by stakeholders.
- Cultural and social factors.
- Economic factors, including economic considerations pertaining to environmental justice issues, economies of scale, evaluation of total lifecycle costs, and estimated valuations of long-term liabilities.
- The reasonably anticipated future land use, especially when planning response actions, conducting evaluations of response alternatives, or establishing specific response action objectives.
- Community reuse requirements at BRAC installations.
- Implementation and execution considerations (*e.g.*, funding availability; the availability of the necessary equipment and people to implement a particular action; examination of alternatives to responses that entail significant capital investments, a lengthy period of operation, or costly maintenance; considering alternatives to removal or treatment of contamination when existing technology cannot achieve established standards, such as maximum contaminant levels.
- The availability of technology to detect, discriminate, recover, and destroy UXO or DMM.
- Implementing standing commitments including those in formal agreements with regulatory agencies, requirements for continuation of remedial action operations until response objectives are met, other long-term management activities, and program administration.
- Tribal trust lands, which are lands held in trust by the United States for the benefit of any Indian Tribe or individual. The United States holds the legal title to the land and the Tribe holds the beneficial interest.
- Established program goals and initiatives.
- Short-term and long-term ecological effects and environmental impacts in general, including injuries to natural resources.

DoD uses its process for developing and updating Management Action Plans (MAP) or an equivalent document as the vehicle for making sequencing decisions. Each installation or FUDS is required to develop and maintain a MAP or its equivalent. MAPs are required to be updated on at least an annual basis. Guidance on preparing and updating the MAP is provided in the *Management Guidance*. Sequencing decisions at installations and FUDS are developed with input from stakeholders, such as the regulatory and community members of an installation's RAB, and are documented in the MAP.

During the annual update of the MAP, installation or FUDS personnel will be required to publish an announcement in a local community publication notifying the public of the following:

(1) The existence of MRS, including a brief description of each MRS addressed, the conditions, and assigned priority,

(2) The intention to develop or update the MAP for the MRS,

(3) The intention to apply the Protocol to each MRS,

(4) The specific means the public or Tribes can use to submit information about each MRS that may influence the priority assigned or the funding sequence assigned, and

(5) The name and contact information for the designated DoD spokesperson for each MRS.

Final sequencing may also be impacted by DoD Component program management considerations. If the sequencing of any MRS is changed from the sequencing reflected in the current MAP, the DoD Component will provide information to the stakeholders documenting the reasons for the sequencing change and will request their review and comment on that decision.

In addition, DoD Components will ensure that all information influencing the sequencing of an MRS is included in the Administrative Record and the Information Repository. On a

programmatic level, DoD Components will report the results of sequencing to the ODUSD (I&E).

XII. Consultation

The provisions of 10 U.S.C. 2710 required the DoD to develop this proposed Protocol in consultation with States and Tribes. DoD has followed Congress' direction, specifically working with States, Tribes, and other interested stakeholders throughout the development process. DoD appreciates the involvement and contributions of these stakeholders in the development process. Many of the comments received were incorporated into the Protocol. Some of the actions DoD took include:

A. Advanced Notice of Proposed Rulemaking. On March 20, 2002, DoD published an *Advanced Notice of Proposed Rulemaking* in the **Federal Register** to inform stakeholders of DoD's efforts to develop a tool for prioritizing MRS and to request suggestions on current prioritizing methods in use and factors to consider in developing the Protocol. DoD has reviewed all comments received and has considered them in its development of the Protocol.

B. DENIX Web site. Beginning in March 2002, DoD established a Website specific to the Protocol development effort on the Defense Environmental Network & Information eXchange. DoD provided information on the Protocol regarding background and status of development efforts as well as an opportunity for stakeholders to submit comments electronically.

C. Consultation with other Federal Agencies. In December 2002 and February 2003, ODUSD (I&E) personnel met with representatives from the U.S. Department of Agriculture, U.S. Department of Interior, and EPA to discuss their concerns and comments on the Protocol.

D. Consultation With States

(1) *Formal Notice for Protocol Development.* Although DoD discussed the Protocol with State representatives at meetings of various organizations, the Deputy Under Secretary of Defense (Environment) (ADUSD(E)) sent a letter to the head (*e.g.*, Secretary, Commissioner, Director) of the environmental agency for each State and U.S. territory providing notification and background on the Protocol development effort and requesting a point of contact for future correspondence. DoD received formal responses from 15 States and territories. DoD considered all submitted comments during its development of the Protocol.

(2) *State Meeting.* To facilitate State involvement in the development of the Protocol, in November 2002 and February 2003, DoD invited representatives from the 50 States and U.S. territories to attend a meeting to discuss State concerns. Participants reviewed the Protocol and discussed their comments with representatives from the ODUSD (I&E)) and DoD Components.

(3) *Munitions Response Committee.* DoD established the Munitions Response Committee (MRC) to coordinate, identify and synchronize efforts among DoD, other Federal agencies, the States, and Tribes to ensure munitions responses at locations on other than operational ranges are conducted in a manner that protects public health and the environment while allowing the military to fulfill its mission. DoD worked with the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and National Association of Attorneys General (NAAG) to determine how best to achieve representation of State interests and concerns on the MRC. Delegates from the ASTSWMO Board of Directors and Committees served as representatives expressing potential State concerns in managing activities at MRS. DoD also engaged the National Congress of American Indians (NCAI) to participate in the MRC. DoD discussed its Protocol development efforts with the MRC at meetings held in March, May, July, and November 2002, as well as through numerous teleconferences. The July meeting was conducted in conjunction with the annual Defense and State Memorandum of Agreement Conference.

(4) *ASTSWMO.* In addition to coordination with the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) through the MRC, DoD also sought to engage ASTSWMO members directly. In October 2002 and April 2003, DoD representatives participated in ASTSWMO's annual meeting—presenting a brief update at a breakout session and individually discussing the Protocol with members.

E. Consultation With Tribes

DoD is committed to working with Tribes on a government-to-government basis in recognition of their sovereignty and in a continuing effort to implement the 1998 DoD American Indian and Alaska Native Policy. In recognition of this commitment and policy and to fulfill congressional requirements, DoD consulted with Tribes throughout the development of the Protocol.

(1) *Formal Notice for Protocol Development.* In April 2002, the ADUSD(E) sent a letter to each Tribal leader of the 586 Federally-recognized Tribes notifying them of the effort to develop the Protocol to prioritize MRS known or suspected to have UXO, DMM, or MC, inviting them to participate in the effort, and requesting of them any information regarding the presence of UXO, DMM, or MC on their lands.

(2) *National Tribal Conference on Environmental Management.* In June 2002, DoD participated in the 6th National Tribal Conference on Environmental Management. DoD representatives briefed interested conference attendees on the background and develop of the Protocol and requested comments and factors to consider in its development. DoD asked several interested Tribal members to participate in a subsequent MRC meeting.

(3) *Tribal Consultation Meetings.* In September 2002 and April 2003, DoD hosted meetings specifically for Tribes whose lands may be impacted by UXO, DMM, or MC. The meeting was intended to ensure that DoD fully considers concerns specific to Tribes in the Protocol. DoD briefed the Tribal participants on the status of the development efforts and discussed their comments and concerns.

(4) *National Congress of American Indians.* In November 2002, DoD attended the 59th Annual Session of the National Congress of American Indians. DoD briefed conference participants in a breakout session on the draft Protocol construct and requested participants to provide their comments and concerns.

(5) *Native American Lands Environmental Mitigation Program Meeting.* DoD provided materials for distribution to interested Tribal members at the annual meeting of the Native American Lands Environmental Mitigation Program in November of 2002 in Juneau, Alaska.

F. DoD Response to Preliminary Comments

In developing this Protocol, DoD actively solicited ideas from interested stakeholders on the scope, structure, and specific features of a Protocol for prioritizing MRS. In addition to the **Federal Register** notice announcing development of the Protocol and requesting input from interested parties, DoD set up a Web site where parties could submit comments and ideas. DoD also actively sought ideas in numerous meetings with other Federal agencies, States, Tribes, and the public.

DoD was pleased with the response to its request for ideas, having received comments and ideas from other Federal agencies, States, Tribes, and members of

the public. The comments and ideas received were in five general areas, including:

- *Definitions.* Most of these comments and ideas submitted addressed recommendations that would provide greater clarity in the definitions.
- *Factors or Data Elements.* Most of these comments and ideas addressed the need for a specific data element that the commenter thought should be included in the Protocol. Other comments addressed the scores for each of the data elements and factors included in one of the deliberative drafts provided to stakeholders during the development process.
- *Policy.* In general, the comments and ideas in this area related to questions or recommendations related to the scope and application of the Protocol.
- *Other Protocols.* These comments and ideas focused primarily on other Protocols or tools that DoD should evaluate for their utility as a prioritization tool. Other comments addressed specific features (*e.g.*, data elements) of other tools that the commenter thought DoD should consider in developing this Protocol.
- *Other Issues.* The comments and ideas in this area were unrelated to the development of this Protocol. Examples include comments regarding the inventory of MRS required under 10 U.S.C. 2710(a) and funding policy.

DoD carefully reviewed and considered each of the comments submitted. The value of these comments and ideas is shown by the fact that this Protocol incorporates many of the ideas provided by interested parties. DoD would like to express its gratitude to all who gave of their time and effort by submitting comments and ideas. To ensure that DoD did consider each of the comments or ideas submitted, a matrix was developed, each comment tracked, and DoD's response to the comment documented. A summary of the comments and DoD's responses can be found at *http://www.denix.mil/MMRP_Protocol/comments.html.*

XIII. Notice of Proposed Rulemaking

DoD now solicits comments from the public on this Protocol. In particular, DoD seeks comment on the form and workability of the Protocol, the data elements considered in each module, the factors considered in each module, the rating system for each module, the weight afforded to each module in determining its evaluation hazard score, and the rating system for each MRS priority.

XIV. Summary

The Protocol developed by DoD in consultation with States and Tribes is proposed for public comment for subsequent codification in the Code of Federal Regulations. DoD developed the Protocol to meet the requirements set out in the 10 U.S.C. 2710 to consider and assign relative priorities to MRS based on environmental and explosive hazards. These hazards are evaluated in three areas:

- The explosive hazards posed by any UXO or DMM present at the MRS,
- The hazards posed by any CWM present at the MRS, and
- The health and environmental hazards posed by any MC at the MRS.

The priority assigned to each MRS, as well as the ratings of each of the three hazard evaluation modules (*i.e.*, Explosive Hazard Evaluation, Chemical Warfare Materiel Hazard Evaluation, and Relative Risk Site Evaluation) will be reported in an inventory.

XV. Administrative Requirements

A. Regulatory Impact Analysis Under Executive Order 12866

Executive Order 12866, (58 FR 51735 (October 4, 1993)) requires each Agency taking regulatory action to determine whether that action is "significant." The Agency must submit any regulatory actions that qualify as "significant" to the Office of Management and Budget (OMB) for review, assess the costs and benefits anticipated as a result of the proposed action, and otherwise ensure that the action meets the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

DoD has determined that today's Protocol is not a significant rule under Executive Order 12866 because it is not likely to result in a rule that will meet any of the four prerequisites.

(1) The Protocol will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

The primary effect on the economy will be the necessity for State and/or local governments to conduct oversight of the environmental restoration activities. The Department of Defense has determined it would not place a burden in excess of $100 million each year on State, local, and Tribal governments from implementing the Protocol.

In completing (in FY02) the initial inventory of MRS known or suspected to contain UXO, DMM, or MC, the DoD Components identified 2,307 MRS. The current estimate of the costs of munitions responses is in excess of $11.5 billion, which will be expended over many years. Although this is a significant expenditure, the proposed rule will not increase or decrease response costs, it will only prioritize the response effort among sites.

In determining the total burden placed on State oversight as a result of applying the Protocol at these MRS, a number of specific oversight steps are assumed. Assumptions regarding individual steps in Protocol application and the estimated time necessary to complete each step were based on experience gained during Protocol testing as well as DoD's experience in the application of other priority-setting models, such as the *Risk Assessment Code* (RAC) applied to FUDS and BRAC installations, the *Range Rule Risk Methodology* (R3M) used to screen explosives hazards, as well as other models. In addition, DoD has developed a significant body of experience in conducting activities similar to those required in application of the Protocol during the course of its execution of the DERP. DoD estimates that State regulators, when applying the Protocol to MRS, will first perform a preliminary document review. It is assumed that this step would include reviewing the Protocol materials and guidance; reviewing existing site background documents, such as USACE Archive Search Reports or State and local property records; and preparing materials for a site inspection. DoD assumes this step to take between 2 and 8 hours. DoD then assumes State regulators would perform a non-invasive site inspection, including a site walkthrough and various interviews with personnel familiar with the site. DoD assumes an after-action report, detailing the findings and results of the site inspection, would then be written

by the State regulators. For the site inspection, interviews, and after action report, DoD estimates this step to require between 3 and 24 hours. The final step in State oversight of applying the Protocol would be for the regulators to meet with DoD personnel to discuss and apply the Protocol to MRS using the available information. DoD estimates this step would require between 3 and 8 hours. In total, between 8 and 40 hours would be required for State oversight at each site.

An average labor cost of $24.25 per hour for oversight is assumed. To arrive at this average, DoD assumed an average yearly salary as $50,000, with 2,060 business hours per year. For the purposes of this estimate, DoD assumes a State would use a three-person team to accomplish all requirements of overseeing the application of the Protocol within their State. To this end, DoD estimates the approximate average per MRS cost for State oversight of administering the Protocol is between $194 and $2,910. These low and high site estimates translate into an estimated oversight cost of between $340,276 and $10,208,280 for the entire munitions response site inventory. In addition, since DoD reimburses States for the costs incurred as a result of oversight through the Defense and State Memorandum of Agreement (DSMOA) program, the overall impact to a State is further reduced.

Otherwise, the Protocol will not adversely affect the economy as a whole, any particular sector of the economy, productivity, competition, or jobs since the Protocol does not establish any new spending amounts. Rather, the Protocol merely provides guidance on allocating funds among the MRS.

The Protocol does not have a direct adverse effect on the environment, public health, and safety even though certain sites will be designated as a low priority and, as a result, not see response activities begin in the near-term. Any adverse effects were either a result the actions that caused the UXO, DMM, or MC to be present at the site (*e.g.*, use as a range, treatment of waste military munitions, all of which pre-date the application of the Protocol) or are the result of the munitions response activities that are implemented after the application of the Protocol. In the former instance, any effects should have been evaluated as part of the decision to undertake the actions. In the latter case, munitions response activities are undertaken under CERCLA and the NCP. The evaluation of response alternatives under CERCLA and the NCP has been determined by the U.S. Department of Justice (DOJ) to be the functional equivalent of an assessment under the National Environmental Policy Act (NEPA).

The Protocol also does not have any adverse affect on the economy, environment, public health, and/or safety programs of State, local, or Tribal governments or communities near a MRS. Again, any adverse effects were either a result of the actions that caused the UXO, DMM, or MC to be present at the site (*e.g.*, use as a range, treatment of waste military munitions, all of which pre-date the application of the Protocol) or are the result of the munitions response activities that are implemented after the application of the Protocol. With respect to impacts occurring as a result of the munitions response at the MRS, State, local, or Tribal governments are offered the opportunity to be involved in the planning and execution of the munitions response. The DoD has estimated that the cost of engaging or overseeing munitions response activities is not significant, as that measure is defined by Executive Order 12866. Further, DoD believes that the resources expended on oversight will be returned in the form of benefits to the community through reuse of the property.

For these reasons, DoD has determined that the Protocol will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities.

(2) The Protocol will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Implementation of the Protocol will not create a serious inconsistency or otherwise interfere with another agency's action because DoD has lead authority for administering the DERP under 10 U.S.C. 2701(a)(1). The DERP statute delineates the responsibilities of DoD and authority of EPA to some extent. The DoD is required by 10 U.S.C. 2701(a)(3) to consult with the EPA in its administration of the environmental restoration program. Further, Section 2701(c)(2) of the statute gives DoD the responsibility of conducting environmental restoration activities on all properties owned or leased by it, except those for which EPA has entered into a settlement with a potentially responsible party. The Protocol ranking system will not interfere with the Hazard Ranking System (HRS) maintained by the EPA because each serves its own purpose. EPA uses the HRS to place uncontrolled waste sites on the National Priorities List (NPL). EPA does not use the HRS to determine the priority in funding EPA remedial response actions. The DoD will use the Protocol to rank the risks posed by each site, relative to other sites, and may use the Protocol as a basis for determining which sites will receive funding. The DoD's use of the Protocol generally will not interfere with EPA's use of the HRS. DoD action may interfere with EPA action in a situation where EPA decides to pursue response action at a site that DoD has designated as a low priority. Where this occurs, DoD will cooperate with EPA to the extent possible and rely on existing interagency processes to reach agreement on site priorities and response actions. Based on the above reasoning, DoD has determined that there is minimal potential for inconsistencies or interference with action by any other agency.

(3) The Protocol does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

The Protocol will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof because no entitlements, grants, user fees, or loan programs are invoked through prioritization of sites for response activities.

(4) The Protocol will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Finally, the Protocol does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Regulatory Impact Analysis. Congress has already established the requirement for environmental restoration of MRS and for DoD's development of a Protocol for prioritization of MRS. The Protocol is merely a method for DoD to determine a relative priority of MRS for response action. DoD has identified no novel legal or policy issues that this Protocol will create on either a MRS-specific basis or overall. Nor has DoD identified any novel legal or policy issues arising out of the President's priorities or principles set forth in the Regulatory Impact Analysis.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), requires that an agency conduct a regulatory flexibility analysis when

publishing a notice of rulemaking for any proposed or final rule. The regulatory flexibility analysis determines the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). SBREFA amended the Regulatory Flexibility Act to require Federal agencies to state the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

DoD hereby certifies that the Protocol will not have a significant economic impact on a substantial number of small entities. The nature of the Protocol here provides the factual basis for a determination that no regulatory flexibility analysis is required. The Protocol merely provides a procedure by which DoD may prioritize MRS for remediation. No costs are directly imposed on small entities, nor is any action directly required of small entities through this Protocol. Because DoD bears the financial responsibility for remediating MRS, and the source of its funding is Congress, implementation of the Protocol will not directly affect small entities in a financial manner. For the foregoing reasons, DoD believes that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

C. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Section 202 of the UMRA requires that, prior to promulgating proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, the Agency must prepare a written statement, including a cost-benefit analysis of the rule. Under section 205 of the UMRA, DoD must also identify and consider a reasonable number of regulatory alternatives to the rule and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. Certain exceptions to section 205 exist. For example, when the requirements of section 205 are inconsistent with applicable law, section 205 does not apply. In addition, an Agency may adopt an alternative other than the least costly, most cost-effective, or least burdensome in those cases where the Agency publishes with the final rule an explanation of why such alternative was not adopted. Section 203 of the UMRA requires that the Agency develop a small government agency plan before establishing any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments. The small government agency plan must include procedures for notifying potentially affected small governments, providing officials of affected small governments with the opportunity for meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The DoD has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments in the aggregate, or by the private sector in any one year. The term "Federal mandate" means any provision in statute or regulation or any Federal court ruling that imposes "an enforceable duty" upon State, local, or Tribal governments, and includes any condition of Federal assistance or a duty arising from participation in a voluntary Federal program that imposes such a duty. The Protocol does not contain a Federal mandate because it imposes no enforceable duty upon State, Tribal or local governments. DoD is responsible for funding munitions responses and imposes no costs on other entities by prioritizing MRS using this Protocol. DoD recognizes that the State, local or Tribal government may expend funds to conduct oversight of the response activities. The Protocol, however, does not require such oversight. To the degree such oversight is required, it is required by pre-existing law on which the Protocol has no effect.

D. Paperwork Reduction Act

The Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, prohibits a Federal agency from conducting or sponsoring a collection of information that requires OMB approval, unless such approval has been obtained, and the collection request displays a currently valid OMB control number. Nor is any person required to respond to an information collection request that has not complied with the PRA. The term "collection of information" includes collection of information from ten or more persons. The DoD has determined that the PRA does not apply to this regulatory action because, although DoD will collect information on the MRS, it will not use people who are not agency personnel as the source of such information. Therefore, the PRA does not apply to this Protocol.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs Federal agencies to use voluntary consensus for technical standards in its regulatory activities, except in those cases in which using such standards would be inconsistent with applicable law or otherwise impractical. "Technical standards" means performance-based or design-specific technical specifications and related management systems practices. Voluntary consensus means that the technical standards are developed or adopted by voluntary consensus standards organizations. In those cases in which a Federal agency does not use voluntary consensus standards that are available and applicable, the agency must provide OMB with an explanation.

Proposal of this Protocol does not involve performance-based or design-specific technical specifications or related management systems practices. The values for relative risk used in the Relative Risk Site Evaluation module, to the extent they qualify as technical standards, were formed through consensus. The Protocol is therefore in compliance with the NTTAA.

F. Executive Order 12898: Environmental Justice

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," a Federal agency must, where practicable and appropriate, collect, maintain, and analyze information assessing and comparing environmental and human health risks borne by populations identified by race, national origin, or income. To the extent practical and appropriate, Federal agencies must then use this information to determine whether their activities have disproportionately high and adverse human health or environmental effects on minority populations and low-income populations.

DoD believes that implementation of this Protocol will address environmental justice concerns in several ways. First, the Protocol will address environmental justice by ensuring that prioritization is based primarily on risk to the human health and environment of all populations. The DoD recognizes that prioritization of MRS for response action could result a

low-priority designation for some MRS located in low-income or minority neighborhoods. Under the risk-based approach, however, such prioritization would result in environmental injustice only if low-income and minority populations were disproportionately located near low-risk MRS. If this is, in fact, the case, DoD will reassess its Protocol once an initial ranking is conducted. Second, DoD has reserved a step in the Protocol for consideration of environmental justice concerns, having supplemented the risk-based prioritization decision with consideration of whether low-income or minority populations are near the MRS. Third, because the Protocol will provide DoD with an established method for choosing which MRS to address first, it will ensure uniformity among decisions and eliminate the potential for intentional discrimination against low-income and minority populations. Finally, DoD's engagement with various stakeholders, most notably Native American governments, in developing the Protocol, has helped to build consideration of environmental justice concerns into the Protocol.

DoD plans to continue to study the environmental justice effects once the Protocol is implemented. Until that time, no data exists regarding whether low-income and minority populations live near high-risk MRS as opposed to low-risk MRS. As such, there is currently no way of determining whether generally focusing response efforts first at those MRS that pose a relatively higher risk will in any way adversely affect these segments of the population. DoD decided to include environmental justice considerations in the body of the Protocol as a precautionary measure, but will examine the effect of the Protocol on low-income and minority populations once DoD has implemented it and has data from which to draw.

At this time, DoD believes that no action will directly result from the proposed rule that will have a disproportionately high and adverse human health and environmental effect on any segment of the population. DoD will examine, however, the effects of implementation to ensure that no disproportionately high and adverse human health or environmental effect occurs.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), establishes certain requirements for Federal agencies issuing regulations, legislative comments, proposed legislation, or other policy statements or actions that have "Federal implications." Under the Executive Order, any of these agency documents or actions have "Federal implications" when they have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Section 6 of the Executive Order prohibits any agency from issuing a regulation that has Federal implications, imposes substantial direct compliance costs on State and local governments, and is not required by statute. Such a regulation may only be issued if the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. Further, a Federal agency may issue a regulation that has Federalism implications and preempts State law only if the agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have Federalism implications because it will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The statute authorizing DoD's environmental restoration program, 10 U.S.C. 2701, clearly defines the role and responsibilities of DoD with respect to State and local governments. The role and primary responsibility of DoD is to implement an appropriate environmental restoration program at MRS. The DoD funds environmental restoration activities and does not directly affect States in any manner. The only potential dispute regarding distribution of power may arise where the State attempts to require DoD to remediate its property under a State hazardous waste law, and DoD has not ranked the MRS as a high priority or allocated funding for environmental restoration of the MRS. Such a situation, however, would be dealt with per established legal principles regarding the relationship of States to the Federal government. The Protocol does not alter this relationship. Additionally, it would not be appropriate for this proposed rule to attempt to assign roles to DoD or any State because such assignment of roles is outside the scope of the statutory mandate. The Protocol does not impose direct compliance costs on State or local governments because DoD funds environmental restoration activities. Nevertheless, DoD consulted with State and local officials throughout development of this Protocol. Finally, development of a Protocol for prioritizing action at MRS was specifically required by statute. The requirements of section 6 of the Executive Order therefore do not apply to this rule.

List of Subjects in 32 CFR Part 179

Government property; Military personnel; Hazardous substances; Environmental protection.

Accordingly, 32 CFR part 179 is proposed to be added to Chapter 1, Subchapter H to read as follows:

PART 179—MUNITIONS RESPONSE SITE PRIORITIZATION PROTOCOL

Sec.

179.1 Purpose.
179.2 Applicability and scope.
179.3 Definitions.
179.4 Policy.
179.5 Responsibilities.
179.6 Procedures.
179.7 Sequencing.
Appendix A to 32 CFR part 179—Tables of the Munitions Response Site Prioritization Protocol

Authority: 10 U.S.C. 2710 *et seq.*

§ 179.1 Purpose.

The Department of Defense (DoD) is adopting this Munitions Response Site Prioritization Protocol (hereinafter referred to as the "Protocol") under the authority of 10 U.S.C. 2710. Provisions of 10 U.S.C. 2710 require that DoD assign to each munitions response site in the inventory required by 10 U.S.C. 2710(a) a relative priority for response activities based on the overall conditions at each location and taking into consideration various factors related to safety and environmental hazards.

§ 179.2 Applicability and scope.

(a) This part applies to the Office of the Secretary of Defense, the Military Departments, the Defense Agencies and the DoD Field Activities, and any other DoD organizational entity or instrumentality established to perform a government function (hereafter referred to collectively as the "DoD Components").

(b) This part and the Protocol described herein shall be applied at all locations:

(1) That are, or were, owned by, leased to, or otherwise possessed or used by the DoD, and

(2) That are known to, or suspected of, containing unexploded ordnance

(UXO), discarded military munitions (DMM), or munitions constituents (MC), and

(3) That are included in the inventory established pursuant to 10 U.S.C. 2710(a).

(c) This part and the Protocol described herein shall not be applied at the locations not included in the inventory required under 10 U.S.C. 2710(a). The locations not included in the inventory are:

(1) Locations that are not, or were not, owned by, leased to, or otherwise possessed or used by the DoD,

(2) Locations not known to, or suspected of, containing UXO, DMM, or MC,

(3) Locations outside the United States,

(4) Locations where the presence of military munitions resulted solely from combat operations,

(5) Operating military munitions storage and manufacturing facilities,

(6) Locations that are used for, or were permitted for, the treatment or disposal of military munitions, and

(7) Operational ranges.

§ 179.3 Definitions.

This part includes definitions for many terms that clarify its scope and applicability. Many of the terms relevant to this part are already defined, either in 10 U.S.C. 2710(e) or the Code of Federal Regulations. Where this is the case, the statutory and regulatory definitions are repeated here strictly for ease of reference. Unless used elsewhere in the U.S. Code or the Code of Federal Regulations, these terms are defined only for purposes of this part.

Barrier means a natural obstacle or obstacles (*e.g.*, difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (*e.g.*, fencing), and combinations of natural and man-made obstacles.

Chemical warfare agents (CWA) means the V- and G-series nerve agents, H-series (*i.e.*, "mustard" agents) and L (*i.e.*, lewisite) blister agents, and certain industrial chemicals used by the military as weapons, including hydrogen cyanide (AC), cyanogen chloride (CK), or carbonyl dichloride (called phosgene or CG). CWA does not include riot control agents (*e.g.*, w-chloroacetophenone (CN) and o-chlorobenzylidenemalononitrile (CS) tear gas), chemical herbicides, smoke or incendiary compounds, and industrial chemicals that are not configured as a military munition.

Chemical Warfare Material (CWM) is a general term that is comprised of four subcategories of specific materials:

(1) *CWM, explosively configured* are all munitions that contain a CWA fill and any explosive component. Examples are M55 rockets with CWA, the M23 VX mine, and the M360 105-mm GB artillery cartridge.

(2) *CWM, nonexplosively configured* are all munitions that contain a CWA fill but that do not contain any explosive components. Examples are any chemical munition that does not contain an explosive components and VX or mustard agent spray canisters.

(3) *CWM, bulk container* are all non-munitions-configured containers of CWA (*e.g.*, a ton container).

(4) *Chemical agent identification sets (CAIS)* are military training aids containing small quantities of various CWA and other chemicals. All forms of CAIS are scored the same in this Protocol, except CAIS K941, toxic gas set M–1; and K942, toxic gas set M–2/E11, which are scored higher due to the relatively large quantities of agent they contain.

Defense site means locations that are or were owned by, leased to, or otherwise possessed or used by the Department of Defense. The term does not include any operational range, operating storage or manufacturing facility, or facility that is used for or was permitted for the treatment or disposal of military munitions. (10 U.S.C. 2710(e)(1))

Department of Defense (DoD) Components means the Office of the Secretary of Defense, the Military Departments, the Defense Agencies, the DoD Field Activities, and any other DoD organizational entity or instrumentality established to perform a government function.

Discarded military munitions (DMM) means military munitions that have been abandoned without proper disposal or removed from storage in a military magazine or other storage area for the purpose of disposal. The term does not include unexploded ordnance, military munitions that are being held for future use or planned disposal, or military munitions that have been properly disposed of, consistent with applicable environmental laws and regulations. (10 U.S.C. 2710(e)(2))

Military munitions means all ammunition products and components produced for or used by the armed forces for national defense and security, including ammunition products or components under the control of the Department of Defense, the Coast Guard, the Department of Energy, and the National Guard. The term includes confined gaseous, liquid, and solid propellants, explosives, pyrotechnics, chemical and riot control agents, smokes, and incendiaries, including bulk explosives and chemical warfare agents, chemical munitions, rockets, guided and ballistic missiles, bombs, warheads, mortar rounds, artillery ammunition, small arms ammunition, grenades, mines, torpedoes, depth charges, cluster munitions and dispensers, demolition charges, and devices and components thereof. The term does not include wholly inert items, improvised explosive devices, and nuclear weapons, nuclear devices, and nuclear components, except that the term does include nonnuclear components of nuclear devices that are managed under the nuclear weapons program of the Department of Energy after all required sanitization operations under the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*) have been completed. (10 U.S.C. 2710(e)(3) and 40 CFR 260.10)

Military range means designated land and water areas set aside, managed, and used to research, develop, test, and evaluate military munitions, other ordnance, or weapon systems, or to train military personnel in their use and handling. Ranges include firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, and buffer zones with restricted access and exclusionary areas. (40 CFR 266.201)

Munitions constituents means any materials originating from unexploded ordnance, discarded military munitions, or other military munitions, including explosive and non-explosive materials, and emission, degradation, or breakdown elements of such ordnance or munitions. (10 U.S.C. 2710(e)(4))

Munitions response means response actions, including investigation, removal actions, and remedial actions, to address the explosives safety, human health, or environmental risks presented by unexploded ordnance (UXO), discarded military munitions (DMM), or munitions constituents (MC).

Munitions response area (MRA) means any area on a defense site that is known or suspected to contain UXO, DMM, or MC. Examples are former ranges or munitions burial areas. An MRA is comprised of one or more munitions response sites.

Munitions response site (MRS) means a discrete location within an MRA that is known to require a munitions response.

Operational range means a military range that is used for range activities, or a military range that is not currently being used but that is still considered by the Secretary to be a range area, is under the jurisdiction, custody, or control of the Department of Defense, and has not been put to a new use that is

incompatible with range activities. (10 U.S.C. 2710(e)(5))

Range activities means research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and the training of military personnel in the use and handling of military munitions, other ordnance, and weapons systems.

Unexploded ordnance (UXO) means military munitions that:

(1) Have been primed, fuzed, armed, or otherwise prepared for action;

(2) Have been fired, dropped, launched, projected, or placed in such a manner as to constitute a hazard to operations, installations, personnel, or material; and

(3) Remain unexploded either by malfunction, design, or any other cause. (10 U.S.C. 2710(e)(9) and 40 CFR 266.201)

United States means, in a geographic sense, the States, territories, and possessions and associated navigable waters, contiguous zones, and ocean waters of which the natural resources are under the exclusive management authority of the United States. (10 U.S.C. 2710(e)(10))

§ 179.4 Policy.

(a) In assigning a relative priority for response activities, DoD generally considers those MRS posing the greatest hazard as having the highest priority for action. The priority assigned should be based on the overall conditions at each location, taking into consideration various factors relating to safety and environmental hazard potential.

(b) It is DoD policy to ensure that EPA, other Federal agencies (as appropriate or required), State regulatory agencies, Native American or Alaskan Native Tribes, local restoration advisory boards (RABs) or technical review committees (TRCs), and local stakeholders are offered opportunities to participate in the application of the Protocol and making sequencing decisions.

§ 179.5 Responsibilities.

For the MRS in the inventory required under 10 U.S.C. 2710(a), each DoD Component shall:

(a) Apply the Protocol to each MRS:

(1) Under its administrative control.

(2) Within an MRA such that the total acreage of each MRA is evaluated.

(3) When sufficient data are available to populate all the data elements within at least one of the three hazard evaluation modules that comprise the Protocol.

(i) In such cases where data are not sufficient to populate one or two of the hazard evaluation modules (*e.g.*, there is no constituent sampling data for the relative risk site evaluation module), DoD Components will assign an MRS priority based on the hazard evaluation modules evaluated and reapply the Protocol once sufficient data to run the remaining hazard evaluation modules are available.

(ii) When an MRS comprises the total area of its MRA (*i.e.*, the MRA has either not been characterized such that more than one MRS has been delineated, or characterization has determined that further delineation is not necessary), DoD Components shall apply the Protocol to that MRS when sufficient data are available to populate all the data elements within at least one of the three hazard evaluation modules. Upon further delineation and characterization of the MRA into more than one MRS, Components shall reapply the Protocol to all MRS within the MRA.

(b) Ensure that EPA, other Federal agencies (as appropriate or required), State regulatory agencies, Native American or Alaskan Native Tribes, local RABs or TRCs, and local community stakeholders are offered opportunities as early as possible and throughout the process to participate in the application of the Protocol and making sequencing decisions.

(1) To ensure EPA, other Federal agencies, State regulatory agencies, Native American and Alaskan Native Tribes, and local government officials are aware of the opportunity to participate in the initial application of the Protocol, the DoD Component organization responsible for implementing a munitions response at the MRS shall send a certified letter to the heads of these organizations (or their designated point-of-contact), as appropriate, seeking their involvement. A copy of these letters will be placed in the Administrative Record and Information Repository for the MRS.

(2) To ensure the local community is aware of the opportunity to participate in the initial application of the Protocol, the DoD Component organization responsible for implementing a munitions response at the MRS shall publish an announcement in a local community publication requesting information pertinent to prioritization or sequencing decisions.

(c) Establish a quality assurance panel to review all MRS prioritization decisions. This panel will not include any participant involved in applying the Protocol to the MRS. If the panel recommends a change that results in a different priority, the DoD Component shall report, in the inventory data submitted to the Office of the Deputy Under Secretary of Defense (Installations & Environment), the rationale for this change. The DoD Component shall also provide this rationale to the appropriate regulatory agencies and involved stakeholders for comment before finalizing the change.

(d) Following the panel review, submit the results of applying the Protocol along with the other inventory data that 10 U.S.C. 2710(c) requires be made publicly available, to the ODUSD (I&E). ODUSD (I&E) shall publish this information in the *Defense Environmental Restoration Program Annual Report to Congress* for that fiscal year. If sequencing decisions result in action at an MRS with a lower MRS priority ahead of an MRS with a higher MRS priority, the DoD Component shall provide specific justification to ODUSD (I&E).

(e) Document in a Management Action Plan (MAP) or its equivalent all aspects of the munitions responses required at all MRS for which that MAP is applicable. DoD guidance requires that MAPs are developed and maintained at an installation (or Formerly Used Defense Site (FUDS) property) level. For the FUDS program, a State-wide MAP may also be developed.

(f) Sequencing decisions at installations and FUDS shall be developed with input from stakeholders, such as the regulatory and community members of an installation's RAB or TRC, and be documented in the MAP. Final sequencing may be impacted by DoD Component program management considerations. If the sequencing of any MRS is changed from the sequencing reflected in the current MAP, the DoD Component shall provide information to the stakeholders documenting the reasons for the sequencing change and shall request their review and comment on that decision.

(g) Ensure that information provided by stakeholders that may influence the MRS priority assigned or sequencing decision concerning an MRS is included in the Administrative Record and the Information Repository.

(h) Review each MRS priority, at least annually, and update the priority as necessary, to reflect new information. Reapplication of the Protocol is required under any of the following circumstances:

(1) Upon completion of a response action that could change site conditions evaluated by the hazard evaluation modules at the MRS.

(2) To update or validate a previous module evaluation at an MRS when new information is available.

(3) To update or validate an MRS priority that was previously assigned based on evaluation of only one or two of the three hazard evaluation modules.

(4) Upon further delineation and characterization of an MRA into MRS.

(5) To categorize any MRS previously classified as "evaluation pending."

§ 179.6 Procedures.

The Protocol is comprised of the following three hazard evaluation modules.

(a) *Explosive Hazard Evaluation (EHE) Module.* (1) The EHE module provides a single, consistent, DoD-wide approach for the evaluation of explosive hazards. This module is used when there is a known or suspected presence of an explosive hazard. The EHE module is composed of three factors, each of which is comprised of two to four data elements that are intended to assess the specific conditions at an MRS. These factors are:

(i) *Explosive hazard,* which has the data elements *Munitions Type and Source of Hazard* (see Appendix A to this part, Tables 1 and 2) and comprises 40 percent of the EHE module score.

(ii) *Accessibility,* which has the data elements *Location of Munitions, Ease of Access, and Status of Property* (see Appendix A to this part, Tables 3, 4, and 5) and comprises 40 percent of the EHE module score.

(iii) *Receptors,* which has the data elements *Population Density, Population Near Hazard, Types of Activities/Structures,* and *Ecological and/or Cultural Resources* (see Appendix A to this part, Tables 6, 7, 8, and 9) and comprises 20 percent of the EHE module score.

(2) Based on MRS-specific information, each data element is assigned a numeric value, and the sum of these values is the EHE module score. The EHE module score results in an MRS being placed into one of the following ratings (See Appendix A to this part, Table 10):

(i) *Hazard Evaluation A (Highest)* is assigned to MRS with an EHE module score of more than 91.

(ii) *Hazard Evaluation B* is assigned to MRS with an EHE module score between 82 and 91.

(iii) *Hazard Evaluation C* is assigned to MRS with an EHE module score between 71 and 81.

(iv) *Hazard Evaluation D* is assigned to MRS with an EHE module score of between 60 and 70.

(v) *Hazard Evaluation E* is assigned to MRS with an EHE module score of between 48 and 59.

(vi) *Hazard Evaluation F* is assigned to MRS with an EHE module score between 38 and 47.

(vii) *Hazard Evaluation G (Lowest)* is assigned to MRS with an EHE module score less than 38.

(3) There are also three other possible outcomes for the EHE module:

(i) *Evaluation pending.* This category is used when there are known or suspected UXO or DMM, but sufficient information is not available to populate the nine data elements of the EHE module.

(ii) *No longer required.* This category is reserved for MRS that no longer require an assigned priority because DoD has conducted a response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

(iii) *No Known or Suspected Explosive Hazard.* This rating is reserved for MRS that do not require evaluation under the EHE module.

(4) The EHE module rating shall be considered with the CHE and RRSE module ratings to determine the MRS priority.

(5) MRS lacking information for determining an EHE module rating shall be programmed for additional study and evaluated as soon as sufficient data are available. Until an EHE module rating is assessed, MRS shall be rated as "evaluation pending" for the EHE module.

(b) *Chemical Warfare Materiel Hazard Evaluation (CHE) Module.* (1) The CHE module provides an evaluation of the chemical hazards associated with the physiological effects of CWM. The CHE module is used only when CWM are known or suspected of being present at an MRS. Like the EHE module, the CHE module is comprised of three factors, each of which is comprised of two to four data elements that are intended to assess the conditions at an MRS.

(i) The *CWM Hazard* factor is comprised of two data elements, *CWM Configuration and Sources of CWM,* and constitutes 40 percent of the CHE score. (See Appendix A to this part, Tables 11 and 12.)

(ii) The *Accessibility* factor focuses on the potential for receptors to encounter the CWM known or suspected to be present on an MRS. This factor consists of three data elements, *Location of CWM, Ease of Access, and Status of Property,* and constitutes 40 percent of the CHE score. (See Appendix A to this part, Tables 13, 14, and 15.)

(iii) The *Receptor* factor focuses on the human and ecological populations that may be impacted by the presence of CWM. It has the data elements *Population Density, Population Near Hazard, Types of Activities/Structures,* and *Ecological and/or Cultural Resources* and constitutes 20 percent of the CHE score. (See Appendix A to this part, Tables 16, 17, 18, and 19.)

(2) Similar to the EHE module, each data element is assigned a numeric value, and the sum of these values (*i.e.*, the CHE module score) is used to determine the CHE rating (See Appendix A to this part, Table 20):

(i) *Hazard Evaluation A (Highest)* is assigned to MRS with a CHE score greater than 91.

(ii) *Hazard Evaluation B* is assigned to MRS with a CHE score between 82 and 91.

(iii) *Hazard Evaluation C* is assigned to MRS with a CHE score between 71 and 81.

(iv) *Hazard Evaluation D* is assigned to MRS with a CHE score between 60 and 70.

(v) *Hazard Evaluation E* is assigned to MRS with a CHE score between 48 and 59.

(vi) *Hazard Evaluation F* is assigned to MRS with a CHE score between 38 and 47.

(vii) *Hazard Evaluation G (Lowest)* is assigned to MRS with a CHE score less than 38.

(3) There are also three other potential outcomes for the CHE module:

(i) *Evaluation pending.* This category is used when there are known or suspected CWM, but sufficient information is not available to populate the nine data elements of the CHE module.

(ii) *No longer required.* This category is reserved for MRS that no longer require an assigned priority because DoD has conducted a response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

(iii) *No Known or Suspected CWM Hazard.* This category is reserved for MRS that do not require evaluation under the CHE module.

(4) The CHE rating shall be considered with the EHE module and RRSE module ratings to determine the MRS priority.

(5) MRS lacking information for assessing a CHE module rating shall be programmed for additional study and evaluated as soon as sufficient data are available. Until a CHE module rating is assigned, MRS shall be rated as "evaluation pending" for the CHE module.

(c) *Relative-Risk Site Evaluation (RRSE).* (1) The RRSE, described in the *Relative-Risk Site Evaluation Primer* (Summer 1997, Revised Edition) provides a single, consistent DoD-wide

approach for evaluating the relative risk to human health and the environment posed by chemical contamination present at an MRS (the *RRSE Primer* can be found in the publications section at *http://www.dtic.mil/envirodod*). The RRSE module shall be used for evaluating the potential hazards posed by munitions constituents (MC) and other chemical contaminants.

(2) Evaluation of three factors—contaminants present, environmental migration pathways, and receptors—applied to four media—soil, surface water, groundwater, and sediments—results in the placement of MRS into RRSE module ratings of "high," "medium," or "low." (See Table 21 of Appendix A to this part.)

(3) The RRSE module rating shall be considered with the EHE and CHE module ratings to determine the MRS priority.

(4) There are also two other potential outcomes for the RRSE module:

(i) *Evaluation pending.* This category is used when there are known or suspected MC or chemical contaminants, but sufficient information is not available to determine the RRSE module rating.

(ii) *No longer required.* This category is reserved for MRS that no longer require an assigned MRS priority because DoD has conducted a response, all objectives set out in the decision document for the MRS have been achieved, and no further action, except for long-term management and recurring reviews, is required.

(iii) MRS lacking information sufficient for assessing an RRSE module rating shall be programmed for additional study and evaluated as soon as sufficient data are available. Until an RRSE module rating is assigned, MRS shall be classified as "evaluation pending" for the RRSE module.

(d) *Determining the MRS Priority.* (1) An MRS priority is determined based on the ratings from the EHE, CHE, and RRSE modules (see Appendix A to this part, Table 22). Until all three hazard evaluation modules have been evaluated, the MRS priority shall be based on the results of the modules completed.

(2) Each MRS is assigned to one of eight MRS priorities based on the ratings of the three hazard evaluation modules, where Priority 1 indicates the highest potential hazard and Priority 8 the lowest potential hazard. Under the Protocol, only MRS with CWM can be assigned to Priority 1 and no MRS with CWM can be assigned to Priority 8.

(3) Where there is insufficient information to assess any of the three hazard evaluation modules, MRS shall receive an "evaluation pending" rating for that module. DoD shall develop program metrics focused on reducing the number of MRS with a status of "evaluating pending" for any of the three modules.

(4) A "prioritization not required" rating is used to indicate that a MRS no longer requires prioritization. This designation is used only when all three hazard evaluation modules are rated as "no longer required" or "no known or suspected explosive hazard" or "no known or suspected CWM hazard."

§ 179.7 Sequencing.

(a) *Sequencing considerations.* The sequencing of MRS for action shall be based primarily on the MRS priority determined through applying the Protocol. Generally, MRS that present a greater relative hazard to human health, safety, or the environment will be addressed before MRS that present a lesser relative hazard. Other factors, however, may warrant consideration when determining the sequencing for specific MRS. In evaluating other factors in its sequencing decisions, DoD will consider a broad range of issues. These "risk-plus" or "other" factors do not influence or change the MRS priority but may influence the sequencing for action. Examples of factors that DoD may consider are:

(1) Concerns expressed by stakeholders

(2) Cultural and social factors

(3) Economic factors, including economic considerations pertaining to environmental justice issues, economies of scale, evaluation of total lifecycle costs, and estimated valuations of long-term liabilities

(4) The findings of health, safety, or ecological risk assessments or evaluations based on MRS-specific data

(5) The reasonably anticipated future land use, especially when planning response actions, conducting evaluations of response alternatives, or establishing specific response action objectives

(6) Community reuse requirements at BRAC installations

(7) Tribal trust lands, which are lands held in trust by the United States for the benefit of any Indian Tribe or individual. The United States holds the legal title to the land and the Tribe holds the beneficial interest.

(8) Implementation and execution considerations (*e.g.*, funding availability; the availability of the necessary equipment and people to implement a particular action; examination of alternatives to responses that entail significant capital investments, a lengthy period of operation, or costly maintenance; considering alternatives to removal or treatment of contamination when existing technology cannot achieve established standards (*e.g.*, maximum contaminant levels)

(9) For responses to address UXO or DMM, the availability of technology to detect, discriminate, recover, and destroy the UXO or DMM

(10) Implementing standing commitments including those in formal agreements with regulatory agencies, requirements for continuation of remedial action operations until response objectives are met, other long-term management activities, and program administration

(11) Established program goals and initiatives

(12) Short-term and long-term ecological effects and environmental impacts in general, including injuries to natural resources.

(b) *Procedures and documentation for sequencing decisions.* (1) Each installation or FUDS is required to develop and maintain a MAP or its equivalent. Sequencing decisions, which will be documented in the MAP, at installations and FUDS shall be developed with input from stakeholders, such as the regulatory and community members of an installation's RAB or TRC. If the sequencing of an MRS is changed from the sequencing reflected in the current MAP, information documenting the reasons for the sequencing change will be provided for inclusion in the MAP. Notice of the change in the sequencing shall be provided to those stakeholders that provided input to the sequencing process.

(2) In addition to the information on prioritization, DoD Components shall ensure that information provided by stakeholders that may influence the sequencing of a MRS is included in the Administrative Record and the Information Repository.

(3) DoD Components shall report the results of sequencing to ODUSD (I&E) (or successor organizations). ODUSD (I&E) shall compile the sequencing results reported by each DoD Component and publish the sequencing in the *Defense Environmental Restoration Program Annual Report to Congress*. If sequencing decisions result in action at an MRS with a lower MRS priority ahead of MRS with a higher priority, specific justification shall be provided to ODUSD (I&E).

Appendix A to 32 CFR Part 179—Tables of the Munitions Response Site Prioritization Protocol

The tables in this Appendix are solely for use in implementing 32 CFR part 179.

TABLE 1.—CLASSIFICATIONS WITHIN THE EHE MODULE MUNITIONS TYPE DATA ELEMENT

Classification and description	Score
Sensitive:	
All UXO that are considered likely to function upon any interaction with exposed persons (*i.e.*, submunitions, cluster munitions, 40mm high-explosive grenades, white phosphorus (WP) munitions (including practice munitions with sensitive fuzes, but excluding all other practice munitions), and high explosive anti-tank (HEAT) munitions	30
All hand grenades containing an explosive filler	30
High explosive (used or damaged):	
All UXO containing a high-explosive filler (*e.g.*, RDX, Composition B) that are not considered "sensitive"	25
All DMM containing a high-explosive filler that have been damaged by burning or detonation	25
All DMM containing a high-explosive filler that have deteriorated to the point of instability	25
Pyrotechnic:	
All UXO containing pyrotechnic fillers other than white phosphorous (*e.g.*, flares, signals, simulators, smoke grenades)	20
All DMM containing pyrotechnic fillers other than white phosphorous (*e.g.*. flares, signals, simulators, smoke grenades) that have been damaged by burning or detonation or that have deteriorated to the point of instability	20
High explosive (unused):	
All DMM containing a high-explosive filler that have not been damaged by burning or detonation	15
All DMM containing a high explosive filler that are not deteriorated to the point of instability	15
Propellant:	
All UXO containing only a single-, double-, or triple-based propellant, or composite propellants (*e.g.*, a rocket motor)	15
All DMM containing only a single-, double-, or triple-based propellant, or composite propellants (*e.g.*, a rocket motor)	15
Bulk HE, pyrotechnics, or propellant:	
Bulk high explosives, including: demolition charges (*e.g.*, C4 blocks), high explosives not contained in a munition, and concentrated mixtures of high explosives or other munitions constituents mixed with environmental media or debris in concentrations that result in the mixture being explosive (*e.g.*, "explosive soil")	10
All pyrotechnic material that is not contained in a munition (*i.e.*, "bulk pyrotechnics")	10
All single-, double-, or triple-based propellant, or composite propellants that is not contained in a munition (*i.e.*, "bulk propellant")	10
Practice:	
All UXO that are a practice munition not associated with a sensitive fuze	5
All DMM that are a practice munition not associated with a sensitive fuze that have been damaged by burning or detonation	5
All DMM that are a practice munition not associated with a sensitive fuze that have deteriorated to the point of instability	5
Riot control: All UXO or DMM containing only a riot control agent (*e.g.*, tear gas)	3
Small arms: All UXO or DMM that are classified as small arms ammunition. Evidence that no other munitions type (*e.g.*, grenades, subcaliber training rockets, demolition charges) was used or is present on the MRS is required for selection of this category	2
Evidence of no munitions: Following investigation of the MRS, there is physical evidence there are no UXO or DMM present or there is historical evidence indicating that no UXO or DMM are present	0

Notes:

Former (as in "former range") means the MRS is a location that was: (1) closed by a formal decision made by the DoD Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.

Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

Practice munitions means munitions that contain an inert filler (*e.g.*, wax, sand, concrete), a spotting charge (*i.e.*, a pyrotechnic charge), and a fuze.

The term *small arms ammunition* means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

TABLE 2.—CLASSIFICATIONS WITHIN THE EHE MODULE SOURCE OF HAZARD DATA ELEMENT

Classification and description	Score
Former range: The MRS is a former military range where munitions (including practice munitions with sensitive fuzes) have been used. Such areas include: impact or target areas, associated buffer and safety zones, firing points, and live-fire maneuver areas.	10
Former munitions treatment (*i.e.*, OB/OD) unit: The MRS is a location where UXO or DMM (*e.g.*, munitions, bulk explosives, bulk pyrotechnic, or bulk propellants) were burned or detonated for the purpose of treatment prior to disposal	8
Former practice munitions range: The MRS is a former range on which only practice munitions without sensitive fuzes were used	6
Former maneuver area: The MRS is a former maneuver area where no munitions other than flares, simulators, smokes, and blanks were used. There must be evidence that no other munitions were used at the location to place an MRS into this category	5
Former burial pit or other disposal area: The MRS is a location where DMM were buried or disposed of (*e.g.*, disposed of into a water body) without prior thermal treatment	5
Former industrial operating facilities: The MRS is a location that is a former munitions manufacturing or demilitarization operating facility	4
Former firing points: The MRS is a firing point, when the firing point is delineated as an MRS separate from the rest of a former range	4
Former missile or air defense artillery emplacements: The MRS is a former missile defense or air defense artillery (ADA) emplacement not associated with a range	2
Former storage or transfer points: The MRS is a location where munitions were stored or handled for transfer between different modes of transportation (*e.g.*, rail to truck, truck to weapon system)	2

TABLE 2.—CLASSIFICATIONS WITHIN THE EHE MODULE SOURCE OF HAZARD DATA ELEMENT—Continued

Classification and description	Score
Former small arms range: The MRS is a former military range where only small arms were used. There must be evidence that no other type of munitions (*e.g.*, grenades) were used or are present at the location to place an MRS into this category	1
Evidence of no munitions: Following investigation of the MRS, there is physical evidence that no UXO or DMM are present, or there is historical evidence indicating that no UXO or DMM are present	0

Notes:

Former (as in "former range") means the MRS is a location that was: (1) closed by a formal decision made by the DoD Component with administrative control over the location, or (2) put to a use incompatible with the presence of UXO, DMM, or MC.

Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

Practice munitions means munitions that contain an inert filler (*e.g.*, wax, sand, concrete), a spotting charge (*i.e.*, a pyrotechnic charge), and a fuze.

The term *small arms ammunition* means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

TABLE 3.—CLASSIFICATIONS WITHIN THE EHE INFORMATION ON THE LOCATION OF MUNITIONS DATA ELEMENT

Classification and description	Score
Confirmed surface:	
Physical evidence indicates there are UXO or DMM on the surface of the MRS	25
Historical evidence (*e.g.*, a confirmed incident report or accident report) indicates there are UXO or DMM on the surface of the MRS	25
Confirmed subsurface, active:	
Physical evidence indicates the presence of UXO or DMM in the subsurface of the MRS and the geological conditions at the MRS are likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena (*e.g.*, drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (*e.g.*, plowing, construction, dredging) at the MRS that are likely to expose UXO or DMM	20
Historical evidence indicates that UXO or DMM are located in the subsurface of the MRS and the geological conditions at the MRS are likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena (*e.g.*, drought, flooding, erosion, frost, heat heave, tidal action), or there are on- going intrusive activities (*e.g.*, plowing, construction, dredging) at the MRS that are likely to expose UXO or DMM	20
Confirmed subsurface, stable:	
Physical evidence indicates the presence of UXO or DMM in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause UXO or DMM to be exposed	15
Historical evidence indicates that UXO or DMM are located in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause UXO or DMM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause UXO or DMM to be exposed	15
Suspected (physical evidence): There is physical evidence other than the documented presence of UXO or DMM, indicating that UXO or DMM may be present at the MRS	10
Suspected (historical evidence): There is historical evidence indicating that UXO or DMM may be present at the MRS	5
Subsurface, physical constraint: There is physical or historical evidence indicating the UXO or DMM may be present in the subsurface, but there is a physical constraint (*e.g.*, pavement, water depth over 120 feet) preventing direct access to the UXO or DMM	2
Small arms (regardless of location): The presence of small arms ammunitions is confirmed or suspected, regardless of other factors such as geological stability There must be evidence that no other types of munitions (*e.g.*, grenades) were used or are present at the MRS to include it in this category	1
Evidence of no munitions: Following investigation of the MRS, there is physical evidence there are no UXO or DMM present or there is historical evidence indicating that no UXO or DMM are present	0

Notes:

Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

In the subsurface means the munition (*i.e.*, a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.

On the surface means the munition (*i.e.*, a DMM or UXO) is: (1) entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (*e.g.*, as a result of tidal activity).

The term *small arms ammunition* means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

TABLE 4.—CLASSIFICATIONS WITHIN THE EHE EASE OF ACCESS DATA ELEMENT

Classification and description	Score
No barrier: There is no barrier preventing access to all parts of the MRS (*i.e.*, all parts of the MRS are accessible)	10
Barrier to MRS access is incomplete: There is a barrier preventing access to parts of the MRS but not the entire MRS	8
Barrier to MRS access is complete but not monitored: There is a barrier preventing access to all parts of the MRS, but there is no surveillance (*e.g.*, by a guard) to ensure that the barrier is effectively preventing access to all parts of the MRS	5

TABLE 4.—CLASSIFICATIONS WITHIN THE EHE EASE OF ACCESS DATA ELEMENT—Continued

Classification and description	Score
Barrier to MRS access is complete and monitored: There is a barrier preventing access to all parts of the MRS, and there is active, continual surveillance (*e.g.*, by a guard, video monitoring) to ensure that the barrier is effectively preventing access to all parts of the MRS	0

Note: *Barrier* means a natural obstacle or obstacles (*e.g.*, difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (*e.g.*, fencing), or a combination of natural and man-made obstacles.

TABLE 5.—CLASSIFICATIONS WITHIN THE EHE STATUS OF PROPERTY DATA ELEMENT

Classification and description	Score
Non-DoD control: The MRS is at a location that is no longer owned by, leased to, or otherwise possessed or used by the DoD. Examples are privately owned land or water bodies; land or water bodies owned or controlled by American Indian or Alaskan Native Tribes or State or local governments; and lands or water bodies managed by other Federal agencies	5
Scheduled for transfer from DoD control: The MRS is on land or is a water body that is owned, leased, or otherwise possessed by DoD, and DoD plans to transfer that land or water body to the control of another entity (*e.g.*, a State, American Indian, Alaskan Native, or local government; a private party; another Federal agency) within 3 years from the date the Protocol is applied	3
DoD control: The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the DoD. With respect to property that is leased or otherwise possessed, DoD must control access to the MRS 24-hours per day, every day of the calendar year	0

TABLE 6.—CLASSIFICATIONS WITHIN THE EHE POPULATION DENSITY DATA ELEMENT

Classification and definition	Score
> 500 persons per square mile There are more than 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data	5
100–500 persons per square mile: There are 100 to 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data	3
< 100 persons per square mile: There are fewer than 100 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data	1

Note: If an MRS is in more than one county, the DoD Component will use the largest population value among the counties. If the MRS is within or borders a city or town, the population density for the city or town instead of the county population density is used.

TABLE 7.—CLASSIFICATIONS WITHIN THE EHE POPULATION NEAR HAZARD DATA ELEMENT

Classification and description	Score
26 or more structures: There are 26 or more inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both	5
16 to 25: There are 16–25 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both	4
11 to 15: There are 11–15 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both	3
6 to 10: There are 6–10 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both	2
1 to 5: There are 1–5 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both	1
0: There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both	0

Note: The term *inhabited structures* means permanent or temporary structures, other than DoD munitions-related structures, that are routinely occupied by one or more persons for any portion of a day.

TABLE 8.—CLASSIFICATIONS WITHIN THE EHE TYPES OF ACTIVITIES/STRUCTURES DATA ELEMENT

Classification and description	Score
Residential, educational, commercial, or subsistence: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or, within the MRS's boundary that are associated with any of the following purposes: residential, educational, child care, critical assets (*e.g.*, hospitals, fire and rescue, police stations, dams), hotels, commercial, shopping centers, play grounds, community gathering areas, religious sites, or sites used for subsistence hunting, fishing, and gathering	5
Parks and recreational areas: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with parks, nature preserves or other recreational uses	4
Agricultural, forestry: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with agriculture or forestry	3
Industrial or warehousing: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with industrial activities or warehousing	2
No known or recurring activities: There are no known or recurring activities occurring up to 2 miles from the MRS's boundary or within the MRS's boundary	1

Note: The term *inhabited structures* means permanent or temporary structures, other than DoD munitions-related structures, are routinely occupied by one or more persons for any portion of a day.

TABLE 9.—CLASSIFICATIONS WITHIN THE EHE ECOLOGICAL AND/OR CULTURAL RESOURCES DATA ELEMENT

Classification and description	Score
Ecological and cultural resources present: There are both ecological and cultural resources present on the MRS	5
Ecological resources present: There are ecological resources present on the MRS	3
Cultural resources present: There are cultural resources present on the MRS	3
No ecological or cultural resources present: There are no ecological resources or cultural resources present on the MRS	0

Notes: *Ecological resources* means that: (1) A threatened or endangered species (designated under the Endangered Species Act (ESA)) is present on the MRS; or (2) the MRS is designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the MRS.

Cultural resources means there are recognized cultural, traditional, spiritual, religious, or historical features (*e.g.*, structures, artifacts, symbolism) on the MRS. For example, American Indians or Alaska Natives deem the MRS to be of religious significance or there are areas that are used by American Indians or Alaska Natives for subsistence activities (*e.g.*, hunting, fishing). Requirements for determining if a particular feature is a cultural resource are found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act.

TABLE 10.—DETERMINING THE EHE RATING FROM THE EHE MODULE SCORE

Overall EHE module score	EHE rating
The MRS has an overall EHE module score from 92 to 100	EHE Rating A
The MRS has an overall EHE module score from 82 to 91	EHE Rating B
The MRS has an overall EHE module score from 71 to 81	EHE Rating C
The MRS has an overall EHE module score from 60 to 70	EHE Rating D
The MRS has an overall EHE module score from 48 to 59	EHE Rating E
The MRS has an overall EHE module score from 38 to 47	EHE Rating F
The MRS has an overall EHE module score less than 38	EHE Rating G

TABLE 11.—CLASSIFICATIONS WITHIN THE CHE CWM CONFIGURATION DATA ELEMENT

Classification and description	Score
CWM, explosive configuration, either UXO or damaged DMM:	
The CWM known or suspected of being present at the MRS is:	
Explosively configured CWM that are UXO (*i.e.*, CWM/UXO)	30
Explosively configured CWM that are DMM that have been damaged (CWM/DMM)	30
CWM mixed with UXO: The CWM known or suspected of being present at the MRS are CWM/DMM that are co-mingled with conventional munitions that are UXO	25
CWM, explosive configuration that are DMM (unused): The CWM 20 known or suspected of being present at the MRS are explosively configured CWM/DMM that have not been damaged	20
CWM, not-explosively configured or CWM, bulk container:	
The CWM known or suspected of being present at the MRS is:	
Non-explosively configured CWM/DMM	15
Bulk CWM/DMM (*e.g.*, ton container)	15
CAIS K941 and CAIS K942: The CWM/DMM known or suspected of being present at the MRS is CAIS K941-toxic gas set M–1 or CAIS K942-toxic gas set M–2/E11	12
CAIS (chemical agent identification sets): The CWM known or suspected of being present at the MRS are only CAIS/DMM. The CAIS present cannot include CAIS K941, toxic gas set M–1; and K942, toxic gas set M–2/E11 for the MRS to be assigned this rating	10
Evidence of no CWM: Following investigation, the physical evidence indicates that CWM are not present at the MRS, or the historical evidence indicates that CWM are not present at the MRS	0

Notes:

The notation *CWM/DMM* means CWM that are DMM.

The term *CWM/UXO* means CWM that are UXO.

Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

TABLE 12.—CLASSIFICATIONS WITHIN THE CHE SOURCES OF CWM DATA ELEMENT

Classification and description	Score
Live-fire involving CWM:	
The MRS is a range that supported live-fire of explosively configured CWM and the CWM/UXO are known or suspected of being present on the surface or in the subsurface	10
The MRS is a range that supported live-fire with conventional munitions, and CWM/DMM are on the surface or in the subsurface co-mingled with conventional munitions that are UXO	10
Damaged CWM/DMM or CAIS/DMM, surface or subsurface: There are damaged CWM/DMM on the surface or in the subsurface at the MRS	10
Undamaged CWM/DMM or CAIS/DMM, surface: There are undamaged CWM/DMM on the surface at the MRS	10
Undamaged CWM/DMM, or CAIS/DMM, subsurface: There are undamaged CWM/DMM in the subsurface at the MRS	5
Production facilities of CWM or CAIS: The MRS is a facility that engaged in production of CWM, and there are CWM/DMM suspected of being present on the surface or in the subsurface	3

TABLE 12.—CLASSIFICATIONS WITHIN THE CHE SOURCES OF CWM DATA ELEMENT—Continued

Classification and description	Score
Research, Development, Testing, and Evaluation (RDT&E) facility using CWM or CAIS: The MRS is at a facility that was involved in non-live fire RDT&E activities (including static testing) involving CWM, and there are CWM/DMM suspected of being present on the surface or in the subsurface	3
Training facility using CWM or CAIS: The MRS is a location that was involved 2 in training activities involving CWM and/or CAIS (*e.g.*, training in recognition of CWA, decontamination training) and CWM/DMM are suspected of being present on the surface or in the subsurface	2
Storage or transfer points of CWM: The MRS is a former storage facility or transfer point (*e.g.*, inter-modal transfer) for CWM	1
Evidence of no CWM: Following investigation, the physical evidence indicates that CWM are not present at the MRS, or the historical evidence indicates that CWM are not present at the MRS	0

Notes:

The notation *CWM/DMM* means CWM that are DMM.

The term *CWM/UXO* means CWM that are UXO.

Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

In the subsurface means the CWM (*i.e.*, a DMM or UXO) is (1) Entirely beneath the ground surface, or (2) fully submerged in a water body.

On the surface means the CWM (*i.e.*, a DMM or UXO) is: (1) Entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (*e.g.*, as a result of tidal activity).

TABLE 13.—CLASSIFICATIONS WITHIN THE CHE INFORMATION ON THE LOCATION OF CWM DATA ELEMENT

Classification and description	Score
Confirmed surface:	
Physical evidence indicates there are CWM on the surface of the MRS	25
Historical evidence (*e.g.*, a confirmed incident report or accident report) indicates there are CWM on the surface of the MRS	25
Confirmed subsurface, active:	
Physical evidence indicates the presence of CWM in the subsurface of the MRS and the geological conditions at the MRS are likely to cause CWM to be exposed in the future by naturally occurring phenomena (*e.g.*, drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (*e.g.*, plowing, construction, dredging) at the MRS that are likely to expose CWM	20
Historical evidence indicates that CWM are located in the subsurface of the MRS and the geological conditions at the MRS are likely to cause CWM to be exposed in the future by naturally occurring phenomena (*e.g.*, drought, flooding, erosion, frost, heat heave, tidal action), or there are on-going intrusive activities (*e.g.*, plowing, construction, dredging) at the MRS that are likely to expose CWM	20
Confirmed subsurface, stable:	
Physical evidence indicates the presence of CWM in the subsurface of the MRS and the stable geological conditions at the MRS are not likely to cause CWM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause CWM to be exposed	15
Historical evidence indicates that CWM are located in the subsurface of the MRS and the geological conditions at the MRS are not likely to cause CWM to be exposed in the future by naturally occurring phenomena, or there are no intrusive activities occurring at the MRS that are likely to either occur, or if the activities do occur, are likely to cause CWM to be exposed	15
Suspected (physical evidence): There is physical evidence other than the documented presence of CWM, indicating that CWM may be present at the MRS	10
Suspected (historical evidence): There is historical evidence indicating that CWM may be present at the MRS	5
Subsurface, physical constraint: There is physical or historical evidence indicating the CWM may be present in the subsurface, but there is a physical constraint (*e.g.*, pavement, water depth over 120 feet) preventing direct access to the CWM	2
Evidence of no CWM: Following investigation of the MRS, there is physical evidence there is no CWM present or there is historical evidence indicating that no CWM are present	0

Notes:

Historical evidence means that the investigation: (1) Found written documents or records, or (2) documented interviews of persons with knowledge of site conditions, or (3) found and verified other forms of information.

Physical evidence means: (1) Recorded observations from on-site investigations, such as finding intact UXO or DMM, or components, fragments, or other pieces of military munitions, or (2) the results of field or laboratory sampling and analysis procedures, or (3) the results of geophysical investigations.

In the subsurface means the CWM (*i.e.*, a DMM or UXO) is (1) entirely beneath the ground surface, or (2) fully submerged in a water body.

On the surface means the CWM (*i.e.*, a DMM or UXO) is (1) entirely or partially exposed above the ground surface, or (2) entirely or partially exposed above the surface of a water body (*e.g.*, as a result of tidal activity).

The term *small arms ammunition* means solid projectile ammunition that is .50 caliber or smaller and shotgun shells.

TABLE 14.—CLASSIFICATIONS WITHIN THE CHE EASE OF ACCESS DATA ELEMENT

Classification and description	Score
No barrier: There is no barrier preventing access to all parts of the MRS (*i.e.*, all parts of the MRS are accessible)	10
Barrier to MRS access is incomplete: There is a barrier preventing access to parts of the MRS but not the entire MRS	8
Barrier to MRS access is complete but not monitored: There is a barrier preventing access to all parts of the MRS, but there is no surveillance (*e.g.*, by a guard) ensure that the barrier is effectively preventing access to all parts of the MRS	5

TABLE 14.—CLASSIFICATIONS WITHIN THE CHE EASE OF ACCESS DATA ELEMENT—Continued

Classification and description	Score
Barrier to MRS access is complete and monitored: There is a barrier preventing access to all parts of the MRS, and there is active continual surveillance (*e.g.*, by a guard, video monitoring) to ensure that the barrier is effectively preventing access to all parts of the MRS	0

Notes: *Barrier* means a natural obstacle or obstacles (*e.g.*, difficult terrain, dense vegetation, deep or fast moving water), a man-made obstacle or obstacles (*e.g.*, fencing), or a combination of natural and man-made obstacles.

TABLE 15.—CLASSIFICATIONS WITHIN THE CHE STATUS OF PROPERTY DATA ELEMENT

Classification and description	Score
Non-DoD control: The MRS is at a location that is no longer owned by, leased to, or otherwise possessed or used by the DoD. Examples are privately owned land or water bodies; land or water bodies owned or controlled by American Indian or Alaskan Native Tribes, or State or local governments; and lands or water bodies managed by other Federal agencies	5
Scheduled for transfer from DoD control: The MRS is on land or is a water body that is owned, leased, or otherwise possessed by control DoD, and DoD plans to transfer that land or water body to control of another entity (*e.g.*, a State, American Indian, Alaskan Native, or local government; a private party; another Federal agency) within 3 years from the date the Protocol is applied	3
DoD control: The MRS is on land or is a water body that is owned, leased, or otherwise possessed by the DoD. With respect to property that is leased or otherwise possessed, DoD controls access to the property 24-hours per day, every day of the calendar year	0

TABLE 16.—CLASSIFICATIONS WITHIN THE CHE POPULATION DENSITY DATA ELEMENT

Classification and definition	Score
> 500 persons per square mile: There are more than 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data	5
100–500 persons per square mile: There are 100 to 500 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data	3
< 100 persons per square mile: There are fewer than 100 persons per square mile in the county in which the MRS is located, based on U.S. Census Bureau data	1

Note: If an MRS is in more that one county, the DoD Component will use the largest population value among the counties. If the MRS is within or borders a city or town, the population density for the city or town instead of the county population density is used.

TABLE 17.—CLASSIFICATIONS WITHIN THE CHE POPULATION NEAR HAZARD DATA ELEMENT

Classification and description	Score
26 or more structures: There are 26 or more inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both	5
16 to 25: There are 16–25 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both	4
11 to 15: There are 11–15 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both	3
6 to 10: There are 6–10 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both	2
1 to 5: There are 1–5 inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both	1
0: There are no inhabited structures located up to 2 miles from the boundary of the MRS, within the boundary of the MRS, or both	0

Note: The term *inhabited structures* means permanent or temporary structures, other than DoD munitions-related structures, that are routinely occupied by one or more persons for any portion of a day.

TABLE 18.—CLASSIFICATIONS WITHIN THE CHE TYPES OF ACTIVITIES/STRUCTURES DATA ELEMENT

Classification and description	Score
Residential, educational, commercial, or subsistence: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with any of the following purposes: residential, educational, child care, critical assets (*e.g.*, hospitals, fire and rescue, police stations, dams), hotels, commercial, shopping centers, play grounds, community gathering areas, religious sites or sites used for subsistence hunting, fishing, and gathering	5
Parks and recreational areas: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary or within the MRS's boundary that are associated with parks, nature preserves or other recreational uses	4
Agricultural, forestry: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary, within the MRS's boundary that are associated with agriculture or forestry	3
Industrial or warehousing: Activities are conducted or inhabited structures are located up to 2 miles from the MRS's boundary, within the MRS's boundary that are associated with industrial activities or warehousing	2
No known or recurring activities: There are no known or recurring activities occurring up to 2 miles from the MRS's boundary or within the MRS's boundary	1

Notes: The term *inhabited structures* means permanent or temporary structures, other than DoD munitions-related structures, are routinely occupied by one or more persons for any portion of a day.

TABLE 19.—CLASSIFICATIONS WITHIN THE CHE ECOLOGICAL AND/OR CULTURAL RESOURCES DATA ELEMENT

Classification and description	Score
Ecological and cultural resources present: There are both ecological and cultural resources present on the MRS	5
Ecological resources present: There are ecological resources present on the MRS	3
Cultural resources present: There are cultural resources present on the MRS	3
No ecological or cultural resources present: There are no ecological resources or cultural resources present on the MRS	10

Notes:

Ecological resources means that: (1) A threatened or endangered species (designated under the Endangered Species Act (ESA)) is present on the MRS; or (2) the MRS is designated under the ESA as critical habitat for a threatened or endangered species; or (3) there are identified sensitive ecosystems such as wetlands or breeding grounds present on the MRS.

Cultural resources means there are recognized cultural, spiritual, traditional, religious, or historical features (*e.g.*, structures, artifacts, symbolism) on the MRS. For example, American Indians or Alaska Natives deem the MRS to be of spiritual significance or there are areas that are used by American Indians or Alaska Natives for subsistence activities (*e.g.*, hunting, fishing). Requirements for determining if a particular feature is a cultural resource are found in the National Historic Preservation Act, Native American Graves Protection and Repatriation Act, Archeological Resources Protection Act, Executive Order 13007, and the American Indian Religious Freedom Act.

TABLE 20.—DETERMINING THE CHE RATING FROM THE CHE MODULE SCORE

Overall CHE module score	CHE rating
The MRS has an overall CHE module score from 92 to 100	CHE Rating A
The MRS has an overall CHE module score from 82 to 91	CHE Rating B
The MRS has an overall CHE module score from 71 to 81	CHE Rating C
The MRS has an overall CHE module score from 60 to 70	CHE Rating D
The MRS has an overall CHE module score from 48 to 59	CHE Rating E
The MRS has an overall CHE module score from 38 to 47	CHE Rating F
The MRS has an overall CHE module score less than 38	CHE Rating G

TABLE 21.—RELATIVE RISK SITE EVALUATION MODULE HAZARD RATING

Contaminant hazard factor and receptor factor	Migration pathway		
	Evident	Potential	Confined
Significant:			
Identified	High	High	Medium
Potential	High	High	Medium
Limited	Medium	Medium	Low
Moderate:			
Identified	High	High	Low
Potential	High	Medium	Low
Limited	Medium	Low	Low
Minimal:			
Identified	High	Medium	Low
Potential	Medium	Low	Low
Limited	Low	Low	Low

TABLE 22.—MRS PRIORITY BASED ON HIGHEST HAZARD EVALUATION MODULE RATING

EHE module rating	Priority	CHE module rating	Priority	RRSE module rating	Priority
		Hazard Evaluation A (Highest)	1		
Hazard Evaluation A (Highest)	2	Hazard Evaluation B	2	High (highest)	2
Hazard Evaluation B	3	Hazard Evaluation C	3		
Hazard Evaluation C	4	Hazard Evaluation D	4		
Hazard Evaluation D	5	Hazard Evaluation E	5	Medium	5
Hazard Evaluation E	6	Hazard Evaluation F	6		
Hazard Evaluation F	7	Hazard Evaluation G (Lowest)	7		
Hazard Evaluation G (Lowest)	8			Low	8
No Longer Required		No Longer Required		No Longer Required	
Evaluation Pending		Evaluation Pending		Evaluation Pending	
No Known or Suspected Explosive Hazard.		No Known or Suspected CWM Hazard.			N/A

Dated: August 11, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 03–21013 Filed 8–21–03; 8:45 am]

BILLING CODE 5001–08–C

Federal Register

Friday,
August 22, 2003

Part V

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Substituted Federal Enforcement of Portions of Missouri's Permanent Regulatory Program and Findings on the Status of Missouri's Permanent Regulatory Program; Final Rule and Proposed Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Substituted Federal Enforcement of Portions of Missouri's Permanent Regulatory Program and Findings on the Status of Missouri's Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: On November 21, 1980, the Secretary of the Interior (the Secretary) conditionally approved the Missouri permanent regulatory program (Missouri program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). On August 4, 2003, we, the Office of Surface Mining Reclamation and Enforcement (OSM), notified the Governor of Missouri that serious problems exist that are adversely affecting implementation and enforcement of the Missouri program. The Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) is the regulatory authority responsible for implementing and enforcing the Missouri program. We also told the Governor that because of the severity of these problems, we must immediately substitute Federal enforcement for portions of the Missouri program in the areas of inspection, enforcement, permitting, and bonding activities. Therefore, in accordance with the provisions of our regulations, we are instituting direct Federal enforcement for those portions of the Missouri program that the MLRP is not adequately implementing or enforcing.

Because we believe that it is preferable that States hold the primary responsibility for regulating surface coal mining and reclamation operations, we will provide the MLRP with assistance and guidance, as necessary, to resolve the issues and to regain full authority for those portions of the Missouri program that are not being adequately implemented or enforced. This document also sets forth our findings regarding this action and the status of those portions of the Missouri program that the MLRP will continue to administer.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, 501 Belle Street, Alton, Illinois 62002. Telephone: (618) 463–6460. Internet address: *jcoleman@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program
II. OSM's Findings on the Status of the Missouri Program
III. OSM's Decision
IV. OSM's Actions and State Remedial Actions
V. Procedural Determinations

I. Background on the Missouri Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary conditionally approved the Missouri program on November 21, 1980. You can find background information on the Missouri program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the November 21, 1980, **Federal Register** (45 FR 77017). You can also find later actions concerning the Missouri program and program amendments at 30 CFR 925.10, 925.12, 925.15, and 925.16.

The Abandoned Mine Land Reclamation (AMLR) Program was established by Title IV of the Act (30 U.S.C. 1201 *et seq.*) in response to concerns over extensive environmental damage caused by past coal mining activities. The program is funded by a reclamation fee collected on each ton of coal that is produced. The money collected is used to finance the reclamation of abandoned coal mines and for other authorized activities. Section 405 of the Act allows States and Indian Tribes to assume exclusive responsibility for reclamation activity within the State or on Indian lands if they develop and submit to the Secretary for approval, a program (often referred to as a plan) for the reclamation of abandoned coal mines. Section 405(c) of the Act also requires States to have an approved State regulatory program before the Secretary can approve a State program for the reclamation of abandoned coal mines. On the basis of these criteria, the Secretary approved the Missouri plan on January 29, 1982. You can find background information on the Missouri plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the January 29, 1982, **Federal Register** (47 FR 4253). You can find later actions concerning the Missouri plan and amendments to the plan at 30 CFR 925.25.

Section 410 of SMCRA authorizes the Secretary to use funds under the AMLR program to abate or control emergency situations in which adverse effects of past coal mining pose an immediate danger to the public health, safety, or general welfare. In a **Federal Register** notice dated September 29, 1982 (47 FR 42729), we invited States to amend their AMLR plans for the purpose of undertaking emergency reclamation programs on our behalf. We approved Missouri's assumption of the AMLR emergency program on June 24, 1998. You can find background information, including our findings, the disposition of comments, and the approval of the Missouri AMLR emergency program in the June 24, 1998, **Federal Register** (63 FR 34277).

On June 19, 2003, the MLRP notified us that the Missouri Legislature passed House Bill (HB) 6 that appropriated funds for the Missouri program. HB 6 did not fully fund the Missouri program for the period beginning July 1, 2003, and ending June 30, 2004. The Governor of Missouri signed the appropriation bill on May 30, 2003 (Administrative Record No. MO–664).

On July 2, 2003, we met with the MLRP at the Missouri Department of Natural Resources' office in Jefferson City, Missouri (Administrative Record No. MO–664.1). During the meeting, the MLRP made a presentation, including a series of slides, describing the recently approved appropriation bill. HB 6 contained a severe cut in general revenue dollars available as State matching funds for the regulatory program. The MLRP advised us that the moneys that are available for the regulatory program would only be used for bond forfeiture reclamation activities. Also, the MLRP advised us that the State Legislature appropriated funds for the AMLR program. In addition, the MLRP explained that as of July 18, 2003, existing regulatory program staff, with the exception of four full-time employees, would be transferred to other programs and that it would not be able to implement and maintain its inspection, enforcement, permitting, or bond release responsibilities under the currently approved Missouri program. The four full-time employees would perform the bond forfeiture reclamation activities that were funded by the State Legislature. The MLRP indicated that it

would try to gain full program funding from the Missouri Legislature next year.

On July 11, 2003, the MLRP notified the Missouri coal operators that the Legislature had decided, through the budget process, to withhold funding and staffing for the Missouri program. The MLRP also notified the operators that after July 18, 2003, it would no longer be available for surface coal mining and reclamation regulatory issues (Administrative Record No. MO–664.2).

On July 21, 2003, the Governor of Missouri notified us that the State of Missouri is experiencing difficult budget and revenue shortfalls (Administrative Record No. MO–664.3). As a result of the revenue shortfalls, he requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. He indicated that Missouri continues to have adequate funding and staff available to maintain design and reclamation efforts for bond forfeiture sites, as well as sufficient funding and staff to maintain the AMLR program, including the emergency program. He also indicated that he was hopeful his request would be temporary and that he would continue to work with the Legislature in an attempt to assure adequate funding for all of Missouri's regulatory program responsibilities.

On August 4, 2003, we notified the Governor of Missouri that we were obligated, in accordance with 30 CFR 733.12(e), to substitute Federal enforcement for those portions of the Missouri program that were not fully funded and staffed (Administrative Record No. MO–664.4). We cited Missouri's failure to fund and staff the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities.

All Missouri Administrative Record documents from MO–664 (June 19, 2003) through MO–664.4 (August 4, 2003) are being considered in this rulemaking.

II. OSM's Findings on the Status of the Missouri Program

On the basis of the record described above, we are making the following findings in accordance with sections 504 and 521(b) of SMCRA and 30 CFR 733.12.

A. Inspection and Enforcement

The MLRP currently has approximately 46 active and inactive mine sites to inspect. By State law, each active site requires four complete and eight partial inspections per year. Inactive sites require four complete inspections per year and sufficient partial inspections to ensure compliance with the State program. On July 2, 2003, the MLRP notified us that effective July 18, 2003, existing regulatory program staff, including inspection and enforcement staff, would be transferred to other programs. Therefore, we find that the MLRP does not have the program staff necessary to implement and maintain its inspection and enforcement provisions in the Code of State Regulations (CSR) at 10 CSR 40–8.030 or its civil and criminal penalty provisions at 10 CSR 40–8.040 and 40–8.045. Thus, the MLRP cannot effectively implement, maintain, or enforce the inspection and enforcement aspects of the approved Missouri program and has not demonstrated that it intends to administer these aspects of the program.

B. Permitting

The MLRP currently has one new permit and several permit revisions that are pending review for possible approval. On July 2, 2003, the MLRP notified us that effective July 18, 2003, existing regulatory program staff, including permitting staff, would be transferred to other programs. Therefore, we find that the MLRP does not have the program staff necessary to implement and maintain its permitting provisions at 10 CSR 40–6.010 through 40–6.120. Thus, the MLRP cannot effectively implement, maintain, or enforce this permitting aspect of the approved Missouri program and has not demonstrated that it intends to administer this aspect of the program.

C. Bonding

1. Performance Bond Requirements

On July 2, 2003, the MLRP told us that effective July 18, 2003, existing regulatory program staff, with the exception of bond forfeiture reclamation staff, would be transferred to other programs. Therefore, we find that the MLRP does not have the program staff necessary to implement and maintain its general bonding provisions at 10 CSR 40–7.011, bond release provisions at 10 CSR 40–7.021, or bond forfeiture provisions at 10 CSR 40–7.031, with the exception of 10 CSR 40–7.031(3) concerning bond forfeiture reclamation activities. Thus, the MLRP cannot effectively implement, maintain, or enforce all of the bonding aspects of the approved Missouri program and has not demonstrated that it intends to administer these aspects, with the exception of bond forfeiture reclamation activities.

2. Bond Forfeiture Reclamation Activities

On July 2, 2003, Missouri told us that the Missouri Legislature appropriated funds for bond forfeiture reclamation. Missouri indicated that it would use the funds to provide four full-time regulatory program staff to implement this activity. Missouri had approximately 33 sites with bonds forfeited and collected that were unreclaimed as of September 30, 2002. In our 2002 annual evaluation report for Missouri, we found that the State took several actions to improve the effectiveness of its bond forfeiture reclamation. The MLRP developed a work plan for completing reclamation at several forfeiture sites and instituted changes in its internal procedures for handling forfeiture projects. Therefore, we find that Missouri has the program staff necessary to implement, maintain, and enforce the bond forfeiture reclamation requirements of the approved Missouri program.

III. OSM's Decision

Having reviewed and considered all available information on the MLRP's capability and intent to implement, maintain, and enforce the Missouri program, we made the following determinations.

Missouri has indicated its intent to take steps to resolve the funding and staffing issues for the entire program. For this reason, we find that, at this time, withdrawing approval of Missouri's program is not justified.

We determined that the MLRP does have sufficient funding and staff to implement and maintain bond forfeiture reclamation activities. We also determined that the MLRP does not have adequate staff and resources to implement all other aspects of its program. To ensure that the adverse effects of surface mining are controlled as required under SMCRA, we must assume the responsibility for enforcement of parts of the Missouri program until the MLRP is able to administer all segments of its program.

We will directly enforce the inspection and enforcement provisions, the permitting provisions, and the bonding and insurance provisions, with the exception of bond forfeiture reclamation activities.

We have developed a process by which the MLRP could resume full authority for all aspects of the approved Missouri program. Failure by the MLRP to seek and obtain full authority for the Missouri program or failure by the MLRP to perform satisfactorily in the areas in which it retains enforcement

authority will result in additional Federal action.

To implement this decision, we are amending the Federal regulations at 30 CFR part 925, which codify decisions concerning the Missouri program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a)(3) of SMCRA requires that a State's program demonstrate that the State regulatory authority has sufficient administrative and technical personnel and sufficient funding to enable the State to regulate surface coal mining and reclamation operations in accordance with the requirements of SMCRA. Effective July 18, 2003, Missouri no longer had sufficient administrative and technical personnel or adequate funding to implement, maintain, and enforce its approved program. Therefore, Federal enforcement of Missouri's program must be made effective immediately to ensure the protection of the public through effective control of surface coal mining and reclamation operations in the State.

IV. OSM Actions and State Remedial Actions

A. Direct Federal Enforcement of the Missouri Program

Starting on August 22, 2003, we will directly implement, administer and enforce the Missouri program requirements to the extent outlined below in accordance with the enforcement provisions of SMCRA and the Federal regulations. The authority of the MLRP to implement the Missouri program is suspended with regard to those provisions listed below, with the following exceptions. With respect to State enforcement actions initiated before the effective date of this notice, the MLRP will have authority to take administrative actions to process outstanding violations to a final disposition (including issuing proposed assessments, assessing penalties, holding informal conferences and hearings, and collecting penalties). However, any actions by the MLRP to terminate or vacate enforcement actions will not take effect until we approve them. With respect to State bond forfeiture actions initiated before the effective date of this notice, the MLRP will have authority to perform bond forfeiture reclamation activities.

1. Inspection and enforcement

a. We will conduct inspections of all coal exploration and surface coal mining and reclamation operations, including bond release inspections, in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267, 1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. With respect to enforcement actions initiated by the MLRP before the effective date of this decision, we will conduct follow-up inspections at all sites with outstanding violations on or after the abatement dates specified in the State-issued notices of violation.

b. We will issue, modify, enforce, and terminate notices of violation, cessation orders, and show cause orders in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1257, 1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. With respect to enforcement actions initiated by the MLRP before the effective date of this decision, we will reinspect the site and if the operator has not abated the violation by the abatement date set in the State-issued notice of violation, we will take appropriate enforcement action. We will issue a notice of violation for any violation observed by us that has not been previously cited by the MLRP. We will issue a cessation order for any condition or practice that creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

c. We will impose civil and criminal sanctions, as appropriate, for violations of the approved Missouri program in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267, 1268, 1271, 1275, and 1276), 30 CFR parts 843 through 845, and 43 CFR part 4.

d. We will promptly inform the MLRP of the results of all follow-up inspections conducted and of enforcement actions taken that pertain to enforcement actions initiated by the MLRP before the effective date of this decision.

e. Administrative and judicial review of our enforcement actions will be in accordance with 43 CFR part 4.

2. Permitting

a. We will review all new applications and issue all new permits, permit revisions, permit renewals, transfer and assignment or sale of permit rights for all surface coal mining and reclamation operations in accordance with the approved Missouri program at sections 444.815 through 444.825, 444.835 through 444.845, and 444.850 of the Missouri Surface Coal Mining Law (MSCML) and 10 CSR 40–6.010 through 40–6.120. This includes pending permit actions for which the MLRP has not made a final decision.

b. Permit fees are required in accordance with section 444.820.1 of MSCML and 10 CSR 40–6.010(6). The fees for all new permitting actions must be submitted to and made payable to OSM.

c. Administrative and judicial review of our permit decisions will be in accordance with sections 525 and 526 of SMCRA (30 U.S.C. 1275 and 1276), 30 CFR part 775, and 43 CFR part 4.

3. *Bonding*

a. We will determine the amount of the performance bonds for new permitting actions in accordance with section 509 of SMCRA and 30 CFR part 800.

b. We will maintain the amount of the performance bonds for existing permits in accordance with the Missouri program at section 444.830 of MSCML and 10 CSR 40–7.011.

c. We will review and make decisions on performance bond release requests for new and existing permits in accordance with the Missouri program at section 444.875 of MSCML and 10 CSR 40–7.021. For existing bonds, we will make the required determinations for the amount of the bond to be released and submit the determinations to the MLRP for release.

d. New performance bonds must be made payable to the "United States of America and State of Missouri," and they must be submitted to OSM.

e. Administrative and judicial review of our performance bond determinations will be in accordance with 43 CFR part 4.

B. State Remedial Actions

To demonstrate its intent and capability to fully implement the Missouri program as approved by the Secretary, we will require the MLRP to complete the following remedial actions. Failure of the MLRP to accomplish these remedial measures could lead to our recommending to the Secretary that approval of the State program be withdrawn.

1. By August 22, 2003, the MLRP must submit to us a list of all outstanding enforcement actions specifying the abatement date set for each cited violation.

2. In accordance with the requirements of the approved Missouri program, the MLRP must complete administrative disposition of all enforcement actions that were initiated before the effective date of this decision.

3. Not later than 30 days from the effective date of this decision, the MLRP must submit to us a plan to reassume full authority for the Missouri program. At a minimum, the proposal must

provide specific and adequate provisions that address the following problems:

a. *Funding:* The proposal must demonstrate to our satisfaction a commitment to fully fund the Missouri program.

b. *Staffing:* The proposal must demonstrate to our satisfaction a commitment to hire a sufficient number of qualified personnel to comply with all inspection and enforcement, permitting, and bonding requirements of the Missouri program.

c. *Adherence to Approved Program:* The proposal must include provisions, policy statements, and other affirmative evidence sufficient to assure us that the MLRP will be in full compliance at all times with the provisions of the Missouri program.

4. Starting three months after the effective date of this decision, the MLRP must submit to us a report once every three months on its progress in obtaining full funding for the Missouri program.

5. Effective September 8, 2003, the MLRP must take all steps necessary to ensure that all records, documents, correspondence, inspector logs, etc. are made secure and to supply copies of all documents to us upon request.

C. Resumption of State Authority

In order to resume regulatory authority over any portion of the inspection and enforcement, permitting, and bonding aspects of the Missouri program, the MLRP must formally petition us. We will entertain such a petition upon completion of the actions listed above under "State Remedial Actions."

Before making a decision to allow the MLRP to resume regulatory authority over any portion of the inspection and enforcement, permitting, or bonding operations, we will schedule a public comment period and hold a public hearing as outlined under 30 CFR 925.19. On the basis of the information available to us, we will determine if the MLRP will be allowed to resume regulatory authority over the Missouri program.

D. 30 CFR 733 Action

We will publish any additional findings and decisions on this action in the **Federal Register** and will amend 30 CFR part 925 accordingly. A notice announcing a public comment period and opportunity for a hearing on Missouri's implementation of its program and our substitution of Federal enforcement may be found else where in this edition of the **Federal Register**.

E. Funding

We have decided that we will not provide additional grant funds to the MLRP for initiating new projects under the approved Missouri AMLR program under Title IV of SMCRA. We will review the status of any uninitiated projects that are currently funded under one or more AMLR construction grants as well as any high-priority proposed projects and take action as appropriate. Also, Missouri currently administers for us the AML emergency program in the State. We will continue to fund this program, as needed.

Because the MLRP's regulatory authority and responsibilities are being modified, funding under future administration and enforcement grants for implementation of the Missouri program must reflect actual regulatory authority responsibilities. The MLRP may submit an application for a new administration and enforcement grant based on its modified responsibilities.

V. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. This determination is based on the fact that the Missouri program does not regulate coal exploration and surface coal mining and reclamation operations on Indian lands. Therefore, the Missouri program has no effect on Federally-recognized Indian tribes.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute

major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that the substitution of Federal enforcement for portions of Missouri's permanent regulatory program will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule is not expected to result in additional costs to the regulated industry.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the rule is not expected to result in additional costs to the regulated industry.

Unfunded Mandates

The substitution of Federal enforcement for portions of Missouri's permanent regulatory program will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the nature of the action being taken.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 15, 2003.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

■ For the reasons set out in the preamble, 30 CFR part 925 is amended as set forth below:

PART 925—MISSOURI

■ 1. The authority citation for part 925 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Add section 925.17 to read as follows:

§ 925.17 Direct Federal enforcement of the Missouri program.

Starting on August 22, 2003, OSM will directly implement, administer and enforce the Missouri program requirements to the extent outlined below in accordance with the enforcement provisions of SMCRA and the Federal regulations. The authority of the Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) to implement the Missouri regulatory program is suspended with regard to those provisions listed below, with the following exceptions. With respect to State enforcement actions initiated before August 22, 2003, the MLRP will have authority to take administrative actions to process outstanding violations to a final disposition (including issuing proposed assessments, assessing penalties, holding informal conferences and hearings, and collecting penalties). However, any actions by the MLRP to terminate or vacate enforcement actions will not take effect until we approve them. With respect to bond forfeiture actions initiated before August 22, 2003, the MLRP will have authority to perform bond forfeiture reclamation activities.

(a) OSM will conduct inspections of all coal exploration and surface coal mining and reclamation operations, including bond release inspections, in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267, 1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. With respect to enforcement actions initiated by the MLRP before August 22, 2003, we will conduct follow-up inspections at all sites with outstanding violations on or after the abatement dates specified in the State-issued notices of violation.

(b) OSM will issue, modify, enforce, and terminate notices of violation, cessation orders, and show cause orders for violations of the approved Missouri program, in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1257, 1268, 1271, 1275, and 1276), 30 CFR parts 842 through 845, and 43 CFR part 4. With respect to enforcement actions initiated by the MLRP before August 22, 2003, we will reinspect the site and if the operator has not abated the violation by the abatement date set in the State-issued notice of violation, we will take appropriate enforcement action. We will issue a notice of violation for any violation observed by us that has not been previously cited by the MLRP. We will issue a cessation order for any condition or practice that creates an imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

(c) OSM will impose civil and criminal sanctions, as appropriate, for violations of the Missouri program in accordance with sections 517, 518, 521, 525, and 526 of SMCRA (30 U.S.C. 1267, 1268, 1271, 1275, and 1276), 30 CFR parts 843 through 845, and 43 CFR part 4.

(d) OSM will promptly inform the MLRP of the results of all follow-up inspections conducted and of enforcement actions taken that pertain to enforcement actions initiated by the MLRP before August 22, 2003.

(e) OSM will review all new applications and issue all new permits, permit revisions, permit renewals, transfer and assignment or sale of permit rights for all surface coal mining and reclamation operations in accordance with the approved Missouri program at sections 444.815 through 444.825, 444.835 through 444.845, and 444.850 of the Missouri Surface Coal Mining Law (MSCML) and 10 CSR 40–6.010 through 40–6.120. This includes pending permit actions for which the MLRP has not made a final decision. Administrative and judicial review will be in accordance with sections 525 and 526 of SMCRA (30 U.S.C. 1275 and 1276), 30 CFR part 775, and 43 CFR part 4.

(f) Permit fees are required in accordance with section 444.820.1 of MSCML and 10 CSR 40–6.010(6). The fees for all new permitting actions must be submitted to and made payable to OSM.

(g) OSM will determine the amount of the performance bonds for new permitting actions in accordance with section 509 of SMCRA and 30 CFR part 800.

(h) OSM will maintain the amount of the performance bonds for existing permits in accordance with the Missouri program at section 444.830 of MSCML and 10 CSR 40–7.011.

(i) OSM will review and make decisions on performance bond release requests for new and existing permits in accordance with the Missouri program at section 444.875 of MSCML and 10 CSR 40–7.021. For existing bonds, we will make the required determinations

for the amount of the bond to be released and submit the determinations to the MLRP for release.

(j) Performance bonds must be made payable to the "United States of America and State of Missouri," and they must be submitted to OSM.

(k) Administrative and judicial review of OSM's enforcement actions, permitting decisions, and performance bond determinations will be in accordance with 43 CFR part 4.

■ 3. Add section 925.18 to read as follows:

§ 925.18 State remedial actions.

As a prerequisite to the Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) reassuming authority to implement the provisions of the Missouri program that are being directly enforced by OSM, as specified under 30 CFR 936.17, the MLRP must complete the remedial measures specified below to demonstrate its intent and capability to fully implement the Missouri program.

(a) By August 22, 2003, the MLRP must submit to OSM a list of all outstanding enforcement actions specifying the abatement date set for each cited violation.

(b) In accordance with the requirements of the approved Missouri program, the MLRP must complete administrative disposition of all enforcement actions that were initiated before the effective date of this decision.

(c) Not later than September 22, 2003, the MLRP must submit to OSM a plan to reassume full authority for the Missouri program. At a minimum, the proposal must provide specific and adequate provisions that address the following problems:

(1) *Funding:* The proposal must demonstrate to the satisfaction of OSM a commitment to fully fund the Missouri program.

(2) *Staffing:* The proposal must demonstrate to the satisfaction of OSM a commitment to hire a sufficient number of qualified personnel to comply with all inspection and enforcement, permitting, and bonding requirements of the approved Missouri program.

(3) *Adherence to Approved Program:* The proposal must include provisions, policy statements, and other affirmative evidence sufficient to assure OSM that the MLRP will be in full compliance at all times with the provisions of the Missouri program.

(d) Starting November 20, 2003, the MLRP must submit to OSM a report once every three months on its progress in obtaining full funding for the Missouri program.

(e) Effective September 8, 2003, the MLRP must take all steps necessary to ensure that all records, documents, correspondence, inspector logs, etc. are made secure and to supply copies of all documents to OSM upon request.

■ 4. Add § 925.19 to read as follows:

§ 925.19 Termination of Federal enforcement of the Missouri program.

(a) OSM will consider returning to the MLRP the authority suspended under 30 CFR 925.17 provided the following requirements have been met:

(1) The MLRP accomplished to the satisfaction of OSM all remedial actions specified under 30 CFR 925.18.

(2) The MLRP petitioned OSM in writing to consider returning authority to the State.

(b) Upon satisfaction of the requirements specified in paragraph (a) of this section, OSM will schedule a public comment period and hearing on the MLRP's request.

(c) Following the close of the hearing and the comment period, OSM will announce in the **Federal Register** its decision to grant in whole or in part, or to deny the MLRP's request.

(d) Following OSM's decision to grant, in part, or to deny the MLRP's request, we will publish in the **Federal Register** further actions the MLRP will be required to take and the timeframes for taking such actions before OSM will consider a second request from the MLRP to return authority to the State.

[FR Doc. 03–21475 Filed 8–21–03; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Public comment period and opportunity for a public hearing.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), have reason to believe that Missouri is not adequately implementing, administering, maintaining, or enforcing its approved regulatory program (Missouri program) to regulate surface coal mining and reclamation operations. Also, based on the information that we currently have, we are substituting Federal enforcement for portions of the Missouri program in accordance with our regulations. We have scheduled a public comment period and opportunity for a public hearing to provide an opportunity for interested persons to express their concerns on Missouri's implementation of its program and our substitution of Federal enforcement for portions of the Missouri program.

This document gives the purposes, dates, and time for the public comment period during which interested persons may submit written comments on Missouri's implementation of its program and on our decision to substitute Federal enforcement for portions of the Missouri program. This document also includes the procedures that we will follow for a public hearing, if one is requested. We are publishing our findings and decision on the substitution of Federal enforcement for portions of the Missouri program in a separate **Federal Register** document.

DATES: We will accept written comments until 4 p.m., c.d.t., September 22, 2003. If requested, we will hold a public hearing on September 16, 2003. We will accept requests to speak at a hearing until 4 p.m., c.d.t. on September 8, 2003. We must receive public comments before 4 p.m., c.d.t., on September 22, 2003 at the address listed below, in order to be considered in our findings on the status of the Missouri program.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to John W. Coleman, Mid-Continent Regional Coordinating Center, at the address listed below.

You may review copies of all administrative record documents referenced in this document and all written comments received in response to this document at the address listed below during normal business hours, Monday through Friday, excluding holidays. John W. Coleman, Mid-Continent Regional Coordinating Center, Office of Surface Mining, 501 Belle Street, Alton, Illinois 62002, Telephone: (618) 463–6460, Internet address: *jcoleman@osmre.gov*.

FOR FURTHER INFORMATION CONTACT: John W. Coleman, Mid-Continent Regional Coordinating Center. Telephone: (618) 463–6460. Internet address: *jcoleman@osmre.gov*.

SUPPLEMENTARY INFORMATION: On June 19, 2003, the Missouri Department of Natural Resources, Air and Land Protection Division, Land Reclamation Program (MLRP) notified us that the Missouri Legislature passed House Bill (HB) 6 that appropriated funds for the Missouri program. In HB 6, the Missouri Legislature did not fully fund the Missouri program for the period beginning July 1, 2003, and ending June 30, 2004. The Governor of Missouri signed the appropriation bill on May 30, 2003 (Administrative Record No. MO–664).

On July 2, 2003, we met with the MLRP at the Missouri Department of Natural Resources' office in Jefferson City, Missouri (Administrative Record No. MO–664.1). During the meeting, the MLRP made a presentation, including a series of slides, describing the recently approved appropriation bill. HB 6 contained a severe cut in general revenue dollars available as State matching funds for the regulatory program. The MLRP advised us that the moneys that are available for the regulatory program would only be used for bond forfeiture reclamation activities. Also, the MLRP advised us that the State Legislature appropriated funds for the abandoned mine land reclamation (AMLR) program. In addition, the MLRP explained that as of July 18, 2003, existing regulatory program staff, with the exception of four full-time employees, would be transferred to other programs and that it would not be able to implement and maintain its inspection, enforcement, permitting, or bond release responsibilities under the currently approved Missouri program. The four full-time employees would perform the bond forfeiture reclamation activities that were funded by the State Legislature. The MLRP indicated that it would try to gain full program funding from the Missouri Legislature next year.

On July 11, 2003, the MLRP notified the Missouri coal operators that the Legislature had decided, through the budget process, to withhold funding and staffing for the Missouri program. The MLRP also notified the operators that after July 18, 2003, it would no longer be available for coal regulatory issues (Administrative Record No. MO–664.2).

On July 21, 2003, the Governor of Missouri notified us that the State of Missouri is experiencing difficult budget and revenue shortfalls (Administrative Record No. MO–664.3). As a result of the revenue shortfalls, he requested assistance with permit reviews, inspection activities, and general oversight of the active coal mining operations in the State. He indicated that Missouri continues to have adequate funding and staff available to maintain design and reclamation efforts for bond forfeiture sites, as well as sufficient funding and staff to maintain the AMLR program, including the emergency program. He also indicated that he was hopeful his request would be temporary and that he would continue to work with the Legislature in an attempt to assure adequate funding for all of Missouri's regulatory program responsibilities.

On August 4, 2003, we notified the Governor of Missouri that we were obligated, in accordance with 30 CFR 733.12(e), to substitute Federal enforcement for those portions of the Missouri program that were not fully funded and staffed (Administrative Record No. MO–664.4). We cited Missouri's failure to fund and staff the Missouri program in several areas including inspection, enforcement, permitting, and bonding activities. A final rule announcing the substitution of Federal enforcement for portions of Missouri's permanent regulatory program may be found elsewhere in this edition of the **Federal Register**.

In accordance with the procedures contained in 30 CFR 733.12(d), we are announcing a public comment period and offering the opportunity for a public hearing to provide interested parties an opportunity to express their concerns on the implementation of the Missouri program. We are particularly interested in the public's views and concerns on the State's ability to implement its program and on possible actions Missouri and OSM should pursue to resolve identified problems.

After the public comment period and review of all available information, we will publish additional findings on the status of Missouri's program implementation in accordance with the provisions of 30 CFR 733.12(e).

Public Comment Procedures

Written Comments

Send your written or electronic comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this document and include explanations in support of your recommendations. We will not consider your comments if they are received after the close of the comment period (*see* **DATES**). We will make every attempt to log all comments into the administrative record, but comments delivered to an address other than the Mid-Continent Regional Coordinating Center may not be logged in.

Electronic Comments

Please submit Internet comments as an ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Mid-Continent Regional Coordinating Center at (618) 463–6460.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Public Hearing

The scope of the public hearing will include permitting, bonding, inspection, enforcement, and all other matters relevant to the issues of whether a full or partial Federal program or Federal enforcement should be implemented in the State of Missouri.

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on September 8, 2003. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

In addition, we will follow the hearing format and rules of procedure listed below.

1. The hearing will be informal and follow legislative procedures.

2. Based on the number of speakers in attendance, each participant may be limited to 10 minutes.

3. Participants will be called in the order in which they register.

List of Subjects in 30 CFR Part 925

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 13, 2003.

Jeffrey D. Jarrett,

Director, Office of Surface Mining.

[FR Doc. 03–21474 Filed 8–21–03; 8:45 am]

BILLING CODE 4310–05–P

Federal Register

Friday,
August 22, 2003

Part VI

Securities and Exchange Commission

17 CFR Parts 200 and 202
Adoption of Filing Fee Account Rule; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200 and 202

[Release Nos. 33–8267; 34–48361; 35–27714; 39–2410; IC–26153]

Adoption of Filing Fee Account Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is adopting a new rule that provides for the return of unused filing fees held in filing fee accounts in which there has been no activity for 180 days.

EFFECTIVE DATE: October 21, 2003.

FOR FURTHER INFORMATION CONTACT: Ronnette McDaniel, Office of Filings and Information Services at (202) 942–8925; Darrell L. Dockery, Office of Financial Management, at (202) 942–0340; Herbert Scholl, Division of Corporation Finance, at (202) 942–2930; or Carolyn Miller, Division of Investment Management, at (202) 942–0510.

SUPPLEMENTARY INFORMATION: Commission rules require fees paid in connection with filings to be submitted to the U.S. Treasury Department depository at Mellon Bank in Pittsburgh, Pennsylvania.[1] The SEC maintains an account for each filer who submits funds to the depository for the purpose of paying required fees. As an accommodation, we have allowed filers to submit funds in advance and to maintain indefinitely running balances in these accounts in anticipation of paying a required fee.

A large number of established fee accounts show outstanding balances with no activity for an extended period of time. Our Office of Financial Management is modifying its practices for maintaining filing fee accounts. The changes will reduce the administrative burdens associated with these inactive accounts and return control of unused funds to filers for more productive purposes, while retaining flexibility for those who are still periodically paying filing fees. We will soon take the following actions relating to current accounts:

- Account statements will be sent to all account holders at the most current account address they have provided to the Commission. Subsequently, each account with activity within 180 calendar days will receive a monthly account statement.
- If an account has had no activity since January 1, 2003 and the balance exceeds $5.00, the funds will be returned to the account holders.
- Balances of $5.00 or less in accounts with no activity since January 1, 2003 will be returned to account holders upon request, if a request is made before January 1, 2004. If no such request is received, the funds will be forwarded to the U.S. Treasury general account, in compliance with applicable regulations.

We also are adopting a new rule to codify our future practices relating to these filing fee accounts. The rule, which will be added as new paragraph (c) to Rule 3a, provides that the SEC will return all funds to account holders if there has been no activity in their accounts for 180 calendar days.[2] We will include a reminder of this provision on each monthly account statement sent to active account holders.

The rule also indicates that account statements and returned funds will be sent to the account address provided to the SEC by each filer and that filers must keep this address current. Without current account addresses, we may not be able to provide timely account statements, and we may ultimately be unable to return funds to the account holders. To ensure the timely return of funds, all current account holders should confirm as soon as possible that their account addresses on file with the Commission are up to date.

A company may update its account and other addresses using two different methods. The preferred and most efficient method is to change them online using the EDGAR filing website.[3] This method ensures data integrity and the most timely update. Alternatively, a company may report a change of addresses on an amended Form ID.[4] Simply changing an address in the text of the cover page of a filing made on the EDGAR system will not be sufficient to update the Commission's account address records.

We also are adopting an update and revision to Rule 200.30–13, delegating authority to the Office of Financial Management to administer Rule 3a(c).[5]

Since this rule relates solely to agency procedure or practice, publication for notice and comment is not required under the Administrative Procedure Act.[6] It follows that the requirements of the Regulatory Flexibility Act do not apply.[7] This rule also imposes no new collection of information under the Paperwork Reduction Act.[8]

Statutory Basis

Rule 3a(c) and revised Rule 200.30–13 are promulgated under Sections 6 and 19(a) of the Securities Act of 1933, Sections 4A, 4B, 13(e), 14(g) and 23(a) of the Securities Exchange Act of 1934, Section 319(a) of the Trust Indenture Act of 1939, Section 20(a) of the Public Utility Holding Company Act of 1935, Section 211 of the Investment Advisers Act of 1940 and Section 38 of the Investment Company Act of 1940.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government Agencies).

17 CFR Part 202

Administrative practice and procedure, Securities.

Text of the Amendment

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION REQUESTS

■ 1. The authority citation for Part 200, Subpart A—Organization and Program Management, continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

■ 2. By revising § 200.30–13 to read as follows:

§ 200.30–13 Delegation of authority to Associate Executive Director of the Office of Financial Management.

Pursuant to the provisions of 15 U.S.C. 78d–1 and 78d–2, the Securities

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[1] Rule 3a of the Commission's Informal and Other Procedures [17 CFR 202.3a] and Rule 13(c) of Regulation S–T [17 CFR 232.13(c)].

[2] We have chosen 180 calendar days as a reasonable period of time to allow filers flexibility to plan future filings and have money available to pay fees. The administrative and accounting burdens associated with accounts without activity beyond that period begin to outweigh the benefits to filers. The 180-day period begins on the date of the last deposit or withdrawal or other adjustment to an account, regardless of the amount. Consequently, if a filer has a balance in an account that has been inactive for almost 180 days, the filer can avoid the return of funds simply by adding a nominal amount of money to the account via the depository or by making a filing that will draw down a fee, at which point the 180-day period is re-started.

[3] This process is described in the EDGAR Filer Manual (Release 8.5), Vol. 1, Section 6.5.1.

[4] Form ID is used by filers to obtain access codes to make electronic filings on the EDGAR system and requires filers to provide account address information to the Commission [17 CFR 239.63; 17 CFR 249.446; 17 CFR 274.402].

[5] 17 CFR 200.30–13.

[6] 5 U.S.C. 553(b).

[7] 5 U.S.C. 601–612.

[8] 44 U.S.C. 3501–3520.

and Exchange Commission hereby delegates, until the Commission orders otherwise, the following functions to the Associate Executive Director of the Office of Financial Management, to be performed by him or her, or under his or her direction by such person or persons as may be designated from time to time by the Chairman of the Commission:

(a) The compromise and collection of federal claims as required by the Federal Claims Collection Act of 1966, as amended and recodified at 31 U.S.C. 3701–3720, in conformance with standards and procedures jointly promulgated by the Secretary of the Treasury and the Attorney General of the United States in 31 CFR Parts 900–904.

(b) The administration of filing fee account procedures and policies established in § 202.3a of this chapter.

PART 202—INFORMAL AND OTHER PROCEDURES

■ 3. The authority citation for Part 202 continues to read, in part, as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78*ll*(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

■ 4. By amending § 202.3a by adding paragraph (c), to read as follows:

§ 202.3a Instructions for filing fees.

* * * * *

(c) *Filing fee accounts.* (1) A filing fee account is maintained for each filer who submits a filing requiring a fee on the Commission's EDGAR system or who submits funds to the U.S. Treasury designated depository in anticipation of paying a filing fee. Account statements are regularly prepared and provided to account holders. Account holders must maintain a current account address with the Commission to ensure timely access to these statements.

(2) Funds held in any filing fee account in which there has not been a deposit, withdrawal or other adjustment for more than 180 calendar days will be returned to the account holder, and account statements will not be sent again until a deposit, withdrawal or other adjustment is made with respect to the account. Filers must maintain a current account address to assure the timely return of funds. It may not be possible to return funds from inactive accounts if the Commission is unable to identify a current account address of an account holder after making reasonable efforts to do so.

Note to paragraph (c). A company may update its account and other addresses using two different methods. The preferred and most efficient method is to change them online using the EDGAR filing website. This method ensures data integrity and the most timely update. Alternatively, a company may report a change of addresses on an amended Form ID [17 CFR 239.63; 17 CFR 249.446 and 17 CER 274.402]. Simply changing an address in the text of the cover page of a filing made on the EDGAR system will not be sufficient to update the Commission's account address records.

Dated: August 19, 2003.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21539 Filed 8–21–03; 8:45 am]

BILLING CODE 8010–01–P

Federal Register

Friday,
August 22, 2003

Part VII

Department of Education

Upward Bound Program Participant Expansion Initiative; Notice

DEPARTMENT OF EDUCATION

RIN 1840–ZA03

Upward Bound Program Participant Expansion Initiative

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of final priority.

SUMMARY: The Secretary of Education announces an absolute priority to provide supplemental funds of up to $100,000 in fiscal year (FY) 2003 to currently funded Upward Bound projects that (1) serve at least one target high school in which at least 50 percent of the students were eligible for free lunch under the National School Lunch Act (Free Lunch program) during the 2001–2002 or 2002–2003 school year, and (2) received supplemental funds in FY 2000 under the Upward Bound Program Participant Expansion Initiative (UBP–PEI).

The Secretary further requires that projects that receive supplemental funds under this priority will use those funds to select and serve students eligible to participate in Upward Bound who (1) attend a target high school in which at least 50 percent of the students were eligible for free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year, and (2) have the greatest need for Upward Bound services. Eligible students having the greatest need for Upward Bound services are those who:

1. Have not met the state academic achievement standard for grade eight in reading/language arts; or

2. Have not met the state academic achievement standard for grade eight in math; or

3. Have a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

By using state academic achievement assessments to determine student eligibility for services, schools can align this initiative with the requirements and activities supported by the No Child Left Behind Act of 2001, Pub. L. 107–110.

Applicants not eligible for the absolute priority are invited to apply and will be funded, subject to the availability of funds, as described in the funding order below. The selected projects must use the supplemental funds to provide services to eligible project participants with the greatest need for those services.

EFFECTIVE DATE: This priority is effective 30 days after the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dr. Margarita Benitez, Sheryl Wilson, or Gaby Watts, U.S. Department of Education, 1990 K Street, NW., Room 7020, Washington, DC 20006–8510. Telephone (202) 502–7600. The e-mail address for the Federal TRIO Programs is: *Trio@ed.gov*. The e-mail address for Dr. Margarita Benitez is: *margarita.benitez@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice of proposed priority in the **Federal Register** on June 24, 2003 (68 FR 37469–37470). This notice of final priority contains several changes from the notice of proposed priority, which are explained fully in the Analysis of Comments and Changes section in this notice.

Background

In FY 2003, the Congress appropriated funds for the Federal TRIO Programs. In examining the options available to the Secretary for allocating these funds, the Secretary determined that a portion of the funds should be used to increase support to the Upward Bound Program. The Upward Bound Program, authorized under section 402C of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070a–13, helps low-income, potential first-generation college students acquire the skills and motivation necessary for success in education beyond secondary school.

The purpose of this supplement is to help the Upward Bound Program achieve one of its key performance goals: increasing the college enrollment rate of low-income, first generation college students. A recent evaluation of the Upward Bound Program found that the program has significant effects on higher risk students, but that the program was inadequately targeting these students.

We intend that, under the absolute priority, there will be an increase in the number of eligible students with the greatest need who are served by the Upward Bound Program. The students with the greatest need are generally those from the lowest income levels who have potential for college but are not performing successfully in high school. The Secretary believes that limiting supplemental funds to projects that serve the above described target schools is a good way to ensure that projects serve the lowest income students because the Free Lunch program is limited to students from families with the lowest family income. An estimated 180 current Upward Bound projects could receive supplemental funds to serve additional students.

The effectiveness of UBP–PEI will be ultimately measured by the college enrollment rate of these higher-risk, low-income, first generation college students who participate in this initiative. However, in addition to the ultimate measure of college enrollment, the Secretary will also look at "what works" in preparing these students for college, in order to inform program improvements in Upward Bound. Each grantee will be required to work with an independent evaluator retained by the Secretary to measure the expansion initiative's effectiveness.

The Secretary will consider requests for $100,000, $75,000, and $50,000 under this initiative. An institution that requests $100,000 must serve at least 20 students, an institution that requests $75,000 must serve at least 15 students, and an institution that requests $50,000 must serve at least 10 students.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Absolute Priority

Under 34 CFR 75.105(c)(3), the Secretary will give an absolute preference to applications that meet the following absolute priority.

The Secretary will provide supplemental funds of up to 100,000 to

regular Upward Bound Program projects that:

1. Were selected for funding under the FY 2003 Upward Bound Program competition.

2. Serve a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year.

3. Received supplemental funds in FY 2000 under the Notice of Final Priority dated July 24, 2000, 65 FR 45698–45699.

4. (a) Agree to select and serve at least 20 students who are eligible for Upward Bound services, attend a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year and have the greatest need for project services, if requesting $100,000.

(b) Agree to select and serve at least 15 students who are eligible for Upward Bound services, attend a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year and have the greatest need for project services, if requesting $75,000.

(c) Agree to select and serve at least 10 students who are eligible for Upward Bound services, attend a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year and have the greatest need for project services, if requesting $50,000.

Students who have the greatest need for project services are those students who:

(i) Have not met the state academic achievement standard for grade eight in reading/language arts;

(ii) Have not met the state academic achievement standard for grade eight in math; or

(iii) Have a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

Veterans Upward Bound projects and Upward Bound Math-Science projects are not eligible to participate in this initiative.

The Secretary will fund applications in the following order:

1. Applications that meet the absolute priority.

2. All other applications that meet criteria 1, 2, and 4 above.

If funds are available after funding all applications that meet the absolute priority, the Secretary will select from among the remaining applicants that meet criteria 1, 2, and 4 based upon the highest scores received (including prior experience points) in the FY 2003 Upward Bound grant competition. If there are insufficient funds for all applications with the same score, the Secretary will select for funding those applicants with the lowest average cost per Upward Bound participant (Federal funds only) for the 2001–2002 program year.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, thirty-four parties submitted comments. An analysis of the comments and of changes in the priority since publication of the notice of proposed priority follows. We group major issues by subject. Generally, we do not address technical or other minor changes—and suggested changes the law does not authorize us to make under the applicable statutory authority.

Target School Eligibility

Comments: Nine commenters responded. Two recommended that eligibility be student-centered, that is, that students with the academic profile outlined in the notice of proposed priority be eligible to participate in the initiative, regardless of whether they were enrolled in a target school. Target schools were defined in the notice of proposed priority as those "in which at least 50 percent of the students were eligible for free lunch under the National School Lunch Act during the 2001–2002 school year and who have the greatest need for Upward Bound services." One commenter posited that it was unfair to exclude low income, high risk students from the initiative simply because they were not enrolled in a school with 50 percent or more students participating in the Free Lunch program. A third commenter suggested that student eligibility should be determined by the project.

Four commenters questioned the reliability of the Free Lunch program data as the criterion for eligibility to qualify for funding under the initiative. Two remarked that there are more high-poverty areas in the country than those indicated by the Free Lunch program statistics. According to one commenter, some regions of the country, such as Appalachia, have a tradition of low registration in Federal programs, such as the Free Lunch program. All four commenters referred to a significant drop in Free Lunch program participation from the early grades to middle and high school. Two pointed out that teenagers are more averse than younger children to register in "poverty" programs. One suggested that we use data on both the number of participants in the Free Lunch program and the number of students who qualify for reduced lunch for target school eligibility.

Discussion: The Secretary agrees with many of the points made by the commenters. However, for purposes of this initiative, the Secretary believes that the Free Lunch program criterion is a fair, valid, and objective measure of low-income and need for Upward Bound services.

Changes: None.

Date of Eligibility Data

Comments: Two commenters indicated that Free Lunch program data for the 2002–2003 school year was actually easier to obtain and was more current than data for the 2001–2002 school year.

Discussion: The Secretary proposed using data for the 2001–2002 year in the notice of proposed priority because the Secretary was uncertain whether more recent data would be available. If that data is available, the Secretary believes that such data may be used.

Changes: The Secretary will accept Free Lunch program data for *either* the 2001–2002 *or* the 2002–2003 school year.

Priority for Currently Funded Programs

Comments: Six commenters addressed this issue. Four supported the priority in favor of currently funded projects that participated in the FY 2000 expansion initiative, citing their experience, proven commitment, and record of success. Two pointed out the existence of other experienced and well qualified projects, and suggested that others be given the opportunity to serve students from other needy areas.

Discussion: The Secretary understands that there are usually more qualified applicants than available funds, and that forces hard choices. In order to increase the chance that this initiative will succeed, the Secretary has chosen to give an absolute priority to experienced Upward Bound projects that have been successful in the past working with eligible target schools and that have the staff capacity to serve additional students. Nonetheless, the Secretary expects that there will be sufficient funds for this initiative to award supplemental grants to a few new projects.

Changes: None.

Length of Funding for UBP–PEI

Comments: Four commenters inquired about the expected funding period for this initiative.

Discussion: To the extent that the commenters were questioning whether the Secretary planned to provide additional funding in future fiscal years, the Secretary anticipates awarding funds under the UBP–PEI for the next four project/budget years. However, the expenditure of funds in the future is always contingent upon Congressional action, including the size of the Congressional appropriation for a program in a given fiscal year.

Changes: None.

Requests for Clarification on Student Eligibility

Comments: Ten commenters asked whether students already enrolled in Upward Bound who took part in the previous Upward Bound initiative could participate in this year's initiative. Eight commenters asked whether all UBP–PEI students must come from the target schools that have 50 percent or more students eligible for the Free Lunch program. Another commenter asked whether grades of C or less in 8th grade core subjects were acceptable if a student's grade point average was unavailable.

Discussion: Students currently being served by Upward Bound projects as a consequence of participating in the FY 2000 expansion initiative may participate in UBP–PEI *as long as they meet all UBP–PEI criteria,* that is they are eligible Upward Bound participants who are enrolled in an eligible target high school and meet one or more of the greatest academic need criteria listed in the priority. With regard to the second question, for the reasons explained in a previous response, all UBP–PEI students must attend eligible target schools. With regard to the third question, the Secretary does not wish to add additional criteria. Moreover, the third criterion allows a project to use the grade point average for the most recent school year for which grade point averages are available. Therefore, a relevant grade point average will almost always be available.

Changes: None.

Request To Reduce the Minimum Number of Participants Served

Comments: One commenter proposed that eligible projects be given the opportunity to serve the number of needy participants they could manage best. The commenter indicated that project and institutional resources may not be sufficient to accommodate and serve well 20 additional students, yet resources would be available to serve a smaller number adequately.

Discussion: The Secretary considers this suggestion reasonable and viable.

Changes: A project may request three levels of funding, $100,000, $75,000, or $50,000. If a project requests $100,000, it must serve at least 20 students; if it requests $75,000, it must serve at least 15 students; if it requests $50,000, it must serve at least 10 students.

Concerns About Local Impediments That Run Counter to UBP–PEI

Comments: Three commenters identified local or regional situations that present difficulties in meeting the UBP–PEI criteria or providing the required services. One was the Appalachia situation that was mentioned above, a second was small rural schools, and a third was jurisdictions like Chicago, where the School Board has mandated students who flunk state tests take summer courses so the students would be unable to participate in the Upward Bound summer component.

Discussion: The change discussed above that allows a project to apply for three levels of funding should eliminate the first two concerns. Jurisdictions like Chicago are providing a valuable service to Chicago students, obviating the need for Upward Bound involvement.

Changes: See preceding change.

Suggestions for Additional Criteria for Student Eligibility

Comments: Three commenters suggested additional eligibility criteria for program participants: limited English proficiency, English as a second language, and a grade of C or less in core academic subjects.

Discussion: As stated earlier, a student currently served by Upward Bound projects may be eligible to participate in UBP–PEI if the student is enrolled in an eligible target high school, and meets one or more of the greatest academic need criteria listed in the priority. The Secretary does not wish to add additional criteria that may be hard to implement consistently across projects nationwide and may confound the evaluation of the impact that UBP–PEI has on the individuals served.

Changes: None.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations

34 CFR part 645

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(Catalog of Federal Domestic Assistance Number 84.047A, Upward Bound Program Participant Expansion Initiative)

Program Authority: 20 U.S.C. 1070.

Dated: August 18, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–21582 Filed 8–19–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No: 84.047A]

Office of Postsecondary Education, Upward Bound Program Participant Expansion Initiative; Notice Inviting Applications for Supplemental Awards for Fiscal Year (FY) 2003

Purpose of Program: The purpose of this initiative is to help the Upward Bound Program achieve one of its key performance goals: increasing the college enrollment rate of low-income, first generation college students.

Eligible Applicants: All currently funded Upward Bound projects successful in the FY 2003 grant competition. Veterans Upward Bound projects and Upward Bound Math-Science projects are not eligible to participate.

Applications Available: August 21, 2003.

Deadline for Transmittal of Applications: September 8, 2003.

Deadline for Intergovernmental Review: Completed on February 11, 2003.

Estimated Available Funds: $18,000,000.

Estimated Range of Awards: $50,000–$100,000.

Estimated Average Size of Awards: $100,000.

Estimated Number of Awards: 180.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 4 years.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 82, 86, 97, 98, and 99; and (b) the regulations for this program in 34 CFR part 645.

SUPPLEMENTARY INFORMATION: Eligible applicants that meet all the criteria for the absolute priority, except for having received supplemental funding under the FY 2000 participant expansion initiative, are invited to apply and will be funded, subject to the availability of funds, as described in the Notice of Final Priority.

Applicants for supplemental awards must submit an application that contains:

- A list, certified by the Upward Bound project director, of the target schools in which at least 50 percent of the students were eligible for the Free Lunch program during the 2001–02 or 2002–03 school year;
- The number of additional students, at least 10 (if requesting $50,000), at least 15 (if requesting $75,000), or at least 20 (if requesting $100,000), that the project plans to serve;
- Agreement to select participants from the identified eligible target schools that have one or more of the greatest need criteria described in the Notice of Final Priority;
- A brief description of the activities that will be supported with the supplemental funding;
- A budget summary; and
- A budget narrative describing how the supplemental funds will be used.

Priority

Absolute Priority

Under 34 CFR 75.105(c)(3), the Secretary will give an absolute preference to applications that meet the following absolute priority.

The Secretary will provide supplemental funds of up to $100,000 to regular Upward Bound Program projects that:

1. Were selected for funding under the FY 2003 Upward Bound Program grant competition;

2. Serve a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year;

3. Received supplemental funds in FY 2000 under the Notice of Final Priority dated July 24, 2000, 65 FR 45698–45699; and

4. (a) Agree to select and serve at least 20 students who are eligible for Upward Bound services, attend a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year and have the greatest need for project services, if requesting $100,000.

(b) Agree to select and serve at least 15 students who are eligible for Upward Bound services, attend a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year and have the greatest need for project services, if requesting $75,000.

(c) Agree to select and serve at least 10 students who are eligible for Upward Bound services, attend a target high school in which at least 50 percent of the students were eligible to receive free lunch under the National School Lunch Act during the 2001–2002 or 2002–2003 school year and have the greatest need for project services, if requesting $50,000.

Students who have the greatest need for project services are those students who:

a. Have not met the state academic achievement standard for grade eight in reading/language arts;

b. Have not met the state academic achievement standard for grade eight in math; or

c. Have a grade point average of 2.5 or less (on a 4.0 scale) for the most recent school year for which grade point averages are available.

Veterans Upward Bound projects and Upward Bound Math-Science projects are not eligible to participate in this initiative.

The Secretary will fund applications in the following order:

1. Applications that meet the absolute priority.

2. All other applications that meet criteria 1, 2, and 4 above.

If funds are available after funding all applications that meet the absolute priority, the Secretary will select from among the remaining applicants based upon the highest scores received (including prior experience points) in the FY 2003 Upward Bound grant competition. If there are insufficient funds for all applications with the same score, the Secretary will select for funding those applicants with the lowest average cost per Upward Bound participant (Federal funds only) for the 2001–2002 program year.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: Dr. Margarita Benitez, Sheryl Wilson, or Gaby Watts, U.S. Department of Education, 1990 K Street, NW., Room 7020, Washington, DC 20006–8510. Telephone (202) 502–7600. The e-mail address for the Office of Federal TRIO Programs is: *Trio@ed.gov.*

The e-mail addresses for Dr. Benitez, Ms. Wilson and Ms. Watts are: *Margarita.Benitez@ed.gov, Sheryl.Wilson@ed.gov, Gaby.Watts@ed.gov.*

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Program Authority: 20 U.S.C. 1070.

Dated: August 18, 2003.

Sally Stroup,

Assistant Secretary Office of Postsecondary Education.

[FR Doc. 03–21583 Filed 8–19–03; 3:49 pm]

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H.R. 1018/P.L. 108–70
To designate the building located at 1 Federal Plaza in New York, New York, as the "James L. Watson United States Court of International Trade Building". (Aug. 14, 2003; 117 Stat. 886)

H.R. 1761/P.L. 108–71
To designate the facility of the United States Postal Service located at 9350 East Corporate Hill Drive in Wichita, Kansas, as the "Garner E. Shriver Post Office Building". (Aug. 14, 2003; 117 Stat. 887)

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VOL. 68
ISS. 164
AUG 25

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Federal Register

8–25–03 Monday
Vol. 68 No. 164 Aug. 25, 2003

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(ISSN 0097-6326)

Federal Register

8–25–03 Monday
Vol. 68 No. 164 Aug. 25, 2003

Pages 50963–51148

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Presidential Documents

Title 3—

The President

Presidential Determination No. 2003–32 of August 18, 2003

Resumption of U.S. Drug Interdiction Assistance to the Government of Colombia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended (22 U.S.C. section 2291–4), I hereby certify, with respect to Colombia, that: (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) that country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft.

The Secretary of State is authorized and directed to publish this determination in the **Federal Register** and to notify the Congress of this determination.

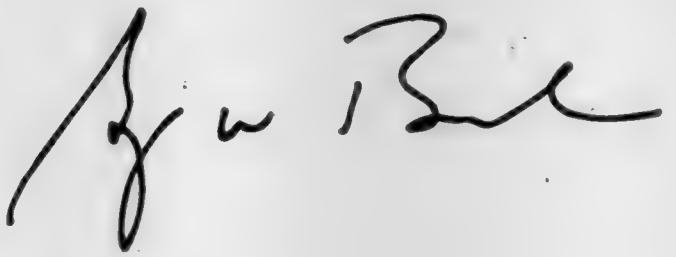

THE WHITE HOUSE,
Washington, August 18, 2003.

[FR Doc. 03–21676
Filed 8–22–03; 8:45 am]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1157]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; staff commentary.

SUMMARY: The Board is publishing a final rule amending the staff commentary that interprets the requirements of Regulation Z (Truth in Lending). The Board is required to adjust annually the dollar amount that triggers requirements for certain home mortgage loans bearing fees above a certain amount. The Home Ownership and Equity Protection Act of 1994 (HOEPA) sets forth rules for home–secured loans in which the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. In keeping with the statute, the Board has annually adjusted the $400 amount based on the annual percentage change reflected in the Consumer Price Index that is in effect on June 1. The adjusted dollar amount for 2004 is $499.

DATES: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Minh–Duc T. Le, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. For the users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Lending Act (TILA; 15 U.S.C. 1601 – 1666j) requires creditors to disclose credit terms and the cost of consumer credit as an annual percentage rate. The act requires additional disclosures for loans secured by a consumer's home, and permits consumers to cancel certain transactions that involve their principal dwelling. TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions.

In 1995, the Board published amendments to Regulation Z implementing HOEPA, contained in the Riegle Community Development and Regulatory Improvement Act of 1994, Pub. L. 103–325, 108 Stat. 2160 (60 FR 15463). These amendments, contained in §§ 226.32 and 226.34 of the regulation, impose substantive limitations and additional disclosure requirements on certain closed–end home mortgage loans bearing rates or fees above a certain percentage or amount. As enacted, the statute requires creditors to comply with the HOEPA rules if the total points and fees payable by the consumer at or before loan consummation exceed the greater of $400 or 8 percent of the total loan amount. TILA and Regulation Z provide that the $400 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. (15 U.S.C. 1602(aa)(3) and 12 CFR 226.32(a)(1)(ii)). The Board adjusted the $400 amount to $488 for the year 2003.

The Bureau of Labor Statistics publishes consumer–based indices monthly, but does not "report" a CPI change on June 1; adjustments are reported in the middle of each month. The Board uses the CPI–U index, which is based on all urban consumers and represents approximately 80 percent of the U.S. population, as the index for adjusting the $400 dollar figure. The adjustment to the CPI–U index reported by the Bureau of Labor Statistics on May 15, 2003, was the CPI–U index "in effect" on June 1, and reflects the percentage increase from April 2002 to April 2003. The adjustment to the $400 figure below reflects a 2.22 percent increase in the CPI–U index for this period and is rounded to whole dollars for ease of compliance.

II. Adjustment and Commentary Revision

Effective January 1, 2004, for purposes of determining whether a home mortgage transaction is covered by 12 CFR 226.32 (based on the total points and fees payable by the consumer at or before loan consummation), a loan is covered if the points and fees exceed the greater of $499 or 8 percent of the total loan amount. Comment 32(a)(1)(ii)–2, which lists the adjustments for each year, is amended to reflect the dollar adjustment for 2004. Because the timing and method of the adjustment is set by statute, the Board finds that notice and public comment on the change are unnecessary.

III. Regulatory Flexibility Analysis

The Board certifies that this amendment will not have a substantial effect on regulated entities because the only change is to raise the threshold for transactions requiring HOEPA disclosures.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

■ For the reasons set forth in the preamble, the Board amends Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

■ 2. In Supplement I to Part 226, under *Section 226.32—Requirements for Certain Closed–End Home Mortgages*, under Paragraph 32(a)(1)(ii), paragraph 2. ix. is added.

SUPPLEMENT I TO PART 226—OFFICIAL STAFF INTERPRETATIONS

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed–End Home Mortgages

32(a) Coverage

* * * * *

Paragraph 32(a)(1)(ii)

* * * * *

2. Annual adjustment of $400 amount. * * *

ix. For 2004, $499, reflecting a 2.22 percent increase in the CPI–U from June 2002 to June 2003, rounded to the nearest whole dollar.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs under delegated authority, August 18, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21569 Filed 8–22–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL37

Effective Dates of Benefits for Disability or Death Caused By Herbicide Exposure; Disposition of Unpaid Benefits After Death of Beneficiary

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is adding a new provision to its adjudication regulations concerning certain awards of disability compensation and dependency and indemnity compensation (DIC). The new rule explains that certain awards of disability compensation or DIC made pursuant to liberalizing regulations concerning diseases presumptively associated with herbicide exposure may be made effective retroactive to the date of the claim or the date of a previously denied claim, even if such date is earlier than the effective date of the regulation establishing the presumption. The new rule also provides that VA may pay to certain survivors of a deceased beneficiary, or to the beneficiary's estate, any amounts the beneficiary was entitled to receive under the effective-date provisions of this rule, but which were not paid prior to the beneficiary's death. The purpose of this rule is to reflect the requirements of court orders in a class-action case.

DATES: Effective Date: September 24, 2003.

FOR FURTHER INFORMATION CONTACT: David Barrans, Staff Attorney (022), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6332.

SUPPLEMENTARY INFORMATION: On January 28, 2003, VA published in the **Federal Register** (68 FR 4132), a proposed rule to establish provisions at 38 CFR 3.816 explaining certain rules arising from court orders in the class action litigation in *Nehmer* v. *United States Department of Veterans Affairs*, No. CV–86–6160 TEH (N.D. Cal.). As explained in that notice, the rule is intended to explain two exceptions to generally-applicable adjudication rules that have resulted from the *Nehmer* court orders.

First, this rule will clarify the standards governing the effective dates of disability compensation or dependency and indemnity compensation (DIC) awarded to *Nehmer* class members under liberalizing regulations establishing presumptions that certain diseases are associated with herbicide exposure in service. That change is necessary to address an apparent conflict between 38 U.S.C. 5110(g), which generally prohibits VA from awarding retroactive effective dates that precede the date a liberalizing regulation took effect, and the *Nehmer* court orders, which require VA to assign such retroactive effective dates for certain awards to *Nehmer* class members. The new rule explains that, when VA awards disability compensation or DIC to a *Nehmer* class member based on a VA regulation issued under the Agent Orange Act of 1991, Pub. L. 102–4, establishing a presumption that a disease is associated with herbicide exposure, VA will assign an effective date for the award that corresponds to the date the claim was received or to the date of a previously-denied claim based on the same disease, without regard to the provisions of 38 U.S.C. 5110(g).

Second, this rule will clarify that, when a *Nehmer* class member dies before receiving payment to which he or she is entitled under the *Nehmer* court orders, VA will pay the entire amount of such unpaid benefits to certain survivors or to the class member's estate if there are no such survivors. This change is necessary to address an apparent conflict between 38 U.S.C. 5121(a), which, in some circumstances, prohibits VA from paying amounts that had accrued for periods more than two years prior to the beneficiary's death, and the *Nehmer* court orders, which require VA to pay the entire amount of any unpaid benefits to the survivors or estate of a deceased *Nehmer* class member. Further, although section 5121(a) requires payment to the person who bore the expense of the beneficiary's last sickness and burial if there are no surviving members of the decedent's immediate family, the *Nehmer* court orders require payment to the decedent's estate in that circumstance. This rule will provide that, in cases governed by the *Nehmer* court orders, VA will pay the entire amount of such benefits to the specified survivors or to the decedent's estate, without regard to the two-year limit in 38 U.S.C. 5121(a).

We received comments on the proposed rule from three commenters. One commenter expressed unqualified support for the rule. The other commenters expressed general support for the rule, but disagreed with certain aspects of it, as discussed below.

Burial Benefits

Two commenters suggested that we add provisions to the rule specifying that when service connection for the cause of a *Nehmer* class member's death is established under a presumption issued pursuant to the Agent Orange Act, VA may pay a service-connected burial allowance under 38 U.S.C. 2307, even if the death occurred prior to the effective date of the regulation establishing the presumption. Those suggestions are based on a 1995 opinion of VA's General Counsel, designated as VAOPGCPREC 15–95, which stated such a conclusion in the context of a *Nehmer* class member's claim.

We make no change based on these comments. The additional provisions suggested by the commenters do not relate to the effective date of awards of disability compensation or DIC, nor to the manner of paying amounts due and unpaid to a beneficiary at death. Rather, they pertain to a distinct issue concerning entitlement to service-connected burial benefits under 38 U.S.C. 2307. Because these comments relate solely to matters outside the scope of the rule we proposed, we will make no change based on them.

Moreover, unlike the subjects of our proposed rule, the General Counsel's conclusion regarding entitlement to service-connected burial benefits does not rest upon the requirements of the *Nehmer* court orders, nor does it establish an exception to the generally applicable adjudication rules. In our January 2003 notice of proposed rule making, we explained that the purpose of the proposed rule was to explain the requirements of the *Nehmer* court orders, which created exceptions to the general statutory prohibitions in 38 U.S.C. 5110(g) and 5121(a) applicable to *Nehmer* class members. The General

Counsel's conclusion that service-connected burial benefits may be paid for deaths preceding the effective date of a regulatory presumption was based on the interpretation of statutes and regulations; it was not based on the *Nehmer* court orders and did not establish any exception to governing statutory requirements for *Nehmer* class members. Accordingly, we will not incorporate that conclusion in this final rule.

Identifying Prior Claims or Decisions

One commenter suggested a revision to proposed § 3.816(c)(2), which explains when a disability compensation award may be made retroactive to the date of a prior claim for compensation for a covered herbicide disease that was pending on May 3, 1989 or was received by VA between that date and the effective date of the regulation establishing a presumption of service connection for the disease. As proposed, § 3.816(c)(2) would explain that a prior claim will be considered a claim for compensation for a particular covered herbicide disease if the claimant's application and other submissions may reasonably be viewed, under the standards ordinarily governing such claims, as indicating an intent to apply for compensation for the covered herbicide disease. The commenter asserts that the *Nehmer* court orders also require payment of retroactive benefits in cases where the prior claim did not request compensation for a covered herbicide disease, but VA nevertheless denied compensation for such disease in its decision on the veteran's claim.

Longstanding VA policy reflected in VA procedural manuals provides that when disability compensation is claimed, VA must make a formal rating decision as to each disability that was either claimed by the veteran or noted in the veteran's records, subject to certain exceptions for non-claimed conditions that are acute and transitory or recorded by history only. That policy is currently stated in VA Manual M21–1, Part VI, para. 3.09(b), and was previously stated in VA Manual M21–1, para. 46.02 at the time of the 1991 final stipulation and order. Accordingly, VA may have denied disability compensation for conditions not expressly claimed by the veteran.

The 1991 final stipulation and order in *Nehmer* stated effective-date rules governing two kinds of claims: those where VA denied benefits in a decision rendered between September 25, 1985 and May 3, 1989 (which decisions were voided by a 1989 *Nehmer* court order), and those where a claim was filed after May 3, 1989 and may or may not have been denied by VA before VA awarded benefits under an applicable regulatory presumption. With respect to the voided decisions, the stipulation and order provided that an award of benefits for a covered herbicide disease would be retroactive to the date of the previously-denied claim if the basis of the award was the same as the basis of the prior claim. The stipulation and order specified that the "basis" of the claim would be determined by reference to the diseases that were coded in the prior decision as required by former paragraph 46.02 of VA Manual M21–1. This requirement is reflected in § 3.816(c)(1) of the proposed regulation, which addresses claims denied by VA between September 25, 1985 and May 3, 1989.

With respect to claims filed after May 3, 1989, the 1991 final stipulation and order merely provides that the effective date of an award will be the later of the date the claim was received or the date disability arose or death occurred. It provided no criteria for determining whether an award related to a previously-filed claim or a prior decision by VA denying benefits. In proposed § 3.816(c)(2), we explained that VA would apply the ordinary standards of claim interpretation to determine whether a claim received after May 3, 1989 was a claim for compensation for the covered herbicide disease for which benefits were ultimately awarded. We believe it is necessary to state guidelines based on the nature of the claim, rather than only the nature of a prior VA decision, because paragraph (c)(2) applies in cases where VA may not have issued any prior decision on the veteran's claim. However, we did not intend to preclude retroactive payments in cases where VA did issue a decision denying compensation for a covered herbicide disease in a decision rendered after May 3, 1989.

As explained above, the 1991 final stipulation and order is ambiguous as to whether retroactive payments may be made where a veteran did not request service connection for a covered herbicide disease but VA expressly denied compensation for such disease in a decision rendered after May 3, 1989. We believe the stipulation may reasonably be construed to allow retroactive payment in those circumstances. Accordingly, we will revise proposed § 3.816(c)(2) to clarify that retroactive payment may be made where a VA decision rendered between May 3, 1989 and the effective date of the relevant statutory or regulatory presumption denied compensation for a disease that reasonably may be construed as the same covered herbicide disease for which compensation was later awarded. As explained in our January 2003 notice of proposed rulemaking, we do not intend to require exact agreement in the terminology or diagnostic codes used to describe the disease at different times, if circumstances reasonably indicate that the same disease is involved.

Payments to Survivors or Estates of Deceased Beneficiaries

We proposed to state, in paragraph (f) of 38 CFR 3.816, that, when a *Nehmer* class member dies before receiving amounts due and unpaid under the *Nehmer* court orders, VA will pay the entire amount of unpaid benefits to the class member's surviving spouse, child(ren), or dependent parents, in that order of preference. In the event no such survivors are in existence, we proposed that VA would pay to the person who bore the expense of the class member's last sickness and burial as much of the unpaid benefits as necessary to reimburse such person for those expenses. Two commenters disagreed with this provision and asserted that the *Nehmer* court orders require VA to release payments to the estates of deceased class members.

In our January 2003 notice of proposed rule making, we stated that we considered it necessary to seek clarification from the district court regarding VA's ability to release payments in the manner proposed. On April 21, 2003, the district court issued an order stating that, in the event a *Nehmer* class member dies, VA must release payments as provided in an August 3, 2001 stipulation between the parties to the *Nehmer* case. Specifically, the Court stated that VA must release the payments to the first of the following individuals or entities who is in existence when payment is made: (a) The class member's spouse; (b) the class member's children (in equal shares); (b) the class member's parents (in equal shares); (d) the class member's estate.

In accordance with the district court's order and the comments, we are revising the proposed rule to provide that VA will release payment to the estate of the deceased class member when there is no surviving spouse, child, or parent. We proposed to caption paragraph (f) of 38 CFR 3.816(f) "Payment of Benefits to Survivors of Deceased Beneficiaries." Based on the court order and the comments, we will change this to "Payment of Benefits to Survivors or Estates of Deceased Beneficiaries."

As proposed, the first sentence of paragraph (f)(1)(i) would have stated

that, when a class member dies, VA will pay the full amount of any retroactive benefits owed the class member under the proposed regulation to the living person or persons who, at the time of death, would have been eligible to receive accrued benefits under 38 U.S.C. 5121(a)(2)-(a)(4). The cited statutory provisions authorize payment to a surviving spouse, child(ren), or dependent parent(s), in that order of priority. The second sentence of proposed paragraph (f)(1)(i) would further have stated that a person's status as a surviving spouse, child, or dependent parent would be determined as of the date of the class member's death, irrespective of the person's age or marital status at the time payment is made.

As explained above, the district court's April 2003 order specifies the individuals and entities entitled to payment. Further, the court's order states that the provisions of 38 U.S.C. 5121 do not govern such payments. Accordingly, we will delete the first sentence of paragraph (f)(1)(i), as proposed, and will amend paragraph (f)(1) to list the eligible payees as identified by the court's order. Revised paragraph (f)(1) will specify that VA will release payment to the first of the listed individual or entities that is in existence at the time payment is made.

We will delete the second sentence of paragraph (f)(1)(i), as proposed, because it reflects requirements applicable to 38 U.S.C. 5121(a). For purposes of 38 U.S.C. 5121(a), eligibility for payment as a surviving spouse, child, or parent is limited by a number of statutory provisions. For example, a "surviving spouse" is generally defined, with certain exceptions, as one who has not remarried. Eligibility for payment as a "child" is limited to unmarried children under the age of 18, or who became permanently incapable of self-support before attaining age 18, or who are under 23 years of age and pursuing a course of education at an approved institution. Eligibility for payment as a parent is subject to dependency. In view of the district court's conclusions that the provisions of the parties' August 2001 stipulation, rather than the provisions of 38 U.S.C. 5121(a), govern payments, we conclude that those restrictions are inapplicable. The August 2001 stipulation does not expressly incorporate the statutory limitations on recognition as a spouse, child, or dependent parent. Further, the provisions of the August 2001 stipulation reflect the view that payments to spouses, children, and parents were authorized because those persons are the usual heirs to a decedent's estate, and that rationale would apply irrespective of age, marital status, or dependency. We will add language to § 3.816(f)(1) to clarify that those limitations do not apply. Specifically, we will provide that payments to a spouse will be made irrespective of current marital status, that payments to a child will be made irrespective of age or marital status, and that payments to a parent will be made irrespective of dependency. We will further explain that a spouse is a person who was married to the class member at the time of the class member's death. We will explain that the term "child" includes natural and adopted children, and also includes any stepchildren who were members of the class member's household at the time of the class member's death. We note that stepchildren ordinarily are not entitled to inherit from a stepparent's estate under the laws of intestate succession, and some stepchildren may have no direct relationship with the deceased class member. However, the laws governing veterans' benefits provide that a stepchild who was a member of a veteran's household at the time of the veteran's death is entitled to certain death benefits, including payment of amounts due and unpaid to the deceased veteran. We believe that persons who would be considered children under the laws governing VA benefits should not be excluded from receiving payment pursuant to the court orders in this case. Accordingly, we are defining "child" to include such stepchildren. We will also explain that the term "parent" includes natural and adoptive parents but that, in the case of successive parents, the persons who last stood in the relationship of parents to the class member will be considered the parents.

The last two sentences of paragraph (f)(1)(i), as proposed, will be deleted because they pertain to matters specific to determinations under 38 U.S.C. 5121.

Paragraph (f)(1)(ii) of 38 CFR 3.816, as proposed, would have stated that, if there is no living person eligible to receive benefits under 5121(a)(2)-(a)(4), VA would pay to the person who bore the expense of the class member's last sickness and burial only such portion of the class member's unpaid benefits as would be necessary to reimburse that person for such expense. We are removing this provision because it is contrary to the district court's order.

The other provisions of proposed 38 CFR 3.816(f) are not affected by the court's order, and we received no comments concerning them. Accordingly, we are adopting them without change.

Presumptions Established Under the Benefits Expansion Act of 2001

We proposed to provide that the nonstatutory adjudication rules flowing from the *Nehmer* court orders would apply only with respect to regulatory presumptions of service connection established pursuant to the Agent Orange Act of 1991, Public Law 102–4, prior to October 1, 2002. We explained that the scope of the *Nehmer* rules is defined by a May 1991 Final Stipulation and Order entered in the *Nehmer* case, which specified that the rules would apply to presumptions of service connection established by VA under the Agent Orange Act of 1991, Public Law 102–4. We noted that, under the terms of the Agent Orange Act of 1991, Public Law 102–4, VA's authority to issue regulatory presumptions of service connection expired on September 30, 2002. Accordingly, we concluded that the *Nehmer* rules applied to awards based on presumptions of service connection established prior to October 1, 2002.

We noted that Congress in 2001 enacted legislation authorizing VA to establish new presumptions of service connection during the additional period from October 1, 2002 to September 30, 2015. Veterans Education and Benefits Expansion Act of 2001, Pub. L. No. 107–103, § 201(d) (Benefits Expansion Act). We concluded that the *Nehmer* rules would not apply to awards based on presumptions established pursuant to the new authority granted by this Act.

Two commenters expressed disagreement with our conclusion and asserted that the *Nehmer* rules should be applied to awards based on presumptions established under the Benefits Expansion Act. We make no change based on these comments, for the reasons explained in our January 2003 notice of proposed rule making and the additional reasons stated below in response to the comments we received.

One commenter asserts that it would be unfair to apply different effective date rules to Vietnam veterans' claims based on presumptions established under the Agent Orange Act of 1991 and those based on presumptions established under the Benefits Expansion Act. Although we agree that a uniform set of effective-date rules would ordinarily be preferable, the prospect of disparate treatment does not provide a basis for changing these rules. VA's obligation to comply with both 38 U.S.C. 5110(g) and the *Nehmer* court orders necessarily requires disparate treatment of claims that are similar in many respects. Section 5110(g)

generally provides that, when benefits are awarded under a liberalizing regulation establishing a presumption of service connection, VA may not pay benefits for any period prior to the effective date of that regulation. Accordingly, any veteran who becomes entitled to service connection pursuant to a presumption, including presumptions relating to radiation exposure, mustard gas exposure, or prisoner of war experience, is subject to this restriction on retroactive payment. The *Nehmer* court orders establish a limited non-statutory exception to this general rule for certain claims based on herbicide exposure, and inevitably require that some veterans will be accorded retroactive benefits that most other veterans cannot receive. In determining where the line must be drawn, we necessarily look to the governing legal authorities.

VA is required to give effect to the clear statutory requirements in 38 U.S.C. 5110(g), in the absence of authority to the contrary. To the extent the *Nehmer* court orders require action seemingly at odds with section 5110(g), we believe they are most reasonably viewed as creating a non-statutory exception to section 5110(g)'s requirements. We believe it would be inappropriate, however, to disregard the clear requirements of section 5110(g) in cases that are not within the scope of the *Nehmer* court orders. The United States Court of Appeals for the Federal Circuit and the United States Court of Appeals for Veterans Claims have held that 38 U.S.C. 5110(g) governs the effective date of awards made pursuant to regulatory presumptions of service connection for diseases associated with herbicide exposure, at least in cases that are not clearly within the scope of the *Nehmer* court orders. *See Williams* v. *Principi*, 15 Vet. App. 189 (2001) (en banc); *aff'd*, 310 F.3d 1374 (Fed. Cir. 2002). As explained in our January 2003 notice of proposed rule making and reiterated below, the 1991 stipulation and order in *Nehmer* provides an exception to 38 U.S.C. 5110(g) that applies by its terms only to certain claims based on presumptions established under the authority granted in Agent Orange Act of 1991, Public Law 102–4.

One commenter asserts that these rules should apply to presumptions established under the Benefits Expansion Act because, when VA and the representatives for the *Nehmer* class entered into the May 1991 Final Stipulation and Order, they intended to incorporate any changes Congress might make in the future to the sunset provisions of the Agent Orange Act of 1991, Public Law 102–4. VA does not agree.

The United States District Court for the Northern District of California has held that the May 1991 stipulation and order must be interpreted in accordance with general principles of contract law. It is well established that, unless the parties provide otherwise, a contract is presumed to incorporate the law that existed at the time the contract was made. *See Norfolk & Western Ry. Co.* v. *American Train Dispatchers' Ass'n*, 499 U.S. 117, 129–30 (1991). The May 1991 stipulation and order specified that it would apply to presumptions established under the Agent Orange Act of 1991, Public Law 102–4. Both the district court and the United States Court of Appeals for the Ninth Circuit have noted that, at the time the parties entered into the May 1991 stipulation and order, the Agent Orange Act of 1991, Public Law 102–4, vested VA with authority to establish presumptions only for a specified 10-year period. *Nehmer* v. *United States Department of Veterans Affairs*, No. CV–86–6160 TEH (N.D. Cal. Dec. 12, 2000); *Nehmer* v. *Veterans' Administration*, 284 F.3d 1158, 1162 n.3. (9th Cir. 2002). The scope of the *Nehmer* rules must be determined with respect to the law existing in 1991, rather than the subsequent changes in law enacted ten years after the final stipulation and order was entered.

The terms of a contract "do not change with the enactment of subsequent legislation, absent a specific contractual provision providing for such a change." *Winstar Corp.* v. *United States*, 64 F.3d 1531, 1547 (Fed. Cir. 1995), *aff'd*, 518 U.S. 839 (1996). A subsequent change in the law cannot retrospectively alter the terms of the agreement. *See Florida East Coast Ry. Co.* v. *CSX Transportation, Inc.*, 42 F.3d 1125, 1129–30 (7th Cir. 1994). The 1991 stipulation and order in *Nehmer* contains no provision providing for subsequent changes in law. Accordingly, the enactment of the Benefits Expansion Act of 2001 cannot expand the Government's authority under the May 1991 stipulation and order.

The commenter asserts that, if Congress had enacted legislation after May 1991 to shorten the 10-year life span of the Agent Orange Act of 1991, the parties would have agreed that VA was relieved from the original agreement made in contemplation of a 10-year life span. The commenter argues that it necessarily follows that the parties intended to incorporate any subsequent legislative changes either limiting or extending VA's authority to establish presumptions. We do not agree, and we believe the hypothetical scenario described by the commenter is inapt. The 1991 stipulation and order in *Nehmer* did not require VA to issue regulations under the Agent Orange Act of 1991, Public Law 102–4. Rather, it established rules for determining the effective dates of benefit awards made pursuant to such regulations as VA would issue under that statute. Accordingly, the hypothetical legislation shortening the life span of the Agent Orange Act of 1991, Public Law 102–4, would not have altered any provision in the 1991 stipulation and order, but would have, at most, resulted in fewer presumptions to which the terms of the stipulation and order would apply. Moreover, even if there were any conflict between the 1991 stipulation and order and the hypothetical legislation described by the commenter, we would still disagree with the commenter's conclusion. Where intervening and unforeseen events interfere with fulfillment of a contract, the performance by one or more parties may be excused under principles of contract law relating to impossibility or impracticability of performance. The hypothetical described by the commenter would likely be governed by that principle rather than any inference that the parties silently intended to incorporate subsequent changes in law.

Two commenters assert that extending the *Nehmer* rules to presumptions established under the Benefits Expansion Act would be consistent with Congress' purpose in that Act. Specifically, the commenters state that Congress extended VA's authority to establish presumptions because the scientific evidence regarding the effects of herbicide exposure continues to develop. As explained above, the 2001 enactment of the Benefits Expansion Act does not bear upon the parties' intent when they entered into the 1991 final stipulation and order. Moreover, nothing in the Benefits Expansion Act suggests a legislative intent to authorize retroactive benefits.

The Benefits Expansion Act, Public Law 107–103, reflects a purpose to require ongoing periodic reviews of the scientific evidence to determine whether additional presumptions of service connection should be established. It does not, however, reflect any purpose to authorize retroactive benefits based on presumptions established under that Act. To the contrary, Congress has expressly limited the retroactive effect of new presumptions established by VA under the Benefits Expansion Act or any other statute. Section 5110(g) of title 38,

United States Code, provides that, when disability compensation, DIC, or pension benefits are awarded pursuant to a new regulation, the effective date of the benefit award may not be earlier than the effective date of the regulation itself. Further, 38 U.S.C. 1116(c), which governs regulations issued under the Benefits Expansion Act, provides that regulations under that Act establishing new presumptions of service connection shall be effective on the date they are issued. Although these statutory provisions alone amply convey Congress' intent, we note that the legislative history of 38 U.S.C. 1116(c) further establishes that Congress was concerned with the possibility that according retroactive effect to new regulatory presumptions would be unfair insofar as it would accord preferential treatment to veterans with disabilities associated with herbicide exposure, as compared with all other veterans who become entitled to benefits under a liberalizing statute or regulation. *See* S. Rep. 379, 101st Cong., 2nd Sess. 105–06 (1990) (expressing disapproval of VA's past actions in issuing retroactive presumptions of service connection according "preferential treatment" to certain veterans).

We note further that section 10(e) of the Agent Orange Act of 1991, Public Law 102–4, expressly referenced the *Nehmer* court orders. That provision delayed the effective date of certain changes to preexisting law made by Public Law 102–4 for a period of six months or for a lesser period in the event that the Secretary of Veterans Affairs determined that VA had fulfilled its obligations under the *Nehmer* court orders based on the prior law. If Congress had intended to codify and extend the provisions of the *Nehmer* court orders when it enacted the Benefits Expansion Act, Public Law 107–103, it is reasonable to expect that it would have done so by a similar express reference to *Nehmer*. However, neither the text nor the legislative history of Public Law 107–103 discusses the *Nehmer* court orders. Applying the *Nehmer* court orders to presumptions established under the Benefits Expansion Act, Public Law 107–103, would be contrary to the governing statutory requirements in 38 U.S.C. 1116(c) and 5110(g), and we have found nothing in the language, purpose, or history of the Benefits Expansion Act to suggest that Congress intended VA to ignore those statutory requirements.

For these reasons, we find that Congress has clearly expressed its intent that regulations issued under the Benefits Expansion Act will not provide a basis for awarding benefits for any period prior to the date such regulations are issued. Accordingly, we make no change based on this comment.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries and their survivors could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Herbicides, Veterans, Vietnam.

Approved: July 2, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, 38 CFR part 3 is amended as follows:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 3.816 is added to read as follows:

§ 3.816 Awards under the Nehmer Court Orders for disability or death caused by a condition presumptively associated with herbicide exposure.

(a) *Purpose.* This section states effective-date rules required by orders of a United States district court in the class-action case of *Nehmer* v. *United States Department of Veterans Affairs,* No. CV–86–6160 TEH (N.D. Cal.).

(b) *Definitions.* For purposes of this section—

(1) *Nehmer class member* means:

(i) A Vietnam veteran who has a covered herbicide disease; or

(ii) A surviving spouse, child, or parent of a deceased Vietnam veteran who died from a covered herbicide disease.

(2) *Covered herbicide disease* means a disease for which the Secretary of Veterans Affairs has established a presumption of service connection before October 1, 2002 pursuant to the Agent Orange Act of 1991, Public Law 102–4, other than chloracne. Those diseases are:

(i) Type 2 Diabetes (Also known as type II diabetes mellitus or adult-onset diabetes).

(ii) Hodgkin's disease.

(iii) Multiple myeloma.

(iv) Non-Hodgkin's lymphoma.

(v) Acute and Subacute peripheral neuropathy.

(vi) Porphyria cutanea tarda.

(vii) Prostate cancer.

(viii) Respiratory cancers (cancer of the lung, bronchus, larynx, or trachea).

(ix) Soft-tissue sarcoma (as defined in § 3.309(e)).

(c) *Effective date of disability compensation.* If a *Nehmer* class member is entitled to disability compensation for a covered herbicide disease, the effective date of the award will be as follows:

(1) If VA denied compensation for the same covered herbicide disease in a decision issued between September 25, 1985 and May 3, 1989, the effective date of the award will be the later of the date VA received the claim on which the prior denial was based or the date the disability arose, except as otherwise provided in paragraph (c)(3) of this

section. A prior decision will be construed as having denied compensation for the same disease if the prior decision denied compensation for a disease that reasonably may be construed as the same covered herbicide disease for which compensation has been awarded. Minor differences in the terminology used in the prior decision will not preclude a finding, based on the record at the time of the prior decision, that the prior decision denied compensation for the same covered herbicide disease.

(2) If the class member's claim for disability compensation for the covered herbicide disease was either pending before VA on May 3, 1989, or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the covered disease, the effective date of the award will be the later of the date such claim was received by VA or the date the disability arose, except as otherwise provided in paragraph (c)(3) of this section. A claim will be considered a claim for compensation for a particular covered herbicide disease if:

(i) The claimant's application and other supporting statements and submissions may reasonably be viewed, under the standards ordinarily governing compensation claims, as indicating an intent to apply for compensation for the covered herbicide disability; or

(ii) VA issued a decision on the claim, between May 3, 1989 and the effective date of the statute or regulation establishing a presumption of service connection for the covered disease, in which VA denied compensation for a disease that reasonably may be construed as the same covered herbicide disease for which compensation has been awarded.

(3) If the class member's claim referred to in paragraph (c)(1) or (c)(2) of this section was received within one year from the date of the class member's separation from service, the effective date of the award shall be the day following the date of the class member's separation from active service.

(4) If the requirements of paragraph (c)(1) or (c)(2) of this section are not met, the effective date of the award shall be determined in accordance with §§ 3.114 and 3.400.

(d) *Effective date of dependency and indemnity compensation (DIC).* If a Nehmer class member is entitled to DIC for a death due to a covered herbicide disease, the effective date of the award will be as follows:

(1) If VA denied DIC for the death in a decision issued between September 25, 1985 and May 3, 1989, the effective date of the award will be the later of the date VA received the claim on which such prior denial was based or the date the death occurred, except as otherwise provided in paragraph (d)(3) of this section.

(2) If the class member's claim for DIC for the death was either pending before VA on May 3, 1989, or was received by VA between that date and the effective date of the statute or regulation establishing a presumption of service connection for the covered herbicide disease that caused the death, the effective date of the award will be the later of the date such claim was received by VA or the date the death occurred, except as otherwise provided in paragraph (d)(3) of this section. In accordance with § 3.152(b)(1), a claim by a surviving spouse or child for death pension will be considered a claim for DIC. In all other cases, a claim will be considered a claim for DIC if the claimant's application and other supporting statements and submissions may reasonably be viewed, under the standards ordinarily governing DIC claims, as indicating an intent to apply for DIC.

(3) If the class member's claim referred to in paragraph (d)(1) or (d)(2) of this section was received within one year from the date of the veteran's death, the effective date of the award shall be the first day of the month in which the death occurred.

(4) If the requirements of paragraph (d)(1) or (d)(2) of this section are not met, the effective date of the award shall be determined in accordance with §§ 3.114 and 3.400.

(e) *Effect of other provisions affecting retroactive entitlement.* (1) *General.* If the requirements specified in paragraphs (c)(1) or (c)(2) or (d)(1) or (d)(2) of this section are satisfied, the effective date shall be assigned as specified in those paragraphs, without regard to the provisions in 38 U.S.C. 5110(g) or § 3.114 prohibiting payment for periods prior to the effective date of the statute or regulation establishing a presumption of service connection for a covered herbicide disease. However, the provisions of this section will not apply if payment to a *Nehmer* class member based on a claim described in paragraph (c) or (d) of this section is otherwise prohibited by statute or regulation, as, for example, where a class member did not qualify as a surviving spouse at the time of the prior claim or denial.

(2) *Claims Based on Service in the Republic of Vietnam Prior To August 5, 1964.* If a claim referred to in paragraph (c) or (d) of this section was denied by VA prior to January 1, 1997, and the veteran's service in the Republic of Vietnam ended before August 5, 1964, the effective-date rules of this regulation do not apply. The effective date of benefits in such cases shall be determined in accordance with 38 U.S.C. 5110. If a claim referred to in paragraph (c) or (d) of this section was pending before VA on January 1, 1997, or was received by VA after that date, and the veteran's service in the Republic of Vietnam ended before August 5, 1964, the effective date shall be the later of the date provided by paragraph (c) or (d) of this section or January 1, 1997.

(Authority: Public Law 104–275, sec. 505)

(f) *Payment of Benefits to Survivors or Estates of Deceased Beneficiaries.* (1) *General.* If a *Nehmer* class member entitled to retroactive benefits pursuant to paragraphs (c)(1) through (c)(3) or (d)(1) through (d)(3) of this section dies prior to receiving payment of any such benefits, VA shall pay such unpaid retroactive benefits to the first individual or entity listed below that is in existence at the time of payment:

(i) The class member's spouse, regardless of current marital status.

Note to Paragraph (f)(1)(i): For purposes of this paragraph, a spouse is the person who was legally married to the class member at the time of the class member's death.

(ii) The class member's child(ren), regardless of age or marital status (if more than one child exists, payment will be made in equal shares, accompanied by an explanation of the division).

Note to Paragraph (f)(1)(ii): For purposes of this paragraph, the term "child" includes natural and adopted children, and also includes any stepchildren who were members of the class member's household at the time of the class member's death.

(iii) The class member's parent(s), regardless of dependency (if both parents are alive, payment will be made in equal shares, accompanied by an explanation of the division).

Note to Paragraph (f)(1)(iii): For purposes of this paragraph, the term "parent" includes natural and adoptive parents, but in the event of successive parents, the persons who last stood as parents in relation to the class member will be considered the parents.

(iv) The class member's estate.

(2) *Inapplicability of certain accrued benefit requirements.* The provisions of 38 U.S.C. 5121(a) and § 3.1000(a) limiting payment of accrued benefits to amounts due and unpaid for a period not to exceed 2 years do not apply to payments under this section. The provisions of 38 U.S.C. 5121(c) and

§ 3.1000(c) requiring survivors to file claims for accrued benefits also do not apply to payments under this section. When a *Nehmer* class member dies prior to receiving retroactive payments under this section, VA will pay the amount to an identified payee in accordance with paragraph (f)(1) of this section without requiring an application from the payee. Prior to releasing such payment, however, VA may ask the payee to provide further information as specified in paragraph (f)(3) of this section.

(3) *Identifying payees.* VA shall make reasonable efforts to identify the appropriate payee(s) under paragraph (f)(1) of this section based on information in the veteran's claims file. If further information is needed to determine whether any appropriate payee exists or whether there are any persons having equal or higher precedence than a known prospective payee, VA will request such information from a survivor or authorized representative if the claims file provides sufficient contact information. Before releasing payment to an identified payee, VA will ask the payee to state whether there are any other survivors of the class member who may have equal or greater entitlement to payment under this section, unless the circumstances clearly indicate that such a request is unnecessary. If, following such efforts, VA releases the full amount of unpaid benefits to a payee, VA may not thereafter pay any portion of such benefits to any other individual, unless VA is able to recover the payment previously released.

(4) *Bar to accrued benefit claims.* Payment of benefits pursuant to paragraph (f)(1) of this section shall bar a later claim by any individual for payment of all or any part of such benefits as accrued benefits under 38 U.S.C. 5121 and § 3.1000.

(g) *Awards covered by this section.* This section applies only to awards of disability compensation or DIC for disability or death caused by a disease listed in paragraph (b)(2) of this section.

(Authority: 38 U.S.C. 501)

[FR Doc. 03–21646 Filed 8–22–03; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 98–156; FCC 03–175]

Certification of Equipment in the 24.05–24.25 GHz Band at Field Strengths up to 2500 mV/m

AGENCY: Federal Communications Commission.

ACTION: Final rule; termination.

SUMMARY: In this document, the Commission affirms the decision to allow the unlicensed operation of fixed point-to-point transmitters in the 24.05–24.25 GHz band at field strengths up to 2500 mV/m under amended provisions of the Commission's rules. In the course of taking this action, the Commission also denies the petition for reconsideration filed by the National Association for Amateur Radio (ARRL) that challenged the decision to allow the described operation on an unlicensed basis. Because the MO&O resolves all pending matters in this proceeding, the Commission terminates this proceeding.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gary Thayer, Office of Engineering and Technology, (202) 418–2290, TTY (202) 418–2989, e-mail: *gary.thayer@fcc.gov;* Neal McNeil, Office of Engineering and Technology, (202) 418–2408, e-mail: *neal.mcneil@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, ET Docket No. 98–156, FCC 03–175, adopted July 15, 2003, and released July 21, 2003. The full text of this Commission decision is available on the Commission's Internet site at *www.fcc.gov.* It is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Summary of the Memorandum Opinion and Order

1. In the Report and Order (R&O) in this proceeding, ET Docket No. 98–156, 67 FR 1,623, January 14, 2002, the Commission amended § 15.249 of the Commission's rules to allow unlicensed operation of fixed point-to-point transmitters in the 24.05–24.25 GHz band with field strengths up to 2500 mV/m. The Commission further decided that such devices must use directional antennas with gains of at least 33 dBi or a main lobe beamwidth not exceeding 3.5 degrees. The Commission also adopted strict frequency stability requirements to limit out-of-band emissions to minimal levels. The Commission concluded that it is in the public interest to allow such operation on an unlicensed basis to supplement the growing demand for licensed point-to-point facilities that satisfy important communications needs. For example, the Commission concluded that increasing the field strength limit would promote greater use of part 15 unlicensed devices for emergency restoration of communications in disaster situations, low-cost telecommunications delivery in rural areas, and other beneficial applications.

2. By this Memorandum Opinion and Order, the Commission affirms the decision made in the R&O to allow the unlicensed operation of fixed point-to-point transmitters in the 24.05–24.25 GHz band at field strengths up to 2500 mV/m under amended provisions of § 15.249 in part 15 of the Rules. The Commission affirms the central technical finding made in the R&O namely, that devices having field strengths up to 2500 mV/m and conforming to the specified directional antenna requirements are suitable for unlicensed operation under part 15 in the 24.05–24.25 GHz band. In particular, the Commission affirms the conclusion that devices operating within these requirements will not increase the interference potential to licensed amateur services in the band.

3. In the course of affirming its decision in the R&O, the Commission also denies the petition for reconsideration filed by the National Association for Amateur Radio (ARRL) that challenged the propriety of the described operation in the 24.05–24.25 GHz band on an unlicensed basis. Because the unlicensed operation provided for by the R&O will not increase the interference potential to licensed amateur services in the band, the Commission finds no merit in ARRL's argument that the Commission violated 47 U.S.C. 301 of the Communications Act in authorizing the unlicensed operation under part 15 of the Commission's rules. Furthermore, the Commission affirms that the rules adopted in the R&O are reasonable for

regulating the unlicensed operation that was authorized under part 15 in this proceeding. Finally, since the MO&O resolves all pending matters in this proceeding, the Commission terminates this proceeding.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21618 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[FCC 02–154]

2000 Biennial Regulatory Review: International Telecommunications Service, Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: In this document the Commission amends a reference to a section that has been removed from the Commission's rules.

DATES: Effective on August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Peggy Reitzel, Telecommunications Division, International Bureau, (202) 418–1499.

SUPPLEMENTARY INFORMATION: The Commission published a document in the **Federal Register** on July 9, 2002, (67 FR 45387).

■ In the FR Doc. 02–16738, the final rule removed § 63.18(e)(3) and redesignated paragraph (e)(4) as paragraph (e)(3). Redesignating paragraph (e)(4) as paragraph (e)(3) resulted in an incorrect reference in § 63.11(d). This document corrects § 63.11(d) to read as follows:

§ 63.11 Notification by and prior approval for U.S. international carriers that are or propose to become affiliated with a foreign carrier.

* * * * *

(d) *Cross-Reference*: In the event a transaction requiring a foreign carrier notification pursuant to this section also requires a transfer of control of assignment application pursuant to § 63.24, the foreign carrier notification shall reference in the notification the transfer of control of assignment application and the date of its filing.

* * * * *

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21617 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 98–67; FCC 03–112]

Telecommunication Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission rules pertaining to mandatory minimum standards, and other regulations, for Telecommunications Relay Services (TRS) and speech-to-speech services for individuals with hearing and speech disabilities. The amended rules are intended to improve the overall effectiveness of TRS to ensure that persons with hearing and speech disabilities have access to telecommunications networks that is consistent with the goal of functional equivalency mandated by Congress.

DATES: Effective September 24, 2003 except § 64.604 (a)(3) and (c)(2) of the Commission's rules, which contains information collection requirements under the Paperwork Reduction Act (PRA), that are not effective until approved by Office of Management and Budget (OMB). Written comments by the public on the new and modified information collections are due October 24, 2003. The Commission will publish a document in the **Federal Register** announcing the effective date for that section.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC, 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collection(s) contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Cheryl King, of the Consumer & Governmental Affairs Bureau at (202) 418–2284 (voice), (202) 418–0416 (TTY), or e-mail *Cheryl.King@fcc.gov*. For additional information concerning the information collection(s) contained in this document, contact Leslie Smith at (202) 418–0217, or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This *Second Report and Order, Order on Reconsideration* contains new and modified collections subject to the PRA of 1995, Public Law 104–13. These will be submitted to the OMB for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new and modified information collections contained in this proceeding. This document contains a *Second Report and Order* addressing issues arising from the Further Notice of Proposed Rulemaking contained in *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Report and Order and Further Notice of Proposed Rulemaking*, (*Improved TRS Order and FNPRM*), CC No. Docket 98–67, FCC No. 00–56, 15 FCC Rcd 5140, March 6, 2000; published at 65 FR 40093, June 21, 2000, and comments received in response thereto. This document also contains an *Order on Reconsideration* which resolves petitions for reconsideration filed against the *Improved TRS Order and FNPRM*. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (tty). This *Second Report and Order, Order on Reconsideration* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Paperwork Reduction Act

The *Second Report and Order, Order on Reconsideration* contains either new and/or modified information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information

collection(s) contained in this *Second Report and Order, Order on Reconsideration* as required by the PRA of 1995, Public Law 104–13. Public and agency comments are due October 24, 2003.

Synopsis

In this *Second Report and Order*, the Commission establishes new rules and amends existing rules governing TRS to further advance the functional equivalency mandate of section 225 of the Communications Act of 1934, 47 U.S.C. 225. First, the Commission requires that TRS providers offer certain improved services and features where technologically feasible, as well as several additional types of TRS calls. In addition, the Commission requires that all TRS providers implement 711 dialing access for STS users. Further, the Commission revises the requirements for handling emergency calls and provides guidance for public access to TRS-related information. In the *Order on Reconsideration*, the Commission addresses certain requirements for communications assistants and other matters relating to TRS.

Final Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 603 *et seq*, an Initial Regulatory Flexibility (IRFA) was incorporated in the further notice of proposed rule making to which this *Second Report and Order* responds. *See Improved TRS Order and FNPRM*. The Commission sought written public comment on the proposals in the *Improved TRS Order and FNPRM*, including comment on the IRFA incorporated in that proceeding. The comments we have received discuss only the general recommendations, not the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA. *See* 5 U.S.C. 604. We also expect that we could certify the *Second Report and Order* under 5 U.S.C. 605, because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore, there is not a substantial number of small entities that may be affected by our action.

Need for, and Objective of This Report and Order

This proceeding was initiated to address the requirement that telecommunications relay services (TRS) users have access to telephone services that are functionally equivalent to those available to individuals without hearing or speech disabilities. Our specific concerns were to examine the mandatory minimum standards for TRS with regard to enhanced features available to the non-disabled telecommunications consumer, and to address emergency call handling and Speech-to-Speech (STS) services. The Commission issued the *Improved TRS FNPRM* to further develop the record with the goal of making the full range of telecommunications services and features available to TRS users, consistent with Congress' direction that TRS regulations encourage the use of existing technology and not discourage or impair the development of improved technology. *See* 47 U.S.C. 225(d)(2). The *Improved TRS FNPRM* also sought comment on outreach programs, the accessibility of emergency services to TRS, and whether SS7 technology should be made available to TRS facilities.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

No comments were filed directly in response to the IRFA in this proceeding. The Commission has nonetheless considered potential significant economic impact of the rules on small entities and as discussed below has concluded that the rules adopted may imposed some economic burden on at least one small entity that is a TRS provider.

Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. 5 U.S.C. 694(a)(3). The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" 15 U.S.C. 632). Pursuant to the 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies an additional criterion established by the Small Business Administration (SBA). 15 U.S.C. 632. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. The term "small governmental jurisdiction" is defined as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." 5 U.S.C. 601(5). As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. U.S. Census Bureau, *Statistical Abstracts of the United States: 2000*, Section 9 pages 299–300, Tables 490 and 492. This number includes 39,044 county governments, municipalities, and townships of which 37,546 (approximately 96.2%) have populations of fewer than 50,000 and 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

Below, we further describe and estimate the number of small entity licensees and regulatees that, in theory, may be affected by these rules. For some categories, the most reliable source of information available at this time is data the Commission publishes in its *Trends in Telephone Service Report*. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5-5 (May 2002) (*Trends in Telephone Service*). FCC Web site location (see online page 24): *http://www.fcc.gov/Bureaus/CommonCarrier/Reports/FCC-StateLink/IAD/trend502.pdf*.

Local Exchange Carriers. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the

RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201 NAICS Code 517110. This provides that such a carrier is a small entity if it employs no more than 1,500 employees. *Id.* Commission data from 2000 indicate that there are 1,329 incumbent local exchange carriers, total, with approximately 1,024 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 1,024 ILECS that are small businesses possibly affected by our action.

Interexchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is a small entity if it employs no more than 1,500 employees. Commission data from 2000 indicate that there are 229 interexchange carriers, total, with approximately 181 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 181 interexchange carriers that are small businesses possibly affected by our action.

TRS Providers. Neither the Commission nor the SBA has developed a definition of "small entity" specifically directed towards providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. The Commission estimates that at least one TRS provider is a small entity. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities. MCI WorldCom, for example, provides TRS in only a few states but is not a small business. Consequently, the FCC estimates that at least one TRS provider is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

Reporting and Recordkeeping. This *Second Report and Order* involves no new mandatory reporting requirements. These rules require a speed dialing feature that may require TRS providers to maintain a list of telephone numbers. The *Second Report and Order* adopts a rule to require that TRS facilities provide speed dialing functionality on an intrastate and interstate basis; however, it does not adopt specific requirements for speed dialing functionality at this time.We anticipate that TRS providers will develop customized speed dialing and expect that consumers' needs will be addressed as this feature matures. The *Second Report and Order* also establishes voluntary reporting requirements associated with certain waivers available for certain TRS providers. Consistent with the *IP Relay Order on Reconsideration, Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, Declaratory Ruling and Second Further Notice of Proposed Rule Making,* FCC 02–121, 17 FCC Rcd 7779, April 22, 2002; published at 67 FR 39863 and 67 FR 39929, June 11, 2002 (*IP Relay Declaratory Ruling and FNPRM*), Order on Reconsideration, FCC 03–46, 18 FCC Rcd 4761, March 14, 2003; published at 68 FR 18825, April 16, 2003 (*IP Relay Order on Reconsideration*), this *Report and Order* establishes waivers for TRS providers that provide Internet Protocol (IP) Relay and video relay service (VRS). The waivers set forth in the *Second Report and Order* are contingent on annual reports filed with the Commission detailing the technological changes in these areas, the progress made, and the steps taken to resolve the technologically problems that prevent IP Relay and VRS providers from offering these types of TRS calls. This requirement has very little economic impact on the TRS providers because it merely requires an annual submission of an annual report to the Commission and the reports are voluntary because IP Relay and VRS are not mandatory forms of TRS under our rules.

Other Compliance Requirements. The rules adopted in this *Second Report and Order* require that all TRS providers provide several types of TRS calls including: Two-line VCO and two-line HCO, HCO-to-TTY and HCO-to-HCO, and VCO-to-TTY and VCO-to-VCO. The rules also require that TRS facilities route emergency TRS calls to the designated PSAP to which a direct voice call from a non-TRS number would be delivered. Furthermore, the rules require that TRS facilities provide certain technological features, including call release and three-way calling. The *Order on Reconsideration* clarifies certain reporting requirements for contact persons: These rules will affect TRS providers.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternative Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603 (c)(1)–(c)(4). One of the main purposes of this *Second Report and Order* is to clarify many of the current requirements for TRS providers. The annual reports associated with the waivers for IP Relay and VRS providers have been made to expire at the same time as previous waivers so that TRS providers have one deadline instead of multiple deadlines to which they must adhere if providing those non-mandatory forms of TRS. Any

new requirements that are imposed are similar to services currently being offered and therefore the Commission expects a minimal impact on small business. Currently, most TRS providers are not small entities, and are either interexchange carriers or local exchange carriers, with very few exceptions. This *Second Report and Order* adopts rules that will improve the effectiveness of TRS and ensure access to telecommunications networks for persons with hearing and speech disabilities while imposing the least necessary regulation.

Report to Congress

The Commission will send a copy of the *Second Report and Order, Order on Reconsideration* including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. *See* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Report and Order* including this FRFA, to the Chief of Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order, Order on Reconsideration* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to the authority contained in sections 1, 2, 4(i) and 4(j), 201–205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 201–205, 218 and 225, this *Second Report and Order, Order on Reconsideration are adopted* and Part 64 of Commission's rules is *amended* as set forth in the rule changes.

It is further ordered that the amendments to §§ 64.601 through 64.605 of the Commission's rules as set forth *are adopted*, effective September 24, 2003 except §§ 64.604 (a)(3) and (c)(2), that contains information collection requirements under the PRA, that are not effective until approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date for that section.

It is further ordered that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Report Order, Order on Reconsideration*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telecommunications, Individuals with disabilities, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); sections. 403(b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

■ 2. Section 64.601 is revised to read as follows:

§ 64.601 Definitions.

As used in this subpart, the following definitions apply:

(1) *711.* The abbreviated dialing code for accessing all types of relay services anywhere in the United States.

(2) *American Sign Language (ASL).* A visual language based on hand shape, position, movement, and orientation of the hands in relation to each other and the body.

(3) *ASCII.* An acronym for American Standard Code for Information Interexchange which employs an eight bit code and can operate at any standard transmission baud rate including 300, 1200, 2400, and higher.

(4) *Baudot.* A seven bit code, only five of which are information bits. Baudot is used by some text telephones to communicate with each other at a 45.5 baud rate.

(5) *Call release.* A TRS feature that allows the CA to sign-off or be "released" from the telephone line after the CA has set up a telephone call between the originating TTY caller and a called TTY party, such as when a TTY user must go through a TRS facility to contact another TTY user because the called TTY party can only be reached through a voice-only interface, such as a switchboard.

(6) *Common carrier or carrier.* Any common carrier engaged in interstate Communication by wire or radio as defined in section 3(h) of the Communications Act of 1934, as amended (the Act), and any common carrier engaged in intrastate communication by wire or radio, notwithstanding sections 2(b) and 221(b) of the Act.

(7) *Communications assistant (CA).* A person who transliterates or interprets conversation between two or more end users of TRS. CA supersedes the term "TDD operator."

(8) *Hearing carry over (HCO).* A form of TRS where the person with the speech disability is able to listen to the other end user and, in reply, the CA speaks the text as typed by the person with the speech disability. The CA does not type any conversation. Two-line HCO is an HCO service that allows TRS users to use one telephone line for hearing and the other for sending TTY messages. HCO-to-TTY allows a relay conversation to take place between an HCO user and a TTY user. HCO-to-HCO allows a relay conversation to take place between two HCO users.

(9) *Non-English language relay service.* A telecommunications relay service that allows persons with hearing or speech disabilities who use languages other than English to communicate with voice telephone users in a shared language other than English, through a CA who is fluent in that language.

(10) *Qualified interpreter.* An interpreter who is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(11) *Public Safety Answering Point (PSAP).* A facility that has been designated to receive 911 calls and route them to emergency services personnel as provided in 47 CFR 64.3000(c).

(12) *Speech-to-speech relay service (STS).* A telecommunications relay service that allows individuals with speech disabilities to communicate with voice telephone users through the use of specially trained CAs who understand the speech patterns of persons with speech disabilities and can repeat the words spoken by that person.

(13) *Speed dialing.* A TRS feature that allows a TRS user to place a call using a stored number maintained by the TRS facility. In the context of TRS, speed dialing allows a TRS user to give the CA a short-hand" name or number for the user's most frequently called telephone numbers.

(14) *Telecommunications relay services (TRS).* Telephone transmission services that provide the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. Such term includes services that enable two-way communication between an individual who uses a text telephone or other nonvoice terminal device and an individual who does not

use such a device, speech-to-speech services, video relay services and non-English relay services. TRS supersedes the terms "dual party relay system," "message relay services," and "TDD Relay."

(15) *Text telephone (TTY).* A machine that employs graphic communication in the transmission of coded signals through a wire or radio communication system. TTY supersedes the term "TDD" or "telecommunications device for the deaf," and TT.

(16) *Three-way calling feature.* A TRS feature that allows more than two parties to be on the telephone line at the same time with the CA.

(17) *Video relay service (VRS).* A telecommunications relay service that allows people with hearing or speech disabilities who use sign language to communicate with voice telephone users through video equipment. The video link allows the CA to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller.

(18) *Voice carry over (VCO).* A form of TRS where the person with the hearing disability is able to speak directly to the other end user. The CA types the response back to the person with the hearing disability. The CA does not voice the conversation. Two-line VCO is a VCO service that allows TRS users to use one telephone line for voicing and the other for receiving TTY messages. A VCO-to-TTY TRS call allows a relay conversation to take place between a VCO user and a TTY user. VCO-to-VCO allows a relay conversation to take place between two VCO users.

■ 3. Section 64.604 is amended by revising paragraphs (a)(1), (a)(3), (b), (c)(2) and (c)(6)(v)(A)(*1*) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(a) *Operational standards.*—(1) *Communications assistant (CA).*

(i) TRS providers are responsible for requiring that all CAs be sufficiently trained to effectively meet the specialized communications needs of individuals with hearing and speech disabilities.

(ii) CAs must have competent skills in typing, grammar, spelling, interpretation of typewritten ASL, and familiarity with hearing and speech disability cultures, languages and etiquette. CAs must possess clear and articulate voice communications.

(iii) CAs must provide a typing speed of a minimum of 60 words per minute. Technological aids may be used to reach the required typing speed. Providers must give oral-to-type tests of CA speed.

(iv) TRS providers are responsible for requiring that VRS CAs are qualified interpreters. A "qualified interpreter" is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary.

(v) CAs answering and placing a TTY-based TRS or VRS call must stay with the call for a minimum of ten minutes. CAs answering and placing an STS call must stay with the call for a minimum of fifteen minutes.

(vi) TRS providers must make best efforts to accommodate a TRS user's requested CA gender when a call is initiated and, if a transfer occurs, at the time the call is transferred to another CA.

(vii) TRS shall transmit conversations between TTY and voice callers in real time.

* * * * *

(3) *Types of calls.* (i) Consistent with the obligations of telecommunications carrier operators, CAs are prohibited from refusing single or sequential calls or limiting the length of calls utilizing relay services.

(ii) Relay services shall be capable of handling any type of call normally provided by telecommunications carriers unless the Commission determines that it is not technologically feasible to do so. Relay service providers have the burden of proving the infeasibility of handling any type of call.

(iii) Relay service providers are permitted to decline to complete a call because credit authorization is denied.

(iv) Relay services shall be capable of handling pay-per-call calls.

(v) TRS providers are required to provide the following types of TRS calls: (1) Text-to-voice and voice-to-text; (2) VCO, two-line VCO, VCO-to-TTY, and VCO-to-VCO; (3) HCO, two-line HCO, HCO-to-TTY, HCO-to-HCO.

(vi) TRS providers are required to provide the following features: (1) Call releasefunctionality; (2) speed dialing functionality; and (3) three-way calling functionality.

(vii) Voice mail and interactive menus. CAs must alert the TRS user to the presence of a recorded message and interactive menu through a hot key on the CA's terminal. The hot key will send text from the CA to the consumer's TTY indicating that a recording or interactive menu has been encountered. Relay providers shall electronically capture recorded messages and retain them for the length of the call. Relay providers may not impose any charges for additional calls, which must be made by the relay user in order to complete calls involving recorded or interactive messages.

(viii) TRS providers shall provide, as TRS features, answering machine and voice mail retrieval.

(4) *Handling of emergency calls.*. Providers must use a system for incoming emergency calls that, at a minimum, automatically and immediately transfers the caller to an appropriate Public Safety Answering Point (PSAP). An appropriate PSAP is the designated PSAP to which a direct call from the particular number would be delivered. In addition, a CA must pass along the caller's telephone number to the PSAP when a caller disconnects before being connected to emergency services.

(5) *STS called numbers.* Relay providers must offer STS users the option to maintain at the relay center a list of names and telephone numbers which the STS user calls. When the STS user requests one of these names, the CA must repeat the name and state the telephone number to the STS user. This information must be transferred to any new STS provider.

(b) *Technical standards.* (1) *ASCII and Baudot.* TRS shall be capable of communicating with ASCII and Baudot format, at any speed generally in use.

(2) *Speed of answer.* (i) TRS providers shall ensure adequate TRS facility staffing to provide callers with efficient access under projected calling volumes, so that the probability of a busy response due to CA unavailability shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(ii) TRS facilities shall, except during network failure, answer 85% of all calls within 10 seconds by any method which results in the caller's call immediately being placed, not put in a queue or on hold. The ten seconds begins at the time the call is delivered to the TRS facility's network. A TRS facility shall ensure that adequate network facilities shall be used in conjunction with TRS so that under projected calling volume the probability of a busy response due to loop trunk congestion shall be functionally equivalent to what a voice caller would experience in attempting to reach a party through the voice telephone network.

(A) The call is considered delivered when the TRS facility's equipment accepts the call from the local exchange carrier (LEC) and the public switched network actually delivers the call to the TRS facility.

(B) Abandoned calls shall be included in the speed-of-answer calculation.

(C) A TRS provider's compliance with this rule shall be measured on a daily basis.

(D) The system shall be designed to a P.01 standard.

(E) A LEC shall provide the call attempt rates and the rates of calls blocked between the LEC and the TRS facility to relay administrators and TRS providers upon request.

(3) *Equal access to interexchange carriers.* TRS users shall have access to their chosen interexchange carrier through the TRS, and to all other operator services, to the same extent that such access is provided to voice users.

(4) *TRS facilities.* (i) TRS shall operate every day, 24 hours a day. Relay services that are not mandated by this Commission need not to be provided every day, 24 hours a day.

(ii) TRS shall have redundancy features functionally equivalent to the equipment in normal central offices, including uninterruptible power for emergency use.

(5) *Technology.* No regulation set forth in this subpart is intended to discourage or impair the development of improved technology that fosters the availability of telecommunications to person with disabilities. TRS facilities are permitted to use SS7 technology or any other type of similar technology to enhance the functional equivalency and quality of TRS. TRS facilities that utilize SS7 technology shall be subject to the Calling Party Telephone Number rules set forth at 47 CFR 64.1600 *et seq.*

(6) *Caller ID.* When a TRS facility is able to transmit any calling party identifying information to the public network, the TRS facility must pass through, to the called party, at least one of the following: the number of the TRS facility, 711, or the 10-digit number of the calling party.

(c) * * *

(2) *Contact persons.* Beginning on June 30, 2000, State TRS Programs, interstate TRS providers, and TRS providers that have state contracts must submit to the Commission a contact person and/or office for TRS consumer information and complaints about a certified State TRS Program's provision of intrastate TRS, or, as appropriate, about the TRS provider's service. This submission must include, at a minimum, the following:

(i) The name and address of the office that receives complaints, grievances, inquiries, and suggestions;

(ii) Voice and TTY telephone numbers, fax number, e-mail address, and web address; and

(iii) The physical address to which correspondence should be sent.

* * * * *

(6) * * *

(v) * * *

(A) * * *

(*1*) *Form.* An informal complaint may be transmitted to the Consumer & Governmental Affairs Bureau by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, or some other method that would best accommodate a complainant's hearing or speech disability.

* * * * *

[FR Doc. 03–21615 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64

[CG Docket No. 02–278, FCC 03–208]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991.

AGENCY: Federal Communications Commission.

ACTION: Final rule; establishment of effective date.

SUMMARY: We recently revised the current Telephone Consumer Protection Act of 1991 (TCPA) rules, and adopted new rules modifying the Federal Communications Commission's (Commission's) unsolicited facsimile advertising requirements. This document establishes an effective date of January 1, 2005 for one provision of those rules. We have also modified the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements and the rule provision requiring that the sender of a facsimile advertisement first obtain the recipient's express permission in writing. The effective date of our amended definition of an "established business relationship" is not affected by our determination here.

DATES: Section 64.1200(a)(3)(i) published at 68 FR 44144, July 25, 2003, is effective January 1, 2005.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Erica H. McMahon or Richard D. Smith at 202–418–2512, Consumer & Governmental Affairs Bureau, Federal Communications Commission.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration* in CG Docket No. 02–278, FCC 03–208, adopted on August 18, 2003 and released August 18, 2003. The full text of this document is available at the Commission's Web site *http://www.fcc.gov* on the Electronic Comment Filing System and for public inspection and copying during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice) or (202) 418–7365 (tty). This Order on Reconsideration can also be downloaded in Text or ASCII formats at *http://www.fcc.gov/cgb.*

Synopsis

On July 3, 2003, the Commission released a *Report and Order* revising many of its telemarketing and facsimile advertising rules pursuant to the TCPA. *See* 68 FR 44144, July 25, 2003. Pursuant to Section 1.108 of the Commission's rules, 47 CFR 1.108, on our own motion, we issue this limited reconsideration of the *Report and Order* and extend, until January 1, 2005, the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. We also establish January 1, 2005 as the effective date of amended rule 47 CFR 64.1200(a)(3)(i), which provides that "a facsimile advertisement is not "unsolicited" if the recipient has granted the sender prior express invitation or permission to deliver the advertisement, as evidenced by a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender."

In the *Report and Order*, the Commission reversed its prior conclusion that an established business relationship provides companies with the necessary express permission to send faxes to their customers. The Commission determined that the established business relationship would no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. Instead, the Commission concluded that the

recipient's express invitation or permission must be in writing and include the recipient's signature. The recipient must clearly indicate that he or she consents to receiving such faxed advertisements from the company to which permission is given, and must provide the individual's or business's fax number to which faxes may be sent.

On July 25, 2003, the American Society of Association Executives (ASAE) filed a petition for emergency clarification of the rules governing unsolicited facsimile advertisements as they apply to tax-exempt nonprofit organizations. This petition asked the Commission to issue a clarification that unsolicited facsimile communications are not prohibited when issued by tax-exempt nonprofit purposes. In addition, ASAE filed a petition for stay of the unsolicited facsimile rules as they apply to tax-exempt nonprofits in the event the Commission is unable to clarify the rules prior to their effective date. Many of ASAE's members and other organizations have filed comments in support of ASAE's petitions. The National Association of Realtors (NAR) also filed, on August 1, 2003, a Request for Emergency Stay of all of the facsimile advertisement rules, asking the Commission to grant a one-year stay of the recently adopted rules "to permit NAR and its members sufficient time to review and comply with the Commission's new, unanticipated, and unprecedented, unsolicited fax rules." A Request for Stay of the amended rules concerning unsolicited facsimile advertising as they apply to the publishers of Requester Publications, along with a Request for Expedited Clarification of the unsolicited facsimile rules, were filed by Proximity Marketing on August 6, 2003. In addition, on August 8, 2003, a Request for Stay of the amended rules concerning unsolicited facsimile advertising as they apply to political action committees was filed by the National Association of Business Political Action Committees. The Chamber of Commerce of the United States, the Community Association Institute, the National Association of Manufacturers, the National Association of Wholesaler-Distributors, the National Restaurant Association, and the National Federation of Independent Business (Chamber of Commerce of the United States, *et al.*) filed, on August 8, 2003, a Request for Stay of the amended rules that apply to unsolicited commercial faxes. The American Society of Travel Agents, Mortgage Bankers Association of America, National Association of Mortgage Brokers, Consumer Mortgage Coalition, and the Midwest Circulation Association (collectively, the Business Users Coalition) also submitted a Petition for Emergency Stay of at least six (6) months of the rules regarding unsolicited facsimile advertisements. A Petition for Stay of the rules governing the nature of "express permission" required to send advertisements by fax was filed by American Business Media. A Petition for Emergency Stay & Clarification of the amended rules governing unsolicited facsimile advertisements as they apply to tax-exempt nonprofit organizations was submitted by the Air Conditioning Contractors of America. A Request for Stay of those rules governing unsolicited fax advertising was filed by the American Dietetic Association. Reed Elsevier Inc. submitted a Motion for Stay of the effective date of the amended fax consent rule at 64.1200(a)(3)(i). The Newspaper Association of America and the National Newspaper Association filed a Petition for Stay of the Commission's amended rules on unsolicited facsimile advertisements.

The American Teleservices Association (ATA) also submitted on July 25, 2003 a Request for Expedited Stay of the Commission's revisions to the rules implementing the TCPA. The ATA requests that the Commission stay the revisions to the rules implementing the TCPA, pending a final decision on judicial review of the new rules. ATA's petition relates primarily to the new telephone solicitation rules, including the national do-not-call registry.

We now, on our own motion, issue this limited reconsideration of the effective date of our determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements, as well as the amended unsolicited facsimile provisions at 47 CFR 64.1200(a)(3)(i). Section 64.1200(a)(3)(i), as amended, requires the sender of a facsimile advertisement to first obtain from the recipient a signed, written statement that includes the facsimile number to which any advertisements may be sent and clearly indicates the recipient's consent to receive such facsimile advertisements from the sender. The comments filed after the release of the *Report and Order* indicate that many organizations may need additional time to secure this written permission from individuals and businesses to whom they fax advertisements. We believe that, in light of this new information, the public interest would best be served by allowing senders of such advertisements additional time to obtain such express permission before the new rules become effective. In addition, this effective date will allow the Commission the opportunity to consider any petitions for reconsideration and other filings that may be made on this issue. We retain the discretion to extend the effective date should circumstances warrant such an action. We emphasize that our existing TCPA rules prohibiting the transmission of unsolicited advertisements to a telephone facsimile machine will remain in effect during the pendancy of this extension. Under these rules, those transmitting facsimile advertisements must have an established business relationship or prior express permission from the facsimile recipient to comply with our rules. In addition, the effective date of the other amended facsimile rules remains unchanged by this *Order on Reconsideration*. *See* 47 CFR 68.318(d) (amending the rules to require any fax broadcaster that demonstrates a high degree of involvement in the transmission of messages to be identified on the facsimile, along with the identification of the sender).

We emphasize that the only effective date of the Commission's *Report and Order* established by this *Order on Reconsideration* is the requirement that the sender of a facsimile advertisement first obtain the recipient's express permission in writing. In addition, as of January 1, 2005, an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements. Therefore, until the amended rule at 47 CFR 64.1200(a)(3)(i) becomes effective on January 1, 2005, an established business relationship will continue to be sufficient to show that an individual or business has given express permission to receive facsimile advertisements. The effective date of our amended definition of an "established business relationship" is not affected by our determination here.

We have considered and rejected ATA's request to stay the revisions to the rules implementing the TCPA to the extent that such request extends beyond the fax rules discussed above. Although the Commission has declined to adopt a single standard for requests for injunctive relief, we generally consider four criteria: (1) The likelihood of success on the merits, (2) the threat of irreparable harm absent grant of preliminary relief, (3) the degree of injury to other parties if relief is granted, and (4) that a stay will be in the public interest. *See Virginia Petroleum Jobbers Ass'n* v. *Federal Power Commission*, 259

F.2d 921 (D.C. Cir. 1958). We conclude that ATA's request does not satisfy the factors governing the issuance of a stay.

The actions contained herein have not changed our Final Regulatory Flexibility Analysis (FRFA), which is set forth in the *Report and Order*. Thus, no supplemental FRFA is necessary. In addition, the action contained herein imposes no new or modified reporting and/or recordkeeping requirements or burdens on the public.

Ordering Clauses

1. Accordingly, pursuant to sections 1–4, 222, 227, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151–154, 222 and 227; and section 1.108 of the Commission's Rules, 47 CFR 1.108, of the Commission's Rules, this *Order on Reconsideration* in CG Docket No. 02–278 *is adopted* and the *Report and Order*, FCC 03–153, *is modified* as set forth herein.

2. Subject to the effective dates set forth above, the National Association of Realtors' Request for Emergency Stay *is dismissed* without prejudice.

3. Subject to the effective dates set forth above, the American Society of Association Executives' Petition for Stay *is dismissed* without prejudice.

4. Subject to the effective dates set forth above, Proximity Marketing Request for Stay *is dismissed* without prejudice.

5. Subject to the effective dates set forth above, the National Association of Business Political Action Committees' Request for Stay *is dismissed* without prejudice.

6. Subject to the effective dates set forth above, the Chamber of Commerce of the United States *et al.* Request for Stay *is dismissed* without prejudice.

7. Subject to the effective dates set forth above, the Business Users Coalition's Petition for Emergency Stay *is dismissed* without prejudice.

8. Subject to the effective dates set forth above, the American Business Media's Petition for Stay *is dismissed* without prejudice.

9. Subject to the effective dates set forth above, the Air Conditioning Contractors of America's Petition for Emergency Stay *is dismissed* without prejudice.

10. Subject to the effective dates set forth above, the American Dietetic Association's Request for Stay of the Implementation of Regulations *is dismissed* without prejudice.

11. Subject to the effective dates set forth above, Reed Elsevier Inc."s Motion for Stay *is dismissed* without prejudice.

12. Subject to the effective dates set forth above, the Newspaper Association of America and the National Newspaper Association's Petition for Stay *is dismissed* without prejudice.

13. The American Teleservices Association Request for Expedited Stay *is dismissed* without prejudice to the extent it seeks a stay of the rules affected by the effective dates set forth above, but is *otherwise denied*.

14. The effective date for the Commission's determination that an established business relationship will no longer be sufficient to show that an individual or business has given express permission to receive unsolicited facsimile advertisements and the requirement that the sender of a facsimile advertisement first obtain the recipient's express permission in writing, as codified at 47 CFR 64.1200(a)(3)(i), IS January 1, 2005, and that this *Order on Reconsideration* is effective upon publication in the **Federal Register**. In light of the need to allow affected entities time to comply with the new faxing rules, we find good cause, pursuant to 5 U.S.C. 553(d), to make this effective on less than 30 days' notice.

List of Subjects

47 CFR Part 64

Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21644 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1002

[STB Ex Parte No. 542 (Sub–No. 10)]

Regulations Governing Fees For Services Performed In Connection With Licensing and Related Services—2003 Update

AGENCY: Surface Transportation Board.

ACTION: Final rules.

SUMMARY: The Board adopts its 2003 User Fee Update and revises its fee schedule at this time to recover the costs associated with the January 2003 Government salary increases and to recover increased **Federal Register** costs to the Board.

EFFECTIVE DATE: These rules are effective September 24, 2003.

FOR FURTHER INFORMATION CONTACT: David T. Groves, (202) 565–1551, or Anne Quinlan, (202) 565–1727. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The Board's regulations in 49 CFR 1002.3 require the Board's user fee schedule to be updated annually. The Board's regulation at 49 CFR 1002.3(a) provides that the entire fee schedule or selected fees can be modified more than once a year, if necessary. The Board's fees are revised based on the cost study formula set forth at 49 CFR 1002.3(d). Also, in some previous years, selected fees were modified to reflect new cost study data or changes in agency fee policy.

Because Board employees received a salary increase of 4.27% in January 2003, we are updating our user fees to recover the increased personnel costs. With certain exceptions, all fees will be updated based on our cost formula contained in 49 CFR 1002.3(d). In addition, the cost to publish data in the **Federal Register** increased last year, so we are revising the fees to give consideration to that increase.

The fee increases involved here result only from the mechanical application of the update formula in 49 CFR 1002.3(d), which was adopted through notice and comment procedures in *Regulations Governing Fees for Services-1987 Update*, 4 I.C.C.2d 137 (1987). In addition, no new fees are being proposed in this proceeding. Therefore, we find that notice and comment are unnecessary for this proceeding. *See Regulations Governing Fees For Services-1990 Update*, 7 I.C.C.2d 3 (1990); *Regulations Governing Fees For Services-1991 Update*, 8 I.C.C.2d 13 (1991); and *Regulations Governing Fees For Services-1993 Update*, 9 I.C.C.2d 855 (1993).

We conclude that the fee changes adopted here will not have a significant economic impact on a substantial number of small entities because the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

Additional information is contained in the Board's decision. To obtain a copy of the full decision, write, call, or pick up in person from the Board's contractor, Da-To-Da Legal, Suite 405, 1925 K Street, NW, Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD services 1–800–877–8339.]

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: August 18, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

■ For the reasons set forth in the preamble, title 49, chapter X, part 1002, of the Code of Federal Regulations is amended as follows:

PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701 and 49 U.S.C. 721(a).

■ 2. Section 1002.1 is amended by revising paragraphs (b), (c), and (e)(1) and the table in paragraph (f)(6) to read as follows:

§ 1002.1 Fees for record search, review, copying, certification, and related services.

* * * * *

(b) Service involved in examination of tariffs or schedules for preparation of certified copies of tariffs or schedules or extracts therefrom at the rate of $32.00 per hour.

(c) Service involved in checking records to be certified to determine authenticity, including clerical work, etc., incidental thereto, at the rate of $22.00 per hour.

* * * * *

(e) * * *

(1) A fee of $55.00 per hour for professional staff time will be charged when it is required to fulfill a request for ADP data.

* * * * *

(f) * * *

(6) * * *

Grade	Rate
GS–1	$ 9.31
GS–2	10.14
GS–3	11.43
GS–4	12.83
GS–5	14.35
GS–6	16.00
GS–7	17.78
GS–8	19.69
GS–9	21.75
GS–10	23.95
GS–11	26.31
GS–12	31.53
GS–13	37.50
GS–14	44.31
GS–15 and over	52.13

* * * * *

■ 3. In § 1002.2, paragraph (f) is revised as follows:

§ 1002.2 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

Type of proceeding	Fee
PART I: Non-Rail Applications or Proceedings to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(1) An application for the pooling or division of traffic	$3,300.
(2) An application involving the purchase, lease, consolidation, merger, or acquisition of control of a motor carrier of passengers under 49 U.S.C. 14303.	$1,500.
(3) An application for approval of a non-rail rate association agreement. 49 U.S.C. 13703	$20,600.
(4) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	$3,400.
(ii) Minor amendment	$70.
(5) An application for temporary authority to operate a motor carrier of passengers. 49 U.S.C. 14303(i)	$350.
(6) A notice of exemption for transaction within a motor passenger corporate family that does not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with motor passenger carriers outside the corporate family.	$1,300.
(7)–(10) [Reserved]	
PART II: Rail Licensing Proceedings Other than Abandonment or Discontinuance Proceedings:	
(11) (i) An application for a certificate authorizing the extension, acquisition, or operation of lines of railroad. 49 U.S.C. 10901.	$5,400.
(ii) Notice of exemption under 49 CFR 1150.31–1150.35	$1,400.
(iii) Petition for exemption under 49 U.S.C. 10502	$9,400.
(12) (i) An application involving the construction of a rail line	$55,600.
(ii) A notice of exemption involving construction of a rail line under 49 CFR 1150.36	$1,400.
(iii) A petition for exemption under 49 U.S.C. 10502 involving construction of a rail line	$55,600.
(13) A Feeder Line Development Program application filed under 49 U.S.C. 10907(b)(1)(A)(i) or 10907(b)(1)(A)(ii)	$2,600.
(14) (i) An application of a class II or class III carrier to acquire an extended or additional rail line under 49 U.S.C. 10902.	$4,600.
(ii) Notice of exemption under 49 CFR 1150.41–1150.45	$1,400.
(iii) Petition for exemption under 49 U.S.C. 10502 relating to an exemption from the provisions of 49 U.S.C. 10902.	$4,900.
(15) A notice of a modified certificate of public convenience and necessity under 49 CFR 1150.21–1150.24	1,300.
(16)–(20) [Reserved]	
PART III: Rail Abandonment or Discontinuance of Transportation Services Proceedings:	
(21) (i) An application for authority to abandon all or a portion of a line of railroad or discontinue operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the Northeast Rail Service Act [Subtitle E of Title XI of Pub. L. 97–35], bankrupt railroads, or exempt abandonments).	$16,500.
(ii) Notice of an exempt abandonment or discontinuance under 49 CFR 1152.50	$2,800.
(iii) A petition for exemption under 49 U.S.C. 10502	$4,700.
(22) An application for authority to abandon all or a portion of a line of a railroad or operation thereof filed by Consolidated Rail Corporation pursuant to Northeast Rail Service Act.	$350.
(23) Abandonments filed by bankrupt railroads	$1,400.
(24) A request for waiver of filing requirements for abandonment application proceedings	$1,300.
(25) An offer of financial assistance under 49 U.S.C. 10904 relating to the purchase of or subsidy for a rail line proposed for abandonment.	$1,100.
(26) A request to set terms and conditions for the sale of or subsidy for a rail line proposed to be abandoned	$16,800.
(27) A request for a trail use condition in an abandonment proceeding under 16 U.S.C.1247(d)	150.
(28)–(35) [Reserved]	
PART IV: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement:	
(36) An application for use of terminal facilities or other applications under 49 U.S.C. 11102	$14,100.
(37) An application for the pooling or division of traffic. 49 U.S.C. 11322	$7,600.

Type of proceeding	Fee
(38) An application for two or more carriers to consolidate or merge their properties or franchises (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership. 49 U.S.C. 11324:	
(i) Major transaction	$1,111,700.
(ii) Significant transaction	$222,300.
(iii) Minor transaction	$5,900.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$1,300.
(v) Responsive application	5,900.
(vi) Petition for exemption under 49 U.S.C. 10502	7,000.
(39) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$1,111,700.
(ii) Significant transaction	$222,300.
(iii) Minor transaction	$5,900.
(iv) A notice of an exempt transaction under 49 CFR 1180.2(d)	$1,000.
(v) Responsive application	$5,900.
(vi) Petition for exemption under 49 U.S.C. 10502	$7,000.
(40) An application to acquire trackage rights over, joint ownership in, or joint use of any railroad lines owned and operated by any other carrier and terminals incidental thereto. 49 U.S.C. 11324:	
(i) Major transaction	$1,111,700.
(ii) Significant transaction	$222,300.
(iii) Minor transaction	$5,900.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$950.
(v) Responsive application	$5,900.
(vi) Petition for exemption under 49 U.S.C. 10502	$7,000.
(41) An application of a carrier or carriers to purchase, lease, or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise. 49 U.S.C. 11324:	
(i) Major transaction	$1,111,700.
(ii) Significant transaction	$222,300.
(iii) Minor transaction	$5,900.
(iv) Notice of an exempt transaction under 49 CFR 1180.2(d)	$1,100.
(v) Responsive application	$5,900.
(vi) Petition for exemption under 49 U.S.C. 10502	$4,900.
(42) Notice of a joint project involving relocation of a rail line under 49 CFR 1180.2(d)(5)	$1,800.
(43) An application for approval of a rail rate association agreement. 49 U.S.C. 10706	$52,000.
(44) An application for approval of an amendment to a rail rate association agreement. 49 U.S.C. 10706:	
(i) Significant amendment	$9,600.
(ii) Minor amendment	$70.
(45) An application for authority to hold a position as officer or director under 49 U.S.C. 11328	$550.
(46) A petition for exemption under 49 U.S.C. 10502 (other than a rulemaking) filed by rail carrier not otherwise covered.	$6,000.
(47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562	$150.
(48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act.	$150.
(49)–(55) [Reserved].	
PART V: Formal Proceedings:	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1).	$62,100.
(ii) All other formal complaints (except competitive access complaints	$6,100.
(iii) Competitive access complaints	$150.
(57) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates or charges. 49 U.S.C. 10705.	$6,600.
(58) A petition for declaratory order:	
(i) A petition for declaratory order involving a dispute over an existing rate or practice which is comparable to a complaint proceeding.	$1,000.
(ii) All other petitions for declaratory order	$1,400.
(59) An application for shipper antitrust immunity. 49 U.S.C. 10706(a)(5)(A)	$5,200.
(60) Labor arbitration proceedings	$150.
(61) Appeals to a Surface Transportation Board decision and petitions to revoke an exemption pursuant to 49 U.S.C. 10502(d).	$150.
(62) Motor carrier undercharge proceedings	$150.
(63)–(75) [Reserved].	
PART VI: Informal Proceedings:	
(76) An application for authority to establish released value rates or ratings for motor carriers and freight forwarders of household goods under 49 U.S.C. 14706.	$900.
(77) An application for special permission for short notice or the waiver of other tariff publishing requirements	$90.
(78) (i) The filing of tariffs, including supplements, or contract summaries	$1 per page. (18 minimum charge.)
(ii) Tariffs transmitted by fax	$1 per page.
(79) Special docket applications from rail and water carriers:	
(i) Applications involving $25,000 or less	$50.
(ii) Applications involving over $25,000	$100.
(80) Informal complaint about rail rate applications	$450.

Type of proceeding	Fee
(81) Tariff reconciliation petitions from motor common carriers:	
(i) Petitions involving $25,000 or less	$50.
(ii) Petitions involving over $25,000	$100.
(82) Request for a determination of the applicability or reasonableness of motor carrier rates under 49 U.S.C. 13710(a)(2) and (3).	$150.
(83) Filing of documents for recordation. 49 U.S.C. 11301 and 49 CFR 1177.3(c)	$30 per document.
(84) Informal opinions about rate applications (all modes)	$150.
(85) A railroad accounting interpretation	$850.
(86) An operational interpretation	$1,100.
(87) Arbitration of Certain Disputes Subject to the Statutory Jurisdiction of the Surface Transportation Board under 49 CFR 1108:	
(i) Complaint	$75.
(ii) Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(iii) Third Party Complaint	$75.
(iv) Third Party Answer (per defendant), Unless Declining to Submit to Any Arbitration	$75.
(v) Appeals of Arbitration Decisions or Petitions to Modify or Vacate an Arbitration Award	$150.
(88)–(95) [Reserved]	
PART VII: Services:	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	$23 per delivery.
(97) Request for service or pleading list for proceedings	$18 per list.
(98) (i) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Surface Transportation Board or State proceeding that does not require a *Federal Register* notice.	$200.
(ii) Processing the paperwork related to a request for Carload Waybill Sample to be used for reasons other than a Surface Transportation Board or State proceeding that requires a *Federal Register* notice.	$500.
(99) (i) Application fee for the Surface Transportation Board's Practitioners' Exam	$100.
(ii) Practitioners' Exam Information Package	$25.
(100) Uniform Railroad Costing System (URCS) software and information:	
(i) Initial PC version URCS Phase III software program and manual	$50.
(ii) Updated URCS PC version Phase III cost file, if computer disk provided by requestor	$10.
(iii) Updated URCS PC version Phase III cost file, if computer disk provided by the Board	$20.
(iv) Public requests for *Source Codes* to the PC version URCS Phase III	$500.
(v) PC version or mainframe version URCS Phase II	$400.
(vi) PC version or mainframe version Updated Phase II databases	$50.
(vii) Public requests for *Source Codes* to PC version URCS Phase II	$1,500.
(101) Carload Waybill Sample data on recordable compact disk (R–CD):.	
(i) Requests for Public Use File on R–CD—First Year	$450.
(ii) Requests for Public Use File on R–CD Each Additional Year	$150.
(iii) Waybill—Surface Transportation Board or State proceedings on R–CD—First Year	$650.
(iv) Waybill—Surface Transportation Board or State proceedings on R–CD—Second Year on same R–CD	$450.
(v) Waybill—Surface Transportation Board of State proceeding on R–CD—Second Year on different R–CD	$500.
(vi) User Guide for latest available Carload Waybill Sample	$50.

* * * * *

[FR Doc. 03–21571 Filed 8–22–03; 8:45 am]

BILLING CODE 4915–00–P

Proposed Rules

Federal Register
Vol. 68, No. 164
Monday, August 25, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL TRADE COMMISSION

16 CFR Part 228

Tire Advertising and Labeling Guides

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission ("Commission") requests public comments about the overall costs and benefits of and the continuing need for its Tire Advertising and Labeling Guides ("the Tire Guides" or "the Guides"), as part of the Commission's systematic review of all current Commission regulations and guides.

DATES: Written comments will be accepted until October 24, 2003.

ADDRESSES: Mailed comments should be directed to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Mailed comments should be identified as "Tire Guides, 16 CFR Part 228—Comment." E-mail comments will be accepted at [*tireguides@ftc.gov*]. Those who comment by e-mail should give a mailing address to which an acknowledgment can be sent.

FOR FURTHER INFORMATION CONTACT: David Plottner, Investigator, Federal Trade Commission, 1111 Superior Avenue, Suite 200, Cleveland, Ohio 44114, telephone number (216) 263–3409, E-mail [*dplottner@ftc.gov*].

SUPPLEMENTARY INFORMATION:

I. Tire Advertising and Labeling Guides

The Commission first promulgated Trade Practice Rules for the Tire Industry in 1936. It discarded those Rules as obsolete and adopted new regulations in 1958. Subsequently, those regulations were folded into complete Guides that became effective in January 1968. These 1968 Guides were revised slightly in 1994, with the addition of a provision regarding retreaded tires. Otherwise the 1968 Guides have remained unchanged.

Commission Guides, generally, constitute administrative interpretations of Commission law and are administered by the Commission for the guidance of the public in conducting its affairs in conformity with legal requirements. Conduct inconsistent with the Guides may result in corrective action by the Commission under applicable statutory provisions.

The Tire Guides cover tires for use on "passenger automobiles, station wagons, and similar vehicles." They apply to manufacturers of new vehicles, on which these tires are provided as original equipment, and to those who manufacture, sell, distribute, or retread tires. The Tire Guides address labeling, both permanent and removable; advertising, including specific triggering terminology, performance claims, deceptive pricing claims, and guarantee advertising; point-of-sale disclosures regarding use, care and safety; and disclosures relating to used, retreaded tires and snow tires.

II. Regulatory Review Program

The Commission has determined, as part of its oversight responsibilities, to review rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. The Commission solicits comments on, among other things, the economic impact of and the continuing need for the Tire Guides; possible conflict between the Guides and state, local, or other federal laws; and the effect of any technological, economic, or other industry changes on the Guides.

III. Request for Comment

The Commission solicits written public comments on the following questions:

(1) Is there a continuing need for the Tire Guides?

(a) What benefits have the Guides provided to purchasers of the products affected by the Guides?

(b) Have the Guides imposed costs on purchasers?

(c) How prevalent and widespread is voluntary compliance with the Guides?

(d) Have other Federal regulatory initiatives rendered the Guides unnecessary?

(2) What changes, if any, should be made to the Guides to increase the benefits of the Guides to purchasers?

(a) How would these changes affect the costs the Guides impose on firms following their suggestions?

(b) How would these changes affect the benefits to purchasers?

(3) What significant burdens or costs, including costs of compliance, have the Guides imposed on firms following their suggestions?

(a) Have the Guides provided benefits to such firms? If so, what benefits?

(4) What changes, if any, should be made to the Guides to reduce the burdens or costs imposed on firms following their suggestions?

(a) How would these changes affect the benefits provided by the Guides?

(5) Do the Guides overlap or conflict with other Federal, state, or local laws or regulations?

(a) To what extent has/will NHTSA tire safety regulations and tire quality grading standards regulations [49 CFR 567, 571, 574, 575, and 597] including those required by the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act of 2000 , Pub. L. 106—414 supersede the need for this Guide or parts of this Guide?

(b) To what extent has the Magnuson-Moss Warranty Act, 15 U.S.C. 2301 *et seq.*, and regulations promulgated pursuant to the Act, found at 16 CFR Parts 700–703 and Part 239, superseded the need for the Guides or parts of the Guides?

(c) Have state consumer protection laws or regulations governing tires, tire safety, tire price advertising, tire disposal, retreading, or snow tires affected the need for the Guides or parts of the Guides?

(6) Since 1968 when the main provisions of the Guides were issued, what effects, if any, have the following changes in relevant technology or economic conditions had on the Guides:

(a) The recent increased sales of pickup trucks, sport utility vehicles, and similar new vehicles, the tires of which may not be covered by the Guides?

(b) The shift to radial tires (as opposed to the bias-ply tires popular when the Guides were issued) in today's tire market?

(c) Changes in tire distribution or sales, including use of E-mail, the Internet, Internet advertising or CD–ROM advertising.

(d) The declining market for retreaded passenger car tires.

(7) Are there any abuses occurring in the distribution, promotion, sale or manufacture of tires that are not addressed by the Guides? If so, what mechanisms should be explored to address such abuses (*e.g.*, consumer education, industry self-regulation, Guide amendment)?

List of Subjects in 16 CFR Part 228

Advertising, Automobile tires, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission, Commissioner Harbour not participating.

Donald S. Clark,

Secretary.

[FR Doc. 03–21681 Filed 8–22–03; 8:45 am]

BILLING CODE 6750–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 404

[Regulation No. 4]

RIN 0960–AF62

Amendments to Annual Earnings Test for Retirement Beneficiaries

AGENCY: Social Security Administration (SSA).

ACTION: Notice of proposed rulemaking.

SUMMARY: We are providing notice of proposed rulemaking to conform to the "Senior Citizens' Freedom to Work Act of 2000". This legislation was enacted on April 7, 2000, and became retroactively effective on January 1, 2000. It eliminates the Social Security annual earnings test for retirement beneficiaries, starting from the month in which they reach full retirement age. Before the passage of this legislation, persons reaching full retirement age were subject to an earnings test until the month in which they attained age 70.

DATES: To ensure that your comments are considered, we must receive them no later than October 24, 2003.

ADDRESSES: You may give us your comments by using: our Internet site facility (*i.e.*, Social Security Online) at *http://www.socialsecurity.gov/regulations/*, e-mail to *regulations@ssa.gov*, telefax to (410) 966–2830 or by sending a letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Process and Innovation Management Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

ELECTRONIC VERSION: The electronic file of this document is available on the date of publication in the **Federal Register** on the Internet site for the Government Printing Office: *http://www.access.gpo.gov/su_docs/aces/acess/140.html*. It is also available on the Internet site for SSA (*i.e.*, "Social Security Online") at *http://www.socialsecurity.gov*.

FOR FURTHER INFORMATION CONTACT: Dorothy Skipwith, Social Insurance Specialist, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–4231 or TTY (410) 966–5609. For information on eligibility or filing benefits: Call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0078, or visit our Internet web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

In addition to the revisions necessitated by the changes in the "Senior Citizens' Freedom to Work Act of 2000," Pub. L. 106–182, which eliminated the annual earnings test for persons reaching full retirement age, we are proposing changes necessitated by the "Social Security Amendments of 1983," Pub. L. 98–21. This legislation will increase the full retirement age for persons born in 1938 or later in incremental amounts, with a full 2-year increase in full retirement age for persons born in 1960 or later. We are also proposing the revision of the existing regulatory sections, numbered below, to present them in plainer language and to update the examples.

Explanation of Proposed Changes

The following is a brief summary of the sections we propose to revise and the changes to each of them.

Section 404.338 Widow's and widower's benefits amounts. This section describes the benefit amount a widow or widower may expect to receive relative to the benefit amount of the deceased insured spouse. The benefit amount for the widow or widower may include increased benefits based on delayed retirement credit of the deceased insured spouse, or reduced benefits based on the deceased insured spouse retiring before reaching full retirement age. This section also includes discussion on widow or widower benefits based on a special primary insurance amount when the insured died before reaching age 62. We propose to revise this section to reflect the change in full retirement age.

Sections 404.415 and 404.416 Deductions because of excess earnings; annual earnings test. Amount of deduction because of excess earnings. We propose to combine sections §§ 404.415 and 404.416 into a revised section § 404.415, "*Deductions because of excess earnings*," because the topics are closely related and overlapping.

Revised section § 404.415 would explain the effect of excess earnings on the benefits of:

1. An insured person caused by his/her excess earnings.
2. An auxiliary beneficiary because of the excess earnings of the insured person on whose record he/she draws benefits.
3. An auxiliary beneficiary because of his/her own excess earnings, which reduce only that beneficiary's benefits.

This revised section § 404.415 would also reflect the legislated changes in full retirement age and annual earnings test.

Section 404.428 Earnings in a taxable year. This section clarifies the method for calculating a beneficiary's or prospective beneficiary's annual earnings with respect to the annual earnings test. It also clarifies when the claimant may use a taxable year other than a calendar year, and the number of months in a taxable year used in the earnings test calculation for the year of death. This section also defines which reporting year wage earners and self-employed individuals must use relative to the year in which the earnings were earned.

We propose to revise the section to reflect changes in the annual earnings test and full retirement age.

Section 404.429 Earnings; defined. This section defines wages and net earnings from self-employment for earnings test purposes. It also lists the self-employment occupations that are included in "net earnings from self-employment" for earnings test purposes. This section also defines the allowable level of a claimant's involvement and performance in an ongoing business in determining whether the claimant's retirement actually has taken place.

We propose to revise the section to reflect the new annual earnings test and full retirement age legislation.

Section 404.430 Excess earnings defined for taxable years ending after December 1972; monthly exempt amount defined. This section defines the maximum monthly and annual

amounts of earnings that can be earned by retirement and survivor beneficiaries without the earnings causing a reduction in their benefits. It then also delineates the reduction if these earning limits are exceeded, as a proportion of the amount of earnings that are above those limits.

We propose to revise this section by changing the section heading to "Monthly and annual exempt amounts defined; excess earnings defined," and deleting obsolete material. This section would also reflect the changes in the annual earnings test and full retirement test, and display annual earnings test exempt amounts for 2000 through 2003.

Section 404.434 Excess earnings; method of charging. This section describes the method of charging estimated excess earnings of an insured person and also the excess earnings of a beneficiary. Although the excess earnings may not completely eliminate the benefits to be paid on the insured's record, all the estimated earnings of the calendar (or fiscal) year are charged to the earlier months of the year. This may eliminate benefits for those earlier months, and may allow full benefits in the later months of the year.

This section also clarifies that the excess earnings of a person receiving benefits on another's record only diminish or eliminate the benefits of that beneficiary; they do not affect the benefits of the insured or those of others receiving benefits on the insured's record.

This section also states that if both the insured and other(s) receiving benefits on an insured's record have excess earnings, the excess earnings of the insured are first charged to the total family benefits payable (or deemed payable), and then the excess earnings of the secondary beneficiary are charged against the insured's remaining benefits. We propose to rewrite this section in plain language.

Section 404.435 Excess earnings; months to which excess earnings cannot be charged. This section lists the situations in which one's excess earnings in a month are not counted to cause reductions in benefits. The section defines the grace year and the termination grace year, and delineates the circumstances where an individual can have more than one grace year. The section cites examples to clarify these concepts.

This section also states the presumption that an individual was engaged in self-employment and/or performing services for wages each month in a taxable year in which such earnings are reported, until the individual provides evidence to us about non-earning months in that year.

We propose to rewrite this section in plain language, change the heading to "Excess earnings; months to which excess earnings can or cannot be charged; grace year defined," to reflect the change in the full retirement age, update outdated examples, and delete obsolete material.

Section 404.437 Excess earnings; benefit rate subject to deductions because of excess earnings. This section delineates the various benefit reduction factors to which a beneficiary may be subjected. We propose to rewrite the section by using simpler, clearer language. We also propose to revise the section heading to "Excess earnings; benefits subject to deductions because of excess earnings."

Section 404.452 Reports to Social Security Administration of earnings; wages; net earnings from self-employment. This section contains the reporting requirements and conditions under which Social Security survivor and retirement beneficiaries who have not yet reached full retirement age, are required to report earnings to the Social Security Administration. The purpose of these reports are: (1) To enable the Social Security Administration to adjust the monthly benefit amounts that may have been affected by the earnings test; and (2) to establish whether a grace year has occurred because the earnings of a beneficiary fell below the earnings test amount. This section also conveys what reporting formats are acceptable, the filing deadlines and possible extensions, and the reporting requirements of persons receiving benefits on behalf of others (representative payees).

We propose to rewrite this section to reflect changes in the full retirement age, to reflect section 309(c) of Public Law 103–296, which eliminates any exceptions to the requirement to file an annual report for beneficiaries under age 70 receiving auxiliary or survivors benefits when there are auxiliary or survivor beneficiaries living in a separate household and to delete obsolete material.

Regulatory Procedures

Clarity of These Regulations

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these proposed rules, we invite your comments and suggestions on how to make these proposed rules yet easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rules easier to understand?

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) (OMB) and determined that these proposed rules meet the requirements for a significant regulatory action under E.O.xecutive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to the Social Security Administration and the Internal Revenue Service, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burden referenced in these rules because the rules were not considered during the clearance of the forms.

Section No.	Number of respondents	Average burden per response	Frequency of response	Estimated annual hour burden
§ 404.428(b)	1	1	1	1
§ 404.429(d)	1	1	1	1
§ 404.435(d)	1	1	1	1
§ 404.435(e)	1	1	1	1
§ 404.452(a)&(c)	1	1	1	1
§ 404.452(b)&(c)	1	1	1	1
§ 404.452(d)	1	1	1	1
§ 404.452(e)(1)	1	1	1	1
§ 404.452(e)(2)	1	1	1	1
Totals	9	9	9	9

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Social Security Administration at the following address: Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6402.

Comments can be received between 30 and 60 days after publication of this notice and will be most useful if received by the Social Security Administration within 30 days of publication.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure in the Federal, old age, survivors and disability insurance program; earnings coverage; insured status; computation of, and eligibility for benefits.

Dated: July 15, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

For the reasons set out in the preamble, we propose to amend subparts D and E of part 404 of Chapter III of Title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.338 is revised to read as follows:

§ 404.338 Widow's and widower's benefits amounts.

(a) A widow's or widower's monthly benefit is equal to the insured person's primary insurance amount. If the insured person dies before reaching age 62 and the widow or widower is first eligible after 1984, we may compute a special primary insurance amount to determine the amount of the monthly benefit (see § 404.212(b)).

(b) We may increase the monthly benefit amount if the insured person delays filing for benefits or requests voluntary suspension of benefits, and thereby earns delayed retirement credit (see § 404.313), and/or works before the year 2000 after reaching full retirement age (as defined in § 404.409). The amount of the monthly benefit may change as explained in § 404.304.

(c) The widow's or widower's monthly benefit will be reduced if the insured person chooses to receive old-age benefits before reaching full retirement age. If so, the benefit will be reduced to the amount the insured person would be receiving if alive, or 82½ percent of his or her primary insurance amount, whichever is larger.

Subpart E—[Amended]

3. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, 702(a)(5) and 1129A of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, 902(a)(5) and 1320a–8a.).

4. Section 404.415 is revised to read as follows:

§ 404.415 Deductions because of excess earnings.

(a) *Deductions because of insured individual's earnings.* Under the annual earnings test, we will reduce your monthly benefits (except disability insurance benefits based on the beneficiary's disability) by the amount of your excess earnings (as described in § § 404.434), for each month in a taxable year (calendar year or fiscal year) in which you are under full retirement age (as defined in § 404.409).

(b) *Deductions from husband's, wife's, and child's benefits because of excess earnings of the insured individual.* We will reduce husband's, wife's, and child's insurance benefits payable (or deemed payable—*see* § 404.420) on the insured individual's earnings record because of the excess earnings of the insured individual. However, beginning with January 1985, we will not reduce the benefits payable to a divorced wife or a divorced husband who has been divorced from the insured individual for at least 2 years.

(c) *Deductions because of excess earnings of beneficiary other than the insured.* If benefits are payable to you (or deemed payable—see § 404.420) on the earnings record of an insured individual and you have excess earnings (as described in § 404.430) charged to a month, we will reduce only your benefits for that month under the annual earnings test. Child's insurance benefits payable by reason of being disabled will be evaluated using Substantial Gainful Activity guidelines (as described in § 404.1574 or § 404.1575). This deduction equals the amount of the excess earnings. (*See* § 404.434 for charging of excess earnings where both the insured individual and you, a beneficiary, have excess earnings).

§ 404.416 [Removed]

5. Section 404.416 is removed.

6. Section 404.428 is revised to read as follows:

§ 404.428 Earnings in a taxable year.

(a) When we apply the annual earnings test to your earnings as a beneficiary under this subpart (*see* § 404.415), we count all of your earnings (as defined in § 404.429) for all months of your taxable year even though you may not be entitled to benefits during all months of that year. (*See* § 404.430 for the rule that applies to the earnings of a beneficiary who attains full retirement age (as described in § 404.409)).

(b) Your taxable year is presumed to be a calendar year until you show to our satisfaction that you have a different taxable year. If you are self-employed, your taxable year is a calendar year unless you have a different taxable year for the purposes of subtitle A of the Internal Revenue Code of 1986. In either case, the number of months in a taxable year is not affected by:

(1) The time a claim for Social Security benefits is filed;

(2) Attainment of any particular age;

(3) Marriage or the termination of marriage; or

(4) Adoption.

(c) The month of death is counted as a month of the deceased beneficiary's taxable year in determining whether the beneficiary had excess earnings for the year under § 404.430. For beneficiaries who die after November 10, 1988, we use twelve as the number of months to determine whether the beneficiary had excess earnings for the year under § 404.430.

(d) Wages, as defined in § 404.429(c), are charged as earnings for the months and year in which you rendered the services. Net earnings or net losses from self-employment count as earnings or losses in the year for which such earnings or losses are reportable for Federal income tax purposes.

7. Section 404.429 is revised to read as follows:

§ 404.429 Earnings; defined.

(a) *General.* The term "earnings" as used in this subpart (other than as a part of the phrase "net earnings from self-employment") includes the sum of your wages for services rendered in a taxable year, plus your net earnings from self-employment for the taxable year, minus any net loss from self-employment for the same taxable year.

(b) *Net earnings or net loss from self-employment.* Your net earnings or net loss from self-employment are determined under the provisions in subpart K of this part, except that:

(1) In this section, the following occupations are included in the definition of "trade or business" (although they may be excluded in subpart K):

(i) The performance of the functions of a public office;

(ii) The performance of a service of a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry or by a member of a religious order in the exercise of duties required by the order;

(iii) The performance of service by an individual in the exercise of his or her profession as a Christian Science practitioner;

(iv) The performance by an individual in the exercise of his or her profession as a doctor of medicine, lawyer, dentist, osteopath, veterinarian, chiropractor, naturopath, or optometrist.

(2) For the sole purpose of the earnings test under this subpart:

(i) If you reach full retirement age, as defined in § 404.409, on or before the last day of your taxable year, you will have excluded from your gross earnings from self-employment, your royalties attributable to a copyright or patent obtained before the taxable year in which you reach full retirement age; and

(ii) If you are entitled to insurance benefits under title II of the Act, other than disability insurance benefits or child's insurance benefits payable by reason of being disabled, we will exclude from gross earnings any self-employment income you received in a year after your initial year of entitlement that is not attributable to services you performed after the first month you became entitled to benefits. In this section, services means any significant work activity you performed in the operation or management of a trade, profession, or business which can be related to the income received. If a part of the income you receive in a year is not related to any significant services you performed after the month of initial entitlement, only that part of your income may be excluded from gross earnings for deduction purposes. We count the balance of the income for deduction purposes. Your royalties or other self-employment income is presumed countable for purposes of the earnings test until it is shown to our satisfaction that such income may be excluded under this section.

(3) We do not count as significant services:

(i) Actions you take after the initial month of entitlement to sell a crop or product if it was completely produced in or before the month of entitlement. This rule does not apply to income you receive from a trade or business of buying and selling products produced or made by others; for example, a grain broker.

(ii) Your activities to protect an investment in a currently operating business or activities that are too irregular, occasional, or minor to be considered as having a bearing on the income you receive, such as—

(A) Hiring an agent, manager, or other employee to operate the business;

(B) Signing contracts where your signature is required, so long as the major contract negotiations were handled by others in running the business for you;

(C) Looking over the company's financial records to assess the effectiveness of those agents, managers, or employees in running the business for you;

(D) Personally contacting an old and valued customer solely for the purpose of maintaining good will when such contact has a minimal effect on the ongoing operation of the trade or business; or

(E) Occasionally filling in for an agent, manager, or other employee or partner in an emergency.

(4) In figuring your net earnings or net loss from self-employment, we count all net income or net loss even though:

(i) You did not perform personal services in carrying on the trade or business;

(ii) The net profit was less than $400;

(iii) The net profit was in excess of the maximum amount creditable to your earnings record; or

(iv) The net profit was not reportable for social security tax purposes.

(5) Your net earnings from self-employment is the excess of gross income over the allowable business deductions (allowed under the Internal Revenue Code). Net loss from self-employment is the excess of business deductions (that are allowed under the Internal Revenue Code) over gross income. You cannot deduct, from wages or net earnings from self-employment, expenses in connection with the production of income excluded from gross income under (b)(2)(ii) of this section.

(c) *Wages.* Wages include the gross amount of your wages rather than the net amount paid after deductions by your employer for items such as taxes and insurance. Wages are defined in subpart K of this part, except that we also include the following types of wages that are excluded in subpart K:

(1) Remuneration in excess of the amounts in the annual wage limitation table in § 404.1047;

(2) Wages of less than the amount stipulated in section § 404.1057 that you

receive in a calendar year for domestic service in the private home of your employer, or service not in the course of your employer's trade or business;

(3) Payments for agricultural labor excluded under § 404.1055;

(4) Remuneration, cash and non-cash, for service as a home worker even though the cash remuneration you received is less than the amount stipulated in § 404.1058(a) in a calendar year;

(5) Services performed outside the United States in the Armed Forces of the United States.

(d) *Presumptions concerning wages.* For purposes of this section, when reports received by us show that you received wages (as defined in paragraph (c) of this section) during a taxable year, it is presumed that they were paid to you for services rendered in that year unless you present evidence to our satisfaction that the wages were paid for services you rendered in another taxable year. If a report of wages shows your wages for a calendar year, your taxable year is presumed to be a calendar year for purposes of this section unless you present evidence to our satisfaction that your taxable year is not a calendar year.

8. Section 404.430 is revised to read as follows:

§ 404.430 Monthly and annual exempt amounts defined; excess earnings defined.

(a) *Monthly and annual exempt amounts.* (1) The earnings test monthly and annual exempt amounts are the amounts of wages and self-employment income which you, as a Social Security beneficiary, may earn in any month or year without part or all of your monthly benefit being deducted because of excess earnings. The monthly exempt amount, (which is 1/12 of the annual exempt amount), applies only in a beneficiary's grace year or years. (*See* § 404.435(a) and (b)). The annual exempt amount applies to the earnings of each non-grace taxable year prior to the year of FRAfull retirement age, as defined in § 404.409. A larger "annual" exempt amount applies to the total earnings of the months in the taxable year that precedes the month in which you attain FRAfull retirement age. The full annual exempt amount applies to the earnings of these pre-FRAfull retirement age FRAmonths, even though they are earned in less than a year. For beneficiaries using a fiscal year as a taxable year, the exempt amounts applicable at the end of the ends of their fiscal year apply.

(2) We determine the monthly exempt amounts for each year by a method that depends on the type of exempt amount.:

(i) For the lower exempt amount (the one applicable before the calendar year of reaching the FRAfull retirement age), we multiply $670 (the lower exempt amount for 1994) by the ratio of the national average wage index for the second prior year to that index for 1992. If the amount so calculated is not a multiple of $10, we round it to the nearest multiple of $10 (*i.e.*, if the amount ends in $5 or more, we round up, otherwise we round down). The annual exempt amount is then 12 times the rounded monthly exempt amount.

(ii) The higher exempt amount (the one applicable in months of the year of attaining full retirement age FRA that precede such attainment) was set by legislation (Pub. L. 104–121) for years 1996–2002. To calculate the higher exempt amount for any year after 2002, we will multiply $2,500 (the higher exempt amount for 2002) by the ratio of the national average wage index for the second prior year to that index for 2000. We round the result as described in paragraph (a)(2)(i) of this section for the lower exempt amount.

(iii) The following are the annual and monthly exempt amounts for taxable years 2000 through 2003.

Year	For years through taxable year preceding year of reaching full retirement age		Months of taxable year prior to month of full retirement age	
	Reduction: $1 for every $2 over the exempt amount		Reduction: $1 for every $3 over the exempt amount	
	Annual	Monthly	Annual	Monthly
2000	$10,080	$840	$17,000	$1,417
2001	10,680	890	25,000	2,084
2002	11,280	940	30,000	2,500
2003	11,520	960	30,720	2,560

(b) *Method of determining excess earnings for years after December 1999.* If you have not yet reached your year of full retirement ageFRA, your excess earnings for a taxable year are 50 percent of your earnings (as described in § 404.429) that are above the exempt amount. After December 31, 1999, in the taxable year you will reach full retirement age, the annual (and monthly, if applicable) earnings limit applies to the earnings of the months prior to the month in which you reach full retirement age. Excess earnings are 33⅓% of the earnings above the annual exempt amount. Your earnings after reaching the month of FRAfull retirement age are not subject to the earnings test.

9. Section 404.434 is revised to read as follows:

§ 404.434 Excess earnings; method of charging.

(a) *Months charged.* If you have not yet reached your year of full retirement age, and if your estimated earnings for a year result in estimated excess earnings (as described in § 404.430), we will charge these excess earnings to your full benefit each month from the beginning of the year, until all of the estimated excess earnings have been charged. Excess earnings, however, are not charged to any month described in §§ 404.435 and 404.436.

(b) *Amount of excess earnings charged.* (1) *Insured individual's excess earnings.* For each $1 of your excess earnings we will decrease by $1 the benefits to which you and all others are entitled (or deemed entitled–*see* § 404.420) on your earnings record. (*See* § 404.439 where the excess earnings for a month are less than the total benefits payable for that month.)

(2) *Excess earnings of beneficiary other than insured individual.* We will charge a beneficiary, other than the insured, $1 for each $1 of the beneficiary's excess earnings (*see* § 404.437). These excess earnings, however, are charged only against that beneficiary's own benefits.

(3) *You, the insured individual, and a person entitled (or deemed entitled) on your earnings record both have excess earnings.* If both you and a person

entitled (or deemed entitled) on your earnings record have excess earnings (as described in § 404.430), your excess earnings are charged first against the total family benefits payable (or deemed payable) on your earnings record, as described in paragraph (b)(1) of this section. Next, the excess earnings of a person entitled on your earnings record are charged against his or her own benefits remaining after part of your excess earnings have been charged against his/her benefits (because of the reduction in the total family benefits payable). See § 404.441 for an example of this process and the manner in which partial monthly benefits are apportioned.

(c) *Earnings test applicability.* Public Law 106–182 eliminated the Social Security earnings test, beginning with the month in which a person attains full retirement age (as defined in § § 404.409), for taxable years after 1999. In the year that you reach full retirement age, the annual earnings test amount is applied to the earnings amounts of the months that precede your month of full retirement age. (*See* § 404.430). The reduction rate for these months is $1 of benefits for every $3 you earned above the earnings limit in these months. The earnings threshold amount will be increased in conjunction with increases in average wages.

10. Section 404.435 is revised to read as follows:

§ 404.435 Excess earnings; months to which excess earnings can or cannot be charged; grace year defined.

(a) *Monthly benefits payable.* We will not reduce your benefits on account of excess earnings for any month in which you, the beneficiary—

(1) Were not entitled to a monthly benefit;

(2) Were considered not entitled to benefits (due to non-covered work outside the United States or no child in care, as described in § 404.436);

(3) Were at full retirement age (as described in § 404.409);

(4) Were entitled to payment of a disability insurance benefit as defined in § 404.315; (*see* § 404.1592 and § 404.1592a(b)) which describes the work test if you are entitled to disability benefits;

(5) Are age 18 or over and entitled to a child's insurance benefit based on disability;

(6) Are entitled to a widow's or widower's insurance benefit based on disability; or

(7) Had a non-service month in your grace year (*see* paragraph (b) of this section). A non-service month is any month in which you, while entitled to retirement or survivors benefits:

(i) Do not work in self-employment (*see* paragraphs (c) and (d) of this section);

(ii) Do not perform services for wages greater than the monthly exempt amount set for that month (*see* paragraph (e) of this section and § 404.430); and

(iii) Do not work in non-covered remunerative activity on 7 or more days in a month while outside the United States. A non-service month occurs even if there are no excess earnings in the year.

(b) *Grace year defined.* (1) A beneficiary's initial grace year is the first taxable year in which the beneficiary has a non-service month (*see* paragraph (a)(7) of this section) in or after the month in which the beneficiary is entitled to a retirement, auxiliary, or survivor's benefit.

(2) A beneficiary may have another grace year each time his or her entitlement to one type of benefit ends and, after a break in entitlement of at least one month, the beneficiary becomes entitled to a different type of retirement or survivors benefit. The new grace year would then be the taxable year in which the first non-service month occurs after the break in entitlement.

(3) For purposes of determining whether a given year is a beneficiary's grace year, we will not count as a non-service month, a month that occurred while the beneficiary was entitled to disability benefits under section 223 of the Social Security Act or as a disabled widow, widower, or child under section 202.

(4) A beneficiary entitled to child's benefits, to spouse's benefits before age 62 (entitled only by reason of having a child in his or her care), or to mother's or father's benefits is entitled to a termination grace year in any year the beneficiary's entitlement to these types of benefits terminates. This provision does not apply if the termination is because of death or if the beneficiary is entitled to a Social Security benefit for the month following the month in which the entitlement ended. The beneficiary is entitled to a termination grace year in addition to any other grace year(s) available to him or her.

Example 1: Don, age 62, will retire from his regular job in April of next year. Although he will have earned $15,000 for January-April of that year and plans to work part time, he will not earn over the monthly exempt amount after April. Don's taxable year is the calendar year. Since next year will be the first year in which he has a non-service month while entitled to benefits, it will be his grace year and he will be entitled to the monthly earnings test for that year only. He will receive benefits for all months in which he does not earn over the monthly exempt amount (May-December) even though his earnings have substantially exceeded the annual exempt amount. However, in the years that follow, up to the year of full retirement age, only the annual earnings test will be applied if he has earnings that exceed the annual exempt amount, regardless of his monthly earnings amounts.

Example 2: Marion was entitled to mother's insurance benefits from 1998 because she had a child in her care under age 18. Because she had a non-service month in 1998, 1998 was her initial grace year. Marion's child married in May 2000 and her entitlement to mother's benefits terminated in April 2000. Since Marion's entitlement did not terminate by reason of her death and she was not entitled to another type of Social Security benefit in the month after her entitlement to a mother's benefit ended, she is entitled to a termination grace year for 2000, the year in which her entitlement to mother's insurance benefits terminated. She applied for and became entitled to widow's insurance benefits effective February 2001. Because there was a break in entitlement to benefits of at least one month before entitlement to another type of benefit, 2001 will be a subsequent grace year if Marion has a non–service month in 2001.

(c) *You worked in self-employment.* You are considered to have worked in self-employment in any month in which you performed substantial services (*see* § 404.446) in the operation of a trade or business (or in a combination of trades and businesses if there are more than one), as an owner or partner even though you had no earnings or net earnings resulting from your services during the month.

(d) *Presumption regarding work in self-employment.* You are presumed to have worked in self-employment in each month of your taxable year until you show to our satisfaction that in a particular month you did not perform substantial services (*see* § 404.446(c)) in any trades and businesses from which you derived your annual net income or loss (*see* § 404.429).

(e) *Presumption regarding services for wages.* You are presumed to have performed services in any month for wages (as defined in § 404.429) of more than the applicable monthly exempt amount in each month of the year, until you show to our satisfaction that you did not perform services for wages in that month that exceeded the monthly exempt amount.

11. Section 404.437 is revised to read as follows:

§ 404.437 Excess earnings; benefit rate subject to deductions because of excess earnings.

We will further reduce your benefits (other than a disability insurance benefit) because of your excess earnings

(*see* § 404.430), after your benefits may have been reduced because of the following:

(a) The family maximum (*see* §§ 404.403 and 404.404), which applies to entitled beneficiaries remaining after exclusion of beneficiaries deemed not entitled under § 404.436 (due to a deduction for engaging in non-covered remunerative activity outside the United States or failure to have a child in one's care);

(b) Your entitlement to benefits (*see* § 404.410) for months before you reach full retirement age FRA (*see* § 404.409) (this applies only to old-age, wife's, widow's, widower's or husband's benefits);

(c) Your receipt of benefits on your own earnings record, which reduces (*see* § 404.407), your entitlement (or deemed entitlement; *see* § 404.420) to benefits on another individual's earnings record; and

(d) Your entitlement to benefits payable (or deemed payable) to you based on the earnings record of an individual entitled to a disability insurance benefit because of that individual's entitlement to worker's compensation (*see* § 404.408).

12. Section 404.452 is revised to read as follows:

§ 404.452 Reports to Social Security Administration of earnings: wages; net earnings from self-employment.

(a) *Reporting requirements and conditions under which a report of earnings, that is, wages and/or net earnings from self-employment, is required.* (1) If you have not reached full retirement age (*see* § 404.409) and you are entitled to a monthly benefit, other than only a disability insurance benefit, you are required to report to us the total amount of your earnings (as defined in § 404.429) for each taxable year. This report will enable SSA to pay you accurate benefits and avoid both overpayments and underpayments.

(2) If your wages and/or net earnings from self-employment in any month(s) of the year are below the allowable amount (*see* §§ 404.446 and 404.447), your report should include this information in order to establish your grace year (*see* § 404.435) and possible eligibility for benefits for those months.

(3) Your report to us for a taxable year should be filed on or before the 15th day of the fourth month following the close of the taxable year; for example, April 15 when the beneficiary's taxable year is a calendar year. An income tax return or form W–2, filed timely with the Internal Revenue Service, may serve as the report required to be filed under the provisions of this section, where the income tax return or form W–2 shows the same wages and/or net earnings from self-employment that must be reported to us. Although we may accept W–2 information and special payment information from employers, you still have primary responsibility for making sure that the earnings we use for deduction purposes are correct. If there is a valid reason for a delay, we may grant you an extension of up to four (4) months to file this report.

(4) You are not required to report to us if:

(i) You reached full retirement age before the first month of your entitlement to benefits; or

(ii) Your benefit payments were suspended under the provisions described in § 404.456 for all months of a taxable year before the year of full retirement age, or for all months prior to your full retirement age in the full retirement age year, unless you are entitled to benefits as an auxiliary or survivor and your benefits are reduced for any month in the taxable year because of earnings and there is another person entitled to auxiliary or survivor's benefits on the same record, but living in a different household.

(b) *Report required by person receiving benefits on behalf of another.* When you receive benefits as a representative payee on behalf of a beneficiary (*see* subpart U of this part), it is your duty to report any earnings of the beneficiary to us.

(c) *Information required.* If you are the beneficiary, your report should show your name, address, Social Security number, the taxable year for which the report is made, and the total amount of your wages and/or net earnings from self employment during the taxable year. If you are a representative payee, your report should show the name, address, and Social Security number of the beneficiary, the taxable year for which the report is made, and the total earnings of the beneficiary, as well as your name, address, and Social Security number.

(d) *Requirement to furnish requested information.* You, the beneficiary (or the person reporting on his/her behalf) are required to furnish any other information about earnings and services that we request for the purpose of determining the correct amount of benefits payable for a taxable year (*see* § 404.455).

(e) *Extension of time for filing report.* (1) *Request for extension to file report.* Your request for an extension of time, or the request of your authorized agent, must be in writing and must be filed at a Social Security Administration office before your report is due. Your request must include the date, your name, the Social Security number of the beneficiary, the name and Social Security number of the person filing the request if other than the beneficiary, the year for which your report is due, the amount of additional time requested, the reason why you require this extension (*see* § 404.454), and your signature.

(2) *Evidence that extension of time has been granted.* If you do not receive written approval of an extension of time for making your report of earnings, it will be presumed that no extension of time was granted. In such case, if you do not file on time, you will need to establish that you had good cause (§ 404.454) for filing your report after the normal due date.

[FR Doc. 03–21613 Filed 8–22–03; 8:45 am]
BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 356

[Docket No. 81N–033P]

RIN 0910–AA01

Oral Health Care Drug Products for Over-the-Counter Human Use; Antigingivitis/Antiplaque Drug Products; Establishment of a Monograph; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to November 25, 2003, the comment period for an advance notice of proposed rulemaking (ANPR) for over-the-counter (OTC) antigingivitis/antiplaque drug products. The ANPR was published in the **Federal Register** of May 29, 2003. FDA is taking this action in response to a request for extension of the comment period to allow interested persons additional time to submit comments and information on the conditions under which OTC antigingivitis/antiplaque drug products are generally recognized as safe and effective and not misbranded. FDA is also extending the reply comment period to February 23, 2004.

DATES: Submit written or electronic comments by November 25, 2003.

Submit reply comments by February 23, 2004.

ADDRESSES: Submit written and reply comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Robert L. Sherman, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 29, 2003 (68 FR 32232), FDA published an ANPR based on the recommendations of the Dental Plaque Subcommittee (the Subcommittee) of the Nonprescription Drugs Advisory Committee (NDAC). FDA issued this notice to establish conditions under which OTC drug products for the reduction or prevention of dental plaque and gingivitis are generally recognized as safe and effective and not misbranded.

II. Request for Extension of Time

On July 15, 2003, the Consumer Healthcare Products Association (CHPA), a trade association of manufacturers of nonprescription drugs and dietary supplements, and the Cosmetic, Toiletry, and Fragrance Association (CTFA), a trade association of manufacturers of personal care products, requested a 90-day extension in which to file comments and new information (Ref. 1). CHPA/CTFA also requested that FDA accept reply comments up to 180 days after the closing date for the comment period. The request stated that the closing date for the original comment period would not allow CHPA/CTFA time to adequately assess the implications of the Subcommittee's proposed rulemaking. The request noted that, because this is the first time FDA published the Subcommittee's recommendations, industry needs sufficient time to provide additional data and perspectives on inclusion of several of the Subcommittee's proposed Category III (insufficient data) active ingredients in a tentative final monograph, and to support a Category I (safe and effective) status for these ingredients. In addition, CHPA/CTFA stated that because FDA specifically requested information on testing protocols, statistical methods, and effectiveness criteria, industry needs sufficient time to develop a set of common elements and basic criteria for performance testing.

CHPA/CTFA stated that individual companies are likely to submit relevant data on antigingivitis/antiplaque active ingredients and on drug products in which antigingivitis/antiplaque active ingredients are combined with other oral health care active ingredients. Further, these companies are considering additional clinical studies that would involve time for FDA's review of submitted protocols and likely require 12 to 18 months to complete.

III. FDA's Decision

FDA has carefully considered the request and acknowledges its request for information on effectiveness criteria for antigingivitis/antiplaque active ingredients, performance testing, and the statistical approaches used to evaluate these tests. Manufacturers and CTFA/CTFA may require additional time to develop and review information to fully respond to the agency's request. However, FDA believes that extension of the reply comment period from 60 to 90 days should be sufficient time for manufacturers to respond to comments submitted during the comment period. The reply comment period is not intended to remain open for new study results to be submitted. Accordingly, the comment period is extended to November 25, 2003, and the reply comment period is extended to February 23, 2004. FDA considers an extension of time for comments in this case to be in the public interest.

IV. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the ANPR. Submit a single paper copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

V. Reference

The following reference has been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. EXT7.

Dated: August 19, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21669 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 4

[USCG–2001–8773]

RIN 1625–AA27 (formerly 2115–AG07)

Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking; notice of public meeting; reopening of comment period.

SUMMARY: The Coast Guard is reopening the comment period on the notice of proposed rulemaking for Marine Casualties and Investigations; Chemical Testing Following Serious Marine Incidents published in the **Federal Register** on February 28, 2003. In response to requests for a public meeting that were submitted to the public docket, the Coast Guard will hold a public meeting in Washington, DC. The purpose of the meeting is to obtain information from the public in addition to the comments already submitted to the docket.

DATES: The meeting will be held Friday, September 19, 2003, from 9 a.m. to 5 p.m. in Washington, DC. This meeting may close early if all business is finished. Comments must reach the docket on or before September 30, 2003.

ADDRESSES: The meeting location is: United States Coast Guard Headquarters, Transpoint Building, 2100 Second Street, SW., Room 2415, Washington, DC 20593. You may submit comments identified by Coast Guard docket number USCG–2001–8773 to the Docket Management Facility at the U.S. Department of Transportation (DOT). To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Federal eRulemaking Portal: *http://www.regulations.gov.*

(3) Mail: Docket Management Facility, DOT, 400 Seventh Street SW., Washington, DC 20590–0001.

(4) Fax: 202–493–2251.

(5) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, contact Mr. Robert C. Schoening, Drug and Alcohol Program Manager, telephone 202–267–0684; e-mail address: *rschoening@comdt.uscg.mil*. For questions on viewing material in the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, DOT, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the DOT to use the Docket Management Facility even though the Coast Guard has recently transferred to DHS. Please see the DOT's statement on the Privacy Act under the section titled Viewing comments and documents.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this rulemaking [USCG–2001–8773], indicate the specific section of the proposed rule to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period in developing the final rule.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, or the like). You may review the DOT's statement on the Privacy Act in the **Federal Register** published on April 11, 2000 [65 FR 19477], or you may visit *http://dms.dot.gov*.

Background Information

The 1998 Coast Guard Authorization Act requires the Coast Guard to establish procedures ensuring alcohol testing is conducted within two hours of a serious marine casualty. The Coast Guard proposes to establish requirements for testing within the statutory time limits, to expand the existing requirements for commercial vessels to have alcohol testing devices on board, and to authorize use of a wider variety of testing devices (Notice of Proposed Rulemaking, [68 FR 9722], February 28, 2003). This rulemaking would also make additional minor procedural changes to Part 4, including a time limit for conducting drug testing following a serious marine incident. The Coast Guard reopened the comment period and scheduled this public meeting in response to comments previously submitted to the docket.

Public Meeting

The public meeting will be held September 19, 2003, from 9 a.m. to 5 p.m., at the United States Coast Guard Headquarters, Transpoint Building, 2100 Second Street, SW., Washington, DC. The building is located adjacent to Army Fort Leslie J. McNair at Buzzard Point. Entry to the Transpoint Building is controlled. All attendees must have a picture identification issued by a U.S. Federal Agency or a State or Territory issued drivers license. Valid Passports and Merchant Mariner Documents are also acceptable. Everyone is subject to a weapons search.

Members of the public may provide oral statements at the meeting. Oral statements may be time limited if there are numerous speakers. Persons wishing to make oral statements should notify Mr. Robert C. Schoening listed under **FOR FURTHER INFORMATION CONTACT** no later than two days before the meeting.

On street public parking in the vicinity of Coast Guard Headquarters is very limited. James Creek Marina, National Park Service, is adjacent to Coast Guard Headquarters and has some parking available for a nominal fee. The closest Metro Station is SEU-Waterfront on the Green Line, about nine blocks from Coast Guard Headquarters. Attendees are encouraged to utilize taxi or public buses serving the Buzzard Point area. (For Bus Schedules, please see the Washington Area Metro Transit Authority-WMATA Web site at *http://www.wmata.com/*. Bus Route 71 serves Coast Guard Headquarters).

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request assistance at the meeting, Contact Mr. Robert C. Schoening listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Dated: August 18, 2003.

L.L. Hereth,

Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–21643 Filed 8–22–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 03–123; FCC 03–112]

Telecommunication Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on technological advancements that may further the statutory goal of functionally equivalent Telecommunications Relay Services (TRS) for persons with hearing and speech disabilities, including comment on whether TRS facilities should have the same National Security Emergency Preparedness (NS/EP) designation as local exchange carriers under the Telecommunications Service Priority (TSP) System to ensure that persons with hearing and speech disabilities have access to telecommunications services during time of local, national, or international crisis.

DATES: Comments are due on or before September 24, 2003 and reply comments are due on or before October 9, 2003. Written comments by the public on the proposed information collection are due September 24, 2003. Written comments must be submitted by the Office of Management and Budget

(OMB) on the proposed information collection on or before October 24, 2003.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20054. In addition to filing comments with the Secretary, a copy of any comment on the information collection contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554; or via the Internet to *Leslie.Smith@fcc.gov*, and to Kim A. Johnson, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kim_A._Johnson@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Cheryl King, of the Consumer & Government Affairs Bureau at (202) 418–2284 (voice), (202) 418–0416 (TTY) or e-mail *Cheryl.King@fcc.gov*. For additional information concerning the information collection contained in this document, contact Leslie Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION: This *Notice of Proposed Rulemaking* (NPRM), *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CG Docket No. 03–123, FCC 03–112, contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It will be submitted to the OMB for review under the Paperwork Reduction Act (PRA). OMB, the general public, and other Federal agencies are invited to comment on the proposed information collection(s) contained in this proceeding. This is a summary of the Commission's *NPRM*, adopted May 15, 2003, and released June 17, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Services mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–B204, Washington, DC 20554. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Dana Jackson, Federal Communications Commission, 445 12th Street, SW., Room 6–C410, Washington, DC 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, CG Docket No. 03–123, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this *NPRM* may be purchased from the Commission's duplication contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY). This *NPRM* can also be downloaded in Text and ASCII formats at: *http://www.fcc.gov/cgb/dro*.

Paperwork Reduction Act

This *NPRM* contains a proposed information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invited the general public and OMB to comment on the information collection(s) contained in this *NPRM*, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM*; OMB notification of action is due 60 days from date of publication of this NPRM in the **Federal Register**. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–xxxx.

Title: Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, CG Docket No. 03–123 (NPRM), FCC 03–112.

Form Number: N/A.

Type of Review: New Collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,053.

Estimated Time per Response: 5.311 hours (average).

Frequency of Responses: Recordkeeping; Annual Reporting requirement; Third Party disclosure.

Total Annual Burden: 26,837 hours.

Total Annual Cost: None.

Needs and Uses: On June 17, 2003, the FCC released a *Notice of Proposed Rulemaking* (NPRM), which proposed rules in § 64.604(c)(5)(iii)(F) regarding certification for TRS providers to be eligible to receive payments from the Interstate TRS Fund. The Commission also proposed to revise § 64.605 of the Commission's rules. On June 17, 2003, the Commission also released a *Second Report and Order, Order on Reconsideration* and is seeking OMB approval for the new collection on the final rule § 64.604(a)(3) and (c)(2) in that *Second Report and Order. See Telecommunication Relay Services and Speech-to-Speech for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98–67, (Report and Order), FCC 03–112.

Synopsis

In this *NPRM*, the Commission seeks comment on whether TRS and TRS facilities should receive a National Security and Emergency Preparedness (NS/EP) Priority Status commensurate with that given to local exchange carrier (LEC) facilities. The Commission also requests comment on TRS mandatory minimum standards regarding confidentiality requirements and encryption for IP Relay TRS calls. The Commission seeks comment on whether TRS should employ a non-shared language translation service, and on amending its call set-up rules for various types of TRS calls. The *NPRM* also seeks comment on technological advances that may improve the functional equivalency of TRS, and on outreach efforts that may benefit TRS consumers. Finally, the *NPRM* seeks comment on whether the Commission should institute a certification process for providers of IP Relay, VRS, and any other technology that does not fit into the statutorily-mandated jurisdictional separation of intrastate and interstate. The intent of these proposed rules is to improve TRS services and the Commission's oversight of certified state TRS programs.

Initial Regulatory Flexibility Analysis (IRFA)

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603 *et seq*, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *NPRM*. *See* 5 U.S.C. 603. We expect that we could certify this action under 5 U.S.C. 605, because it appears that only one TRS provider is likely a small entity (because it is a non-profit organization). Therefore, there is not a substantial number of small entities that may be affected by our action. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM*. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *NPRM* and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

The Commission is issuing this *NPRM* to seek comment on technological advances that could improve TRS. In doing so, the Commission intends to improve TRS users consistent with Congress' direction ensure that the Commission's regulations encourage the use of existing technology and not discourage or impair the development of improved technology. 47 U.S.C. 225(d)(2). The Commission also seeks public comment on whether its rules should be modified to provide a federal certification process for providers of IP Relay and VRS.

Legal Basis

The authority for actions proposed in this *NPRM* may be found in sections 1, 4(i) and (j), 201–205, 218 and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154 (i), 154(j), 201–205, 218 and 225.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by rules adopted herein. 5 U.S.C. 604(a)(3). The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the 5 U.S.C. 601(3), the statutory definition of small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration). The term "small governmental jurisdiction" is defined as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand. 5 U.S.C. 601(5). As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. U.S. Census Bureau, *Statistical Abstracts of the United States: 2000*, Section 9, pages 299–300, Tables 490 and 492. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdiction overall to be 84,098 or fewer.

Below, we further describe and estimate the number of small entity licensees and regulates that, in theory, may be affected by these rules. For some categories, the most reliable source of information available at this time is data the Commission publishes in its *Trends in Telephone Service* Report. FCC, Wireline Competition Bureau, Industry Analysis and Technology Division, "Trends in Telephone Service" at Table 5.3, Page 5–5 (May 2002) (*Trends in Telephone Service*). FCC Web site location (*see* online page 24): *http://www.fcc.gov/Bureaus/CommonCarrier/Reports/FCC-StateLink/IAD/trends502.pdf*.

Local Exchange Carriers. We have included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a telephone communications business

having 1,500 or fewer employees), and "is not dominant in its field of operation." 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C 632 (a) (Small Business Act); 5 U.S.C. 601 (3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance of a national basis. 13 CFR 121.102 (b). We have therefore included small incumbent LECs in the RFA analysis, although we emphasize that this RFA action has no effect on FCC analyses and determinations in other, non-RFA contexts. NAICS code 513310.

Incumbent Local Exchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of incumbent local exchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is small entity if it employs no more than 1,500 employees. *Id.* Commission data from 2000 indicate that there are 1,329 incumbent local exchange carriers, total, with approximately 1,024 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more than 1,024 ILECS that are small businesses possibly affected by our action.

Interexchange Carriers. Neither the Commission nor the SBA has developed a small business size standard specifically directed toward providers of interexchange service. The closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. This provides that such a carrier is small entity if it employs no more than 1,500 employees. Commission data from 2000 indicate that there are 229 interexchange carriers, total, with approximately 181 having 1,500 or fewer employees. *Trends in Telephone Service* at Table 5.3. The small carrier number is an estimate and might include some carriers that are not independently owned and operated; we are therefore unable at this time to estimate with greater precision the number of these carriers that would qualify as small businesses under SBA's size standard. Consequently, we estimate that there are no more that 181 interexchange carriers that are small businesses possibly affected by our action.

TRS Providers. Neither the Commission nor the SBA has developed a definition of "small entity" specifically directed toward providers of telecommunications relay services (TRS). Again, the closest applicable size standard under the SBA rules is for Wired Telecommunications Carriers. 13 CFR 121.201, NAICS Code 517110. Currently, there are 10 interstate TRS providers, which consist of interexchange carriers, local exchange carriers, state-managed entities, and non-profit organizations. Approximately five or fewer of these entities are small businesses. *See* National Association for State Relay Administration (NASRA) Statistics. These numbers are estimates because of recent and pending mergers and partnerships in the telecommunications industry. The FCC notes that these providers include several large interexchange carriers and incumbent local exchange carriers. Some of these large carriers may only provide TRS service in a small area but they nevertheless are not small business entities. MCI WorldCom, for example, provides TRS in approximately only a few states but is not a small business. The FCC estimates that there is at least one TRS provider that is a small entity that may be affected by our action.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

This *NPRM* seeks comment on a proposal regarding possible certification of TRS providers seeking to provide interstate TRS. The proposed certification process would mirror an existing certification process established for certification of state TRS programs. The proposed certification process for interstate TRS providers, if implemented, would impose a new requirement to file information with the Federal Communications Commission.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take (among others) into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities. 5 U.S.C. 603.

The proposals in the *NPRM*, and the comments the Commission seeks regarding them, are part of the Commission's role with respect to the implementation and operation of nationwide TRS for persons with hearing and speech disabilities. *See, e.g.*, 47 U.S.C. 225. The guiding principle shaping these proposals is Congress' direction to the Commission to ensure that TRS keeps pace with advancing technology, that the Commission's rules do not discourage the implementation of technological advances or improvements, and that TRS provides functionally equivalent telecommunications services for persons with hearing and speech disabilities. The majority of TRS service is provided by large interexchange carriers and incumbent local exchange carriers, and we believe that the number of small entities impacted by these proposals would be potentially very small. With respect to proposed amendments to the Commission's rules governing TRS, by statute common carriers (including small entities) providing voice transmission services that are subject to the TRS rules may comply with their obligations individually, through designees, through competitively selected vendors, or in concert with other carriers. 47 U.S.C. 225 (c). For this reason, the Commission expects that the proposed rule amendments will have a minimal impact on small entities. We seek comment on our tentative conclusion.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

It is further ordered that, pursuant to the authority contained in sections 1, 2, 4 (i), 4 (j), 225, 303 (r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C 151, 154 (i), 154 (j), 225, 303 (r), and 403, the *notice of proposed rulemaking is adopted.*

It is further ordered that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *notice of proposed rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 64 as follows:

1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254(k); sections 403 (b)(2)(B), (c), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254(k) unless otherwise noted.

2. Amend § 64.604 by adding paragraph (c)(5)(iii)(F)(*4*) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(F) * * *

(*4*) Interstate TRS providers certified by the Commission pursuant to § 64.605.

* * * * *

3. Revise § 64.605 to read as follows:

§ 64.605 State TRS Program Certification and Interstate TRS Providers.

(a) *Documentation.* (1) *State TRS programs.* Any state, through its office of the governor or other delegated executive office empowered to provide TRS, desiring to establish a state program under this section shall submit, not later than October 1, 1992, documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, State TRS Certification Program, Washington, DC 20554, and captioned "TRS State Certification Application." All documentation shall be submitted in narrative form, shall clearly describe the state program for implementing intrastate TRS, and the procedures and remedies for enforcing and requirements imposed by the state program. The Commission shall give public notice of state filing for certification including notification in the **Federal Register**.

(2) *Interstate TRS providers.* Any TRS provider desiring to provide TRS on an interstate basis, independent from any state TRS program or any interstate common carrier, and desiring to establish eligibility to provide TRS and receive compensation for providing those services from the Interstate TRS Fund, shall submit documentation to the Commission addressed to the Federal Communications Commission, Chief, Consumer & Governmental Affairs Bureau, Interstate TRS Provider Certification Program, Washington, DC 20554, and captioned "Interstate TRS Provider Certification Application." All documentation shall be submitted in narrative form, and shall clearly describe the forms of TRS to be provided (*i.e.*, VRS, STS, IP Relay, traditional text-to-speech TRS) and any waivers of mandatory minimum standards deemed necessary to provide the aforementioned forms of TRS. The Commission shall give public notice of each interstate TRS provider filing for certification including notification in the **Federal Register**.

(b) *Requirements for certification.* (1) *State TRS programs.* After review of certification documentation, the Commission shall certify, by letter, or order, the state program or interstate TRS provider if the Commission determines that the documentation:

(i) Establishes that the statea program meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the state program makes available adequate procedures and remedies for enforcing the requirements of the state program, including that it makes available to TRS users informational materials on state and Commission complaint procedures sufficient for users to know the proper procedures for filing complaints; and;

(iii) Where a state program exceeds the mandatory minimum standards contained in § 64.604, the state establishes that its program in no way conflicts with federal law.

(2) *Interstate TRS providers.* After review of certification documentation, the Commission shall certify, by letter, or order, the interstate TRS provider if the Commission determines that the certification documentation:

(i) Establishes that the interstate TRS provider meets or exceeds all operational, technical, and functional minimum standards contained in § 64.604;

(ii) Establishes that the interstate TRS provider makes available adequate procedures and remedies for ensuring compliance with the requirements of this section and the mandatory minimum standards contained in § 64.604, including the requirement that informational materials on complaint procedures sufficient for users to know the proper procedures for filing complaints are made available to TRS users; and

(iii) Where the interstate TRS provider exceeds the mandatory minimum standards contained in § 64.604, the interstate TRS provider establishes that its program and services in no way conflict with federal law.

(c) *Certification period.* (1) *State TRS programs.* State certification shall remain in effect for five years. One year prior to expiration of certification, a state may apply for renewal of its certification by filing documentation as prescribed by paragraphs (a) and (b) of this section.

(2) *Interstate TRS providers.* Certification granted under this section shall remain in effect for one year. Providers shall file with the Commission, on an annual basis, a report providing evidence that they are in compliance with § 64.604. Interstate TRS providers shall also file a log of any complaints received, and their disposition of such complaints. An interstate TRS provider may apply for renewal of its certification by filing documentation to the Commission addressed to the Federal Communications Commission, Chief, Disability Rights Office, Consumer & Governmental Affairs Bureau, Washington, DC 20554, and captioned "Interstate TRS Provider Re-Certification Application," as prescribed by paragraphs (a) and (b) of this section.

(d) *Method of funding.* Except as provided in § 64.604, the Commission shall not refuse to certify a state program based solely on the method such state will implement for funding intrastate TRS, but funding mechanisms, if labeled, shall be labeled in manner that promote national understanding of TRS and do not offend the public.

(e) *Suspension or revocation of certification.* (1) *State TRS programs.*

(i) The Commission may suspend or revoke such certification if, after notice of opportunity for hearing, the Commission determines that such certification is no longer warranted. In a state whose program has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS.

(ii) The Commission may, on its own motion, require a certified state program to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission received evidence that a state program may not be in compliance with the minimum standards.

(2) *Interstate TRS providers.* (i) The Commission may suspend or revoke certification of an interstate TRS provider if, after notice of opportunity for hearing, the Commission determines that such certification is no longer warranted. If such certification has been suspended or revoked, the Commission shall take such steps as may be necessary, consistent with this subpart, to ensure continuity of TRS.

(ii) The Commission may, on its own motion, require a certified interstate TRS provider to submit documentation demonstrating ongoing compliance with the Commission's minimum standards if, for example, the Commission receives evidence that a certified interstate TRS provider may not be in compliance with the minimum standards.

(f) *Notification of substantive change.* (1) *State TRS Programs.* States must notify the Commission of substantive changes in their TRS programs within 60 days of when they occur, and must certify that the state TRS program continues to meet federal minimum standards after implementing the substantive change.

(2) *Interstate TRS providers.* Interstate TRS providers must notify the Commission of substantive changes in their TRS programs, services and features within 60 days of when such changes may occur, and must certify that the interstate TRS provider continues to meet federal minimum standards after implementing the substantive change.

[FR Doc. 03–21616 Filed 8–22–03; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 03–130; DA 03–2639]

Definition of Radio Markets for Areas Not Located in an Arbitron Survey Area

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This decision extends the period for filing public comments and reply comments in this proceeding at the request of commenters.

DATES: Comments are now due on October 6, 2003, and Reply Comments are due on October 21, 2003.

FOR FURTHER INFORMATION CONTACT: Amy Brett, Media Bureau, 202–418–2330.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in MB Docket No. 03–130, DA 03–2639, adopted August 11, 2003, and released August 12, 2003. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, S.W., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com*. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at *bmillin@fcc.gov*.

Synopsis of the Order

1. On July 2, 2003, the Commission released its *Notice of Proposed Rule Making* ("NPRM") in conjunction with its *Report and Order* in this proceeding, completing its third biennial review of its broadcast ownership rules. (*See* NPRM at 68 FR 46359, August 5, 2003, and Report and Order at 68 FR 46286, August 5, 2003.) The current deadlines to file comments and reply comments in this proceeding are September 4, 2003 and September 19, 2003, respectively.

2. In the *Report and Order*, the Commission replaced its current contour-overlap methodology for defining radio markets with a geographic market approach in areas where such markets have been defined by Arbitron. These "Metro" markets are used to determine compliance with the local radio ownership rule. The Commission also initiated this proceeding to define radio markets for areas not covered by Metro markets. Until a new definition is developed, the Commission will use a modified contour-overlap methodology in non-Metro markets. The goal of the proceeding is to generate a map or a list of markets for radio stations across the entire country.

3. On August 8, 2003, the National Association of Broadcasters ("NAB") and Saga Communications, Inc. (collectively, "Petitioners") filed a joint motion asking the Commission to extend the comment and reply comment deadlines to October 20, 2003 and November 19, 2003, respectively. Petitioners assert that they need additional time to assess the impact of the options suggested by the Commission as well as to attempt to develop a market definition specific to radio. NAB has contracted with a consultant to study the Commission's options as well as others and requests additional time to accumulate and review the data. Petitioners also argue that additional time is needed for NAB's radio task force and Radio Board to act, and for staff to prepare comments reflecting the Board's decisions.

4. We believe that the public interest would be best served by granting a brief extension of the comment and reply comment filing deadlines so that commenters may assemble data and conduct studies that will inform our decision in this proceeding. At the same time, however, we recognize the importance of completing this proceeding in a timely fashion. Adopting a permanent definition of radio markets outside Metro areas will provide parties with long-term certainty as to the radio market definition and allow them to plan transactions accordingly. Accordingly, we will grant only a thirty-day extension. The new deadline for comments is October 6, 2003. The new deadline for replies is October 21, 2003.

Federal Communications Commission.

Robert Ratcliffe,

Deputy Chief, Media Bureau.

[FR Doc. 03–21652 Filed 8–22–03; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[ID 081403B]

RIN 0648–AP57

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Surf Clam and Ocean Quahog Fishery; Amendment 13 to the Surf Clam and Ocean Quahog Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic Council (Council) has submitted Amendment 13 to the Atlantic Surf Clam and Ocean Quahog Fishery Management Plan (FMP) for Secretarial review and is requesting comments from the public. Amendment 13 to the FMP (Amendment 13) would establish: A new surf clam overfishing definition; multi-year fishing quotas; a mandatory vessel monitoring system (VMS), when such a system is economically viable; the ability to suspend or adjust the surf clam minimum size limit through a framework adjustment; and an analysis of fishing gear impacts on Essential Fish Habitat (EFH) for surf clams and ocean quahogs. The primary purpose of this proposed action is to rectify the disapproved surf clam overfishing definition and the EFH analysis and rationale contained in Amendment 12 to the FMP in order to comply with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and to simplify the regulatory requirements of the FMP.

DATES: Comments must be received on or before October 23, 2003.

ADDRESSES: Comments on the FMP should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Surf Clam Amendment 13." Comments may also be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Amendment, the Final Supplementary Environmental Impact Statement (FSEIS), Regulatory Impact Review (RIR), and the Initial Regulatory Flexibility Analysis (IRFA) are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115 Federal Building, 300 S. New Street, Dover, DE 19904–6790.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Senior Fishery Policy Analyst, 978–281–9252, fax 978–281–9135.

SUPPLEMENTARY INFORMATION: Amendment 12 to the FMP was prepared by the Council to bring the FMP into compliance with the Magnuson-Stevens Act, as amended by the Sustainable Fisheries Act of 1996. On April 28, 1999, the Council was notified that NMFS partially approved Amendment 12. Specifically, two Amendment 12 measures were disapproved, the surf clam overfishing definition and the analysis and rationale for the status quo alternative for addressing fishing gear impacts to EFH. To rectify these diapprovals, the Council prepared, and NMFS published, a Notice of Intent to Prepare an Environmental Impact Statement (EIS) in the **Federal Register**, officially beginning the Council's scoping process for Amendment 13 (66 FR 13694, March 7, 2001). The Council held a scoping hearing on March 21, 2001, and accepted scoping comments on the amendment during the period March 7 through April 6, 2001. In addition to the surf clam overfishing definition and EFH alternatives, other issues identified for inclusion in the FSEIS were multi-year quotas, a mandatory VMS requirement and a permanent suspension of the surf clam minimum size limit. The Council identified a range of alternatives for each of these five issues and approved the alternatives in a public hearing document at its May, 2002 meeting. A Notice of Availability (NOA) on the DSEIS was published in the **Federal Register** on August 30, 2002 (67 FR 55838), with a comment period ending October 15, 2002. There were a series of three public hearings held (one each in the states of Maine, New Jersey and Delaware). After consideration of all public comments, the Council chose the following alternatives at its January, 2003 meeting and voted to submit the Amendment 13 document, including the draft final supplemental environmental impact statement to NMFS. Amendment 13 would establish: A new surf clam overfishing definition; multi-year fishing quotas; a mandatory vessel monitoring system (VMS), when such a system is economically viable; the ability to suspend or adjust the surf clam minimum size limit through a framework adjustment; and an analysis of fishing gear impacts on Essential Fish Habitat (EFH) for surf clams and ocean quahogs.

Public comments are being solicited on Amendment 13 through the end of the comment period stated in this notice of availability. A proposed rule that would implement Amendment 13 may be published in the **Federal Register** for public comment, following NMFS' evaluation of the proposed rule under the procedures of the Magnuson-Stevens Act. Public comments on the proposed rule must be received by the end of the comment period on the Amendment 13 to be considered in the approval/disapproval decision on the Amendment 13. All comments received by the end of the comment period on Amendment 13, whether specifically directed to Amendment 13 or the proposed rule, will be considered in the approval/disapproval decision on Amendment 13. Any comments received after that date will not be considered in the decision to approve or disapprove Amendment 13.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 18, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21609 Filed 8–22–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 164
Monday, August 25, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 19, 2003.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Pamela_Beverly_OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806; and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Service

Title: CCC's Export Enhancement Program (EEP) and CCC's Dairy Export Incentive Program (DEIP).

OMB Control Number: 0551–0028.

Summary of Collection: The Foreign Agricultural Service (FAS) collects information from U.S. exporters in order to determine the exporters' eligibility for the Export Enhancement Program (EEP) and the Dairy Export Incentive Program (DEIP). Program applicants can fax information in or applicants may register over the Internet.

Need and of the Information: FAS will use the information collected from U.S. exporters to determine whether an exporter has the experience necessary to perform under the proposed agreements. Other information is collected to determine compliance during the period of the agreement and to ensure that compensation in the appropriate amount is made. Without the application and related information, FAS would be unable to properly qualify U.S. exporters for EEP and DEIP.

Description of Respondents: Business or other for-profit.

Number of Respondents: 95.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 1,803.

Farm Service Agency

Title: Power of Attorney.

OMB Control Number: 0560–0190.

Summary of Collection: Individuals or authorized representatives of entities wanting to appoint another to act as their attorney must complete FSA–211, "Power of Attorney" form. The FSA–211 serves as evidence that the grantor has appointed another to act on their behalf for certain Farm Service Agency (FSA), Commodity Credit Corporation (CCC), and Risk Management Agency (RMA) programs and related actions giving the appointee legal authority to enter into binding agreements on the grantor's behalf.

Need and use of the Information: FSA will collect information to verify an individual's authority to sign and act or another in the event of errors or fraud that requires legal remedies. The information collected on the FSA–211 is limited to the grantor's name, signature, and identification number, the grantee's name, address, and the applicable FSA, CCC, and RMA programs. Failure to collect and maintain the data collected on the form will limit or eliminate USDA's ability to accept an individual's signature on behalf of another individual or entity.

Description of Respondents: Farms; Individuals or households.

Number of Respondents: 519,653.

Frequency of Responses: Reporting: Other (Once).

Total Burden Hours: 129,913.

Forest Service

Title: Forest Industries Data Collection System.

OMB Control Number: 0596–0010.

Summary of Collection: The Forest and Range Renewable Resources Planning Act of 1974 and the Forest and Rangeland Renewable Resources Research Act of 1978 require the Forest Service (FS) to evaluate trends in the use of logs and wood chips, to forecast anticipated levels of logs and wood chips, and to analyze changes in the harvest of the resources. Forest product and other wood-using industries are important to state, regional, and national economies. In most southern states, the value of rounded timber products is ranked either first or second in relation to other major agricultural crops. The importance and value of the timber products industry is significant in other regions of the United States as well.

Need and use of the information: FS will collect information using questionnaires to monitor the types, species, volumes, sources, and prices of the timber products harvested throughout the Nation. The data will be used to develop specific economic development plans for new forest-related industries and to assist existing industries in identifying raw material problems and opportunities. If the information were not collected, data would not be available for sub-state, state, regional, and national policy makers and program developers to make decisions related to the forestland on a scientific basis.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 2,110.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 1,696.

Forest Service

Title: Bid For Advertised Tibmer
OMB Control Number: 0596–0066
Summary of Collection: Individuals, large and small businesses, and corporations who wish to purchase timber or forest products from the National Forest must enter into a timber sale contract or forest product contract with the Forest Service (FS). Information must be collected by FS in order to ensure that: National Forest System timber is sold at not less than appraised value; bidders meet specific criteria when submitting a bid; and anti-trust violations do not occur during the bidding process. Several statutes, regulations, and policies impose requirements on the Government and purchasers in the bidding process. The FS will collect information using several forms.
Need and Use of the Information: FS will collect information to determine bid responsiveness. The sale officer will ensure: the bidder has signed the bid form; provided a tax identification number; completed the unit rate, weighted average, or total sale value bid; entered the bid guarantee amount, type, and ensure the bid guarantee is enclosed with the bid, the bidder has provided the required information concerning Small Business Administration size and Equal Opportunity compliance on previous sales. The Timber Sale Contracting Officers will use the information to complete the contract prior to award to the highest bidder. Failure to include the required information may result in the bid declared non-responsive or the Contracting Officer may be unable to make an affirmative finding of purchaser responsibility and not able to award the contract.
Description of Respondents: Business or other for-profit; Individuals or households.
Number of Respondents: 5,500.
Frequency of Responses: Reporting; On occasion.
Total Burden Hours: 38,672.

Rural Utilities Service

Title: State Telecommunications Modernization Plan.
OMB Control Number: 0572–0104.
Summary of Collection: The Rural Electrification Loan Restructuring Act (RELRA, Pub. L. 103–129), November 1, 1993, amended the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (the RE Act). RELRA requires that a State Telecommunications Modernization Plan (Modernization Plan or Plan), meet all the statutory requirements of RELRA (part 1751, Subpart B). The plan at a minimum must provide for: (1) The elimination of party line service; (2) the availability of telecommunications services for improved business, educational, and medical services; (3) must encourage computer networks and information highways for subscribers in rural areas; (4) subscribers in rural areas to receive through telephone lines; (a) conference calling; (b) video images; and (c) data at a rate of 1 million bits of information per second; and the proper routing of information to subscribers.
Need and Use of the Information: The Rural Utilities Service (RUS) telecommunications program staff will review and approve Modernization Plans, if they comply with the requirements of the regulation. If the proposed Modernization Plan is approved, RUS will notify the developer of the approval. If not, RUS will make specific written comments and suggestion for modifying the proposed Modernization Plan so that it will comply with the requirements of the regulation. If the information is not collected, RUS' authority to make loans under the Rural Electrification Act will be restricted.
Description of Respondents: Business or other for-profit; Not-for-profit institutions.
Number of Respondents: 1.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 350.

Rural Housing Service

Title: USDA Rural Housing Service—Centralized Servicing Center Loan Servicing Satisfaction Survey.
OMB Control Number: 0575–NEW.
Summary of Collection: The Rural Housing Service (RHS) provides insured loans to low and moderate-income applicants located in rural geographic areas to assist them in obtaining decent, sanitary and safe dwellings. RHS Centralized Servicing Center (CSC) has been in operation since October 1996. The CSC was established to achieve a high level of customer service and operating efficiency that provides its borrowers with convenient access to their loan account information. RHS has developed a survey to measure the results and overall effectiveness of customer services provided.
Need and Use of the Information: RHS will use the outcome of the Customer Satisfaction Survey to determine the general satisfaction level among its customers throughout the nation, highlight areas that need improvement and provide a benchmark for future surveys and improvement in customer service. The survey is administered as part of CSC's on going service quality improvement program.
Description of Respondents: Business or other for profit: Individual or households; Farms; Not-for-profit institutions; State, local, or Tribal government.
Number of Respondents: 23,000.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 3,680.

Rural Utilities Service

Title: 7 CFR Part 1786, Prepayment of RUS Guaranteed and Insured Loans to Electric and Telephone Borrowers.
OMB Control Number: 0572–0088.
Summary of Collection: The Rural Electrification (RE) Act of 1936, as amended, authorizes and empowers the Administrator of Rural Utilities Service (RUS) to make loans in the several States and Territories of the United States for rural electrification and for the purpose of furnishing and improving electric and telephone service in rural areas and to assist electric borrowers to implement demand side management, energy conservation programs, and on-grid and off-grid renewable energy systems. 7 CFR 1786, subparts E, F and G provides the authorization for the reporting burden in section 306(C) of the RE Act.
Need and Use of the Information: The information will be collected from borrowers requesting to prepay their notes and to determine that the borrower is qualified to prepay under the authorizing statues. The overall goal of subparts E and F is to allow RUS borrowers to prepay their RUS loan and the overall goal of subpart G is to refinance.
Description of Respondents: Business or other for-profit; Not-for-profit institutions.
Number of Respondents: 28.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 62.

Rural Housing Service

Title: 7 CFR 1951–F, Analyzing Credit Needs and Graduation of Borrower
OMB Control Number: 0575–0093
Summary of Collection: Section 333 of the Consolidated Farm and Rural Development Act and section 502 of the Housing Act of 1949, require the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), and the Farm Service Agency (FSA) to graduate their direct loan borrowers to other credit when they are able to do so. Graduation is an integral part of Agency lending, as Government loans beyond a borrower's need for subsidized rates of non-market terms. The notes, security

instruments, or loan agreements of most borrowers require borrowers to refinance their Agency loans when other credit becomes available at reasonable rates and terms. If the borrower finds other credit is not available at reasonable rates and terms, the Agency will continue to review the borrower for possible graduation at periodic intervals. Information will be collected from the borrowers concerning their loans.

Needs and Use of the Information: The information submitted by FSA, RBS, or RHS borrowers to Agency offices is used to graduate direct borrowers to private credit with or without the use of Agency loan guarantees. The data collected will include financial information such as income; farm operating expenses, asset values, and liabilities.

Description of Respondents: Individuals or households; Business or other for-profit; Farms; State, local or Tribal government.

Number of Respondents: 31,975.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 74,419.

Rural Housing Service

Title: 7 CFR 1965–E, "Prepayment and Displacement Prevention of Multiple Family Housing Loans."

OMB Control Number: 0575–0155.

Summary of Collection: The Housing and Community Development Act of 1987 required that Rural Rental Housing borrowers wishing to prepay their loans, must first decide if the housing continues to serve low- and moderate-income tenants, if so, Rural Development (RD) must offer the borrower a fair incentive to prepay the loan. If the borrower rejects the incentive, the housing must be offered for sale to a nonprofit organization or public agencies. Only if no nonprofit organization or public agencies can be found to purchase the project at the market value can the loan be prepaid.

Need and Use of the Information: When a request to prepay a rural rental-housing loan is received, RD will collect information to determine the need for the housing to remain in the low-income program. RD will also determine the extent to any incentive offer to keep the housing within the RD program. If RD does not have current and appropriate information, the decision to accept or reject the prepayment request and the amount of an incentive offer would be made inappropriately.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; Individuals or households; Farms; State, local or Tribal government.

Number of Respondents: 800.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 687.

Agricultural Marketing Service

Title: Livestock Mandatory Reporting Act of 1999.

OMB Control Number: 0581–0186.

Summary of Collection: The Livestock Mandatory Reporting Act of 1999 mandates the reporting of information on prices and quantities of livestock products by packer processing plants meeting certain criteria, including size as measured by annual slaughter. The information is necessary for the proper performance of the functions of Agriculture Marketing Service. USDA's market news provides all market participants, including producers, with the information necessary to make intelligent and informed marketing decisions.

Need and Use of the Information: The information collected and recordkeeping requirements are essential to establishing and implementing a mandatory program of livestock and livestock products reporting. The information is reported up to three times daily and once weekly and is only available directly from those entities required to report under the Act.

Description of Respondents: Business or other for-profit.

Number of Respondents: 119.

Frequency of Response: Reporting; Weekly; Other (Daily).

Total Burden Hours: 24,429.

Rural Utilities Service

Title: Request for Release of Lien and/or Approval of Sale.

OMB Control Number: 0572–0041.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, telecommunications, water and waste facilities in rural areas. RUS manages loan programs in accordance with the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, as amended (RE Act). A 1949 amendment to the RE Act established the telephone program in RUS with the purpose of making loans to furnish and improve rural telephone service. Section 201 of the RE Act provides that loans shall not be made unless RUS finds and certifies that the security for the loan is reasonably adequate and that the loan will be repaid within the time agreed. In addition to providing loans and loan guarantees, one of RUS' main objectives is to safeguard loan security until the loan is repaid.

Need and Use of the Information: A borrower's assets provide the security for a Government loan. The selling of assets reduces the security and increases the risk of loss to the Government. RUS Form 793 allows the telecommunication program borrower to seek agency permission to sell some of its assets. The form collects detailed information regarding the proposed sale of a portion of the borrower's system. RUS telephone borrowers fill out the form to request RUS approval in order to sell capital assets. Specifics to the sale of capital assets, including the use of Form 793 and submission of supporting documentation, are covered in REA Bulletin 415–1, "Sale of Property by Telephone Borrowers."

If the information in Form 793 is not collected when capital assets are sold, the capital assets securing the Government's loans could be liquidated and the Government's security either eliminated entirely or diluted to an undesirable level. This increases the risk of loss to the Government in the case of a default.

Description: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 75.

Frequency of Response: Reporting: On occasion.

Total Burden Hours: 206.

Rural Utilities Service

Title: Request for Release of Lien and/or Approval of Sale.

OMB Control Number: 0572–0041.

Summary of Collection: The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA) that makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. RUS manages loan programs in accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended (RE Act). A 1949 amendment to the RE Act established the telephone program in RUS with the purpose of making loans to furnish and improve rural telephone service. Section 201 of the RE Act provides that loans shall not be made unless RUS finds and certifies that the security for the loan is reasonably adequate and that the loan will be repaid within the time agreed. In addition to providing loans and loan guarantees, one of RUS's main objectives is to safeguard loan security until the loan is repaid.

Need and Use of the Information: A borrower's assets provide the security for a Government loan. The selling of assets reduces the security and increases

the risk of loss to the Government. A borrower seeking permission to sell some of its assets uses RUS Form 793. The form contains detailed information regarding the proposed sale. If the information in Form 793 is not collected when capital assets are sold, the capital assets securing the Government's loans could be liquidated and the Government's security either eliminated entirely or diluted to an undesirable level. This increases the risk of loss to the Government in the case of a default.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal government.

Number of Respondents: 75.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 206.

Rural Housing Service

Title: 7 CFR Part 1924–A, Planning and Performing Construction and other Development.

OMB Control Number: 0575–0042.

Summary of Collection: The Rural Housing Service (RHS) is the credit agency for rural housing and community development within the Rural Development mission area of the United States Department of Agriculture. RHS offers a supervised credit program to build modest housing and essential community facilities in rural areas. Section 501 of Title V of the Housing Act of 1949, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, alter, repair, replace, or rehabilitate dwellings, farm buildings and/or related facilities to provide decent, safe sanitary living conditions and adequate farm building and other structures in rural areas.

Need and Use of the Information: RHS provides several forms to assist in the collection and submission of information. The information will be used to determine whether a loan/grant can be approved; to ensure that RHS has adequate security for the loans financed; to monitor compliance with the terms and conditions of the agency loan/grant and to monitor the prudent use of Federal funds. If the information is not collected and submitted, RHS would have no control over the type and quality of construction and development work planned and performed with Federal funds.

Description of Respondents: Individuals or households; Business or other for-profit; Not-for-profit institutions; Farms.

Number of Respondents: 25,340.

Frequency of Responses: Recordkeeping; Report: On occasion.

Total Burden Hours: 94,924.

Sondra Blakey,

Departmental Information Collection Clearance Officer.

[FR Doc. 03–21640 Filed 8–22–03; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Deposting of Stockyards

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: We are deposting 77 stockyards. These facilities are no longer capable of being used as stockyards and, therefore, are no longer required to be posted.

EFFECTIVE DATE: August 25, 2003.

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Section 302 of the P&S Act (7 U.S.C. 202) defines the term "stockyard" as follows:

> * * * any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.

Section 302 (b) of the P&S Act requires the Secretary to determine which stockyards meet this definition, and to notify the owner of the stockyard and the public of that determination by posting a notice in each designated stockyard. After giving notice to the stockyard owner and to the public, the stockyard is subject to the provisions of Title III of the P&S Act (7 U.S.C. 201–203 and 205–217a) until the Secretary deposts the stockyard by public notice.

We depost a stockyard after the facility can no longer be used as a stockyard. Some of the reasons a facility can no longer be used as a stockyard include: the facility has been moved and the posted facility is abandoned, the facility has been torn down or otherwise destroyed, such as by fire, the facility is dilapidated beyond repair, or the facility has been converted and its function changed.

This document notifies the public that the following 77 stockyards no longer meet the definition of stockyard and that we are deposting the facilities.

Facility No.	Stockyard name and location	Date posted
AL–106	Athens—Limestone Stockyard, Athens, Alabama	November 16, 1971
AL–127	Geneva County Livestock, Geneva, Alabama	August 27, 1959
AL–162	Barrett Livestock Market, Inc., Wetumpka, Alabama	June 27, 1978
AL–167	Kenneth Hinckle Feeder Pig Sale, Piedmont, Alabama	August 28, 1986
AL–186	Wood's Livestock Market, Ohatchee, Alabama	December 1, 1991
AL–188	Centre Livestock Market, Inc., Centre Alabama	November 9, 1995
AR–102	Atkins Livestock Auction, Atkins, Arkansas	January 13, 1970
AR–112	Eudora Livestock Auction Company, Eudora, Arkansas	August 15, 1958
AR–122	Imboden Concentration Point, Imboden, Arkansas	February 18, 1970
AR–151	S & S Livestock, Paragould, Arkansas	March 6, 1974
AR–165	Beebe Livestock Exchange, Beebe, Arkansas	April 1, 1991
AR–167	Dunn's Horse and Tack Sale, El Dorado, Arkansas	March 19, 1992
AR–171	Roden's Auction Service, DeQueen, Arkansas	May 1, 1996
AZ–103	Layton Livestock Auction, Inc., Tucson, Arizona	October 15, 1957
CA–106	Rebik Auction Yard, Brawley, California	January 11, 1959
CA–115	Dixon Livestock Auction Co., Dixon, California	October 6, 1959
CA–172	Western Auction Co., El Cajon, California	November 8, 1976
CA–179	Martins Dairy Stockyards, Chino, California	February 21, 1986
CA–187	Cash & Carry Livestock Sale, Apple Valley, California	November 20, 1993

Facility No.	Stockyard name and location	Date posted
CO–101	Mile Hi Livestock Auction Co., Broomfield, Colorado	December 28, 1962
CO–130	Limon Cattle Auction, L.L.C., Limon, Colorado	March 6, 1957
CO–150	Monte Vista Livestock Auction, Inc. Ignaco, Colorado	May 8, 1981
IA–188	Monticello Sale Barn, Monticello, Iowa	October 13, 1965
IA–215	Sioux City Stock Yards, Sioux City, Iowa	November 1, 1921
ID–105	Coeur d'Alene Livestock, Inc., Couer d'Alene, Idaho	October 2, 1959
ID–109	Gooding Livestock Commission Co., Inc., Gooding, Idaho	February 28, 1950
KS–125	Emmett Livestock Sales, Emmett, Kansas	June 1, 1959
KS–140	Hiawatha Auction Company, Hiawatha, Kansas	May 25, 1959
KS–147	Iola Community Sale, Iola, Kansas	May 28, 1959
KS–153	D. C. Livestock, Lawerence, Kansas	February 15, 1963
KS–200	Leavenworth Livestock Auction Company, Leavenworth, Kansas	February 7, 1975
KS–206	Sunflower Horse Auction, Chapman, Kansas	February 12, 1986
KY–114	Glasgow Livestock Market, Inc., Glasgow, Kentucky	December 11, 1959
LA–107	Clarks Livestock Auction, Inc., Benton, Louisiana	April 10, 1957
LA–117	Grand Cane Livestock Sales, Inc., Grand Cane, Louisiana	March 11, 1959
LA–127	Dominique's Livestock Market, Inc., Marksville, Louisiana	September 28, 1962
MD–100	Aberdeen Sales Co., Aberdeen, Maryland	October 27, 1959
MN–140	Princeton Livestock Market, Inc., Princeton, Minnesota	October 15, 1959
MS–153	E & E Livestock, Inc., Tupelo, Mississippi	May 17, 1974
MS–166	Granger Trading Barn, Halzlehurst, Mississippi	February 21, 1993
MS–168	S & S Sales, Mantachie, Mississippi	January 8, 1996
MS–169	McDermott Sale Company, Byhalia, Mississippi	October 24, 1996
MT–104	Montana Livestock Auction, Butte, Montana	February 14, 1950
NC–126	Stanley County Livestock Market, Norwood, North Carolina	March 31, 1961
NC–161	Mount Olive Livestock Market, Inc., Faison, North Carolina	February 2, 1990
NY–100	Empire Livestock Adams Sales, Adams, New York	August 4, 1960
NY–106	Sunny Acres Livestock Market, Bombay, New York	September 20, 1960
NY–126	Johnstown Livestock Sales, Inc., Johnstown, New York	June 14, 1965
NY–130	Thomas Commission Company, Malone, New York	December 7, 1960
NY–131	Milford Commission Sales Stables, Inc., Milford, New York	August 17, 1960
NY–133	Newman's Livestock Exchange, Inc., Newport, New York	September 15, 1962
NY–136	Empire Livestock Marketing Cooperative, Inc., Owego, New York	July 11, 1960
NY–162	Englan Select Sales, Inc., Madison, New York	June 30, 1981
NY–165	Angelica Feeder Sales Cooperative, Inc., Angelica, New York	September 5, 1986
NY–169	Baurer Horse and Tack Auction, Lyons, New York	October 24, 1989
NY–172	The Bar W Ranch & Sales, Shushan, New York	November 11, 1994
OK–106	Ardmore Livestock Auction and Ringling Livestock Auction, Ardmore, Oklahoma	November 15, 1949
OK–122	Dewey Stockyards, Dewey, Oklahoma	August 31, 1964
OK–145	Marietta Livestock Auction Sale, Marietta, Oklahoma	April 7, 1959
OK–159	Perkins "Y" Livestock Auction, Inc., Perkins, Oklahoma	April 27, 1959
OK–164	Ringling Livestock Auction, Ringling, Oklahoma	March 6, 1950
OK–197	Alva Sales Company, Inc., Alva, Oklahoma	November 10, 1977
OK–198	Erin Springs Livestock Auction, Erin Springs, Oklahoma	November 25, 1978
OR–103	Corvallis Auction Yard, Inc., Corvallis, Oregon	September 22, 1959
OR–116	Portland Livestock Exchange, North Portland, Oregon	November 1, 1921
OR–126	Mikes Livestock Auction, Eagle Point, Oregon	January 1, 1996
TN–113	Covington Sales Company, Covington, Tennessee	June 19, 1959
TN–157	Scotts Hill Sales Barn, Scotts Hill, Tennessee	May 7, 1959
TN–181	Murfreesboro Livestock Market, Murfreesboro, Tennessee	October 27, 1983
TN–189	Middle Tennessee Horse Sale, Decherd, Tennessee	July 17, 1993
TN–190	H Bar M Horse Auction, Athens, Tennessee	September 13, 1993
UT–101	Delta Livestock Exchange L.L.C., Delta, Utah	January 28, 1955
UT–117	Parker Sales, Logan, Utah	June 18, 1992
UT–118	Ogden Livestock Auction, Inc., Farr West, Utah	January 27, 1994
VT–102	Thomas Hichack Company Commission Sales, Morrisville, Vermont	November 18, 1959
VT–111	Roberts Livestock and Auctioneering—Sales & Auction Barn, Newport, Vermont	March 20, 1986
WA–117	Britton Brothers, Snohomish, Washington	September 22, 1959

Effective Date

This notice is effective upon publication in the **Federal Register** because it relieves a restriction and, therefore, may be made effective in less than 30 days after publication in the **Federal Register** without prior notice or other public procedure.

Authority: 7 U.S.C. 202.

Dated: August 20, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–21664 Filed 8–22–03; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice and request for comments.

SUMMARY: We propose to post 10 stockyards. We have received information that the stockyards meet the definition of a stockyard under the Packers and Stockyards Act and, therefore, need to be posted. Posted stockyards are subject to the provisions of the Packers and Stockyards Act.

DATES: We will consider comments that we receive by September 9, 2003.

ADDRESSES: Send comments via electronic mail to *comments.gipsa@usda.gov*. Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647-S, Washington, DC 20250–3604, or fax to (202) 690–2755. All comments should make reference to the date and page number of this issue of the **Federal Register**, and will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)).

SUPPLEMENTARY INFORMATION: The Grain Inspection, Packers and Stockyards Administration (GIPSA) administers and enforces the Packers and Stockyards Act of 1921, as amended and supplemented (7 U.S.C. 181–229) (P&S Act). The P&S Act prohibits unfair, deceptive, and fraudulent practices by livestock market agencies, dealers, stockyard owners, meat packers, swine contractors, and live poultry dealers in the livestock, poultry, and meatpacking industries.

Section 302 of the P&S Act (7 U.S.C. 202) defines the term "stockyard" as follows:

* * * any place, establishment, or facility commonly known as stockyards, conducted, operated, or managed for profit or nonprofit as a public market for livestock producers, feeders, market agencies, and buyers, consisting of pens, or other inclosures, and their appurtenances, in which live cattle, sheep, swine, horses, mules, or goats are received, held, or kept for sale or shipment in commerce.

Section 302(b) of the P&S Act requires the Secretary to determine which stockyards meet this definition, and to notify the owner of the stockyard and the public of that determination by posting a notice in each designated stockyard. After giving notice to the stockyard owner and to the public, the stockyard will be subject to the provisions of Title III of the Packers and Stockyards Act (7 U.S.C. 201–203 and 205–217a) until the Secretary deposts the stockyard by public notice.

This document notifies the stockyard owners and the public that the following 10 stockyards meet the definition of stockyard and that we propose to designate the stockyards as posted stockyards.

Facility No.	Stockyard name and location
CA–190	Tulare Sales Yard, Inc., Tulare, California.
CA–191	B and B Livestock Auction, Madera, California.
MN–193	Fergus Falls Livestock Auction Market, Fergus Falls, Minnesota.
MO–283	Cameron Livestock Sales, Warrensburg, Missouri.
MO–284	Southwest City Livestock Auction, L.L.C., Southwest City, Missouri.
MS–174	Solomon's Horse Sale, Belmont, Mississippi.
NY–174	Woods Auction Service, Cincinnatus, New York.
OK–213	Bakers Auction, Butler, Oklahoma.
TX–346	Shamrock Livestock Commission, Shamrock, Texas.
VA–161	Wythe County Livestock Exchange, L.L.C., Wytheville, Virginia.

Authority: 7 U.S.C. 202.

Dated: August 20, 2003.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–21665 Filed 8–22–03; 8:45 am]

BILLING CODE 3410–EN–U

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Oregon State Advisory Committee in the Western Region will convene at 1 p.m. (PDT) and adjourn at 2 p.m., Tuesday, September 2, 2003. The purpose of the conference call is to discuss the Patriot Act.

This conference call is available to the public through the following call-in number: 1–800–659–8294, access code number 18604119. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the provided call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Philip Montez of the Western Regional Office, (213) 894–3437, by 3 p.m. on Monday, September 1, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 14, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–21648 Filed 8–22–03; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wyoming Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a conference call of the Wyoming State Advisory Committee will convene at 12 p.m. (m.d.t.) and adjourn at 1:15 p.m. (m.d.t.), Wednesday, September 3, 2003. The purpose of the conference call is to discuss strategic planning including plans for possible regional project on discrimination against Native Americans in reservation border towns, and progress of current SAC briefing summary, "Dropout Rates of Minority

Students in Wyoming Public Secondary Schools."

This conference call is available to the public through the following call-in number: 1–800–659–8292; access code: 18483692. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Malee Craft, Rocky Mountain Regional Office, (303) 866–1040 (TDD 303–866–1049), by 3 p.m. (m.d.t.) on Monday, September 1, 2003.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 14, 2003.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 03–21647 Filed 8–22–03; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

[I.D. 081903A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Logbook Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648–0271.

Type of Request: Regular submission.

Burden Hours: 1,382.

Number of Respondents: 70.

Average Hours Per Response: 13 minutes a day for a catcher vessel Daily Fishing and Cumulative Production Log; 26 minutes a day for a catcher-processor Daily Fishing and Cumulative Production Log; 13 minutes a day for a mothership Daily Fish Received and Cumulative Production Log; 30 minutes a week for a Weekly/Daily Production Report; 20 minutes for a Product Transfer/Offload Log; 1.25 minutes for a Start/Stop Report; and 5 minutes for a notification of intent to offload donation fish.

Needs and Uses: This data collection would require the submission and preparation of logbooks and reports in the Pacific Coast Groundfish Fishery from processing vessels larger than 125 feet in length and from catcher vessels that deliver to them. The collection also includes a requirement that vessels intending to voluntarily donate fish caught in excess of trip limits to hunger relief organizations notify NOAA prior to offloading the fish and that the amount of donated fish be identified in the Product Transfer/Offloading Logbook. The information is necessary to monitor catch, effort, and production for fishery management purposes.

Affected Public: Business or other for-profit organizations; State, Local, or Tribal Government.

Frequency: On occasion, weekly, and quarterly.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 14, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–21607 Filed 8–22–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Telecommunications and Information Administration (NTIA).

Title: Public Telecommunications Facilities Program (PTFP) Application Form.

Form Number(s): None.

OMB Approval Number: 0660–0003.

Type of Review: Regular submission.

Burden Hours: 37,188.

Number of Respondents: 450.

Average Hours Per Response: 77 hours to prepare online applications; and 86 hours to prepare printed applications. In every grant cycle, NTIA/PTFP requires revised information to be submitted by applicants under serious consideration for funding, this re-submission takes an average of 6 hours for online applications and 9 hours for printed applications.

Needs and Uses: The PTFP is a grant-making program that operates an annual application review process. The applicants submit proposals which describe unique projects intended to provide broadcasting or telecommunications services to the general public. The application forms make possible the required competitive review process for making decisions on which applicants are funded.

Affected Public: Not-for-profit institutions; State, local, or Tribal government.

Frequency: Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Kim Johnson, (202) 395–7232.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 1401 Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Kim Johnson, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 19, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–21637 Filed 8–22–03; 8:45 am]

BILLING CODE 3510–60–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 03–00004." A summary of the application follows.

Summary of the Application

Applicant: NYVZ Import & Export, Inc., 257 W 10th Street, Suite 3E, New York, New York 10014.

Contact: Jean Carlos Blanco, President.

Telephone: (212) 675–8642.

Application No.: 03–00004.

Date Deemed Submitted: August 12, 2003.

Members (in addition to applicant): Steven Henderson, Vice President.

NYVZ Import & Export, Inc., seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. *Products.*—All products.

2. *Services.*—All services.

3. *Technology Rights.*—Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. *Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights).*—Export Trade Facilitation Services, including, but not limited to, professional services and assistance relating to: Government relations; state and Federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation services; and the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

With respect to the sale of Products and Services, licensing of Technology Rights and provisions of Export Trade Facilitation Services, NYVZ Import & Export, Inc., may:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;

2. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Market and distribute such information to clients;

3. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;

4. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

5. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

6. Allocate export orders among Suppliers;

7. Establish the price of Products, Services, and/or Technology Rights for sale and/or licensing in Export Markets;

8. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights;

9. Enter into contracts for shipping; and

10. Exchange information on a one-on-one basis with individual Suppliers regarding inventories and near-term production schedules for the purpose of determining the availability of products for export and coordinating export with distributors.

Definitions

1. "Supplier" means a person who produces, provides, or sells a Product and/or Service.

Dated: August 18, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 03–21668 Filed 8–22–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081803D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory bodies will hold public meetings.

DATES: The Council and its advisory bodies will meet September 7–12, 2003. The Council meeting will begin on Monday, September 8, at 4:15 p.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 3:30 p.m. until 4:15 p.m. on Monday, September 8 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings will be held at the DoubleTree Guest Suites, 16500 Southcenter Parkway, Seattle, WA 98188; telephone: 206–575–8220.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: 503–820–2280 or 866–806–7204.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order. All items listed are subject to potential Council action.

A. Call to Order

1. Opening Remarks, Introductions
2. Council Member Appointments - Swearing in of New Members
3. Roll Call
4. Executive Director's Report
5. Approve Agenda

B. Administrative and Other Matters

1. Election of Council Chair and Vice Chair
2. April 2003 Council Meeting Minutes
3. Council Input into NOAA Fisheries Constituent Survey
4. Legislative Matters
5. Fiscal Matters
6. Appointments to Advisory Bodies, Standing Committees, and Other Forums for the 2004–06 Term
7. Staff Work Load Priorities and November 2004 Council Meeting Agenda

C. Groundfish Management

1. NMFS Report on Groundfish Management
2. Observer Data Implementation Status
3. Final Harvest Levels for 2004
4. Status of Groundfish Fisheries and Inseason Adjustments
5. Final Criteria for Exempted Fishing Permits and Consideration of Proposals for 2004 Season
6. Groundfish Management Measures for 2004
7. Proposed Monitoring Program for the Shore-based Pacific Whiting Fishery
8. Stock Assessment of Canary Rockfish
9. Groundfish Bycatch Program Environmental Impact Statement
10. Consideration of Individual Quota Programs

D. Habitat

Current Habitat Issues

E. Marine Reserves

1. Update on Marine Reserves Issues
2. Marine Reserves in the Federal Waters Portion of the Channel Islands National Marine Sanctuary

F. Salmon Management

1. Salmon Fishery Update
2. Salmon Methodology Review: Final Prioritization of Modeling Issues for the Scientific and Statistical Committee
3. Mitchell Act Program Update

G. Pacific Halibut Management

1. Status of 2003 Pacific Halibut Fisheries
2. Status of Pacific Halibut Bycatch Estimates for Use by the International Pacific Halibut Commission
3. Proposed Changes to the Catch Sharing Plan and Annual Regulations

SCHEDULE OF ANCILLARY MEETINGS

SUNDAY, SEPTEMBER 7, 2003	
Groundfish Management Team	11 a.m.
MONDAY, SEPTEMBER 8, 2003	
Council Secretariat	8 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.
Habitat Committee	10 a.m.
Legislative Committee	10:30 a.m.
Budget Committee	1 p.m.
TUESDAY, SEPTEMBER 9, 2003	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Scientific and Statistical Committee	8 a.m.

SCHEDULE OF ANCILLARY MEETINGS—Continued

Salmon Technical Team	8 a.m.
Model Evaluation Workgroup	1 p.m.
Enforcement Consultants	Immediately following Council Session
WEDNESDAY, SEPTEMBER 10, 2003	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As necessary
THURSDAY, SEPTEMBER 11, 2003	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As necessary
FRIDAY, SEPTEMBER 12, 2003	
Council Secretariat	7 a.m.
California State Delegation	7 a.m.
Oregon State Delegation	7 a.m.
Washington State Delegation	7 a.m.
Groundfish Advisory Subpanel	8 a.m.
Groundfish Management Team	8 a.m.
Enforcement Consultants	As necessary

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503)820–2280 or (866)806–7204 at least 5 days prior to the meeting date.

Dated: August 18, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21608 Filed 8–22–03; 8:45 am]

BILLING CODE 3510–22–S

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice; Information collection 3038–0017, Market Surveys.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instruments (if any).

DATES: Comments must be submitted on or before September 24, 2003.

FOR FURTHER INFORMATION OR A COPY CONTACT: Judith Payne at CFTC, (202) 418–5268; FAX: (202) 418–5527; e-mail: *jpayne@cftc.gov* and refer to OMB Control No. 3038–0017.

SUPPLEMENTARY INFORMATION:

Title: Market Surveys, OMB Control No. 3038–0017. This is a request for extension of a currently approved information collection.

Abstract: Sections 8(a)(i) and (ii) of the Commodity Exchange Act provide for the efficient execution of the provisions of the Act and in order to inform Congress, the Commission may make investigations concerning futures markets and may publish general information from such investigations. In certain instances in response to abrupt and substantial changes in market prices, Congressional inquiry or other reasons, the Commission may conduct full market investigations requiring that all persons holding futures positions on the date in question in a specific market to be identified. In such cases, the Commission issues its call for survey information pursuant to Commission Rule 21.02, 17 CFR 21.02.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the CFTC's regulations were published on December 30, 1981. See 46 FR 63035 (Dec. 30, 1981). The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on June 17, 2003 (68 FR 35870).

Burden statement: The respondent burden for this collection is estimated to average 1.75 hours per response. This estimate includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; and transmit or otherwise disclose the information.

Respondents/Affected entities: 400.

Estimated number of responses: 400.

Estimated total annual burden on respondents: 700 hours.

Frequency of collection: Annually.

Send comments regarding the burden estimated or any other aspect of the information collection, including suggestions for reducing the burden, to the addresses listed below. Please refer to OMB Control No. 3038–0017 in any correspondence.

Judith Payne, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581 and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Office for CFTC, 725 17th Street, NW., Washington, DC 20503.

Issued in Washington, DC, on August 19, 2003.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–21633 Filed 8–22–03; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the U.S. Naval Academy Board of Visitors

AGENCY: Department of the Navy, DOD.

ACTION: Notice of partially closed meeting.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry, as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The open session of the meeting will be held on Friday, September 12th, 2003, from 9 a.m. to 11:45 a.m. The closed Executive Session will be from 11:45 a.m. to 12:30 p.m.

ADDRESSES: The meeting will be held at the Dirksen Senate Office Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Domenick Micillo, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, telephone (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of a partially closed meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information, which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), (7) and (9) of title 5, United States Code.

Dated: August 13, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–21632 Filed 8–22–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by September 22, 2003. Interested persons are invited to submit comments on or before September 24, 2003.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: August 19, 2003.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of the Deputy Secretary

Type of Review: New.

Title: Performance Based Data Management Initiative.

Abstract: The Performance Based Data Management Initiative (PBDMI) is in the first phase of a multiple year effort to consolidate the collection of education information about States, Districts, and Schools in a way that improves data quality and reduces paperwork burden for all the national education partners.

Additional Information: The Department is requesting emergency processing of this collection with an OMB approval date of September 22. The Department has spent over four months of internal review of these data elements with federal program managers and analysts and has visited each of the State Education Agencies that will be submitting this data to determine the availability of the data and the amount of effort required to provide this data to the Department. With such an intensive and thorough review of the data elements by the participating partners in this collection, it has been determined that the purpose for the initial sixty day public comment to ED has been fulfilled. It is also important to provide the State Agencies with as much lead time as possible for the development of their data transmission plans so they will be able to provide this data in November 2003.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 8,230.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2335. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Patrick Sherrill at his e-mail address *Pat.Sherrill@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–21642 Filed 8–22–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Advanced Scientific Computing Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting cancellation.

On July 30, 2003, the Department of Energy published a notice of open meeting announcing a meeting of the Advanced Scientific Computing Advisory Committee 68 FR 44756. Today's notice is announcing the cancellation of the meeting scheduled for August 21–22, 2003, because the committee will not have a quorum of members for the meeting.

Issued in Washington, DC, on August 20, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–21666 Filed 8–21–03; 9:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0280; FRL–7323–4]

Tribal Pesticide Programs Council; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Tribal Pesticide Program Council (TPPC) will hold a 3–day meeting, beginning on September 17 and ending on September 19, 2003. This notice announces the location and times for the meeting and sets forth the tentative agenda topics.

DATES: The meeting will be held on Wednesday, September 17, 2003, from 9 a.m. until 5 p.m., including a closed session from 4 p.m. until 5 p.m.;

Thursday, September 18, 2003, from 9 a.m. until 5 p.m., including a closed session from 4 p.m. until 5 p.m.; and Friday, September 19, 2003, from 9 a.m. until noon.

ADDRESSES: The meeting will be held at Miccosukee Resort and Convention Center, 500 SW., 177th Ave., Miami, FL 33194.

FOR FURTHER INFORMATION CONTACT: Georgia McDuffie, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 605–0195; fax number: (703) 308–1850; e-mail address: *Mcduffie.Georgia@epa.gov*; or Lillian Wilmore, TPPC Facilitator, P.O. Box 470829, Brookline Village, MA 02447–0829; telephone number: (617) 232–5742; fax: (617) 277–1656; e-mail address: *naecology@aol.com.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of particular interest to those persons interested in TPPC's information exchange relationship with EPA regarding important issues related to human health, environmental exposure to pesticides, and insight into EPA's decision-making process. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0280. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although, not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Tentative Agenda

This unit provides tentative agenda topics for the 2–day meeting.

1. TPPC state of the Council Report.
2. Presentation and questions and answers by EPA's Office of Pesticide Programs and Field and External Affairs Division.
3. Reports from working groups and TPPC participation in other meetings: Tribal Strategy and FOSTTA, Pesticide Program Dialogue Committee, Western Region. Pesticide Meeting, Certification and Training Assessment Group, and Worker Protection.
4. *Tribal caucus* (2).
5. Reports from other organizations: State FIFRA Issues Research and Evaluation Group, American Indian Environmental Office, Tribal Operations Committee, Regional Tribal Operations Committee, Intertribal Agricultural Council, and National Tribal Environmental Council, Intertribal Agricultural Council, and Tribal Air Group.
6. Tribal west nile virus concerns.
7. The new interim guidance on pesticides applied to waterways.
8. Spray drift regulation labeling and minimization.
9. EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS) tribal strategy update.
10. OECA enforcement priorities.
11. Pesticide-related homeland security concerns.
12. Updates from the subregional lead officer.
13. Worker protection, e-commerce, and tribal enforcement issues.
14. Background checks on inspections.

List of Subject

Environmental protection.

Dated: August 12, 2003.

Kennan Garvey,

Acting Associate Director, Field and External Affairs Division, Office of Pesticide Programs.

[FR Doc. 03–21663 Filed 8–22–03; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7548–8]

Notice of Availability: Draft Watershed-Based National Pollutant Discharge Elimination System (NPDES) Permitting Implementation Guidance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that the U.S. Environmental Protection Agency is publishing Draft Guidance On Watershed-Based National Pollutant Discharge Elimination System (NPDES) Permitting Implementation. EPA is making the draft guidance available to the public for a period of thirty days during which EPA seeks comments on the document. The purpose of this guidance is to describe the concept of and the process for watershed-based permitting under the NPDES permit program. Watershed-based NPDES permitting is an approach to developing NPDES permits for multiple point sources located within a defined geographic area (*i.e.*, watershed boundaries). This approach, aimed at achieving new efficiencies and environmental results, provides a process for considering all stressors within a hydrologically defined drainage basin or other geographic area, rather than addressing individual pollutant sources on a discharge-by-discharge basis. As outlined in the guidance, EPA will continue to implement the NPDES program through its existing statutory and regulatory authorities. The guidance cannot impose legally binding requirements on EPA, States, Tribes, or the regulated community. It cannot substitute for Clean Water Act (CWA) requirements, EPA's regulations, or the obligations imposed by consent decrees or enforcement orders.

DATES: All public comments on the draft guidance must be received on or before September 24, 2003.

ADDRESSES: Comments should be addressed to Patrick Bradley, U.S. Environmental Protection Agency, EPA East Building (MC 4203M), 1200

Pennsylvania Avenue, NW., Washington, DC 20460. Commenters are also requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. EPA will also accept comments electronically. Comments should be addressed to the following e-mail address: *bradley.patrick@epa.gov*. Electronic comments must be submitted as an ASCII, WordPerfect format file and avoid the use of special characters or any form of encryption.

Interested persons may obtain a copy of the guidance from the Water Permits Division's Web site (*http://cfpub.epa.gov/npdes/wqbasedpermitting/wspermitting.cfm*).

FOR FURTHER INFORMATION CONTACT: Patrick Bradley, Telephone: (202) 564–0729. Facsimile Number: (202) 564–6392. E-mail: *bradley.patrick@epa.gov*. Also visit the Water Permits Division's Web page at *http://www.epa.gov/npdes*.

SUPPLEMENTARY INFORMATION: For nearly a decade, the U.S. Environmental Protection Agency (EPA) has supported and encouraged a watershed approach to addressing water quality problems. Awareness and understanding of this approach has grown over time, but with demonstrated gaps in implementation. In fall 2002 the EPA Office of Water Assistant Administrator issued a policy memo entitled "Committing EPA's Water Program to Advancing the Watershed Approach." This policy memo not only reaffirms EPA's commitment to the watershed approach but also reenergizes efforts to ensure that EPA as a whole fully integrates the approach into program implementation. The memo calls for the creation of a Watershed Management Council (WMC) that will, among other activities, accelerate efforts to develop and issue NPDES permits on a watershed basis.

Following the watershed approach policy memo, EPA's Assistant Administrator for Water released the "Watershed-Based NPDES Permitting Policy Statement." This statement communicates EPA's policy on implementing NPDES permitting activities on a watershed basis, discusses the benefits of watershed-based permitting, presents an explanation of the process and several mechanisms to implement watershed-based permitting, and outlines how EPA will encourage watershed-based permitting. It serves as both a formal commitment and a strategy for fully integrating the watershed approach into the NPDES permitting program and accelerating these efforts, as called for in the watershed approach policy memo. Both the policy memo on advancing the watershed approach and the watershed-based permitting policy statement are available on EPA's Web page at *http://cfpub.epa.gov/npdes/wqbasedpermitting/wspermitting.cfm*.

Dated: August 14, 2003.

James Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03–21660 Filed 8–22–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7547–6]

Preliminary Listing of Additional Waters to Ohio's 2002 List of Waters Under Section 303(d) of the Clean Water Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice and request for comments.

SUMMARY: This notice announces the EPA decision identifying water quality limited segments and associated pollutants in Ohio to be listed pursuant to the Clean Water Act section 303(d)(2), and requests public comment. Section 303(d)(1) requires that states submit lists of waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards and for which total maximum daily loads (TMDLs) must be prepared. Section 303(d)(2) requires EPA to review and approve or disapprove the lists submitted by the states. If EPA disapproves a state list of waters pursuant to section 303(d)(2), EPA must then identify the impaired waters.

On July 17, 2003, EPA partially approved and partially disapproved Ohio's 2002 section 303(d) list of waters still requiring TMDLs. Specifically, EPA approved Ohio's section 303(d) list of impaired waters at Table 6 of the Ohio 2002 Integrated Water Quality Monitoring and Assessment Report, including associated pollutants and associated priority rankings. EPA disapproved Ohio's decision not to identify 17 additional waters on the 2002 section 303(d) list based upon sport fish consumption advisories. In a July 17, 2003 decision document, EPA identified these additional water bodies and associated pollutants for inclusion on the Ohio 2002 section 303(d) list.

EPA is providing the public the opportunity to review its decision to add the 17 additional water bodies and pollutants to Ohio's 2002 section 303(d) list, as required by EPA's Public Participation regulations. EPA will consider public comments in reaching its final decisions on the additional water bodies and pollutants identified for inclusion on Ohio's final list.

DATES: Comments on this document must be received in writing by September 24, 2003.

ADDRESSES: Written comments on today's notice may be submitted to Jo Lynn Traub, Director, Water Division, Attn: Ohio 303 (d) list, U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. As an alternative, EPA will accept comments electronically. Comments should be sent to the following Internet e-mail address: *keclik.donna@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Donna Keclik, Watersheds and Wetlands Branch, at the EPA address noted above or by telephone at (312) 886–6766.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA) requires that each state identify those waters for which existing technology-based pollution controls are not stringent enough to attain or maintain state water quality standards. For those waters, states are required to establish TMDLs according to a priority ranking.

EPA's Water Quality Planning and Management regulations include requirements related to the implementation of section 303(d) of the CWA (40 CFR 130.7). The regulations require states to identify water quality limited waters still requiring TMDLs every two years. The lists of waters still needing TMDLs must also include priority rankings and must identify the waters targeted for TMDL development during the next two years (40 CFR 130.7). On March 31, 2000, EPA promulgated a revision to this regulation that waived the requirement for states to submit section 303(d) lists in 2000, except in cases where a court order, consent decree, or settlement agreement required EPA to take action on a list in 2000 (65 FR17170).

Consistent with EPA's regulations, Ohio submitted to EPA its listing decision under section 303(d)(2) on October 3, 2002. On July 17, 2003, EPA approved Ohio's 2002 section 303(d) list of impaired waters and associated priority rankings. EPA disapproved Ohio's decision not to list 17 additional waters and associated pollutants on the 2002 section 303(d) list based upon sport fish consumption advisories. EPA solicits public comment on its identification of 17 additional waters

and associated pollutants for inclusion on Ohio's 2002 section 303(d) list.

Dated: August 14; 2003.

Anthony Carrollo,

Acting Director, Water Division, Region 5.

[FR Doc. 03–21659 Filed 8–22–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7548–9]

Public Water System Supervision Program Revision for the State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of Oklahoma is revising its approved Public Water System Supervision Program. Oklahoma has adopted an Arsenic Rule, Radionuclides Rule, Long Term 1 Enhanced Surface Water Treatment Rule, Filter Backwash Recycling Rule, Public Notification Rule, Lead and Copper Rule Minor Revisions, and a revised Public Water Supply Definition. The Arsenic Rule is adopted to improve public health by reducing the maximum contaminant level of Arsenic in drinking water from 50 micrograms/Liter to 10 micrograms/Liter. The Radionuclides Rule is adopted to improve public health protection and reduce the risk of cancer by reducing the exposure to radionuclides in drinking water. The Long Term 1 Enhanced Surface Water Treatment Rule will improve control of microbial pathogens, specifically the protozoan Cryptosporidium, in drinking water and address risk trade-offs with disinfection byproducts. The Filter Backwash Recycling Rule is adopted to further protect public health by requiring public water systems, where needed, to institute changes to the return of recycle flows to a plant's treatment process that may otherwise compromise microbial control. The Public Notification Rule is adopted to notify the public anytime a water system violates national primary drinking water regulations or has other situations posing a risk to public health. The Lead and Copper Rule Minor Revisions will eliminate unnecessary requirements, streamline and reduce reporting burden, and promote consistent national implementation of the Lead and Copper Rule. Finally, the revised Public Water Supply Definition will now include other constructed conveyances. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by September 24, 2003, to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 24, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on September 24, 2003. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: Oklahoma Department of Environmental Quality, Water Quality Division, Public Water Supply Section, 707 North Robinson, Oklahoma City, Oklahoma 73101 and United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Dawn D. Ison, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665–2162.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: August 18, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

[FR Doc. 03–21661 Filed 8–22–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

August 18, 2003.

SUMMARY: The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0859.

OMB Approval date: 06/03/2003.

Expiration Date: 06/30/2006.

Title: Suggested Guidelines for Petititons for Ruling Under Section 253 of the Communications Act.

Form No.: N/A.

Estimated Annual Burden: 80 responses; 6,280 total annual hours; 78.5 hours per respondent.

Needs and Uses: The attached Public Notice establishes various procedural guidelines related to the Commission's processing of petitions for preemption pursuant to Section 253 of the Communications Act of 1934, as amended. The Commission will use the information to discharge its statutory mandate relating to the preemption of state or local statutes or other state or local legal requirements.

OMB Control No.: 3060–0876.

OMB Approval date: 06/24/2003.

Expiration Date: 06/30/2006.

Title: USAC Board of Directors Nomination Process (47 CFR Section 54.703) and Review of Administrator's Decision (47 CFR Sections 54.719–54.725).

Form No.: N/A.

Estimated Annual Burden: 1312 responses; 41,840 total annual hours; approximately 32 hours per respondent.

Needs and Uses: Pursuant to 47 CFR Section 54.703 industry and non-industry groups may submit to the Commission for apporoval nominations for individuals to be appointed to the USAC Board of Directors. 47 CFR Sections 54.719–54.725 contain the procedures for Commission review of USAC decisions, including the general filing requirements pursuant to which

parties must file requests for review. The information is used by the Commission to select USAC's Board of directors and to ensure that requests for review are filed properly with the Commission.

OMB Control No.: 3060–0463.
OMB Approval date: 06/24/2003.
Expiration Date: 06/30/2006.
Title: Telecommunications Relay Services and the Americans with Disabilities Act of 1990, 47 CFR Part 64 (Section 64.604 (a)(3).
Form No.: N/A.
Estimated Annual Burden: 5,053 responses; 26,837 total annual hours; 5–6 hours per respondent.
Needs and Uses: The attached Report and Order eliminates the coin sent-paid requirement and encourages specific outreach and education programs to inform TRS users of their options when placing calls from payphones. Because the Commission concludes that it is infeasible to provide coin sent-paid toll relay service through payphones at this time, and the coin sent-paid toll functionality is not necessary to achieve functional equivalence, carriers need not provide coin sent-paid toll TRS calls from payphones. The attached Report and Order requires carriers to continue to provide coin sent-paid local calls free to TRS users. The Report and Order requires carriers via the Industry Team to submit a one time report on the efforts industry has made to educate consumers on how to make toll coin sent-paid calls.

OMB Control No.: 3060–0804.
OMB Approval date: 06/18/2003.
Expiration Date: 06/30/2006.
Title: Universal Service—Health Care Providers Universal Service Program.
Form No.: FCC Forms 465,466,466-A, and 467.
Estimated Annual Burden: 5,605 responses; 8,805 total annual hours; 1–2 hours per respondent.
Needs and Uses: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible health care providers. Health care providers who want to participate in the universal service program must file several forms, including FCC Forms 466 and 468. FCC Forms 466 and 468 are being revised and combined into one comprehensive form. The information is used to ensure that telecommunications carriers and eligible providers of information services receive the appropriate credit for providing eligible services.

OMB Control No.: 3060–0824.
OMB Approval date: 07/14/2003.
Expiration Date: 07/31/2006.
Title: Service Provider Identification Number and Contact Form.
Form No.: FCC Form 498.
Estimated Annual Burden: 5,000 responses; 10,000 total annual hours; 2 hours per respondent.
Needs and Uses: The Administrator of the universal service program must obtain contact and remittance information from service providers participating in the universal service high cost, low income, rural health care, and schools and libraries programs. The Administrator uses FCC Form 498 to collect service provider name, phone numbers, other contact information, and remittance information from universal service fund participants to enable the Administrator to perform its universal service disbursement functions under 47 CFR Part 54. FCC Form 498 allows fund participants to direct remittance to third parties or receive payments directly from the Administrator.

OMB Control No.: 3060–0613.
OMB Approval date: 07/23/2003.
Expiration Date: 07/31/2006.
Title: Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91–141, Transport Phase II (Third R & O).
Form No.: N/A.
Estimated Annual Burden: 64 responses; 832 total annual hours; 13 hours per respondent.
Needs and Uses: Tier 1 local excange carriers (except NECA members) are required to make tariff filing to provide certain signalling information to interested parties so that those parties can provide tandem switching services. Tandem swiching providers are required to provide certain billing information to those Tier 1 local exchange carriers.

OMB Control No.: 3060–0853.
OMB Approval date: 08/14/2003.
Expiration Date: 02/29/2004.
Title: Receipt of Service Confirmation Form; Adjustment of Funding Commitment; and Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act—Universal Service for Schools and Libraries.
Form No.: FCC Forms 479, 486, and 500.
Estimated Annual Burden: 40,000 responses; 75,000 total annual hours; 1–2 hours per respondent.
Needs and Uses: Following a district court decision that portions of CIPA were unconstitutional, the Commission modified FCC Forms 479 and 486 to remove certain language from the certifications for libraries (language requiring compliance with the parts of CIPA the district court found unconstitutional). The Supreme Court reversed the district court decision and the Commission must revise the forms to enable libraries to certify their compliance with CIPA. Specifically, the Commission will make a few small changes to the forms in item 6.b and 11 of the Form 486 and Item 6 of the FCC 479. FCC Form 500 remains unchanged. Additionally, the Commission is requesting contact information to conform with the contact information requested in other Schools and Libraries Universal Service forms.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 03–21620 Filed 8–22–03; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 18, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility; and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 24, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Telecommunication Relay Services and Speech-to-Speech Services for Individual with Hearing and Speech Disabilities, CC Docket No. 98–67 (Second Report and Order, Order on Reconsideration), FCC 03–112.

Form Number: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 5,053.

Estimated Time per Response: 5.311 hours (average).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 26,837 hours.

Total Annual Cost: None.

Needs and Uses: On June 17, 2003, the Commission released the *Second Report and Order, ("Report and Order"), Order on Reconsideration, In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CC 98–67, FCC 03–112. In the *Report and Order,* the Commission establishes new rules and amends existing rules governing TRS to further advance the functional equivalency mandate of section 225. The *Report and Order* also revises the requirements for handling emergency calls. In the *Order on Reconsideration,* the Commission provides clarify requirements for Communication Assistants, the speed of answer requirement and clarify certain procedural matters regarding TRS-related information to improve the usability of TRS for all Americans. On June 17, 2003, the Commission also released a *Notice of Proposed Rulemaking, In the Matter of Telecommunication Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities,* CG Docket No. 03–123, FCC 03–112, that proposed rules in section 64.604 (c)(5)(iii) regarding certification for TRS providers to be eligible for receiving payments from the Interstate TRS Fund and proposed to revise section 64.605 of the Commission rules. These proposed rules are also seeking OMB approval for the new collection associated with the *Second Report and Order, Order on Reconsideration,* CC Docket No. 98–67, FCC 03–112.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21621 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 19, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 24, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0465.

Title: Section 74.985, Signal Booster Station.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 6,300.

Estimated Time Per Response: .084—8.25 hours.

Frequency of Response: Recordkeeping requirement, on occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 919 hours.

Total Annual Cost: $2,252,500.

Needs and Uses: Section 74.985 requires signal booster stations to: (1) submit engineering data or showings in specified formats to the FCC's duplicating and research contractor for public service records duplication; (2) to serve a copy of the application and accompanying engineering materials on affected co-channel or adjacent channel parties; and (3) to retain a copy of the application at the transmitter site. The data are used to ensure that Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS) applicants and licensees have considered properly the potential for harmful interference from their facilities.

OMB Control No.: 3060–0531.

Title: Local Multipoint Distribution Service (LMDS).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 986.

Estimated Time Per Response: .25–20 hours.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 30,423 hours.

Total Annual Cost: $2,025,400.

Needs and Uses: The information requested will be used by FCC personnel to determine the technical, legal and other qualifications of applicants to operate stations in the Local Multipoint Distribution Service (LMDS). There is no change to this information collection (extension of a currently approved collection).

OMB Control No.: 3060–0798.

Title: FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

Form No.: FCC Form 601.

Type of Review: Revision of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions and State, local, or Tribal government.

Number of Respondents: 250,520.

Estimated Time Per Response: 1.25 hours.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 219,205 hours.

Total Annual Cost: $50,104,000.

Needs and Uses: The FCC Form 601 is a consolidated, multi-part application or "long form" for market-based licensing and site-by-site licensing in the Wireless Telecommunications Bureau's (WTB's) Radio Services' Universal Licensing System (ULS).

The WTB is in the process of implementing the Instructional Television Fixed Service (ITFS) and the Multipoint Distribution Service (MDS) into the Universal Licensing System (ULS). These services were transferred to WTB due to the Commission's reorganization on March 25, 2003, as they were previously held in the Broadband Licensing System (BLS). The information is used by the Commission to determine whether the applicant is legally, technically and financially qualified to be licensed.

The estimated average burden and number of respondents have been corrected to reflect the integration of the ITFS and the MDS services into ULS using FCC Form 601.

OMB Control No.: 3060–0947.

Title: Section 101.1327, Renewal Expectancy for EA Licensees.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 18,820.

Estimated Time Per Response: .50–20 hours.

Frequency of Response: Every 10 year reporting requirement.

Total Annual Burden: 284,653 hours.

Total Annual Cost: $18,820,000.

Needs and Uses: The information required in Section 101.1327 is used to determine whether a renewal applicant of a Multiple Address System has complied with the requirements to provide substantial service by the end of the ten-year initial license term. The FCC uses this information to determine whether the applicant's license will be renewed at the end of the license period.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–21622 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–45; DA 03–2621]

NPCR, Inc. d/b/a Nextel Partners Petition for Designation as an Eligible Telecommunications Carrier in the State of Georgia

AGENCY: Federal Communications Commission.

ACTION: Notice; solicitation of comments.

SUMMARY: In this document, the Wireline Competition Bureau sought comment on the NPCR, Inc. d/b/a Nextel Partners' petition seeking designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in certain rural and non-rural study areas in the state of Georgia.

DATES: Comments are due on or before September 4, 2003. Reply comments are due on or before September 18, 2003.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0494.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released August 8, 2003. On July 10, 2003, NPCR, Inc. d/b/a Nextel Partners (Nextel Partners) filed with the Commission a petition under section 214(e)(6) of the Communications Act of 1934, as amended. In particular, Nextel Partners seeks designation as an eligible telecommunications carrier (ETC) to receive federal universal service support for service offered in certain rural and non-rural study areas in the state of Georgia.

Nextel Partners contends that the Georgia Public Service Commission has provided an affirmative statement that it does not regulate commercial Mobile radio service (CMRS) carriers; Nextel Partners meets all the statutory and regulatory prerequisites for ETC designation; and designating Nextel Partners as an ETC will serve the public interest.

The petitioner must provide copies of its petition to the Georgia Public Service Commission. The Commission will also send a copy of this Public Notice to the Georgia Public Service Commission by overnight express mail to ensure that the Georgia Public Service Commission is notified of the notice and comment period.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments as follows: comments are due September 4, 2003 and reply comments are due September 18, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners.

Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 12th Street SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR § 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which ex parte communications are permitted subject to disclosure.

Federal Communications Commission.

Paul Garnett,

Acting Assistant Division Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–21619 Filed 8–22–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 18, 2003.

A. Federal Reserve Bank of Kansas City (James Hunter, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. BancFirst Corporation, Oklahoma City, Oklahoma; to acquire 100 percent of the voting shares of Lincoln National Bancorporation, Inc., and thereby indirectly acquire Lincoln National Bank, both of Oklahoma City, Oklahoma.

Board of Governors of the Federal Reserve System, August 19, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21667 Filed 8–22–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Request for Measures of Patients' Hemodialysis Care Experiences

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice of request.

SUMMARY: The Agency of Healthcare Research and Quality (AHRQ) is soliciting the voluntary submission of instruments measuring patient perspectives of their experience with hemodialysis facilities from researchers, vendors, stakeholders and other interested parties. AHRQ and the Centers for Medicare & Medicaid Services (CMS) have set as a priority the development of a standardized survey that may be used to make widely available, comparable measurements of hemodialysis patient experiences. Therefore, AHRQ is assessing the feasibility of creating such a standardized instrument and the nature and scope of the work to be done. As part of the feasibility study, AHRQ is reviewing existing instruments that capture patients' treatment experiences and is therefore requesting voluntary submission of such instruments or measures along with documentation for administration of the instruments or measures and, if possible, critical evaluations of particular measures or related survey administration techniques.

DATES: Parties interested in contributing to this endeavor are asked to submit the requested material on or before October 24, 2003 to Beth Kosiak, Ph.D. (see address below). AHRQ will not reply to individual responses, but will consider all submissions and suggestions.

ADDRESSES: Submissions should include a brief cover letter and include copy of the instrument or particular measure(s) for consideration. They may be in the form of a letter or e-mail, preferably with an electronic file in a standard word processing format such as Microsoft Word or Word Perfect on a 3½ inch diskette enclosed or as an e-mail with an e-mail attachment. Electronic submissions are strongly encouraged. Responses to this request should be submitted to: Beth Kosiak, PhD, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850, Phone: (301) 427–1322, Fax: (301) 427–1341, e-mail: *bkosiak@ahrq.gov.*

In order to ease the handling of submissions, please send a copy of the instrument or measure(s), and a cover letter addressing the extent to which the information submitted meats the "Submission Criteria" below. A copy or citation of relevant peer-reviewed journal articles is also desirable, but not required. For citations, please include the title of the article, author(s), publication year, journal name, volume, issue, and page numbers where article appears. All submissions must include a statement of willingness to grant to AHRQ the right to use and authorize others to use submitted measures and their documentation as part of a CAHPS®-trademarked instrument. Any CAHPS instrument developed for patient perspectives of experiences of hemodialysis care will be made publicly available for use free of charge. However, a CAHPS instrument bearing the CAHPS trademark may only be administered following CAHPS documentation and instructions. To facilitate our obtaining any other required clarifications, please submit the following information with respect to a knowledgeable contact person: (a) Name, (b) title, (c) organization, (d)

mailing address, (e) telephone number, and (f) e-mail address. For clarity, please do not use acronyms without explanation..

FOR FURTHER INFORMATION CONTACT: Beth Kosiak, PhD, from the Center for Quality Improvement and Patient Safety, Agency for Healthcare Research and Quality (see contact information above).

Submission Criteria

Measures submitted should ideally reflect these elements to be considered: (a) They must capture the patients' perspective on their experience of care in hemodialysis settings; (b) have a high degree of reliability and validity; and (c) have been used widely, not just in one or two research studies or local dialysis settings. It is recommended that submitters provide documentation that the instrument(s) or measure(s) they submit meets these criteria. The following information, if available, should be included in the submission of materials: the name of the instrument, domains assessed, language(s) in which the instrument is available, evidence of cross group/cultural comparability if any, examples of uses of the instrument for quality assessment or improvement, scale, psychometric statistics, such as individual level reliability (*e.g.*, internal consistency, test-retest), group level reliability, item response theory (IRT) statistics, validity (content, construction, criterion), as well as cognitive interviews and field test results, and details about focus groups.

Submitters are also encouraged to submit recommendations regarding, and any evaluations of, administration protocols, including recommended patient contact procedures, recommended sample sizes, mode of administration, any information available about mode effects, and mode specific response rates. Evidence of the criteria may be demonstrated by providing peer-reviewed journal article(s) or citations thereof.

As noted aboye submitters must indicate a willingness to grant to AHRQ the right to use and authorize others to use the submitted instrument or particular measures or formats therein. The license or assignment of rights will make it possible to apply the CAHPS trademark to a new instrument combining the best features of all the submissions as well as any ideas that may develop from reviewing them. AHRQ will not simply adopt one instrument and apply the CAHPS trademark to it. Rather, AHRQ, in collaboration with its CAHPS grantees, will evaluate all submitted instruments and measures, select several, either in whole or in part, for testing, or more likely devise one or more for testing and, as required, make additional modifications for the final product. AHRQ will assume responsibility for the final measure set as well as any further modifications to the developed instruments. Sources used in developing the final product will be acknowledged by AHRQ in the appropriate forum. In addition, all submissions will be publicly reported in aggregate.

The finalized instrument will bear the CAHPS trademark. As indicated above, it will be made freely available for use by all interested parties. There will be free access to the instrument's supportive/administrative information as well, and as a matter of quality control, there will be warnings that the CAHPS identification may not be used if any changes are made of the instrument or final measure set, without review and permission of the agency. AHRQ will assume responsibility for the final measure set as well as any further modifications to the developed instrument.

SUPPLEMENTARY INFORMATION:

Background

The Agency for Healthcare Research and Quality has been a leading proponent and supporter of the development of instruments for measuring patient experiences within the healthcare system of the United States. Through prior CAHPS patient survey development efforts such as the Consumer Assessment of Health Plan CAHPS®, AHRQ has been able to provide valuable information to consumers and purchasers alike. While the Health Plan CAHPS® tool is highly regarded within the industry and provides valuable information to consumers and purchasers, it does not address hemodialysis patient experiences of care.

Leaders in the healthcare sector have called for a response to this pressing need. In "Crossing the Quality Chasm", the National Institute of Medicine (IOM) established patient-centered care as one of the industry's six aims for quality improvement. The dimensions of patient-centered care include: Respect for patients' values, preferences, and expressed needs; coordination and integration of care; information, communication, and education; physical comfort; emotional support, *i.e.*, relieving fear and anxiety; involvement of family and friends (2001). From past experience, AHRQ suggests the addition of two more aims for quality improvement: Continuity and transition; and access to care. To measure these dimensions will require a standardized instrument that produces reliable and valid results.

In an effort to address the concerns of the industry, the Director AHRQ and the Administrator of CMS have established a priority to develop a standardized measure of hemodialysis patients' experiences. The goal of developing the standardized survey and reporting quality data on hemodialysis facilities could be reached within the next few years.

The steps to advance this initiative include:

- *Stakeholder and Technical Expert Panel Meetings:* A series of meetings will be held to identify the issues, concerns and interests of the healthcare community. Summaries of these meetings will be posted on the AHRQ Website: *http://www.ahrq.gov/*.
- *Feasibility Study:* The process to access the feasibility of developing a national standardized survey instrument to measure patient experiences with hemodialysis care. As part of the study, the potential uses of the instrument such as quality improvement, public reporting, or both will be assessed.
- *Research Plan:* The process by which measures will be defined and applicable instruments identified. Instruments submitted will be evaluated to determine if they meet the measurement needs and to identify whether additional measure development is required. The standardized instrument will reside in the public domain.
- *Implementation Plan:* A process to implement the standardized survey will be established to include information related to data collection, analysis, and reporting.

Dated: August 14, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–21555 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of AHRQ SEP Meetings—Change of Time and Date

The original AHRQ Notice of Meetings was published in the **Federal Register** (FR), July 31, 2003, Volume 68, Number 147, Page 44951. However, there are changes that need to be made to the September 4, 2003 meeting. See specifics on changes below:

Change: 4. SEP Meeting on: Sale Practices Implementation Challenge Grants, *Date:* September 4–5, 2003 (open on September 4 from 8 a.m. to 8:15 a.m. and closed for the remainder of the meeting).

To: 4. SEP Meeting on: Sale Practices Implementation Challenge Grants. *Date:* September 3, 2003 (open on September 3 from 6 p.m. to 6:15 p.m. and closed for the remainder of the meeting).

There are no changes to the location of this meeting.

Dated: August 14, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–21556 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Annual Survey of Refugees.

OMB No.: 0970–0033

Description: The Annual Survey of Refugees collects information on the economic circumstances of a random sample of refugees, Amerasians, and entrants who arrived in the United States during the previous five years. The survey focuses on their training, labor force participation, and welfare utilization rates. Data are segmented by region of origin, State of resettlement, and number of months since arrival. From their responses, the Office of Refugees Resettlement reports on the economic adjustment of refugees to the American economy. These data are used by Congress in its annual deliberations of refugee admissions and funding and by program managers in formulating policies for the future direction of the Refugee Resettlement Program.

Respondents:

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Form	2,000	1	.6666 (40 minutes) ..	1,333

Estimated Total Annual Burden Hours: 1,333.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. e-mail address: *rsargis@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 19, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–21629 Filed 8–22–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Refugee State-of-Origin Report.

OMB No.: 0970–0043.

Description: The information collection of the ORR–11 (Refugee State-of-Origin Report) is designed to satisfy the statutory requirements of the Immigration and Nationality Act (the Act). Section 412(s) of the Act requires the Office of Refugee Resettlement (ORR) to compile and maintain data on the secondary migration of refugees within the United States (U.S.) after arrival.

In order to meet this legislative requirement, ORR requires each State to submit an annual count of the number of refugees who were initially resettled in another State. The State does this by counting the number of refugees with Social Security numbers indicating residence in another State at the time of arrival in the U.S. (The first three digits of the Social Security number indicate the State of residence of the applicant.)

Data submitted by the States are compiled and analyzed by the ORR statisticians, who then prepare a summary report which is included in ORR's annual Report to Congress. The primary use of the data is to quantify and analyze refugee secondary migration among the 50 States. ORR uses these data to adjust its services formula allocation.

Respondents: State, local or Tribal government.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State of Origin Report	50	1	4.333	217

Estimated Total Annual Burden Hours: 217.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW.,

Washigton, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@aof.hhs.gov.*

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF, E-mail address: *lauren_wittenberg@omb.eop.gov.*

Dated: August 19, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–21630 Filed 8–22–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Developmental Disabilities Protection and Advocacy Statement of Goals and Priorities.

OMB No.: 0980–0270.

Description: Required by Federal statute and regulation. Each State Protection and Advocacy System must prepare and submit to public comment a Statement of Goals and Priorities (SGP). The final version of this SGP for the coming fiscal year is submitted to the Administration on Developmental Disabilities (ADD). The information in the SGP will be aggregated into a national prospective profile of where Protection and Advocacy Systems are going. It will provide ADD with an overview of program direction, and permit ADD to track accomplishments against objectives/targets, permitting the formulation of technical assistance and compliance with the Government Performance and Results Act. ADD is currently in the process of coordinating with other federal funding agencies to develop a more comprehensive SGP format.

Respondents: State and Tribal Governments.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
P&A SGP	57	1	44	2,508

Estimated Total Annual Burden Hours: 2,508.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *rsargis@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: August 19, 2003.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 03–21631 Filed 8–22–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0360]

Agency Information Collection Activities; Proposed Collection; Comment Request; Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Maintaining a Databank

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information contained in the final guidance entitled "Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Maintaining a Databank," dated March 18, 2002.

DATES: Submit written or electronic comments on the collection of information by October 24, 2003.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION:

I. Background

Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management

and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Maintaining a Databank—(OMB Control Number 0910–0459)—Extension

Description: In the **Federal Register** of March 18, 2002 (65 FR 12022), FDA issued a final guidance to industry on recommendations for investigational new drug application (IND) sponsors on submitting information about clinical trials for serious or life-threatening diseases to a Clinical Trials Data Bank developed by the National Library of Medicine, National Institutes of Health (NIH). This information is especially important for patients and their families seeking opportunities to participate in clinical trials of new drug treatments for serious or life-threatening diseases. The final guidance describes three collections of information: Mandatory submissions, voluntary submissions, and certifications.

II. Mandatory Submissions

Section 113 of the Food and Drug Administration Modernization Act of 1997 (the Modernization Act) (Public Law 105–115) requires that sponsors shall submit information to the Clinical Trials Data Bank when the clinical trial: (1) Involves a treatment for a serious or life-threatening disease, and (2) is intended to assess the effectiveness of the treatment. The final guidance discusses how sponsors can fulfill the requirements of section 113 of the Modernization Act. Specifically, sponsors should provide: (1) Information about clinical trials, both federally and privately funded, of experimental treatments (drugs, including biological products) for patients with serious or life-threatening diseases; (2) a description of the purpose of the experimental drug; (3) patient eligibility criteria; (4) the location of clinical trial sites; and (5) a point of contact for patients wanting to enroll in the trial.

Senate 1789, "Best Pharmaceuticals for Children Act" (BPCA) (Public Law 107–109) established a new requirement for the Clinical Trials Data Bank mandated by section 113 of the Modernization Act. Information submitted to the data bank must now include "a description of whether, and through what procedure, the manufacturer or sponsor of the investigation of a new drug will respond to requests for protocol exception, with appropriate safeguards, for single-patient and expanded protocol use of the new drug, particularly in children." The final guidance will be updated to include a discussion of how sponsors can fulfill the BPCA requirements.

III. Voluntary Submissions

Section 113 of the Modernization Act also specifies that sponsors may voluntarily submit information pertaining to results of clinical trials, including information on potential toxicities or adverse effects associated with the use or administration of the investigational treatment. Sponsors may also voluntarily submit studies that are not trials to test effectiveness, or not for serious or life-threatening diseases, to the Clinical Trials Data Bank.

IV. Certifications

Section 113 of the Modernization Act specifies that the data bank will not include information relating to a trial if the sponsor certifies to the Secretary of Health and Human Services (the Secretary) that disclosure of the information would substantially interfere with the timely enrollment of subjects in the investigation, unless the Secretary makes a determination to the contrary.

Description of Respondents: A sponsor of a drug or biologic product regulated by the agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the Public Health Service Act (42 U.S.C. 262) who submits a clinical trial to test effectiveness of a drug or biologic product for a serious or life-threatening disease.

Burden Estimate: The information required under section 113(a) of the Modernization Act is currently submitted to FDA under 21 CFR part 312, and this collection of information is approved under OMB Control No. 0910–0014 until January 31, 2006, and, therefore, does not represent a new information collection requirement. Instead, preparation of submissions under section 113 of the Modernization Act involves extracting and reformatting information already submitted to FDA. Procedures (where and how) for the actual submission of this information to the Clinical Trials Data Bank are addressed in the final guidance.

The Center for Drug Evaluation and Research (CDER) received 3,957 new protocols in 2002. CDER anticipates that protocol submission rates will remain at or near this level in the near future. Of these new protocols, an estimated two-thirds[1] are for serious or life-threatening diseases and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 3,957 protocols per year is 2,638 new protocols per year. An estimated 50 percent[1] of the new protocols for serious or life-threatening diseases submitted to CDER are for clinical trials involving assessment for effectiveness, and are subject to the mandatory reporting requirements under section 113 of the Modernization Act. Fifty percent of 2,638 protocols per year is 1,319 new protocols per year subject to mandatory reporting. The remaining 2,638 new protocols per year are subject to voluntary reporting.

The Center for Biologics Evaluation and Research (CBER) received 910 new protocols in 2002. CBER anticipates that protocol submission rates will remain at or near this level in the near future. An estimated two-thirds[2] of the new protocols submitted to CBER are for clinical trials involving a serious or life-threatening disease, and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 910 new protocols per year is 607 new protocols per year. An

[1]Estimate obtained from a review of 2,062 protocols submittted to CDER between January 1, 2002, and September 30, 2002.

[2]Estimate obtained from a review of 2,062 protocols submitted to CDER between January 1, 2002, and September 30, 2002.

estimated 50 percent[2] of the new protocols for serious or life-threatening diseases submitted to CBER are for clinical trials involving assessments for effectiveness. Fifty percent of 607 protocols per year is an estimated 304 new protocols per year subject to the mandatory reporting requirements under section 113 of the Modernization Act. The remaining 606 new protocols per year are subject to voluntary reporting.

The estimated total number of new protocols for serious or life-threatening diseases subject to mandatory reporting requirements under section 113 of the Modernization Act is 1,319 for CDER plus 304 for CBER, or 1,623 new protocols per year. The remainder of protocols submitted to CDER or CBER will be subject to voluntary reporting, including clinical trials not involving a serious or life-threatening disease as well as trials in a serious or life-threatening disease but not involving assessment of effectiveness. Therefore, the total number of protocols (4,867) minus the protocols subject to mandatory reporting requirements (1,623) will be subject to voluntary reporting, or 3,244 protocols.

It was originally estimated that the protocol submissions to the data bank will be updated 2.5 times per year under section 113 of the Modernization Act.

In the **Federal Register** of March 29, 2000 (65 FR 16620), the agency requested comments on the proposed collection of information. One comment was received. The comment stated that FDA greatly underestimated the burden by excluding multicenter studies and not accounting for the quality control review of the data before it is submitted to the data bank. Our final burden estimate incorporated these concerns and included a revised burden estimate.

The number of IND amendments submitted in 2002 for protocol changes (e.g., changes in eligibility criteria) was 4,750 for CDER and 1,646 for CBER. The number of IND amendments submitted in 2002 for new investigators was 9,419 for CDER and 1,773 for CBER. The number of protocol changes and new investigators was apportioned proportionally between mandatory and voluntary submissions. We recognize that single submissions may include information about multiple sites.

Generally, there is no submission to FDA when an individual study site is no longer recruiting study subjects. For this analysis, we assumed that the number of study sites closed each year is similar to the number of new investigator amendments received by FDA (9,419 CDER and 1,773 CBER).

Generally, there is no submission to FDA when the study is closed to enrollment. We estimate the number of protocols closed to enrollment each year is similar to the number of new protocols submitted (3,957 CDER and 910 CBER).

The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted under section 113(a) of the Modernization Act, including the time it takes to extract and reformat the information. FDA has been advised that some sponsors lack information system capabilities enabling efficient collection of company-wide information on clinical trials subject to reporting requirements under section 113(a) of the Modernization Act. The estimation of burden under section 113(a) reflects the relative inefficiency of this process for these firms.

Based on its experience reviewing IND's, consideration of the above information, and further consultation with sponsors who submit protocol information to the Clinical Trials Data Bank, FDA estimated that approximately 4.6 hours on average would be needed per response. The estimate incorporates 2.6 hours for data extraction and 2.0 hours for reformatting based on data collected from organizations currently submitting protocols to the Clinical Trials Data Bank. We considered quality control issues when developing the current burden estimates of 2.6 hours for data extraction and the 2.0 hours estimated for reformatting. Additionally, the internet-based data entry system developed by NIH incorporates features that further decrease the sponsor's time requirements for quality control procedures. The Clinical Trials Data Bank was set up to receive protocol information transmitted electronically by sponsors. Approximately 10 percent of sponsors electronically transmit information to the Clinical Trials Data Bank. If the sponsor chooses to manually enter the protocol information, the data entry system allows it to be entered in a uniform and efficient manner primarily through pull-down menus. As sponsor's familiarity with the data entry system increases, the hourly burden will continue to decrease.

A sponsor of a study subject to the requirements of section 113 of the Modernization Act will have the option of submitting data under that section or certifying to the Secretary that disclosure of information for a specific protocol would substantially interfere with the timely enrollment of subjects in the clinical investigation. FDA has no means to accurately predict the proportion of protocols subject to the requirements of section 113 of the Modernization Act that will be subject to a certification submission. To date, no certifications have been received. It is anticipated that the burden associated with such certification will be comparable to that associated with submission of data regarding a protocol. Therefore, the overall burden is anticipated to be the same, regardless of whether the sponsor chooses data submission or certification for nonsubmission. Table 1 reflects the estimate of this total burden.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

New Protocols	Recruitment Complete	Protocol Changes	New Investigators	Site Closed	Total Responses	Hours per Reponse	Total Hours
CDER (mandatory); 1,306	1,306	1,568	3,108	3,108	10,396	4.6	47,822
CBER (mandatory); 300	300	543	585	585	2,313	4.6	10,640
CDER (voluntary); 2,651	2,651	3,182	6,311	6,311	21,106	4.6	97,088
CBER (voluntary); 610	610	1,103	1,188	1,188	4,699	4.6	21,615
Total							177,165

[1]There are no capital and startup costs, or operation and maintenance costs associated with this collection of information.

We believe the estimate, 177,165 hours per year (38,514 responses × 4.6 hours per response) accurately reflects the burden. We recognize that companies who are less familiar with the data entry system and the Clinical Trials Data Bank will require greater than 4.6 hours per response. However, as sponsor familiarity with the system increases, the hourly estimate will decrease.

Dated: August 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21624 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0200]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Export of Medical Devices—Foreign Letters of Approval

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 24, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Export of Medical Devices—Foreign Letters of Approval (OMB Control Number 0910–0264)—Extension

Section 801(e)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381(e)(2)) provides for the exportation of an unapproved device under certain circumstances if the exportation is not contrary to the public health and safety and it has the approval of the foreign country to which it is intended for export.

Requesters communicate (either directly or through a business associate in the foreign country) with a representative of the foreign government to which they seek exportation, and written authorization must be obtained from the appropriate office within the foreign government approving the importation of the medical device. An alternative to obtaining written authorization from the foreign government is to accept a notarized certification from a responsible company official in the United States that the product is not in conflict with the foreign country's laws. This certification must include a statement acknowledging that the responsible company official making the certification is subject to the provisions of 18 U.S.C. 1001. This statutory provision makes it a criminal offense to knowingly and willingly make a false or fraudulent statement, or make or use a false document, in any manner within the jurisdiction of a department or agency of the United States.

FDA uses the written authorization from the foreign country or the certification from a responsible company official in the United States to determine whether the foreign country has any objection to the importation of the device into their country.

The respondents to this collection of information are companies that seek to export medical devices.

In the **Federal Register** of June 3, 2003 (68 FR 33161), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the reporting burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
801(e)(2)	20	1	20	2.5	50

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21625 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0038]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Device User Fee Cover Sheet; Form FDA 3601

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Medical Device User Fee Cover Sheet; Form FDA 3601" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 21, 2003 (68 FR 27818), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An

agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0511. The approval expires on August 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: August 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21627 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 29, 2003, from 8 a.m. to 5 p.m.; and on September 30, 2003, from 8 a.m. to 1 p.m.

Location: Holiday Inn, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Kimberly Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, FAX 301–827–6776, or e-mail: topperk@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: On both days, the committee will discuss the proposed systemic lupus erythematosis (SLE) concept paper, a preliminary discussion for creating a guidance document for the development of drugs, biologics, and devices for the treatment of SLE.

On September 29, 2003, the committee will discuss the proposed sections regarding the current state of the art, the claims for treatments, and clinical markers. On September 30, 2003, the meeting will be open to the public from 8 a.m. to 11 a.m., and the committee will discuss the section concerning clinical trial design. From 11 a.m. to 1 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information.

Procedure: On September 29, 2003, from 8 a.m. to 5 p.m.; and on September 30, 2003, from 8 a.m. to 11 a.m., the meeting will be open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 19, 2003. Oral presentations from the public will be scheduled on September 29, 2003, between approximately 12:30 p.m. and 1 p.m., on the topic of claims; between approximately 2:45 p.m. and 3:15 p.m., on the topic of clinical markers; and on September 30, 2003, between approximately 9 a.m. and 9:30 a.m., on the topic of trial design. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 19, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Persons desiring to speak who have not registered in advanced may be recognized from the floor by the Chair.

Closed Committee Deliberations: On September 30, 2003, from 11 a.m. to 1 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Trevelin Prysock at 301–827–7001 at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 18, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–21626 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Reproductive Health Drugs; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Reproductive Health Drugs.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 29 and 30, 2003, from 8:30 a.m. to 5 p.m.

Location: Hilton, The Ballrooms, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Shalini Jain, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: *jains@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12537. Please call the Information Line for up-to-date information on this meeting. Background materials for this meeting when available will be posted on the Web site 1 business day before the meeting at: *www.fda.gov/ohrms/dockets/ac/acmenu.htm*.

Agenda: On September 29, 2003, the committee will discuss issues relevant to the conduct of clinical trials and outcome measures for consideration of approval of drug products for the indications of induction of ovulation and pregnancy in anovulatory, infertile women and development of multiple follicles, and pregnancy in ovulatory women participating in assisted reproductive technology (ART) programs. On September 30, 2003, the committee will discuss new drug application (NDA) 21–322, Luveris (lutropin alfa for injection) Serono, Inc., a recombinant human luteinizing

hormone (r–hLH) drug product, proposed for concomitant administration with recombinant human follicle stimulating hormone (r–hFSH), for the proposed indication of induction of ovulation in infertile women with severe luteinizing hormone and follicle stimulating hormone deficiency.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 22, 2003. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. on September 29, 2003, and between approximately 1:30 p.m. and 2:30 p.m. on September 30, 2003. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 22, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Shalini Jain at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 18, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–21628 Filed 8–22–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–58]

Notice of Submission of Proposed Information Collection to OMB: Applications for Housing Assistance Payments

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act.

Housing owners/agents submit vouchers to HUD or their Contract Administrators (CA)/Performance Based Contract Administrators (PBCA) monthly to receive assistance payments for the difference between the gross rent and the total tenant payment for all assisted tenants. Special claims vouchers are also submitted by owners/agents to HUD or their CA/PBCA to receive an amount to offset unpaid rent, tenant damages, vacancies, and/or debt service losses. This is a proposed revision to the current information collection.

The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* September 24, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0182) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or through HUD's Information Collection Budget Tracking System at *http://mf.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Applications for Housing Assistance Payments.

OMB Approval Number: 2502–0182.

Form Numbers: HUD–52670; HUD–52670–A, Part 1; HUD–52670–A, Part 2; HUD–52671–A/B/C/D.

Description of the Need for the Information and Its Proposed Use: Owners/agents submit vouchers to HUD or their Contract Administrators/Performance Based Contract Administrators monthly to receive assistance payments for the difference between the gross rent and the total tenant payment for all assisted tenants. Special claims vouchers are also submitted to receive an amount to offset unpaid rent, tenant damages, vacancies, and/or debt service losses.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institutions, State, local or tribal government

Frequency of Submission: On occasion, Monthly.

Reporting Burden: Number of Respondents 23,507; Average responses per respondent 16.8; Total annual responses 394,824; Average burden per response 0.81 hrs.

Total Estimated Burden Hours: 319,627.

Status: Revision of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 15, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–21634 Filed 8–22–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4821–N–03]

Ginnie Mae Mortgage-Backed Securities Guide 5550.3, Revision 1 (Forms and Electronic Data Submissions); Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* October 24, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to:

Sonya Suarez, Office of Program Operations, Department of Housing & Urban Development, 451–7th Street, SW, Room 6206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Ginnie Mae Mortgage-Backed Securities Guide 5500.3, Revision 1 (Forms and Electronic Data Submissions).

OMB Control Number, if applicable: New Approval Number.

Description of the need for the information proposed use: Ginnie Mae's Mortgage-Backed Securities Guide 5500.3, Revision 1 ("Guide") provides instructions and guidance to participants in the Ginnie Mae Mortgage-Backed Securities ("MBS") programs "Ginnie Mae I and Ginnie Mae II"). Participants in the Ginnie Mae I program issue securities backed by single-family or multifamily loans. Participants in the Ginnie Mae II program issue securities backed by single-family loans. The Ginnie Mae II MBS are modified pass-through MBS on which registered holders receive an aggregate principal and interest payment from a central paying agent on all of their Ginnie Mae II MBS. The Ginnie Mae II MBS also allow small issuers who do not meet the minimum dollar pool requirements of the Ginnie Mae I MBS to participate in the secondary mortgage market. In addition, the Ginnie Mae II MBS permit the securitization of adjustable rate mortgages ("ARMs"). Any requirement in a document created under a Ginnie Mae MBS program is effective as of the date of the Guide, including amendments. Included in the Guide are Appendices. The Appendices include the forms or documents needed to comply with program requirements.

Agency form numbers, if applicable: 11700, 11702, 11704, 11707, 11710 A–E, 11714, 11714SN, 11705, 11706, 11708, 11709, 11709A, 11715, 11720, 11712–I, 11712–II, 11717, 11717–II, 1724, 11728, 11728–II, 1731, 1734, 11747, 11747–II and 11772–II, 11732, 11711A, 11711B, 11748C, and 11748A.

Members of affected public: For-profit business (mortgage companies, thrifts, savings & loans, etc.).

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION, INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE

Form	Title	No. of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
11700	Letter of Transmittal.	300	4	1,200	0.17	204
11702	Resolution of Board of Directors and Certificate of Authorized Signatures.	300	1	300	0.17	51
11704	Commitment to Guaranty Mortgage-Backed Securities.	300	4	1,200	0.25	300
11705	Schedule of Subscribers and Ginnie Mae Guaranty Agreement.	300	91.4	27,442	0.0166	456
11706	Schedule of Pooled Mortgages.	300	91.4	27,442	0.0166	456
11707	Master Servicing Agreement.	300	1	300	0.17	51
11708	Document Release Request.	300	10	3,000	0.2	600

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION, INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE—Continued

Form	Title	No. of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
11709	Master Agreement for Servicer's Principal and Interest Custodial Account.	30	1	300	0.03	9
11715	Master Custodial Agreement.	300	1	300	0.25	75
11720	Master Agreement for Servicer's Escrow Custodial Account.	300	1	300	0.2	60
11732	Custodian's Certification for Construction Securities.	250	1	250	0.0166	4
11709–A	ACH Debit Authorization.	300	1	300	0.25	75
11710, A, B, C, and E.	Issuer's Monthly Accounting Reports.	300	17,513.57	5,254,071	0.0166	87,218
11710 D	Issuer's Monthly Summary Reports.	300	16.88	5,064	0.0166	84
11711A and 11711B.	Release of Security Interest and Certification and Agreement.	300	91.4	27,442	0.0166	456
11712–I, 11712–II, 11717, 11717–II, 1724, 11728, 11728–II, 1731, 1734, 11747, 11747–II and 11722–II.	Ginnie Mae I and II Prospectus Forms.	300	91.4	27,442	0.25	6,861
11714 and 11714SN.	Issuer's Monthly Remittance Advice and Issuer's Monthly Serial Note Remittance Advice.	300	886.8	266,040	0.0166	4,416
11714 A and C	Addendum to Monthly Accounting Report—Adjustable Rate Mortgage Loan Package and Graduated Payment Mortgage or Growing Equity Mortgage Pool or Loan Package Composition.	300	8	2,406	0.0166	40
	Monthly Loan Level Reporting.	300	12	3,600	4	14,400
	Financial Statements and Audit Reports.	300	1	300	1	300
	Mortgage Bankers Financial Reporting Form.	278	4	1,112	0.5	556
	Soldiers' and Sailors' Quarterly Reimbursement Request and SSCRA Loan Eligibility Information.	173	162	28,026	0.034	953

ESTIMATION OF THE TOTAL NUMBER OF HOURS NEEDED TO PREPARE THE INFORMATION COLLECTION, INCLUDING NUMBER OF RESPONDENTS, FREQUENCY OF RESPONSE, AND HOURS OF RESPONSE—Continued

Form	Title	No. of respondents	Frequency of responses per year	Total annual responses	Hours per response	Total annual hours
	Form Letter for Loan Repurchase.	1,000	1	1,000	0.25	250
	Certification Requirements for the Pooling of Multifamily Mature Loan Program.	14	1	14	0.0166	0
	Request for Reimbursement of Mortgage Insurance Claim Costs.	60	1	60	0.25	15
	Collection of Remaining Principal Balances.	300	12	3,600	91.4	27,442
	Data Verification Form.	300	2	600	0.08	48
	Electronic Data Interchange System Agreement.	300	1	300	0.25	75
	Enrollment Administrator Signatories for Issuers and Document Custodians.	300	1	300	0.25	75
	Corporate Agreement.	10	1	10	0.25	3
	Cross Default Agreement.	10	1	10	0.25	3
	Transfer Agreements and Assignment Agreements.	180	1	15	0.25	4
	Pool Advance Agreement.	10	1	10	0.25	3
	Excess Funds Agreement.	10	1	10	0.25	3
	Acknowledgement Agreement and Accompanying Documents—Pledge of Servicing.	10	1	10	0.25	3
	Supervisory agreement.	10	1	10	0.25	3
Total	.....	246	.....	5,683,879	.....	145,570

Calculations:

Total Annual Responses × Hours per Response = Total Annual Hours

Estimated Cost to Respondents:

1. Mortgage industry employee salary: $25.00 per hour

$25.00 × Total Annual Hours = Cost

Estimated Annual Cost to the Government:

1. Ginnie Mae employee salary: $29.00 per hour

$29.00 × Total Annual Hours = Cost

2. Contractor Expense is based on contract award

Status of the proposed information collection: New Collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 19, 2003.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 03–21635 Filed 8–22–03; 8:45 am]

BILLING CODE 4210–66–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[SGA–03–15]

Notice of Funding Availability (NOFA), Solicitation for Grant Applications (SGA) for Ending Chronic Homelessness Through Employment and Housing Revision To Extend Application Deadline Date for Eligible Applicants

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Extension of Deadline Date.

SUMMARY: On July 18, 2003, HUD and the Department of Labor (DOL) jointly announced the availability of approximately $12.5 million to help address chronic homelessness. This notice advises interested parties that, as a result of the emergency situation caused by the power outages that affected much of the Mid-Atlantic and the Mid-West, HUD and DOL have decided to extend the application submission date for the Notice of Funding Availability/Solicitation for Grant Applications (SGA) to Monday, August 25, 2003.

FOR FURTHER INFORMATION CONTACT: John Garrity, Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development, Room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500, (202) 708–4300 (this is not a toll-free number). Persons with hearing or speech impairments access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On July 18, 2003 (68 FR 42818), HUD and DOL jointly published a Solicitation for Grant Applications (SGA)/ Notice of Funding Availability that announced approximately $12.5 million to help address chronic homelessness. Of this amount, the Office of Disability Employment Policy at DOL made available $2.5 million to award up to four cooperative agreements designed to increase and improve employment opportunities for persons who are chronically homeless. HUD announced the availability of approximately $10 million for permanent housing grants from recaptured McKinney Act monies. The deadline for applications established by the July 18, 2003; notice was August 20, 2003.

As a result of the emergency situation caused by the power outages that affected much of Mid-Atlantic and the Mid-West beginning on August 14, 2003, HUD and DOL have decided to extend the application submission date for the Notice of Funding Availability/ Solicitation for Grant Applications (SGA) to Monday, August 25, 2003. This notice is consistent with a similar notice extending the deadline for applications for this joint Solicitation for Grant Applications/ Notice of Funding Availability that will be appear in the **Federal Register** on Thursday, August 21, 2003.

Other than extension of the application due date, no other changes are made to the NOFA. All applications must continue to be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, by the new application deadline—not later than 4:45 pm e.s.t., August 25, 2003.

Dated: August 20, 2003.

John Garrity,

Director, Office of Special Needs Assistance Programs, Office of Community Planning and Development.

[FR Doc. 03–21716 Filed 8–21–03; 10:57 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Handbook for Candidate Conservation Agreements With Assurances and Enhancement of Survival Permit Processing

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability; extension of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service, are extending the comment period for the Draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permit Processing. This draft document provides internal guidance for conducting the Candidate Conservation Agreement with Assurances permit program under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period, and will be fully considered in the final rule.

DATES: Comments on the Draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permit Processing must be received on or before September 22, 2003, to be considered during preparation of a final guidance document.

ADDRESSES: Persons wishing to review the Draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permit Processing may obtain a copy by contacting the Division of Conservation and Classification, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 420, Arlington, Virginia 22203 (telephone 703/358–2105), and may be viewed at: *http://endangered.fws.gov/candidates/ccaahandbook.html*. Written comments and materials regarding the draft guidance should be directed to the same address. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Chris Nolin, Chief, Division of Conservation and Classification, U.S. Fish and Wildlife Service, at the above address (703–358–2105)

SUPPLEMENTARY INFORMATION:

Background

On June 23, 2003, we published in the **Federal Register** a notice of availability for the draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permit Processing (68 FR 37170). This draft handbook provides consistent procedures and policies for the Service's compliance with the enhancement of survival permit provisions of section 10(a)(1)(A) of the Act. Consistency in the section 10(a)(1)(A) program will be achieved by (1) providing national procedural and policy guidance; (2) providing standardized guidance to our offices and personnel who participate in the Candidate Conservation Agreements with Assurances program and review and process enhancement of survival permit applications; (3) ensuring uniform Service compliance with section 10(a)(1)(A) of the Act associated with a Candidate Conservation Agreement with Assurances; (4) providing assistance to applicants in the non-Federal sector who wish to apply for enhancement of survival permits; and (5) providing for conservation of federally proposed, candidate, and other at-risk species. For further information, please refer to the June 23, 2003, **Federal Register** notice and the draft Handbook.

Public Comments Solicited

We intend that a final decision on the Draft Handbook for Candidate Conservation Agreements with Assurances and Enhancement of Survival Permit Processing will take advantage of information and recommendations from all interested parties. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this draft document are hereby solicited. All comments and materials received will be considered prior to the approval of a

final document. Previously submitted comments need not be resubmitted.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 4, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–21623 Filed 8–22–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Information Collection Under the Paperwork Reduction Act; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs (BIA) invites comments on an information collection request which will be renewed. The collection is: Gaming on Trust Lands Acquired After October 17, 1988, OMB Control No. 1076–0158.

DATES: Submit your comments and suggestions on or before October 24, 2003 to be assured of consideration.

ADDRESSES: Comments should be sent to: George Skibine, Bureau of Indian Affairs, Office of Indian Gaming Management, Mail Stop 4543–MIB, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may get copies of the information collection requests without charge by contacting George Skibine at 202–219–4066 or facsimile number 202–273–3153.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. The Bureau of Indian Affairs, Office of Indian Gaming Management is proceeding with this public comment period as the first step in getting a normal information collection clearance from the Office of Management and Budget (OMB). The request contains (1) type of review, (2) title, (3) summary of the collection, (4) number and type of respondents, (5) frequency of collection, (6) reporting and record keeping requirements.

Please note that we will not sponsor nor conduct, and you need not respond to, a request for information unless we display the OMB control number and the expiration date.

Gaming on Trust Lands Acquired After October 17, 1988

Type of review: Extension of a currently-approved collection.

Title: Gaming on Trust Lands Acquired After October 17, 1988, 25 CFR 292.

OMB Control No. 1076–0158.

Summary: The collection of information will ensure that the provisions of IGRA, Federal law and the trust obligations of the United States are met when federally recognized tribes submit an application seeking a Secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988, and not exempt under one of the other statutory exemptions to the prohibition on gaming contained in Section 20 of the Indian Gaming Regulatory Act (IGRA), would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0158). All information is collected when the tribe makes a request for a Secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988, would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community. Annually, we expect about 2 tribes to apply, seeking a Secretarial determination that a gaming establishment on land acquired in trust after October 17, 1988, would be in the best interest of the Indian tribe and its members, and would not be detrimental to the surrounding community. The estimated time to review instructions and complete each application is 2000 hours. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 4,000 hours.

Frequency of Collection: A one time collection.

Description of Respondents: Federally recognized tribes.

Total Annual Responses: 2.

Response Burden Hours per Application: 2000.

Total Annual Burden Hours: 4,000 hours.

Request for Comments

The Bureau of Indian Affairs solicits comments in order to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the bureau, including whether the information will have practical utility;

(2) Evaluate the bureau's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond.

Any public comments received will be addressed in the Bureau of Indian Affairs' submission of the information collect request to the Office of Management and Budget.

All comments will be available for public review during regular business hours. There may be an instance when we decide to withhold information, but if you wish us to withhold your name and address, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowed by law. We will not consider anonymous comments, and we will make public all comments from businesses and from individuals who represent businesses.

Dated: August 13, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–21680 Filed 8–22–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF LABOR

Office of the Secretary

Proposed Collection; Comment Request; Correction

ACTION: Corrected notice.

SUMMARY: Due to an inadvertent error, the document published on August 8, 2003, at 68 FR pp. 47364–47365 did not contain the full text. This revised document will correct and supercede that document.

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and

the impact of collection requirements on respondents can be properly assessed. Currently, the Office of the Secretary is soliciting comments concerning the proposed collection: National Agricultural Workers Survey. A copy of the proposed information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSEE** section below on or before October 24, 2003.

ADDRESSES: Mr. Daniel Carroll, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–2312, Washington, DC 20210, telephone (202) 693–5077, fax (202) 693–5961, e-mail *carroll.daniel@dol.gov*. Please use only one method of transmission for comments (mail, fax, or e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor (DOL) has been continually surveying hired farm workers since 1988 via the National Agricultural Workers Survey (NAWS). The survey's primary focus is to describe the demographic and employment characteristics of hired crop farm workers at the national level. To date, over 36,000 farm workers have been interviewed.

The NAWS provides an understanding of the manpower resources available to U.S. agriculture, and both public and private service programs use the data for planning, implementing, and evaluating farm worker programs. It is the only national data source on the demographic and employment characteristics of hired crop farm workers.

The NAWS samples crop farm workers in three cycles each year to capture the seasonality of agricultural employment. Workers are located and sampled at their work sites. During the initial contact, arrangements are made to interview the respondent at home or at another convenient location. Currently, approximately 4,000 interviews are obtained each year.

The NAWS presently includes a primary questionnaire and four supplements (youth, parent, injury, and health). Beginning with the October 2003 interview cycle, the Department proposed to discontinue the youth, parent and occupational health supplements.

The youth and parent supplements were implemented in fiscal year 2000 as part of the Department's Child Labor Initiative. They were designed to collect information on the demographic and employment conditions of youth farm workers and on the barriers to education experienced by the children of farm workers.

Having collected four years of data under this initiative, the Department will evaluate the effectiveness of these instruments and methodology for obtaining information on youth crop workers. The Department therefore proposes to discontinue the youth and parent supplements at this time.

The occupational health supplement was designed to assess the health status of hired crop farm workers. Funded by the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (CDC/NIOSH), the supplement was implemented in fiscal year 1999 to satisfy research priorities emanating from the Agricultural Occupational Safety and Health Initiative. CDC/NIOSH is proposing to exclude the occupational health supplement in fiscal year 2004. This would provide an opportunity for NIOSH to more thoroughly examine previously collected data and to evaluate the need for updating or modifying the supplement for future inclusion.

The purpose of this notice is to solicit comments regarding the ongoing primary questionnaire and occupational injury supplement, and the discontinuance of the youth, parent and occupational health supplements. The questionnaires are described below.

The NAWS Primary Questionnaire (ongoing)

The primary instrument is administered to crop agricultural workers 14 years and older. It contains a household grid, where the education level and migration history or each member of the respondent's household is recorded, and an employment grid, where a full year of employment and geographic movement of the respondent is detailed. It also contains sections on income, assets, legal status, use of public services, and experience working with and training on the safe use of pesticides.

The employment grid includes the task and crop for agricultural jobs, type and amount of non-agricultural work, periods of unemployment and time spent outside the U.S., and the respondent's location for every week of the year preceding the interview. For the respondent's current job, the NAWS collects information on wages and payment method (piece or hourly), health insurance, workers' compensation and unemployment insurance, housing arrangements, and other benefits and working conditions.

The demographic information collected include age, gender, place of birth, marital status, language ability, education and training, and family history working in U.S. agriculture.

The Occupational Injury Supplement (ongoing)

This CDC/NIOSH-sponsored supplement has been in place since fiscal year 1999. It is administered to all NAWS respondents who had a qualifying occupational injury in U.S. agriculture in the 12-month period before the date of interview. For each qualifying injury, the respondent is asked how, when and where the injury occurred, the body part(s) injured, where medical treatment was received, how the treatment was paid for, and the number of days the respondent couldn't work or worked at a reduced activity level.

The Youth Supplement (to be discontinued)

This supplement contains additional labor and education components and is administered to NAWS respondents ages 14 to 18.

The labor component solicits the respondent's age when he/she first went to an agricultural field in the U.S. (for any reason), and the age when he/she first worked or assisted a relative in a field. The method of payment, if any, for the first working or helping experience in the field is also recorded. This supplement also asks the youth respondent about any implements and equipment used while doing farm work.

The education component solicits school and attendance information for the 12-month period preceding the date of interview. For those youth who did not attend any school in the previous 12 months, the following information is obtained: the date of the last attendance, type and location of school, reasons for no longer attending, and educational aspirations in the U.S.

The Parent Supplement (to be discontinued)

This supplement also contains labor and education components. It is administered to NAWS respondents who are parents of U.S. resident children between the ages of 6 and 18.

For those children who did U.S. farm work in the 12-month period preceding the date of the interview, the labor component asks how many days the child worked in agriculture, if the child received a separate (individual) payment for that work, and why the child worked.

The education component solicits information on school attendance and

performance in the 12-month period preceding the interview, including number and type of schools attended, average grades, number of school days missed and reasons for days absent, number of times the parent met with the child's teacher to discuss the child's educational progress, and the parent's expectations for the child to graduate.

The Occupational Health Supplement (to be discontinued)

This CDC/NIOSH-sponsored supplement is administered to all NAWS respondents. Four types of health information are currently solicited: lifetime history of smoking, a 12-month history of problems with body systems (gastrointestinal, respiratory, musculoskeletal, and dermal), a lifetime history of disease, and access to health care.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond.

Hard copies of the instruments associated with the proposed information collection request may be obtained by contacting the employee listed above in the **ADDRESSES** section of this notice.

III. Current Actions

The Department of Labor seeks approval for the revision of this information collection in order to carry out its responsibility to monitor the hired farm labor market.

Type of Review: Revision.

Agency: Office of the Secretary.

Title: National Agricultural Workers Survey.

OMB Number: 1225–0044.

Affected Public: Farm workers and farm employers.

Total Respondents: 5,500 (4,000 farm workers will receive an interview and 1,500 employees will be briefly interviewed to ascertain the location of the potential worker respondents).

Time per Response: 20 minutes for employers; 60 minutes for workers.

Estimated Total Burden Hours: 4,536 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 18, 2003.

Roland G. Droitsch,

Deputy Assistant Secretary for Policy.

[FR Doc. 03–21674 Filed 8–22–03; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of The Secretary

Solicitation for Grant Applications (SGA) 03–11; Combating HIV/AIDS in Ugandan Workplaces Through Community/Faith-Based Organizations

AGENCY: Bureau of International Labor Affairs, Labor.

ACTION: Notice of correction.

SUMMARY: In the **Federal Register**, Vol. 68, No. 138, Friday, July 18, 2003, the competition was announced and the SGA printed in its entirety. The recent power outage in several states has caused the preparation and submission of proposals to be adversely affected. Due to this interruption, the deadline for submission of applications is extended. All applications must now be submitted to the U.S. Department of Labor, Procurement Services Center, Room N–5416, 200 Constitution Avenue, NW., Washington, DC 20210, not later than 4:45 p.m. e.d.t., August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Lisa Harvey, Department of Labor, Telephone (202) 693–4570, e-mail: *harvey-lisa@dol.gov.*

Signed at Washington, DC, this 18th day of August, 2003.

Lawrence J. Kuss,

Director, Procurement Services Center.

[FR Doc. 03–21675 Filed 8–22–03; 8:45 am]

BILLING CODE 4510–28–M

NATIONAL SCIENCE FOUNDATION

DOE/NSF Nuclear Science Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: DOE/NSF Nuclear Science Advisory Committee (1176).

Date and Time: Saturday, September 13, 2003; 8 a.m.—5 p.m.

Place: Room 375, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Bradley D. Keister, Program Director for Nuclear Physics, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7377.

Purpose of Meeting: To provide advice and recommendations concerning the scientific programs of the NSF and DOE in the area of basic nuclear physics research.

Agenda:

September 13, 2003:

Introduction (R. Casten)
Report from DOE (D. Kovar)
Report from NSF (B. Keister)
Report from subcommittee on fundamental neutron science (R. Tribble)
Report from subcommittee on nuclear theory (B. Mueller)
Report from subcommittee on education (J. Cerny)
Discussion of recommendations concerning fundamental neutron science
Discussion of recommendations concerning nuclear theory
Public Comment

Dated: August 19, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–21639 Filed 8–22–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

All of these meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the

proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will no longer be announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site: *www.nsf.gov/home/pubinfo/advisory.htm*. This information may also be requested by telephoning 703/292–8182.

Dated: August 19, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–21638 Filed 8–22–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Notice of Receipt of License Amendment Request From the Sequoyah Fuels Corp. To Approve a Ground Water Corrective Action Plan for Its Gore, Oklahoma Facility, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of consideration of license amendment request to approve a ground water action plan, and opportunity to request a hearing.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6629; Fax: (301) 415–5955; and/or by e-mail: *mhf1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated June 16, 2003, a request from Sequoyah Fuels Corp. (SFC) for approval of a license amendment to Materials License SUB–1010 to approve its proposed ground water corrective action plan.

The SFC facility, a nuclear fuel cycle facility located near Gore, Oklahoma, operated from 1970 to 1993. In response to a request from SFC, on December 11, 2002, NRC amended the license to allow possession of 11e.(2) byproduct material, in addition to source material. In its request, SFC proposes a program to clean up ground water at its site to appropriate standards and is designed to meet the requirements in 10 CFR part 40, appendix A.

The staff will review SFC's request for conformance with 10 CFR parts 20 and 40, using NUREG–1620, "Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act" and other applicable agency regulations and guidance. If NRC approves SFC's request, the approval will be documented in an amendment to SFC's license. However, before approving the request, NRC will need to make the findings required by the AEA and NRC regulations. These findings will be documented in a Technical Evaluation Report and an Environmental Impact Statement.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101, or by e-mail to *hearingdocket@nrc.gov*.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Sequoyah Fuels Corporation, P.O. Box 610, Gore Oklahoma, Attention: Mr. John Ellis; and

(2) The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *OGCMailCenter@nrc.gov*.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

III. Further Information

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," details with respect to this action, including the application for amendment and supporting documentation, are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html*. These documents may also be examined, and/or copied for a fee, at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Dated at Rockville, Maryland, this 15th day of August, 2003.

For the Nuclear Regulatory Commission.

Myron H. Fliegel,

Senior Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–21654 Filed 8–22–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8027]

Notice of Receipt of License Amendment Request from the Sequoyah Fuels Corp. To Approve a Ground Water Monitoring Plan for Its Gore, Oklahoma Facility, and Opportunity To Request a Hearing

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of consideration of amendment request, and opportunity to request a hearing.

FOR FURTHER INFORMATION CONTACT: Myron Fliegel, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6629; Fax: (301) 415–5955; and/or by e-mail: *mhf1@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated June 12, 2003, a request from Sequoyah Fuels Corp. (SFC) for approval of a license amendment to Materials License SUB–1010 to approve its proposed ground water monitoring plan.

The SFC facility, a nuclear fuel cycle facility located near Gore, Oklahoma, operated from 1970 to 1993. In response to a request from SFC, on December 11, 2002, NRC amended the license to allow possession of 11e.(2) byproduct material, in addition to source material. In its request, SFC proposes a plan to monitor the ground water at its site that is designed to meet the requirements in 10 CFR part 40, appendix A.

The staff will review SFC's request for conformance with 10 CFR parts 20 and 40, using NUREG–1620, "Standard Review Plan for the Review of a Reclamation Plan for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act" and other applicable agency regulations and guidance. If NRC approves SFC's request, the approval will be documented in an amendment to SFC's license. However, before approving the request, NRC will need to make the findings required by the AEA and NRC regulations. These findings will be documented in a Technical Evaluation Report and either an Environmental Assessment or an Environmental Impact Statement.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for an amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within 30 days of the publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemaking and Adjudications Staff of the Office of the Secretary of the Commission at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications Staff. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Secretary of the Commission either by means of facsimile transmission to (301) 415–1101, or by e-mail to *hearingdocket@nrc.gov.*

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Sequoyah Fuels Corporation, P.O. Box 610, Gore, Oklahoma, Attention: Mr. John Ellis; and

(2) The NRC staff, by delivery to the Office of the General Counsel, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:45 a.m. and 4:15 p.m., Federal workdays, or by mail addressed to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Because of continuing disruptions in the delivery of mail to United States Government offices, it is requested that requests for hearing also be transmitted to the Office of the General Counsel, either by means of facsimile transmission to (301) 415–3725, or by e-mail to *OGCMailCenter@nrc.gov.*

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

III. Further Information

In accordance with 10 CFR 2.790 of the NRC's "Rules of Practice," details with respect to this action, including the application for amendment and supporting documentation, are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html.* These documents may also be examined, and/or copied for a fee, at the NRC Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Dated at Rockville, Maryland, this 15th day of August, 2003.

For the Nuclear Regulatory Commission.

Myron H. Fliegel,

Senior Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–21657 Filed 8–22–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of a Standard Review Plan (NUREG–1569) for Staff Reviews for *in Situ* Leach Uranium Extraction License Applications

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has developed a

Standard Review Plan (NUREG–1569) which provides guidance for staff reviews of applications to develop and operate uranium *in situ* leach facilities. Under the provisions of Title 10 of the Code of Federal Regulations, part 40 (10 CFR part 40), Domestic Licensing of Source Material, an NRC Materials License is required to conduct uranium recovery by *in situ* leach extraction techniques. Applicants for a new license and operators seeking an amendment or renewal of an existing license are required to provide detailed information on the facilities, equipment, and procedures used in the proposed activities. In addition, the applicant for a new license also provides an Environmental Report that discusses the effects of proposed operations on the health and safety of the public and assesses impacts to the environment. For amendment or renewal of an existing license, the original Environmental Report is supplemented, as necessary. This information is used by the NRC staff to determine whether the proposed activities will be protective of public health and safety and the environment and to fulfill NRC responsibilities under the National Environmental Policy Act (NEPA). The purpose of the Standard Review Plan (NUREG–1569) is to provide the NRC staff with guidance on performing reviews of information provided by the applicant and to ensure a consistent quality and uniformity of staff reviews. Each section in the review plan provides guidance on what is to be reviewed, the basis for the review, how the staff review is to be accomplished, what the staff will find acceptable in a demonstration of compliance with the regulations, and the conclusions that are sought regarding the applicable sections in 10 CFR part 40, Appendix A. NUREG–1569 is also intended to improve the understanding of the staff review process by interested members of the public and the uranium recovery industry. The review plan provides general guidance on acceptable methods for compliance with the existing regulatory framework. As described in an NRC white paper on risk-informed, performance-based regulation (SECY–98–144), however, the applicant has the flexibility to propose other methods as long as it demonstrates how it will meet regulatory requirements.

A draft of NUREG–1569 was issued in October 1997 and subsequently revised to reflect responses to public comments and the results of Commission policy decisions affecting uranium recovery issues described in NRC Regulatory Issue Summary (RIS) 2000–23, dated November 30, 2000. RIS 2000–23 addressed two issues related to *in situ* leach facilities. In the first, the NRC took the position that all waste water generated during or after the uranium extraction phase of operations at an *in situ* leach facility, and all evaporation pond sludges derived from such waste waters, are 11e.(2) byproduct material. In the second, the NRC reaffirmed its authority to regulate ground water at *in situ* leach facilities, but expressed its intent to continue discussions with the U.S. Environmental Protection Agency (EPA) and appropriate States to try to minimize duplicative ground-water reviews. On February 5, 2002 (FR 5347), the NRC made the revised second draft of NUREG–1569 available for a 75-day public comment.

In preparing the final version of NUREG–1569, the NRC staff reviewed and considered more than 750 written comments received by the close of the public comment period on April 22, 2002. To simplify the analysis, the NRC staff grouped all comments into the following major topic areas:

(1) Editorial and Organizational Comments (322 comments);

(2) Policy Issues (including administrative, quality assurance, and surety/financial issues) (103 comments);

(3) Ground water (123 comments);

(4) Operational (47 comments);

(5) Health Physics (78 comments);

(6) Monitoring (55 comments); and

(7) Environmental aspects related to NRC responsibilities under NEPA (40 comments).

ADDRESSES: Electronic copies of this document are available for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (The Public Electronic Reading Room). NUREG–1569 is under Adams Accession Number ML032250177. The document is also available for inspection or copying for a fee at the NRC's Public Document Room, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852. This guidance document is not copyrighted, and Commission approval is not required to reproduce it.

FOR FURTHER INFORMATION CONTACT: John Lusher, Office of Nuclear Material Safety and Safeguards, Division of Fuel Cycle Safety and Safeguards, Mail Stop T–8 A33, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–7694, or e-mail *jhl@nrc.gov*.

SUPPLEMENTARY INFORMATION: The following provides a more detailed discussion of the NRC evaluation of the major topic areas and the NRC responses to comments.

1. Editorial and Organizational Comments

Issue: The standard review plan has a number of redundancies and editorial errors.

Comment: Several commenters identified editorial concerns, text omissions, or areas where the organization of the standard review plan could be improved. Most of the organizational comments addressed perceived redundancies in the standard review plan or opportunities to streamline the style. Most editorial comments addressed inconsistent terminology, identified typographical and grammatical mistakes, or questioned the accuracy of reference documents.

Response: NUREG–1569 is structured consistent with NRC practice for standard review plan style and format. While this style and format may be considered complex or redundant by some commenters, no substantive changes have been made. This will preserve consistency with other NRC standard review plans. The commenters have provided numerous suggestions for improving the readability and clarity of the review plan. Editorial comments on inconsistent terminology, typographical and grammatical mistakes, or the accuracy of reference documents were accepted and incorporated in preparing the final standard review plan, as appropriate. The individual editorial comments are not addressed in this comment summary document.

An appendix (Effluent Disposal at Licensed *In Situ* Leach Uranium Extraction Facilities) was deleted since the guidance therein was superseded by the Staff Requirements Memorandum for SECY–99–013 which provided staff with direction on classification of liquid wastes at these facilities.

Issue: There is sometimes a lack of agreement between the topics to be reviewed and the corresponding acceptance criteria.

Comment: Commenters stated that in several review plan sections, the areas of review identified at the beginning of the section did not correspond well to the acceptance criteria that would be used to make the evaluation findings.

Response: The staff concurs with this comment. NUREG–1569 was edited to provide correspondence among areas of review, review methods, acceptance criteria, and evaluation findings in each section.

Issue: Chapter 5 (Operations) of the standard review plan has many editorial and technical discrepancies.

Comment: Several commenters identified editorial and technical concerns with Chapter 5 of the draft standard review plan. In some cases, the editorial problems may have made the regulatory guidance difficult to implement.

Resolution: The staff concurs with the commenters. Chapter 5 was rewritten to incorporate editorial and regulatory guidance improvements. The separate section on recordkeeping and reporting was combined with the section on the management control program to more closely match Regulatory Guide 3.46.1 (Standard Format and Content of License Applications, Including Environmental Reports, for *In Situ* Uranium Solution Mining). Editorial comments are not addressed individually in this comment summary document except where they have particular impact on the standard review plan.

Issue: Additional clarifying or background information should be included in NUREG–1569.

Comment: Several commenters suggested that specific additional information related to proceedings for a given site or that would provide general background information on *in situ* uranium extraction techniques and hazards be included.

Resolution: The NRC has elected not to include the suggested information in NUREG–1569 because the standard review plan is not written for application to a specific site, and general information is available in other references on *in situ* uranium extraction operations.

2. Policy Issues (Including Administrative, Quality Assurance, and Surety/Financial Issues)

Issue: NUREG–1569 attempts to apply a risk-informed, performance-based regulatory philosophy without a regulatory basis for doing so.

Comment: Commenters, while noting that risk-informed, performance-based regulatory philosophies could be applied to *in situ* leach uranium extraction facilities, argued that no regulatory basis exists for implementing such philosophies. The commenters stated that 10 CFR part 40 should be modified to incorporate risk-informed, performance-based regulatory concepts before the associated standard review plan is modified in that way, because standard review plans are not to be used to promulgate regulatory policy. Commenters also stated that the NRC should not expect license applicants to conduct the accident analyses, consequence evaluations, and probability determinations associated with risk-informed, performance-based regulation. Finally, the commenters argued that the risk-informed, performance-based approach presented in NUREG–1569 was too cursory, contained undefined terms, assumed the existence of a facility change mechanism, and that the review plan contained highly prescriptive acceptance criteria.

Response: The NRC agrees that standard review plans cannot be used to promulgate regulatory requirements, and has no intent to do so using NUREG–1569. In related action, the Commission considered promulgating a new regulation (10 CFR part 41) that would specifically address regulatory requirements for *in situ* leach uranium extraction facilities and that would formally incorporate risk-informed, performance-based regulatory philosophies. However, considering feedback from the uranium extraction industry and other stakeholders, and taking into account the economic status of the uranium extraction industry which would have to bear the cost of the rulemaking, the Commission determined that rulemaking was not an appropriate action at this time. Instead, in making this decision, the Commission directed the staff to update its regulatory guidance related to *in situ* leach uranium extraction facilities. NUREG—1569 incorporates this direction from the Commission. It outlines risk-informed, performance-based approaches that staff reviewers may apply to *in situ* leach uranium extraction facilities that are also consistent with existing NRC regulations at 10 CFR part 40.

In NUREG/CR–6733 (A Baseline Risk-Informed, Performance-Based Approach for *In Situ* Leach Uranium Extraction Licensees) staff analyses of *in situ* leach uranium extraction facility operations and accidents that consider both likelihood of occurrence and consequence (and therefore, risk) are presented. The analyses in NUREG–6733 are conservative and demonstrate that *in situ* leach uranium extraction facilities operated with properly trained workers and effective emergency response procedures generally pose low levels of radiologic risk. The staff considers analyses similar to, or based on, those in NUREG–6733 to be an appropriate basis for licensee safety analyses. NUREG–1569 is not intended to require applicants to prepare complex accident analyses, consequence evaluations, and probability determinations. However, site-specific conditions and circumstances must be addressed in any application.

For several years, the NRC staff has been approving *in situ* leach uranium extraction facility license renewals that incorporate a performance-based license condition that provides a facility change mechanism using a Safety and Environmental Review Panel. This accepted practice is continued in NUREG–1569.

Finally, the staff has not attempted to implement overly prescriptive acceptance criteria in NUREG–1569. Rather, standard practices that have been found acceptable in demonstrating compliance at *in situ* leach uranium extraction facilities have been placed in the standard review plan as one approach that the staff may use in determining compliance. Other approaches may be found acceptable as long as the staff can determine that such approaches comply with applicable regulations. In addition, the introduction to 10 CFR part 40, Appendix A, allows applicants to propose alternative standards to the specific requirements in the Appendix A to demonstrate compliance, and the staff will review any such alternative standards that are submitted.

NUREG–1569 has been edited to remove inconsistent use of terms or undefined terms. Where useful, acceptance criteria have been modified to be less prescriptive. However, risk-informed, performance-based approaches to determining compliance have been incorporated in the standard review plan to the extent consistent with existing regulations.

Issue: Standard review plan guidance with respect to overlapping jurisdiction is not adequate.

Comment: Commenters were concerned that NUREG–1569 did not provide sufficiently clear guidance on coordinating license application reviews with federal and state agencies. Commenters also stated that the NRC should accept state guidelines in conducting reviews.

Response: NUREG–1569 implements Commission direction in SECY–99–013 regarding ground-water issues at *in situ* leach uranium extraction facilities. While this direction requires the staff to determine the extent to which it can rely on the U.S. Environmental Protection Agency's (EPA) Underground Injection Control program and to work to implement agreements with appropriate states on these issues, it does not suggest that the NRC broadly accept state guidelines. As appropriate, minimizing dual regulation and implementing agreements with affected states remains an objective of the NRC,

and interactions with the EPA and the states continue on these issues. The review plan has been revised to clarify this intent.

Issue: The standard review plan directs the staff to inappropriately seek disclosure of an applicant's primary corporate internal costs.

Comment: Commenters argued that corporate internal costs such as capital costs of land acquisition and improvement, capital costs of facility construction, and other operating and maintenance costs addressed in the draft standard review plan were not appropriate for staff review. The commenters suggested that only the forecast costs for plant decommissioning and site reclamation should be examined by the staff.

Resolution: The staff agrees with the commenters. The standard review plan has been revised to remove guidance that the staff examine costs outside of those associated with plant decommissioning and site reclamation.

Issue: The NRC is exceeding its legal authority by requiring that a determination be made that a proposed licensing action is appropriate prior to allowing construction to proceed.

Comment: The Executive Summary to NUREG–1569 states that "beginning construction of process facilities, well fields, or other substantial actions that would adversely affect the environment of the site, before the staff has concluded that the appropriate action is to issue the proposed license, is grounds for denial of the application." The commenter disagrees with the "sweeping nature" of this statement and asserts that the NRC has no jurisdiction over wells in an exempted aquifer until lixiviant injection begins.

Response: The NRC considers this statement to be consistent with the requirements of 10 CFR 40.32(e) and believes it to be appropriate for the agency's responsibilities to protect public health and safety and the environment. The license applicant shall not commence construction activities with a potential for adverse impacts prior to the NRC completing its environmental assessment in accordance with 10 CFR part 51.

3. Ground Water

Issue: Some acceptance criteria for ground-water protection seem overly prescriptive or inconsistent with current practices at specific *in situ* leach uranium extraction facilities.

Comment: Several comments pertained to the use of examples of acceptable methods and approaches cited in the various acceptance criteria for ground-water protection. These comments expressed concern that the examples cited were not consistent with current practices at some *in situ* leach uranium extraction facilities. For example, several comments stated that the examples of acceptable methods for conducting mechanical integrity tests on injection wells are not consistent with methods currently employed or with state-approved practices.

Response: Examples of acceptable practices cited in the review plan acceptance criteria for ground-water protection were obtained from operations plans of currently operating *in situ* leach uranium extraction facilities. These examples refer to methods used to implement ground-water protection requirements that have been considered acceptable in past NRC licensing reviews. The NRC recognizes that an optimal approach to ground-water protection at one facility is not necessarily applicable or appropriate at all *in situ* leach uranium extraction facilities. As stated in the introduction to NUREG–1569, applicants may take approaches to demonstrating compliance that are different from the acceptance criteria in the standard review plan so long as the staff can make the requisite decisions concerning environmental acceptability and compliance with applicable regulations. Where appropriate, these comments were addressed by modifying text to clarify that the given examples are not prescriptive requirements.

Comment: Several comments recommended deletion of constituents from the list of typical baseline water quality indicators in Table 2.7.3–1 of NUREG–1569. In a specific example, a rationale was provided for eliminating radium-228 from the list of baseline water quality indicators to be sampled in each new well field.

Response: The rationales provided by the commenters for elimination of certain chemical constituents from the list of typical baseline water quality indicators are not necessarily applicable for all *in situ* leach uranium extraction facilities. A licensee may provide the rationale for the exclusion of water quality indicators in a license application or amendment request if operational experience or site-specific data demonstrate that concentrations of constituents such as radium-228 are not significantly affected by *in situ* leach operations. NRC reviewers will determine whether proposed exclusions are justified by the information provided. No changes to Table 2.7.3–1 were made for the final standard review plan.

Comment: Two commenters pointed out an apparently new policy that an excursion of lixiviant solutions will be deemed to have occurred if any single excursion indicator exceeds its upper control limit by 20 percent, where previous guidance considered an excursion to have occurred only when two or more excursion indicators exceed their upper control limits by any amount.

Response: Acceptance criterion (5) in Section 5.7.8.3 in the draft NUREG–1569 was revised by deleting the statement regarding a single excursion indicator exceeding its upper control limit by 20 percent for determination of when an excursion has occurred. However, the same acceptance criterion retains the requirement that corrective action for an excursion is deemed complete when all excursion indicators are below their respective upper control limits, or when no single indicator exceeds its control limit by more than 20 percent. Ideally, corrective action for an excursion would be to restore all indicators to below their upper control limits. However, in the past, corrective action has been considered acceptable when a monitor well no longer meets the criteria for being on excursion status. Excursion status criteria allow one indicator to be above the respective upper control limit. However, once an excursion has occurred, the reduction in concentrations of indicator constituents by corrective action may not occur at the same rate. Therefore, corrective action may be terminated prematurely if one of two indicators are brought below upper control limits while another remains substantially above its control limit.

Issue: The NRC is unduly concerned with protection of ground water in aquifers where exemptions have been obtained from the requirements of the Safe Drinking Water Act.

Comment: Several commenters took exception to Acceptance Criterion (4) in Section 6.1.3 of the draft standard review plan, which states that the primary goal for restoration of well fields, following uranium extraction, is to return each well field to its pre-operational baseline water quality conditions. The commenters correctly pointed out that EPA requirements for the Underground Injection Control program result in the uranium production zones being classified as "Exempted Aquifers." This means they are not considered a potential source of drinking water and, therefore, are not subject to requirements of the Safe Drinking Water Act.

Response: Acceptance Criterion (4) of Section 6.1.3 in the draft standard review plan was revised to clarify that the goal of ground-water restoration at

in situ leach uranium extraction facilities is to protect present or potential future sources of drinking water outside of the exempted production zone. Generally, if water quality within the production zone is restored to the pre-operational baseline water quality, then protection of water resources outside the exempted zone is assured. Hence, restoration of water quality within the production zone to pre-operational conditions is considered a primary goal whenever degradation of water outside of the exempted zone is a possibility. It is recognized, however, that restoration to pre-operational baseline conditions may not be practicable or feasible, owing to geochemical changes in the production zone during operations. Hence, applicants may propose secondary standards for monitored constituents that are protective of water resources outside of the exempted zone. This has also been clarified in the final standard review plan.

4. Operations

Issue: It is unclear which hazardous chemicals have the potential to impact safety at *in situ* leach uranium extraction facilities.

Comment: Some commenters expressed concern that the standard review plan addressed hazardous chemicals that were not realistic concerns at *in situ* leach uranium extraction facilities.

Response: In 10 CFR part 40, Appendix A, regulations implement EPA Standards at 40 CFR part 192, as required by law. Specifically, 10 CFR part 40, Appendix A, Criterion 13 identifies those hazardous constituents for which standards must be set and complied with if the specific constituent is reasonably expected to be in, or derived from, the byproduct material, and has been detected in ground water. At the same time, the introduction to 10 CFR part 40, Appendix A, allows applicants to submit alternative proposals for meeting the requirements that take into account local or regional conditions. 10 CFR part 40, Appendix A, Criterion 13 also notes that the Commission does not consider the subsequent list of hazardous constituents to be exhaustive. In summary, NUREG–1569 reflects the regulatory requirements but also allows the reviewer to consider any demonstration presented by an applicant that addresses the potential hazardous constituents at a specific site.

Issue: The responsibilities of the Safety and Environmental Review Panel are not well defined.

Comment: Various commenters stated that the responsibilities of the Safety and Environmental Review Panel, and their authority to authorize changes without a license amendment were either not clear or had no regulatory basis.

Resolution: The staff agrees that clarification of Safety and Environmental Review Panel responsibilities and authorities would facilitate use of the standard review plan. These portions of the draft plan were rewritten for clarity. However, consistent with a risk-informed, performance-based licensing approach, use of Safety and Environmental Review Panels has been accepted by NRC staff, and an evaluation of their use was left in NUREG–1569.

Issue: The NRC is placing inappropriate restrictions on use of potentially hazardous process chemicals at *in situ* leach uranium extraction facilities.

Comment: The commenter refers to NUREG/CR–6733 (A Baseline Risk-Informed, Performance-Based Approach for *In Situ* Leach Uranium Extraction Licensees) and states that the analyses in this document were conservative. The commenter concludes that chemical safety must be based on a realistic analysis of the hazards.

Resolution: The NRC staff interpreted the conclusions from the analyses presented in NUREG/CR–6733 differently from the commenter. NUREG/CR–6733 conducted deliberately conservative analyses for the purpose of evaluating whether risks at *in situ* leach uranium extraction facilities were significant. The conclusion presented in NUREG/CR–6733 for chemical hazards was that licensees should follow design and operating practices published in accepted codes and standards that govern hazardous chemical systems. This recommendation leaves licensees flexibility to establish chemical safety measures appropriate for a specific facility and consistent with good engineering and safety practice. NUREG–1569 places no specific strictures on chemical safety practices at *in situ* leach uranium extraction facilities.

5. Health Physics

Issue: The NRC is requesting information on radiation safety programs that is unnecessary, based on the operational record at *in situ* leach uranium extraction facilities, or is outside NRC licensing authority.

Comment: Some commenters expressed a concern that the NRC was requesting information that is not necessary to fulfill the agency mission of protecting the public health and safety and the environment from the effects of radiation. An example cited was information on radiation safety programs, such as the qualifications of those people proposed for the health physics staff.

Response: While the NRC agreed with many of these commenters that some of the information requested was not needed, information on qualifications is necessary. However, much of this information is identified in Regulatory Guide 8.30, "Health Physics Surveys in Uranium Recovery Facilities" (May 2002), and Regulatory Guide 8.31, "Information Relevant to Ensuring That Occupational Radiation Exposures at Uranium Recovery Facilities will be As Low As is Reasonably Achievable" (May 2002). Chapter 5 of NUREG–1569 was revised to ensure that it is consistent with NRC regulations and regulatory guidance applicable to *in situ* leach uranium extraction facilities by referring to those regulatory guides, rather than repeat the information in the SRP. In addition, the licensees are required by license condition to follow the guidance set forth in Regulatory Guide 8.30, and Regulatory Guide 8.31. This is to ensure protection of the worker, the public health and safety, and the environment.

Issue: NUREG–1569 references regulatory guides that are outdated.

Comment: A number of commenters noted that the standard review plan referenced regulatory guides that have been revised or that are in the process of revision.

Response: The commenters correctly noted that some of the references in the draft standard review plan had been superseded or were in the process of revision. The standard review plan has been edited to reference current guidance. However, NRC has a number of regulatory guides that are being updated, and revised versions may only be referenced when they have been formally approved. This has necessitated retaining reference to some draft regulatory guides.

Issue: NUREG–1569 introduces a new and undefined concept in discussing "control systems relevant to safety."

Comment: Several commenters objected to inconsistent use of terms and a lack of definition for terms related to control systems that may affect safety.

Response: NUREG–1569 was edited to incorporate consistent use of terms, and the term "controls" was defined consistent with other NRC regulatory guidance.

6. Monitoring

Issue: In situ leach uranium extraction facility licensees are not subject to long-term surveillance costs.

Comment: A commenter stated that including long-term surveillance costs in financial surety requirements, as addressed in the draft standard review plan, is inappropriate.

Response: NRC staff agrees with the commenter. Reference to long-term surveillance costs has been removed from NUREG–1569.

7. Comments Related to NRC Responsibilities Under the National Environmental Policy Act

Issue: The NRC is requesting non-radiological information that is outside its area of regulatory authority.

Comment: Many commenters expressed concern that the NRC was requesting information that is not necessary to fulfill the agency mission of protecting the public health and safety and the environment from the effects of radiation. The areas of concern included information on water quality, air quality, and historical and cultural information.

Response: As a federal agency, the NRC is subject to the NEPA. NEPA requires the NRC to consider impacts to the human environment as a part of its decision making process for licensing actions. The regulations governing NRC implementation of NEPA requirements are in 10 CFR part 51, Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions. Guidance to the NRC staff on conducting environmental reviews is also provided in NUREG–1748 "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs." In fulfilling its requirements under NEPA, the NRC routinely prepares an environmental impact assessment when evaluating applications for new materials licenses or amendments to such licenses. Areas of potential environmental impact that are investigated include water availability and quality, air quality, historical and cultural resources, ecology, aesthetic resources, and socioeconomic effects. In preparing its environmental impact assessment under NEPA, it is necessary for the NRC to establish background conditions for the affected area. This may require collection of data over a larger geographic area than the licensed area, as well as collection of data in technical and sociological areas that are beyond the traditional scope of radiation safety assessments. The commenters noted that detailed environmental impact assessments may not be necessary for all licensing actions, such as license amendment requests that may be minor in scope or short in duration. The text of the review plan has been modified to clarify those situations where NRC has traditionally performed a detailed environmental impact assessment, but the NRC necessarily reserves the right to determine the nature of the assessment on a site-specific basis in accordance with the requirements of 10 CFR part 51.

Issue: The standard review plan inappropriately examines corporate financial information in evaluating the socioeconomic effects in cost-benefit analyses.

Comment: A number of commenters noted that the standard review plan examines detailed internal corporate financial data as part of the review of cost-benefit analyses for a licensing action. The commenters expressed concern that this information was proprietary and beyond the scope of information necessary for an evaluation of the socioeconomic impact of a facility.

Response: The commenters correctly noted that some of the information identified in the draft standard review plan was beyond the scope of information typically required for cost-benefit analyses. The text of the standard review plan has been revised to eliminate requests for proprietary corporate financial information and to clarify the purpose and use of the financial information that is addressed in the standard review plan.

Issue: Commenters questioned whether the standard review plan applies to facilities planned for private land as well as those on public land.

Comment: Several commenters expressed uncertainty as to whether the review methods and acceptance criteria developed in the standard review plan were also applicable to *in situ* leach facilities wholly located on private lands.

Response: The NRC must consider the environmental impacts of activities on both private and public lands to meet its responsibilities under NEPA, particularly with regard to assessment of direct, indirect, and cumulative impacts of proposed actions. The specific information to be provided by a licensee, and the level of the NRC staff review, will be determined on a site-specific basis considering the nature of the proposed action. The standard review plan is general guidance to the staff on the type of information that is commonly acceptable for evaluating the environmental impact of a proposed licensing action. Consistent with the NRC risk-informed, performance-based licensing philosophy, licensees may use compliance demonstration methods different from those presented in the standard review plan so long as the staff can determine whether public health and safety and the environment are protected. The standard review plan text has been revised for clarity, but it has not been changed to reflect different approaches for facilities operating on private and public lands.

Issue: Licensees should not be required to choose the alternative that has the least impact on the environment.

Comment: Several commenters expressed concern that the standard review plan requires a licensee or applicant to select the alternative that has the least impact on the environment, or requires that the NRC use license conditions to mitigate adverse environmental impacts that are deemed outside the scope of NRC responsibilities.

Response: The NRC agrees that while NEPA requires the agency to identify a preferred alternative, it does not require that the alternative with the least impact on the environment be selected. However, if an environmental impact statement (EIS) is necessary for a proposed action, NEPA requires that all reasonable alternatives be evaluated and that the environmentally preferable alternative be identified in the final EIS. NUREG–1569 does not require the applicant or licensee to select the most environmentally benign alternative. As guidance to the NRC staff, the standard review plan asks the reviewers to determine whether the choice of a particular uranium recovery method has been adequately justified and whether different techniques and processes were evaluated as part of this justification. The standard review plan also directs the staff to evaluate the bases and rationales used by an applicant in evaluating and ranking alternatives.

As stated in Council on Environmental Quality regulations (40 CFR 1502.16), in preparing an EIS, federal agencies are to identify all reasonable mitigation measures that can offset the environmental impacts of a proposed action, even if they are outside the jurisdiction of the lead agency. These mitigation measures are intended to avoid, minimize, rectify, reduce, or compensate for significant impacts of a proposed action. If an environmental assessment identifies potentially significant impacts that can be reduced to less-than-significant levels by mitigation, an agency may issue a mitigated finding of no significant impact (FONSI). In the case of a

mitigated FONSI, the mitigation measures should be specific and tangible, such as may be stated as license conditions. The standard review plan states that the NRC has responsibilities under NEPA to identify and implement measures to mitigate adverse environmental impacts of the proposed action.

Dated at Rockville, Maryland this 15th day of August, 2003.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–21656 Filed 8–22–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Availability of a Standard Review Plan (NUREG–1620) Revision 1 for Staff Reviews of Reclamation Plans for Mill Tailings Sites Under Title II of the Uranium Mill Tailings Radiation Control Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has revised the Standard Review Plan (NUREG–1620) that was developed to provide guidance for staff reviews of reclamation plans for uranium mill tailings sites covered by Title II of the Uranium Mill Tailings Radiation Control Act. Revision 1 also incorporates information to address new Commission policy on several issues related to uranium recovery, including administrative, quality assurance, surety/financial issues, geotechnical stability, ground-water, and exclusive jurisdication. Under the provisions of Title 10 of the Code of Federal Regulations, part 40 (10 CFR part 40), Domestic Licensing of Source Material, an NRC Materials License is required in conjunction with uranium or thorium milling, or with byproduct material at sites formerly associated with such milling. The licensee's site Reclamation Plan documents how the proposed activities demonstrate compliance with the criteria in Appendix A of 10 CFR part 40. This information, combined with the licensee's Environmental Report, is used by the NRC staff to determine whether the proposed activities will be protective of public health and safety and the environment. The purpose of the Standard Review Plan (NUREG–1620) is to provide the NRC staff with guidance on performing reviews of information provided by licensees. The use of the Standard Review Plan is also intended to ensure a consistent quality and uniformity of staff reviews. Each section in the review plan provides guidance on what is to be reviewed, the basis for the review, how the staff review is to be accomplished, what the staff will find acceptable in a demonstration of compliance with the regulations, and the conclusions that are sought regarding the applicable sections in 10 CFR part 40, appendix A. NUREG–1620 will also assist in improving the understanding of the staff review process by interested members of the public and the uranium recovery industry. The review plan provides general guidance on acceptable methods for compliance with the existing regulatory framework. As described in an NRC white paper on risk-informed, performance-based regulation (SECY–98–144), however, the licensee has the flexibility to propose other methods as long as it demonstrates how it will meet regulatory requirements.

A draft of NUREG–1620 was issued in January 1999 for public comment. A final NUREG–1620, which incorporated NRC staff responses to the comments received on the draft, was issued in June 2000.

On February 5, 2002 (FR5348), the NRC made the draft of NUREG–1620, Revision 1, available for a 75-day public comment period. In preparing the final version of NUREG–1620, Revision 1, the NRC staff carefully reviewed and considered about 120 written comments received by the close of the public comment period on April 22, 2002. To simplify the analysis, the NRC staff grouped all comments into the following major topic areas:

(1) Editorial and Organizational Comments (31 comments);

(2) Policy Issues (including administrative, quality assurance, and surety/financial issues) (51 comments);

(3) Geotechnical Stability (17 comments);

(4) Ground water (15 comments); and

(5) Environmental aspects related to NRC responsibilities under NEPA (4 comments).

ADDRESSES: Electronic copies of this document are available for public inspection in the NRC Public Document Room or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (The Public Electronic Reading Room). NUREG 1620 is under ADAMS Accession Number ML032250190. The document is also available for inspection or copying for a fee at the NRC's Public Document Room, 11555 Rockville Pike, Room O1–F21, Rockville, Maryland 20852. This guidance document is not copyrighted, and Commission approval is not required to reproduce it.

FOR FURTHER INFORMATION CONTACT: John Lusher, Office of Nuclear Material Safety and Safeguards, Division of Fuel Cycle Safety and Safeguards, Mail Stop T–8 A33, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–7694, or e-mail *jhl@nrc.gov*.

The following provides a more detailed discussion of the NRC evaluation of the major topic areas and the NRC responses to comments.

1. Editorial and Organizational Comments

Issue: The draft standard review plan has a number of redundancies and editorial errors.

Comment: Several commenters identified editorial concerns, text omissions, or areas where the organization of the draft standard review plan could be improved. Most of the organizational comments addressed perceived redundancies in the standard review plan or opportunities to streamline the style. Most editorial comments addressed inconsistent terminology, identified typographical and grammatical mistakes, or questioned the accuracy of reference documents.

Response: NUREG–1620, Revision 1, is structured consistent with the NRC practice for standard review plan style and format. While the style and format may be considered complex or redundant by some commenters, no substantive changes have been made. This will preserve consistency with other NRC standard review plans. The commenters have provided numerous suggestions for improving the readability and clarity of the review plan. Most editorial comments that addressed inconsistent terminology, typographical and grammatical mistakes, or the accuracy of reference documents were accepted and incorporated in preparing the final standard review plan. The individual editorial comments are not addressed in this comment summary document.

2. Policy Issues (Including Administrative, Quality Assurance, and Surety/Financial Issues)

Issue: The NRC is inappropriately examining economic assessments that are the prerogative of the applicant.

Comment: The draft standard review plan asked the reviewer to examine the

economic benefits when slopes steeper than 5 horizontal: 1 vertical (5h:1v) are proposed by an applicant. The NRC staff should be concerned only with whether the slope design will be stable enough to protect the tailings.

Resolution: The NRC agrees with the commenter. The final standard review plan has been edited to remove consideration of economic factors in slope design.

Issue: Guidance provided on alternate feed materials and non-11e.(2) byproduct material is not informative.

Comment: Commenters stated that information presented in Appendix I [Guidance on Disposal of Alternate Feed Materials and Non-11e.(2) Byproduct Materials in Uranium Mill Tailings Impoundments] of the draft standard review plan was not useful. The commenter suggested that additional guidance was not needed and recommended that the appendix be deleted from the review plan.

Resolution: The NRC staff agrees with the commenters to some extent. Appendix I did not contain sufficient information to assist the reviewers in examining requests for disposal of these materials in mill tailings impoundments. However, recent guidance from the Commission on these subjects is relevant to such reviews. Accordingly, Regulatory Issue Summary 2000–23, which presents Commission guidance on these matters has been included in the appendix to facilitate staff reviews.

Issue: NUREG–1620 should present guidance on examining multi-site problems.

Comment: One commenter noted that guidance on review of multi-site problems should be included in the final standard review plan. The reviewer stated that if a group of licensees raise a common issue, it would be cost effective to address it generically.

Response: The NRC staff agrees that addressing multi-site problems in an integrated manner could be cost effective and potentially beneficial to public health and safety and the environment. Omitting this information from NUREG–1620 is not meant to reflect a lack of staff interest in multi-site problems. Rather, the standard review plan is meant to address licensing reviews that can be completed using well-accepted techniques. The staff believes that the technical and regulatory aspects of multi-site problems are such that it is best to examine them on a case-by-case basis.

Issue: The long-term custodian must accept transfer of property at termination of the specific license.

Comment: One commenter expressed concern regarding language in NUREG–1620 that there must be assurance that the long-term custodian will accept the property necessary to protect public health and safety. The commenter was concerned that the language in the standard review plan implied that the long-term custodian has the option to refuse transfer of the property.

Response: The language in the standard review plan is included to ensure that the reviewer verifies that the long-term custodian is aware of the full extent of required land transfer prior to termination of the specific license. The intent is to avoid delays in license termination because the licensee and the long-term custodian may not have a mutual understanding on the extent of land transfer. The text on this issue has been clarified to avoid any potential misunderstanding.

Issue: NUREG–1620 guidance on consideration of reasonably attainable corrective actions and economic constraints is unclear.

Comment: One commenter was concerned that standard review plan guidance to not eliminate potential corrective actions because of economic constraints is inconsistent with guidance to assess three reasonably attainable, practicable corrective actions. The commenter notes that in some cases there may not be three reasonably attainable, practicable corrective actions to assess.

Resolution: While the NRC understands the commenter's concern, the language in the standard review plan on this matter is appropriate to the intent of the guidance and needs no further detail. The guidance to evaluate three reasonably attainable, practicable corrective actions is not a regulatory requirement. The NRC expects that an applicant will present corrective action alternatives that are reasonable and practicable for a specific site and a specific set of circumstances.

Issue: Guidance that equipment owned by the licensee not be considered in reducing surety cost evaluations is inappropriate.

Comment: One commenter expressed concern that in estimating costs to complete reclamation by a third-party independent contractor, direction that the equipment owned by the licensee and the availability of licensee staff should not be considered in reducing costs was inappropriate. The commenter added that extreme interpretations of this approach could lead to extravagantly expensive or even unattainable surety requirements.

Resolution: It is appropriate not to consider equipment owned by the licensee and the availability of licensee staff in calculating costs for surety. The purpose of the surety is to ensure that there will be adequate funds available to complete site reclamation in the event that the licensee is unable to do so. The most likely circumstance that would result in the licensee being unable to complete reclamation is bankruptcy by the licensee. Unless the licensee can show that the equipment and staff would be available during and after a bankruptcy, credit for such can not be taken. The text has been clarified to address this issue.

Issue: NUREG–1620 should be used as a tool for public education.

Comment: Several commenters suggested that discussions could be expanded in various sections of the standard review plan to improve public understanding of regulatory issues at Title II uranium mill tailings sites.

Response: Discussions in several sections of the standard review plan were revised to improve clarity and to correct editorial errors. Although it is made available to the public, the primary intent of the Standard Review Plan is to provide guidance to the NRC staff, not to serve as a tool for public education. The staff believes that the standard review plan contains the appropriate level of detail for its intended purpose as a guide for staff reviews of reclamation plans for Title II mill tailings sites.

3. Geotechnical Stability

Issue: NUREG–1620 requires additional flexibility in criteria for selection of rock erosion protection materials.

Comment: One commenter suggested that criteria in the standard review plan should provide more flexibility in selecting a less durable rock for erosion protection when obtaining more durable rock is not practical.

Response: Flexibility in selecting rock types for erosion protection is implicitly provided in several locations in NUREG–1620, Revision 1 (*e.g.*, Section 3.5.3), as long as the applicant can demonstrate with reasonable assurance that the radon barrier will be effective for 1,000 years, to the extent reasonably achievable, and, in any case, for at least 200 years. Clarifying text has been added to indicate explicitly that this option is available.

Issue: Terminology for erosion protection covers needs to be clarified.

Comment: One commenter requested clarification in use of the terms "unprotected soil cover" and "vegetative soil cover."

Response: The staff agrees with the commenter. Section 3.5 of the standard

review plan has been retitled "Design of Erosion Protection," and the review guidance in that section has been clarified to avoid confusion in the use of terms.

Issue: The NRC is requiring detailed seismic hazard analysis, even in zero seismic risk areas identified in the Uniform Building Code.

Comment: One commenter noted that for cases where a given site is located in a "zero" seismic risk area, as identified in the Uniform Building Code, no further seismic characterization, explanation, or description should be needed for the licensee or applicant.

Response: Maps for the maximum considered earthquake ground motion for the United States in the most recent version of the building code (2000 International Building Code) are based on probabilistic seismic hazard maps with additional modifications incorporating deterministic ground motions in selected areas and the application of engineering judgement. These maps were prepared for the National Earthquake Hazards Reduction Program by the United States Geological Survey. Because it is based on probabilistic methods, within the new update, the "zero" seismic risk areas no longer exist.

The NRC is currently establishing risk-informed and performance-based regulations. One example of this philosophy is the application of a risk-graded approach in developing seismic design requirements for nuclear facilities. Under this approach, for example, nuclear power plants have to meet the most stringent design requirements because they pose the greatest radiological risk to public health and safety. Other nuclear facilities like dry cask and canister storage facilities or uranium mining operations could be designed to less stringent design criteria because they pose substantially less radiological risk to public health and safety. This type of graded approach to radiological hazard is described in U.S. Department of Energy (DOE) Standard 1020–2002, "Natural Phenomena Hazards Design and Evaluation Criteria for Department of Energy Facilities." In that guidance, the DOE developed five performance categories according to the relative risks posed by the potential failure of a structure, system, or components (SSCs) to perform its intended safety function. Performance Category (PC)-2 is intended for occupational safety and the design requirements for this category match those in the IBC–2000. PC–3 SSCs are for hazard confinement and the design requirements go beyond those within IBC–2000. Given the potential radiological hazards posed by Mill Tailing sites, evaluations of seismic hazards should therefore exceed those prescribed in the IBC–2000 for buildings. In addition, the National Earthquake Hazards Reduction Program maps do not take site effects into account. Local site effects, such as soil amplification, can greatly increase the level, spectral frequency content, and duration of vibratory ground motions at a site that is produced during an earthquake. Therefore, these effects need to be understood in order to accurately predict the seismic hazard at any site.

Based on these two considerations (graded risk approach and possible site amplification effects), staff conclude that site-specific seismic evaluations are necessary for all sites.

Issue: The NRC has not provided an adequate definition of the intent of using probabilistic seismic hazard analysis to satisfy the consideration of the maximum credible earthquake.

Comment: One commenter noted that the draft standard review plan indicates that licensees can use an alternative to the maximum credible earthquake, such as probabilistic seismic hazard analysis, but does not indicate whether the intent is to allow probabilistic analyses to satisfy 10 CFR part 40, appendix A, criterion 4(e) or it is being considered as an alternative requirement.

Response: The application of a probabilistic seismic hazard analysis in place of a deterministic approach is not intended to be an alternative requirement to, as defined in the question, but another way of satisfying the existing move toward risk-informed and performance-based regulations. In addition, other NRC regulations clearly recommend the use of a probabilistic approach as an acceptable way to account for uncertainties [*e.g.*, 10 CFR 100.23(d)(1)].

Issue: The NRC has provided only general guidance to seismic hazard analysis, rather than guidance specific to certain geographic provinces.

Comment: One commenter noted that references cited in the standard review plan did not provide useful guidance with regard to site-specific seismicity issues, and suggested other references specific to Wyoming and the intermountain region of the western United States.

Response: The standard review plan is intended to provide general guidance to the NRC staff on reviewing license applications, license renewals, and amendment requests. The standard review plan does not preclude licensees from providing additional site-specific information as necessary in their license application or amendment requests, and identifying how this information supports a specific licensing action.

4. Ground Water

Issue: NUREG–1620 should be consistent in use of terminology related to ground water.

Comment: The term "constituent of concern" seems to be used interchangeably with the term "hazardous constituent." Constituents of concern are not necessarily hazardous constituents unless they have migrated into "non-exempted" aquifers.

Response: Section 4.2.1 of the standard review plan was revised to delete a sentence equating constituents of concern with hazardous constituents. The term "hazardous constituent" is now used consistent with the definition in 10 CFR part 40, appendix A, criterion 5B(2).

Issue: The difference in an As Low As Reasonably Achievable (ALARA) analysis for radiological and nonradiological parameters needs to be more clearly presented.

Comment: An ALARA analysis for a nonradiological parameter differs from that for a radiological parameter in that once the concentration of a nonradiological parameter falls below the maximum concentration limit, the licensee has no obligation to further reduce the parameter's concentration. The NRC should distinguish between the two types of ALARA studies.

Response: The NRC concurs with the commenter. A sentence was added to Section 4.3.3.3 of the standard review plan to indicate that, when a nonradiological hazardous constituent concentration is below its regulatory maximum concentration level, the licensee has no further obligation to reduce the constituent concentrations.

Issue: The benefits of ground-water corrective action requirements at remote sites are questionable.

Comment: Two commenters noted that the NRC should provide further guidance on addressing instances where the benefits of ground-water correction action may not justify the cost. One comment referred to circumstances where restrictions on site access or site-specific physical characteristics may make it infeasible for members of the public to access ground water. Another comment suggested that the future value of the ground water removed and evaporated during corrective actions may exceed any risk posed by the contaminant.

Response: No changes to the standard review plan were made to address these comments. In such site-specific circumstances as described by the

commenters, the burden is on the licensee to demonstrate that termination of ground-water corrective actions would pose no significant threat to human health and the environment. Licensees may propose alternate concentration limits that meet the requirements of 10 CFR part 40, appendix A, criterion 5B(6). Consideration of the remoteness of a site, potential future water uses, and future value may be included in a licensee's basis for determining that alternate concentration limits are protective of human health and the environment, and that limits are as low as reasonably achievable. These and other factors for consideration by the Commission are specifically mentioned in 10 CFR, part 40, appendix A, criterion 5B(6), which is appropriately cited in the standard review plan.

5. Comments Related to NRC Responsibilities Under the National Environmental Policy Act

Issue: The NRC is reviewing information that is outside its areas of regulatory authority.

Comment: Several commenters noted that the NRC is asking for information that appears to be beyond its regulatory authority. This includes information on nonradiological hazardous constituents and review of restoration plans for borrow areas.

Response: As a federal agency, the NRC is subject to the National Environmental Policy Act (NEPA). This requires the NRC to consider impacts to the human environment as a part of its decision making process. The regulations governing the NRC implementation of NEPA are described in 10 CFR part 51. Guidance to the NRC staff on conducting environmental reviews is also provided in NUREG–1748 "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs." With regard to NEPA, the NRC must consider the environmental impacts of both radiological and nonradiological aspects of a proposed action, particularly with regard to assessment of direct, indirect, and cumulative impacts of the proposed action. The exact nature of the information to be provided by a licensee and the level of NRC staff review will be determined on a site-specific basis. The standard review plan is intended as general guidance to the staff on the type of information that is commonly acceptable for evaluating the environmental impact of a proposed licensing action. Under the risk-informed, performance-based licensing philosophy used by the NRC, the licensee is free to present alternative approaches for NRC consideration.

With regard to restoration plans for borrow areas, the intent of the section of the standard review plan identified by the commenter is to have staff review restoration plans for borrow areas as part of characterizing the stratigraphy and materials at a given site, and fulfilling NRC requirements under NEPA. The NRC also needs to consider the cumulative impacts of both radiological and nonradiological hazardous constituents to meet its obligations under NEPA. General guidance to the NRC staff for the evaluation of cumulative impacts is provided in Section 4.2.5 of NUREG–1748 "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs."

Dated at Rockville, Maryland this 15th day of August, 2003.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–21655 Filed 8–22–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26154; 812–12836]

Nuveen Real Estate Income Fund, et al.; Notice of Application

August 20, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 19(b) of the Act and rule 19b-1 under the Act.

Summary of Application: Applicants request an order to permit certain registered closed-end management investment companies to make periodic distributions of long-term capital gains, as often as monthly, on their outstanding common stock and as often as distributions are specified in the terms of any series of preferred stock.

Applicants: Nuveen Real Estate Income Fund ("NREIF"), Nuveen Real Estate Income Fund 2 ("NREIF2"), Nuveen Real Estate Growth & Income Fund ("NREGIF"), Nuveen Preferred and Convertible Income Fund ("NPCIF"), Nuveen Preferred and Convertible Income Fund 2 ("NPCIF2"), Nuveen Diversified Dividend and Income Fund ("NDDIF") (together, the "Current Funds"), Nuveen Institutional Advisory Corp. ("NIAC"), and each registered closed-end management investment company currently advised or to be advised in the future by NIAC (including any successor in interest)[1], or by an entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with NIAC (together with NIAC, the "Investment Advisers") that decides in the future to rely on the requested relief (the "Future Funds" and together with the Current Funds, the "Funds").[2]

Filing Dates: The application was filed on June 16, 2002 and amended on August 15, 2003.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 10, 2003 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Gifford R. Zimmerman, Nuveen Investments, 333 West Wacker Drive, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Each of the Current Funds is organized as a Massachusetts business

[1] A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

[2] All existing Funds currently intending to rely on the requested order are named as applicants, and any Fund that may rely on the order in the future will comply with the terms and conditions of the application.

trust and is registered under the Act as a closed-end management investment company. The primary investment objective of NREIF and NREIF2 is to seek high current income through investment in real estate investment trust ("REIT") securities. The primary investment objective of NREGIF is total return, and NREGIF has a policy of concentrating its investments in REIT securities. The primary investment objective of both NPCIF and NPCIF2 is high current income through investment in preferred and convertible securities. The primary investment objective of NDDIF is high current income and total return, through investment in income producing and dividend-paying securities. Common shares of NREIF are currently listed and traded on the American Stock Exchange ("AMEX") and common shares of NPCIF and NPCIF2 are currently listed and traded on the New York Stock Exchange ("NYSE"). It is anticipated that the common shares of NREIF2, NREGIF and NDDIF will also be listed and traded on the AMEX or NYSE. The preferred shares of NREIF (known as taxable auctioned preferred shares or "TAPS") and NPCIF and NPCIF2 (known as "FundPreferred shares") are not listed on an exchange, but may be purchased and sold by investors at an auction (normally held weekly) with or through a broker-dealer that has entered into an agreement with the auction agent and the respective Current Fund. Applicants state that it is also contemplated that the preferred shares of NREIF2, NREGIF and NDDIF will not be listed on an exchange either, but will trade periodically at auction in the same manner as the TAPS and FundPreferred shares.

2. NIAC, an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"), serves as investment adviser to the Current Funds. Security Capital Research and Management Incorporated ("Security Capital"), an investment adviser registered under the Advisers Act, is or will be the subadviser to NREIF, NREIF2 and NREGIF. Spectrum Asset Management, Inc. and Froley, Revy Investment Co., Inc., investment advisers registered under the Advisers Act, will serve as subadvisers to NPCIF and NPCIF2. Security Capital, NWQ Investment Management Company, LLC, Wellington Management Company, LLP and Symphony Asset Management, LLC, each an investment adviser registered under the Advisers Act, will serve as subadvisers to a portion of the assets of NDDIF.

3. The board of directors of each Current Fund ("Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), of such Fund, each concluded that the proposed distribution policy of such Fund ("Distribution Policy") with respect to its common stock would be in the best interests of the Fund's common shareholders.[3] The Distribution Policy would permit each Fund to make periodic long-term capital gains distributions as often as monthly with respect to its common stock, so long as it maintains in effect a Distribution Policy with regard to its common stock of at least a minimum fixed percentage per year of the net asset value ("NAV") or market price per share of its common stock or at least a minimum fixed dollar amount per year. Although applicants do not currently contemplate implementing a Distribution Policy for the preferred shares of the Current Funds, applicants request relief to permit each Fund to make periodic long term capital gains distributions with regard to any series of its preferred stock as often as distributions are specified in the terms of its preferred stock, so long as it maintains in effect a Distribution Policy with respect to such series of its preferred stock of a specified percentage of liquidation preference of such series of preferred stock, whether such specified percentage is determined at the time the preferred stock is initially issued, pursuant to periodic remarketing or auctions. Applicants believe that the discount at which each Fund's common stock may trade may be reduced if the Funds are permitted to pay capital gains dividends more frequently than permitted under rule 19b-1 under the Act. In addition, applicants state that to the extent that any of the Fund's preferred stock pays dividends less frequently than investors in that type of preferred stock would expect, such Fund is at a competitive disadvantage and, consequently, is likely to be required to pay a higher dividend rate on its preferred stock than issuers who pay at the desired frequency.

4. Applicants state that the Distribution Policy with respect to common stock of the Funds and any Distribution Policy with respect to preferred stock of the Funds will not be related to one another in any way. Applicants state that the Distribution Policy with respect to each Fund's common stock will be initially established and reviewed at least annually in light of the Fund's performance by the Board of the Fund.

5. Applicants request relief to permit each Fund, so long as it maintains in effect a Distribution Policy, to make periodic long-term capital gains distributions, as often as monthly, on its outstanding common stock and as specified by the terms of any preferred stock outstanding.

Applicants' Legal Analysis

1. Section 19(b) of the Act provides that a registered investment company may not, in contravention of such rules, regulations, or orders as the Commission may prescribe, distribute long-term capital gains more often than once every twelve months. Rule 19b–1(a) under the Act permits a registered investment company, with respect to any one taxable year, to make one capital gains distribution, as defined in section 852(b)(3)(c) of the Internal Revenue Code of 1986, as amended (the "Code"). Rule 19b–1(a) also permits a supplemental distribution to be made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year. Rule 19b–1(f) permits one additional long-term capital gains distribution to be made to avoid the excise tax under section 4982 of the Code.

2. Applicants assert that rule 19b–1 under the Act, by limiting the number of net long-term capital gains distributions that the Funds may make with respect to any one year, would prevent implementation of the Funds' proposed Distribution Policy. Applicants state that because each Fund expects to realize net long-term capital gains as often as every month, the combination of Revenue Ruling 89–81 and the accounting interpretation relating to rule 19b–1 would cause each Fund to treat a portion of such net long-term capital gains as being distributed each time it has incremental or undistributed long-term capital gains for the current distribution period. Applicants state that Revenue Ruling 89–81 takes the position that if a regulated investment company has two classes of shares, it may not designate distributions made to either class in any

[3] The Boards of the Current Funds made the above determination at meetings held on the following respective dates: NREIF "October 3, 2001, NREIF2 and NREGIF—January 9, 2002, NPCIF—February 20, 2003, NPCIF2—May 11–15, 2003, and NDDIF—July 28–30, 2003. Applicants state that if, in the future, the Board of each Current Fund decides to implement a Distribution Policy with respect to its preferred shares, such Board, including a majority of Independent Trustees, will make a similar finding prior to implementing such Distribution Policy in reliance on the order. Applicants state that the Board of each Future Fund intending to rely on the requested order, including a majority of its Independent Trustees, will make a similar finding prior to implementing a Distribution Policy with respect to the common or preferred stock of the respective Fund in reliance on the order.

year as consisting of more than such class's proportionate share of particular types of income, such as capital gains. Consequently, applicants state that any payments of long-term capital gains to holders of common stock require proportionate allocations of such long-term capital gains to the preferred stock, which can be extremely difficult to do.

3. Applicants submit that one of the concerns leading to the enactment of section 19(b) and the adoption of the rule was that shareholders might be unable to distinguish between frequent distributions of capital gains and dividends from net investment income. Applicants state that the proposed Distribution Policies, including the fact that the distributions called for by the policies may include returns of capital to the extent that a Fund's net investment income and net capital gains are insufficient to meet the fixed dividend, will be fully described in the Funds' periodic communications to their shareholders, including the periodic report to shareholders following the institution of any such policy. Applicants state that, in accordance with rule 19a–1 under the Act, a statement showing the source or sources of the distribution would accompany each distribution (or the confirmation of the reinvestment thereof under a Fund's common stock distribution reinvestment plan). Applicants state that, for both the common stock and the preferred stock, the amount and sources of distributions received during the calendar year will be included on each Fund's IRS Form 1099–DIV reports of distributions during the year, which will be sent to each shareholder who received distributions (including shareholders who have sold shares during the year). Applicants state that this information, on an aggregate basis, also will be included in each Fund's annual report to shareholders.

4. Another concern underlying section 19(b) and rule 19b–1 is that frequent capital gains distributions could facilitate improper distribution practices, including, in particular, the practice of urging an investor to purchase fund shares on the basis of an upcoming distribution ("selling the dividend") where the dividend results in an immediate corresponding reduction in NAV and would be, in effect, a return of the investor's capital. Applicants submit that this concern does not apply to closed-end investment companies, such as the Funds, which do not continuously distribute their shares. Applicants also assert that by paying out periodically any capital gains that have occurred, at least up to the fixed periodic payout amount, the Funds' Distribution Policies help avoid the buildup of end-of-the-year distributions and accordingly help avoid the scenario in which an investor acquires shares in the open market that are subject to a large upcoming capital gains dividend. Applicants also state that the "selling the dividend" concern is not applicable to preferred stock, which entitles a holder to a specific periodic dividend and, like a debt security, is initially sold at a price based on its liquidation preference, credit quality, dividend rate and frequency of payment. In addition, applicants state that any rights offering will be timed so that shares issuable upon exercise of the rights will be issued only in the 15-day period immediately following the record date for the declaration of a monthly dividend, or in the six-week period immediately following the record date of a quarterly dividend. Thus, applicants state that, in a rights offering, the abuse of selling the dividend could not occur as a matter of timing. Any rights offering also will comply with all relevant Commission and staff guidelines. In determining compliance with these guidelines, a Fund's Board will consider, among other things, the brokerage commissions that would be paid in connection with the offering. Any offering by a Fund of transferable rights will comply with any applicable National Association of Securities Dealers, Inc. rules regarding the fairness of compensation.

5. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or class or classes of any persons, securities or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. For the reasons stated above, applicants believe that the requested relief satisfies this standard.

Applicants' Conditions

Applicants agree that the order granting the requested relief with respect to the Funds' common stock shall terminate with respect to a Fund upon the effective date of a registration statement under the Securities Act of 1933, as amended, for any future public offering of common stock of the Fund after the date of the requested order and after the Fund's initial public offering other than:

(i) A rights offering to shareholders of such Fund, provided that (a) shares are issued only within the 15-day period immediately following the record date of a monthly dividend, or within the six-week period following the record date of a quarterly dividend; (b) the prospectus for such rights offering makes it clear that common shareholders exercising rights will not be entitled to receive such dividend with respect to shares issued pursuant to such rights offering; and (c) such Fund has not engaged in more than one rights offering during any given calendar year; or

(ii) An offering in connection with a merger, consolidation, acquisition, spin-off or reorganization; unless the Fund has received from the staff of the Commission written assurance that the order will remain in effect.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21658 Filed 8–22–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48360; File No. SR–NYSE–2003–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Reduce the Original Listing Fee Applicable to Closed-End Funds

August 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on August 15, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The NYSE has represented that the proposal meets the criteria of paragraph (f)(6) of Rule 19b–4 and, therefore, may take effect immediately. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes amending Section 902.02 of its Listed Company Manual to reduce the original listing fee

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

applicable to closed-end funds. Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are bracketed.

* * * * *

Listed Company Manual

902.00 Listing Fees

* * * * *

902.02 Schedule of Current Listing Fees

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A. Original Listing Fee

A special charge of $36,800 in addition to initial fees (described below) is payable in connection with the original listing of a company's stock. In any event, each issuer is subject to a minimum original listing fee of $150,000 inclusive of the special charge referenced in the preceding sentence.

The special charge is also applicable to an application which in the opinion of the Exchange is a "back-door listing". *See* Para. 703.08(F) for definition.

Original listings of [C]closed-end funds are not subject to either the special charge or to the minimum original listing fee. *Closed-end funds will instead pay an original listing fee based on the number of shares outstanding upon listing. Closed-end funds with up to 10 million shares outstanding will be subject to a $20,000 original listing fee, closed-end funds with greater than 10 million shares up to 20 million shares outstanding will be subject to a $30,000 original listing fee, and closed-end funds with more than 20 million shares outstanding will be subject to a $40,000 original listing fee. Original listings of closed-end funds are also not subject to the initial fees described below.*

Initial Fee

The initial fee schedule applies to original listings,** *other than to original listings of closed-end funds as described above,* and to the listing of additional shares of an already listed class of stock,* new issues of preferred stock, warrants, or similar securities which are the subject of subsequent applications. New issues of additional classes of common stock of listed companies will be charged a fixed initial fee of $5,000 in lieu of the per share schedule.

Each stock or warrant—and in the case of preferred stock, each series—shall be regarded as a separate issue.

Each application must cover the maximum number of shares that may be issued involving the particular transaction in question. However, the initial fee payable at the time of consideration of an application will cover only the determinable number of shares to be issued at or about that time. The balance of any initial fee under this schedule will accrue when subsequent issuance is made of shares not issued and paid for at the time that application is considered. This covers items like future issuances of shares for stock options, employee stock plans, conversion of other securities, contingencies, etc. Billing for such accrued initial fees is made as soon as possible following the close of the calendar year. Payment shall be made within 30 days of date upon receipt of invoice.

The initial fee shall be paid on shares issued at the time of billing by the Exchange. The subsequent reacquisition by the company and/or surrender to it for exchange, cancellation, or retirement shall not reduce this fee. The Exchange should be advised of shares cancelled. The shares authorized for listing on the Exchange should be reduced by the number of shares cancelled as well as by the shares no longer required to be issued under a specific plan for which an application was previously filed with the Exchange.

The pertinent initial fees per million shares are:

Fee bracket	Initial fee
1st and 2nd million shares	$14,750
3rd and 4th million shares	7,400
5th up to 300 million shares ...	3,500
In excess of 300 million shares	1,900

Reduced Initial Fee—A fee of $15,000 will apply to a company which either changes its state of incorporation or reincorporates, forms a holding company which replaces a listed company or has a reverse stock split. This fee will be applicable only if the change in the company's status is technical in nature and providing also that shareholders of the original company receive a share-for-share interest in the new company without any change in their equity position or rights.

Amalgamations are calculated at 25% of the applicable basic initial fee. An amalgamation is defined as the listing of shares resulting from merger or consolidation of two or more listed companies into a new company or into an unlisted company which becomes listed.

Mergers between an unlisted company and a listed company (other than back door listings (as defined in para.703.08(E))—If listing occurs within 12 months of the merger, 25% of the applicable basic initial fee, except during the first year following the listed company's original listing, where the fee shall be the lesser of (1) 25% of the applicable basic initial fee or (2) the full fee less a credit for the fee the listed company paid at the time of its initial listing.

In all other circumstances, the full initial fee rate will apply. For example: where a change in a listed security is effected which in the opinion of the Exchange in effect represents a new issue or class of security, or where the rights or privileges or the identities of previous shareholders are altered.

Minimum Initial Fee—The minimum fee for the consideration of an application is $2,500. Credit against initial fees will be limited to the determinable number of shares to be issued at or about the time the application is processed where the minimum fee applies. The minimum initial fee of $2,500 will apply for changes such as change of name, change of par value, the title of the security, etc., since these require changes in Exchange records.

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*Fees on shares issued in conjunction with stock splits are capped at $250,000 per split and at $500,000 for all splits over a rolling three calendar-year period. Fees on shares issued in conjunction with a merger or acquisition (other than amalgamations) are capped at $500,000.

**Fees on shares listed in conjunction with the original listing are limited to $250,*000* [thousand] per company, inclusive of the special charge and encompassing all classes of securities.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Like many other sectors of the industry, closed-end funds have come under considerable cost pressure in

recent years. The cost pressure has been exacerbated by a 1998 accounting interpretation that required funds to cease amortizing the original listing fee over several years, requiring them to recognize the entire amount in the first year. To date in 2003, under the current schedule, the smallest fund listing on the NYSE paid an original listing fee of approximately $44,000, and the largest closed-end funds paid the maximum original listing fee of $250,000.[3]

The Exchange is, therefore, proposing to reduce the original listing fees applicable to closed-end funds. It would establish a three-tiered structure based on the number of shares outstanding. Closed-end funds with up to 10 million shares outstanding would be subject to a $20,000 original listing fee, funds with greater than 10 million shares up to 20 million shares outstanding would be charged $30,000, and funds with more than 20 million shares outstanding would be subject to a $40,000 original fee.

2. Statutory Basis

The NYSE believes that the basis under the Act for the proposed rule change is section 6(b)(4),[4] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The NYSE has neither solicited nor received written comments on the proposed rule change.

[3] Currently, the initial fee schedule in 902.02 of the NYSE Listing Company Manual provides changes that are applied to *each* million shares issued. Closed-end fund offerings are often substantial. The Exchange notes that its current listing fees can affect NAV. Therefore, the Exchange believes that the reduction in listing fees will benefit investors because incurred costs are paid from the investor's equity raised for the closed-end fund offering. Telephone conversation among Raymond Bell, Vice President of New Listing and Client Services, AnneMarie Tierney, Senior Counsel, NYSE, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated August 18, 2003.

[4] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange asserts that, because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed (or such shorter time as the Commission may designate), it may become effective pursuant to section 19(b)(3)(A) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[7]

A proposed rule change filed under Rule 19b–4(f)(6) normally would not become operative prior to 30 days after the date of the filing. However, Rule 19b–4(f)(6) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Commission believes that lowering the initial listing fees for closed-end funds will benefit those who invest in such funds by reducing the costs associated with the issuance of the shares. Accordingly, the Commission hereby determines to waive the 30-day pre-operative period, and the proposed rule change becomes operative immediately.[8]

Rule 19b–4(f)(6) also requires the self-regulatory organization submitting the proposed rule change to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing, or such shorter time as designated by the Commission. The NYSE has requested that the Commission waive the five-day pre-filing requirement, and the Commission hereby grants that request.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–2003–22 and should be submitted by September 15, 2003.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

[7] *See* 15 U.S.C. 78s(b)(3)(C).

[8] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21641 Filed 8–22–03; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before September 24, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency

Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Reports to SBA, Provisions of 13 CFR 120.472.

No: N/A.

Frequency: On Occasion.

Description of Respondents: Small Business Lending Companies.

Responses: 14.

Annual Burden: 1,120.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–21672 Filed 8–22–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3526]

State of Indiana; Amendment #3

In accordance with the notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective August 18, 2003, the above numbered declaration is hereby amended to include Lake, Porter, and Vanderburgh Counties in the State of Indiana as a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on July 4, 2003 and continuing through August 6, 2003.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Gibson, Pike, Posey, and Warrick Counties in the State of Indiana; Cook and Will Counties in the State of Illinois; and Henderson County in the Commonwealth of Kentucky. All other counties contiguous to the above named primary counties have been previously declared.

For economic injury, the number is 9W7300 for the Commonwealth of Kentucky.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 9, 2003, and for economic injury the deadline is April 12, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 19, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–21673 Filed 8–22–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Delegation of Authority as to Denial of Liability on 7(a) Loans

The Administrator of the U.S. Small Business Administration (SBA), Hector V. Barreto, pursuant to the authority vested in him by the Small Business Act, 72 Stat. 384, as amended, hereby delegates to the Associate Deputy Administrator for Capital Access (ADA/CA), or to anyone Acting in the position of ADA/CA, the following authorities:

1. To make the final Agency decision to deny SBA's liability under its guaranty of a 7(a) loan.

2. To approve the initiation of a lawsuit against a participant lender for recovery of proceeds received by that lender in connection with SBA's guaranty of a 7(a) loan.

Neither the ADA/CA, nor anyone Acting in the position of ADA/CA, is authorized to further delegate these authorities.

Dated: August 4, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–21671 Filed 8–22–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4455]

Bureau of Political-Military Affairs; Denied Persons Pursuant to UN Security Council Resolution

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of an updated list of persons that are subject to an arms embargo in implementation of UN Security Council Resolutions 1390 (2002) and 1455 (2003). This action is being taken pursuant to sections 38 and 42 of the Arms Export Control Act and in accordance with section 5 of the UN Participation Act (UNPA) and E.O. 12918.

EFFECTIVE DATE: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Office of Defense Trade Controls Management, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 633–2700.

SUPPLEMENTARY INFORMATION: UN Security Council Resolutions 1390 (2002) and 1455 (2003) require UN Member States to implement an arms embargo (and other sanctions) against those individuals, groups, undertakings and entities listed in the consolidated list created in accordance with UN Security Council Resolutions 1267 (1999) and 1333 (2000) and maintained by the UN 1267 Sanctions Committee. Specifically, the resolutions require that Member States prevent the direct or indirect supply, sale and transfer, to those on the 1267 Sanctions Committee list, from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related material of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned and technical advice, assistance, or training related to military activities.

Effective October 24, 2002, U.S. manufacturers and exporters and any other affected parties were notified that the Department imposed a policy of denial for any new license application or other request for approval for the export or transfer of defense articles (including technical data) or defense services (whether or not all the information relied upon by the U.S. person in performing the defense service is in the public domain) if any of the names on the list published on October 24, 2002 appear in connection with the application or other request for approval subject to section 38 of the Arms Export Control Act. Further, that action also precluded the use of any exemptions from licensing or other approval (*e.g.* brokering) requirements available under the International Traffic in Arms Regulations (ITAR) involving any person on the list. A consolidated list created pursuant to UN Security Council Resolutions 1267 (1999), 1333 (2000) and 1390 (2002), updated on September 11, 2002, was published in the **Federal Register** on October 24, 2002, by the Bureau of Political-Military Affairs. This notice contains the list updated as of June 25, 2003, which also reflects UN Security Council Resolution 1455, adopted in January 2003.

Thus, U.S. manufacturers and exporters and any other affected parties are hereby notified the Department has imposed a policy of denial for any new license application or other request for approval for the export or transfer of defense articles or defense services if any of the names on the list below appear in connection with the application or other request for approval subject to section 38 of the Arms Export

Control Act. This action also precludes the use of any exemptions from licensing or other approval (*e.g.* brokering) requirements available under the ITAR involving any person on the list.

The term "person", as defined in 22 CFR 120.14 of the ITAR, means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities.

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2778 and 2791) and 126.7 of the International Traffic in Arms Regulations in furtherance of the foreign policy of the United States, and in accordance with section 5 of the UNPA (22 U.S.C. 287(c)) and E.O. 12918.

In accordance with these authorities the following persons are subject to this arms embargo:

A. The list of individuals belonging to or associated with the Taliban.

1. Mullah Mohammad Rabbani, Chairman of the Ruling Council, Head of the Council of Ministers;
2. Mullah Hadji Mohammad Hassan, First Deputy, Council of Ministers; Governor of Kandahar;
3. Maulavi Abdul Kabir, Second Deputy, Council of Ministers; Governor of Nangahar Province; Head of Eastern Zone;
4. Mullah Mohammed Omar, Leader of the Faithful ('Amir ul-Mumineen'), Afghanistan;
5. Mullah Mohammed Tahre Anwari, Administrative Affairs;
6. Maulavi Sayyed Haqqan, Minister of Administrative Affairs;
7. Maulavi Abdul Latif Mansur, Minister of Agriculture;
8. Mullah Shams-ur-Rahman, Deputy Minister of Agriculture;
9. Maulavi Attiqullah Akhund, Deputy Minister of Agriculture;
10. Maulavi Abdul Ghafoor, Deputy Minister of Agriculture;
11. Akhtar Mohammad Mansour, Minister of Civil Aviation and Transportation;
12. Hadji Tahis, Deputy Minister of Civil Aviation;
13. Mullah Mohammad Naim, Deputy Minister of Civil Aviation;
14. Hidayatuallah Abu Turab, Deputy Minister of Civil Aviation;
15. Mullah Yar Mohammad Rahimi, Minister of Communication;
16. Mullah Haji Alla Dad Tayeb, Deputy Minister of Communication;
17. Maulavi Abdul Razaq, Minister of Commerce;
18. Maulavi Faiz Mohammad Faizan, Deputy Minister of Commerce;
19. Maulavi Nik Mohammad, Deputy Minister of Commerce;
20. Mullah Matiullah, Kabul Custom House;
21. Maulavi Dadullah Akhund, Minister of Construction;
22. Mullah Hadji Ubaidullah Akhund, Minister of Defense;
23. Mullah Fazel M. Mazloom, Deputy Chief of Army Staff;
24. Mullah Baradar, Deputy Minister of Defence;
25. Mullah Abdul Rauf, Commander of Central Corpus;
26. Mullah Amir Khan Motaql, Minister of Education;
27. Mullah Mohammad Nasim Hanafi, Deputy Minister of Education;
28. Maulavi S. Ahmed Skahidkhel, Deputy Minister of Education;
29. Mullah Abdul Wasay Aghajan Motasem, Minister of Finance;
30. Mullah Arefullah Aref, Deputy Minister of Finance;
31. Mullah M. Ahmadi, President of Da Afghanistan Bank;
32. Abdul Wakil Mutawakil, Minister of Foreign Affairs;
33. Abdul Rahman Zahed; Deputy Minister of Foreign Affairs;
34. Mullah Abdul Jalil, Deputy Minister of Foreign Affairs;
35. Dr. Abdul Satar Paktis, Protocol Dept., Ministry of Foreign Affairs;
36. Maulavi Faiz, Information Dept., Ministry of Foreign Affairs;
37. Shams-us-Safa Aminzai, Press-Centre, Ministry of Foreign Affairs;
38. Maulavi Abdul Baqi, Consulate Dept., Ministry of Foreign Affairs;
39. M. Jawaz Waziri, UN Dept., Ministry of Foreign Affairs;
40. Maulavi Djallalouddine Haqani, Minister of Frontier Affairs;
41. Maulavi Abdul Hakim Monib, Deputy Minister of Frontier Affairs;
42. Alhaj M. Ibrahim Omari, Deputy Minister of Frontier Affairs;
43. Qari Din Mohammad, Minister Higher Education;
44. Maulavi Hamidullah Nomani, High Ranking Official in the Ministry of Higher Education;
45. Zabihullah Hamidi, Deputy Minister of Higher Education;
46. Maulavi Arsalan Rahmani, Deputy Minister of Higher Education;
47. Maulavi Qudratuallah Jamal, Minister of Information;
48. Mullah Abdul Baqi, Vice-Minister of Information and Culture;
49. Maulavi Abdul Rahman Ahman Hottak, Deputy (Cultural) Minister of Information and Culture;
50. Maulavi Rahimullah Zurmati, Deputy (Publication) Minister of Information and Culture;
51. Abdulhai Motmaen, Information and Culture Dept., Kandahar;
52. Maulavi Mohammad Yaqoub, Head of BIA;
53. Mullah Abdul Razaq, Minister of Interior Affairs;
54. Mullah Abdul Samad Khaksar, Deputy (Security) Minister of Interior Affairs;
55. Mohammad Sharif, Deputy Minister of Interior Affairs;
56. Maulavi Noor Jalal, Deputy (Administrative) Minister of Interior Affairs;
57. Maulavi Saed M. Azim Agha, Passport and Visa Dept.;
58. Mullah Nooruddin Turabi, Minister of Justice;
59. Maulavi Jalaluddine Shinwari, Deputy Minister of Justice;
60. Alhaj Mullah Mohammad Essa Akhund, Minister of Mines and Industries;
61. Maulavi Sayeedur Rahman Haqani, Deputy Minister of Mines and Industries;
62. Mullah Abdul Salam Zaief, Deputy Minister of Mines and Industries;
63. Maulavi Mohammad Azam Elmi, Deputy Minister of Mines and Industries;
64. Qari Din Mohammad Hanif, Minister of Planning;
65. Maulavi Ezatullah, Deputy Minister of Planning;
66. Maulavi M. Musa Hottak, Deputy Minister of Planning;
67. Mullah Mohammad Abbas Akhund, Minister of Public Health;
68. Sher Abbas Stanekzai, Deputy Minister of Public Health;
69 Maulavi Mohammadullah Mati, Minister of Public Works;
70. Maulavi Rostam Nuristani, Deputy Minister of Public Works;
71. Hadji Molla Atiqullah, Deputy Minister of Public Works;
72. Maulavi Najibullah Haqqani, Deputy Minister of Public Works;
73. Maulavi Sayyed Ghiassouddine Agha, Minister of Haj and Religious Affairs;
74. Maulavi Moslim Haqqani, Deputy Minister of Haj and Religious Affairs;
75. Maulavi Qalamudin Momand, Deputy Minister of Haj Afairs;
76. Maulavi Abdul Raqib Takhari, Minister of Repatriation;
77. Ramatullah Wahidyar, Deputy Minister for Martyrs and Repatriation;
78. Mohammad Sediq Akhundzada, Deputy Minister of Martyrs and Repatriation;
79. Maulavi Mohammad Wali, Minister of Department of Preventing Vice and Propagating Virtue;
80. Maulavi Mohammad Salim Haqqani, Deputy Minister of Preventing Vice and Propagating Virtue;

81. Maulavi Sayed Esmatullah Asem, Deputy Minister of Preventing Vice and Propagating Virtue;
82. Qari Ahmadulla, Minister of Security (Intelligence);
83. Maulavi Abdul-Haq-Wasseq, Deputy Minister of Security (Intelligence);
84. Maulavi Ehsanullah, Deputy Minister of Security (Intelligence);
85. Mullah Habibullah Reshad, Head of Investigation Dept.;
86. Mullah Ahmed Jan Akhund, Minister of Water and Electricity;
87. Eng. Mohammad Homayoon, Deputy Minister of Water and Electricity;
88. Maulavi Saiduddine Sayyed, Vice-Minister of Work and Social Affairs;
89. Maulavi Abdul Jabbar, Governor of Baghlan Province;
90. Maulavi Nurullah Nuri, Governor of Balkh Province; Head of Northern Zone;
91. Muhammad Islam, Governor of Bamiyan Province;
92. Mullah Janan, Governor of Fariab;
93. Mullah Dost Mohammad, Governor of Ghazni Province;
94. Maulavi Khair Mohammad Khairkhwah, Governor of Heart Province;
95. Maulavi Abdul Bari, Governor of Helmand Province;
96. Maulavi Walijan, Governor of Jawzjan Province;
97. Mullah M. Hasan Rahmani, Governor of Kandahar Province;
98. Mullah Manan Nyazi, Governor of Kabul Province;
99. Maulavi A. Wahed Shafiq, Deputy Governor of Kabul Province;
100. Alhaj Mullah Sadudin Sayed, Mayor of Kabul City;
101. Maulavi Shafiquallah Mohammadi, Governor of Khost Province;
102. Maulavi Nazar Mohammad, Governor or Kunduz Province;
103. M. Eshaq, Governor of Laghman Province;
104. Maulavi Zia-ur-Rahman Madani, Governor of Logar Province;
105. Maulavi Hamsudin, Governor of Wardak (Msidan) Province;
106. Maulavi A. Kabir, Governor of Nangarhar Province;
107. Mullah M. Rasul, Governor of Nimroz Province;
108. Maulavi Tawana, Governor of Paktia Province;
109. Mullah M. Shafiq, Governor of Samangan Province;
110. Maulavi Aminullah Amin, Governor of Saripul Province;
111. Maulavi Abdulhai Salek, Governor of Urouzgan Province;
112. Maulavi Ahmad Jan, Governor of Zabol Province;
113. Noor Mohammad Saqib, Chief Justice of Supreme Court;
114. Maulavi Sanani, Head of Dar-ul-Efta;
115. Maulavi Samiullah Muazen, Deputy of High Court;
116. Maulavi Shahabuddin Delawar, Deputy of High Court;
117. Abdul Rahman Agha, Chief Justice of Military Court;
118. Mullah Mustasaed, Head of Academy of Sciences;
119. Maulavi Esmatullah Asem, SG of Afghan Red Crescent Society (ARCS);
120. Maulavi Qalamuddin, Head of Olympic Committee;
121. Abdul Salam Zaeef, Taliban Ambassador to Pakistan;
122. Abdul Hakim Mujahid, Taliban enyoy to the United Nations;
123. General Rahmatullah Safi, Taliban representative in Europe;
124. Mullah Hamidullah, Head of Ariana Afghan Airlines;
125. Alhaj Mullah Sadruddin, Mayor of Kabul City;
126. Amir Khan Muttaqi, Taliban representative in UN-led talks;
127. Mr Jan Mohmmad Madani, Charge d'Affaires, Taliban Embassy, Abu Dhabi;
128. Mr Shamsalah Kmalzada, Second Secretary, Taliban Embassy, Abu Dhabi;
129. Mr Azizirahman, Third Secretary, Taliban Embassy, Abu Dhabi;
130. Mr Mawlawi Abdul Manan, Commercial Attache, Taliban Embassy, Abu Dhabi;
131. Malawi Abdul Wahab, Taliban Charge d'Affairs in Riyadh; Taliban "Embassy," Islamabad
132. Mullah Abdul Salam Zaeef (Ambassador Extraordinary & Plenipotentiary);
133. Ilabibullab Fauzi (First Secretary/ Deputy Head of Mission);
134. Mohammad Sohail Shaheen (Second Secretary);
135. Mohammad Sarwar Siddiqmal (Third Secretary);
136. Mullah Mohammad Zahid (Third Secretary);
137. General Abdul Qadeer (Military Attache);
138. Maulavi Nazirullah Anafi (Commercial Attache);
139. Maulavi Abdul Ghafar Qurishi (Repatriation Attache);
140. Mohammad Daud (Administrative Attache);

Taliban "Consulate General," Peshawar

141. Maulavi Najibullah (Consul General);
142. Qari Abdul Wali (First Secretary);
143. Syed Allamuddin (Second Secretary);
144. Maulavi Akhtar Mohmmad (Education Attache);
145. Alhaj Maulavi Mohammad Saddiq (Trade Representative);

Taliban "Consulate General," Karachi

146. Maulavi Rahamatullah Kakazada (Consul General);
147. Mufti Mohammad Aleem Noorani (First Secretary);
148. Haji Abdul Ghafar Shenwary (Third Secretary);
149. Maulavi Gul Ahmad Hakimi (Commercial Attache); Taliban

"Consulate General," Quetta

150. Maulavi Abdullah Murad (Consul General);
151. Maulavi Abdul Haiy Aazem (First Secretary);
152. Maulavi Hamdullah (Repatriation Attache);

B. The list of entities belonging to or associated with the Taliban.

1. De Afghanistan Momtaz Bank.

C. List of individuals belonging to or associated with Al-Qaida organization.

1. Saiyid Abd Al-Man (a.k.a. Abdul Manan, a.k.a. Agha Haji; a.k.a. Am); Other information: Pakistan;
2. Youssef Abdaoui; (a.k.a. Abu Abdullah, a.k.a. Abdellah, a.k.a. Abdullah); DOB: 4 June 1966; POB: Kairouan, Tunisia; Address: Piazza Giovane Italia n.2, Varese, Italy;
3. Ali Abbas Abdi; Other information: Mogadishu, Somalia;
4. Majeed, Abdul Chaudhry (a.k.a. Majeed, Abdul; a.k.a. Majeed Chaudhry Abdul; a.k.a. Majid, Abdul) DOB: 15 April 1939; alt. DOB 1938; Nationality: Pakistani;
5. Abdullah Ahmed Abdullah (a.k.a. Abu Mariam; a.k.a. Al-Masri, Abu Mohamed; a.k.a. Saleh); DOB: 1963; POB: Egypt; Nationality Egypt; Other information: Afghanistan;
6. Mohamad Iqbal Adburrahman (a.k.a. Rahman, Mohamad Iqbal; a.k.a. A Rahman, Mohamad Iqbal; a.k.a. Abu Jibril Abdurrahman; a.k.a. Fikiruddin Muqti; a.k.a. Fihiruddin Muqti); Nationality Indonesian;
7. Ibrahim Ali Muhammad Abu Bakr (a.k.a. Al-Libi, Abd al-Muhsin); Other information: Affiliated with Afghan Support Committee (ASC) and Revival of Islamic Heritage Society (RIHS);
8. Amin Muhammad Ah Haq (a.k.a. Al-Haq, Amin; a.k.a. Amin, Muhammad; a.k.a. Dr. Amin; a.k.a. Ul-Haq, Dr. Amin); DOB: 1960; POB: Nangahar Province, Afghanistan; Nationality Afghan; Other information: Security coordinator for Usama Bin Laden;
9. Mustafa Muhammad Ahmad (a.k.a. Shaykh Sai'id); POB: Egypt;
10. Mohamed Amine Akli (a.k.a. Akli Amine Mohamed, a.k.a. Killech Shamir,

a.k.a. Kali Sami, a.k.a. Elias); DOB: 30 March 1972; POB: Abordj El Kiffani (Algeria);

11. Mohammad Hamdi Sadiq Al-Ahdal (a.k.a. Al-Hamati, Muhammad; a.k.a. Al-Makki, Abu Asim); Other information: Yemen;

12. Khalid Al-Fawaz (a.k.a. Al-Fauwaz, Khaled; a.k.a. Al-Fauwaz Kaled A.; a.k.a. Al-Fawwaz, Khalid; a.k.a. Al Fawwaz, Khalik; a.k.a. Al-Fawwaz, Khaled; a.k.a. Al-Fawwaz, Khaled; a.k.a. Al Fawwaz, Khaled); DOB: August 25, 1962; 55 Hawarden Hill, Brooke Road, London NW2 7BR, UK;

13. Ahmed Mohammed Hamed Ali (a.k.a. Abdurehman, Ahmed Mohammed; a.k.a. Ahmed Hamed; a.k.a. Ali, Ahmed Mohammed; a.k.a. Ali, Hamed; a.k.a. Hemed, Ahmed; a.k.a. Shieb, Ahmed; a.k.a. Abu Fatima; a.k.a. Abu Islam; a.k.a. Abu Khadiijah; a.k.a. Ahmed The Egyptian; a.k.a. Ahmed, Ahmed; a.k.a. Al-Masri, Ahmad; a.k.a. Al-Surir, Abu Islam; a.k.a. Shuaib); DOB: 1965; POB: Egypt; Nationality: Egypt; Other information: Afghanistan;

14. Jim'ale Ahmed Nur Ali (a.k.a. Jimale, Ahmed Ali; a.k.a. Jim'ale, Ahmad Nur Ali; a.k.a. Jumale, Ahmed Nur; a.k.a. Jumali, Ahmed Ali) P.O. Box 3312, Dubai, UAE; Other information: Mogadishu, Somalia;

15. Abd Al-Hadi Al-Iraqi (a.k.a. Abdal Al-Hadi Al-Iraqi; a.k.a. Abu Abdallah);

16. Saqar Al-Jadawi; DOB: 1965; Thought to be a Yemeni and Saudi national; Other information: Aide to Usama Bin Laden;

17. Abu Bakr Al-Jaziri; Nationality Algerian, Address: Peshawar, Pakistan; Other information: Affiliated with Afghan Support Committee (ASC);

18. Ahmad Sa'id Al-Kadr (a.k.a. Al-Kanadi, Abu Abd Al-Rahman); DOB: 01 March 1948; POB: Cairo, Egypt; Thought to be an Egyptian and Canadian national.;

19. Ibn Al-Shaykh Al-Libi;

20. Yasin Al-Qadi (a.k.a. Kadi, Shaykh Yassin Abdullah; a.k.a. Kahdi, Yasin); Other information: Jeddah, Saudi Arabia.

21. Nazih Abdul Hamed Al-Raghie (a.k.a. Anas Al-Liby; a.k.a. Al-Libi, Anas; a.k.a. Al-Raghie, Nazih; a.k.a. Al-Sabai, Anas); DOB: 30 Mar 1964; Alt. DOB: 14 May 1964; POB: Tripoli, Libya; Nationality: Libya; Other information: Afghanistan;

22. Tariq Anwar Ahmad Al-Sayyid (a.k.a. Hamdi Ahmad Farag, a.k.a. Amr Al-Fatih Fathi); DOB: 15 March 63; POB: Alexandria, Egypt;

23. Sa'd Al-Sharif; DOB: 1969; POB: Saudi Arabia; Other information: Brother-in-law and close associate of Usama Bin Laden. Said to be head of Usama Bin Laden's financial organization;

24. Mahfouz Ould Al-Walid; a.k.a. Abu Hafs the Mauritanian; a.k.a. Khalid Al-Shanqiti; a.k.a. Mafouz Walad Al-Walid; a.k.a. Mahamedou Ouid Slahi) DOB: 1 Jan 75;

25. Aiman Muhammed Rabi Al-Zawahiri (a.k.a. Ayman Al-Zawahari; a.k.a. Ahmed Fuad Salim) DOB: 19 Jun 1951; POB: Giza, Egypt; Nationality: thought to be Egyptian; Other information: Operational and Military Leader of Jihad Group. Thought to be an Egyptian national. Former leader of Egyptian Islamic Jihad, now a close associate of Usama Bin Laden;

26. Mehrez Amdouni (a.k.a. Fabio Fusco, a.k.a. Mohamed Hassan, a.k.a. Abu Thale); DOB: 18 Dec. 1969; POB: Tuni, Tunisia;

27. Muhammed Atif (a.k.a. Subhi Abu Sitta; a.k.a. Sheik Taysir Abdullah; a.k.a. Mohamed Atef; a.k.a. Abu Hafs Al Masri; a.k.a. Abu Hafs Al Masri El Khabir; a.k.a. Taysir) DOB: 1956; Alt. DOB: 1951; Alt. DOB: 1944; POB: Alexandria, Egypt; Thought to be an Egyptian national; Other information: Senior lieutenant to Usama Bin Laden;

28. Muhsin Musa Matwalli Atwah (a.k.a. Al-Muhajir, Abdul Rahman; a.k.a. Al-Namer, Mohammed K.A.; a.k.a. Abdel Rahman; a.k.a. Abdul Rahman); DOB: 19 Jun 1964; POB: Egypt; Nationality: Egypt; Other information: Afghanistan;

29. Chiheb Ben Mohamed Ayari (a.k.a. Hichem Abu Hchem); DOB: 19 Dec 1965; POB: Tunis (Tunisia); Address: Via di Saliceto n. 51/9, Bologna, Italy;

30. Mondher Baazaoui (a.k.a. Hamza); DOB: 18 March 1967; POB: Kairouan (Tunisia); Address: Via di Saliceto n. 51/9, Bologna, Italy;

31. Said Bahaji; DOB: July 15, 1975; POB: Haselunne/Lower Saxony/ Germany; Nationality: Germany; formerly resident at Bunatwiete 23, 21073 Hamburg/Germany;

32. Mahmood Sultan Bashir-Ud-Din (a.k.a. Mahmood, Sultan Bashiruddin; a.k.a. Mehmood, Dr. Bashir Uddin; a.k.a. Mekmud, Sultan Baishiruddin) DOB: 1937; Alt. DOB: 1938; Alt. DOB 1939; Alt. DOB: 1940; Alt. DOB: 1941; Alt. DOB: 1942; Alt. DOB: 1943; Alt. DOB: 1944; Alt. DOB: 1945; Nationality: Pakistani; Address: Street 13, Wazir Akbar Khan, Kabul, Afghanistan;

33. Aouadi, Mohamed Ben Belgacem Ben Abdallah (a.k.a. Aouadi, a.k.a. Mohamed Ben Belkacem); DOB: 12/11/ 1974; POB: Tunis, Tunisia; Nationality: Tunisian; Address: Via A. Masina n. 7, Milan, Italy; Alt. Address: Via Dopini No 3, Gallarati-Italy; Other information: His mother's name is Bent Ahmed Ourida;

34. Charaabi, Tarek Ben Bechir Ben Amara (a.k.a. Sharaabi, Tarek, a.k.a. Haroun; a.k.a. Frank); DOB: 03/31/1970; POB: Tunis, Tunisia; Nationality: Tunisian; Address: Viale Bligny n.42, Milan, Italy; Other information: His mother's name is Charaabi Hedia;

35. Lased Ben Heni; DOB: 02/05/1969; POB: Libya;

36. Ayadi Shafiq Ben Mohamed Ben Mohamed (a.k.a. Bin Muhammad, Ayadi Chafiq, a.k.a. Ayadi Chafik, a.k.a. Ben Muhammad; a.k.a. Aiadi, Ben Muhammad; Aiady, Ben Muhammad; a.k.a. Ayadi Shafig Ben Mohamed; a.k.a. Ben Mohamed, Ayadi Chafig; a.k.a. Abou El Baraa); DOB: 21 March 1963; POB: Sfax, Tunisia; Nationality: Tunisian; Alt. Nationality: Bosnian; Alt. Nationality: Austrian; Address: Helene Meyer Ring 10–1415–80809, Munich, Germany; 129 Park Road, NW8, London, England; 28 Chausse Di Lille, Moscron, Belgium, Darvingasse 1/2/58–60, Vienna, Austria; Other information: Tunisia; He is in Ireland. His mother's name is Medina Abid.;

37. Bouchoucha Mokhtar Ben Mohamed Ben Mokhtar (a.k.a. Bushusha, Mokhtar); DOB: 13 October 1969; POB: Tunis, Tunisia; Nationality: Tunisian; Address: Via Milano n.38, Spinadesco (CR), Italy; Other information: His mother's name is Bannour Hedia;

38. Essid Sami Ben Khemais Ben Salah (a.k.a. Omar El Mouhajer; a.k.a. Saber); DOB: 02/10/1968; POB: Menzel Jemil Bizerte, Tunisia; Nationality: Tunisian; Address: Via Dubini n.3, Gallarate (VA) Italy; Other information: His mother's name is Saidani Beya;

39. Adel Ben Soltane; DOB: July 14, 1970; POB: Tunis, Tunisia; Address: Via Latisana n. 6, Milan, Italy;

40. Nabil Benattia; DOB: May 11, 1966; POB: Tunis, Tunisia;

41. Usama Muhammed Awad Bin Laden (a.k.a. Usama Bin Laden; a.k.a. Usama Bin Muhammed Bin Awad, a.k.a. Osama Bid Laden; a.k.a. Abu Abdallah Abd Al-Hakim); DOB: 30 Jul 57; Alt. DOB: 28 Jul 57; POB: Jeddah, Saudi Arabia; Alt. POB: Yemen; Nationality: Saudi citizenship withdrawn, now officially and Afghan national;

42. Bilal Bin Marwan; DOB: 1947; Other information: Senior lieutenant of Usama Bin Laden;

43. Ramzi Mohamed Abdullah Binalshibh (a.k.a. Binalsheidah, Ramzi Mohamed Abdullah, a.k.a. Bin Al Shibh, Ramzi; a.k.a. Omar, Ramzi Mohamed Abdellah) DOB: May 1st 1972; Alt. DOB: September 16, 1973; POB: Hadramawt/Yemen; Alt. POB:

Khartoum, Sudan; Nationality: Yemen; Alt. Nationality: Sudan;

44. Yassine Chekkouri; DOB: October 6, 1966; POB: Safi, Morocco;

45. Aweys Hassan Dahir (a.k.a. Ali, Sheikh Hassan Dahir Aweys, a.k.a. Awes, Shaykh Hassan Dahir); DOB: 1935; Nationality: Somalia;

46. Mamoun Darkazanli (a.k.a. Abu Ilyas; a.k.a. Abu Ilyas Al Suri; a.k.a. Abu Luz) DOB: August 4, 1958; POB: Damascus/Syria; Nationality: Syrian and German; Uhlenhorster Weg 34, Hamburg, 22085 Germany;

47. Lionel Dumont (a.k.a. Jacques Brougere; a.k.a. Bilal; a.k.a. Hamza); DOB: 21 Jan. 1971; POB: Robaix (France);

48. Mounir El Motassadeq; DOB: April 3, 1974; POB: Marrakesh/ Morocco; Address: 21073 Hamburg, Goschenstrasse 13;

49. Abdelkader Mahmoud Es Sayed (a.k.a. Es Sayed, Kader); DOB: 12/26/ 1962; POB: Egypt; Address: Via del Fosso di Centocelle n.66, Rome, Italy;

50. Moussa Ben Amor Essaadi (a.k.a. Dah Dah, a.k.a. Abdelrahmman, a.k.a. Bechir); DOB: 4 Dec. 1964; POB: Tabarka (Tunisia); Address: Via Milano n. 108, Brescia, Italy;

51. Zakarya Essabar; DOB: April 13, 1977; POB: Essaouria/Morocco; Nationality: Morocco; Address: Dortmunder Strasse 38, 22419 Hamburg/Germany;

52. Mustafa Mohamed Fadhil (a.k.a. Al Masri, Abd Al Wakil; a.k.a. Ali, Hassan; a.k.a. Anis, Abu; a.k.a. Elbishy, Moustafa Ali; a.k.a. Fadil, Mustafa Muhamad; a.k.a. Fazul, Mustafa; a.k.a. Mohammed, Mustafa; a.k.a. Al-Nubi, Abu; a.k.a. Hussein, a.k.a. Jihad, Abu; a.k.a. Khalid; a.k.a. Man, Nu; a.k.a. Yussrr, Abu); DOB: 23 Jun 1976; POB: Cairo, Egypt; Nationality: Egypt; Alt. Nationality: Kenya;

53. Rachid Fettar (a.k.a. Amine del Belgio, a.k.a. Djaffar); DOB: 16 April 1969; POB: Boulogin (Algeria); Address: Via degli Apuli n.5, Milan, Italy;

54. Ahmed Khalfan Ghailani (a.k.a. Ahmed, Abubakar; a.k.a. Ahmed, Abubakar; a.k.a. Ahmed, Abubakar K.; a.k.a. Ahmed, Abubakar Khalfan; a.k.a. Ahmed, Abubakary K.; a.k.a. Ahmed, Ahmed Khalfan; a.k.a. Ali, Ahmed Khalfan; a.k.a. Ghailani, Abubakary Khalfan Ahmed; a.k.a. Ghailani, Ahmed; a.k.a. Ghilani, Ahmad Khalafan; a.k.a. Hussein, Mahafudh Abubakar Ahmed Abdallah; a.k.a. Khalfan, Ahmed; a.k.a. Mohammed, Shariff Omar; a.k.a. Ahmed The Tanzanian; a.k.a. Foopie; a.k.a. Fupi; a.k.a. Ahmed, A.; a.k.a. Al Tanzani, Ahmad; a.k.a. Bakr, Abu; a.k.a. Khabar, Abu); DOB: 14 Mar 1974; Alt. DOB: 13 Apr. 1974; Alt. DOB: 14 Apr 1974; Alt. DOB: 1 Aug 1970; POB: Zanzibar, Tanzania; Nationality: Tanzania;

55. Brahim Ben Hedili Hamami; DOB: 20 Nov. 1971; POB: Goubellat (Tunisia); Address: Via de Carracci n.15, Casalecchio di Reno (Bologna) Italy;

56. Nasr Fahmi Nasr Hasanayn (a.k.a. Muhammad Salah);

57. Gulbuddin Hekmatyar (a.k.a. Gulabudin Hekmatyar; a.k.a. Golboddin Hikmetyar; a.k.a. Gulbuddin Khekmatiyar; a.k.a. Gulbuddin Hekmatiar; a.k.a. Gulbuddin Hekhmartyar; a.k.a. Gulbudin Hekmetyar) DOB: August 1, 1949; POB: Konduz Province, Afghanistan;

58. Ri'ad (Raed) Muhammad Hasan Muhammad Hijazi (a.k.a. Hijazi, Raed M.; a.k.a. Al-Hawen, Abu-Ahmad; a.k.a. Al-Shahid, Abu-Ahmad; a.k.a. Al-Maghribi, Rashid (The Moroccan); a.k.a. Al-Amriki, Abu-Ahmad (The American)); DOB: 30 December 1968; POB: California, U.S.A.; Nationality: Jordanian; Other information: Originally from Ramlah; place of residence while in Jordan—al-Shumaysani (Sheisani) (area of Amman), behind the trade unions complex;

59. Ali Ghaleb Himmat; DOB: 16 June 1938; POB: Damascus, Syria; Nationality: Switzerland; Address: via Posero 2, ch-6911 Campione D'Italia, Italy;

60. Armand Albert Friedrich Huber (a.k.a. Huber, Ahmed); DOB: 1927; Nationality: Switzerland; Address: Rossmimattstrasse 33, 3074 Muri b. Bern, Switzerland;

61. Zayn Al-Abidin Muhammad Husayn (a.k.a. Abu Zubaida; a.k.a. Abd Al-Hadi Al-Wahab; a.k.a. Zain Al-Abidin Muhahhad Husain; a.k.a. Zain Al-Abidin Muhahhad Husain; a.k.a. Abu Zubaydah; a.k.a. Tariq); DOB: 12 March 71; POB: Riyadh, Saudi Arabia; Nationality: Thought to be a Saudi and Palestinian national; Other information: Close associate of Usama Bin Laden and facilitator of terrorist travel;

62. Nasreddin, Ahmed Idris (a.k.a. Nasreddin, Ahmad I.; a.k.a. Nasreddin, Hadji Ahmed; a.k.a. Nasreddine, Ahmed Idriss; a.k.a. Ahmed Idris Nasreddin); DOB 22 November 1929; POB: Adi Ugri, Ethiopia (now Eritrea); Nationality: Italian; Address: Corso Sempione 69, 20149 Milan, Italy; Atl. Address: Piazzale Biancamano, Milan, Italy; Alt. Address: Rue De Cap Spartel, Tangiers, Morocco; Alt. Address: no. 10, Rmilat, Villa Nasreddin in Tangiers, Morocco; Other information: Mr. Nasreddin left his residence at 1 via della Scuole, 6900 Lugano, Switzerland in 1994 and moved to Morocco;

63. Nurjaman Riduan Isamuddin (a.k.a. Hambali; a.k.a. Nurjaman; a.k.a. Isomuddin, Nurjaman Riduan); DOB: April 4, 1964; POB: Cianjur, West Java, Indonesia; Nationality: Indonesian; Other information: Born: Encep Nurjaman;

64. Khalil Jarraya (a.k.a. Khalil Yarraya, a.k.a. Ben Narvan Abdel Aziz, a.k.a. Amro, a.k.a. Omar, a.k.a. Amr); DOB: 8 Feb. 1969; POB: Sfax (Tunisia); Address: Via Bellaria n.10, Bologna, Italy; Alt. Address: Via Lazio n.3, Bologna, Italy; Other information: Identified as Abdel Aziz Ben Narvan, born in Sereka (ex-Yugoslavia) on 15 August 1970;

65. Mounir Ben Habib Jarraya; (a.k.a. Yarraya); DOB: 25 October 1963; POB: Sfax (Tunisia); Address: Via Mirasole n.11, Bologna, Italy; Alt. Address: Via Ariosto n.8, Casalecchio di Reno (Bologna), Italy;

66. Riadh, Jelassi; DOB: December 15, 1970; POB: Tunisia;

67. Faouzi Jendoubi (a.k.a. Said, a.k.a. Samir); DOB: 30 January 1966; POB: Beja (Tunisia); Address: Via Agucchi n.250, Bologna, Italy; Alt. Address: Via di Saliceto n.51/9, Bologna, Italy;

68. Wa'el Hamza Julaidan (a.k.a. Wa'il Hamza Julaidan; a.k.a. Wa'el Hamza Jalaidan; a.k.a. Wa'il Hamza Jalaidan; a.k.a. Wa'el Hamza Jaladin; a.k.a. Wa'il Hamza Jaladin; a.k.a. Abu Al-Hasan Al Madani); DOB: 22 January 1958; POB: Al-Madinah, Saudi Arabia;

69. Abdullahi Hussein Kahie; Other information: Bakara Market, Dar Salaam Buildings, Mogadishu, Somalia;

70. Mehdi Kammoun; DOB: April 3, 1968; POB: Tunis, Tunisia; Address: Via Masina n. 7, Milan, Italy;

71. Samir Kishk; DOB: May 14, 1955; POB: Gharbia, Egypt;

72. Mufti Rashid Ahmad Ladehyanoy (a.k.a. Ludhianvi, Mufti Rashid Ahmad; a.k.a. Armad, Mufti Rasheed; a.k.a. Wadehyanoy, Mufti Rashid Ahmad); Other information: Karachi, Pakistan;

73. Tarek Ben Habib Maaroufi; DOB: November 23, 1965; POB: Ghardimaou, Tunisia;

74. Abdullkadir Hussei Mahamud; Other information: Florence, Italy;

75. Uthman Omar Mahmoud (a.k.a. Uthman, Al-Samman; a.k.a. Uthman, Umar; a.k.a. Al-Filistini, Abu Qatada; a.k.a. Takfiri, Abu Umr; a.k.a. Abu Umar, Abu Omar; a.k.a. Umar, Abu Umar; a.k.a. Abu Ismail); DOB: 30 December 1960; Atl. DOB: 13 December 1960; Other information: London, England;

76. Fethi Ben Rebai Mnasri (a.k.a. Fethi Alic, a.k.a. Amor, a.k.a. Omar Abu); DOB: 6 March 1969; POB: Nefza (Tunisia); Address: Via Toscana n.46, Bologna, Italy; Alt. Address: Via di Saliceto n. 51/9, Bologna, Italy;

77. Mansour Mohamed (a.k.a. Al-Mansour, Dr. Mohamed), DOB:

30.08.1928; POB: Egypt; Alt. POB: UAE; Nationality: Switzerland; Address: Obere Heslibachstrasse 20, 8700 Kuesnacht, ZH, Switerland; Other information: Zurich, Switzerland;

78. Zia Mohammad (a.k.a. Zia, Ahmad); Address: C/O Ahmed Shah C/O Painda Mohammad Al-Karim Set, Peshawar, Pakistan; Alt. Address: C/O Alam General Store Shop 17, Awami Market, Peshawar, Pakistan; Alt. Address: C/O Zahir Sha S/;

79. Fazul Abdullah Mohammed (a.k.a. Abdalla, Fazul; a.k.a. Adballah, Fazul; a.k.a. Ali, Fadel Abdallah Mohammed; a.k.a. Fazul Abdalla; a.k.a. Fazul Abdallah; a.k.a. Fazul, Abdallah Mohammed; a.k.a. Fazul, Haroon; a.k.a. Fazul, Harun; a.k.a. Haroun, Fadhil, a.k.a. Mohammed, Fazul; a.k.a. Mohammed, Fazul Abdilahi; a.k.a. Mohammed Fouad; a.k.a. Muhamad, Fadil Abdallah; a.k.a. Aisha, Abu; a.k.a. Al Sudani, Abu Seif; a.k.a. Haroon; a.k.a. Harun; a.k.a. Luqman, Abu; DOB: 25 Aug 1972; Alt. DOB: 25 Dec 1974; Alt. DOB: 25 Feb 1974; POB: Moroni, Comoros Islands; Nationality: Comoros; Alt. Nationality: Kenya;

80. Mostafa Kamel Mostafa (a.k.a. Mustafa Kamel Mustafa, a.k.a. Adam Ramsey Eaman, a.k.a. Abu Hamza Al-Masri, a.k.a. Al-Masri, Abu Hamza, a.k.a. Al-Misri, Abu Hamza); DOB: April 15, 1958; Address: 9 Albourne Road, Shepherds Bush, London W12 OLW, UK; Alt. Address: Adie Road, Hammersmith, London W6 OPW, UK;

81. Fahid Mohammed Ally Msalam (a.k.a. Ally, Fahid Mohammed; a.k.a. Msalam, Fahad Ally; a.k.a. Msalam, Fahid Mohammed Ali; a.k.a. Msalam, Mohammed Ally; a.k.a. Musalaam, Fahid Mohammed Ali; a.k.a. Salem, Fahid Muhamad Ali, a.k.a. Al-Kini, Usama;); DOB: 19 Feb 1976; POB: Mombasa, Kenya; Nationality: Kenya;

82. Nada, Youssef Mustafa (a.k.a. Nada, Youssef; a.k.a. Nada, Youssef M.); DOB: 17 May 1931; Alt. DOB: 17 May 1937; POB: Alexandria, Egypt; Address: via Arogno 32, 6911 Campione d'Italia, Italy; Alt. Address: via per Arogno 32, ch-6911 Campione d'Italia, Italy; Alt. Address: via Riasc 4, ch-6911 Campione d'Italia I, Italy;

83. Abdelghani Mzoudi (a.k.a. Abdelghani Mazwati, a.k.a. Abdelghani Mazuti); DOB: 6 December 1972; POB: Marrakesh, Morocco; Nationality: Moroccan; Address: Currently (June 2003) being held in custody in Germany;

84. Najib Ouaz; DOB: 12 April 1960; POB: Hekaima (Tunisia); Address: Vicolo dei Prati n.2/2, Bologna, Italy;

85. Ahmed Hosni Rarrbo (a.k.a. Abdallah o Abdullah); DOB: 12 September 1974; POB: Bologhine (Algeria);

86. Abdelhalim Remadna; DOB: April 2, 1966; POB: Bistra, Algeria;

87. Nedal Saleh (a.k.a. Hitem); DOB: 1 March 1970; POB: Taiz (Yemen); Address: Via Milano n.105, Casal di Principe (Caserta), Italy; Alt. Address: Via di Saliceto n.51/9, Bologna, Italy;

88. Nabil Adbul Salam Sayadi (a.k.a. Abu Zeinab); DOB: 1/1/66; POB: El Hadid, Tripoli, Lebanon; Nationality: Belgian since 18/9/01; Other information: Spouse of Patricia Vinck. Married on 29/5/92 in Peshawar, Pakistan;

89. Sayf-Al Adl (a.k.a. Saif Al-'Adil); DOB: 1963; POB: Egypt; Nationality: Thought to be an Egyptian national; Other information: Responsible for Usama Bin Laden's security;

90. Ahmed Salim Swedan Sheikh (a.k.a. Ally, Ahmed; a.k.a. Suweidan, Sheikh Ahmad Salem; a.k.a. Swedan, Sheikh; a.k.a. Swedan, Sheikh Ahmed Salem a.k.a. Ahmed The Tall; a.k.a. Bahamad; a.k.a. Bahamad, Sheik; a.k.a. Bahamadi, Sheikh); DOB: 9 Apr 1969; Alt. DOB: 9 Apr 1960; POB: Mombasa, Kenya; Nationality: Kenya;

91. Thirwat Salah Shihata (a.k.a. Tarwat Salah Abdallah; a.k.a. Salah Shihata Thirwat; a.k.a. Shahata Thirwat); DOB: 29 Jun 60; POB: Egypt;

92. Mansour Thaer; DOB: March 21, 1974; POB: Baghdad, Iraq;

93. Lazhar Ben Mohammed Tlili; DOB: March 26, 1969; POB: Tunis, Tunisia; Address: Via Carlo Porta n. 97, Legnano, Italy;

94. Yuldashev Tohir (a.k.a. Yuldashev, Takhir); Other information: Uzbekistan;

95. Mohammed Tufail (a.k.a. Tufail, S.M.; a.k.a. Tuffail, Sheik Mohammed); Nationality: Pakistani;

96. Aweys Dahir Ubeldullahi; Address: via Cipriano Facchinetti 84, Rome, Italy;

97. Patricia Rosa Vinck (a.k.a. Souraya P. Vinck); DOB: 4/1/65; POB: Berchem, Antwerp; Nationality: Belgium; Other information: Spouse of Nabil Saydai;

98. Habib Waddani; DOB: June 10, 1970; POB: Tunis, Tunisia; Address: Via unica Borighero n. 1, San Donato M.se(MI), Italy; Other information: Italian;

99. Zelimkhan Ahmedovich Yandarbiev (a.k.a. Abdul-Muslimovich); DOB: 12 September 1952; POB: USSR, Eastern Kazakhstan region, village of Vydriha; Nationality: Russian Federation; Address: formerly Russian Federation, Chechen Republic, Grozny, Derzhavina str. 281–59;

100. Abdul Rahman Yasin (a.k.a. Taha, Abdul Rahman S.; a.k.a. Taher, Abdul Rahman S.; a.k.a. Yasin, Abdul Rahman Said; a.k.a. Yasin, Aboud); DOB: 10 Apr 1960; POB: Bloomington, Indiana, U.S.A.; Nationality: U.S.A.; Abdul Rahman Yasin is in Iraq.

101. Ali Ahmed Yusaf; (a.k.a. Ali Galoul); DOB: 20 November 1974; POB: Garbaharey, Somalia; Nationality: Swedish; Address: Kralingegrand 33 S–16362 Spanga;

102. Mansour Fattouh Zeinab; DOB: 07.05.1933; Address: Obere Heslibachstrasse 20, 8700 Kuesnacht, ZH, Switzerland;

.D. The list of entities belonging to or associated with the Al-Qaida organization.

1. Abu Sayyaf Group (a.k.a. Al Harakat Al Islamiyya);

2. Afghan Support Committee (ASC) (a.k.a. Lajnat ul Masa Eidatul Afghaniab, a.k.a. Jamiat Ayat-ur-Rhas al Islamiac, a.k.a. Jamiat Ihya ul Turath al Islamia, a.k.a. Ahya ul Turas); Address: Headquarters–G.T. Road (probably Grand Trunk Road), near Pushtoon Garhi Pabbi, Peshwar, Pakistan; Atl. Address: Cheprahar Hadda; Mia Omar Sabaqah School, Jalabad, Afghanistan;

3. The Aid Organization of the Ulema, Pakistan (a.k.a. Al Rashid Trust; a.k.a. Al Rasheed Trust; a.k.a. Al-Rasheed Trust; a.k.a. Al-Rashid Trust); Addresses: Kitab Ghar, Darul Ifta Wal Irshad, Nazimabad No. 4, Karachi, Pakistan, Phone 6683301, Phone 0300–8209199, Fax 6623814; Alt. Address: 302b–40, Good Earth Court, Opposite Pia Planitarium, Block 13a, Gulshan-I Iqbal, Karachi, Phone 4979263; Alt. Address: 617 Clifton Center, Block 5, 6th Floor, Clifton, Karachi, Phone 587–2545; Alt. Address: 605 Landmark Plaza, 11 Chundrigar Road, Opposite Jang Building, Karachi, Pakistan, Phone 2623818–19; Alt. Address: Jamia Masjid, Sulaiman Park, Begum Pura, Lahore, Pakistan, Phone 042–6812081; Other information: Pakistan;

4. Akida Bank Private Limited; (f.k.a. Akida Islamic Bank, International Limited; f.k.a. Iksir International Bank Limited); Address: c/o Arthur D. Hanna & Company; Alt. Address: 10 Deveaux Street, Nassau, Bahamas; Alt. Address: P.O. Box N–4877, Nassau, Bahamas;

5. Akida Investment Co. Ltd. (a.k.a. Akida Investment Company Limited, f.k.a. Akida Bank Private Limited; Address: c/o Arthur D. Hanna & Company; Alt. Address: 10 Deveaux Street, Nassau, Bahamas; Alt. Address: P.O. Box N–4877, Nassau, Bahamas;

6. Al Baraka Exchange L.L.C.; Address: P.O. Box 3313 Deira Dubai, UAE; Alt. Address: P.O. Box 20066, Dubai, UAE;

7. Al-Barakaat; Address: Mogadishu, Somalia; Alt. Address: Dubai, UAE;

8. Al-Barakaat Bank; Address: Mogadishu, Somalia;

9. Al-Barakaat Wiring Service; Address: 2940 Pillsbury Avenue, Suite 4, Minneapolis, Minnesota 55408;

10. Al-Barakat Bank of Somalia (BSS) (a.k.a. Barakat Bank of Somalia); Address: Mogadishu, Somalia; Alt. Address: Bossaso, Somalia;

11. Al-Barakat Finance Group; Address: Dubai, UAE; Alt. Address: Mogadishu, Somalia;

12. Al-Barakat Financial Holding Co.; Address: Dubai, UAE; Alt. Address: Mogadishu, Somalia;

13. Al-Barakat Global Telecommunications (a.k.a. Barakaat Globetelcompany); Address: P.O. Box 3313, Dubai, UAE; Alt. Address: Mogadishu, Somalia; Alt. Address: Hargeysa, Somalia;

14. A1-Barakat Group of Companies Somalia Limited (a.k.a. Al-Barakat Financial Company); Address: P.O. Box 3313, Dubai, UAE; Alt. Address: Mogadishu, Somalia;

15. A1-Barakat International (a.k.a. Baraco Co.); Address: Box 2923, Dubai, UAE;

16. Al-Barakat Investments; Address: P.O. Box 3313, Deira, Dubai, UAE;

17. Al-Hamati Sweets Bakeries; Address: Al-Mukallah, Hadhramawt, Governorate, Yemen;

18. Al-Haramain Islamic Foundation; Address: Bosnia and Herzegovina;

19. Al-Haramain Islamic Foundation; Address: Somalia;

20. Al-Itihadd Al-Islamiya/AIAI;

21. Al-Jihad/Egyptian Islamic Movement (a.k.a. Egyptian Al-Jihad; a.k.a. Egyptian Islamic Jihad; a.k.a. Jihad Group; a.k.a. New Jihad);

22. Al-Nur Honey Press Shops (a.k.a. Al-Nur Honey Center); Address: Sanaa, Yemen;

23. Al Taqwa Trade, Property and Industry Company Limited; (f.k.a. Al Taqwa Trade, Property and Industry; f.k.a. Al Taqwa Trade, Property and Industry Establishment; f.k.a. Himmat Establishment); Address: C/O Asat Trust Reg., Altenbach 8,9490 Vaduz Fl, Liechtenstein;

24. Al Qa'ida/Islamic Army (a.k.a. "The Base," a.k.a Al Qaeda, a.k.a. Islamic Salvation Foundation, a.k.a. the Group for the Preservation of the Holy Sites, a.k.a. The Islamic Army for the Liberation of Holy Places, a.k.a. The World Islamic Front for the Jihad Against Jews and Crusaders, a.k.a. Usama Bin Laden Network, a.k.a. Usama Bin Laden Organization);

25. Al Rashid Trust (a.k.a. Al-Rasheed Trust); Address: Kitas Ghar, Nazimabad 4, Dahgel-Iftah, Karachi, Pakistan; Alt. Address: Jamia Maajid, Sulalman Park, Melgium Pura, Lahore, Pakistan; Alt. Address: Office Dha'rbi-M'unin, Opposite Khyber Bank, Abbottabad Road, Mansehra, Pakistan; Alt. Address: Office Dha'rbi-M'unin ZR Brothers, Katcherry Road, Chowk Yadgaar, Peshawar, Pakistan; Alt. Address: Office Dha'rbi-M'unin, Rm No. 3, Moti Plaza, Near Liaquat 2Bagh, Muree Road, Rawalpindi, Pakistan; Alt. Address: Office Dha'rbi-M'unin, Top Floor, Dr. Dawa Khan Dental Clinic Surgeon, Main Baxae, Mingora, Swat, Pakistan; Other information: Operations in Afghanistan: Heart Jalalabad, Kbul, Kandahar, Mazar Sherif. Also operations in Kosovo, Chechnya;

26. Al-Shifa, Honey Press for Industry and Commerce; Address: P.O. Box 8089, Al-Hasabah, Sanaa, Yemen; Alt. Address: By the Shrine Next to the Gas Station, Jamal Street, Ta'iz, Yemen; Alt. Address: Al-Arudh Square, Khur Maksar, Aden, Yemen; Alt. Address: Al-Nasr Street, Doha, Qatar;

27. Ansar Al-Islam (a.k.a. Devotees of Islam; a.k.a. Jund al-Islam; a.k.a. Soldiers of Islam; a.k.a. Kurdistan Supporters of Islam; a.k.a. Supporters of Islam in Kurdistan; a.k.a. Followers of Islam in Kurdistan; a.k.a. Kurdistand Taliban; a.k.a. Soldiers of God; Other information: Location: The Kurdish-controlled area of northeastern Iraq;

28. Armed Islamic Group (a.k.a. Al Jamm'ah Al-Islamiah Al-Musallah; a.k.a. GIA; a.k.a.; Groupement Islamique Arme);

29. Asat Trust Reg.; Address: Altenbach 8, 9490 Vaduz Fl, Liechtenstein;

30. Asbat Al-Ansar;

31. BA Taqwa for Commerce and Real Estate Company Limited; Address: Vaduz, Liechtenstein; Alt. Address: formerly c/o/ Astat Trust reg;

32. Bank Al Taqwa Limited (a.k.a. Al Taqwa Bank; a.k.a. Bank Al Taqwa); Address, P.O. Box N–4877, Nassau, Bahamas; Alt. Address: C/O Arthur D. Hanna & Company; Alt. Address: 10 Deveaux Street, Nassau, Bahamas;

33. Barakaat Boston; Address: 266 Neponset Avenue, Apt. 43, Dorchester, Massachusetts 02122–3224;

34. Barakaat Construction Company; Address: P.O. Box 3313, Dubai, UAE;

35. Barakaat Group of Companies; Address: P.O. Box 3313, Dubai, UAE; Alt. Address: Mogadishu, Somalia;

36. Barakaat International; Address: Hallbybacken 15, 70 Spanga, Sweden;

37. Barakaat International Foundation; Address: Box 4036, Spanga, Stockholm, Sweden; Atl. Address: Rinkebytorget 1, 04 Spanga, Sweden;

38. Barakaat International, Inc.; Address: 1929 South 5th Street, Suite 205, Minneapolis, Minnesota;

39. Barakaat North America, Inc.; Address: 925 Washington Street, Dorchester, Massachusetts; Alt. Address: 2019 Bank Street, Ottawa, Ontario, Canada;

40. Barakaat Red Sea Telecommunications; Address: Bossaso, Somalia; Address: Nakhiil, Somalia; Address: Huruuse, Somalia; Address: Raxmo, Somalia; Address: Ticis, Somalia; Address: Kowthar, Somalia; Address: Noobir, Somalia; Address: Bubaarag, Somalia; Address: Gufure, Somalia; Address: Xuuxuule, Somalia; Address: Ala Aamin, Somalia; Address: Guureeye, Somalia; Address: Najax, Somalia; Address: Carafaat, Somalia;

41. Barakaat Telecommunications Co. Somalia, Ltd.; Address: P.O. Box 3313, Dubai, UAE;

42. Barakaat Wire Transfer Company; Address: 4419 South Brandon Street, Seattle, Washington;

43. Barakat Banks and Remittances; Address: Mogadishu, Somalia; Address: Dubai, UAE;

44. Barakat Computer Consulting (BCC); Address: Mogadishu, Somalia;

45. Barakat Consulting Group (BCG); Address: Mogadishu, Somalia;

46. Barakat Global Telephone Company; Address: Mogadishu, Somalia; Address: Dubai, UAE;

47. Barakat International Companies (BICO); Address: Mogadishu, Somalia; Address: Dubai, UAE;

48. Barakat Post Express (BPE); Address: Mogadishu, Somalia;

49. Barakat Refreshment Company; Address: Mogadishu, Somalia; Address: Dubai, UAE;

50. Barakat Telecommunications Company Limited (a.k.a. BTELCO), Address: Bakara Market, Dar Salaam Building, Mogadishu, Somalia; Last Known Address: The Netherlands;

51. Baraka Trading Company; Address: P.O. Box 3313, Dubai, UAE;

52. Barako Trading Company, LLC; Address: P.O. Box 3313, Dubai, UAE;

53. Benevolence International Foundation (a.k.a. Al Bir Al Dawalia; a.k.a. BIF; a.k.a. BIF–USA; a.k.a. Mezhdunarodnyj Blagotvoritel'nyl Fond); Address: 8820 Mobile Avenue, IA, Oak Lawn, Illinois, 60453 U.S.A.; Alt. Address: P.O. Box 548, Worth, Illinois, 60482 U.S.A.; Former Address: 9838 S. Roberts Road, Suite 1W, Palos Hills, Illinois, 60465 U.S.A.; Former Address: 20–24 Branford Place, Suite 705, Newark, New Jersey 07102 U.S.A.; Alt. Address: Bashir Safar Ugil 69, Baku, Azerbaijan; Alt. Address: 69 Boshir Safaroglu St., Baku, Azerbaijan; Alt. Address: Sarajevo, Bosnia-Herzegovina; Alt. Address: Zenica, Bosnia-Herzegovina; Last Known Address: 3 King Street, South Waterloo, Ontario,

N2J 3Z6, Canada; Last Known Address: P.O. Box 1508 Station 1, Mississauga, Ontario, L4Y 4G2 Canada; Last Known Address: 2465 Cawthra Rd., #203, Mississauga, Ontario, L5A 3P2 Canada; Alt. Address: Ottawa, Canada; Alt. Address: Grozny, Chechnya; Alt. Address: 91 Paihonggou, Lanzhou, Gansu, China 730000; Alt. Address: Hrvatov 30, 41000, Zagreb, Croatia; Alt. Address: Makhachkala, Daghestan; Alt. Address: Duisi, Georgia; Alt. Address: Tbilisi, Georgia; Alt. Address: Nazran, Ingushetia; Alt. Address: Burgemeester Kessensingel 40, Masstricht, Netherlands; Alt. Address: Stichting Benevolence International Nederaland (a.k.a. Benevolence International Nederland, a.k.a. BIN) Radeborg 14B, 6228 CV Maastricht, Netherlands; Alt. Address: House 111, First Floor, Street 64, F–10/3, Islamabad, Pakistan; Alt. Address: P.O. Box 1055, Peshawar, Pakistan; Alt. Address: Azovshaya 6, km. 3, off. 401, Moscow, Russia 113149; Alt. Address: Ulitsa Oktyabr'skaya, dom. 89, Moscow, Russia 127521; Alt. Address: P.O. Box 1937, Khartoum, Sudan; Alt. Address: P.O. Box 7600, Jeddah 21472, Saudi Arabia; Alt. Address: P.O. Box 10845, Riyadh 11442, Saudi Arabia; Alt. Address: Dushanbe, Tajikistan; Alt. Address: United Kingdom; Alt. Address: Afghanistan; Alt. Address: Bangladesh; Alt. Address: Gaza Strip; Alt. Address: Bosnia-Herzegovina; Alt. Address: Yemen;

54. Benevolence International Fund (a.k.a. Benevolent International Fund); Last Known Address: 2465 Cawthra Rd., Unit 203, Mississauga, Ontario, L5A 3P2 Canada; Last Known Address: P.O. Box 1508, Station B, Mississauga, Ontario, L4Y 4G2 Canada; Last Known Address: P.O. Box 40015, 75 King Street South, Waterloo, Ontario, N2J 4V1 Canada; Last Known Address: 92 King Street, 201, Waterloo, Ontario, N2J 1P5 Canada;

55. Bosanska Idealna Futura (a.k.a. BIF-Bosnia; a.k.a. Bosnia Ideal Future); Address: Salke Lagumdzije 12, 71000 Sarajevo, Bosnia-Herzegovina; Alt. Address: Hadzije Mazica Put 16F, 72000 Zenica, Bosnia-Herzegovina; Alt. Address: Sehidska Street, Breza, Bosnia-Herzegovina; Alt. Address: Kanal 1, 72000 Zenica, Bosnia-Herzegovina; Alt. Address: Hamze Celenke 35, Ilidza, Sarajevo, Bosnia-Herzegovina; Other information: Doing business as BECF Charitable Educational Center, Benevolence Educational Center;

56. The Eastern Turkistan Islamic Movement (a.k.a. The Eastern Turkistan Islamic Party, a.k.a. The Eastern Turkistan Islamic Party of Allah);

57. Global Relief Foundation (GRF) (a.k.a. Foudation Secours Mondial (FSM); a.k.a. Secours mondial de France (SEMONDE); a.k.a. Foundation Secours Mondial—Belgique a.s.b.i.; a.k.a. Foundation Secours Mondial "World Relief"; Address: 9935 South 76th Avenue, Unit 1, Bridgeview, Illinois 60455, U.S.A.; Alt. Address: P.O. Box 1406, Bridgeview, Illinois 60455, U.S.A.; Alt. Address: 49 rue du Lazaret, 67100 Strasebourg, France; Alt. Address: Vaatjesstraat, 29, 2580 Putte, Belgium; Alt. Address: Rue des Bataves 69, 1040 Etterbeek, Brussels, Belgium; Alt. Address: P.O. Box 6, 1040 Etterbeek 2, Brussels, Belgium; Alt. Address: Mula Mustafe Baseskije Street No. 72, Sarajevo, Bosnia; Alt. Address: Put Mladih Muslimana Street 30/A, Sarajevo, Bosnia; Alt. Address: Rr. Skenderbeu 76, Lagjja Sefa, Gjakova, Kosovo; Alt. Address: Ylli Morina Road, Djakovica, Kosovo; Alt. Address: Rruga e Kavajes, Building No. 3, Apartment No. 61, P.O. Box 2892, Tirana, Albania; Alt. Address: House 267 Street No. 54, Sector F–11/4, Islamabad, Pakistan; Alt. Address: Saray Cad. No. 37 B Blok, Yesilyurt Apt. 2/4, Sirinevler, Turkey; Other information: Other Foreign Locations: Afghanistan, Azerbaijan, Bangladesh, Chechnya (Russia), China, Eritrea, Ethiopia, Georgia, India, Ingushetia (Russia), Iraq, Jordan, Kashmir, Lebanon, West Bank and Gaza, Sierra Leone, Somalia and Syria;

58. Gulf Center S.R.L.; Address: Corso Sempione 69, 20149 Milan, Italy;

59. Harakat Ul-Mujahidin/HUM (a.k.a. Al-Faran, a.k.a. Al-Hadid, a.k.a. Al-Hadith, a.k.a. Harakat Ul-Ansar, a.k.a. HUA, a.k.a. Harakat Ul-Mujahideen);

60. Heyatul Ulya; Address: Mogadishu, Somalia;

61. Islamic Army of Aden;

62. Islamic International Brigade (IIB); (a.k.a. The Islamic Peacekeeping Brigade; a.k.a. The Islamic Peacekeeping Army; a.k.a. The International Brigade; a.k.a. Islamic Peacekeeping Battalion; a.k.a. International Battalion; Islamic Peacekeeping International Brigade;

63. Islamic Movement of Uzbekistan (a.k.a. IMU);

64. Jaish-I-Mohammed (a.k.a. Army of Mohammed); Address: Pakistan;

65. Jam'yah Ta'awun Al-Islamia (a.k.a. Society of Islamic Cooperation, a.k.a. Jam'iyat Al Ta'awun Al Islamiyya, a.k.a. Jit); Address: Qandahar City, Afghanistan;

66. Jemaah Islamiyah (a.k.a. Jema'ah Islamiyah, a.k.a. Jemaah Islamiya, a.k.a. Jemaah Islamiah; a.k.a. Jamaah Islamiyah; a.k.a. Jama'ah Islamiyah; Other information: The network in Southeast Asia. Founded by the late Abdullah Sungkar;

67. Lajnat Al Daawa Al Islamiya (LDI);

68. Lashkar I Jhangvi (LJ);

69. Libyan Islamic Fighting Group;

70. Makhtab Al-Khidamat/Al Kifah;

71. Mamoun Darkazanli Import-Export Company (a.k.a. Darkazanli Company, a.k.a. Darkazanli Export-Import Sonderposten); Address: Uhlenhorsterweg 3411 Hamburg, Germany;

72. Miga-Malaysian Swiss, Gulf and African Chamber (f.n.a. Gulf Office Assoc. Per Lo Sviluppo Comm. Ind. E Turis; f.n.a. Fra Gli Stati Arabi Del Golfo E La Svizzera); Address: Via Maggio 21, 6900 Lugano TI, Switzerland;

73. Moroccan Islamic Combatant Group (a.k.a Groupe Islamique Combattant Marocain;

74. Nada International Anstalt; Address: Vaduz, Liechtenstein; Alt. Address: c/o Asat Trust reg.

75. Nada Management Organization SA (f.k.a. Al Taqwa Management Organization Sa); Address: Viale Stefano Franscini 22, Ch–6900 Lugano Ti, Switzerland;

76. NASCO Business Residence Center SAS DI Nasreddin Ahmed Idris EC; Address: Corso Sempione 69, 20149 Milan, Italy;

77. NASCO Nasreddin Holding A.S.; Address: Zemin Kat, 219 Demirhane Caddesi, Zeytinburnu, Istanbul, Turkey;

78. NASCOSERVICE S.R.L.; Address: Corso Sempione 69, 20149 Milan, Italy;

79. NASCOTEX S.A. (a.k.a. Industrie Generale De Filature Et Tissage; a.k.a. Industrie Generale De Textile); Address: KM 7 Route de Rabat, BP 285, Tangiers, Morocco; Alt. Address: KM 7 Route de Rabat, Tangiers, Morocco;

80. Nasreddin Company NASCO SAS DI Ahmed Idris Nasreddin EC; Address: Corso Sempione 69, 20149 Milan, Italy;

81. Nasreddin Foundation (a.k.a. Nasreddin Stiftung); Address: c/o Rechta Treuhand-Anstalt, Vaduz, Liechtenstein;

82. Nasreddin Group International Holding Limited (a.k.a. Nasreddin Group International Holdings Limited); Address: c/o Arthur D. Hanna & Company; Alt. Address: 10 Deveaux Street, Nassau, Bahamas; Alt. Address: P.O. Box N–4877, Nassau, Bahamas;

83. Nasreddin International Group Limited Holding (a.k.a. Nasreddin International Group Ltd. Holding); Address: c/o Rechta Treuhand-Anstalt, Vaduz, Liechtenstein; Alt. *Address:* Corso Sempione 69, 20149 Milan, Italy;

84. Parka Trading Company; Address: P.O. Box 3313, Deira, Dubai, UAE;

85. Rabita Trust; Address: Room 9a, 2nd Floor, Wahdat Road, Education Town, Lahore, Pakistan; Alt. Address: Wares Colony, Lahore, Pakistan;

86. Red Sea Barakat Company Limited; Address: Mogadishu, Somalia; Alt. Address: Dubai; UAE;

87. Revival of Islamic Heritage Society (RIHS); (a.k.a. Jamiat Ihia Al-Turath Al-

Islamiya, a.k.a. Revival of Islamic Society Heritage on the African Continent, a.k.a. Jamia Ihya ui Turath) Address: Pakistan; Alt. Address: Afghanistan; Other information: Only the Pakistan and Afghanistan offices of this entity will be designated;

88. Riyadus-Salikhin Reconnaissance and Sabotage Battalion of Chechen Martyrs (RSRSBCM); (a.k.a. Riyadus-Salikhin Reconnaissance and Sabotage Battalion, a.k.a. Riyadh-as-Saliheen, a.k.a. The Sabotage and Military Surveillance Group of the Riyadh al-Salihin Martyrs, a.k.a. Firqat al-Takhrib wa al-Istitla al-Askariyah li Shuhada Riyadh al-Salihin;

89. Salafist Group for Call and Combat/GSPC (a.k.a. Le Groupe Salafiste Pour La Prediction et le Combat);

90. Somali International Relief Organization; Address: 1806 Riverside Avenue, 2nd Floor, Minneapolis, Minnesota;

91. Somali Internet Company; Address: Mogadishu, Somalia;

92. Somali Network Ab; Address: Hallybybacken 15, 70 Spanga, Sweden;

93. Special Purpose Islamic Regiment (SPIR) (a.k.a. The Islamic Special Purpose Regiment, a.k.a. The al-Jihad-Fisi-Sabilillah Special Islamic Regiment);

94. Tunisian Combatant Group (a.k.a. Groupe Combattant Tunisien);

95. Ummah Tameer E-Nau (UTN); Address: Street 13, Wazir Akbar Khan, Kabul, Afghanistan; Alt. Address: Pakistan;

96. Wafa Humanitarian Organization (a.k.a. Al Wafa, a.k.a. Al Wafa Organization; a.k.a. Wafa Al-Igatha Al-Islamia); Address: Jordan House No. 125, Street 54, Phase II Hayatabad, Peshawar, Pakistan; Alt. Address: Saudi Arabia; Alt. Address: Kuwait; Alt. Address: UAE;

97. Youssef M. Nada; Address: Via Riasc 4, Ch–6911 Campionie D'Italia I, Switzerland;

98. Youssef M. Nada & Co. Gescellschaft M.B.H.; Address: Kaertner Ring 2/2/5/22, 1010 Vienna, Austria.

Dated: August 13, 2003.

John R. Bolton,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 03–21790 Filed 8–22–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4456]

Bureau of Political-Military Affairs: Directorate of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to sections 36(c) and 36(d) and in compliance with section 36(f) of the Arms Export Control Act (22 U.S.C. 2776).

EFFECTIVE DATE: As shown on each of the twenty-three letters.

FOR FURTHER INFORMATION CONTACT: Mr. Peter J. Berry, Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202–663–2700).

SUPPLEMENTARY INFORMATION: Section 36(f) of the Arms Export Control Act mandates that notifications to the Congress pursuant to sections 36(c) and 36(d) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: August 18, 2003.

Terry L. Davis,

Acting Director, Office of Defense Trade Controls Licensing, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs.

U.S. Department of State

Washington, DC 20520,
May 28, 2003.

The Honorable Henry J. Hyde, *Chairman, Committee on International Relations, House of Representatives.*

Dear Mr. Chairman: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Japan for the production of AN/ARA–50 Automatic Direction Finder for end-use by the Japanese Defense Agency (JDA) for use on various aircraft in the Japanese inventory.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 040–03.

U.S. Department of State

Washington, DC 20520,
July 24, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the development of 155mm artillery ammunition resulting from the merging of the U.S. Army XM982 Excalibur Guided Projectile and the Swedish Trajectory Correctible Munition Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 060–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.

The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the manufacture of Rate Gyros in Sweden for the export to, and end-use by, the Indian Army in the fire control system of the ARJUN Main Battle Tank.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 021–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense articles and assistance to support the sale of the Sensor Fused Weapon to the United Arab Emirates Air Force and Air Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 048–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the overseas launch of two commercial communications satellites, either from Pacific/International waters or from French Guiana.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 050–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense articles, and assistance necessary to provide support and maintenance of the T–6A–1 Aircraft for the NATO Flying Training in Canada Program.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 057–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction contained in the attached certification concerns exports of technical data and defense services for delivery of the Estrela do Sul commercial communications satellite to Brazil.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 058–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 or more.

The transaction described in the attached certification involves the installation of "Group A" modifications for the Israeli Ministry of Defense's Compact Early Warning System (CAEW) Program, with involvement by the Government of Singapore.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 059–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to Turkey of technical data and assistance for the manufacture, testing and repair of Generation II and Generation III Night Vision Systems for sale to the Turkish Ministry of Defense and return to the United States.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 061–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export to United Kingdom of technical data and defense services for the design, development, manufacture, testing and delivery of Specified WR–21 Intercooled Recuperated Gas Turbine engine components for possible

use in Surface Ship propulsion systems of the United States, United Kingdom, France and Italy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 062–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the manufacture of a Drogue Rocket Motor and Propellant for end use in an aircraft ejection seat for the Japanese Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 066–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Haste, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles and defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export to Brazil of technical data and defense services to support the launching of a satellite into orbit.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 068–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Haste, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major defense equipment and defense articles in the amount of $25,000,000 or more.

The transaction contained in the attached certification involves the export to Turkey of two Model S–70A helicopters and one lot of spare parts and ground support equipment to fulfill the helicopter mission requirement of the Special Aviation Regiment Command of the Government of Turkey.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 070–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of technical data, defense articles, and assistance necessary to provide support and manufacture of hydraulic pumps, motors, and control systems for military aircraft and defense applications for end-use by the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 071–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Japan to support the sale of Longbow Apache helicopter to the Government of Japan.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 072–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed technical assistance agreement for the export of defense articles or defense services sold commercially under a contract in the amount of $50,000,000 of more.

The transaction described in the attached certification involves the production of applique (reactive) armor for the U.S. Army's Bradley Fighting Vehicle using Israeli design and production technology.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DDTC 073–03.

U.S. Department of State

Washington, DC 20520,

July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount of $25,000,000 or more.

The transaction contained in the attached certification involves the export to Greece of five Phalanx Close-In Weapon System Block 0 to 1A upgrades to support the Hellenic Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 074–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of major defense equipment and defense articles in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the temporary export of one AMC 10 and one AMC 11 Commercial Communications Satellite with high purity hydrazine fuel, nitrogen tetroxide oxidizer, ground support and test equipment to Russia. The AMC 10 and AMC 11 are geo-stationary direct broadcast satellites, and will be launched from Baikonur Cosmodrome aboard a Proton M/Breeze M launch vehicle. After launch and separation from the launch vehicle, the satellites are considered returned to the U.S.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 076–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad.

The transaction described in the attached certification involves the transfer of technical data, assistance and manufacturing know-how to Japan for the manufacture of Propellant Actuated Devices utilized in Crew Escape Systems for the T–4 Aircraft for end-use by the Japan Defense Agency.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 077–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Japan to continue supporting the manufacture and assembly of S–70B (SH–60J/K) helicopters (minus avionics and engines) with related support equipment and parts for sale to the Japanese Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 079–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense articles or defense services in the amount of $100,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Japan to continue supporting the manufacture and assembly of S–70A (UH–60J) helicopters (minus avionics and engines) with related support equipment and parts for sale to the Japanese Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DTC 080–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) and (d) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles that are firearms controlled under category I of the United States Munitions List sold commercially under a contract in the amount of $1,000,000 or more.

The transaction contained in the attached certification involves the export of 5,984 bolt-action and lever-action centerfire sporting rifles for commercial resale in Canada.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 082–03.

U.S. Department of State

Washington, DC 20520,
July 25, 2003.
The Honorable J. Dennis Hastert, *Speaker of the House of Representatives.*

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed manufacturing license agreement for the manufacture of significant military equipment abroad and the export of defense

articles or defense services in the amount of $50,000,000 or more.

The transaction contained in the attached certification involves the export of defense services, technical data and defense articles to Taiwan to support the manufacture and maintenance of GRC–171, RT–1272F and/or RT 1272H Ultra High Frequency Receiver Transmitters for Taiwan's Ministry of National Defense.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Paul V. Kelly,
Assistant Secretary, Legislative Affairs.
Enclosure: Transmittal No. DDTC 083–03.

[FR Doc. 03–21678 Filed 8–22–03; 8:45 am]
BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 4457]

Determination: Imposing Conditions and Restrictions on the Cuban Interests Section and Its Personnel with Respect to Acquisition and Disposition of Motor Vehicles in the United States

Summary

The United States Interests Section of the Embassy of Switzerland in Havana, Cuba ("the U.S. Interests Section") is the mission through which the U.S. communicates with the Government and people of Cuba. The Cuban Government's counterpart mission in the United States is the Cuban Interests Section of the Embassy of Switzerland in Washington. For some time, the Cuban Government has imposed a series of impediments, obstructions, denials of service, and unjustifiable costs upon the functioning of the U.S. Interests Section and living conditions of the Interests Section's employees and dependents. The Foreign Missions Act of 1982 as amended (22 U.S. Code 4301, *et. seq.*) provides the domestic legal authority for responding to these restrictions by imposing reciprocal measures such as those set out in this Determination.

Among the many areas in which Cuban authorities impose undue restrictions on the U.S. Interests Section and its personnel is that of motor vehicles. Specifically, Cuban authorities impose a variety of restrictions and impediments which have the net effect of making it inordinately difficult, if not altogether impossible to either purchase a new vehicle or resell a used one in Cuba.

To enable the U.S. Government to respond effectively to the situation described above, as well as to create for the Government of Cuba an incentive to improve the conditions it imposes upon the U.S. Interests Section, the Department of State is hereby invoking its authorities under the Foreign Missions Act to impose a series of reciprocal terms and conditions on the Cuban Interests Section in Washington, DC with respect to motor vehicles. The primary effect of these terms and conditions, which are spelled out in the text below, is to restrict the ability of the Cuban Interests Section and its personnel to purchase, lease, or sell any vehicle in the United States.

It should be noted that, upon publication of this Determination in the **Federal Register**, or upon actual notice to any party, whichever is the earlier, it will be unlawful for any person or business subject to the jurisdiction of the United States to act in a manner contrary to the terms and conditions specified below.

Persons Affected by This Action

This Determination applies primarily to the Cuban Interests Section of the Embassy of Switzerland in Washington, DC, its personnel, and the family members thereof. However, it also applies to any person subject to the jurisdiction of the United States, whether natural person, business, or other entity of any sort, that intends to sell or lease a motor vehicle to, or purchase a motor vehicle from the Cuban Interests Section or its personnel.

Legal Authority

The terms and conditions promulgated by this Determination are done so pursuant to the Foreign Missions Act of 1982, as amended, 22 U.S.C. 4301 *et seq.* ("the Act"). The Act at section 4304 authorizes the Secretary to provide "benefits" to foreign missions in the United States and to impose certain terms and conditions upon the provision of such benefits, if such action is reasonably necessary to achieve a statutory purpose identified in the act, including the interests of diplomatic reciprocity. The term "benefits" is defined in the Act at section 4302 to include any of a number of specifically enumerated goods and services, as well as "any other benefits as the Secretary may designate." 22 U.S.C. 4302(a)(1).

Pursuant to Department of State Delegation of Authority No. 214, section 14 (September 20, 1994), the authorities that the Act vests in the Secretary of State were delegated by the Secretary to the Assistant Secretary of State for Diplomatic Security, who also functions as Director of the Office of Foreign Missions.

Designation of Benefits, Findings, and Specific Determinations

Pursuant to the authority vested in me by and through the above-cited provisions of law and Designation of Authority, I hereby find and determine as follows:

(1) *Definitions:* Pursuant to the authorities contained in the Act, including the discretion contained at 22 U.S.C. 4302(b) to determine the meaning and applicability of the terms used in section 4301(a), I hereby determine that, for the purposes of this Determination, the following definitions shall apply:

(a) "Cuban Interests Section" shall mean the Cuban Interests Section of the Embassy of Switzerland in Washington, DC, including its personnel, and any dependent of such personnel, forming part of the household thereof;

(b) "motor vehicle" shall mean any motorized device intended for the purpose of transporting individuals on public streets and highways;

(c) U.S. person shall mean any natural or corporate person or entity physically present within the United States, regardless of nationality or immigration status, *except for* accredited members of foreign diplomatic or consular missions in the United States, and their accredited dependents forming parts of their households, *provided that* the foregoing exclusion shall *not* apply to any employee of such a foreign mission, or any dependent thereof, who is a U.S. citizen, permanent resident alien, or a person regarded as permanently resident" in the U.S., pursuant to the policies of the Department of State in implementing the Vienna Convention on Diplomatic Relations or the Vienna Convention on Consular Relations;

(d) "acquisition" shall mean the transfer by any U.S. person whatsoever to the Cuban Interests Section of any interest in a motor vehicle, by any method or means including, but not limited, to purchase, lease, loan, gift, hypothecation, or devise; and

(e) "disposition" shall mean the transfer by the Cuban Interests Section to any U.S. person whatsoever of any interest in a motor vehicle by any method or means including, but not limited to, sale, lease, loan, gift, hypothecation, or devise, including sale for scrap or salvage.

(2) *Designation of Benefits:* Pursuant to 22 U.S.C. 4302(a)(1), which authorizes the Secretary, or his

delegatee, to designate as a "benefit" under the Act any additional good or service beyond those enumerated in section 4302(a)(1)(A)–(G), I hereby designate as a benefit the privilege of disposing of a motor vehicle to a U.S. person within the United States. This designation of a benefit shall, as of this date, apply to all diplomatic and consular missions accredited to the United States. It is noted that the acquisition of a motor vehicle is already encompassed within the statutory designation of a "benefit", pursuant to the existing definitions in 22 U.S.C. 4301(a)(1)(C), "transportation".

(3) Based upon the facts and circumstances set forth in the Summary section above, I hereby find that with respect to the acquisition and disposition of motor vehicles, the Cuban Interests Section in Washington, its personnel, and their dependents enjoy significantly more favorable treatment than do the U.S. Interests Section in Havana, its personnel, and their dependents.

(4) I further find that, in the area of motor vehicles, the Cuban Government's treatment of the U.S. Interests Section in Havana, its personnel, and their dependents imposes additional undue and unjustifiable costs on the operation of the United States Interests Section in Havana; that it creates a source of dispute in relations between the United States and Cuba; and that the persistence of such an imbalance in the treatment of United States and Cuban diplomatic personnel in each other's state is contrary to the interests of the United States.

(5) *Determination To Deny Benefits:* In light of the findings discussed in Sections 3 and 4 above and pursuant to the statutory requirements and purposes of the Act, I hereby determine that imposition of the following terms and conditions on the acquisition and disposition of motor vehicles by or on behalf of the Cuban Interests Section in Washington is necessary on the basis of reciprocity:

(a) *Acquisitions of Vehicles:* The Cuban Interests Section shall be denied the benefit of acquiring any motor vehicle in the United States, subject only to the following exceptions:

(i) The rental of a vehicle from an established auto rental business, for a period not to exceed thirty (30) days;

(ii) The direct, duty-free importation of a vehicle from a vendor located outside the United States, utilizing the services of a manufacturer's authorized dealer, *provided that* such vehicle is less than four years old from date of manufacture and complies fully with all applicable Federal safety requirements. In order to be eligible for this exclusion, the acquisition may not be made from any pre-existing dealer stock, and the ownership and importation documentation must clearly indicate the Cuban Interests Section as the consignee/transferee of said vehicle;

(iii) The duty-free importation into the United States from abroad by the Cuban Interests Section of any motor vehicle, the pre-existing ownership of which was already in the hands of the Government of Cuba, any employee thereof, or any dependent of such employee forming part of the employee's household, provided that such vehicle is less than four years old from date of manufacture and complies fully with all applicable Federal safety requirements;

(iv) The continued ownership by the Cuban Interests Section of any vehicles that are owned as of the effective date hereof;

(v) The continued retention and use, until and not beyond the expiration of the lease term, of any motor vehicle leased by the Cuban Interests Section as of the effective date hereof;

(vi) The purchase by the Cuban Interests Section of a motor vehicle from any accredited diplomatic or consular mission in the United States, or any accredited member of such a mission, or accredited dependent thereof, enjoying privileges and immunities in the United States pursuant to international law, provided that such transaction shall constitute a bona fide arms-length purchase not entered into for purposes of collusion or evasion of the general prohibition on vehicle acquisitions being imposed by this Determination. For purposes of ascertaining the bona fide nature of any such acquisition, it shall be presumed that the acquisition of any vehicle which was registered in the name of a foreign mission or accredited member or dependent thereof for longer than 120 days satisfies the requirements of a bona fide acquisition. The present exclusion, however, shall not apply to the purchase of vehicles currently leased by the Cuban Interests Section, its members, or their dependents.

(vii) The acquisition of any motor vehicle by and through the Department of State's Office of Foreign Missions.

(b) *Dispositions of Vehicles:* The Cuban Interests Section shall likewise be denied the benefit of disposing of any motor vehicle in the United States, subject only to the following exceptions:

(i) The return of any rental vehicle to the auto rental entity concerned;

(ii) The return of any prior leased vehicle to the dealership concerned;

(iii) The sale of any vehicle to any diplomatic or consular mission to the United States, any accredited member thereof, or any accredited dependent forming part of the household of such member, provided that such member or dependent is not a "U.S. person" as defined in Section 1(C), above; and

(iv) The sale of any vehicle by and through the Department of State's Office of Foreign Missions.

(c) *No Restriction on Exports or Imports of Vehicles:* Nothing in this Determination shall in any way operate to limit or restrict the right of the Cuban Interests Section, its personnel, and dependents thereof to import or export motor vehicles for mission or personal use from or to sources outside the United States.

(6) *Waiver of Recourse:* Pursuant to the Act at section 4304(d) and the Delegation of Authority thereunder, I hereby find and determine that, for the purposes of implementing the present restrictions on motor vehicle benefits, it is reasonably necessary in order to achieve the purposes set forth in the Act at § 4304, to require that the acceptance and use of all motor vehicle license tags issued by the Office of Foreign Missions to the Cuban Interests Section be conditioned, consistent with U.S. international obligations, as follows:

(a) The Cuban Interests Section, shall waive any recourse that the Interests Section, its agents or assigns may have in U.S. courts or administrative tribunals against any person or party with respect to any past, present, or future motor-vehicle-related transaction, whether such transaction is contracted for or has actually been concluded.

(b) Pursuant to the Act at 22 U.S.C. 4304(d) of the Act, I hereby designate the Deputy Director of the Office of Foreign Missions to be the agent for the Cuban Interests Section for purposes of effectuating such a waiver of recourse.

(c) The requirement for such waiver of recourse shall constitute a condition both as regards the continued use of license tags previously issued to the Cuban Interests Section as well as the acceptance and use of license tags in the future.

(7) *Enforcement:* Pursuant to the Act at 22 U.S.C. 4311, provision to the Cuban Interests Section of any motor vehicle-related benefit contrary to the terms and conditions set forth above shall be unlawful. The United States is authorized to bring legal action to obtain compliance with the aforementioned terms and conditions.

(8) *Date of Effect:* The provisions of this Determination shall take effect upon the earlier of (a) its publication in

the **Federal Register**; or (b) actual notice to any party or person affected hereby.

(9) Publication of this Determination in the **Federal Register** constitutes notice to persons subject to the jurisdiction of the United States that terms and conditions on the acquisition and disposition of vehicles by the Cuban Interests Section are hereby imposed. Compliance with such terms and conditions are required by the Act. Persons wishing clarification as to the applicability of this Determination may contact the Office of Foreign Missions, U.S. Department of State, Washington, DC 20520; or by telephone: (202) 647–4554.

Dated: August 8, 2003.

Francis X. Taylor,

Assistant Secretary of State for Diplomatic Security and Director, Office of Foreign Missions, Department of State.

[FR Doc. 03–21677 Filed 8–22–03; 8:45 am]

BILLING CODE 4710–43–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1547).

TIME AND DATE: 9 a.m. (EDT), August 27, 2003; TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

Approval of minutes of meeting held on July 30, 2003.

New Business

A—Budget and Financing

A1. Rate change and rate adjustment.

A2. Approval of short-term borrowing from the United States Treasury.

C—Energy

C1. Contract with Tool Smith Company, Inc., for purchase, repair, and rental of power tools.

C2. Contracts with the following companies for construction/modification services for TVA's Facilities Management and River System Operations and Environment organizations: Raines Brothers, Inc.; Schaerer Contracting Company, Inc.; and Vega Corporation, all of Chattanooga, Tennessee; Commercial Contracting Company, Maryville, Tennessee; Stethen-Smith Construction Company, Knoxville, Tennessee; Johnson Contractors, Inc., and Cates & Puckett Construction Company, Inc., both of Muscle Shoals, Alabama; B. H. Craig Construction Company, Inc., Florence, Alabama; Morsey, Inc., Calvert City, Kentucky; and M. P. Lawson Construction, Inc., Paducah, Kentucky.

E—Real Property Transactions

E1. Public auction sale of approximately 1.6 acres of land adjacent to the Singleton Laboratory site on Fort Loudoun Reservoir in Blount County, Tennessee, Tract No. XFL–135.

E2. Abandonment of certain transmission line easement rights affecting approximately 23.0 acres of land, Tract Nos. KDHR–2, KDHR–4, and KDHR–5, to Vulcan Materials, in exchange for transmission line easement rights affecting approximately 24.6 acres of land in Livingston County, Kentucky, Tract No. 2KDHR–1.

E3. Abandonment of certain transmission line easement rights affecting approximately 12.8 acres of land, Tract Nos. WGFL–2, WGFL–3, WGFL–4, TRF–12, and TRF–13, to BP Amoco Chemical Company, in exchange for transmission line easement rights affecting approximately 39.14 acres of land in Morgan County, Alabama, Tract No. MECT–1.

E4. Grant of a 30-year term public recreation easement for use as a public park to the City of Stevenson, Alabama, affecting approximately 122 acres of land on Guntersville Reservoir in Jackson County, Alabama, Tract No. XTGR–83RE.

E5. Grant of permanent and temporary construction easements to the State of Tennessee for a highway improvement project affecting approximately .53 acre of land on the Norton Hill Microwave Repeater Station site in Madison County, Tennessee, Tract No. XTWJRS–1H.

E6. Grant of a permanent easement to the State of Tennessee for a highway improvement project affecting approximately .4 acre of land on Watts Bar Reservoir in Roane County, Tennessee, Tract No. XTWBR–144H.

F—Other

F1. Designation of Edwin W. Small and Michael L. Wills as Assistant Secretaries of TVA.

F2. Approval to file condemnation cases to acquire easements and rights-of-way for a TVA power transmission line project affecting the Leake-Singleton Transmission Line in Leake County, Mississippi.

Information Items

1. Approval to enter into a financial arrangement associated with a call provision which TVA has on its 1993 Series F Power Bonds and for delegations to take related actions.

2. Approval of the issuance, sale, and delivery of TVA Power Bonds.

3. Approval of the appointment of John M. Hoskins to the Board of Directors of the TVA Retirement System.

4. Approval of a contract with KEMA, Inc., to provide project management and engineering support in connection with TVA's Power System Optimization Project.

5. Approval of an amendment to the Business Practice entitled, "The Acquisition and Disposal of Fossil Fuels and Related Transportation and Storage."

6. Sale of a permanent easement to Kentucky Utilities Company for a 69kV double circuit transmission line, affecting approximately 4.47 acres of land on Kentucky Reservoir Dam Reservation in Livingston County, Kentucky, Tract No. XGIR–939T.

7. Approval to file condemnation cases to acquire easements and rights-of-way for TVA power transmission line projects affecting the Batesville-Blue Goose Transmission Line in Panola and Tate Counties, Mississippi, and the John Sevier-Alcoa Loop into State Route 160 Substation Transmission Line in Hamblen County, Tennessee.

8. Approval of a revised Business Practice 12 entitled, "Legal Representation."

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: August 20, 2003.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 03–21726 Filed 8–21–03; 10:36 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Proposed United States–Bahrain Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to initiate negotiations on a free trade agreement between the United States and Bahrain,

request for comments, and notice of public hearing.

SUMMARY: The United States intends to initiate negotiations with Bahrain on a free trade agreement. The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to assist the United States Trade Representative (USTR) in amplifying and clarifying negotiating objectives for the proposed agreement and to provide advice on how specific goods and services and other matters should be treated under the proposed agreement.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as their testimony, by October 17, 2003. A hearing will be held in Washington, DC, beginning on November 5, 2003 and will continue as necessary on subsequent days. Written comments are due by noon, November 17, 2003.

ADDRESSES: Submissions by electronic mail: *FR0092@ustr.gov* (notice of intent to testify and written testimony); *FR0093@ustr.gov* (written comments). Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. (*See* requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–3475. All other questions should be directed to Jason Buntin, Director for Western Europe and Middle East Affairs at (202) 395–3320.

SUPPLEMENTARY INFORMATION:

1. Background

Under section 2104 of the Trade Act of 2002 (Trade Act) (19 U.S.C. 3804), for agreements that will be approved and implemented through trade promotion authority (TPA) procedures, the President must provide the Congress with at least 90 days written notice of his intent to enter into negotiations and must identify the specific objectives for the negotiations. Before and after the submission of this notice, the President must consult with appropriate Congressional committees and the Congressional Oversight Group (COG) regarding the negotiations. Under the Trade Act of 1974, as amended, the President must (i) afford interested persons an opportunity to present their views regarding any matter relevant to any proposed agreement, (ii) designate an agency or inter-agency committee to hold a public hearing regarding any proposed agreement, and (iii) seek the advice of the U.S. International Trade Commission (ITC) regarding the probable economic effects on U.S. industries and consumers of the removal of tariffs and non-tariff barriers on imports pursuant to any proposed agreement.

On August 4, 2003, after consulting with relevant Congressional committees and the COG, the USTR notified the Congress that the President intends to initiate free trade agreement negotiations with Bahrain and identified specific objectives for the negotiations. In addition, the USTR has requested that the ITC provide its advice on probable economic effects no later than December 13, 2003. This notice solicits views from the public on these negotiations and provides information on a hearing that will be conducted pursuant to the requirements of the Trade Act of 1974.

2. Public Comments and Testimony

To assist the Administration as it continues to develop its negotiating objectives for the proposed agreement, the Chairman of the TPSC invites written comments and/or oral testimony of interested persons at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of Bahrain, any concession that should be sought by the United States, or any other matter relevant to the proposed agreement. The TPSC invites comments and testimony on all of these matters and, in particular, seeks comments and testimony addressed to:

(a) General and commodity-specific negotiating objectives for the proposed agreement.

(b) Economic costs and benefits to U.S. producers and consumers of removal of tariffs and non-tariff barriers to U.S.-Bahrain trade.

(c) Treatment of specific goods (described by Harmonized System tariff numbers) under the proposed agreement, including comments on

(1) product-specific import or export interests or barriers,

(2) experience with particular measures that should be addressed in the negotiations, and

(3) in the case of articles for which immediate elimination of tariffs is not appropriate, a recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure Bahraini origin of imported goods, and appropriate rules of origin for goods entering the United States under the proposed agreement.

(e) Existing Bahraini sanitary and phytosanitary measures and technical barriers to trade.

(f) Existing barriers to trade in services between the United States and Bahrain that should be addressed in the negotiations.

(g) Relevant trade-related intellectual property rights issues that should be addressed in the negotiations.

(h) Relevant investment issues that should be addressed in the negotiations.

(i) Relevant government procurement issues that should be addressed in the negotiations.

(j) Relevant environmental and labor issues that should be addressed in the negotiations.

Comments identifying as present or potential trade barriers laws or regulations that are not primarily trade-related should address the economic, political and social objectives of such regulations and the degree to which they discriminate against producers of the other country. At a later date, the USTR, through the TPSC, will publish notice of reviews regarding (a) the possible environmental effects of the proposed agreement and the scope of the U.S. environmental review of the proposed agreement, and (b) the impact of the proposed agreement on U.S. employment and labor markets.

A hearing will be held on November 5, 2003, in Rooms 1 and 2, 1724 F Street, NW, Washington, DC. If necessary, the hearing will continue on subsequent days. Persons wishing to testify at the hearing must provide written notification of their intention October 17, 2003. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraphs) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement) to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact the TPSC Executive Secretary. Interested persons, including persons who participate in the hearing, may submit written comments by noon, November 17, 2003. Written comments may include rebuttal points demonstrating

errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects (such as investment, intellectual property and/or government procurement).

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile.

Persons making submissions by e-mail should use the following subject line: "United States-Bahrain Free Trade Agreement" followed by (as appropriate) "Notice of Intent to Testify," "Testimony," or "Written Comments." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-," and the file name of the public version should begin with the characters "P-." The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "Business Confidential" at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–21679 Filed 8–22–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 12, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 24, 2003 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0011.
Form Number: TTB F 5150.19.
Type of Review: Extension.
Title: Formula and/or Process for Articles Made with Specially Denatured Spirits.
Description: TTB F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. TTB uses the information provided on the form to insure the manufacturing formulas and processes conform to the requirement of 26 U.S.C. 5273.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 2,683.
Estimated Burden Hours Per Respondent: 54 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 2,415 hours.

OMB Number: 1513–0012.
Form Number: TTB F 5150.186.
Type of Review: Extension.
Title: User's Report of Denatured Spirits.
Description: The information on TTB F 5150.18 is used to pinpoint unusual activities in the use of specially denatured spirits. The form shows a summary of activities at permit premises. TTB examines and verifies certain entries on these reports to identify unusual activities, errors and omissions.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 2,765.
Estimated Burden Hours Per Respondent: 18 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 830 hours.

OMB Number: 1513–0029.
Form Number: TTB F 5120.20.
Type of Review: Extension.
Title: Certification of Tax Determination—Wine.
Description: TTB F 5120.20 supports the exporter's claim for drawback, as the producing winery verifies that the wine being exported was in fact taxpaid.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Respondent: 30 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 500 hours.

OMB Number: 1513–0038.
Form Number: TTB F 5100.16.
Type of Review: Extension.
Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.
Description: TTB F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. TTB uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 250.
Estimated Burden Hours Per Respondent: 12 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 300 hours.

OMB Number: 1513–0039.

Form Number: TTB F 5110.11.
Recordkeeping Requirement ID Number: TTB REC 5100/02.
Type of Review: Extension.
Title: Distilled Spirits Plants Warehousing Records, TTB REC 5110/02 and Reports, TTB F 5110.11.
Description: The information collected is used to account for proprietor's tax liability, adequacy of bond coverage and protection of the revenue. It also provides data to analyze trends, audit plant operations, monitor industry activities and compliance to provide for efficient allocation of field personnel plus provide for economic analysis.
Respondents: Business of other for-profit.
Estimated Number of Respondents/Recordkeepers: 230.
Estimated Burden Hours Per Respondent/Recordkeeper: 2 hours.
Frequency of Response: Monthly.
Estimated Total Reporting/Recordkeeping Burden: 5,520 hours.

OMB Number: 1513–0045.
Recordkeeping Requirement ID Number: TTB REC 5110/06.
Type of Review: Extension.
Title: Distilled Spirits Plants—Excise Taxes.
Description: Collection of information is necessary to account for and verify taxable removals of distilled spirits. The data is used to audit tax payments.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 133.
Estimated Burden Hours Per Recordkeeper: 26 hours.
Frequency of Response: Weekly.
Estimated Total Recordkeeping Burden: 3,458 hours.

OMB Number: 1513–0046.
Form Number: TTB F 5110.38.
Type of Review: Extension.
Title: Formula for Distilled Spirits under the Federal Alcohol Administration Act (Supplemental).
Description: TTB F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is used by TTB to ensure that a product is made and labeled properly and to audit distilled spirits operations.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 200.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4,000 hours.

OMB Number: 1513–0049.
Form Number: TTB F 5110.43.
Recordkeeping Requirement ID Number: TTB REC 5110/4.
Type of Review: Extension.
Title: Distilled Spirits Plants (DSP Denaturation Records and Reports).
Description: The information collected is necessary to account for and verify the denaturation of distilled spirits. It is used to audit plant operations, monitor the industry for the efficient allocation of personnel resources, and compile statistics for government economic planning.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 98.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.
Frequency of Response: Monthly.
Estimated Total Reporting Burden: 1,176 hours.

OMB Number: 1513–0056.
Recordkeeping Requirement ID Number: TTB REC 5110/5.
Type of Review: Extension.
Title: Distilled Spirits Plants (DSP)—Transaction and Supporting Records.
Description: Transaction records provide the source data for accounts of distilled spirits in all DSP operations. They are used by DSP proprietors to account for spirits and by TTB to verify those accounts and consequent tax liabilities.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 278.
Estimated Burden Hours Per Recordkeeper: 22 hours.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 6,060 hours.

OMB Number: 1513–0080.
Recordkeeping Requirement ID Number: TTB REC 5110/12.
Type of Review: Extension.
Title: Equipment and Structures.
Description: Marks, signs and calibrations are necessary on equipment and structures at a distilled spirits plant for the identification of major equipment and the accurate determination of contents.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 281.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1513–0081.
Recordkeeping Requirement ID Number: TTB REC 5110/9.
Type of Review: Extension.
Title: Registration and Records of Vinegar Vaporizing Plants.
Description: Data is necessary to identify persons producing and using distilled spirits in the manufacture of vinegar and to account for spirits so produced and used.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 1.
Estimated Burden Hours Per Recordkeeper: 1 hour.
Estimated Total Recordkeeping Burden: 1 hour.

OMB Number: 1513–0082.
Recordkeeping Requirement ID Number: TTB REC 5170/7.
Type of Review: Extension.
Title: Alternate Methods of Procedures and Emergency Variations from Requirements for Exports of Liquors.
Description: TTB allows exporters to request approval of alternate methods from those specified in regulations under 27 CFR part 252. TTB uses the information to evaluate need, jeopardy to the revenue, and compliance with law. Also used to identify areas where regulations need change.
Respondents: Business or other for-profit.
Estimated Number of Recordkeepers: 500.
Estimated Burden Hours Per Recordkeeper: 24 minutes.
Estimated Total Recordkeeping Burden: 200 hours.

OMB Number: 1513–0084.
Form Number: None.
Type of Review: Extension.
Title: Labeling of Sulfites in Alcoholic Beverages.
Description: In accordance with our consumer protection responsibilities, as mandated by law, TTB requires label disclosure statements on all alcoholic beverage products released from U.S. bottling premises or customs custody that contain 10 parts per million or more of sulfites.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 4,787.
Estimated Burden Hours Per Respondent: 40 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 3,159 hours.

OMB Number: 1513–0106.
Form Number: None.
Type of Review: Extension.

Title: Recordkeeping Requirements for Importers of Tobacco Products.

Description: Importers of tobacco products are required to maintain records of physical receipts and disposition of tobacco products to be able to prepare TTB Form 5220.6 a monthly report. Importers of tobacco products will consist of both large and small businesses that operate for a profit.

Respondents: Business or other for-profit.

Estimated Number of Recordkeepers: 1,500.

Estimated Burden Hours Per Recordkeeper: 1 hour.

Frequency of Response: Monthly.

Estimated Total Recordkeeping Burden: 1 hour.

Clearance Officer: Jacqueline White (202) 927–8930, Alcohol and Tobacco Tax and Trade Bureau, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–21534 Filed 8–22–03; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 15, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 24, 2003 to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: 1535–0004.

Form Number: PD F 1522.

Type of Review: Extension.

Title: Special Form of Request for Payment of U.S. Savings and Retirement Securities Where Use of a Detached Request is Authorized.

Description: Used to request payment of U.S. Savings Securities.

Respondents: Individuals or households.

Estimated Number of Respondents: 56,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 14,000 hours.

OMB Number: 1535–0005.

Form Number: PD F 3253.

Type of Review: Extension.

Title: Exchange Application for U.S. Savings Bonds of Series HH.

Description: Used by owners of Series EE/E bonds to request exchange for Series HH bonds.

Respondents: Individuals or households.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Per Respondent: 40 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 39,960 hours.

OMB Number: 1535–0006.

Form Number: PD F 2458.

Type of Review: Extension.

Title: Certificate of Entitlement to U.S. Savings Bonds/Checks after Administration of Estate.

Description: Used to establish entitlement of savings bonds after estate is settled.

Respondents: Individuals or households.

Estimated Number of Respondents: 7,000.

Estimated Burden Hours Per Respondent: 8 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 938 hours.

OMB Number: 1535–0008.

Form Number: PD F 1938.

Type of Review: Extension.

Title: Request for Reissue of U.S. Savings Bonds to Remove Name of One or More Living Registrants.

Description: Used to request reissue of savings bonds to remove one or more living registrants.

Respondents: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 460 hours.

OMB Number: 1535–0015.

Form Number: PD F 1022.

Type of Review: Extension.

Title: Report/Application for Relief of Loss, Theft or Destruction of Bearer Securities (Organizations).

Description: Used to obtain relief for lost, stolen or destroyed bearer securities.

Respondents: Business of other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 92 hours.

OMB Number: 1535–0016.

Form Number: PD F 1022–1.

Type of Review: Extension.

Title: Report/Application for Relief of Loss, Theft or Destruction of Bearer Securities (Individuals).

Description: Used to request relief because of the loss, theft or destruction of bearer securities.

Respondents: Individuals or households.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 55 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 92 hours.

OMB Number: 1535–0067.

Form Number: PD F 0974.

Type of Review: Extension.

Title: Affidavit of Forgery for United States Savings Bonds.

Description: Used to certify that signature was forged.

Respondents: Individuals or households.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 750 hours.

OMB Number: 1535–0098.

Form Number: PD F 3062–4.

Type of Review: Extension.

Title: Claim for Relief on Account of the Nonreceipt of United States Savings Bonds.

Description: Application by owner to request a substitute bond in lieu of bond not received.

Respondents: Individuals or households.

Estimated Number of Respondents: 30,000.

Estimated Burden Hours Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 5,010 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public

Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Joseph F. Lackey, Jr. (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 03–21535 Filed 8–22–03; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Government-Owned Invention Available for Licensing

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The invention listed below is owned by the U.S. Government as represented by the Department of Veterans Affairs, and is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Patrick Hallinan, Department of Veterans Affairs, National Cemetery Administration, Office of Field Programs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: 202–273–5226 (this is not a toll-free number). Any request for information should include the Number and Title for the relevant invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: 60/458,966 "Mower Trimmer Combination".

Approved: August 14, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–21645 Filed 8–22–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
August 25, 2003

Part II

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 2, et al.
Hydroelectric Licensing Under the Federal Power Act; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2, 4, 5, 9, 16, 375 and 385

[Docket No. RM02–16–000; Order No. 2002]

Hydroelectric Licensing Under the Federal Power Act

July 23, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations pertaining to hydroelectric licensing under the Federal Power Act. The revisions create a new licensing process in which a potential license applicant's pre-filing consultation and the Commission's scoping pursuant to the National Environmental Policy Act (NEPA) are conducted concurrently, rather than sequentially. The revised rules also provide for increased public participation in pre-filing consultation; development by the potential applicant of a Commission-approved study plan; better coordination between the Commission's processes, including NEPA document preparation, and those of Federal and state agencies with authority to require conditions for Commission-issued licenses; encouragement of informal resolution of study disagreements, followed by dispute resolution, and schedules and deadlines.

The traditional licensing process is being retained, and modified by increased public participation and additional time before an application for water quality certification must be filed. No changes are being made to the Alternative Licensing Process (ALP).

For a period of two years from the date of issuance of the new rule, potential license applicants will be permitted to elect to use the traditional or the integrated licensing process, or to request authorization to use the ALP. Thereafter, the integrated process will become the default, and Commission approval will be required to use the traditional process or the ALP.

Under the revised rules, a new part 5 will be added to Title 18 of the Code of Federal Regulations and 18 CFR parts 2, 4, 9, 16, 375, and 385 will be amended to implement the new procedures.

EFFECTIVE DATE: The rule will become effective October 23, 2003.

FOR FURTHER INFORMATION CONTACT: John Clements, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, 202–502–8070.

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Appendix

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, and Nora Mead Brownell.

I. Introduction

1. In this final rule, the Federal Energy Regulatory Commission (Commission) amends its regulations for licensing of hydroelectric power projects by establishing a new licensing process. The amendments are the culmination of efforts by the Commission, other Federal and state agencies, Indian tribes, licensees, and members of the public to develop a more efficient and timely licensing process, while ensuring that licenses provide appropriate resource protections required by the Federal Power Act (FPA) and other applicable laws.

2. The new licensing process is designed to create efficiencies by integrating a potential license applicant's pre-filing consultation with

the Commission's scoping pursuant to the National Environmental Policy Act (NEPA).[1] Highlights of this "integrated" process include:

- Increased assistance by Commission staff to the potential applicant and stakeholders during the development of a license application;
- Increased public participation in pre-filing consultation;
- Development by the potential applicant of a Commission-approved study plan;
- Opportunities for better coordination between the Commission's processes, including NEPA document preparation, and those of Federal and state agencies and Indian tribes with authority to require conditions for Commission-issued licenses;
- Encouragement of informal resolution of study disagreements, followed by study dispute resolution; and
- Issuance of public schedules.

3. In response to oral and written comments on the Notice of Proposed Rulemaking (NOPR),[2] public drafting workshops, and additional consultations with other Federal agencies, the following significant modifications have been made to the integrated process in the final rule:

- The content and distribution requirements for the Pre-Application Document (PAD) have been changed to make it less burdensome on potential applicants and easier for recipients to use;
- More time has been provided for potential applicants and participants to develop and informally resolve differences concerning study needs;
- A technical conference open to all participants has been added to the formal dispute resolution process;
- The draft license application has been replaced by a less burdensome "Preliminary Licensing Proposal";
- The deadline for filing a water quality certification application has been extended to 60 days after the ready for environmental analysis notice;
- The integrated process will become the default process in two years; in the interim license applicants may choose the integrated process or the traditional process as it is currently constituted; and
- We are withdrawing our proposal to permit a cooperating agency for NEPA document preparation to also intervene in the relevant proceeding.

We believe that the changes we are adopting will significantly improve the integrated licensing process.

4. We also proposed in the NOPR to modify the traditional process by increasing public participation in pre-filing consultation, adding mandatory, binding dispute resolution, and extending the deadline for filing an application for water quality certification. We have decided not to include mandatory, binding pre-filing dispute resolution, but are adopting the other proposals.[3]

5. To improve consultation with Indian tribes, we are establishing the position of tribal liaison, providing in the regulations for a meeting between the Commission and interested Indian tribes at the beginning of the licensing process, and issuing simultaneously with this final rule a Tribal Consultation Policy applicable to the hydroelectric, gas, and electric programs.

6. No changes will be made to the alternative licensing procedures (ALP).

7. The Commission appreciates the active participation and thoughtful comments provided by the industry representatives, Federal and state resource agencies, Indian tribes, and members of the public in this proceeding. We believe the provisions of the final rule, discussed below, fully take into consideration the interests of all of the stakeholders and will establish an integrated licensing process that serves the public interest.

II. Background

8. The background of this proceeding was set forth in detail in the NOPR, and need not be repeated here. Since the NOPR was issued on February 21, 2003, the Commission has held public and tribal regional workshops to hear and consider stakeholder concerns about the proposed rule, and to find stakeholder consensus on recommendations to resolve those concerns.[4] Written comments were due by April 21, 2003.[5] Thereafter, we held a four-day stakeholder drafting session from April 29, 2003 to May 2, 2003, at Commission headquarters. At the stakeholder drafting sessions, participants were divided into four groups: Studies, Overall Process, Dispute Resolution, and Tribal issues, with each group including members from all the major stakeholder groups. The goal of the drafting sessions was to develop consensus recommendations on final rule language.

9. Following the drafting sessions, the Commission staff held additional discussion and drafting sessions with other Federal agencies before preparing the final rule.

III. Discussion

A. Need for New Integrated Process Confirmed

10. Many commenters commended the Commission for undertaking the rulemaking and indicated that the proposed integrated licensing process holds strong promise of accomplishing its objectives.[6] The commenters also provided hundreds of general and specific recommendations regarding how the proposed rule might be improved. After careful review of these comments, we affirm the need for the proposed rule and conclude that we should finalize it with certain modifications discussed below.

11. A few commenters[7] question the need for an integrated process. They are not convinced that it will simplify matters or reduce the time needed for licensing, and think it is certain to be more expensive for license applicants. WPSR is disappointed that the rule does not resolve their concerns about the exercise by federal and state agencies of mandatory conditioning authority. WPSR adds that the integrated process will be overly burdensome for small projects and that the dispute resolution provisions and proposed change in the cooperating agencies policy unreasonably diminish the role of the applicant. SCE and Georgia DNR state that the objectives of the integrated process could be achieved by modifying the traditional process, the consensus-based ALP,[8] or both.[9] These concerns are addressed in the following pages.[10]

12. We are committed to making the integrated process a success. Potential applicants who choose this process during the transition period may rest assured that the Commission will

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[1] 42 U.S.C. 4321, *et seq.*

[2] 68 FR 13988 (Mar. 21, 2003); IV FERC Stats. & Regs. ¶32,568 (Feb. 20, 2003).

[3] For the convenience of commenters on the proposed rule, a redline/strikeout version of the affected regulatory text will be posted on the hydroelectric page of the Commission's website.

[4] The regional workshops were held in Portland, Oregon; Sacramento, California; Charlotte, North Carolina; Manchester, New Hampshire; Milwaukee, Wisconsin; and Washington, D.C.

[5] Entities that filed comments in response to the NOPR are listed in the Appendix to the preamble. For administrative ease, the commenters' names are abbreviated in the preamble, as indicated on the Appendix. On April 21, 2003, the California Public Utilities Commission filed a notice of intervention. However, rulemaking proceedings do not have parties.

[6] Virginia DEQ, WGA, WPPD, Interior, PCWA, EPA, Advisory Council, VANR, WPPD, Alabama Power, AmRivers, PG&E, Long View, NHA.

[7] SCE, NEU, Xcel, Georgia DNR

[8] *See* 18 CFR 4.34(i).

[9] SCE's detailed recommendations for improvements to the traditional process are discussed in Section III.T.

[10] Some commenters, such as WPSR, state that the rulemaking should have focused on a perceived unreasonable exercise of authority by agencies with mandatory conditioning authority. As we explained in the NOPR, this is a matter that should be addressed elsewhere.

dedicate the resources necessary to meet our goals for the process. To this end, the Office of Energy Projects has established outreach and training teams to promote the integrated process and educate participants in its implementation.

13. It is also our intention to conduct an effectiveness study of the integrated process in order to quantify the resulting reductions in processing time and costs.

B. Number of Processes

14. The NOPR proposed to retain both the traditional process and the ALP in light of comments by industry that a single process is not suitable for all projects and that the integrated process and ALP might be too time constrained or resource intensive for small projects. We also proposed to retain the ALP in light of its demonstrated track record of reducing license application processing times and fostering settlement agreements.[11]

15. We discussed the concerns of environmental groups, and some agencies and Indian tribes, that multiple processes would confuse participants with modest resources, particularly those that rely on volunteers. We concluded that the benefits of having different processes that can be applied to differing circumstances outweighs this concern. We also proposed to require any potential applicant wishing to use the traditional process to obtain Commission authorization to do so, and to provide an opportunity for all stakeholders to comment on the request.[12]

16. Industry commenters and a few others continue to support retaining the traditional process and ALP. They state that flexibility is required by the diversity of project circumstances, issues, and stakeholders; the traditional process and ALP have both been shown to be effective under the right circumstances; the integrated process is too costly and labor-intensive for many small projects and for small stakeholders; and the integrated process is not suitable where stakeholders and the potential applicant are very polarized. They add that the integrated process is untested and that the traditional process needs to be retained as a backstop if an ALP or the integrated process break down.[13]

17. Agency and non-governmental organization (NGO) commenters continue overwhelmingly to favor one integrated process sufficiently flexible to accommodate the diverse circumstances of license applications. They, along with SCE, reiterate that the existing two processes are already confusing, making participants unclear about their rights and duties, and making it difficult for parties with few human and financial resources to effectively participate. A third process, they say, will make matters worse. Some also question the logic of retaining a traditional process which they say stakeholders agree does not achieve the goals of the integrated process.[14] Several note that one process would obviate the need for time in the process to comment on the potential applicant's process proposal.[15]

18. California adds that there is no reason to retain the traditional process because the information requirements and scope and level of analysis are essentially the same as those of the integrated process, so costs should be similar; that polarization is irrelevant if both processes have mandatory, binding study dispute resolution; and project size is no indicator that the issues will be relatively simple or few.

19. SCE also asserts that the revised traditional process, if supplemented by the PAD, more early identification of issues and study design, study request criteria, and study dispute resolution, would differ from the integrated process and the ALP only with respect to the timing of NEPA process. This, says SCE, would make the integrated process needless, so the Commission should just make appropriate modifications to the traditional process.

20. Upon review of the comments, we remain convinced that having three processes is the most effective means of ensuring that the licensing process used is suited to the circumstances of the project, consistent with our intention to reduce the time required for the process without sacrificing resource protection standards. The process selection for each licensing proceeding will be made at the outset, so stakeholders should not be confused about which process they are in. We designed the integrated process to show the steps clearly in sequence from beginning to end and to be as self-contained (*i.e.*, with a minimum of cross-referencing to parts 4 and 16) as is practicable. To the extent stakeholders are concerned about process ambiguities in the ALP, they can negotiate the terms of participation. The Commission staff also stands ready to assist in clearing up any remaining ambiguities about what the regulations may require.

21. We also disagree with those who imply that the traditional process never works well. About one third of traditional license process proceedings are concluded before the existing license expires. The most common reason for delay in the remaining cases is lack of state water quality certification. As discussed below,[16] the integrated licensing process addresses this by providing opportunities and inducements for water quality certification agencies and tribes to participate from the beginning of pre-filing consultation.

22. Some commenters recommend that we consider establishing a sunset provision to eliminate or phase out the traditional process, ALP, or both when the integrated process has become sufficiently established and fine-tuned in light of experience.[17] We agree this idea may have merit. It is our intention to conduct an ongoing review of the progress being made in realizing the goals of the integrated process. If it becomes clear in the future that the integrated process is substantially meeting these goals and the traditional process is not, then it may be appropriate to eliminate the traditional process at that time.

C. Pre-NOI Activity

1. Filing Date for NOI and PAD

23. In the NOPR we rejected California's recommendation that the regulations be modified to move the deadline date for the notification of intent to seek a license (NOI) forward to 6.5 years before license expiration because it would be inconsistent with our goal of developing a more timely process. We stated that in the great majority of cases, a license applicant should be able to complete the pre-filing aspects of the integrated process in the three and one-half year period provided for in the regulations.[18]

24. Several commenters request that we reconsider our position, and specifically authorize licensees to voluntarily issue the NOI and circulate

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[11] 68 FR 13988 at p. 13991–992; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,698–699.

[12] The requirement for a consensus to support approval of a request to use the ALP would be unchanged. *See* 18 CFR 4.34(i).

[13] NHA, Idaho Power, EEI, WUWC, SCE, Alabama Power, NEU, WPPD, WPSC, Snohomish, CSWC, FWS, CHI, Maryland DNR, Minnesota DNR. NF Rancheria states that the rules should clarify what would happen if the ALP or integrated process break down, and that any change of process should consider impacts to participants other than the potential applicant.

[14] MDEP, HRC, CRITFC, Nez Perce.

[15] Wisconsin DNR, PFMC, CHRC, Whitewater, SC League, IRU, Interior, CRITFC, RAW, Georgia DNR, HRC.

[16] *See* Sections III.F, G, and M.2.

[17] HRC, AmRivers, Washington, RAW, AMC, NPS, Georgia DNR.

[18] 68 FR 13988 at pp. 13992–993; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,701.

the PAD prior to 5.5 years before license expiration.[19] They reiterate that the FPA requires only that the NOI be filed no later than five years before the license expires and that some cases simply take longer. They cite the diversity of stakeholder interests, development of complex study plans, and unpreventable gaps between approval of a study plan and commencement of studies owing to seasonal considerations and the time needed to negotiate contracts with consultants. They state that adding three to six months at the front end will, in many cases, permit an additional field season of studies before the application deadline, thus increasing the likelihood that the application will be complete when filed. They stress that the goal should be to conclude the licensing proceeding and put into place improved terms and conditions before an existing license expires, and that maintaining an unrealistic time frame for commencing the process will result in the continued issuance of unnecessary annual licenses.[20]

25. NHA and Longview suggest that an alternative would be to permit the applicant to issue the PAD before the earliest date the NOI can be filed if resource agencies and stakeholders approve. They state however that this is much less desirable because stakeholders could decline to participate before the NOI is filed, forcing the potential applicant to repeat steps already completed with some stakeholders after the NOI is filed.

26. These advocates of commencing the licensing process before the NOI is issued are correct that some proceedings will exceed 5.5 years, notwithstanding the best efforts of all participants. They base their comments however on experience under the traditional process, which lacks the crucial features of the integrated process designed to minimize delays. If all stakeholders work together in good faith, the integrated process should minimize the number of instances where a new license application proceeding cannot be concluded before the existing license expires by integrating pre-filing consultation and development of the Commission's NEPA document and resolving study disputes early in the process.

2. Advance Notice

27. In the NOPR we proposed to issue to licensees an advance notice of license expiration. This would be done sufficiently in advance of the NOI deadline date to ensure that the existing licensee is alerted to the requirements for the NOI, PAD, and any potential request to use the traditional process or ALP. We noted that because the advance notice is an administrative action which requires no action on the part of any other entity, and which will be undertaken regardless of the process selected, there is no need to include this action in the regulations. [21]

28. Some commenters state that the advance notice should be included in the regulations because it notifies stakeholders as well as the existing licensee. Barring that, some request publication of a written policy on when the notice will be issued and its contents.[22] Suggestions in this regard include reminding the licensee that seasonal study considerations may be relevant to timely application development [23] and giving directions to contact resource agencies and assemble a list of entities to be consulted and potential issues to address.[24] CHRC and Whitewater similarly recommend that the Commission issue public notice when the advance notice is issued.

29. There is no need to put the advance notice in the regulations. The Commission has for many years published in its annual report and annually in the **Federal Register** a table showing the projects for which the license will expire during the succeeding six years and providing essential information about each project's physical and geographical characteristics.[25] The Commission's annual report is posted on the Commission's Web site.

30. A written policy on the content of the notice would be superfluous. As stated above, the purpose of the notice is to alert licensees to the requirements for the NOI, PAD, and any potential request to use the traditional process or ALP. These requirements are found in the regulations.

31. Recommendations for when the advance notice should be made range from one to three years before the NOI deadline date.[26] We intend to issue the notice approximately 1.5 years before the NOI deadline date. This should provide adequate time for existing licensees to make decisions concerning process selection and to gather existing information for the PAD.

D. Process Selection

1. Default Process

32. The NOPR proposed to make the integrated process the default process. A potential applicant would have to request Commission approval to use the traditional process or ALP when it files the NOI and PAD.[27]

33. Licensee commenters question the need for a default process and Commission approval of the potential applicant's choice of the integrated and traditional process.[28] PG&E, SCE, and WUWC state that no rationale has been offered for eliminating the applicant's existing right to choose the traditional process and others say that applicants should not have to show good cause to use the traditional process because it has been tested and shown to be effective in many cases.[29] Licensee commenters also emphasize that the integrated process is untested, and that the ALP was formally adopted by the Commission only after several years of case-by-case experience based on requests for waiver of the of the traditional process requirements.

34. WPPD suggests that stakeholders will threaten to withhold support for the applicant's potential process proposal in order to pressure potential applicants into making other procedural or substantive concessions, and that there would be more certainty if potential applicants had unfettered process choice.

35. Several licensees state that the potential applicant has the most knowledge of the complexity, level of stakeholder involvement, and the resources available to itself and others, so the Commission should defer to its judgment.[30] Other reasons offered in support of applicant choice are that the applicant bears the cost of the process, a lack of choice will inhibit

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[19] California, Long View, MWH, PG&E, VANR, MHW, NOAA Fisheries, Process Group. VANR states that the NOI deadline date should be moved to six years before the license expires.

[20] PG&E adds that in Order No. 513, Hydroelectric Licensing Regulations under the Federal Power Act, 54 FR at p. 31384 (June 2, 1989), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,854 (May 17, 1989), which promulgated the existing time frame for filing the NOI, the Commission specifically encouraged pre-NOI consultation. The rule we are promulgating today does not discourage pre-NOI activity. Indeed, the PAD cannot be prepared without it. Rather, we are declining to require provisions that could be construed to require or encourage consultation before the NOI is filed.

[21] 68 FR at pp. 13992–993; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,700–701.

[22] NOAA, HRC, NHA, NEU, CRITFC, Interior, SCE.

[23] PG&E.

[24] Wisconsin DNR.

[25] *See* 18 CFR 16.3.

[26] Wisconsin DNR, SCE.

[27] 68 FR at pp. 13992, 14009; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,699, 34,730.

[28] Troutman, Snohomish, WPPD, Idaho Power, EEI, Alabama Power, Xcel, NEU, WUWC, SCE, NHA. No commenter appears to advocate a change in the requirements for use of the ALP, and the Process Group at the drafting sessions agreed that the existing criteria are satisfactory.

[29] WUWC, Snohomish, EEI, SCE.

[30] NHA, EEI, SCE, Long View, PG&E, B&B.

commitment of the potential applicant to the success of the process, and the cooperation of stakeholders can be achieved without Commission approval.[31]

36. Several of these commenters suggest that if the integrated process is to be made the default, that it be done only after a 5–6 year test period, during which there would be a presumption that the applicant's choice is appropriate. If the potential applicant chooses the traditional process, proponents of the integrated process would have the burden of showing that the integrated process would be significantly better or significantly disadvantage non-applicant stakeholders. If, at the end of this period, the integrated process appeared successful, it would be made the default process, with any modifications needed in light of experience.[32] In this regard, AEP and GKRSE state that the goal should be to use the process that is likely to yield the best results, procedurally, economically and environmentally, and that if the integrated process appears to satisfy this goal, potential applicants and stakeholders will use it.

37. A few industry commenters assert that the traditional process, either in its current form or with the proposed modifications, should be the default because it has been tested by years of experience and is satisfactory in most cases.[33] They add that it works best for small projects, which are a substantial portion of licensed projects.[34]

38. Several non-industry commenters favor making the integrated process the default with the potential applicant's choice requiring Commission approval.[35] The Minnesota DNR, while not apparently objecting to the integrated process as the default, states that there should also be a means for other entities to oppose an applicant's election to use the default process.

39. We continue to think the integrated process should be the default because it addresses as fully as we can within the confines of the statutory scheme the problems that participants in licensing from every perspective have identified with the traditional process. It merges pre-filing consultation and the NEPA process, brings finality to pre-filing study disputes, and maximizes the opportunity for the Federal and state agencies to coordinate their respective processes.

40. The best means of gaining acceptance for the integrated process however is to demonstrate that it works. We agree with commenters that some period of transition is appropriate. Accordingly, we have decided that the integrated process should become the default process on July 23, 2005. During this two year period, potential license applicants will be able to select the integrated process or the traditional process as it currently exists, or request authorization to use the ALP. At the end of the two-year period, the integrated process will become the default process, and potential applicants will have to obtain approval to use the traditional process.

41. We disagree with those who believe we should defer to the potential applicant's process choice on the ground that it has the most relevant knowledge. The comprehensive development standard of the FPA requires us to consider all issues pertaining to the public interest and establishes important roles and responsibilities for other federal and state agencies. We also have a trust responsibility to Indian tribes. The appropriate process must be selected with the interests of these entities and other members of the public, not simply those of the potential applicant, in mind.

2. Standard for Approval of Traditional Process

42. The NOPR proposed to grant requests to use the traditional process upon a showing of "good cause."[36] Several commenters state that this standard should be replaced by specified criteria, or at least that certain factors should be considered before the Director acts on a request to use the traditional process.[37] Alabama Power and WUWC, however, state that "good cause" is sufficient if construed liberally and with deference to the potential applicant.

43. The recommended criteria predictably differ depending on whether they come from industry commenters or others. Industry commenters suggest that the traditional process should be readily approved for small projects with relatively few issues. This, they suggest, includes some or all of: a project operated in run-of-river mode; no substantial changes are proposed in operations or structures; there are no anadromous fish; generating capacity is modest; or the existing project boundary includes little or no land above the high water mark.[38] Other recommended criteria for approving the traditional process include where the potential applicant and stakeholders are too polarized to work well together;[39] if, all things considered, it appears likely that the licensing process can be completed before the license expires;[40] and the potential applicant thinks the integrated process would be too costly.[41]

44. Non-licensees contend that the bar for approval of the traditional process should be set high. Criteria for approval recommended by these commenters include: (1) A consensus favoring the traditional process;[42] (2) lack of opposition from any Federal or state agency;[43] (3) the public or resources affected by the project will benefit from using the traditional process compared to the integrated process;[44] (4) the traditional process will maximize coordination of all pertinent regulatory processes and more timely resolve potential disputes;[45] (5) it will be the most efficient process with the highest level of resource protection;[46] (6) the project does not have significant environmental impacts;[47] or (7) the

[31] NHA, EEI, SCE, Long View, PG&E, B&B, M&H.

[32] NHA, Long View, PG&E, B&B.

[33] Xcel, WPSR, Alabama Power. Other industry commenters, while not recommending the traditional process as a default, also assert that it generally works well. GKRSC, AEP, CHI, Long View, Consumers, WPSC.

[34] Approximately half of Commission-licensed projects are 5 MW or less.

[35] RAW, ADK, CHRC, Whitewater, SC League, IRU, California, AmRivers. PFMC recommends that approval of the applicant's process proposal should remain with the full Commission. rather than be delegated to the Director of the Office of Energy Projects. California states that an applicant may show good cause to use the traditional process, yet other reasons may exist to deny the request, so the regulation should read "may" approve, instead of "shall." Any good cause determination will take account of any objections raised by commenters.

[36] Proposed 18 CFR 5.2(f)(5). The criteria for approval of the ALP would not change. Proposed 18 CFR 5.2(f)(5) states that requests to use the traditional process or ALP will be granted "for good cause shown." NHA asserts that the good cause standard is something new and unnecessary as applied to the ALP. While the regulatory text of 18 CFR part 4, from which the requirements for support of a request to use the ALP were transposed, do not explicitly state that a good cause standard applies, it should be obvious that good cause is the minimum standard for Commission approval of any authorization not subject to a more specific standard. We are merely making explicit what is plainly implicit.

[37] Interior, PG&E, NF Rancheria, NPS, Washington, AmRivers, Wisconsin DNR, CHRC, Whitewater, NOAA Fisheries, HRC, SC League, TU, VANR, PFMC, AW/FLOW.

[38] GKRSC, AEP, CHI, Long View, Consumers, WPSC.

[39] NHA, Idaho Power, EEI, WUWC, SCE.

[40] Consumers.

[41] M&H.

[42] CHRC, Interior, Whitewater, NOAA Fisheries, AmRivers.

[43] HRC. HRC, consistent with its recommendation for one flexible process, would also apply these criteria to requests to use the ALP.

[44] SC League, Wisconsin DNR.

[45] TU, VANR.

[46] PFMC, HRC.

[47] NOAA Fisheries. California agrees that the bar for using the traditional process should be very

licensing is uncontroversial.[48] Others factors identified by Washington and American Rivers for consideration include the potential for time savings, benefits to the environment, and public participation needs.[49]

45. Regarding original license applications, Consumers contends that the traditional process is appropriate because there is likely to be little relevant data available, which will cause the information gathering and study period to be extended, which is incompatible with the compressed time frames of the integrated process. NOAA Fisheries states that the same circumstances cited by Consumers should bar an applicant from using the traditional process.

46. The Process Group agreed that the "good cause" standard is vague, but did not identify criteria that would favor or disfavor use of the traditional process. Instead, they identified various factors for the Director to consider in each case in light of the goal of a timely, well-informed decision that protects the public interest. These factors include:

- Project size;[50]
- Characteristics of the river basin, including the presence or absence of other dams;[51]
- The likely level of controversy, including disputes over studies;
- The level of involvement and interest by resource agencies, any expressed intent on their part to exercise applicable mandatory conditioning authority, and the anticipated resource issues, including ESA;
- Whether there are tribal issues;
- The physical characteristics of the project and known biological impacts of project operations;
- Stakeholder and tribal views on process choice;[52]
- Resource constraints on Commission staff and participants;
- Reasonableness of project costs;[53]
- Whether the potential applicant has a history of positive or negative relationships with stakeholders and Indian tribes; and
- The amount and usefulness of existing, relevant information.

47. Although there was general agreement in the Process Group about which factors should be considered, this does not reflect a consensus on how the factors should be considered. For instance, industry commenters tend to think small projects are better suited to the traditional process because they are likely to have fewer environmental impacts, be less controversial, and be less well able to bear the transaction costs of relicensing. Agencies, NGOs, and Indian tribes, tend to think project size is only coincidently related to environmental impacts and controversy, and view transaction costs as a cost of doing business and a much lower concern than development of a complete record and improvements in environmental protection.

48. This fundamental difference of viewpoints leads us to conclude that the Process Group approach, somewhat modified, is the most sensible approach to this issue. We conclude that five factors are most likely to bear on whether use of the traditional process is appropriate. These are: (1) Likelihood of timely license issuance; (2) complexity of the resource issues; (3) level of anticipated controversy; (4) the amount of available information and potential for significant disputes over studies, and (5) the relative cost of the traditional process compared to the integrated process. The more likely it appears from the participants' filings that an application will have relatively few issues, little controversy, can be expeditiously processed, and can be processed less expensively under the traditional process, the more likely the Commission is to approve such a request. In recognition of the uniqueness of licensing proceedings, participants who comment on requests to use the traditional process may identify other factors they think are pertinent to the proceeding in question.[54]

3. Timing Issues

49. The NOPR proposed to require a potential applicant to serve a copy of its request, if any, to use the traditional process or ALP on all affected resource agencies, Indian tribes, and members of the public likely to be interested in the proceeding, and to give appropriate newspaper notice to the general public. Responses would be due to the Commission within 15 days.[55]

50. Many commenters respond that this is insufficient time to respond on a matter of such importance.[56] We agree that additional time may be appropriate for this step because it relies in part on newspaper notice and occurs at the commencement of the proceeding. Accordingly, we have increased the time allowed to respond to these requests to 30 days.

E. Pre-Application Document

51. The NOPR concluded that NEPA scoping will be greatly assisted by the availability to the participants of as much relevant existing information as possible when scoping begins. To this end, we proposed to supplant the current requirements for existing licensees to make project information available to the public when the NOI is filed, and for all potential license applicants to provide an initial consultation document (ICD) to consulted entities during first stage consultation, with the PAD.[57]

52. The PAD should include all engineering, economic, and environmental information relevant to licensing the project that is reasonably available when the NOI is filed. It is a tool for identifying issues and information needs, including NEPA scoping, developing study requests and study plans, and providing information for the Commission's NEPA document. The PAD would be a precursor to Exhibit E, the environmental exhibit in the license application. In the integrated process, the PAD would evolve directly into a new Exhibit E that has the form and contents of an applicant-prepared draft NEPA document.[58]

53. The PAD proposal was widely supported, and many comments were received concerning the appropriate contents, format, and distribution requirements.[59]

1. In General

54. Industry commenters generally agree that the PAD is a good idea in principle, but that the requirements need to be significantly reduced to ensure that the contents are relevant to the licensing proceeding and useful to the participants. Some industry commenters believe the PAD requires significantly more information and a

high, but makes no specific recommendations in this regard.

[48] AW/FLOW.

[49] Washington, AmRivers.

[50] Also suggested by NF Rancheria and NPS.

[51] Also suggested by Wisconsin DNR.

[52] Also suggested by Washington and AmRivers.

[53] Also suggested by Washington, AmRivers, and PG&E.

[54] *See* 18 CFR 5.3(d)(1). PFMC states that this decision should be made by the Commission rather than delegated to the Office Director.

[55] Proposed 18 CFR 5.1(f).

[56] NPS, NYSDEC, Interior, AmRivers, Wisconsin DNR, Consumers.

[57] 68 FR at pp. 13993–994; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,699, 34,730.

[58] *See* proposed 18 CFR 5.16(b). Applicants using the traditional process would continue to use the existing Exhibit E in their license application, and applicants using the ALP could use the existing Exhibit E or file with their application in lieu thereof an applicant-prepared environmental analysis. As discussed in Section III.U.5, we are changing our policy to permit applicant using the traditional process to file an applicant-prepared environmental assessment.

[59] A great many specific recommendations regarding the detailed requirements of the PAD were filed. All of these have been considered, but it would be needless and impractical to discuss each comment individually.

higher level of effort than the existing public information and ICD requirements,[60] and suggest that the incremental burden on applicants is unnecessary.[61] Several commenters also indicate that much or all of the historical information currently required to be made available to the public is never requested and represents a needless burden and expense.[62]

55. Consumers recommends that we allow any applicant that uses the traditional process to meet only the existing public information and ICD requirements instead of filing the PAD. NEU makes the same recommendation for existing projects of 5 MW or less. Consumers also recommends that information requirements be made flexible to accommodate different types of projects; for instance, some data that is useful for unconstructed projects greater than 5 MW may not be needed to evaluate a smaller existing project. MWH and WPSR similarly indicate the PAD requirements should be reduced for small projects because of the asserted connection between small projects with minor impacts.

56. Various industry commenters also seek affirmation or clarification of our intention that only existing information relevant to project impacts is required, and that the scope of and level of effort to obtain existing data should be commensurate with project impacts.[63]

57. Resource agencies and NGOs support the PAD and state that a high quality PAD is essential to the success of the integrated process in light of the short time frames contemplated in the NOPR, and that an applicant's failure in this connection would interfere with the ability of other parties to timely and effectively participate in licensing.[64]

58. California agencies and a few other commenters believe that the PAD contents should not be limited to existing information, but should include all information needed to evaluate potential effects of project operations, and that the applicant should be required to conduct whatever studies or information searches are necessary to fill in any gaps in the existing information before the PAD is filed. They assert generally that NEPA scoping cannot be done unless there already exists a complete baseline of existing environmental data, and suggest that existing licensees should have acquired such data during the term of the existing license.[65]

59. HRC similarly states that the PAD should include a systematic discussion of the project's resource impacts, so that post-NOI information gathering and studies are minimal, even if that requires potential applicants to conduct environmental monitoring or original studies not required under the existing license.

60. Agency and NGO commenters generally recognize however that complete information on all resource impacts attributable to a project is unlikely to be available when the NOI is issued and the PAD is filed. These commenters recommend that potential applicants be subject to a due diligence standard with respect to obtaining existing information; that is, make a good faith effort to determine what relevant information is available and to obtain it.[66]

61. We agree that a due diligence standard will apply to the development of the PAD. The regulations we are adopting provide some guidance on what constitutes due diligence, but we are not able to provide a detailed definition. Rather, the determination of whether due diligence is exercised will have to be made on case-by-case basis.

2. PAD Contents, Format, and Distribution

a. Contents

62. There is a considerable gap between the industry and other commenters on the range and level of detail that should be required in the PAD. PG&E and Georgia Power for instance, suggest that instead of specific requirements, the content requirements should be stated as broad subject matter categories, with information required to the extent reasonably known, available, and applicable. Troutman similarly recommends that specific requirements in the regulations be replaced by a policy statement or guidance document from which applicants would determine what information is relevant and appropriate.

63. In contrast, agencies and NGOs generally prefer explicit and detailed requirements. For example, Wisconsin DNR and VANR recommend that the PAD include the original license order and all amendment orders and management plans; any document that explains the existing license requirements; a layman's summary of all of the license and management plan requirements; and a list of every entity consulted by the potential applicant prior to filing the NOI and the issues those entities raised. Another recommendation is that the PAD include study plans for restoration of essential fish habitat; data needed for water quality certification; information on cumulative environmental impacts throughout the river basin; and studies of fish passage conditions and plans for improvements thereto, including restoration of historic fish habitat. CHRC states that flow data should be provided on the finest available scale, even to daily or hourly flow for the entire historical record.

64. HRC suggests that licensee compliance with the requirements can best be ensured by having the Commission evaluate whether the PAD meets certain standards for completeness and commiting to taking measures to enforce compliance with the standards beyond finding that an application is deficient. These might include requiring the applicant to file a revised PAD before the proceeding continues, and interim environmental measures in annual licenses, or civil penalties.

65. Because these disagreements relate to how the document is formatted and distributed, we will defer their resolution to the conclusion of the following section concerning those matters.

b. Distribution

66. Several industry commenters made recommendations with respect to the format and distribution requirements for the PAD.[67] NHA proposes that the PAD be reformatted, some of the content requirements be deferred to the license application, and the distribution requirements modified. The PAD itself would contain basic information about the licensee, project description and existing and proposed operations, a general description of the river basin, including pertinent information about land use, other dams, and management plans, a discussion of environmental impacts based on existing information, a list of issues in the form of a scoping document, and a plan and schedule for pre-application activities.[68] Exhibits showing project structures and features, historical information on amendments,

[60] The initial consultation document is required by 18 CFR 4.38(b) and 16.8(b)(1). The public information requirement for existing licensees seeking a new license is at 18 CFR 16.7(d).

[61] SCE, Alabama Power, NEU, Xcel, Consumers, Oroville.

[62] PG&E, SCE, Consumers.

[63] Consumers, Long View, MWH, WPSR, EEI, NHA, Xcel, NEU, SCE, CHI.

[64] VANR, WUWC, Interior, California, CHRC, Whitewater, SC League, IRU, NYSDEC, CSWRCB, Long View, HRC, AmRivers, SC League, Oregon, AMC.

[65] CDWR, Cal A–G, CSWRCB, AMC.

[66] CDFG, HRC. At least one licensee, PG&E, agrees that a due diligence standard is reasonable.

[67] Duke, PG&E, Troutman, WPPD, Xcel, CHI, Sullivan, NHA, SCE.

[68] *See* proposed 18 CFR 5.4(c)(2)(A)–(B), (D)–(G), (J) and (P).

compliance, and generation, and information pertaining to dam and project safety would be located in the potential applicant's project files and would be provided to anyone who requested it at a reasonable cost of production.[69] Distribution of other generally uncontroversial information would be deferred until the license application is filed.[70] NHA contends that these changes would reduce the burden on applicants, make the document better suited to its purpose, and make it more accessible to stakeholders. Georgia Power and Duke support NHA's proposal.

67. NHA's concerns are shared and the essence of its proposal supported by many licensees. They acknowledge the importance of explaining the current license requirements based on the original license and any amendments, existing management plans, and other requirements, but state that the expense of producing, packaging and distributing the underlying licensing documents and existing studies to many recipients will be burdensome in general and enormous in some cases. They say that study results are generally useful only to a few stakeholders with appropriate expertise, such as resource agencies. The common thread of these comments is that general information about existing project facilities and operations would be broadly distributed, while more detailed information would be identified and made available on request, via the internet or another means of distribution.[71]

68. SCE has a somewhat different proposal. It recommends that the PAD be limited to: (1) A general description of the project, similar to existing Exhibit A;[72] (2) monthly energy data for the prior five years;[73] (3) five years of existing streamflow data;[74] (4) a description of existing recreation facilities and use based on the most recent Form 80, and of the applicant's policies, if any, with respect to management of project lands and waters; (5) a single line diagram showing the electrical path between all project components; (6) existing and available environmental data obtainable from resource agencies or in the applicant's possession.[75]

69. Long View and Xcel recommend that the PAD have the same format as license application requirements for the classification of the project; *e.g.*, major unconstructed project, major project-existing dam, or major water power project-5 megawatts or less, with the gaps to be filled in as the prefiling consultation and information gathering process proceeds.[76]

70. Agency and NGO commenters appear to be less concerned with the format of the document than with its contents. They generally contend that the range of data and level of detail set forth in the NOPR should be affirmed in the final rule.

71. WPSR opposes having to provide the PAD at all. It recommends instead that the existing requirement to make public information viewable by the public in various locations, such as company headquarters and public libraries, be retained.

72. AW/FLOW states that internet or CD distribution is good in theory, but that people attending meetings generally have paper, so this means of distribution would unfairly force cash-strapped NGOs to bear the cost of printing materials.

73. The Documents Group agreed that it makes sense for a potential applicant to incorporate into the PAD by reference voluminous information such as raw data and existing studies. They agreed that the substantial effort and expense does not necessarily make the document more useful and may, owing to sheer volume, make it less useful. This information could be summarized in the relevant section of the PAD using appropriate methods. In addition, the PAD would contain an appendix describing all materials summarized in the text, and explaining how to obtain those materials from the potential applicant.

74. The Documents Group agreed that the goal is to target insofar as is practicable the needs of various stakeholders, agencies, and Indian tribes. To that end, the potential applicant would have to deliver the summarized information upon request to any agency, Indian tribe, NGO, or other stakeholder within 20 days of the request, in a mutually agreeable format that does not require conversion by the potential applicant from paper to an electronic format. Potential applicants would have to be able to deliver electronically formatted materials in a variety of formats.

75. We are adopting requirements for the PAD that substantially incorporate the recommendations of the Documents Group. The purpose of the PAD is to provide the Commission and the consulted entities with existing information relevant to the project proposal that is in the potential applicant's possession or that it can obtain with the exercise of due diligence. Distribution of the information will enable the consulted entities to identify issues and related information needs, develop study requests and study plans, and help the Commission to analyze any application that may be filed. We will not require a potential applicant to conduct studies in order to generate information for inclusion in the PAD. The basic content requirements will be a description of the existing and proposed project facilities and operations, a description of the existing environment, existing data or studies relevant to the existing environment, and any known and potential impacts of the proposed project on relevant resources.

76. A potential applicant will not be required to include all of the studies and information sources on which the descriptions in the PAD are based, but will be required to provide these materials upon request to recipients of the PAD. Potential applicants and participants in pre-filing consultation are encouraged to accomplish such distribution by electronic means, including compact disks, but a requester is entitled to receive such materials in hard copy form. The PAD will also be required to include a process plan and schedule, a preliminary issues and studies list, and an appendix summarizing any contacts with agencies, Indian tribes, and others in obtaining relevant information. We think that the foregoing format, content, and distribution provisions should result in PADs that serve the purpose for which this document is established and

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[69] *See* proposed 18 CFR 5.4(c)(2)(H), (I), (K), and (L). NHA adds that critical energy infrastructure information (CEII) would be viewable only at the potential applicant's offices. CEII is discussed in Section III. X below.

[70] *See* proposed 18 CFR 5.4(c)(2) (M) and (O), and (G)(xi).

[71] PG&E, Suloway, Normandeau, M&H, Consumers, Long View, Reliant, AEP, Oroville, SCE.

[72] *See e.g.*, 18 CFR 4.41(b).

[73] SCE states that licensee's methods of maintaining information on dependable capacity are not consistent and would therefore be misleading if required to be included. At the least, SCE suggests, the term should be defined if it is required to be reported.

[74] SCE does not specify how the required information would be reported; for instance the vintage of the data or its periodicity (*e.g.*, hourly, daily, monthly).

[75] SCE's rewrite of proposed 18 CFR 5.4 is at pp. 8–18 of its comments. SCE would also have us put language in the regulations encouraging agencies to cooperate in the development of the PAD by providing available environmental data to the applicant. Given the concerns expressed by agency commenters about the potential for an incomplete PAD and, in general, the importance of a quality evidentiary record, we think agencies and other potential participants have sufficient incentive to assist potential applicants in this regard.

[76] Long View, Xcel.

reasonably balance the competing interests of the participants.[77]

F. NEPA Scoping and Study Plan Development

1. In General

77. Most commenters support having a Commission-approved study plan in the integrated process,[78] but many request clarifications of or modifications to the proposed study plan development process. Only Idaho Power objects to this feature. It asserts that the current study planning and dispute resolution provisions generally work well, and are less costly and labor-intensive than what is included in the integrated process. We do not dispute that there are instances where the current study planning and dispute resolution processes are adequate. They undeniably contribute in many cases however to the undue length of the licensing process by deferring identification and resolution of fundamental issues about what information gathering and studies are necessary until after the application is filed. The integrated process is designed to eliminate that problem.

78. HRC requests that we affirm that the purpose of an approved study plan is to develop a record that allows for the adequate evaluation of reasonable alternatives to mitigate ongoing impacts to resources from project operations, and not to prejudge potential mitigation measures. The purpose of an approved study plan is to bring, to the extent possible, pre-filing finality to the issue of what information gathering and studies will be required by the Commission to provide a sound evidentiary basis on which the Commission and other participants in the process can make recommendations and provide terms and conditions. The study plan is developed in conjunction with NEPA scoping, and the latter inevitably involves judgments about which potential alternatives are reasonable to consider, and which alternatives will be eliminated from detailed consideration. It therefore follows that the Commission-approved study plan will reflect those determinations.

79. Washington states that study requests should not be rejected merely because they do not employ generally accepted practices, because new methodologies or techniques may be appropriate in some cases. We agree. As noted elsewhere, with the exception of the establishment of a nexus between the study request and operation of the project, no one criteria establishes a "litmus test" for study requests.

80. Georgia DNR states that study plans should be project-specific and that the study criteria should not be interpreted so as to mandate standard form study plans. We agree. Although we would expect specific study plans for projects with features identical or similar to one another to have the same or similar components, every project is likely to have unique features that need to be accounted for in the development of the study plan.

81. NYSDEC states that the unique aspects of individual projects make extrapolated data acceptable, if at all, only if it is technically infeasible to produce site-specific data. We do not agree with blanket assertions of this nature. We agree with Oregon that the appropriateness of extrapolated data is a decision properly made on a case-by-case and issue-by-issue basis.

82. Under the proposed rule, the NEPA scoping meeting and site visit would be followed by an opportunity for participants to make comments and preliminary study requests before the potential applicant files its draft study plan.[79] Interior would insert after the comments and preliminary study requests a six-month period for the participants to negotiate a mutually agreeable study plan. Interior reasons that this might permit elimination of the following steps up to the potential applicant filing a revised study plan for approval,[80] and thereby minimize the need for formal dispute resolution, eliminating as much as 200 days from the pre-filing process. PG&E and SCE think the proposed study plan development process is weighted too heavily toward notice and comment and not enough toward interaction between the participants. PG&E and SCE would also like to see more time for the participants to resolve their study differences. The Process Group agreed in general with these commenters that there should be more time in the process for such interaction.

83. As discussed below, we have modified the process to extend the time for participants to discuss the potential applicant's proposed study plan and to provide more flexibility concerning interactions during that period.[81]

2. Study Criteria

84. The NOPR proposed that an information-gathering or study request be required to address seven criteria:

(1) Describe the goals and objectives of the study and the information to be obtained;

(2) If applicable, explain the relevant resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied;

(3) If the requester is not a resource agency, explain any relevant public interest considerations in regard to the proposed study;

(4) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied;

(6) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate field season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge;

(7) Describe considerations of cost and practicality, and why any proposed alternatives would not be sufficient to meet the stated information needs.[82]

a. General Comments

85. Commenters generally approved of the proposed study criteria subject to various recommendations for minor changes.[83] With the exception of issues concerning what consideration should be given to study costs, few had criterion-specific comments. Commenters also offered a variety of more general comments on how the study criteria should be applied. We consider the general comments first.

86. PG&E, SCE, and Duke request that we affirm in the preamble that the study criteria are not a check list; rather, they need to be considered as a whole, with each criterion addressed, and that no single criterion is determinative. The Studies Group agreed. We so stated in

[77] We cannot do away with the "library" requirement, as it is required by FPA Section 15(b)(2). In part 5, it appears at 18 CFR 5.2(a).

[78] *E.g.*, NYSDEC, S–P, California, Interior. S–P states that approved study plans are needed to ensure confidential treatment of tribal cultural practices. This matter is addressed in Section III.N.

[79] Proposed 18 CFR 5.5 and 5.6.

[80] Interior refers to proposed 18 CFR 5.7 through 5.12.

[81] *See* Section III.T below, and 18 CFR 5.12.

[82] *See* proposed 18 CFR 5.10.

[83] VANR, Normandeau, HRC, NHA, Long View, Duke, PG&E, Advisory Council, Oregon. In contrast to the broad expression of support from all stakeholder perspectives, Minnesota DNR states that Criteria (2), (5), (6), and (7) are either exceedingly general or unduly specific and speculates that they were designed to obstruct or limit resource agency study requests.

the NOPR,[84] and affirm that statement here.

87. Long View states that the preamble should clarify that requesters' desires for information must be tempered by practical considerations of relevancy, the value of the information sought in the context of the proceeding, and the complexity and effort required to obtain the information. NHA states that requesters should be required to explain the merits of their requests in the context of the case and the FPA. We think a practical application of the proposed criteria, with the minor modifications we are making in this rule, should result in the adoption of study requests that have merit, and the exclusion of those that do not. As we stated in the NOPR, "the * * * criteria implicitly require that study requests not be frivolous and add some appreciable evidentiary value to the record." [85]

88. HRC asks us to clarify how ongoing environmental impacts will be considered in light of our policy that the baseline for environmental analysis is current conditions.[86] The study criteria should be applied in the same manner regardless of whether an impact from project operations on a resource is characterized as ongoing or otherwise. The requesting party would have to reasonably demonstrate the nexus between project operations and resource impacts and, in the context of addressing the other criteria, show how the proposed study reasonably relates to the development of potential mitigation or enhancement measures.

89. Duke wants us to emphasize that decisions on study requests will be consistent with Commission policy and practice. We think the regulation text is sufficiently clear in this regard.[87]

90. The Advisory Council states that it would be helpful to include a more complete definition of what cultural resources studies are needed. The Advisory Council makes no specific suggestions in this connection, and we continue to believe that the best forum for determining appropriate data needs and study requirements is in individual cases.

91. Oregon suggests, particularly in light of the time frames, that participants' study requests should only need to be general in nature, with the burden on potential applicants to produce detailed study plans. We disagree. As discussed below,[88] we have modified the process in response to comments by moving NEPA scoping, including the issuance of Scoping Document 1, to a place prior to the participants' submittal of their study requests. Under the revised process, these study requests should be as detailed as possible.

92. The NOPR states that judgment calls on study requests will be made "in light of the principle that the integrated licensing process should to the extent reasonably possible serve to establish an evidentiary record upon which the Commission and all agencies or Indian tribes with mandatory conditioning authority can carry out their responsibilities."[89] Duke states that this is inconsistent with a prior order in which Duke asserts that the Commission stated that it will not require data that other agencies deem necessary to support the exercise of their mandatory conditioning authority. In fact, in the order cited by Duke, *Curtis/Palmer Hydroelectric Company LP and International Paper Company,*[90] we merely restated our judicially affirmed position that the Commission has no statutory obligation to provide a record to support other agencies' decision making, or to require studies that it does not deem necessary to evaluate the public interest in light of the record evidence and argument provided by other parties.[91] The principle underlying the integrated process expressed above is not inconsistent with that position.

93. No comments were filed on proposed criteria (1), (4), and (6). Comments on the other proposed criteria are considered below.

b. Criterion (2)

(2) *If applicable, explain the relevant resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied.*

94. NYSDEC states that the relationship of a study request to agency management goals should not be the sole or even the primary measure of the need for a study because agencies may request studies that do not relate directly to agency management objectives, but do relate to mandates established in law or regulation or derive from agency policy. A statement by an agency connecting its study request to a legal, regulatory, or policy mandate is, of course, entitled to appropriate consideration. Any requester should however appreciate that the more broadly stated the legal, regulatory, or policy mandate is, the more clearly the requester needs to explain how the mandate relates to the study request and, in turn, project impacts.

95. Massachusetts DER states that only a resource agency may appropriately determine what study requests apply to its management goals, so neither the Commission nor potential applicants should make determinations of applicability. As explained in the NOPR, the Commission does not intend to second guess the appropriateness or applicability of resource agency management goals.[92] A requesting agency is required however to establish the connection, if any, between its study request and its management goals. In the great majority of cases, the connection should be obvious.

c. Criterion (3)

(3) *If the requester is not a resource agency, explain any relevant public interest considerations in regard to the proposed study.*

96. NYSDEC states that the requirement to explain relevant public interest considerations should also apply to agencies. It would be desirable for any entity requesting a study to explain how its study request relates to the public interest, but it should suffice for an agency requester to explain the connection of the study request to its resource management goals.

d. Criterion (5)

(5) *Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied.*

97. EEI requests us to state that a nexus between project operations and effects on the resource in question is a threshold requirement that must be demonstrated in every case.[93] This issue was discussed by the Studies Group, which agreed with EEI's request, as do we. Otherwise, the door would be open

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[84] 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,705.

[85] 68 FR at p. 13996; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,706.

[86] S–P and PFMC state that the environmental baseline for studies should be pre-project conditions. Georgia DNR states that pre-project baseline studies may be appropriate in some cases. SCE, Duke, and PG&E ask us to restate in the regulations our policy that the baseline is current conditions. We are not changing our well-established and judicially approved policy, and see no need for it to be written into our procedural regulations.

[87] *See* 18 CFR 5.14(l).

[88] *See* Section III.T and 18 CFR 5.8(c).

[89] 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,705.

[90] 92 FERC ¶ 61,037 (2000).

[91] 92 FERC at p. 61,089.

[92] 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,705.

[93] Duke and PG&E similarly state that the Commission should affirm that it will strictly apply this criterion.

to study requests having nothing to do with project impacts.[94]

98. CHRC counters that a study might be required to establish the existence of a nexus. Taken to its extreme, CHRC's position would have us approving study proposals that amount to mere speculation. We think a common sense approach to demonstrating a nexus between project operations and resource impacts, informed by the professional judgment of qualified agency, Commission, and tribal staff, should ensure that this criterion is reasonably applied.

99. Oregon approaches the nexus issue from a different perspective; that is, if a nexus is demonstrated between project operations and resource impacts (*e.g.*, fish entrainment mortality), then related study requests must be approved. We do not agree. As stated above, the criteria are to be considered as a whole, in light of the circumstances of the individual proceeding, and any applicable Commission policies and practices.

100. NHA and PG&E also request that we add an additional criterion requiring requesters to describe how the information would be used in the proceeding in relation to resource management measures. This proposed criterion appears to be intended to elicit an explanation how the information could be used to develop protection, mitigation, or enhancement measures by the Commission or agencies with conditioning authority. The Studies Group discussed this matter and recommended that the following phrase be added to the end of Criterion (5): "and how study results would inform the development of license conditions." We agree that this is an important aspect of study requests and are adopting the proposed modification.

e. Criterion (7)

(7) *Describe considerations of cost and practicality, and why any proposed alternatives would not be sufficient to meet the stated information needs.*[95]

101. This proposed criterion received the most comments. Several state agencies state that resource agencies should not be required to provide detailed cost estimates of proposed studies because specific knowledge concerning study costs lies with applicants or their contractors. They contend that potential applicants should have the burden of addressing cost and practicality. They also add that this may be a difficult matter on which to reach a merits conclusion, because the value of the information developed is not always known until after a study is completed.[96]

102. NYSDEC states that the criterion should be modified to require a requester to address the proposed study's scope and level of effort. We conclude the proposed modification is not necessary because there is a built-in incentive for requesters to do so. It is implicit that cost and practicality can be addressed only to the extent the study request includes a description of the scope and level of effort. The less specificity a requester provides, the more difficult it will be to apply the criterion in its favor.

103. Finally, various Indian tribes and agencies state that where protection of tribal trust resources is at issue, the Commission's trust responsibility prohibits it from considering factors of cost and practicality, or that such factors are entitled to minimal weight. They state that the only applicable considerations are consistency with treaties, statutes, and case law defining obligations to protect the trust resources. Some add that the FPA requires the Commission to protect non-developmental resources, so matters of study cost and practicality are entitled under that Act to minimum weight.[97] As we stated in the NOPR, our responsibility to balance all aspects of the public interest with respect to any project proposal necessarily encompasses the exercise of independent judgment concerning the relative cost and value of obtaining information.[98]

104. The NOPR also discussed certain additional criteria proposed by NHA and SCE,[99] and requested comments on whether their proposed criterion (3) ("The cost of the study must be justified relative to the value of the incremental information provided") or the Commission's proposed Criterion (7) more appropriately deals with the issue of study costs.[100]

105. Industry commenters preferred the NHA/SCE language because it requires a conclusion concerning whether the cost of the study is justified by the expected value of the information.[101] Agency and NGO commenters aver that the NHA/SCE language is more theoretical than practical and likely to cause more disputes than it prevents because the full value of a study cannot be known until it is completed. They add that any criterion that purports to measure study results against dollars is an apples to oranges comparison and prejudices everyone's interests but the applicant's. They therefore favor the Commission's Criterion (7).[102] Interior and MPRB state that scientific standards should be paramount. Interior adds that cost and practicality can be assessed by the proposed Advisory Panel, if the study request goes to dispute resolution.

106. California recommends that if Criterion (7) is not adopted, a better alternative than the NHA/SCE language would be to follow California's requirement that the burden of studies, including their costs, must bear a reasonable relationship to the need for the study and the benefits to be obtained therefrom. PG&E and NHA in their comments also attempt to find some middle ground by recommending that NHA/SCE criterion (3) be revised to require the requester to "Assess the relative value of the anticipated incremental information compared to the effort, including time and cost, required to obtain it." There is clearly no agreement between the industry on the one hand, and agencies, Indian tribes, and NGOs on the other hand about how to consider cost and practicality.

107. The Studies Group considered this question at length and agreed that this criterion is not concerned solely with cost, but also generally with the level of effort the potential applicant should have to make to gather information or conduct studies with respect to an issue. They proposed to insert the words "and/or level of effort" after the word "cost" to reflect that agreement. After considering all the comments, we conclude Criterion (7), modified as recommended by the Studies Group, provides an appropriate basis for consideration of cost and

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[94] Geosyntec appears to state that a requester should only have to show a nexus between the study request and an issue, rather than a nexus between a study request and the project. We think this is a distinction without a difference, because the impacts of the project on resources creates the issues, which in turn are the basis for study requests.

[95] *See* proposed 18 CFR 5.10.

[96] Georgia DNR, Minnesota DNR, NCWRC, PFBC, MPRB. MPRB would eliminate this criterion altogether on the ground that once a need for information is established, cost is irrelevant. We rejected such assertions in the NOPR. 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,705.

[97] Menominee, Wisconsin DNR, MPRB, Interior, Skokomish.

[98] 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,705.

[99] 68 FR at pp. 13995–996; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,706.

[100] 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,706.

[101] NHA, Normandeau, WPPD, SCE, PFMC, EEI, NEU, Duke, PG&E, CSWC.

[102] California, Oregon, HRC, NCWRC, Interior, MPRB.

practicality in weighing the merits of any study request.[103]

f. Proposed Additional Criteria

108. Various industry commenters recommend that we add a criterion requiring a requester to discuss whether or a not a resource problem has been identified that relates to the request.[104] This proposed criterion is too subjective. A principal feature of hydroelectric licensing in recent decades has been disagreements between license applicants and others concerning the extent to which proposed or existing projects have negative effects on natural and other resources. Whether an identified impact is or is not a problem, and the extent of the problem, are often matters of perspective. Moreover, the finding of a "problem" is not a required predicate for Commission action under the comprehensive development standard of FPA Section 10(a)(1). Rather, that standard contemplates license conditions for the "protection, mitigation, and *enhancement*" of fish and wildlife * * *, and for other beneficial public uses, including irrigation, flood control, water supply, and recreational and other resources." [emphasis supplied] [105]

109. Normandeau suggests that we consider adding a criterion that requires a requester to address the effect the information gathering or study would have on timely completion of the overall process. Criterion (6) requires each proposed study to include a schedule, including appropriate field season(s) and the study duration, so all parties should be able to assess the potential effect of the request on the timeliness of the proceeding. The appropriate length of a proposed study will, of course, be a matter best determined in the context of the specific case.

110. Menominee recommends that we add a criterion to recognize study requests made in connection with the Federal government's trust responsibility to protect the resources of Indian tribes. This does not appear to be necessary because the relationship between a study request and the trust responsibility can be addressed in Criteria (2) or (6).

111. The study criteria, modified in accordance with the foregoing discussion and as set forth in the regulations we are adopting, are set forth here:

(1) Describe the goals and objectives of each study proposal and the information to be obtained;

(2) If applicable, explain the relevant resource management goals of the agencies or Indian tribe with jurisdiction over the resource to be studied;

(3) If the requester is a not resource agency, explain any relevant public interest considerations in regard to the proposed study;

(4) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied, and how the study results would inform the development of license requirements;

(6) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate filed season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge; and

(7) Describe considerations of level of effort and cost, as applicable, and why any proposed alternative studies would not be sufficient to meet the stated information needs.

3. Progress and Study Reports and Additional Study Requests

a. Progress Reports and Initial and Updated Study Reports

112. The proposed rule would have required the potential applicant to file an initial status report with study results and analyses following the first season of studies, or at another appropriate time following the date of the study plan order. The report would be followed by a meeting with parties and Commission staff. The potential applicant would file a meeting summary and, if necessary, a request to modify the study plan and schedule. The request to modify the plan, if any, would be deemed approved unless any party filed a notice of disagreement. Disagreements would be resolved based on written submissions to the Director. Any request for new information or studies following the initial status report would have to address the study criteria and show good cause why the request should be approved.[106]

113. An updated status report would follow after a second season of studies or at another appropriate time. It would be subject to the same review, comment, and disagreement resolution procedures, except that any request for new information or studies must address the study criteria and show extraordinary circumstances why the request should be approved.[107]

114. SCE states that this is unduly burdensome for all participants. It questions the practicality of one report at a specified time because of the likelihood of multiple studies conducted on different schedules, and states that preliminary results could lead participants to false conclusions. SCE also objects to sending study results to entities that have not previously requested to be involved in the issue under study. SCE and NHA would instead require the potential applicant to distribute a status report explaining actions taken to date, any unexpected findings, and a schedule for completing the studies.

115. SCE adds that the meeting following the initial status report would be unworkable because of the large numbers of studies required to be reported in detail, and because most participants will be interested in a limited number of studies. SCE would have the potential applicant determine the need for study review meetings based on comments received on the abbreviated status report, unless a majority of participants requested a meeting with respect to a particular study. NHA would also make the meeting optional for the potential applicant. If participants wanted a meeting not proposed by the potential applicant, they would so request in their comments on the initial status report, and the Commission staff would decide if it is needed.

116. Long View shares NHA's and SCE's concerns about the status reports and meetings. It would modify the rule to allow potential applicants to issue study-specific status reports and hold study-specific meetings at appropriate times with appropriate people.

117. NYSDEC would modify the rule to state that the potential applicant's meeting summary must include a brief statement that the meeting summary is deemed to be approved unless a party files a notice of disagreement.

118. These and other concerns about the status report proposal were considered at length by the Studies Group, including the fundamental issue of whether it makes more sense to have one status report and meeting, or to issue separate reports for each study or group of related studies at different

[103] *See* 18 CFR 5.9(b)(7).

[104] PG&E, SCE, NHA, WPPD, EEI. Other additional criteria were suggested, which were considered above in the context of modifications to the existing proposed criteria.

[105] 16 U.S.C. 803(a)(1).

[106] Proposed 18 CFR 5.14 (Conduct of studies).

[107] *Id.*

times. The Studies Group concluded that it would be best for the participants to negotiate the timing of periodic progress reports on studies,[108] including the manner and extent to which information will be shared, which may include meetings, and sufficient time for technical review of the analysis and results, when the study plan and schedule is developed. The progress reports would have to describe the study progress and data collected to date in a manner that enables participants to determine if the study plan is being followed, and to describe any proposed changes. Documentation of study results would be provided to participants upon request. An annual study report would be issued, but would be in the form of a summary of the overall progress of study plan implementation and would serve as a trigger point for requests, if any, to modify existing studies or conduct additional studies.

119. These modifications should make it easier for individual participants to focus on issues of concern to them, should result in early identification of any implementation issues, and should ease the distribution and consultation burden on the potential applicant. Accordingly, this is a reasonable approach to the matter of study plan implementation and is reflected in the final rules.[109]

120. Finally, the Studies Group and Minnesota DNR recommend that parties have 30 days to respond to the initial and updated study reports, instead of the 15 days proposed. We have so provided.[110]

b. Modified Study Requests

121. NHA also addressed the standard for requesting modifications to the approved study plan in response to the initial study report. NHA would require a requester to address each of the study criteria and subject the request to the same good cause standard as a request for new information or new studies. We think such a requirement is unnecessary. Requests for modifications to an ongoing study are likely to be focused on specific concerns about how the study was conducted, or straight forward matters such as whether to extend the study for an additional field season because of drought conditions. A participant with such concerns should not have to reestablish the need for the study in the first instance. Rather, it should only be required to show good cause for the proposed modification.

122. We also think good cause standard should apply to proposals to modify ongoing studies following the updated study report. The proposed regulation text was not clear on the distinction between the standards applicable to requests for modifications to existing studies versus requests for new information gathering or studies. We have modified the regulation text to make the applicable standards clear.[111]

c. New Study Requests

123. We requested comments on whether participants should be permitted to make new information-gathering or study requests (as opposed to requests for modification of, or disputes concerning the implementation of, existing studies) following the updated study report.[112]

124. NHA and Long View would like the rules to provide more certainty regarding the potential applicant's study obligations. They propose that after the updated study report participants would be permitted to make recommendations regarding the implementation of previously approved studies, but not permitted to make new information gathering or study requests. They state that participants should know when the initial study report is made whether any new studies are needed, and allowing new study requests after the updated study report would make participants less likely to focus their efforts on developing study requests at the beginning of the process.

125. Other licensees share the desire for certainty, but support the "extraordinary circumstances" standard as an alternative to a prohibition on new study requests.[113] SCE would permit a new study request only if: first year studies reveal unexpected results that require further review not possible under the current study plan; a change in applicable law that requires another goal to be considered; or there is a valid dispute regarding implementation of the plan.

126. Agencies and NGOs support the opportunity to request new studies at this point.[114] Interior and MPRB state that many unanticipated events could cause a change in circumstances or that study results could show that more information is needed. Oregon and PFBC similarly state that studies may reveal specific sources of project impacts, and that follow-up studies may be needed to determine if negative impacts can be corrected without extensive mitigation.

127. Some agencies and NGOs accept the premise that the standard for new study requests should increase as the proceeding progresses, and do not oppose an extraordinary circumstances standard at this point.[115] Examples of extraordinary circumstances proffered by these entities include:

- A finding late in the study of a listed species in the area affected by the project;[116]
- Initial studies uncover information that must be considered to ensure agency mandates and important management objectives are met.[117]
- A nexus between project impacts and the study request is shown;
- A good reason is offered why the study was not previously requested;
- Circumstances have changed;
- Study results indicate a new study is necessary; or
- There are changes in laws, regulations, or environment.[118]

128. After considering the comments, we have decided to adopt the proposed rule in this regard. We appreciate the desire of potential applicants for certainty when the study plan is approved, but until the study plan is completed, it appears premature to prohibit any additional study requests. An extraordinary circumstances standard, conscientiously applied, is sufficiently strict to provide ample incentive for participants to make their study requests early on, during development of the study plan. We will not attempt to further specify in the rules what constitutes extraordinary circumstances. This is the kind of decision that needs to be made in the context of a specific proceeding.[119]

129. Finally, HRC, apparently fearing that the "good cause" standard will be too restrictive, requests clarification of that term. Troutman, apparently fearing that "good cause" and "extraordinary circumstances," will be interpreted too broadly, requests clarification of both terms. We think it inadvisable to attempt more specificity at this point. The only practical approach is to apply

[108] For clarification, here and in the regulations we are referring to the potential applicant's comprehensive annual report as the "study report," and to other periodic reports on studies as "progress reports."

[109] 18 CFR 5.11 and 5.15.

[110] 18 CFR 5.15.

[111] *See* 18 CFR 5.15.

[112] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,731.

[113] PG&E, Springer, NEU, Idaho Power, EEI.

[114] California, Oregon, PFMC, Menominee, Interior, MPRB, Skagit.

[115] California, HRC, NYSDEC, NCWRC.

[116] NCWRC, PFBC, Georgia DNR.

[117] NCWRC, PFBC, Georgia DNR.

[118] The last five examples were provided by NYSDEC. Minnesota DNR states that study requests should not be foreclosed simply because they may not have been identified early in the consultation process, and MPRB contends that the proposed limitations should be relaxed to ensure that project proposals are fully understood.

[119] New study requests made at later points in the process are considered in Section III.L.2 below.

these standards in the light of case-specific facts.

d. Comments on Study Reports

130. We also requested comments on whether parties should be required to file written comments on the potential applicant's initial and updated study reports prior to the required meeting to discuss the report(s).[120] Most commenters oppose such a requirement. Long View, Oregon, and ADK say that the written comments are likely to reflect misunderstandings or misinterpretations and the best place to clear such things up is in a face-to-face meeting. These parties suggest that written comments be filed after the meeting. California, PFBC, ADK, Georgia DNR also think it would be unproductive and would allow anyone who cannot attend the meeting to file their comments in lieu thereof. On the other hand, HRC, PFMC, and NEU think such a requirement would encourage effective preparation by the potential applicant for the meeting. Interior and Skokomish think pre-meeting comments should be optional.

131. In light of these comments, we will not impose such a requirement. Instead, we will leave it to the parties to determine individually whether they think the time and effort to file comments before the meeting will be beneficial in the circumstances of the proceeding.

132. Finally, S–P seeks assurance that the study development process will include consultation on means of keeping confidential sensitive Indian cultural practices. Our regulations and practices ensure that Indian tribes' confidentiality concerns will be appropriately addressed.[121]

G. Study Dispute Resolution Process

133. The NOPR proposed to establish a dispute resolution process that serves two purposes. In the informal stage, the applicant files a draft study plan for comment; the participants (including Commission staff) meet to discuss the draft plan and attempt to informally resolve differences. The Commission then approves a study plan with any needed modifications after considering the applicant's proposed plan and the participants' comments (study plan order).[122]

134. In the formal dispute resolution process, resource agencies with mandatory conditioning authority under FPA sections 4(e) and 18, and states or Indian tribes with water quality certification authority under Clean Water Act section 401, would be able to file a notice of study dispute with respect to studies pertaining directly to the exercise of their authorities under the aforementioned sections of the FPA or CWA. An Advisory Panel considers the dispute and makes recommendations to the Director of Energy Projects, who resolves the dispute.

135. We also proposed that the applicant, by virtue of the fact that it must conduct any studies required by the Commission and implement the license, has a special interest in the outcome of study dispute resolution, and should be afforded the opportunity to submit to the panel information and arguments with respect to a dispute.[123]

136. The NOPR requested comments on what modifications, if any, should be made to the proposed study dispute resolution process and, in particular, the proposed advisory panel.[124] Responses were received on nearly every aspect of the proposed process. Most commenters supported the proposed study dispute resolution process, but nearly all requested clarifications or modifications to cure perceived deficiencies. A few commenters opposed the panel and made alternative recommendations. All of these comments are considered in this section.

1. Informal Dispute Resolution

137. NHA and WPPD recommend that a peer review process be added for study disagreements prior to issuance of the study plan determination, to provide unbiased expert opinion on establishment of study request goals and objectives, technical design in relation to goals and objectives and the state of the art, and the anticipated utility of the study results to meeting the study goals and objectives. If the disagreement was not resolved as a result of consultation with the peer reviewers, the peer reviewers' comments would become part of the record, which would be available to the panel in formal dispute resolution, if any.

138. We will not adopt this recommendation. A peer review process would add additional time and expense to the process, and would largely replicate the formal dispute resolution process, which would be inconsistent with our goal of having a study plan development process that ensures, as best the Commission can, that the participants come together for the purpose of resolving study disagreements themselves.

2. Formal Dispute Resolution—Subject Matter and Eligibility

139. Many commenters recommend that the formal process be made available to any participant for study requests regarding any matter.[125] California states that the formal process should be available for all study disputes raised by agencies and Indian tribes. Some agencies suggest that the fact that they have a statutorily established role in licensing process, such as making fish and wildlife agency recommendation pursuant to FPA Section 10(j), establishes an obligation on the part of the Commission to ensure that the record contains information to support their recommendations.[126] Others suggest that eligibility for informal dispute resolution only undermines state agency management of state fish and wildlife resources.[127]

140. The NOPR explained that agencies and Indian tribes with mandatory conditioning authority, to extent they are exercising that authority, are differently situated than participants whose role is to make recommendations pursuant to FPA sections 10(a) and 10(j), National Historic Preservation Act (NHPA) Section 106,[128] or other applicable statutes. The former have a duty to make reasoned decisions based on substantial evidence, and their decisions are subject to judicial review. Those making recommendations have no such responsibility.[129] None of the proponents of broadening eligibility for the formal process addresses this fundamental distinction. They also gloss over the fact that the study plan determination is the culmination of the study plan development process in which potential applicants, study requesters, and the Commission staff consult intensively on what information gathering and studies are needed, study requests and responses thereto are accompanied by discussion of the study criteria, and the study plan determination must explain its decision

[120] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,732–733.

[121] *See* discussion of this issue in the NOPR; 68 FR at p.14002; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,717.

[122] This was referred to in the NOPR as the "Preliminary Determination." We have change the name to Study Plan Order to recognize that it is not preliminary with respect to study requests that do not directly involve the exercise by agencies or Indian tribes of mandatory conditioning authority.

[123] Proposed 18 CFR 5.1213(i).

[124] 68 FR at p. 13998; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,711.

[125] Interior, ODFW, Duke, Nez Perce, S-P, AW/FLOW, AMC, MDEP, Washington, AmRivers, ADK, RAW, EPA, MPRB, PFBC, CRITFC, SC League, MPRB, WGA, Skagit.

[126] Interior, IDFG, Oregon, Washington.

[127] Oregon, IDPR, PFMC, WGA, California, IDFG.

[128] 16 U.S.C. 470f.

[129] *See* 68 FR at p. 13998; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,710.

on each disputed study with reference to the study criteria and any applicable Commission policies and practices. We think this provides ample opportunity for development of the record and consideration of study requests related to recommendations.

141. Interior contends that the National Park Service should be eligible for formal dispute resolution with respect to study recommendations that relate to potential project impacts on a unit of the National Park System or other areas of special management concern, such as National Recreation Areas. Interior offers no basis for distinguishing these studies related to FPA Section 10(a) recommendations from those of other entities, and we *see* none.

142. GLIFWC, Menominee, and Nez Perce suggest that the Commission's trust responsibility requires Indian tribes to be eligible for formal dispute resolution with respect to studies related to impacts to reservation lands within the project boundary and ceded lands on which tribes have treaty reserved rights. We do not agree. The study plan development and formal dispute resolution components of the integrated process are not required by any treaty or statute, and are being created solely to provide a means of creating an evidentiary record to support, to the extent reasonably possible, the actions of agencies or Indian tribes with decisional authority.

143. Finally, NHA and PG&E request that the regulations make more clear that the formal process is available only to agencies or Indian tribes with respect to their study requests related directly to exercise of their mandatory conditioning authority, and not for study requests relating to matters wherein these entities may only make recommendations, such as FPA Section 10(j) fish and wildlife agency recommendations. We have clarified the regulatory text in this regard.[130]

3. Advisory Panel

a. Need for Panel

144. Several commenters object to, or express concerns about, the efficacy of, the Advisory Panel. Some licensee commenters assert that the existing dispute resolution provisions work well enough.[131] They assert generally that allowing the disputing agency to be represented on the panel violates fundamental fairness, accepted notions of due process, and the Administrative Procedure Act (APA).[132]

145. Some commenters also fear that the panel proposal is not practical, citing the lack of monetary compensation for the third-party panelist's time and effort; and the short time frames, particularly in light of the panelists' lack of familiarity with the project and background of the issues.[133] They recommend instead a technical conference, narrowly focused on the specific dispute, with input from the potential applicant and any other interested participant, and that the record of the technical conference be filed with Director to inform his decision on the dispute. The Skokomish Tribe fears that the panel process will be unwieldy, take longer than the existing process, and increase costs. VANR recommends that eligible study disputes be resolved by the Director using the existing process and, if the panel is used at all, it be only as a forum for appeals from the Director's decision. Duke recommends instead a modified version of the existing dispute resolution process; written submissions followed by a technical conference including Commission staff, or a panel including a representative of the applicant. PFBC recommends that the formal process be used only after the disputants have first attempted to resolve the matter using the ALP dispute resolution process.

146. These alternative recommendations generally have the virtue of being less complicated than the Advisory Panel proposal. They lack however the presence of a third party technical expert and panelists from Commission staff and the disputing agency who have no prior connection to the proceeding, and must work cooperatively with the third party expert and one another. We have also provided for a technical conference, discussed below, at which the potential applicant may directly address the Advisory Panel. For these reasons, we will adopt the Advisory Panel proposal.

b. Panel Membership

147. Many comments were received on the membership of the Advisory Panel. Various licensee commenters contend that the Advisory Panel is unfair because it includes a panelist from the disputing agency, but not the potential applicant.[134] They assert that requiring the agency representative to be someone not previously involved with the proceeding,[135] or even from another agency, will not obviate an institutional bias that resource agency staff have in favor of other resource agency staff.[136] Others contend that the panel would be more fair without a disputing agency representative because the disputing agency is a party to the dispute, while the Commission is the decisional authority.[137] Troutman expresses skepticism that resource agencies will be able to find qualified representatives who have not been involved in the proceeding and suggests that agency representatives will be unwilling to act independently of higher level agency officials who support the agency's position in the dispute.

148. Suggested remedies for this alleged bias include having two Commission staff members not previously associated with the proceeding and one third party expert,[138] replacing the disputing agency on the panel with a licensee representative,[139] adding a licensee representative to the panel,[140] and replacing the third party expert with a third member designated by the potential applicant.[141]

149. We do not agree that the proposal for panel membership is unfair to potential applicants. Again we remind industry commenters that the purpose of the Advisory Panel is to help resolve a dispute between the Commission staff and an agency or Indian tribe with mandatory conditioning authority concerning the adequacy of the record to support agency decision-making. Potential applicants will have ample opportunity through their written submission and participation in the technical conference to make their case to the Advisory Panel and the Office Director. A potential applicant that believes the Advisory Panel recommendation and study plan determination are not based on substantial evidence or are otherwise improper may file a request for rehearing.

150. EEI states that the agency representatives are not bound by the

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[130] *See* 18 CFR 5.14(a). EPA requests that we modify the regulation text to make eligible any agency that has water quality certification authority, so as to permit EPA to file notices of dispute in instances where it, rather than the state, is responsible for issuing water quality certification. We agree to this modification, and modified the regulatory text accordingly.

[131] EEI, Idaho Power, Alabama Power, Xcel, NEU.

[132] 5 U.S.C. 551–559.

[133] Suloway, NPS, Long View, VANR.

[134] Duke, Long View, Xcel, Snohomish. These entities reiterate assertions previously made that the Advisory Panel abdicates the Commission's responsibility to decide the issues before it. The Advisory Panel has no decisional authority; it is limited to making recommendations concerning the consistency of the study request with the study criteria.

[135] This is required by 18 CFR 5.14(d).

[136] WPSC, WPSR.

[137] Duke, Progress, Troutman.

[138] Duke, Progress, Troutman.

[139] WPSR.

[140] Xcel.

[141] Snohomish.

Commission's *ex parte* rules and suggest that they will consult in private with the agency staff who filed the dispute. The Process Group considered this issue and agreed that as a condition of serving on a panel, all panelists would have to agree to be strictly bound by the Commission's prohibition on *ex parte* communications. This is unnecessary however, as the regulations state that all communications to and from the Commission staff concerning the merits of the potential application shall be filed with the Commission.[142]

151. The few agency commenters on panel membership state that fairness and balance require the disputing agency to be on the panel because that is the only way to ensure that its position on biological and technical issues is properly represented.[143] Their principal concern is that the panel members have appropriate technical expertise relative to the specific issues in dispute.[144] NOAA Fisheries, for instance, contends that the expertise must be very specific to the issues; for instance, a study dispute involving gas bubble disease in fish would require experts on that topic, not merely general expertise in fisheries or other related specialized knowledge. Wisconsin DNR similarly argues that regional-specific expertise is needed; for instance, an expert in west coast anadromous fish would be unsuitable for a dispute concerning the study of resident, freshwater fish in Wisconsin.

152. We think it would be a sterile exercise to try to craft regulatory language that more precisely defines the type or degree of expertise that may be necessary for the myriad of potential dispute resolution issues. The most practical approach is to leave the selection of an appropriate third party expert from the list of technical experts to the agency or tribe and Commission staff panel members in light of the facts of the case.

153. Interior requests that the requirement that the Commission and disputing agency panel members be "not otherwise involved in the proceeding" [145] be modified to bar only persons not "directly" involved. In this way, Interior would make eligible a supervisor in the same office as the agency staff who invoked the formal dispute resolution process. California would exclude only those who have not been "actively involved in the proceeding as an advocate or negotiator for the agency or tribe's position." [146] This, too, would allow supervisory employees with direct responsibility for the agency's participation in the case to serve as a panel member. We decline to add this qualification because it would blur the line between those who are eligible to serve and those who are not, and would undercut the appearance, and probably the reality, that the panel is composed of technical experts using their independent judgment. The best way to ensure acceptance of the Advisory Panel approach is to ensure that the panel members are working on a clean slate with respect to the specific proceeding.

154. Oregon and IDPR state that the Advisory Panel should not be limited to three members because every agency that objects to the study plan determination on a particular study needs to have its own representative. We have limited the panel to three for two reasons. First, we seek to minimize the possibility of deadlock. Second, the larger the panel is, the greater are the logistical challenges associated with the panel convening, meeting, and making a recommendation. To these we add the concern that the panel not appear to be weighted in favor of disputing agencies. We see moreover no reason why two Federal agencies with disputes concerning the same or similar study requests cannot be represented by one individual with the requisite expertise.

155. The NOPR proposed that if there is no timely agreement on a third party expert, the two existing panel members carry out the panel's functions.[147] Mr. Groznik recommends that in such a case the Director should be required to appoint a third party expert. Interior contends that three panel members are needed to ensure that there is either a majority or unanimous recommendation. Oregon states that the panel should not be allowed to proceed in the absence of a technically-qualified third party, principally to ensure that there is appropriate technical expertise on the panel.

156. We expect instances where a third panel member cannot timely be selected by the Commission staff and disputing agency representatives to be rare. We recognize however the importance of the third panel member in providing assurance that the impartiality of the panel's recommendations. We have therefore amended the rule to provide that in such an event, an appropriate third panel member will be selected at random from the list of experts maintained by the Commission.[148]

157. Washington thinks a state agency expert should be able to serve on the Advisory Panel. We agree. A Federal agency or Indian tribe that initiates a dispute resolution could request a state agency expert to represent it on the Advisory Panel. Likewise, for instance, a state water quality certification agency could certainly appoint as its representative a member from its own ranks, or from another state or Federal agency, or Indian tribe. There is also no reason a qualified state agency employee could not serve as a third party expert if that person was selected by the other panel members and the state's regulations and policies permit that person to engage in such activities. We think this flexibility should make it easier to quickly assemble panels with the right expertise.

158. The Studies Group agreed that it would be appropriate for the Commission staff representative to initially organize the Advisory Panel and serve as chair. We think this makes sense because the notice of dispute will first be filed with the Commission, which will maintain the list of eligible technical experts, and some individual needs to be responsible to ensure that the process starts quickly and stays on track. We have so provided in the regulation text.[149]

c. Non-Member Participation

159. Some commenters contend that parties other than the potential applicant should be allowed to respond to the notice of dispute, even if they cannot initiate a dispute resolution, because they may have an interest in the outcome of the process not represented by the disputing agency or the potential applicant.[150] To do otherwise, suggests HRC, violates fundamental due process. SCE asserts that a potential applicant should be permitted to meet face-to-face with the Advisory Panel instead of being limited to written submissions. We believe the concerns of these parties are addressed by our decision in the following section to include the technical advisory meeting in the formal dispute resolution process.

160. The Advisory Council, citing 36 CFR 800.4, seeks assurance that State Historic Preservation Officers (SHPO), Tribal Historic Preservation Officers (THPO), and Indian tribes have an

[142] 18 CFR 5.8(b)(3)(v).

[143] Catawba, SC League, Wisconsin DNR.

[144] Interior, Oregon, NOAA Fisheries.

[145] 18 CFR 5.14(d).

[146] California, p. 13.

[147] Proposed 18 CFR 5.13(d).

[148] 18 CFR 5.14(d).

[149] *See* 18 CFR 5.14(d)(1). To further assist the rapid formation of the panel, the disputing agency is required to identify its panel member in its notice of dispute. 18 CFR 5.14(b).

[150] HRC, CHRC, Whitewater, Advisory Council, TU.

opportunity to participate in formal dispute resolution before any dispute pertaining to implementation of NHPA Section 106 is resolved. Subsection 800.4(a) provides for the action agency to determine whether the action could result in changes to any historic properties located in the area of potential effects. If so, the agency is to review existing information on potentially affected historic properties, request the views of the SHPO or THPO on further action to identify historic properties that may be affected, and seek relevant information from local governments, Indian tribes and others. Based on its assessment, the action agency is to determine the need for further actions, such as field surveys, to identify historic properties. Subsection 800.4(b) requires the action agency to make a good faith effort to identify potentially affected historic properties and to evaluate their eligibility for the National Register in consultation with the SHPO or THPO.

161. The integrated process is fully consistent with this requirement. The study plan and schedule development process discussed above contemplates the active participation of the SHPO or THPO, local governments, Indian tribes, and any interested agency or member of the public in determining what information needs to be gathered or studies conducted with respect to historic properties. Because these entities do not have mandatory conditioning authority, they would not be eligible to initiate the formal dispute resolution process. They would however have the benefit of informal dispute resolution and be eligible to participate in the technical conference.

162. We emphasize in this connection that the study plan development process merely determines, in consultation with the participants in the Section 106 process, which information gathering and studies the potential applicant should undertake. It assists the Commission in obtaining the information needed to identify what historic properties may be present. It makes no determination whether any aspect of the potential license application or reasonable alternatives would have an adverse effect on historic properties. That determination is made later in the context of the environmental document and other elements of the Section 106 process; specifically, the Commission must, when applying the criteria of effect and, if necessary, consult with the SHPO/THPO on ways to avoid or mitigate these effects, usually by entering into a PA.

d. Technical Conference

163. NHA recommended inclusion of an "Advisory Technical Conference (ATC)," which would convene just prior to the meeting of the Advisory Panel. The ATC would include representatives of the Commission staff, the agency or Indian tribe with the dispute, the potential applicant, and a neutral expert or experts. It is not clear from NHA's submission how the Advisory Panel would interact with the conferees. Commission staff with appropriate expertise would moderate the ATC,[151] and the Commission staff would be responsible for maintaining a conference record.

164. Prior to the ATC, the potential applicant and the resource agency that filed the dispute would file information and arguments. During the ATC, the agency or Indian tribe would summarize its arguments based on the study criteria, the potential applicant would respond, and the conferees would then discuss the issue in dispute relative to the study criteria. NHA would, to the extent feasible, have all studies in dispute addressed at one ATC. Following the ATC, the Advisory Panel would meet without the applicant, then make its recommendation to the Director, who would also have available the record of the ATC, including the opinions of the third party technical experts.

165. The Studies Group agreed that it would assist the formal dispute resolution process to add a technical conference, to be presided over by the Advisory Panel. This meeting would be held after the written submissions to the Advisory Panel by the disputing agency and the potential applicant are made by disputing agencies and the Commission staff, and just prior to the deliberative meeting(s) of the Advisory Panel. The meeting would be open to all parties, but the topics would be restricted to the specific studies in dispute and the applicability to them of the study criteria. The Advisory Panel would determine how it wished to receive information, but we anticipate that a question and answer format would work well.

166. The NHA proposal has merit in the sense that it would bring in additional technical expertise, but it also would entail additional steps requiring more time, additional Commission resources to provide a moderator and to keep a record, and would add to the overall burden by creating additional written record material of questionable incremental utility. NHA's proposal also does not provide an avenue for other participants with an interest in the outcome of the dispute to participate in the process.

167. We conclude that a technical conference based on the Studies Group's recommendation would benefit the process. The opportunity for the members of the Advisory Panel to hear directly from and be able to question the disputing agency or Indian tribe, the potential applicant, or other participants who have an interest in the outcome of the dispute should enable them to clear up any questions about the written submissions and quickly focus on the most important elements of the dispute. This should, in turn, assist the Advisory Panel to develop its recommendation in a timely fashion.[152]

e. Activities of the Advisory Panel

168. Various comments were received about the role of the Advisory Panel and how it should go about its work. EEI urges us to require the Advisory Panel to specifically address the potential applicant's submissions. An explicit direction in this regard is unnecessary; particularly in light of our decision to include the technical conference.

169. Troutman and Oregon request generally more definition of how the Advisory Panel will do its work, including with whom it will communicate, and how. The technical conference proposal and clarification that strict application of the prohibition on *ex parte* communications will apply should address these commenters' concerns. Also, as discussed above, we have determined that the Commission staff panel member should chair the panel. These provisions provide sufficient guidance to panelists and assurance to others that the panel will make its recommendations through procedures that are fair and reasonable.

170. EEI believes the disputing agency representative should be barred from writing the Advisory Panel's report on the ground that this person is likely to be biased in favor the disputing agency's position and, by having control over the drafting, will wield undue influence. We reject this suggestion. First, we trust that the panelists will apply their expertise in a professional manner consistent with the purpose of the

[151] It is not clear if NHA intends for the Commission staff moderator to be someone other than the Commission staff panel member.

[152] *See* 18 CFR 5.14(j). EEI recommended that we consider turning over disputes to the Commission's Dispute Resolution Service (DRS). The DRS is not an appropriate alternative to the formal dispute resolution process because the DRS is not a decision-making body and cannot ensure a resolution of the dispute through voluntary mediation. The DRS' role as a mediator or facilitator is more appropriate at other points in the process.

panel. We are moreover confident that no single panelist will be able to dictate the recommendation to the other panelists. The panel chair should have the leeway to make this assignment in consultation with the other panelists.

171. California contends that it is important for the Advisory Panel to convene in the vicinity of the project (and perhaps to visit the project) in order for the panel to better understand the disputed issues and so that state agencies and local entities with limited budgets are more likely to be able to appear before the panel. Whether it is necessary for the panel to meet in the project vicinity or visit the project is a matter best determined in light of the facts and circumstances of each case.

5. Timing Issues

172. Some commenters state that some or all of the time frames for the formal dispute resolution process are insufficient.[153] OWRC is particularly concerned that if more than one agency brings the same dispute, insufficient time is allowed for the agencies to agree on who should represent both of them. We disagree. This is a matter that agencies should be able to quickly settle over the telephone.

173. HRC suggests that the response times can be alleviated and the panel's deliberations better focused if the notice of dispute and potential applicant's responsive comments, if any, are required to include proposed findings and recommendations. The agency or Indian tribe's notice of dispute is already required to address the study criteria, which we expect would encompass its proposed findings and recommendations, but only from its own perspective. Any response from the potential applicant is likely to similarly address the criteria from its perspective. The task of the Advisory Panel will be to discuss and attempt to resolve differences between the submissions. The addition of the technical conference is also likely to result in clarifications to the written submissions that will influence the opinions of individual panelists. Thus, the proposed findings and recommendations are largely included in the record. Although we are not inclined to require the disputing agency or Indian tribe, or the potential applicant, to separately state its proposed findings and recommendations, they are encouraged to do so if they think it will benefit the record.

174. The NOPR proposes to require a notice of study dispute resolution to be filed within 20 days of the study plan determination.[154] NYSDEC and Interior state that this is not sufficient time to assemble the supporting evidence. NYSDEC would give the disputing agency at least the 25 days afforded to the potential applicant to submit responsive comments.[155] Interior recommends 30–60 days. Twenty days is not a great deal of time, but a disputing agency will have written out the support for its notice of dispute when it makes its study request prior to the study plan determination.

175. IDEQ recommends a 90-day period for the participants to informally resolve remaining differences after the study plan determination before a notice of dispute must be filed. We decline to adopt this recommendation. As discussed below, we have modified the rules to provide a 90-day period before comments are filed on the potential applicant's draft study plan for this purpose.[156] Participants in the formal dispute resolution process may also try to resolve differences during that process as a result of reviewing one another's written submissions, or following the technical conference.

6. Third Party Technical Expert

176. The principal concern raised about the third party technical expert is whether qualified persons will be willing to serve. Some commenters think the absence of compensation for professional time beyond reimbursement of expenses will make recruiting difficult.[157] Washington states that this is inequitable, but does not explain why, in light of the fact that panelists would be volunteers. Others suggest that unpaid panelists won't invest the necessary time and effort to result in a well-reasoned recommendation. They also think that a compensated third party expert is more likely to be truly neutral. These commenters recommend that third party experts be paid for their services as part of the cost of the hydropower program.[158] SCE recommends that the Commission and the disputing agency share the cost to compensate the third party expert.

177. We believe potential third party technical experts may be motivated to volunteer their services for reasons other than financial gain. One reason would be that service on the panel would enhance that person's professional standing as a technical expert, or in the area of alternative dispute resolution. It would also be an opportunity to provide a public service.

178. IDFG is concerned that there may not be a sufficient number of qualified people in the pool for certain issues due to lack of familiarity with local resources or limited field level experience with the resources. We think the Commission staff and disputing agency panelists will be competent to determine who among the pool of experts is qualified to serve.

179. The other principal concern of commenters is how to ensure that third party experts are truly neutral. Minnesota DNR indicates that technical experts employed by consulting firms are biased in favor of the industry and recommends using only experts from academia who have no recent ties to the industry. EEI, on the other hand, would have us prohibit the use of academics, on the ground that they are biased in favor of expansive and expensive studies. We decline to make any such blanket characterizations about large and very diverse classes of persons. This is the kind of concern that is best dealt with by the Commission staff and agency representatives to the panel in the context of a specific proceeding.

7. Multiple Panels and Multi-Issue Panels

180. A few commenters favor the use of multiple panels. NOAA Fisheries, for instance, states that there should be a separate panel for each issue relating to each study dispute; *e.g.*, if NOAA Fisheries and the U.S. Fish and Wildlife Service each had different issues with respect to the same study, they would file separate notices and there would be separate panels.

181. We hope that the formal dispute resolution process will rarely be invoked, but must take care to structure it so as to ensure that when it is, it can accomplish its purpose of timely bringing finality to study disputes. The regime favored by NOAA Fisheries is simply not practical. A contentious case with multiple study requests and disputes could paralyze the dispute resolution process for months. The more resources, studies, and agencies involved in a proceeding, and the more integrated processes being undertaken in the same general time frame, the more panels would be required, and the more difficult it would be to timely recruit panel members.

[153] OWRC, California, NYSDEC, IDEQ, HRC.

[154] Proposed 18 CFR 5.13(a).

[155] The 25-day period for potential applicants to respond to the notice was not selected to give the potential applicant an advantage, but to provide time following convening of the panel for the service addresses of the panelists to be posted on the Commission's Web site in order that the potential applicant will be able to serve the panel members. *See* proposed 18 CFR 5.13(h).

[156] 18 CFR 5.12 and Section III.T.

[157] Wisconsin DNR, Washington, HRC, Idaho Power, EEI, NEU, SCE.

[158] HRC, Washington.

182. The majority of commenters on this issue, and the Process Group, support the use of a single panel to deal with related resource issues in the same proceeding, subject to various caveats. They indicate that it may be necessary to reduce costs, avoid delay, and prevent sequential disputes over the same study. For instance, one panel would consider all issues relating to fishery studies in a single proceeding or, perhaps, in a multi-project proceeding.[159] A few commenters suggest that one panel ought to suffice for all disputes in a proceeding, without regard to resource differences.[160] In this regard, Troutman likens the role of the panelists to that of judges in a court, and states that expertise is less important than a good record.

183. The most frequent caveat of those who agree that a single panel may consider more than one dispute is that the panelists have appropriate expertise.[161] Interior adds that the decision to have one panel for multiple disputes needs to be made on a case-by-case basis, and that it needs to be clear at the outset what issues the panel will consider so that disputing agencies can appoint an appropriate representative and identify appropriate technical experts. We agree.

184. California would have the panel chair determine which disputes the panel will hear. In light of the goal of expeditious resolution, we think it falls to the Commission staff, under the direction of the Director of Energy Projects, to quickly assess the disputes and determine how many panels are needed and which issues each will consider.

185. Oregon requests clarification as to whether there will be standing panels for various resources that are likely to be the subject of many study requests at many projects, such as anadromous fisheries, or project-specific panels. Oregon does not appear to support this, but rather to recommend project-specific panels in order to help ensure that appropriate technical expertise is brought to bear. We agree.[162]

186. GLIFWC indicates that if a panel is to consider issues pertaining to different resources, it should be supplemented with a technical expert for each resource. We do not envision that the same panel would consider issues relating to, for instance, the need for a requested turbine entrainment study and the need for additional or modified recreational use surveys. The same panel might however consider disputes concerning studies requested on turbine entrainment and bypass reach flows for fishery habitat purposes. It would be a matter for the Commission staff and agency or tribal panel members to determine which persons on the list of potential technical experts are qualified and able to serve with respect to the subject of the dispute(s).

8. Panel Recommendation

187. The proposed rule provides for the Advisory Panel to make a finding "as to whether the criteria * * * are met or not, and why."[163] PG&E and GLIFWC state that the Advisory Panel should be required to determine whether each of the study criteria has been met. This is a reasonable recommendation, and we are modifying the regulation text accordingly. We make however two observations. First, not all the criteria necessarily apply to all the requesters. For instance, a requester may not be an agency or Indian tribe with established resource management goals for the relevant resource (Criterion 2). There is moreover no bright line by which to determine if some of the criteria have been met.

188. PG&E also suggests that the Advisory Panel should address, in addition to the study criteria, "any other relevant consideration."[164] SCE recommends that panel's recommendation be explicitly limited to whether the criteria have been satisfied. We agree with SCE. The study criteria were carefully developed with the intention that every participant in a dispute resolution proceeding would understand the criteria by which study requests should be formulated and would be judged. PG&E's recommendation would introduce substantial uncertainty into the process.

189. NEU states that if all three panelists do not support a recommendation, the disagreeing panel member should be required to provide a statement of the reason for their disagreement, in order to ensure a more complete record. We think this decision is best left to individual panelists. We could not, in any case, require compliance with such a provision.

9. Director's Determination

190. The Director's determination is to be made "with reference to the study criteria * * * and any applicable law or Commission policies and practices."[165] Several commenters think the Director has too much discretion regarding whether or not to accept a panel's recommendation.[166] NOAA Fisheries, Interior, and MPRB would have the Director bound by a majority vote of the panel. GLIFWC indicates that a requirement for deference to panel recommendations should be written into the rules. The commenters identify no deficiency with these requirements or other specific concern, but evince only a desire to make the panel recommendation binding. The Commission cannot delegate its decisional authority to the Advisory Panel. We have however modified the regulations to clarify that the Director will take into account the technical expertise of the panel, and will explain why any panel recommendation was rejected if that occurs.

191. Some licensee commenters suggest that a potential applicant should be permitted to file a response to the panel recommendation before the Director's determination is made.[167] We think that the study plan development process, plus the right in formal dispute resolution to make a written submission to the Advisory Panel and to participate in the technical conference provide sufficient opportunities for potential applicants to plead the merits of their study proposals.

192. Interior recommends that the Director be required to obtain Commission approval before issuing a decision that does not adopt the Advisory Panel's recommendation. We *see* no reason why such a decision needs to be elevated to the full Commission.

193. Interior also states that it does not know which technical experts the Director may consult before the decision is issued, which could result in the Director's objectivity being compromised. The regulations provide that all communications to or from the Commission staff, which includes the Director, related to the merits of the potential application shall be placed into the record.[168]

194. Finally, several states request that we reaffirm that the Commission's dispute resolution process does not bind state water quality certification agencies

[159] HRC, NYSDEC, NCWRC, PFMC, NEU, SCE, Alabama Power, GLIFWC, IDFG, Troutman, Interior, California.

[160] B&B, Troutman, Alabama Power.

[161] Interior, IDFG, NYSDEC, NCWRC.

[162] We note however that the concept of standing panels is worth considering, as it may be more administratively efficient. As experience is gained with the integrated process we will further consider this idea and, if experience indicates that it would be beneficial, will consult with stakeholders concerning whether modifications to the rule are necessary.

[163] Proposed 18 CFR 5.13(j).

[164] PG&E, p. 24.

[165] *See* proposed 18 CFR 5.13(k).

[166] NOAA Fisheries, Interior, MPRB, GLIFWC, FWS.

[167] CWRC, NEU, SCE.

[168] 18 CFR 5.8(b)(3)(v).

in the sense that participation by a such agencies in the Commission's processes does not affect whatever independent authority it has to require a potential license applicant to produce data or information in the context of the water quality certification application.[169] Alaska states that this holds for state CZMA processes as well. We affirm our prior statement.[170]

10. Study Plan Implementation

195. Several commenters[171] state that a dispute resolution panel should be convened to resolve any disagreements over the interpretation of study results, whether study plans need to be modified, and whether any additional studies are needed. They contend that such disagreements are no less important than disputes over what the study plan requirements should be in the first instance. Interior and RAW add that disagreements concerning a matter which was previously the subject of a panel recommendation should be considered by the same panel.

196. Our decision to limit formal study dispute resolution to development of the study plan does not imply that any subsequent decisions with respect to studies are less important. Rather, it reflects the fact that convening an Advisory Panel at every point in the overall process where there are likely to be disagreements would severely hamper the timely conclusion of the proceeding. Subsequent resolution of disagreements over study results, modifications to the approved plan, and additional study needs are also not likely to result in substantial changes to the overall study plan. Interior's and RAW's recommendation to reconvene an Advisory Panel for later disagreements pertaining to matters previously considered by that panel is impractical. There is no assurance that the same panelists would be available in a timely manner, or at all, and it would likely hamper the recruitment of third party technical experts if by committing to serve on one panel they were also committing to serve on an undetermined number of future panels at undetermined times.

H. Compliance With Study Plan

197. As proposed, the study plan order would require the potential applicant to proceed with the approved study plan. The Director's order in formal dispute resolution could amend the study plan order and, if so, would require the potential applicant to carry out the study plan as modified.[172]

198. SCE and others[173] request that we clarify in the rules whether the proposed study plan order (if no dispute resolution is initiated) and the proposed Director's order following formal dispute resolution are final orders to which rehearing applies. SCE seeks certainty on this point so that it may know whether a potential license applicant is subject to the compliance provisions of FPA Section 31. Duke and SCE request that we make these orders non-binding so that potential applicants are not forced to file requests for rehearing or judicial review to protect themselves against the possibility of sanctions under Section 31[174] or, at least, that we permit the plan and schedule to be modified based on unforeseen circumstances. PG&E suggests that the rules state that an application lacking the required information "may" be found deficient, rather than "will" be found deficient, since an existing licensee might want to avoid doing pre-filing studies to prevent potential competitors from copying the results. WUWC similarly requests that we make clear that any failure to comply with a study plan determination will not result in civil penalties, but will be treated as a deficiency in the application.

199. California, Interior, and AmRivers request that the rule be amended to ensure that there are consequences for the potential applicant if study requirements, objectives, and expectations are not met. Menominee requests that applicants be required to develop a "Quality Assurance Project Plan" prior to implementation of the study plan.

200. Orders regarding studies plans will be binding on potential license applicants, and we expect that they will comply with them. Failure to do so will put potential applicants at risk of having their applications, when filed, found to be deficient or rejected. The question of whether such orders are subject to rehearing and appellate review may have differing answers, based on the facts of individual cases. In addition, review of study plan orders could significantly lengthen the licensing process, and thus is to be avoided to the extent possible.

201. More to the point, it is crucial to the success of the integrated process that issues regarding development of the record be identified and resolved at an early stage in the licensing proceeding. To this end, the process has been designed to give all participants the opportunity to examine existing information, make proposals regarding necessary studies, work with other participants to achieve consensus regarding information-gathering and, on matters that cannot otherwise be resolved, to obtain the opinion of a three-person panel of experts and a determination from the Director based on the record compiled by the participants. It is our hope and expectation that this consensus-building process will succeed, as has the collaborative alternative licensing process, in keeping disputes regarding studies to an absolute minimum, such that all participants can meet their information needs with the study plan as approved by the Director, without the need for further proceedings.

202. Some licensee commenters[175] state that it is unfair that an existing licensee which is a potential applicant could be sanctioned under Section 31 for failing to comply with study plan determinations, while non-licensee potential competitors for the same project license could not.[176] PG&E and others fear that non-licensee potential competitors might fail to comply with the study orders, then submit an application that relies on the studies undertaken by the existing licensee. They recommend that the Commission address this imbalance by specifying that the penalty for failure to comply with the study plan determinations will be the same for licensee and non-licensee potential applicants; that is, the application will be found deficient.[177] Alternatively, SCE states that a non-licensee potential competitor should also be required to have a formal study plan and schedule, and that its

[169] Washington, Massachusetts DER, Georgia DNR, NYSDEC, California, WGA.

[170] California requested that this statement be included in the regulations. We think it is unnecessary to do so, as the authority of states and Indian tribes in this connection is not affected by anything in our regulations.

[171] HRC, AmRivers, Wisconsin DNR, Interior, and RAW.

[172] Proposed 18 CFR 5.13(k).

[173] Long View and PG&E recommend that the Director's decision in formal study dispute resolution be appealable to the Commission or an administrative law judge. PG&E would extend this right to agencies, tribes, and the potential applicant, but states that it should be limited to alleged errors of fact. Long View would allow an appeal in "extraordinary circumstances," which it indicates would include a study recommendation that significantly increases the cost of the study plan over the applicant's budget.

[174] Duke adds that if rehearing is requested, the Commission would have to suspend the study requirements in dispute pending rehearing or judicial review in order to preserve the potential applicant's rights.

[175] Duke, PG&E, NHA, SCE.

[176] SCE evidently has in mind Wolverine Power Co. v. FERC, 963 F.2d 446 (D.C. Cir. 1992), which holds that the civil penalty provisions of FPA section 31 apply only to licensees, permittees, and exemptees, not to unlicensed project operators.

[177] They refer to 18 CFR 4.38(b)(6)(I) and 16.8(b)(6)(I).

application should be found deficient and rejected if it attempts to use the licensee's studies for that purpose.

203. Given that the thrust of Section 31 is the enforcement of Commission requirements with respect to the construction, operation, and maintenance of licensed projects, and not the license application process, it is not clear that the section is applicable to licensees as potential applicants. In any event, we consider imposing civil penalties to be inappropriate in this context and do not propose to do so.

204. With respect to the concern raised by PG&E about the unfair use by a competitor of another competitor's work product, the Commission has pointed out that any improper use of a copyrighted filing is subject to remedy in an appropriate judicial forum.[178] There has not been an instance of a potential competitor copying another applicant's license application since the late 1980s,[179] and since ECPA was enacted in 1986, there have been but two instances of competing applications for a new license.[180] We are aware of only one instance where a potential competitor and an existing licensee have been involved in a dispute over whether an existing licensee should have to share with a potential competitor information required to be made public.[181]

205. In any event, as discussed below, we are requiring non-licensee potential applicants for a new license to file the NOI and PAD no later than the statutory deadline for an existing licensee to file its NOI.[182] Under these circumstances, it will be difficult for a potential non-licensee competitor to game the regulations.

206. NHA similarly requests that we add to the regulations a requirement that as a condition of invoking the formal dispute resolution process agencies must agree to be bound by the Director's decision. This, NHA states, would ensure that the cost and effort of formal dispute resolution is not wasted. As just stated, we cannot bind states or Indian tribes with respect to the administration of their water quality certification programs under the Clean Water Act. NHA does not moreover speak for a united industry on this issue. Several licensee commenters indicate that they may feel compelled to seek rehearing of the Director's decision, and we can see no distinction between a potential applicant, agency, or Indian tribe in this regard.

207. Finally, PG&E and SCE request that we modify the proposed rule to make clear that agencies and Indian tribes with mandatory conditioning authority may not invoke the Commission's dispute resolution processes and then use authorities they have under other statutes to require potential applicants to do information gathering or studies in addition to those the Commission requires. We cannot do this, for we have no authority to control the activities of these entities under other statutes. We do however fully expect these entities to participate in the integrated process in good faith in order that the Commission's decisional record will, to the extent reasonably possible, serve as the basis for the decisions of entities with conditioning authority, and that any additional information these entities may require is known early in the process.

I. Other Uses for Dispute Resolution

208. Washington DNR recommends that the Commission establish a conflict resolution process for disputes between potential applicants and the owners of lands on which a project would be located, and that the license application not be accepted until the conflict resolution process has run its course. Such a conflict is likely to occur only in the case of a new project proposal. We think it is inappropriate to hold processing of the application in abeyance until the concerns of one party are resolved. Affected landowners, like all interested entities, are encouraged to participate in the pre-filing consultation process and to intervene if a license application is filed. If the potential applicant and the landowner are not able to resolve any differences,[183] the Commission will do so in the context of its public interest analysis under the FPA.

209. Skagit recommends that we require tribal approval of consultants engaged by potential applicants for tribal cultural resources analysis. Nez Perce recommends that a dispute resolution process be made available for disagreements between Indian tribes and potential applicants over the identity of consultants engaged by the potential applicant to do information gathering or studies related to tribal cultural resources because potential applicants sometimes engage persons who are not acceptable to the Indian tribe. As discussed in the NOPR, we agree that it is appropriate for potential applicants to consult with interested tribes concerning the identity of consultants and, indeed, it is in their best interest to do so, but we also think that applicants need flexibility in this regard and should not be required to obtain tribal approval before engaging a consultant.[184] We note however that our regulations require potential applicants and those in their service to protect sensitive cultural resources information from disclosure.[185]

J. Evidentiary Hearings

210. A few licensee commenters[186] want the rules to provide that a party is entitled to an evidentiary hearing before an administrative law judge (ALJ) whenever there are disputed issues of fact.[187] They indicate that such hearings would not be for resolving study disputes, but for "disputed issues of fact material to disputed mandatory terms and conditions."[188] They state that such hearings would help foster settlements, and improve the quality and probative value of the record by encouraging resource agencies to support their terms and conditions, and help to limit post-license litigation. They add that such hearings should not delay the process because they would be narrowly focused on specified factual disputes and an ALJ decision could be rendered in about six months.

211. Substantially the same recommendation was made by some of the same commenters prior to the NOPR. We there stated that while we do not intend to change our general practice of resolving most hydroelectric licensing matters by means of notice and comment procedures, we are open to setting discrete issues of fact for hearing before an ALJ in appropriate circumstances, and will give due

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[178] *See* WV Hydro, Inc. and the City of St. Mary's, WV, 45 FERC ¶ 61,220 (1988).

[179] *Id.*

[180] One case was N.E.W. Hydro, Inc. and City of Oconto Falls, WI, 81 FERC ¶ 1,238 (1997), *order on reh'g*, 85 FERC ¶ 61,222 (1998), *aff'd, sub nom.* City of Oconto Falls, WI v. FERC, 204 F.3d 1154 (D.C. Cir. 2000). The other was Holyoke Water and Power Co., *et al.*, 88 FERC ¶ 61,186 (1999). In neither case did the competitor prevail.

[181] *See* P.U.D. No. 2 of Grant County, WA, 96 FERC ¶ 61,211 (2001) and ¶ 61,362 (2001). In that instance, the non-licensee potential competitor elected not to file a license application.

[182] *See* Section III.S and 18 CFR 5.5(a).

[183] We note that the Commission's Dispute Resolution Service is available to assist willing parties to resolve disagreements.

[184] 68 FR at p. 14003; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,718.

[185] *See* discussion of this issue in the NOPR; 68 FR at p. 14002; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,717.

[186] NHA, WPPD, Idaho Power, EEI, NEU.

[187] EEI recommends that the regulations include the following language from APA Section 556(d): "a party is entitled to present his case or defense by oral or documentary evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts."

[188] EEI, p.15. Such a rule would however also logically apply to disputed facts pertaining to license conditions originating with the Commission staff.

consideration to such requests.[189] We also included a provision in the proposed rules providing for such hearings.[190]

212. In the Final Rule, we retain the proposed language on this issue. Resolving factual disputes before an ALJ is a time-tested means of decision making; factual records developed in such hearings are useful to courts which may be called upon to review the final decision on the license.

K. Draft License Application Replaced

213. The integrated process was proposed to include the filing for comment of a draft license application containing, insofar as possible, the same contents as a final license application.[191] Exhibit E, the environmental report, would be significantly different from the traditional Exhibit E because it would be prepared following the guidelines for preparation of an applicant-prepared environmental analysis.[192] Any entity requesting additional information or studies in its comments on the draft application would be required to show extraordinary circumstances, and to address in its request certain criteria, as applicable to the facts of that case.[193]

1. Need for Draft Application

214. We requested comments on whether, in lieu of filing a draft license application for comment, it would be a better use of the participants' time to continue informally working on the resolution of any outstanding issues, or whether other considerations weigh for or against a draft license application.[194]

215. Several industry commenters state that the potential applicant should decide if a draft license application is needed, because many potential applicants feel the time and effort devoted to it would be better spent on other matters such as settlement discussions and completing study requirements.[195] They state that the draft application requirement is burdensome and redundant because of the cost of creating, reproducing and distributing the document to many stakeholders, and then quickly revising and again reproducing and distributing a final application. Some state that other Federal agencies, such as the U.S. Army Corps of Engineers, do not require draft applications, and that it causes no problems.

216. These commenters contend that the other participants do not need to see the potential applicant's proposed resource protection, mitigation, and enhancement (PM&E) measures until the application is filed, and that they should have a good general idea of what the potential applicant is likely to propose from the PAD, NEPA scoping, and study plan requirements. NHA would have the potential applicant consult with the parties with the objective of an agreement on whether a draft application should be circulated.[196] NHA and Long View also suggest that the draft license application may be eliminated for relatively simple cases, such as small projects that operate run-of-river or have no anadromous fish issues.

217. Resource agencies and NGOs urge us to retain the draft license application. They state that it is the first time the potential applicant's whole proposal, including PM&E measures, is consolidated and revealed to agencies, which helps them to understand the entire effect of the project and to prepare for filing of the application in final. Some indicate that the draft application is necessary to ensure that potential applicants consider all participants' comments. Others state that it is an important last pre-filing chance to influence the potential applicant's proposed PM&E measures, and to identify areas where additional information may be needed, including for water quality certification purposes. Some also suggest that the draft license application fosters settlement negotiations. Finally, some commenters indicate that the time required to review a draft license application will not prevent parties from continuing to work on outstanding issues, such as settlements or the completion of studies.[197]

218. Agency and NGO commenters also suggest that the cost of a draft application should be modest because it is circulated so close to the filing deadline that the draft must very closely resemble the final application, and some favor permitting control of costs by e-filing.[198] AMC would retain the draft application if there are no settlement negotiations taking place when it would otherwise be due. Interior suggests that the burden entailed by a draft license application could be minimized by permitting the potential application to incorporate by reference information from the PAD or study results that have not changed.

219. As indicated above, much of the disagreement about whether to require a draft license application turns on the contrast between the industry view that it is burdensome and of questionable utility, and the agency and NGO view that it is helpful to the participants. Our task then is to devise a document that reduces the burden imposed on the potential applicant but retains the features of the draft license application that the agencies and NGOs find useful. To that end, we must consider the commenters' views on the appropriate contents of a draft license application.

2. Contents of Draft Application

220. The NOPR requested comments on whether a draft application, if required to be filed, should track the contents of the final license application, or whether it would be preferable to require it only to include a revised Exhibit E or other materials.[199]

221. NHA and others[200] state that if a draft application is required it should be limited to a description and analysis of the potential applicant's proposal, plus Exhibit E or an abbreviated version thereof. They state that most recipients are only interested in those parts of the draft application and rarely comment on any other part of it.[201] They add that any other information in the record will already have been filed with the Commission and served on the parties, and may be incorporated in a draft application or comments by reference.[202] They conclude that the comments are seldom useful because of

[189] 68 FR at p. 13998; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,711.

[190] *See* proposed 18 CFR 5.28(e). The provision is now at 18 CFR 5.29(e).

[191] Proposed 18 CFR 5.15 (Draft license application).

[192] Proposed 18 CFR 5.17 (Application content).

[193] Proposed 18 CFR 5.15.

[194] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,732.

[195] NHA, Suloway, Long View, SCE, Snohomish.

[196] PFBC, viewing the matter from the opposite side of the coin, would eliminate the draft license application only if most or all parties agree.

[197] MDEP, FWS, ADK, Wisconsin DNR, IDFG, VANR, NEU, Oregon, HRC, PFMC, NCWRC, California, Interior, GLIFWC, Skokomish, Skagit. One industry commenter, PG&E recommends against eliminating the draft application, at least Exhibit E. PG&E states that the comment deadline on the draft application tends to focus participants on the matters most important to them.

[198] Oregon, HRC, PFMC, NCWRC, ADK, California, Interior, VANR, GLIFWC, Skokomish.

[199] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,732.

[200] Oregon, HRC, PFMC, NCWRC, ADK, California, Interior, VANR, GLIFWC, Skokomish, Long View, Acres.

[201] Long View, Acres. Acres indicates that Exhibits A (project description) and B (description of proposed project operation and alternatives considered) may also be appropriate if the potential applicant for a new license is proposing material changes in project operation.

[202] Longview, Acres. These commenters state that the contents of Exhibits A, B, C (proposed construction schedule), and G (project map) would already have been circulated in the PAD or a PAD supplement, or already provided for in the study plan and schedule. They recommend reference to the Commission's EA Handbook as the guidance for preparing Exhibit E.

the limited time available to review the draft, but the potential applicant nonetheless must revise the draft application to respond to them before it files the application in final form.[203]

222. Long View states that if a draft license application contains the potential applicant's specific proposal, then commenting agencies should be required to provide preliminary terms and conditions. This, it states, would allow the potential applicant to refine its proposal and help make Commission action more timely.

223. Agencies and NGOs, on the other hand, recommend that the draft license application continue to follow the format and content of the final application. They wish particularly to have a requirement for a specific operating proposal, and stress the need for a quality Exhibit E.[204] They contend that these are essential for a thorough review and opportunity to comment, and emphasize the importance of the potential applicant's response to comments in the final application. One of the few industry proponents of the existing draft license application format, NEU adds that having a consistent format between draft and final license applications will make reading and comprehension of the documents easier than if the draft application is in a different format.

224. Several commenters also state that the draft license application should include all the data and information needed for the state to consider the potential applicant's clean water act certification application.[205] Oregon states that its process is complex and iterative, so this requirement would help to expedite the state process. IDEQ states that if a state has specific information requirements for the application, the information should be included in the draft application, or the potential applicant should be required to explain when the information will be supplied.

225. Clearly, there is no meeting of the minds on this issue in the written comments. The Process Group however discussed this issue at length and agreed that, in lieu of a draft license application, an applicant could be permitted to file a document discussing its proposal for operation of the project facilities, a range of PM&E measures under consideration by the potential applicant,[206] and a summary of the environmental analysis of the impacts of the range of PM&E's and proposed project operations. This document would be called the potential applicant's "Preliminary Licensing Proposal."

226. The underlying premise of the Process Group's compromise is that sufficient information is available through the PAD and completion of information gathering and studies under the approved study plan to support development of a range of PM&E measures and a draft environmental document.[207] The Process Group further agreed that, if the participants are amenable, this filing could be waived by the Commission. The issue of whether to request a waiver would be initially considered in the development of the study plan and schedule.[208] A potential applicant would also have the option to prepare a complete draft license application with the format and contents of the final application.

227. We think the Process Group's agreement is by and large a reasonable attempt to bridge the gap between license applicants and other participants because the proposed document should be less burdensome for potential applicants, yet provide the specificity sought by agencies and NGOs with respect to the potential applicant's proposal and environmental impacts analysis. We have two concerns with this recommendation however. First, a document which contains a "range" of potential PM&E measures will not be very helpful to commenters, who will not know which of the potential PM&E measures the potential applicant is seriously considering. It would also needlessly complicate commenting on the draft environmental analysis. We will therefore require the Preliminary Licensing Proposal to include one set of proposed PM&E measures. Second, the utility of the Preliminary Licensing Proposal would also be compromised if the potential applicant merely provided a "summary" of its draft environmental analysis. The term "summary" is quite elastic and we do not intend to further complicate the process by trying to specify the contents of the summary. Instead, we will require the Preliminary Licensing Proposal to include the potential applicant's draft environmental analysis of its preliminary licensing proposal.

3. Preliminary Draft Terms and Conditions

228. The NOPR states that in most cases the updated study report should indicate that all of the information required by the approved study plan, or all of the information required to support the filing of FPA Section 10(j) recommendations or mandatory terms and conditions or fishways, has been collected and distributed to the relevant agencies at the draft application stage. We suggested that in such circumstances, it may be appropriate for the parties to file preliminary draft 10(j) recommendations, terms and conditions, or fishway prescriptions, and for the Commission staff to make a preliminary response, including initial 10(j) consistency findings, to those filings. Modified recommendations, and terms and conditions would be filed in response to the Commission's ready for environmental analysis (REA) notice.[209] In this regard, we requested comments on whether we should in each case make a determination following the updated study report of whether the record is sufficiently complete to require the filing of preliminary draft recommendations and terms and conditions with comments on the draft license application.[210]

229. A few licensee commenters responded affirmatively. SCE states that under these circumstances we should require draft PM&E measures to be filed 45 days after the license application is filed because the record will be complete. SCE would have final PM&E measures filed 60 days after the REA notice. Idaho Power and EEI suggest that if parties are not required to provide recommendations and terms and conditions when the studies are completed, the goals of the integrated process will not be realized. NEU also supports earlier filing of draft PM&E measures.

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[203] Long View, NPS, SCE.

[204] HRC, NCWRC, PFBC, Georgia DNR, California, NYSDEC, Interior.

[205] Oregon, HRC, PFMC, NCWRC, ADK, California, Interior, VANR, GLIFWC, Skokomish.

[206] As we understand the Process Group's recommendation, a "range" of PM&E measures encompasses measures with respect to each of the affected resources, and could include potential alternative PM&E measures with respect to a particular issue. An example of the latter might be enhancing bypassed reach flows to benefit aquatic resources or, alternatively, providing enhancements to wetlands in the project reservoir.

[207] In recognition of the fact that information gathering and studies will not always be complete at this stage of the proceeding, we have moved acceptance of the application to the point were the study plan is completed.

[208] The Preliminary Licensing Proposal is issued for comments, which could include requests for new or modified studies. The Process Group's expectation appeared to be that this opportunity would be preserved even if the Preliminary Licensing Proposal were waived. We disagree. Since the purpose of that document is to obtain comments with respect to the potential applicant's proposal, waiver of the requirement to distribute that document should likewise eliminate the opportunity to request new or modified studies at this point.

[209] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,732. The proposed regulation test inadvertently states that the modified PM&E measures would be final.

[210] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,732.

230. One state agency, IDFG also supports this idea, at least with respect to fish and wildlife agency recommendations made pursuant to FPA Section 10(j).[211] Under IDFG's proposal, the Commission staff would not respond to the preliminary 10(j) recommendations. IDFG states that this would enable potential applicants to consider the preliminary 10(j) measures without being influenced by the Commission staff's preliminary response. IDFG thinks this might provide an incentive to the parties to enter into settlement negotiations.

231. Nearly all respondents however opposed this idea for various reasons. Wisconsin DNR and NCWRC state that the potential applicant needs to make its licensing proposal, at least in draft, in order for agencies to assess the potential impacts so that they can develop mitigation measures or craft water quality certification conditions.[212] NCWRC adds that the time frames provided in the proposed rule are already too tight, and it would be unreasonable to require another document from the commenters in the same overall time frame.[213]

232. NOAA Fisheries and HRC indicate that completion of the study plan does not complete the record because, at a minimum, the license application including the applicant's proposal needs to be filed.[214] NOAA Fisheries indicates that the lack of complete information would require it to file prescriptions and recommendations based on a worst case scenario. California and PG&E agree that it would be unproductive for parties to file anything before the Commission declares that the application is ready for environmental analysis. California adds that, in any event, if the studies are complete, parties will soon be making the same filing in response to an REA notice and after the Commission has reviewed the application.[215] NHA similarly indicates that agencies would need to respond on a case-by-case basis, depending on their view of whether the record is complete.

233. GLIFWC and Skokomish state that preliminary draft conditions before the REA notice would not afford Indian tribes sufficient time to consult with Federal agencies that have authority pursuant to FPA Section 4(e) to require mandatory conditions for projects located on Indian reservations.

234. Among agencies and NGOs, only NYSDEC and Oregon do not object to filing preliminary draft PM&E measures. Oregon's tentative assent however assumes a period of one year between the draft and final license applications, in contrast to the approximate period of 150 days in the proposed rule.[216] We are not inclined, particularly in light of our decision to adopt the Preliminary Licensing Proposal, to extend the comment period.

235. Finally, Interior states that this might be acceptable, but only at the option of the entity filing the PM&E measures. Interior also questions the purpose of this proposal on the ground that the Commission's draft environmental document is likely to provide significant information and analysis not found in the studies or applicant's proposal. Interior adds that filing preliminary PM&E measures before the REA notice is pointless since modified PM&E measures are not due until 60 days after the comments are due on the draft NEPA document.[217]

236. We conclude that the arguments against requiring preliminary draft PM&E measures are persuasive and will not require them to be filed.

L. License Applications

1. Contents

237. Only a few comments were filed on the contents of the final license application. Long View seeks clarification that Exhibit C (proposed construction schedule) applies only to proposed construction, and need not discuss any previous construction. Long View's understanding is correct.

238. Long View requests an explanation of why the maps required in Exhibit G need to be stamped by a Registered Land Surveyor. This ensures accuracy in the maps because Registered Land Surveyors are accountable for the accuracy of their work.

239. Nez Perce indicates that the license application should include a map showing the political boundaries of any Indian reservation that may be affected, and identifying ceded and non-ceded territories where treaty rights apply. In our view, this is information that can best be provided to a potential applicant by the Indian tribe itself or with the assistance of Interior.

240. Nez Perce also states that the Exhibit E should be prepared after consultation with affected Indian tribes on the scope of cumulative environmental impacts, and should be prepared on a watershed basis. The integrated process provides ample opportunity for Indian tribes to participate in pre-filing consultation and NEPA scoping. In addition, the Commission staff's Scoping Document 1 will state what the Commission staff considers to be the geographical and temporal scope of the analysis.

241. Some commenters requested changes to the license application requirements that touch on economic analysis. Nez Perce and NOAA Fisheries request that Exhibit E include, in addition to discussion of the cost of PM&E measures, a dollar valuation of the benefits of environmental and cultural resources PM&E measures. This analysis would include, among others things, potential increases in revenues from commercial and sport fishing, increased non-fishing recreation, and potential property value increases resulting from better environmental protection.

242. Our views concerning the attachment of dollar values to natural and cultural resource benefits are set forth in *Great Northern Paper, Inc.*[218] and *City of Tacoma, Washington*.[219]

The public-interest balancing of environmental and economic impacts cannot be done with mathematical

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[211] 16 U.S.C. 803(j).

[212] Wisconsin DNR, NOAA Fisheries, and HRC also indicate that this would needlessly create an additional step in the process, and Wisconsin DNR states that it does not have the necessary resources.

[213] PFMC suggests that the Commission and the agencies should negotiate dates for filing of PM&E measures. That would be inconsistent with a central goal of the integrated process, reducing the time required to process license applications.

[214] HRC adds that if preliminary PM&E measures are required, then the record should also be complete enough for the Commission staff to provide draft license articles. Draft license articles are however based on the Commission's evaluation of the reasonable alternatives, which may consist largely of the alternatives recommended by agencies, Indian tribes, and NGOs.

[215] California adds that in the context of its water quality certification, state law requires a final environmental document before its final certification conditions can be issued, and that it would have to repeat the entire water quality certification process. We did not however suggest that the state should issue water quality certification at this juncture.

[216] 90 days to comment on the Preliminary Licensing Proposal or draft license application, followed by 60 days for the applicant to file the final application.

[217] Proposed 18 CFR 5.22.

[218] 85 FERC ¶ 61,316 (1998), *reconsideration denied*, 86 FERC ¶ 61,164 (1999), *aff'd*, Conservation Law Foundation v. FERC, 216 F.3d 41 (DC Cir. 2000) (nothing in the FPA requires the Commission to place a dollar value on nonpower benefits; nor does the fact that the Commission assigned dollar figures to the licensee's economic costs require it to do the same for nonpower benefits.). *See also*, Namekegon Hydro Co., 12 FPC 203, 206 (1953), *aff'd*, Namekegon Hydro Co. v. FPC, 216 F.2d 509 (7th Cir. 1954) (when unique recreational or other environmental values are present such as here, the public interest cannot be evaluated adequately only by dollars and cents); and Eugene Water & Electric Board, 81 FERC ¶ 61,270 (1997) *aff'd*, American Rivers v. FERC, 187 F.3d 1007 (9th Cir. 1999) (rejecting request for economic valuation of environmental resources that were the subject of 10(j) recommendations).

[219] 84 FERC ¶ 61,107 (1998), *order on reh'g*, 86 FERC ¶ 61,311 (1999), *appeal pending, City of Tacoma* v. *FERC*, DC Cir. No. 99–1143, *et al.*

precision, nor do we think our statutory obligation to weigh and balance all public interest considerations is served by trying to reduce it to a mere mathematical exercise. Where the dollar cost of enhancement measures, such as diminished power production, can be reasonably ascertained, we will do so. However, for non-power resources such as aquatic habitat, fish and wildlife, recreation, and cultural and aesthetic values, to name just a few, the public interest cannot be evaluated adequately only by dollars and cents.[220]

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In the context of public interest balancing for long-term authorizations, it is inappropriate to rely too heavily on the accuracy of current dollar estimates of non-power resource values, calculated using any number of reasonably disputable assumptions and methods.[221]

243. AW/FLOW and FWS state that the final application should include projections of project revenues for the purpose of testing applicant assertions that proposed PM&E measures are too costly. That would be inconsistent with the fundamental determination underlying our policy of using current costs to value project power; that is, the futility of attempts to estimate power values on a long-term basis.[222]

244. Long View and PG&E state that Exhibit E (which is in the form of a draft environmental document) which requires an economic analysis of "any other action alternative" [223] would unreasonably require an applicant to conduct an economic analysis of every PM&E measure recommended by any participant in pre-filing consultation. They would like for the applicant to determine which such measures are reasonable to analyze.

245. The action alternatives typically include PM&E measures proposed by agencies, Indian tribes, and NGOs. If such measures are not provided before the application is filed, the potential applicant has little to work with and a commensurately minor obligation in this regard. In such cases Exhibit E then will contain an economic analysis of the existing project as it currently operates and the license applicant's proposal. We expect however there will also be cases in which preliminary action alternatives or individual PM&E measures will exist when the application is filed. We share PG&E's concern about license applicants being held responsible for developing cost information about or analyses of PM&E measures of varying specificity and practicality, or those that involve long-term activity not easily translated into current costs. We would only expect a potential applicant to provide an analysis of preliminary PM&E measures if they were sufficiently specific to make that possible.[224] We have modified the regulation text to reflect this view.[225]

2. Post-Application Study Requests

246. The proposed rule makes no provision for new information-gathering or study requests after a license application is filed, based on the premise that participants are provided ample opportunity before the application is filed and during the study period to make such requests. Industry commenters agree with this proposal.[226]

247. Some agency and NGO commenters do not agree. They appear to concede that if such requests are permitted, the bar should be set high, but assert that to prohibit them entirely would exclude from the record information warranted by unforeseen circumstances. They cite as examples unexpected study results which establish a need for a new study; failure of the applicant to meet document production and disclosure obligations during the pre-filing period or in the application; and material changes in circumstance with respect to the environment, the applicant's license proposal or information contained therein, and applicable laws or regulations.[227]

248. The mere fact that study results are unexpected does not indicate that a new study is needed. It is possible for study results to be so different from what was expected that questions arise concerning whether it was properly conducted, but such events are exceedingly rare in our experience. The failure of an applicant to satisfy the terms of the study plan or filing requirements is not a cause for new study requests. It is rather the cause of a deficiency that must be remedied, and may also raise compliance issues.

249. It is also possible for a material change in circumstances to occur between the completion of the study plan and the conclusion of a licensing proceeding that requires additional information to be provided. That has always been the case, and the Commission has always exercised its authority to require applicants to provide additional information for the record in appropriate cases. We will continue to do so. However, we remain convinced that the multiple opportunities to request information and studies and to resolve any study disputes during the pre-filing phase of the integrated process will ensure that the application will include all information needs.

M. Consultation and Coordination With States

1. General Comments

250. PFMC requests that we clarify the relationship between licensing and other Federal and state processes. The relationships between licensing and state and tribal water quality certification and consistency certification under the Coastal Zone Management Act (CZMA) are discussed in this section.[228]

251. Minnesota DNR asks us to affirm that the changes we are adopting are not designed to weaken the authority of state fish and wildlife agencies. We have carefully developed the final rule to ensure that the rights and views of all participants, including all state agencies, are accorded the full consideration to which they are entitled by law, and in many instances have provided procedural rights exceeding any legal requirements.[229] Indeed, our expansive approach to stakeholder participation in this rulemaking, which greatly exceeds the notice and comment requirements of the APA, is indicative of our approach to stakeholder participation in our processes.

252. Long View requests that the Commission designate specific members of staff to be familiar with the water quality certification requirements of

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[220] 85 FERC at p. 62,244–245. Interior states that environmental and cultural resource benefits of PM&E measures need to be better articulated by the Commission to counter the cost arguments of applicants, but does not seek to have them translated into dollar values. We agree that it is important to explain the benefits, economic or otherwise, of the PM&E measures we approve, and believe our NEPA documents and orders do so. By the same token, agencies that provide mandatory conditions or recommendations have the same obligation with respect to the PM&E measures they sponsor.

[221] 84 FERC at pp. 61,571–72.

[222] *See* Mead Corporation, Publishing Paper Division., 72 FERC ¶ 61,027 (1995), *order on reh'g*, 76 FERC ¶ 61,352 (1996).

[223] *See* proposed 18 CFR 5.17(b)(1)(E).

[224] For instance, the cost of a specific recommendation for instream flows in a bypassed reach can be determined. A fishway prescription, on the other hand, may be too vague, particularly as a preliminary measure, for the costs to be reasonably determined. *See* the discussion in Section III.O.2.

[225] 18 CFR 5.18(b)(5)(i)(B).

[226] We infer this from the fact that the only industry member to comment on the matter was NHA, which endorsed the proposal.

[227] NYSDEC, HRC, Interior, MPRB, NJDEP.

[228] The relationship of ESA consultation to the licensing process is discussed in Section III.O.3.

[229] Georgia DNR states that all state agencies should receive equal consideration in the licensing process. If, by this, Georgia DNR means each agency should receive the full consideration to which it is entitled by the law and implementing regulations, we agree.

each state for the purpose of coordinating with the state at various milestones in the process to ensure that its information needs are being met. Long View expects that this would minimize post-application requests by states for additional information. We decline to adopt this recommendation. State or tribal officials are the persons responsible for administering water quality certification programs, and the integrated process we are establishing includes opportunities and inducements for them to participate in the licensing process and make their information gathering and study needs known early. We also expect the water quality certification process will be coordinated with the licensing process through the development of the process plan and schedule.[230]

2. Timing of Water Quality Certification Application

253. The existing regulations require license applicants to file an application for a water quality certification for both the traditional process and ALP no later than the date on which the application is filed.[231] In the NOPR, we noted that this assumes that the potential applicant has consulted with the water quality certification agency, determined what data is required, and obtained that data before the license application is filed.[232] This premise however frequently does not reflect reality.

254. We proposed to make the license application date the deadline date for filing the water quality certification application in the integrated process because the integrated process is designed to better ensure that water quality certification data needs are timely identified and met.[233] We proposed to change the deadline date for the traditional process from the license application date to 60 days after the REA notice is issued because there is less assurance under the traditional process that water quality certification matters will be resolved when the application is filed. We requested comments on that proposal and on an appropriate deadline date for this filing in the ALP.[234]

255. Commenters on this issue seldom distinguished between processes, and opined that it would be confusing for participants to have a different deadline date depending on the process selection. They recommended a deadline date for all processes based on their views of how the Commission's processes should be coordinated with state water quality certification processes.

256. Only PFMC, NEU, and NJDEP recommended that the deadline date continue to be the filing date of the license application. Several commenters recommended that the deadline for filing of the water quality certification application should be 30–60 days following the Commission's REA notice.[235] The rationale for this recommendation is that the REA notice establishes that the record is complete, so there is sufficient data to support the water quality certification application, and the state should be able to act on the application within one year. NHA also suggests that allowing additional time after the license application is filed would afford time for the state and the applicant to work together in ways that may lead to earlier issuance of water quality certification.

257. In this connection, the Process Group agreed that the integrated process will work best when states and Indian tribes recognize and are actively involved throughout the pre-filing process, and that the Commission, state or Indian tribe, and applicant should discuss schedules and procedures for their respective processes early on. We wholeheartedly agree, and if this is done the integrated process should result in all parties knowing what water quality-related data the Commission will require the potential applicant to produce when the study plan determination is issued or, at the latest, the conclusion of any relevant formal dispute resolution process. This should leave ample time before the license application is filed, about two and one-half years, for the potential applicant to consult with the state regarding what, if any, additional data is required for certification, and to collect that data. If the potential applicant and the state or Indian tribe are diligent in this regard, the potential applicant should be able to file the water quality certification application by the time the license application is filed.[236]

258. There may however be instances where the license application is required to be filed, but some information required by the Commission-approved study plan or by the water quality certification agency has not yet been obtained. In these circumstances, the REA notice will not be issued until the study plan is completed, so using the REA notice as the triggering date to file the water quality certification application allows an additional increment of time past the license application date in case there is also outstanding water quality data.[237]

259. California, VANR, and the Process Group propose that the deadline date be negotiated by the state or Tribe and the license applicant. As a default in the event there is no agreement, California proposes a deadline of 60 days following issuance of the Commission's draft NEPA document.[238] EPA thinks there may be merit in California's proposal. This recommendation is based on the concept that one environmental document should serve for all Federal and state authorizations; *e.g.*, water quality certification, CZMA consistency certification, and Clean Water Act Section 404[239] dredge and fill permits issued by the U.S. Army Corps of Engineers. California explains that it must prepare an environmental document akin to the Federal NEPA document after an opportunity for public notice and comment (SEQA analysis). It does not consider a water quality certification application to be complete until its SEQA analysis is complete, and it would prefer that the SEQA analysis be the same document as the Commission's NEPA document. It states that by waiting until after the Commission's draft NEPA document is issued, it may be able to use the comments filed on that document to satisfy its own public notice and comment requirements, and still have sufficient time to take substantive action on the water quality certification application within a one-year period.[240] Although VANR supports the single environmental document concept, it

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[230] *See* 18 CFR 5.8(d)(4).

[231] 18 CFR 4.38(f)(7) and 16.8(f)(7).

[232] 68 FR at p. 14010; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,714.

[233] Proposed 18 CFR 5.17(f) and 68 FR at p. 14000; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,714.

[234] Proposed 18 CFR 4.34(b)(5) and 68 FR 13988 at p. 14000; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,714.

[235] NHA, PG&E, MDEP, SCE, EPA, NYSDEC.

[236] We hasten to add that this is a minimum time. We are aware of no reason why a potential applicant cannot consult with the water quality certification agency when the NOI and PAD are filed and begin collecting required data before the Commission's study plan determination is issued.

[237] The Process Group agreed that the license application should include the information required by the water quality certification agency. That would of course be desirable, but we cannot impose such a requirement since new license applications must be filed on a schedule determined by the FPA, and we cannot control the timing of the state's process. We likewise decline to tie issuance of the REA notice to a state's determination that the record in its separate process is complete. The Commission cannot delegate its procedural or substantive responsibilities to other entities.

[238] Alaska suggests that for projects in that state an even later time may be appropriate if at some time it exercises water quality certification authority, because a CZMA consistency certification in that state would have to precede issuance of water quality certification.

[239] 33 U.S.C. 1344.

[240] California, WGA, EPA.

concludes that either the license application or REA notice deadline should generally be late enough to ensure that its processes can be concluded before an existing license expires.

260. Oregon and HRC similarly recommend that the deadline date should be established by agreement between the participants and the state on a project-by-project basis. They state that the best time to file the water quality certification application is when the studies are sufficiently complete to provide reasonable assurance of a supportable decision, so long as there is sufficient remaining time to complete the Commission's NEPA analysis and other steps and issue a new license before an existing license expires. Other factors Oregon would take into account include whether the state has public participation and SEPA requirements that rely on the federal environmental analysis.

261. We cannot accept an open-ended deadline date to be negotiated in each proceeding. That would introduce an enormous element of uncertainty into the process and subordinate the Commission's license process to the convenience of the parties or the processes of the water quality certification agency. Neither can we accept a deadline of 60 days following issuance of the draft NEPA document. First, this would be well over three years after the Commission-approved study plan is finalized. Second, in some states the potential license applicant may learn from pre-filing consultation with the certifying agency or tribe all of the data it will be required to produce, but in others this is not determined until an application has been filed. The draft NEPA document is issued at a point approximately 14 months prior to expiration of an existing license. Even if the state promptly determines what additional information is required, it is highly unlikely that the data could be gathered and a certification issued within the remaining time before license expiration. If the state does not act promptly, as much as a year could be lost from the remaining time.

262. California does not explain how the Commission's draft NEPA document could serve that state's public notice and comment requirements when there is no application pending for water quality certification. Absent that application, there would be no reason to think the state would consider the evidentiary record complete, or that the alternatives considered in the Commission's NEPA document would resemble the contents of a water quality certification. In this connection, New York states that it requires water quality certification applicants to submit studies or data based on pre-project conditions. Maine states that its water quality certification agency will not participate in the Commission's study dispute resolution process because of state sovereignty concerns and because an unfavorable decision in the Commission's process would make it more difficult to require the requested data through its own processes.

263. California indicates that the Commission need not establish a water quality application deadline because states have an incentive to informally consult with the potential applicant before the water quality application is filed to ensure that they have the data necessary to issue water quality certification before the existing license expires and thereby ensure that the environmental improvements included in the certification will timely go into effect. That incentive exists now, yet the single most common cause of new licenses not being issued prior to expiration of the existing license is the absence of water quality certification.

264. In sum, the latest date we can accept for filing of the water quality certification application is 60 days following the REA notice for all processes. This provides two to two and one-half years following issuance of the Commission-approved study plan for the potential applicant and the state agency or Indian tribe to determine what, if any, additional information will be required for a complete water quality certification application, and for the applicant to collect the data and file an application before the Commission issues its REA notice.[241] If an application is filed at that point and the state has not yet determined what additional information it will require, it is highly unlikely that the certification will be issued before an existing license expires.

265. Since 1991, our policy has been to deem a water quality certification agency to have waived certification if it has not denied or granted a request for certification within one year after the request is filed. A few commenters recommend that we change the policy so that the statutory one-year period for action established by CWA Section 401 is deemed to begin when the state deems the application to be complete.[242] We decline to do so. This was our practice prior to 1991, but it was found to be unduly burdensome because it put the Commission in the frequently difficult posture of trying to ascertain and construe the requirements of many and divergent state statutes and regulations. The existing rule, in contrast, is clear and simple.[243]

3. Coastal Zone Management Act

266. Alaska seeks assurance that our consideration of coordination and consultation with states includes CZMA issues. Coordination with state agencies that issue consistency certifications under the states' approved Coastal Zone Management Plans should begin with development of the process plan and schedule, in the same manner as coordination with the water quality certification process. We have added state agencies with CZMA authorities to the list of agencies with which a potential applicant must consult,[244] and strongly encourage such agencies to participate in the pre-filing consultation process.

N. Tribal Issues

267. In the NOPR we proposed to establish the position of Tribal Liaison as a single, dedicated point of contact and a resource to which Native Americans can turn for assistance in dealing with the Commission regardless of the proceeding or issue. We also proposed to contact Indian tribes likely to be interested in a relicense proceeding in a time frame consistent with the advance notification to initiate discussions concerning consultation procedures.[245]

1. Consultation Policy

268. Indian tribes offered many comments on the Commission's trust responsibility as it relates to treaty rights, legislation, and executive orders. Several tribes state that as sovereign entities, they have government-to-government consultation rights which differ from those applicable to agencies and the general public, because they must be determined by mutual agreement between the Commission and individual tribes in a case-specific and issue-specific context.[246]

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[241] As discussed above in this section, this is a minimum time that assumes the certification agency has not previously made its information requirements known to the potential applicant.

[242] VANR, PFBC, IDEQ, EPA.

[243] See Order No. 533, Regulations Governing Submittal of Proposed Hydropower License Conditions and other Matters, 55 FR 23108 (May 20, 1991); FERC Stats. & Regs. Regulations Preambles 1991–1996 ¶ 32,921 at p. 30,135 (May 8, 1991).

[244] 18 CFR 5.1(d).

[245] 68 FR at p. 14002; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,717.

[246] S–B, S–P, CRITFC, NW Indians, Nez Perce, Umatilla, GLIFWC, NF Rancheria.

269. Many commenters [247] also noted their appreciation for the Commission's discussion, but stated that the government-to-government consultation process should be specifically defined in the regulations, so as to clarify the role of tribes in the licensing process and to prevent confusion between tribal consultation and consultation with other entities. They state that the rules should be sufficiently flexible to accommodate case-specific circumstances and incorporate recognition of treaty rights into decisions on studies, resource impact analyses, and license conditions.

270. Various specific suggestions were also made regarding tribal consultation. For instance, the Tribal Group indicates that tribal consultation should begin when the Commission sends the licensee the advance notice of license expiration. GLIFWC, citing tribal government decision-making processes, and NF Rancheria, asserting a need for as complete a record as possible when the NOI is filed, support pre-NOI contacts between the Tribal Liaison and the potentially affected tribes. Catawba and Choctaw state that consultation needs to begin with the chief or governing body, rather than other tribal members or employees. Catawba also recommends that Commission staff visit tribal lands in order to understand local issues. The Tribal Group recommends including in the regulations a requirement for a meeting between the Commission, potentially affected tribes, and other concerned Federal agencies shortly after notice of the NOI and PAD is issued. The Tribal Group and others [248] also recommend that certain points in the licensing process be designated at which the Commission and tribes would assess consultation to date and seek agreement on next steps to ensure that appropriate communication takes place throughout the process.[249] Maidu states that the regulations must specifically recognize the tribes' right to comment on cultural and historical resources study proposals.

271. Concerns were also expressed about the timing of consultation. One example is that some tribes require any agreement with another entity to be ratified by an executive board, while some require only the agreement of the tribal chief.[250] Another concern is that tribal councils don't meet according to Commission schedules, but have their own schedules. This may involve meetings on a monthly, quarterly, or other basis, so that advance notice of schedules is very important.[251]

272. S–P states that tribal sovereignty requires issues scoping to be separate for tribes. NW Indians, on the other hand, suggest that tribes need to be in the same scoping process with other entities because they are likely to have overlapping issues and because the interests of other participants (such as recreational users of project lands) may be adverse to those of the tribes.

273. In light of these comments, we have decided to take a three-pronged approach to better fulfill our trust responsibility. The first prong is to publish in our regulations a policy statement on tribal consultation. The policy statement was developed from our review of the written policies of other Federal agencies concerning the trust responsibility and government-to-government consultation.[252] The policy statement is being issued contemporaneous with this final rule in a separate docket [253] and will appear in part 2 of the Commission's regulations, "General Policy and Interpretations." [254] The policy statement will apply to all of the Commission's program areas and, for hydroelectric licensing, to all licensing proceedings, regardless of which process is used.

274. The policy statement recognizes the unique relationship between the Federal government and Indian tribes as defined by treaties, statutes, and judicial decisions. It acknowledges the Commission's trust relationships. It states that the Commission will endeavor to work with the tribes on a government-to-government basis pursuant to trust responsibilities, the FPA, and any other statutes governing the Commission's authority. It notes that the Commission functions as a neutral, quasi-judicial body and as such is bound by the APA and Commission rules regarding off-the-record communications. It states that the Commission will assure tribal issues and interests are considered in making decisions. Specifically to the hydroelectric program, it states that the Commission will notify tribes at the time of the NOI and will consider comprehensive plans prepared by tribes or intertribal organizations.

275. The second prong of our approach is to establish the Tribal Liaison position, discussed below. The third prong is inclusion in the regulations of a meeting with willing Indian tribes no later than 30 days after filing of the NOI.[255]

276. NW Indians and S–B state that the Commission's rules must acknowledge that the trust responsibility supersedes public interest balancing under the FPA. We do not agree. The Commission carries out its trust responsibility towards Indian tribes in the context of the FPA, and the trust responsibility does not require the Commission to afford tribes greater rights than they would otherwise have under the FPA.[256]

277. We will not attempt to further define the government-to-government consultation process in the regulations. The review of tribal comments above makes clear that there is no consensus on what such specific provisions might be. The one consistent comment is that an effective process needs to be established in consultation with individual tribes. Under these circumstances, we conclude that the most effective way to move forward is to issue the policy statement; include a provision in the integrated process regulations to ensure that tribal consultation begins, at the latest, no later than 30 days after issuance of the NOI; and establish the Tribal Liaison.

278. Although some other Federal agencies have done so, we will also not include a more general definition of tribal consultation in the regulations. BIA, for instance, is guided by the definition of the Advisory Council in the latter's regulations governing

[247] Nez Perce, Menominee, NF Rancheria, Maidu, NW Indians, CRITFC, S–P, CRITFC. NHA and Interior agree.

[248] Nez Perce, Umatilla, Interior.

[249] Interior recommends that, in addition to a pre-NOI check, there should be a check point when the parties receive the potential applicant's proposed study plan and another when the application has been filed.

[250] Fort Peck, NF Rancheria.

[251] Catawba, Choctaw.

[252] We reviewed the policies of other independent agencies, including the Federal Communications Commission, FCC No. 00–207 (June 8, 2000), 16 FCC Rcd 4078; 2000 FCC LEXIS 3245; 20 Comm. Reg. (P&F) 1316; the Federal Emergency Management Agency, "Final Agency Policy for Government-to-Government Relations with American Indian and Alaska Native Tribal Governments (Sept. 25, 1998), 64 Fed. Reg. 2096 (Jan. 12, 1999); the Environmental Protection Agency (EPA), Memorandum to all EPA Employees from Christine Todd Whitman, EPA Administrator, dated July 12, 2001; and the Nuclear Regulatory Commission (NRC), Memorandum to NRC Commissioners from William D. Travers, Executive Director for Operations, dated February 2, 2001.

[253] Order No. 635 Policy Statement on Consultation with Indian Tribes in Commission Proceedings (PL03–4–000), III FERC Stats. & Regs., Regulations Preambles 104 FERC ¶ 61,108 (July 23, 2003).

[254] 18 CFR 2.1(c).

[255] 18 CFR 5.7.

[256] City of Tacoma, WA, 71 FERC ¶ 61,381 at p. 62,493 (1995); Skokomish Indian Tribe, 72 FERC ¶ 61,268 (1995); *See also* FPC v. Tuscarora Indian Nation, 362 U.S. 99 at p. 118 (1960), *reh. denied*, 362 U.S. 956; and City of Tacoma, WA, 89 FERC ¶ 61,275 (1999). In this regard, we note particularly that the Tribal Group agreed that government-to-government consultation must be consistent with the Commission's *ex parte* regulations.

consultation under Section 106 of the NHPA, 36 CFR 800.16(f). This regulation, which is not specific to tribal consultation, defines consultation as "the process of seeking, discussing and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process." It adds that "[The Secretary of Interior's] 'Standards and Guidelines for Federal Agency Preservation Programs pursuant to the National Historic Preservation Act' provide further guidance on consultation."

279. In our view, tribal consultation pursuant to our trust responsibility encompasses far more than implementation of NHPA Section 106. It includes every issue of concern to an Indian tribe related to a treaty, statute, or executive order where the Commission can, through the exercise of its authorities under the FPA, fulfill its trust responsibility. That is a very broad concept, and we are convinced that establishing the consultation process with respect to any particular case through direct communications with the affected tribes will be more meaningful than any general language we could put in the regulations.[257]

2. Tribal Liaison

280. Our proposal to establish a Tribal Liaison was supported by all of the commenting tribes and the Advisory Council.[258] There is a consensus among the commenters that the liaison should not be merely a clerical position, but should also not have decisional authority.[259]

281. Commenters suggest various roles and responsibilities for the Tribal Liaison. These include facilitating government-to-government consultation by directing tribes to the right person or persons to deal with substantive or policy issues; ensuring that communications are maintained between tribal representatives and Commission staff throughout the proceeding;[260] assisting tribal knowledge of and participation in the Commission's processes;[261] educating Commission staff about tribes and the trust responsibility and treaty obligations,[262] assisting tribes in learning how to access and effectively use the informational resources of the Commission's Web site;[263] and informing tribes of activities at a project during licensing and throughout the term of a license that may affect tribal resources on or off the reservation.[264]

282. GLIFWC and Menominee state that because the process for government-to-government consultation needs to be developed in agreement with each tribe, the roles and responsibilities of the Tribal Liaison cannot be fully determined at the outset, but must evolve in response to the development of tribal-specific agreements.

283. The Tribal Group essentially endorsed all of these recommended responsibilities and added the following:

- Coordinate with tribal liaisons at other agencies;
- Help determine which tribes may be affected by likely future relicensing applications or original license applications;
- Inform potentially affected tribes about potential future relicensing applications and facilitate tribal participation in rulemaking proceedings;
- Become educated about the rights of Indians;
- Assist tribes in making known their issues and views on compliance with treaties and the trust responsibility;
- Ensure that tribes are informed of studies and information with cultural resources or treaty rights implications;
- Manage communications between the Commission and tribes when the *ex parte* rule is in effect;
- Facilitate communications between applicants and tribes; and
- Facilitate informal dispute resolution between the applicant and a tribe.

284. Only Skokomish and NW Indians suggest that the Tribal Liaison should play an active role in the substantive resolution of licensing proceedings. NW Indians recommend that the Tribal Liaison or Liaisons should be educated about individual tribes and their interests in specific proceedings and act as their advocate within the Commission.

285. We agree with the majority of the commenters that the Tribal Liaison should be a facilitator of government-to-government consultation, and should not be responsible for resolution of substantive issues. The latter requires expertise with specific resources, plus a thorough knowledge of the facts relevant to a specific case. The Commission employs technical experts for such matters, as do many tribes. The Tribal Liaison will provide expertise with respect to matters of process.

286. Regarding the specific responsibilities of the position, the Tribal Liaison will seek to educate Commission staff about tribal governments and cultures and to educate tribes about the Commission's various statutory functions and programs. The Tribal Liaison will work with the tribes during Commission proceedings, to ensure that the tribes' views are appropriately considered at every step of the process. The Tribal Liaison will act as a guide for the tribes to Commission processes, and will strive to ensure that consultation requirements are met The Tribal Liaison will have considerable flexibility in carrying out these responsibilities, consistent with the evolving nature of tribal consultation.

287. Various commenters indicate that there are too many tribes and too many tribe-specific, case-specific, and interrelated regional or watershed issues for one person to understand and act upon. Some suggestions in this regard include multiple liaison positions based on regions of the country, watersheds or river basins, or sub-regions within a state.[265] Pacific Legacy suggests that the efforts of the Commission's liaison should be complemented by a liaison from each tribe for each project, to be funded by the applicant. The Tribal Group stated that the Tribal Liaison should be a regional position, with an overall coordinator position at the Commission's headquarters.

288. Our decision on the number of Commission staff serving as Tribal Liaison involves two basic considerations; the responsibilities of the position and the level of effort necessary to effectively carry out the responsibilities. At this point we can define the responsibilities of the position, but only time and experience will tell us with certainty what level of effort is necessary.

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[257] S–P states that the rules should require each licensee proceeding to include an assessment of treaty rights and an agreement with the tribe on how those rights will be honored. Although treaty rights need to be considered, S–P appears to suggest that the Commission and the tribe must reach agreement on the substantive disposition of the license application. That is something we cannot do consistent with our statutory responsibilities.

[258] S–P, Nez Perce, NW Indians, CRITFC, Umatilla, GLIFWC, HRC, Advisory Council, Menominee, Skokomish, Interior, NF Rancheria.

[259] S–P, Nez Perce, NW Indians, CRITFC, Umatilla, GLIFWC, Menominee.

[260] NW Indians, Nez Perce, Umatilla, GLIFWC, Menominee. They indicate that the correct person would depend on the issues under consideration; *e.g.*, a technical issue dealing with a fisheries study would be dealt with by a fishery biologist, while an issue concerning the appropriate elements of government-to-government consultation with the tribe might be directed to senior Commission staff. We agree.

[261] SCE.

[262] GLIFWC, Menominee.

[263] GLIFWC.

[264] Interior.

[265] Pacific Legacy, GLIFWC, Menominee, CRITFC, S–P, California, Interior.

3. NHPA Section 106

289. In response to licensee requests, the NOPR clarified how the Commission meets its responsibilities to Indian tribes under NHPA Section 106.[266] The Advisory Council states that this discussion is accurate. NHA however states that while the Historic Resources Management Plan (HPMP) guidance document issued jointly by the Commission and the Advisory Council[267] is useful, the documentation requirements for license applications are inconsistently applied. It states that some staff require a draft Programmatic Agreement (PA) when the application is filed, others want the HPMP to be complete before the application and prior to the PA, and in other cases these documents are allowed to be completed after the license is issued. NHA states that the proposed integrated process regulations are clear that a draft HPMP needs to be filed with the application when the potential applicant has been designated as the Commission's non-Federal representative, but that the traditional process and ALP regulations need to provide the same clarity.

290. NHA and others[268] also request that we explain how the Section 106 consultation process relates to the overall licensing process. Section 106 consultation begins at the same time as the licensing process; that is, when the NOI and PAD are filed and distributed. 18 CFR § 5.8(b)(2) provides for the license applicant to request to initiate consultation at the beginning the pre-filing consultation or, if it is not designated as the Commission's representative for this purpose, for the Commission to initiate consultation.[269] The Commission-approved study plan and schedule provided for in 18 CFR 5.11 through § 5.13 should include studies pertaining to issues raised pursuant to Section 106. The PA must be completed prior to license issuance, but the HPMP can be prepared prior to or following issuance of the license.

291. They also request that the Commission undertake in such circumstances to do any necessary studies itself. The fact that a potential applicant does not become the Commission's non-Federal representative, for whatever reason, does not relieve it, as the project proponent, of the responsibility to undertake the information gathering or studies the Commission determines are necessary to provide the evidentiary record to support a reasoned decision.

4. Other Matters

292. The Tribal Group recommended that the regulations require each potential applicant to designate one person as its point of contact for Indian tribes. We think this is a matter best worked out via consultation between potential applicants and individual tribes.

293. Finally, Washington, Maidu, and Skagit indicate that participation in licensing is costly and that the Commission should work with states and tribes to identify and develop sources for funding of tribal participation that will foster consistent, active participation and rapid turn-around times by tribes. GRITFC recommends that the Commission require applicants to fund liaisons under the control and direction of tribes. NW Indians add that even if the Commission cannot require applicants to fund tribal participation, it should encourage them to do so.

294. The Commission is aware that participation in licensing proceedings can entail significant expense. Federal funding for Indian tribes is however the responsibility of other Federal agencies. We note however that some applicants have found such funding to be beneficial in specific circumstances, and we encourage applicants to consider whether it may be beneficial in the context of their potential applications.

O. Environmental Document Preparation

1. Cooperating Agencies Policy

295. The NOPR proposed to modify, as to federal agencies, the Commission's policy that an agency which has served as a cooperator in the preparation of a NEPA document may not thereafter intervene in the same proceeding, and to make conforming revisions to our *ex parte* rule. The rationale for the existing policy is that cooperating agency staff will necessarily engage in off-the-record communications with the Commission staff concerning the merits of issues in the proceeding, so that, if the agency is allowed to become an intervenor, it will then have access to information that is not available to other parties, in violation of the prohibition in the APA and our rule against on *ex parte* communications.[270]

296. In the NOPR, we concluded that the likely benefits of better coordination between federal agencies in the exercise of their responsibilities, a more complete record, and reduced duplication of effort outweighed the potential for prejudice to other parties that would not have access to some information and decisional communications between the Commission and the cooperating agency. To minimize the potential for prejudice to other parties, we proposed to require that any cooperating agency that provides the Commission with study results or other information also serve such materials on parties to the proceeding.

297. State agencies and NGOs generally support this proposal, and request that we also reverse the policy for state agencies, including water quality certification agencies.[271] SCE also supports the proposed change, provided that cooperating agencies are precluded from challenging the content and completeness of a jointly-prepared environmental document.

298. NHA does not take a position on the proposed policy change, but suggests that any change in policy occur after the transition period, so as not to disrupt ongoing proceedings. PG&E and Duke assert that if the policy change is to apply to gas certification proceedings as well, the Commission should first provide public notice and an opportunity for comment.

299. Several commenters strongly oppose the proposed change in policy.[272] They assert that the changed policy would make cooperating agencies who also intervene "super parties" with

[266] 68 FR at pp. 14001–003; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,716–718.

[267] This document provides guidance to applicants and licensees for preparing their historic resource management plans. It is available on the Commission's Web site at *http://www.ferc.gov/hydro/docs/hpmp.pdf*.

[268] *E.g.*, Spiegel.

[269] The Advisory Council and NHA requested this provision.

[270] *See, e.g.*, Rainsong Company, 79 FERC ¶ 61,338 at 62,457 n.18 (1997).

[271] Washington, Georgia DNR, Wisconsin DNR, Washington DNR, California, CSWRCB, Interior, NOAA, HRC. California asserts that the prohibition on *ex parte* communications would not be an issue with respect to states if the Commission were to change its practice of preparing NEPA documents that include, in addition to an environmental impact analysis, analysis and recommendations to the Commission concerning which of the reasonable alternatives considered is the preferred alternative. California would have us put all such analysis in a separate document. California further suggests that the *ex parte* issue could be obviated if the Commission staff who process the application and prepare the NEPA document were separate from the decisional staff that advised the Commission. We will not adopt California's suggestions because preparing two environmental documents in each case and requiring that two separate sets of Commission staff be assigned to every proceeding would likely add expense and delay to proceedings, and would place an undue burden on our resources. Moreover, given that decisions about the scope and conduct of the environmental analysis may have a significant bearing on the ultimate outcome of a proceeding, we are unsure that California's proposals would obviate concerns about fairness and *ex parte* requirements.

[272] *See, e.g.*, Alabama, Duke, EEI, Idaho, Spiegel.

access to more information than others, and thus would violate the APA's prohibition against *ex parte* communications.[273] In support of their contentions, these commenters cite the Commission's statement when it amended its *ex parte* rule that "a hearing is not fair when one party has private access to the decision maker and can present evidence or argument that other parties have no opportunity to rebut,"[274] as well as case law. *See e.g., Home Box Office* v. *FCC*, 567 F.2d 9 (D.C. Cir. 1997) (*HBO*); *Portland Audubon Society* v. *Endangered Species Committee*, 984 F.2d 1534 (9th Cir. 1993) (*Audubon*); *Professional Air Traffic Controllers Organization* v. *Federal Labor Relations Authority*, 685 F.2d 547 (D.C. Cir. 1982) (*PATCO*).[275]

300. We continue to believe strongly that maximizing cooperation between the Commission and the federal resource agencies will lead to optimal results in the licensing process. However, we conclude that precedent indicates that allowing federal agencies to serve both as cooperators and intervenors in the same case would violate the APA. Our proposal to change the existing policy rested on a plain meaning reading of the APA provisions which the courts have not adopted. Rather, the courts have interpreted the APA more broadly on this point in order to ensure that the purposes of the statute are fulfilled. We therefore will not change the policy precluding cooperating agencies from also being intervenors.

2. NEPA Document Contents

301. California and PFBC state that the filing requirements for license applications include information on the costs of the applicant's proposed PM&E measures, but not information on the economic benefits of those measures. They assert that the NEPA document should contain a much expanded discussion of the latter. Our policy concerning this matter was discussed above.[276]

302. NOAA Fisheries recommends that the regulations include a standard methodology "to calculate project economics."[277] Economic evaluations in the context of our public interest analysis cannot be reduced to a formula. For example, one component is a comparison of the current cost of project power under each reasonable alternative to the current cost of the most likely alternative source of power. The comparison helps to support an informed decision concerning what is in the public interest.[278] The estimated current cost of project power under each alternative is of course the sum of many other estimates, principally of the costs of PM&E measures proposed by applicants, agencies, Indian tribes, and NGOs. PM&E measures are moreover not standardized in any way, but are made on a site-specific basis, and often require, in addition to capital cost estimates, annualized estimates of long-term operation and maintenance expenses. Such estimates rest on myriad debatable assumptions upon which reasonable people often disagree.

303. The means of determining the current cost of the most likely alternative source of power also cannot be reduced to a formula. It is based on the project-specific operating regime (*e.g.*, run-of-river or peaking) and is made in the context of regional power markets. For instance, the most likely alternative to baseload hydroelectric capacity in some regions is baseload power from a coal-fired plant. The most likely alternative to hydroelectric energy is typically a combined cycle gas-fired combustion turbine. The value of such power varies from region-to-region and time-to-time. Each NEPA document fully explains the determination of the most likely alternative source of power and the basis for its valuation.

304. The NOPR proposed to accompany draft NEPA documents and environmental assessments with draft special license articles (*i.e.*, articles specific to a project).[279] NHA supports this, but states that standard form license articles should also be included in order to enable the U.S. Forest Service to address concerns it purportedly has about the Commission's administration of projects on National Forest lands. The U.S. Forest Service did not raise this issue. In any event, the standard form license articles are a matter of public record[280] and anyone may request the Commission to modify them.

305. The NOPR proposed to revise our practice in preparing NEPA documents to more clearly separate resource impact analysis from decisional analysis.[281] California reiterates its prior assertion that we should issue NEPA documents containing only resource impact analysis on the ground that it would eliminate any *ex parte* problem associated with state agencies acting as cooperating agencies. We rejected this argument in the NOPR[282] and above.[283]

306. NHA, SCE, HRC and others support our proposal to better separate the environmental impact analysis from decisional analysis; that is, decisional analysis will appear only in the comprehensive development section of the NEPA document. NHA and SCE ask that we make clear that discussion of alternatives and potential mitigation measures in the NEPA document is part of the resource impact analysis under NEPA. We are not entirely clear what these commenters are requesting. We think it is self-evident that the environmental impact analysis under NEPA will cover alternatives and potential mitigation measures. These things are however also likely to be considered, or at the least referred to, in the decisional analysis.

307. HRC requests that a NEPA document prepared in cooperation with another agency include in the environmental analysis the views of each agency where there is a disagreement in the agencies' conclusions concerning impacts to resources. We think the cooperating agencies should decide how best to present the resource impact analysis in such a case.

308. RAW continues to assert that the baseline for environmental analysis on relicensing should be pre-project conditions. We rejected such assertions in the NOPR,[284] and RAW offers no new arguments that would cause us to change our well-established and judicially-approved policy in this regard.

309. Finally, VANR opposes our practice of issuing a single

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[273] *See* 5 U.S.C. 557(d)(1)(A) & (B).

[274] Order No. 607, Regulations Governing Off-the-Record Communications, 64 FR 51222 (Sept. 22, 1999); FERC Stats. & Regs. ¶ 31,079 at 30,878 (Sept.15, 1999).

[275] APA Section 557(d)(1) bans *ex parte* communications to or from "interested persons" outside the agency. The *PATCO* court held that the ban is not intended to have limited application and that "[t]he term 'interested person' is intended to be a wide, inclusive term covering any individual or other person with an interest in the agency proceeding that is greater than the general interest the public as a whole may have." 685 F.2d at 562. *Audubon*, which holds that the President and White House staff are not exempt from Section 557(d)(1), similarly notes that the legislative history of the provision confirms the ban is to be broadly construed in order to achieve the appearance and reality of open decision-making. 984 F.2d at 1543–44. *HBO* holds that all relevant information must be disclosed in order to ensure the efficacy of judicial review. 567 F.2d at 54.

[276] *See* Section III.L.1.

[277] NOAA Fisheries, p. 8.

[278] *See* Mead Corporation, Publishing Paper Division, 72 FERC ¶ 61,027 at pp. 61,068–069 (1995).

[279] 68 FR at pp. 14004–005; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,722.

[280] The current standard form articles are published at 54 FPC 1799–1928 (1975).

[281] 68 FR at p. 14004; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,721–722.

[282] 68 FR p. 14004; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,721.

[283] Section III.O.1.

[284] 68 FR at p. 13995; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,706.

environmental assessment in some cases. VANR believes this increases the likelihood of process delay in the form of requests for rehearing. A single environmental assessment is issued only when the Commission is able to make a finding of no significant impacts, which is generally in cases where there is little or no controversy. The parties are in any event afforded an opportunity to comment before the order acting on the license application is issued. The integrated process makes no change in this practice.[285]

3. Endangered Species Act Consultation

310. NOAA Fisheries and Interior state that the integrated process regulations should clearly identify points at which ESA consultation occurs, such as initiation of formal and informal consultation.[286] NOAA Fisheries also recommends language to encourage either the potential applicant or the Commission staff to initiate informal or formal consultation when the process begins.

311. The part 5 regulations are replete with references to ESA consultation. The section on the NOI states that the NOI may include a request by the potential applicant to be the Commission's designated non-Federal representative for this purpose.[287] The notice of commencement of proceeding will contain, if appropriate, a request by the Commission to initiate informal consultation and, if applicable, designate a non-Federal representative.[288] The PAD must include existing information on threatened and endangered species.[289] One of the specified topics for the scoping meeting is a schedule for ESA consultation in the process plan and schedule.[290] Study requests following this meeting should include requests related to threatened and endangered species.[291] The application contents include a discussion of the status of ESA consultation.[292] The tendering notice will update the processing schedule, if required, including ESA consultation.[293]

312. In addition, although it is not reflected in the regulations, our well-established practice is to issue a biological assessment with the draft NEPA document, and the joint agency ESA regulations[294] are clear concerning how and when Interior and Commerce are to respond to that document. In sum, we think the regulations we are adopting provide sufficient clarity concerning the interaction between the licensing process and ESA consultation.

313. Interior, citing the Interagency Task Force report on ESA consultation,[295] also implies that information gathering and studies for ESA purposes should be conducted independent of the rules for information gathering and studies in the licensing process. Interior offers no reason why this should be so, and it would be inconsistent with the entire thrust of the integrated process, which is to maximize coordination of Federal, state, and tribal processes.

314. Finally, Washington DNR states a license or license amendment might be inconsistent with an existing Habitat Conservation Plan (HCP) approved by the USFWS and NOAA Fisheries for various species in Washington State and, if that were the case, the HCP would have to be amended.[296] Washington DNR indicates that the Commission should require the licensee in such circumstances to reimburse Washington State for any costs associated with the HCP amendment. Decisions concerning funding of state agencies are however a legislative responsibility.

4. Fish and Wildlife Agency Recommendations

315. The NOPR proposed to modify our regulations which set forth procedures for consideration under FPA Section 10(j)[297] of recommendations made by Federal and state fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act.[298] The proposed modifications would, with one minor exception, not change the existing procedures, but would simply restate the existing practices with more clear reference to the statutory standards. The only change in procedure would be that Federal and state fish and wildlife agencies would no longer receive separate notice by letter of the preliminary consistency determination that is made in the Commission's draft NEPA document (or single environmental assessment). In the future, service of the draft NEPA document would serve as notice.

316. Oregon objects to the proposal to give notice of preliminary consistency determination in the draft NEPA document. Oregon suggests that notice by letter is necessary to ensure that state agencies do not miss the opportunity for 10(j) negotiations.[299] This should not be a matter of concern. We are not aware of any case in which a Federal or state fish and wildlife agency has failed to receive the Commission's draft or final NEPA document.

317. Interior proposes that the regulations include criteria for the acceptance of 10(j) recommendations, based on a "team" approach in which the Commission staff and fish and wildlife agencies would confer before issuance of any preliminary consistency determination. However, at the point where the draft NEPA document or single environmental assessment is ready to be issued there has already been substantial consultation on these matters. Interior's proposal would also, for all practical purposes, be a pre-draft NEPA document 10(j) negotiation procedure. It would be inconsistent with our goal of expeditious resolution of licensing applications to provide an additional, duplicative process step.[300]

318. Snohomish states that the regulations should specify the step in the integrated process at which the 10(j) process begins. The regulations state that the process begins when federal and state agencies submit their 10(j) recommendations in response to the REA notice.[301]

319. California asserts that it cannot reasonably be asked to make final 10(j)

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[285] *See* 18 CFR 5.24(d).

[286] Washington and Washington DNR state that ESA consultation should begin with the NOI and be completed before the application is accepted for filing.

[287] 18 CFR 5.5(e).

[288] 18 CFR 5.8(b)(2).

[289] 18 CFR 5.6(d)(3)(v).

[290] 18 CFR 5.8(b)(3)(viii).

[291] 18 CFR 5.9(a).

[292] 18 CFR 5.18(b)(3)(ii).

[293] 18 CFR 5.19(b).

[294] 50 CFR part 402.

[295] This report provides guidance for integrating and coordinating the procedural steps of the licensing and ESA Section 7 consultation processes. The intent of the agreement report is to incorporate ESA issues into prefiling consultation on study needs, the filing of a draft biological assessment with the license application when possible, and integrating ESA issues with the NEPA document and 10(j) negotiations, so that all processes are on the same track. The ITF's guidance documents are posted on the Commission's Web site at *http://www.ferc.gov* on the hydro page.

[296] The PAD is required to describe any applicable HCPs, so that any potential conflicts with a license or amendment proposal are brought to light early.

[297] 16 U.S.C. 803(j).

[298] 16 U.S.C. 661 *et seq.*

[299] Oregon also urges us to defer to state agency recommendations instead of requesting additional support for recommendations that the Commission staff believes are not adequately supported on the record. Such deference would be inconsistent with the Commission's obligation to independently analyze all public interest issues. Our approach to consideration of 10(j) recommendations is moreover long-established and judicially approved. *See National Wildlife Federation* v. *FERC*, 912 F.2d 1471 (D.C. Cir. 1990); *accord, American Rivers* v. *FERC*, 187 F.3d 1007 (9th Cir. 1999).

[300] Implementation of section 10(j) has been discussed by the Interagency Task Force on hydropower, which consists of staff from the Commission and other Federal agencies. Additional discussions may be conducted in the future, if necessary.

[301] 18 CFR 5.26(a).

recommendations without the benefit of the Commission's NEPA analysis. It recommends that we provide for preliminary 10(j) recommendations, which would be due 60 days after the REA notice, and final recommendations, which would accompany the agency's comments on the draft NEPA document. The 10(j) process however already includes a response by Commission staff to the 10(j) recommendations (the preliminary consistency determination), which initiates an opportunity for agencies to file responsive comments, including modifications to their 10(j) recommendations.[302] That is not changed. We *see* no need to burden the process with a second opportunity to modify these recommendations.

320. The NOPR proposes that modified mandatory terms and conditions be filed 60 days following the deadline date for comments on the draft NEPA document or environmental assessment. Washington suggests that the time frames for the 10(j) process should be on the same track as the track for mandatory conditions because there may be related issues. It states, for example, that a modified fishway prescription might be inconsistent with an earlier-filed 10(j) recommendation. The 10(j) recommendations and the Commission's preliminary consistency determination are in the public record and served on all parties to the proceeding. If a Federal or state agency or Indian tribe with mandatory conditioning authority elects to impose a condition inconsistent with a state agency's 10(j) recommendation, the mandatory condition would prevail.

321. NOAA Fisheries states that the Commission's determinations that 10(j) recommendations are inconsistent with the FPA often rest on the conclusion that a recommended measure is too costly relative to the expected environmental benefits. NOAA Fisheries states that these determinations appear to be arbitrary because there is no standard formula for determining the cost of 10(j) recommendations. It asks that we establish a standard methodology for these determinations and include it in the regulations. NOAA Fisheries' concerns in this regard were addressed above.[303]

322. In a related vein, Interior recommends that the regulations specify in detail procedures for determining pursuant to the comprehensive development standard of FPA Section 10(a) whether to accept the recommendations of parties to licensing proceedings, including 10(j) recommendations. The procedures for processing all aspects of a license application are set forth in the integrated process rules or in parts 4 and 16, as applicable. To the extent Interior may be requesting the establishment of a formula for determining the public interest, public interest determinations are made with reference to a myriad of statutory and regulatory provisions and case-specific factual circumstances and cannot be reduced to a formula.

323. HRC does not request the establishment of a formula for acceptance or rejection of 10(j) recommendations, but does request that our consistency determinations provide a more specific explanation of how cost figures into each decision. The Commission is committed to providing a full explanation of how all relevant considerations are factored into its decisions.[304]

324. Georgia DNR requests that we include in the integrated process formal guidelines to address state-listed threatened and endangered species. We do not believe there is a need for any additional guidelines concerning state-listed species, as consideration of them is already built into the integrated process. State fish and wildlife agencies should participate in development of the study plan and schedule, including NEPA scoping, then make recommendations concerning protection of state-listed species pursuant to FPA Section 10(j) in response to the REA notice.

P. Time Frame for Integrated Process

325. The NOPR included a detailed, sequential description of the process steps in the proposed integrated process, including time frames for each of the process steps.[305] We requested comments on which process steps might need to be adjusted, and which time frames, if any, should be specified in the regulations for purposes of guiding development of a process plan and schedule (including studies), and which may not be appropriate for specification in the regulations, but should be developed entirely in the context of case-specific facts.[306] Many comments were filed on the proposed time frames. In this section we consider comments on the overall process.[307] Comments on the time frames for specific steps are discussed with the relevant subject matter.

326. Many commenters state that the overall process time frame of 5.5 years is unrealistic.[308] They cite the complex, multi-party, multi-jurisdictional nature of the proceeding; study requirements that often require more than one or two years of data;[309] the likelihood of one or more occurrences that could impair the timely development of the evidentiary record, such as droughts; weather conditions such as heavy snowpack that can cause lengthy delays in the initiation of field work or may force the revision of planned studies; newly listed threatened and endangered species; the possibility that potential applicants may not adequately fulfill the study plan; the likelihood that some applications will be considered in the context of multi-project environmental analyses covering projects in the same river basis with different expiration dates;[310] and potential difficulties melding the integrated process with the processes of Indian tribal governments, particularly those with modest resources.[311]

327. California and others state that strict adherence to a 5.5-year time frame emphasizes speed at the expense of sound science and quality decision-making, will stifle meaningful public and agency participation, and will cause the process to break down, resulting in needless rehearings and appeals.

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[302] Although the process has always been conducted in a manner that contemplates modifications to 10(j) recommendations, the regulations may not be entirely clear in this respect. We have therefore clarified the regulation text. *See* 18 CFR 5.25(c).

[303] Section III.O.2.

[304] HRC suggests that not making formal dispute resolution available for study disputes related to possible 10(a) and 10(j) recommendations increases the risk of disputes over the recommendations themselves. It urges us to increase the use of neutrals to resolve such disputes. We have not traditionally used neutrals in disputes between Commission staff and the parties to proceedings following the issuance of draft NEPA documents, but we are not categorically opposed to HRC's suggestion. As experience is developed with the formal pre-filing study dispute resolution process, it may make sense to further consider whether neutral technical experts could play a useful role in this area as well.

[305] NOPR Section III.E.2 and Appendix C.

[306] 68 FR at p. 14011; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,733.

[307] The Commission received several hundred specific recommendations regarding modifications to the regulation text. These recommendations may be discussed in the preamble in the context of a significant issue, but many recommendations are redundant of the recommendations of other commenters, or are technical corrections, or while meritorious and incorporated into revised regulatory text, do not require discussion in the preamble.

[308] California, SCE, Oregon, PFMC, MPRB, PFMC, VANR, Oregon, GLIFWC, NHA, WPPD, S–P, CRITFC, Noe, Wisconsin DNR, Long View, PG&E, Snohomish, Xcel, Washington, ADK, IDEQ, Minnesota DNR, Interior, HRC, Menominee.

[309] California, Oregon, NOAA Fisheries, Interior, PFMC, and CRITFC point to such examples as mortality studies of anadromous fish, which require multiple release groups over as much as five years to obtain data from just one brood year.

[310] California.

[311] S–P, Menominee, GLIFWC, CRITFC.

California recommends that we assume a process requiring at least 6.5 years. Interior agrees and, if we adopt the 5.5-year process, change all of the 15–30 day time frames to 45–90 days. California also recommends that we modify the rule to provide for negotiated schedules.

328. We are aware that there may be instances in which factors such as those cited above or others, such as lack of water quality certification, will prevent a license application from being developed and processed within the 5.5-year time frame, and that there will continue to be cases where annual licenses are issued. That said, we continue to think the best approach the Commission can take is to design a process that, to the greatest extent possible under the existing statutory scheme, addresses the causes of delay and disputes over the sufficiency of the record. The proposed integrated process was designed to do so. We are confident that the integrated process, with modifications based on the post-NOPR comments and consultation activities, offers the best means of meeting our goals.

Q. Settlement Agreements

1. Time Outs

329. Many commenters urge us to reconsider our decision not to include specific provisions in the regulations for a "time out" period during which processing of a license application could be suspended while settlement discussions take place.[312] Oregon suggests a period of 12–18 months would be appropriate. HRC similarly suggests that the processing schedule could be developed to include time for settlement discussions, with the schedule for the Commission's NEPA document adjusted upon the request of the parties to ensure that any settlement agreement which may be filed is one of the action alternatives.

330. These commenters do not disagree that the integrated process should help to foster settlements by ensuring early issue identification and production of information. They contend however that the labor intensive nature of the integrated process and settlement discussions, and the tight time frames in the integrated process, will prevent participants from participating simultaneously in both activities. They add that settlement agreements enhance the strength and durability of the license, help to avoid conflicting Federal and state license conditions, and minimize litigation.

331. They also challenge our statement that the pressure a firm processing schedule places on the parties is an incentive to reach settlement. They argue that time outs increase the likelihood of settlements because it often takes significant time for all parties to fully understand the implications of various potential provisions, which is needed for complete buy-in to an agreement. They add that enforcement of strict deadlines, such as for responses to REA notices, will force parties to take adversarial positions.[313] We continue to adhere to our conclusion in this regard, which is based on our experience.

332. In response to the concerns expressed in the NOPR about maintaining timeliness, the commenters indicate that reaching settlement is more important than strict adherence to a schedule, and that the Commission can place reasonable limits on the amount of time that processing will be suspended while the parties negotiate and require periodic status reports. These comments essentially restate comments made prior to the NOPR.

333. We are not inclined to grant requests for regulatory language that guarantees time outs or implies that they should be routinely granted. We think however there is benefit to codifying the considerations that should be addressed by parties who seek suspension of the procedural schedule to pursue settlement agreements. The provisions we are adopting in this connection make clear that a lack of progress toward the timely filing of a settlement agreement may cause the Commission to terminate any suspension of the procedural schedule that it has granted.[314]

2. Other Matters Pertaining to Settlements

334. The NOPR responded to many commenters who requested guidance in the regulations on what kinds of settlement provisions are or are not acceptable, including adaptive management programs, mitigation measures in lieu of additional studies, mitigation measures outside of existing project boundaries, and confidentiality agreements. In declining to adopt this recommendation, we explained our policies and practices in this regard, with citations to relevant orders. We further explained that it is inappropriate to put general guidance in the regulations because each settlement agreement measure must be evaluated individually in light of the entire record and factors identified in the FPA and other relevant legislation.[315]

335. Several commenters renew their requests for guidance. Some essentially repeat their earlier submissions. Others state that the Commission's response in the NOPR, while helpful, is insufficient. Interior and Oregon, for example, request that we provide additional guidance by compiling case studies and examples of successful agreements.[316] Regarding the second point, Interior and Oregon appear to be asking for guidance on the substantive content of settlement agreements. The best general guidance we can give is that we strive to approve and give effect to all uncontested settlement agreements to the maximum feasible extent, within the bounds of the law and consistent with the public interest. Instances where the Commission has rejected a substantive provision of a hydroelectric licensing settlement that is lawful and within our jurisdiction to enforce are quite rare. If there is any question concerning whether a potential settlement provision has been previously rejected by the Commission or is likely to be rejected, we encourage the parties to confer with the Commission staff.

336. HRC acknowledges that decisions on settlement agreements are based on the law and the record of individual cases, but requests periodically updated guidance on the boundaries of the law concerning what is acceptable, formatted similarly to the Council on Environmental Quality's "Forty Most Asked Questions Concerning CEQ's NEPA

[312] OWRC, Long View, Reliant, Oregon, CRITFC, Xcel, NHA, VANR, IDFG, GKRSE, Interior, Process Group. NYSDEC states that explicit provisions for time outs are not needed, but that the Commission should grant reasonable requests for suspensions that will help advance settlement talks. Georgia DNR supports a brief suspension of the schedule only where the Commission determines it is ultimately likely to expedite the licensing process. Only Alabama Power opposes a time out provision.

[313] Interior states in this connection that it cannot engage in settlement negotiations that compromise its authorities, presumably by causing it to lose its conditioning authority by failing to meet deadlines in the licensing process. It states that if it agrees to participate in settlement discussions, the Commission must agree to accept as mandatory conditions any resulting settlement provisions, or to accept as timely filed any conditions that Interior may file if settlement negotiations fail. We cannot strike such a bargain, which would compromise the Commission's control of its own processes. Interior must weigh the risks of participation in settlement negotiations in each case.

[314] 18 CFR 5.29(g).

[315] 68 FR at p. 14008; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,727–728.

[316] Interior makes the same request with respect to scientific studies and adaptive management plans.

Regulations."[317] We think the statements concerning what the law requires are better made in formal orders or regulations than in guidance documents. The Commission staff stands ready to assist parties if there are questions pertaining to a particular case.

337. NHA states that guidance on formats and components of acceptable settlement agreements would be beneficial. As a general matter, the parties are the persons best able to determine what issues they wish to address in a settlement document and to organize the document. Parties may find it particularly useful to review other settlement documents and use as models those which address the same or similar matters to their proceeding and that have a format useful to them. As with other matters pertaining to settlement documents, there have been several instances in which parties have requested informal staff review of draft documents, a practice we encourage.

338. NOAA Fisheries states that the regulations should require a communications protocol and ground rules for settlement discussions, and should prohibit discussions until the record is complete. NYSDEC disagrees. We responded to NOAA Fisheries' comment in the NOPR[318] and it advances no new facts or arguments.

339. The NOPR also explained the various means of dispute resolution available to parties to proceedings before the Commission, including the use of administrative law judges and Commission staff as facilitators, mediators, and neutrals.[319] ADK states that to succeed in these capacities, Commission staff need to be experienced in hydroelectric licensing. While prior licensing experience is unquestionably beneficial to anyone serving in one of these capacities, it is not a prerequisite. What is essential is training and experience in the relevant discipline. Our Alternative Dispute Resolution training program provides the necessary training to Commission staff.

340. We also explained in the NOPR that we include in licenses settlement agreement provisions that are beyond our authority to enforce if they are included in mandatory terms and conditions.[320] Interior states that there is confusion about how such settlement provisions are to be enforced, and that the confusion would be cleared up if each approved settlement provision the Commission can enforce was incorporated into a numbered license article, and other provisions clearly identified. Interior would like to see this done before issuance of the license order, and the parties given time to amend the settlement agreement in the light thereof.

341. In many cases, settlement agreement provisions approved by the Commission are reformatted into numbered license articles.[321] In other cases, however, it makes more sense from the standpoint of license administration to append the settlement agreement to the license order and include numbered license articles which require the licensee to provide plans to implement various components of the settlement agreement. This is most often the case when the settlement agreement is extremely lengthy or complex.[322]

342. In either case, if there are provisions the Commission cannot enforce, they are identified in the body of the license order.[323] Also, as we have pointed out, the parties are free to include in their agreements other means of enforcing those provisions the Commission itself cannot enforce. Some settlement agreements, for instance, include language characterizing the agreement as a contract.

343. We think it would be inadvisable to amend the regulations to add a time period for the parties to renegotiate the settlement agreement if it contains provisions the Commission cannot enforce. As we have stated, such provisions are almost always procedural and involve the conduct of non-jurisdictional entities, and the precedent[324] is clear, so there is little likelihood of the parties being surprised by such a finding. We are also aware of no case where the settling parties in a hydroelectric licensing proceeding have modified the agreement as a result of the Commission's statement that portions of it are not enforceable by the Commission. Nevertheless, the Commission believes that there may be merit in certain cases to allowing parties a limited opportunity to renegotiate before the Commission issues a license that would not include a critical component of a settlement, or that would include a critical settlement component in a mandatory condition, but that the Commission could not enforce. Therefore, the Commission remains open to considering this approach on a case-by-case basis.

344. Finally, we requested comments on whether the integrated process regulations should encourage potential applicants to include with their draft license application a non-binding statement of whether or not they intend to engage in settlement discussions.[325] Most commenters agreed that this would be beneficial because it would confirm the applicant's intentions with respect to settlement negotiations, which would better enable the parties to assess the prospects for settlement.[326] One commenter suggested that it might also help the Commission to determine the appropriate processing schedule. HRC states that the Commission should also require any such statement to be preceded by discussions with the participants so the intentions of all parties are made clear. A few commenters responded that such encouragement would be meaningless, since it requires the applicant to do nothing, a statement of intent does not commit the applicant to anything, or because the applicant cannot unilaterally decide to conduct negotiations.[327]

345. We have concluded that this is a matter best left to the discretion of the potential applicant because it is likely that there will be many situations in which the potential applicant has not discussed the possibility of a settlement with the other participants when the Preliminary Licensing Proposal or draft license application is filed, or is only able to assess the prospects for settlement after receiving comments on that document.

R. Original License Applications

346. We proposed to make the integrated process applicable to original as well as new license applications, and requested comments on that proposal.[328] Most of the few commenters who addressed this issue responded in the affirmative.[329] NHA, California, and NOAA Fisheries state

[317] 55 FR 18026 (Mar. 23, 1981). NYSDEC indicates that generic guidance on such matters unnecessary.

[318] 68 FR at p. 14007; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,727.

[319] 68 FR at p. 14007; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,727.

[320] 68 FR at p. 14008; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,728.

[321] *See, e.g.*, Hudson River-Black River Regulating District, 100 FERC ¶ 61,319 (2002).

[322] *See, e.g.*, Central Nebraska Public Power and Irrigation District and Nebraska Public Power District, 84 FERC ¶ 61,077 (1998).

[323] *See, e.g.*, Avista Corporation, 90 FERC ¶ 61,167 at p. 61,512 n.25 (2000).

[324] Erie Boulevard Hydropower, L.P., 88 FERC ¶ 61,176 (1999).

[325] 68 FR at p. 14007; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,726.

[326] PG&E, Oregon, HRC, IDFG, PFMC, GLIFWC, Menominee, NCWRC, PFBC, Georgia DNR, NYSDEC.

[327] NHA, Long View, NEU, Interior.

[328] 68 FR at p. 14009; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,729.

[329] NHA, California, HRC, PFBC, PFMC, GLIFWC, Interior. NEU would, however, only apply the integrated process to projects greater than 5 MW, which is about one third of all projects.

that it is important for the integrated process to be coordinated with the issuance of preliminary permits, and offer specific proposals for doing so.

347. NHA's proposal is detailed. An applicant for a permit for a project at an existing non-federal dam would be required to demonstrate ownership of the dam or evidence of authorization from the existing dam owner to evaluate the dam for potential generation. If the permit applicant could not satisfy this requirement, the Commission would issue an order to show cause why the permit application should not be dismissed. If good cause to issue the permit was not shown, the permit application would be declared patently deficient and dismissed. This, states NHA, would prevent the issuance of permits to entities that do not own the site or who lack real intent to construct a project.

348. Under NHA's proposal, six months before expiration of a first permit, the permit holder would have to file its NOI,[330] but would not have to file a PAD. A public notice of the NOI would be issued inviting potential competitors to also file an NOI. Thereafter, the permittee and any potential competitors would have to file a skeletal PAD, with both documents due on the same day in order to prevent either party from copying the other's PAD. The Commission would also bar the competitor from using the permittee's materials in any subsequent filings.[331] A PAD that did not meet minimum content standards would be declared patently deficient and rejected, with no opportunity to remedy the deficiency. The new permittee would have a specified period of time to file a new NOI and the same PAD required of all other potential license applicants. Thereafter the same integrated process applicable to relicenses would apply.

349. NHA's proposal would impede development applications at existing dams by entities other than the dam owner. That would be fundamentally inconsistent with Congress' intent to promote competition in hydropower development.[332]

350. California and NOAA Fisheries make much simpler proposals. California would have us require each new permittee to begin prefiling consultation within 30 days from issuance of the preliminary permit and to file an NOI and PAD within 60 days. NOAA Fisheries would require permit applicants to simultaneously file the NOI and PAD.

351. The California and NOAA Fisheries recommendations do not account for the many uncertainties associated with developing an unconstructed project, a lack of existing project-specific information and studies, or the need to obtain other permits, such as a dredge and fill permit under Section 404 of the Clean Water Act. These factors can add significant time to the period needed to prepare a new development application, or even an original license application for a project at an existing dam. For this reason, successive permits are typical in such circumstances. Other commenters recognize this,[333] and some suggest that the labor-intensive and time-sensitive integrated process may be incompatible with original licenses.

352. We affirm our proposal to apply the integrated process to original license applications. We conclude that the existing preliminary permit program and the integrated process can exist side-by-side and do not need any special provisions for coordination. There is no need for the permit term and pre-filing consultation to begin contemporaneously because a permit holder can file a license application any time during the term of the permit, and pre-filing consultation can and does go forward regardless of whether the potential applicant has a preliminary permit.

S. Competition for New Licenses

353. The FPA requires an existing licensee that is a potential applicant for a new license to file an NOI.[334] Neither the FPA nor our regulations require a non-licensee that is a potential competitor for a new license to file an NOI. In the NOPR we rejected requests from some licensees to require a potential non-licensee competitor to file an NOI.[335]

354. PG&E and NHA state that they are not concerned about this, as long as we require a potential non-licensee competitor to file its PAD no later than five years prior to license expiration. In effect, this would ensure that the potential non-licensee competitor must show its hand no later than the existing licensee. Likewise, an existing licensee concerned about potential competitors could ensure that any potential competitor may not copy its PAD by also issuing its NOI and PAD at the statutory deadline.[336]

355. Upon further reflection, we have decided that it is appropriate for a potential non-licensee competitor to file both the NOI and the PAD. We previously rejected the NOI requirement for non-licensee potential competitors in order to encourage competition on relicensing.[337] Over two hundred new license applications have been filed since the current rules were promulgated in 1989, but just a few applications have been filed by a non-licensee in competition with a timely-filed application by an existing licensee. It is clear that relieving non-licensee potential applicants of the NOI requirement has not had any effect or competition.

356. More important, the existing policy was developed when only the traditional licensing process existed. The adoption of the integrated process and the requirement for Commission approval to use the traditional process change the landscape considerably. The integrated process is based on clearly delineated steps designed to be completed before the license application is filed. The traditional process is much less prescriptive. If there were competing applications, it is mostly likely that we would require them to be developed using the same process in the same time frame. In any event, we would want to ensure that stakeholders have the same opportunity to comment on both potential applicants' process proposals, and the process proposal is required to be included with the PAD.[338]

357. The remaining question is whether a non-licensee potential competitor should be required to file its NOI and PAD within the same six month window applicable to existing licensees. The importance of process selection to efficient processing, discussed above, persuades us that a potential non-licensee competitor should also be required to file its NOI

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[330] NHA states that the permit regulations would have to be modified to permit this.

[331] We have previously held that an application will not be rejected because it contains materials duplicated from another application, even if the material is copyrighted. WV Hydro, Inc. and City of St. Mary's, WV, 45 FERC ¶ 61,220 (1988).

[332] Order No. 496, Information to be Made Available by Hydroelectric Licenses under Section 4(c) of the Electric Consumers Protection Act of 1986, 53 FR 15804 (May 4, 1989), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,812 at p. 31,105 (Apr. 28, 1988).

[333] Long View, Troutman, ADK, Wisconsin DNR.

[334] 16 U.S.C. 15(b)(1).

[335] 68 FR at p. 14009; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,729. PG&E notes that the text of proposed 18 CFR 5.3(a) is consistent with the body of the NOPR in this regard, but that proposed 18 CFR 5.3(c) appears to require any potential applicant, whether or not an existing licensee, to file an NOI. We are modifying the language concerning this requirement in accordance with our decision here to require any potential applicant for a new license to file an NOI.

[336] This would if adopted, take care of Long View's concern that a competing non-licensee applicant could photocopy an existing licensee's PAD.

[337] Order No. 513, IV FERC Stats. & Regs. ¶ 30,854 at p. 31,415.

[338] 18 CFR 5.6(d)(1).

and PAD no later than five years before expiration of the existing license.[339]

T. Summary of Changes to Integrated Process—Regulation Text

358. In this section, we summarize the changes we are making to the integrated process. The changes are discussed in the order in which they occur in the part 5 regulations. A flowchart of the integrated process with significant modifications in boldface print is posted on the Commission's Web site.

359. The content and distribution requirements for the PAD have been substantially modified.[340]

360. At the time of the notice of commencement of proceeding, the Commission will request commencement of informal ESA consultation if the potential applicant is not designated as the Commission's non-federal representative for this purpose.[341]

361. We are accepting the Tribal Group's request that early tribal consultation be specifically acknowledged in the regulations. To that end, we have added a new section providing for a meeting no later than 30 days following the filing of the NOI between each willing Indian tribe likely to be affected by the potential license application and the Commission staff and other relevant Federal agencies.[342]

362. The NOPR proposed to have the Commission's NEPA Scoping Document 1 issued following the potential applicant's issuance of a revised PAD with a draft study plan. The Process Group concluded that because the study plan should be issue-driven, and because the PAD and other factors should enable participants to begin issue identification from the beginning of the process; the integrated process would work better if NEPA scoping begins earlier. Accordingly, we have modified the rule to provide for the issuance of Scoping Document 1 at the same time the Commission issues the notice that the proceeding has commenced.[343]

363. The proposed rule provided that comments on the PAD "may" include initial information and study requests. In light of the fact that the beginning of NEPA scoping has been advanced to the same date as notification that the proceeding has commenced, the regulations have been modified to state that comments on the PAD "shall" include the commenters' information and study requests, and should include information and studies needed for consultation under ESA Section 7 or water quality certification.[344] Agencies or Indian tribes with authority to issue water quality certification are strongly urged to participate in this and all other aspects of the development of a Commission-approved study plan and schedule.

364. The proposed rule would have required the potential applicant to file a revised PAD and a proposed study plan. The Process Group concluded that there is no need for a revised PAD if the process is modified to provide additional time for the participants to address the potential applicant's draft study plan. As we are modifying the rule for that purpose, as discussed below, the revised PAD has been eliminated. We stress once again, however, the importance of potential applicant's exercising due diligence in obtaining information and preparing all components of the PAD. It is central to the success of the enterprise.

365. At the same time the potential applicant files its draft study plan, the Commission staff will issue, if necessary, Scoping Document 2.[345] This previously occurred when the study plan determination is issued.

366. Comments on the draft study plan were proposed to be due 60 days after the draft study plan was filed, during which period the Commission staff would have issued Scoping Document 1, with the draft study plan appended.[346] As recommended by the Process Group, Scoping Document 1 has been advanced, and the draft study plan will be served directly on the participants. The comment period on the draft study plan has also been extended to 90 days, and provisions made for the applicants and participants to hold meetings on the study plan during the 90-day period, in order to encourage as much discussion and negotiation as possible among the participants.[347]

367. As proposed, the potential applicant would file a revised study plan for Commission approval, followed by the Commission's study plan order.[348] The Process Group recommended that we add an opportunity for participants to file comments on the revised study plan prior to the study plan order. We have added a 15-day period for this purpose.[349]

368. The formal dispute resolution rules have been modified to include a technical conference open to all parties, before the Advisory Panel begins deliberations.[350]

369. We have clarified the standards for requesting changes to ongoing studies, and for requesting new information gathering or studies following the initial and updated study reports.[351] In brief, requests made following the initial study report are subject to a good cause standard, and requests made following the updated study report are subject to an extraordinary circumstances standard.

370. The requirement to file for comment a draft license application has been replaced by a requirement to file a "Preliminary Licensing Proposal," although a potential applicant may elect to file a draft application."[352]

371. The proposed rule provided for comments, interventions, and the filing of preliminary recommendations and terms and conditions 60 days following issuance of the REA notice,[353] to be followed by the issuance of a draft EA or EIS, or an environmental assessment. We have, consistent with our current rules, added a 45-day period for reply comments, which would not affect the proposed time periods for issuance of NEPA documents.[354]

U. Changes to Traditional Process and ALP

372. The NOPR proposed four significant changes to the traditional process: (1) Full public participation; (2) mandatory, binding pre-filing dispute resolution; (3) the requirement to file an NOI and PAD; and (4) extending the deadline for filing the water quality certification application until 60 days after the REA notice. The NOI and PAD and related discussion of process selection and transition provisions were discussed above.[355] The water quality certification deadline was also discussed previously.[356]

373. As discussed in this section, we are adopting the changes to ensure full public participation, but have decided to maintain the existing pre-filing dispute resolution process.

[339] 18 CFR 5.5(d).
[340] 18 CFR 5.6 and Section III.E.
[341] 18 CFR 5.8(b)(2) and Section III.O.3.
[342] 18 CFR 5.7 and Section III.N.
[343] *See* 18 CFR 5.8(c).
[344] *See* 18 CFR 5.9(a).
[345] *See* 18 CFR 5.10 (Scoping Document 2).
[346] Proposed 18 CFR 5.9 and 5.10.
[347] 18 CFR 5.11(c).
[348] Proposed 18 CFR 5.12.
[349] 18 CFR 5.13(b).
[350] 18 CFR 5.14(j) and Section III.G.3.d.
[351] 18 CFR 5.15.
[352] 18 CFR 5.16 and Section III.K.
[353] Proposed 18 CFR 5.22.
[354] 18 CFR 5.23(a).
[355] *See* Sections III.D. and III.F.
[356] *See* Section III.M.2.

1. Traditional Process—Public Participation

374. In the NOPR we proposed to modify the traditional process pre-filing consultation regulations to require potential applicants to make reasonable efforts to bring into pre-filing consultation as early as possible NGOs and other members of the public, and for these entities to be involved in the development of the potential applicant's study plans.[357]

375. Non-industry commenters favor this proposal. NHA and SCE oppose it. NHA states that it could significantly increase the cost and time of the process. It recommends that we maintain the existing provisions for public participation, except that the public would be encouraged to provide the potential applicant with comments on its proposal following the public meeting required during stage one consultation,[358] and the potential applicant and agencies would be required to respond contemporaneously to those comments. NHA indicates that the availability of the PAD on the Commission's Web site should enable the public to effectively participate in the public meeting, and the potential applicant could decide what level of pre-filing public participation was appropriate for the project. SCE also cites increased costs and burdens and states that the public is already adequately represented by the Commission and resource agencies.[359]

376. We are strongly inclined to adopt the rule as proposed. Under NHA's proposal, the potential applicant would not be required to distribute the PAD to members of the public likely to be interested in any license application proceeding or include the public in the joint meeting with agencies and Indian tribes. There would also be no requirement for the public to provide comments and study requests following the joint meeting, and they would not be eligible to participate in the joint meeting following comments on the draft license application.[360] This would exacerbate the contribution that lack of public input during pre-filing consultation now makes to licensing delays. The proposal in the NOPR to include the public in all aspects of pre-filing consultation substantially resolves this problem for the traditional process.

2. Traditional Process—Mandatory, Binding Dispute Resolution

377. The principal reasons the existing study dispute resolution process is not used are that it is not required to be used and the result is advisory only.[361] We proposed to require consulted entities in the traditional process who oppose a potential applicant's information-gathering and study proposals to file a request for dispute resolution during pre-filing consultation. Consulted entities that do not request dispute resolution would thereafter be precluded from contesting the potential applicant's study plan or results with respect to the issue in question.

378. We also proposed to make the outcome of dispute resolution binding on all participants; that is, the Director's order resolving the dispute would, if information or a study is determined to be necessary, direct the potential applicant to gather the information or conduct the study. Consulted entities would not be permitted to revisit the dispute after the application is filed. We further proposed to eliminate from the traditional process the opportunity to request additional scientific studies after the license application is filed.[362]

379. NHA and EEI support the proposed change.[363] NHA would also modify the proposed rule by requiring study requesters to address the study criteria applicable to the integrated process, and by requiring the Director to address those criteria in his decision.

380. Agency and NGO commenters were less enthusiastic. HRC and Interior contend the proposed change could make the problem of post-application study disputes worse and, along with TU urge that if pre-filing binding dispute resolution is adopted, it be the same as formal dispute resolution in the integrated process. Interior argues that study disputes cannot be resolved without the aid of a panel of technical experts and the views of Commission staff, so the goal of developing a record during pre-filing consultation that will support the actions of all agencies with decisional authority would be thwarted. NYSDEC appears to support mandatory, binding dispute resolution, but opposes elimination of post-application study requests. HRC, echoing the concerns of commenters on binding dispute resolution in the integrated process, adds that if the traditional process dispute resolution is to be mandatory and binding, then the Commission must permit rehearing of the Director's decisions. Finally, Interior and NOAA Fisheries state that the Commission does not have authority to issue a binding pre-filing dispute resolution in the traditional process because in that process no formal proceeding commences until the application is filed. We think Interior and NOAA Fisheries are correct and will therefore not adopt this proposal.

381. Finally, NOAA Fisheries recommends that we modify the traditional process by requiring applicants to submit for Commission approval a study plan under conditions similar to development of the study plan in the integrated process. Since we are not adopting mandatory, binding dispute resolution in the traditional process, a Commission-approved study plan would serve no purpose, and would blur the distinction between the integrated and traditional process.

3. Traditional Process—Other Recommendations

382. Interior recommends that we make no changes in the traditional process until the integrated process has become established and shown to be effective because it opposes mandatory, binding dispute resolution in the traditional process. As just discussed, we are not adopting that proposal. Because Interior does not specifically oppose increased public participation, we presume it has no objection to that aspect of the proposed rule.

383. SCE states that the best way to streamline the process would be to eliminate pre-filing consultation altogether for any project that has previously been issued a license in which a NEPA document was prepared, or for small projects where no operational or ground-disturbing changes are contemplated. Under SCE's scenario, the pre-NOI notice to the applicant would be published in a local newspaper. The potential applicant would file the NOI and an abbreviated version of the PAD, then file an application based on whatever pre-filing consultation it decides is needed. In support, SCE states that it already has relationships with the resource agencies and that anyone is welcome to make

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[357] 68 FR at p. 14011; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,734.

[358] *See* 18 CFR 4.38(b)(3) and 16.8(b)(3).

[359] Acres does not oppose the proposal, but states that the Commission should help individual members of the public organize themselves so that public participation is efficient and structured. Participation by individuals may be inconvenient for applicants in certain respects, but individuals are capable of determining for themselves whether joint action is consistent with their individual interests.

[360] *See* proposed 18 CFR 4.38(b) (1)(3)(4) and (5); 4.38(c)(2) and (6); 4.38(d)(2); analagous sections of proposed 18 CFR part 16, and proposed 18 CFR 5.4.

[361] 68 FR at p. 13996; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,707.

[362] *See* proposed changes to 18 CFR 4.38(b)(5), (c)(1), and (c)(2); and 16.38(b)(5), (c)(1), and (c)(2) and related NOPR discussion, 68 FR at p. 13996; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,734–735.

[363] SCE supports mandatory pre-filing dispute resolution, but states that it should be the same for all processes and should be available only to agencies with mandatory conditioning authority.

comments before an application is filed. It adds that Interior's Bureau of Land Management and the U.S. Forest Service do not require pre-filing consultation.

384. We think leaving pre-filing consultation to the discretion of potential applicants is unlikely to result in any gains in the timeliness or efficiency of the licensing process, and reject the qualifying criteria proposed by SCE. A NEPA document issued many years before a new license application is filed is likely to be of very little value. Nor is a proposal to maintain the *status quo* as an operating regime necessarily a guarantee that a new license application will not raise substantial issues. Changes are likely to have occurred over the term of the license with respect to recreational use of the reservoir and shoreline, threatened and endangered species listings, water quality standards, resource agency management goals, standards for protection of cultural and historical resources, and others. That SCE has established relations with certain agencies has no bearing on this issue of general applicability.

385. SCE adds that if the PAD is required it should be scaled back for applications using the traditional process because it is too burdensome for small projects and the required amount of information is not needed at the beginning because NEPA scoping will follow filing of the application. SCE overlooks two important facts. First, the PAD is one of the tools used to inform the opinions of the participants and the Commission concerning whether to approve use of the traditional process. Second, the PAD is only required to include existing relevant information that can be obtained with the exercise of due diligence. An existing licensee already has a substantially similar obligation to produce information under the traditional process regulations.[364]

4. Streamlined Process for Small Projects

386. The NOPR declined to adopt a proposal by NHA under which applicants could file a request for waiver of all or part of the pre-filing consultation requirements. We did so largely because the existing regulations already provide for consensual waiver by agencies and Indian tribes and owing to concerns about NHA's proposed criteria.[365] Nonetheless, in recognition of the important place of small hydropower in the nation's energy infrastructure and in the hope of eliminating potentially unnecessary costs of relicensing, we requested comments on other approaches to streamlining the licensing process for small projects that would not compromise the interests of other stakeholders.[366]

387. NHA responds that we should not have rejected its proposal because no other agency requires pre-filing consultation, it is not required by NEPA, and it is less important for licenses issued after enactment of the Electric Consumers Protection Act[367] because such licenses were the subject of a recent NEPA document and are likely to include many environmental protection measures. NHA adds that it does not seek an exemption from NEPA, or to preclude analysis based on new issues such as threatened or endangered species listings, but only wants recognition that some impacts will already have been adequately addressed. NHA also stresses that the existence of the PAD would enable interested entities to comment prior to the license application even if there is no formal opportunity to comment.

388. We remain unpersuaded. That other agencies may not require pre-filing consultation, or that it is not required by NEPA, has no bearing on whether it makes sense for license applications. The FPA licensing scheme is unique, and commenters were nearly unanimous that the key to timely and efficient processing of applications is combining pre-filing consultation with NEPA scoping. NHA may be correct that post-ECPA licenses are likely to contain a greater level of resource protection than pre-ECPA licenses. However, as noted in our response to SCE's proposal in the preceding section, many factors are likely to change over the term of any license, regardless of when it was issued.[368]

389. NEU recommends that projects under 5 MW with minor licenses should have the right to elect the traditional process without Commission approval, and to file the initial consultation document currently required by the regulations instead of the PAD. We think the approval requirement has been framed so that licensees of small projects will have a reasonable opportunity to make their case for using the traditional process and, as noted, we have made the PAD less burdensome for all potential applicants.

390. Agencies and NGOs continue to recommend that no special allowances be made for projects of any size unless there has been consultation with agencies, Indian tribes, and the public. They reiterate that size is no indicator of environmental impacts, case-by-case consideration of the issues is not unduly burdensome, and that if there really are few issues or little controversy, then the study design can reflect that.[369]

391. Notwithstanding our rejection of NHA's and NEU's recommendations, we think there are likely to be instances where relicensing of a small project will be uncontroversial, and for which study requirements should be modest. For such cases, waiver of part or all of pre-filing consultation may not prejudice the timely and thorough consideration of a relicense application. We are therefore modifying Section 16.8(e) of the regulations that requires the consent of a resource agency or Indian tribe in order to waive pre-filing consultation with respect to that entity. We will now permit non-consensual requests for waivers, but will require any such request to be preceded by discussions with these other entities and for the request to include documentation of the discussions and a response to any objections to the waiver request. We will also provide an opportunity for responses to the waiver request.[370]

5. Draft Applicant-Prepared Environmental Analyses

392. Under the current rules, a license applicant may include a draft EA with its application if it uses the ALP (applicant-prepared EA, or APEA). The NOPR declined to adopt recommendations that we permit license applicants to include a draft EA or draft EIS with their application even if they use the existing traditional process. We stated that the limits on pre-filing public participation and the history of post-application continuation of pre-filing study disputes would likely make such documents no more useful, or even less useful, than the existing Exhibit E. We did however note that by proposing full public participation in pre-filing consultation and adding mandatory, binding study dispute resolution, the problem of an incomplete record when the application is filed should be alleviated. We requested comments on whether, in light of these proposed changes, we

[364] *See* 18 CFR 16.7(d) and 16.8(b).

[365] 68 FR at p. 14012; IV FERC Stats. & Regs. ¶ 32,568 at pp. 34,735–736.

[366] 68 FR at p. 14012; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,736.

[367] Public Law 99–495, 100 Stat. 1243 (Oct. 16, 1986) (codified at 16 U.S.C. 791a *et seq.*).

[368] We note in this regard that the minimum term for a new license is 30 years, and the first relicenses of projects with post-ECPA licenses are still approximately 15 years away.

[369] S–P, MPRB, NCWRC, Interior, Georgia DNR, Wisconsin DNR, Oregon, California, HRC, NYSDEC.

[370] 18 CFR 16.8(e).

should change our rules in this regard.[371]

393. Agencies and NGO commenters opposed this idea.[372] HRC and Interior state that this would not achieve the goals of the rulemaking because there would still be no requirement comparable to the ALP or even the integrated process to consult on a study plan or the APEA. Thus, the APEA would reflect only the positions and interests of the applicant, making it highly unlikely that the Commission could adopt it without major revisions. California adds that even if the factual record was satisfactory, the objectivity of the applicant's analysis would be suspect.

394. EEI and NEU favor this idea. EEI states that APEAs work well in the gas pipeline certificates program.

395. We have decided to permit a license applicant to include a draft EA with its application. The agency and NGO commenters may be correct that an APEA prepared under the traditional process is less likely to account for the views of all participants and may require significant revisions pursuant to the Commission's independent review. That however is not the central issue. The adequacy of an APEA for purposes of filing a license application is determined by whether it contains the information required in Exhibit E, the environmental exhibit. If it contains that information, we are not concerned that it appears in a nontraditional format. The parties will retain the same rights they now enjoy to comment on the full application and make any additional information requests. Regardless of whether an applicant includes an APEA or a traditional Exhibit E in its application, the Commission will issue its own independently prepared draft NEPA document or single environmental assessment.

6. ALP—Applicability of Dispute Resolution

396. We proposed to leave the existing, non-mandatory and non-binding dispute resolution procedures applicable to the ALP in place because mandatory, binding dispute resolution appears to be incompatible with the collaborative nature of the ALP. We did however request comments on whether there may be circumstances in which binding dispute resolution could be conducted in a manner that safeguards the collaborative process.[373]

397. SCE recommends that the ALP include binding dispute resolution. Most commenters however state that a binding process would be inconsistent with the concept of a collaborative process and would therefore have a chilling effect on participation.[374] California and PFMC state that there should be a negotiated dispute resolution mechanism in the communications protocol for each ALP. PFBC recommends that if the existing ALP dispute resolution process[375] fails, the proposed formal dispute resolution process for the integrated licensing process should be used, modified to make it available to all parties.[376]

398. After considering the comments, we have decided not to change the existing ALP dispute resolution provision. Mandatory, binding dispute resolution still seems to us inconsistent with the collaborative process. For the same reason we decline to import into the ALP the formal dispute resolution procedures of the integrated process. The negotiated dispute resolution procedure contemplated by California and PFMC could however be encompassed within a communications protocol, if the participants agreed to request waiver of the process provided for in the regulations.

V. Ancillary Matters

1. Intervention by Federal and State Agencies

399. We proposed to permit Federal agencies that commonly intervene in Commission proceedings, and state fish and wildlife and water quality certification agencies, to intervene by filing a notice instead of the current requirement to file a motion to intervene.[377]

400. No commenter objected to this proposal. Various commenters request that we clarify that the intervention by notice policy extends to, or will be expanded to include, state water rights agencies[378] and Indian tribes with authority to issue water quality certification.[379] These requests are reasonable and will be granted.[380]

401. NYSDEC requests that late interventions also be allowed by notice unless there is prejudice to others. We deny this request. The best means of determining whether other parties would be prejudiced is for the entity seeking untimely intervention to address that issue and for potentially prejudiced parties to respond. Our regulations on this matter make clear that this is one of the matters the Commission may consider in acting on a late motion to intervene.[381]

402. NOAA Fisheries and Interior renew their request for automatic intervenor status, or for the ability to file one notice of intervention good for all proceedings throughout the term of a license. They advance no arguments that were not considered and rejected in the NOPR.

2. Information Technology

403. In the NOPR we denied requests by a few commenters to require that documents filed in a proceeding or required to be available to the public be served or otherwise made available on the internet. We acknowledged that there are many instances where this is very efficient and more useful for participants than distribution of paper. We also noted that many license applicants and others are taking advantage of these benefits. We concluded however that such a requirement might be an undue cost burden on licensees that are small enterprises, and noted that we have granted waiver of the "licensing library" requirement where the applicant agreed to make all of the information available on the Internet and to provide hard copies by mail on request.[382]

404. SCE requests that we reconsider and allow applicants to use Web sites and e-mail to disseminate information and effect service in the ordinary course.[383] The applicant would determine whether and to what extent to employ this means of service and information dissemination. SCE states that entities without access to the internet would be accommodated by service of physical documents. HRC notes in a similar vein that electronic service is critical to the tight deadlines

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[371] 68 FR at p. 14012; IV FERC Stats. & Regs. § 32,568 at p. 34,736.

[372] HRC, Interior, PFMC, MPRB, NCWRC, California.

[373] 68 FR at p. 14012; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,735.

[374] Interior, HRC, NYSDEC, NEU.

[375] Under 18 CFR 4.34(i)(6)(vii), participants in an ALP may file a request with the Commission to resolve any disagreement concerning the ALP (*i.e.*, not limited to studies) after reasonable efforts have been made by the participants to resolve the dispute.

[376] CSWC recommends that numerous elements of the integrated process be incorporated into ongoing ALP processes. Imposing such requirements would be inconsistent with the collaborative nature of these processes and would upset the settled expectations of the potential applicants and stakeholders who have already established the means by which they will work together.

[377] 68 FR at p. 14013; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,737, and proposed 18 CFR 385.214.

[378] Alaska DNR, EPA.

[379] Interior, EPA.

[380] *See* 18 CFR 385.214.

[381] 18 CFR 385.214(d)(1)(iv).

[382] 68 FR at pp. 14013–014; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,737–738.

[383] SCE states that oversized documents that are not compatible with e-mail would be served by mail, and that critical energy infrastructure information could be excluded.

in the integrated process. It requests that we make electronic service the presumptive form of service, as long as the potential applicant agrees to paper service for anyone who requests it.

405. We continue to be concerned with the situation of small enterprises that operate jurisdictional projects, as well as small NGOs or individuals that may lack the sophistication to fully participate without physical service. We do however *see* the potential for great savings in electronic service and the Commission is continuously reviewing its filing and distribution requirements with a view toward maximizing the use of electronic filing and distribution of information. Thus, as noted above, the final rule encourages potential applicants to distribute on-line information and analyses referenced in the PAD, while preserving the right of a participant to receive these materials in hard copy form. One recent innovation in this connection is the advent of our e-subscription service, in which an entity may sign up to receive e-mail notification of, and a link to our Commission-wide information database (FERRIS [384]) for, every filing made in a specified proceeding.[385] Finally, we will also continue to consider waiver requests in individual cases, and participants in collaborative processes are free to negotiate agreements which take advantage of e-mail and other Internet capabilities.

406. ADK states that the Commission should permit meeting notices and other short documents to be served by facsimile machine instead of by e-mail on the ground that facsimile service is more reliable. This would be an extremely inefficient, if not impossible, means for the Commission to issue public notices. ADK is however free to request that license applicants or other participants in individual proceedings serve documents on it in this manner.

407. GLIFWC states that all documents filed in the licensing process should be made available on the Commission's Web site and an applicant's Web site in both portable document format (pdf) and a word processing format. All documents filed with the Commission are already available to the public on the Commission's Web site via FERRIS in various formats, including pdf. For this reason, there is no need to impose this burden on a potential applicant.

[384] FERRIS stands for Federal Energy Regulatory Records and Information System.

[385] Entities wishing to establish e-subscriptions can find instructions on the Commission's Web site at http://www.ferconline@ferc.gov.

3. Project Boundaries and Maps

408. The NOPR stated that for historical reasons the current regulations do not require minor projects occupying non-federal lands to have an established project boundary, although the boundary for such projects has been considered to be the reservoir shoreline. We further observed that this situation is inconsistent with our ongoing effort to modernize project boundary mapping by conversion of such maps into highly accurate, georeferenced electronic maps, and therefore proposed to require all future license and exemption applicants, regardless of license or exemption type, to provide a project boundary with each application. We requested comments on this proposal.[386]

409. Agencies and NGOs support the proposal. They state that it is important for compliance purposes because the Commission has said the geographical limit of its compliance authority is the project boundary.[387] They state that the project boundary should include generating facilities, bypass reaches, the reservoir to the high water mark, all shoreline lands needed to meet project purposes other than the generation of power, and all lands needed to implement mitigation measures.[388] All of these are required to be included in the project boundary with the exception of bypassed reaches, which we have explained may or may not be jurisdictional depending on case-specific facts.[389]

410. NHA is not opposed to consistent standards for project boundary maps, but objects to imposing the new standards on existing minor licenses for which project boundary maps are already on file, or on exemptions. NHA states that it would cost thousands of dollars for field survey and drafting and that the Commission can obtain all the information it needs under the current rules. NHA, SCE, and NEU also state that licensees should only be required to revise their project boundaries when a new license application is filed or the licensee otherwise seeks approval to revise a particular Exhibit G drawing, because requiring georeferenced, electronically-formatted maps for all projects would be costly and extremely burdensome.

411. These commenters may misapprehend the proposed rule in this regard. It is not our intention to require all existing licensees or exemptees to file a georeferenced map of the project boundary. The project boundary data would only be required when an application is filed for a license or an exemption, or when an application to amend either authorization already requires a revised Exhibit G.

412. SCE adds that standards similar to the electronic standards required for project maps should also be established for design drawings required in a license application. Duke requests clarification of which electronic format is required for Exhibit G maps. It recommends widely used formats such as JPG, TIFF, or PDF, which do not require specialized software.

413. The revised regulations do not require Exhibit G maps to be in a GIS format. The project boundary is only one feature of Exhibit G maps, which also include the location of project features such as the reservoir, powerhouse, and other facilities. An applicant can file the Exhibit G map in a JPG, TIFF, or PDF file, or any other graphic format, the project boundary data however, must be filed in a GIS format.

4. Miscellaneous Filing Requirements

414. The NOPR proposed minor additions to the application filing requirements of §§ 4.41, 4.51, and 4.61. These are: monthly flow duration curves;[390] minimum and maximum hydraulic capacities for the powerplant;[391] estimated capital and operating and maintenance (O&M) expenses for each proposed PM&E measures;[392] estimates of the costs to develop the license application;[393] on-peak and off-peak values of project power, and the basis for the value determinations;[394] estimated annual increase or decrease in generation at existing projects;[395] remaining undepreciated net investment or book value of project;[396] a single-line electrical diagram;[397] and a statement of

[386] 68 FR at p. 14014; IV FERC Stats. & Regs. ¶ 32,568 at p. 34,738.

[387] *See* PacifiCorp, 80 FERC ¶ 61,334 (1997).

[388] HRC, IDFG, NCWRC, PFBC, NYSDEC, PFMC, Menominee, Interior, MPRB.

[389] *See* Duke Power, a Division of Duke Energy Corporation, 100 FERC ¶ 61,294 (2002), in which we stated that where a license requires ongoing programs in a bypassed reach (*e.g.*, a habitat restoration program) such that continued Commission oversight is necessary to meet the program requirements, the reach is considered to be part of the project.

[390] *See* proposed modifications to 18 CFR 4.41(c)(2)(i), 4.51(c)(2)(i), and 4.61(c)(1)(vii).

[391] Proposed modifications to 18 CFR 4.41(c)(4)(iii); 4.51(c)(2)(iii), and 4.61(c)(1)(vii).

[392] Proposed 18 CFR 4.41(e)(4)(v); 4.51(e)(4), and 4.61(c)(1)(x).

[393] Proposed 18 CFR 4.41(e)(9); 4.51(e)(7); and 4.61(c)(3).

[394] Proposed 18 CFR 4.41(e)(10); 4.51(e)(8); and 4.61(c)(4).

[395] Proposed 18 CFR 4.51(e)(9) and 4.61(c)(5).

[396] Proposed 18 CFR 4.61(c)(6).

[397] Proposed 18 CFR 4.61(c)(8).

measures taken or planned to ensure safe management, operation, and maintenance of the project.[398]

415. These are items of information not specifically required to be included by the current regulations, but which the Commission staff requests as additional information in nearly every license proceeding in order to complete its NEPA and comprehensive development analyses. The NOPR found that obtaining this information with the application instead of via an additional information request will enable the staff to move forward more expeditiously to process license applications. No opposing comments were received on these proposed changes, and we are adopting them. A few commenters raised other miscellaneous filing requirement issues.

416. NOAA Fisheries requests a reduction in the number of paper copies that are required to be filed, and that we consider allowing filings to be made on compact disks (CDs) and by other electronic means. The Commission allows, indeed strongly encourages, electronic filing. Parties may also request waiver of the filing requirements in order to substitute a compact disk or CD-ROM for a hard copy filing.[399] We are also reviewing our filing and distribution requirements Commission-wide with a view toward maximizing the use of e-filing and distribution of information, but that review is not complete at this time.

417. Interior requests that we require applicants to provide aerial photographs and/or satellite images to provide an overview of the project area. We think this is excessive in light of the requirements we are already imposing for electronically formatted maps, and the ready availability of United States Geological Survey and other maps.

5. Technical Changes

418. We are also taking this opportunity to correct various sections of the regulations to update them, or to cure incorrect cross-references, misspellings, or misstatements.[400]

W. Delegations of Authority

419. The proposed rule contemplated certain new delegations of authority to the Director, Office of Energy Projects, in the context of the proposed integrated process. Specifically, these are authority to issue: (1) Act on requests to use the traditional licensing process; (2) issue a study plan determination; (3) resolve formal study disputes; and (4) resolve disagreements brought during the conduct of studies. Consistent with our decision to adopt the integrated process as described herein, we are adopting conforming modifications to our delegations to the Director.[401]

X. Critical Energy Infrastructure Information

1. Order No. 630

420. In Order No. 630,[402] the Commission established standards and procedures for the handling of Critical Energy Infrastructure Information (CEII) submitted to or created by the Commission. CEII is information about existing or proposed critical infrastructure that relates to the production, generation, transportation, transmission, or distribution of energy; that could be useful to a person planning an attack on critical infrastructure; is exempt from mandatory disclosure under the Freedom of Information Act;[403] and that does not simply give the location of the critical infrastructure.[404] Critical infrastructure refers to existing or proposed systems and assets, the damage or destruction of which would harm the national security of the public health and safety.[405] The purpose of the rule is to protect information on critical energy infrastructure that could be used by terrorists, while continuing to make public the information necessary for participation in the Commission's processes.

421. CEII is required to be redacted from filings made with the Commission. A hydroelectric license application could contain various kinds of information that are CEII. The preamble to the rule gives examples of such information, including: (1) General design drawings of the principal project works, such as those found in Exhibit F; (2) Maps, such as those found in Exhibit G; (3) Drawings showing technical details of a project, such as plans and specifications, supporting design reports, part 12 independent consultant reports,[406] facility details, electrical transmission systems, communication and control center information; and (4) GPS coordinates of any project features.

422. Of particular concern to the Commission in defining CEII was location information. Such information is particularly relevant, for example, to participants in the NEPA process. Consequently, the following types of location information were not considered to be CEII: (1) USGS 7.5-minutes topographic maps showing the location of pipelines, dams, or other aboveground facilities; (2) alignment sheets showing the location of pipeline and aboveground facilities, right of way dimensions, and extra work areas; (3) drawings showing site or project boundaries, footprints, building locations and reservoir extent; and (4) general location maps. Such information is classified as "non-Internet public access," that is, information to be included in paper filings with the Commission and made be available in hard copy and through the Commission's public reference room, but which will not be available for viewing or downloading from Commission databases.[407]

423. Order No. 630 establishes procedures for persons to request CEII that has been filed with the Commission or to challenge CEII status.[408]

2. Conforming Rulemaking

424. Several commenters in the CEII rulemaking and on the NOPR in this proceeding[409] noted that the Commission also requires regulated entities to provide directly to agencies, Indian tribes, and the public certain information that is CEII. The Commission agreed and stated that it would issue conforming rules to ensure consistent treatment of CEII by the Commission and regulated entities. A proposed conforming rule was issued on April 9, 2003.[410] Comments were due on May 16, 2003, and a final rule is being issued concurrent with this rule.[411]

425. The final conforming rule identifies various sections of 18 CFR Parts 4 and 16 that require direct disclosure of information that could include CEII. Public disclosure requirements in part 4 include: (1) Notification of applications to affected

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[398] Proposed 18 CFR 4.61(c)(9).

[399] Such waivers are granted under the Commission Secretary's delegated authority in 18 CFR 375.302(i).

[400] Corrections have been made to 18 CFR 2.1(a)(1); 2.7(b); 4.30(b)(9)(ii); 4.30(b)(23); 4.32(a)(5)(vi); 4.32(e)(2); 4.32(h); 4.33(a); 4.33(b); 4.37 introductory text; 4.37(b)(1); 4.39(a); 4.39(b); 4.40(b); 4.41(f)(6)(v); 4.41(f)(9)(i); 4.60(b); 4.61(f)(2); 4.70; 4.90; 4.91; 4.92; 4.93; 4.101; 4.200(c); 9.1; 9.10; 375.308(d)(11), (k)(1), (k)(2)(ii), and (k)(3).

[401] 18 CFR 375.308(aa).

[402] 68 FR 9857 (Mar. 3, 2003); IV FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003).

[403] 5 U.S.C. 552.

[404] 18 CFR 388.113(c)(1).

[405] 18 CFR 388.113(c)(2).

[406] *See* 18 CFR part 12, Subpart D.

[407] 68 FR at p. 9862.

[408] 18 CFR 388.113.

[409] Consumers, PSE, WPSR, NHA, WPPD, Oroville, EEI.

[410] Critical Energy Infrastructure Information (RM02–4–001, PL02–1–001), 68 FR 18538–18544 (Apr. 16, 2003); III FERC Stats. & Regs. ¶ 32,569 (Apr. 9, 2003).

[411] Order No. 643, III FERC Stats. & Regs. Regulations Preambles 104 FERC ¶ 61,107 (July 23, 2003).

property owners, which must include Exhibit G to the application;[412] (2) a copy of the application and all exhibits, available to the public for inspection and reproduction at specified locations;[413] (3) an applicant using alternative procedures must distribute an information package and maintain a public file of all relevant documents, including scientific studies;[414] and (4) in pre-filing consultation for an original license application, the requirement to make available for public inspection various items,[415] including detailed maps[416] and a general engineering design.[417]

426. Public disclosure requirements in part 16 include: (1) When the NOI is issued, a number of items, including the original application, as-built drawings, diagrams, emergency action plans, and operation and maintenance reports;[418] and (2) during pre-filing consultation, detailed maps and a general engineering design must be made available for public inspection.[419] Parts 4 and 16 also in several instances require applicants to serve CEII on Indian tribes, resource agencies, and other government offices.[420]

427. The NOPR proposed to provide that regulated entities subject to the disclosure requirements of Parts 4 and 16 omit CEII from the information made available to agencies, Indian tribes, and the public. Instead, they would include with their filing a statement briefly describing the omitted information, without revealing CEII, and referring the reader to the procedures for challenging CEII claims and for requesting CEII under the procedures adopted in Order No. 630.[421] Therefore, a member of the public could still obtain the information, but would have to follow procedures different from those applicable now. That proposal is adopted in the final rule.

428. Neither the regulations promulgated in Order No. 630 nor the proposals contained in the proposed conforming rule are intended to require companies to withhold CEII. Instead, they are intended to ensure that the Commission's regulations do not require companies to reveal CEII. Consequently, the Commission anticipates that, in most instances, companies will share CEII with participants in the licensing process without requiring those entities to request access to CEII through the Commission.

429. The rules also do not alter the ability of state agencies to obtain data directly from regulated companies pursuant to whatever authorities those agencies have. State agencies are also presumed to have a need to know information involving issues that are within there are of responsibility. They may submit requests for information regarding entities outside their jurisdictions with an explanation of the need.

3. CEII in the Integrated Process

430. Several commenters stated that the final rule needs to clarify how the information filing and distribution aspects of the license application process would work in concert with the CEII regulations.[422] They observe that some of the information in the PAD required to be filed and distributed appears to be non-Internet public information and CEII.[423]

431. The information filing and disclosure requirements of part 5 are not covered by Order No. 630, or the proposed conforming rule. We are therefore including in the new part 5 regulations a provision consistent with the revisions to Parts 4 and 16 promulgated in Order Nos. 630 and 630–A.[424]

432. Long View recommends that the requirements of Exhibit F to the license application be made consistent with the CEII rules. This is not a matter of conforming Exhibit F to the CEII rules, but rather making Exhibit F subject to the rules, which it is.

433. One commenter stated that the form which entities requesting CEII are to use is not available on the Commission's Web site and that the form does not provide a name or office number for the person to whom the submission is to be made. These omissions will shortly be remedied.[425]

Y. Transition Provisions

434. Nearly all the comments on the proposed transition provisions were made by industry representatives. Only Idaho Power found the three-month transition period to be reasonable, as long as flexibility is provided for the few existing licensees who would be immediately affected. HRC and NYSDEC agree.

435. Requests for extension of the transition period range from six months to six years, during which time applicants would have complete choice of process.[426] The commenters assert that more time is needed to fully consider the rule after it is finalized and to switch from the initial consultation document and public information requirements of the current rules to the PAD, and that a three-month period reduces the six-month window provided by the rules for submittal of the NOI to three months for some licensees.[427] The Process Group recommended a one to two year transition period.

436. In light of these comments, we have concluded that the integrated process should become the default process on July 23, 2005. Until that time, potential license applicants will be able to select the integrated process or the traditional process as it currently exists (except for increased public participation, changes in miscellaneous filing requirements, and a later deadline date for filing of the water quality certification application). At the end of the two-year period, the integrated process will become the default process. All potential applicants will have to file the NOI and PAD, and obtain Commission authorization to use the traditional process.[428]

437. All other proposed changes to the regulations will, as proposed, take effect on October 23, 2003.

438. EEI requests that changes to the *ex parte* rule in connection with reversal of the policy on intervention by cooperating agencies should not apply to any projects for which an NOI has

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[412] 18 CFR 4.32(a)(3)(ii).

[413] 18 CFR 4.32(b)(3)(i), (b)(4)(ii)–(iv).

[414] 18 CFR 4.34(i)(4)(i) and (i)(6)(iii).

[415] 18 CFR 4.38(g).

[416] 18 CFR 4.38(b)(1)(i).

[417] 18 CFR 4.38(b)(1)(ii).

[418] 18 CFR 16.7(d)(1)–(2).

[419] 18 CFR 16.8(b)(2)(i)–(ii).

[420] 18 CFR 4.32(b)(1)–(2); 4.38(b)(1), (c)(4), (d); 16.8(b)(1), (c)(4), (d).

[421] *See* proposed 18 CFR 4.32(k), 4.34(i)(10), 4.38(i), 16.7(d)(7), and 16.8(k).

[422] Consumers, PSE, WPSR, NHA, WPPD, Oroville, EEI.

[423] They cite proposed 18 CFR 5.4(c)(2)(H), (I), (K) and (L).

[424] 18 CFR 5.30 (Critical Energy Infrastructure Information).

[425] The CEII request form is being developed and will soon be posted on the Commission's Web site at *http://www.ferc.gov*.

[426] Six months to one year (NHA); one year (Troutman, EEI, PG&E, SCE, Georgia Power); one to two years (Process Group); and five-six years (Long View).

[427] This would be the case when the effective date of the rule falls within the six-month window. In this regard, Georgia Power and Troutman recommend against making the NOI deadline date the trigger date for applicability of the rule. They recommend instead the six-month period of five to five and one-half years before license expiration. A licensee for whom the six-month period includes the effective date of the rule could choose the traditional process by filing its NOI prior to the effective date of the rule, or choose the integrated process by filing its NOI after the effective date (and not making a request to use the traditional process). Alternatively, Georgia Power, Duke, and NEU request that guidance and special consideration be given to requests for waiver of the rule for the few projects for which the NOI is due very close to the effective date of the rule.

[428] The two-year period is irrelevant for purposes of the ALP because the requirements for approval do not change.

already been filed, because those potential applicants relied on the existing rules. As we have decided to retain the existing cooperating agencies policy, EEI's request is moot.

439. California asserts that any change in the deadline for applying for water quality certification from the date of the application to a later time should apply immediately. California states that this would give all licensees that have filed an NOI, but not yet filed the license application, the benefit of additional time to resolve data requirements before filing their certification request.[429] We agree in general that licensee applicants should have the benefit of our decision to move back the deadline date to 60 days following issuance of the REA notice. To minimize confusion, however, we will make that change effective October 23, 2003. Thus, a license application filed after that date under any process will benefit from the changed deadline date for filing the water quality certification application.

440. SCE and the Process Group request that we "grandfather" any potential applicant that has already been authorized to use the ALP, even if the NOI date has not arrived. This request is reasonable and we will grant it.

441. Duke requests that we grandfather "existing licensing proceedings," by which it apparently means that the potential applicant has commenced pre-filing consultation. This request is moot with respect to the process selection rules because a potential new license applicant by definition begins pre-filing consultation when the NOI and PAD are filed, and only those for whom the deadline date is two years away will be affected. With respect to the miscellaneous filing requirements, we think the three month transition period is sufficient.

442. Duke also states that potential applicants already engaged in the traditional pre-filing process should be permitted to employ features of the integrated process in the traditional process. We proposed changes to the regulatory text which enable a potential applicant to file a request to do so during first stage consultation after consulting with potentially affected entities.[430] No commenter opposed the proposed provisions, which we are including in the final rule.

[429] California cites changes to 18 CFR 4.34(j) and 4.38(h).

[430] Proposed 18 CFR 4.38(e)(4).

IV. Environmental Analysis

443. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have significant adverse effect on the human environment.[431] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusions are rules that are clarifying, corrective, or procedural or that do not substantively change the effect of the regulations being amended.[432] This proposed rule is procedural in nature and therefore falls under this exception. Consequently, no environmental consideration is necessary.

V. Regulatory Flexibility Act

444. The Regulatory Flexibility Act of 1980 (RFA)[433] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities, or a certification that the rule will not have a significant economic impact on a substantial number of small entities.[434] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the proposed licensing regulations, if promulgated, would not have a significant economic impact on a substantial number of small entities. We justify our certification on the fact that the efficiency and timeliness of the proposed integrated licensing process (early Commission assistance, early issue identification, integrated NEPA scoping with application development, and better coordination among federal and state agencies) will benefit small entities by minimizing redundancy and waste in the processes of the Commission and the various federal and state agencies associated with the hydroelectric licensing process.

VI. Information Collection Statement

445. The Office of Management and Budget's ("OMB's") regulations require that OMB approve certain information collection requirements imposed by agency rule.[435] This Final Rule does not make any substantive or material changes to the information collection requirements specified in the NOPR, which was previously submitted to OMB for approval. OMB has elected to take no action on the NOPR. Thus, the information collection requirements in this rule are pending OMB approval.

446. The following collections of information contained in this proposed rule will be submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission identifies the information provided for under parts 4, 5, and 16 and FERC–500 "Application for License/Relicense for Water Projects greater than 5 MW Capacity," and FERC–505, "Application for License for Water Projects less than 5 MW Capacity."

447. This Final Rule responds to comments concerning the information collections requirements specified in the NOPR, and has changed the PAD that was previously submitted to OMB. The changes make the document less burdensome on potential applicants and easier for all recipients to use. OMB did not make substantive comments on the NOPR, but directed the Commission to calculate the burden for each of the three available licensing processes and to estimate the proportion of licensees that would select each process. The burden calculation is based on the collection, dissemination of, and recordkeeping for information in the licensing process, and does not include any costs of license terms and conditions.

448. *Public Reporting Burden:* The Commission provided burden estimates for the proposed requirements. Several commenters stated that the PAD as proposed was unduly burdensome. These comments are addressed elsewhere in the Final Rule. In summary, we have clarified that the PAD requirements are limited to existing information and do not include any requirement to conduct studies, are substantially similar to existing requirements, and that the format and content requirements have been modified to reduce the burden on potential applicants.[436]

449. *Estimated Annual Burden*

[431] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶30,783 (Dec. 10, 1987).

[432] 18 CFR 380.4(a)(2)(ii).

[433] 5 U.S.C. 601–612 (2000).

[434] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to Section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation" 15 U.S.C. 632(a).

[435] 5 CFR part 1320.

[436] *See* Section III.E.

TABLE 1. TRADITIONAL LICENSING PROCESS

Data collection	No. of respondents*	No. of responses	Hours per response	Percent use**	Total annual hours
FERC–500	26	1	46,000	10	119,600
FERC–505	15	1	10,000	10	15,000

*Estimated number of licenses subject to renewal through 2009.
**Estimate of the percentage of applications that may use the Traditional Licensing Process.

Total Annual Hours for Collection: (Reporting + Recordkeeping, (if appropriate)) = 1,356,000 hours

TABLE 2. ALTERNATIVE LICENSING PROCESS

Data collection	No. of respondents*	No. of responses	Hours per response	Percent use**	Total annual hours
FERC–500	26	1	39,000	30	304,000
FERC–505	15	1	8,600	30	38,700

*Estimated number of licenses subject to renewal through 2009.
**Estimate of the percentage of applications that may use the Alternative Licensing Process.

Total Annual Hours for Collection: (Reporting + Recordkeeping, (if appropriate)) = 1,152,000 hours

TABLE 3. INTEGRATED LICENSING PROCESS

Data collection	No. of respondents*	No. of responses	Hours per response***	Percent use**	Total annual hours
FERC–500	26	1	32,200	60	502,320
FERC–505	15	1	7,000	60	63,000

*Estimated no. of licenses subject to renewal through FY 2009.
**Estimate of the percentage of applicants that may use the Integrated Licensing Process.
***Based on a 30% reduction through concomitant processes.

Total Annual Hours for Collection:

(Reporting + Recordkeeping, (if appropriate)) = 942,200 hours

Information Collection Costs: The Commission requested comments on the cost to comply with these requirements. None were received. The Commission has projected the average annualized cost per respondent to be the following:

Annualized Costs:

(1) Using Traditional Licensing Process

(a) Projects less than 5 MW (average)— $500,000.00

(b) Projects greater than 5 MW (average)—$2,300,000.00.

(2) Using Proposed Integrated Licensing Process

(a) Projects less than 5MW average—$350,000.00.

(b) Projects greater than 5 MW—$1,610,000.00.

Total Annualized Costs:

(1) Traditional Licensing Process—$67,300,000 ($59.8 mil. + $7.5 mil.).

(2) Proposed Integrated Licensing Process— $47,110,000 ($41.8 mil. + ($5.25 mil.)

The Office of Management and Budget's (OMB) regulations[437] require OMB to approve certain information collection requirements imposed by agency rule. The Commission is submitting notification of this proposed rule to OMB.

Title: FERC–500 "Application for License/Relicense for Water Projects greater than 5 MW Capacity," and FERC–505, "Application for License for Water Projects less than 5 MW Capacity."

Action: Proposed Collections.

OMB Control No: 1902–0058 (FERC 500) and 1902–0115 (FERC 505).

Respondents: Business or other for profit, or non-profit.

Frequency of Responses: On occasion.

Necessity of the Information: The final rule revises the Commission's regulations regarding applications for licenses to construct, operate, and maintain hydroelectric projects. Specifically, the revisions establish a new process for the development and processing of license applications that combines during the pre-filing consultation phase activities that are currently conducted during pre-filing consultation and after the license application is filed. The information to be collected is needed to evaluate the license application pursuant to the comprehensive development standard of FPA Sections 4(e) and 10(a)(1), to consider in the comprehensive development analysis certain factors with respect to new licenses set forth in FPA Section 15, and to comply with NEPA, ESA, and NHPA. Most of the information is already being collected under the existing regulations, and the new regulations would for the most part affect only the timing of the collection and the form in which it is presented.

Internal Review: The Commission has reviewed the requirements pertaining to evaluation of hydroelectric license applications and has determined that the revisions are necessary because the hydroelectric licensing process is unnecessarily long and costly.

450. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the hydroelectric power industry. The Commission has assured itself, by means of internal review, that there is

[437] 5 CFR 1320.11.

specific, objective support for the burden estimates associated with the information requirements.

451. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 (Attention: Michael Miller, Office of the Executive Director, 202–502–8415 or *michael.miller@ferc.gov*) or from the Office of Management and Budget (OMB), Room 10202 NEOB, 725 17th Street, NW., Washington, DC 20503. (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285.)

452. Comments on the collection of information and the associated burden estimates should be submitted to the contact listed above and to OMB. (Attention: Desk Officer for the Federal Energy Regulatory Commission, fax: 202–395–7285 or by e-mail to *pamelabeverly.oirasubmissions @omb.eop.gov.*)

VII. Effective Date and Congressional Notification

453. This final rule will take effect on October 23, 2003. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of Section 251 of Small Business Regulatory Enforcement Fairness Act of 1996.[438] The Commission will submit the Final Rule to both houses of Congress and the General Accounting Office.

VIII. Document Availability

454. In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during regular business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

455. From the Commission's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number of this docket, excluding the last three digits, in the docket number field. User assistance is available for FERRIS and the Commission's Web site during regular business hours. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

[438] 5 U.S.C. 804(2).

List of Subjects

18 CFR Part 2

Administrative practice and procedures, Electric power, Natural Gas, Pipelines, Reporting, and recordkeeping requirements.

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 5

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 9

Electric power, Reporting, and recordkeeping requirements.

18 CFR Part 16

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies).

18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends parts 2, 4, 9, 16, 375, and 385, and adds a new part 5 to, Chapter I, Title 18, *Code of Federal Regulations,* as follows.

Regulatory Text

PART 2—GENERAL POLICY AND INTERPRETATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

■ 2. Amend § 2.1 as follows:
■ a. Redesignate existing paragraph (a)(1)(xi)(K) as paragraph (a)(1)(xi)(L).
■ b. Add a new paragraph (a)(1)(xi)(K).
The added text reads as follows:

§ 2.1 Initial notice; service; and information copies of formal documents.

(a) * * *
(1) * * *
(xi) * * *

(K) Proposed penalties under section 31 of the Federal Power Act.

§ 2.7 [Amended]

■ 3. Amend § 2.7 by removing "physically handicapped individuals" in paragraph (b) and adding "persons with disabilities" in its place.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

■ 4. The authority citation for part 4 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 5. Amend § 4.30 as follows:
■ a. Paragraph (a) is revised.
■ b. In paragraph (b)(9)(ii), remove "§§ 4.34(e)(2)" and add "§ 4.34(e)(1)" in its place.
■ c. In paragraph (b)(23), remove "§ 4.31(c)(2)" and add "§ 4.31(b)(2)" in its place.

The revised text of paragraph (a) reads as follows:

§ 4.30 Applicability and definitions.

(a) (1) This subpart applies to applications for preliminary permit, license, or exemption from licensing.

(2) Any potential applicant for an original license for which prefiling consultation begins on or after July 23, 2005 and which wishes to develop and file its application pursuant to this part, must seek Commission authorization to do so pursuant to the provisions of part 5 of this chapter.

* * * * *

■ 6. Amend § 4.32 as follows:
■ a. In § 4.32, remove "Office of Hydropower Licensing" each place it appears and add "Office of Energy Projects" in its place.
■ b. The second sentence of paragraph (b)(1) is revised.
■ c. Paragraph (b)(2) is revised.
■ d. In paragraph (h), remove "Division of Engineering and Environmental Review" and add "Division of Hydropower—Environment and Engineering" in its place.

The revised text reads as follows:

§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.

* * * * *

(b) * * *

(1) * * * The applicant or petitioner must serve one copy of the application or petition on the Director of the

Commission's Regional Office for the appropriate region and on each resource agency, Indian tribe, and member of the public consulted pursuant to § 4.38 or § 16.8 of this chapter or part 5 of this chapter. * * *

(2) Each applicant for exemption must submit to the Commission's Secretary for filing an original and eight copies of the application. An applicant must serve one copy of the application on each resource agency consulted pursuant to § 4.38. For each application filed following October 23, 2003, maps and drawings must conform to the requirements of § 4.39. The originals (microfilm) of maps and drawing are not to be filed initially, but will be requested pursuant to paragraph (d) of this section.

* * * * *

■ 7. Amend § 4.33 as follows:
■ a. In paragraph (a), redesignate paragraph (a)(2) as (a)(3), and add a new paragraph (a)(2).
■ b. Paragraph (b) is revised.

The added and revised text reads as follows:

§ 4.33 Limitations on submitting applications.

(a) * * *

(2) Would interfere with a licensed project in a manner that, absent the licensee's consent, would be precluded by Section 6 of the Federal Power Act.

* * * * *

(b) *Limitations on submissions and acceptance of a license application.* The Commission will not accept an application for a license or project works that would develop, conserve, or utilize, in whole or part, the same water resources that would be developed, conserved, and utilized by a project for which there is:

* * * * *

(1) An unexpired preliminary permit, unless the permittee has submitted an application for license; or

(2) An unexpired license, as provided for in Section 15 of the Federal Power Act.

* * * * *

■ 8. Amend § 4.34 as follows:
■ a. In paragraph (b)(1), revise the third sentence to read as follows: "In the case of an application prepared other than pursuant to part 5 of this chapter, if ongoing agency proceedings to determine the terms and conditions or prescriptions are not completed by the date specified, the agency must submit to the Commission by the due date:"
■ b. In paragraph (b)(4)(i): In the first sentence remove "impact statement" and add "document" in its place. In the second sentence remove "statement" and add "document" in its place.
■ c. Paragraph (b)(5) is added.
■ d. Paragraph (e) is revised.
■ e. In paragraph (h), remove "consist of an original and eight copies" and add "conform to the requirements of subpart T of part 385 of this chapter" in its place.
■ f. Paragraph (i)(5) is revised.
■ g. Paragraph (i)(9) is removed.

The revised and added text reads as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene; alternative procedures.

* * * * *

(b) * * *

(5)(i) With regard to certification requirements for a license applicant under section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), an applicant shall file within 60 days from the date of issuance of the notice of ready for environmental analysis:

(A) A copy of the water quality certification;

(B) A copy of the request for certification, including proof of the date on which the certifying agency received the request; or

(C) Evidence of waiver of water quality certification as described in paragraph (b)(5)(ii) of this section.

(ii) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification. If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

(iii) Notwithstanding any other provision in title 18, chapter I, subchapter B, part 4, any application to amend an existing license, and any application to amend a pending application for a license, requires a new request for water quality certification pursuant to paragraph (b)(5)(i) of this section if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project.

* * * * *

(e) *Consultation on recommended fish and wildlife conditions; Section 10(j) process.* (1) In connection with its environmental review of an application for license, the Commission will analyze all terms and conditions timely recommended by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act for the protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the proposed project. Submission of such recommendations marks the beginning of the process under section 10(j) of the Federal Power Act.

(2) The agency must specifically identify and explain the recommendations and the relevant resource goals and objectives and their evidentiary or legal basis. The Commission may seek clarification of any recommendation from the appropriate fish and wildlife agency. If the Commission's request for clarification is communicated in writing, copies of the request will be sent by the Commission to all parties, affected resource agencies, and Indian tribes, which may file a response to the request for clarification within the time period specified by the Commission. If the Commission believes any fish and wildlife recommendation may be inconsistent with the Federal Power Act or other applicable law, the Commission will make a preliminary determination of inconsistency in the draft environmental document or, if none, the environmental assessment. The preliminary determination, for any recommendations believed to be inconsistent, shall include an explanation why the Commission believes the recommendation is inconsistent with the Federal Power Act or other applicable law, including any supporting analysis and conclusions, and an explanation of how the measures recommended in the environmental document would adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project.

(3) Any party, affected resource agency, or Indian tribe may file comments in response to the preliminary determination of inconsistency, including any modified recommendations, within the time frame allotted for comments on the draft environmental document or, if none, the time frame for comments on the environmental analysis. In this filing, the fish and wildlife agency concerned may also request a meeting, telephone or video conference, or other additional procedure to attempt to resolve any preliminary determination of inconsistency.

(4) The Commission shall attempt, with the agencies, to reach a mutually

acceptable resolution of any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of the fish and wildlife agency. If the Commission decides, or an affected resource agency requests, the Commission will conduct a meeting, telephone, or video conference, or other procedures to address issues raised by its preliminary determination of inconsistency and comments thereon. The Commission will give at least 15 days' advance notice to each party, affected resource agency, or Indian tribe, which may participate in the meeting or conference. Any meeting, conference, or additional procedure to address these issues will be scheduled to take place within 90 days of the date the Commission issues a preliminary determination of inconsistency. The Commission will prepare a written summary of any meeting held under this subsection to discuss section 10(j) issues, including any proposed resolutions and supporting analysis, and a copy of the summary will be sent to all parties, affected resource agencies, and Indian tribes.

(5) The section 10(j) process ends when the Commission issues an order granting or denying the license application in question. If, after attempting to resolve inconsistencies between the fish and wildlife recommendations of a fish and wildlife agency and the purposes and requirements of the Federal Power Act or other applicable law, the Commission does not adopt in whole or in part a fish and wildlife recommendation of a fish and wildlife agency, the Commission will publish the findings and statements required by section 10(j)(2) of the Federal Power Act.

* * * * *

(i) * * *

(5)(i) If the potential applicant's request to use the alternative procedures is filed prior to July 23, 2005, the Commission will give public notice in the **Federal Register** inviting comment on the applicant's request to use alternative procedures. The Commission will consider any such comments in determining whether to grant or deny the applicant's request to use alternative procedures. Such a decision will not be subject to interlocutory rehearing or appeal.

(ii) If the potential applicant's request to use the alternative procedures is filed on or after July 23, 2005 and prior to the deadline date for filing a notification of intent to seek a new or subsequent license required by § 5.5 of this chapter, the Commission will give public notice and invite comments as provided for in paragraph (i)(5)(i) of this section. Commission approval of the potential applicant's request to use the alternative procedures prior to the deadline date for filing of the notification of intent does not waive the potential applicant's obligation to file the notification of intent required by § 5.5 of this chapter and Pre-Application Document required by § 5.6 of this chapter.

(iii) If the potential applicant's request to use the alternative procedures is filed on or after July 23, 2005 and is at the same time as the notification of intent to seek a new or subsequent license required by § 5.5, the public notice and comment procedures of part 5 of this chapter shall apply.

* * * * *

§ 4.35 [Amended]

■ 9. Amend § 4.35 as follows:

■ In paragraph (f)(1)(iii) remove the word "or" and add the word "of" in its place.

§ 4.37 [Amended]

■ 10. Amend § 4.37 as follows:

■ a. In the introductory sentence, remove "§ 4.33(f)" and add "§ 4.33(e)" in its place.

■ b. In paragraph (b)(1), remove "If both of two" and add "If both or neither of two" in its place.

■ 11. Amend § 4.38 as follows:

■ a. In § 4.38, remove "Office of Hydropower Licensing" each place it appears and add "Office of Energy Projects" in its place.

■ b. In paragraph (a), redesignate existing paragraphs (a)(2) through (a)(7) as paragraphs (a)(4) through (a)(9), add new paragraphs (a)(2) and (a)(3), and revise newly redesignated paragraph (a)(4).

■ c. Paragraph (b) is revised.

■ d. In paragraph (c)(1), remove "(b)(5)" and add "(b)(6)" in its place.

■ e. In paragraph (c)(1)(ii), remove "(b)(1)" and add "(b)(2)" in its place.

■ f. In paragraph (c)(2): remove "(b)(6)" and add "(b)(7)" in its place; remove "(b)(4)(i)–(vi)" and add "(b)(5)(i)–(vi)" in its place; and remove "(b)(5)" and add "(b)(6)" in its place.

■ g. In paragraph (c)(4)(ii), remove "(b)(1)(vii)" and add "(b)(2)(vii)" in its place.

■ h. In paragraph (d)(1), remove "Indian tribes, and other government offices" and add "Indian tribes, other government offices, and consulted members of the public" in its place.

■ i. In paragraph (d)(2), remove "resource agency and Indian tribe consulted and on other government offices" and add "resource agency, Indian tribes, and member of the public consulted, and on other government offices" in its place.

■ j. In paragraph (e), a new paragraph (e)(4) is added.

■ k. In paragraph (f), paragraph (7) is removed, and paragraphs (8) and (9) are redesignated (7) and (8), respectively, and in newly redesignated paragraph (7), remove "(b)(2)" and add "(b)(3)" in its place.

■ l. In paragraph (g)(1), remove the phrase "(b)(2)" and add the phrase "(b)(3)" in its place.

■ m. In paragraph (g)(1), "(b)(2)" is removed and "(b)(3)" is added in its place.

■ n. Paragraph (g)(2) is revised.

■ o. Paragraph (h) is removed.

The revised and added text reads as follows:

§ 4.38 Consultation requirements.

(a) * * *

(2) Each requirement in this section to contact or consult with resource agencies or Indian tribes shall be construed to require as well that the potential applicant contact or consult with members of the public.

(3) If a potential applicant for an original license commences first stage pre-filing consultation on or after July 23, 2005 it shall file a notification of intent to file a license application pursuant to § 5.5 and a pre-application document pursuant to the provisions of § 5.6.

(4) The Director of the Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

* * * * *

(b) *First stage of consultation.* (1) A potential applicant for an original license that commences pre-filing consultation on or after July 23, 2005 must, at the time it files its notification of intent to seek a license pursuant to § 5.6 of this chapter and a pre-application document pursuant to § 5.6 of this chapter and, at the same time, provide a copy of the pre-application document to the entities specified in § 5.6(a) of this chapter.

(2) A potential applicant for an original license that commences pre-filing consultation under this part prior to July 23, 2005 or for an exemption must promptly contact each of the appropriate resource agencies, affected Indian tribes, and members of the public likely to be interested in the proceeding; provide them with a description of the proposed project and supporting information; and confer with them on project design, the impact of the proposed project (including a

description of any existing facilities, their operation, and any proposed changes), reasonable hydropower alternatives, and what studies the applicant should conduct. The potential applicant must provide to the resource agencies, Indian tribes and the Commission the following information:

(i) Detailed maps showing project boundaries, if any, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the proposed project, with a description of any proposed diversion of a stream through a canal or penstock;

(iii) A summary of the proposed operational mode of the project;

(iv) Identification of the environment to be affected, the significant resources present, and the applicant's proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations;

(vi) (A) A statement (with a copy to the Commission) of whether or not the applicant will seek benefits under section 210 of PURPA by satisfying the requirements for qualifying hydroelectric small power production facilities in § 292.203 of this chapter;

(B) If benefits under section 210 of PURPA are sought, a statement on whether or not the applicant believes diversion (as that term is defined in § 292.202(p) of this chapter) and a request for the agencies' view on that belief, if any;

(vii) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(viii) Any statement required by § 4.301(a) of this part.

(3) (i) A potential exemption applicant and a potential applicant for an original license that commences pre-filing consultation;

(A) On or after July 23, 2005 pursuant to part 5 of this chapter and receives approval from the Commission to use the license application procedures of part 4 of this chapter; or

(B) Elects to commence pre-filing consultation under part 4 of this chapter prior to July 23, 2005; must:

(1) Hold a joint meeting at a convenient place and time, including an opportunity for a site visit, with all pertinent agencies, Indian tribes, and members of the public to explain the applicant's proposal and its potential environmental impact, to review the information provided, and to discuss the data to be obtained and studies to be conducted by the potential applicant as part of the consultation process;

(2) Consult with the resource agencies, Indian tribes and members of the public on the scheduling and agenda of the joint meeting; and

(3) No later than 15 days in advance of the joint meeting, provide the Commission with written notice of the time and place of the meeting and a written agenda of the issues to be discussed at the meeting.

(ii) The joint meeting must be held no earlier than 30 days, but no later than 60 days, from, as applicable;

(A) The date of the Commission's approval of the potential applicant's request to use the license application procedures of this part pursuant to the provisions of part 5 of this chapter; or

(B) The date of the potential applicant's letter transmitting the information required by paragraph (b)(2) of this section, in the case of a potential exemption applicant or a potential license applicant that commences pre-filing consultation under this part prior to July 23, 2005.

(4) Members of the public must be informed of and invited to attend the joint meeting held pursuant to paragraph (b)(3) of this section by means of the public notice provision published in accordance with paragraph (g) of this section. Members of the public attending the meeting are entitled to participate in the meeting and to express their views regarding resource issues that should be addressed in any application for license or exemption that may be filed by the potential applicant. Attendance of the public at any site visit held pursuant to paragraph (b)(3) of this section will be at the discretion of the potential applicant. The potential applicant must make either audio recordings or written transcripts of the joint meeting, and must promptly provide copies of these recordings or transcripts to the Commission and, upon request, to any resource agency, Indian tribe, or member of the public.

(5) Not later than 60 days after the joint meeting held under paragraph (b)(3) of this Section (unless extended within this time period by a resource agency, Indian tribe, or members of the public for an additional 60 days by sending written notice to the applicant and the Director of the Office of Energy Projects within the first 60 day period, with an explanation of the basis for the extension), each interested resource agency and Indian tribe must provide a potential applicant with written comments:

(i) Identifying its determination of necessary studies to be performed or the information to be provided by the potential applicant;

(ii) Identifying the basis for its determination;

(iii) Discussing its understanding of the resource issues and its goals and objectives for these resources;

(iv) Explaining why each study methodology recommended by it is more appropriate than any other available methodology alternatives, including those identified by the potential applicant pursuant to paragraph (b)(2)(vii) of this section;

(v) Documenting that the use of each study methodology recommended by it is a generally accepted practice; and

(vi) Explaining how the studies and information requested will be useful to the agency, Indian tribe, or member of the public in furthering its resource goals and objectives that are affected by the proposed project.

(6)(i) If a potential applicant and a resource agency or Indian tribe disagree as to any matter arising during the first stage of consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency or Indian tribe may refer the dispute in writing to the Director of the Office of Energy Projects (Director) for resolution.

(ii) At the same time as the request for dispute resolution is submitted to the Director, the entity referring the dispute must serve a copy of its written request for resolution on the disagreeing party and any affected resource agency or Indian tribe, which may submit to the Director a written response to the referral within 15 days of the referral's submittal to the Director.

(iii) Written referrals to the Director and written responses thereto pursuant to paragraphs (b)(6)(i) or (b)(6)(ii) of this section must be filed with the Commission in accordance with the Commission's Rules of Practice and Procedure, and must indicate that they are for the attention of the Director pursuant to § 4.38(b)(6).

(iv) The Director will resolve the disputes by letter provided to the

potential applicant and all affected resource agencies and Indian tribes.

(v) If a potential applicant does not refer a dispute regarding a request for a potential applicant to obtain information or conduct studies (other than a dispute regarding the information specified in paragraph (b)(2) of this section), or a study to the Director under paragraph (b)(6) of this section, or if a potential applicant disagrees with the Director's resolution of a dispute regarding a request for information (other than a dispute regarding the information specified in paragraph (b)(2) of this section) or a study, and if the potential applicant does not provide the requested information or conduct the requested study, the potential applicant must fully explain the basis for its disagreement in its application.

(vi) Filing and acceptance of an application will not be delayed, and an application will not be considered deficient or patently deficient pursuant to § 4.32(e)(1) or (e)(2) of this part, merely because the application does not include a particular study or particular information if the Director had previously found, under paragraph (b)(6)(iv) of this section, that each study or information is unreasonable or unnecessary for an informed decision by the Commission on the merits of the application or use of the study methodology requested is not a generally accepted practice.

(7) The first stage of consultation ends when all participating agencies and Indian tribes provide the written comments required under paragraph (b)(5) of this section or 60 days after the joint meeting held under paragraph (b)(3) of this section, whichever occurs first, unless a resource agency or Indian tribe timely notifies the applicant and the Director of Energy Projects of its need for more time to provide written comments under paragraph (b)(5) of this section, in which case the first stage of consultation ends when all participating agencies and Indian tribes provide the written comments required under paragraph (b)(5) of this section or 120 days after the joint meeting held under paragraph (b)(5) of this section, whichever occurs first.

* * * * *

(e) * * *

(4) Following October 23, 2003, a potential license applicant engaged in pre-filing consultation under part 4 may during first stage consultation request to incorporate into pre-filing consultation any element of the integrated license application process provided for in part 5 of this chapter. Any such request must be accompanied by a:

(i) Specific description of how the element of the part 5 license application would fit into the pre-filing consultation process under this part; and

(ii) Demonstration that the potential license applicant has made every reasonable effort to contact all resource agencies, Indian tribes, non-governmental organizations, and others affected by the applicant's proposal, and that a consensus exists in favor of incorporating the specific element of the part 5 process into the pre-filing consultation under this part.

* * * * *

(g) * * *

(2)(i) A potential applicant must make available to the public for inspection and reproduction the information specified in paragraph (b)(2) of this section from the date on which the notice required by paragraph (g)(1) of this section is first published until a final order is issued on any license application.

(ii) The provisions of § 4.32(b) will govern the form and manner in which the information is to be made available for public inspection and reproduction.

(iii) A potential applicant must make available to the public for inspection at the joint meeting required by paragraph (b)(3) of this section at least two copies of the information specified in paragraph (b)(2) of this section.

■ 12. Amend § 4.39 as follows:

■ a. Paragraph (a) is revised.

■ b. Paragraph (b), introductory text, is revised.

■ c. Paragraph (e) is added.

The revised and added text reads as follows:

§ 4.39 Specifications for maps and drawings.

* * * * *

(a) Each original map or drawing must consist of a print on silver or gelatin 35mm microfilm mounted on Type D (3¼″ by 7⅜″) aperture cards. Two duplicates must be made on sheets of each original. Full-sized prints of maps and drawings must be on sheets no smaller than 24 by 36 inches and no larger than 28 by 40 inches. A space five inches high by seven inches wide must be provided in the lower right hand corner of each sheet. The upper half of this space must bear the title, numerical and graphical scale, and other pertinent information concerning the map or drawing. The lower half of the space must be left clear. Exhibit G drawings must be stamped by a registered land surveyor. If the drawing size specified in this paragraph limits the scale of structural drawings (exhibit F drawings) described in paragraph (c) of this section, a smaller scale may be used for those drawings.

(b) Each map must have a scale in full-sized prints no smaller than one inch equals 0.5 miles for transmission lines, roads, and similar linear features and no smaller than one inch equals 1,000 feet for other project features, including the project boundary. Where maps at this scale do not show sufficient detail, large scale maps may be required.

* * * * *

(e) The maps and drawings showing project location information and details of project structures must be filed in accordance with the Commission's instructions on submission of Critical Energy Infrastructure Information in §§ 388.112 and 388.113 of subchapter X of this chapter.

§ 4.40 [Amended]

■ 13. Amend § 4.40 as follows:

In paragraph (b), remove "Division of Hydropower Licensing" and add "Office of Energy Projects" in its place.

■ 14. Amend § 4.41 as follows:

■ a. In paragraph (c)(4)(i), remove "a flow duration curve" and add "monthly flow duration curves" in its place. After the phrase "deriving the", remove "curve" and add "curves" in its place.

■ b. In paragraph (c)(4)(iii), add "minimum and maximum" between "estimated" and "hydraulic".

■ c. In paragraph (e)(4)(iii), remove "and" the first place it appears.

■ d. In paragraph (e)(4)(iv), add "and" after the word "contingencies;".

■ e. Paragraph (e)(4)(v) is added.

■ f. In paragraph (e)(7), remove "and" after "constructed;".

■ g. In paragraph (e)(8), remove the period after "section" and add a semi-colon in its place.

■ h. Paragraphs (e)(9) and (e)(10) are added.

■ i. In paragraph (f)(9)(i), remove "Soil Conservation Service" and add "Natural Resources Conservation Service" in its place.

■ j. Paragraph (h), introductory text, is revised.

■ k. In paragraph (h)(2), second sentence, remove "license" from "the license application".

■ l. Paragraph (h)(3)(iv) is added.

■ m. Paragraph (h)(4)(ii) is revised.

The revised and added text reads as follows.

§ 4.41 Contents of application.

* * * * *

(e) * * *

(4) * * *

(v) The estimated capital cost and estimated annual operation and maintenance expense of each proposed environmental measure;

* * * * *

(9) An estimate of the cost to develop the license application; and

(10) The on-peak and off-peak values of project power, and the basis for estimating the values, for projects which are proposed to operate in a mode other than run-of-river.

* * * * *

(h) *Exhibit G* is a map of the project that must conform to the specifications of § 4.39. In addition, each exhibit G boundary map must be submitted in a geo-referenced electronic format—such as ArcView shape files, GeoMedia files, MapInfo files, or any similar format. The electronic boundary map must be positionally accurate to + 40 feet, in order to comply with the National Map Accuracy Standards for maps at a 1:24,000 scale (the scale of USGS quadrangle maps). The electronic exhibit G data must include a text file describing the map projection used (*i.e.*, UTM, State Plane, Decimal Degrees, etc.), the map datum (*i.e.*, feet, meters, miles, etc.). Three copies of the electronic maps must be submitted on compact disk or DVD. If more than one sheet is used for the paper maps, the sheets must be numbered consecutively, and each sheet must bear a small insert sketch showing the entire project and indicate that portion of the project depicted on that sheet. Each sheet must contain a minimum of three known reference points. The latitude and longitude coordinates, or state plane coordinates, or each reference point must be shown. If at any time after the application is filed there is any change in the project boundary, the applicant must submit, within 90 days following the completion of project construction, a final exhibit G showing the extent of such changes. The map must show:

* * * * *

(3) * * *

(iv) The project location must include the most current information pertaining to affected Federal lands as described under § 4.81(b)(5).

(4) * * *

(ii) Lands over which the applicant has acquired or plans to acquire rights to occupancy and use other than fee title, including rights acquired or to be acquired by easement or lease.

■ 15. Amend § 4.51 as follows:

■ a. In paragraph (c)(2)(i), remove "a flow duration curve" and add "monthly flow duration curves" in its place and remove "curve" the second place it appears and add "curves" in its place.

■ b. In paragraph (c)(2)(iii), before the word "maximum", add "minimum and".

■ c. Paragraph (e)(4) is revised.

■ d. Paragraphs (e)(7)–(9) are added.

■ e. Paragraph (g) is revised.

■ f. Paragraph (h) is revised.

The revised and added text reads as follows:

§ 4.51 Contents of application.

* * * * *

(e) * * *

(4) A statement of the estimated average annual cost of the total project as proposed specifying any projected changes in the costs (life-cycle costs) over the estimated financing or licensing period if the applicant takes such changes into account, including:

(i) Cost of capital (equity and debt);

(ii) Local, state, and Federal taxes;

(iii) Depreciation and amortization;

(iv) Operation and maintenance expenses, including interim replacements, insurance, administrative and general expenses, and contingencies; and

(v) The estimated capital cost and estimated annual operation and maintenance expense of each proposed environmental measure.

* * * * *

(7) An estimate to develop the cost of the license application;

(8) The on-peak and off-peak values of project power, and the basis for estimating the values, for projects which are proposed to operate in a mode other than run-of-river; and

(9) The estimated average annual increase or decrease in project generation, and the estimated average annual increase or decrease of the value of project power, due to a change in project operations (*i.e.*, minimum bypass flows; limits on reservoir fluctuations).

* * * * *

(g) Exhibit F. *See* § 4.41(g) of this chapter.

(h) Exhibit G. *See* § 4.41(h) of this chapter.

* * * * *

§ 4.60 [Amended]

■ 16. Amend § 4.60 as follows:

■ In paragraph (b), remove "Division of Public Information" and add "Public Reference Room" in its place.

■ 17. Amend § 4.61 as follows:

■ a. In paragraph (c)(1)(vii), after the first appearance of "estimated" add "minimum and maximum". After "1.5 megawatts," remove "a" and add "monthly" in its place. Remove "curve" and add in its place "curves".

■ b. Paragraph (c)(1)(x) is added.

■ c. Paragraphs (c) (3) through (9) are added.

■ d. Paragraph (e) is revised.

■ e. Paragraph (f) is revised.

The revised and added text reads as follows:

§ 4.61 Contents of application.

* * * * *

(c) * * *

(1) * * *

(x) The estimated capital costs and estimated annual operation and maintenance expense of each proposed environmental measure.

* * * * *

(3) An estimate of the cost to develop the license application; and

(4) The on-peak and off-peak values of project power, and the basis for estimating the values, for project which are proposed to operate in a mode other than run-of-river.

(5) The estimated average annual increase or decrease in project generation, and the estimated average annual increase or decrease of the value of project power due to a change in project operations (*i.e.*, minimum bypass flows, limiting reservoir fluctuations) for an application for a new license;

(6) The remaining undepreciated net investment, or book value of the project;

(7) The annual operation and maintenance expenses, including insurance, and administrative and general costs;

(8) A detailed single-line electrical diagram;

(9) A statement of measures taken or planned to ensure safe management, operation, and maintenance of the project.

* * * * *

(e) *Exhibit F.* See § 4.41(g) of this chapter.

(f) *Exhibit G.* See § 4.41(h) of this chapter.

§ 4.70 [Amended]

■ 18. In § 4.70, remove "or other hydroelectric power project authorized by Congress".

§ 4.81 [Amended]

■ 19. In § 4.81, paragraph (b)(5) is revised to read as follows:

The revised text reads as follows:

§ 4.81 Contents of application.

* * * * *

(b) * * *

(5) All lands of the United States that are enclosed within the proposed project boundary described under paragraph (e)(3) of this section, identified and tabulated on a separate sheet by legal subdivisions of a public land survey of the affected area, if available. If the project boundary includes lands of the United States, such lands must be identified on a completed land description form, provided by the Commission. The

project location must identify any Federal reservation, Federal tracts, and townships of the public land surveys (or official protractions thereof if unsurveyed). A copy of the form must also be sent to the Bureau of Land Management state office where the project is located;

* * * * *

§ 4.90 [Amended]

■ 20. In § 4.90, remove "§ 4.30(b)(26)" and add "§ 4.30(b)(28)" in its place.
■ 21. Amend § 4.92 as follows:
■ a. In § 4.92 remove "§ 4.30(b)(26)" wherever it appears and add "§ 4.30(b)(28)" in its place.
■ b. Paragraph (a)(2) is revised.
■ c. In paragraph (c), introductory text, remove "Exhibit B" and add "Exhibit F" in its place.
■ d. Paragraph (d) is revised.
■ e. Paragraph (f) is revised.
The revised text reads as follows:

§ 4.92 Contents of exemption application.

(a) * * *

(2) Exhibits A, E, F, and G.

* * * * *

(d) *Exhibit G.* Exhibit G is a map of the project and boundary and must conform to the specifications of § 4.41(h) of this chapter.

* * * * *

(f) *Exhibit F.* Exhibit F is a set of drawings showing the structures and equipment of the small conduit hydroelectric facility and must conform to the specifications of § 4.41(g) of this chapter.

§ 4.93 [Amended]

■ 22. In § 4.93, remove from paragraph (a) "§ 4.30(b)(26)(v)" and add "§ 4.30(b)(28)(v)" in its place.

§ 4.101 [Amended]

■ 23. In § 4.101, remove "4.30(b)(27)" and add "4.30(b)(29)" in its place.
■ 24. Amend § 4.107 as follows:
■ a. Paragraph (d) is revised.
■ b. Paragraph (f) is revised.
The revised text reads as follows:

§ 4.107 Contents of application for exemption from licensing.

* * * * *

(d) *Exhibit G.* Exhibit G is a map of the project and boundary and must conform to the specifications of § 4.41(h) of this chapter.

* * * * *

(f) *Exhibit F.* Exhibit F is a set of drawings showing the structures and equipment of the small hydroelectric facility and must conform to the specifications of § 4.41(g) of this chapter.

§ 4.200 [Amended]

■ 25. In § 4.200, remove from paragraph (c) "on" and add "in" in its place.
■ 26. Add part 5 to read as follows:

PART 5—INTEGRATED LICENSE APPLICATION PROCESS

Sec.

5.1 Applicability, definitions, and requirement to consult.
5.2 Document availability
5.3 Process selection.
5.4 Acceleration of a license expiration date.
5.5 Notification of intent.
5.6 Pre-application document.
5.7 Tribal consultation.
5.8 Notice of commencement of proceeding and scoping document, or of approval to use traditional licensing process or alternative procedures.
5.9 Comments and information or study requests.
5.10 Scoping document 2.
5.11 Potential Applicant's proposed study plan and study plan meetings.
5.12 Comments on proposed study plan.
5.13 Revised study plan and study plan determination.
5.14 Formal study dispute resolution process.
5.15 Conduct of studies.
5.16 Preliminary licensing proposal.
5.17 Filing of application.
5.18 Application content.
5.19 Tendering notice and schedule.
5.20 Deficient applications.
5.21 Additional information.
5.22 Notice of acceptance and ready for environmental analysis.
5.23 Response to notice.
5.24 Applications not requiring a draft NEPA document.
5.25 Applications requiring a draft NEPA document.
5.26 Section 10(j) process.
5.27 Amendment of application.
5.28 Competing applications.
5.29 Other provisions.
5.30 Critical Energy Infrastructure Information.
5.31 Transition provision.

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

§ 5.1 Applicability, definitions, and requirement to consult.

(a) This part applies to the filing and processing of an application for an:
(1) Original license;
(2) New license for an existing project subject to Sections 14 and 15 of the Federal Power Act; or
(3) Subsequent license.
(b) *Definitions.* The definitions in § 4.30(b) of this parte and § 16.2 of this part apply to this part.
(c) *Who may file.* Any citizen, association of citizens, domestic corporation, municipality, or state may develop and file a license application under this part.

(d) *Requirement to consult.* (1) Before it files any application for an original, new, or subsequent license under this part, a potential applicant must consult with the relevant Federal, state, and interstate resource agencies, including as appropriate the National Marine Fisheries Service, the United States Fish and Wildlife Service, Bureau of Indian Affairs, the National Park Service, the United States Environmental Protection Agency, the Federal agency administering any United States lands utilized or occupied by the project, the appropriate state fish and wildlife agencies, the appropriate state water resource management agencies, the certifying agency or Indian tribe under Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341(c)(1)), the agency that administers the Coastal Zone Management Act, 16 U.S.C. § 1451–1465, any Indian tribe that may be affected by the project, and members of the public. A potential license applicant must file a notification of intent to file a license application pursuant to § 5.2 and a pre-application document pursuant to the provisions of § 5.3.
(2) The Director of the Office of Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.
(e) *Purpose.* The purpose of the integrated licensing process provided for in this part is to provide an efficient and timely licensing process that continues to ensure appropriate resource protections through better coordination of the Commission's processes with those of Federal and state agencies and Indian tribes that have authority to condition Commission licenses.
(f) *Default process.* Each potential original, new, or subsequent license applicant must use the license application process provided for in this part unless the potential applicant applies for and receives authorization from the Commission under this part to use the licensing process provided for in:
(1) 18 CFR part 4, Subparts D–H and, as applicable, part 16 (*i.e.*, traditional process), pursuant to paragraph (c) of this section; or
(2) Section 4.34(i) of this chapter, *Alternative procedures.*

§ 5.2 Document availability.

(a) *Pre-application document.* (1) From the date a potential license applicant files a notification of intent to

seek a license pursuant to § 5.5 until any related license application proceeding is terminated by the Commission, the potential license applicant must make reasonably available to the public for inspection at its principal place of business or another location that is more accessible to the public, the pre-application document and any materials referenced therein. These materials must be available for inspection during regular business hours in a form that is readily accessible, reviewable, and reproducible.

(2) The materials specified in paragraph (a)(1) of this section must be made available to the requester at the location specified in paragraph (a)(1) of this section or through the mail, or otherwise. Except as provided in paragraph (a)(3) of this section, copies of the pre-application document and any materials referenced therein must be made available at their reasonable cost of reproduction plus, if applicable, postage.

(3) A potential licensee must make requested copies of the materials specified in paragraph (a)(1) of this section available to the United States Fish and Wildlife Service, the National Marine Fisheries Service, the state agency responsible for fish and wildlife resources, any affected Federal land managing agencies, and Indian tribes without charge for the costs of reproduction or postage.

(b) *License application.* (1) From the date on which a license application is filed under this part until the licensing proceeding for the project is terminated by the Commission, the license applicant must make reasonably available to the public for inspection at its principal place of business or another location that is more accessible to the public, a copy of the complete application for license, together with all exhibits, appendices, and any amendments, pleadings, supplementary or additional information, or correspondence filed by the applicant with the Commission in connection with the application. These materials must be available for inspection during regular business hours in a form that is readily accessible, reviewable, and reproducible at the same time as the information is filed with the Commission or required by regulation to be made available.

(2) The applicant must provide a copy of the complete application (as amended) to a public library or other convenient public office located in each county in which the proposed project is located.

(3) The materials specified in paragraph (b)(1) of this section must be made available to the requester at the location specified in paragraph (b)(1) of this section or through the mail. Except as provided in paragraph (b)(4) of this section, copies of the license application and any materials referenced therein must be made available at their reasonable cost of reproduction plus, if applicable, postage.

(4) A licensee applicant must make requested copies of the materials specified in paragraph (b)(1) of this section available to the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the state agency responsible for fish and wildlife resources, any affected Federal land managing agencies, and Indian tribes without charge for the costs of reproduction or postage.

(c) *Confidentiality of cultural information.* A potential applicant must delete from any information made available to the public under paragraphs (a) and (b) of this section, specific site or property locations the disclosure of which would create a risk of harm, theft, or destruction of archeological or native American cultural resources or of the site at which the sources are located, or would violate any Federal law, include the Archeological Resources Protection Act of 1979, 16 U.S.C. 470w–3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(d) *Access.* Anyone may file a petition with the Commission requesting access to the information specified in paragraphs (a) or (b) of this section if it believes that the potential applicant or applicant is not making the information reasonably available for public inspection or reproduction. The petition must describe in detail the basis for the petitioner's belief.

§ 5.3 Process selection

(a)(1) Notwithstanding any other provision of this part or of parts 4 and 16 of this chapter, a potential applicant for a new, subsequent, or original license may until July 23, 2005 elect to use the licensing procedures of this part or the licensing procedures of parts 4 and 16.

(2) Any potential license applicant that files its notification of intent pursuant to § 5.5 and pre-application document pursuant to § 5.6 after July 23, 2005 must request authorization to use the licensing procedures of parts 4 and 16, as provided for in paragraphs (b)–(f) of this section.

(b) A potential license applicant may file with the Commission a request to use the traditional licensing process or alternative procedures pursuant to this Section with its notification of intent pursuant to § 5.5.

(c)(1)(i) An application for authorization to use the traditional process must include justification for the request and any existing written comments on the potential applicant's proposal and a response thereto.

(ii) A potential applicant requesting authorization to use the traditional process should address the following considerations:

(A) Likelihood of timely license issuance;

(B) Complexity of the resource issues;

(C) Level of anticipated controversy;

(D) Relative cost of the traditional process compared to the integrated process;

(E) The amount of available information and potential for significant disputes over studies; and

(F) Other factors believed by the commenter to be pertinent

(2) A potential applicant requesting the use of § 4.34(i) *alternative procedures* of this chapter must:

(i) Demonstrate that a reasonable effort has been made to contact all agencies, Indian tribes, and others affected by the applicant's request, and that a consensus exists that the use of alternative procedures is appropriate under the circumstances;

(ii) Submit a communications protocol, supported by interested entities, governing how the applicant and other participants in the pre-filing consultation process, including the Commission staff, may communicate with each other regarding the merits of the potential applicant's proposal and proposals and recommendations of interested entities; and

(iii) Provide a copy of the request to all affected resource agencies and Indian tribes and to all entities contacted by the applicant that have expressed an interest in the alternative pre-filing consultation process.

(d)(1) The potential applicant must provide a copy of the request to use the traditional process or alternative procedures to all affected resource agencies, Indian tribes, and members of the public likely to be interested in the proceeding. The request must state that comments on the request to use the traditional process or alternative procedures, as applicable, must be filed with the Commission within 30 days of the filing date of the request and, if there is no project number, that responses must reference the potential applicant's name and address.

(2) The potential applicant must also publish notice of the filing of its notification of intent, of the pre-application document, and of any request to use the traditional process or alternative procedures no later than the

filing date of the notification of intent in a daily or weekly newspaper of general circulation in each county in which the project is located. The notice must:

(i) Disclose the filing date of the request to use the traditional process or alternative procedures, and the notification of intent and pre-application document;

(ii) Briefly summarize these documents and the basis for the request to use the traditional process or alternative procedures;

(iii) Include the potential applicant's name and address, and telephone number, the type of facility proposed to be applied for, its proposed location, the places where the pre-application document is available for inspection and reproduction;

(iv) Include a statement that comments on the request to use the traditional process or alternative procedures are due to the Commission and the potential applicant no later than 30 days following the filing date of that document and, if there is no project number, that responses must reference the potential applicant's name and address;

(v) State that comments on any request to use the traditional process should address, as appropriate to the circumstances of the request, the:

(A) Likelihood of timely license issuance;

(B) Complexity of the resource issues;

(C) Level of anticipated controversy;

(D) Relative cost of the traditional process compared to the integrated process; and

(E) The amount of available information and potential for significant disputes over studies; and

(F) Other factors believed by the commenter to be pertinent; and

(vi) State that respondents must submit an electronic filing pursuant to § 385.2003(c) or an original and eight copies of their comments to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

(e) Requests to use the traditional process or alternative procedures shall be granted for good cause shown.

§ 5.4 Acceleration of a license expiration date.

(a) *Request for acceleration.* (1) No later than five and one-half years prior to expiration of an existing license, a licensee may file with the Commission, in accordance with the formal filing requirements in subpart T of part 385 of this chapter, a written request for acceleration of the expiration date of its existing license, containing the statements and information specified in § 16.6(b) of this chapter and a detailed explanation of the basis for the acceleration request.

(2) If the Commission grants the request for acceleration pursuant to paragraph (c) of this section, the Commission will deem the request for acceleration to be a notice of intent under § 16.6 of this chapter and, unless the Commission directs otherwise, the licensee must make available the Pre-Application Document provided for in § 5.6 no later than 90 days from the date that the Commission grants the request for acceleration.

(b) *Notice of request for acceleration.* (1) Upon receipt of a request for acceleration, the Commission will give notice of the licensee's request and provide a 45-day period for comments by interested persons by:

(i) Publishing notice in the **Federal Register**;

(ii) Publishing notice once in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(iii) Notifying appropriate Federal, state, and interstate resource agencies and Indian tribes, and non-governmental organizations likely to be interested.

(2) The notice issued pursuant to paragraphs (b)(1)(A) and (B) and the written notice given pursuant to paragraph (b)(1)(C) will be considered as fulfilling the notice provisions of § 16.6(d) of this chapter should the Commission grant the acceleration request and will include an explanation of the basis for the licensee's acceleration request.

(c) *Commission order.* If the Commission determines it is in the public interest, the Commission will issue an order accelerating the expiration date of the license to not less than five years and 90 days from the date of the Commission order.

§ 5.5 Notification of intent.

(a) *Notification of intent.* A potential applicant for an original, new, or subsequent license, must file a notification of its intent to do so in the manner provided for in paragraphs (b) and (c) of this section.

(b) *Requirement to notify.* In order for a non-licensee to notify the Commission that it intends to file an application for an original, new, or subsequent license, or for an existing licensee to notify the Commission whether or not it intends to file an application for a new or subsequent license, a potential license applicant must file with the Commission pursuant to the requirements of subpart T of part 385 of this chapter a letter that contains the following information:

(1) The potential applicant or existing licensee's name and address.

(2) The project number, if any.

(3) The license expiration date, if any.

(4) An unequivocal statement of the potential applicant's intention to file an application for an original license, or, in the case of an existing licensee, to file or not to file an application for a new or subsequent license.

(5) The type of principal project works licensed, if any, such as dam and reservoir, powerhouse, or transmission lines.

(6) The location of the project by state, county, and stream, and, when appropriate, by city or nearby city.

(7) The installed plant capacity, if any.

(8) The names and mailing addresses of:

(i) Every county in which any part of the project is located, and in which any Federal facility that is used or to be used by the project is located;

(ii) Every city, town, or similar political subdivision;

(A) In which any part of the project is or is to be located and any Federal facility that is or is to be used by the project is located, or

(B) That has a population of 5,000 or more people and is located within 15 miles of the existing or proposed project dam;

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision:

(A) In which any part of the project is or is proposed to be located and any Federal facility that is or is proposed to be used by the project is located; or

(B) That owns, operates, maintains, or uses any project facility or any Federal facility that is or is proposed to be used by the project;

(iv) Every other political subdivision in the general area of the project or proposed project that there is reason to believe would be likely to be interested in, or affected by, the notification; and

(v) Affected Indian tribes.

(c) *Requirement to distribute.* Before it files any application for an original, new, or subsequent license, a potential license applicant proposing to file a license application pursuant to this part or to request to file a license application pursuant to part 4 of this chapter and, as appropriate, part 16 of this chapter (*i.e.*, the "traditional process"), including an application pursuant to § 4.34(i) *alternative procedures* of this chapter must distribute to appropriate Federal, state, and interstate resource agencies, Indian tribes, and members of the public likely to be interested in the

proceeding the notification of intent provided for in paragraph (a) of this section.

(d) *When to notify.* An existing licensee or non-licensee potential applicant must notify the Commission as required in paragraph (b) of this section at least five years, but not more than five and one-half years, before the existing license expires.

(e) *Non-Federal representatives.* A potential license applicant may at the same time it files its notification of intent and distributes its pre-application document, request to be designated as the Commission's non-Federal representative for purposes of consultation under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402, Section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and the implementing regulations at 50 CFR 600.920. A potential license applicant may at the same time request authorization to initiate consultation under section 106 of the National Historic Preservation Act and the implementing regulations at 36 CFR 800.2(c)(4).

(f) *Procedural matters.* The provisions of subpart F of part 16 of this chapter apply to projects to which this part applies.

(g) *Construction of regulations.* The provisions of this part and parts 4 and 16 shall be construed in a manner that best implements the purposes of each part and gives full effect to applicable provisions of the Federal Power Act.

§ 5.6 Pre-application document.

(a) *Pre-application document.* (1) Simultaneously with the filing of its notification of intent to seek a license as provided for in § 5.5, and before it files any application for an original, new, or subsequent license, a potential applicant for a license to be filed pursuant to this part or part 4 of this chapter and, as appropriate, part 16 of this chapter, must file with the Commission and distribute to the appropriate Federal, state, and interstate resource agencies, Indian tribes, local governments, and members of the public likely to be interested in the proceeding, the pre-application document provided for in this section.

(2) The agencies referred to in paragraph (a)(1) of this section include: Any state agency with responsibility for fish, wildlife, and botanical resources, water quality, coastal zone management plan consistency certification, shoreline management, and water resources; the U.S. Fish and Wildlife Service; the National Marine Fisheries Service; Environmental Protection Agency; State Historic Preservation Officer; Tribal Historic Preservation Officer; National Park Service; local, state, and regional recreation agencies and planning commissions; local and state zoning agencies; and any other state or Federal agency or Indian tribe with managerial authority over any part of project lands and waters.

(b) *Purpose of pre-application document.* (1) The pre-application document provides the Commission and the entities identified in paragraph (a) of this section with existing information relevant to the project proposal that is in the potential applicant's possession or that the potential applicant can obtain with the exercise of due diligence. This existing, relevant, and reasonably available information is distributed to these entities to enable them to identify issues and related information needs, develop study requests and study plans, and prepare documents analyzing any license application that may be filed. It is also a precursor to the environmental analysis section of the Preliminary Licensing Proposal or draft license application provided for in § 5.16, Exhibit E of the final license application, and the Commission's scoping document(s) and environmental impact statement or environmental assessment under the National Environmental Policy Act (NEPA).

(2) A potential applicant is not required to conduct studies in order to generate information for inclusion in the pre-application document. Rather, a potential applicant must exercise due diligence in determining what information exists that is relevant to describing the existing environment and potential impacts of the project proposal (including cumulative impacts), obtaining that information if the potential applicant does not already possess it, and describing or summarizing it as provided for in paragraph (d) of this section. Due diligence includes, but is not limited to, contacting appropriate agencies and Indian tribes that may have relevant information and review of Federal and state comprehensive plans filed with the Commission and listed on the Commission's Web site at *http://www.ferc.gov.*

(c) *Form and distribution protocol.*—(1) *General requirements.* As specifically provided for in the content requirements of paragraph (d) of this section, the pre-application document must describe the existing and proposed (if any) project facilities and operations, provide information on the existing environment, and existing data or studies relevant to the existing environment, and any known and potential impacts of the proposed project on the specified resources.

(2) *Availability of source information and studies.* The sources of information on the existing environment and known or potential resource impacts included in the descriptions and summaries must be referenced in the relevant section of the document, and in an appendix to the document. The information must be provided upon request to recipients of the pre-application document. A potential applicant must provide the requested information within 20 days from receipt of the request. Potential applicants and requesters are strongly encouraged to use electronic means or compacts disks to distribute studies and other forms of information, but a potential applicant must, upon request, provide the information in hard copy form. The potential applicant is also strongly encouraged to include with the pre-application document any written protocol for distribution consistent with this paragraph to which it has agreed with agencies, Indian tribes, or other entities.

(d) *Content requirements.*—(1) *Process plan and schedule.* The pre-application document must include a plan and schedule for all pre-application activity that incorporates the time frames for pre-filing consultation, information gathering, and studies set forth in this part. The plan and schedule must include a proposed location and date for the scoping meeting and site visit required by § 5.8(b)(3)(viii).

(2) *Project location, facilities, and operations.* The potential applicant must include in the pre-application document:

(i) The exact name and business address, and telephone number of each person authorized to act as agent for the applicant;

(ii) Detailed maps showing lands and waters within the project boundary by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of any Federal and tribal lands, and the location of proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(iii) A detailed description of all existing and proposed project facilities and components, including:

(A) The physical composition, dimensions, and general configuration of any dams, spillways, penstocks, canals, powerhouses, tailraces, and other structures proposed to be included

as part of the project or connected directly to it;

(B) The normal maximum water surface area and normal maximum water surface elevation (mean sea level), gross storage capacity of any impoundments;

(C) The number, type, and minimum and maximum hydraulic capacity and installed (rated) capacity of any proposed turbines or generators to be included as part of the project;

(D) The number, length, voltage, and interconnections of any primary transmission lines proposed to be included as part of the project, including a single-line diagram showing the transfer of electricity from the project to the transmission grid or point of use; and

(E) An estimate of the dependable capacity, average annual, and average monthly energy production in kilowatt hours (or mechanical equivalent);

(iv) A description of the current (if applicable) and proposed operation of the project, including any daily or seasonal ramping rates, flushing flows, reservoir operations, and flood control operations.

(v) In the case of an existing licensed project;

(A) A complete description of the current license requirements; *i.e.*, the requirements of the original license as amended during the license term;

(B) A summary of project generation and outflow records for the five years preceding filing of the pre-application document;

(C) Current net investment; and

(D) A summary of the compliance history of the project, if applicable, including a description of any recurring situations of non-compliance.

(vi) A description of any new facilities or components to be constructed, plans for future development or rehabilitation of the project, and changes in project operation.

(3) *Description of existing environment and resource impacts.*—(i) *General requirements.* A potential applicant must, based on the existing, relevant, and reasonably available information, include a discussion with respect to each resource that includes:

(A) A description of the existing environment as required by paragraphs (d)(3)(ii)–(xiii) of this section;

(B) Summaries (with references to sources of information or studies) of existing data or studies regarding the resource;

(C) A description of any known or potential adverse impacts and issues associated with the construction, operation or maintenance of the proposed project, including continuing and cumulative impacts; and

(D) A description of any existing or proposed project facilities or operations, and management activities undertaken for the purpose of protecting, mitigating impacts to, or enhancing resources affected by the project, including a statement of whether such measures are required by the project license, or were undertaken for other reasons. The type and amount of the information included in the discussion must be commensurate with the scope and level of resource impacts caused or potentially caused by the proposed project. Potential license applicants are encouraged to provide photographs or other visual aids, as appropriate, to supplement text, charts, and graphs included in the discussion.

(ii) *Geology and soils.* Descriptions and maps showing the existing geology, topography, and soils of the proposed project and surrounding area. Components of the description must include:

(A) A description of geological features, including bedrock lithology, stratigraphy, structural features, glacial features, unconsolidated deposits, and mineral resources at the project site;

(B) A description of the soils, including the types, occurrence, physical and chemical characteristics, erodability and potential for mass soil movement;

(C) A description of reservoir shorelines and streambanks, including:

(*1*) Steepness, composition (bedrock and unconsolidated deposits), and vegetative cover; and

(*2*) Existing erosion, mass soil movement, slumping, or other forms of instability, including identification of project facilities or operations that are known to or may cause these conditions.

(iii) *Water resources.* A description of the water resources of the proposed project and surrounding area. This must address the quantity and quality (chemical/physical parameters) of all waters affected by the project, including but not limited to the project reservoir(s) and tributaries thereto, bypassed reach, and tailrace. Components of the description must include:

(A) Drainage area;

(B) The monthly minimum, mean, and maximum recorded flows in cubic feet per second of the stream or other body of water at the powerplant intake or point of diversion, specifying any adjustments made for evaporation, leakage, minimum flow releases, or other reductions in available flow;

(C) A monthly flow duration curve indicating the period of record and the location of gauging station(s), including identification number(s), used in deriving the curve; and a specification of the critical streamflow used to determine the project's dependable capacity;

(D) Existing and proposed uses of project waters for irrigation, domestic water supply, industrial and other purposes, including any upstream or downstream requirements or constraints to accommodate those purposes;

(E) Existing instream flow uses of streams in the project area that would be affected by project construction and operation; information on existing water rights and water rights applications potentially affecting or affected by the project;

(F) Any federally-approved water quality standards applicable to project waters;

(G) Seasonal variation of existing water quality data for any stream, lake, or reservoir that would be affected by the proposed project, including information on:

(*1*) Water temperature and dissolved oxygen, including seasonal vertical profiles in the reservoir;

(*2*) Other physical and chemical parameters to include, as appropriate for the project; total dissolved gas, pH, total hardness, specific conductance, cholorphyll a, suspended sediment concentrations, total nitrogen (mg/L as N), total phosphorus (mg/L as P), and fecal coliform (E. Coli) concentrations;

(H) The following data with respect to any existing or proposed lake or reservoir associated with the proposed project; surface area, volume, maximum depth, mean depth, flushing rate, shoreline length, substrate composition; and

(I) Gradient for downstream reaches directly affected by the proposed project.

(iv) *Fish and aquatic resources.* A description of the fish and other aquatic resources, including invasive species, in the project vicinity. This section must discuss the existing fish and macroinvertebrate communities, including the presence or absence of anadromous, catadromous, or migratory fish, and any known or potential upstream or downstream impacts of the project on the aquatic community. Components of the description must include:

(A) Identification of existing fish and aquatic communities;

(B) Identification of any essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act and established by the National Marine Fisheries Service; and

(C) Temporal and spacial distribution of fish and aquatic communities and any associated trends with respect to:

(*1*) Species and life stage composition;

(*2*) Standing crop;

(*3*) Age and growth data;

(*4*) Spawning run timing; and

(*5*) The extent and location of spawning, rearing, feeding, and wintering habitat.

(v) *Wildlife and botanical resources.* A description of the wildlife and botanical resources, including invasive species, in the project vicinity. Components of this description must include:

(A) Upland habitat(s) in the project vicinity, including the project's transmission line corridor or right-of-way and a listing of plant and animal species that use the habitat(s); and

(B) Temporal or spacial distribution of species considered important because of their commercial, recreational, or cultural value.

(vi) *Wetlands, riparian, and littoral habitat.* A description of the floodplain, wetlands, riparian habitats, and littoral in the project vicinity. Components of this description must include:

(A) A list of plant and animal species, including invasive species, that use the wetland, littoral, and riparian habitat;

(B) A map delineating the wetlands, riparian, and littoral habitat; and

(C) Estimates of acreage for each type of wetland, riparian, or littoral habitat, including variability in such availability as a function of storage at a project that is not operated in run-of-river mode.

(vii) *Rare, threatened and endangered species.* A description of any listed rare, threatened and endangered, candidate, or special status species that may be present in the project vicinity. Components of this description must include:

(A) A list of Federal- and state-listed, or proposed to be listed, threatened and endangered species known to be present in the project vicinity;

(B) Identification of habitat requirements;

(C) References to any known biological opinion, status reports, or recovery plan pertaining to a listed species;

(D) Extent and location of any federally-designated critical habitat, or other habitat for listed species in the project area; and

(E) Temporal and spatial distribution of the listed species within the project vicinity.

(viii) *Recreation and land use.* A description of the existing recreational and land uses and opportunities within the project boundary. The components of this description include:

(A) Text description illustrated by maps of existing recreational facilities, type of activity supported, location, capacity, ownership and management;

(B) Current recreational use of project lands and waters compared to facility or resource capacity;

(C) Existing shoreline buffer zones within the project boundary;

(D) Current and future recreation needs identified in current State Comprehensive Outdoor Recreation Plans, other applicable plans on file with the Commission, or other relevant local, state, or regional conservation and recreation plans;

(E) If the potential applicant is an existing licensee, its current shoreline management plan or policy, if any, with regard to permitting development of piers, boat docks and landings, bulkheads, and other shoreline facilities on project lands and waters;

(F) A discussion of whether the project is located within or adjacent to a:

(*1*) River segment that is designated as part of, or under study for inclusion in, the National Wild and Scenic River System; or

(*2*) State-protected river segment;

(G) Whether any project lands are under study for inclusion in the National Trails System or designated as, or under study for inclusion as, a Wilderness Area.

(H) Any regionally or nationally important recreation areas in the project vicinity;

(I) Non-recreational land use and management within the project boundary; and

(J) Recreational and non-recreational land use and management adjacent to the project boundary.

(ix) *Aesthetic resources.* A description of the visual characteristics of the lands and waters affected by the project. Components of this description include a description of the dam, natural water features, and other scenic attractions of the project and surrounding vicinity. Potential applicants are encouraged to supplement the text description with visual aids.

(x) *Cultural resources.* A description of the known cultural or historical resources of the proposed project and surrounding area. Components of this description include:

(A) Identification of any historic or archaeological site in the proposed project vicinity, with particular emphasis on sites or properties either listed in, or recommended by the State Historic Preservation Officer or Tribal Historic Preservation Officer for inclusion in, the National Register of Historic Places;

(B) Existing discovery measures, such as surveys, inventories, and limited subsurface testing work, for the purpose of locating, identifying, and assessing the significance of historic and archaeological resources that have been undertaken within or adjacent to the project boundary; and

(C) Identification of Indian tribes that may attach religious and cultural significance to historic properties within the project boundary or in the project vicinity; as well as available information on Indian traditional cultural and religious properties, whether on or off of any federally-recognized Indian reservation (A potential applicant must delete from any information made available under this section specific site or property locations, the disclosure of which would create a risk of harm, theft, or destruction of archaeological or Native American cultural resources or to the site at which the resources are located, or would violate any Federal law, including the Archaeological Resources Protection Act of 1979, 16 U.S.C. 470w-3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh).

(xi) *Socio-economic resources.* A general description of socio-economic conditions in the vicinity of the project. Components of this description include general land use patterns (*e.g.*, urban, agricultural, forested), population patterns, and sources of employment in the project vicinity.

(xii) *Tribal resources.* A description of Indian tribes, tribal lands, and interests that may be affected by the project Components of this description include:

(A) Identification of information on resources specified in paragraphs (d)(2)(ii)–(xi) of this section to the extent that existing project construction and operation affecting those resources may impact tribal cultural or economic interests, *e.g.*, impacts of project-induced soil erosion on tribal cultural sites; and

(B) Identification of impacts on Indian tribes of existing project construction and operation that may affect tribal interests not necessarily associated with resources specified in paragraphs (d)(3)(ii)–(xi) of this Section, *e.g.*, tribal fishing practices or agreements between the Indian tribe and other entities other than the potential applicant that have a connection to project construction and operation.

(xiii) *River basin description.* A general description of the river basin or sub-basin, as appropriate, in which the proposed project is located, including information on:

(A) The area of the river basin or sub-basin and length of stream reaches therein;

(B) Major land and water uses in the project area;

(C) All dams and diversion structures in the basin or sub-basin, regardless of function; and

(D) Tributary rivers and streams, the resources of which are or may be affected by project operations;

(4) *Preliminary issues and studies list.* Based on the resource description and impacts discussion required by paragraphs (d)(1) and (d)(2) of this section; the pre-application document must include with respect to each resource area identified above, a list of:

(i) Issues pertaining to the identified resources;

(ii) Potential studies or information gathering requirements associated with the identified issues;

(iii) Relevant qualifying Federal and state or tribal comprehensive waterway plans; and

(iv) Relevant resource management plans.

(5) *Summary of contacts.* An appendix summarizing contacts with Federal, state, and interstate resource agencies, Indian tribes, non-governmental organizations, or other members of the public made in connection with preparing the pre-application document sufficient to enable the Commission to determine if due diligence has been exercised in obtaining relevant information.

(e) If applicable, the applicant must also provide a statement of whether or not it will seek benefits under section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA) by satisfying the requirements for qualifying hydroelectric small power production facilities in § 292.203 of this chapter. If benefits under section 210 of PURPA are sought, a statement of whether or not the applicant believes the project is located at a new dam or diversion (as that term is defined in § 292.202(p) of this chapter), and a request for the agencies' view on that belief, if any.

§ 5.7 Tribal consultation.

A meeting shall be held no later than 30 days following issuance of the notification of intent required by § 5.5 between each Indian tribe likely to be affected by the potential license application and the Commission staff if the affected Indian tribe agrees to such meeting.

§ 5.8 Notice of commencement of proceeding and scoping document, or of approval to use traditional licensing process or alternative procedures.

(a) *Notice.* Within 60 days of the notification of intent required under § 5.5, filing of the pre-application document pursuant to § 5.6, and filing of any request to use the traditional licensing process or alternative procedures, the Commission will issue a notice of commencement of proceeding and scoping document or of approval of a request to use the traditional licensing process or alternative procedures.

(b) *Notice contents.* The notice shall include:

(1) The decision of the Director of the Office of Energy Projects on any request to use the traditional licensing process or alternative procedures.

(2) If appropriate, a request by the Commission to initiate informal consultation under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402, section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920, or section 106 of the National Historic Preservation Act and implementing regulations at 36 CFR 800.2, and, if applicable, designation of the potential applicant as the Commission's non-federal representative.

(3) If the potential license application is to be developed and filed pursuant to this part, notice of:

(i) The applicant's intent to file a license application;

(ii) The filing of the pre-application document;

(iii) Commencement of the proceeding;

(iv) A request for comments on the pre-application document (including the proposed process plan and schedule);

(v) A statement that all communications to or from the Commission staff related to the merits of the potential application must be filed with the Commission;

(vi) The request for other Federal or state agencies or Indian tribes to be cooperating agencies for purposes of developing an environmental document;

(vii) The Commission's intent with respect to preparation of an environmental impact statement; and

(viii) A public scoping meeting and site visit to be held within 30 days of the notice.

(c) *Scoping Document 1.* At the same time the Commission issues the notice provided for in paragraph (a) of this Section, the Commission staff will issue Scoping Document 1. Scoping Document 1 will include:

(1) An introductory section describing the purpose of the scoping document, the date and time of the scoping meeting, procedures for submitting written comments, and a request for information or study requests from state and Federal resource agencies, Indian tribes, non-governmental organizations, and individuals;

(2) Identification of the proposed action, including a description of the project's location, facilities, and operation, and any proposed protection and enhancement measures, and other alternatives to the proposed action, including alternatives considered but eliminated from further study, and the no action alternative;

(3) Identification of resource issues to be analyzed in the environmental document, including those that would be cumulatively affected along with a description of the geographic and temporal scope of the cumulatively affected resources;

(4) A list of qualifying Federal and state comprehensive waterway plans;

(5) A list of qualifying tribal comprehensive waterway plans;

(6) A process plan and schedule and a draft outline of the environmental document; and

(7) A list of recipients.

(d) *Scoping meeting and site visit.* The purpose of the public meeting and site visit is to:

(1) Initiate issues scoping pursuant to the National Environmental Policy Act;

(2) Review and discuss existing conditions and resource management objectives;

(3) Review and discuss existing information and make preliminary identification of information and study needs;

(4) Review, discuss, and finalize the process plan and schedule for pre-filing activity that incorporates the time periods provided for in this part and, to the extent reasonably possible, maximizes coordination of Federal, state, and tribal permitting and certification processes, including consultation under section 7 of the Endangered Species Act and water quality certification or waiver thereof under section 401 of the Clean Water Act; and

(5) Discuss the appropriateness of any Federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document pursuant to the National Environmental Policy Act.

(e) *Method of notice.* The public notice provided for in this section will be given by:

(1) Publishing notice in the **Federal Register**;

(2) Publishing notice in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated, and, as appropriate, tribal newspapers;

(3) Notifying appropriate Federal, state, and interstate resource agencies, state water quality and coastal zone management plan consistency certification agencies, Indian tribes, and non-governmental organizations by mail.

§ 5.9 Comments and information or study requests.

(a) *Comments and study requests.* Comments on the pre-application document and the Commission staff's Scoping Document 1 must be filed with the Commission within 60 days following the Commission's notice of consultation procedures issued pursuant to § 5.8. Comments, including those by Commission staff, must be accompanied by any information gathering and study requests, and should include information and studies needed for consultation under section 7 of the Endangered Species Act and water quality certification under Section 401 of the Clean Water Act.

(b) *Content of study request.* Any information or study request must:

(1) Describe the goals and objectives of each study proposal and the information to be obtained;

(2) If applicable, explain the relevant resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied;

(3) If the requester is a not resource agency, explain any relevant public interest considerations in regard to the proposed study;

(4) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(5) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied, and how the study results would inform the development of license requirements;

(6) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate filed season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers relevant tribal values and knowledge; and

(7) Describe considerations of level of effort and cost, as applicable, and why any proposed alternative studies would not be sufficient to meet the stated information needs.

(c) *Applicant seeking PURPA benefits; estimate of fees.* If a potential applicant has stated that it intends to seek PURPA benefits, comments on the pre-application document by a fish and wildlife agency must provide the potential applicant with a reasonable estimate of the total costs the agency anticipates it will incur and set mandatory terms and conditions for the proposed project. An agency may provide a potential applicant with an updated estimate as it deems necessary. If any agency believes that its most recent estimate will be exceeded by more than 25 percent, it must supply the potential applicant with a new estimate and submit a copy to the Commission.

§ 5.10 Scoping Document 2.

Within 45 days following the deadline for filing of comments on Scoping Document 1, the Commission staff shall, if necessary, issue Scoping Document 2.

§ 5.11 Potential Applicant's proposed study plan and study plan meetings.

(a) Within 45 days following the deadline for filing of comments on the pre-application document, including information and study requests, the potential applicant must file with the Commission a proposed study plan.

(b) The potential applicant's proposed study plan must include with respect to each proposed study:

(1) A detailed description of the study and the methodology to be used;

(2) A schedule for conducting the study;

(3) Provisions for periodic progress reports, including the manner and extent to which information will be shared; and sufficient time for technical review of the analysis and results; and

(4) If the potential applicant does not adopt a requested study, an explanation of why the request was not adopted, with reference to the criteria set forth in § 5.9(b).

(c) The potential applicant's proposed study plan must also include provisions for the initial and updated study reports and meetings provided for in § 5.15.

(d) The applicant's proposed study plan must:

(1) Describe the goals and objectives of each study proposal and the information to be obtained;

(2) Address any known resource management goals of the agencies or Indian tribes with jurisdiction over the resource to be studied;

(3) Describe existing information concerning the subject of the study proposal, and the need for additional information;

(4) Explain any nexus between project operations and effects (direct, indirect, and/or cumulative) on the resource to be studied;

(5) Explain how any proposed study methodology (including any preferred data collection and analysis techniques, or objectively quantified information, and a schedule including appropriate field season(s) and the duration) is consistent with generally accepted practice in the scientific community or, as appropriate, considers any known tribal interests;

(6) Describe considerations of level of effort and cost, as applicable.

(e) The potential applicant's proposed study plan must be accompanied by a proposal for conducting a study plan meeting or meetings during the 90-day period provided for in § 5.12 for the purpose of clarifying the potential applicant's proposed study plan and any initial information gathering or study requests, and to resolve any outstanding issues with respect to the proposed study plan. The initial study plan meeting must be held no later than 30 days after the deadline date for filing of the potential applicant's proposed study plan.

§ 5.12 Comments on proposed study plan.

Comments on the potential applicant's proposed study plan, including any revised information or study requests, must be filed within 90 days after the proposed study plan is filed. This filing must also include an explanation of any study plan concerns and any accommodations reached with the potential applicant regarding those concerns. Any proposed modifications to the potential applicant's proposed study plan must address the criteria in § 5.9(b).

§ 5.13 Revised study plan and study plan determination.

(a) Within 30 days following the deadline for filing comments on the potential applicant's proposed study plan, as provided for in § 5.12, the potential applicant must file a revised study plan for Commission approval. The revised study plan shall include the comments on the proposed study plan and a description of the efforts made to resolve differences over study requests. If the potential applicant does not adopt a requested study, it must explain why the request was not adopted, with

reference to the criteria set forth in § 5.9(b).

(b) Within 15 days following filing of the potential applicant's revised study plan, participants may file comments thereon.

(c) Within 30 days following the date the potential applicant files its revised study plan, the Director of Energy Projects will issue a Study Plan Determination with regard to the potential applicant's study plan, including any modifications determined to be necessary in light of the record.

(d) If no notice of study dispute is filed pursuant to § 5.14 within 20 days of the Study Plan Determination, the study plan as approved in the Study Plan Determination shall be deemed to be approved and the potential applicant shall proceed with the approved studies. If a potential applicant fails to obtain or conduct a study as required by Study Plan Determination, its license application may be considered deficient.

§ 5.14 Formal study dispute resolution process.

(a) Within 20 days of the Study Plan Determination, any Federal agency with authority to provide mandatory conditions on a license pursuant to FPA Section 4(e), 16 U.S.C. 797(e), or to prescribe fishways pursuant to FPA Section 18, 16 U.S.C. 811, or any agency or Indian tribe with authority to issue a water quality certification for the project license under section 401 of the Clean Water Act, 42 U.S.C. 1341, may file a notice of study dispute with respect to studies pertaining directly to the exercise of their authorities under sections 4(e) and 18 of the Federal Power Act or section 401 of the Clean Water Act.

(b) The notice of study dispute must explain how the disputing agency's or Indian tribe's study request satisfies the criteria set forth in § 5.9(b), and shall identify and provide contact information for the panel member designated by the disputing agency or Indian tribe, as discussed in paragraph (d) of this section.

(c) Studies and portions of study plans approved in the Study Plan Determination that are not the subject of a notice of dispute shall be deemed to be approved, and the potential applicant shall proceed with those studies or portions thereof.

(d) Within 20 days of a notice of study dispute, the Commission will convene one or more three-person Dispute Resolution Panels, as appropriate to the circumstances of each proceeding. Each such panel will consist of:

(1) A person from the Commission staff who is not otherwise involved in the proceeding, and who shall serve as the panel chair;

(2) One person designated by the Federal or state agency or Indian tribe that filed the notice of dispute who is not otherwise involved in the proceeding; and

(3) A third person selected by the other two panelists from a pre-established list of persons with expertise in the resource area. The two panelists shall make every reasonable effort to select the third panel member. If however no third panel member has been selected by the other two panelists within 15 days, an appropriate third panel member will be selected at random from the list of technical experts maintained by the Commission.

(e) If more than one agency or Indian tribe files a notice of dispute with respect to the decision in the preliminary determination on any information-gathering or study request, the disputing agencies or Indian tribes must select one person to represent their interests on the panel.

(f) The list of persons available to serve as a third panel member will be posted, as revised from time-to-time, on the hydroelectric page of the Commission's Web site. A person on the list who is requested and willing to serve with respect to a specific dispute will be required to file with the Commission at that time a current statement of their qualifications, a statement that they have had no prior involvement with the proceeding in which the dispute has arisen, or other financial or other conflict of interest.

(g) All costs of the panel members representing the Commission staff and the agency or Indian tribe which filed the notice of dispute will be borne by the Commission or the agency or Indian tribe, as applicable. The third panel member will serve without compensation, except for certain allowable travel expenses as defined in 31 CFR part 301.

(h) To facilitate the delivery of information to the dispute resolution panel, the identity of the panel members and their addresses for personal service with respect to a specific dispute resolution will be posted on the hydroelectric page of the Commission's Web site.

(i) No later than 25 days following the notice of study dispute, the potential applicant may file with the Commission and serve upon the panel members comments and information regarding the dispute.

(j) Prior to engaging in deliberative meetings, the panel shall hold a technical conference for the purpose of clarifying the matters in dispute with reference to the study criteria. The technical conference shall be chaired by the Commission staff member of the panel. It shall be open to all participants, and the panel shall receive information from the participants as it deems appropriate.

(k) No later than 50 days following the notice of study dispute, the panel shall make and deliver to the Director of the Office of Energy Projects a finding, with respect to each information or study request in dispute, concerning the extent to which each criteria set forth in § 5.9(b) is met or not met, and why, and make recommendations regarding the disputed study request based on its findings. The panel's findings and recommendations must be based on the record in the proceeding. The panel shall file with its findings and recommendations all of the materials received by the panel. Any recommendation for the potential applicant to provide information or a study must include the technical specifications, including data acquisition techniques and methodologies.

(l) No later than 70 days from the date of filing of the notice of study dispute, the Director of the Office of Energy Projects will review and consider the recommendations of the panel, and will issue a written determination. The Director's determination will be made with reference to the study criteria set forth in § 5.9(b) and any applicable law or Commission policies and practices, will take into account the technical expertise of the panel, and will explain why any panel recommendation was rejected, if applicable. The Director's determination shall constitute an amendment to the approved study plan.

§ 5.15 Conduct of studies.

(a) *Implementation.* The potential applicant must gather information and conduct studies as provided for in the approved study plan and schedule.

(b) *Progress reports.* The potential applicant must prepare and provide to the participants the progress reports provided for in § 5.11(b)(3). Upon request of any participant, the potential applicant will provide documentation of study results.

(c) *Initial study report.* (1) Pursuant to the Commission-approved study plan and schedule provided for in § 5.13 or no later than one year after Commission approval of the study plan, whichever comes first, the potential applicant must prepare and file with the Commission an initial study report describing its overall progress in implementing the

study plan and schedule and the data collected, including an explanation of any variance from the study plan and schedule. The report must also include any modifications to ongoing studies or new studies proposed by the potential applicant.

(2) Within 15 days following the filing of the initial study report, the potential applicant shall hold a meeting with the participants and Commission staff to discuss the study results and the potential applicant's and or other participant's proposals, if any, to modify the study plan in light of the progress of the study plan and data collected.

(3) Within 15 days following the meeting provided for in paragraph (c)(2) of this section, the potential applicant shall file a meeting summary, including any modifications to ongoing studies or new studies proposed by the potential applicant.

(4) Any participant or the Commission staff may file a disagreement concerning the applicant's meeting summary within 30 days, setting forth the basis for the disagreement. This filing must also include any modifications to ongoing studies or new studies proposed by the Commission staff or other participant.

(5) Responses to any filings made pursuant to paragraph (c)(4) of this section must be filed within 30 days.

(6) No later than 30 days following the due date for responses provided for in paragraph (c)(5) of this section, the Director will resolve the disagreement and amend the approved study plan as appropriate.

(7) If no participant or the Commission staff files a disagreement concerning the potential applicant's meeting summary and request to amend the approved study plan within 15 days, any proposed amendment shall be deemed to be approved.

(d) *Criteria for modification of approved study.* Any proposal to modify an ongoing study pursuant to paragraphs (c)(1)–(4) of this section must be accompanied by a showing of good cause why the proposal should be approved, and must include, as appropriate to the facts of the case, a demonstration that:

(1) Approved studies were not conducted as provided for in the approved study plan; or

(2) The study was conducted under anomalous environmental conditions or that environmental conditions have changed in a material way.

(e) *Criteria for new study.* Any proposal for new information gathering or studies pursuant to paragraphs (c)(1)–(4) of this section must be accompanied by a showing of good cause why the proposal should be approved, and must include, as appropriate to the facts of the case, a statement explaining:

(1) Any material changes in the law or regulations applicable to the information request;

(2) Why the goals and objectives of any approved study could not be met with the approved study methodology;

(3) Why the request was not made earlier;

(4) Significant changes in the project proposal or that significant new information material to the study objectives has become available; and

(5) Why the new study request satisfies the study criteria in § 5.9(b).

(f) *Updated study report.* Pursuant to the Commission-approved study plan and schedule provided for in § 5.13, or no later than two years after Commission approval of the study plan and schedule, whichever comes first, the potential applicant shall prepare and file with the Commission an updated study report describing its overall progress in implementing the study plan and schedule and the data collected, including an explanation of any variance from the study plan and schedule. The report must also include any modifications to ongoing studies or new studies proposed by the potential applicant. The review, comment, and disagreement resolution provisions of paragraphs (c)(4)–(7) of this section shall apply to the updated study report. Any proposal to modify an ongoing study must be accompanied by a showing of good cause why the proposal should be approved as set forth in paragraph (d) of this section. Any proposal for new information gathering or studies is subject to paragraph (e) of this section except that the proponent must demonstrate extraordinary circumstances warranting approval. The applicant must promptly proceed to complete any remaining undisputed information-gathering or studies under its proposed amendments to the study plan, if any, and must proceed to complete any information-gathering or studies that are the subject of a disagreement upon the Director's resolution of the disagreement.

§ 5.16 Preliminary licensing proposal.

(a) No later than 150 days prior to the deadline for filing a new or subsequent license application, if applicable, the potential applicant must file for comment a preliminary licensing proposal.

(b) The preliminary licensing proposal must:

(1) Clearly describe, as applicable, the existing and proposed project facilities, including project lands and waters;

(2) Clearly describe, as applicable, the existing and proposed project operation and maintenance plan, to include measures for protection, mitigation, and enhancement measures with respect to each resource affected by the project proposal; and

(3) Include the potential applicant's draft environmental analysis by resource area of the continuing and incremental impacts, if any, of its preliminary licensing proposal, including the results of its studies conducted under the approved study plan.

(c) A potential applicant may elect to file a draft license application which includes the contents of a license application required by § 5.18 instead of the Preliminary Licensing Proposal. A potential applicant that elects to file a draft license application must include notice of its intent to do so in the updated study report required by § 5.15(f).

(d) A potential applicant that has been designated as the Commission's non-Federal representative may include a draft Biological Assessment, draft Essential Fish Habitat Assessment, and draft Historic Properties Management Plan with its Preliminary Licensing Proposal or draft license application.

(e) Within 90 days of the date the potential applicant files the Preliminary Licensing Proposal or draft license application, participants and the Commission staff may file comments on the Preliminary Licensing Proposal or draft application, which may include recommendations on whether the Commission should prepare an Environmental Assessment (with or without a draft Environmental Assessment) or an Environmental Impact Statement. Any participant whose comments request new information, studies, or other amendments to the approved study plan must include a demonstration of extraordinary circumstances, pursuant to the requirements of § 5.15(f).

(f) A waiver of the requirement to file the Preliminary Licensing Proposal or draft license application may be requested, based on a consensus of the participants in favor of such waiver.

§ 5.17 Filing of application.

(a) *Deadline—new or subsequent license application.* An application for a new or subsequent license must be filed no later than 24 months before the existing license expires.

(b) *Subsequent licenses.* An applicant for a subsequent license must file its application under part I of the Federal Power Act. The provisions of section 7(a) of the Federal Power Act do not

apply to licensing proceedings involving a subsequent license.

(c) *Rejection or dismissal of application.* If the Commission rejects or dismisses an application for a new or subsequent license filed under this part pursuant to the provisions of § 5.20, the application may not be refiled after the new or subsequent license application filing deadline specified in paragraph (a) of this section.

(d)(1) *Filing and service.* Each applicant for a license under this part must submit the application to the Commission's Secretary for filing pursuant to the requirements of subpart T of part 385 of this chapter. The applicant must serve one copy of the application on the Director of the Commission's Regional Office for the appropriate region and on each resource agency, Indian tribe, or member of the public consulted pursuant to this part.

(2) An applicant must publish notice twice of the filing of its application, no later than 14 days after the filing date in a daily or weekly newspaper of general circulation in each county in which the project is located. The notice must disclose the filing date of the application and briefly summarize it, including the applicant's name and address, the type of facility applied for, its proposed location, and the places where the information specified in § 5.2(b) is available for inspection and reproduction. The applicant must promptly provide the Commission with proof of the publication of this notice.

(e) *PURPA benefits.* (1) Every application for a license for a project with a capacity of 80 megawatts or less must include in its application copies of the statements made under § 4.38(b)(1)(vi).

(2) If an applicant reverses a statement of intent not to seek PURPA benefits:

(i) Prior to the Commission issuing a license, the reversal of intent will be treated as an amendment of the application under § 4.35 of this chapter and the applicant must:

(A) Repeat the pre-filing consultation process under this part; and

(B) Satisfy all the requirements in § 292.208 of this chapter; or

(ii) After the Commission issues a license for the project, the applicant is prohibited from obtaining PURPA benefits.

(f) *Limitations on submitting applications.* The provisions of §§ 4.33(b), (c), and (e) of this chapter apply to license applications filed under this Section.

(g) *Applicant notice.* An applicant for a subsequent license that proposes to expand an existing project to encompass additional lands must include in its application a statement that the applicant has notified, by certified mail, property owners on the additional lands to be encompassed by the project and governmental agencies and subdivisions likely to be interested in or affected by the proposed expansion.

§ 5.18 Application content.

(a) *General content requirements.* Each license application filed pursuant to this part must:

(1) Identify every person, citizen, association of citizens, domestic corporation, municipality, or state that has or intends to obtain and will maintain any proprietary right necessary to construct, operate, or maintain the project;

(2) Identify (providing names and mailing addresses):

(i) Every county in which any part of the project, and any Federal facilities that would be used by the project, would be located;

(ii) Every city, town, or similar local political subdivision:

(A) In which any part of the project, and any Federal facilities that would be used by the project, would be located; or

(B) That has a population of 5,000 or more people and is located within 15 miles of the project dam;

(iii) Every irrigation district, drainage district, or similar special purpose political subdivision:

(A) In which any part of the project, and any Federal facilities that would be used by the project, would be located; or

(B) That owns, operates, maintains, or uses any project facilities that would be used by the project;

(iv) Every other political subdivision in the general area of the project that there is reason to believe would likely be interested in, or affected by, the application; and

(v) All Indian tribes that may be affected by the project.

(3)(i) For a license (other than a license under section 15 of the Federal Power Act) state that the applicant has made, either at the time of or before filing the application, a good faith effort to give notification by certified mail of the filing of the application to:

(A) Every property owner or record of any interest in the property within the bounds of the project, or in the case of the project without a specific project boundary, each such owner of property which would underlie or be adjacent to any project works including any impoundments; and

(B) The entities identified in paragraph (a)(2) of this section, as well as any other Federal, state, municipal or other local government agencies that there is reason to believe would likely be interested in or affected by such application.

(ii) Such notification must contain the name, business address, and telephone number of the applicant and a copy of the Exhibit G contained in the application, and must state that a license application is being filed with the Commission.

(4)(i) As to any facts alleged in the application or other materials filed, be subscribed and verified under oath in the form set forth in paragraph (a)(3)(B) of this Section by the person filing, an officer thereof, or other person having knowledge of the matters set forth. If the subscription and verification is by anyone other than the person filing or an officer thereof, it must include a statement of the reasons therefor.

(ii) This application is executed in the:

State of _____
County of _____
By: _____
(Name) _____
(Address) _____
being duly sworn, depose(s) and say(s) that the contents of this application are true to the best of (his or her) knowledge or belief. The undersigned Applicant(s) has (have) signed the application this___ day of____, 2__.

_____
(Applicant(s))
By: _____

Subscribed and sworn to before me, a [Notary Public, or title of other official authorized by the state to notarize documents, as appropriate] this___ day of ____, 2__.
/SEAL [if any]
(Notary Public, or other authorized official)

(5) Contain the information and documents prescribed in the following Sections of this chapter, except as provided in paragraph (b) of this Section, according to the type of application:

(i) License for a minor water power project and a major water power project 5 MW or less: § 4.61 (General instructions, initial statement, and Exhibits A, B, C, D, F, and G);

(ii) License for a major unconstructed project and a major modified project: § 4.41 of this chapter (General instructions, initial statement, Exhibits A, B, C, D, F, and G);

(iii) License for a major project—existing dam: § 4.51 of this chapter (General instructions, initial statement, Exhibits A, F, and G); or

(iv) License for a project located at a new dam or diversion where the applicant seeks PURPA benefits: § 292.208 of this chapter.

(b) *Exhibit E—Environmental Exhibit.* The specifications for Exhibit E in

§§ 4.41, 4.51, or 4.61 of this chapter shall not apply to applications filed under this part. The Exhibit E included in any license application filed under this part must address the resources listed in the Pre-Application Document provided for in § 5.6; follow the Commission's "Preparing Environmental Assessments: Guidelines for Applicants, Contractors, and Staff," as they may be updated from time-to-time; and meet the following format and content requirements:

(1) *General description of the river basin.* Describe the river system, including relevant tributaries; give measurements of the area of the basin and length of stream; identify the project's river mile designation or other reference point; describe the topography and climate; and discuss major land uses and economic activities.

(2) *Cumulative effects.* List cumulatively affected resources based on the Commission's Scoping Document, consultation, and study results. Discuss the geographic and temporal scope of analysis for those resources. Describe how resources are cumulatively affected and explain the choice of the geographic scope of analysis. Include a brief discussion of past, present, and future actions, and their effects on resources based on the new license term (30–50 years). Highlight the effect on the cumulatively affected resources from reasonably foreseeable future actions. Discuss past actions' effects on the resource in the Affected Environment Section.

(3) *Applicable laws.* Include a discussion of the status of compliance with or consultation under the following laws, if applicable:

(i) *Section 401 of the Clean Water Act.* The applicant must file a request for a water quality certification (WQC), as required by Section 401 of the Clean Water Act no later than the deadline specified in § 5.23(b). Potential applicants are encouraged to consult with the certifying agency or tribe concerning information requirements as early as possible.

(ii) *Endangered Species Act (ESA).* Briefly describe the process used to address project effects on Federally listed or proposed species in the project vicinity. Summarize any anticipated environmental effects on these species and provide the status of the consultation process. If the applicant is the Commission's non-Federal designee for informal consultation under the ESA, the applicant's draft biological assessment must be included.

(iii) *Magnuson-Stevens Fishery Conservation and Management Act.* Document from the National Marine Fisheries Service (NMFS) and/or the appropriate Regional Fishery Management Council any essential fish habitat (EFH) that may be affected by the project. Briefly discuss each managed species and life stage for which EFH was designated. Include, as appropriate, the abundance, distribution, available habitat, and habitat use by the managed species. If the project may affect EFH, prepare a draft "EFH Assessment" of the impacts of the project. The draft EFH Assessment should contain the information outlined in 50 CFR 600.920(e).

(iv) *Coastal Zone Management Act (CZMA).* Section 307(c)(3) of the CZMA requires that all Federally licensed and permitted activities be consistent with approved state Coastal Zone Management Programs. If the project is located within a coastal zone boundary or if a project affects a resource located in the boundaries of the designated coastal zone, the applicant must certify that the project is consistent with the state Coastal Zone Management Program. If the project is within or affects a resource within the coastal zone, provide the date the applicant sent the consistency certification information to the state agency, the date the state agency received the certification, and the date and action taken by the state agency (for example, the agency will either agree or disagree with the consistency statement, waive it, or ask for additional information). Describe any conditions placed on the state agency's concurrence and assess the conditions in the appropriate section of the license application. If the project is not in or would not affect the coastal zone, state so and cite the coastal zone program office's concurrence.

(v) *National Historic Preservation Act (NHPA).* Section 106 of NHPA requires the Commission to take into account the effect of licensing a hydropower project on any historic properties, and allow the Advisory Council on Historic Preservation (Advisory Council) a reasonable opportunity to comment on the proposed action. "Historic Properties" are defined as any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register of Historic Places (NRHP). If there would be an adverse effect on historic properties, the applicant may include a Historic Properties Management Plan (HPMP) to avoid or mitigate the effects. The applicant must include documentation of consultation with the Advisory Council, the State Historic Preservation Officer, Tribal Historic Preservation Officer, National Park Service, members of the public, and affected Indian tribes, where applicable.

(vi) *Pacific Northwest Power Planning and Conservation Act (Act).* If the project is not within the Columbia River Basin, this section shall not be included. The Columbia River Basin Fish and Wildlife Program (Program) developed under the Act directs agencies to consult with Federal and state fish and wildlife agencies, appropriate Indian tribes, and the Northwest Power Planning Council (Council) during the study, design, construction, and operation of any hydroelectric development in the basin. Section 12.1A of the Program outlines conditions that should be provided for in any original or new license. The program also designates certain river reaches as protected from development. The applicant must document consultation with the Council, describe how the act applies to the project, and how the proposal would or would not be consistent with the program.

(vii) *Wild and Scenic Rivers and Wilderness Acts.* Include a description of any areas within or in the vicinity of the proposed project boundary that are included in, or have been designated for study for inclusion in, the National Wild and Scenic Rivers System, or that have been designated as wilderness area, recommended for such designation, or designated as a wilderness study area under the Wilderness Act.

(4) *Project facilities and operation.* Provide a description of the project to include:

(i) Maps showing existing and proposed project facilities, lands, and waters within the project boundary;

(ii) The configuration of any dams, spillways, penstocks, canals, powerhouses, tailraces, and other structures;

(iii) The normal maximum water surface area and normal maximum water surface elevation (mean sea level), gross storage capacity of any impoundments;

(iv) The number, type, and minimum and maximum hydraulic capacity and installed (rated) capacity of existing and proposed turbines or generators to be included as part of the project;

(v) An estimate of the dependable capacity, and average annual energy production in kilowatt hours (or mechanical equivalent);

(vi) A description of the current (if applicable) and proposed operation of the project, including any daily or seasonal ramping rates, flushing flows, reservoir operations, and flood control operations.

(5) *Proposed action and action alternatives.* (i) The environmental document must explain the effects of the applicant's proposal on resources. For each resource area addressed include:

(A) A discussion of the affected environment;

(B) A detailed analysis of the effects of the applicant's licensing proposal and, if reasonably possible, any preliminary terms and conditions filed with the Commission; and

(C) Any unavoidable adverse impacts.

(ii) The environmental document must contain, with respect to the resources listed in the Pre-Application Document provided for in § 5.6, and any other resources identified in the Commission's scoping document prepared pursuant to the National Environmental Policy Act and § 5.8, the following information, commensurate with the scope of the project:

(A) *Affected environment.* The applicant must provide a detailed description of the affected environment or area(s) to be affected by the proposed project by each resource area. This description must include the information on the affected environment filed in the Pre-Application Document provided for in § 5.6, developed under the applicant's approved study plan, and otherwise developed or obtained by the applicant. This section must include a general description of socio-economic conditions in the vicinity of the project including general land use patterns (*e.g.*, urban, agricultural, forested), population patterns, and sources of employment in the project vicinity.

(B) *Environmental analysis.* The applicant must present the results of its studies conducted under the approved study plan by resource area and use the data generated by the studies to evaluate the beneficial and adverse environmental effects of its proposed project. This section must also include, if applicable, a description of any anticipated continuing environmental impacts of continued operation of the project, and the incremental impact of proposed new development of project works or changes in project operation. This analysis must be based on the information filed in the Pre-Application Document provided for in § 5.6, developed under the applicant's approved study plan, and other appropriate information, and otherwise developed or obtained by the Applicant.

(C) *Proposed environmental measures.* The applicant must provide, by resource area, any proposed new environmental measures, including, but not limited to, changes in the project design or operations, to address the environmental effects identified above and its basis for proposing the measures. The applicant must describe how each proposed measure would protect or enhance the existing environment, including, where possible, a non-monetary quantification of the anticipated environmental benefits of the measure. This section must also include a statement of existing measures to be continued for the purpose of protecting and improving the environment and any proposed preliminary environmental measures received from the consulted resource agencies, Indian tribes, or the public. If an applicant does not adopt a preliminary environmental measure proposed by a resource agency, Indian tribe, or member of the public, it must include its reasons, based on project-specific information.

(D) *Unavoidable adverse impacts.* Based on the environmental analysis, discuss any adverse impacts that would occur despite the recommended environmental measures. Discuss whether any such impacts are short- or long-term, minor or major, cumulative or site-specific.

(E) *Economic analysis.* The economic analysis must include annualized, current cost-based information. For a new or subsequent license, the applicant must include the cost of operating and maintaining the project under the existing license. For an original license, the applicant must estimate the cost of constructing, operating, and maintaining the proposed project. For either type of license, the applicant should estimate the cost of each proposed resource protection, mitigation, or enhancement measure and any specific measure filed with the Commission by agencies, Indian tribes, or members of the public when the application is filed. For an existing license, the applicant's economic analysis must estimate the value of developmental resources associated with the project under the current license and the applicant's proposal. For an original license, the applicant must estimate the value of the developmental resources for the proposed project. As applicable, these developmental resources may include power generation, water supply, irrigation, navigation, and flood control. Where possible, the value of developmental resources must be based on market prices. If a protection, mitigation, or enhancement measure reduces the amount or value of the project's developmental resources, the applicant must estimate the reduction.

(F) *Consistency with comprehensive plans.* Identify relevant comprehensive plans and explain how and why the proposed project would, would not, or should not comply with such plans and a description of any relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan.

(G) *Consultation Documentation.* Include a list containing the name, and address of every Federal, state, and interstate resource agency, Indian tribe, or member of the public with which the applicant consulted in preparation of the Environmental Document.

(H) *Literature cited.* Cite all materials referenced including final study reports, journal articles, other books, agency plans, and local government plans.

(2) The applicant must also provide in the Environmental Document:

(A) Functional design drawings of any fish passage and collection facilities or any other facilities necessary for implementation of environmental measures, indicating whether the facilities depicted are existing or proposed (these drawings must conform to the specifications of § 4.39 of this chapter regarding dimensions of full-sized prints, scale, and legibility);

(B) A description of operation and maintenance procedures for any existing or proposed measures or facilities;

(C) An implementation or construction schedule for any proposed measures or facilities, showing the intervals following issuance of a license when implementation of the measures or construction of the facilities would be commenced and completed;

(D) An estimate of the costs of construction, operation, and maintenance, of any proposed facilities, and of implementation of any proposed environmental measures.

(E) A map or drawing that conforms to the size, scale, and legibility requirements of § 4.39 of this chapter showing by the use of shading, cross-hatching, or other symbols the identity and location of any measures or facilities, and indicating whether each measure or facility is existing or proposed (the map or drawings in this exhibit may be consolidated).

(c) *Exhibit H.* The information required to be provided by this paragraph (c) must be included in the application as a separate exhibit labeled "Exhibit H."

(1) *Information to be provided by an applicant for new license: Filing requirements.*—(i) *Information to be supplied by all applicants.* All Applicants for a new license under this part must file the following information with the Commission:

(A) A discussion of the plans and ability of the applicant to operate and

maintain the project in a manner most likely to provide efficient and reliable electric service, including efforts and plans to:

(*1*) Increase capacity or generation at the project;

(*2*) Coordinate the operation of the project with any upstream or downstream water resource projects; and

(*3*) Coordinate the operation of the project with the applicant's or other electrical systems to minimize the cost of production.

(B) A discussion of the need of the applicant over the short and long term for the electricity generated by the project, including:

(*1*) The reasonable costs and reasonable availability of alternative sources of power that would be needed by the applicant or its customers, including wholesale customers, if the applicant is not granted a license for the project;

(*2*) A discussion of the increase in fuel, capital, and any other costs that would be incurred by the applicant or its customers to purchase or generate power necessary to replace the output of the licensed project, if the applicant is not granted a license for the project;

(*3*) The effect of each alternative source of power on:

(*i*) The applicant's customers, including wholesale customers;

(*ii*) The applicant's operating and load characteristics; and

(*iii*) The communities served or to be served, including any reallocation of costs associated with the transfer of a license from the existing licensee.

(C) The following data showing need and the reasonable cost and availability of alternative sources of power:

(*1*) The average annual cost of the power produced by the project, including the basis for that calculation;

(*2*) The projected resources required by the applicant to meet the applicant's capacity and energy requirements over the short and long term including:

(*i*) Energy and capacity resources, including the contributions from the applicant's generation, purchases, and load modification measures (such as conservation, if considered as a resource), as separate components of the total resources required;

(*ii*) A resource analysis, including a statement of system reserve margins to be maintained for energy and capacity; and

(*iii*) If load management measures are not viewed as resources, the effects of such measures on the projected capacity and energy requirements indicated separately;

(*iv*) For alternative sources of power, including generation of additional power at existing facilities, restarting deactivated units, the purchase of power off-system, the construction or purchase and operation of a new power plant, and load management measures such as conservation: The total annual cost of each alternative source of power to replace project power; the basis for the determination of projected annual cost; and a discussion of the relative merits of each alternative, including the issues of the period of availability and dependability of purchased power, average life of alternatives, relative equivalent availability of generating alternatives, and relative impacts on the applicant's power system reliability and other system operating characteristics; and the effect on the direct providers (and their immediate customers) of alternate sources of power.

(D) If an applicant uses power for its own industrial facility and related operations, the effect of obtaining or losing electricity from the project on the operation and efficiency of such facility or related operations, its workers, and the related community.

(E) If an applicant is an Indian tribe applying for a license for a project located on the tribal reservation, a statement of the need of such Indian tribe for electricity generated by the project to foster the purposes of the reservation.

(F) A comparison of the impact on the operations and planning of the applicant's transmission system of receiving or not receiving the project license, including:

(*1*) An analysis of the effects of any resulting redistribution of power flows on line loading (with respect to applicable thermal, voltage, or stability limits), line losses, and necessary new construction of transmission facilities or upgrading of existing facilities, together with the cost impact of these effects;

(*2*) An analysis of the advantages that the applicant's transmission system would provide in the distribution of the project's power; and

(*3*) Detailed single-line diagrams, including existing system facilities identified by name and circuit number, that show system transmission elements in relation to the project and other principal interconnected system elements. Power flow and loss data that represent system operating conditions may be appended if applicants believe such data would be useful to show that the operating impacts described would be beneficial.

(G) If the applicant has plans to modify existing project facilities or operations, a statement of the need for, or usefulness of, the modifications, including at least a reconnaissance-level study of the effect and projected costs of the proposed plans and any alternate plans, which in conjunction with other developments in the area would conform with a comprehensive plan for improving or developing the waterway and for other beneficial public uses as defined in Section 10(a)(1) of the Federal Power Act.

(H) If the applicant has no plans to modify existing project facilities or operations, at least a reconnaissance-level study to show that the project facilities or operations in conjunction with other developments in the area would conform with a comprehensive plan for improving or developing the waterway and for other beneficial public uses as defined in Section 10(a)(1) of the Federal Power Act.

(I) A statement describing the applicant's financial and personnel resources to meet its obligations under a new license, including specific information to demonstrate that the applicant's personnel are adequate in number and training to operate and maintain the project in accordance with the provisions of the license.

(J) If an applicant proposes to expand the project to encompass additional lands, a statement that the applicant has notified, by certified mail, property owners on the additional lands to be encompassed by the project and governmental agencies and subdivisions likely to be interested in or affected by the proposed expansion.

(K) The applicant's electricity consumption efficiency improvement program, as defined under Section 10(a)(2)(C) of the Federal Power Act, including:

(*1*) A statement of the applicant's record of encouraging or assisting its customers to conserve electricity and a description of its plans and capabilities for promoting electricity conservation by its customers; and

(*2*) A statement describing the compliance of the applicant's energy conservation programs with any applicable regulatory requirements.

(L) The names and mailing addresses of every Indian tribe with land on which any part of the proposed project would be located or which the applicant reasonably believes would otherwise be affected by the proposed project.

(ii) *Information to be provided by an applicant licensee.* An existing licensee that applies for a new license must provide:

(A) The information specified in paragraph (c)(1) of this section.

(B) A statement of measures taken or planned by the licensee to ensure safe management, operation, and maintenance of the project, including:

(*1*) A description of existing and planned operation of the project during flood conditions;

(*2*) A discussion of any warning devices used to ensure downstream public safety;

(*3*) A discussion of any proposed changes to the operation of the project or downstream development that might affect the existing Emergency Action Plan, as described in subpart C of part 12 of this chapter, on file with the Commission;

(*4*) A description of existing and planned monitoring devices to detect structural movement or stress, seepage, uplift, equipment failure, or water conduit failure, including a description of the maintenance and monitoring programs used or planned in conjunction with the devices; and

(*5*) A discussion of the project's employee safety and public safety record, including the number of lost-time accidents involving employees and the record of injury or death to the public within the project boundary.

(C) A description of the current operation of the project, including any constraints that might affect the manner in which the project is operated.

(D) A discussion of the history of the project and record of programs to upgrade the operation and maintenance of the project.

(E) A summary of any generation lost at the project over the last five years because of unscheduled outages, including the cause, duration, and corrective action taken.

(F) A discussion of the licensee's record of compliance with the terms and conditions of the existing license, including a list of all incidents of noncompliance, their disposition, and any documentation relating to each incident.

(G) A discussion of any actions taken by the existing licensee related to the project which affect the public.

(H) A summary of the ownership and operating expenses that would be reduced if the project license were transferred from the existing licensee.

(I) A statement of annual fees paid under part I of the Federal Power Act for the use of any Federal or Indian lands included within the project boundary.

(iii) *Information to be provided by an applicant who is not an existing licensee.* An applicant that is not an existing licensee must provide:

(A) The information specified in paragraph (c)(1) of this section.

(B) A statement of the applicant's plans to manage, operate, and maintain the project safely, including:

(*1*) A description of the differences between the operation and maintenance procedures planned by the applicant and the operation and maintenance procedures of the existing licensee;

(*2*) A discussion of any measures proposed by the applicant to implement the existing licensee's Emergency Action Plan, as described in subpart C of part 12 of this chapter, and any proposed changes;

(*3*) A description of the applicant's plans to continue safety monitoring of existing project instrumentation and any proposed changes; and

(*4*) A statement indicating whether or not the applicant is requesting the licensee to provide transmission services under section 15(d) of the Federal Power Act.

(d) *Consistency with comprehensive plans.* An application for license under this part must include an explanation of why the project would, would not, or should not, comply with any relevant comprehensive plan as defined in § 2.19 of this chapter and a description of any. relevant resource agency or Indian tribe determination regarding the consistency of the project with any such comprehensive plan.

(e) *Response to information requests.* An application for license under this Section must respond to any requests for additional information-gathering or studies filed with comments on its preliminary licensing proposal or draft license application. If the license applicant agrees to do the information-gathering or study, it must provide the information or include a plan and schedule for doing so, along with a schedule for completing any remaining work under the previously approved study plan, as it may have been amended. If the applicant does not agree to any additional information-gathering or study requests made in comments on the draft license application, it must explain the basis for declining to do so.

(f) *Maps and drawings.* All required maps and drawings must conform to the specifications of § 4.39 of this chapter.

§ 5.19 Tendering notice and schedule.

(a) *Notice.* Within 14 days of the filing date of any application for a license developed pursuant to this part, the Commission will issue public notice of the tendering for filing of the application. The tendering notice will include a preliminary schedule for expeditious processing of the application, including dates for:

(1) Issuance of the acceptance for filing and ready for environmental analysis notice provided for in § 5.22.

(2) Filing of recommendations, preliminary terms and conditions, and fishway prescriptions;

(3) Issuance of a draft environmental assessment or environmental impact statement, or an environmental assessment not preceded by a draft.

(4) Filing of comments on the draft environmental assessment or environmental impact statement, as applicable;

(5) Filing of modified recommendations, mandatory terms and conditions, and fishway prescriptions in response to a draft NEPA document or Environmental Analysis, if no draft NEPA document is issued;

(6) Issuance of a final NEPA document, if any;

(7) In the case of a new or subsequent license application, a deadline for submission of final amendments, if any, to the application; and

(8) Readiness of the application for Commission decision.

(b) *Modifications to process plan and schedule.* The tendering notice shall also include any known modifications to the schedules developed pursuant to § 5.8 for completion of consultation under section 7 of the Endangered Species Act and water quality certification under section 401 of the Clean Water Act.

(c) *Method of notice.* The public notice provided for in paragraphs (a) and (b) of this Section will be given by:

(1) Publishing notice in the **Federal Register**; and

(2) Notifying appropriate Federal, state, and interstate resource agencies, state water quality and coastal zone management plan consistency certification agencies, Indian tribes, and non-governmental organizations by mail.

(d) *Applicant notice.* The applicant must publishing notice once every week for two weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated, and, as appropriate, tribal newspapers.

(e) *Resolution of pending information requests.* Within 30 days of the filing date of any application for a license developed pursuant to this part, the Director of the Office of Energy Projects will issue an order resolving any requests for additional information-gathering or studies made in comments on the preliminary licensing proposal or draft license application.

§ 5.20 Deficient applications.

(a) *Deficient applications.* (1) If an applicant believes that its application conforms adequately to the pre-filing consultation and filing requirements of this part without containing certain required materials or information, it

must explain in detail why the material or information is not being submitted and what steps were taken by the applicant to provide the material or information.

(2) Within 30 days of the filing date of any application for a license under this part, the Director of the Office of Energy Projects will notify the applicant if, in the Director's judgment, the application does not conform to the prefiling consultation and filing requirements of this part, and is therefore considered deficient. An applicant having a deficient application will be afforded additional time to correct the deficiencies, not to exceed 90 days from the date of notification. Notification will be by letter or, in the case of minor deficiencies, by telephone. Any notification will specify the deficiencies to be corrected. Deficiencies must be corrected by submitting an a filing pursuant to the requirements of subpart T of part 385 of this chapter within the time specified in the notification of deficiency.

(3) If the revised application is found not to conform to the prefiling consultation and filing requirements of this part, or if the revisions are not timely submitted, the revised application will be rejected. Procedures for rejected applications are specified in paragraph (b)(3) of this section.

(b) *Patently deficient applications.* (1) If, within 30 days of its filing date, the Director of the Office of Energy Projects determines that an application patently fails to substantially comply with the prefiling consultation and filing requirements of this part, or is for a project that is precluded by law, the application will be rejected as patently deficient with the specification of the deficiencies that render the application patently deficient.

(2) If, after 30 days following its filing date, the Director of the Office of Energy Projects determines that an application patently fails to comply with the prefiling consultation and filing requirements of this part, or is for a project that is precluded by law:

(i) The application will be rejected by order of the Commission, if the Commission determines that it is patently deficient; or

(ii) The application will be considered deficient under paragraph (a)(2) of this Section, if the Commission determines that it is not patently deficient.

(iii) Any application for an original license that is rejected may be submitted if the deficiencies are corrected and if, in the case of a competing application, the resubmittal is timely. The date the rejected application is resubmitted will be considered the new filing date for purposes of determining its timeliness under § 4.36 of this chapter and the disposition of competing applications under § 4.37 of this chapter.

§ 5.21 Additional information.

An applicant may be required to submit any additional information or documents that the Commission considers relevant for an informed decision on the application. The information or documents must take the form, and must be submitted within the time, that the Commission prescribes. An applicant may also be required to provide within a specified time additional copies of the complete application, or any of the additional information or documents that are filed, to the Commission or to any person, agency, Indian tribe or other entity that the Commission specifies. If an applicant fails to provide timely additional information, documents, or copies of submitted materials as required, the Commission may dismiss the application, hold it in abeyance, or take other appropriate action under this chapter or the Federal Power Act.

§ 5.22 Notice of acceptance and ready for environmental analysis.

(a) When the Commission has determined that the application meets the Commission's filing requirements as specified in §§ 5.18 and 5.19, the approved studies have been completed, any deficiencies in the application have been cured, and no other additional information is needed, it will issue public notice as required in the Federal Power Act:

(1) Accepting the application for filing and specifying the date upon which the application was accepted for filing (which will be the application filing date if the Secretary receives all of the information and documents necessary to conform to the requirements of §§ 5.1 through 5.21, as applicable, within the time frame prescribed in § 5.20 or § 5.21;

(2) Finding that the application is ready for environmental analysis;

(3) Requesting comments, protests, and interventions;

(4) Requesting recommendations, preliminary terms and conditions, and preliminary fishway prescriptions, including all supporting documentation; and

(5) Establishing the date for final amendments to applications for new or subsequent licenses; and

(6) Updating the schedule issued with the tendering notice for processing the application.

(b) If the project affects lands of the United States, the Commission will notify the appropriate Federal office of the application and the specific lands affected, pursuant to Section 24 of the Federal Power Act.

(c) For an application for a license seeking benefits under Section 210 of the Public Utility Regulatory Polices Act of 1978, as amended, for a project that would be located at a new dam or diversion, the Applicant must serve the public notice issued under paragraph (a)(1) of this Section to interested agencies at the time the applicant is notified that the application is accepted for filing.

§ 5.23 Response to notice.

(a) *Comments and reply comments.* Comments, protests, interventions, recommendations, and preliminary terms and conditions or preliminary fishway prescriptions must be filed no later than 60 days after the notice of acceptance and ready for environmental analysis. All reply comments must be filed within 105 days of that notice.

(b) *Water quality certification.* (1) With regard to certification requirements for a license applicant under Section 401(a)(1) of the Federal Water Pollution Control Act (Clean Water Act), the license applicant must file no later than 60 days following the date of issuance of the notice of acceptance and ready for environmental analysis provide for in § 5.22:

(i) A copy of the water quality certification;

(ii) A copy of the request for certification, including proof of the date on which the certifying agency received the request; or

(iii) Evidence of waiver of water quality certification as described in paragraph (b)(5)(2) of this Section.

(2) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act if the certifying agency has not denied or granted certification by one year after the date the certifying agency received a written request for certification. If a certifying agency denies certification, the applicant must file a copy of the denial within 30 days after the applicant received it.

(3) Notwithstanding any other provision in 18 CFR part 4, subpart B, any application to amend an existing license, and any application to amend a pending application for a license, requires a new request for water quality certification pursuant to § 4.34(b)(5) of this chapter if the amendment would have a material adverse impact on the water quality in the discharge from the project or proposed project.

§ 5. 24 Applications not requiring a draft NEPA document.

(a) If the Commission determines that a license application will be processed with an environmental assessment rather than an environmental impact statement and that a draft environmental assessment will not be required, the Commission will issue the environmental assessment for comment no later than 120 days from the date responses are due to the notice of acceptance and ready for environmental analysis.

(b) Each environmental assessment issued pursuant to this paragraph must include draft license articles, a preliminary determination of consistency of each fish and wildlife agency recommendation made pursuant to Federal Power Act section 10(j) with the purposes and requirements of the Federal Power Act and other applicable law, as provided for in § 5.26, and any preliminary mandatory terms and conditions and fishway prescriptions.

(c) Comments on an environmental assessment issued pursuant to paragraph (a) of this section, including comments in response to the Commission's preliminary determination with respect to fish and wildlife agency recommendations and on preliminary mandatory terms and conditions or fishway prescriptions, must be filed no later than 30 or 45 days after issuance of the environmental assessment, as specified in the notice accompanying issuance of the environmental assessment, and should any revisions to supporting documentation.

(d) Modified mandatory prescriptions or terms and conditions must be filed no later than 60 days following the date for filing of comments provided for in paragraph (c) of this section, as specified in the notice accompanying issuance of the environmental analysis.

§ 5.25 Applications requiring a draft NEPA document.

(a) If the Commission determines that a license application will be processed with an environmental impact statement, or a draft and final environmental assessment, the Commission will issue the draft environmental impact statement or environmental assessment for comment no later than 180 days from the date responses are due to the notice of acceptance and ready for environmental analysis provided for in § 5.22.

(b) Each draft environmental document will include for comment draft license articles, a preliminary determination of the consistency of each fish and wildlife agency recommendation made pursuant to section 10(j) of the Federal Power Act with the purposes and requirements of the Federal Power Act and other applicable law, as provided for in § 5.26, and any preliminary mandatory terms and conditions and fishways prescriptions.

(c) Comments on a draft environmental document issued pursuant to paragraph (b) of this section, including comments in response to the Commission's preliminary determination with respect to fish and wildlife agency recommendations and on preliminary mandatory terms and conditions or prescriptions must be filed no later than 30 or 60 days after issuance of the draft environmental document, as specified in the notice accompanying issuance of the draft environmental document.

(d) Modified mandatory prescriptions or terms and conditions must be filed no later than 60 days following the date for filing of comments provided for in paragraph (c) of this section.

(e) The Commission will issue a final environmental document within 90 days following the date for filing of modified mandatory prescriptions or terms and conditions.

§ 5.26 Section 10(j) process.

(a) In connection with its environmental review of an application for license, the Commission will analyze all terms and conditions timely recommended by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act for the protection, mitigation of damages to, and enhancement of fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the proposed project. Submission of such recommendations marks the beginning of the process under section 10(j) of the Federal Power Act.

(b) The agency must specifically identify and explain the recommendations and the relevant resource goals and objectives and their evidentiary or legal basis. The Commission may seek clarification of any recommendation from the appropriate fish and wildlife agency. If the Commission's request for clarification is communicated in writing, copies of the request will be sent by the Commission to all parties, affected resource agencies, and Indian tribes, which may file a response to the request for clarification within the time period specified by the Commission. If the Commission believes any fish and wildlife recommendation may be inconsistent with the Federal Power Act or other applicable law, the Commission will make a preliminary determination of inconsistency in the draft environmental document or, if none, the environmental assessment. The preliminary determination, for any recommendations believed to be inconsistent, shall include an explanation why the Commission believes the recommendation is inconsistent with the Federal Power Act or other applicable law, including any supporting analysis and conclusions and an explanation of how the measures recommended in the environmental document would adequately and equitably protect, mitigate damages to, and enhance, fish and wildlife (including related spawning grounds and habitat) affected by the development, operation, and management of the project.

(c) Any party, affected resource agency, or Indian tribe may file comments in response to the preliminary determination of inconsistency, including any modified recommendations, within the time frame allotted for comments on the draft environmental document or, if none, the time frame for comments on the environmental assessment. In this filing, the fish and wildlife agency concerned may also request a meeting, telephone or video conference, or other additional procedure to attempt to resolve any preliminary determination of inconsistency.

(d) The Commission shall attempt, with the agencies, to reach a mutually acceptable resolution of any such inconsistency, giving due weight to the recommendations, expertise, and statutory responsibilities of the fish and wildlife agency. If the Commission decides, or an affected resource agency requests, the Commission will conduct a meeting, telephone or video conference, or other procedures to address issues raised by its preliminary determination of inconsistency and comments thereon. The Commission will give at least 15 days' advance notice to each party, affected resource agency, or Indian tribe, which may participate in the meeting or conference. Any meeting, conference, or additional procedure to address these issues will be scheduled to take place within 90 days of the date the Commission issues a preliminary determination of inconsistency. The Commission will prepare a written summary of any meeting held under this paragraph to discuss section 10(j) issues, including any proposed resolutions and supporting analysis, and a copy of the summary will be sent to all parties,

affected resource agencies, and Indian tribes.

(e) The section 10(j) process ends when the Commission issues an order granting or denying the license application in question. If, after attempting to resolve inconsistencies between the fish and wildlife recommendations of a fish and wildlife agency and the purposes and requirements of the Federal Power Act or other applicable law, the Commission does not adopt in whole or in part a fish and wildlife recommendation of a fish and wildlife agency, the Commission will publish the findings and statements required by section 10(j)(2) of the Federal Power Act.

§ 5.27 Amendment of application.

(a) *Procedures.* If an Applicant files an amendment to its application that would materially change the project's proposed plans of development, as provided in § 4.35 of this chapter, an agency, Indian tribe, or member of the public may modify the recommendations or terms and conditions or prescriptions it previously submitted to the Commission pursuant to §§ 5.20–5.26. Such modified recommendations, terms and conditions, or prescriptions must be filed no later than the due date specified by the Commission for comments on the amendment.

(b) *Date of acceptance.* The date of acceptance of an amendment of application for an original license filed under this part is governed by the provisions of § 4.35 of this chapter.

(c) *New and subsequent licenses.* The requirements of § 4.35 of this chapter do not apply to an application for a new or subsequent license, except that the Commission will reissue a public notice of the application in accordance with the provisions of § 4.32(d)(2) of this chapter if a material amendment, as that term is used in § 4.35(f) of this chapter, is filed.

(d) *Deadline.* All amendments to an application for a new or subsequent license, including the final amendment, must be filed with the Commission and served on all competing applicants no later than the date specified in the notice issued under § 5.23.

§ 5.28 Competing applications.

(a) *Site access for a competing applicant.* The provisions of § 16.5 of this chapter shall govern site access for a potential license application to be filed in competition with an application for a new or subsequent license by an existing licensee pursuant to this part, except that references in § 16.5 to the pre-filing consultation provisions in parts 4 and 16 of this chapter shall be construed in a manner compatible with the effective administration of this part.

(b) *Competing applications.* The provisions of § 4.36 of this chapter shall apply to competing applications for original, new, or subsequent licenses filed under this part.

(c) *New or subsequent license applications—final amendments; better adapted statement.* Where two or more mutually exclusive competing applications for new or subsequent license have been filed for the same project, the final amendment date and deadlines for complying with provisions of § 4.36(d)(2) (ii) and (iii) of this chapter established pursuant to the notice issued under § 5.23 will be the same for all such applications.

(d) *Rules of preference among competing applicants.* The Commission will select among competing applications according to the provisions of § 4.37 of this chapter.

§ 5.29 Other provisions.

(a) *Filing requirement.* Unless otherwise provided by statute, regulation or order, all filings in hydropower hearings, except those conducted by trial-type procedures, must conform to the requirements of 18 CFR part 385, subpart T of this chapter.

(b) *Waiver of compliance with consultation requirements.* (1) If an agency, Indian tribe, or member of the public waives in writing compliance with any consultation requirement of this part, an applicant does not have to comply with the requirement as to that agency, Indian tribe, or member of the public.

(2) If an agency, Indian tribe, member of the public fails to timely comply with a provision regarding a requirement of this section, an applicant may proceed to the next sequential requirement of this section without waiting for the agency, Indian tribe, or member of the public.

(c) *Requests for privileged treatment of pre-filing submission.* If a potential Applicant requests privileged treatment of any information submitted to the Commission during pre-filing consultation (except for the information specified in § 5.4), the Commission will treat the request in accordance with the provisions in § 388.112 of this chapter until the date the application is filed with the Commission.

(d) *Conditional applications.* Any application, the effectiveness of which is conditioned upon the future occurrence of any event or circumstance, will be rejected.

(e) *Trial-type hearing.* The Commission may order a trial-type hearing on an application for a license under this part either upon its own motion or the motion of any interested party of record. Any trial-type hearing will be limited to the issues prescribed by order of the Commission. In all other cases, the hearings will be conducted by notice and comment procedures.

(f) *Notice and comment hearings.* (1) All comments and reply comments and all other filings described in this part must be served on all persons on the service list prepared by the Commission, in accordance with the requirements of § 385.2010 of this chapter. If a party submits any written material to the Commission relating to the merits of an issue that may affect the responsibility of particular resource agency, the party must also serve a copy of the submission on that resource agency.

(2) The Director of Energy Projects may waive or modify any of the provisions of this part for good cause. A commenter or reply commenter may obtain an extension of time from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with § 385.2008 of this chapter.

(3) Late-filed recommendations by fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act and section 10(j) of the Federal Power Act for the protection, mitigation of damages to, and enhancement of fish and wildlife affected by the development, operation, and management of the proposed project and late-filed terms and conditions or prescriptions filed pursuant to sections 4(e) and 18 of the Federal Power Act, respectively, will be considered by Commission under section 10(a) of the Federal Power Act if such consideration would not delay or disrupt the proceeding.

(g) *Settlement negotiations.* (1) The Commission will consider, on a case-by-case basis, requests for a short suspension of the procedural schedule for the purpose of participants conducting settlement negotiations, where it determines that the suspension will not adversely affect timely action on a license application. In acting on such requests, the Commission will consider, among other things:

(i) Whether requests for suspension of the procedural schedule have previously been made or granted;

(ii) Whether the request is supported by a consensus of participants in the proceeding and an explanation of objections to the request expressed by any participant;

(iii) The likelihood that a settlement agreement will be filed within the requested suspension period; and

(iv) Whether the requested suspension is likely to cause any new or subsequent license to be issued after the expiration of the existing license.

(2) The Commission reserves the right to terminate any suspension of the procedural schedule if it concludes that insufficient progress is being made toward the filing of a settlement agreement.

(h) *License conditions and required findings.* (1) All licenses shall be issued on the conditions specified in Section 10 of the Federal Power Act and such other conditions as the Commission determines are lawful and in the public interest.

(2) Subject to paragraph (f)(3) of this section, fish and wildlife conditions shall be based on recommendations timely received from the fish and wildlife agencies pursuant to the Fish and Wildlife Coordination Act.

(3) The Commission will consider the timely recommendations of resource agencies, other governmental units, and members of the public, and the timely recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project.

(4) Licenses for a project located within any Federal reservation shall be issued only after the findings required by, and subject to any conditions that may be timely filed pursuant to section 4(e) of the Federal Power Act.

(5) The Commission will require the construction, maintenance, and operation of such fishways as may be timely prescribed by the Secretary of Commerce or the Secretary of the Interior, as appropriate, pursuant to section 18 of the Federal Power Act.

(i) *Standards and factors for issuing a new license.* (1) In determining whether a final proposal for a new license under section 15 of the Federal Power Act is best adapted to serve the public interest, the Commission will consider the factors enumerated in sections 15(a)(2) and (a)(3) of the Federal Power Act.

(2) If there are only insignificant differences between the final applications of an existing licensee and a competing Applicant after consideration of the factors enumerated in section 15(a)(2) of the Federal Power Act, the Commission will determine which Applicant will receive the license after considering:

(i) The existing licensee's record of compliance with the terms and conditions of the existing license; and

(ii) The actions taken by the existing licensee related to the project which affect the public.

(iii) An existing licensee that files an application for a new license in conjunction with an entity or entities that are not currently licensees of all or part of the project will not be considered an existing licensee for the purpose of the insignificant differences provision of section 15(a)(2) of the Federal Power Act.

(j) *Fees under section 30(e) of the Federal Power Act.* The requirements of 18 CFR part 4, subpart M, of this chapter, fees under section 30(e) of the Federal Power Act, apply to license applications developed under this part.

§ 5.30 Critical energy infrastructure information.

If any action required by this part requires a potential Applicant or Applicant to reveal Critical Energy Infrastructure Information, as defined by § 388.113(c) of this chapter, to the public, the Applicant must follow the procedures set out in § 4.32(k) of this chapter.

§ 5.31 Transition provision.

This part shall apply to license applications for which the deadline for filing a notification of intent to seek a new or subsequent license, or for filing a notification of intent to file an original license application, as required by § 5.5 of this part, is July 23, 2005 or later.

PART 9—TRANSFER OF LICENSE OR LEASE OF PROJECT PROPERTY

■ 27. The authority citation for part 9 continues to read as follows:

Authority: Sec. 8, 41 Stat. 1068, sec. 309, 49 Stat. 858; 16 U.S.C. 801, 825h; Pub. L. 96–511, 94 Stat. 2812 (44 U.S.C. 3501 *et seq.*)

§ 9.1 [Amended]

■ 28. In § 9.1, remove "4.31" and add "4.32" in its place.

§ 9.2 [Amended]

■ 29. In § 9.10, remove "4.31" and add "4.32(b)(1)" in its place.

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OR LICENSED PROJECTS

■ 30. The authority citation for part 16 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 31. Remove the phrase "Office of Hydropower Licensing" throughout the part and add in its place "Office of Energy Projects".

■ 32. Amend § 16.1 by adding paragraph (c) to read as follows:

§ 16.1 Applicability.

* * * * *

(c) Any potential applicant for a new or subsequent license for which the deadline for the notice of intent required by § 16.6 falls on or after July 23, 2005 and which wishes to develop and file its application pursuant to this part, must seek Commission authorization to do so pursuant to the provisions of part 5 of this chapter.

■ 33. Amend § 16.6 as follows:

■ a. In paragraph (b)(9), remove "16.16" and add "16.7" in its place.

■ b. In paragraph (b)(10)(ii), remove "Indian tribe".

■ c. In paragraph (b)(10)(iii)(B), remove "and".

■ d. In paragraph (b)(10)(iv), remove the period after "notification" and add a semi-colon in its place.

■ e. In paragraph (b)(10), add a new paragraph (b)(10)(v).

■ f. Paragraph (d) is revised.

■ The revised text reads as follows:

§ 16.6 Notification procedures under Section 15 of the Federal Power Act.

* * * * *

(b) * * *

(10) * * *

(v) Affected Indian tribes.

* * * * *

(d) *Commission notice.* Upon receipt of the notification required under paragraph (c) of this Section, the Commission will provide notice of the licensee's intent to file or not to file an application for a new license by:

(1) If the notification is filed prior to July 23, 2005;

(i) Publishing notice in the **Federal Register**;

(ii) Publishing notice once in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(iii) Notifying the appropriate Federal and state resource agencies, state water quality and coastal zone management consistency certifying agencies, and Indian tribes by mail.

(2) If the notification is filed on or after July 23, 2005, pursuant to the provisions of § 5.8 of this chapter.

■ 34. Amend § 16.7 as follows:

■ a. Paragraph (d) is revised.

■ b. In paragraph (e)(1), following "section" add ", or the pre-application document, as applicable,".

■ c. In paragraph (e)(3), after "National Marine Fisheries Service," add "Indian tribes,".

■ d. In paragraph (g), remove "16.16(d)(1)(iv)" and add "16.7(d)(1)(iv)" in its place.

■ The revised text reads as follows:

§ 16.7 Information to be made available to the public at the time of notification of intent under Section 15(b) of the Federal Power Act.

* * * * *

(d) *Information to be made available.* (1) A licensee for which the deadline for filing a notification of intent to seek a new or subsequent license is on or after July 23, 2005 must, at the time it files a notification of intent to seek a license pursuant to § 5.5 of this chapter, provide a copy of the pre-application document required by § 5.6 of this chapter to the entities specified in that paragraph.

(2) A licensee for which the deadline for filing a notification of intent to seek a new or subsequent license is prior to July 23, 2005, and which elects to seek a license pursuant to this part must make the following information regarding its existing project reasonably available to the public as provided in paragraph (b) of this section:

(i) The following construction and operation information:

(A) The original license application and the order issuing the license and any subsequent license application and subsequent order issuing a license for the existing project, including

(*1*) Approved Exhibit drawings, including as-built exhibits,

(*2*) Any order issuing amendments or approving exhibits,

(*3*) Any order issuing annual licenses for the existing project;

(B) All data relevant to whether the project is and has been operated in accordance with the requirements of each license article, including minimum flow requirements, ramping rates, reservoir elevation limitations, and environmental monitoring data;

(C) A compilation of project generation and respective outflow with time increments not to exceed one hour, unless use of another time increment can be justified, for the period beginning five years before the filing of a notice of intent;

(D) Any public correspondence related to the existing project;

(E) Any report on the total actual annual generation and annnual operation and maintenance costs for the period beginning five years before the filing of a notice of intent;

(F) Any reports on original project costs, current net investment, and available funds in the amortization reserve account;

(G) A current and complete electrical single-line diagram of the project showing the transfer of electricity from the project to the area utility system or point of use; and

(H) Any bill issued to the existing licensee for annual charges under Section 10(e) of the Federal Power Act.

(ii) The following safety and structural adequacy information:

(A) The most recent emergency action plan for the project or a letter exempting the project from the emergency action plan requirement;

(B) Any independent consultant's reports required by part 12 of this chapter and filed on or after January 1, 1981;

(C) Any report on operation or maintenance problems, other than routine maintenance, occurring within the five years preceding the filing of a notice of intent or within the most recent five-year period for which data exists, and associated costs of such problems under the Commission's Uniform System of Accounts;

(D) Any construction report for the existing project; and

(E) Any public correspondence relating to the safety and structural adequacy of the existing project.

(iii) The following fish and wildlife resources information:

(A) Any report on the impact of the project's construction and operation on fish and wildlife resources;

(B) Any existing report on any threatened or endangered species or critical habitat located in the project area, or affected by the existing project outside the project area;

(C) Any fish and wildlife management plan related to the project area prepared by the existing licensee or any resource agency; and

(D) Any public correspondence relating to the fish and wildlife resources within the project area.

(iv) The following recreation and land use resources information:

(A) Any report on past and current recreational uses of the project area;

(B) Any map showing recreational facilities and areas reserved for future development in the project area, designated or proposed wilderness areas in the project area; Land and Water Conservation Fund lands in the project area, and designated or proposed Federal or state wild and scenic river corridors in the project area.

(C) Any documentation listing the entity responsible for operating and maintaining any existing recreational facilities in the project area; and

(D) Any public correspondence relating to recreation and land use resources within the project area.

(v) The following cultural resources information:

(A) Except as provided in paragraph (d)(2)(v)(B) of this section, a licensee must make available:

(*1*) Any report concerning documented archeological resources identified in the project area;

(*2*) Any report on past or present use of the project area and surrounding areas by Native Americans; and

(*3*) Any public correspondence relating to cultural resources within the project area.

(B) A licensee must delete from any information made available under paragraph (d)(2)(v)(A) of this section, specific site or property locations the disclosure of which would create a risk of harm, theft, or destruction of archeological or Native American cultural resources or to the site at which the resources are located, or would violate any Federal law, including the Archeological Resources Protection Act of 1979, 16 U.S.C. 470w–3, and the National Historic Preservation Act of 1966, 16 U.S.C. 470hh.

(vi) The following energy conservation information under section 10(a)(2)(C) of the Federal Power Act related to the licensee's efforts to conserve electricity or to encourage conservation by its customers including:

(A) Any plan of the licensee;

(B) Any public correspondence; and

(C) Any other pertinent information relating to a conservation plan.

* * * * *

■ 35. Amend § 16.8 as follows:

■ a. Redesignate existing paragraphs (a)(2) and (a)(3) as paragraphs (a)(4) and (a)(5) and revise newly redesignated paragraph (a)(4).

■ b. Add new paragraphs (a)(2) and (a)(3).

■ c. Paragraph (b) is revised.

■ d. In paragraph (c)(1), remove "(b)(5)" and add "(b)(6)" in its place.

■ e. In paragraph (c)(1)(ii), following "(b)(1)" remove "of this section" and add "or (b)(2) of this section, as applicable," in its place.

■ f. In paragraph (c)(2), remove "(b)(6)" and add "(b)(7)" in its place.

■ g. In paragraph (c)(2), remove "resource agency or Indian tribe" and add "resource agency, Indian tribe, or member of the public" in its place.

■ h. In paragraph (c)(4)(ii), remove "(b)(1)((vi)" and add "(b)(2)(vi)" in its place.

■ i. In paragraph (d)(1), remove "mailed" and add "distributed" in its place.

■ j. In paragraph (e), add a new paragraph (e)(4).

■ k. Remove paragraph (f)(7) and redesignate existing paragraph (f)(8) as (f)(7).

■ l. In paragraph (h), remove "(b)(2)(i)" and add "(b)(3)(i)" in its place.

■ m. In paragraph (i)(1), remove "(b)(2)" wherever it appears and add "(b)(3)" in its place.

■ n. In paragraph (i)(2)(i), remove "the date of the joint meeting required by

paragraph (b)(2) of this section." and add "a final order is issued on the license application." in its place.

■ o. In paragraph (i)(2)(iii), remove "(b)(2)" and add "(b)(3)" in its place and remove "(b)(1)" and add "(b)(2)" in its place.

■ p. Paragraph (j) is removed.

■ The revised and added text reads as follows:

§ 16.8 Consultation requirements.

(a) * * *

(2) Each requirement in this section to contact or consult with resource agencies or Indian tribes shall require as well that the potential Applicant contact or consult with members of the public.

(3) If the potential applicant for a new or subsequent license commences first stages pre-filing consultation under this part on or after July 23, 2005, it must file a notification of intent to file a license application pursuant to § 5.5 of this chapter and a pre-application document pursuant to the provisions of § 5.6 of this chapter.

(4) The Director of the Office of Energy Projects will, upon request, provide a list of known appropriate Federal, state, and interstate resource agencies, and Indian tribes, and local, regional, or national non-governmental organizations likely to be interested in any license application proceeding.

* * * * *

(b) *First stage of consultation.* (1) A potential Applicant for a new or subsequent license must, at the time it files its notification of intent to seek a license pursuant to § 5.5 of this chapter, provide a copy of the pre-application document required by § 5.6 of this chapter to the entities specified in § 5.6(a) of this chapter.

(2) A potential applicant for a nonpower license or exemption must promptly contact each of the appropriate resource agencies, Indian tribes, and members of the public listed in paragraph (a)(1) of this section, and the Commission with the following information:

(i) Detailed maps showing existing project boundaries, if any, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all existing and proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the existing project and any proposed changes, with a description of any existing or proposed diversion of a stream through a canal or penstock;

(iii) A summary of the existing operational mode of the project and any proposed changes;

(iv) Identification of the environment affected or to be affected, the significant resources present and the applicant's existing and proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations;

(vi) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(vii) Any statement required by § 4.301(a) of this chapter.

(3)(i) A potential applicant for an exemption, a new or subsequent license for which the deadline for filing a notification of intent to seek a license is prior to July 23, 2005 and which elects to commence pre-filing consultation under this part, or a new or subsequent license for which the deadline for filing a notification of intent to seek a license is on or after July 23, 2005 and which receives Commission approval to use the license application procedures of this part must:

(A) Hold a joint meeting, including an opportunity for a site visit, with all pertinent agencies, Indian tribes and members of the public to review the information and to discuss the data and studies to be provided by the potential applicant as part of the consultation process; and

(B) Consult with the resource agencies, Indian tribes and members of the public on the scheduling of the joint meeting; and provide each resource agency, Indian tribe, member of the public, and the Commission with written notice of the time and place of the joint meeting and a written agenda of the issues to be discussed at the meeting at least 15 days in advance.

(ii) The joint meeting must be held no earlier than 30 days, and no later than 60 days from, as applicable:

(A) The date of the potential applicant's letter transmitting the information required by paragraph (b)(2) of this section, in the case of a potential exemption applicant or a potential license applicant that commences pre-filing consultation under this part prior to July 23, 2005; or

(B) The date of the Commission's approval of the potential license applicant's request to use the license application procedures of this part pursuant to the provisions of part 5, in the case of a potential license applicant for which the deadline for filing a notification of intent to seek a license is on or after July 23, 2005.

(4) Members of the public are invited to attend the joint meeting held pursuant to paragraph (b)(3) of this section. Members of the public attending the meeting are entitled to participate fully in the meeting and to express their views regarding resource issues that should be addressed in any application for a new license that may be filed by the potential applicant. Attendance of the public at any site visit held pursuant to paragraph (b)(3) of this section shall be at the discretion of the potential applicant. The potential applicant must make either audio recordings or written transcripts of the joint meeting, and must upon request promptly provide copies of these recordings or transcripts to the Commission and any resource agency and Indian tribe.

(5) Unless otherwise extended by the Director of Office of Energy Projects pursuant to paragraph (b)(6) of this section, not later than 60 days after the joint meeting held under paragraph (b)(3) of this section each interested resource agency, and Indian tribe, and member of the public must provide a potential applicant with written comments: (i) Identifying its determination of necessary studies to be performed or information to be provided by the potential applicant;

(ii) Identifying the basis for its determination;

(iii) Discussing its understanding of the resource issues and its goals objectives for these resources;

(iv) Explaining why each study methodology recommended by it is more appropriate than any other available methodology alternatives, including those identified by the potential applicant pursuant to paragraph (b)(2)(vi) of this section;

(v) Documenting that the use of each study methodology recommended by it is a generally accepted practice; and

(vi) Explaining how the studies and information requested will be useful to the agency, Indian tribe, or member of the public in furthering its resource goals and objectives.

(6)(i) If a potential applicant and a resource agency, Indian tribe, or member of the public disagree as to any matter arising during the first stage of

consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency, or Indian tribe, or member of the public may refer the dispute in writing to the Director of the Office of Energy Projects (Director) for resolution.

(ii) The entity referring the dispute must serve a copy of its written request for resolution on the disagreeing party at the time the request is submitted to the Director. The disagreeing party may submit to the Director a written response to the referral within 15 days of the referral's submittal to the Director.

(iii) Written referrals to the Director and written responses thereto pursuant to paragraphs (b)(6)(i) or (b)(6)(ii) of this section must be filed with the Secretary of the Commission in accordance with the Commission's Rules of Practice and Procedure, and must indicate that they are for the attention of the Director of the Office of Energy Projects pursuant to § 16.8(b)(6).

(iv) The Director will resolve disputes by an order directing the potential applicant to gather such information or conduct such study or studies as, in the Director's view, is reasonable and necessary.

(v) If a resource agency, Indian tribe, or member of the public fails to refer a dispute regarding a request for a potential applicant to obtain information or conduct studies (other than a dispute regarding the information specified in paragraph (b)(1) or (b)(2) of this section, as applicable), the Commission will not entertain the dispute following the filing of the license application.

(vi) If a potential applicant fails to obtain information or conduct a study as required by the Director pursuant to paragraph (b)(6)(iv) of this section, its application will be considered deficient.

(7) Unless otherwise extended by the Director pursuant to paragraph (b)(6) of this section, the first stage of consultation ends when all participating agencies, Indian tribes, and members of the public provide the written comments required under paragraph (b)(5) of this section or 60 days after the joint meeting held under paragraph (b)(3) of this section, whichever occurs first.

* * * * *

(e) * * *

(4) Following July 23, 2003 a potential license applicant engaged in pre-filing consultation under this part may during first stage consultation request to incorporate into pre-filing consultation any element of the integrated license application process provided for in part 5 of this chapter. Any such request must be accompanied by a:

(i) Specific description of how the element of the part 5 license application would fit into the pre-filing consultation process under this part; and

(ii) Demonstration that the potential license applicant has made every reasonable effort to contact all resource agencies, Indian tribes, non-governmental organizations, and others affected by the potential applicant's proposal, and that a consensus exists in favor of incorporating the specific element of the part 5 process into the pre-filing consultation under this part.

* * * * *

§ 16.9 [Amended]

■ 36. Amend § 16.9 by removing "agencies and Indian tribes by mail" from paragraph (d)(1)(iii) and adding "agencies, Indian tribes, and non-governmental organizations" in its place.

§ 16.10 [Amended]

■ 37. Amend § 16.10 as follows:
■ a. Paragraph (d) is removed.
■ b. Paragraph (e) is redesignated as paragraph (d) and newly redesignated paragraph (d) is revised.
■ c. Paragraph (f) is removed.
■ The revised text reads as follows:

§ 16.10 Information to be provided by an Applicant for new license: Filing requirements.

* * * * *

(d) *Inclusion in application.* The information required to be provided by this section must be included in the application as a separate exhibit labeled "Exhibit H."

§ 16.11 [Amended]

■ 38. Amend § 16.11 by removing paragraph (a)(2).

§ 16.19 [Amended]

■ 39. Amend § 16.19 by removing paragraphs (b)(3) and (b)(4) and by redesignating paragraph (b)(5) as paragraph (b)(3).

§ 16.20 [Amended]

■ 40. In § 16.20, paragraph (c) is revised.
The revised text reads as follows:

§ 16.20 Applications for subsequent license for a project with an expiring license subject to Section 14 and 15 of the Federal Power Act.

* * * * *

(c) *Requirement to file.* An applicant must file an application for subsequent license at least 24 months before the expiration of the existing license.

* * * * *

PART 375—THE COMMISSION

■ 41. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 42. Amend § 375.308 as follows:
■ a. In paragraph (c)(11), remove "4.303(d)" and add "4.303(e)" in its place.
■ b. In paragraph (k)(1), remove "4.32(d)(2)(i)" and add "4.32(e)(2)(i)" in its place.
■ c. In paragraph (k)(2)(ii), remove "4.32(d)(1)" and add "4.32(e)(1)(iii)" in its place.
■ d. In paragraph (k)(3), remove "4.32(f)" and add "4.32(g)" in its place.
■ e. Add a new section (aa):
■ The added text reads as follows.

§ 375.308 Delegations to the Director of the Office of Energy Projects.

* * * * *

(aa) Take the following actions to implement part 5 of this chapter on or after October 23, 2003:

(1) Act on requests for approval to use the application procedures of parts 4 or 16, pursuant to § 5.3 of this chapter;

(2) Approve a potential license applicant's proposed study plan with appropriate modifications pursuant to § 5.13 of this chapter;

(3) Resolve formal study disputes pursuant to § 5.14 of this chapter; and

(4) Resolve disagreements brought pursuant to § 5.15 of this chapter.

PART 385—RULES OF PRACTICE AND PROCEDURE

■ 43. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a-825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85 (1988).

■ 44. In § 385.214, revise paragraphs (a)(2) and (a)(3).
■ The revised text reads as follows.

§ 385.214 Intervention (Rule 214).

(a) * * *

(2) Any State Commission, the Advisory Council on Historic Preservation, the U.S. Departments of Agriculture, Commerce, and the Interior, any state fish and wildlife, water quality certification, or water rights agency; or Indian tribe with authority to issue a water quality certification is a party to any proceeding upon filing a notice of intervention in that proceeding, if the notice is filed within the period established under

Rule 210(b). If the period for filing notice has expired, each entity identified in this paragraph must comply with the rules for motions to intervene applicable to any person under paragraph (a)(3) of this section including the content requirements of paragraph (b) of this section.

(3) Any person seeking to intervene to become a party, other than the entities specified in paragraphs (a)(1) and (a)(2) of this section, must file a motion to intervene.

* * * * *

§ 385.2001 [Amended]

■ 45. In § 385.2001, remove "*http://www.ferc.fed.us*" from paragraph (a)(iii) and add "*http://www.ferc.gov*" in its place.

§ 385.2003 [Amended]

■ 46. In § 385.2003, remove "*http://www.ferc.fed.us*" from paragraph (c)(ii) and add "*http://www.ferc.gov*" in its place.

Note: The following Appendix will appear in the Code of Federal Regulations:

Appendix A

List of Commenters

Licensees

Alabama Power Co. (Alabama Power)
American Electric Power Company (AEP)
CHI Energy (CHI)
Consumers Energy Company (Consumers)
Duke Power Company (Duke)
Edison Electric Institute and Alliance of Energy Suppliers (EEI)
Georgia Power Company (Georgia Power)
Idaho Power Company (Idaho Power)
National Hydropower Association (NHA)
Northeast Utilities Systems (NEU)
Oroville-Wyandotte Irrigation District (Oroville)
PG&E Corporation (PG&E)
Progress Energy (Progress)
Puget Sound Energy (PSE)
Reliant Energy (Reliant)
Southern California Edison Company (SCE)
Tri-Dam Project (Tri-Dam)
WPS Resources (WPSR)
Wisconsin Public Service Corporation (WPSC)
Xcel Energy (Xcel)

Non-Governmental Organizations

Adirondack Mountain Club (ADK)
American Rivers (AmRivers)
American Whitewater Affiliation (AW)
Appalachian Mountain Club (AMC)
California Hydropower Reform Coalition (CHRC)
Catawba-Wateree Relicensing Coalition (C-WRC)
Hydropower Reform Coalition (HRC)
Idaho Rivers United (IRU)
Maine Rivers
New England FLOW (NE FLOW)
Pacific Fishery Management Council (PFMC)
River Alliance of Wisconsin (RAW)
South Carolina Coastal Conservation League (SC League)
Trout Unlimited (TU)

Federal Agencies

Advisory Council on Historic Preservation (Advisory Council)
Environmental Protection Agency (EPA)
National Marine Fisheries Service (NOAA)
Dept. of the Interior (Interior)
Dept. of the Interior, Bureau of Indian Affairs (BIA)
Dept. of the Interior, Bureau of Land Management (BLM)
Dept. of the Interior, Fish and Wildlife Service (FWS)
Dept. of the Interior, National Park Service (NPS)

States/State Agencies

Alaska Department of Natural Resources (Alaska DNR)
California Department of Fish and Game (CDFG)
California Attorney-General (Cal A-G)
California Department of Water Resources (CDWR)
California Resources Agency, California EPA, State Water Resources Control Board, Department of Fish and Game, State of California Office of the Attorney General (California)
California Regional Council of Rural Counties (CA RCRC)
Commonwealth of Virginia (Virginia DEQ)
Georgia Department of Natural Resources (Georgia DNR)
Idaho Department of Fish and Game (IDFG)
Idaho Department of Environmental Quality (IDEQ)
Idaho Department of Parks and Recreation (IDPR)
Indiana Department of Natural Resources
Maine Department of Environmental Protection (MDEP)
Maryland Department of Natural Resources (Maryland DNR)
Massachusetts Division of Energy Resources (Massachusetts DER)
Minnesota Department of Natural Resources (Minnesota DNR)
Minneapolis Parks and Recreation Board (MPRB)
New Jersey Department of Environmental Protection (NJDEP)
New York State Department of Environmental Conservation (NYSDEC)
North Carolina Wildlife Resources Commission (NCWRC)
Pennsylvania Fish and Boat Commission (PFBC)
Placer County Water Agency (PCWA)
State of Oregon (Oregon)
Oregon Water Resources Commission (OWRC)
Oregon Department of Fish and Wildlife (ODFW)
Oregon Dept. of Enviromental Quality (ODEQ)
Snohomish County PUD and City of Everett (Snohomish)
State of Washington
State of Vermont, Agency of Natural Resources (VANR)
Washington Department of Ecology (WDOE)
Washington Department of Natural Resources (Washington DNR)
Western Governors' Association (WGA)
Wisconsin Department of Natural Resources (Wisconsin DNR)
Wyoming Game and Fish Department

Indian Tribes

Affiliated Tribes of Northwest Indians—Economic Development Corporation (NW Indians)
Catawba Indian Nation (Catawba)
Confederated Tribes of the Umatilla Indian Reservation (Umatilla)
Columbia River Inter-Tribal Fish Commission (CRITFC)
Fort Peck Assiniboine Sioux Tribes, Northeast Montana (Fort Peck)
Shoshone-Paiute Tribes of Nevada and Idaho, Duck Valley Reservation (S–P)
Shoshone-Bannock (S–B)
Great Lakes Indian Fish and Wildlife Commission (GLIFWC)
Maidu-Enterprise Tribe (Maidu)
Menominee Tribe of Wisconsin (Menominee)
Mississippi Band of Choctaw Indians (Choctaw)
Nez Perce
North Fork Rancheria of Mono Indians of California (NF Rancheria)
Skagit System Cooperative
Skokomish Indian Tribe (Skokomish)

Individuals

Frank Groznik
Acres International
Cyrus Noe
Thomas Sullivan, Sullivan & Gomez Engineers (Sullivan)
Grammer, Kissel, Robbins, Skancke, & Edwards (GKRSE)
Fred Springer
John Suloway

Other

Association of California Water Agencies (ACWA)
Balch & Bingham (B&B)
California State Water Contractors (CSWC)
Commonwealth of Puerto Rico (PR)
Geosyntec
Long View Associates (Long View)
Mead & Hunt (M&H)
MWH
Normandeau Associates (Normandeau)
Pacific Legacy
Spiegel and McDiarmid (Spiegel)
Troutman Sanders (Troutman)
Western Urban Water Coalition (WUWC)

[FR Doc. 03–20999 Filed 8–22–03; 8:45 am]
BILLING CODE 6717–01–P

Federal Register

Monday,
August 25, 2003

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries off the Exclusive Economic Zone Off Alaska; Provisions of the American Fisheries Act (AFA); Final and Proposed Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030808196–3197–02; I. D. 081103B]

RIN 0648–AR42

Fisheries of the Exclusive Economic Zone Off Alaska; Provisions of the American Fisheries Act (AFA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule: effectiveness of collection-of-information requirements.

SUMMARY: NMFS announces approval by the Office of Management and Budget (OMB) of collection-of-information requirements contained in the following American Fisheries Act (AFA)-related amendments: Amendment 61 to the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands (BSAI) Area, Amendment 61 to the FMP for Groundfish of the Gulf of Alaska, Amendment 13 to the FMP for BSAI King and Tanner Crab, and Amendment 8 to the FMP for the Scallop Fishery off Alaska (collectively referred to as Amendment 61/61/13/8), and in Amendment 69 to the FMP for the Groundfish Fishery of the BSAI Area, and issues a final rule to make effective the collections of information contained in those amendments. The collections provide that if an AFA cooperative contract was previously filed with NMFS and the North Pacific Fishery Management Council (Council), a renewal letter may be submitted to NMFS and the Council in lieu of the cooperative contract and business review letter. Each AFA cooperative contract must include a clause that the parties agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery that are not landed in the State of Alaska; and an AFA cooperative may contract with a non-member vessel to harvest a portion of the cooperative's annual pollock allocation. The intent of this final rule is to inform the public of the effective date of the requirements.

DATES: Sections 679.61(d)(1) and (d)(2), and § 679.61(e)(1)(v), published at 67 FR 79692 (December 30, 2002), and § 679.62(c), published at 68 FR 6833 (February 11, 2003), are effective on September 24, 2003.

ADDRESSES: Any comments regarding burden-hour estimates for collection-of-information requirements contained in this final rule should be sent to Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, phone: 907–586–7247, email: lori.durall@noaa.gov and to OMB, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, NMFS, 907–586–7228 or e-mail at *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION: A final rule that implemented the measures contained in Amendment 61/61/13/8 was published in the **Federal Register** on December 30, 2002 (67 FR 79692), and most of the measures were effective January 29, 2003. A final rule that implemented the measures contained in Amendment 69 was published in the **Federal Register** on February 11, 2003 (68 FR 6833), and most of the measures were effective March 13, 2003. However, because OMB approval of the reporting requirements contained in these amendments had not yet been received as of the effective date of each rule, effectiveness of the requirements contained in the amendments was delayed.

OMB approval for those measures was received on July 14, 2003. No comments were received in response to this review. Consequently, this rule makes the following requirements effective:

OMB 0648–0393, AFA Vessel and Processor Permit Applications. Approval of this collection included: § 679.61(d)(1) and (d)(2), cooperative contract renewal letter, and § 679.61(e)(1)(v), contract clause regarding payments to the State of Alaska, codified in the final rule published on December 30, 2002 (67 FR 79692).

OMB 0648–0401, American Fisheries Act: Recordkeeping and Reporting. Approval of this collection included § 679.62(c), contract fishing by non-member vessels, codified in the final rule published on February 11, 2003 (68 FR 6833).

Classification

This rule has been determined to be not significant for the purposes of Executive Order 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This rule contains collection-of-information requirements subject to the PRA that have been approved by OMB under control numbers 0648–0393 (AFA Vessel and Processor Permit Applications) and 0648–0401 (American Fisheries Act: Recordkeeping and Reporting). The estimated time per response to submit a cooperative contract renewal letter and a contract clause regarding payments to the State of Alaska is estimated as part of the permit process (0648–0393), which is 2.5 hours. The estimated time per response to contract fishing by non-member vessels (0648–0401) is 30 minutes.

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collection-of-information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 15, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21451 Filed 8–22–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030808196–3196–01; I. D. 062403C]

RIN 0648–AR13

Fisheries of the Exclusive Economic Zone Off Alaska; Provisions of the American Fisheries Act (AFA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to remove the expiration date of regulations published as a final rule in the **Federal Register** on December 30, 2002, implementing the AFA. The AFA final rule specified a period of effectiveness that will expire December 31, 2007, and this rule proposes to make the amendments to the AFA rule permanent. This action is necessary to implement properly the AFA, and is intended to do so in a manner consistent with the objectives of the AFA, the Magnuson-Stevens Fishery Conservation and Management Act, and other applicable laws.

DATES: Comments must be received by September 24, 2003.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator for Sustainable Fisheries, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Durall, or delivered to room 401 of the Federal Building, 709 West 9th Street, Juneau, AK. Comments also may be sent via facsimile (FAX) to 907–586–7557. Comments will not be accepted if submitted via e-mail or Internet. The Final Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis (FEIS/RIR/FRFA) prepared for Amendments 61/61/13/8 is available in the NEPA section of the NMFS Alaska Region home page at *http://www.fakr.noaa.gov*. Paper copies of the FEIS/RIR/FRFA prepared for Amendments 61/61/13/8 may be requested from Lori Durall, NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802, phone: 907 586 7247, email: *lori.durall@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, NMFS, 907–586–7228 or *patsy.bearden@noaa.gov*.

SUPPLEMENTARY INFORMATION: The final rule implementing the AFA was published on December 30, 2002 (67 FR 79692), and became effective January 29, 2003. Excepted from this period of effectiveness were several paragraphs under review by the Office of Management and Budget (OMB) under the requirements of the Paperwork Reduction Act (PRA). The **DATES** section of the preamble text described the period of effectiveness for the final rule as January 29, 2003, through December 31, 2007. The December 31, 2007, date was meant to apply only to 50 CFR 679.50, which describes the Groundfish Observer Program, applicable through that date. Therefore, except for those paragraphs in 50 CFR 679.50, and the paragraphs subject to review under PRA, this proposed rule would state the date of effectiveness for the AFA rule and would clarify that the affected paragraphs are permanent revisions without expiration. The paragraphs subject to review under PRA were subsequently approved by OMB on July 14, 2003. A document announcing their effective requirements is published elsewhere in this issue of the **Federal Register**.

Classification

This action is necessary to make the regulations governing the pollock fishery in the BSAI consistent with statute. In October 1998, the AFA mandated sweeping changes to the conservation and management program for the pollock fishery of the Bering Sea and Aleutian Islands (BSAI) and to a lesser extent, affected the management programs for other groundfish fisheries of the BSAI, the groundfish fisheries of the Gulf of Alaska (GOA), the king and Tanner crab fisheries of the BSAI, and the scallop fishery off Alaska. With respect to the fisheries off Alaska, the AFA requires a suite of new management measures that fall into four general categories:

(1) regulations that limit access into the fishing and processing sectors of the BSAI pollock fishery and that allocate pollock to such sectors,

(2) regulations governing the formation and operation of fishery cooperatives in the BSAI pollock fishery,

(3) regulations to protect other fisheries from spillover effects from the AFA, and

(4) regulations governing catch measurement and monitoring in the BSAI pollock fishery.

Section 213 of the AFA as originally passed by Congress contained a December 31, 2004, sunset date and authorized the Council to review and extend the AFA management program in 2004. As submitted by the Council, Amendments 61/61/13/8 contained this December 31, 2004, sunset date. However, after the amendments were submitted for Secretarial review, the "Department of Commerce and Related Agencies Act, 2002," was enacted which contained a provision that removed the December 31, 2004, sunset date from the AFA. As a result, NMFS found it necessary to reconcile the sunset dates contained in the FMP amendments and proposed rule with the newly-amended AFA which contained no such sunset date. On February 27, 2002, NMFS partially approved Amendments 61/61/13/8, implementing the AFA. NMFS disapproved the December 31, 2004, sunset dates contained in the amendments because the sunset dates were inconsistent with new legislation making the AFA permanent. The remaining text in Amendments 61/61/13/8 was approved.

The final rule implementing these amendments was published on December 30, 2002 (67 FR 79692) and became effective January 29, 2003. The pollock fisheries in the BSAI are subject to observer requirements under regulations at § 679.50. These observer requirements have an independent sunset date of December 31, 2007. The final rule made changes to these observer regulations. The DATE section of the preamble to the final rule contained a reference to the sunset date for these observer requirements, but as the preamble was written, this observer sunset date applied to the entire final rule. Thus, the DATES section of the preamble text described the period of effectiveness for the final rule as January 29, 2003 through December 31, 2007. This proposed rule would state that the phrase "effective through December 31, 2007" applies only to those paragraphs dealing with the observer program, and that the other provisions would be effective indefinitely.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

The impacts of this action have already been analyzed pursuant to the Regulatory Flexibility Act by way of the FRFA completed for Amendments 61/61/13/8, and may be found in Section 4.6 of the Final Environmental Impact Statement for American Fisheries Act Amendments 61/61/13/8 (NMFS, 2002). The FRFA is further summarized in the final rule (December 30, 2002, 67 FR 79692). The FRFA identified a total of 41 small pollock fishing industry entities to which the rule applied (Table 4.6.2). A description of the fleet, fishery

and industry directly and reasonably indirectly impacted by Amendments 61/61/13/8 was provided in Section 4.6.7 of the FRFA (pages 4–176 to 4–182). Since this action corrects the dates for which this rule is effective, and does not modify eligibility criteria or any other facet of Amendments 61/61/13/8, there would be no change in the numbers of impacted entities as a result of this proposed action.

Similarly, the FRFA in Section 4.6.8 described the negative impacts of Amendments 61/61/13/8 on small entities, summarized in the final rule (December 30, 2002, 67 FR 79692). This proposed rule corrects the described period of effectiveness in the DATES section of the preamble to a final rule. The proposed rule results in no impacts on small entities.

Two criteria were considered in determining the significance of regulatory impacts, namely, disproportionality and profitability. These criteria consider the effect of regulations on small businesses and other small entities. The correction of the effective dates section in this proposed rule will not place a substantial number of small entities at a significant competitive disadvantage to large entities. Similarly, this proposed rule will not significantly reduce profit for a substantial number of small entities. This proposed rule will not impact industry.

The final rule for Amendments 61/61/13/8 (December 30, 2002, 67 FR 79692), addressed whether the rule would impose impacts on a substantial number of small entities. As discussed above, this proposed action will not impact the numbers of affected entities.

The findings of fact underlying a certification should "describe the data sources and analytical methods used in the analyses, variability, and uncertainty in the cost and revenue estimates, explain the assumptions used, and indicate the extent to which the results were affected by those assumptions." The findings of fact underlying this certification are based on a review of the FRFA for the original action, and did not utilize new data sets, analytical methods, or cost and revenue estimates beyond those incorporated in the earlier analysis.

On this basis, the Chief Counsel for Regulation has certified that this action will not have "a significant impact on a substantial number of small entities." As a result, a regulatory flexibility analysis was not prepared.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Dated: August 14, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 03–21452 Filed 8–22–03; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

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H.R. 2195/P.L. 108–72
Smithsonian Facilities Authorization Act (Aug. 15, 2003; 117 Stat. 888)

H.R. 2465/P.L. 108–73
Family Farmer Bankruptcy Relief Act of 2003 (Aug. 15, 2003; 117 Stat. 891)

H.R. 2854/P.L. 108–74
To amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program, and for other purposes. (Aug. 15, 2003; 117 Stat. 892)

S. 1015/P.L. 108–75
Mosquito Abatement for Safety and Health Act (Aug. 15, 2003; 117 Stat. 898)

H.R. 1412/P.L. 108–76
Higher Education Relief Opportunities for Students Act of 2003 (Aug. 18, 2003; 117 Stat. 904)

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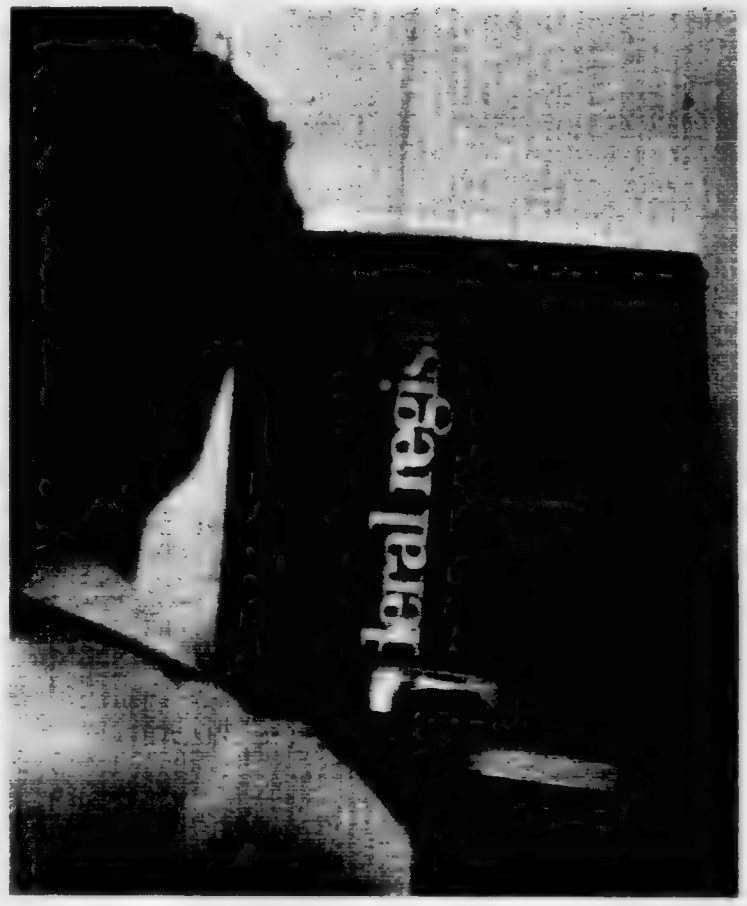

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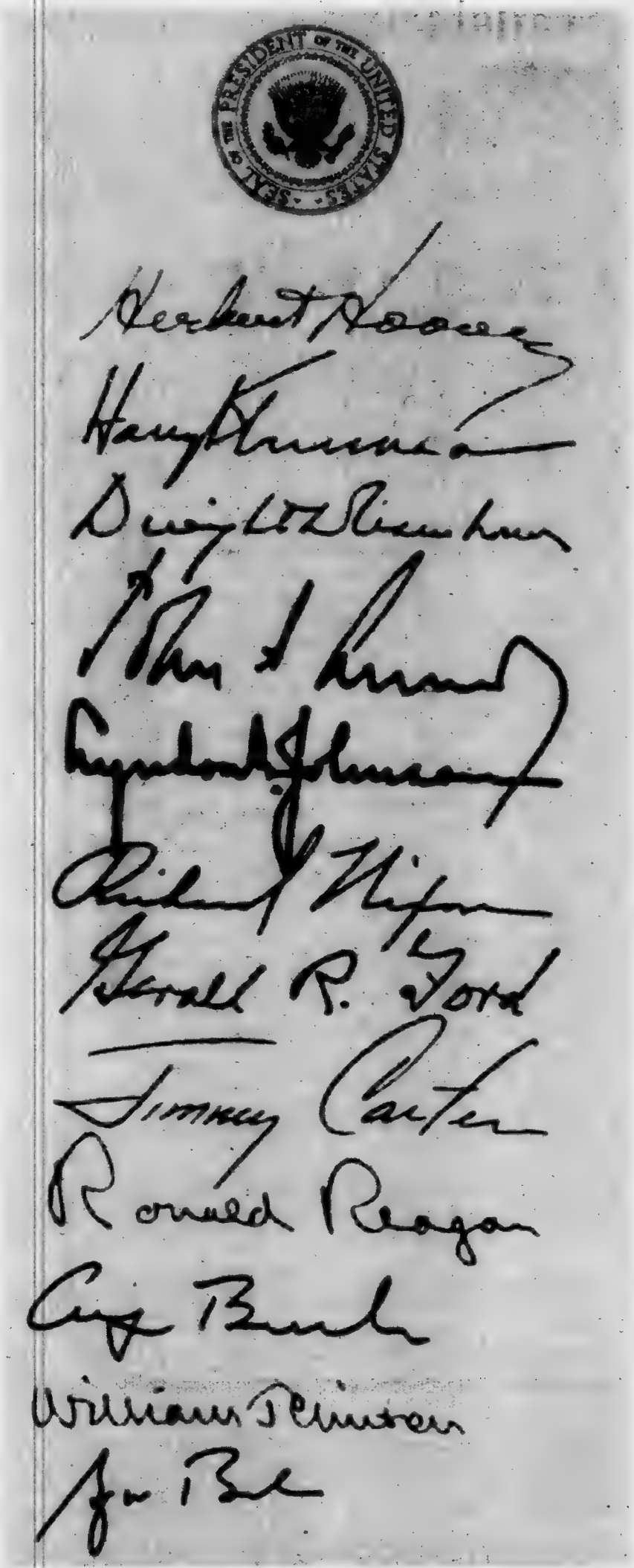

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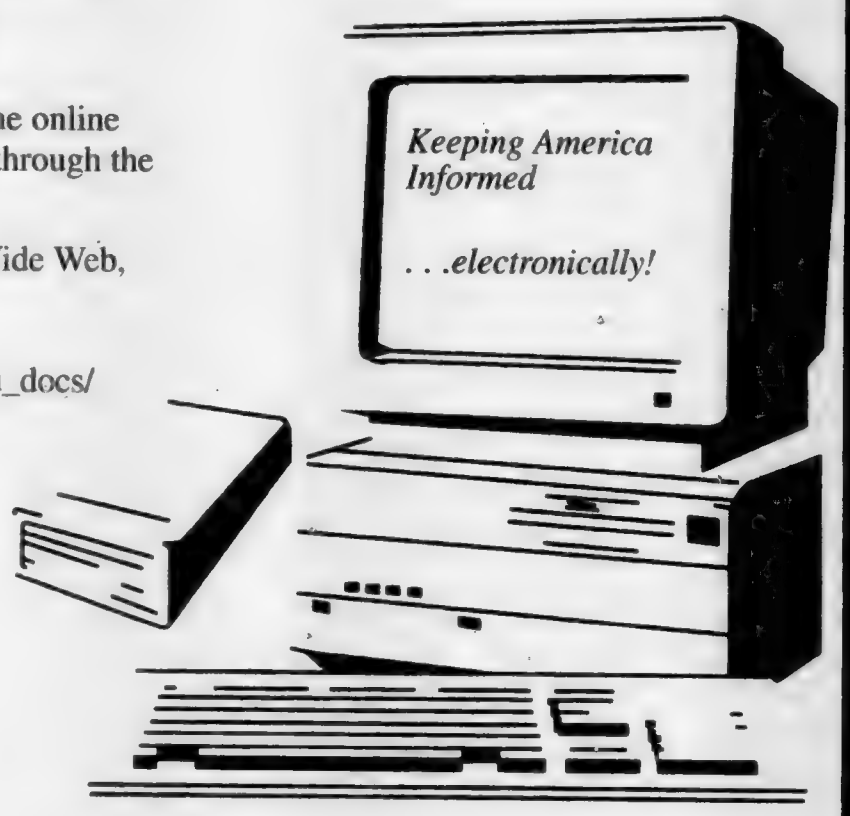

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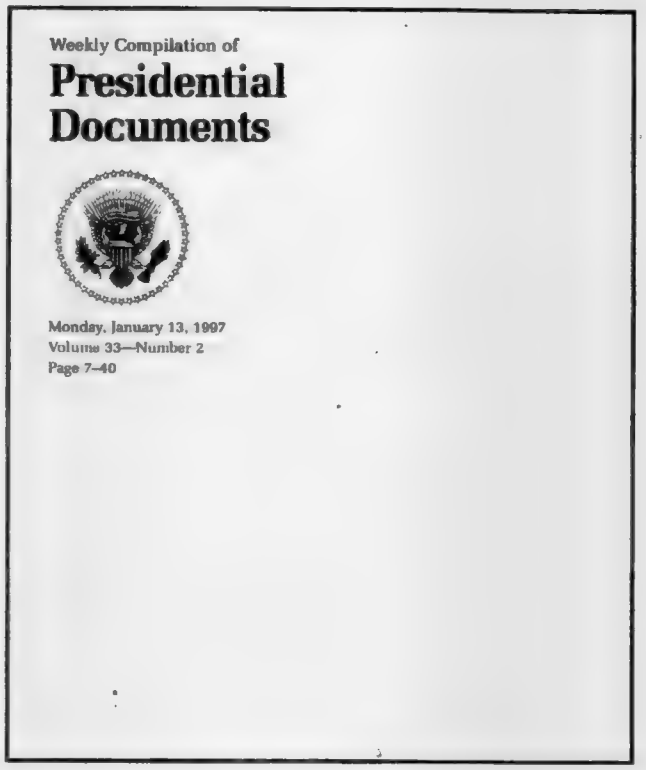

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Federal Register

8–26–03 Tuesday
Vol. 68 No. 165 Aug. 26, 2003

Pages 51149–51428

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Rules and Regulations

Federal Register
Vol. 68, No. 165
Tuesday, August 26, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–04–AD; Amendment 39–13264; AD 2003–16–11]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters, Inc., Model 600N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified MD Helicopters, Inc. (MDHI) model helicopters that requires reducing the life limit of the main rotor drive shaft (drive shaft) and changing the life limit on the component history card or equivalent record. This amendment is prompted by the review of final fatigue test data, which indicates that the life limit of the drive shaft should be reduced by 2000 hours time-in-service (TIS). The actions specified by this AD are intended to prevent failure of the drive shaft, loss of drive of the main rotor system, and subsequent loss of control of the helicopter.

DATES: Effective September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Chinh Vuong, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Propulsion Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5264, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on May 19, 2003 (68 FR 27006). That action proposed reducing the life limit of the drive shaft from 16,000 hours TIS to 14,000 hours TIS and revising the component history card or an equivalent record to reflect the reduced life limit.

MDHI has issued Service Bulletin SB600N–033, dated December 13, 2001, which specifies reducing the life limit of the drive shaft at the next scheduled maintenance or within 1 year, whichever occurs first.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that this AD will affect 46 helicopters of U.S. registry, and it will take approximately .5 work hour per helicopter to update the records at an average labor rate of $65 per work hour. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $1,495.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–16–11 MD Helicopters, Inc.: Amendment 39–13264. Docket No. 2003–SW–04–AD.

Applicability: Model 600N, with main rotor drive shaft assembly (drive shaft), part number (P/N) 600N5510–1, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 100 hours time-in-service (TIS), unless accomplished previously.

To prevent failure of the drive shaft, loss of drive to the main rotor hub, and subsequent loss of control of the helicopter, accomplish the following:

(a) Revise the component history card or equivalent record for drive shaft, P/N 600N5510–1, by changing the life limit from 16,000 to 14,000 hours TIS. Before further flight, replace any drive shaft that has 14,000 or more hours TIS with an airworthy drive shaft.

(b) This AD revises the Limitations section of the maintenance manual by reducing the life limit of the drive shaft, P/N 600N5510–1, to 14,000 hours TIS.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LAACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(d) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on September 30, 2003.

Issued in Fort Worth, Texas, on August 5, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–21521 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–10–AD; Amendment 39–13286; AD 2003–17–11]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG Dart 528, 529, 529D, 531, 532, 535, 542, and 552 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc) Dart 528–7E, 529–7H, –7E, –8E, –8H, –8X, –8Y, –8Z, 529D–7E, –7H, –8E, –8H, –8X, –8Y, –8Z, 531, 532–2L, –7, –7N, –7P, –7L, –7R, 535–2, –7R, 542–4, –4K, –10, –10J, –10K, 552–2, 552–7, and –7R turboprop engines. This AD requires removal of any Sermetel coating (Omat 7/46) from certain high pressure (HP) turbine discs and intermediate pressure (IP) turbine discs, and inspection of discs after coating removal. This AD is prompted by reports of Sermetel coating (Omat 7/46) applied to certain turbine discs which, if allowed to remain on the discs would react adversely with the disc dry film lubricant, and could result in uncontained HP or IP turbine disc failure, resulting in possible damage to the airplane. We are issuing this AD to prevent uncontained HP or IP turbine disc failure, which could result in damage to the airplane.

DATES: This AD becomes effective September 30, 2003.

ADDRESSES: You may get the service information identified in this AD from Rolls-Royce Deutschland Ltd & Co KG, Eschenweg 11, D–15827 Dahlewitz, Germany; Tel: 49–33–7086–1768; Fax: 49–33–7086–3356.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR Part 39 with a proposed AD. The proposed AD applies to RRD (formerly Rolls-Royce plc) Dart 528–7E, 529–7H, –7E, –8E, –8H, –8X, –8Y, –8Z, 529D–7E, –7H, –8E, –8H, –8X, –8Y, –8Z, 531, 532–2L, –7, –7N, –7P, –7L, –7R, 535–2, –7R, 542 –4, –4K, –10, –10J, –10K, 552–2, 552–7, and –7R turboprop engines. We published the proposed AD in the **Federal Register** on May 5, 2003 (68 FR 23620). That action proposed to require removal of any Sermetel coating (Omat 7/46) from certain HP turbine discs and IP turbine discs, and inspection of discs after coating removal.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. That regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. The material previously was included in each individual AD. Since the material is included in 14 CFR part 39, we will not include it in future AD actions.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–10–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2003–17–11 Rolls-Royce Deutschland Ltd & Co KG: Amendment 39–13286. Docket No. 2003–NE–10–AD.

Effective Date

(a) This AD becomes effective September 30, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) (formerly Rolls-Royce plc) Dart 528–7E, 529–7H, –7E,

–8E, –8H, –8X, –8Y, –8Z, 529D–7E, –7H, –8E, –8H, –8X, –8Y, –8Z, 531, 532–2L, –7, –7N, –7P, –7L, –7R, 535–2, –7R, 542–4, –4K, –10, –10J, –10K, 552–2, 552–7, and –7R turboprop engines with a high pressure (HP) turbine disc or intermediate pressure (IP) turbine disc that has a serial number (SN) listed in Table 1 of this AD installed. These engines are installed on, but not limited to, BAE Systems (Operations) Limited, Model HS 748 Series 2A and 2B airplanes, Fokker Aircraft B.V., F.27 Friendship Mark 200, 400, 500, and 600 airplanes, Gulfstream Aerospace Corporation Model G–159 "Gulfstream I" airplanes, Maryland Air Industries, Inc. F–7F, F–27A, F–27G, F–27J, F–27M, FH–227B, FH–227C, FH–227D, and FH–227E airplanes, and Mitsubishi Heavy Industries, Ltd Model YS–11, YS–11A–200, YS–11A–300, YS–11A–500, and YS–11A–600 airplanes. Table 1 follows:

TABLE 1.—AFFECTED TURBINE DISCS

Turbine disc serial number	Turbine disc stage	Date when coating was applied	Turbine disc cycles-since-new when coating was applied
DETN128	HP	31. Mar 01	4356
DETN155	HP	22. Jun 99	0
DETN3541	HP	17. Apr 01	2850
DETN3542	HP	16. Jan 01	6053
LA759	HP	27. Oct 00	5858
LP219	HP	23. Nov 99	6688
LW376	HP	21. Jul 99	3302
LX484	HP	22. Feb 00	4632
LZ299	HP	23. Dec 99	5839
LZ404	HP	13. Jul 01	630
LZ555	HP	30. Aug 00	2158
LZ564	HP	15. Mar 01	4204
SG612	HP	20. Apr 00	5735
SH195	HP	16. Dec 99	5349
DETN25	IP	30. Aug 00	2158
DETN238	IP	31. Mar 01	4356
DETN240	IP	18. Apr 01	0
DETN944	IP	04. Mar 00	2200
DETN2666	IP	17. Apr 01	2850
DETN5538	IP	16. Jul 01	630
DETN6400	IP	14. Apr 99	0
LA407	IP	22. Jun 00	5736
LA858	IP	27. Oct 00	5856
LB99	IP	13. Aug 99	9093
LE284	IP	24. Dec 99	5679
LN87	IP	10. May 99	5829
LP519	IP	23. Nov 99	6688
LW517	IP	22. Dec 99	5865
LX214	IP	09. Dec 00	6498
LX379	IP	22. Feb 00	4632
LZ248	IP	23. Dec 99	5839
LZ385	IP	17. Oct 01	9072
LZ603	IP	22. Jun 99	0
SG554	IP	20. Apr 00	5735
SH863	IP	16. Dec 99	5349

Unsafe Condition

(d) This AD is prompted by reports of Sermetel coating (Omat 7/46) applied to certain turbine discs which, if allowed to remain on the discs would react adversely with the disc dry film lubricant, causing uncontained HP or IP turbine disc failure, which could result in damage to the airplane. We are issuing this AD to prevent HP or IP turbine disc failure, which could result in damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Determining if Action Is Required

(f) Within 60 days after the effective date of this AD, determine the SN of the HP turbine disc and the IP turbine disc. If none of the HP and IP turbine discs with SNs listed in Table 1 are installed in the engine, no further action is required.

(g) If one or more of the discs with SNs listed in Table 1 of this AD are installed in the engine, do the following:

(1) If the engine has had a full overhaul of the turbine after the shop visit at which the Sermetel coating (Omat 7/46) was applied, no further action is required.

(2) If only the HP turbine disc is listed in Table 1, and the engine has RRD Service Bulletin No. Da72–533, Revision 3, dated October 2001, incorporated, no further action is required.

Removal of Sermetel Coating and Disc Inspection

(3) Before accumulating 10,000 flight cycles since the coating was applied, completely remove Sermetel coating (Omat 7/46) from HP turbine discs and LP turbine discs. Information on coating removal can be found in RRD Overhaul Processes Manual, Overhaul Process 114.

(4) Visually inspect HP turbine discs and LP turbine discs, and return to service discs that pass inspection. Information on disc pass or fail inspection criteria can be found in the RRD Engine Overhaul Manual, Chapter 72–6–1.

Alternative Methods of Compliance

(h) Alternative methods of compliance must be requested in accordance with 14 CFR part 39.19, and must be approved by the Manager, Engine Certification Office, FAA.

Material Incorporated by Reference

(i) None.

Related Information

(j) The subject of this AD is addressed in LBA airworthiness directive LTA 2003–015, dated February 6, 2003.

Issued in Burlington, Massachusetts, on August 19, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–21741 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–P

RAILROAD RETIREMENT BOARD

20 CFR Part 206

RIN: 3220–AB56

Account Benefits Ratio

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to add a new part to explain how it will compute the account benefits ratio. The Railroad Retirement and Survivors' Improvement Act of 2001 amended the Railroad Retirement Act to require that on an annual basis the Board compute an account benefits ratio for the most recent 10 preceding fiscal years and a projection of the account benefits ratio for the next 5 succeeding fiscal years. In determining the account benefits ratio, the Board has interpreted several terms utilized in that computation. Since the account benefits ratio will be used to determine the tier II tax rate for calendar years after 2003, the Board is issuing this regulation to clarify how we will compute the account benefits ratio.

DATES: This final rule is effective August 26, 2003.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092, (312) 751–4945, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Effective for calendar years after 2003, the tier II tax rate will be determined in accord with a formula that relies on the average account benefits ratio. *See* section 3241 of the Internal Revenue Code as amended by section 204 of Public Law 107–90. The Board has decided to set forth how it will compute the account benefits ratio so that all parties, rail labor, rail management and the public, will be aware of how we intend to compute the account benefits ratio. Part 206 of the Board's regulations deals with the manner by which the account benefits ratio will be computed. Section 206.1 contains definitions of the terms that are used to compute the account benefits ratio. In making these calculations, the Board based its definitions on the language of the statute and the purpose of computing the account benefits ratio.

The term "total benefits and administrative expenses paid" is computed on a cash basis, since the use of the word "paid" demonstrates that the computation should be made on a cash basis. In addition, "total benefits paid" is computed on the basis of net benefits paid, *i.e.*, the gross benefits paid in a particular fiscal year minus any benefit overpayments actually recovered in that fiscal year. The purpose of computing the account benefits ratio is to ensure that there are adequate funds to pay benefits due under the Railroad Retirement Act. Using net benefits paid more accurately reflects the amount of benefits paid in a given year.

The term "assets" is defined in the regulation as the total of the market value of all cash and investments held in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefit Account). Excluded from "assets" is the amount of accounts receivable. While a receivable may be viewed as an asset under certain circumstances, the language of the Railroad Retirement and Survivors' Improvement Act of 2001 leads the Board to conclude that Congress did not contemplate inclusion of accounts receivable in the computation of the account benefits ratio. By providing that the computation is to be made based on the fair market value of the assets in the Investment Trust and the accounts, Congress signaled that the computation should be made based on the amount of cash and the value of investments in the Investment Trust and the accounts. Moreover, disregarding accounts receivable in computing the account benefits ratio is consistent with the cash basis being used to determine total benefits and administrative expenses paid in a given fiscal year.

The term "administrative expenses paid" is also defined in the regulation. All Railroad Retirement Board administrative expenses are currently paid from a single administrative account. The only amounts recorded in the Railroad Retirement Account are "cash transfers" to that administrative account. The amount used for calculating the administrative expenses paid will be the amount of those cash transfers from the Railroad Retirement Account in each fiscal year. Also included in total administrative expenses will be those amounts transferred from the Railroad Retirement Account to the Limitation on the Office of Inspector General. The expenses of the Inspector General are appropriate railroad retirement program expenses that must be considered in determining total administrative expenses. Finally, the administrative expenses of the National Railroad Retirement Investment Trust will also be included in this term.

Collection of Information Requirements

This rule does not impose additional information collection and record keeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

Regulatory Impact Statement

Prior to publication of the proposed rule, the Board submitted this rule to the Office of Management and Budget (OMB) for review pursuant to Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for rules that constitute significant regulatory action, including rules that have an economic effect of $100 million or more annually. The proposed rule was not a major rule in terms of the aggregate costs involved. The costs associated with the addition of a new part to the Board's regulations are administrative in nature, and include the costs associated with drafting and publishing the regulation as a proposed and then a final rule. We have determined that this final rule is not a major rule with economically significant effects because it would not result in increases in total expenditures of $100 million or more per year.

OBM determined that the final rule did not need to be reviewed again under Executive Order 12866. Part 206 explains how the Railroad Retirement Board will compute the account benefits ratio in accordance with sections 108 and 204 of the Railroad Retirement and Survivors' Improvement Act of 2001. The purpose of the regulation is to provide a written explanation so that all parties, rail labor, rail management, and the public, will be aware of how the Board intends to compute the account benefits ratio. Thus, the final rule will benefit the agency's constituents, who will be aware of how the account benefits ratio is computed.

Both the Regulatory Flexibility Act and the Unfunded Mandates Act of 1995 define "agency" by referencing the

definition of "agency" contained in 5 U.S.C. 551(1). Section 551(1)(E) excludes from the term "agency" an agency that is composed of representatives of the parties or of representatives of organizations of the parties to the disputes determined by them. The Railroad Retirement Board falls within this exclusion (45 U.S.C. 231f(a)) and is therefore exempt from the Regulatory Flexibility Act and the Unfunded Mandates Act.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule under the threshold criteria of Executive Order 13132 and have determined that it would not have a substantial direct effect on the rights, roles, and responsibilities of States or local governments.

This rule was published as a proposed rule on December 18, 2002 (67 FR 77447). The proposed rule invited the public and interested parties to comment on the proposed rule. No comments were received.

List of Subjects in 20 CFR Part 206

Railroad retirement.

■ For the reasons set out in the preamble, the Railroad Retirement Board adds a new Part 206 to Title 20, chapter II of the Code of Federal Regulations to read as follows:

PART 206—ACCOUNT BENEFITS RATIO

Sec.
206.1 Definitions.
206.2 Computations.

Authority: 45 U.S.C. 231f(b)(5); 45 U.S.C. 231u(a).

§ 206.1 Definitions.

Except as otherwise expressly noted, as used in this part—

Account benefits ratio means the amount determined by the Railroad Retirement Board by dividing the fair market value of the assets in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years prior to 2002, the Social Security Equivalent Benefit Account) as of the close of each fiscal year by the total benefits and administrative expenses paid from those accounts during the fiscal year.

Administrative expenses paid means the amount of the cash transfers from the Railroad Retirement Account to the agency's single administrative fund. Also included in this term is the amount of the cash transfers from the Railroad Retirement Account to the Limitation on the Office of Inspector General and the administrative expenses paid by the National Railroad Retirement Investment Trust.

Assets means the market value of cash and investments in the Railroad Retirement Account and the National Railroad Retirement Investment Trust (and for years before 2002, the Social Security Equivalent Benefit Account).

Average account benefits ratio means for any calendar year, the average of the account benefits ratio for the 10 most recent fiscal years ending before such calendar year. If the amount computed is not a multiple of 0.1, such amount shall be increased to the next highest 0.1.

Total benefits paid means the total amount of benefits paid from the Railroad Retirement Account and the National Railroad Retirement Investment Trust in a fiscal year minus any benefit overpayments actually recovered during that fiscal year.

§ 206.2 Computation.

(a) On or before November 1, 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratios for each of the most recent 10 preceding fiscal years; and

(2) Certify the account benefits ratio for each such fiscal year to the Secretary of the Treasury.

(b) On or before November 1 of each year after 2003, the Railroad Retirement Board shall:

(1) Compute the account benefits ratio for the fiscal year ending in such year; and

(2) Certify the account benefits ratio for such fiscal year to the Secretary of the Treasury.

(c) No later than May 1 of each year, beginning 2003, the Board shall compute its projection of the account benefits ratio and the average account benefits ratios for each of the next succeeding 5 fiscal years.

Dated: August 19, 2003.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 03–21738 Filed 8–25–03; 8:45 am]

BILLING CODE 7905–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations Nos. 4 and 16]

RIN 0960–AF37

Clarification of Rules Involving Residual Functional Capacity Assessments; Clarification of Use of Vocational Experts and Other Sources at Step 4 of the Sequential Evaluation Process; Incorporation of "Special Profile" Into Regulations

AGENCY: Social Security Administration.

ACTION: Final rules.

SUMMARY: For purposes of this document, "we," "our," and "SSA" refer to the Social Security Administration and State agencies that make disability determinations for the Social Security Administration. "You" and "your" refer to individuals who claim benefits from the Social Security Administration based on "disability."

In this final rule we clarify our rules about the responsibility that you have to provide evidence and the responsibility that we have to develop evidence in connection with your claim of disability. This includes our rules about when we assess your residual functional capacity (RFC) and how we use this RFC assessment when we decide whether you can do your past relevant work or other work. These clarifications address issues of responsibility raised by some courts in recent cases; clarify that we may use vocational experts (VEs), vocational specialists (VSs), or other resources to obtain evidence we need to help us determine whether your impairment(s) prevents you from doing your past relevant work; add a special provision to our rules stating that, if you are at least 55 years old, and specific other circumstances are present, we will find that you are disabled; and make a number of minor editorial changes to clarify and update the language of our rules, and to use simpler language in keeping with our goal of using plain language in our regulations.

DATES: These rules will be effective September 25, 2003.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Regulations Officer, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, 410–965–1767 or TTY 800–966–5609 for information about these rules. For information on eligibility or filing for benefits, call our national toll-free number. 800–772–1213 or TTY 800–325–0778, or visit our Internet Web site,

Social Security Online, at *http://www.socialsecurity.gov*.

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SUPPLEMENTARY INFORMATION:

What Programs Do These Regulations Affect?

These regulations affect disability determinations and decisions we make for you under title II and title XVI of the Social Security Act (the Act). In addition, to the extent that Medicare and Medicaid eligibility are based on entitlement to benefits under title II and eligibility for benefits under title XVI, these regulations also affect the Medicare and Medicaid programs.

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (see 20 CFR 404.336) of insured workers.

Under title XVI of the Act, we provide for Supplemental Security Income (SSI) payments on the basis of disability if you have limited income and resources.

How Do We Define "Disability"?

Under both the title II and title XVI programs, disability means the inability to "* * * engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months." (Sections 223(d)(1)(A) and 1614(a)(3)(A) of the Act.) This definition applies if you file a claim under title II or if you file a claim as an adult under title XVI. (There is a different definition of disability for children filing under title XVI. See section 1614(a)(3)(C) of the Act.)

In addition, we only consider you to be disabled if your physical or mental impairment(s) is so severe that you are not only unable to do your previous work, but you cannot, considering your age, education, and work experience, engage in any other kind of substantial gainful work that exists in the national economy. This is true regardless of whether this kind of work exists in the immediate area in which you live, or whether a specific job vacancy exists for you, or whether you would be hired if you applied for work. (See sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act.)

We will not consider you under a disability unless you furnish medical and other evidence that we need to show that you are disabled. (See section 223(d)(5)(A) and, by reference to section 223(d)(5), section 1614(a)(3)(H) of the Act.) However, when we decide whether you are disabled (or whether you continue to be disabled), we will develop a complete medical history of at least the preceding twelve months for any case in which we decide that you are not disabled. (See sections 223(d)(5)(B) and 1614(a)(3)(H) of the Act.)

Who Makes the Rules, Regulations, and Procedures for Providing Evidence of Disability?

Section 205(a) of the Act and, by reference to section 205(a), section 1631(d)(1) provide that:

> The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

How Do We Decide Whether You Are Disabled?

To decide whether you are disabled under this statutory definition, we use a five-step sequential evaluation process, which we describe in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we find that you are not disabled regardless of your medical condition or your age, education, and work experience. If you are not, we go on to step 2 of the sequence.
2. Do you have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities? If you do not, we find that you are not disabled. If you do, we go on to step 3 of the sequence.
3. Do you have an impairment(s) that meets or equals the severity of an impairment listed in appendix 1 of subpart P of part 404 of our regulations? If you do, and the impairment(s) meets the duration requirement, we find you disabled. If you do not, we go on to step 4 of the sequence.
4. Considering your RFC and the physical and mental demands of the work you have done in the past, does your impairment(s) prevent you from doing your past relevant work? If not, we find that you are not disabled. If so, we go on to step 5 of the sequence.
5. Considering your RFC and your age, education, and past work experience, does your impairment(s) prevent you from doing any other work? If it does, and your impairment(s) meets the duration requirement, we find that you are disabled. If it does not, we find that you are not disabled.

We use different sequential evaluation processes if we are deciding whether your disability continues. (See §§ 404.1594 and 416.994 of our regulations.) However, these different processes also include steps that consider your RFC and past relevant work, and your ability to adjust to other work considering your RFC, age, education, and work experience.

What Revisions Are We Making, and Why?

We are changing several sections in subpart P of part 404 and subpart I of part 416 to clarify our longstanding rules about how we make determinations and decisions for initial applications at steps 4 and 5 of the sequential evaluation process. The changes will also apply to steps 7 and 8 of the sequential evaluation processes for determining continuing disability in § 404.1594(f), and steps 6 and 7 in § 416.994(b)(5). However, for clarity we will refer in this preamble only to the steps of the sequential evaluation process for initial applications.

Several of the revisions clarify our longstanding interpretation of our rules that we assess your RFC once, after we have found that you have a severe impairment(s) that does not meet or equal a listing; *i.e.*, after step 3 but before we consider step 4. We use this RFC assessment first to determine, at step 4, whether you are able to do any of your past relevant work. If we determine that you cannot perform your past relevant work, or you have no past relevant work, we use the same RFC assessment at step 5 to determine whether you are able to make an adjustment to other work, given your RFC, age, education, and work experience.

Under the Act and §§ 404.1512 and 416.912 of our regulations, you

generally have the burden of proving your disability. You must furnish medical and other evidence we can use to reach conclusions about your impairment(s) and its effect on your ability to work on a sustained basis. Our responsibility is to make every reasonable effort to develop your complete medical history. That includes arranging for consultative examinations, if necessary, and making every reasonable effort to get medical reports from your own medical sources. We are responsible for helping you produce evidence that shows whether you are disabled.

Our administrative process was designed to be nonadversarial. (*See* §§ 404.900(b) and 416.1400(b) of our regulations; *Richardson* v. *Perales*, 402 U.S. 389, 403 (1971); *Sims* v. *Apfel*, 120 S. Ct. 2080, 2083–85, 2086 (2000).) In addressing burdens of proof, it is critical to keep in mind that we are using a term in our nonadversarial administrative process that describes a process normally used in adversarial litigation. "Burdens of proof" operate differently in the disability determination process than in a traditional lawsuit.

In the administrative process, the burden of proof generally encompasses both a burden of production of evidence and a burden of persuasion about what the evidence shows. (*Director, OWCP* v. *Greenwich Collieries*, 512 U.S. 267, 273 (1994) (citing *Powers* v. *Russell*, 30 Mass. 69, 76 (1833).) You shoulder the dual burdens of production and persuasion through step 4 of the sequential evaluation process. (*See Bowen* v. *Yuckert*, 482 U.S. 137, 146 n.5 (1987).)

Although you generally bear the burden of proving disability throughout the sequential evaluation process, there is a limited shift in the burden of proof to us "only if the sequential evaluation process proceeds to the fifth step * * *." *Bowen* v. *Yuckert*, *id.* When the process proceeds to the fifth step, this means that you have demonstrated the existence of a severe impairment(s) resulting in an RFC that prevents the performance of past relevant work. When we decide that you are not disabled at step 5, this means that we have determined that there is other work you can do. To make this finding, we must provide evidence that demonstrates that jobs exist in significant numbers in the national economy that you can do, given your RFC, age, education, and work experience. In legal terms, this is a burden of production of evidence.

This burden shifts to us because, once you establish that you are unable to do any past relevant work, it would be unreasonable to require you to produce vocational evidence showing that there are no jobs in the national economy that you can perform, given your RFC. However, as stated by the Supreme Court, "It is not unreasonable to require the claimant, who is in a better position to provide information about his own medical condition, to do so." *Bowen* v. *Yuckert*, *id.* Thus, the only burden shift that occurs at step 5 is that we are required to prove that there is other work that you can do, given your RFC, age, education, and work experience. That shift does not place on us the burden of proving RFC.

When the burden of production of evidence shifts to us at step 5, our role is to obtain evidence to assist in impartially determining whether there is a significant number of jobs in the national economy you can do. Thus, we have a burden of proof even though our primary interest in the outcome of the claim is that it be decided correctly. As required by the Act, the ultimate burden of persuasion to prove disability, however, remains with you.

What Specific Changes Are We Making?

Sections 404.1501 and 416.901—Scope of Subpart

The second sentence of §§ 404.1501(g) and 416.901(j) is very long, and it includes a number of clauses. We are clarifying this sentence by numbering and listing the clauses and by revising some language. This includes clarifying, in new paragraphs (g)(2) and (j)(2), that assessment of RFC is our responsibility ("our residual functional capacity assessment") and that we use this assessment at steps 4 and 5 of the sequential evaluation process.

Sections 404.1505—Basic Definition of Disability, and 416.905—Basic Definition of Disability for Adults

We are revising the second sentence, deleting the third sentence in §§ 404.1505(a) and 416.905(a), redesignating the fourth sentence as the last sentence in § 404.1505(a) and adding four new sentences after the second sentence. The revisions in the second sentence clarify our longstanding policy that, when we consider your "previous work," we consider only work that was "past relevant work." Past relevant work is work that you performed within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn how to do it. (See Social Security Ruling (SSR) 82–62, "Titles II and XVI: A Disability Claimant's Capacity To Do Past Relevant Work, In General," Social Security Rulings, Cumulative Edition, 1982, p. 158.)

The previous third sentence explained that we consider your RFC, age, education, and work experience when we determine whether you can do other work; *i.e.*, at step 5 of the sequential evaluation process. We are replacing this sentence (and the fourth sentence in § 404.1505(a)) with four new sentences that provide more detail about this policy, including cross-references to our rules on the sequential evaluation process and RFC. They also clarify that we assess RFC once, and that we use this assessment at both step 4 and step 5 of the sequential evaluation process.

Sections 404.1512 and 416.912—Evidence of Your Impairment

We are making several revisions in these sections to clarify both your responsibility and our responsibility. We are changing the heading of these sections from "Evidence of your impairment" to "Evidence" because, as we discuss below, we are adding a provision that is not about evidence of your impairment; *i.e.*, a provision that is about our responsibility, at step 5 of the sequential evaluation process, to provide evidence of the existence of jobs.

We are making two changes in paragraph (c) to make it clearer. These are not substantive changes. First, we are adding a new second sentence to paragraph (c) to clarify, consistent with the remainder of the paragraph, that we may ask for non-medical information about functioning or about other non-medical issues in addition to medical information. Second, we are making a slight modification to the previous second sentence (now the third sentence) to make it clearer.

We also are adding a new paragraph (g), "Other work" explaining our burden at step 5. It explains that, in order to determine that you can make an adjustment to other work, we must provide evidence of the existence of work in the national economy that you can do, given your RFC and vocational factors. The new paragraph includes cross-references to regulations that explain how we evaluate your ability to do other work (§§ 404.1560 through 404.1569a and 416.960 through 416.969a, as appropriate).

The new paragraph also clarifies, by including the phrase "make an adjustment to other work," our longstanding interpretation of the statutory requirement that we consider your age, education, and work experience as well as your impairment(s) when we determine the ability to do other work at step 5.

Our use of the phrase "make an adjustment to other work" is not new. We used the phrase when we originally published proposed rules on the medical/vocational guidelines in appendix 2, subpart P of regulations part 404 (the grid rules) in 1978:

> If an individual cannot perform his or her past relevant work, but the individual's physical and mental capacities are consistent with his or her meeting the demands of a significant number of jobs in the national economy, and the individual has the vocational capabilities (considering his or her age, education, and past work experience) to make an adjustment to work different from that which the individual has performed, it will be determined that such an individual is not under a disability. However, if such an individual's physical and mental capacities in conjunction with his or her vocational capabilities (considering his or her age, education, and work experience) are not consistent with making an adjustment to work differing from that which the individual has performed in the past, it will be determined that such an individual is under a disability.

(See 43 FR 9284, 9288 (March 7, 1978).) We used the same language in the preamble when we published the final rules for the medical/vocational guidelines (see 43 FR 55349, 55352 (November 28, 1978)) and have used similar language in our Policy Interpretation Rulings (see, *e.g.*, SSR 83–11, "Titles II and XVI: Capability To Do Other Work—The Exertionally Based Medical-Vocational Rules Met," Social Security Rulings, Cumulative Edition, 1983, p. 184). More recently, we have used the same or similar language in publications that we use to help the public better understand whether they may qualify for disability benefits under the Act and our regulations. Therefore, we are now using this language in our regulations.

Sections 404.1520—Evaluation of Disability in General, and 416.920—Evaluation of Disability of Adults, in General

We are revising the language in paragraph (a) of these sections to make it clearer. We are dividing it into five separate paragraphs ((a)(1) through (a)(5)) with headings. We also are modifying the previous language to explain more clearly what the five steps of the sequential evaluation process are, and to reflect the provisions of new paragraph (e), which we discuss below.

We are adding a new paragraph (e) to this section to explain that, after we decide that you are not working and have a severe impairment(s) that does not meet or equal any listing, we will assess your RFC. We then use this RFC assessment at step 4 to determine whether you are able to do any past relevant work and, if we make a determination at step 5, we use the same RFC assessment in determining whether you can do any other work.

Because we are adding a new paragraph (e), we are redesignating previous paragraphs (e) and (f) as paragraphs (f) and (g). We are also revising these paragraphs to make changes consistent with the changes we are making to other rules already described. For example, they now refer to "our residual functional capacity assessment," to "past relevant work" (instead of "work you have done in the past" or "past work experience"), and to making "an adjustment to other work." Likewise, new paragraph (g) (previous paragraph (f)) clarifies that, at step 5, we consider "the same residual functional capacity assessment" we used at step 4. In new paragraph (f) (previous paragraph (e)), we are changing the phrase, "[i]f we cannot make a decision based on your current work activity or on medical facts alone," to "[i]f we cannot make a determination or decision at the first three steps of the sequential evaluation process," in order to make it clear that this language has always referred to determinations or decisions at steps 1, 2 and 3 of the sequential evaluation process. We are also making a comparable conforming change to §§ 404.1560(a) and 416.960(a). In the final rules we are adding new cross-references that were not in the proposed rules. These references are in §§ 404.1520(a)(4)(iv) and 416.920(a)(4)(iv) (referencing new §§ 404.1560(b) and 416.960(b)), and in §§ 404.1520(a)(4)(v) and 416.920(a)(4)(v) and §§ 404.1520(g) and 416.920(g) (referencing new §§ 404.1560(c) and 416.960(c)).

We are also revising the language that was in previous paragraph (f)(2) (new paragraph (g)(2)) to reflect that we are adding a second special medical-vocational profile under which we may find you disabled without referring to our grid rules. When we discuss changes we are making to §§ 404.1562 and 416.962 later in this document, we explain the second profile and our reasons for including it in the regulations. We are also modifying the language that was in previous paragraph (f)(2) (new paragraph (g)(2)) to delete the partial description of the first special medical-vocational profile because it was duplicative of information already contained in §§ 404.1562 and 416.962.

Finally, we are making a number of minor editorial changes to language that was in previous paragraphs (e) and (f) (new paragraphs (f) and (g)).

Sections 404.1545 and 416.945—Your Residual Functional Capacity

To make paragraph (a) easier to understand, we are revising the paragraph by breaking it into five numbered paragraphs ((a)(1) through (a)(5)) with headings. We also are reorganizing and clarifying some of the text.

In new paragraph (a)(3), "Evidence we use to assess your residual functional capacity," we are including a reference to §§ 404.1512(c) or 416.912(c) (as appropriate), which explains your burden to provide evidence of the existence and severity of your impairment(s) and how it affects your functioning, and our responsibility to develop a complete medical history and to arrange for a consultative examination(s) if necessary.

In new paragraph (a)(5), "How we will use our residual functional capacity assessment," we are explaining that we first use our RFC assessment to decide if you can do past relevant work and to explain that, if you cannot do past relevant work, or do not have any past relevant work, we use the same assessment to decide, at step 5, if you can make an adjustment to other work.

In addition, we are making other changes in paragraph (a) to clarify our rules. In new paragraph (a)(1), "Residual functional capacity assessment," we are adding a sentence to explain that RFC is the most you can do despite your limitations. This incorporates into our regulations a clarification that we currently provide in SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims," 61 FR 34474 (July 2, 1996). We are also making a minor change to the language that appeared in proposed paragraph (a)(2) to incorporate another clarification provided in that SSR. The new paragraph explains that, when we assess RFC, we will consider all medically determinable impairments of which we are aware, including impairments that are not "severe."

New paragraph (a)(3) clarifies the fifth, sixth, and seventh sentences of previous paragraph (a), which discusses the evidence we consider when assessing RFC. Our intent is to clarify three points about how we consider evidence of pain and other symptoms in our RFC assessments. First, we make clear that the phrase "observations by your treating and examining physicians or psychologists", that had appeared in previous paragraph (a), includes "statements about what you can still do," as discussed in §§ 404.1513 and 416.913. Second, we clarify that we consider descriptions and observations

of your impairment-related limitations from both medical and non-medical sources. Third, by removing the phrase "that are important in the diagnosis and treatment of your medical condition" from the fifth sentence of previous paragraph (a), we make clear that we consider all limitations that result from your medically determinable impairments, not just those that are important in the diagnosis and treatment of a medical condition. We also are deleting the entire eighth sentence of previous paragraph (a), which could have been misinterpreted to mean that we may or may not consider evidence that we already have. Because that is not our intent, and because these final rules make clear that we consider all relevant medical and nonmedical evidence in the case record, we believe this sentence is unnecessary.

We are revising the last sentence of previous paragraph (a) (now the last sentence of new (a)(5)(ii)) to remove the language that discusses our rules on RFC assessment in deciding whether your disability continues or ends. Those rules are already discussed in §§ 404.1594 and 416.994, and the new language simply directs you to those sections.

We made a minor editorial change to proposed §§ 404.1545(a)(5)(ii) and 416.945(a)(5)(ii) to clarify that we consider if you can make an adjustment to "any" other work. This change retains language from §§ 404.1561 and 416.961, being deleted by these rules. In § 416.945(a)(5)(ii), we also made a minor change to the next to the last sentence of the proposed rule by adding the word "assessment" to conform it to the language in proposed (and new) § 404.1545(a)(5)(ii).

We are making a number of other editorial changes to the previous rule. These changes are intended only to clarify the previous language and to reorganize the provisions into a more logical order.

Sections 404.1546 and 416.946—Responsibility for Assessing and Determining Your Residual Functional Capacity

We are revising the heading of these sections, which were previously titled "Responsibility for assessing and determining residual functional capacity." to "Responsibility for assessing your residual functional capacity." The two words "and determining" are superfluous. Our assessment is our determination about RFC.

Because of agency reorganizations, we are changing the title in the existing regulations in paragraph (b) of these sections, "Director of the Office of Disability Hearings" and in the proposed regulations in paragraph (b) of these section, "Associate Commissioner for Disability" to "Associate Commissioner for Disability Determinations" because this individual or his or her delegate is now responsible for assessing residual functional capacity in the disability hearing process.

The other changes we are making in this section are editorial. To make the section easier to understand, we are breaking up the previous single paragraph into three separate paragraphs that address the responsibilities of:

- State agency medical and psychological consultants (new paragraph (a)),
- State agency disability hearing officers (new paragraph (b)), and
- Administrative law judges and Appeals Council administrative appeals judges (new paragraph (c)).

We are making minor editorial changes to the wording in proposed paragraph (c) to make it clearer.

Sections 404.1560 and 416.960—When Your Vocational Background Will Be Considered

We are changing the previous heading, putting it into active voice, to make the meaning clearer.

We are also making changes in paragraphs (a) "General," (b) "Past relevant work," and (c) "Other work," consistent with the changes we are making in other sections, already noted above.

For clarity, we are revising paragraph (b) by dividing it into three paragraphs with headings, designated (b)(1) through (b)(3). We are adding a new sentence in new paragraph (b)(1), "Definition of past relevant work," defining "past relevant work" as work you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn how to do it. This definition is based on our longstanding interpretation in SSR 82–62, already noted above. We also are adding a cross-reference to § 404.1565(a) or 416.965(a), as appropriate, because these paragraphs explain how we determine the 15-year period.

In paragraph (b)(2), "Determining whether you can do your past relevant work," we are adding new language to explain how we obtain information that we need to determine, at step 4 of the sequential evaluation process, whether your impairment(s) prevents you from doing your past relevant work. The new language indicates that we ask you for information about work you have done in the past, and that we may ask other people who know about your past work. This is consistent with the provisions in §§ 404.1565(b) and 416.965(b), and we are including a cross-reference to each of those sections, as appropriate, in new paragraph(b)(2).

We also are explaining in new paragraph(b)(2) that we may use the services of VEs or VSs, or other resources such as the "Dictionary of Occupational Titles," to obtain evidence that we need to help us determine whether you can do your past relevant work. This is a longstanding policy interpretation set out in SSR 82–61, "Titles II and XVI: Past Relevant Work—The Particular Job or the Occupation As Generally Performed," Social Security Rulings, Cumulative Edition, 1982, p. 185.

In response to a public comment, we are making changes to the language that appeared in proposed paragraph (b)(2) to clarify the role of a VE at step 4 and to clarify that, if we obtain additional evidence at step 4, that evidence is used to help our adjudicators decide if an individual can do his or her past relevant work.

We are editing the second sentence of previous paragraph (b), making it into two sentences for clarity, and redesignating it as new paragraph (b)(3), "If you can do your past relevant work." Based on a public comment we received in response to the notice of proposed rulemaking, we are also revising proposed paragraph (b)(3) to clarify that, in determining whether you have the RFC to do your past relevant work, we do not consider whether the past relevant work exists in significant numbers in the national economy. In response to this comment, we are also making related clarifying changes to proposed paragraphs (b)(3) and (c) and to §§ 404.1569a and 416.969a.

We are modifying previous paragraph (c) to make clear that, if we decide at step 5 that you are not disabled, we are responsible for providing evidence of other work you can do (consistent with new §§ 404.1512(g) and 416.912(g)). The modified paragraph also makes clear that we are not responsible for providing additional evidence of RFC or for making another RFC assessment at step 5. This is because we use the same RFC assessment at step 5 that we made before we considered whether you have the RFC to do past relevant work at step 4, a point in our process at which you have the burdens of production and persuasion.

We are also making minor changes to the language that appeared in proposed paragraph (c) to conform it with the new language in §§ 404.1520 and 416.920

which explains that at step 5 we consider whether you are able to "adjust to" any other work.

Sections 404.1561 and 416.961—Your Ability To Do Work Depends Upon Your Residual Functional Capacity

We are removing these sections because their provisions are incorporated into other new and existing rules. We are making additional revisions to the language that appeared in proposed rules in §§ 404.1520(g) and 416.920(g), 404.1545(a)(5)(ii) and 416.945(a)(5)(ii), and 404.1560(c)(1) and 416.960(c)(1) to better reflect the provisions of deleted §§ 404.1561 and 416.961.

Sections 404.1562 and 416.962—If You Have Done Only Arduous Unskilled Physical Labor

We are revising and updating the headings of these sections in order to reflect changes we are making to their content.

First Medical-Vocational Profile

Previously, §§ 404.1562 and 416.962 described one special medical-vocational profile. Under that profile, if you have only a marginal education and work experience of 35 years or more during which you did arduous unskilled labor, and you are not working and are no longer able to do this kind of work because of a severe impairment, we will find that you are disabled. We consider this special medical-vocational profile at step 5 of the sequential evaluation process, before we consider the grid rules. We do this because we have decided that, if you match this profile, you do not have the ability to adjust to other work (*i.e.*, you are disabled)—regardless of your age. If you meet this profile, and are age 60 or over, we would usually find you disabled using our grid rules. However, if you are under age 60, you might not qualify without this special rule.

Although we have changed the language somewhat over the years, this medical-vocational profile has been in our regulations since 1960 (when it was at § 404.1502(c)). However, the language in previous §§ 404.1562 and 416.962 needed to be updated to be consistent with our current rules and policies. For example, the last sentence of the paragraph before the example spoke about the ability to do other work "on a full-time or reasonably regular part-time basis." However, in SSR 96–8p, we explain that at step 5 we consider only full-time work when we consider other work you are able to do. (See 61 FR 34474, 34475 (July 2, 1996).) Other provisions in the medical-vocational profile have been made obsolete or been superseded by more recent regulations, such as our rules on doing substantial gainful activity at step 1 of the sequential evaluation process, and our rules on transferability of skills in §§ 404.1568(d)(4) and 416.968(d)(4).

We therefore are deleting the second and third sentences of the previous sections and revising the example. These changes only make the rule more consistent with our current policies and will not affect anyone whom we would have found disabled under the previous rule. We are also changing the occupation title that appeared in the proposed example to paragraph (a) from "miner" to "miner's helper" because there are some highly skilled mining occupations that would not meet the qualifications for this medical-vocational profile.

We are designating all the language discussing this first medical-vocational profile as paragraph (a) of revised §§ 404.1562 and 416.962 in order to distinguish it from the second medical-vocational profile in new paragraph (b), discussed below. We also are making a conforming change to the third sentence of section 203.00(b) in appendix 2 to subpart P of part 404, to reflect these changes.

Second Medical-Vocational Profile

We are adding to §§ 404.1562 and 416.962 a second special medical-vocational profile that we have been using since 1975, but that has not been in our regulations. We are designating the language discussing the second medical-vocational profile as paragraph (b). Under this profile, we will find you disabled if you:

- Are of "advanced age" (*i.e.*, are at least 55 years old);
- Have a "limited" education or less (*i.e.*, generally, an 11th grade education or less—see §§ 404.1564(b)(3) and 916.964(b)(3));
- Have no past relevant work (*i.e.*, either no work experience or no work experience that satisfies our definition of "past relevant work"); and
- Have a "severe," medically determinable impairment(s).

If you have these characteristics, we would usually find you disabled using our grid rules. However, if you have solely "nonexertional" limitations (see § 200.00(e) of appendix 2 to subpart p of part 404), you might not qualify without this special profile.

The original instruction for this profile dates back to a policy decision of July 7, 1975. In 1982, we incorporated this profile into SSR 82–63, "Titles II and XVI: Medical-Vocational Profiles Showing an Inability To Make an Adjustment to Other Work" (see Social Security Rulings, Cumulative Edition, 1982, page 205). Therefore, the new rule incorporates our longstanding policy interpretation into our regulations.

We also are clarifying in paragraph (b) and other related rules that, if you meet the second medical-vocational profile, we do not have to assess RFC. This is because, once we have determined that you have a "severe" impairment(s) and that you meet the other criteria in the profile, we will find you disabled, and we will not need an RFC assessment. We recognize that, in most cases, our normal sequential evaluation process would require us to do an RFC assessment before we determine that you have no past relevant work. However, because you must only have a "severe" impairment(s) under this profile, and your advanced age, limited education, and lack of past relevant work should be readily apparent from the case record, an RFC assessment is unnecessary.

Sections 404.1563 and 416.963—Your Age as a Vocational Factor.

We are making only editorial changes to the second sentence of paragraph (a).

Sections 404.1569a and 416.969a—Exertional and Nonexertional Limitations

We are deleting the seventh sentence of paragraph (a), "General," and adding three new sentences in its place. These changes are consistent with other changes discussed above.

We are making a minor change to proposed §§ 404.1569a and 416.969a at the end of the third new sentence to refer to, "any other work which exists in the national economy." We believe that this revision, which retains more of the language from these sections prior to these amendments, helps clarify that "other work", as distinguished from a claimant's previous work, must exist in significant numbers in the national economy.

Sections 404.1594—How We Will Determine Whether Your Disability Continues or Ends, and 416.994—How We Will Determine Whether Your Disability Continues or Ends, Disabled Adults

We are revising the first sentence of § 404.1594(f)(7) and § 416.994(b)(5)(vi), which contain essentially the same language, in order to update the cross-references. This is necessary due to the changes we are making to §§ 404.1560 and 416.960 and the removal of §§ 404.1561 and 416.961.

Section 203.00, Appendix 2 to Subpart P of Part 404

As already noted, we are revising the third sentence of section 203.00(b) to conform to the changes in new §§ 404.1562(a) and 416.962(a).

Public Comments: We published these regulatory provisions in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on June 11, 2002 (67 FR 39904). We provided the public a 60-day comment period. The comment period closed on August 12, 2002. We heard from eight commenters in response to this notice. The commenters included attorneys, an organization whose members include attorneys and others who represent the interest of disabled persons, a State agency that makes disability determinations on our behalf, and individuals who did not identify a particular affiliation. A summary of the comments we received and our responses to the comments are set out below.

Because some of the comments were detailed and lengthy, we have condensed, summarized, or paraphrased them. We have, however, tried to summarize the commenters'' views accurately and to respond to all of the significant issues raised by the commenters that are within the scope of these rules.

Comment: One commenter expressed concerns about whether the proposed revisions would apply to all cases or if they would only apply to cases filed after the effective date of the revisions. This commenter stated that it would be preferable to apply the new rules only to cases filed after the effective date of the revisions.

Response: These new rules, as stated in **DATES**, above, will be effective 30 days after the date published in the **Federal Register**. As is our usual practice when we amend our regulations, the new rules will apply to all administrative determinations and decisions made on or after that effective date, regardless of the date on which an application was filed.

Comment: This same commenter stated that although the burden is on the claimant to produce evidence to show disability, the 5th Circuit Court of Appeals has ruled that the Commissioner has the burden of ensuring that evidentiary gaps are filled and the record is complete. The commenter stated that, if an administrative law judge (ALJ) is not satisfied with the development of the record, he or she should "reset the case" to complete the record if possible, rather than issue an unfavorable decision.

Response: We believe that our existing regulations (§§ 404.1512(d) and 416.912(d)) and the new rules at §§ 404.1545(a)(3) and 416.945(a)(3) address the commenter's concerns, and clearly explain our responsibility to develop the record and to assist claimants in obtaining evidence. Before making a determination that an individual is not disabled, our adjudicators, including ALJs, will develop the individual's complete medical history.

Comment: One commenter stated that the proposed rules should clarify at § 404.1560 that past relevant work must exist in the national economy in order to be considered as past relevant work for the purpose of denying benefits under the sequential evaluation process. He stated that finding an individual can perform past work that no longer exists is not in conformity with the Social Security Act's requirement that, to be considered gainful employment, work must exist in the national economy.

Response: We do not agree with the commenter's interpretation of the Social Security Act. Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Act provide that:

> An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence * * *, "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

In this excerpt, the phrase "which exists in the national economy" relates to "any other kind of substantial gainful activity" (*i.e.*, work other than an individual's previous work). It does not relate to "previous work." Thus, the Act does not require that an individual's previous work exist in significant numbers in the national economy. (*See* SSR 82–40, "Titles II and XVI: The Vocational Relevance of the Past Work Performed in a Foreign Country.") Consequently, we do not consider job prevalence at step 4 of sequential evaluation. Neither do we consider an individual's age, education, and work experience. The issue at step 4 is whether or not an individual's impairment(s) prevents him or her from being able to perform the job duties of his or her past relevant work. If he or she has the residual functional capacity to still do his or her past relevant work, we will make a finding of not disabled at step 4 and deny the claim whether or not that previous work exists in significant numbers in the national economy. In response to this comment, we are making additional changes in §§ 404.1560 and 416.960 to ensure that other members of the public do not misunderstand this.

Comment: One commenter stated that the proposed rules would not be a clarification of our rules, but a change. He stated that the proposed rules would force claimants to prove at step 4 that they cannot do other work (their past job, as performed in the national economy) against testimony from a trained VE. He stated that it is not fair that the claimant would have the burden of proof at step 4, yet have no ability to rebut testimony from a trained expert, and that VE testimony and all opinion evidence regarding other work should be limited to step 5 where the Commissioner has the burden of proof.

Response: We do not agree that these new rules represent a change in policy. Our longstanding policy is that evaluation of ability to do past relevant work at step 4 involves two aspects. We will find that a claimant is not disabled at this step if he or she retains the physical and mental capacity to perform either the functional demands and job duties of a particular past relevant job (*i.e.*, the job as the individual actually performed it) or the functional demands and job duties of the occupation as generally required by employers throughout the national economy. (*See* SSR 82–61: "Titles II and XVI: Past Relevant Work—The Particular Job or the Occupation as Generally Performed.") Thus, evaluation of capacity to do past relevant work as generally performed in the national economy is not, as the commenter suggests, an assessment of ability to do "other work" (*i.e.*, step 5 of sequential evaluation). In addition, allowing for expert testimony on the issue of how work is generally performed in the national economy is not unfair. VE testimony can be examined and rebutted at any step of sequential evaluation.

Comment: One commenter, who generally supported the proposed rules, recommended that the new rules clarify that adjudicators may obtain VE testimony about past relevant work, but that such testimony is not required. The commenter also suggested that we clarify that the VE's role at step 4 should be limited to explaining how the claimant's past relevant work is normally performed in the national economy. The commenter stated that the VE should not determine whether

the claimant's description of past relevant work is credible or whether the claimant can perform past relevant work, either as it is normally performed in the national economy or as he or she actually previously performed it. According to the commenter, it is the administrative law judge's, not the VE's, duty to determine whether a claimant can continue to perform past work. The commenter also suggested that we include a cross-reference to §§ 404.1560(c) and 416.960(c) in several sections of the regulations that address the concept of "other work."

Response: We agree with the suggestion about adding cross-references and have added them to new § 404.1520(a)(4)(iv) and (v) and § 416.920(a)(4)(iv) and (v). We also agree that VE testimony is not a requirement at step 4, but that VE testimony may be obtained at step 4 to provide evidence to help us determine whether or not an individual can do his or her past relevant work. We do not agree that the VE is or should be limited to testifying about how an individual's past relevant work is normally performed in the national economy. Although we agree that the ultimate responsibility for making the necessary findings at step 4 rests with our adjudicators, we believe that it is appropriate for our adjudicators to consider evidence from a VE, VS, or other vocational resource (along with the other evidence in the case record) on a broad range of step 4 issues to help them decide if an individual can do his or her past relevant work. A VE or VS may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, as he or she actually performed it or as it is generally performed. Such testimony may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a VE or VS may offer expert opinion testimony in response to a hypothetical question about whether a person with the physical and mental limitations (as determined by our adjudicator) imposed by the claimant's medical impairments can meet the demands of the claimant's previous work, either as the claimant actually performed it in the past or as that work is generally performed. In response to this comment about the role of the VE at step 4, we are making additional revisions to §§ 404.1560(b)(2) and 416.960(b)(2) to clarify our policy in this regard.

Comment: One commenter stated that a VE should not play any role at all in the disability process.

Response: The commenter did not explain why she stated that VEs should play no role in the disability claims adjudication process. We do not agree, and we made no changes in our longstanding policy based on this comment.

Several of the comments we received were outside the scope of the proposed rules. Two commenters asked us to provide additional clarification about aspects of step 5 of sequential evaluation that are not within the scope of these rules. Another commenter asked about claimants being able to record hearings before an ALJ. One commenter provided observations relating to her own claim for benefits. Because these comments were outside the scope of these rules, we are not addressing them.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain amended reporting requirements at §§ 404.1560 and 416.960 of the final regulation. The public reporting burden is accounted for in the Information Collection Request for the various forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burden referenced in these rules because the rules were not considered during the clearance of the form.

SSA solicited public comment in the notice of proposed rulemaking and subsequently received and incorporated suggestions from the public that have resulted in revision to these two sections of the regulation. As a result, SSA is soliciting comments in the final rule on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. While these rules will be effective September 25, 2003, these burdens will not be effective until cleared by OMB.

An Information Collection Request has been submitted to OMB for clearance. Comments may be mailed or faxed to the Office of Management and Budget and the Social Security Administration at the following addresses/fax numbers:

Office of Management and Budget, Attn: OMB Desk Officer for SSA, Rm. 10235, New Executive Office Building, 725 17th St., NW., Washington, DC 20503, Fax No. 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax No. 410–965–6400.

Comments can be received up to 30 days after publication of this notice. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410–965–0454.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: May 22, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subpart P of part 404 and subpart I of part 416 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950——)

Subpart P—[Amended]

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

■ 2. Amend § 404.1501 by revising paragraph (g) to read as follows:

§ 404.1501 Scope of subpart.

* * * * *

(g) Our rules on vocational considerations are in §§ 404.1560 through 404.1569a. We explain in these rules—

(1) When we must consider vocational factors along with the medical evidence;

(2) How we use our residual functional capacity assessment to determine if you can still do your past relevant work or other work;

(3) How we consider the vocational factors of age, education, and work experience;

(4) What we mean by "work which exists in the national economy";

(5) How we consider the exertional, nonexertional, and skill requirements of work, and when we will consider the limitations or restrictions that result from your impairment(s) and related symptoms to be exertional, nonexertional, or a combination of both; and

(6) How we use the Medical-Vocational Guidelines in appendix 2 of this subpart.

* * * * *

■ 3. Amend § 404.1505(a), by revising the second sentence, removing the third sentence, redesignating the fourth sentence as the last sentence, and adding four new sentences after the second sentence to read as follows:

§ 404.1505 Basic definition of disability.

(a) * * * To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (*see* § 404.1560(b)) or any other substantial gainful work that exists in the national economy. If your severe impairment(s) does not meet or medically equal a listing in appendix 1, we will assess your residual functional capacity as provided in §§ 404.1520(e) and 404.1545. (*See* §§ 404.1520(g)(2) and 404.1562 for an exception to this rule.) We will use this residual functional capacity assessment to determine if you can do your past relevant work. If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work. * * *

* * * * *

■ 4. Amend § 404.1512 by revising the section heading, revising paragraph (c), and adding a new paragraph (g) to read as follows:

§ 404.1512 Evidence.

* * * * *

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. You must provide evidence showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your case. If we ask you, you must provide evidence about:

(1) Your age;

(2) Your education and training;

(3) Your work experience;

(4) Your daily activities both before and after the date you say that you became disabled;

(5) Your efforts to work; and

(6) Any other factors showing how your impairment(s) affects your ability to work. In §§ 404.1560 through 404.1569, we discuss in more detail the evidence we need when we consider vocational factors.

* * * * *

(g) *Other work.* In order to determine under § 404.1520(g) that you are able to make an adjustment to other work, we must provide evidence about the existence of work in the national economy that you can do (*see* §§ 404.1560 through 404.1569a), given your residual functional capacity (which we have already assessed, as described in § 404.1520(e)), age, education, and work experience.

■ 5. Amend § 404.1520 as follows:

■ a. By revising paragraph (a),

■ b. By redesignating paragraphs (e) and (f) as paragraphs (f) and (g),

■ c. By adding a new paragraph (e) and

■ d. By revising newly redesignated paragraphs (f) and (g).

The revisions and additions read as follows:

§ 404.1520 Evaluation of disability in general.

(a) *General*—(1) *Purpose of this section.* This section explains the five-step sequential evaluation process we use to decide whether you are disabled, as defined in § 404.1505.

(2) *Applicability of these rules.* These rules apply to you if you file an application for a period of disability or disability insurance benefits (or both) or for child's insurance benefits based on disability. They also apply if you file an application for widow's or widower's benefits based on disability for months after December 1990. (*See* § 404.1505(a).)

(3) *Evidence considered.* We will consider all evidence in your case record when we make a determination or decision whether you are disabled.

(4) *The five-step sequential evaluation process.* The sequential evaluation process is a series of five "steps" that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. (*See* paragraph (e) of this section.) We use this residual functional capacity assessment at both step four and step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. (*See* paragraph (b) of this section.)

(ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a severe medically determinable physical or mental impairment that meets the duration requirement in § 404.1509, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. (*See* paragraph (c) of this section.)

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 of this subpart and meets the duration requirement, we will find that you are disabled. (*See* paragraph (d) of this section.)

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. (*See* paragraph (f) of this section and § 404.1560(b).)

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to

other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. (*See* paragraph (g) of this section and § 404.1560(c).)

(5) *When you are already receiving disability benefits.* If you are already receiving disability benefits, we will use a different sequential evaluation process to decide whether you continue to be disabled. We explain this process in § 404.1594(f).

* * * * *

(e) *When your impairment(s) does not meet or equal a listed impairment.* If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record, as explained in § 404.1545. (See paragraph (g)(2) of this section and § 404.1562 for an exception to this rule.) We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work (paragraph (f) of this section) and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can adjust to other work (paragraph (g) of this section).

(f) *Your impairment(s) must prevent you from doing your past relevant work.* If we cannot make a determination or decision at the first three steps of the sequential evaluation process, we will compare our residual functional capacity assessment, which we made under paragraph (e) of this section, with the physical and mental demands of your past relevant work. (See § 404.1560(b).) If you can still do this kind of work, we will find that you are not disabled.

(g) *Your impairment(s) must prevent you from making an adjustment to any other work.* (1) If we find that you cannot do your past relevant work because you have a severe impairment(s) (or you do not have any past relevant work), we will consider the same residual functional capacity assessment we made under paragraph (e) of this section, together with your vocational factors (your age, education, and work experience) to determine if you can make an adjustment to other work. (See § 404.1560(c).) If you can make an adjustment to other work, we will find you not disabled. If you cannot, we will find you disabled.

(2) We use different rules if you meet one of the two special medical-vocational profiles described in § 404.1562. If you meet one of those profiles, we will find that you cannot make an adjustment to other work, and that you are disabled.

■ 6. Amend § 404.1545 by revising paragraph (a) to read as follows:

§ 404.1545 Your residual functional capacity.

(a) *General*—(1) *Residual functional capacity assessment.* Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is the most you can still do despite your limitations. We will assess your residual functional capacity based on all the relevant evidence in your case record. (See § 404.1546.)

(2) *If you have more than one impairment.* We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments that are not "severe," as explained in §§ 404.1520(c), 404.1521, and 404.1523, when we assess your residual functional capacity. (See paragraph (e) of this section.)

(3) *Evidence we use to assess your residual functional capacity.* We will assess your residual functional capacity based on all of the relevant medical and other evidence. In general, you are responsible for providing the evidence we will use to make a finding about your residual functional capacity. (*See* § 404.1512(c).) However, before we make a determination that you are not disabled, we are responsible for developing your complete medical history, including arranging for a consultative examination(s) if necessary, and making every reasonable effort to help you get medical reports from your own medical sources. (*See* §§ 404.1512(d) through (f).) We will consider any statements about what you can still do that have been provided by medical sources, whether or not they are based on formal medical examinations. (*See* § 404.1513.) We will also consider descriptions and observations of your limitations from your impairment(s), including limitations that result from your symptoms, such as pain, provided by you, your family, neighbors, friends, or other persons. (*See* paragraph (e) of this section and § 404.1529.)

(4) *What we will consider in assessing residual functional capacity.* When we assess your residual functional capacity, we will consider your ability to meet the physical, mental, sensory, and other requirements of work, as described in paragraphs (b), (c), and (d) of this section.

(5) *How we will use our residual functional capacity assessment.*

(i) We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. (*See* §§ 404.1520(f) and 404.1560(b).)

(ii) If we find that you cannot do your past relevant work (or you do not have any past relevant work), we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can make an adjustment to any other work that exists in the national economy. (*See* §§ 404.1520(g) and 404.1566.) At this step, we will not use our assessment of your residual functional capacity alone to decide if you are disabled. We will use the guidelines in §§ 404.1560 through 404.1569a, and consider our residual functional capacity assessment together with the information about your vocational background to make our disability determination or decision. For our rules on residual functional capacity assessment in deciding whether your disability continues or ends, *see* § 404.1594.

* * * * *

■ 7. Revise § 404.1546 to read as follows:

§ 404.1546 Responsibility for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency makes the disability determination, a State agency medical or psychological consultant(s) is responsible for assessing your residual functional capacity.

(b) *Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under § 404.914, a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under § 404.918, the Associate Commissioner for the Office of Disability Determinations or his or her delegate is responsible for assessing your residual functional capacity.

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* If your case is at the administrative law judge hearing level under § 404.929 or at the Appeals Council review level under § 404.967, the administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible

for assessing your residual functional capacity.

■ 8. Revise § 404.1560 to read as follows:

§ 404.1560 When we will consider your vocational background.

(a) *General.* If you are applying for a period of disability, or disability insurance benefits as a disabled worker, or child's insurance benefits based on disability which began before age 22, or widow's or widower's benefits based on disability for months after December 1990, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (*see* § 404.1520), we will consider your residual functional capacity together with your vocational background, as discussed in paragraphs (b) and (c) of this section.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. (*See* § 404.1565(a).)

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. (*See* § 404.1565(b).) We may use the services of vocational experts or vocational specialists, or other resources, such as the "Dictionary of Occupational Titles" and its companion volumes and supplements, published by the Department of Labor, to obtain evidence we need to help us determine whether you can do your past relevant work, given your residual functional capacity. A vocational expert or specialist may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, either as the claimant actually performed it or as generally performed in the national economy. Such evidence may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a vocational expert or specialist may offer expert opinion testimony in response to a hypothetical question about whether a person with the physical and mental limitations imposed by the claimant's medical impairment(s) can meet the demands of the claimant's previous work, either as the claimant actually performed it or as generally performed in the national economy.

(3) *If you can do your past relevant work.* If we find that you have the residual functional capacity to do your past relevant work, we will determine that you can still do your past work and are not disabled. We will not consider your vocational factors of age, education, and work experience or whether your past relevant work exists in significant numbers in the national economy.

(c) *Other work.* (1) If we find that your residual functional capacity is not enough to enable you to do any of your past relevant work, we will use the same residual functional capacity assessment we used to decide if you could do your past relevant work when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and your vocational factors of age, education, and work experience. Any other work (jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

(2) In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we are responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

§ 404.1561 [Removed]

■ 9. Remove § 404.1561.

■ 10. Revise § 404.1562 to read as follows:

§ 404.1562 Medical-vocational profiles showing an inability to make an adjustment to other work.

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (*see* § 404.1564) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (*see* §§ 404.1520(c), 404.1521, and 404.1523), we will consider you unable to do lighter work, and therefore, disabled.

Example to paragraph (a): B is a 58-year-old miner's helper with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a "severe" combination of impairments that prevents B from performing his past relevant work. Under these circumstances, we will find that B is disabled.

(b) *If you are at least 55 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (*see* §§ 404.1520(c), 404.1521, and 404.1523), are of advanced age (age 55 or older, *see* § 404.1563), have a limited education or less (*see* § 404.1564), and have no past relevant work experience (*see* § 404.1565), we will find you disabled. If the evidence shows that you meet this profile, we will not need to assess your residual functional capacity or consider the rules in appendix 2 to this subpart.

■ 11. Amend § 404.1563 by revising the second sentence of paragraph (a) and adding a new sentence after the revised second sentence to read as follows:

§ 404.1563 Your age as a vocational factor.

(a) *General.* * * * When we decide whether you are disabled under § 404.1520(g)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. * * *

■ 12. Amend § 404.1569a by removing the seventh sentence of paragraph (a), redesignating the eighth sentence as the last sentence, and adding three new sentences after the sixth sentence to read as follows:

§ 404.1569a Exertional and nonexertional limitations.

(a) *General.* * * * When we decide whether you can do your past relevant work (*see* §§ 404.1520(f) and 404.1594(f)(7)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to any other work which exists in the national economy. (*See* §§ 404.1520(g) and 404.1594(f)(8).)

* * *

* * * * *

■ 13. Amend § 404.1594 by revising the first sentence of paragraph (f)(7) to read as follows:

§ 404.1594 How we will determine whether your disability continues or ends.

* * * * *

(f) * * *

(7) If your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with § 404.1560. * * *

* * * * *

■ 14. Amend § 203.00 in appendix 2 to subpart P of part 404 by revising the section heading, revising the third sentence of paragraph (b), and adding a new fourth sentence to read as follows:

Appendix 2 to Subpart P of Part 404—Medical-Vocational Guidelines

* * * * *

§ 203.00 Maximum sustained work capability limited to medium work as a result of severe medically determinable impairment(s).

* * * * *

(b) * * * However, we will find that an individual who (1) has a marginal education, (2) has work experience of 35 years or more during which he or she did only arduous unskilled physical labor, (3) is not working, and (4) is no longer able to do this kind of work because of a severe impairment(s) is disabled, even though the individual is able to do medium work. (*See* § 404.1562(a) in this subpart and § 416.962(a) in subpart I of part 416.)

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart I—[Amended]

■ 15. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a) and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

■ 16. Amend § 416.901 by revising paragraph (j) to read as follows:

§ 416.901 Scope of subpart.

* * * * *

(j) Our rules on vocational considerations are in §§ 416.960 through 416.969a. We explain in these rules—

(1) When we must consider vocational factors along with the medical evidence;

(2) How we use our residual functional capacity assessment to determine if you can still do your past relevant work or other work;

(3) How we consider the vocational factors of age, education, and work experience;

(4) What we mean by "work which exists in the national economy";

(5) How we consider the exertional, nonexertional, and skill requirements of work, and when we will consider the limitations or restrictions that result from your impairment(s) and related symptoms to be exertional, nonexertional, or a combination of both; and

(6) How we use the Medical-Vocational Guidelines in appendix 2 of subpart P of part 404 of this chapter.

* * * * *

■ 17. Amend § 416.905(a), by revising the second sentence, removing the third sentence, and adding four new sentences after the second sentence to read as follows:

§ 416.905 Basic definition of disability for adults.

(a) * * * To meet this definition, you must have a severe impairment(s) that makes you unable to do your past relevant work (see § 416.960(b)) or any other substantial gainful work that exists in the national economy. If your severe impairment(s) does not meet or medically equal a listing in appendix 1 to subpart P of part 404 of this chapter, we will assess your residual functional capacity as provided in §§ 416.920(e) and 416.945. (*See* § 416.920(g)(2) and 416.962 for an exception to this rule.) We will use this residual functional capacity assessment to determine if you can do your past relevant work. If we find that you cannot do your past relevant work, we will use the same residual functional capacity assessment and your vocational factors of age, education, and work experience to determine if you can do other work.

* * * * *

■ 18. Amend § 416.912 by revising the section heading, revising paragraph (c), and adding a new paragraph (g) to read as follows:

§ 416.912 Evidence.

* * * * *

(c) *Your responsibility.* You must provide medical evidence showing that you have an impairment(s) and how severe it is during the time you say that you are disabled. You must provide evidence showing how your impairment(s) affects your functioning during the time you say that you are disabled, and any other information that we need to decide your case. If we ask you, you must provide evidence about:

(1) Your age;

(2) Your education and training;

(3) Your work experience;

(4) Your daily activities both before and after the date you say that you became disabled;

(5) Your efforts to work; and

(6) Any other factors showing how your impairment(s) affects your ability to work, or, if you are a child, your functioning. In §§ 416.960 through 416.969, we discuss in more detail the evidence we need when we consider vocational factors.

* * * * *

(g) *Other work.* In order to determine under § 416.920(g) that you are able to make an adjustment to other work, we must provide evidence about the existence of work in the national economy that you can do (*see* §§ 416.960 through 416.969a), given your residual functional capacity (which we have already assessed, as described in § 416.920(e)), age, education, and work experience.

■ 19. Amend § 416.920 as follows:

■ a. By revising paragraph (a),

■ b. By redesignating paragraphs (e) and (f) as paragraphs (f) and (g),

■ c. By adding a new paragraph (e) and

■ d. By revising newly redesignated paragraphs (f) and (g).

The revisions and addition read as follows:

§ 416.920 Evaluation of disability of adults, in general.

(a) *General*—(1) *Purpose of this section.* This section explains the five-step sequential evaluation process we use to decide whether you are disabled, as defined in § 416.905.

(2) *Applicability of these rules.* These rules apply to you if you are age 18 or older and you file an application for Supplemental Security Income disability benefits.

(3) *Evidence considered.* We will consider all evidence in your case record when we make a determination or decision whether you are disabled.

(4) *The five-step sequential evaluation process.* The sequential evaluation process is a series of five "steps" that we follow in a set order. If we can find that you are disabled or not disabled at a step, we make our determination or decision and we do not go on to the next step. If we cannot find that you are disabled or not disabled at a step, we go on to the next step. Before we go from step three to step four, we assess your residual functional capacity. (*See* paragraph (e) of this section.) We use this residual functional capacity assessment at both step four and at step five when we evaluate your claim at these steps. These are the five steps we follow:

(i) At the first step, we consider your work activity, if any. If you are doing substantial gainful activity, we will find that you are not disabled. (*See* paragraph (b) of this section.)

(ii) At the second step, we consider the medical severity of your impairment(s). If you do not have a

severe medically determinable physical or mental impairment that meets the duration requirement in § 416.909, or a combination of impairments that is severe and meets the duration requirement, we will find that you are not disabled. (*See* paragraph (c) of this section.)

(iii) At the third step, we also consider the medical severity of your impairment(s). If you have an impairment(s) that meets or equals one of our listings in appendix 1 to subpart P of part 404 of this chapter and meets the duration requirement, we will find that you are disabled. (*See* paragraph (d) of this section.)

(iv) At the fourth step, we consider our assessment of your residual functional capacity and your past relevant work. If you can still do your past relevant work, we will find that you are not disabled. (See paragraph (f) of this section and § 416.960(b).)

(v) At the fifth and last step, we consider our assessment of your residual functional capacity and your age, education, and work experience to see if you can make an adjustment to other work. If you can make an adjustment to other work, we will find that you are not disabled. If you cannot make an adjustment to other work, we will find that you are disabled. (See paragraph (g) of this section and § 416.960(c).)

(5) *When you are already receiving disability benefits.* If you are already receiving disability benefits, we will use a different sequential evaluation process to decide whether you continue to be disabled. We explain this process in § 416.994(b)(5).

* * * * * *

(e) *When your impairment(s) does not meet or equal a listed impairment.* If your impairment(s) does not meet or equal a listed impairment, we will assess and make a finding about your residual functional capacity based on all the relevant medical and other evidence in your case record, as explained in § 416.945. (See paragraph (g)(2) of this section and § 416.962 for an exception to this rule.) We use our residual functional capacity assessment at the fourth step of the sequential evaluation process to determine if you can do your past relevant work (paragraph (f) of this section) and at the fifth step of the sequential evaluation process (if the evaluation proceeds to this step) to determine if you can adjust to other work (paragraph (g) of this section).

(f) *Your impairment(s) must prevent you from doing your past relevant work.* If we cannot make a determination or decision at the first three steps of the sequential evaluation process, we will compare our residual functional capacity assessment, which we made under paragraph (e) of this section, with the physical and mental demands of your past relevant work. (*See* § 416.960(b).) If you can still do this kind of work, we will find that you are not disabled.

(g) *Your impairment(s) must prevent you from making an adjustment to any other work.* (1) If we find that you cannot do your past relevant work because you have a severe impairment(s) (or you do not have any past relevant work), we will consider the same residual functional capacity assessment we made under paragraph (e) of this section, together with your vocational factors (your age, education, and work experience) to determine if you can make an adjustment to other work. (*See* § 416.960(c).) If you can make an adjustment to other work, we will find you not disabled. If you cannot, we will find you disabled.

(2) We use different rules if you meet one of the two special medical-vocational profiles described in § 416.962. If you meet one of those profiles, we will find that you cannot make an adjustment to other work, and that you are disabled.

■ 20. Amend § 416.945 by revising paragraph (a) to read as follows:

§ 416.945 Your residual functional capacity.

(a) *General*—(1) *Residual functional capacity assessment.* Your impairment(s), and any related symptoms, such as pain, may cause physical and mental limitations that affect what you can do in a work setting. Your residual functional capacity is the most you can still do despite your limitations. We will assess your residual functional capacity based on all the relevant evidence in your case record. (*See* § 416.946.)

(2) *If you have more than one impairment.* We will consider all of your medically determinable impairments of which we are aware, including your medically determinable impairments that are not "severe," as explained in §§ 416.920(c), 416.921, and 416.923, when we assess your residual functional capacity. (*See* paragraph (e) of this section.)

(3) *Evidence we use to assess your residual functional capacity.* We will assess your residual functional capacity based on all of the relevant medical and other evidence. In general, you are responsible for providing the evidence we will use to make a finding about your residual functional capacity. (*See* § 416.912(c).) However, before we make a determination that you are not disabled, we are responsible for developing your complete medical history, including arranging for a consultative examination(s) if necessary, and making every reasonable effort to help you get medical reports from your own medical sources. (*See* §§ 416.912(d) through (f).) We will consider any statements about what you can still do that have been provided by medical sources, whether or not they are based on formal medical examinations. (*See* § 416.913.) We will also consider descriptions and observations of your limitations from your impairment(s), including limitations that result from your symptoms, such as pain, provided by you, your family, neighbors, friends, or other persons. (*See* paragraph (e) of this section and § 416.929.)

(4) *What we will consider in assessing residual functional capacity.* When we assess your residual functional capacity, we will consider your ability to meet the physical, mental, sensory, and other requirements of work, as described in paragraphs (b), (c), and (d) of this section.

(5) *How we will use our residual functional capacity assessment.* (i) We will first use our residual functional capacity assessment at step four of the sequential evaluation process to decide if you can do your past relevant work. (*See* §§ 416.920(f) and 416.960(b).)

(ii) If we find that you cannot do your past relevant work (or you do not have any past relevant work), we will use the same assessment of your residual functional capacity at step five of the sequential evaluation process to decide if you can make an adjustment to any other work that exists in the national economy. (*See* §§ 416.920(g) and 416.966.) At this step, we will not use our assessment of your residual functional capacity alone to decide if you are disabled. We will use the guidelines in §§ 416.960 through 416.969a, and consider our residual functional capacity assessment together with the information about your vocational background to make our disability determination or decision. For our rules on residual functional capacity assessment in deciding whether your disability continues or ends, *see* § 416.994.

* * * * *

■ 21. Revise § 416.946 to read as follows:

§ 416.946 Responsibility for assessing your residual functional capacity.

(a) *Responsibility for assessing residual functional capacity at the State agency.* When a State agency makes the disability determination, a State agency medical or psychological consultant(s)

is responsible for assessing your residual functional capacity.

(b) *Responsibility for assessing residual functional capacity in the disability hearings process.* If your case involves a disability hearing under § 416.1414, a disability hearing officer is responsible for assessing your residual functional capacity. However, if the disability hearing officer's reconsidered determination is changed under § 416.1418, the Associate Commissioner for the Office of Disability Determinations or his or her delegate is responsible for assessing your residual functional capacity.

(c) *Responsibility for assessing residual functional capacity at the administrative law judge hearing or Appeals Council level.* If your case is at the administrative law judge hearing level under § 416.1429 or at the Appeals Council review level under § 416.1467, the administrative law judge or the administrative appeals judge at the Appeals Council (when the Appeals Council makes a decision) is responsible for assessing your residual functional capacity.

■ 22. Revise § 416.960 to read as follows:

§ 416.960 When we will consider your vocational background.

(a) *General.* If you are age 18 or older and applying for supplemental security income benefits based on disability, and we cannot decide whether you are disabled at one of the first three steps of the sequential evaluation process (*see* § 416.920), we will consider your residual functional capacity together with your vocational background, as discussed in paragraphs (b) and (c) of this section.

(b) *Past relevant work.* We will first compare our assessment of your residual functional capacity with the physical and mental demands of your past relevant work.

(1) *Definition of past relevant work.* Past relevant work is work that you have done within the past 15 years, that was substantial gainful activity, and that lasted long enough for you to learn to do it. (*See* § 416.965(a).)

(2) *Determining whether you can do your past relevant work.* We will ask you for information about work you have done in the past. We may also ask other people who know about your work. (*See* § 416.965(b).) We may use the services of vocational experts or vocational specialists, or other resources, such as the "Dictionary of Occupational Titles" and its companion volumes and supplements, published by the Department of Labor, to obtain evidence we need to help us determine whether you can do your past relevant work, given your residual functional capacity. A vocational expert or specialist may offer relevant evidence within his or her expertise or knowledge concerning the physical and mental demands of a claimant's past relevant work, either as the claimant actually performed it or as generally performed in the national economy. Such evidence may be helpful in supplementing or evaluating the accuracy of the claimant's description of his past work. In addition, a vocational expert or specialist may offer expert opinion testimony in response to a hypothetical question about whether a person with the physical and mental limitations imposed by the claimant's medical impairment(s) can meet the demands of the claimant's previous work, either as the claimant actually performed it or as generally performed in the national economy.

(3) *If you can do your past relevant work.* If we find that you have the residual functional capacity to do your past relevant work, we will determine that you can still do your past work and are not disabled. We will not consider your vocational factors of age, education, and work experience or whether your past relevant work exists in significant numbers in the national economy.

(c) *Other work.* (1) If we find that your residual functional capacity is not enough to enable you to do any of your past relevant work, we will use the same residual functional capacity assessment we used to decide if you could do your past relevant work when we decide if you can adjust to any other work. We will look at your ability to adjust to other work by considering your residual functional capacity and your vocational factors of age, education, and work experience. Any other work (jobs) that you can adjust to must exist in significant numbers in the national economy (either in the region where you live or in several regions in the country).

(2) In order to support a finding that you are not disabled at this fifth step of the sequential evaluation process, we are responsible for providing evidence that demonstrates that other work exists in significant numbers in the national economy that you can do, given your residual functional capacity and vocational factors. We are not responsible for providing additional evidence about your residual functional capacity because we will use the same residual functional capacity assessment that we used to determine if you can do your past relevant work.

§ 416.961 [Removed]

■ 23. Remove § 416.961.

■ 24. Revise § 416.962 to read as follows:

§ 416.962 Medical-vocational profiles showing an inability to make an adjustment to other work.

(a) *If you have done only arduous unskilled physical labor.* If you have no more than a marginal education (*see* § 416.964) and work experience of 35 years or more during which you did only arduous unskilled physical labor, and you are not working and are no longer able to do this kind of work because of a severe impairment(s) (*see* §§ 416.920(c), 416.921, and 416.923), we will consider you unable to do lighter work, and therefore, disabled.

Example to paragraph (a): B is a 58-year-old miner's helper with a fourth grade education who has a lifelong history of unskilled arduous physical labor. B says that he is disabled because of arthritis of the spine, hips, and knees, and other impairments. Medical evidence shows a "severe" combination of impairments that prevents B from performing his past relevant work. Under these circumstances, we will find that B is disabled.

(b) *If you are at least 55 years old, have no more than a limited education, and have no past relevant work experience.* If you have a severe, medically determinable impairment(s) (*see* §§ 416.920(c), 416.921, and 416.923), are of advanced age (age 55 or older, *see* § 416.963), have a limited education or less (*see* § 416.964), and have no past relevant work experience (*see* § 416.965), we will find you disabled. If the evidence shows that you meet this profile, we will not need to assess your residual functional capacity or consider the rules in appendix 2 to subpart P of part 404 of this chapter.

■ 25. Amend § 416.963 by revising the second sentence of paragraph (a) and adding a new sentence after the newly revised second sentence to read as follows:

§ 416.963 Your age as a vocational factor.

(a) General. * * * When we decide whether you are disabled under § 416.920(g)(1), we will consider your chronological age in combination with your residual functional capacity, education, and work experience. We will not consider your ability to adjust to other work on the basis of your age alone. * * *

* * * * *

■ 26. Amend § 416.969a by removing the seventh sentence of paragraph (a), redesignating the eighth sentence as the last sentence, and adding three new sentences after the sixth sentence to read as follows:

§ 416.969a Exertional and nonexertional limitations.

(a) *General.* * * * When we decide whether you can do your past relevant work (*see* §§ 416.920(f) and 416.994(b)(5)(vi)), we will compare our assessment of your residual functional capacity with the demands of your past relevant work. If you cannot do your past relevant work, we will use the same residual functional capacity assessment along with your age, education, and work experience to decide if you can adjust to any other work which exists in the national economy. (*See* §§ 416.920(g) and 416.994(b)(5)(vii).)

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■ 27. Amend § 416.994 by revising the first sentence of paragraph (b)(5)(vi) to read as follows:

§ 416.994 How we will determine whether your disability continues or ends, disabled adults.

* * * * *

(b) * * *

(5) * * *

(vi) *Step 6.* your impairment(s) is severe, we will assess your current ability to do substantial gainful activity in accordance with § 416.960. * * *

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[FR Doc. 03–21610 Filed 8–25–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 1980N–0050]

RIN 0910–AA01

Anorectal Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that any over-the-counter (OTC) drug product containing a combination of hydrocortisone and pramoxine hydrochloride (HCl) for anorectal use is not generally recognized as safe and effective and is misbranded. This combination product is not currently marketed OTC. This final rule discusses data on the combination of hydrocortisone and pramoxine HCl that were still under review when an earlier final rule on OTC anorectal drug products was issued. This rule is part of FDA's ongoing review of OTC drug products.

DATES: This rule is effective September 25, 2003.

FOR FURTHER INFORMATION CONTACT: Michael T. Benson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of May 27, 1980 (45 FR 35576), FDA published an advance notice of proposed rulemaking to establish a monograph for OTC anorectal drug products together with the recommendations of the Advisory Review Panel on OTC Hemorrhoidal Drug Products (the Hemorrhoidal Panel), which was the advisory review panel responsible for evaluating the data on the active ingredients in this class of drugs. The agency's tentative final monograph (TFM) on OTC anorectal drug products was published in the **Federal Register** of August 15, 1988 (53 FR 30756). Hydrocortisone as a single ingredient or in combination with pramoxine HCl was not discussed in the TFM. In response to the TFM, the agency received a submission, containing data, information, analyses, views, legal arguments, and a hearing request, to support monograph status for a combination OTC drug product containing hydrocortisone and pramoxine HCl for use as an anti-inflammatory, antipruritic, anesthetic agent (Ref. 1). The requester asked that: (1) The definition section of the proposed anorectal monograph (§ 346.3 (21 CFR 346.3)) be amended to provide for a drug that has anti-inflammatory properties, such as hydrocortisone, (2) hydrocortisone be allowed to be combined with other appropriate ingredients at OTC strengths, including a topical anesthetic such as pramoxine HCl and, (3) a combination of hydrocortisone 0.5 percent and 1 percent pramoxine HCl be generally recognized as safe and effective.

When the OTC anorectal drug products final monograph was published on August 3, 1990 (55 FR 31776 at 31779), the hearing request relating to hydrocortisone individually and in combination had not been evaluated and, therefore, was not addressed in that document. After publication of the final rule, the agency responded to the submission (Ref. 1) and stated that: (1) It does not provide sufficient evidence to demonstrate that each of the active ingredients in the combination product contributes to the claimed effects and (2) it has not been shown that the combination is generally recognized as safe and effective, whether under the TFM for OTC external analgesic drug products (48 FR 5852, February 8, 1983), the TFM or FM for OTC anorectal drug products, current regulations, or the agency's OTC combination drug product guidelines. The agency's detailed comments are on file in the Division of Dockets Management (Ref. 2).

Subsequently, the requester submitted additional information (Ref. 3). In this final rule, the agency responds to the additional information and includes the combination of hydrocortisone with pramoxine HCl as a nonmonograph (not generally recognized as safe and effective) anorectal drug product in new § 310.545(a)(26)(xi) (21 CFR 310.545(a)(26)(xi)). Any such product marketed OTC would be subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule.

II. The Agency's Final Conclusions on Hydrocortisone Individually and in Combination With Pramoxine HCl for Anorectal Use

The requester contended (Ref. 3) that the proposed combination meets, both from a scientific and legal perspective, the agency's OTC combination drug product policy in that a combination of hydrocortisone (0.25 to 1 percent) and pramoxine HCl 1 percent, is generally recognized as safe and effective for use in OTC drug products to relieve symptoms associated with idiopathic pruritus ani, such as anorectal swelling, pain, itching, and burning. The requester asked the agency to amend the OTC external analgesic drug products TFM and the anorectal drug products FM to include an external analgesic-anorectal OTC drug product containing the active ingredients hydrocortisone and pramoxine HCl. In the alternative, the requester asked for an oral hearing.

The requester's arguments and the agency's responses follow:

(Comment 1) Hydrocortisone is a proposed Category I ingredient and; therefore, FDA considers it safe and effective for OTC use. The ingredient is included in the OTC external analgesic drug products TFM (55 FR 6932 at 6951, February 27, 1990). FDA considers hydrocortisone safe and effective to relieve swelling and itching associated with various skin conditions, including anal itching (55 FR 6932 at 6933).

(Agency response) The agency agrees that hydrocortisone as a single ingredient is safe and effective for OTC use for the claims proposed in

§ 348.50(b) (21 CFR 348.50(b)) (55 FR 6932 at 6951). However, data are lacking to support any combination drug products containing hydrocortisone with other OTC drug active ingredients. Further, the 1990 TFM cited by the requester did not include the term "swelling" as an acceptable claim.

(Comment 2) Pramoxine HCl is a Category I ingredient, and thus FDA considers it safe and effective for OTC use. The ingredient is included in § 346.10(g) (21 CFR 346.10(g)) of the OTC anorectal drug products FM for the treatment of various anorectal conditions, including pain, burning, itching, discomfort, and/or irritation. The requester contended that OTC anorectal drug products containing pramoxine HCl in the established dosages of 0.5 to 1 percent that are indicated to relieve pruritus ani may be lawfully marketed in accordance with the OTC anorectal drug products FM.

(Agency response) Pramoxine HCl 0.5 to 1 percent is a proposed Category I ingredient as a local anesthetic in the TFM for OTC external analgesic drug products (48 FR 5852 at 5867). The requester mentioned that this concentration range could be used in OTC anorectal drug products. However, only a 1 percent concentration is included in § 346.10(g) of the OTC anorectal drug products monograph as this was the only concentration evaluated in that rulemaking. The agency lacks data to support a lower concentration for external anorectal use.

(Comment 3) The agency has the authority to switch the status of a product from prescription to OTC when the active ingredient or the combination of active ingredients is determined to be safe and effective for OTC use. The requester cited the **Federal Register** of August 4, 1976 (41 FR 32580) and May 11, 1972 (37 FR 9464 at 9470) as sources for that authority.

(Agency response) The agency has made the determination that the combination of hydrocortisone and pramoxine HCl is not safe and effective for OTC use. Therefore, switching the status of the product from prescription to OTC is not an option. Although the agency is not bound by the recommendations of its advisory panels, the panels that reviewed these ingredients did not recognize any combination of "amine" and "caine" type local anesthetics with hydrocortisone preparations as safe and effective. The requester has also failed to provide adequate information to support a determination that the combination is safe and effective. The agency lacks sufficient data from available sources to propose a combination of hydrocortisone and pramoxine HCl for OTC use in the applicable OTC drug rulemakings.

(Comment 4) Combination products containing hydrocortisone and pramoxine HCl should have been reconsidered by the agency when it extended the concentration range for hydrocortisone up to 1 percent. Specifically, the agency has the obligation to reconsider combination products when it determines that all of the active ingredients contained in the combination are Category I, and an interested person has requested the combination be considered under a particular OTC drug rulemaking proceeding (21 CFR § 330.10(a)(7) and (a)(12)) (21 CFR 330.10(a)(7) and (a)(12)).

(Agency response) The agency disagrees. The agency's proposal to increase the maximum concentration of hydrocortisone from 0.5 to 1 percent occurred in the rulemaking for OTC external analgesic drug products based on data on the single ingredient and not on combination products. There were no proposed hydrocortisone combinations in that rulemaking. The data on the combination of hydrocortisone 1 percent and pramoxine HCl were submitted to the rulemaking on OTC anorectal drug products and had not been reviewed by the agency at the time it published the amendment to the OTC external analgesic TFM on February 27, 1990 (55 FR 6932) extending the strength of hydrocortisone up to 1 percent. The agency published the FM on OTC anorectal drug products on August 3, 1990 (55 FR 31776 at 31777), in which it stated that hydrocortisone combinations were under review and the agency's evaluation would be reported separately in the future. Simultaneous publication of the agency's evaluation of the single ingredient hydrocortisone in the rulemaking for OTC external analgesic drug products and hydrocortisone-pramoxine HCl combinations in the rulemaking for OTC anorectal drug products would have delayed publication of the anorectal FM for several years.

(Comment 5) Prior to completing the FM for OTC external analgesic drug products, the agency should conduct a retrospective analysis of previously reviewed (or "should have been reviewed") hydrocortisone combinations marketed before 1979.

(Agency response) The agency previously reviewed combination drug products containing hydrocortisone and pramoxine HCl submitted during the 1970s and 1980s. In a notice of proposal to withdraw approval of abbreviated new drug applications for fixed combination drug products containing hydrocortisone acetate and pramoxine HCl, the agency found no evidence that pramoxine HCl contributed an effect to the combination drug product (53 FR 25013, July 1, 1988).

(Comment 6) The agency has consistently applied its combination policy, except with respect to a hydrocortisone and pramoxine HCl combination. The agency did not require additional data in support of the effectiveness of combinations in the monographs for OTC antacid (simethicone and an antacid), cough-cold (ingredients from different pharmacological groups), laxative (bulk and stimulant laxatives), and anorectal drug products (not requiring final formulation testing of combination products and accepting the combinations as formulated).

(Agency response) The agency has consistently focused on the safety and effectiveness of each active ingredient, the rationale for concurrent therapy, the contribution each ingredient makes to the combination, and the marketing history to support Category I classification of combinations. Marketing history for the products cited by the requester provided more extensive data than were available for a combination of hydrocortisone and pramoxine HCl for anorectal use. There was an extensive marketing history for combinations of an antacid and simethicone, an antiflatulent, ingredients with different indications. The agency required additional data for a number of cough-cold combinations in the TFM for those products (53 FR 30522, August 12, 1988). The combinations in the laxative TFM (50 FR 2124 at 2152 and 2153, January 15, 1985) and anorectal FM involve ingredients with the same indication. The Advisory Review Panel for OTC Laxative Drug Products (Laxative Panel) looked at laxative combinations and determined that each active ingredient had to make a contribution toward laxation. The Laxative Panel recommended monograph status only for combinations it determined had sufficient data. FDA agreed with the Panel's recommendation, and the agency has requested additional data to support other laxative combinations. The Hemorrhoidal Panel evaluated and recommended combinations of anorectal ingredients (45 FR 35576 at 35673), but did not evaluate hydrocortisone because information on that ingredient was not submitted for its review. The Advisory Review Panel on OTC Topical Analgesic, Antirheumatic,

Otic, Burn, and Sunburn Prevention and Treatment Drug Products (Topical Analgesic Panel) discussed combinations of external analgesic ingredients, including hydrocortisone and pramoxine HCl, but did not recommend this combination for monograph status (44 FR 69768 at 69790, December 4, 1979).

The agency has not always accepted a panel's recommendation that specific combinations should be allowed, without having adequate supporting data. For example, the Advisory Review Panel on OTC Antimicrobial (II) Drug Products recommended monograph status for combinations of up to three antifungal ingredients and hydrocortisone or hydrocortisone acetate 0.5 to 1 percent (47 FR 12480, March 23, 1982). The agency disagreed with that panel's recommendations because the agency found that these combinations lacked adequate evidence of effectiveness (47 FR 12480 at 12481). The rulemaking for antifungal drug products has been completed and, because adequate data were not provided to support this combination, it remains nonmonograph. No combination containing hydrocortisone has been found to be generally recognized as safe and effective for OTC use. Thus, the agency is consistent in requiring additional data to support this hydrocortisone-pramoxine HCl combination.

(Comment 7) Currently marketed prescription products containing 1 percent or less hydrocortisone and 1 percent pramoxine HCl meet the combination policy implemented by the agency. The OTC drug combination policy standards are satisfied because the active ingredients are Category I, are present in the established dosage range, and each ingredient represents a different therapeutic category. The requester also mentioned a previously submitted clinical protocol (Ref. 3) that was not initiated because this protocol was suspended following a meeting with FDA (Ref. 4).

(Agency response) The agency's requirements for OTC drug combination products in § 330.10(a)(4)(iv) also include that each active ingredient makes a contribution to the product's claimed effect(s). The agency has no data showing that the combination of hydrocortisone and pramoxine HCl has been clinically tested against each individual active ingredient and a placebo. As the agency discussed in its January 13, 1994, letter to the requester (Ref. 2), the submitted data did not include these types of studies. Further, the studies from the literature did not involve a patient population where the product is intended for OTC use, nor were they for the proposed OTC anorectal indication. Therefore, based on the available data, the agency is unable to conclude that each active ingredient makes a contribution to the product's claimed effect(s) and that this combination is generally recognized as safe and effective. After the agency received a letter indicating that the requester's client had suspended an ongoing study of the combination (Ref. 4), the agency was under the impression that there was no longer interest in having the protocol reviewed. The requester should notify the agency if there is still interest in conducting the appropriate study and having the protocol reviewed.

(Comment 8) The combination of 1 percent or less hydrocortisone and 1 percent pramoxine HCl is warranted because hydrocortisone is a therapeutic equivalent of other active antipruritic ingredients that may be combined with a local anesthetic such as pramoxine HCl. In the past, the agency has permitted active ingredient substitutions with pharmacological classes. Further, while the method of action of hydrocortisone is different than other antipruritic agents, the requester suggests that it can be properly combined with local anesthetics, because it is therapeutically equivalent, if not superior, to other approved antipruritic agents.

(Agency response) The agency's response under section II, comment 6 of this document applies here also. The requester's belief that the combination of an antipruritic/analgesic with a local anesthetic is permitted by implication is incorrect. Section 346.22 (21 CFR 346.22) provides for the combination of an "antipruritic/analgesic and a local anesthetic with an astringent." The ingredients under proposed § 348.10 (48 FR 5852 at 5868) are classified as "analgesic/anesthetic/antipruritic."

Listed combinations of external analgesic active ingredients under proposed § 348.50 include ingredients listed under § 348.10(a), (b), and (c) exclude hydrocortisone preparations which are listed under proposed § 348.10(d)(1) as hydrocortisone and under (d)(2) as hydrocortisone acetate. The Topical Analgesic Panel classified hydrocortisone preparations in a listing of ingredients that depress cutaneous sensory receptors (analgesics, anesthetics, and antipruritics) (44 FR 69768 at 69865, December 4, 1979). The agency subdivided the analgesic, anesthetic antipruritic ingredients into separate classes, i.e., "caine" type local anesthetics, alcohols and ketones, antihistamines, and hydrocortisone preparations (48 FR 5852 at 5867 and 5868, February 8, 1983). The Topical Analgesic Panel did not have adequate data to consider hydrocortisone and pramoxine HCl interchangeable, and the agency has no basis to recommend their interchangeability and inclusion in any OTC drug product monograph.

(Comment 9) If the agency is unable to conclude from the information presented that the proposed combination is Category I, the agency should grant a hearing in this matter.

(Agency response) The agency has evaluated all of the evidence in support of a combination of hydrocortisone and pramoxine HCl in the administrative record for the rulemaking for OTC anorectal drug products submitted on behalf of the requester's client. The agency has discussed this information in its letter of January 13, 1994 (Ref. 2) and in this document. The agency does not find an oral hearing warranted.

III. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts, and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The final rule that led to the development of this supplemental final rule was published in 1990, before the Unfunded Mandates Reform Act of 1995 was enacted. The agency explains in this final rule that the final rule will not result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million.

The agency concludes that this final rule is consistent with the principles set out in the Executive order and in these two statutes. The final rule is not a

significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order. Further, since this final rule makes no mandates on government entities and will result in expenditures less than $100 million in any one year, FDA need not prepare additional analyses under the Unfunded Mandates Reform Act.

The purpose of this final rule is to establish that OTC anorectal drug products containing a combination of hydrocortisone and pramoxine HCl are not generally recognized as safe and effective. Because no such products are currently marketed OTC, the final rule will not have an economic impact on any entity (no reformulations or relabeling are necessary) and will not require any new reporting or recordkeeping activities.

The agency has no alternative course of action as the data are inadequate to support monograph status for this combination product. Therefore, no additional professional skills are needed. The Commissioner of Food and Drugs certifies that this final rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. References

The following references are on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, in Docket No. 1980N–0050 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Comment No. HER1.
2. LET26.
3. Comment No. C25.
4. OTC vol. 12FR3.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

■ 1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b-360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b-263n.

■ 2. Section 310.545 is amended by adding paragraph (a)(26)(xi), by revising paragraph (d) introductory text, by revising paragraph (d)(13), and by adding paragraph (d)(37) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(26) * * *

(xi) *Combination drug products.* Any combination drug product containing hydrocortisone and pramoxine hydrochloride.

* * * * *

(d) Any OTC drug product that is not in compliance with this section is subject to regulatory action if initially introduced or initially delivered for introduction into interstate commerce after the dates specified in paragraphs (d)(1) through (d)(37) of this section.

* * * * *

(13) August 5, 1991, for products subject to paragraph (a)(26) of this section, except for those that contain live yeast cell derivative and a combination of hydrocortisone and pramoxine hydrochloride.

* * * * *

(37) September 25, 2003, for products subject to paragraph (a)(26)(xi) of this section.

Dated: August 18, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21749 Filed 8–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) that appeared in the **Federal Register** of June 19, 2003 (68 FR 36744). FDA is correcting the amount of monocalcium phosphate in the formula for a free-choice, loose mineral Type C medicated feed containing lasalocid that was entered inaccurately. This correction is being made so the lasalocid regulations accurately reflect the approved formula.

DATES: This rule is effective June 19, 2003.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4567, e-mail: *ghaibel@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 03–15541, published on June 19, 2003 (68 FR 36744), the following correction is made:

§ 558.311 [Corrected]

■ On page 36745, in the first column, in the table in § 558.311 *Lasalocid* in paragraph (e)(4)(i), in the row for "Monocalcium Phosphate" the entry in the "Percent" column is corrected to read "57.70".

Dated: August 7, 2003.

David R. Newkirk,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–21750 Filed 8–25–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 120

[Public Notice 4440]

RIN AB–52

Bureau of Political-Military Affairs; Amendment to the International Traffic in Arms Regulations; Corrections

AGENCY: Department of State.

ACTION: Correcting amendments.

SUMMARY: This document makes corrections to the final regulations (Public Notice 4274), which were published in the **Federal Register** of Friday, February 14, 2003.

EFFECTIVE DATE: Effective on January 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Sweeney, Office of Defense Trade Controls Management, Bureau of Political-Military Affairs, Department of State, (202) 663–2700.

SUPPLEMENTARY INFORMATION:

Background

The Department of State published a final rule (Public Notice 4274) in the **Federal Register** of February 14, 2003, (68 FR 7417), amending § 120.1 General authorities and eligibility, of the International Traffic in Arms Regulations.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and need to be clarified.

List of Subjects in 22 CFR Part 120

Arms and munitions, Classified information, Exports.

■ Accordingly, 22 CFR part 120 is corrected by making the following correcting amendments:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 continues to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp. p. 79; 22 U.S.C. 2658; Pub. L. 105–261, 112 Stat. 1920.

■ 2. Revise paragraphs (b)(2) and (b)(2)(ii) of § 120.1 to read as follows:

§ 120.1 General authorities and eligibility.

* * * * *

(b) * * *

(1) * * *

(2) In the Bureau of Political-Military Affairs, there will be a Deputy Assistant Secretary for Defense Trade Controls (DAS—Defense Trade Controls) and a Managing Director of Defense Trade Controls (MD—Defense Trade Controls). Initially, one individual will hold both the DAS—Defense Trade Controls and MD—Defense Trade Controls positions. The position of Director, Office of Defense Trade Controls will be abolished. The DAS—Defense Trade Controls/MD—Defense Trade Controls will assume all duties, responsibilities, and authorities held under the ITAR by that Director. The MD—Defense Trade Controls has responsibility for the Directorate of Defense Trade Controls, which will oversee the subordinate offices described in paragraph (b)(2)(i) of this section.

(i) * * *

(A) * * *

(B) * * *

(C) * * *

(D) * * *

(ii) Further amendments to the ITAR will be promulgated to reflect the specific changes as a result of this realignment.

* * * * *

Dated: August 21, 2003.

Timothy Egert,

Federal Register Liaison, Department of State.

[FR Doc. 03–21804 Filed 8–25–03; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9088]

RIN 1545–BA57

Compensatory Stock Options Under Section 482

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations that provide guidance regarding the application of the rules of section 482 governing qualified cost sharing arrangements. These regulations provide guidance regarding the treatment of stock-based compensation for purposes of the rules governing qualified cost sharing arrangements and for purposes of the comparability factors to be considered under the comparable profits method.

DATES: *Effective Date:* These regulations are effective August 26, 2003.

Applicability Dates: For dates of applicability of these regulations, *see* §§ 1.482–1(j)(5) and 1.482–7(k).

FOR FURTHER INFORMATION CONTACT: Douglas Giblen, (202) 435–5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1794. Responses to these collections of information are required by the IRS to monitor compliance with the federal tax rules for determining stock-based compensation costs to be shared among controlled participants in qualified cost sharing arrangements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

The estimated annual burden per respondent or recordkeeper varies from 2 hours to 7 hours, depending on individual circumstances, with an estimated average of 4 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On July 29, 2002, Treasury and the IRS published in the **Federal Register** (67 FR 48997) proposed amendments to the regulations (REG–106359–02) under section 482 of the Internal Revenue Code (Code). These proposed regulations provide guidance regarding treatment of stock-based compensation for purposes of qualified cost sharing arrangements (QCSAs) and the comparable profits method and clarify the coordination of the rules regarding QCSAs with the arm's length standard. Written comments responding to these proposed regulations were received, and a public hearing was held on November

20, 2002. After consideration of all the comments, the proposed regulations under section 482 of the Code are adopted as revised by this Treasury decision.

Explanation of Revisions and Summary of Comments

These final regulations are the first in a series of regulatory guidance under section 482 through which Treasury and the IRS intend to update, clarify and improve current regulatory guidance in the transfer pricing area. A broader regulatory project on the treatment of QCSAs and a regulatory project on the transfer pricing of services are in progress, and Treasury and the IRS intend to issue proposed regulations with respect to each project in the near term.

These final regulations set forth explicit provisions clarifying that stock-based compensation is taken into account in determining the operating expenses treated as intangible development costs of a controlled participant in a QCSA under § 1.482–7. These final regulations provide rules for measuring the cost associated with stock-based compensation; clarify that the utilization and treatment of stock-based compensation is appropriately taken into account as a comparability factor for purposes of the comparable profits method under § 1.482–5; and provide rules that coordinate the rules of § 1.482–7 regarding QCSAs with the arm's length standard as set forth in § 1.482–1.

Treasury and the IRS received comments with respect to the proposed regulations. Most commentators objected to the proposed regulations in their entirety or suggested postponement of their finalization. Some commentators suggested modifications to be adopted in the event that the proposed regulations were finalized in some form.

After fully considering these comments, Treasury and the IRS continue to believe that the proposed regulations reflect a sound application of established principles under section 482. At the same time, Treasury and the IRS have concluded that certain suggested modifications to the administrative provisions of the proposed regulations are appropriate. These modifications are incorporated into the final regulations.

A. Stock-Based Compensation as a Cost To Be Shared and the Arm's Length Standard as Applied to QCSAs—§§ 1.482–7(d)(2)(i) and (a)(3), and 1.482–1(a)(1), (b)(2)(i) and (c)

A QCSA subject to the rules of § 1.482–7 is an arrangement to develop intangibles which meets certain administrative and other requirements and in which the participants to the arrangement share intangible development costs in proportion to their shares of reasonably anticipated benefits attributable to the intangibles developed under the arrangement. In the case of a QCSA, § 1.482–7(a)(2) limits the ability of the Commissioner to make allocations, except to the extent necessary to make each controlled participant's share of the costs equal its share of reasonably anticipated benefits. An arrangement in which significant intangible development costs are not shared in proportion to reasonably anticipated benefits (or are not shared at all) would not in substance constitute an arrangement to which the rules of § 1.482–7 are applicable.

The proposed regulations address the treatment of stock-based compensation under a QCSA, and the interaction between the rules applicable to QCSAs and the arm's length standard. The proposed regulations provide that stock-based compensation related to the covered intangible development area must be taken into account in determining the costs to be shared by participants in a QCSA. The proposed regulations further provide that a QCSA produces results consistent with an arm's length result if, and only if, all costs related to the intangible development, as determined in accordance with the specific guidance in § 1.482–7(d), are shared in proportion to reasonably anticipated benefits.

Commentators objected to this rule on the basis of interpretations of the arm's length standard and on other grounds.

1. Comments Relating to Arm's Length Standard

Commentators asserted that taking stock-based compensation into account in the QCSA context would be inconsistent with the arm's length standard unless there is evidence that parties at arm's length take stock-based compensation into account in similar circumstances. Commentators asserted that third-party evidence, such as the government's own procurement contracting practices and agreements between unrelated parties with some characteristics similar to QCSAs, would show that parties at arm's length do not take stock-based compensation into account in determining costs to be reimbursed.

Treasury and the IRS continue to believe that requiring stock-based compensation to be taken into account for purposes of QCSAs is consistent with the legislative intent underlying section 482 and with the arm's length standard (and therefore with the obligations of the United States under its income tax treaties and with the OECD transfer pricing guidelines). The legislative history of the Tax Reform Act of 1986 expressed Congress's intent to respect cost sharing arrangements as consistent with the commensurate with income standard, and therefore consistent with the arm's length standard, if and to the extent that the participants' shares of income "reasonably reflect the actual economic activity undertaken by each." *See* H.R. Conf. Rep. No. 99–481, at II–638 (1986). The regulations relating to QCSAs implement that legislative intent by using costs incurred by each controlled participant with respect to the intangible development as a proxy for actual economic activity undertaken by each, and by requiring each controlled participant to share these costs in proportion to its anticipated economic benefit from intangibles developed pursuant to the arrangement. In order for the costs incurred by a participant to reasonably reflect its actual economic activity, the costs must be determined on a comprehensive basis. Therefore, in order for a QCSA to reach an arm's length result consistent with legislative intent, the QCSA must reflect all relevant costs, including such critical elements of cost as the cost of compensating employees for providing services related to the development of the intangibles pursuant to the QCSA. Treasury and the IRS do not believe that there is any basis for distinguishing between stock-based compensation and other forms of compensation in this context.

Treasury and the IRS do not agree with the comments that assert that taking stock-based compensation into account in the QCSA context would be inconsistent with the arm's length standard in the absence of evidence that parties at arm's length take stock-based compensation into account in similar circumstances. Section 1.482–1(b)(1) provides that a "controlled transaction meets the arm's length standard if the results of the transaction are consistent with the results that *would have been realized* if uncontrolled taxpayers *had engaged* in the same transaction under the same circumstances." (Emphasis added). While the results actually realized in similar transactions under

similar circumstances ordinarily provide significant evidence in determining whether a controlled transaction meets the arm's length standard, in the case of QCSAs such data may not be available. As recognized in the legislative history of the Tax Reform Act of 1986, there is little, if any, public data regarding transactions involving high-profit intangibles. H.R. Rep. No. 99–426, at 423–25 (1985). The uncontrolled transactions cited by commentators do not share enough characteristics of QCSAs involving the development of high-profit intangibles to establish that parties at arm's length would not take stock options into account in the context of an arrangement similar to a QCSA. Government contractors that are entitled to reimbursement for services on a cost-plus basis under government procurement law assume substantially less entrepreneurial risk than that assumed by service providers that participate in QCSAs, and therefore the economic relationship between the parties to such an arrangement is very different from the economic relationship between participants in a QCSA. The other agreements highlighted by commentators establish arrangements that differ significantly from QCSAs in that they provide for the payment of markups on cost or of non-cost-based service fees to service providers within the arrangement or for the payment of royalties among participants in the arrangement. Such terms, which may have the effect of mitigating the impact of using a cost base to be shared or reimbursed that is less than comprehensive, would not be permitted by the QCSA regulations. Further, the QCSA regulations would not allow the Commissioner to impose such terms in the context of a QCSA.

The regulations relating to QCSAs have as their focus reaching results consistent with what parties at arm's length generally would do if they entered into cost sharing arrangements for the development of high-profit intangibles. These final regulations reflect that at arm's length the parties to an arrangement that is based on the sharing of costs to develop intangibles in order to obtain the benefit of an independent right to exploit such intangibles would ensure through bargaining that the arrangement reflected all relevant costs, including all costs of compensating employees for providing services related to the arrangement. Parties dealing at arm's length in such an arrangement based on the sharing of costs and benefits generally would not distinguish between stock-based compensation and other forms of compensation.

For example, assume that two parties are negotiating an arrangement similar to a QCSA in order to attempt to develop patentable pharmaceutical products, and that they anticipate that they will benefit equally from their exploitation of such patents in their respective geographic markets. Assume further that one party is considering the commitment of several employees to perform research with respect to the arrangement. That party would not agree to commit employees to an arrangement that is based on the sharing of costs in order to obtain the benefit of independent exploitation rights unless the other party agrees to reimburse its share of the compensation costs of the employees. Treasury and the IRS believe that if a significant element of that compensation consists of stock-based compensation, the party committing employees to the arrangement generally would not agree to do so on terms that ignore the stock-based compensation.

An arrangement between controlled taxpayers for the development of intangible assets in which one taxpayer's share of significant costs exceeds its share of reasonably anticipated benefits from the exploitation of the developed intangibles would not in substance be a QCSA and therefore would be subject to analysis under the other section 482 regulations. For example, as in the transactions cited by commentators, a controlled taxpayer might agree at the outset of an arrangement to bear a disproportionate share of costs in an arrangement in which it receives a service fee or a contingent royalty from the exploitation of the developed intangibles. More generally, controlled taxpayers might agree at the outset of an arrangement to determine the compensation of one party based on a subset of that taxpayer's costs or on a basis that does not take that taxpayer's costs into account at all (*e.g.*, based on an amount determined with reference to a comparable uncontrolled price or transaction). In either case, such an arrangement between controlled taxpayers would not in substance constitute an arrangement to which the rules of § 1.482–7 would apply. Indeed, the limitations contained in § 1.482–7(a)(2) could produce results inconsistent with an arm's length result if applied to such an arrangement because the Commissioner would be precluded from making allocations that could be necessary to ensure that each controlled taxpayer is compensated appropriately. Rather, such an arrangement should be analyzed under the other section 482 regulations (in particular, sections 1.482–1, 1.482–2(b), and 1.482–4) to determine whether it reaches results consistent with the arm's length standard, and any allocations by the Commissioner should be consistent with such other section 482 regulations.

2. Other Comments

Commentators offered various other reasons for not taking stock-based compensation into account in the context of QCSAs. Commentators expressed the view that stock-based compensation should not be taken into account because it does not constitute an economic cost or require a cash outlay, or, to the extent such compensation does constitute a cost, because the cost is borne by shareholders whose share value is diluted when additional shares are issued on exercise. Commentators also noted that the treatment of stock-based compensation for financial reporting purposes should not mandate that stock-based compensation be taken into account in the context of QCSAs.

In response to such views, and as discussed above, Treasury and the IRS continue to believe that requiring stock-based compensation to be taken into account for in the context of QCSAs is appropriate. The final regulations provide that stock-based compensation must be taken into account in the context of QCSAs because such a result is consistent with the arm's length standard. Treasury and the IRS agree that the disposition of financial reporting issues does not mandate a particular result under these regulations.

One commentator suggested that even if stock-based compensation generates a cost to a participant, there is precedent within the regulations relating to QCSAs for excluding certain costs, notably interest and taxes. Treasury and the IRS believe that the technical treatment under the regulations relating to QCSAs of interest, taxes and other expenses not related to the intangible development area does not warrant failing to take into account an element of employee compensation that is clearly related to the intangible development area. Treasury and the IRS believe that in order for the costs incurred by a participant to reasonably reflect its actual economic activity consistent with the legislative intent in this area, those costs must be determined on a comprehensive basis and so must take into account all relevant costs, in particular critical elements such as employee compensation. As noted above, Treasury and the IRS do not believe that there is a basis for

distinguishing between stock-based compensation and other forms of compensation in this context.

One commentator also claimed that the historical administrative practice of the IRS has been not to challenge the failure to take stock-based compensation into account in other transfer pricing contexts in which the determination of cost is relevant. Treasury and the IRS believe that such perceived practices of the IRS with respect to other section 482 contexts are not relevant to determining the appropriate regulatory rule applicable to QCSAs.

As an alternate approach, one commentator suggested that rather than requiring stock-based compensation to be taken into account in the QCSA context, Treasury and the IRS should promulgate a "stock-based compensation safe harbor" applicable to QCSAs. This suggested "safe harbor" has not been adopted in the final regulations. As noted above, Treasury and the IRS believe that in order for the costs incurred by a participant to reasonably reflect its actual economic activity, those costs must be determined on a comprehensive basis and so must take into account all relevant costs, in particular critical elements such as employee compensation. The final regulations therefore require employee compensation to be taken into account, rather than provide for a safe harbor under which such compensation could be ignored.

B. Grant-Date Identification Rule—§ 1.482–7(d)(2)(ii)

The proposed regulations identify the stock-based compensation to be included in the cost pool based on whether the compensation is related to the intangible development area on the date the option is granted.

One commentator noted that this identification rule is inconsistent with the IRS treatment of stock-based compensation in other tax areas such as sourcing, where IRS rulings trace the compensation to the entire period over which the employee performed the services compensated by the option.

The grant-date identification rule has been retained in the final regulations. As noted in the preamble of the proposed regulations, it is desirable in the QCSA context to select a single date for identification of covered stock-based compensation. The grant of compensation generally is the single economic event most closely associated with the services being compensated.

C. Provision of Specific Methods of Measurement and Timing

The proposed regulations prescribe two alternative methods for determining the operating expenses attributable to stock-based compensation. The default rule under § 1.482–7(d)(2)(iii)(A) provides that the costs attributable to stock-based compensation generally are included as intangible development costs upon the exercise of the option and measured by the spread between the option strike price and the price of the underlying stock. An elective rule under § 1.482–7(d)(2)(iii)(B) provides that the costs attributable to stock options are taken into account in certain cases in accordance with the "fair value" of the option, as reported for financial accounting purposes either as a charge against income or in footnoted disclosures.

Commentators claimed that parties at arm's length would not use either of the alternatives prescribed in the proposed regulations because they would produce results that are too speculative or not sufficiently related to the employee services that are compensated. One commentator suggested that the final regulations should not limit taxpayers to the two prescribed measurement methods but rather should codify the current IRS administrative practice of permitting any reasonable method. In the commentator's view, a standard based on any reasonable method should permit the intrinsic-value method, which measures the difference between strike price and underlying stock value at date of grant, exclusive of time value. However, the commentator suggested that if Treasury and the IRS consider an element of time value indispensable, an alternative would be to require the use of the "minimum value" method, which accounts for the time value of stock options by assuming the underlying stock will grow at the risk-free interest rate.

These suggestions were not adopted. Treasury and the IRS believe that it is appropriate for regulations to prescribe guidance in this context that is consistent with the arm's length standard and that also is objective and administrable. As long as the measurement method is determined at or before grant date, either of the prescribed measurement methods can be expected to result in an appropriate allocation of costs among QCSA participants and therefore would be consistent with the arm's length standard. The results under the default measurement rule are consistent with what would occur under an arm's length agreement at or before the grant date to take stock-based compensation into account at the date of exercise when more facts are known and therefore to share the risks associated with such compensation between the date of grant and the date of exercise. The results under the elective measurement rule are consistent with what would occur under an alternative arm's length agreement at or before the grant date to determine the value of the compensation up front and take such compensation into account at that time. With respect to the specific methods proposed by commentators, Treasury and the IRS believe that "intrinsic value" ignores significant elements of the economic value of stock-based compensation and "minimum value" ignores the important variable of volatility that enters into the economic pricing models used for financial reporting purposes.

The prescribed measurement methods are objective and administrable because they rely on valuations or measurements of stock-based compensation prepared for other purposes. The prescribed measurement methods do not require or permit valuations of stock-based compensation specifically for QCSA purposes. A standard under which the validity of the taxpayer's method would have to be analyzed on a case-by-case basis would be unduly difficult to administer and potentially could lead to significant disputes.

D. General Rule of Measurement—§ 1.482–7(d)(2)(iii)(A)

Under the default measurement rule, the amount taken into account for QCSA purposes generally is the amount allowable as a federal income tax deduction on exercise of the stock-based compensation. This amount generally is the "spread" between the option price and the fair market value of the underlying stock at the date of exercise.

One commentator suggested that this method would be improved if the amount taken into account for QCSA purposes were limited to the portion of the spread that accrued between date of grant and full vesting, as further prorated to reflect only the time during which the employee was engaged in cost-shared activities.

This suggestion has not been adopted in the final regulations. Treasury and the IRS believe that the grant-date identification rule already limits in an appropriate way the stock-based compensation taken into account. The purpose of the default measurement rule is to measure the amount attributable to stock-based compensation that must be taken into account under the grant-date identification rule. Accordingly, the default measurement rule does not

require further refinement through proration. Further, additional recordkeeping and analysis necessary to identify relevant time periods and employee activities involving the covered intangibles and to perform proration calculations are not warranted.

The proposed regulations set forth special rules for the application of the general rule of measurement in the event of modification of a stock option and expiration or termination of a QCSA. The final regulations retain these rules with technical modifications.

E. Treatment of Statutory Stock Options—§ 1.482–7(d)(2)(iii)(A)(1)

Under the default measurement rule in the proposed regulations, a special rule applies to statutory stock options (also referred to as incentive and employee stock purchase plan stock options). Under this special rule, the spread on statutory stock options generally is taken into account for QCSA purposes on exercise, even though section 421 denies a deduction with respect to statutory stock options unless and until there is a disqualifying disposition of the underlying stock by the employee.

One commentator suggested that the special rule for statutory stock options should be removed because it imposes an unnecessary administrative burden on taxpayers to apply different rules for different purposes. This suggestion was not adopted in the final regulations. Treasury and the IRS believe that the more important concern is consistent treatment of statutory and nonstatutory stock options for this purpose. This consistency is achieved only if the spread on both statutory and nonstatutory options is included in the cost pool on exercise.

F. Elective Method of Measurement—§ 1.482–7(d)(2)(iii)(B)

The proposed regulations permit an elective method of measurement and timing with respect to options on publicly traded stock of companies subject to financial reporting under U.S. generally accepted accounting principles (U.S. GAAP), provided that the stock is traded on a U.S. securities market. Under the election, the amount taken into account for QCSA purposes associated with compensatory stock options is their "fair value," generally measured by reference to economic pricing models as of the date of grant, as reflected either as a charge against income or as a footnote disclosure in the company's audited financial statements, in compliance with current U.S. GAAP.

One commentator proposed that the elective measurement method be made available to all taxpayers. The commentator further suggested that controlled participants should be permitted to use any reasonable method to measure stock-based compensation in the form of options on stock of foreign corporations as long as that method is consistent with international accounting standards or with accounting principles that are prevalent in the home country of the controlled participant. In the commentator's view, the limitations in the proposed regulations are not justified by difficulty of valuation and may be vulnerable to challenges under anti-discrimination clauses in U.S. income tax treaties.

Treasury and the IRS agree that the elective method should be more broadly available and have modified these rules in the final regulations. Specifically, the final regulations extend the availability of the elective method to options on the stock of certain companies that prepare their financial statements in accordance with accounting principles other than U.S. GAAP, while continuing to limit the availability of the elective method to options on stock that is publicly traded on a U.S. securities market. Thus, the availability of the elective method is not extended to options on stock of privately held companies or companies whose stock is traded only on foreign securities markets.

Treasury and the IRS believe that objectivity and ease of administration are important features of any method of measuring costs attributable to stock-based compensation for purposes of QCSAs. The elective method should be available only for options on stock whose value is readily determinable and for companies that are required to determine the fair value of stock options for a non-tax purpose. Treasury and the IRS recognize that foreign-based companies whose stock is traded on a U.S. securities market (directly or through the use of American Depository Receipts) are required to determine the fair value of options on their stock even though they do not necessarily prepare financial statements in accordance with U.S. GAAP. Companies satisfy that requirement by preparing financial statements in accordance with a comprehensive body of generally accepted accounting principles (GAAP) that is consistent with the U.S. GAAP requirement of determining the fair value of stock options, or by preparing reconciliations of their financial statements with U.S. GAAP in a manner that reflects the fair value of stock options.

Accordingly, the final regulations provide that in determining eligibility for the elective method, financial statements prepared in accordance with GAAP other than U.S. GAAP are considered as prepared in accordance with U.S. GAAP in two circumstances. First, financial statements are considered as prepared in accordance with U.S. GAAP where the fair value of stock options is reflected in a legally required reconciliation between the applicable GAAP and U.S. GAAP. In such a case, the fair value of stock options for purposes of the elective method of measurement will be the fair value reflected in such reconciliation. Second, financial statements are considered as prepared in accordance with U.S. GAAP where, under the applicable GAAP, the fair value of stock options is reflected as a charge against income in audited financial statements or is disclosed in footnotes to such statements. In such a case, the fair value of stock options for purposes of the elective method of measurement will be the fair value reflected in such audited financial statements.

Treasury and the IRS continue to believe that the elective method should be available only for options on stock whose value is readily determinable and for companies that are required to determine the fair value of stock options for a non-tax purpose. Accordingly, the final regulations do not extend the availability of the elective method to options on stock of privately held companies or companies whose stock is traded only on foreign securities markets.

One commentator suggested that the election to use the elective method should be made on the taxpayer's return rather than evidenced in the written cost sharing agreement. In the view of the commentator, such a procedure would be more practical from an enforcement perspective.

This suggestion was not adopted. Treasury and the IRS continue to believe that the most effective way to ensure that all participants are bound by the election is to incorporate it within the written cost sharing agreement.

G. Modification of Comparable Profits Method—§ 1.482–5(c)(2)(iv)

The proposed regulations provide that in applying the comparable profits method, if there are material differences among the tested party and uncontrolled comparables with respect to the utilization or treatment of stock-based compensation, such material differences are an appropriate basis for comparability adjustments. One commentator expressed the view that

this provision contradicts the arm's length coordination rules for QCSAs because the treatment of stock-based compensation by unrelated parties is considered relevant for purposes of the comparable profits method but not relevant for purposes of QCSAs.

No revision was made in response to this comment. Treasury and the IRS believe that the rule provided in the proposed regulations with respect to the application of the comparable profits method is appropriate because the financial data with respect to similar business activities that generally is used as a reference point for that method is subject to adjustment to ensure comparability.

H. Effective Date and Transition Rules—§ 1.482–7(k) and (d)(2)(iii)(B)(2)

The provisions of the proposed regulations applicable to QCSAs would apply to stock-based compensation granted in taxable years beginning on or after publication of final regulations. Participants in a QCSA in existence on the effective date may, on a one-time basis, amend their agreement to elect the grant-date method of measurement without the Commissioner's consent. The election with respect to existing QCSAs must be made not later than the latest due date, without regard to extensions, for an income tax return of a controlled participant for the first taxable year beginning after the effective date of final regulations.

One commentator stated that the prospective effective date does not afford taxpayers a reasonable time to amend their cost sharing agreements or restructure complex international operations. A transition period of two years after the publication of final regulations was suggested.

This suggestion was not adopted. Treasury and the IRS consider the period stated in the proposed regulations adequate for the initial planning and recordkeeping that may be occasioned by the final regulations.

With respect to the special transition rule permitting taxpayers to elect the grant-date method of measurement by amendment of an existing written cost sharing agreement no later than the latest due date of an income tax return of a controlled participant, one commentator suggested that the due date should not disregard filing extensions. The commentator maintained that fairness dictates affording taxpayers this extra time for the analysis needed to make this significant decision.

In response to this comment, the final regulations provide that the due date for amendments to existing cost sharing agreements is determined with regard to filing extensions.

Some commentators urged Treasury and the IRS to postpone finalization of the proposed regulations until the OECD completes its ongoing consideration of the treatment of stock options for transfer pricing purposes and an international consensus begins to form so that the potential for international disputes and resulting negative effects on U.S. business can be minimized. Similarly, a commentator suggested that the effects of applying the principles of the proposed regulations to other areas of transfer pricing should be thoroughly studied and harmonized before finalizing the regulations to avoid creating traps for the unwary or other unforeseen consequences.

These suggestions were not implemented. Treasury and the IRS do not believe that international discussion of issues compels the suspension of the regulatory process. Also, Treasury and the IRS believe that it is important to provide timely guidance on issues such as those addressed by the proposed and final regulations.

Finally, the preamble to the proposed regulations states that the proposed regulations clarify that stock-based compensation must be taken into account in the QCSA context. Several commentators interpreted this language as in effect requiring the new rules to be applied retroactively. These commentators urged that the final regulations contain further assurances of prospective intent and explicitly recognize that these regulations represent a fundamental change to the traditional approach to section 482.

No revisions were made in light of these comments. As noted earlier, Treasury and the IRS believe that requiring stock-based compensation to be taken into account in the QCSA context is consistent with the arm's length standard and long-standing policies underlying section 482. The final regulations, like the proposed regulations, clearly specify that the specific rules provided therein are prospective in application. Moreover, as stated in the proposed regulations, while taxpayers may rely on the proposed regulations until the effective date of the final regulations, no inference is intended with respect to the treatment of stock-based compensation granted in taxable years beginning before the effective date of these final regulations.

I. Paperwork Reduction Act and Regulatory Flexibility Act

One commentator expressed the view that the compliance burden imposed by the proposed regulations on each taxpayer will significantly exceed the two to seven hours estimated under the Paperwork Reduction Act. The commentator also asserted that the estimated number of taxpayers affected by the rules was too low.

The burden estimates as stated in the final regulations reflect no change. Treasury and the IRS reviewed the estimates made in the proposed regulations and concluded that they are reasonable.

Similarly, with respect to the Regulatory Flexibility Act, the commentator challenged the statement in the preamble of the proposed regulations that the new regulatory requirements will not have a significant economic impact on a substantial number of small entities. Upon review of available information, Treasury and the IRS found no basis for a change in the statement or in the operative finding that the economic impact of the collections of information in the proposed regulations is not significant with respect to small entities.

J. Documentation Requirements and Other Provisions on Which No Comments Received

Section 1.482–7(j)(2)(i)(F) of the proposed regulations requires that controlled participants maintain specific documentation to establish the amount attributable to stock-based compensation that is taken into account in determining the costs to be shared, including the method of measurement and timing used with respect to that amount. No comments were received on this particular provision, and it is retained in the final regulations.

Treasury and the IRS intend that this provision will require controlled participants that use the elective method of measurement to maintain documentation establishing compliance with the requirements of § 1.482–7(d)(2)(iii)(B). For example, documentation should establish that applicable financial statements reflecting the value of stock options with respect to which the elective method is used, as well as applicable accounting principles under which such financial statements are prepared, are in conformity with the fair-value and reconciliation requirements adopted in the final regulations with respect to GAAP other than U.S. GAAP.

Several other provisions of the proposed regulations similarly were not commented upon and have been adopted without modification in the final regulations. These provisions include § 1.482–7(d)(2)(iii)(A)(*2*), relating to deductions of foreign

controlled participants; the last sentence of § 1.482–7(d)(2)(ii), relating to repricing and other modifications of stock options; and § 1.482–7(d)(2)(iii)(C), providing consistency rules for measurement and timing of stock-based compensation.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that few small entities are expected to enter into QCSAs involving stock-based compensation, and that for those who do, the burdens imposed under § 1.482–7(d)(2)(iii)(B) and (j)(2)(i)(F) will be minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Douglas Giblen of the Office of Associate Chief Counsel (International). However, other personnel from Treasury and the IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ Sections 1.482–1, 1.482–5 and 1.482–7 also issued under 26 U.S.C. 482. * * *

■ **Par. 2.** Section 1.482–0 is amended by:

■ 1. Redesignating the entry for § 1.482–7(a)(3) as the entry for § 1.482–7(a)(4).

■ 2. Adding a new entry for § 1.482–7(a)(3).

■ 3. Redesignating the entry for § 1.482–7(d)(2) as the entry for § 1.482–7(d)(3).

■ 4. Adding new entries for § 1.482–7(d)(2).

The additions and redesignation read as follows:

§ 1.482–0 Outline of regulations under section 482.

* * * * *

§ 1.482–7 Sharing of costs.

(a) In general.

* * * * *

(3) Coordination with § 1.482–1.

(4) Cross references.

* * * * *

(d) Costs.

* * * * *

(2) Stock-based compensation.

(i) In general.

(ii) Identification of stock-based compensation related to intangible development.

(iii) Measurement and timing of stock-based compensation expense.

(A) In general.

(*1*) Transfers to which section 421 applies.

(*2*) Deductions of foreign controlled participants.

(*3*) Modification of stock option.

(*4*) Expiration or termination of qualified cost sharing arrangement.

(B) Election with respect to options on publicly traded stock.

(*1*) In general.

(*2*) Publicly traded stock.

(*3*) Generally accepted accounting principles.

(*4*) Time and manner of making the election.

(C) Consistency.

(3) Examples.

* * * * *

■ **Par. 3.** Section 1.482–1 is amended by:

■ 1. Removing the sixth sentence of paragraph (a)(1) and adding two sentences in its place.

■ 2. Adding a sentence at the end of paragraph (b)(2)(i).

■ 3. Adding a sentence at the end of paragraph (c)(1).

■ 4. Adding paragraph (j)(5).

The additions read as follows:

§ 1.482–1 Allocation of income and deductions among taxpayers.

(a) * * *

(1) * * * Section 1.482–7T sets forth the cost sharing provisions applicable to taxable years beginning on or after October 6, 1994, and before January 1, 1996. Section 1.482–7 sets forth the cost sharing provisions applicable to taxable years beginning on or after January 1, 1996. * * *

* * * * *

(b) * * *

(2) * * *

(i) * * *Section 1.482–7 provides the specific method to be used to evaluate whether a qualified cost sharing arrangement produces results consistent with an arm's length result.

* * * * *

(c) * * *

(1) * * *See § 1.482–7 for the applicable method in the case of a qualified cost sharing arrangement.

* * * * *

(j) * * *

(5) The last sentences of paragraphs (b)(2)(i) and (c)(1) of this section and of paragraph (c)(2)(iv) of § 1.482–5 apply for taxable years beginning on or after August 26, 2003.

■ **Par. 4.** Section 1.482–5 is amended by adding a sentence at the end of paragraph (c)(2)(iv) to read as follows:

§ 1.482–5 Comparable profits method.

* * * * *

(c) * * *

(2) * * *

(iv) * * *As another example, it may be appropriate to adjust the operating profit of a party to account for material differences in the utilization of or accounting for stock-based compensation (as defined by § 1.482–7(d)(2)(i)) among the tested party and comparable parties.

* * * * *

■ **Par. 5.** Section 1.482–7 is amended by:

■ 1. Redesignating paragraph (a)(3) as paragraph (a)(4).

■ 2. Adding a new paragraph (a)(3).

■ 3. Redesignating paragraph (d)(2) as paragraph (d)(3).

■ 4. Adding a new paragraph (d)(2).

■ 5. Removing the word "and" at the end of paragraph (j)(2)(i)(D).

■ 6. Removing the period at the end of paragraph (j)(2)(i)(E) and adding "; and" in its place.

■ 7. Adding paragraph (j)(2)(i)(F).

■ 8. Revising paragraph (k).

The additions and revision read as follows:

§ 1.482–7 Sharing of costs.

(a) * * *

(3) *Coordination with § 1.482–1.* A qualified cost sharing arrangement produces results that are consistent with an arm's length result within the meaning of § 1.482–1(b)(1) if, and only if, each controlled participant's share of

the costs (as determined under paragraph (d) of this section) of intangible development under the qualified cost sharing arrangement equals its share of reasonably anticipated benefits attributable to such development (as required by paragraph (a)(2) of this section) and all other requirements of this section are satisfied.

* * * * *

(d) * * *

(2) *Stock-based compensation*—(i) *In general.* For purposes of this section, a controlled participant's operating expenses include all costs attributable to compensation, including stock-based compensation. As used in this section, the term *stock-based compensation* means any compensation provided by a controlled participant to an employee or independent contractor in the form of equity instruments, options to acquire stock (stock options), or rights with respect to (or determined by reference to) equity instruments or stock options, including but not limited to property to which section 83 applies and stock options to which section 421 applies, regardless of whether ultimately settled in the form of cash, stock, or other property.

(ii) *Identification of stock-based compensation related to intangible development.* The determination of whether stock-based compensation is related to the intangible development area within the meaning of paragraph (d)(1) of this section is made as of the date that the stock-based compensation is granted. Accordingly, all stock-based compensation that is granted during the term of the qualified cost sharing arrangement and is related at date of grant to the development of intangibles covered by the arrangement is included as an intangible development cost under paragraph (d)(1) of this section. In the case of a repricing or other modification of a stock option, the determination of whether the repricing or other modification constitutes the grant of a new stock option for purposes of this paragraph (d)(2)(ii) will be made in accordance with the rules of section 424(h) and related regulations.

(iii) *Measurement and timing of stock-based compensation expense*—(A) *In general.* Except as otherwise provided in this paragraph (d)(2)(iii), the operating expense attributable to stock-based compensation is equal to the amount allowable to the controlled participant as a deduction for Federal income tax purposes with respect to that stock-based compensation (for example, under section 83(h)) and is taken into account as an operating expense under this section for the taxable year for which the deduction is allowable.

(*1*) *Transfers to which section 421 applies.* Solely for purposes of this paragraph (d)(2)(iii)(A), section 421 does not apply to the transfer of stock pursuant to the exercise of an option that meets the requirements of section 422(a) or 423(a).

(*2*) *Deductions of foreign controlled participants.* Solely for purposes of this paragraph (d)(2)(iii)(A), an amount is treated as an allowable deduction of a controlled participant to the extent that a deduction would be allowable to a United States taxpayer.

(*3*) *Modification of stock option.* Solely for purposes of this paragraph (d)(2)(iii)(A), if the repricing or other modification of a stock option is determined, under paragraph (d)(2)(ii) of this section, to constitute the grant of a new stock option not related to the development of intangibles, the stock option that is repriced or otherwise modified will be treated as being exercised immediately before the modification, provided that the stock option is then exercisable and the fair market value of the underlying stock then exceeds the price at which the stock option is exercisable. Accordingly, the amount of the deduction that would be allowable (or treated as allowable under this paragraph (d)(2)(iii)(A)) to the controlled participant upon exercise of the stock option immediately before the modification must be taken into account as an operating expense as of the date of the modification.

(*4*) *Expiration or termination of qualified cost sharing arrangement.* Solely for purposes of this paragraph (d)(2)(iii)(A), if an item of stock-based compensation related to the development of intangibles is not exercised during the term of a qualified cost sharing arrangement, that item of stock-based compensation will be treated as being exercised immediately before the expiration or termination of the qualified cost sharing arrangement, provided that the stock-based compensation is then exercisable and the fair market value of the underlying stock then exceeds the price at which the stock-based compensation is exercisable. Accordingly, the amount of the deduction that would be allowable (or treated as allowable under this paragraph (d)(2)(iii)(A)) to the controlled participant upon exercise of the stock-based compensation must be taken into account as an operating expense as of the date of the expiration or termination of the qualified cost sharing arrangement.

(B) *Election with respect to options on publicly traded stock*—(*1*) *In general.* With respect to stock-based compensation in the form of options on publicly traded stock, the controlled participants in a qualified cost sharing arrangement may elect to take into account all operating expenses attributable to those stock options in the same amount, and as of the same time, as the fair value of the stock options reflected as a charge against income in audited financial statements or disclosed in footnotes to such financial statements, provided that such statements are prepared in accordance with United States generally accepted accounting principles by or on behalf of the company issuing the publicly traded stock.

(*2*) *Publicly traded stock.* As used in this paragraph (d)(2)(iii)(B), the term *publicly traded stock* means stock that is regularly traded on an established United States securities market and is issued by a company whose financial statements are prepared in accordance with United States generally accepted accounting principles for the taxable year.

(*3*) *Generally accepted accounting principles.* For purposes of this paragraph (d)(2)(iii)(B), a financial statement prepared in accordance with a comprehensive body of generally accepted accounting principles other than United States generally accepted accounting principles is considered to be prepared in accordance with United States generally accepted accounting principles provided that either—

(*i*) The fair value of the stock options under consideration is reflected in the reconciliation between such other accounting principles and United States generally accepted accounting principles required to be incorporated into the financial statement by the securities laws governing companies whose stock is regularly traded on United States securities markets; or

(*ii*) In the absence of a reconciliation between such other accounting principles and United States generally accepted accounting principles that reflects the fair value of the stock options under consideration, such other accounting principles require that the fair value of the stock options under consideration be reflected as a charge against income in audited financial statements or disclosed in footnotes to such statements.

(*4*) *Time and manner of making the election.* The election described in this paragraph (d)(2)(iii)(B) is made by an explicit reference to the election in the written cost sharing agreement required by paragraph (b)(4) of this section or in a written amendment to the cost sharing agreement entered into w th the consent

of the Commissioner pursuant to paragraph (d)(2)(iii)(C) of this section. In the case of a qualified cost sharing arrangement in existence on August 26, 2003, the election must be made by written amendment to the cost sharing agreement not later than the latest due date (with regard to extensions) of a Federal income tax return of any controlled participant for the first taxable year beginning after August 26, 2003, and the consent of the Commissioner is not required.

(C) *Consistency.* Generally, all controlled participants in a qualified cost sharing arrangement taking options on publicly traded stock into account under paragraph (d)(2)(iii)(A) or (B) of this section must use that same method of measurement and timing for all options on publicly traded stock with respect to that qualified cost sharing arrangement. Controlled participants may change their method only with the consent of the Commissioner and only with respect to stock options granted during taxable years subsequent to the taxable year in which the Commissioner's consent is obtained. All controlled participants in the qualified cost sharing arrangement must join in requests for the Commissioner's consent under this paragraph. Thus, for example, if the controlled participants make the election described in paragraph (d)(2)(iii)(B) of this section upon the formation of the qualified cost sharing arrangement, the election may be revoked only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained. Similarly, if controlled participants already have granted stock options that have been or will be taken into account under the general rule of paragraph (d)(2)(iii)(A) of this section, then except in cases specified in the last sentence of paragraph (d)(2)(iii)(B)(*2*) of this section, the controlled participants may make the election described in paragraph (d)(2)(iii)(B) of this section only with the consent of the Commissioner, and the consent will apply only to stock options granted in taxable years subsequent to the taxable year in which consent is obtained.

* * * * *

(j) * * *

(2) * * *

(i) * * *

(F) The amount taken into account as operating expenses attributable to stock-based compensation, including the method of measurement and timing used with respect to that amount as well as the data, as of date of grant, used to identify stock-based compensation related to the development of covered intangibles.

* * * * *

(k) *Effective date.* This section applies for taxable years beginning on or after January 1, 1996. However, paragraphs (a)(3), (d)(2) and (j)(2)(i)(F) of this section apply for stock-based compensation granted in taxable years beginning on or after August 26, 2003.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 9.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805

■ **Par. 10.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read in part as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.482–7	1545–1794
* * * * *	

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: August 11, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury.

[FR Doc. 03–21355 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD11–03–004]

RIN 1625–AA09

Drawbridge Operation Regulation; Islais Creek, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Commander, Eleventh Coast Guard District is temporarily changing the regulation governing the Third Street Drawbridge, mile 0.4 Islais Creek, San Francisco, CA. The drawbridge need not open for vessel traffic and may remain in the closed-to-navigation position to allow seismic retrofit and rehabilitation of the bridge.

DATES: This temporary rule is effective from 12:01 a.m., September 3, 2003 until 12:01 a.m., September 2, 2004.

ADDRESSES: Documents referred to in this temporary rule are available for inspection and copying at Commander (oan), Eleventh Coast Guard District, Building 50–3, Coast Guard Island, Alameda, CA 94501–5100, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District, telephone (510) 437–3516.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is being promulgated without an NPRM because drawspan openings at this bridge are infrequent, the proposal has been thoroughly coordinated with the waterway users and it would be impracticable, unnecessary and contrary to the public interest to delay the proposed project start date.

Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the event has been thoroughly coordinated with waterway users, no objections were received and there is no justification to deny the request or delay the proposed project.

Background and Purpose

The City of San Francisco requested a temporary change to the operation of the Third Street Bridge, mile 0.4 Islais Creek, in San Francisco, California. The bridge provides 4.4 feet minimum vertical clearance above mean high water in the closed-to-navigation position. Navigation on the waterway consists primarily of recreational watercraft. Presently, the draw is required to open on signal if at least one hour advance notice is given. The bridge was last opened for recreational waterway traffic on July 1, 2001. The City requested the drawbridge be allowed to remain closed to navigation from 12:01 a.m., September 3, 2003 until 12:01 a.m., September 2, 2004.

During this time the City would perform seismic upgrades and rehabilitation work on the bridge. This temporary drawbridge operation amendment has been coordinated with the waterway users. No objections to the proposed temporary rule were raised.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because drawspan openings at this bridge are infrequent and waterway traffic is not likely to be delayed.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as none were identified that will be affected by the temporary rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No small entities were identified that will be affected by the temporary rule.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded no factors in this case would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. A Categorical Exclusion Determination is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.163 [Suspended]

■ 2. From 12:01 a.m., September 3, 2003, until 12:01 a.m., September 2, 2004, § 117.163 is temporarily suspended.

■ 3. From 12:01 a.m., September 3, 2003, until 12:01 a.m., September 2, 2004, § 117.T164 is temporarily added to read as follows:

§ 117.T164 Islais Creek.

The Third Street Drawbridge, Islais Creek mile (0.4), at San Francisco, California need not open for vessels from 12:01 a.m., September 3, 2003 until 12:01 a.m., September 2, 2004.

Dated: August 15, 2003.

Kevin J. Eldridge,

Rear Admiral, Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 03–21764 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA267–0402a; FRL–7526–6]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from general spray coating operations, surfactant manufacturing, and storage tanks at petroleum facilities. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 27, 2003, without further notice, unless EPA receives adverse comments by September 25, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, NW., (Mail Code 6102T), Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and,

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted to EPA by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	481	Spray Coating Operations	01/11/02	05/21/02
SCAQMD	1141.2	Surfactant Manufacturing	01/11/02	05/21/02
SCAQMD	1178	Further Control of VOC Emissions from Storage Tanks at Petroleum Facilities	12/21/01	05/21/02

On August 6, 2002, EPA found these rule submittals met the completeness criteria in 40 CFR part 51, appendix V. These criteria must be met before formal EPA review can begin.

B. Are There Other Versions of These Rules?

We approved versions of SCAQMD rules 481 and 1141.2 into the SIP on February 12, 2002 (*see* 67 FR 6410). Between these SIP incorporations and today, CARB has made no intervening submittals of these SCAQMD rules. SCAQMD rule 1178 has not been approved into the SIP.

C. What Is the Purpose of the Submitted Rules?

SCAQMD rule 481 is a rule specifying the conditions for using spray painting or spray coating equipment as well as exemptions from these conditions. These exemptions can be divided between volumetric cut-offs and specified coating operations that are too difficult or unwieldy to be performed within a spray booth enclosure. SCAQMD's January 11, 2002, amendments to rule 481 included these significant changes to the version within the SIP.

—New sections were added for applicability, definitions, and test methods.

—Thirteen new definitions were added.

—High volume, low pressure (HVLP) coating was added as an acceptable coating application method.

—The test method section was updated to include standardized language concerning alternative methods to determine transfer efficiency, violations under multiple test methods in the rule, and revised test methods.

—Rule 109—Recordkeeping is referenced so as to require a source to keep records supporting the use of two exemptions.

—Finally, an exemption was added for extreme high gloss topcoats used in the marine pleasure craft industry.

SCAQMD rule 1141.2 prohibits manufacturing of surface-active agents such as detergents, wetting agents and emulsifiers unless certain emission requirements and work practices are met. SCAQMD's January 11, 2002, amendments to rule 1141.2 included these significant changes to the November 17, 2000, version within the SIP.

—New sections were added for applicability, definitions, and test methods.

—Several new definitions were added.

—The test method section was updated to include methods for determining capture, control, and overall emission control equipment efficiency, an allowance for equivalent test methods with SCAQMD, CARB, and EPA approval, and a statement that a violation may exist under any one of the rule's test methods.
—Finally, rule 109—Recordkeeping is referenced as part of requiring a source to have records supporting a source size exemption.

SCAQMD rule 1178 applies additional controls to reduce VOC emissions at petroleum facilities. VOCs are emitted during the filling, storage, and emptying of large tanks at these petroleum facilities. Rule 1178 applies to facilities emitting more than 20 tons/year of VOCs that have storage tanks larger than 19,815 gallons storing organic liquids with a true vapor pressure greater than or equal to 0.1 psi. The rule establishes vapor pressure containment and control requirements for organic liquid storage tanks. Tanks and systems of tanks must have a vapor recovery system that recovers at least 95% of ROC vapors by weight or combusts excess vapors. Also, rule 1178 sets specific requirements for vapor loss control devices, external floating roofs, and internal floating roofs. Rule 1178 includes the following provisions:

—Purpose and applicability;
—Definitions of terms used within the rule;
—Emission reduction requirements;
—Identification, monitoring, and maintenance requirements;
—Test methods for determining compliance with the rule; and,
—Exemptions from the rule.

Rule 1178 augments SCAQMD Rule 463—Organic Liquid Storage. While some of rule 1178's requirements are duplicative, many requirements are additive and more stringent. For example, rule 1178 requires emission control systems for fixed roof tanks storing liquid with a TVP of 0.1 psia, domes for external floating roof tanks storing a liquid with a TVP greater than or equal to 3 psia, and increased gasketing and rim-seal requirements for external floating roof tanks storing a liquid with a TVP less than 3 psia. Also, monitoring requirements are more stringent for external floating roof and fixed roof tanks.

The TSD for the subject rule has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The SCAQMD regulates an ozone nonattainment area (*see* 40 CFR part 81), so these rules must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements consistently include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "Control of Volatile Organic Emissions from Petroleum Liquid Storage in External Floating Roof Tanks," EPA–450/2–78–047, USEPA, December 1978; and,
5. "Control of Volatile Organic Emissions from Storage of Petroleum Liquids in Fixed-Roof Tanks," EPA–450/2–77–036, USEPA, December 1977.

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. Rule 481's requirements remain unchanged compared to the SIP version of the rule. The amendments to the rule strengthen and update test method and record keeping portions of the rule. The exemption for high gloss topcoats will result in an insignificant amount of particulate matter being released while remaining consistent with the VOC limits in SCAQMD rule 1106.1—Pleasure Craft Coating Operations. Rule 1141.2's emission limits and work practices remain unchanged compared to the SIP version of the rule. The test method and recordkeeping sections of the rule have been strengthened and made more specific. Finally, Rule 1178's requirements are enforceable and the rule contains adequate monitoring and maintenance provisions for monitoring compliance of regulated facilities.

The subject TSD for each rule has more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

We have no recommendations for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 25, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 27, 2003. This action will incorporate these rules into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(310)(i)(B)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(310) * * *

(i) * * *

(B) South Coast Air Quality Management District.

(*1*) Rule 1178 adopted on December 21, 2001; Rule 481 adopted on October 7, 1977 and amended on January 11, 2002; and, Rule 1141.2 adopted on July

6, 1984 and amended on January 11, 2002.

* * * * *

[FR Doc. 03–21590 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 279–0401a; FRL–7526–4]

Revisions to the California State Implementation Plan; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Sacramento Metropolitan Air Quality Management District's portion of the California State Implementation Plan. These revisions concern a local fee rule that applies to major sources of volatile organic compound and nitrogen oxide emissions within the Sacramento Metropolitan ozone nonattainment area. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990.

DATES: This rule is effective on October 27, 2003 without further notice, unless EPA receives adverse comments by September 25, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted State Implementation Plan revisions and EPA's technical support document at our Region IX office during normal business hours. You may also see copies of the submitted revisions at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue NW., (Mail Code 6102T), Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

The Sacramento Metropolitan Air Quality Management District (SMAQMD) adopted Rule 307, Clean Air Act Fees, on September 26, 2002. This rule was submitted by the California Air Resources Board (CARB) on December 12, 2002, for incorporation into the California State Implementation Plan (SIP). On February 7, 2003, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review. There are no previous versions of Rule 307 in the SIP, and no previous versions of this rule have been submitted.

B. What Is the Purpose of the Submitted Rule?

SMAQMD Rule 307 requires major stationary sources of volatile organic compounds (VOCs) and nitrogen oxides (NO_X) in the Sacramento Metropolitan ozone nonattainment area to pay a fee to the SMAQMD if the area fails to attain the one-hour national ambient air quality standard for ozone by its federally established attainment year. The fee must be paid beginning in the second year after the attainment year, and in each calendar year thereafter, until the area is redesignated to attainment of the 1-hour ozone standard. EPA's technical support document (TSD) has more information about this rule.

C. Why Was This Rule Submitted?

Under sections 182(d)(3), (e), and 185 of the Clean Air Act as amended in 1990 (CAA or the Act), States are required to adopt an excess emissions fee regulation for ozone nonattainment areas classified as severe or extreme. In California, the Sacramento Metropolitan nonattainment area is classified as severe. The fee regulation specified by the Act requires major stationary sources of VOCs in the nonattainment area to pay a fee to the State if the area fails to attain the standard by the attainment date set forth in the Act. Emissions of VOCs play a role in producing ground-level ozone and smog, which harm human health and the environment. Section 182(f) of the Act requires States to apply the same requirements to major stationary sources of NO_X as are applied to major stationary sources of VOCs. SMAQMD Rule 307 applies to major sources of both NO_X and VOCs.

II. What Action Is EPA Taking?

As authorized in section 110(k)(3) of the Act, EPA is fully approving SMAQMD Rule 307 because we believe it fulfills all relevant requirements. We believe the submitted rule is consistent with the requirements of the Act and relevant policy and guidance regarding SIP revisions. The TSD has more information on our evaluation.

We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by September 25, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 27, 2003. This will incorporate SMAQMD Rule 307 into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose

any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (*see* section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

■ Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(308)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(308) * * *

(i) * * *

(C) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 307, adopted on September 26, 2002.

* * * * *

[FR Doc. 03–21588 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 245–0403a; FRL–7535–2]

Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the San Diego County Air Pollution Control District (SDCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from the transfer of organic compounds to mobile transport tanks. We are approving a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act). We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 27, 2003 without further notice, unless EPA receives adverse comments by September 25, 2003. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, *steckel.andrew@epa.gov*.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, U.S. Environmental Protection Agency, Region IX, (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the date that it was amended by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Amended	Submitted
SDCAPCD	61.2	Transfer of Organic Compounds into Mobile Transport Tanks.	7/26/00	12/11/00

On February 8, 2001, this rule submittal was found to meet the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 61.2 into the SIP on June 30, 1993 (58 FR 34906).

C. What Is the Purpose of the Submitted Rule Revisions?

The purpose is to make the following revisions:

- 61.2(b)(2): Decreased is the threshold of 5,000,000 gallons per year or less to 500,000 gallons per year or less for bulk plants existing before March 1, 1984 for exemption from the requirement to use a vapor recovery unit or vapor disposal unit. The exemption only applies to vapors emitted during transfer of organic liquids, not subject to this rule, into a mobile transport tank that previously transported volatile organic compounds (VOCs).
- 61.2(b)(6): Added is a threshold of 21,000 gallons per year or less for the exemption of U.S. military ships from the requirements for no fugitive liquid leaks, for vapor concentration not exceeding 500 parts per million by volume (ppmv) measured as propane or 1,375 ppmv measured as methane, and for the liquid to enter less than six inches from the bottom of a mobile transport truck.
- 61.2(d): Revised and specified in detail are test procedures on mobile transport tanks and vapor emission control systems. Added are tests for vapor fugitive emissions. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SDCAPCD regulates a severe ozone nonattainment area and must fulfill RACT. See 40 CFR part 81. Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987).
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,* EPA (May 25, 1988) (the Bluebook).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies,* EPA Region 9 (August 21, 2001) (the Little Bluebook).

B. Does the Rule Meet the Evaluation Criteria?

The rule is improved, enforceable, on balance more stringent than the SIP Rule and does not relax the SIP. The requirements section of the rule fulfills RACT. The rule should be given full approval.

C. EPA Recommendation to Further Improve the Rule

The TSD describes an additional rule revision that does not affect EPA's current action but is recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 25, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 27, 2003. This will incorporate these rules into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Dated: July 8, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(285)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(285) * * *

(i) * * *

(E) San Diego County Air Pollution Control District.

(*1*) Rule 61.2, amended on July 26, 2000.

* * * * *

[FR Doc. 03-21586 Filed 8-25-03; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 284-0399a; FRL-7536-2]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). The BAAQMD revisions concern the emission of volatile organic compounds (VOCs) from the use of solvents and surface coatings. The SJVUAPCD revision concerns the emission of VOCs from a glycol dehydration system used on natural gas streams. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on October 27, 2003 without further notice, unless EPA receives adverse comments by September 25, 2003. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR-4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov*.

You can inspect a copy of the submitted rules and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rules and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B-102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, U.S. Environmental Protection Agency, Region IX, (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were revised by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted or amended	Submitted
BAAQMD	8–4	General Solvent and Surface Coating Operations	Amended 10/16/02	04/01/03
BAAQMD	8–16	Solvent Cleaning Operations	Amended 10/16/02	04/01/03
SJVUAPCD	4408	Glycol Dehydration Systems	Adopted 12/19/02	04/01/03

On May 13, 2003, these submittals were found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We gave a full approval to a version of BAAQMD Rule 8–4 on December 23, 1997 (62 FR 66998). We gave a limited approval/limited disapproval to a version of BAAQMD Rule 8–16 on April 16, 2003 (68 FR 18546). There is no version of SJVUAPCD Rule 4408 in the SIP.

C. What Are the Purposes of the Submitted Rules or Rule Revisions?

The purpose of the revisions to BAAQMD Rule 8–4 are to make the following changes:

- 8–4–110: Deleted is the exemption for water-base coatings and high-solids coatings that do not come in contact with a flame.
- 8–4–112: Deleted is the exemption for organic diluents that react in any operation such that no more than 20% volatilizes.
- 8–4–115: Added is an exemption for film cleaners using 1,1,1-trichloroethane exclusively.
- 8–4–116: Added are exemptions for specific operations that include (i) Surface preparation of electrical and electronic components, precision optics, or numismatic dies; (ii) stripping of cured inks, coatings, and adhesives or cleaning of resin, coating, ink, and adhesive mixing, molding, and application equipment; and (iii) surface preparation related to R&D operations, performance testing, and testing for quality control or quality assurance.
- 8–4–214: Added to the list of VOC not considered part of the coating are non-precursors methane, carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate, acetone, methyl acetate, parachlorobenzotrifluoride, and cyclic, completely-methylated siloxanes. Deleted from the list of VOC not considered part of the coating are various chlorinated and fluorinated hydrocarbons.
- 8–4–301: Deleted is the requirement that operations involving flame or heat to cure in the presence of oxygen do not emit more than 2.5 tons per year of VOC. This requirement would become 5 tons per year of VOC under section 8–4–302.1.
- 8–4–302.2: Added is the alternative requirement to sections 8–4–302.1 or 8–4–302.3 that emissions from surface coating or solvent use be controlled with an approved emission control system to an abatement efficiency of 85%.
- 8–4–302.3: Added is the alternative requirement to sections 8–4–302.1 or 8–4–302.2 that surface coatings contain no more than 420 grams per liter of VOC.
- 8–4–312: Added is the requirement with certain exceptions for cleanup of spray equipment that the solvent contain no more than 50 grams per liter of VOC.
- 8–4–313: Added is the requirement for surface preparation that the solvent contain no more than 50 grams per liter of VOC.

The purpose of the revisions to BAAQMD Rule 8–16 are to make the following changes and to correct deficiencies cited in the limited approval/limited disapproval action of April 16, 2003 (68 FR 18546):

- 8–16–121: Deleted is the limited exemption for one single cold cleaner per facility with less than 20 gallons per year solvent loss.
- 8–16–122: Deleted is the limited exemption for permitted cold cleaners.
- 8–16–123: Added are exemptions from section 8–16–303.5 for cleaning aerospace components; electrical and electronic components; precision optics; medical devices; resin, coating, ink, and adhesive application equipment; research and development equipment; performance testing equipment; and quality control equipment.
- 8–16–124: Added is an exemption from recordkeeping requirements for aqueous cleaning operations using solvent with less than 50 grams/liter VOC.
- 8–16–303.5: Added is a requirement for all repair and maintenance cleaning operations to use low VOC solvents with less than 50 grams/liter VOC, such as aqueous-based solvents or methyl siloxane-based solvents.
- 8–16–503: Added are recordkeeping requirements for approved emission control devices.
- 8–16–501: Revised to monthly from annually is the solvent use recordkeeping frequency (to correct a deficiency cited by EPA).
- 8–16–111, 8–16–602.2, and 8–16–602.3: Corrected are certain erroneous section references (to correct deficiencies cited by EPA).

The purpose of the new SJVUAPCD Rule 4408 is to reduce emissions of volatile organic compounds (VOCs) from a glycol dehydration system used on natural gas streams.

The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see sections 110(l) and 193). SIP rules must require Reasonably Available Control Technology (RACT) for major sources in ozone nonattainment areas (see section 182(a)(2)(A)).

The BAAQMD regulates a CAA subpart 1 ozone nonattainment area and the rules must fulfill the requirements of RACT. The SJVUAPCD regulates a severe ozone nonattainment area. See 40 CFR 81.305. The District identified the control of VOC emissions from natural gas dehydration systems in Rule 4408 as a Reasonably Available Control Measure (RACM) for implementation in 2003. See *2002 and 2005 Rate of Progress Plan*, SJVUAPCD. Therefore, Rule 4408 must fulfill RACM/RACT requirements.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.
- Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987).
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations*, EPA (May 25, 1988) (the Bluebook).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies*, EPA Region IX (August 21, 2001) (the Little Bluebook).
- *Determination of RACT and BARCT for Organic Solvent Cleaning and Degreasing Operations*, California Air Resources Board (July 7, 1991).
- *Control of VOE from Solvent Metal Cleaning*, EPA–450–2–77–022 (November 1977).

B. Do the Rules Meet the Evaluation Criteria?

We believe all of the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling RACT. All of the deficiencies identified in our previous limited approval/limited disapproval action on BAAQMD Rule 8–16 have been adequately addressed as follows:

- 8–16–501: The solvent use recordkeeping frequency is increased to monthly from annually.
- 8–16–111, 8–16–602.2, and 8–16–602.3: Corrected are certain erroneous section references.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by September 25, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on October 27, 2003. This will incorporate these rules into the federally-enforceable SIP. It will also permanently terminate all sanctions and FIP implications associated with our final action on BAAQMD Rule 8–16 on April 16, 2003 (68 FR 18546).

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

VOCs help produce ground-level ozone, smog, and particulate matter which harm human health and the environment. EPA has established National Ambient Air Quality Standards (NAAQS) for ozone. Section 110(a) of the CAA requires states to submit regulations in order to achieve and maintain the NAAQS. Table 2 lists some of the national milestones leading to the submittal of local agency VOC rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 27, 2003.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(315) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(315) New and amended regulations for the following APCDs were submitted on April 1, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Bay Area Air Quality Management District.

(*1*) Rule 8–4, amended on October 16, 2002 and Rule 8–16, adopted on March 7, 1979 and amended on October 16, 2002.

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4408, adopted on December 19, 2002.

* * * * *

[FR Doc. 03–21584 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[NC–112L–2003–1–FRL–7549–6]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry; State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA), North Carolina Department of Environment and Natural Resources (NC DENR) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry and the National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-alone Semi-chemical Pulp Mills. The Environmental Protection Agency (EPA) had reviewed this request and had found that it satisfies all of the requirements necessary to qualify for approval. Thus, the EPA is hereby granting NC DENR the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the state's alternative requirements.

DATES: This direct final rule is effective October 27, 2003 without further notice, unless EPA receives adverse comment by September 25, 2003. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written Comments must be submitted to Lee Page, Air Toxics Assessment and Implementation Section; Air Toxics and Monitoring Branch; Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier by following the detailed instructions described in (part (I)(B)(1)(i) through (iii)) of the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Lee Page, Air Toxics Assessment and

Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9131. Mr. Page can also be reached via electronic mail at *page.lee@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. The Regional Office has established an official public rulemaking file for this action under NC–112L–2003–1 that is available for inspection at the Regional Office. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding Federal Holidays.

2. Copies of the State submittal and supporting documents are also available for public inspection during normal business hours, by appointment at the North Carolina Department of Environmental and Natural Resources, Division of Air Quality, 1641 Mail Service Center, Raleigh, North Carolina 27699–1641.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking NC–112L–2003–1" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. E-mail. Comments may be sent by electronic mail (e-mail) to *page.lee@epa.gov.* Please include the text "Public comment on proposed rulemaking NC–112L–2003–1" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulation.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. Regulation.gov. Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov*, then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Please include the text "Public comment on proposed rulemaking NC–112L–2003–1" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Lee Page; Air Toxics Assessment and Implementation Section; Air Toxics and Monitoring Branch; Air, Pesticides and Toxics Management Division 12th floor; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30 excluding Federal Holidays.

C. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific

information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

On April 15, 1998, the Environmental Protection Agency (EPA) promulgated the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry (*see* 63 FR 18504) which was codified in 40 CFR part 63, subpart S, "National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry" (Pulp and Paper MACT I). Subsequently, on January 12, 2001, EPA promulgated the National Emission Standard for Hazardous Air Pollutants from the Pulp and Paper Industry (*see* 66 FR 3180) which has been codified in 40 CFR part 63, subpart MM, "National Emission Standards for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-alone Semi-chemical Pulp Mills" (Pulp and Paper MACT II). The International Paper Riegelwood Mill in Riegelwood, North Carolina, is one of five pulp and paper mills operating in the State and subject to subpart S and subpart MM.

On March 4, 2003, North Carolina Department of Environment and Natural Resources (NC DENR) requested delegation of subpart S and subpart MM under § 63.94 for the International Paper Riegelwood Mill. EPA received the request on March 11, 2003. NC DENR requested to implement and enforce approved alternative title V permit terms and conditions in place of the otherwise applicable requirements of subpart S and subpart MM under the process outlined in 40 CFR 63.94. As part of its request to implement and enforce alternative terms and conditions in place of the otherwise applicable Federal section 112 standards, NC DENR also requested approval of its demonstration that NC DENR has adequate authorities and resources to implement and enforce all Clean Air Act (CAA) section 112 programs and rules. The purpose of this demonstration is to streamline the approval process for future CAA section 112(l) applications.

III. Analysis of State's Submittal

Under CAA section 112(l), EPA may approve state or local rules or programs to be implemented and enforced in place of certain otherwise applicable CAA section 112 Federal rules, emission standards, or requirements. The Federal regulations governing EPA's approval of state and local rules or programs under section 112(l) are located at 40 CFR part 63, subpart E (*see* 65 FR 55810, dated September 14, 2000). Under these regulations, a state or local air pollution control agency has the option to request EPA's approval to substitute alternative requirements and authorities that take the form of permit terms and conditions instead of source category regulations. This option is referred to as the equivalency by permit (EBP) option. To receive EPA approval using this option, the requirements of 40 CFR 63.91 and 63.94 must be met.

The EBP process comprises three steps. The first step (*see* 40 CFR 63.94(a) and (b)) is the "up-front approval" of the state EBP program. The second step (*see* 40 CFR 63.94(c) and (d)) is EPA review and approval of the state alternative section 112 requirements in the form of pre-draft permit terms and conditions. The third step (*see* 40 CFR 63.94(e)) is incorporation of the approved pre-draft permit terms and conditions into a specific title V permit and the title V permit issuance process itself. The final approval of the state alternative requirements that substitute for the Federal standard does not occur for purposes of the Act, section 112(l)(5), until the completion of step three.

The purpose of step one, the "up-front approval" of the EBP program, is three fold: (1) It ensures that NC DENR meets the § 63.91(b) criteria for up-front approval common to all approval options; (2) it provides a legal foundation for NC DENR to replace the otherwise applicable Federal section 112 requirements with alternative, federally enforceable requirements that will be reflected in final title V permit terms and conditions; and (3) it delineates the specific sources and Federal emission standards for which NC DENR will be accepting delegation under the EBP option.

Under §§ 63.94(b) and 63.91, NC's request for approval is required to include the identification of the sources and the source categories for which the state is seeking authority to implement and enforce alternative requirements, as well as a one time demonstration that the State has an approved title V operating permit program that permits the affected sources.

IV. Final Action

After reviewing the request for approval of NC DENR's EBP program for Subpart S and Subpart MM, EPA has determined that this request meets all the requirements necessary to qualify for approval under CAA section 112(l) and 40 CFR 63.91 and 63.94. Accordingly, EPA approves NC DENR's request to implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Riegelwood Mill for subpart S and subpart MM. This action is contingent upon NC DENR including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirement applicable to the sources and the "applicable requirement" for title V purposes remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the

proposal to approve the section 112(l) provisions should adverse comments be filed. This rule will be effective October 27, 2003 without further notice unless the Agency receives adverse comments by September 25, 2003.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 27, 2003 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). Also, this action is not subject to Executive Order 13045, entitled, "Protection of Children from Environmental Health Risks and Safety Risks," because it is not an "economically significant" action under Executive Order 12866.

B. Executive Order 13175

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Thus, Executive Order 13175 does not apply to this rule

C. Executive Order 13132

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state program implementing a Federal program, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, Executive Order 13132 does not apply to this rule.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental entities with jurisdiction over populations of less than 50,000. This rule will not have a significant impact on a substantial number of small entities because approvals under 40 CFR 63.94 do not create any new requirements but simply allows the state to implement and enforce permit terms in place of federal requirements that the EPA is already imposing. Therefore, because this approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action allows North Carolina to implement equivalent alternative requirements to replace pre-existing requirements under Federal law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

F. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2003.

Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 13, 2003

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

■ Title 40, chapter I, part 63 of the *Code of Federal Regulations* is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart E—Approval of State Programs and Delegation of Federal Authorities

■ 2. Section 63.99 is amended by adding paragraph (a)(33) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(33) *North Carolina.*

(i) [Reserved]

(ii) North Carolina Department of Environment and Natural Resources (NC DENR) may implement and enforce alternative requirements in the form of title V permit terms and conditions for International Paper Riegelwood Mill, Riegelwood, North Carolina, for subpart S of this part—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry and subpart MM of this part—National Emissions Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-alone Semi-chemical Pulp Mills. This action is contingent upon NC DENR including, in title V permits, terms and conditions that are no less stringent than the Federal standard. In addition, the requirement applicable to the source remains the Federal section 112 requirement until EPA has approved the alternative permit terms and conditions and the final title V permit is issued.

* * * * *

[FR Doc. 03–21779 Filed 8–25–03; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 02–277, and MM Docket Nos. 01–235, 01–317, and 00–244; DA 03–2671]

Broadcast Ownership Rules, Cross-Ownership of Broadcast Stations and Newspapers, Multiple Ownership of Radio Broadcast Stations in Local Markets, and Definition of Radio Markets

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This decision grants a motion requesting permission to exceed the Commission's page limits for petitions for reconsideration, as well as oppositions and replies thereto, in this proceeding. This decision provides that such petitions and oppositions may be up to 50 pages each, and replies may be up to 20 pages.

FOR FURTHER INFORMATION CONTACT: Debra Sabourin, 202–418–2330.

SUPPLEMENTARY INFORMATION: This is a summary of the Order in MB Docket No. 02–277, and MM Docket Nos. 01–235, 01–317, and 00–244, DA 03–2671, adopted August 15, 2003, and released August 15, 2003. The complete text of this Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com*. Alternative formats (computer diskette, large print, audio cassette, and Braille) are available to persons with disabilities by contacting Brian Millin at 202–418–7426, TTY 202–418–7365, or at *bmillin@fcc.gov*.

Synopsis of the Order

1. On July 2, 2003, the Commission released a *Report and Order and Notice of Proposed Rulemaking*, completing its third biennial review of its broadcast ownership rules. (*See* Report and Order at 68 FR 46286, August 5, 2003, and Notice of Proposed Rulemaking at 68 FR 46359, August 5, 2003.) On August 11, 2003, the Diversity and Competition Supporters ("Petitioners") filed a motion requesting permission to exceed the page limits for petitions for reconsideration, as well as oppositions and replies thereto. See Motion to Extend Page Limits on Reconsideration ("Motion"), filed by Diversity and Competition Supporters, Aug. 11, 2003. The Commission's rules state that petitions for reconsideration and oppositions to petitions for reconsideration of Commission actions shall not exceed 25 double-spaced typewritten pages, and replies to oppositions shall not exceed 10 double-spaced typewritten pages. 47 CFR 1.429 (d), (f) and (g). Petitioners ask that we increase the limits for petitions and oppositions to 50 pages for each and the limits for replies to 20 pages. They argue that the broadcast ownership proceeding contains several interrelated proceedings, and they cannot discuss their points "coherently and thoroughly" within the page limits articulated in the rules. They add that the Commission has previously relaxed the page limitations when parties seek reconsideration of extraordinarily complex decisions.

2. We agree with Petitioners that the issues presented in this proceeding are both complex and important. The Report and Order was the culmination of the most comprehensive review of broadcast ownership regulation in the agency's history. We therefore find that the public interest would be best served by granting the Petitioners' Motion in order to assure a complete record and thorough treatment of all the issues on reconsideration. In this proceeding, petitions for reconsideration and oppositions to petitions for reconsideration will be limited to 50 pages each, and replies to opposition to petitions for reconsideration will be limited to 20 pages.

3. Accordingly, Petitioners' Motion to Extend Page Limits on Reconsideration in the above-captioned proceeding is granted.

Federal Communications Commission.

Robert Ratcliffe,

Deputy Chief, Media Bureau.

[FR Doc. 03–21651 Filed 8–25–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 030221039–3195–02; I.D. 081602B]

RIN 0648–AQ04

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations that implement the Atlantic Large Whale Take Reduction Plan (ALWTRP) to identify gear modifications that sufficiently reduce the risk of entanglement to western North Atlantic right whales (right whales) under the Dynamic Area Management (DAM) program and, as such, allows NMFS to utilize the option of allowing gear with certain modifications within a DAM zone. Specifically, NMFS identifies anchored gillnet and lobster trap/pot gear modifications that could be allowed within a DAM zone. This final rule includes a provision to correct and clarify the regulations implementing the Seasonal Area Management (SAM) program with respect to lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlap with a SAM area.

DATES: This final rule is effective September 25, 2003.

ADDRESSES: Copies of the final Environmental Assessment/Regulatory Impact Review for this action can be obtained from the ALWTRP website (see **SUPPLEMENTARY INFORMATION**). Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, and progress reports on implementation of the ALWTRP may be obtained by writing Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930 or Juan Levesque, NMFS, Southeast Region, 9721 Executive Center Drive, St.Petersburg, FL 33702–2432. For additional addresses and web sites for document availability see **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978–281–9328 ext. 6503; or Kristy Long, NMFS, Office of Protected Resources, 301–713–1401 ext. 171.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP web site at *http://www.nero.nmfs.gov/whaletrp/*. Copies of the most recent marine mammal stock assessment reports may be obtained by writing to Richard Merrick, NMFS, 166 Water Street, Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.wh.whoi.edu/psb/sar2002.pdf*. In addition, copies of the documents entitled "Defining Triggers for Temporary Area Closures to Protect Right Whales from Entanglements: Issues and Options" and "Identification of Seasonal Area Management Zones for North Atlantic Right Whale Conservation" are available by writing to Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930 or can be downloaded from the Internet at *http://www.nero.nmfs.gov/whaletrp/*.

Background

This final rule identifies acceptable gear that would sufficiently reduce the risk of entanglement to right whales and could be allowed under the DAM program (67 FR 1133, January 9, 2002; 67 FR 65722, October 28, 2002). This final rule completes the regulatory actions planned and described in the recent amendments to the ALWTRP, which included the SAM program (67 FR 1142, January 9, 2002; 67 FR 65722, October 28, 2002), expanded gear modifications (67 FR 1300, January 10, 2002; 67 FR 15493, April 2, 2002), as well as the DAM program. Details concerning the justification for and development of the rule were provided in the preamble to the proposed rule (68 FR 10195; March 4, 2003) and, therefore, are not repeated here.

Lobster Trap and Anchored Gillnet Gear Modifications for Use in DAM Zones

The final gear modifications to the ALWTRP DAM program are based on the SAM anchored gillnet and lobster trap/pot gear, with allowance for a second buoy line and floating line on the bottom third of each buoy line, which are described below. These requirements are in addition to the gear modifications currently required under the ALWTRP for the Offshore Lobster Waters, Northern Nearshore Lobster Waters, Southern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, Great South Channel Restricted Lobster Area (July 1 through March 31), Stellwagen Bank/Jeffreys Ledge Restricted Area (lobster trap and gillnet area descriptions), Cape Cod Bay Restricted Area (lobster trap and gillnet area descriptions; May 16 through December 31), Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), Mid-Atlantic Coastal Waters (gillnet area description) and Other Northeast Gillnet Waters. If the requirements and exceptions for gear modifications in a DAM zone as provided in this final rule differ from other ALWTRP requirements for any overlapping areas and times, then the more restrictive requirements will apply in the DAM zone. Time periods for critical habitat are incorporated to clarify when these are subject to the DAM program, which, as described (66 FR 50160, October 2, 2001; 67 FR 1142, January 9, 2002) and implemented by NMFS, are time periods when the requirements for critical habitat areas are no more conservative than the surrounding waters. Additionally, DAM gear modification requirements under the DAM program are applicable to ALWTRP management areas north of 40° N. latitude where a DAM zone could be triggered.

Lobster Trap Gear

In addition to the universal gear and gear marking requirements, fishermen utilizing lobster trap gear within the portion of the Northern Nearshore Lobster Waters, Southern Nearshore Lobster Waters, Northern Inshore State Lobster Waters, Cape Cod Bay Restricted Area (May 16 through December 31), and Stellwagen Bank/Jeffreys Ledge Restricted Area that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. Buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. A weak link with a maximum breaking strength of 600 lb (272.4 kg) must be placed at all buoys; and
4. Fishermen are allowed to use two buoy lines per trawl string.

In addition to the universal gear and gear marking requirements, fishermen utilizing lobster trap gear within the portion of the Great South Channel Restricted Lobster Area (July 1 through March 31) and Offshore Lobster Waters

Area that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines must be made of either sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. Buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. A weak link with a maximum breaking strength of 1,500 lb (680.4 kg) must be placed at all buoys; and
4. Fishermen are allowed to use two buoy lines per trawl string.

Anchored Gillnet Gear

In addition to the universal gear and gear marking requirements, fishermen utilizing anchored gillnet gear within the portion of the Other Northeast Gillnet Waters, Cape Cod Bay Restricted Area (May 16 through December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), and Mid-Atlantic Coastal Waters that overlap with a DAM zone may be required to utilize all the following gear modifications when a DAM zone is in effect:

1. Groundlines must be made of sinking or neutrally buoyant line. Floating groundlines are prohibited;
2. Buoy lines must be made of either sinking or neutrally buoyant line, except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line;
3. A weak link with a maximum breaking strength of 1,100 lb (498.8 kg) must be placed at all buoys;
4. Each net panel must have a total of 5 weak links each with a maximum breaking strength of 1,100–lb (498.8–kg). Net panels are typically 50 fathoms in length, but the weak link requirements would apply to all variations in panel size. These weak links must include 3 floatline weak links. The placement of the weak links on the floatline must be as follows: one at the center of the net panel and one as close as possible to each of the bridle ends of the net panel. The remaining 2 weak links must be placed in the center of each of the up and down lines at the panel ends;
5. Fishermen are allowed to use two buoy lines per net string; and
6. All anchored gillnets, regardless of the number of net panels, must be securely anchored with the holding power of at least a 22–lb (10.0–kg) Danforth style anchor at each end of the net string.

Clarification of Weak Link Requirement for Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that Overlap With SAM Areas

Details concerning the justification for and clarification of the weak link requirement for Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that Overlap with SAM Areas were provided in the preamble to the proposed rule (68 FR 10195; March 4, 2003) and, therefore, are not repeated here. NMFS includes in this final rule a provision that lobster trap gear in Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters that overlaps with a SAM area must have a weak link with a maximum breaking strength of 600–lb (272.4–kg) at all buoys.

Comments and Responses

Approximately 12 letters of comment were received during the public comment period on the proposed rule, which ended on April 3, 2003. A complete summary of the comments and NMFS' responses is provided here.

General Comments

Comment 1: One commenter expressed support for the preferred alternative because they believe it will provide the guidance necessary for fishermen to modify their gear in order to minimize impacts on marine mammals.

Response: NMFS appreciates the support and reiterates that identifying gear modifications in the final rule is necessary to complete the DAM program as an element of the Reasonable and Prudent Alternative (RPA) required under the Endangered Species Act (ESA) to protect right whales and avoid jeopardy. In addition, through the implementation of the gear modifications identified for potential use in a DAM zone, NMFS acknowledges the preference for management measures that allow fishing to continue with modified gear inside designated DAM zones while also sufficiently reducing the risk of serious injury and mortality to right whales from entanglements.

Comment 2: One commenter disagreed with the conclusion made in the proposed rule for the SAM program that the gear modifications prevent serious injury or mortality to right whales.

Response: NMFS recognizes the practical difficulties associated with identifying gear modifications designed to sufficiently reduce the risk of serious injury or mortality to right whales. As indicated in the Final Environmental Assessments for the SAM interim final rule and this final rule, it is not feasible, in a typical scientific fashion, to conduct and evaluate experiments on right whale interactions with modified gear configurations. For obvious reasons, NMFS cannot conduct field tests or even laboratory experiments on right whales to collect data. However, NMFS is able to scrutinize past entanglements, analyze these events, and develop ways to modify gear in order to sufficiently reduce risk of serious injury and mortality from future entanglements.

Comment 3: One commenter disagrees that interactions between large marine mammals and fixed gear types, such as gillnets, have a major impact. Another commenter disagreed with the assessment that the arc created by floating line between traps in a trawl posed a threat to whales.

Response: While it is often difficult to identify the specific gear type involved in each entanglement, NMFS does have evidence that fixed gear types, such as gillnets, have an impact on large whales. In 2001, there were two confirmed and several unconfirmed entanglements of large whales where gillnet gear was recovered. For example, in February 2001, gillnet gear was recovered from an entangled humpback whale off the coast of North Carolina. In April 2001, gillnet gear was recovered from an entangled humpback whale found dead near Virginia Beach, VA.

Floating line between traps has also been implicated in large whale entanglements; NMFS has evidence that establishes the risk associated with this gear configuration. Underwater video footage of typical lobster gear with floating groundline between traps revealed that the floating groundline forms large loops in the water column between traps. Similar underwater video footage of neutrally buoyant line between traps indicated that it did not have the same vertical profile as floating line; rather, it was located on or near the bottom, thus reducing the risk of entangling a large whale. Additionally, in the SAM proposed rule (66 FR 59394, November 28, 2001), NMFS discussed an analysis of gear profiles in the Offshore Lobster Waters area, which estimated that an 85% reduction in floating line would result if floating line were replaced by sinking or neutrally buoyant line in SAM areas. Therefore, NMFS expects that by eliminating most floating line and requiring sinking or neutrally buoyant line in a DAM zone,

a large percentage of the line within the water column would be eliminated.

Comment 4: One commenter suggested that NMFS add new mandatory provisions to all its permits or impose new mandatory regulations on fishing vessel personnel regarding marine trash and debris awareness and elimination, vessel strike avoidance, and injured/dead protected species reporting.

Response: NMFS appreciates the concerns raised by the commenter; however, these activities fall outside of the scope of this final rule under the DAM program in the ALWTRP. In addition, marine trash and debris awareness and elimination falls outside the scope for regulations promulgated under take reduction plans. Specifically, section 118 of the Marine Mammal Protection Act (MMPA), which authorizes NMFS to establish take reduction teams and develop plans for the purpose of reducing serious injury and mortality to marine mammals, is designed to address interactions between commercial fishing gear and marine mammals. Similarly, although ship strikes and the need to mitigate the risks posed by vessel traffic are important to large whale conservation and recovery, the take reduction team is established to deal solely with the interactions between marine mammals and commercial fishing. NMFS is developing a separate strategy to address ship strikes and will work with interested agencies and parties to implement that strategy. Finally, MMPA section 118 and NMFS implementing regulations have separate requirements for reporting incidental mortality and injury of marine mammals in the course of fishing operations (16 U.S.C. 1387(e) and 50 CFR 229.6) and similar requirements may be imposed under the ESA as necessary for the conservation of other protected species.

Comment 5: One commenter requested that NMFS immediately establish regulations to require all fish and shellfish traps and all gillnets in U.S. waters north of central Florida to use sinking or neutrally buoyant line for ground and buoy lines and a single buoy to mark gear.

Response: The DAM program, under which this final rule is promulgated, only applies to anchored gillnet and lobster trap gear in waters north of 40° N. latitude. Therefore, the gear modifications identified in this final rule would only be required in these waters and for these gear types in the event that a gear modification option is selected for implementation inside a DAM zone. However, NMFS and the ALWTRT have been discussing the need for bringing other fisheries under the auspices of the ALWTRP. Representatives from new trap/pot fisheries, such as hagfish, red crab, and black sea bass, have been added to the ALWTRT for the purpose of discussing, developing, and applying risk reduction measures to these fisheries. NMFS and the ALWTRT will continue to investigate the need to add representatives from other fisheries to the Team as warranted.

Comment 6: Several commenters encouraged NMFS to replace the DAM and SAM program with universal gear modifications to protect all large whales from entanglement.

Response: NMFS and the ALWTRT have identified "universal" or expanded gear modifications as a long term objective with the potential for replacing DAM and SAM. However, as indicated in the Biological Opinion that identified DAM, SAM, and expanded gear modifications, these three programs act as multiple management components for one RPA to avoid jeopardy to right whales. Therefore, in order to remove DAM and SAM and still avoid jeopardy, NMFS must replace these programs with management measures of at least equal or more conservation benefit to right whales. NMFS hopes that the implementation of DAM gear modification options through this final rule will help alleviate some of the hardship experienced by the fishing community that might otherwise be caused by requiring or requesting the complete removal of lobster trap/pot and anchored gillnet gear from a DAM zone while still protecting right whales.

DAM Gear Modification Comments

Comment 7: One commenter proposed that NMFS explore the feasibility of year-round breakaway gear, with in-season modifications, such as the anchoring requirement, when concentrations of large mammals are observed.

Response: NMFS and the ALWTRT have been developing and discussing alternative management measures, including year-round, "universal" or expanded gear modifications. However, under the current RPA, DAM, SAM, and additional gear modifications have been identified as multiple management components necessary to avoid jeopardy. In the meantime, NMFS will continue to work with the ALWTRT, fishermen, scientists and fishing gear manufacturers to develop and test gear modifications. NMFS will continue to discuss the need for additional gear modifications requirements under the ALWTRP with the ALWTRT.

Comment 8: Several commenters oppose the proposal to require the use of a single endline, also referred to as a buoy line. One commenter suggests allowing the use of two endlines on gillnets with Danforth-style anchors at each end to ensure the proper operation of weak links on the gear. In addition, this commenter and others felt that NMFS has failed to analyze the increased potential for gear conflicts and financial loss to fixed gear fishermen by prohibiting the use of two endlines. One commenter suggested that NMFS consider allowing fishermen to replace the second endline with a very weak buoy line for the purpose of marking the location of the gear during the 15–day DAM restricted period. Several commenters felt that this provision would lead to increased lobster gear loss because it is common for lobstermen to lose one buoy line. Finally, several commenters felt that prohibiting the use of two buoy lines may encourage fishermen to split their trawls into smaller units (i.e., to avoid increased gear conflict and gear loss), which could result in an increase in vertical lines in the water column, thereby defeating the purpose of requiring a single buoy line (i.e., to reduce the number of lines in the water). Additionally, commenters noted that two buoy lines should be allowed to minimize the risk to human safety that would result if fishermen could not haul from either end of a net string or trap trawl in adverse weather conditions.

Response: Since publication of the proposed rule, NMFS has become aware that requiring gear modifications with one buoy line in a DAM area may not necessarily result in a 50–percent reduction of vertical lines in the water column as fishermen may fish shorter trawls, which may result in the same or a greater number of buoy lines. Allowing SAM gear modifications with a second endline and one third polypropylene on the bottom third of the buoy line reduces both the potential for interaction through a significant reduction in floating line and the potential for serious injury or mortality through the incorporation of additional weak links at reduced breaking strengths. In addition, having two endlines reduces the probability of gear conflicts and lost gear. Thus, this final rule implements a DAM gear modifications option that allows fishermen to retain a second endline, which addresses both gear conflict and financial burden concerns expressed by the commenter.

Comment 9: One commenter suggested that NMFS reconsider the

proposed prohibition of floating line because sinking and/or neutrally buoyant line is not compatible with all bottom types and all conditions.

Response: NMFS has reconsidered the prohibition on floating line in the proposed rule with respect to endlines only. In this final rule, endlines will be required to be composed entirely of either sinking and/or neutrally buoyant line except for the bottom third of the line, which may be made of floating line. Floating groundlines will be prohibited and must, therefore, be composed entirely of sinking or neutrally buoyant line. See also response to Comment 13.

Comment 10: Several commenters suggested that NMFS consider the current management measures in the Cape Cod Bay Critical Habitat Area for guidance with respect to regulating buoy lines. These regulations allow lobstermen to fish with two buoy lines on a trawl and allows for a section of floating line on the buoy line.

Response: The final rule implements a lobster gear modification option for DAM that is similar to those currently required in Cape Cod Bay from January 1 through May 15.

Comment 11: One commenter felt that it was premature for NMFS to suggest that the SAM gear modifications (e.g., the use of 600–lb (272.4–kg) and 1,100–lb (498.8–kg) weak links) have been demonstrated to prevent serious injury or mortality to right whales.

Response: See response to Comment 2.

Comment 12: Two commenters suggested that NMFS should adopt a more regional approach to developing gear modifications, which would take into account unique bathymetric features, especially those found along the coast of Maine. In addition, one of these commenters expressed opposition to the proposal for eliminating one buoy line, the prohibition on floating line on the bottom 1/3 of the endline, and the prohibition on floating groundline.

Response: NMFS is working with the ALWTRT, including the Maine Department of Marine Resources, to understand the unique bathymetric features throughout the Gulf of Maine and fishing operations in these areas. NMFS considers numerous factors when developing regulations to reduce interactions between large whales and commercial fisheries. For example, weak link requirements under the ALWTRP vary by fishery and management area. See also responses to Comments 9 and 13.

Comment 13: One commenter expressed opposition to the proposed requirement that buoy lines be comprised of entirely sinking or neutrally buoyant line because recent research from flume-tank testing of scale models suggests that this gear requirement has little or no conservation value.

Response: Based on this recent research, NMFS has reconsidered the prohibition on floating line identified in the proposed rule with respect to endlines only. The flume-tank testing results support underwater video footage taken by NMFS and discussed in the Environmental Assessment/Regulatory Impact Review (EA/RIR), which demonstrates that allowing one-third polypropylene line on the bottom third of the buoy line does not necessarily produce a loop in the water column, due to current and tidal action on the surface system, and, therefore, would not increase risk to right whales. NMFS does believe that there is conservation value in requiring two-thirds of the buoy line to be sinking and/or neutrally buoyant line, similar to the buoy line gear modification requirement in Cape Cod Bay Critical Habitat. Thus, endlines will be required to be composed entirely of either sinking and/or neutrally buoyant line except for the bottom third of the line, which may be made of floating line.

Comment 14: One commenter expressed support for the proposed requirement that groundlines be comprised entirely of sinking or neutrally buoyant line, but suggested that NMFS allow a phase-in period for fishermen to change their gear.

Response: This final rule will be effective 30–days after date of publication in the **Federal Register**. If a DAM zone is triggered after this time and NMFS requires gear modifications in the DAM zone, fishermen will be required to change their groundlines over to sinking or neutrally buoyant line in order to continue fishing inside the DAM zone during the restricted period if their groundlines are not currently configured in this manner. NMFS understands that some fishermen are already using sinking or neutrally buoyant line in their groundline.

Comment 15: One commenter asked NMFS to consider allowing floating endlines because the free end of the rope would be at the surface and would allow the fishermen to access the line more easily than sinking or neutrally buoyant line.

Response: The final rule will allow fishermen to use floating line on the bottom third of the endline. Under the regulations implementing the ALWTRP, gillnet and lobster trap fishermen are prohibited from having any portion of the buoy line that is directly connected to the gear at the ocean bottom from floating at the surface at any time. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

Rulemaking Process Comments

Comment 16: One commenter felt that the 30–day comment period was too short and should be extended for an additional 30 days.

Response: NMFS considers the 30–day comment period on the DAM gear modifications proposed rule appropriate in light of the need to complete the DAM program as it was intended when initially promulgated in 2002. Because the DAM gear modifications proposed rule is an amendment to the already established DAM program, NMFS considers a 30–day comment period sufficient.

Comment 17: One commenter felt that NMFS did not consider enough options in the proposed rule and recommends additional options, such as the gear modifications accepted in Cape Cod Bay during the high use period or the prohibitions in place in the Great South Channel.

Response: An alternative with gear modifications similar to those currently implemented in Cape Cod Bay was analyzed as an option in the proposed rule. That alternative would allow fishermen to retain a second endline, and allow each endline to be comprised entirely of sinking or neutrally buoyant line except for the bottom third, which may be floating line. Based in part on comments received, NMFS is now adopting this option and it will be implemented through this final rule.

DAM Implementation Comments

Comment 18: One commenter felt that NMFS has failed to implement DAM properly and that, in the instances when DAM zones have been declared, the request for voluntary action alone is insufficient.

Response: In its implementation of the DAM program, NMFS has acted in accordance with the DAM rule and internal protocols designed by NMFS to respond to DAM triggers.

Comment 19: One commenter felt that it is unrealistic to require fishermen to modify gear within 48 hours of implementing a DAM zone.

Response: NMFS appreciates the time and effort involved in hauling fishing gear and modifying it in an area designated for DAM. NMFS also understands that some fishermen are already using sinking or neutrally buoyant line in their groundline.

However, if a DAM action is triggered and NMFS implements gear modifications in the DAM zone, fishermen will be required to comply with the specified gear modifications or remove their gear from the area. In order to provide fishermen with enough time to respond to restrictions in a DAM zone, NMFS will issue a notice at the time the action is filed with the Office of the **Federal Register**, which is usually 3 to 5 days prior to the regulation being published in the **Federal Register**. Once the decision has been made to modify gear inside a DAM zone, NMFS will notify the commercial fisheries affected as quickly and comprehensively as possible. In addition, NMFS will issue an alert via email to all ALWTRT members and post the alert on the website at *www.nero.nmfs.gov/whaletrp/*. NMFS hopes that members of the ALWTRT who receive an alert will circulate the information to other interested parties to help ensure that the fishermen who may have to comply with the gear restrictions in a DAM zone have time to respond. Fishermen, industry representatives, environmental groups, and all others interested in receiving alerts and notices over the Internet should provide their email address to the Northeast Regional Office (see **ADDRESSES**). NMFS will also mail letters providing notice to those who request it by contacting the Northeast Regional Office (See **ADDRESSES**).

Comment 20: One commenter suggested that NMFS exempt small-scale fishing operations in state waters from the DAM program. Another commenter expressed opposition to any DAMs or SAMs in state waters.

Response: The MMPA applies to state waters and there have been aggregations of right whales, which the DAM and SAM rules are designed to address, in state waters. NMFS is currently investigating the feasibility and practicality of revising the exempted waters of the ALWTRP to possibly include other inland areas where the presence of large whales is rare or non-existent.

Changes From the Proposed Rule

In the March 4, 2003 proposed rule (68 FR 10195), NMFS identified as its preferred alternative gear modifications for anchored gillnet and lobster trap/pot gear that could be allowed within a DAM zone. In the preamble to the proposed rule, NMFS sought comment from the public on the proposed regulations and the alternatives analyzed. Based on comments received during the public comment period, and as explained below, NMFS has concluded that its original preferred alternative may not afford the level of protection to right whales as one of the other alternatives discussed in the EA/RIR. Therefore, NMFS has determined that the alternative identifying SAM gear modifications with the allowance for a second endline and floating line on the bottom third of each endline should be implemented as gear that could be allowed within a DAM zone.

Comments received from the public requested that NMFS identify gear modifications similar to those currently required by the ALWTRP in Cape Cod Bay Critical Habitat during the high use time period for right whales (January 1 - May 15). The Cape Cod Bay Critical Habitat gear requirements allow two buoy lines with floating line on the bottom third of each endline. These gear modifications were analyzed in the Draft and Final EA/RIR. Based on this analysis, NMFS believes that this gear sufficiently reduces the risk of entanglement to right whales. This gear is currently allowed in a critical habitat area during the time period when high concentrations of whales occur in the area. Additionally, information received through the comment period supports underwater video footage taken by NMFS and discussed in the EA/RIR, which demonstrates that, due to current and tidal action on the surface system, allowing one-third polypropylene line on the bottom third of the buoy line does not typically produce a loop in the water column, which could increase risk to right whales. Since publication of the proposed rule, NMFS has determined that requiring gear modifications with one buoy line in a DAM area may not necessarily result in a 50–percent reduction in vertical line in the water column as fishermen may fish shorter trawls, which may result in the same or a greater number of buoy lines. Allowing SAM gear modifications with a second endline and one third polypropylene line on the bottom third of the buoy line in DAM zones reduces both the potential for interaction through a significant reduction in floating line (in the groundline) and the potential for serious injury or mortality through the incorporation of additional weak links at reduced breaking strengths. Thus, DAM gear modifications, including replacing floating line with neutrally buoyant and/or sinking line in the groundline, installing additional weak links, and reducing breaking strengths for weak links, sufficiently reduces the risk of serious injury or mortality to right whales in DAM zones.

Classification

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

This final rule would identify gear modifications that reduce the risk of entanglement to right whales sufficiently to be an option under the DAM program. The objective of this final rule, issued pursuant to section 118 of the MMPA, is to reduce the level of serious injury and mortality of right whales in East Coast lobster trap and finfish gillnet fisheries. Additionally, this final rule enables NMFS to exercise the full range of management options that the agency intended to be available under the DAM program.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. A copy of the FRFA is available from NMFS (see **ADDRESSES**). Four alternatives, including a status quo or no action alternative, the preferred alternative (PA), and two other alternatives were evaluated using a retrospective analysis based on 2000 right whale sightings data and 2000 Vessel Trip Report (VTR) data. Under all alternatives, from June 20th to July 6th, 45 vessels (29 lobster vessels and 16 sink gillnet vessels) were affected by a DAM zone. A summary of the analysis follows:

1. NMFS considered a "no action" or status quo alternative that would result in no changes to the current measures under the ALWTRP. The no action alternative would result in NMFS only having the options of requiring the removal of all lobster trap and anchored gillnet gear from a DAM zone or issuing an alert requesting the voluntary removal of all gear. NMFS rejected this alternative as NMFS would not be able to exercise the full range of management options that the agency intended to be available under the DAM program.

2. NMFS considered an alternative (NPA 1) that would allow SAM gear modifications to be used under the DAM program. SAM gear modifications include, among other requirements, the use of neutrally buoyant or sinking line on all ground lines and buoy lines and restricts fishermen to one endline (buoy line) per trawl or string. Due to comments received, NMFS understands that requiring gear modifications with one buoy line in a DAM area may result in fishermen splitting trawls or strings into shorter trawls or strings (to avoid increased gear conflict and gear loss), which may result in the same or a greater number of buoy lines, thus increasing the risk to whales. Furthermore, comments received and a study conducted after publication of the

proposed rule supports underwater video footage taken by NMFS and discussed in the EA/RIR. This information indicates that, due to current and tidal action on the surface system, allowing one- third polypropylene line on the bottom third of the buoy line does not typically produce a loop in the water column, and, therefore, does not increase risk to right whales.

3. The option selected in this final rule will implement SAM gear modifications with two endlines (buoy lines) and floating line on the bottom third of each endline. These are similar gear modifications required under the ALWTRP in Cape Cod Bay Critical Habitat during the high use time period for right whales (January 1 - May 15). NMFS believes that this gear, which is currently required in a critical habitat area during the time period when whales occur in the area, sufficiently reduces the risk of entanglement to right whales.

4. NMFS considered and rejected an alternative (NPA 2) that would implement SAM gear modifications with two endlines (buoy lines) and require that the buoy lines be composed entirely of sinking or neutrally buoyant line. NMFS rejected this alternative because information received during the comment period supports preliminary investigations by NMFS, which demonstrates that due to current and tidal action on the surface system, allowing some floating line on the buoy line does not typically produce a loop in the water column and, therefore, would not increase risk to right whales.

NMFS has taken steps to minimize the economic impact on small entities through this final rule by establishing the option of utilizing gear modifications rather than completely closing DAM areas.

NMFS received two public comments relating to the economic impacts of this final rule. These comments were considered by NMFS before it approved this final rule and are summarized by NMFS in the "Comments and Responses" section of the preamble to this final rule, as comment/response number eight. Changes to the rule were made, in part, as a result of these and other public comments.

The small entities affected by this final rule are anchored gillnet and lobster trap fishermen fishing north of 40° N. latitude. Since DAM is used to respond to unusual and unexpected sightings of right whales, it is difficult for NMFS to predict exactly where DAM zones may be implemented in the future. Therefore, providing an accurate estimate of the number of small entities that will be affected is problematic. In the northeast, there are potentially 7,147 vessels fishing lobster gear and 312 vessels fishing sink gillnet gear (Bisack 2000). However, NMFS does not expect that number of vessels to be affected by any one DAM zone because of the limited size and duration of a DAM zone. Data from aerial surveys in 2000 were used to retrospectively evaluate the use of the recommended DAM triggers. Based on the analysis of this data, six DAM zones would have been triggered in 2000. Four of the six hypothetical DAM zones would have been subsumed under the SAM program and the other DAM zone would have occurred in Canadian waters, which are outside of U.S. jurisdiction. Therefore, the impacts were assessed with respect to one hypothetical DAM zone from June 20 to July 6, 2000. For example, based on 2000 right whale sightings data and 2000 VTR data from June 20th to July 6th, the final rule would have affected 45 lobster and sink gillnet vessels (29 lobster vessels and 16 sink gillnet vessels), which represents 0.4 percent of the vessels (0.004=29/7,147 lobster vessels) associated with the lobster fleet and 5.1 percent of the vessels (0.051=16/312 sink gillnet vessels) associated with the sink gillnet fleet in the northeast.

This final rule contains no reporting, recordkeeping, or other compliance requirements. NMFS determined that this action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. No state disagreed with our conclusion that this final rule is consistent with the enforceable policies of the approved coastal management program for that state.

This final rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the proposed action to the appropriate official(s) of affected state, local, and/or tribal governments. No comments on the federalism implications of the proposed action were received in response to this notification. However, two commenters did respond on the federalism implications during the comment period for the proposed rule. The comment is characterized and responded to by NMFS in the "Comments and Responses" section of the preamble to this final rule, as comment/response number twenty. No changes to the rule were made as a result of the comment received.

This final rule would also clarify that vessels in Northern Inshore State and Northern Nearshore Lobster Waters must install and use a 600 lb (272.4 kg) weak link at each buoy when fishing in SAM West during the time it overlaps the Northern Inshore State and Northern Nearshore Lobster Waters. The impacts of this requirement on small entities fall within the scope of the regulatory flexibility analyses performed in conjunction with the original SAM proposed and interim final rules. Among other requirements, the regulations implementing the ALWTRP currently require lobster trap fishermen in Northern Nearshore Lobster Waters to attach a weak link at the buoy with a breaking strength of 600–lb (272.4–kg) or less, and also includes this same weak link requirement as an option from the Lobster Take Reduction Technology List for Northern Inshore State Lobster Waters. Therefore, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(a) and (c), no further analysis is required. Copies of the SAM EA/RIR are available upon request (see **ADDRESSES**).

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

Dated: August 19, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. In § 229.32, paragraph (g)(3)(iii)(B) is revised and (g)(4)(i)(B)(*2*)(*ii*) is added to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(g) * * *

(3) * * *

(iii) * * *

(B) Allow fishing within a DAM zone with anchored gillnet and lobster trap gear, provided such gear satisfies the requirements specified in paragraphs (g)(4)(i)(B)(*1*) and (g)(4)(i)(B)(*2*) of this section, except that a second buoy line

and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. These requirements are in addition to requirements found in § 229.32 (b) through (d) but supersede them when the requirements in paragraphs (g)(4)(i)(B)(*1*) and (g)(4)(i)(B)(*2*) of this section, with the exception that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone, are more restrictive than those in § 229.32 (b) through (d). Requirements for anchored gillnet gear in Other Northeast Gillnet Waters are as specified in paragraphs (g)(4)(i)(B)(*1*) of this section, except that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. Requirements for lobster trap gear in Offshore Lobster Waters, Northern Nearshore Lobster Waters and Northern Inshore State Lobster Waters are as specified in paragraph (g)(4)(i)(B)(*2*) of this section, except that a second buoy line and a section of floating line in the bottom portion of each line not to exceed one-third the overall length of the buoy line are allowed within a DAM zone. Requirements for anchored gillnet gear in Cape Cod Bay Restricted Area (May 16 through December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area (July 1 through March 31), Great South Channel Sliver Restricted Area (July 1 through March 31), and Mid-Atlantic Coastal Waters are the same as requirements for Other Northeast Gillnet Waters. Requirements for lobster trap gear in Southern Nearshore Lobster Waters, Cape Cod Bay Restricted Area (May 16 through December 31) and Stellwagen Bank/Jeffreys Ledge Restricted Area are the same as requirements for Northern Nearshore Lobster Waters and Northern Inshore State Lobster Waters. Requirements for lobster trap gear in the Great South Channel Restricted Lobster Area (July 1 through March 31) are the same as requirements for Offshore Lobster Waters.

* * * * *

(4) * * *

(i) * * *

(B) * * *

(*2*) * * *

(*ii*) Northern Inshore State Lobster Waters and Northern Nearshore Lobster Waters Areas buoy weak links—All buoy lines must be attached to the buoy with a weak link having a maximum breaking strength of up to 600–lb (272.4–kg). Weak links may include swivels, plastic weak links, rope of appropriate diameter, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator for Fisheries.

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[FR Doc. 03–21606 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 165
Tuesday, August 26, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1124 and 1131

[Docket No. AO–368–A32, AO–271–A37; DA–03–04]

Milk in the Pacific Northwest and Arizona-Las Vegas Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders; Correction

7 CFR Part	Marketing area	AO Nos.
1124	Pacific Northwest	AO–368–A32
1131	Arizona-Las Vegas	AO–271–A37

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: The Agricultural Marketing Service is correcting the proposed rule that appeared in the **Federal Register** of August 6, 2003 (68 FR 46505), which gave notice of a public hearing to be held to consider proposals to amend the producer-handler provisions of the Arizona-Las Vegas and Pacific Northwest orders. The document was published with errors in the regulatory text regarding the amendments to the producer-handler definitions in § 1124.10 and § 1131.10. This docket corrects these errors.

FOR FURTHER INFORMATION CONTACT: Jack Rower, Marketing Specialist, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231–Room 2971, 1400 Independence Avenue, Washington, DC 20250–0231, (202) 720–2357, e-mail address *jack.rower@usda.gov*.

SUPPLEMENTARY INFORMATION: Background notice of hearing was published in the **Federal Register** on August 6, 2003 (68 FR 46505), containing 5 proposals to be considered at a public hearing scheduled to begin on September 23, 2003. As published, errors contained in proposals 1 and 3 are misleading and are in need of clarification.

1. On page 46506, third column, § 1124.10, paragraph (a)(3) introductory text is corrected to read as follows:

§ 1124.10 Producer-handler.

* * * * *

(a) * * *

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk products derived from any source other than:

* * * * *

2. On page 46508, first column, § 1131.10, paragraph (a)(3) introductory text is corrected to read as follows:

§ 1131.10 Producer-handler.

* * * * *

(a) * * *

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk products derived from any source other than:

* * * * *

Authority: 7 U.S.C. 601–674.

Dated: August 20, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–21787 Filed 8–25–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1205

[Doc. No. CN–03–003]

Cotton Research and Promotion Program: Section 610 Review

AGENCY: Agricultural Marketing Service.

ACTION: Notice of regulatory review and request for comments.

SUMMARY: This document announces the Agricultural Marketing Service's (AMS) review of the Cotton Research and Promotion Program (conducted under the Cotton Research and Promotion Order), under the criteria contained in Section 610 of the Regulatory Flexibility Act (RFA).

DATES: Comments must be received by October 27, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning the notice to Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, Agricultural Marketing Service, USDA, Stop 0224, 1400 Independence Avenue, SW., Washington, DC 20250. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: *cottoncomments@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this notice may be found at: *http://www.ams.usda.gov/cotton/rulemaking.htm*.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, Chief, Research and Promotion Staff, Cotton Program, AMS, USDA, Stop 0224, 1400 Independence Avenue, SW., Washington, DC 20250–0224, telephone (202) 720–2259, facsimile (202) 690–1718, or e-mail at *whitney.rick@usda.gov*.

SUPPLEMENTARY INFORMATION: The Cotton Research and Promotion Act of 1966 (7 U.S.C. 2101 *et seq.*) authorized a national Cotton Research and Promotion Program which is industry operated and funded, with oversight by USDA. The program's objective is to enable cotton growers and importers to establish, finance and carry out a coordinated program of research and promotion to improve the competitive position of, and to expand markets for cotton.

The program became effective on December 31, 1966, when the Cotton Research and Promotion Order (7 CFR Part 1205) was issued. Assessments began with the 1967 cotton crop. The Order was amended and a supplemental assessment initiated, not to exceed one percent of the value of each bale,

effective January 26, 1977. The current assessment is $1 per bale plus five-tenths of one percent of the value of the bale and is collected on every bale of cotton harvested and ginned in the U.S. and on imported raw cotton and on the non-U.S. cotton content of imported textile and apparel products. Assessments under this program are used to fund promotional campaigns and to conduct research in the areas of U.S. marketing, international marketing, cotton production and processing, and textile research and implementation.

The program is administered by the Cotton Board, which is composed of representatives of cotton producers and importers selected by the Secretary of Agriculture from nominations submitted by eligible producer and importer organizations. The Cotton Board has thirty-two members, thirty-two alternate members and one consumer advisor. All members and alternate members serve terms of three years.

AMS published in the **Federal Register** (64 FR 8014; February 18, 1999), its plan to review certain regulations, including the Cotton Research and Promotion Program (conducted under the Cotton Research and Promotion Order), under criteria contained in Section 610 of the Regulatory Flexibility Act (RFA; 5 U.S.C. 601–612). The plan was updated in the **Federal Register** on August 14, 2003 (68 FR 48574). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under section 610 of the RFA, warrant review. Accordingly, this notice and request for comments is made for the Cotton Research and Promotion Order.

The purpose of the review is to determine whether the Order should be continued without change, amended, or rescinded (consistent with the objects of the Cotton Research and Promotion Act of 1966) to minimize the impacts on small entities. AMS will consider the continued need for the order; the nature of complaints or comments received from the public concerning the order; the complexity of the order; the extent to which the order overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with state and local regulations; and the length of time since the order has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the order.

Written comments, views, opinions and other information regarding the order's impact on small business are invited.

Dated: August 20, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–21788 Filed 8–25–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM259; Notice No. 25–03–06–SC]

Special Conditions: Bombardier Aerospace Model BD–100–1A10; Side-Facing Single Occupancy Seats

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Bombardier Aerospace Model BD–100–1A10 airplane. This airplane as modified by Learjet Inc. (Subsidiary of Bombardier Aerospace) will have novel or unusual design features associated with side-facing single-occupant seats. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before September 25, 2003.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM259, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. Comments must be marked: Docket No. NM259. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Michael Thompson, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–1157; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On April 11, 2003, Learjet Inc. (subsidiary of Bombardier Aerospace) applied for a supplemental type certificate for installation of single-occupant side-facing seats on Bombardier BD–100–1A10 airplanes. Bombardier Aerospace has requested that special conditions be issued for these seats and that the special conditions be listed on the type certificate data sheet of the BD–100–1A10 airplane. The Model BD–100–1A10 is a twin engine, turbofan powered, transport category airplane which is currently the subject of a type certification program.

Section 25.785(a) at Amendment 25–64 requires that each seat "at each station designated as occupiable during takeoff and landing must be designed so that persons occupying these seats will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562." Additionally, § 25.562 requires dynamic testing of all seats that are occupied during takeoff and landing. However, side-facing seats are considered a novel design for transport

category airplanes that include Amendment 25–64 in the certification basis and were not considered when those airworthiness standards were promulgated. Hence, the existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. In order to provide a level of safety that is equivalent to that afforded occupants of forward and aft facing seats, additional airworthiness standards in the form of special conditions are necessary.

These special conditions are applicable only to single-occupant side-facing seats. They are not sufficient or intended to be used for the certification of multiple-occupant side-facing divans or sofas.

Type Certification Basis

Under the provisions of § 21.101, Learjet Inc. (subsidiary of Bombardier Aerospace) must show that the Model BD–100–1A10 airplane, as changed, continues to meet the applicable provisions of the regulations incorporated by reference in T00005NY or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in T00005NY are as follows:

14 CFR part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–98; 14 CFR part 34, effective September 10, 1990.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Bombardier Aerospace Model BD–100–1A10 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Bombardier Aerospace Model BD–100–1A10 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model.

Novel or Unusual Design Features

Bombardier Aerospace has proposed to install single-occupant side-facing seats on BD–100–1A10 airplanes. Section 25.785(b) requires that each seat "at each station designated as occupiable during takeoff and landing must be designed so that persons occupying these seats will not suffer serious injury in an emergency landing as a result of the inertia forces specified in §§ 25.561 and 25.562." Additionally, § 25.562 requires dynamic testing of all seats that are occupied during takeoff and landing. However, side-facing seats are considered a novel design for transport category airplanes that include Amendment 25–64 in the certification basis, and were not considered when those airworthiness standards were promulgated. Hence, the existing regulations do not provide adequate or appropriate safety standards for occupants of side-facing seats. In order to provide a level of safety that is equivalent to that afforded occupants of forward and aft facing seats, additional airworthiness standards, in the form of special conditions, are necessary.

Discussion

The following special conditions are considered to provide occupants of single-occupancy side-facing seats a level of safety that is equivalent to that afforded occupants of forward and aft facing seats. These special conditions supplement 14 CFR part 25 and, more specifically, they supplement §§ 25.785 and 25.562.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Aerospace Model BD–100–1A10. Should Bombardier Aerospace apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Bombardier Aerospace Model BD–100–1A10 airplanes. In addition to the airworthiness standards of §§ 25.562 and 25.785, the minimum acceptable standards for dynamic certification of Model BD–100–1A10 single-occupant side-facing seats are proposed as follows:

Injury Criteria

(a) *Existing Criteria:* All injury protection criteria of § 25.562(c)(1) through (c)(6) apply to the occupant of a side-facing seat. Head Injury Criterion (HIC) assessments are required only for head contact with the seat and/or adjacent structures.

(b) *Body-to-Wall/Furnishing Contact:* The seat must be installed aft of a structure, such as an interior wall or furnishing, that will support the pelvis, upper arm, chest, and head of an occupant seated next to the structure. A conservative representation of the structure and its stiffness must be included in the tests. It is recommended, but not required, that the contact surface of this structure be covered with at least two inches of energy absorbing protective padding (foam or equivalent), such as Ensolite.

(c) *Thoracic Trauma:* The Thoracic Trauma Index (TTI) injury criterion must be substantiated by dynamic test or by rational analysis, based on a previous test or tests of a similar seat installation. Testing must be conducted with a Side Impact Dummy (SID), as defined by 49 CFR Part 572, Subpart F, or its equivalent. TTI must be less than 85, as defined in 49 CFR Part 572, Subpart F. TTI data must be processed as defined in Federal Motor Vehicle Safety Standard (FMVSS) Part 571.214, section S6.13.5.

(d) *Pelvis:* Pelvic lateral acceleration must be shown by dynamic test or by rational analysis based on previous test(s) of a similar seat installation to not exceed 130g. Pelvic acceleration data must be processed as defined in FMVSS Part 571.214, section S6.13.5.

(e) *Shoulder Strap Loads:* Where upper torso straps (shoulder straps) are used for occupants, tension loads in individual straps must not exceed 1,750 pounds. If dual straps are used for restraining the upper torso, the total

strap tension loads must not exceed 2,000 pounds.

Test Requirements

The above performance measures must not be exceeded during the following dynamic tests:

(a) Conduct a longitudinal test per § 25.562(b)(2) with a SID, undeformed floor, no yaw, and with all lateral structural supports (armrests/walls).

Pass/fail injury assessments: TTI and pelvic acceleration.

(b) Conduct a longitudinal test per § 25.562(b)(2) with the Hybrid II ATD, deformed floor, 10 degrees yaw, and with all lateral structural supports (armrests/walls).

Pass/fail injury assessments: HIC, upper torso restraint load, restraint system retention and pelvic acceleration.

(c) Conduct a downward vertical test per § 25.562(b)(1) with a modified Hybrid II ATD with existing pass/fail criteria.

Issued in Renton, Washington, on August 18, 2003.

Kyle Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21769 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA 2003–15887; Airspace Docket No. 03–AWP–11]

Proposed Establishment of Class D Airspace; Ramona, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Ramona, CA. A non-federal contract tower is being constructed at the Ramona Airport. Weather reporting service will be available. Therefore, the airport will meet criteria for Class D airspace. Class D surface area airspace is required when the control tower is open to contain Standard Instrument Approach Procedures (SIAPs) and other Instrument Flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to but not including 3,800 feet MSL within a 4-mile radius of the airport.

DATES: Comments must be received on or before October 1, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003–15887/ Airspace Docket No. 03–AWP–11, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Room 2010, 15000 Aviation Boulevard, Lawndale, California 90261.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, Air Traffic Division, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California; telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15887/Airspace Docket No. 03–AWP–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara*. Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Ramona, CA. Class D airspace designations for airspace areas extending upward from the surface of the earth are published in Paragraph 5000 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

AWP CA D Ramona, CA [NEW]

Ramona, CA
(Lat. 33°02.35′ N, long. 116°54.92′ W)

That airspace extending upward from the surface to but not including 3,800 feet MSL within a 4-mile radius of the Ramona Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Los Angeles, California, on August 13, 2003.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 03–21770 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB29

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; notice of public hearings; close of comment period.

SUMMARY: This document announces the addition of a fourth public hearing to receive comment on the proposed rule addressing diesel particulate matter exposure of underground metal and nonmetal miners published in the **Federal Register** on August 14, 2003 (68 FR 48668).

DATES: Post-hearing comments must be received on or before October 14, 2003. For dates of the public hearings, *see* the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Please identify your request to make an oral presentation or comments by Docket ID Number [RIN 1219–AB29]. Submit your request or comments to MSHA by any of the following methods:

- Fax to: 202–693–9441.
- Mail to: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2352, Arlington, Virginia 22209–3939.
- Hand delivery or Courier to: Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia.

For access to the docket to read comments received, go to *http://www.msha.gov/currentcomments.htm* and/or the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 2309, 1100 Wilson Boulevard, Arlington, Virginia.

For locations of the public hearings, *see* the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations and Variances, MSHA; phone: (202) 693–9440; facsimile: (202) 693–9441; E-mail: *nichols-marvin@msha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On August 14, 2003 (68 FR 48668), we published a proposed rule in the **Federal Register** that would revise the existing diesel particulate matter (DPM) interim concentration limit measured by total carbon (TC) to a comparable permissible exposure limit (PEL) measured by elemental carbon (EC) which renders a more accurate DPM exposure measurement; increase flexibility of compliance by requiring MSHA's longstanding hierarchy of controls for its other exposure-based health standards at metal and nonmetal mines, but prohibit rotation of miners for compliance; allow MSHA to consider economic as well as technological feasibility in determining if operators qualify for an extension of time in which to meet the DPM limits; and simplify requirements for a DPM control plan. The proposed rule would also make conforming changes to existing provisions concerning compliance determination, environmental monitoring and recordkeeping.

II. Public Hearings

In the **Federal Register** notice published on August 14, 2003, (68 FR 48668), we announced that we would hold three public hearings on the proposed rule. However, since that time, we have added a fourth public hearing. Please note the date below.

The public hearings will begin at 9 a.m. and will end after the last scheduled speaker testifies. The hearings will be held on the following dates and at the locations indicated.

Date	Location	Phone
September 16, 2003	University Park Marriott, 480 Wakara Way, Salt Lake City, UT 84108	(801) 581–1000
September 18, 2003	Renaissance St. Louis Hotel Airport, 9801 Natural Bridge Road, St. Louis, MO 63134.	(314) 429–1100
September 23, 2003	Hilton Pittsburgh, 600 Commonwealth Place, Pittsburgh, PA 15222	(412) 391–4600
October 7, 2003	U.S. Department of Labor, Mine Safety and Health Administration, 1100 Wilson Boulevard, MSHA Conference Room, 25th Floor, Arlington, VA 22209.	(202) 693–9440

The hearings will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations to a panel. You do not have to make a written request to speak. Speakers will speak in the order that they sign in. Any unallotted time will be made available for persons making same-day requests.

At the discretion of the presiding official, the time allocated to speakers for their presentation may be limited. Speakers and other attendees may also present information to the MSHA panel for inclusion in the rulemaking record.

The hearings will be conducted in an informal manner. The hearing panel may ask questions of speakers. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

A verbatim transcript of the proceedings will be included in the rulemaking record. Copies of this transcript will be available to the public, and can be viewed at *http://www.msha.gov*.

MSHA will accept post-hearing written comments and other appropriate data for the record from any interested party, including those not presenting oral statements, prior to the close of the comment period on October 14, 2003.

Dated: August 21, 2003.

John R. Correll,

Deputy Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 03–21886 Filed 8–22–03; 1:35 pm]

BILLING CODE 4510–43–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1, 3 and 7

RIN 1024–AD07

Boating and Water Use Activities

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing to revise rules that regulate boating and water use activities in areas administered by the NPS. The proposed rule is intended to address changing visitor use patterns, changing technologies, compelling boating and water safety issues, and the evolution of related statutory authorities. The goal is to provide for greater consistency with United States Coast Guard (USCG) regulations and state laws and regulations, establish rules which will be more clearly understood by the visiting public; and which can be more effectively communicated and enforced by NPS personnel. Promulgation of the proposed rule will eliminate many requirements which are ineffective or out of date and apply new rules which will provide flexibility in managing safety, resource preservation, and public use needs throughout the National Park System.

DATES: Comments must be received by December 24, 2003.

ADDRESSES: Comments should be sent to Kym Hall, Special Assistant, National Park Service, 1849 C Street NW, Room 3145, Washington, DC 20240. Email: WASO_Regulations@nps.gov. Fax: (202) 208–4684.

FOR FURTHER INFORMATION CONTACT: Kym Hall, (202) 208–4206.

SUPPLEMENTARY INFORMATION: The regulations contained in parts 1 through 7 of Title 36 of the Code of Federal Regulations (CFR) are the basic mechanisms used by the National Park Service (NPS) to protect the natural and cultural resources of the parks and to protect visitors and property within the parks. Parts 1 through 6 are general regulations applicable to all areas of the National Park System, with some exceptions, while part 7 contains special regulations, which have been found necessary for individual parks as supplements to the general regulations. Part 3 is specific to boating and water activities. The part 3 regulations were last revised in 1983. Although amendments and additions have been made from time to time since 1983, this was usually in response to new situations for which the existing regulations were not sufficient. For example, personal watercraft (PWC) were addressed in 36 CFR 3.24, April, 2000. Between 1983 and the present, the evolution of statutory authorities, changing visitor use patterns, new technologies, and continued boating and water safety issues coupled with evolving national trends to address such issues, all revealed that a comprehensive review of part 3 regulations was needed.

A work group of experienced employees from a wide variety of parks with water-based recreation and resources management responsibilities was established to work on part 3. The work group included an experienced State Boating Law Administrator, representing the National Association of State Boating Law Administrators (NASBLA). Park superintendents were asked to provide comments regarding boating and water safety issues apart from those addressed in the existing part 3, and comments were received from sixteen parks and from the staff at the NPS Washington Office. All comments were evaluated by the workgroup. Some of the comments were incorporated into the proposed rule. Other comments were more appropriately addressed in section(s) of 36 CFR other than part 3. Some comments, specific to an individual park's circumstances, are more appropriately addressed as special regulations in part 7.

The NPS faced several situations where parks were unclear about enforcing USCG regulations and/or state laws and regulations. Specifically, an issue arose about the applicability of USCG regulations on a tour boat being operated on Crater Lake which is a non-navigable body of water. Lake Mead was also presented with a requirement to provide lifeguards on beaches because of Nevada state water use regulations. In addition to these specific questions, there has been some general confusion about the order of applicability or hierarchy of adopting USCG regulations and state laws and regulations in relation to NPS specific regulations contained in part 3. The required order of applicability, or hierarchy, of boating and water use regulations on park waters is as follows:

1. Regulations in Title 36, Code of Federal Regulations (CFR) will apply over any comparable law or regulation.

2. Laws and regulations of the USCG adopted pursuant to § 3.2 (a) will apply over any comparable state law or regulation.

3. Non-conflicting state boating safety laws and regulations that are not addressed by either 36 CFR or by the USCG are adopted pursuant to 3.2(b). The NPS is not adopting state water use laws or regulations unless specifically indicated in part 3.

The work group took several factors into consideration while discussing regulations to be changed, deleted, or written anew. Those factors include compliance with the NPS mission, safety issues, resource protection issues, clarity of existing regulations, reducing NPS regulations where possible and the uniformity of regulations with the USCG, the states, and among units of the National Park System to the extent possible. As a result of the review, the proposed changes to part 3 are expected to be more clearly understood by the public and be more effectively communicated and enforced by NPS employees. In addition the changes will enhance the NPS focus on safety and resource preservation issues, provide flexibility to address changing technologies, maintain minimum regulation necessary to address safety and resource preservation and provide for greater consistency in enforcement of NPS, USCG regulations and state boating laws and regulations.

Section-By-Section Analysis

Organizational Summary

The National Park Service (NPS) has prepared the following organizational summary to assist in the location and analysis of the proposed revisions.

NUMBERING

Old	New
3.1 Applicable Regulations	3.2
3.2 NPS Distinctive Identification.	Deleted
3.4 Accidents	3.5
3.5 Inspections	3.4
3.6 Prohibited Operations	3.8
3.7 Noise Abatement	3.14
3.20 Water Skiing	3.11
3.21 Swimming and Bathing	3.15
3.22 Surfing	Deleted
3.23 SCUBA and Snorkeling	3.17
3.24 Regulation of Personal Watercraft.	3.9

New sections
3.1 Applicability and Scope
3.6 Operator Age for Power Vessels
3.7 Personal Floatation Devices (PFDs)
3.10 Operating Under the Influence
3.12 Marine Sanitation Devices
3.13 Sunken, Grounded, Disabled Vessels
3.16 Swim Beach Areas
3.18 Submersibles

Section 1.4 What Terms Do I Need To Know?

In order to enhance clarity and consistency, ten definitions have been included in this section. One, defining vessel, is a revision of the current definition; it has been revised to more adequately describe the applicability of these regulations to all craft including tubes, rafts and other inflatable devices; surfboards, sailboards, and other rigid devices, specifically when these are used as a means of transportation. Nine others are added in order to reduce confusion in interpretation of regulations or to address issues new to part 3: dive flag, flat wake speed, harbor, manned submersible, power-driven vessel, sailing vessel, sewage, underwater diving, and un-manned submersible. The rationale for the addition of these terms appears in the preamble relative to the appropriate section.

Section 3.1 What Is the Applicability and Scope of This Section?

This section is added to include a description of the applicability of part 3 to all park waters. Other laws applicable have been removed from this section and now appear in § 3.2.

The objective of the regulations in this part is to provide for the proper management of boating and other water use activities within parks. Park waters are all waters that are subject to the jurisdiction of the NPS. This includes both navigable waters within the congressionally established boundaries of a park area and non-navigable waters where the United States owns or administers the lands and waters within the boundaries of a park area. Examples of park areas with navigable waters within the boundaries include Biscayne National Park, Assateague Island National Seashore, and Channel Islands National Park. Examples of park areas with non-navigable waters where the United States has jurisdiction over the lands and waters within the boundaries include Crater Lake National Park, Yellowstone National Park, and Glacier National Park or other areas with inland lakes and ponds.

Section 1.2 defines the primary applicability and scope of the NPS regulations found in 36 CFR parts 1 through 5, and parts 7 and 13. In § 1.2(a)(1) and (2) the NPS provides that the regulations in Chapter 1 apply, respectively, on lands and waters located within boundaries of park areas that are either federally owned or NPS-administered. While in § 1.2(a)(3) it states that the regulations shall apply to all waters subject to Federal jurisdiction that are located within National Park System boundaries.

In addition to the general regulatory authority delegated by Congress in 16 U.S.C. 3, the NPS has been authorized to "[p]romulgate regulations concerning boating and other activities on or relating to waters located within areas of the National Park System. This includes waters subject to the jurisdiction of the United States: provided, that any regulations adopted pursuant to this section shall be complementary to, and not in derogation of, the authority of the United States Coast Guard to regulate the use of waters subject to the jurisdiction of the United States [.]" 16 U.S.C. 1a–2(h). Under these authorities the NPS has managed and regulated activities occurring on and in the waters of the National Park System.

Section 3.2 Do Other Boating Laws and Regulations Apply To Me When I Operate My Boat on Park Waters?

The current § 3.2 pertains to "National Park Service distinctive identification". This is considered an unnecessary regulation since boat markings are addressed in NPS Director's Order 9 and Reference Manual 9. This regulation is deleted.

The proposed § 3.2(a) identifies USCG laws and regulations adopted with the addition of Title 33 and title 46 United States Code. Proposed paragraph (b) identifies applicable state laws and regulations adopted as non-conflicting boating safety laws and regulations, and it is not the intent of this section to include non-boating water-use laws and regulations including but not limited to swimming, bathing, beach management or SCUBA diving unless specifically adopted in a section of the part 3 regulations.

The intent of this section, a revision of the existing 3.1, is to clarify and emphasize that the NPS is seeking to apply existing federal and state law to its management of boating activities. Except in situations of specific need as identified and proposed in the part 3 revision, the NPS will enforce the laws and regulations of the United States Coast Guard and the state within whose exterior boundaries a park area or a portion thereof is located. The NPS is encouraging each park to develop an administrative file of all state laws and regulations the park intends to adopt under § 3.2(b).

This regulation continues to adopt USCG laws and regulations in order to promote uniformity of boating regulations throughout the National Park System. While the USCG's jurisdiction and therefore the application of laws and regulations by the USCG is limited to navigable waters, the NPS jurisdiction is not similarly restricted to navigable waters. The NPS adoption of the laws and regulations of the USCG makes them part of the NPS regulations and are subject to the same applicability and scope provisions as other NPS promulgated regulations. As such, the NPS applies pertinent USCG laws and regulations to all waters within park areas, whether the waters are navigable or non-navigable.

As directed by Congress in 16 U.S.C. 1a–2(h), this regulation recognizes the USCG laws and regulations as the guiding federal standard for regulating boating activities. However, this regulation also provides the opportunity for individual park areas to enforce state laws and regulations or NPS regulations where there is a specific need for public safety reasons, or in order to protect wildlife and the other resources, values, and purposes of a park area.

Section 3.3 Am I Required To Obtain a Permit To Operate a Vessel in a Park Area?

This section continues to allow the superintendent to manage boating use within park areas that may effect park resources or the visiting public by requiring a permit to operate a vessel in park waters. Recognizing the uniqueness of park areas, a

superintendent may require a permit to ensure communication of hazards, special conditions, specific policies, closures, equipment requirements or other restrictions (36 CFR 1.5 and 1.7). It also establishes factors that the superintendent should consider when determining requirements for the issuance of a permit (36 CFR 1.6).

Section 3.4 For What Purposes May My Vessel Be Inspected?

This section is changed to include the inspection of marine sanitation devices, and other pollution and noise abatement requirements within the authority of authorized persons, and to include noise level as one of those violations for which a vessel's use may be suspended.

The previous language in this section established the authority of authorized persons to stop and board vessels for the purposes of inspection and to terminate the voyage of vessels found in an unsafe condition as specified. This authority is in keeping with that granted to boarding officers of the USCG and many of the states.

The use of marine sanitation devices (MSDs) and discharge of sewage from vessels into park waters has come under increasing scrutiny as environmental awareness has grown. Park staff found that to simply adopt USCG regulations or state laws and regulations was ineffective. USCG regulations regarding the certification of MSDs give appropriate guidance regarding the devices themselves but do not address their use in waters of the National Park System. Park staff is increasingly required to inspect MSDs aboard vessels and to manage their use while on park waters.

Another issue of increasing importance faced by park management and enforcement staff has been the regulation of noise created by some power-driven vessels. NPS has made an attempt at such management for some time but was hampered by its own regulations. In this proposal NPS will enhance its ability to significantly improve this capability in proposed § 3.14.

It is the intent of this section to clearly authorize park staff to inspect vessels for compliance with marine sanitation device use, and with appropriate noise level requirements regardless of whether the vessel is underway. Further, the proposed language more clearly defines responsibilities to correct not only hazardous conditions but conditions involving pollution of park waters and excessive noise levels.

Section 3.5 Do I Have To Report an Accident Involving a Vessel to the National Park Service?

This section was formerly numbered 3.4 and is renumbered here to provide a more logical flow to the rules in Part 3 for the benefit of both the public and NPS staff.

The language in this section is changed to include only vessel accidents as opposed to the current term "incidents". Existing paragraph (a) is divided into proposed paragraphs (a), (b), and (c) in order to provide clarity. Proposed paragraph (a) identifies the vessel operator as the responsible reporting party. It also identifies a total property damage dollar value threshold for mandatory reporting of vessel accidents to the NPS. Proposed paragraph (b) identifies that otherwise the owner or an occupant of the vessel must assume this responsibility if the owner is incapable of doing so. The existing paragraph (b), which deals with "failure to report", is considered unnecessary and is deleted. A person who fails to report an accident would violate the reporting requirements of proposed paragraph (a). Proposed paragraph (c) identifies that the NPS reporting requirements may not fulfill the reporting requirements for the United States Coast Guard and the state.

It is the intent of the proposed changes in this rule to clarify for the public their responsibilities in vessel accident reporting. The changes in language to this section more clearly define who is required to report a vessel accident.

Section 3.6 What Age Must I Be To Operate a Power Driven Vessel?

This section is an addition to part 3. The intent of this section is to address a minimum age requirement for the operator of a power-driven vessel. Currently there is no NPS regulation establishing a minimum operator age. This has become a safety issue of growing concern as a result of changing technologies, increasingly crowded waterways, and a more complete understanding of the development of motor skills with age. Vessel operators can significantly impact the health, safety, and well being of other boaters and of park resources. This section establishes a minimum age of 16 to be the unsupervised operator of a power-driven vessel on park waters. It also allows children between the ages of 12 and 15 to operate power-driven vessels under the direct supervision of an adult.

There is a national trend to establish a minimum age for vessel operators in response to accident data. According to the NASBLA, 43 states have established a minimum age for the operation of power-driven vessels. Those ages range from 10 to 18, with several states setting 16 as a minimum and many other states requiring an adult to be present to supervise a child operator. In the interest of conforming with state regulations when possible and to reduce the potential for confusion of the boating public, this section is applicable in parks located in states that have adopted no minimum age for the operator of a power-driven vessel. If a park is located within a state that has different age requirements for operators of power-driven vessels then that state's regulation is adopted in lieu of this section.

Section 3.7 Who Must Wear a Personal Flotation Device (PFD)?

This section is an addition to part 3. The intent of this section is to enhance visitor safety in the boating environment through identifying circumstances when children will be required to wear PFDs and to encourage superintendents to examine other activities that might appropriately require wearing of PFDs.

PFDs required by this section must be USCG approved Type I, II, or III PFDs, in serviceable condition and of the correct size for the person wearing it, in accordance with 33 CFR 175.11–175.23. Type V are eliminated because they are identified for specific functions and uncommon in recreational boating.

This section requires children 12 years of age or younger to wear a PFD when aboard a vessel underway, except while in an enclosed cabin or below deck, and authorizes the superintendent to determine other circumstances that require that PFDs be worn. This is not intended to preclude children from playing on inflatable devices, without wearing a PFD, when close to shore or the devices are not being used as a method of transportation.

According to NASBLA, 32 of 50 states, Puerto Rico and the District of Columbia now require children to wear PFDs. The majority of those states require children 12 years of age and younger to wear PFDs.

NASBLA supports an age requirement of 12 years of age and younger nationwide, and has referenced work completed by Ballestreri Consulting Inc. involving research surrounding the physiological, emotional and motor skill changes that occur around the age of 12. Ballestreri Consulting's work suggests that prior to that age, children have neither the motor skills nor the emotional skills to put on a PFD in an emergency situation. The American Academy of Pediatrics recommends that

"* * * children should wear lifejackets at all times when on or near the water." The National Transportation Safety Board also recommends that children be required to wear PFDs.

The proposed rule exempts children inside an enclosed cabin or below deck from wearing a PFD. These individuals are in a more stable environment and risks of incidents resulting from falls overboard are significantly reduced.

Paragraph (a)(1) is intended to alleviate confusion by the boating public about the new regulation for children to wear PFDs. Although 32 states require children to wear PFDs, they have varying requirements. Since the boating public would be more familiar with existing state requirements, the NPS will defer to the state age for requiring children to wear PFDs. In the absence of a state requirement, the NPS requirement of age 12 or under would apply.

Paragraph (b) of this section relates to vessels that are inspected and certified under USCG regulations codified in Title 46 CFR to carry passengers for hire. These vessels are inspected annually by USCG personnel from a Marine Inspection Office and must be operated by a licensed captain. The higher standard of training, combined with the experience of individuals necessary to qualify for a USCG captain's license, and the fact that the vessels are subject to this rigorous inspection process, the wearing of PFDs by children is not required.

Paragraph (c) of this section is intended to clarify the superintendent's authority to require PFDs be worn on designated waters during specific water-based activities. However, it should be noted that the NPS has adopted 33 CFR 175.15 which applies to the carrying of PFDs for all persons on board a vessel. This paragraph emphasizes the potential need for wearing PFDs rather than just carrying them in certain waters or during certain water-based activities. There was considerable discussion by work group members regarding wearing PFDs during a wide variety of activities and circumstances that might be involved such as use of small inflatable, *i.e.* inner tubes, sail-boarding, or river rafting. It is clear that there is no uniform set of circumstances or conditions nationwide that allows the promulgation of a regulation sufficient to meet the needs of all national parks. This is an issue that is best left to superintendents to address through local restrictions utilizing §§ 1.5 and 1,7 of this chapter.

The part 3 work group feels strongly that with the promulgation of § 3.7, the potential for serious injury or death would be significantly reduced service-wide. All requirements pertaining to proper size, type, serviceability and carriage requirements are adopted by the NPS and applicable in parks in accordance with § 3.2.

Section 3.8 What Vessel Operations Are Prohibited?

The regulations in this section are currently addressed in § 3.6. It is the intent of this section to address several issues of unsafe or otherwise prohibited vessel operations that are not effectively dealt with through the adoption of USCG laws and regulations or state laws and regulations since these entities either do not regulate the activity or there is wide disparity among the various regulations nationwide. These are generally activities that create an unsafe condition or conflict with the orderly management of park visitor use. The order of the violations has also changed to reflect the nature of the violations from those posing the least risk to life or property to those acts that pose the most risk.

Paragraph (a), which solely addressed "reckless or negligent operation" has been broken into two distinct violations; negligent operations and grossly negligent operations under (b)(6) and (b)(7). This was done in order to bring boater education and park staff training more into concert with terminology and enforcement philosophy used by the USCG. It is expected that this change, along with the clarified language that describes the regulated activity, will significantly reduce the misunderstandings experienced in many parks regarding enforcement and education of this issue.

The act of negligence can be distinguished by the vessel operator's *failure* to exercise care, caution or prudence. Generally, the operator is not willful or malicious in their actions. For example, maneuvering quickly, turning sharply or swerving within 100 feet of another vessel; weaving through congested traffic; operating a vessel in the vicinity of a motorized vessel in a manner that obstructs the visibility of either operator. A negligent act may have an increased risk of causing harm but usually does not result in property damage or physical injury.

The act of gross negligence can be distinguished by the vessel operator's disregard for the rights of others through "willful and wanton" actions and consciousness that personal injury or property damage is a probable consequence of their actions. Generally, the operator is willful or malicious in their actions. For example, operating any vessel at extremely high speeds, operating a vessel within extremely close proximity to persons in the water, or causing a severe collision between vessels. A grossly negligent act has an increased risk of causing harm and usually results in property damage or physical injury; however, a person can be guilty of gross negligence without the damage or injury actually resulting.

Paragraph (b) of the current § 3.6, operating a vessel when under the influence of alcohol or controlled substance, has been removed from this section and is proposed as a stand-alone regulation in § 3.10.

Paragraph (c) is renumbered as (b)(2) with no change.

Paragraph (d) is renumbered as (b)(3). Amends "5 mph or creating a wake" to "flat wake speed". Paragraph (b)(3)(ii) deletes diver's marker and swimmer from this paragraph and adds "a person swimming, wading, fishing, or floating with the aid of a non-motorized inflatable or rigid buoyant device, designated launch site, and manually-propelled, anchored, or drifting vessel." Since numerous states have "speed in proximity" laws, this paragraph allows for the adoption of those laws to avoid conflict.

The work group found that there was no consistency in describing to the public the desired condition in zones that were intended to require a slow speed. Most of these areas intend to prevent damage or injury resulting from boat wakes. The variety of terms used to notify the boating public of these zones included "no wake", "wakeless speed", "5 mph", "slow speed", "idle", and "flat wake." Since a boat underway and making way creates some wake regardless of speed, the terms "no wake" and "wakeless speed" are not descriptive of the desired condition. "5 mph" may or may not create the desired condition and, in any case, is an action many boaters may not identify with since effective boat speedometers are rarely found on recreational vessels. Neither "slow speed" nor "idle" effectively address the desired condition.

"Flat wake speed" is proposed as the appropriate alternative since the desired condition, a minimal disturbance of the water by a vessel in order to prevent damage or injury, is described. The capability of park staff to educate the boater or to enforce this section is also enhanced.

The additions to paragraph (b)(3)(ii) reflect the experience of the work group in a wide variety of water-based recreation situations nationwide. Accidents and visitor complaints identify these additions as necessary for

safe recreational use and for effective enforcement.

Additionally, the prohibition of operating around a diver's marker needed enhancement and has been moved to paragraph (b)(1). This is a change that enhances the prohibition formerly found in paragraph (d)(2) that limits vessels "within 100 feet of a diver's marker" to a speed less than "5 mph". The recommended change prohibits "operating a power-driven or sailing vessel within 100 feet of a diver's marker." Excepted are "vessels in support of dive operations" which must "maintain a flat wake speed".

This paragraph responds to a safety issue long confused in the minds of both boat operators and underwater divers. Under the previous rules, a vessel was allowed to approach a dive flag when not in excess of 5 mph. At the same time, divers have been taught that a boat must avoid a dive flag. Many boating safety classes (USCG Auxiliary for example) also taught that a boat must avoid a dive flag. It is the intent of this regulation to establish a safety zone around underwater diving activities in order to reduce conflict and accidents between underwater divers and vessels. At the same time boats in support of diving activities are allowed to function as intended.

Paragraph (e) is renumbered as (b)(4). Deletes "vessel not propelled by hand" and adds "power-driven or sailing vessel" to the description of prohibited vessels. Amends "location" to "shoreline" designated as a swimming beach. Amends "in excess of 5 mph or creating a wake" to "flat wake speed".

This will clarify for the visiting public and for park staff the intent of the rule regulating vessel operation in proximity to designated swimming beaches. The prohibition under the former regulation restricted the operation of a vessel, other than a manually propelled vessel, to beyond 500 feet of a location designated as a swimming beach. There has been considerable confusion regarding how to measure the distance of 500 feet in relation to the designated swimming beach. The intent of this recommended change is to clearly define the point at which the 500 feet distance is to be measured with the result of more clearly and consistently defining the safety zone at designated swim beaches. It is expected that a resulting consistency in management, education, and enforcement actions will result and will enhance visitor safety.

Paragraph (f) is renumbered as (b)(5). Amends "a vessel propelled by machinery" to "power-driven vessel". Amends "transom" to "top edge of the transom". Adds "motor cover or other unsafe positions" to the description of prohibited activity. Deletes the exemption for a vessel "being maneuvered for anchoring, mooring or casting off moorings". Amends "operating in excess of 5 mph" to "being operated above flat wake speed".

Changes recommended to this section include changing the term "flat wake speed" instead of "5 mph or creating a wake", and changing "a vessel propelled by machinery" to "power-driven vessel".

These are recommended in order to provide consistency in terminology throughout part 3. Also recommended herein is the deletion of the allowance for unsafe riding when a vessel "is being maneuvered for anchoring, mooring, or casting off moorings" since this is redundant. A vessel engaged in such maneuvers will be already in compliance since its speed will be at "flat wake speed" in order to complete the maneuver.

Paragraph (g) is renumbered as (a)(5) without change.

Paragraphs (h) and (i) are combined and renumbered as (a)(2). Deletes reference to "trailers" and to "a vessel propelled by machinery". This clarifies the condition under which vessels may be launched in a park by combining the former paragraphs 3.6(h) and (i). The superintendent must designate launch sites and if local circumstances require may establish further conditions. The original paragraphs were redundant and resulted in some confusion. The proposed changes reduce the potential for confusion and enhance education and enforcement capability.

Paragraph (j) is renumbered as (a)(3). Amends "vessel propelled by machinery" to "power-driven vessel". Deletes "directly" from "not directly accessible by road."

Use of the term "power-driven vessel" rather than "vessel propelled by machinery" provides consistency throughout part 3. It is the intent of this proposal that the meaning of the paragraph is not altered.

Paragraph (k) is renumbered as (a)(1). Adds hovercraft. Airboats were previously prohibited in this section and that prohibition continues. The addition of hovercraft to part 3 is a result of new technologies increasingly available to the boating public and since this surface effect craft has the ability to be used on and over a variety of surfaces, including water. The ability to navigate into areas not accessible to other vessels or vehicles would open, in many cases, sensitive habitat to degradation and is inconsistent with the NPS mission. Due to the unique operating characteristics of hovercraft, the prohibition of hovercraft will also appear in part 2 of this chapter.

Paragraph (l) is renumbered as (a)(4). Amends "size, length or width restrictions" to "length, width, or horsepower restrictions". Adds the criteria used by the USCG to measure vessel length. This continues the authority of the superintendent to restrict the size of vessels using national park waters. It is herein proposed to add language to this paragraph that identifies horsepower restriction as one of those criteria that may be established by the superintendent utilizing §§ 1.5 and 1.7 of this chapter. The work group considered a proposal to establish these vessel size restrictions in part 3. However, it was clearly demonstrated that individual park needs vary considerably. The authority to establish size restrictions will remain with the park superintendent.

This rule proposes language that identifies the USCG standard for measuring vessels and it is the intent of this paragraph that this standard be used in all NPS areas.

Section 3.9 May I Operate a Personal Watercraft (PWC) in Park Waters?

This section has been renumbered from 3.24 to 3.9 and replaces 3.24 (a) and (b) with additions.

Over the past several years the NPS has been working to propose personal watercraft (PWC) use in some areas of the National Park System. As PWC rules are finalized there will be a need to regulate some types of their activity. It is the intent of this section to provide parks having authorized PWC use, rules to govern certain operations of PWC that are as consistent as possible with those of the states. Accordingly, the work group used the NASBLA model act as its guide. This act was developed by NASBLA in concert with the USCG and the Personal Watercraft Industry Association. The NPS agrees with these entities that PWC are sufficiently unique in their operation and safety issues that some specific regulations are necessary for these vessels.

Paragraph (a) of this section requires PWC use to be authorized with the promulgation of a special regulation. This requirement is carried over from 36 CFR 3.24(a) and (b). A PWC is defined under existing NPS regulations located at 36 CFR 1.4. Paragraphs (b)(1) through (b)(4) are designed to reduce conflicts between PWC operators and other vessels and improve safety. To adhere to the goal of consistency with the states, the NPS is proposing in paragraph (b)(5) that if a park area is within a state that regulates the operation of PWC, then the more restrictive state regulation applies

in lieu of paragraphs (b)(1) through (b)(4) of this section. In paragraph (b)(1) a person operating a PWC is required to wear rather than just carry a PFD. This is required because generally an operator or passenger rides on top of the vessel rather than in the confines of the hull, causing additional safety risks. In paragraph (b)(3) night operations are prohibited specifically for PWC.

It is the intent of this section that paragraphs (b)(1) through (b)(4) are applicable in park areas that may be located in a state that does not have more restrictive PWC regulations. Less restrictive state regulations are not adopted.

Section 3.10 What Are the Regulations Regarding Operating a Vessel While Under the Influence of Alcohol and/or Drugs?

This section is an amendment and expansion of the regulation found currently in § 3.6(b).

Operation of a vessel while under the influence of alcohol or drugs is proposed as a stand alone regulation due to the increased emphasis given this issue since part 3 was last reviewed and rewritten.

Further, the regulation in former paragraph 3.6(b) has been found through experience in prosecuting violations to be ineffective. This problem has been experienced in parks nationwide.

Coincident with the rise in boating under the influence awareness and enforcement, there has been an even greater emphasis on operation of a motor vehicle while under the influence. After considerable discussion, the work group came to realize that the regulations governing such activities vary considerably from state to state and that it was best that the NPS not rely on adopting state regulations in this instance.

Through Presidential Proclamation, the federal standard for blood alcohol level is now established at .08 BAC, while the states vary in their standards. This standard is to be employed whether involving vessels or motor vehicles.

With this as background, the work group examined 36 CFR 4.23 governing the operation of motor vehicles while under the influence of alcohol or drugs while in a National Park area. The group found that § 4.23 has been effective in the enforcement of motor vehicle DUI cases. As a result, the work group recommends adopting the language and methodology found in § 4.23 and application of the same standards to the boating environment with appropriate changes to address vessels rather than motor vehicles. While it is true that the operation of vessels and motor vehicles differ in some ways, the impairment of the operator is established at the same level for both (.08 BAC) and the same standards are applicable for public education, staff training, enforcement, and prosecution.

Section 3.11 May I Use a Vessel To Tow a Person for Water Skiing or Other Similar Activities?

This section has been renumbered from 3.20 to 3.11. The title of this section is amended from "water skiing." This change encompasses the variety of recreational devices that individuals may ride on or in while being towed by a vessel. Examples of these devices may include but are not limited to water-ski, inflatables, wake boards, knee boards and other rigid devices.

Paragraph (a) is amended to read, "allowed only in designated waters" instead of "prohibited, except in designated waters." It also allows for the superintendents to identify how towing may occur utilizing §§ 1.5 and 1.7 of this chapter.

Paragraph (a)(1) is an addition to part 3 and prohibits the towing of persons attached to airborne devices unless allowed by the superintendent. Some parks have determined this to be an appropriate public use activity; others have found it to be inappropriate. It is the intent of this workgroup to provide superintendents the flexibility to permit this activity, if appropriate, under § 1.6. This prohibition is not intended to include similar devices when used as a form of propulsion.

Paragraph (b) is amended to read "* * * is designated, the following conditions apply" instead of "* * * is authorized, the following are prohibited."

Paragraph (b)(1) is amended to read "Towing is allowed only * * *"

Paragraph (b)(2) is amended to read "In addition to the boat operator, a person at least 12 years of age must be present" instead of "Towing without one person (other than the operator)'.

The work group recommends the minimum age of 12 to be consistent with a majority of those states that have established a minimum age for observers. Twelve is also consistent with minimum age requirement for wearing of PFD's as recommended elsewhere in part 3.

Paragraph (b)(3) is amended to require that persons being towed wear a "United States Coast Guard approved personal flotation device" rather than "a personal flotation device."

Paragraph (b)(4) is an addition to part 3 and addresses unsafe acts committed by a person being towed. It was identified by the work group that a person being towed might commit acts that endanger others through manipulating skis or other devices in a manner that is outside of the control of the vessel operator. The intent of the work group is to place a burden of responsibility on a person being towed to participate in this activity in a safe manner. It is not the intent of the work group to absolve the vessel operator of responsibility for unsafe operation, but to not hold the vessel operator responsible for acts solely under the control of the person being towed.

Paragraph (b)(5) is an addition to part 3 and is added to address the carrying capacity restrictions of the towing vessel. It is the intention of this regulation to assure compliance with the manufacturer's recommended capacity limits on vessels. By assuring compliance with capacity limits, all individuals involved in a towing activity (operator, observer, other passengers, and person being towed), are guaranteed space on or in the vessel in a safe manner. This is intended to include individuals being towed by personal watercraft.

Section 3.12 What Conditions Apply to Marine Sanitation and the Use of Marine Sanitation Devices (MSD)?

This section is an addition to part 3. Neither the existing part 3 nor other Title 36 CFR regulations address the issue of Marine Sanitation Devices (MSDs) or their use on waters of the National Park System.

This section is proposed in order to clarify for the public and park staff the standard necessary to protect park resources with a consistent approach system-wide, while at the same time allowing the superintendent flexibility to accommodate local issues. This regulation provides clearer guidance, consistent with park standards, than is currently available in either USCG laws and regulations or state laws and regulations. USCG regulations regarding MSDs provide for the design of the devices, certification, and use in non-park waters but do not adequately address MSD use in park waters.

State laws vary such that an NPS System-wide standard is imperative to ensure the capability to effectively protect park resources. Part 2 regulations are not specific enough to the boating environment.

The proposed section does not address the issue of the discharge of "gray-water" from boats. The work group researched and discussed this issue as an agenda item brought forward as a concern for resource protection.

Several factors prevented its inclusion in the proposed regulations:

1. According to the EPA and the Federal Water Pollution Control Act, gray-water is not a pollutant or contaminant.

2. Vessels are not usually constructed with holding tanks for gray-water. Most vessels are constructed so that water generated from the shower, bath, laundry and sinks is plumbed to a small sump that is periodically (often automatically) discharged overboard, or is directly discharged overboard.

3. There is no requirement in the USCG regulations for carriage or certification of gray-water holding or a discharge device as there is with MSDs.

4. The nature of water resources vary considerably throughout the National Park System, and the impact of gray-water should be evaluated in each environment by appropriate professionals such as biologists or hydrologists.

The work group concluded that gray-water issues should be dealt with on a case-by-case basis at the park level and that the focus of this section is more appropriately directed toward "black-water" (sewage) containment aboard vessels.

Section 3.13 Am I Required To Remove a Sunken, Grounded, or Disabled Vessel?

USCG regulations clearly cover the removal of sunken or grounded vessels in navigable waters if the vessel poses a navigational hazard or immediate environmental threat.

The USCG generally ensures that the owner mitigate the hazard or threat by salvaging the vessel completely or by eliminating the object or substance which poses the threat (*i.e.*; removing masts to provide ample clear draft for vessel traffic, pumping out fuel from submerged tanks, towing disabled vessels to deeper water where they are purposely sunk). Depending on location, depth, insurance issues, time period after the sinking or disabling, the owners may decide it more cost effective to leave the vessel where it foundered (sank), grounded, or disabled once they have taken care of the navigational or environmental hazard.

In non-navigable waters, owners may not even be required to fully address these factors. It should be noted that the terms founder and sunken are synonymous with each other for the purposes of this regulation.

In recognizing the unique natural and cultural resources of park waters, shorelines, and submerged areas, the NPS proposes to empower superintendents with the clear authority to order owners of these vessels to remove them under clearly defined conditions. Removal would also include associated equipment, debris, and cargo from the vessel. Although the "tradition of the sea" has been to discard things overboard where they are out of sight and out of mind (even the USCG still approves of towing ships out to sea to sink them when they are no longer salvageable in some cases), this may not be in the best interest of park resources. Ultimately, this decision should be made by the NPS rather than by the vessel's owner.

The wording for this regulation was taken almost verbatim from 36 CFR 2.17(c)(1–3) regarding downed aircraft. The situation of downed aircraft in parks is very similar to that of sunken vessels, with the main difference being that one can easily see the aircraft, but cannot generally see the sunken vessel.

Disabled vessels were included in this regulation since they can easily founder or ground if action by the owner is not taken immediately. The regulation again gives authority to the superintendent to require action by the owners, which may prevent more serious problems later on.

Component parts, equipment and associated cargo may become detached from the vessel during the foundering, but can pose just as much or more problems to park resources than the vessels themselves. Therefore, they are included in the removal requirements. Examples of this would be lines, cables, shipping containers, lumber, vehicles, or a wide variety of cargo transported on board vessels.

Although there was some discussion to include the term "abandoned vessels" in this regulation, it was decided that this covers a wider range of vessels than was intended for this purpose. 36 CFR 2.22 "Property" covers the subject of abandoned property of any type sufficiently. Some parks requested authority to recover costs associated with vessel removal, however, we believe that authority already exists under 36 CFR 2.22(b)(4).

Section 3.14 What Is the Maximum Noise Level for the Operation of a Vessel?

This section is revised with the intent of updating the testing standards for noise level enforcement to encompass more recent standards adopted by the Society of Automotive Engineers (SAE). To accommodate the review of part 3 in its entirety this section is renumbered from 3.7 to 3.14.

The current testing procedures outlined in § 3.7 are appropriate for tests conducted in a laboratory or test facility but are impractical for field law enforcement use. They are difficult and cumbersome to use, thus rendering this regulation ineffective.

Noise abatement has not only continued as a concern on all waterways but has grown in importance as an issue addressed by the visiting public and park staff. According to the Reference Guide To State Boating Laws (2001—Sixth Edition), published by NASBLA, thirty-one states set maximum noise level for vessels. In order to meet the stated work group objective of uniformity with state regulations wherever possible, the rule proposed for noise testing and regulation is modeled after the NASBLA model act. This act has also been adopted whole or in part by many states. Since there is still some inconsistency among the states, with some not regulating noise level, a rule in part 3 is the most effective means to provide a standard applicable across the National Park System. The standards adopted are SAE J–2005 and SAE J–1970. These standards may be obtained through the Society of Automotive Engineer's Web site at *http://www.SAE.org*. These standards are sound testing procedures that allow the measurement of noise level for either stationary vessels or vessels underway. These procedures are more readily used in the field than the current testing procedures. The ease in use of these procedures places less of a burden on the boating public and will result in more effective management of noise level with the result of enhancing the visitor experience. The maximum decibel levels remain the same.

Section 3.15 May I Swim or Wade in Park Waters?

This section is renumbered from the current § 3.21. The title of the regulation is amended from "Swimming and bathing" to "Swimming and wading".

The title of the section is modified by replacing the term "bathing" with "wading" in order to clarify the range of activities intended for coverage under this rule. "Bathing", as used to refer to the act of swimming, is largely an out-dated term and may have more meaning to modern visitors as a term that addresses the act of "cleansing" the body using soap or cleansing agents. Bathing violations could be addressed under 36 CFR 2.14(a)(6).

Paragraphs (a)(1) and (2) of existing § 3.21 are deleted. Paragraph (a)(3) of existing § 3.21 is deleted. The work group decided there was no uniform set of circumstances service-wide regarding swimming from vessels underway, given the variety of water conditions that exist throughout the National Park

System. It is recommended that individual parks deal with this issue on an as-needed basis through designation of this restriction by the superintendent utilizing §§ 1.5 and 1.7 of this chapter. Paragraph (b) of existing § 3.21 is renumbered as a stand-alone regulation, § 3.17.

Section 3.16 What Regulations Apply to Swimming Areas and Beaches?

This section has been moved from paragraph (b) of existing § 3.21. The word "sporting" is deleted from the description of activities that may be restricted by the superintendent in order to provide greater flexibility to deal with swimming beach safety issues. These regulations distinguish between swimming areas (in the water) and swimming beaches (on the land).

Section 3.17 May I Snorkel or Underwater Dive in Park Waters?

The part 3 work group is recommending the promulgation of a new regulation to manage underwater activities. The title is amended from "SCUBA and snorkeling" to "Snorkeling and underwater diving".

In section 1.4, a definition of "underwater diving" was added to reflect new diving technologies. It encompasses compressed air as well as mixed gas and surface supplied air.

Paragraph (a) allows "snorkeling and underwater diving in park waters except where designated as closed". This is a change from the previous regulation that identified "swimming, docking, or mooring areas" as closed to these activities. Superintendents will now have the authority to designate waters that are closed utilizing §§ 1.5 and 1.7 of this chapter.

In Section 1.4, the term "dive flag" was added. Several states' dive flag standards were examined. If there were differences, they were most often found in the size of the flag. Many states had no standard and, as a result, the work group recognized a need for an NPS standard and chose the standard most often encountered in other regulations.

Paragraph (c) establishes the relationship in horizontal distance between a diver and the dive flag. It is not the intent of the work group that a diver's vertical distance from the flag be considered in this regulation. Regardless of depth, a diver must be within a 100-foot horizontal radius of the dive flag.

Paragraph (d) allows parks to adopt state laws or regulations that may apply a dive flag requirement to snorkeling as well as to underwater diving. It is not the intent of this section to require a dive flag for snorkeling in parks that are within states with no requirement. Since section 3.2 allows only for the adoption of state boating safety laws and regulations, this section is added to allow parks to adopt specific state water use regulations or laws that require dive flags for snorkelers.

Section 3.18 May I Operate a Submersible in Park Waters?

The part 3 work group is proposing the promulgation of a new regulation to manage submersibles within the national park areas. Definitions of manned and unmanned submersible appear in § 1.4 of this part. The regulation is established to manage, through the permit process, use that is consistent with the NPS mission to protect life, property and park resources. It is the intent of this section to allow the superintendents the discretion to establish conditions for permits.

Over the last several years, several park areas, particularly those with large bodies of water, have experienced an increase in the use of submersibles. The threat to the safety of visitors and submerged natural, cultural or historic resources far outweigh any inconveniences to the public that may result from implementation of the regulation.

Manned recreational submersibles are appearing on the retail market and although somewhat expensive for the average individual, operation requires very little in terms of training. It should also be noted that an automobile easily transports some of these submersible vessels giving the owner ready access to national park areas.

If the operation of these vessels remains unregulated, the potential for boating accidents increases significantly. For example, a submersible coming to the surface in front of an oncoming vessel without warning and without allowing either party sufficient time to maneuver out of harms way.

The use of remotely operated devices is included in the proposed new regulation. The documented use of these devices in national park areas has been primarily for official search and rescue/recovery operations. There is no intent to preclude the use of these devices for administrative purposes. However, the NPS recognizes these devices can easily be used to locate and loot submerged natural, cultural or historical resources. Therefore, the NPS proposes the requirement for a permit for private individuals.

Superintendent's Authority

Throughout this document, the Superintendent is given latitude to manage specific types of uses or activities based on local park needs or issues under the authority of 36 CFR 1.5 and 1.7. Exercising this authority may be accomplished using the authority as cited (§§ 1.5 and 1.7) or through promulgation of a special regulation (part 7).

Part 7

Several parks had existing marine sanitation regulations that were promulgated because there were no service-wide regulations covering the disposal of marine waste. Since MSD regulations are being proposed, the park specific regulations are now redundant and are proposed for removal as well. Other types of boating and water-use regulations also became redundant and have been deleted accordingly.

Compliance With Other Laws

Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. This rule only relates to the general operation of vessels on park waters and other water based activities but does not propose changes that would alter the numbers of users to a particular area. No economic impacts are likely to be recognized as a result of these regulations.

b. This rule will not create inconsistencies with other agencies' actions. These regulations only impact users of NPS areas and are written to provide greater consistency with the USCG and other state laws.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This rule will not raise novel legal or policy issues. Although this rule is a rewrite of the entire Part 3, it does not propose any significant changes to the way the public currently participates in water based activities. It does provide for greater consistency with state regulations that the public is more likely familiar with.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule affects vessel operation and imposes requirements that are generally already required by most states. There are no

regulations proposed that would likely change the amount of users to an NPS unit nor are there regulations that impose any restrictions on concessions or other vessel or water related businesses.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. This rule is not expected to have any economic affect on local communities or businesses because the scope of the regulations focuses on the way in which vessels are operated, not the amount of vessels to an area.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions. This rule has no association with costs for consumers nor does it impose any restrictions on businesses or governments of any kind.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rule has no association with businesses or uses outside NPS areas.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. This rule has no affect on government entities, only the visiting public.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, *i.e.*, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. This rule is generally focused on safety regarding water use and vessel activity and does not impose any regulations on lands or waters outside the NPS or on any private property.

Federalism

In accordance with Executive Order 12612, the rule does not have significant Federalism effects. A Federalism assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order. This rule is focused on providing clearer interpretation of existing regulations and consistency with USCG regulations and state laws and regulations in order to make it easier for the visiting public to comply with regulations.

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and have determined that this rule is covered by a categorical exclusion adopted by this federal agency in accordance with the Council on Environmental Quality regulations, 40 CFR 1500–1508. The DOI Manual contains the categorical exclusions applicable to the National Park Service and the exceptions of the use of a categorical exclusion. The effect of the categorical exclusion to identify a category of activities that individually or cumulatively do not have significant effect on the human environment and therefore are exempt from the requirements to prepare an environmental impact statement. The federal action proposed in this rule is described in the categorical exclusion listed in the Departmental Manual at 516 DM 6, appendix 7, section 7.4.A(10) and none of the exceptions to the use of the categorical exclusions listed at 516 DM 2, appendix 2 are applicable.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, "Consultation and Coordination with Tribal Governments", and 512 DM 2:

We have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. This rule only pertains to water use and vessel operations on waters inside NPS boundaries and does not propose to change use patterns or amounts so is not likely to affect any tribes near an NPS unit with water use.

Drafting Information: The primary authors of this regulation were Jay Lippert, Fire Island National Seashore; Art North, Delaware Water Gap National Recreation Area; Bonnie Foist, Everglades National Park; Jerry Case, Pinnacles National Monument; Bob McKeever (retired), and Kym Hall, Regulations Program Manager, National Park Service.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail written comments to: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7248, Washington, DC 20240. Email to: *WASO_Regulations@nps.gov*. Fax: (202) 219–8835. Please include "Part 3 Rules" in the subject line and your name and return address in the body of your message. Finally, you may hand deliver comments to Kym Hall, 1849 C Street NW., Room 7248, Washington, DC. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects

36 CFR Part 1

National Parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

36 CFR Part 3

Marine safety, National parks, Reporting and recordkeeping requirements.

36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Park Service proposes to amend 36 CFR Parts 1, 3 and 7 as follows:

PART 1—GENERAL PROVISIONS

1. The authority for Part 1 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460 1–6a(e), 462(k); D.C. Code 8–137, 40–721 (1981).

2. Amend § 1.4 as follows:

a. Add the following definitions in alphabetical order.

b. Revise the existing definition of *vessel*.

§ 1.4 What terms do I need to know?

* * * * *

Dive flag means a flag not less than 12 inches square, red in color, with a white stripe running diagonally from the top of the staff to the opposite lower corner. The white stripe shall be one-fifth the width of the flag.

* * * * *

Flat wake speed means the minimum required speed to leave a flat wave disturbance close astern a moving vessel yet maintain steerageway, but in no case in excess of 5 statute miles per.

Harbor means a natural or artificially improved body of water providing protection for vessels, which may include anchorage, mooring or docking facilities.

* * * * *

Manned submersible means any vessel that carries or is capable of carrying passenger(s) within the confines of the vessel below the surface of the water.

* * * * *

Power-driven vessel means any vessel propelled by machinery.

* * * * *

Sailing vessel means any vessel under sail provided, if propelling machinery is fitted, it is not being used.

* * * * *

Sewage means human body waste or the waste from a toilet or other receptacle intended to receive or retain body waste.

* * * * *

Underwater diving means the use of any apparatus, whether self contained or connected to a distant source of air or other gas, whereby a person wholly or partially submerged in water, enabling that person to obtain or reuse air or any other gas or gasses for breathing without returning to the surface of the water. Underwater diving would include, but is not to be limited to use of SCUBA; surface supplied air, mixed gas, or re-breathers.

* * * * *

Un-manned submersible means any device operated by remote control, used or capable of being used, to search or collect below the surface of the water. This definition does not apply to a device being used lawfully for fishing.

* * * * *

Vessel means every type or description of craft capable of free flotation, other than a seaplane on the water, used or capable of being used as a means of transportation on or through the water. Non-traditional vessels such as a tube, raft or other inflatable device; surf board, sailboard, and other rigid device are vessels when being used as a means of transportation on or through the water.

* * * * *

PART 3—BOATING AND WATER USE ACTIVITIES

3.–4. Part 3 is revised to read as follows:

Sec.

3.1 What is the applicability and scope of this part?
3.2 Do other boating laws and regulations apply to me when I operate my boat on park waters?
3.3 Am I required to obtain a permit to operate a vessel in a park area?
3.4 For what purposes may my vessel be inspected?
3.5 Do I have to report an accident involving a vessel to the National Park Service?
3.6 What age must I be to operate a power driven vessel?
3.7 Who must wear a Personal Flotation Device (PFD)?
3.8 What vessel operations are prohibited?
3.9 May I operate my personal watercraft (PWC) in park waters?
3.10 What are the regulations regarding operating a vessel while under the influence of alcohol and/or drugs?
3.11 May I use a vessel to tow a person for water skiing or other similar activities?
3.12 What conditions apply to the use of Marine Sanitation Devices (MSD)?
3.13 Am I required to remove a sunken, grounded, or disabled vessel?
3.14 What is the maximum noise level for the operation of a vessel?
3.15 May I swim or wade in park waters?
3.16 What regulations apply to swimming areas and beaches?
3.17 May I snorkel or underwater dive in park waters?
3.18 May I operate a submersible within park waters?

Authority: 16 U.S.C. 1, 1a–2(h), 3.

§ 3.1 What is the applicability and scope of this part?

The applicability of the regulations in this part is described in § 1.2 of this chapter.

§ 3.2 Do other boating laws and regulations apply to me when I operate my boat on park waters?

(a) In addition to the regulations contained in this part, applicable laws and regulations of the United States Coast Guard apply to govern vessels and their operation on all waters (navigable and non-navigable) subject to NPS jurisdiction. Title 14 United States Code, Title 33 United States Code, Title 46 United States Code, and the United States Coast Guard regulations in 33 CFR Chapter I, 46 CFR Chapter I and III, and 49 CFR Chapter IV apply to such operation. Therefore, Federal regulations authorizing an action by the "captain of the port" or another officer or employee of the United States Coast Guard, authorize a like action by the superintendent.

(b) Unless specifically addressed by the regulation in paragraph (a) of this section, vessels and their operation on all waters subject to NPS jurisdiction are governed by non-conflicting boating safety laws and regulations of the state within whose interior boundaries a park area or portion thereof is located.

§ 3.3 Am I required to obtain a permit to operate a vessel in a park area?

Generally, you are not required to obtain a permit to operate a vessel in a park area. However, in certain circumstances, taking into consideration public safety, protection of park resources, weather and park management objectives or other factors, the superintendent may require a permit for use of a vessel within a park area, pursuant to §§ 1.5 and 1.7 and consistent with § 1.6 of this chapter.

§ 3.4 For what purposes may my vessel be inspected?

(a) An authorized person may at any time stop and/or board a vessel to examine documents, licenses or permits relating to operation of the vessel, and to inspect the vessel to determine compliance with regulations pertaining to safety equipment, vessel capacity, marine sanitation devices, and other pollution and noise abatement requirements.

(b) An authorized person who identifies a vessel being operated without sufficient life saving or firefighting devices, in an overloaded or other unsafe condition, as defined in United States Coast Guard regulations, or in violation of a noise level specified in § 3.15(a) of this part, may direct the operator to suspend further use of the vessel until the condition is corrected.

§ 3.5 Do I have to report an accident involving a vessel to the National Park Service?

(a) The operator of a vessel involved in an accident involving total property damage exceeding $2000, injury, or death or disappearance of a person must report the accident to the superintendent as soon as practical, but in any event within 24 hours of the accident.

(b) If the operator is physically incapable of making the report, the owner or an occupant of the vessel must

report the accident to the superintendent.

(c) Filing a report with the superintendent may not satisfy applicable United States Coast Guard, state or local accident reporting requirements.

§ 3.6 What age must I be to operate a power driven vessel?

(a) No person under the age of sixteen (16) years may operate a power-driven vessel on park waters except that a person twelve (12) to fifteen (15) years of age may operate a power-driven vessel if a person at least eighteen (18) years of age is on board the vessel.

(b) If a park area is located within a state having a similar requirement specifying a different age or having different conditions, then the applicable state law is adopted in lieu of paragraph (a) of this section.

§ 3.7 Who must wear a Personal Floatation Device (PFD)?

(a) Any child 12 years of age or younger must wear USCG approved Type I, II, or III PFD when aboard a vessel underway, except while inside an enclosed cabin. If a park area is located within a state having a similar requirement specifying a different age or with different conditions, then applicable state law applies in lieu of this paragraph (a).

(b) Paragraph (a) does not apply to a vessel that requires inspection by the U.S. Coast Guard when that vessel is certified for carrying passengers for hire pursuant to 46 CFR Chapter I or III.

(c) The Superintendent may require that a PFD be worn on designated waters or during designated water based activities in accordance with §§ 1.5 and 1.7 of this chapter.

§ 3.8 What vessel operations are prohibited?

(a) The following operations are prohibited:

(1) Launching or operating an airboat or hovercraft.

(2) Launching or recovering a vessel, except at a launch site designated by the superintendent.

(3) Operating a power-driven vessel on waters not accessible by road.

(4) Operating a vessel in excess of a length, width or horsepower restriction established by the superintendent in accordance with §§ 1.5 and 1.7 of this chapter. For the purposes of this paragraph, vessel length is measured according to criteria established in 46 CFR Chapter I or III.

(5) Attaching a vessel to or interfering with a marker, navigation buoy or other navigational aid.

(b) The following operations are inherently unsafe and therefore prohibited:

(1) Operating a power-driven or sailing vessel within 100 feet of a diver's flag except a vessel in support of dive operations, which may not be operated in excess of flat wake speed.

(2) Failing to observe restriction(s) established by a regulatory marker.

(3) Operating a vessel in excess of flat wake speed:

(i) In designated areas, or

(ii) Within 100 feet of:

(A) A downed water skier, (B) Person swimming, wading, fishing or floating with the aid of a non-motorized inflatable or rigid buoyant device;

(C) Designated launch site; or

(D) Manually propelled, anchored or drifting vessel unless the park is located within a state specifying different conditions then that state law is adopted in lieu of this paragraph.

(4) Unless a designated area is marked otherwise, operating a power-driven or sailing vessel within 500 feet of a shoreline designated as a swimming beach. This prohibition does not apply in locations such as a river, channel, or narrow cove where passage is restricted to less than 500 feet. In such restrictive locations where swim beaches are designated, the operation of a vessel in excess of a flat wake speed is prohibited.

(5) Operating a power-driven vessel while a person is riding on the decking over the bow, gunwales, top edge of the transom, motor cover, or in any other unsafe position when the vessel is being operated above a flat wake speed. Provided however, that this provision does not apply when that portion of the vessel is designed and constructed for the purpose of carrying passengers safely at all speeds.

(6) Operating a vessel, or knowingly allowing another person to operate a vessel in a negligent manner, by failing to exercise that degree of care which a reasonable person, under like circumstances, would demonstrate in order to prevent the endangering of the life, limb, or property of a person(s) through the operator's lack of knowledge, inattention, or general carelessness.

(7) Operating a vessel or knowingly allowing another person to operate a vessel in a grossly negligent manner, by willfully and wantonly creating an unreasonable risk of harm to person(s) or property, regardless of whether the operator intended to cause harm.

§ 3.9 May I operate my personal watercraft (PWC) in park waters?

(a) A person may operate a PWC in park areas only where authorized by special regulation.

(b) Where authorized, operation of a PWC on park waters is subject to the following conditions:

(1) No person may operate a PWC unless each person aboard is wearing a type I, II, or III PFD approved by the United States Coast Guard.

(2) A person operating a PWC equipped by the manufacturer with a lanyard-type engine cut-off switch must attach such lanyard to his person, clothing, or PFD, as appropriate for the specific vessel.

(3) No person may operate a PWC anytime between sunset and sunrise.

(4) No person may operate a PWC by jumping the wake, becoming partially airborne or completely leaving the water while crossing the wake of another vessel within 100 feet of the vessel creating the wake.

(5) If a park area is located within a state that has more restrictive regulations for the operation of PWC, then applicable state law applies in lieu of paragraphs (b)(1) through (b)(4) of this section.

§ 3.10 What are the regulations regarding operating a vessel while under the influence of alcohol and/or drugs?

(a) Operating or being in actual physical control of a vessel is prohibited while:

(1) Under the influence of alcohol or a drug or drugs or any combination thereof, to a degree that renders the operator incapable of safe operation; or

(2) The alcohol concentration in the operator's blood or breath is 0.08 grams or more of alcohol per 100 milliliters of blood or 0.08 grams or more of alcohol per 210 liters of breath. Provided, however, that if state law that applies to operating a vessel while under the influence of alcohol establishes more restrictive limits of alcohol concentration in the operator's blood or breath, those limits apply rather than the limits specified in this paragraph.

(3) These provisions also apply to an operator who is or has been legally entitled to use alcohol or drugs.

(b) At the request or direction of an authorized person who has probable cause to believe that an operator of a vessel has violated provisions of paragraph (a) of this section, the operator must submit to one or more testing procedures of the blood, breath, saliva or urine for the purpose of determining blood alcohol and/or drug content.

(1) Refusal by an operator to submit to a test is prohibited and proof of

refusal may be admissible in any related judicial proceeding.

(2) Any test or tests for the presence of alcohol and drugs shall be determined by and administered at the direction of an authorized person.

(3) Any test shall be conducted by using accepted scientific methods and equipment of proven accuracy and reliability operated by personnel certified in its use.

(c) The results of chemical or other quantitative tests are intended to supplement the elements of probable cause used as the basis for the arrest of an operator charged with a violation of paragraph (a)(1) of this section. If the alcohol concentration in the operator's blood or breath at the time of testing is less than alcohol concentrations specified in paragraph (a)(2) of this section, this fact does not give rise to any presumption that the operator is or is not under the influence of alcohol.

(d) The provisions of paragraph (c) of this section are not intended to limit the introduction of any other competent evidence bearing upon the question of whether the operator, at the time of the alleged violation, was under the influence of alcohol, or a drug, or drugs, or any combination thereof.

§ 3.11 May I use a vessel to tow a person for water skiing or other similar activities?

(a) The towing of a person by a vessel is allowed only in designated waters, and in accordance with conditions established by the superintendent pursuant to §§ 1.5 and 1.7 of this chapter.

(b) Towing a person using a parasail, hang-glider or other airborne device may be allowed only in accordance with a permit issued by the superintendent pursuant to § 1.6 of this chapter.

(c) Where towing is designated, the following conditions apply:

(1) Towing is allowed only between the hours of sunrise and sunset.

(2) In addition to the boat operator, a person at least 12 years of age must be present to observe the action of the person being towed.

(3) A person being towed must wear a United States Coast Guard approved type I, II, or III PFD.

(4) A person being towed may not commit any act in a manner that endangers, or is likely to endanger, any person or damage property.

(5) Operating a vessel that does not have the capacity to carry the person(s) being towed in addition to the operator and observer is prohibited.

§ 3.12 What conditions apply to the use of Marine Sanitation Devices (MSD)?

(a) Discharging sewage from any vessel, whether treated or not, in park waters is prohibited.

(b) The owner or operator of any vessel that is equipped with toilet facilities and/or an MSD that is capable of discharge into park waters, must lock or otherwise secure the valves or mechanism of the device in a manner that prevents discharge while within the boundaries of park area waters. For the purposes of this section, a deck mounted pump-out fitting is not considered to be an overboard discharge outlet and is not subject to these requirements, when used in conjunction with an approved pump-out facility.

(c) The superintendent may require the owner and/or operator of the vessel to have all discharge outlets disconnected from through-hull fittings and have both ends of the disconnected line(s) capped or plugged in order to prevent the ability to discharge, pursuant to §§ 1 .5 and 1 .7 of this chapter.

(d) The superintendent may modify the requirements of this section through a special regulation.

§ 3.13 Am I required to remove a sunken, grounded or disabled vessel?

(a) Except as provided in paragraph (b) of this section, the owners or authorized salvager of a sunken, grounded, or disabled vessel must remove the vessel, all component parts and equipment, and all associated cargo thereof in accordance with procedures established by the superintendent. In establishing removal procedures, the superintendent is authorized to:

(1) Establish a reasonable date by which vessel removal operations must be complete;

(2) Determine times and means of access to and from the vessel, and

(3) Specify the manner or method of removal.

(b) The superintendent may waive the requirements of paragraph (a) of this section or prohibit removal of the vessel, equipment or cargo upon a written determination that:

(1) The removal would constitute an unacceptable risk to human life;

(2) The removal would result in extensive resource damage; or

(3) The removal is impracticable or impossible.

§ 3.14 What is the maximum noise level for the operation of a vessel?

(a) A person may not operate a vessel at a noise level exceeding:

(1) 75dB(A) measured utilizing test procedures applicable to vessels underway (Society of Automotive Engineers SAE—J1970); or

(2) 88dB(A) measured utilizing test procedures applicable to stationary vessels (Society of Automotive Engineers SAE—J2005).

(b) An authorized person who has reason to believe that a vessel is being operated in excess of the noise levels established in paragraph (a) of this section, may direct the operator of the vessel to submit the vessel to an on-site test to measure the noise level.

§ 3.15 May I swim or wade in park waters?

Swimming or wading is allowed in waters, subject to closures or restrictions designated by the superintendent in accordance with §§ 1.5 and 1.7 of this chapter.

§ 3.16 What regulations apply to swimming areas and beaches?

(a) The superintendent may designate areas as swimming areas or swimming beaches pursuant to §§ 1.5 and 1.7 of this chapter.

(b) Within designated swimming areas, the use of a surfboard or similar rigid device is prohibited.

(c) The superintendent may prohibit the use or possession of flotation devices, glass containers, kites, or incompatible activities in swimming areas or swimming beaches pursuant to §§ 1.5 and 1.7 of this chapter.

§ 3.17 May I snorkel or underwater dive in park waters?

(a) Snorkeling and underwater diving is allowed in park waters, subject to closures or restrictions designated by the superintendent in accordance with §§ 1.5 and 1.7 of this chapter.

(b) In waters open to the use of vessels, a diver must prominently display a dive flag.

(c) A diver must remain within a 100′ horizontal radius of the dive flag.

(d) If applicable state law or regulation requires a snorkler to display a dive flag, that provision of state law or regulation applies.

§ 3.18 May I operate a submersible within park waters?

The use of manned or unmanned submersibles may only occur in accordance with a permit issued by the superintendent pursuant to § 1.6 of this chapter.

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

5. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under DC Code 8–137 (1981) and DC Code 40–721 (1981).

6. Section 7.45 is amended by removing and reserving paragraph (e)(8).
7. Section 7.48 is amended by removing and reserving paragraph (d).
8. Section 7.57 is amended by removing and reserving paragraph (c).
9. Section 7.70 is amended by removing and reserving paragraph (c).
10. Section 7.79 is amended by removing paragraph (c).

Dated: August 14, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife, and Parks.

[FR Doc. 03–21333 Filed 8–21–03; 4:26 pm]

BILLING CODE 4312–52–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA267–0402b; FRL–7526–7]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the South Coast Air Quality Management District (SCAQMD) portion of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from general spray coating operations, surfactant manufacturing, and storage tanks at petroleum facilities. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by September 25, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 or e-mail to *steckel.andrew@epa.gov.*

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814; and
South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, EPA Region IX, (415) 947–4111.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SCAQMD 481—Spray Coating Operations, SCAQMD 1141.2—Surfactant Manufacturing, and SCAQMD 1178—Further Control of VOC Emissions from Storage Tanks at Petroleum Facilities. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–21591 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 279–0401b; FRL–7526–5]

Revisions to the California State Implementation Plan; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Sacramento Metropolitan Air Quality Management District's portion of the California State Implementation Plan. These revisions concern a local fee rule that applies to major sources of volatile organic compound and nitrogen oxide emissions within the Sacramento Metropolitan ozone nonattainment area. We are proposing to approve a local rule that regulates these emission sources under the Clean Air Act as amended in 1990.

DATES: Any comments on this proposal must arrive by September 25, 2003.

ADDRESSES: Mail comments to Andrew Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 or e-mail to *steckel.andrew@epa.gov.*

You can inspect copies of the submitted State Implementation Plan revisions and EPA's technical support document at our Region IX office during normal business hours. You may also see copies of the submitted revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.
Sacramento Metropolitan Air Quality Management District, 777 12th Street, Third Floor, Sacramento, CA 95814.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Mae Wang, EPA Region IX, (415) 947–4124.

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rule: Sacramento Metropolitan Air Quality Management District Rule 307, Clean Air Act Fees. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 12, 2003.

Alexis Strauss,

Acting Regional Administrator, Region IX.

[FR Doc. 03–21589 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 245–0403b; FRL–7535–1]

Revisions to the California State Implementation Plan, San Diego County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the San Diego County Air Pollution Control District (SDCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from the transfer of organic compounds to mobile transport tanks. We are proposing to approve a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by September 25, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov*.

You can inspect a copy of the submitted rule revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revision and TSD at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local SDCAPCD Rule 61.2. In the Rules section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 8, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–21587 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 284–0399b; FRL–7536–3]

Revisions to the California State Implementation Plan, Bay Area Air Quality Management District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Bay Area Air Quality Management District (BAAQMD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). The BAAQMD revisions concern the emission of volatile organic compounds (VOCs) from the use of solvents and surface coatings. The SJVUAPCD revision concerns the emission of VOCs from a glycol dehydration system used on natural gas streams. We are proposing approval of local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by September 25, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov*.

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rules may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local BAAQMD Rules 8–4 and 8–16 and SJVUAPCD Rule 4408. In the rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: June 27, 2003.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. 03–21585 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[NC–112L–2003–1–FRL–7549–5]

Approval of Section 112(l) Authority for Hazardous Air Pollutants; Equivalency by Permit Provisions; National Emission Standards for Hazardous Air Pollutants From the Pulp and Paper Industry; State of North Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 112(l) of the Clean Air Act (CAA), North Carolina

Department of Environment and Natural Resources (NC DENR) requested approval to implement and enforce State permit terms and conditions that substitute for the National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry and the National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite and Stand-Alone Semi-chemical Pulp Mills. In the Rules section of this **Federal Register**, EPA is granting NC DENR the authority to implement and enforce alternative requirements in the form of title V permit terms and conditions after EPA has approved the state's alternative requirements. A detailed rationale for this approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before September 25, 2003.

ADDRESSES: Comments may be submitted by mail to: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division; U.S. Environmental Protection Agency Region 4; 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, Supplementary Information section (part (I)(B)(1)(i) through (iii)) which is published in the Rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Lee Page, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9141. Mr. Page can also be reached via electronic mail at *page.lee@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: August 13, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–21780 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–7549–4]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Rocky Mountain Arsenal National Priorities List Site from the National Priorities List; extension of public comment periods.

SUMMARY: The Environmental Protection Agency (EPA) Region 8 announced its intent to delete the Selected Perimeter Area (SPA, 68 FR 44259) and the Surface Deletion Area (SDA, 68 FR 44265) of the Rocky Mountain Arsenal National Priorities List Site (RMA/NPL Site) On-Post Operable Unit (OU) from the National Priorities List (NPL) on July 28, 2003. Both 30-day public comment periods are scheduled to end on August 26, 2003. EPA has received a written request to extend these public comment periods. In response, EPA is extending both public comment periods for an additional 30 days concluding on September 25, 2003.

The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

EPA bases its proposal to delete the SPA and SDA portions of the RMA/NPL Site on the determination by EPA and the State of Colorado, through the Colorado Department of Public Health and Environment (CDPHE), that all appropriate actions under CERCLA have been implemented to protect human health, welfare, and the environment and that no further response action by responsible parties is appropriate.

The partial deletions pertain only to the SPA and SDA of the On-Post OU of the RMA/NPL Site and do not include the Off-Post OU or the rest of the On-Post OU. The Off-Post OU and rest of the On-Post OU will remain on the NPL and response activities will continue at those OUs.

DATES: Comments concerning the proposed partial deletions may be submitted to EPA on or before September 25, 2003.

ADDRESSES: Comments may be mailed to: Catherine Roberts, Community Involvement Coordinator (8OC), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, 1–800–227–8917 or (303) 312–6025.

Comprehensive information on the RMA/NPL Site, as well as information specific to both proposed partial deletions, is available through EPA's Region 8 Superfund Records Center in Denver, Colorado. Documents are available for viewing by appointment from 8 a.m. to 4 p.m., Monday through Friday excluding holidays by calling (303) 312–6473. The Administrative Record for the RMA/NPL Site and the Deletion Dockets for these partial deletions are maintained at the Joint Administrative Records Document Facility, Building 129, Room 2024, Commerce City, Colorado 80022–1748, (303) 289–0362. Documents are available for viewing from 12 p.m. to 4 p.m., Monday through Friday or by appointment.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Williams, Remedial Project Manager (8EPR–F), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado, 80202–2466, (303) 312–6660.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Partial Site Deletion

I. Introduction

The Environmental Protection Agency Region 8 announces a thirty (30) day extension of the public comment periods for the proposed deletion of the Selected Perimeter Area and Surface Deletion Area of the Rocky Mountain Arsenal National Priorities List (RMA/NPL) Site, Commerce City, Colorado, from the National Priorities List and requests comment on these proposed actions. The NPL constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan, 40 CFR part 300, which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9605. EPA identifies sites that appear to present a significant risk to public health or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). The partial deletions

from the RMA/NPL Site are proposed in accordance with 40 CFR 300.425(e) and Notice of Policy Change: Partial Deletion of Sites Listed on the National Priorities List (60 FR 55466 (November 1, 1995)). As described in 40 CFR 300.425(e)(3), portions of a site deleted from the NPL remain eligible for further remedial actions if warranted by future conditions.

EPA will accept comments concerning its intent for the SPA and SDA partial deletions from the RMA/NPL Site until September 25, 2003.

Section II of this action explains the criteria for deleting sites from the NPL. Section III discusses the procedures that EPA is using for these proposed partial deletions. Section IV explains how the SPA and SDA each meet the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate to protect public health or the environment. In making such a determination pursuant to § 300.425(e), EPA will consider, in consultation with the State, whether any of the following criteria have been met:

Section 300.425(e)(1)(i). Responsible parties or other persons have implemented all appropriate response actions required; or

Section 300.425(e)(1)(ii). All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

Section 300.425(e)(1)(iii). The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking remedial measures is not appropriate.

A partial deletion of a site from the NPL does not affect or impede EPA's ability to conduct CERCLA response activities for portions not deleted from the NPL. In addition, deletion of a portion of a site from the NPL does not affect the liability of responsible parties or impede agency efforts to recover costs associated with response efforts. The U.S. Army and Shell Oil Company will be responsible for all future remedial actions required at the areas deleted if future site conditions warrant such actions.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) of the NCP has been met, EPA may formally begin deletion procedures. The following procedures were used for the proposed deletion of the SPA and SDA portions of the RMA/NPL Site:

(1) EPA has recommended the partial deletions and prepared the relevant documents.

(2) The State of Colorado, through the CDPHE, concurred with publication of the notices of intent for partial deletion.

(3) Concurrent with the national Notices of Intent for Partial Deletion, a local notice was published in a newspaper of record and distributed to appropriate federal, State, and local officials, and other interested parties. These notices announced a thirty (30) day public comment period for each deletion package, both ending August 26, 2003, based upon publication of the notices in the **Federal Register** and a local newspaper of record.

(4) Concurrent with this national Notice of the Public Comment Extension, a local notice has been published in a newspaper of record and has been distributed to appropriate federal, State, and local officials, and other interested parties. These notices announce a thirty (30) day extension of the public comment periods, which end on September 25, 2003.

(5) EPA has made all relevant documents available at the information repositories listed previously for public inspection and copying.

Upon completion of the thirty (30) calendar day extension of the public comment periods, EPA Region 8 will evaluate each significant comment and any significant new data received before issuing a final decision concerning the proposed partial deletions. EPA will prepare a responsiveness summary for both the SPA and SDA for each significant comment and any significant new data received during the public comment periods and will address concerns presented in such comments and data. The responsiveness summaries will be made available to the public at the EPA Region 8 office and the information repository listed above and will be included in the final deletion packages. Members of the public are encouraged to contact EPA Region 8 to obtain a copy of the responsiveness summaries. If, after review of all such comments and data, EPA determines that either of the partial deletions from the NPL is appropriate, EPA will publish a final notice of partial deletion in the **Federal Register**. Deletion of the SPA or the SDA from the RMA/NPL Site does not actually occur until a final notice of partial deletion is published in the **Federal Register**. A copy of each final partial deletion package will be placed at the EPA Region 8 office and the information repository listed above after the final documents have been published in the **Federal Register**.

IV. Basis for Intended Partial Site Deletion

This notice announces a thirty (30) day extension of the public comment periods for the proposed partial deletions from the RMA/NPL Site. EPA Region 8 announced its intent to delete the SPA and SDA portions of the RMA/NPL Site from the NPL on July 28, 2003. The original basis for deleting the SPA and SDA from the RMA/NPL Site has not changed. The **Federal Register** notice for the SPA (68 FR 44259) and the SDA (68 FR 44265) provide a thorough discussion of the bases for the intended partial deletions.

Dated: August 18, 2003.

Robert E. Roberts,

Regional Administrator, Region 8.

[FR Doc. 03–21781 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 21

RIN 1018–AC57

Revisions to General Permit Procedures

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the U.S. Fish and Wildlife Service's permit application fee schedule for permits issued by the Divisions of Migratory Bird Management, Endangered Species, Law Enforcement, and Management Authority. The rule also clarifies several aspects of Service permit application procedures, and updates permit-related Service addresses. Additionally, the rule extends the tenure of two types of migratory bird permits.

DATES: Send comments on this proposal by October 10, 2003.

ADDRESSES: You may mail or deliver comments to the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MBSP 4107, Arlington, Virginia 22203–1610. Alternatively, you may submit your comments via the Internet to: *permitspart13@fws.gov*. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Please also include your name and return address in your e-mail message.

If you submit comments by more than one medium, please note that at the beginning of your document. You may also fax in comments to 703/358–2272. When submitting comments, refer to the file number RIN 1018-AC57.

The complete file for this proposed rule, including public comments, is available, by appointment, during normal business hours at the same address. You may call 703/358–2329 to make an appointment to view the files.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703/358–1714.

SUPPLEMENTARY INFORMATION:

Background

In implementing its responsibilities under the Endangered Species Act of 1973, as amended (ESA), Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Migratory Bird Treaty Act (MBTA), and other wildlife laws, the Service issues permits and certificates that authorize the holders to engage in certain wildlife-related activities that are regulated by international treaty or laws of the United States. The Service charges user fees to offset the cost of processing applications for these permits and certificates, as well as the cost of monitoring and maintaining active permit files.

The general statutory authority to charge fees for applications for permits and certificates is found in 31 U.S.C. 9701, which states that services provided by Federal agencies are to be "self-sustaining to the extent possible." The authority to charge fees is also found under various wildlife laws. Specifically, the ESA, 16 U.S.C. Sec. 1540(f), authorizes the Secretary to "charge reasonable fees for expenses to the Government connected with permits or certificates authorized by [the ESA] including processing applications." The Marine Mammal Protection Act (MMPA), 16 U.S.C. Sec. 1374(g), also provides that the "Secretary shall establish and charge a reasonable fee for permits" issued pursuant to the MMPA.

Federal user fee policy, as stated in Office of Management and Budget (OMB) Circular No. A–25, requires Federal agencies to recoup the costs of "special services" that provide benefits to identifiable recipients. Permits are special services, authorizing identifiable recipients to engage in activities not otherwise authorized for the general public. Some of the Service's permit programs receive no designated budget appropriations. Others receive some funding, but not enough to cover costs. Our ability to effectively provide these special services depends in large part on user fees. We are proposing that the standard permit application fee, which has not been revised since 1982, be increased in order to recoup more of the costs associated with providing permitting services.

The current schedule of permit application fees was published in the **Federal Register** on July 15, 1982 (47 FR 30785). The Service set what it calculated to be a reasonable standard fee in 1982 dollars to help defray the costs of processing permit applications, and monitoring and maintaining active permits. However, the standard $25 fee was not large enough to recover the total cost of administering the Service's permit programs, even when it was set in 1982.

In response to cost of living increases, average Federal Government salaries have increased by 126% since 1982, according to the Bureau of Labor Statistics Employment Cost Index. This means that labor costs, which constitute the major expense incurred in administering permit programs, have more than doubled during the 21 years since the standard fee was established.

Furthermore, during that time, the average permit application has become more complex and time consuming to process. For example, migratory bird depredation permit applications are increasing in both frequency and complexity as greater numbers of people have more frequent interactions with migratory birds, resulting in more extensive, and different types of, property damage. Before issuing these permits, the Service must document that it considered and complied with the requirements of the National Environmental Policy Act (NEPA). As part of NEPA compliance, some of these permit issuances require preparation of environmental assessments. For migratory bird rehabilitation, permit conditions and criteria have had to become more complex to keep pace with an expanding and evolving profession, as larger, better-equipped facilities open, providing greater numbers of birds with more sophisticated treatment. In general, permit administration today requires more coordination between Service programs, other Federal programs, and State governments than it did 2 decades ago, in order to comply with the growing body of wildlife regulations needed to address the increasing impacts of an expanding human society. This increased complexity and workload of permit administration results in larger costs to the Service.

Proposed Revised Fee Schedule

Given the shortfall between program costs and fee collection, the Service is proposing to implement a new permit application fee schedule. The Service proposes to replace the current standard and nonstandard fees with a new table of fees to be designated under title 50 of the Code of Federal Regulations (CFR) at § 13.11(d)(4). This rule does not affect permit application fees for migratory bird banding and marking permits, which are issued by the U.S. Geological Survey, Bird Banding Laboratory.

The proposed fee structure is what the Service deems to be reasonable based on the nature of the activities being permitted, as well as the level of complexity and time required to process applications and maintain active permit files. Greater complexity results in greater workload and costs to the Federal Government for providing these special services. For example, fees for marine mammal public display permits are set at the rate of $300 since they are among the most burdensome to process. These permit applications are often complex and require Service coordination with the National Marine Fisheries Service and the Marine Mammal Commission, as well as publication of notices in the **Federal Register** on receipt of an application and issuance of the permit. Permits to import marine mammals generally require a greater allocation of Service administrative and professional resources to process than a comparable CITES Appendix-I import permit and are significantly more complex to process than, for example, a simpler CITES Appendix-II permit application.

While cost considerations were important in developing the new fee structure, the Service does not intend this fee schedule to precisely mirror the actual cost of processing and maintaining the various types of permits we issue. For some types of permits, the cost of processing applications and monitoring active permits far exceeds what the Service can reasonably expect the applicant to pay, and thus the proposed permit application fee defrays only a minor portion of the actual cost to the Service. The proposed fee structure is a compromise between charging permit applicants the entire cost of providing these special services and the need to establish a uniform, straightforward fee schedule that reflects a reasonable cost for processing applications and maintaining active files.

In addition to cost, the Service considered several other factors in developing the new permit application

fee schedule in accordance with 31 U.S.C. 9701, which states that charges for services provided by the Government shall be based on (1) the costs to the Government; (2) the value of the service or thing to the recipient; (3) public policy or interest served; and (4) other relevant facts. Thus, the Service took into consideration such factors as whether the permit serves the public interest, and whether the type of permit to be issued typically provides a commercial benefit, either directly or indirectly, to the recipient.

While the Service's proposed new fee schedule will more closely conform to the Federal user fee policy by recovering a greater portion of the direct and indirect costs of providing special services than is currently being recovered, the proposed fee increases are not great enough to recover the full cost of administering the Service's permit programs. Administrative costs include research and analysis, policy development, consultation, outreach, publication of notices in the **Federal Register**, and overall management of the permit programs. Remaining costs, not captured through permit application fees, must be met with money appropriated for base funding of Service programs.

The Service will review permit application fees on a regular basis, using the cost of living index, as reported by the Bureau of Labor Statistics, as well as other factors that impact the cost to the Government of providing these services, to determine when it is appropriate and necessary to adjust fees.

Native American Cultural and Religious Possession Permits

Native American applicants for permits to possess or travel with eagle and other migratory bird carcasses, parts, and feathers for cultural and religious use will not be required to pay a permit processing fee. We do not consider this type of permit to be a special service like the other permits the Service issues. The Service issues Native American cultural and religious possession permits as part of the Federal Government's trust responsibility toward Federally recognized Native American tribes, and in order to fulfill Native Americans' First Amendment Constitutional rights, and in accordance with the American Indian Religious Freedom Act of 1978. To require Native Americans to pay a fee in order to carry out traditional cultural and religious ceremonies could unduly burden their religious freedom. Thus, we have not proposed a processing fee for applications for permits to take, possess, or transport (including CITES applications) eagle or other migratory bird carcasses, parts, and feathers for Native American cultural and religious use.

Migratory Bird Rehabilitation Permit Application Fees

For many years, applicants for migratory bird rehabilitation permits have paid no application fee. Although part 13 has never provided a formal exemption for rehabilitators, as a matter of practice, application fees for those permits have been waived. On December 6, 2001, the Service proposed a regulation to establish a specific permit category under which migratory bird rehabilitators will be permitted (66 FR 63349). Under that proposed rulemaking, migratory bird rehabilitation permit applicants are required to pay the fee listed in part 13, which is currently $25. As part of that same rulemaking, migratory bird rehabilitation permits are proposed to be extended from a 3-year to a 5-year tenure. The net result of those changes is that migratory bird rehabilitation permit holders would pay $5 per year in permit processing costs.

Under the present rulemaking proposed herein, the rehabilitation permit application fee would increase to $50, resulting in a net increase to rehabilitation permit holders of another $5 per year. While we recognize that migratory bird rehabilitators provide benefits to injured wildlife, the Service nevertheless incurs substantial costs when processing these permits. For the same reasons we are obliged to increase permit application fees Servicewide, we need to recoup the costs of issuing migratory bird rehabilitation permits, and we do not consider a fee equivalent to $10 per year to be a significant economic burden for permit applicants.

Native Endangered and Threatened Species Permit Application Fees

Under the present rulemaking proposed herein, the application fee for native endangered and threatened species permits under the ESA will increase from $25 to: $100 for recovery and interstate commerce; $50 for enhancement of survival permits with Safe Harbor Agreements; $50 for enhancement of survival permits with Candidate Conservation Agreement with Assurances; and $100 for incidental take permits with Habitat Conservation Plans. While we recognize that many of the activities authorized under these permits provide conservation benefits for endangered and threatened species, and the habitats upon which they depend, ESA permit applications for native species have risen significantly in both number and complexity since the application fees were set in 1982. For the same reasons we are obliged to increase permit application fees Servicewide, we need to recoup costs of issuing native endangered and threatened species permits, and we do not consider this modest increase in permit application fees to be a significant economic burden for permit applicants.

Recent Changes in CITES Permits and the Corresponding Fee Changes

With the implementation of new CITES Resolutions and in an effort to improve the efficiency of the permitting process in the Division of Management Authority, changes to the permit procedures have been implemented. The implementation of new Resolutions has been addressed in a previous **Federal Register** notice (65 FR 26664; May 8, 2000). Other procedural changes are outlined below. In some cases, these new Resolutions and charges require that new fees be adopted to offset some new administrative costs.

(1) *Security Paper.* The Service has recently started to issue certain CITES permits and certificates on security paper, rather than using plain paper with a CITES security stamp. Security paper is specially produced paper that contains a variety of security features to prevent fraudulent use of the document. One aspect is a feature that does not allow the document to be clearly reproduced by photocopying. Since these documents cannot be photocopied, the Service needs to alter how we issue certain CITES documents.

(2) *Discontinuation of Multiple-Use Permits.* In the past, we have issued multiple-use permits that allowed multiple exports of specific items. These items have included artificially propagated plants, biological samples, circus animals, ginseng, and personally owned pets. With the exception of personally owned pets and circus animals, we have not issued multiple-use permits to export live animals. In appropriate situations, the applicant would submit a single application and, if approved, would receive a single document that could be used multiple times. Each time the document was used, a photocopied version would be submitted for clearance and would accompany the shipment. However, with the shift to security paper and because fewer countries are willing to accept photocopied documents, the Service has decided to discontinue the issuance of multiple-use permits.

(3) *Multiple Single-Use Permits.* As an alternative to multiple-use permits, we will begin issuing multiple single-use

permits. The permittee will receive a number of single-use permits, valid for 6 months from the issuance date. Each shipment exported must be accompanied by an original document. This new procedure would require that an individual or business submit an application that, if approved, would allow the Service to set up a "Master File." All information regarding the applicant and activities being requested would be maintained in this file. The Service would then be able to issue single-use permits based on the Master File. Since the permits would be valid only for 6 months, the permittee would need to evaluate how many permits would be required during this time period and request that number of permits. The original application for the Master File would require an application fee of $200, and the file would be valid for 3 years. As long as no changes are made to the file, no additional application fee would be required for the 3 years. If, however, changes or amendments are made to the file, an additional application fee of $100 (one half of the original fee) would be charged. After 3 years, the Master File would need to be updated if the permittee wishes to continue receiving single-use permits. This will require that the permittee submit a renewal application and an application fee of $100. A $5 fee charge will be assessed for each single-use permit issued from the Master File. Any permit not used within the 6-month period will expire, and no refund or exchange will be made. Please note that we consider permittees who currently receive multiple-use permits to already have a Master File established and, therefore, they will not need to apply to the Division of Management Authority to establish a new one. They will need to update these files every 3 years and pay the $100 renewal fee.

(4) *Passport Documents.* In addition to switching to security paper, the Service will also begin issuing "passport" documents for personally owned pets and traveling exhibition live animals. Under CITES, a passport can be issued for personal pets and traveling exhibition animals in lieu of a typical CITES permit. The passport is valid for 3 years and is issued for a single animal. The animal must travel with the original passport, which must be presented to the appropriate agents at the ports of exit and entry. The passport is only valid for the single animal listed on the document. If the animal is lost, sold, or dies, the passport must be returned to the Division of Management Authority. The application fee for a CITES passport for a personal pet or traveling exhibition animal is $75 and is valid for 3 years. The fee for a passport for an animal listed under both CITES and the ESA is $100 and is also valid for 3 years. Since the passport is issued for a specific specimen and must be returned to the Division of Management Authority if any changes occur to the status of the specimen, we cannot amend the passport once it has been issued.

(5) *Native Appendix III Species.* Under CITES, any Party can unilaterally list a native species in Appendix III. The country that lists a species in Appendix III must issue export permits for any specimens that are exported from that country. Specimens from another country would normally require a Certificate of Origin to be exported or reexported, indicating that they did not originate in the listing country. Currently, the United States has not listed any native species in Appendix III. However, in anticipation of this possibility, we propose an alternative fee schedule to address unique aspects of such a listing. One such aspect could be the need to permit the export of specimens from captive-breeding operations that produce large numbers of specimens intended for a limited number of exportations under very restricted conditions. Permitting for the export of specimens from such an operation could be conducted under a permitting procedure similar to a Master File (described above). We are proposing that a fee schedule be established that would allow an applicant to set up an Annual Program for a $50 processing fee. If approved, the Annual Program permittee would be issued a number of single-use permits, valid for 6 months, that would allow for specimens produced by that permittee to be exported by that permittee. As with permits issued under a Master File, each permit would cost $5 to cover processing. Annual Programs could also be established for Appendix-III species that are harvested from the wild which, due to perishability, must be exported within a few days of harvest. Finally, Annual Programs could be established for breeding operations of native Appendix-II species that are being produced in a closed production system. As with personally owned pet passports, Annual Programs will be established for very specific situations. If the permitted program changes, the Division of Management Authority would need to re-evaluate the complete program. As such, any amendments or changes to the program would void the currently permitted program, and a new application would need to be submitted.

(6) *Wild Bird Conservation Act Cooperative Breeding Programs.* Under the WBCA, cooperative breeding programs can be established to import and breed specifically authorized avian species. These programs are made up of individuals or zoological institutions with specialized skills in the propagation of a particular species. If the program is approved, authorization can be given to import birds under the WBCA. Currently, no fee has been charged to apply for the approval of a cooperative breeding program or to amend and renew currently authorized programs. However, given the length of time and expertise required to review applications for cooperative breeding programs, we will now require an application fee to cover a small portion of the costs involved. We will charge a fee of $200 to process an application to establish a new cooperative breeding program, and a fee of $100 to amend a current program. Amendments would consist of adding a species to or removing a species from the program. We will charge $50 to renew a current breeding program. If an amendment is requested at the time of renewal, the application fee would be only $100.

Combining Permit Authorizations

Sometimes applicants need more than one type of permit to cover their proposed activities, for example, for the export of a bird covered by both CITES and the MBTA, or the take from the wild of a bird covered by both the ESA and MBTA. In such cases, where the applicant requires two or more permit authorizations simultaneously for the same activity, or for more than one activity involving the same wildlife, and the authorizations can be made by the same permit issuance office, the Service can issue a consolidated permit combining the multiple authorizations (see 65 FR 26664, May 8, 2000, Revisions of Regulations for the Convention on International Trade in Endangered Species of Wild Fauna and Flora). In such cases, the applicant would pay a single fee for the more costly permit.

Renewals and Amendments

To ensure consistency, the Service is clarifying its policy on permit renewals and amendments. Applications to renew a permit when the tenure of a permit is expiring or has expired are effectively new permit applications. Therefore, all applicable fees will be applied.

The Service will assess a fee for amendments to a valid permit where the amendment reflects a substantive change within the scope of the permit. We will not charge permittees for

administrative changes to valid permits, such as address and telephone number changes. The amount of the amendment fee will typically be half of the application fee for the type of permit (see fee schedule at the end of this document). Examples of substantive amendments include changing the species covered under a scientific collecting permit, requesting authorization to import wildlife through an additional nondesignated port, and relocating a wildlife operation to new facilities at a different site. With some exceptions, most migratory bird permits will not require fees for amendment because amendments to migratory bird permits typically do not require significant additional staff time on the part of the Service to process. Amending a valid permit will not extend the tenure of the permit beyond the original expiration date. Amendments to Master Files, Annual Programs, and WBCA cooperative breeding programs will be treated differently (see above). Some permits cannot be amended; the fee schedule therefore does not reflect any amendment cost for these types of permits (see fee schedule at the end of this document).

Waivers

Currently, § 13.11(d)(3) provides for a waiver of permit fees for governmental entities. This section provides that a fee will not be charged to any Federal, State, or local government agency, nor to any individual or institution under contract to such agency for the proposed activity. In the past, the Service has extended fee waivers to other public institutions provided that proof of their status as a "public institution" accompanied the permit application. We are now proposing to limit the fee waiver provided for public institutions to only Federal and State governmental agencies, and to individuals or institutions under contract to such agencies for the activities being permitted. We find it necessary to limit exemptions given the substantial time and effort the Service dedicates to processing permit applications and monitoring and maintaining permits of public institutions. In addition, many of the affected institutions receive benefits from Service permits beyond those that accrue to the general public or to Federal or State governments.

This rule further provides that a Regional Director or Assistant Director may waive or reduce any fee on a case-by-case basis for extraordinary extenuating circumstances. We envision this provision will be used rarely, if ever.

Additional Revisions

We have proposed several administrative changes to § 13.3, entitled "Scope of regulations." Specifically, the titles of several parts of the CFR in Title 50, that are referenced within this section, have been brought up to date. The rule further proposes to revise the term "permit" to include documents issued by authorized foreign government agencies for purposes of CITES.

The proposed rule makes revisions to § 13.11(b) to provide updated Service addresses for requesting and submitting permit applications.

We are proposing to revise § 13.11(c) to advise applicants that the time required for the processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects, and may require more than 90 calendar days. Permit applicants are also now informed that the time required for processing some permits may be increased by the procedural requirements of NEPA, the requirement to publish a notice in the **Federal Register** for a 30-day public comment period upon receipt of a permit application, as well as the need to obtain review of the permit application by Service Regional and Field Offices. The Service will work to complete all steps of the permitting process as expeditiously as possible.

Finally, the proposed rule amends § 13.42, to clarify that, in addition to any conditions set forth in the regulations for a given permit type, individual permits may be further conditioned at the time of issuance, at the discretion of the Director, as noted on the face of the permit.

Extension of Permit Tenure for Two Migratory Bird Permits

We are revising § 21.24, taxidermist permits, and § 21.25, waterfowl sale and disposal permits, to extend the tenure of these permits from 3 years to 5 years. These migratory bird permits authorize a service or activities that occur on an ongoing basis. They do not authorize take from the wild, and as such necessitate less Service oversight and monitoring. Taxidermy permits are the most numerous migratory bird permit, representing over 8,000 active permits at any given time. Reducing the frequency of renewal of these permits would reduce Service costs associated with administering these permits.

Endangered Species Act Consideration

Section 7 of the ESA (16 U.S.C. 1531 *et seq.*), provides that, "[t]he Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act." Furthermore, section 7(a)(2) of the Act requires all Federal agencies to "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat." Our review of this proposed rule pursuant to section 7 of the ESA concluded that this action will not affect listed or proposed species.

Required Determinations

Responsibilities of Federal Agencies To Protect Migratory Birds (E.O. 13186)

This rule has been evaluated for impacts to migratory birds, with emphasis on species of management concern, and is in accordance with the guidance in Executive Order 13186.

Regulatory Planning and Review (E.O. 12866)

In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action. OMB has made this determination of significance under Executive Order 12866.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The purpose of this rule is to more closely align the fee structure with the Federal cost of permit processing for permits issued by the Divisions of Migratory Bird Management, Law Enforcement, and Management Authority. Fees charged for permits issued by the Fish and Wildlife Service have not increased since 1982. During that time period, Federal salaries have increased by 128 percent and since permit reviews are a labor-intensive activity, Service programs have had to absorb the additional cost of permit processing.

In total, the Service processes approximately 25,000 permits annually. About half of these permits are issued to small entities, many of whom can pass the economic effect of the fee increase (an average of $50 per year per permit) to consumers, depending on the elasticity of demand. The maximum loss in consumer surplus, if all costs were passed along to consumers, would be $1.25 million annually. However, for commercial permittees, the average $50 cost increase of the permits will be spread over many products and result in negligible price increases to consumers.

The Service believes that the permit fee for working with regulated plants and wildlife is a very small part of the cost of these activities and will result in a negligible economic impact to consumers and businesses.

The benefit of better aligning the permit application fees schedule to the cost of Federal processing is that this will shift the burden of payment for these services from taxpayers as a whole to those persons who are receiving the government services. User fee increases reflect a related shift in appropriations of taxes to government programs, allowing those tax dollars to be applied to other programs that benefit the general public.

The administrative costs involved in implementing this proposed rule are minimal, since the Service permit programs are already established, and the mechanisms for collecting the permit application fees are already in place. Therefore the net gain of reducing the costs on taxpayers greatly outweighs the costs of introducing the user fee increases.

b. This rule will not create serious inconsistencies or otherwise interfere with other agencies' actions. This rule pertains to a Federal permit application process that already exists, and the only purpose of this rule is to update the fee structure to recover Federal costs of processing the permit applications. Non-Federal agencies are not affected by this rule, except that some local agencies previously exempt will now be subject to permit application fees.

c. This rule will not negatively impact or affect entitlements, other grants, user fees, loan programs, or the rights and obligations of their recipients. This rule affects user fees charged for plant and wildlife permits by updating and better aligning the fees with the Federal cost of processing the permits. The average fee increase will be $50 per year with a range of annual fee increases running from $10 for a migratory bird rehabilitation permit to $275 dollars for a marine mammal public display permit. Multiplying the expected 25,000 permits issued annually by the average fee increase of $50 yields a maximum of $1.25 million, which is well below the threshold for a significant regulatory action.

d. This rule does not raise novel legal or policy issues. The current fee schedule for plant and wildlife related permits has been in place since July 15, 1982. No new permits are included in this rulemaking.

The only purpose of this rulemaking is to update and better align the permit fee schedule with the actual Federal cost for processing the applications.

Regulatory Flexibility Act and Small Business Regulatory Enforcement Fairness Act

The Service has performed the threshold analysis required under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA) and the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 *et seq.* (SBREFA), and has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required.

a. The proposed increase in user fees for Federal permits will affect approximately 12,737 small entities, including importers and exporters of plants, wildlife, and animal products, wildlife propagators, museums, airports, animal exhibitors, migratory bird taxidermists, and migratory bird rehabilitators. The average user fee under this proposal will increase approximately $50 per year. This average includes annual increases ranging from $10 for a migratory bird rehabilitation permit to $275 for a marine mammal public display permit. The total cost increase for small entities applying for permits will be approximately $642,244 for the approximately 12,737 permits that are issued annually to small entities.

The economic effect on small entities of this proposed rulemaking will be an increased cost of doing business. Depending on the elasticity of demand for the goods and services authorized by the permits, much of the cost increase will be passed on to consumers. Thus, the Service does not anticipate that this proposed rule will result in a significant economic burden to small businesses.

b. This proposed rule does not introduce any new reporting, record keeping, or other compliance requirements, and does not introduce any new legal requirements that duplicate other Federal regulations. The average cost increase will be borne by all entities doing business involving wildlife.

c. This proposed rule will not cause major increases in prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or have significant adverse impacts on competition, employment, investment, innovation, or the ability of U.S.-based enterprises to compete with foreign enterprises. A small cost increase to better reflect the cost of review of the permit application will not adversely affect competition in this industry since all entities will be required to pay the increased fees. Since the increase of the cost of the permits will be spread over many products, it will result in negligible price increases to consumers, and will not have a significant effect on the number of permit applications and the corresponding total number of permitted wildlife-related activities conducted.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The Service has determined and certified pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. The proposed rulemaking only affects the Federal review and issuance of permits under Federal laws. This proposed rule does not apply to State regulations.

b. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The process of wildlife permit application review and issuance is already in place, and this proposed rulemaking is only updating the fee schedule to better align it with the actual cost of processing permits.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. A takings implication assessment is not required.

Federalism

In accordance with Executive Order 13132, and based on the discussions in Regulatory Planning and Review above, this rule does not have significant Federalism effects. A Federalism assessment is not required. This rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. Information collection associated with this proposed rule is covered by existing OMB approval Nos. 1018–0022 (expires 4/30/2004), 1018–0094 (expires 7/31/2004), 1018–0093 (expires 3/31/2004), and 1018–0092 (expires 7/31/2004). The Service may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined that this rule is categorically excluded under the Department's NEPA procedures in 516 DM 2, Appendix 1.10.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, this rule will have no effect on federally recognized Indian tribes.

Energy Supply, Distribution or Use (E.O. 13211)

On May 18, 2001, the President issued an Executive Order addressing regulations that affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule is only updating the fee schedule for permit application review and issuance, it is not a significant regulatory action under Executive Order 12866 and is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Clarity of Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments about how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. You may call 703/358–2329 to make an appointment to view the files. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. Under limited circumstances, as allowable by law, we can withhold from the rulemaking record a respondent's identity. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representing an organization or business, available for public inspection in their entirety.

List of Subjects

50 CFR Part 13

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons set forth in the preamble, title 50, chapter I, subchapter B of the Code of Federal Regulations is proposed to be amended as follows:

PART 13—[AMENDED]

1. The authority citation for part 13 is revised to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j-l, 1374(g), 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; 31 U.S.C. 9701.

2. Section 13.3 is revised to read as follows:

§ 13.3 Scope of regulations.

The provisions in this part are in addition to, and are not in lieu of, other permit regulations of this subchapter and apply to all permits issued thereunder, including "Importation, Exportation and Transportation of Wildlife" (part 14), "Wild Bird Conservation Act" (part 15), "Injurious Wildlife" (part 16), "Endangered and Threatened Wildlife and Plants" (part 17), "Marine Mammals" (part 18), "Migratory Bird Permits" (part 21), "Eagle Permits" (part 22), and "Endangered Species Convention" (the Convention on International Trade in Endangered Species of Wild Fauna and Flora) (part 23). As used in this part 13, the term "permit" will refer to a license, permit, certificate, letter of authorization, or other document as the context may require, and to all such documents issued by the Service or other authorized United States or foreign government agencies.

3. Revise § 13.11 to read as follows:

§ 13.11 Application procedures.

The Service may not issue a permit for any activity authorized by this subchapter B unless you have filed an application in accordance with the following procedures:

(a) *Forms.* Applications must be submitted in writing on a Federal Fish and Wildlife License/Permit Application (Form 3–200) or as otherwise specifically directed by the Service.

(b) *Forwarding instructions.* Applications for permits in the following categories should be forwarded to the issuing office indicated below.

(1) You may obtain applications for migratory bird banding permits (50 CFR 21.22) by writing to: Bird Banding Laboratory, USGS Patuxent Wildlife Research Center, 12100 Beech Forest Road, Laurel, Maryland 20708–4037.

(2) You may obtain applications for designated port exception permits and import/export licenses (50 CFR 14) by writing to the Assistant Regional Director for Law Enforcement of the Region in which you reside (see 50 CFR 2.2 for addresses and boundaries of the Regions).

(3) You may obtain applications for Wild Bird Conservation Act permits (50 CFR 15); injurious wildlife permits (50 CFR 16); captive-bred wildlife registrations (50 CFR 17); permits authorizing import, export, or foreign commerce of endangered and threatened species, and interstate commerce of non-native endangered or threatened species (50 CFR 17); marine mammal permits (50 CFR 18); and permits and certificates for import, export, and reexport of species listed under the Convention on International Trade in Endangered Species of Wild Fauna and

Flora (CITES) (50 CFR 23) from: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203–1610. Submit completed permit applications to the same address.

(4) You may obtain Endangered Species Act permit applications (50 CFR 17) for native species, including incidental take, scientific purposes, enhancement of propagation or survival (*i.e.*, recovery), and enhancement of survival by writing to the Regional Director (Attention: Endangered Species Permits) of the Region where the activity is to take place (see 50 CFR 2.2 for addresses and boundaries of the Regions). Submit completed applications to the same address (the Regional office covering the area where the activity will take place). Permit applications for interstate commerce for native listed species should be obtained by writing to the Regional Director (Attention: Endangered Species Permits) of the Region that has the lead for the particular species, rather than the Region where the activity will take place. You can obtain that information on the Internet at *http://endangered.fws.gov/wildlife.html*, by entering the common or scientific name of the listed species in the Regulatory Profile query box. Send interstate commerce permit applications for native listed species to the same Regional Office that has the lead for that species.

(5) You may obtain applications for bald and golden eagle permits (50 CFR 22) and migratory bird permits (50 CFR 21), except for banding and marking permits, by writing to the Migratory Bird Permit Program Office in the Region in which you reside (see 50 CFR 2.2 for addresses and boundaries of the Regions). Send completed applications to the same address (the Regional office covering the State where you reside).

(c) *Time notice.* The Service will process all applications as quickly as possible. However, we cannot guarantee final action within the time limit you request. You should ensure that applications for permits for marine mammals and/or endangered and threatened species are postmarked at least 90 calendar days prior to the requested effective date. The time we require for processing of endangered and threatened species incidental take permits will vary according to the project scope and significance of effects. Submit applications for all other permits to the issuing/reviewing office and ensure they are postmarked at least 60 calendar days prior to the requested effective date. Our processing time may be increased by the procedural requirements of the National Environmental Policy Act (NEPA), the requirement to publish a notice in the **Federal Register** for a 30-day public comment period upon receipt of certain types of permit applications, and/or the time required for extensive consultation within the Service, with other Federal agencies, and/or State or foreign governments. When applicable, we may require permit applicants to provide additional information on the proposal and on its environmental effects as may be necessary to satisfy the procedural requirements of NEPA.

(d) *Fees.* (1) You must pay the required permit processing fee at the time that you apply for issuance or renewal of a permit. You must pay by check or money order made payable to the "U.S. Fish and Wildlife Service." The Service will not refund any application fee under any circumstances if we have processed the application. However, we may return the application fee if you withdraw the application before we have significantly processed it.

(2) If regulations in this subchapter require more than one type of permit for an activity and the permits are issued by the same office, the issuing office may issue one consolidated permit authorizing the activity pursuant to § 13.1. You may submit a single application in such cases, provided that the single application contains all the information required by the separate applications for each permitted activity. Where more than one permitted activity is consolidated into one permit, the issuing office will charge the highest single fee for the activity permitted.

(3) We will not charge a fee to any Federal or State government agency or to any individual or institution under contract to such agency for the proposed activities. Proof of status as a Federal or State government agency, or contractor to such agency, must accompany your application. Except as otherwise authorized or waived, if you fail to submit evidence of such status with your application, we will require the submission of all processing fees prior to the acceptance of the application for processing. We may waive the fee on a case-by-case basis for extraordinary extenuating circumstances provided that the issuing permit office and a Regional or Assistant Director approve the waiver.

(4) User fees.

Type of permit	Citation	Fee	Amendment fee
Migratory Bird Treaty Act			
Migratory Bird Import/Export	50 CFR 21	$75	.....
Migratory Bird Banding or Marking	50 CFR 21	.....	.....
Migratory Bird Scientific Collecting	50 CFR 21	100	50
Migratory Bird Taxidermy	50 CFR 21	100	.....
Waterfowl Sale and Disposal	50 CFR 21	75	.....
Special Canada Goose	50 CFR 21	.....	.....
Migratory Bird Special Purpose/Education	50 CFR 21	75	.....
Migratory Bird Special Purpose/Salvage	50 CFR 21	75	.....
Migratory Bird Special Purpose/Game Bird Propagation	50 CFR 21	75	.....
Migratory Bird Special Purpose/Miscellaneous	50 CFR 21	100	.....
Falconry	50 CFR 21	100	.....
Raptor Propagation	50 CFR 21	100	.....
Migratory Bird Rehabilitation	50 CFR 21	50	.....
Migratory Bird Depredation	50 CFR 21	100	50
Migratory Bird Depredation/Homeowner	50 CFR 21	50	
Bald and Golden Eagle Protection Act			
Eagle Scientific Collecting	50 CFR 22	100	50
Eagle Exhibition	50 CFR 22	75	.....
Eagle Falconry	50 CFR 22	100	.....

Type of permit	Citation	Fee	Amendment fee
Eagle—Native American Religion	50 CFR 22		
Eagle Depredation	50 CFR 22	100	50
Golden Eagle Nest Take	50 CFR 22	100	50
Eagle Transport—Scientific or Exhibition	50 CFR 22	75	
Eagle Transport—Native American Religious Purposes	50 CFR 22		
Endangered Species Act/CITES/Lacey Act			
ESA Recovery	50 CFR 17	100	50
ESA Interstate Commerce	50 CFR 17	100	50
ESA Enhancement of Survival (Safe Harbor Agreement)	50 CFR 17	50	25
ESA Enhancement of Survival (Candidate Conservation Agreement with Assurances)	50 CFR 17	50	25
ESA Incidental Take (Habitat Conservation Plan)	50 CFR 17	100	50
ESA and CITES Import/Export and Foreign Commerce	50 CFR 17	100	50
ESA and CITES Museum Exchange	50 CFR 17	100	50
ESA Captive-bred Wildlife Registration	50 CFR 17	200	100
—Captive-bred wildlife registration renewal	50 CFR 17	100	
CITES Import (including Trophies under ESA and MMPA)	50 CFR 17, 18, 23	100	50
CITES Export	50 CFR 23	100	50
CITES Pre-Convention	50 CFR 23	75	40
CITES Certificate of Origin	50 CFR 23	75	40
CITES Re-Export	50 CFR 23	75	40
CITES Personal Effects and Pet Export/Re-Export	50 CFR 23	50	
CITES Appendix II Export (native furbearers and alligators—excluding live)	50 CFR 23	100	50
CITES Master File (includes files for artificial propagation, biomedical, etc. and covers import, export, and reexport documents).	50 CFR 23	200	100
—Renewal of CITES Master File	50 CFR 23	100	
—Single-use permits issued on Master File	50 CFR 23	[1] 5	
CITES Annual Program File	50 CFR 23	50	
—Single-use permits issued under Annual Program	50 CFR 23	[1] 5	
CITES replacement documents (lost, stolen, or damaged documents)	50 CFR 23	50	50
CITES Passport for Traveling Exhibitions and Pets	50 CFR 23	[2] 75	
CITES/ESA Passport for Traveling Exhibitions	50 CFR 23	[2] 100	
Import/Export License	50 CFR 14	100	50
Designated Port Exception	50 CFR 14	100	50
Injurious Wildlife Permit	50 CFR 16	100	50
—Transport Authorization for Injurious Wildlife	50 CFR 16	25	
Wild Bird Conservation Act			
Personal Pet Import	50 CFR 15	50	
WBCA Scientific Research, Zoological Breeding or Display, Cooperative Breeding	50 CFR 15	100	50
WBCA Approval of Cooperative Breeding Programs	50 CFR 15	200	100
—Renewal of a WBCA Cooperative Breeding Program	50 CFR 15	50	
WBCA Approval of a Foreign Breeding Facility	50 CFR 15	[3] 250	
Marine Mammal Protection Act			
Marine Mammal Public Display	50 CFR 18	300	150
Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery	50 CFR 18	150	75
—Renewal of Marine Mammal Scientific Research/Enhancement/Registered Agent or Tannery	50 CFR 18	75	

[1] Each.
[2] Per animal.
[3] Per species.

(5) We will charge a fee for substantive amendments made to permits within the time period that the permit is still valid. The fee will be half the original fee assessed at the time that the permit is processed. Substantive amendments are those that pertain to the purpose and conditions of the permit and are not purely administrative. Administrative changes, such as updating name and address information, are required under § 13.23(c), and we will not charge a fee for such amendments.

(6) Except where specifically addressed above, a permit renewal is an issuance of a new permit, and applicants for permit renewal must pay the appropriate fee listed in paragraph (d)(4) of this section.

(e) *Abandoned or incomplete applications.* Upon receipt of an incomplete or improperly executed application, or if you do not submit the proper fees, the issuing office will notify you of the deficiency. If you fail to supply the correct information to complete the application or to pay the required fees within 45 calendar days of the date of notification, we will consider the application abandoned. We will not refund any fees for an abandoned application.

4. Amend § 13.12 by adding a new paragraph (c) to read as follows:

§ 13.12 General information requirements on applications for permits.

* * * * *

(c) When applicable, the Service may require permit applicants to provide additional information about the

activity for which permit authorization is being requested and on its environmental effects as may be necessary to satisfy the Service's requirements to comply with the National Environmental Policy Act, other Federal laws, and Executive orders, consistent with 40 CFR 1506.5 and Departmental procedures in 516 DM 6, Appendix 1.3A.

5. Revise § 13.42 to read as follows:

§ 13.42 Permits are specific.

A permit is subject to the conditions of this subpart D, as well as the conditions within the regulations in this subchapter under which the permit is issued, and any other conditions deemed appropriate and included on the face of the permit at the discretion of the Director. The authorizations on the face of a permit that set forth specific times, dates, places, methods of taking or carrying out the permitted activities, numbers and kinds of wildlife or plants, location of activity, and associated activities that must be carried out; authorize certain circumscribed transactions; or otherwise permit a specifically limited matter, are to be strictly construed and will not be interpreted to permit similar or related matters outside the scope of strict construction.

PART 21—[AMENDED]

6. The authority citation for part 21 continues to read as follows:

Authority: Pub. L. 95–616; 92 Stat. 3112 (16 U.S.C. 712(2); Pub L. 106–108.

7. Amend § 21.24 by revising paragraph (e) to read as follows:

§ 21.24 Taxidermist permits.

* * * * *

(e) *Term of permit.* A taxidermist permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit will not exceed five (5) years from the date of issuance or renewal.

8. Amend § 21.25 by revising paragraph (d) to read as follows:

§ 21.25 Waterfowl sale and disposal permits.

* * * * *

(d) *Term of permit.* A waterfowl sale and disposal permit issued or renewed under this part expires on the date designated on the face of the permit unless amended or revoked, but the term of the permit will not exceed five (5) years from the date of issuance or renewal.

Dated: July 30, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–21489 Filed 8–25–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AI05

Review of Captive-Reared Mallard Regulations on Shooting Preserves

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that a Final Draft of a review of regulations pertaining to the release and take of captive-reared mallards on licensed shooting preserves is available for public review. Comments and suggestions are requested.

DATES: You must submit comments pertaining to the review of regulations governing the release of captive-reared mallards by December 20, 2003.

ADDRESSES: Send your comments to: Jerome R. Serie, Atlantic Flyway Representative, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 12100 Beech Forest Drive, Room 224, Laurel, Maryland 20708–4038. Copies of the Final Draft "Review of Captive-reared Mallard Regulations on Shooting Preserves" can be obtained by writing to the above address. The Final Draft may also be viewed via the U.S. Fish and Wildlife Service's Home Page at *http://migratorybirds.fws.gov.* All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jerome R. Serie, Atlantic Flyway Representative, (301) 497–5851.

SUPPLEMENTARY INFORMATION: On June 1, 1993, we published in the **Federal Register** (58 FR 31247) a notice of intent to review all aspects of regulations pertaining to the release and harvest of captive-reared mallards. This review was subsequently suspended until all the appropriate field studies were completed and results reviewed. On August 28, 2001, we reinitiated our review by publishing in the **Federal Register** (66 FR 45274) an updated notice of intent to review all aspects of regulations pertaining to the release and harvest of captive-reared mallards and provided the public with background information. These regulations, stated in § 21.13 of title 50 of the Code of Federal Regulations (CFR), allow captive-reared mallards, provided they are properly marked prior to 6 weeks of age by removal of the right hind toe, banding with a seamless metal band, pinioning, or tattooing, to be possessed and disposed of in any number, at any time, by any person, without a permit. Further, this regulation stipulates that such birds may be killed by shooting only in accordance with all applicable hunting regulations governing the take of mallard ducks from the wild, with the exception provided; that such birds may be killed by shooting, in any number, at any time, within the confines of any premises operated as a shooting preserve under State license, permit, or authorization. Because captive-reared mallards are classified as a "migratory bird" by definition in 50 CFR 10.12, and simply excepted by regulations in § 21.13 allowing their take, they remain protected under the Migratory Bird Treaty Act.

We do not oppose the shooting of captive-reared mallards on shooting preserves to supplement hunting opportunities for the public when precautions are taken to control the distribution of these birds. However, since 1985, this regulation has become more broadly interpreted and some shooting preserves actively release captive-reared mallards in large numbers in free-ranging situations on their premises. Often these properties are in areas frequented by wild ducks. Because both classes of mallards (captive-reared and wild) are indistinguishable until in the hand, regulatory conflicts can arise from allowing free-ranging, captive-reared birds to be taken without bag limits during closed seasons for wild ducks. Similarly, regulations involving live decoys and baiting (50 CFR 20.21) come into effect, which necessitate a discretionary interpretation by enforcement personnel in the field. Also, releases of thousands of uncontrolled, free-flighted captive-reared mallards into areas inhabited by wild ducks pose potential threats of disease transmission and genetic introgression or hybridization, and potentially render data-gathering activities by Federal, State, and Flyway waterfowl management programs less effective. Information pertaining to these potential conflicts is discussed, and recommendations to modify these regulations are considered. The primary focus is to assess the potential effects of

the captive-reared releases and harvest on the status and management of wild migratory waterfowl.

We believe several options are available to alleviate potential conflicts and resolve management problems associated with captive-reared mallard release programs without adversely affecting the opportunities and operations on shooting preserves. Many of these options would require some modification of Federal regulations (50 CFR parts 20 and 21). We intend to explore these options and invite public comment on any options that may alleviate this problem. Comments may be sent to the address indicated under the caption **ADDRESSES.**

Authority

Under the Migratory Bird Treaty Act (16 U.S.C. 703–712), the Secretary of the Interior has responsibility for setting appropriate regulations for the hunting of migratory birds, with due regard for maintaining such populations in a healthy state and at satisfactory levels. The Fish and Wildlife Act of 1956 (16 U.S.C. 742 a–j) more specifically authorizes collection of such information as is necessary and to take steps as may be required to protect wildlife resources.

Dated: August 19, 2003.

Matt Hogan,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 03–21761 Filed 8–25–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 030714172–3172–01; I.D. 063003A]

RIN 0648–AR33

Atlantic Striped Bass Conservation Act; Atlantic Striped Bass Fishery; Reopening of the Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance Notice of Proposed Rulemaking (ANPR); reopening of comment period.

SUMMARY: In a document published in the **Federal Register** on July 21, 2003, NMFS requested comments on potential revisions to the Federal Atlantic striped bass regulations for the U.S. Exclusive Economic Zone (EEZ) in response to recommendations from the Atlantic States Marine Fisheries Commission (Commission) to the Secretary of Commerce (Secretary). The comment period for the ANPR closed on August 20, 2003. The intent of this document is to announce the reopening of the public comment period from August 26, 2003 to September 25, 2003.

DATES: Written comments must be received at the appropriate address or facsimile (fax) number (see **ADDRESSES**) no later than 5 p.m. Eastern Standard Time on or before September 25, 2003.

ADDRESSES: Written comments must be sent to: Anne Lange, Chief, State-Federal Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East West Highway, Room 13317, Silver Spring, MD 20910. Comments may also be sent via fax to (301) 713–0596. Comments submitted via e-mail or Internet will not be accepted.

FOR FURTHER INFORMATION CONTACT: Tom Meyer, Fishery Management Biologist, (301) 713–2334, fax (301) 713–0596.

SUPPLEMENTARY INFORMATION: As announced in the **Federal Register** on July 21, 2003 (68 FR 43074), NMFS requested comments on potential revisions to the Federal Atlantic striped bass regulations for the U.S. EEZ in response to recommendations from the Commission to the Secretary. NMFS also solicited comments on possible management measures and issues that NMFS should consider relative to these recommendations. The ANPR comment period closed on August 20, 2003. While NMFS received numerous correspondence expressing opinions about opening the EEZ during the comment period on the original ANPR, NMFS believes that additional concrete information would be useful to make a decision whether to proceed with this rulemaking. Therefore, NMFS is reopening the comment period to solicit additional data or other information that it should consider relative to making a decision regarding possible management measures to address the Commission's recommendations.

Background

Atlantic Striped Bass management is based on the Commission's Atlantic Striped Bass Interstate Fishery Management Plan (ISFMP), first adopted in 1981. From 1981–1994, four ISFMP Amendments were developed that provided a series of management measures that led to the rebuilding of the stocks. In 1995, the Commission declared the Atlantic striped bass population fully restored and implemented Amendment 5 to the ISFMP to perpetuate the stock so as to allow a commercial and recreational harvest consistent with the long-term maintenance of the striped bass stock. Since then the population has expanded to record levels of abundance. To maintain this recovered population, the Commission approved Amendment 6 to the ISFMP (Amendment 6) in February 2003 (copies of Amendment 6 are available via the Commission's website at www.asmfc.org). The Commission believes that the measures contained in Amendment 6 are necessary to prevent the overfishing of the Atlantic striped bass resource while allowing growth in both the commercial and recreational fishery. Development of Amendment 6 took almost four years and involved extensive input from technical and industry advisors, and provided numerous opportunities for the public to comment on the future management of the species.

Amendment 6 incorporates results of the most recent Atlantic striped bass stock assessment, developed by the Atlantic Coast States, the Commission, NMFS, and the U.S. Fish and Wildlife Service (see section 1.2.2 of Amendment 6). In summary, the 2001 stock assessment concluded that the overall abundance of the stock is very high and fishing mortality remains below the target rate. The stock's abundance increased steadily between 1982 and 1997 and since then has remained stable. The fishing mortality rate increased steadily until 1999, but decreased slightly in 2000. Amendment 6 also includes recommendations to the Secretary on the development of complementary measures in the EEZ. Management of Atlantic striped bass in the EEZ was one of the issues that was considered throughout development of Amendment 6.

Recommendation to the Secretary

On April 24, 2003, the Secretary of Commerce received a letter from the Commission with the following three recommendations for implementation of regulations in the EEZ: (1) Remove the moratorium on the harvest of Atlantic striped bass in the EEZ; (2) implement a 28–inch (71.1 cm) minimum size limit for recreational and commercial Atlantic striped bass fisheries in the EEZ; and (3) allow states the ability to adopt more restrictive rules for fishermen and vessels licensed in their jurisdictions.

In support of its request, the Commission provided a number of reasons to justify opening the EEZ to striped bass fishing. These reasons include:

(1) In 1995, due in part to a closure of the EEZ in 1990 to striped bass

harvest, the population of this species was declared fully restored by the Commission. The purpose of closing the EEZ was to protect strong year classes entering the population and to promote rebuilding of the overfished population.

(2) The commercial harvest is controlled by hard quotas; when they are reached the fishery is closed; and overages are taken out of next year's quotas. The Commercial quota will be landed regardless of whether or not the EEZ is opened.

(3) Currently, recreational and commercial catches are occurring in the EEZ and these fish are required to be discarded. Opening the EEZ will convert discarded bycatch of striped bass to landings.

(4) Because of management measures implemented since 1990, the striped bass population has recovered to a point where further examination of whether this fishery should occur in the EEZ is appropriate. There are expectations among a number of fishing industry stakeholders that their past sacrifices would result in future opportunities to harvest striped bass, and therefore, there are potential credibility issues associated with keeping the EEZ closed, especially in light of the current status of the Atlantic striped bass stock.

(5) The recommendation to open the EEZ is part of Amendment 6 to the Atlantic Striped Bass Interstate Fishery Management Plan (Amendment 6) which incorporates new management standards to ensure stock conservation including targets and thresholds for both mortality and spawning stock biomass. Fishing mortality is currently below the target level, and spawning stock biomass is 1.5 times the target level.

(6) Amendment 6 includes monitoring requirements and triggers that will allow the Commission to respond quickly to increased mortality.

(7) The bulk of the public comment received by the Commission in opposition to opening the EEZ during the development of Amendment 6 cited expansion of the commercial fishery as rationale not to open the EEZ. The Commission believes the rationale is incorrect because the commercial fishery is controlled by a hard quota.

The Commission stated that its Atlantic Striped Bass Technical Committee would monitor annually the Atlantic striped bass population, and, if at some point in the future the Commission determines that the Atlantic striped bass population is overfished or that overfishing is occurring, it may recommend further management measures for the EEZ.

By this document, NMFS is reopening the public comment period. There were no changes from the ANPR previously published. NMFS is specifically soliciting additional data or other information that it should consider relative to making a decision regarding possible management measures to address the Commission's recommendations. After review of comments received from this notice and the ANPR, NMFS will decide whether to initiate a lengthy review and decision-making process, which would include preparation of either an Environmental Impact Statement or an Environmental Assessment, and the development of management measures to revise current Federal regulations for Atlantic striped bass in the EEZ.

Authority: 16 U.S.C. 1851 note.

Dated: August 21, 2003.

Bruce C. Morehead,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21806 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 165
Tuesday, August 26, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection: Visitor's Permit Form FS–2300–30 and Visitor Registration Card Form FS–2300–32

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the extension of a previously approved information collection, for the Visitor's Permit Form (FS–2300–30) and the Visitor Registration Card Form (FS–2300–32). Moreover, the Organic Administration Act (16 U.S.C. 473), the Wilderness Act (16 U.S.C. 1131), Wild and Scenic Rivers Act (16 U.S.C. 1271) and Executive Order 11644 (Use of Off-Road Vehicles in the Public Lands), require the Forest Service to manage the forests to benefit both land and people. To this end, the information collected from the Visitor's Permit Form and Visitor Registration Card Form will help the Forest Service ensure that visitors' use of National Forest System lands is in the public interest and is compatible with the mission of the agency. Information will be collected from National Forest System land visitors, who will be asked to describe their intended use of the land and their estimated duration of use.

DATES: Comments must be received in writing on or before October 27, 2003, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to Wilderness Program Manager; Recreation, Heritage, and Wilderness Resources Staff, Mail Stop 1125, Forest Service, USDA, 1400 Independence Avenue, SW., Washington, DC 20090–1125.

Comments also may be submitted via facsimile to (202) 205–1145 or by e-mail to *dfisher/wo@fs.fed.us.*

The public may inspect comments received at the Office of the Director, Recreation, Heritage, and Wilderness Resources Staff, 201 14th Street, SW., Washington, DC during normal business hours. Visitors are encouraged to call ahead to (202) 205–0818 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Don Fisher, Wilderness Program Manager, Recreation, Heritage, and Wilderness Resources Staff at (202) 205–1414. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Description of Collection

1. *Title:* Visitor's Permit Form (FS–2300–30).

OMB Number: 0596–0019.

Expiration Date of Approval: 11/30/2003.

Type of Request: This is a request for extension of an information collection previously approved by the Office of Management and Budget.

Abstract: The Visitor's Permit Form is required for visitors to enter many special management areas on National Forest System Lands, including Wilderness Areas, Scenic Rivers, restricted off-road vehicle areas, and campgrounds where use is controlled through reservation and permit systems. The permit is only used where public use levels must be managed and monitored to prevent resource damage, to preserve the quality of the experience, or to maintain public safety. The information collected from the Visitor's Permit Form can also be used to respond to indicators or standards in a Forest plan or Wilderness Area plan.

Forest Service employees collect and analyze the information from the Visitor's Permit Form. The personal contact generated by issuance of the permit results in improved visitor education and information about proper camping techniques, fire prevention, safety, and sanitation. The Visitor's Permit Form also allows managers to identify heavily used areas and move use to lesser-impacted areas; and helps managers locate lost forest visitors. Not having the Visitor's Permit Form could result in overuse and site deterioration in some environmentally sensitive areas. Furthermore, without the permit, the Forest Service would be required to undertake special studies to collect use data, and could be pressed to make management decisions based on insufficient or inaccurate data.

The Visitor's Permit Form captures the visitor's name and address, area to be visited, dates of visit, length of stay, method of travel, number of people, and number of pack and saddle stock (that is, the number of animals either carrying people or their gear) in the group.

Method of Collection

The Visitor's Permit Form is generally issued by Forest Service employees at an office location and requires visitors to obtain the permit in person, or to call ahead and provide the required information over the phone. The information collection does not involve the use of automated, electronic, mechanical, or other technological collection techniques. The information collected will not be shared with other organizations inside or outside the government.

Estimate of Annual Burden: 3 minutes per permit.

Type of Respondents: Individuals and groups reqùesting use of National Forest System wilderness and special management areas.

Estimated Annual Number of Respondents: 126,500 per year.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,325 hours.

Description of Collection

2. *Title:* Visitor Registration Card (FS–2300–32).

OMB Number: 0596–0019.

Expiration Date of Approval: 11/30/2003.

Type of Request: This request for extension of an information collection previously approved by the Office of Management and Budget.

Abstract: The Visitor Registration Card Form is a voluntary registration card, which provides Forest Service managers with an inexpensive means of gathering visitor use information required by management plans, without imposing mandatory visitor permit regulations. Moreover, the information

collected can be used to respond to indicators or standards in a Forest plan or Wilderness Area plan without requiring a mandatory permit system to gather and record the data. Use of the Visitor Registration Card Form is one of the most efficient means of collecting data from visitors. It allows the Forest Service to collect data in remote locations, where it is not feasible to have permanent staffing.

The Visitor Registration Card Form allows managers to identify heavily used areas, to prepare restoration and monitoring plans that reflect where use is occurring, and in extreme cases, to develop plans to move forest users to lesser impacted areas. It also provides managers with information useful in locating lost forest visitors. Not having the Visitor's Registration Card Form could result in overuse and site deterioration in some environmentally sensitive areas. Furthermore, without the registration card, the Forest Service would be required to undertake special studies to collect use data, and could be pressed to make management decisions based on insufficient or inaccurate data.

The Visitor Registration Card Form provides information from wilderness and special management area visitors including name and address, area to be visited, dates of visit, length of stay, method of travel, number of people, and number of pack and saddle stock (that is, the number of animals either carrying people or their gear) in the group, and number of watercraft or vehicles.

Method of Collection

The Visitor Registration Card Form (FS–2300–32) is normally made available at un-staffed entry locations such as trailheads, and is completed by the visitor without Forest Service assistance. The information is collected once from visitors during their visit, by Forest Service employees who then analyze the information. The information collected will not be shared with other organizations inside or outside the Government.

Estimate of Annual Burden: 3 minutes per card.

Type of Respondents: Individuals and groups requesting use of National Forest System wilderness and special management areas.

Estimated Annual Number of Respondents: 241,500 per year.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12,075 hours.

Comment Is Invited

Comment is invited on: (1) The necessity of the information for the stated purposes and the proper performance of agency functions, including the practical or scientific utility of the information; (2) the accuracy of the agency's estimated burden of the information collection, including the validity of the methodology and assumptions used; (3) the enhancement of the quality, utility, and clarity of the information to be collected; and (4) the minimization of the information collection burden on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: August 19, 2003.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. 03–21778 Filed 8–25–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on Wednesday, September 10, 2003, at the Sunnyslope Fire Station, 206 Easy Street, Wenatchee, Washington. The meeting will begin at 9 a.m. and continue until 3 p.m. During this meeting we will discuss Forest Plan Revision, Farewell Fire update, noxious weed management and prevention, and updates on implementation of the Northwest Forest Plan. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, (509) 662–4335.

Dated: August 19, 2003.

Paul Hart,

Designated Federal Official, Okanogan and Wenatchee National Forests.

[FR Doc. 03–21730 Filed 8–25–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will meet in Red Bluff, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Chairman's Report, (5) Update on Approved Projects from the Mendocino, (6) Report from Tehama Fire Plan, (7) General Discussion, (8) Next Agenda.

DATES: The meeting will be held on September 11, 2003, from 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room A, 1135 Lincoln Street, Red Bluff, CA. Individuals wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, PO Box 164, Elk Creek, CA 95939. (530) 968–5329; email *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 8, 2003, will have the opportunity to address the committee at those sessions.

Dated: August 19, 2003.

Robert McCabe,

Acting Designated Federal Official.

[FR Doc. 03–21728 Filed 8–25–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

[I.D. 082003A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Basic Requirements for All Marine Mammal Special Exception Permits to Take, Import and Export Marine Mammals, and for Maintaining a Captive Marine Mammal Inventory under the Marine Mammal Protection Act, the Fur Seal Act, and the Endangered Species Act.

Form Number(s): None.

OMB Approval Number: 0648–0084.

Type of Request: Regular submission.

Burden Hours: 6,411.

Number of Respondents: 481.

Average Hours Per Response: 29 hours for an application for a scientific research or enhancement permit; 20 hours for an application for a public display permit or a General Authorization Letter of Intent; 10 hours for an application for a photography permit; 19 hours for a major amendment to a permit; 3 hours for a minor amendment to a permit or for a change to a General Authorization; 2 hours for a request to retain or transfer a rehabilitated marine mammal; 12 hours for a scientific research/enhancement annual or final report; 2 hours for public display or photography permit annual or final report; 12 hours for a General Authorization annual or final report; 2 hours for a marine mammal inventory (1 hour for a transport notification, 30 minutes for a data sheet, and 30 minutes for a person/holder/facility sheet); and 2 hours for recordkeeping.

Needs and Uses: The Marine Mammal Protection Act (MMPA), the Fur Seal Act (FSA) and the Endangered Species Act (ESA) prohibit the taking, import, and export of marine mammals with certain exceptions. Applicants desiring a permit or authorization to take, import, or export must provide certain information to be used as a basis for determining whether the proposed activity is consistent with the purposes, policies, and requirements of the MMPA, ESA, and/or FSA and if a permit or authorization should be issued. Permit holders and authorized researchers under the General Authorization are required to report periodically on activities conducted and species taken. This requirement ensures compliance with permit conditions and protection of the animals, and updates information, as necessary, on any marine mammals held captive for purposes of maintaining the marine mammal inventory as required under the 1994 Amendments to the MMPA.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions; Federal Government; and State, Local, or Tribal Government.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 19, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–21725 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend an export trade certificate of review.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review ("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 92–7A001."

The original Certificate for Aerospace Industries Association of America, Inc. was issued on April 10, 1992 (57 FR 13707, April 17, 1992) and previously amended on September 8, 1992 (57 FR 41920, September 14, 1992); October 8, 1993 (58 FR 53711, October 18, 1993); November 17, 1994 (59 FR 60349, November 23, 1994); June 26, 1995 (60 FR 36262, July 14, 1995); November 12, 1998 (63 FR 64061, November 18, 1998); and December 4, 2001 (66 FR 64216, December 12, 2001). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Aerospace Industries Association of America, Inc., 1000

Wilson Boulevard, Suite 1700, Arlington, Virginia 22209–3901.

Contact: Matthew F. Hall, Counsel, Telephone: (202) 862–9700.

Application No.: 92–7A001.

Date Deemed Submitted: August 14, 2003.

Proposed Amendment: Aerospace Industries Association of America, Inc. seeks to amend its Certificate to:

1. Add each of the following companies as a new "Member" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Areté Associates, Arlington, VA; AstroVision International, Inc., Bethesda, MD; B&E Tool Company, Inc., Southwick, MA; Celestica Corporation, Toronto, Ontario; Computer Sciences Corporation, El Segundo, CA; Crane Aerospace & Electronics, Lynwood, WA (Controlling Entity: Crane Company, Stamford, CT); Dy 4 Systems Limited, Kanata, Ontario (Controlling Entities: Force Computers, Fremont, CA and Solectron Corporation, Milpitas, CA); EDO Corporation, New York, NY; EFW Inc., Fort Worth, TX; ESIS, Inc., San Diego, CA; Federation, Inc., Centennial, CO; HITCO Carbon Composites, Inc., Gardena, CA; JEDCO, Inc., Grand Rapids, MI; L–3 Communications Holdings, Inc., New York, NY; 3M Company, St. Paul, MN; Orbital Sciences Corporation, Dulles, VA; PerkinElmer, Inc., Wellesley, MA; Proficiency, Inc., Marlborough, MA; The Purdy Corporation, Manchester, CT; Remmele Engineering, Inc., New Brighton, MN; RTI International Metals, Inc., Niles, OH; Silicon Graphics, Inc., Mountain View, CA; SM&A, Newport Beach, CA; and Titan Corporation, San Diego, CA;

2. Delete the following companies as "Members" of the Certificate: The Aerostructures Corporation, Nashville, TN; Davis Tool, Inc., Hillsboro, OR; Fairchild Dornier, Corporation, Wessling, Germany; The Fairchild Corporation, Dulles, VA, for the activities of Fairchild Fasteners, Dulles, VA; Genuity Solutions, Inc., Woburn, MA; Groen Brothers Aviation Incorporated, Salt Lake City, Utah; i2 Technologies, Washington, DC; The NORDAM Group, Tulsa, OK; Robinson Helicopter Company, Torrance, CA; and Space Access, LLC, Palmdale, CA; TRW Inc., Cleveland, OH; and

3. Change the listing of the following Members: "Stellex Aerostructures, Inc., Woodland Hills, CA" to the new listing "Stellex Aerostructures, Inc., Lebanon, NJ"; "GenCorp, Sacramento, CA" to the new listing "Aerojet, Rancho Cordova, CA"; "Parker Hannifin Corporation, Cleveland, OH" to the new listing "Parker Aerospace, Irvine, CA"; "Embraer Aircraft Corporation, Brazil" to the new listing "Embraer Aircraft Holding, Inc., Fort Lauderdale, FL"; "GKN Aerospace, Inc., Reston, VA" to the new listing "GKN Aerospace Services, Farnham, Surrey, UK"; "The Boeing Company, Seattle, WA" to the new listing "The Boeing Company, Chicago, IL"; "Honeywell Incorporated, Morristown, NJ" to the new listing "Honeywell Aerospace, Phoenix, AZ"; "MatrixOne, Inc., Chelmsford, MA" to the new listing "MatrixOne Inc., Westford, MA"; and "Smiths Group, PLC, London, England, UK, for the activities of Smiths Aerospace Actuation Systems, Los Angeles, Duarte, CA" to the new listing "Smiths Aerospace Actuation Systems, Duarte, CA".

Dated: August 20, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 03–21789 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the below listed overseas trade missions. For a more complete description, obtain a copy of the mission statement from the contact officer indicated for each individual mission below.

Bonjour Quebec!

Montreal, Canada, October 28–29, 2003, recruitment closes September 15, 2003.

For Further Information Contact: Mr. Pierre Richer, U.S. Commercial Service Montreal, telephone (514) 908–3661, or email *Pierre.Richer@mail.doc.gov.*

Aerospace Executive Service at the Dubai 2003

Dubai, United Arab Emirates, December 8–10, 2003, recruitment closes November 1, 2003.

For Further Information Contact: Mr. Adel Fehmi, U.S. Commercial Service, Dubai, telephone: 011–971–4–311–6128 or email *Adel.Fehmi@mail.doc.gov.*

Healthcare Technologies Trade Mission

Brussels, Belgium and Amsterdam, the Netherlands, February 9–13, 2004, recruitment closes January 9, 2004.

For Further Information Contact: Mr. William Kutson, U.S. Department of Commerce, telephone (202) 482–2839, or e-mail *William.Kutson@mail.doc.gov.*

Information and Communication Technologies Trade Mission

Singapore, Kuala Lumpur, Malaysia and Bangkok, Thailand, March 15–23, 2004, recruitment closes January 30, 2004.

For Further Information Contact: Mr. Matthew H. Wright, U.S. Department of Commerce, telephone (202) 482–2567, or e-mail *Matthew.Wright@mail.doc.gov.*

Recruitment and selection of private sector participants for these trade missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions dated March 3, 1997.

For Further Information Contact: Mr. John Klingelhut, U.S. Department of Commerce, telephone (202)482–3304 or e-mail *John.Klingelhut@mail.doc.gov.*

Dated: August 19, 2003.

John Klingelhut,

Senior Advisor, Export Promotion Services.

[FR Doc. 03–21731 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082003B]

Proposed Information Collection; Comment Request; Electronic Chart System and Electronic Chart Display and Information System User Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before October 27, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental

Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to CDR Timothy D. Tisch, NOAA, U.S. Department of Commerce, NOAA, National Ocean Service, Office of Coast Survey, N/CS, U.S. Merchant Marine Academy, 300 Steamboat Road, Bowditch Hall, Kings Point, NY 11024 (phone: 516– 773–5221).

SUPPLEMENTARY INFORMATION:

I. Abstract

Electronic Chart Systems (ECS) and Electronic Chart Display and Information Systems (ECDIS) are extremely complex navigation systems which gives the operator broad discretion over display setup. As with any complex system they are particularly vulnerable to human factor errors. It is extremely important to examine and re-evaluate knowledge and skill sets that a mariner will need to have to use these revolutionary pieces of navigation equipment to their maximum benefit and maximum safety. Users of ECS and ECDIS would be surveyed for the purpose of determining the current state of ECDIS/ECS usage by the mariner and identifying technical problems, best practices, personal preferences, near misses, reasons for mariners preferences on equipment setup, and skill sets and knowledge that mariners feel are important to the safe efficient use of this equipment.

Ongoing research at the United States Merchant Marine Academy proposes to use an existing full mission bridge simulator to identify human factor errors associated with ECS and ECDIS by the observation of casualties in a virtual environment. The intent is to use this information and research to help develop training and educational aids which proactively work to reduce the likelihood of human factors errors with ECS and ECDIS.

II. Method of Collection

Survey questionnaires mailed to users of ECS and ECDIS equipment will collect data on vessel and equipment type, wheelhouse ergonomics, electronic charts in use, equipment usage, navigation, and operator backgrounds.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households, business or other for-profit organizations, and Federal Government.
Estimated Number of Respondents: 1000.
Estimated Time Per Response: 40 minutes.
Estimated Total Annual Burden Hours: 667.
Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 19, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–21724 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–KE–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081803B]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), has determined that an application for EFPs contains all of the required information and warrants further consideration. The Regional Administrator is considering the impacts of the activities to be authorized under the EFPs with respect to the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Regional Administrator proposes to issue EFPs in response to an application submitted by the Cape Cod Commercial Hook Fisherman's Association (CCCHFA), in collaboration with Massachusetts Division of Marine Fisheries (DMF), and Manomet Center for Conservation Sciences (Manomet). These EFPs would allow up to 18 vessels (including 2 alternates) to fish for haddock using longline gear or jig gear in NE multispecies year-round Georges Bank (GB) Closed Area I (CA I) during the months of October through December 2003. The purpose of the study is to collect observer-based data to determine whether reinstating traditional access to GB CA I for haddock for hook-and-line fishermen while minimizing bycatch of GB cod is possible. This information could then be used by the New England Fishery Management Council (Council) and NMFS to determine the feasibility of establishing a traditional haddock hook-and-line fishery in CA I.

DATES: Comments on this action must be received at the appropriate address or fax number on or before September 10, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, NE Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Haddock EFP Proposal." Comments may also be sent via fax to (978) 281–9135. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of the Draft Environmental Assessment (EA) are available from the NE Regional Office at the same address.

FOR FURTHER INFORMATION CONTACT: Heather Sagar, Fishery Management Specialist, phone: 978–281–9341, fax: 978–281–9135, email: *heather.sagar@noaa.gov*

SUPPLEMENTARY INFORMATION:

Background

Three year-round closed areas were established in 1994 under Amendment 5 to the FMP to provide protection to concentrations of regulated NE multispecies, particularly cod, haddock, and yellowtail flounder. These closure areas, CA I, Closed Area II and the Nantucket Lightship Closure Area, have

proven to be effective in improving the stock status of several species, in particular of GB haddock. Spawning stock biomass for GB haddock declined from 69,000 mt in 1978 to 11,000 mt by 1993, and has since increased to 74,000 mt in 2001. Fishing pressure has been reduced by days-at-sea management, mesh sizes, and trip limits.

In their EFP application, the applicants indicated that common knowledge within the fishing and scientific communities suggests that cod are less available than haddock in certain portions of CA I. The applicants believe that there is a need to support this knowledge with scientific data, potentially enabling the rebuilt GB haddock resource to be utilized without impacting the management programs that currently protect the rebuilding of GB cod.

Proposed EFP

On August 7, 2003, CCCHFA, in collaboration with Massachusetts DMF and Manomet, submitted a complete application for 18 EFPs. Of the 18 EFPs, 11 would be issued to longline vessels (including 1 alternate) and 7 would be issues to jig vessels (including 1 alternate). Although 18 EFPs would be issued, only 16 vessels would take part in this study, as 2 vessels would be used as alternates only. The purpose of this study is to determine if a directed hook-gear fishery for haddock in GB CA I can occur with minimal impact to GB cod. Exemptions would be necessary to relieve vessels from the CA I restrictions specified under 50 CFR 648.81(a) and hook gear restrictions under 50 CFR 648.80(a)(4)(v) of the FMP.

The proposed study would occur in a specified area within the northwest portion of CA I, defined by the following Loran coordinates: 13700 X 43820; 13625 X 43820; 13625 X 43680; 13700 X 43680. The experiment would occur during the months of October and December 2003, during which approximately 3 longline and 2 jig trips would occur weekly, for a total of 64 day trips for the study. Participating vessels would be prohibited from fishing in areas outside of CA I during an experimental fishing trip. This study would follow normal fishing practices. A total allowable catch (TAC) of 15 mt for GB cod and 100 mt for GB haddock would be allowed for the experimental fishery. The applicant estimates that longline trips would average 1,500 to 3,000 lb (680 kg to 1,360 kg, respectively) of haddock and less then 300 lb (136 kg) of cod daily. Jig trips are estimated to land a maximum of 2,000 lb (907 kg) of haddock and less then 100 lb (45 kg) of cod daily. All fish landed would be subject to the minimum size and trip limit requirements.

Manomet scientific staff would be present on board each participating vessel, equating to 100–percent observer coverage for this experimental fishery. Observers would be responsible for collecting all biological and environmental data on NMFS observer forms. Manomet will also be developing a full report of results and will submit this information to the Regional Administrator monthly. The EFPs would contain a provision authorizing the Regional Administrator to continue the proposed experimental fishery on a month-by-month basis, e.g., if the cod TAC of 15 mt, or haddock TAC of 100 mt, is exceeded or projected to be exceeded by the end of December 2003.

A draft EA has been prepared that analyzes the impacts of the proposed experimental fishery on the human environment. This draft EA concludes that the activities proposed to be conducted under the requested EFPs are consistent with the goals and objectives of the FMP, would not be detrimental to the well-being of any stocks of fish harvested, and would have no significant environmental impacts. The draft EA also concludes that the proposed experimental fishery would not be detrimental to Essential Fish Habitat, marine mammals, or protected species.

EFPs would be issued to up to 18 vessels exempting them from the CA I, and 3,600–hook limit restrictions of the FMP.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 19, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21722 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081803C]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator), has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow one vessel to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemption from the Georges Bank cod landing limit for one commercial vessel, for not more than 26 days-at-sea (DAS). The experiment would test the effectiveness of two cod-avoiding flatfish trawl designs for reducing bycatch of cod (*Gadus morhua*) and sub-legal size yellowtail flounder (*Limanda ferruginea*) while maintaining catch rates of legal-sized yellowtail flounder.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments on this document must be received on or before September 10, 2003.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Massachusetts DMF Cod-Avoiding Trawl Net EFP Proposal." Comments may also be sent via facsimile (fax) to (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Susan Chinn, Fishery Management Specialist, phone 978–281–9218.

SUPPLEMENTARY INFORMATION: The Massachusetts Division of Marine Fisheries (DMF) submitted an application for an EFP on June 9, 2003,

to implement a Salstonstall-Kennedy grant, with a final, revised submission on July 30, 2003. DMF proposes to conduct 100 tows for each design with a twin trawl net, in which the test net is rigged alongside a standard net, for 200 total tows, and limited to 200 hours of bottom-time. The experimental fishing would take place between September 1, 2003, and March 1, 2004, on Georges Bank in 30–minute squares 62–63, 79–80, 92–99, 109–114, 118–119, excluding year-round Closed Areas I and II. DMF requests exemption from the trip limit for haddock, specified at 50 CFR 648.86(a)(1), and the Georges Bank cod landing limit, specified at 50 CFR 648.86(b)(2), and requests retention of legal-sized fish for sale, with the vessel receiving the revenues as compensation for using its DAS. The participating vessel would be required to comply with applicable state landing laws and Federal commercial DAS requirements, and to report all landings on the Federal Fishing Vessel Trip Report.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 19, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21723 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Sea Grant College Program

AGENCY: National Oceanic and Atmospheric Administration Office of Oceanic and Atmospheric Research (OAR) National Sea Grant Review Panel, Commerce.

ACTION: Notice of Solicitation for Sea Grant Review Panelists.

SUMMARY: This notice responds to the National Sea Grant College Program Act, at 33 U.S.C. 1128, which requires the Secretary of Commerce to solicit nominations at least once a year for membership on the Sea Grant Review Panel. This advisory committee provides advice on the implementation of the National Sea Grant College Program.

DATES: Resumes should be sent to the address specified and must be received by 30 days from publication.

ADDRESSES: Dr. Ronald C. Baird, Director; National Sea Grant College Program; 1315 East-West Highway, Room 11716; Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald Baird of the National Sea Grant College Program at the address given above; telephone (301) 713–2448 or fax number (301) 713–1031.

SUPPLEMENTARY INFORMATION: Section 209 of the Act establishes a Sea Grant Review Panel to advise the Secretary of Commerce, the Under Secretary for Oceans and Atmosphere, and the Director of the National Sea Grant College Program on the implementation of the Sea Grant Program. The panel provides advice on such matters as:

(a) The Sea Grant Fellowship Program;

(b) Applications or proposals for, and performance under, grants and contracts awarded under the Sea Grant Program Improvement Act of 1976, as amended at 33 U.S.C. 1124;

(c) The designation and operation of sea grant colleges and sea grant institutes; and the operation of the sea grant program;

(d) The formulation and application of the planning guidelines and priorities under 33 U.S.C. 1123 (a) and (c)(1); and

(e) Such other matters as the Secretary refers to the panel for review and advice.

The Panel is to consist of 15 voting members composed as follows; Not less than eight of the voting members of the panel should be individuals who, by reason of knowledge, experience, or training, are especially qualified in one or more of the disciplines and fields included in marine science. The other voting members shall be individuals who by reason of knowledge, experience, or training, are especially qualified in, or representative of, education, extension service, state government, industry, economics, planning, or any other activity which is appropriate to, and important for, any effort to enhance the understanding, assessment, development, utilization, or conservation of ocean and coastal resources. No individual is eligible to be a voting member of the panel if the individual is (a) the director of a sea grant college, sea grant regional consortium, or sea grant program, (b) an applicant for or beneficiary (as determined by the Secretary) of any grant or contract under 33 U.S.C. 1124 or (c) a full-time officer or employee of the United States. The Director of the Naitonal Sea Grant College Program and one Director of a Sea Grant Program also serve as non-voting members. Panel members are appointed for a 4-year term.

Dated: August 19, 2003.

Louisa Koch,

Acting Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 03–21831 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073003D]

Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys in the Eastern Tropical Pacific Ocean

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take authorization; request for comments.

SUMMARY: NMFS has received an application from the Scripps Institution of Oceanography (SIO), a part of the University of California, for an Incidental Harassment Authorization (IHA) to take small numbers of marine mammals, by harassment, incidental to conducting oceanographic surveys in the Eastern Tropical Pacific Ocean (ETP). Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental take authorization to SIO to incidentally take, by harassment, small numbers of several species of cetaceans and pinnipeds for a limited period of time within a one-year period.

DATES: Comments and information must be received no later than September 25, 2003.

ADDRESSES: Comments on the application should be addressed to the Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the references used in this document may be obtained by writing to this address or by telephoning the contact listed here. Comments cannot be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Sarah C. Hagedorn, Office of Protected Resources, NMFS, (301) 713–2322, ext 117.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 3(18)(A), the MMPA defines "harassment" as:

> ...any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term "Level A harassment" means harassment described in subparagraph (A)(i). The term "Level B harassment" means harassment described in subparagraph (A)(ii).

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On June 16, 2003, NMFS received an application from SIO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program in international waters of the ETP and in several Exclusive Economic Zones (EEZ) of several coastal states (Mexico, Costa Rica, Panama, Columbia, Ecuador, and Peru), from which permission to conduct this type of scientific research has been requested. SIO's *R/V Roger Revelle* is scheduled to undertake a multidisciplinary research cruise, including some seismic reflection profiling and echo-sounding studies, in the ETP from September 2003 to February 2004, primarily 100–400 nautical miles (nm) (185 - 741 km) west of northern Peru and 200–1000 nm (370 - 1852 km) west of the Galapagos Islands. None of these operations would be in U.S. territorial waters or in the U.S. EEZ. A low-energy seismic reflection profiler with a small airgun sound source will be used on 3 of the 8 legs of the cruise. The purpose of this survey is to study the shape and structure of the sediment-buried oceanic crust in this part of the ETP.

Description of the Activity

SIO's seismic surveys will involve one vessel, the *R/V Roger Revelle* (under a cooperative agreement with the U.S. Navy, owner of the vessel). The *Roger Revelle* will deploy two airguns as an energy source, plus a single short (300 m or 984 ft) towed streamer of hydrophones to receive the returning acoustic signals, that can be retrieved and deployed in less than 20 minutes.

The bubble-generating chambers of the two small General-Injector airguns have a combined volume of 90 cubic inches (1475 cubic centimeters (cc)), contrasting with 3000–9000 cubic inches (49,161–147,484 cc) of the large gun arrays typical of academic and commercial seismic surveys. The primary seismic pulse is produced by a 45–in3 (737 cc) generator chamber, while compressed air from a 105–in3 (1721 cc) injector chamber is used to maintain the shape of the bubble and reduce its sound-making oscillation. The pair of simultaneously fired airguns would have a peak-to-peak (p-p) amplitude of 236 dB re 1 µPa. In addition, a hull-mounted mid-frequency multibeam echo-sounder sonar for seafloor mapping will be routinely operated whenever the Revelle is underway. The Kongsberg-Simard EM–120 sonar images the seafloor over a 120–140 degree-wide swath (about 10–20 km, or 5–10 nm wide), using very short (15 msec) transmit pulses with a 10–20 second repetition rate and a 11.25–12.60 kHz frequency sweep. Source level in deep water is 240 dB rms, but the brevity, directivity, and narrow beam-width (1 degree fore-and-aft) of the transmit pulses make it unlikely that operation of this depth sonar will affect marine mammals.

None of the 3 research legs for which an IHA is requested will be a dedicated seismic reflection survey of the sort typically conducted by a specialized seismic vessel. The seismic reflection profiler will be used as just one tool in integrated marine geology and geophysical studies that also employ bathymetric echo-sounders, passive geophysical sensors (such as a gravimeter and magnetometer), and geologic sampling tools (like rock dredges and cores). Typical operating procedure during these three legs of the cruise will be to conduct seismic profiling, at a ship speed of 9–11 knots for periods of 8–12 hours, interspersed with episodes of geologic sampling and periods of faster steaming with no profiling system deployed. In a few instances (1–3 per leg), longer profiles will need to be collected, requiring up to 36 hours of continuous airgun operation. The objective is not to image deep crustal structureor the stratigraphy of thick sedimentary units (the typical goals of seismic surveys); instead the purpose is to measure the varying thickness of the 100–400 m-thick (328–1312 ft) cover of pelagic sediment that buries and obscures the igneous oceanic crust in our study areas, because establishing the relief of the buried crust is essential for interpreting the bathymetric, magnetic and gravity data. For this limited objective, the large powerful sound sources and hydrophone streamers several kilometers long that typify dedicated seismic surveys are not required. Nor will any broad ocean volume be ensonified by profiling on closely-spaced seismic lines.

Leg 1 of the cruise, from San Diego to Puerto Caldera, Costa Rica, is planned for September 27–October 9, 2003. This will be primarily a staging and instrument testing and calibration leg, but with 2 days of seismic reflection profiling and rock-dredging 40–80 nm (74–148 km) off the coast of Costa Rica. In addition to the approximately 24 hours of seismic profiling, it is also planned during this leg to test and calibrate new components of the system, and train shipboard technicians in their use, with 2 or 3 12–18 hour test runs along parts of the transit track. Because these test profiles may obtain scientifically useful data, specific sites that are of interest to Mexican researchers have been targeted, in partial fulfillment of SIO's foreign-

clearance obligation to collect data of value to coastal states.

Leg 2, from Puerto Caldera, Costa Rica, to Manta, Ecuador, is planned for October 10–November 6, 2003. The plan for this leg is to (i) conduct a 2–day seismic reflection plus rock dredging survey of Cobia Ridge, south of Panama, (ii) collect a north-south seismic reflection plus magnetics profile across the eastern Panama Basin, and (iii) conduct a 14–day seismic reflection plus bathymetry plus rock dredging survey off northern Peru. A total of 200–250 hours of seismic reflection profiling is anticipated for this leg of the cruise.

Leg 5, from Callao, Peru, to Puerto Caldera, Costa Rica, is planned to take place from December 28–February 23, 2003. Primary survey tools will be a multibeam echo-sounder and a new magnetometer system. Seismic reflection profiling will have a subsidiary role, imaging the relief of the igneous crust in the approximately 20 percent of the survey area that has a significant cover of structure-obscuring sediment. A total of 150–200 hours of profiling is anticipated for this leg of the cruise. All three legs will use the same bathymetric sonar and seismic profiling system, described above.

All planned geophysical data acquisition activities are funded by the National Science Foundation (NSF) and will be conducted by SIO scientists, with a specific Principal Investigator aboard the vessel. Additional information on the airgun array and bathymetric multibeam sonar is contained in the application, which is available upon request (see **ADDRESSES**).

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the ETP and its associated marine mammals can be found in the SIO application (as updated by Peter Lonsdale) and in a number of documents referenced therein. That information is not repeated here. Throughout the entire proposed study regions during the fall and winter months of 2003, approximately 21 species of cetaceans and four species of pinnipeds are likely to occur. These species are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), spinner dolphin (*Stenella longirostris*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), Pacific white-sided dolphin (*Lagenorhynchus obliquidis*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), blue whale (*Balaenoptera musculus*), Guadalupe fur seal (*Arctocephalus townsendi*), northern elephant seal (*Mirounga angusirostris*), South American sea lion (*Otaria flavescens*), and California sea lions (*Zalophus californianus*). It is also possible that four species of beaked whales may be encountered within the proposed survey areas: Longman's beaked whale (*Indopacetus pacificus*), pygmy beaked whale (*Mesoplodon peruvianus*), Ginkgo-toothed beaked whale (*Mesoplodon ginkgodens*), and Blainville's beaked whale (*Mesoplodon densirostris*). In addition, four other species of cetaceans have been reported in the area of the proposed surveys, but have been rarely or never seen during NMFS population assessments. These species are the dusky dolphin (*Lagenorhynchus obscurus*), Fraser's dolphin (*Lagenodelphis hosei*), fin whale (*Balaenoptera physalus*), and Baird's beaked whale (*Berardius bairdii*). Additional information on most of these species can be found in the application, but is also contained in Caretta *et al.* (2001, 2002) which are available at: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html.*

Potential Effects on Marine Mammals

NMFS described the characteristics of acoustic sources from airguns and from mid-frequency sonar and, in general, the anticipated effects on marine mammals including masking, disturbance, and potential hearing impairment and other physical effects in another Notice of Receipt of an IHA application and proposed IHA involving seismic survey activities, published on April 14, 2003 (68 FR 17909). That information is not repeated here. The SIO application also provides information on what is known about the effects on marine mammals from the types of seismic operations planned by SIO.

Estimates of Take by Harassment for the ETP Cruise

As described previously (68 FR 17909), animals subjected to sound levels ≥160 dB may alter their behavior or distribution, and therefore might be considered taken by Level B harassment.

The estimates of takes by harassment are based on the number of marine mammals that might be found within the 160 dB isopleth radius and potentially disturbed by operations with the 2 GI-guns planned for the project. Based on summer/fall marine mammal density calculations by Ferguson and Barlow (2001), SIO used their average marine mammal densities from the ETP to compute a "best estimate" of the number of marine mammals that may be exposed to seismic sounds ≥160 dB re 1μPa (rms) (NMFS' current criterion for onset of Level B harassment). The average densities were then converted to per-km abundances and multiplied (for the appropriate region) by the area that is planned to be ensonified at levels ≥160 dB re 1 μPa (rms) during the proposed seismic survey program. Where abundance estimates for certain species (pacific white-sided dolphins, pygmy sperm whales, minke whales, and humpback whales) were not readily available for stocks found within the proposed survey areas, minimum population estimates were taken from individual Marine Mammal Stock Assessment Reports, which are available online as mentioned previously.

SIO did not estimate numbers of pinnipeds potentially vulnerable to harassment due to insufficient data on distribution, seasonal abundance, and pinniped response. However, SIO determined that it is unlikely to encounter significant numbers of any of the pinniped species that live, at least part of the year, in the area of the proposed activity. We preliminarily agree.

Based on this method, Table 3 in the application gives the best estimates of numbers for each species of cetacean that might be exposed to received levels ≥160 dB re 1 μPa (rms), and thus potentially taken by Level B harassment, during seismic surveys in the proposed study areas of the ETP.

Eight species of delphinidae would account for 95 percent of the overall estimate for potential taking by harassment. Common dolphins are the most abundant delphinid in the proposed seismic survey areas, representing 71 percent of the total estimate for potential taking by harassment. Most of the remaining 5 percent of the overall estimate for potential taking by harassment consists of pilot whales, dwarf sperm whales, and five species of beaked whales.

Conclusions-effects on Cetaceans

Baleen whales have been seen to avoid operating airguns with avoidance

radii that are quite variable, while some baleen whales show considerable tolerance of seismic pulses. Whales are often reported to show no overt reactions to airgun pulses at distances beyond a few kilometers, even though the pulses remain well above ambient noise levels out to much longer distances. However, recent studies of humpback and especially bowhead whales show that reactions, including avoidance, sometimes extend to greater distances than documented earlier, possibly even exceeding the distances at which boat-based observers can see whales. Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 6 to 8 km (3.2 to 4.3 n.mi.) and occasionally as far as 20–30 km (10.8–16.2 n.mi.) from the source vessel. Some bowhead whales avoided waters within 30 km (16.2 n.mi.) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes, and even for bowheads may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen from seismic vessels, occasionally even at close distances. In fact, there are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels. In the cases of mysticetes, these reactions are expected to involve small numbers of individual cetaceans because few mysticetes occur in the area where seismic surveys are proposed.

For most species, including endangered sperm and blue whales, the total estimated "take by harassment" by species presented in Table 3 of the application (Scripps 2003) represents less than 1.0 percent of the eastern tropical Pacific population of any of these species. For the remaining three cetacean species, the total estimated "take by harassment" are 1.8 percent of the estimated pygmy sperm whale population in and adjacent to the study area, 6.2 percent of the dwarf sperm whale population, and 1.8 percent of endangered humpback whales would receive seismic sounds ≤160 dB. Although the absolute numbers of odontocetes that may be harassed by the proposed activities may be large, the population sizes of the main species are also large; therefore, the numbers potentially affected are small relative to the population sizes.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to avoidance of the area around the seismic operation and short-term changes in behavior, falling within the MMPA definition of "Level B harassment." Based on the relatively low numbers of marine mammals that will be exposed at levels ≤160 dB and the expected impacts at these levels, NMFS has preliminarily determined that this action will have a negligible impact on the affected species or stocks of cetaceans.

Conclusions-effects on Pinnipeds

Responses of pinnipeds to acoustic disturbance are variable, but usually quite limited. Early observations provided considerable evidence that pinnipeds are often quite tolerant of strong pulsed sounds. Visual monitoring from seismic vessels has shown only slight (if any) avoidance of airguns by pinnipeds, and only slight (if any) changes in behavior. These studies show that pinnipeds frequently do not avoid the area within a few hundred meters of an operating airgun array. Even so, results from initial telemetry studies suggest that avoidance and other behavioral reactions may be stronger than has been evident from visual studies.

Very few, if any, pinnipeds are expected to be encountered during the proposed seismic survey in the ETP, and it is therefore unlikely that the seismic vessel will encounter significant numbers of any of the four pinniped species that live, for at least part of the year, in the area of proposed seismic profiling.

If pinnipeds are encountered, the proposed seismic activities would have, at most, a short-term effect on their behavior and no long-term impacts on individual seals or their populations. Effects are expected to be limited to short-term and localized behavioral changes falling within the MMPA definition of Level B harassment. Therefore, NMFS' preliminary determination is that impacts will be negligible.

Mitigation

For the proposed seismic operations in the ETP, SIO will use 2–GI guns with a total volume of 90 in3 (1475 cc). These airguns will be spread out horizontally, so that the energy from the array will be directed mostly downward. The following mitigation measures, as well as marine mammal monitoring, will be adopted during the proposed ETP seismic survey program.

Shutdown Procedures

SIO proposes to shut down seismic sources whenever marine mammals are observed close enough to the vessel that they are at risk of exposure to sound levels greater than 180 dB (rms), where there is a possibility of Level A harassment. Airgun operations will be suspended immediately when marine mammals are observed within, or about to enter, this designated safety zone. Current NMFS guidance dictates that cetaceans and pinnipeds should not be exposed to impulsive sounds exceeding 180 and 190 dB rms (the level for the potential for Level A harassment), respectively. SIO will adopt a 180–dB threshold for all marine mammals because pinnipeds have less developed (or less documented) avoidance behaviors, and because of the low liklihood that pinnipeds will be encountered.

SIO has adopted conservative methods in defining safety zone calculations using (i) a 9–dB difference between p-p and rms, and (ii) spherical spreading of the sound, even though it is clear that at the low acoustic frequencies which dominate SIO's airgun output, the generated sound pulses have considerable directivity, favoring downward propagation over horizontal propagation (because in the near-horizontal direction the direct gun pulse is closely followed by the opposite-phased bounce off the sea surface, if the source is within an acoustic wavelength of the surface; this effect can reduce the effective near-horizontal output by as much as 10 dB). Because the actual seismic source is a distributed sound source rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

As described earlier, the pair of simultaneously fired airguns would have a p-p amplitude of 236 dB re 1 μPa. Converting to a rms dB using the 9 dB difference between p-p and rms for a sine wave yields an output level of 227 dB rms. Therefore, SIO's modeled results for the 2–gun array indicate that, assuming spherical spreading, the paired guns would produce sound levels of 180 dB re 1 μPa (rms) at a range of about 225 m (738 ft); i.e., the radius around the 2–gun array where the received level would be 180 dB re 1 μ\Pa (rms), is estimated to be 225 m (738 ft). The effect of using a conservative calculation, which yields this safety zone for 180 dB rms sound, is to build a safety factor into the airgun

shut-down radius; this is desirable because mammals may not be observed while submerged, and might move towards the acoustic sources during dives.

Airgun operations will not resume until the marine mammal is observed outside the safety radius or a minimum of 15 minutes has elapsed since the last sighting. Once the safety zone is clear of marine mammals, the observer will advise that seismic surveys can re-commence.

Gradual ramp-up of the output of the airgun array, a standard mitigation procedure during seismic surveys employing numerous guns of varying size, is inapplicable to the proposed operations which use only two small sound sources with a small total air discharge volume (90 in3).

Course Alteration

If a marine mammal is detected at any range beyond the 225 m (738 ft) safety radius but, based on its position and the relative motion, appears to be on a converging course with the ship while profiling is underway, the vessel will be maneuvered in an attempt to maintain a range greater than the shut-down radius. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not approach within the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

Because of the ineffectiveness of mammal observers during darkness (even though the vessel is equipped wit night-vision binoculars), seismic reflection profiling will be concentrated during daylight hours. As noted earlier, there are just 1–3 occasions on each leg when the scientific objectives require collection of seismic profiles that are too long to complete in a single daylight period, and limited nighttime profiling is needed to allow completion of the marine geophysical research. In no instance will seismic profiling be initiated during darkness, a situation where unobservable mammals would be at risk from the sudden onset of G.I.-gun noise.

Marine Mammal Monitoring

Effective implementation of these procedures requires surveillance by appropriately equipped skilled observers, who will monitor for marine mammals in the vicinity of the array. Each leg of the cruise will be staffed with two observers who have previously worked for the Southwest Fisheries Science Center of NMFS, and who are recommended by the Center. These observers will share surveillance duties during daylight hours, and be responsible for computer entry of their observations while off watch. They will be equipped with binoculars and have access to the 50X "big-eye" binoculars mounted on the Revelle's bridge (though their normal station, except in inclement weather will be outside on the upper deck). For estimating the range of marine mammals that are sighted, the observers will use the optical fixed-interval range-finder described by Heinemann (1981); this instrument relies on measuring the angle between the mammal and the visual horizon, by an observer at known height above sea-level. The observers will be in wireless communication with ship officers on the bridge and scientists in the vessel's operations laboratory, so they can advise promptly of the need for avoidance maneuvers or G.I. gun shut-down.

Monitoring and Reporting

Vessel-based Visual Monitoring

SIO proposes to conduct marine mammal monitoring of its seismic surveys in the ETP in order to satisfy the anticipated requirements of the IHA. Monitoring of marine mammals by experienced observers will occur during all daylight hours of the 3 legs of the cruise on the *Revelle*, whether or not G.I. guns are in operation. Except in bad weather, when they will occupy the bridge, observers will be stationed outside, forward on the 03 deck at a height of 9 m (30 ft) above the waterline; this has proved to be an effective station for marine mammal surveillance during previous mammal and seabird monitoring exercises from the *Revelle*.

Reporting

Observers will record their observations and range measurements on tape, for subsequent transcription into NMFS format. When a marine mammal sighting is made, the following information about the sighting will be recorded: (1) Species, group size, age/size/sex categories (if determinable), behavior when first sighted and after initial sighting, heading (if consistent), bearing and distance from seismic vessel, sighting cue, apparent reaction to seismic vessel (e.g., none, avoidance, approach, paralleling, etc.), and behavioral pace; and (2) time, location, heading, speed, activity of the vessel (seismic activity or not), sea state, visibility, cloud cover, and sun glare. The data listed under (2) above will also be recorded at the start and end of each observation watch and during a watch, and whenever there is a change in one or more of the variables.

Results from the vessel-based observations will provide: (1) the basis for real-time mitigation (airgun shutdown); (2) information needed to estimate the number of marine mammals potentially taken by harassment, which must be reported to NMFS; (3) data on the occurrence, distribution, and activities of marine mammals in the area where the seismic study is conducted; (4) information to compare the distance and distribution of marine mammals relative to the source vessel at times with and without seismic activity; and (5) data on the behavior and movement patterns of marine mammals seen at times with and without seismic activity.

A report will be submitted to NMFS within 90 days after the end of the seismic profiling program (before May 2004). The report will be submitted to NMFS, providing full documentation of methods, results, and interpretation pertaining to most all monitoring tasks. The 90–day report will summarize the dates and locations of seismic operations, sound measurement data, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential "take" of marine mammals by harassment or in other ways.

Endangered Species Act (ESA)

Under section 7 of the ESA, NMFS has begun consultation on the proposed issuance of an IHA under section 101(a)(5)(D) of the MMPA for this activity. Consultation will be concluded prior to the issuance of an IHA.

National Environmental Policy Act (NEPA)

An Environmental Assessment (EA) on a similar action for this area of the Pacific Ocean was prepared and released to the public on July 11, 2003 (68 FR 41314). The proposed acoustic survey described in this document will use acoustic instruments that are significantly less intense and will therefore have a significantly lower impact on the marine environment than acoustic sources addressed in the earlier EA. NMFS' analysis resulted in a Finding of No Significant Impact (FONSI). Therefore, based on that EA and the IHA application from Scripps, NMFS has preliminarily determined that this action will not have a significant impact on the human environment. Accordingly, this proposed action qualifies for a categorical exclusion under NEPA and NOAA Administrative Order 216–6 and

is therefore exempted from further environmental review. A copy of relevant previous EA is available (see **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting a seismic survey program in the ETP will result, at worst, in a temporary modification in behavior by certain species of marine mammals. While behavioral modifications may be made by these species as a result of seismic survey activities, this behavioral change is expected to result in no more than a negligible impact on the affected species.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document.

Proposed Authorization

NMFS proposes to issue an IHA to Scripps for conducting a 2–GI gun seismic survey program in the ETP, provided the proposed mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activity would result in the harassment of only small numbers of marine mammals; would have no more than a negligible impact on the affected marine mammal stocks; and would not have an unmitigable adverse impact on the availability of stocks for subsistence uses.

Information Solicited

NMFS requests interested persons to submit comments and information concerning this request (see **ADDRESSES**).

Dated: August 20, 2003.

Donna Wieting,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–21794 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081903D]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Socioeconomic Panel (SEP).

DATES: The SEP meeting will be held beginning at 8:30 a.m. on Wednesday, September 10, 2003, and will conclude at 12 noon on Friday, September 12, 2003.

ADDRESSES: The meeting will be held at the Omni Royal Orleans, 621 St. Louis Street, New Orleans, LA; telephone: 504–529–5333.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SEP will meet to review available social and economic information on yellowtail snapper. The SEP will also review a project proposal, submitted to the Council by researchers from Florida State University, that will attempt to estimate the economic impacts of the various fisheries in the Gulf. In addition, the SEP will hear presentations on the individual fishing quota for the red snapper commercial fishery.

A report will be prepared by the SEP containing their conclusions and recommendations. This report will be presented for review to the Council's Reef Fish Advisory Panel and Standing and Special Reef Fish Scientific and Statistical Committee at meetings to be held in October 2003 in Tampa, FL and to the Council at its meeting on November 9–12, 2003 in Biloxi, MS.

Composing the SEP membership are economists, sociologists, and anthropologists from various universities and state fishery agencies throughout the Gulf. They advise the Council on the social and economic implications of certain fishery management measures.

A copy of the agenda can be obtained by calling 813–228–2815. Although other non-emergency issues not on the agenda may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 3, 2003.

Dated: August 20, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21720 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081903B]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (MAFMC) Dogfish Monitoring Committee will hold a public meeting.

DATES: The meeting will be held on Wednesday, September 10, 2003, from 10 a.m. to 4 p.m.

ADDRESSES: This meeting will be held at the BWI Airport Marriott, 1743 W. Nursery Road, Baltimore, MD, telephone: 410–859–8300.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to develop management measures including quotas and trip limits to recommend to the Councils for the 2004/05 specifications setting for spiny dogfish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the MAFMC's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 20, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21718 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081903C]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Trawl Survey Advisory Committee, composed of representatives from the Northeast Fisheries Science Center (NEFSC), the Mid-Atlantic Fishery Management Council (MAFMC), the New England Fishery Management Council (NEFMC), and several independent scientific researchers, will hold a public meeting.

DATES: The meeting will be held on Wednesday, September 10th, from 9 a.m. to 5 p.m. and Thursday, September 11th, from 9 a.m. until 2 p.m.

ADDRESSES: This meeting will be held at the Brookshire Suites at the Inner Harbor, 120 East Lombard Street , Baltimore, MD, telephone: 410–625–1300.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to finalize the short-term priorities and identify and develop the long-term priorities needed to provide important advice and feedback to the NEFSC on its trawl surveys.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the MAFMS's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 20, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21719 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081103C]

Notice of Additional Regional Fisheries Management Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: NMFS is scheduling an additional constituent session in San Francisco, CA. This is part of a series of regional constituent sessions that started in June and are running through September to gather public input on ways to improve the effectiveness of NMFS and its management of living marine resources. The regional sessions are a collaborative effort involving all major marine fisheries interests. The primary objective is to assemble and provide a comprehensive analysis of the diverse opinions, attitudes, and perspectives of marine resource stakeholders as they relate to broad themes in fisheries management. The secondary objective is to identify performance measures.

DATES: The additional session will be held September 24, 2003 from 6 p.m. – 9 p.m. at The Westin St. Francis in San Francisco, CA. To submit comments, see **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The session will be held at The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102–1875. Information on the meetings will be updated periodically on NMFS' web page: *http://www.nmfs.noaa.gov/emeetings*.

FOR FURTHER INFORMATION CONTACT: Patricia Lawson, NMFS, telephone: 301–713–2239; fax: 301–713–1940; email: *patricia.lawson@noaa.gov*. To submit e-Comments (see E-Comments Pilot Program).

SUPPLEMENTARY INFORMATION:

E-Comments Pilot Program

NMFS encourages the public to participate in submitting comments by the e-comment program. To this end, NMFS is accepting comments by submitted mail, fax, and the Internet as part of its e-Comments pilot project. The e-Comments pilot project is designed to introduce electronic commenting to its constituents. You can respond to the questions on the e-comment page through NMFS' web page *http://www.nmfs.noaa.gov/emeetings*. The public is encouraged to use the new web site to compose and submit comments on the regional constituent meetings. In submitting comments, please include your name, address, and region for each comment. NMFS also invites public comments on the e-Comments program that allows you to submit your comments on line. Please submit your comments by only one means. Comments received from the public will become part of the public record and will be posted on the e-Comments web site *http://www.nmfs.noaa.gov/emeetings*.

Areas NMFS is soliciting public comments on:

(1) What is the most important issue facing fisheries in your region?

(2) Who has responsibility over this issue? If unclear, or uncertain, who should be in charge?

(3) Identify and describe a possible solution or solutions that would remedy the issue?

(4) Does the solution require (a)no changes to the present administrative or statutory structure, or (b)administrative changes, and if so, what changes would you propose, or (c) statutory changes, and if so, what would they be?

(5) How could one measure whether the solution is being properly implemented and working?

(6) Briefly describe the best way to keep you informed about changes within NMFS and fisheries management.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patricia Lawson (see **FOR FURTHER INFORMATION CONTACT**) 2 weeks before each meeting.

Dated: August 21, 2003.

William T. Hogarth,

Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 03–21793 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D 080403A]

Endangered Species; File No. 1397

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Jeanette Wyneken, Florida Atlantic University, 777 Glades Rd., Boca Raton, FL 33431, has been issued a permit to take green sea turtles (*Chelonia mydas*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376;

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Patrick Opay, (301)713–1401 or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On November 27, 2002, notice was published in the **Federal Register** (67 FR 70934) that a request for a scientific research permit to take green sea turtles had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The applicant will hand capture, handle, transport, temporarily hold, measure, weigh, sonic tag, paint a number on the carapace of, flipper tag, PIT tag, tissue sample, lavage, photograph, track, recapture and remove the sonic tag from, and release up to 10 green sea turtles annually. Although not included in the original permit application, NMFS received comments during the application review which recommended that the applicant flipper tag, PIT tag, and tissue biopsy each of the turtles captured during the proposed research. Tagging will facilitate individual identification of the turtles and provide information on migratory movements in the event of recapture by other researchers or stranding in the future. A biopsy sample will allow researchers to determine the genetic identity(s) of this group of animals, a priority research goal identified by NMFS. NMFS contacted the applicant to discuss these recommendations, and the applicant agreed to conduct these additional research activities. The purpose of the research is to determine the number and distribution of green sea turtles (Chelonia mydas) on shallow reef habitat located in Palm Beach County, FL as well as quantify their daily movements and establish what food and other resources of importance to this species are present there. The permit duration is 2 years.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 19, 2003.

Jennifer Skidmore,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–21721 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

August 20, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: August 26, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 65340, published on October 24, 2002.

James C. Leonard III

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 2003.

Commissioner,

Bureau of Customs and Border Protection,

Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 18, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on August 26, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
433	27,990 dozen.
443	173,859 numbers.
444	79,079 numbers.
448	42,721 dozen.

[1]The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–21746 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

August 20, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: August 26, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68577, published on November 12, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on August 26, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month limit [1]
Group II	
237, 239pt [2], 331pt. [3], 332, 333/334/335, 336, 338/339, 340–345, 347/348, 351, 352/652, 359–C/659–C [4], 659–H [5], 359pt. [6], 433-438, 440, 442, 443, 444, 445/446, 447/448, 459pt. [7], 631pt. [8], 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 651, 659–S [9], 659pt. [10], 846 and 852, as a group.	609,060,139 square meters equivalent.
Sublevels in Group II	
336	166,779 dozen.
340	1,249,024 dozen.
345	147,035 dozen.
352/652	3,733,424 dozen.
435	28,129 dozen.
438	31,315 dozen.
445/446	147,566 dozen.
638/639	6,533,712 dozen.
640	1,002,515 dozen of which not more than 281,710 dozen shall be in Category 640–Y [11].
642	799,193 dozen.
647/648	5,404,466 dozen of which not more than 5,141,289 dozen shall be in Categories 647–W/648–W [12].
659–H	2,511,597 kilograms.
659–S	1,729,838 kilograms.
Group II Subgroup	
333/334/335, 341, 342, 351, 447/448, 636, 641 and 651, as a group	74,322,479 square meters equivalent.
Within Group II Subgroup	
333/334/335	338,564 dozen of which not more than 183,391 dozen shall be in Category 335.
341	368,564 dozen.
342	274,698 dozen.
351	276,982 dozen.

Category	Twelve-month limit [1]
447/448	23,092 dozen.
636	407,264 dozen.
651	598,197 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[5] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[6] Category 359pt.: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6115.19.8010, 6117.10.6010, 6117.20.9010, 6203.22.1000, 6204.22.1000, 6212.90.0010, 6214.90.0010, 6406.99.1550, 6505.90.1525, 6505.90.1540, 6505.90.2060 and 6505.90.2545.

[7] Category 459pt.: all HTS numbers except 6115.19.8020, 6117.10.1000, 6117.10.2010, 6117.20.9020, 6212.90.0020, 6214.20.0000, 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[8] Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 659pt.: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6115.11.0010, 6115.12.2000, 6117.10.2030, 6117.20.9030, 6212.90.0030, 6214.30.0000, 6214.40.0000, 6406.99.1510 and 6406.99.1540.

[11] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[12] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–21744 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the United Arab Emirates

August 20, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: August 27, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63899, published on October 16, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 9, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on August 27, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
219	2,284,553 square meters.
226/313	3,906,641 square meters.
317	57,256,182 square meters.

Category	Adjusted limit [1]
326	3,687,875 square meters.
334/634	458,165 dozen.
335/635	312,142 dozen.
336/636	425,317 dozen.
338/339	1,190,864 dozen of which not more than 696,098 dozen shall be in Categories 338–S/339–S [2].
340/640	752,488 dozen.
341/641	658,920 dozen.
342/642	494,764 dozen.
347/348	828,559 dozen of which not more than 410,946 dozen shall be in Categories 347–T/348–T [3].
351/651	356,949 dozen.
352	693,599 dozen.
363	12,292,915 numbers.
369–O [4]	150,192 kilograms.
369–S [5]	171,119 kilograms.
638/639	465,585 dozen.
647/648	703,412 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S): 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.22.4020, 4202.22.4500, 4202.22.8030, 4202.32.4000, 4202.32.9530, 4202.92.0505, 4202.92.1500, 4202.92.3016, 4202.92.6091, 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020, 5805.00.3000, 5807.10.0510, 5807.90.0510, 6301.30.0010, 6301.30.0020, 6302,51.1000, 6302.51.2000, 6302.51.3000, 6302.51.4000, 6302.60.0010, 6302.60.0030, 6302.91.0005, 6302.91.0025, 6302.91.0045, 6302.91.0050, 6302.91.0060, 6303.11.0000, 6303.91.0010, 6303.91.0020, 6304.91.0020, 6304.92.0000, 6305.20.0000, 6306.11.0000, 6307.10.1020, 6307.10.1090, 6307.90.3010, 6307.90.4010, 6307.90.5010, 6307.90.8910, 6307.90.8945, 6307.90.9882, 6406.10.7700, 9404.90.1000, 9404.90.8040 and 9404.90.9505 (Category 369pt.).

[5] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–21747 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

August 20, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection providing for the use of a new textile export license/commercial invoice bearing a new watermark.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Governments of the United States and the People's Republic of China have agreed to amend the existing export visa requirements to provide for the use of a new textile export license/commercial invoice, issued by the Government of the People's Republic of China, for shipments of goods produced or manufactured in China and exported from China on and after January 1, 2004. The new license/invoice will bear a watermark issued by "the Ministry of Commerce of the People's Republic of China." This replaces the old watermark issued by "the Ministry of Foreign Trade and Economic Cooperation." The visa stamp is not being changed at this time.

Shipments of textile and apparel products which are produced or manufactured in China and exported from China during the period January 1, 2004 through January 31, 2004 may be accompanied by a visa bearing either the old or new watermark, as described above.

Products exported on and after February 1, 2004 must be accompanied by an export visa issued by the Government of the People's Republic of China bearing the new watermark, as described above.

The requirements for ELVIS (Electronic Visa Information System) remain unchanged.

See 62 FR 15465, published on April 1, 1997.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 20, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 27, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export visa arrangement for certain cotton, wool, man-made fiber, silk blend, and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on January 1, 2004, for products exported from China on or after January 1, 2004, you are directed to amend the March 27, 1997 directive to provide for the use of export licenses/commercial invoices issued by the Government of the People's Republic of China which bear the watermark "the Ministry of Commerce of the People's Republic of China." This watermark replaces the old watermark issued by "the Ministry of Foreign Trade and Economic Cooperation."

To facilitate implementation of this amendment to the export licensing system, you are directed to permit entry of textile products, produced or manufactured in China and exported from China during the

period January 1, 2004 through January 31, 2004, for which the Government of the People's Republic of China has issued an export license/commercial invoice bearing either the old or new watermarks, as described above.

Products exported on and after February 1, 2004 must be accompanied by an export visa issued by the Government of the People's Republic of China bearing the new watermark, as described above.

The requirements for ELVIS (Electronic Visa Information System) remain unchanged.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–21745 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Request for Public Comment on Commercial Availability Petition under the North American Free Trade Agreement (NAFTA); Correction

August 20, 2003.

In the **Federal Register** notice, published on August 20, 2003 68 FR 50126, Column 2, Line 17, under "**Summary**", please insert the number "6203.31" right after "6203.11," as it was inadvertantly left out.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–21748 Filed 8–25–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 10:30 a.m., Friday September 5, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 9012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–21912 Filed 8–22–03; 1:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING

Sunshine Act; Meetings

TIME AND DATE: 10:30 a.m., Friday, September 12, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 9012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–21913 Filed 8–22–03; 1:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meetings

TIME AND DATE: 10:30 a.m., Friday, September 19, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–21914 Filed 8–22–03; 1:07 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meetings

TIME AND DATE: 10:30 a.m., Friday September 26, 2003.

PLACE: 1155 21st St., NW., Washington, DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED. Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–21915 Filed 8–22–03; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act; Meetings

TIME AND DATE: 10:30 a.m., Tuesday September 30, 2003.

PLACE: 1155 21st St., NW., Washington DC, Room 1012.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, (202) 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–21916 Filed 8–22–03; 1:07 pm]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Record of Decision To Establish a Ground-Based Midcourse Defense Extended Test Range

AGENCIES: Missile Defense Agency, Department of Defense; Federal Aviation Administration; Office of the Associate Administrator for Commercial Space Transportation.

ACTION: Notice.

SUMMARY: The Missile Defense Agency (MDA) is issuing this Record of Decision (ROD) to establish a Ground-Based Midcourse Defense (GMD) extended test range capability, to provide for the construction and operation of a Sea-Based Test X-Band Radar (SBX), and to determine the location of the SBX Primary Support Base (PSB). The extended test range and the SBX are capabilities of the GMD element within the broader conceptual Ballistic Missile Defense System (BMDS). This action will enhance the current test capabilities that include missile launch sites, sensors, and other test equipment associated with the Ronald Reagan Ballistic Missile Test Site (RTS) at Kwajalein Atoll, the Pacific Missile Range Facility (PMRF) in Hawaii, the Kodiak Launch Complex (KLC) in Alaska, Vandenberg Air Force Base (AFB) in California, and other Pacific locations.

FOR FURTHER INFORMATION CONTACT: For further information on the GMD Extended Test Range (ETR) Environmental Impact Statement (EIS) or this ROD contact Ms. Julia Elliot, U.S. Army Space and Missile Defense Command, Attn: SMDC–EN–V, P.O. Box 1500, Huntsville, Alabama 35807–3801.

Public reading copies of the Final EIS and the ROD are available for review at the public libraries within the communities near proposed activities and at the MDA Internet site: *http://www.acq.osd.mil/bmdo/*.

SUPPLEMENTARY INFORMATION:

A. MDA Decision

The MDA is issuing this ROD, selecting portions of Alternative 2 as described in the GMD ETR EIS, to establish a GMD extended test range capability, to provide for the construction and operation of an SBX, and to select the location of the SBX PSB. This decision includes the capability to conduct single and dual launches of interceptor and target missiles at RTS and Vandenberg AFB. Development of these capabilities will include target launch facility modifications/construction at RTS; modification of launch and support facilities at Vandenberg AFB; construction of an In-Flight Interceptor Communication System Data Terminal (IDT) at Titan Pasture at Vandenberg AFB; a TPS–X radar; added range instrumentation (tracking and range safety radars) at the test site and test support locations; and use of either existing GMD Fire Control/Communications (GFC/C) facilities and links at RTS, or new GFC/C facilities that may be developed at Fort Greely, Alaska and/or Schriever AFB or Cheyenne Mountain Complex, Colorado.

Additionally, MDA has decided to construct an SBX for Pacific range testing. MDA has also decided to establish a Primary Support Base at Adak, Alaska. The vessel will be constructed and outfitted with an XBR and ancillary test equipment in the Gulf of Mexico and will transit to the Primary Support Base (PSB) and testing region when completed.

This Record of Decision makes no decision regarding Alternative 2's components at KLC. The FAA is contemplating re-licensing activities at KLC. Should FAA re-license KLC activities, MDA may issue a second ROD regarding the KLC portion of Alternative 2.

B. Background

In July 2000, the MDA completed the National Missile Defense (NMD) Deployment EIS to support decisions concerning deployment of a GMD (formerly NMD element. At the direction of the Secretary of Defense, the MDA re-directed the GMD element to focus on operationally realistic testing. The GMD ETR EIS analyzed the proposed GMD Extended Test Range actions and alternatives for potential impacts on the environment.

The proposed action analyzed in the GMD ETR EIS is to develop the capability to conduct more realistic interceptor flight tests in support of GMD. The extension of the existing GMD test range will increase the realism of GMD testing by using multiple engagement scenarios, trajectories, geometries, distances, and speeds of target and interceptors that closely resemble those in which an operational system will be required to provide an effective defense. Extended range testing will include pre-launch activities, launch of targets and Ground-Based Interceptors (GBI) from a number of widely separated geographic locations, and missile intercepts over the Pacific Ocean.

On December 16, 2002, President George W. Bush issued National Security Presidential Directive 23 announcing plans to begin fielding an initial set of missile defense capabilities by the year 2004. The MDA proposes to use existing test facilities and infrastructure to the extent possible in fielding these initial capabilities. Some of the assets proposed for the Initial Defensive Operations (IDO) capability are analyzed as part of the GMD ETR EIS. For example, facilities at Vandenberg AFB will also be used in support of the IDO capability. Due to the nature of the IDO, the configuration and use of those assets will be separately analyzed under NEPA, and are also assessed in the relevant cumulative effects sections. Some assets, such as the SBX, will also be used in support of IDO. As the SBX in an IDO role will be operated in the same manner as in a test mode, no further NEPA analysis is required.

C. NEPA Process

The GMD ETR EIS was prepared pursuant to the Council on Environmental Quality (CEQ) regulation implementing the NEPA (40 CFR Parts 1500–1508), Department of Defense (DoD) Instruction 4715.9, and the applicable service environmental regulations that implement these laws and regulations.

The Notice of Intent (NOI) to prepare an EIS for the GMD Extended Test Range was published in the **Federal Register** on March 28, 2002, initiating the public scoping process. Public scoping meetings were held from April from December 2002 in eight communities perceived to be affected by the proposed GMD extended test range. The Notice of Availability (NOA) of the GMD Extended Test Range Draft EIS was published in the **Federal Register** on February 7, 2003. This initiated a public review and comment period for the Draft EIS. Seven public hearings were held from February 24 through March 6, 2003. Comments on the Draft EIS were considered in the preparation of the Final EIS. The NOA for the Final EIS was published in the **Federal Register** on July 15, 2003, initiating an additional 30-day review period. This ROD is the culmination of the NEPA process.

D. Alternatives Considered

1. No-Action Alternative

As required by the CEQ regulations, the GMD ETR EIS evaluated a No-Action Alternative. Under this alternative, the GMD ETR would not be established and interceptor and target launch scenarios would not be fully tested under operationally realistic conditions. All existing launch areas and other support facilities would continue current operations for GMD and other mission activities.

2. Alternative 2 (Selected Alternative)

Target missiles will be launched from Vandenberg AFB, KLC, PMRF, RTS, or from mobile platforms in the Pacific Ocean. GBIs will be launched from Vandenberg AFB or RTS. Dual target and GBI missiles launches will occur in some scenarios. Existing, modified, or newly constructed launch facilities and infrastructure will support these launch activities at the various locations.

Missile acquisition and tracking will be provided by existing test range sensors, shipborne sensors, an SBX, and/or a mobile sensor (TPS-X) positioned at Vandenberg AFB, PMRF, or RTS; and existing/upgraded radars at Beale AFB, California, and Clear Air Station and Eareckson Air Station, Alaska. An IDT will be constructed/installed at a site near the proposed Ground-Based interceptor launch sites on Vandenberg AFB. Six potential sites were considered at Vandenberg for the IDT. Commercial satellite communications terminals will be constructed at launch locations that do not have fiber optic communications links.

3. Alternative 1

Alternative 1 is similar to Alternative 2, with the exception that ground-based interceptor launches would be from KLC and RTS instead of Vandenberg AFB and RTS. The GBI launch would require construction of an IDT and modifications of existing launch support facilities at KLC. Alternative 1 would include site preparation and operation of a TPS-X radar at KLC, Vandenberg

AFB, RTS or PMRF and the construction of two GBI silos or one GBI launch pad, and an additional target launch pad that could accommodate GBI launches if needed, and associated support facilities at KLC. There would also be target pad modifications at KLC and RTS along with the installation of a COMSATCOM at KLC. Placement of small mobile telemetry units and mobile C-band radar at KLC and at one or two of the following locations: Pasagshak Point, Kenai, Homer, Soldotna, King Salmon, Adak, Cordova, and Pillar Mountain, Alaska; Pillar Point, California; Bremerton, Washington; Makaha Ridge and PMRF, Hawaii. The other components described in Alternative 2 would remain the same.

4. Alternative 3

Alternative 3 would include activities proposed for Alternatives 1 and 2. This would include GBI launches from KLC, RTS, and Vandenberg AFB, and construction of the required support facilities for dual launches of GBI and target missiles at each location.

5. SBX Primary Support Base Decision. Encompassed within all three alternatives was a proposal to construct and operate the SBX. Six potential sites for a primary support base for the SBX were analyzed in the EIS.

E. Environmental Impacts of Alternatives

The GMD ETR EIS analyzed the environment in terms of 14 resource areas: air quality, airspace, biological resources, cultural resources, geology and soils, hazardous materials and hazardous waste, health and safety, land use, noise, socioeconomics, transportation, utilities, visual and aesthetic resources, and water resources. Subsistence resources were also considered for potential sites in Alaska. Environmental Justice was addressed separately. Each resource area was discussed at each location as applicable. The potential for cumulative impacts was also evaluated in the EIS.

The impacts of the various alternatives are summarized in depth in Tables ES–1A, ES–1B, and Tables ES 2 through ES 11 in the Final ETR EIS (available on the MDA Internet site: *http://www.acq.osd.mil/bmdo/*). The following is a short comparison of the potential impacts of the alternatives, including the no-action alternative:

1. Kodiak Launch Complex

a. *Air Quality.* Under the No-Action alternative, single target and commercial launches would continue. Under Alternative 2 (the Selected Alternative), a minimal increase in air emissions from target launch and support facilities construction and operation of mobile telemetry would not affect the region's current attainment status. The results of modeling a dual Peacekeeper target launch to determine exhaust emissions of aluminum oxide, hydrogen chloride, and carbon monoxide show that the level of hydrogen chloride would be below the 1-hour Air Force standard, but would exceed the peak hydrogen chloride standard for a short duration. Other emissions were determined to be within National Ambient Air Quality Standards (NAAQS) and Alaska Ambient Air Quality Standards (AAQS). A single Peacekeeper target launch would be within NAAQS, Alaska AAQS, and U.S. Air force standards. Significant air quality impacts due to target launches are not anticipated. Under Alternative 1, the impacts would be the same as Alternative 2 with the addition of GBI silo construction and GBI launches. The results of modeling to determine exhaust emissions of aluminum oxide, hydrogen chloride, and carbon monoxide show that concentrations produced by dual launches of a Ground-Based Interceptor would remain within National Ambient Air Quality Standards (NAAQS), Alaska Ambient Air Quality Standards (AAQS), and U.S. Air Force standards. Significant air quality impacts due to Ground-Based Interceptor launches are not anticipated. Alternative 3 would have the same impacts as both Alternatives 1 and 2.

b. *Biological Resources.* Under the No Action Alternative, temporary effects to vegetation from emissions, discoloration and foliage loss and temporary, short-term startle effects from noise to wildlife and birds are possible during testing. Although a remote possibility, individual animals close to the water's surface could be hit by debris. Under Alternative 2 (the Selected Alternative), loss of small amounts of mainly upland vegetation could occur due to construction. Fence lines would likely be altered to avoid impacts to wetlands. Testing impacts would be similar to those noted in the No Action Alternative. Mobile sensors necessary to support Ground-Based Midcourse Defense Extended Test Range activities would be located on existing disturbed areas with minimal effect to biological resources. Alternatives 1 and 3 would have the same impacts as Alternative 2.

c. *Hazardous Materials and Hazardous Waste.* Under the No Action Alternative, continued handling and use of limited quantities of hazardous and toxic materials related to pre-launch, launch and post-launch activities would generate small quantities of hazardous waste. Under Alternative 2 (Selected Alternative), the target launch activities and support facilities construction would use small quantities of hazardous materials, which would result in the generation of some hazardous and non-hazardous waste that would be similar to current operations. All hazardous materials and waste would be handled in accordance with applicable state and federal regulations. No impact from short-term operation of mobile sensors at existing gravel pad areas are expected. Alternatives 1 and 3 would have the same impacts as Alternative 2.

d. *Health and Safety.* Under the No Action Alternative, planning and execution of target and commercial launches would continue. Ground and Launch Hazard Areas, Notices to Airmen and Notices to Mariners, and program Safety plans would protect workers and the general public. Under Alternative 2 (Selected Alternative), planning and execution of single and dual target launches would include establishing ground and Launch hazard Areas, issuing Notices to Airmen and Notices to Mariners, and adherence to program Safety plans. These actions would be in compliance with federal, state, and local health and safety requirements and regulations, as well as Department of Defense and Kodiak Launch Complex Safety Policy and would result in no impacts to health and safety. Due to the same precautions taken above, Alternatives 1 and 3 would also result in no impacts to health and safety.

e. *Land Use.* Under the No Action Alternative, Publication of availability of KLC's beaches and coastline will continue. Under Alternative 2 (Selected Alternative), minimal impacts would occur as a result of site preparation and new construction. This activity will limit the use of a small portion of the overall land available for livestock grazing. Only temporary closures during the transportation of missile components to the launch facilities and up to a full day closure on launch days would occur for the Pasagshak Point Road at the KLC site boundary. Under Alternative 1, the proposed activities would not significantly impact the availability of recreational opportunities. Impacts under Alternatives 1 and 3 would be the same as Alternative 2.

f. *Water Resources.* Under the No Action Alternative, Alternative 2 (Selected Alternative), and Alternatives 1 and 3, there is a minor potential for short-term increase in erosion and turbidity of surface waters during construction. Missile launches would disperse exhaust emission products over

a large area. These emissions would not cause a significant water quality impact. Water quality monitoring would continue on an as-needed basis.

2. Vandenberg Air Force Base

a. Air Quality. Under the No Action Alternative, current missile activities would continue. Under Alternative 2 (Selected Alternative) and Alternative 3, the results of modeling to determine exhaust emissions of aluminum oxide, hydrogen chloride, and carbon monoxide show that concentrations produced by dual launches of a Ground-Based Interceptor would remain within NAAQS, California AAQS, and U.S. Air Force standards. Based upon this, the proposed launches would not cause or contribute to violation of any air quality standards. Under Alternative 1, 2 and 3 the results of modeling a dual Peacekeeper target launch to determine exhaust emissions of aluminum oxide, hydrogen chloride, and carbon monoxide show that the level of hydrogen chloride would be below the 1-hour Air Force standard, but would exceed the peak hydrogen chloride standard for a short duration. Other emissions were determined to be within NAAQS and California AAQS. A single Peacekeeper target launch would be within NAAQS, California AAQS, and U.S. Air Force standards. The proposed launches would not cause or contribute to violation of any air quality standards.

b. Biological Resources. Under all alternatives, temporary effects to vegetation from emissions, discoloration and foliage loss and temporary, short-term startle effects from noise to wildlife and birds are possible. Although a remote possibility, individual animals close to the water's surface could be hit by debris.

c. Cultural Resources. Under the No Action Alternative, resources would continue to be managed in accordance with cultural resources regulations. For GBI launches under Alternative 2 (Selected Alternative) and Alternative 3, possible minor modifications may be required for buildings 1819 and 1900, as well as LF–02, LF–03, or LF–10. All of these are listed as National Register of Historic Places-eligible. Prior to the reuse of these facilities, consultation would occur with the State Historic Preservation Officer to ensure their protection or appropriate mitigation to preserve information concerning these buildings. Only in the unlikely event of flight termination over land (necessary debris recovery within the region of influence) would the possibility for impacts to cultural resources from off-road vehicle activity exist. Even then, all areas affected by ground impacts of flight hardware would be cleared of all recoverable debris in strict accordance with current Vandenberg Air Force Base policy. Under Alternatives 1, 2, and 3, possible minor modifications may be required for target facilities. LF–03 and LF–06 are listed as National Register of Historic Places-eligible. Prior to the reuse of these facilities, consultation would occur with the State Historic Preservation Officer to ensure facilities, consultation would occur with the State Historic Preservation Officer to ensure their protection or appropriate mitigation to reserve information concerning the sites. The potential for impacts due to a flight termination over land would be the same as in Alternative 2.

d. Land Use. Under the No Action Alternative, there would be no impact Vandenberg Air Force Base publicizes recreation availability, and activities are consistent with the California Coastal Zone Management Program. Under Alternative 2 (Selected Alternative) and Alternatives 1 and 3, disruption to land use would occur from routine closures of recreation areas near the region of influence during launches. Such action would represent a minimal impact to land use.

3. Ronald Reagan Ballistic Missile Test Site

Biological Resources. Under all alternatives, temporary affects to vegetation from emissions, discoloration and foliage loss and temporary, short-term startle effects from noise to wildlife and birds are possible. Although a remote possibility, individual animals close to the water's surface could be hit by debris. Personnel would be instructed to avoid areas designated as avian or sea turtle nesting or avian roosting habitat and to avoid all contact with any nest that may be encountered.

4. Pacific Missile Range Facility

a. Air Quality. Under the No Action Alternative, current missile activities would continue. Under Alternative 2 (Selected Alternative) and Alternatives 1 and 3, it is anticipated that operation of the TPS–X or continued missile launches would have no adverse impacts on regional air quality at PMRF. Therefore, there would be no change to the region's current attainment statistics.

b. Biological Resources. Under the No Action Alternative, short-term disturbance to wildlife, including migratory birds, from minor site preparation activities and increased personnel could occur. Reflection from outdoor lighting could disorient the Newell's Townsend's shearwater. Temporary effects to vegetation from emissions, discoloration and foliage loss and temporary, short-term startle effects from noise to wildlife and birds are possible. Although a remote possibility, individual animals close to the water's surface could be hit by debris. For Alternative 2 (Selected Alternative) and alternatives 1 and 3, the TPS–X Radar is not expected to add any additional impacts above those identified in the No Action alternative because the TPS–X will not radiate lower than 5 degrees above horizontal and the relatively small radar beam would normally be in motion which reduces the probability of bird species remaining within this limited region of space.

c. Hazardous Materials and Hazardous Waste. Under the No Action Alternative, continued handling and use of limited quantities of hazardous and toxic materials related to pre-launch, launch and post-launch activities would generate small quantities of hazardous waste. Under Alternative 2 (Selected Alternative) and alternatives 1 and 3, in addition to missile launch activities, TPS–X Radar activities would generate small quantities of hazardous waste. The use and disposal of hazardous materials and wastes would be in accordance with Pacific Missile Range Facility, State of Hawaii, Environmental Protection Agency, Occupational Safety and Health Administration, Department of Transportation, and Department of Defense policies and procedures.

d. Health and Safety. Under the No Action Alternative, planning and execution of target launches would continue. Ground and Launch hazard Areas, Notices to Airmen and Notices to Mariners, and implementation of Safety plans would protect workers and the general public. Under Alternative 2 (Selected Alternative) and Alternatives 1 and 3, TPS–X Radar Electromagnetic Radiation hazard zones would be established within the beam's tracking space and near emitter equipment. A visual survey of the area would verify that all personnel are outside the hazard zone prior to startup. The TPS–X Radar would be prevented from illuminating in a designated cutoff zone, in which operators and all other system elements would be located. Potential interference with other electronic and emitter units (flight navigation systems, tracking radars, etc.) would also be examined prior to startup. Compliance with federal, state, and local health and safety requirements and regulations, safety procedures relative to radar operations, as well as Department of Defense and Pacific Missile Range Facility Safety Policy would result in no impacts to health and safety. Missile

launch activities would use the same safety plans and procedures as in the No Action Alternative.

5. Sea-Based Text X-Band Radar

a. Air Quality

1. RTS: The SBX would not be considered a stationary source and would not require a U.S. Army Kwajalein Atoll Environmental Standards New Source Review. The increase in air emissions from operation of the SBX would not affect the region's attainment status.

2. Pearl Harbor: The SBX would not be considered a stationary source and would not require a Prevention of Significant Deterioration review or a Title V permit. Air emissions from the operation of the SBX would be in compliance with appropriate State Implementation Plans.

3. Naval Base Ventura County: The SBX would not be considered a stationary source and would not require a Prevention of Significant Deterioration review or a Title V permit. Air emissions from the operation of the SBX would be in compliance with appropriate State Implementation Plans.

4. Naval Station Everett: The SBX would not be considered a stationary source and would not require a Prevention of Significant Deterioration review or a Title V permit. Air emissions from the operation of the SBX would be in compliance with appropriate State Implementation Plans. Dust suppression measures such as periodic watering of areas being graded, minimizing area traffic, reducing vehicle speeds near work areas, and wet sweeping or otherwise removing soil deposits from paved roadways and parking areas, would be used as required for support facility construction.

5. Adak, Alaska (Selected Alternative): The SBX would not be considered a stationary source and would not require a Prevention of Significant Deterioration review or a Title V permit. Air emissions from the operation of the SBX would be in compliance with appropriate State Implementation Plans.

6. Valdez, Alaska: The SBX would not be considered a stationary source and would not require a Prevention of Significant Deterioration review or a Title V permit. Air emissions from the operation of the SBX would be in compliance with appropriate State Implementation Plans.

b. Airspace. All sites: Potential impacts to airspace would be minimized by adhering to operational requirements. An Electromagnetic Radiation/Electromagnetic Interference survey and analysis and DD Form 1494 would be required as part of the spectrum certification and frequency allocation process. The SBX high-energy radiation area would be configured to minimize potential impacts to aircraft and other potentially affected systems, and would be published on aeronautical charts. In addition, SBX information would be published in the Airport Facility section of the FAA Airport Guide, and local Notices to Airmen would be issued. Flight service personnel would brief pilots flying in the vicinity about the SBX high-energy radiation area.

c. Biological Resources. For all sites, minor, short-term impacts from construction noise, such as starting and temporary displacement, may occur. The SBX is not expected to radiate lower than 10 degrees above horizontal for calibration and maintenance testing at the mooring site. The relatively small radar beam would normally be in motion that reduces the probability of bird species, marine mammals, or sea turtles remaining within this limited region of space. The SBX vessel would incorporate marine pollution control procedures such as keeping decks clear of debris, cleaning spills, and residues, and engaging in spill and pollution prevention practices in compliance with the Uniform National Discharge Standards provisions of the Clean Water Act. The potential for impacts to marine mammals or sea turtles due to an accidental release of diesel fuel is considered low. The relatively slow speed of the SBX platform would preclude the potential for collision with a free-swimming marine mammal.

1. RTS: Overall no adverse impacts to marine mammals or sea turtles are anticipated.

2. Pearl Harbor: Overall no adverse impacts to marine mammals or sea turtles are anticipated.

3. Naval Base Ventura County: No significant long-term adverse impacts are anticipated to seabirds and shorebirds, Guadalupe fur seals, California sea lions, northern elephant and harbor seals and sea otters or to widely distributed, open water species such as gray and killer whales.

4. Naval Station Everett: No significant long-term adverse impacts are anticipated to seabirds and shorebirds (bald eagle), Chinook salmon, bull trout, or widely distributed, open water species such as humpback, blue, fin, sei, and sperm whales; green, leatherback, and loggerhead sea turtles; and Steller sea lions.

5. Adak, Alaska (Selected Alternative): No significant long-term adverse impacts are anticipated to seabirds and water fowl or widely distributed, open water species such as Steller sea lions, sea otters, harbor seals, and whales.

6. Valdez, Alaska: No significant long-term adverse impacts are anticipated to Essential Fisk Habitat, area seabirds and water fowl, or widely distributed, open water species such as humpback, killer and minke whales, sea otters, Steller sea lions, harbor seals, and Dall and harbor porpoise.

d. Hazardous Materials and Waste. All potential sites: The small quantities of potentially hazardous materials used during construction activities would result in generation of added wastes that would be accommodated in accordance with existing protocol and regulations. The SBX would follow U.S. Navy requirements that, to the maximum extent practicable, ships shall retain hazardous waste aboard ship for shore disposal. In compliance with Uniform National Discharge Standards, the SBX vessel would incorporate marine pollution control devices, such as keeping decks clear of debris, cleaning spills and residues and engaging in spill and pollution prevention practices, in design or routine operation. Handling and disposal of hazardous materials and hazardous waste would be in accordance with state, Environmental Protection Agency, Occupational Safety and Health Administration, Department of Transportation, and Department of Defense policies and procedures.

e. Health and Safety. All potential sites: An Electromagnetic Radiation/Electromagnetic Interference survey and analysis and DD Form 1494 would be required as part of the spectrum certification and frequency allocation process. Implementation of SBX operational safety procedures, including establishment of controlled areas, and limitations in the areas subject to illumination by the radar units, would preclude any potential safety hazard to either the public or workforce. These limitations would be similar to the existing Ground-Based Radar Prototype on Kwajalein, resulting in no impacts to health and safety.

f. Visual and Aesthetic Resources.

1. RTS: No impact.

2. Pearl Harbor: Visual impacts would be minor, as the SBX would be comparable to ships passing along the horizon. The SBX would be moored at an adequate distance away from the shore and would not obstruct panoramic views. Visual resources could be affected by the SBX if it is in the line of site from boats to the island; however,

the SBX would only inhibit the view of the island temporarily as the boat passes by.

3 Naval Base Ventura County: No impact.

4. Naval Station Everett: While there is a high amount of viewer concern, the SBX would be considered visually compatible with the port and present military uses; therefore only moderate impacts are expected.

5. Adak, Alaska (Selected Alternative): Due to limited visibility, a moderate scenic value, and low viewer concern, there would be minimal adverse impacts.

6. Valdez, Alaska: Because Valdez is the site of the terminus of the Trans-Alaska Pipeline, numerous oil tankers are entering Prince William Sound which would limit the impacts to visual resources caused by the SBX. However, adverse impacts to visual resources could occur due to some concerned viewers and a high scenic integrity.

F. Mitigation Measures and Monitoring

The applicable mitigation measures specified for each of the sites selected will be implemented as part of the GMD ETR action. A Mitigation Monitoring Plan has been developed to assist in tracking and implementing these mitigation measures. With the implementation of the mitigation measures, all practicable means to avoid or minimize environmental harm from establishing the GMD ETR considered in this ROD have been adopted.

G. Environmentally Preferred Alternative

The environmentally preferred alternative in the EIS is the No-Action Alternative (not proceeding with the GMD ETR) since there will be no new construction or operation of GMD elements at any of the potential sites. Continuation of current site operations at these locations will result in few additional environmental impacts.

Among the three alternatives to the Proposed Action in the EIS, Alternative 2 is the environmentally preferred action to establish and operate the GMD ETR because the proposed GBI launches from existing silos at Vandenberg AFB will require less construction and ground disturbance than the other alternatives. The proposed launches from Vandenberg AFB would be within the number of launches per year allowed in existing agreements with state and federal regulatory agencies. Adak, Alaska is the environmentally preferred location to establish a SBX PSB because, while placement of the mooring may cause minor impacts to the environment, locating the SBX at Adak would require little or no new construction of administrative or warehouse facilities and operations would have minimal adverse impacts on the surrounding environment.

Conclusion

In accordance with NEPA, I have considered the information contained within the GMD ETR EIS as well as cost, mission requirements and other factors in deciding to establish an extended GMD test range capability.

I have decided to select Alternative 2 over the other alternatives to the proposed action. Although the No-Action Alternative has fewer environmental impacts, it does not support the agency's ability to conduct realistic testing nor does it support IDO as directed by the President. Selection of Alternative 2 will meet the mission requirements of creating an extended test range for the GMD wile utilizing, to the greatest extent practicable, existing test assets at Vandenberg AFB, the Pacific Missile Range Facility and the Reagan Test Site and associated test support sites. Alternative two also offers the quickest path to enable the program to support IDO and provide a protective capability for the nation.

I have chosen Alternative 2 over Alternative 3 because there are currently no plans to finance GBI interceptors at KLC. If funding becomes a realistic possibility in the future, I will re-assess this view, and perform additional NEPA as appropriate before making any decisions in this regard.

LTG R. KADISH have also decided to defer any decisions at KLC regarding the remainder of the actions contemplated in Alternative 2. FAA, as cooperating agency to this EIS, may entertain relicensing activities at KLC. LTG R. Kadish believe my decision should be deferred pending those activities so that LTG R. Kadish can be confident that all operational and environmental concerns have been addressed.If FAA acts to re-license KLC, LTG R. Kadish may issue an additional ROD at that time, as appropriate.

LTG R. Kadish have further decided to construct and operate the SBX, and have chosen Adak, Alaska as the location for the PSB. When work commenced on this EIS, the President had not directed the IDO capability enhancements. Accordingly, the SBX PSB analysis was focused only on various test locations in the Pacific region. In view of the President's directive on 16 December 2002, LTG R. Kadish have re-examined candidate PSB locations and selection Adak, Alaska as the most prudent location to support IDO while still supporting the test program.

Dated: August 19, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–21653 Filed 8–25–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Intent To Grant an Exclusive License to Foster Miller, Inc.

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: In accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(l)(i), announcement is made of the intent to grant an exclusive, royalty-bearing, revocable license to U.S. patent application number 09,715,496 filed November 17, 2000 entitled "Wearable Transmission Device" to Foster Miller, Inc. with its principal place of business at 350 Second Avenue, Waltham, MA 02451.

DATES: File written objections by September 10, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Rosenkrans at U.S. Army Soldier and Biological Chemical Command, Kansas Street, Natick, MA 01760, Phone; (508) 233–4928 or e-mail: *Robert.Rosenkrans@natick.army.mil.*

SUPPLEMENTARY INFORMATION: The prospective partially exclusive licenses will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive licenses may be granted, unless within fifteen (15) days from the date of this published notice, Soldier and Biological Chemical Command receives written evidence and argument to establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–21791 Filed 8–25–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Proposed Renourishment of the Brunswick County Beaches—Caswell Beach, Oak Island, and Holden Beach Portion, Brunswick County, NC

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Recent storms, in addition to natural coastal processes, have seriously eroded the oceanbront beaches of the Caswell Beach, Oak Island, and Holden Beach communities, located adjacent to the Atlantic Ocean, in Brunswick County, North Carolina. The proposed project will renourish the beach and dunes for approximately 11.8 miles of Caswell Beach and Oak Island, and 7.1 miles of Holden Beach, using beach compatible sand from one or more offshore borrow sources. Benefits that will accrue from the proposed beach renourishment include the protection of developed property from future storm and erosion damages, and the maintenance and enhancement of the Brunswick County Beaches tourism industry.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft Environmental Impact Statement (DEIS) can be answered by: Mr. Jeff Richter; Environmental Resources Branch; U.S. Army Engineer District, Wilmington; Post Office Box 1890; Wilmington, NC 28402–1890; telephone (910) 251–4636.

SUPPLEMENTARY INFORMATION: Project alternatives being considered include other methods of storm damage reduction and property protection, different project designs, various sand borrow sites, and no action. Hydraulic pipeline dredges are to be used to dredge and pump sand from the selected offshore borrow site(s) to the beach. As the discharge site moves along the beach away from the dredge, bulldozers move the sand and shape the new beach.

All private parties and Federal, State, and local agencies having an interest in the study are hereby notified of the intent to prepare a DEIS and are invited to comment at this time. Also, a scoping letter requesting input to the study was sent to all known interested parties on January 24, 2000. Based on comments received to date, a scoping meeting will not be needed. All comments received as a result of this notice of intent and the scoping letter will be considered in the preparation of the DEIS.

Significant issues to be analyzed in the DEIS include: (1) Dredging of benthic resources; (2) impact on primary nursery areas, anadromous fish, threatened and endangered sea turtles and piping plovers, and marine mammals; and (3) impacts to intertidal invertebrates, nektonic and benthic species, and other marine species occurring near the subject beaches.

The lead agency for this project is the U.S. Army Engineer District, Wilmington. Cooperating agency status has not been assigned to, nor requested by, any other agency.

The DEIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended, and will address the relationship of the proposed action to all other applicable Federal and State Laws and Executive Orders.

The DEIS is currently scheduled to be available in July 2004.

Dated: August 8, 2003.

Charles R. Alexander, Jr.,

Colonel, U.S. Army, District Engineer.

[FR Doc. 03–21792 Filed 8–25–03; 8:45 am]

BILLING CODE 3710–CE–M

DEPARTMENT OF EDUCATION

[CFDA No. 84.019A]

Office of Postsecondary Education; Fulbright-Hays Faculty Research Abroad Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: The Fulbright-Hays Faculty Research Abroad Fellowship Program offers opportunities to faculty members of institutions of higher education for research and study in modern foreign languages and area studies.

For FY 2004 the competition for new awards focuses on projects designed to meet the priority we describe in the PRIORITY section of this application notice.

Eligible Applicants: Institutions of higher education.

Applications Available: August 26, 2003.

Deadline for Transmittal of Applications: October 20, 2003.

Estimated Available Funds: The Administration has requested $1,575,000 for Fulbright-Hays Faculty Research Abroad Fellowship Program new awards for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $20,000–$100,000.

Estimated Average Size of Fellowship Awards: $47,727.

Estimated Number of Awards: 33 fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning July 1, 2004. Faculty may request funding for 3–12 months.

Page Limit: The application narrative is where the faculty applicant addresses the selection criteria that reviewers use to evaluate the application. The faculty applicant must limit the narrative to the equivalent of no more than 10 pages, and the references to the equivalent of no more than 2 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10-pitch (characters per inch).

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the bibliography. However, the faculty applicant must include the complete response to the selection criteria in the application narrative.

We will reject an application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 663.

Priority

This competition focuses on projects designed to meet a priority in the regulations for this program (34 CFR 663.21(d)), which provides that priorities may be established for projects focusing on certain geographic areas in addition to certain other categories.

Absolute Priority

A research project that focuses on one or more of the following areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (Canada, Central and South America, Mexico, and the Caribbean). Please note that applications that propose projects focused on Western Europe will not be funded.

Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Performance Measures: The effectiveness of the Fulbright-Hays Faculty Research Abroad Fellowship Program will be measured by the improvement of language proficiency of fellows. All grantees will be expected to provide documentation of the improved language proficiency of fellows through the Department's Evaluation of Exchange, Language, International and Area Studies (EELIAS) electronic reporting system for the purposes of assessing the effectiveness of individual projects and the program overall.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants for FY 2004 under the Fulbright-Hays Faculty Research Abroad Fellowship Program be submitted electronically using e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

An applicant who is unable to submit an application through the e-GRANTS system may submit a written request for a waiver of the electronic submission requirement. In the request, the applicant should explain the reason or reasons that prevent the applicant from using the Internet to submit the application. The request should be addressed to: Eliza Washington or Amy Wilson, U.S. Department of Education, 1990 K St., NW., Suite 6000, Washington, DC 20006–8521. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, an applicant is unable to submit an application electronically, the applicant must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant from using the Internet to submit the application.

Pilot Project for Electronic Submission of Applications

In FY 2004, the Department is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Fulbright-Hays Faculty Research Abroad Fellowship Program—CFDA 84.019A is one of the programs included in the pilot project. If you are an applicant under the Fulbright-Hays Faculty Research Abroad Fellowship Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

Note: In order for institutions to apply electronically, potential project directors must email the following information to fra@ed.gov: first and last name of potential project director, university, and email address. This information must be submitted no later than September 8, 2003.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC, time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC, time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Fulbright-Hays Faculty Research Abroad Fellowship Program at:
http://e-grants.ed.gov.

Note: An applicant institution of higher education must submit all individual applications in electronic format unless the institution receives a waiver of this requirement. Individuals interested in funding under this program must check with the applicant institution to see if the institution is participating in e-Application, or has requested a waiver.

FOR FURTHER INFORMATION CONTACT: Eliza Washington or Amy Wilson, International Education and Graduate Programs Service, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7700 or via Internet: *fra@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in PDF at the following site: *http://www.ed.gov/HEP/iegps.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 22 U.S.C. 2452(b)(6).

Dated: August 21, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–21812 Filed 8–25–03; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No. 84.022A]

Office of Postsecondary Education; Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: The Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program provides opportunities for graduate students to engage in full-time dissertation research abroad in modern foreign languages and area studies.

For FY 2004 the competition for new awards focuses on projects designed to meet the priority we describe in the PRIORITY section of this application notice.

Eligible Applicants: Institutions of higher education.

Applications Available: August 26, 2003.

Deadline for Transmittal of Applications: October 20, 2003.

Estimated Available Funds: The Administration has requested $4,580,000 for Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program new awards for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $15,000–$60,000.

Estimated Average Size of Fellowship Awards: $26,941.

Estimated Number of Awards: 170 fellowships.

Note: The Department is not bound by any estimates in this notice.

Project Period: The institutional project period is 18 months beginning July 1, 2004. Students may request funding for 6–12 months.

Page Limit: The application narrative is where the student applicant addresses the selection criteria that reviewers use to evaluate the application. The student must limit the narrative to the equivalent of no more than 10 pages, and the references to the equivalent of no more than 2 pages, using the following standards:

- A "page" is 8.5" x 11", on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the bibliography. However, the student must include the complete response to the selection criteria in the application narrative.

We will reject an application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR part 662.

Priority

This competition focuses on projects designed to meet a priority in the regulations for this program (34 CFR 662.21(d)).

Absolute Priority: A research project that focuses on one or more of the following areas: Africa, East Asia, Southeast Asia and the Pacific Islands, South Asia, the Near East, East Central Europe and Eurasia, and the Western Hemisphere (Canada, Central and South America, Mexico, and the Caribbean). Please note that applications that propose projects focused on Western Europe will not be funded.

Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Performance Measures: The effectiveness of the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program will be measured by the improvement in the language proficiency of fellows. All grantees will

be expected to provide documentation of the improved language proficiency of fellows through the Department's Evaluation of Exchange, Language, International and Area Studies (EELIAS) electronic reporting system for the purposes of assessing the effectiveness of individual projects and the program overall.

Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants for FY 2004 under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program be submitted electronically using e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

An applicant who is unable to submit an application through the e-GRANTS system may submit a written request for a waiver of the electronic submission requirement. In the request, the applicant should explain the reason or reasons that prevent the applicant from using the Internet to submit the application. The request should be addressed to: Karla Ver Bryck Block or Sara Starke, U.S. Department of Education, 1990 K St., NW., Suite 6000, Washington, DC 20006–8521. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, an applicant is unable to submit an application electronically, the applicant must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant from using the Internet to submit the application.

Pilot Project for Electronic Submission of Applications

In FY 2004, the Department is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program—CFDA 84.022A is one of the programs included in the pilot project. If you are an applicant under the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

Note: In order for institutions to apply electronically, potential project directors must email the following information to *ddra@ed.gov:* first and last name of potential project director, university, and email address. This information must be submitted no later than September 8, 2003.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, except transcripts, including the Application for Federal Education Assistance (ED 424), and all necessary assurances and certifications. Transcripts must be mailed separately.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the Fulbright-Hays Doctoral Dissertation Research Abroad Fellowship Program at: *http://e-grants.ed.gov.*

Note: An applicant institution of higher education must submit all individual applications in electronic format unless the institution receives a waiver of this requirement. Individuals interested in funding under this program must check with

the applicant institution to see if the institution is participating in e-Application, or has requested a waiver.

FOR FURTHER INFORMATION CONTACT: Karla Ver Bryck Block or Sara Starke, International Education and Graduate Programs Service, U.S. Department of Education, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7632 or via Internet: *ddrq@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

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You may also view this document in PDF at the following site: *http://www.ed.gov/HEP/iegps/*.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 22 U.S.C. 2452(b)(6).

Dated: August 21, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–21814 Filed 8–25–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.017A]

Office of Postsecondary Education; International Research and Studies Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: The International Research and Studies Program provides grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields.

For FY 2004, we encourage applicants to design projects that focus on the invitational priorities in the Priorities section of this application notice.

Eligible Applicants: Public and private agencies, organizations, institutions, and individuals.

Applications Available: August 26, 2003.

Deadline for Transmittal of Applications: November 3, 2003.

Estimated Available Funds: The Administration has requested $2,053,000 for International Research and Studies new awards for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Estimated Range of Awards: $30,000—$170,000 per year.

Estimated Average Size of Awards: $108,053 per year.

Estimated Number of Awards: 19.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limit: The application narrative, section C, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 30 pages, using the following standards:

- A "page" is 8.5″ × 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs. Charts, tables, figures, and graphs presented in the application narrative do count toward the page limit.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However you may use a 10-point font in charts, tables, figures, and graphs.

The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; the one-page abstract; or the appendices. However, you must include your complete response to the selection criteria in the application narrative in section C.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, 86, 97, 98, and 99; (b) the regulations in 34 CFR part 655; and (c) the regulations for this program in 34 CFR part 660.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities

Invitational Priorities: We are particularly interested in applications that meet the following invitational priorities.

Invitational Priority 1

Research, surveys, studies, or development of instructional materials that are nonbiased, factually accurate and solicitous of diverse views, and that serve to enhance international understanding for use at the elementary and secondary education levels, or for use in teacher education programs.

Invitational Priority 2

The development of instructional materials that are nonbiased, factually accurate and solicitous of diverse views on the Middle East, Central Asia, and South Asia or the languages spoken in these regions.

Invitational Priority 3

Studies assessing the outcomes and effectiveness of programs authorized under title VI of the Higher Education Act of 1965, as amended, and related programs supported under section 102(b)(6) of the Mutual Educational and Cultural Exchange Act of 1961.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priorities a competitive or absolute preference over other applications.

Application Procedures: The Government Paperwork Elimination Act (GPEA) of 1998 (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999

(Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants for FY 2004 under the International Research and Studies Program be submitted electronically using e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov*.

An applicant who is unable to submit an application through the e-GRANTS system may submit a written request for a waiver of the electronic submission requirement. In the request, the applicant should explain the reason or reasons that prevent the applicant from using the Internet to submit the application. The request should be addressed to: Jose Martinez, U.S. Department of Education, 1990 K St., NW., Suite 6000, Washington, DC 20006–8521. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, an applicant is unable to submit an application electronically, the applicant must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant from using the Internet to submit the application.

Pilot Project for Electronic Submission of Applications

In FY 2004, the Department is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The International Research and Studies Program—CFDA 84.017A is one of the programs included in the pilot project. If you are an applicant under the International Research and Studies Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application and have initiated an e-Application for this competition; and

2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the International Research and Studies Program at: *http://e-grants.ed.gov*.

FOR FURTHER INFORMATION CONTACT: Jose L. Martinez, U.S. Department of Education International Education and Graduate Programs Service, 1990 K Street, NW., Suite 6000, Washington, DC 20006–8521. Telephone: (202) 502–7635, or via Internet: *jose.martinez@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 1125.

Dated: August 21, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–21815 Filed 8–25–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129C, 84.129E, 84.129F, 84.129Q, 84.129R]

Rehabilitation Training: Rehabilitation Long-Term Training; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

Purpose of Program: The Rehabilitation Long-Term Training program provides financial assistance for—

(1) Projects that provide basic or advanced training leading to an academic degree in areas of personnel shortages in rehabilitation as identified by the Assistant Secretary;

(2) Projects that provide a specified series of courses or program of study leading to award of a certificate in areas of personnel shortages in rehabilitation as identified by the Assistant Secretary; and

(3) Projects that provide support for medical residents enrolled in residency training programs in the specialty of physical medicine and rehabilitation.

Eligible Applicants: State agencies and other public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education, are eligible for assistance under the Rehabilitation Long-Term Training program.

Applications Available: August 27, 2003.

Deadline for Transmittal of Applications: October 27, 2003.

Deadline for Intergovernmental Review: December 26, 2003.

Estimated Available Funds: The Administration has requested $42,629,000 for the Rehabilitation Training program for FY 2004, of which an estimated $1,100,000 would be allocated for this competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Note: This competition is being conducted in FY 2003 for grants that will be awarded using FY 2004 funds.

Estimated Range of Awards: $75,000 to $100,000.

Estimated Average Size of Awards: $100,000.

Estimated Total Number of Awards: 11.

Maximum Number of Awards, Maximum Awards, and Absolute Priorities: The maximum number of awards to be made are listed in parentheses following each priority area. We will reject any application that proposes a budget exceeding the amount listed under *Maximum Award* in any project year.

CFDA number	Priority area (maximum number of awards in parentheses)	Maximum award
84.129C	Rehabilitation Administration (4)	$100,000
84.129E	Rehabilitation Technology (2)	$100,000
84.129F	Vocational Evaluation and Work Adjustment (3)	$100,000
84.129Q	Rehabilitation of Individuals Who Are Deaf or Hard of Hearing (4)	$100,000
84.129R	Job Development and Job Placement Services to Individuals With Disabilities (3)	$100,000

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit part III to the equivalent of no more than 35 pages, using the following standards:

- A "page" is 8.5″ x 11,″ on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to part I, the cover sheet; part II, the budget section, including the narrative budget justification; part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in part III. You may include brief appendices, but be advised that peer reviewers are not required to review appendix material.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 99. (b) The regulations in 34 CFR parts 385 and 386.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating an application for a new grant under this competition, we use the selection criteria in 34 CFR 385.31 and 386.20. The selection criteria to be used for this competition will be provided in the application package for this competition.

Priorities: This competition focuses on projects designed to meet the priorities in the regulations for this program (34 CFR 386.1). The priority

areas of personnel shortages are listed in the chart published in this notice.

Under 34 CFR 75.105(c)(3) and 34 CFR 386.1, we consider only applications that propose to provide training in the areas of personnel shortages listed in the chart.

Performance Measures: The Government Performance and Results Act (GPRA) of 1993 directs Federal departments and agencies to improve the effectiveness of their programs by engaging in strategic planning, setting outcome-related goals for programs, and measuring program results against those goals. Program officials must develop performance measures for all of their grant programs to assess their performance and effectiveness. The Rehabilitation Services Administration (RSA) has established a set of indicators to assess the effectiveness of the Rehabilitation Training program and will use the following indicator for the Rehabilitation Long-Term Training program projects:

- The percentage of graduates fulfilling their payback requirement through acceptable employment.

Each grantee must report annually on this indicator using the electronic grantee reporting system administered by RSA for this purpose.

Application Procedures

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

The Department is continuing to expand its pilot project for electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Rehabilitation Long-Term Training program (CFDA numbers 84.129C, 84.129E, 84.129F, 84.129Q, and 84.129R) is one of the programs included in the pilot project. If you are an applicant under the Rehabilitation Long-Term Training program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. If you participate in this voluntary pilot project by submitting an application electronically, the data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate its success and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- Your participation is voluntary.
- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirements described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you elect to participate in the e-Application pilot for the Rehabilitation Long-Term Training program and you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

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You may access the electronic grant application for the Rehabilitation Long-Term Training program at: *http://e-grants.ed.gov*.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*.

Or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.129C, E, F, Q, or R.

FOR FURTHER INFORMATION CONTACT: Marilyn Fountain, U.S. Department of Education, 400 Maryland Avenue, SW., room 3332, Switzer Building, Washington, DC 20202–2649. Telephone (202) 205–8294 or via Internet: *Marilyn.Fountain@ed.gov*.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person

listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 29 U.S.C. 772.

Dated: August 21, 2003.

Loretta Petty Chittum,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 03–21813 Filed 8–25–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project—Base Charge and Rates

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of base charge and rates.

SUMMARY: The Deputy Secretary of the Department of Energy (DOE) has approved Rate Schedule BCP–F6, FY 2004 Base Charge and Rates (Rates) for Boulder Canyon Project (BCP) electric service provided by the Western Area Power Administration (Western). The Rates will provide sufficient revenue to pay all annual costs, including interest expense, and investment repayment within the allowable period.

DATES: The Rates will be effective the first day of the first full billing period beginning on or after October 1, 2003. These Rates will stay in effect through September 30, 2004, or until other Rates replace them.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Team Lead, Desert Southwest Customer Service Region, Western Area Power Administration, PO Box 6457, Phoenix, AZ 85005–6457, telephone (602) 352–2442, e-mail *jmurray@wapa.gov*.

SUPPLEMENTARY INFORMATION: The Deputy Secretary of DOE approved the existing Rate Schedule BCP–F6 for BCP electric service on September 18, 2000 (Rate Order No. WAPA–94, 65 FR 60933, October 13, 2000), on an interim basis. Rate Schedule BCP–F6, effective October 1, 2000, through September 30, 2005, allows for an annual recalculation of the rates. On July 31, 2001, the Federal Energy Regulatory Commission (FERC) approved Rate Order No. WAPA–94 on a final basis.

Under Rate Schedule BCP–F6, the existing composite rate, effective on October 1, 2002, was 11.16 mills per kilowatthour (mills/kWh), the base charge was $50,761,729, the energy rate was 5.58 mills/kWh, and the capacity rate was $1.08 per kilowattmonth (kWmonth). The newly calculated Rates for BCP electric service, to be effective October 1, 2003, will result in an overall composite rate of 12.91 mills/kWh. This is an increase of approximately 16 percent when compared with the existing BCP electric service composite rate. The increase is due to an increase in the annual base charge and a decrease in the projected energy sales. The Fiscal Year (FY) 2004 base charge is increasing to $51,719,075. The increase is due mainly to a reduction in visitor service revenues resulting from fewer tours at the Hoover Dam. The FY 2004 energy rate of 6.46 mills/kWh is approximately a 16-percent increase from the existing energy rate of 5.58 mills/kWh. The increase in the energy rate is due to a decrease in the projected energy sales resulting from lake elevations continuing to drop due to poor hydrology in the lower Colorado River basin. The FY 2004 capacity rate of $1.17/kWmonth is approximately an 8-percent increase from the existing $1.08/kWmonth capacity rate. The capacity rate is increasing due to decreased generation ratings resulting from lower lake elevations. Another factor that contributes to the increase in the energy and capacity rates is the increase in the annual base charge.

The following summarizes the steps taken by Western to ensure involvement of all interested parties in determining the Rates:

1. A **Federal Register** (FR) notice was published on February 27, 2003 (68 FR 9078), announcing the proposed rate adjustment process, initiating a public consultation and comment period, announcing public information and public comment forums, and presenting procedures for public participation.

2. On March 7, 2003, a letter was mailed from Western's Desert Southwest Customer Service Region to the BCP Contractors and other interested parties announcing an informal customer meeting, and public information and comment forums. The BCP Contractors consist of Municipalities in Arizona and Nevada, States Agencies from Arizona, Nevada, and Southern California and an Investor-Owned Utility from Southern California.

3. Discussion of the proposed Rates was initiated at an informal BCP Contractor meeting held March 19, 2003, in Phoenix, Arizona. At this informal meeting, representatives from Western and the Bureau of Reclamation (Reclamation) explained the basis for estimates used to calculate the Rates. A question and answer session was held.

4. At the public information forum held on April 1, 2003, in Phoenix, Arizona, Western and Reclamation representatives explained the proposed Rates for FY 2004 in greater detail. A question and answer session was held.

5. A public comment forum was held on April 23, 2003, in Phoenix, Arizona, to give the public an opportunity to comment for the record. Four persons representing customers made oral comments.

6. One comment letter was received during the 90-day consultation and comment period. The consultation and comment period ended May 28, 2003. All comments were considered in developing the Rates for FY 2004. Written comments were received from: Irrigation & Electrical Districts Association of Arizona, AZ.

Comments and responses, paraphrased for brevity, are presented below.

Agency Accountability

Comment: The Contractors stressed the importance of accountability, for both Western and the U. S. Bureau of Reclamation, under the implementation agreement processes, and indicated that there appears to be something wrong in the processes. Similarly, concern was expressed over the significant increases

in Reclamation's costs over the last 8 years, particularly the administrative and general expenses increasing by 128 percent since 1996. The Contractors requested a specific breakdown and itemization of the expenses be provided for discussion at the next engineering and operating committee (E&OC) meeting on May 14, 2003. The E&OC is a committee established by the BCP Implementation Agreement.

Response: Western and Reclamation agreed that each agency has an obligation under the implementation agreement to uphold accountability in all the various processes. Both agencies have stated that they are willing to work with the Contractors to alleviate these concerns. This was an agenda item for discussion at the May 2003 E&OC meeting. Also, Reclamation provided the requested detail of the itemized administrative and general costs for discussion at the meeting.

Congressional Authorization

Comment: The Contractors expressed concern that some security costs resulting from activities made necessary after the September 11, 2001, terrorist attack are not being considered as non-reimbursable costs; specifically, $600,000 identified in Reclamation's budget in FY 2003 for Information Technology (IT) Security. The Contractors believe Congress was very specific in deeming such costs non-reimbursable and providing funding to cover the costs.

Response: Reclamation did receive a supplemental appropriation in FY 2003 for IT security related to counterterrorism, of which $3.3 million was earmarked for IT security ($1.8 million for implementation of the Office of Inspector General's audit recommendation including accreditation and certification, training, and background investigations, and $1.5 million for implementation of network security improvements including system conversions). Appropriations for physical security, such as guards and surveillance, equipment, etc., are entirely separate from the appropriations for IT security. The $600,000 identified in Reclamation's budget is considered normal IT security costs. It covers Reclamation's perimeter security system (RECNET) assessment, fire walls and intrusion detection, accreditation and certification, and application conversions. Reclamation believes that Ninety thousand dollars ($90,000) of these funds may qualify as non-reimbursable and therefore are being submitted for consideration for supplemental funding. If the supplemental funding is obtained, the $600,000 will be reduced by $90,000.

Revenue Transfers

Comment: An interested party representative expressed concern that Western was making a unilateral decision of transferring a portion of revenues from the Parker-Davis Project (P–DP) to the BCP without the consent of either the P–DP or BCP customers. The interested party indicated that the customers first needed to see the documentation supporting this determination.

Response: Western has the obligation under the BCP Electric Service Contracts to equitably apportion benefits and appropriate charges among the BCP, other Desert Southwest Projects, and other Federal Projects on the Colorado River. Western recognizes the customers' concerns with the methodology that is currently being applied to transmission losses, spinning reserves and regulation revenues. Western has chartered a team to establish a control area accounting methodology that identifies compensation due to all projects. The expected duration of the project is 12 months with an implementation phase to follow. As Western moves further into the project it will hold a meeting to share information and receive input regarding the accounting methodology.

BCP Electric Service Rates

BCP electric service rates are designed to recover an annual revenue requirement that includes the operation and maintenance expenses, payments to States, visitor services, uprating program, replacements, investment repayment, and interest expense. Western's power repayment study allocates the projected annual revenue requirement for electric service between capacity and energy, 50 percent to capacity and 50 percent to energy.

Procedural Requirements

BCP electric service rates are developed under the Department of Energy Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved, were transferred to and vested in the Secretary of Energy.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the FERC. Existing DOE procedures for public participation in electric service rate adjustments are located at 10 CFR part 903, effective September 18, 1985 (50 FR 37835). DOE procedures were followed by Western in developing the rate formula approved by FERC on July 31, 2001, at 96 FERC ¶ 61,171.

The Boulder Canyon Project Implementation Agreement Contract No. 95–PAO–10616 requires Western, prior to October 1 of each rate year, to determine the annual rates for the next fiscal year. The rates for the first rate year and each fifth rate year thereafter, will become effective provisionally upon approval by the Deputy Secretary subject to final approval by the FERC. For all other rate years, the rates will become effective on a final basis upon approval by the Deputy Secretary.

Western will continue to provide the Contractors annual rates by October 1 of each year using the same rate-setting formula. The rates are reviewed annually and adjusted upward or downward to assure sufficient revenues to achieve payment of all costs and financial obligations associated with BCP. Each fiscal year, Western prepares a power repayment study that updates actual revenues and expenses and includes future estimates of annual revenues and expenses for the BCP including interest and capitalized costs.

Western's BCP electric service rate-setting formula set forth in Rate Order No. WAPA–70 was approved on April 19, 1996, in Docket No. EF96–5091–000 at 75 FERC ¶ 62,050, for the period beginning November 1, 1995, and ending September 30, 2000. Rate Order No. WAPA–94 extended the existing rate-setting formula beginning on October 1, 2000, and ending September 30, 2005. The BCP rate-setting formula includes a base charge, an energy rate, and a capacity rate. The rate-setting formula was used to determine the BCP FY 2004 Base Charge and Rates.

Western proposes the FY 2004 base charge of $51,719,075, the energy rate of 6.46 mills/kWh, and the capacity rate of $1.17/kWmonth be approved on a final basis.

Consistent with procedures set forth in 10 CFR part 903, Western held a consultation and comment period. The

notice of the proposed FY 2004 Rates for electric service was published in the **Federal Register** on February 27, 2003.

Following review of Western's proposal, I approve the FY 2004 Rates, on a final basis for BCP electric service, under Rate Schedule BCP–F6, through September 30, 2004.

Dated: August 14, 2003.

Kyle E. McSlarrow,

Deputy Secretary.

[FR Doc. 03–21776 Filed 8–25–03; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0036; FRL–7325–2]

National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances; Notice of Public Meeting; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In the **Federal Register** of August 20, 2003, EPA announced a Notice of a public meeting scheduled for the National Advisory Committee for Acute Exposure Guideline Levels for Hazardous Substances for September 16—18, 2003, in Washington, DC. There were three chemicals that were inadvertently omitted and seven chemicals that were inadvertently listed. This document is being published to correct the list of chemicals.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information contact: Paul S. Tobin, Designated Federal Officer (DFO), Economics, Exposure, and Technology Division (7406M), Office of Pollution Prevention and Toxics, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8557; e-mail address: *tobin.paul@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

The Agency included in the notice of August 20, 2003 a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0036. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Correction

In FR Doc. 03–21352 published in the **Federal Register** of August 20, 2003 (FRL–7319–2), appearing on page 50135, in the first column, in the **SUMMARY**, beginning with the twelfth line, the list of chemicals should have read as follows:

Acetone cyanohydrin; acetonitrile; acrylic acid; bromine; butane; carbon monoxide; chloroacetic acid; chloroacetonitrile; dimethyl sulfate; disulfur dichloride; fluorine; hydrogen iodide; isobutyronitrile; jet fuel 8; malononitrile; methanol; methyl ethyl ketone; phenol; phosphorus oxychloride; phosphorus trichloride; propane; propionitrile; styrene; sulfur dichloride; vinyl chloride; and xylenes.

List of Subjects

Environmental protection, Chemicals, Hazardous substances, Health.

Dated: August 21, 2003.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 03–21861 Filed 8–22–03; 10:26 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7548–2]

San Fernando Valley—Glendale Operable Units Superfund Site, Proposed Notice of Administrative Settlement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, notice is hereby given that a proposed Prospective Purchaser Agreement associated with the San Fernando Valley Crystal Springs (Area 2) Superfund Site—Glendale Operable Units was executed by the United States Environmental Protection Agency ("EPA") on June 24, 2003. The proposed Prospective Purchaser Agreement amends a prior Prospective Purchaser Agreement executed by EPA on February 12, 2001. The proposed Prospective Purchaser Agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, against Home Depot U.S.A., Inc. (the "Purchaser"). The Purchaser plans to acquire two contiguous parcels located within the Glendale Operable Units, 1200 South Flower Street, Burbank, California and 801 Allen Avenue, Glendale, California for the construction of a Home Depot U.S.A. retail operation. The proposed settlement would require

the Purchaser to pay EPA a one-time payment of $10,000.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

DATES: Comments must be submitted on or before September 25, 2003.

AVAILABILITY: The proposed Prospective Purchaser Agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from Marie M. Rongone, Senior Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "First Amended Home Depot U.S.A. Prospective Purchaser Agreement, San Fernando Valley Superfund Site, Glendale Operable Unit," and "Docket No. 2001–06" and should be addressed to Marie M. Rongone at the above address.

FOR FURTHER INFORMATION CONTACT: Marie M. Rongone; Senior Counsel (ORC–3), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; e-mail: *rongone.marie@epa.gov*; Telephone: (415) 972–3891, Facsimile: (415) 947–3570 or 3571.

Dated: August 12, 2003.

E. Adams,

Acting Director, Superfund Division, EPA, Region IX.

[FR Doc. 03–21782 Filed 8–25–03; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meeting

ACTION: Notice of a partially open meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, August 28, 2003 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

OPEN AGENDA ITEM: Short Term Insurance Program for Iraq.

PUBLIC PARTICIPATION: The meeting will be open to public participation for Item No. 1 only. Attendees that are not employees of the Executive Branch will be required to sign in prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Office of the Secretary, 811 Vermont Avenue, NW., Washington, DC 20571 (Telephone No. 202–565–3957).

James K. Hess,

Senior Vice President and Chief Financial Officer.

[FR Doc. 03–21988 Filed 8–22–03; 3:38 pm]

BILLING CODE 6690–01–M

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Tuesday, September 2, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personal actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 22, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–21967 Filed 8–22–03; 2:35 pm]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–62–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503; or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Racial and Ethnic Approaches to Community Health Information Network (REACH IN)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

REACH IN is a customized internet-based support system that will allow the Racial and Ethnic Approaches to Community Health 2010 (REACH 2010) Program grantees to perform remote data entry and retrieval of data on the grantees' actions, intervention activities, community/systems change, and change among change agents. This support system is also designed to create on-demand graphs and reports of the grantees' actions and accomplishments. This system will be used by grantees to meet the reporting requirements of their cooperative agreements with CDC. The annual burden for this data collection is 84 hours.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)
REACH 2010 Grantees Officials	42	2	1

Dated: August 19, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–21732 Filed 8–25–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–63–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503; or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Work and Health Study: Risk Factors for Heart Disease and Depression in the Workplace—NEW—The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Cardiovascular disease (CVD) and depression represent health problems of staggering proportion for the United States. An estimated 60 million Americans, over half of whom are younger than 65 years of age, currently have some form of CVD, and nearly 20 percent of all Americans will experience at least one episode of major depression during their lifetimes. In economic terms, the total yearly costs of CVD and depression in the United States have been estimated at $327 billion and $43 billion, respectively.

In addition to being common and costly health problems, CVD and depression co-morbidity is frequent, and recent studies have shown increased cardiovascular morbidity and mortality in depressed patients, implicating depression as a potential independent risk factor for CVD. Understanding the causes and etiologic relationships between these two illnesses represents a major challenge for public health researchers.

In addition to traditionally recognized risk factors, occupational factors appear to play a role in the etiology of both CVD and depression. For example, studies of occupational groups have shown markedly different rates of CVD and depression that are too large to be explained by known risk factors alone, and it is generally inferred that chemical, physical and/or work organizational exposures must be involved. While of relatively recent origins, the term "work organization" has evolved to serve as a rubric that encompasses diverse workplace exposures (often called job stressors) such as psychological demands, limited job control, work role demands and shift-work. There is considerable evidence that such factors play a role in the etiology of both CVD and depression, but design and sample size limitations of existing studies make it difficult to establish a causal association and make specific public health recommendations.

This proposed study will examine the relationships between specific job stressors, CVD and depression. To overcome the limitations of previous studies, we are proposing a five-year prospective study with a population of 20,000 workers, half of them women. Workers will be identified through 20 large businesses sampled from the four geographic Census regions of the U.S. Different types of businesses will be sampled in order to incorporate diverse types of jobs and work. Specific job stressors, perceived non-work stressors and general risk factors for CVD and depression will be assessed. To ascertain exposures and outcomes, the study will rely on employee medical records, blood samples, and both self-reports and work-site assessments of job conditions. Several instruments to evaluate the work environment will be used, including the NIOSH Generic Job Stress Questionnaire, which assess a variety of job stressors, as well as other relevant aspects of the work environment.

This request is for three years of the five-year proposed data collection with a total of 57,721 burden hours, and an average annualized burden of 28,860 hours.

Data	Number of respondents	Number of responses/ respondent	Average burden/response (in hours)
Baseline Interview/Blood Collection Biometrics	21,993	1	75/60
Medical Records for Baseline	4,398	1	30/60
Employer Information	15	1	5
Follow-up Interview 1	17,594	1	30/60
Refusal Questionnaire	4,399	1	5/60
Medical Records for Follow-up 1	3,519	1	30/60
Follow-up Interview 2	14,995	1	30/60
Refusal Questionnaire	2,639	1	5/60
Medical Records for Follow-up 2	2,999	1	30/60
Follow-up Interview 3	12,712	1	30/60
Refusal Questionnaire	2,243	1	5/60
Medical Records for Follow-up 3	2,542	1	30/60

Dated: August 19, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–21733 Filed 8–25–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0361]

Anti-counterfeit Drug Initiative

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is establishing a docket to receive information and comments on the agency's initiative against counterfeit drugs. Many individuals, vendors, trade and professional associations, consumer groups, and other stakeholders have offered to assist FDA. This action is intended to ensure that there is a venue for information and comments to be submitted to the agency regarding the anti-counterfeit initiative.

DATES: The agency encourages interested parties to submit information by November 30, 2003.

ADDRESSES: Submit written comments and information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. All comments submitted to the public docket are public information and may be posted to FDA's Web site (*http://www.fda.gov*) for public viewing. Please include the docket number listed in the heading of this document on all correspondence related to this docket.

FOR FURTHER INFORMATION CONTACT: Poppy Kendall, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360, *e-mail: pkendall@fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Counterfeit drugs pose potentially serious public health and safety concerns. They may contain only inactive ingredients, incorrect ingredients, improper dosages, or even dangerous subpotent or superpotent ingredients. In the United States, drug counterfeiting is a relatively rare event. Although FDA believes domestic counterfeiting is not widespread, the agency has recently seen an increase in counterfeiting activities as well as a more sophisticated ability to introduce finished dosage counterfeits into the otherwise legitimate drug distribution channels. FDA has seen its counterfeit drug investigations increase to over 20 per year since 2000, after averaging only about 5 per year through the late 1990's.

In an effort to protect against the rising occurrence of potentially unsafe counterfeit drugs reaching consumers, on July 16, 2003, FDA announced an initiative to more aggressively protect American consumers from the risks posed by counterfeit drugs. As part of this effort, FDA established an internal task force that will develop recommendations for steps FDA, other government agencies, and the private sector can take to minimize the risks to the public from counterfeit drugs getting into the supply chain. Some of the areas that FDA's task force will explore include the following topics:

- *Technology:* Assess the extent to which new technologies can help assure the authenticity of drugs;
- *Regulatory/Legislative Issues:* Will evaluate potential regulatory and legislative changes that could be made to strengthen the nation's protections against counterfeiting;
- *Public Education:* Recommend ways to educate consumers and health providers on steps they can take to minimize risks associated with counterfeit drugs; will also educate consumers and health professionals about what to look for and what to do if they suspect they have received a counterfeit drug;
- *Industry and Health Professional Issues:* Identify actions industry and health professionals can take to prevent, detect, and respond to counterfeit drugs;

The task force has the following deliverables:

- Interim task force report to be released in September 2003. It will include draft recommendations on which interested persons may comment.
- Public meeting to be held in mid-October 2003. The meeting announcement will be published in a forthcoming **Federal Register** and will pose issues for discussion at the meeting.
- Final task force report to be released in January 2004.

Many individuals, vendors, trade and professional associations, consumer groups, and other stakeholders have offered to assist the agency and provide information that may be helpful in the agency's anti-counterfeit drug efforts. The agency requests that all persons or organizations that would like to provide such information submit it to this docket number.

FDA expects to place submissions it receives on this initiative in the public docket. Therefore, submitters should recognize that information submitted to this docket is public information and can be viewed and accessed by the general public.

Note that, as mentioned previously, the counterfeit task force expects to issue a report with draft recommendations for public comment in September of this year. In addition, the agency expects to hold a public meeting on these issues later this year as well. Comments on the draft report and the issues discussed at the public meeting will sought in future issues of the **Federal Register**.

Dated: August 19, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21751 Filed 8–25–03; 8:45 am]

BILLING CODE 4150–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques

or other forms of information technology.

Proposed Project: The Health Education Assistance Loan (HEAL) Program: Forms—0915–0108—Extension

This clearance request is for extension of approval for the notification, reporting and recordkeeping requirements in the HEAL program to insure that the lenders, holders and schools participating in the HEAL program follow sound management procedures in the administration of federally-insured student loans. While the regulatory requirements are approved under this OMB number, much of the burden associated with the regulations is cleared under the OMB numbers for the HEAL forms and electronic submissions used to report required information (listed below). The table listed at the end of this notice contains the estimate of burden for the remaining regulations.

Annual Response Burden for the following regulations is cleared by OMB when the reporting forms are cleared:

OMB Approval No. 0915–0034, Lender's Contract Application and Borrower Deferment Forms, and Borrower Loan Status and Loan Transfers/Purchases and Consolidation Tape Specification and Submission

Reporting

42 CFR 60.31(a), Lender annual application

42 CFR 60.38(a), Loan Reassignment

Notification

42 CFR 60.12(c)(1), Borrower deferment

OMB Approval No. 0915–0036, Lender's Application for Insurance Claim

Reporting

42 CFR 60.35(a)(1), Lender due-diligence activities

42 CFR 60.35(a)(2), Lender skip-tracing activities

42 CFR 60.40(a), Lender documentation to litigate a default

42 CFR 60.40(c)(i),(ii), and (iii), Lender default claim

42 CFR 60.40(c)(2), Lender death claim

42 CFR 60.40(c)(3), Lender disability claim

42 CFR 60.40(c)(4), Lender report of student bankruptcy

OMB Approval No. 0915–0043, Promissory Note, Repayment Schedule, Call Report

Notification 42 CFR 60.11(e), Establishment of repayment terms-borrower

42 CFR 60.11(f)(5), Borrower notice of supplemental repayment agreement

42 CFR 60.33(e), Executed note to borrower

42 CFR 60.34(b)(1), Establishment of repayment terms—lender

42 CFR 60.42(b), Lender Quarterly Report on HEAL Loans Outstanding (Call Report)

OMB Approval No. 0915–0204, Physicians Certification of Permanent and Total Disability

Reporting

42 CFR 60.39(b)(2), Holder request to Secretary to determine borrower disability

OMB Approval No. 0915–0227, Federal Health Education Assistance Loan Refinancing Application/Promissory Note

Reporting

42 CFR 60.7, Application for loan

42 CFR 60.18 Consolidation of a HEAL loan

The estimate of burden for the regulatory requirements of this clearance are as follows:

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN

Type of burden	Transactions per year	Estimated time per transaction	Annual response burden (hours)
REPORTING			
Subpart D: Lender—28 Participating Lenders			
60.32(b) & (c) Application for lender contract		0.00	0
60.40(c)(1)(iv) Bankruptcy Report to the Secretary	78	12 min	15
60.42(d) Audit	8	240 min. (4 hrs.)	32
60.42(e) Evidence of Fraud	0	120 min. (2 hrs.)	0
60.43(b) Evidence of Cause for Administrative Hearing	0	180 min. (3 hrs.)	0
Subtotal	86		47
Subpart E: School—190 Participating Schools			
60.56(c) Biennial Audit	0	0.00	0
60.60(b) Evidence of Cause for Administrative Hearing	0	0.00	0
60.61(b) Evidence of Fraud	0	0.00	0
60.61(d) Bankruptcy Documentation	78	10 min	13
Subtotal	78		13
Total Reporting			60
NOTIFICATION			
Subpart B: Borrower—7,930 Borrowers			
60.0(a)(5) Sale or Transfer of Loan		Burden included in 60.38a	
60.8(b)(3) Status Change	7,852	10 min	1,309

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN—Continued

Type of burden	Transactions per year	Estimated time per transaction	Annual response burden (hours)
60.61(d)* Bankruptcy	78	10 min	13
Subtotal	7,930		1,322
Subpart D: Lender—28 Participating Lenders			
60.33(g) Denial of Loan	0	14 min	0
60.33(h) Borrower Indebtedness	3,000	1 min	50
60.34(c) Biannual Debt Status	133,178	10 min	22,196
60.35(a)(1) Delinquent Payment Notice to Borrower	34,648	10 min	5,775
60.35(c)(2) Delinquent Notice to Credit Reporting Agency	8,662	10 min	1,443
60.35(e) Final Demand Letter	695	10 min	116
60.37(a) Right to Forbearance	3,000	5 min	250
60.37(c)(3) Reminder of obligation to pay	1,200	10 min	200
60.38(a) Notification to Borrower of Loan Reassignment	7,500	5 min	625
60.40(c)(1)(iv) and (c)(4) Default Notification to Courts	78	25 min	32
Subtotal	191,961		30,687
Subpart E: School—190 Participating Schools			
60.53 Change in Student Status	Burden included with 60.61(a)(7)		
60.54 Notice of Refund Payment	0	25 min	0
60.57 Borrower Identifying Information	73	8 min	10
60.61(a)(1) Entrance Interview	0	35 min	0
60.61(a)(2) Exit Interview	73	50 min	61
60.61(a)(2) Student Departure Notification to Lender	190	35 min	111
60.61(a)(3) Unresolved Discrepancies to Lender	0	12 min	0
60.61(a)(7) Change in Student Address to Lender	73	10 min	12
Subtotal	409		194
Total Notification			32,203
RECORDKEEPING			
Subpart B: Borrower			
60.7(a)(2) Student Signed Stmt.-Gov. Debt Collection Procedures	Burden included in 60.34(b)(2) and 60.61(a)(1)&(2)		
60.7(c)(2) Non-Student signed Stmt.-Gov. Debt Collection	0.00		0.00
Subpart D: Lender—28 Participating Lenders			
60.31(c) Procedures for Servicing & Collecting Loans	28	240 min (4 hrs.)	112
60.33(e) Promissory Note	Burden included in 60.42(a)(2)		
60.34(b)(2) Terms of Repayment Schedules	8,130	5 min	667
60.35(a)(1) Attempts to Collect Delinquent Payment	8,662	5 min	722
60.35(a)(2) Documentation of Skip-tracing	131	10 min	22
60.37(a)(1) Documentation of Borrower's Inability to Pay	2,065	15 min	516
60.37(c) Renewals of Forbearance	2,065	10 min	344
60.37(c)(1) Basis for Belief of Borrower Intent to Default	800	10 min	133
60.40(a) Documentation of Insurance Claims	695	70 min	811
60.42(a)(1) Loan Records	Burden included in 60.42(a)(2)		
60.42(a)(2) Borrower's Payment History	66,589	15 min	16,647
Subtotal	89,165		19,974
Subpart E: School—190 Participating Schools			
60.51(f)(1) Documentation of Needs Analysis Adjustment	Burden included in 60.61(a)(5)		
60.51(f)(2) Documentation of Standard Student Budget Adjustments.	Burden included in 60.61(a)(5)		
60.56(a) Required Retention of HEAL Borrower Records	Burden included in 60.61(a)(5)		
60.56(b) Five year Retention of Student Records			
60.57 Retention of Reports to the Secretary	190	45 min	143
60.61(a)(1) Entrance Interview			
60.61(a)(2) Exit Interview	73	5 min	6
60.61(a)(4) HEAL Check Receipt	0	300 min	0
60.61(a)(5) Complete Records of HEAL Borrowers	90,000	15 min	22,500
60.61(a)(6) Criteria for Student Budgets	190	10 min	32

TABLE OF REGULATORY SECTIONS AND RESPONDENT BURDEN—Continued

Type of burden	Transactions per year	Estimated time per transaction	Annual response burden (hours)
Subtotal	90,453		22,681
Total Recordkeeping			42,655
Total Annual Burden			74,918

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 16C–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 19, 2003.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–21752 Filed 8–26–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Evaluation of the Implementation and Outcomes of the Maternal and Child Health Bureau's National Healthy Start Program—NEW

HRSA's Maternal and Child Health Bureau is planning to conduct a survey to collect information concerning Healthy Start, a community-based initiative, to understand how Healthy Start services are expected to change local health care systems and service delivery and ultimately affect maternal and child health outcomes. The purpose of the survey is to collect consistent and comprehensive information across current grantees about their Healthy Start program, its organizational configuration, community context, and the extent to which the program components address service needs and contribute to grantees meeting their Healthy Start goals. A two-part survey consisting of a mail component followed by a telephone follow-up is proposed. The mail survey will focus on obtaining descriptive and quantitative data that is currently not available. The phone survey will be used to obtain grantee assessments of program achievements, factors that facilitated their achievements, and challenges that they faced.

Data collection will cover information on the five service components (case management, health education, outreach, perinatal depression screening, and interconceptional care), and the four systems-building components (consortium, collaboration with Title V, local health systems action plan, and sustainability plan) that comprise the Healthy Start program. Data gathered from the survey will be used to provide HRSA the information necessary to assess the grantees' achievements of three core Healthy Start program goals: (1) Reduced racial and ethnic disparities in access to and utilization of health services; (2) improved local health care system; and (3) increased consumer or community voice in health care decisions. The survey will provide information that is currently unavailable from the service delivery and performance measure data. Based on the data collected in this survey, the National Evaluator will conduct cross-site analyses.

The estimated burden on respondents is as follows:

Respondents	Number of respondents	Hours per respondent	Total burden hour
Grantees	96	4 (assume mail and phone)	384

The estimated response burden for service providers is as follows:

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 18, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–21753 Filed 8–25–03; 8:45 am]

BILLING CODE 4155–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

Proposed Project: Ryan White Comprehensive AIDS Resources Emergency (CARE) Act and Minority AIDS Initiative (MAI) Consultation Form—New

The purpose of the Ryan White CARE Act is to provide emergency assistance to localities that are disproportionately affected by the human immunodeficiency virus (HIV) epidemic and to make financial assistance available for the development, organization, coordination, and operation of more effective and cost-efficient systems for the delivery of essential services to persons with HIV disease. The CARE Act also provides grants to States, eligible metropolitan areas, community-based programs, and early intervention programs for the delivery of services to individuals and families with HIV infection.

The HRSA's HIV/AIDS Bureau (HAB) administers Titles I, II, III, and IV of the Ryan White CARE Act of 1990, as amended by the Ryan White CARE Act Amendments of 1996 and 2000 (codified under Title XXVI of the Public Health Service Act).

In 1998, President Clinton declared that HIV was a severe and ongoing health crisis among racial/ethnic minority communities. In response to the President's declaration, in fiscal year 1999 the Congressional Black Caucus (CBC) announced funding of a new initiative to address the disproportionate impact of HIV on African-American and Hispanic communities. Since 1999, the initial CBC initiative has been broadened to address the HIV epidemic in other racial and ethnic minority communities. Currently, the HRSA, the Centers for Disease Control and Prevention, the National Institutes of Health, the Office of Public Health and Sciences' Office of Minority Health, the Indian Health Service, and the Substance Abuse and Mental Health Services Administration allocate MAI funds. Direct service providers receiving MAI funds through HAB include organizations whose board of directors and/or direct service employees are racial/ethnic minorities, as well as organizations whose mission is focused on providing care to racial/ethnic minority populations.

The Fax Consultation Form for Minority Providers and Providers Receiving MAI Funds is designed to collect information from (1) service providers receiving MAI funds and (2) service providers funded by the Ryan White CARE Act whose board members or direct service staff are predominantly racial/ethnic minority members. The Fax Consultation Form will address several over-arching questions including: (1) Have the MAI funds increased the number of persons served and the type and availability of services provided in communities of color; (2) have the MAI funds increased the capacity of minority and other CARE Act service providers to provide care and services in communities of color; (3) what has been the impact of MAI funded training, technical assistance (TA), and capacity building of minority and other organizations; and (4) what administrative impact have MAI funds had on CARE Act programs? Information obtained from the Fax Consultation Form for Minority Providers and Providers Receiving MAI Funds will be used to address the over-arching questions, plan new technical assistance and capacity development activities, and inform HAB policies and program management.

The Fax Consultation Form for Minority Providers and Providers Receiving MAI Funds will be transmitted by facsimile to service providers who meet the criteria for completing the form. Responding service providers will return their completed forms by the United States Postal Service, an Internet web-based response form, or by facsimile. The form will be designed to include check box responses and open-ended questions. The form will not require additional data to be collected or analyzed by the responding provider. The form will take no longer than 20 minutes to complete. The form will include questions regarding facilitators and barriers to CARE Act and MAI funding, training and technical assistance needs, ways in which the number of minority service providers engaged in HIV care might be increased, new and expanded activities funded by MAI, extent to which MAI funds have met the needs of racial/ethnic communities, the impact of MAI funds on the administration activities, and methods used to track MAI funds.

The estimated response burden for service providers is as follows:

Estimated number of provider respondents	Estimated responses per provider	Estimated minutes per response	Estimated total minutes burden	Estimated total hour burden
1,500	1	20	30,000	500

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number, 202–395–6974.

Dated: August 19, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–21755 Filed 8–25–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

AETC National Evaluation Center Program Guidance Announcement

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction.

SUMMARY: In notice document FR Doc 03–19996, Vol. 68, No 151, Wednesday, August 06, 2003, make the correction:

On page 46648 in the first column under *Eligible Applicants* add "Applications will be accepted from public and nonprofit private entities including schools and academic health sciences centers."

Dated: August 19, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–21754 Filed 8–26–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Generic Clearance To Collect Medical Outcome and Risk Factor Data From a Cohort of U.S. Radiologic Technologists

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Generic Clearance to Collect Medical Outcome and Risk Factor Data from a Cohort of U.S. Radiologic Technologists. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection (OMB No. 0925–0405 expired 09/30/1999). *Need and Use of Information Collection.* The primary aim of this project is to substantially increase knowledge about the long-term health affects associated with protracted low- to moderate-dose radiation exposures. With this submission, the NIH, Office of Communications and Public Liaison, seeks to obtain OMB's generic approval to conduct occasional surveys of a cohort of U.S. radiologists to ascertain incident cancers, benign conditions associated with high risk of cancer, and selected other health outcomes, as well as demographic, lifestyle, reproductive, employment, and other characteristics that may influence health risks. Researchers at the National Cancer Institute and the University of Minnesota have followed a nationwide cohort of 146,000 radiologists since 1982, of whom 110,000 completed at least one of two prior questionnaire surveys and 17,000 are deceased. This cohort is unique because estimates of cumulative radiation dose to specific organs (*e.g.*, breast) are available and the cohort is largely female, offering a rare opportunity to study effects of low-dose radiation exposure on breast and thyroid cancers, the two most sensitive organ sites for radiation carcinogenesis in women. Primary objectives are to quantify radiation dose-response for: (1) Cancers of the breast, thyroid, other radiogenic sites or histologies, and other cancers; (2) benign breast disease, thyroid nodules, and other benign conditions associated with increased cancer risk; and (3) other selected health outcomes that may be related to radiation exposure (*e.g.*, cardiovascular disease). Findings from this study will address an important gap in the scientific understanding of radiation dose-rate affects, *i.e.*, whether cumulative exposures of the same magnitude have the same health affects when received in single or a few doses over a very short period of time (as in atomic bomb or therapeutic exposures) or in many small doses over a protracted period of time (as in medical or nuclear occupational settings). The first survey will be mailed in 2004 to approximately 100,000 living cohort members who completed at least one prior survey and will collect information on: (1) Medical outcomes (as described above) to assess radiation-related risks; (2) detailed job-specific frequency of performing high-dose procedures (*e.g.*, handling isotopes), use of protective measures (*e.g.*, using lead aprons or standing behind shields), and other work practices (*e.g.*, holding patients for x-rays) to refine the organ dose estimates and associated uncertainty distributions; and (3) behavioral, susceptibility, and residential histories for refining estimates of lifetime ultraviolet (UV) radiation exposure to assess in greater detail the risks of melanoma and non-melanoma skin cancer associated with UV and ionizing radiation exposures, separated and jointly. Subsequent surveys will collect updated information on medical outcomes and risk factors of interest at that time. All surveys will be in optical-read format for computerized data capture. The annual reporting burden is as follows: *Frequency of Response:* On occasion. *Affected Public:* U.S. radiologic technologists who have willingly participated in earlier investigations to quantify the carcinogenic risks of protracted low- to moderate-dose occupational radiation exposures. *Estimated Number of Respondents:* 56,000. *Estimated Number of Responses Per Respondent:* 1. *Average Burden Hours Per Response:* 0.50. *Annual Burden Hours Requested:* 28,200. Total cost to respondents is estimated at $654,804. There are no capital costs, operating costs and/or maintenance costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection information is necessary for the proper performance of the functioning of the National Cancer Institute, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request additional information on the proposed collection of information contact: Michele M. Doody, Radiation Epidemiology Branch, National Cancer Institute, Executive Plaza South, Room 7040, Bethesda, MD 20892–7238, or call non-toll-free at (301) 594–7203. You

may also e-mail your request to *doodym@exchange.nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of this publication.

Dated: August 18, 2003.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–21693 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

NICHD Research Partner Satisfaction Surveys; Proposed Collection, Comment Request

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: *Title:* NICHD Research Partner Satisfaction Surveys. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* Executive Order 12862 directs agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. With this submission, the National Institute of Child Health and Human Development (NICHD), Office of Science Policy, Analysis and Communication (OSPAC), seeks to obtain OMB's generic approval to conduct customer satisfaction surveys surrounding its research programs and activities.

The NICHD was founded in 1963. Its mission is to ensure, through research, the birth of healthy infants and the opportunity for each to reach full potential in adulthood, unimpaired by physical or mental disabilities. The NICHD conducts and supports research on the many factors that protect and enhance the processes of human growth and development. The developmental focus of the NICHD means that its research portfolio is unusually broad. NICHD programs include research on infant mortality, birth defects, learning disorders, developmental disabilities, vaccine development, and demographic and behavioral sciences, among others.

In addition to supporting laboratory research, clinical trials, and epidemiological studies that explore health processes, the NICHD disseminates information that emanates from its research programs to its customers, or those who are partners with the Institute. This includes scientists, practitioners, other health professionals, and the public.

Survey information will augment the NICHD's on-going efforts to evaluate their research funding mechanisms, activities, and programs, as well as the information products that are used to disseminate research findings. Primary objectives are: (1) To identify opportunities and barriers to achieving scientific aims; (2) to learn about emerging scientific opportunities and unmet public health needs; (3) to measure customer satisfaction with information products; and (4) to identify strengths and weaknesses of the NICHD's program operations. The OSPAC will use the survey results to better respond to its customers, including its various partners in research, and to improve the NICHD's research programs and activities. Findings will help to: (1) Formulate strategies to help enhance research opportunities and remove barriers; (2) target the NICHD's research programs and activities to take advantage of emerging scientific opportunities and meet public health needs related to its mission; (3) develop information products tailored to the NICHD audience; and (4) improve program planning, management, and operations. *Frequency of Response:* Annual [As needed on an on-going and concurrent basis]. *Affected Public:* Members of the public, researchers, practitioners, and other health professionals. *Type of Respondents:* Members of the public; eligible grant applicants and actual applicants (both successful and unsuccessful); clinicians and other health professionals; and actual or potential clinical trials participants. The annual reporting burden is as follows: *Estimated Number of Respondents:* 3,954; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* Varies with survey type, see below; and *Estimated Total Annual Burden Hours Requested:* 1113.25. The annualized cost to respondents is estimated at: $16,698.75. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Web-based	3,387	1	0.25	846.75
E-mail	100	1	0.25	25.00
Telephone	214	1	0.50	107.00
Paper	237	1	0.50	118.50
In-person	16	1	1.00	16.00
Total	3,954			1,113.25

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project, contact Paul L. Johnson, NIH NICHD Office of Science

Policy, Analysis and Communication (OSPAC), 9000 Rockville Pike, Bldg. 31, Rm. 2A–18, Bethesda, Maryland 20892–2425, or call non-toll-free at 301–402–3213. You may also e-mail your request to *pjohnson@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: August 15, 2003.

April Burton,

Project Clearance Liaison, NICHD, National Institutes of Health.

[FR Doc. 03–21698 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Aggression Prevention Among High-Risk Early Adolescents

Summary: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Child Health and Human Development (NICHD), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 30, 2003, pages 23151–23152, and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: Aggression Prevention Among High-Risk Early Adolescents Study. *Type of Information Collection Request:* New collection. *Need and Use of Information Collection:* This study will assess the efficacy of an in-school, group-mentoring intervention designed to foster academic engagement and prevent aggressive and deviant behavior among early adolescents. The primary objectives of the study are to determine if participation in a weekly group-mentoring program throughout 6th grade significantly impacts adolescents' attitudes and behaviors regarding school engagement and aggression above and beyond educational materials for youth and parents. The findings will provide valuable information concerning: (1) The efficacy of in-school group-mentoring programs for improving youth attitudes, expectations, intent/motivation, and social competence; and (2) the extent to which such improvement increases academic engagement and decreases aggressive and deviant behavior among high-risk youth. *Frequency of Response:* 6 times over three years (*i.e.*, fall and spring of 6th, 7th, and 8th grades). *Affected Public:* For the pilot, incoming 6th graders from an inner city Baltimore middle school and their parents who agree to participate. For the main trial, two successive cohorts of incoming 6th grade students from two inner city Baltimore middle schools and their parents. Additionally, one cohort of 7th and 8th graders will be surveyed in the Fall and Spring of the first school year of the main trial. *Type of Respondents:* Early adolescents and Parents. The annual reporting burden is as follows: *Estimated Number of Respondents:* 1280 early adolescents and 800 parents; *Estimated Number of Responses per Respondent:* 6 for early adolescents who enter study as 6th graders, 2 for youth who enter as 7th or 8th graders, and 4 for parents; *Average Burden Hours Per Response:* 1.0 for youth and 0.5 for parents; and *Estimated Total Annual Burden Hours Requested:* 2,887. The annualized cost to respondents is estimated at: $43,305 (based on $15 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
6th graders	800	6	1.0	1,600
7th graders	160	2	1.0	106.5
8th graders	320	2	1.0	213.5
Parents	800	4	.50	533.5
Total	2060			2453.5

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Bruce Simons-Morton, Chief, Prevention Research Branch, DESPR, NICHD, NIH, 6100 Executive Blvd., Rm 7B13, MSC 7510, Bethesda, MD 20892–7510; (301) 493–5674; email: *mortonb@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: August 15, 2003.

April Burton,

NICHD Project Clearance Liaison, National Institutes of Health.

[FR Doc. 03–21699 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

The National Institutes of Health

Submission for OMB Review; Comment Request; Customer/Partner Satisfaction Surveys, the Effectiveness of the National Institute on Drug Abuse's Publications Project

Summary: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the National Institute on Drug Abuse (NIDA), the National Institutes of Heath (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval. The National Institutes of Health may not conduct or sponsor; and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. This proposed information collection was previously published in the **Federal Register** on (June 3, 2003, page 33168) and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment.

Proposed Collection: *Title:* The Effectiveness of NIDA's Publications Project. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This is a request for a three-year generic clearance to study the level of customer satisfaction in relation to public health information publications produced by the Institute. This effort is made according to Executive Order 12862, which directs Federal agencies that provide significant services directly to the public to survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services. The primary purpose of the Project is to assess NIDA's effectiveness in developing and disseminating selected public health information publications designed to promote the use of science-based evidence to improve drug abuse and addiction prevention, treatment, and policy. A multi-method approach (survey, in-person interviews, focus groups) will be used to determine the use and usefulness of selected NIDA public health information publications for several of NIDA's key audiences. Measures will include outcomes associated with the following variables: Knowledge/awareness of the publications, receipt of the publications, reading of the publications, use of the publications, perceived utility of the publications, and the impact of the publications on the use of science-based evidence to improve drug abuse and addiction prevention, treatment, and policy. *Frequency of Response:* This project will be conducted annually or biennially. *Affected Public:* Individuals or households; state or local governments; organizations; businesses or educational institutions. *Type of Respondents:* Community coalition leaders, drug abuse treatment and prevention service providers, drug abuse researchers, Native Americans, middle school science and health educators, public health policy makers and public health officials, and the general public. The annual reporting burden is as follows: *Estimated Number of Respondents:* 22,326; *Estimated Number of Responses Per Respondent:* One for six of the seven key audiences and two for one audience. *Average Burden Hours per Response:* .4357. *Estimated Total Annual Burden Hours Requested:* 9,727. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report. The estimated annualized burden is summarized below.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total burden hours
1. Community Coalition Leaders	1,782	2	0.26	909
2. Drug Abuse Treatment and Prevention Service Providers	6,042	1	0.42	2,532
3. Drug Abuse Researchers	6,020	1	0.42	2,504
4. Native Americans and Native American Intermediaries	50	1	1.14	57
5. Middle School Science and Health Educators	3,532	1	0.51	1,784
6. Public Health Policy Makers and Public Health Officials	1,800	1	0.36	645
7. The General Public	3,100	1	0.42	1,296
Total				9,727

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Denise Pintello, Project Officer, Office of Science Policy and Communications, NIDA/NIH/DHHS, 6001 Executive Boulevard, MSC 9591, Bethesda, MD 20892; or call non-toll-free number (301) 443–6071; fax (301) 443–6277; or e-mail your request, including your address to: *dp276v@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: August 18, 2003.

Laura Rosenthal,

Executive Officer, National Institute for Drug Abuse.

[FR Doc. 03–21700 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Protection Against Vertical Transmission of Pathogenic Infections

Drs. Gene Shearer and Maria T. Rugeles (NCI).

DHHS Reference No. E–225–2003/0–US–01 filed 22 May 2003.

Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov*.

This invention describes the treatment of pregnant women who are infected with HIV–1 (or other infectious agents that would be harmful to their fetuses and/or newborns) to reduce the risk of vertical transmission of the infectious agents. The treatment could potentially be accomplished by treating the pregnant women with recombinant ribonucleases (RNases), or by immunizing the women with allogeneic leukocytes that could stimulate the production of endogenous RNases. Since alloantigen stimulation of blood leukocytes from healthy individuals results in production of ribonucleases (RNases) that inhibit HIV–1 and HTLV–1 replication, alloimmunization of at risk or infected pregnant females would be protective for their newborns from infection of different pathogens, including HIV–1 and HTLV–1. Thus, this invention may provide a cost effective and a therapeutically effective means of preventing vertical transmission of pathogens, including HIV–1 and HTLV–1.

Inhibition of HIV–1 Replication by the Ribonuclease, Recombinant Angiogenin

Drs. Gene Shearer, Joost J. Oppenheim, Maria T. Rugeles, and Susanna M. Rybak (NCI).

DHHS Reference No. E–327–2002/0-US–01 filed 22 May 2003.

Licensing Contact: Sally Hu; 301/435–5606; *hus@mail.nih.gov*.

This invention describes the inhibition of human immunodeficiency virus-1 (HIV–1) replication by recombinant angiogenin, a ribonuclease (RNase). Ribonucleases have been shown to inhibit HIV–1 replication in chronically-infected cell lines. This invention has demonstrated that angiogenin is a potent inhibitor of HIV–1 replication. For example, angiogenin inhibits HIV–1 replication in primary activated T lymphocyte cultures as well as chronically infected cell lines. Since inhibition of HIV–1 replication in primary activated T lymphocytes would decrease the risk of HIV spreading to other T cells, angiogenin has several advantages over other known ribonucleases that are used to inhibit HIV replication. Furthermore, this invention raised the possibility that angiogenin could be used in lower doses for inhibiting HIV replication and would be less toxic as compared to other ribonucleases. Thus, angiogenin may be an RNase of choice for treating patients with AIDS and this invention would overcome some of the problems involved in current ribonucleolytic HIV treatments.

Dated: August 18, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–21694 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by agencies of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent application listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.

Container for Drying Biological Samples, Method of Making Such Container, and Method of Using Same

Geoffrey L. Kidd (NEI).

U.S. Patent Application Serial No. 10/238,147 filed 09 Sep 2002 (DHHS Reference No. E–304–2003/0–US–01).

Licensing Contact: Marlene Astor, 301/435–4426, or David Sadowski, 301/435–5525.

Problem Addressed by This Invention: Many materials, such as drugs, growth factors, etc., must be kept sterile and must be aliquotted for storage. Usually, these aliquots are best stored lyophilized. When compared to freezing in solution, lyophilization offers more than twenty-fold longer shelf-lives for these labile compunds. Yet, researchers have never had a way to keep aliquots sterile through the lyophilization process. Consequently, each aliquot has had to be filter-sterilized when reconstituted for use. This process has the disadvantages of consuming: excessive filters, syringes, sterile receptacles, and time; and may result in serious loss of precious sample due to absorption by the filters—especially with small samples. Alternatively, researchers have had to forego lyophilization and store their sterile solutions in the less-stable frozen form.

Solution Offered by This Invention: The multi-well plates of this invention provide venting through a filter element thereby permitting a sterile solution to remain sterile throughout lyophilization, even after the vacuum is released and air reenters the multi-well plate. Thus, a starting solution is simply filter-sterilized while in a relatively large volume, using a single filter and therefore suffering minimal loss and consuming little time. It is then aliquotted into a multi-well plate and lyophilized. The plate may then be transferred directly to the freezer, if

desired. The compound is reconstituted when needed, and may then be used immediately without further filtration.

Potential Applications of This Invention: All researchers worldwide who utilize sterile, labile compounds will have an interest in this product, including governmental, university, institutional, and drug company laboratories. Most notably in need are investigators involved in drug-testing, which is normally done either in cell cultures, laboratory animals, or humans, and which requires sterility of many aliquots of many drugs. Additionally, this product will have a large market relating to basic research utilizing microbial, plant, or animal cell or organ cultures, to which sterile compounds such as growth factors are commonly added. Research in drugs, growth factors, etc., is expanding ever more rapidly, and generally requires a cell culture system in which to study such compounds. Most of these compounds are quite expensive. Loss of potency during storage and loss of material during filtration are widespread problems which may be overcome with this invention. Therefore, there exists a tremendous need and immense market for these multi-well plates.

Dated: August 14, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–21695 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

LMNA Gene and Its Involvement in Hutchinson-Gilford Progeria Syndrome (HGPS) and Arteriosclerosis

B. Maria H. Eriksson and Francis S. Collins (NHGRI). Serial No. 60/419,541 filed 18 Oct 2002 (DHHS Reference No. E–020–2003/0–US–01) and Serial No. 60/463,084 filed 14 Apr 2003 (DHHS Reference No. E–131–2003/0–US–01).

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov*.

Hutchinson-Gilford Progeria Syndrome (HGPS) is a very rare progressive childhood disorder characterized by premature aging (progeria). The most common cause of death is from arteriosclerosis and few children affected by HGPS live beyond their teens. The invention identifies point mutations in the LMNA gene, a gene which encodes a nuclear lamin protein, as the cause of HGPS. These mutations activate a cryptic splice site within the LMNA gene which leads to the excision of a portion of an exon and the subsequent generation of a Lamin A protein with an internal deletion of fifty (50) amino acids. The identification of mutations associated with HGPS could lead to breakthroughs in detection, diagnosis, and treatment of HGPS and related or similar conditions, including arteriosclerosis and aging. See also Eriksson, M. et al "Recurrent de novo point mutations in lamin A cause Hutchinson-Gilford progeria syndrome" Nature 423, 293–298 (2003).

Synthesis of Proteins by Cell-Free Protein Expression

Deb K. Chatterjee (NCI). DHHS Reference No. E–328–2002/0–US–01 filed 11 Mar 2003.

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov*.

Cell-free protein expression is becoming a valuable tool for rapid and economical production of recombinant proteins. In conventional cell-free protein synthesis systems, the ATP (high energy) supply is accomplished by secondary energy regenerating sources containing high-energy phosphate bonds. The sources include glucose (G), glucose-6-phosphate (G–6P), phosphoenolpyruvate (PEP), acetyl phosphate (AP), creatine phosphate (CP) or pyruvate. However, for some of these systems (G, G–6P and pyruvate) require the addition of exogenous enzymatic cofactors such as NAD/NADH, adding considerable expense to the system. In addition, the conventional systems (PEP, AP or CP) are also mired by unproductive enzymatic degradation of energy sources and unproductive consumption of ATP resulting in lower yields of protein.

The present invention offers a new ATP regeneration system for cell-free protein expression, using one of the early intermediates of the glycolytic pathway as the secondary energy source. The new energy source, costs only a fraction of the conventional substrates, provides chemical energy for protein synthesis without the addition of an exogenous enzymatic cofactor, thereby reducing the costs of the system. Moreover, the present system improves efficiency of protein synthesis by several folds by providing an improved energy regeneration system and protein-folding machinery.

Cycloxygenase Inhibition With Nitroxyl

David A. Wink *et al.* (NCI). Serial No. 60/470,320 filed 13 May 2003 (DHHS Reference No. E–301–2002/0–US–01).

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov*.

Inflammation is initiated and maintained by the overproduction of prostaglandins in injured cells. Cyclooxygenase (COX) regulates the production of prostaglandins. As the rate-limiting step for prostaglandin synthesis, the COX pathway is the primary target for anti-inflammatory drugs. Inhibition of COX accounts for the activity of the non-steroidal anti-inflammatory drugs (NSAIDs), such as aspirin, acetaminophen, ibuprofen, naproxen, indomethacin. However, these drugs are nonselective COX inhibitors. While they inhibit the activity of COX–2 in inflammation, they also interfere with the activity of COX–1 in non-inflamed cells. The inhibition of COX–1 produces undesirable side effects, such as gastrointestinal bleeding and renal failure. Therefore, agents that selectively inhibit COX–2 over COX–1 are desirable for the treatment of inflammation. Moreover, COX–2 inhibiting compounds have been reported to be useful in treating a variety of conditions, such as general pain, osteoarthritis, rheumatoid arthritis, menstrual pain associated with primary dysmenorrhea, cancers, Alzheimer's disease and diabetes.

The present invention relates to methods of using nitroxyl to selectively inhibit COX–2 activity. Also disclosed are methods of using nitroxyl to treat conditions that respond favorably to COX–2 inhibition. Nitroxyl-donating compounds include nitroxyl-donating

diazeniumdiolates such as IPA/NO ($Na(CH_3)_2C(H)N(H)N(O)NO$). Other embodiments include methods of screening candidate nitroxyl-donating compounds for COX–2 inhibition.

Nitroxyl Progenitors in the Treatment of Heart Failure

David Wink and Katrina Miranda (NCI). Serial No. 10/226,412 filed 21 Aug 2002 (DHHS Reference No. E–273–2002/0–US–01).

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov*.

Congestive Heart Failure affects nearly 5 million Americans and approximately 550,000 new cases are diagnosed each year.

The present invention relates to the administration of nitroxyl donating compounds, such as Angeli's salt for increasing myocardial contractility while concomitantly lowering left ventricular preload in subjects experiencing heart failure. Moreover, administration of the nitroxyl donating compound, isopropylamine, surprisingly exhibits positive inotropic effects in subjects experiencing heart failure that were superior to those caused by Angeli's salt. Additionally, in contrast to the effects observed with nitric oxide donors, administration of a nitroxyl donating compound in combination with a positive inotropic agent does not impair the positive inotropic effect of the positive inotropic agent. Furthermore, nitroxyl donating compounds exert its positive inotropic effect independent of the adrenergic system, increasing contractility even in subjects receiving beta-antagonist therapy.

Vasopressor Peptide Derived From Adrenomedullin and Methods of Its Use

Frank Cuttitta *et al.* (NCI). Serial No. 60/416,291 filed 04 Oct 2002 (DHHS Reference No. E–293–2002/0–US–01).

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov*.

Systemic hypertension is the most prevalent cardiovascular disorder in the United States, affecting over 60 million Americans. In spite of increasing public awareness and rapidly expanding array of antihypertensive medications, hypertension remains one of the leading causes of cardiovascular morbidity and mortality. On the other end of the spectrum are hypovolemic shock (often from acute hemorrhage), cardiogenic shock (from arrhythmia or heart failure) and vasodilatory shock (from cerebral trauma, drug intoxication, heat exposure or septic shock accompanying a gram negative bacterial infection). In view of the above, there exists a need for agents that counteract aberrations in blood pressure, including hypertension and hypotension.

This invention discloses compounds that are useful as vasoconstrictors or vasodilators and their methods of use. Specific embodiments include administration of AM (II–22) to reverse vasodilation and administration of an inhibitor of MMP–2 to reverse vasoconstriction.

This research is described, in part, in J. Lopez & A. Martinez, "Cell and Molecular Biology of the Multifunctional Peptide, Adrenomedullin," Int. Rev. Cytol. 2002, 221:1–92.

Foamy Virus Mutant Reverse Transcriptase

Stephen H. Hughes *et al.* (NCI). Serial No. 60/292,994 filed 22 May 2001 (DHHS Reference No. E–152–2001/0–US–01) and PCT/US02/16528 filed 22 May 2002 (DHHS Reference No. E–152–2001/0–PCT–02).

Licensing Contact: Fatima Sayyid; 301/435–4521; *sayyidf@mail.nih.gov*.

The present invention provides a recombinant reverse transcriptase (RT) obtained from a mutant Foamy Virus (FV), which has highly active and highly processive reverse transcriptase activity and substantially reduced protease activity. In particular, the FV protease-reverse transcriptase has been mutated to functionally inactivate the protease activity. The FV RT has better polymerase activity than other commercially available products (MLV, AMV, HIV).

The invention discloses the production of the mutant FV RT, vectors and plasmids comprising nucleic acids that encode the FV RT and recombinant host cells. The invention also encompasses kits for the production of cDNA from RNA comprising the FV RT.

This research is described, in part, in Rinke *et al.*, J. Virol. 76:7560, 2002.

Dated: August 14, 2003.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 03–21696 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the contact person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board, Subcommittee on Planning and Budget.

Closed: September 8, 2003, 7 p.m. to 8:30 p.m.

Agenda: The subcommittee will be establishing a funding policy for scoring large unfunded R01 grants applications.

Place: Bethesda Hyatt Hotel, 1 Metro Place, Bethesda, MD 20892.

Contact Person: Ms. Kathie Reed, Acting Executive Secretary, National Cancer Institute, National Institutes of Health, 9000 Rockville Pike, Building 31, Room 11A03, Bethesda, MD 20892. (301) 496–5515.

Name of Committee: National Cancer Advisory Board.

Open: September 9, 2003, 8:30 a.m. to 4:20 p.m.

Agenda: Program reports and presentations; business of the Board.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892–8327. (301) 496–4218.

Name of Committee: National Cancer Advisory Board.

Closed: September 9, 2003, 4:20 p.m. to recess.

Agenda: Review of grant applications.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892–8327. (301) 496–4218.

Name of Committee: National Cancer Advisory Board.

Open: September 10, 2003, 8:30 a.m. to adjournment.

Agenda: Program reports and presentations; business of the Board.

Contact Person: Dr. Paulette S. Gray, Executive Secretary, National Cancer

Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892–8327. (301) 496–4218.

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93,398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS.)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21692 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee; National Cancer Institute Special Emphasis Panel, Institutional Clinical Oncology Research Career Development Program (K12).

Date: October 22, 2003.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 15th and M Streets, NW., Washington, DC 20005.

Contact Person: Robert Bird, PhD, Scientific Review Administrator, Resources and Training Review Branch, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., MSC 8328, Room 8113, Bethesda, MD 20892–8328, 301–496–7978, *birdr@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21702 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Radiation-Induced Cancer Risks: The New Biology.

Date: October 15–17, 2003.

Time: 6 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: The Belvedere Hotel, 319 West 48th Street, New York, NY 10036.

Contact Person: Sunghan Yoo, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd, Room 8105, Bethesda, MD 20892, (301) 594–9025, *yoosu@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21703 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Spore in Gastrointestinal Cancer.

Date: October 13–14, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton La Jolla Torrey Pines, 10950 North Torrey Pines Road, La Jolla, CA 92037.

Contact Person: Brian E. Wojcik, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, 301/402–2785.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21704 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5. U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be Open to the Public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 24–25, 2003.

Open: September 24, 2003, 8:30 a.m. to 1 p.m.

Agenda: To present the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: September 25, 2003, 9:45 AM to 10:15 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Open: September 25, 2003, 10:15 a.m. to 12 p.m.

Agenda: Continuation of the Director's Report and other scientific presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Diabetes, Endocrinology and Metabolic Diseases Subcommittee.

Date: September 24–25, 2003.

Open: September 24, 2003, 3 p.m. to 4 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: September 24, 2003, 4 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Closed: September 25, 2003, 8 AM 8:30 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Open: September 25, 2003, 8:30 AM 9:30 AM.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PhD, Director for Extramural Activities, National Institutes of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: September 24–25, 2003.

Open: September 24, 2003, 1 p.m. to 1 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Closed: September 24, 2003, 3:15 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Open: September 25, 2003, 8:30 AM 9:30 AM.

Agenda: Continuation of the review of the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room D, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PHD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD, 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council Kidney, Urologic, and Hematologic Diseases Subcommittee.

Date: September 24–25, 2003.

Open: September 24, 2003, 1 p.m. to 5:30 p.m.

Agenda: To review the Division's scientific and planning activities.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Closed: September 25, 2003 8 AM to 9:30 AM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room F1/F2, Bethesda, MD 20892.

Contact Person: Robert D. Hammond, PHD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Blvd, Room 715, MSC 5452, Bethesda, MD, 20892–5452, 301–594–8834, *hammondr@extra.niddk.nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.niddk.nih.gov/fund/divisions/DEA/Council/coundesc.htm.*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endrocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21682 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Aging.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other

reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. the grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Aging.

Date: September 23–24, 2003.

Closed: September 23, 2003, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville, Bethesda, MD 20892.

Open: September 24, 2003, 8 a.m. to Adjournment.

Agenda: Call to Order; and reports from the Task Force on Minority Aging Research and the Working Group on Program.

Place: National Institutes of Health, Building 31, Conference Room 10, 9000 Rockville, Bethesda, MD 20892.

Contact Person: Miriam F. Kelty, PhD, Director, Office of Extramural Affairs, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C218, Bethesda, MD 20892, 301–496–9322.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Hone page *http://www.nih.gov/nia/naca/*, where an agenda and any additional information for the meeting will be posed when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21683 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated wit the contract proposals, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, "E-Training for Prevention Providers."

Date: August 27, 2003.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, Bethesda, MD 20892–9547, (301) 435–1439.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientists Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21684 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense & Emerging Infectious Disease Research Opportunities.

Date: September 3, 2003.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700–B Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Hagit S. David, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2155, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–402–4596.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21685 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notices of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Allergy and Infectious Diseases Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(b)(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Allergy, Immunology and Transplantation Subcommittee.

Date: September 29, 2003.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, D, Bethesda, MD 20892.

Open: 12 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, D, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Microbiology and Infectious Diseases Subcommittee.

Date: September 29, 2003.

Closed: 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, F1/F2, Bethesda, MD 20892.

Open: 1 p.m. to adjournment.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, F1/F2, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council, Acquired Immunodeficiency Syndrome Subcommittee.

Date: September 29–30, 2003.

Closed: September 29, 2003, 8:30 a.m. to 10:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, A, Bethesda, MD 20892.

Open: September 29, 2003, 1 p.m. to adjournment on September 30.

Agenda: Program advisory discussions and presentations.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, A, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

Name of Committee: National Advisory Allergy and Infectious Diseases Council.

Date: September 29, 2003.

Open: 10:30 a.m. to 11:40 a.m.

Agenda: Reports from the NIAID Director and the Director, Division of Intramural Research.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, E1/E2, Bethesda, MD 20892.

Closed: 11:40 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, E1/E2, Bethesda, MD 20892.

Contact Person: John J McGowan, PhD, Director, Division of Extramural Activities, NIAID, Room 2142, 6700–B Rockledge Drive, MSC 7610, Rockville, MD 20892–7610, 301–496–7291.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's Center's home page: *http://www.niaid.nih.gov/vacts/facts.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 19, 2003

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21686 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: NIDCR Special Grants Review Committee, Review of R03s and Ks.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lynn M. King, PHD, Scientific Review Administrator, Scientific Review Branch, 45 Center Dr., Rm 4AN–38K, National Institute of Dental & Craniofacial Research, National Institutes of Health, Bethesda, MD 20892–6402, 301–594–5006.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21687 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such

as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–76, Review of R01s.

Date: September 23, 2003.

Time: 9 a.m. to 10:30 a.m.

Agenda: To provide concept review of proposed grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Institute of Dental and Craniofacial Research, National Institutes of Health, 45 Center Dr., room 4AN32E, Bethesda, MD 20892, 301–451–5096.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21688 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 03–81, Review of R13s.

Date: September 12, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. George Hausch, PhD, Acting Director, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372, *george__hausch@nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–05, Review of R01s.

Date: October 14, 2003.

Time: 10:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Institute of Dental and Craniofacial Research, National Institutes of Health, 45 Center Drive, room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–06, Review of R01s.

Date: October 14, 2003.

Time: 2:15 p.m. to 5:15 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rebecca Roper, MS, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, National Institute of Dental and Craniofacial Research, National Institutes of Health, 45 Center Drive, room 4AN32E, Bethesda, MD 20892, (301) 451–5096.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–03, Review of R25s.

Date: December 3, 2003.

Time: 1 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel, 04–04, Review of R01s.

Date: December 19, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PhD, DMD, Scientific Review Administrator, 45 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS).

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21689 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: September 11, 2003.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Willco Building, 6000 Executive Boulevard, Rockville, MD 20892. (Telephone conference call.)

Contact Person: Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003. 301–443–9787. *etaylor@niaaa.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS.)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21690 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Alcohol Abuse and Alcoholism, September 17, 2003, 5:30 p.m. to September 18, 2003, 3 p.m., Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD, 20817 which was published in the **Federal Register** on August 7, 2003, 061511.

There will not be a closed meeting of the National Advisory Council on Alcohol Abuse and Alcoholism, Thursday, September 18. The open session will start at 9 a.m. instead of 9:30 a.m., at the Natcher Bldg., 45 Center Dr., Bethesda, MD. The meeting is partially closed to the public.

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21691 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the National Institute of Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: September 22–23, 2003.

Open: September 22, 2003, 8:30 a.m. to Adjournment.

Agenda: (1) A report by the Director, NICHD; (2) a report by the Scientific Director, NICHD; (3) the NICHD Fortieth Anniversary observation; and (4) other business of the Council.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Closed: September 23, 2003, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 9000 Rockville Pike, Conference Room 6, Bethesda, MD 20892.

Contact Person: Mary Plummer, Committee Management Officer, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

Information is also available on the Institute's/Center's Home page: *http://www.nichd.nih.gov/about/nachhd.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21701 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, 3 Unsolicited P01's.

Date: September 8, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Terrace Room, Chevy Chase, MD 20815.

Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, National Institute of Allergy and Infectious Diseases, DEA/NHI/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 3127, Bethesda, MD 20892–7616, 301–402–4598, *clapham@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21706 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Diseases Research Opportunities.

Date: September 12, 2003.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Eleazar Cohen, PhD, Scientific Review Administrator, Scientific Review Program, NIAID/NIH, 6700B Rockledge Drive, Rm. 2220, Bethesda, MD 20892, 301–496–2550, *ec17w@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21707 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion or personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: September 25, 2003.

Open: 8:30 a.m. to 12 p.m.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Cheryl Kitt, PhD, Director, Division of Extramural Activities, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 1 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 594–2463, *kittc@niams.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health (HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21708 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Biology of Bone Regeneration.

Date: September 12, 2003.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and, Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21709 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552(b)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special emphasis Panel. Microcirculation and Target Organ Damage in Rheumatic and Skin.

Date: September 2–3, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, Natcher Building, MSC 6500, 45 Center Drive, 5AS–25H, Bethesda, MD 20892, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21710 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Nursing Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such a sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Nursing Research.

Date: September 16–17, 2003.

Open: September 16, 2003, 1 p.m. to 5 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: September 17, 2003, 9:00 AM to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Mary Leveck, PhD, Deputy Director, NINR, NIH, Building 31, Room 5B05, Bethesda, MD 20892, (301) 594–5963.

Information is also available to the Institute's/Center's home page: *www.nih.gov/ninr/a_advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21711 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel. Review of Research Program Project.

Date: September 8, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Tracy A. Shahan, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd, One Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594–4974.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne T. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21712 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, High Risk Applications.

Date: August 29, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Richard J. Bartlett, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Plaza, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.46, Arthritis, Musculoskeletal and Skin diseases Research, National Institutes of Health HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21713 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin

Diseases Special Emphasis Panel, Biomarkers Review for Co-op Projects.

Date: August 29, 2003.

Time: 8:30 a.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Aftab A Ansari, PhD, Health Science Administrator, National Institute of Arthritis and Musculoskeletel and Skin Diseases, 6701 Democracy Plaza, Suite 800, Bethesda, MD 20892, (301) 594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and fundying cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21714 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: September 29–30, 2003.

Time: September 29, 2003, 1 p.m. to 5 p.m.

Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps and/or obstacles to progress.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Time: September 30, 2003, 8:30 a.m. to adjournment.

Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level. The Committee will review the progress and productivity of ongoing efforts, and identify critical gaps and/or obstacles to progress.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Room E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Room 4139, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7601, 301–435–3732.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 19, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21832 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 VACC 15: Small Business: Vaccine delivery systems.

Date: August 19, 2003.

Time: 2 P.M. to 4 P.M.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5104, MSC 7852, Bethesda, MD 20892, (301) 435–1165.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Signaling.

Date: August 20, 2003.

Time: 2 P.M. to 3 P.M.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Litwack, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6206, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 14, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21705 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); Notice of a Meeting of the NTP Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors on September 10–11, 2003, in the Rodbell Auditorium, Rall Building at the National Institute of Environmental Health Sciences, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

The NTP Board of Scientific Counselors ("the Board") is composed of scientists from the public and private sector and provides primary scientific oversight to the NTP.

Agenda

The meeting being held on September 10–11, 2003, begins each day at 8:30 a.m. and is open to the public from 8:30 a.m. to adjournment with attendance limited only by the space available. Persons needing special assistance should contact the Executive Secretary (contact information below) at least

seven business days in advance of the meeting. A draft agenda with a tentative schedule is provided below. Primary agenda topics include: (1) A vision for the NTP that includes its concept and projection of new areas into which toxicology will develop in the next 5–10 years; (2) a presentation on the development of new, publicly accessible, electronic databases for NTP studies; (3) a demonstration of an interactive, web-based, 2-D-imaging system to evaluate the pathological outcomes of NTP studies; and (4) updates on the NTP testing program including the design of studies on radio-frequency radiation from cellular phone devices, collaborations with the National Institute of Occupational Safety and Health, studies on medicinal herbs and dietary supplements and the recommendations of the NTP Interagency Committee for Chemical Evaluation and Coordination (ICCEC) for substances nominated to the NTP for study. There will also be updates on the NTP Board of Scientific Counselors Technical Reports Peer Review Meeting held on May 22, 2003, the status of the 11th Edition of the Report on Carcinogens and the NTP Center for the Evaluation of Risks to Human Reproduction. Time is allotted during the meeting for the public to present comments to the Board and NTP staff on agenda topics.

The agenda and background materials on agenda topics, as available, will be posted on the NTP Web site (*http://ntp-server.niehs.nih.gov, see* What's New) or available upon request to the Executive Secretary (contact information below). Following the meeting, summary minutes will be prepared and available through the NTP web site and upon request to Central Data Management, NIEHS, P.O. Box 12233, MD E1–02, Research Triangle Park, NC 27709; telephone: 919–541–3419, fax: 919–541–3687, and e-mail: *CDM@niehs.nih.gov*.

ICCEC Recommendations for Substances Nominated for Future NTP Studies

Information about substances nominated to the NTP for toxicology and carcinogenesis studies and the ICCEC's recommendations were published in the **Federal Register** on July 16, 2003 (Vol. 68, No. 136, p. 42068–71). This notice is available on the Web (*http://ntp-server.niehs.nih.gov/htdocs/Liason/ICCECFinal02JuneFR.html*) along with supporting documents for each nomination (*http://ntp-server.niehs.nih.gov/htdocs/liason/BkgrSum02June.html*) or by contacting the NTP Executive Secretary (contact information below). This meeting provides an additional opportunity for the public to provide comment on these nominations and study recommendations to the Board and NTP staff. Comments submitted to the NTP in response to the July 2003 **Federal Register** notice are under consideration and do not need to be resubmitted or readdressed.

Public Comment Encouraged

Public input at this meeting is invited and time is set aside for the presentation of public comments on any agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Each organization is allowed one time slot per agenda topic. Persons registering to make oral comments are asked to provide their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any). To facilitate planning for the meeting, persons interested in providing formal oral comments are asked to notify Dr. Barbara Shane, NTP Executive Secretary, NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709; telephone: 919–541–0530; and e-mail: *shane@niehs.nih.gov* by September 2, 2003. Persons may also submit written comments *in lieu* of making oral comments. Written comments should be sent to the Executive Secretary and must be received by September 2, 2003, to enable review by the Board and NTP staff prior to the meeting. Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) with the document.

Individuals will also be able to register to give oral public comments on-site at the meeting. However, if registering on-site and reading from written text, please bring 30 copies of the statement for distribution to the Board and NTP staff and to supplement the record.

Registration

The NTP Board of Scientific Counselors meeting is open to the public. Attendance at this meeting is limited only by the space available. Due to changes in security policies at the NIEHS, individuals who plan to attend are asked to pre-register with the Executive Secretary (contact information above). The names of those registered will be given to the NIEHS Security Office in order to gain access to the campus. Persons attending who have not pre-registered may be asked to provide pertinent information about the meeting, *i.e.*, title or host of meeting before gaining access to the campus. All visitors (whether or not you are pre-registered) will need to be prepared to show 2 forms of identification (ID), *i.e.*, driver's license and one other form of ID, such as company ID, government ID, or university ID.

NTP Board of Scientific Counselors

The Board is a technical advisory body comprised of scientists from the public and private sectors who provide primary scientific oversight to the overall program and its centers. Specifically, the Board advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purposes of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields, such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology and neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. The NTP strives for equitable geographic distribution and minority and female representation on the Board. Its members are invited to serve overlapping terms of up to four years and meetings are held once or twice annually for the Board and its two standing subcommittees (the Report on Carcinogens Subcommittee and the Technical Reports Review Subcommittee).

Dated: August 12, 2003.

Kenneth Olden,

Director, National Toxicology Program.

Preliminary Agenda: National Toxicology Program (NTP) Board of Scientific Counselors: September 10–11, 2003

National Institute of Environmental Health Sciences, Rodbell Auditorium, Rall Building, 111 T.W. Alexander Drive, Research Triangle Park, NC.

September 10, 2003

8:30 a.m.—Welcome and Opening Comments.
NTP Update.
A Vision for the NTP.
NTP Databases.
11:45 a.m.—Lunch.
1 p.m.—Imaging Technology for Pathological Evaluations.
Research Highlights
- Carbonyl Sulfide;
- Endocrine Disrupting Agents.

NTP Study Updates
- Design of Study on Radio-frequency Radiation Emissions;
- NTP–NIOSH Collaborations;
- Medicinal Herbs and Dietary Supplements.

5 p.m.—Adjourn

September 11, 2003

8:30 a.m.—Welcome and Introductions.
NTP Testing Program Study Nominations.
NTP–USGS Collaboration to Map Mercury Levels in Fish on a National Scale.
NTP Updates.
- Statistical Issues in Phototoxicology Studies;
- Technical Reports Peer Review Meeting on May 22, 2003;
- Report on Carcinogens;
- NTP Center for the Evaluation of Risks to Human Reproduction.

Other Business.
11:30 a.m.—Adjourn.

[FR Doc. 03–21697 Filed 8–25–03; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA #: 93.676]

Office of Refugee Resettlement Grant to Lutheran Immigration and Refugee Service for the Unaccompanied Alien Children's Program

AGENCY: Office of Refugee Resettlement, HHS.

ACTION: Grant award announcement.

SUMMARY: This notice is hereby given that an award is being made to Lutheran Immigration and Refugee Service (LIRS), 700 Light Street, Baltimore, MD, in the amount of $367,575 in FY03 due to urgent and compelling circumstances. The award will be used to assess and develop a capacity plan for unaccompanied alien minors transferred into the custody of the Office of Refugee Resettlement (ORR) from the Department of Homeland Security by reason of their immigration status. The program providing such services shall hereafter be referred to as the Unaccompanied Alien Children's Program (UAC).

The specific goal of the program is to facilitate the provision of family reunification and/or long-term foster care services to unaccompanied alien minors referred to LIRS by ORR and currently held in the legal custody of the ORR. The provisions of services will include child welfare related services, including family reunification and foster care placement, to alien unaccompanied minors who have been approved for such services by the appropriate entities. LIRS has extensive experience in this area drawing from the Unaccompanied Refugee Minors Program. In addition, they have one of the largest affiliate networks, allowing them to easily facilitate capacity development and establish a much needed presence in major apprehension centers.

Per the *Flores* v. *Reno* settlement agreement, no child apprehended by the Department of Homeland Security can remain in a secure detention setting for longer than 72 hours, unless warranted. Given the recent influx of apprehensions along the southwest border and southern border, ORR has the urgent need to assess and develop a capacity plan for the program.

Grant and Cooperative Agreement Program Authority for this activity is contained in the Refugee Education Assistance Act of 1980, Title V, Section 501(c) Pub. L. 94 Stat.1799, 1809–1810, Executive Order 12341, the Immigration and Naturalization Act, and Section 462 of the Homeland Security Act.

The Recipient will:
1. Assess and develop a capacity plan;
2. Identify agencies and sites for reception and assessment centers in major apprehension locations throughout the United States;
3. Develop residential, therapeutic and foster care programs;
4. Assist with developing a long-term care program;
5. Develop a system for family reunification assessment including support systems;
6. Participate in the development of a universal assessment placement plan under the direction of ORR;
7. Coordinate placement plan recommendations; and
8. Develop an assessment training manual of protocols and procedures.

Other services for these minors may be provided if ORR determines in advance that the service is reasonable and necessary for a particular minor.

LIRS will ensure services comply with State child welfare statutes and generally accepted child welfare standards, practices, principles, and procedures, and the *Flores* v. *Reno* settlement agreement. Services offered provide for the safety and security of each child.

After the appropriate reviews, it has been determined that the need to assess and develop a capacity plan is compelling. The project period is July 1, 2003 to September 30, 2006.

FOR FURTHER INFORMATION CONTACT: Theresa Bell, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–4863.

Dated: July 3, 2003.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 03–21784 Filed 8–25–03; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA# 93.676]

Office of Refugee Resettlement Grant to Southwest Initiative Group for the Unaccompanied Alien Children's Program

AGENCY: Office of Refugee Resettlement, HHS.

ACTION: Grant award announcement.

SUMMARY: This notice is hereby given that a urgent grant award is being made to Southwest Initiatives Group, Nixon, TX in the amount of $797,152 in FY03, to provide shelter care and child welfare services to alien minors transferred into the custody of the Office of Refugee Resettlement (ORR) from the Department of Homeland Security by reason of their immigration status. The programs providing such services shall hereafter be referred to as the Unaccompanied Alien Children's Program (UAC).

The specific goal of the program is to provide residential shelter care and other related child welfare services to male and female alien children under 18 years of age who are in the custody of the ORR. The provision of services will include: a structured, safe and productive environment which meets or exceeds respective state guidelines and ORR minimum standards for services designed to serve minors in UAC care and custody. This announcement provides for the delivery of services to a population of at least 16 children. The program is licensed for up to 36 children. This grant is being made to Southwest Initiatives Group due to its strategic location in a major apprehension area, ability to expeditiously meet state licensing and ORR requirements to accommodate the current need for shelter care, emergency influx expansion potential and high quality of care.

Shelter care services will be provided for the interim period beginning when

the minor is placed into the UAC, and ending when the minor is released from federal custody or when a final disposition of the minor's immigration proceedings occurs.

Grant and Cooperative Agreement Program Authority for this activity is contained in the Refugee Education Assistance Act of 1980, Title V, Section 501(c) Pub. L. 94 Stat.1799, 1809–1810, the Immigration and Naturalization Act and Section 462 of the Homeland Security Act.

Per the *Flores* v. *Reno* settlement agreement, no child apprehended by the Department of Homeland Security can remain in a secure detention setting for longer than 72 hours, unless warranted. Given the recent influx of apprehensions along the southwest border, ORR has the urgent need to increase the number of shelter beds to ensure that no child is placed in secure detention unless warranted. .

The Recipient will provide assistance and services for each minor including, but not limited to:

1. Family Reunification Services;
2. Initial Program Orientation;
3. Individual Counseling;
4. Group Counseling;
5. Acculturation/Adaptation;
6. Education;
7. Access to Legal Services.

Other services that are necessary and appropriate for these minors may be provided if ORR determines in advance that the service is reasonable and necessary for a particular minor.

The Recipient will be expected to develop and implement an appropriate individualized service plan for the care and maintenance of each minor in accordance with his/her needs as determined in an intake assessment after initial placement. In addition, the Recipient is required to implement and administer a case management system which tracks and monitors each minor's progress to ensure that services are appropriate and to each minor's individual needs.

Services comply with State child welfare statutes and generally accepted child welfare standards, practices, principles, and procedures. Services offered provide for the safety and security of each child. The service will be provided in an age appropriate, culturally acceptable manner that meets the needs of each individual minor.

After the appropriate reviews, it has been determined that the need for additional shelter care beds and services in the southwest United States is compelling. The project period is July 1, 2003 through September 30, 2006.

FOR FURTHER INFORMATION CONTACT: Kenneth Tota, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 205–3590.

Dated: July 31, 2003.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 03–21785 Filed 8–25–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA #: 93.676]

Office of Refugee Resettlement Grant to United States Conference of Catholic Bishops for the Unaccompanied Alien Children's Program

AGENCY: Office of Refugee Resettlement, HHS.

ACTION: Grant Award Announcement.

SUMMARY: This notice is hereby given that an award is being made to The United States Conference of Catholic Bishops (USCCB), 3211 4th Street, NE, Washington, DC, 20017 in the amount of $349,967 in FY03 due to urgent and compelling circumstances. The award will be used to assess and develop a capacity plan for unaccompanied alien minors transferred into the custody of the Office of Refugee Resettlement (ORR) from the Department of Homeland Security by reason of their immigration status. The program providing such services shall hereafter be referred to as the Unaccompanied Alien Children's Program (UAC).

The specific goal of the program is to facilitate the provision of family reunification and/or long-term foster care services to unaccompanied alien minors referred to USCCB by ORR and currently held in the legal custody of the ORR. The provisions of services will include child welfare related services, including family reunification and foster care placement, to alien unaccompanied minors who have been approved for such services by the appropriate entities. USCCB has extensive experience in this area drawing from the Unaccompanied Refugee Minors Program. In addition, they have one of the largest affiliate networks, allowing them to easily facilitate capacity development and establish a much needed presence in major apprehension centers.

Per the *Flores* v. *Reno* settlement agreement, no child apprehended by the Department of Homeland Security can remain in a secure detention setting for longer than 72 hours, unless warranted. Given the recent influx of apprehensions along the southwest border and southern border, ORR has the urgent need to assess and develop a capacity plan for the program.

Grant and Cooperative Agreement Program Authority for this activity is contained in the Refugee Education Assistance Act of 1980, Title V, Section 501(c) Pub. L. 94 Stat.1799, 1809–1810, the Immigration and Naturalization Act, and Section 462 of the Homeland Security Act.

The Recipient will:

1. Assess and develop a capacity plan;
2. Identify agencies and sites for reception and assessment centers in major apprehension locations throughout the United States;
3. Develop residential, therapeutic and foster care programs;
4. Assist with developing a long-term care program;
5. Develop a system for family reunification assessment including support systems;
6. Participate in the development of a universal assessment placement plan under the direction of ORR;
7. Coordinate placement plan recommendations; and
8. Develop an assessment training manual of protocols and procedures

Other services for these minors may be provided if ORR determines in advance that the service is reasonable and necessary for a particular minor.

USCCB will ensure services comply with State child welfare statutes and generally accepted child welfare standards, practices, principles, and procedures, and the *Flores* v. *Reno* settlement agreement. Services offered provide for the safety and security of each child.

After the appropriate reviews, it has been determined that the need to assess and develop a capacity plan is urgent and compelling. The project period is July 1, 2003 to September 30, 2006.

FOR FURTHER INFORMATION CONTACT: Kenneth Tota, Office of Refugee Resettlement, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447, telephone (202) 401–4858.

Dated: August 20, 2003.

Nguyen Van Hanh,

Director, Office of Refugee Resettlement.

[FR Doc. 03–21786 Filed 8–25–03; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer at 301–443–7978.

National Cross-Site Assessment of the Addiction Technology Transfer Centers Network—(OMB No. 0930–0216, Revision—The Substance Abuse and Mental Health Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) intends to continue an assessment of its Addiction Technology Transfer Centers (ATTCs). The data collection instruments are being modified, and the methodology will be updated to comply with CSAT's new Government Performance and Results Act (GPRA) requirements. CSAT is requiring all of its programs to use standard GPRA Customer Satisfaction forms for training, technical assistance and meeting events, approved by OMB under OMB control number 0930–0197. In response to these new requirements, the ATTC Network will modify the current information collection tools to be in compliance, while still collecting information needed for the cross-site assessment.

The goal underlying the training and education opportunities provided through the ATTCs is to enhance the competencies of professionals in a variety of disciplines to address the clinical needs of individuals with substance abuse problems using research-based curricula and training materials through both traditional and non-traditional technologies.

The ATTCs disseminate current health services research from the National Institute on Drug Abuse, National Institute on Alcohol Abuse and Alcoholism, National Institute of Mental Health, Agency for Health Care Policy and Research, National Institute of Justice, and other sources and applied knowledge development activities from SAMHSA using innovative technologies by developing and updating state-of-the-art research-based curricula and developing faculty and trainers. Participants in ATTC events are self-identified and participate in either academic courses, continuing education/professional development training events, technical assistance or meetings. Academic courses are offered at all levels. Continuing education/professional development training is designed to meet identified needs of counselors and other professionals who work with individuals with substance abuse problems. A technical assistance is a jointly planned consultation generally involving a series of contacts between the ATTC and an outside organization/institution during which the ATTC provides expertise and gives direction toward resolving a problem or improving conditions. A meeting is an ATTC sponsored or co-sponsored event in which a group of people representing one or more agencies other than the ATTC work cooperatively on a project, problem, and/or a policy.

Both a process and an outcome assessment will be conducted. The process component will describe the training and education needs of pre-service and currently practicing professionals, the types of events that participants receive through the ATTCs, and their satisfaction with services. The outcome component will focus on changes in clinical practice made by participants as a result of knowledge received.

Analysis of this information will assist CSAT in documenting the numbers and types of participants in ATTC events, describing the extent to which participants improve in their clinical competency, and which method is most effective in disseminating knowledge to the various audiences. This type of information is crucial to support CSAT in complying with GPRA reporting requirements and will inform future development of knowledge dissemination activities.

The study design for trainees will include a description of each event, and a pre-post design that collects identical information at initiation of ATTC courses/trainings, at the completion of the course/training, and again after 30 days. For technical assistance and meeting events, there will be a description of each event and demographic information will be collected from participants before the event. In addition, the study will collect satisfaction measures after each event and at 30-day follow-up using the required GPRA forms. Follow-up forms will be sent to a sample of 25% of participants at events. The chart below summarizes the annualized burden for this project.

Respondent type	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Students/Trainees	20,000	3	.25	15,000
ATTC Faculty/Staff				
Faculty/Trainers	200	1	.25	50
ATTC Summary Reports	15	4	2.00	120
Training Participants				
Pre-event Information	20,000	1	.13	2,600
Post-event Information	20,000	1	.16	3,200
Followup Information	5,000	1	.16	800
Meeting and Technical Assistance Participants				
Pre-event information	3,000	1	.08	240
Total	23,215			7,010

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 19, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–21734 Filed 8–25–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Administration and Financing of Group Homes and Residential Facilities for Persons With Mental Illness—New—The Substance Abuse and Mental Health Services Administration (SAMHSA) will conduct a survey of state health officials to determine what types of residential care programs for persons with mental illness are operated in each State and the District of Columbia. The state health officials will be identified through Web searches of State Mental Health Departments and other relevant agencies on a State-by-State basis.

The survey will contact identified state health officials in all fifty States (and the District of Columbia) and will gather information on the following six survey domains: Facility characteristics (for approximately five different types of group homes); Licensing and certification; Facility programs and treatment services; Seclusion and restraint; Facility monitoring and oversight; and, Financing. The questionnaire will identify and describe the types of residential facilities for persons with mental illness that are licensed, certified, and/or financed by State governments; the target population served by each facility type; the range of services provided in each facility type; provisions for monitoring each facility type, including the use of seclusion and restraints; and, sources of financing for each facility type.

This information collection supports the New Freedom Initiative, one of SAMHSA's current priorities; the New Freedom Initiative is the President's comprehensive plan to reduce barriers to full community integration for people with disabilities. The national survey will provide new information to SAMHSA and to other policymakers regarding the ways in which group homes and other types of residential facilities for adults, adolescents, and children with mental illness are established, regulated, and financed.

The questionnaire will be distributed to identified state health officials in electronic and/or paper formats. State health officials may either return the completed questionnaire via email or regular mail or request a telephone interview. In addition, respondents who do not return a completed paper questionnaire will be contacted and interviewed by telephone.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Number of respondents	Responses per respondent	Hours per response	Total hour burden
240	1	1	240

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 18, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–21735 Filed 8–25–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Pretesting of Substance Abuse Prevention and Treatment and Mental Health Services Communication Messages—(OMB No. 0930–0196, Reinstatement)—As the Federal agency responsible for developing and disseminating authoritative knowledge about substance abuse prevention, addiction treatment, and mental health services and for mobilizing consumer support and increasing public understanding to overcome the stigma attached to addiction and mental illness, the

Substance Abuse and Mental Health Services Administration (SAMHSA) is responsible for development and dissemination of a wide range of education and information materials for both the general public and the professional communities. This submission is for generic approval and will provide for formative and qualitative evaluation activities to (1) assess audience knowledge, attitudes, behavior and other characteristics for the planning and development of messages, communication strategies and public information programs; and (2) test these messages, strategies and program components in developmental form to assess audience comprehension, reactions and perceptions. Information obtained from testing can then be used to improve materials and strategies while revisions are still affordable and possible. The annual burden associated with these activities is summarized below.

Activity	Number of respondents	Responses per respondent	Hours per response	Total hours
Individual in-depth interviews:				
General public	400	1	.75	300
Service Providers	200	1	.75	150
Focus group interviews:				
General public	3,000	1	1.50	4,500
Service Providers	1,500	1	1.50	2,250
Telephone interviews:				
General public	335	1	.08	27
Service Providers	165	1	.08	13
Self-administered questionnaires:				
General public	2,680	1	.25	670
Service Providers	1,320	1	.25	330
Gatekeeper reviews:				
General public	1,200	1	.50	600
Service Providers	600	1	.50	300
Total	11,400			9,140

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 19, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–21736 Filed 8–25–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of a Meeting

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in September 2003.

The SAMHSA National Advisory Council meeting will be open and will include a report by the SAMHSA Administrator on key policy issues and current program developments. There will also be discussions about SAMHSA's four new standard grant announcements, the President's New Freedom Commission on Mental Health Commission Report, SAMHSA's Strategic Prevention Framework, and advancements in medication treatment. In addition, the meeting will include updates on the President's Access to Recovery Initiative, the 2002 National Survey on Drug Use and Health, and the April 2004 Co-occurring Summit.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained either by accessing the SAMHSA Council Web site, *www.samhsa.gov/council/council* or by communicating with the contact whose name and telephone number is listed below. The transcript for the open session will also be available on the SAMHSA Council Web site.

Committee Name: SAMHSA National Advisory Council.

Date/Time: Tuesday, September 9, 2003, 9 a.m. to 5:15 p.m. (Open).

Place: Embassy Suites Hotel, Chevy Chase Room, 4300 Military Road, NW., Washington, DC 20015.

Contact: Toian Vaughn, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 12C–05, Rockville, MD 20857, Telephone: (301) 443–7016; FAX: (301) 443–7590 and e-mail: *TVaughn@samhsa.gov.*

Dated: August 19, 2003.

Toian Vaughn,

Committee Management Officer, SAMHSA.

[FR Doc. 03–21756 Filed 8–25–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

Action: 30-day notice of information collection under review; application to preserve residence for naturalization: Form N–470.

The Department of Homeland Security, Bureau of Citizenship and Immigration Services has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 4, 2003, at 68 FR 33510, allowing for a 60-day public comment period. No comments were received by the BCIS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September

25, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Department of Homeland Security Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Preserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N–470. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 375 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 375 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Regulations and Forms Services Divisions, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536.

Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to: Ms. Terry O'Malley, Clearance Officer, United States Department of Homeland Security, 7th and D Streets, NW., Washington, DC 20530, (202) 358–3571.

Dated: August 20, 2003.

Richard A. Sloan,

Department Clearance Officer, United States Department of Homeland Security, Bureau of Citizenship and Immigration Services.

[FR Doc. 03–21727 Filed 8–25–03; 8:45 am]

BILLING CODE 4416–18–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–59]

Notice of Submission of Proposed Information Collection to OMB: Section 8 Random Digit Dialing Fair Market Rent Survey

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information to be collected is used to determine Section 8 Fair Market Rents (FMRs) in areas not covered by either the AHS or the CPI surveys.

DATES: *Comments Due Date:* September 25, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0142) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained though HUD's Information Collection Budget Tracking System at *http://mf.hud.gov.63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Section 8 Random Digit Dialing Fair Market Rent Surveys.

OMB Approval Number: 2528–0142.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The information is used to determine Section 8 Fair Market Rents (FMRs) in areas not covered by either the AHS or the CPI surveys.

Respondents: Individual or Households.

Frequency of Submission: On occasion.

Reporting Burden: Number of Respondents 894,708: Average response per respondent 0.03; Total annual responses 29,835; Average burden per response 0.63 hrs.

Total Estimated Burden Hours: 18,926.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 20, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–21717 Filed 8–25–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4639–N–04]

Notice of HUD-Held Multifamily and Healthcare Loan Sale (MHLS 2003–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sale of mortgage loans.

SUMMARY: This notice announces HUD's intention to sell certain unsubsidized multifamily and healthcare mortgage loans, without Federal Housing Administration (FHA) insurance, in a competitive, sealed bid sale, Multifamily and Healthcare Loan Sale 2003–1 (MHLS 2003–1). This notice also describes generally the bidding process for the sale and certain persons who are ineligible to bid.

DATES: The Bidder Information Package (BIP) will be available to qualified bidders on or about August 15, 2003. Bids for the loans must be submitted on the bid date that currently is scheduled for September 16, 2003. HUD anticipates that awards will be made on or before September 18, 2003. Closings are expected to take place between September 22 and September 30, 2003.

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement that are acceptable to HUD. Both documents are available on the HUD Web site at *http://www.hud.gov/offices/hsg/comp/asset/hsgloan.cfm*. The executed documents must be mailed and faxed to Owusu & Company at 1900 L Street, NW., Suite 300, Washington, DC 20036, Attention MHLS 2003–1 Sale Coordinator, Fax: (202) 223–7293.

FOR FURTHER INFORMATION CONTACT: Myrna Gordon, Deputy Director, Asset Sales Office, Room 6266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–2625, extension 3369, or Erin E. Moore, Office of General Counsel, Insured Housing, Multifamily Division, Room 9230; telephone (202) 708–0614, extension 5763. Hearing or speech-impaired individuals may call (202) 708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in MHLS 2003–1 certain unsubsidized mortgage loans (Mortgage Loans) secured by multifamily and healthcare properties located throughout the United States. The Mortgage Loans are comprised of performing and nonperforming mortgage loans. A final listing of the Mortgage Loans will be included in the BIP. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Mortgage Loans will be stratified for bidding purposes into separate pools. Each pool will contain Mortgage Loans that generally have similar performance, property type, geographic location, lien position and other characteristics. Qualified bidders may submit bids on one or more pools of Mortgage Loans. A mortgagor who is a qualified bidder may submit an individual bid on its own Mortgage Loan.

The Bidding Process

The BIP will describe in detail the procedure for bidding in MHLS 2003–1. The BIP also will include a standardized non-negotiable loan sale agreement (Loan Sale Agreement) and a loan information CD that contains a spreadsheet with selected attributes for each Mortgage Loan.

As part of its bid, each bidder must submit a deposit equal to the greater of $100,000 or 10% of the bid price. HUD will evaluate the bids submitted and determine the successful bids in its sole and absolute discretion. If a bidder is successful, the bidder's deposit will be non-refundable and will be applied toward the purchase price. HUD anticipates that the awards will be made on or before September 18, 2003 (Award Date). Deposits will be returned to unsuccessful bidders. Closings are scheduled to occur between September 22 and September 30, 2003.

These are the essential terms of sale. The Loan Sale Agreement, which is included in the BIP, contains additional terms and details. To ensure a competitive bidding process, the terms of the bidding process and the Loan Sale Agreement are not subject to negotiation.

Due Diligence and Inquiries

The due diligence contractor for MHLS 2003–1 is American Express Tax and Business Services, Inc. located at 1101 14th Street, NW., 14th Floor, Washington, DC 20005. For general questions regarding the Bidder Information Package, Loan Sale Agreement, loan information, bid structure, bid evaluation, sale procedures and mortgage loan due diligence, please contact Owusu & Company at (866) 565–0558.

Mortgage Loan Sale Policy

HUD reserves the right to add Mortgage Loans to or delete Mortgage Loans from MHLS 2003–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, without prejudice to HUD's right to include any Mortgage Loans in a later sale. Mortgage Loans will not be withdrawn after the Award Date except as is specifically provided in the Loan Sale Agreement.

This is a sale of unsubsidized mortgage loans. Pursuant to the Multifamily Mortgage Sale Regulations at 24 CFR part 290, the Mortgage Loans will be sold without FHA mortgage insurance. Consistent with HUD's policy as set forth in 24 CFR 290.35, HUD is unaware of any Mortgage Loan that is delinquent and secures a project (1) for which foreclosure appears unavoidable, and (2) in which very-low income tenants reside who are not receiving housing assistance and who would be likely to pay rent in excess of 30 percent of their adjusted monthly income if HUD sold the Mortgage Loan. If HUD determines that any Mortgage Loans meet these criteria, they will be removed from the sale.

Mortgage Loan Sale Procedure

HUD selected a competitive sale as the method to sell the Mortgage Loans primarily to satisfy the Mortgage Sale Regulations. These regulations require that, except under certain limited circumstances, HUD-held multifamily mortgage loans must be sold on a competitive basis (24 CFR 290.30). This method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans, and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Eligibility

In order to bid in the sale, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to

HUD. The following individuals and entities are ineligible to bid on any of the Mortgage Loans included in MHLS 2003–1:

(1) Any employee of FHA or HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household;

(2) Any individual or entity that is debarred from doing business with FHA or HUD pursuant to Title 24 of the Code of Federal Regulations;

(3) Any contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with MHLS 2003–1;

(4) Any individual who was a principal, partner, director, agent or employee of any entity or individual described in subparagraph 3 above, at any time during which the entity or individual performed services for or on behalf of HUD in connection with MHLS 2003–1;

(5) Any individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 4 above to assist in preparing any of its bids on the Mortgage Loans;

(6) Any individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in MHLS 2003–1;

(7) Any mortgagor (or affiliate of a mortgagor) that failed to submit to HUD all 1998 through 2002 audited financial statements for a project securing a Mortgage Loan on or before August 15, 2003; and

(8) Any individual or entity and any Related Party (as such term is defined in the Qualification Statement) that is a mortgagor in any of HUD's multifamily housing programs that is in default under such mortgage loan or is in violation of any regulatory or business agreements with HUD, unless such default or violation is cured on or before August 15, 2003.

In addition, any entity or individual that served as a loan servicer or performed other services for or on behalf of FHA or HUD at any time during the 2-year period prior to September 1, 2003 with respect to any Mortgage Loan is ineligible to bid on such Mortgage Loan. Also ineligible to bid on any Mortgage Loan are: (a) any affiliate or principal of any entity or individual described in the preceding sentence; (b) any employee or subcontractor of such entity or individual during that 2-year period; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan.

Prospective bidders should carefully review the Qualification Statement to determine whether they are eligible to submit bids on the Mortgage Loans in MHLS 2003–1.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding MHLS 2003–1, including, but not limited to, the identity of any bidder and their bid price or bid percentage for any pool of loans or individual loan within a pool of loans, upon the completion of the sale. Even if HUD elects not to publicly disclose any information relating to MHLS 2003–1, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to MHLS 2003–1, and does not establish HUD's policy for the sale of other mortgage loans.

Dated: August 20, 2003.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 03–21715 Filed 8–25–03; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

United States Geological Survey

Advisory Committee on Water Information

AGENCY: United States Geological Survey, Interior.

ACTION: Advisory Committee on Water Information meeting notice.

SUMMARY: Notice is hereby given of a meeting of the Advisory Committee on Water Information (ACWI). This meeting of the ACWI is to discuss broad policy-related topics relating to national water initiatives, and to hear reports from ACWI subgroups. The proposed agenda will include a series of discussions concerning various U.S. Government policies and programs related to the development and dissemination of water information.

The ACWI has been established under the authority of the Office of Management and Budget Memorandum M–92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water-information users and professionals to advise the Federal Government of activities and plans that may improve the effectiveness of meeting the Nation's water information needs. More than 30 organizations have been invited by the Secretary of the Interior to name representatives to the ACWI. These include Federal departments, State, local, and tribal government organizations, industry, academia, agriculture, environmental organizations, professional societies, and volunteer groups.

DATES: The formal meeting will convene at 8 a.m., on September 9, 2003, and will adjourn on September 10, 2003, at 5 p.m.

ADDRESSES: Days Hotel and Conference Center, 2200 Centreville Road, Herndon, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Toni M. Johnson (Executive Secretary), Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, 417 National Center, Reston, VA 20192. Telephone: 703–648–6810; Fax: 703–648–5644.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Up to a half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Ms. Johnson at the above address no later than noon, September 5, 2003. It is requested that 40 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Ms. Johnson for distribution at the ACWI Meeting.

Dated: August 21, 2003.

R. Thomas Weimer,

Deputy Assistant Secretary—Water and Science.

[FR Doc. 03–21811 Filed 8–25–03; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal-State Gaming Compact Between the State of Arizona and the San Juan Southern Paiute Tribe.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988

(IGRA), Public Law 100–497, 25 U.S.C 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing notice that the Tribal-State Compact for Class III gaming between the San Juan Southern Paiute Tribe and the State of Arizona is considered approved. By the terms of IGRA, the Compact is considered approved, but only to the extent the compact is consistent with the provisions of IGRA.

This Compact expands the scope of gaming activities authorized under the Compact, increases wager limits, increases the number of permitted gaming devices, and allows the tribe to enter into gaming device transfer agreements with one or more gaming tribes.

EFFECTIVE DATE: August 26, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 18, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–21805 Filed 8–25–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–03–1150–PG–24–1A]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) meeting; additional details.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: A meeting is scheduled for September 9–10, 2003, at the Airport Hilton Hotel, Salon A conference room, 5151 Wiley Post Way, Salt Lake City, Utah. The meeting will begin at 8 a.m. on September 9 and conclude at 11 a.m. on September 10.

FOR FURTHER INFORMATION CONTACT: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah, 84111; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: A notice was initially published (vol. 68, page number 122, dated 6/25/03) which addressed a follow-up meeting to be scheduled on September 9–10, 2003. This notice is issued to announce additional details of the meeting. A working meeting is scheduled for September 9 to discuss the reports from the raptor, OHV, and San Rafael subgroups; an overview of shrub die-off and sage grouse national/state strategies; and a presentation, along with a discussion, on the Sustainable Working Landscapes (SWL) Initiative.

On September 10, 2003, beginning at 8 a.m. until 10 a.m, the Council encourages and is providing an opportunity for public comments on the SWL initiative. If you are unable to attend the meeting, written comments can be sent to the Bureau of Land Management, c/o Larry Lichthardt, P.O. Box 45144, Salt Lake City, Utah, 84145–0155.

There will also be a public comment period from 10 a.m.–11 a.m. for members of the public to address the Council on non-SWL related issues.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: August 18, 2003.

Sally Wisely,

State Director.

[FR Doc. 03–21796 Filed 8–25–03; 8:45 am]

BILLING CODE 4310–$$–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

California Bay-Delta Public Advisory Committee Public Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the California Bay-Delta Public Advisory Committee will meet on September 11, 2003. The agenda for the Committee meeting will include a report on the California Bay-Delta Authority actions on Program Plans; a Finance update; staff and subcommittee reports; and discussions on the California Water Plan, Water 2025, Committee priorities for 2003, and implementation of the CALFED Bay-Delta Program with State and Federal officials.

DATES: The meeting will be held Thursday, September 11, 2003, from 9 a.m. to 6 p.m. If reasonable accommodation is needed due to a disability, please contact Pauline Nevins at (916)445–5511 or TDD (800) 735–2929 at least 1 week prior to the meeting.

ADDRESSES: The meeting will be held at the John E. Moss Federal Building located at 650 Capitol Mall, 5th Floor, Bay-Delta Room, Sacramento, California.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, California Bay-Delta Authority, at (916) 445–5511, or Diane Buzzard, U.S. Bureau of Reclamation, at (916) 978–5022.

SUPPLEMENTARY INFORMATION: The Committee was established to provide assistance and recommendations to Secretary of the Interior Gale Norton and California Governor Gray Davis on implementation of the CALFED Bay-Delta Program. The Committee will advise on annual priorities, integration of the eleven Program elements, and overall balancing of the four Program objectives of ecosystem restoration, water quality, levee system integrity, and water supply reliability. The Program is a consortium of State and Federal agencies with the mission to develop and implement a long-term comprehensive plan that will restore ecological health and improve water management for beneficial uses of the San Francisco/Sacramento and San Joaquin Bay Delta.

Committee and meeting materials will be available on the CALFED Bay-Delta Web site: *http://calwater.ca.gov* and at the meeting. This meeting is open to the public. Oral comments will be accepted from members of the public at the meeting and will be limited to 3–5 minutes.

Authority: The Committee was established pursuant to the Department of the Interior's authority to implement the Fish and Wildlife Coordination Act, 16 U.S.C. 661 *et.seq.*, the Endangered Species Act, 16 U.S.C. 1531 *et. seq.*, and the Reclamation Act of 1902, 43 U.S.C. 371 *et. seq.*, and the acts amendatory thereof or supplementary thereto, all collectively referred to as the Federal Reclamation laws, and in particular, the Central Valley Project Improvement Act, title 34 of Pub. L. 102–575.)

Dated: August 8, 2003.

Allan Oto,

Special Projects Officer, Mid-Pacific Region.

[FR Doc. 03–21737 Filed 8–25–03; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. TA–131–26 and TA–2104–8]

U.S.-Bahrain Free Trade Agreement: Advice Concerning the Probable Economic Effect of Duty-Free Imports

AGENCY: International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: August 19, 2003.

SUMMARY: Following receipt of a request on August 13, 2003, from the United States Trade Representative (USTR), the Commission instituted investigation Nos. TA–131–26 and TA–2104–8, *U.S.-Bahrain Free Trade Agreement: Advice Concerning the Probable Economic Effect of Duty-Free Imports*, under section 131 of the Trade Act of 1974 and section 2104(b)(2) of the Trade Act of 2002.

FOR FURTHER INFORMATION CONTACT: Information specific to this investigation may be obtained from Laura Polly, Project Leader (202–205–3408; *polly@usitc.gov*), or Queena Fan, Deputy Project Leader (202–205–3055; *qfan@usitc.gov*), Office of Industries, United States International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091; *wgearhart@usitc.gov*). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) *at http://edis.usitc.gov*.

Background

As requested by the USTR pursuant to section 131 of the Trade Act of 1974 (19 U.S.C. 2151), in its report the Commission will provide advice as to the probable economic effect of providing duty-free treatment for imports of products of Bahrain (i) on industries in the United States producing like or directly competitive products, and (ii) on consumers. The import analysis will consider each article in chapters 1 through 97 of the Harmonized Tariff Schedule of the United States for which U.S. tariffs will remain after the United States fully implements its Uruguay Round tariff commitments. The import advice will be based on the 2003 Harmonized Tariff System nomenclature and 2002 trade data. The advice with respect to the removal of U.S. duties on imports from Bahrain will assume that any known U.S. nontariff barrier will not be applicable to such imports. The Commission will note in its report any instance in which the continued application of a U.S. nontariff barrier to such imports would result in different advice with respect to the effect of the removal of the duty.

As also requested, pursuant to section 2104(b)(2) of the Trade Act of 2002 (19 U.S.C. 3804(b)(2)), the Commission will provide advice as to the probable economic effect of eliminating tariffs on imports of certain agricultural products of Bahrain on (i) industries in the United States producing the product concerned, and (ii) the U.S. economy as a whole.

USTR indicated that the Commission's report will be classified and considered to be an interagency memorandum containing pre-decisional advice and subject to the deliberative process privilege. The Commission expects to provide its report to USTR by December 12, 2003.

Public Hearing

A public hearing in connection with this investigation will be held at the United States International Trade Commission Building, 500 E Street, SW., Washington, DC, beginning at 9:30 a.m. on September 25, 2003. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than 5:15 p.m., September 5, 2003. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., September 11, 2003; the deadline for filing post-hearing briefs or statements is 5:15 p.m., October 2, 2003. In the event that, as of the close of business on September 5, 2003, no witnesses are scheduled to appear at the hearing, the hearing will be canceled. Any person interested in attending the hearing as an observer or non-participant may call the Secretary to the Commission (202–205–1806) after September 5, 2003, for information concerning whether the hearing will be held.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary to the Commission for inspection by interested parties. The Commission may include such confidential business information in the report it sends to the USTR. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on October 2, 2003. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by § 201.8 of the Commission's rules (19 CFR 201.8) (*see* Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*).

Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

List of Subjects

Bahrain, tariffs, and imports.

Issued: August 20, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21757 Filed 8–25–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–497]

In the Matter of Certain Universal Transmitters for Garage Door Openers; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and motion for temporary relief were filed with the U.S. International Trade Commission on July 16, 2003, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of The Chamberlain Group, Inc. of Elmhurst, Illinois. A supplement to the complaint was filed on August 8, 2003. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain universal transmitters for garage door openers by reason of infringement of claims 1–8 of U.S. Patent No. RE 35,364 and claims 5–62 of U.S. Patent No. RE 37,986, and violation of section 1201(a)(2) of the Digital Millennium Copyright Act, 17 U.S.C. 1201(a)(2). The complaint further alleges that an industry in the United States exists as required by subsections (a)(1)(A) and (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

The motion for temporary relief requests that the Commission issue a temporary limited exclusion order and temporary cease and desist orders prohibiting the importation into and the sale within the United States after importation of certain universal transmitters for garage door openers that violate section 1201(a)(2) of the Digital Millennium Copyright Act, 17 U.S.C. 1201(a)(2), during the course of the Commission's investigation.

ADDRESSES: The complaint and motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic document information system (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2606.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (2003). The authority for provisional acceptance of the motion for temporary relief is contained in § 210.58, 19 CFR 210.58.

Scope of Investigation: Having considered the complaint and the motion for temporary relief, the U.S. International Trade Commission, on August 20, 2003, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine:

(a) whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain universal transmitters for garage door openers by reason of violation of section 1201(a)(2) of the Digital Millennium Copyright Act, 17 U.S.C. ¶1201(a)(2) the threat or effect of which is to destroy or substantially injure an industry in the United States; and

(b) whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain universal transmitters for garage door openers by reason of infringement of claims 1–8 of U.S. Patent No. RE 35,364 or claims 5–62 of U.S. Patent No. RE 37,986 and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) Pursuant to § 210.58 of the Commission's rules of practice and procedure, 19 CFR 210.58, the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, is provisionally accepted and referred to the presiding administrative law judge for investigation.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—The Chamberlain Group, Inc., 845 Larch Avenue, Elmhurst, IL 60126–1196.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint and motion for temporary relief are to be served:

Skylink Technologies, Inc., 2213 Dunwin Drive, Mississauga, Ontario, Canada L5L 1X1.

Capital Prospect, Ltd., Room 1316B, Veristrong Industrial Center, 36 Au Pui Wan Street, Fo Tan, New Territories, Hong Kong.

Philip Tsui, 2213 Dunwin Drive, Mississauga, Ontario, Canada L5L 1X1.

(c) Karin J. Norton, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Charles E. Bullock is designated as the presiding administrative law judge.

Responses to the complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondents in accordance with §§210.13 and 210.59 of the Commission's rules of practice and procedure, 19 CFR 210.13 and 210.59. Pursuant to 19 CFR 201.16(d), 210.13(a), and 210.59, such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint, the motion for temporary relief, and the notice of investigation. Extensions of time for submitting the responses to the complaint, motion for temporary relief, and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, the motion for temporary relief, and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: August 20, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21758 Filed 8–25–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–493]

Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof, and Products Containing Same; Notice of a Commission Determination Not To Review an Initial Determination Amending the Complaint and Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") of the presiding administrative law judge ("ALJ") granting the joint motion of complainants to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3041. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 27, 2003, based on a complaint filed by complainants Energizer Holdings, Inc. and Eveready Battery Co., Inc., both of St. Louis, MO, 68 FR 32771 (2003). The complaint as amended alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1–12 of U.S. Patent No. 5,464,709. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainants requested that the Commission issue a general exclusion order and cease and desist orders. The Commission named as respondents 26 companies located in the United States, China, Indonesia, and Japan. *Id.* The ALJ has set September 2, 2004, as the target date for completion of the investigation.

The ALJ issued the subject ID on July 17, 2003. The ID grants the motion of complainants to terminate the investigation as to respondent Changhong Battery Co. on the basis of a consent motion and amend the complaint and notice of investigation to reflect this fact. The ALJ found that Changhong Battery Co. is a division of another respondent in the investigation, Sichuan Changhong Electric Co., Ltd., and therefore Changhong Battery Co. cannot be sued as a separate respondent. Accordingly, the ID amends the notice of investigation and complaint to reflect the fact that Changhong Battery Co. is not a separate respondent.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

By order of the Commission.

Issued: August 19, 2003.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21729 Filed 8–25–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–92]

Canadian Standards Association; Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of the Canadian Standards Association (CSA) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on August 26, 2003 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while CSA remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of the Canadian Standards Association (CSA) as a Nationally Recognized Testing Laboratory (NRTL). CSA's expansion covers the use of additional test standards. OSHA's current scope of recognition for CSA may be found in the following informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/csa.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgement that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on an application. These notices set forth the NRTL's scope of recognition or modifications of this scope.

CSA submitted a request, dated March 27, 2002 (*see* Exhibit 30), to expand its recognition as an NRTL to use 17 additional test standards. The NRTL Program staff determined that nine of these standards could not be included in the expansion because they are not "appropriate test standards," within the meaning of 29 CFR 1910.7(c). The staff makes similar determinations in processing expansion requests from any NRTL. Therefore, OSHA approves eight test standards for the expansion, which are listed below. Through no fault of CSA, the application was initially delayed in processing.

In connection with the request, OSHA did not perform an on-site review of CSA's NRTL testing facilities. However, NRTL Program assessment staff

reviewed information pertinent to the request and recommended that CSA's recognition be expanded to include the additional test standards listed above (see Exhibit 31).

OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on May 22, 2003 (68 FR 28033). The notice requested submission of any public comment by June 6, 2003. OSHA did not receive any comments pertaining to the application.

The previous notice published by OSHA for CSA's recognition covered a renewal and expansion of recognition, which became effective on July 3, 2001 (66 FR 35271).

You may obtain or review copies of all public documents pertaining to the CSA application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL–2–92, the permanent record of public information on CSA's recognition.

The current address of the testing facilities (sites) that OSHA recognizes for CSA are:

Canadian Standards Association, Etobicoke (Toronto), 178 Rexdale Boulevard, Etobicoke, Ontario, M9W 1R3

CSA International, Pointe-Claire (Montreal), 865 Ellingham Street, Pointe-Claire, Quebec H9R 5E8

CSA International, Richmond (Vancouver), 13799 Commerce Parkway, Richmond, British Columbia V6V 2N9

CSA International, Edmonton, 1707–94th Street, Edmonton, Alberta T6N 1E6

CSA International, Cleveland, 8501 East Pleasant Valley Road, Cleveland, Ohio 44131 (formerly part of the American Gas Association)

CSA International, Irvine, 2805 Barranca Parkway, Irvine, California 92606 (formerly part of the American Gas Association)

Final Decision and Order

The NRTL Program staff has examined the application, the assessor's recommendation, and other pertinent information. Based upon this examination and the recommendation, OSHA finds that the Canadian Standards Association has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the additional test standards subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of CSA, subject to this limitation and these conditions.

Limitation

OSHA limits the expansion to testing and certification of products for demonstration of conformance to the following 8 test standards, and OSHA has determined the standards are appropriate, within the meaning of 29 CFR 1910.7(c).

ANSI Z21.19 Refrigerators Using Gas Fuel
ANSI Z21.42 Gas-Fires Illuminating Appliances
ANSI Z21.45 Flexible Connectors of Other Than All-Metal Construction for Gas Appliances
ANSI Z21.54 Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances
ANSI Z21.57 Recreational Vehicle Cooking Gas Appliances
ANSI Z21.58 Outdoor Cooking Gas Appliances
ANSI Z21.74 Portable Refrigerators for Use With HD–5 Propane Gas
ANSI Z21.76 Gas-Fired Unvented Catalytic Room Heaters for Use With Liquefied Petroleum (LP) Gases
UL 2017 General Purposes Signaling Devices and Systems

OSHA's recognition of CSA, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) that fall within the scope of a test standard, but for which OSHA standards do not require testing and certification.

Conditions

CSA must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

CSA must have specific written testing procedures in place before testing products covered by any test standard for which it is recognized and must use these procedures in testing and certifying those products;

OSHA must be allowed access to CSA's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CSA has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CSA must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, CSA agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

CSA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

CSA will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

CSA will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC this 15th day of August, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–21763 Filed 8–25–03; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL1–88]

MET Laboratories, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of MET Laboratories, Inc. (MET) for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition becomes effective on August 26, 2003 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while MET remains recognized by OSHA as an NRTL.

FOR FURTHER INFORMATION CONTACT: Roy Resnick, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW.,

Room N3653, Washington, DC 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of MET Laboratories, Inc., (MET) as a Nationally Recognized Testing Laboratory (NRTL). MET's expansion covers the use of additional test standards. OSHA's current scope of recognition for MET may be found in the following informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/met.html*.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope.

MET submitted a request, dated April 30, 2002 (*see* Exhibit 32), to expand its recognition as an NRTL to use 20 additional test standards. The NRTL Program staff determined that all the standards were "appropriate test standards," within the meaning of 29 CFR 1910.7(c). The staff makes similar determinations in processing expansion requests from any NRTL. OSHA NRTL Program staff performed an on-site review of the NRTL in September 2002 and recommended the expansion in a memo dated October 22, 2002 (see Exhibit 33). Through no fault of MET, the application was delayed in processing. MET then submitted an amendment on May 15, 2003 (see Exhibit 32–1), to add one additional test standard to its expansion request. This standard requires the same capabilities as a few of the standards included in the original request and therefore falls within the recommendation of the assessor. As a result, a total of 21 test standards are approved for the expansion.

OSHA published the notice of its preliminary findings on the expansion request in the **Federal Register** on June 20, 2003 (68 FR 37028). The notice requested submission of any public comments by July 7, 2003. OSHA did not receive any comments pertaining to the application.

The previous notices published by OSHA for MET's recognition covered a renewal and expansion of recognition, which became effective on May 23, 2002 (67 CFR 36260).

You may obtain or review copies of all public documents pertaining to the MET application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL1–88, the permanent record of public information on MET's recognition.

The current address of the MET testing facility that OSHA recognizes for MET is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

Final Decision and Order

The NRTL Program staff has examined the application, the assessor's recommendation, and other pertinent information. Based upon this examination and the recommendation, OSHA finds that MET Laboratories, Inc., has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the additional test standards subject to the limitation and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of MET, subject to this limitation and these conditions.

Limitation

OSHA limits the expansion to testing and certification of products for demonstration of conformance to the following 21 test standards, and OSHA has determined the standards are appropriate within the meaning of 29 CFR 1910.7(c).

UL48 Electric Signs
UL183 Manufactured Wiring Systems
UL325 Door, Drapery, Gate, Louver and Window Operator and Systems
UL355 Cord Reels
UL427 Refrigerating Units
UL508C Power Conversion Equipment
UL541 Refrigerated Vending Machines
UL756 Coin and Currency Changers and Actuaters
UL778 Motor-Operated Water Pumps
UL916 Energy Management Equipment
UL961 Electric Hobby and Sports Equipment
UL983 Surveillance Cameras Units
UL1419 Professional Video and Audio Equipment
UL1433 Control Centers for Changing Message Type Electric Signs
UL1564 Industrial Battery Chargers
UL1574 Track Lighting Systems
UL1740 Industrial Robots and Robotic Equipment
UL1838 Low Voltage Landscape Lighting Systems
UL2044 Commercial Closed Circuit Television Equipment
UL2161 Neon Transformers and Power Supplies
UL3044 Surveillance Closed Circuit Television Equipment

Many of the test standards listed above are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we show the designation of the standards developing organization (*e.g.*, UL 541) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 541). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of which version appears in the list of test standards found on OSHA's informational web page for the NRTL. Contact "NSSN" (*http://www.nssn.org*), an organization partially sponsored by ANSI, to find out whether or not a standard is currently ANSI-approved.

OSHA's recognition of MET, or any NRTL, for a particular test standard is limited to equipment or materials (*i.e.*, products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) that falls within the scope of a test standard, but for which OSHA standards do not require NRTL testing and certification.

Conditions

MET Laboratories, Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

MET must have specific written testing procedures in place before testing products covered by any test standard for which it is recognized and must use these procedures in testing and certifying those products;

OSHA must be allowed access to MET's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If MET has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

MET must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, MET agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

MET must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

MET will meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

MET will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 15th day of August, 2003.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 03–21762 Filed 8–25–03; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–096)]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council (NAC).

DATES: Tuesday, September 9, 2003, 8 a.m. to 5 p.m. and Wednesday, September 10, 2003, 8:30 a.m. to 3 p.m.

ADDRESSES: AMES Research Center, NASA, Moffett Training and Conference Center, Building 3, Corner of Severyns and South Akron Avenues, Moffett Field, CA 94035–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Code IC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0732.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Information Technology
- Strategic Plan
- Human Capital, Education and Communication
- Project Prometheus—Informational Briefing
- Future Air Transportation Management System
- Overview of AMES Research Center
- Proposed NAC Work Plan Presentation to the Administrator
- Return to Flight

Visitors will be asked to present a valid picture ID. It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–21817 Filed 8–25–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–095)]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announce a forthcoming meeting of the NASA Advisory Council (NAC), Minority Business Resource Advisory Committee.

DATES: Thursday, September 11, 2003, 9 a.m. to 4 p.m., and Friday, September 12, 2003, 9 a.m. to 12 Noon.

ADDRESSES: NASA Headquarters, 300 E. Street, SW., Room 9H40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Review of Previous Meeting;
- Office of Small and Disadvantaged Business Utilization Update of Activities;
- NAC Meeting Report;
- Overview of Agency-wide initiatives;
- Update of Small Business Program;
- Public Comment;
- Panel Discussion and Review;
- Committee Panel Reports;
- Status of Open Committee Recommendations; and
- New Business.

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; employee/affiliation information (name of institution, address, country, phone); title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Mr. Lamont Hames via e-mail at *lhames@hq.nasa.gov* or by telephone at 202–358–2088. Attendees will be escorted at all times.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Visitors will be requested to sign a visitor's register.

Members of the press who have questions about these procedures should contact the NASA Headquarters newsroom (202–358–1600).

June Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–21816 Filed 8–25–03; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Reinstatement, Without Change, of a Previously Approved Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA is submitting the following reinstatement, without

change, of a previously approved collection for which approval has expired, to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until September 25, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. (703) 518–6669, e-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of this information collection request, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447. It is also available on the following Web site: *http://www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0139.

Form Number: N/A.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Title: Organization and Operation of Federal Credit Unions.

Description: Federal Credit Unions wishing to pay lending-related incentives to employees must establish written policies.

Respondents: Certain Federal Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 1,000.

Estimated Burden Hours Per Response: One.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 1,000.

Estimated Total Annual Cost: $25,000.

By the National Credit Union Administration Board on August 18, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–21809 Filed 8–25–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until September 25, 2003.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. Neil McNamara, (703) 518–6447, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. (703) 518–6669, e-mail: *mcnamara@ncua.gov.*

OMB Reviewer: Mr. Joseph F. Lackey, (202) 395–4741, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, Neil McNamara, (703) 518–6447. It is also available on the following Web site: *http://www.NCUA.gov.*

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0135.

Form Number: N/A.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: National Credit Union Administration Agreement for Electronic Funds Transfer Payments.

Description: NCUA needs this information to comply with the Debt Collection Improvement Act which has a provision concerning the use of EFT payments.

Respondents: All Federally Insured Credit Unions.

Estimated No. of Respondents/ Recordkeepers: 250.

Estimated Burden Hours Per Response: 15 minutes, (15/60 hr).

Frequency of Response: Annually.

Estimated Total Annual Burden Hours: 62.5 hours.

Estimated Total Annual Cost: $1,350.

By the National Credit Union Administration Board on August 18, 2003.

Becky Baker,

Secretary of the Board.

[FR Doc. 03–21810 Filed 8–25–03; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL INSTITUTE FOR LITERACY

National Institute for Literacy Advisory Board; Meeting

AGENCY: National Institute for Literacy.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and a summary of the agenda for an upcoming meeting of the National Institute for Literacy Advisory Board (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or materials in alternative format) should notify Liz Hollis at telephone number (202) 233–2072 no later than August 29. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

DATE AND TIME: Open sessions—September 9, 2003, from 8:30 a.m. to 5:30 p.m. and September 10, 2003, from 8:30 a.m. to 12:15 p.m. Closed session—September 8, 2003, from 4:15 p.m. to 6 p.m.

ADDRESSES: National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Liz Hollis, Special Assistant to the Director; National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006; telephone number: (202) 233–2072; e-mail: *ehollis@nifl.gov.*

SUPPLEMENTARY INFORMATION: The Board is established under section 242 of the Workforce Investment Act of 1998, Pub. L. 105–220 (20 U.S.C. 9252). The Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board advises and makes recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and

Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in implementing any programs to achieve those goals. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Institute's Director.

The National Institute for Literacy Advisory Board meeting on September 8–10, 2003, will focus on future and current program activities, reauthorization of the Workforce Investment Act, and other relevant literacy activities and issues. On September 8, 2003 from 4:15 p.m. to 6 p.m., the meeting will be closed to the public to discuss personnel issues. This discussion relates to the internal personnel rules and practices of the Institute and is likely to disclose information of personal nature where disclosure would constitute a clearly unwarranted invasion of personnel privacy. The discussion may therefore be held in closed session under exemptions 2 and 6 of the Government in the Sunshine Act, 5 U.S.C. 552b(c)(2) and (6). A summary of the activities at the closed session and related matters that are informative to the public and consistent with the policy of 5 U.S.C. 552b will be available to the public within 14 days of the meeting.

Records are kept of all Advisory Board proceedings and are available for public inspection at the National Institute for Literacy, 1775 I Street, NW., Suite 730, Washington, DC 20006, from 8:30 a.m. to 5 p.m.

Dated: August 20, 2003.

Sandra L. Baxter,

Interim Director.

[FR Doc. 03–21795 Filed 8–25–03; 8:45 am]

BILLING CODE 6055-01-P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 27, 2003, the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on August 4, 2003 to: Grant Ballard, Permit No. 2004–007.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–21807 Filed 8–25–03; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste, Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on September 16, 2003, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, September 16, 2003—8:30 a.m.–10 a.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Howard J. Larson (Telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (e.t.) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted only during those portions of the meeting that are open to the public.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m. (e.t.). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes in the agenda.

Dated: August 19, 2003.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 03–21777 Filed 8–25–03; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Notice of Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of August 25, September 1, 8, 15, 22, 29, 2003.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 25, 2003

Monday, August 25, 2003

9:30 a.m. Discussion of Investigatory and Enforcement Issues (Closed—Ex. 7 & 5).

Thursday, August 28, 2003.

10:45 a.m. Affirmation Session (Public Meeting) (If needed).

2 p.m. Discussion of Intragovernmental Issues (Closed—Ex. 1 & 9).

Week of September 1, 2003—Tentative

There are no meetings scheduled for the Week of September 1, 2003.

Week of September 8, 2003—Tentative

Wednesday, September 10, 2003

1 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, (301) 415–2308).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

3 p.m. Discussion of Security Issues (Closed—Ex. 1).

Thursday, September 11, 2003

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1).

Week of September 15, 2003—Tentative

There are no meetings scheduled for the Week of September 15, 2003.

Week of September 22, 2003—Tentative

Wednesday, September 24, 2003

9 a.m. Briefing on Emergency Preparedness Program Status (Public Meeting) (Contact: Eric Weiss, 301–415–3264).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of September 29, 2003—Tentative

There are no meetings scheduled for the Week of September 29, 2003.

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: David Louis Gamberoni (301) 415–1651.

* * * * *

SUPPLEMENTARY INFORMATION: By a vote of 3–0 on August 14, the Commission determined pursuant to U.S.C. 552b(e) and 9.107(a) of the Commission's rules that "Affirmation of (1) Final Rule: Geological and Seismological Characteristics for the Siting and Design of Dry Cask Independent Spent Fuel Storage Installations and Monitored Retrievable Storage Installations—10 CFR part 72 and (2) Private Fuel Storage (Independent Spent Fuel Storage Installation), Docket No. 72–22–ISFSI, LBP–03–08 (May 22, 2003)" be held on August 15, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 21, 2003.

D.L. Gamberoni

Technical Coordinator, Office of the Secretary.

[FR Doc. 03–21880 Filed 8–22–03; 11:20 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services,Washington, DC 20549.

Extension:

Rule 17Ad–15, SEC File No. 270–360, OMB Control No. 3235–0409.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17Ad–15 Signature Guarantees

Rule 17Ad–15 requires approximately 900 transfer agents to establish written standards for the acceptance or rejection of guarantees of securities transfers from eligible guarantor institutions. Transfer agents are required to establish procedures to ensure that those standards are used by the transfer agent to determine whether to accept or reject guarantees from eligible guarantor institutions. Transfer agents must maintain, for a period of three years following the date of a rejection of transfer, a record of all transfers rejected, along with the reason for the rejection, identification of the guarantor, and whether the guarantor failed to meet the transfer agent's guarantee standard. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

There are approximately 900 registered transfer agents. The staff estimates that every transfer agent will spend about 40 hours annually to comply with rule 17Ad–15. The total annual burden for all transfer agents is 36,000 hours. The average cost per hour is approximately $30. Therefore, the total cost of compliance for all transfer agents is $1,080,000.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Kenneth A. Fogash, Associate Executive Director/Acting CIO, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: August 19, 2003.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21818 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f–1(c) and Form X–17F–1A, SEC File No. 270–29, OMB Control No. 3235–0037.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

• Rule 17f–1(c) and Form X–17F–1A Reporting of missing, lost, stolen, or counterfeit securities.

Rule 17f–1(c) and Form X–17F–1A requires approximately 26,000 entities in the securities industry to report lost, stolen, missing, or counterfeit securities to a central database. Form X–17F–1A facilitates the accurate reporting and precise and immediate data entry into the central database. Reporting to the central database fulfills a statutory requirement that reporting institutions report and inquire about missing, lost, counterfeit, or stolen securities. Reporting to the central database also allows reporting institutions to gain access to the database that stores information for the Lost and Stolen Securities Program.

We estimate that 26,000 reporting institutions will report that securities are either missing, lost, counterfeit, or

stolen annually and that each reporting institution will submit this report 50 times each year. The staff estimates that the average amount of time necessary to comply with rule 17f–1(c) and Form X–17F–1A is five minutes per submission. The total burden is 108,333 hours annually for the entire industry (26,000 times 50 times 5 divided by 60). The average cost per hour is approximately $50. Therefore, the total cost of compliance for respondents is $5,416,666.

Rule 17f–1(c) is a reporting rule and does not specify a retention period. The rule requires an incident-based reporting requirement by the reporting institutions when securities are discovered missing, lost, counterfeit, or stolen. Registering under rule 17f–1(c) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Lost and Stolen Securities Program. Reporting institutions required to register under rule 17f–1(c) will not be kept confidential; however, the Lost and Stolen Securities Program database will be kept confidential. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 19, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21819 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17f–1(b), SEC File No. 270–28, OMB Control No. 3235–0032.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

- Rule 17f–1(b): Requirements for reporting and inquiry with respect to missing, lost, counterfeit, or stolen securities.

Rule 17f–1(b) requires approximately 26,000 entities in the securities industry to register in the Lost and Stolen Securities Program ("Program"). Registration fulfills a statutory requirement that entities report and inquire about missing, lost, counterfeit, or stolen securities. Registration also allows entities in the securities industry to gain access to a confidential database that stores information for the Program.

We estimate that 1,000 entities will register in the Program annually and that each respondent will register one time. The staff estimates that the average number of hours necessary to comply with the rule 17f–1(b) is one-half hour. The total burden is therefore 500 hours (1,000 times one-half) annually for all respondents. The average cost per hour is approximately $50. Therefore, the total cost of compliance for each respondent is $25,000 (500 times $50).

Rule 17f–1(b) is a reporting rule and does not specify a retention period. The rule requires a one-time registration for reporting institutions. Registering under rule 17f–1(b) is mandatory to obtain the benefit of a central database that stores information about missing, lost, counterfeit, or stolen securities for the Program. Reporting institutions required to register under rule 17f–1(b) will not be kept confidential; however, the Program database will be kept confidential.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the estimated burden hours should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC, 20503; and (ii) Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 19, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21820 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 14f–1, OMB Control No. 3235–0108, SEC File No. 270–127;
Rule 12d1–3, OMB Control No. 3235–0109, SEC File No. 270–116.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for approval.

Rule 14f–1 (OMB Control No. 3235–0108; SEC File No. 270–127) requires issuers to disclose a change in a majority of the directors of the issuer. The information filed under rule 14f–1 must be filed with the Commission and is publicly available. We estimate that it takes 18 burden hours to provide the information required under rule 14f–1 and that the information is filed by 44 respondents for a total of 792 burden hours.

Rule 12d1–3 (OMB Control No. 3235–0109; SEC File No. 270–116) requires a certification that a security has been approved by an exchange for listing and registration pursuant to section 12(d) of the Securities Exchange Act of 1934 to be filed with the Commission. The information required under rule 12d1–3 must be filed with the Commission and is publicly available. We estimate that it takes one-half hour to provide the information required under rule 12d1–3 and that the information is filed by 688 respondents for a total of 344 burden hours.

Written comments are invited on: (a) Whether these proposed collection of information are necessary for the performance of the functions of the agency, including whether the information will have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: August 19, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21821 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48366; File No. SR–EMCC–2003–02]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Order Granting Approval of a Proposed Rule Change Modifying the Clearing Fund Calculation

August 19, 2003.

I. Introduction

On May 8, 2003, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") and on June 2, 2003, and June 5, 2003, amended proposed rule change SR–EMCC–2003–02 pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on June 30, 2003.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

One of the purposes of the proposed rule change is to modify the clearing fund deposit requirement for certain EMCC members. The proposed change adds Addendum I to EMCC's rules. Addendum I establishes $50 million as the clearing fund deposit for members who are Inter-Dealer Brokers ("IDBs") or whose only business with EMCC is to clear for IDBs. EMCC will continue to calculate the clearing fund requirements for each of these members. To the extent that the calculated amount exceeds the $50 million fixed amount for any day, the difference will be required to be paid by all other EMCC members on a pro-rata basis based on their average clearing fund requirements over the previous 30 calendar day period. However, for the purpose of determining the pro-rata loss obligation of any member whose deposit is fixed at $50 million, the member's calculated clearing fund requirement will continue to be used by EMCC. Similarly, the additional amounts paid by other EMCC members will not be used by EMCC in determining their pro-rata loss obligations.

The function of an IDB is to bring together principals in transactions on a matched anonymous basis while taking no principal risk themselves. If every dealer who interacted with an IDB were a member of EMCC, the IDB or its clearing firm would have to deposit only a minimal clearing fund amount. To the extent that one side of an IDB trade is not with an EMCC member, the clearing fund requirement for the IDB or its clearing firm is based only on one side of the matched transaction. This one sided calculation may create a clearing fund obligation of a significant amount for the IDB or its clearing firm. EMCC believes it is appropriate, given the role of IDBs in providing liquidity to the market place, to establish a fixed clearing fund requirement for such firms or their clearing firms and to have the difference between the fixed amount and the IDB's calculated clearing fund requirement deposited by the other EMCC members. EMCC is concerned that if this requirement is not established IDBs will stop submitting their transactions to EMCC, and as a result, the dealer market will lose the benefits, such as risk management and standardized, electronic processing, currently provided by EMCC.

While EMCC has determined that it is appropriate to set a fixed clearing fund amount of $50 million for such members, it does not want this fixed amount to alter the status quo among members in the event that a pro-rata charge is imposed pursuant to section 11(c) of rule 4 (Clearing Fund, Margin and Loss Allocation). Consequently, the proposed rule change provides that the calculated clearing fund amount and not the fixed clearing fund amount will be used in determining the pro-rata liability of any affected members. Further, any amount that is required to be paid by other members because the IDB's calculated clearing fund amount exceeds the fixed clearing fund amount similarly will not be taken into account when determining pro-rata charges.

A second purpose of the proposed rule change is to modify the time at which EMCC novates transactions and to change the clearing fund formula to eliminate the "look back" feature. Currently, EMCC novates transactions at different times depending on whether the trade is received and compared on trade date or thereafter. Since under the current rules EMCC novates transactions received on trade date before EMCC has the opportunity to collect any additional required clearing fund, the clearing fund required of members is the greater of the calculated requirement or the highest requirement over the previous two months. When the "look back" feature was adopted, EMCC believed that by "looking back" it would have sufficient clearing fund deposits so long as a member's current trades were similar to the trading that occurred over the prior two months. While this methodology provided EMCC with adequate collateral in most cases, EMCC could never be certain it was always fully protected. To remedy this, EMCC has determined to require members to submit trades earlier on trade date, to calculate clearing fund based on these trades, and to collect any additional required clearing fund on trade date. EMCC's rules are being changed to provide that novation of trades will not occur until after all margin requirements are received from both sides of the trade. This will apply to trades included in the afternoon calculation as well as trades covered by the morning calculation. As before, EMCC will do an afternoon and a morning clearing fund calculation, but now payments of required clearing fund will be due after each calculation and not just after the morning calculation. Because EMCC will be collecting margin to cover its exposure on a timely basis, it will no longer need to collect the highest margin calculation over the prior two months. Therefore, the "look back" feature of its clearing fund calculation will be eliminated.[3]

Because EMCC will now be collecting clearing fund deposits in the afternoon, there will no longer be an overnight exposure. Accordingly, EMCC is deleting from its rules all references to calculations based on the "overnight exposure cap."

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 48081 (June 24, 2003), 68 FR 38733.

[3] EMCC expects that by removing the "look back" feature, its members' clearing fund requirements will decrease. This decrease in required clearing fund should help offset any additional clearing fund requirement that members will be required to make under new Addendum I.

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[4] The proposed rule change will allocate EMCC's clearing fund requirement in a manner that more appropriately reflects the risks of its members' activities. The proposed rule change will also allow EMCC to use a more accurate calculation and more time to collect members' clearing fund requirements. Accordingly, the proposed rule change should help assure EMCC's ability to safeguard securities and funds.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with the requirements of section 17A of the Act and the rules and regulations thereunder applicable.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–EMCC–2003–02) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21824 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48367; File No. SR–EMCC–2003–03]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Establishing a Temporary Rebate for IDB Members

August 19, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 6, 2003, Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") and on August 4, 2003, amended the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by EMCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change establishes a temporary reimbursement for Inter-Dealer Broker ("IDB") members or members whose only use of EMCC is to clear for IDBs of the costs associated with their deposits in excess of $50 million.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission recently approved a proposed rule change filed by EMCC to modify its clearing fund requirements for IDB members or members whose only use of EMCC is to clear for IDBs.[3] That proposed rule change established a fixed amount of $50 million to be deposited by members who are IDBs or whose only use of EMCC is to clear for IDBs. EMCC is concerned that if this modified requirement is not established, the IDBs will no longer submit their transactions to EMCC, and the dealer market will lose the benefits, such as the risk management and standardized, electronic processing, currently provided by EMCC. EMCC has decided to reimburse any such member the costs associated with its deposit requirements in excess of $50 million. The rebate is retroactive to May 1, 2003, and will continue in effect until the modified clearing fund requirement for IDBs is effective.

EMCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder applicable to EMCC because it will permit the equitable allocation of charges among participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will have any impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes fees to be imposed by EMCC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[4] and rule 19b–4(f)(2).[5] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–EMCC–2003–03. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

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[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Securities Exchange Act Release No. 48366 (August 19, 2003) (File No. SR–EMCC–2003–02).

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to the File No. SR–EMCC–2003–03 and should be submitted by September 16, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21825 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48374; File No. SR–NASD–2003–129]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify the Fees for Trading and Compliance Data Available to NASD Member Firms Via NasdaqTrader.com

August 20, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on August 15, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to section 19(b)(3)(A)(ii) of the Act,[3] and rule 19b–4(f)(2) thereunder[4] as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to modify the fees for trading and compliance data available to NASD member firms via NasdaqTrader.com. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

7000. Charges for Services and Equipment

7010. System Services

(a)–(m) No change.

(n) NasdaqTrader.com Trading and Compliance Data Package Fee.

The charge to be paid by an NASD Member Firm for each entitled user receiving Nasdaq Trading and Compliance Data Package via NasdaqTrader.com is *$100* [75] per month (monthly maximum of 25 Historical Research Reports) or *$130* [100] per month (monthly maximum of 100 Historical Research Reports). The Nasdaq Trading and Compliance Data Package includes:

(1) Daily Share Volume Report for a Broker/Dealer (Member Firm's information only).

(2) Monthly Compliance Report Cards (Member Firm's information only).

(3) Monthly Summaries.

(4) Historical Research Reports.

(i) Market Maker Price Movement Report.

(ii) Equity Trade Journal (Member Firm's information only).

The Association may modify the contents of the Nasdaq Trading and Compliance Data Package from time to time based on subscriber interest.

(o)–(s) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to modify the fees for trading and compliance data available to NASD member firms via NasdaqTrader.com.

NasdaqTrader.com allows NASD member firms to obtain data regarding their own trading volume in securities in which they report volume as well as information concerning their compliance with NASD rules. Specifically, NASD member firms that subscribe to Nasdaq's Trading and Compliance Data Package ("Data Package") can obtain the following reports: (1) Daily Share Volume Reports, which provide a member firm's own daily share volume for each security in which the firm reports volume; (2) Monthly Compliance Report Cards, which outline a firm's own compliance with various NASD rules; (3) Monthly Summaries, which provide monthly trading volume statistics for the top 50 market participants broken down by industry sector, security or type of trading; and (4) Historical Research Reports, which provide a variety of historical trading data such as a market maker's quote updates for a security on a specified date or trades reported through the Automated Confirmation Transaction Service ("ACT") by a NASD member firm for a selected security and date.

Use of this service is voluntary and NASD member firms have the option of subscribing to two different levels of the Data Package. The "basic" level, which has a fee of $75 per month, allows access to a maximum of 25 Historical Research Reports per month. The "premium" level, which has a fee of $100 per month, allows access to a maximum of 100 Historical Research Reports per month. These fees have not increased since the launch of the service in December 1998, even though several enhancements have been made since that time. Some of these enhancements include: (1) Various additional types of Monthly Compliance Report Card reports that show such things as compliance with the short sale bid test and ACT reporting; (2) detailed trade data specific to each Monthly Compliance Report Card; and (3) additional types of Historical Research Reports such as SuperMontage Activity Reports and Daily Security Position Data Reports.

In order to help cover the costs associated with the maintenance of the Data Package service as well as the

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(2).

implementation of additional enhancements to the service in the near future, Nasdaq proposes to increase the subscription fee for the service. Specifically, Nasdaq proposes to increase the subscription fee for the "basic" level from $75 to $100 per month and increase the fee for the "premium" level from $100 to $130 per month. As previously mentioned, this increase in subscription fees will be the first such increase since the launch of the Data Package service in December 1998.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[5] in general, and with section 15A(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Specifically, use of the Data Package service is voluntary and the subscription fees will be imposed on all member firms equally based on the level of service selected. In addition, the increase in fees will help cover the costs associated with maintaining and enhancing the Data Package service.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of rule 19b–4 thereunder,[8] because it establishes or changes a due, fee, or other charge imposed by the Association. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Association. All submissions should refer to file number SR–NASD–2003–129 and should be submitted by September 16, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21823 Filed 8–25–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78o–3(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48365; File No. SR–NYSE–98–14]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the New York Stock Exchange, Inc. Relating to Margin Requirements

August 19, 2003.

I. Introduction

On April 28, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and rule 19b–4 thereunder,[2] a proposal to amend NYSE rule 431, "Margin Requirements." The NYSE's proposed rule change was published for comment in the **Federal Register** on August 5, 1998.[3]

The NYSE filed Amendment Nos. 1, 2, and 3 to the proposal on January 5, 1999, November 6, 2002, and May 12, 2003, respectively. In addition, on March 6, 2000, the NYSE filed an Information Memo ("Information Memo") that sets forth the general requirements for the written risk analysis methodology that members will be required to maintain in connection with good faith securities transactions in exempt accounts. Amendment Nos. 1, 2, and 3, as well as the Information Memo, were published for comment in the **Federal Register** on July 14, 2003.[4]

The Commission received one comment regarding the proposal,[5] as initially published, and the NYSE submitted a response to that comment.[6] As described more fully below, the Commission received two additional comment letters following the publication of the 2003 Release.[7] This order approves the proposed rule change, as amended.

II. Description of the Proposal

A. Background

Section 7 of the Exchange Act[8] authorizes the Board of Governors of the Federal Reserve System ("Federal Reserve Board") to establish requirements for the purchase or carrying of securities on margin.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40278 (July 29, 1998), 63 FR 41882.

[4] *See* Securities Exchange Act Release No. 48133 (July 7, 2003), 68 FR 41672 (July 14, 2003) ("2003 Release").

[5] *See* letter from Paul Saltzman, Senior Vice President and General Counsel, The Bond Market Association ("TBMA") and Patricia Brigantic, Vice President and Senior Associate General Counsel, TBMA, to Jonathan Katz, Secretary, Commission, dated August 26, 1998 ("TBMA I").

[6] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated April 5, 1999. TBMA I supported the proposal but raised questions regarding the definition of "exempt account" and the treatment of accounts that currently qualify as exempt but that would not satisfy the proposal's financial threshold for exempt accounts. The NYSE answered the questions raised in TBMA I in its response. TBMA I and the NYSE's response are described more fully in the 2003 notice, *supra* note 4.

[7] *See* letter from H. Lake Wise, Executive Vice President and Chief Legal Officer, Daiwa Securities America Inc., to Jonathan Katz, Secretary, Commission, dated August 4, 2003 ("Daiwa Letter"); and letter from Paul Saltzman, Executive Vice President and General Counsel, TBMA, to Jonathan G. Katz, Secretary, Commission, dated August 8, 2003 ("TBMA II").

[8] 12 U.S.C. 78(g).

Pursuant to this authority, the Federal Reserve Board promulgated Regulation T,[9] which sets minimum initial margin requirements. Regulation T provides that transactions in non-equity securities are subject to either "good faith" margin requirements[10] or the level set by the rules of a self-regulatory organization ("SRO"), whichever is higher.[11] Accordingly, the maintenance margin requirements established by the NYSE or another SRO set the minimum margin levels for non-equity securities.[12]

As described more fully below, the proposal amends NYSE rule 431 to: (1) Lower the customer maintenance margin requirements for certain non-equity securities; and (2) permit good faith margin treatment for certain non-equity securities held in "exempt accounts," as defined in the proposal.

B. Reduced Customer Maintenance Margin for Non-Equity Securities Not Held in Exempt Accounts

With respect to non-equity securities that are not held in exempt accounts, the proposal: (1) Reduces the customer maintenance margin requirement for highly rated foreign sovereign debt[13] from 20% of current market value to 1% to 6% of current market value, depending on the time to maturity; (2) reduces the customer maintenance margin requirement for exempted securities other than U.S. government obligations from 15% of current market value to 7% of current market value; (3) reduces the customer maintenance margin requirement for investment grade non-equity securities[14] from 20% of current market value to 10% of current market value; and (4) establishes a customer maintenance margin requirement of 20% of current market value for all other marginable non-equity securities.[15]

C. Good Faith Margin Treatment for Certain Non-Equity Securities Held in Exempt Accounts

1. Good Faith Margin Treatment

The proposal will permit broker-dealers to effect transactions in "exempt accounts" without being required to collect either margin or marked to the market losses[16] on exempted securities, mortgage-related securities,[17] or major foreign sovereign debt securities.[18] However, a broker-dealer must take a capital charge for any uncollected marked to the market losses on exempt account positions in these securities.[19]

For transactions in exempt accounts involving highly rated foreign sovereign debt[20] and investment grade debt,[21] the proposal establishes margin requirements of 0.5% and 3%, respectively.[22] Although a broker-dealer is not required to collect this margin, it must take a capital charge for any uncollected margin and for any uncollected marked to the market losses.[23]

2. Limitation on Capital Charges

The proposal limits the amount of capital charges a broker-dealer may take in lieu of collecting marked to the market losses.[24] Specifically, a broker-dealer may not enter into transactions with exempt accounts that would increase the broker-dealer's capital charges if the broker-dealer's capital charges exceed: (1) 5% of the broker-dealer's tentative net capital[25] on any one account or group of commonly controlled accounts; or (2) 25% of the broker-dealer's tentative net capital on all accounts combined, unless the excess no longer exists on the fifth business day after it was incurred. The broker-dealer also must notify the NYSE that it has reached the 5% or 25% threshold.

3. Definition of Exempt Account

The proposal defines "exempt account" to include the accounts of certain regulated entities, including banks, savings and loans, insurance companies, and registered investment companies. In addition, the proposal defines an "exempt account" to include any person that has a net worth of at least $40 million and financial assets of at least $45 million and who: (1) Is an issuer of registered securities; (2) is an issuer of securities that provides the Commission with the information required under rule 12g3–2(b) under the Exchange Act;[26] (3) is a person with respect to which there is publicly available certain information required in rule 15c2–11 under the Exchange Act;[27] or (4) makes available to the broker-dealer such current information regarding the person's ownership, business, and financial condition (including a current audited statement of financial condition, statement of income, or comparable financial reports) that the broker-dealer reasonably believes to be accurate, sufficient for the purposes of performing a risk analysis in respect of the person.[28]

4. Written Risk Analysis Methodology

Under the proposal, a broker-dealer must maintain a written risk analysis methodology for managing the credit risk associated with extending good faith margin on securities transactions in exempt accounts.[29] The NYSE has prepared an Information Memo providing guidelines for the risk analysis methodology that it will distribute to members following approval of the proposal. The Information Memo states that a member's written risk analysis methodology should include the following:

- Procedures for obtaining and reviewing the appropriate customer account documentation and the customer financial information necessary to determine exempt account status for the extension of credit under the rule;
- Procedures and guidelines for the determination, review and approval of credit limits to customers and across all customers who qualify as exempt accounts under the rule;
- Procedures and guidelines for monitoring credit risk exposure to the

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[9] 12 CFR 220 *et seq.*

[10] Regulation T defines "good faith" margin as the amount of margin that a broker-dealer would require in exercising sound credit judgment.

[11] 12 CFR 220.12(b).

[12] *See* NYSE rule 431(c).

[13] The proposal defines "highly rated foreign sovereign debt securities" as debt securities issued or guaranteed by the government of a foreign country, its provinces, states or cities, or a supranational entity that are assigned a rating in one of the two top rating categories by at least one nationally recognized statistical rating organization. *See* NYSE rule 431(a)(9).

[14] The proposal defines "investment grade debt" as any debt securities assigned a rating in one of the top four rating categories by at least one nationally recognized statistical rating organization. *See* NYSE rule 431(a)(10).

[15] The proposal defines "other marginable non-equity securities" to include debt securities not traded on a national securities exchange that meet certain requirements and private pass-through securities not guaranteed by a U.S. government agency that meet certain requirements. *See* NYSE rule 431(a)(16).

[16] Marked to the market losses are unrealized losses on a position in securities resulting from a decline in the position's market value.

[17] The proposal defines "mortgage related securities" to mean securities that fall within the definition in section 3(a)(41) of the Exchange Act. *See* NYSE rule 431(a)(12).

[18] The proposal defines "major foreign sovereign debt securities" as debt securities issued or guaranteed by the government of a foreign country or supranational entity that are assigned a rating in the top rating category by at least one nationally recognized statistical rating organization. *See* NYSE rule 431(a)(11).

[19] *See* NYSE rule 431(e)(2)(F).

[20] *See supra* note 13.

[21] *See supra* note 14.

[22] *See* NYSE rule 431(e)(2)(G).

[23] *See* NYSE rule 431(e)(2)(G).

[24] *See* NYSE rule 431(e)(2)(H).

[25] Generally, tentative net capital is a broker-dealer's net worth after deducting most illiquid assets but before making haircut deductions.

[26] 17 CFR 240.12g3–2(b).

[27] 17 CFR 240.15c2–11.

[28] *See* NYSE rule 431(a)(13).

[29] *See* NYSE rule 431(e)(2)(H).

organization relating to exempt account customers;

• Procedures and guidelines for the use of stress testing of exempt accounts in order to monitor market risk exposure from exempt accounts individually and in the aggregate; and

• Procedures providing for the regular review and testing of these risk management procedures by an independent unit such as internal audit, risk management, or other comparable group.

III. Summary of Comments

The Commission received two comment letters following the publication of the 2003 Release.[30] One commenter expressed strong support for the proposal.[31] The other commenter limited its remarks to the provisions of the proposal affecting transactions in foreign sovereign debt and expressed support for those provisions.[32] Specifically, this commenter maintained that NYSE rule 431 currently imposes high margin requirements on transactions in foreign sovereign debt, which the commenter believes have resulted in the exclusion of U.S. broker-dealers from significant segments of international bond markets. The commenter believed that the proposal would create more reasonable margin requirements for foreign sovereign debt while protecting U.S. broker-dealers and their customers from undue risk.

IV. Discussion

Section 6(c)(3)(A) of the Exchange Act[33] provides, among other things, that a national securities exchange may condition membership privileges on compliance with the exchange's own financial responsibility rules. Pursuant to this authority, the NYSE is authorized to promulgate rules governing the financial responsibility requirements of its members. In addition, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[34] In particular, as described above, for positions not maintained in exempt accounts, the proposal reduces the customer maintenance margin requirement for certain non-equity securities and establishes a customer maintenance margin requirement of 20% of current market value for other marginable non-equity securities. The Commission believes that these requirements are consistent with the risks of those securities.

The proposal also permits the extension of good faith margin to certain non-equity securities held in exempt accounts. The Commission notes that the definition of exempt account is limited to certain regulated entities as well as to persons with net worth of at least $40 million and financial assets of at least $45 million about whom certain information is publicly available or who make available to the broker-dealer certain current financial information. The Commission believes that these requirements are important to the broker-dealer's evaluation of the creditworthiness of the exempt account borrower and its ability to make an informed decision regarding an extension of good faith margin to the exempt account.

The Commission also notes that the proposal limits the amount of capital charges a broker-dealer may take in lieu of collecting marked to the market losses. Specifically, a broker-dealer may not enter into transactions with exempt accounts that would increase the broker-dealer's capital charges if the broker-dealer's capital charges exceed: (1) 5% of the broker-dealer's tentative net capital on any one account or group of commonly controlled accounts; or (2) 25% of the broker-dealer's tentative net capital on all accounts combined, unless the excess no longer exists on the fifth business day after it was incurred. In addition, the proposal requires broker-dealers to maintain a written risk analysis methodology for assessing the amount of good faith credit extended to exempt accounts and assures that a broker-dealer has procedures for determining, approving, and monitoring extensions of credit to exempt accounts. The Commission believes that these requirements establish important safeguards to minimize potential risks to a broker-dealer.

Accordingly, the Commission finds that the proposed rule change is consistent with section 6(b)(5) of the Exchange Act,[35] which requires, among other things, that the rules of a national securities exchange be designed to promote just and equitable principles of trade, and to protect investors and the public interest.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[36] that the proposed rule change (SR–NYSE–98–14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[37]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21822 Filed 8–25–03; 8:45 am]

BILLING CODE 8010-01-P

[30] *See* Daiwa letter and TBMA II, *supra* note 7. As noted above, the Commission received a comment letter from TBMA following the initial publication of the proposal. *See supra* notes 5 and 6. TBMA I and the NYSE's response are described more fully in the 2003 release, *supra* note 4.

[31] *See* TBMA II, *supra* note 7.

[32] *See* Daiwa letter, *supra* note 7.

[33] 15 U.S.C. 78f(c)(3)(A).

[34] In approving the proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[35] 15 U.S.C. 78f(b)(5).

[36] 15 U.S.C. 78s(b)(2).

[37] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3535]

Commonwealth of Pennsylvania

Crawford County and the contiguous counties of Erie, Mercer, Venango and Warren in the Commonwealth of Pennsylvania; and Ashtabula and Trumbull Counties in the State of Ohio constitute a disaster area as a result of severe storms and flooding that occurred between July 21 and July 28, 2003. The storms caused serious damage to a number of homes and businesses throughout the county. Applications for loans for physical damage as a result of the disaster may be filed until the close of business on October 14, 2003, and for economic injury until the close of business on May 13, 2004, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.625
Homeowners Without Credit Available Elsewhere	2.812
Businesses With Credit Available Elsewhere	5.906
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.953
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.953

The number assigned to this disaster for physical damage is 353511 for

Pennsylvania; and 353611 for Ohio. The number assigned to this disaster for economic injury is 9W7000 for Pennsylvania; and 9W7100 for Ohio.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 13, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–21798 Filed 8–25–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 00–4(2)

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling (AR) 00–4(2)—*Curry* v. *Apfel*, 209 F.3d 117 (2d Cir. 2000).

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e), and 416.1485(e), the Commissioner of Social Security gives notice of the rescission of Social Security AR 00–4(2).

EFFECTIVE DATE: The rescission of this AR is effective on September 25, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Office of Acquiescence and Litigation Coordination, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1695.

SUPPLEMENTARY INFORMATION: An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), we may rescind an AR as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On September 11, 2000, we published AR 00–4(2) (65 FR 54879) to reflect the holding in *Curry* v. *Apfel*, 209 F.3d 117 (2d Cir. 2000). In *Curry*, the United States Court of Appeals for the Second Circuit held that, at step five of the sequential evaluation process for determining disability, we have the burden of proving that a claimant has the residual functional capacity to perform other work which exists in the national economy.

In this issue of the **Federal Register**, we are publishing final rules that, among other things, amend Social Security Regulations No. 4 and 16 (20 CFR 404.1512(c) and (g), 416.912(c) and (g), 404.1520(g), 416.920(g), 404.1545(a)(3) and (5), 416.945(a)(3) and (5), 404.1560(c) and 416.960(c)) to clarify our rules about the responsibility that you have to provide evidence and the responsibility that we have to develop evidence in connection with your claim of disability. When we decide your case at step five of the sequential evaluation process, we are responsible for providing evidence that demonstrates other work that you can do exists in significant numbers in the national economy. However, we do not have the burden to prove what your residual functional capacity is. The final rules also explain that we use at step five the same residual functional capacity assessment that we used for determining whether you could do your past relevant work at step four of the sequential evaluation process. We explain in the preamble to the final rules that these clarifying regulatory amendments are consistent with the Supreme Court's decision in *Bowen* v. *Yuckert*, 482 U.S. 137, 146 n.5 (1987).

Because these changes in our regulations clarify our policy that was the subject of the *Curry* AR, we are rescinding AR 00–4(2) concurrently with the effective date of the final rules. The final rules and this notice of rescission restore uniformity to our nationwide system of rules, in accordance with our commitment to the goal of administering our programs through uniform national standards.

We will continue to apply this AR to your claim if it is readjudicated under our acquiescence regulations (20 CFR 404.985(b)(2) and 416.1485(b)(2)).

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance; 96.006—Supplemental Security Income)

Dated: May 22, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–21612 Filed 8–25–03; 8:45 am]

BILLING CODE 4191–02–P

SOCIAL SECURITY ADMINISTRATION

Rescission of Social Security Acquiescence Ruling 90–3(4)

AGENCY: Social Security Administration.

ACTION: Notice of Rescission of Social Security Acquiescence Ruling (AR) 90–3(4)—*Smith* v. *Bowen*, 837 F.2d 635 (4th Cir. 1987).

SUMMARY: In accordance with 20 CFR 402.35(b)(2), 404.985(e), and 416.1485(e), the Commissioner of Social Security gives notice of the rescission of Social Security AR 90–3(4).

EFFECTIVE DATE: The rescission of this AR will be effective September 25, 2003.

FOR FURTHER INFORMATION CONTACT: Gary Sargent, Office of Acquiescence and Litigation Coordination, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–1695.

SUPPLEMENTARY INFORMATION: An AR explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

As provided by 20 CFR 404.985(e)(4) and 416.1485(e)(4), we may rescind an AR as obsolete if we subsequently clarify, modify or revoke the regulation or ruling that was the subject of the circuit court holding for which the Acquiescence Ruling was issued.

On July 16, 1990, we published AR 90–3(4) (55 FR 28949) to reflect the holding in *Smith* v. *Bowen*, 837 F.2d 635 (4th Cir. 1987). In *Smith*, the United States Court of Appeals for the Fourth Circuit held that, under 20 CFR 404.1566(e), we could not rely on a vocational expert's testimony in determining that an individual can do his or her past relevant work at step four of the sequential evaluation process for determining disability.

In this issue of the **Federal Register**, we are publishing final rules, that among other things, amend Social Security Regulations No. 4 and 16 (20 CFR 404.1560(b) and 416.960(b)) to clarify that we may use the services of a vocational expert, vocational specialist or other vocational resources at step four of the sequential evaluation process.

Because the changes in the regulations clarify our policy on using vocational expert evidence at step four that was the subject of the *Smith* AR, we are rescinding AR 90–3(4) concurrently with the effective date of the final rules. The final rules and this notice of rescission restore uniformity to our nationwide system of rules, in accordance with our commitment to the goal of administering our programs through uniform national standards.

(Catalog of Federal Domestic Assistance, Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004

Social Security—Survivors Insurance; 96.006—Supplemental Security Income)

Dated: May 22, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–21611 Filed 8–25–03; 8:45 am]

BILLING CODE 4191–02–P

TENNESSEE VALLEY AUTHORITY

Meeting of the Regional Resource Stewardship Council

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: TVA will convene a meeting of the Regional Resource Stewardship Council (Regional Council) to obtain views and advice on the topic of TVA's involvement in recreation. Under the TVA Act, TVA is charged with the proper use and conservation of natural resources for the purpose of fostering the orderly and proper physical, economic and social development of the Tennessee Valley region. The Regional Council was established to advise TVA on its natural resource stewardship activities. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2, (FACA).

The meeting agenda includes the following:

(1) Overview of current TVA role in recreation.

(2) Review of recreation questions to be addressed by the Regional Council.

(3) National perspective from federal recreation providers.

(4) Regional, state, and commercial viewpoints on TVA's role with regard to recreation.

(5) Recreation trends.

(6) Public comments on the topic of TVA's involvement in recreation.

(7) Regional Council discussion on the topic of TVA's involvement in recreation.

The Regional Council will hear opinions and views of citizens by providing a public comment session. The Public Comment session will be held from 9:20 a.m. to 10:20 a.m. EDT on Thursday, September 11, 2003. Citizens who wish to express views and opinions on the topic of TVA involvement in recreation may do so during the Public Comment portion of the agenda. Public Comments participation is available on a first-come, first-served basis. Speakers addressing the Regional Council are requested to limit their remarks to no more than 5 minutes. Persons wishing to speak are requested to register at the door and are then called on by the Regional Council Chair during the public comment period. Handout materials should be limited to one printed page. Written comments are also invited and may be mailed to the Regional Resource Stewardship Council, Tennessee Valley Authority, 400 West Summit Hill Drive, WT 11A, Knoxville, Tennessee 37902.

DATES: The meeting will be held on Wednesday, September 10, 2003, from 8:30 a.m. to 4:30 p.m. and on Thursday, September 11, 2003, from 8 a.m. to 3:30 p.m. Eastern Daylight Time.

ADDRESSES: The meeting will be held in the auditorium at the Tennessee Valley Authority headquarters, 400 West Summit Hill Drive, Knoxville, Tennessee 37902, and will be open to the public. Anyone needing special access or accommodations should let the contact below know at least a week in advance.

FOR FURTHER INFORMATION CONTACT: Sandra L Hill, 400 West Summit Hill Drive WT 11A, Knoxville, Tennessee 37902, (865) 632–2333.

Dated: August 19, 2003.

Kathryn J. Jackson,

Executive Vice President, River System Operations & Environment, Tennessee Valley Authority.

[FR Doc. 03–21739 Filed 8–25–03; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Guidance Material For 14 CFR § 33.28, Reciprocating Engines, Electrical And Electronic Engine Control Systems

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice of availability of advisory circular.

SUMMARY: The Federal Aviation Administration (FAA) announces the availability of Advisory Circular (AC) Number 33.28–2, Guidance Material For 14 CFR 33.28, Reciprocating Engines, Electrical And Electronic Control Systems.

DATES: The Engine and Propeller Directorate, Aircraft Certification Service, issued AC 33.28–2 on August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Rumizen, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 0183–5299; telephone: (781) 238–7113; fax: (781) 238–7199; e-mail: *mark.rumizen@faa.gov*. The subject AC is available on the Internet at the following address: *http://www.airweb.faa.gov/rgl*.

SUPPLEMENTARY INFORMATION: The FAA published a notice in the **Federal Register** on July 10, 2002 (67 FR 45780) to announce the availability of the proposed AC and invite interested parties to comment.

Background

Electrical and Electronic Engine Control (EEC) technology was initially applied to turbine engines designed for large transport aircraft applications. Therefore, the information and guidance for showing compliance with § 33.28 provided by the FAA was oriented toward these applications. However, the increasing use of EEC systems in reciprocating piston engines has created a need for guidance specifically for reciprocating engines. This AC provides a means, but not the only means, of compliance with § 33.28 that addresses these issues.

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.

Issued in Burlington, Massachusetts, on August 13, 2003.

Marc J. Bouthillier,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–21773 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Request to Release Airport Property at the Brownsville/South Padre Island International Airport, Brownsville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of request to release airport property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Brownsville/South Padre Island International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before September 25, 2003.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry Brown, Director of Aviation, at the following address: City of Brownsville, Department of Aviation, 700 South Minnesota Avenue, Brownsville, Texas 78521–5721.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Clark, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5650, *e-mail: Rodney.Clark@faa.gov, fax:* (817) 222–5989.

The request to release property may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Brownsville/South Padre Island International Airport under the provisions of the AIR 21.

On June 24, 2003, the FAA determined that the request to release property at Brownsville/South Padre Island International Airport, submitted by the City, met the procedural requirements of the Federal Aviation Regulations, Part 155. The FAA may approve the request, in whole or in part, 30 days from the posting of this **Federal Register** notice.

The following is a brief overview of the request:

The City of Brownsville requests the release of 1.327 acres of non-aeronautical airport property. The land is part of a War Assets Administration deed of airport property to the City in 1948. The funds generated by the release will be used for upgrading, maintenance, operation and development of the airport.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Brownsville/South Padre Island International Airport, telephone number (956) 542–4373.

Issued in Fort Worth, Texas on August 5, 2003.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 03–21772 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Update to Noise Compatibility Program and Request for Review; Austin-Bergstrom International Airport Austin, TX

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed update to the existing noise compatibility program that was submitted for Austin-Bergstrom International Airport under the provisions of title 49, U.S.C. Chapter 475 (hereinafter referred to as "Title 49") and 14 CFR Part 150 by City of Austin, Texas. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Austin-Bergstrom International Airport were in compliance with applicable requirements effective on April 29, 2000. The original noise compatibility program was approved on November 7, 2000. The proposed update to the noise compatibility program will be approved or disapproved on or before February 11, 2004.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is August 15, 2003. The public comment period ends October 13, 2003.

FOR FURTHER INFORMATION CONTACT: Nan L. Terry, Department of Transportation, Federal Aviation Administration, Fort Worth, Texas, 76193–0652, (817) 222–5607. Comments on the proposed update to the noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed update to the existing noise compatibility program for Austin-Bergstrom International Airport, which will be approved or disapproved on or before February 11, 2004. This notice also announces the availability of this program for public review and comment.

Under Title 49, an airport operator may submit to the FAA noise exposure maps, which meet applicable regulations, and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the way sin which such operations will affect such maps. Title 49 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of 14 CFR Part 150, promulgated pursuant to Title 49, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

On April 20, 1999, FAA published its approval noise exposure maps for the Austin-Bergstrom International Airport in the **Federal Register**. On May 25, 2000, the FAA published its approval of a final 2004 noise exposure map for the Austin-Bergstrom International Airport in the **Federal Register**. The FAA approved the original noise compatibility program on November 7, 2000 produced during Austin-Bergstrom International Airport, Austin, Texas Part 150 Noise Compatibility Study.

The FAA has formally received an update to the noise compatibility program for Austin-Bergstrom International Airport. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 11, 2004.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed update to the existing program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure map, the FAA 's evaluation of the map, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Airports Division, 2601 Meacham Boulevard, Fort Worth, Texas 76137.
Austin-Bergstrom International Airport, City of Austin, Aviation Department, 3600 Presidential Blvd., Austin, Texas 78719.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Fort Worth, Texas, August 15, 2003.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 03–21771 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–51]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 15, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033; Sandy Buchanan-Sumter (202) 267–7271, or Denise Emrick (202) 267–5174, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 20, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15792.
Petitioner: Northwest Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.505(b).
Description of Relief Sought: To permit pilots operating a single Northwest Airlines airplane to be on duty for more than 16 hours during 24 consecutive hours. The proposed exemption will be used in a one-time operation to conduct a part 121 supplemental operation in an attempt to set an around the poles world speed record flight in conjunction with the 100th anniversary of the Wright Brothers first flight at Kitty Hawk.

[FR Doc. 03–21768 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 2003, there were five applications approved. This notice also includes information on two applications, one approved in April 2003 and the other approved in May 2003, inadvertently left off the April 2003 and May 2003 notices, respectively. Additionally, nine approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: County of Kalamazoo, Kalamazoo, Michigan.
Application Number: 03–04–C–00–AZO.
Application Type: Impose and use a PFC.
PFC Level: $3.00.
Total PFC Revenue Approved in This Decision: $2,080,000.
Earliest Charge Effective Date: December 1, 2003.
Estimated Charge Expiration Date: May 1, 2007.
Class of Air Carriers Not Required To Collect PFC'S:
(1) Non-scheduled part 135 operators; and (2) air taxi operators.
Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that each approved class accounts for less than 1 percent of the total annual enplanements at Kalamazoo/Battle Creek International Airport.
Brief Description of Projects Approved for Collection and Use:
Terminal design—landside.
Terminal design—gates and bag claim.
Terminal design—security check point.
Terminal design—public terminal area.
Terminal design—PFC financial consulting service—phase I.
Decision Date: April 1, 2003.
For Further Information Contact: Arlene B. Draper, Detroit Airports District Office, (734) 487–7282.

Public Agency: Mason City Airport Commission, Mason City, Iowa.
Application Number: 03–02–C–00–MCW.
Application Type: Impose and use a PFC.
PFC Level: $4.50.
Total PFC Revenue Approved in This Decision: $379,500.

Earliest Charge Effective Date: August 1, 2003.

Estimated Change Expiration Date: August 1, 2009.

Class of Air Carriers Not Required To Collect PFC'S: Nonscheduled part 135 and air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Mason City Municipal Airport.

Brief Description of Projects Approved For Collection and Use:

Runway safety area improvements.

Runway edge drains, phase 2.

Reconstruct terminal and general aviation ramps.

Reconstruct terminal restrooms.

Aircraft passenger lift.

Replace wind cone and install supplemental wind cone.

Airport master plan.

Rehabilitate runway 17/35 (design).

Acquire land in runway protection zones.

PFC consultation services.

Decision Date: May 13, 2003.

For Further Information Contact: Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: County of Okaloosa, Crestview, Florida.

Application Number: 03–02–C–00–VPS.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,885,235.

Earliest Charge Effective Date: August 1, 2018.

Estimated Charge Expiration Date: December 1, 2019.

Class of Air Carriers Not Required To Collect PFC'S: Charter operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Okaloosa Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Construct and equip expansion to surface public parking lot.

PFC formulation and annual administrative costs.

Decision Date: July 3, 2003.

For Further Information Contact: Bill Farris, Orlando Airports District Office, (407) 812–6331, extension 25.

Public Agency: Broward County Aviation Department, Fort Lauderdale, Florida.

Application Number: 02–05–C–00–FLL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $91,967,755.

Earliest Charge Effective Date: March 1, 2008.

Estimated Charge Expiration Date: March 1, 2011.

Class of Air Carriers Not Required To Collect PFC'S: Air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approach class accounts for less than 1 percent of the total annual enplanements at Fort Lauderdale—Hollywood International Airport.

Brief Description of Projects Approved for Collection and Use:

Exit roadways—pre-design.

Concourse A—pre-design.

Concourse A apron—pre-design.

International terminal—federal inspection station—design.

Automated people mover pre-design planning and programming.

Master plan update.

Brief Description of Projects Approved for Collection:

Exit roadways—final design/construction.

Taxiway C—improvements west of runway 13/31.

Taxiway C phase II—design.

Decision Date: July 14, 2003.

For Further Information Contact: Matthew J. Thys, Orlando Airports District Office, (407) 812–6331, extension 21.

Public Agency: City of St. Louis Airport Authority, St. Louis, Missouri.

Application Number: 03–03–C–00–STL.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $13,806,955.

Earliest Charge Effective Date: December 1, 2016.

Estimated Charge Expiration Date: June 1, 2017.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Lambert-St. Louis International Airport.

Brief Description of Projects Approved for Collection and Use:

Airport maintenance facility.

Concourse C federal inspection services elevators and stairs.

Brief Description of Project Partially Approved for Collection and Use: C/D connector.

Determination: Partially approved. The portion of this project which is not in a non-revenue producing public-use area related to the movement of passengers, but rather in an area designated for concession use (approximated 30 percent) is not eligible.

Decision Date: July 18, 2003.

For Further Information Contact: Lorna Sandridge, Central Region Airports Division, (816) 329–2641.

Public Agency: Lexington—Fayette Urban County Airport Board, Lexington, Kentucky.

Application Number: 03–05–C–00–LEX.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $53,671,204.

Earliest Charge Effective Date: December 1, 2003.

Estimated Charge Expiration Date: March 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: Air carriers operating under part 135 on a non-scheduled, whole-plane charter basis, that is air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Blue Grass Airport.

Brief Description of Projects Approved for Collection and Use:

Air carrier ramp expansion.

Security upgrades.

Concourse B and C stairwells.

Taxiways A rehabilitation.

Runways 8/26 rehabilitation.

Air carrier ramp rehabilitation.

PFC application development.

PFC program administration.

Brief Description of Projects Approved for Collection:

Runway safety area improvements.

Terminal interior modifications.

Concourse gate addition.

Decision Date: July 29, 2003.

For Further Information Contact: Tommy L. Dupree, Memphis Airports District Office, (901) 544–3495, extension 215.

Public Agency: Helena Regional Airport Authority, Helena, Montana.

Application Number: 03–03–C–00–HLN.

Application Type: Impose and use a PFC.

PFC Level: $4.50.

Total PFC Revenue Approved in This Decision: $2,336,432.

Earliest Charge Effective Date: October 1, 2003.

Estimated Charge Expiration Date: June 1, 2010.

Class of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Helena Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Disabled passenger access lift acquisition.

Phase I—southside taxilane construction.

Phase II—southside taxilane construction.

Runway 9 perimeter access road.

Terminal building expansion and remodel.

Snow removal equipment acquisition.

Aircraft rescue and firefighting equipment acquisition.

Brief Description of Project Partially Approved for Collection and Use: Loop road and parking lot improvements.

Determination: The total project cost, and thus the portion to be paid by PFC revenue, was reduced after the application was submitted and before the FAA ruled on the decision.

Decision Date: July 29, 2003.

For Further Information Contact: David S. Stelling, Helena Airports District Office, (406) 449–5271.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, State	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
98–03–C–03–DSM, Des Moines, IA	05/08/03	$7,899,744	$8,782,783	05/01/04	05/01/04
03–06–C–01–GPT, Gulfport, MS	07/02/03	3,922,709	5,976,506	09/01/12	03/01/17
03–05–C–01–BUR, Burbank, CA	07/10/03	17,509,405	20,135,816	11/01/09	03/01/10
92–01–C–03–MGW, Morgantown, WV	07/14/03	63,044	54,022	01/01/94	09/01/93
95–02–C–06–STL, St. Louis, MO	07/17/03	91,640,971	75,131,773	11/01/97	07/01/97
97–03–U–04–STL, St. Louis, MO	07/17/03	NA	NA	11/01/97	07/01/97
01–07–C–01–STL, St. Louis, MO	07/17/03	99,103,000	81,330,000	03/01/15	12/01/16
*03–04–C–01–JAN, Jackson, MS	07/22/03	5,101,722	5,101,722	06/01/10	01/01/08
99–01–C–02–AEX, Alexandria, LA	07/31/03	5,378,352	10,284,927	11/01/20	12/01/22

Note: The amendment denoted by an asterisk (*) includes a change to the PFC level charged from $3.00 per enplaned passenger to $4.50 per enplaned passenger. For Jackson, MS, this change is effective on January 1, 2006.

Issued in Washington, DC, on August 19, 2003.

David S. Stelling,

Acting Manager, Financial Analysis and Passenger Facility Charge Branch.

[FR Doc. 03–21774 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket Nos. FMCSA–98–3298 and FMCSA–98–3299]

Programmatic Environmental Impact Statement and General Conformity Evaluation for Proposed North American Free Trade Agreement Regulations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of intent.

SUMMARY: The FMCSA is issuing this notice to advise the public a Programmatic Environmental Impact Statement (PEIS) will be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA) and a General Conformity Evaluation will be made pursuant to the Clean Air Act (CAA) before promulgation of the FMCSA's proposed regulations regarding (1) the application process for Mexico-domiciled motor carriers desiring to operate beyond the U.S.-Mexico border commercial zones and (2) the safety monitoring system applicable to all Mexico-domiciled motor carriers.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Rombro, Analysis Division, Office of Information Management, (202) 366–1861, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: The FMCSA is responsible for ensuring the safe operation of commercial motor vehicles within the United States. In carrying out these responsibilities, the FMCSA proposed regulations in May 2001 prescribing procedures for applications and safety monitoring for Mexico-domiciled carriers seeking authority to operate within the United States beyond the border commercial zones pursuant to the North American Free Trade Agreement and the anticipated modification by the President of the statutory moratorium on the grant of operating authority to these carriers. The proposed rules are commonly referred to as the "Application" and "Safety Monitoring" rules.

The FMCSA conducted a Programmatic Environmental Assessment (PEA) for the Application and Safety Monitoring rules. Based on the PEA, FMCSA concluded a PEIS was not required for these rules because the rules did not significantly affect the quality of the human environment. The FMCSA issued interim final Application and Safety Monitoring rules on March 7, 2002 (*see* 67 FR 12702 and 67 FR 12758). The FMCSA placed the PEA and Finding of No Significant Impact in the respective dockets.

On March 19, 2002, the FMCSA issued an interim final rule establishing certification standards for motor carrier safety auditors, investigators and inspectors (67 FR 12776). This rule (commonly referred to as the "Certification" rule) applied to all safety audits, inspections and reviews within the FMCSA's jurisdiction, not just those involving Mexico-domiciled carriers. Congress mandated this rule as part of the Motor Carrier Safety Improvement Act of 1999 (49 U.S.C. 31148). However, Congress, as part of the Department of Transportation Appropriations Act for fiscal year 2002, also made issuance of the Certification rule one of several conditions that had to be met before FMCSA could expend appropriated funds to process applications filed by

Mexico-domiciled carriers seeking authority to operate in the United States beyond the border commercial zones. The FMCSA determined the Certification rule was not subject to environmental analysis due to a categorical exclusion.

A group of labor, industry, and environmental organizations sought review of the regulations in the United States Court of Appeals for the Ninth Circuit, alleging FMCSA had violated NEPA and the CAA. The Ninth Circuit ruled a PEIS and General Conformity Evaluation under the CAA were required. The Court also determined the Certification rule did not fall within any of the existing DOT categorical exclusions and therefore, the court held DOT acted arbitrarily and capriciously by failing to conduct any environmental analysis.

In light of the Ninth Circuit's opinion, the FMCSA intends to prepare a PEIS pursuant to NEPA and perform a General Conformity Evaluation pursuant to the CAA for the Application and Safety Monitoring rules. The PEIS will be developed pursuant to the Council on Environmental Quality (CEQ) regulations, 40 CFR 1500 *et seq.*, and DOT Order 5610.1C, which supplements the CEQ regulations by applying them to DOT programs. The General Conformity Evaluation will be conducted pursuant to the U.S. Environmental Protection Agency's general conformity regulations, 40 CFR parts 51 and 93.

The FMCSA is currently preparing an Environmental Assessment (EA) for the Certification rule. Should the EA determine an EIS is required for the Certification rule, a supplemental Notice of Intent will be issued.

A letter describing the proposed regulations and soliciting comments will be sent to all appropriate Federal, State, local, and tribal agencies, as well as to private organizations and individuals who have expressed an interest in this matter. Interagency and public scoping meetings will be scheduled in the near future. Public notice will be given, providing the time and place of the meetings.

To ensure the full range of issues related to these proposed regulations are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed regulations and the PEIS should be directed to the FMCSA at the above address.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction, and Number 20.218 National Motor Carrier Safety (MCSAP). The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: August 20, 2003.

Annette M. Sandberg,

Administrator.

[FR Doc. 03–21743 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than October 27, 2003.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Ms. Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number _____." Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Ms. Steward at *debra.steward@fra.dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No: 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of the three currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Inspection Brake System Safety Standards For Freight and Other Non-Passenger Trains and Equipment (Power Brakes and Drawbars).

OMB Control Number: 2130–0008.

Abstract: Section 7 of the Rail Safety Enforcement and Review Act of 1992, Public Law No. 102–365, amended Section 202 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 421, 431 *et seq.*), empowered the Secretary of Transportation to conduct a review of the Department's rules with respect to railroad power brakes and, where applicable, prescribe standards regarding dynamic brake equipment. In keeping with the Secretary's mandate and the authority delegated from him to the FRA Administrator, FRA recently published a comprehensive regulatory revision of the then current requirements related to the inspection, testing, and maintenance of the brake equipment used in freight car operations. The Final Rule focused solely on freight and other non-passenger trains, and codified and solidified the maintenance requirements related to the power brake system and its components. The collection of information is used by FRA to monitor and enforce safety requirements related to power brakes on freight cars. The collection of information is also used by locomotive engineers and road crews to verify that the terminal air brake test has been performed in a satisfactory manner.

Form Number(s): None.

Affected Public: Businesses.

Respondent Universe: 545 railroads.

Frequency of Submission: On occasion.

Affected Public: Businesses.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
229.27—Annual Tests	20,000 locomotives	18,000 tests	15 minutes	4,500	$166,500
232.1—Scope—Requests For Earlier Application of Requirements in Subparts A–C, F.	545 railroads	4 requests	1 hour	4	224
232.3—Applicability—Cars Not Used in Service.	545 railroads	8 cards	10 minutes	1	35
232.7—Waivers	545 railroads	20 petitions	40 hours	800	28,000
232.11—Penalties	545 railroads	1 false record	10 minutes	.20	7
232.15—Movement of Defective Equipment.	1,620,000 cars/locomotives.	128,400 tags	2.5 minutes	5,350	197,950
—Notice of Defective Car/Locomotive and Restrictions.	1,620,000 cars/locomotives.	25,000 notices	3 minutes	1,060	46,250
232.17—Special Approval Procedure.	545 railroads	4 petitions	100 hours	400	22,400
Petitions For Special Approval of Pre-Revenue Service Acceptance Testing Plan.	545 railroads	2 petitions	100 hours	200	11,200
—Copies of Petitions For Special Approval Procedure.	545 railroads	4 petitions	40 hours	160	5,600
—Statements of Interest	Public/railroads	14 statements	8 hours	112	3,920
—Comments on Special Approval Procedure Petition.	Public/railroads	13 comments	4 hours	52	1,820
232.103—General Requirements For All Train Brakes:	370,000 cars	66,660 stickers	10 minutes	11,110	230,644
232.105—General Requirements For Locomotives.	20,000 locomotives	20,000 forms	5 minutes	1,667	61,679
232.107—Air Source Requirements—Plans To Monitor All Air Yard Sources: First Year.	545 railroads	50 plans	40	2,000	38,080
—Subsequent Years	25 new railroads	1 plan	40 hours	40	2,240
—Amendments to Plan	50 existing plans	10 amendments	20 hours	200	11,200
—Record Keeping	50 existing plans	1,150 records	20 hours	23,000	805,000
—Written Operating Procedures/Plans.	545 railroads	37 plans	20 hours	740	41,440
232.109—Dynamic Brake Requirements—Records.	545 railroads	1,656,000 records	4 minutes	110,400	3,864,000
—Repair of Inoperative Dynamic Brakes.	20,000 locomotives	6,358 records	4 minutes	424	14,840
—Locomotives with Inoperative Dynamic Brakes—Tag.	20,000 locomotives	6,358 tags	30 seconds	53	1,961
—Deactivated Dynamic Brakes—Markings.	8,000 locomotives	2,800 markings	5 minutes	233	8,621
—Subsequent Years—Markings.	8,000 locomotives	20 markings	5 minutes	2	74
—Written Operating Rules—Safe Train Handling.	545 railroads	100 oper. rules	4 hours	400	22,400

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Subsequent Years—Safe Train Handling Procedures.	5 new railroads	5 oper. rules	4 hours	20	1,120
—Amendments	545 railroads	15 amendments	1 hour	15	525
—Over Speed Top Rules	545 railroads	182 rules	1 hour	182	10,192
—Requests to Increase 5 MPH Overs Speed Restriction.	545 railroads	5 requests	20.5 hours	103	3,605
—Locomotive Engineer Certification Programs/ PBrake.	545 railroads	100 amendments	16 hours	1,600	89,600
—Subsequent Years	5 new railroads	5 amendments	16 hours	80	4,480
232.111—Train Information Handling—Procedures.	545 railroads	182 procedures	50 hours	9,100	509,600
—Subsequent Years	10 new railroads	10 procedures	40 hours	400	22,400
—Amendments	100 railroads	33 amendments	20 hours	660	23,100
—Reports to Train Crews	545 railroads	2,112,000 rpts	10 minutes	352,000	13,024,000
232.203—Training Requirements: Training Programs.	545 railroads	100 programs	100 hours	10,000	560,000
—Subsequent Years	15 railroads	1 program	100 hours	100	5,600
—Amendments to Written Program.	545 railroads	182 amendments	8 hours	1,456	50,960
—Training Records	545 railroads	67,000 records	8 minutes	8,933	312,655
—Training Notifications	545 railroads	67,000 notices	3 minutes	3,350	117,250
—Validation/Assessment Plans.	545 railroads	545 copies	40 hours/1 minute	49	2,375
Amendments to Validation/ Assessment Plans.	545 railroads	50 amendments	20 hours	1,000	35,000
232.205—Class I Brake Test—Initial Terminal Insp.	545 railroads	1,656,000 notices	45 seconds	20,700	931,500
232.207—Class I A Brake Tests: 1000 Mile Insp.	545 railroads	8 designations	30 minutes	4	140
—Subsequent Years	545 railroads	1 designation	1 hour	1	35
—Amendments	545 railroads	5 amendments	1 hour	5	175
232.209—Class II Brake Tests—Intermediate Insp.	545 railroads	1,600,000	3 seconds	1,333	59,985
232.213—Extended Haul Trains—Designations.	84,000 train movements.	100 designations	15 minutes	25	875
—Records	84,000 train movements.	25,200 records	20 minutes	8,400	294,000
232.303—General Requirements—Track Brake Test.	1,600,000 freight cars.	5,600 tags	5 minutes	467	17,279
—Location of Last Track Brake Test/Single Car Test.	1,600,000 freight cars.	320,000 stenciling	5 minutes	26,667	986,679
232.305—Single Car Tests	1,600,000 freight cars.	320,000 tests/rods	45 minutes	240,000	8,400,000
232.309—Equipment and Devices—Tests/Calibrations.	640 shops	5,000 tests	30 minutes	2,500	92,500
232.403—Design Standards For One-way EOT Devices—Unique Code.	245 railroads	12 requests	5 minutes	1	35
232.407—Operations Requiring 2-Way EOTs.	245 railroads	50,000 30 commun	30 seconds	417	18,765
232.409—Inspection and Testing of 2-Way EOTs.	245 railroads	450,000 commun	30 seconds	3,750	138,750
—Testing Telemetry Equipment.	245 railroads	32,708 markings	60 seconds	545	20,165
232.503—Process to Introduce New Brake System Technology—Special Approval.	545 railroads	1 request/letter	60 minutes	1	58
—Pre-Revenue Service Demonstration.	545 railroads	1 request	3 hours	3	168
232.505—Pre-Revenue Service Acceptance Testing Plan: Maintenance Procedure—1st Year.	545 railroads	1 procedure	160 hours	160	8,920
—Subsequent Years	545 railroads	1 procedure	160 hours	160	8,920
—Amendments	545 railroads	1 amendment	40 hours	40	1,400
—Design Descriptions—Petitions.	545 railroads	1 petition	67 hours	67	3,752

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Results Pre-Revenue Service Acceptance Testing.	545 railroads	1 report	13 hours	13	455
—Description of Brake Systems Technologies Previously Used in Revenue Service.	545 railroads	5 descriptions	40 hours	200	7,000

Total Responses: 8,643,075.

Total Estimated Total Annual Burden: 857,415 hours.

Status: Regular Review.

Title: Regional Inspection Point Listing Forms.

OMB Control Number: 2130–0551.

Abstract: Through a direct comparison of inspection data with accident/incident data, the collection of information aims to develop a profile county-by-county of what there is to inspect, and how much inspection activity was done by Federal and State railroad inspectors each year nationwide. The information collected will produce "snapshots" which will allow FRA to determine where the gaps are in inspection territories so that it can focus inspection resources where they will do the most good. As a result of the collection of information, FRA will be better able to equalize inspector workloads, and will be better able to make informed hiring decisions regarding the most effective placement of new inspectors. More targeted inspections will permit FRA to maximize its limited resources, and will serve to enhance overall safety on the nation's rail system.

Form Number(s): FRA F 6180.106(a)–(e).

Affected Public: Businesses.

Respondent Universe: 545 railroads.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden	Total annual burden cost
FRA 6180.106(a)	20 inspectors	280 records	5 (in minutes)	23	$736
FRA 6180.106(b)	35 inspectors	315 records	5 (in minutes)	26	832
FRA 6180.106(c)	30 inspectors	300 records	5 (in minutes)	25	800
FRA 6180.106(d)	12 inspectors	108 records	5 (in minutes)	9	288
FRA 6180.106(e)	40 inspectors	360 records	5 (in minutes)	30	960

Total Responses: 1,363.

Total Estimated Total Annual Burden: 113 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on August 19, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–21765 Filed 8–25–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 18, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before September 25, 2003, to be assured of consideration.

Departmental Offices/Office of Financial Institutions Policy

OMB Number: 1505–0190.

Form Number: None.

Type of Review: Extension.

Title: Terrorism Risk Insurance Program Rebuttal of Controlling Influence Submissions.

Description: 31 CFR 50.8 specifies a rebuttal procedure that requires a written submission by a insurer that seeks to rebut a regulatory presumption of "controlling influence" over another insurer under the Terrorism Risk Insurance Program, to provide Treasury with necessary information to make a determination.

Respondents: Business or other for-profit, Federal Government.

Estimated Number of Respondents: 10.

Estimated Burden Hours Per Respondent: 40 hours.

Frequency of Response: Other (one time).

Estimated Total Reporting Burden: 400 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New

Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–21801 Filed 8–25–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 18, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 22, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0087.

Form Number: 1040–ES, 1040–ES (NR), and 1040–ES(Espanol).

Type of Review: Extension.

Title: Form 1040–ES: Estimated Tax for Individuals;

Form 1040–ES (NR): U.S. Estimated Tax for Nonresident Alien Individuals;

Form 1040–ES (Espanol): Contribuciones Federales Estimadas Del Trabajo Por Cuenta Propia Y Sobre El Empleo de Empleados Domesticos—Puerto Rico.

Description: Form 1040–ES is used by individuals (including self-employed) to make estimated tax payments if their estimated tax due is $500 or more. IRS uses the data to credit taxpayers' accounts and to determine if estimated tax has been properly computed and timely paid.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 14,563,250.

Estimated Burden Hours Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law	Prepearing the worksheets and payment vouchers	Copying, assembling, and sending the payment voucher to the IRS
1040–ES	52 min.	28 min.	48 min.	10 min.
1040–ES (NR)	39 min.	18 min.	49 min.	10 min.
1040–ES (Espanol)	6 min.	17 min.	30 min.	10 min.

Frequency of Response: Quarterly.

Estimated Total Reporting/Recordkeeping Burden: 94,591,282 hours.

OMB Number: 1545–0175.

Form Number: IRS Form 4626.

Type of Review: Revision.

Title: Alternative Minimum Tax—Corporations.

Description: Form 4626 is used by corporations to calculate their alternative minimum tax.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 60,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping	17 hr., 13 min.
Learning about the law or the form.	12 hr., 36 min.
Preparing and sending the form to the IRS.	13 hr., 27 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,596,800 hours.

OMB Number: 1545–0938.

Form Number: IRS Form 1120–IC–DISC and Schedules.

Type of Review: Extension.

Title: 1120–IC–DISC: Interest Charge Domestic International Sales Corporation Return;

Schedule K (Form 1120–IC–DISC): Shareholder's Statement of IC–DISC Distributions; and

Schedule P (Form 1120–IC–DISC): Intercompany Transfer Price or Commission.

Description: U.S. corporations that have elected to be an interest charge domestic international sales corporation (IC–DISC) file Form 1120–IC–DISC to report their income and deductions. The IC–DISC is not taxed, but IC–DISC shareholders are taxed on their share of IC–DISC income. IRS uses Form 1120–IC–DISC to check the IC–DISC's computation of income. Schedule K (Form 1120–IC–DISC) is used to report income to shareholders. Schedule P (Form 1120–IC–DISC) is used by the IC–DISC to report its dealings with related suppliers, etc.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,200.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing the form	Copying, assembling, and sending the form to the IRS
1120–IC–DISC	94 hr., 56 min.	20 hr., 0 min.	30 hr., 48 min.	2 hr., 24 min.
Schedule K	4 hr., 4 min.	18 min.	22 min.	
Schedule P	12 hr., 40 min.	1 hr., 29 min.	1 hr., 48 min.	

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 229,676 hours.

OMB Number: 1545–0976.

Form Number: IRS Form 990–W.

Type of Review: Extension.

Title: Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations.

Description: Form 990–W is used by tax-exempt trusts and tax-exempt corporations to figure estimated tax liability on unrelated business income and on investment income for private

foundations and the amount of each installment payment. Form 990–W is a worksheet only. It is not required to be filed.

Respondents: Not-for-profit institutions, Business of other for-profit.

Estimated Number of Respondents/ Recordkeepers: 27,265.

Estimated Burden Hours Respondent/ Recordkeeper:

Form	Record-keeping	Learn-ing about the law or the form	Pre-paring the form
Form 990–W ...	10 hr., 2 min..	1 hr., 40 min..	1 hr., 55 min.
Form 990–W, Schedule A (Pt. I).	11 hr., 14 min..	42 min.	54 min.
Form 990–W, Schedule A (Pt. II).	23 hr., 26 min..	12 min.	35 min.
Form 990–W, Schedule A (Pt. III).	4 hr., 32 min..	.....	4 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 387,392 hours.

OMB Number: 1545–0991.

Form Number: IRS Form 8633.

Type of Review: Extension.

Title: Application to Participate in the IRS e-file Program.

Description: Form 8633 is used by tax preparers, electronic return collectors, software firms, service bureaus and electronic transmitters, as an application to participate in the electronic filing program covering individual income tax returns.

Respondents: Business of other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 50,000.

Estimated Burden Hours Respondent: 1 hour.

Estimated Total Reporting Burden: 50,000 hours.

OMB Number: 1545–1561.

Form Number: IRS Form 8853.

Type of Review: Extension.

Title: Archer MSAs and Long-Term Care Insurance Contracts.

Description: This form is used by individuals to report general information about their medical savings accounts (MSAs), to figure their MSA deductions, and to figure their taxable distributions from MSAs. The form is also used to report taxable payments from long-term care (LTC) contracts.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 56,000.

Estimated Burden Hours Respondent/ Recordkeeper:

Recordkeeping	1 hr., 31 min.
Learning about the law or the form.	34 min.
Preparing the form	1 hr., 42 min.
Copying, assembling, and sending the form to the IRS.	46 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 100,795 hours.

OMB Number: 1545–1690.

Notice Number: Notice 2000–28.

Type of Review: Extension.

Title: Coal Exports.

Description: Notice 2000–28 provides guidance relating to the coal excise tax imposed by section 4121 of the Internal Revenue Code. The notice provides rules under the Code for making a nontaxable sale of coal for export or for obtaining a credit or refund when tax has been with respect to a nontaxable sale of coal for export.

Respondents: Business of other for-profit.

Estimated Number of Respondents/ Recordkeeper: 400.

Estimated Burden Hours Respondent/ Recordkeeper: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 400 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–21802 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 19, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 25, 2003 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1699.

Regulation Project Number: REG–103805–99 Final.

Type of Review: Extension.

Title: Agent for Consolidated Group.

Description: The information needed in order for a terminating common parent of a consolidated group to designate a substitute agent for the group and receive approval of the Commissioner, or for a default substitute agent to notify the Commissioner that it is the default substitute agent, pursuant to Treasury Regulation § 1.1502–77(d). The Commissioner will use the information to determine whether to approve the designation of the substitute agent (if approval is required) and to change the IRS's records to reflect the information about the substitute agent.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Respondent: 2 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 200 hours.

Clearance Officer: Glenn Kirkland, (202) 622–3428, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–21803 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas and Tennessee)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, September 19, 2003 from 11 a.m. EDT to 12:30 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Friday, September 19, 2003, from 11 a.m. EST to 12:30 p.m. EST via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979. The agenda will include various IRS issues.

Dated: August 19, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–21828 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (Via Teleconference)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, September 19, 2003 from 1 p.m. e.d.t. to 2 p.m. e.d.t.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227 or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, September 19, 2003, from 1 p.m. e.d.t. to 2 p.m. e.d.t. via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977. The agenda will include the following: Various IRS issues.

Dated: August 20, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–21829 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Alaska, Arizona, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be conducted in Las Vegas, Nevada. The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Thursday, September 18, 2003, and Friday, September 19, 2003.

FOR FURTHER INFORMATION CONTACT: Anne Gruber at 1–888–912–1227 or 206–220–6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Committee of the Taxpayer Advocacy Panel will be held Thursday, September 18, 2003, from 8 a.m. to 4 p.m. and Friday, September 19, 2003, from 8 a.m. to 12 p.m. Thursday's meeting will be held in conjunction with IRS's Tax Forum at the Rio Hotel in Seminar Room 4. Friday's meeting will be held at the Coyote Café at the MGM Grand Hotel. The public is invited to make oral comments on Thursday, September 18, from 2 p.m. to 4 p.m. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider an oral or written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, M/S W406, Seattle, WA 98174. Due to limited time and space, notification of intent to participate in the public forum part of the meeting must be made with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: August 20, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–21830 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; Systems of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed alterations to seven Internal Revenue Service Privacy Act systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Department of the Treasury, Internal Revenue Service, is proposing to add a routine use to seven of its existing systems of records.

DATES: Comments must be received no later than September 25, 2003. The alteration to the systems of records will be effective October 6, 2003, unless the IRS receives comments, which would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison & Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for public inspection and copying in the Internal Revenue Service Freedom of Information Reading Room, 1111 Constitution Avenue, NW.,

Room 1621, Washington, DC 20224, telephone number (202) 622–5164, (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Greg Rehak, Management Controls Coordinator, Agency-Wide Shared Services, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3702 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The Internal Revenue Service (IRS) is adding a routine use to the following systems of records: Treasury/IRS 36.001-Appeals, Grievances and Complaints Records; Treasury/IRS 36.002-Employee Activity Records; Treasury/IRS 36.003-General Personnel and Payroll Records; Treasury/IRS 36.005-Medical Records; Treasury/IRS 36.008-Recruiting, Examining and Placement Records; Treasury/IRS 36.009-Retirement, Life Insurance and Health Benefits Records, and Treasury/IRS 38.001-General Training Records.

In keeping with the Government's policy to rely on commercial sources to supply products and services the Government needs, the IRS on occasion retains the services of contractors to perform routine functions relating to personnel administration. The disclosure of information maintained in IRS' systems of records may be required in order for the contractor to perform the services for which it has been hired. If a disclosure is necessary, the contractor to which the disclosure is made will be subject to the same limitations applicable to IRS officers and employees under the Privacy Act.

In addition, the IRS will be following OMB Guidelines under which government agencies have been directed to become more efficient while sustaining service to customers by using competitive sourcing.

The system notices were last published in their entirety in the **Federal Register**, December 10, 2001 (Volume 66, Number 237) pp. 63819–63835.

The report of altered systems of records, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

For reasons set forth above, IRS proposes to alter seven systems of records as follows:

TREASURY/IRS 36.001

SYSTEM NAME:

Appeals Grievances and Complaint Files-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period "." at the end of routine use 10 is replaced with a semicolon ";", and the following routine use is added at the end thereof:

"(11) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a."

* * * * *

Treasury/IRS 36.002

SYSTEM NAME:

Employee Activity Records-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period "." at the end of routine use 5 is replaced with a semicolon ";", and the following routine use is added at the end thereof:

"(6) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a."

* * * * *

Treasury/IRS 36.003

SYSTEM NAME:

General Personnel and Payroll Records-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period "." at the end of routine use 22 is replaced with a semicolon ";", and the following routine use is added at the end thereof:

"(23) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a."

* * * * *

Treasury/IRS 36.005

SYSTEM NAME:

Medical Records-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period "." at the end of routine use 15 is replaced with a semicolon ";", and the following routine use is added at the end thereof:

"(16) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a."

* * * * *

Treasury/IRS 36.008

SYSTEM NAME:

Recruiting, Examining and Placement Records-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period "." at the end of routine use 12 is replaced with a semicolon ";", and the following routine use is added at the end thereof:

"(13) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a."

* * * * *

Treasury/IRS 36.009

SYSTEM NAME:

Retirement, Life Insurance and Health Benefits Records System-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period "." at the end of routine use 14 is replaced with a semicolon ";", and the following routine use is added at the end thereof:

"(15) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a."

* * * * *

Treasury/IRS 38.001

SYSTEM NAME:

General Training Records-Treasury/Internal Revenue Service.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

Description of changes: The period "." at the end of routine use 3 is replaced with a semicolon ";", and the following routine use is added at the end thereof:

"(4) disclose records to agency contractors who need to have access to the records in order to perform the services required by the contract. Recipients must comply with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a."

* * * * *

Dated: August 19, 2003.

W. Earl Wright Jr.,

Acting Chief Management and Administrative Programs Officer.

[FR Doc. 03–21800 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet September 16–18, 2003, from 8:30 a.m. to 5 p.m. each day. The meeting will be held at the Marriott Residence Inn, 1199 Vermont Avenue, NW., Washington Conference Room, Washington, DC 20005. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the need of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by the VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such programs and activities.

On September 16, the agenda will include briefings and updates on legislative issues affecting women veterans, the Women Veterans Health Program and the National Survey of Veterans. On September 17, the Committee will be briefed on issues regarding burial for women veterans, Committee membership requirements, and compensation and pension benefits. On September 18, the Committee will be briefed on veterans' health issues, Capital Asset Realignment for Enhanced Services (CARES), the VA Homeless Program and related issues that the Committee members may choose to introduce.

Any member of the public wishing to attend should contact Ms. Desiree Long, at the Department of Veterans Affairs, Center for Women Veterans (OOW), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Long may be contacted either by phone at (202) 273–6193, fax at (202) 273–7092, or e-mail at *OOW@mail.va.gov*. Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: August 13, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–21797 Filed 8–25–03; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
August 26, 2003

Part II

Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, or Age in Programs or Activities Receiving Federal Financial Assistance; Final Rule

Department of Agriculture
Nuclear Regulatory Commission
Department of Energy
Small Business Administration
National Aeronautics and Space Administration
Department of Commerce
Tennessee Valley Authority
Department of State
Agency for International Development
Department of Justice
Department of Labor
Department of Veterans Affairs
Environmental Protection Agency
General Services Administration
Department of the Interior
Department of Homeland Security
Federal Emergency Management Agency
National Science Foundation
National Foundation on the Arts and the Humanities
National Endowment for the Arts
National Endowment for the Humanities
Institute of Museum and Library Services
Corporation for National and Community Service
Department of Transportation

DEPARTMENT OF AGRICULTURE

7 CFR Parts 15, 15b

RIN 0566–AB78

NUCLEAR REGULATORY COMMISSION

10 CFR Part 4

RIN 3130–AG65

DEPARTMENT OF ENERGY

10 CFR Part 1040

RIN 1901–AA86

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 112, 117

RIN 3245–AE59

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Parts 1250, 1251, 1252

RIN 2700–AC41

DEPARTMENT OF COMMERCE

15 CFR Parts 8, 8b, 20

RIN 0690–AA30

TENNESSEE VALLEY AUTHORITY

18 CFR Parts 1302, 1307, 1309

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DEPARTMENT OF VETERANS AFFAIRS

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 7

RIN 2020–AA43

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–6, 101–8

RIN 3090–AH33

DEPARTMENT OF THE INTERIOR

43 CFR Part 17

RIN 1090–AA77

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 7

RIN 1660–AA12

NATIONAL SCIENCE FOUNDATION

45 CFR Parts 605, 611, 617

RIN 3145–AA38

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Parts 1110, 1151, 1156

RIN 3135–AA17

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Parts 1110, 1170

RIN 3136–AA24

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

45 CFR Part 1110

RIN 3137–AA11

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 1203, 1232

RIN 3045–AA29

DEPARTMENT OF TRANSPORTATION

49 CFR Parts 21, 27

RIN 2105–AC96

Nondiscrimination on the Basis of Race, Color, or National Origin in Programs or Activities Receiving Federal Financial Assistance; Nondiscrimination on the Basis of Handicap in Programs or Activities Receiving Federal Financial Assistance; Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance

AGENCIES: Department of Agriculture; Nuclear Regulatory Commission; Department of Energy; Small Business Administration; National Aeronautics and Space Administration; Department of Commerce; Tennessee Valley Authority; Department of State; Agency for International Development; Department of Justice; Department of Labor; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; Department of the Interior; Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security; National Science Foundation; National Endowment for the Arts, National Endowment for the Humanities, Institute of Museum and Library Services, National Foundation on the Arts and the Humanities; Corporation for National and Community Service; Department of Transportation (collectively, "the Agencies").

ACTION: Joint final rule.

SUMMARY: The Agencies amend their regulations implementing Title VI of the Civil Rights Act of 1964 ("Title VI"), section 504 of the Rehabilitation Act of 1972 ("section 504"), and the Age Discrimination Act of 1975 ("Age Discrimination Act"). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive federal financial assistance. In 1988, the Civil Rights Restoration Act ("CRRA") added definitions of "program or activity" and "program" to Title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. These amendments incorporate the CRRA's definitions of "program or activity" and "program" into Title VI, section 504,

and Age Discrimination Act regulations of the Agencies, and promote consistent and adequate enforcement of these statutes by the Agencies.[1]

DATES: Effective September 25, 2003.

FOR FURTHER INFORMATION CONTACT: Merrily A. Friedlander, Chief, Coordination and Review Section, Civil Rights Division, U.S. Department of Justice, (202) 307–2222 voice, (202) 307–2678 TTY, (202) 307–0595 fax.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Overview

On December 6, 2000, the Agencies published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 76460) proposing to amend the regulations governing nondiscrimination on the basis of race, color, national origin, handicap, and age to conform with the Civil Rights Restoration Act of 1987, Pub. L. 100–259 ("CRRA").

The Agencies are amending their civil rights regulations to conform to provisions of the CRRA regarding the scope of coverage under civil rights statutes they administer. These statutes include Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.* ("Title VI"); section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 ("section 504"); and the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.* ("Age Discrimination Act"). Title VI prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive federal financial assistance; section 504 prohibits discrimination on the basis of disability in all programs or activities that receive federal financial assistance; and the Age Discrimination Act prohibits discrimination on the basis of age in all programs or activities that receive federal financial assistance. (Note that the CRRA does not affect coverage under federal employment nondiscrimination statutes, such as Title VII of the Civil Rights Act of 1964, Title I of the Americans with Disabilities Act, and the Age Discrimination in Employment Act.)

Background Information

The principal conforming change amends each of these regulations to add a definition of "program or activity" or "program" that reflects the statutory definition of "program or activity" or "program" enacted as part of the CRRA. We believe that adding this statutory definition to the regulatory language is the best way to avoid confusion on the part of beneficiaries, recipients, government entities, and other interested parties about the scope of civil rights coverage. These amendments also conform to a final rule under Title IX of the Education Amendments of 1972, as amended, to establish common regulations for 21 federal agencies published on August 30, 2000, 65 FR 52857. That common rule incorporated the statutory definitions of "program or activity" and "program" enacted as part of the CRRA.

When originally issued and implemented, the Agencies' civil rights regulations were interpreted by the Agencies to mean that acceptance of federal assistance by a recipient resulted in broad coverage of an entity. The Supreme Court, however, interpreted "program or activity" in restrictive terms. *Grove City College* v. *Bell*, 465 U.S. 555, 570–74 (1984). The Court concluded in *Grove City College* that federal student financial assistance provided to a college established jurisdiction under Title IX only over the college's financial aid program, not the entire college. Since Title IX was patterned after Title VI, this interpretation significantly narrowed the prohibitions of Title VI and two other statutes based on it: the Age Discrimination Act and section 504. *See* S. Rep. No. 100–64, at 2–3, 11–16, *reprinted in* 1988 U.S.C.C.A.N. at 3–5, 13–18. Following the Supreme Court's decision in *Grove City*, the Agencies changed their interpretation, but not the language, of the governing regulations to be consistent with the Court's restrictive, program-specific definition of "program or activity."

In 1988, Congress enacted the CRRA to restore the prior consistent and long-standing executive branch interpretation and "broad, institution-wide application" of those laws as previously administered. *See* S. Rep. No. 100–64, at 4, *reprinted in* 1988 U.S.C.C.A.N. at 6. Congress enacted the CRRA in order to remedy what it perceived to be a serious narrowing by the Supreme Court of a longstanding administrative interpretation of the coverage of these laws. At that time, the Agencies reinstated their broad interpretation to be consistent with the CRRA, again without changing the language of the regulations. To the extent there was any inconsistency between the language of the regulations and the language of the CRRA, it was and remains the Agencies' interpretation that the CRRA superseded the regulations and, therefore, the regulations must be read in conformity with the CRRA. This interpretation was consistent with the understanding of Congress as expressed in the legislative history of the CRRA that the statutory definition of "program or activity" would take effect immediately without the need for federal agencies to amend their existing regulations. S. Rep. No. 100–64, at 32, *reprinted in* 1988 U.S.C.C.A.N. at 34.

These regulatory amendments are designed to address an issue recently raised by the Third Circuit Court of Appeals in *Cureton* v. *NCAA*, 198 F.3d 107 (3d Cir. 1999). The Third Circuit determined that, because the Departments of Health and Human Services and Education did not amend their Title VI regulations after the enactment of the CRRA, application of the Departments' Title VI regulations to disparate impact discrimination claims is "program specific" (*i.e.*, limited to the particular program receiving federal financial assistance), rather than institution-wide (*i.e.*, applicable to all of the operations of the institution regardless of the use of the federal funds). *See id.* at 114–16. As noted above, however, the Agencies have, since the passage of the CRRA, consistently interpreted the coverage of their Title VI regulations to reach those programs that fall within the broad statutory definition of "program or activity." The *Cureton* decision thwarts clearly expressed congressional intent by giving continued effect to a judicial interpretation that Congress intended to override. In any event, the regulatory changes address the concerns raised by the Third Circuit in that the regulations would track the CRRA's statutory language and apply to both disparate impact and disparate treatment forms of discrimination. ("Disparate treatment," *i.e.*, intentional discrimination, refers to policies or practices that treat individuals differently based on their

[1] Since the publication of the Notice of Proposed Rulemaking (NPRM), the Federal Emergency Management Agency (FEMA) has become a component of the Department of Homeland Security (DHS). DHS published its Interim Final Rules for Title VI, Section 504, and Title IX of the Education Amendments of 1972 in the **Federal Register** on March 6, 2003. 68 FR 10904 (to be codified at 6 CFR part 21). Those rules reflect the Civil Rights Restoration Act's broadened definitions of "program" "Program or activity." FEMA is continuing as part of this rulemaking because the DHS regulations provide that "[t]he provisions published by this part shall be effective for all components of the Department, including all Department components that are transferred to the Department, except to the extent that a Department component already has existing title VI regulations." 6 CFR 21.1. Similar language is included in DHS' Title XI and section 504 regulations.

race, color, national origin, disability, or age, as applicable. Discrimination that involves such disparate treatment is barred by the civil rights statutes and regulations. "Disparate impact" refers to criteria or methods of administration that have a significant adverse effect on individuals based on race, color, national origin, disability, or age, as applicable. Such criteria or practices constitute impermissible discrimination if there is no substantial legitimate justification for those criteria or practices. However, even where such a justification exists, if there is an equally effective but less discriminatory alternative, that alternative must be adopted.)

Pursuant to Executive Order 12250 ("Leadership and Coordination of Nondiscrimination Laws"), the Department of Justice ("DOJ") requested that the Agencies jointly issue amendments to their regulations implementing Title VI, Section 504, and the Age Discrimination Act to incorporate the CRRA definitions of "program" and "program or activity." The two federal agencies implicated in the *Cureton* decision—the Department of Education ("ED") and the Department of Health and Human Services ("HHS")—are promulgating separate rules to incorporate the CRRA's expanded definition of "program or activity" and "program" in their regulations. ED published its NPRM on May 5, 2000, 65 FR 26464, and published its final rule on November 13, 2000, 65 FR 68050. HHS published its NPRM on October 26, 2000, 65 FR 64194, and plans to publish its final rule soon. DOJ participated in and coordinated the promulgation of amendments to 22 other agencies' Title VI, Section 504, and Age Discrimination Act regulations. 65 FR 76460. Again, while DOJ views these modifications to be merely technical in nature, public comments were invited on these modifications.

These changes are summarized in the sections below.

Definition of "Program or Activity" and "Program"

The statutory definition, which is now incorporated into the regulations, addresses the scope of coverage for four broad categories of recipients: (1) State or local governmental entities; (2) colleges, universities, other postsecondary educational institutions, public systems of higher education, local educational agencies, systems of vocational education, and other school systems; (3) private entities, such as corporations, partnerships, and sole proprietorships; and (4) entities that are a combination of any of those groups. *See* 42 U.S.C. 2000d–4a.

Under the first part of the definition, when State and local governmental entities receive financial assistance from a federal agency, the "program or activity" or "program" in which discrimination is prohibited includes all of the operations of any State or local department or agency to which the federal assistance is extended. If, for example, a State or local agency receives federal assistance for one of many functions of the agency, all of the operations of the entire agency are subject to the nondiscrimination provisions of these regulations. In addition, "program or activity" or "program" also includes all of the operations of the entity of a State or local government that distributes the federal assistance to another State or local governmental agency or department and all of the operations of the State or local governmental entity to which the financial assistance is extended. *See* 42 U.S.C. 2000d–4a(1); S. Rep. No. 100–64, at 16, *reprinted in* 1988 U.S.C.C.A.N. at 18.

Under the second portion of the definition of "program or activity," when covered educational institutions receive federal financial assistance, all of their operations are subject to the nondiscrimination requirements of the funding agency's regulations. *See* 42 U.S.C. 2000d–4a(2).

Under the third part of the definition, the degree of coverage of private entities, such as private corporations and partnerships, will vary depending on how the funding is provided, the principal purpose or objective of the entity, or how the entity is structured (*e.g.*, physically separate offices or plants). Each of the operations of private businesses that are principally engaged in education, health care, housing, social services, or parks and recreation is considered a "program or activity" for purposes of these regulations. *See* 42 U.S.C. 2000d–4a(3)(A)(ii). S. Rep. No. 100–64 provides numerous other examples of the scope of coverage with regard to each category of recipient, and readers are referred to this material. S. Rep. No. 100–64, at 16–20, *reprinted in* 1988 U.S.C.C.A.N. at 19–21. In addition, if federal financial assistance is extended to a private entity "as a whole" and the private entity is not principally engaged in the business of education, health care, housing, social services, or parks and recreation, all of the private entity's operations at all of its locations would be covered. If the private entity receives general assistance, that is, assistance that is not designated for a particular purpose, that would be considered federal financial assistance to the private entity "as a whole." In other instances where financial assistance is extended directly to a geographically separate facility of an entity described in the third part of this definition, then coverage would be limited to the geographically separate facility that receives the assistance. *See* 42 U.S.C. 2000d–4a(3).

Under the fourth part of the definition, if an entity of a type not already covered by one of the first three parts of the definition is established by two or more of the entities listed under the first three parts of the definition, then all of the operations of that new entity are covered. *See* 42 U.S.C. 2000d–4a(4).

The amendments incorporate the CRRA definition of "program or activity" and "program" into the agencies' regulations. When Congress amended Title VI in the CRRA, it added definitions of both "program or activity" and "program" to the statute. Therefore, we are amending each agency's Title VI regulations to incorporate the definition of both "program or activity" and "program." However, when Congress amended section 504 and the Age Discrimination Act in the CRRA, it added a definition of the term "program or activity," but did not add a similar definition of the term "program." Thus, we are amending the agencies' section 504 and Age Discrimination Act regulations to incorporate a new definition of "program or activity" only.

As explained below, in order to conform with the CRRA definitions of "program or activity" and "program," the regulatory changes also modify or delete some existing sections of the Agencies' regulations that have become superfluous or incorrect following enactment of the CRRA. These regulatory changes do not change the requirements of the existing regulations.

It is important to note that the changes do not in any way alter the requirement of the CRRA that a fund termination be limited to the particular programs "or part[s] thereof" that discriminate, or, as appropriate, to all of the programs that are infected by the discriminatory practices. *See* S. Rep. No. 100–64, at 20, *reprinted in* 1988 U.S.C.C.A.N. at 22 ("The [CRRA] defines 'program' in the same manner as 'program or activity,' and leaves intact the 'or part thereof' pinpointing language.").

Assurances

Several agencies' Title VI regulations included an assurance requirement that has created confusion with regard to the scope of "program or activity" under

these regulations. In general, these assurances, which are legal agreements between the government and recipients of federal financial assistance, are designed to ensure that recipients of federal financial assistance comply with nondiscrimination laws and do not discriminate in their programs or activities. However, some agencies had assurance provisions that were confusing in light of the CRRA because they incorrectly stated that, in some circumstances, certain parts of a program will not be covered by civil rights laws. For example, DOJ's assurance provision, which is very similar to the corresponding assurance requirements in other agencies' Title VI regulations, provided in part: "[t]he assurance * * * shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the practices in designated parts or programs of the institution * * * will in no way affect its practices in the program of the institution * * * for which Federal financial assistance is sought. * * *" 28 CFR 42.105(c)(2). In order to avoid any further confusion, the regulatory changes delete the above provision and similar provisions in the regulations of other agencies that incorrectly suggest that some parts of a program will not be covered under certain circumstances. These changes ensure that agency regulations reflect the broad scope of coverage of a program or activity that was contemplated by the CRRA.

Several federal agencies' Title VI regulations provided illustrative examples or applications that referred to the waiver language contained in the assurance provision. Because the waiver language in relevant assurance provisions has been deleted, similar language and references in illustrative applications and examples also have been deleted. These deletions do not affect the reach of the statutes or regulations.

Other References to "Program" and "Program or Activity"

In addition, we deleted references to "program" and "program or activity" in the regulations that did not conform to the broadened CRRA definition of "program" and "program or activity." For example, in some instances, we substituted "Federal financial assistance" for "program" or "program or activity" where the phrase referred to federal financial assistance. In other instances, we substituted the phrase "aid, benefit, or service" if that was the intended meaning. We made revisions when the terms "program" and "program or activity" were used too narrowly, *i.e.*, when they were used to indicate only a specific portion of a program that directly receives assistance. The nomenclature tables, which are charts designed to provide an easy method for viewing the words to be removed or replaced, show these conforming changes for each agency. In some instances, we changed the phrase "program and activity" to "program or activity" to conform the regulations to the term as defined in the CRRA. We did not modify the term "activity" when it appears separately from the phrase "program or activity" and is used in a manner unrelated to the CRRA phrase "program or activity."

In promulgating its final regulations, the Department of Education ("ED") used the plural terms "programs" and "programs or activities" to refer generally to multiple programs or activities operated by multiple recipients. In all other instances, however, ED used the singular terms "program" or "program or activity." ED explained that it had decided to use the singular terms in all such instances to reflect the fact that virtually all of ED's recipients, such as institutions of higher education, have only one "program" or "program or activity" encompassing all of the recipient's operations. Noting that the singular also can be interpreted to encompass the plural, ED further explained that the use of the singular was appropriate even for those cases in which ED might fund a recipient that operates more than one program or activity (such as when an individual recipient corporation has multiple plants each of which is a separate program or activity). Given the greater range of recipient entities funded by the multiple agencies participating in this joint final rule and the likelihood that most of these agencies fund recipients that may operate more than one program or activity, the participating agencies have not endeavored to make any changes to these regulations solely related to the use of the singular or plural forms of these terms. As such, the regulations of these agencies may differ from ED's regulations in terms of the use of the singular or plural form of "program" or "program or activity," but such differences should not be interpreted to imply any legal difference in the intended scope of coverage.

Although we have generally deleted all references to "program" and "program or activity" where such references do not conform to the CRRA, we have not done so when the regulation is merely copying statutory language. For example, the regulations for some agencies contain a compliance provision that requires the agency to report any order for fund termination to the congressional committee with jurisdiction over the "program" involved. In this case, the term "program" clearly refers to Federal financial assistance, but we did not replace the word because the copied statutory language itself uses the term "program."

In other instances in which the term "program" is used in a manner inconsistent with the CRRA, we capitalized the word in order to distinguish it from the term defined by the CRRA. For example, we capitalized certain terms of art (*e.g.*, "Historic Preservation Program," "Individualized Education Program") or names of types of federal financial assistance (*e.g.*, "School Lunch Program") to avoid confusion.

Other Conforming Changes

Other changes include modifications to some agencies' definition of "recipient." A few agencies defined this term to include an entity that "benefits from" Federal financial assistance. Likewise, many agencies' section 504 and Age Discrimination Act regulations used the phrase "receives or benefits from Federal financial assistance." The phrase "or benefits from" in this context has been deleted as it is superfluous in light of the CRRA.

Because the changes are limited to those that are related to the CRRA definition of "program" and "program or activity," we did not make additional technical corrections unless the provision was already subject to a CRRA-related change. Likewise, we did not make other technical corrections to outdated agency or office names, with one notable exception. Since the regulations for the Department of Energy require that age discrimination complaints be filed with a specific office, we have updated the regulations to reflect the new name of that office, thereby reducing confusion for individual complainants.

Although we are not amending the content of the Agencies' appendices, the headings and introductory text describing the content are amended to conform with the CRRA. Additional conforming changes to the body of the various agency appendices will be published in the **Federal Register** in a separate document at a later date.

Coordination With the Department of Education

The Department of Education ("ED")—one of two agencies that were implicated in the *Cureton* decision and that have decided to promulgate

separate rules to incorporate the CRRA's expanded definition of "program or activity" in their regulations—published its proposed rule on May 5, 2000, at 65 FR 26464, and its final rule on November 13, 2000, at 65 FR 68050. Among other modifications, ED's amendments contain several conforming changes to the following three subparts of its Section 504 regulations: (1) Preschool, Elementary, and Secondary Education; (2) Postsecondary Education; and (3) Health, Welfare, and Social Services.

Eight other Federal agencies have Section 504 regulations containing sections similar to all or a portion of the provisions in the above three subparts. Because we believe that it is particularly important to maintain consistency among Federal agencies with respect to these subparts, we have, with a few minor exceptions, followed ED's lead when amending these sections for the other eight agencies—Department of Agriculture, Department of Commerce, Department of Interior, Department of State, Department of Veterans Affairs, Agency for International Development, National Endowment for the Humanities, and National Science Foundation—that have similar regulations.

Coordination With the Department of Health and Human Services

The other agency implicated in the *Cureton* decision is the Department of Health and Human Services (HHS). Like ED, HHS promulgated its own separate NPRM, which was published on October 26, 2000 at 65 FR 64194. We coordinated with HHS, as we did with ED, to avoid any inconsistencies between this joint rule and those agencies' separate rules.

Differences Among Agencies

Some agencies lack regulations implementing section 504 or the Age Discrimination Act. In accordance with the limited scope of this regulation, we are not adding section 504 or Age Discrimination Act sections to agencies that lack such regulations. Outlined below are the agencies that do not have such implementing regulations, as well as agencies that have comprehensive rules implementing several statutes in one set of regulations or that follow the regulations of another Federal agency.

Agencies that do not have regulations implementing the Age Discrimination Act and, therefore, are amending only their regulations implementing Title VI and section 504 are: the Department of Agriculture, the Department of Labor, the Department of Defense, the Environmental Protection Agency, and the Department of Transportation. The Federal Emergency Management Agency ("FEMA") does not have regulations applying section 504 to recipients of Federal financial assistance but, instead, operates in accordance with section 504 regulations developed by HHS. Therefore, FEMA is amending only its regulations implementing Title VI and the Age Discrimination Act. Likewise, the Small Business Administration does not have regulations applying section 504 to recipients of federal financial assistance and, therefore, is amending only its Title VI and Age Discrimination Act regulations.

In addition, the Corporation for National and Community Service ("the Corporation") lacks regulations applying the Age Discrimination Act, Title VI, and section 504 to recipients of Federal financial assistance. Instead, the Corporation, which is the successor of ACTION, operates in accordance with Title VI and section 504 regulations promulgated by ACTION and is amending only those regulations. Similarly, the National Endowment for the Arts, the National Endowment for the Humanities ("NEH"), and the Institute of Museum and Library Services ("IMLS"), which together constitute the National Foundation on the Arts and the Humanities ("NFAH"), operate in accordance with Title VI regulations developed jointly by these three agencies and thus are amending their Title VI regulations jointly. However, NEA is separately amending its section 504 and Age Discrimination Act regulations, while NEH, which lacks an Age Discrimination Act regulation, is amending its section 504 regulation only. IMLS, which operates in accordance with NEH's section 504 regulations and does not have regulations implementing the Age Discrimination Act, is not issuing any separate amendments.

Analysis of Comments and Changes

In the NPRM, we invited comments on the proposed regulations. We received two comments. The first commenter wrote in support of the NPRM, stating that Title VI, section 504, and the Age Discrimination Act needed to be strengthened and be made uniform by adding the definitions of "program or activity." The commenter also stated that the amendments would result in consistent and adequate enforcement of Title VI, section 504, and the Age Discrimination Act, and commended the Department of Justice and its "sister Federal agencies" for amending the regulations.

The second commenter advanced the view that the Agencies should not amend the regulations at this time because the commenter believed an amendment would be untimely due to a case then-pending before the United States Supreme Court (*Alexander* v. *Sandoval*, 532 U.S. 275 (2001)). *Sandoval* did not, however, address the focus of this rulemaking—revising the regulations to conform them to the added definition of "program or activity" or "program." Instead, *Sandoval* addressed a different issue—whether there is an implied private right of action to enforce disparate-impact regulations promulgated under Section 602 of Title VI and concluded that there was not such a right. The Agencies have decided to proceed with the amendment of their regulations because we believe it is important to conform the regulations to the civil rights statutes as amended by the CRRA. We are, however, mindful of the Supreme Court's statements in *Sandoval* that call the validity of the Title VI disparate-impact regulations into question.[2]

In addition, in consultation with the Department of Justice, the Agencies have reviewed the regulations since publication of the NPRM and have made minor editorial and technical changes.

Applicable Executive Orders and Regulatory Certifications

Executive Order 12067

These conforming changes have been reviewed by the Equal Employment Opportunity Commission pursuant to Executive Order 12067.

Executive Order 12250

These conforming changes to the Title VI and section 504 regulations have been reviewed and approved by the Attorney General pursuant to Executive Order 12250.

Executive Order 12866

These regulations have been drafted and reviewed in accordance with Executive Order 12866, "Regulatory Planning and Review", Section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, Section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget. Under the terms of the

[2] *See Sandoval*, 532 U.S. at 286 & 286 n. 6 ("[W]e assume for purposes of this decision that § 602 confers the authority to promulgate disparate-impact regulations"; "[w]e cannot help observing, however, how strange it is to say that disparate-impact regulations are 'inspired by, at the service of, and inseparably intertwined with' § 601 * * * when § 601 permits the very behavior that the regulations forbid.").

order we have assessed the potential costs and benefits of this regulatory action.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that there probably will be no cost impacts because these final regulations merely clarify longstanding policy of the Agencies and do not change the Agencies' practices in addressing issues of discrimination.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

We summarized the potential costs and benefits of these final regulations in the preamble to the joint NPRM (65 FR 76460).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975 and the Department of Health and Human Services' ("HHS") general, government-wide implementing regulations give the Secretary of HHS the authority to review changes to the Age Discrimination Act regulations of federal agencies. This authority has been delegated to the Office for Civil Rights ("OCR"), which has reviewed and approved these conforming changes.

Small Business Regulatory Enforcement Fairness Act of 1996

It has been determined that this rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

All recipients of federal funding have been bound by these standards of liability since the passage of the CRRA, when the Agencies reinstated their broad interpretation of the terms "program or activity" and "program" and applied these regulations on an institution-wide basis without changing the language of the regulations. The joint rule merely makes the regulations track the statutory language of the CRRA, both for disparate impact and disparate treatment forms of discrimination. These regulations implement statutory amendments and longstanding agency policy.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandate Reform Act of 1995, Public Law 104–4, 109 Stat. 48 (1995), requires agencies to prepare several analytic statements before proposing any rule that may result in annual expenditures of $100 million by State, local, Indian tribal governments or the private sector. See 2 U.S.C. 1532.

These amendments make technical changes to existing regulations that enforce statutory prohibitions on discrimination on the basis of race, color, national origin, age, or disability. Therefore, these amendments will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and they will not significantly or uniquely affect small governments. The participating agencies certify that no actions were deemed necessary under the Unfunded Mandate Reform Act of 1995.

Regulatory Flexibility Act

The Agencies, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), have reviewed these regulations and certify that these regulations will not have a significant economic impact on a substantial number of small entities, in large part because these regulations do not impose any new substantive obligations on ederal funding recipients. All recipients of Federal funding have been bound by these standards of liability since the passage of the CRRA, when the Agencies reinstated their broad interpretation of the terms "program or activity" and "program" and applied these regulations on an institution-wide basis without changing the language of the regulations. The joint rule merely makes the regulations track the statutory language of the CRRA, both for disparate impact and disparate treatment forms of discrimination. These regulations implement statutory amendments and longstanding agency policy.

Paperwork Reduction Act

The Agencies certify that this rule will not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule does not subject federal funding recipients to new obligations. The regulations amend and clarify existing regulations that are required by statute pursuant to Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975. Therefore, in accordance with section 6 of Executive Order 13132, the Agencies have determined that these amendments do not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

List of Subjects

7 CFR Part 15

Aged, Civil rights, Religious discrimination, Sex discrimination.

7 CFR Part 15b

Civil rights, Equal employment opportunity, Grant programs—education, Individuals with disabilities.

10 CFR Part 4

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination.

10 CFR Part 1040

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Individuals with disabilities, Sex discrimination.

13 CFR Part 112

Civil rights, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 117

Aged, Civil rights, Reporting and recordkeeping requirements.

14 CFR Part 1250

Civil rights.

14 CFR Part 1251

Administrative practice and procedure, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

14 CFR Part 1252

Aged, Civil rights.

15 CFR Part 8

Civil rights.

15 CFR Part 8b

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements.

15 CFR Part 20

Administrative practice and procedure, Aged, Civil rights.

18 CFR Part 1302

Civil rights, Reporting and recordkeeping requirements.

18 CFR Part 1307

Administrative practice and procedure, Civil rights, Individuals with disabilities.

18 CFR Part 1309

Aged, Civil rights.

22 CFR Part 141

Civil rights.

22 CFR Part 142

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

22 CFR Part 143

Aged, Civil rights.

22 CFR Part 209

Civil rights.

22 CFR Part 217

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

22 CFR Part 218

Aged, Civil rights.

28 CFR Part 42

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Grant programs, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination.

29 CFR Part 31

Civil rights, Reporting and recordkeeping requirements.

29 CFR Part 32

Civil rights, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements.

38 CFR Part 18

Aged, Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements, Veterans.

40 CFR Part 7

Civil rights, Equal employment opportunity, Individuals with disabilities, Reporting and recordkeeping requirements, Sex discrimination.

41 CFR Part 101–6

Civil rights, Government property management.

41 CFR Part 101–8

Administrative practice and procedure, Civil rights, Government property management, Individuals with disabilities, Reporting and recordkeeping requirements.

43 CFR Part 17

Administrative practice and procedure, Aged, Civil rights, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

44 CFR Part 7

Administrative practice and procedure, Aged, Civil rights, Reporting and recordkeeping requirements.

45 CFR Part 605

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

45 CFR Part 611

Civil rights, Reporting and recordkeeping requirements.

45 CFR Part 617

Administrative practice and procedure, Aged, Civil rights.

45 CFR Part 1110

Civil rights.

45 CFR Part 1151

Civil rights, Equal employment opportunity, Individuals with disabilities.

45 CFR Part 1156

Administrative practice and procedure, Aged, Civil rights, Grant programs, Investigations, Reporting and recordkeeping requirements.

45 CFR Part 1170

Civil rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

45 CFR Part 1203

Civil rights, Reporting and recordkeeping requirements.

45 CFR Part 1232

Civil rights, Grant programs—social programs, Individuals with disabilities.

49 CFR Part 21

Civil rights, Reporting and recordkeeping requriements.

49 CFR Part 27

Administrative practice and procedure, Airports, Civil rights, Highways and roads, Individuals with disabilities, Mass transportation, Railroads, Reporting and recordkeeping requirements.

Adoption of Joint Rule

■ The agency adoptions of this joint rule are set forth below:

DEPARTMENT OF AGRICULTURE

7 CFR Subtitle A

RIN 0566–AB78

Authority and Issuance

■ For the reasons set forth in the joint preamble, USDA amends 7 CFR subtitle A, parts 15 and 15b as set forth below:

PART 15—NONDISCRIMINATION

■ 1. The authority citation for part 15 continues to read as follows:

Authority: 5 U.S.C. 301; 29 U.S.C. 794.

■ 2. Section 15.2 is amended by revising paragraph (k) to read as follows:

§ 15.2 Definitions.

* * * * *

(k) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section.

* * * * *

■ 3. In § 15.3, the headings for paragraphs (d)(1) through (d)(10) are revised to read as follows:

§ 15.3 Discrimination prohibited.

* * * * *

(d) * * *

(1) *Cooperative Agricultural Extension Program.* * * *

(2) *Rural Electrification and Rural Telephone Programs.* * * *

(3) *Direct Distribution Program.* * * *

(4) *National School Lunch Program.* * * *

(5) *Food Stamp Program.* * * *

(6) *Special Milk Program for Children.* * * *

(7) *Price Support Programs carried out through producer associations or cooperatives or through persons who are required to provide specified benefits to producers.* * * *

(8) *Forest Service Programs.* * * *

(9) *Farmers Home Administration Programs.* * * *

(10) *Cooperative State Research Programs.* * * *

■ 4. Section 15.4 is amended by revising paragraph (c) to read as follows:

§ 15.4 Assurances required.

* * * * *

(c) *Assurances from institutions.* The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

* * * * *

5. Amend the appendix to subpart A of part 15 as follows:

a. In the heading, by removing the words "USDA-Assisted Programs" and adding, in their place, the words "Federal Financial Assistance From USDA";

b. In the introductory text, by removing the word "Programs" and adding, in its place, the words "The types of Federal financial assistance"; and by removing the words "in which Federal financial assistance is rendered"; and

c. In the chart, by removing the column heading "Program" and adding, in its place, the column heading "Type of Federal Financial Assistance".

6. In the table below, for each section indicated in the left column, remove the text shown in the middle column, and add the text shown in the right column:

Section	Remove	Add
15.1(b)(3)	under any such program	
15.2(e)	for any program	
15.2(e)	under any such program	
15.2(f)	for the purpose of carrying out a program	
15.3(b)(3)	activities or programs	programs or activities
15.3(d), introductory text, first sentence	programs and activities	types of Federal financial assistance
15.3(d), introductory text, third sentence	program	type of Federal financial assistance
15.3(d), introductory text, third sentence	it	a program
15.3(d), introductory text, last sentence	listed program	listed type of Federal financial assistance
15.3(d)(1)(ii)	activity of	activity funded by
15.3(d)(3)(i)	direct distribution program	Direct Distribution Program
15.3(d)(3)(iii)	program	Program
15.3(d)(4)(i)	program	Program
15.3(d)(4)(ii)	program	Program
15.3(d)(5)(i)	program	Program
15.3(d)(6)(i)	program	Program
15.3(d)(6)(iv)	program	Program
15.3(d)(7)(v)	price support program	Price Support Program
15.3(d)(10)(ii)	cooperative research program	Cooperative Research Program
15.4(a)(1), first sentence	to carry out a program	
15.4(a)(1), first sentence	except a program	except an application
15.4(b)	to carry out its program for or activity involving	
15.5(a), second sentence	programs	Federal financial assistance
15.5(a), second sentence	program	
15.5(b), second sentence	of any program under	in
15.5(d)	program under	program for Federal statutes, authorities, or other means by which Federal financial assistance is extended and
15.9(e), first sentence	programs	
15.10(f)	under the program involved	to which this regulation applies
15.10(f)	assistance will	assistance to which this regulation applies will
15.10(f)	under such program	
15.12(a), introductory text, first sentence	under such program	

PART 15b—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 7. The heading for part 15b is revised to read as set forth above.

■ 8. The authority citation for part 15b continues to read as follows:

Authority: 29 U.S.C. 794.

■ 9. Section 15b.3 is amended by revising paragraph (p) and adding a new paragraph (s) to read as follows:

§ 15b.3 Definitions.

* * * * *

(p) For purposes of § 15b.18(d), *Historic Preservation Programs* are those that receive Federal financial assistance that has preservation of historic properties as a primary purpose.

* * * * *

(s) *Program or activity* means all of the operations of any entity described in paragraphs (s)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (s)(1), (2), or (3) of this section.

§ 15b.4 [Amended]

■ 10. In § 15b.4, the heading of paragraph (c) is amended by removing the word "Programs" and adding, in its place, the words "Aid, benefits, or services".

■ 11. The heading for subpart C is revised to read as follows:

Subpart C—Accessibility

■ 12. Section 15b.18 is amended by revising the heading and first sentence of paragraph (a), the heading of paragraph (e), and the first sentence of paragraph (e)(1) introductory text to read as follows:

§ 15b.18 Existing facilities.

(a) *Accessibility.* A recipient shall operate each assisted program or activity so that when each part is viewed in its entirety it is readily accessible to and usable by qualified handicapped persons. * * *

* * * * *

(e) *Historic Preservation Programs; application for waiver of accessibility requirements.* (1) A recipient shall operate each assisted program or activity involving Historic Preservation Programs so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

§ 15b.27 [Amended]

■ 13. Section 15b.27 is amended by removing from the heading of paragraph (b) the words "Program delivery" and adding, in their place, the word "Delivery", and by removing from the heading of paragraph (c) the words "Program materials" and adding, in their place, the word "Materials".

§ 15b.28 [Amended]

■ 14. The heading for § 15b.28 is amended by removing the word "programs".

■ 15. The heading for subpart F is revised to read as follows:

Subpart F—Other Aid, Benefits, or Services

Appendix A to Part 15b [Amended]

■ 16. Amend appendix A to part 15b as follows:

■ a. In the heading, by removing the words "USDA-Assisted Programs" and adding, in their place, the words "Federal Financial Assistance From USDA";

■ b. In the introductory text, by removing the word "Programs" and adding, in its place, the words "The types of Federal financial assistance"; and by removing the words "in which Federal financial assistance is rendered"; and

■ c. In the chart, by removing the column heading "Program" and adding, in its place, the column heading "Type of Federal Financial Assistance".

■ 17. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
15b.2, first sentence	programs and activities	programs or activities
15b.2, last sentence	tailored to specific programs	more specifically tailored
15b.4(b)(1)(v)	program	program or activity
15b.4(b)(3)	programs or activities	aid, benefits, or services
15b.4(b)(4)(ii)	program	program or activity
15b.4(b)(5)(i)	or benefits from	
15b.4(b)(6)	or benefiting from	
15b.4(c)	the benefits of a program	aid, benefits, or services
15b.4(c)	from a program	from aid, benefits, or services
15b.5(a), first sentence	for a program or activity	
15b.5(a), first sentence	the program will	the program or activity will
15b.7(a), second sentence	programs and activities	programs or activities
15b.8(a)(3)(i)	program	program or activity
15b.8(a)(3)(ii)	program	program or activity
15b.8(a)(3)(iii)	program	program or activity
15b.10	programs	programs or activities
15b.11	programs and activities	programs or activities

Section	Remove	Add
15b.12(a)(3), last sentence	apprenticeship programs	apprenticeships
15b.12(b)(8)	social	those that are social
15b.12(b)(8)	programs	
15b.13(a)	program	program or activity
15b.13(c), introductory text	programs	programs or activities
15b.13(c)(1)	program	program or activity
15b.16	programs and activities	programs or activities
15b.18(b), last sentence	offer programs and activities to	serve
15b.18(b), last sentence	to obtain the full benefits of the program	
15b.18(d)	program accessibility	accessibility
15b.18(d)	the program	the program or activity
15b.18(e)(1), introductory text, last sentence	program	
15b.18(e)(1)(iv), first sentence	program	
15b.18(e)(1)(iv), last sentence	historic preservation program	Historic Preservation Program
15b.18(e)(1)(iv), first sentence	program accessibility	accessibility
15b.18(e)(2), introductory text, first sentence	program	
15b.18(e)(2), introductory text, last sentence	program	
15b.18(e)(2)(iii)	program	program or activity
15b.18(g)(3)	program accessibility	ccessibility under paragraph (a) of this section
15b.20	programs and activities	programs or activities
15b.21, introductory text	program	program or activity
15b.22(a)	program	program or activity
15b.22(b)(2)	individualized education program	Individualized Education Program
15b.22(b)(3), first sentence	in	
15b.22(b)(3), first sentence	to a program	for aid, benefits, or services
15b.22(b)(3), first sentence	the one	those
15b.22(b)(3), first sentence	operates	operates or provides
15b.22(c)(1), second sentence	to a program	for aid, benefits, or services
15b.22(c)(1), second sentence	operated	operated or provided
15b.22(c)(1), second sentence	the program	aid, benefits, or services
15b.22(c)(2)	person in	person
15b.22(c)(2)	to a program	for aid, benefits, or services
15b.22(c)(2)	not operated	not operated or provided
15b.22(c)(2)	the program	aid, benefits, or services
15b.22(c)(3)	placement in	
15b.22(c)(3)	program	placement
15b.22(c)(4), last sentence	such a program	a free appropriate education
15b.24(a)	program shall	program or activity shall
15b.24(a)	a regular or special education program	regular or special education
15b.25, first sentence	operates a	provides
15b.25, first sentence	education program	education
15b.26(c)(1), first sentence	programs and activities	aid, benefits, or services
15b.26(c)(1), last sentence	in these activities	
15b.27(a), first sentence	operates an	provides
15b.27(a), first sentence	program or activity receiving assistance from this Department	
15b.27(a), first sentence	from the program or activity	
15b.27(a), last sentence	under the program or activity	
15b.27(b)(1), first sentence	program services	aid, benefits, or services
15b.27(b)(2), first sentence	program services	aid, benefits, or services
15b.27(b)(2), second sentence	program benefits	aid, benefits, or services
15b.27(b)(3), first sentence	program services	aid, benefits, or services
15b.27(b)(3), second sentence	program benefits	aid, benefits, or services
15b.27(c), first sentence	program	
15b.28(a), first sentence	operates a	provides
15b.28(a), first sentence	program receiving assistance from this Department	
15b.28(a), first sentence	from such program	
15b.29	programs and activities	programs or activities
15b.31(a)	program or activity	aid, benefits, or services
15b.31(d)	programs and activities	programs or activities
15b.32(a), second sentence	program or	
15b.32(c)	in its program	
15b.32(d)(1)	under the education program or activity operated by the recipient	
15b.35(a)(1), first sentence	programs and activities	aid, benefits, or services
15b.36	programs and activities	aid, benefits, or services
15b.39, first sentence	activity for	activity that provides aid, benefits, or services for
15b.39, first sentence	program, or activity	program or activity
15b.40(a), first sentence	operate	provide
15b.40(a), first sentence	service programs assisted by this Department	services
15b.41(a)	a multi-family rental housing program	multi-family rental housing
15b.41(b)(2)	program	

Section	Remove	Add
15b.41(c), first sentence	program	
15b.41(c), last sentence	program	

Dated: May 1, 2001.

David Winningham,

Acting Director, Office of Civil Rights, Department of Agriculture.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter I

RIN 3130–AG65

Authority and Issuance

■ For the reasons set forth in the joint preamble, NRC amends 10 CFR chapter I, part 4 as set forth below:

PART 4—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE COMMISSION

■ 1. The heading for part 4 is revised as set forth above.

■ 2. The authority citation for part 4 is revised to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 274, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A also issued under secs. 602–605, Pub. L. 88–352, 78 Stat. 252, 253 (42 U.S.C. 2000d–2000d–7); sec. 401, 88 Stat. 1254 (42 U.S.C. 5891).

Subpart B also issued under sec. 504, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 706); sec. 119, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 794); sec. 122, Pub. L. 95–602, 92 Stat. 2984 (29 U.S.C. 706(6)).

Subpart C also issued under Title III of Pub. L. 94–135, 89 Stat. 728, as amended (42 U.S.C. 6101).

Subpart E also issued under 29 U.S.C. 794.

■ 3. Section 4.4 is amended by revising paragraph (g) to read as follows:

§ 4.4 Definitions.

* * * * *

(g) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

■ 4. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
4.3, introductory text, second sentence	programs	types of Federal financial assistance
4.3, introductory text, third sentence	under any program or activity	
4.3, introductory text, fourth sentence	a program	a type of Federal financial assistance
4.3, introductory text, fourth sentence	the program	a program or activity
4.4(f)	for the purpose of carrying out a program	
4.4(h)	for any program	
4.4(h)	under any such program	

Subpart A—Regulations Implementing Title VI of the Civil Rights Act of 1964 and Title IV of the Energy Reorganization Act of 1974

■ 5. The heading of § 4.22 is revised to read as follows:

§ 4.22 Continuing Federal financial assistance.

* * * * *

■ 6. Section 4.24 is amended by revising paragraph (b) to read as follows:

§ 4.24 Assurances from institutions.

* * * * *

(b) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

■ 7. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
4.12(a), introductory text	under any program	
4.13(a), first sentence	a program of	the
4.13(a), first sentence	assistance	assistance to a program
4.13(a), second sentence	such programs	such Federal financial assistance
4.13(a), second sentence	fellowship programs	fellowships

Section	Remove	Add
4.21(a), first sentence	under a program	
4.21(a), first sentence	except a program	except an application
4.21(a), fifth sentence	for each program	
4.21(a), fifth sentence	in the program	
4.21(b), third sentence	program	statute
4.22	to carry out a program involving	for
4.32(b)	of any program under	in
4.34	program under which	program for which
4.51(a)(4)	under the program involved	
4.64, first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
4.64, last sentence	programs subject to this subpart are	this regulation is
4.74, first sentence	under the program involved	to which this regulation applies
4.74, first sentence	assistance will	assistance to which this regulation applies will
4.74, first sentence	under such program	
4.91, introductory text, first sentence	under such program	

Subpart B—Regulations Implementing Section 504 of the Rehabilitation Act of 1973, as Amended

■ 8. The heading of § 4.126 is revised to read as follows:

§ 4.126 General requirement concerning accessibility.

* * * * *

■ 9. Section 4.127 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 4.127 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 10. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
4.121(a)	or benefits from	
4.121(b)(1)(v)	program	program or activity
4.121(b)(2)	programs or activities	aid, benefits, or services
4.121(b)(3)(ii)	program	program or activity
4.121(b)(4)(i)	or benefits from	
4.121(c)	the benefits of a program	aid, benefits, or services
4.121(c)	a program	aid, benefits, or services
4.121(d)	programs and activities	programs or activities
4.122(a)	or benefits from	
4.122(c)(8)	social	those that are social
4.122(c)(8)	programs	
4.122(d), last sentence	apprenticeship programs	apprenticeships
4.123(a)	program	program or activity
4.123(c), introductory text	program	program or activity
4.123(c)(1)	program	program or activity
4.126	or benefits from	
4.127(b), last sentence	offer programs and activities to	serve
4.127(d)(3)	program accessibility	accessibility under paragraph (a) of this section
4.231(a), first sentence	for a program or activity	
4.231(a), first sentence	the program	the program or activity
4.231(c)(3)(i)	program	program or activity
4.231(c)(3)(ii)	program	program or activity
4.232(a), second sentence	programs and activities	programs or activities

Subpart C—Regulations Implementing the Age Discrimination Act of 1975, as Amended

■ 11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
4.313, introductory text, first sentence	program of activity	program or activity
4.321, first sentence	programs and activities	programs or activities
4.321, second sentence	programs and activities	programs or activities
4.334(a)(2), last sentence	program	

Section	Remove	Add
4.336(c)(2), first sentence	Federal	
4.338(c)	program	program or activity
4.339(b)(2)	program or activity	Federal financial assistance
4.341(b)	programs	programs or activities
4.341(c)	programs	programs or activities
4.341(d)	programs	programs or activities

Dated: April 30, 2001.

William D. Travers,

Executive Director for Operations, Nuclear Regulatory Commission.

DEPARTMENT OF ENERGY

10 CFR Chapter X

RIN 1901–AA86

Authority and Issuance

■ For the reasons set forth in the joint preamble, DOE amends 10 CFR chapter X, part 1040 as set forth below:

PART 1040—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES

■ 1. The heading for part 1040 is revised to read as set forth above.

■ 2. The authority citation for part 1040 is revised to read as follows:

Authority: 20 U.S.C. 1681–1686; 29 U.S.C. 794; 42 U.S.C. 2000d to 2000d–7, 3601–3631, 5891, 6101–6107, 7101 *et seq.*

Subpart A—General Provisions

■ 3. Section 1040.3 is amended by revising paragraph (u) to read as follows:

§ 1040.3 Definitions—General.

* * * * *

(u) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (u)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (u)(1), (2), or (3) of this section.

* * * * *

■ 4. Section 1040.4 is amended by revising paragraph (d) and the heading of paragraph (f) to read as follows:

§ 1040.4 Assurances required and preaward review.

* * * * *

(d) *Assurances from government agencies.* In the case of any application from any department, agency or office of any State or local government for Federal financial assistance for any specified purpose, the assurance required by this section is to extend to any other department, agency, or office of the same governmental unit.

* * * * *

(f) *Continuing Federal financial assistance.* * * *

* * * * *

■ 5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1040.1, first sentence	the program or activity	the Federal financial assistance
1040.1, first sentence	program services	services
1040.2(a), second sentence	Programs	Types of Federal financial assistance
1040.2(a), fourth sentence	under any program or activity	
1040.2(a), last sentence	a program	a type of Federal financial assistance
1040.2(a), last sentence	the program	that a program or activity
1040.3(a)	program	aid, benefit, service
1040.3(t)	for the purpose of carrying out a program	
1040.4(a), first sentence	for a program or activity	
1040.4(f), introductory text	administering a program which receives	applying for
1040.4(f)(1)	program	program or activity
1040.5(b), first sentence	or programs	or activity
1040.5(b), second sentence	programs	programs or activities
1040.5(b), last sentence	broadcast program	broadcast
1040.5(b), last sentence	the program	the program or activity
1040.5(b), last sentence	opportunity program	opportunity program or activity
1040.5(c), first sentence	program	program or activity
1040.6(a) second sentence	programs and activities	programs or activities
1040.7(b)	a program that will	to

Subpart B—Title VI of the Civil Rights Act of 1964; Section 16 of the Federal Energy Administration Act of 1974, as Amended; and Section 401 of the Energy Reorganization Act of 1974

■ 6. Section 1040.13 is amended by revising paragraph (e) to read as follows:

§ 1040.13 Discrimination prohibited.

* * * * *

(e) For the purpose of this section, the disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance include all portions of the recipient's program or activity, including facilities, equipment, or property provided with the aid of Federal financial assistance.

* * * * *

■ 7. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1040.11(b), first sentence	administering	administering or
1040.11(b), first sentence	or substantially benefiting from	
1040.12(b), first sentence	programs and activities	programs or activities
1040.13(b), introductory text	under any program	
1040.13(c)	program objectives	objectives of the program
1040.13(g), first sentence	from programs	from benefits
1040.13(g), last sentence	the benefits of a program	benefits
1040.13(g), last sentence	programs funded	Federal financial assistance provided
1040.14(a)(1), introductory text, first sentence	mobility programs	mobility projects

Subpart D—Nondiscrimination on the Basis of Handicap—Section 504 of the Rehabilitation Act of 1973, as Amended

§ 1040.63 [Amended]

■ 8. In § 1040.63, the heading of paragraph (c) is amended by removing the word "Programs," and adding, in its place, the words "Aid, benefits, or services".

■ 9. The undesignated center heading immediately preceding § 1040.71 is amended by removing the word "Program".

■ 10. Section 1040.72 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 1040.72 Existing facilities.

(a) *Accessibility.* A recipient shall operate any program or activity to which this subpart applies so that when each part is viewed in its entirety it is readily accessible and usable by handicapped persons. * * *

* * * * *

■ 11. Section 1040.74 is amended by revising the section heading, the heading of paragraph (a), the first sentence of paragraph (a) introductory text and the headings of paragraphs (a)(1), (a)(2), and (a)(3) to read as follows:

§ 1040.74 Accessibility in historic properties.

(a) *Methods to accomplish accessibility.* Recipients shall operate each program or activity involving historic properties so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

(1) *Methods to accomplish accessibility without building alterations or structural changes.* * * *

(2) *Methods to accomplish accessibility resulting in building alterations.* * * *

(3) *Methods to accomplish accessibility resulting in structural changes.* * * *

* * * * * *

■ 12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1040.61(b)	or benefits from	
1040.63(a)	or benefits from	
1040.63(b)(1)(v)	program	program or activity
1040.63(b)(3)	programs or activities	aid, benefits, or services
1040.63(b)(4)(ii)	program	program or activity
1040.63(b)(6)	or benefiting from	
1040.63(c)	the benefits of a program	aid, benefits, or services
1040.63(c)	from a program	from aid, benefits, or services
1040.63(d)	programs of activities	programs or activities
1040.64(c), first sentence	under any program to which	under any program or activity to which
1040.64(c), first sentence	assistance under any program for	assistance for
1040.66(a)(3), last sentence	apprenticeship programs	apprenticeships
1040.66(b)(8)	social	those that are social
1040.66(b)(8)	programs	
1040.67(a)	program	program or activity
1040.67(c), introductory text	program	program or activity
1040.67(c)(1)	program	program or activity
1040.72(b), last sentence	offer programs and activities to	serve
1040.72(d)(3)	program accessibility	accessibility under § 1040.72(a)
1040.74(a), introductory text, second sentence	program	
1040.74(a), introductory text, last sentence	program	
1040.74(a)(1)(i)	programs	aid, benefits, or services
1040.74(a)(1)(iii)	programs or activities	aid, benefits, or services
1040.74(a)(1)(iv)	programs	aid, benefits, or services
1040.74(a)(2), first sentence	program	
1040.74(a)(2), first sentence	Program	
1040.74(a)(3), first sentence	program	

Section	Remove	Add
1040.74(a)(3), first sentence	Program	

Subpart E—Nondiscrimination on the Basis of Age—Age Discrimination Act of 1975, as Amended

■ 13. The authority citation for subpart E is revised to read as follows:

Authority: Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*); 45 CFR part 90.

Appendix A to Subpart E to Part 1040 [Amended]

■ 14. Appendix A to subpart E to part 1040 is amended by removing the words "or program" from the sixth column heading.

■ 15. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1040.81, last sentence	programs and activities	programs or activities
1040.82(a)	or benefits from	
1040.83(i)	programs and activities	programs or activities
1040.88(a)	Office of Equal Opportunity (OEO)	Office of Civil Rights and Diversity
1040.88(c)	program	program or activity
1040.89–1, first sentence	program and activities	programs or activities
1040.89–5(a), third sentence	Office of Equal Opportunity (OEO)	Office of Civil Rights and Diversity
1040.89–5(a), last sentence	OEO	Office of Civil Rights and Diversity
1040.89–5(b), introductory text	OEO	Office of Civil Rights and Diversity
1040.89–5(c), first sentence	OEO	Office of Civil Rights and Diversity
1040.89–6(b), second sentence	OEO	Office of Civil Rights and Diversity
1040.89–6(c), second sentence	OEO	Office of Civil Rights and Diversity
1040.89–6(e)	OEO	Office of Civil Rights and Diversity
1040.89–7(a)(1)	OEO	Office of Civil Rights and Diversity
1040.89–7(a)(3)	OEO	Office of Civil Rights and Diversity
1040.89–7(b), first sentence	OEO	Office of Civil Rights and Diversity
1040.89–9(a), introductory text	Programs	Programs or Activities
1040.89–9(a)(1), first sentence	under the program or activity involved where	for a program activity in which
1040.89–9(c)(1)	OEO	Office of Civil Rights and Diversity
1040.89–9(c)(2), first sentence	Federal	
1040.89–11	OEO	Office of Civil Rights and Diversity
1040.89–12(b)(2)	program or activity	Federal financial assistance
1040.89–13(b), introductory text	OEO	Office of Civil Rights and Diversity

Dated: May 29, 2001.

Spencer Abraham,

Secretary, Department of Energy.

SMALL BUSINESS ADMINISTRATION

13 CFR Chapter I

RIN 3245–AE59

Authority and Issuance

■ For the reasons set forth in the joint preamble, SBA amends 13 CFR chapter I, parts 112 and 117 as set forth below:

PART 112—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF SBA—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 112 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d-1).

■ 2. Section 112.2 is amended by adding paragraph (e) to read as follows:

§ 112.2 Application of this part.

* * * * *

(e) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1),(2), or (3) of this section.

Appendix A to Part 112 [Amended]

■ 3. The chart in appendix A to part 112 is amended by removing the heading "Name of program" and adding, in its place, the heading "Name of Federal financial assistance'; by removing the heading "Financial Programs" and adding, in its place, the heading "Federal Financial Assistance Involving Grants of Funds"; and by removing the heading "Nonfinancial Programs" and adding, in its place, the heading "Other Federal Financial Assistance".

■ 4. The note immediately following appendix A to part 112 is amended by removing the word "programs" and adding, in its place, the words "types of Federal financial assistance".

■ 5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
112.2(a)	assistance under programs	Federal financial assistance
112.3(b)(3), first sentence	the program	a program
112.8, last sentence	for each program	
112.8, last sentence	in the program	

PART 117—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES OF SBA—EFFECTUATION OF THE AGE DISCRIMINATION ACT OF 1975, AS AMENDED

■ 6. The heading for part 117 is revised to read as set forth above.

■ 7. The authority citation for part 117 continues to read as follows:

Authority: Age Discrimination Act of 1975, 42 U.S.C. 6101 *et seq.*

■ 8. Section 117.2 is amended by revising paragraph (a) to read as follows:

§ 117.2 Application of this part.

(a) This part applies to all recipients of Federal financial assistance administered by the Small Business Administration, whether or not the specific type of Federal financial assistance administered is listed in appendix A.

* * * * *

■ 9. Section 117.3 is amended by redesignating paragraphs (j) through (m) as paragraphs (k) through (n), and adding a new paragraph (j) to read as follows:

§ 117.3 Definitions.

* * * * *

(j) The term *program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (j)(1), (2), or (3) of this section.

* * * * *

Appendix A to Part 117 [Amended]

■ 10. The chart in appendix A to part 117 is amended by removing the words "Name of program" and adding, in their place, the words "Type of Federal financial assistance".

■ 11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
117.1	programs	programs or activities
117.3(j), first sentence	under any program	
117.4(b)(2)	programs	programs or activities
117.5(b), first sentence	in a program	
117.6(b)	business or program	program or activity
117.6(c)	program	program or activity
117.7, first sentence	under any program	
117.7, last sentence	for each program,	
117.7, last sentence	in the program	
117.8(a), first sentence	programs and activities	programs or activities
117.8(c)	its program beneficiaries	the beneficiaries of its programs or activities
117.15(a)(3), first sentence	program	
117.17(f)	under the programs involved	to which this regulation applies
117.17(f)	assistance will	assistance to which this regulation applies will
117.17(f)	under such program	
117.19(a)(9)	program	program or activity
117.20, first sentence	programs	programs or activities

Dated: October 10, 2002.

Hector V. Barreto,

Administrator, Small Business Administration.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Chapter V

RIN 2700–AC41

Authority and Issuance

■ For the reasons set forth in the joint preamble, NASA amends 14 CFR chapter V, parts 1250, 1251, and 1252 as set forth below:

PART 1250—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF NASA— EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 1250 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252, 42 U.S.C. 2000d–1; and the laws listed in appendix A to this part.

■ 2. Section 1250.102 is amended by revising paragraph (h) to read as follows:

§ 1250.102 Definitions.

* * * * *

(h) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

* * * * *

■ 3. Section 1250.103–4 is amended by revising paragraph (b) to read as follows:

§ 1250.103–4 Illustrative applications.

* * * * *

(b) In a research or training grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited and the prohibition extends to the entire university.

* * * * *

■ 4. Section 1250.103–5 is amended by revising the heading to read as follows:

§ 1250.103–5 Special benefits.

* * * * *

■ 5–6. Section 1250.104 is amended by revising paragraph (c)(2) and by removing paragraph (d)(2) and the paragraph designation (d)(1), to read as follows:

§ 1250.104 Assurances.

* * * * *

(c) * * *

(2) The assurances from such an applicant shall be applicable to the entire organization of the applicant.

* * * * *

■ 7. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1250.101(a)(1), first sentence	federally-assisted programs and activities	types of Federal financial assistance
1250.101(a)(1), second sentence	program or activity	type of Federal assistance
1250.101(a)(1), second sentence	such program	a program
1250.101(a)(1), last sentence	programs	types of Federal financial assistance
1250.101(a)(2)	under any such program	
1250.101(b)(2)	extended under any such program	extended
1250.101(b)(3)	beneficiary under any such program	beneficiary
1250.101(b)(5)	programs	types of Federal financial assistance
1250.101(b)(6)	programs	types of Federal financial assistance
1250.102(f)	for the purpose of carrying out a program	
1250.102(i)	for any program	
1250.102(i)	under any such program	
1250.103–2(a), introductory text	under any program	
1250.103–3(b)	programs	types of Federal financial assistance
1250.103–4(a)	programs	services
1250.103–5	the benefits of a program	benefits
1250.104(a), first sentence	to carry out a program	
1250.104(e), second sentence	under a program of	with
1250.104(e), last sentence	program	statute
1250.105(b), last sentence	of any program under	in
1250.105(d)	program under	program for
1250.108(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
1250.109(f)	under the program involved	to which this regulation applies
1250.109(f)	assistance will	assistance to which this regulation applies will
1250.109(f)	under such program	
1250.111(a), first sentence	under such program	

PART 1251—NONDISCRIMINATION ON BASIS OF HANDICAP

■ 8. The authority citation for part 1251 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 9. Section 1251.102 is amended by adding paragraph (k) to read as follows:

§ 1251.102 Definitions.

* * * * *

(k) *Program or activity* means all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k) (1), (2), or (3) of this section.

§ 1251.103 [Amended]

■ 10. In § 1251.103, the heading of paragraph (c) is amended by removing the word "Programs" and adding, in its place, the words "Aid, benefits, or services".

■ 11. The heading of subpart 1251.3 of part 1251 is revised to read as follows:

Subpart 1251.3—Accessibility

■ 12. In § 1251.301, the heading and first sentence of paragraph (a) are revised to read as follows:

§ 1251.301 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which his part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. * * *

* * * * *

■ 13. In the table below, for each section indicated in the left column, remove the text shown in the middle column, and add the text shown in the right column:

Section	Remove	Add
1251.101	or benefits from	
1251.103(a)	or benefits from	
1251.103(b)(1)(v)	program	program or activity
1251.103(b)(3)	program	program or activity
1251.103(b)(3)	or benefiting from	
1251.103(b)(4)	programs or activities	aid, benefits, or services
1251.103(b)(5)(ii)	program	program or activity
1251.103(b)(6)(i)	or benefits from	
1251.103(b)(7)	or benefiting from	
1251.103(c)	the benefits of a program	aid, benefits, or services
1251.103(c)	from a program	from aid, benefits, or services
1251.104(a), first sentence	for a program or activity	
1251.104(a), first sentence	the program	the program or activity
1251.105(a)(3)(i)	program	program or activity
1251.105(a)(3)(ii)	program	program or activity
1251.105(a)(3)(iii)	program	program or activity
1251.107(a), second sentence	programs and activities programs or activities	
1251.200(a)(2)	programs	programs or activities
1251.200(a)(4), last sentence	apprenticeship programs apprenticeships	
1251.200(b)(8)	social	those that are social
1251.200(b)(8)	programs	
1251.200(d), last sentence	apprenticeship programs apprenticeships	
1251.201(a)	program	program or activity
1251.201(c), introductory text	program	program or activity
1251.201(c)(1)	program	program or activity
1251.301(b), last sentence	offer programs and activities to	serve
1251.301(d)(3)	program accessibility	accessibility under paragraph (a) of this section

PART 1252—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 14. The heading for part 1252 is revised to read as set forth above.

■ 15. The authority citation for part 1252 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.* (45 CFR part 90).

■ 16. Section 1252.102 is amended by revising the heading to read as follows:

§ 1252.102 To what programs or activities do these regulations apply?

* * * * *

■ 17. Section 1252.103 is amended by adding paragraph (n) to read as follows:

§ 1252.103 Definitions.

* * * * *

(n) *Program or activity* means all of the operations of any entity described in paragraphs (n)(1) through (4) of this

section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (n)(1), (2), or (3) of this section.

■ 18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1252.100, last sentence	programs and activities	programs or activities
1252.102(a)	or benefits from	
1252.203	program	program or activity
1252.300	programs and activities	programs or activities
1252.403(a)(2), last sentence	program	
1252.405(b), first sentence	program activity	program or activity
1252.405(c)(2), first sentence	Federal	
1252.409(b)(2)	program or activity	Federal financial assistance

Dated: September 10, 2002.

Sean O'Keefe,

Administrator, National Aeronautics and Space Administration.

DEPARTMENT OF COMMERCE

15 CFR Subtitle A

RIN 0690–AA30

Authority and Issuance

■ For the reasons set forth in the joint preamble, DOC amends 15 CFR subtitle A, parts 8, 8b, and 20 as set forth below:

PART 8—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF COMMERCE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 8 continues to read as follows:

Authority: Sec. 602, Civil Rights Act of 1964 (42 U.S.C. 2000d–1).

■ 2. Section 8.3 is amended by revising paragraph (g) to read as follows:

§ 8.3 Definitions.

* * * * *

(g) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

■ 3. Section 8.5 is amended by revising paragraph (b)(10) to read as follows:

§ 8.5 Nondiscrimination clause.

* * * * *

(b) * * *

(10) In the case where any assurances are required from an academic, a medical care, detention or correctional, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or providing of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility.

* * * * *

■ 4. Section 8.6 is amended by revising the heading of paragraph (a) to read as follows:

§ 8.6 Applicability of this part to Department assisted programs.

* * * * *

(a) *Assistance to support economic development.* * * *

* * * * *

Appendix A to Part 8 [Amended]

■ 5. The heading for appendix A to part 8 is amended by removing the word "Programs" and adding, in its place, the words "Federal Financial Assistance".

■ 6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
8.2(a), first sentence	federally assisted programs	types of Federal financial assistance
8.2(a), last sentence	under any such program	
8.2(b)(2)	under any such program	
8.2(b), second sentence	a program	a type of Federal financial assistance
8.2(b), second sentence	such program	a program
8.2(b), last sentence	programs	types of Federal financial assistance
8.3(i), first sentence	for or in connection with any program	
8.3(i), last sentence	under any program	
8.3(j)	for the purpose of carrying out a program	
8.4(b)(1), introductory text	under any program to which this part applies	
8.4(b)(1)(vii)	when a program is applicable thereto	
8.4(b)(2)	under any program	
8.4(b)(2)	such program, or the class of persons to whom	program, or the class of persons to whom
8.4(c)(1), third sentence	program	plan
8.5(a), first sentence	to carry out a program	
8.5(b)(3)	That in a program involving	When
8.5(b)(3)	assistance,	assistance is involved,
8.5(b)(5), third sentence	program	statute
8.6, introductory text, second sentence	program	type of Federal financial assistance
8.6(b), second sentence	student training programs	instances of student training
8.7(b), last sentence	of any program under	in
8.7(d)	program under which	program for which
8.12(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
8.13(f)	under the program involved	to which this regulation applies
8.13(f)	assistance will	assistance to which this regulation applies will
8.13(f)	under such program	
8.15(a), introductory text, first sentence	under such program	

PART 8b—PROHIBITION OF DISCRIMINATION AGAINST THE HANDICAPPED IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES OF THE DEPARTMENT OF COMMERCE

■ 7. The heading for part 8b continues to read as set forth above.

■ 8. The authority citation for part 8b continues to read as follows:

Authority: 29 U.S.C. 794.

■ 9. Section 8b.3 is amended by redesignating paragraphs (h) through (l) as paragraphs (i) through (m), respectively; and adding a new paragraph (h) to read as follows:

§ 8b.3 Definitions.

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

* * * * *

■ 10. Section 8b.4 is amended by revising the heading of paragraph (c) to read as follows:

§ 8b.4 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, or services limited by Federal law.* * * *

* * * * *

Subpart C of Part 8b—[Amended]

■ 11. The heading for subpart C of part 8b is amended by removing the word "Program."

■ 12. Section 8b.17 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 8b.17 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to qualified handicapped individuals. * * *

* * * * *

■ 12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
8b.1, first sentence	or benefiting from	
8b.1, last sentence	programs and activities	programs or activities
8b.1, last sentence	or benefiting from	
8b.2, first sentence	program	program or activity
8b.2, first sentence	or benefiting from	
8b.2, last sentence	program	program or activity
8b.4 (a)	or benefits from	
8b.4(b)(1)(v)	program	program or activity
8b.4(b)(3)	programs or activities	aid, benefits, or services
8b.4(b)(4)(ii)	program	program or activity
8b.4(b)(5)(i)	or benefits from	
8b.4(b)(6)	or benefiting from	
8b.4(b)(7)(i)	under programs of Federal financial assistance	
8b.4(c)	the benefits of a program	aid, benefits, or services
8b.4(c)	from a program	from aid, benefits, or services
8b.4(d)	programs and activities	programs or activities
8b.5(a), first sentence	for a program or activity	
8b.5(a), first sentence	the program	the program or activity
8b.5(b)(3)	program	program or activity
8b.5(d)	a program	the objectives of Federal financial assistance
8b.5(d)	programs and activities	programs or activities
8b.6(a)(3)(i)	program	program or activity
8b.6(a)(3)(ii)	program	program or activity
8b.8(a), second sentence	programs and activities	programs or activities
8b.10(a)	programs	programs or activities
8b.11(a)(1)	or benefits from	
8b.11(a)(3), last sentence	apprenticeship programs	apprenticeships
8b.12(a)	program	program or activity
8b.12(b)(1)	program	program or activity
8b.12(c), introductory text	program	program or activity
8b.12(c)(1)	program	program or activity
8b.12(e)	program	program or activity
8b.17(a), third sentence	program	aid, benefit, or service
8b.17(a), last sentence	Program accessibility	Accessibility
8b.17(a), last sentence	program	aid, benefit, or service
8b.17(b), last sentence	offer programs and activities to	serve
8b.17(e)(3)	program accessibility	accessibility under § 8b.17(a)
8b.19	programs and activities	programs or activities
8b.19	or benefit from	
8b.21(a)	program or activity	aid, benefits, or services
8b.21(d)	programs and activities	program or activity
8b.22(a), second sentence	program of	
8b.22(c)	in its program	
8b.22(d)(1), first sentence	under the education program or activity operated by the recipient	
8b.25(a)(1), first sentence	programs and activities	aid, benefits, or services

PART 20—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 15. The authority citation for part 20 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. sec. 6101 *et seq.* and the government-wide regulations implementing the Act, 45 CFR part 90.

■ 16. The heading of § 20.2 is revised to read as follows:

§ 20.2 Programs or activities to which these regulations apply.

* * * * *

■ 17. Section 20.3 is amended by redesignating paragraphs (j) through (n) as paragraphs (k) through (o), respectively; and adding a new paragraph (j) to read as follows:

§ 20.3 Definitions.

* * * * *

(j) *Program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial

assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (j)(1),(2), or (3) of this section.

* * * * *

■ 18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
20.1, last sentence	programs and activities	programs or activities
20.2(a)	or benefits from	
20.4(d)	program	program or activity
20.7, introductory text	programs and activities	programs or activities
20.7(a), first sentence	program	program or activity
20.13(a)(2), last sentence	program	
20.15(a)(1), last sentence	program	program or activity
20.15(b)	program and activity	program or activity
20.15(c)(2), first sentence	Federal	
20.18(b)(2)	program or activity	Federal financial assistance

Dated: May 17, 2001.

Suzan J. Aramaki,

Director, Office of Civil Rights, Department of Commerce.

TENNESSEE VALLEY AUTHORITY

18 CFR Chapter XIII

RIN 3316–AA20

Authority and Issuance

■ For the reasons set forth in the joint preamble, TVA amends 18 CFR chapter XIII, parts 1302, 1307, and 1309 as set forth below:

PART 1302—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF TVA— EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 1302 continues to read as follows:

Authority: TVA Act, 48 Stat. 58 (1933), as amended, 16 U.S.C. 831–831dd, and sec. 602 of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d–1.

■ 2. Section 1302.3 is amended by adding a new paragraph (e) to read as follows:

§ 1302.3 Definitions.

* * * * *

(e) *Program or activity* and *program* refer to all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

■ 3. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1302.2, introductory text, first sentence	program in which	program for which
1302.2, introductory text, second sentence	programs	types of Federal financial assistance
1302.2(b)	under any such program	
1302.2(c)	under any such program	
1302.2, concluding text, first sentence	a program	a type of Federal financial assistance
1302.2, concluding text, first sentence	such program	a program
1302.2, concluding text, last sentence	programs	types of Federal financial assistance
1302.4(b)(1), introductory text	under any program or activity	
1302.5(a), last sentence	in the program	
1302.5(b), first sentence	through a program of	with
1302.5(b), second sentence	under a program of	with
1302.5(b), third sentence	program	statute
1302.6(b), last sentence	of any program under	in
1302.6(d)	program under which	program for which
1302.7(b)(3)(ii)	program	programs
1302.7(c)(3)(ii)(B)	program	programs
1302.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and

Section	Remove	Add
1302.10(f)	under the program involved	to which this regulation applies
1302.10(f)	assistance will	assistance to which this regulation applies will
1302.10(f)	under such program	
1302.12(a), introductory text, first sentence	under such program	

PART 1307—NONDISCRIMINATION WITH RESPECT TO HANDICAP

■ 4. The authority citation for part 1307 continues to read as follows:

Authority: TVA Act, 48 Stat. 58 (1933) as amended, 16 U.S.C. 831–831dd (1976) and sec. 504 of the Rehabilitation Act of 1973, Pub. L. 93–112, as amended, 29 U.S.C. 794 (1976; Supp. II 1978).

■ 5. Section 1307.1 is amended by adding paragraph (k) to read as follows:

§ 1307.1 Definitions.

* * * * *

(k) *Program or activity* means all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section.

■ 6. The heading of § 1307.4 is revised to read as follows:

§ 1307.4 Discrimination prohibited.

* * * * *

■ 7. Section 1307.6 is amended by revising the section heading and the first sentence of paragraph (b)(1) to read as follows:

§ 1307.6 Accessibility.

* * * * *

(b) * * *

(1) Each program or activity subject to this part shall be operated so that when each part is viewed in its entirety it is readily accessible to and usable by qualified handicapped persons. * * *

* * * * *

■ 8. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1307.3, first sentence	program in which	program or activity for which
1307.3, first sentence	under any program	
1307.3, first sentence	under any such program	
1307.4(b)(1), introductory text	under any program	
1307.4(b)(1)(i)	program	program or activity
1307.4(b)(1)(ii)	program	program or activity
1307.4(b)(1)(iii)	program	program or activity
1307.4(b)(1)(iv)	program	program or activity
1307.4(b)(1)(v)	program	program or activity
1307.4(b)(1)(vi)	program	program or activity
1307.4(b)(1)(vii)	program	program or activity
1307.4(b)(2)	program	program or activity
1307.4(b)(2)	activities	aid, benefits, or services
1307.4(b)(3)(ii)	program	program or activity
1307.4(b)(4)	program,	program or activity,
1307.4(b)(4)(i)	program	program or activity
1307.4(c)	the benefits of a program	aid, benefits, or services
1307.4(c)	from a program	from aid, benefits, or services
1307.4(d), first sentence	programs and activities	programs or activities
1307.4(d), last sentence	programs	aid, benefits, or services
1307.5(c)(8)	social	those that are social
1307.5(c)(8)	programs	
1307.5(d)	apprenticeship programs	apprenticeships
1307.5(e)(2)(i)	programs	programs or activities
1307.6(a)	program	program or activity
1307.6(b)(1), third sentence	program	
1307.6(b)(1), last sentence	programs or activities	aid, benefits, or services
1307.6(b)(2), introductory text, second sentence	make covered programs or activities in existing facilities recipient accessible	comply with paragraph (b)(1) of this section
1307.6(c), second sentence	program	
1307.6(c), fourth sentence	program	
1307.6(d)(1)	program	program or activity
1307.7(a), last sentence	in the program	

Section	Remove	Add
1307.7(b), first sentence	through a program of	with
1307.7(b), second sentence	under a program of	with
1307.7(b), third sentence	program	statute
1307.8(b), last sentence	of any program under in	
1307.8(d)	program under which	program or activity for which
1307.10(c), last sentence	program	program or activity
1307.11(e) first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
1307.12(f)	under the program involved	to which this regulation applies
1307.12(f)	assistance will	assistance to which this regulation applies will
1307.12(f)	under such program	
1307.13(a)(2)	program	program or activity
1307.13(b), first sentence	programs	programs or activities

PART 1309—NONDISCRIMINATION WITH RESPECT TO AGE

■ 9. The authority citation for part 1309 continues to read as follows:

Authority: TVA Act of 1933, 48 Stat. 58 (1938), as amended, 16 U.S.C. 831–831dd (1976), and sec. 304 of the Age Discrimination Act of 1975, 89 Stat. 729 (1975), as amended, 42 U.S.C. 6103 (1976).

■ 10. Section 1309.1 is amended by redesignating paragraphs (h) through (l) as paragraphs (i) through (m), and adding paragraph (h) to read as follows:

§ 1309.1 What are the defined terms in this part and what do they mean?

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

■ 11. The heading for § 1309.4 is revised to read as follows:

§ 1309.4 What programs or activities are covered by the Act and this part?

* * * * *

■ 12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1309.2, last sentence	programs and activities	programs or activities
1309.9(a), last sentence	in the program	
1309.9(b), second sentence	under a program of	with
1309.9(b), third sentence	program	statute
1309.10(a), first sentence	programs and activities	programs or activities
1309.12(a), last sentence	of any program under	in
1309.12(c)	program under which	program or activity for which
1309.14(a), third sentence	program	
1309.14(d)(2), last sentence	program	
1309.15(b), first sentence	programm	program
1309.15(c)(2), first sentence	the TVA program	the program
1309.16, last sentence	program or activity	Federal financial assistance
1309.17(e), first sentence	programs	Federal statutes, authorities, of other means by which Federal financial assistance is extended and
1309.17(f)(3)	under the program involved	to which this regulation applies
1309.17(f)(3)	assistance will	assistance to which this regulations applies will
1309.17(f)(3)	under such program	
1309.18(c) program	program or activity	

Dated: May 29, 2001.

Steven R. Ayers,

General Manager, Contracts/Supplier & Diverse Business Relations, Tennessee Valley Authority.

DEPARTMENT OF STATE

22 CFR Chapter I

RIN 1400–AB17

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Department of State amends 22 CFR chapter I, parts 141 through 143 as set forth below:

PART 141—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF STATE—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 141 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252, sec. 4, 63 Stat. 111, as amended; 42 U.S.C. 2000d–1, 22 U.S.C. 2658.

■ 2. Section 141.3 is amended by revising the heading of paragraph (c) to read as follows:

§ 141.3 Discrimination prohibited.

* * * * *

(c) Special benefits. * * *

* * * * *

■ 3. Section 141.4 is amended by revising paragraph (b)(2) to read as follows:

§ 141.4 Assurances required.

* * * * *

(b) * * *

(2) The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

* * * * *

■ 4. Section 141.12 is amended by revising paragraph (f) to read as follows:

§ 141.12 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

Appendix A to Part 141 [Amended]

■ 5. The heading for appendix A to part 141 is amended by removing the words "Grants and Activities" and adding, in their place, the words "Federal Financial Assistance".

■ 6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
141.2, first sentence	federally-assisted programs and activities	types of Federal financial assistance
141.2, second sentence	under any such program	
141.2(b)	under any such program	
141.2(c)	under any such program	
141.2, penultimate sentence	program or activity	type of Federal financial assistance
141.2, penultimate sentence	such program	a program
141.3(b)(1), introductory text	under any program	
141.3(c)	the benefits of a program	benefits
141.4(a)(1), first sentence	to carry out a program	
141.4(a)(2), third sentence	a program of	
141.4(a)(3), first sentence	for each program,	
141.4(a)(3), first sentence	in the program	
141.4(b)(1)	a student loan program	student loans
141.5(b), last sentence	of any program under	in
141.5(d)	program under which	program for which
141.8(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
141.9(f)	under the program involved	to which this regulation applies
141.9(f)	assistance will	assistance to which this regulation applies will
141.9(f)	under such program	
141.12(c)	the program extending	
141.12(g)	for any program,	
141.12(g)	under any such program	
141.12(h)	for the purpose of carrying out a program	

PART 142—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 7. The heading for part 142 is revised to read as set forth above.

■ 8. The authority citation for part 142 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 9. Section 142.3 is amended by adding paragraph (m) to read as follows:

§ 142.3 Definitions.

* * * * *

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or (ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

■ 10. Section 142.4 is amended by revising the heading of paragraph (c) to read as follows:

§ 142.4 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, or services limited by Federal law.* * * *

* * * * *

■ 11. The heading for subpart C is revised to read as follows:

Subpart C—Accessibility

■ 12. Section 142.16 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 142.16 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

Appendix to Part 142 [Amended]

■ 13. The heading for appendix A to part 142 is amended by removing the words "Grants and Activities" and adding, in their place, the words "Federal Financial Assistance".

■ 14. The introductory text for appendix A to part 142 is amended by removing the words "Programs of" and adding, in their place, the words "Types of Federal".

■ 15. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
142.2, introductory text, first sentence	all programs	all programs or activities
142.2, introductory text, first sentence	federally-assisted programs and activities	types of Federal financial assistance
142.2, introductory text, second sentence	under any such program	
142.2(b)	under any such program	
142.2(c)	under any such program	
142.2(d), last sentence	program	Federal financial assistance
142.4(a)	or benefits from	
142.4(b)(1)(v)	recipients program	recipient's program or activity
142.4(b)(3)	programs or activities	aid, benefits, or services
142.4(b)(4)(ii)	program	program or activity
142.4(b)(5)(i)	or benefits from	
142.4(b)(6)	or benefiting from	
142.4(c)	the benefits or a program	aid, benefits, or services
142.4(d)	programs and activities	programs or activities
142.4(e)	programs and activities	programs or activities
142.5(a), first sentence	for a program or activity	
142.5(a), first sentence	program will	program or activity will
142.6(a)(3)(i)	program	program or activity
142.6(a)(3)(ii)	program	program or activity
142.8(a), second sentence	programs and activities	programs or activities
142.11(a)(3), last sentence	apprenticeship programs	apprenticeships
142.11(b)(8)	social	those that are social
142.11(b)(8)	programs	
142.12(a)	program	program or activity
142.12(c), introductory text	program	program or activity
142.12(c)(1)	program	program or activity
142.16(b), last sentence	offer programs and activities to	serve
142.16(d)(3)	program accessibility	accessibility under paragraph (a) of this section
142.41	programs and activities	programs or activities
142.41	or benefit from	
142.43(a)	program or activity	aid, benefits, or services
142.43(b)	programs activities	programs or activities
142.43(d)	programs and activities	programs or activities

Section	Remove	Add
142.44(a), second sentence	program of	
142.44(c)	in its program	
142.44(d)(1)	under the education program or activity operated by the recipient	
142.47(a)(1), first sentence	programs and activities	aid, benefits, or services
142.61	programs and activities	programs or activities
142.61	or benefit from	

PART 143—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 16. The authority citation for part 143 is revised to read as follows:

Authority: Age Discrimination Act of 1975, as amended, (42 U.S.C. 6101 *et seq.*); 22 U.S.C. 2658; 45 CFR part 90.

■ 17. The heading of § 143.2 is revised to read as follows:

§ 143.2 To what programs or activities do these regulations apply?

* * * * *

■ 18. Section 143.3 is amended by redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4) and adding a new paragraph (b)(2) to read as follows:

§ 143.3 Definitions.

* * * * *

(b) * * *

(2) *Program or activity* means all of the operations of any entity described in paragraphs (b)(2)(i) and (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*1*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*2*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity which is established by two or more of the entities described in paragraph (b)(2)(i), (ii), or (iii) of this section.

* * * * *

Appendix A to Part 143 [Amended]

■ 19. The heading for appendix A to part 143 is amended by removing the word "Programs" and adding, in its place, the words "Federal Financial Assistance".

■ 20. The undesignated center heading in appendix A to part 143 is amended by removing the words "Programs of" and adding, in their place, the words "Types of Federal".

Appendix B to Part 143 [Amended]

■ 21. The heading for appendix B to part 143 is amended by removing the word "Programs" and adding, in its place, the words "Federal Financial Assistance".

■ 22. The undesignated center heading in appendix B to part 143 is amended by removing the words "Programs of" and adding, in their place, the words "Types of Federal".

Appendix C to Part 143 [Amended]

■ 23. The heading for appendix C to part 143 is amended by removing the word "Programs" and adding, in its place, the words "Federal Financial Assistance".

■ 24. The undesignated center heading in appendix C to part 143 is amended by removing the words "Program of" and adding, in their place, the words "Types of Federal".

■ 25. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
143.1, last sentence	programs and activities	programs or activities
143.2	or benefits from	
143.21	programs and activities	programs or activities
143.34(a)(2), last sentence	program	
143.36(c)(2), first sentence	Federal	
143.39(b)(2)	program or activity	Federal financial assistance

Dated: May 18, 2001.

Grant S. Green, Jr.,

Under Secretary for Management.

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Chapter II

RIN 0412–AA45

Authority and Issuance

■ For the reasons set forth in the joint preamble, AID amends 22 CFR chapter II, parts 209, 217, and 218, as set forth below:

PART 209-NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE AGENCY FOR INTERNATIONAL DEVELOPMENT—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 209 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252, and sec. 621, Foreign Assistance Act of 1961, 75 Stat. 445; 22 U.S.C. 2402.

■ 2. Section 209.3 is amended by revising paragraph (g) to read as follows:

§ 209.3 Definitions.

* * * * *

(g) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1) (i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2) (i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3) (i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

■ 3. Section 209.5 is amended by revising paragraph (b)(2) to read as follows:

§ 209.5 Assurance required.

* * * * *

(b) * * *

(2) The assurance required with respect to an institution of higher education or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

■ 4. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
209.2, first sentence	federally-assisted programs and activities	types of Federal financial assistance
209.2, second sentence	under any such program	
209.2(b)	under any such program	
209.2(c)	under any such program	
209.2, last sentence	program	Federal financial assistance
209.3(f)	for the purpose of carrying out a program	
209.3(h)	for any program,	
209.3(h)	under any such program	
209.4(b)(1), introductory text	under any program	
209.5(a)(1), first sentence	to carry out a program	
209.5(a)(1), first sentence	except a program	except an application
209.5(a)(1), fifth sentence	for each program	
209.5(a)(1), fifth sentence	in the program	
209.5(a)(2), first sentence	through a program of	with
209.5(a)(2), second sentence	under a program of	with
209.5(a)(2), third sentence	program	statute
209.5(b)(1)	for a student assistance program	for student assistance
209.6(b), last sentence	of any program under	in
209.6(d)	under	for
209.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
209.10(e)	under the program involved	to which this regulation applies
209.10(e)	assistance will	assistance to which this regulation applies will
209.10(e)	under such program	
209.12(a), first sentence	under such program	
209.13	programs	Federal financial assistance

PART 217—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 5. The heading for part 217 is revised to read as set forth above.

■ 6. The authority citation for part 217 continues to read as follows:

Authority: 29 U.S.C. 794, unless otherwise noted.

■ 7. Section 217.3 is amended by adding a new paragraph (l) to read as follows:

§ 217.3 Definitions.

* * * * *

(l) *Program or activity* means all of the operations of any entity described in paragraphs (l)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (l)(1), (2), or (3) of this section.

■ 8. Section 217.4 is amended by revising the heading of paragraph (c) to read as follows:

§ 217.4 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, or services limited by Federal law.* * * *

Subpart C of Part 217—[Amended]

■ 9. The heading for subpart C is amended by removing the word "Program".

■ 10. Section 217.22 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 217.22 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. * * *

* * * * *

■ 11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
217.2, first sentence	programs carried	programs or activities carried
217.2, first sentence	federally-assisted programs and activities	types of Federal financial assistance
217.2, second sentence	under any such program	
217.2(b)	under any such program	
217.2(c)	under any such program	
217.2, last sentence	program	Federal financial assistance
217.4(a)	or benefits from	
217.4(b)(1)(v)	program	program or activity
217.4(b)(3)	programs or activities	aid, benefits, or service
217.4(b)(4)(ii)	program	program or activity
217.4(b)(5)(i)	or benefits from	
217.4(b)(6)	or benefiting from	
217.4(c)	the benefits of a program	aid, benefits, or services
217.4(c)	from a program	from aid, benefits, or services
217.5(a), first sentence	for a program or activity	
217.5(a), first sentence	the program	the program or activity
217.6(a)(3)(i)	program	program or activity
217.6(a)(3)(ii)	program	program or activity
217.6(a)(3)(iii)	program	program or activity
217.8(a), second sentence	programs and activities	programs or activities
217.11(a)(3), last sentence	apprenticeship programs	apprenticeships
217.11(b)(8)	social	those that are social or recreational
217.11(b)(8)	programs	
217.12(a)	program	program or activity
217.12(c), introductory text	program	program or activity
217.12(c)(1)	program	program or activity
217.14(b)	programs	program
217.22(b), last sentence	offer programs and activities to	serve
217.22(d)(3)	program accessibility	accessibility under § 217.22(a)
217.41	programs and activities	programs or activities
217.41	or benefit from	
217.43(a)	program or activity	aid, benefits, or services
217.43(d)	programs and activities	program or activity
217.44(a), second sentence	program of	
217.44(c)	in its program	
217.44(d)(1)	under the education program or activity operated by the recipient	
217.47(a)(1), first sentence	programs and activities	aid, benefits, or services

PART 218—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 12. The authority citation for part 218 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; 45 CFR part 90; 22 U.S.C. 2658, unless otherwise noted.

■ 13. The heading for § 218.02 is revised to read as follows:

§ 218.02 To what programs or activities do these regulations apply?

* * * * *

■ 14. Section 218.03 is amended by adding paragraph (b)(4) to read as follows:

§ 218.03 Definitions.

* * * * *

(b) * * *

(4) *Program or activity* means all of the operations of any entity described in paragraphs (b)(4)(i) through (iv) of this section, any part of which is extended Federal financial assistance:

(i)(A) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(B) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(ii)(A) A college, university, or other postsecondary institution, or a public system of higher education; or

(B) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(iii)(A) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*1*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*2*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(B) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(iv) Any other entity which is established by two or more of the entities described in paragraph (b)(4)(i), (ii), or (iii) of this section.

Appendices A, B, and C to Part 218 [Amended]

■ 15. The headings for appendices A, B, and C to part 218 are amended by removing the words "Affected Programs" and adding, in their place, the words "Types of Federal Financial Assistance".

■ 16. The undesignated center headings immediately following the headings for appendices A and B to part 218 are amended by removing the words "Programs of" and adding, in their place, the word "Federal".

■ 17. The undesignated center heading immediately following the heading for appendix C to part 218 is amended by removing the words "Program of" and adding, in their place, the word "Federal".

■ 18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
218.01, last sentence	programs and activities	programs or activities
218.02	or benefits from	
218.21	programs and activities	program or activities
218.34(a)(2), last sentence	program	
218.36(c)(2)	Federal	
218.39(b)(2)	program or activity	Federal financial assistance

Dated: May 1, 2001.

Jessalyn L. Pendarvis,

Director, Office of Equal Opportunity Programs, Agency for International Development.

DEPARTMENT OF JUSTICE

28 CFR Chapter I

[A.G. Order No. 2679–2003]

RIN 1190–AA49

Authority and Issuance

■ For the reasons set forth in the joint preamble, DOJ amends 28 CFR chapter I, part 42 as set forth below:

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart C—Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964 [1]

■ 1. The authority citation for subpart C is revised to read as follows:

Authority: 42 U.S.C. 2000d–2000d–7; E.O. 12250, 45 FR 72995, 3 CFR, 1980 Comp., p. 298.

■ 2. Section 42.102 is amended by revising paragraph (d) to read as follows:

§ 42.102 Definitions.

* * * * *

(d) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (d)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

[1] *See also* 28 CFR 50.3. Guidelines for enforcement of Title VI, Civil Rights Act.

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (d)(1), (2), or (3) of this section.

* * * * *

■ 3. Section 42.104 is amended by revising paragraph (b)(4) to read as follows:

§ 42.104 Discrimination prohibited.

* * * * *

(b) * * *

(4) For the purposes of this section the disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance shall be deemed to include all portions of the recipient's program or activity, including facilities, equipment, or property provided with the aid of Federal financial assistance.

* * * * *

■ 4. Section 42.105 is amended by revising paragraph (b), paragraph (c)(2), and the heading of paragraph (d) to read as follows:

§ 42.105 Assurance required.

* * * * *

(b) *Assurances from government agencies.* In the case of any application from any department, agency, or office of any State or local government for Federal financial assistance for any specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of such other department, agency, or office will substantially affect the project for which Federal financial assistance is requested.

(c) * * *

(2) The assurance required with respect to an academic institution, detention or correctional facility, or any other institution or facility, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to such individuals, shall be applicable to the entire institution or facility.

(d) *Continuing Federal financial assistance.* * * *

* * * * *

■ 5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
42.102(f)	for any program,	
42.102(f)	under any such program	
42.102(g)	for the purpose of carrying out a program	
42.103, introductory text, second sentence	under any such program	
42.104(b)(1), introductory text	under any program	
42.105(a)(1), first sentence	to carry out a program	
42.105(a)(1), fourth sentence	for each program	
42.105(a)(1), fourth sentence	in the program	
42.105(a)(2), first sentence	through a program of	with
42.105(a)(2), second sentence	under a program of	with
42.105(a)(2), last sentence	program	statute
42.105(d), introductory text	administering a program which receives	applying for
42.106(b), last sentence	of any program under	in
42.106(d)	program under which	program for which
42.109(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
42.110(f)	under the program involved	to which this regulation applies
42.110(f)	assistance will	assistance to which this regulation applies will
42.110(f)	under such program	

■ 6. The heading for subpart G is revised to read as follows:

Subpart G—Nondiscrimination Based on Handicap in Federally Assisted Programs or Activities—Implementation of Section 504 of the Rehabilitation Act of 1973

■ 7. The authority citation for subpart G continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 29 U.S.C. 706, 794; E.O. 12250.

§ 42.520 [Amended]

■ 8. The undesignated center heading immediately preceding § 42.520 is amended by removing the word "Program."

■ 9. Section 42.521 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 42.521 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this subpart applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 10. Section 42.540 is amended by revising paragraph (h) to read as follows:

§ 42.540 Definitions.

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h) (1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

* * * * *

Appendix A to Subpart G of Part 42 [Amended]

■ 11. The Note in appendix A to subpart G is amended by removing the word "program" and adding, in its place, the words "program or activity."

■ 12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
42.501	program	program or activity
42.502, first sentence	program	program or activity
42.502, first sentence	or benefiting from	
42.502, last sentence	program	program or activity
42.503(a)	program	program or activity
42.503(a)	or benefiting from	
42.503(b)(1), introductory text	program	program or activity
42.503(b)(1)(i)	program	program or activity
42.503(b)(1)(ii)	program	program or activity
42.503(b)(1)(iv)	program	program or activity
42.503(b)(1)(vi)	program	program or activity
42.503(b)(2)	program	program or activity
42.503(b)(2)	program	aid, benefits, or services
42.503(b)(3)	program	program or activity
42.503(b)(4)	program	program or activity
42.503(b)(5)	a program	aid, benefits, or services
42.503(b)(5)	any program	any program or activity
42.503(b)(6)	program	entity
42.503(c)	programs	aid, benefits, or services
42.503(d)	programs	programs or activities
42.503(f), first sentence	program	program or activity
42.504(a), first sentence	program	program or activity
42.504(a), second sentence	for each of its assistance programs	
42.504(a), second sentence	program	program or activity
42.504(b)	program	program or activity
42.505(a), last sentence	program	program or activity
42.505(b)	program	program or activity
42.505(f)(1), second sentence	programs	programs or activities
42.510(a)(1)	program	program or activity
42.510(a)(1)	or benefiting from	
42.510(a)(2)	program	program or activity
42.510(a)(3), last sentence	apprenticeship programs	apprenticeships
42.510(b)(7)	social	those that are social
42.510(b)(7)	programs	
42.511(a)	program	program or activity
42.511(c), introductory text	program	program or activity
42.511(c)(1)	program	program or activity
42.520	program	program or activity
42.521(b), first sentence	in making its program accessible to its program accessible	in making its program or activity accessible
42.521(b), last sentence	offer programs to	serve
42.521(b), last sentence	to obtain the full benefits of the program	
42.521(d)(1)	program	program or activity
42.521(d)(3)	program accessibility	accessibility under § 42.521(a)
42.530(a), first sentence	programs	programs or activities
42.530(b)	programs	programs or activities
42.530(c)	programs	programs or activities
42.540(i), first sentence	programs	programs or activities

■ 13. The heading for subpart I is revised to read as follows:

Subpart I—Nondiscrimination on the Basis of Age in Federally Assisted Programs or Activities; Implementation of the Age Discrimination Act of 1975

■ 14. The authority citation for subpart I continues to read as follows:

Authority: 42 U.S.C. 6103(a)(4); 45 CFR part 90.

■ 15. Section 42.702 is amended by revising the definition of "Program or activity" to read as follows:

§ 42.702 Definitions.

* * * * *

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

■ 16. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
42.701(b)	programs	programs or activities
42.710(b), last sentence	program	program or activity
42.712(a)(2)	program	program or activity
42.712(b)(2)	program	program or activity
42.712(c)	program	program or activity
42.713(b), last sentence	program	program or activity
42.714	program	program or activity
42.720, first sentence	program	program or activity
42.724(b)	program	program or activity
42.725	programs and activities	programs or activities
42.733(b)(1)(i)(A)	program	program or activity
42.733(b)(2), last sentence	programs	programs or activities
42.733(b)(3), last sentence	program	program or activity

Dated: July 1, 2003.

John Ashcroft,

Attorney General.

DEPARTMENT OF LABOR

29 CFR Subtitle A

RIN 1291–AA31

Authority and Issuance

■ For the reasons set forth in the joint preamble, DOL amends 29 CFR subtitle A, parts 31 and 32 as set forth below:

PART 31—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF LABOR—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 31 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 501, 29 U.S.C. 49k, 5 U.S.C. 301.

■ 2. Section 31.2 is amended by revising paragraph (g) to read as follows:

§ 31.2 Definitions.

* * * * *

(g) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(*A*) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(*B*) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

■ 3. Section 31.3 is amended by revising the heading of paragraph (d)(1) to read as follows:

§ 31.3 General standards.

* * * * *

(d) * * *

(1) *Employment service.* * * *

* * * * *

■ 4. Section 31.6 is amended by revising the heading of paragraph (b) to read as follows:

§ 31.6 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance.* * * *

■ 5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
31.2(f)	for the purpose of carrying out a program	
31.2(h)	for any program,	
31.2(h)	under any such program	
31.3(b)(1), introductory text	under any program	
31.3(d), introductory text, first sentence	programs and activities	types of Federal financial assistance
31.3(d), introductory text third sentence	particular program	particular type of Federal financial assistance
31.3(d), introductory text, last sentence	listed program	listed type of Federal financial assistance
31.3(d), introductory text, last sentence	that program that	assistance
31.3(d), introductory text, last sentence	other programs or activities	programs or activities receiving other types of Federal financial assistance
31.5(b), last sentence	of any program under	in
31.5(d)	under	for
31.6(a)(1), first sentence	to carry out a program	
31.6(a)(1), first sentence	to carry out such program	
31.6(a)(1), first sentence	except a program	except an application
31.6(a)(1), second sentence	Every program	Every award
31.6(a)(1), sixth sentence	for each program	
31.6(a)(1), sixth sentence	in this program	
31.6(a)(2), second sentence	under a program of	with
31.6(a)(2), third sentence	program under	statute under
31.6(b), introductory text	to carry out a program involving	for
31.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
31.10(e)	under the program involved	to which this regulation applies
31.10(e)	assistance will	assistance to which this regulation applies will
31.10(e)	under such program	
31.12(a),	first sentence under such program	

PART 32—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 6. The heading for part 32 is revised to read as set forth above.

■ 7. The authority citation for part 32 continues to read as follows:

Authority: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794); sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93–516, 88 Stat. 1619 (29 U.S.C. 706); secs. 119 and 122 of the Rehabilitation Comprehensive Services and Developmental Disabilities Amendments of 1978, Pub. L. 95–602, 92 Stat. 2955; Executive Order 11914, 41 FR 17871.

■ 8. Section 32.2 is amended by revising paragraph (a) to read as follows:

§ 32.2 Application.

(a) This part applies to each recipient of Federal financial assistance from the Department of Labor, and to every program or activity that receives such assistance.

* * * * *

■ 9. Section 32.3 is amended by adding, in alphabetical order, a definition of *Program or activity* to read as follows:

§ 32.3 Definitions.

* * * * *

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

■ 10. Section 32.4 is amended by revising the heading of paragraph (c) to read as follows:

§ 32.4 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, services, or training limited by Federal law.* * * *

* * * * *

■ 11. Section 32.5 is amended by revising paragraph (d) to read as follows:

§ 32.5 Assurances required.

* * * * *

(d) *Interagency agreements.* Where funds are granted by the Department to another Federal agency, and where the grant obligates the recipient agency to comply with the rules and regulations of the Department applicable to that grant the provisions of this part shall apply to programs or activities operated with such funds.

■ 12. The heading for subpart B is revised to read as follows:

Subpart B—Employment Practices and Employment Related Training Participation

■ 13. The heading for subpart C is revised to read as follows:

Subpart C—Accessibility

■ 14. Section 32.27 is amended by revising the section heading and the first sentence of paragraph (a) to read as follows:

§ 32.27 Accessibility.

(a) *Purpose.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to qualified handicapped individuals. * * *

* * * * *

■ 15. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
32.1	or benefiting from	
32.1, last sentence	programs and activities	programs or activities
32.3, definition of Facility	program	program or activity
32.3, definition of Qualified handicapped individual, paragraph (b).	program	program or activity
32.3, definition of Qualified handicapped individual, paragraph (c).	programs	
32.3, definition of Qualified handicapped individual, paragraph (c).	in the program	in the program or activity
32.3, definition of Reasonable accommodation, introductory text, first sentence.	training program	training
32.3, definition of Reasonable accommodation, introductory text, first sentence.	an employment	employment
32.3, definition of Reasonable accommodation, introductory text, first sentence.	recipient's program	recipient's program or activity
32.3, definition of Reasonable accommodation paragraph (a).	where the program	where the program or activity
32.4(a)	or benefits from	
32.4(b)(1)(v)	program	program or activity
32.4(b)(2)	services and training	services or training
32.4(b)(3)	programs or activities	aid, benefits, services, or training
32.4(b)(4)(ii)	program	program or activity
32.4(b)(5)(i)	or benefits from	
32.4(b)(6)	or benefiting from	
32.4(b)(7)(i), first sentence	under programs of	receiving
32.4(b)(7)(i), second sentence	programs of employment	employment
32.4(c)	the benefits of a program	aid, benefits, program services, or training
32.4(c)	individuals from a program	individuals from aid, benefits, services, or training
32.4(d)	programs and activities	programs or activities
32.5(a), first sentence	for a program or activity	
32.5(a), first sentence	program will	program or activity will
32.5(b)(3)	program	program or activity
32.6(a)(3)(i)	program	program or activity
32.6(a)(3)(ii)	program	program or activity
32.8(a), second sentence	programs and activities	programs or activities
32.10(a)	programs	programs or activities
32.12(a)(1), last sentence	programs	under programs or activities
32.12(a)(3), last sentence	apprenticeship programs	apprenticeships
32.12(b)(8)	social	those that are social
32.12(b)(8)	programs	
32.13(a)	program	program or activity
32.13(b), introductory text	program	program or activity
32.13(b)(1)	program	program or activity
32.13(b)(2)	training program	training
32.13(d)	program	program or activity
32.15(c)(1), second sentence	training programs	training
32.17(a), last sentence	programs of	programs or activities receiving
32.27(a), third sentence	particular program	particular aid, benefit, service, or training
32.27(a), third sentence	program must	aid, benefit, service, or training must
32.27(a), fourth sentence	program accessibility	Accessibility
32.27(a), fourth sentence	program accessible	program or activity accessible
32.27(b)(1)	including	including those involving
32.27(b)(1)	when	when each part is
32.27(b)(2), second sentence	programs	
32.27(c), last sentence	offer programs and activities to	serve
32.27(e)(3)	program accessibility	accessibility under § 32.27(a)
32.44(b), second sentence	programs	programs or activities
32.44(b), last sentence	of any program under	in
32.46(c)(2), last sentence	program	program or activity

Section	Remove	Add
32.47(c)	programs	programs or activities

Dated: July 24, 2001.

Elaine L. Chao,

Secretary, Department of Labor.

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Chapter I

RIN 2900–AK13

Authority and Issuance

■ For the reasons set forth in the joint preamble, VA amends 38 CFR chapter I, part 18 as set forth below:

PART 18—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF VETERANS AFFAIRS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Subpart A—General

■ 1. The authority citation for subpart A continues to read as follows:

Authority: Sec. 602, 78 Stat. 252 (42 U.S.C. 2000d–1) and the laws referred to in Appendix A.

■ 2. Section 18.4 is amended by revising the heading of paragraph (b) and paragraph (d) to read as follows:

§ 18.4 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance.* * * *

* * * * *

(d) *Extent of application to institution or facility.* In the case where any assurances are required from an academic, a medical care, or any other institution or facility, insofar as the assurances relate to the institution's practices with respect to the admission, care, or other treatment of persons by the institution or with respect to the opportunity of persons to participate in the receiving or providing of services, treatment, or benefits, such assurances shall be applicable to the entire institution or facility.

■ 3. Section 18.13 is amended by revising paragraph (f) to read as follows:

§ 18.13 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

■ 4. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
18.2, first sentence	the federally assisted programs and activities	the types of Federal financial assistance
18.2, second sentence	under any such program	
18.2(b)	under any such program	
18.2(c)	under any such program	
18.2, penultimate sentence	program or activity	type of Federal financial assistance
18.2, penultimate sentence	such program	a program
18.2, last sentence	programs	types of Federal financial assistance
18.3(b)(1), introductory text	under any program	
18.4(a)(1), first sentence	to carry out a program	
18.4(a)(1), first sentence	except a program	except an application
18.4(a)(1), second sentence	program	award
18.4(a)(1), sixth sentence	for each program,	
18.4(a)(1), sixth sentence	in the program	
18.4(b), introductory text, first sentence	to carry out a program involving	for
18.4(b), introductory text, first sentence	programs	types of Federal financial assistance
18.4(b), concluding text	under a continuing program	
18.6(b), second sentence	of any program under	in
18.6(d)	program under	program for
18.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
18.10(f)	under the program involved	to which this regulation applies
18.10(f)	assistance will	assistance to which this regulation applies will
18.10(f)	under such program	
18.12(a), first sentence	under such program	
18.13(h)	for any program,	

Section	Remove	Add
18.13(h)	under any such program	

■ 5. The heading for subpart D is revised to read as follows:

Subpart D—Nondiscrimination on the Basis of Handicap

■ 6. The authority citation for subpart D is revised to read as follows:

Authority: 29 U.S.C. 706, 794.

■ 7. Section 18.403 is amended by adding paragraph (m) to read as follows:

§ 18.403 Definitions.

* * * * *

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

§ 18.404 [Amended]

■ 8. In § 18.404, the heading of paragraph (c) is amended by removing the word "Programs" and adding, in its place, the words "Aid, benefits, or services".

■ 9. Section 18.405 is amended by revising paragraph (c) to read as follows:

§ 18.405 Assurances required.

* * * * *

(c) *Extent of application to institution or facility.* An assurance shall apply to the entire institution or facility.

* * * * *

§ 18.421 [Amended]

■ 10. The undesignated center heading before § 18.421 is amended by removing the word "Program".

■ 11. In § 18.422, the heading and first sentence of paragraph (a) are revised to read as follows:

§ 18.422 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. * * *

* * * * *

■ 12. The heading of § 18.438 is revised to read as follows:

§ 18.438 Adult education.

* * * * *

■ 13. The heading of § 18.439 is revised to read as follows:

§ 18.439 Private education.

* * * * *

■ 14. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
18.402	or benefits from	
18.403(h)(1)	a program of	
18.404(a)	or benefits from	
18.404(b)(1)(v)	program	program or activity
18.404(b)(3)	programs or activities	aid, benefits, or services
18.404(b)(4)(ii)	program	program or activity
18.404(b)(5)(i)	or benefits from	
18.404(b)(6)	or benefiting from	
18.404(c)	a program	aid, benefits, or services
18.405(a)	for a program or activity	
18.405(a)	the program	the program or activity
18.406(a)(3)(i)	program	program or activity
18.406(a)(3)(ii)	program	program or activity
18.406(a)(3)(iii)	program	program or activity
18.408(a), second sentence	programs and activities	programs or activities
18.411(a)(3), last sentence	apprenticeship programs	apprenticeships
18.411(b)(8)	social	those that are social
18.411(b)(8)	programs	
18.412(a)	program	program or activity
18.412(c), introductory text	program	program or activity
18.412(c)(1)	program	program or activity
18.422(b), last sentence	offer programs and activities to	serve
18.422(c), last sentence	programs	programs or activities
18.422(e)(3)	program accessibility	accessibility under paragraph (a) of this section
18.431	programs and activities	programs or activities
18.431	or benefit from	
18.433(b)(2)	individualized education program	Individualized Education Program

Section	Remove	Add
18.433(b)(3), first sentence	in	
18.433(b)(3), first sentence	to a program	for aid, benefits, or services
18.433(b)(3), first sentence	the one	those
18.433(b)(3), first sentence	operates	operates or provides
18.433(c)(1), second sentence	in	
18.433(c)(1), second sentence	to a program	for aid, benefits, or services
18.433(c)(1), second sentence	operated	operated or provided
18.433(c)(1), second sentence	the program	the aid, benefits, or services
18.433(c)(2)	in	
18.433(c)(2)	to a program	for aid, benefits, or services
18.433(c)(2)	operated	operated or provided
18.433(c)(2)	the program	the aid, benefits, or services
18.433(c)(4), last sentence	such a program	a free appropriate public education
18.435(a)	education program	education program or activity
18.435(a)	in a regular or special program	in regular or program special education
18.435(b), introductory text	programs and activities	programs or activities
18.435(b), introductory text	or benefit from	
18.437(a)(1)	or benefit from	
18.437(b)	or benefit from	
18.437(c)(1), first sentence	programs and activities	aid, benefits, or services
18.437(c)(1), first sentence	or benefits from	
18.437(c)(1), last sentence	in these activities	
18.438, first sentence	operates an	provides
18.438, first sentence	program or activity	
18.438, first sentence	from the program or activity	
18.438, last sentence	under the program or activity	
18.439(a)	operates a	provides
18.439(a)	education program	education
18.439(a)	from that program	
18.439(a)	the recipient's program	that recipient's program or activity
18.439(c)	operates	provides
18.439(c)	programs shall operate those programs	shall do so
18.441	programs and activities	programs or activities
18.441	or benefit from	
18.443(a)	program or activity	aid, benefits, or services
18.443(d)	programs and activities	program or activity
18.444(a), last sentence	program of	
18.444(c)	in its program	
18.444(d)(1)	under the education program or activity operated by the recipient	
18.447(a)(1), first sentence	programs and activities	aid, benefits, or services
18.451	programs and activities	programs or activities
18.451	or benefit from	
18.454, first sentence	program or activity	program or activity that provides aid, benefits, or services

Subpart E—Nondiscrimination on the Basis of Age

■ 15. The authority citation for subpart E continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*; 45 CFR part 90 (1979).

■ 16. Section 18.503 is amended by redesignating paragraphs (j) through (l) as paragraphs (k) through (m), and adding a new paragraph (j) to read as follows:

§ 18.503 Definitions.

* * * * *

(j) *Program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (j)(1), (2), or (3) of this section.

Appendix B to Subpart E to Part 18 [Amended]

■ 17. The heading for appendix B to subpart E to part 18 is amended by removing the word "Programs".

■ 18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
18.501, last sentence	programs and activities	programs or activities
18.531	programs and activities	programs or activities
18.532	programs and activities	programs or activities
18.544(a)(2), last sentence	program	
18.546(b), first sentence	program and activity	program or activity
18.546(c)(2), first sentence	Federal	
18.549(b)(2)	program or activity	Federal financial assistance

Dated: May 4, 2001.

Anthony Principi,

Secretary, Department of Veterans Affairs.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

RIN 2020–AA43

Authority and Issuance

■ For the reasons set forth in the joint preamble, EPA amends 40 CFR chapter I, part 7 as set forth below:

PART 7—NONDISCRIMINATION IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL ASSISTANCE FROM THE ENVIRONMENTAL PROTECTION AGENCY

■ 1. The heading for part 7 is revised to read as set forth above.

■ 2. The authority citation for part 7 is revised to read as follows:

Authority: 42 U.S.C. 2000d to 2000d–7; 29 U.S.C. 794; 33 U.S.C. 1251 nt.

■ 3. Section 7.25 is amended by adding the new definition of "Program or activity" in alphabetical order to read as follows:

§ 7.25 Definitions.

* * * * *

Program or activity and *program* mean all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

§ 7.55 [Amended]

■ 4. The heading for § 7.55 is amended by removing the word "programs" and adding, in its place, the words, "aid, benefits, or services".

■ 5. In § 7.65, the first sentence of paragraph (a) introductory text and the heading for paragraph (b) are revised to read as follows:

§ 7.65 Accessibility.

(a) *General.* A recipient shall operate each program or activity receiving EPA assistance so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

(b) *Methods of ensuring compliance in existing facilities.* * * *

* * * * *

Appendix A to Part 7 [Amended]

■ 6. The heading for appendix A to part 7 is amended by removing the word "Programs" and inserting the words "Types of" immediately before the word "EPA".

■ 7. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
7.20(a)	compliance programs	means of ensuring compliance
7.25, undesignated definition of Project Officer	program	
7.35(a)(1)	program	program or activity
7.35(a)(2)	program	program or activity
7.35(a)(3)	program	program or activity
7.35(a)(4)	program	program or activity
7.35(a)(5)	program	program or activity
7.35(a)(6)	any program	any program or activity
7.35(a)(6)	the EPA assistance program	EPA assistance
7.35(b)	program	program or activity
7.35(c)	program	program or activity
7.50(a)(1)	program	program or activity
7.50(a)(3)	program	program or activity
7.50(a)(5)	program	program or activity
7.50(b)	or benefits from	

Section	Remove	Add
7.50(e)	programs	aid, benefits, or services
7.55	program	program or activity
7.55	programs	programs or activities
7.60(a)	or benefits from	
7.60(c)(8)	social	those that are social
7.60(c)(8)	programs	
7.60(d)	apprenticeship programs	apprenticeships
7.60(e)	program	program or activity
7.65(b)	offer program benefits to	serve
7.65(c)(2) first sentence	make a program or activity accessible	comply with paragraph (a) of this section
7.65(d)	assisted program	
7.65(e), last sentence	program	statute
7.75, introductory text	program	program or activity
7.75(a)(3)	program accessibility	accessibility under § 7.65(a)
7.85(b), first sentence	programs	programs or activities
7.95(a), first sentence	programs	programs or activities
7.130(b)(4)	program	program or activity

Dated: April 30, 2001.

Christine Todd Whitman,

Administrator, Environmental Protection Agency.

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 101

RIN 3090–AH33

Authority and Issuance

■ For the reasons set forth in the joint preamble, GSA amends 41 CFR chapter 101, parts 101–6 and 101–8 as set forth below:

PART 101–6—MISCELLANEOUS REGULATIONS

Subpart 101–6.2—Nondiscrimination in Programs Receiving Federal Financial Assistance

■ 1. The authority citation for subpart 101–6.2 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1.

■ 2. Section 101–6.204–3 is amended by revising the heading to read as follows:

§ 101–6.204–3 Special benefits.

* * * * *

■ 3. Section 101–6.205–2 is amended by revising the heading to read as follows:

§ 101–6.205–2 Continuing Federal financial assistance.

* * * * *

■ 4. Section 101–6.205–4 is amended by revising paragraph (b) to read as follows:

§ 101–6.205–4 Applicability of assurances.

* * * * *

(b) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

* * * * *

■ 5. Section 101–6.216 is amended by revising paragraph (f) to read as follows:

§ 101–6.216 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of nay other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

■ 6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
101–6.201	52	42
101–6.201	2000d–2000d–4	2000d–2000d–7
101–6.203(a), last sentence	programs involving	
101–6.203(b)	the programs involving	
101–6.203(c)	programs	types of Federal financial assistance
101–6.204–2 (a)(4), first sentence	the program	a program
101–6.204–3	the benefits of a program	benefits
101–6.205–1(a), first sentence	to carry out a program	

Section	Remove	Add
101–6.205–1(a), first sentence	except a program	except an application
101–6.205–1(a), fifth sentence	for each program	
101–6.205–1(a), fifth sentence	in the program	
101–6.205–1(b), second sentence	under a program of	with
101–6.205–1(b), third sentence	program	statute
101–6.205–1(d)	programs	Federal financial assistance
101–6.205–2	to carry out a program involving	for
101–6.205–4(c)	under a program	
101–6.206(b), second sentence	except as provided in paragraph (b) of § 101–6.205–4	
101–6.206(d)	subject to the provisions of § 101–6.205–4(b)	
101–6.209–2, last sentence	of any program under	in
101–6.209–4	program under	program for
101–6.212–5, first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
101–6.213–6	under the program involved	to which this regulation applies
101–6.213–6	assistance will	assistance to which this regulation applies will
101–6.213–6	under such program	
101–6.215–1, introductory text, first sentence	under such program	
101–6.216(h)	for any program,	
101–6.216(h)	under any such program	
101–6.216(i)	for the purpose of carrying out a program	

PART 101–8—NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 7. The heading for part 101–8 is revised to read as set forth above.

Subpart 101–8.3—Discrimination Prohibited on the Basis of Handicap

■ 8. Section 101–8.301 is amended by adding a new paragraph (f) to read as follows:

§ 101–8.301 Definitions.

* * * * *

(f) The term *program or activity* means all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

■ 9. Section 101–8.309 is amended by revising the section heading and the heading and first sentence of paragraph (b) to read as follows:

§ 101–8.309 Accessibility.

* * * * *

(b) *Accessibility.* A recipient shall operate any program or activity to which this subpart applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 10. Section 101–8.311 is amended by revising the section heading and the heading and the first sentence of the introductory text of paragraph (b)(1) to read as follows:

§ 101–8.311 Historic Preservation Programs.

* * * * *

(b) * * * (1) *Accessibility.* A recipient shall operate any program or activity involving Historic Preservation Programs so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
101–8.300(b)	or benefits from	
101–8.302	or benefits from	
101–8.303(a)(5)	program	program or activity
101–8.303(c)	programs or activities	aid, benefits, or services
101–8.303(d)(2)	program	program or activity
101–8.303(f)	or benefitting from	
101–8.303(g)	the benefits of a program	aid, benefits, or services
101–8.303(g)	from a program	from aid, benefits, or services

Section	Remove	Add
101–8.303(h), first sentence	programs and activities	programs or activities
101–8.305(c), last sentence	apprenticeship programs	apprenticeships
101–8.305(d)(8)	social	those that are social
101–8.305(d)(8)	programs	
101–8.306(a)	program	program or activity
101–8.306(c), introductory text	program	program or activity
101–8.306(c)(1)	program	program or activity
101–8.309(a)	or benefits from	
101–8.309(c), last sentence	offer programs and activities to	serve
101–8.309(f)(3)	program accessibility	accessibility under paragraph (a) of this section
101–8.311(a), introductory text	the term	
101–8.311(a)(1)	preservation programs	Preservation Programs
101–8.311(a)(1)	means programs receiving	are those that receive
101–8.311(b)(1), introductory text, last sentence	program	
101–8.311(b)(1)(iv)	program accessibility	accessibility
101–8.311(b)(1), concluding paragraph	historic preservation program	Historic Preservation Program
101–8.311(b)(1), concluding paragraph	program accessibility	accessibility
101–8.311(b)(2), introductory text	program	
101–8.311(b)(2)(iii)	program	program or activity

Subpart 101–8.7—Discrimination Prohibited on the Basis of Age

■ 12. The authority citation for subpart 101–8.7 continues to read as follows:

Authority: 42 U.S.C. 6101 *et seq.*

■ 13. Section 1101–8.703 is amended by redesignating paragraph (k) as paragraph (l) and by adding a new paragraph (k) to read as follows:

§ 101–8.703 Definitions of terms.

* * * * *

(k) *Program or activity* means all of the operations of any entity described in paragraphs (k)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a state or of a local government;

(ii) The entity of such state and local government that distributes such assistance and each such department or agency (and each other state or local government entity) to which the assistance is extended, in the case of assistance to a state or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section.

* * * * *

■ 14. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
101–8.701, last sentence	Federal financial assistance	Federally assisted
101–8.701, last sentence	programs and activities	programs or activities
101–8.702(a)	that benefits from GSA Federal financial assistance	
101–8.703(g)(2)	program	
101–8.703(j)	for the purpose of carrying out a program	policy
101–703(l)	for any program	
101–8.703(l)	under any such program	
101–8.709	program	program or activity
101–8.710, first sentence	program	program or activity
101–8.710, second sentence	programs	
101–8.710, second sentence	provide	provides
101–8.710, last sentence	"Child Care Center" program	Child Care Center Program
101–8.710, last sentence	two programs	two types of Federal financial assistance
101–8.711, first sentence	programs and activities	programs or activities
101–8.712(b)	program	
101–8.718(a), third sentence	program	
101–8.720(b), first sentence	program and activity	program or activity
101–8.720(c)(2), first sentence	Federal	
101–8.721(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
101–8.725(b)	program or activity	Federal financial assistance

Dated: February 26, 2003.

Stephen A. Perry,

Administrator, General Services Administration.

DEPARTMENT OF THE INTERIOR

43 CFR Subtitle A

RIN 1090–AA77

Authority and Issuance

■ For the reasons set forth in the joint preamble, DOI amends 43 CFR subtitle A, part 17 as set forth below:

PART 17—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR

Subpart A—Nondiscrimination on the Basis of Race, Color, or National Origin

■ 1. The authority citation for subpart A continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1; and the laws referred to in Appendix A.

■ 2. Section 17.3 is amended by revising the heading of paragraph (d) to read as follows:

§ 17.3 Discrimination prohibited.

* * * * *

(d) *Benefits for Indians, natives of certain territories, and Alaska natives.*

* * *

■ 3. Section 17.4 is amended by revising the heading of paragraph (b) and paragraph (d)(2) to read as follows:

§ 17.4 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance.* * * *

* * * * *

(d) * * *

(2) The assurance required with respect to an institution of higher education, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

■ 4. Section 17.12 is amended by revising paragraph (f) to read as follows:

§ 17.12 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

Appendix B to Subpart A [Amended]

■ 5. The introductory text for appendix B to subpart A is amended by removing the word "programs" and adding, in its place, the words "Federal financial assistance."

■ 6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
17.2(a), second sentence	under any such program	
17.2(a)(2)	under any such program	
17.2(a)(3)	under any such program	
17.3(b)(1), introductory text	under any program	
17.3(c)(1), first sentence	a program of	the
17.3(c)(1), first sentence	assistance	assistance to a program
17.3(d), first sentence	the benefits of a program	benefits
17.3(d), first sentence	is limited	are limited
17.3(d), first sentence	the program is addressed	the benefits are addressed
17.3(d), last sentence	programs	benefits
17.4(a)(1), first sentence	to carry out a program	
17.4(a)(1), first sentence	except a program	except an application
17.4(a)(1), second sentence	program of	award of
17.4(a)(1), sixth sentence	for each program,	
17.4(a)(1), sixth sentence	in the program	
17.4(a)(2), second sentence	under a program of	with
17.4(a)(2), third sentence	program	statute
17.4(b)(1), introductory text	to carry out a program involving	for
17.4(d)(1)	a student assistance program	student assistance
17.5(b), last sentence	of any program under	in
17.5(d)	program under which	program for which
17.8(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
17.9(g)	under the program involved	to which this regulation applies
17.9(g)	assistance will	assistance to which this regulation applies will

Section	Remove	Add
17.9(g)	under such program	
17.11(a), first sentence	under such program	
17.12(h)	for any program,	
17.12(h)	under such program	
17.12(i)	for the purpose of carrying out a program	

Subpart B—Nondiscrimination on the Basis of Handicap

■ 7. The authority citation for subpart B continues to read as follows:

Authority: 29 U.S.C. 794.

■ 8. Section 17.202 is amended by adding a new paragraph (q) to read as follows:

§ 17.202 Definitions.

* * * * *

(q) *Program or activity* means all of the operations of any entity described in paragraphs (q)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (q)(1), (2), or (3) of this section.

■ 9. Section 17.203 is amended by revising the heading of paragraph (c) to read as follows:

§ 17.203 Discrimination prohibited.

* * * * *

(c) *Aid, benefits, or services limited by Federal law.* * * *

* * * * *

■ 10. The heading for § 17.216 is revised to read as follows:

§ 17.216 Accessibility.

* * * * *

■ 11. Section 17.217 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 17.217 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 12. Section 17.260 is amended by revising the section heading, the introductory text of paragraph (a), and the first sentence of paragraph (b)(1) introductory text to read as follows:

§ 17.260 Historic Preservation Programs.

(a) *Definitions.* For the purposes of this section, Historic Preservation Programs are those that receive Federal financial assistance that has preservation of historic properties as a primary purpose.

* * * * *

(b) * * *

(1) A recipient shall operate any program or activity involving Historic Preservation Programs so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 13. The section heading and the introductory text of § 17.270 are revised to read as follows:

§ 17.270 Recreation.

This section applies to recipients that operate, or that receive Federal financial assistance for the operation of programs or activities involving recreation.

* * * * *

■ 14. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
17.201	or benefits from	
17.202(i)	recreation and program spaces	spaces, including those used for recreation,
17.202(m)	programs	the recipient
17.202(m)	should be available	should make its aid, benefits, or services available
17.202(n)	programs	programs or activities
17.203(a)	or benefits from	
17.203(b)(1)(v)	program	program or activity
17.203(b)(3)	programs or activities	aid, benefits, or services
17.203(b)(4)(ii)	program	program or activity
17.203(b)(5)(i)	or benefits from	
17.203(b)(6)	or benefiting from	
17.203(c)	the benefits of a program	aid, benefits, or services
17.203(c)	from a program	from aid, benefits, or services
17.204(a), first sentence	for a program or activity	
17.204(a), first sentence	the program	the program or activity
17.204(c)(4), first sentence	to carry out a program involving	for
17.204(c)(4)(i)	program	program or activity

Section	Remove	Add
17.204(c)(4)(ii)	the program	the program or activity
17.204(c)(4)(ii)	under such program	
17.205(a)(3)(i)	program	program or activity
17.205(a)(3)(ii)	program	program or activity
17.207(a), second sentence	programs and activities	programs or activities
17.210(a)(2)	programs	programs or activities
17.210(a)(4), last sentence	apprenticeship programs	apprenticeships
17.210(b)(8)	social	those that are social
17.210(b)(8)	programs	
17.211(a)	program	program or activity
17.211(c), introductory text	program	program or activity
17.211(c)(1)	program	program or activity
17.217(b), last sentence	offer programs and activities to	serve
17.217(e)(3)	program accessibility	accessibility under paragraph (a) of this section
17.220, first sentence	programs and activities	programs or activities
17.220, first sentence	or benefit from	
17.232, first sentence	programs and activities	programs or activities
17.232, first sentence	or benefit from	
17.250, introductory text	programs and activities	programs or activities
17.250, introductory text	or benefit from	
17.252, first sentence	activity for	activity that provides aid, benefits, or services for
17.260(b)(1), introductory text, last sentence	program	
17.260(b)(1)(iv)	program	
17.260(b)(1), concluding text	historic preservation program	Historic Preservation Program
17.260(b)(1), concluding text	program accessibility	accessibility
17.260(b)(2), introductory text, first sentence	program	
17.260(b)(2), introductory text, last sentence	program	
17.260(b)(2)(iii)	program	program or activity
17.270(a)(1)	programs	aid, benefits, or services
17.270(a)(2)	programs or activities	aid, benefits, or services
17.270(a)(5)	program or activity	aid, benefits, or services

Subpart C—Nondiscrimination on the Basis of Age

■ 15. The authority citation for subpart C continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.*; 45 CFR part 90.

■ 16. The heading of § 17.302 is revised to read as follows:

§ 17.302 To what programs or activities do these regulations apply?

* * * * *

■ 17. Section 17.303 is amended by redesignating paragraphs (j) through (m) as paragraphs (k) through (n) and adding a new paragraph (j) to read as follows:

§ 17.303 Definitions.

* * * * *

(j) *Program or activity* means all of the operations of any entity described in paragraphs (j)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (j)(1), (2), or (3) of this section.

* * * * *

■ 18. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
17.300, first sentence	programs and activities	programs or activities
17.300, last sentence	programs and activities	programs or activities
17.301, last sentence	programs and activities	programs or activities
17.302(a)	or benefits from	
17.313	program	program or activity
17.314	program	program or activity
17.320, first sentence	programs and activities	programs or activities

Section	Remove	Add
17.321(b)	program	
17.333(a)(2), last sentence	program	
17.335(c)(2), first sentence	Federal	
17.338(b)(2)	program or activity	Federal financial assistance

Dated: October 11, 2002.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management, and Budget, Department of the Interior.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Chapter I

RIN 1660–AA12

Authority and Issuance

■ For the reasons set forth in the joint preamble, FEMA amends 44 CFR chapter I, part 7 as set forth below:

PART 7—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS (FEMA REG. 5)

■ 1. The heading for subpart A is revised to read as follows:

Subpart A—Nondiscrimination in FEMA-Assisted Programs—General

■ 2. The authority citation for subpart A continues to read as follows:

Authority: FEMA Reg. 5 issued under sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1; 42 U.S.C. 1855–1885g; 50 U.S.C. 404.

■ 3. Section 7.2 is amended by revising paragraph (d) to read as follows:

§ 7.2 Definitions.

* * * * *

(d) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (d)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (d)(1), (2), or (3) of this section.

* * * * *

■ 4. Section 7.3 is revised to read as follows:

§ 7.3 Application of this regulation.

No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program to which this regulation applies.

■ 5. Section 7.9 is amended by revising paragraph (b) to read as follows:

§ 7.9 Assurances from institutions.

* * * * *

(b) The assurances required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institutions or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
7.2(f)	for any program,	
7.2(f)	under any such program	
7.2(g)	for the purpose of carrying out a program	
7.4, second sentence	under any such program	
7.4(b)	under any such program	
7.4(c)	under any such program	
7.5(a), introductory text	under any program	
7.7, first sentence	to carry out a program	
7.7, fifth sentence	for each program,	
7.7, fifth sentence	in the program	
7.10(b), last sentence	of any program under	in
7.10(d)	program under which	program for which
7.13(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
7.14(f)	under the program involved	to which this regulation applies
7.14(f)	assistance will	assistance to which this regulation applies will
7.14(f)	under such program	
7.16(a), first sentence	under such program	

■ 7. The heading for subpart E is revised to read as follows:

Subpart E—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From FEMA

■ 8. The authority citation for subpart E is revised to read as follows:

Authority: Age Discrimination Act of 1975, as amended (42 U.S.C. 6101 *et seq.*); 45 CFR part 90.

■ 9. The heading for § 7.912 is revised to read as follows:

§ 7.912 To what programs or activities does this regulation apply?

* * * * *

■ 10. Section 7.913 is amended by adding, in alphabetical order, a definition of "Program or activity" to read as follows:

§ 7.913 Definition of terms used in this regulation.

* * * * *

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

■ 11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
7.910	programs and activities	programs or activities
7.911, last sentence	programs, activities	programs or activities
7.912(a)	or benefits from	
7.925	program	program or activity
7.926	program	program or activity
7.930, first sentence	programs and activities	programs or activities
7.931(b)	program	
7.943(a)(2), last sentence	program	
7.945(b), first sentence	program and activity	program or activity
7.945(c)(2), first sentence	Federal	
7.948(b)(2)	program or activity	Federal financial assistance

Dated: May 8, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

NATIONAL SCIENCE FOUNDATION

45 CFR Chapter VI

RIN 3145–AA38

Authority and Issuance

■ For the reasons set forth in the joint preamble, NSF amends 45 CFR chapter VI, parts 605, 611, and 617 as set forth below:

PART 605—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 1. The heading for part 605 is revised to read as set forth above.

■ 2. The authority citation for part 605 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 3. Section 605.3 is amended by adding a new paragraph (m) to read as follows:

§ 605.3 Definitions.

* * * * *

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

§ 605.4 [Amended]

■ 4. In § 605.4, the heading of paragraph (c) is amended by removing the word "Programs" and adding, in its place, the words "Aid, benefits, or services".

Subpart C to Part 605—[Amended]

■ 5. The heading for subpart C is amended by removing the word "Program".

■ 6. In § 605.22, the heading and first sentence of paragraph (a) are revised to read as follows:

§ 605.22 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to qualified handicapped persons. * * *

* * * * *

§ 605.38 [Amended]

■ 7. The heading for § 605.38 is amended by removing the word "programs".

§ 605.39 [Amended]

■ 8. The heading for § 605.39 is amended by removing the word "programs".

■ 9. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
605.0, first sentence	programs and activities	programs or activities
605.2	or benefits from	
605.3(k)(5), second sentence	programs	aid, benefits, or services
605.3(k)(5), third sentence	program	
605.4(a)	or benefits from	
605.4(b)(1)(v)	recipients program	recipient's program or activity
605.4(b)(3)	programs or activities	aid, benefits, or services
605.4(b)(4)(ii)	program	program or activity
605.4(b)(5)(i)	or benefits from	
605.4(b)(6)	or benefiting from	
605.4(c)	the benefits of a program	aid, benefits, or services
605.4(c)	from a program	from aid, benefits or services
605.5(a)	under a program or activity	
605.5(a)	programs	programs or activities
605.6(a)(3)(i)	program	program or activity
605.6(a)(3)(ii)	program	program or activity
605.8(a), second sentence	programs and activities	programs or activities
605.11(a)(2)	programs	programs or activities
605.11(a)(4), last sentence	apprenticeship programs	apprenticeships
605.11(b)(8)	social	those that are social
605.11(b)(8)	programs	
605.12(a)	program	program or activity
605.12(c), introductory text	program	program or activity
605.12(c)(1)	program	program or activity
605.22(b), last sentence	offer programs and activities to	serve
605.22(e)(3)	program accessibility	accessibility under paragraph (a) of this section
605.31	programs and activities	programs or activities
605.31	or benefit from	
605.33(b)(2)	individualized education program	Individualized Education Program
605.33(b)(3), first sentence	in	
605.33(b)(3), first sentence	to a program	for aid, benefits, or services
605.33(b)(3), first sentence	the one	those
605.33(b)(3), first sentence	operates	operates or provides
605.33(c)(1), second sentence	in	
605.33(c)(1), second sentence	to a program	for aid, benefits, or services
605.33(c)(1), second sentence	operated	operated or provided
605.33(c)(1), second sentence	program	aid, benefits, or services
605.33(c)(2)	person in	person
605.33(c)(2)	to a program	for aid, benefits, or services
605.33(c)(2)	operated	operated or provided
605.33(c)(2)	the program	the aid, benefits, or services
605.33(c)(3)	placement in	placement
605.33(c)(3)	program	a free appropriate public education
605.33(c)(4), last sentence	such a program	program or activity
605.35(a)	program	regular or special education
605.35(a)	a regular or special education program	aid, benefits, or services
605.37(c)(1), first sentence	programs and activities	
605.37(c)(1), last sentence	in these activities	provides
605.38	operates a	day care
605.38	day care program or activity	adult education
605.38	an adult education program or activity	
605.38	from the program or activity	
605.38	under the program or activity	
605.39(a)	operates a	provides
605.39(a)	education program	education
605.39(a)	from such program	
605.39(a)	the recipient's program	that recipient's program or activity
605.39(c), first sentence	operates	provides
605.39(c), first sentence	programs shall operate such programs	shall do so

Section	Remove	Add
605.41	programs and activities	programs or activities
605.41	or benefit from	aid, benefits, or services
605.43(a)	program or activity	program or activity
605.43(d)	programs and activities	
605.44(a), second sentence	program of	
605.44(c)	in its program	aid, benefits, or services
605.47(a)(1), first sentence	programs and activities	programs or activities
605.51	programs and activities	
605.51	or benefit from	activity that provides aid, benefits, or services for
605.54, first sentence	activity for	

PART 611—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE NATIONAL SCIENCE FOUNDATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 10. The authority citation for part 611 continues to read as follows:

Authority: Sec. 11(a), National Science Foundation Act of 1950, as amended, 42 U.S.C. 1870(a); 42 U.S.C. 2000d–1.

■ 11. Section 611.4 is amended by revising paragraph (c)(2) to read as follows:

§ 611.4 Assurances required.

* * * * *

(c) * * *

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

■ 12. Section 611.5 is amended by revising the example 2. to read as follows:

§ 611.5 Illustrative applications.

* * * * *

2. In a research, training, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university.

* * * * *

■ 13. Section 611.13 is amended by revising paragraph (f) to read as follows:

§ 611.13 Definitions.

* * * * *

(f) The terms *program or activity* and *program* mean all of the operations of any entity described in paragraphs (f)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (f)(1), (2), or (3) of this section.

* * * * *

■ 14. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
611.2, first sentence	Federally-assisted programs and activities	types of Federal financial assistance
611.2, second sentence	under any such program	
611.2(b)	under any such program	
611.2(c)	under any such program	
611.2, penultimate sentence	program or activity	type of Federal financial assistance
611.2, penultimate sentence	such program	a program
611.2, last sentence	programs	types of Federal financial assistance
611.3(b)(1), introductory text	under any program	
611.3(c)(2)	Programs	Types of Federal financial assistance
611.4(a)(1), first sentence	to carry out a program	
611.4(a)(1), fourth sentence	for each program	
611.4(a)(1), fourth sentence	in the program	
611.4(a)(2), second sentence	under a program of	with
611.4(a)(2), third sentence	program	statute
611.5, introductory text, first sentence	programs of	programs aided by
611.5, example 1., first sentence	In programs for	For
611.5, example 4., first sentence	grant programs	grants
611.6(b), last sentence	of any program under	in
611.6(d)	program under	program for

Section	Remove	Add
611.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
611.10(f)	under the program involved	to which this regulation applies
611.10(f)	assistance will	assistance to which this regulation applies will
611.10(f)	under such program	
611.12(a), first sentence	under such program	
611.13(h)	for any program,	
611.13(h)	under any such program	
611.13(i)	for the purpose of carrying out a program	

PART 617—NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM NSF

■ 15. The authority citation for part 617 continues to read as follows:

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, *et seq.*; 45 CFR part 90.

§ 617.2 [Amended]

■ 16. In § 617.2, the list is amended by adding, in alphabetical order, the term "Program or activity."

■ 17. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
617.1, last sentence	programs and activities	programs or activities
617.8, first sentence	program or activities	program or activity
617.11(a)(2), last sentence	program	
617.12(a), first sentence	under	for
617.12(c), first sentence	program	program or activity
617.12(e), first sentence	Federal	
617.12(f)(2)(ii)	program or activity	Federal financial assistance

Dated: April 26, 2001.

Lawrence Rudolph,

General Counsel, National Science Foundation.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Chapter XI

RIN 3135–AA17, RIN 3136–AA24, RIN 3137–AA11

Authority and Issuance

■ For the reasons set forth in the joint preamble, NFAH, composed of the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum and Library Services, amends 45 CFR chapter XI, part 1110, as set forth below:

PART 1110—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

■ 1. The authority citation for part 1110 is revised to read as follows:

Authority: 42 U.S.C. 2000d–2000d–7.

■ 2. Section 1110.4 is amended by revising the heading of paragraph (b) and paragraph (d)(2) to read as follows:

§ 1110.4 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance* * * *

* * * * *

(d) * * *

(2) The assurance required with respect to an institution of higher education or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

■ 3. Section 1110.5 is amended by revising paragraph (a) to read as follows:

§ 1110.5 Illustrative applications.

* * * * *

(a) In a research, training, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university.

* * * * *

■ 4. Section 1110.13 is amended by revising paragraph (g) to read as follows:

§ 1110.13 Definitions.

* * * * *

(g) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

■ 5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1110.2, first sentence	federally assisted programs and activities	types of Federal financial assistance
1110.2, second sentence	under any such program	
1110.2, fifth sentence	program or activity	type of Federal financial assistance
1110.2, fifth sentence	that such program	that a program
1110.2, last sentence	programs	types of Federal financial assistance
1110.4(a)(1), first sentence	to carry out a program	
1110.4(a)(1), third sentence	for each program	
1110.4(a)(1), third sentence	in the program	
1110.4(a)(2), first sentence	through a program of	with
1110.4(a)(2), second sentence	under a program of	with
1110.4(a)(2), third sentence	program	statute
1110.4(b)	to carry out a program involving	for
1110.6(b), last sentence	of any program under	in
1110.6(d)	program under which	program for which
1110.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
1110.10(f)	under the program involved	to which this regulation applies
1110.10(f)	assistance will	assistance to which this regulation applies will
1110.10(f)	under such program	
1110.13(i)	for any program,	
1110.13(i)	under any such program	
1110.13(j)	for the purposes of carrying out a program	

Dated: January 16, 2003.

Karen Elias,

Deputy General Counsel, National Endowment for the Arts, National Foundation on the Arts and the Humanities.

Dated: January 17, 2003.

Daniel Schneider,

General Counsel, National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

Dated: January 16, 2003.

Nancy E. Weiss,

General Counsel, Institute of Museum and Library Services, National Foundation on the Arts and the Humanities.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Chapter XI

RIN 3135–AA17

Authority and Issuance

■ For the reasons set forth in the joint preamble, NEA amends 45 CFR chapter XI, parts 1151 and 1156, as set forth below:

PART 1151—NONDISCRIMINATION ON THE BASIS OF HANDICAP

■ 1. The authority citation for part 1151 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 2. Section 1151.3 is amended by adding a new paragraph (h) to read as follows:

§ 1151.3 Definitions.

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

§ 1151.21 [Amended]

■ 3. The undesignated center heading immediately preceding § 1151.21 is amended by removing the word "Program".

■ 4. Section 1151.22 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 1151.22 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. * * *

* * * * *

■ 5. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1151.2	or benefits from	
1151.4(a), second sentence	programs and activities	programs or activities
1151.16(a)	or benefits from	
1151.16(b)	the benefits of a program	aid, benefits, or services
1151.16(c)	program	program or activity
1151.16(c)	or benefiting from	
1151.16(e)	programs and activities	programs or activities
1151.17(a), introductory text	benefit, service, or program	benefit, or service
1151.17(a)(1)	program,	
1151.17(a)(5)	program	program or activity
1151.17(b)	programs or activities	aid, benefits, or services
1151.17(c)(2)	program	program or activity
1151.17(d)(1)	or benefits from	
1151.17(e)	or benefiting from	
1151.18(a)(3)	for a specific program offered	and offering, for example, a specific event
1151.18(a)(3)	that program	that specific event
1151.18(b)	programs	aid, benefits, or services
1151.18(d)	benefits of the programs and activities	aid, benefits, or services
1151.18(d)	programs and activities	aid, benefits, or services
1151.18(e)	programs and activities	programs or activities
1151.22(b), last sentence	offer programs and activities to	serve
1151.22(c)	to make programs or, activities in existing facilities accessible	
1151.22(d)(3)	program accessibility	accessibility under paragraph (a) of this section
1151.31(a)	or benefits from	
1151.31(c), last sentence	apprenticeship programs	apprenticeships
1151.31(d)(8)	social	those that are social
1151.31(d)(8)	programs	
1151.32(a)	program	program or activity
1151.32(c), introductory text	program	program or activity
1151.32(c)(1)	program	program or activity
1151.41(a), first sentence	for a program or activity	
1151.41(a), first sentence	the program	the program or activity

PART 1156—NONDISCRIMINATION ON THE BASIS OF AGE

■ 6. The authority citation for part 1156 continues to read as follows:

Authority: 42 U.S.C. 6101 *et seq.*; 45 CFR part 90.

§ 1156.2 [Amended]

■ 7. Section 1156.2 is amended by removing the words "and to each program or activity that receives or benefits from such assistance" in paragraph (a).

■ 8. Section 1156.3 is amended by redesignating paragraphs (h) through (n) as paragraphs (i) through (o), respectively; and by adding a new paragraph (h) to read as follows:

§ 1156.3 Definitions.

* * * * *

(h) *Program or activity* means all of the operations of any entity described in paragraphs (h)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section.

* * * * *

■ 9. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1156.1, last sentence	programs and activities	programs or activities
1156.7(c)	program	program or activity
1156.10, first sentence	programs and activities	programs or activities
1156.17(a)(2), last sentence	program	
1156.19(c)(2), first sentence	Federal	
1156.20(b)(2)	program or the activity	Federal financial assistance

Dated: April 17, 2001.

Karen Elias,

Deputy General Counsel, National Endowment for the Arts.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Chapter XI

RIN 3136–AA24

Authority and Issuance

■ For the reasons set forth in the joint preamble, NEH amends 45 CFR chapter XI, part 1170 as set forth below:

PART 1170—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES

■ 1. The heading for part 1170 is revised to read as set forth above.

■ 2. The authority citation for part 1170 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 3. Section 1170.3 is amended by revising paragraph (g) to read as follows:

§ 1170.3 Definitions.

* * * * *

(g) The term *program or activity* means all of the operations of any entity described in paragraphs (g)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section.

* * * * *

Subpart D to Part 1170—[Amended]

■ 4. The heading for subpart D is amended by removing the word "Program".

■ 5. Section 1170.32 is amended by revising the heading and first sentence of paragraph (a) to read as follows:

§ 1170.32 Existing facilities.

(a) *Accessibility.* A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to handicapped persons. * * *

* * * * *

■ 6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1170.2	or benefits from	
1170.3(a)	and	
1170.3(a)	95–602	95–602, and by the Civil Rights Restoration Act of 1987, Pub. L. 100–259
1170.3(d)	program	program or activity
1170.11	or benefits from	
1170.12(a)(5)	program	program or activity
1170.12(b)	programs or activities	aid, benefits, or services
1170.12(c)(2)	program	program or activity
1170.12(d)(1)	or benefits from	
1170.12(e)	the benefits of a program	aid, benefits, or services
1170.12(e)	from a program	from aid, benefits, or services
1170.12(f)	programs and activities	programs or activities
1170.13(a)(3)	programs	aid, benefits, or services
1170.13(a)(3)	program	aid, benefit, or service
1170.13(a)(4), first sentence	of a program's	
1170.13(c)	the programs and activities	the program or activity
1170.13(c)	museum programs and activities	museum aid, benefits, or services
1170.13(d)	programs and activities	programs or activities
1170.21(a)	or benefits from	
1170.21(c), last sentence	apprenticeship programs	apprenticeships
1170.21(d)(8)	social	those that are social
1170.21(d)(8)	programs	
1170.22(a)	program	program or activity
1170.22(c), introductory text	program	program or activity
1170.22(c)(1)	program	program or activity
1170.32(b), last sentence	offer program and activities to	serve
1170.32(d)(3)	program accessibility	accessibility under paragraph (a) of this section
1170.41	programs and activities	programs or activities
1170.41	or benefit from	
1170.43(a)	program or activity	aid, benefit, or service
1170.43(d)	programs and activities	program or activity
1170.44(a), second sentence	program of	
1170.44(c),	in its program	

Section	Remove	Add
1170.44(d)(1)	under the education program or activity operated by the recipient	
1170.47(a)(1), first sentence	programs and activities	aid, benefits, or services
1170.51(a), first sentence	for a program or activity	
1170.51(a), first sentence	the program	the program or activity
1170.52(a)(3)(i)	program	program or activity
1170.52(a)(3)(ii)	program	program or activity
1170.54(a), second sentence	programs and activities	programs or activities

Dated: January 17, 2003.

Daniel Schneider,

General Counsel, National Endowment for the Humanities.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Chapter XII

RIN 3045–AA29

Authority and Issuance

■ For the reasons set forth in the joint preamble, the Corporation amends 45 CFR chapter XII, parts 1203 and 1232 as set forth below:

PART 1203—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 1203 continues to read as follows:

Authority: Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1.

■ 2. Section 1203.3 is amended by revising paragraph (e) to read as follows:

§ 1203.3 Definitions.

* * * * *

(e) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

* * * * *

■ 3. Section 1203.5 is amended by revising paragraph (b), paragraph (c)(2), and the heading of paragraph (d) to read as follows:

§ 1203.5 Assurances required.

* * * * *

(b) *Assurances from Government agencies.* In the case of an application from a department, agency, or office of a State or local government for Federal financial assistance for a specified purpose, the assurance required by this section shall extend to any other department, agency, or office of the same governmental unit if the policies of the other department, agency, or office will substantially affect the project for which Federal financial assistance is requested.

(c) * * *

(2) The assurance required by an academic institution, detention or correctional facility, or any other institution or facility, relating to the institution's practices with respect to admission or other treatment of individuals as students, patients, wards, inmates, persons subject to control, or clients of the institution or facility or to the opportunity to participate in the provision of services, disposition, treatment, or benefits to these individuals, is applicable to the entire institution or facility.

(d) *Continuing Federal financial assistance.* * * *

* * * * *

Appendix A to Part 1203 [Amended]

■ 4. The heading for appendix A to part 1203 is amended by removing the word "Programs" and adding, in its place, the words "Federal Financial Assistance".

Appendix B to Part 1203 [Amended]

■ 5. The heading for appendix B to part 1203 is amended by removing the word "Programs" and adding, in its place, the words "Federal Financial Assistance".

■ 6. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1203.2(a), introductory text, first sentence	federally assisted programs	types of Federal financial assistance
1203.2(a), introductory text, second sentence	under a program	
1203.2(a)(2)	under a program	
1203.2(a)(3)	under a program	
1203.2(a), concluding text, first sentence	a program	a type of Federal financial assistance
1203.2(a), concluding text, first sentence	the program	a program
1203.2(a)(4) concluding text last sentence	programs	types of Federal financial assistance
1203.2(b)	as part of the program receiving that assistance	
1203.3(d)	for the purpose of carrying out a program	
1203.3(f)	for any program,	

Section	Remove	Add
1203.3(f)	under a program	
1203.4(b)(1), introductory text	under a program ,	
1203.4(c)(1), first sentence	a program of	the
1203.5(a)(1), first sentence	to carry out a program	
1203.5(a)(1), first sentence	except a program	except an application
1203.5(a)(1), second sentence	program	award
1203.5(a)(1), sixth sentence	for each program,	
1203.5(a)(1), sixth sentence	in the program	
1203.5(a)(2), second sentence	under a program of	with
1203.5(a)(2), third sentence	program	statute
1203.5(d), introductory text	to carry out a program involving	for
1203.5(d), introductory text	programs	types of Federal financial assistance
1203.6(b), second sentence	of a program under	in
1203.6(d)	program under which	program for which
1203.9(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
1203.10(f)	under the program involved	to which this regulation applies
1203.10(f)	assistance will	assistance to which this regulation applies will
1203.10(f)	under the programs	
1203.12(a), first sentence	under a program	

PART 1232—NONDISCRIMINATION ON BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 7. The heading for part 1232 is revised to read as set forth above.

■ 8. The authority citation for part 1232 continues to read as follows:

Authority: 29 U.S.C. 794.

■ 9. Section 1232.3 is amended by adding a new paragraph (m) to read as follows:

§ 1232.3 Definitions.

* * * * *

(m) *Program or activity* means all of the operations of any entity described in paragraphs (m)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (m)(1), (2), or (3) of this section.

Subpart C of Part 1232—[Amended]

■ 10. The heading for subpart C of part 1232 is amended by removing the word "Program".

§ 1232.13 [Amended]

■ 11. The heading for § 1232.13 is amended by removing the word "program".

■ 12. Section 1232.14 is amended by revising the first sentence of paragraph (a) and paragraph (b) to read as follows:

§ 1232.14 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible and usable by handicapped persons. * * *

(b) A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Where structural changes are necessary to comply with paragraph (a) of this section, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the regulation.

* * * * *

■ 13. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
1232.2, first sentence	or benefits from	
1232.2, first sentence	including volunteer programs such as	including, but not limited to
1232.3(k)	under any programs	as
1232.4(b)(1)(v)	program	program or activity
1232.4(b)(2)	programs or activities	aid, benefits, or services
1232.4(b)(3)(ii)	program	program or activity
1232.4(b)(4)(i)	or benefits from	
1232.4(c)	the benefits of a program	aid, benefits, or services

Section	Remove	Add
1232.4(c)	from a program	from aid, benefits, or services
1232.4(d)	programs and activities	programs or activities
1232.4(f)	program	program or activity
1232.4(f)	or benefiting from	
1232.5(a), first sentence	for a program or activity	
1232.5(a), first sentence	program	program or activity
1232.5(c)	volunteer program	program or activity
1232.7(a)(3)(i)	program	program or activity
1232.7(a)(3)(ii)	program	program or activity
1232.7(a)(3)(iii)	program	program or activity
1232.9(a)	or benefits from	
1232.9(c)(8)	social	those that are social
1232.9(c)(8)	programs	
1232.9(d), last sentence	apprenticeship programs	apprenticeships
1232.9(f)	volunteer program	program or activity
1232.10(a)	program	program or activity
1232.10(c), introductory text	program	program or activity
1232.10(c)(1)	program	program or activity

Dated: September 17, 2002.

Frank Trinity,

General Counsel, Corporation for National and Community Service.

DEPARTMENT OF TRANSPORTATION

49 CFR Subtitle A

RIN 2105–AC96

Authority and Issuance

■ For the reasons set forth in the joint preamble, DOT amends 49 CFR subtitle A, parts 21 and 27 as set forth below:

PART 21—NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS OF THE DEPARTMENT OF TRANSPORTATION—EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

■ 1. The authority citation for part 21 is revised to read as follows:

Authority: 42 U.S.C. 2000d-2000d–7.

■ 2. Section 21.7 is amended by removing the fifth sentence of paragraph (a)(1) and by revising the heading of paragraph (b) to read as follows:

§ 21.7 Assurances required.

* * * * *

(b) *Continuing Federal financial assistance.* * * *

■ 3. Section 21.23 is amended by revising paragraph (e) to read as follows:

§ 21.23 Definitions.

* * * * *

(e) *Program or activity* and *program* mean all of the operations of any entity described in paragraphs (e)(1) through (4) of this section, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (e)(1), (2), or (3) of this section.

* * * * *

■ 4. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
21.3(a), introductory text, first sentence	federally assisted programs and activities	types of Federal financial assistance
21.3(a), introductory text, second sentence	under any such program	
21.3(a)(2)	under any such program	
21.3(a)(3)	under any such program	
21.3(a), concluding text, first sentence	program or activity	type of Federal financial assistance
21.3(a), concluding text, first sentence	such	E
21.3(a), concluding text, last sentence	programs	types of Federal financial assistance
21.5(b)(1), introductory text	under any program	
21.5(b)(6)	programs of	types of Federal financial assistance administered by
21.5(c)(1), first sentence	a program of	the
21.5(c)(1), first sentence	assistance	assistance to a program
21.7(a)(1), first sentence	to carry out a program	
21.7(a)(1), first sentence	except a program	except an application
21.7(a)(1), second sentence	program	award
21.7(a)(1), sixth sentence	for each program	

Section	Remove	Add
21.7(a)(1), sixth sentence	in the program	
21.7(a)(2), second sentence	under a program of	with
21.7(a)(2), third sentence	program	statute
21.7(b)	to carry out a program involving	for
21.7(b)	programs	types of Federal financial assistance
21.9(b), second sentence	of any program under	in
21.9(d)	under	for
21.15(e), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
21.17(f)	under the program involved	to which this regulation applies
21.17(f)	assistance will	assistance to which this regulation applies will
21.17(f)	under such programs	
21.21(a), first sentence	under such program	
21.23(d)	for the purpose of carrying out a program	
21.23(f)	for any program,	
21.23(f)	under any such program	

PART 27—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

■ 5. The heading for part 27 is revised to read as set forth above.

■ 6. The authority citation for part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16 (a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310 (a) and (f)); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142 nt.).

Subpart A—General

■ 7. Section 27.5 is amended by revising the definition of *Primary recipient* and adding, in alphabetical order, a definition of *Program or activity* to read as follows:

§ 27.5 Definitions.

* * * * *

Primary recipient means any recipient that is authorized or required to extend Federal financial assistance from the Department to another recipient.

Program or activity means all of the operations of any entity described in paragraphs (1) through (4) of this definition, any part of which is extended Federal financial assistance:

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 7801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (1), (2), or (3) of this definition.

* * * * *

■ 8. Section 27.7 is amended by revising the heading for paragraph (d) to read as follows:

§ 27.7 Discrimination prohibited.

* * * * * *

(d) *Aid, benefits, or services limited by Federal law.* * * *

■ 9. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
27.3(a)	or benefits from	
27.5, definition of Qualified handicapped person, paragraph (2).	activities	services
27.5, definition of Recipient	for any Federal program,	
27.5, definition of Recipient	under any such program	
27.7(a)	or benefits from	
27.7(b)(1)(v)	program	program or activity
27.7(b)(3)	programs or activities	aid, benefits, or services
27.7(b)(4)(ii)	program	program or activity
27.7(b)(5)(i)	or benefits from	
27.7(b)(6)	or benefitting from	
27.7(d)	In programs	For aid, benefits, or services
27.9(a), first sentence	to carry out a program	
27.9(a), first sentence	program will	program or activity will
27.9(b)(4)	program	program or activity
27.11(a)(3)(i)	program	program or activity
27.11(a)(3)(ii)	program	program or activity

■ 10. The heading of subpart B is revised to read as follows:

Subpart B—Accessibility Requirements in Specific Operating Administration Programs: Airports, Railroads, and Highways

■ 11. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
27.71(b), last sentence	programs	programs or activities
27.77	Essential Air Service program	Essential Air Service Program

Subpart C—Enforcement

■ 12. In the table below, for each section indicated in the left column, remove the text shown in the middle column and add the text shown in the right column:

Section	Remove	Add
27.121(b), last sentence	of any program under	in
27.121(d)	program	program or activity
27.125(b)(2)	program	program or activity
27.127(f), first sentence	programs	Federal statutes, authorities, or other means by which Federal financial assistance is extended and
27.129(e), first sentence	under the program involved	to which this first regulation applies
27.129(e), last sentence	assistance	assistance to which this regulation applies

Dated: April 27, 2001.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–21140 Filed 8–25–03; 8:45 am]

BILLING CODES 3410–94–P, 7590–01–P, 6450–01–P, 8025–01–P, 7510–01–P, 3510–BP–P, 4710–10–P, 6116–01–P, 4410–13–P, 4510–23–P, 8320–01–P, 6560–50–P, 6820–34–P, 4310–RE–P, 6718–01–P, 7555–01–P, 7536–01–P, 7536–01–P, 7036–01–P, 6050–28–P, 4910–62–P

Federal Register

Tuesday,
August 26, 2003

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 602
Exclusions From Gross Income of Foreign Corporations; Final Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9087]

RIN 1545–BA07

Exclusions From Gross Income of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations implementing sections 883(a) and (c) that relate to income derived by foreign corporations from the international operation of ships or aircraft. The final regulations reflect changes made by the Tax Reform Act of 1986 and subsequent legislative amendments. The final regulations provide, in general, that a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships or aircraft shall exclude qualified income from gross income for purposes of U.S. Federal income taxation, provided that the corporation can satisfy certain ownership and related documentation requirements. The final regulations explain when a foreign country is a qualified foreign country and what income is considered to be qualified income. The final regulations specify how a foreign corporation may satisfy the ownership and related documentation requirements. In addition, the final regulations describe the information that the foreign corporation must include on its U.S. income tax return in order to claim an exemption. All foreign corporations engaged in the international operation of ships or aircraft that claim an exemption from U.S. Federal income tax based on section 883 are affected by these regulations.

DATES: *Effective Date:* These regulations are effective August 26, 2003.

Applicability Date: These regulations are applicable to taxable years of the foreign corporation beginning 30 days or more after August 26, 2003.

FOR FURTHER INFORMATION CONTACT: Patricia A. Bray or David L. Lundy at (202) 622–3880 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1677. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

For corporations, the estimated annual burden per respondent varies from 30 minutes to eight hours, depending on the individual circumstances of the foreign corporation, with an estimated average of one hour. For shareholders, the estimated annual burden per respondent varies from zero minutes to eight hours, depending on the individual circumstances of the shareholder or intermediary, with an estimated average of 90 minutes.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

A notice of proposed rulemaking (REG–208280–86) under sections 883(a) and (c) was published in the **Federal Register** (65 FR 6065) on February 8, 2000 (the 2000 proposed regulations). Due to the substantial number of comments that were received on the 2000 proposed regulations, and the significant impact the regulations have on large segments of the shipping and air transport industries, the 2000 proposed regulations were withdrawn on August 2, 2002. A revised notice of proposed rulemaking (REG–136311–01) was published in the **Federal Register** (67 FR 50510) on August 2, 2002 (the proposed regulations), and provided an opportunity for additional comments. A public hearing on the proposed regulations was held on November 25, 2002. Numerous comments have been received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

The preamble to the 2000 proposed regulations contains a detailed explanation of the provisions in the 2000 proposed regulations, and the preamble to the proposed regulations describes the comments received on the 2000 proposed regulations and the consequent changes reflected in the proposed regulations. The explanations contained in those preambles are not repeated herein. The comments submitted to the IRS on the proposed regulations and the consequent changes reflected in the final regulations are described herein.

Public Comments

Comments Relating to § 1.883–1: Exclusion of Income From the International Operation of Ships or Aircraft

A. Substantiation and Reporting Requirements

For a foreign corporation to be considered a qualified foreign corporation under § 1.883–1(c)(3), the proposed regulations require that the corporation provide on its return a reasonable estimate of the amount of income in each category of qualified income for which an exemption is claimed to the extent such amounts are readily determinable. Commentators criticized this requirement on the ground that it could require the creation of a separate accounting system, and would necessitate the allocation of expenses to each of the specific categories of income. Commentators suggested that whether amounts are *readily determinable* should depend on whether records to ascertain such amounts are available in the ordinary course of business.

The IRS and Treasury believe that the suggested definition of *readily determinable* does not ensure that adequate records will be maintained. That term should be interpreted in accordance with § 1.6012–2(g)(1)(i). However, the final regulations have been revised to clarify that a reasonable estimate of the gross amount of income in each category is required. Accordingly, there is no requirement that expenses be allocated to each category of income.

B. Operation of Ships or Aircraft

Section 1.883–1(e) of the proposed regulations provides generally that a corporation is considered engaged in the operation of ships or aircraft only when it is an owner or lessee of an entire ship or aircraft used in the carriage of passengers or cargo for hire.

Commentators said that a shipping company utilizing less than the entire space on several vessels also should be considered engaged in the operation of ships or aircraft. The final regulations do not adopt this suggestion. The IRS and Treasury believe that it is appropriate to consider a foreign corporation to be engaged in the operation of ships or aircraft for purposes of section 883 only when it is an owner or lessee of an entire ship or aircraft.

C. Pool, Partnership, Strategic Alliance, Joint Operating Agreement, Code-Sharing Arrangement or Other Joint Venture

Section 1.883–1(e)(2) generally treats a foreign corporation as engaged in the operation of ships or aircraft with respect to its participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture. Commentators asked that these rules be made applicable to single-member disregarded entities in addition to arrangements with multiple owners. Commentators also asked for clarification concerning whether these rules apply to tiered partnerships, such as in the case of a foreign corporation that is a partner in a partnership, whose sole activity is to be a partner in another partnership that is engaged in international shipping.

The rules have been revised to cover single-member disregarded entities, and to clarify that they apply to tiered entities in the case of both joint venture entities and joint ventures that are not entities. An example was added to illustrate these revisions.

D. Cruises to Nowhere

Section 1.883–1(f)(1) excludes from the international operation of ships or aircraft the carriage of passengers or cargo on a voyage or flight that begins and ends in the United States, even if the voyage or flight contains a segment extending beyond the territorial limits of the United States, unless the passenger disembarks or the cargo is unloaded outside the United States. Commentators renewed their objection to this exclusion of such "cruises to nowhere." The final regulations continue to exclude cruises to nowhere because such travel has beginning and ending points within the United States within the meaning of section 863(c)(1).

E. Determining Whether Income Is Derived From International Operation of Ships or Aircraft

Section 1.883–1(f)(2) of the proposed regulations provides that whether income is derived from international operation of ships or aircraft is determined on a passenger by passenger basis and on an item-of-cargo by item-of-cargo basis. Commentators suggested that with respect to the carriage of passengers by ship, the determination should be made on a voyage by voyage basis. Commentators said the voyage should be treated as international if it cannot be completed because of weather or similar factors.

The final regulations do not adopt the suggestion that income be determined on a voyage by voyage basis. The regulations have been revised, however, to exempt income from the sale of a ticket for international carriage of a passenger when the passenger does not begin or complete an international journey because of unanticipated circumstances. For example, if a passenger does not leave on an international flight because of a change in plans, or is unable to complete an international voyage because of illness, any income derived from the sale of the ticket nonetheless will qualify for exemption.

F. International Carriage of Cargo

Under § 1.883–1(e)(1), a foreign corporation is considered engaged in the operation of ships or aircraft only if the ship or aircraft is used in the carriage of passengers or cargo for hire. Commentators pointed out that the regulations do not define the term *for hire*. They expressed concern that requiring the carriage of cargo for hire might be interpreted to exclude income derived by a vessel owner or operator who charters a vessel to a lessee, if the lessee uses it to transport the lessee's own cargo or repositions the vessel without cargo on board for its next voyage. Commentators suggested that the term *for hire* be defined to include carriage of proprietary goods and an empty backhaul voyage, or that it be deleted from the regulations.

Section 1.883–1(f)(2)(iv) of the final regulations provides that if a foreign corporation time, voyage, or bareboat charters out a ship or aircraft, and the lowest-tier lessee uses the ship or aircraft to carry passengers or cargo on a fee basis, the ship or aircraft is considered used to carry passengers or cargo for hire, regardless of whether the ship or aircraft may be empty during a portion of the charter period due to a backhaul voyage or flight or for purposes of repositioning. If a foreign corporation time, voyage, or bareboat charters out a ship or aircraft, and the lowest-tier lessee uses the ship or aircraft for the carriage of proprietary goods, including an empty backhaul voyage or flight or repositioning related to such carriage of proprietary goods, the ship or aircraft similarly will be treated as used to carry cargo for hire.

G. Bareboat Charter of Ships or Dry Lease of Aircraft Used in International Operation of Ships or Aircraft

When a foreign corporation bareboat charters a ship or dry leases an aircraft to a lessee, § 1.883–1(f)(2)(iii) of the proposed regulations requires the corporation to adopt a reasonable method for determining the amount of charter income attributable to the international operation of ships or aircraft by the lowest tier lessee. The regulations contain two ratios that may provide a reasonable method for determining the amount of qualifying charter income.

Commentators asked for clarification that business records or log books are a reasonable method for determining the amount of charter income when those records show that the vessel has been used exclusively in international transportation. Commentators also asserted that the ratios are unnecessary and suggested that they be deleted.

The IRS and Treasury believe that business records or log books showing that a ship or aircraft has been used exclusively on voyages or flights that begin or end in the United States (but not both) may be sufficient to establish that the foreign corporation's entire gross income is income from the international operation of ships or aircraft. However, if the ship or aircraft also has been used on voyages or flights that begin and end outside the United States, the foreign corporation must determine the amount of the charter income that is attributable to voyages or flights that begin or end in the United States (but not both) to determine the amount of income potentially within the scope of section 883. The final regulations have been revised generally to require such a foreign corporation to determine the amount of such income based on the total number of days of uninterrupted travel on voyages or flights between the United States and the farthest point or points where cargo or passengers are loaded en route to, or discharged en route from, the United States. However, the final regulations permit the foreign corporation to adopt an alternative method for determining the amount of the charter income that is attributable to the international operation of ships or aircraft if it can establish that the alternative method more accurately reflects the amount of such income.

H. Activities Incidental to the International Operation of Ships or Aircraft

Section 1.883–1(g) of the proposed regulations provides that certain activities of an operator of a ship or aircraft are so closely related to the primary activity of the international operation of ships or aircraft that income from those incidental activities shall be considered income from the international operation of ships or aircraft, and thus eligible for exemption.

Intermodal Containers

Section 1.883–1(g)(1)(x) of the proposed regulations treats certain container rental activities in the United States as incidental to the international operation of ships or aircraft. The regulations limit incidental treatment to the rental of containers for use in the United States for a period not exceeding five days beyond the original delivery date to the consignee as stated on the bill of lading, and also impose other limitations on incidental treatment.

Commentators stated that ocean carriers provide containers to their customers as an integral part of international shipping, but do not "rent" containers or provide them for "temporary warehousing" of cargo. Commentators also noted that deliveries can be delayed beyond five days for many reasons that clearly do not involve warehousing, such as congestion at port facilities. Commentators said it would be difficult and unrealistic to allocate a portion of the shipping charges to the use of containers.

For these reasons, the reference to container rental as an incidental activity has been modified. The "five day" rule has been eliminated and replaced with a more flexible rule under which the provision of containers or other related equipment by the foreign corporation in connection with the international carriage of cargo for use by its customers, including short-term use within the United States immediately preceding or following the international carriage of cargo, is considered an incidental activity. The regulations presume that a container is used in connection with the international carriage of cargo if it is used for a period of five days or less immediately preceding or following the international carriage of cargo. Beyond this five-day period, whether a container is being used in connection with the international carriage of cargo, or for some other purpose such as warehousing of cargo, will depend on the facts and circumstances. The regulations make clear that the use of containers for any such other purpose will be considered to give rise to income that is not incidental to the international operation of ships or aircraft.

Hotel Accommodations

Arranging for one night in a hotel within the United States before or after a cruise is considered incidental to the international operation of ships under § 1.883–1(g)(1)(vii) of the proposed regulations. Commentators suggested that the exception also should apply to one-night hotel accommodations arranged by airlines. Commentators said that airlines occasionally provide such accommodations to passengers on tour packages for the same reasons that cruise companies provide accommodations. The final regulations do not adopt this suggestion. The IRS and Treasury believe that different rules are appropriate in light of operational differences between the airline and cruise industries.

Inland Transportation of Cargo

Section 1.883–1(g)(1)(v) treats the inland transportation of cargo by a related or unrelated corporation as incidental. Commentators suggested that inland transportation of cargo by the foreign corporation itself (after the cargo has passed through Customs) also should be treated as incidental. The final regulations do not adopt this suggestion. The IRS and Treasury are concerned that an exemption would permit foreign corporations engaged in international transportation to compete unfairly with other corporations engaged in the inland transportation of cargo.

Under the proposed regulations, inland transportation by another corporation must be documented by a through bill of lading, airway bill, or similar document. Commentators asked whether the term *similar document* can include any document showing an inland leg to international transportation, such as a seaway bill or cargo receipt. The IRS and Treasury believe that *similar document* may be construed broadly to include any appropriate document.

Commentators stated that some unincorporated entities provide inland transportation, and asked that such entities be included in the regulations. Accordingly, the final regulations have been revised to permit any unrelated person (whether incorporated or not) to provide inland transportation of cargo. The final regulations also provide that the rules of section 267(b) shall apply for purposes of determining whether persons are related.

Inland Transportation of Passengers

Section 1.883–1(g)(1)(vi) treats the sale or issuance by a foreign corporation of interline or code-sharing tickets for the inland transportation of passengers by air as an incidental activity. Commentators suggested that the inland segment of an international journey also should be treated as incidental when provided by the foreign airline itself through the sale or issuance of an intraline ticket. The final regulations extend incidental treatment to the sale or issuance of intraline tickets. The final regulations also impose a maximum 12-hour scheduled interval between the international and inland segments of any flight involving intraline tickets.

Shore Excursions

Land tour packages are excluded from incidental activities under § 1.883–1(g)(2)(i). Commentators contend that single-day shore excursions are not the same as land tour packages and should qualify as an incidental activity. The final regulations do not adopt this suggestion because the two activities are similar in nature.

Short-term Use

Ships normally engaged in international cruises may occasionally be used for other purposes, such as cruises to nowhere. Commentators asked that such short-term use be treated as an incidental activity. The final regulations do not adopt this suggestion because domestic use of a vessel does not qualify as the international operation of ships or aircraft.

Airline Tickets

Section 1.883–1(g)(1) treats as incidental the sale of tickets by an airline for international transportation on another airline, and the sale of tickets by a ship operator on behalf of another ship operator. Section 1.883–1(g)(2)(iii), however, excludes from incidental income the sale of airline tickets by a cruise company. Commentators objected to this exclusion. This exclusion is retained in the final regulations. Cruise companies that sell airline tickets are acting in a capacity comparable to travel agents, and would have an unfair competitive advantage if their income from this activity were exempt.

Ground Services and Other Services

The proposed regulations, in § 1.883–1(g)(3), reserve on the treatment of ground services, maintenance and catering, as well as other services not mentioned as included among incidental activities. In the absence of a

clear international norm or standard regarding the appropriate treatment of such services, the IRS and Treasury solicited comments on an appropriate rule. Commentators generally suggested that activities be treated as incidental unless they rise to the level of a separate, nonshipping business. The final regulations continue to reserve on this issue, pending further consideration by the IRS and Treasury.

I. Determining Equivalent Exemptions for Each Category of Income

Section 1.883–1(h)(2) of the proposed regulations provides that if an exemption is unavailable in a foreign country for one of the eight enumerated categories of income, the foreign country is not considered to grant an equivalent exemption with respect to that category of income. Paragraph (h)(2)(vi) of this section treats incidental income, other than incidental bareboat charter or dry lease income and incidental container-related income, as one category of income.

Commentators suggested that an equivalent exemption be determined on an item-of-income basis rather than by category of income. Commentators objected to the requirement that a foreign country exempt all items of income within a category of income to be treated as granting an equivalent exemption. The examples provided by commentators indicated that this concern arose primarily in the context of the residual category of incidental income described in paragraph (h)(2)(vi).

The final regulations retain the requirement that a foreign country exempt all items of income within a category of income, but provide an exception for incidental income described in paragraph (h)(2)(vi). The final regulations permit an exemption of any type of incidental income that qualifies under paragraph (g)(1) if a foreign country grants an equivalent exemption with respect to that type of income. For example, if a foreign country grants an equivalent exemption for the sale of airline tickets on behalf of another corporation engaged in international operation of aircraft, as provided in paragraph (g)(1)(iii), but does not provide an equivalent exemption for the inland transportation of cargo, as provided in paragraph (g)(1)(v), the foreign country is nonetheless considered to grant an equivalent exemption for the sale of airline tickets.

Commentators also pointed out that some income items may be described in more than one category of income, and asked which category would apply for purposes of determining whether the foreign country provides an equivalent exemption. The IRS and Treasury believe that the taxpayer can select any applicable category of income that provides an exemption.

J. Special Rules With Respect to Income Tax Conventions

Section 1.883–1(h)(3)(i) of the proposed regulations provides that if a taxpayer is eligible to exempt income under both an applicable income tax convention and section 883, the taxpayer may claim an exemption under both the applicable income tax convention and section 883 with respect to such category of income. Such an election must be made with respect to all income of the foreign corporation from the international operation of ships or aircraft, and cannot be made separately with respect to different categories of income.

Commentators requested clarification concerning the election to claim an exemption under both the applicable income tax convention and section 883 when the benefits under the two exemptions are not co-extensive with respect to any category of income.

The final regulations have been clarified to provide that if a corporation chooses to claim an exemption under an income tax convention, it may simultaneously claim an exemption under section 883 with respect to any category of income listed in paragraphs (h)(2)(i) through (v), (vii), and (viii) of § 1.883–1 and to any type of income described in paragraph (h)(2)(vi) of § 1.883–1, but only to the extent that such income also is exempt under the income tax convention.

K. Participation in Certain Joint Ventures

Under § 1.883–1(h)(3)(i), a corporation organized in a foreign country that provides an exemption only through an income tax convention is not permitted to claim an exemption under section 883, with one exception. Paragraph (h)(3)(ii) permits such corporation to claim an exemption under section 883 if the foreign corporation participates in a joint venture described in paragraph (e)(2) that is not treated as fiscally transparent with respect to the category of income derived from the joint venture under the income tax laws of the jurisdiction where the foreign corporation is organized, and treaty benefits would be available but for this reason.

Commentators suggested that the exception in § 1.883–1(h)(3)(ii) should apply to single-owner disregarded entities in addition to transparent joint ventures. This suggestion was not adopted. The IRS and Treasury believe that the policy justification for relief in the joint venture context is not present in the context of a wholly owned entity.

L. Independent Interpretation of Income Tax Conventions

Section 1.883–1(h)(3)(iii) of the proposed regulations clarifies that definitions provided in these regulations do not give meaning or provide guidance regarding similar terms in U.S. income tax conventions or the scope of any treaty exemption. Commentators stated that definitions in the regulations and income tax conventions should have the same scope and be interpreted in the same way. The IRS and Treasury continue to believe that terms used in the proposed regulations should not be used to interpret terms and concepts in U.S. income tax conventions except to the extent that a treaty that entered into force after August 26, 2003 or its legislative history explicitly refers to section 883 and guidance thereunder for its meaning.

Comments Relating to § 1.883–2: Treatment of Publicly-traded Corporations

A. Closely-held Classes of Stock not Treated as Meeting Trading Requirements

Section 1.883–2(d)(3)(i) of the proposed regulations disqualifies a class of stock from being relied on to satisfy the publicly traded test if, at any time during the taxable year, one or more 5-percent shareholders of that class of stock (determined without regard to the attribution rules in § 1.883–4) owns, in the aggregate, 50 percent or more of the total vote and value of that class of stock (closely-held rule).

Commentators pointed out that a company could lose its exemption if a nonqualified shareholder held a sufficiently large block of stock for one day. Commentators suggested requiring a longer period of ownership by nonqualified shareholders before disqualifying a class of stock from being relied on to satisfy the publicly traded test.

This suggestion has been adopted. The final regulations provide that a class of stock will be disqualified if one or more 5-percent shareholders of that class of stock owns, in the aggregate, 50 percent or more of the total vote and value of that class of stock for more than half the number of days during the corporation's taxable year. In this way, the closely-held rule matches the exception provided in § 1.883–2(d)(3)(ii)

which permits a foreign corporation to establish that qualified shareholders own sufficient shares in the closely-held block of stock to preclude nonqualified shareholders from owning 50 percent or more of the total value of the class of stock for more than half the number of days during the taxable year.

To demonstrate that a class of stock is not closely-held for purposes of § 1.883–2(d)(3)(i), a foreign corporation whose stock is traded on an established securities market in the United States may rely on current Schedule 13G filings with the Securities and Exchange Commission to identify its 5-percent shareholders in each class of stock relied upon to meet the regularly traded test, without having to make any independent investigation to determine the identity of the 5-percent shareholders. § 1.883–4(d)(3)(viii). Commentators suggested that a foreign corporation also be permitted to rely on current Schedule 13D filings with the Securities and Exchange Commission to identify 5-percent shareholders for purposes of meeting the exception contained in § 1.883–2(d)(3)(ii). The final regulations adopt this suggestion.

Under § 1.883–2(d)(3)(iii)(B) of the proposed regulations, an investment company registered under the Investment Company Act of 1940 will not be treated as a 5-percent shareholder if no person owns both 5 percent or more of the value of the outstanding interests in the investment company and 5 percent or more of the value of the shares of the class of stock of the foreign corporation. Commentators suggested that this exception be extended to foreign mutual funds, other investment companies not registered under the Investment Company Act of 1940, and financial institutions with customer or nominee accounts. Commentators also pointed out that it would be difficult for a shipping company to determine the identity of 5-percent owners of a mutual fund because most mutual fund shares are held in street name.

The final regulations eliminate the provision that treats an investment company registered under the Investment Company Act of 1940 as a 5-percent shareholder if a person owns both 5 percent or more of the value of the outstanding interests in the investment company and 5 percent or more of the value of the shares of the class of stock of the foreign corporation. Instead, the final regulations provide that such an investment company shall not be treated as a 5-percent shareholder for purposes of these regulations. The final regulations do not expand the mutual fund exception to include other types of investment vehicles or financial institutions.

Comments Relating to § 1.883–3: Treatment of Controlled Foreign Corporations

Income Inclusion Test

Section 883(c)(2) provides that the stock ownership test of section 883(c)(1) shall not apply to controlled foreign corporations (CFCs). Under the proposed regulations, a CFC is considered to satisfy the CFC exception of section 883(c)(1) if it meets the requirements of § 1.883–3. One such requirement is the income inclusion test of § 1.883–3(b). This test requires that more than 50 percent of the subpart F income derived by the CFC from the international operation of ships or aircraft be includible in the gross income of one or more U.S. citizens, individual residents of the United States, or domestic corporations.

Commentators restated their objection to the income inclusion test. They argued that the test is too restrictive because it could deny qualified foreign corporation status to CFCs legitimately owned and controlled by U.S. shareholders.

The IRS and Treasury continue to believe that the income inclusion rule contained in the proposed regulations is supported by the legislative history to section 883(c). The Conference report accompanying the legislation that added the CFC exception provides with respect to the exception that "corporations are not considered residents of countries that exempt U.S. persons unless 50 percent or more of the ultimate individual owners are U.S. shareholders of controlled foreign corporations". H.R. Conf. Rep. No. 99–841, 99th Cong., 2d Sess. 598 (1986), reprinted in 1986–3 C.B. vol. 4, at 598 (1986). The intent of the CFC exception, therefore, is for the general ownership requirement of section 883(c)(1) to apply unless the foreign corporation is a CFC and 50 percent or more of the subpart F income of that corporation derived from the international operation of ships or aircraft is includible by U.S. citizens, individual residents, or domestic corporations.

Commentators stated that if the income inclusion test is retained, the regulations should provide that income derived by U.S. tax-exempt organizations holding shares in CFCs should be counted toward satisfying the income inclusion test even though the income is not taxed.

The final regulations do not adopt this suggestion. A U.S. tax-exempt organization is not in substance different from a U.S. person that is not required to include in its gross income the subpart F income of a CFC.

Comments Relating to § 1.883–4: Qualified Shareholder Stock Ownership Test

A. Qualified Shareholders

A foreign corporation satisfies the stock ownership test of § 1.883–1(c)(2) if more than 50 percent of the value of its outstanding shares is owned, or treated as owned through attribution, for at least half of the number of days in the foreign corporation's taxable year by one or more qualified shareholders. Section 1.883–4(b)(1)(i)(A) of the proposed regulations treats an individual resident in a qualified foreign country as a qualified shareholder, but excludes individuals described in § 1.883–4(b)(1)(i)(E) and (F). Commentators stated that the exclusion of pension fund beneficiaries described in paragraph (b)(1)(i)(E) could be interpreted to prevent the qualification of an individual under paragraph (b)(1)(i)(A). For example, if an individual held stock directly in a shipping company and also was the beneficiary of a pension fund holding stock in the same company, commentators believe that the individual might not qualify under paragraph (b)(1)(i)(A) with respect to the individual's direct ownership. The final regulations clarify that an individual can be a qualified shareholder under paragraph (b)(1)(i)(A) and also be a qualified shareholder under paragraph (b)(1)(i)(E) with respect to a category of income for which a foreign corporation is seeking an exemption.

Under § 1.883–4(b)(1)(i)(D) of the proposed regulations, a not-for-profit organization described in § 1.883–4(b)(4) is treated as a qualified shareholder. Section 1.883–4(b)(4)(iii)(A) requires a not-for-profit organization to expend more than 50 percent of its annual support on behalf of individuals described in § 1.883–4(b)(1)(i)(A).

Commentators suggested that the category of recipients eligible for support be expanded to include other not-for-profit organizations. This suggestion has been adopted in part. The final regulations provide that a not-for-profit organization may be a qualified shareholder if it expends more than 50 percent of its annual support on behalf of U.S. organizations that have received determination letters under section 501(c)(3) and on behalf of individuals described in § 1.883–4(b)(1)(i)(A).

Commentators asked that the list of qualified shareholders in § 1.883–4(b)(1)(i) be expanded to include international organizations as defined in section 7701(a)(18), and pension funds established for employees of such organizations. The final regulations do not adopt this suggestion. Under section 883(c)(1) and § 1.883–4(a), a foreign corporation satisfies the stock ownership test if more than 50 percent of the value of its outstanding shares is owned by qualified shareholders who are residents of qualified foreign countries. The remaining shares of the foreign corporation can be owned by nonqualified shareholders, including international organizations.

Section 1.883–4(b)(1)(ii) of the proposed regulations provides that a shareholder is a qualified shareholder only if the shareholder does not own its interest in the foreign corporation through bearer shares, either directly or by applying the attribution rules of § 1.883–4(c). Commentators renewed their objection to this rule. The final regulations retain this provision due to the difficulty of reliably demonstrating the true ownership of bearer shares.

B. Substantiation of Stock Ownership

Section 1.883–4(b)(1)(iii) of the proposed regulations provides that a shareholder is a qualified shareholder only if the shareholder provides to the foreign corporation the documentation required in § 1.883–4(d), and the foreign corporation meets the reporting requirements of § 1.883–4(e) with respect to such shareholder. Commentators argued that the required reporting requirements are burdensome, and suggested that taxpayers have the option of submitting a sworn statement with their return stating that qualified individuals own the corporation and that supporting documentation has been deposited with a qualified tax practitioner in the United States. The final regulations do not adopt this suggestion. The IRS and Treasury continue to believe that this information is necessary for proper administration of section 883 and that the provision of this information with the foreign corporation's tax return is not unduly burdensome.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of U.S. small entities. This certification is based upon the fact that these regulations apply to foreign corporations and impose only a limited collection of information burden on shareholders of such corporations, which in some cases may include U.S. small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is David L. Lundy of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.883–1 is also issued under 26 U.S.C. 883.

Section 1.883–2 is also issued under 26 U.S.C. 883.

Section 1.883–3 is also issued under 26 U.S.C. 883.

Section 1.883–4 is also issued under 26 U.S.C. 883.

Section 1.883–5 is also issued under 26 U.S.C. 883. * * *

■ **Par. 2.** Section 1.883–0 is added to read as follows:

§ 1.883–0 Outline of major topics.

This section lists the major paragraphs contained in §§ 1.883–1 through 1.883–5.

§ 1.883–1 Exclusion of income from the international operation of ships or aircraft.

(a) General rule.
(b) Qualified income.
(c) Qualified foreign corporation.
(1) General rule.
(2) Stock ownership test.
(3) Substantiation and reporting requirements.
(i) General rule.
(ii) Further documentation.
(4) Commissioner's discretion to cure defects in documentation.
(d) Qualified foreign country.
(e) Operation of ships or aircraft.
(1) General rule.
(2) Pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.
(3) Activities not considered operation of ships or aircraft.
(4) Examples.
(5) Definitions.
(i) Bareboat charter.
(ii) Code-sharing arrangement.
(iii) Dry lease.
(iv) Entity.
(v) Fiscally transparent entity under the income tax laws of the United States.
(vi) Full charter.
(vii) Nonvessel operating common carrier.
(viii) Space or slot charter.
(ix) Time charter.
(x) Voyage charter.
(xi) Wet lease.
(f) International operation of ships or aircraft.
(1) General rule.
(2) Determining whether income is derived from international operation of ships or aircraft.
(i) International carriage of passengers.
(A) General rule.
(B) Round trip travel on ships.
(ii) International carriage of cargo.
(iii) Bareboat charter of ships or dry lease of aircraft used in international operation of ships or aircraft.
(iv) Charter of ships or aircraft for hire.
(g) Activities incidental to the international operation of ships or aircraft.
(1) General rule.
(2) Activities not considered incidental to the international operation of ships or aircraft.
(3) Services.
(i) Ground services, maintenance, and catering.
(ii) Other services.
(4) Activities involved in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.
(h) Equivalent exemption.
(1) General rule.
(2) Determining equivalent exemptions for each category of income.
(3) Special rules with respect to income tax conventions.
(i) General rule.
(ii) Participation in certain joint ventures.
(iii) Independent interpretation of income tax conventions.
(4) Exemptions not qualifying as equivalent exemptions.
(i) General rule.
(ii) Reduced tax rate or time limited exemption.
(iii) Inbound or outbound freight tax.
(iv) Exemptions for limited types of cargo.

(v) Territorial tax systems.
(vi) Countries that tax on a residence basis.
(vii) Exemptions within categories of income.
(i) Treatment of possessions.
(j) Expenses related to qualified income.

§ 1.883–2 Treatment of publicly-traded corporations.

(a) General rule.
(b) Established securities market.
(1) General rule.
(2) Exchanges with multiple tiers.
(3) Computation of dollar value of stock traded.
(4) Over-the-counter market.
(5) Discretion to determine that an exchange does not qualify as an established securities market.
(c) Primarily traded.
(d) Regularly traded.
(1) General rule.
(2) Classes of stock traded on a domestic established securities market treated as meeting trading requirements.
(3) Closely-held classes of stock not treated as meeting trading requirements.
(i) General rule.
(ii) Exception.
(iii) Five-percent shareholders.
(A) Related persons.
(B) Investment companies.
(4) Anti-abuse rule.
(5) Example.
(e) Substantiation that a foreign corporation is publicly traded.
(1) General rule.
(2) Availability and retention of documents for inspection.
(f) Reporting requirements.

§ 1.883–3 Treatment of controlled foreign corporations.

(a) General rule.
(b) Income inclusion test.
(1) General rule.
(2) Examples.
(c) Substantiation of CFC stock ownership.
(1) General rule.
(2) Documentation from certain United States shareholders.
(i) General rule.
(ii) Availability and retention of documents for inspection.
(d) Reporting requirements.

§ 1.883–4 Qualified shareholder stock ownership test.

(a) General rule.
(b) Qualified shareholder.
(1) General rule.
(2) Residence of individual shareholders.
(i) General rule.
(ii) Tax home.
(3) Certain income tax convention restrictions applied to shareholders.
(4) Not-for-profit organizations.
(5) Pension funds.
(i) Pension fund defined.
(ii) Government pension funds.
(iii) Nongovernment pension funds.
(iv) Beneficiary of a pension fund.
(c) Rules for determining constructive ownership.
(1) General rules for attribution.
(2) Partnerships.
(i) General rule.
(ii) Partners resident in the same country.
(iii) Examples.
(3) Trusts and estates.
(i) Beneficiaries.
(ii) Grantor trusts.
(4) Corporations that issue stock.
(5) Taxable nonstock corporations.
(6) Mutual insurance companies and similar entities.
(7) Computation of beneficial interests in nongovernment pension funds.
(d) Substantiation of stock ownership.
(1) General rule.
(2) Application of general rule.
(i) Ownership statements.
(ii) Three-year period of validity.
(3) Special rules.
(i) Substantiating residence of certain shareholders.
(ii) Special rule for registered shareholders owning less than one percent of widely-held corporations.
(iii) Special rule for beneficiaries of pension funds.
(A) Government pension fund.
(B) Nongovernment pension fund.
(iv) Special rule for stock owned by publicly-traded corporations.
(v) Special rule for not-for-profit organizations.
(vi) Special rule for a foreign airline covered by an air services agreement.
(vii) Special rule for taxable nonstock corporations.
(viii) Special rule for closely-held corporations traded in the United States.
(4) Ownership statements from shareholders.
(i) Ownership statements from individuals.
(ii) Ownership statements from foreign governments.
(iii) Ownership statements from publicly-traded corporate shareholders.
(iv) Ownership statements from not-for-profit organizations.
(v) Ownership statements from intermediaries.
(A) General rule.
(B) Ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediary.
(C) Ownership statements from pension funds.
(*1*) Ownership statements from government pension funds.
(*2*) Ownership statements from nongovernment pension funds.
(*3*) Time for making determinations.
(D) Ownership statements from taxable nonstock corporations.
(5) Availability and retention of documents for inspection.
(e) Reporting requirements.

§ 1.883–5 Effective dates.

(a) General rule.
(b) Election for retroactive application.
(c) Transitional information reporting rule.

■ **Par. 3.** § 1.883–1 is revised to read as follows:

§ 1.883–1 Exclusion of income from the international operation of ships or aircraft.

(a) *General rule.* Qualified income derived by a qualified foreign corporation from its international operation of ships or aircraft is excluded from gross income and exempt from United States Federal income tax. Paragraph (b) of this section defines the term *qualified income.* Paragraph (c) of this section defines the term *qualified foreign corporation.* Paragraph (f) of this section defines the term *international operation of ships or aircraft.*

(b) *Qualified income.* Qualified income is income derived from the international operation of ships or aircraft that—

(1) Is properly includible in any of the income categories described in paragraph (h)(2) of this section; and

(2) Is the subject of an equivalent exemption, as defined in paragraph (h) of this section, granted by the qualified foreign country, as defined in paragraph (d) of this section, in which the foreign corporation seeking qualified foreign corporation status is organized.

(c) *Qualified foreign corporation*—(1) *General rule.* A qualified foreign corporation is a corporation that is organized in a qualified foreign country and considered engaged in the international operation of ships or aircraft. The term *corporation* is defined in section 7701(a)(3) and the regulations thereunder. Paragraph (d) of this section defines the term *qualified foreign country.* Paragraph (e) of this section defines the term *operation of ships or aircraft,* and paragraph (f) of this section defines the term *international operation of ships or aircraft.* To be a qualified foreign corporation, the corporation must satisfy the stock ownership test of paragraph (c)(2) of this section and satisfy the substantiation and reporting requirements described in paragraph (c)(3) of this section. A corporation may be a qualified foreign corporation with respect to one category of qualified income but not with respect to another such category. See paragraph (h)(2) of this section for a discussion of the categories of qualified income.

(2) *Stock ownership test.* To be a qualified foreign corporation, a foreign corporation must satisfy the publicly-traded test of § 1.883–2(a), the CFC stock ownership test of § 1.883–3(a), or the qualified shareholder stock ownership test of § 1.883–4(a).

(3) *Substantiation and reporting requirements*—(i) *General rule.* To be a qualified foreign corporation, a foreign corporation must include the following information in its Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation," in the manner prescribed

by such form and its accompanying instructions—

(A) The corporation's name and address (including mailing code);

(B) The corporation's U.S. taxpayer identification number;

(C) The foreign country in which the corporation is organized;

(D) The applicable authority for an equivalent exemption, for example, citation of a statute in the country where the corporation is organized, a diplomatic note between the United States and such country, (for further guidance, see Rev. Rul. 2001–48 (2001–2 C.B. 324) (see § 601.601(d)(2) of this chapter)), or, in the case of a corporation described in paragraph (h)(3)(ii) of this section, an income tax convention between the United States and such country;

(E) The category or categories of qualified income for which an exemption is being claimed;

(F) A reasonable estimate of the gross amount of income in each category of qualified income for which the exemption is claimed, to the extent such amounts are readily determinable;

(G) Any other information required under § 1.883–2(f), 1.883–3(d), or 1.883–4(e), as applicable; and

(H) Any other relevant information specified by the Form 1120–F and its accompanying instructions.

(ii) *Further documentation.* If the Commissioner requests in writing that the foreign corporation document or substantiate representations made under paragraph (c)(3)(i) of this section, or under § 1.883–2(f), 1.883–3(d) or 1.883–4(e), the foreign corporation must provide the documentation or substantiation within 60 days following the written request. If the foreign corporation does not provide the documentation and substantiation requested within the 60-day period, but demonstrates that the failure was due to reasonable cause and not willful neglect, the Commissioner may grant the foreign corporation a 30-day extension to provide the documentation or substantiation. Whether a failure to obtain the documentation or substantiation in a timely manner was due to reasonable cause and not willful neglect shall be determined by the Commissioner after considering all the facts and circumstances.

(4) *Commissioner's discretion to cure defects in documentation.* The Commissioner retains the discretion to cure any defects in the documentation where the Commissioner is satisfied that the foreign corporation would otherwise be a qualified foreign corporation.

(d) *Qualified foreign country.* A qualified foreign country is a foreign country that grants to corporations organized in the United States an equivalent exemption, as described in paragraph (h) of this section, for the category of qualified income, as described in paragraph (h)(2) of this section, derived by the foreign corporation seeking qualified foreign corporation status. A foreign country may be a qualified foreign country with respect to one category of qualified income but not with respect to another such category.

(e) *Operation of ships or aircraft*—(1) *General rule.* Except as provided in paragraph (e)(2) of this section, a foreign corporation is considered engaged in the operation of ships or aircraft only during the time it is an owner or lessee of one or more entire ships or aircraft and uses such ships or aircraft in one or more of the following activities—

(i) Carriage of passengers or cargo for hire;

(ii) In the case of a ship, the leasing out of the ship under a time or voyage charter (full charter), space or slot charter, or bareboat charter, as those terms are defined in paragraph (e)(5) of this section, provided the ship is used to carry passengers or cargo for hire; and

(iii) In the case of aircraft, the leasing out of the aircraft under a wet lease (full charter), space, slot, or block-seat charter, or dry lease, as those terms are defined in paragraph (e)(5) of this section, provided the aircraft is used to carry passengers or cargo for hire.

(2) *Pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.* A foreign corporation is considered engaged in the operation of ships or aircraft within the meaning of paragraph (e)(1) of this section with respect to its participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture if it directly, or indirectly through one or more fiscally transparent entities under the income tax laws of the United States, as defined in paragraph (e)(5)(v) of this section—

(i) Owns an interest in a partnership, disregarded entity, or other fiscally transparent entity under the income tax laws of the United States that itself would be considered engaged in the operation of ships or aircraft under paragraph (e)(1) of this section if it were a foreign corporation; or

(ii) Participates in a pool, strategic alliance, joint operating agreement, code-sharing arrangement, or other joint venture that is not an entity, as defined in paragraph (e)(5)(iv) of this section, involving one or more activities described in paragraphs (e)(1)(i) through (iii) of this section, but only if—

(A) In the case of a direct interest, the foreign corporation is otherwise engaged in the operation of ships or aircraft under paragraph (e)(1) of this section; or

(B) In the case of an indirect interest, either the foreign corporation is otherwise engaged, or one of the fiscally transparent entities would be considered engaged if it were a foreign corporation, in the operation of ships or aircraft under paragraph (e)(1) of this section.

(3) *Activities not considered operation of ships or aircraft.* Activities that do not constitute operation of ships or aircraft include, but are not limited to—

(i) The activities of a nonvessel operating common carrier, as defined in paragraph (e)(5)(vii) of this section;

(ii) Ship or aircraft management;

(iii) Obtaining crews for ships or aircraft operated by another party;

(iv) Acting as a ship's agent;

(v) Ship or aircraft brokering;

(vi) Freight forwarding;

(vii) The activities of travel agents and tour operators;

(viii) Rental by a container leasing company of containers and related equipment; and

(ix) The activities of a concessionaire.

(4) *Examples.* The rules of paragraphs (e)(1) through (3) of this section are illustrated by the following examples:

Example 1. Three tiers of charters—(i) *Facts.* A, B, and C are foreign corporations. A purchases a ship. A and B enter into a bareboat charter of the ship for a term of 20 years, and B, in turn, enters into a time charter of the ship with C for a term of 5 years. Under the time charter, B is responsible for the complete operation of the ship, including providing the crew and maintenance. C uses the ship during the term of the time charter to carry its customers' freight between U.S. and foreign ports. C owns no ships.

(ii) *Analysis.* Because A is the owner of the entire ship and leases out the ship under a bareboat charter to B, and because the sublessor, C, uses the ship to carry cargo for hire, A is considered engaged in the operation of a ship under paragraph (e)(1) of this section during the term of the time charter. B leases in the entire ship from A and leases out the ship under a time charter to C, who uses the ship to carry cargo for hire. Therefore, B is considered engaged in the operation of a ship under paragraph (e)(1) of this section during the term of the time charter. C time charters the entire ship from B and uses the ship to carry its customers' freight during the term of the charter. Therefore, C is also engaged in the operation of a ship under paragraph (e)(1) of this section during the term of the time charter.

Example 2. Partnership with contributed shipping assets—(i) *Facts.* X, Y, and Z, each a foreign corporation, enter into a partnership, P. P is a fiscally transparent

entity under the income tax laws of the United States, as defined in paragraph (e)(5)(v) of this section. Under the terms of the partnership agreement, each partner contributes all of the ships in its fleet to P in exchange for interests in the partnership and shares in the P profits from the international carriage of cargo. The partners share in the overall management of P, but each partner, acting in its capacity as partner, continues to crew and manage all ships previously in its fleet.

(ii) *Analysis.* P owns the ships contributed by the partners and uses these ships to carry cargo for hire. Therefore, if P were a foreign corporation, it would be considered engaged in the operation of ships within the meaning of paragraph (e)(1) of this section. Accordingly, because P is a fiscally transparent entity under the income tax laws of the United States, as defined in paragraph (e)(5)(v) of this section, X, Y, and Z are each considered engaged in the operation of ships through P, within the meaning of paragraph (e)(2)(i) of this section, with respect to their distributive share of income from P's international carriage of cargo.

Example 3. Joint venture with chartered in ships—(i) *Facts.* Foreign corporation A owns a number of foreign subsidiaries involved in various aspects of the shipping business, including S1, S2, S3, and S4. S4 is a foreign corporation that provides cruises but does not own any ships. S1, S2, and S3 are foreign corporations that own cruise ships. S1, S2, S3, and S4 form joint venture JV, in which they are all interest holders, to conduct cruises. JV is a fiscally transparent entity under the income tax laws of the United States, as defined in paragraph (e)(5)(v) of this section. Under the terms of the joint venture, S1, S2, and S3 each enter into time charter agreements with JV, pursuant to which S1, S2, and S3 retain control of the navigation and management of the individual ships, and JV will use the ships to carry passengers for hire. The overall management of the cruise line will be provided by S4.

(ii) *Analysis.* S1, S2, and S3 each owns ships and time charters those ships to JV, which uses the ships to carry passengers for hire. Accordingly, S1, S2, and S3 are each considered engaged in the operation of ships under paragraph (e)(1) of this section. JV leases in entire ships by means of the time charters, and JV uses those ships to carry passengers on cruises. Thus, JV would be engaged in the operation of ships within the meaning of paragraph (e)(1) of this section if it were a foreign corporation. Therefore, although S4 does not directly own or lease in a ship, S4 also is engaged in the operation of ships, within the meaning of paragraph (e)(2)(i) of this section, with respect to its participation in JV.

Example 4. Tiered partnerships—(i) *Facts.* Foreign corporations A, B, and C enter into a partnership, P1. P1 is one of several shareholders of Poolco, a foreign limited liability company that makes an election pursuant to § 301.7701–3 of this chapter to be treated as a partnership for U.S. tax purposes. P1 acquires several ships and time charters them out to Poolco. Poolco slot or voyage charters such ships out to third parties for use in the carriage of cargo for hire. P1 and Poolco are fiscally transparent entities under the income tax laws of the United States, as defined in paragraph (e)(5)(v) of this section.

(ii) *Analysis.* A, B, and C are considered engaged in the operation of ships under paragraph (e)(2)(i) of this section with respect to their direct interest in P1 and with respect to their indirect interest in Poolco because both P1 and Poolco are fiscally transparent entities under the income tax laws of the United States and would be considered engaged in the operation of ships under paragraph (e)(1) of this section if they were foreign corporations. The result would be the same if Poolco were a single-member disregarded entity owned solely by P1.

(5) *Definitions*—(i) *Bareboat charter.* A bareboat charter is a contract for the use of a ship or aircraft whereby the lessee is in complete possession, control, and command of the ship or aircraft. For example, in a bareboat charter, the lessee is responsible for the navigation and management of the ship or aircraft, the crew, supplies, repairs and maintenance, fees, insurance, charges, commissions and other expenses connected with the use of the ship or aircraft. The lessor of the ship bears none of the expense or responsibility of operation of the ship or aircraft.

(ii) *Code-sharing arrangement.* A code-sharing arrangement is an arrangement in which one air carrier puts its identification code on the flight of another carrier. This arrangement allows the first carrier to hold itself out as providing service in markets where it does not otherwise operate or where it operates infrequently. Code-sharing arrangements can range from a very limited agreement between two carriers involving only one market to agreements involving multiple markets and alliances between or among international carriers which also include joint marketing, baggage handling, one-stop check-in service, sharing of frequent flyer awards, and other services. For rules involving the sale of code-sharing tickets, see paragraph (g)(1)(vi) of this section.

(iii) *Dry lease.* A dry lease is the bareboat charter of an aircraft.

(iv) *Entity.* For purposes of this paragraph (e), an entity is any person that is treated by the United States as other than an individual for U.S. Federal income tax purposes. The term includes disregarded entities.

(v) *Fiscally transparent entity under the income tax laws of the United States.* For purposes of this paragraph (e), an entity is fiscally transparent under the income tax laws of the United States if the entity would be considered fiscally transparent under the income tax laws of the United States under the principles of § 1.894–1(d)(3).

(vi) *Full charter.* Full charter (or full rental) means a time charter or a voyage charter of a ship or a wet lease of an aircraft but during which the full crew and management are provided by the lessor.

(vii) *Nonvessel operating common carrier.* A nonvessel operating common carrier is an entity that does not exercise control over any part of a vessel, but holds itself out to the public as providing transportation for hire, issues bills of lading, assumes responsibility or is liable by law as a common carrier for safe transportation of shipments, and arranges in its own name with other common carriers, including those engaged in the operation of ships, for the performance of such transportation.

(viii) *Space or slot charter.* A space or slot charter is a contract for use of a certain amount of space (but less than all of the space) on a ship or aircraft, and may be on a time or voyage basis. When used in connection with passenger aircraft this sort of charter may be referred to as the sale of block seats.

(ix) *Time charter.* A time charter is a contract for the use of a ship or aircraft for a specific period of time, during which the lessor of the ship or aircraft retains control of the navigation and management of the ship or aircraft (*i.e.*, the lessor continues to be responsible for the crew, supplies, repairs and maintenance, fees and insurance, charges, commissions and other expenses connected with the use of the ship or aircraft).

(x) *Voyage charter.* A voyage charter is a contract similar to a time charter except that the ship or aircraft is chartered for a specific voyage or flight rather than for a specific period of time.

(xi) *Wet lease.* A wet lease is the time or voyage charter of an aircraft.

(f) *International operation of ships or aircraft*—(1) *General rule.* The term *international operation of ships or aircraft* means the operation of ships or aircraft, as defined in paragraph (e) of this section, with respect to the carriage of passengers or cargo on voyages or flights that begin or end in the United States, as determined under paragraph (f)(2) of this section. The term does not include the carriage of passengers or cargo on a voyage or flight that begins and ends in the United States, even if the voyage or flight contains a segment extending beyond the territorial limits of the United States, unless the passenger disembarks or the cargo is unloaded outside the United States. Operation of ships or aircraft beyond the territorial limits of the United States does not constitute in itself

international operation of ships or aircraft.

(2) *Determining whether income is derived from international operation of ships or aircraft.* Whether income is derived from international operation of ships or aircraft is determined on a passenger by passenger basis (as provided in paragraph (f)(2)(i) of this section) and on an item-of-cargo by item-of-cargo basis (as provided in paragraph (f)(2)(ii) of this section). In the case of the bareboat charter of a ship or the dry lease of an aircraft, whether the charter income for a particular period is derived from international operation of ships or aircraft is determined by reference to how the ship or aircraft is used by the lowest-tier lessee in the chain of lessees (as provided in paragraph (f)(2)(iii) of this section).

(i) *International carriage of passengers*—(A) *General rule.* Except in the case of a round trip described in paragraph (f)(2)(i)(B) of this section, income derived from the carriage of a passenger will be income from international operation of ships or aircraft if the passenger is carried between a beginning point in the United States and an ending point outside the United States, or vice versa. Carriage of a passenger will be treated as ending at the passenger's final destination even if, en route to the passenger's final destination, a stop is made at an intermediate point for refueling, maintenance, or other business reasons, provided the passenger does not change ships or aircraft at the intermediate point. Similarly, carriage of a passenger will be treated as beginning at the passenger's point of origin even if, en route to the passenger's final destination, a stop is made at an intermediate point, provided the passenger does not change ships or aircraft at the intermediate point. Carriage of a passenger will be treated as beginning or ending at a U.S. or foreign intermediate point if the passenger changes ships or aircraft at that intermediate point. Income derived from the sale of a ticket for international carriage of a passenger will be treated as income derived from international operation of ships or aircraft even if the passenger does not begin or complete an international journey because of unanticipated circumstances.

(B) *Round trip travel on ships.* In the case of income from the carriage of a passenger on a ship that begins its voyage in the United States, calls on one or more foreign intermediate ports, and returns to the same or another U.S. port, such income from carriage of a passenger on the entire voyage will be treated as income derived from international operation of ships or aircraft under paragraph (f)(2)(i)(A) of this section. This result obtains even if such carriage includes one or more intermediate stops at a U.S. port or ports and even if the passenger does not disembark at the foreign intermediate point.

(ii) *International carriage of cargo.* Income from the carriage of cargo will be income derived from international operation of ships or aircraft if the cargo is carried between a beginning point in the United States and an ending point outside the United States, or vice versa. Carriage of cargo will be treated as ending at the final destination of the cargo even if, en route to that final destination, a stop is made at a U.S. intermediate point, provided the cargo is transported to its ultimate destination on the same ship or aircraft. If the cargo is transferred to another ship or aircraft, the carriage of the cargo may nevertheless be treated as ending at its final destination, if the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. Similarly, carriage of cargo will be treated as beginning at the cargo's point of origin, even if en route to its final destination a stop is made at a U.S. intermediate point, provided the cargo is transported to its ultimate destination on the same ship or aircraft. If the cargo is transferred to another ship or aircraft at the U.S. intermediate point, the carriage of the cargo may nevertheless be treated as beginning at the point of origin, if the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. Repackaging, recontainerization, or any other activity involving the unloading of the cargo at the U.S. intermediate point does not change these results, provided the same taxpayer transports the cargo to and from the U.S. intermediate point and the cargo does not pass through customs at the U.S. intermediate point. A lighter vessel that carries cargo to, or picks up cargo from, a vessel located beyond the territorial limits of the United States and correspondingly loads or unloads that cargo at a U.S. port, carries cargo between a point in the United States and a point outside the United States. However, a lighter vessel that carries cargo to, or picks up cargo from, a vessel located within the territorial limits of the United States, and correspondingly loads or unloads that cargo at a U.S. port, is not engaged in international operation of ships or aircraft. Income from the carriage of military cargo on a voyage that begins in the United States, stops at a foreign intermediate port or a military prepositioning location, and returns to the same or another U.S. port without unloading its cargo at the foreign intermediate point, will nevertheless be treated as derived from international operation of ships or aircraft.

(iii) *Bareboat charter of ships or dry lease of aircraft used in international operation of ships or aircraft.* If a qualified foreign corporation bareboat charters a ship or dry leases an aircraft to a lessee, and the lowest tier lessee in the chain of ownership uses such ship or aircraft for the international carriage of passengers or cargo for hire, as described in paragraphs (f)(2)(i) and (ii) of this section, then the amount of charter income attributable to the period the ship or aircraft is used by the lowest tier lessee is income from international operation of ships or aircraft. The foreign corporation generally must determine the amount of the charter income that is attributable to such international operation of ships or aircraft by multiplying the amount of charter income by a fraction, the numerator of which is the total number of days of uninterrupted travel on voyages or flights of such ship or aircraft between the United States and the farthest point or points where cargo or passengers are loaded en route to, or discharged en route from, the United States during the smaller of the taxable year or the particular charter period, and the denominator of which is the total number of days in the smaller of the taxable year or the particular charter period. For this purpose, the number of days during which the ship or aircraft is not generating transportation income, within the meaning of section 863(c)(2), are not included in the numerator or denominator of the fraction. However, the foreign corporation may adopt an alternative method for determining the amount of the charter income that is attributable to the international operation of ships or aircraft if it can establish that the alternative method more accurately reflects the amount of such income.

(iv) *Charter of ships or aircraft for hire.* For purposes of this section, if a foreign corporation time, voyage, or bareboat charters out a ship or aircraft, and the lowest-tier lessee uses the ship or aircraft to carry passengers or cargo on a fee basis, the ship or aircraft is considered used to carry passengers or cargo for hire, regardless of whether the ship or aircraft may be empty during a portion of the charter period due to a backhaul voyage or flight or for

purposes of repositioning. If a foreign corporation time, voyage, or bareboat charters out a ship or aircraft, and the lowest-tier lessee uses the ship or aircraft for the carriage of proprietary goods, including an empty backhaul voyage or flight or repositioning related to such carriage of proprietary goods, the ship or aircraft similarly will be treated as used to carry cargo for hire.

(g) *Activities incidental to the international operation of ships or aircraft*—(1) *General rule.* Certain activities of a foreign corporation engaged in the international operation of ships or aircraft are so closely related to the international operation of ships or aircraft that they are considered incidental to such operation, and income derived by the foreign corporation from its performance of these incidental activities is deemed to be income derived from the international operation of ships or aircraft. Examples of such activities include—

(i) Temporary investment of working capital funds to be used in the international operation of ships or aircraft by the foreign corporation;

(ii) Sale of tickets by the foreign corporation engaged in the international operation of ships for the international carriage of passengers by ship on behalf of another corporation engaged in the international operation of ships;

(iii) Sale of tickets by the foreign corporation engaged in the international operation of aircraft for the international carriage of passengers by air on behalf of another corporation engaged in the international operation of aircraft;

(iv) Contracting with concessionaires for performance of services onboard during the international operation of the foreign corporation's ships or aircraft;

(v) Providing (either by subcontracting or otherwise) for the carriage of cargo preceding or following the international carriage of cargo under a through bill of lading, airway bill or similar document through a related corporation or through an unrelated person (and the rules of section 267(b) shall apply for purposes of determining whether a corporation or other person is related to the foreign corporation);

(vi) To the extent not described in paragraph (g)(1)(iii) of this section, the sale or issuance by the foreign corporation engaged in the international operation of aircraft of intraline, interline, or code-sharing tickets for the carriage of persons by air between a U.S. gateway and another U.S. city preceding or following international carriage of passengers, provided that all such flight segments are provided pursuant to the passenger's original invoice, ticket or itinerary and in the case of intraline tickets are a part of uninterrupted international air transportation (within the meaning of section 4262(c)(3));

(vii) Arranging for port city hotel accommodations within the United States for a passenger for the one night before or after the international carriage of that passenger by the foreign corporation engaged in the international operation of ships;

(viii) Bareboat charter of ships or dry lease of aircraft normally used by the foreign corporation in international operation of ships or aircraft but currently not needed, if the ship or aircraft is used by the lessee for international carriage of cargo or passengers;

(ix) Arranging by means of a space or slot charter for the carriage of cargo listed on a bill of lading or airway bill or similar document issued by the foreign corporation on the ship or aircraft of another corporation engaged in the international operation of ships or aircraft; and

(x) The provision of containers or other related equipment by the foreign corporation in connection with the international carriage of cargo for use by its customers, including short-term use within the United States immediately preceding or following the international carriage of cargo (and for this purpose, a period of five days or less shall be presumed to be short-term).

(2) *Activities not considered incidental to the international operation of ships or aircraft.* Examples of activities that are not considered incidental to the international operation of ships or aircraft include—

(i) The sale of or arranging for train travel, bus transfers, single day shore excursions, or land tour packages;

(ii) Arranging for hotel accommodations within the United States other than as provided in paragraph (g)(1)(vii) of this section;

(iii) The sale of airline tickets or cruise tickets other than as provided in paragraph (g)(1)(ii), (iii), or (vi) of this section;

(iv) The sale or rental of real property;

(v) Treasury activities involving the investment of excess funds or funds awaiting repatriation, even if derived from the international operation of ships or aircraft;

(vi) The carriage of passengers or cargo on ships or aircraft on domestic legs of transportation not treated as either international operation of ships or aircraft under paragraph (f) of this section or as an activity that is incidental to such operation under paragraph (g)(1) of this section;

(vii) The carriage of cargo by bus, truck or rail by a foreign corporation between a U.S. inland point and a U.S. gateway port or airport preceding or following the international carriage of such cargo by the foreign corporation; and

(viii) The provision of containers or other related equipment by the foreign corporation within the United States other than as provided in paragraph (g)(1)(x) of this section, including warehousing.

(3) *Services*—(i) *Ground services, maintenance and catering.* [Reserved]

(ii) *Other services.* [Reserved]

(4) *Activities involved in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture.* Notwithstanding paragraph (g)(1) of this section, an activity is considered incidental to the international operation of ships or aircraft by a foreign corporation, and income derived by the foreign corporation with respect to such activity is deemed to be income derived from the international operation of ships or aircraft, if the activity is performed by or pursuant to a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture in which such foreign corporation participates directly, or indirectly through a fiscally transparent entity under the income tax laws of the United States, provided that—

(i) Such activity is incidental to the international operation of ships or aircraft by the pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture, and provided that it is described in paragraph (e)(2)(i) of this section; or

(ii) Such activity would be incidental to the international operation of ships or aircraft by the foreign corporation, or fiscally transparent entity if it performed such activity itself, and provided the foreign corporation is engaged or the fiscally transparent entity would be considered engaged if it were a foreign corporation in the operation of ships or aircraft under paragraph (e)(1) of this section.

(h) *Equivalent exemption*—(1) *General rule.* A foreign country grants an equivalent exemption when it exempts from taxation income from the international operation of ships or aircraft derived by corporations organized in the United States. Whether a foreign country provides an equivalent exemption must be determined separately with respect to each category of income, as provided in paragraph (h)(2) of this section. An equivalent

exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa. For rules regarding foreign corporations organized in countries that provide exemptions only through an income tax convention, see paragraph (h)(3) of this section. An equivalent exemption may exist where the foreign country—

(i) Generally imposes no tax on income, including income from the international operation of ships or aircraft;

(ii) Specifically provides a domestic law tax exemption for income derived from the international operation of ships or aircraft, either by statute, decree, or otherwise; or

(iii) Exchanges diplomatic notes with the United States, or enters into an agreement with the United States, that provides for a reciprocal exemption for purposes of section 883.

(2) *Determining equivalent exemptions for each category of income.* Whether a foreign country grants an equivalent exemption must be determined separately with respect to income from the international operation of ships and income from the international operation of aircraft for each category of income listed in paragraphs (h)(2)(i) through (v), (vii), and (viii) of this section. If an exemption is unavailable in the foreign country for a particular category of income, the foreign country is not considered to grant an equivalent exemption with respect to that category of income. Income in that category is not considered to be the subject of an equivalent exemption and, thus, is not eligible for exemption from income tax in the United States, even though the foreign country may grant an equivalent exemption for other categories of income. With respect to paragraph (h)(2)(vi) of this section, a foreign country may be considered to grant an equivalent exemption for one or more types of income described in paragraph (g)(1) of this section. The following categories of income derived from the international operation of ships or aircraft may be exempt from United States income tax if an equivalent exemption is available—

(i) Income from the carriage of passengers and cargo;

(ii) Time or voyage (full) charter income of a ship or wet lease income of an aircraft;

(iii) Bareboat charter income of a ship or dry charter income of an aircraft;

(iv) Incidental bareboat charter income or incidental dry lease income;

(v) Incidental container-related income;

(vi) Income incidental to the international operation of ships or aircraft other than incidental income described in paragraphs (h)(2)(iv) and (v) of this section;

(vii) Capital gains derived by a qualified foreign corporation engaged in the international operation of ships or aircraft from the sale, exchange or other disposition of a ship, aircraft, container or related equipment or other moveable property used by that qualified foreign corporation in the international operation of ships or aircraft; and

(viii) Income from participation in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement, international operating agency, or other joint venture described in paragraph (e)(2) of this section.

(3) *Special rules with respect to income tax conventions*— (i) *General rule.* Except as provided in paragraph (h)(3)(ii) of this section, if a corporation is organized in a foreign country that provides an exemption only through an income tax convention with the United States, the foreign corporation is not organized in a foreign country that grants an equivalent exemption. Rather, the foreign corporation must satisfy the terms of that convention to receive a benefit under the convention, and the foreign corporation may not claim an exemption under section 883. If the corporation is organized in a foreign country that offers an exemption under an income tax convention and also by some other means, such as by diplomatic note or domestic statutory law, the foreign corporation may choose annually whether to claim an exemption under section 883 based upon the equivalent exemption provided by such other means or under the income tax convention. However, if a corporation chooses to claim an exemption under an income tax convention under the preceding sentence, it may simultaneously claim an exemption under section 883 with respect to any category of income listed in paragraphs (h)(2)(i) through (v), (vii), and (viii) of this section and to any type of income described in paragraph (h)(2)(vi) of this section, but only to the extent that such income also is exempt under the income tax convention. Any such choice will apply with respect to all qualified income of the corporation from the international operation of ships or aircraft and cannot be made separately with respect to different categories of such income. If a foreign corporation bases its claim for an exemption on section 883, the foreign corporation must satisfy all of the requirements of this section to qualify for an exemption from U.S. income tax. See § 1.883–4(b)(3) for rules regarding satisfying the ownership test of paragraph (c)(2) of this section using shareholders resident in a foreign country that offers an exemption under an income tax convention.

(ii) *Participation in certain joint ventures.* Notwithstanding paragraph (h)(3)(i) of this section, if a corporation is organized in a foreign country that provides an exemption only through an income tax convention with the United States, the foreign corporation will be treated as organized in a foreign country that grants an equivalent exemption under section 883 with respect to a category of income derived through participation, directly or indirectly, in a pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture described in paragraph (e)(2) of this section, but only where treaty benefits would be available under the treaty but for the treatment of the pool, partnership, strategic alliance, joint operating agreement, code-sharing arrangement or other joint venture as not fiscally transparent with respect to that category of income under the income tax laws of the foreign country in which the foreign corporate interest holder is organized for purposes of § 1.894–1(d)(3)(iii)(A).

(iii) *Independent interpretation of income tax conventions.* Nothing in this section and §§ 1.883–2 through 1.883–5 affects the rights or obligations under any income tax convention. The definitions provided in this section and §§ 1.883–2 through 1.883–5 shall neither give meaning to similar terms used in income tax conventions nor provide guidance regarding the scope of any exemption provided by such conventions, unless an income tax convention that entered into force after August 26, 2003 or its legislative history explicitly refers to section 883 and guidance thereunder for its meaning.

(4) *Exemptions not qualifying as equivalent exemptions*—(i) *General rule.* Certain types of exemptions provided to corporations organized in the United States by foreign countries do not satisfy the equivalent exemption requirements of this section. Paragraphs (h)(4)(ii) through (vii) of this section provide descriptions of some of the types of exemptions that do not qualify as equivalent exemptions for purposes of this section.

(ii) *Reduced tax rate or time limited exemption.* The exemption granted by the foreign country's law or income tax convention must be a complete exemption. The exemption may not constitute merely a reduction to a

nonzero rate of tax levied against the income of corporations organized in the United States derived from the international operation of ships or aircraft or a temporary reduction to a zero rate of tax, such as in the case of a tax holiday.

(iii) *Inbound or outbound freight tax.* With respect to the carriage of cargo, the foreign country must provide an exemption from tax for income from transporting freight both inbound and outbound. For example, a foreign country that imposes tax only on outbound freight will not be treated as granting an equivalent exemption for income from transporting freight inbound into that country.

(iv) *Exemptions for limited types of cargo.* A foreign country must provide an exemption from tax for income from transporting all types of cargo. For example, if a foreign country were generally to impose tax on income from the international carriage of cargo but were to provide a statutory exemption for income from transporting agricultural products, the foreign country would not be considered to grant an equivalent exemption with respect to income from the international carriage of cargo, including agricultural products.

(v) *Territorial tax systems.* A foreign country with a territorial tax system will be treated as granting an equivalent exemption if it treats all income derived from the international operation of ships or aircraft derived by a U.S. corporation as an entirely foreign source and therefore not subject to tax, including income derived from a voyage or flight that begins or ends in that foreign country.

(vi) *Countries that tax on a residence basis.* A foreign country that provides an equivalent exemption to corporations organized in the United States but also imposes a residence-based tax on certain corporations organized in the United States may nevertheless be considered to grant an equivalent exemption if the residence-based tax is imposed only on a corporation organized in the United States that maintains its center of management and control or other comparable attributes in that foreign country. If the residence-based tax is imposed on corporations organized in the United States and engaged in the international operation of ships or aircraft that are not managed and controlled in that foreign country, the foreign country shall not be treated as a qualified foreign country and shall not be considered to grant an equivalent exemption for purposes of this section.

(vii) *Exemptions within categories of income.* With respect to paragraphs (h)(2)(i) through (v), (vii), and (viii) of this section, a foreign country must provide an exemption from tax for all income in a category of income, as defined in paragraph (h)(2) of this section. For example, a country that exempts income from the bareboat charter of passenger aircraft but not the bareboat charter of cargo aircraft does not provide an equivalent exemption. However, an equivalent exemption may be available for income derived from the international operation of ships even though income derived from the international operation of aircraft may not be exempt, and vice versa. With respect to paragraph (h)(2)(vi) of this section, a foreign country may be considered to grant an equivalent exemption for one or more types of income described in paragraph (g)(1) of this section.

(i) *Treatment of possessions.* For purposes of this section, a possession of the United States will be treated as a foreign country. A possession of the United States will be considered to grant an equivalent exemption and will be treated as a qualified foreign country if it applies a mirror system of taxation. If a possession does not apply a mirror system of taxation, the possession may nevertheless be a qualified foreign country if, for example, it provides for an equivalent exemption through its internal law. A possession applies the mirror system of taxation if the U.S. Internal Revenue Code of 1986, as amended, applies in the possession with the name of the possession used instead of "United States" where appropriate.

(j) *Expenses related to qualified income.* If a qualified foreign corporation derives qualified income from the international operation of ships or aircraft as well as income that is not qualified income, and the nonqualified income is effectively connected with the conduct of a trade or business within the United States, the foreign corporation may not deduct from such nonqualified income any amount otherwise allowable as a deduction from qualified income, if that qualified income is excluded under this section. See section 265(a)(1).

■ **Par. 4.** Sections 1.883–2 through 1.883–5 are added to read as follows:

§ 1.883–2 Treatment of publicly-traded corporations.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883–1(c)(2) if it is considered a publicly-traded corporation and satisfies the substantiation and reporting requirements of paragraphs (e) and (f) of this section. To be considered a publicly-traded corporation, the stock of the foreign corporation must be primarily traded and regularly traded, as defined in paragraphs (c) and (d) of this section, respectively, on one or more established securities markets, as defined in paragraph (b) of this section, in either the United States or any qualified foreign country.

(b) *Established securities market*—(1) *General rule.* For purposes of this section, the term *established securities market* means, for any taxable year—

(i) A foreign securities exchange that is officially recognized, sanctioned, or supervised by a governmental authority of the qualified foreign country in which the market is located, and has an annual value of shares traded on the exchange exceeding $1 billion during each of the three calendar years immediately preceding the beginning of the taxable year;

(ii) A national securities exchange that is registered under section 6 of the Securities Act of 1934 (15 U.S.C. 78f);

(iii) A United States over-the-counter market, as defined in paragraph (b)(4) of this section;

(iv) Any exchange designated under a Limitation on Benefits article in a United States income tax convention; and

(v) Any other exchange that the Secretary may designate by regulation or otherwise.

(2) *Exchanges with multiple tiers.* If an exchange in a foreign country has more than one tier or market level on which stock may be separately listed or traded, each such tier shall be treated as a separate exchange.

(3) *Computation of dollar value of stock traded.* For purposes of paragraph (b)(1)(i) of this section, the value in U.S. dollars of shares traded during a calendar year shall be determined on the basis of the dollar value of such shares traded as reported by the International Federation of Stock Exchanges located in Paris, or, if not so reported, then by converting into U.S. dollars the aggregate value in local currency of the shares traded using an exchange rate equal to the average of the spot rates on the last day of each month of the calendar year.

(4) *Over-the-counter market.* An over-the-counter market is any market reflected by the existence of an interdealer quotation system. An interdealer quotation system is any system of general circulation to brokers and dealers that regularly disseminates quotations of stocks and securities by identified brokers or dealers, other than by quotation sheets that are prepared and distributed by a broker or dealer in the regular course of business and that

contain only quotations of such broker or dealer.

(5) *Discretion to determine that an exchange does not qualify as an established securities market.* The Commissioner may determine that a securities exchange that otherwise meets the requirements of paragraph (b) of this section does not qualify as an established securities market, if—

(i) The exchange does not have adequate listing, financial disclosure, or trading requirements (or does not adequately enforce such requirements); or

(ii) There is not clear and convincing evidence that the exchange ensures the active trading of listed stocks.

(c) *Primarily traded.* For purposes of this section, stock of a corporation is primarily traded in a country on one or more established securities markets, as defined in paragraph (b) of this section, if, with respect to each class of stock described in paragraph (d)(1)(i) of this section (relating to classes of stock relied on to meet the regularly traded test)—

(1) The number of shares in each such class that are traded during the taxable year on all established securities markets in that country exceeds.

(2) The number of shares in each such class that are traded during that year on established securities markets in any other single country.

(d) *Regularly traded*—(1) *General rule.* For purposes of this section, stock of a corporation is regularly traded on one or more established securities markets, as defined in paragraph (b) of this section, if—

(i) One or more classes of stock of the corporation that, in the aggregate, represent more than 50 percent of the total combined voting power of all classes of stock of such corporation entitled to vote and of the total value of the stock of such corporation are listed on such market or markets during the taxable year; and

(ii) With respect to each class relied on to meet the more than 50 percent requirement of paragraph (d)(1)(i) of this section—

(A) Trades in each such class are effected, other than in *de minimis* quantities, on such market or markets on at least 60 days during the taxable year (or 1/6 of the number of days in a short taxable year); and

(B) The aggregate number of shares in each such class that are traded on such market or markets during the taxable year are at least 10 percent of the average number of shares outstanding in that class during the taxable year (or, in the case of a short taxable year, a percentage that equals at least 10 percent of the average number of shares outstanding in that class during the taxable year multiplied by the number of days in the short taxable year, divided by 365).

(2) *Classes of stock traded on a domestic established securities market treated as meeting trading requirements.* A class of stock that is traded during the taxable year on an established securities market located in the United States shall be considered to meet the trading requirements of paragraph (d)(1)(ii) of this section if the stock is regularly quoted by dealers making a market in the stock. A dealer makes a market in a stock only if the dealer regularly and actively offers to, and in fact does, purchase the stock from, and sell the stock to, customers who are not related persons (as defined in section 954(d)(3)) with respect to the dealer in the ordinary course of a trade or business.

(3) *Closely-held classes of stock not treated as meeting trading requirements*—(i) *General rule.* Except as provided in paragraph (d)(3)(ii) of this section, a class of stock of a foreign corporation that otherwise meets the requirements of paragraph (d)(1) or (2) of this section shall not be treated as meeting such requirements for a taxable year if, for more than half the number of days during the taxable year, one or more persons who own at least 5 percent of the vote and value of the outstanding shares of the class of stock, as determined under paragraph (d)(3)(iii) of this section (each a 5-percent shareholder), own, in the aggregate, 50 percent or more of the vote and value of the outstanding shares of the class of stock. If one or more 5-percent shareholders own, in the aggregate, 50 percent or more of the vote and value of the outstanding shares of the class of stock, such shares held by the 5-percent shareholders will constitute a closely-held block of stock.

(ii) *Exception.* Paragraph (d)(3)(i) of this section shall not apply to a class of stock if the foreign corporation can establish that qualified shareholders, as defined in § 1.883–4(b), applying the attribution rules of § 1.883–4(c), own sufficient shares in the closely-held block of stock to preclude nonqualified shareholders in the closely-held block of stock from owning 50 percent or more of the total value of the class of stock of which the closely-held block is a part for more than half the number of days during the taxable year. Any shares that are owned, after application of the attribution rules in § 1.883–4(c), by a qualified shareholder shall not also be treated as owned by a nonqualified shareholder in the chain of ownership for purposes of the preceding sentence. A foreign corporation must obtain the documentation described in § 1.883–4(d) from the qualified shareholders relied upon to satisfy this exception. However, no person shall be treated for purposes of this paragraph (d)(3) as a qualified shareholder if such person holds an interest in the class of stock directly or indirectly through bearer shares.

(iii) *Five-percent shareholders*—(A) *Related persons.* Solely for purposes of determining whether a person is a 5-percent shareholder, persons related within the meaning of section 267(b) shall be treated as one person. In determining whether two or more corporations are members of the same controlled group under section 267(b)(3), a person is considered to own stock owned directly by such person, stock owned through the application of section 1563(e)(1), and stock owned through the application of section 267(c). In determining whether a corporation is related to a partnership under section 267(b)(10), a person is considered to own the partnership interest owned directly by such person and the partnership interest owned through the application of section 267(e)(3).

(B) *Investment companies.* For purposes of this paragraph (d)(3), an investment company registered under the Investment Company Act of 1940, as amended (54 Stat. 789), shall not be treated as a 5-percent shareholder.

(4) *Anti-abuse rule.* Trades between or among related persons described in section 267(b), as modified by paragraph (d)(3)(iii) of this section, and trades conducted in order to meet the requirements of paragraph (d)(1) of this section shall be disregarded. A class of stock shall not be treated as meeting the trading requirements of paragraph (d)(1) of this section if there is a pattern of trades conducted to meet the requirements of that paragraph. For example, trades between two persons that occur several times during the taxable year may be treated as an arrangement or a pattern of trades conducted to meet the trading requirements of paragraph (d)(1)(ii) of this section.

(5) *Example.* The closely-held test in paragraph (d)(3) of this section is illustrated by the following example:

Example. Closely-held exception—(i) *Facts.* X is a foreign corporation organized in a qualified foreign country and engaged in the international operation of ships. X has one class of stock, which is primarily traded on an established securities market in the qualified foreign country. The stock of X meets the regularly traded requirements of paragraph (d)(1)(ii) of this section without

regard to paragraph (d)(3)(i) of this section. A, B, C and D are four members of the corporation's founding family who each own, during the entire taxable year, 25 percent of the stock of Hold Co., a company that issues registered shares. Hold Co., in turn, owns 60 percent of the stock of X during the entire taxable year. The remaining 40 percent of the stock of X is not owned by any 5-percent shareholder, as determined under paragraph (d)(3)(iii) of this section. A, B, and C are not residents of a qualified foreign country, but D is a resident of a qualified foreign country.

(ii) *Analysis.* Because Hold Co. owns 60 percent of the stock of X for more than half the number of days during the taxable year, Hold Co. is a 5-percent shareholder that owns 50 percent or more of the value of the stock of X. Thus, the shares owned by Hold Co. constitute a closely-held block of stock. Under paragraph (d)(3)(i) of this section, the stock of X will not be regularly traded within the meaning of paragraph (d)(1) of this section unless X can establish, under paragraph (d)(3)(ii) of this section, that qualified shareholders within the closely-held block of stock own sufficient shares in the closely-held block of stock to preclude nonqualified shareholders in the closely-held block of stock from owning 50 percent or more of the value of the outstanding shares in the class of stock for more than half the number of days during the taxable year. A, B, and C are not qualified shareholders within the meaning of § 1.883–4(b) because they are not residents of a qualified foreign country, but D is a resident of a qualified foreign country and therefore is a qualified shareholder. D owns 15 percent of the outstanding shares of X through Hold Co. (25 percent × 60 percent = 15 percent) while A, B, and C in the aggregate own 45 percent of the outstanding shares of X through Hold Co.. D, therefore, owns sufficient shares in the closely-held block of stock to preclude the nonqualified shareholders in the closely-held block of stock, A, B and C, from owning 50 percent or more of the value of the class of stock (60 percent − 15 percent = 45 percent) of which the closely-held block is a part. Provided that X obtains from D the documentation described in § 1.883–4(d), X's sole class of stock meets the exception in paragraph (d)(3)(ii) of this section and will not be disqualified from the regularly traded test by virtue of paragraph (d)(3)(i) of this section.

(e) *Substantiation that a foreign corporation is publicly traded*—(1) *General rule.* A foreign corporation that relies on the publicly traded test of this section to meet the stock ownership test of § 1.883–1(c)(2) must substantiate that the stock of the foreign corporation is primarily and regularly traded on one or more established securities markets, as that term is defined in paragraph (b) of this section. If one of the classes of stock on which the foreign corporation relies to meet this test is closely-held within the meaning of paragraph (d)(3)(i) of this section, the foreign corporation must obtain an ownership statement described in § 1.883–4(d) from each qualified shareholder and intermediary that it relies upon to satisfy the exception to the closely-held test, but only to the extent such statement would be required if the foreign corporation were relying on the qualified shareholder stock ownership test of § 1.883–4 with respect to those shares of stock. The foreign corporation must also maintain and provide to the Commissioner upon request a list of its shareholders of record and any other relevant information known to the foreign corporation supporting its entitlement to an exemption under this section.

(2) *Availability and retention of documents for inspection.* The documentation described in paragraph (e)(1) of this section must be retained by the corporation seeking qualified foreign corporation status until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such time and such place as the Commissioner may request in writing.

(f) *Reporting requirements.* A foreign corporation relying on this section to satisfy the stock ownership test of § 1.883–1(c)(2) must provide the following information in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120–F, "U.S. Income Tax Return of a Foreign Corporation," for the taxable year. The information must be current as of the end of the corporation's taxable year and must include the following—

(1) The name of the country in which the stock is primarily traded;

(2) The name of the established securities market or markets on which the stock is listed;

(3) A description of each class of stock relied upon to meet the requirements of paragraph (d) of this section, including the number of shares issued and outstanding as of the close of the taxable year;

(4) For each class of stock relied upon to meet the requirements of paragraph (d) of this section, if one or more 5-percent shareholders, as defined in paragraph (d)(3)(i) of this section, own in the aggregate 50 percent or more of the vote and value of the outstanding shares of that class of stock for more than half the number of days during the taxable year—

(i) The days during the taxable year of the corporation in which the stock was closely-held without regard to the exception in paragraph (d)(3)(ii) of this section and the percentage of the vote and value of the class of stock that is owned by 5-percent shareholders during such days;

(ii) For each qualified shareholder who owns or is treated as owning stock in the closely-held block upon whom the corporation intends to rely to satisfy the exception to the closely-held test of paragraph (d)(3)(ii) of this section—

(A) The name of each such shareholder;

(B) The percentage of the total value of the class of stock held by each such shareholder and the days during which the stock was held;

(C) The address of record of each such shareholder; and

(D) The country of residence of each such shareholder, determined under § 1.883–4(b)(2) (residence of individual shareholders) or § 1.883–4(d)(3) (special rules for residence of certain shareholders); and

(5) Any other relevant information specified by Form 1120–F and its accompanying instructions.

§ 1.883–3 Treatment of controlled foreign corporations.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883–1(c)(2) if it is a controlled foreign corporation (CFC), as defined in section 957(a), and satisfies the income inclusion test in paragraph (b) of this section and the substantiation and reporting requirements of paragraphs (c) and (d) of this section, respectively. A CFC that fails the income inclusion test of paragraph (b) of this section will not be a qualified foreign corporation unless it meets either the publicly traded test of § 1.883–2(a) or the qualified shareholder stock ownership test of § 1.883–4(a).

(b) *Income inclusion test*—(1) *General rule.* A CFC shall not be considered to satisfy the requirements of paragraph (a) of this section unless more than 50 percent of the CFC's adjusted net foreign base company income (as defined in § 1.954–1(d) and as increased or decreased by section 952(c)) derived from the international operation of ships or aircraft is includible in the gross income of one or more United States citizens, individual residents of the United States or domestic corporations, pursuant to section 951(a)(1)(A) or another provision of the Internal Revenue Code, for the taxable years of such persons in which the taxable year of the CFC ends.

(2) *Examples.* The income inclusion test of paragraph (b)(1) of this section is illustrated in the following examples:

Example 1. Ship Co is a CFC organized in a qualified foreign country. All of Ship Co's income is foreign base company shipping income that is derived from the international

operation of ships. All of its shares are owned by a domestic partnership that is a United States shareholder for purposes of section 951(b). All of the partners in the domestic partnership are citizens and residents of foreign countries. Ship Co fails the income inclusion test of paragraph (b)(1) of this section because no amount of Ship Co's subpart F income that is adjusted net foreign base company income derived from the international operation of ships is includible under any provision of the Internal Revenue Code in the gross income of one or more United States citizens, individual residents of the United States or domestic corporations. Therefore, Ship Co must satisfy the qualified shareholder stock ownership test of § 1.883–4(a), in order to satisfy the stock ownership test of § 1.883–1(c)(2) and to be considered a qualified foreign corporation.

Example 2. Ship Co is a CFC organized in a qualified foreign country. All of Ship Co's income is foreign base company shipping income that is derived from the international operation of ships. Corp A, a domestic corporation, owns 50 percent of the value of the stock of Ship Co. X, a domestic partnership, owns the remaining 50 percent of the value of the stock of Ship Co. A United States citizen is a partner owning a 10 percent income interest in X. Individual partners owning 90 percent of X are citizens and residents of foreign countries. There are no special allocations of partnership income. Ship Co satisfies the income inclusion test of paragraph (b)(1) of this section because 55 percent (50 percent + (10 percent × 50 percent)) of the subpart F income that is adjusted net foreign base company income derived from the international operation of ships would be includible in the gross income of U.S. citizens, individual residents of the United States or domestic corporations. If Ship Co satisfies the substantiation and reporting requirements of paragraphs (c) and (d) of this section, it will meet the stock ownership test of § 1.883–1(c)(2).

(c) *Substantiation of CFC stock ownership*—(1) *General rule.* A foreign corporation that relies on this section to satisfy the stock ownership test of § 1.883–1(c)(2) must substantiate all the facts necessary to satisfy the Commissioner that it qualifies under the income inclusion test of paragraph (b)(1) of this section. For purposes of the income inclusion test, if the CFC has one or more United States shareholders, as defined in section 951(b), that are domestic partnerships, estates, or trusts, the pro rata share of the subpart F income includible in the gross income of such shareholders will only be treated as includible in the income of any partner, beneficiary or other interest owner of such United States shareholder that is a United States citizen, resident of the United States or a domestic corporation if the CFC obtains the documentation described in paragraph (c)(2) of this section.

(2) *Documentation from certain United States shareholders*—(i) *General rule.* A CFC only meets the documentation requirements of paragraph (c)(1) of this section if the CFC obtains the following documentation with respect to each United States shareholder, as defined in section 951(b), that is a partnership, estate or trust, for the taxable year of the shareholder which ends with or within the taxable year of the CFC—

(A) A copy of the Form 5471, "Information Return of U.S. Persons with Respect to Certain Foreign Corporations," filed with the controlling United States shareholder's return;

(B) A written statement, signed under penalties of perjury by a person authorized to sign the U.S. Federal tax return of each such United States shareholder, providing the following information with respect to each United States citizen, individual resident of the United States or domestic corporation that is a partner, beneficiary or other interest owner of each such United States shareholder and upon whom the CFC intends to rely to satisfy the income inclusion test of paragraph (b)(1) of this section—

(*1*) The name, address from the CFC's corporate records (that is a specific street address and not a nonresidential address, such as a post office box or in care of a financial intermediary or stock transfer agent), and taxpayer identification number of the interest owner;

(*2*) The interest owner's proportionate interest in the United States shareholder that reflects that owner's share of subpart F income required to be included in income on such interest owner's U.S. Federal income tax return;

(*3*) The percentage of the value of shares of the CFC owned by each such interest owner pursuant to the attribution rules in § 1.883–4(c); and

(C) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(ii) *Availability and retention of documents for inspection.* The documentation described in paragraph (c)(2)(i) of this section must be retained by the corporation seeking qualified foreign corporation status (the CFC) until the expiration of the statute of limitations for the taxable year of the CFC to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such place as the Commissioner may request in writing.

(d) *Reporting requirements.* A foreign corporation that relies on the CFC test of this section to satisfy the stock ownership test of § 1.883–1(c)(2) must provide the following information in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120-F, "U.S. Income Tax Return of a Foreign Corporation," for the taxable year. The information must be current as of the end of the corporation's taxable year and must include the following—

(1) The name, address from the CFC's corporate records (that is a specific street address and not a nonresidential address, such as a post office box or in care of a financial intermediary or stock transfer agent), and taxpayer identification number of each United States shareholder, as defined in section 951(b), of the CFC;

(2) The percentage of the vote and value of the shares of the CFC that is owned by each United States shareholder, as defined in section 951(b);

(3) If one or more of the United States shareholders is a domestic partnership, estate or trust, the name, address, taxpayer identification number and the percentage of the value of shares of the CFC owned (as determined under § 1.883–4(c)) by each interest owner of each such United States shareholder that is a United States citizen, individual resident of the United States or a domestic corporation; and

(4) Any other relevant information specified by Form 1120-F and its accompanying instructions.

§ 1.883–4 Qualified shareholder stock ownership test.

(a) *General rule.* A foreign corporation satisfies the stock ownership test of § 1.883–1(c)(2) if more than 50 percent of the value of its outstanding shares is owned, or treated as owned by applying the attribution rules of paragraph (c) of this section, for at least half of the number of days in the foreign corporation's taxable year by one or more qualified shareholders, as defined in paragraph (b) of this section. A shareholder may be a qualified shareholder with respect to one category of income while not being a qualified shareholder with respect to another. A foreign corporation will not be considered to satisfy the stock ownership test of § 1.883–1(c)(2) pursuant to this section unless the foreign corporation meets the substantiation and reporting requirements of paragraphs (d) and (e) of this section.

(b) *Qualified shareholder*—(1) *General rule.* A shareholder is a qualified shareholder only if the shareholder—

(i) With respect to the category of income for which the foreign

corporation is seeking an exemption, is—

(A) An individual who is a resident, as described in paragraph (b)(2) of this section, of a qualified foreign country;

(B) The government of a qualified foreign country (or a political subdivision or local authority of such country);

(C) A foreign corporation that is organized in a qualified foreign country and meets the publicly traded test of § 1.883–2(a);

(D) A not-for-profit organization described in paragraph (b)(4) of this section that is not a pension fund as defined in paragraph (b)(5) of this section and that is organized in a qualified foreign country;

(E) An individual beneficiary of a pension fund (as defined in paragraph (b)(5)(iv) of this section) that is administered in or by a qualified foreign country, who is treated as a resident under paragraph (d)(3)(iii) of this section, of a qualified foreign country; or

(F) A shareholder of a foreign corporation that is an airline covered by a bilateral Air Services Agreement in force between the United States and the qualified foreign country in which the airline is organized, provided the United States has not waived the ownership requirement in the Air Services Agreement, or that the ownership requirement has not otherwise been made ineffective;

(ii) Does not own its interest in the foreign corporation through bearer shares, either directly or by applying the attribution rules of paragraph (c) of this section; and

(iii) Provides to the foreign corporation the documentation required in paragraph (d) of this section and the foreign corporation meets the reporting requirements of paragraph (e) of this section with respect to such shareholder.

(2) *Residence of individual shareholders*—(i) *General rule.* An individual described in paragraph (b)(1)(i)(A) of this section is a resident of a qualified foreign country only if the individual is fully liable to tax as a resident in such country (e.g., an individual who is liable to tax on a remittance basis in a foreign country will not be treated as a resident of that country unless all residents of that country are taxed on a remittance basis only) and, in addition—

(A) The individual has a tax home, within the meaning of paragraph (b)(2)(ii) of this section, in that qualified foreign country for 183 days or more of the taxable year; or

(B) The individual is treated as a resident of a qualified foreign country based on special rules pursuant to paragraph (d)(3) of this section.

(ii) *Tax home.* For purposes of this section, an individual's tax home is considered to be located at the individual's regular or principal (if more than one regular) place of business. If the individual has no regular or principal place of business because of the nature of his business (or lack of a business), then the individual's tax home is located at his regular place of abode in a real and substantial sense. If an individual has no regular or principal place of business and no regular place of abode in a real and substantial sense in a qualified foreign country for 183 days or more of the taxable year, that individual does not have a tax home for purposes of this section. A foreign estate or trust, as defined in section 7701(a)(31), does not have a tax home for purposes of this section. See paragraph (c)(3) of this section for alternative rules in the case of trusts or estates.

(3) *Certain income tax convention restrictions applied to shareholders.* For purposes of paragraph (b)(1) of this section, a shareholder described in paragraph (b)(1) of this section may be considered a resident of, or organized in, a qualified foreign country if that foreign country provides an exemption by means of an income tax convention with the United States, but only if the shareholder demonstrates that it is treated as a resident of that country under the convention and qualifies for benefits under any Limitation on Benefits article, and that the convention provides an exemption for the relevant category of income. If the convention has a requirement in the shipping and air transport article other than residence, such as place of registration or documentation of the ship or aircraft, the shareholder is not required to demonstrate that the corporation seeking qualified foreign corporation status could satisfy any such additional requirement.

(4) *Not-for-profit organizations.* The term *not-for-profit organization* means an organization that meets the following requirements—

(i) It is a corporation, association taxable as a corporation, trust, fund, foundation, league or other entity operated exclusively for religious, charitable, educational, or recreational purposes, and not organized for profit;

(ii) It is generally exempt from tax in its country of organization by virtue of its not-for-profit status; and

(iii) Either—

(A) More than 50 percent of its annual support is expended on behalf of individuals described in paragraph (b)(1)(i)(A) of this section (see paragraph (d)(3)(v) of this section for special rules to substantiate the residence of individual beneficiaries of not-for-profit organizations) and on behalf of U.S. exempt organizations that have received determination letters under section 501(c)(3); or

(B) More than 50 percent of its annual support is derived from individuals described in paragraph (b)(1)(i)(A) of this section (see paragraph (d)(3)(v) of this section for special rules to substantiate the residence of individual supporters of not-for-profit organizations).

(5) *Pension funds*—(i) *Pension fund defined.* The term *pension fund* shall mean a government pension fund or a nongovernment pension fund, as those terms are defined, respectively, in paragraphs (b)(5)(ii) and (iii) of this section, that is a trust, fund, foundation, or other entity that is established exclusively for the benefit of employees or former employees of one or more employers, the principal purpose of which is to provide retirement, disability, and death benefits to beneficiaries of such entity and persons designated by such beneficiaries in consideration for prior services rendered.

(ii) *Government pension funds.* A government pension fund is a pension fund that is a controlled entity of a foreign sovereign within the principles of § 1.892–2T(c)(1) (relating to pension funds established for the benefit of employees or former employees of a foreign government).

(iii) *Nongovernment pension funds.* A nongovernment pension fund is a pension fund that—

(A) Is administered in a foreign country and is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country;

(B) Is generally exempt from income taxation in its country of administration;

(C) Has 100 or more beneficiaries; and

(D) The trustees, directors or other administrators of which pension fund provide the documentation required in paragraph (d) of this section.

(iv) *Beneficiary of a pension fund.* The term *beneficiary of a pension fund* shall mean any person who has made contributions to a pension fund, as that term is defined in paragraph (b)(5)(i) of this section, or on whose behalf contributions have been made, and who is currently receiving retirement,

disability, or death benefits from the pension fund or can reasonably be expected to receive such benefits in the future, whether or not the person's right to receive benefits from the fund has vested. See paragraph (c)(7) of this section for rules regarding the computation of stock ownership through nongovernment pension funds.

(c) *Rules for determining constructive ownership*—(1) *General rules for attribution.* For purposes of applying paragraph (a) of this section and the exception to the closely-held test in § 1.883–2(d)(3)(ii), stock owned by or for a corporation, partnership, trust, estate, or mutual insurance company or similar entity shall be treated as owned proportionately by its shareholders, partners, beneficiaries, grantors, or other interest holders, as provided in paragraphs (c)(2) through (7) of this section. The proportionate interest rules of this paragraph (c) shall apply successively upward through a chain of ownership, and a person's proportionate interest shall be computed for the relevant days or period taken into account in determining whether a foreign corporation satisfies the requirements of paragraph (a) of this section. Stock treated as owned by a person by reason of this paragraph (c) shall be treated as actually owned by such person for purposes of this section. An owner of an interest in an association taxable as a corporation shall be treated as a shareholder of such association for purposes of this paragraph (c). No attribution will apply to an interest held directly or indirectly through bearer shares.

(2) *Partnerships*—(i) *General rule.* A partner shall be treated as having an interest in stock of a foreign corporation owned by a partnership in proportion to the least of—

(A) The partner's percentage distributive share of the partnership's dividend income from the stock;

(B) The partner's percentage distributive share of gain from disposition of the stock by the partnership; or

(C) The partner's percentage distributive share of the stock (or proceeds from the disposition of the stock) upon liquidation of the partnership.

(ii) *Partners resident in the same country.* For purposes of this paragraph, all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country shall be treated as one partner. Thus, the percentage distributive shares of dividend income, gain and liquidation rights of all qualified shareholders that are partners in a partnership and that are residents of, or organized in, the same qualified foreign country are aggregated prior to determining the least of the three percentages set out in paragraph (c)(2)(i) of this section. For the meaning of the term *resident*, see paragraph (b)(2) of this section.

(iii) *Examples.* The rules of paragraph (c)(2)(ii) of this section are illustrated by the following examples:

Example 1. Stock held solely by qualified shareholders through a partnership. Country X grants an equivalent exemption. A and B are individual residents of Country X and are qualified shareholders within the meaning of paragraph (b)(1) of this section. A and B are the sole partners of Partnership P. P's only asset is the stock of Corporation Z, a Country X corporation seeking a reciprocal exemption under this section. A's distributive share of P's income and gain on the disposition of P's assets is 80 percent, but A's distributive share of P's assets (or the proceeds therefrom) on P's liquidation is 20 percent. B's distributive share of P's income and gain is 20 percent and B is entitled to 80 percent of the assets (or proceeds therefrom) on P's liquidation. Under the attribution rules of paragraph (c)(2)(ii) of this section, A and B will be treated as a single partner owning in the aggregate 100 percent of the stock of Z owned by P.

Example 2. Stock held by both qualified and nonqualified shareholders through a partnership. Assume the same facts as in *Example 1* except that C, an individual who is not a resident of a qualified foreign country, is also a partner in P and that C's distributive share of P's income is 60 percent. The distributive shares of A and B are the same as in *Example 1*, except that A's distributive share of income is 20 percent. Under the attribution rules of paragraph (c)(2)(ii) of this section, qualified shareholders A and B will be treated as a single partner owning in the aggregate 40 percent of the stock of Z owned by P (i.e., the lowest aggregate percentage of A and B's distributive shares of dividend income (40 percent), gain (100 percent), and liquidation rights (100 percent) with respect to the Z stock). Thus, only 40 percent of the Z stock is treated as owned by qualified shareholders.

Example 3. Stock held through tiered partnerships. Country X grants an equivalent exemption. A and B are individual residents of Country X and are qualified shareholders within the meaning of paragraph (b)(1) of this section. A and B are the sole partners of Partnership P. P is a partner in Partnership P1, which owns the stock of Corporation Z, a Country X corporation seeking a reciprocal exemption under this section. Assume that P's distributive share of the dividend income, gain and liquidation rights with respect to the Z stock held by P1 is 40 percent. Assume that of the remaining partners of P1 only D is a qualified shareholder. D's distributive share of P1's dividend income and gain is 15 percent; D's distributive share of P1's assets on liquidation is 25 percent. Under the attribution rules of paragraph (c)(2)(ii) of this section, A and B, treated as a single partner, will own 40 percent of the Z stock owned by P1 (100 percent × 40 percent) and D will be treated as owning 15 percent of the Z stock owned by P1 (the least of D's dividend income (15 percent), gain (15 percent), and liquidation rights (25 percent) with respect to the Z stock). Thus, 55 percent of the Z stock owned by P1 is treated as owned by qualified shareholders.

(3) *Trusts and estates*—(i) *Beneficiaries.* In general, an individual shall be treated as having an interest in stock of a foreign corporation owned by a trust or estate in proportion to the individual's actuarial interest in the trust or estate, as provided in section 318(a)(2)(B)(i), except that an income beneficiary's actuarial interest in the trust will be determined as if the trust's only asset were the stock. The interest of a remainder beneficiary in stock will be equal to 100 percent minus the sum of the percentages of any interest in the stock held by income beneficiaries. The ownership of an interest in stock owned by a trust shall not be attributed to any beneficiary whose interest cannot be determined under the preceding sentence, and any such interest, to the extent not attributed by reason of this paragraph (c)(3)(i), shall not be considered owned by a beneficiary unless all potential beneficiaries with respect to the stock are qualified shareholders. In addition, a beneficiary's actuarial interest will be treated as zero to the extent that someone other than the beneficiary is treated as owning the stock under paragraph (c)(3)(ii) of this section. A substantially separate and independent share of a trust, within the meaning of section 663(c), shall be treated as a separate trust for purposes of this paragraph (c)(3)(i), provided that payment of income, accumulated income or corpus of a share of one beneficiary (or group of beneficiaries) cannot affect the proportionate share of income, accumulated income or corpus of another beneficiary (or group of beneficiaries).

(ii) *Grantor trusts.* A person is treated as the owner of stock of a foreign corporation owned by a trust to the extent that the stock is included in the portion of the trust that is treated as owned by the person under sections 671 through 679 (relating to grantors and others treated as substantial owners).

(4) *Corporations that issue stock.* A shareholder of a corporation that issues stock shall be treated as owning stock of a foreign corporation that is owned by such corporation on any day in a proportion that equals the value of the stock owned by such shareholder to the value of all stock of such corporation. If, however, there is an agreement, express

or implied, that a shareholder of a corporation will not receive distributions from the earnings of stock owned by the corporation, the shareholder will not be treated as owning that stock owned by the corporation.

(5) *Taxable nonstock corporations.* A taxable nonstock corporation that is entitled in its country of organization to deduct from its taxable income amounts distributed for charitable purposes may deem a recipient of such charitable distributions to be a shareholder of such taxable nonstock corporation in the same proportion as the amount that such beneficiary receives in the taxable year bears to the total income of such taxable nonstock corporation in the taxable year. Whether each such recipient is a qualified shareholder may then be determined under paragraph (b) of this section or under the special rules of paragraph (d)(3)(vii) of this section.

(6) *Mutual insurance companies and similar entities.* Stock held by a mutual insurance company, mutual savings bank, or similar entity (including an association taxable as a corporation that does not issue stock interests) shall be considered owned proportionately by the policyholders, depositors, or other owners in the same proportion that such persons share in the surplus of such entity upon liquidation or dissolution.

(7) *Computation of beneficial interests in nongovernment pension funds.* Stock held by a pension fund shall be considered owned by the beneficiaries of the fund equally on a pro-rata basis if—

(i) The pension fund meets the requirements of paragraph (b)(5)(iii) of this section;

(ii) The trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries' actuarial interest in the pension fund, the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(iii) Either—

(A) Any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are organized in the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies); or

(B) The foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or

(C) The pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions and employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(iv) The trustees, directors or other administrators provide the relevant documentation as required in paragraph (d) of this section.

(d) *Substantiation of stock ownership*—(1) *General rule.* A foreign corporation that relies on this section to satisfy the stock ownership test of § 1.883–1(c)(2), must establish all the facts necessary to satisfy the Commissioner that more than 50 percent of the value of its shares is owned, or treated as owned applying paragraph (c) of this section, by qualified shareholders. A foreign corporation cannot meet this requirement with respect to any stock that is issued in bearer form. A shareholder that holds shares in the foreign corporation either directly or indirectly in bearer form cannot be a qualified shareholder.

(2) *Application of general rule*—(i) *Ownership statements.* Except as provided in paragraph (d)(3) of this section, a person shall only be treated as a qualified shareholder of a foreign corporation if—

(A) For the relevant period, the person completes an ownership statement described in paragraph (d)(4) of this section or has a valid ownership statement in effect under paragraph (d)(2)(ii) of this section;

(B) In the case of a person owning stock in the foreign corporation indirectly through one or more intermediaries (including mere legal owners or recordholders acting as nominees), each intermediary in the chain of ownership between that person and the foreign corporation seeking qualified foreign corporation status completes an intermediary ownership statement described in paragraph (d)(4)(v) of this section or has a valid intermediary ownership statement in effect under paragraph (d)(2)(ii) of this section; and

(C) The foreign corporation seeking qualified foreign corporation status obtains the statements described in paragraphs (d)(2)(i)(A) and (B) of this section.

(ii) *Three–year period of validity.* The ownership statements required in paragraph (d)(2)(i) of this section shall remain valid until the earlier of the last day of the third calendar year following the year in which the ownership statement is signed, or the day that a change of circumstance occurs that makes any information on the ownership statement incorrect. For example, an ownership statement signed on September 30, 2000, remains valid through December 31, 2003, unless a change of circumstance occurs that makes any information on the ownership statement incorrect.

(3) *Special rules*—(i) *Substantiating residence of certain shareholders.* A foreign corporation seeking qualified foreign corporation status or an intermediary that is a direct or indirect shareholder of such foreign corporation may substantiate the residence of certain shareholders, for purposes of paragraph (b)(2)(i)(B) of this section, under one of the following special rules in paragraphs (d)(3)(ii) through (viii) of this section, in lieu of obtaining the ownership statements required in paragraph (d)(2)(i) of this section from such shareholders.

(ii) *Special rule for registered shareholders owning less than one percent of widely-held corporations.* A foreign corporation with at least 250 registered shareholders, that is not a publicly-traded corporation, as described in § 1.883–2 (a widely-held corporation), is not required to obtain an ownership statement from an individual shareholder owning less than one percent of the widely-held corporation at all times during the taxable year if the requirements of paragraphs (d)(3)(ii)(A) and (B) of this section are satisfied. If the widely-held foreign corporation is the foreign corporation seeking qualified foreign corporation status, or an intermediary that meets the documentation requirements of paragraphs (d)(4)(v)(A) and (B) of this section, the widely-held foreign corporation may treat the address of record in its ownership records as the residence of any less than one percent individual shareholder if—

(A) The individual's address of record is a specific street address and not a

nonresidential address, such as a post office box or in care of a financial intermediary or stock transfer agent; and

(B) The officers and directors of the widely-held corporation neither know nor have reason to know that the individual does not reside at that address.

(iii) *Special rule for beneficiaries of pension funds*—(A) *Government pension fund.* An individual who is a beneficiary of a government pension fund, as defined in paragraph (b)(5)(ii) of this section, may be treated as a resident of the country in which the pension fund is administered if the pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(*1*) of this section.

(B) *Nongovernment pension fund.* An individual who is a beneficiary of a nongovernment pension fund, as described in paragraph (b)(5)(iii) of this section, may be treated as a resident of the country of the beneficiary's address as it appears on the records of the fund, provided it is not a nonresidential address, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not an individual resident of such foreign country. The rules of this paragraph (d)(3)(iii)(B) shall apply only if the nongovernment pension fund satisfies the documentation requirements of paragraphs (d)(4)(v)(A) and (C)(2) of this section.

(iv) *Special rule for stock owned by publicly-traded corporations.* Any stock in a foreign corporation seeking qualified foreign corporation status that is owned by a publicly-traded corporation will be treated as owned by an individual resident in the country where the publicly-traded corporation is organized if the foreign corporation receives the statement described in paragraph (d)(4)(iii) of this section from the publicly-traded corporation and copies of any relevant ownership statements from shareholders of the publicly-traded corporation relied on to satisfy the exception to the closely-held test of § 1.883–2(d)(3)(ii), as required in paragraph (d)(2)(i) of this section.

(v) *Special rule for not-for-profit organizations.* For purposes of meeting the ownership requirements of paragraph (a) of this section, a not-for-profit organization may rely on the addresses of record of its individual beneficiaries and supporters to determine the residence of an individual beneficiary or supporter, within the meaning of paragraph (b)(2)(i)(B) of this section, to the extent required under paragraph (b)(4) of this section, provided that—

(A) The addresses of record are not nonresidential addresses such as a post office box or in care of a financial intermediary;

(B) The officers, directors or administrators of the organization do not know or have reason to know that the individual beneficiaries or supporters do not reside at that address; and

(C) The foreign corporation seeking qualified foreign corporation status receives the statement required in paragraph (d)(4)(iv) of this section from the not-for-profit organization.

(vi) *Special rule for a foreign airline covered by an air services agreement.* A foreign airline that is covered by a bilateral Air Services Agreement in force between the United States and the qualified foreign country in which the airline is organized may rely exclusively on the Air Services Agreement currently in effect and will not have to otherwise substantiate its ownership under this section, provided that the United States has not waived the ownership requirements in the agreement or that the ownership requirements have not otherwise been made ineffective. Such an airline will be treated as owned by qualified shareholders resident in the country where the foreign airline is organized.

(vii) *Special rule for taxable nonstock corporations.* Any stock in a foreign corporation seeking qualified foreign corporation status that is owned by a taxable nonstock corporation will be treated as owned, in any taxable year, by the recipients of distributions made during that taxable year, as set out in paragraph (c)(5) of this section. The taxable nonstock corporation may treat the address of record in its distribution records as the residence of any recipient if—

(A) An individual recipient's address is in a qualified foreign country and is a specific street address and not a nonresidential address, such as a post office box or in care of a financial intermediary or stock transfer agent;

(B) The address of a nonindividual recipient's principal place of business is in a qualified foreign country;

(C) The officers and directors of the taxable nonstock corporation neither know nor have reason to know that the recipients do not reside or have their principal place of business at such addresses; and

(D) The foreign corporation receives the statement described in paragraph (d)(4)(v)(D) of this section from the taxable nonstock corporation intermediary.

(viii) *Special rule for closely-held corporations traded in the United States.* To demonstrate that a class of stock is not closely-held for purposes of § 1.883–2(d)(3)(i), a foreign corporation whose stock is traded on an established securities market in the United States may rely on current Schedule 13D and Schedule 13G filings with the Securities and Exchange Commission to identify its 5-percent shareholders in each class of stock relied upon to meet the regularly traded test, without having to make any independent investigation to determine the identity of the 5-percent shareholder. However, if any class of stock is determined to be closely-held within the meaning of § 1.883–2(d)(3)(i), the publicly traded corporation cannot satisfy the requirements of § 1.883–2(e) unless it obtains sufficient documentation described in this paragraph (d) to demonstrate that the requirements of § 1.883–2(d)(3)(ii) are met with respect to the 5-percent shareholders.

(4) *Ownership statements from shareholders*—(i) *Ownership statements from individuals.* An ownership statement from an individual is a written statement signed by the individual under penalties of perjury stating—

(A) The individual's name, permanent address, and country where the individual is fully liable to tax as a resident, if any;

(B) If the individual was not a resident of the country for the entire taxable year of the foreign corporation seeking qualified foreign corporation status, each of the foreign countries in which the individual resided and the dates of such residence during the taxable year of such foreign corporation;

(C) If the individual directly owns stock in the corporation seeking qualified foreign corporation status, the name of the corporation, the number of shares in each class of stock of the corporation that are so owned, and the period of time during the taxable year of the foreign corporation during which the individual owned the stock;

(D) If the individual directly owns an interest in a corporation, partnership, trust, estate or other intermediary that directly or indirectly owns stock in the corporation seeking qualified foreign corporation status, the name of the intermediary, the number and class of shares or amount and nature of the interest of the individual in such intermediary, and the period of time during the taxable year of the corporation seeking qualified foreign

corporation status during which the individual held such interest;

(E) To the extent known by the individual, a description of the chain of ownership through which the individual owns stock in the corporation seeking qualified foreign corporation status, including the name and address of each intermediary standing between the intermediary described in paragraph (d)(4)(i)(D) of this section and the foreign corporation and whether this interest is owned either directly or indirectly through bearer shares; and

(F) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(ii) *Ownership statements from foreign governments.* An ownership statement from a foreign government that is a qualified shareholder is a written statement—

(A) Signed by any one of the following—

(*1*) An official of the governmental authority, agency or office who has supervisory authority with respect to the government's ownership interest and who is authorized to sign such a statement on behalf of the authority, agency or office; or

(*2*) The competent authority of the foreign country (as defined in the income tax convention between the United States and the foreign country); or

(*3*) An income tax return preparer that, for purposes of this paragraph (d)(4)(ii) only, shall mean a firm of licensed or certified public accountants, a law firm whose principals or members are admitted to practice in one or more states, territories or possessions of the United States or the country of such government, or a bank or other financial institution licensed to do business in such foreign country and having assets at least equivalent to 50 million U.S. dollars and who is authorized to represent the government or governmental authority; and

(B) That provides—

(*1*) The title of the official or other person signing the statement;

(*2*) The name and address of the government authority, agency or office that has supervisory authority and, if applicable, the income tax preparer which has prepared such ownership statement;

(*3*) The information described in paragraphs (d)(4)(i)(C) through (E) of this section (as if the language applied "government" instead of "individual") with respect to the government's direct or indirect ownership of stock in the corporation seeking qualified resident status;

(*4*) In the case of an ownership statement prepared by an income tax return preparer, a statement under penalties of perjury identifying the documentation relied upon in the conduct of due diligence for the taxable year to determine the aggregate government investment in the stock of the shipping or aircraft company in preparation of such ownership statement attached to a valid power of attorney to represent the taxpayer for the taxable year; and

(*5*) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(iii) *Ownership statements from publicly-traded corporate shareholders.* An ownership statement from a publicly-traded corporation that is a direct or indirect owner of the corporation seeking qualified foreign corporation status is a written statement, signed under penalties of perjury by a person that would be authorized to sign a tax return on behalf of the shareholder corporation containing the following information—

(A) The name of the country in which the stock is primarily traded;

(B) The name of the established securities market or markets on which the stock is listed;

(C) A description of each class of stock relied upon to meet the requirements of § 1.883–2(d)(1), including the number of shares issued and outstanding as of the close of the taxable year;

(D) For each class of stock relied upon to meet the requirements of § 1.883–2(d)(1), if one or more 5-percent shareholders, as defined in § 1.883–2(d)(3)(i), own in the aggregate 50 percent or more of the vote and value of the outstanding shares of that class of stock for more than half the number of days during the taxable year—

(*1*) The days during the taxable year of the corporation in which the stock was closely-held without regard to the exception in paragraph (d)(3)(ii) of this section and the percentage of the vote and value of the class of stock that is owned by 5-percent shareholders during such days;

(*2*) For each qualified shareholder who owns or is treated as owning stock in the closely-held block upon whom the corporation intends to rely to satisfy the exception to the closely-held test of § 1.883–2(d)(3)(ii)—

(*i*) The name of each such shareholder;

(*ii*) The percentage of the total value of the class of stock held by each such shareholder and the days during which the stock was held;

(*iii*) The address of record of each such shareholder; and

(*iv*) The country of residence of each such shareholder, determined under paragraph (b)(2) or (d)(3) of this section;

(E) The information described in paragraphs (d)(4)(i)(C) through (E) of this section (as if the language applied "publicly-traded corporation" instead of "individual") with respect to the publicly-traded corporation's direct or indirect ownership of stock in the corporation seeking qualified resident status; and

(F) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(iv) *Ownership statements from not-for-profit organizations.* An ownership statement from a not-for-profit organization (other than a pension fund as defined in paragraph (b)(5) of this section) is a written statement signed by a person authorized to sign a tax return on behalf of the organization under penalties of perjury stating—

(A) The name, permanent address, and principal location of the activities of the organization (if different from its permanent address);

(B) The information described in paragraphs (d)(4)(i)(C) through (E) of this section (as if the language applied "not-for-profit organization" instead of "individual");

(C) A representation that the not-for-profit organization satisfies the requirements of paragraph (b)(4) of this section; and

(D) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(v) *Ownership statements from intermediaries*—(A) *General rule.* The foreign corporation seeking qualified foreign corporation status under the shareholder stock ownership test must obtain an intermediary ownership statement from each intermediary standing in the chain of ownership between it and the qualified shareholders on whom it relies to meet this test. An intermediary ownership statement is a written statement signed under penalties of perjury by the intermediary (if the intermediary is an individual) or a person who would be authorized to sign a tax return on behalf of the intermediary (if the intermediary is not an individual) containing the following information—

(*1*) The name, address, country of residence, and principal place of business (in the case of a corporation or partnership) of the intermediary, and, if

the intermediary is a trust or estate, the name and permanent address of all trustees or executors (or equivalent under foreign law), or if the intermediary is a pension fund, the name and permanent address of place of administration of the intermediary;

(*2*) The information described in paragraphs (d)(4)(i)(C) through (E) of this section (as if the language applied "intermediary" instead of "individual");

(*3*) If the intermediary is a nominee for a shareholder or another intermediary, the name and permanent address of the shareholder, or the name and principal place of business of such other intermediary;

(*4*) If the intermediary is not a nominee for a shareholder or another intermediary, the name and country of residence (within the meaning of paragraph (b)(2) of this section) and the proportionate interest in the intermediary of each direct shareholder, partner, beneficiary, grantor, or other interest holder (or if the direct holder is a nominee, of its beneficial shareholder, partner, beneficiary, grantor, or other interest holder), on which the foreign corporation seeking qualified foreign corporation status intends to rely to satisfy the requirements of paragraph (a) of this section. In addition, such intermediary must obtain from all such persons an ownership statement that includes the period of time during the taxable year for which the interest in the intermediary was owned by the shareholder, partner, beneficiary, grantor or other interest holder. For purposes of this paragraph (d)(4)(v)(A), the proportionate interest of a person in an intermediary is the percentage interest (by value) held by such person, determined using the principles for attributing ownership in paragraph (c) of this section;

(*5*) If the intermediary is a widely-held corporation with registered shareholders owning less than one percent of the stock of such widely-held corporation, the statement set out in paragraph (d)(4)(v)(B) of this section, relating to ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediaries;

(*6*) If the intermediary is a pension fund, within the meaning of paragraph (b)(5) of this section, the statement set out in paragraph (d)(4)(v)(C) of this section, relating to ownership statements from pension funds;

(*7*) If the intermediary is a taxable nonstock corporation, within the meaning of paragraph (c)(5) of this section, the statement set out in paragraph (d)(4)(v)(D) of this section, relating to ownership statements from intermediaries that are taxable nonstock corporations; and

(*8*) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(B) *Ownership statements from widely-held intermediaries with registered shareholders owning less than one percent of such widely-held intermediary.* An ownership statement from an intermediary that is a corporation with at least 250 registered shareholders, but that is not a publicly-traded corporation within the meaning of § 1.883–2, and that relies on paragraph (d)(3)(ii) of this section, relating to the special rule for registered shareholders owning less than one percent of widely-held corporations, must provide the following information in addition to the information required in paragraph (d)(4)(v)(A) of this section—

(*1*) The aggregate proportionate interest by country of residence in the widely-held corporation of such registered shareholders or other interest holders whose address of record is a specific street address and not a nonresidential address, such as a post office box or in care of a financial intermediary or stock transfer agent; and

(*2*) A representation that the officers and directors of the widely-held intermediary neither know nor have reason to know that the individual shareholder does not reside at his or her address of record in the corporate records; and

(*3*) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(C) *Ownership statements from pension funds—(1) Ownership statements from government pension funds.* A government pension fund (as defined in paragraph (b)(5)(ii) of this section) that relies on paragraph (d)(3)(iii) of this section (relating to the special rules for pension funds) generally must provide the documentation required in paragraph (d)(4)(v)(A) of this section, and, in addition, the government pension fund must also provide the following information—

(*i*) The name of the country in which the plan is administered;

(*ii*) A representation that the fund is established exclusively for the benefit of employees or former employees of a foreign government, or employees or former employees of a foreign government and nongovernmental employees or former employees that perform or performed governmental or social services;

(*iii*) A representation that the funds that comprise the trust are managed by trustees who are employees of, or persons appointed by, the foreign government;

(*iv*) A representation that the trust forming part of the pension plan provides for retirement, disability, or death benefits in consideration for prior services rendered;

(*v*) A representation that the income of the trust satisfies the obligations of the foreign government to the participants under the plan, rather than inuring to the benefit of a private person; and

(*vi*) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(*2*) *Ownership statements from nongovernment pension funds.* The trustees, directors, or other administrators of the nongovernment pension fund, as defined in paragraph (b)(5)(iii) of this section, that rely on paragraph (d)(3)(iii) of this section, relating to the special rules for pension funds, generally must provide the pension fund's intermediary ownership statement described in paragraph (d)(4)(v)(A) of this section. In addition, the nongovernment pension fund must also provide the following information—

(*i*) The name of the country in which the pension fund is administered;

(*ii*) A representation that the pension fund is subject to supervision or regulation by a governmental authority (or other authority delegated to perform such supervision or regulation by a governmental authority) in such country, and, if so, the name of the governmental authority (or other authority delegated to perform such supervision or regulation);

(*iii*) A representation that the pension fund is generally exempt from income taxation in its country of administration;

(*iv*) The number of beneficiaries in the pension plan;

(*v*) The aggregate percentage interest of beneficiaries by country of residence based on addresses shown on the books and records of the fund, provided the addresses are not nonresidential addresses, such as a post office box or an address in care of a financial intermediary, and provided none of the trustees, directors or other administrators of the pension fund know, or have reason to know, that the beneficiary is not a resident of such foreign country;

(*vi*) A representation that the pension fund meets the requirements of paragraph (b)(5)(iii) of this section;

(*vii*) A representation that the trustees, directors or other administrators of the pension fund have no knowledge, and no reason to know, that a pro-rata allocation of interests of the fund to all beneficiaries would differ significantly from an actuarial allocation of interests in the fund (or, if the beneficiaries' actuarial interest in the stock held directly or indirectly by the pension fund differs from the beneficiaries' actuarial interest in the pension fund, the actuarial interests computed by reference to the beneficiaries' actuarial interest in the stock);

(*viii*) A representation that any overfunding of the pension fund would be payable, pursuant to the governing instrument or the laws of the foreign country in which the pension fund is administered, only to, or for the benefit of, one or more corporations that are organized in the country in which the pension fund is administered, individual beneficiaries of the pension fund or their designated beneficiaries, or social or charitable causes (the reduction of the obligation of the sponsoring company or companies to make future contributions to the pension fund by reason of overfunding shall not itself result in such overfunding being deemed to be payable to or for the benefit of such company or companies); or that the foreign country in which the pension fund is administered has laws that are designed to prevent overfunding of a pension fund and the funding of the pension fund is within the guidelines of such laws; or that the pension fund is maintained to provide benefits to employees in a particular industry, profession, or group of industries or professions, and that employees of at least 10 companies (other than companies that are owned or controlled, directly or indirectly, by the same interests) contribute to the pension fund or receive benefits from the pension fund; and

(*ix*) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(*3*) *Time for making determinations.* The determinations required to be made under this paragraph (d)(4)(v)(C) shall be made using information shown on the records of the pension fund for a date during the foreign corporation's taxable year to which the determination is relevant.

(D) *Ownership statements from taxable nonstock corporations.* An ownership statement from an intermediary that is a taxable nonstock corporation must provide the following information in addition to the information required in paragraph (d)(4)(v)(A) of this section—

(*1*) With respect to paragraph (d)(4)(v)(A)(*7*) of this section, for each beneficiary that is treated as a qualified shareholder, the name, address of residence (in the case of an individual beneficiary, the address must be a specific street address and not a nonresidential address, such as a post office box or in care of a financial intermediary; in the case of a nonindividual beneficiary, the address of the principal place of business) and percentage that is the same proportion as the amount that the beneficiary receives in the tax year bears to the total net income of the taxable nonstock corporation in the tax year;

(*2*) A representation that the officers and directors of the taxable nonstock corporation neither know nor have reason to know that the individual beneficiaries do not reside at the address listed in paragraph (d)(4)(v)(D)(*1*) of this section or that any other nonindividual beneficiary does not conduct its primary activities at such address or in such country of residence; and

(*3*) Any other information as specified in guidance published by the Internal Revenue Service (see § 601.601(d)(2) of this chapter).

(5) *Availability and retention of documents for inspection.* The documentation described in paragraphs (d)(3) and (4) of this section must be retained by the corporation seeking qualified foreign corporation status (the foreign corporation) until the expiration of the statute of limitations for the taxable year of the foreign corporation to which the documentation relates. Such documentation must be made available for inspection by the Commissioner at such time and place as the Commissioner may request in writing.

(e) *Reporting requirements.* A foreign corporation relying on the qualified shareholder stock ownership test of this section to meet the stock ownership test of § 1.883–1(c)(2) must provide the following information in addition to the information required in § 1.883–1(c)(3) to be included in its Form 1120–F, "U.S. Income Tax Return of a Foreign Corporation," for each taxable year. The information should be current as of the end of the corporation's taxable year. The information must include the following—

(1) A representation that more than 50 percent of the value of the outstanding shares of the corporation is owned (or treated as owned by reason of paragraph (c) of this section) by qualified shareholders for each category of income for which the exemption is claimed;

(2) With respect to each individual qualified shareholder owning 5 percent or more of the foreign corporation, applying the attribution rules of paragraph (c) of this section, and relied upon to meet the 50 percent ownership test of paragraph (a) of this section, the name and street address, as represented on each such individual's ownership statement;

(3) With respect to all qualified shareholders relied upon to satisfy the 50 percent ownership test of paragraph (a) of this section, the total percentage of the value of the outstanding shares owned, applying the attribution rules of paragraph (c) of this section, by all qualified shareholders resident in a qualified foreign country, by country; and

(4) Any other relevant information specified by the Form 1120–F and its accompanying instructions.

§ 1.883–5 Effective dates.

(a) *General rule.* Sections 1.883–1 through 1.883–4 apply to taxable years of a foreign corporation seeking qualified foreign corporation status beginning 30 days or more after August 26, 2003.

(b) *Election for retroactive application.* Taxpayers may elect to apply §§ 1.883–1 through 1.883–4 for any open taxable year of the foreign corporation beginning after December 31, 1986, except that the substantiation and reporting requirements of § 1.883–1(c)(3) (relating to the substantiation and reporting required to be treated as a qualified foreign corporation) or §§ 1.883–2(f), 1.883–3(d) and 1.883–4(e) (relating to additional information to be included in the return to demonstrate whether the foreign corporation satisfies the stock ownership test) will not apply to any year beginning before September 25, 2003. Such election shall apply to the taxable year of the election and to all subsequent taxable years beginning before September 25, 2003.

(c) *Transitional information reporting rule.* For taxable years of the foreign corporation beginning 30 days or more after August 26, 2003, and until such time as the Form 1120–F, "U.S. Income Tax Return of a Foreign Corporation," or its instructions are revised to provide otherwise, the information required in § 1.883–1(c)(3) and § 1.883–2(f), § 1.883–3(d) or § 1.883–4(e), as applicable, must be included on a written statement attached to the Form 1120–F and filed with the return.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ *Par. 5.* The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ *Par. 6.* In § 602.101, paragraph (b) is amended by adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * * * *	*
1.883–1	1545–1677
11.883–2	1545–1677
1.883–3	1545–1677
1.883–4	1545–1677
1.883–5	1545–1677
* * * * * * *	*

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: July 11, 2003.

Pamela F. Olson,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–21354 Filed 8–25–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Tuesday,
August 26, 2003

Part IV

General Services Administration

41 CFR Parts 101–45 and 102–38
Federal Management Regulation; Sale of Personal Property; Final Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 101–45 and 102–38

[FPMR Amendment H–211 and FMR Amendment B–3]

RIN 3090–AH10

Federal Management Regulation; Sale of Personal Property

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the Federal Property Management Regulations (FPMR) by revising coverage on the sale of personal property and moving it into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR coverage is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

DATES: *Effective Date:* August 26, 2003.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Robert Holcombe, Director, Personal Property Management Policy Division, (202) 501–3828. Please cite PMR H–211.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule updates, streamlines, and clarifies FPMR part 101–45 and moves most of the part into the FMR. FPMR part 101–45 is revised to include a cross reference to the regulations moved to FMR part 102–38. Section 101–45.101 has been revised to clarify the applicability of these regulations to agencies in the executive, legislative, and judicial branches of the Federal Government. Section 101–45.307 has been revised to reflect Congress' clear intent as stated in the codification of title 40 into positive law whereby Congress recognized that GSA and other agencies are permitted to retain direct and reasonably related indirect expenses of sale from the proceeds of sale of surplus personal property. Sections 101–45.309–3, 101–45.309–9, 101–45.309–12, and 101–45.309–13 remain in part 101–45 but are revised and given new section numbers. The final rule is written in a plain language question and answer format. This style uses an active voice, shorter sentences, and pronouns. A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

A proposed rule was published in the **Federal Register** at 67 FR 47494, July 19, 2002. All public comments received were considered in the formulation of this final rule.

B. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 101–45 and 102–38

Government property management, Surplus Government property.

Dated: July 10, 2003.

Stephen A. Perry,

Administrator of General Services.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

1. Part 101–45 is revised to read as follows:

PART 101–45—SALE, ABANDONMENT, OR DESTRUCTION OF PERSONAL PROPERTY

Sec.

101–45.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).
101–45.001 Demilitarization and decontamination.
101–45.002 Gold.
101–45.003 Vehicle reconditioning.
101–45.004 All terrain vehicles.

Authority: 40 U.S.C. 545 and 121(c).

§ 101–45.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).

For information on the sale of personal property previously contained in this part, see FMR part 38 (41 CFR part 102–38).

§ 101–45.001 Demilitarization and decontamination.

(a) Dangerous material shall not be disposed of pursuant to part 102–38 of the Federal Management Regulation (FMR) without first being demilitarized or decontaminated when a duly authorized official of the executive agency concerned determines this action to be in the interest of public health, safety, or security. This may include rendering the property innocuous, stripping from it any confidential or secret characteristics, or otherwise making it unfit for further use.

(b) Demilitarization or decontamination of property to be donated to public bodies pursuant to part 102–37 of the FMR shall be accomplished in a manner so as to preserve so far as possible any civilian utility or commercial value of the property.

(c) Except for those sales otherwise authorized by part 101–42 of the Federal Property Management Regulations or other statutes, and for specialized sales authorized by the Secretary of Defense, U.S. Munitions List items identified as requiring demilitarization shall not be reported for public sale without first being demilitarized or requiring demilitarization to be a part of the terms and conditions of sale. The General Services Administration may refer technical questions on demilitarization to the Department of Defense for advice.

§ 101–45.002 Gold.

(a) Gold will be sold in accordance with this section and part 102–38 of the Federal Management Regulation.

(b) Sales of gold shall be processed to—

(1) Use the sealed bid method of sale;

(2) Require a 20 percent bid deposit;

(3) Certify all forms of bid deposit and payments; and

(4) Include in the invitation for bids only gold and such other precious and semiprecious materials as may be available for sale at that time.

(c) Each agency generating scrap gold and also having a continuing need for fine gold may arrange for the acceptance of scrap gold for fine gold with a private

contractor or the Defense Logistics Agency.

§ 101–45.003 Vehicle reconditioning.

(a) For the purpose of this section, vehicle reconditioning means restoring or improving the appearance of any motorized passenger or cargo vehicle designed primarily for highway use that is to be disposed of through surplus or exchange/sale procedures to the general public.

(b) To produce the maximum net proceeds, holding agencies shall determine, prior to sale, the appropriate level of reconditioning commensurate with the estimated fair market value of each vehicle scheduled for sale.

(c) Holding agencies shall arrange for the reconditioning to be accomplished just prior to the dates scheduled for public inspection and sale.

(d) For all motor vehicles above salvage condition or value, the minimum level of reconditioning required is as follows:

(1) For the driver and passenger compartment—

(i) Remove debris;

(ii) Vacuum floors and seats;

(iii) Clean dashboard, instrument panel, armrests, door panels, and rear shelf;

(iv) Remove Government stickers or decals without marring surface;

(v) Clean ashtrays and glove compartment; and

(vi) Wash windows.

(2) For the trunk—

(i) Remove debris;

(ii) Vacuum; and

(iii) Position spare tire and tools.

(3) For the engine compartment—

(i) Remove debris;

(ii) Replenish lubricants and coolant to required levels and replace missing caps/covers; and

(iii) Charge battery, if necessary.

(4) For the exterior—

(i) Remove Government stickers or decals without marring paint finish;

(ii) Wash exterior, including glass, door jambs, tires, and wheel rims/covers; and

(iii) Inflate tires to recommended pressure.

(e) Additional reconditioning of selected motor vehicles should be considered when such action is expected to substantially improve the return on the sale of a vehicle. Generally, a return of $2 for each dollar invested should be estimated to justify additional reconditioning. Additional reconditioning should include some or all of the following:

(1) For the driver and passenger compartment—

(i) Shampoo seats, dashboard, headliner, door panels, and floor covering;

(ii) Spray-dye floor carpets and mats;

(iii) Polish where appropriate;

(iv) Apply vinyl/rubber reconditioners where appropriate; and

(v) Replace missing knobs, nameplates, and light lenses and/or bulbs.

(2) For the trunk—

(i) Wash interior surface; and

(ii) Spray-dye mats.

(3) For the engine compartment—

(i) Clean major surface areas (air cleaner cover, battery, *etc.*);

(ii) Wash or steam clean, when necessary;

(iii) Replace air and fuel filters; and

(iv) Make minor adjustments and/or replacements to engine systems (electrical, fuel, cooling, *etc.*) to ensure that the vehicle will start and idle correctly during inspection by prospective purchasers.

(4) For the exterior—

(i) Rotate tires, including the spare, to ensure that the best tires are displayed on the vehicle. Properly inflate, clean, and apply rubber conditioner or black tire paint to all tires;

(ii) Wash and blacken wheel splash shields;

(iii) Apply touch-up paint to nicks and scratches;

(iv) Wax and polish;

(v) Replace missing or damaged molding, nameplates, lenses, caps, mirrors, antennas, and wheel covers;

(vi) Repaint exterior of vehicle to original factory color if scrapes, dings, *etc.*, are excessive;

(vii) Repair minor body damage;

(viii) Apply decorative molding and/or striping to add eye appeal; and

(ix) Obtain State safety and/or emission control inspections, if required.

(f) Reconditioning, when possible, should be accomplished no earlier than the calendar week prior to the scheduled sale date.

(g) Agencies should contact the nearest General Services Administration Federal Supply Service Bureau office for information regarding the availability of reconditioning services.

(h) The expense of reconditioning is the responsibility of the holding agency.

§ 101–45.004 All terrain vehicles.

(a) Three-wheeled all terrain vehicles (ATVs) may be offered for public sale only after they have been mutilated in a manner to prevent operational use.

(b) Four-wheeled ATVs no longer needed by the Government can be exchanged with a dealer under the provisions of part 102–39 of the Federal Management Regulation. If the unit cannot be exchanged, four-wheeled ATVs may be offered for public sale only after they have been mutilated in a manner to prevent operational use.

CHAPTER 102—FEDERAL MANAGEMENT REGULATION

2. Part 102–38 is added to subchapter B of chapter 102 to read as follows:

PART 102–38—SALE OF PERSONAL PROPERTY

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Authority: 40 U.S.C. 545 and 40 U.S.C. 121(c).

Subpart A—General Provisions

§ 102–38.5 What does this part cover?

This part prescribes the policies governing the sale of Federal personal property, including—

(a) Surplus personal property that has completed all required Federal and/or donation screening; and

(b) Personal property to be sold under the exchange/sale authority.

Note to § 102–38.5: You must follow additional guidelines in 41 CFR parts 101–42 and 101–45 of the Federal Property Management Regulations (FPMR) for the sale of personal property that has special handling requirements or property containing hazardous materials. Additional requirements for the sale of aircraft and aircraft parts are provided in part 102–33 of this chapter.

§ 102–38.10 What is the governing authority for this part?

The authority for the regulations in this part governing the sale of Federal personal property is 40 U.S.C. 541 through 548, 571, 573 and 574.

§ 102–38.15 Who must comply with these sales provisions?

All executive agencies must comply with the provisions of this part. The legislative and judicial branches are encouraged to follow these provisions.

§ 102–38.20 Must we follow the regulations of this part when selling all personal property?

Generally, yes, you must follow the regulations of this part when selling all personal property; however—

(a) Materials acquired for the national stockpile or supplemental stockpile, or materials or equipment acquired under section 303 of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2093) are excepted from this part;

(b) The Maritime Administration, Department of Transportation, has jurisdiction over the disposal of vessels of 1,500 gross tons or more and determined by the Secretary to be merchant vessels or capable of conversion to merchant use;

(c) Sales made by the Secretary of Defense pursuant to 10 U.S.C. 2576 (Sale of Surplus Military Equipment to State and Local Law Enforcement and Firefighting Agencies) are exempt from these provisions; and

(d) Foreign excess personal property is exempt from these provisions.

§ 102–38.25 To whom do "we", "you", and their variants refer?

Unless otherwise indicated, use of pronouns "we", "you", and their variants throughout this part refer to the holding agency responsible for the sale of the property.

§ 102–38.30 How do we request a deviation from the provisions of this part?

Refer to §§ 102–2.60 through 102–2.110 of this chapter for information on how to obtain a deviation from this part.

Definitions

§ 102–38.35 What definitions apply to this part?

The following definitions apply to this part:

Bid means a response to an offer to sell that, if accepted, would bind the bidder to the terms and conditions of the contract (including the bid price).

Bidder means any entity that is responding to or has responded to an offer to sell.

Estimated fair market value means the selling agency's best estimate of what the property would be sold for if offered for public sale.

Identical bids means bids for the same item of property having the same total price.

Personal property means any property, except real property. For purposes of this part, the term excludes records of the Federal Government, and naval vessels of the following categories:

(1) Battleships;
(2) Cruisers;
(3) Aircraft carriers;
(4) Destroyers; and
(5) Submarines.

State Agency for Surplus Property (SASP) means the agency designated under State law to receive Federal surplus personal property for distribution to eligible donees within the State as provided for in 40 U.S.C. 549.

State or local government means a State, territory, possession, political subdivision thereof, or tax-supported agency therein.

Responsibilities

§ 102–38.40 Who may sell personal property?

You may sell personal property as the holding agency or on behalf of another agency when so requested, or have the General Services Administration, a contractor, or another Federal agency conduct the sale for you, provided that only Federal officials authorized by your agency approve the sale and bind the United States.

§ 102–38.45 What are our responsibilities in selling personal property?

Your responsibilities in selling personal property are to—

(a) Ensure the sale complies with the provisions of Title 40 of the U.S. Code, the regulations of this part, and any other applicable laws;

(b) Issue internal guidance to promote uniformity of sales procedures;

(c) Assure that officials designated to conduct and finalize sales are adequately trained;

(d) Be accountable for the care and handling of the personal property prior to its removal by the buyer; and

(e) Adjust your property and financial records to reflect the final disposition.

§ 102–38.50 What must we do when we suspect violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property?

If you suspect violations of 40 U.S.C. 559, fraud, bribery, or criminal collusion in connection with the disposal of personal property, you must—

(a) Refer the violations to the Inspector General of your agency and/or the Attorney General, Department of Justice, Washington, DC 20530, for further investigation. You must cooperate with and provide evidence concerning the suspected violation or crime to the investigating agency assuming jurisdiction of the matter; and

(b) Submit to the General Services Administration (GSA), Property Management Division (FBP), 1800 F Street, NW., Washington, DC 20406, a report of any compliance investigations concerning such violations. The report must contain information concerning the noncompliance, including the corrective action taken or contemplated, and, for cases referred to the Department of Justice, a copy of the transmittal letter. A copy of each report must be submitted also to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC 20405.

§ 102–38.55 What must we do when selling personal property?

When selling personal property, you must ensure that—

(a) All sales are made after publicly advertising for bids, except as provided for negotiated sales in §§ 102–38.100 through 102–38.125; and

(b) Advertising for bids must permit full and free competition consistent with the value and nature of the property involved.

§ 102–38.60 Who is responsible for the costs of care and handling of the personal property before it is sold?

You are responsible for the care and handling costs of the personal property until it is removed by the buyer or the buyer's designee. When specified in the terms and conditions of sale, you may charge costs for storage when the buyer is delinquent in removing the property.

§ 102–38.65 What if we are notified of a Federal requirement for surplus personal property before the sale is complete?

Federal agencies have first claim to excess or surplus personal property reported to the General Services Administration. When a bona fide need for the property exists and is expressed by a Federal agency, and when no like item(s) are located elsewhere, you must make the property available for transfer to the maximum extent practicable and prior to transfer of title to the property.

§ 102–38.70 May we abandon or destroy personal property either prior to or after trying to sell it?

(a) Yes, you may abandon or destroy personal property either prior to or after trying to sell it, but only when an authorized agency official has made a written determination that—

(1) The personal property has no commercial value; or

(2) The estimated cost of continued care and handling would exceed the estimated sales proceeds.

(b) In addition to the provisions in paragraph (a) of this section, see the regulations at §§ 102–36.305 through 102–36.330 of this subchapter B that are applicable to the abandonment or destruction of personal property in general, and excess personal property in particular.

Subpart B—Sales Process

Methods of Sale

§ 102–38.75 How may we sell personal property?

(a) You may sell personal property upon such terms and conditions as the head of your agency or designee deems proper to promote fairness, openness, and timeliness. In selling personal property, you must document the required terms and conditions of each sale, including, but not limited to, the following terms and conditions, as applicable:

(1) Inspection.
(2) Condition and location of property.
(3) Eligibility of bidders.
(4) Consideration of bids.
(5) Bid deposits and payments.
(6) Submission of bids.
(7) Bid price determination.
(8) Title.
(9) Delivery, loading, and removal of property.
(10) Default, returns, or refunds.
(11) Modifications, withdrawals, or late bids.
(12) Requirements to comply with applicable laws and regulations.
(13) Certificate of independent price determinations.

(14) Covenant against contingent fees.
(15) Limitation on Government's liability.
(16) Award of contract.
(b) Standard government forms (*e.g.*, Standard Form 114 series) may be used to document terms and conditions of the sale.
(c) When conducting and completing a sale through electronic media, the required terms and conditions must be included in your electronic sales documentation.

§ 102–38.80 Which method of sale should we use?

(a) You may use any method of sale provided the sale is publicly advertised and the personal property is sold with full and open competition. Exceptions to the requirement for competitive bids for negotiated sales (including fixed price sales) are contained in §§ 102–38.100 through 102–38.125. You must select the method of sale that will bring maximum return at minimum cost, considering factors such as—
(1) Type and quantity of property;
(2) Location of property;
(3) Potential market;
(4) Cost to prepare and conduct the sale;
(5) Available facilities; and
(6) Sales experience of the selling activity.
(b) Methods of sale may include sealed bid sales, spot bid sales, auctions, or negotiated sales and may be conducted at a physical location or through any electronic media that is publicly accessible.

Competitive Sales

§ 102–38.85 What is a sealed bid sale?

A sealed bid sale is a sale in which bid prices are kept confidential until bid opening. Bids are submitted either electronically or in writing according to formats specified by the selling agency, and all bids are held for public disclosure at a designated time and place.

§ 102–38.90 What is a spot bid sale?

A spot bid sale is a sale where immediately following the offering of the item or lot of property, bids are examined, and awards are made or bids rejected on the spot. Bids are either submitted electronically or in writing according to formats specified by the selling agency, and must not be disclosed prior to announcement of award.

§ 102–38.95 What is an auction?

An auction is a sale where the bid amounts of different bidders are disclosed as they are submitted, providing bidders the option to increase their bids if they choose. Bids are submitted electronically and/or by those physically present at the sale. Normally, the bidder with the highest bid at the close of each bidding process is awarded the property.

Negotiated Sales

§ 102–38.100 What is a negotiated sale?

A negotiated sale is a sale where the selling price is arrived at between the seller and the buyer, subject to obtaining such competition as is feasible under the circumstances.

§ 102–38.105 Under what conditions may we negotiate sales of personal property?

You may negotiate sales of personal property when—

(a) The personal property has an estimated fair market value that does not exceed $15,000;

(b) The disposal will be to a State, territory, possession, political subdivision thereof, or tax-supported agency therein, and the estimated fair market value of the property and other satisfactory terms of disposal are obtained by negotiation;

(c) Bid prices after advertising are not reasonable and re-advertising would serve no useful purpose;

(d) Public exigency does not permit any delay such as that caused by the time required to advertise a sale;

(e) The sale promotes public health, safety, or national security;

(f) The sale is in the public interest under a national emergency declared by the President or the Congress. This authority may be used only with specific lot(s) of property or for categories determined by the Administrator of General Services for a designated period but not in excess of three months;

(g) Selling the property competitively would have an adverse impact on the national economy, provided that the estimated fair market value of the property and other satisfactory terms of disposal can be obtained by negotiation, *e.g.*, sale of large quantities of an agricultural product that impact domestic markets; or

(h) Otherwise authorized by Title 40 of the U.S. Code or other law.

§ 102–38.110 Who approves our determinations to conduct negotiated sales?

The head of your agency (or his/her designee) must approve all negotiated sales of personal property.

§ 102–38.115 What are the specific reporting requirements for negotiated sales?

For negotiated sales of personal property, you must—
(a) In accordance with 40 U.S.C. 545(e), and in advance of the sale, submit to the oversight committees for the General Services Administration (GSA) in the Senate and House, explanatory statements for each sale by negotiation of any personal property with an estimated fair market value in excess of $15,000. You must maintain copies of the explanatory statements in your disposal files. No statement is needed for negotiated sales at fixed price or for any sale made without advertising when authorized by law other than 40 U.S.C. 545; and
(b) Report annually to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC, 20405, within 60 calendar days after the close of each fiscal year, a listing and description of all negotiated sales of personal property with an estimated fair market value in excess of $5,000. You may submit the report electronically or manually (see § 102–38.330).

§ 102–38.120 When may we conduct negotiated sales of personal property at fixed prices (fixed price sale)?

You may sell personal property at fixed prices when the head of your agency, or designee, determines in writing that such sale serves the best interests of the Government. You must publicize such sale to the extent consistent with the value and nature of the property involved, and the prices established must reflect the estimated fair market value of the property. Property is sold on a first-come, first-served basis. You may also establish additional terms and conditions that must be met by the successful purchaser.

§ 102–38.125 May we sell personal property at fixed prices to State agencies?

Yes, before offering to the public, you may offer the property at fixed prices (through the State Agencies for Surplus Property) to any States, territories, possessions, political subdivisions thereof, or tax-supported agencies therein, which have expressed an interest in obtaining the property. For additional information, *see* subpart G of this part.

Advertising

§ 102–38.130 Must we publicly advertise sales of Federal personal property?

Yes, you must provide public notice of your sale of personal property to permit full and open competition.

§ 102–38.135 What constitutes a public advertisement?

Announcement of the sale using any media that reaches the public and is appropriate to the type and value of personal property to be sold is considered public advertising. You may also distribute mailings or flyers of your offer to sell to prospective purchasers on mailing lists. Public notice should be made far enough in advance of the sale to ensure adequate notice, and to target your advertising efforts toward the market that will provide the best return at the lowest cost.

§ 102–38.140 What must we include in the public notice on sale of personal property?

In the public notice, you must provide information necessary for potential buyers to participate in the sale, such as—

(a) Date, time and location of sale;
(b) General categories of property being offered for sale;
(c) Inspection period;
(d) Method of sale (*i.e.*, spot bid, sealed bid, auction);
(e) Selling agency; and
(f) Who to contact for additional information.

Pre-Sale Activities

§ 102–38.145 Must we allow for inspection of the personal property to be sold?

Yes, you must allow for an electronic or physical inspection of the personal property to be sold. You must allow prospective bidders sufficient time for inspection. If inspection is restricted to electronic inspections only, due to unusual circumstances prohibiting physical inspection, you must notify your General Services Administration Regional Personal Property Office in writing, with the circumstances surrounding this restriction at least 3 days prior to the start of the screening period.

§ 102–38.150 How long is the inspection period?

The length of the inspection period allowed depends upon whether the inspection is done electronically or physically. You should also consider such factors as the circumstances of sale, volume of property, type of property, location of the property, and accessibility of the sales facility. Normally, you should provide at least 7 calendar days to ensure potential buyers have the opportunity to perform needed inspections.

Offer to Sell

§ 102–38.155 What is an offer to sell?

An offer to sell is a notice listing the terms and conditions for bidding on an upcoming sale of personal property, where prospective purchasers are advised of the requirements for a responsive bid and the contractual obligations once a bid is accepted.

§ 102–38.160 What must be included in the offer to sell?

The offer to sell must include—
(a) Sale date and time;
(b) Method of sale;
(c) Description of property being offered for sale;
(d) Selling agency;
(e) Location of property;
(f) Time and place for receipt of bids;
(g) Acceptable forms of bid deposits and payments; and
(h) Terms and conditions of sale, including any specific restrictions and limitations.

§ 102–38.165 Are the terms and conditions in the offer to sell binding?

Yes, the terms and conditions in the offer to sell are normally incorporated into the sales contract, and therefore binding upon both the buyer and the seller once a bid is accepted.

Subpart C—Bids

Buyer Eligibility

§ 102–38.170 May we sell Federal personal property to anyone?

Generally, you may sell Federal personal property to anyone of legal age. However, certain persons or entities are debarred or suspended from purchasing Federal property. You must not enter into a contract with such a person or entity unless your agency head or designee responsible for the disposal action determines that there is a compelling reason for such an action.

§ 102–38.175 How do we find out if a person or entity has been suspended or debarred From doing business with the Government?

Refer to the List of Parties Excluded From Federal Procurement and Nonprocurement Programs to ensure you do not solicit from or award contracts to these persons or entities. The list is available through subscription from the U.S. Government Printing Office, or electronically on the Internet at *http://epls.arnet.gov*. For policies, procedures, and requirements for debarring/suspending a person or entity from the purchase of Federal personal property, follow the procedures in the Federal Acquisition Regulation (FAR) subpart 9.4 (48 CFR part 9, subpart 9.4).

§ 102–38.180 May we sell Federal personal property to a Federal employee?

Yes, you may sell Federal personal property to any Federal employee whose agency does not prohibit their employees from purchasing such property. However, unless allowed by Federal or agency regulations, employees having nonpublic information regarding property offered for sale may not participate in that sale (see 5 CFR 2635.703). For purposes of this section, the term "Federal employee" also applies to an immediate member of the employee's household.

§ 102–38.185 May we sell Federal personal property to State or local governments?

Yes, you may sell Federal personal property to State or local governments. Additional guidelines on sales to State or local governments are contained in subpart G of this part.

Acceptance of Bids

§ 102–38.190 What is considered a responsive bid?

A responsive bid is a bid that complies with the terms and conditions of the sales offering, and satisfies the requirements as to the method and timeliness of the submission. Only responsive bids may be considered for award.

§ 102–38.195 Must bidders use authorized bid forms?

No, bidders do not have to use authorized bid forms; however if a bidder uses his/her own bid form to submit a bid, the bid may be considered only if—

(a) The bidder accepts all the terms and conditions of the offer to sell; and
(b) Award of the bid would result in a binding contract.

§ 102–38.200 Who may accept bids?

Authorized agency representatives may accept bids for your agency. These individuals should meet your agency's requirements for approval of Government contracts.

§ 102–38.205 Must we accept all bids?

No, the Government reserves the right to accept or reject any or all bids. You may reject any or all bids when such action is advantageous to the Government, or when it is in the public interest to do so.

§ 102–38.210 What happens when bids have been rejected?

You may re-offer items for which all bids have been rejected at the same sale, if possible, or another sale.

§ 102–38.215 When may we disclose the bid results to the public?

You may disclose bid results to the public after the sales award of any item or lot of property. On occasions when there is open bidding, usually at a spot

bid sale or auction, all bids are disclosed as they are submitted. No information other than names may be disclosed regarding the bidder(s).

§ 102–38.220 What must we do when the highest bids received have the same bid amount?

When the highest bids received have the same bid amount, you must consider other factors of the sale (*e.g.*, timely removal of the property, terms of payment, etc.) that would make one offer more advantageous to the Government. However, if you are unable to make a determination based on available information, and the Government has an acceptable offer, you may re-offer the property for sale, or you may utilize random tiebreakers to avoid the expense of reselling the property.

§ 102–38.225 What are the additional requirements in the bid process?

All sales except fixed price sales must contain a certification of independent price determination. If there is suspicion of false certification or an indication of collusion, you must refer the matter to the Department of Justice or your agency's Office of the Inspector General.

Bid Deposits

§ 102–38.230 Is a bid deposit required to buy personal property?

No, a bid deposit is not required to buy personal property. However, should you require a bid deposit to protect the Government's interest, a deposit of 20 percent of the total amount of the bid is generally considered reasonable.

§ 102–38.235 What types of payment may we accept as bid deposits?

In addition to the acceptable types of payments in § 102–38.290, you may also accept a deposit bond. A deposit bond may be used in lieu of cash or other acceptable form of deposit when permitted by the offer to sell, such as the Standard Form (SF) 150, Deposit Bond—Individual Invitation, Sale of Government Personal Property, SF 151, Deposit Bond—Annual, Sale of Government Personal Property, and SF 28, Affidavit of Individual Surety. For information on how to obtain these forms, *see* § 102–2.135 of subchapter A.

§ 102–38.240 What happens to the deposit bond if the bidder defaults or wants to withdraw his/her bid?

(a) When a bid deposit is secured by a deposit bond and the bidder defaults, you must issue a notice of default to the bidder and the surety company.

(b) When a bid deposit is secured by a deposit bond and the bidder wants to withdraw his/her bid, you should return the deposit bond to the bidder.

Late Bids

§ 102–38.245 Do we consider late bids for award?

Consider late bids for award only when the bids were delivered timely to the address specified and your agency caused the delay in delivering the bids to the official designated to accept the bids.

§ 102–38.250 How do we handle late bids that are not considered?

Late bids that are not considered must be returned to the bidder promptly. You must not disclose information contained in returned bids.

Modification or Withdrawal of Bids

§ 102–38.255 May we allow a bidder to modify or withdraw a bid?

(a) Yes, a bidder may modify or withdraw a bid prior to the start of the sale or the time set for the opening of the bids. After the start of the sale, or the time set for opening the bids, the bidder will not be allowed to withdraw his/her bid.

(b) You may consider late modifications to an otherwise successful bid at any time, but only when it makes the terms of the bid more favorable to the Government.

Mistakes in Bids

§ 102–38.260 Who makes the administrative determinations regarding mistakes in bids?

The administrative procedures for handling mistakes in bids are contained in FAR 14.407, Mistakes in Bids (48 CFR 14.407). Your agency head, or his/her designee, may delegate the authority to make administrative decisions regarding mistakes in bids to a central authority, or a limited number of authorities in your agency, who must not re-delegate this authority.

§ 102–38.265 Must we keep records on administrative determinations?

Yes, you must—

(a) Maintain records of all administrative determinations made, to include the pertinent facts and the action taken in each case. A copy of the determination must be attached to its corresponding contract; and

(b) Provide a signed copy of any related determination with the copy of the contract you file with the Comptroller General when requested.

§ 102–38.270 May a bidder protest the determinations made on sales of personal property?

Yes, protests regarding the validity or the determinations made on the sale of personal property may be submitted to the Comptroller General.

Subpart D—Completion of Sale

Awards

§ 102–38.275 To whom do we award the sales contract?

You must award the sales contract to the bidder with the highest responsive bid, unless a determination is made to reject the bid under § 102–38.205.

§ 102–38.280 What happens when there is no award?

When there is no award made, you may sell the personal property at another sale, or you may abandon or destroy it pursuant to § 102–36.305 of this subchapter B.

Transfer of Title

§ 102–38.285 How do we transfer title from the Government to the buyer for personal property sold?

(a) Generally, no specific form or format is designated for transferring title from the Government to the buyer for personal property sold. For internal control and accountability, you must execute a bill of sale or another document as evidence of transfer of title or any other interest in Government personal property. You must also ensure that the buyer submits any additional certifications to comply with specific conditions and restrictions of the sale.

(b) For sales of vehicles, you must issue to the purchaser a Standard Form (SF) 97, the United States Government Certificate to Obtain Title to a Vehicle, or a SF 97A, the United States Government Certificate to Obtain a Non-Repairable or Salvage Certificate, as appropriate, as evidence of transfer of title. For information on how to obtain these forms, see § 102–2.135 of this chapter.

Payments

§ 102–38.290 What types of payment may we accept?

You must adopt a payment policy that protects the Government against fraud. Acceptable payments include, but are not limited to, the following:

(a) U.S. currency or any form of credit instrument made payable on demand in U.S. currency, *e.g.*, cashier's check, money order. Promissory notes and postdated credit instruments are not acceptable.

(b) Irrevocable commercial letters of credit issued by a United States bank payable to the Treasurer of the United States or to the Government agency conducting the sale.

(c) Credit or debit cards.

Disposition of Proceeds

§ 102–38.295 May we retain sales proceeds?

(a) You may retain that portion of the sales proceeds equal to the direct costs and reasonably related indirect costs incurred in selling surplus personal property.

(b) You may retain all sales proceeds when—

(1) You have statutory authority to retain all proceeds from sales of personal property;

(2) You sold property acquired with non-appropriated funds as defined in § 102–36.40 of this subchapter B;

(3) You sold surplus Government property that was in the custody of a contractor or subcontractor and the contract or subcontract provisions authorize the proceeds of sale to be credited to the price or cost of the contract or subcontract;

(4) You sold property to obtain replacement property under the exchange/sale authority pursuant to part 102–39 of this subchapter B; or

(5) You sold property related to waste prevention and recycling programs, under the authority of Section 607 of Public Law 107–67 (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 107–67, 115 Stat. 514). Consult your General Counsel or Chief Financial Officer for guidance on use of this authority.

§ 102–38.300 What happens to sales proceeds that we are not authorized to retain or that are unused?

Any sales proceeds that are not retained pursuant to the authorities in § 102–38.295 must be deposited as miscellaneous receipts in the U.S. Treasury.

Disputes

§ 102–38.305 How do we handle disputes involved in the sale of Federal personal property?

First contact your Office of General Counsel. Further guidance can be found in the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613), and the Federal Acquisition Regulation (FAR) at 48 CFR part 33.

§ 102–38.310 Are we required to use the Disputes clause in the sale of personal property?

Yes, you must ensure the Disputes clause contained in Federal Acquisition Regulation (FAR) 52.233–1 (48 CFR part 52) is included in all offers to sell and contracts for the sale of personal property.

§ 102–38.315 Are we required to use Alternative Disputes Resolution for sales contracts?

No, you are not required to use Alternative Disputes Resolution (ADR) for sales contracts. However, you are encouraged to use ADR procedures in accordance with the authority and the requirements of the Alternative Disputes Resolution Act of 1998 (28 U.S.C. 651–658).

Subpart E—Other Governing Statutes

§ 102–38.320 Are there other statutory requirements governing the sale of Federal personal property?

Yes, in addition to Title 40 of the U.S. Code the sale of Federal personal property is governed by other statutory requirements, such as the Debt Collection Improvement Act of 1996 (Public Law 104–134, sec. 31001, 110 Stat. 1321–358) and antitrust requirements that are discussed in § 102–38.325.

Antitrust Requirements

§ 102–38.325 What are the requirements pertaining to antitrust laws?

When the sale of personal property has an estimated fair market value of $3 million or more or if the sale involves a patent, process, technique, or invention, you must notify the Attorney General of the Department of Justice (DOJ) and get DOJ's opinion as to whether the sale would give the buyer an unfair advantage in the marketplace and violate any antitrust laws. Include in the notification the description and location of the property, method of sale and proposed selling price, and information on the proposed purchaser and intended use of the property.

You must not complete the sale until you have received confirmation from the Attorney General that the proposed transaction would not violate any antitrust laws.

Subpart F—Reporting Requirements

§ 102–38.330 Are there any reports that we must submit to the General Services Administration?

Yes, there are two sales reports you must submit to the General Services Administration (GSA), Personal Property Management Policy Division (MTP), 1800 F Street, NW., Washington, DC 20405—

(a) *Negotiated sales report.* Within 60 calendar days after the close of each fiscal year, you must provide GSA with a listing and description of all negotiated sales with an estimated fair market value in excess of $5,000 (*see* § 102–38.115). For each negotiated sale that meets this criterion, provide the following:

(1) Description of the property (including quantity and condition).

(2) Acquisition cost and date (if not known, estimate and so indicate).

(3) Estimated fair market value (including date of estimate and name of estimator).

(4) Name and address of purchaser.

(5) Date of sale.

(6) Gross and net sales proceeds.

(7) Justification for conducting a negotiated sale.

(b) *Exchange/sale report.* Within 90 calendar days after the close of each fiscal year, you must provide a summary report to GSA of transactions conducted under the exchange/sale authority under part 102–39 of this subchapter B (*see* § 102–39.75).

§ 102–38.335 Is there any additional personal property sales information that we must submit to the General Services Administration?

Yes, you must report to the General Services Administration's (GSA's) Asset Disposition Management System (ADMS), once that capability is established, any sales information that GSA deems necessary.

Subpart G—Provisions for State and Local Governments

§ 102–38.340 How may we sell personal property to State and local governments?

You may sell Government personal property to State and local governments through—

(a) Competitive sale to the public;

(b) Negotiated sale, through the appropriate State Agency for Surplus Property (SASP); or

(c) Negotiated sale at fixed price (fixed price sale), through the appropriate SASP. (This method of sale can be used prior to a competitive sale to the public, if desired.)

§ 102–38.345 Do we have to withdraw personal property advertised for public sale if a State Agency for Surplus Property wants to buy it?

No, you are not required to withdraw the item from public sale if the property has been advertised.

§ 102–38.350 Are there special provisions for State and local governments regarding negotiated sales?

Yes, you must waive the requirement for bid deposits and payment prior to removal of the property. However, payment must be made within 30 calendar days after purchase. If payment is not made within 30 days, you may charge simple interest at the rate established by the Secretary of the Treasury as provided in section 12 of

the Contract Disputes Act of 1978 (41 U.S.C. 611), from the date of written demand for payment.

§ 102–38.355 Do the regulations of this part apply to State Agencies for Surplus Property (SASPs) when conducting sales?

Yes, State Agencies for Surplus Property (SASPs) must follow the regulations in this part when conducting sales on behalf of the General Services Administration of Government personal property in their custody.

[FR Doc. 03–21485 Filed 8–25–03; 8:45 am]

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(ISSN 0097-6326)

8–27–03 Wednesday
Vol. 68 No. 166 Aug. 27, 2003

Pages 51429–51672

Federal Register

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Wednesday, August 27, 2003

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DEPARTMENT OF ENERGY

10 CFR Parts 1021 and 1022

RIN 1901–AA94

Compliance With Floodplain and Wetland Environmental Review Requirements

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is revising its floodplain and wetland environmental review requirements to add flexibility and remove unnecessary procedural burdens by simplifying DOE public notification procedures for proposed floodplain and wetland actions, exempting additional actions from the floodplain and wetland assessment provisions of these regulations, providing for immediate action in an emergency, expanding the existing list of sources that may be used in determining the location of floodplains and wetlands, and allowing floodplain and wetland assessments for actions proposed to be taken under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) to be coordinated with the CERCLA environmental review process rather than the National Environmental Policy Act (NEPA) process. DOE also is making a conforming change to its NEPA implementing regulations to allow for issuance of a floodplain statement of findings in a final environmental impact statement (EIS) or separately.

EFFECTIVE DATE: These rule changes will become effective September 26, 2003.

FOR FURTHER INFORMATION CONTACT: For information regarding DOE's regulations for compliance with floodplain and wetland environmental review requirements or this rulemaking, or for copies of the final rule, contact Carolyn M. Osborne, U.S. Department of Energy, Office of NEPA Policy and Compliance, 1000 Independence Avenue, SW., Washington, DC 20585–0119. Telephone (202) 586–4600 or leave a message at (800) 472–2756; facsimile to (202) 586–7031; e-mail to *carolyn.osborne@eh.doe.gov*. The final rule also will be available after the effective date specified above on the DOE NEPA Web at *http://tis.eh.doe.gov/nepa*.

For information on DOE's NEPA process, contact Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance, at the above address and telephone numbers.

SUPPLEMENTARY INFORMATION:

I. Background

We published on November 18, 2002 (67 FR 69480), proposed revisions to our regulations entitled "Compliance with Floodplain/Wetlands Environmental Review Requirements" (10 CFR Part 1022), which were promulgated originally on March 7, 1979 (44 FR 12596), to implement the requirements of Executive Order (E.O.) 11988, "Floodplain Management" (42 FR 2951; May 24, 1977), and E.O. 11990, "Protection of Wetlands" (42 FR 26961; May 24, 1977). We also published in our November 18, 2002, **Federal Register** notice a proposed conforming change to our "National Environmental Policy Act Implementing Procedures" (10 CFR 1021.313).

Publication of the Notice of Proposed Rulemaking began a 60-day public comment period, ending January 17, 2003. Comments were received from three sources: A State, a county, and a member of the public. Copies of these comments are available for public inspection at the DOE Freedom of Information Office Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0101, (202) 586–3142, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

This document adopts the revisions proposed on November 18, 2002, with certain changes discussed below, and codifies them at 10 CFR parts 1021 and 1022. In accordance with 40 CFR 1507.3, the Council on Environmental Quality (CEQ) reviewed this notice of final rulemaking and concluded that the proposed amendment to the DOE regulations implementing NEPA is in conformance with NEPA and the CEQ regulations. The Secretary of Energy has approved this notice of final rulemaking for publication.

II. Statement of Purpose

We are revising 10 CFR part 1022 based on our experience implementing the existing requirements for over 20 years. We expect these changes to improve our ability to meet our goals for floodplain and wetland protection in a timely and cost-effective manner. We are revising 10 CFR 1021.313 to conform with 10 CFR 1022.14(c) by allowing floodplain statements of findings to be issued in a final EIS or separately.

The major revisions we are implementing will: (1) Simplify our public notification procedures for proposed floodplain and wetland actions by emphasizing local publication as opposed to publication in the **Federal Register**, (2) exempt additional actions from the floodplain and wetland assessment provisions of these regulations, (3) provide for immediate action in an emergency with documentation to follow, (4) expand the existing list of credible sources that may be used in determining the location of floodplains and wetlands, and (5) allow floodplain and wetland assessments for actions proposed to be taken under CERCLA to be coordinated with the CERCLA environmental review process rather than the NEPA process. The revisions also will make the rule easier to use by reordering sections to parallel the assessment process, clarifying requirements (such as the differences between floodplain and wetland actions and their respective assessment requirements), and simplifying the rule by deleting provisions that are no longer applicable. The revisions streamline existing procedures and add no new requirements.

III. Comments Received and DOE's Responses

We have considered and evaluated the comments received during the public comment period. A number of revisions suggested in these comments have been incorporated into the final rule. The following discussion describes the comments received, provides our response to the comments, and describes any resulting changes to the rule. We also have made editorial and stylistic revisions for clarity and consistency.

A. General Comments

In addition to a comment supporting our intent to simplify and restructure the rule, we received one comment objecting to our streamlining effort on the ground that it would make it easier to sabotage environmental protection before the public could know about potential impacts. This comment is speculative. It does not provide any example to show a potentially adverse effect from any of the proposed amendments to the regulations in 10 CFR parts 1021 and 1022. We believe the revised rule will improve our ability to meet our goals for floodplain and wetland protection. We will be able to focus our resources, and those of the public, on the types of proposed actions that our experience demonstrates are most likely to benefit from an examination of alternatives and mitigating measures and increase the efficiency of our environmental reviews (thereby, for example, allowing earlier identification of mitigation actions).

We received a comment pointing to DOE's obligation to comply with the Coastal Zone Management Act, NEPA, and applicable state laws and regulations. We recognize our legal responsibilities and note that it is the intent of the E.O.'s upon which this regulation is based, and the regulation itself, that implementation be coordinated, and when appropriate, integrated with procedures for implementing other requirements, such as those of NEPA. (*See* §§ 1022.1(b) and 1022.2(b).) We also note that this rulemaking is not a proposal to conduct any activity that would affect any coastal resource. We will comply with 10 CFR part 1022 and all other applicable requirements if we propose any such activity in the future.

B. Comments on Definitions (§ 1022.4)

Two comments requested clarification of "effects of national concern" as used in determining whether we are required to publish in the **Federal Register** a notice of proposed action (§ 1022.12(b)) or a floodplain statement of findings (§ 1022.14(e)). In response, we have added a definition to state that effects of national concern are those effects that because of the high quality or function of the affected resource or because of the wide geographic range of effects could create concern beyond the locale or region of the proposed action. The lack of potential effects of national concern does not excuse us from our public notification and participation responsibilities (§§ 1022.3(e), 1022.12, and 1022.14).

C. Comments on Exemptions (§ 1022.5)

One comment recommended that we define terms associated with the exemptions described in § 1022.5(d) to "ensure that the activities contemplated by the proposed rule changes will have only minimal and temporary adverse impacts on the aquatic environment." We do not believe it is practical or useful to attempt to define all the activities that might fall within the rule's three exemptions. We have, however, added examples for each exemption.

The rule now states that routine maintenance activities (§ 1022.5(d)(1)) are those, such as reroofing, plumbing repair, and door and window replacement, needed to maintain and preserve existing facilities and structures for their designated purpose. We believe that the restrictive conditions stated in § 1022.5(d)(2) and § 1022.5(d)(3) help describe the types of activities that could be exempted, but also have added examples in both sections. For site characterization, environmental monitoring, or environmental research activities (§ 1022.5(d)(2)), the rule now includes the examples of sampling and surveying water and air quality, flora and fauna abundance, and soil properties. For minor modification of an existing facility or structure to improve safety or environmental conditions (§ 1022.5(d)(3)), the rule now includes the examples of upgrading lighting, heating, ventilation, and air conditioning systems; installing or improving alarm and surveillance systems; and adding environmental monitoring or control systems.

D. Comments on Public Notification and Information Dissemination (§§ 1022.12 and 1022.14)

We received one comment asking that, when providing public notification, consideration be given to the interest of state government, in addition to local interest, in a proposed action. This has been our practice and is our intent. For clarification, in this final rule, we have added the parenthetical phrase "(*e.g.*, FEMA [Federal Emergency Management Agency, Department of Homeland Security] regional offices, host and affected states, and tribal and local governments)" after "government agencies" in §§ 1022.12(b) and 1022.14(d). Distribution to these parties, and to others as appropriate for a specific proposed action, facilitates public participation.

One comment questioned whether language in § 1022.14(f) would limit distribution of floodplain statements of findings to only those state agencies identified in a particular list of state contacts maintained by the Office of Management and Budget. To clarify our intent to continue to distribute statements of findings to parties interested in or potentially affected by a proposed action, in § 1022.14(f) of the final rule, we have added the word "also." The rule now states that for actions subject to E.O. 12372, "Intergovernmental Review of Federal Programs," DOE "also" shall send the floodplain statement of findings to the state in accordance with 10 CFR part 1005 (DOE's regulations for implementing the E.O.).

With regard to a comment that DOE must establish contacts and maintain current information on them, DOE Order 451.1B, "National Environmental Policy Act Compliance Program," requires each DOE Program and Field Office with NEPA responsibilities to have a Public Participation Plan. With regard specifically to state contacts, we established ongoing relationships with State Clearinghouses in 1990 through contact with the Governors, and we update our State Clearinghouse contacts in the "Directory of Potential Stakeholders for Department of Energy Action under the National Environmental Policy Act," which is distributed broadly within the Department and made available on the DOE NEPA Web site (*http://tis.eh.doe.gov/nepa/guidance.html*, under "Public Participation").

One comment opposed our change to allow discretion in whether to include a floodplain statement of findings within a final EIS. We agree with the commenter that information relevant to potential floodplain and wetland impacts is integral to the evaluation of a proposed action and alternatives within an EIS. A final EIS would consider those impacts and mitigations. For example, both the final EIS and the floodplain assessment would evaluate mitigation measures to minimize harm to or within the floodplain. Nonetheless, a floodplain statement of findings may be issued separately as there may be times when it is not appropriate to incorporate the statement within the final EIS (*e.g.*, when steps to be taken to minimize harm are not determined until after the final EIS is issued, or a phased decision involving sequential records of decision is being made and the findings would not be relevant to the initial record of decision). Moreover, E.O. 11988, upon which the floodplain management portions of this regulation are based, does not specify when in the NEPA process the statement of findings

should be published, and E.O. 11990, which addresses wetlands protection, does not require a statement of findings. The E.O.'s allow Federal agencies substantial latitude in implementing the requirements as deemed most appropriate for individual agencies.

E. Comments on Variances (§ 1022.16)

One comment sought clarification of the conditions under which we could waive time limits between various steps in the floodplain or wetland environmental review process and requested a definition of emergency actions and emergency situations. The rule allows us to alter the floodplain or wetland assessment process in response to emergencies and in some non-emergency situations.

Section 1022.16(a) allows us to take immediate action in the event of an emergency, forgoing the assessment process required by this rule until after the emergency has been addressed. We will continue to determine what constitutes an emergency (an emergency action or emergency situation) on a case-by-case basis, as is consistent with the manner in which an emergency has been declared in the past in regard to compliance with these and other requirements (*e.g.*, NEPA). We have declared only three emergency exceptions to our NEPA procedures in the past 25 years.

Section 1022.16(b) allows shortening the review process in non-emergency situations in response to "statutory deadlines or overriding considerations of program or project expense or effectiveness." This section does not allow any exception from completing a required floodplain or wetland assessment nor from following any other provision of this rule or any other applicable requirement before taking action. This provision has been in place since we first promulgated our floodplain and wetland environmental review requirements in 1979, and in practice, we have not experienced difficulty in its implementation.

The comment also asked who determines whether a variance is to be granted. The cognizant DOE official responsible for NEPA or CERCLA implementation, as applicable, normally would consult with the Office of NEPA Policy and Compliance pursuant to § 1022.16(c) before determining whether to grant a variance.

F. Other Revisions

Notable among the editorial and stylistic revisions we made are changes to the definitions of "floodplain and wetland values" and "critical action floodplain" in §1022.4. We reorganized the examples of floodplain and wetland values to improve readability.

We have added to the definition of critical action floodplain a clarification that was included in the preamble to this proposed rule in November 2002. This clarification regards when we will consider a flood with an expected frequency of less than once in a 500-year period, and thus a larger floodplain, in evaluating potential impacts associated with a critical action (*i.e.*, any DOE action for which even a slight chance of flooding would be too great). In this final rule, and as proposed, we define a critical action floodplain as "at a minimum, the 500-year floodplain, that is, a floodplain with a 0.2 percent chance of flooding in any given year." To this, we have added the clarification that when another requirement applicable to the proposed action requires evaluation of a less frequent flood (*i.e.*, a more severe flood that would inundate a larger floodplain), then we may use the less frequent flood to determine the floodplain for purposes of this rule. For example, where the safety basis documentation under 10 CFR part 830 for a proposed action requires consideration of a 100,000-year flood, then the 100,000-year floodplain could be the critical action floodplain for the proposed action for purposes of this rule.

IV. Procedural Review Requirements

A. Review Under Executive Order 12866

This rule has been determined not to be a "significant regulatory action" under E.O. 12866, "Regulatory Planning and Review" (58 FR 51735; October 4, 1993), as amended by E.O. 13258 (67 FR 9385; February 28, 2002). Accordingly, today's final regulatory action was not subject to review under that E.O. by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, "Civil Justice Reform" (61 FR 4779; February 7, 1996) imposes on Federal agencies the general duty to adhere to the following requirements: Eliminate drafting errors and needless ambiguity, write regulations to minimize litigation, provide a clear legal standard for affected conduct rather than a general standard, and promote simplification and burden reduction. Section 3(b) requires Federal agencies to make every reasonable effort to ensure that a regulation, among other things: Clearly specifies the preemptive effect, if any, adequately defines key terms, and addresses other important issues affecting the clarity and general draftsmanship under guidelines issued by the Attorney General. Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final rule meets the relevant standards of E.O. 12988.

C. Review Under Executive Order 13132

Today's regulatory action has been determined not to be a "policy that has federalism implications," that is, it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor on the distribution of power and responsibility among the various levels of government under E.O. 13132, "Federalism" (64 FR 43255; August 10, 1999). Accordingly, no "federalism summary impact statement" was prepared or subjected to review under the E.O. by the Director of the Office of Management and Budget.

D. Review Under Executive Order 13175

Under E.O. 13175 (65 FR 67249; November 9, 2000) on "Consultation and Coordination with Indian Tribal Governments," DOE may not issue a discretionary rule that has "tribal implications" and imposes substantial direct compliance costs on Indian tribal governments. DOE has determined that this rule would not have such effects and concluded that E.O. 13175 does not apply to this rule.

E. Review Under the Regulatory Flexibility Act

The revisions to the existing regulations have been reviewed under the Regulatory Flexibility Act of 1980 (5 U.S.C.601 *et seq.*) and related provisions of E.O. 13272, "Proper Consideration of Small Entities in Agency Rulemaking" (67 FR 53461; August 16, 2002) and DOE's procedures and policies (68 FR 7990; February 19, 2003). The Act requires preparation of an initial regulatory flexibility analysis for any regulation that is likely to have a significant economic impact on a substantial number of small entities. Today's revisions to 10 CFR parts 1021 and 1022 amend DOE policies and streamline existing procedures for environmental review of actions proposed in a floodplain or wetland under two E.O.s. The actions would

neither increase the incidence of floodplain and wetland assessments nor increase burdens associated with carrying out such an assessment. Therefore, DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities, and therefore, no regulatory flexibility analysis has been prepared. We received no comments on our decision not to prepare a regulatory flexibility analysis.

F. Review Under the Paperwork Reduction Act

No additional information or recordkeeping requirements are imposed by this rulemaking. The changes would actually reduce paperwork requirements by eliminating a requirement that public notices always be published in the **Federal Register** and by increasing the number of exemptions from requirements for preparing a floodplain or wetland assessment. Accordingly, no clearance by the Office of Management and Budget was required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

G. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these revisions to existing regulations falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, the revisions to 10 CFR parts 1021 and 1022 would amend DOE's policies to streamline and simplify existing procedures for environmental review of actions proposed in a floodplain or wetland under two E.O.s. The proposed regulations are covered under the categorical exclusion in paragraph A6, "Rulemakings, Procedural" (rulemakings that are strictly procedural) to Appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental assessment nor an EIS is required.

H. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency regulation that may result in the expenditure by state, tribal, or local governments, on the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officials of state, tribal, or local governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to provide timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE has determined that the revisions to 10 CFR parts 1021 and 1022 published today do not contain any Federal mandates affecting small governments, so these requirements do not apply.

I. Review Under Executive Order 13211

E.O. 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs in the Office of Management and Budget a Statement of Energy Effects for any significant energy action. Today's rule is not a significant energy action, as that term is defined in the E.O. Accordingly, DOE has not prepared a Statement of Energy Effects.

J. Review Under the Treasury and General Government Appropriations Act

Section 654 of the Treasury and General Government Appropriations Act of 1999 (Pub. L. 105–277) requires Federal agencies to issue a "Family Policymaking Assessment" for any proposed rule that may affect family well-being. This rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most dissemination of information to the public under guidelines established by each agency pursuant to general guidelines issued by the Office of Management and Budget. The Office ofManagement and Budget guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the Office of Management and Budget and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

L. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that is has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

List of Subjects in 10 CFR Parts 1021 and 1022

Floodplains, Wetlands.

Issued in Washington, DC, August 19, 2003.

Beverly A. Cook,

Assistant Secretary, Environment, Safety and Health.

■ For the reasons set forth in the preamble, parts 1021 and 1022 of chapter III of title 10, Code of Federal Regulations, are amended as follows:

PART 1021—NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

■ 1. The authority citation for part 1021 is revised to read as follows:

Authority: 42 U.S.C. 7101 *et seq.*; 42 U.S.C. 4321 *et seq.*; 50 U.S.C. 2401 *et seq.*

§ 1021.313 [Amended]

■ 2. In § 1021.313, paragraph (c), the last sentence is amended as follows:

■ a. Remove the word "shall" and add in its place the word "may".

■ b. Remove the phrase "Floodplain/Wetlands" and add in its place "Floodplain and Wetland".

■ c. Remove the period and add the words ", or a Statement of Findings may be issued separately." at the end of the sentence.

PART 1022—COMPLIANCE WITH FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS

■ 3. Part 1022 is revised to read as follows:

PART 1022—COMPLIANCE WITH FLOODPLAIN AND WETLAND ENVIRONMENTAL REVIEW REQUIREMENTS

Subpart A—General

Sec.

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1022.22 Requests for authorizations or appropriations.
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Authority: 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*; E.O. 11988, 42 FR 26951, 3 CFR, 1977 Comp., p. 117; E.O. 11990, 42 FR 26961, 3 CFR, 1977 Comp., p. 121; E.O. 12372, 47 FR 30959, 3 CFR, 1982 Comp., p. 197.

Subpart A—General

§ 1022.1 Background.

(a) Executive Order (E.O.) 11988—Floodplain Management (May 24, 1977) directs each Federal agency to issue or amend existing regulations and procedures to ensure that the potential effects of any action it may take in a floodplain are evaluated and that its planning programs and budget requests reflect consideration of flood hazards and floodplain management. Guidance for implementation of the E.O. is provided in the floodplain management guidelines of the U.S. Water Resources Council (40 FR 6030; February 10, 1978) and in "A Unified National Program for Floodplain Management" prepared by the Federal Interagency Floodplain Management Taskforce (Federal Emergency Management Agency, FEMA 248, June 1994). E.O. 11990—Protection of Wetlands (May 24, 1977) directs all Federal agencies to issue or amend existing procedures to ensure consideration of wetlands protection in decisionmaking and to ensure the evaluation of the potential impacts of any new construction proposed in a wetland.

(b) It is the intent of the E.O.s that Federal agencies implement both the floodplain and the wetland provisions through existing procedures such as those established to implement the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). In those instances where the impacts of the proposed action are not significant enough to require the preparation of an EIS under section 102(2)(C) of NEPA, alternative floodplain or wetland evaluation procedures are to be established. As stated in the E.O.s, Federal agencies are to avoid direct or indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

§ 1022.2 Purpose and scope.

(a) This part establishes policy and procedures for discharging the Department of Energy's (DOE's) responsibilities under E.O. 11988 and E.O. 11990, including:

(1) DOE policy regarding the consideration of floodplain and wetland factors in DOE planning and decisionmaking; and

(2) DOE procedures for identifying proposed actions located in a floodplain or wetland, providing opportunity for early public review of such proposed actions, preparing floodplain or wetland assessments, and issuing statements of findings for actions in a floodplain.

(b) To the extent possible, DOE shall accommodate the requirements of E.O. 11988 and E.O. 11990 through applicable DOE NEPA procedures or, when appropriate, the environmental review process under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq.*).

§ 1022.3 Policy.

DOE shall exercise leadership and take action to:

(a) Incorporate floodplain management goals and wetland protection considerations into its planning, regulatory, and decisionmaking processes, and shall to the extent practicable:

(1) Reduce the risk of flood loss;

(2) Minimize the impact of floods on human safety, health, and welfare;

(3) Restore and preserve natural and beneficial values served by floodplains;

(4) Require the construction of DOE structures and facilities to be, at a minimum, in accordance with FEMA National Flood Insurance Program building standards;

(5) Promote public awareness of flood hazards by providing conspicuous delineations of past and probable flood heights on DOE property that has suffered flood damage or is in an identified floodplain and that is used by the general public;

(6) Inform parties during transactions guaranteed, approved, regulated, or insured by DOE of the hazards associated with locating facilities and structures in a floodplain;

(7) Minimize the destruction, loss, or degradation of wetlands; and

(8) Preserve and enhance the natural and beneficial values of wetlands.

(b) Undertake a careful evaluation of the potential effects of any proposed floodplain or wetland action.

(c) Avoid to the extent possible the long- and short-term adverse impacts associated with the destruction of wetlands and the occupancy and modification of floodplains and wetlands, and avoid direct and indirect support of development in a floodplain or new construction in a wetland wherever there is a practicable alternative.

(d) Identify, evaluate, and as appropriate, implement alternative actions that may avoid or mitigate adverse floodplain or wetland impacts.

(e) Provide opportunity for early public review of any plans or proposals for floodplain or wetland actions.

§ 1022.4 Definitions.

The following definitions apply to this part:

Action means any DOE activity necessary to carry out its responsibilities for:

(1) Acquiring, managing, and disposing of Federal lands and facilities;

(2) Providing DOE-undertaken, -financed, or -assisted construction and improvements; and

(3) Conducting activities and programs affecting land use, including but not limited to water- and related land-resources planning, regulating, and licensing activities.

Base floodplain means the 100-year floodplain, that is, a floodplain with a 1.0 percent chance of flooding in any given year.

Critical action means any DOE action for which even a slight chance of flooding would be too great. Such actions may include, but are not limited to, the storage of highly volatile, toxic, or water reactive materials.

Critical action floodplain means, at a minimum, the 500-year floodplain, that is, a floodplain with a 0.2 percent chance of flooding in any given year. When another requirement directing evaluation of a less frequent flood event also is applicable to the proposed action, a flood less frequent than the 500-year flood may be appropriate for determining the floodplain for purposes of this part.

Effects of national concern means those effects that because of the high quality or function of the affected resource or because of the wide geographic range of effects could create concern beyond the locale or region of the proposed action.

Environmental assessment (EA) means a document prepared in accordance with the requirements of 40 CFR 1501.4(b), 40 CFR 1508.9, 10 CFR 1021.320, and 10 CFR 1021.321.

Environmental impact statement (EIS) means a document prepared in accordance with the requirements of section 102(2)(C) of NEPA and its

implementing regulations at 40 CFR Parts 1500–1508 and 10 CFR Part 1021.

Facility means any human-made or -placed item other than a structure.

FEMA means the Federal Emergency Management Agency, Department of Homeland Security.

Finding of no significant impact means a document prepared in accordance with the requirements of 40 CFR 1508.13 and 10 CFR 1021.322.

Flood or flooding means a temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, or the unusual and rapid accumulation or runoff of surface waters from any source.

Floodplain means the lowlands adjoining inland and coastal waters and relatively flat areas and floodprone areas of offshore islands.

Floodplain action means any DOE action that takes place in a floodplain, including any DOE action in a wetland that is also within the floodplain, subject to the exclusions specified at § 1022.5(c) and (d) of this part.

Floodplain and wetland values means the qualities of or functions served by floodplains and wetlands that can include, but are not limited to, living values (*e.g.*, conservation of existing flora and fauna including their long-term productivity, preservation of diversity and stability of species and habitats), cultural resource values (*e.g.*, archeological and historic sites), cultivated resource values (*e.g.*, agriculture, aquaculture, forestry), aesthetic values (*e.g.*, natural beauty), and other values related to uses in the public interest (*e.g.*, open space, scientific study, outdoor education, recreation).

Floodplain or wetland assessment means an evaluation consisting of a description of a proposed action, a discussion of its potential effects on the floodplain or wetland, and consideration of alternatives.

Floodplain statement of findings means a brief document issued pursuant to § 1022.14 of this part that describes the results of a floodplain assessment.

High-hazard areas means those portions of riverine and coastal floodplains nearest the source of flooding that are frequently flooded and where the likelihood of flood losses and adverse impacts on the natural and beneficial values served by floodplains is greatest.

Minimize means to reduce to the smallest degree practicable.

New construction, for the purpose of compliance with E.O. 11990 and this part, means the building of any structures or facilities, draining, dredging, channelizing, filling, diking, impounding, and related activities.

Notice of proposed floodplain action and notice of proposed wetland action mean a brief notice that describes a proposed floodplain or wetland action, respectively, and its location and that affords the opportunity for public review.

Practicable means capable of being accomplished within existing constraints, depending on the situation and including consideration of many factors, such as the existing environment, cost, technology, and implementation time.

Preserve means to prevent modification to the natural floodplain or wetland environment or to maintain it as closely as possible to its natural state.

Restore means to reestablish a setting or environment in which the natural functions of the floodplain or wetland can again operate.

Structure means a walled or roofed building, including mobile homes and gas or liquid storage tanks.

Wetland means an area that is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, including swamps, marshes, bogs, and similar areas.

Wetland action means any DOE action related to new construction that takes place in a wetland not located in a floodplain, subject to the exclusions specified at § 1022.5(c) and (d) of this part.

§ 1022.5 Applicability.

(a) This part applies to all organizational units of DOE, including the National Nuclear Security Administration, except that it shall not apply to the Federal Energy Regulatory Commission.

(b) This part applies to all proposed floodplain or wetland actions, including those sponsored jointly with other agencies.

(c) This part does not apply to the issuance by DOE of permits, licenses, or allocations to private parties for activities involving a wetland that are located on non-Federal property.

(d) Subject to paragraph (e) of this section, subpart B of this part does not apply to:

(1) Routine maintenance of existing facilities and structures on DOE property in a floodplain or wetland. Maintenance is routine when it is needed to maintain and preserve the facility or structure for its designated purpose (*e.g.*, activities such as reroofing, plumbing repair, door and window replacement);

(2) Site characterization, environmental monitoring, or environmental research activities (*e.g.*, sampling and surveying water and air quality, flora and fauna abundance, and soil properties) in a floodplain or wetland, unless these activities would involve building any structure; involve draining, dredging, channelizing, filling, diking, impounding, or related activities; or result in long-term change to the ecosystem; and

(3) Minor modification (*e.g.*, upgrading lighting, heating, ventilation, and air conditioning systems; installing or improving alarm and surveillance systems; and adding environmental monitoring or control systems) of an existing facility or structure in a floodplain or wetland to improve safety or environmental conditions unless the modification would result in a significant change in the expected useful life of the facility or structure, or involve building any structure or involve draining, dredging, channelizing, filling, diking, impounding, or related activities.

(e) Although the actions listed in paragraphs (d)(1), (d)(2), and (d)(3) of this section normally have very small or no adverse impact on a floodplain or wetland, where unusual circumstances indicate the possibility of adverse impact on a floodplain or wetland, DOE shall determine the need for a floodplain or wetland assessment.

§ 1022.6 Public inquiries.

Inquiries regarding DOE's floodplain and wetland environmental review requirements may be directed to the Office of NEPA Policy and Compliance, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0119, 202–586–4600, or a message may be left at 1–800–472–2756, toll free.

Subpart B—Procedures for Floodplain and Wetland Reviews

§ 1022.11 Floodplain or wetland determination.

(a) Concurrent with its review of a proposed action to determine appropriate NEPA or CERCLA process requirements, DOE shall determine the applicability of the floodplain management and wetland protection requirements of this part.

(b) DOE shall determine whether a proposed action would be located within a base or critical action floodplain consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) Flood Insurance Rate Maps or Flood Hazard Boundary Maps prepared by FEMA;

(2) Information from a land-administering agency (*e.g.*, Bureau of Land Management) or from other government agencies with floodplain-determination expertise (*e.g.*, U.S. Army Corps of Engineers, Natural Resources Conservation Service);

(3) Information contained in safety basis documents as defined at 10 CFR part 830; and

(4) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(c) DOE shall determine whether a proposed action would be located within a wetland consistent with the most authoritative information available relative to site conditions from the following sources, as appropriate:

(1) U.S. Army Corps of Engineers "Wetlands Delineation Manual," Wetlands Research Program Technical Report Y–87–1, January 1987, or successor document;

(2) U.S. Fish and Wildlife Service National Wetlands Inventory or other government-sponsored wetland or land-use inventories;

(3) U.S. Department of Agriculture Natural Resources Conservation Service Local Identification Maps;

(4) U.S. Geological Survey Topographic Maps; and

(5) DOE environmental documents, *e.g.*, NEPA and CERCLA documents.

(d) Pursuant to § 1022.5 of this part and paragraphs (b) and (c) of this section, DOE shall prepare:

(1) A floodplain assessment for any proposed floodplain action in the base floodplain or for any proposed floodplain action that is a critical action located in the critical action floodplain; or

(2) A wetland assessment for any proposed wetland action.

§ 1022.12 Notice of proposed action.

(a) For a proposed floodplain or wetland action for which an EIS is required, DOE shall use applicable NEPA procedures to provide the opportunity for early public review of the proposed action. A notice of intent to prepare the EIS may be used to satisfy the requirement for DOE to publish a notice of proposed floodplain or wetland action.

(b) For a proposed floodplain or wetland action for which no EIS is required, DOE shall take appropriate steps to send a notice of proposed floodplain or wetland action to appropriate government agencies (*e.g.*, FEMA regional offices, host and affected States, and tribal and local governments) and to persons or groups known to be interested in or potentially affected by the proposed floodplain or wetland action. DOE also shall distribute the notice in the area where the proposed action is to be located (*e.g.*, by publication in local newspapers, through public service announcements, by posting on- and off-site). In addition, for a proposed floodplain or wetland action that may result in effects of national concern to the floodplain or wetland or both, DOE shall publish the notice in the **Federal Register**.

§ 1022.13 Floodplain or wetland assessment.

(a) A floodplain or wetland assessment shall contain the following information:

(1) *Project Description.* This section shall describe the proposed action and shall include a map showing its location with respect to the floodplain and/or wetland. For actions located in a floodplain, the nature and extent of the flood hazard shall be described, including the nature and extent of hazards associated with any high-hazard areas.

(2) *Floodplain or Wetland Impacts.* This section shall discuss the positive and negative, direct and indirect, and long- and short-term effects of the proposed action on the floodplain and/or wetland. This section shall include impacts on the natural and beneficial floodplain and wetland values (§ 1022.4) appropriate to the location under evaluation. In addition, the effects of a proposed floodplain action on lives and property shall be evaluated. For an action proposed in a wetland, the effects on the survival, quality, and function of the wetland shall be evaluated.

(3) *Alternatives.* DOE shall consider alternatives to the proposed action that avoid adverse impacts and incompatible development in the floodplain and/or wetland, including alternate sites, alternate actions, and no action. DOE shall evaluate measures that mitigate the adverse effects of actions in a floodplain and/or wetland including, but not limited to, minimum grading requirements, runoff controls, design and construction constraints, and protection of ecologically-sensitive areas.

(b) For proposed floodplain or wetland actions for which an EA or EIS is required, DOE shall prepare the floodplain or wetland assessment concurrent with and included in the appropriate NEPA document.

(c) For floodplain or wetland actions for which neither an EA nor an EIS is prepared, DOE shall prepare the floodplain or wetland assessment separately or incorporate it when appropriate into another environmental review process (*e.g.*, CERCLA).

§ 1022.14 Findings.

(a) If DOE finds that no practicable alternative to locating or conducting the action in the floodplain or wetland is available, then before taking action DOE shall design or modify its action in order to minimize potential harm to or within the floodplain or wetland, consistent with the policies set forth in E.O. 11988 and E.O. 11990.

(b) For actions that will be located in a floodplain, DOE shall issue a floodplain statement of findings, normally not to exceed three pages, that contains:

(1) A brief description of the proposed action, including a location map;

(2) An explanation indicating why the action is proposed to be located in the floodplain;

(3) A list of alternatives considered;

(4) A statement indicating whether the action conforms to applicable floodplain protection standards; and

(5) A brief description of steps to be taken to minimize potential harm to or within the floodplain.

(c) For floodplain actions that require preparation of an EA or EIS, DOE may incorporate the floodplain statement of findings into the finding of no significant impact or final EIS, as appropriate, or issue such statement separately.

(d) DOE shall send copies of the floodplain statement of findings to appropriate government agencies (*e.g.*, FEMA regional offices, host and affected states, and tribal and local governments) and to others who submitted comments on the proposed floodplain action.

(e) For proposed floodplain actions that may result in effects of national concern, DOE shall publish the floodplain statement of findings in the **Federal Register**, describing the location of the action and stating where a map is available.

(f) For floodplain actions subject to E.O. 12372—Intergovernmental Review of Federal Programs (July 14, 1982), DOE also shall send the floodplain statement of findings to the State in accordance with 10 CFR part 1005—Intergovernmental Review of Department of Energy Programs and Activities.

§ 1022.15 Timing.

(a) For a proposed floodplain action, DOE shall allow 15 days for public comment following issuance of a notice of proposed floodplain action. After the close of the public comment period and

before issuing a floodplain statement of findings, DOE shall reevaluate the practicability of alternatives to the proposed floodplain action and the mitigating measures, taking into account all substantive comments received. After issuing a floodplain statement of findings, DOE shall endeavor to allow at least 15 days of public review before implementing a proposed floodplain action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register**.

(b) For a proposed wetland action, DOE shall allow 15 days for public comment following issuance of a notice of proposed wetland action. After the close of the public comment period, DOE shall reevaluate the practicability of alternatives to the proposed wetland action and the mitigating measures, taking into account all substantive comments received, before implementing a proposed wetland action. If a **Federal Register** notice is required, the 15-day period begins on the date of publication in the **Federal Register**.

§ 1022.16 Variances.

(a) *Emergency actions.* DOE may take actions without observing all provisions of this part in emergency situations that demand immediate action. To the extent practicable prior to taking an emergency action (or as soon as possible after taking such an action) DOE shall document the emergency actions in accordance with NEPA procedures at 10 CFR 1021.343(a) or CERCLA procedures in order to identify any adverse impacts from the actions taken and any further necessary mitigation.

(b) *Timing.* If statutory deadlines or overriding considerations of program or project expense or effectiveness exist, DOE may waive the minimum time periods in § 1022.15 of this subpart.

(c) *Consultation.* To the extent practicable prior to taking an action pursuant to paragraphs (a) or (b) of this section (or as soon as possible after taking such an action) the cognizant DOE program or project manager shall consult with the Office of NEPA Policy and Compliance.

§ 1022.17 Follow-up.

For those DOE actions taken in a floodplain or wetland, DOE shall verify that the implementation of the selected alternative, particularly with regard to any adopted mitigation measures, is proceeding as described in the floodplain or wetland assessment and the floodplain statement of findings.

Subpart C—Other Requirements

§ 1022.21 Property management.

(a) If property in a floodplain or wetland is proposed for license, easement, lease, transfer, or disposal to non-Federal public or private parties, DOE shall:

(1) Identify those uses that are restricted under applicable floodplain or wetland regulations and attach other appropriate restrictions to the uses of the property; or

(2) Withhold the property from conveyance.

(b) Before completing any transaction that DOE guarantees, approves, regulates, or insures that is related to an area located in a floodplain, DOE shall inform any private party participating in the transaction of the hazards associated with locating facilities or structures in the floodplain.

§ 1022.22 Requests for authorizations or appropriations.

It is DOE policy to indicate in any requests for new authorizations or appropriations transmitted to the Office of Management and Budget, if a proposed action is located in a floodplain or wetland and whether the proposed action is in accord with the requirements of E.O. 11988 and E.O. 11990 and this part.

§ 1022.23 Applicant responsibilities.

DOE may require applicants for any use of real property (*e.g.*, license, easement, lease, transfer, or disposal), permits, certificates, loans, grants, contract awards, allocations, or other forms of assistance or other entitlement related to activities in a floodplain or wetland to provide information necessary for DOE to comply with this part.

§ 1022.24 Interagency cooperation.

If DOE and one or more agencies are directly involved in a proposed floodplain or wetland action, in accordance with DOE's NEPA or CERCLA procedures, DOE shall consult with such other agencies to determine if a floodplain or wetland assessment is required by subpart B of this part, identify the appropriate lead or joint agency responsibilities, identify the applicable regulations, and establish procedures for interagency coordination during the environmental review process.

[FR Doc. 03–21775 Filed 8–26–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM262; Special Conditions No. 25–244–SC]

Special Conditions: Avions Marcel Dassault-Breguet Aviation Model Falcon 10 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Avions Marcel Dassault-Breguet Aviation (AMD/BA) Model Falcon 10 series airplanes modified by Elliott Aviation Technical Products Development, Inc. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of dual Innovative Solutions & Support (IS&S) Air Data Display Units (ADDU) with the IS&S Air Data Sensor and an analog interface unit (AIU) that perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 19, 2003.

Comments must be received on or before September 26, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM262, 1601 Lind Avenue SW., Renton Washington, 98055–4056; or delivered in duplicate to the Transport Directorate at the above address. All comments must be marked: Docket No. NM262.

FOR FURTHER INFORMATION CONTACT: Greg Dunn, FAA, Airplane and Flight Crew Interface Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2799; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

FAA's Determination as to Need for Public Process

The FAA has determined that notice and opportunity for prior public comment is unnecessary because the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On February 25, 2003, Elliott Aviation Technical Products Development, Inc., PO Box 100, Quad City Airport, Moline, Illinois 61266–0100, applied for a Supplemental Type Certificate (STC) to modify Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes. This model series is currently approved under Type Certificate No. A33EU. The Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes are a small category airplane powered by two Airesearch Manufacturing Company TFE731–2–1C turbofan engines, and have a maximum takeoff weight of 18,300 pounds. This airplane operates with a 2-pilot crew and can hold up to 9 passengers. The modification incorporates the installation of Innovative Solutions & Support (IS&S) Air Data Display Units (ADDU) with an IS&S Air Data Sensor and Analog Interface Unit (AIU). The ADDU replaces the existing analog flight instrumentation and provides additional functional capability and redundancy in the system. The AIU is a digital-to-analog adapter used to adapt signals driving the existing Sperry Flight Guidance Computer. The avionics/electronics and electrical systems installed in this airplane have the potential to be vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Elliott Aviation Technical Products Development, Inc. must show that the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A33EU, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes includes 14 CFR part 25 as amended by Amendments 25–1 through 25–20, dated February 1, 1964, except for special conditions and exceptions noted in Type Certificate Data Sheet (TDCS) No. A33EU.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirement of part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Elliott Aviation Technical Products Development, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A33EU to incorporate the same or similar novel or unusual design feature, these special conditions would also apply to the other model.

Novel or Unusual Design Features

As noted earlier, the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Elliott Aviation Technical Products Development, Inc. will incorporate systems comprised of dual Air Data Display Units and an analog interface unit that will perform critical functions. These systems may be vulnerable to high-intensity radiated fields external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Elliott Aviation Technical Products Development, Inc. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit

window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, **OR** 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 kHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table below are to be demonstrated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Elliott Aviation Technical Products Development, Inc. Should Elliott Aviation Technical Products Development, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A33EU to incorporate the same or similar novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Elliott Aviation Technical Products Development, Inc. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. Therefore, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Avions Marcel Dassault-Breguet Aviation Model Falcon 10 series airplanes modified by Elliott Aviation Technical Products Development, Inc.

1. *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on August 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21959 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–128–AD; Amendment 39–13269; AD 2003–16–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes Equipped With General Electric Model CF6–80C2 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that currently requires repetitive tests of the cone brake of the central drive unit (CDU) of the thrust reversers, and corrective actions if necessary. This amendment requires installation of a thrust reverser actuation system (TRAS) lock and various related modifications and installations. Following installation of the TRAS lock, this action also requires repetitive functional tests of the TRAS lock, and corrective action if necessary. These actions are intended to prevent an inadvertent deployment of a thrust reverser during flight, which could result in loss of control of the airplane.

DATES: Effective October 1, 2003.

The incorporation by reference of certain publications, as listed in the regulations, is approved by the Director of the Federal Register as of October 1, 2003.

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 6, 2000 (65 FR 47252, August 2, 2000).

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of March 13, 2000 (65 FR 5742, February 7, 2000).

The incorporation by reference of certain other publications, as listed in the regulations, was approved previously by the Director of the Federal Register as of August 25, 1999 (64 FR 39003, July 21, 1999).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; and Distribution, Lockheed Martin Technical Services, 1330 Kemper Meadow Drive, suite 110–C, Cincinnati, Ohio 45240. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–09–03, amendment 39–11711 (65 FR 25829, May 4, 2000), which is applicable to certain Boeing Model 747–400 series airplanes, was published in the **Federal Register** on January 30, 2003 (68 FR 4731). The action proposed to continue to require repetitive tests of the cone brake of the central drive unit of the thrust reversers, and corrective actions if necessary. The action proposed to add new requirements for installation of a thrust reverser actuation system (TRAS) lock and various related modifications and installations. The action also proposed to require, following installation of the TRAS lock, repetitive functional tests of the TRAS lock, and corrective action if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from a single commenter.

Request To Add Additional Sources of Service Information

The commenter notes that there are later revisions available for certain service bulletins referenced in the proposed AD. The commenter points out the following:

- Lockheed Martin is now Middle River Aircraft Systems (MRAS).
- Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997, has been superseded by MRAS Service Bulletin 78–1007, Revision 2, dated March 10, 1998.
- Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997, has been superseded by MRAS Service Bulletin 78–1020, Revision 3, dated March 16, 1998; and MRAS CF6–80C2B Service Bulletin 78–1020, Revision 4, dated October 10, 2002.

The commenter notes that no additional work is necessary per the new revisions of the service bulletins.

We infer that the commenter is requesting that we revise the final rule to include references to the later revisions of the service bulletins. We concur and have revised paragraphs (d)(2)(i) and (d)(2)(iii) of this AD to reference the service bulletin revisions cited by the commenter as additional acceptable sources of service information.

Request To Accept Additional Software Versions

The same commenter notes that Boeing Service Bulletin 747–31–2242, dated April 18, 1996, which is cited in paragraph (d)(2)(iv) of the proposed AD, specifies installation of integrated display system (IDS) software version 995–0017–012. The commenter similarly notes that Boeing Service Bulletin 747–45–2016 (Revision 1, dated May 2, 1996), which is cited in paragraph (d)(2)(v) of the proposed AD, specifies installation of central maintenance computer (CMC) software version 685–2270–009. The commenter points out that, since the issuance of those service bulletins, the manufacturer has released several additional software versions. The commenter requests that we include the additional software versions as acceptable parts for the purposes of the proposed AD.

We concur and have added references to acceptable versions of the IDS and CMC software into paragraphs (d)(2)(iv) and (d)(2)(v) of this AD, respectively. We note, however, that the manufacturer has delayed release of one of the CMC software versions to which the commenter refers, 685–2270–012. Because we are unable to determine whether that version would be acceptable for compliance with this AD, this final rule does not refer to that version.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the

FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

Since we issued the proposed AD, we have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 145 airplanes of the affected design in the worldwide fleet. The FAA estimates that 8 airplanes of U.S. registry will be affected by this AD.

The functional test that is currently required by AD 2000–09–03 takes approximately 12 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $6,240, or $780 per airplane, per test cycle.

The installations in Boeing Service Bulletin 747–78–2151, Revision 2, will take approximately 410 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will be provided at no charge. Based on these figures, the cost impact of this requirement on U.S. operators is estimated to be $213,200, or $26,650 per airplane.

The installation specified in Lockheed Martin Service Bulletin 78–1007, Revision 1, or MRAS Service Bulletin 78–1007, Revision 2, will take approximately 60 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will be provided at no charge. Based on these figures, the cost impact of this requirement on U.S. operators is estimated to be $31,200, or $3,900 per airplane.

The installation specified in Boeing Service Bulletin 747–78–2132, Revision 2, will take approximately 223 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will cost between $32,219 and $36,562 per airplane. Based on these figures, the cost impact of this requirement is estimated to be between $46,714 and $51,057 per airplane. The manufacturer may cover the cost of replacement parts associated with this service bulletin, subject to warranty conditions. As a result, the costs attributable to this required action may be less than stated above.

The installation specified in Lockheed Martin Service Bulletin 78–1020, Revision 2, or MRAS Service Bulletin 78–1020, Revision 3 or 4, will take approximately 16 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts will be provided at no charge. Based on these figures, the cost impact of this requirement on U.S. operators is estimated to be $8,320, or $1,040 per airplane.

The installation specified in Boeing Service Bulletin 747–31–2242 will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. The cost of required parts will be negligible. Based on these figures, the cost impact of this requirement is estimated to be $1,040, or $130 per airplane. The manufacturer may cover the cost of replacement parts and labor costs associated with accomplishment of this service bulletin, subject to warranty conditions. As a result, the costs attributable to this required action may be less than stated.

The installation specified in Boeing Service Bulletin 747–45–2016, Revision 1, will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. The cost of required parts will be negligible. Based on these figures, the cost impact of this requirement is estimated to be $1,560, or $195 per airplane. The manufacturer may cover the labor costs associated with accomplishment of this service bulletin, subject to warranty conditions. As a result, the costs attributable to this required action may be less than stated above.

The functional test that will be required following installation of the TRAS lock would take approximately 12 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this requirement is estimated to be $6,240, or $780 per airplane, per test cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11711 (65 FR 25829, May 4, 2000), and by adding a new airworthiness directive (AD), amendment 39–13269, to read as follows:

2003–16–16 Boeing: Amendment 39–13269. Docket 2002–NM–128–AD. Supersedes AD 2000–09–03, Amendment 39–11711.

Applicability: Model 747–400 series airplanes equipped with General Electric (GE) Model CF6–80C2 series engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an inadvertent deployment of a thrust reverser during flight, which could result in loss of control of the airplane, accomplish the following:

Requirements of AD 2000–09–03

Repetitive Functional Tests

(a) Within 1,000 hours time-in-service after the most recent test of the center drive unit (CDU) cone brake as specified in paragraph (b)(1) of AD 94–15–05, amendment 39–8976; or within 650 hours time-in-service after May 19, 2000 (the effective date of AD 2000–09–03, amendment 39–11711); whichever occurs later: Perform a functional test to detect discrepancies of the CDU cone brake on each thrust reverser as specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For Model 747–400 series airplanes equipped with thrust reversers that have not been modified in accordance with Boeing Service Bulletin 747–78–2151 or a production equivalent: Perform the test in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; or paragraph 3.C. of Boeing Alert Service Bulletin 747–78A2166, Revision 2, dated March 15, 2001; or the applicable section of paragraph III.A. of the Accomplishment Instructions of Boeing Service Bulletin 747–78A2113, Revision 2, dated June 8, 1995; or Revision 3, dated September 11, 1997. Repeat the test thereafter at intervals not to exceed 650 hours time-in-service.

(2) For Model 747–400 series airplanes equipped with thrust reversers that have been modified in accordance with Boeing Service Bulletin 747–78–2151 or a production equivalent: Perform the test in accordance with Appendix 1 (including Figure 1) of this AD, or paragraph 3.C. of Boeing Alert Service Bulletin 747–78A2166, Revision 2, dated March 15, 2001. After the effective date of this AD, only Boeing Alert Service Bulletin 747–78A2166, Revision 2, may be used. Repeat the test thereafter at intervals not to exceed 1,000 hours time-in-service.

Note 2: Accomplishment of the CDU cone brake test during production in accordance with Production Revision Record (PRR) 80452–102 prior to May 19, 2000, is considered acceptable for compliance with the initial test required by paragraph (a) of this AD.

Note 3: Model 747–400 series airplanes, line numbers 1061 and subsequent, equipped with GE CF6–80C2 engines, had a third locking system installed during production in accordance with PRR 80452–102, and were not modified in accordance with Boeing Service Bulletin 747–78–2151 (which is a retrofit action for airplanes having line numbers 700 through 1060 inclusive).

Terminating Action

(b) Accomplishment of the functional test of the CDU cone brake, as specified in paragraph (a) of this AD, constitutes terminating action for the repetitive tests of the CDU cone brake required by paragraph (b)(1) of AD 94–15–05.

Corrective Action

(c) If any functional test required by paragraph (a) of this AD cannot be successfully performed as specified in the referenced service bulletin, or if any discrepancy is detected during any functional test required by paragraph (a) of this AD, accomplish either paragraph (c)(1) or (c)(2) of this AD.

(1) Prior to further flight, repair in accordance with Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; Boeing Alert Service Bulletin 747–78A2166, Revision 2, dated March 15, 2001; Boeing Service Bulletin 747–78A2113, Revision 2, dated June 8, 1995; or Revision 3, dated September 11, 1997. After the effective date of this AD, only Boeing Alert Service Bulletin 747–78A2166, Revision 2; or Boeing Service Bulletin 747–78A2113, Revision 2 or Revision 3; may be used.

(2) The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved Minimum Equipment List, provided that no more than one thrust reverser on the airplane is inoperative.

New Requirements of This AD

Installation of Thrust Reverser Actuator System Lock and Associated Actions

(d) For airplanes listed in Boeing Service Bulletin 747–78–2151, Revision 2, dated January 13, 2000: Within 36 months after the effective date of this AD, do paragraphs (d)(1) and (d)(2) of this AD.

(1) Install and activate a thrust reverser actuator system (TRAS) lock on each thrust reverser per the Accomplishment Instructions of Boeing Service Bulletin 747–78–2151, Revision 1, dated August 21, 1997; as revised by Notice of Status Change (NSC) 747–78–2151 NSC 04, dated November 26, 1997; and NSC 747–78–2151 NSC 05, dated December 18, 1997; or Boeing Service Bulletin 747–78–2151, Revision 2, dated January 13, 2000. The procedures for completing the installation and activating the TRAS lock include replacing a certain microswitch pack with a new one; adding new wires; routing certain new wire bundles; changing certain wiring, circuit breakers, and components; installing thrust-reverser relay panels; and performing a functional test to ensure that the thrust reverser actuation system operates properly.

(2) Prior to or concurrently with the installation required by paragraph (d)(1) of this AD, do the requirements of paragraphs (d)(2)(i), (d)(2)(ii), (d)(2)(iii), (d)(2)(iv), and (d)(2)(v) of this AD.

(i) Install a bracket and fastening hardware for the third locking system on each thrust reverser, per Lockheed Martin Service Bulletin 78–1007, Revision 1, dated March 18, 1997; or Middle River Aircraft Systems Service Bulletin 78–1007, Revision 2, dated March 10, 1998.

(ii) Install wiring provisions in various areas of the airplane, per the Accomplishment Instructions of Boeing Service Bulletin 747–78–2132, Revision 2, dated December 11, 1997.

(iii) Install a TRAS lock (also called an electromechanical lock or brake) and a flexible drive cable on each thrust reverser, per Lockheed Martin Service Bulletin 78–1020, Revision 2, dated March 20, 1997; or Middle River Aircraft Systems Service Bulletin 78–1020, Revision 3, dated March 16, 1998; or Middle River Aircraft Systems CF6–80C2B Service Bulletin 78–1020, Revision 4, dated October 10, 2002.

(iv) Install new integrated display system (IDS) software in six integrated display units and three electronic flight information/engine indication and crew alerting system (EICAS) interface units, per the Accomplishment Instructions of Boeing Service Bulletin 747–31–2242, dated April 18, 1996. Where the service bulletin specifies installation of IDS software version 995–0017–012, installation of IDS software version 995–0017–013, 995–0017–014, 995–0017–015, 995–0017–016, 995–0017–018, 3174–COL–EG5–01, 3177–COL–EG5–02, or 3176–COL–EG5–03 is also acceptable for compliance with this paragraph.

(v) Replace two central maintenance computers (CMC), part number 622–8592–103, with new, improved CMCs, part number 622–8592–105, and install new software for the CMCs, per the Accomplishment Instructions of Boeing Service Bulletin 747–45–2016, Revision 1, dated May 2, 1996. Where the service bulletin specifies installation of CMC software version 685–2270–009, installation of CMC software version 685–2270–010, or 685–2270–011 is also acceptable for compliance with this paragraph.

Repetitive Tests

(e) For airplanes on which a TRAS lock is installed on the thrust reversers: Within 1,000 flight hours after the installation of the TRAS lock, or within 90 flight hours after the effective date of this AD, whichever is later, do a functional test of the TRAS lock (also called an electromechanical lock or brake) per the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2166, Revision 2, dated March 15, 2001. Then, repeat this test at least every 1,000 flight hours. If the functional test cannot be successfully performed, before further flight, repair per the Accomplishment Instructions of the service bulletin, and repeat the test until it is successful.

Dispatch Limitations

(f) If, prior to accomplishment of Boeing Service Bulletin 747–78–2151 on any airplane, it becomes necessary to install a thrust reverser with the TRAS lock installed, dispatch of the airplane is allowed per the provisions and limitations specified in the 747–400 Master Minimum Equipment List (MMEL), provided that the thrust reverser assembly that has the TRAS lock installed is deactivated per the 747–400 Dispatch Deviations Guide, Boeing Document D6U10151, dated June 28, 2002. Installation of a thrust reverser without a TRAS lock installed and reactivation of the thrust reverser must be accomplished within the time constraints specified in the MMEL.

(g) If, after accomplishment of Boeing Service Bulletin 747–78–2151 on any airplane, it becomes necessary to install a thrust reverser assembly that does not have the TRAS lock installed, dispatch of the airplane is allowed per the provisions and limitations specified in the Boeing Model 747–400 MMEL, provided that the thrust reverser assembly that does not have the TRAS lock installed is deactivated per the 747–400 Dispatch Deviations Guide, Boeing Document D6U10151, dated June 28, 2002. Installation of a thrust reverser with the TRAS lock installed and reactivation of the thrust reverser must be accomplished within the time constraints specified in the MMEL.

Alternative Methods of Compliance

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–09–03, amendment 39–11711, are not considered to be approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Unless otherwise provided by this AD, the actions shall be done in accordance with the service bulletins listed in Table 1 of this AD, as applicable:

TABLE 1.—APPLICABLE SERVICE BULLETINS

Service bulletin	Revision	Date
Boeing Service Bulletin 747–31–2242	original	April 18, 1996.
Boeing Service Bulletin 747–45–2016	1	May 2, 1996.
Boeing Service Bulletin 747–78–2132	2	December 11, 1997.
Boeing Service Bulletin 747–78–2151, as revised by Notice of Status Change 747–78–2151 NSC 04 and	1 NSC 04	August 21, 1997. November 26, 1997.
Notice of Status Change 747–78–2151 NSC 05	NSC 05	December 18, 1997
Boeing Service Bulletin 747–78–2151	2	January 13, 2000.
Boeing Service Bulletin 747–78A2113	2	June 8, 1995.
Boeing Service Bulletin 747–78A2113	3	September 11, 1997.
Boeing Service Bulletin 747–78A2166	1	October 9, 1997.
Boeing Alert Service Bulletin 747–78A2166	2	March 15, 2001.
Lockheed Martin Service Bulletin 78–1007	1	March 18, 1997.
Middle River Aircraft Systems Service Bulletin 78–1007	2	March 10, 1998.
Lockheed Martin Service Bulletin 78–1020	2	March 20, 1997.
Middle River Aircraft Systems Service Bulletin 78–1020	3	March 16, 1998.
Middle River Aircraft Systems CF6–80C2B Service Bulletin 78–1020	4	October 10, 2002.

Middle River Aircraft Systems CF6–80C2B Service Bulletin 78–1020, Revision 4, dated October 10, 2002, contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 7, 20	4	October 10, 2002.
2–6, 8–19, 21–37	3	March 16, 1998.

(1) The incorporation by reference of the service bulletins in Table 2 of this AD is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Table 2 follows:

TABLE 2.—SERVICE BULLETINS INCORPORATED BY REFERENCE

Service bulletin	Revision	Date
Boeing Service Bulletin 747–31–2242	original	April 18, 1996.
Boeing Service Bulletin 747–45–2016	1	May 2, 1996.
Boeing Service Bulletin 747–78–2132	2	December 11, 1997.
Boeing Service Bulletin 747–78–2151, as revised by	1	August 21, 1997.

TABLE 2.—SERVICE BULLETINS INCORPORATED BY REFERENCE—Continued

Service bulletin	Revision	Date
Notice of Status Change 747–78–2151 NSC 04 and	NSC 04	November 26, 1997.
Notice of Status Change 747–78–2151 NSC 05	NSC 05	December 18, 1997.
Boeing Service Bulletin 747–78–2151	2	January 13, 2000.
Boeing Alert Service Bulletin 747–78A2166	2	March 15, 2001.
Middle River Aircraft Systems CF6–80C2B Service Bulletin 78–1020	4	October 10, 2002.

(2) The incorporation by reference of the service bulletins in Table 3 of this AD was approved previously by the Director of the Federal Register as of September 6, 2000 (65 FR 47252, August 2, 2000). Table 3 follows:

TABLE 3.—SERVICE BULLETINS PREVIOUSLY INCORPORATED BY REFERENCE

Service bulletin	Revision	Date
Lockheed Martin Service Bulletin 78–1007	1	March 18, 1997.
Middle River Aircraft Systems Service Bulletin 78–1007	2	March 10, 1998.
Lockheed Martin Service Bulletin 78–1020	2	March 20, 1997.
Middle River Aircraft Systems Service Bulletin 78–1020	3	March 16, 1998.

(3) The incorporation by reference of Boeing Service Bulletin 747–78A2113, Revision 2, dated June 8, 1995; and Boeing Service Bulletin 747–78A2113, Revision 3, dated September 11, 1997; was approved previously by the Director of the Federal Register as of March 13, 2000 (65 FR 5742, February 7, 2000).

(4) The incorporation by reference of Boeing Service Bulletin 747–78A2166, Revision 1, dated October 9, 1997; was approved previously by the Director of the Federal Register as of August 25, 1999 (64 FR 39003, July 21, 1999).

(5) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207; and Distribution, Lockheed Martin Technical Services, 1330 Kemper Meadow Drive, suite 110–C, Cincinnati, Ohio 45240. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(k) This amendment becomes effective on October 1, 2003.

Appendix 1—Thrust Reverser CDU Cone Brake Test

1. This procedure contains steps to do a check of the holding torque of the CDU cone brake.

2. CDU cone brake check (Figure 1):

A. Prepare to do the check:

(1) Open the fan cowl panels.

(2) Pull up on the manual release handle to unlock the electro-mechanical brake.

(3) Pull the manual brake release lever on the CDU to release the cone brake.

Note: This will release the pre-load tension that may occur during a stow cycle.

(4) Return the manual brake release lever to the locked position to engage the cone brake.

(5) Remove the two bolts that hold the lockout plate to the CDU and remove the lockout plate.

(6) Install a ¼-inch drive and a dial-type torque wrench into the CDU drive pad.

Caution: Do not use more than 100 pound-inches of torque when you do this check. Excessive torque will damage the CDU.

(7) Turn the torque wrench to try to manually extend the translating cowl until you get at least 15 pound-inches.

Note: The cone brake prevents movement in the extend direction only. If you try to measure the holding torque in the retract direction, you will get a false reading.

(8) If the torque is less than 15 pound-inches, you must replace the CDU.

(9) Reinstall the lockout plate.

B. Return the airplane to its usual condition:

(1) Fully retract the thrust reverser (unless already accomplished).

(2) Pull down on the manual-release handle on the electro-mechanical brake until the handle fully engages the retaining clip (unless already accomplished).

Note: This will lock the electro-mechanical brake.

(3) Close the fan cowl panels.

BILLING CODE 4910–13–P

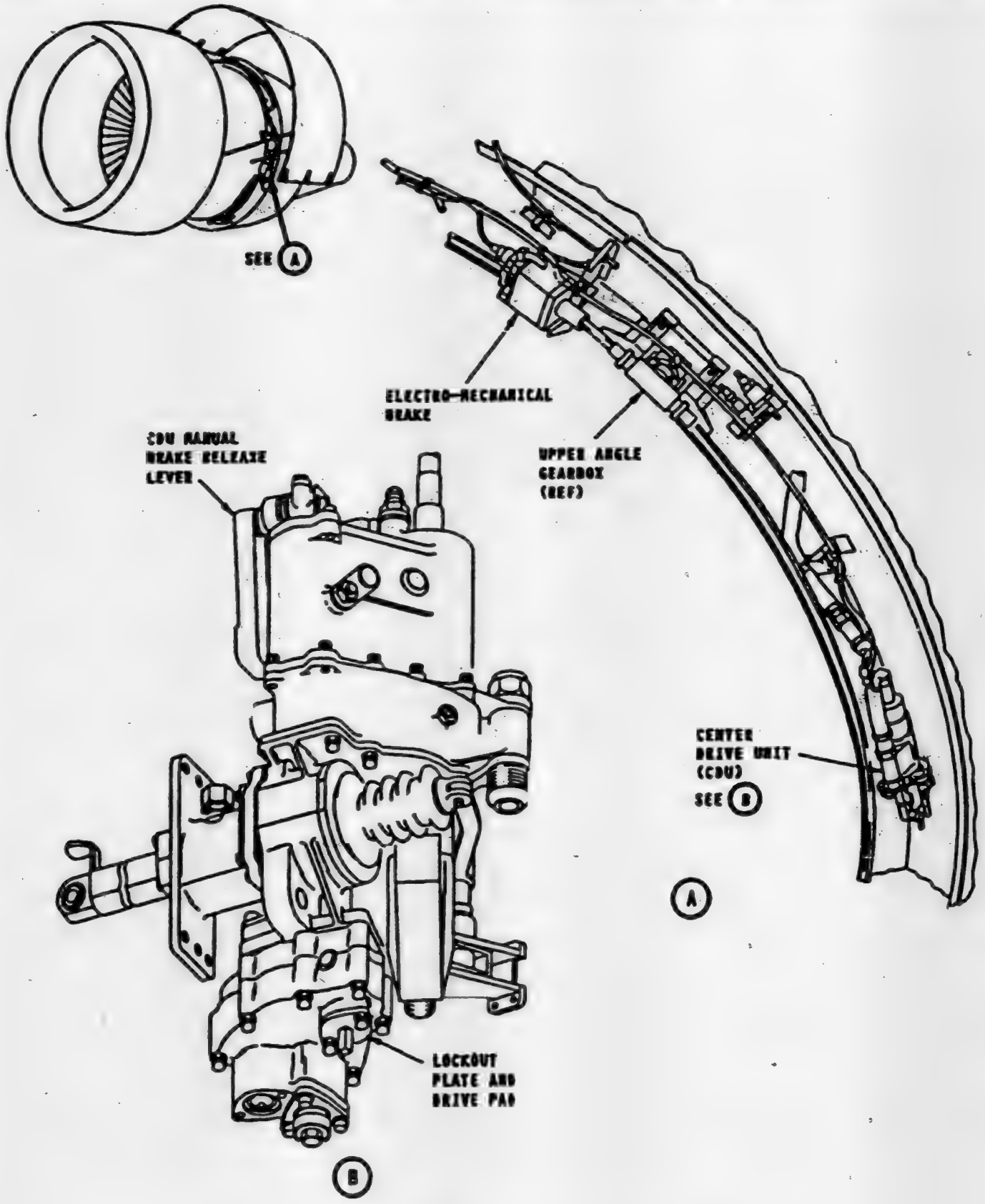

Electro-Mechanical Brake and CDU Cone Brake Torque Check
Figure 1

Issued in Renton, Washington, on August 13, 2003.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21151 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Moxidectin Gel

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule, technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of Wyeth. The supplemental NADA adds an age precaution to labeling for moxidectin gel used for the control of various species of internal parasites in horses and ponies.

DATES: This rule is effective August 27, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855; tel: 301–827–7543; e-mail: *mberson@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of Wyeth, 800 Fifth St. NW., Fort Dodge, IA 50501, filed a supplement to NADA 141–087 for QUEST (moxidectin) 2.0% Equine Oral Gel used for the control of various species of internal parasites in horses and ponies. The supplemental NADA adds a precaution to labeling that the product is for oral use in horses and ponies 6 months of age and older. The supplemental NADA is approved as of May 29, 2003, and the regulations are amended in 21 CFR 520.1452 to reflect the approval and to reflect current format. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1452 is amended by revising paragraphs (a), (d)(3), and by adding paragraph (c) to read as follows:

§ 520.1452 Moxidectin gel.

(a) *Specifications.* Each milliliter of gel contains 20 milligrams (2 percent) moxidectin.

* * * * *

(c) *Special considerations.* See § 500.25 of this chapter.

(d) * * *

(3) *Limitations.* For oral use in horses and ponies 6 months of age and older. Not for use in horses and ponies intended for food.

Dated: August 13, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–21834 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Moxidectin and Praziquantel Gel

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of Wyeth. The NADA provides for use of a moxidectin and praziquantel oral gel for the treatment and control of various species of internal parasites in horses and ponies.

DATES: This rule is effective August 27, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855; 301–827–7543; e-mail: *mberson@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Div. of Wyeth, 800 Fifth St. NW., Fort Dodge, IA 50501, filed NADA 141–216 for QUEST PLUS (moxidectin 2.0%/praziquantel 12.5%) Gel for the treatment and control of various species of internal parasites in horses and ponies. The NADA is approved as of May 14, 2003, and part 520 (21 CFR part 520) is amended by adding new § 520.1453 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore,

neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520–ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1453 is added to read as follows:

§ 520.1453 Moxidectin and praziquantel gel.

(a) *Specifications.* Each milliliter of gel contains 20 milligrams (mg) (2.0 percent) moxidectin and 125 mg (12.5 percent) praziquantel.

(b) *Sponsor.* See No. 000856 in § 510.600(c) of this chapter.

(c) *Special considerations.* See § 500.25 of this chapter.

(d) *Conditions of use in horses and ponies*—(1) *Amount.* Administer by mouth as a single dose: 0.4 mg moxidectin per kilogram and 2.5 mg praziquantel per kilogram (2.2 pounds) body weight.

(2) *Indications for use.* For treatment and control of large strongyles (*Strongylus vulgaris* (adults and L4/L5 arterial stages), *S. edentatus* (adults and tissue stages), *Triodontophorus brevicauda* (adults), *T. serratus* (adults)); small strongyles (*Cyathostomum* spp. (adults), *Cyathostomum catinatum* (adults), *Cylicocyclus* spp. (adults), *Cylicostephanus* spp. (adults), *Gyalocephalus capitatus* (adults), undifferentiated lumenal larvae; encysted cyathostomes (late L3 and L4 mucosal cyathostome larvae)); ascarids (*Parascaris equorum* (adults and L4 larval stages)); pinworms (*Oxyuris equi* (adults and L4 larval stages)); hairworms (*Trichostrongylus axei* (adults)); large-mouth stomach worms (*Habronema muscae* (adults)); horse stomach bots (*Gasterophilus intestinalis* (2nd and 3rd instars) and *G. nasalis* (3rd instars)); and tapeworms (*Anoplocephala perfoliata* (adults)). One dose also suppresses strongyle egg production for 84 days.

(3) *Limitations.* For oral use in horses and ponies 6 months of age and older. Not for use in horses and ponies intended for food.

Dated: August 13, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–21833 Filed 8–26–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9075]

RIN 1545–AX52

Compensation Deferred Under Eligible Deferred Compensation Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains final regulations that provide guidance on deferred compensation plans of state and local governments and tax-exempt entities. The regulations reflect the changes made to section 457 by the Tax Reform Act of 2986, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Economic Growth and Tax Relief Reconciliation Act of 2001, the Job Creation and Worker Assistant Act of 2002, and other legislation. This document was published in the **Federal Register** on July 11, 2003 (68 FR 41230).

EFFECTIVE DATE: These final regulations are effective July 11, 2003.

FOR FURTHER INFORMATION CONTACT: Cheryl Press (202) 622–6060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 457 by the Tax Reform Act of 1986, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Economic Growth and Tax Relief Reconciliation Act of 2001, the Job Creation and Worker Assistance Act of 2002, and other legislation.

Need for Correction

As published, the final regulations (TD 9075) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

■ Accordingly, the publication of the final regulations (TD 9075), which are the subject of FR Doc. 03–17523, is corrected as follows:

§ 1.457–2 [Corrected]

■ 1. On page 41235, column 2, § 1.457–2, paragraph (k), line 10, the language "treated as agreements or arrangement" is corrected to read "treated as agreements or arrangements".

■ 2. On page 41235, column 3, § 1.457–2, paragraph (i), line 5, the language "amended by section 1011(e)(6) of" is corrected to read "amended by section 1011(e)(6) of the".

■ 3. On page 41235, column 3, § 1.457–2, paragraph (ii), line 2, the language "nonelective deferred a compensation" is corrected to read "nonelective deferred compensation".

§ 1.457–4 [Corrected]

■ 4. On page 41236, column 2, § 1.457–4, paragraph (i), of *Example 1*, line 5, the language "compensation for that year. Participant A is" is corrected to read "compensation for that year. A is".

■ 5. On page 41236, column 3, § 1.457–4, paragraph (b)(ii), paragraph (i), of *Example 3*, line 3, the language "per year for five years to Participant B's" is corrected to read "per year for five years to B's".

■ 6. On page 41236, column 3, § 1.457–4, paragraph (i), of *Example 3*, lines 3 thru 7, the language "per year for five years to Participant B's eligible plan account. B's interest in the account vests in 2006. B has annual compensation of $50,000 in each of the five years 2002 through 2006. Participant B is 41" is corrected to read "per year for five years to B's eligible plan account. B's interest in the account vests in 2006. B has annual compensation of $50,000 in each of the five years 2002 through 2006. B is 41".

■ 7. On page 41236, column 3, § 1.457–4, paragraph (ii), of *Example 3*, line 6, the language "amounts deferred, $17,000, is in excess of the" is corrected to read "amounts deferred, $17,000, is in excess of".

§ 1.457–5 [Corrected]

■ 8. On page 41241, column 1, § 1.457–5, paragraph (i), of *Example 2*, the language "four eligible plans during 2006: Plan W" is corrected to read "four eligible plans during 2006 Plan W".

§ 1.457–6 [Corrected]

■ 9. On page 41242, column 2, § 1.457–6, paragraph (e)(2), third line from the bottom of the paragraph, the language "but allow participants or beneficiary

to" is corrected to read "but allow a participant or beneficiary".

§ 1.457–7 [Corrected]

■ 10. On page 41244, column 2, § 1.457–7, paragraph (i), of Example 1, line 18, the language "participant K, a calendar year taxpayer, has" is corrected to read "K, a calendar year taxpayer, has".

§ 1.457–8 [Corrected]

■ 11. On page 41245, column 3, § 1.457–8, paragraph (b)(2), line 2, the language "purposes of a paragraph (b)(1) of this" is corrected to read "purposes of paragraph (b)(1) of this".

§ 1.457–9 [Corrected]

■ 12. On page 41246, column 1, § 1.457–9, paragraph (a), line 7, the language "1.457–8 or 1.447–10. However, the plan" is corrected to read "§ 1.457–8 or § 1.447–10. However, the plan".

§ 1.457–10 [Corrected]

■ 13. On page 41246, column 1, § 1.457–10, paragraph (a)(2), line 8, the language "under a paragraph (a)(2)(ii) of this" is corrected to read "under paragraph (a)(2)(ii) of this".

■ 14. On page 41246, column 3, § 1.457–10, paragraph (b), line 6, the language "the conditions in paragraph (b)(2), (3)," is corrected to read "the conditions in paragraphs (b)(2), (3),".

LaNita Van Dyke,

Acting Chief, Publication and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–21826 Filed 8–26–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–142–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: We are removing a required amendment to the Pennsylvania regulatory program (the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). The amendment required a review and approval of the configuration and species composition for reclaimed forest land on either a site-by-site basis or a program wide basis by the Pennsylvania Bureau of Forestry. By removing the amendment, we find that the identified Pennsylvania regulations are no less effective than the corresponding Federal Regulations.

EFFECTIVE DATE: August 27, 2003.

FOR FURTHER INFORMATION CONTACT: George Rieger, Acting Director, Harrisburg Field Office, Telephone: (717) 782–4036, e-mail: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background on the Pennsylvania Program
II. Submission of the Proposed Amendment
III. OSM's Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Pennsylvania Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Pennsylvania program on July 30, 1982. You can find background information on the Pennsylvania program, including the Secretary's findings, the disposition of comments, and conditions of approval in the July 30, 1982, **Federal Register** (47 FR 33050). You can also find later actions concerning Pennsylvania's program and program amendments at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Proposed Amendment

By letter dated January 30, 2002 (Administrative Record No. PA 803.23), the Pennsylvania Department of Environmental Protection (PADEP) submitted a comparison of the State regulations at 25 Pennsylvania (Pa.) Code sections 87.151(d), 89.86(e)(2)(ii)(C), and 90.155(d) and the corresponding Federal regulations along with its explanation of why Pennsylvania's regulations are no less effective than their Federal counterparts regarding approval of the configuration and species composition for reclaimed forest land. This letter was submitted in response to the required amendment to the Pennsylvania program codified at 30 CFR 938.16(fff). Following this correspondence, OSM's Harrisburg Field Office, by letter dated February 22, 2002 (Administrative Record No. PA 803.24), submitted a request to the Pennsylvania Department of Conservation and Natural Resource's Bureau of Forestry that it review the regulations at issue. By letter dated March 20, 2002 (Administrative Record No. PA 803.25), the Bureau of Forestry approved the subject regulations. The Bureau of Forestry also noted that it supported the use of native species when practical and discourages the use of invasive species.

We announced our proposal to remove the required amendment in the June 3, 2003, **Federal Register** (68 FR 33037). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on removing the required amendment. We did not hold a public hearing or meeting because no one requested one. The public comment period ended on July 3, 2003. We received comments from two Federal agencies (the United States Environmental Protection Agency, Region III, and the United States Department of Labor, Mine Safety and Health Administration's New Stanton and Wilkes-Barre Offices). We also received comments from two State agencies (the Pennsylvania Game Commission and the Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation).

III. OSM's Findings

Following are the findings we made concerning removing the required amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are removing the required amendment because in the March 20th letter, the Bureau of Forestry stated that it "approve[d] of the Pennsylvania DEP Protection Regulations, particularly the relevant portions of Sections 87.151(d), 89.86(e)(2)(ii)(C), 90.155(d), 90.155(c), 87.155(b)(2), 89.86(e)(2)(ii), and 90.159(b)(2)." The former three regulations approved in the Bureau's letter contain species composition and configuration rules that apply to reclaimed forest land. Because the Bureau has approved the configuration and species composition for reclaimed forest land, as required under 30 CFR 938.16(fff), we have found that Pennsylvania has met the conditions of the required amendment and we are removing it.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment (Administrative Record No. PA 803.28), but we did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Pennsylvania program (Administrative Record No. PA 803.28). On July 1, 2003 (Administrative Record No. PA 803.31), the United States Department of Labor, Mine Safety and Health Administration's (MSHA) New Stanton Office wrote to us indicating that the proposed rule did not conflict with any of its rules or regulations. On July 3, 2003 (Administrative Record No. PA 803.30), MSHA's Wilkes-Barre Office wrote to us noting that it had no comments on the proposal.

State Agency Comments

The Pennsylvania Game Commission (PGC) commented on June 24, 2003 (Administrative Record No. PA 803.29), that it generally approves a species composition that contains a minimum of 75% woody species. However, some endangered and threatened species may require more than 25% of their habitat to be open grassy areas devoid of trees and shrubs. PGC noted that in those cases, it must have the ability to alter the tree to grass ratios. PGC further noted that it supports the recommendations of the Bureau of Forestry and believes that removal of the proposed amendment satisfies the applicable criteria of 30 CFR 732.15.

We believe that the Pennsylvania program currently provides regulations that satisfy PGC's concerns regarding species composition. Pennsylvania's regulations at 25 Pa. Code 87.151(d), 89.86(e)(2)(ii)(C), and 90.155(d) provide that the vegetation configuration and species composition for a postmining land use of fish and wildlife habitat must be established in accordance with guidelines from the Fish and Boat Commission and the PGC. Thus, the program provides for input by the PGC on species composition. In addition, the regulations at 25 Pa. Code 87.138, 89.82, and 90.150 provide protections for threatened and endangered species that require consultation with the PGC. This section also provides additional guidelines for selecting and planting vegetation on areas where the approved postmining land use is fish and wildlife habitat.

The Pennsylvania Historical and Museum Commission, Bureau for Historic Preservation (PHMC) submitted comments on July 3, 2003 (Administrative Record No. PA 803.32). PHMC indicated that removing the referenced amendment will not affect the consideration of cultural resources in the mine reclamation process. PHMC further stated it supported the Pennsylvania Bureau of Forestry recommendation to avoid the use of invasive species which can be harmful to the environment and historic buildings and landscapes.

We agree with PHMC's assessment on removal of the required amendment. With regard to PHMC's comment on invasive species, which reflected the Bureau of Forestry's recommendation, Pennsylvania's regulations are no less effective than the Federal regulations at 30 CFR 816/817.111. The Federal regulations require that the revegetation be comprised of native species or, where necessary to achieve the postmining land use, an approved introduced species; be compatible with plant and animal species of the area, and "meet the requirements of applicable State and Federal seed, poisonous and noxious plant and introduced species laws or regulations." Similarly, Pennsylvania's regulations at 25 Pa. Code 87.147, 87.149, 89.86, 90.151 and 90.153 also require that the revegetation be of the same seasonal variety native to the area unless an introduced species is necessary to achieve the postmining land use; compatible with animal and plant species; can not be poisonous or noxious species; and must meet the applicable requirements of State and Federal seed and introduced species statutes. Additionally, Pennsylvania informed us in its January 30, 2002 (Administrative Record No. PA 803.23), letter supporting removal of the required amendment that the configuration and species composition for reclaiming forestland is reviewed and approved on a permit-by-permit basis by foresters in its District Mining Offices.

Environmental Protection Agency (EPA) Comments

Under 30 CFR 732.17(h)(11)(i) we requested comments on the amendment from EPA (Administrative Record No. PA 803.28). EPA responded on July 17, 2003 (Administrative Record No. PA 803.33), that it has determined that removal of the required amendment at 30 CFR 938.16(fff) would not be inconsistent with the Clean Water Act or other statutes or regulations under its jurisdiction.

V. OSM's Decision

Based on the above findings, we are removing the required amendment at 30 CFR 938.16(fff).

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally-recognized Indian tribes and have determined that the rule does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Pennsylvania does not regulate any Native Tribal lands.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the Pennsylvania submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the Pennsylvania submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfounded mandate.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 7, 2003.

Brent Wahlquist,

Regional Director, Appalachian Regional Coordinating Center.

■ For the reasons set out in the preamble, 30 CFR part 938 is amended as set forth below:

PART 938—PENNSYLVANIA

■ 1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

§ 938.16 [Amended]

■ 2. Section 938.16 is amended by removing and reserving paragraph (fff).

[FR Doc. 03–21876 Filed 8–26–03; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–261]

RIN 1625–AA00

Safety Zone; Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety for the Chicago to Saint Joseph sailboat race. The safety zone encompasses a portion of Lake Michigan. This safety zone is necessary to ensure vessel safety in the vicinity of the race start area, protecting both competitors and spectators from hazards associated with this sail boat race. This safety zone is intended to restrict vessel traffic from a portion of southern Lake Michigan.

DATES: This temporary final rule is effective from 7 a.m. until 10 a.m. on August 29, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CDG09–03–261 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office, 215 W. 83rd Street, Burr Ridge, Illinois 60527 between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2125.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

During the start of the Chicago to Saint Joseph sailboat race, the Coast Guard is establishing a safety zone encompassing the starting area. The Coast Guard expects approximately 150 vessels to participate in this event. This safety zone is required to ensure the safety of vessels and spectators from hazards associated with this sailing event. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Chicago or the designated On-Scene Representative. The Captain of the Port Chicago or the designated On-Scene Representative on scene may be contacted on VHF Channel 16.

Discussion of Rule

The safety zone will encompass all waters of Lake Michigan bounded by the arc of a circle with a 1000-foot radius with its center in approximate position 41°52′67″ N; 087°35′24″ W. These coordinates are based upon North American Datum 1983 (NAD 83). All vessels except those officially participating in this event are prohibited from entering the safety zone without the permission of the Captain of the Port Chicago or his on-scene representative.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed this rule under that order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is in an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zone is only in effect for 3 hours on the day of the event.

The designated area is being established to allow for maximum use of the waterway for commercial vessels to enjoy the sailboat race in a safe manner. In addition, commercial vessels transiting the area can transit around the area. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Chicago (*see* **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this proposed rule is categorically excluded from further environmental documentation. A written categorical exclusion determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action"

under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. A new temporary safety zone § 165.T09–261 is added to read as follows:

§ 165.T09–261 Safety Zone; Lake Michigan, Chicago, Illinois.

(a) *Location.* The following is a safety zone: All waters of Lake Michigan bounded by the arc of a circle with a 1000-foot radius with its center in approximate position 41° 52′67″ N; 087° 35′24″ W (NAD 83).

(b) *Effective period.* This section is effective from 7 a.m. until 10 a.m. on August 29, 2003.

(c) *Regulations.* In accordance with § 165.23, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated On-Scene Representative. Section 165.23 also contains other general requirements.

Dated: August 12, 2003.

Terrence W. Carter,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 03–21958 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–260]

RIN 1625–AA00

Safety Zone; APBA Silver Cup Race, Lake Michigan, Grand Haven, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for APBA Silver Cup Race. The safety zone is necessary to protect participants and spectators during the event. This safety zone is intended to restrict vessels from a portion of Lake Michigan.

DATES: This temporary final rule is effective from 1 p.m. until 7 p.m. (local) on August 31, 2003. A rain date is scheduled for September 1, 2003 from 12 a.m. (noon) until 7 p.m. (local).

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CDG09–03–260] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60527, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

For the duration of the APBA Silver Cup Race, the Coast Guard is establishing a safety zone encompassing the race area to protect participating vessels and spectators from the hazards associated with a power boat race. The Coast Guard expects approximately 30 to 40 vessels to participate in this event. The likely combination of large numbers of recreational vessels and congested waterways could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the race area will help ensure the safety of persons and property of these events and help minimize the associated risks. All persons and vessels shall comply with the directions of the Coast Guard Captain of the Port or the designated On-Scene Representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Chicago or his designated On-Scene Representative and may be reached via VHF radio channel 16.

Discussion of Rule

The safety zone will include all navigable waters of Lake Michigan encompassed by a line connecting the following points beginning at South Pier Head, 43°03.4′ N, 86°15.4′ W; then heading west to 43°03.2′ N, 86°16.2′ W; then south to 43°01.1′ N, 86°15.3′ W; then east to 43°01.4′ N, 86°14.2′ W; then north to 43°03.5′ N, 86°15.0′ W; then back to the point of origin. These coordinates are based upon North American Datum 1983 (NAD 1983).

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are independently owned and operated are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under section 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with sec. 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offered to assist small entities in understanding this rule so that they can better evaluate its effectiveness and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3 (b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS.

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. A new temporary safety zone § 165.T09–260, is added to read as follows:

§ 165.T09–260 Safety Zone; Lake Michigan, Grand Haven, MI.

(a) *Location.* The following is a safety zone: all navigable waters of Lake Michigan encompassed by a line connecting the following points beginning at South Pier Head at 43°03.4′ N, 86°15.4′ W; then heading west to 43°03.2′ N, 86°16.2′ W; then south to 43°01.1′ N, 86°15.3′ W; then east to 43°01.4′ N, 86°14.2′ W; then north 43°03.5′ N, 86°15.0′ W; then back to the point of origin. (NAD 83).

(b) *Enforcement period.* This section will be enforced from 1 p.m. until 7 p.m. (local) on August 31, 2003.

(c) *Alternate enforcement period.* In the event that inclement weather prevents the events from being held on August 31, this section will be enforced from 12 a.m. (noon) until 7 p.m. (local) on September 1, 2003.

(d) *Regulations.* In accordance with § 165.23, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated On-Scene Representative. Section 165.23 also contains other general requirements.

Dated: August 12, 2003.

Terrence W. Carter,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 03–21957 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF HOMELAND SECURITY

COAST GUARD

33 CFR PART 165

[CGD09–03–249]

RIN 1625–AA00

Safety Zone; Grundy County Corn Festival, Morris, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Grundy County Corn Festival. The safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over a portion of the Illinois River. This safety zone is intended to restrict vessels from a portion of the Illinois River in Morris, IL.

DATES: This temporary final rule is effective from 8:30 p.m. until 9 p.m. (local) on September 27, 2003.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CDG09–03–249] and are available for inspection or copying at Marine Safety Office Chicago, 215 W. 83rd Street, Suite D, Burr Ridge, Illinois 60527, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, U.S. Coast Guard Marine Safety Office Chicago, at (630) 986–2155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosives hazard of fireworks, the Captain of the Port Chicago has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property of these events and help minimize the associated risks. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Chicago or his designated On-Scene representative. The Captain of the Port or his designated On-Scene representative may be contacted via VHF radio Channel 16.

Discussion of Rule

The safety zone will encompass the waters of the Illinois River within the arc of a circle with a 840-foot radius from the fireworks launch site with its center in the approximate position 41°21.2′ N, 088°23.08′ W. These coordinates are based upon North American Datum 1983 (NAD 1983). The size of this zone was determined using the National Fire Prevention Association guidelines and local knowledge concerning wind, waves, and currents.

Regulatory Evaluation

This temporary rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule will have a significant impact on a substantial number of small businesses and not-for-profit organizations that are independently owned and operated are not dominant in their respective fields, and governmental jurisdictions with populations less than 50,000.

The Coast Guard certifies under section 605 (b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with sec. 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard offered to assist small entities in understanding this fule so that they can better evaluate its effectiveness and participate in the rulemaking process. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3 (b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34) (g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Record Keeping Requirements, Security Measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary safety zone § 165.T09–249 is added to read as follows:

§ 165.T09–249 Safety Zone; Grundy County Corn Festival, Morris, IL

(a) *Location.* The following is a safety zone: All waters of the Illinois River bounded by the arc of a circle with a 840-foot radius from the fireworks launch site with its center in the approximate position 41°21.2′ N, 088°23.08′ W (NAD 1983).

(b) *Effective period.* This section is effective from 8:30 p.m. until 9 p.m. (local) on September 27, 2003.

(c) *Regulations.* In accordance with § 165.23, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Chicago, or the designated On-Scene Representative. Section 165.23 also contains other general requirements.

Dated: August 12, 2003.

Terrence W. Carter,

Captain, U.S. Coast Guard, Captain of the Port Chicago.

[FR Doc. 03–21956 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AJ60

Schedule for Rating Disabilities; The Spine

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) Schedule for Rating Disabilities by revising that portion of the Musculoskeletal System that addresses disabilities of the spine. The intended effect of this action is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

DATES: *Effective Date:* This amendment is effective September 26, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Tomlinson, Medical Officer, Policy and Regulations Staff (211A), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (202) 273–7215.

SUPPLEMENTARY INFORMATION: VA has amended its Schedule for Rating Disabilities, 38 CFR part 4, by revising that portion of the Musculoskeletal System that addresses disabilities of the spine. The intended effect of this action is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. VA published a notice of proposed rulemaking in the **Federal Register** on September 4, 2002 (67 FR 56509). Interested persons were invited to submit written comments on or before November 4, 2002. We received comments from two commenters, one from the Disabled American Veterans, and one from a VA employee.

We proposed to evaluate spine disabilities under a General Rating Formula for Diseases and Injuries of the Spine that included the following introductory language: "With symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease". One commenter felt that including this language does not allow raters to take into account the impairment that may result from asymptomatic residuals or sequelae of diseases or injury of the spine and also that the proposed rating formula would not recognize pain as disabling unless it is present in conjunction with ankylosis or limitation of motion, *etc.* The commenter went on to say that symptoms such as pain, stiffness, and aching should alone or in combination with each other warrant compensable ratings when severe enough to cause disability.

In response to this comment, we have changed the introductory language quoted above to "With or without symptoms such as pain (whether or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease". Doing so removes the requirement that there be pain, stiffness, or aching in order to assign any evaluation under the General Rating Formula for Diseases and Injuries of the Spine. Pain alone cannot be evaluated without being associated with an underlying pathologic abnormality. In

the case of spine disabilities, it would be rare for pain not to be present. Pain is often the primary factor limiting motion, for example, and is almost always present when there is muscle spasm. Therefore, the evaluation criteria provided are meant to encompass and take into account the presence of pain, stiffness, or aching, which are generally present when there is a disability of the spine.

The prior schedule directed that a vertebral fracture that did not meet the criteria for a 60-percent or higher evaluation would be evaluated on the basis of limited motion or muscle spasm, with 10 percent added for demonstrable vertebral body deformity. Since the term "demonstrable deformity" was not defined, however, this provision was applied inconsistently. We proposed that a 10-percent evaluation be assigned for a vertebral body fracture with loss of 50 percent or more of the height. One commenter felt that this requirement was too stringent.

As we reported in the preamble to the proposed regulation, a recent medical textbook on disability evaluation states that vertebral fractures with loss of height of the vertebral body of 50-percent or less ordinarily do not require surgery, heal uneventfully, and are compatible with the resumption of normal activities after healing ("Disability Evaluation," 292–3 (Stephen L. Demeter, M.D., Gunnar B.J. Anderson, M.D., Ph.D., and George M. Smith, M.D., 1996)). Furthermore, should a vertebral body fracture with less than 50 percent loss of height prove to be disabling, it may be evaluated based on any specific disabling residuals that are present, such as pain or limitation of motion. In our judgment, the requirement that there be a loss of 50 percent or more of the height of a fractured vertebral body in order to assign a 10-percent evaluation based on deformity alone has a sound medical basis and will promote consistency, and we have made no change based on this comment.

One commenter felt that it is confusing and illogical to list the evaluation criteria for diagnostic codes 5235 to 5242 after diagnostic code 5243. In response, we have moved the General Rating Formula for Diseases and Injuries of the Spine to the beginning of the Spine subsection. For further clarity, we have added the title "Formula for Rating Intervertebral Disc Syndrome Based on Incapacitating Episodes" to the set of evaluation criteria under diagnostic code 5243 and explained that intervertebral disc syndrome may be evaluated under either rating formula, depending on which is more beneficial to the veteran. All other spine diseases and injuries will be evaluated under the General Rating Formula for Diseases and Injuries of the Spine.

We proposed that the language under diagnostic code 5243 be: "Evaluate intervertebral disc syndrome (preoperatively or postoperatively) either on the total duration of incapacitating episodes over the past 12 months or by combining under § 4.25 evaluations under the General Rating Formula for Diseases and Injuries of the Spine along with evaluations for all other disabilities, whichever method results in the higher evaluation." A commenter felt that the proposed language was confusing and suggested that we revise it.

We agree that the language could be clearer and have revised it to read: "Evaluate intervertebral disc syndrome (preoperatively or postoperatively) either under the General Rating Formula for Diseases and Injuries of the Spine or under the Formula for Rating Intervertebral Disc Syndrome Based on Incapacitating Episodes, whichever method results in the higher evaluation when all disabilities are combined under § 4.25."

One commenter felt that painful motion, even if the range of motion is normal, should be one of the criteria for a 10-percent evaluation because usually any limitation of motion is due to pain, and we usually give 10-percent for pain on motion, under §§ 4.45 (The joints) and 4.59 (Painful motion).

As discussed above, we developed evaluation criteria that are meant to take pain and other symptoms into account. Therefore, an evaluation based on pain alone would not be appropriate, unless there is specific nerve root pain, for example, that could be evaluated under the neurologic sections of the rating schedule.

The same commenter said there is no need for criteria for a zero-percent evaluation, since § 4.31 (Zero percent evaluations) states that a zero percent evaluation can be assigned in any case when the requirements for a compensable evaluation are not met. On further consideration, and in view of other changes we have made in the General Rating Formula, we agree and have removed the zero-percent criteria.

The commenter also suggested that we add diagnostic codes for pyriformis syndrome, mechanical back pain due to poor posture, and neck strain to the rating schedule.

Pyriformis syndrome, often called pseudosciatica, is characterized by sciatica-like pain. It is regarded as a pain syndrome or a functional syndrome because there is no demonstrable pathology to account for the symptoms. It is a controversial diagnosis because there is no agreement on how to diagnose it, and there is no way to confirm the diagnosis by testing. We have not added this to the rating schedule because its diagnosis is controversial and uncertain.

Section 4.40 indicates that functional loss of the musculoskeletal system may be due to pain when it is supported by adequate pathology. The diagnosis of mechanical back pain is a broad general diagnosis that does not identify an underlying pathologic process to account for the pain. Most mechanical back pain (70%) is due to lumbar strain or sprain, with 10% due to degenerative changes in discs and facets, 4% due to herniated discs, 4% due to osteoporotic compression fractures, and 3% due to spinal stenosis. (*http://www.emedicine.com/pmr/topic73.htm*). Examiners should be asked to identify the underlying pathologic process causing back pain, and evaluations can then be made under the appropriate diagnostic codes for spine disabilities that are listed in the rating schedule.

We agree that neck strain is a common disability in veterans and have therefore revised the title of diagnostic code 5237 to "Lumbosacral or cervical strain". We have also revised the heading of the General Rating Formula for Diseases and Injuries of the Spine accordingly.

One commenter suggested we add a note explaining when to use diagnostic code 5320 (for muscle injury of Group XX muscles (spinal muscles)) rather than 5237 (lumbosacral or cervical strain).

In our judgment, such a note is unnecessary. Diagnostic code 5320 is primarily used for evaluating muscle injuries due to wounds caused by gunshots or other missiles, as § 4.56 (Evaluation of muscle disabilities) indicates. Lumbosacral and cervical strain do not stem from wounds but mainly from work or recreational injuries that involve sudden twisting, overuse, improper lifting, etc., sometimes superimposed on mechanical problems such as obesity, postural defects, or anatomical defects (*http://users.rowan.edu*, The Merck Manual (17th edition 1999, page 504), *http://www.bonetumour.org/book*, *http://www.emedicine.com/sports/topic69.htm*). Muscle strains are, therefore, most appropriately evaluated under diagnostic code 5237 (lumbosacral and cervical strain).

VA appreciates the comments submitted in response to the proposed rule. Based on the rationale stated in the proposed rule and in this document, the

proposed rule is adopted with the changes noted.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Order 12866

This regulatory amendment has been reviewed by the Office of Management and Budget under the provisions of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This amendment would have no such effect on State, local, or tribal governments, or the private sector.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: June 12, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155, unless otherwise noted.

■ 2. In § 4.71a, the table "The Spine" is revised and is transferred so that it precedes the table "The Hip and Thigh'; and Plate V is added immediately following the table "The Spine", to read as follows:

§ 4.71a Schedule of ratings—musculoskeletal system.

* * * * *

THE SPINE

	Rating
General Rating Formula for Diseases and Injuries of the Spine	
(For diagnostic codes 5235 to 5243 unless 5243 is evaluated under the Formula for Rating Intervertebral Disc Syndrome Based on Incapacitating Episodes):	
With or without symptoms such as pain (whther or not it radiates), stiffness, or aching in the area of the spine affected by residuals of injury or disease	
Unfavorable ankylosis of the entire spine	100
Unfavorable ankylosis of the entire thoracolumbar spine	50
Unfavorable ankylosis of the entire cervical spine; or, forward flexion of the thoracolumbar spine 30 degrees or less; or, favorable ankylosis of the entire thoracolumbar spine	40
Forward flexion of the cervical spine 15 degrees or less; or, favorable ankylosis of the entire cervical spine	30
Forward flexion of the thoracolumbar spine greater than 30 degrees but not greater than 60 degrees; or, forward flexion of the cervical spine greater than 15 degrees but not greater than 30 degrees; or, the combined range of motion of the thoracolumbar spine not greater than 120 degrees; or, the combined range of motion of the cervical spine not greater than 170 degrees; or, muscle spasm or guarding severe enough to result in an abnormal gait or abnormal spinal contour such as scoliosis, reversed lordosis, or abnormal kyphosis	20
Forward flexion of the thoracolumbar spine greater than 60 degrees but not greater than 85 degrees; or, forward flexion of the cervical spine greater than 30 degrees but not greater than 40 degrees; or, combined range of motion of the thoracolumbar spine greater than 120 degrees but not greater than 235 degrees; or, combined range of motion of the cervical spine greater than 170 degrees but not greater than 335 degrees; or, muscle spasm, guarding, or localized tenderness not resulting in abnormal gait or abnormal spinal contour; or, vertebral body fracture with loss of 50 percent or more of the height	10
Note (1): Evaluate any associated objective neurologic abnormalities, including, but not limited to, bowel or bladder impairment, separately, under an appropriate diagnostic code.	
Note (2): (See also Plate V.) For VA compensation purposes, normal forward flexion of the cervical spine is zero to 45 degrees, extension is zero to 45 degrees, left and right lateral flexion are zero to 45 degrees, and left and right lateral rotation are zero to 80 degrees. Normal forward flexion of the thoracolumbar spine is zero to 90 degrees, extension is zero to 30 degrees, left and right lateral flexion are zero to 30 degrees, and left and right lateral rotation are zero to 30 degrees. The combined range of motion refers to the sum of the range of forward flexion, extension, left and right lateral flexion, and left and right rotation. The normal combined range of motion of the cervical spine is 340 degrees and of the thoracolumbar spine is 240 degrees.The normal ranges of motion for each component of spinal motion provided in this note are the maximum that can be used for calculation of the combined range of motion.	
Note (3): In exceptional cases, an examiner may state that because of age, body habitus, neurologic disease, or other factors not the result of disease or injury of the spine, the range of motion of the spine in a particular individual should be considered normal for that individual, even though it does not conform to the normal range of motion stated in Note (2). Provided that the examiner supplies an explanation, the examiner's assessment that the range of motion is normal for that individual will be accepted.	
Note (4): Round each range of motion measurement to the nearest five degrees.	

THE SPINE—Continued

	Rating
Note (5): For VA compensation purposes, unfavorable ankylosis is a condition in which the entire cervical spine, the entire thoracolumbar spine, or the entire spine is fixed in flexion or extension, and the ankylosis results in one or more of the following: difficulty walking because of a limited line of vision; restricted opening of the mouth and chewing; breathing limited to diaphragmatic respiration; gastrointestinal symptoms due to pressure of the costal margin on the abdomen; dyspnea or dysphagia; atlantoaxial or cervical subluxation or dislocation; or neurologic symptoms due to nerve root stretching. Fixation of a spinal segment in neutral position (zero degrees) always represents favorable ankylosis.	
Note (6): Separately evaluate disability of the thoracolumbar and cervical spine segments, except when there is unfavorable ankylosis of both segments, which will be rated as a single disability.	
5235 Vertebral fracture or dislocation	
5236 Sacroiliac injury and weakness	
5237 Lumbosacral or cervical strain	
5238 Spinal stenosis	
5239 Spondylolisthesis or segmental instability	
5240 Ankylosing spondylitis	
5241 Spinal fusion	
5242 Degenerative arthritis of the spine (see also diagnostic code 5003)	
5243 Intervertebral disc syndrome	
Evaluate intervertebral disc syndrome (preoperatively or postoperatively) either under the General Rating Formula for Diseases and Injuries of the Spine or under the Formula for Rating Intervertebral Disc Syndrome Based on Incapacitating Episodes, whichever method results in the higher evaluation when all disabilities are combined under § 4.25.	
Formula for Rating Intervertebral Disc Syndrome Based on Incapacitating Episodes	
With incapacitating episodes having a total duration of at least 6 weeks during the past 12 months	60
With incapacitating episodes having a total duration of at least 4 weeks but less than 6 weeks during the past 12 months	40
With incapacitating episodes having a total duration of at least 2 weeks but less than 4 weeks during the past 12 months	20
With incapacitating episodes having a total duration of at least one week but less than 2 weeks during the past 12 months	10

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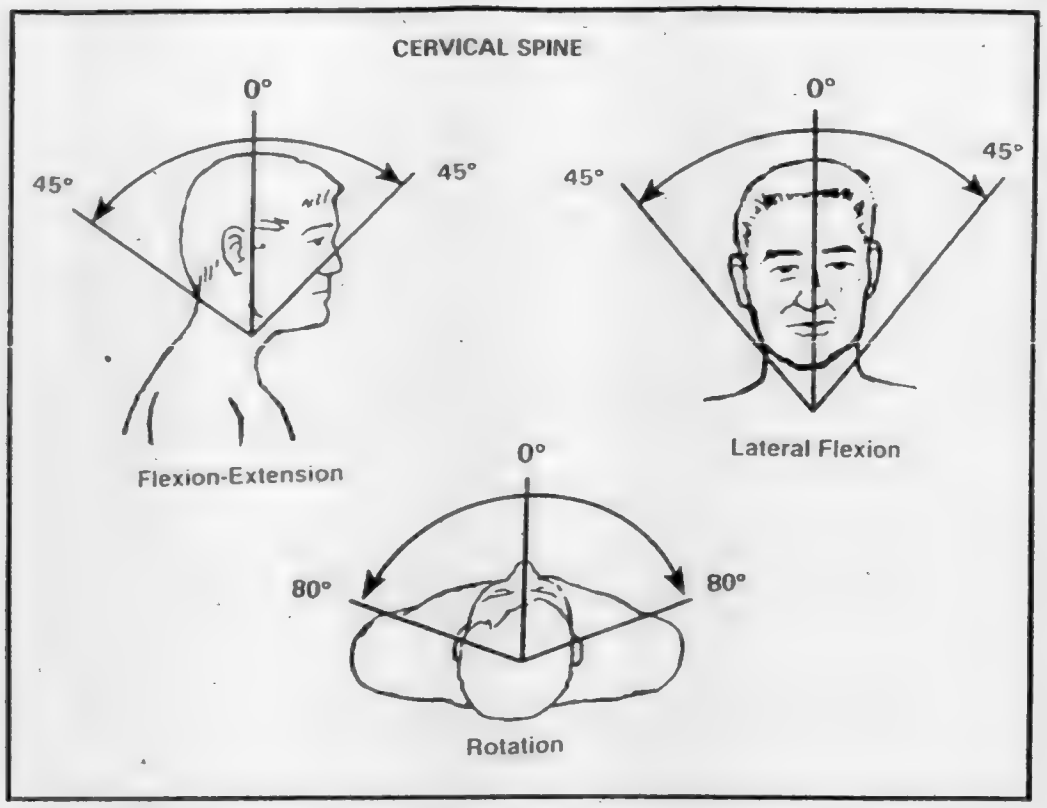

PLATE V
RANGE OF MOTION OF CERVICAL AND THORACOLUMBAR SPINE

[FR Doc. 03–21839 Filed 8–26–03; 8:45 am]
BILLING CODE 8320–01–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WV061–6031a; FRL–7549–1]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the Follansbee PM_{10} Nonattainment Area To Attainment and Approval of the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a request from the State of West Virginia to redesignate the Follansbee area of Brooke County, West Virginia (Follansbee area) from nonattainment to attainment for the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM_{10}). EPA is also approving the plan for maintaining the PM_{10} standard in the Follansbee area and contingency measures as revisions to the West Virginia State Implementation Plan (SIP). Approval of the maintenance plan will put a plan in place for maintaining the PM_{10} standard for the next ten years in the Follansbee area. EPA is approving the redesignation request, the maintenance plan and the contingency measures in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on October 27, 2003 without further notice, unless EPA receives adverse written comment by September 26, 2003. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in Part V of the Supplementary Information section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 1301 Constitution Avenue, NW., Room B108, Washington, DC 20460; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, West Virginia 25304–2943.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by e-mail at *knapp.ruth@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used we mean EPA.

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Introduction

Under the CAA, EPA may redesignate areas to attainment if sufficient data are available to warrant such changes and the area meets the criteria contained in section 107(d)(3) of the Act. This includes full approval of a maintenance plan for the area. EPA may approve a maintenance plan which meets the requirements of section 175A of the CAA. On May 12, 2003, the State of West Virginia submitted a redesignation request and maintenance plan for the Follansbee PM_{10} moderate nonattainment area. When approved, the section 175A maintenance plan will become a Federally enforceable part of the West Virginia SIP for this area.

I. Area Designated Nonattainment for PM_{10}

On November 15, 1990, the Clean Air Act (CAA) amendments were enacted. Pursuant to section 107(d)(4)(B), the Follansbee area in Brooke County, West Virginia was designated nonattainment by operation of law. The nonattainment classification and designation of Follansbee as a moderate PM_{10} area was codified in 40 CFR part 81 on November 6, 1991 (56 FR 56848). Prior to enactment of the CAA amendments this area along with a portion of Jefferson County, Ohio near Steubenville was classified as a single Group I PM_{10} nonattainment area. Under the 1990 CAA amendments, these two adjacent areas were each designated by operation of law as nonattainment areas. Although the State of West Virginia and the State of Ohio worked together to provide an attainment demonstration for both the Follansbee, West Virginia nonattainment area and the Jefferson County, Ohio nonattainment area, each area is treated separately for purposes of redesignation. Specific information on the Jefferson County, Ohio area's redesignation to attainment can be found in EPA's approval of the State of Ohio's redesignation request and maintenance plan for Jefferson County. (*See* December 11, 2000, 65 FR 77308).

II. Geographic Boundaries of the PM_{10} Nonattainment Area

The Follansbee PM_{10} nonattainment area in Brooke County, West Virginia is bounded on the north by the Market Street Bridge, on the east by West Virginia Route 2, on the south by the extension of the southern boundary of Steubenville Township in Jefferson County, Ohio, and on the west by the Ohio/West Virginia border.

The adjacent Jefferson County, Ohio area is bounded by Market Street (State Route 43) from the West Virginia /Ohio border west to Sunset Boulevard (U.S. Route 22), Sunset Boulevard west to the Steubenville Township /Cross Creek Township boundary, the Township boundary south to the Steubenville Corporation limit, the corporation boundary east to State Route 7, State Route 7 South to the Steubenville Township /Wells Township boundary, the Township boundary east to the West Virginia Ohio border, and North on the border to Market Street.

III. Criteria for Redesignation

Section 107(d)(3)(E) of the CAA specifies five requirements that must be met to redesignate an area from nonattainment to attainment as follows:

1. The area has attained the applicable NAAQS;
2. The area has a fully approved SIP under section 110(k);
3. The air quality improvement is permanent and enforceable;
4. The area has a fully approved maintenance plan pursuant to section 175A; and
5. The area has met all relevant requirements under section 110 and part D of the Act.

IV. Analysis of How the State Met the Criteria for Redesignation

The EPA has reviewed the redesignation request submitted by West Virginia for the Follansbee nonattainment area and finds that the request meets the five requirements of section 107(d)(3)(E).

A. Data Shows Attainment of the PM_{10} NAAQS in the Follansbee Area

For purposes of assessing air quality, monitoring data in both West Virginia and Ohio was reviewed. The monitor in Brooke County, West Virginia has always been located outside the boundary of the nonattainment area but is included in the review to provide an overall picture of air quality in the area. Three monitors are currently operating in the Jefferson County, Ohio area previously described in section II entitled, Geographic Boundaries. The redesignation request is based upon the three most recent years of quality-assured PM_{10} air monitoring data (1999–2001) available during preparation of the May 12, 2003 submittal. The PM_{10} NAAQS includes both a daily and an annual standard. An area is attaining the daily and annual NAAQS if there are no violations, as determined in accordance with 40 CFR 50.6 and appendix K, based upon three complete consecutive calendar years of quality assured monitoring data. The daily standard is met if the expected frequency of values above 150 ug/m^3 is 1.0 or less. The data must be collected and quality assured in accordance with 40 CFR part 58, and recorded in the Aerometric Information Retrieval System (AIRS) now known as the Air Quality System (AQS).

West Virginia's formal submittal included data from 1990 through 2002. This data shows that the area has not recorded any exceedances of the daily NAAQS in the past decade. The formal redesignation request is based upon data from 1999 through 2001. This data has been quality assured and recorded in AQS. During the 1999 through 2001 time period, there were no actual exceedances of the daily standard, and the average number of expected exceedances is less than 1.0 for the same time period. During 2002, no exceedances were recorded. Therefore, the area has attained and continues to attain the daily NAAQS. During 1999 through 2002 the maximum annual average recorded at these sites was 35 ug/m3. As the annual standard is based on the average annual mean over three years, the area has attained and continues to attain the annual PM_{10} standard. Since the area has attained the daily and annual NAAQS based upon the most recent three years of quality-assured data available during preparation of the May 12, 2003 submittal, and continues to attain the NAAQS, the first criterion of section 107(d)(3)(E) has been satisfied. West Virginia has committed to continue monitoring in Brooke County in accordance with 40 CFR parts 53 and 58.

B. Fully Approved SIP Under Section 110(k) of the CAA

1. Section 110 Requirements

On November 15, 1991, West Virginia submitted an attainment plan to EPA consisting of an attainment demonstration and control measures for the Follansbee area. On July 25, 1994 (59 FR 37696) EPA took a limited approval/limited disapproval action on the submittal. EPA fully approved the control measures portion of the plan, but disapproved the attainment demonstration and took no action on the contingency measures with specific regard to section 172(c)(9) of the CAA. On November 22, 1995, West Virginia submitted a revised attainment demonstration, and EPA approved that attainment demonstration on November 15, 1996 (61 FR 58481) but did not take action on the contingency measures. In this rulemaking, EPA is approving the contingency measures submitted on November 15, 1991 as fulfilling the requirements of section 172(c)(9). Therefore, EPA fully approved all applicable requirements of section 110(a)(2)(I) of the Act, including all applicable requirements of part D (relating to nonattainment), which were due prior to the time of the redesignation request.

2. Part D Requirements

Part D of the CAA contains general provisions that apply to all nonattainment plans and certain sections that apply to specific pollutants. Before EPA may redesignate the Follansbee PM_{10} nonattainment area to attainment, the SIP must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it is subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. EPA designated the Follansbee area of Brooke County as a moderate PM_{10} nonattainment area on November 6, 1991 (codified at 40 CFR 81.339). Therefore, to be redesignated to attainment, the area must meet the applicable requirements of subpart 1 of part D, specifically sections 172(c) and 176. Section 189(a) of subpart 4 of the CAA also must be met.

a. Subparts 1 and 4 of Part D—Sections 172(c) and 189(a) Provisions

Subpart 1 of part D addresses nonattainment areas in general and subpart 4 addresses PM_{10} nonattainment areas specifically. Except for contingency measures, all the relevant SIP elements required under sections 172(c) and 189(a) including an emissions inventory, Reasonably Available Control Measures (RACM); and an attainment demonstration were approved by EPA on July 25, 1994 (59 FR 37696) and, November 15, 1996 (61 FR 58481). Although contingency measures were contained in consent orders that were fully approved and incorporated into the West Virginia SIP by EPA on July 25, 1994 (59 FR 37696), our approval did not specifically take action to approve them as contingency measures pursuant to section 172(c)(9) at that time. However, as the consent orders' requirements were made part of the Federally approved SIP, if the area had not reached attainment, the additional reductions from these measures would have been implemented. Within 365 days of receiving notice that attainment had not been achieved, the following sources would have implemented additional PM_{10} emission reductions: Follansbee Steel would have obtained additional PM_{10} actual reductions of 0.22 lbs/hr and 0.96 tpy; Wheeling Pittsburgh Steel would have achieved additional actual reductions of 6.5 lbs/hr and 28.5 tpy; International Mill Services would have obtained actual reductions of 0.1 lbs/hr and 0.4 tpy; and Koppers Industries would add additional dust control on access roads. Since the area did attain the standard, these measures were not triggered. Given that the Follansbee area did attain the standard and is being redesignated to attainment, it may be argued that the need for EPA to approve these SIP-approved measures as contingency measures specifically

pursuant to section 172(c)(9) is moot. Nonetheless, EPA is now approving these measures as meeting the criteria of section 172(c)(9) for contingency measures in order to be clear that the area has a full approved plan for all applicable Part D requirements. The Federal requirements for new source review (NSR) in nonattainment areas are contained in section 172(c)(5). EPA guidance indicates the requirements of the part D NSR program will be replaced by the prevention of significant deterioration (PSD) program when an area has reached attainment and been redesignated, provided there are assurances that PSD will become fully effective immediately upon redesignation. Regulations for the Prevention of Significant Deterioration of Air Quality were approved into the West Virginia SIP on April 11, 1986 (51 FR 12518). Therefore, the PSD program will become fully effective in the Follansbee area immediately upon redesignation.

b. Subpart 1 of Part D—Section 176 Conformity Provisions

The Follansbee area was not required to have a transportation conformity budget for PM_{10}. The most significant causes of nonattainment in this area were emissions from steel and industrial facilities in the area and not mobile source emissions. PM_{10} emissions from public roads contributed 5% or less to the ambient impacts of PM_{10} in the Follansbee area. Because the PM_{10} violations had been caused by stationary sources and motor vehicles were not an important contributor to the nonattainment problem, no additional quantitative analysis for transportation related PM_{10} impacts are required for conformity purposes. While section 176 provides that a State's conformity revisions must be consistent with Federal Conformity regulations promulgated by EPA, given the nature of the area's former nonattainment problem, it is reasonable to interpret those conformity requirements as not applying for purposes of evaluating the redesignation request.

C. The Improvement in Air Quality Due to Permanent and Enforceable Measures

In order to redesignate an area, EPA must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable SIP, applicable Federal air pollutant control regulations and other permanent and enforceable reductions. The State's approved 1991 PM_{10} SIP for the Follansbee area identified the measures to bring the area into attainment. These measures included emission standards and operating restrictions for various sources of PM_{10}. The facilities that were required to implement additional controls were Follansbee Steel Corporation, International Mill Services, Koppers Industries, Standard Lafarge, Starvaggi Industries Incorporated, and Wheeling Pittsburgh Steel Corporation. All of these facilities received reduced allowable emission rates for PM_{10}. All of these sources except for Follansbee Steel Corporation were required to implement new or improved dust control measures. Both Follansbee Steel and Koppers Industries were required to implement "add-on" control equipment to reduce process PM_{10} emissions.

In addition to these emission reductions, other reductions have occurred since the attainment demonstration inventory was prepared and the modeled demonstration of attainment was performed. The sinter plant at Wheeling Pittsburgh Steel shutdown in 1999 and operations at International Mill Services have also shutdown. The additional emission reductions resulting from these shutdowns are permanent and enforceable given that any reactivation of these facilities would be subject to applicable new source review requirements.

The May 12, 2003 redesignation request demonstrates that actual enforceable emission reductions are responsible for the air quality improvements in the Follansbee area. EPA finds that emission reductions due to the control measures and emission limitations imposed by the SIP-approved 1991 attainment plan and emission reductions due to permanent and enforceable shutdowns have reduced the ambient PM_{10} levels such that the Follansbee area attained the NAAQS and continues to attain the NAAQS.

D. The Maintenance Plan Under Section 175A

Section 175A of the Act sets forth the necessary elements of a maintenance plan needed for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after the redesignation, West Virginia must submit a revised maintenance plan which demonstrates attainment for the 10 years following the initial 10-year period. To address potential future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation adequate to assure prompt correction of any air quality problems. Under section 175A(d), contingency provisions must include a requirement that the State will implement all control measures that were in the SIP prior to redesignation as an attainment area. EPA is approving the maintenance plan for the Follansbee nonattainment area because EPA finds that the submittal meets the requirements of section 175A. The details of the maintenance plan requirements and how the submittal meets these requirements are detailed in the following paragraphs. A maintenance plan must contain the following elements.

(1) An emissions inventory reflective of PM_{10} emissions in the monitored attainment years;

(2) A maintenance demonstration which is expected to provide adequate assurance of maintenance over the initial 10-year period;

(3) A commitment to continue monitoring in the area;

(4) A method for verifying continued attainment; and

(5) A contingency plan with specific indicators or triggers for implementation of the plan.

1. Maintenance Plan Requirements

a. Emissions inventory

The maintenance plan indicates that the attainment inventory is the emission inventory used to perform the modeling demonstration of attainment and provides updates to that inventory for 2001 for sources in the Follansbee nonattainment area. Emissions have declined somewhat in the area due to the previously described shutdowns. Any future increases in emissions and/or significant changes to the stack configurations/parameters from those modeled in the attainment demonstration due to new or modifying stationary sources would be subject to new source review requirements including a demonstration that the NAAQS is protected.

b. Maintenance demonstration

Steel and industrial facilities were the main cause of nonattainment in the area. The attainment demonstration was based upon allowable emission levels for stationary sources impacting the nonattainment area. PM_{10} emissions from public on-road sources did not play a significant role in nonattainment and their impacts were less than 5% of the PM_{10} concentrations. Therefore, no conformity budgets are required for Brooke County. Population in the

incorporated area of Follansbee (which is larger than the nonattainment area) has increased slightly since 1990 and may experience a minor increase in population over the next ten years. However, population in Brooke County has been decreasing since 1990 and is expected to continue to decline over the next ten years. Manufacturing employment in the metropolitan area which includes Follansbee has been decreasing since 1994, and this decline in manufacturing is expected to continue for the next 10 years. As a result of these factors, PM_{10} emissions are expected to remain at or below the emission levels used to demonstrate attainment for the next 10 years. The area, therefore, is expected to maintain the PM_{10} NAAQS for the next 10 years as it has for the past 10 years. Moreover as noted previously, any future increases in emissions and/or significant changes to the stack configurations/parameters form those modeled in the attainment demonstration due to new or modifying stationary sources would be subject to new source review requirements including a demonstration that the NAAQS is protected.

c. Commitment to continue monitoring air quality

The maintenance plan includes commitments to continue to operate and maintain the monitor located in Follansbee, Brooke County in accordance with 40 CFR parts 53 and 58. Information regarding the State of Ohio's monitoring commitment can be found in EPA's notice approving the maintenance plan for Jefferson County on December 11, 2000 (65 FR 77308).

d. Verification of continued attainment

In addition to reviewing ambient monitoring data in the Follansbee area on annual basis to verify continued attainment, the State of West Virginia will continue to examine the air quality impact of any major new sources or modifications through its approved PSD program. New minor sources will also be evaluated to assure maintenance of the area. In addition the State will review their PM_{10} inventory every three years.

e. Contingency plan

The maintenance plan contingency measures consist of control measures on source material handling operations and/or potential fuel switching at fuel burning units. The State will track air quality data in the Follansbee area. Upon a determination that three exceedances of the PM_{10} standard have occurred within a three-year period, the State will notify subject companies that the potential for a violation exists. The companies must then prepare detailed action plans containing specific measures selected from the contingency measures for implementation in the event of a violation. These plans must be submitted to the West Virginia Department of Environmental Protection (WVDEP) within 6 months of notification that the potential for a violation exists, and the plan shall include an implementation timeline such that the final milestone of the plan calls for implementation of the measures no later than 18 months after the company is notified that a violation has occurred. Within 6 months of a violation, the State will enter into consent orders or a legislative rule to incorporate the specific measures and compliance deadlines in the action plans and these measures will be made federally enforceable.

2. Commitment To Submit Subsequent Maintenance Plan Revisions

A new maintenance plan must be submitted to EPA within eight years of the redesignation of the nonattainment area, as required by section 175(A)(b). This subsequent maintenance plan must constitute a SIP revision and provide for the maintenance of the PM_{10} NAAQS for a period of 10 years after the expiration of the initial 10 year maintenance period. The State commits to submit a SIP revision as required by section 175(A)(b).

E. The Submittal Meets the Applicable Requirements of Section 110 and Part D

General SIP elements are delineated in section 110(a)(2) of Title I, part A. These requirements include but are not limited to the following: submittal of a SIP that has been adopted by the state after reasonable notice and public hearing, provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality, implementation of a permit program, provisions for part C, Prevention of Significant Deterioration (PSD), and part D, New Source Review (NSR) permit programs, criteria for stationary source emission control measures, monitoring and reporting, and provisions for public and local agency participation. For the purposes of redesignation, the West Virginia SIP was reviewed to ensure that all requirements under the amended CAA were satisfied through approved SIP provisions for the Follansbee nonattainment area. EPA has concluded that the Commonwealth's SIP for the Follansbee nonattainment area satisfies all of the section 110 SIP requirements of the CAA and that all applicable requirements of part D have been satisfied.

V. Final Action

EPA is approving West Virginia's request to redesignate the Follansbee PM_{10} nonattainment area to attainment because the State has complied with the requirements of section 107(d)(3)(E) of the CAA. In addition, EPA is approving the West Virginia's maintenance plan for the Follansbee area as a SIP revision because it meets the requirements of section 175A. Lastly, we are approving the contingency measures submitted in the November 15, 1991 submittal as meeting the criteria of section 172(c)(9). EPA has prepared a Technical Support Document (TSD) in support of this rulemaking. Copies are available upon request, from the person identified in the **FOR FUTHER INFORMATION CONTACT** section. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on October 27, 2003 without further notice unless EPA receives adverse comment by September 26, 2003. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number WV061–6031a in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

A. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you

include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

1. *E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeba@epa.gov*, attention WV–061–6031a. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through *Regulations.gov*, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

2. *Regulations.gov.* Your use of *Regulations.gov* is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

3. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

B. *By Mail.* Written comments should be addressed to the EPA Regional office listed in the **ADDRESSES** section of this document. For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

VI. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997),

because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under Section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 27, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action, redesignating the Follansbee, Brooke County, West Virginia PM_{10} area to attainment and approval of the area's maintenance plan and contingency measures, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: August 18, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR Parts 52 and 81 are amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

■ 2. Section 52.2520 is amended by adding paragraph (c)(54) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(54) The PM_{10} Redesignation and Maintenance Plan for the Follansbee, West Virginia nonattainment area submitted by the West Virginia Department of Environmental Protection on May 12, 2003.

(i) Incorporation by reference.

(A) Letter of May 12, 2003 from the West Virginia Department of Environmental Protection transmitting the redesignation request and maintenance plan for the PM_{10} nonattainment area in the Follansbee area of Brooke County.

(B) Maintenance Plan for the Follansbee PM_{10} nonattainment area, effective April 28, 2003.

(ii) *Additional Material.*—Remainder of the May 12, 2003 State submittal pertaining to the revisions listed in paragraph (c)(54)(i) of this section.

§ 52.2522 [Amended]

■ 3. In § 52.2522 (Approval status), paragraph (d) is removed and reserved.

■ 4. Section 52.2526 is added to read as follows:

§ 52.2526 Control strategy: Particulate matter.

EPA approves West Virginia's November 15, 1991 SIP submittal for fulfilling the PM_{10}-specific requirement of part D for contingency measures required under section 172(c)(9) of the Clean Air Act applicable to the Follansbee, West Virginia PM_{10} nonattainment area.

PART 81—[AMENDED]

Subpart C—Section 107 Attainment Status Designations

■ 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. In § 81.349, the table for "West Virginia—PM_{10}" is amended by revising the entry for the Follansbee Area of Brooke County to read as follows:

§ 81.349 West Virginia.

* * * * *

WEST VIRGINIA—PM_{10}

Designated area	Designation		Classification	
	Date	Type	Date	Type
Brooke				
Follansbee area bounded on the north by the Market Street Bridge, on the east by West Virginia Route 2, on the south by the extension of the southern boundary of Steubenville Township in Jefferson County, Ohio, and on the west by the Ohio/West Virginia border.	October 27, 2003..	Attainment.		
* * * *	*	*	*	*

* * * * *

[FR Doc. 03–21910 Filed 8–26–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0253; FRL–7319–4]

Flumioxazin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of flumioxazin in or on sweet potato, roots in connection with a crisis exemption declared by the State of Louisiana. This regulation establishes a maximum permissible level for residues of flumioxazin in this food commodity. The tolerance will expire and is revoked on June 30, 2006.

DATES: This regulation is effective August 27, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0253, must be received on or before October 27, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9364; e-mail address: *pemberton.libby@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you a Federal or State government agency involved in administration of environmental quality programs. Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0253. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing a tolerance for residues of the herbicide flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1H-isoindole-1,3(2H)-dione, in or on sweet potato, roots at 0.02 parts per million (ppm). This tolerance will expire and is revoked on June 30, 2006. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Flumioxazin on Sweet Potato, Roots and FFDCA Tolerances

Ineffectiveness of registered alternatives in controlling sedges, pigweeds, and other broadleaf weeds has allowed these weeds to flourish and become more problematic each year. Louisiana has declared a crisis exemption under FIFRA section 18 for the use of flumioxazin on sweet potato, roots for control of certain broadleaf weeds.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of flumioxazin in or on sweet potato, roots. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on June 30, 2006, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sweet potato, roots after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because this tolerance is being approved under emergency conditions, EPA has not made any decisions about whether flumioxazin meets EPA's registration requirements for use on sweet potato, roots or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of flumioxazin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Louisiana to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for flumioxazin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of flumioxazin and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for residues of flumioxazin in or on sweet potato, roots at 0.02 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1 x10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for flumioxazin used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR FLUMIOXAZIN

Endpoint	Dose (mg/kg/day)	HIARC/FQPA determination	Conclusion
Acute Dietary	NOAEL = 3.0 UF = 100	Cardiac effects (interventricular septal defects) were seen in the oral developmental and supplemental prenatal studies in rats.	This risk assessment is required for the population subgroup Females 13–50. Acute RfD=0.03 mg/kg/day
Chronic Dietary	NOAEL = 2 UF = 100	Kidney effects were seen in males and anemia was seen in females in the 2-year toxicity study in rats.	This risk assessment is required. Chronic RfD =0.02 mg/kg/day.
FQPA Safety Factor	NA	Safety factor was retained because (1) there was evidence of increased susceptibility of fetuses exposed to flumioxazin by both the oral and dermal route in the prenatal developmental toxicity studies in rats, (2) there was evidence of increased susceptibility of young animals exposed to flumioxazin in the 2-generation reproduction toxicity in rats, and (3) there is concern for the severity of the effects in fetuses and young animals when compared to the maternal or parental animals.	10x Safety factor was retained aPAD=0.003 mg/kg/dy cPAD=0.002 mg/kg/dy
Carcinogenicity	NA	The HIARC determined that flumioxazin is "not likely" to be a human carcinogen (HIARC Memo, In Review).	A cancer risk assessment is not required.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.568) for the residues of flumioxazin, in or on peanuts and soybean seed. Risk assessments were conducted by EPA to assess dietary exposures from flumioxazin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: For this acute analysis the assumption was made that 100% of the crops with flumioxazin tolerances are treated with flumioxazin. In addition, the assumption was made that all commodities contain tolerance level residues when consumed, with the exception of those with default processing factors. Default processing factors were used for peanuts-butter (1.89x) and for soybeans-sprouted seeds (0.33x). As the exposure and risk estimates were low, no further refinements were made to this analysis.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: For this chronic analysis the assumption was made that 100% of the crops with flumioxazin tolerances are treated with flumioxazin. In addition, the assumption was made that all commodities contain tolerance level residues when consumed, with the exception of those with default processing factors. Default processing factors were used for peanuts-butter (1.89x) and for soybeans-sprouted seeds (0.33x). As the exposure and risk estimates were low, no further refinements were made to this analysis.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for flumioxazin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of flumioxazin.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and Screening Concentration in Ground Water Modeling System (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent of the reference dose or percent of the population adjusted dose (%RfD or %PAD). Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on

a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to flumioxazin they are further discussed in the aggregate risk sections below.

The hydrolysis study for flumioxazin indicates that flumioxazin forms the metabolite 482-HA, which can further hydrolyze to metabolites APF and THPA. The rates of the two hydrolytic reactions are very pH dependent, but the parent is not very stable at any likely environmental pH. Additional data indicated that THPA and APF are likely to be very mobile. Although THPA can comprise a major portion of the total residue in water, it does not possess the phenyl ring and is thus considered significantly less toxic than parent, APF, and 482-HA, thus THPA needs not be included in the residue of concern for drinking water. Therefore, parent flumioxazin and the metabolites 482-HA and APF are the residues of concern in drinking water.

Based on the GENEEC and SCI-GROW models the EECs of flumioxazin for acute exposures are estimated to be 2.4 parts per billion (ppb) for surface water and 6.3 ppb for ground water. The EECs for chronic exposures are estimated to be 0.67 ppb for surface water and 6.3 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Flumioxazin is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether flumioxazin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, flumioxazin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that flumioxazin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The data for flumioxazin indicate that there is both quantitative and qualitative evidence of increased susceptibility to flumioxazin from prenatal or postnatal exposures. Quantitative susceptibility is observed when the young respond more than the adults at a given dose, and qualitative susceptibility is observed when there is a unique biological target, such as the developing brain, that predisposes the individual. The quantitative and qualitative evidence of increased susceptibility is observed with the rat fetuses to *in utero* exposure to flumioxazin in the oral and dermal developmental studies. In both studies, there was an increased incidence in fetal cardiovascular anomalies (especially ventricular septal defects). In the oral study, no maternal effects were seen at the highest dose tested (HDT) (30 milligrams/kilograms (mg/kg/day)); whereas, the effects in the fetuses were observed at 10 mg/kg/day. In the dermal study, no maternal effects were noted at the HDT (300 mg/kg/day); whereas, the effects in the fetuses were observed at 100 mg/kg/day. Regarding the 2-generation rat reproduction study, parental effects (red substance in vagina and increased mortality in females as well as decreases in male and female body weights, body weight gains, and food consumption) were noted at 18.9 mg/kg/day in males HDT and 22.7 mg/kg/day in females HDT. Based on the results of the study, no apparent reproduction effects were attributed to test article administration. The effects observed regarding the offspring were a decrease in both the number of liveborn and pup body weights at 12.7 mg/kg/day for males and 15.1 mg/kg/day for females. Therefore, it was considered that there was both a quantitative and qualitative increase in susceptibility.

5. *Conclusion.* There is a complete toxicity data base for flumioxazin and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. The FQPA safety factor (as required by the Food Quality Protection Act of August 3,1996) has been retained at 10x for all population subgroups for all exposure durations (acute and chronic) in assessing the risk posed by this chemical. The reasons for retaining the 10x safety factor are as follows. First, there is evidence of increased susceptibility of the rat fetuses to *in utero* exposure to flumioxazin by the oral and dermal route in the prenatal developmental toxicity studies in rats. In addition, there is evidence of increased susceptibility of young animals exposed to flumioxazin in the 2-generation reproduction toxicity study in rats. Finally, there is concern for the severity of the effects observed in fetuses and young animals when compared to those observed in the maternal and parental animals (dose- and treatment-related increase in the incidence of cardiovascular abnormalities, particularly ventricular septal defect, in the developmental studies; and decreases in the number of live born pups and pup body weights in the absence of parental toxicity in the reproduction study).

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)]. This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water

consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to flumioxazin in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of flumioxazin on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to flumioxazin will occupy 6% of the aPAD for females 13 years and older. In addition, despite the potential for acute dietary exposure to flumioxazin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of flumioxazin in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO FLUMIOXAZIN

Population subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Acute DWLOC (ppb)[a]
Females (13–50 years old)	0.003	4.6	2.4	6.3	86

[a] DWLOC = Drinking Water Level of Comparison = (PAD - dietary exposure) × 1,000 µg/mg × body weight ÷ consumption. Standard body weights are 70 kg adult males, 60 kg adult females, 10 kg infants and children. Standard consumption values are 2 L/day for adults and 1 L/day for infants and children. DWLOC values are rounded to 2 significant figures.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to flumioxazin from food will utilize 4% of the cPAD for the U.S. population, 12% of the cPAD for children 3–5 years old, the subpopulation at greatest exposure and 11% of the cPAD for children 1–2 years old. There are no residential uses for flumioxazin that result in chronic residential exposure to flumioxazin. In addition, despite the potential for chronic dietary exposure to flumioxazin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of flumioxazin in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC EXPOSURE TO FLUMIOXAZIN

Population subgroup	cPAD (mg/kg)	% cPAD (Food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Chronic DWLOC (ppb)a
U.S. Population	0.002	4	2.4	6.3	68
All Infants (<1 year old)	0.00	6	2.4	6.3	18
Children (1–2 years old)	0.002	11	2.4	6.3	19
Children (3–5 years old)	0.002	12	2.4	6.3	19
Females (13–49 years old)	0.002	3	2.4	6.3	58
Children (6–12 years old)	0.002	9	2.4	6.3	67
Youths (13–19years old)	0.002	4	2.4	6.3	68
Adults (50+)	0.002	3	2.4	6.3	69

[a] DWLOC = Drinking Water Level of Comparison = (PAD - dietary exposure) × 1000 µg/mg × body weight ÷ consumption. Standard body weights are 70 kg adult males, 60 kg adult females, 10 kg infants and children. Standard consumption values are 2 L/day for adults and 1 L/day for infants and children. DWLOC values are rounded to 2 significant figures.

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Flumioxazin is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to flumioxazin residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance

expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address:*furlow.calvin@epa.gov*.

B. International Residue Limits

There are no Codex, Canadian or Mexican maximum residue limits established on soybeans or peanuts.

VI. Conclusion

Therefore, the tolerance is established for residues of flumioxazin, 2-[7-fluoro-3,4-dihydro-3-oxo-4-(2-propynyl)-2H-1,4-benzoxazin-6-yl]-4,5,6,7-tetrahydro-1H-isoindole-1,3(2H)-dione, in or on sweet potato, roots at 0.02 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need To Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0253 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 27, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2003–0253, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes a time-limited tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates

Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 19, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q); 346(a) and 371.

■ 2. Section 180.568 is amended by adding text to paragraph (b) to read as follows:

§ 180.568 Flumioxazin; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of the herbicide flumioxazin in connection with the use of the pesticides under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/ Revocation date
Sweet potato, roots	0.02	06/30/05

* * * * *

[FR Doc. 03–21662 Filed 8–26–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0254; FRL–7320–2]

Thiamethoxam; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for the combined residues of thiamethoxam and CGA–322704 on hops at 0.10 parts per million (ppm); bean, succulent at 0.02 ppm; and bean, dried at 0.02 ppm. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on hops, succulent bean seed and dry bean seed. This regulation establishes maximum permissible levels for residues of thiamethoxam in these food commodities. The tolerances will expire and are revoked on December 31, 2006.

DATES: This regulation is effective August 27, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0254, must be received on or before October 27, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; e-mail address: *Sec-18-Mailbox@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are a Federal or State Government Agency involved in administration of environmental quality programs (i.e., United States Departments of Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

- Federal or State Government Entity (NAICS 9241).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number OPP–2003–0254. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtm_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346(a), is establishing tolerances for the combined residues of thiamethoxam and CGA–322704 on hops at 0.10 ppm; bean, succulent at 0.02 ppm; and bean, dried at 0.02 ppm. These tolerances will expire and are revoked on December 31, 2006. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18-related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State Agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act (FQPA) of 1996. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Thiamethoxam on Hops, Succulent Bean Seed and Dry Bean Seed and FFDCA Tolerances

The States of Washington and Idaho requested the use of thiamethoxam on succuelent and dry bean seed to control leaf hoppers. EPA has authorized under FIFRA section 18 the use of thiamethoxam on succulent and dry bean seed for control of leaf hoppers in Washington and Idaho. After having reviewed the submissions, EPA concurs that emergency conditions exist for these States. The State of Oregon requested the use of thiamethoxam on hops to control garden symphylans. EPA has authorized under FIFRA section 18 the use of thiamethoxam on hops for control of garden symphylans in Oregon. After having reviewed the submission, EPA concurs that an emergency condition exists for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of thiamethoxam in or on hops, succulent bean seed and dry bean seed. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing

these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances will expire and are revoked on December 31, 2006, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on hops, succulent beans and dry beans after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether thiamethoxam meets EPA's registration requirements for use on hops, succulent bean seed and dry bean seed or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of thiamethoxam by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Washington and Idaho (succulent and dry bean seed) and Oregon (hops) to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for thiamethoxam, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of thiamethoxam and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for the combined residues of thiamethoxam and CGA–322704 on hops at 0.10 ppm; bean, succulent at 0.02 ppm; and bean, dried at 0.02 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

The dose at which no observed adverse effect levels are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (aRfD or cRfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for thiamethoxam used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR THIAMETHOXAM FOR USE IN HUMAN RISK ASSESSMENT

Exposure scenario	Dose used in risk assessment, UF	FQPA SF* and level of concern for risk assessment	Study and toxicological effects
Acute dietary (general population including infants and children)	NOAEL = 100 mg/kg/day UF = 100 Acute RfD = 1 mg/kg/day	FQPA SF = 10 aPAD = acute RfD FQPA SF = 0.1 mg/kg/day	Acute mammalian neurotoxicity study in the rat LOAEL = 500 mg/kg/day based on treatment-related neurobehavioral effects observed in the FOB and LMA testing (drooped palpebral closure, decreased rectal temperature and locomotor activity, increased forelimb grip strength).

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR THIAMETHOXAM FOR USE IN HUMAN RISK ASSESSMENT—Continued

Exposure scenario	Dose used in risk assessment, UF	FQPA SF* and level of concern for risk assessment	Study and toxicological effects
Chronic dietary (all populations)	NOAEL = 0.6 mg/kg/day UF = 100 Chronic RfD = 0.006 mg/kg/day	FQPA SF = 10 cPAD = chronic RfD FQPA SF = 0.0006 mg/kg/day	2-Generation reproduction study LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F1 generation males.
Oral nondietary (all durations)	NOAEL = 0.6 mg/kg/day	LOC for MOE = 1,000 (Residential)	2-Generation reproduction study LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F1 generation males.
Dermal (all durations) (Residential)	Oral study NOAEL = 0.6 mg/kg/day (dermal absorption rate = 5%)	LOC for MOE = 1,000 (Residential) LOC for MOE = 100 (Occupational)	2-Generation reproduction study LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F1 generation males.
Inhalation (all durations) (Residential)	Oral study NOAEL= 0.6 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE = 1,000 (Residential) LOC for MOE = 100 (Occupational)	2-Generation reproduction study LOAEL = 1.8 mg/kg/day based on increased incidence and severity of tubular atrophy in testes of F1 generation males.
Cancer (oral, dermal, inhalation)	Likely carcinogen for humans based on increased incidence of hepatocellular adenomas and carcinomas in male and female mice. Quantification of risk based on most potent unit risk: male mouse liver adenoma and/or carcinoma combined tumor rate. The upper bound estimate of unit risk, Q1* milligrams/kilogram/day (mg/kg/day)$^{-1}$ is 3.77×10^{-2} in human equivalents.		

*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established for the combined residues of thiamethoxam, in or on a variety of raw agricultural commodities (RAC). The following RAC's have established tolerances: Barley, canola, cotton, sorghum, wheat, tuberous and corm vegetables crop subgroup, fruiting vegetables, crop group, tomato paste, cucurbit vegetables crop group, pome fruits crop group, milk and the meat and meat by products of cattle, goats, horses, and sheep. Risk assessments were conducted by EPA to assess dietary exposures from thiamethoxam in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the United States Department of Agriculture (USDA) 1994–1996 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: Tolerence level residues and 100% crop treated.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 nationwide CSFII and accumulated exposure to the chemical for each commodity. The chronic exposure estimates are based on Tier 3 analyses that incorporate anticipated residues and percent crop treated (PCT) for most commodities.

iii. *Cancer.* Cancer dietary exposure has been estimated using the DEEM-FCID version 1.3. The cancer exposure estimates are based on Tier 3 analyses that incorporate anticipated residues and PCT for most commodities.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a Data Call-In for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To

provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows: Potatos, 19%; fruiting vegetables, 15%; cucumbers, 5%; melons, 13%; casabas, 44%; crenshaws, 44%; squash, 44%; pumpkins, 44%; apples, 5%; crabapples, 53%; pears, 9%; quinces, 53%; loquat, 53%; barley, 0.1%; sorghum, 9%; wheat, 2%; canola, 55%; cotton, 20%.

The Agency believes that the three conditions listed above have been met. With respect to condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which thiamethoxam may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for thiamethoxam in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of thiamethoxam.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/ Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and (SCI-GROW), which predicts pesticide concentrations in ground water. In general, EPA will use GENEEC (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/ EXAMS model that uses a specific high-end runoff scenario for pesticides: GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a percent reference dose (%RfD) or percent population adjusted dose (%PAD). Instead drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to thiamethoxam, they are further discussed in the aggregate risk sections below.

Based on the PRZM/EXAMS and SCI-GROW models, the EECs of thiamethoxam for acute exposures are estimated to be 7.1 parts per billion (ppb) for surface water and 1.94 ppb for ground water. The EECs for chronic exposures are estimated to be 0.43 (non-cancer) and 0.13 ppb (cancer) for surface water and 1.94 ppb for ground water (cancer and non-cancer).

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Thiamethoxam is not registered for use on any sites that would result in residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether thiamethoxam has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, thiamethoxam does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that thiamethoxam has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of

safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* The developmental toxicity studies indicated no quantitative or qualitative evidence of increased susceptibility of rat or rabbit fetus to *in utero* exposure based on the fact that the developmental NOAELs are either higher than or equal to the maternal NOAELs. However, the reproductive studies indicate effects in male rats in the form of increased incidence and severity of testicular tubular atrophy. These data are considered to be evidence of increased quantitative susceptibility for male pups when compared to the parents.

3. *Conclusions.* Based on:

i. Effects on endocrine organs observed across species.

ii. The significant decrease in alanine amino transferase levels in the companion animal studies and in the dog studies.

iii. The mode of action of this chemical in insects (interferes with the nicotinic acetyl choline receptors of the insect's nervous system) thus a developmental neurotoxicity study is required.

iv. The transient clinical signs of neurotoxicity in several studies across species.

v. The suggestive evidence of increased quantitative susceptibility in the rat reproduction study, the Agency is retaining the FQPA factor which is 10X.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by EPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to thiamethoxam in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of thiamethoxam on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to thiamethoxam will occupy 3% of the aPAD for the U.S. population; 2% of the aPAD for females 13 years and older; 7% of the aPAD for all infants <1 year old; and 9% of the aPAD for children 1–2 years old. In addition, despite the potential for acute dietary exposure to thiamethoxam in drinking water, after calculating DWLOCs and comparing them to conservative EECs of thiamethoxam in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO THIAMETHOXAM

Population subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Acute DWLOC (ppb)
General U.S. population	0.1	3	7.1	1.94	3,400
All Infants (<1 year old)	0.1	7	7.1	1.94	930
Children (1–2 years old)	0.1	9	7.1	1.94	910
Children (3–5 years old)	0.1	6	7.1	1.94	940
Children (6–12 years old)	0.1	4	7.1	1.94	960
Youth (13–19 years old)	0.1	2	7.1	1.94	3,400
Adults (20–49 years old)	0.1	2	7.1	1.94	3,400
Adults (50+ years old)	0.1	2	7.1	1.94	3,400
Females (13–49 years old)	0.1	2	7.1	1.94	3,000

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to thiamethoxam from food will utilize 4% of the cPAD for the U.S. population, 8% of the cPAD for all

infants <1 year old and 12% of the cPAD for children 1–2 years old. There are no residential uses for thiamethoxam that result in chronic residential exposure to thiamethoxam. In addition, despite the potential for chronic dietary exposure to thiamethoxam in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of thiamethoxam in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO THIAMETHOXAM

Population subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface water EEC (ppb)	Ground water EEC (ppb)	Chronic DWLOC (ppb)
General U.S. population	0.0006	4	0.43	1.94	20
All infants (<1 year old)	0.0006	8	0.43	1.94	5.6
Children (1–2 years old)	0.0006	12	0.43	1.94	5.3
Children (3–5 years old)	0.0006	10	0.43	1.94	5.4
Children (6–12 years old)	0.0006	6	0.43	1.94	5.6
Youth (13–19 years old)	0.0006	4	0.43	1.94	20
Adults (20–49 years old)	0.0006	3	0.43	1.94	20
Adults (50+ years old)	0.0006	3	0.43	1.94	20
Females (13–49 years old)	0.0006	3	0.43	1.94	17

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Thiamethoxam is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Thiamethoxam is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

5. *Aggregate cancer risk for U.S. population.* At the present time, there are no uses of thiamethoxam that will result in non-dietary, non-occupational (i.e., residential) exposures. Therefore, aggregate cancer risk estimates for thiamethoxam address only the food and drinking water pathways of exposure. EECs for thiamethoxam for comparison to the DWLOCs are 1.94 µg/L for cancer scenarios. The Agency does not have aggregate risk concerns when the estimated residues in water are less than the DWLOCs.

For cancer risk, which is estimated for the total U.S. population only, the DWLOC is 2:15 µg/L and assumes a negligible risk level of 3×10^{-6} rather than 1×10^{-6}. For risk management purposes, EPA considers a cancer risk to be greater than negligible when it exceeds the range of 1 in 1 million, however the Agency has generally treated cancer risks up to 3 in 1 million as within the range of 1 in 1 million. The DWLOC value indicates that aggregate exposure to thiamethoxam is not likely to exceed the Agency's level of concern as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (CANCER) EXPOSURE TO THIAMETHOXAM

Population subgroup	Maximum acceptable exposure (mg/kg/day)[1]	Food exposure (mg/kg/day)	Maximum water exposure (mg/kg/day)[2]	Surface water EEC (ppb)	Ground water EEC (ppb)	Cancer DWLOC (ppb)[3]
General U.S. population	0.0000795	0.000018	0.000062	0.13	1.94	2.15

[1] Maximum acceptable exposure = $3 \times 10^{-6} \div 0.0377$ (mg/kg/day)$^{-1}$ = 7.95×10^{-5} mg/kg/day.
[2] Maximum water exposure = maximum acceptable exposure - food exposure.
[3] DWLOC = maximum water exposure (mg/kg/day) 1,000 µg/mg H body weight (70 kg general population) ÷ water consumption (2 L/day). Value has been rounded to three significant figures.

EPA recognizes that the active ingredient clothianidin is identical to the thiamethoxam metabolite-of-concern CGA–322704; however, clothianidin has not been classified as a carcinogen and therefore, it has been removed from the cancer assessment.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to thiamethoxam residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology High Performance Liquid Chromatography using Ultra Violet or Mass Spectrometry (HPLC/UV or MS) is

available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: *furlow.calvin@epa.gov*.

B. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum residue limits that impact this action.

C. Conditions

The thiamethoxam label currently contains the following rotational crop restriction: Immediate rotation to any crop on the label or to cucurbit vegetables, fruiting vegetables, cotton, sorghum, corn, wheat, barley, canola, tuberous and corm vegetables, and tobacco. For all other crops, a 120–day plant back interval must be observed. That restriction is adequate to cover the requested section 18 use as a seed treatment for succulent and dried beans. Hops is not rotated and, therefore, does not raise any potential rotational crop issues.

VI. Conclusion

Therefore, the tolerances are established for the combined residues of thiamethoxam and CGA–322704 on hops at 0.10 ppm; bean, succulent at 0.02 ppm; and bean, dried at 0.02 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need To Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0254 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 27, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2003–0254, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of

the FFDCA. The Office of Management and Budget has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the [tolerances] in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 14, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—AMENDED

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.565 is amended by adding text to paragraph (b) to read as follows:

§ 180.565 Thiamethoxam; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of the insecticide thiamethoxam [3-[(2-chloro-5-thiazolyl)methyl]tetrahydro-5-methyl-*N*-nitro-4H-1,3,5-oxadiazin-4-imine] and its metabolite CGA-322704 in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. These tolerances will expire and are revoked on the dates specified in the following table:

Commodity	Parts per million	Expiration/revocation date
Bean, dried	0.02	12/31/06
Bean, succulent	0.02	12/31/06
Hops	0.10	12/31/06

* * * * *

[FR Doc. 03–21783 Filed 8–26–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0279; FRL–7323–1]

Diflubenzuron; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of diflubenzuron in or on wheat and barley commodities. This action is in response to treatment of these crops under section 18 of the Federal Insecticide, Fungicide, and

Rodenticide Act (FIFRA). This regulation establishes maximum permissible levels for residues of diflubenzuron in these food commodities. The tolerances will expire and are revoked on December 31, 2005.

DATES: This regulation is effective August 27, 2003. Objections and requests for hearings, identified by docket (ID) number OPP–2003–0279, must be received on or before October 27, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; e-mail address: *conrath.andrea@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop producers (NAICS 111)
- Animal producers (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification ID number OPP–2003–0279. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/4 0cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408 (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the insecticide diflubenzuron, [*N*-[[(4-chlorophenyl)amino]carbonyl]-2,6-difluorobenzamide and its metabolites 4-chlorophenlyurea and 4-chloroaniline (CPU) and (PCA)], in or on wheat and barley grain at 0.05 parts per million (ppm), wheat and barley straw at 0.50 ppm, wheat and barley hay at 1.0 ppm, wheat milled byproducts at 0.10 ppm, and aspirated grain fractions at 30 ppm. These tolerances will expire and are revoked on December 31, 2005. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of (FQPA) 1996. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemptions for Diflubenzuron on Wheat and Barley and FFDCA Tolerances

The requesting States (Idaho, Montana, and Washington) are experiencing severe outbreaks of grasshoppers in their wheat and barley fields this year. In most areas, densities of grasshoppers have reached 40 or more per square yard, and without the use of diflubenzuron, the Applicants estimate that yield could drop by 50%,

resulting in severe crop devastation and significant economic impact to wheat and barley producers in these States. It is believed that the mild winters over the last several years have allowed grasshopper nymphs to survive the winter and multiply more rapidly in the spring, leading to population explosions of grasshoppers to levels of up to 60 grasshoppers per square foot in some cases. The Applicants state that materials registered for grasshopper control either are not effective with populations at the current levels, are toxic to beneficial insects, or provide insufficient residual control, given the outbreak levels of grasshopper infestation. Under the crisis provisions (40 CFR 166.40) of section 18 of FIFRA the Applicants used diflubenzuron on wheat and barley for control of grasshoppers.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of diflubenzuron in or on barley and wheat commodities. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although this tolerance will expire and is revoked on December 31, 2005, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on barley and wheat commodities after that date will not be unlawful, provided it is demonstrated pursuant to section 408(l)(5) that the residues are the result of the application or the use of a pesticide at a time and in a manner that was lawful under FIFRA, and the residues do not exceed levels that were authorized by these tolerances at the time of that application or use. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues they allow are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether diflubenzuron meets EPA's registration requirements for use on barley and wheat or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of diflubenzuron by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any States other than Montana, Washington, and Idaho to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for diflubenzuron, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA , EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of diflubenzuron and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for combined residues of diflubenzuron in or on wheat and barley grain at 0.05 ppm, wheat and barley straw at 0.50 ppm, wheat and barley hay at 1.0 ppm, wheat milled byproducts at 0.10 ppm, and aspirated grain fractions at 30 ppm.

EPA has received objections to a separate tolerance-setting involving the use of diflubenzuron on pears. These objections were filed by the Natural Resources Defense Council (NRDC) and raised several issues regarding aggregate exposure estimates and the additional safety factor for the protection of infants and children. Although that proceeding remains ongoing, EPA has considered whether it is appropriate to establish the emergency exemption tolerances for diflubenzuron on wheat and barley commodities while the objections are still pending.

Factors taken into account by EPA included how close the Agency is to concluding the proceedings on the objections, the nature of the current action, whether NRDC's objections raised non-frivolous issues, and the extent to which the issues raised by NRDC had already been considered by EPA. Although NRDC's objections are not frivolous, the other factors all support establishing these tolerances at this time. First, the objections proceeding is unlikely to conclude prior to when action is necessary on this petition. [NRDC's objections raise complex legal, scientific, policy, and factual matters and EPA initiated a 60 day public comment period on them in the **Federal Register** on June 19, 2002 (67 FR 41628) (FRL–7167–7). That comment period was extended until October 16, 2002 in the **Federal Register** of September 17, 2002 (67 FR 58536) (FRL–7275–3),] and EPA is now examining the extensive comments received. Moreover, NRDC itself submitted further information to the Agency in June 2003, and the Agency is in the process of evaluating that information as well. Second, the nature of the current actions are extremely time-sensitive as they address emergency situations. Third, the issues raised by NRDC are not new matters but questions that already have been the subject of considerable evaluation by EPA and comment by stakeholders. Accordingly, EPA is proceeding with establishing these tolerances for diflubenzuron. EPA has determined at this time that these tolerances rest on a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residues involved. As suggested above, if during the life of these tolerances EPA determines that any experience with, scientific data on, or other relevant information on this pesticide indicates that the residues these tolerances allow are not safe, EPA will take action to revoke the tolerances prior to their otherwise applicable expiration date. The action EPA is taking at this time should not be construed to constitute action on NRDC's aforesaid objections. The Agency continues to consider those objections and information concerning them, including the new information which NRDC submitted in June 2003.

The most recent estimated aggregate risks resulting from the use of diflubenzuron, are discussed in the **Federal Register** of September 19, 2002 (67 FR 59017) (FRL–7200–4), final rule establishing tolerances for residues of diflubenzuron in/on grass forage, fodder, and hay; peppers; stone fruits; and tree nuts. In that prior action, risk was estimated using anticipated residue (AR) information based on field trial data and percent crop treated (PCT) information for some commodities. Available residue data indicate that the

use pattern for these emergency exemptions will not result in residues of diflubenzuron in excess of the following levels: Wheat and barley grain at 0.05 ppm, wheat and barley straw at 0.50 ppm, wheat and barley hay at 1.0 ppm, wheat milled byproducts at 0.10 ppm, and aspirated grain fractions at 30 ppm.

Therefore, tolerances are being established for these commodities at these levels. The risk assessment related to incremental addition of these items at this level to dietary exposure is discussed below. Refer also to the September 19, 2002 **Federal Register** document for a detailed discussion of the aggregate risk assessments and determination of safety. EPA relies in part upon that risk assessment and the findings made in that **Federal Register** document in support of this action. Below is a brief summary of the aggregate risk assessment.

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. A summary of the toxicological dose and endpoints for diflubenzuron for use in human risk assessment is discussed in the final rule mentioned above, published in the **Federal Register** of September 19, 2002 (67 FR 59017) (FRL–7200–4).

EPA assessed risk scenarios for diflubenzuron under chronic exposures only. Chronic risk estimates were calculated for the residues of toxicological concern, the parent compound of the insecticide diflubenzuron (*N*-[[4-chlorophenyl)amino]-carbonyl]-2,6-difluorobenzamide) and its metabolites, CPU and PCA. For the chronic analysis, ARs and PCT information for some commodities were also used. An acute dietary exposure analysis was not performed, because there were no acute toxicological endpoints identified (no effects of concern occurring as a result of a 1 day or single exposure). Short-term aggregate exposure, which takes into account residential exposure plus chronic exposure, was not assessed since diflubenzuron is not registered for use on any sites that would result in substantial residential exposure. Intermediate-term aggregate exposure, which takes into account residential exposure plus chronic exposure to food and water was not assessed, because intermediate-term exposure to diflubenzuron would not be expected from the registered and proposed use patterns. Aggregate cancer risk for the U.S. population was assessed, since the metabolite, CPU, is of concern for aggregate cancer risk and could be found in drinking water.

A refined, chronic dietary exposure assessment was conducted for the general U.S. population and various population subgroups using the Dietary Exposure Evaluation Model (DEEM™) Version 1.3. software with the Food Commodity Intake Database (FCID). The chronic analysis was performed using ARs and PCT information for several registered plant and livestock commodities, and recommended tolerance-level residues and 100% CT information for all proposed commodities. The chronic dietary exposure estimates are below levels of concern (<100% of the chronic population adjusted dose (cPAD)) for that general U.S. population and all population subgroups. The most highly exposed population subgroups are all infants <1 year old and children 1–2 years old (both at 3% of the cPAD).

A cancer dietary exposure assessment from consumption of PCA and CPU was conducted in the previous risk assessment. Based on the submitted metabolism studies, there are two possible sources for dietary exposure to PCA and CPU: Residues in fungi (mushrooms), and residues in animal commodities (milk and liver). As the wheat and barley uses will not result in additional dietary exposure to PCA and CPU, an updated cancer dietary exposure assessment was not needed to support the current section 18 request. The results of the previous cancer analysis indicated that the estimated cancer dietary risk associated with the use of diflubenzuron is below the Agency's level of concern

Dietary exposure from drinking water. For the current use on wheat and barley, a chronic aggregate exposure (food + drinking water) assessment was performed. Acute, short-term and intermediate-term aggregate risk assessments were not performed because an acute dietary endpoint was not selected and there are no registered or proposed non-food uses resulting in significant residential exposure, respectively. A cancer aggregate exposure (food + drinking water) assessment was not conducted because, as mentioned above, the current uses will not result in additional dietary exposure to CPU.

Since EPA does not have ground water and surface water monitoring data to calculate a quantitative aggregate exposure, Drinking Water Levels of Concern (DWLOCs) were calculated. A DWLOC is a theoretical upper limit on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and through residential uses. A DWLOC will vary depending on the toxic endpoint, drinking water consumption, body weights, and pesticide uses. Different populations will have different DWLOCs. EPA uses DWLOCs in the risk assessment process to assess potential concern for exposure associated with pesticides in drinking water. DWLOC values are not regulatory standards for drinking water. To calculate DWLOCs, the dietary food estimates (from DEEM™-FCID) were subtracted from the population adjusted dose (PAD) value to obtain the maximum water exposure level. DWLOCs were then calculated using the standard body weights and drinking water consumption figures: 70kg/2L (U.S. population and adult male), 60 kg/2L (adult female and youth), and 10kg/1L (infants and children). For chronic dietary exposure, EPA's level of concern is exceeded when estimated dietary risk exceeds 100% of the cPAD.

The chronic drinking water assessment resulted in chronic DWLOCs for the overall U.S. population of 690 parts per billion (ppb), and for all infants (<1 year old) and children (1–2 years) of 190 ppb (the population subgroups with the lowest DWLOC). All chronic DWLOCs were well above the chronic estimated environmental concentration (EEC) for ground water of 0.067 ppb. The chronic DWLOCs were also above the chronic EEC for surface water of 0.32 ppb.

Thus, results of the chronic analysis indicate that the estimated chronic dietary risk associated with the proposed use of diflubenzuron is below levels of concern, and chronic aggregate risk estimates are also below the level of concern.

Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to diflubenzuron residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate methods are available for the analysis of diflubenzuron, PCA, and CPU in crops. Three enforcement methods for diflubenzuron are published in the Pesticide Analytical Method Volume II (PAM II) as Methods I, II, and III.

B. International Residue Limits

There are no Codex proposals, Canadian, or Mexican limits for residues

of diflubenzuron on wheat and barley commodities. Therefore there are no compatibility issues associated with the proposed tolerances.

C. Conditions

One application per growing season may be made of the pesticide, diflubenzuron, to wheat and barley, at a rate of 2.0 fl. oz. product (0.44 fl. oz. of active ingredient) per acre. Applications may be made by ground or aerial equipment. A preharvest interval of 45 days must be observed, and all label directions on the federally registered label, as well as the section 18 use directions must be followed.

VI. Conclusion

Therefore, the tolerance is established for combined residues of diflubenzuron, and its metabolites CPU and PCA, in or on wheat and barley grain at 0.05 ppm, wheat and barley straw at 0.50 ppm, wheat and barley hay at 1.0 ppm, wheat milled byproducts at 0.10 ppm, and aspirated grain fractions at 30 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need To Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0279 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before October 27, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2003–0279, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not

contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 18, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.377 is amended by revising the table in paragraph (b) to read as follows:

§ 180.377 Diflubenzuron; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/revocation date
Alfalfa, forage ...	6.0	6/30/04
Alfalfa, hay	6.0	6/30/04
Barley, grain	0.05	12/31/05
Barley, hay	1.0	12/31/05
Barley, straw	0.50	12/31/05
Wheat, aspirated grain fractions	30	12/31/05
Wheat, grain	0.05	12/31/05
Wheat, hay	1.0	12/31/05
Wheat, milled byproducts	0.10	12/31/05
Wheat, straw	0.50	12/31/05

* * * * *

[FR Doc. 03–21935 Filed 8–26–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–7479–5]

New Mexico: Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act (RCRA), allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses the regulations entitled "Approved State Hazardous Waste Management Programs" to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that will be subject to EPA's inspection and enforcement. The rule codifies in the regulations the prior approval of New Mexico's hazardous waste management program and incorporates by reference authorized

provisions of the State's statutes and regulations.

DATES: This regulation is effective October 27, 2003, unless EPA receives adverse written comment on this regulation by the close of business September 26, 2003. If EPA receives such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** informing the public that this rule will not take effect. The incorporation by reference of authorized provisions in the New Mexico statutes and regulations contained in this rule is approved by the Director of the Federal Register as of October 27, 2003 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Send written comments referring to Docket Number NM–01–02 to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533. You can inspect the records related to this codification effort from 8:30 a.m. to 4 p.m. Monday through Friday in the EPA Region 6 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. What Is Codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize State hazardous waste management programs to operate in lieu of the Federal hazardous waste management regulatory program. EPA codifies its authorization of State programs in 40 CFR part 272 and incorporates by reference State statutes and regulations that EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and State requirements that can be Federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each State.

B. What Is the History of the Authorization and Codification of New Mexico's Hazardous Waste Management Program?

New Mexico initially received Final authorization effective January 25, 1985, (50 FR 1515) to implement its Base Hazardous Waste Management program. Subsequently, the EPA approved additional program revision applications effective April 10, 1990 (55 FR 4604); July 25, 1990 (55 FR 28397); December 4, 1992 (57 FR 45717); August 23, 1994 (59 FR 29734); December 21, 1994 (59 FR 51122); July 10, 1995 (60 FR 20238); January 2, 1996 (60 FR 53708) as affirmed by EPA in the **Federal Register** notice published on January 26, 1996 (61 FR 2450)); and March 10, 1997 (61 FR 67474). The EPA incorporated by reference New Mexico's then authorized hazardous waste program effective December 13, 1993 (58 FR 52677); August 21, 1995 (60 FR 32113); November 18, 1996 (61 FR 49265); and July 13, 1998 (63 FR 23224). Effective October 9, 2001 (66 FR 42140), EPA granted authorization to New Mexico for additional program revisions. In this document, EPA is approving a conforming change to the New Mexico regulations at Title 20, Chapter 4, Part 1, New Mexico Administrative code, section 20.4.1.1103, and incorporating by reference the authorized State hazardous waste program in New Mexico. The State's provision at section 20.4.1103 clarifies that references to any provisions of 40 CFR Part 280 within the text of any other provision of 40 CFR as adopted in Part 1 would mean the New Mexico Underground Storage Tank Regulations, 20 NMAC 5.1 through 5.16.

C. What Decisions Have We Made in This Rule?

The purpose of today's **Federal Register** document is to codify New Mexico's base hazardous waste management program and its revisions to that program. EPA provided notices and opportunity for comments on the Agency's decisions to authorize the New Mexico program, and EPA is not now reopening the decisions, nor requesting comments, on the New Mexico authorizations as published in the **Federal Register** notices specified in Section B of this document.

This document incorporates by reference New Mexico's hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. By codifying New Mexico's authorized program and by amending the Code of Federal Regulations, the public will be more easily able to discern the status of Federally approved requirements of the New Mexico hazardous waste management program.

The EPA is incorporating by reference the New Mexico authorized hazardous waste program in subpart GG of 40 CFR part 272. Section 272.1601 incorporates by reference New Mexico's authorized hazardous waste statutes and regulations. Section 272.1601 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the State's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

D. What Is the Effect of New Mexico's Codification on Enforcement?

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in authorized States. With respect to these actions, the EPA will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized State analogues to these provisions. Therefore, the EPA is not incorporating by reference such particular, approved New Mexico procedural and enforcement authorities. Section 272.1601(b)(2) of 40 CFR lists the statutory provisions which provide the legal basis for the State's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the State's approved program, but these are not incorporated by reference.

E. What State Provisions Are Not Part of the Codification?

The public needs to be aware that some provisions of New Mexico's hazardous waste management program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (*see* 40 CFR 271.1(i));

(2) Federal rules for which New Mexico is not authorized, but which have been incorporated into the State

regulations because of the way the State adopted Federal regulations by reference.

State provisions that are "broader in scope" than the Federal program are not part of the RCRA authorized program and EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.1601(b)(3) lists the New Mexico regulatory provisions which are "broader in scope" than the Federal program and which are not part of the authorized program being incorporated by reference. "Broader in scope" provisions cannot be enforced by EPA; the State, however, may enforce such provisions under State law.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

F. What Will Be the Effect of Federal HSWA Requirements on the Codification?

The EPA is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized States at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985). EPA has the authority to implement HSWA requirements in all States, including authorized States, until the States become authorized for such requirement or prohibition. Authorized States are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing State requirements may be similar to the HSWA requirement implemented by EPA. However, until EPA authorizes those State requirements, EPA can only enforce the HSWA requirements and not the State analogs. EPA will not codify those State requirements until the State receives authorization for those requirements.

G. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This rule incorporates by reference New Mexico's authorized hazardous waste management regulations and does not impose new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which EPA already approved under 40 CFR part 271, and with which regulated entities must already comply, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing authorized State hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

The requirements being codified are the result of New Mexico's voluntary participation in EPA's State program authorization process under RCRA Subtitle C. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective October 27, 2003.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006 and

7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 27, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, EPA Region 6.

■ For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

■ 2. Subpart GG is amended by revising § 272.1601 to read as follows:

§ 272.1601 New Mexico State-administered Program: Final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), New Mexico has final authorization for the following elements as submitted to EPA in New Mexico's base program application for final authorization which was approved by EPA effective on January 25, 1985. Subsequent program revision applications were approved effective on April 10, 1990, July 25, 1990, December 4, 1992, August 23, 1994, December 21, 1994, July 10, 1995, January 2, 1996, March 10, 1997, and October 9, 2001.

(b) *State Statutes and Regulations.*

(1) The New Mexico regulations cited in paragraph (b)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* (See § 272.2).

(i) The Binder entitled "EPA Approved New Mexico Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program", dated October 2001.

(ii) [Reserved]

(2) The following provisions provide the legal basis for the State's implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) New Mexico Statutes 1978 Annotated, Inspection of Public Records Act, Chapter 14, Article 2, (1994 Cumulative Supplement), sections 14–2–1 *et seq.*

(ii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1993 Replacement Pamphlet), sections 74–4–4 (except 74–4–4C), 74–4–4.1, 74–4–4.2C through 74–4–4.2F, 74–4–4.2G(1), 74–4–4.2H, 74–4–4.2I, 74–4–4.3 (except 74–4–4.3A(2) and 74–4–4.3F), 74–4–4.7B, 74–4–4.7C, 74–4–5, 74–4–7, 74–4–10, 74–4–10.1 (except 74–4–10.1C), 74–4–11 through 74–4–14.

(iii) Title 20, Chapter 4, part 1, New Mexico Administrative Code, effective June 14, 2000, sections 20.4.1.901 (except 20.4.1.901.B.1 through 20.4.1.901.B.6 and 20.4.1.901.E), 20.4.1.1100, 20.4.1.1104, 20.4.1.1105, and 20.4.1.1107.

(3)(i) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(ii) New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4, (1993 Replacement Pamphlet), sections 74–4–3.3 and 74–4–4.2J.

(4) *Unauthorized State Amendments.*—(i) The State's adoption of the Federal rules listed in the following table is not approved by EPA and are, therefore, not enforceable:

Federal requirement	**Federal Register** reference	Publication date
Biennial Report	48 FR 3977	01/28/83
Permit Rules; Settlement Agreement	48 FR 39611	09/01/83
Interim Status Standards; Applicability	48 FR 52718	11/22/83
Chlorinated Aliphatic Hydrocarbon Listing (F024)	49 FR 5308	02/10/84
National Uniform Manifest	49 FR 10490	03/20/84
Recycled Used Oil Management Standards	57 FR 41566: Amendments to 40 CFR parts 260, 261 and 266.	09/10/92
	58 FR 26420: Amendments to 40 CFR parts 261, 264 and 265.	05/03/93
	58 FR 33341: Amendments to 40 CFR parts 261, 264 and 265.	06/17/93
	63 FR 24963: Amendments to 40 CFR part 261	05/06/98
Revision of Conditional Exemption for Small Scale Treatability Studies.	59 FR 8362	02/18/94
Letter of Credit Revision	59 FR 29958	06/10/94
Universal Waste Rule, Petition Provisions to Add a New Universal Waste.	60 FR 25492	05/11/95
Recovered Used Oil Exclusion; Correction	61 FR 13103	03/26/96
Mineral Processing Secondary Materials	63 FR 28556; Amendments to 40 CFR part 261	06/26/98
Hazardous Remediation Waste Requirements (HWIR-Media), except as they apply to the standards for staging piles and to 40 CFR 264.1(j) and 264.101(d).	63 FR 65874	11/30/98

(ii) Additionally, New Mexico has adopted but is not authorized to implement the HSWA rules that are listed in the following table in lieu of EPA. EPA will continue to enforce the Federal HSWA standards for which New Mexico is not authorized until the State receives specific authorization from EPA:

Federal requirement	**Federal Register** reference	Publication date
Toxicity Characteristic; Hydrocarbon Recovery Operations	55 FR 40834	10/05/90
	56 FR 3978	02/01/91
	56 FR 13406	04/02/91
Toxicity Characteristic; Chlorofluorocarbon Refrigerants	56 FR 5910	02/13/91

Federal requirement	Federal Register reference	Publication date
Revisions to the Petroleum Refining Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038).	56 FR 21955	05/13/91
Boilers and Industrial Furnaces; Administrative Stay and Interim Standards for Bevill Residues.	58 FR 59598	11/09/93
Hazardous Remediation Waste Requirements (HWIR-Media), to the extent that they apply to the standards for staging piles and to 40 CFR 264.1(j) and 264.101(d).	63 FR 65874	11/30/98

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the State of New Mexico, signed by the EPA Regional Administrator on July 30, 2001, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of New Mexico January, 1985, and revisions, supplements and addenda to that Statement dated April 13, 1988; September 14, 1988; July 19, 1989; July 23, 1992; February 14, 1994; July 18, 1994; July 20, 1994; August 11, 1994; November 28, 1994; August 24, 1995; and January 12, 1996; and June 14, 2000 are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to Part 272 is amended by revising the listing for "New Mexico" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

New Mexico

The statutory provisions include:

New Mexico Statutes 1978 Annotated, Hazardous Waste Act, Chapter 74, Article 4 (1993 Replacement Pamphlet), sections 74–4–2, 74–4–3 (except 74–4–3L, 74–4–3O and 74–4–3R), 74–4–3.1, 74–4–4.2A, 74–4–4.2B, 74–4–4.2G introductory paragraph, 74–4–4.2G(2), 74–4–4.3F, 74–4–4.7 (except 74–4–4.7B and 74–4–4.7C), 74–4–9 and 74–4–10.1C, as published by the Michie Company, Law Publishers, 1 Town Hall Square, Charlottesville, Virginia 22906–7587.

The regulatory provisions include:

Title 20, Chapter 4, part 1, New Mexico Annotated Code, effective June 14, 2000, sections 20.4.100, 20.4.1.101, 20.4.1.200, 20.4.1.300, 20.4.1.400, 20.4.1.401, 20.4.1.500, 20.4.1.501, 20.4.1.600, 20.4.1.601, 20.4.1.700, 20.4.1.800, 20.4.801, 20.4.1.900, 20.4.1.901.B.1 through 20.4.1.901.B.6, 20.4.1.901.E, 20.4.1.1000, 20.4.1.1001, 20.4.1.1102 and 20.4.1103. Copies of the New Mexico regulations can be obtained from the New Mexico Commission of Public Records, State Records Center and Archives, Administrative Law Division, 1205 Camino Carlos Rey, Santa Fe, NM 87507.

* * * * *

[FR Doc. 03–21594 Filed 8–26–03; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–7479–3]

Oklahoma: Incorporation by Reference of Approved State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The Resource Conservation and Recovery Act (RCRA) allows the Environmental Protection Agency (EPA) to authorize States to operate their hazardous waste management programs in lieu of the Federal program. EPA uses the regulations entitled "Approved State Hazardous Waste Management Programs" to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that will be subject to EPA's inspection and enforcement. The rule codifies in the regulations the prior approval of Oklahoma's hazardous waste management program and incorporates by reference authorized provisions of the State's statutes and regulations. In addition, today's document corrects technical errors made in the table of authorities published in previous authorization **Federal Register** notices for Oklahoma.

DATES: This regulation is effective October 27, 2003, unless EPA receives adverse written comment on this regulation by the close of business September 26, 2003. If EPA receives such comments, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** informing the public that this rule will not take effect. The incorporation by reference of authorized provisions in the Oklahoma statutes and regulations contained in this rule is approved by the Director of the Federal Register as of October 27, 2003 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Send written comments referring to Docket Number OK–02–02 to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533. You can inspect the records related to this codification effort from 8:30 a.m. to 4 p.m. Monday through Friday in the EPA Region 6 Library, 1445 Ross Avenue, Dallas, Texas 75202–2733.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

SUPPLEMENTARY INFORMATION:

I. Technical Corrections

A. Corrections to Previously Published Authorization Federal Register *Notices for Oklahoma*

There were typographical and effective date errors in the tables of authorities published as part of the following authorization notices for Oklahoma. The affected entries are as follows:

1. December 9, 1998 (63 FR 67800) authorization notice:

(a) All references to "Sec. 2–7–104" are corrected to "Sec. 2–2–104";

(b) Specific to Checklist 151 (Item 4), the second reference to "2–7–106" is corrected to "2–7–107A(10)" the corresponding effective date of "July 1, 1994" is corrected to "July 1, 1993".

2. March 29, 2000 (65 FR 16258) authorization notice:

(a) Specific to Checklist 154 (item 2) and Checklist 159 (item 7), the references to "2–2104" are corrected to "Sec. 2–2–104";

3. January 2, 2001 (66 FR 28) authorization notice:

(a) Specific to Checklist 166 (Item 1), the reference to "2–2–106" is corrected to "2–7–106".

II. Incorporation By Reference

A. What Is Codification?

Codification is the process of placing a State's statutes and regulations that comprise the State's authorized hazardous waste management program into the Code of Federal Regulations (CFR). Section 3006(b) of RCRA, as amended, allows the Environmental Protection Agency (EPA) to authorize state hazardous waste management programs to operate in lieu of the federal hazardous waste management regulatory program. EPA codifies its authorization of the state programs in 40 CFR part 272 and incorporates by reference state statutes and regulations that EPA will enforce under sections 3007 and 3008 of RCRA and any other applicable statutory provisions.

The incorporation by reference of state authorized programs in the Code of Federal Regulations should substantially enhance the public's ability to discern the current status of the authorized state program and state requirements that can be federally enforced. This effort provides clear notice to the public of the scope of the authorized program in each state.

B. What Is the History of the Authorization and Codification of Oklahoma's Hazardous Waste Management Program?

Oklahoma received final authorization to implement its Base Hazardous Waste Management program, effective January 10, 1985, (49 FR 50362). Subsequently, the EPA approved additional program revision applications effective on June 18, 1990 (55 FR 14280), November 27, 1990 (55 FR 39274), June 3, 1991 (56 FR 13411), November 19, 1991 (56 FR 47675), November 29, 1993 (58 FR 50854), December 21, 1994 (59 FR 51116), April 27, 1995 (60 FR 2699), March 14, 1997 (62 FR 12100), July 14, 1998 (63 FR 23673) and November 23, 1998 (63 FR 50528). The EPA incorporated by reference Oklahoma's then authorized hazardous waste program effective December 13, 1993 (58 FR 52679), July 14, 1998 (63 FR 23673) and October 25, 1999 (64 FR 46567). Effective February 8, 1999 (63 FR 67800), May 30, 2000 (65 FR 16528), July 10, 2000 (65 FR 29981), and March 5, 2001 (66 FR 28), EPA granted authorization to Oklahoma for additional program revisions. In this document, EPA is approving a change to the Oklahoma regulations at OKLA. ADMIN. CODE section 252:205–7–4, which makes it clear that transporters are prohibited from mixing or combining incompatible hazardous waste within a common container.

C. What Decisions Have We Made in This Rule?

The purpose of today's **Federal Register** document is to codify Oklahoma's base hazardous waste management program and its revisions to that program. EPA provided notices and opportunity for comments on the agency's decisions to authorize the Oklahoma program. EPA is not now reopening the decisions, nor requesting comments, on the Oklahoma authorizations as published in the **Federal Register** notices specified in Section B of this document.

This document incorporates by reference Oklahoma's hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and federally enforceable program. By codifying Oklahoma's authorized program and by amending the Code of Federal Regulations, the public will be more easily able to discern the status of federally approved requirements of the Oklahoma hazardous waste management program.

The EPA is incorporating by reference the Oklahoma authorized hazardous waste program in subpart LL of 40 CFR part 272. 40 CFR 272.1851 incorporates by reference Oklahoma's authorized hazardous waste statutes and regulations. Section 272.1851 also references the statutory provisions (including procedural and enforcement provisions) which provide the legal basis for the state's implementation of the hazardous waste management program, the Memorandum of Agreement, the Attorney General's Statements and the Program Description, which are approved as part of the hazardous waste management program under Subtitle C of RCRA.

D. What Is the Effect of Oklahoma's Codification on Enforcement?

The EPA retains its authority under statutory provisions, including but not limited to, RCRA sections 3007, 3008, 3013 and 7003, and other applicable statutory and regulatory provisions to undertake inspections and enforcement actions and to issue orders in all authorized states. On occasion when EPA might need to undertake these actions, it will rely on Federal sanctions, Federal inspection authorities, and Federal procedures rather than any authorized state analogues to these provisions. Therefore, the EPA is not incorporating by reference any such approved Oklahoma procedural and enforcement authorities. 40 CFR 272.1851(b)(2) lists the statutory provisions which provide the legal basis for the state's implementation of the hazardous waste management program, as well as those procedural and enforcement authorities that are part of the state's approved program, but these are not incorporated by reference.

E. What State Provisions Are Not Part of the Codification?

The public needs to be aware that some provisions of Oklahoma's hazardous waste management program are not part of the federally authorized state program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (*see* 40 CFR 271.1(i));

(2) Federal rules for which Oklahoma is not authorized, but which have been incorporated into the state regulations because of the way the state adopted Federal regulations by reference.

State provisions that are "broader in scope" than the Federal program are not part of the RCRA authorized program and EPA will not enforce them. Therefore, they are not incorporated by reference in 40 CFR part 272. For reference and clarity, 40 CFR 272.1851(b)(3) lists the Oklahoma regulatory provisions which are "broader in scope" than the Federal program and which are not part of the authorized program being incorporated by reference. "Broader in scope" provisions cannot be enforced by EPA; the state, however, may enforce such provisions under state law.

Oklahoma has adopted but is not authorized for the Federal rule regarding exclusion of a waste from the list of hazardous waste, 40 CFR 260.20 *et seq.*, ("delisting") published on July 15, 1985 (50 FR 28702) and amended on June 27,

1989 (54 FR 27114); and the Federal rules published in the **Federal Register** on October 5, 1990 (55 FR 40834); February 1, 1991 (56 FR 3978); February 13, 1991 (56 FR 5910); April 2, 1991 (56 FR 13406); May 1, 1991 (56 FR 19951); December 23, 1991 (56 FR 66365); June 29, 1995 (60 FR 33912) and May 26, 1998 (63 FR 28556). Therefore, these Federal amendments included in Oklahoma's adoption by reference at OKLA. ADMIN. CODE sections 252:205–7–4, 252:205–3–2(b) through 252:205–3–2(k), are not part of the state's authorized program and are not part of the incorporation by reference addressed by today's **Federal Register** document.

With respect to any requirement pursuant to the Hazardous and Solid Waste Amendments of 1984 (HSWA) for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State is authorized for these provisions.

F. What Will Be the Effect of Federal HSWA Requirements on the Codification?

The EPA is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are implemented by EPA. Section 3006(g) of RCRA provides that any HSWA requirement or prohibition (including implementing regulations) takes effect in authorized and not authorized states at the same time. A HSWA requirement or prohibition supersedes any less stringent or inconsistent state provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985). EPA has the authority to implement HSWA requirements in all states, including authorized states, until the states become authorized for such requirement or prohibition. Authorized states are required to revise their programs to adopt the HSWA requirements and prohibitions, and then to seek authorization for those revisions pursuant to 40 CFR part 271.

Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the state receives authorization for its analog to the new HSWA provision before amending the state's 40 CFR part 272 incorporation by reference. Until then, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

Some existing state requirements may be similar to the HSWA requirement implemented by EPA. However, until EPA authorizes those state requirements, EPA can only enforce the HSWA requirements and not the state analogs. EPA will not codify those state requirements until the state receives authorization for those requirements.

III. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This rule incorporates by reference Oklahoma's authorized hazardous waste management regulations and does not impose new burdens on small entities. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely incorporates by reference certain existing State hazardous waste management program requirements which EPA already approved under 40 CFR part 271, and with which regulated entities must already comply, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not have tribal implications within the meaning of Executive Order 13175 (65 FR 67249, November 6, 2000). It does not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. This action will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely incorporates by reference existing authorized state hazardous waste management program requirements without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

The requirements being codified are the result of Oklahoma's voluntary participation in EPA's State program authorization process under RCRA Subtitle C. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective October 27, 2003.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006 and

7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 27, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, Region 6.

■ For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

■ 1. The authority citation for part 272 continues to read as follows:

Authority: Secs. 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Subpart LL—[Amended]

■ 2. Section 272.1851 is revised to read as follows:

§ 272.1851 Oklahoma State-administered program: Final authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), Oklahoma has final authorization for the following elements as submitted to EPA in Oklahoma's base program application for final authorization which was approved by EPA effective on January 10, 1985. Subsequent program revision applications were approved effective on June 18, 1990, November 27, 1990, June 3, 1991, November 19, 1991, November 29, 1993, December 21, 1994, April 27, 1995, March 14, 1997, July 14, 1998, November 23, 1998, February 8, 1999, May 30, 2000, July 10, 2000 and March 5, 2001.

(b) State Statutes and Regulations.

(1) The Oklahoma statutes and regulations cited in paragraph (b)(1)(i) of this section are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.* (*See* § 272.2).

(i) The Binder entitled "EPA Approved Oklahoma Statutory and Regulatory Requirements Applicable to the Hazardous Waste Management Program", dated March, 2001.

(ii) [Reserved]

(2) The following provisions provide the legal basis for the State's implementation of the hazardous waste management program, but they are not being incorporated by reference and do not replace Federal authorities:

(i) Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 1997 Edition (unless otherwise specified), Sections 2–2–104, 2–7–102, 2–7–104, 2–7–105 (except 2–7–105(27), 2–7–105(29) and 2–7–105(34)), 2–7–106, 2–7–107, 2–7–108(B)(2), 2–7–110(A), 2–7–113.1, 2–7–115, 2–7–116(A), 2–7–116(G), 2–7–116(H)(1), 2–7–123, 2–7–126 (1999 Supplement), 2–7–129, 2–7–130, 2–7–131 and 2–7–133.

(ii) The Oklahoma Administrative Code, Title 252, Chapter 205, Hazardous Waste Management, effective June 12, 2000: Subchapter 1, Sections 252:205–1–1(b), 252:205–1–3(a) and (b), 252:205–1–4(a)–(d); Subchapter 3, Sections 252:205–3–2 introductory paragraph, and 252:205–3–2(a)(1).

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute 1997 Edition, Sections 2–7–119, 2–7–121 and 2–7–134.

(ii) The Oklahoma Administrative Code, Title 252, Chapter 205, effective June 12, 2000: Subchapter 1, Section 252:205–1–1(c)(2)–(4), 252:205–1–2 "RRSIA". 252:205–1–2 "Reuse", 252:205–1–2 "Speculative accumulation", 252:205–1–2 "Transfer facility", 252:205–1–2 "Transfer station", 252:205–1–4(e) and (f); Subchapter 5, Sections 252:205–5–1(4), Subchapter 15; Subchapter 17; Subchapter 21; and 252:205 Appendices A, B, and C.

(4) *Unauthorized State Amendments.* The State's adoption of the Federal rules listed below is not yet approved by EPA and is, therefore, not enforceable:

Federal requirement	Federal Register reference	Publication date
Delisting	50 FR 28702	07/15/85
	54 FR 27114	06/27/89
	Amendments to 260.22(a) through 260.22(e).	
Toxicity Characteristics; Hydrocarbon Recovery Operations	55 FR 40834	10/05/90
	56 FR 3978	02/01/91
	56 FR 13406	04/02/92
Toxicity Characteristics; Chlorofluorocarbon Refrigerants	56 FR 5910	02/13/91
Administrative Stay for K069 Listing	56 FR 19951	05/01/91
Amendments to Interim Status Standards for Downgradient Ground-water Monitoring Well Locations.	56 FR 66365	12/23/91
Removal of Legally Obsolete Rules	60 FR 33912	06/29/95
Mineral Processing Secondary Materials Exclusion	63 FR 28556	05/26/99

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region 6 and the State of Oklahoma (ODEQ), signed by the EPA Regional Administrator on March 1, 2000, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization", signed by the Attorney General of Oklahoma on January 20, 1984 and revisions, supplements and addenda to that Statement dated January 14, 1988 (as amended July 20, 1989); December 22, 1988 (as amended June 7, 1989 and August 13, 1990); November 20, 1989; November 16, 1990; November 6, 1992; June 24, 1994; December 8, 1994; March 4, 1996; April 15, 1997; February 6, 1998, December 2, 1998, October 15, 1999 and May 31, 2000, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

■ 3. Appendix A to part 272 is amended by revising the listing for "Oklahoma" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Oklahoma

The statutory provisions include:

Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute 1997 Edition, Sections 2–7–103, 2–7–108(A), 2–7–108(B)(1), 2–7–108(B)(3), 2–7–108(C), 2–7–110(B), 2–7–110(C), 2–7–111(A), 2–7–111(B) (except the last sentence and the phrase, "recycling" in the first sentence), 2–7–111(C)(2)(a) (except the phrase "Except as provided in subparagraph b of this paragraph" and the word "recycling" in the first sentence), 2–7–111(D), 2–7–111(E) (except the word "recycling" in the first sentence), 2–7–112, 2–7–116(B) through 2–7–116(F), 2–7–116(H)(2), 2–7–118(A), 2–7–124, 2–7–125, 2–7–127 and 2–10–301(G).

Copies of the Oklahoma statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, PO Box 64526, St. Paul, Minnesota 55164–0526.

The regulatory provisions include:

The Oklahoma Administrative Code, Title 252, Chapter 205, effective June 12, 2000: Subchapter 1, Sections 252:205–1–1(a), 252:205–1–1(c) introductory paragraph, 252:205–1–1(c)(1), 252:205–1–2 introductory paragraph, 252:205–1–2 "OHWMA", 252:205–1–2 "Post-closure permit", 252:205–1–3(c); Subchapter 3, Sections 252:205–3–1, 252:205–3–2(a)(2), 252:205–3–2(b)–(m), 252:205–3–4, 252:205–3–5 and 252:205–3–6; Subchapter 5, Sections 252:205–5–1 (except 252:205–5–1(4)), 252:205–5–2 through 252:205–5–5; Subchapter 7, Sections 252:205–7–1 through 252:205–7–3 and 252:205–7–4 (except the phrase "or in accordance with 252:205–15–1(d)); Subchapter 9 (except 252:205–9–5 and 252:205–9–6); Subchapter 11, 252:205–11–1(a) (except the word "recycling"), 252:205–11–1(b) through 252:205–11–1(e) and 252:205–11–2; and Subchapter 13, Sections 252:205–13–1(a)—(e).

Copies of the Oklahoma regulations that are incorporated by reference can be obtained from The Oklahoma Register, Office of Administrative Rules, Secretary of State, 101 State Capitol, Oklahoma City, Oklahoma 73105.

* * * * *

[FR Doc. 03–21592 Filed 8–26–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

42 CFR Part 102

RIN 0906–AA50

Smallpox Vaccine Injury Compensation Program: Smallpox (Vaccinia) Vaccine Injury Table

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Interim Final Rule.

SUMMARY: The Smallpox Emergency Personnel Protection Act of 2003 (SEPPA), Public Law 108–20, 117 Stat. 638, authorized the Secretary of Health and Human Services (the Secretary), through the establishment of the Smallpox Vaccine Injury Compensation Program (the Program), to provide benefits and/or compensation to certain persons who have sustained injuries as a result of the administration of smallpox covered countermeasures (including the smallpox vaccine) or as a result of vaccinia contracted through accidental vaccinia inoculations.

The SEPPA directed the Secretary to establish, by interim final rule, a table identifying adverse effects (including injuries, disabilities, conditions, and deaths) that shall be presumed to result from the administration of or exposure to the smallpox vaccine, and the time interval in which the first symptom or manifestation of each listed injury must manifest in order for such presumption to apply. As mandated by law, the Secretary is establishing such a Smallpox (Vaccinia) Vaccine Injury Table (the Table) through this interim final rule. The Secretary is also establishing a set of Table Definitions and Requirements, which define the terms and conditions included on the Table and are to be read in conjunction with the Table.

The Secretary is seeking public comment on the Table established through this interim final rule. At a later date, the Secretary will publish a companion final rule setting forth the administrative implementation of the Program. The public will then be afforded an additional opportunity to comment on the procedures set forth therein.

DATES: This regulation is effective on August 27, 2003. Written comments must be submitted on or before October 27, 2003. The Secretary will consider the comments received and will decide whether to amend the Table based upon such comments.

ADDRESSES: All written comments concerning this interim final rule should be submitted to the Director, Smallpox Vaccine Injury Compensation Program, Office of Special Programs, Health Resources and Services Administration, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, Maryland 20857. Express and courier mail should be sent to Smallpox Vaccine Injury Compensation Program, Office of Special Programs, Health Resources and Services Administration, 4350 East West Highway, 10th Floor, Bethesda, Maryland 20814. Electronic comments should be sent to *smallpox@hrsa.gov*. Comments received will be available for public inspection at the Office of Special Programs, Health Resources and Services Administration, 4350 East West Highway, 10th Floor, Bethesda, Maryland 20814, between the hours of 8:30 a.m. and 5 p.m. on Federal Government work days.

FOR FURTHER INFORMATION CONTACT: Dr. Vito Caserta, telephone (301) 443–4956. This is not a toll-free number. Electronic inquiries should be sent to *smallpox@hrsa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Prior to its eradication, smallpox (variola) was a serious illness that manifested either as outbreaks of variola major with death rates of greater than 20 percent or variola minor with death rates approaching 1 percent. Those who survived were frequently left with significant disabilities, such as blindness. Smallpox (vaccinia) vaccine (referred to in this rule as the "smallpox vaccine") was an essential tool for the successful global eradication of smallpox (variola), announced by the World Health Organization in 1980. Despite such eradication, concern exists that terrorists may have access to the smallpox (variola) virus (referred to in this rule as the "smallpox virus").

On December 13, 2002, the President announced a plan to protect the population of the United States against the threat of a possible smallpox attack. This plan was based on heightened concerns, in the wake of the attacks of September and October 2001, that terrorists may have access to the smallpox virus and may attempt to use it against the population of the United States and government facilities abroad. Under this plan, which the Secretary is actively working to implement, State and local governments have formed volunteer smallpox response teams that will be prepared to provide critical services to the population of the United

States in the event of a smallpox virus attack.

In furtherance of the President's plan, the Secretary issued a Declaration Regarding Administration of Smallpox Countermeasures on January 24, 2003 (68 FR 4212). In this Declaration, the Secretary declared that "a potential bioterrorist incident makes it advisable to administer, on a voluntary basis, covered countermeasures specified * * * for prevention or treatment of smallpox [(virus infection)] or control or treatment of adverse events related to smallpox vaccination, to [specified] categories of individuals. * * *" The specific "covered countermeasures" described in the Declaration are smallpox vaccines, cidofovir and derivatives thereof, and Vaccinia Immune Globulin. The categories of persons to whom the Secretary recommended the administration of such covered countermeasures, on a voluntary basis, included certain health care workers, members of smallpox response teams identified by State or local government entities or the Department of Health and Human Services, certain public safety personnel, and certain personnel associated with certain Federal facilities abroad. The Secretary recommended that such persons volunteer to receive the smallpox vaccine in order to ensure that critical personnel would be able to mobilize immediately and provide critical services to the population of the United States in the event of a smallpox virus attack. The Secretary's Declaration became effective on January 24, 2003, and will remain effective until January 23, 2004, unless the Secretary extends or shortens the effective period of the Declaration by amendment.

The smallpox vaccine contains a live vaccinia virus that induces immunity to smallpox infection, but does not lead to variola infection or disease. Vaccinia virus is an orthopox type virus that is different from, but related to, the smallpox virus. Different strains of vaccinia have been used in the development of smallpox vaccines throughout the world, with some strains causing more injuries than other strains. The New York City Board of Health strain, "the NYCBH strain," is the only strain currently used in vaccines administered in the United States. The NYCBH strain was selected for use in such vaccines because it has shown itself to be both relatively safe and effective when compared to other vaccinia strains. Nevertheless, the routine use of smallpox vaccination in the United States and several other countries, irrespective of the strain used, was discontinued prior to the certification of global eradication of smallpox. This was due to the relatively high complication rate observed with the smallpox vaccine, in addition to the lower risk of importation of smallpox with the increasing success of the global eradication program.

Because the vaccinia virus in the smallpox vaccine is live, it can be transmitted to other parts of the body of the vaccine recipient, *e.g.*, by touching a vaccination site before it has healed and then touching another part of the recipient's body (self-inoculation), or to another person, *e.g.*, by touching a vaccination site in a recipient before it has healed and then touching another person (accidental person-to-person inoculation). For purposes of this rule, the term "vaccination" refers to the administration and receipt of the smallpox vaccine and not through contact. Likewise, for purposes of this rule, the term "inoculation" is meant to refer to transmission of and subsequent infection with the vaccinia virus through a means other than smallpox vaccination, as described above.

Even though several studies documented the rate of serious complications after receipt of the smallpox vaccine during the 1960s and 1970s, these rates may be higher today as more individuals are immunocompromised, which has the same meaning for purposes of this regulation as immunosuppressed or immunodeficient. Furthermore, persons receiving primary smallpox vaccination under a smallpox emergency response plan will be doing so as adults. The earlier studies also primarily sought information only on what was known already to be caused by the smallpox vaccine. Unrecognized adverse reactions that may become more clearly evident with improved surveillance may not have been studied in the past.

The SEPPA authorized the Secretary to establish and implement the Smallpox Vaccine Injury Compensation Program. Under the Program, certain persons may receive benefits and/or compensation for covered injuries, described below, sustained as a result of such vaccination or accidental vaccinia inoculation. Specifically, SEPPA authorizes the Secretary to make available such benefits and/or compensation to two categories of persons who sustain covered injuries, provided they meet other legal requirements, *e.g.*, filing deadlines. The first category, described as "recipients," includes certain persons who volunteer for and are selected to be a member of a smallpox emergency response plan and are vaccinated with smallpox vaccine. In the event that recipients sustain covered injuries as the result of the administration of the smallpox vaccine or other covered countermeasures listed in the Secretary's Declaration, they may be entitled to benefits and/or compensation under the Program. The second category, described as "contacts," includes certain persons who sustained covered injuries as the result of vaccinia contracted through accidental vaccinia inoculation through contact with categories of recipients described in the SEPPA or the contacts of such recipients. In addition, survivors of deceased recipients or contacts may be eligible for benefits and/or compensation under the Program in certain circumstances. Persons who do not meet the criteria for one of these categories (*e.g.*, individuals who receive the smallpox vaccine, but not as part of an approved smallpox emergency response plan) will not be entitled to benefits.

In order to obtain benefits and/or compensation under the Program, eligible individuals in these categories must file a request with the Program and demonstrate to the Secretary in their requests that applicable eligibility, benefits, and compensation criteria are satisfied. Persons filing such requests with the Program are described as requesters. The benefits and compensation available under the Program include compensation for medical care, lost employment income, and a death benefit for certain survivors of persons who died as the result of a covered injury. A requester's entitlement to such benefits and compensation will vary depending upon the nature of the requester's condition, the requester's particular personal circumstances, *e.g.*, whether the requester has insurance coverage, and the completeness of the request and accompanying documentation.

Among the criteria that must be satisfied in order for a person to be entitled to such benefits and/or compensation is the requirement that a person sustained a "covered injury" as the result of the administration of a covered countermeasure or as the result of an accidental vaccinia inoculation. A requester can demonstrate that such a covered injury, an injury either proven or presumed to be caused by the vaccinia virus contained in the smallpox vaccine or transmitted through accidental vaccinia inoculation and meeting all applicable requirements, occurred through two alternative mechanisms. First, in accordance with the SEPPA, a recipient or contact shall be presumed to have sustained a covered injury as the result of the

administration of or exposure to the smallpox vaccine if the requester submits sufficient documentation demonstrating that the event is included on an injury table (*i.e.*, the Table) created by the Secretary with the onset of the first symptom or manifestation within the time interval specified on the Table. For this reason, if an otherwise eligible person sustained an injury listed on the Table in the time interval listed on the Table, the Secretary will presume, solely for purposes of the Program, that this event was caused by the smallpox vaccine. Such a requester need not actually demonstrate that the vaccine or the vaccinia contracted from accidental vaccinia inoculation caused the underlying injury, only that an injury listed on the Table was sustained with the first manifestation within the time interval listed on the Table.

This presumption is not conclusive, however. The Secretary may determine, based on his review of the relevant evidence, that an injury meeting the Table requirements was most likely caused by other factors and was not caused by the smallpox vaccine or exposure to vaccinia in contact cases. In these circumstances, the Table presumption could be rebutted, and the requester may not be entitled to benefits and/or compensation under the Program.

The alternative mechanism to demonstrate that a covered injury was sustained is available when a requester cannot demonstrate that a Table injury occurred within the time interval listed on the Table. In such circumstances, the requester must submit sufficient documentation showing that the smallpox vaccine or other covered countermeasures, or the vaccinia contracted from accidental vaccinia inoculation, actually caused the injury that is the basis for the request. In evaluating such claims, the Secretary will employ a preponderance of the evidence standard, taking into consideration all relevant medical and scientific evidence, including all relevant medical records.

As authorized and mandated under the SEPPA, the Secretary is herein establishing, at 42 CFR 102.21, a Table that identifies injuries, *i.e.*, illnesses, disabilities, injuries, or conditions, referred to as "Table injuries," that shall be presumed to result from the administration of or exposure to the smallpox vaccine, as well as the time interval in which the first symptom or manifestation of each such injury must manifest in order for this presumption to apply. The Secretary is further including Table Definitions and Requirements, set forth in 42 CFR 102.21(b), which define the terms and conditions included in the Table and set forth the requirements necessary to establish Table injuries. As such, the Table Definitions and Requirements are considered a part of the Table.

At this time, the Secretary is seeking public comment on the Table established through this interim final rule. The Secretary will solicit comments on other matters pertaining to the implementation of the Program in the future, when the Secretary publishes a companion rule detailing the policies and procedures for the implementation of the Smallpox Vaccine Injury Compensation Program.

Summary of Regulation

Smallpox (Vaccinia) Vaccine Injury Table

This interim final rule establishes the Table, which includes the covered injuries for the smallpox vaccine and the relevant time intervals for "recipient requests" (requests concerning injuries in relation to the administration of the smallpox vaccine) and "contact requests" (requests concerning injuries in relation to vaccinia contracted through accidental vaccinia inoculation from another person). In order to obtain the presumption of causation afforded by the Table, a requester filing a recipient request must demonstrate that the onset of the recipient's first symptom or manifestation of an injury listed on the Table occurred within the timeframe listed on the Table in relation to the administration of the smallpox vaccine. Likewise, in order to obtain the Table presumption of causation, a requester filing a contact request must demonstrate that the onset of the contact's first symptom or manifestation of the injury listed on the Table occurred within the time interval listed on the Table in relation to any date in the exposure period.

A contact may be exposed to vaccinia on any date in the exposure period, which is the span of time during which transmission of vaccinia virus from a vaccine recipient or another contact shedding vaccinia can occur. The risk of exposure from viral shedding from a recipient or contact is generally considered no longer to exist when the scab from each vaccinial lesion spontaneously falls off, which usually occurs approximately three weeks after vaccination or inoculation in a healthy person and may be considerably longer in the immunocompromised or those experiencing injuries such as eczema vaccinatum.

The time intervals listed on the Table for recipients reflect the quantity of time between vaccination and the onset of the first symptom or manifestation of the Table injury. For contacts, because the exact time the vaccinia virus is transmitted cannot generally be pinpointed, the time intervals listed on the Table reflect a comparable quantity of time between exposure to vaccinia (i.e. any point in the exposure period) and the onset of the first symptom or manifestation of the Table injury.

The injuries included on the Table, as well as the time intervals set forth for both recipients and contacts, represent the Secretary's best effort to include a comprehensive listing of injuries believed to be causally related to the smallpox vaccine. The Table is meant to represent the known NYCBH strain injuries where credible medical evidence suggests that the smallpox vaccine has a causal role in the injury and the time intervals in which such known events first manifest in relation to the administration of the smallpox vaccine, or the exposure to vaccinia in contact cases. However, the Table covers all smallpox vaccines administered under the Secretary's Declaration. With future generations of smallpox vaccines, the Secretary may need to amend the Table to fit the injury profile of the new vaccine.

Although the occurrence of many of the injuries included on the Table appears to be exceedingly rare, the Secretary is including such injuries on the Table in order to ensure that people who are otherwise eligible for benefits and/or compensation under the Program will receive the Table's presumption of causation in those instances in which the credible medical literature persuasively suggests a causal relationship between the smallpox vaccine and the injury. The Table presumption can be rebutted if the Secretary determines, based on a review of the relevant evidence, that an injury meeting the Table requirements was not caused by the smallpox vaccine or exposure to vaccinia in contact cases.

The Secretary is aware of anecdotal reports of ischemic heart disease, such as angina pectoris or myocardial infarction (heart attacks) occurring in a few individuals following receipt of the smallpox vaccine. The Secretary has included vaccinia-related myocarditis, pericarditis, and myopericarditis as Table injuries but, at this time, there is no clear scientific evidence to support including ischemic heart disease as a separate Table injury.

Nevertheless, where a requester can demonstrate that an ischemic heart disease following a covered Table injury was likely caused by, or was a health complication (i.e., sequela) of, the Table

injury, we expect that the requester will be eligible for benefits associated with the ischemic heart disease.

Should sufficient scientific evidence be forthcoming that ischemic heart disease (absent these Table conditions) is caused by the vaccine, the Secretary would amend the Table (see discussion below), with retroactive effect, to include this condition too. Furthermore, even absent a Table injury for ischemic heart disease, requesters may provide sufficient evidence of causation in fact for this injury, which might also lead to Program benefits.

The Secretary will provide further information in the forthcoming companion regulation as to how he will determine whether an event was caused by, or was a health complication of, a covered injury.

In addition to specific injuries, the Table includes a category for any death resulting from an injury included on the Table in which the injury arose within the time interval set forth on the Table. No time interval is specified for the category of death. Therefore, so long as the Secretary determines that the death resulted from an injury meeting the Table requirements, the death can occur at any time subsequent to the injury and not necessarily in the time interval set forth on the Table.

Table Definitions and Requirements

The Table's Definitions and Requirements, set forth in 42 CFR 102.53(b), define and describe the scope of the terms included on the Table. As such, the listings included on the Table are to be read in conjunction with the Definitions and Requirements. For each Table injury, the Table Definitions and Requirements must be satisfied.

By law, requesters will be required to provide documentation showing that they meet other eligibility criteria, separate from the Table, in order to demonstrate eligibility to receive benefits and/or compensation under the Program. For example, each requester filing a contact request is required by law to demonstrate to the Secretary that the contact contracted vaccinia through accidental vaccinia inoculation during the effective dates of the Secretary's Declaration, or up to 30 days thereafter. This requirement applies to all contact requests filed, regardless of whether the injury in question is included on the Table. For this reason, the requirement that a requester with a contact request demonstrate that the contact contracted vaccinia within the time interval specified by law is not incorporated into the Table. The companion regulations that the Secretary will issue in the future will provide detailed information concerning this requirement and other requirements that requesters must satisfy beyond those that pertain exclusively to injuries included on the Table.

Requests Based on Non-Table Injuries

A requester may be eligible to receive benefits and/or compensation available through the Program even if the underlying injury is not included on the Table, as defined through the Definitions and Requirements, or did not occur within the time-frame included on the Table. Because such requesters will not be afforded the presumption of causation given to requesters who establish Table injuries, requesters filing requests based on non-Table injuries must submit documentation that demonstrates to the Secretary that the injury underlying the request was actually caused by the administration of the covered countermeasure, or by vaccinia through accidental vaccinia inoculation in contact requests. The Secretary will give full and fair review of all such requests.

Medical evidence available concerning a possible causal link between the vaccinia virus and particular conditions may not be sufficient for the Secretary to add such conditions to the Table. However, such evidence together with medical documentation introduced by particular requesters may be sufficient for requesters with such conditions to persuade the Secretary that the vaccinia virus from vaccination or inoculation was a significant factor in causing the condition. For example, medical literature suggests that the vaccinia virus has caused acute vaccinial arthritis (VA) or vaccinial osteomyelitis (VO) in isolated instances. As a result, requesters with such conditions may be entitled to compensation even when such conditions are not included on the Table. In order to demonstrate that a particular person's condition was caused by the vaccinia virus through vaccination or inoculation, requesters must provide evidence demonstrating such a link, *e.g.*, evidence that the vaccinia virus was present in an infected joint in a case of alleged VA or in an osteomyelitis in a case of alleged VO. Such evidence may persuade the Secretary to determine that the person sustained a covered, albeit a non-Table, injury. Likewise, persons in whom a malignant melanoma (MM), basal cell carcinoma (BCC), or squamous cell carcinoma (SCC) originated with the first manifestation in a vaccination or inoculation scar may be able to demonstrate to the Secretary that the vaccinia virus caused the MM, BCC, or SCC. This is consistent with the rare cases in the medical literature in which a causal link has been suggested between the vaccinia virus and such skin tumors, *e.g.*, persons who developed new tumors, *i.e.*, MM, BCC, or SCC (as the first manifestation of each tumor) in separate vaccinial scars from separate vaccinations given years apart.

To decide whether benefits and/or compensation under the Program are available in relation to a request that does not concern a Table injury, the Secretary will review the materials provided in each case. In reviewing these requests, the Secretary will employ a preponderance of the evidence standard, taking into consideration relevant medical and scientific evidence. The Secretary will provide further information concerning such requests when he publishes the companion final rule setting forth the administrative implementation of the Program.

No Table for Other Non-Vaccine Covered Countermeasures

The Secretary was statutorily directed to establish a Table identifying injuries presumed to result from the administration of or exposure to the smallpox vaccine. The SEPPA did not direct the Secretary to establish such a Table in relation to injuries presumed to result from the administration of other covered countermeasures. Nonetheless, certain requesters may still be entitled to benefits and/or compensation in relation to injuries that resulted from covered countermeasures other than the smallpox vaccine, *i.e.*, Vaccinia Immune Globulin, cidofovir and derivatives thereof. Requesters filing requests in relation to such injuries are not afforded the presumption of causation given to requesters who have sustained Table injuries. For this reason, a requester filing a request in relation to such non-vaccine covered countermeasures, as with any non-Table request, must demonstrate to the Secretary that the administration of the covered countermeasure actually caused an injury for which benefits and/or compensation may be available under the Program.

Amendments to Table

In accordance with Section 263(a)(2) of the Public Health Service Act (PHS Act), as established by SEPPA, the Secretary is authorized to amend by regulation the Table established in this interim final rule. The Secretary intends to monitor injuries in relation to covered countermeasures, including the smallpox vaccine. Based upon the best scientific evidence available, the

Secretary will amend the Table to add new injuries, to modify the governing time intervals, or to modify Table definitions, when the evidence supports doing so. Such amendments will apply to pending requests and to requests filed after the amendments take effect. Requesters who become eligible with respect to an injury on the Table as the result of such an amendment may file a request based on the amendment within the time period prescribed by law.

Justification for Omitting Notice of Proposed Rulemaking and for Waiver of Delayed Effective Date

Through the enactment by the SEPPA of Section 263(a)(1) of the PHS Act, the Secretary was directed to establish by interim final rule a table identifying injuries that shall be presumed to result from the administration of or exposure to the smallpox vaccine, and the time interval in which the first symptom or manifestation of each such injury must manifest in order for such presumption to apply. In accordance with that statutory directive, the Secretary is herein establishing such a Table, including Definitions and Requirements. As noted earlier, the establishment of this Table by interim final rule was authorized by statute.

The Secretary has further determined, under 5 U.S.C. 553(b), that it is contrary to the public interest to follow the notice of proposed rulemaking procedures before issuance of these regulations, because such a process might delay the continuing implementation of the President's plan to protect the population of the United States against the threat of a smallpox (variola) attack. A significant element of this plan, which is also an important priority of the Secretary, is the increased voluntary participation of persons in smallpox emergency response plans throughout the Nation, which includes voluntary immunization with the smallpox vaccine. The companion regulation, which will serve to implement the Program, will be issued after this regulation is in effect. The sooner that this regulation becomes effective, the sooner potential requesters will be able to assess their eligibility to recover benefits and/or compensation from the Program and to recover such benefits and/or compensation, if eligible. For the same reasons, the Secretary has determined that there is good cause to waive a delay in the rule's effective date.

As noted above, comments will be accepted at the above listed address for a period of 60 days following the publication of this rule.

Economic and Regulatory Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). In addition, under the Regulatory Flexibility Act (RFA), if a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of a rule on small entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, of costs, of benefits, of incentives, of equity, and of available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are "significant" because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis.

Congress has found it necessary to appropriate $42,000,000 for the administration of, and payment of the Program. Because any resources required to implement the regulatory requirements imposed by the SEPPA are not required by virtue of the establishment of a Table, and because the Secretary will conduct an independent analysis concerning any burdens associated with the implementation of the Program when the Secretary publishes the companion regulations setting forth the Program's administrative implementation, the Secretary has determined that no resources are required to implement the provisions included in this regulation. Therefore, in accordance with the RFA of 1980, and the Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

The Secretary has also determined that this proposed interim final rule does not meet the criteria for a major rule as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. The Secretary has determined that the proposed interim final rule is not a "major rule" within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. Similarly, it will not have effects on State, local, and tribal governments and on the private sector such as to require consultation under the Unfunded Mandates Reform Act of 1995.

The Secretary has also reviewed this rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have "federalism implications." The rule does not "have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

On the basis of family well-being, the provisions of this interim final rule will not affect the following family elements: family safety, family stability, marital commitment; parental rights in the education, nurture and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under section 654(c) of the Treasury and General Government Appropriations Act of 1999.

Impact of the New Rule

In this interim final rule, the Secretary establishes a Smallpox (Vaccinia) Vaccine Injury Table identifying injuries that shall be presumed to result from the administration of or exposure to the smallpox vaccine, and the time interval in which the onset of the first symptom or manifestation of each such injury must manifest in order for such presumption to apply. The Secretary also is providing Table Definitions and Requirements. This interim final rule is based upon legal authority. This interim final rule will have the effect of affording certain persons a presumption that particular injuries were sustained as the result of the administration of or exposure to the smallpox vaccine. Because the Table establishes a presumption of causation, it relieves requesters of the burden of demonstrating causation for covered events.

Paperwork Reduction Act of 1995, as Amended

This interim final rule has no information collection requirements.

List of Subjects in 42 CFR Part 102

Benefits, Biologics, Compensation, Immunization, Public health, Smallpox, Vaccinia.

Dated: July 18, 2003.

Elizabeth M. Duke,

Administrator, Health Resources and Services Administration.

Approved: July 22, 2003.

Tommy G. Thompson,

Secretary.

■ For the reasons stated above, the Department of Health and Human Services adds to Subchapter J of Chapter I of Title 42 CFR, a new part 102 to read as follows:

PART 102—SMALLPOX COMPENSATION PROGRAM

Sec.

102.1–102.20. [Reserved]

102.21 Smallpox (Vaccinia) Vaccine Injury Table.

Authority: Sec. 215 of the Public Health Service Act (42 U.S.C. 216); sec. 263 of the PHS Act, as amended, Public Law No. 108–20, 117 Stat. 638.

§102.21 Smallpox (Vaccinia) Vaccine Injury Table.

(a) SMALLPOX (VACCINIA) VACCINE INJURY TABLE

Injury (illness, disability, injury, or condition)	Time interval for first symptom or manifestation of onset of injury after: (1) administration of smallpox (vaccinia) vaccine in recipients (R); or (2) exposure to vaccinia in contacts (C)
1. Significant Local Skin Reaction	R or C: 1–21 days.
2. Stevens-Johnson Syndrome	R or C: 1–21 days.
3. Inadvertent Inoculation	R or C: 1–21 days.
4. Generalized Vaccinia	R or C: 1–21 days.
5. Eczema Vaccinatum	R or C: 1–21 days.
6. Progressive Vaccinia	R or C: 1–21 days.
7. Postvaccinial Encephalopathy, Encephalitis or Encephalomyelitis	R or C: 1–21 days.
8. Fetal Vaccinia	Maternal R or C: any time in gestation until 7 days after birth.
9. Secondary Infection	R or C: 0–30 days.
10. Anaphylaxis or Anaphylactic Shock	R: 0–4 hours. C: Not Covered.
11. Vaccinial Myocarditis, Pericarditis, or Myopericarditis	R or C: 1–21 days.
12. Death resulting from an injury referred to above in which the injury arose within the time interval referred to above (except as specifically provided in specified paragraph (b) of this section).	R or C: No time interval specified.

(b) *Table Definitions and Requirements*

The Table Definitions that follow shall apply to, define and describe the scope of, and be read in conjunction with paragraph (a) of this section.

(1) *Significant local skin reaction.*—(i) *Definition.* Significant local skin reaction is, for purposes of the Table, an unexpected and extreme response at the vaccination or inoculation site that results in a significant scar that is serious enough to require surgical intervention. The onset of this injury is the initial skin lesion at the vaccination or inoculation site that generally occurs with smallpox vaccinations or inoculations. Minor scarring or minor local reactions do not constitute a Table injury. Even a robust take, defined as an area of redness at the vaccination site that exceeds 7.5 cm in diameter with associated swelling, warmth and pain, in general is considered an expected response to the vaccination or inoculation. A robust take does not in itself constitute a Table injury, even when the redness and swelling involves the entire upper arm with associated enlargement and tenderness of the glands (lymph nodes) in the underarm (axilla).

(ii) *Table requirements.* A Table injury for a significant local skin reaction in a recipient or contact requires sufficient evidence in the medical records of the occurrence of a significant local skin reaction at the vaccination or inoculation site and a permanent, disfiguring scar that resulted from the significant local skin reaction. The scar must be of sufficient severity to require surgical intervention to correct a significant cosmetic (*e.g.*, keloid) or functional (*e.g.*, contracture) deformity and such surgery must be included in the treatment plan documented in the medical records.

(2) *Stevens-Johnson Syndrome (SJS).*—(i) *Definition.* SJS (sometimes called erythema multiforme major) is an acute hypersensitivity reaction that affects skin, mucous membranes, and sometimes internal organs (systemic toxicity). For purposes of the Table, both skin and mucous membrane rash or lesions must be present and the rash or lesions may not cover less than ten percent of body surface area. In SJS, mucosal involvement generally predominates. Mucosal lesions generally occur at more than one location and manifest as painful lesions in sites such as the mouth or eyes. Skin rash or lesions in SJS usually consist of red raised areas (erythematous macules), blisters, and ulcerations.

(ii) *Table requirements.* A Table injury for SJS in a recipient or contact requires sufficient evidence in the medical records of the occurrence of SJS. The SJS, or related complications, must be of sufficient severity to require inpatient hospitalization.

(3) *Inadvertent Inoculation (II).*—(i) *Definition.* II is the spread of vaccinia virus from an existing vaccination or inoculation site to a second location usually by scratching the vaccination or inoculation site and subsequently spreading the virus, which produces a new vaccinial lesion on the same person. Alternatively, II is the spread of vaccinia virus from an existing vaccination or inoculation site to another person usually by scratching an existing vaccination or inoculation site and subsequently spreading the virus, resulting in a contact case.

(ii) *Table requirements.* A Table injury for II in a recipient or contact requires sufficient evidence in the medical records of the occurrence of II and the occurrence of one of the following:

(A) Eye lesions, *e.g.*, vaccinial keratitis or vaccinial blepharitis, that resulted from II and that led to a permanent sequela, *e.g.*, decrease in visual acuity;

(B) Permanent and disfiguring scar(s) that resulted from II. The scar(s) must be of sufficient severity to require surgical intervention to correct a significant cosmetic (*e.g.*, keloid) or functional (*e.g.*,

contracture) deformity and such surgery must be included in the treatment plan documented in the medical records; or

(C) Acute II or related complications of sufficient severity to require inpatient hospitalization.

(4) *Generalized Vaccinia (GV).*—(i) *Definition.* GV is a vaccinial infection that occurs from the spread of vaccinia from an existing vaccination or inoculation site to otherwise normal skin, resulting in multiple new areas of vaccinial rash or lesions. The vaccinia is believed to be spread through the blood. The rash or lesions are characterized by multiple blisters (vesicles or pustules) that generally evolve in a similar sequence or manner as the original vaccination or inoculation site.

(ii) *Table requirements.* A Table injury for GV in a recipient or contact requires sufficient evidence in the medical records of the occurrence of GV and the occurrence of one of the following:

(A) Permanent and disfiguring scar(s) that resulted from GV. The scar(s) must be of sufficient severity to require surgical intervention to correct a significant cosmetic (*e.g.*, keloid) or functional (*e.g.*, contracture) deformity and such surgery must be included in the treatment plan documented in the medical records; or

(B) Acute GV or related complications of sufficient severity to require inpatient hospitalization.

(5) *Eczema Vaccinatum (EV).*—(i) *Definition.* EV is the transmission or the spread of vaccinia virus from a vaccination or inoculation site to skin that has been affected by, or is currently affected with, eczema or atopic dermatitis. EV is characterized by lesions that include multiple blisters (vesicles or pustules), which generally evolve in a similar sequence or manner as the original vaccination or inoculation site. The lesions may come together to form larger lesions. Lesions may also spread to patches of skin that have never been involved with eczema or atopic dermatitis. A person with EV may be quite ill with signs and symptoms that involve the whole body (systemic illness), such as fever, malaise, or enlarged glands (lymph nodes).

(ii) *Table requirements.* A Table injury for EV in a recipient or contact requires sufficient evidence in the medical records of the occurrence of EV and the occurrence of one of the following:

(A) Permanent and disfiguring scar(s) that resulted from EV. The scar(s) must be of sufficient severity to require surgical intervention to correct a significant cosmetic (*e.g.*, keloid) or functional (*e.g.*, contracture) deformity and such surgery must be included in the treatment plan documented in the medical records; or

(B) Acute EV or related complications of sufficient severity to require inpatient hospitalization.

(6) *Progressive Vaccinia (PV).*—(i) *Definition.* PV is the failure to initiate the healing process in an initial vaccination or inoculation site by 21 days after exposure to vaccinia with progressive ulceration or necrosis at the vaccination or inoculation site leading to a large destructive ulcer. PV is seen in people with an impaired immune system (immunocompromised) and is characterized by a complete or near complete lack of inflammation or absence of inflammatory cells in the dermis of the skin at the vaccination or inoculation site. The diagnosis of PV may be made before 21 days after exposure, especially in a known immunocompromised individual who develops a lesion at the vaccination or inoculation site. PV may spread through the blood to any location in the body. Any person who initiates a significant healing process of the vaccination or inoculation site by 21 days after receipt of the smallpox vaccine or exposure to vaccinia does not have PV.

(ii) *Table requirements.* A Table injury for PV in a recipient or contact requires sufficient evidence in the medical records of the occurrence of PV and the occurrence of one of the following:

(A) Permanent and disfiguring scar(s) that resulted from PV. The scar(s) must be of sufficient severity to require surgical intervention to correct a significant cosmetic (*e.g.*, keloid) or functional (*e.g.*, contracture) deformity and such surgery must be included in the treatment plan documented in the medical records; or

(B) Acute PV or related complications of sufficient severity to require inpatient hospitalization.

(7) *Postvaccinial Encephalopathy, Encephalitis or Encephalomyelitis (PVEM).*—(i) *Definition.* PVEM is, for the purposes of the Table, an autoimmune central nervous system injury. In rare cases, the vaccinia virus is isolated from the central nervous system. Manifestations usually occur abruptly and may include fever, vomiting, loss of appetite (anorexia), headache, general malaise, impaired consciousness, confusion, disorientation, delirium, drowsiness, seizures, language difficulties (aphasia), coma, muscular incoordination (ataxia), urinary incontinence, urinary retention, and clinical signs consistent with inflammation of the spinal cord (myelitis) such as paralysis or meningismus. Long term central nervous system impairments such as paralysis, seizure disorders, or developmental delays are known to occur as sequelae of the acute PVEM. No clinical criteria, radiographic findings, or laboratory tests are specific for the diagnosis of PVEM.

(ii) *Table Requirements.* A Table injury for PVEM in a recipient or contact requires sufficient evidence in the medical records of the occurrence of acute PVEM. The acute PVEM or related complications must be of sufficient severity to require inpatient hospitalization.

(8) *Fetal Vaccinia (FV).*—(i) *Definition.* FV is an intrauterine vaccinial infection subsequent to vaccinia vaccination or inoculation of the mother that results from the placental transmission of the vaccinia virus during any time in the pregnancy. FV manifests as multiple skin lesions or organ involvement and may result in significant scarring or death. FV skin lesions are similar to those seen in GV or PV and the lesions may come together to form larger lesions. Congenital malformations, other than those described above, are not Table injuries.

(ii) *Table requirements.* A Table injury for FV requires sufficient evidence in the medical records of the occurrence of the FV. The occurrence of the FV or related complications must be of sufficient severity to require inpatient hospitalization or result in permanent and disfiguring scar(s). In addition, a Table injury for FV requires one of the following:

(A) A maternal history of vaccinial vaccination or inoculation, with the occurrence of vaccinial skin or mucous membrane lesions within the incubation period for vaccinia during the pregnancy in a maternal recipient or contact; or

(B) Isolation of vaccinia from intrauterine or neonatal tissue.

(9) *Secondary Infection (SI).*—(i) *Definition.* SI is, for purposes of the Table, a non-vaccinial bacterial, fungal, or viral infection at the site of a vaccinial skin or mucous membrane lesion. SI occurs because the blister formation or ulceration that is part of the normal progression of a vaccinial skin or mucous membrane lesion disrupts the surface of the skin or mucous membrane, allowing potential germs to invade and infect the vaccinial skin or mucous membrane lesion leading to significant illness requiring hospitalization.

(ii) *Table requirements.* A Table injury for SI in a recipient or contact

requires sufficient evidence in the medical records of the occurrence of SI. The acute SI or related complications must be of sufficient severity to require inpatient hospitalization.

(10) *Anaphylaxis or Anaphylactic shock.*—(i) *Definition.* Anaphylaxis or anaphylactic shock is, for purposes of the Table, as an acute, severe, and potentially lethal systemic allergic reaction to a component of the smallpox vaccine.

(ii) *Table requirements.* A Table injury for anaphylaxis or anaphylactic shock in a recipient requires sufficient evidence in the medical records of the occurrence of an acute anaphylaxis or anaphylactic shock. The anaphylaxis or anaphylactic shock must be of sufficient severity to require inpatient hospitalization. Anaphylaxis or anaphylactic shock is not a Table injury for contacts.

(11) *Vaccinial Myocarditis, Pericarditis, or Myopericarditis (MP).*—(i) *Definition.* MP is, for purposes of the Table, vaccinial myocarditis, pericarditis, or myopericarditis. Myocarditis is defined as an inflammation of the heart muscle (myocardium). Pericarditis is defined as an inflammation of the covering of the heart (pericardium). Myopericarditis is defined as an inflammation of both the heart muscle and its covering. The inflammation associated with MP may range in severity from very mild (subclinical) to life threatening. In many mild cases, myocarditis is diagnosed solely by transient electrocardiographic (EKG) abnormalities (*e.g.*, ST segment and T wave changes), increased cardiac enzymes, or mild echocardiographic abnormalities. Arrhythmias, abnormal heart sounds, heart failure, and death may occur in more severe cases. Pericarditis generally manifests with chest pain, abnormal heart sounds (pericardial friction rub), EKG abnormalities (*e.g.*, ST segment and T wave changes), and/or increased fluid accumulation around the heart.

(ii) *Table requirements.* A Table injury for MP in a recipient or contact requires sufficient evidence in the medical records of the occurrence of acute MP. The acute MP (or related complications) must be of sufficient severity to require inpatient hospitalization. A death resulting from MP requires sufficient microscopic (histopathologic) evidence of MP or its sequela in heart tissue.

(c) *Glossary for Purposes of This Section*

(1) *Blister or vesicle* means a circumscribed, elevated skin or mucous membrane lesion containing an accumulation of fluid.

(2) *Contact* means a person who developed a vaccinial lesion or infection through inoculation (and not vaccination).

(3) *Exposure period* means the span of time during which vaccinia virus can be transmitted from a vaccine recipient shedding vaccinia or through a contact case shedding vaccinia.

(4) *Inoculation* means transmission of and infection with the vaccinia virus through a means other than smallpox vaccination. Spread (inoculation) of vaccinia virus may occur in two ways: either self-inoculation in which the vaccinia virus is spread from the vaccinial lesion at the vaccination site to one or more areas on the same person or person-to-person inoculation when the vaccinia virus is spread to another person, a contact.

(5) *Inoculation site* means the skin or mucous membrane surface where the vaccinia virus entered the body through means other than vaccination.

(6) *Lesion* means a pathologic change.

(7) *Pustule* means a circumscribed, elevated skin or mucous membrane lesion containing an accumulation of white blood cells.

(8) *Recipient* means a person to whom the smallpox vaccine was administered.

(9) *Ulceration* means a specific skin or mucous membrane lesion characterized by erosion of the skin or mucous membrane surface.

(10) *Vaccination* means the administration and receipt of the smallpox (vaccinia) vaccine, and not through contact.

(11) *Vaccination* site means the skin surface where the vaccinia virus entered the body through vaccination.

[FR Doc. 03–21906 Filed 8–26–03; 8:45 am]
BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Part 1

[USCG 2003–15137]

RIN 1625–AA71

Right To Appeal; Director, Great Lakes Pilotage

AGENCY: Coast Guard, DHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On June 23, 2003, we published a direct final rule that notified the public of the Coast Guard's intent to amend its appellate procedures to provide explicit authority for appeal of decisions or actions taken by the Director, Great Lakes Pilotage. We have not received an adverse comment, or notice of intent to submit an adverse comment, on this rule. Therefore, the rule will go into effect as scheduled.

DATES: The effective date of the direct final rule is confirmed as August 22, 2003.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Tom Lawler, Coast Guard, telephone 202–267–1241. If you have questions on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, Department of Transportation, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION: On June 23, 2003, we published a direct final rule [68 FR 37091] that notified the public of the Coast Guard's intent to amend its appellate procedures to provide explicit authority for appeal of decisions or actions taken by the Director, Great Lakes Pilotage. We have not received an adverse comment, or notice of intent to submit an adverse comment, on this rule. Therefore, the rule will go into effect as scheduled.

Dated: August 21, 2003.

T.H. Gilmour,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–21966 Filed 8–26–03; 8:45 am]
BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1 and 25

[IB Docket Nos. 02–34 and 02–54, FCC 03–102]

Satellite Licensing Procedures

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts new satellite licensing procedures, intended to enable the Commission to issue satellite slicenses more quickly. In addition, the Commission eliminates the anti-trafficking rule for satellites, together with new safeguards to protect against speculation. These actions are necessary to expedite provision of satellite services to the public, without allowing satellite license applicants to abuse the Commission's licensing procedures.

DATES: Effective August 27, 2003, except for §§ 25.137(d)(4), 25.164 (c) through

(e), and 25.165 which will become effective September 11, 2003. The Commission has adopted a freeze on new satellite applications. This freeze is terminated as of August 27, 2003.

FOR FURTHER INFORATION CONTACT: Steven Spaeth, Attorney Advisor, Satellite Division, International Bureau, telephone (202) 418–1539 or via the Internet at *steven.spaeth@fcc.gov*.

SUPPLMENTARY INFORMATION: This summary of the Commission's First Report and Order, IB Docket Nos. 02–34 & 02–54, FCC 03–102, adopted April 23, 2003, and released on May 19, 2003. The complete text of this First Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554, and also may be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898 or via e-mail *qualexint@lol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov*.

Paperwork Reduction Act Analysis: The actions taken in the First Report and Order have been analyzed with respect to the Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, and §§ 25.137(d)(4), 25.164(c) through (e), and 25.165 have been found to impose new or modified reporting requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements has been approved by the Office of Management and Budget (OMB). OMB granted approval for this information collection by means of a Notice of Action for collection number 3060–1007 dated August 13, 2003.

Regulatory Flexibility Analysis: As required by the Regulatory Flexibility Act (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the Notice of Proposed Rule Making (NPRM) in IB Docket No. 02–34.[2] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

Need for, and Objectives of, the Proposed Rules. The objective of the proposed rules is to discourage parties from filing "speculative" satellite applications, *i.e.*, applying for a satellite license without intending to construct the satellite facilities. These rule revisions are needed because speculative satellite applications can delay or preclude other parties from obtaining a satellite license and providing service to the public.

Summary of Significant Issues Raised by Public Comments In Response to the IRFA. No comments were submitted in response to the IRFA.

Description and Estimate of the Number of Small Entities To Which Rules Will Apply. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[7] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[8] Nationwide, as of 1992, there were approximately 275,801 small organizations.[9] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[10] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[11] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees that may be affected by the proposed rules, if adopted.

The rules adopted in this *First Report and Order* affect satellite operators. The Commission has not developed a definition of small entities applicable to satellite operators. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Satellite Telecommunications.[12] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[13] 1997 Census Bureau data indicate that, for 1997, 273 satellite communication firms had annual receipts of under $10 million. In addition, 24 firms had receipts for that year of $10 million to $24,999,990.[14]

In addition, Commission records reveal that there are approximately 240 space station operators licensed by this Commission. We do not request or collect annual revenue information, and thus are unable to estimate of the number of licensees that would constitute a small business under the SBA definition. Small businesses may not have the financial ability to become space station licensees because of the high implementation costs associated with satellite systems and services.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. In this *First Report and Order*, the Commission adopts a mandatory electronic filing requirement for space station license applicants. The Commission believes that filing satellite license applications electronically is no more burdensome than submitting paper applications, because a majority

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[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601—612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104–121, Title II, 110 Stat. 857 (1996).

[2] Amendment of the Commission's Space Station Licensing Rules and Policies, *Notice of Proposed Rulemaking*, IB Docket No. 02–34, 67 FR 12498 (Mar. 19, 2002) (*NPRM*).

[3] *See* 5 U.S.C. 604.

[4] 5 U.S.C. 604(a)(3).

[5] *Id* 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[7] Small Business Act, 15 U.S.C. 632 (1996).

[8] 5 U.S.C. 601(4).

[9] 1992 Economic Census, U.S. Business of the Census, Table 6 (special tabulation of data under contract to Office of the Advocacy of the U.S. Small Business Administration).

[10] 5 U.S.C. 601(5).

[11] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[12] "This industry comprises establishes primarily engaged in providing point-to-point telecommunications services to other establishes in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Small Business Administration, 1997 NAICS Definitions, NAICS 513340.

[13] 13 CFR 120.121, NAICS code 513340.

[14] U.S. Census Bureau, 1997 Economic Census, Subject Service: Information, "Establishment and Firm Size," Table 4, NAICS 513340 (Issued Oct. 2000).

of satellite applicants currently file their applications electronically on a voluntary basis.

None of the other rules adopted in this *First Report and Order* are expected to increase the reporting, record keeping and other compliance requirements of any licensee.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): "(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities."[15]

In this proceeding, we adopt rule revisions designed to allow the Commission to issue satellite licenses faster than is now possible, which will enable satellite operators to provide service faster, and to attract investors faster. This will have a positive economic impact on all satellite licensees, including small entities.

In the *NPRM*, the Commission proposed applying a first-come, first-served procedure to all satellite applications, including non-geostationary satellite applications. In the *First Report and Order*, the Commission concluded that applying a first-come, first-served procedure to non-geostationary satellite applications could enable one applicant to unreasonably exclude others, including small entities, from the market. Accordingly, the Commission rejected this proposal.

Report to Congress: The Commission will send a copy of the *First Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *First Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *First Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

Summary of Report and Order: In this document, the Commission adopts new satellite licensing procedures, intended to enable the Commission to issue satellite licenses more quickly. First, the Commission establishes a queue for satellite applications, based on the date and time they are filed. If an application is filed before a needed international frequency allocation is adopted, the application will be returned as premature. If an application is filed before a needed domestic frequency allocation is adopted, the application will be considered only pursuant to a waiver of the Table of Frequency Allocations, 47 CFR 2.106. If an application is filed after international and domestic frequency allocations are adopted, but before the Commission adopts service-band specific service rules, the application will be considered only subject to default service rules adopted in the *First Report and Order*. Included in those default service rules is a requirement for the applicant to disclose its orbital debris mitigation proposals, if any. This requirement is based on the record in IB Docket No. 02–54. In addition, as explained further below, the Commission adopts different procedures for non-geostationary satellite orbit (NGSO) satellite system applications and geostationary satellite orbit (GSO) applications. If an applicant files an application before there are GSO/NGSO sharing criteria for that band, then we will consider only GSO applications or NGSO applications, depending on which is filed first, until the Commission adopts sharing criteria. If a GSO application and an NGSO application are filed at the same time, the band will be split proportionally between GSOs and NGSOs.

Second, the Commission adopts different procedures for different types of satellite applications. When a non-geostationary satellite orbit (NGSO) application or a geostationary satellite orbit (GSO) Mobile Satellite Service (MSS) application (together, "NGSO-like") reaches the front of the queue, the Commission starts a modified processing round, and divides the available spectrum equally among all the qualified applicants. If a licensee loses or surrenders its license, the spectrum assigned to that licensee will be reassigned to the remaining licensees, unless the number of remaining licensees is sufficient to make reasonably efficient use of the frequency band. The Commission presumes that this number is three. In this case, the Commission will announce another processing round for the newly available spectrum. Similarly, the Commission will start another processing round if there are fewer than three qualified applicants in the initial processing round.

When a non-geostationary satellite (GSO) application other than a GSO MSS application reaches the front of the queue, the Commission considers it on a first-come, first-served basis. The Commission will grant each of those applications if the applicant is qualified, and the proposed satellite would not conflict with any other previously licensed satellite. If two or more qualified GSO-like applications are filed at the same thousandth of a second, the Commission will divide the spectrum equally among the qualified applicants at that orbit location. If a GSO-like licensee loses its license, that orbit location will become available for another GSO-like applicant on a first-come, first-served basis.

For both the modified processing round and first-come, first-served procedures, the Commission revises its rules for amendments to satellite applications and modifications to satellite licenses.

In addition, the Commission eliminates the anti-trafficking rule for satellites, together with new safeguards to protect against speculation. By eliminating the anti-trafficking rule, the Commission will no longer review transfer of control applications to determine whether the transaction is the sale of a bare license for profit. The Commission will still review such applications to determine whether the transaction will further the public interest, convenience, and necessity.

Together with the elimination of the anti-trafficking rule, the Commission adopts safeguards to protect against speculation. First, the Commission replaces the financial qualification rules with a bond requirement. Formerly, the Commission required satellite license applicants to show that they have financing available to construct and launch the satellite and operate it for one year. Here, the Commission replaces that requirement with a requirement that licensees post a bond within 30 days of grant of the license, payable upon missing a milestone. The bond amount is $7.5 million for NGSO-like applications, and $5 million for GSO-like applications. The amount of the bond may be reduced when the licensee meets each of its milestones.

The Commission also adopts new milestones. The NGSO-like milestones are now: (1) Contract execution; (2) critical design review; (3) commencement of construction; (4) launch; and (5) bring entire system into operation. The GSO-like milestones are (1) contract execution; (2) critical design review; (3) commencement of

[15] 5 U.S.C. 603(c)(1)–(c)(4).

construction; and (4) launch. In addition, the Commission adopts information requirements for licensees to demonstrate that they have met each of the new milestones.

To protect further against speculative applications, the Commission adopts a limit on the number of pending applications and unbuilt satellites any applicant may have in any frequency band. Those limits are five GSO orbit locations and one NGSO satellite system. So that applicants do not undercut the policy goals of these limits, the Commission also adopts an attribution rule prohibiting a party from filing a satellite application if it holds more than 33 percent of the total asset value of applicants with applications for five GSO orbital locations, and one NGSO satellite system, in any frequency band, pending before the Commission. Stricter limits apply to applicants who establish a pattern of missing milestones. Applicants who have established such a pattern, and have two or more applications pending, or two licensed-but-unbuilt satellite systems of any kind, will not be permitted to file another GSO-like application or NGSO-like application in any frequency band.

In addition to these safeguards, the Commission prohibits applicants from selling their place in the queue, and require applications to be substantially complete.

The Commission adopts a number of other provisions in this *First Report and Order*. First, the Commission adopts mandatory electronic filing of space station applications. Second, the Commission creates a streamlined procedure for replacement satellite applications. Third, the Commission revises its full frequency reuse requirements. The Commission also extends the license terms of certain satellite licenses from 10 to 15 years. Finally, the Commission established a freeze on new satellite applications. This freeze is terminated as of August 27, 2003.

In addition, the Commission revises the procedures for non-U.S.-licensed satellite operators seeking access to the U.S. market, to be consistent with the new procedures for U.S. license applications. The Commission also adopted provisions for Permitted List satellite modifications, replacements of Permitted List satellites, and changes of ownership of satellites on the Permitted List.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to sections 1, 2, 4(i), 4(j), 7(a), 11, 301, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 154(j), 157(a), 161, 301, 303(c), 303(f), 303(g), 303(r), that this *First Report and Order* in IB Docket Nos. 02–34 and 02–54 is hereby *adopted*.

It is further ordered that parts 1 and 25 of the Commission's rules *are amended*.

It is further ordered that the provisions of this *First Report and Order* in IB Docket Nos. 02–34 and 02–54, other than §§ 25.137(d)(4), 25.164(c) through (e), and 25.165, will be effective August 27, 2003.

It is further ordered that §§ 25.137(d)(4), 25.164(c) through (e), and 25.165, as adopted in this *First Report and Order*, will be effective September 11, 2003.

It is further ordered that, effective upon the adoption date of this *First Report and Order* in IB Docket Nos. 02–34 and 02–54, no applications for space station licenses for any satellite service addressed in this *First Report and Order* will be accepted for filing. This freeze will continue until August 27, 2003.

It is further ordered that the license term of each space station license issued on or before April 17, 2002, and in effect on the release date of this Order, *is hereby extended* to 15 years, starting on the date the licensee certified to the Commission that the space station was successfully placed in orbit and its operations fully conform to the terms and conditions of its authorization.

It is further ordered that the Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *First Report and Order* in IB Docket Nos. 02–34 and 02–54, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative Practice and Procedure.

47 CFR Part 25

Satellites.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1 and 25 as follows:

PART 1—PRACTICE AND PROCEDURE

■ 1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

■ 2. Amend § 1.1113 by adding paragraph (d) to read as follows:

§ 1.1113 Return or refund of charges.

* * * * *

(d) Applicants for space station licenses under the first-come, first served procedure set forth in part 25 of this title will be entitled to a refund of the fee if, before the Commission has placed the application on public notice, the applicant notifies the Commission that it no longer wishes to keep its application on file behind the licensee and any other applicants who filed their applications before its application, and specifically requests a refund of the fee and dismissal of its application.

PART 25—SATELLITE COMMUNICATIONS

■ 3. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309, 332, unless otherwise noted.

■ 4. Amend § 25.112 by adding paragraph (a)(3) and revising paragraph (b) introductory text to read as follows:

§ 25.112 Defective applications.

(a) * * *

(3) The application requests authority to operate a space station in a frequency band that is not allocated internationally for such operations under the Radio Regulations of the International Telecommunication Union.

(b) Applications for space station authority found defective under paragraph (a)(3) of this section will not be considered. Applications for authority found defective under paragraphs (a)(1) or (a)(2) of this section may be accepted for filing if:

* * * * *

■ 5. Amend § 25.113 by revising paragraph (g) to read as follows:

§ 25.113 Construction permits, station licenses, launch authority.

* * * * *

(g) A launch authorization and station license (*i.e.*, operating authority) must be applied for and granted before a space station may be launched and operated in orbit. Request for launch authorization may be included in an application for space station license. However, an application for authority to launch and operate an on-ground spare satellite will be considered pursuant to the following procedures:

(1) Applications for launch and operation of an on-ground spare NGSO-

like satellite will be considered pursuant to the procedures set forth in § 25.157, except as set forth in paragraph (g)(3) of this section.

(2) Applications for launch and operation of an on-ground spare GSO-like satellite will be considered pursuant to the procedures set forth in § 25.158, except as set forth in paragraph (g)(3) of this section.

(3) Neither paragraph (g)(1) nor (g)(2) of this section will apply in cases where the space station to be launched is determined to be an emergency replacement for a previously authorized space station that has been lost as a result of a launch failure or a catastrophic in-orbit failure.

■ 6. Amend § 25.114 by revising paragraph (b) and removing and reserving paragraph (c)(13), to read as follows:

§ 25.114 Applications for space station authorizations.

* * * * *

(b) Each application for a new or modified space station authorization must constitute a concrete proposal for Commission evaluation. Each application must also contain the formal waiver required by section 304 of the Communications Act, 47 U.S.C. 304. The technical information for a proposed satellite system need not be filed on any prescribed form but should be complete in all pertinent details. Applications for new space station authorizations other than authorizations for the Direct Broadcast Service (DBS) and Digital Audio Radio Satellite (DARS) service must be filed electronically through the International Bureau Filing System (IBFS).

(c) * * *

(13) [Reserved]

* * * * *

7. Amend § 25.116 by removing and reserving paragraph (b)(3); adding paragraph (b)(5); revising paragraph (c) introductory text; redesignating paragraph (d) as (e); and adding new paragraph (d) to read as follows:

§ 25.116 Amendments to applications.

* * * * *

(b) * * *

(3) [Reserved]

* * * * *

(5) Amendments to "defective" space station applications, within the meaning of § 25.112 will not be considered.

(c) Any application for an NGSO-like satellite license within the meaning of § 25.157 will be considered to be a newly filed application if it is amended by a major amendment (as defined by paragraph (b) of this section) after a "cut-off" date applicable to the application, except under the following circumstances:

* * * * *

(d) Any application for a GSO-like satellite license within the meaning of § 25.158 will be considered to be a newly filed application if it is amended by a major amendment (as defined by paragraph (b) of this section), and will cause the application to lose its status relative to later-filed applications in the "queue" as described in § 25.158.

* * * * *

■ 8. Amend § 25.117 by redesignating paragraph (d) as (d)(1), and adding paragraph (d)(2) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(d) * * *

(2) Applications for modifications of space station authorizations will be granted except under the following circumstances:

(i) Granting the modification would make the applicant unqualified to operate a space station under the Commission's rules.

(ii) Granting the modification request would not serve the public interest, convenience, and necessity.

(iii) Except as set forth in paragraph (d)(2)(iv) of this section, applications for modifications of GSO-like space station authorizations granted pursuant to the procedure set forth in § 25.158, which seek to relocate a GSO satellite or add a frequency band to the authorization, will be placed in a queue pursuant to § 25.158 and considered only after previously filed space station license applications or space station modification applications have been considered.

(iv) Applications for modifications of space station authorizations to increase the authorized bandwidth will not be considered in cases in which the original space station authorization was granted pursuant to the procedures set forth in § 25.157(e) or § 25.158(c)(4).

* * * * *

■ 9. Amend § 25.119 by adding paragraph (g) to read as follows:

§ 25.119 Assignment or transfer of control of station authorization.

* * * * *

(g) The Commission retains discretion in reviewing assignments and transfers of control of space station licenses to determine whether the initial license was obtained in good faith with the intent to construct a satellite system.

■ 10. Amend § 25.120 by revising paragraph (b) to read as follows:

§ 25.120 Application for special temporary authorization.

* * * * *

(b)(1) The Commission may grant a temporary authorization only upon a finding that there are extraordinary circumstances requiring temporary operations in the public interest and that delay in the institution of these temporary operations would seriously prejudice the public interest. Convenience to the applicant, such as marketing considerations or meeting scheduled customer in-service dates, will not be deemed sufficient for this purpose.

(2) The Commission may grant a temporary authorization for a period not to exceed 180 days, with additional periods not exceeding 180 days, if the Commission has placed the special temporary authority (STA) request on public notice.

(3) The Commission may grant a temporary authorization for a period not to exceed 60 days, if the STA request has not been placed on public notice, and the applicant plans to file a request for regular authority for the service.

(4) The Commission may grant a temporary authorization for a period not to exceed 30 days, if the STA request has not been placed on public notice, and an application for regular authority is not contemplated.

* * * * *

■ 11. Amend § 25.121 by revising paragraph (e) to read as follows:

§ 25.121 License term and renewals.

* * * * *

(e) *Renewal of licenses.* Applications for renewals of earth station licenses must be submitted on FCC Form 405 (Application for Renewal of Radio Station License in Specified Services) no earlier than 90 days, and no later than 30 days, before the expiration date of the license. Applications for space station system replacement authorization for non-geostationary orbit satellites shall be filed no earlier than 90 days, and no later than 30 days, prior to the end of the twelfth year of the existing license term.

■ 12. Amend § 25.137 by revising paragraphs (b), (c), and (d), and adding paragraphs (e), (f), and (g), to read as follows:

§ 25.137 Application requirements for earth stations operating with non-U.S. licensed space stations.

* * * * *

(b) Earth station applicants, or entities filing a "letter of intent," or "Petition for Declaratory Ruling," requesting authority to operate with a non-U.S. licensed space station must attach to

their FCC Form 312 an exhibit providing legal and technical information for the non-U.S. licensed space station in accordance with part 25. Applications addressed in this paragraph must be filed electronically through the International Bureau Filing System (IBFS).

(c) A non-U.S.-licensed NGSO-like satellite system seeking to serve the United States can be considered contemporaneously with other U.S. NGSO-like satellite system pursuant to § 25.157 and considered before later-filed applications of other U.S. satellite system operators, and a non-U.S.-licensed GSO-like satellite system seeking to serve the United States can have its request placed in a queue pursuant to § 25.158 and considered before later-filed applications of other U.S. satellite system operators, if the non-U.S. licensed satellite system is:

(1) In orbit and operating;

(2) Has a license from another administration; or

(3) Has been submitted for coordination to the International Telecommunication Union.

(d) Earth station applicants requesting authority to operate with a non-U.S. licensed space station must demonstrate that the space station the applicant seeks to access has complied with all applicable Commission requirements for non-U.S. licensed systems to operate in the United States, including but not limited to the following:

(1) Milestones;

(2) Reporting requirements;

(3) Any other applicable service rules;

(4) Posting a bond of $7.5 million for NGSO-like satellite systems, or $5 million for GSO-like satellites, denominated in U.S. dollars, compliant with the terms of § 25.165;

(5) Non-U.S. licensed GSO-like space station operators with a total of five requests for access to the U.S. market in a particular frequency band, or a total of five previously granted requests for access to the U.S. market with unbuilt GSO-like space stations in a particular frequency band, or a combination of pending GSO-like requests and granted requests for unbuilt GSO-like space stations in a particular frequency band that equals five, will not be permitted to request access to the U.S. market with another GSO-like space station license in that frequency band. In addition, non-U.S.-licensed NGSO-like satellite system operators with one request on file with the Commission in a particular frequency band, or one granted request for an unbuilt NGSO-like satellite system in a particular frequency band, will not be permitted to request access to the U.S. market with another NGSO-like satellite system in that frequency band.

(e) A non-U.S.-licensed satellite operator that is seeking to serve the United States pursuant to a Letter of Intent may amend its request by submitting an additional Letter of Intent. Such additional Letters of Intent will be treated as amendments filed by U.S. space station applicants for purposes of determining the order in which the Letters of Intent will be considered relative to other pending applications.

(f) A non-U.S.-licensed satellite operator that has been permitted to serve the United States pursuant to a Letter of Intent or Petition for Declaratory Ruling, may modify its U.S. operations under the procedures set forth in § 25.117(d).

(g) A non-U.S.-licensed satellite operator that has been permitted to serve the United States pursuant to a Petition for Declaratory Ruling must notify the Commission if it plans to transfer control or assign its license to another party, so that the Commission can afford interested parties an opportunity to comment on whether the proposed transaction affects any of the considerations we made when we allowed the satellite operator to enter the U.S. market. If the transferee or assignee is not licensed by or seeking a license from a country that is a member of the World Trade Organization for services covered under the World Trade Organization Basic Telecommunications Agreement, the non-U.S.-licensed satellite operator will be required to make the showing described in paragraph (a) of this section.

■ 13. Amend § 25.140 by revising paragraph (b) and removing and reserving paragraphs (c) through (g) to read as follows:

§ 25.140 Qualifications of fixed-satellite space station licensees.

* * * * *

(b) Each applicant for a space station authorization in the fixed-satellite service must demonstrate, on the basis of the documentation contained in its application, that it is legally, technically, and otherwise qualified to proceed expeditiously with the construction, launch and/or operation of each proposed space station facility immediately upon grant of the requested authorization. Each applicant must provide the following information:

(1) The information specified in § 25.114; and

(2) An interference analysis to demonstrate the compatibility of its proposed system 2 degrees from any authorized space station. An applicant should provide details of its proposed r.f. carriers which it believes should be taken into account in this analysis. At a minimum, the applicant must include, for each type of r.f. carrier, the link noise budget, modulation parameters, and overall link performance analysis. (*See, e.g.*, appendices B and C to Licensing of Space Stations in the Domestic Fixed-Satellite Service (available at address in § 0.445)).

(c)–(g) [Reserved]

* * * * *

§ 25.141 [Amended]

■ 14. Amend § 25.141 by removing and reserving paragraph (b).

■ 15. Amend § 25.142 by revising paragraph (a)(1), and by removing and reserving paragraph (a)(4) to read as follows:

§ 25.142 Licensing provisions for the non-voice, non-geostationary mobile-satellite service.

(a) *Space station application requirements.* (1) Each application for a space station system authorization in the non-voice, non-geostationary mobile-satellite service shall describe in detail the proposed non-voice, non-geostationary mobile-satellite system, setting forth all pertinent technical and operational aspects of the system, and the technical and legal qualifications of the applicant. In particular, each application shall include the information specified in § 25.114. Applicants must also file information demonstrating compliance with all requirements of this section, and showing, based on existing system information publicly available at the Commission at the time of filing, that they will not cause unacceptable interference to any non-voice, non-geostationary mobile-satellite service system authorized to construct or operate.

* * * * *

(4) [Reserved]

* * * * *

§ 25.143 [Amended]

■ 16. Amend § 25.143 by removing and reserving paragraphs (b)(3) and (g).

■ 17. Amend § 25.144 by revising paragraph (b) to read as follows:

§ 25.144 Licensing provisions for the 2.3 GHz satellite digital audio radio service.

* * * * *

(b) Milestone requirements. Each applicant for system authorization in the satellite digital audio radio service must demonstrate within 10 days after a required implementation milestone as specified in the system authorization,

and on the basis of the documentation contained in its application, certify to the Commission by affidavit that the milestone has been met or notify the Commission by letter that it has not been met. At its discretion, the Commission may require the submission of additional information (supported by affidavit of a person or persons with knowledge thereof) to demonstrate that the milestone has been met. The satellite DARS milestones are as follows, based on the date of authorization:

* * * * *

§ 25.145 [Amended]

■ 18. Amend § 25.145 by removing and reserving paragraph (d).

§ 25.146 [Amended]

■ 19. Amend § 25.146 by removing and reserving paragraph (i).

■ 20. Revise § 25.155 to read as follows:

§ 25.155 Mutually exclusive applications.

(a) The Commission will consider applications to be mutually exclusive if their conflicts are such that the grant of one application would effectively preclude by reason of harmful electrical interference, or other practical reason, the grant of one or more other applications.

(b) An application for an NGSO-like space station license, within the meaning of § 25.157, will be entitled to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with another NGSO-like space station application; and

(2) The application is received by the Commission in a condition acceptable for filing by the "cut-off" date specified in a public notice.

(c) An application for a GSO-like space station license, within the meaning of § 25.158, will be entitled to comparative consideration with one or more conflicting applications only if:

(1) The application is mutually exclusive with another GSO-like space station application; and

(2) The application is received by the Commission in a condition acceptable for filing at the same millisecond as another GSO-like space station application with which it is mutually exclusive.

■ 21. Amend § 25.156 by adding paragraph (d) to read as follows:

§ 25.156 Consideration of applications.

* * * * *

(d)(1) Applications for NGSO-like satellite systems will be considered pursuant to the procedures set forth in § 25.157.

(2) Applications for GSO-like satellite systems will be considered pursuant to the procedures set forth in § 25.158.

(3) Applications for NGSO-like satellite and GSO-like systems employing two or more service bands will be treated like separate applications for each service band, and each service band request will be considered pursuant to § 25.157 or § 25.158, as appropriate.

(4) Applications for feeder link authority or intersatellite link authority will be treated like an application separate from its associated service band. Each feeder link request or intersatellite link request will be considered pursuant to the procedure for GSO-like service or NGSO-like service, as applicable.

(5) In cases where the Commission has not adopted frequency-band specific service rules, the Commission will not consider NGSO-like applications after it has granted a GSO-like application, and it will not consider GSO-like applications after it has granted an NGSO-like application, unless and until the Commission establishes NGSO/GSO sharing criteria for that frequency band. In the event that the Commission receives NGSO-like applications and GSO-like applications at the same time, and the Commission has not adopted sharing criteria in that band, the Commission will divide the spectrum between GSO-like and NGSO-like licensees based on the proportion of qualified GSO-like and NGSO-like applicants.

(6) An application for DBS or DARS services will be entitled to comparative consideration with one or more conflicting applications only if:

(i) The application is mutually exclusive with another application; and

(ii) The application is received by the Commission in a condition acceptable for filing by the "cut-off" date specified in a public notice.

■ 22. Add § 25.157 to read as follows:

§ 25.157 Consideration of NGSO-like satellite applications.

(a) This section specifies the Commission's procedures for considering license applications for "NGSO-like satellite systems." For purposes of this section, the term "NGSO-like satellite system" is defined as:

(1) All NGSO satellite systems, and

(2) All GSO MSS satellite systems, in which the satellites are designed to communicate with earth stations with omni-directional antennas.

(b) Each NGSO-like satellite system application will be reviewed to determine whether it is acceptable for filing within the meaning of § 25.112. Any application that is not acceptable for filing would be returned to the applicant.

(c) Each NGSO-like satellite system application that is acceptable for filing will be reviewed to determine whether it is a "competing application," *i.e.*, filed in response to a public notice initiating a processing round, or a "lead application," *i.e.*, all other NGSO-like satellite system applications.

(1) Competing applications that are acceptable for filing will be placed on public notice to provide interested parties an opportunity to file pleadings in response to the application pursuant to § 25.154.

(2) Lead applications that are acceptable for filing will be placed on public notice. This public notice will initiate a processing round, establish a cut-off date for competing NGSO-like satellite system applications, and provide interested parties an opportunity to file pleadings in response to the application pursuant to § 25.154.

(d) After review of each of the applications in the processing round, and all the pleadings filed in response to each application, the Commission will grant all the applications that meet the standards of § 25.156(a), and deny the other applications.

(e)(1) In the event that there is insufficient spectrum in the frequency band available to accommodate all the qualified applicants in a processing round, the available spectrum will be divided equally among the licensees whose applications are granted pursuant to paragraph (d) of this section, except as set forth in paragraph (e)(2) or (e)(3) of this section.

(2) In cases where there are only one or two applications in a processing round granted pursuant to paragraph (d) of this section, each applicant will be assigned 1/3 of the available spectrum, and the remaining spectrum will be made available to other licensees in an additional processing round pursuant to paragraph (c) of this section.

(3) In cases where there are three or more applications in a processing round granted pursuant to paragraph (d) of this section, and one or more applicants apply for less spectrum than they would be warranted under paragraph (e)(1) of this section, those applicants will be assigned the bandwidth amount they requested in their applications. In those cases, the remaining qualified applicants will be assigned the lesser of the amount of spectrum they requested in their applications and the amount spectrum that they would be assigned if the available spectrum were divided

equally among the remaining qualified applicants.

(f)(1) Each licensee will be allowed to select the particular band segment it wishes to use no earlier than 60 days before they plan to launch the first satellite in its system, and no later than 30 days before that date, by submitting a letter to the Secretary of the Commission. The licensee shall serve copies of this letter to the other participants in the processing round pursuant to § 1.47 of this chapter.

(2) The licensee shall request contiguous bandwidth in both the uplink and downlink band. Each licensee's bandwidth selection in both the uplink and downlink band shall not preclude other licensees from selecting contiguous bandwidth.

(3) If two or more licensees in a processing round request the same band segment, all licensees other than the first one to request that particular band segment will be required to make another selection.

(g)(1) In the event that an applicants' license is cancelled for any reason, the Commission will redistribute the bandwidth allocated to that applicant equally among the remaining applicants whose licenses were granted concurrently with the cancelled license, unless the Commission determines that such a redistribution would not result in a sufficient number of licensees remaining to make reasonably efficient use of the frequency band.

(2) In the event that the redistribution of bandwidth set forth in paragraph (g)(1) of this section would not result in a sufficient number of licensees remaining to make reasonably efficient use of the frequency band, the Commission will issue a public notice initiating a processing round, as set forth in paragraph (c) of this section, to invite parties to apply for an NGSO-like satellite system license to operate in a portion of the bandwidth made available as a result of the cancellation of the initial applicant's license. Parties already holding licenses to operate an NGSO-like satellite system in that frequency band will not be permitted to participate in that processing round.

(3) There is a presumption that three satellite licensees in a frequency band are sufficient to make reasonably efficient use of the frequency band.

(h) Services offered pursuant to an NGSO-like license in a frequency band granted before the Commission has adopted frequency-band-specific service rules for that band will be subject to the default service rules in § 25.217.

■ 23. Add § 25.158 to read as follows:

§ 25.158 Consideration of GSO-like satellite applications.

(a) This section specifies the Commission's procedures for considering license applications for "GSO-like satellite systems." For purposes of this section, the term "GSO-like satellite system" is defined as a GSO satellite designed to communicate with earth stations with directional antennas. Examples of GSO-like satellite systems are those which use earth stations with antennas with directivity towards the satellites, such as FSS, and MSS feeder links which use GSO satellites. GSO-like satellite systems are satellite systems that are not NGSO-like satellite systems within the meaning of § 25.157(a).

(b) Applications for GSO-like satellite system licenses will be placed in a queue and considered in the order that they are filed, pursuant to the following procedure:

(1) The application will be reviewed to determine whether it is acceptable for filing within the meaning of § 25.112. If not, the application will be returned to the applicant.

(2) If the application is acceptable for filing, the application will be placed on public notice pursuant to § 25.151, and interested parties will be given an opportunity to file pleadings pursuant to § 25.154.

(3) The application will be granted only if it meets each of the following criteria:

(i) After review of the application and any pleadings filed in response to that application, the Commission finds that the application meets the standards of § 25.156(a); and

(ii) The proposed satellite will not cause harmful interference to any previously licensed operations.

(c) An applicant for a GSO-like satellite system license is not allowed to transfer, assign, or otherwise permit any other entity to assume its place in any queue.

(d) In the event that two or more GSO-like satellite system license applications are mutually exclusive within the meaning of § 25.155(c), the Commission will consider those applications pursuant to the following procedure:

(1) Each application will be reviewed to determine whether it is acceptable for filing within the meaning of § 25.112. Any application not found acceptable for filing will be returned to the applicant.

(2) All applications that are acceptable for filing will be placed on public notice pursuant to § 25.151, and interested parties will be given an opportunity to file pleadings pursuant to § 25.154.

(3) Each application will be granted if it meets the criteria of paragraph (b)(3) of this section, and otherwise will be denied.

(4) In the event that two or more applications are granted pursuant to paragraph (d)(3) of this section, the available bandwidth at the orbital location or locations in question will be divided equally among those licensees.

(5) Licensees whose licenses are granted pursuant to paragraph (d)(4) of this section will be allowed to select the particular band segment it wishes to use no earlier than 60 days before they plan to launch the first satellite in its system, and no later than 30 days before that date, by submitting a letter to the Secretary of the Commission. The licensee shall serve copies of this letter to the other participants in the processing round pursuant to § 1.47 of this chapter.

(6) Licensees whose licenses are granted pursuant to paragraph (d)(4) of this section shall request contiguous bandwidth in both the uplink and downlink band. Each licensee's bandwidth selection shall not preclude other licensees from selecting contiguous bandwidth.

(7) If two or more licensees whose licenses are granted pursuant to paragraph (d)(4) of this section request the same band segment, all licensees other than the first one to request that particular band segment will be required to make another selection.

(e) Services offered pursuant to a GSO-like license in a frequency band granted before the Commission has adopted frequency-band-specific service rules for that band will be subject to the default service rules in § 25.217.

■ 24. Add § 25.159 to read as follows:

§ 25.159 Limits on pending applications and unbuilt satellite systems.

(a) Applicants with a total of five applications for GSO-like space station licenses on file with the Commission in a particular frequency band, or a total of five licensed-but-unbuilt GSO-like space stations in a particular frequency band, or a combination of pending GSO-like applications and licensed-but-unbuilt GSO-like space stations in a particular frequency band that equals five, will not be permitted to apply for another GSO-like space station license in that frequency band.

(b) Applicants with an application for one NGSO-like satellite system license on file with the Commission in a particular frequency band, or one licensed-but-unbuilt NGSO-like satellite system in a particular frequency band, will not be permitted to apply for

another NGSO-like satellite system license in that frequency band.

(c) If an applicant has an attributable interest in one or more other entities seeking one or more space station licenses, the pending applications and licensed-but-unbuilt satellite systems filed by those other entities will be counted as filed by the applicant for purposes of the limits on the number of pending space station applications and licensed-but-unbuilt satellite systems in this paragraph. For purposes of this paragraph, an applicant has an "attributable interest" in another entity if:

(1) It holds equity (including all stockholdings, whether voting or nonvoting, common or preferred) and debt interest or interests, in the aggregate, exceed thirty-three (33) percent of the total asset value (defined as the aggregate of all equity plus all debt) of that entity, or

(2) It holds a controlling interest in that entity, or is the subsidiary of a party holding a controlling interest in that entity, within the meaning of 47 CFR 1.2110(b)(2).

(3) For purposes of paragraphs (c)(1) and (c)(2) of this section, ownership interests shall be calculated on a fully diluted basis, *i.e.*, all agreements, such as warrants, stock options, and convertible debentures, will generally be treated as if the rights thereunder already have been fully exercised.

(d) In the event that a licensee misses three or more milestones within any three-year period, the Commission will presume that the licensee obtained one or more of those licenses for speculative purposes. Unless the licensee rebuts this presumption, it will not be permitted to apply for a GSO-like satellite or an NGSO-like satellite system in any frequency band if it has two or more satellite applications pending, or two licensed-but-unbuilt satellite systems of any kind. This limit will remain in effect until the licensee provides adequate information to demonstrate that it is very likely to construct its licensed facilities if it were allowed to file more applications.

(e) For purposes of this section, "frequency band" means one of the paired frequency bands available for satellite service listed in § 25.202.

■ 25. Amend § 25.161 by revising paragraph (a) to read as follows:

§ 25.161 Automatic termination of station authorization.

* * * * *

(a)(1) Failure to meet any applicable milestone for implementation of the licensed satellite system specified in §§ 25.164(a) and/or (b), without demonstrating that the failure was caused by circumstances beyond the licensee's control, or

(2) If there are no applicable milestones for implementation of the licensed satellite system specified in §§ 25.164(a) and/or (b), the expiration of the required date of completion of construction or other required action specified in the authorization, or after any additional time authorized by the Commission, if a certification of completion of the required action has not been filed with the Commission unless a request for an extension of time has been filed with the Commission but has not been acted on.

* * * * *

■ 26. Add § 25.164 to subpart B to read as follows:

§ 25.164 Milestones.

(a) Licensees of geostationary orbit satellite systems other than DBS and DARS satellite systems, including GSO MSS satellite systems, licensed on or after August 27, 2003 will be required to comply with the schedule set forth in paragraphs (a)(1) through (a)(4) of this section in implementing their satellite systems, unless a different schedule is established by Title 47, Chapter I, or by Commission Order, or by Order adopted pursuant to delegated authority. These dates are to be measured from the date the license is issued.

(1) *One year:* Enter into a binding non-contingent contract to construct the licensed satellite system.

(2) *Two years:* Complete the critical design review of the licensed satellite system.

(3) *Three years:* Begin the construction of the satellite.

(4) *Five years:* Launch and operate the satellite.

(b) Licensees of non-geostationary orbit satellite systems other than DBS and DARS satellite systems licensed on or after September 11, 2003, will be required to comply with the schedule set forth in paragraphs (b)(1) through (b)(5) of this section in implementing their satellite systems, unless a different schedule is established by Title 47, Chapter I, or by Commission Order, or by Order adopted pursuant to delegated authority. These dates are to be measured from the date the license is issued.

(1) *One year:* Enter into a binding non-contingent contract to construct the licensed satellite system.

(2) *Two years:* Complete the critical design review of the licensed satellite system.

(3) *Two years, six months:* Begin the construction of the first satellite in the licensed satellite system.

(4) *Three years, six months:* Launch and operate the first satellite in the licensed satellite system.

(5) *Six years:* Bring all the satellites in the licensed satellite system into operation.

(c) Licensees of all satellite systems, other than DBS and DARS satellite systems, licensed on or after September 11, 2003, will be required to submit a copy of their binding non-contingent contract with the Commission on or before the date scheduled for entering into such a contract.

(d) Licensees of all satellite systems, other than DBS and DARS satellite systems, licensed on or after September 11, 2003, will be required to submit information to the Commission sufficient to demonstrate that the licensee has completed the critical design review of the licensed satellite system on or before the date scheduled for entering into such completion.

(e) Licensees of all satellite systems, other than DBS and DARS satellite systems, licensed on or after September 11, 2003, will be required to submit information to the Commission sufficient to demonstrate that the licensee has commenced physical construction of its licensed spacecraft on or before the date scheduled for such commencement.

(f) In cases where the Commission grants a satellite authorization in different stages, such as a license for a satellite system using feeder links or intersatellite links, the earliest of the milestone schedules shall be applied to the entire satellite system.

■ 27. Add § 25.165 to subpart B to read as follows:

§ 25.165 Posting of bonds.

(a) For all satellite licenses other than DBS and DARS licenses issued after September 11, 2003, the licensee is required to post a bond within 30 days of the grant of its license. Failure to post the required bond will render the license null and void automatically.

(1) NGSO-like licensees are required to post a bond in the amount of $7.5 million.

(2) GSO-like licensees are required to post a bond in the amount of $5 million.

(b) The licensee must use a surety company deemed acceptable within the meaning of 31 U.S.C. 9304 *et seq.* (*See, e.g.*, Department of Treasury Fiscal Service, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and As Acceptable Reinsurance Companies, 57 FR 29356, July 1, 1992.) The bond must name the U.S. Treasury as beneficiary in the event of the licensee's default. The licensee must provide the Commission with a

copy of the performance bond, including all details and conditions.

(c) A licensee will be considered to be in default if it fails to meet any milestone deadline set forth in § 25.164, and, at the time of milestone deadline, the licensee has not provided a sufficient basis for extending the milestone.

(d) An NGSO-like licensee will be permitted to reduce the amount of the bond by 20 percent of the original bond amount upon successfully meeting a milestone deadline set forth in § 25.164(b). A GSO-like licensee will be permitted to reduce the amount of the bond by 25 percent of the original bond amount upon successfully meeting a milestone deadline set forth in § 25.164(a).

■ 28. Amend § 25.210 by removing and reserving paragraphs (e) and (g), and revising paragraph (f) to read as follows:

§ 25.210 Technical requirements for space stations in the Fixed-Satellite Service.

* * * * *

(e) [Reserved]

(f) All space stations in the Fixed Satellite Service in the 3600–3700 MHz, 3700–4200 MHz, 5091–5250 MHz, 5825–5925 MHz, 5925–6425 MHz, 6425–6525 MHz, 6525–6700 MHz, 6700–7025 MHz, 10.7–10.95 GHz, 10.95–11.2 GHz, 11.2–11.45 GHz, 11.45–11.7 GHz, 11.7–12.2 GHz, 12.2–12.7 GHz, 12.75–13.15 GHz, 13.15–13.2125 GHz, 13.2125–13.25 GHz, 13.75–14.0 GHz, 14.0–14.5 GHz and 15.43–15.63 GHz bands shall employ state-of-the-art full frequency reuse either through the use of orthogonal polarizations within the same beam and/or the use of spatially independent beams.

(g) [Reserved]

* * * * *

■ 29. Add § 25.217 to subpart C to read as follows:

§ 25.217 Default service rules.

(a) The technical rules in this section apply only to licenses to operate a satellite system in a frequency band granted after a domestic frequency allocation has been adopted for that frequency band, but before any frequency-band-specific service rules have been adopted for that frequency band.

(b)(1) For all NGSO-like satellite licenses for which the application was filed pursuant to the procedures set forth in § 25.157 after August 27, 2003, authorizing operations in a frequency band for which the Commission has not adopted frequency band-specific service rules at the time the license is granted, the licensee will be required to comply with the following technical requirements, notwithstanding the frequency bands specified in these rule provisions: §§ 25.142(d), 25.143(b)(2)(ii), 25.143(b)(2)(iii), 25.204(g), 25.210(c), 25.210(d), 25.210(f), 25.210(i), 25.210(k), and 25.210(l).

(2) In addition to the requirements set forth in paragraph (b)(1) of this section, the Commission will coordinate with the National Telecommunications and Information Administration (NTIA) regarding the operations of any licensees authorized to operate in a shared government/non-government frequency band, pursuant to the procedure set forth in § 25.142(b)(2)(ii).

(3) Earth station licensees authorized to operate with one or more space stations described in paragraph (b)(1) of this section shall comply with the requirements in § 25.136. In addition, earth station licensees authorized to operate with one or more space stations described in paragraph (b)(1) of this section in frequency bands shared with terrestrial wireless services shall comply with the requirements in § 25.203(c).

(c)(1) For all GSO-like satellite licenses for which the application was filed pursuant to the procedures set forth in § 25.158 after August 27, 2003, authorizing operations in a frequency band for which the Commission has not adopted frequency band-specific service rules at the time the license is granted, the licensee will be required to comply with the following technical requirements, notwithstanding the frequency bands specified in these rule provisions: §§ 25.142(d), 25.143(b)(2)(iv), 25.204(g), 25.210(c), 25.210(d), 25.210(f), 25.210(i), 25.210(j), 25.210(k), and 25.210(l).

(2) In addition to the requirements set forth in paragraph (c)(1) of this section, the Commission will coordinate with the National Telecommunications and Information Administration (NTIA) regarding the operations of any licensees authorized to operate in a shared government/non-government frequency band, pursuant to the procedure set forth in § 25.142(b)(2)(ii).

(3) Earth station licensees authorized to operate with one or more space stations described in paragraph (c)(1) of this section shall comply with the earth station antenna performance verification requirements in § 25.132, and the antenna gain pattern requirements in §§ 25.209(a) and (b). In addition, earth station licensees authorized to operate with one or more space stations described in paragraph (c)(1) of this paragraph in frequency bands shared with terrestrial wireless services shall comply with the requirements in § 25.203(c).

(4) In addition to the requirements set forth in paragraph (c)(3) of this section, earth station licensees with a gain equivalent or higher than the gain of a 1.2 meter antenna operating in the 14.0–14.5 GHz band, authorized to operate with one or more space stations described in paragraph (c)(1) of this paragraph in frequency bands greater than 14.5 GHz shall be required to comply with the antenna input power density requirements set forth in § 25.212(c).

(d) Applicants requesting authorization of a satellite subject to paragraphs (b) or (c) of this section must submit a narrative statement describing the debris mitigation design and operational strategies, if any, that they will use. Applicants are specifically required to submit a casualty risk assessment if planned post-mission disposal involves atmospheric re-entry of the spacecraft.

(e) In the event that the Commission adopts frequency band-specific service rules for a particular frequency band after it has granted one or more space station or earth station licenses for operations in that frequency band, those licensees will be required to come into compliance with the frequency band-specific service rules within 30 days of the effective date of those rules, unless otherwise specified by either Commission or Bureau Order.

[FR Doc. 03–21649 Filed 8–26–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No.030725185–3207–02; I.D. 071403B]

RIN 0648–AR34

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is amending the turtle excluder device (TED) regulations that require most shrimp trawlers to use Turtle Excluder Devices (TEDs) in the southeastern Atlantic and the Gulf of Mexico, to reduce the incidental capture of endangered and threatened sea turtles during shrimp trawling. Specifically, NMFS is allowing the use of a design of

a hooped hard TED ("the Coulon TED") that is capable of releasing large loggerhead and green turtles as well as leatherback turtles.

DATES: This final rule is effective August 21, 2003.

ADDRESSES: Copies of the environmental assessment can be obtained from the Protected Resources Division, Southeast Regional Office, 9721 Executive Center Drive, North, Suite 102 St. Petersburg, Florida, 33702.

FOR FURTHER INFORMATION CONTACT: Robert Hoffman (ph. 727–570–5312, fax 727–570–5517, e-mail *Robert.Hoffman@noaa.gov*), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail *Barbara.Schroeder@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) turtles are listed as endangered. The loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Sea turtles are incidentally taken and killed as a result of numerous activities, including fishery trawling activities in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 223.206, or if in accordance with the terms and conditions of a biological opinion issued under section 7 of the ESA or an incidental take permit issued under section 10 of the Act. The incidental taking of turtles during shrimp or summer flounder trawling is exempted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the southeastern United States (Atlantic Area, Gulf Area, and summer flounder sea turtle protection area, see 50 CFR 223.206) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, the flounder TED, and one type of soft TED the Parker soft TED (see 50 CFR 223.207).

TEDs incorporate an escape opening, usually covered by a webbing flap, that allows sea turtles to escape from trawl nets. To be approved by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during testing based upon specific testing protocols (50 CFR 223.207(e)(1)). Most approved hard TEDs are described in the regulations (50 CFR 223.207 (a)) according to generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape.

February 21, 2003, Amendments to the Sea Turtle Conservation Regulations

On February 21, 2003, NMFS issued a final rule (68 FR 8456), amending the sea turtle conservation regulations to protect large loggerhead, green, and leatherback sea turtles. The final rule became effective April 15, 2003, with the exception of the Gulf Area where it will become effective on August 21, 2003. The February final rule requires that all shrimp trawlers fishing in the offshore waters of the southeastern United States (Atlantic Area and Gulf Area) and the inshore waters of Georgia and South Carolina use either a double cover flap TED, a single-grid hard TED with a 71–inch (180–cm) opening, or a Parker soft TED with a 96–inch (244–cm) opening in each net rigged for fishing. In inshore waters, except those of Georgia and South Carolina, the rule allows the use of a single-grid hard TED with a 44–inch (112–cm) opening, a Parker soft TED with a 56–inch (142–cm) opening, and a hooped hard TED with a 35–inch (89–cm) by 27–inch (69–cm) escape opening.

Since publication of the final rule (68 FR 8456, February 21, 2003), NMFS has tested a new hooped hard TED design developed in Louisiana (the Coulon TED) that contains a larger escape opening than the hooped hard TED design used in inshore waters. Louisiana fishermen prefer the Coulon TED due to its higher shrimp retention, and its efficiency and quickness in releasing both turtles and fish bycatch. Because of the desire of fishermen to continue to use this style of TED in offshore waters and their assertion that it could indeed be made large enough to release leatherback turtles, the Southeast Fisheries Science Center's Harvesting Systems and Engineering Branch worked with the inventor of the Coulon TED and fishermen who use it to develop and test a large Coulon style TED to evaluate its ability to release large loggerhead, green, and leatherback turtles.

Large Hooped Hard TED Testing

NMFS tested the large Coulon style TED using testing protocols designed to evaluate a TED's ability to release large turtles. The protocols were developed during the testing and approval of the double cover TED (66 FR 24287, May 14, 2001). NMFS used the average carapace measurements of 15 nesting female leatherback turtles to construct a pipe-framed model of a leatherback turtle. This model measured 40 inches wide by 21 inches (102 cm by 53 cm) deep. The test was performed by a diver swimming repeatedly through the trawl with the model and pushing it through the TED opening. During these tests, the diver was able to push the model through the opening with ease. When the model was inverted (simulating the dorsal surface of the turtle oriented against the TED frame), the diver was still able to push the model through the opening with ease.

A large Coulon style TED with a hinged door covering the escape opening to within 12 inches (30 cm) from the back edge of the opening was also tested to determine its ability to release small turtles. The small turtle protocol calls for the release of 25 turtles, released one at a time, into a trawl towed at 2.5 knots (55 FR 41092, October 9, 1990). Each turtle is given 5 minutes to escape; if the turtle does not escape within 5 minutes, it is retrieved by divers and is considered to have been captured. The capture rate is then compared to that of a control TED (in this case a top-opening double cover flap TED).

During the week of June 22, 2003, 25 small turtles were exposed to the large Coulon style TED with a hinged door and all 25 turtles escaped quickly and easily. The Southeast Fisheries Science Center's Harvesting Systems and Engineering Branch believes that this particular configuration of the large Coulon-style TED would be the most difficult for small turtles to escape from because of the weight and size of the door. However, when compared to the control TED, the average escape times did not differ significantly; the average escape time for the control TED was 62 seconds compared to 68 seconds for the Coulon style TED with the hinged door. Based upon the tests described above, NMFS determined that the large Coulon style TED meets the regulatory turtle release rate requirement.

Therefore, on July 30, 2003, NMFS published a proposed rule (68 FR 44722) requesting comments on allowing the use of a large hooped hard

TED in the offshore waters of the Atlantic and Gulf of Mexico. NMFS received two comments on the proposed rule.

Pubic Comments

Comment 1: The University of Georgia Marine Extension Service is concerned that the codified text specifying construction materials for TEDs in the proposed rule requires that if steel rod is used to construct a single grid hard TED or an inshore hooped hard TED the steel rod used must have an outside diameter of 1/2 inch (1.27 cm). This is a significant change from the required 1/4 inch (.64 cm) currently required.

Response: NMFS thanks the commenter for bringing this to our attention. This is a typographical error in the proposed rule and has been corrected in this final rule.

Comment 2: An environmental organization stated that although they do not oppose NMFS allowing the use of the Coulon TED, they asserted that any certified TED must continue to be reviewed, monitored and enforced to ensure that it is effectively releasing sea turtles. The commenter stated that NMFS must increase the monitoring and enforcement of the TED regulations to ensure that these devices are performing as specified.

Response: NMFS agrees that any TED certified for use in the shrimp fishery should be monitored to ensure proper performance. NMFS Southeast Fisheries Science Center's Harvesting Systems and Engineering Branch works closely with the industry, net manufacturers, observer program, and enforcement to ensure that any problems encountered with the performance of TEDs during fishing conditions is addressed through further gear development and testing. NMFS enforcement will continue to enforce and monitor the TED requirements, including the Coulon TED. However given the anticipated limited use of the Coulon TED, NMFS does not intend to commit extra resources towards monitoring this device.

Provisions of the Final Rule

NMFS is issuing a rule allowing the use of an offshore hooped hard TED that has to meet certain minimum construction standards, in addition to the construction standards specified for hard TEDs generally. The frame for this TED must be made of aluminum rod with a minimum outside diameter of 5/8 inch (1.59 cm) or aluminum tubing with a minimum outside diameter of 1 inch (2.54 cm) and a minimum wall thickness of 1/8 inch (0.32 cm). The escape opening must have a horizontal measurement of no less than 40 inches (102 cm) wide and a forward measurement of no less than 35 inches (89 cm). The front hoop on an offshore hooped hard TED must have an inside horizontal measurement of at least 40 inches (102 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 23 1/4 inches (59 cm). The measurement between support bars must be no less than 40 inches (102 cm) (see Figure 1 for illustrations of the offshore hooped hard TED and its dimensions)

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Fig. 1.A. Turtle escape path through offshore hooped hard TED.

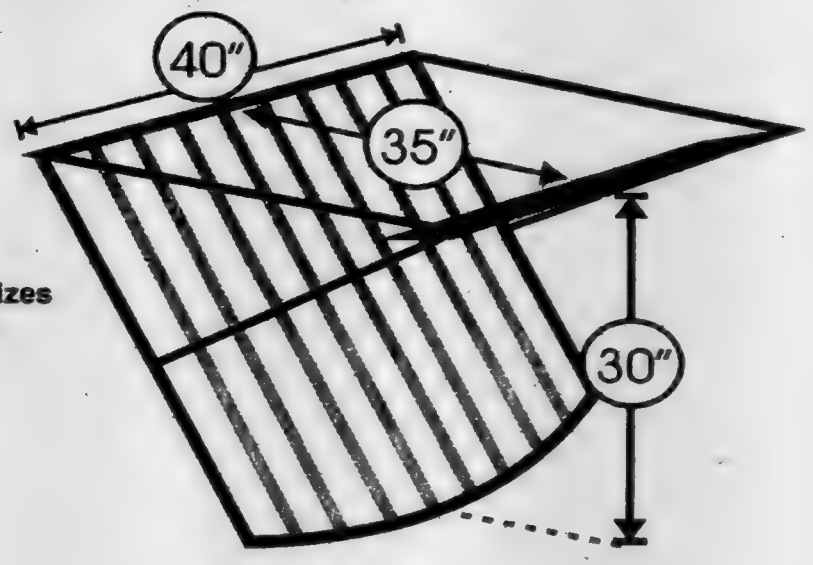

Fig. 1.B. Minimum opening sizes for offshore hooped hard TED.

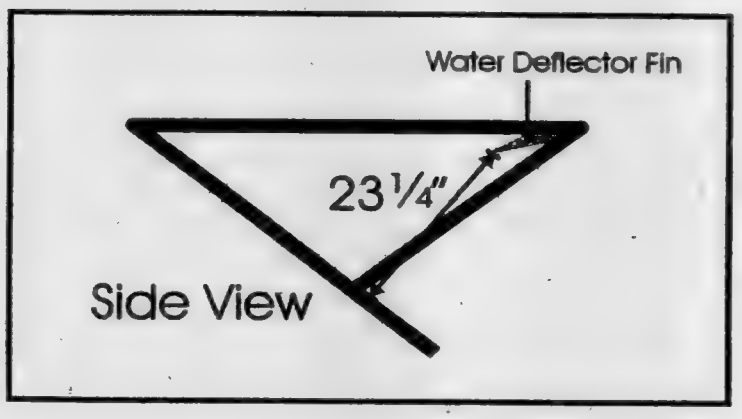

Fig. 1.C. Minimum grid clearance for offshore hooped hard TED, shown with optional water deflector fin.

Figure 1. Illustration of offshore hooped hard TED dimensions, showing optional water deflector fin.

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This final rule will also allow three modifications for hooped hard TEDs. The first is the use of a water deflector fin used to increase shrimp retention. The original Coulon TED design incorporates such a water deflector fin. This fin can be welded onto the forward edge of the escape opening, projecting aft into the TED with an angle of 5 to 45–degrees from the normal, horizontal plane of the trawl. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to 4 inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus 1 inch (2.5 cm).

The second allowable modification is the use of a webbing flap. The resultant escape opening for the offshore hooped hard TED with a webbing flap must have a stretched mesh circumference of no less than 142 inches (361 cm). The end of the flap cannot extend more than 24 inches (61 cm) past the posterior edge of the frame. This is the same webbing flap allowed for use with single-grid hard TEDs with the 71–inch (180 cm) offshore opening (see 50 CFR 223.207(d)(3)(iii)).

The third allowable modification for hooped hard TEDs is the use of a hinged door frame to partially cover the escape opening. The door frame must be at least as wide as the escape opening, may be up to a maximum of 24 inches (61 cm) long, may be covered with taut mesh webbing (the size of the mesh cannot be greater than that used for the TED extension webbing), and must be connected to the forward edge of the escape opening by a hinge device that will allow the door to open upwards freely. The posterior edge of the door frame, in the closed position, must lie at least 12 inches (30 cm) forward of the posterior edge of the escape opening. If a water deflector fin is used with a hinged door it must be welded to the posterior edge of the door frame, projecting aft into the TED with an angle of 5–45 degrees from the normal, horizontal plane of the trawl. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to four inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus one inch (2.5 cm). The deflector fin must be no less than 12 inches (30 cm) forward of the posterior edge of the escape opening, when the door is in the closed position. Two stopper ropes or a hinge limiter may be used to limit the maximum opening height of the hinged door frame, as long as the minimum clearance between any part of the deflector bars and any part of the door, including a water deflector fin if installed, in its fully open position is at least 23 1/4 inches (59 cm) for an offshore hooped hard TED or at least 20 inches (51 cm) for an inshore hooped hard TED. The purpose of the stopper ropes or hinge limiters is to prevent the door frame from opening excessively during net deployment and haulback, possibly resulting in loss of catch or damage to the door. Any stopper ropes or hinge limiters must not restrict the free operation of the door, up to its maximum opening (i.e. the door must be able to easily swing to the required opening height before the stops or limiters affect its movement). The hinged door cannot be used in combination with a webbing flap or with a water deflector fin attached to the forward edge of the escape opening (See Figure 2 for illustration of the optional hinged door frame, shown with water deflector fin).

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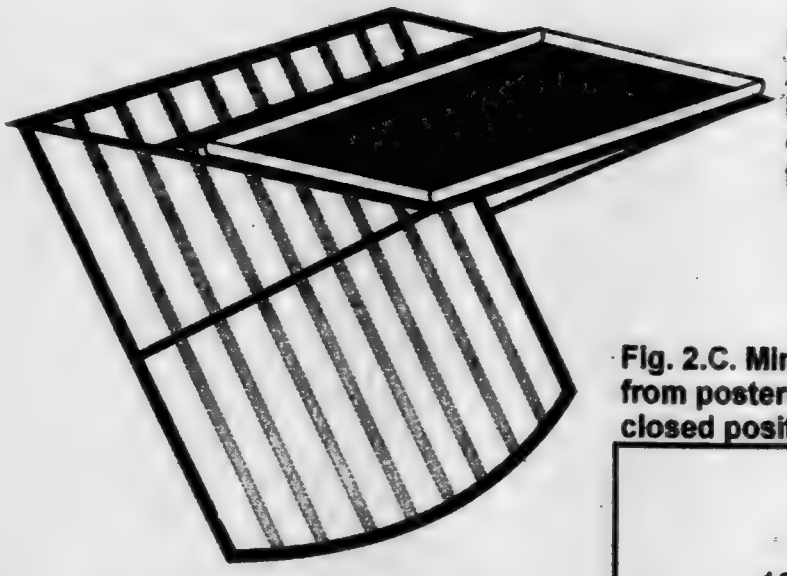

Fig. 2.A.
A perspective view of hooped hard TED with optional hinged door frame.

Fig. 2.B. Side perspective view

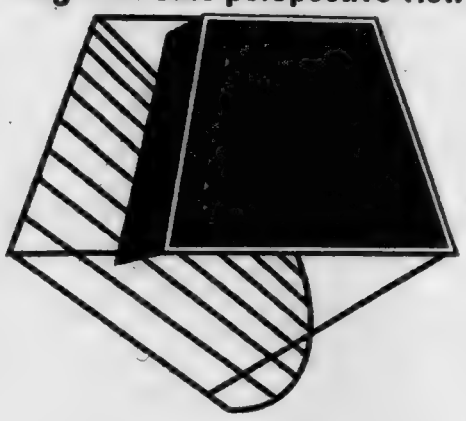

Fig. 2.C. Minimum clearance of door frame from posterior edge of escape opening in closed position.

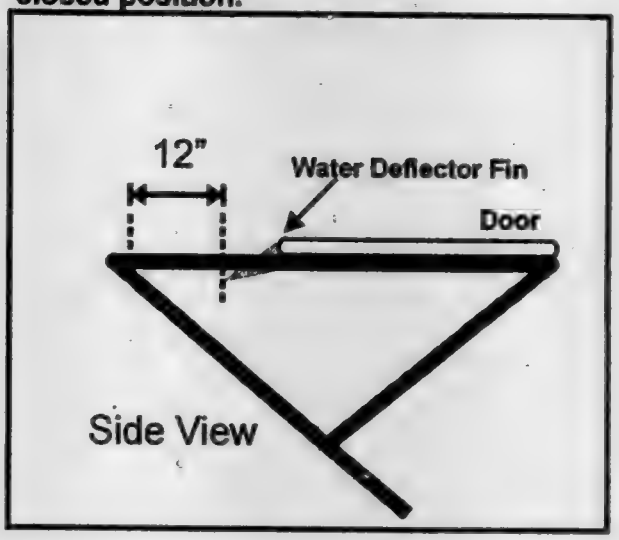

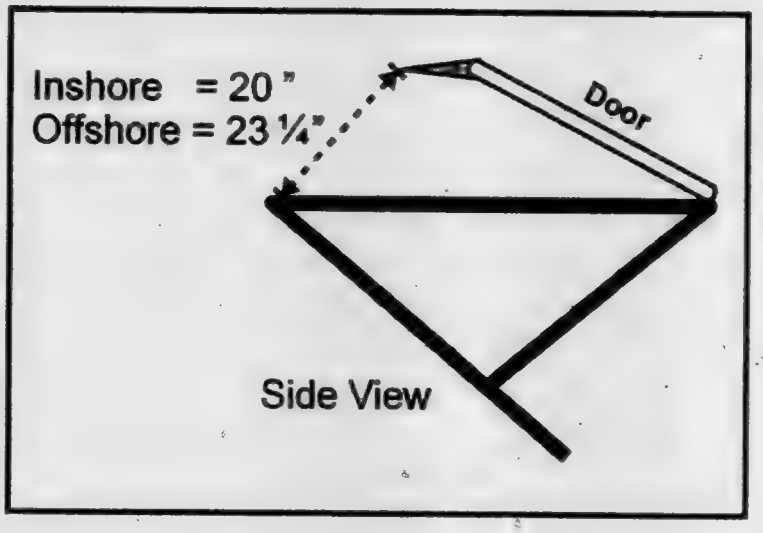

Fig. 2.D. Minimum clearance of door frame from deflector bars; door in fully open position.

Figure 2. Hooped hard TED with optional hinged door frame and water deflector fin.

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Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared an environmental assessment (EA) for this final rule that evaluates the potential impact on the environment that may result from the final rule. The EA found that the implementation of this final rule will not have a significant impact on the quality of the human environment and that the preparation of an environmental impact statement is not necessary. A copy of the EA is available from NMFS (see **ADDRESSES**).

Under the existing TED regulations published on February 21, 2003, offshore fishermen can choose to use a single grid hard TED with either a 71–inch (180–cm) opening or a double cover flap, or they can use a Parker soft TED with a leatherback opening. Until this final rule becomes effective, hooped hard TED use would not be legal in offshore waters. Accordingly, if the effectiveness of this rule is delayed, it would burden fishermen whocurrently use hooped hard TEDS in offshore waters and plan to continue using them by forcing them either to abstain from fishing until the rule becomes effective, or else purchase an additional TED of one of the varieties described above. If the rule becomes effective immediately, then there will be no need for such substantial duplicative expenditures in order to fish during that period. Therefore, because this rule relieves a restriction, the Assistant Administrator for Fisheries, NOAA, finds good cause under the Administrative Procedure Act pursuant to 5 U.S.C. 553(d)(1) to waive the 30 day delay in effectiveness for this final rule.

The Endangered Species Act provides the statutory basis for this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. This final rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the provisions of the final rule would not require any action or purchase on the part of fishermen, but rather would allow fishermen the option of a hooped hard TED design to comply with the TED requirement. Hooped hard TEDs are already in use by some fishermen who prefer this TED style due to its efficiency in releasing both turtles and fish bycatch, while retaining shrimp. Therefore, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: August 21, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 223 will be amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

■ 2. In § 223.207, paragraphs (a)introductory text, (a)(1), (a)(7)(i), and (a)(8)(i) are revised and paragraphs (d)(6) and (d)(7) are added to read as follows:

§ 223.207 Approved TEDs.

(a) *Hard TEDs.* Hard TEDs are TEDs with rigid deflector grids and are categorized as "hooped hard TEDs" and "single-grid hard TEDs" such as the Matagorda and Georgia TED (Figures 3 & 4 to this part). Hard TEDs complying with the following generic design criteria are approved TEDs:

(1) *Construction materials*—(i) *Single-grid and inshore hooped hard TED.* A single-grid hard TED or an inshore hooped hard TED must be constructed of one or a combination of the following materials, with minimum dimensions as follows:

(A) Solid steel rod with a minimum outside diameter of 1/4 inch (0.64 cm);

(B) Fiberglass or aluminum rod with a minimum outside diameter of 1/2 inch (1.27 cm); or

(C) Steel or aluminum tubing with a minimum outside diameter of 1/2 inch (1.27 cm) and a minimum wall thickness of 1/8 inch (0.32 cm) (also known as schedule 40 tubing).

(ii) *Offshore hooped hard TED.* An offshore hooped hard TED must be constructed of aluminum, with minimum dimensions as follows:

(A) Solid rod with a minimum outside diameter of 5/8 inch (1.59 cm); or

(B) Tubing with a minimum outside diameter of 1 inch (2.54 cm) and a minimum wall thickness of 1/8 inch (0.32 cm).

* * * * *

(7) * * *

(i) *Hooped hard TEDs.* * * *

(A) *Escape opening for inshore hooped hard TED.* The inshore hooped hard TED escape opening must have a horizontal measurement of no less than 35 inches (89 cm) wide and a forward measurement of no less than 27 inches (69 cm). A hinged door frame may be used to partially cover the escape opening as provided in paragraph (d)(7) of this section. Alternatively, a webbing flap may be used as provided in paragraph (d)(3)(i) of this section. The resultant opening with a webbing flap must be a minimum width of 35 inches (89 cm) and a minimum height of 20 inches (51 cm), with each measurement taken simultaneously. This opening may only be used in inshore waters, except it may not be used in the inshore waters of Georgia and South Carolina.

(B) \ The offshore hooped hard TED escape opening must have a horizontal measurement of no less than 40 inches (102 cm) wide and a forward measurement of no less than 35 inches (89 cm). A hinged door frame may be used to partially cover the escape opening as provided in paragraph (d)(7) of this section. Alternatively, a webbing flap may be used as provided in paragraph (d)(3)(ii) of this section. The resultant escape opening with a webbing flap must have a stretched mesh circumference of no less than 142 inches (361 cm).

* * * * *

(8) * * *

(i) *Hooped hard TEDs.*

(A) *Inshore hooped hard TED.* The front hoop on an inshore hooped hard TED must have an inside horizontal measurement of at least 35 inches (89 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 20 inches (51 cm).

(B) *Offshore hooped hard TED.* The front hoop on an offshore hooped hard TED must have an inside horizontal measurement of at least 40 inches (102 cm) and an inside vertical measurement of at least 30 inches (76 cm). The minimum clearance between the deflector bars and the forward edge of the escape opening must be at least 23 1/4 inches (59 cm).

* * * * *

(d) * * *

(6) *Water deflector fin for hooped hard TEDs.* On a hooped hard TED, a water deflector fin may be welded to the forward edge of the escape opening. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to 4 inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus 1 inch (2.5 cm). The fin must project aft into the

TED with an angle between 5° and 45° from the normal, horizontal plane of the trawl. On an inshore hooped hard TED, the clearance between the deflector bars and the posterior edge of the deflector fin must be at least 20 inches (51 cm). On an offshore hooped hard TED, the clearance between the deflector bars and the posterior edge of the deflector fin must be at least 23–1/4 inches (59 cm).

(7) *Hinged door frame for hooped hard TEDs.* A hinged door frame may be attached to the forward edge of the escape opening on a hooped hard TED. The door frame must be constructed of materials specified at paragraphs (a)(1)(i) or (a)(1)(ii) of this section for inshore and offshore hooped hard TEDs, respectively. The door frame may be covered with a single panel of mesh webbing that is taut and securely attached with twine to the perimeter of the door frame, with a mesh size not greater than that used for the TED extension webbing. The door frame must be at least as wide as the TED escape opening. The door frame may be a maximum of 24 inches (61 cm) long. The door frame must be connected to the forward edge of the escape opening by a hinge device that allows the door to open outwards freely. The posterior edge of the door frame, in the closed position, must lie at least 12 inches (30 cm) forward of the posterior edge of the escape opening. A water deflector fin may be welded to the posterior edge of the hinged door frame. The fin must be constructed of a flat aluminum bar, up to 3/8 inch (0.95 cm) thick and up to four inches (10.2 cm) deep. The fin may be as wide as the width of the escape opening, minus one inch (2.5 cm). The fin must project aft into the TED with an angle between 5° and 45° from the normal, horizontal plane of the trawl, when the door is in the closed position. The clearance between the posterior edge of the escape opening and the posterior edge of the door frame or the posterior edge of the water deflector fin, if installed, must be no less than 12 inches (30 cm), when the door is in the closed position. Two stopper ropes or a hinge limiter may be used to limit the maximum opening height of the hinged door frame, as long as they do not obstruct the escape opening in any way or restrict the free movement of the door to its fully open position. When the door is in its fully open position, the minimum clearance between any part of the deflector bars and any part of the door, including a water deflector fin if installed, must be at least 20 inches (51 cm) for an inshore hooped hard TED and at least 23 1/4 inches (59 cm) for an offshore hooped hard TED. The hinged door frame may not be used in combination with a webbing flap specified at paragraph (d)(3) of this section or with a water deflection fin specified at paragraph (d)(6) of this section.

* * * * *

[FR Doc. 03–21858 Filed 8–21–03; 5:02 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 082003D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Eastern Aleutian District of the Bering Sea and Aleutian Islands (BSAI). NMFS is requiring that catch of Pacific ocean perch in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the Pacific ocean perch 2003 total allowable catch (TAC) in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 23, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and CFR part 679. The allocation of the Pacific ocean perch TAC in the Eastern Aleutian District of the BSAI was established as 3,238 metric tons (mt) by the final 2003 harvest specifications for groundfish in the BSAI and the reserve apportionment (68 FR 9907, March 3, 2003). The allocation of Pacific ocean perch TAC in the Eastern Aleutian District of the BSAI to Community Development Quota (CDQ) participants was established as 263 mt by the final 2003 harvest specifications for groundfish in the BSAI.

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the Pacific ocean perch TAC in the Eastern Aleutian District of the BSAI has been reached. Therefore, NMFS is requiring that further catches of Pacific ocean perch TAC in the Eastern Aleutian District of the BSAI be treated as prohibited species in accordance with § 679.21(b).

As of August 19, 2003, 125 mt of the Pacific ocean perch CDQ reserve in the Eastern Aleutian District of the BSAI remains unharvested. Therefore, CDQ participants are not yet required to treat catch of Pacific ocean perch in the Eastern Aleutian District of the BSAI as a prohibited species.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the prohibition of retention, lead to exceeding the TAC of Pacific ocean perch in the Eastern Aleutian District of the BSAI, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 21, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21933 Filed 8–22–03; 2:45 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 166
Wednesday, August 27, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

State of Utah: NRC Staff Assessment of Utah's Proposed Alternative Standard To Use Utah's Existing Groundwater Regulation in Lieu of the Nuclear Regulatory Commission Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice and opportunity for public hearing on Utah's proposal to use alternative groundwater protection standards for uranium mills and 11e.(2) byproduct material disposal facilities.

SUMMARY: By letter dated October 23, 2002, to Paul Lohaus, Director, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission (NRC), William J. Sinclair, Director, Division of Radiation Control (the Division), State of Utah, submitted information on how the Division proposes to regulate a portion of the groundwater aspects of uranium milling in the State of Utah. Utah's proposed approach is to use its existing groundwater protection regulations, based on Environmental Protection Agency (EPA) drinking water limits, in lieu of a portion of the specific groundwater requirements in Appendix A to 10 CFR part 40 (Appendix A). The Commission has determined that Utah's proposed approach constitutes use of alternative standards. Under section 274o of the Atomic Energy Act, as amended (Act), the Commission must make a determination that such alternatives will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and non-radiological hazards associated with such sites, after notice and opportunity for public hearing. Through this **Federal Register** notice, the Commission intends to fulfill both the notice and opportunity for public hearing provisions of section 274o of the Act.

DATES: The comment period expires September 26, 2003. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff.

E-mail comments to: *SECY@nrc.gov*. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at (301) 415–1966.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966.)

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Copies of documents cited in this section are available through ADAMS. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

The Division has posted documents related to its amendment application including the alternative groundwater regulations on the Division's Web site at: *http://www.deq.state.ut.us/EQRAD/milllst.htm*.

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the Division's submittal and copies of the NRC Staff correspondence with the Division are also available for public inspection in the NRC's Public Document Room. The ADAMS Accession Numbers are presented with the first mention of each document (*i.e.*, ML.* * *).

FOR FURTHER INFORMATION CONTACT: Dennis M. Sollenberger, Office of State and Tribal Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2819 or e-mail *dms4@nrc.gov*.

SUPPLEMENTARY INFORMATION:

Background

Since section 274 of the Act was added in 1959, the Commission has entered into Agreements with 33 States that authorize a State to regulate the use of radioactive material within the State. NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of section 274. The Act was amended in 1983 to add the last paragraph of section 274o which requires the Commission to make a determination, after notice and opportunity for public hearing, that alternative standards will achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and non-radiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency (EPA) in accordance with section 275.

The State of Utah Agreement became effective April 1, 1984, but did not include authority for 11e.(2) byproduct material or the land disposal of source, byproduct and special nuclear material received from other persons. In 1990, Utah amended its Agreement to include land disposal of source, byproduct and special nuclear material received from other persons. In 1996, Utah returned its authority for the evaluation of radiation safety information on sealed sources and devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations. The State of Utah initiated further amendment of their current section 274b Agreement to add authority for 11e.(2) byproduct material by a letter of intent from Governor Michael Leavitt dated June 26, 2001

(ML013250419). By letter dated November 19, 2001 from William J. Sinclair, Director, Division of Radiation Control, Utah submitted a draft application to amend its Agreement (ML013250578). NRC sent comments on the draft application to Utah by letter dated February 21, 2002 (ML020530319). The draft application did not contain either draft or final regulations for the control of 11e.(2) byproduct material. Utah subsequently developed draft and final regulations on which the NRC staff provided comments (ML021490340, ML021790511, ML022110416, and ML023290240). Under the proposed amendment, four NRC licenses would transfer to Utah.

In its review of Utah's draft regulations, the staff identified that Utah proposed to use its existing groundwater protection standards to protect the waters of the State from uranium milling operations, in lieu of the groundwater protection requirements in Appendix A. Utah's regulations are based on the EPA's hazardous waste program and differ in several respects from the groundwater protection provisions in Appendix A. Therefore, the Commission has determined that Utah's proposed approach constitutes the use of alternative standards.

The NRC had not previously identified any instances in which an Agreement State had proposed alternative standards under section 274o and, therefore, the implementing process for this provision had not been previously developed. Upon receiving the Utah request, the NRC undertook development of an implementing process which included a Commission determination that notice through the **Federal Register** and a hearing process similar to the process in subpart H of 10 CFR part 2, "Rulemaking," would fulfill the NRC's requirements in section 274o. Additionally, as part of that process, the NRC staff requested that Utah provide an analysis that compares the differences between the Utah regulations and NRC's regulations, and demonstrates that, notwithstanding these differences, the Utah groundwater regulations meet the provisions in section 274o. Utah submitted its response supporting the substitution of Utah's groundwater regulations for NRC's regulations, by letter dated October 23, 2002 (ML022980335).

This notice is being published in fulfillment of the requirement to notice and provide an opportunity for public hearing in this instance.

Discussion

In its application for the amended Agreement, Utah stated that the Director, Division of Radiation Control, was designated, by the Water Quality Board, as a Co-Executive Secretary of the Water Quality Board (see Utah Code Annotated (UCA) 19–5–106 and 19–5–104(1)(k)). As Co-Executive Secretary, the Director, Division of Radiation Control, has legal authority to issue, administer, and enforce specific groundwater permits under the Utah Water Quality Rule R317–6 as applied to the current four 11e.(2) byproduct material facilities that would transfer to Utah. The four current NRC licensed facilities are: Envirocare, Rio Algom, International Uranium Corporation, and Plateau Resources Limited. Therefore, the Division of Radiation Control has substituted the Utah Administrative Code R317–6, Groundwater Quality Protection, for certain of the groundwater standards provided in 10 CFR part 40, Appendix A (specifically Criteria 5B(1) through 5H, 7A, and 13). In addition, under State procedures, appeals of enforcement proceedings and permit issues relating to groundwater would be administered through the Water Quality Board.

NRC considers the substitution of R317–6 for the groundwater protection regulations in 10 CFR part 40, Appendix A, Criteria 5B(1) through 5H, 7A, and 13 to be the substitution of an alternative standard. The substitution was proposed in Utah Administrative Code R313–24–4(1)(b). On October 23, 2002, Utah provided a comparative analysis of R317–6 to the Appendix A standards listed above (ML022980335). Utah's analysis concludes that R317–6 provides an equivalent level of protection of the groundwater as the NRC standards. Implementation of R317–6 would be accomplished through issuance of a separate groundwater discharge permit for the specific site in addition to the radioactive materials license. Of the four current NRC licensed facilities, two of the facilities (Envirocare and Plateau Resources Limited) have existing Utah groundwater discharge permits, International Uranium Corporation is in discussions with Utah for a groundwater discharge permit, and Rio Algom is currently implementing a groundwater remediation program.

NRC staff reviewed the Utah groundwater protection regulations (R317–6), the Utah comparative analysis for R317–6, and the administrative approach in the Utah groundwater protection permitting process to determine if the resulting overall approach meets the requirements for alternative standards in section 274o. The NRC staff review focused on three major areas: the administrative procedure including the permitting process, the specific numerical limits in the regulations, and the hazardous constituents that must be considered in setting standards at a specific site.

Utah's administrative process of issuing separate groundwater discharge permits as well as the other procedural requirements in R317–6 differ from the process in Criteria 5B(1) through 5H and 7A. However, staff's review concluded that they accomplish the same regulatory outcome of establishing a site-specific groundwater protection program for both radiological and nonradiological hazards associated with 11e.(2) byproduct material that is consistent with the groundwater protection regulations of the Commission.

The NRC staff review of the specific numerical limits in R317–6 determined that the specific values in R317–6 were based on the EPA drinking water limits (primary and some secondary limits) and that Utah had updated its groundwater protection regulations to reflect current EPA drinking water regulations in 40 CFR parts 141 and 142. Although the numerical limits in NRC regulations are also based on EPA drinking water limits, they are based on EPA limits in effect in 1983 when EPA issued its uranium milling regulations in 40 CFR part 192, subparts D and E. Thus, Utah's rules reflect some differences, discussed further below, that are included in the current issuances of EPA's drinking water limits.

The Utah groundwater regulations apply to all facilities in the State unless specifically exempted in the regulations, *i.e.*, the effect of using R317–6 is to apply consistent groundwater regulations to uranium milling facilities as well as other industries in the State of Utah. The NRC staff review identified the following differences between the specific numerical limits in R617–6 and the NRC regulations: (1) Four chemical constituents listed in R317–6 have higher (less stringent) values than specified in NRC's regulations; (2) several chemical constituents listed in R317–6 have lower (more stringent) values than specified in NRC's regulations; and (3) R317–6 also includes specific numerical values for chemical constituents that are not listed in NRC regulations, but are listed in the EPA primary or secondary drinking water standards (and thus may be more stringent than NRC regulations). Given this, and as discussed further below, the NRC staff concludes that the Utah regulation, R317–6, has the same objective and basis as the NRC regulations, although the Utah

regulation has been updated as EPA has updated its drinking water regulations in 40 CFR parts 141 and 142 to reflect current constituents and limits.

Utah's specific constituents and limit values (higher, lower, and not identified in NRC regulations) are based on the EPA maximum concentration limits (MCLs) in its primary or secondary drinking water standards as updated by EPA. As noted above, NRC standards are based on the MCLs in effect in 1983 when EPA issued its uranium milling regulations. Therefore, the different values for the MCLs are due to EPA updating its MCLs in 40 CFR parts 141 and 142 based on newer scientific information. NRC staff has used the newer values when NRC licensees have proposed their use as part of an Alternate Concentration Limit (ACL) proposal as permitted in Appendix A, to 10 CFR part 40. Based on this information, NRC staff concludes that the Utah groundwater protection regulation (R317–6) has the same objective as NRC's regulations and is based on the same EPA standards that form the basis for the NRC regulations even through the Utah regulation is based on the more recent version of the EPA regulations. Thus, the differences between the proposed Utah groundwater protection regulations and the 10 CFR part 40, Appendix A groundwater protection standards are essentially the differences between the two versions of the EPA regulations. Because NRC regulations in this area must conform to those in 40 CFR part 192, subparts D and E, until such time as EPA updates these regulations, NRC is not able, by law, to update its regulations. However, the public health, safety, and environmental protection objectives are the same in both regulations.

The Utah regulation at R317–6–6.3.I.6 also includes a reference to the EPA RCRA Groundwater Monitoring Technical Enforcement Guidance Manual (1986) for use in selecting constituents for groundwater monitoring and this document uses the current list of constituents in 40 CFR part 261, Appendix VIII, which has been updated by EPA since it was used earlier as the basis for Criterion 13 of 10 CFR part 40, Appendix A. The updated list drops certain chemicals listed in Criterion 13 and includes other constituents not currently listed in Criterion 13. Utah has stated that it will use Criterion 13 and the list in 40 CFR part 261, Appendix VIII, as guidance in selecting the constituents to be monitored at 11e.(2) byproduct materials facilities. The constituents selected will be based on the feed material to the facility and the process chemicals used at the facility. This selection process is equivalent to the hazardous constituent selection process in Criteria 5B(2) and 5B(3).

Therefore, the NRC staff conclusion is that the Utah Administrative Code R317–6 provides a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose.

Section 274o Hearing for Alternative Standards

The Commission has approved the use of a hearing process similar to the provisions in subpart H of 10 CFR part 2 for the "hearing" component required by the last paragraph of section 274o. The proposed alternative standards have been subject to the State of Utah rulemaking process which includes opportunity for a public hearing. A hearing process similar to the provisions in subpart H is not intended to duplicate the State's process; rather, it will be used to provide sufficient information for the Commission to make the determination required in section 274o.

Pursuant to the hearing process set forth in subpart H of 10 CFR part 2, the Commission is requesting information from interested members of the public on the alternative standards proposed by the State of Utah of substituting Utah Administrative Code R317–6 for the groundwater protection standards in 10 CFR part 40, Appendix A, Criteria 5B(1) through 5H, 7A, and 13. The NRC staff will evaluate the information received and provide the information to the Commission for a final determination. The issue under consideration is:

Does the Utah alternative standard achieve a level of stabilization and containment of the sites concerned, and a level of protection for public health, safety, and the environment from radiological and nonradiological hazards associated with such sites, which is equivalent to, to the extent practicable, or more stringent than the level which would be achieved by standards and requirements adopted and enforced by the Commission for the same purpose and any final standards promulgated by the Administrator of the Environmental Protection Agency in accordance with section 275?

Environmental Analysis

The environmental impact of a Commission determination that an Agreement State's alternative standards that have been found to provide a level of protection that is equivalent to, to the extent practicable, or more stringent than standards promulgated by NRC or the Administrator of EPA under section 275 are within the generic impact analysis conducted by NRC and EPA in promulgating their standards and requirements (NUREG–0706, "Final Generic Environmental Impact Statement on Uranium Milling," and EPA 520/1–83–008, "Final Environmental Impact Statement for Standards for the Control of Byproduct Materials from Uranium Processing"). Any site-specific application of alternative standards in Agreement States will be evaluated under the State's environmental assessment required of the State under the section 274o.

Dated at Rockville, Maryland, this 21st day of August, 2003.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 03–21884 Filed 8–26–03; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–105–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, DC–9–20, DC–9–30; DC–10–40, and DC–10–50 Series Airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes; and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas transport category airplanes. This proposal would require an inspection of the upper lock link assembly of the nose landing gear (NLG) to determine the manufacturer, repetitive eddy current inspections for cracking, and modification or replacement if necessary. This proposal also would provide for optional terminating action for the repetitive inspections. This action is necessary to prevent fracture of the upper lock link

assembly of the NLG, which could result in failure of the NLG to extend following a gear-down selection, and consequent gear-up landing, structural damage, and possible injury to passengers and crew. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–105–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mike Lee, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5325; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–105–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that an operator of a Model DC–9–82 (MD–82) airplane was unable to extend the nose landing gear (NLG) during landing. As a result of this problem, the operator landed with the nose gear up, which caused moderate damage to the nose gear doors, avionics door, and adjacent structure. Investigation of the damage revealed that the upper lock link of the NLG was completely fractured. Boeing has determined that tool marks and/or rough surface finish across the parting plane can cause stress concentration and cracking along the forged parting plane of the upper lock link. The Component Maintenance Manual is being revised to incorporate minimum surface finish and height requirements for the upper lock link. Fracture of the upper lock link assembly of the NLG could result in failure of the NLG to extend following a gear-down selection, and consequent gear-up landing, structural damage, and possible injury to passengers and crew.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin DC9–32A340, dated November 14, 2001, which describes procedures for a visual inspection of the upper lock link assembly of the NLG to determine if the part was manufactured by Ready Machine and Manufacturing Company, and (regardless of manufacturer) repetitive high frequency eddy current (HFEC) inspections for cracking of the assembly, and modification or replacement of the assembly with a new assembly if cracking is found. The modification includes chemically stripping the lock link assembly, verifying the distance between the machined surface and lower surface parting line, doing a fluorescent dye penetrant inspection for cracking, doing another HFEC inspection for cracking, shotpeening the machined surface, reidentifying the reworked upper link, and refinishing. The service bulletin also describes an adjustment and test for the nose gear linkages, and provides for optional terminating action for the repetitive inspections if no cracking is found. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously. The actions would be required to be accomplished in accordance with the service bulletin described previously, except that the proposed AD does not require submitting Appendix A (report of inspection findings), and except as discussed below.

Difference Between Proposed AD and Service Bulletin

The Accomplishment Instructions of the service bulletin describe procedures for completing a sheet to record and report negative inspection findings. However, this proposed AD would not require a report; we do not need this information from operators.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR

47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

Cost Impact

There are approximately 1,904 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,188 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed visual inspection on U.S. operators is estimated to be $71,280, or $60 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed high frequency eddy current (HFEC) inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed HFEC inspection on U.S. operators is estimated to be $71,280, or $60 per airplane, per inspection cycle.

It would take approximately 11 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $784,080, or $660 per airplane.

It would take approximately 8 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $9,981 per airplane. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $12,427,668, or $10,461 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 200–NM–105–AD.

Applicability: Model DC–9–11, DC–9–12, DC–9–13, DC–9–14, DC–9–15, and DC–9–15F airplanes; Model DC–9–21 airplanes; Model DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F (C–9A, C–9B), DC–9–33F, DC–9–34 airplanes; Model DC–9–41 airplanes; Model DC–9–51 airplanes; Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes; as listed in Boeing Alert Service Bulletin DC9–32A340, dated November 14, 2001; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fracture of the upper lock link assembly of the nose landing gear (NLG), which could result in failure of the NLG to extend following a gear-down selection, and consequent gear-up landing, structural damage, and possible injury to passengers and crew; accomplish the following:

One-Time Inspection

(a) Within 2,500 flight cycles after the effective date of this AD: Do a general visual inspection to determine if the upper lock link assembly of the NLG was manufactured by Ready Machine and Manufacturing Company (this can be identified by the letters "RM" or an "F" suffix adjacent to the serial numbers), per the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–32A340, excluding Appendix A, dated November 14, 2001. Then do the actions specified in paragraph (b) or (c) of this AD, as applicable.

Note 1: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Repetitive Inspections/Modification or Replacement, if Necessary

(b) If the upper lock link assembly of the NLG was manufactured by Ready Machine and Manufacturing Company: Within 2,500 flight cycles after the effective date of this AD, do a high frequency eddy current (HFEC) inspection of the assembly for cracking, per Condition 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–32A340, excluding Appendix A, dated November 14, 2001.

(1) If no cracking is found, repeat the inspection at intervals not to exceed 4,000 flight cycles until accomplishment of paragraph (d) of this AD.

(2) If any cracking is found, before further flight, modify or replace the upper lock link assembly, as applicable, per the service bulletin.

(c) If the upper lock link assembly was not manufactured by Ready Machine and Manufacturing Company: Within 3,500 flight cycles after the effective date of this AD, do a HFEC inspection of the assembly for cracking, per Condition 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin DC9–32A340, excluding Appendix A, dated November 14, 2001.

(1) If no cracking is found, repeat the inspection at intervals not to exceed 4,000 flight cycles until accomplishment of paragraph (d) of this AD.

(2) If any cracking is found, before further flight, modify or replace the upper lock link assembly, as applicable, per the service bulletin.

Optional Terminating Action

(d) Modification or replacement of the upper lock link assembly of the NLG, as applicable, per Boeing Alert Service Bulletin DC9–32A340, excluding Appendix A, dated November 14, 2001, terminates the repetitive inspections required by paragraph (b) or (c) of this AD, as applicable.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on August 21, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21874 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–180–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing airplane models. This proposal would require a one-time inspection to identify all H–11 steel bolts installed in the latch fittings of the cargo doors, repetitive inspections for cracked or broken H–11 steel bolts, and follow-on and corrective actions if necessary. This proposal also would require eventual replacement of all H–11 steel bolts in the latch fittings of the cargo doors with Inconel bolts. This action is necessary to prevent broken bolts in the latch fittings, which could reduce the capability of the door latch to keep the door closed, and result in loss of a cargo door and consequent rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–180–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–180–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6434; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–180–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–180–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of five corroded and broken bolts common to two of the latch fittings for the main deck side cargo door on a Boeing Model 747–300 series airplane. The affected bolts are made from H–11 steel, a material that is susceptible to corrosion and subsequent stress corrosion cracking. Broken H–11 steel bolts in the latch fittings of the cargo door could reduce the capability of the door latch to keep the door closed. This condition, if not corrected, could result in loss of the cargo door and consequent rapid depressurization of the airplane.

The same H–11 steel bolts used in the latch fittings of the main deck side cargo door of Boeing Model 747–300 series airplanes are also used in the latch fittings of the main deck side cargo door, nose cargo door, and the forward and aft lower lobe cargo doors on certain Boeing Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–400, 747SR, and 747SP series airplanes. Therefore, the subject doors on all of these airplane models may be subject to the same unsafe condition.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Alert Service Bulletin 747–53A2464, Revision 1, dated August 30, 2001. That service bulletin describes procedures for a one-time inspection to identify all H–11 steel bolts installed in the latch fittings of the main deck side cargo door, nose cargo door, and the forward and aft lower lobe cargo doors. The inspection procedures include

checking the bolt part number, which is stamped on the bolt head; or using a magnet to verify that the bolt is made of steel. The service bulletin also describes procedures for repetitive ultrasonic inspections for cracked or broken H–11 steel bolts, and replacement of H–11 steel bolts with Inconel bolts. The procedures for replacement of H–11 steel bolts involve performing a detailed inspection of the bolt hole for corrosion; oversizing the bolt hole to remove any corrosion; installing a new bolt, nut, and washers; and applying sealant. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Other Relevant Rulemaking

Boeing Alert Service Bulletin 747–53A2464, Revision 1, specifies that the actions in Boeing Alert Service Bulletin 747–52A2167 must have been accomplished previously or must be accomplished concurrently. The FAA has previously issued AD 80–14–11, amendment 39–3831. That AD applies to all Model 747 series airplanes equipped with nose cargo doors, and requires, before further flight (as of July 15, 1980, the effective date of that AD), an inspection for loose or missing bolts of the portal latch fittings of the nose cargo door, and corrective actions if necessary, per Boeing Alert Service Bulletin 747–52A2167, Revision 1, dated March 28, 1980. Because the initial compliance time of AD 80–14–11 has long passed, this AD does not specify a requirement for accomplishing that service bulletin.

Explanation of Requirements of Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in Boeing Alert Service Bulletin 747–53A2464, Revision 1, except as discussed below. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Differences Between This Proposed AD and Boeing Alert Service Bulletin 747–53A2464, Revision 1

The service bulletin does not specify the type of inspection necessary to identify H–11 steel bolts or to find corrosion during accomplishment of the replacement of H–11 bolts with improved bolts. For the purposes of this proposed AD, we have determined that the procedures in the service bulletin constitute a "detailed inspection." Note 1 of this proposed AD defines such an inspection.

Although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repairs, this proposed AD would require such repairs to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.

The service bulletin specifies that the actions therein should be accomplished prior to or concurrently with the actions in Boeing Service Bulletin 747–52–2197. We have determined that it is not necessary at this time to require accomplishment of Boeing Service Bulletin 747–52–2197. This determination is based on our decision that the inspection of the portal latch fitting of the nose cargo door described in that service bulletin does not address an immediate safety issue. Service history shows that there have been no significant adverse findings since the issuance of that service bulletin; thus, the subject of that service bulletin is not an area of concern.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in this proposed AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 566 airplanes of the affected design in the worldwide fleet. The FAA estimates that 179 airplanes of U.S. registry would be affected by this proposed AD, that it would take between 2 and 8 work hours per airplane (depending on the airplane's configuration) to accomplish the proposed inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $130 and $520 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–180–AD.

Applicability: Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747SR, and 747SP series airplanes; line numbers 1 through 721 inclusive, 976, and 982; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent bolts from breaking in the latch fittings of the cargo doors, which could reduce the capability of the door latch to keep the door closed, and result in loss of a cargo door and consequent rapid depressurization of the airplane, accomplish the following:

Service Bulletin References

(a) The following information pertains to the service bulletin referenced in this AD:

(1) The term "service bulletin" as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2464, Revision 1, dated August 30, 2001.

(2) Although the service bulletin referenced in this AD specifies to submit certain information to the manufacturer, this AD does not include such a requirement.

(3) Although the service bulletin specifies that the actions therein must be accomplished prior to or concurrently with the actions in Boeing Alert Service Bulletin 747–52A2167 and Boeing Service Bulletin 747–52–2197, this AD does not include such a requirement. AD 80–14–11, amendment 39–3831, already requires accomplishment of Boeing Alert Service Bulletin 747–52A2167, Revision 1, dated March 28, 1980.

(4) Inspections and replacements accomplished before the effective date of this AD per Boeing Alert Service Bulletin 747–53A2464, dated March 15, 2001, are considered acceptable for compliance with this AD.

Initial Inspection

(b) Within 1 year after the effective date of this AD: Do a one-time detailed inspection to identify all H–11 steel bolts installed in the latch fittings of the main deck side cargo door, nose cargo door, and the forward and aft lower lobe cargo doors, as applicable. Do the inspection by checking the bolt part number stamped on the bolt head, or verifying the bolt is steel by using a magnet, per the service bulletin. If no H–11 steel bolt is found, no further action is required by this paragraph. If any H–11 steel bolt is found, do the requirements of paragraph (c) of this AD.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Follow-On Inspections/Corrective Actions

(c) For any H–11 steel bolt found during any inspection required by paragraph (b) of this AD: Before further flight, do an ultrasonic inspection for cracked or broken bolts, or replace the H–11 steel bolt with an Inconel bolt, per the service bulletin. Replace any cracked or broken bolt with an Inconel bolt before further flight per the service bulletin. Repeat the ultrasonic inspection of remaining H–11 steel bolts in the latch fittings of the main deck side cargo door, nose cargo door, and the forward and aft lower lobe cargo doors, at intervals not to exceed 18 months until the terminating action required by paragraph (d) of this AD is done.

Terminating Action

(d) Within 6 years after the effective date of this AD: Replace, with Inconel bolts, all H–11 steel bolts in the latch fittings of the main deck side cargo door, nose cargo door, and the forward and aft lower lobe cargo doors, per the service bulletin. The procedures for this replacement include performing a detailed inspection of the bolt hole for corrosion; oversizing the bolt hole to remove any corrosion; installing a new bolt, nut, and washers; and applying sealant. Such replacement terminates the repetitive inspections required by paragraph (c) of this AD. If corrosion is found and oversizing the bolt hole within the limits specified in the service bulletin is not adequate to remove the corrosion, before further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Parts Installation

(e) As of the effective date of this AD: No person may install, on any airplane, an H–11 steel bolt in the latch fittings of the main deck side cargo door, nose cargo door, or the forward and aft lower lobe cargo doors.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on August 20, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21873 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–68–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 airplanes, that currently requires repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center (EPC) to detect damage; and corrective actions, if necessary. For certain airplanes, this action would require replacement of the electrical wiring of the galley in the EPC. For certain other airplanes, this action would require an inspection to detect damage of the electrical wiring of the galley in the EPC; corrective actions if necessary; modification of the wiring support; and removal of spare fuses; as applicable. These new actions would terminate the repetitive inspection requirements. This action also limits the applicability of the existing AD. This proposal is prompted by the FAA's determination that additional rulemaking is necessary. The actions specified by the proposed AD are intended to prevent chafing damage to the wire assembly, and consequent arcing and smoke and fire in the EPC, and to prevent damage to the wire assembly terminal lugs and overheating of the power feeder cables on the No. 3 and No. 4 GLCU, which could result in smoke and fire in the center accessory compartment.

DATES: Comments must be received by October 14, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–68–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using

the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–68–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–68–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–68–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 23, 2002, the FAA issued AD 2002–17–06, amendment 39–12872 (67 FR 55716, August 30, 2002), applicable to certain McDonnell Douglas Model MD–11 airplanes, to supersede AD 2002–14–05, amendment 39–12805 (67 FR 47640, July 19, 2002) to require repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the galley load control unit (GLCU) within the No. 3 bay electrical power center (EPC) to detect damage; and corrective actions, if necessary. That action was prompted by information from the airplane manufacturer that accomplishment of the replacement required by AD 2002–14–05 could result in additional wire chafing damage in the EPC due to insufficient clearance from structure. The requirements of that AD are intended to prevent such chafing, and consequent arcing and smoke and fire in the EPC, and to prevent damage to the wire assembly terminal lugs and overheating of the power feeder cables on the No. 3 and No. 4 GLCU, which could result in smoke and fire in the center accessory compartment.

Actions Since Issuance of Previous Rule

In the preamble of AD 2002–17–06, the FAA indicated that the actions required by that AD were considered "interim action," and that further rulemaking action would be considered once the airplane manufacturer developed a replacement that addresses the identified unsafe condition and once we approved that replacement. We now have determined that further rulemaking is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

We have reviewed and approved Revision 02 of Boeing Service Bulletin MD–11–24–184, dated January 7, 2003. Revision 02 of the service bulletin incorporates engineering data released subsequent to Revision 01 of the service bulletin (referenced in AD 2002–17–06 as the appropriate source of service information for the required actions) to provide additional details for ensuring proper wire clamping and support. Revision 02 also removes airplanes from the effectivity. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 2002–17–06 to continue to require repetitive general visual inspections of the power feeder cables, terminal strip, fuseholder, and fuses of the GLCU within the No. 3 bay EPC to detect damage; and corrective actions, if necessary. The proposed AD would also require accomplishment of the actions specified in Revision 02 of the service bulletin described previously, which would terminate the repetitive inspection requirements.

Explanation of Change to Applicability

The applicability of the proposed AD references Boeing Service Bulletin MD11–24–184, Revision 02, dated January 7, 2003, as the appropriate source of service information for determining the affected airplanes (AD 2002–17–06 referenced Revision 01 of the service bulletin). The service bulletin reflects the most current listing of airplanes subject to the requirements of this proposed AD.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOC). Because we have now included this material in part 39, for purposes of this proposed AD, it is only necessary to identify the office authorized to approved AMOCs and previously approved AMOCs that are acceptable for compliance with the applicable requirements of this proposed AD.

Cost Impact

There are approximately 112 airplanes of the affected design in the worldwide fleet. The FAA estimates that 32 airplanes of U.S. registry would be affected by this proposed AD.

The inspection that is currently required by AD 2002–17–06 and retained in this AD takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $2,080, or $65 per airplane, per inspection cycle.

Table 1 of this proposed AD shows the estimated cost impact of the new actions for airplanes affected by this proposed AD. The average labor rate is $65 per work hour. Table 1 is as follows:

TABLE 1.—COST ESTIMATE

Task	For group 1 airplanes			For group 2 airplanes		
	Work hours	Required parts	Cost per airplane	Work hours	Required parts	Cost per airplane
Replacement	18	$15,276	$16,446	19	$17,261	$18,496
Task	**Group 3 airplanes**			**For group 4 airplanes**		
	Work hours	Required parts	Cost per airplane	Work hours	Required parts	Cost per airplane
Inspection	1	None	$65	1	None	$65
Modification	2	$190	$320	1	$9	$74

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12872 (67 FR 55716, August 30, 2002), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2003–NM–68–AD. Supersedes AD 2002–17–06, Amendment 39–12872.

Applicability: Model MD–11 airplanes, as listed in Boeing Service Bulletin MD11–24–184, Revision 02, dated January 7, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing damage to the wire assembly, and consequent arcing and smoke and fire in the electrical power center (EPC), and to prevent damage to the wire assembly terminal lugs and overheating of the power feeder cables on the No. 3 and No. 4 galley load control unit (GLCU), which could result in smoke and fire in the center accessory compartment; accomplish the following:

Certain Requirements of AD 2002–17–06, Amendment 39–12872

Initial Inspection

(a) Do a general visual inspection of the power feeder cables, terminal strip, fuseholder, and fuses of the GLCU within the No. 3 bay EPC to detect damage (*i.e.*, discoloration of affected parts or loose attachments), per McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; or Revision 01, dated November 11, 1999; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes on which the replacement required by paragraph (c) of AD 2002–14–05, amendment 39–12805, has been done: Inspect within 60 days after September 16, 2002 (the effective date AD 2002–17–06, amendment 39–12872).

(2) For airplanes on which the replacement required by paragraph (c) of AD 2002–14–05 has not been done: Inspect within 600 flight hours from the last inspection required by AD 2002–14–05, or within 60 days after September 16, 2002, whichever occurs later.

Note: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is

made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

No Damage Detected: Repetitive Inspections

(b) If no damage is detected during any inspection required by paragraph (a) of this AD, repeat the general visual inspection every 600 flight hours.

Damage Detected: Replacement and Repetitive Inspections

(c) If any damage is detected during any inspection required by paragraph (a) of this AD, before further flight, replace the power feeder cables, fuseholder, and/or fuses, as applicable, with new parts, per McDonnell Douglas Alert Service Bulletin MD11–24A160, dated August 30, 1999; or Revision 01, dated November 11, 1999. Repeat the general visual inspection every 600 flight hours.

New Requirements of This AD

Group 1 and Group 2 Airplanes: Replacement of Electrical Wiring

(d) For Group 1 and Group 2 airplanes identified in Boeing Service Bulletin MD11–24–184, Revision 02, dated January 7, 2003: Within 12 months after the effective date of this AD, replace the electrical wiring of the galley in the EPC in bays 1, 2, and 3, per the service bulletin. Accomplishment of the replacement terminates the requirements of paragraphs (a) through (c) of this AD.

Group 3 and Group 4 Airplanes: Inspection for Damage, Modification of Wiring Support, Removal of Fuses; and Corrective Action; As Applicable

(e) For Group 3 and Group 4 airplanes identified in Boeing Service Bulletin MD11–24–184, Revision 02, dated January 7, 2003: Within 12 months after the effective date of this AD, do the actions specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD per the service bulletin. Accomplishment of the applicable actions in those paragraphs terminates the requirements of paragraphs (a) through (c) of this AD.

(1) Do a general visual inspection to detect damage of the electrical wiring of the galley in the EPC in bays 1, 2, and 3. If any damage is detected, before further flight, repair or replace damaged wiring with new or serviceable wiring per the service bulletin.

(2) Modify wiring support in bay 1.

(3) Remove spare fuses and modify wiring support in bays 2 and 3.

Alternative Methods of Compliance

(f)(1) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously per AD 2002–17–06, amendment 39–12872, are approved as alternative methods of compliance with paragraphs (a) through (c) of this AD.

Issued in Renton, Washington, on August 20, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21872 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD11

Special Regulations; Areas of the National Park System

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service is proposing this rule to more effectively manage winter visitation and recreational use in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway. This proposed rule is in conjunction with the Winter Use Plans Final Environmental Impact Statement and the Final Supplemental Environmental Impact Statement and is necessary to mitigate impacts resulting from oversnow motorized recreation in the parks and to implement the conditional decisions made in the Record of Decision of March 25, 2003. The proposal utilizes an adaptive management strategy and, in order to minimize impacts, requires, among other things, that most recreational snowmobiles and snowcoaches operating in the parks meet certain air and sound requirements, most snowmobiles be accompanied by a trained guide, and establishes daily entry limits on the numbers of snowmobiles that may enter the parks. Cross-country routes will continue to remain closed to oversnow motorized vehicles.

DATES: Comments must be received by October 14, 2003.

ADDRESSES: Comments may be sent to Yellowstone National Park, Planning Office, PO Box 168, Yellowstone NP, WY 82190. Comments may also be submitted online at *http://www.nps.gov/yell/rule.*

FOR FURTHER INFORMATION CONTACT: John Lacklin, Planning Office, Yellowstone National Park, 307–344–2021 or at the address listed in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: The National Park Service (NPS) has been managing winter use issues in Yellowstone National Park (YNP), Grand Teton National Park (GTNP), and the John D. Rockefeller, Jr., Memorial Parkway (the Parkway) for several decades. In 1997 the Fund for Animals and others filed suit, alleging that the NPS failed to: Consult with the U.S. Fish and Wildlife Service on impacts of winter use on threatened and endangered species; prepare an EIS concerning winter use; and evaluate the effects of trail grooming on wildlife and other park resources. The suit was resolved with a settlement agreement in October 1997 which, among other things, required the NPS to prepare a new winter use plan for the three park units. On October 10, 2000, a Winter Use Plans Final Environmental Impact Statement (FEIS) was published for YNP, GTNP, and the Parkway. A Record of Decision (ROD) was signed by Intermountain Regional Director Karen Wade on November 22, 2000, and subsequently distributed to interested and affected parties. The ROD selected FEIS Alternative G, which eliminated both snowmobile and snowplane use from the parks by the winter of 2003–2004, and provided access via an NPS-managed, mass-transit snowcoach system. This decision was based on a finding that the snowmobile and snowplane use existing at that time, and the snowmobile use analyzed in the FEIS alternatives, impaired park resources and values, thus violating the statutory mandate of the NPS.

Implementing aspects of this decision required a special regulation for each park unit in question. Following publication of a proposed rule and the subsequent public comment period, a final rule was published in the **Federal Register** on January 22, 2001 (66 FR 7260). The rule became effective on April 22, 2001.

On December 6, 2000, the Secretary of the Interior, the Director of the National Park Service and others in the Department of the Interior and the NPS were named as defendants in a lawsuit brought by the International Snowmobile Manufacturers' Association and several groups and individuals. The State of Wyoming subsequently intervened on behalf of the plaintiffs. Following promulgation of final regulations, the original complaint was amended to also challenge the regulations. The lawsuit asked for the decision, as reflected in the ROD, to be set aside. The lawsuit alleged that NPS

failed to give legally mandated consideration to all of the alternatives, made political decisions outside the public process, and, contradictory to evidence and data, failed to give the public appropriate notice and participation, failed to adequately consider and use the proposals and expertise of the cooperating agencies, failed to properly interpret and implement the parks' purpose, discriminated against disabled visitors, and improperly adopted implementing regulations. A procedural settlement was reached on June 29, 2001, under which, NPS prepared a Supplemental Environmental Impact Statement (SEIS). In accordance with the settlement, the SEIS incorporated "any significant new or additional information or data submitted with respect to a winter use plan." Additionally, the NPS provided the opportunity for additional public participation in furtherance of the purposes of NEPA. A Notice of Intent to prepare a Supplemental Environmental Impact Statement was published in the **Federal Register** on July 27, 2001 (66 FR 39197).

A draft SEIS was published on March 29, 2002, and distributed to interested and affected parties. NPS accepted public comments on the draft for 60 days, and 357,405 pieces of correspondence were received. The draft SEIS examined four additional alternatives: Two alternatives to allow some form of snowmobile access to continue; a no-action alternative, which would implement the November 2000 ROD; and another alternative which would implement the no-action alternative one year later to allow additional time for phasing in snowcoach-only travel. The SEIS focused its analysis only on the issues relevant to allowing recreational snowmobile and snowcoach use in the parks. These impact topics included: Air quality and air quality related values, employee health and safety, natural soundscapes, public health and safety, socioeconomics, wildlife—bison and elk, and visitor experience. The SEIS did not include re-evaluating the decision to ban snowplane use on Jackson Lake because this had not been an issue in the lawsuit, and was not an aspect of the resulting settlement.

On November 18, 2002, the NPS published a final rule (67 FR 69473) based on the FEIS, which generally postponed for one year implementation of the phase-out of snowmobiles in the parks under the January 2001 regulation. This rule allowed for additional time to plan and implement the NPS-managed mass-transit, snowcoach-only system outlined in the FEIS as well as time for completion of the SEIS. The rule delayed the implementation of the daily entry limits on snowmobiles until the winter of 2003–2004 and the complete prohibition on snowmobiles until 2004–2005. The transitional requirement under the 2001 regulation that snowmobile parties use an NPS-permitted guide was also delayed until the 2003–2004 winter use season.

Other provisions under the January 2001 regulation concerning licensing requirements, limits on hours of operation, and the ban on snowplane use remained effective for the winter use season of 2002–2003.

The Notice of Availability for the final SEIS was published on February 24, 2003 (68 FR 8618). The final SEIS included a new alternative, alternative 4, consisting of elements which fell within the scope of the analyses contained in the Draft SEIS and which was identified as the preferred alternative. In addition, the final SEIS included changes to the alternatives, changes in modeling assumptions and analysis, and it incorporated additional new information. Intermountain Regional Director Karen Wade signed a Record of Decision for the SEIS, which became effective on March 25, 2003. The ROD selected Final SEIS alternative 4 for implementation, and it enumerated additional modifications to that alternative. The final SEIS and ROD found that implementation of final SEIS alternatives 1a, 1b, 3, or 4 would not be likely to impair park resources or values resulting from motorized oversnow recreation. Promulgation of the regulations proposed in this rule is necessary to implement the March 25, 2003, ROD. Absent the promulgation of such new regulations, the existing regulations reducing the numbers of snowmobiles that may be used in the parks during the winter of 2003–2004, but without air and sound requirements, will continue to apply.

Park Resource Issues

As disclosed in the FEIS and SEIS, the NPS is concerned about impacts to park resources and values resulting from the use of motorized oversnow vehicles, including both snowcoaches and snowmobiles. These impacts are summarized below. Additional information is available in the SEIS and FEIS, available online at: *http://www.nps.gov/grte/winteruse/intro.htm* and *http://www.nps.gov/yell/technical/planning/winteruse/plan/index.htm* respectively.

Air Quality and Air Quality Related Values

Over the past 10 years, increases in the number of visitors using snowmobiles in YNP and GTNP have intensified concerns regarding localized air pollution and its effects on the health of park employees, visitors, and operators and riders of snowmobiles. Although NPS has not documented violations of federal or state ambient air quality standards, these standards have been approached, especially on days when atmospheric conditions produce little air movement. In both cases the NPS is relying on EPA approved methodologies and equipment for carbon monoxide testing at a station operated by the State of Montana and located near the West Entrance to Yellowstone. Two-stroke snowmobile engines typically produce relatively high amounts of carbon monoxide, particulate matter, and volatile organic compounds. New commercially available snowmobile engine technology, especially certain four-stroke snowmobiles, reduce carbon monoxide emissions by as much as 85% and hydrocarbons by 95–98%, relative to the EPA's baseline assumptions about current average two-stroke snowmobile emissions.

Employee and Visitor Health and Safety

Both parks employees and visitors are at times exposed to the hazards of loud sounds, exhaust emissions, and naturally occurring avalanches. Significant levels of carbon monoxide, particulate matter, and other toxic air pollutants have been found near the West Entrance to YNP. Complaints of nausea, dizziness, headaches, sore throats, eye irritation, light-headedness, and lethargy are frequent among employees who work at the West Entrance and others who work within heavily used travel corridors. We have involved OSHA in a partnership with the NPS to help us proactively mitigate concerns about employee health and safety. Through this partnership, OSHA measured exposures in several workplace environments in February 2000, finding high levels of noise, carbon monoxide, benzene, formaldehyde, and severe vibration to employees riding snowmobiles during the performance of their work duties. In addition, OSHA found that an employee working primarily outside the fee kiosk at the West Entrance was over-exposed to noise due to snowmobiles, and that a ranger conducting a normal snowmobile patrol operations was over-exposed to noise at a level of 93 decibels. To address these issues in part,

NPS issues appropriate personal protective equipment, such as earplugs, to employees to minimize their exposure to workplace hazards. We are also in the process of re-designing the West Entrance kiosk to minimize noise and air pollution exposure to employees. The NPS has also established the off-site sale of winter entrance passes to further reduce snowmobile congestion, and subsequent employee exposure to snowmobile emissions. The measures contained in the proposed rule would further mitigate these impacts.

Natural Soundscapes

Natural soundscapes are the unimpaired sounds of nature, and are among the intrinsic elements of the environment that are associated both with the purpose of a park and with its natural ecological functioning. Human-generated noise in the winter includes that from snowmobiles, snowcoaches, and wheeled vehicles. Of particular concern to NPS is the impact of noise generated by humans in travel corridors or staging areas in developed areas that carries into backcountry areas, where visitors expect to hear only the natural soundscape. The majority of areas visited by individuals seeking solitude and quiet lie within close proximity to travel corridors and developed areas because other, more remote, areas of the park are not as easily accessible to the average visitor.

Visitor Experience

In YNP and GTNP, an average of 75 percent of winter visitors ride snowmobiles, 12 percent ride in snowcoaches, 20 percent use cross-country skis, 2 percent use snowshoes and 22 percent drive automobiles. These figures exceed 100 percent because some visitors engage in more than one activity. Visitors come to the parks seeking a winter recreation experience and surveys have shown the primary reasons people visit is to view natural scenery and wildlife. In surveys, visitors have also indicated that experiencing "tranquility," "peace and quiet," and "getting away from crowds," are important components of their visit. However, there are gaps between these characteristics and visitors' satisfaction with them based on visitor surveys. For instance, visitors rated "experiencing the tranquility" as the sixth most important component of their visit, while their satisfaction with that characteristic was 18th. Similarly, "experience peace and quiet" was rated 14th in importance and 25th in satisfaction. "Get away from crowds" had the largest gap: it was the 17th in importance and 40th in satisfaction. This indicates that visitors feel that the values of tranquility, peace and quiet, and solitude are important and expected, but that they are often dissatisfied with their actual experience. The quality of the groomed surface is also an important indicator of visitor satisfaction with oversnow travel in Yellowstone. As roads are traveled by snowmobiles and snowcoaches they can develop bumps, also called moguls. On warm days with heavy snowmobile traffic, the road surface can become so deeply moguled as to render it unsafe for travel. Roads are groomed throughout the week, some on a daily basis, to mitigate this issue.

Wildlife

Wintering wildlife in YNP and GTNP can be challenged for survival due to high snow depths, cold temperatures, and lack of available forage due to deep snow. Wildlife, especially bison and elk, are frequently encountered by travelers along park roadways. Scientific studies, case incident reports, and the experience of park staff indicate that disturbance occurs to wildlife due to some motorized oversnow recreation. This disturbance could come from a visitor, concessioner, or administrative use of snowmobiles or snowcoaches. Additionally, wildlife disturbance and harassment occurs from contact with some cross-country skiers and snowshoers, both on the roadway and in the backcountry. In spite of these contacts, there is not evidence that winter recreation is clearly responsible for any long-term adverse consequences to ungulate populations, including bison and elk. Currently both of these species are at sound population levels.

Impairment to Park Resources and Values

In managing units of the National Park System, the NPS may allow activities that have both beneficial and adverse impacts on park resources and values. However, by the provisions of the laws governing the NPS, the NPS is prohibited from taking or authorizing any action that would result in adverse impacts so significant that they would, or are likely to, impair park resources and values. An impact would be more likely to constitute impairment to the extent that it affects a resource or value whose conservation is: (1) Necessary to fulfill specific purposes identified in the establishing legislation or proclamation of the park; (2) key to the natural or cultural integrity of the park or to opportunities for enjoyment of the park; or (3) identified as a goal in the park's general management plan or other relevant NPS planning documents.

The FEIS ROD, dated November 22, 2000, concluded that, of the seven alternatives evaluated in the FEIS, only one (alternative G), which called for a phase-out of snowmobile use in the parks, did not exceed a level of impairment. This was the basis for selecting this alternative, as described in the rationale for the decision in the November 2000 ROD. In all other FEIS alternatives, the existing snowmobile use in YNP was found to impair air quality, wildlife, the natural soundscape, and opportunities for the enjoyment of the park by visitors. In GTNP, impairment to the natural soundscape and opportunities for enjoyment of the park was found to result from the impacts of snowmobile and snowplane use. In the Parkway, impairment was found to result from snowmobile use on air quality, the natural soundscape, and opportunities for enjoyment of the park. These findings were made for all alternatives with snowmobile use, including those that would have required phased-in use of cleaner and quieter snowmobiles in accordance with set objectives for air and sound emissions. It was determined that there was no way to mitigate the impairment short of reducing the amount of use as determined by an effective carrying capacity analysis, or by imposing a suitable limit unsupported by such an analysis.

The final rule implementing FEIS alternative G, published in the **Federal Register** on January 22, 2001, recognized that, "achieving compliance with the applicable legal requirements while still allowing snowmobile use would require very strict limits on the numbers of both snowmobile and snowcoaches." Thus, through appropriate management actions, the January 2001 rule recognized that some snowmobile and snowcoach use could possibly be accommodated in the parks without resulting in an impairment to park resources and values.

Final SEIS alternative 4, with limited modifications, was selected in the March 25, 2003, ROD for implementation, and will be implemented through this proposed rule. NPS believes that this alternative would not impair park resources or values when fully implemented for several reasons. Fundamental to this alternative is an adaptive management and monitoring strategy, which allows park managers to modify use numbers or take other actions if thresholds related to noise, air quality, wildlife, employee and visitor health and safety, and visitor experience are exceeded.

This alternative implements significant daily entry limits, which will result in fewer conflicts with wildlife, fewer air and sound emissions, and improved road conditions. Most snowmobilers entering the parks will be accompanied by a trained guide, which will reduce conflicts with wildlife and address concerns about safety. In addition, most snowmobiles and snowcoaches in the parks would be required to comply with air and sound requirements. For convenience, the snowmobile models that achieve those air and sound requirements are referred to as the best available technology (BAT). Use of BAT snowmobiles is expected to reduce the noise pollution and significantly reduce the amount of air pollution generated.

At the time of the November 2000 ROD, there were no current means of mitigation that would assure impacts to air quality and the natural soundscapes resulting from unregulated recreational snowmobile use could be reduced, predictably and soon, to a level that would not generally impair these resources and values. Cleaner snowmobiles were not commercially available at that time, nor was mass production of such machines imminent. Today, this technology has changed dramatically and is available to the public. Some four-stroke snowmobiles are substantially cleaner than standard two-stroke machines and are capable of reducing hydrocarbon emissions by up to 95% and carbon monoxide emissions by up to 85%. In addition, some four-stroke snowmobiles are quieter than standard two-stroke machines, testing at approximately 73 dB(A) versus 75–78 dB(A) for two-strokes.

This decision also reflects a commitment to provide protection of park resources and values. The decision allows appropriate levels of visitor use while recognizing that winter in YNP, GTNP, and the Parkway is a unique experience not duplicated on other public lands. Such uses are in a manner that ensures protection of park resources and values. Finally, the decision reflects the Service's concern for working closely and cooperatively with gateway communities. Within the limits authorized by the Organic Act and other legal authorities applicable to winter use in the parks, for any park's programs to be truly successful, a strong collaborative relationship with gateway community partners is essential. This relationship has been demonstrated in our planning process both by the role of these communities through the states and counties as cooperating agencies and by the March 2003 ROD.

Furthermore, the applicable laws and policies governing the NPS afford park managers broad discretion. We are led to the inevitable conclusion that there is no single decision with respect to snowmobiles mandated by these laws and policies. This is reflected by the ROD from November 2000, which would have phased out the recreational use of snowmobiles in these parks over several years, and the March 2003 ROD, which permits recreational snowmobile use under strict numerical and technological limits, with adaptive management, to respond to future impacts from motorized winter use in these parks. The strict requirements set forth in this proposed rule will allow for a reasonable level of recreational snowmobile use to continue in a manner which protects, not impairs, park resources and values.

Entrance Fees and Reservations

Because of the absence of plowed roads and the limited facilities which are open within the parks in the winter, entrance to the parks via snowmobile or snowcoach is fundamentally different than visits during other seasons. As a practical matter, this proposed rule will effectively require that visitors wishing to enter Yellowstone via a snowmobile or snowcoach have an advance reservation. Therefore, entrance fees to Yellowstone will parallel this reservation system by becoming a daily entry fee system. Snowmobilers or snowcoach passengers wishing to enter the park over multiple days would still be able to purchase a multiple-day entry pass; however, visitors only entering the park on one day would now have the option of purchasing a one-day pass. In the past, the NPS has sold snowmobile entrance passes that allowed entry for seven consecutive days, however we wish to avoid the potential confusion to a visitor who might pay for a seven-day snowmobile entry fee, but only have reservations to actually enter the park for one day. We will be modifying our winter entry fees to reflect this distinction through a separate administrative process.

Description of the Proposed Rule

Many of the regulations regarding over-snow transportation have been in existence at the park under the authority of 36 CFR Part 7 or 36 CFR 1.5. Regulations such as the operating conditions, designated routes, and restricted hours of operation have been in effect and enforced by NPS employees for several years. They are included in this rule, with only slight modifications, to remind the public of all the regulations that apply to over-snow transportation for each park area. New regulations such as alcohol limits, BAT requirements, daily entry limits and guiding requirements are new and are explained in detail in this proposed rule.

The NPS is proposing an adaptive management and monitoring strategy to mitigate the impacts described previously on air quality, employee and visitor health and safety, natural soundscapes, wildlife, and visitor experience, while allowing snowmobile access on all major oversnow routes in Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr., Memorial Parkway. The NPS will continuously adapt these limits to protect park resources and values while allowing for the enjoyment of those resources by the American people. These preliminary limits are based on the best information available to the NPS, as described in the FSEIS. The NPS welcomes new information and data pertinent to its management of park resources and visitor use and will incorporate new information in the final rule and future adaptive management decisions as appropriate. In order to prevent impairment to park resources and values, this strategy requires implementation of the following components:

Monitoring and Adaptive Management

Adaptive management allows park managers to take management actions as new information is collected about a specific resource or issue. The NPS will conduct monitoring of park resources and values, including air quality, employee and visitor health and safety, natural soundscapes, wildlife, and visitor experience. If analysis of the monitoring data identifies unacceptable impacts to park resources and values are occurring, management actions will be taken to remedy the problem. Examples of initial methods, indicators, thresholds, and management actions are identified in Attachment A of the March 25, 2003, Record of Decision. Attachment A is available online at *http://www.nps.gov/grte/winteruse/winteruse.htm*. These management actions could include, but are not limited to, adjustment of daily entry limits, adjustment of BAT requirements, closure of road segments, changes in the commercial to non-commercial guiding ratio, establishment of timed-entries, increased road grooming, and others.

To allow for management flexibility (the premise of adaptive management) these proposed rules would authorize the Superintendent to make changes in winter use management, with advance public notice. For example, if improved snowmobile technologies became commercially available, the

Superintendent could further reduce the amount of air and sound emissions in the park units by requiring that cleaner and quieter machines be used. In such a case the parks generally would not initiate formal rulemaking or publish a notice in the **Federal Register** to effect changes in winter use management. Instead these changes would be authorized through these proposed rules. None of the actions in this proposed rule are intended to preclude road or other closures for safety, resource protection, or other reasons as identified in 36 CFR 1.5.

If monitoring or adaptive management leads park managers to take management actions, the Superintendent will provide appropriate public notice in accordance with 36 CFR 1.7(a). To provide the public with sufficient notice, changes in winter management of the parks would ordinarily be made by July 1 and implemented in a future winter season. The Superintendent will also report periodically to the public on monitoring results and justify any changes in winter use management. These changes would be based on analyses of the data collected from the parks' monitoring program.

We are interested in soliciting comments from the public on other potential strategies and authorities to implement adaptive management, which allow park managers similar flexibility as the process described above. We recognize that adaptive management has only been formally used in a relatively few national parks, although parks have informally used it in the past.

Best Available Technology

In recent years, some snowmobile manufacturers have made significant improvements at reducing air and sound emissions in some snowmobile models. The 2002 Arctic Cat 4-Stroke Touring and the 2002 Polaris Frontier four-stroke represent the cleanest and quietest commercially available snowmobiles for which test data is available to the NPS. These snowmobiles are capable of reducing hydrocarbon emissions by 95–98% and carbon monoxide by 85%, as compared to a standard two-stroke snowmobile. In addition, four-stroke snowmobiles typically perform at full throttle at sound levels below 73 dB as measured on the A-weighted scale, as compared to two-stroke snowmobiles, which typically perform at 75–78 dB(A). Four-stroke snowmobiles also produce more even frequency spectra and are less audible over a distance, relative to two-stroke snowmobiles.

Therefore, to mitigate impacts to air quality and the natural soundscape, NPS is proposing to require that initially, most recreational snowmobiles operating in the parks, and by the winter season of 2004–2005 all recreational snowmobiles in Yellowstone, be BAT. Initially BAT would be set at any snowmobile that can achieve a 90% reduction in hydrocarbons and a 70% reduction in carbon monoxide from EPA's baseline assumptions for uncontrolled snowmobiles as published in the **Federal Register** on November 8, 2002 (67 FR 68241). The initial requirement is set lower than the test results from the 2002 machines to allow more than one manufacturer the opportunity to produce snowmobiles that meet the requirements while allowing the NPS to achieve our air quality goals.

Thus, any recreational snowmobile operating in YNP must achieve air emissions below 15 g/kW-hr for hydrocarbons and 120 g/kW-hr for carbon monoxide. Snowmobiles must be tested on a 5-mode engine dynamometer, in accordance with EPA's November 8, 2002, rule (67 FR 28241) with test data and methodology provided to NPS for review. The NPS is relying on the 5-mode engine dynamometer test because it is the standard testing procedure approved by the Environmental Protection Agency and because it was used in determining snowmobile emissions for the SEIS and it would allow for comparisons to be made amongst snowmobiles models. Other test methods could be approved by NPS on a case-by-case basis.

Snowmobiles would also be required to operate at or below 73 dB(A), as measured at full throttle according to Society of Automotive Engineers J192 test procedures. The initial BAT requirement for sound was established by reviewing individual machine results from side-by-side testing performed by the NPS' contractor, Harris Miller Miller & Hanson Inc. (HMMH) and the State of Wyoming's contractor, Jackson Hole Scientific Investigations (JHSI). These separate reports independently concluded that the six four-stroke snowmobiles tested between 69.6 and 77.0 dB(A) using the J192 protocol. On average, the HMMH and JHSI studies measured four-strokes at 73.1 and 72.8 dB(A) at full throttle, respectively. The SAE J192 test also allows for a tolerance of 2 dB(A) over the sound limit to account for variations in weather, snow conditions, and other factors.

Currently, little data exists on snowcoach emissions, with the exception of one laboratory study commissioned by the State of Wyoming which used a chassis dynamometer to measure emissions from one V–10 powered Ford E–350 15-passenger van (Lela, Chad C. and Jeff L. White, 2002). Field conditions in this study could not be replicated accurately in the laboratory because the percent of time a snowcoach operates in open-loop mode (with the throttle wide open, producing higher emissions) versus closed-loop mode (at normal throttle, producing extremely low emissions) is unknown. Running in snow on tracks requires more power than operation with wheels and thus the vehicle may operate in open-loop mode more frequently.

Currently no industry standard air emissions testing procedure exists for snowcoaches that would be cost effective to implement in the field. Due to the cost, it would be impractical to use an engine or chassis dynamometer in the field to determine emissions of individual snowcoaches.

There are approximately 55 snowcoaches currently operating in Yellowstone National Park. Under concessions contracts currently proposed, there could be as many as 69 snowcoaches authorized. Approximately 29 snowcoaches operating in the park were manufactured by Bombardier and were designed specifically for oversnow travel. Those 29 snowcoaches were manufactured prior to 1983 and are referred to as "historic snowcoaches" for the purpose of this rulemaking. All other snowcoaches are 12 to 15-passenger vans that have been converted for oversnow travel using tracks and/or skis.

The March 2003 ROD called for snowcoach air emissions to be no greater than 15 g/kW-hr for hydrocarbons and 120 g/kW-hr for carbon monoxide by the winter of 2005–2006. However, we do not believe it is currently feasible to enforce this requirement as there is insufficient information to establish testing procedures.

Therefore, we are proposing to require that all snowcoaches meet the EPA's standards that were in existence at the time the vehicle was manufactured. Most of these vehicles achieve EPA's Tier 1 emissions standards, which were phased-in from 1994–1996. To ensure that vehicles were meeting EPA's emissions standards, we would require that the vehicle's original pollution control equipment had not been modified or tampered with. Snowcoach owners would be required to certify to the NPS and make available for inspection upon NPS" request, that the vehicle's pollution control equipment is as originally manufactured.

EPA's Tier 1 standards require that emissions from vehicles be extremely clean. In comparison with four-stroke snowmobiles, snowcoaches operating within EPA's Tier 1 standards are cleaner, especially given their ability to carry up to seven times more passengers (Lela and White 2002). In addition, in 2004 EPA will begin phasing-in Tier 2 emissions standards for multi-passenger vans, and will be fully phased-in by 2009. Tier 2 standards will require that vehicles be even cleaner than Tier 1. Tier 2 standards would also significantly reduce the open loop mode of operation. If Tier 2 vehicles are converted to snowcoaches, then the emissions attributable to them would be further reduced in the parks.

If any of the vehicle's pollution control equipment, including the catalytic converter, associated piping, and other related parts that may release CO, HC or PM emissions in the event of mechanical failure or deterioration, had exceeded its useful life as published by the EPA, then the owner would be required to replace it. Generally, useful life for new vehicles (since 1996) is 120,000 miles or 11 years, whichever comes first. NPS is proposing that if a snowcoach owner was required to replace any pollution control equipment under this requirement, the new pollution control equipment would be required to be original equipment, if available from the vehicle's manufacturer, versus after-market equipment. If original equipment is no longer available snowcoach owners could then install after-market equipment. We are proposing that snowcoach owners install original equipment if available because it generally has a longer useful life and may be more efficient in reducing pollutants, although both are certified to the same level of emissions reduction. We are requesting comments on whether original equipment or other, including after market, equipment is more appropriate when replacing the pollution control equipment with respect to emission reduction and cost.

These air emissions requirements would be implemented during the 2005–2006 winter season.

NPS would continue to work with snowcoach owners, researchers, and other experts during the winters of 2003–2004 and 2004–2005 to better understand snowcoach emissions and to determine the most effective field testing methods. We ultimately intend to require that snowcoaches achieve numerical performance-based limits for emissions before being allowed entry into the park. We may propose a special regulation in the future to establish specific numerical performance based air and sound emission requirements for snowcoaches.

For sound emissions, snowcoaches would be required to operate at or below 75 dB by the winter of 2008–2009, as measured at 25 mph on the A-weighted scale at 50 feet. This test would be similar to Society of Automotive Engineers J1161 procedures except that snowcoaches would maintain a speed of 25 mph which is a typical snowcoach operating speed and 10 mph faster than the J1161 procedures prescribe. NPS intends to test and certify individual snowcoaches in a field setting because of the number of different makes, models, and years of manufacture being used in the parks and the fact that sound emissions vary from vehicle to vehicle. We are proposing to allow additional time to phase-in air and sound requirements for snowcoaches because of the substantial investment required to upgrade snowcoach technology and to encourage additional investment in mass transit snowcoaches.

Historic snowcoaches (defined as a Bombardier snowcoach manufactured in 1983 or earlier) would initially be exempt from air and sound requirements; however NPS will work with snowcoach owners to retrofit historic snowcoaches to meet the air and sound requirements. We are initially exempting historic snowcoaches from air and sound requirements to maintain the character of winter motorized oversnow travel. We also believe it is reasonable and prudent to work with outfitters and concessioners to determine how best to upgrade their equipment.

Beginning with the winter season of 2003–2004, all commercially guided snowmobiles operating within YNP would be required to be BAT. Beginning with the winter season of 2004–2005, all snowmobiles would be required to be BAT.

In GTNP and the Parkway, all snowmobiles operating on the Continental Divide Snowmobile Trail (CDST) and Jackson Lake must be BAT starting in 2004–2005. BAT requirements would also apply to all snowmobiles originating at Flagg Ranch and traveling west on the Grassy Lake Road. Snowmobiles originating in the Targhee National Forest and traveling eastbound on the Grassy Lake Road would not be required to utilize BAT; however, these snowmobiles could not travel further than Flagg Ranch. We are allowing this exception because the Grassy Lake Road in the Parkway is approximately 6 miles long, snowmobiles are not required to be BAT on U.S. Forest Service lands, and the NPS wishes to honor the request of the USFS that these visitors be able to access food, fuel, and other amenities available at Flagg Ranch. Any commercially guided snowmobiles authorized to operate in the Parkway or Grand Teton will be required to be BAT beginning with the winter season of 2003–2004.

NPS will annually publish a list of snowmobile makes, models, and year of manufacture that meet BAT requirements. The NPS intends to rely on certified air and sound emissions data from the private sector rather than establish its own independent testing program, which would be cost prohibitive. NPS intends to work cooperatively with the private sector—guides and outfitters as well as manufacturers—in the preparation of such lists. Each snowmobile model would be approved for entry into the parks for six winter seasons after it was first listed. Based on NPS experience, six years represents the typical useful life of a snowmobile, and thus six years provides purchasers with a reasonable length of time where operation is allowed once a particular model is listed as being compliant. Individual snowmobiles modified in such a way as to increase sound and air emissions of HC and CO beyond the proposed emission requirements would be denied entry to the parks. Currently, the NPS has sufficient test data on the 2002 Arctic Cat 4-Stroke and the 2002 Polaris Frontier to determine that they meet the BAT requirements. No other snowmobiles would be allowed entry into the parks unless they were subjected to the testing described above and met the BAT requirements herein proposed.

For both snowcoaches and snowmobiles, it would be the responsibility of the end users, guides and outfitters (or private snowcoach owners to the extent they are permitted for entry into the parks) to ensure that their oversnow vehicles comply with all applicable requirements.

Under the adaptive management framework, BAT requirements could be adjusted annually to protect park resources and values, including air quality, natural soundscapes, wildlife, visitor experience, and employee health and visitor safety. The process for changing air and sound requirements is described previously in "Monitoring and Adaptive Management." When adjusting the BAT requirements, one of the facts the NPS will consider is the best available technology in the snowmobile market. If there is a substantial improvement in the

snowmobile technology with respect to air and sound emissions, the NPS may consider adjusting these limits to reflect the best available technology. Based on technology improvements in the past few years, NPS expects that snowmobile technology will continue to improve, further reducing air and sound emissions. However, if technology worsens, the daily entry limits could be further restricted to protect park resources and values.

The NPS is interested in obtaining public comments on the issue of specifically how compliance with BAT should be determined, and what procedures NPS would use. For instance, we have preliminarily identified at least two methods that we could use to determine if snowmobiles are BAT-compliant. One method would be to average the manufacturer's Official Test Results (OTR). These tests are preformed by manufacturers in order to comply with EPA's snowmobile regulations (67 FR 68241), and reflect the actual emissions of snowmobiles. Another method would be to use the average Family Emissions Limit (FEL), which are the emissions limits that manufacturers certify to EPA for a specific engine class of snowmobiles. FELs will likely be set somewhat higher (*i.e.*, to allow for more emissions) than OTRs to account for variances in production and insure that individual snowmobiles do not exceed the FELs.

The restrictions on air and sound emissions proposed in this rule is not a restriction on what manufacturers may produce but an end-use restriction on which commercially produced snowmobiles and snowcoaches may be used in the parks. The NPS Organic Act (16 U.S.C. 1) authorizes the Secretary of the Interior to "promote and regulate" the use of national parks "by such means and measures as conform to the fundamental purpose of said parks * * * which purpose is to "conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Further, the Secretary is expressly authorized by 16 U.S.C. § 3 to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *." This exercise of the NPS Organic Act authority is not an effort by the NPS to regulate manufacturers and is consistent with Sec. 310 of the Clean Air Act.

Since 2001, Yellowstone and Grand Teton National Parks have been converting their own administrative fleet of snowmobiles to four-stroke machines. These machines have proven successful in use throughout the parks. NPS intends to continue to purchase these snowmobiles for most administrative uses. However, we recognize that some administrative applications, such as off-trail boundary patrols outside the park in deep powder, towing heavy equipment or disabled sleds, or law enforcement uses may require additional power beyond that supplied by existing 4-stroke snowmobiles. In these limited cases, NPS may use snowmobiles that exceed BAT requirements proposed in this rule.

Use of Trained Guides

To mitigate impacts to wildlife and visitor and employee safety, all recreational snowmobiles operated in Yellowstone National Park must be accompanied by a trained guide. During the development of the SEIS and the ROD, the NPS was requested to develop an alternative to commercially guided snowmobiles. As a result we are proposing that eighty percent of the authorized daily snowmobile entries through each entrance be allocated to commercially guided tours under concessions contracts similar to those currently operating in the parks. The remaining twenty percent of daily authorized snowmobile entries will be available for non-commercially guided trips that require a trained member of the group to be authorized by NPS to lead a group of snowmobilers. The NPS has set the current 80:20 ratio to allow the public an opportunity to visit the park at their own pace through private groups. This initial ratio is based on an NPS expectation of success in mitigating wildlife impacts through a variety of guiding alternatives. The NPS will analyze how well the non-commercial guide program works to minimize impacts on wildlife and enhance visitor safety, and through the adaptive management process may revise this ratio in future years.

Beginning with the winter season of 2003–2004, eighty percent of daily snowmobile entries through each Yellowstone entrance must be accompanied by a commercial guide. In order to provide adequate time for the development and implementation of the non-commercial guiding program, for the winter 2003–2004 only, non-commercial guides will not be required; however, private snowmobile parties will be required to travel in groups. Beginning with the winter season of 2004–2005, all snowmobiles in YNP must be accompanied by a guide, either through a concession or by an authorized non-commercial guide.

In Grand Teton and the Parkway, all snowmobile parties traveling north from Flagg Ranch must be accompanied by a guide, with the same phase-in as described above for YNP. All other snowmobilers in Grand Teton and the Parkway do not have to be accompanied by a guide. Thus, in the winter of 2003–2004, eighty percent of the authorized entries via the South Gate at YNP are allocated to commercially guided parties, and twenty percent to individuals without guides. The use of guides in Grand Teton and the Parkway is not otherwise required due to the low volume of use, the conditions for access to Jackson Lake for winter fishing, the through road characteristics of the CDST, as well as the inter-agency jurisdiction on the Grassy Lake Road.

Under the adaptive management framework, requirements for use of guides, including the commercial to non-commercial guide ratio, could be adjusted annually to protect park resources and values, including air quality, natural soundscapes, wildlife, visitor experience, and employee health and visitor safety.

Non-commercial guides will be required to successfully complete a training program approved by NPS that would address park rules, safety considerations, and appropriate actions to minimize impacts to wildlife and other park resources. The NPS has not fully developed the training course but will be working with private groups to develop a curriculum and make the training widely available to the public through private businesses by the winter of 2004–2005. The NPS will require individuals seeking a non-commercial guide certification to successfully complete the training course. The training provider will need to define "successfully" in order to ensure that the attendee has met the NPS objectives of the course.

Members of non-commercial guide parties may not compensate anyone, either directly or indirectly, for non-commercial guiding services. The NPS intends that the provision for non-commercial guides is to accommodate requests that the public have alternatives to using commercial guiding services, and thus no business transaction of any kind may take place in association with non-commercial guiding services. For example, a non-commercial guide may not provide a guiding service to someone in exchange for his or her employer receiving compensation in order to classify the activity as a non-commercial guiding service.

Commercial guides are also educated in safety, interpretive skills, and

appropriate actions to minimize impacts to resources and other visitors. Commercial guides receive more rigorous training and perform guiding duties, usually, as employees of a business. A commercial guide is defined as a guide who is hired by park visitors for a fee or compensation, as opposed to a non-commercial guide, who may not receive compensation or fees. Any person who guides for a fee or compensation must do so under a contract with the NPS to operate as a business within the boundaries of a park unit. Commercial guides are employed by local businesses. Those jobs are not performed by NPS employees.

Guided groups must contain from 2 to 11 snowmobiles, including the guide's machine. This would apply to commercial and non-commercial groups. Individual snowmobiles may not be operated separately from a group within the park. A minimum group size of two was established to require the public to concentrate snowmobiles together in order to reduce the frequency of wildlife encounters along the roadways. In this respect, guided parties will more closely resemble the "mass transit" aspect of snowcoach use. A maximum group size of 11 was established so that no one party would be so large that a single guide could not safely direct and manage all party members.

Except in emergency situations, guided parties must travel together and remain within a maximum distance of one-third mile of the first snowmobile in the group. This will insure that guided parties do not get spread too far out. One-third mile will allow for sufficient and safe spacing between individual snowmobiles within the guided party, allow the guide to maintain control over the group and minimize the impacts on wildlife.

Initial Daily Snowmobile Entry Limits

The number of snowmobiles that could enter the parks each day would be limited under this rule. These limits are intended to mitigate impacts to air quality, employee and visitor health and safety, natural soundscapes, wildlife, and visitor experience, while providing the opportunity to maintain historical levels of visitation to the parks with the use of snowcoaches. Once the daily snowmobile entry limits are reached, the only other means of public motorized access will be through the use of snowcoaches. No limits on snowcoach numbers are intended at this time, but could be considered in the future as part of the adaptive management process. The initial entry limits are identified in Table 1. Use limits identified in Table 1 include guides; thus both commercial and non-commercial guides are counted towards the daily entry limits. The NPS considered suggestions to not count guides themselves within these limits, but believe this suggestion would constitute a de facto increase in use from the levels being authorized. For YNP, the daily entry limits are identified for each entrance; for GTNP and the Parkway, the daily limits apply to total snowmobile use on the road segment.

Those limits are listed in the following table:

TABLE 1.—INITIAL DAILY SNOWMOBILE ENTRY LIMITS

Park entrance/road segment	Number of commercially-guided snowmobile entrance passes	Number of non-commercially guided snowmobile entrance passes [1]	Total number snowmobile entrance passes
YNP—North Entrance	40	10	50
YNP—West Entrance	440	110	550
YNP—South Entrance	200	50	250
YNP—East Entrance	80	20	100
GTNP and the Parkway—Total Use on Continental Divide Snowmobile Trail [3]	N/A	N/A	[2] 75
Parkway—Total Use Grassy Lake Road	N/A	N/A	[2] 75
Jackson Lake	N/A	N/A	[2] 40

[1] In the 2003–2004 winter season only, these entries would be available for unguided parties of 2 to 11 snowmobiles, to allow sufficient time to develop and implement a non-commercial guide training program.
[2] These users do not have to be accompanied by a guide.
[3] The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 75 daily snowmobile use limit applies to total use on this trail in both parks.

These daily entry limits would be implemented beginning with the winter season of 2003–2004. Adaptive management and monitoring programs would be implemented to allow the interim numbers to be assessed annually. The results of the adaptive management program would determine the need for increasing or decreasing snowmobile numbers to ensure adequate protection of park resources and values, including air quality, employee and visitor health and safety, natural soundscapes, wildlife, and visitor experience. For instance, if air quality monitoring, based on EPA protocols, shows that conditions near a park entrance or along a road segment are inconsistent with the goals set forth in the March 2003 ROD, the daily entry limits could be reduced to protect air quality. In addition, should NPS adjust BAT requirements, daily entry limits might also be increased or decreased.

The purpose of these caps is to impose strict limits on the numbers of snowmobiles that may use the parks in order to minimize resulting impacts. Compared to historical use where peak days found as many as 1,700 snowmobiles in the parks, these caps represent a reduction. While the caps allow in theory for some growth in daily average snowmobile use, it is uncertain at best whether the former peak day users who are now foreclosed will shift their snowmobile use to what were the previously less busy days. While NPS does not expect this to result in an actual increase in snowmobile usage from historic levels, the adaptive management process will be used to address impacts not presently foreseen.

The daily snowmobile entry limits were derived based on several factors. First, the daily limits are based on the analysis contained in the SEIS, which concluded that these entry limits, combined with other elements of this rule, would prevent impairment to park resources and values while allowing for an appropriate range of experiences available to park visitors. Second, they approximate at minimum the historic

average daily use at each entrance. At some entrances where park managers believe additional use could be accommodated without unacceptable impacts to park resources or values, the daily limits allow for growth beyond the historic daily averages.

During the winter of 2003–2004, reservations for private, unguided snowmobile parties may be made by contacting Xanterra Parks and Resorts at 307–344–7311. Every snowmobile a group uses in Yellowstone would require a reservation; thus, a group of four people riding double on two snowmobiles would need two reservations each day they snowmobile in the park. Reservations for commercially guided trips may be made by contacting the guide. The NPS is currently soliciting bids for commercially guided snowmobile concessions. Once guides are selected we will post a list of authorized commercial guides on our Web site at *http://www.nps.gov/yell.*

Visitors who go in and out of the park in a single day will be counted against entrance limits only at the initial entrance gate. For instance, a group that enters Yellowstone through the North Entrance, exits the park that afternoon to have lunch in West Yellowstone and re-enters the park through the West Entrance would only count towards the daily limits at the North Entrance.

Visitors who enter the parks through one entrance, exit at another entrance in order to spend that night out of the park, and then re-enter on the following day will be counted towards the daily entry limits on the following day. Snowmobile parties' subsequent entries will count towards the entry limits at whatever entrance station they first entered at the start of their trip. In the March 2003 ROD, NPS did not require that these entries be counted. After further consideration, the NPS believes that counting these entries will simplify management of snowmobile entries and the reservation system, will be less confusing to the public, and will keep the daily level of snowmobile use within the scope of the SEIS analysis.

Non-commercial groups would be required to have obtained by an advance reservation a daily entry pass, for the first entrance they intend to use on the first day of their trip and subsequent entries would be counted against the entrance gate they initially entered the park through. Thus, a non-commercial group entering at the West Entrance and spending the night outside the park would count towards the daily entry limits at the West Entrance each day the snowmobile is in the park, regardless of the entrance through which they actually re-enter.

Commercial groups would be counted each day towards their allocated number of daily entries at their base entrance as specified in their concessions contract. Thus, a commercial group entering at the West Entrance and spending the night outside the park would count against their allocation at their base entrance (West Entrance), not the entrance through which they actually enter on subsequent days.

Visitors by snowmobile spending the night in Yellowstone, such as at Old Faithful or Canyon Yurt Camp, would count towards the entry limit for each day they are in the park. These provisions could be modified through adaptive management.

Initially, snowmobiles rented at Old Faithful by an authorized concessioner will not count against daily entry limits. Currently, approximately 25 snowmobiles are available for rent at Old Faithful, and NPS controls the level of use through the concessions contract. Guiding requirements would apply to these snowmobile rentals. We do not intend for this snowmobile rental operation to substantially increase. This provision could be modified through adaptive management should monitoring detect unacceptable impacts to park resources and values.

NPS Park Passes and Fees

Because of past experiences with large groups on numerous snowmobiles, the NPS wishes to make clear the existing parameters on the use of NPS-issued Park Passes that permit entry into the park for free or at a reduced rate. Existing regulations regarding the various passes issued by the NPS specifically limit the number of people who may gain entrance to the park under a single passport or pass. The intent in the existing regulations is to admit, for free or at a reduced rate, only those persons occupying the same motor vehicle as the pass holder. Those regulations also specifically state that a second vehicle associated with this group but not occupied by the pass holder will be charged at the single-visit rate.

To carry that intent into winter use, the NPS wants to make clear that only the persons riding on the snowmobile with the passport or pass holder and their immediate family (spouse, parents, and children under the age of 21) may enter at the same fee rate as the passport or pass holder. No other associated persons or snowmobiles will be permitted entry at the reduced fee rate.

Lastly, the NPS is concerned about members of the public purchasing entrance reservations and reselling them for a personal profit since there will be a limited number of daily reservations available for non-commercial entrances. Therefore, the NPS is seeking comments on whether to prohibit the reselling of entrance reservations and by what means.

What Terms Do I Need To Know?

The NPS has added definitions for oversnow vehicle and designated oversnow route. Additionally, we have added definitions for commercial and non-commercial guides and have discussed those definitions at length earlier in this proposed rule. For snowmobiles, we are using the definition found at 36 CFR 1.4, as there is no need to alter that definition at this time. For the sake of clarity and ease, we are reiterating that definition again in this section. Earlier rulemakings specific to Yellowstone, Grand Teton and the Parkway referenced "unplowed roadways" and that terminology was changed to "designated oversnow routes" to more accurately portray the condition of the route being used for oversnow travel. Despite this terminology change, these routes will remain on roads or water surfaces used by motor vehicles and motorboats during other seasons. Previous rulemakings also referred only to snowmobiles or snowcoaches. Since there is a strong likelihood that new forms of machines will be developed that can travel on snow, a broader definition was developed to insure that such new technology remained subject to regulation. When a particular requirement or restriction only applies to a certain type of machine (for example: some concession restrictions only apply to snowcoaches) then the specific machine is stated and only applies to that type of vehicle, not all oversnow vehicles. However, oversnow vehicles that do not meet the strict definition of a snowcoach (*i.e.*, both weight and passenger capacity) would be subject to the same requirements as snowmobiles. The definitions listed under § 7.13(l)(1) will apply to all three parks. These definitions may be further clarified based on changes in technology.

Where Must I Operate My Snowmobile in the Park?

Specific routes are listed where snowmobiles may operate, but this proposed rule also provides latitude for the Superintendent to modify those routes available for use. When determining what routes are available

for use, the Superintendent will use criteria that are the same as those set forth in § 2.18(c), and may also take other issues into consideration including the most direct route of access, weather and snow conditions, the necessity to eliminate congestion, the necessity to improve the circulation of the visitor use patterns in the interest of public safety and protection of park resources. The criteria mentioned above are reiterated in this section since winter use management in these parks will not be specifically subject to § 2.18.

Snowmobiles authorized to operate on the frozen surface of Jackson Lake may gain access to the Lake by trailering their snowmobiles to the parking areas near the designated access points via the plowed roadway. There is no direct access from the CDST to Jackson Lake and use limits established for each area are distinctly separate.

What Other Conditions Apply to the Operation of Oversnow Vehicles?

A similar section existed in previous snowmobile regulations entitled "What other conditions are placed on snowmobile and snowcoach operations?" and addressed many of the same issues. A few minor changes were made to those operating requirements, including modifying the operating hours by one hour, limiting idling to 5 minutes at any one time, and no longer allowing operation of a snowmobile by persons holding only a learner's permit. These modifications were made based on experiences over the last few winters with winter use operations and the need to adjust requirements for safety and resource impact considerations.

What Conditions Apply to Alcohol Use While Operating an Oversnow Vehicle?

Although the regulations in 36 CFR 4.23 apply to oversnow vehicles, additional regulations were needed to address the issue of under-age drinking while operating a snowmobile and snowcoach operators or guides operating under the influence while performing services for others. Many states have adopted similar alcohol standards for under-age operators and commercial drivers and the NPS feels it is necessary to include these regulations specifically to help mitigate potential safety concerns.

The alcohol level for minors (anyone under the age of 21) is set at .02. Although the NPS endorses a "zero tolerance", a very low Blood Alcohol Content (BAC) is established to avoid a chance of a false reading. Mothers Against Drunk Driving and other organizations have endorsed this enforcement posture and the NPS agrees that under-age drinking and driving, particularly in a harsh winter environment, will not be allowed.

In the case of snowcoach operator or guides, a low BAC limit is also necessary. Those persons operating a snowcoach are likely to be carrying 8 or more passengers in a vehicle with tracks or skis that is more challenging to operate than a wheeled vehicle, and along oversnow routes that could pose significant hazards should the driver not be paying close attention or have impaired judgement. Similarly, persons guiding others (commercially or non-commercially) on a snowmobile have put themselves in a position of responsibility for the safety of other visitors and of minimizing impacts to park wildlife and other resources. Should the guide's judgement be impaired, hazards such as wildlife on the road or snow obscured features, could endanger all members of the group in an unforgiving climate. For these reasons, the NPS is requiring that all guides be held to a stricter than normal standard for alcohol consumption. Therefore, the NPS has established a BAC limit of .02 for snowcoach operators and snowmobile guides. Again, the NPS endorses a "zero tolerance" but provides a minimal amount of latitude to avoid false positive readings. Should a snowcoach operator or snowmobile guide be found to have a BAC above .02, their authorization to serve as an operator or guide will be suspended and a fine may be imposed.

Do Other NPS Regulations Apply to the Use of Oversnow Vehicles?

These regulations propose to supercede the NPS' general snowmobiling regulations at 36 CFR 2.18 in order to avoid confusion as to how two separate bodies of snowmobile regulation interrelate. Relevant portions of 36 CFR 2.18 have been incorporated within these proposed regulations. The proposed rule also supercedes 36 CFR 2.19(b) because it provides for the towing of people behind an oversnow vehicle. The proposed rule prohibits towing of persons on skis, sleds, or other sliding devices by motor vehicle or snowmobile, except in emergency situations. Towing people, especially children, is a potential safety hazard and health risk due to road conditions, traffic volumes, and direct exposure to snowmobile emissions. This rule does not affect supply sleds attached by a rigid device or hitch pulled directly behind snowmobiles or other oversnow vehicles as long as no person or animal is hauled on them. Other provisions of 36 CFR Parts 1 and 2 continue to apply to the operation of oversnow vehicles unless specifically excluded here.

Are There Any Other Forms of Non-Motorized Oversnow Transportation Allowed in the Park?

YNP has specifically prohibited dog sledding and ski-joring (the practice of a skier being pulled by dogs or a vehicle) to prevent disturbance or harassment to wildlife. These restrictions have been in place for several years under regulatory authority and would now be codified in these regulations.

May I Operate a Snowplane?

Prior to the winter of 2002–2003, snowplanes were allowed on Jackson Lake within GTNP under a permit system, but not authorized for operation in YNP or the Parkway. The operation of snowplanes is now prohibited in all three parks, and this rule continues that prohibition. To avoid any uncertainty from this previous use on Jackson Lake, this proposed rule includes language that specifically prohibits the operation of snowplanes in each of these parks.

Is Violating Any of the Provisions of This Section Prohibited?

While writing this rule, park staff became concerned that a statement did not exist specifically prohibiting violations of this section. Some Magistrates have interpreted the lack of a specific prohibitory statement to be ambiguous and therefore unenforceable. Although it would seem to be implicit that each instance of a failure to abide by specific requirements is a separate violation, the proposed regulation contains clarifying language for this purpose. Each occurrence of non-compliance with these regulations is a separate violation. However, it should also be noted that each individual regulatory provision (*i.e.*, numbered in separate subparagraphs throughout these three sections) could be violated individually and are of varying severity. Thus, each subparagraph violated can and should receive individual fines in accordance with the issuance of the park's bail schedule as issued by the appropriate Magistrate. It is not intended that violations of the individual subparagraphs of these regulations be treated as a single violation or subject only to a single fine.

Summary of Economic Analysis

In support of the proposed rulemaking, NPS conducted a draft benefit-cost analysis and regulatory flexibility analysis. In support of the final rulemaking, a quantitative benefit-cost analysis will be conducted in

which the expected effects of the final rule would be monetized. The quantitative benefit-cost analysis will draw on data gathered from a survey of winter visitors to Yellowstone and Grand Teton National Parks conducted during the 2002–2003 winter season. A draft report on the survey will be released in conjunction with the draft benefit-cost analysis issued in support of the proposed rulemaking. Selected preliminary results from the survey were used to inform the draft benefit-cost analysis. The final report on the winter visitor survey will be released in conjunction with the quantitative benefit-cost analysis of the final rule. For the purposes of this benefit-cost analysis, Alternative 1b, as implemented by the 2002 "delay rule", represents the baseline against which other alternatives are compared. Under this baseline, most snowmobile use would be prohibited in the parks as of the winter of 2004–2005, with restrictions on snowmobile use phased in during the winter of 2003–2004. Alternatives 2, 3, and 4, as discussed in the FSEIS, allow for continued recreational snowmobile use subject to daily limits on the number of snowmobiles that can enter the parks. This rulemaking proposes to promulgate alternative 4, with a few modifications.

The primary beneficiaries of Alternatives 2, 3, and 4 are the park visitors who ride snowmobiles in the park and the businesses that serve them. Benefits accruing to individual visitors are called consumer surplus gains and those accruing to businesses are called producer surplus gains. Consumer surplus measures the net economic benefit obtained by individuals from participating in their chosen activities, while producer surplus measures the net economic benefit obtained by businesses from providing services to individuals. Overall, Alternative 2 should provide greater consumer surplus benefits to snowmobile riders than Alternatives 3 and 4, since it is less restrictive with respect to entry limits, snowmobile emission standards, and guiding requirements. As with the benefits described above, the costs of any alternative are measured relative to the baseline conditions. The primary group that would incur costs under Alternatives 2, 3, and 4 would be the park visitors who do not ride snowmobiles and the businesses that provide services to these visitors, as well as members of the general public who place a value on protecting park resources from the negative externalities associated with snowmobile use. Out of the set of alternatives that allow for continued snowmobile access to the parks, Alternative 3 is expected to impose the lowest costs on non-snowmobile users who are adversely affected by snowmobile use because of the lower daily limits, stricter emission limits and guided tour requirement relative to Alternatives 2 and 4. Alternative 4 is expected to impose only slightly higher costs on non-snowmobile users than Alternative 3, with the biggest difference between Alternatives 3 and 4 coming from the higher daily use limits under Alternative 4.

Balancing the benefits and the costs presented in this section, Alternative 4, as proposed in this rulemaking, provides for increased consumer surplus for snowmobile riders while containing provisions that should help mitigate the costs imposed on those visitors who are affected by the negative externalities imposed by snowmobiles.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These conclusions are based on the analysis contained in the Final SEIS and a report we commissioned on the economic impact of this regulation, "Proposed Regulations on Snowmobile Riding in the Greater Yellowstone Area," MACTEC Engineering and Consulting, August 2003.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Implementing actions under this rule will not interfere with plans by other agencies or local government plans, policies, or controls since this is an agency specific change.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. It only affects the use of over-snow machines within specific national parks. No grants or other forms of monetary supplement are involved.

(4) This rule may raise novel legal or policy issues. The issue has generated local as well as national interest on the subject in the Greater Yellowstone Area. The NPS received nearly 360,000 public comment letters on the draft SEIS. Additionally, this is only the second NPS regulation to use an adaptive management strategy for managing visitor use levels. That concept, coupled with new provisions for Best Available Technology engine requirements, make this proposed rule unique to the NPS.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on information contained in the reports entitled "Winter 2002–2003 Visitor Survey: Yellowstone and Grand Teton National Parks" (MACTEC Engineering and Consulting, Inc. August 2003) and "Proposed Regulations on Snowmobile Riding in the Greater Yellowstone Area" (MACTEC Engineering and Consulting, Inc. August 2003). These reports are available in their draft form on the Yellowstone website. Final versions of these reports will be available upon publication of the final rule.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This rulemaking has no effect on methods of manufacturing or production and specifically affects the Wyoming region, not national or U.S. based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant

takings implications. Access to private property located within or adjacent to the parks will still be afforded the same access during winter as before this rule. No other property is affected.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. It addresses public use of national park lands, and imposes no requirements on other agencies or governments.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

National Environmental Policy Act

A Final Supplemental Environmental Impact Statement has been completed and a Record of Decision issued. The Final SEIS and ROD are available for review by contacting Yellowstone or Grand Teton Planning Offices or at *www.nps.gov/grte/winteruse/intro.htm.*

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects. Numerous tribes in the area were consulted in the development of the SEIS. Their major concern was to reduce the adverse effects on wildlife by snowmobiles. This rule does that through implementation of the guiding requirements and disbursement of snowmobile use through the various entrance stations.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example § 7.13 Yellowstone National Park.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may also e-mail the comments to this address: *Exsec@ios.doi.gov.*

Drafting Information: The primary authors of this regulation were Kevin Schneider, Outdoor Recreation Planner, Mona Divine, Deputy Chief Ranger, John Sacklin, Supervisory Park Resource Planner, Yellowstone National Park and; Bill Holda, Supervisory Park Ranger, Grand Teton National Park; and Kym Hall, NPS Regulations Program Manager, and Barry Roth, Attorney-Advisor, Washington, DC.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Planning Office, Yellowstone National Park, PO Box 168, Yellowstone National Park, WY 82190. You may also comment via the Internet at *www.nps.gov/yell/rule.* Finally, you may hand deliver comments to Planning Office, Mammoth Hot Springs, Yellowstone National Park, Wyoming. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

We propose to amend 36 CFR part 7 as set forth below:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. Amend § 7.13 to revise paragraph (l) to read as follows:

§ 7.13 Yellowstone National Park.

* * * * *

(l)(1) *What terms do I need to know? Commercial guide* means those guides who operate as a snowmobile guide for a fee or compensation and are authorized to operate in the park under a concession contract.

Non-commercial guide means those authorized guides who have successfully completed an NPS-approved training course and provide guiding services without compensation.

Oversnow route means that portion of the unplowed roadway located between the road shoulders and is designated by snow poles or other poles, ropes, fencing, or signs erected to regulate over-snow activity. Oversnow routes include pullouts or parking areas that are groomed or marked similarly to roadways and are adjacent to designated oversnow routes. An oversnow route may also be distinguished by the interior boundaries of the berm created by the packing and grooming of the unplowed roadway. Only oversnow vehicles are permitted on oversnow routes.

Oversnow vehicle means a snowmobile, snowcoach, or other motorized vehicle that is intended for travel primarily on snow and is authorized by the Superintendent to operate in the park. An oversnow vehicle that does not meet the definition of a snowcoach or a snowplane must comply with all requirements applicable to snowmobiles.

Snowcoach means a self-propelled mass transit vehicle intended for travel on snow, having a curb weight of over 1000 pounds (450 kilograms), driven by a track or tracks and steered by skis or tracks, having a capacity of at least 8 passengers.

Snowplane means a self-propelled vehicle intended for oversnow travel and driven by an air-displacing propeller.

(2) *May I operate a snowmobile in Yellowstone National Park?* You may operate a snowmobile in Yellowstone National Park in compliance with use limits and entry passes, guiding requirements, operating dates, equipment, and operating conditions established in this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter.

(3) *May I operate a snowcoach in Yellowstone National Park?* Commercial snowcoaches may be operated in Yellowstone National Park under a concessions contract. Non-commercial snowcoaches may be operated if authorized by the Superintendent. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section:

(i) Beginning with the winter of 2005–2006, all non-historic snowcoaches must meet NPS emissions requirements. These requirements are the EPA's emission standards for the vehicle at the time it was manufactured.

(ii) Any pollution control equipment that has exceeded its useful life must be replaced.

(iii) Tampering with or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(iv) Individual snowcoaches will be periodically inspected tested to determine compliance with the requirements of paragraphs (l)(3)(i) through (l)(3)(iii) of this section.

(v) Beginning with the winter of 2008–2009, all non-historic snowcoaches must meet NPS sound requirements. Snowcoaches must operate at or below 75 dB(A) as measured at 25 mph on the A-weighted scale at 50 feet using test procedures similar to Society of Automotive Engineers J1161 (revised 1983).

(vi) Historic snowcoaches (Bombardier snowcoaches manufactured in 1983 or earlier) are not initially required to meet air or sound requirements.

(4) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound emissions requirements may be operated in Yellowstone National Park. The park will identify snowmobile makes, models, and year of manufacture that meet those requirements. Any snowmobile not so identified by the NPS may not be operated in the park.

(i) Snowmobiles must achieve air emissions below 15 g/kW-hr for hydrocarbons and 120 g/kW-hr for carbon monoxide as tested using a 5-mode engine dynamometer in accordance with the test cycle identified by EPA's snowmobile regulations in 40 CFR parts 1051 and 1065.

(ii) For sound emissions snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985).

(iii) Snowmobiles not operating under a concessions contract do not have to meet air and sound requirements for the winter 2003–2004 only.

(5) *Where must I operate my snowmobile in Yellowstone National Park?* You must operate your snowmobile only upon designated oversnow routes established within the park. The following oversnow routes are designated for snowmobile use:

(i) The Grand Loop Road from its junction with Terrace Springs Drive to Norris Junction.

(ii) Norris Junction to Canyon Junction.

(iii) The Grand Loop Road from Norris Junction to Madison Junction.

(iv) The West Entrance Road from the park boundary at West Yellowstone to Madison Junction.

(v) The Grand Loop Road from Madison Junction to West Thumb.

(vi) The South Entrance Road from the South Entrance to West Thumb.

(vii) The Grand Loop Road from West Thumb to its junction with the East Entrance Road.

(viii) The East Entrance Road from the East Entrance to its junction with the Grand Loop Road.

(ix) The Grand Loop Road from its junction with the East Entrance Road to Canyon Junction.

(x) The South Canyon Rim Drive.

(xi) Lake Butte Road.

(xii) In the developed areas of Madison Junction, Old Faithful, Grant Village, Lake, Fishing Bridge, Canyon, Indian Creek, and Norris.

(xiii) The Superintendent may designate additional oversnow routes for snowmobiles only when the use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources.

(xiv) The Superintendent may open or close these or other routes, or portions thereof, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety, and other factors. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(xv) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(6) *What routes are designated for snowcoach use?* Authorized snowcoaches may only be operated on the routes designated for snowmobile use in paragraphs (l)(5)(i) through (l)(5)(xii) of this section and the following additional oversnow routes:

(i) Firehole Canyon Drive.

(ii) Fountain Flat Road.

(iii) Virginia Cascades Drive.

(iv) North Canyon Rim Drive.

(v) Riverside Drive.

(vi) That portion of the Grand Loop Road from Canyon Junction to Washburn Hot Springs overlook.

(vii) The Superintendent may designate or close these or other oversnow routes for snowcoach travel. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(7) *Will I be required to use a guide while snowmobiling in Yellowstone?* Beginning in the winter of 2004–2005, all recreational snowmobile operators must be accompanied by a guide that has successfully completed an NPS-approved training program.

(8) *What other requirements apply to the use of snowmobile guides?* During the winter of 2003–2004 only, eighty percent (80%) of the authorized daily snowmobile entries are allocated under concessions contracts for commercial guiding services, while the remaining twenty percent (20%) of the authorized daily snowmobile entries are allocated to the general public and do not require a guide. Beginning the winter of 2004–2005, eighty percent (80%) of the authorized daily snowmobile entries for each entrance are allocated for commercially guided parties, while the remaining twenty percent (20%) of the authorized daily snowmobile entries are allocated for non-commercially guided parties.

(i) Non-commercial guides will be required to successfully complete a training program approved by the Superintendent to include training on park rules, safety considerations, and appropriate actions to minimize impacts to wildlife and other park resources.

(ii) Snowmobile parties must travel in a group of at least two snowmobiles but no more than 11 snowmobiles, including that of the guide.

(iii) It is prohibited for non-commercial guides, or anyone else, to receive fees or other forms of compensation for non-commercial guiding services.

(iv) Guided parties must travel together within a maximum of one-third

mile of the first snowmobile in the group.

(v) The Superintendent may change requirements related to guiding, including the commercial: non-commercial guide ratio. Except for emergency situations, changes to guiding requirements may be made annually and the public will be notified of those changes by one or more of the procedures listed in § 1.7(a) of this chapter.

(9) *Are there limits established for the numbers of snowmobiles permitted to enter the park each day?* Beginning with the winter of 2003–2004, the numbers of snowmobiles allowed to enter the park each day will be limited to a certain number per entrance. The initial limits are listed in the following table:

TABLE 1 TO § 7.13.—INITIAL DAILY SNOWMOBILE ENTRY LIMITS

Park entrance road segment	Number of commercially-guided snowmobiles entrance passes	Number of non-commercially guided snowmobile entrance passes [1]	Total number of snowmobile entrance passes
(i) YNP—North Entrance	40	10	50
(ii) YNP—West Entrance	440	110	550
(iii) YNP—South Entrance	200	50	250
(iv) YNP—East Entrance	80	20	100

[1] In the 2003–2004 winter season only, these entries would be available for unguided parties, to allow sufficient time to develop and implement a non-commercial guide training program.

(v) The limits established in Table 1 to this section apply until modified by the Superintendent. The Superintendent may establish different limits on an annual basis, after taking into consideration the effectiveness of air and sound requirements, the state of technology, monitoring results, or other relevant information. The public will be made aware of any new limits through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter.

(10) *When may I operate my snowmobile or snowcoach?* (i) A snowmobile or snowcoach may only be operated between 7:00 a.m. and 9:00 p.m.

(ii) The Superintendent may adjust operating hours. Except for emergency situations, changes to operating hours may be made annually and the public will be notified of those changes through publication in the **Federal Register** and through one or more of the methods listed in § 1.7(a) of this chapter.

(11) *What other conditions apply to the operation of oversnow vehicles?* (i) The following operating conditions are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Operating an oversnow vehicle while the operator's state motor vehicle license or privilege is suspended or revoked by any state.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Operating an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following operating conditions are required:

(A) All vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle operators must possess a valid state motor vehicle operator's license. A learner's permit does not satisfy this requirement. The license must be carried on the operator's person at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid state registration sticker from any state in the United States.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(12) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations contained in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the operator is 20 years of age or younger and the alcohol concentration in the operator's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the operator is a snowmobile guide or a snowcoach operator and the alcohol concentration in the operator's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(iii) Refusing to take an alcohol or drug test, as required under 36 CFR 4.23, or any conviction for driving under the influence of drugs or alcohol while driving a motor vehicle or operating an oversnow vehicle disqualifies an operator from snowmobile guiding or operating a commercial snowcoach.

(13) *Do other NPS regulations apply to the use of oversnow vehicles?* The following sections apply to the use of oversnow vehicles, but the provisions of this section govern for purposes of operating an oversnow vehicle:

(i) Notwithstanding the definition of vehicle set forth in § 1.4, the provisions of §§ 4.3, 4.4, 4.12, 4.13, 4.14, 4.20, 4.21, 4.22, and 4.23 of this chapter apply to the operation of an oversnow vehicle.

(ii) The use of snowmobiles in Yellowstone is not subject to §§ 2.18 and 2.19(b) of this chapter.

(14) *Are there any other forms of non-motorized oversnow transportation allowed in the park?* Non-motorized

travel consisting of skiing, skating, snowshoeing, or walking are permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR part 1.

(i) The Superintendent may designate areas of the park as closed, reopen such areas or establish terms and conditions for non-motorized travel within the park in order to protect visitors, employees or park resources.

(ii) Dog sledding or ski-jorring is prohibited.

(15) *May I operate a snowplane in Yellowstone?* The operation of a snowplane in Yellowstone is prohibited.

(16) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (l)(1) through (l)(15) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

* * * * *

3. Amend § 7.21 to revise paragraph (a) to read as follows:

§ 7.21 John D. Rockefeller, Jr., Memorial Parkway.

(a)(1) *What terms do I need to know?* All the terms in § 7.13(l)(1) of this part apply to this section.

(2) *May I operate a snowmobile in the Parkway?* You may operate a snowmobile in the Parkway in compliance with use limits, guiding requirements, operating dates, equipment, and operating conditions established in this section. The Superintendent may establish additional operating conditions and shall provide notice of those conditions in accordance with § 1.7(a) of this chapter.

(3) *May I operate a snowcoach in the Parkway?* Commercial snowcoaches may be operated in the Parkway under a concessions contract. Non-commercial snowcoaches may be operated if authorized by the Superintendent. Snowcoach operation is subject to the conditions stated in the concessions contract and all other conditions identified in this section.

(i) Beginning with the winter of 2005–2006, all non-historic snowcoaches must be NPS air emissions requirements. These requirements are the EPA's emission standards for the vehicle at the time it was manufactured.

(ii) Any pollution equipment that has exceeded it useful life must be replaced.

(iii) Tampering with or disabling a snowcoach's original pollution control equipment is prohibited except for maintenance purposes.

(iv) Individual snowcoaches will be periodically inspected to determine compliance with the requirements of paragraphs (a)(3)(i) through (a)(3)(iii) of this section.

(v) Beginning with the winter of 2008–2009, all non-historic snowcoaches must meet NPS sound requirements. Snowcoaches must operate at or below 75 dB(A) as measured at 25 mph on the A-weighted scale at 50 feet using test procedures similar to Society of Automotive Engineers J1161 (revised 1983).

(vi) Historic snowcoaches (Bombardier snowcoaches manufactured in 1983 or earlier) are not required to meet air or sound requirements.

(4) *Must I operate a certain model of snowmobile?* Only commercially available snowmobiles that meet NPS air and sound requirements may be operated in the parkway. The park will identify snowmobile makes, models, and year of manufacture that meet those requirements. Any snowmobile not so identified by the NPS may not be operated in the park.

(i) Snowmobiles must achieve air emissions below 15 g/kW-hr for hydrocarbons and 120 g/kW-hr for carbon monoxide as tested using a 5-mode engine dynamometer in accordance with the test cycle identified by EPA's snowmobile regulations in 40 CFR parts 1051 and 1065.

(ii) For sound emissions snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985).

(iii) These air and sound emissions requirements shall not apply to snowmobiles originating in the Targhee National Forest and traveling on the Grassy Lake Road to Flagg Ranch; however, these snowmobiles may not travel further into the Parkway than Flagg Ranch.

(5) *Where must I operate my snowmobile in the Parkway?* You must operate your snowmobile only upon designated oversnow routes established within the Parkway. The following oversnow routes are designated for snowmobile use:

(i) The Continental Divide Snowmobile Trail (CDST) along U.S. Highway 89/287 from the southern boundary of the Parkway north to the Snake River Bridge.

(ii) Along U.S. Highway 89/287 from the Snake River Bridge to the northern boundary of the Parkway.

(iii) Grassy Lake Road from Flagg Ranch to the western boundary of the Parkway.

(iv) The Superintendent may designate other oversnow routes for snowmobile use only when the use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources.

(v) The Superintendent may open or close these routes or other routes, or portions thereof, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety or to effectively manage visitor use and experience. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(vi) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(6) *What routes are designated for snowcoach use?* (i) Authorized snowcoaches may only be operated on the route designated for snowmobile use in paragraph (a)(5)(ii) of this section. No other routes are open to snowcoach use.

(ii) The Superintendent may designate or close these or other oversnow routes for snowcoach travel. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(7) *Will I be required to use a guide while snowmobiling in the Parkway?* Beginning in the winter of 2004–2005, all recreational snowmobile operators using the oversnow route along U.S. Highway 89/287 from Flagg Ranch to the northern boundary of the parkway must be accompanied by a guide that has successfully completed an NPS-approved training program. A guide is not required in other portions of the parkway.

(8) *What other requirements apply to the use of snowmobile guides?* During the winter of 2003–2004 only, eighty percent (80%) of the authorized daily snowmobile use on U.S. Highway 89/287 from the Snake River Bridge to the northern boundary of the Parkway is awarded under concessions contracts for commercial guiding services, while the remaining twenty percent (20%) of the authorized daily snowmobile entries do not require a guide. Beginning the winter of 2004–2005, eighty percent (80%) of the authorized daily snowmobile use on this road segment are allocated for commercially guided parties. The remaining twenty percent (20%) of authorized daily snowmobile use is allocated for non-commercially guided parties.

(i) Non-commercial guides are required to successfully complete a training program approved by the Superintendent to include training on parkway rules, safety considerations, and appropriate actions to minimize impacts to wildlife and other parkway resources.

(ii) Snowmobile parties must travel in a group of at least two snowmobiles but no more than 11 snowmobiles, including the guide.

(iii) It is prohibited for non-commercial guides, or anyone else, to receive fees or other forms of compensation for the non-commercial guiding services.

(iv) Guided parties must travel together within a maximum of one-third mile of the first snowmobile in the group.

(v) The Superintendent may change requirements related to guiding, including the commercial to non-commercial guide ratio. Except for emergency situations, changes to guiding requirements may be made annually and the public will be notified of those changes by one or more of the procedures listed in § 1.7(a) of this chapter.

(9) *Are there limits established for the numbers of snowmobiles permitted to enter the Parkway each day?* (i) Beginning with the winter of 2003–2004, the numbers of snowmobiles allowed to enter the Parkway each day will be limited to a certain number per road segment.

TABLE 1 TO § 7.21.—INITIAL DAILY SNOWMOBILE ENTRY LIMITS

Park entrance/road segment	Number of commercially-guided snowmobile entrance passes	Number of non-commercially guided showmobile entrance passes	Total number of snowmobile entrance passes
(A) GTNP and the Parkway—Total Use on CDST[2]	N/A	N/A	[1] 75
(B) Parkway—Toal Use Grassy Lake Road	N/A	N/A	[1] 75

[1] These users do not have to be accompanied by a guide.
[2] The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 75 daily snowmobile use limit applies to total use on this trail in both parks.

(ii) The limits established in Table 1 to this section apply until modified by the Superintendent. The Superintendent may modify these limits annually after taking into consideration the effectiveness of air and sound requirements, the state of technology, monitoring results, or other relevant information. The public will be made aware of new limits through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter.

(10) *When may I operate my snowmobile or snowcoach?* (i) A snowmobile or snowcoach may only be operated between 7 a.m. and 9 p.m.

(ii) The Superintendent may adjust operating hours. Except for emergency situations, changes to operating hours may be made annually and the public will be notified of those changes through publication in the **Federal Register** and through one or more of the methods listed in § 1.7(a) of this chapter.

(11) *What other conditions apply to the operation of oversnow vehicles?* (i) The following operating conditions are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Operating an oversnow vehicle while the operator's state motor vehicle license or privilege is suspended or revoked by any state.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Operating an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or parkway resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles, except in emergency situations.

(ii) The following operating conditions are required:

(A) All vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle operators must possess a valid state motor vehicle operator's license. The license must be carried on the operator's person at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid state registration sticker from any state in the United States.

(iii) The Superintendent may impose other terms and conditions as necessary to protect parkway resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(12) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the operator is 20 years of age or younger and the alcohol concentration in the operator's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the operator is a guide or a snowcoach operator and the alcohol concentration in the operator's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(iii) Refusing to take an alcohol or drug test, as required under 36 CFR 4.23, or any conviction for driving under the influence of drugs or alcohol while driving a motor vehicle or operating an oversnow vehicle disqualifies an operator from guiding or operating a commercial snowcoach.

(13) *Do other NPS regulations apply to the use of oversnow vehicles?* The following sections apply to the use of oversnow vehicles, but the provisions of this section govern for purposes of operating an oversnow vehicle:

(i) Notwithstanding the definition of vehicle set forth in § 1.4, the provisions of §§ 4.1, 4.3, 4.4, 4.12, 4.13, 4.14, 4.20, 4.21, 4.22, and 4.23 of this chapter

apply to the operation of an oversnow vehicle.

(ii) The use of snowmobiles in the Parkway is not subject to §§ 2.18 and 2.19(b) of this chapter.

(14) *Are there any other forms of non-motorized oversnow transportation allowed in the parkway?* (i) Non-motorized travel consisting of skiing, skating, snowshoeing, or walking are permitted unless otherwise restricted pursuant to this section or other provisions of 36 CFR part 1 provided you follow all applicable regulations.

(ii) The Superintendent may designate areas of the parkway as closed, reopen such areas or establish terms and conditions for non-motorized travel within the parkway in order to protect visitors, employees or park resources.

(15) *May I operate a snowplane in the parkway?* The operation of a snowplane in the parkway is prohibited.

(16) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (a)(1) through (a)(15) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

* * * * *

4. Amend § 7.22 to revise paragraph (g) to read as follows:

§ 7.22 Grand Teton National Park.

* * * * *

(g)(1) *What terms do I need to know?* All the terms in § 7.13(l)(1) of this part apply to this section.

(2) *May I operate a snowmobile in the Grand Teton National Park?* You may operate a snowmobile in Grand Teton National Park in compliance with use limits, guiding requirements, operating dates, equipment, and operating conditions established in this section. The Superintendent may establish additional operating conditions and provide notice of those conditions in accordance with § 1.7(a) of this chapter.

(3) *May I operate a snowcoach in Grand Teton National Park?* It is prohibited to operate a snowcoach in Grand Teton National Park.

(4) *Must I operate a certain model of snowmobile in the park?* Only commercially available snowmobiles that meet NPS air and sound requirements may be operated in Grand Teton National Park. The park will identify snowmobile makes, models, and year of manufacture that meet those requirements. Any snowmobile not so identified by the NPS may not be operated in the park.

(i) Snowmobiles must achieve air emissions below 15 g/kW-hr for hydrocarbons and 120 g/kW-hr for carbon monoxide as tested using a 5-mode engine dynamometer in accordance with the test cycle identified by EPA's snowmobile regulations in 40 CFR parts 1051 and 1065.

(ii) For sound emissions snowmobiles must operate at or below 73dB(A) as measured at full throttle according to Society of Automotive Engineers J192 test procedures (revised 1985).

(iii) These air and sound requirements do not apply to snowmobiles while in use to access lands authorized by paragraphs (g)(14) and (g)(16) of this section.

(iv) Snowmobiles do not have to meet air and sound requirements for the winter 2003–2004 only.

(5) *Where must I operate my snowmobile in the park?* You must operate your snowmobile only upon designated oversnow routes established within the park. The following oversnow routes are designated for snowmobile use:

(i) The frozen water surface of Jackson Lake for the purposes of ice fishing only. Those persons accessing Jackson lake for ice fishing must possess a valid state fishing license and the proper fishing gear.

(ii) The Continental Divide Snowmobile Trail along U.S. 26/287 from Moran Junction to the eastern park boundary and along U.S. 89/287 from Moran Junction to the north park boundary.

(iii) The Superintendent may designate snowmobile routes only when the use is consistent with the park's natural, cultural, scenic and aesthetic values, safety considerations, park management objectives, and will not disturb wildlife or damage park resources.

(iv) The Superintendent may open or close these or other routes, or portions thereof, and may establish separate zones for motorized and non-motorized use on Jackson Lake, after taking into consideration the location of wintering wildlife, appropriate snow cover, public safety and to effectively manage visitor use and experience. Notice of such opening or closing shall be provided by one or more of the methods listed in § 1.7(a) of this chapter.

(v) Maps detailing the designated oversnow routes will be available from Park Headquarters.

(6) *Will I be required to use a guide while snowmobiling in Grand Teton National Park?* (i) You will not be required to use a guide while snowmobiling in Grand Teton National Park.

(ii) The Superintendent may establish requirements related to the use of guides, including requirements for commercial and/or non-commercial guides. Changes to guiding requirements may be made annually and the public will be notified of those changes by one or more of the procedures listed in § 1.7(a) of this chapter.

(7) *Are there limits established for the numbers of snowmobiles permitted to operate in Grand Teton National Park each day?* (i) Beginning with the winter of 2003–2004, the numbers of snowmobiles allowed to enter the park each day will be limited to a certain number per road segment or area. The initial limits are listed in the following table:

TABLE 1. TO § 7.22.—TO INITIAL DAILY SNOWMOBILE ENTRY LIMITS

Park entrance/road segment	Number of commercially-guided snowmobile entrance passes	Number of non-commercially guided snowmobile entrance passes	Total number of snowmobile entrance passes
(A) GTNP and the Parkway—Total Use on CDST [2]	N/A	N/A	75
(B) Jackson Lake	N/A	N/A	40

[1] These users do not have to be accompanied by a guide.
[2] The Continental Divide Snowmobile Trail lies within both GTNP and the Parkway. The 75 daily snowmobile use limit applies to total use on this trail in both parks.

(ii) The limits established in Table 1 of this section apply until modified by the Superintendent. The Superintendent may modify these limits annually after taking into consideration the effectiveness of air and sound

requirements, the state of technology, monitoring results, or other relevant information. The public will be made aware of new limits through publication in the **Federal Register** and using one or more of the methods listed in § 1.7(a) of this chapter.

(8) *When may I operate my snowmobile?* (i) A snowmobile may only be operated between 7 a.m. and 9 p.m.

(ii) The Superintendent may adjust operating hours. Except for emergency situations, changes to operating hours may be made annually and the public will be notified of those changes through publication in the **Federal Register** and through one or more of the methods listed in § 1.7(a) of this chapter.

(9) *What other conditions apply to the operation of oversnow vehicles?* (i) The following operating conditions are prohibited:

(A) Idling an oversnow vehicle more than 5 minutes at any one time.

(B) Operating an oversnow vehicle while the operator's state motor vehicle license or privilege is suspended or revoked by any state.

(C) Allowing or permitting an unlicensed driver to operate an oversnow vehicle.

(D) Operating an oversnow vehicle in willful or wanton disregard for the safety of persons, property, or park resources or otherwise in a reckless manner.

(E) Operating an oversnow vehicle without a lighted white headlamp and red taillight.

(F) Operating an oversnow vehicle that does not have brakes in good working order.

(G) The towing of persons on skis, sleds or other sliding devices by oversnow vehicles.

(ii) The following operating conditions are required:

(A) All vehicles that stop on designated routes must pull over to the far right and next to the snow berm. Pullouts must be utilized where available and accessible. Vehicles may not be stopped in a hazardous location or where the view might be obscured, or operating so slowly as to interfere with the normal flow of traffic.

(B) Oversnow vehicle operators must possess a valid state motor vehicle operator's license. The license must be carried on the operator's person at all times.

(C) Equipment sleds towed by a snowmobile must be pulled behind the snowmobile and fastened to the snowmobile with a rigid hitching mechanism.

(D) Snowmobiles must be properly registered and display a valid state registration sticker from any state in the United States.

(iii) The Superintendent may impose other terms and conditions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7(a) of this chapter.

(10) *What conditions apply to alcohol use while operating an oversnow vehicle?* In addition to the regulations in 36 CFR 4.23, the following conditions apply:

(i) Operating or being in actual physical control of an oversnow vehicle is prohibited when the operator is 20 years of age or younger and the alcohol concentration in the operator's blood or breath is 0.02 grams or more of alcohol per 100 milliliters or blood or 0.02 grams or more of alcohol per 210 liters of breath.

(ii) Operating or being in actual physical control of an oversnow vehicle is prohibited when the operator is a commercial guide or a snow coach operator and the alcohol concentration in the operator's blood or breath is 0.02 grams or more of alcohol per 100 milliliters of blood or 0.02 grams or more of alcohol per 210 liters of breath.

(11) *Do other NPS regulations apply to the use of oversnow vehicles?* The following sections apply to the use of oversnow vehicles, but the provisions of this section govern for purposes of operating an oversnow vehicle:

(i) Notwithstanding the definition of vehicle set forth in § 1.4, the provisions of §§ 4.1, 4.3, 4.4, 4.12, 4.13, 4.14, 4.20, 4.21, 4.22, and 4.23 of this chapter apply to the operation of an oversnow vehicle.

(ii) The use of snowmobiles in Grand Teton National Park is not subject to §§ 2.18 and 2.19(b) of this chapter.

(12) *Are there any other forms of non-motorized oversnow transportation allowed in the park?* (i) Non-motorized travel including skiing, skating, snowshoeing, or walking are permitted provided you follow all applicable regulations.

(ii) The Superintendent may designate areas of the park as closed or establish terms and conditions for skiing, snowshoeing, or walking in order to protect visitors, employees or park resources.

(13) *May I operate a snowplane in Grand Teton National Park?* The operation of a snowplane in Grand Teton National Park is prohibited.

(14) *May I continue to access public lands via snowmobile through the park?* Reasonable and direct access, via snowmobile, to adjacent public lands will continue to be permitted on designated routes through the park. Requirements established in this section related to snowmobile operator age, guiding and licensing do not apply on these oversnow routes. The following routes only are designated for access via snowmobile to public lands:

(i) From the parking area at Shadow Mountain directly along the unplowed portion of the road to the east park boundary.

(ii) Along the unplowed portion of the Ditch Creek Road directly to the east park boundary.

(15) *For what purpose may I use the routes designated in paragraph (g)(14) of this section?* You may use those routes designated in paragraph (g)(14) of this section only to gain direct access to public lands adjacent to the park boundary.

(16) *May I continue to access private property within or adjacent to the park via snowmobile?* Until such time as the United States takes full possession of an inholding in the park, the Superintendent may establish reasonable and direct access routes via snowmobile, to such inholding, or to private property adjacent to park boundaries for which other routes or means of access are not reasonably available. Requirements established in this section related to air and sound emissions, snowmobile operator age, licensing, and guiding do not apply on these oversnow routes. The following routes are designated for access to properties within or adjacent to the park:

(i) The unplowed portion of Antelope Flats Road off U.S. 26/89 to private lands in the Craighead Subdivision.

(ii) The unplowed portion of the Teton Park Road to the piece of land commonly referred to as the "Clark Property".

(iii) From the Moose-Wilson Road to the land commonly referred to as the "Barker Property".

(iv) From the Moose-Wilson Road to the land commonly referred to as the "Wittimer Property".

(v) From the Moose-Wilson Road to those two pieces of land commonly referred to as the "Halpin Properties".

(vi) From the south end of the plowed sections of the Moose-Wilson Road to that piece of land commonly referred to as the "JY Ranch".

(vii) From Highway 26/89/187 to those lands commonly referred to as the "Meadows", the "Circle EW Ranch", the "Moulton Property", the "Levinson Property" and the "West Property".

(viii) From Cunningham Cabin pullout on U.S. 26/89 near Triangle X to

the piece of land commonly referred to as the "Lost Creek Ranch".

(ix) Maps detailing designated routes will be available from Park Headquarters.

(17) *For what purpose may I use the routes designated in paragraph (g)(16) of this section?* Those routes designated in paragraph (g)(16) of this section are only to access private property within or directly adjacent to the park boundary. Use of these roads via snowmobile is authorized only for the landowners and their representatives or guests. Use of these roads by anyone else or for any other purpose is prohibited.

(18) *Is violating any of the provisions of this section prohibited?* Violating any of the terms, conditions or requirements of paragraphs (g)(1) through (g)(17) of this section is prohibited. Each occurrence of non-compliance with these regulations is a separate violation.

Dated: August 15, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–21332 Filed 8–22–03; 10:22 am]

BILLING CODE 4312–CX–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WV061–6031b; FRL–7549–2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Redesignation of the Follansbee PM_{10} Nonattainment Area to Attainment and Approval of the Associated Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a request from the State of West Virginia to redesignate the Follansbee area of Brooke County, West Virginia (Follansbee area) from nonattainment to attainment for the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM_{10}). EPA is also approving the plan for maintaining the PM_{10} standard in the Follansbee area and contingency measures as revisions to the West Virginia State Implementation Plan (SIP). In the Final Rules section of this **Federal Register**, EPA is redesignating the Follansbee area to attainment and approving the State's SIP submittals of the maintenance plan and contingency measures as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by September 26, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Makeba A. Morris, Chief, Air Quality Planning Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Electronic comments should be sent either to *morris.makeba@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in the **SUPPLEMENTARY INFORMATION** section. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, SE., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by e-mail at *knapp.ruth@epa.gov*.

SUPPLEMENTARY INFORMATION:

For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number WV061–6031b in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *By E-mail.* Comments may be sent by electronic mail (e-mail) to *morris.makeb@epa.gov*, attention WV–061–6031b. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through *Regulations.gov*, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. *Regulations.gov.* Your use of *Regulations.gov* is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, then select "Environmental Protection Agency" at the top of the page and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

c. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in the **ADDRESSES** section of this document. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format.

Avoid the use of special characters and any form of encryption.

2. *By Mail.* Written comments should be addressed to the EPA Regional Office listed in the **ADDRESSES** section of this document. For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

Submittal of CBI Comments

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

Considerations When Preparing Comments to EPA

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: August 18, 2003.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 03–21911 Filed 8–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–7479–4]

New Mexico: Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to codify in the regulations entitled "Approved State Hazardous Waste Management Programs", New Mexico's authorized hazardous waste program. EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that EPA will enforce under the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act (RCRA). In the "Rules and Regulations" section of this **Federal Register**, the EPA is codifying and incorporating by reference the State's hazardous waste program as an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this codification and incorporation by reference in the preamble to the immediate final rule. Unless we get written comments which oppose this incorporation by reference during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose these actions, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send written comments by September 26, 2003.

ADDRESSES: Send written comments to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson at (214) 665–8533 at the address listed in **ADDRESSES.**

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: March 27, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, EPA Region 6.

[FR Doc. 03–21595 Filed 8–26–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–7479–2]

Oklahoma: Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to codify in the regulations entitled "Approved State Hazardous Waste Management Programs", Oklahoma's authorized hazardous waste program. EPA will incorporate by reference into the Code of Federal Regulations (CFR) those provisions of the State regulations that are authorized and that EPA will

enforce under the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act (RCRA). In the "Rules and Regulations" section of this **Federal Register**, the EPA is codifying and incorporating by reference the State's hazardous waste program as an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe these actions are not controversial and do not expect comments that oppose them. We have explained the reasons for this codification and incorporation by reference in the preamble to the immediate final rule. Unless we get written comments which oppose this incorporation by reference during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose these actions, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send written comments by September 26, 2003.

ADDRESSES: Send written comments to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

FOR FURTHER INFORMATION CONTACT: Alima Patterson at (214) 665–8533 at the address listed in **ADDRESSES**.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: March 27, 2003.

Lawrence E. Starfield,

Acting Regional Administrator, EPA Region 6.

[FR Doc. 03–21593 Filed 8–26–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket Nos. 02–34 and 02–54, FCC 03–102]

Satellite License Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission invites comment on revisions to the bond requirement for satellite licensees, adopted in the *First Report and Order* in this proceeding. The intended purpose of this proceeding is to discourage parties from applying for satellite licenses for speculative reasons, without unreasonably discouraging applicants who intend to construct and launch their licensed satellite systems.

DATES: Comments are due on or before September 26, 2003. Reply comments are due on or before October 27, 2003.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Satellite Division, International Bureau, (202) 418–1539.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Further Notice of Proposed Rulemaking adopted April 23, 2003 and released May 19, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20554.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Paperwork Reduction Act: This NPRM does not contain any proposed new or modified reporting, recordkeeping, or other compliance requirements not previously adopted in this proceeding. *See* Paperwork Reduction Act of 1995, Public Law No. 104–13.

Initial Regulatory Flexibility Analysis: As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Further Notice of Proposed Rulemaking provided above. The Commission will send a copy of the Further Notice of Proposed Rulemaking, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the Further Notice of Proposed Rulemaking and IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

Need for, and Objectives of, the Proposed Rules. The objective of the proposed rules is to discourage parties from filing "speculative" satellite applications, *i.e.*, applying for a satellite license without intending to construct the satellite facilities. These rule revisions are needed because speculative satellite applications can delay or preclude other parties from obtaining a satellite license and providing service to the public.

Legal Basis. The proposed action is supported by sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules May Apply. The RFA directs agencies to provide a description

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 through 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).

of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.[2] The RFA generally defines the term "small entity "as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[3] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[6] Nationwide, as of 1992, there were approximately 275,801 small organizations.[7] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[8] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[9] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[10] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities. Below, we further describe and estimate the number of small entity licensees that may be affected by the proposed rules, if adopted.

The rules proposed in this Notice of Proposed Rulemaking would affect satellite operators, if adopted. The Commission has not developed a definition of small entities applicable to satellite operators. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Satellite Telecommunications.[11] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[12] 1997 Census Bureau data indicate that, for 1997, 273 satellite communication firms had annual receipts of under $10 million. In addition, 24 firms had receipts for that year of $10 million to $24,999,990.[13]

In addition, Commission records reveal that there are approximately 240 space station operators licensed by this Commission. We do not request or collect annual revenue information, and thus are unable to estimate the number of licensees that would constitute a small business under the SBA definition. Small businesses may not have the financial ability to become space station licensees because of the high implementation costs associated with satellite systems and services.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements. In this Further Notice of Proposed Rulemaking, the Commission invites comment on whether to revise the bond requirement adopted in the First Report and Order in this proceeding. None of the proposed revisions are intended to increase the projected reporting, record keeping, or other compliance requirements associated with the bond requirement.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

We have attempted not to foreclose any option. In addition, we invite comment on allowing licensees to create an escrow account as an alternative to a bond requirement. We also invite interested parties to propose alternatives for a standard for a waiver of the bond requirement for licensees providing public safety services, including small entities.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules. None.

Summary of Further Notice of Proposed Rulemaking: In the *First Report and Order* in this proceeding, the Commission adopted a bond requirement for new satellite licensees. Under this requirement, licensees of geostationary satellite orbit (GSO) satellites must post a bond of $5 million, payable upon failure to meet a milestone. Licensees of non-geostationary satellite orbit (NGSO) satellite systems must post a bond of $7.5 million. Non-U.S.-licensed satellite operators seeking access to the U.S. market through a letter of intent must also post bonds in these amounts.

The Commission adopted these bond amounts on an interim basis pending additional comment. Accordingly, parties are invited to comment on the bond amount. Parties are also invited to comment on whether to allow satellite licensees to create an escrow account in lieu of posting a bond. Finally, the Commission solicited comment on revising the bond requirements for non-U.S.-licensed satellite operators to be consistent with the requirements for U.S. licensees.

Ordering Clauses

Accordingly, *it is ordered*, pursuant to sections 4(i), 7(a), 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 303(c), 303(f), 303(g), 303(r), that this Further Notice of Proposed Rulemaking in IB Docket No. 02–34 is hereby *adopted*.

It is further ordered that the Consumer Information Bureau, Reference Information Center, *shall send* a copy of this Further Notice of Proposed Rulemaking in IB Docket No. 02–34, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

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[2] 5 U.S.C. 603(b)(3).

[3] *Id.* 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*." 5 U.S.C. 601(3).

[5] Small Business Act, 15 U.S.C. 632 (1996).

[6] 5 U.S.C. 601(4).

[7] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[8] 5 U.S.C. 601(5).

[9] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[10] *Id.*

[11] "This industry comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications." Small Business Administration, 1997 NAICS Definitions, NAICS 513340.

[12] 13 CFR 120.121, NAICS code 513340.

[13] U.S. Census Bureau, 1997 Economic Census, Subject Service: Information, "Establishment and Firm Size," Table 4, NAICS 513340 (Issued Oct. 2000).

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 03–21650 Filed 8–26–03; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 061303D]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting/public hearing.

SUMMARY: The Western Pacific Fishery Management Council (Council) will meet on September 23, 2003, at 12 noon Hawaiian Standard Time to review the draft regulatory amendment to the Fishery Management Plan for the Pelagics Fishery of the Western Pacific (Pelagics FMP), which includes a range of alternatives (including no action) that permit some access by pelagic longline vessels to the southern fishing grounds during April and May while continuing to conserve sea turtles. The Council will also consider and may take final action on conservation measures intended to offset any potential harm that the Hawaii-based longline fishery could still pose to turtles. In addition, the Council will discuss potential modifications to the current northern prohibition on shallow-set longlining and may take initial action on this issue.

ADDRESSES: The Council meeting will be held via telephone conference call at the Council offices, 1164 Bishop Street, Suite 1400, Honolulu Hawaii 96813; telephone: 808–522–8220; Call in number: 1–808–527–2929 PIN 5785; FAX: 808–522–8226.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The agenda during the Council meeting will include the following items:

1. Pelagic Fisheries

A. Status of Biological Opinion, litigation and mediation

B. Final action on modifications to the current longline seasonal southern area closure.

C. Initial action to consider modifications to the current northern prohibition on shallow-set longlining.

In 2002, the Council developed a regulatory framework adjustment to the Pelagics FMP which was intended to minimize interactions with, and harm to, Pacific sea turtles. These measures stemmed from the non-discretionary Reasonable and Prudent Alternative contained in a Biological Opinion issued in 2001 by NMFS under the Endangered Species Act. Among the various measures implemented were a prohibition on shallow-set longline fishing north of the equator, and a seasonal area closure from 15° N. lat. to the equator, and from 145° W. long. to 180° long. to all fishing by pelagic longline vessels during April and May of each year. These measures have contributed to reductions in sea turtle interactions. However, the southern area closure exacts a significant economic burden on the Hawaii-based longline fleet because it is unable to access these fishing grounds when bigeye and yellowfin tuna stocks are seasonally abundant during April and May. At its 118th meeting in June 2003, the Council took initial action to consider modifying the southern area closure to reduce the economic impact on the longline fishery while continuing to conserve turtles. The Council also directed its staff to continue preparation of a regulatory amendment for potential changes to the Pelagics FMP, including a detailed analysis of a range of modifications to the southern area closure and the impacts of those alternatives on sea turtles, fisheries, and the environment. At its 119th meeting, the Council will review this draft regulatory amendment to the Pelagics FMP, which includes a range of alternatives (including no action) that permit some access by pelagic longline vessels to the southern fishing grounds during April and May while continuing to conserve sea turtles. The Council will also consider and may take final action on conservation measures intended to offset any potential harm that the Hawaii-based longline fishery could still pose to turtles. In addition, the Council will discuss potential modifications to the current northern prohibition on shallow-set longlining and may take initial action on this issue.

2. Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and to any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 22, 2003.

Bruce C. Morehead,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 03–21953 Filed 8–26–03; 8:45 am]
BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 166
Wednesday, August 27, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

[I.D. 082203A]

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Commercial Fisheries Employment Survey.

Form Number(s): None.

OMB Approval Number: None.

Type of Request: Regular submission.

Burden Hours: 583.

Number of Respondents: 7,000.

Average Hours Per Response: 5 minutes.

Needs and Uses: The data will be collected to estimate full- and part-time employment in commercial fisheries. This information is needed to identify how many individuals are affected by proposed commercial fishing regulations. The respondents will be commercial fishing vessel owners and captains.

Affected Public: Individuals or households, business or other for-profit organizations.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 20, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–21952 Filed 8–26–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 29–2003]

Wacker Chemical Corporation—Application for Subzone Status; Amendment of Application and Extension of Comment Period

The application for subzone status at the Wacker Chemical Corporation in Adrian, Michigan, submitted by the Greater Detroit Foreign-Trade Zone, Inc. (68 FR 38009, 6/26/03), has been amended. The company has indicated that imported coloring matter and pigments (HTS 3204.12, 3204.17, 3204.19, 3206.19, 3206.20 and 3206.49) will be admitted to the zone in privileged foreign status.

The comment period for the case referenced above is being extended to September 25, 2003, to allow interested parties additional time in which to comment. Rebuttal comments may be submitted during the subsequent 15 day period, until October 10, 2003. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW., Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW., Washington, DC 20230.

Dated: August 19, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–21844 Filed 8–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 40–2003]

Foreign-Trade Zone 181–Akron/Canton, Ohio; Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Northeast Ohio Trade & Economic Consortium (NEOTEC), grantee of FTZ 181, requesting authority to expand and reorganize its zone in Akron/Canton, and the seven-county northeast Ohio area, within and adjacent to the Cleveland Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 15, 2003.

FTZ 181 was approved by the Board on December 23, 1991 (Board Order 546, 57 FR 41; 1/2/92). On March 13, 1998, the grant of authority was reissued to NEOTEC (Board Order 965, 63 FR 13837; 3/23/98). The zone was expanded in 1997 (Board Order 902, 62 FR 36044; 7/3/97), in 1998 (Board Order 968, 63 FR 16962; 4/7/98), in 1999 (Board Order 1053, 64 FR 51291; 9/22/99) and in 2002 (Board Order 1260, 67 FR 71933; 12/3/02). FTZ 181 currently consists of six sites in the northeast, Ohio area:

Site 1 (8 Parcels, 555 acres total)—158 acres within the Akron-Canton Regional Airport; 3 acres 8400 Port Jackson Avenue, Jackson Township; 21 acres at 3175, 3325 & 3375 Gilchrist Road, Mogadore; 30 acres at the Cuyahoga Falls Industrial Park, Cuyahoga Falls; 30 acres at the Terminal Warehouse facility, 1779 Marvo Drive; 20 acres at 1600 Terex Road, Hudson, operated by Kobelco Stewart Bolling, Inc; 190 acres at the Ascot Industrial Park, Akron; and, 103 acres at the Prosper Industrial Park, Stow, Summit County, Ohio;

Site 2 (3 Parcels, 1,371 acres total)—within the Youngstown-Warren Regional Airport area, Trumbull County, Ohio;

Site 3 (3 Parcels, 190 acres total)—124 acres—2 parcels located at the Columbiana County Port Authority port terminal facility: (19 acres) at 1250 St. George Street, East Liverpool, and (105 acres) at the Leetonia Industrial Park, State Route 344, Leetonia, Ohio; and 66 acres at the Intermodal Industrial Park Port Facility, Wellsville, Columbiana County, Ohio;

Site 4 (7 Parcels, 1,197 acres total)—91 acre industrial park located on the southeast side

of the city of Massillon, 840-acre Stark County Intermodal Facility, 12 acres located at 8045 Navarre Road, SW operated by Peoples Cartage, 40-acre Ford Industrial Park, adjacent to the City of Canton, 18 acres located at 2207 Kimball Road, SE., Canton, operated by Peoples Cartage, 158-acre Sawburg Commerce Industrial Park on the west side of Alliance, and 38-acre Detroit Diesel warehouse located at 515 11th Street, SE., Canton, Stark County, Ohio.

Site 5 (2,347 acres total)—located at the Mansfield Lahm Airport complex, State Route 13 at South Airport Road, Mansfield (includes the airport facility's four industrial parks, airport fueling facilities, and the 91-acre Gorman-Rupp facility, Mansfield, Ohio; and,

Site 6 (309 acres)—Kinder-Morgan/Pinney Dock and Transport Company, Inc. Facility located at 1149 East 5th Street, Ashtabula, Ohio.

The applicant is now requesting authority to update, expand and reorganize the zone as described below. The proposal also requests authority to reduce certain existing sites, and to add several new industrial park sites. Overall, the zone would be reduced by 217 acres.

Site 1 will be reorganized and expanded by deleting 7 acres from the southern portion of the Akron-Canton Regional Airport and adding it to a parcel south of Airport Drive; deleting 79 acres from the southeast and northwestern portions of the Ascot Industrial Park and adding 23 acres to the southern portion of the Park; deleting 18 acres from the rail line portion of the Prosper Industrial Park and adding 18 acres to the southeastern portion of the Park; and adding the 56-acres Akron-Fulton Municipal Airport and three new industrial park sites as follows: 55-acre Streetsboro Road Industrial Park; Hudson; 35-acre Freeway Drive Industrial Park, Macedonia; and, 23-acre Hy-Ko Business Park, Northfield. Overall, the reorganized Site 1 would cover 668 acres.

Site 2 will be reorganized by deleting 393 acres from the southern portion of the Youngstown-Warren Regional Airport and adding two new industrial parks as follows: 110-acre Lordstown Industrial Park, Trumbull County and the 100-acre Centerpointe Business Park, Austintown, Mahoning County, Ohio. The reorganized Site 2 would cover 1,188 acres.

Site 4: will be reorganized by deleting 21 acres from the southern portion of the Intermodal Facility and 31 acres from the northern and southern portions of the 91-acre MDF Industrial Park, Massillon. The applicant also requests to add the 52-acre Cloverleaf Park in Massillon. Total acreage will remain at 1,197.

Site 5: will be modified by deleting 308 acres from the southwestern portion of the Mansfield Lahm Airport. The reorganized Site 5 would cover 2,039 acres.

New Site 7: will involve the Interstate Commerce Center/Frost Road Commerce Center in Streetsboro (149 acres) and the Commerce Industrial Park (12 acres), Portage County, Ohio.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below.

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW., Washington, DC 20230.

The closing period for their receipt is October 27, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 10, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Office for the U.S. Department of Commerce Export Assistant Center, 600 Superior Avenue East, Suite 700, Cleveland, Ohio 44114.

Dated: August 15, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–21845 Filed 8–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 41–2003]

Proposed Foreign-Trade Zone—Lubbock, TX; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the City of Lubbock, Texas, to establish a general-purpose foreign-trade zone at sites in Lubbock, Texas, adjacent to the Lubbock Customs port of entry. The FTZ application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 18, 2003. The applicant is authorized to make the proposal under Senate Bill 691 of the 70th Legislature of the State of Texas (Regular Session, 1987), codified as Tex. Rev. Civ. Stat. Ann. Art. 144601.

The proposed zone would consist of two sites covering 2,393 acres in the Lubbock area of west Texas: *Site 1* (693 acres, 3 parcels)—within the 3,000-acre Lubbock International Airport complex, 5401 N. Martin Luther King, Jr.; Blvd., Lubbock; and, *Site 2* (1,700 acres, 3 parcels)—within the 2,467-acre Reese Technology Center, 9801 Reese Blvd, Lubbock. The Lubbock International Airport complex is located within an Enterprise Zone. The Reese Technology Center was formerly the Reese Air Force Base and is currently being developed for commercial use as a business center for distribution, manufacturing and other industrial development. Site 1 is owned by the applicant and Site 2 is owned by the Lubbock Reese Redevelopment Authority.

The application indicates a need for zone services in the Lubbock, Texas, area. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on September 23, 2003, at 1 p.m., City of Lubbock City Council Chambers, 1625—13th Street, Lubbock, Texas 79457.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099—14th Street, NW., Washington, DC 20005; or

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is October 27, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 10, 2003).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the Lubbock International Airport, 5401 Martin Luther King Boulevard, Lubbock, Texas 79401.

Dated: August 19, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–21843 Filed 8–26–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–827]

Certain Cased Pencils From the People's Republic of China: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

EFFECTIVE DATE: August 27, 2003.

FOR FURTHER INFORMATION CONTACT: Paul Stolz or Magd Zalok, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4474 or (202) 482–4162, respectively.

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On January 22, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on certain cased pencils from the People's Republic of China, covering the period December 1, 2001, through November 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009, 3010 (January 22, 2003). The preliminary results are currently due no later than September 2, 2003.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the preliminary results by 120 days until no later than December 31, 2003. *See* Decision Memorandum from Thomas Futtner, Acting Office Director for Import Administration, Group II, Office IV to Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, Group II, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the Department's main building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 19, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 03–21904 Filed 8–26–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-602–805, A-484–802, A-419–802, A-588–864, A-791–818, A-570–889]

Notice of Initiation of Antidumping Duty Investigations: Electrolytic Manganese Dioxide From Australia, Greece, Ireland, Japan, South Africa and the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Initiation of Antidumping Duty Investigations.

EFFECTIVE DATE: August 27, 2003.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand (Australia) at 202–482–3207, Doug Kirby (Greece) at 202–482–3782, John Drury (Ireland) at 202–482–0195, Brandon Farlander (Japan) at 202–482–0182, Matthew Renkey (South Africa) at 202–482–2312, Rachel Kreissl (PRC) at 202–482–0409 or Alex Villanueva at 202–482–3208, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Initiation of Investigations

The Petition

On July 31, 2003, the Department of Commerce ("Department") received an antidumping duty petition ("Petition") filed in proper form by Kerr-McGee Chemical LLC ("Kerr-McGee or Petitioner"). Kerr-McGee is a domestic producer of electrolytic manganese dioxide ("EMD"). On August 13, 2003, Petitioner submitted information to supplement the Petition ("Supplemental Response"). Additionally, on August 13, 2003, the Department asked Petitioner to clarify the sales-below-cost allegations and the countries for which the allegations were made. *See Memorandum to the File from Alex Villanueva, Case Analyst through James C. Doyle, Program Manager; EMD: Regarding Sales- Below-Cost Allegations*, dated August 13, 2003. On August 14, 2003, Petitioner submitted a letter indicating that the sales-below-costs allegations were made only for Ireland, Japan and South Africa. Consequently, Petitioner did not request a sales-below-cost allegation for Australia and Greece. On August 20, 2003, Petitioner submitted revised lost sales and revenue information. In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), Petitioner alleges imports of EMD from Australia, Greece, Ireland, Japan, South Africa and the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring, or threatening material injury to, the U.S. industry.

The Department finds that Petitioner filed its Petition on behalf of the domestic industry because it is an interested party as defined in section 771(9)(C) of the Act, and it has demonstrated sufficient industry support with respect to the investigations it is presently seeking. *See Determination of Industry Support for the Petition* section below.

Scope of the Investigations

These investigations cover all manganese dioxide (MnO_2) that has been manufactured in an electrolysis process, whether in powder, chip or plate form. Excluded from the scope are natural manganese dioxide ("NMD") and chemical manganese dioxide ("CMD"), including high-grade chemical manganese dioxide ("CMD-U").

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 2820.10.0000. The tariff classifications are provided for convenience and Customs purposes; however, the written description of the scope of these investigations is dispositive.

As discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 days of publication of this notice. Comments should be addressed to Import Administration's Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. This period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that the Department's industry support determination, which is to be made before the initiation of the investigation, be based on whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission ("ITC"), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (Ct. Int'l Trade 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 642–44 (Ct. Int'l Trade 1988).

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the Petition.

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted in the Petition we have determined there is a single domestic like product, EMD, which is defined further in the "Scope of the Investigations" section above, and we have analyzed industry support in terms of that domestic like product. For more information on our analysis and the data upon which we relied, *see Antidumping Duty Investigation Initiation Checklist* ("*Initiation Checklist*"), dated August 20, 2003, Appendix II - Industry Support on file in the Central Record Unit ("CRU") in room B-099 of the main Department of Commerce building.

In determining whether the domestic petitioner has standing, we considered the industry support data contained in the petition with reference to the domestic like product as defined above in the "Scope of the Investigations" section. To estimate 2002 production for all domestic EMD producers named in the Petition, Petitioner estimated production data using Roskill Information Service Ltd. and conservatively assumed that the remaining company produced to capacity. For purposes of determining industry support, Petitioner combined its year 2002 production data with Erachem Comilog, Inc. ("Erachem"), also a domestic producer, and supporter of the Petition. To estimate 2002 production for all other domestic EMD producers named in the Petition, Petitioner estimated production data using Roskill Information Services Ltd. and conservatively assumed the remaining company produced to capacity. This estimated production data was added to the actual production data detailed above to arrive at total estimated U.S. production of EMD for the year 2002 in short tons. *See* Petition at Exhibit 9 describing how this production data was estimated.

Using the data described above, the share of total estimated U.S. production of EMD in year 2002 represented by Petitioner and Erachem, a supporter of the Petition, equals over 50 percent of total domestic production. Therefore, the Department finds the domestic producers who support the Petition account for at least 25 percent of the total production of the domestic like product. In addition, as no domestic producers have expressed opposition to the Petition, the Department also finds the domestic producers who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.

Therefore, we find that Petitioner has met the requirements of section 732(c)(4)(A) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The source or sources of data for the deductions and adjustments relating to U.S. and foreign market prices and cost of production ("COP") and constructed value ("CV") have been accorded

treatment as business proprietary information. Petitioner's sources and methodology are discussed in greater detail in the business proprietary version of the Petition and in our *Initiation Checklist*. We corrected certain information contained in the Petition's margin calculations; these corrections are set forth in detail in the *Initiation Checklist*. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine this information and revise the margin calculations, if appropriate.

Periods of Investigation

The anticipated period of investigation ("POI") for Australia, Greece, Ireland, Japan and South Africa will be July 1, 2002 through June 30, 2003. The anticipated POI for the PRC will be January 1, 2003 through June 30, 2003. *See* 19 CFR 351.204(b).

Export Price for All Countries

In calculating the U.S. price, Petitioner has relied exclusively on average unit value ("AUV") data with respect to the HTSUS number 2820.10.0000. This HTS number is a "basket category" as it includes both subject and non-subject merchandise. This HTS number includes the subject merchandise, EMD, as well as non-subject merchandise, CMD, and possibly NMD[1]. Historically, the Department has not accepted basket category AUV's as the basis for U.S. price unless petitioners can provide evidence that the imports classified under the basket category overwhelmingly consist of subject merchandise. In this case, Petitioner has provided information on the record that supports its position that the overwhelming percentage of the imports from the subject countries are, in fact, within the scope of the investigation.

Petitioner used PIERS data to corroborate its contention that the imports under HTSUS number 2820.10.0000 are in fact overwhelmingly subject merchandise because PIERS provides greater product identification information than official U.S. Census data as reported on the International Trade Commission's Dataweb import statistics ("Dataweb").

[1] Note that Petitioner indicated at footnote 11 on page 6 of its July 31, 2003, petition, that NMD would be in the basket category HTS number 2820.10.0000. However, it would appear that NMD is properly classified under HTS 2602.00.0000, with 10-digit designations varying according to manganese weight. As a result, NMD should not be included in the basket category.

Petitioner points out that for the subject countries, in many instances, PIERS data clearly identifies EMD for individual shipments. For other shipments, PIERS often identifies them as simply "Manganese Dioxide." These shipments could very well be of subject merchandise but PIERS' lack of specificity prevents a clear identification as such. Given the reluctance of the Department to rely on basket category AUV's for U.S. price, we requested that Petitioner demonstrate that the PIERS data captures the universe of subject merchandise sales during the POI. Additionally, for subject countries where a portion of total POI imports cannot be clearly identified as EMD, we requested that Petitioner demonstrate through other means that all (or at least an overwhelming majority) of the imports were in fact EMD. In order to show the completeness of the PIERS data, Petitioner provided a ratio of total imports according to the PIERS data, as divided by total imports as reported by Dataweb for each of the six countries in the petition. A review of the concordance between PIERS and Dataweb show that for five of the six countries, a substantial majority of the imports are EMD. *See* Supplemental Response at Exhibit A.

In the case of Ireland, the PIERS import volume is significantly less than the Dataweb volume. Petitioner suggests that the discrepancy between PIERS and Dataweb is due to systematic under-reporting of Irish EMD imports in PIERS. According to Petitioner, EMD imports from Ireland as shown in PIERS are likely mis-labeled as imports from the UK, because there is no EMD production in England, Scotland, or Wales. In addition, Petitioner believes that some imports from Ireland are entering the United States via Canada, and PIERS may have excluded such entries entirely as PIERS does not report on truck, plane, or railway entries. *See* Supplemental Response at pages 22–24. We found this explanation reasonable because we found no evidence to contradict these statements after conducting a review of the data submitted by Petitioner. *See Initiation Checklist*. Therefore, we find that there is a sufficient basis to accept the Irish AUV data as a basis for U.S. price.

As the second step in its analysis, Petitioner examined each PIERS import entry and compared those which specifically identified the imported product as EMD to those identifying another product, which was usually simply "manganese dioxide," thereby generating another set of ratios.[2] For five countries (Australia, Greece, Ireland, Japan, and South Africa), the PIERS-based EMD-to-total-imports ratios show that at least approximately eight-seven percent of the entries in the basket HTS category were EMD, while two of the countries (South Africa and Greece) were one-hundred percent. Extrapolating the PIERS-based results to the Dataweb figures, the Department is able to adequately conclude that the overwhelming portion of imports reflected in the Dataweb figures are EMD, and are therefore adequate figures upon which to base export price for Australia, Greece, Ireland, Japan, and South Africa.

Finally, we note that the PIERS EMD-to-total imports ratio does not demonstrate that all imports from the PRC are EMD and that there is evidence on the record that the PRC does produce CMD and NMD. As a result, Petitioner provided further information to corroborate its argument that the Chinese imports to the United States were EMD. Specifically, Petitioner provided Dataweb statistics that showed that there were entries of Chinese merchandise in only three months of the POI to two different ports. Petitioner provided an affidavit to attest to the fact that the material was significantly EMD. *See* Petition at Exhibit 5. The volumes indicated in the affidavit match two of the three entries listed in the Dataweb statistics, and represent approximately eighty-nine percent of the volume entered into the United States under the relevant HTS number. Petitioner did not have any information regarding the third and final month's entry volume. However, the average unit value of the third month's entries is significantly higher than the others. Therefore, Petitioner notes that the inclusion of this data point is conservative since it lowers the overall margin. *See Initiation Checklist*. Therefore, we find that there is a sufficient basis to accept the Chinese AUV data as a basis for U.S. price.

Australia

Export Price

For a description of export price for Australia, *see Export Price for All*

[2] Note that these ratios only counted those PIERS entries which could be positively identified as EMD in the numerator. However, the remaining entries may include EMD, so the actual EMD-to-total imports ratios may in fact be higher. Moreover, Petitioner also provided additional evidence that it is likely that only EMD is being imported under this HTS category. Petitioner provided information that CMD is produced only in Belgium and the PRC, while NMD is predominantly produced in Gabon, Ghana, Brazil, the PRC, Mexico, and India *See* Petition at Exhibit 9 and 13.

Countries above. Petitioner also adjusted this AUV data for foreign inland freight costs. *See* Petition at Exhibit 28 and *Initiation Checklist.*

Normal Value

With respect to normal value ("NV"), Petitioner provided information that there were no commercial quantity sales of EMD in the home market during the POI and that there is no viable third country market on which to base NV. *See* Petition at Exhibit 6 and 18. Therefore, Petitioner based NV on CV. *See* Supplemental Response at Exhibit K.

Petitioner calculated cost of manufacturing ("COM") based on its own production experience, adjusted for known differences between costs incurred to produce EMD in the United States and Australia using publicly available data. To calculate interest, Petitioner relied upon information from Delta-Australia's corporate parent, Delta PLC, for the year 2002. Petitioner based profit on the 2002 experience of Ticor Limited, a producer of titanium dioxide, which Petitioner stated was similar to the production process of manganese dioxide. *See* Petition at page 21. We have accepted this methodology for purposes of this initiation. The price to CV comparison produced an estimated dumping margin of 47.01 percent.

Greece

Export Price

For a description of export price for Greece, *see Export Price for All Countries* above. Petitioner made no deduction for imputed credit expenses or foreign inland freight costs. *See Initiation Checklist.*

Normal Value

With respect to NV; Petitioner stated it did not know whether the home market for Greece was viable and home market prices were not reasonably available for Tosoh-Greece's sales of EMD during the POI. *See* Petition at page 23. However, Petitioner provided a third country price for EMD offered for sale in Belgium. The Petition provides evidence that these sales of EMD in the third-country market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act. We note, however, that Petitioner did not request a sales-below-cost of production investigation for Greece. Therefore, because the home market prices were unavailable, the home market viability is unknown and the largest third country market price is below COP, Petitioner's dumping allegation is based on CV.

Pursuant to section 773(b)(3) of the Act, cost of production ("COP") consists of manufacture ("COM"), selling, general and administrative (SG&A) expenses, and packing. Petitioner calculated COM based on its own production experience, adjusted for known differences between costs incurred to produce EMD in the United States and Greece using publicly available data. To calculate interest, Petitioner relied upon information based upon the 2002 financial statement of Tosoh Corporation, the corporate parent of Tosoh-Greece. To calculate SG&A, petitioner relied upon the 2002 financial statement of a similar company for which data was reasonably available, Aluminum de Grece Industrial and Commercial S.A. ("Aluminum de Grece"). Petitioner chose Aluminum de Grece, an aluminum producer, because the production of aluminum is similar to EMD production.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, Petitioner based NV for Greece on constructed value ("CV"). Petitioner calculated CV using the COM, SG&A and interest expense figures used to compute Greece home market costs. Consistent with section 773(e)(2) of the Act, the petitioner included in CV an amount for profit. For profit, Petitioner relied upon amounts reported in Aluminum de Grece's 2002 financial statement. See Supplemental Response at Exhibit L. Petitioner explained that the production of Aluminum De Grece is similar to the process of EMD as they are both energy intensive and involve purification of the ore feedstock and electrolysis. *See* Petition at page 24.

We are initiating this investigation based on constructed value of EMD from Greece calculated by Petitioner. Based on the comparison of the U.S. price to NV, the estimated dumping margin is 22.86 percent. *See Initiation Checklist.*

Ireland

U.S. Price

For a description of export price for Ireland, *see Export Price for All Countries* section above. Petitioner made adjustments for foreign inland freight to the AUV data. *See* Petition at Exhibits 3, 33 and *Initiation Checklist.*

Normal Value

With respect to NV, Petitioner relied on foreign market research and third country market price, as Mitsui-Ireland's EMD production was not sold in the home market during the POI and Petitioner demonstrated that all production was for export activities. *See* Petition at Exhibit 34.

Petitioner used Germany as the viable third country comparison market as Germany is the second largest export market for Irish EMD after the United States. Pursuant to section 773 of the Act, Petitioner retrieved data confirming that Mitsui-Ireland's EMD exports to Germany represent at least 22 percent of its total EMD exports to the United States during the period July 2000 through May 2003. Petitioner calculated an average net third-country price and adjusted for movement expenses from Ireland to Germany and for imputed credit expenses. *See* Petition at Exhibit 33 and Supplemental Response at Exhibit M.

Petitioner alleges that the sales of EMD in the third-country market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act. Pursuant to that section of the Act, COP consists of the COM, SG&A expenses, and packing. In the analysis of the third-country market price (above), market prices are inclusive of selling expenses, and therefore Petitioner used a COP also inclusive of SG&A. In regard to SG&A expense, Petitioner states it was unable to obtain specific and detailed financial data for Mitsui-Ireland, and believes it reasonable to use an SG&A ratio of the most similar Irish metals producer for which data was available - Glencar Mining, PLC. *See* Petition at Exhibit 56, page 16 and Supplemental Response at Exhibit M.

Petitioner used its own COM in the CV calculations with adjustments for known differences in production costs between Ireland and the U.S. for materials, energy and labor costs across the manufacturing process of EMD: ore handling (a.k.a. "leaching"), electrolysis, and finishing.

For interest expense, Petitioner relied upon amounts reported for the Japanese parent company Mitsui Mining & Smelting Co., Ltd. (Mitsui Kinzoku)'s interest expense for the year ending March 2002. See Petition at Exhibit 55, page 14. Consistent with 773(e)(2) of the Act, Petitioner included in CV an amount for profit. However, Petitioner applied the "zero" profit rate of Glencar Mining, PLC. *See* Petition at Exhibit 56, pages 16–17.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, Petitioner based NV for sales in Ireland on CV. *See* Supplemental Response at Exhibit M.

We have accepted this methodology for purposes of this initiation. The price to CV comparison produced an estimated dumping margin of 25.04% percent. *See Initiation Checklist.*

Japan

Export Price

For a description of export price for Japan, *see Export Price for All Countries* above. Petitioner also adjusted the AUV for foreign inland freight expenses based upon information obtained from a foreign market researcher. *See* Petition at Exhibit 7 and Supplemental Response at pages 28–29 and Exhibit H. Petitioner made no other adjustments to U.S. price, claiming this resulted in a conservative estimate.

Normal Value

With respect to NV, Petitioner relied on the same foreign market researcher to obtain price quotes for the foreign like product sold in Japan. Petitioner obtained from the market researcher price quote for alkaline grade, powder form EMD sold in the Japanese home market which the researcher indicates is the same type and grade sold in the United States. *See* Petition at Exhibit 7 and Supplemental Response Exhibit H. Petitioner adjusted this price by deducting total movement expenses. Petitioner made no deduction for imputed credit expenses. *See Initiation Checklist*. Petitioner claimed this was a conservative estimate, as foreign market research revealed payment terms in a range of periods.

Claiming that the Japanese producer's sales of the foreign like product were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, Petitioner requested that the Department initiate a country-wide sales-below-cost investigation. *See* Petitioner's August 14, 2003 letter. Pursuant to section 773(b)(3) of the Act, COP consists of the COM, SG&A expenses, and packing. Petitioner calculated COM based on Petitioner's own experience, adjusted for known differences based on the foreign market research of Japanese EMD producers' operations and publicly available data.

Based upon the comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, Petitioner based NV for sales in Japan on CV. Petitioner calculated CV using the same COM, SG&A, and interest expense figures used to compute the COP. Consistent with section 773(e)(2) of the Act, Petitioner included in CV an amount for profit. Petitioner relied upon the profit ratio reported in Tosoh's 2002 annual report. *See* Petition at Exhibit 53 and Supplemental Response at page 30.

We have accepted this methodology for purposes of this initiation. The price to CV comparison produced an estimated dumping margin of 87.96 percent. *See Initiation Checklist.*

South Africa

Export Price

For a description of export price for South Africa, *see Export Price for All Countries* above. Petitioner adjusted this AUV data for foreign inland freight costs. *See* Petition at Exhibit 38.

Normal Value

With respect to NV, Petitioner provided a home market price obtained through foreign market research for EMD comparable to the product exported to the United States which serve as a basis for EP. Petitioner made no adjustments to this calculated average home market price. Petitioner also provided information demonstrating reasonable grounds to believe or suspect that sales of EMD in the home market were made at prices below the fully absorbed COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of COM, SG&A expenses, and packing. Petitioner calculated COM based on its own production experience, adjusted for known differences between costs incurred to produce EMD in the United States and South Africa using publicly available data. To calculate interest, Petitioner relied upon information from Delta SA's corporate parent, Delta PLC, for the year 2002. To calculate SG&A, Petitioner relied upon the 2002 financial statement of the most similar company for which data was reasonably available, Highveld. Based upon a comparison of the prices of the foreign like product in the home market to the calculated COP of the product, we find reasonable grounds to believe or suspect that sales of the foreign like product were made below the COP, within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department is initiating a country-wide cost investigation.

Pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act, Petitioner based NV for South Africa on CV. Petitioner calculated CV using the same COM, SG&A and interest expense figures used to compute South African home market costs. Consistent with section 773(e)(2) of the Act, Petitioner included in CV an amount for profit. For profit, Petitioner relied upon amounts reported in Highveld's 2002 financial statement.

We have accepted this methodology for purposes of this initiation. The price to CV comparison produced an estimated dumping margin of 24.82 percent. *See Initiation Checklist.*

PRC

Export Price

For a description of export price for the PRC, *see Export Price for All Countries* above. Petitioner also deducted an amount for foreign inland freight in the PRC from the starting U.S. Price. The calculation of foreign inland freight was derived using an inflated value used in the recent preliminary determination on polyvinyl alcohol from the PRC. *See* Petition at Exhibit 41 and Supplemental Response at page 37.

Normal Value

Petitioner asserts that the Department considers the PRC to be a non-market economy country ("NME") and therefore, constructed NV based on the factors of production methodology pursuant to section 773(c) of the Act. In previous cases, the Department has determined that the PRC is an NME country. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Barium Carbonate From the People's Republic of China*, 68 FR 46577 (August 6, 2003) and *Notice of Initiation of Antidumping Investigation: Floor-Standing, Metal-Top Ironing Tables and Certain Parts Thereof from the People's Republic of China*, 68 FR 44040 (July 25, 2003). In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The NME status of the PRC has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product appropriately is based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

For NV, Petitioner based the factors of production, as defined by section 773(c)(3) of the Act, on its own consumption rates because information regarding Chinese producers' consumption rates is not reasonably available. *See* Supplemental Response

at pages 39–40. Thus, Petitioner has assumed, for purposes of the Petition, that producers in the PRC use the same inputs in the same quantities as Petitioner, adjusted for any known differences. Based on the information provided by Petitioner, we believe that its factors of production methodology represents information reasonably available to Petitioner and is appropriate for purposes of initiating this investigation.

Petitioner asserts that India is the most appropriate surrogate country for the PRC, claiming that India is: (1) a significant producer of comparable merchandise; and (2) at a level of economic development comparable to the PRC. Based on the information provided by Petitioner, we believe that Petitioner's use of India as a surrogate country is appropriate for purposes of initiating this investigation.

Petitioner based the factors of production (raw materials, labor, energy and packing), as defined by section 773(c)(3) of the Act, for EMD from the PRC on its own experience and adjusted for known differences. Pursuant to section 773(c)(4), Petitioner valued these factors using a variety of sources, including Monthly Statistics of Foreign Trade of India, Volumes I and II, Directorate General of Commercial Intelligence & Statistics (Monthly) ("MSFTI"), Chemical Weekly, the Department's factor valuation memoranda from other NME proceedings, Government of India and pricing lists from Indian chemical manufacturers.

For manganese dioxide ore, the main raw material, Petitioner provided a surrogate value based on the prices from the financial statements of Eveready Industries India, Ltd. ("Eveready India"), an Indian manufacturer of the subject merchandise. For certain chemical inputs (*e.g.*, sulfuric acid), Petitioner provided a surrogate value based on pricing information from Chemical Weekly. For other inputs such as caustic soda, lime (high calcium), harbonite 800S, Petitioner used pricing data from MSFTI to calculate surrogate values.

With regard to energy (electricity), Petitioner provided a surrogate value using Eveready India's financial statements. In addition, Petitioner provided a surrogate value for natural gas, a second energy source, using pricing information from the Gas Authority of India website.

Labor was valued using the regression-based wage rate for the PRC provided by the Department, in accordance with 19 CFR 351.408(c)(3). With regard to certain packing materials, Petitioner used MSFTI pricing data as the basis for the surrogate values.

Petitioner has provided values for inputs that represent almost 99 percent of the total cost of materials, energy, and packing in the NV calculation. Petitioner explained that the estimated value of the inputs for which it was unable to identify Indian surrogate values represents a minuscule portion of the NV calculation.

For some inputs, Petitioner did not provide a surrogate value using Indian imports statistics or any of the sources identified above. Instead, Petitioner used its own U.S. acquisition costs to value those inputs. Petitioner explained that the U.S. acquisition cost was used because there were no known differences in Chinese production processes and any differences would be immaterial. The inputs for which Petitioner used a U.S. acquisition cost included: packing materials and certain minor factors used in the production of EMD. *See Initiation Checklist* at Attachment V.

Petitioner contends that it has attempted to identify surrogate values for as many inputs as possible, including those that are common to other Chinese antidumping cases before the Department. Petitioner also explains that it has not been able to identify surrogate values for inputs that are unusual and used in very small amounts.

We have decided not to accept Petitioner's reliance on the U.S. acquisition costs to value the packing materials and certain minor factors of production because our practice in NME cases is to obtain surrogate values from a surrogate country. In the instant case, Petitioner did not provide surrogate values for certain inputs using information from a surrogate country. Therefore, in accordance with the Department's practice, we have not included those surrogates in the calculation of NV provided by Petitioner. By doing so, the Department is lowering the normal value, which is conservative. *See Notice of Initiation of Antidumping Duty Investigations: 4,4'-Diamino-2,2'-Stilbenedisulfonic Acid (DAS) and Stilbenic Fluorescent Whitening Agents (SFWA) from Germany, India, and the People's Republic of China*, 68 FR 34579 (June 10, 2003) and *Initiation Checklist*.

Eveready India was selected by Petitioner as the surrogate producer in India to compute factory overhead and SG&A expenses. *See Initiation Checklist*. Petitioner calculated the overhead ratio by dividing Eveready India's total overhead expenses (including "Depreciation," "Repairs to Machinery and Buildings," and "Stores and Spares Consumed") by Eveready India's material and energy expenses.

Petitioner excluded labor expenses from the denominator in the calculation of the overhead ratio on the grounds that Eveready India's Tea Division employs over 44,000 people while its Battery, Flashlights and Packet Tea Division (which produces EMD) employs 3,400 people. *See* Petition at 40. While the Department agrees it is appropriate to exclude non-EMD related labor expenses from the denominator of the overhead ratio, we do not agree it is appropriate to deduct EMD related labor expenses. Therefore, the Department added EMD-related labor expenses into the overhead ratio and COM calculations. The Department then applied the ratio to the labor expense inclusive COM as per its standard practice. With regard to SG&A, Petitioner calculated a ratio by dividing all the SG&A expense by Eveready India's total COM (inclusive of labor expenses). *See Initiation Checklist*.

Eveready India did not report a profit in its financial statements, therefore, Petitioner based the profit ratio on aggregate data published by the Reserve Bank of India ("RBI") (*See Final Determination of the Antidumping Duty Investigation of Saccharin from the People's Republic of China*, (Issues and Decision Memoranda at Comment 9) 68 FR 27530 (May 20, 2003)), for the accounting period 2000–2001, the most current data available from the RBI. Petitioner calculated profit as a percentage of the COP for public companies and private companies, and then averaged these two ratios to obtain a single profit ratio. *See Initiation Checklist*.

After revising the NV calculation submitted by Petitioner as discussed above, the Department accepted Petitioner's calculation of NV for initiation purposes based on the above arguments which resulted in an estimated dumping margin of 31.38 percent. See Initiation Checklist at Attachment V.

Fair Value Comparisons

Based on the data provided by Petitioner, there is reason to believe imports of EMD from Australia, Greece, Ireland, Japan, South Africa and the PRC are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

With respect to Australia, Greece, Ireland, Japan, South Africa and the PRC, Petitioner alleges that the U.S.

industry producing the domestic like product is being materially injured, or threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV.

Petitioner contends the industry's injured condition is evident in examining net operating income, profit, net sales volumes, production employment, as well as inventory levels, and reduced capacity utilization. *See* Petition at pages 41–60. Petitioner asserts its share of the market has declined from 2000 to 2002. *See* Petition at page 48. For a full discussion of the allegations and evidence of material injury, *see Initiation Checklist* at Appendix IV and Supplemental Response at pages 42–42.

Initiation of Antidumping Investigations

Based on our examination of the Petition covering EMD, we find it meets the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of EMD from Australia, Greece, Ireland, Japan, South Africa and the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended pursuant to section 733(b)(1)(A) of the Act, we will make our preliminary determinations no later than 140 days after the date of this initiation, or January 7, 2004.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the Petition has been provided to representatives of the governments of Australia, Greece, Ireland, Japan, South Africa and the PRC. We will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided in section 19 CFR 351.203(c)(2).

International Trade Commission Notification

The ITC will preliminarily determine on September 12, 2003, whether there is reasonable indication that imports of EMD from Australia, Greece, Ireland, Japan, South Africa and PRC are causing, or threatening, material injury to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: August 20, 2003.

Jeffrey A. May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–21903 Filed 8–26–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533–820]

Certain Hot-Rolled Carbon Steel Flat Products from India: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

EFFECTIVE DATE: August 27, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy Finn or Kevin Williams, AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0065 or (202) 482–2371, respectively.

TIME LIMITS:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the 245-day time limit for the preliminary determination to a maximum of 365 days and the time limit for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On January 22, 2003, the Department published a notice of initiation of administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from India, covering the period May 3, 2001 through November 30, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009, 3010 (January 22, 2003). The preliminary results are currently due no later than September 2, 2003.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, the Department is extending the time limit for completion of the preliminary results by 62 days until no later than November 3, 2003. See Decision Memorandum from Thomas Futtner, Acting Office Director for Import Administration, Group II, Office IV to Holly A. Kuga, Acting Deputy Assistant Secretary for Import Administration, Group II, dated concurrently with this notice, which is on file in the Central Records Unit, Room B-099 of the Department's main building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: August 18, 2003.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 03–21905 Filed 8–26–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475–059]

Notice of Initiation of Antidumping Duty Changed Circumstances Review: Pressure Sensitive Plastic Tape From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In accordance with section 751(b) of the Tariff Act of 1930, as amended, (the Act) and 19 CFR 351.216 (2003), Tyco Adhesives Italia S.p.A. (Tyco) requested that the Department of Commerce (the Department) conduct a changed circumstances review of the antidumping duty order on pressure sensitive plastic tape (PSPT) from Italy. In response to this request, the Department is initiating a changed circumstances review of the above-referenced order.

EFFECTIVE DATE: August 27, 2003.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Maisha Cryor, AD/CVD Enforcement, Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4114 or (202) 482–5831, respectively.

SUPPLEMENTARY INFORMATION:

Background

On July 3, 2003, Tyco requested that the Department conduct an expedited changed circumstances review of the antidumping duty order on PSPT from Italy pursuant to section 751(b)(1) of the Act and 19 CFR 351.221(c)(3)(ii). Tyco claims to be the successor-in-interest to Manuli Autoadesivi (Manuli), based on its May 8, 2001, purchase of Manuli Tapes[1], and, as such, claims that it is entitled to receive the same antidumping treatment as Manuli.

Scope of Review

Imports covered by the review are shipments of PSPT measuring 1 3/8 inches in width and not exceeding 4 millimeters in thickness, currently classifiable under items 3919.90.20 and 3919.90.50 of the Harmonized Tariff Schedule of the United States (HTSUS). HTSUS subheadings are provided for convenience and customs purposes. The written description remains dispositive as to the scope of the product coverage.

Initiation of Antidumping Duty Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act, the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The information submitted by Tyco regarding a change in ownership of Manuli shows changed circumstances sufficient to warrant a review. *See* 19 CFR 351.216(c) (2003).

In antidumping duty changed circumstances reviews involving a successor-in-interest determination, the Department typically examines several factors including, but not limited to, changes in: (1) management; (2) production facilities; (3) supplier relationships; and (4) customer base. *See Brass Sheet and Strip from Canada: Notice of Final Results of Antidumping Administrative Review*, 57 FR 20460, 20462 (May 13, 1992) (*Canadian Brass*). While no single factor or combination of factors will necessarily be dispositive, the Department generally will consider the new company to be the successor to the predecessor company if the resulting operations are essentially the same as those of the predecessor company. *See, e.g., Industrial Phosphoric Acid from Israel: Final Results of Changed Circumstances Review*, 59 FR 6944, 6945 (February 14, 1994), and *Canadian Brass*, 57 FR 20460. Thus, if the record evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the predecessor company, the Department may assign the new company the cash deposit rate of its predecessor. *See, e.g., Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changes Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999). Although Tyco submitted information indicating, allegedly, that, with respect to subject merchandise, it operates in the same manner as its predecessor, that information is unclear and is lacking sufficient supporting documents. *See* Letter from the Department to Tyco, Re: "Pressure Sensitive Plastic Tape from Italy: Changed Circumstances Review, Supplemental Questionnaire" dated July 10, 2003. Concerning Tyco's request that the Department conduct an expedited antidumping duty changed circumstances review, the Department has determined that it would be inappropriate to expedite this action by combining the preliminary results of review with this notice of initiation, as permitted under 19 CFR 351.221(c)(3)(ii). Because the Department may need to seek additional information, we find that an expedited action is impracticable. Therefore, the Department is not issuing the preliminary results of its antidumping duty changed circumstances review at this time.

The Department will publish in the **Federal Register** a notice of preliminary results of antidumping duty changed circumstances review, in accordance with 19 CFR 351.221(b)(4) and 19 CFR 351.221(c)(3)(I). This notice will set forth the factual and legal conclusions upon which our preliminary results are based and a description of any action proposed based on those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its antidumping duty changed circumstances review not later than 270 days after the date on which the review is initiated.

During the course of this antidumping duty changed circumstances review, we will not change the cash deposit requirements for the merchandise subject to review. The cash deposit will only be altered, if warranted, pursuant to the final results of this review. This notice of initiation is in accordance with sections 751(b)(1) of the Act and 19 CFR 351.221(b)(1) of the Department's regulations.

Dated: August 18, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

[FR Doc. 03–21842 Filed 8–26–03; 8:45 am]

BILLING CODE 3510–DS–S

[1] On December 31, 1999, after merging with another company, Manuli changed its corporate name to Manuli Tapes S.p.A.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 030711167–3167–01]

Notice of Request for Submissions of Information Security Practices by Public and Private Sector Organizations

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: NIST invites public and private organizations to submit their information security practices for inclusion in its Computer Security Resource Center. The NIST Computer Security Resource Center (CSRC) Web site, located at *http://csrc.nist.gov*, houses security specific guidance and tools that are shared widely in support of improving security programs and fostering good security practice. Selected information security practices will be posted on the Federal Agency Security Practices (FASP) section of the CSRC Web page (*http://csrc.nist.gov/fasp*). FASP includes a variety of agency security practices, which have been successfully used by the submitters in implementing their information security programs. With the recognition that protection of the Nation's critical infrastructure is dependent upon effective information security solutions and to minimize vulnerabilities associated with a variety of threats, the broader sharing of such practices will enhance the overall security of the nation. Today's federal networks and systems are highly interconnected and interdependent with non-federal systems. Access to information security

practices in the public and private sector can be applied to enhance the overall performance of Federal information security programs.

DATES: Request period is open-ended. Submissions can be offered at any time.

ADDRESSES: Written submissions may be sent to Computer Security Division, ATTN: Information Security Practices, Mail Stop 8930, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. Electronic submissions should be sent to: *infosecpractices@nist.gov*. Materials accepted by NIST will be posted to its CSRC Web site at *http://csrc.nist.gov/pcig*.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Hash, (301) 975–3357, National Institute of Standards and Technology, Attn: Computer Security Division, 100 Bureau Drive (Mail Stop 8930), Gaithersburg, MD 20899–8930, e-mail: *joan.hash@nist.gov*.

SUPPLEMENTARY INFORMATION: Under section 5131 of the Information Technology Management Reform Act of 1996 and sections 302–3 of the Federal Information Security Management Act of 2002 (FISMA) (Pub. L. 107–347), the Secretary of Commerce is authorized to approve standards and guidelines for Federal information systems and to make standards compulsory and binding for Federal agencies as necessary to improve the efficiency or security of Federal information systems. NIST is authorized to develop standards, guidelines, and associated methods and techniques for information systems, other than national security systems, to provide for adequate information security for agency operations and assets. The FISMA requires each Federal agency to develop, document, and implement an agency-wide information security program that will provide information security for the information and information systems supporting the operations and assets of the agency, including those provided or managed by another agency, contractor, or other source. The FISMA specifically tasked NIST to evaluate public and private sector security practices. This is done to improve the level of Federal security programs and to learn from public and private sector best practices.

NIST invites public and private organizations to submit their information security practices for inclusion in its Computer Security Resource Center. The NIST CSRC Web site, located at *http://csrc.nist.gov* specific guidance and tools that are shared widely in support of improving security programs and fostering good security practice. Selected information security practices will be posted on the FASP section of the CSRC Web page (*http://csrc.nist.gov/fasp*). FASP includes a variety of agency security practices, which have been successfully used by the submitters in implementing their information security programs. With the recognition that protection of the Nation's critical infrastructure is dependent upon effective information security solutions and to minimize vulnerabilities associated with a variety of threats, the broader sharing of such practices will enhance the overall security of the nation. Today's Federal networks and systems are highly interconnected and interdependent with non-Federal systems. Access to information security practices in the public and private sector can be applied to enhance the overall performance of Federal information security programs.

Submitters must indicate the source of the information security practices, such as an official organization Web site, or they may submit their information security practices accompanied by a management official's approval. Submitters may request that NIST sanitize the submission to mask the source of the material. NIST will review submissions for consistency with generally accepted security practices prior to posting. These practices may be found at *http://csrc.nist.gov/publications/*. Submissions must include a point of contact. NIST reserves the right to accept, post and remove submissions at its discretion. By submitting material, the submitter agrees that NIST may publicly disseminate such material, regardless of copyright. Submitters agree to inform NIST if the status of the submission changes (updated, discontinued, etc.). The preferred method of transmittal of the submissions is via e-mail to *infosecpractices@nist.gov*.

Policies and procedures may be submitted to NIST in any area of information security including, but not limited to: Accreditation, audit trails, authorization of processing, budget planning and justification, certification, contingency planning, data integrity, disaster planning, documentation, hardware and system maintenance, identification and authentication, incident handling and response, life cycle, network security, personnel security, physical and environmental protection, production input/output controls, security policy, program management, review of security controls, risk management, security awareness training, and education (to include specific course and awareness materials), and security planning.

Dated: August 21, 2003.

Hratch G. Semerjian,

Acting Deputy Director.

[FR Doc. 03–21948 Filed 8–26–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Tuesday, September 16, 2003, from 8:30 a.m. until 5 p.m., Wednesday, September 17, 2003, from 8:30 a.m. until 5 p.m. and on Thursday, September 18, from 8:30 a.m. until 1 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/ispab/*.

DATES: The meeting will be held on September 16, 2003, from 8:30 a.m. until 5 p.m., September 17, 2003, from 8:30 a.m. until 5 p.m., and September 18, 2003, from 8:30 a.m. until 1 p.m.

ADDRESSES: The meeting will take place at the Bethesda Hyatt Regency Hotel, 7400 Wisconsin Avenue [One Bethesda Metro Center], Bethesda, MD 20814.

Agenda

—Welcome and Overview
—Session on Agencies Customer Service Management Work
—Session on the National Information Assurance Program Extension Activities
—Session on Acceptable Behavior of "Touching the Browser"
—NIST Information Technology Laboratory Briefings
—Update by OMB on Privacy and Security Issues
—Briefing by Department of Homeland Security Office Privacy Officer

—Agenda Development for December 2003 ISPAB Meeting
—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated if 35 copies of written material were submitted for distribution to the Board and attendees no later than September 9, 2003. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Ms. Joan Hash, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3357.

Dated: August 21, 2003.

Hratch G. Semerjian,

Acting Deputy Director.

[FR Doc. 03–21949 Filed 8–26–03; 8:45 am]

BILLING CODE 3510–CN–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082003C]

Atlantic Highly Migratory Species; Advisory Panels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; Highly Migratory Species and Billfish Advisory Panel Meetings; Request for nominations.

SUMMARY: NMFS will hold a Highly Migratory Species Advisory Panel (HMS AP) meeting September 30, 2003, for Atlantic Shark management in Silver Spring, MD. Also, a joint meeting of the Atlantic HMS AP and the Atlantic Billfish Advisory Panel (Billfish AP) will be held February 9 through 11, 2004, in Silver Spring, MD. Additionally, NMFS solicits nominations for the HMS AP and the Billfish AP. The intent of these Advisory Panel meetings is to consider alternatives for the conservation and management of highly migratory species.

DATES: The HMS AP Shark management meeting will be held from 9:30 a.m. to 4:30 p.m. on September 30, 2003. The joint HMS-Billfish AP meeting will be held from 1 p.m. to 5 p.m. on Monday, February 9, 2004, from 8 a.m. to 5 p.m. on Tuesday, February 10, 2004, and from 8 a.m. to 5 p.m. on Wednesday, February 11, 2004.

Nominations must be submitted on or before October 10, 2003.

ADDRESSES: The AP meetings will be held at the Holiday Inn, 8777 Georgia Avenue (Rt. 97), Silver Spring, MD 20910. Phone: (301) 589–0800.

Nominations and requests for the AP Statement of Organization, Practices, and Procedures should be submitted in writing to Christopher Rogers, Chief, Highly Migratory Species Management Division, NMFS, 1315 East-West Highway, Silver Spring, MD, 20910. Nominations may be submitted by fax; (301) 713–1917.

FOR FURTHER INFORMATION CONTACT: Othel Freeman or Carol Douglas (301) 713–2347.

SUPPLEMENTARY INFORMATION:

Introduction

In accordance with the Magnuson-Stevens Fishery Conservation and Management Act, (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.*, as amended by the Sustainable Fisheries Act, Public Law 104–297, Advisory Panels (AP) have been established to consult with NMFS in the collection and evaluation of information relevant to the HMS FMP (April 1999) and the Billfish FMP Amendment (April 1999). Nominations are being sought to fill one-third of the posts of the HMS AP for 3-year appointments, and one-half of the posts of the Billfish AP for 2-year appointments. The nomination process and appointments are required by the Statement of Organization, Practices, and Procedures for each AP. The purpose of the HMS AP is to advise and assist the Secretary of Commerce (Secretary) in the collection and evaluation of information relevant to any amendment to the HMS FMP. The HMS AP evaluates future management options for Atlantic tunas, swordfish, and sharks under the requirements of the Magnuson-Stevens Act.

The purpose of the Billfish AP is to advise and assist the Secretary in the collection and evaluation of information relevant to any amendment to the Billfish FMP. The Billfish AP evaluates future management options for Atlantic billfish under the requirements of the Magnuson-Stevens Act.

Procedures and Guidelines

A. Procedures for Appointing the Advisory Panels

Individuals with definable interests in the recreational and commercial fishing and related industries, environmental community, academia, governmental entities, and non-governmental organizations will be considered for membership in the AP.

Nominations are invited from all individuals and constituent groups. The nomination should include:

1. The name of the applicant or nominee and a description of their interest in highly migratory species (HMS) or one species in particular from among sharks, swordfish, tunas, and billfish;
2. A statement of background and/or qualifications;
3. The AP to which the applicant seeks appointment;
4. A written commitment that the applicant or nominee shall actively participate in good faith in the tasks of the AP; and
5. Outreach Resources.

Tenure for the HMS AP:

Member tenure will be for 3 years, with one-third of the members' terms expiring on the last day of each calendar year. All appointments will be for 3 years (36 months).

Tenure for the Billfish AP:

Member tenure will be for 2 years, with one-half of the terms expiring on the last day of each calendar year. All appointments will be for 2 years (24 months).

B. Participants

The HMS AP consists of not less than 23 members who are knowledgeable about the fisheries for all Atlantic HMS species. The Billfish AP consists of not less than nine members who are knowledgeable about the fisheries for all Atlantic billfish species. Nominations for each AP will be accepted to allow representation from recreational and commercial fishing interests, the conservation community, and the scientific community.

NMFS does not believe that each potentially affected organization or individual must necessarily have its own representative, but each area of interest must be adequately represented. The intent is to have a group that, as a

whole, reflects an appropriate and equitable balance and mix of interests given the responsibilities of each AP. Criteria for membership include one or more of the following: (a) experience in the recreational fishing industry involved in catching swordfish, tunas, billfish, or sharks; (b) experience in the commercial fishing industry for HMS; (c) experience in fishery-related industries (marinas, bait and tackle shops); (d) experience in the scientific community working with HMS; (e) representation of a private, non-governmental, regional, (non-Federal) state, national, or international organization representing marine fisheries, environmental, governmental or academic interests dealing with HMS.

Five additional members of the AP include one voting representative each of the New England Fishery Management Council, the Mid-Atlantic Fishery Management Council, the South Atlantic Fishery Management Council, the Gulf of Mexico Fishery Management Council, and the Caribbean Fishery Management Council. The AP also includes 22 *ex-officio* participants: 20 representatives of the constituent states and two representatives of the constituent interstate commissions: the Atlantic States Marine Fisheries Commission and the Gulf States Marine Fisheries Commission.

NMFS will provide the necessary administrative support, including technical assistance, for the AP. However, NMFS will not compensate participants with monetary support of any kind. Depending on availability of funds, members may be reimbursed for travel costs related to the AP meetings.

C. Meeting Schedule

Meetings of each AP will be held as frequently as necessary but are routinely held once each year in the Spring. Often the meetings are held jointly, and may be held in conjunction with other advisory panel meetings or public hearings.

The HMS AP meeting on September 30, 2003, will focus on Atlantic shark management. NMFS published a proposed rule and notice of availability of Draft Amendment 1 to the HMS FMP on August 1, 2003 (68 FR 45196). The 60-day comment period ends on September 30, 2003. Since the alternatives presented in Draft Amendment 1 apply only to management measures for Atlantic sharks, the HMS AP discussion will be limited to Atlantic shark management. There will be time for the public to comment on shark management at the end of the meeting.

The joint HMS-Billfish AP meeting in February 2004 will focus on management alternatives for Atlantic tunas, swordfish, sharks, and billfish. On July 9, 2003, NMFS published a notice of intent to prepare an Environmental Impact Statement for Amendment 2 to the HMS FMP and Amendment 2 to the Billfish FMP (68 FR 40907). Amendment 2 to the HMS FMP is intended to address issues regarding quota allocation of Atlantic bluefin tuna, swordfish, and sharks among and within domestic fishing categories, examine management alternatives to improve and streamline the current HMS limited access permit program, conduct a 5-year review of HMS essential fish habitat (EFH) identifications, and address exempted fishing and scientific research permitting issues consistent with rebuilding plans, the Magnuson-Stevens Act, Atlantic Tunas Convention Act (ATCA), and other relevant Federal laws. Amendment 2 to the Billfish FMP is intended to conduct a 5-year review of Atlantic billfish EFH identifications and address other issues as appropriate, consistent with the Magnuson-Stevens Act, ATCA, and other relevant Federal laws.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Othel Freeman or Carol Douglas (*see* **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the meeting.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Date: August 21, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–21951 Filed 8–26–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060903A]

Notice of Availability of Draft Stock Assessment Reports

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS revised the Alaska, Atlantic and Gulf of Mexico, and Pacific marine mammal stock assessment reports (SARs) in accordance with the Marine Mammal Protection Act (MMPA). Draft 2003 reports are available for public review and comment.

DATES: Comments must be received by November 25, 2003.

ADDRESSES: Send comments or requests for copies of reports to: Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments. Comments may also be sent via facsimile (fax) to 301–713–0376. NMFS will not accept comments submitted via e-mail or Internet.

Copies of the Alaska Regional SARs may be requested from Robyn Angliss, Alaska Fisheries Science Center, NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115–0070.

Copies of the Atlantic and Gulf of Mexico Regional SARs may be requested from Janeen Quintal, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543 or Steven Swartz, Southeast Fisheries Science Center, 75 Virginia Beach Dr., Miami, FL 33149.

Copies of the Pacific Regional SARs may be requested from Cathy Campbell, Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Tom Eagle, Office of Protected Resources, 301–713–2322, ext. 105, e-mail *Tom.Eagle@noaa.gov*; Robyn Angliss 206- 526–4032, e-mail Robyn.Angliss@noaa.gov, regarding Alaska regional stock assessments; Janeen Quintal, 508–495–2252, e-mail *Janeen.Quintal@noaa.gov*, regarding Northwest Atlantic regional stock assessments; Steven Swartz, 305–361–4487, e-mail *Steven.Swartz@noaa.gov*, regarding Mid-Atlantic and Gulf of Mexico regional stock assessments; or Cathy Campbell, 562–280–4060, e-mail *Cathy.E.Campbell@noaa.gov*, regarding Pacific regional stock assessments.

SUPPLEMENTARY INFORMATION:

Electronic Access

All stock assessment reports and the guidelines for preparing them are available via the Internet at *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*.

Background

Section 117 of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessments for each stock of marine mammals that occurs in waters under the jurisdiction of the United States. These reports must contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available and at least once every 3 years for non-strategic stocks. NMFS and the FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups, reviewed the status of marine mammal stocks as required and revised reports for which new information was available. A summary of notable changes is described for each region below. Also, each regional set of stock assessment reports and a summary table of the changes made for 2003 are available on the Internet (see electronic access) and may be requested in hard copy form (see **ADDRESSES**). NMFS solicits public comments on the draft Alaska, Atlantic and Gulf of Mexico, and Pacific reports.

Alaska Stocks

NMFS revised 14 reports for marine mammal stocks in the Alaska Region, and the remaining 18 reports were not revised. Most revisions included incorporating new abundance or mortality estimates into the reports and did not change the status of the stock.

Counts of northern fur seal pups in the Pribilof Islands declined more than 5 percent per year from 1998 to 2002. The abundance estimate of this stock is derived from pup counts and has also declined accordingly. The population estimate remains over 800,000 fur seals, direct human-caused mortality remains a small portion of the calculated PBR, and the stock remains identified as strategic due to its designation as depleted under the MMPA.

The abundance estimates for Pacific white-sided dolphins, Central North Pacific stock, and Dall's porpoise, Alaska stock, are more than 8 years old and are considered unreliable according to NMFS' guidelines for preparing marine mammal stock assessment reports (Wade and Angliss, 1997). In accordance with the guidelines, the PBR for Pacific white-sided dolphins has been changed to "undefined". The PBR for Dall's porpoise is not changed to "undefined" because recent surveys in part of the range suggest the population remains quite large, and a new abundance estimate is expected to be available in the near future. The recent surveys in a portion of the range are considered compelling evidence that the Dall's porpoise population in Alaska has not declined; therefore, continued use of the PBR is consistent with NMFS' guidelines for preparing marine mammal stock assessment reports.

For humpback whales, Central North Pacific stock, the report was revised to include abundance, mortality, and PBR estimates for the Southeast Alaska feeding aggregation as well as for the entire stock. This change was based upon a recommendation from the Alaska SRG because humpback whales encountered in Southeast Alaska are likely to be part of the single feeding aggregation.

Atlantic and Gulf of Mexico Stocks

The SARs for marine mammal stocks in the Atlantic Ocean, including the Gulf of Mexico, contained revisions in 37 reports, and 20 reports were not revised. Most revisions were minor updates to abundance or mortality estimates and did not change the status of the affected stock of marine mammals.

The new mean annual mortality estimate for common dolphins, Western North Atlantic stock, is 190, and the PBR for this stock remains 227. Consequently, the status of common dolphins, Western North Atlantic stock, was revised from strategic to non-strategic.

A new abundance estimate for Cuvier's beaked whale, Northern Gulf of Mexico stock, is included in the 2003 draft SAR, and this new abundance estimate raises the PBR for the stock from 0.2 to 0.6. The section of the report on Human-Caused Mortality was revised to indicate that mortality of beaked whales has been associated with noise-generating activities in the ocean, and there are many such activities within portions of the Gulf of Mexico where beak whales are distributed. The report leads to the conclusion that there is a potential for human-caused mortality to exceed the stock's PBR level; therefore, following a precautionary approach, the Status of Stock section of the SAR was revised to label this stock as strategic. This section was also revised to clarify that fishery-related mortality and serious injury remains unknown; however, such mortality and serious injury can be considered at insignificant levels approaching a zero mortality and serious injury rate.

Pacific Stocks

The Pacific SARs contain revised stock assessments for 42 Pacific marine mammal stocks under NMFS' jurisdiction. Reports on the remaining 14 Pacific region stocks were not revised. Most revisions consisted of updates to abundance or mortality estimates that did not affect the status of the stock or the classification of any fishery that interacts with the stock. Three revisions included more than minor updates.

NMFS reinstated pygmy sperm whales (CA/OR/WA stock) to the list of marine mammal stocks for which a SAR is produced. Reinstatement was prompted by recent strandings of pygmy sperm whales, which indicate that pygmy sperm whales occur in waters under US jurisdiction more than rarely.

Harbor porpoise (Monterey Bay stock) was re-classified from strategic to non-strategic. Re-classification resulted from reduced mortality incidental to set gillnet fisheries within Monterey Bay. In 2001, the State of California largely closed gillnet fishing in the range of harbor porpoise under emergency regulations and made these regulations permanent in 2002.

Short-finned pilot whales (CA/OR/WA stock) were re-classified from non-strategic to strategic. Although the point estimate for incidental mortality and serious injury decreased in this update, the minimum abundance estimates also decreased from 717 to 149. The reduction in abundance was due to no sightings of pilot whales in the 2001 survey. Because pilot whale distribution appears variable and is likely related to specific oceanographic conditions, the reduction in abundance is not likely an indication that the actual number of pilot whales has been reduced. NMFS has previously observed fluctuations in sightings (thus, fluctuations in abundance estimates) of pilot whales during abundance surveys. These fluctuations are likely due to pilot whale distribution being affected by specific oceanographic conditions that sometimes are within the survey area and sometimes not. Because NMFS has no biological basis to adjust this abundance estimate to account for fluctuations in oceanographic conditions, the abundance estimate is a pooled estimate that includes results

from surveys in 1996 and 2001. Thus, the lower abundance estimate likely reflects fluctuations in pilot whale distribution rather than fluctuations in the actual abundance of pilot whales.

Dated: August 19, 2003.

Donna Wieting,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–21859 Filed 8–26–03; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

Public Meeting Concerning Upholstered Furniture Flammability Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of public meeting.

SUMMARY: The Consumer Product Safety Commission (CPSC or Commission) will conduct a public meeting on Wednesday, September 24, 2003 to receive comments on the July 2003 CPSC staff briefing package on upholstered furniture flammability. The briefing package recommends that the Commission issue an advance notice of proposed rulemaking (ANPR) that could result in a mandatory flammability standard addressing upholstered furniture ignition by small open flames and/or smoldering cigarettes.[1] If the staff's recommendation was accepted, the Commission's ongoing proceeding under the Flammable Fabrics Act (FFA), 15 U.S.C. 1191–1204 addressing ignition of upholstered furniture by small open flame sources such as matches, cigarette lighters, and candles would be expanded to also include ignition by smoldering cigarettes.

The Commission invites oral presentations from individuals, associations, firms, and government agencies with information or comments related to the briefing package. The Commission will consider these presentations in its deliberations on the staff recommendation.

DATES: The meeting will begin at 9 a.m. on Wednesday, September 24, 2003. Requests to make oral presentations, and 10 copies of the text of the presentation, must be received by the CPSC Office of the Secretary no later than September 17, 2003. Persons making presentations at the meeting should provide an additional 25 copies for dissemination on the date of the meeting.

Presentation texts should identify the author's affiliation with, or employment or sponsorship by, any entity with an interest in the Commission rulemaking on upholstered furniture flammability.

The Commission reserves the right to limit the number of persons who make presentations and the duration of their presentations. To prevent similar presentations, groups may be directed to designate a spokesperson.

ADDRESSES: The meeting will be in room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, MD. Requests to make oral presentations, and texts of oral presentations should be captioned "Upholstered Furniture Flammability Rulemaking" and be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Requests and texts of oral presentations may also be submitted by facsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov*.

FOR FURTHER INFORMATION CONTACT: For information about the purpose or subject matter of this meeting contact Dale Ray, Project Manager, Directorate for Economics, U.S. Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7704; e-mail: *dray@cpsc.gov*. For information about the schedule for submission of requests to make oral presentations and submission of texts of oral presentations, contact Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833; fax (301) 504–0127; e-mail: *rhammond@cpsc.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Cigarette-ignitions of upholstered furniture have long been a leading cause of residential fire deaths, injuries and property damage. The Commission has extensively investigated this risk since the 1970s, when the CPSC staff prepared a draft proposed cigarette ignition standard. In 1977, a furniture industry group, the Upholstered Furniture Action Council (UFAC), established a voluntary industry program as an alternative to CPSC rulemaking. The UFAC voluntary guidelines were amended in 1983, and are widely followed among manufacturers today.

In 1993 the National Association of State Fire Marshals (NASFM) petitioned the Commission to issue rules concerning the flammability of upholstered furniture when exposed to smoldering ignition, small open flame ignition and large open flame ignition sources. In 1994 the Commission acted to deny the petition insofar as it concerned large open flame ignition sources, to defer it insofar as it concerned smoldering ignition sources and to grant it insofar as it concerned small open flame sources. In 2001 the NASFM withdrew its petition.

Based on a 1996 CPSC survey, more than 85 percent of currently manufactured upholstered furniture (including products from non-UFAC member firms) meets the UFAC guidelines. Further, CPSC laboratory tests indicate that more than 80 percent of currently manufactured upholstered furniture resists cigarette ignition. However, cigarette-ignited fires involving upholstered furniture not made with cigarette-resistant materials constitutes a substantial proportion of overall fire losses. Thus, while the cigarette ignition risk is attributable to a relatively small proportion of currently produced upholstered furniture, the estimated societal costs associated with this risk are large.

The CPSC staff developed a draft small open flame standard for residential upholstered furniture that would prevent or limit fire growth following exposure to a small open flame.[2] The staff's draft standard does not directly address cigarette ignition resistance. However, CPSC laboratory testing suggests that flame retardant (FR) upholstery fabrics—identified by manufacturers as a likely means of limiting fire growth—would also reduce the risk of upholstered furniture fires ignited by smoldering cigarettes. About 80 percent of the projected safety benefits of a possible small open flame standard consist of reductions in cigarette fire losses.

The staff's October 2001 briefing package on upholstered furniture flammability presented options for possible continuing Commission action (*e.g.*, a notice of proposed rulemaking on the small open flame ignition risk), and with respect to possible new action (*e.g.*, an ANPR on the cigarette ignition risk).

In June 2002, the CPSC staff held a public meeting to obtain comments from stakeholders on all aspects of the Commission's proceeding on upholstered furniture. At the public meeting, the American Furniture Manufacturers Association (AFMA)

[1] The staff briefing package and other materials pertinent to this rulemaking are available on the CPSC Web site at: *http://www.cpsc.gov/library/foia/foia.html*.

[2] The most recent draft appears in the staff's October 2001 briefing package on upholstered furniture flammability. See fn. 1, supra, re obtaining this and other pertinent materials from the CPSC Web site.

stated their view that the Commission should promulgate a uniform national flammability standard for upholstered furniture. In a May 2, 2003 letter to Chairman Stratton, AFMA reiterated this position and recommended that a standard include requirements for upholstered furniture cigarette ignitability.

In a June 27, 2003 letter to Chairman Stratton, a group of six upholstery fabric manufacturers (the "Fabric Coalition") also expressed support for a national mandatory flammability standard for upholstered furniture. The Fabric Coalition asserted that its recommended approach to a national standard would address both cigarette- and open flame-related fire losses.

A number of factors bear on whether CPSC should directly address the risk of cigarette-ignited upholstered furniture fires. These include the large proportion of fire losses resulting from cigarette ignitions, the importance of reducing this risk in any effective remedial action, the feasibility of risk-reducing remedies, and the adequacy of existing voluntary standards to address the risk.

B. The Public Meeting

The purpose of the public meeting is to provide a forum for oral presentations on the CPSC staff briefing package on upholstered furniture flammability, with emphasis on the factors noted above.

Participation in the meeting is open. See the **DATES** section of this notice for information on making requests to give oral presentations at the meeting and on submitting copies of presentation texts.

Dated: August 22, 2003.

Sandra K. Bradshaw,

Deputy Secretary, Consumer Product Safety Commission.

[FR Doc. 03–21936 Filed 8–26–03; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0129]

Federal Acquisition Regulation; Submission for OMB Review; Cost Accounting Standards Administration

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0129).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning cost accounting standards administration. A request for public comments was published in the **Federal Register** at 68 FR 35634 on June 24, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before September 26, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Edward Loeb, Office of Acquisition Policy, GSA, 501–0650.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR subpart 30.6 and the clause at 52.230–5 include pertinent rules and regulations related to the Cost Accounting Standards along with necessary administrative policies and procedures. These administrative policies require certain contractors to submit cost impact estimates and descriptions in cost accounting practices and also to provide information on CAS-covered subcontractors.

B. Annual Reporting Burden

Number of Respondents: 644.
Responses Per Respondent: 2.27.
Total Responses: 1,462.
Average Burden Hours Per Response: 200.85.
Total Burden Hours: 293,650.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0129, Cost Accounting Standards Administration, in all correspondence.

Dated: August 20, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–21841 Filed 8–26–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Admissions announces the proposed reinstatement of a public information collection and seeks public comment on provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, unity, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by October 31, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the United States Air Force Academy, Office of Admissions, 2304 Cadet Drive, Suite 236, USAFA, CO 80840.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to above address, or call the United States Air Force Academy, Office of Admissions, (719) 333–7291.

Title, Associated Form, and OMB Number: Air Force Academy Candidate

Personal Data Record, USAFA Form 146, OMB Number 0701–0064.

Needs and Uses: The information collection requirement is necessary to obtain data on candidate's background and aptitude in determining eligibility and selection to the Air Force Academy.

Affected Public: Individuals or households.

Annual Burden Hours: 3,617.

Number of Respondents: 7,233.

Responses per Respondent: 1.

Average Burden per Response: 30 Minutes.

Frequency: 1.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The information collected on this form is required by 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy. Each student's background and aptitude is reviewed to determine eligibility. If the information on this form is not collected, the individual cannot be considered for admittance to the Air Force Academy.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–21846 Filed 8–26–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Headquarters Air Force Recruiting Service announces the proposed extension of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, unity, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 8, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of Defense, HQ AFRS/RSOC, 550 D Street West, Suite 1, Randolph AFB TX 78150–4527.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above addresses, or call HQ AFRS/RSOC, Officer Accessions Branch at (210) 652–4334.

Title; Associated Form, and OMB Number: Air Force Officer Training School Accession Forms, AETC Forms 1413 and 1422, OMB Number 0701–0080.

Needs and Uses: These forms are used by field recruiters and education counselors in the processing of Officer Training School (OTS) applications.

Affected Public: Civilian and Active Duty OTS Applicants.

Annual Burden Hours: 2,200.

Number of Respondents: 1,700.

Responses per Respondent: 1.

Average Burden per Response: 1 Hour (AETC Form 1413)/2 Hours (AETC Form 1422).

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are civilian and active-duty candidates applying for a commission in the United States Air Force. These forms provide pertinent information to facilitate selection of candidates for commission.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–21848 Filed 8–26–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, Headquarters Air Force Recruiting Service announces the proposed extension of a currently approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, unity, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by September 11, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of Defense, HQ AFRS/RSOC, 550 D Street West, Suite 1, Randolph AFB TX 78150–4527.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above addresses, or call HQ AFRS/RSOC, Officer Accessions Branch at (210) 652–4334.

Title, Associated Form, and OMB Number: Health Profession Accession Forms, AETC Forms 1402 and 1437, OMB Number 0701–0078.

Needs and Uses: These forms are used by field recruiters in the processing of health professions applicants applying for a commission in the United States Air Force.

Affected Public: Individuals or households.

Annual Burden Hours: 3,600.

Number of Respondents: 3,600.

Responses per Respondent: 1.

Average Burden per Response: 1 Hour.

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are civilian candidates applying for a commission in the United States Air Force as healthcare officers. These forms provide pertinent information to facilitate selection of candidates for commission.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–21849 Filed 8–26–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Intent To Grant an Exclusive Patent License

Pursuant to the provisions of part 404 of title 37, code of Federal Regulations, which implements Public Law 96–517, as amended, the Department of the Air Force announces its intention to grant MJS International, Inc., a corporation of Missouri, having a place of business at Chesterfield, Missouri, an exclusive license in any right, title and interest the Air Force has in:

U.S. Patent No. 6,267,039, issued 31 July 2001, entitled "Aircraft Missile Hit Survivability Using Infrared Lamp and Sacrificial Support Structure," by Gregory J. Czarnecki.

A license for this patent will be granted unless a written objection is received within fifteen (15) days from the date of publication of this Notice. Written objection should be sent to: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B. Street, Rm 100, Wright-Patterson AFB OH 45433–7109. Telephone: (937) 255–2838; Facsimile (937) 255–7333.

Pamela Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 03–21847 Filed 8–26–03; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.153A]

Business and International Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2004

AGENCY: Office of Postsecondary Education, Department of Education.

Purpose of Program: The Business and International Education (BIE) Program provides grants to institutions of higher education to enhance international business education programs and to expand the capacity of the business community to engage in international economic activities.

Eligible Applicants: Institutions of higher education that enter into agreements with trade associations, business enterprises, or trade organizations that are engaged in international economic activity.

Applications Available: August 27, 2003.

Deadline for Transmittal of Applications: November 7, 2003.

Deadline for Intergovernmental Review: January 7, 2004.

Estimated Available Funds: The Administration has requested $2,531,000 for the BIE Program new awards for FY 2004. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process, if Congress appropriates funds for this program.

Estimated range of awards: $50,000–$95,000.

Estimated average size of awards: $76,697.

Estimated number of awards: 33.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months.

Page Limit: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit the narrative to the equivalent of no more than 40 pages, using the following standards:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch). However, you may use a 10-point font in charts, tables, figures, and graphs. The page limit does not apply to the cover sheet; the budget section, including the narrative budget justification; the assurances and certifications; or the one-page abstract or the appendices. However, you must include your complete response to the selection criteria in the application narrative.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; and (b) The regulations for this program in 34 CFR parts 655 and 661.

SUPPLEMENTARY INFORMATION: Matching requirement: Under title VI, part B, section 613(d) of the Higher Education Act of 1965, as amended, a BIE Program grantee must provide no less than 50 percent of the total cost of the project in each fiscal year. Example: The institution's total costs of the proposed project will be $140,000 per year. The institution may request a grant in the amount of $70,000 or less. The institution must provide the remaining $70,000 in cash or in-kind contributions.

Priorities

Invitational Priorities

We are particularly interested in applications that meet the following invitational priorities.

Invitational Priority 1

Applications from institutions of higher education that propose educational projects that include activities that promote an understanding of economic education for K–12 educators.

Invitational Priority 2

Applications from institutions of higher education that propose educational projects that include activities focused on the targeted world areas of Central and South Asia, the Middle East, Russia, the Independent States of the former Soviet Union, and Africa. These projects should be integrated into the curricula of the home institution or institutions.

Under 34 CFR 75.105(c)(1) we do not give an application that meets the invitational priorities a competitive or absolute preference over other applications.

Application Procedures

The Government Paperwork Elimination Act (GPEA) of 1998, (Pub. L. 105–277) and the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107) encourage us to undertake initiatives to improve our grant processes. Enhancing the ability of individuals and entities to conduct business with us electronically is a major part of our response to these Acts. Therefore, we are taking steps to adopt the Internet as our chief means of conducting transactions in order to improve services to our customers and to simplify and expedite our business processes.

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b) (A), the Secretary has determined that proposed rulemaking is not required.

We are requiring that applications for grants for FY 2004 under the BIE Program be submitted electronically using e-Application available through the Department's e-GRANTS system. The e-GRANTS system is accessible through its portal page at: *http://e-grants.ed.gov.*

An applicant who is unable to submit an application through the e-GRANTS system may submit a written request for a waiver of the electronic submission requirement. In the request, the applicant should explain the reason or reasons that prevent the applicant from using the Internet to submit the application. The request should be addressed to: Tanyelle Richardson, U.S. Department of Education, 1990 K Street, NW., Suite 6017, Washington, DC 20006–8521. Please submit your request no later than two weeks before the application deadline date.

If, within two weeks of the application deadline date, an applicant is unable to submit an application electronically, the applicant must submit a paper application by the application deadline date in accordance with the transmittal instructions in the application package. The paper application must include a written request for a waiver documenting the reasons that prevented the applicant from using the Internet to submit the application.

Pilot Project for Electronic Submission of Applications

In FY 2004, the Department is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The BIE Program—CFDA 84.153 is one of the programs included in the pilot project. If you are an applicant under the BIE Program, you must submit your application to us in electronic format or receive a waiver.

The pilot project involves the use of the Electronic Grant Application System (e-Application). Users of e-Application will be entering data on-line while completing their applications. You may not e-mail a soft copy of a grant application to us. The data you enter on-line will be saved into a database. We request your participation in e-Application. We shall continue to evaluate the success of e-Application and solicit suggestions for its improvement.

If you participate in e-Application, please note the following:

- When you enter the e-Application system, you will find information about its hours of operation. We strongly recommend that you do not wait until the application deadline date to initiate an e-Application package.
- You will not receive additional point value because you submit a grant application in electronic format, nor will we penalize you if you submit an application in paper format.
- You must submit all documents electronically, including the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Your e-Application must comply with any page limit requirement described in this notice.
- After you electronically submit your application, you will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).
- Within three working days after submitting your electronic application, fax a signed copy of the Application for Federal Education Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from e-Application.
2. The institution's Authorizing Representative must sign this form.
3. Place the PR/Award number in the upper right hand corner of the hard copy signature page of the ED 424.
4. Fax the signed ED 424 to the Application Control Center at (202) 260–1349.

- We may request that you give us original signatures on all other forms at a later date.
- *Application Deadline Date Extension in Case of System Unavailability:* If you are prevented from submitting your application on the application deadline date because the e-Application system is unavailable, we will grant you an extension of one business day in order to transmit your application electronically, by mail, or by hand delivery. For us to grant this extension—

1. You must be a registered user of e-Application, and have initiated an e-Application for this competition; and
2. (a) The e-Application system must be unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) The e-Application system must be unavailable for any period of time during the last hour of operation (that is, for any period of time between 3:30 and 4:30 p.m., Washington, DC time) on the application deadline date.

The Department must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm the Department's acknowledgement of any system availability, you must contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** or (2) the e-GRANTS help desk at 1–888–336–8930.

You may access the electronic grant application for the GPA Program at: *http://e-grants.ed.gov.*

FOR FURTHER INFORMATION CONTACT: Tanyelle Richardson, U.S. Department of Education, International Education and Graduate Programs Service, 1990 K Street NW., Suite 6066, Washington, DC 20006–8521. Telephone: (202) 502–7626 or via Internet: *tanyelle.richardson@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in PDF at the following site: *http://www.ed.gov/offices/HEP/iegps/.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1130a–1130b.

Dated: August 21, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–21950 Filed 8–26–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, and/or materials in alternative format) should notify Ms. Hope M. Gray at 202–219–2099 or via e-mail at *hope.gray@ed.gov* no later than Friday, September 5. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. This notice also describes the functions of the Committee. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: Thursday, September 11, 2003, beginning at 9 a.m. and ending at approximately 5 p.m.

ADDRESSES: The Holiday Inn on the Hill, 415 New Jersey Avenue, NW., the Congressional Room. Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202–7582; (202) 219–2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act (HEA) of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the Committee has been charged with providing technical expertise with regard to systems of need analysis and application forms, making recommendations that result in the maintenance of access to postsecondary education for low- and middle-income students; conducting a study of institutional lending in the Stafford Student Loan Program; assisting with activities related to the 1992 reauthorization of the Higher Education Act of 1965; conducting a three-year evaluation of the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP) under the Omnibus Budget Reconciliation Act (OBRA) of 1993; and assisting Congress with the 1998 reauthorization of the Higher Education Act.

The congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. The Committee traditionally approaches its work from a set of fundamental goals: promoting access; ensuring program integrity; integrating delivery across the Title IV programs; eliminating or avoiding program complexity; and minimizing burden on students and institutions.

The most important charge of the Advisory Committee is to make recommendations to Congress and the Secretary that will lead to the maintenance and enhancement of access to postsecondary education for low- and middle-income students. In addition to carrying out its ongoing statutory charges, the Committee dedicated itself to articulating the current state of access by developing two reports on the condition of access, Access Denied: Restoring the Nation's Commitment to Equal Educational Opportunity and Empty Promises: The Myth of College Access in America. As a result of the findings in its access reports, the Committee submitted its access proposal to Congress in May 2003 in preparation for reauthorization of the Higher Education Act. The Committee will review and evaluate, from an access perspective, other reauthorization proposals and ideas emanating from Congress and the higher education community.

The proposed agenda includes discussion sessions with congressional staff and members of the higher education community focusing on reauthorization proposals and ideas related to: (a) The Committee's access partnership, (b) grants and work, (c) loans, (d) accountability, college costs and consumer information, and (e) address other Committee business. Space is limited and you are encouraged to register early if you plan to attend. You may register through the Internet at *ADV.COMSFA@ed.gov*. or *Tracy.Deanna.Jones@ed.gov*. Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register electronically, you may mail or fax your registration information to the Advisory Committee staff office at (202) 219–3032. Also, you may contact the Advisory Committee staff at (202) 219–2099. *The registration deadline is Monday, September 8, 2003.*

The Advisory Committee will meet on Washington, DC on Thursday, September 11, 2003, from 9 a.m. until approximately 5 p.m.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: August 20, 2003.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 03–21860 Filed 8–26–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Meeting of the President's Board Advisors on Tribal Colleges and Universities

AGENCY: President's Board of Advisors on Tribal Colleges and Universities, U.S. Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the President's Board of Advisors on Tribal Colleges and Universities (the Board) and is intended to notify the general public of their opportunity to attend. This notice also describe the functions of the Board. Notice of the Board's meetings is required under Section 10(a)(2) of the Federal Advisory Committee Act and by the Board's charter.

AGENDA: The purpose of the meeting will be to review agencies' Three-Year Plans and decide on timeliness for and format of the Board's upcoming Report to the President.

DATES AND TIME: September 17, 2003–9 a.m. to 5 p.m. and September 18, 2003–9 a.m. to 2 p.m.

LOCATION: Prairie Knights Lodge, 7932 Highway 24, Fort Yates, ND 58538.

FOR FURTHER INFORMATION CONTACT: Betty Thompson, Special Assistant, White House Initiative on Tribal Colleges and Universities, U.S. Department of Education, Suite 408, 555 New Jersey Avenue, NW., Washington, DC 20208. Telephone 202–219–0704. Fax: 202–208–2174.

SUPPLEMENTARY INFORMATION: The Board is established by Executive Order 13270, dated July 3, 2002, to provide advice regarding the progress made by Federal agencies toward fulfilling the purposes and objectives of the order. The Board also provides recommendations to the President, through the Secretary of Education, on ways the Federal government can help tribal colleges: (1) Use long-term development, endowment building and planning to strengthen institutional viability; (2) improve financial management and security, obtain private sector funding support, and expand and complement Federal education initiatives; (3) develop institutional capacity through the use of new and emerging technologies offered by both the Federal and private sectors; (4) enhance physical infrastructure to facilitate more efficient operation and effective recruitment and retention of students and faculty; and (5) help implement the No Child Left Behind Act of 2001 and meet other high standards of educational achievement.

The general public is welcome to attend the September 17–18, 2003, meeting. However, space is limited and is available on a first-come, first-serve basis. Individuals who need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Betty Thompson at (202) 219–0704 no later than September 3, 2003. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

A summary of the activities of the meeting and other related materials that are informative to the public will be available to the public within 14 days after the meeting. Records are kept of all Board proceedings and are available for public inspection at the White House Initiative on Tribal Colleges and Universities, United States Department of Education, Suite 408, 555 New Jersey Avenue, NW., Washington, DC 20208.

Dated: August 21, 2003.

Rod Paige,

Secretary, U.S. Department of Education.

[FR Doc. 03–21862 Filed 8–26–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. PP–229]

Notice of Availability of Draft Environmental Impact Statement and Public Hearings for the Proposed Tucson Electric Power Company (TEP) Sahuarita-Nogales Transmission Line

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability and public hearings.

SUMMARY: The Department of Energy (DOE) announces the availability of the "Tucson Electric Power Company (TEP) Sahuarita-Nogales Transmission Line Draft Environmental Impact Statement" (DOE/EIS–0336) for public review and comment. DOE also announces four public hearings on the Draft EIS. The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality NEPA regulations, 40 CFR parts 1500–1508, and the DOE NEPA regulations, 10 CFR part 1021. The Draft EIS evaluates the environmental impacts of the proposed action of granting a Presidential permit for the proposed project and reasonable alternatives, including the "No Action" alternative of denying the permit. The U.S. Forest Service (USFS), the Bureau of Land Management (BLM), and the U.S. Section of the International Boundary and Water Commission (USIBWC) are cooperating agencies in the preparation of this Draft EIS.

DATES: DOE invites interested Members of Congress, state and local governments, other Federal agencies, American Indian tribal governments, organizations; and members of the public to provide comments on the Draft EIS. The public comment period started with the publication in the **Federal Register** by the Environmental Protection Agency of the "Notice of Availability" of the Draft EIS on August 22, 2003, and will continue until October 14, 2003. Written and oral comments will be given equal weight, and DOE will consider all comments received or postmarked by that date in preparing the Final EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Dates for the public hearings are:

1. September 25, 2003, 3 p.m. to 5 p.m., Green Valley, Arizona
2. September 25, 2003, 7 p.m. to 9 p.m., Green Valley, Arizona
3. September 26, 2003, 1 p.m. to 3 p.m., Nogales, Arizona
4. September 26, 2003, 5 p.m. to 7 p.m., Nogales, Arizona

Requests to speak at a specific public hearing should be received by Dr. Jerry Pell as indicated in the **ADDRESSES** section below on or before September 15, 2003. Requests to speak may also be made at the time of registration for the hearing(s). However, persons who have submitted advance requests to speak will be given priority if time should be limited during the meeting.

ADDRESSES: Requests to speak at the public hearings should be addressed to: Dr. Jerry Pell, Office of Fossil Energy (FE–27), U.S. Department of Energy, Washington DC 20585, or transmitted by phone: 202–586–3362, facsimile: 202–318–7761, or electronic mail at *Jerry.Pell@hq.doe.gov*. Please be aware that anthrax screening delays conventional mail delivery to DOE.

The locations of the public hearings are:

1. Both hearings on September 25, 2003, will be held at the Santa Rita Springs Facility, Green Valley Recreation Department, 921 W. Via Rio Fuerte, Green Valley, Arizona 85614–5711.

2. Both hearings on September 26, 2003, will be held in the County Board Hearing Room, Santa Cruz County Office Building, 2150 N. Congress Drive, Nogales, Arizona 85621.

Copies of the Draft EIS are available as (a) the Summary in paper format, accompanied by a CD–ROM that includes the entire Draft EIS, (b) the entire Draft EIS in paper format, accompanied by the CD–ROM, or (c) the CD–ROM only; requests for any of these should be addressed to Dr. Pell at any of the addresses above. Additionally, the Draft EIS is available on the Internet at *http://www.ttclients.com/tep*.

Written comments on the Draft EIS may be addressed to Dr. Jerry Pell as indicated in the **ADDRESSES** section of this notice or submitted on the project Web site at *http://www.ttclients.com/tep*.

FOR FURTHER INFORMATION CONTACT: For information on the proposed project or to receive a copy of the Draft EIS, contact Dr. Pell as indicated in the **ADDRESSES** section of this notice.

For general information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000

Independence Avenue, SW., Washington, DC 20585, Phone: 202–586–4600 or leave a message at 800–472–2756; Facsimile: 202–586–7031.

SUPPLEMENTARY INFORMATION:

Background

Executive Order (E.O.) 10485, as amended by E.O. 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, maintained, operated, or connected at the U.S. international border. The E.O. provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the impacts of the project on the reliability of the U.S. electric power system and on the environment. The regulations implementing the E.O. have been codified at 10 CFR 205.320–205.329. Issuance of the permit indicates that there is no Federal objection to the project, but does not mandate that the project be completed.

On August 17, 2000, TEP, a regulated public utility, filed an application for a Presidential permit with the Office of Fossil Energy of DOE and, on May 18, 2001, supplemented its application with its March 1, 2001 application to the Arizona Corporation Commission (ACC) for a Certificate of Environmental Compatibility. TEP proposes to construct two 345,000-volt (345-kV) transmission circuits on a single set of support structures across the U.S. international border in the vicinity of Nogales, Arizona. Both circuits would originate at TEP's existing South Substation located approximately 15 miles south of Tucson in the vicinity of Sahuarita, Arizona, and 1.4 miles east of Interstate Highway 19 (I–19), south of Pima Mine Road, in Pima County, Arizona. Near the U.S. international border, the proposed transmission lines would interconnect with the Citizens Communications system at the proposed Gateway Substation that would be constructed just west of Nogales, Arizona. South of the border, TEP would extend the line approximately 60 miles to the Santa Ana Substation, located in the City of Santa Ana, Sonora, Mexico, and owned by the Comisión Federal de Electricidad (CFE), the national electric utility of Mexico.

On July 10, 2001, DOE published in the **Federal Register** (66 FR 35950) a Notice of Intent (NOI) to prepare an EIS for the proposed project. The NOI informed the public of the proposed scope of the EIS, solicited public participation in the scoping process, and announced public scoping meetings that were held on July 30, 2001, in Sahuarita, Arizona, and on July 31, 2001, in Rio Rico, Arizona. The public scoping period initially closed on August 9, 2001, but then was extended to August 31, 2001 (**Federal Register** Notice of July 27, 2001, 66 FR 39154). Comments received during the public scoping process were used in preparing the Draft EIS.

Action Alternatives Considered

The action alternatives developed for the proposed project focus on alternative routes to interconnect TEP's South Substation with the proposed Gateway Substation. TEP's evaluation of interconnection schemes, scoping comments, and discussions with DOE resulted in three potentially viable alternative corridors for transmission interconnection in southern Arizona: the Western Corridor (the applicant's Preferred Alternative), the Central Corridor, and the Crossover Corridor. The Crossover Corridor was included for analysis in this Draft EIS based on public and tribal input received during the public scoping period and tribal consultations. Another alternative, the Eastern Corridor, was originally proposed by TEP but was eliminated from analysis as a reasonable alternative in this Draft EIS at TEP's request for reasons of reliability, constructability, existing encroachment into the right-of-way, and visual impacts.

NEPA requires the identification of the agency's preferred alternative or alternatives in a Draft EIS if one or more exists or, if one does not yet exist at the draft stage, in the Final EIS, 40 CFR part 1502.14(e). DOE reported in the NOI (see above) that TEP's Preferred Alternative is the Western Corridor. In light of TEP's preference and the ACC's decision to site TEP's proposed line only along the Western Corridor, DOE has designated the Western Corridor as DOE's preferred alternative at this time. DOE welcomes comments on this designation. The cooperating agencies have not designated their respective preferred alternatives at this time but will do so after their review of environmental information is completed. Identification of a preferred alternative in the Draft EIS does not preclude selection of a different or modified preferred alternative in the Final EIS. The final selection of preferred alternatives will be based on a balanced evaluation of the environmental consequences, public comment, and consideration of national policies.

No Action Alternative

The Council on Environmental Quality's (CEQ) regulations require that an agency "include the alternative of no action" as one of the alternatives it considers, 40 CFR 1502.14(d). For DOE and the cooperating agencies, "no action" means any one of the Federal agencies declining to grant approval for their area of jurisdiction. Each agency will make its own decision independently, so that it is possible that one or more agencies could grant permission for the proposal while another could deny permission.

The Draft EIS analyzes the potential environmental effects, or impacts, of TEP constructing and operating the proposed project in one of the three alternative transmission corridors, and also analyzes the No Action Alternative. CEQ's regulations require that an EIS contain a description of the environmental effects (both positive and negative) of the proposed alternatives. The regulations also distinguish between direct and indirect effects (40 CFR 1508.8). Direct effects are caused by an action and occur at the same time and place as the action. Indirect effects are reasonably foreseeable effects caused by the action that occur later in time or farther in distance. Both direct and indirect effects are addressed in the Draft EIS. CEQ's regulations also require that an EIS contain a description of the cumulative impacts of the proposed alternatives (40 CFR 1508.7). CEQ's regulations define cumulative impacts as those that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative impacts are addressed in the Draft EIS.

The Draft EIS presents information on the potential environmental effects of both the proposed transmission line construction and subsequent operation on land use and recreation, visual resources, biological resources, cultural resources, socioeconomics, geology and soils, water resources, air quality, noise, human health and environment, infrastructure, transportation, and minority and low income populations. The Draft EIS also includes a Floodplains and Wetlands Assessment, in accordance with E.O. 11988, *Floodplain Management*, and E.O. 11990, *Protection of Wetlands*.

Coronado National Forest Plan Amendment

The Coronado National Forest, U.S. Forest Service, has identified the need for amendments to its Land and

Resource Management Plan (Forest Plan) in order to implement any of the action alternatives identified in the Draft EIS. The amendments needed are for segments of all (three) action alternative corridor locations and for visual resources. The public comment period for the amendments will coincide with DOE's comment period. Comments on Forest Plan amendments should be sent to Mr. John M. McGee, Forest Supervisor, U.S. Forest Service, 300 West Congress, Tucson, Arizona 85701. Any inquiries regarding the Forest Plan or the amendments should be directed to the U.S. Forest Service.

Availability of the Draft EIS

DOE has distributed copies of the Draft EIS to appropriate Members of Congress, state and local government officials in Arizona, American Indian tribal governments, and other Federal agencies, groups, and interested parties. Copies of the document may be obtained by contacting DOE as provided in the section of this notice entitled **ADDRESSES.** Copies of the Draft EIS and supporting documents are also available for inspection at the locations identified below:

1. U.S. Department of Energy, Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.
2. Coronado National Forest, Federal Building, 300 West Congress Street, 5th Floor, Room 5H, Tucson, AZ 85701 (phone 520–670–4527).
3. Nogales Ranger District, 303 Old Tucson Road, Nogales, AZ 85621 (phone 520–281–2296).
4. Rio Rico Public Library, 1060 Yavapai Drive, Rio Rico, AZ 85648 (phone 520–281–8067).
5. Tubac Community Library, 50 Bridge Road, Tubac, AZ 85646 (phone 520–398–9814).
6. Conrad Joyner-Green Valley Branch Library, 601 North La Cañada Drive, Green Valley, AZ 85614 (phone 520–625–8660).
7. Nogales-Santa Cruz County Public Library, 518 North Grand Ave., Nogales, AZ 85621 (phone 520–287–3343).

Comments on the Draft EIS may be submitted to Dr. Jerry Pell (*see* **ADDRESSES**, above) or provided at the public hearings (see **DATES**, above). After the public comment period ends on October 14, 2003, DOE will consider all comments received, revise the Draft EIS as appropriate, and issue a Final EIS. DOE will consider the Final EIS, along with other information, such as electric reliability and national policy factors, in deciding whether or not to issue a Presidential permit.

Issued in Washington, DC, this 20th day of August 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal and Power Import/Export, Office of Coal and Power Systems, Office of Fossil Energy.

[FR Doc. 03–21885 Filed 8–26–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–565–000]

ANR Pipeline Company; Notice of Revised Tariff Filing

August 20, 2003.

Take notice that on August 12, 2003, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, 2nd Revised Fourth Revised Sheet No. 162, to become effective September 12, 2003.

ANR submits that the listed tariff sheet is being proposed to aid its customers in administration of their storage and associated transportation agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21896 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–569–000]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Tariff Filing

August 20 2003.

Take notice that on August 13, 2003, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective October 1, 2003:

Forty-Ninth Revised Sheet No. 5.
Forty-Ninth Revised Sheet No. 6.
Forty-Sixth Revised Sheet No. 7.
Nineteenth Revised Sheet No. 8.

MRT states that the purpose of this filing is to comply with the Commission's order issued January 16, 2002 in Docket No. RP01–292. MRT states that it is filing to implement the Period Two Settlement Rates to be effective October 1, 2003 through September 30, 2004.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21899 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–570–000]

Colorado Interstate Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 20, 2003.

Take notice that on August 15, 2003, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 358A, bearing a proposed effective date of October 1, 2002.

CIG states that the tendered tariff sheet adds a recently approved revenue crediting provision to the currently effective Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21900 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–327–005, RP00–604–005]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

August 20, 2003.

Take notice that on August 14, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, bearing a proposed effective date of September 1, 2003, and tariff sheets listed on Appendix B to the filing, bearing a proposed effective date of April 1, 2004.

Columbia states it is making this filing in compliance with the Commission's July 30, 2003, Order in the above-referenced dockets. In the July 30 Order, the Commission held that Columbia's August 19, 2002, filing to comply with the Commission's July 19, 2002, order on Columbia's compliance with Order Nos. 637, 587–G, and 587–L generally complied with the requirements of those Orders. Columbia states however, the Commission required that Columbia make certain compliance changes by filing actual tariff sheets within 15 days of the date of issuance of the July 30 Order. The Commission directed Columbia that those tariff sheets should have a September 1, 2003, effective date. Columbia states that in addition, the Commission identified other compliance changes that were to have an effective date of April 1, 2004. Columbia further states that these revised tariff sheets reflect the changes required by the Commission in the July 30 Order.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: August 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21890 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–1088–000]

Direct Energy Marketing Inc.; Notice of Issuance of Order

August 20, 2003.

Direct Energy Marketing Inc. (Direct Energy) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of electric energy at market-based rates. Direct Energy also requested waiver of various Commission regulations. In particular, Direct Energy requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Direct Energy.

On August 13, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Direct Energy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 12, 2003.

Absent a request to be heard in opposition by the deadline above, Direct Energy is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Direct Energy, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Direct Energy's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the e library (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21887 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP00–469–006, RP01–22–008 and RP03–177–003]

East Tennessee Natural Gas Company; Notice of Supplemental Compliance Filing

August 20, 2003.

Take notice that on August 14, 2003, East Tennessee Natural Gas Company (East Tennessee) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Second Sub Original Sheet No. 13, to be effective November 3, 2003.

East Tennessee states that the purpose of this filing is to clarify tariff language contained in its June 23, 2003 compliance filing in the captioned dockets in response to customer comments.

East Tennessee states that copies of its filing have been mailed to all affected customers and interested state commissions, as well as to all parties on the official service lists compiled by the Secretary of the Commission in these proceedings.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: August 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21893 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–340–008]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

August 20, 2003.

Take notice that on August 13, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Attachment A to the filing, to become effective August 1, 2003.

Gulf South files these tariff sheets as directed by the Commission in its July 29, 2003 order regarding Gulf South's filings to comply with Order No. 637.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: August 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21891 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–340–009]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

August 20, 2003.

Take notice that on August 13, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Attachment A to the filing, to become effective August 1, 2003.

Gulf South files these tariff sheets as directed by the Commission in its July 29, 2003 Order regarding Gulf South's filings to comply with Order No. 637.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: August 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21892 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP01–411–001]

Kern River Gas Transmission Company; Notice of Compliance Filing

August 20, 2003.

Take notice that on August 15, 2003, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 205.
First Revised Sheet No. 206.
First Revised Sheet No. 207.
Original Sheet No. 207–A.

Kern River states that the purpose of this filing is to comply with the order issued on July 29, 2003 in this proceeding by submitting revised tariff sheets that modify the provisions in Kern River's tariff pertaining to the reservation of capacity for use in future expansion projects.

Kern River states that it has served a copy of this filing on all parties designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: August 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21895 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–476–005]

Southern Natural Gas Company; Notice of Compliance Filing

August 20, 2003.

Take notice that on August 12, 2003, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets shown on Appendix A to the filing, in compliance with the Commission's "Order on Rehearing and Compliance" dated July 30, 2003, to become effective September 1, 2003.

Southern submits the tariff sheets to comply with the terms of the Order and Order No. 637 as follows: (1) Elaboration that it will grant intrazone segmentation transactions in reticulated areas if they are operationally feasible; (2) explanation that it will evaluate requests for segmented transactions in the reticulated areas during the standard AESB scheduling cycles; (3) explanation that Southern will not consider backhaul and forwardhaul deliveries to or from the same point to be an overlap for purposes of intrazone segmentation on its system; (4) elimination of references to the short term capacity release price cap waiver which expired in September, 2002; and (5) adjustment of the penalty for the Type 3, Level 3 Emergency OFO to be $15.00.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary"(FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: August 25, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21894 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–566–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

August 20, 2003.

Take notice that on August 12, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a report reflecting the flow through of refunds received from Dominion Transmission, Inc.

Transco states that on July 15, 2003 in accordance with Section 4 of its Rate Schedule LSS and Section 3 of its Rate Schedule GSS, it refunded $177,572.18 to its LSS and GSS customers, as a result of the refund of Dominion Transmission, Inc. in Docket No. RP03–515. Transco states that the refund covers the period from April 1, 2002 to March 31, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed or before the intervention and protest date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21897 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–567–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

August 20, 2003.

Take notice that on August 14, 2003, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Twenty Third Revised Sheet No. 28, proposed to be effective August 1, 2003.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. Transco states that this filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Third revised Volume No. 1 Tariff. Transco also states that included in Appendix A attached to the filing is the explanation of the rate changes and details regarding the computation of the revised S–2 rates.

Transco states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 26, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21898 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[P–620–000]

Notice of Draft License Application and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

August 20, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 620–000.

c. *Date Filed:* August 4, 2003.

d. *Applicant:* Norquest Seafoods.

e. *Name of Project:* Chignik Hydroelectric Project.

f. *Location:* On Indian Creek, a tributary of Chignik Bay, in the Town of Chignik, Aleutian Islands, Alaska. The project occupies 38.89 acres of United States lands under the jurisdiction of the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Ron Soule, Norquest Seafoods, Inc., 5245 Shilshole Avenue, NW., Seattle, WA 98107–4833, Phone: (206) 281–7022. Mr. Daniel Hertrich, Polarconsult Alaska, Inc., 1503 W 33rd Avenue, #310, Anchorage, AK 99503, Phone: (907) 258–2420.

i. *FERC Contact:* John M. Mudre, (202) 502–8902, *john.mudre@ferc.gov.*

j. *Status of Project:* With this notice the Commission is soliciting: (1) preliminary terms, conditions, and recommendations on the Preliminary Draft Environmental Assessment (DEA); and (2) comments on the Draft License Application.

k. *Deadline for filing:* September 30, 2003.

All comments on the Preliminary DEA and Draft License Application should be sent to the addresses noted above in Item (h), with one copy filed with FERC at the following address: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All comments must include the project name and number and bear the heading Preliminary Comments, Preliminary Recommendations, Preliminary Terms and Conditions, or Preliminary Prescriptions.

Comments, preliminary recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings

and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Polarconsult Alaska, Inc. has mailed a copy of the Preliminary DEA and Draft License Application to interested entities and parties. Copies of these documents are available for review at Polarconsult Alaska, Inc.'s address in h., above.

m. With this notice, we are initiating consultation with the *Alaska State Historic Preservation Officer* (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21888 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7264–010]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protest

August 20, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License for a Minor Water Power Project.

b. *Project No.:* P–7264–010.

c. *Date Filed:* January 22, 2003.

d. *Applicant:* Fox River Paper Company and N.E.W. Hydro, Inc.

e. *Name of Project:* Middle Appleton Dam Hydroelectric Project.

f. *Location:* Located on the Lower Fox River, Outagamie County, Wisconsin. This project would not use federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. John Rom, Manager, Fox River Paper Company, P.O. Box 2215, Appleton, Wisconsin 54913, 920–733–7341 or Mr. Arie DeWaal, Mead and Hunt, Inc., 6501 Watts Road, Madison Wisconsin 53719, 608–273–6380.

i. *FERC Contact:* John Ramer, (202) 502–8969 or e-mail *John.Ramer@ferc.gov.*

j. *Deadline for filing motions to intervene and protest*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* CFR 385.200(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *The Middle Appleton Hydroelectric Project would consist of the following existing facilities:* (1) A 372-foot-long by about 20-foot-high dam, topped with 15 functional and one non-functional, 20-foot-wide by 10-foot-high, steel Taintor gates; (2) a 35.5-acre reservoir with a gross storage capacity of about 195-acre feet; (3) two power channels , one about 500-foot-long by 40-foot-wide, and another 1,700-foot-long and from 120 foot-to 200-foot-wide; (4) three powerhouses containing seven open-flume Francis turbines with a total maximum hydraulic capacity of 1,650 cubic feet per second (cfs) and seven generating units with a total installed generating capacity of 1,190 kilowatts (kW) and producing a total of 8,635,000 kilowatt hours (kWh) annually; (5) two transformer banks and one 4.16-kilovolt (kV) transmission line; along with (6) appurtenant facilities. The dam and existing project facilities are owned by Fox River Paper Company and N.E.W. Hydro, Inc.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21889 Filed 8–26–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7549–8]

Tracer-Test Planning Using the Efficient Hydrologic Tracer-Test Design (EHTD) Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of final document.

SUMMARY: The U. S. Environmental Protection Agency (EPA) announces the availability of a final document and associated computer program, *Tracer-Test Planning Using the Efficient Hydrologic Tracer-Test Design (EHTD) Program* (EPA/600/R–03/034, April 2003). This document was prepared by the U.S. Environmental Protection Agency's (EPA) National Center for Environmental Assessment (NCEA) of the Office of Research and Development (ORD).

The purpose of this document is to serve as a technical guide to various groups who must address potential or existing contamination problems in hydrologic systems using trace tests. Hydrologic complexities and inadequate data tends to relegate initial tracer-test designs regarding appropriate tracer masses and sample collection times to simple conjecture. This document and associated computer program alleviate some of these problems.

EHTD produces a detailed assessment of expected tracer-test results before a tracer test is ever initiated. It also produces a probable tracer-breakthrough curve for each sampling station. Preliminary testing of EHTD has shown it to be reliable in most instances.

DATES: This document will be available soon.

ADDRESSES: This document is available electronically through the NCEA Web site at (*www.epa.gov/ncea*). A limited number of paper copies will be available from the EPA's National Service Center for Environmental Publications (NSCEP) in Cincinnati, OH (telephone: 1–800–490–9198 or 513–489–8190; facsimile: 513–489–8695; or via the Internet at *http://www.epa.gov/NCEPIhome/orderpub.html*). Please provide your name, mailing address, the title, and EPA number of the requested publication when ordering from NSCEP. Copies may also be purchased from the National Technical Information Service (NTIS) in Springfield, Virginia; telephone: 1–800–553–NTIS[6847] or 703–605–6000; facsimile: 703–321–8547. Please provide the number PB2003–103271 when ordering from NTIS.

FOR FURTHER INFORMATION CONTACT: For further information, please contact Malcolm Field (202–564–3279) mailing address: National Center for Environmental Assessment (8623D), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; facsimile: 202–565–0079; e-mail: *field.malcolm@epa.gov*.

Dated: August 18, 2003.

Peter W. Preuss,

Director, National Center for Environmental Assessment.

[FR Doc. 03–21934 Filed 8–26–03; 8:45 am]

BILLING CODE 5560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Monday, September 8, 2003 (Two (2) Sessions—Morning Session: 9:30 a.m.–12:50 p.m., and Afternoon Session 2:10 p.m.–4:55 p.m. eastern time).

PLACE: Clarence M. Mitchell Conference Room on the Ninth Floor of the EEOC Office Building, 1801 "L" Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Votes, and
2. Panel Discussions on Repositioning for New Realities: Securing EEOC's Continued Effectiveness—Trends and Issues Driving the Need for Change

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.

Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TTD) at any time for information on these meetings. *Contact person for more information:* Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: August 25, 2003.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 03–22024 Filed 8–25–03; 11:40 am]

BILLING CODE 6750–06–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Council of Advisors on Science and Technology

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Council of Advisors on Science and Technology (PCAST), and describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (FACA).

Dates and Place: September 9, 2003, Washington, DC. The meeting will be held in Room 100 (lobby level) of the National Academy of Sciences Building, 500 Fifth Street NW., Washington, DC 20001.

Type of meeting: Open. For details on the agenda please see the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html*.

Proposed schedule and agenda: The President's Council of Advisors on Science and Technology is scheduled to meet in open session on Tuesday September 9, 2003, at approximately 9 a.m. The PCAST is tentatively scheduled to: (1) Discuss the status of the work of its workforce-education subcommittee; (2) discuss preliminary draft findings of its information technology manufacturing-competitiveness subcommittee; and (3) continue its discussion of nanotechnology and its review of the federal National Nanotechnology Initiative. This session will end at approximately 3 p.m. Additional information on the agenda can be found at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html*.

Public Comments: There will be time allocated for the public to speak on the above agenda items. This public comment time is designed for substantive commentary on PCAST's work topics, not for business marketing purposes. Please submit a request for the opportunity to make a public comment five (5) days in advance of the meeting. Presentations will be reviewed for appropriate content and marketing opportunities will not be provided. The time for public comments will be limited to no more than 5 minutes per person. Written comments are also welcome at any time following the meeting. Please notify Stan Sokul, PCAST Executive Director, at (202) 456–6070, or fax your request/comments to (202) 456–6021.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place and agenda, please call Cynthia Chase at (202) 456–6010, prior to 3 p.m. on Friday, September 5, 2003. Information will also be available at the PCAST Web site at: *http://www.ostp.gov/PCAST/pcast.html*. Please note that public seating for this meeting is limited and is available on a first-come, first-served basis.

SUPPLEMENTARY INFORMATION: The President's Council of Advisors on Science and Technology was established by Executive Order 13226, on September 30, 2001. The purpose of PCAST is to advise the President on matters of science and technology policy, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Council members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by Dr. John H. Marburger, III, the Director of the Office of Science and Technology Policy, and by E. Floyd

Kvamme, a Partner at Kleiner Perkins Caufield & Byers.

Stanley S. Sokul,

Executive Director, PCAST, and Counsel, Office of Science and Technology Policy.

[FR Doc. 03–22025 Filed 8–26–03; 8:45 am]

BILLING CODE 3170–01–M

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Meeting

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice of New Exposure Draft *Heritage Assets and Stewardship Land: Reclassification From Required Supplementary Stewardship Information*, and a Scheduled Public Hearing on Accounting and Fiduciary Activities.

Board Action: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, section 10(a)(2), and the FASAB Rules of Procedure, as amended in October, 1999, notice is hereby given that the Federal Accounting Standards Advisory Board has published a new exposure draft, Heritage Assets and Stewardship Land: Reclassification from Required Supplementary Stewardship Information.

A summary of the proposed Statement follows: The proposed standard classifies heritage assets and stewardship land information as basic information, except for condition information, which would be classified as required supplementary information. The proposed standard also introduces minor changes to the current disclosure requirements for heritage assets and stewardship land by requiring policies and an explanation of how heritage assets and stewardship land are pertinent to the entity's mission. Additionally, it will be available on FASAB's home page *http://www.fasab.gov/*. Copies can be obtained by contacting FASAB at 202–512–7350, or *loughanm@fasab.gov*. Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by November 10, 2003, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW., Suite 6814, Washington, DC 20548.

Notice is also given that a public hearing of the Federal Accounting Standards Advisory Board will be held on Wednesday, October 8, 2003 from 9:15 a.m. to 12 p.m. in room 7C13 of the General Accounting Office, 441 G Street, NW., Washington, DC.

The purpose of the hearing is to hear testimony from interested parties on *Accounting for Fiduciary Activities.* Those interested in testifying should contact Richard Fontenrose, Assistant Director, no later than one week prior to the hearing. Mr. Fontenrose can be reached at 202–512–7358 or via e-mail at *fontenroser@fasab.gov*.

Also, they should at the same time provide a short biography and written copies of their testimony. Any interested person may attend the public hearing as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW., Mail Stop 6K17V, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: August 21, 2003.

Robert Bramlett,

Assistant Director.

[FR Doc. 03–21850 Filed 8–26–03; 8:45 am]

BILLING CODE 1610–01–M

FEDERAL COMMUNICATIONS COMMISSION

[WC Docket No. 02–60; DA 03–2633]

New Universal Service Deadline for Completing Funding Year 2002 Rural Healthcare Application Process

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the new deadline for completing Rural Healthcare Applications for filing the FCC Form 466/468 packet, for those rural healthcare providers seeking discounts for Funding Year 2002 under the rural healthcare universal service support mechanism.

DATES: Filing deadline is October 8, 2003.

FOR FURTHER INFORMATION CONTACT: Diane Law-Hsu, Deputy Chief, Wireline Competition Bureau, Telecommunications Access Policy Division (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: October 8, 2003, is the final deadline for filing the FCC Form 466/468 packet, for those rural healthcare providers seeking discounts for Funding Year 2002 under the rural healthcare universal service support mechanism. The Form 466/468 packet informs the Rural Healthcare Division (RHCD) of the Universal Service Administrative Company that the health care provider has entered into an agreement with a telecommunications carrier for a service eligible for universal service support. Those entities that have applied for support for Funding Year 2002 (July 1, 2002–June 30, 2003) must have their completed packet postmarked by October 8, 2003. The completed FCC Form 466/468 packet must include the following: FCC Form 466 (Services Ordered and Certification Form), completed by the health care provider; FCC Form 468 (Telecommunications Service Providers Support Form), completed by the telecommunications carrier; contract document or tariff designation, provided by either the health care provider or telecommunications carrier; and if the health care provider is seeking support based on an urban/rural rate comparison, documentation must be included to show the rate for the selected service(s) in the nearest city of 50,000 or more within the State.

The forms and accompanying instructions may be obtained at the RHCD Web site *http://www.rhc.universalservice.org/forms/default.asp#2003*. Parties with questions or in need of assistance with the filing of their applications should contact RHCD's Customer Service Support Center at 1–800–229–5476.

Federal Communications Commission.

Eric N. Einhorn,

Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.

[FR Doc. 03–21837 Filed 8–26–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Network Reliability and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons of the fifth meeting of the Network Reliability and Interoperability Council (Council) under its charter renewed as of December 26, 2001. The meetings will be held at the Federal Communications Commission in Washington, DC.

DATES: Monday, September 15, 2003, from 1 p.m. to 4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jeffery Goldthorp at 202–418–1096 or TTY 202–418–2989.

SUPPLEMENTARY INFORMATION: The Council was established by the Federal Communications Commission to bring together leaders of the telecommunications industry and telecommunications experts from academic, consumer and other organizations to explore and recommend measures that will enhance network security, reliability and interoperability. At the September meeting the Council will discuss the progress of working groups that are addressing the topics that are contained in the Council's charter and any additional issues that may come before it.

Members of the general public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many people as possible. Admittance, however, will be limited to the seating available. The public may submit written comments before the meeting to Jeffery Goldthorp, the Commission's Designated Federal Officer for the Network Reliability and Interoperability Council, by e-mail *Jeffery.Goldthorp@fcc.gov* or U.S. mail (7–A325, 445 12th Street SW., Washington, DC 20554). Real Audio and streaming video Access to the meeting will be available at *http://www.fcc.gov.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 03–21863 Filed 8–26–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC, offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011284–053.

Title: Ocean Carrier Equipment Management Association Agreement ("OCEMA").

Parties: APL Co. Pte. Ltd.; American President Lines, Ltd.; A.P.Moller-Maersk Sealand; CMA CGM, S.A.; Compania Sud Americana de Vapores, S.A.; Evergreen Marine Corp. (Taiwan) Ltd.; Hanjin Shipping Co., Ltd.; Hamburg-Süd-amerikanische Dampfschifffahrtsgesellschaft KG; Hapag-Lloyd Container Linie GmbH; Hyundai Merchant Marine Co., Ltd.; Mitsui O.S.K. Lines Ltd.; Lykes Lines Limited, LLC; TMM Lines Limited, LLC; Contship Containerlines, a division of CP Ships (UK) Limited; Australia-New Zealand Direct Line, a division of CP Ships (UK) Limited; Orient Overseas Container Line Limited; P&O Nedlloyd B.V.; P&O Nedlloyd Limited; Nippon Yusen Kaisha Line; Yang Ming Marine Transport Corp.; COSCO Container Lines Company Limited; Kawasaki Kisen Kaisha, Ltd.; and Crowley Maritime Corporation.

Synopsis: The subject amendment reflects that the administration and management of OCEMA will be through a non-profit corporation, revises committee membership and functions, and makes conforming modifications with the foregoing.

Agreement No.: 011860.

Title: CLS/Lykes Space Charter Agreement.

Parties: Crowley Liner Services, Inc.; Lykes Lines Limited, LLC.

Synopsis: The proposed agreement would authorize Crowley to charter space to Lykes in the trade from Gulfport, MS, to Puerto Cortes, Honduras.

By Order of the Federal Maritime Commission.

Dated: August 22, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–21947 Filed 8–26–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 10, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Guy F. Medley, Michael P. McCann, both of Dothan, Alabama, and Michael A. Medley, Bonifay, Florida; to retain voting shares of Bonifay Holding Company, Inc., Bonifay, Florida, and thereby indirectly retain voting shares of The Bank of Bonifay, Bonifay, Florida.

2. Anita Marie Fontenot Melancon, Carla LaHaye Duhon and Darwin James Fontenot, all of Lafayette, Louisiana; Rachel Fontenot Wyble, Carencro, Louisiana; Carl Winn Fontenot, Verona Gayla Fontenot, Chad David Fontenot, Craig Dwaine Fontenot, David Joseph Fontenot, and Vickie Lynn Fontenot Bergeron, and Percy Fontenot, all of Ville Platte, Louisiana; Thelma Guillory LaHaye, Brenda LaHaye Vidrine, Earline Faye LaHaye Parrott, Richard Stagg Parrott III, and Karen Kathy LaHaye Marcantel, all of Mamou, Louisiana, to acquire voting shares of Citizens Bancshares, Inc., and thereby indirectly acquire voting shares of Citizens Bank, both of Ville Platte, Louisiana.

Board of Governors of the Federal Reserve System, August 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–21878 Filed 8–26–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of

the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1: Signature Bancshares, Inc., Minnetonka, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Signature Bank, Minnetonka, Minnesota.

Board of Governors of the Federal Reserve System, August 21, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–21879 Filed 8–26–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04018]

Cooperative Agreement With the University of Malawi College of Medicine; Notice of Intent To Fund Single Eligibility Award

A. Purpose

A Notice of Intent to Fund a Single Eligibility Award, Program Announcement 03127 was published in the **Federal Register**, May 13, 2003, Vol 68, Number 92, pages 25612–25613. That notice is rescinded, and replaced as follows:

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program with the University of Malawi, College of Medicine, located in Blantyre, Malawi. The Catalog of Federal Domestic Assistance number for this program is 93.283.

B. Eligible Applicant

Assistance will be provided only to the University of Malawi, College of Medicine. The University of Malawi, College of Medicine is the only institution that possesses the requisite scientific and technical expertise, the infrastructure capacity and experience in conducting the described operations research topics, and which has collaborative relationships within Malawi and internationally to ensure that all aspects of this agreement can be fulfilled.

C. Funding

Approximately $125,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before December 1, 2003, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

D. Where to Obtain Additional Information

For general comments or questions about this announcement, contact:

Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Carl Campbell, Program Manager, Blantyre Integrated Malaria Initiative, Blantyre District Health Office, Blantyre, Malawi, Telephone: 265–167–6071 or 265–883–2614, E-mail address: *cdc@malawi.net*.

Dated: August 18, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–21864 Filed 8–26–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the President's Cancer Panel.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(9)(B), Title 5 U.S.C., as amended because the premature disclosure of information and the discussions would likely to significantly frustrate implementation of recommendations.

Name of Committee: President's Cancer Panel.

Date: September 5–6, 2003.

Open: September 5, 2003, 8 a.m. to 3:15 p.m.

Agenda: Living Beyond Cancer: Pediatric Survivorship.

Place: Adam's Mark Denver, 1550 Court Place, Denver, CO 80202.

Open: September 5, 2003, 7 p.m. to 9 p.m.

Agenda: Town Hall Meeting.

Place: Adam's Mark Denver, 1550 Court Place, Denver, CO 80202.

Closed: September 6, 2003, 9 a.m. to 12 p.m.

Agenda: To review and evaluate discussion of prepublication manuscripts on children's survivorship.

Place: Adam's Mark Denver, 1550 Court Place, Denver, CO 80202.

Contact Person: Maureen O. Wilson, PhD, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 3A18, Bethesda, MD 20892, 301/496–1148.

This meeting is being published less than 15 days prior to the meeting due to scheduling conflicts.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: deainfo.nci.nih.gov/advisory/pcp/pcp.htm, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.932, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21852 Filed 8–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contract Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: September 14–16, 2003.

Closed: September 14, 2003, 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Open: September 15, 2003, 8.30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: September 15, 2003, 3 p.m to adjournment on September 16, 2003.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mark S. Guyer, Director for Extramural Research Assistant, Director for Scientific Coordination, National Human Genome Research Institute, 31 Center Drive, MSC 2033, Building 31, Room B2B07, Bethesda, MD 20892, 301–435–5536, *guyerm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, human Genome Research, National Institutes of Health, HHS)

Dated: August 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21856 Filed 8–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Crainofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Crainofacial Research Council.

Date: September 18, 2003.

Open: 8:30 a.m. to 12:30 p.m.

Agenda: Director's Comments, Scientific Presentations, Concepts, Reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Closed: 12:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.

Contact Person: J. Ricardo Martinez, MD, MPH, Associate Director for Program Development, Office of the Director, National Institute of Dental & Craniofacial Research, 31 Center Drive, Bldg. 31, Rm. 5B55, Bethesda, MD 20892, (301) 451–6229.

Information is also available on the Institute's/Center's home page: *www.nidcr.nih.gov/discover/nadrc/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21853 Filed 8–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Neurological Disorders and Stroke Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Training and Career Development Subcommittee.

Date: September 17, 2003.

Time: 8 p.m. to 10 p.m.

Agenda: To discuss the training programs of the Institute.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry Khachaturian, PhD, Training and Special Programs Officer, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2154, MSC 9527, Bethesda, MD 20892–9527, 301–496–4188, *hk11b@nih.gov*.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Infrastructure, Neuroinformatics, and Computational Neuroscience Subcommittee.

Date: September 18, 2003.

Time: 8 a.m. to 10 a.m.

Agenda: To discuss research mechanisms and infrastructure needs.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 7, Bethesda, MD 20892.

Contact Person: Robert Baughman, MD, Associate Director for Technology Development, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2137, MSC 9527, Bethesda, MD 20892–9527, (301) 496–1779.

Name of Committee: National Advisory Neurological Disorders and Stroke Council, Clinical Trials Subcommittee.

Date: September 18, 2003.

Open: 8 a.m. to 8:30 a.m.

Agenda: To discuss clinical trials policy.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 8:30 a.m. to 10 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: John Marler, MD, Associate Director for Clinical Trials, National Institute of Neurological Disorders and Stroke, National Institutes of Health, 6001 Executive Blvd., Suite 2216, Bethesda, MD 20892, (301) 496–9135, *jm137f@nih.gov.*

Name of Committee: National Advisory Neurological Disorders and Stroke Council.

Date: September 18–19, 2003.

Open: September 18, 2003, 10:30 a.m. to 5 p.m.

Agenda: Report by the Director, NINDS; Report by the Director, Division of Extramural Research and other administrative and program developments.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: September 19, 2003, 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Constance W. Atwell, PhD, Associate Director for Extramural Research, National Institute of Neurological Disorders and Stroke, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892–9531, (301) 496–9248.

Information is also available on the Institute's/Center's home page: *http://www.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21854 Filed 8–25–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Concept Review—"The Synthesis and Testing of Norsteroidal and Nonhormonal Male Contraceptive Agents."

Date: September 17, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contract Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Boulevard, Room 5E01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–21855 Filed 8–26–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Protection and Advocacy for Individuals With Mental Illness (PAIMI) Annual Program Performance Report (OMB No. 0930–0169, Revision)

The Protection and Advocacy for Individuals with Mental Illness (PAIMI) Act (42 U.S.C. 10801 *et seq.*) authorized funds to support protection and advocacy services on behalf of individuals with significant (severe) mental illnesses (adults) and significant (severe) emotional impairments (children) who are at risk for abuse (including incidents of seclusion, restraint and fatalities related to such incidents), neglect, and other civil rights violations while residing in a public or private care or treatment facility. This program is managed by SAMHSA's Center for Mental Health Services (CMHS).

Under the PAIMI Act, formula grant awards are made to governor-designated protection and advocacy (P&A) systems in the 50 States, 7 territories, and the District of Columbia (Mayor) to ensure that the rights of individuals with significant mental illnesses and

significant emotional impairments are not violated. Whenever the annual PAIMI appropriation reaches $30 million or more, State P&A systems may serve PAIMI-eligible individuals, as defined under the Act [42 U.S.C. at 10802(4)], residing in the community, including their own homes. However, persons residing in public and private residential care or treatment facilities have priority for all State P&A system PAIMI Program services [42 U.S.C. at 10804(d)].

The PAIMI Act requires State P&A systems to file an annual report on their activities and accomplishments and to provide information on such topics as: numbers of individuals served, types of complaints addressed, and the number of intervention strategies used to resolve the presenting issues, and actual expenditures. Under the Act, there is an Advisory Council which is also required to submit an annual report that assesses the effectiveness of the services provided to, and the activities conducted by, the P&A systems on behalf of PAIMI eligible individuals and their family members. In this submission, CMHS is reinstating information on fiscal year actual budget expenditures and making primarily minor changes to the annual reports. Also, CMHS will consult with the Center for Medicaid and Medicaid Services on mutual issues related to the use of seclusion and restraint in residential care and treatment facilities. The revised report formats will be effective for the PAIMI report due on January 1, 2005. The annual burden estimate is as follows:

	No. of respondents	No. of responses per respondent	Hours per response	Total hour burden
Annual Program Performance Report	57	1	28	1,596
Activities & Accomplishments			(20)	(1,140)
Performance outcomes			(3)	(171)
Expenses			(2)	(114)
Budget			(2)	(114)
Priority statements & objectives			(1)	(57)
Advisory Council Report	57	1	10	570
Total	114			2,166

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 20, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–21865 Filed 8–26–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Mental Health Services; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Mental Health Services (CMHS) National Advisory Council in September 2003.

A portion of the meeting will be open and will include a roll call, general announcements, Director's and Administrator's Reports, and discussions about the Substance Abuse and Mental Health Service (SAMHSA)'s Grant Review Process, SAMHSA's activities surrounding the Faith-Based Initiative, and President's New Freedom Commission on Mental Health.

Public comments are welcome. Please communicate with the individual listed as contact below for guidance. If anyone needs special accommodations for persons with disabilities please notify the contact listed below.

The meeting will also include the review, discussion, and evaluation of grant applications, which precede this grant review.

Therefore a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2. & 10 (d).

A summary of the meeting and a roster of Council members may be obtained from Ms. Dale Kaufman, Executive Secretary, CMHS, Room 17–99, Parklawn Building, Rockville, Maryland 20857, telephone (301) 443–2660.

Committee Name: CMHS National Advisory Council.

Meeting Date: September 4–5, 2003.

Place: The Doubletree Hotel, The Regency Room, 1750 Rockville Pike, Rockville, Maryland.

Type: Closed: September 4, 2003, 8:30 a.m.–10:30 a.m. Open: September 4, 2003, 11 a.m.–5 p.m. Open: September 5, 2003, 9 a.m.–12:15 p.m.

Contact: Dale Kaufman, MPH, MA, Executive Secretary, 5600 Fishers Lane, Parklawn Building, Room 17–99, Rockville, Maryland 20857. Telephone: (301) 443–2660 and FAX (301) 443–1563.

August 21, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–21836 Filed 8–26–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15981]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various issues relating to offshore safety and security. The meeting will be open to the public.

DATES: NOSAC will meet on Thursday, October 2, 2003, from 9 a.m. to 3 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 18, 2003. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before September 18, 2003.

ADDRESSES: NOSAC will meet in the Grand Ballroom A, of the Radisson

Hotel New Orleans, 1500 Canal Street, New Orleans, LA 70112. Send written material and requests to make oral presentations to Captain D. L. Scott, Commandant (G–MSO), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Captain D. L. Scott, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone 202–267–1082, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of the meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following items:

(1) Report on issues concerning the International Maritime Organization and the International Organization for Standardization.

(2) Report by the Coast Guard and subcommittee chairman on public meetings held and development of maritime and offshore security rules.

(3) Report from Task Force on development and implementation of the Standards of Training, Certification and Watchkeeping for Seafarers (STCW) Convention for offshore supply vessels (OSVs).

(4) Progress report from the Subcommittee on Pipeline-Free Anchorages.

(5) Status report on Coast Guard/Minerals Management Service Inspection of Fixed Facilities.

(6) Revision of 33 CFR chapter I, subchapter N, Outer Continental Shelf activities.

(7) Revision of 33 CFR chapter I, subchapter NN, Deepwater Ports rules, and status of submissions for LNG deepwater ports.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than September 18, 2003. Written material for distribution at the meeting should reach the Coast Guard no later than September 18, 2003. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 25 copies to the Executive Director no later than September 18, 2003.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Executive Director as soon as possible.

Dated: August 21, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 03–21955 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4818–N–11]

Notice of Proposed Information Collection for Public Comment: 2004 American Housing Survey—Metropolitan Sample

AGENCY: Office Policy Development and Research, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1995. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 27, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 7th Street, SW., Room 8226, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ronald J. Sepanik at (202) 708–1060, Ext. 5887 (this is not a toll-free number), or Jane M. Kneessi, Bureau of the Census, HHES Division, Washington, DC 20233, (301) 763–3235 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: 2004 American Housing Survey—Metropolitan Sample.

OMB Control Number: 2528–0016.

Description of the Need for the Information and Proposed Use: The 2004 American Housing Survey Metropolitan Sample (AHS–MS) provides a periodic measure of the size and composition of the housing inventory in selected metropolitan areas. Title 12, United States Code, sections 1701Z–1, 1701Z–2(g), and 1710Z–10a mandate the collection of this information.

The 2004 survey is similar to previous AHS–MS surveys and collects data on subjects such as the amount and types of changes in the inventory, the physical condition of the inventory, the characteristics of the occupants, the persons eligible for and beneficiaries of assisted housing by race and ethnicity, and the number and characteristics of vacancies.

Policy analysts, program managers, budget analysts, and Congressional staff use AHS data to advise executive and legislative branches about housing conditions and the suitability of public policy initiatives. Academic researchers and private organizations also use AHS data in efforts of specific interest and concern to their respective communities.

The Department of Housing and Urban Development (HUD) needs the AHS data for two important uses.

1. With the data, policy analysts can monitor the interaction among housing needs, demand and supply, as well as changes in housing conditions and costs, to aid in the development of housing policies and the design of housing programs appropriate for different target groups, such as first-time home buyers and the elderly.

2. With the data, HUD can evaluate, monitor, and design HUD programs to improve efficiency and effectiveness.

Agency Form Numbers: Computerized Versions of AHS–62 and AHS–63.

Members of affected public: Households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of Respondents: 59,500.

Estimate Responses per Respondent: 1 every six years.

Time per Respondent: 34 minutes.

Total Hours to Respond: 33,716.

Respondent's Obligation: Voluntary.

Status of the Proposed Information Collection: Pending OMB approval.

Authority: Title 13 U.S.C. 9(a), and title 12, U.S.C. 170z–1 *et seq.*

Dated: August 20, 2003.

Darlene F. Williams,

General, Deputy Assistant Secretary.

[FR Doc. 03–21927 Filed 8–26–03; 8:45 am]

BILLING CODE 4210–62–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–34]

Notice of Proposed Information Collection: Comment Request; Late Request for Endorsement Procedures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 27, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submissive of responses.

This notice also lists the following information:

Title of Proposal: Late Request for Endorsement Procedures.

OMB Control Number, if applicable: 2502—New.

Description of the need for the information and proposed use: The information collection establishes the criteria for defining late requests for endorsement for initial submissions and reconsiderations. When submitting a late request for endorsement, a lender must certify that the borrower's mortgage payments are current and made within the month due, all escrows are current, and no payments were made by the lender to affect an acceptable payment history. The lender will also submit a copy of the payment history or ledger as additional documentation.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents is 12,000 generating approximately 300,000 annual responses; frequency of response is on occasion; the estimated time needed to prepare the response varies from 6 minutes to 30 minutes; and the estimated annual burden hours requested is 120,000.

Status of the proposed information collection: New collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: August 20, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 03–21928 Filed 8–26–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–11]

Notice of Proposed Information Collection for Public Comment—Public Housing Financial Management Template

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 27, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the

information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

The Public Housing Financial Management template is the set of documents on which the Department collects financial information from Public Housing Agencies (PHAs). Pursuant to the Public Housing Assessment System (PHAS) regulation, PHAs annually submit both unaudited and audited financial information to the Department using the financial management template. In accordance with HUD regulatory requirements, PHAs enter the financial information on the template and electronically submit to HUD.

This notice also lists the following information:

Title of Proposal: Public Housing Financial Management Template.

OMB Control Number: 2535–0107.

Description of the need for the information and proposed use: The Uniform Financial Reporting Standards (UFRS) for HUD Housing Programs requires PHAs to submit financial data electronically, using Generally Accepted Accounting Principles (GAAP), in a prescribed format. The financial management template is that format. HUD uses the financial information it collects from PHAs to assist in the evaluation and assessment of the PHAs overall condition. Requiring PHAs to report electronically has enabled HUD to provide a more comprehensive assessment of the PHAs receiving Federal funds.

Agency form numbers, if applicable: Not applicable.

Members of affected public: Local, State, or tribal governments, not-for-profit institutions.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 3,173 PHAs; annual submission per PHA; average hours for PHA response is 10 hours; the total reporting burden is 31,961 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: August 20, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–21929 Filed 8–26–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–12]

Notice of Proposed Information Collection for Public Comment—Customer Service and Satisfaction Survey

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 27, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

The Customer Service and Satisfaction Survey is the means by which HUD surveys the residents of HUD assisted and insured housing. The survey assesses resident satisfaction with housing services and living conditions.

This notice also lists the following information:

Title of Proposal: Customer Service and Satisfaction Survey.

OMB Control Number: 2507–0001.

Description of the need for the information and proposed use: HUD conducts a resident survey of assisted and insured housing residents on an annual basis. A random sample of residents in each PHA is surveyed annually in accordance with requirements of the Public Housing Assessment System (PHAS) regulation. PHAs are required to announce the survey and follow up on substandard scores. Approximately twenty percent of multifamily property residents are surveyed annually from a random sample of selected properties. No implementation or follow-up is required.

Agency form numbers, if applicable: Not applicable.

Members of affected public: Individuals or households, businesses or other for-profit, not-for-profit institutions.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 631,261 residents receive the survey, 3,173 PHAS submit implementation and follow-up plans, HUD receives a total 269,091 responses from residents and PHAs (total based on 47% resident response rate for survey); annual submission per resident respondents and PHAs; average hours for resident response is 15 minutes; average hours for PHA response is 5.45 hours; the total reporting burden is 82,903 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: August 20, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–21930 Filed 8–26–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–13]

Notice of Proposed Information Collection for Public Comment—Management Operations Certification

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 27, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

The Management Operations template is the set of documents on which the Department collects management operations information from Public Housing Agencies (PHAs). Pursuant to the Public Housing Assessment System (PHAS) regulation, PHAs are required annually to submit specific management operations information. In accordance with the requirements of PHAS, PHAs enter the required data on the templates, certify to the data entered, and electronically submit the information to HUD.

This notice also lists the following information:

Title of Proposal: Management Operations Certification.

OMB Control Number: 2535–0106.

Description of the need for the information and proposed use: To meet the requirements of the PHAS rule, the Department has developed the management operations template that PHAs use to annually submit specific management information to HUD electronically. HUD uses the management operations information it collects from each PHA to assist in the evaluation and assessment of the PHAs overall condition. Requiring PHAs to report electronically has enabled HUD to provide a more comprehensive assessment of the PHAs receiving federal funds from HUD.

Agency form numbers, if applicable: Form HUD–50072.

Members of affected public: Local, State, or tribal governments, not-for-profit institutions.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Management Operations Certification: 3,169 PHAs; annual submission per PHA; average hours for PHA response is 1.9 hours; the total reporting burden is 6,202.5 hours.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: August 20, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–21931 Filed 8–26–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–60]

Notice of Submission of Proposed Information Collection to OMB: Survey of New Manufactured (Mobile) Home Placements

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This survey is used to collect data on the placement of new manufactured (mobile) homes. The data are collected from manufactured home dealers. The principal user, HUD, use the statistics to monitor trends in this type of low-cost housing; to formulate policy, draft legislation, and evaluate programs.

DATES: *Comments Due Date:* September 26, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2528–0029) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may also be obtained through HUD's Information Collection Budget Tracking System at *http://mf.hud.gov.63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the

information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This notice also lists the following information:

Title of Proposal: Survey of New Manufacture (Mobile) Home Placements.

OMB Approval Number: 2528–0029.

Form Numbers: C–MH–9A.

Description of the Need for the Information and its Proposed Use:

This survey is used to collect data on the placement of new manufactured (mobile) homes. The data are collected from manufactured home dealers. The principal user, HUD, use the statistics to monitor trends in this type of low-cost housing; to formulate policy, draft legislation, and evaluate programs.

Respondents: Business or other for-profit.

Frequency of Submission: Monthly.

Reporting Burden: Number of respondents 4,750: Average responses per respondent 2; Total annual responses 9,500; Average burden per response 0.5 hrs.

Total Estimated Burden Hours: 4,750.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 21, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–21932 Filed 8–26–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–13]

Notice of Availability of a Draft Environmental Impact Statement (EIS) for the Salishan Revitalization Project, City of Tacoma, WA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development gives notice to the public, agencies, and Indian tribes that the City of Tacoma, WA acting under its authority as the Responsible Entity for compliance with the national Environmental Policy Act (NEPA) in accordance with 24 CFR 58.4, and jointly the City of Tacoma and Tacoma Housing Authority (THA) acting under their authority as lead agencies in accordance with the State Environmental Policy Act (SEPA) (RCW 43.21) that a Draft Environmental Impact Statement (DEIS) for the redevelopment of the Salishan housing project is available for review and comment. This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508.

Notice is also given that the City of Tacoma as Responsible Entity has decided to combine the National Historic Preservation Ace, section 106 process with the NEPA EIS in accordance with 36 CFR 800.8(c). Comments are also being requested on the Section 106 information presented in the Draft EIS as well as on the section 106 process itself.

DATES: *Comments Due Date:* Comments must be received on or before October 12, 2003. Written comments on the Draft EIS should be addressed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Public Meeting: A public comment meeting will be held during the comment period in order to ensure public participation. The public meeting will be held on September 22, 2003, from 5 p.m. to 8 p.m. (childcare and language translation services will be available at the meeting). The public meeting will be held at the following location: Tacoma Housing Authority, Salishan Meeting Rooms, 1724 E. 44th Street, Tacoma, Washington 98404.

FOR FURTHER INFORMATION CONTACT: The DEIS is available on the Internet and can be viewed or downloaded at: *http://govme.cityoftacoma.org/govme/panelBeta/permitInfo/LandUse/landUse.* Copies of the DEIS are also available from: Karie Hayashi, and Land Use Administration Planner, City of Tacoma, 747 Market Street, Tacoma, Washington, 98402; Phone (253) 591–5387; FAX: (253) 591–5433; e-mail *khayashi@cityoftacoma.org*

SUPPLEMENTARY INFORMATION: The Salishan Public Housing Development (Salishan) was originally constructed in 1942 as war-time housing. Located in what is known as the East Side neighborhood, Salishan is bordered on the west by Portland Avenue and on the east by Swan Creek. There are currently 786 housing units on the site, of which 778 are occupied, and other related community/social service buildings.

In 2000, THA submitted a successful HOPE VI grant application for the redevelopment of Salishan. The amount of the HOPE VI grant awarded in connection with the Salishan revitalization project was $35 million. Under the proposed Revitalization Plan, existing housing will be demolished and Salishan will be redeveloped into a mixed-use, mixed-income community of approximately 1,270 to 1,500 units. The project will require the relocation of all existing residents. The new unit mix will incorporate low-income, affordable, and market rate housing with single- and multi-family dwellings, and senior and special needs housing. The redevelopment project will also include a mixture of commercial uses and improvements to community facilities such as expanding the existing health clinic, day care, family investment center, and gymnasium. Alternatives to be considered in the EIS include a no action alternative, a 1,270-unit alternative, and a 1,500-unit development.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: August 21, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–21925 Filed 8–26–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by September 26, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review,

subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Walter H. Fox, Charlotte, NC, PRT–075825

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of survival of the species.

Applicant: Camp Cooley Ranch, Franklin TX, PRT–810353

The applicant requests renewal of a permit to authorize interstate and foreign commerce, export and cull of excess male barasingha (*Cervus duvaucelli*) from their captive herd for the purpose of enhancement of the survival of the species. This notification covers activities conducted by the applicant over a five-year period. Permittee must apply for renewal annually.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Virgil R. Graber, Orrville, OH, PRT–073810

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada prior to April 30, 1994, for personal use.

Dated: August 15, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–21902 Filed 8–26–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Threemile Canyon Farms Multi-Species Candidate Conservation Agreement With Assurances, and Related Draft Environmental Assessment, Morrow and Gilliam Counties, Oregon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Threemile Canyon Farms, LLC (Farm), Portland General Electric (PGE), The Nature Conservancy (TNC), and the Oregon Department of Fish and Wildlife (ODFW) have applied to the U.S. Fish and Wildlife Service (Service) for Enhancement of Survival Permits pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). The permit applications include a proposed Multi-Species Candidate Conservation Agreement with Assurances (MSCCAA) between the Farm, PGE, TNC, ODFW, and the Service. The proposed term of the permits and MSCCAA is 25 years.

Under the proposed MSCCAA, the parties would implement habitat management, operational modifications, and conservation measures for four non-listed species over approximately 93,000 acres (Covered Area) in northeast Oregon. The Service has prepared a draft Environmental Assessment pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and associated regulations (40 CFR 1500–1508) for approval of the MSCCAA and issuance of the permits.

We request comments from the public on the permit applications, proposed MSCCAA and the draft Environmental Assessment, all of which are available for review (see "Document Availability" in the **SUPPLEMENTARY INFORMATION** section).

DATES: Written comments must be received from interested parties on or before October 14, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery, facsimile, or by e-mail. If you use postal mail/commercial delivery or facsimile, please address your written comments to Kemper McMaster, State Supervisor, Fish and Wildlife Service, 2600 S.E. 98th Ave., Suite 100, Portland, Oregon 97266, facsimile (503) 231–6195. If you use e-mail, address your comments to *threemilemsccaa@r1.fws.gov*. Include your name and mailing address in your message.

FOR FURTHER INFORMATION CONTACT: Rich Szlemp, Fish and Wildlife Biologist, Oregon State Office at (503) 231–6179.

SUPPLEMENTARY INFORMATION:

Document Availability

You may obtain copies of the documents for review by contacting the above named individual (**FOR FURTHER INFORMATION CONTACT**) or by making an appointment to view the documents at the above address (see **ADDRESSES**) during normal business hours. You may also view the documents on the Internet at *http://www.davidevansandassociates.com/projects/threemile.html*.

Background

Under a Candidate Conservation Agreement with Assurances, participating landowners voluntarily implement conservation activities on their property to benefit nonlisted species that are proposed or candidates for listing under the Act, or other sensitive species. Landowners may be willing to implement measures that enhance populations of sensitive species on their property, but may be reluctant to do so because of potential land-use restrictions that could occur should the species eventually be listed under the Act. As a result of this potential regulatory concern, Candidate Conservation Agreements with Assurances encourage private and other non-Federal property owners to implement conservation efforts and reduce threats to non-listed species by assuring landowners that they will not be subjected to increased property use restrictions beyond those identified in

the agreement. Under the Final Policy for Candidate Conservation Agreements with Assurances (64 FR 32726), the Service must determine that the benefits of the conservation measures implemented by the property owner, when combined with those benefits that would be achieved if it is assumed that conservation measure were also to be implemented on other necessary properties, would preclude or remove any need to list the covered species. Application requirements and issuance criteria for Enhancement of Survival Permits through Candidate Conservation Agreements with Assurances are found in 50 CFR 17.22(d) and 17.32(d). These permits allow the incidental take of any covered species in accordance with the terms of the permits and accompanying agreement, should the species be listed during the term of the permit. Section 9 of the Act and its implementing Federal regulations prohibit the "take" of a species listed as endangered or threatened. Take is defined under the Act as including to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct (16 U.S.C. 1538). "Harm" is further defined by regulation as significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns; including breeding, feeding, or sheltering (50 CFR 17.3).

In 1963, the State of Oregon leased approximately 93,000 acres of property to the Boeing Company. In 1974, the Boeing Company leased the property to Boeing Agri-Industrial Company (BAIC), a wholly-owned subsidiary of the Boeing Company. In 2000, BAIC was sold to the Farm and in 2002, the Farm, by and through its wholly-owned subsidiary BAIC, Inc., purchased the property from the State of Oregon. Since 1974, the majority of the property has been used for farming purposes. PGE owns and controls approximately 3,520 acres within the Farm property boundary. The Boeing Company continues to lease approximately 2,700 acres within the Farm property described as the "radar range" in the agreement. The Boeing lease is set to expire in 2040.

In 2000, principal Farm representatives joined with environmental organizations to set aside differences and to cooperatively balance conservation and sustainable agriculture. A settlement agreement was reached in 2000 that set forth terms and conditions under which the parties agreed to settle litigation. The purpose of the settlement agreement was to allow development and utilization of the agreed-upon Development Area and associated water resources in a manner that preserved the ecological integrity of the adjacent Conservation Area while at the same time protecting Columbia and Snake River salmon and steelhead, the Washington ground squirrel (*Spermophilus washingtoni*), and other ecological values.

In order to address long-term conservation of the ecological values of the Covered Area and to implement the terms of the settlement agreement and creation of a Conservation Area, Farm representatives agreed to develop and implement a conservation plan that prescribes management practices for the development portion of the property while providing protection within the Conservation Area. As a result of these efforts, a draft Candidate Conservation Agreement with Assurances was developed.

Description of Proposed Action

The Farm, PGE, TNC, and ODFW have applied to the Service for 25-year Enhancement of Survival Permits pursuant to section 10(a)(1)(A) of the Act. The permits would cover habitat management, operational modifications, and conservation measures on approximately 93,000 acres in northeast Oregon (Covered Area). The Covered Area is primarily in Morrow County, with western portions in Gilliam County. The city of Boardman is approximately 6 miles to the northeast and the city of Heppner is approximately 25 miles to the south. Interstate 84 runs through the north portion of the Covered Area. The MSCCAA proposes to cover four nonlisted species facing steadily declining populations: the Washington ground squirrel; ferruginous hawk (*Buteo regalis*); loggerhead shrike (*Lanius ludovicianus gambeli*); and sage sparrow (*Amphispiza belli*) (Covered Species).

On October 25, 1999, the Service formally identified the Washington ground squirrel as a candidate for listing under the Act with a priority number of 5 (64 FR 57534). Since this initial candidate listing, the Service raised the listing priority to 2 based on additional information on the overall decline of the species throughout its range and an increased threat from agricultural conversion (66 FR 1296). Washington ground squirrels are also listed as endangered under Oregon law. The Washington ground squirrel is endemic to the Deschutes-Columbia Plateau Province south of the Columbia River and east of the John Day River. Its range was probably contiguous when the region was first settled, but now consists of three distinct sub-populations, two in Washington and one in Oregon. The MSCCAA addresses the Oregon population of the squirrel, which occurs in lower elevation (generally up to 800 feet) native grasslands and shrub-steppe, south of the Columbia River, east of the John Day River, and west of Pendleton.

The ferruginous hawk is a species of concern and is identified by the State of Oregon as a sensitive species. This species is included within this MSCCAA due to its sensitive status within the region, its strong association with the native grassland and shrub-steppe habitats in the Covered Area, and the fact that a conserved portion of the Covered Area contains the largest remaining piece of shrub-steppe habitat in the Columbia Basin.

The loggerhead shrike is an Oregon State sensitive species (vulnerable) in the Columbia Basin but has no current Federal listing status. Breeding Bird Surveys documented an annual decline of 2.7 percent nationally between 1968 and 1994. The population decline has been attributed to many factors, including pesticides, loss of nesting habitat, high winter mortality, and intensive farming practices. This species is included in this MSCCAA because the population appears to be declining across its range (thereby increasing its likelihood of becoming proposed for Federal listing) and because of recent data showing poor nesting success and high fledgling mortality on the adjacent Naval Facility.

The sage sparrow is Oregon State-listed as sensitive (critical) in the Columbia Basin but has no current Federal listing status. The sage sparrow is included in this MSCCAA due to its apparent declining range and strong positive correlation with the sagebrush habitats in the Covered Area.

Covered Species are largely dependent on private lands in the project area. Primary factors for their declining populations include loss, degradation, or fragmentation of suitable habitat within the Columbia Basin Ecosystem, largely due to the conversion of shrub-steppe to agricultural use. Conservation measures that preserve or enhance suitable habitat on private lands are critically important for the long-term survival of these species.

Pursuant to the proposed MSCCAA, the Farm (including its leased properties, affiliates, and tenants), TNC, and PGE have already begun implementing or will implement the following measures within the Covered Area:

(1) Dedicate a combined total of approximately 23,480 acres to Conservation Areas. TNC, or a comparable third-party conservation organization, will manage in perpetuity the 22,600 acres of Conservation Areas dedicated by the Farm and protected under a permanent conservation easement with the intent of maintaining and improving the imperiled native shrub-steppe and grassland habitats for the Covered Species and other associated wildlife. The PGE Conservation Area, approximately 880 acres, would also be protected from development and managed by PGE for conservation purposes for the life of the MSCCAA.

(2) Provide a 250-foot buffer around all of the Farm Conservation Areas to further restrict land use activities that otherwise could affect the outer edges of the Farm Conservation Area.

(3) Provide funds for the preservation, management, and improvement of the Conservation Areas, including intensive noxious weed control.

(4) Provide funds for conducting extensive monitoring, surveying, notification, and reporting.

(5) Provide restrictions on grazing, ground-disturbing activities, hunting and shooting to avoid or minimize harmful impacts to the Covered Species.

(6) Develop and implement coordinated fire response plans and detailed conservation management plans for the Conservation Areas.

(7) Provide for adaptive management within the Conservation Areas to address changing habitat conditions.

A draft EA has been prepared to address the impacts of issuing ESA assurances through the MSCCAA for the four covered species. The draft EA evaluates the environmental impacts that may result from implementation of the conservation measures described in the MSCCAA. The draft EA describes five alternatives to the proposed action including the "no action" alternative.

This notice is provided pursuant to section 10(c) of the Act, the Candidate Conservation Agreement with Assurances standard precluding the need to list, and NEPA regulations (40 CFR 1506.6). The Service will evaluate the permit applications, associated documents, and comments submitted thereon to determine whether the permit applications meet the requirements of section 10(a) of the Act and NEPA regulations. All comments received, including names and addresses, will become part of the administrative record and will be available for review pursuant to section 10(c) of the Act. If we determine that all requirements are met, we will sign the MSCCAA and issue separate permits to the Farm, PGE, TNC, and ODFW for the take of the Covered Species (should they be listed during the term of the permits), incidental to otherwise lawful activities in accordance with the terms of the MSCCAA. The final permit decisions will be made no sooner than 45 days after the date of this notice.

Dated: July 28, 2003.

Carolyn Bohan,

Acting Deputy Regional Director, Fish and Wildlife Service, Region 1, Portland, Oregon.

[FR Doc. 03–21867 Filed 8–26–03; 8:45 am]

BILLING CODE 4310–5–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein.

Marine Mammals

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
070536	Robert E. Speegle	68 FR 22409; April 28, 2003	August 4, 2003.
070569	Marvin J. Winter	68 FR 22409; April 28, 2003	July 15, 2003.
071569	Leonard Bernstein	68 FR 33179; June 3, 2003	August 13, 2003.
072004	Alfred E. Delgreco	68 FR 33734; June 5, 2003	August 4, 2003.
072240	Michael B. Thomas	68 FR 33735; June 5, 2003	July 17, 2003.

Dated: August 15, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–21901 Filed 8–26–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Final Preassessment Screen for the Chino and Tyrone Mines, Grant County, New Mexico and the Morenci Mine, Graham County, Arizona

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The Department of the Interior, through the U.S. Fish and Wildlife Service, has conducted a preliminary screen of existing data and literature pertaining to injuries to natural resources from releases of hazardous chemicals from three large open-pit copper mines in southwestern New Mexico and southeastern Arizona (the Phelps Dodge Chino, Tyrone, and Morenci mines). Information available to the Department has resulted in a determination that there is a reasonable probability of making a successful claim for natural resource injuries. This determination, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, (42 U.S.C. 9607, and Departmental regulations found at 43 CFR part 11), is

memorialized in the document entitled "Final Preassessement Screen for the Chino, Tyrone, and Morenci Mine Sites, Grant County, New Mexico and Graham County, Arizona."

DATES: Documents and other information submitted with the determinations are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents by October 14, 2003.

ADDRESSES: Copies of the preassessment screen are available on the Internet at *http://ifw2es.fws.gov/library,* or may be requested from the Service at U.S. Fish and Wildlife Service, 2105 Osuna, NE, Albuquerque, New Mexico 87113, (505) 346–2525 or U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103, (505) 248–6648.

FOR FURTHER INFORMATION CONTACT: Karen Cathey, U.S. Fish and Wildlife Service, Ecological Services, Division of Habitat Conservation/Environmental Contaminants, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103, (505) 248–6648.

SUPPLEMENTARY INFORMATION:

Background

Among the mines within a 500 mi^2 region of Southwestern New Mexico and Southeastern Arizona (Gila Region), the Phelps Dodge Corporation Chino, Tyrone, and Morenci open-pit copper mines are among the largest. Several ephemeral streams have been impacted by downstream releases, and portions of the Gila and San Francisco Rivers and their tributaries (bordered by the Gila and Apache National Forests) have been affected by high concentration metal pulses. Four species listed under the Endangered Species Act (spikedace, loach minnow, southwestern willow flycatcher, and Chiricahua leopard frog) frequent the affected areas, and resources under the management of the Bureau of Indian Affairs and Bureau of Land Management may have been impacted.

In September and October 2000, numerous dead birds were discovered at the Phelps Dodge Chino and Tyrone Mines in New Mexico, and the Morenci Mine in Arizona. The discovery of these dead birds (with a strong causal link to death by acid and metal poisoning), and the completion of an ecological risk assessment at an area impacted by historical copper smelter emissions (with direct evidence of injury to Department of the Interior trust resources), requires that the Department move forward with assessment of further injuries immediately. The Department has contacted the parties potentially responsible for releases of hazardous materials and invited them to participate in the assessment of injuries. Should evaluation of data indicate further extensive assessment studies are necessary, an assessment plan will be published and public comments solicited.

The preassessment screen indicates there are multiple methods that could be used in the of valuation of damages, including one method called "contingent valuation." While this method is evaluated in the document, it is not likely that the Department would use the contingent valuation method because it depends heavily on subjective opinions in its analysis. More likely, once extent of injuries are determined, the Department would use one of the other methods of damage determination: Examples of such restoration project(s) would be where the responsible party conducts the implementation of the restoration project with Trustee oversight and no determination of specific monetary damages are made, or where the Trustees perform restoration projects funded by responsible parties.

Bryan Arroyo,

Acting Regional Director, Southwest Region, Albuquerque, New Mexico, Authorized Official, Department of the Interior.

[FR Doc. 03–21866 Filed 8–26–03; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection for 1029–0051 and 1029–0120

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval to continue the collections of information under 30 CFR part 840, Permanent Program Inspection and Enforcement Procedures, and two Technical Training Program forms for nominations and payment of travel and per diem expenses. These information collection activities were previously approved by the Office of Management and Budget (OMB), and assigned clearance numbers 1029–0051 and –0120, respectively.

DATES: Comments on the proposed information collection activities must be received by October 27, 2003, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW., Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to *jtreleas@osmre.gov.*

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783 or by e-mail.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8 (d)]. This notice identifies information collections that OSM will be submitting to OMB for renewed approval. These collections are contained in (1) 30 CFR part 840, Permanent Program Inspection and Enforcement Procedures (1029–0051); and (2) OSM's Technical Training Program Non-Federal Nomination Form, and Request for Payment of Travel and Per Diem Form (1029–0120). OSM will request a 3-year term of approval for each information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: Permanent Program Inspection and Enforcement Procedures, 30 CFR part 840.

OMB Control Number: 1029–0051.

Abstract: This provision requires the regulatory authority to conduct periodic inspections of coal mining activities, and prepare and maintain inspection reports for public review. This information is necessary to meet the requirements of the Surface Mining Control and Reclamation Act of 1977 and its public participation provisions. Public review assures the public that the State is meeting the requirements for the Act and approved State regulatory program.

Bureau Form Number: None.

Frequency of Collection: Once, monthly, quarterly, and annually.

Description of Respondents: State Regulatory Authorities.

Total Annual Responses: 86,599.

Total Annual Burden Hours: 503,549.

Title: Technical Training Program Non-Federal Nomination Form and Request for Payment of Travel and Per Diem Form.

OMB Control Number: 1029–0120.

Summary: The information is used to identify and evaluate the training courses requested by students to enhance their job performance, to calculate the number of classes and instructors needed to complete OSM's technical training mission, and to estimate costs to the training program.

Bureau Form Number: OSM 105, OSM 140.

Frequency of Collection: Once.

Description of Respondents: State and Tribal regulatory and reclamation employees and industry personnel.

Total Annual Responses: 1,800.

Total Annual Burden Hours: 150 hours.

Dated: August 21, 2003.

Richard G. Bryson,

Chief, Division of Regulatory Support

[FR Doc. 03–21877 Filed 8–26–03; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–768 (Review)]

Fresh Atlantic Salmon From Chile

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year review.

SUMMARY: The subject five-year review was initiated in June 2003 to determine whether revocation of the antidumping duty order on fresh Atlantic salmon from Chile would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On July 25, 2003, Commerce published notice of its final results of a changed circumstances review, in which it decided to revoke the order on fresh Atlantic salmon from Chile, effective July 1, 2001, because "domestic interested parties expressed no interest in the continuation of this order" (68 FR 44043). In light of the revocation of the order, Commerce published notice that it was rescinding its five-year review on fresh Atlantic salmon from Chile on August 13, 2003 (68 FR 48339). Accordingly, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), the subject review is terminated.

EFFECTIVE DATE: August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*).

Authority: This review is being terminated pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)); this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: August 21, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–21875 Filed 8–26–03; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–435]

In the Matter of Certain Integrated Repeaters, Switches, Transceivers and Products Containing Same; Notice of Rescission of Limited Exclusion Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has rescinded the limited exclusion order issued in this investigation.

FOR FURTHER INFORMATION CONTACT: Andrea Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3105. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On September 5, 2001, the Commission determined not to review a final initial determination finding that respondent Altima Communications, Inc. ("Altima") violated section 337 of the Tariff Act of 1930 in the unlawful importation and sale of certain integrated repeaters covered by various claims of U.S. Patent No. 5,894,410 and U.S. Patent No. 5,742,603, owned by complainant Intel Corporation ("Intel"). On October 24, 2001, the Commission issued a limited exclusion order excluding from entry for consumption into the United States the infringing articles. The President did not disapprove the Commission's determination. *See* 19 U.S.C. 1337(j)(4).

On August 14, 2003, Intel filed with the Commission a Petition for Rescission of Exclusion Order based on a settlement agreement between Intel and Broadcom Corporation ("Broadcom"), Altima's parent. On August 19, 2003, Altima and Broadcom filed a response, stating that they join in the petition and request rescission. No party opposed the petition. The Commission found that the requirements of Commission rules 210.76(a)(1) and 210.76(a)(2), 19 CFR 210.76(a)(1) and (a)(2), were satisfied, and determined to grant the petition for rescission.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337(k), and section 210.76(a) of the Commission's Rules of Practice and Procedure, 19 CFR 210.76(a).

Issued: August 21, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–21851 Filed 8–26–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on August 14, 2003, a proposed Consent Decree in *United States* v. *City of Hastings, et al.*, Civil Action No. 8:03–cv–321, was lodged with the United States District Court for the District of Nebraska.

In this action the United States asserted claims under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607(a), seeking an order requiring the Defendants to implement EPA's selected remedy for the South Landfill Subsite of the Hastings Groundwater Contamination Site, located in the City of Hastings, Nebraska, and requiring the Defendants to reimburse the United States for costs incurred and to be incurred in response to releases or threatened releases of hazardous substances at the Subsite. The United States asserted these claims against the City of Hastings, Dravo Corporation, Dutton-Lainson Company, and Concrete Industries, Inc. The South Landfill Subsite, a former municipal landfill, is approximately 56 acres in size and is located southeast of the central business district of Hastings, Waste oils, sludges, and other materials containing hazardous substances were disposed of at the Subsite, resulting in contamination of soils and ground water beneath and down gradient of the Subsite.

Under the terms of the proposed Consent Decree settling the claims asserted in the Complaint, the Defendants agreed to perform the remedial design and remedial action at the Subsite, pay $815,000 of EPA's past response costs, and all of the United states' future response costs. EPA's selected remedy for the Subsite consists of capping the landfill with an evapotranspiration cover, monitored natural attenuation of contaminated ground water emanating from beneath the landfill, and institutional controls. In return for the commitments by the Settling Defendants, the United States grants the Settling Defendants a covenant not to sue under Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), relating to the south Landfill Subsite.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Hastings, et al.*, D.J. Ref. No. 90–11–2–1112/4.

The Consent Decree may be examined at the Office of the United States Attorney, 1620 Dodge Street, Suite 1400, Omaha, NE 68102–1506, and at U.S. EPA Region VII, 901 North Fifth Street, Kansas City, Kansas 66025. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, Please enclose a check in the amount of $41.25 (25 cents per page reproduction cost) payable to the U.S. Treasury. If requesting a copy of the Consent Decree exclusive of Appendices, please enclose a check in the amount of $12.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Catherine R. McCabe,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–21924 Filed 8–26–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

In accordance with Departmental Policy, 28 U.S.C. 50.7, notice is hereby given that on August 13, 2003, a proposed Consent Decree in *United States, et al.* v. *Hoosac Water Quality District, et al.*, Civil Action No. 03–30197, was lodged with the United States District Court for the District of Massachusetts.

In this section, the United States sought injunctive relief and civil penalties against the Hoosac Water Quality District ("the District"), the City of North Adams, and the Town of Williamstown, (all located in Massachusetts), with respect to violations of the limitations imposed under a National Pollutant Discharge Elimination System ("NPDES") permit issued to the District's Waste Water Treatment Plant pursuant to section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. 1311(a). Under the terms of the proposed settlement, the Settling Defendants will pay a civil penalty of $100,000 and Williamstown will undertake a Supplemental Environmental Project with a cost to Williamstown of at least $168,400. In addition, the Settling Defendants will undertake measures to reduce infiltration and inflow into the District and otherwise bring the Plant into compliance with the CWA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Hoosac Water Quality District*, D.J. Ref. 90–5–1–1–07289.

The Consent Decree may be examined at the Office of the United States Attorney, Western District of Massachusetts, 1550 Main Street, Springfield, Massachusetts, 0113, and at U.S. EPA Region I, One Congress Street, Boston, MA, 02114. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.25 (25 cents per page reproduction cost-no including the attached exhibits) payable to the U.S. Treasury.

Ronald Gluck,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–21921 Filed 8–26–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Second Amended Clean Water Act Consent Decree With Icicle Seafoods, Inc.

AGENCY: Department of Justice.

ACTION: Notice of availability for public comment.

SUMMARY: Notice is hereby given that on August 18, 2003, a Second Amended Consent Decree in *United States* v. *Icicle Seafoods, Inc.*, Docket No. A03–0142 CV (JWS), was lodged with the United States District Court for the District of Alaska. In this action brought pursuant to section 309 of the Clean Water Act, as amended, 33 U.S.C. 1319, the United States has requested the imposition of civil penalties and injunctive relief on Icicle Seafoods, Inc. (Icicle). This action arose out of Icicle's operation of its Seward Fisheries Facility in Seward, Alaska. The United States has alleged that Icicle discharged seafood processing waste from that facility to waters of the United States without a permit on various days in 2000 and 2001, and that the company failed to meet several of the discharge and reporting requirements of its authorization to discharge under the general National Pollutant Discharge Elimination System permit for seafood processors in Alaska (General Permit) on numerous days between January of 1998 and October of 2001, all in violation of section 301 of the Clean Water Act, 33 U.S.C. 1311.

Authority: 28 CFR 50.7.

Like the Consent Decree that was lodged with the court on June 26, 2003, and the Amended Consent Decree that was lodged with the court on July 18, 2003, the Second Amended Consent Decree requires Icicle to pay an $85,000 civil penalty and perform several measures of injunctive relief at the Seward Fisheries Facility. The first element of injunctive relief, requiring that Icicle render salmon heads and waste salmon carcasses into fish meal during the 2003 processing season and provide related reporting to the Environmental Protection Agency (EPA), allowed Icicle to barge that salmon processing waste to an EPA-approved at-sea discharge location when the fish meal plant was inoperative and Icicle could not freeze that waste or dispose of it by means other than marine discharge. The Amended Consent Decree allowed an additional exception for at-sea discharges of such waste during the period July 11–July 31, 2003. This exception was available if the fish meal plant is operating at full capacity and Icicle could not freeze or dispose of salmon heads and waste salmon carcasses by means other than marine discharge. The Second Amended Consent Decree changes the period during which this exception is available to August 15 through September 20, 2003.

The other injunctive relief measures Icicle is to implement remain the same. They concern the reduction of foam generated by the transfer of fresh seafood from catcher vessels to the Seward Fisheries Facility for processing; means to prevent the introduction of fish hooks into the grinders used to chop seafood processing waste into ½" pieces that can be discharged under the General Permit; the monitoring of the underwater waste pile created by discharges from the Seward Fisheries Facility prior to 2002; and improvement of internal operating procedures.

DATES: The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Second Amended Consent Decree.

ADDRESSES: Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice and sent to 801 B Street, Suite 504, Anchorage, Alaska 99501–3657. Comments should refer to *United States* v. *Icicle Seafoods, Inc.*, D.J. Ref. #90–5–1–1–07395. During the public comment period, the Second Amended Consent Decree may be examined during business hours at the same address by contacting Lorraine Carter (907–271–5452) or on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. The Second Amended Consent Decree may also be examined at the Office of the Regional Counsel, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, by contacting Meg Silver (206–553–1476). A copy of the Second Amended Consent Decree may be obtained by contacting Lorraine Carter in writing at the address above or via electronic mail (*lorraine.carter@usdoj.gov*). In requesting a copy by mail, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S Treasury.

Catherihe R. McCabe,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–21923 Filed 8–26–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Stephen Jacobs and Doug Steve*, case No. 02 C 8998; was lodged with the United States District Court for the Northern District of Illinois on August 19, 2003. This proposed Consent Decree concerns a complaint filed by the United States against Stephen Jacobs and Doug Steve, pursuant to section 301(a) of the Clean Water Act ("CWA"), 33 U.S.C. 1311(a) and section 10 of the Rivers and Harbors Appropriation Act of 1899, 33 U.S.C. 403 ("RHA"), to obtain injunctive relief from and impose civil penalties against the Defendants for filling wetlands on their property without a permit and for installing bank stabilization and boat docks in the Fox River without a permit.

The proposed Consent Decree prohibits mowing, cutting, clearing, cultivating, dredging, excavating, farming, filling, dewatering, draining or otherwise disturbing in any manner whatsoever the wetland impact area, and requires removal of all fill material from the wetland impact area, removal of a portion of the bank stabilization, restoration of the filled wetland areas, and requires payment of a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to Kurt Lindland, Assistant United States Attorney, United States Attorney's Office, 5th Floor, 219 S. Dearborn Street, Chicago, Illinois 60604 and refer to *United States* v. *Stephen Jacobs and Doug Steve*, including the USAO #2002V01900.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Northern District of Illinois, 219 S. Dearborn Street, Chicago, Illinois. In addition, the proposed Consent Decree may be viewed on the World Wide Web at *http://www.usdoj.gov/enrd/open.html*.

Kurt N. Lindland,

Assistant United States Attorney.

[FR Doc. 03–21920 Filed 8–26–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in In re Kaiser Aluminum Corporation Under the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)

Notice is hereby given that on August 22, 2003, a proposed Consent Decree was lodged with the United States Bankruptcy Court for the District of Delaware in *In re Kaiser Aluminum Corporation*, No. 02–10429 (JKF) (Bankr. D. Del.). The Consent Decree among the United States on behalf of U.S. EPA, Department of Interior, National Oceanic and Atmospheric Administration of the Department of Commerce, the States of Rhode Island, and Washington, the State of California Department of Toxic Substances Control and the State of California Department of Fish and Game, the Puyallap Tribe of Indians, the Debtor Kaiser Aluminum Corporation and certain of its Debtor affiliates, including Kaiser Aluminum & Chemical Corporation, resolves CERCLA claims against the Debtors for the following 66 hazardous waste sites, denominated as "Liquidated Sites" under the Consent Decree: Aberdeen Pesticide Dumps Superfund Site in Aberdeen, NC; American Chemical Services Site in Griffith, IN; Aqua Tech Environmental Inc. Site in Greer, SC; ARRCOM Corporation Site in Kootenai County, ID; Bay Area Drum Site in San Francisco, CA; Bay Drums (a.k.a. Peak Oil Co.) Site in Brandon, FL; Bayou Sorrel Site in Bayou Sorrell, LA; Breslube Penn Superfund Site in Coroapolis, PA; Cannons Engineering Corporation Site in Bridgewater, MA. Plymouth, MA and Londenderry, NH and Gilson Road, a.k.a. Sylvester's in Nashua, NH; Casmalia Disposal Site in Santa Barbara County, CA; Center for Technology (a.k.a. CFT or Pleasanton Center for Technology) Site in Pleasanton, CA (with respect to the State of California only); Chemical Control Superfund Site in Elizabeth, NJ; Chemical Handling Corporation Site in Broomfield, CO; Coastal Radiation Services Site in St. Gabriel, LA; Combustion Inc. Site in Livingston, LA; Commencement Bay (Hylebos Waterway) Site in Tacoma, WA; Commercial Oil Services Site in Toledo, OH; Custom Distribution Services Site in Perth Amboy, NJ; Diamond State Salvage Yard in Wilmington, DE; Doepke-Holliday Site in Johnson County, KS; Douglassville Disposal/ Berks Reclamation Site in Douglassville, PA; Dubose Oil Products Superfund Site in Cantonment, FL; Dutchtown Refinery Site in Dutchtown, LA; Eastern Diversified Metals Superfund Site in Hometown, PA; Ekotek (a.k.a. Petrochem Recycling) Site in Salt Lake City, UT; Ellis Road Site in Jacksonville, FL: Envirotek II Site in Tonawanda, NY; Ettlinger's Pit in Duval County, FL; Four County Landfill Site in De Long, IN; French Limited Site in Crosby, TX; Geigy Superfund Site in Aberdeen, NC; General Refining Site in Garden City, GA: Gibson Environmental, Inc. Site in Bakersfield, CA; Great Lakes Container Site in St. Louis, MO; Higgins Disposal Site in Somerset County, NJ; Hillsdale Drums Site in Hillsdale and Amite, LA; Huth Oil Services Site in Cleveland, OH; Laskin Poplar Site in Ashtabula County, OH; Liquid Disposal Site in Utica, MI; Liquid Dynamics Site in Chicago, IL; Lorentz Barrel & Drum Site in San Jose, CA; Marzone Site in Tipton, GA; Metamora Landfill Site in Lapeer County, MI; Moyer's Landfill Site in Collegeville, PA; Operating Industries, Inc. Corporation Site in Monterey Park, CA; Pickettville Road Landfill Site in Jacksonville, FL; PRC Patterson Site in Patterson, CA; Pristine, Inc. Site in Reading, OH; Quicksilver Products, Inc. Site in Brisbane, CA (with respect to the State of California only); Richmond Railyard Site in Richmond, CA; Richmond Shipyard No. 2 (a.k.a. Marina Bay Development) Site in Richmond, CA; Rouse Steel Drums Site in Jacksonville, FL; Sadler Drum Superfund Site in Mulberry, FL; Sand Springs Petrochemical Complex Site in Sand Springs, OK; Sea Cliff Marina Site in Richmond, CA (with respect to the State of California only); Spokane Junkyard in Spokane, WA; Stickney Ave. Landfill & Tyler St. Dump Site in Toledo, OH; Tacoma Reduction Facility Site in Tacoma, WA; Tex-Tin Site in Texas City, TX; Tremont City Landfill Site in Clark County, OH; Tri-County and Elgin Landfills Site in South Elgin, IL; Waste, Inc. Landfill Site in Michigan City, IN; West County Landfill Site in Contra Costa County, CA; West Virginia Ordnance Works (a.k.a. Point Pleasant Landfill) Site in Mason County, WV; XTRON Site in Blanding, UT; and Yellow Water Road Superfund Site in Baldwin, FL.

Under the Consent Decree, in addition to amounts previously paid, the Debtors have agreed to allowed claims in the total amount of $24,486,021. The Consent Decree also contains provisions pertaining to the treatment of four other categories of sites: Debtor-Owned Sites, Discharged Sites, Additional Sites, and Reserved Sites.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *In re Kaiser Aluminum Corp.*, D.J. Ref. 90–11–3–00769/1. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney for the District of Delaware, 1201 Market Street, Suite 1100, Wilmington, DE, and at the United States Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $11.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Bruce S. Gelber.

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–21919 Filed 8–26–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Material Modification of Consent Decree Under the Residential Lead-Based Paint Hazard Reduction Act of 1992

Notice is hereby given that on August 12, 2003, a proposed Material Modification of Consent Decree in *United States* v. *Wolin-Levin, Inc.*, Civil No. 01 C 7580, was lodged with the United States District Court for the Northern District of Illinois.

A Consent Decree was entered in this section on March 12, 2002, between defendant Wolin-Levin, Inc., a real estate management company doing business in the City of Chicago, the United States, and plaintiff-intervenors the State of Illinois, Cook County and the City of Chicago.

The Material Modification of Consent Decree changes the performances standard for the work that will be done pursuant to the Consent Decree. In addition, the Material Modification of Consent Decree provides that defendant Wolin-Levin, Inc. establish a $300,000 letter of credit to guarantee certain of its obligation under the modified Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the Material Modification of Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental and Natural Resources Division, P.O. Box 7611, Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Wolin-Levin, Inc.*, D.J. Ref. 90–11–2–06829/1.

The Consent Decree may be examined at the Office of the United States Attorney, Jonathan Haile, Assistant U.S. Attorney, 5th Floor, 219 S. Dearborn St., Chicago, Illinois 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Website, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from Consent Decree Library, P.O. Box 76121, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 616–6584, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $12.00 (48 pages at 48 cents per page reproduction cost) payable to the U.S. Treasury.

Ellen Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 03–21922 Filed 8–26–03; 8:45 am]

BILLING CODE 4410–15–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–143]

Nuclear Fuel Services, Inc.; Correction of Amendment 39 Authorizing Operations in the Uranyl Nitrate Building

ACTION: Notice of availability; Corrected Amendment 39 to Materials License SNM–124.

FOR FURTHER INFORMATION CONTACT: Mary Adams, Fuel Cycle and Safety Branch, Office of Nuclear Materials, Safety and Safeguards, 11554 Rockville Pike, Rockville, MD 20852; telephone (301) 415–7249; or by e-mail at *mta@nrc.gov*.

SUPPLEMENTARY INFORMATION: Amendment 39 to Materials License SNM–124 was issued on July 7, 2003. Safety Condition S–1 in Amendment 39 failed to reference the supplement to the Nuclear Fuel Services (NFS) license application dated April 16, 2003. NRC staff used the commitments in this supplement as the basis for approving management measures for items relied on for safety at the Uranyl Nitrate Building. Safety Condition S–1 has been corrected to add the date of April 16, 2003.

The corrected Amendment 39 is available electronically for public inspection and copying for a fee in the NRC Public Document Room, One White Flint North Building, 11555 Rockville, MD 20852, or from the Publicly Available Records (PARS) component of NRC's Agency-wide Documents Access and Management System (ADAMS) under accession number ML031890762. ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* (the Public Electronic Reading Room). If you do not have access to ADAMS, or if there are problems accessing the documents located in ADAMS, contact the NRC Public Document Room Reference staff at 1(800) 397–4209 or by e-mail at *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 13th day of August, 2003.

For the U.S. Nuclear Regulatory Commission.

Mary T. Adams,

Project Manager, Fuel Cycle Facilities Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–21881 Filed 8–26–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–272 and 50–311]

PSEG Nuclear, LLC, Salem Nuclear Generating Station, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of amendments to Facility Operating License Nos. DPR–70 and DPR–75, issued to PSEG Nuclear, LLC (the licensee), for operation of the Salem Nuclear Generating Station (Salem), Unit Nos. 1 and 2, located in Salem County, New Jersey. Therefore, as required by Title 10 of the Code of Federal Regulations (10 CFR) Section 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action: The proposed action would allow the licensee to make an editorial change to the Salem Technical Specifications (TSs) by revising the description of the P–7 permissive interlock defined in TS Table 3.3–1, "Reactor Trip System Instrumentation," in accordance with the licensee's application dated April 10, 2003.

The Need for the Proposed Action: The proposed action would revise the description of the P–7 permissive interlock defined in TS Table 3.3–1 due to changes in the design of the high pressure turbine. As part of this design change, the pressure taps for transmitters PT505 and PT506 will be relocated. Consequently, the description for the "Turbine impulse chamber pressure" will be changed to "Turbine steam line inlet pressure." The proposed action is considered an editorial change.

Environmental Impacts of the Proposed Action: The NRC has completed its evaluation of the proposed action and concludes, as set forth below, that there are no significant environmental impacts associated with the administrative and editorial changes to the Salem TSs.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action: As an alternative to the proposed action, the staff considered denial of the

proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources: The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement related to operation of Salem Nuclear Generating Station, Unit Nos. 1 and 2, dated April 1973.

Agencies and Persons Consulted: On June 10, 2003, the staff consulted with the New Jersey State official, Mr. Rich Pinney of the New Jersey Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 10, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 30th day of June, 2003.

For the Nuclear Regulatory Commission.

Richard B. Ennis,

Acting Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–21882 Filed 8–26–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08976]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Source Material License No. SMB–1527, Viacom, Incorporated, Bloomfield, New Jersey

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Viacom, Incorporated (Viacom) for Source Material License No. SMB–1527, to authorize release of the former lamp manufacturing plant located at One Westinghouse Plaza, Bloomfield, New Jersey for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. Environmental Assessment

The purpose of the proposed action is to allow for the release of the licensee's Bloomfield, New Jersey facility for unrestricted use. Viacom, Incorporated in Bloomfield, New Jersey (formerly Westinghouse Electric Corporation and CBS Corporation) was authorized by NRC since February 3, 1989, to possess radioactive materials for decommissioning purposes at the site. On August 21, 2002, Viacom requested that NRC release the Bloomfield, New Jersey facility for unrestricted use. Viacom has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated Viacom's request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20. The staff has prepared the EA (summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are not expected to be significant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession No. ML032250208. These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. Any questions with respect to this action should be referred to Mark C. Roberts, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406, telephone (610) 337–5094, fax (610) 337–5269.

Dated at King of Prussia, Pennsylvania this 13th day of August, 2003.

For The Nuclear Regulatory Commission.

Francis Costello,

Deputy Division Director, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–21883 Filed 8–26–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release Number IC–26166; 812–12997]

Fidelity Commonwealth Trust, et al.; Notice of Application

August 22, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c–1 under the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

Summary of Application: Applicants request an order that would permit (a) series of an open-end management investment company, whose portfolios will consist of the component securities of certain equity securities indexes, to issue shares of limited redeemability; (b) secondary market transactions in the shares of the series to occur at negotiated prices on The Nasdaq Stock Market ("Nasdaq") or a national securities exchange (each, a "Listing Market"); (c) dealers to sell shares of the series to purchasers in the secondary market unaccompanied by a prospectus, when prospectus delivery is not required by the Securities Act of 1933

(the "Securities Act"); and (d) affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of aggregations of the series' shares.

Applicants: Fidelity Commonwealth Trust ("Trust"), Fidelity Distributors Corporation ("Distributor"), and Fidelity Management & Research Company ("Advisor").

Filing Dates: The application was filed on August 4, 2003, and amended on August 22, 2003.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 11, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, 82 Devonshire Street, Boston, MA 02109.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 942–0611, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and organized as a Massachusetts business trust. The Trust intends to create a new, non-diversified series that will operate pursuant to the terms and conditions of the application (the "Initial Fund" and together with the "Future Funds," as defined below, the "Funds"). The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act") and will serve as the investment adviser to the Funds. The Advisor may, in the future, enter into subadvisory agreements with additional investment advisers to act as subadvisers with respect to particular Funds. Any subadviser will be registered under the Advisers Act. The Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934 ("Exchange Act") and will be the principal underwriter and distributor of the shares of the Funds ("Shares").

2. Each Fund will invest in a portfolio of equity securities generally consisting of the component securities of a specified equity securities index (an "Underlying Index").[1] The Initial Fund will be based on the NASDAQ Composite Index. Applicants request that the order also apply to any additional series of the Trust, or any series of any other existing or future investment company registered under the Act, that will (a) be based on an Underlying Index and operate pursuant to the terms and conditions of the application and (b) be advised by the Advisor or an entity controlled by or under common control with the Advisor (each, a "Future Fund"). No entity that creates, compiles, sponsors or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trust, the Advisor, a subadviser or promoter of a Fund, or the Distributor.

3. The investment objective of each Fund will be to provide investment results that closely correspond to the price and yield performance of its Underlying Index. Intra-day values of each Underlying Index will be disseminated every 15 seconds throughout regular trading hours on the Listing Market. A Fund will utilize either a replication strategy or a representative sampling strategy to track its Underlying Index. A Fund using a replication strategy generally will invest in substantially all of the component securities of its Underlying Index in the same approximate proportions as in the Underlying Index. When a component security is illiquid or when there are practical difficulties or substantial costs involved in holding every security in an Underlying Index, a Fund may use a representative sampling strategy where it holds a representative sample of the component securities of the Underlying Index and will invest in some but not all of the component securities of its Underlying Index.[2] Applicants anticipate that a Fund using the representative sampling technique will not track its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every component security of the Underlying Index with the same weighting as the Underlying Index. Applicants anticipate that the expected tracking error of a Fund using the representative sampling technique will not exceed 5%, net of fees or expenses.

4. Shares will be issued in aggregations of at least 50,000 or more ("Creation Units"). The price of a Creation Unit will range from $5,000,000 to $7,000,000. All orders to purchase Creation Units must be placed with the Distributor by or through a Depository Trust Company ("DTC") participant that has executed a participation agreement with the Distributor. Creation Units generally will be issued in exchange for an in-kind deposit of securities and cash. A Fund also may sell Creation Units on a "cash only" basis in limited circumstances. A person purchasing a Creation Unit from a Fund must make a "Creation Deposit" consisting of: (a) securities selected by the Advisor ("Deposit Securities"), and (b) a cash payment equal to the difference between the market value of the Deposit Securities and the net asset value ("NAV") of a Creation Unit ("Cash Amount").[3] An investor purchasing or

[1] As a general matter, at least 90% of each Fund's total assets (exclusive of collateral held from securities lending will be invested in the component securities of its Underlying Index. Each Fund may also invest up to 10% of its total assets in stocks that are not included in the Underlying Index, futures contracts, options on futures contracts, options and swaps, and cash and cash equivalents. Under certain unusual circumstances, such as to manage changes in its Underlying Index, a Fund may have between 80% and 90% of its total assets invested in the component securities of its Underlying Index for a short period of time.

[2] Securities selected for inclusion in a Fund by the Advisor will have aggregate investment characteristics (based on market capitalization and industry weightings), fundamental characterictics (such as return variability, earnings valuation and yield) and liquidity measures similar to those of the Underlying Index taken in its entirety.

[3] On each day that the Listing Market is open for business ("Business Day"), the Advisor or subadviser will make available through the National Securities Clearing Corporation ("NSCC"), prior to the opening of trading on the Listing Market, the list of the names and the required number of shares of each Deposit Security to be included in the Creation Deposit for each Fund as well as information regarding the Cash Amount. That Creation Deposit will apply to all purchases of Creation Units until a new Creation Deposit composition is announced. A purchasing investor may be permitted or required to substitute an amount of cash or a different security for a Deposit Security in certain circumstances. The Listing Market will disseminate every 15 seconds throughout the regular trading hours of the Listing Market, an amount representing on a per Share basis the sum of the current value of the deposit Securities and the estimated Cash Amount.

redeeming Creation Units from a Fund will be charged a fee ("Transaction Fee") to prevent the dilution of the interests of the remaining shareholders resulting from costs incurred by the Fund in connection with the purchase and redemption of the Creation Units.[4] Each Fund will provide complete disclosure about the Transaction Fee in its prospectus, including the maximum amount of the Transaction Fee, and the method of calculating the Transaction Fee will be disclosed in the Trust's statement of additional information ("SAI").

5. Orders to purchase Creation Units must be placed with the Distributor who will be responsible for transmitting the orders to the relevant Fund. The Distributor will maintain a record of Creation Unit purchases and send out confirmations to purchasers. The Distributor will also furnish a copy of the Fund's prospectus to those placing purchase orders.

6. Persons purchasing Creation Units from a Fund may hold the Shares or sell some or all of them in the secondary market. Shares of the Funds will be listed on a Listing Market, which will either be Nasdaq or a national securities exchange as defined in section 2(a)(26) of the Act, and traded in the secondary market in the same manner as other equity securities. It is expected that one or more member firms of the Listing Market will act as a market maker or specialist ("Market Maker") and maintain a market on the Listing Market for the Shares.[5] The price of Shares traded on a Listing Market will be based on a current bid/offer market. Each Share is expected to have a market value of between $50 and $70. Purchases and sales of Shares in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Units will include institutional investors and arbitrageurs. A Market Maker, in providing for a fair and orderly secondary market for Shares, also may purchase Creation Units in connection with its market-making activities. Applicants expect that secondary market purchasers of Shares will include both institutional and retail investors.[6] Applicants expect that arbitrage opportunities created by the ability to continually purchase or redeem Creation Units at NAV, will ensure that the market price of Shares will not vary much from its NAV.

8. Shares will not be individually redeemable. Shares will only be redeemable in Creation Units from a Fund. To redeem, an investor will have to accumulate enough Shares to constitute a Creation Unit. An investor redeeming a Creation Unit in most cases will receive a portfolio of securities ("Redemption Securities") plus a balancing cash amount representing the difference between the NAV of a Creation Unit and the market value of the Redemption Securities. As with purchases, a redeeming investor will pay a Transaction Fee. An investor may receive the cash equivalent of a Redemption Security in certain circumstances, such as if the investor is unable, by law or policy, to own a particular Redemption Security.

9. Applicants state that neither the Trust nor any Fund will be advertised, marketed, or otherwise held out as a traditional open-end investment company or mutual fund. Rather, applicants state that each Fund and the Trust will be marketed as a "Nasdaq-traded fund," "exchange-traded fund," "investment company," "fund," and "trust" without reference to an "open-end fund" or "mutual fund," except to compare and contrast the Trust and the Funds with conventional open-end investment companies. All marketing materials that describe the features or method of obtaining, buying, or selling Creation Units or Shares will prominently disclose that Shares are not individually redeemable and that Shares may be acquired or redeemed from the Fund in Creation Units only. The same type of disclosure will be provided in each Fund's prospectus, SAI, shareholder reports and investor educational materials issued or circulated in connection with the Shares. The Trust will provide copies of its annual and semi-annual shareholder reports to DTC participants for distribution to beneficial holders of Shares.

10. Applicants note that the Trust will have series that operate as "traditional" mutual funds that do not rely on the requested relief. To ensure that investors clearly understand the differences between these series and the Funds, applicants agree to a number of disclosure measures detailed in the application, including that the Funds will have separate prospectuses than any other series of the Trust.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act granting an exemption from sections 2(a)(32), 5(a)(1), 22(d) and 24(d) of the Act and rule 22c–1 under the Act; and under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a)(1) and (a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately a proportionate share of the issuer's current net assets, or the cash equivalent. Because Shares will not be individually redeemable, applicants request an order that would permit the Trust to register as an open-end management investment company and issue Shares that are redeemable in Creation Units only. Applicants state that investors may purchase Shares in Creation Units from each Fund and redeem Creation Units. Applicants further state that because the market price of Shares will be disciplined by arbitrage opportunities, the market price of Shares will not vary much from its NAV.

Section 22(d) of the Act and Rule 22c–1 under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c–1 under the Act generally requires that a dealer selling, redeeming, or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market

[4] Where a Fund permits a purchaser to deposit cash in lieu of deposting one or more Deposit Securities, the purchaser will be asessed a higher Transaction Fee to offset the transaction cost to the Fund of buying those particular Deposit Securities.

[5] The listing requirements established by Nasdaq require that at least two market makers be registered in Shares in order for the Shares to maintain a listing on Nasdaq. Registered market makers must make a continuous two-sided market in a listing or face regulatory sanctions.

[6] Shares will be registered in book-entry form only. DTC or its nominee will be the record or registered owner of all outstanding Shares. DTC or its participants will maintain records reflecting the beneficial owners of Shares.

trading in Shares will take place at negotiated prices, not at an offering price described in the prospectus, and not at a price based on NAV. Thus, purchases and sales of Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c–1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c–1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c–1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Shares to trade in the secondary market at negotiated prices. Applicants state (a) that secondary market trading in Shares will not cause dilution for owners of Shares because such transactions do not directly involve Fund assets, and (b) to the extent different prices exist during a given trading day, or from day to day, these variances occur as a result of third-party market forces such as supply and demand and not as a result of unjust or discriminatory manipulation. Therefore, applicants assert that secondary market transactions in Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because competitive forces in the marketplace will ensure that the difference between the market price of Shares and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants request an exemption from section 24(d) to permit dealers selling Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.[7]

8. Applicants state that Shares will be listed on a Listing Market and will be traded in a manner similar to other equity securities. Applicants note that dealers selling shares of closed-end investment companies in the secondary market generally are not required to deliver a prospectus to the purchaser.

9. Applicants contend that Shares, as a listed security, merit a reduction in the compliance costs and regulatory burdens resulting from the imposition of prospectus delivery obligations in the secondary market. Because Shares will be listed on a Listing Market, prospective investors will have access to several types of market information about Shares. Applicants state that information regarding market price and volume will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The previous day's price and volume information for Shares also will be published daily in the financial section of newspapers. In addition, the Fund (or the Listing Market) also intends to maintain a Web site that includes quantitative information updated on a daily basis, including, for each Fund, daily trading volume, the closing NAV and the reported closing price. The Web site for the Fund will also include, for each Fund, on a per Share basis, (a) a calculation of the premium or discount of the closing price against NAV, and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against NAV, within appropriate ranges, for each of the four previous calendar quarters.

10. Investors also will receive a product description ("Product Description") describing a Fund and its Shares. Applicants state that, while not intended as a substitute for a Prospectus, the Product Description will contain information about Shares that is tailored to meet the needs of investors purchasing Shares in the secondary market.

Sections 17(a)(1) and (2) of the Act

11. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person and any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns 25% or more of another person's voting securities. Applicants request an exemption from section 17(a) under sections 6(c) and 17(b) to permit persons that are affiliated persons of a Fund or the Trust solely by virtue of (a) a 5% or more, or in excess of a 25%, ownership interest of Shares (and affiliated persons of such affiliated persons that are not otherwise affiliated with such Fund or Trust), or (b) a 5% or more, or in excess of 25%, ownership interest in a Fund or other registered investment company (or series) advised by the Advisor, to purchase and redeem Creation Units through in-kind transactions with the Fund.

12. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Applicants contend that no useful purpose would be served by prohibiting the affiliated persons of a Fund or the Trust described above from purchasing or redeeming Creation Units through in-kind transactions. The deposit procedure for in-kind purchases and the redemption procedure for in-kind redemptions will be the same for

[7] Applicants do not seek relief from the prospectus delivery requirement for non-secondary market transactions, such as purchases of shares from the Fund or an underwriter. Applicants state that a Fund's prospectus will caution persons purchasing Creation Units that some activities on their part may, depending on the circumstances, result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it purchases Creation Units from a Fund, breaks them down into the constituent Shares, and sells those Shares directly to customers, or if it chooses to couple the creation of a supply of new Shares with an active selling effort involving solicitation of secondary market demand for Shares. Each Fund's prospectus will state that whether a person is an underwriter depends upon all the facts and circumstances pertaining to that person's activities. Each Fund's prospectus also will caution dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, that they would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

all purchases and redemptions. Deposit Securities and Redemption Securities will be valued in the same manner as the securities in the Fund's portfolio. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for an affiliated person described above to effect a transaction detrimental to the other holders of Shares. Applicants also believe that in-kind purchases and redemptions will not result in abusive self-dealing or overreaching by affiliated persons of the Funds or Trust.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a Future Fund, by means of filing a post-effective amendment to the Trust's registration statement or by any other means, unless (a) applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission; or (b) the Future Fund will be listed on a Listing Market without the need for a filing pursuant to rule 19b–4 under the Exchange Act.

2. Each Fund's prospectus and Product Description will clearly disclose that, for purposes of the Act, Shares are issued by the Funds and that the acquisition of Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act.

3. As long as the Trust operates in reliance on the requested order, the Shares will be listed on a Listing Market.

4. Neither the Trust (with respect to any Fund) nor any of the Funds will be advertised or marketed as an open-end fund or a mutual fund. Each Fund's prospectus will prominently disclose that Shares are not individually redeemable shares and will disclose that the owners of the Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only. Any advertising material that describes the purchase or sale of Creation Units or refers to redeemability will prominently disclose that the Shares are not individually redeemable and that owners of the Shares may acquire those Shares from a Fund and tender those Shares for redemption to a Fund in Creation Units only.

5. The Web site for each Fund, which will be publicly accessible at no charge, will contain the following information, on a per Share basis, for each Fund: (a) the prior Business Day's NAV and the reported closing price, and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily closing price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the Web site for the Fund has information about the premiums and discounts at which the Fund's Shares have traded.

6. The prospectus and annual report for each Fund will also include: (a) the information listed in condition 5(b), (i) in the case of the prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Share basis for one, five and ten year periods (or life of the Fund), (i) the cumulative total return and the average annual total return based on NAV and closing price, and (ii) the cumulative total return of the relevant Underlying Index.

7. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b–4 under the Exchange Act, a Listing Market rule requiring Listing Market members and member organizations effecting transactions in Shares to deliver a Product Description to purchasers of Shares.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21937 Filed 8–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26164; 812–13001]

Merrill Lynch Principal Protected Trust, et al.; Notice of Application

August 20, 2003.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 12(d)(3) of the Act, under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

APPLICANTS: Merrill Lynch Principal Protected Trust (the "Trust"), Merrill Lynch Investment Managers, L.P. ("MLIM"), and Fund Asset Management, L.P. ("FAM," and together with MLIM, the "Advisers").

SUMMARY OF APPLICATION: Applicants request an order to permit any existing and future series of the Trust, any existing and future registered investment company or series that has as its investment adviser an Adviser or other registered investment adviser that is in the control of, controlled by, or under common control with an Adviser (collectively with the Trust and its present and future series, the "Funds") to enter into an arrangement with any entity that now or in the future is in control of, controlled by, or under common control with, an Adviser (a "Merrill Lynch Affiliate") to provide principal protection to the Fund ("Principal Protection"), or to serve as a hedging counterparty ("Hedging Counterparty") where an unaffiliated third party providing Principal Protection to the Fund seeks to enter into a derivatives contract or reinsurance contract with a Merrill Lynch Affiliate to hedge all or a portion of the risks under the Principal Protection arrangement.[1]

FILING DATES: The application was filed on August 13, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 15, 2003, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Andrew J. Donohue, Esq., Merrill Lynch Investment Managers, L.P., P.O. Box

[1] All existing entities currently intending to rely on the requested order have been named as applicants. Any other existing and future entity that relies on the order will comply with the terms and conditions of the application.

9011, Princeton, New Jersey 08543–9011.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 942–0614, or Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Trust, a statutory trust organized under the laws of Delaware, is registered as an open-end investment company under the Act. Each Fund will be registered under the Act as, or be a series of, a management investment company. Each Adviser is registered with the Commission under the Investment Advisers Act of 1940 and serves as investment adviser to the Funds.

2. Each Fund proposes to provide Principal Protection, pursuant to which shareholders who hold their Fund shares for a prescribed period of time (the "Protection Period")[2] will be able, at the end of the period (the "Maturity Date"), to redeem their shares and receive no less than the amount of their initial investment, subject to certain adjustments (the "Protected Amount"). Applicants state that Principal Protection will be achieved primarily through the use of a mathematical formula that allocates assets based on the "Constant Proportion Portfolio Insurance" model (the "Formula").[3] In addition to using the Formula, the Fund may also enter into a financial guarantee agreement, warranty agreement or other principal protection agreement[4] or may acquire an insurance policy (each a "Protection Agreement"), in order to ensure that the Fund can meet its obligation to pay each redeeming shareholder the Protected Amount on the Maturity Date.[5] The entity providing Principal Protection ("Protection Provider") may be a bank, brokerage firm, insurance company or other financial institution. In certain cases, the Protection Provider may seek to hedge all or a portion of its risks by entering into a derivatives contract or reinsurance contract with a Hedging Counterparty. Each Fund will pay a fee to the Protection Provider, typically equal to a percentage of the Fund's average daily net assets.

3. Each Protection Agreement will require the Protection Provider to pay the Fund an amount equal to any shortfall between the aggregate Protected Amount and the net asset value ("NAV") of the Fund on the Maturity Date (the "Shortfall"). Under the terms of each Protection Agreement, the Fund will be required to manage its assets within certain investment parameters, based in large part on the asset allocations determined by the Formula. If the Fund fails to comply with these allocations ("Trigger Event"), the Protection Provider may demand the Fund cure the situation by reallocating Fund assets or, in the event the Fund fails to effect the reallocation within a specified period of time, by causing the Fund to defease its portfolio and allocate all of its assets to the Fund's Protection Component (a "Defeasance Event").

4. A Protection Agreement and the fee for the Protection Agreement will be subject to approval by the Board of Directors or Trustees of each Fund (the "Board"), including a majority of those Directors or Trustees who are not interested persons of a Fund or an Adviser, as defined in section 2(a)(19) of the Act (the "Independent Trustees"). In the event that a Fund wishes to consider entering into a Protection Agreement with a Merrill Lynch Affiliate, or with a Protection Provider that is otherwise not an affiliated person of the Fund or its Adviser, or an affiliated person of such a person (an "Unaffiliated Provider"), but that wants to use a Merrill Lynch Affiliate as its Hedging Counterparty (each, an "Affiliated Protection Arrangement"), the Adviser will be required to conduct a bidding process to select the Protection Provider. Applicants state that the Adviser will initially solicit at least three other bids in addition to the bid relating to an Affiliated Protection Arrangement, then will engage in negotiations with all of the bidders. At the end of the negotiation process, all bidders who wish to participate will submit final bids. All final bids will be due at the same time and no bidder will be permitted to change its final bid once submitted. After final bids are submitted, no bidder, including a Merrill Lynch Affiliate, will have access to any competing bids until after the Protection Agreement is entered into by the Fund. In order for the Adviser to recommend the bid relating to an Affiliated Protection Arrangement, the Fund must have also received at least two bona fide final bids that are not Affiliated Protection Arrangements.[6] The Adviser will evaluate final bids and recommend a bid for acceptance by the Board, together with an explanation of the basis for this recommendation and a summary of the material terms of any bids that were rejected. Applicants state that in addition to cost, other factors such as creditworthiness will be significant in the Adviser's evaluation of bids, and thus, the Adviser may recommend to the Board a Principal Provider who does not submit the bid with the lowest fee rate.[7] A majority of the Board, including a majority of the Independent Trustees, must approve the acceptance of a bid involving an Affiliated Protection Arrangement, as well as the general terms of the proposed Protection Arrangement. Upon the conclusion of the Adviser's negotiation of the Affiliated Protection Arrangement, the Board must approve the final Protection Agreement, and determine that the terms of the Affiliated Protection Arrangement, as so

[2] The life of a Fund offering Principal Protection will generally be divided into three time periods: (a) An initial offering period during which the Fund will sell shares to the public; (b) the Protection Period during which the Fund will not normally offer its shares to the public and the Fund's assets will be invested pursuant to the Formula (as defined below); and (c) a period after the Maturity Date (the "Post-Protection Period"), during which the Fund will offer its shares on a continuous basis and pursue an objective that does not include Principal Protection, or alternatively, will wind up and cease operations.

[3] The objective of the Formula is to maximize the allocation of a Fund's assets that may be invested for purposes other than Principal Protection (the "Portfolio Component"), thus gaining exposure to the securities markets, while attempting to minimize the risk of a shortfall (as defined below) by investing a portion of the Fund's assets in fixed income securities (the "Protection Component").

[4] Other principal protection agreements may take the form of a swap agreement or other privately negotiated derivatives contract with similar economic characteristics requiring the Protection Provider (as defined below) to make payments to the Fund in the event of a Shortfall (as defined below).

[5] The Protected Amount may be reduced (a) to the extent the Fund incurs extraordinary expenses, such as litigation expenses, which are not covered by the Protection Agreement, (b) if the Adviser is required to make payments to the Protection Provider and/or the Fund ("Adviser Payment") under the Protection Agreement as a result of its own negligence or certain other disabling conduct and there is a dispute regarding such payment, or (c) as otherwise described in the Protection Agreement, subject in each case to appropriate prospectus disclosure. The Protected Amount will not be reduced by the Fund's ordinary fees and expenses, including its advisory fees.

[6] If an Unaffiliated Provider submits multiple bids, each with a different Hedging Counterparty, each submission will constitute a separate bid

[7] If the Protection Provider recommended by the Adviser does not propose the lowest fee to provide Principal Protection and the Board approves a Protection Agreement with such Protection Provider, the Board minutes will reflect the reasons why the Protection Provider requiring the higher fee was approved.

finalized, are not materially different from the terms of the accepted bid.

5. The Board will exercise oversight responsibilities in connection with any Protection Agreement and will establish a special committee (the "Committee"), a majority of the members of which will be Independent Trustees, if the Fund enters into an Affiliated Protection Arrangement. If a Trigger Event or a Defeasance Event occurs under the Protection Agreement (each, a "Protection Event"), the Adviser will be required to notify the Committee as soon as practicable, and absent special circumstances, before a decision is reached by the Protection Provider and the Adviser as to how to effect any necessary cure. On or about the Maturity Date, the Board will review information comparing the aggregate Protected Amount with the Fund's total NAV on the Maturity Date, and will review and approve the amount of any Shortfall to be submitted for payment to the Protection Provider under the Protection Agreement (including the amount of any required Adviser Payment to the Fund) (the "Approved Shortfall Amount").

Applicants' Legal Analysis

A. Section 12(d)(3) of the Act

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting. Rule 12d3–1 under the Act exempts certain transactions from the prohibition of section 12(d)(3) if certain conditions are met. One of these conditions, set forth in rule 12d3–1(c), provides that the exemption provided by the rule is not available when the issuer of the securities is the investment adviser, promoter, or principal underwriter of the investment company, or any affiliated person of such entities. In addition, rule 12d3–1(b) does not permit a registered investment company to (i) own more than five percent of a class of equity securities of an issuer that is engaged in securities related activities; (ii) own more than ten percent of such an issuer's debt securities; or (iii) invest more than five percent of the value of its total assets in the securities of any such issuer. Section 6(c) of the Act authorizes the Commission to exempt any person or transaction from any provision of the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

2. Applicants state that by virtue of entering into an Affiliated Protection Arrangement with a Merrill Lynch Affiliate that is a broker, dealer, underwriter or investment adviser to a registered investment company or an investment adviser registered under the Investment Advisers Act, a Fund may be deemed to have acquired a security from the Merrill Lynch Affiliate.[8] In addition, applicants state that it is possible that a Protection Agreement entered into by the Fund (whether pursuant to an Affiliated Protection Agreement or otherwise) may represent more than ten percent of the debt securities of a Protection Provider that is involved in securities related activities or more than five percent of the total assets of the Fund. Therefore, applicants seek an exemption from section 12(d)(3) to the extent necessary to permit the Fund to enter into Affiliated Protection Arrangements with a Merrill Lynch Affiliate or a Protection Agreement with another Protection Provider that is involved in securities related activities.

3. Applicants state that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses and to prevent reciprocal practices between investment companies and securities related businesses. Applicants assert that the proposed transactions are consistent with the policy and intent underlying section 12(d)(3). In terms of the risk-preventing element of section 12(d)(3), applicants state that the Adviser and Board, when evaluating the credentials of a prospective Protection Provider, will take into account the Protection Provider's creditworthiness, any ratings assigned by a nationally recognized statistical ratings organization ("NRSRO"), and the availability of audited financial statements. Applicants state that the purpose of the Fund's Protection Agreement is to provide Principal Protection for the Fund, not to reward a Merrill Lynch Affiliate (or any other broker-dealer) for sales of Fund shares. Moreover, applicants believe that the conditions set forth in the application will ensure that each Fund is operated in the interests of its shareholders and not in the interests of a Merrill Lynch Affiliate or any other Protection Provider.

B. Section 17(a) of the Act

1. Section 17(a)(1) and (2) of the Act generally prohibit the promoter or principal underwriter, or any affiliated person of the promoter or principal underwriter, of a registered investment company, acting as principal, knowingly to sell or purchase any security or other property to or from such investment company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include, among other things: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned; and (c) any person directly or indirectly controlling, controlled by, or under common control with, the other person. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from the terms of section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act.

2. Applicants state that depending on the structure of a Protection Agreement, it might be deemed to be a security or other property, and the Fund's entering into a Protection Agreement with a Merrill Lynch Affiliate might be deemed to be the acquisition of a security or other property from a Merrill Lynch Affiliate. In addition, applicants state that if a Merrill Lynch Affiliate were to serve as a Hedging Counterparty to an Unaffiliated Provider, the Merrill Lynch Affiliate might under certain circumstances be deemed to be indirectly involved in the sale of a security or other property to the Fund. Applicants request an exemption under sections 6(c) and 17(b) to permit the proposed transactions.

3. Applicants submit that the involvement of a Merrill Lynch Affiliate in an Affiliated Protection Arrangement will benefit a Fund and its shareholders given the expertise of the Merrill Lynch Affiliates in structuring and providing credit enhancements for Principal Protection arrangements, and the alignment of interests that exist between the Merrill Lynch Affiliates and the Funds. Applicants argue that the relationship of a Fund and Unaffiliated Provider may be more adversarial, with the protection of the Unaffiliated

[8] Applicants state that depending on the structure of the Protection Agreement, while certain types of Protection Agreements would not meet the definition of "security" contained in section 2(a)(36) of the Act such as insurance contracts, certain types of derivative agreements may be deemed to constitute securities.

Provider's rights and remedies being of paramount importance to the Unaffiliated Provider, which could result in the Unaffiliated Provider exhibiting a greater willingness to declare a Defeasance Event or to rely on a clause permitting it to avoid liability to the Fund than would a Merrill Lynch Affiliate in similar circumstances. Applicants further argue that a Merrill Lynch Affiliate may assume a greater risk to itself by avoiding a Defeasance Event for the same fee charged by an Unaffiliated Provider without creating additional risk to the Fund or its shareholders by allowing a greater portion of the Fund's assets to remain invested in the Portfolio Component. Applicants also argue that the use of a Merrill Lynch Affiliate as Protection Provider may lower the cost of Principal Protection since there is a limited universe of Protection Providers with which a Fund may enter into a Protection Agreement. In addition, because a Merrill Lynch Affiliate may have a greater comfort level with the Formula and certain investment strategies to be used by the Advisers than an Unaffiliated Provider, applicants state that this may allow the Merrill Lynch Affiliate to enter into a Hedging Transaction with an Unaffiliated Provider for a lower fee or spread than would be available through a counterparty unaffiliated with the Fund.

4. Applicants submit that the conditions applicable to each Affiliated Protection Arrangement will ensure that such arrangement will be reasonable and fair to each Fund and that no Merrill Lynch Affiliate will be able to engage in overreaching. Applicants state that a Fund will not be able to participate in an Affiliated Protection Arrangement until after a bidding process has been completed in which the Fund receives at least two bona fide offers for Principal Protection from an Unaffiliated Provider not seeking to hedge with a Merrill Lynch Affiliate, and that a Merrill Lynch Affiliate will not have an unfair advantage over other bidders in winning the bid. A Fund may not accept a bid or subsequently enter into an Affiliated Protection Arrangement unless it has been approved by the Fund's Board, including a majority of Independent Trustees, who must determine that entering into the Affiliated Protection Arrangement is in the best interests of the Fund and its shareholders and meets the standards specified in section 17(b) of the Act. In addition, applicants state that if a Fund enters into an Affiliated Protection Arrangement, the Fund's Board will establish a Committee to represent the Fund's interests if a Protection Event should occur. Lastly, applicants state that the Board will approve the Approved Shortfall Amount to be submitted for payment to the Affiliated Protection Provider and that the Fund will not accept a lesser amount in settlement of its claim without a further Commission exemptive order.

5. Applicants submit that an Affiliated Protection Arrangement will be consistent with the policies of each Fund, as recited in its registration statement. Applicants further submit that an Affiliated Protection Arrangement, subject to the conditions set forth in the application, will be consistent with the purposes fairly intended by the policy and provisions of the Act and will be in the best interests of each Fund and its shareholders.

C. Section 17(d) of the Act

1. Section 17(d) of the Act and rule 17d–1 under the Act generally prohibit any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of, or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other arrangement or profit-sharing plan in which the investment company participates, unless an application regarding the joint transaction has been filed with the Commission and granted by order. Under rule 17d–1, in passing upon such applications, the Commission considers whether the participation of the registered investment company in the joint transaction is consistent with the provisions, policies and purposes of the Act and the extent to which such participation is on a basis different or less advantageous than that of other participants.

2. Applicants state that the fee paid to a Merrill Lynch Affiliate pursuant to an Affiliated Protection Arrangement (either by the Fund directly under a Protection Agreement or indirectly through a Hedging Transaction) may be deemed to involve a joint enterprise or joint arrangement or profit sharing plan under section 17(d) and rule 17d–1 because a Merrill Lynch Affiliate may be in control of, controlled by or under common control with the Adviser of a Fund, and the Merrill Lynch Affiliate's compensation as the Protection Provider or Hedging Counterparty will be based on the Fund's assets. In addition, the Merrill Lynch Affiliate might make a profit or suffer a loss depending on the performance of the Fund. Applicants also state that an Affiliated Protection Arrangement could be deemed to involve a joint enterprise or joint arrangement because of the coordination and possible ongoing negotiations between a Fund and a Merrill Lynch Affiliate in managing the Fund's risk exposure.[9] Applicants thus request an order pursuant to section 17(d) and rule 17d–1.

3. Applicants state that the purpose of section 17(d) is to avoid overreaching by and unfair advantage to insiders. Applicants submit that the conditions proposed in the application will ensure that a Fund and its shareholders are treated fairly and not taken advantage of by a Merrill Lynch Affiliate. Applicants submit that a Fund and its shareholders will benefit from the participation of a Merrill Lynch Affiliate in an Affiliated Protection Arrangement. For these reasons, applicants state that the proposed arrangement satisfies the standards of section 17(d) and rule 17d–1.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Prior to recommending to the Board that a Fund enter into an Affiliated Protection Arrangement, the Adviser will conduct a competitive bidding process in which the Adviser solicits bids on at least three Protection Agreements that would not constitute Affiliated Protection Arrangements. At a reasonable amount of time prior to the date bids are to be submitted, the Adviser will solicit bids by supplying prospective bidders with a bid invitation letter that includes any requirement for a potential Protection Provider to include audited financial statements in the Fund's registration statement, a copy of the relevant sections of a draft prospectus of the Fund, and a draft of the Protection Agreement. Initial bids will be due at the same time, and no bidder will have access to any competing bids prior to its own submission. After initial bids are received, the Adviser will negotiate in good faith with each of the bidders to obtain more favorable terms for the Fund. During these negotiations, all bidders will have access to equal information about competing bids. At the end of this process, all bidders who

[9] For example, applicants state that a Merrill Lynch Affiliate could seek to request that a Fund's assets be invested not to seek to maximize the Fund's return, but in a manner designed to protect the Merrill Lynch Affiliate's interest by over-allocating the Fund's assets to the Protection Component so as to minimize the risk that a Merrill Lynch Affiliate would be called upon to make a payment under an Affiliated Protection Arrangement.

wish to participate will submit final bids. All such final bids will be due at the same time, and no bidder will be permitted to change its final bid once submitted. After the final bids are submitted, no bidder, including a Merrill Lynch Affiliate, will have access to any competing bids until after the Protection Agreement is entered into by the Fund. A Fund may not enter into an Affiliated Protection Arrangement unless two bona fide final bids have been received for Protection Agreements that would not constitute Affiliated Protection Arrangements.

2. If the Adviser recommends that the Board approve an Affiliated Protection Arrangement, the Adviser must provide the Board with an explanation of the basis for its recommendation and a summary of the material terms of any bids that were rejected.

3. The Fund's Board, including a majority of Independent Trustees, must approve the acceptance of a bid involving an Affiliated Protection Arrangement, as well as the general terms of the proposed Protection Agreement. In evaluating the final bids and the recommendations from the Adviser, the Board will consider, among other things: (i) The fee rate to be charged by a potential Protection Provider; (ii) the structure and potential limitations of the proposed Principal Protection arrangement and any legal, regulatory or tax implications of such arrangement; (iii) the credit rating (if any) and financial condition of the potential Protection Provider, including any ratings assigned by any NRSRO; and (iv) the experience of the potential Protection Provider in providing Principal Protection, including in particular to registered investment companies. If the Affiliated Protection Arrangement approved by the Board does not reflect the lowest fee submitted in a proposal to provide the Principal Protection, the Board will reflect in its minutes the reasons why the higher cost option was selected.

4. Upon the conclusion of the Adviser's negotiations of the Affiliated Protection Arrangement, including the Protection Agreement, the Fund's Board, including a majority of Independent Trustees, must approve the final Protection Agreement and determine that the terms of the final Affiliated Protection Arrangement, as so finalized, are not materially different from the terms of the accepted bid. The Board, including a majority of its Independent Trustees, will also determine that entering into the Affiliated Protection Arrangement will be in the best interests of the Fund and its shareholders and meets the standards specified in section 17(b) of the Act. The Board will reflect these findings and their basis in its minutes.

5. If a Merrill Lynch Affiliate is chosen as the Protection Provider or Hedging Counterparty, it will not charge a higher fee for its Protection Agreement or Hedging Transaction than it would charge for similar agreements or transactions for unaffiliated parties that are similarly situated to the Fund. Any Merrill Lynch Affiliate acting as Hedging Counterparty will not be directly compensated by the Fund and the Fund will not be a party to any Hedging Transaction.

6. In the event the Fund enters into an Affiliated Protection Arrangement, the Board will establish a Committee, a majority of whose members will be Independent Trustees, to represent the Fund in any negotiations relating to a Protection Event. The Adviser will notify the Committee of any Protection Event as soon as practicable, and absent special circumstances, before a decision is reached by the Protection Provider and the Adviser as to how to effect any cure. All Protection Events will be brought to the attention of the full Board at the next regularly scheduled Board meeting.

7. The Adviser will present a report to the Board, at least quarterly, comparing the actual asset allocation of the Fund's portfolio with the allocation required under the Protection Agreement, describing any Protection Events, and summarizing any negotiations that were the subject of the previous condition.

8. At the conclusion of the Protection Period, the Adviser of a Fund will report to the Fund's Board any Shortfall potentially covered under an Affiliated Protection Arrangement (including, for this purpose, the amount of any required Adviser Payment). The Board, including a majority of Independent Trustees, will evaluate the Shortfall and will determine the amount of the claim (previously defined as the Approved Shortfall Amount) under the Protection Agreement to be submitted to the Protection Provider. The Fund will not settle any claim under the Protection Agreement for less than the full Approved Shortfall Amount determined by the Board without obtaining a further exemptive order from the Commission.

9. No less than a majority of a Fund's Board will consist of Independent Trustees.

10. The Independent Trustees will be represented by independent legal counsel within the meaning of Rule 0–1 under the Act.

11. The Adviser, under the supervision of the Board, will maintain sufficient records to verify compliance with the conditions of the order. Such records will include, without limitation: (i) An explanation of the basis upon which the Adviser selected prospective bidders; (ii) a list of all bidders to whom a bid invitation letter was sent and copies of the bid invitation letters and accompanying materials; (iii) copies of all initial and final bids received, including the winning bid; (iv) records of the negotiations with bidders between their initial and final bids; (v) the materials provided to the Board in connection with the Adviser's recommendation regarding the Protection Agreement; (vi) the final price and terms of the Protection Agreement with an explanation of the reason the arrangement is considered an Affiliated Protection Arrangement; and (vii) records of any negotiations with the Protection Providers related to the occurrence of a Protection Event and the satisfaction of any obligations under a Protection Agreement. All such records will be maintained for a period ending not less than six years after the conclusion of the Protection Period, the first two years in an easily accessible place, and will be available for inspection by the staff of the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21938 Filed 8–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27715]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 20, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s)

should submit their views in writing by September 12, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 12, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

AGL Resources Inc. et al. (70–9813)

AGL Resources Inc. ("AGLR"), located at Ten Peachtree Place, NE., Atlanta, Georgia 30309, a registered holding company under the Act, and its wholly-owned subsidiary, Global Energy Resource Insurance Corp. ("GERIC") located at Romasco Place, Wickhams Cay 1, P.O. Box 3140, Road Town, Tortola, British Virgin Islands, (collectively, "Applicants") have filed a post-effective amendment under sections 9(a) and 10 of the Act to their application previously filed with the Commission under sections 6(a), 7, 9(a) and 10 and rule 43 of the Act.

Applicants are seeking authorization for GERIC (1) to provide finite insurance program services to AGLR and its subsidiaries ("AGLR System") as described in more detail below, and (2) to retain additional risk associated with the AGLR System's self-insured retention.

By an order dated April 13, 2001 (HCAR No. 27378) ("Captive Order"), the Commission authorized AGLR to organize a subsidiary to underwrite a certain portion of the insurance purchased by the AGLR System companies, which risks it would then transfer to third-party reinsurance companies. In particular, the subsidiary would underwrite coverage for the AGLR System companies over their self-insured retention and above a layer of traditional insurance. The subsidiary was also authorized to retain a small amount of risk, not to exceed $1 million, for each type of insurance coverage ("GERIC Retained Risk Limit"). In accordance with the Captive Order, AGLR formed GERIC, which began to provide insurance services to the AGLR System on May 1, 2001.

Applicants state that the AGLR System maintains insurance for automobile and general liability exposures, directors and officers liability, "all risk" property coverage, workers' compensation liability and other risks. In addition, the AGLR System companies may provide wrap-up construction insurance coverage to nonaffiliated construction contractors working for the AGLR System. The AGLR System currently maintains a self-insured retention with respect to its insured risks of up to $1 million (except with respect to automobile liability and terrorism insurance, where the self-insured retentions are $2 million and $5 million, respectively) and purchases insurance to cover risks over and above that amount.

The Captive Order noted that GERIC was authorized to operate as an insurance company in the British Virgin Islands. Initially, GERIC would focus on providing insurance coverage for automobile, general liability, risk property, boiler and machinery, directors and officers, crime, fiduciary and workers compensation. The Captive Order noted that, in the future, GERIC might seek to underwrite additional types of insurance and retain a small amount of risk that for each additional type of insurance would not exceed $1 million. GERIC may underwrite additional types of insurance only when: (1) A reinsurer is ceded 100% of the underwritten risk; (2) the insurance is related to an authorized or permitted AGLR System business activity; (3) direct placement of reinsurance by GERIC could be reasonably expected to save the AGLR System a portion of the risk premium it would otherwise have paid; and (4) normal deductible amounts are retained by the AGLR System companies and where GERIC can obtain, as appropriate, excess or stop-loss coverage.

The Applicants state that GERIC targets its underwriting activity on the portions of the AGLR System's liability program where the greatest cost savings are possible. Presently, GERIC provides excess coverage for the types of insurance listed above that is placed above the AGLR System's self-insured retention and above a layer of traditional coverage that is maintained by AGLR for the benefit of the AGLR System. GERIC reinsures all of the risks that it underwrites with reinsurance companies, except with respect to coverage for property crime where it also covers a $500,000 AGLR System deductible. GERIC intends to begin providing construction wrap-up insurance in the near future.

Applicants now propose that GERIC offer the AGLR System a finite insurance program that would provide coverage for the layer of risk, currently covered by traditional retail insurance carriers, that resides between the self-insured retention and the excess risk reinsured by GERIC with reinsurance companies. This intermediate layer of insurance coverage extends generally from the self-insured retention level to the $10,000,000 level. Because this intermediate level of coverage is more likely to be accessed by a claim than the higher layer of excess coverage, it is responsible for a significant percentage of the AGLR System's premium costs.

Under the finite insurance program the AGLR System companies would use premium dollars presently used to acquire traditional insurance coverage for the intermediate risk layer to fund a reserve that would be used instead of traditional insurance coverage to cover losses related to the intermediate risk level (*i.e.*, the risk above the self-insured retention and below the reinsured risk). For example, the AGLR System's premiums for intermediate risk layer coverage are expected to be approximately $2.5 million per year, including the construction wrap-up program that GERIC intends to initiate in October, 2003. After collecting the AGLR System's finite premium payments, GERIC would invest the payments in reserves consisting of U.S. Treasury securities and other securities permitted by section 9(c) of the Act and rule 40. The balance of the premium payments (less GERIC's at-cost administrative expenses) not invested in reserves would be used to purchase third-party coverage for any loss that could not be covered by the reserve maintained by GERIC. As the reserves accumulate over several years, the third party coverage would be expected to become less expensive. In addition, when the reserve reaches an amount adequate to cover anticipated losses, the reserve funding commitment from the AGLR System companies can be reduced with commensurate premium savings.

The finite program would not increase the risk of an uncovered loss since amounts held by GERIC in reserve would be invested in secure assets and available to fund claims. Uncovered losses also would be avoided because third party provided coverage would be in place to the extent GERIC's reserves were not fully funded at the time of a loss. Reinsurance would continue to be maintained to cover liabilities that would exceed the intermediate layer of liability coverage that would be provided by the combination of GERIC's reserves and the third party coverage. The finite program would provide the opportunity to further reduce the AGLR System's insurance costs because once GERIC's reserves have been fully

funded, subsequent contributions by the AGLR System companies can be substantially reduced to a level adequate to maintain the reserves at a fully funded level and to provide reinstatement coverage that would step in to provide protection if the reserves were exhausted.

The third-party coverage would be provided by a reinsurance company or through the acquisition of a capital markets product that is entered into on an exchange or with an investment-grade counterparty. Applicants request that the Commission reserve jurisdiction with respect to the use of capital markets products to provide third-party coverage until the record has been supplemented with additional detail about the nature of the product. GERIC will establish reserves consistent with the insurance regulations of the British Virgin Islands and sound actuarial practices.[1] As provided in the Captive Order, GERIC will not be operated to generate profits beyond what is necessary to maintain adequate reserves. To the extent that premiums and interest earned on the reserves exceed current claims and expenses, GERIC will accumulate reserves that will allow it to cover claims in years when claims and expenses exceed premiums. To the extent that losses are lower than projected, GERIC will correspondingly lower premiums and thus return excess capital to AGLR System companies.

Applicants assert that GERIC's current insurance program has been effective in managing the AGLR System's insurance costs. As shown in the certificate of notification under rule 24, filed on April 1, 2003, GERIC's operations for the period May 1, 2001, to May 31, 2002, resulted in first year premium savings for the AGLR System of $386,751. For the period June 1, 2002, through May 31, 2003, GERIC contributed benefits to the AGLR System by making possible the avoidance of a portion of the increase in insurance premiums that followed the terrorist attack of September 11, 2001, and other events. Applicants assert that this experience demonstrates that by providing the AGLR System with the flexibility to access the insurance markets independent of traditional insurers, GERIC serves a valuable function that, although not readily quantifiable, can be a significant factor in managing insurance costs.

Similarly, Applicants project that the proposed finite program would produce savings for the AGLR System companies. GERIC has compared the AGLR System premium costs for the intermediate risk layer (losses of $1 million to $10 million) over four years with the costs associated with funding the captive insurance program. Projected losses over this same period also were analyzed. GERIC's analysis concludes that the finite insurance program could provide savings of several million dollars.

A British Virgin Islands management company has been retained to provide administrative services to GERIC. AGL Services Company ("AGSC") employees are directors and principal officers of GERIC and they oversee the performance of the administrative activities by the management company. The administrative functions directed by AGSC through the management company include: (1) Accounting and reporting activities; (2) legal, actuarial, banking and audit services; (3) negotiating reinsurance contracts, policy terms and conditions; (4) invoicing and making payments, and; (5) managing regulatory affairs. The existing AGSC claim staff performs the claims adjusting function. It is not anticipated that managing the finite program would require additional staff or materially increase the administrative costs associated with GERIC's operations. All goods and services provided by AGSC to GERIC would be provided in accordance with section 13 of the Act and any applicable rules under that section, and costs incurred by GERIC would be recovered in premiums charged to the AGLR System companies.

Applicants propose that in addition to the authorization requested for the finite program, that the Commission increase the Self-Insurance Limit from $1 million to $5 million. In some lines of insurance the AGLR System has increased, or expects that it may increase, its self-insured retention. For example, in the automobile liability line of coverage the AGLR System's self-insured retention is now $2 million. Increasing the self-insured retention helps the AGLR System to manage its insurance costs and to adjust limits in response to inflation. An increase in the Self-Insurance Limit would allow GERIC to retain the risk associated with the self-insured retention of the AGLR System beyond the current $1 million limit. GERIC will maintain appropriate reserves to cover any risk of loss that it retains under an increased Self-Insurance Limit.

GERIC will continue to be bound by the condition in the Captive Order that it may underwrite additional types of insurance only when: (1) A reinsurer is ceded 100% of the underwritten risk; (2) the insurance is related to an authorized or permitted AGLR System business activity; (3) direct placement of reinsurance by GERIC would be reasonably expected to save the AGLR System a portion of the risk premium it would otherwise have paid; and (4) normal deductible amounts are retained by the AGLR System companies and where GERIC can obtain, as appropriate, excess or stop-loss coverage.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21939 Filed 8–26–03; 8:45 am]

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[1] Applicants expect that premium payments would be sufficient to establish and maintain the necessary reserves. If, however, additional capital is required, AGLR may provide capital to GERIC through equity and or debt purchases exempt under Rule 52, or guarantees, letters of credit or other forms of credit support authorized by Commission order. AGL Resources Inc., Holding Co. Act Release No. 27243 (October 5, 2000).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Tamarak, Inc.; Order of Suspension of Trading

August 25, 2003.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Tamarak, Inc. ("Tamarak") because of questions regarding the accuracy and adequacy of assertions in press releases by Tamarak, concerning, among other things: (1) Tamarak's plans and financial ability to produce and distribute a television mini-series and movie; (2) Tamarak's projected profits; (3) the purported support by the U.S. Air Force for Tamarak's film projects; and (4) purported discussions between Tamarak and major television and film studios.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in securities related to the above-listed company.

Therefore, *it is ordered*, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in all securities, as defined in Section 3(a)(10) of the Securities Exchange Act of 1934, issued by the above-listed company, is suspended for the period from 9:30 a.m. EDST on Monday, August 25, 2003 and terminating at 11:59 p.m. EDST on Monday, September 8, 2003.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–22026 Filed 8–25–03; 1:30 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48389; File No. SR–MSRB–2003–07]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Proposed Amendments to the MSRB's Telemarketing Rules To Require Participation in the National Do-Not-Call Registry

August 21, 2003.

On August 19, 2003, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2003–07), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the MSRB. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing herewith a proposed rule change to require brokers, dealers and municipal securities dealers to participate in the Federal Trade Commission's ("FTC's") national do-not-call registry. The text of the proposed rule change is below. Additions are italicized; deletions are bracketed.

* * * * *

Rule G–39. Telemarketing

[(a) No broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer shall:]

[(i) make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of municipal securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person; or]

[(ii) make an outbound telephone call to any person for the purpose of soliciting the purchase of municipal securities or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information:]

[(A) the identity of the caller and the firm;]

[(B) the telephone number or address at which the caller may be contacted; and]

[(C) that the purpose of the call is to solicit the purchase of municipal securities or related services.]

[(b) The prohibitions of section (a) shall not apply to telephone calls by any person associated with a broker, dealer or municipal securities dealer, or another associated person acting at the direction of such person for the purpose of maintaining and servicing the accounts of existing customers of the broker, dealer or municipal securities dealer under the control of or assigned to such associated person:]

[(i) to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or the deposit, was under the common control of or assigned to, such associated person;]

[(ii) to an existing customer who previously has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or deposit, was under the control of or assigned to, such associated person, provided that such customer's account has earned interest or dividend income during the preceding twelve months; or]

[(iii) to a broker, dealer or municipal securities dealer.]

[For the purposes of section (b), the term "existing customer" means a customer for whom the broker, dealer or municipal securities dealer, or a clearing broker or dealer on behalf of such broker, dealer or municipal securities dealer, carries an account. The scope of this rule is limited to the telemarketing calls described herein; the terms of this rule shall not otherwise expressly or by implication impose on brokers, dealers or municipal securities dealers any additional requirements with respect to the relationship between a broker, dealer or municipal securities dealer and a customer or between a person associated with a broker, dealer or municipal securities dealer and a customer.]

(a) General Telemarketing Requirements

No broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer shall initiate any telephone solicitation, as defined in paragraph (g)(ii) of this rule, to:

(i) Time of Day Restriction

Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless

(A) the broker, dealer or municipal securities dealer has an established business relationship with the person pursuant to paragraph (g)(i)(A)(1),

(B) the broker, dealer or municipal securities dealer has received that person's prior express invitation or permission, or

(C) the person called is a broker, dealer or municipal securities dealer;

(ii) Firm-Specific Do-Not-Call List

Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the broker, dealer or municipal securities dealer; or

(iii) National Do-Not-Call List

Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(b) National Do-Not-Call List Exceptions

A broker, dealer or municipal securities dealer making telephone solicitations will not be liable for violating paragraph (a)(iii) if:

(i) Established Business Relationship Exception

The broker, dealer or municipal securities dealer has an established business relationship with the recipient of the call. A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that broker, dealer or municipal securities dealer even if the person continues to do business with the broker, dealer or municipal securities dealer;

(ii) Prior Express Written Consent Exception

The broker, dealer or municipal securities dealer has obtained the person's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the person and the broker, dealer or municipal securities dealer which states that the person agrees to be contacted by the broker, dealer or municipal securities dealer and includes the telephone number to which the calls may be placed; or

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

(iii) Personal Relationship Exception

The associated person making the call has a personal relationship with the recipient of the call.

(c) Safe Harbor Provision

A broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer making telephone solicitations will not be liable for violating paragraph (a)(iii) if the broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer demonstrates that the violation is the result of an error and that as part of the broker, dealer or municipal securities dealer's routine business practice, it meets the following standards:

(i) Written procedures. The broker, dealer or municipal securities dealer has established and implemented written procedures to comply with the national do-not-call rules;

(ii) Training of personnel. The broker, dealer or municipal securities dealer has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(iii) Recording. The broker, dealer or municipal securities dealer has maintained and recorded a list of telephone numbers that it may not contact; and

(iv) Accessing the national do-not-call database. The broker, dealer or municipal securities dealer uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than three months prior to the date any call is made, and maintains records documenting this process.

(d) Procedures

Prior to engaging in telemarketing, a broker, dealer or municipal securities dealer must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:

(i) Written policy. Brokers, dealers and municipal securities dealers must have a written policy for maintaining a do-not-call list.

(ii) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(iii) Recording, disclosure of do-not-call requests. If a broker, dealer or municipal securities dealer receives a request from a person not to receive calls from that broker, dealer or municipal securities dealer, the broker, dealer or municipal securities dealer must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. Brokers, dealers and municipal securities dealers must honor a person's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party other than the broker, dealer or municipal securities dealer on whose behalf the telemarketing call is made, the broker, dealer or municipal securities dealer on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request.

(iv) Identification of sellers and telemarketers. A broker, dealer or municipal securities dealer or person associated with a broker, dealer or municipal securities dealer making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the broker, dealer or municipal securities dealer, an address or telephone number at which the broker, dealer or municipal securities dealer may be contacted, and that the purpose of the call is to solicit the purchase of securities or related service. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(v) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the broker, dealer or municipal securities dealer making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(vi) Maintenance of do-not-call lists. A broker, dealer or municipal securities dealer making calls for telemarketing purposes must maintain a record of a caller's request not to receive further telemarketing calls. A firm-specific do-not-call request must be honored for five years from the time the request is made.

(e) Wireless Communications

The provisions set forth in this rule are applicable to brokers, dealers and municipal securities dealers telemarketing or making telephone solicitations calls to wireless telephone numbers.

(f) Outsourcing Telemarketing

If a broker, dealer or municipal securities dealer uses another entity to perform telemarketing services on its behalf, the broker, dealer or municipal securities dealer remains responsible for ensuring compliance with all provisions contained in this rule.

(g) Definitions

(i) Established business relationship.

(A) An established business relationship exists between a broker, dealer or municipal securities dealer and a person if:

(1) the person has made a financial transaction with the broker, dealer or municipal securities dealer within the previous eighteen months immediately preceding the date of the telemarketing call; or

(2) the person has contacted the broker, dealer or municipal securities dealer to inquire about a product or service offered by the broker, dealer or municipal securities dealer within the previous three months immediately preceding the date of the telemarketing call.

(B) A person's established business relationship with a broker, dealer or municipal securities dealer does not extend to the broker, dealer or municipal securities dealer's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a broker, dealer or municipal securities dealer's affiliate does not extend to the broker, dealer or municipal securities dealer unless the person would reasonably expect the broker, dealer or municipal securities dealer to be included.

(ii) The terms telemarketing and telephone solicitation mean the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(iii) The term personal relationship means any family member, friend, or acquaintance of the telemarketer making the call.

Rule G–8. Books and Records to be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records Required to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)–(xviii) No change.

(xix) [Telemarketing Requirements] *Negotiable Instruments Drawn From a Customer's Account*

[(A) Each broker, dealer and municipal securities dealer shall make and maintain a centralized do-not-call list of persons who do not wish to receive telephone solicitations from such broker, dealer or municipal securities dealer or its associated persons.]

[(B)] No broker, dealer or municipal securities dealer or person associated with such broker, dealer or municipal securities dealer shall obtain from a customer or submit for payment a check, draft or other form of negotiable paper drawn on a customer's checking, savings, share, or similar account, without that person's express written authorization, which may include the customer's signature on the negotiable instrument.

(xx)–(xxii) No change.

(b)–(g) No change.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the SEC, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Earlier this year, both the FTC and the Federal Communications Commission ("FCC") established requirements for sellers and telemarketers to participate in a national do-not-call registry. Beginning in June 2003, consumers have been able to enter their home telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry. The FCC's rules are directly applicable to broker/dealers.

The national do-not-call registry is not the FCC's or FTC's first foray into regulating telemarketing. In 1992 and 1995, the FCC and FTC developed requirements for firms to maintain do-not-call lists and to limit the hours of telephone solicitations. The MSRB adopted substantially similar rules in 1996.[3] On July 2, 2003, the SEC requested that the MSRB amend its telemarketing rules to include a requirement for dealers to participate in the national do-not-call registry.[4]

In this proposed rule change, the MSRB is amending its rules to implement the national do-not-call registry. Because broker/dealers and banks are subject to the FCC's jurisdiction, the MSRB modeled its rules after the FCC, with minor modifications tailoring the rules to broker/dealers and the securities industry.[5]

General Telemarketing Requirements

Paragraph (a)(i) of the proposed rule change provides the time-of-day restrictions under which a dealer or person associated with a dealer may make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services. Specifically, dealers may engage in such telephone solicitations only between the hours of 8 a.m. to 9 p.m. (local time at the called party's location) unless the dealer has an established business relationship with the called person based upon a financial transaction with the dealer, the dealer has received express written permission from the person which allows the dealer to call outside the applicable time frame, or the person called is a broker, dealer or municipal securities dealer. These provisions are substantively equivalent to those currently in Rule G–39, except that the MSRB is replacing the current existing customer exception with the established business relationship exception. This change is discussed in detail below.

Paragraph (a)(ii) provides the requirement for firms to maintain a firm-specific do-not-call list.[6] The MSRB originally established the requirement for firms to maintain their own do-not-call lists in 1996. The new federal legislation imposes the additional requirement for firms to consult the national do-not-call registry; it does not eliminate the obligation for firms to maintain their own do-not-call lists. The provisions in paragraph (a)(ii) are substantively equivalent to those in current Rule G–8(a)(xix)(A). Dealers should note that under proposed paragraph (d)(iii), they must honor a request by a person to be placed on a firm-specific do-not-call list within thirty days, or sooner if they are able to do so.

Paragraph (a)(iii) prohibits a dealer or person associated with a dealer from making telephone solicitations to any person who registers his or her phone number on the national do-not-call registry. Dealers should note that such registrations are maintained in the national registry for a period of five years. A consumer may re-register his or her telephone number at any time. This re-registration re-commences the applicable five-year registration.

Exceptions

The rules of the FCC and FTC provide several exceptions under which sellers and telemarketers may make telephone solicitations to persons on the national registry.[7] The MSRB has adopted these exceptions.

The first exception, contained in paragraph (b)(i), is for calls made to persons with whom the dealer has an "established business relationship." An established business relationship may be formed in two ways. First, under paragraph (g)(i)(A)(1), an established business relationship exists between a dealer and a person if such person has made a financial transaction with the dealer within the previous eighteen months immediately preceding the date of the telemarketing call. Second, under paragraph (g)(i)(A)(2), an established business relationship arises if a person has contacted the dealer to inquire about a product or service offered by the

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[3] *See* Release No. 34–38053 (Dec. 16, 1996), 61 FR 68078 (Dec. 26, 1996) (approving MSRB rule requiring brokers, dealers and municipal securities dealers ("dealers") to maintain firm-specific do-not-call lists and creating telemarketing time-of-day restrictions and disclosure provisions).

[4] The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 requires the SEC to promulgate telemarketing rules substantially similar to those of the FTC or direct self-regulatory organizations to do so, unless the SEC determines that such rules are not in the interest of investor protection. 47 U.S.C. 6102(d) (2003).

[5] Substantively, the Rules of the FCC and FTC are very similar. Indeed, Congress has asked the FCC to consult with the FTC to maximize consistency between their respective do-not-call rules. *See* The Do-Not-Call Implementation Act, 108 Pub. L. 10, 117 Stat. 557 (Mar. 11, 2003).

[6] MSRB Rule G–8(a)(xix)(A) currently requires firms to maintain firm-specific do-not-call lists. In an effort to consolidate and clarify the MSRB's telemarketing rules, the MSRB is proposing to combine Rule G–8(a)(xix)(A) with its main telemarketing rule, Rule G–39. The remaining section of Rule G–8(a)(xix) is substantively unchanged.

[7] The FTC rule only contains two exceptions: (1) Prior express written consent; and (2) an established business relationship. The FTC rule, unlike the FCC rule, does not include a personal relationship exception.

dealer within the previous three months immediately preceding the date of the telemarketing call.

The definition of established business relationship replaces the definition of "existing customer," which was applicable solely to the time-of-day restriction and disclosure provisions in current Rule G–39. The MSRB believes that requiring dealers to follow separate definitions of existing customer and established business relationship would lead to confusion and inadvertent violations. We note that the proposed definition of "established business relationship" is generally broader than the MSRB's definition of existing customer in that it looks back eighteen months rather than twelve months to see whether a consumer made a financial transaction. In addition, an established business relationship may be established by a person inquiring about a product or service from the dealer within the previous three months. The MSRB proposes, however, that time-of-day restrictions should not be waived solely because a person inquired about a product or service within the past three months. Thus, for purposes of the time-of-day restrictions in paragraph (a)(i), an established business relationship must exist based upon a financial transaction as specified in paragraph (g)(i)(A)(1).

In addition, for purposes of paragraph (g)(i)(A)(1), the MSRB proposes interpreting the term "financial transaction" to mean that a person has effected a securities transaction or deposited funds or securities with the broker, dealer or municipal securities dealer. The MSRB does not believe that under the FCC's or FTC's definitions of established business relationship,[8] the receipt of interest or dividends would constitute a financial transaction. We note that this is a distinction from current Rule G–39(b)(ii), under which a person could be an existing customer solely on the basis of interest or dividend income. However, because dealers are subject to FCC rules, we have sought to harmonize MSRB standards with those of the FCC. We also believe that consumers generally would not view receiving interest or dividends as sufficient to overcome their expectation that entering their telephone number in the national do-not-call registry will curtail telephone solicitations.

A person's request to be placed on a firm-specific do-not-call list terminates the established business relationship exception. Thus, a dealer or person associated with a dealer may not make telephone solicitations to a person with whom it has an established business relationship if such person requests to be placed on the dealer's do-not-call list. This is consistent with the MSRB's current do-not-call provisions, which do not contain any exemption for existing customers. Nothing in this section prohibits a dealer from contacting a customer concerning the administration of his or her account. Such calls are not telephone solicitation or telemarketing and are not precluded under existing MSRB rules or the proposed rule change.

The second exception to the national do-not-call rules, contained in paragraph (b)(ii), is for calls to persons from whom the dealer has obtained prior express invitation or permission. In accordance with the requirements of the FCC and FTC, permission must be evidenced by a signed, written agreement between the dealer and person that specifically states that the person agrees to be contacted by the dealer. The agreement also must include the telephone number to which calls may be placed.

The third exception, in paragraph (b)(iii), is for calls made by an associated person who has a personal relationship with the recipient. The definition of personal relationship is in paragraph (g)(iii) and means "any family member, friend, or acquaintance of the telemarketer making the call." The FCC has indicated that in determining whether a telemarketer is a friend or acquaintance of the consumer, the FCC will look at, among other things, whether a reasonable consumer would expect a call from such persons because they have a close, or, at least, a firsthand relationship. Dealers and persons associated with a dealer also should be aware that this exception applies solely to the national do-not-call registry. Thus, if a person with whom an associated person has a personal relationship has requested to be placed on a firm's do-not-call list, the associated person may not make a telephone solicitation to such person.

Safe Harbor Provision

The FCC and FTC rules also contain a "safe harbor" under which a person will not be liable for a violation that is the result of error if the telemarketer's routine business practice meets certain specified standards. The safe harbor is established in paragraph (c) and applies only to a violation of paragraph (a)(iii), the national do-not-call registry provision. To be eligible for this safe harbor, a dealer or person associated with a dealer must demonstrate that the dealer's routine business practice meets the following four standards. First, the dealer has established and implemented written procedures to comply with the national do-not-call rules. Second, the dealer has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules. Third, the dealer has maintained and recorded a list of telephone numbers that the dealer may not contact. Fourth, the dealer uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the FTC no more than three months prior to the date any call is made, and maintains records documenting this process.[9]

Telemarketing Procedures

Paragraph (d) tracks the requirements of the FCC rule and existing Rule G–39 in establishing procedures that dealer firms must institute prior to engaging in telemarketing. These procedures include requirements to: (1) Have a written policy for maintaining a do-not-call list; (2) train personnel engaged in

[8] The FCC's definition of established business relationship requires a person's "purchase or transaction with the entity." FCC Report 03–153 (July 3, 2003). The FTC's definition is substantially similar and states that the established business relationship may be formed by the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller. 68 FR 4580, 4669 (Jan. 29, 2003).

[9] We note that under the rules of the FCC, the safe harbor contains an additional requirement that a seller or telemarketer use a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with the FCC's national do-not-call rules and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database. The telemarketer also must purchase access to the relevant do-not-call data from the administrator of the national database and must not participate in any arrangement to share the cost of accessing the national database, including any arrangement with other entities to divide the costs to access the national database among various client sellers.

The FTC will collect fees from sellers and telemarketers to fund the ongoing expenses of the national registry. The annual cost of accessing the FTC's national registry has been set at $25 per area code, with a maximum annual cap of $7,375 (equivalent to 300 area codes). *See* 68 FR 45134, 45141 (July 31, 2003). In addition, as part of the FTC's Regulatory Flexibility analysis on the burdens to small entities, the FTC determined that it would not charge an access fee for the first five area codes.

Although the MSRB's proposed safe harbor does not contain provisions concerning the sale, rent, lease, purchase, use, or means of accessing the national do-not-call registry as such matters generally fall outside the purview of the investor protection concerns underlying the proposed rule change, dealers are subject to the FCC's national do-not-call rules and must nevertheless comply with these provisions or risk administrative action by the FCC.

telemarketing in the existence and use of the do-not-call list; (3) record and disclose requests from a person to be added to the dealer's do-not-call list; and (4) have the dealer provide the called party with the name of the individual caller, the name of the dealer, a telephone number or address at which the dealer may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services.

Paragraph (d)(v) contains the FCC's position with respect to affiliated persons or entities. In general, a person's do-not-call request applies only to the entity making the call, and does not apply to any affiliated entity unless the customer reasonably would expect the affiliated entity to be included given the identification of the caller and the product being advertised. Similarly, the established business relationship exception does not extend to the dealer's affiliated entities unless the customer reasonably would expect the dealer to be included.

Paragraph (d)(vi) explains that dealers must maintain a record of a caller's request not to receive further telemarketing calls and must honor that request for a period of five years.

Miscellaneous Provisions

Paragraph (e) tracks the FCC's position with respect to the application of the proposed rule change to wireless telephone numbers. In general, the FCC has stated that wireless subscribers may participate in the national do-not-call registry. Although FCC telemarketing rules only generally apply to residential telephone subscribers; the FCC has stated that it will presume wireless subscribers who ask to be put on the national do-not-call list are residential subscribers. Such a presumption, however, may require a complaining wireless customer to provide further proof of the validity of that presumption should it need to take enforcement action. The MSRB agrees with this interpretation and, consistent with the FCC, will apply its telemarketing provisions to dealers engaging in telephone solicitations with wireless subscribers.

Paragraph (f) provides that, if a dealer uses another entity to perform telemarketing services on its behalf, the dealer remains responsible for ensuring compliance with all provisions contained in this proposed rule. Dealers also should be mindful of the limitations on the use of unregistered persons to perform telemarketing services.

2. Basis

The MSRB believes the proposed rule change is consistent with section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall:

> Be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade* * *to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

The MSRB believes that the proposed rule change is consistent with the Act in that investors will expect that their participation in the national do-not-call registry will, subject to certain limited exceptions, preclude telephone solicitations by broker/dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–2003–07 and should be submitted by September 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21940 Filed 8–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48390; File No. SR–NASD–2003–131]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Proposed Amendments to NASD's Telemarketing Rules To Require Members To Participate in the National Do-Not-Call Registry

August 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 15, 2003, the National Association of Securities Dealers, Inc. ("NASD"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is filing with the Commission a proposed rule change to require members to participate in the Federal Trade Commission's ("FTC") national

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

do-not-call registry. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

2200. COMMUNICATIONS WITH THE PUBLIC

* * * * *

2211. Telemarketing

[No member or person associated with a member shall:]

[(a) make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services at any time other than between 8 a.m. and 9 p.m. local time at the called person's location, without the prior consent of the person; or]

[(b) make an outbound telephone call to any person for the purpose of soliciting the purchase of securities or related services without disclosing promptly and in a clear and conspicuous manner to the called person the following information:]

[(1) the identity of the caller and the member firm;]

[(2) the telephone number or address at which the caller may be contacted; and]

[(3) that the purpose of the call is to solicit the purchase of securities or related services.]

[(c) The prohibitions of paragraphs (a) and (b) shall not apply to telephone calls by any person associated with a member, or another associated person acting at the direction of such person for the purpose of maintaining and servicing the accounts of existing customers of the member under the control of or assigned to such associated person:]

[(1) to an existing customer who, within the preceding twelve months, has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or the deposit, was under the control of or assigned to, such associated person;]

[(2) to an existing customer who previously has effected a securities transaction in, or made a deposit of funds or securities into, an account that, at the time of the transaction or deposit, was under the control of or assigned to, such associated person, provided that such customer's account has earned interest or dividend income during the preceding twelve months, or]

[(3) to a broker or dealer.]

[(d) For the purposes of paragraph (c), the term "existing customer " means a customer for whom the broker or dealer, or a clearing broker or dealer on behalf of such broker or dealer, carries an account. The scope of this Rule is limited to the telemarketing calls described herein; the terms of this Rule shall not otherwise expressly or by implication impose on members any additional requirements with respect to the relationship between a member and a customer or between a person associated with a member and a customer.]

(a) General Telemarketing Requirements

No member or person associated with a member shall initiate any telephone solicitation, as defined in paragraph (g)(2) of this rule, to:

(1) Time of Day Restriction

Any residence of a person before the hour of 8 a.m. or after 9 p.m. (local time at the called party's location), unless

(A) the member has an established business relationship with the person pursuant to paragraph (g)(1)(A)(i),

(B) the member has received that person's prior express invitation or permission, or

(C) the person called is a broker or dealer;

(2) Firm-Specific Do-Not-Call List

Any person that previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the member; or

(3) National Do-Not-Call List

Any person who has registered his or her telephone number on the Federal Trade Commission's national do-not-call registry.

(b) National Do-Not-Call List Exceptions

A member making telephone solicitations will not be liable for violating paragraph (a)(3) if:

(1) Established Business Relationship Exception

The member has an established business relationship with the recipient of the call. A person's request to be placed on the firm-specific do-not-call list terminates the established business relationship exception to that national do-not-call list provision for that member even if the person continues to do business with the member;

(2) Prior Express Written Consent Exception

The member has obtained the person's prior express invitation or permission. Such permission must be evidenced by a signed, written agreement between the person and member which states that the person agrees to be contacted by the member and includes the telephone number to which the calls may be placed; or

(3) Personal Relationship Exception

The associated person making the call has a personal relationship with the recipient of the call.

(c) Safe Harbor Provision

A member or person associated with a member making telephone solicitations will not be liable for violating paragraph (a)(3) if the member or person associated with a member demonstrates that the violation is the result of an error and that as part of the member's routine business practice, it meets the following standards:

(1) Written procedures. The member has established and implemented written procedures to comply with the national do-not-call rules;

(2) Training of personnel. The member has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules;

(3) Recording. The member has maintained and recorded a list of telephone numbers that it may not contact; and

(4) Accessing the national do-not-call database. The member uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than three months prior to the date any call is made, and maintains records documenting this process.

(d) Procedures

Prior to engaging in telemarketing, a member must institute procedures to comply with paragraph (a). Such procedures must meet the following minimum standards:

(1) Written policy. Members must have a written policy for maintaining a do-not-call list.

(2) Training of personnel engaged in telemarketing. Personnel engaged in any aspect of telemarketing must be informed and trained in the existence and use of the do-not-call list.

(3) Recording, disclosure of do-not-call requests. If a member receives a request from a person not to receive calls from that member, the member must record the request and place the person's name, if provided, and telephone number on the firm's do-not-call list at the time the request is made. Members must honor a person's do-not-call request within a reasonable time from the date such request is made. This period may not exceed thirty days from the date of such request. If such requests are recorded or maintained by a party

other than the member on whose behalf the telemarketing call is made, the member on whose behalf the telemarketing call is made will be liable for any failures to honor the do-not-call request.

(4) Identification of sellers and telemarketers. A member or person associated with a member making a call for telemarketing purposes must provide the called party with the name of the individual caller, the name of the member, an address or telephone number at which the member may be contacted, and that the purpose of the call is to solicit the purchase of securities or related service. The telephone number provided may not be a 900 number or any other number for which charges exceed local or long distance transmission charges.

(5) Affiliated persons or entities. In the absence of a specific request by the person to the contrary, a person's do-not-call request shall apply to the member making the call, and will not apply to affiliated entities unless the consumer reasonably would expect them to be included given the identification of the caller and the product being advertised.

(6) Maintenance of do-not-call lists. A member making calls for telemarketing purposes must maintain a record of a caller's request not to receive further telemarketing calls. A firm-specific do-not-call request must be honored for 5 years from the time the request is made.

(e) Wireless Communications

The provisions set forth in this rule are applicable to members telemarketing or making telephone solicitations calls to wireless telephone numbers.

(f) Outsourcing Telemarketing

If a member uses another entity to perform telemarketing services on its behalf, the member remains responsible for ensuring compliance with all provisions contained in this rule.

(g) Definitions

(1) Established business relationship.

(A) An established business relationship exists between a member and a person if:

(i) The person has made a financial transaction with the member within the previous 18 months immediately preceding the date of the telemarketing call; or

(ii) The person has contacted the member to inquire about a product or service offered by the member within the previous three months immediately preceding the date of the telemarketing call.

(B) A person's established business relationship with a member does not extend to the member's affiliated entities unless the person would reasonably expect them to be included. Similarly, a person's established business relationship with a member's affiliate does not extend to the member unless the person would reasonably expect the member to be included.

(2) The terms telemarketing and telephone solicitation mean the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

(3) The term personal relationship means any family member, friend, or acquaintance of the telemarketer making the call.

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Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

Earlier this year, both the FTC and the Federal Communications Commission ("FCC") established requirements for sellers and telemarketers to participate in a national do-not-call registry. Beginning in June 2003, consumers have been able to enter their home telephone numbers into the national do-not-call registry, which is maintained by the FTC. Under rules of the FTC and FCC, sellers and telemarketers generally are prohibited from making telephone solicitations to consumers whose numbers are listed in the national do-not-call registry. The FCC's rules are directly applicable to broker/dealers.

The national do-not-call registry is not the FCC's or FTC's first foray into regulating telemarketing. In 1992 and 1995, the FCC and FTC developed requirements for firms to maintain do-not-call lists and to limit the hours of telephone solicitations. NASD adopted substantially similar rules in 1995 and 1996.[3] On July 2, 2003, the SEC requested that NASD amend its telemarketing rules to include a requirement for its members to participate in the national do-not-call registry.[4]

In this proposed rule change, NASD is amending its rules to implement the national do-not-call registry. Because broker/dealers and banks are subject to the FCC's jurisdiction, the NASD modeled its rules after the FCC, with minor modifications tailoring the rules to broker/dealers and the securities industry.[5]

General Telemarketing Requirements

Paragraph (a)(1) of the proposed rule change provides the time-of-day restrictions under which a member or person associated with a member may make outbound telephone calls to the residence of any person for the purpose of soliciting the purchase of securities or related services. Specifically, members may engage in such telephone solicitations only between the hours of 8 a.m. to 9 p.m. (local time at the called party's location) unless the member has an established business relationship with the called person based upon a financial transaction with the member, the member has received express written permission from the person which allows the member to call outside the applicable time frame, or the person called is a broker or dealer. These provisions are substantively equivalent to those currently in Rule 2211, except that NASD is replacing the current existing customer exception with the established business relationship exception. This change is discussed in detail below.

Paragraph (a)(2) provides the requirement for firms to maintain a firm-specific do-not-call list.[6] NASD

[3] *See* 60 FR 31527 (June 15, 1995) (approving NASD rule requiring members to maintain firm-specific do-not-call lists); 61 FR 65625 (Dec. 13, 1996) (approving NASD rule creating telemarketing time-of-day restrictions and disclosure provisions).

[4] The Telemarketing and Consumer Fraud and Abuse Prevention Act of 1994 requires the SEC to promulgate telemarketing rules substantially similar to those of the FTC or direct self-regulatory organizations to do so, unless the SEC determines that such rules are not in the interest of investor protection. 47 U.S.C. 6102(d) (2003).

[5] Substantively, the Rules of the FCC and FTC are very similar. Indeed, Congress has asked the FCC to consult with the FTC to maximize consistency between their respective do-not-call rules. *See* The Do-Not-Call Implementation Act, 108 Pub. L. 10, 117 Stat. 557 (Mar. 11, 2003).

[6] NASD Rule 3110(g)(1) currently requires firms to maintain firm-specific do-not-call lists. In an effort to consolidate and clarify NASD's telemarketing rules, NASD is proposing to combine Rule 3110(g)(1) with its main telemarketing rule,

Continued

originally established the requirement for firms to maintain their own do-not-call lists in 1995. The new federal legislation imposes the additional requirement for firms to consult the national do-not call registry; it does not eliminate the obligation for firms to maintain their own do-not-call lists. The provisions in paragraph (a)(2) are substantively equivalent to those in current Rule 3110(g)(1). Members should note that under proposed paragraph (d)(3), they must honor a request by a person to be placed on a firm-specific do-not-call list within thirty days, or sooner if they are able to do so.

Paragraph (a)(3) prohibits a member or person or associated with a member from making telephone solicitations to any person who registers his or her phone number on the national do-not-call registry. Members should note that such registrations are maintained in the national registry for a period of five years. A consumer may re-register his or her telephone number at any time. This re-registration re-commences the applicable five-year registration.

Exceptions

The rules of the FCC and FTC provide several exceptions under which sellers and telemarketers may make telephone solicitations to persons on the national registry.[7] NASD has adopted these exceptions.

The first exception, contained in paragraph (b)(1), is for calls made to persons with whom the member has an "established business relationship." An "established business relationship may be formed in two ways. First, under paragraph (g)(1)(A)(i), an established business relationship exists between a member and a person if such person has made a financial transaction with the member within the previous 18 months immediately preceding the date of the telemarketing call. Second, under paragraph (g)(1)(A)(ii), an established business relationship arises if a person has contacted the member to inquire about a product or service offered by the member within the previous three months immediately preceding the date of the telemarketing call.

The definition of established business relationship replaces the definition of "existing customer," which was applicable solely to the time-of-day restriction and disclosure provisions in current Rule 2211. NASD believes that requiring members to follow separate definitions of existing customer and established business relationship would lead to confusion and inadvertent violations. We note that the proposed definition of "established business relationship" is generally broader than the NASD's definition of existing customer in that it looks back 18 months rather than 12 months to see if a consumer made a financial transaction. In addition, an established business relationship may be established by a person inquiring about a product or service from the member within the previous three months. NASD proposes, however, that time-of-day restrictions should not be waived solely because a person inquired about a product or service within the past three months. Thus, for purposes of the time-of-day restrictions in paragraph (a)(1), an established business relationship must exist based upon a financial transaction as specified in paragraph (g)(1)(A)(i).

In addition, for purposes of paragraph (g)(1)(A)(i), NASD proposes interpreting the term "financial transaction" to mean that a person has effected a securities transaction or deposited funds or securities with the member. NASD does not believe that under the FCC's or FTC's definitions of established business relationship,[8] the receipt of interest or dividends would constitute a financial transaction. We note that this is a distinction from current Rule 2211(c)(2), under which a person could be an existing customer solely on the basis of interest or dividend income. However, because members are subject to FCC rules, we have sought to harmonize NASD standards with those of the FCC. We also believe that consumers generally would not view receiving interest or dividends as sufficient to overcome their expectation that entering their telephone number in the national do-not-call registry will curtail telephone solicitations.

A person's request to be placed on a firm-specific do-not-call list terminates the established business relationship exception. Thus, a member or person associated with a member may not make telephone solicitations to a person with whom it has an established business relationship if such person requests to be placed on the member's do-not-call list. This is consistent with NASD's current do-not-call provisions, which do not contain any exemption for existing customers. Nothing in this section prohibits a member from contacting a customer concerning the administration of his or her account. Such calls are not telephone solicitation or telemarketing and are not precluded under existing NASD rules or the proposed rule change.

The second exception to the national do-not-call rules, contained in paragraph (b)(2), is for calls to persons from whom the member has obtained prior express invitation or permission. In accordance with the requirements of the FCC and FTC, permission must be evidenced by a signed, written agreement between the member and person that specifically states that the person agrees to be contacted by the member. The agreement also must include the telephone number to which calls may be placed.

The third exception, in paragraph (b)(3), is for calls made by an associated person who has a personal relationship with the recipient. The definition of personal relationship is in paragraph (g)(3) and means "any family member, friend, or acquaintance of the telemarketer making the call." The FCC has indicated that in determining whether a telemarketer is a friend or acquaintance of the consumer, the FCC will look at, among other things, whether a reasonable consumer would expect a call from such persons because they have a close, or, at least, a firsthand relationship. Members and persons associated with a member also should be aware that this exception applies solely to the national do-not-call registry. Thus, if a person with whom an associated person has a personal relationship has requested to be placed on a firm's do-not-call list, the associated person may not make a telephone solicitation to such person.

Safe Harbor Provision

The FCC and FTC rules also contain a "safe harbor" under which a person will not be liable for a violation that is the result of error if the telemarketer's routine business practice meets certain specified standards. The safe harbor is established in paragraph (c) and applies only to a violation of paragraph (a)(3), the national do-not-call registry provision. To be eligible for this safe harbor, a member or person associated with a member must demonstrate that the member's routine business practice meets the following four standards. First, the member has established and implemented written procedures to comply with the national do-not-call

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Rule 2211. The remaining sections of Rule 3110 are substantively unchanged.

[7] The FTC rule only contains two exceptions: (1) prior express written consent; and (2) an established business relationship. The FTC rule, unlike the FCC rule, does not include a personal relationship exception.

[8] The FCC's definition of established business relationship requires a person's "purchase or transaction with the entity." FCC Report 03–153 (July 3, 2003). The FTC's definition is substantially similar and states that the established business relationship may be formed by the consumer's purchase, rental, or lease of the seller's goods or services or a financial transaction between the consumer and seller. 68 FR 4580, 4669 (Jan. 29, 2003).

rules. Second, the member has trained its personnel, and any entity assisting in its compliance, in procedures established pursuant to the national do-not-call rules. Third, the member has maintained and recorded a list of telephone numbers that the member may not contact. Fourth, the member uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the FTC no more than three months prior to the date any call is made, and maintains records documenting this process.[9]

Telemarketing Procedures

Paragraph (d) tracks the requirements of the FCC rule and existing Rule 2211 in establishing procedures that member firms must institute prior to engaging in telemarketing. These procedures include requirements to: (1) Have a written policy for maintaining a do-not-call list; (2) train personnel engaged in telemarketing in the existence and use of the do-not-call list; (3) record and disclose requests from a person to be added to the member's do-not-call list; and (4) have the member provide the called party with the name of the individual caller, the name of the member, a telephone number or address at which the member may be contacted, and that the purpose of the call is to solicit the purchase of securities or related services.

Paragraph (d)(5) contains the FCC's position with respect to affiliated persons or entities. In general, a person's do-not-call request applies only to the entity making the call, and does not apply to any affiliated entity unless the customer reasonably would expect the affiliated entity to be included given the identification of the caller and the product being advertised. Similarly, the established business relationship exception does not extend to the member's affiliated entities unless the customer reasonably would expect the member to be included.

Paragraph (d)(6) explains that members must maintain a record of a caller's request not to receive further telemarketing calls and must honor that request for a period of five years.

Miscellaneous Provisions

Paragraph (e) tracks the FCC's position with respect to the application of the proposed rule change to wireless telephone numbers. In general, the FCC has stated that wireless subscribers may participate in the national do-not-call registry. Although FCC telemarketing rules only generally apply to residential telephone subscribers, the FCC has stated that it will presume wireless subscribers who ask to be put on the national do-not-call list are residential subscribers. Such a presumption, however, may require a complaining wireless customer to provide further proof of the validity of that presumption should it need to take enforcement action. NASD agrees with this interpretation and, consistent with the FCC, will apply its telemarketing provisions to members engaging in telephone solicitations with wireless subscribers.

Paragraph (f) provides that if a member uses another entity to perform telemarketing services on its behalf, the member remains responsible for ensuring compliance with all provisions contained in this proposed rule. Members also should be mindful of the limitations on the use of unregistered persons to perform telemarketing services. In *NASD Notice to Members* 00–50 (Aug. 2000), NASD identified the limited telemarketing activities that can be performed by unregistered persons. Under this *Notice*, unregistered persons may only contact prospective customers to: (1) Extend invitations to firm-sponsored events; (2) inquire whether the customer wishes to discuss investments with a registered person; and (3) inquire whether the customer wishes to receive investment literature. Members must also be mindful of the supervision and training requirements contained in the *Notice*.

2. Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that NASD's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that investors will expect that their participation in the national do-not-call registry will, subject to certain limited exceptions, preclude telephone solicitations by broker/dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the

[9] We note that under the rules of the FCC, the safe harbor contains an additional requirement that a seller or telemarketer use a process to ensure that it does not sell, rent, lease, purchase or use the national do-not-call database, or any part thereof, for any purpose except compliance with the FCC's national do-not-call rules and any such state or federal law to prevent telephone solicitations to telephone numbers registered on the national database. The telemarketer also must purchase access to the relevant do-not-call data from the administrator of the national database and must not participate in any arrangement to share the cost of accessing the national database, including any arrangement with other entities to divide the costs to access the national database among various client sellers.

The FTC will collect fees from sellers and telemarketers to fund the ongoing expenses of the national registry. The annual cost of accessing the FTC's national registry has been set at $25 per area code, with a maximum annual cap of $7,375 (equivalent to 300 area codes). *See* 68 FR 45134, 45141 (July 31, 2003). In addition, as part of the FTC's Regulatory Flexibility analysis on the burdens to small entities, the FTC determined that it would not charge an access fee for the first five area codes.

Although NASD's proposed safe harbor does not contain provisions concerning the sale, rent, lease, purchase, use, or means of accessing the national do-not-call registry as such matters generally fall outside the purview of the investor protection concerns underlying the proposed rule change, members are subject to the FCC's national do-not-call rules and must nevertheless comply with these provisions or risk administrative action by the FCC.

Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of NASD. All submissions should refer to File No. SR–NASD–2003–131 and should be submitted by September 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21941 Filed 8–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48386; File No. SR–NASD–2003–132]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Extend the Pilot Period for Fees for the National Quotation Data Service

August 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative day. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend a one-year pilot program under NASD Rule 7010(h), which reduced from $50 to $10 the monthly fee that non-professional users pay to receive the National Quotation Data Service ("NQDS").[6] The purpose of this proposed rule change is to extend the one-year fee reduction pilot program for non-professional users of NQDS through August 31, 2004. Nasdaq proposes no other changes to the pilot as it is currently operating. Accordingly, there is no new proposed rule language.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to extend for one year the fee reduction pilot program under NASD Rule 7010(h) that reduced from $50 to $10 the monthly fee that non-professional users pay to receive NQDS.

NQDS delivers market maker quotations, Nasdaq Level 1[7] service (including calculation and display of the inside market), and last sale information that is dynamically updated on a real-time basis. NQDS data is used not only by firms, associated persons, and other market professionals, but also by non-professionals who receive the service through authorized vendors, including, for example, on-line brokerage firms. Prior to August 31, 2000, NQDS data was available through authorized vendors at a monthly rate of $50 for professionals and non-professional users alike. In August 2000, the NASD through Nasdaq filed a rule change to reduce from $50 to $10 the monthly fee that non-professional users pay to receive NQDS data. The Commission approved the pilot on August 22, 2000, and the fee reduction commenced on August 31, 2000 on a one-year pilot basis. On September 4, 2001, and again on August 29, 2002, Nasdaq filed proposed rule changes to extend the pilot for another one-year period.

Nasdaq has consistently supported broad, effective dissemination of market information to public investors. Thus, Nasdaq is proposing to extend the one-year fee-reduction pilot for another year. The pilot would cover twelve months, commencing with September 2003 and expiring on August 31, 2004. Nasdaq notes that the existing pilot reduced by 80% the fees that non-professionals paid for NQDS data prior to August 31, 2000. Continuing the reduction of NQDS charges for non-professional users demonstrates Nasdaq's continued commitment to individual investors and responds to the dramatic increase in the demand for real-time market data by non-professional market participants. In addition, NASD member firms often supply real-time market data to their customers through automated means. Thus, NASD member firms' customers will benefit from the continued fee reduction.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Sections 15A(b)(5)[9] and 15A(b)(6)[10] of the Act, in particular, in that the proposal is designed to provide for the equitable allocation of reasonable fees among members and other persons using any facility or system which the Association operates or controls, and it does not unfairly discriminate between customers, issuers, brokers or dealers. In addition, Nasdaq believes that the fee reduction enhances the public's access to market data that is relevant to investors when they make financial decisions. Nasdaq further believes that the public's enhanced access to this data may encourage increased public participation in the securities markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will impose no burden on competition that is not necessary or

[6] *See* Securities Exchange Act Release No. 43199 (August 22, 2000), 65 FR 52460 (August 29, 2000) (SR–NASD–2000–47). NQDS is also referred to as the "Nasdaq Quotation Dissemination Service."

[7] Pursuant to NASD Rule 7010(e), Nasdaq separately distributes Level 1 data to non-professionals for a monthly fee of $1.00.

[8] 15 U.S.C. 78o–3.

[9] 15 U.S.C. 78o–3(b)(5).

[10] 15 U.S.C. 78o–3(b)(6).

appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has asked the Commission to waive the five-day pre-filing notice requirement and the 30-day operative delay contained in Rule 19b–4(f)(6).[13] The Commission believes waiving the five-day pre-filing notice requirement and the 30-day operative delay is consistent with the protection of investors and the public interest. Such waiver will allow the reduction in fees reflected in the proposal to be made available on an uninterrupted basis. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[14]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–132 and should be submitted by September 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21942 Filed 8–26–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48387; File No. SR–NASD–2003–117]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Introduce Fees for NASD Members Using the Financial Information Exchange Protocol To Connect to Nasdaq

August 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 31, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq has designated this proposal as one establishing or changing a due, fee or other charge imposed by the self-regulatory organization under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing this proposed rule change to propose connectivity and testing fees for NASD members wishing to use the Financial Information Exchange ("FIX") protocol to connect to Nasdaq.[5] Nasdaq proposes to implement the change to Rule 7050(d) on August 1, 2003, and the change to Rule 7010(f) on August 25, 2003.

The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENT

* * * * *

Rule 7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1) No change.

(2) The following charges shall apply for each [CTCI] subscriber *using CTCI and/or FIX:*

Options	Price
Option 1:	
Dual 56kb lines (one for redundancy), [and] single hub and router, *and optional single FIX port.*	$1,275/month.
Option 2:	
Dual 56kb lines (one for redundancy), dual hubs (one for redundancy), [and] dual routers (one for redundancy), *and optional single FIX port.*	$1,600/month.
Option 3:	

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 240.19b–4(f)(6).

[14] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] Nasdaq is also submitting a proposed rule change to introduce these fees for non-members. *See* File No. SR–NASD–2003–118 (July 31, 2003).

Options	Price
Dual T1 lines (one for redundancy), dual hubs (one for redundancy), [and] dual routers (one for redundancy), *and optional single FIX port* Includes base bandwidth of 128kb.	$8,000/month *(CTCI or CTCI/FIX lines)* *$4,000/month (FIX-only lines).*
FIX Port Charge	*$300/port/month.*
Option 1, 2, or 3 with Message Queue software enhancement	Fee for Option 1, 2, or 3 (including any Bandwidth Enhancement Fee) plus 20%.
Disaster Recovery Option:	
Single 56kb line with single hub and router *and optional single FIX port.* (For remote disaster recovery sites only.).	$975/month.
Bandwidth Enhancement Fee (for T1 subscribers only)	$600/month per 64kb increase above 128kb T1 base.
Installation Fee	$2,000 per site for dual hubs and routers. $1,000 per site for single hub and router.
Relocation Fee (for the movement of TCP/IP-capable lines within a single location).	$1,700 per relocation.

(g)–(s) No change.

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7050. Other Services

(a)–(c) No change.

(d) Nasdaq Testing Facility

(1) Subscribers that conduct tests of their computer-to-computer interface (CTCI), NWII application programming interface (API), *Financial Information Exchange (FIX) interface,* or market data vendor feeds through the Nasdaq Testing Facility (NTF) shall pay the following charges:

$285/hour	For an Active Connection for CTCI/NWII API/*FIX* testing during the normal operating hours of the NTF;
$75/hour	For an Idle Connection for CTCI/NWII API/*FIX* testing during the normal operating hours of the NTF, unless such an Idle Connection is over a dedicated circuit;
No charge	For an Idle Connection for CTCI/NWII API/*FIX* testing if such an Idle Connection is over a dedicated circuit during the normal operating hours of the NTF;
$333/hour	For CTCI/NWII API/*FIX* testing (for both Active and Idle Connections) at all times other than the normal operating hours of the NTF.

(2)(A) An "Active Connection" commences when the user begins to send and/or receive a transaction to and from the NTF and continues until the earlier of disconnection or the commencement of an Idle Connection.

(B) An "Idle Connection" commences after a Period of Inactivity and continues until the earlier of disconnection or the commencement of an Active Connection. If a Period of Inactivity occurs immediately after subscriber's connection to the NTF is established and is then immediately followed by an Idle Connection, then such Period of Inactivity shall also be deemed a part of the Idle Connection.

(C) A "Period of Inactivity" is an uninterrupted period of time of specified length when the connection is open but the NTF is not receiving from or sending to subscriber any transactions. The length of the Period of Inactivity shall be such period of time between 5 minutes and 10 minutes in length as Nasdaq may specify from time to time by giving notice to users of the NTF.

(3) The foregoing hourly fees shall not apply to market data vendor feed testing, or testing occasioned by:

(A) new or enhanced services and/or software provided by Nasdaq;

(B) modifications to software and/or services initiated by Nasdaq in response to a contingency; or

(C) testing by a subscriber of a Nasdaq service that the subscriber has not used previously, except if more than 30 days have elapsed since the subscriber commenced the testing of such Nasdaq service.

(4) Subscribers that conduct CTCI/API/*FIX* or market data vendor feed tests using a dedicated circuit shall pay a monthly fee, in addition to any applicable hourly fee described in section (d)(1) above, in accordance with the following schedule:

Service	Description	Price
NTF Market Data	Test Market Data Vendor Feed over a 56kb dedicated circuit.	$1,100/circuit/month.
NTF NWII API	NWII API service to an onsite test SDP over a 56kb dedicated circuit.	$1,100/circuit/month.
NTF CTCI/*FIX*	CTCI *and/or FIX* service over a 56kb dedicated circuit.	$1,100/circuit/month.
NTF Test Suite	NWII API service, *FIX* and CTCI service over two 56kb circuits (128kb).	$1,800/2 circuits/month.
NTF Circuit Installation	Installation of any service option including SDP configuration.	$700/circuit/installation.

(5) New NTF subscribers that sign a one-year agreement for dedicated testing service shall be eligible to receive 90 calendar days free dedicated testing service.

(6) "New NTF subscribers" are subscribers that

(A) have never had dedicated testing service; or

(B) have not had dedicated testing service within the last 6 calendar months.

(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq currently offers market participants and other Nasdaq subscribers two messaging protocols for communicating with Nasdaq systems: computer-to-computer interface ("CTCI") and application programming interface ("API"). Effective August 25, 2003, Nasdaq will expand the connectivity options available to its subscribers by introducing the FIX protocol as a means of accessing SuperMontage. The FIX protocol was first developed in 1992, and since that time has become the dominant protocol for messaging among equity market participants. Nasdaq represents that FIX is now used by over 50% of all U.S. firms in the equity securities business, and its users include market makers and other broker-dealers, institutional investors, electronic communications networks ("ECNs"), and national securities exchanges.

Nasdaq proposes to amend Rule 7010(f) to reflect the various pricing options that Nasdaq proposes to make available to firms that connect through FIX. Firms that already have dedicated CTCI circuits would be able to use FIX over their existing circuits. Thus, these firms would be able to begin using FIX immediately, without having to incur the costs or delays associated with installation of new circuits. Moreover, the charges for circuits used to support both FIX and CTCI would be the same as the current charges for CTCI-only circuits (although a firm that increases its bandwidth usage as a result of using FIX might have to install additional circuits or pay the existing bandwidth enhancement fee of $600 per 64 kilobit per second increase if it exhausts its existing available bandwidth).[6] However, Nasdaq would assess a "port charge" of $300 per month for each port (*i.e.*, a connection to a server that operates off of the circuit) that uses FIX, with the first port provided free of charge to firms with direct connections. Each customer would determine the number of ports that it requires, based on its message traffic needs.

A firm that does not currently have CTCI circuits would be able to obtain circuits to support both CTCI and FIX at the same prices that currently apply to CTCI circuits, or would be able to obtain dual 128 kb circuits to support FIX only at a reduced rate of $4,000 per month (compared with the $8,000 per month charge of 128 kb circuits that support CTCI and FIX). The lower fee reflects the lower costs to Nasdaq of supporting FIX (as compared with CTCI), as well as the more limited range of functionality that would be accessible to firms through FIX.[7] Firms would also be able to connect to Nasdaq indirectly through service bureaus and third-party private networks that provide the option of FIX connectivity to their subscribers. In such cases, Nasdaq would charge for FIX or CTCI/FIX circuits if any must be supplied by Nasdaq to establish connectivity, and would also charge the end user a port charge of $300 per month for each port that it requires, based on its message traffic needs.

Firms wishing to use FIX would be able to begin testing FIX connectivity during the month of August 2003. Accordingly, Nasdaq also proposes to amend Rule 7050(d), which lists the fees for the Nasdaq Testing Facility ("NTF"). The NTF would be available for testing FIX connectivity at the same rates that currently apply to CTCI/API testing. The fees for testing without a dedicated testing circuit are: (i) $285 per hour for an active connection during the normal operating hours of the NTF, (ii) $75 per hour for an idle connection during normal operating hours; and (iii) $333 per hour for an active or idle connection at times other than normal operating hours. In addition, firms have the option of obtaining dedicated 56kb testing circuits at a rate of $1,100 for one CTCI/FIX circuit or $1,800 for two circuits usable for API, CTCI, and FIX. Hourly fees also apply to testing through dedicated circuits, with the exception of the charge for idle connections during normal operating hours. Pursuant to Rule 7050(d)(3)(A), however, the hourly fees would not be applied to testing conducted prior to August 25, 2003. Moreover, pursuant to Rule 7050(d)(3)(C), the hourly fees would not be applied thereafter to a new FIX subscriber until 30 days after it commences testing.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[8] in general, and with Section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. The proposed fees for FIX connectivity and testing are similar in structure and dollar amount to existing fees for CTCI and API connectivity and testing.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become immediately effective pursuant to Section 19(b)(3)(A)(ii) of the Act,[10] and subparagraph (f)(2) of Rule 19b–4 thereunder,[11] in that it establishes or

[6] The term "bandwidth" refers to the amount of data that can be transmitted over a circuit in one second. Accordingly, bandwidth enhancements allow a subscriber to send and receive a greater volume of data over a circuit.

[7] CTCI and API can be used to access a range of Nasdaq systems, including SuperMontage, ACT and Nasdaq InterMarket. At the time of its introduction in late August 2003, however, FIX will provide access solely to SuperMontage. Based on user demand, Nasdaq will evaluate whether to make additional Nasdaq functionality available through FIX in the future.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

changes a due, fee, or other charge imposed by the self-regulatory organization. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD–2003–117 and should be submitted by September 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–21943 Filed 8–26–03; 8:45 am]

BILLING CODE 8010–01–P

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48379; File No. SR–NASD–2003–109]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. Relating to Changes in Fingerprint Processing Fees Contained in Schedule A of the NASD By-Laws

August 20, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 10, 2003, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD. On August 7, 2003, NASD filed an amendment to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Section (4)(b) of Schedule A of NASD's By-Laws to: (1) Increase the $10.00 charge for each set of fingerprints submitted by a member to NASD for processing to $13.00; (2) establish a $13.00 charge to be paid to NASD for posting each set of fingerprint results and identifying information that have been processed through another self-regulatory organization ("SRO") and submitted by a member to NASD; and (3) substitute the term "fingerprints" for "fingerprint cards." NASD intends for the fees to become operative on July 15, 2003. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.[4]

* * * * *

Schedule A to NASD By-Laws

Assessments and fees pursuant to the provisions of Article VI of the By-Laws of NASD shall be determined on the following basis.

Sections 1 through 3 No change.

Section 4—Fees

(a) No change.

(b) NASD shall assess each member a fee of:

(1) through (3) No change.

(4) [$10.00] *$13.00* for *processing and posting to the CRD system each set of fingerprints* [each fingerprint card] submitted by the member to NASD, plus any other charge that may be imposed by the United States Department of Justice for processing [such] *each set of* fingerprints [card; and].

(5) $13.00 for processing and posting to the CRD system each set of fingerprint results and identifying information that have been processed through another self-regulatory organization and submitted by a member to NASD.

[(5)] (*6*) $30.00 annually for each of the member's registered representatives and principals for system processing.

[(6)] (*7*) 10% of a member's final annual renewal assessment or $100, whichever is greater, with a maximum charge of $5,000, if the member fails timely to pay the amount indicated on its preliminary renewal statement.

(c) through (l) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Jonathan G. Katz, Secretary, Commission, dated August 6, 2003. ("Amendment No. 1"). In Amendment No. 1, NASD substituted in the first paragraph of Section I of Exhibit 1 of the filing the word "fingerprints" for the phrase "fingerprint images and identifying information" to make the introductory language of Section I consistent with the proposed rule text. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 7, 2003.

[4] At the NASD's request, the Commission made certain non-substantive, typographical changes to the proposed rule text to make it consistent with the current NASD rule text. Telephone conference between Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (July 22, 2003).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change to Section 4(b) is to (1) increase the $10.00 charge for each set of fingerprints submitted by a member to NASD for processing to $13.00; and (2) establish a $13.00 charge to be paid to NASD for posting each set of fingerprint results and identifying information processed by another SRO on the Central Registration Depository ("CRD" or "Web CRD").

NASD currently processes fingerprint cards submitted by member firms on behalf of their associated persons who are required to be fingerprinted pursuant to the Act. Among other things, NASD collects the fingerprint cards, images them, links them to an associated person's CRD record, and forwards them to the Federal Bureau of Investigation ("FBI"). NASD tracks the status of these cards and posts the results of the FBI's fingerprint check on the CRD system.[5] NASD currently charges members $10.00 for processing each fingerprint card and additionally collects $22.00 from members on behalf of the FBI as appropriate, consistent with FBI guidelines.[6] The $3.00 increase proposed in the rule change will raise NASD's fingerprint processing fee from $10.00 to $13.00 and, when the FBI's $22.00 fee is included, will raise the total fingerprint processing fee from $32.00 to $35.00. The additional $3.00 charge will help cover NASD costs associated with its fingerprinting program.

The proposed rule change also establishes a new $13.00 fee to be charged by NASD to members that submit to NASD for posting to the CRD system fingerprint results and identifying information that has been processed through another SRO. Pursuant to Section 17(f)(2) of the Act[7] and Rule 17f–2 thereunder,[8] other SROs may process fingerprint cards for persons required to have their fingerprints processed through the FBI, consistent with fingerprint plans submitted by those SROs to the Commission. NASD currently accepts the results (*i.e.*, the actual disposition/record sent by the FBI) of fingerprints processed through another SRO at no cost to the member. Consistent with Commission Rule 17f–2(b),[9] members may, under certain enumerated circumstances, submit such results in lieu of submitting fingerprint cards. Upon receipt of the results, NASD staff images and stores the documents received, verifies and matches the fingerprint processing results to an existing CRD record if available, and manually posts the results to the CRD system. In the event that the individual does not already have a CRD record, NASD staff would be required to create a new base record in the CRD system. NASD proposes charging members a $13.00 fee to perform these activities. Because the FBI would have already processed these fingerprints, the member would have already paid the FBI fee, and NASD would not be charging the additional FBI fee under these circumstances.

NASD also proposes substituting the term "set of fingerprints" for "fingerprint cards." This proposed change describes the traditional ink and paper fingerprint cards in current use, but in recognition of the changing technology available for fingerprint processing, would also describe the electronic transmission of fingerprints.

The proposed fingerprint processing fees will be assessed starting on July 15, 2003.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(5) of the Act,[10] which requires, among other things, the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. NASD believes that the proposed fingerprint processing fees are reasonable and fairly reflect NASD's costs incurred in processing fingerprints and posting each set of fingerprint results and identifying information processed by another SRO on CRD.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii)[11] of the Act and Rule 19b–4(f)(2) thereunder[12] as establishing or changing a due, fee, or other charge paid solely by members of the NASD. NASD intends to implement this rule change on July 15, 2003. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate, in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[5] Generally speaking, results fall into one of three categories: "clear," "criminal history record information," or "illegible" (if the FBI could not "read" the images submitted). "Criminal history record information" ("CHRI") is defined in Section 28 of the Code of Federal Regulations as "information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system." In general terms, CHRI is composed of the results of a fingerprint check on a registered or associated person when information received from the FBI reflects an arrest history.

[6] The FBI determines when and on what basis it will charge the $22.00 fee. For example, the FBI does not charge a fee on the submission of a second card when it identifies both the first and the second card as illegible for a particular individual.

[7] 15 U.S.C. 78q(f)(2).

[8] 17 CFR 240.17f–2.

[9] 17 CFR 240.17f–2(b). At the NASD's request, the Commission added the subparagraph (b) to the rule reference to clarify the "enumerated circumstances" being referred to by the NASD. Telephone conference between Richard E. Pullano, Associate Vice President and Chief Counsel, Registration and Disclosure, NASD, Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (July 22, 2003).

[10] 15 U.S.C. 78o–3(b)(5).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

[13] *See* Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–109 and should be submitted by September 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21944 Filed 8–26–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48373; File No. SR–NASD–2003–123]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute an Hourly Maintenance Fee Associated with Use of the Nasdaq Workstation II Service by NASD Members

August 20, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 6, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to institute an hourly fee for maintenance services supplied for equipment used in connection with the Nasdaq Workstation™ II ("NWII") service.[3] Nasdaq proposes to implement the proposed rule change immediately.[4]

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

* * * * *

7000. CHARGES FOR SERVICES AND EQUIPMENT

7010. System Services

(a)–(e) No change

(f) Nasdaq Workstation™ Service

(1) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq Workstation II Service:

Service Charge	$2,035/month per service delivery platform ("SDP").
Display Charge	$525/month per logon for the first 150 logons. $200/month for each additional logon.
Additional Circuit/SDP Charge	$3,235/month[*].
PD and SDP Maintenance:	
Monthly maintenance agreement	$55/presentation device ("PD") logon or SDP/month.
Hourly fee for maintenance provided without monthly maintenance agreement.	*$195 per hour (two hour minimum), plus cost of parts.*

A subscriber that accesses Nasdaq Workstation II Service via an application programming interface ("API") shall be assessed the Service Charge for each of the subscriber's SDPs and shall be assessed the Display Charge for each of the subscriber's logons, including logons of an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit/SDP Charge.

A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight logons on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP(s) (i.e., the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its logons, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming an eighteen-to-one ratio.

(2) No change.

[* A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight logons on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP(s) (i.e., the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its logons, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This filing applies to persons that are NASD members. On August 6, 2003, Nasdaq also submitted a proposed rule change to implement an identical charge for non-members. *See* File No. SR–NASD–2003–124.

[4] In this filing, Nasdaq is also moving the text of the footnote to NASD Rule 7010(f) into the text of the rule to improve the clarity of the rule's presentation in the NASD Manual.

Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming an eighteen-to-one ratio.]

(g)–(u) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NWII service allows market participants to access SuperMontage and other Nasdaq facilities through Nasdaq's Enterprise Wide Network II ("EWN II"). Each NWII subscriber location has at least one service delivery platform ("SDP") that connects to the EWN II by a dedicated T1 circuit pair. The subscriber then connects the workstations used by its employees to the SDP. Workstations may be either Nasdaq Workstation presentation devices ("PDs") provided by Nasdaq, or workstations and software supplied by the subscriber (often referred to as an "application programming interface" device, or an "NWII substitute").

Nasdaq currently allows subscribers to contract with Nasdaq for maintenance of their NWII PDs and SDPs on a monthly basis, at the rate of $55 per PD logon or SDP per month. Maintenance is provided by Nasdaq personnel in the New York metropolitan area and by a contractor in other areas of the country. Nasdaq is now proposing to supplement this monthly maintenance option with an hourly maintenance option for subscribers that may not wish to commit to a monthly maintenance agreement. The fee for maintenance provided without a monthly maintenance agreement will be $195 per hour, with a two-hour minimum charge for all service calls, plus the cost of parts supplied.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[5] in general, and Section 15A(b)(5) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of August 6, 2003, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–2003–123 and should be submitted by September 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21945 Filed 8–26–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(b)(5).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] *See* 15 U.S.C. 78(b)(3)(C).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48363; File No. SR–PCX–2003–39]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Changes in Schedule of Fees and Charges

August 19, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 28, 2003, the Pacific Exchange, Inc. ("PCX") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the PCX has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to amend its schedule of rates and charges in order to provide a limit on the fees that it collects with regard to certain options strategy executions.

The text of the proposed rule change is available at the PCX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The PCX currently assesses the following trade-related charges on transactions involving equity or index options: [3]

Transaction fees: $0.21 per contract side.
Comparison fees: $0.05 per contract.
Ticket data entry fees: $0.25 per firm trade and $0.50 per market maker trade.

From time to time, market participants engage in financing strategies known as option strategy plays for the purpose of reducing risk. These transactions include reversals and conversions,[4] dividend spreads,[5] and box spreads.[6] Because the referenced options strategy transactions are generally executed by professionals whose profit margins are generally narrow, the PCX proposes to cap the transaction fees associated with such executions at $2,000.[7] The PCX believes that, by keeping fees low, it will be able to attract liquidity by accommodating these transactions. By adopting the $2,000 cap on fees, the PCX focuses on the size of the particular order rather than the aggregate monthly volume of the routing firm.[8] Therefore, the PCX believes that the proposal will not have a disparate impact on members and will not favor any member over another.

2. Statutory Basis

The PCX believes that its proposal is consistent with Section 6(b) of the Act [9] in general, and furthers the objectives of Section 6(b)(4) of the Act [10] in particular, in that it provides for the equitable allocation of reasonable fees among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The PCX neither solicited nor received written comments concerning the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the PCX, it has become effective pursuant to Section 19(b)(3)(A) of the Act [11] and Rule 19b–4(f)(2) [12] thereunder. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2003–39 and should be submitted by September 17, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–21946 Filed 8–26–03; 8:45 am]

BILLING CODE 8010–01–P

[3] The PCX also provides a volume discount program that reduces the fees as market makers increase their quarterly average daily contract volume.

[4] Reversals and conversions are transactions that employ calls, puts and the underlying stock to lock in a nearly risk free profit. Reversals are established by combining a short stock position with a short put and a long call position that shares the same strike and expiration. Conversions employ long positions in the underlying stock that accompany long puts and short calls sharing the same strike and expiration.

[5] Dividend spreads are trades involving deep in the money options that exploit pricing differences arising around the time a stock goes ex-dividend.

[6] The Box Spread strategy synthesizes long and short stock positions to create a profit. Specifically, a long call and short put at one strike are combined with a short call and long put at a different strike to create synthetic long and synthetic short stock positions, respectively.

[7] According to the PCX, the $2,000 cap applies to the transaction fees arising from a set of executions forming a single strategy play. The PCX also represents that a member executing such a strategy submits to the PCX a record of the strategy play after it has been executed. The PCX then reviews the submission for accuracy. Conversation between Mai Shiver, Senior Attorney, Regulatory Policy, PCX and Tim Fox, Attorney, Division of Market Regulation, Commission, on August 14, 2003.

[8] The PCX represents that member firms of all sizes can execute transactions large enough to benefit from the proposed fee cap. Conversation between Mai Shiver, Senior Attorney, Regulatory Policy, PCX and Tim Fox, Attorney, Division of Market Regulation, Commission, on August 14, 2003.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Psilos Group Partners II SBIC, L.P., License No. 02/72–0617]

Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Psilos Group Partners II SBIC, L.P., 625 Avenue of the Americas, Fourth Floor, New York, NY 10011, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730 (2000). Psilos Group Partners II SBIC, L.P. proposes to provide equity/debt security financing to Definity Health Corporation. The financing is contemplated for national sales force expansion and working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Psilos Group Partners II, L.P. and Psilos Group Partners IIA, L.P., Associates of Psilos Group Partners II SBIC, L.P., collectively own more than ten percent of Definity Health Corporation.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: August 14, 2003.

Harry E. Haskins,

Deputy Associate Administrator for Investment.

[FR Doc. 03–21799 Filed 8–26–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4348]

Establishment of the Advisory Committee on Cultural Diplomacy

Establishment of advisory committee: This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), and advises of the establishment of the Department of States Advisory Committee on Cultural Diplomacy. The Secretary of State has determined that the establishment of the committee is in the public interest and fulfills the requirements set forth in Pub. L. 107–228, section 224.

Purpose of the advisory committee: The Advisory Committee on Cultural Diplomacy will advise the Secretary on programs and policies to advance the use of cultural diplomacy in United States foreign policy.

FOR FURTHER INFORMATION CONTACT: The Bureau of Educational and Cultural Affairs, Office of Citizen Exchanges, Cultural Programs Division is the organization within the Department of State that is supporting this advisory committee. For additional information, contact Angier Peavey, Advisory Committee Management Secretariat 301 Fourth Street SW., Washington DC 20547, telephone (202) 619–4809.

Dated: July 30, 2003.

Patricia S. Harrison,

Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 03–21907 Filed 8–26–03; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4458]

Bureau of Consular Affairs; Registration for the Diversity Immigrant (DV–2005) Visa Program

ACTION: Notice of registration for the Diversity Immigrant Visa Program.

This public notice provides information on how to apply for the DV 2005 Program. This notice is issued pursuant to 22 CFR 42.33(b)(3) which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(G) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154(a)(1)(G)).

Instructions for the 2005 Diversity Immigrant Visa Program (DV–2005)

The congressionally mandated Diversity Immigrant Visa Program is administered on an annual basis by the Department of State and conducted under the terms of Section 203(c) of the Immigration and Nationality Act (INA). Section 131 of the Immigration Act of 1990 (Pub. L. 101–649) amended INA 203 to provide for a new class of immigrants known as "diversity immigrants" (DV immigrants). The Act makes available 50,000 permanent resident visas annually to persons from countries with low rates of immigration to the United States.

The annual DV program makes permanent residence visas available to persons meeting the simple, but strict, eligibility requirements. Applicants for Diversity Visas are chosen by a computer-generated random lottery drawing. The visas, however, are distributed among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and with no visas going to citizens of countries sending more than 50,000 immigrants to the U.S. in the past five years. Within each region, no one country may receive more than seven percent of the available Diversity Visas in any one year.

For DV–2005, natives of the following countries are *not* eligible to apply because they sent a total of more than 50,000 immigrants to the U.S. in the previous five years (the term "country" in this notice includes countries, economies and other jurisdictions explicitly listed beginning on page 15).

Canada, China (mainland-born), Colombia, Dominican Republic, El Salvador, Haiti, India, Jamaica, Mexico, Pakistan, Philippines, Russia, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam. *Persons born in Hong Kong SAR, Macau SAR and Taiwan are eligible*

Application Submission Dates

Entries for the DV–2005 Diversity Visa Lottery must be submitted electronically between Saturday, November 1, 2003 and Tuesday, December 30, 2003. Applicants may access the electronic Diversity Visa entry form at www.dvlottery.state.gov during the 60-day registration period beginning November 1. Paper entries will not be accepted.

Requirements For Entry

- Applicant must be a native of one of the countries listed beginning on page 10. See "List of Countries by Region Whose Natives Qualify."

Native of a country whose natives qualify: In most cases this means the country in which the applicant was born. However, if a person was born in a country whose natives are ineligible but his or her spouse was born in a country whose natives are eligible, such person can claim the spouse's country of birth providing both the applicant and spouse are issued visas and enter the U.S. simultaneously. If a person was born in a country whose natives are ineligible, but neither of his or her parents was born there or resided there at the time of the birth, such person may be able to claim nativity in the country of birth of one of the parents.

- Applicants must meet either the education or training requirement of the DV program.

Education or Training: An applicant must have EITHER a high school education or its equivalent, defined as successful completion of a 12-year course of elementary and secondary education; OR two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. The U.S. Department of Labor's O*Net OnLine database will be used to determine qualifying work experience. Applicants will also find a link to a Labor Department list of qualifying occupations at the Consular Affairs Web site: *http://www.travel.state.gov.*

If the applicant cannot meet these requirements, he or she should NOT submit an entry to the DV program.

Procedures for Submitting an Entry to DV–2005

- All entries by an applicant will be disqualified if more than ONE entry for the applicant is received, regardless of who submitted the entry. Applicants may prepare and submit their own entries, or have someone submit the entry for them.
- For the DV–2005 Program, the Department of State for the first time will only accept completed Electronic Diversity Visa Entry Forms submitted electronically at *http://www.dvlottery.state.gov* during a lengthened 60 day registration period beginning November 1, 2003.

• Also for the first time, the Department of State will send DV lottery entrants an electronic confirmation notice upon receipt of a completed EDV Entry Form.

• The entry will be disqualified if all required photos are not attached. Recent photographs of the applicant and his or her spouse and each child under 21 years of age, including all natural children as well as all legally-adopted and stepchildren, excepting a child who is already a U.S. citizen or a Legal Permanent Resident, even if a child no longer resides with the applicant or is not intended to immigrate under the DV program, must be submitted electronically with the Electronic Diversity Visa Entry Form. Group or family photos will not be accepted; there must be a separate photo for each family member.

Each applicant, his/her spouse, and each child will therefore need a computer file containing his/her digital photo (image) which will be submitted on-line with the EDV Entry Form. The image file can be produced either by taking a new digital photograph or by scanning a photographic print with a digital scanner.

If the submitted digital images do not conform to the following specifications, the system will automatically reject the EDV Entry Form and notify the sender.

• The image must be in the Joint Photographic Experts Group (JPEG) format.

• The image must be either in color or grayscale; monochrome images (2-bit color depth) will not be accepted.

• If a new digital photograph is taken, it must have a resolution of 320 pixels wide by 240 pixels high, and a color depth of either 24-bit color, 8-bit color, or 8-bit grayscale.

• If a photographic print is scanned, the print must be 2 inches by 2 inches (50mm x 50mm) square. It must be scanned at a resolution of 150 dots per inch (dpi) and with a color depth of either 24-bit color, 8-bit color, or 8-bit grayscale.

• The maximum image size accepted will be sixty-two thousand five hundred (62,500) bytes.

If the submitted digital images do not conform to the following specifications, the entry will be disqualified:

• Applicant, spouse, or child must be directly facing the camera; the head of the person being photographed should not be tilted up, down or to the side, and should cover about 50% of the area of the photo.

• The photo should be taken with the person being photographed in front of a neutral, light-colored background. Photos taken with very dark or patterned, busy backgrounds will not be accepted.

• Photos in which the face of the person being photographed is not in focus will not be accepted.

• Photos in which the person being photographed is wearing sunglasses or other paraphernalia which detracts from the face will not be accepted.

• Photos of applicants wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant. Photos of applicants with tribal or other headgear not specifically religious in nature are not acceptable. Photos of military, airline or other personnel wearing hats will not be accepted.

Information Required for the Electronic Entry

There is only one way to enter the DV–2005 lottery. Applicants must submit an Electronic Diversity Visa Entry Form (EDV Entry Form), which is accessible only at *www.dvlottery.state.gov*. Failure to complete the form in its entirety will disqualify the applicant's entry. Applicants will be asked to submit the following information on the EDV Entry Form.

1. FULL NAME, Last/Family Name, First Name, Middle name.
2. DATE OF BIRTH, Day, Month, Year.
3. GENDER, Male or Female.
4. CITY/TOWN OF BIRTH.
5. COUNTRY OF BIRTH, The name of the country should be that which is currently in use for the place where the applicant was born.
6. APPLICANT PHOTOGRAPH, (See pages 3 and 4 for information on photo specifications).
7. MAILING ADDRESS, Address, City/Town, District/Country/Province/ State, Postal. Code/Zip Code, Country.
8. PHONE NUMBER (optional).
9. E-MAIL ADDRESS (optional).
10. COUNTRY OF ELIGIBILITY IF THE APPLICANT'S NATIVE COUNTRY IS DIFFERENT FROM COUNTRY OF BIRTH, If the applicant is claiming nativity in a country other than his or her place of birth, that information must be submitted on the entry. If an applicant is claiming nativity through spouse or parent, please indicate that on the entry.
11. MARRIAGE STATUS, Yes or No.
12. NUMBER OF CHILDREN THAT ARE UNMARRIED AND UNDER 21 YEARS OF AGE.
13. SPOUSE INFORMATION, Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, Photograph.
14. CHILDREN INFORMATION, Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, Photograph.

Note: Entries must include the name, date and place of birth of the applicant's spouse and all natural children, as well as all legally-adopted and stepchildren who are unmarried and under the age of 21 years, excepting those children who are already U.S. citizens or legal permanent residents, even if they are no longer legally married to the child's parent, and even if the spouse or child does not currently reside with the applicant and/ or will not immigrate with the applicant. Note that married children and children 21 years or older will not qualify for the diversity visa. Failure to list all children will result in the applicant's disqualification for the visa. (See question 11 on the list of Frequently Asked Questions.)

Selection of Applicants

Applicants will be selected at random by computer from among all qualified entries. Those selected will be notified by mail between May and July 2004 and will be provided further instructions, including information on fees connected with immigration to the U.S.

Persons not selected will *not* receive any notification. U.S. embassies and consulates will not be able to provide a list of successful applicants. Spouses and unmarried children under age 21 of successful applicants may also apply for visas to accompany or follow to join the principal applicant. DV–2005 visas will be issued between October 1, 2004 and September 30, 2005.

In order to actually receive a visa, applicants selected in the random drawing must meet *all* eligibility requirements under U.S. law. Processing of entries and issuance of diversity visas to successful applicants and their eligible family members *must* occur by midnight on September 30, 2005. Under no circumstances can diversity visas be issued or adjustments approved after this date, nor can family members obtain diversity visas to follow to join the applicant in the U.S. after this date.

Important Notice

No fee is charged to enter the annual DV program. The U.S. Government employs no outside consultants or private services to operate the DV program. Any intermediaries or others who offer assistance to prepare DV casework for applicants do so without the authority or consent of the U.S. Government. Use of any outside intermediary or assistance to prepare a DV entry is entirely at the applicant's discretion.

A qualified entry submitted electronically directly by an applicant has an equal chance of being selected by the computer at the Kentucky Consular

Center, as does an entry submitted electronically through a paid intermediary who completes the entry for the applicant. Every entry received during the lottery registration period will have an equal random chance of being selected within its region. However, receipt of more than one entry per person will disqualify the person from registration, regardless of the source of that entry.

Frequently Asked Questions About DV Registration

1. What does the term "native" mean? Are there any situations in which persons who were not born in a qualifying country may apply?

"Native" ordinarily means someone born in a particular country, regardless of the individual's current country of residence or nationality. But for immigration purposes "native" can also mean someone who is entitled to be "charged" to a country other than the one in which he or she was born under the provisions of Section 202(b) of the Immigration and Nationality Act.

For example, if a principal applicant was born in a country that is not eligible for this year's DV program, he or she may claim "chargeability" to the country where his or her derivative spouse was born, but he or she will not be issued a DV–1 unless the spouse is also eligible for and issued a DV–2, and both must enter the U.S. together on the DVs. In a similar manner, a minor dependent child can be "charged" to a parent's country of birth.

Finally, any applicant born in a country ineligible for this year's DV program can be "charged" to the country of birth of either parent as long as neither parent was a resident of the ineligible country at the time of the applicant's birth. In general, people are not considered residents of a country in which they were not born or legally naturalized if they are only visiting the country temporarily or stationed in the country for business or professional reasons on behalf of a company or government. An applicant who claims alternate chargeability *must* include information to that effect on the application for registration.

2. Are there any changes or new requirements in the application procedures for this diversity visa registration?

All DV–2005 lottery entries must be submitted electronically at www.dvlottery.state.gov between Saturday, November 1, 2003 and Tuesday, December 30, 2003. No paper entries will be accepted.

The Department of State implemented an electronic registration system in order to make the Diversity Visa process more efficient and secure. The Department will utilize special technology and other means to identify applicants who commit fraud for the purposes of illegal immigration or who submit multiple applications.

The signature requirement on the DV entry has been eliminated and the DV–2005 Diversity Immigrant Visa Program registration period will run from November 1 through December 30. The other major change from last year is that natives of Russia will not be eligible to apply for a diversity visa. (Please see Question 4 below for a description of why natives of certain countries do not qualify for the DV Program.)

3. Are signatures and photographs required for each family member, or only for the principal applicant?

Signatures are not required on the Electronic Diversity Visa Entry Form. Recent and individual photos of the applicant, his or her spouse and all children under 21 years of age are required. Family or group photos are not accepted. Check the information on the photo requirements on page 2 of this bulletin.

4. Why do natives of certain countries *not* qualify for the diversity program?

Diversity visas are intended to provide an immigration opportunity for persons from countries other than the countries that send large numbers of immigrants to the U.S. The law states that no diversity visas shall be provided for natives of "high admission" countries. The law defines this to mean countries from which a total of 50,000 persons in the Family-Sponsored and Employment-Based visa categories immigrated to the United States during the previous five years. Each year, the Bureau of Citizenship and Immigration Services (BCIS) adds the family and employment immigrant admission figures for the previous five years in order to identify the countries whose natives must be excluded from the annual diversity lottery. Because there is a separate determination made before each annual DV entry period, the list of countries whose natives do not qualify may change from one year to the next.

5. What is the numerical limit for DV–2005?

By law, the U.S. diversity immigration program makes available a maximum of 55,000 permanent residence visas each year to eligible persons. However, the Nicaraguan Adjustment and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning as early as DV–99, and for as long as necessary, 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. The actual reduction of the limit to 50,000 began with DV–2000 and remains in effect for the DV–2005 program.

6. What are the Regional Diversity Visa (DV) limits for DV–2005?

The Bureau of Citizenship and Immigration Services (BCIS) determines the DV regional limits for each year according to a formula specified in Section 203(c) of the Immigration and Nationality Act (INA). Once the BCIS has completed the calculations, the regional visa limits will be announced.

7. When will entries for the DV–2005 program be accepted?

The DV–2005 entry period will begin on Saturday, November 1, 2003 and will last for 60 days through Tuesday, December 30, 2003. Each year millions apply for the program during the registration period. The massive volume of entries creates an enormous amount of work in selecting and processing successful applicants. Holding the entry period during November and December will ensure successful applicants are notified in a timely manner, and gives both them and our embassies and consulates time to prepare and complete entries for visa issuance.

8. May persons who are in the U.S. apply for the program?

Yes, an applicant may be in the U.S. or in another country, and the entry may be submitted from the U.S. or from abroad.

9. Is each applicant limited to only one entry during the annual DV registration period?

Yes, the law allows only one entry by or for each person during each registration period; *applicants for whom more than one entry is submitted will be disqualified.* The Department of State will employ sophisticated technology and other means to identify individuals that submit multiple entries during the registration period. Applicants submitting more than one entry will be disqualified and an electronic record will be permanently maintained by the Department of State. Applicants may apply for the program each year during the regular registration period.

10. May a husband and a wife each submit a separate entry?

Yes, a husband and a wife may each submit one entry, if each meets the eligibility requirements. If either were selected, the other would be entitled to derivative status.

11. What family members must I include on my DV entry?

On your entry you must list your spouse, that is, husband or wife, and all unmarried children under 21 years of age, with the exception of a child who

is already a U.S. citizen or a Legal Permanent Resident. You must list your spouse even if you are currently separated from him or her. However, if you are legally divorced, you do not need to list your former spouse. For customary marriages, the important date is the date of the original marriage ceremony, *not* the date on which the marriage is registered. You must list ALL your children who are unmarried and under the age of 21 years, whether they are your natural children, your spouse's children by a previous marriage, or children you have formally adopted in accordance with the laws of your country, unless a child is already a U.S. citizen or Legal Permanent Resident. List all children under 21 years of age even if they no longer reside with you or you do not intend for them to immigrate under the DV program.

The fact that you have listed family members on your entry does not mean that they later must travel with you. They may choose to remain behind. However, if you include an eligible dependent on your visa application forms that you failed to include on your original entry, your case will be disqualified. (This only applies to persons who were dependents at the time the original application was submitted, not those acquired at a later date.) Your spouse may still submit a separate entry, even though he or she is listed on your entry, as long as both entries include details on all dependents in your family. See question 10 above.

12. Must each applicant submit his or her own entry, or may someone act on behalf of an applicant?

Applicants may prepare and submit their own entries, or have someone submit the entry for them. Regardless of whether an entry is submitted by the applicant directly, or assistance is provided by an attorney, friend, relative, etc., only one entry may be submitted in the name of each person. If the entry is selected, the notification letter will be sent *only* to the mailing address provided on the entry.

13. What are the requirements for education or work experience?

The law and regulations require that every applicant must have at least a high school education or its equivalent or, within the past five years, have two years of work experience in an occupation requiring at least two years training or experience. A "high school education or equivalent" is defined as successful completion of a twelve-year course of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to a high school education in the United States. Documentary proof of education or work experience should not be submitted with the lottery entry, but must be presented to the consular officer at the time of the visa interview. To determine eligibility based on work experience, definitions from the Department of Labor's O*Net OnLine database will be used.

14. How will successful entrants be selected?

At the Kentucky Consular Center, all entries received *from each region will be individually numbered*. After the end of the registration period, a computer will randomly select entries from among all the entries received for each geographic region. Within each region, the first entry randomly selected will be the first case registered, the second entry selected the second registration, etc. All entries received during the registration period will have an equal chance of being selected within each region. When an entry has been selected, the applicant will be sent a notification letter by the Kentucky Consular Center, which will provide visa application instructions. The Kentucky Consular Center will continue to process the case until those who are selected are instructed to appear for visa interviews at a U.S. consular office, or until those able to do so apply at a BCIS office in the United States for change of status.

15. May winning applicants adjust their status with BCIS?

Yes, provided they are otherwise eligible to adjust status under the terms of Section 245 of the INA, selected applicants who are physically present in the United States may apply to the Bureau of Citizenship and Immigration Services (BCIS) for adjustment of status to permanent resident. Applicants must ensure that BCIS can complete action on their cases, including processing of any overseas derivatives, before September 30, 2005, since on that date registrations for the DV–2005 program expire. No visa numbers for the DV–2005 program will be available after midnight on September 30, 2005 under any circumstances.

16. Will applicants who are not selected be informed?

No, applicants who are not selected will receive no response to their entry. Only those who are selected will be informed. All notification letters are sent within about nine months of the end of the application period to the address indicated on the entry. Anyone who does not receive a letter will know that his or her application has not been selected.

17. How many applicants will be selected?

There are 50,000 DV visas available for DV–2005, but more than that number of individuals will be selected. Because it is likely that some of the first 50,000 persons who are selected will not qualify for visas or pursue their cases to visa issuance, more than 50,000 entries will be selected by the Kentucky Consular Center to ensure that all of the available DV visas are issued. However, this also means that there will not be a sufficient number of visas for all those who are initially selected. All applicants who are selected will be informed promptly of their place on the list. Interviews with those selected will begin in early October 2004. The Kentucky Consular Center will send appointment letters to selected applicants four to six weeks before the scheduled interviews with U.S. consular officers at overseas posts. Each month visas will be issued, visa number availability permitting, to those applicants who are ready for issuance during that month. Once all of the 50,000 DV visas have been issued, the program for the year will end. In principle, visa numbers could be finished before September 2005. Selected applicants who wish to receive visas must be prepared to act promptly on their cases. Random selection by the Kentucky Consular Center computer does not automatically guarantee that you will receive a visa.

18. Is there a minimum age for applicants to apply for the DV Program?

There is no minimum age to apply for the program, but the requirement of a high school education or work experience for each principal applicant at the time of application will effectively disqualify most persons who are under age 18.

19. Are there any fees for the DV Program?

There is no fee for submitting an entry. A special DV case processing fee will be payable later by persons whose entries are actually selected and processed at a U.S. consular section for this year's program. DV applicants, like other immigrant visa applicants, must also pay the regular visa fees at the time of visa issuance. Details of required fees will be included with the instructions sent by the Kentucky Consular Center to applicants who are selected.

20. Are DV applicants specially entitled to apply for a waiver of any of the grounds of visa ineligibility?

No. Applicants are subject to all grounds of ineligibility for immigrant visas specified in the Immigration and Nationality Act. There are no special provisions for the waiver of any ground

of visa ineligibility other than those ordinarily provided in the Act.

21. May persons who are already registered for an immigrant visa in another category apply for the DV Program?

Yes, such persons may apply for the DV program.

22. How long do applicants who are selected remain entitled to apply for visas in the DV Category?

Persons selected in the DV–2005 lottery are entitled to apply for visa issuance only during fiscal year 2005, *i.e.*, from October 2004 through September 2005. Applicants must obtain the DV visa or adjust status by the end of the Fiscal Year (September 30, 2005). There is no carry-over of DV benefits into the next year for persons who are selected but who do not obtain visas during FY–2005. Also, spouses and children who derive status from a DV–2005 registration can only obtain visas in the DV category between October 2004 and September 2005. Applicants who apply overseas will receive an appointment letter from the Kentucky Consular Center four to six weeks before the scheduled appointment.

List Of Countries by Region Whose Natives Qualify

The lists below show the countries whose natives are QUALIFIED within each geographic region for this diversity program. The determination of countries within each region is based on information provided by the Geographer of the Department of State. The countries whose natives do not qualify for the DV–2005 program were identified by the Bureau of Citizenship and Immigration Services (BCIS) according to the formula in Section 203(c) of the Immigration and Nationality Act. Dependent areas overseas are included within the region of the governing country. The countries whose natives do NOT qualify for this diversity program (because they are the principal source countries of Family-Sponsored and Employment-Based immigration, or "high admission" countries) are noted in parentheses after the respective regional lists.

Africa

Algeria
Angola
Benin
Botswana
Burkina Faso
Burundi
Cameroon
Cape Verde
Central African Republic
Chad
Comoros
Congo
Congo, Democratic Republic of the Cote D'Ivoire (Ivory Coast)
Djibouti
Egypt
Equatorial Guinea
Eritrea
Ethiopia
Gabon
Gambia, The
Ghana
Guinea
Guinea-Bissau
Kenya
Lesotho
Liberia
Libya
Madagascar
Malawi
Mali
Mauritania
Mauritius
Morocco
Mozambique
Namibia
Niger
Nigeria
Rwanda
Sao Tome and Principe
Senegal
Seychelles
Sierra Leone
Somalia
South Africa
Sudan
Swaziland
Tanzania
Togo
Tunisia
Uganda
Zambia
Zimbabwe

Asia

Afghanistan
Bahrain
Bangladesh
Bhutan
Brunei
Burma
Cambodia
East Timor
Hong Kong Special Administrative Region
Indonesia
Iran
Iraq
Israel
Japan
Jordan
Kuwait
Laos
Lebanon
Malaysia
Maldives
Mongolia
Nepal
North Korea
Oman
Qatar
Saudi Arabia
Singapore
Sri Lanka
Syria
Taiwan
Thailand
United Arab Emirates
Yemen

Natives of the following Asian countries do not qualify for this year's diversity program: China [mainland-born], India, Pakistan, South Korea, Philippines, and Vietnam. The Hong Kong S.A.R and Taiwan do qualify and are listed above. Macau S.A.R. also qualifies and is listed below.

Europe

Albania
Andorra
Armenia
Austria
Azerbaijan
Belarus
Belgium
Bosnia and Herzegovina
Bulgaria
Croatia
Cyprus
Czech Republic
Denmark (including components and dependent areas overseas)
Estonia
Finland
France (including components and dependent areas overseas)
Georgia
Germany
Greece
Hungary
Iceland
Ireland
Italy
Kazakhstan
Kyrgyzstan
Latvia
Liechtenstein
Lithuania
Luxembourg
Macau Special Administrative Region
Macedonia, the Former Yugoslav Republic
Malta
Moldova
Monaco
Netherlands (including components and dependent areas overseas)
Northern Ireland
Norway
Poland
Portugal (including components and dependent areas overseas)
Romania
San Marino
Serbia and Montenegro
Slovakia
Slovenia

Spain
Sweden
Switzerland
Tajikistan
Turkey
Turkmenistan
Ukraine
Uzbekistan
Vatican City

Natives of the following European countries do not qualify for this year's diversity program: Great Britain and Russia. Great Britain (United Kingdom) includes the following dependent areas: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands. **Note** that for purposes of the diversity program only, Northern Ireland is treated separately; Northern Ireland does qualify and is listed among the qualifying areas.

North America

The Bahamas

In North America, natives of Canada and Mexico do not qualify for this year's diversity program.

Oceania

Australia (including components and dependent areas overseas)
Fiji
Kiribati
Marshall Islands
Micronesia, Federated States of Nauru
New Zealand (including components and dependent areas overseas)
Palau
Papua New Guinea
Solomon Islands
Tonga
Tuvalu
Vanuatu
Samoa

South America, Central America, and the Caribbean

Antigua and Barbuda
Argentina
Barbados
Belize
Bolivia
Brazil
Chile
Costa Rica
Cuba
Dominica
Ecuador
Grenada
Guatemala
Guyana
Honduras
Nicaragua
Panama
Paraguay
Peru
Saint Kitts and Nevis
Saint Lucia
Saint Vincent and the Grenadines
Suriname
Trinidad and Tobago
Uruguay
Venezuela

Countries in this region whose natives do not qualify for this year's diversity program: Colombia, Dominican Republic, El Salvador, Haiti, Jamaica, and Mexico.

Dated: August 21, 2003.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 03–21908 Filed 8–26–03; 8:45 am]
BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4459]

Bureau of Oceans and International Environmental and Scientific Affairs (OES); Plan of Action To Be Established Through the U.S.-Singapore Memorandum of Intent on Cooperation in Environmental Matters

AGENCY: Department of State.

ACTION: Notice and request for comments.

SUMMARY: The Department of State, through its Bureau of Oceans and International Environmental and Scientific Affairs, is providing notice that, in accordance with the terms of a U.S.-Singapore Memorandum of Intent on Cooperation in Environmental Matters (MOI), the two governments intend to devise a Plan of Action setting out initial cooperative projects to be pursued. In this notice the Department of State is requesting written comments from the public regarding priority areas for bilateral and regional environmental cooperation with the Republic of Singapore. In preparing comments, the public is encouraged to make reference to the MOI (available at: *http://www.state.gov/g/oes/rls/or/22193.htm*) and to the Final Environment Review of the U.S.-Singapore Free Trade Agreement (available at: *http://www.ustr.gov*).

DATES: To guarantee receipt in proper time for consideration prior to the meeting, comments are requested as soon as possible but not later than thirty days after the publication of this notice.

ADDRESSES: Comments may be sent by fax to (202) 647–5947 or 202–647–1052, or by e-mail to *richardcj@state.gov*.

FOR FURTHER INFORMATION CONTACT: Chris Richard, Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Policy, telephone 202–647–4548, e-mail *richardcj@state.gov*.

SUPPLEMENTARY INFORMATION: On May 6, 2003 the governments of the United States and the Republic of Singapore signed a Free Trade Agreement in which both governments recognized the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with the strengthening of trade and investment relations. The Parties agreed to pursue, as appropriate, cooperative environmental activities under a Memorandum of Intent on Cooperation in Environmental Matters (MOI). In the MOI, signed on June 13, 2003, the United States and the Republic of Singapore agreed to pursue cooperative environmental activities, including those pertinent to trade and investment and to strengthening environmental performance. This commitment was made to further the objectives of the Trade Act of 2002, including Section 2101(c)(3), which calls upon the President to "seek to establish consultative mechanisms among parties to trade agreements to strengthen the capacity of the United States trading partners to develop and implement standards for the protection of the environment and human health based on sound science." (Further information on the negotiation of free trade agreements or on the Trade Act of 2002 can be found at the Internet site of the Office of the U.S. Trade Representative, *http://www.ustr.gov*.)

In the MOI the governments expressed their intent to meet at least biennially to review the status of environmental cooperation activities. At the first of these meetings, they intend to devise a Plan of Action setting out initial cooperative bilateral, and, where appropriate, regional projects to be pursued. The MOI sets out a number of general areas under which the two governments may cooperate, including promotion of environmental management, exchange of information on environmental best practices, exploring avenues for technological cooperation, and promoting improved natural resource management and endangered species conservation. In devising the Plan of Action the governments of the United States and Singapore will develop a consensus on more specific objectives based upon further consideration of mutual environmental priorities and resources. Public comment is invited on potential cooperative projects and activities, particularly on ways in which non-

government organizations or business groups might be involved through public-private partnerships.

Dated: August 22, 2003.

Robert Ford,

Acting Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

[FR Doc. 03–21909 Filed 8–26–03; 8:45 am]

BILLING CODE 4710–09–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection, Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; Comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523. (SC: 0001MYJ). Comments should be sent to the Agency Clearance Officer no later than October 27, 2003.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: Foreign Line Crossing Data.

Frequency of Use: On occasion.

Type of Affected Public: State or local governments, small businesses or organizations, businesses or other for-profit.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 100.

Estimated Total Annual Burden Hours: 1000.

Estimated Average Burden Hours Per Response: 10.

Need For and Use of Information: When a company wishes to build a line over or under a power transmission line owned by TVA, TVA must review certain engineering data to ensure reliability of the power system and to protect the public by ensuring that the crossing meets the National Electrical Safety Code. The information collection provides such engineering data.

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 03–21868 Filed 8–26–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 159: Global Positioning System (GPS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 159 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 159: Global Positioning System.

DATES: The meeting will be held September 15–19, 2003, from 9 a.m. to 4:30 p.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 159 meeting. *Note: Special working group sessions will be held September '15, 16, 17, and 18.* The plenary agenda will include:

- September 19:
- Opening Plenary Session (Welcome and Introductory Remarks, Approve Minutes of Previous Meeting)
- Review Working Group Progress and Identify Issues for Resolution
- Global Positioning System (GPS)/ 3rd Civil Frequency (WG–1)
- GPS/Wide Area Augmentation System (WAAS)(WG–2)
- GPS/GLONASS (WG–2A)
- GPS/Inertial (WG–2C)
- GPS/Precision Landing Guidance (WG–4)
- GPS/Airport Surface Surveillance (WG–5)
- GPS/Interference (WG–6)
- Review of EUROCAE activities
- Closing Plenary Session (Assignment/Review of Future Work, Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Dated: Issued in Washington, DC, on August 15, 2003.

Robert Zoldos,

FAA Systems Engineer, RTCA Advisory Committee.

[FR Doc. 03–21961 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 186 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 186: Automatic Dependent Surveillance—Broadcast (ADS–B).

DATES: The meeting will be held September 15–18, 2003, starting at 9 a.m. (unless stated otherwise).

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix 2), notice is hereby given for a Special Committee 186 meeting. *Note: Specific working group sessions will be held on September 15, 16, and 17.* The plenary agenda will include:

September 18

- Opening Plenary Session (Chairman's Introductory Remarks, Review of Meeting Agenda, Review/Approval of Previous Meeting Summary)
- SC–186 Activity Reports
  - WG–1, Operations & Implementation

- WG–2, Traffic Information Service—Broadcast (TIS–B)
- WG–3, 1090 MHz Minimum Operational Performance Standard (MOPS)
- WG–4, Application Technical Requirements
- WG–5, Universal Access Transceiver (UAT) MOPS
- WG–6, Automatic Dependent Surveillance-Broadcast (ADS–B) Minimum Aviation System Performance Standards (MASPS)
- EUROCAE WG–51 Activity Report
- Review ASA MASPS
- Closing Plenary Session (Date, Place and Time of Next Meeting, Other Business, Review Actions Items/Work Program, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 15, 2003.

Robert Zoldos,

FAA Systems Engineer, RTCA Advisory Committee.

[FR Doc. 03–21962 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–02–U–00–PIT To Use the Revenue From a Passenger Facility Charge (PFC) at Pittsburgh International Airport, Pittsburgh, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Pittsburgh International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 26, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Lori Ledebohm, Community Planner/PFC Contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to John R. Serpa of Allegheny County Airport Authority at the following address: 1000 Airport Blvd., P.O. Box 12370, Pittsburgh, PA 15231–0370.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Allegheny County Airport Authority under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Lori Ledebohm, Community Planner/PFC contact, Harrisburg Airports District Office, 3905 Hartzdale Drive, Suite 508, Camp Hill, PA 17011, 717–730–2835. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Pittsburgh International Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 8, 2003, the FAA determined that the application to use the revenue from a PFC submitted by Allegheny County Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 7, 2003.

The following is a brief overview of the application:

Proposed charge effective date: October 1, 2001.

Proposed charge expiration date: October 1, 2006.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $125,000.

Brief description of proposed project(s): Replace Security Fence.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: non-schedule on demand air carriers filing form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Eastern Region, Airports Division, AEA–610, 1 Aviation Plaza, Jamaica, New York 11434.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Allegheny County Airport Authority.

Issued in Camp Hill, PA on August 20, 2003.

Lori Ledebohm,

PFC Coordinator, Harrisburg Airports District Office, Eastern Region.

[FR Doc. 03–21960 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collection and their expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on June 25, 2003 (68 FR 37890).

DATES: Comments must be submitted on or before September 26, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On June 25, 2003, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB

approval. 68 FR 37890. FRA received no comments in response to this notice.

Before OMB decides whether to approve this proposed collection of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30-day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30-day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summaries below describe the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Hours of Service Regulations.

OMB Control Number: 2130–0005.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form(s): N/A.

Abstract: The collection of information is due to the railroad Hours of Service Regulations set forth in 49 CFR part 228 which require railroads to collect the Hours of Duty for covered employees, and records of train movements. Railroads whose employees have exceeded maximum duty limitations must report the circumstances. Also, a railroad that has developed plans for construction or reconstruction of sleeping quarters (subpart C of 49 CFR part 228) must obtain approval of the Federal Railroad Administration (FRA) by filing a petition conforming to the requirements of §§ 228.101, 228.103, and 228.105.

Annual Estimated Burden Hours: 3,294,736.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503; Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of FRA, including whether the information will have practical utility; the accuracy of FRA's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC, on August 22, 2003.

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 03–21963 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 03–15651; Notice 2]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Extension of comment period for a notice of draft interpretations.

SUMMARY: This document extends the comment period on a notice setting forth two draft interpretations concerning how our standard on lamps, reflective devices, and associated equipment applies to replacement equipment. In response to a petition from the Specialty Equipment Market Association (SEMA), the agency is granting the petition and extending the comment period 30 days, from September 2, 2003, to October 2, 2003. The reason for the extension is to give SEMA sufficient time to "craft coordinated responses on behalf of the many SEMA members that produce aftermarket lighting equipment." SEMA requested that the comment period be extended by 30 days.

DATES: You should submit comments early enough to ensure that Docket Management receives them not later than October 2, 2003.

ADDRESSES: You may submit comments (identified by the docket number set forth above) by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site. Please note, if you are submitting petitions electronically as a PDF (Adobe) file, we ask that the documents submitted be scanned using Optical Character Recognition (OCR) process, thus allowing the agency to search and copy certain portions of your submissions.[1]
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name and docket number. For detailed instructions on submitting comments, see the Submission of Comments heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590, Telephone: (202) 366–5263, Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION: On July 17, 2003, the agency published a notice requesting comments on two draft interpretations in response to questions whether replacement lamps for the rear of a vehicle may have the reflex reflectors in a location that is inboard from that in the original lamps, and whether light source modifications are permissible for aftermarket lamps (68 FR 42454). The draft letters would be interpretations of Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment.* We provided a comment period of 45 days, until the close of business on September 2, 2003.

[1] Optical character recognition (OCR) is the process of converting an image of text, such as a scanned paper document or electronic fax file, into computer-editable text."

On August 15, 2003, the Specialty Equipment Market Association (SEMA) petitioned the agency to extend the comment period for an additional 30 days. SEMA explained that it had been "attempting to craft coordinated responses on behalf of the many AEMA members that produce aftermarket lighting equipment." This undertaking "has been complicated by the fact that most of the comment period falls in August, a time when many of these SEMA members are away from their businesses." In addition, the comment deadline "falls on September 2nd, the day after Labor Day." SEMA considers the interpretations to be of great importance "to the ability of SEMA members to manufacture, market and sell replacement lighting equipment in the U.S."

After considering the arguments raised by SEMA, we have decided that it is in the public interest to extend the comment period for 30 days, to October 2, 2003, pursuant to the petitioner's request.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

Authority: 49 U.S.C. 30111; 49 CFR 501.8(d)(5).

Issued on August 21, 2003.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 03–21840 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–55–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration (RSPA)

[Docket No. RSPA–98–4470]

Pipeline Safety: Technical Pipeline Safety Standards Committees; Vacancies

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice; request for applications.

SUMMARY: The Research and Special Programs Administration's (RSPA) Office of Pipeline Safety (OPS) seeks applications for membership on the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The TPSSC and the THLPSSC review and report on proposed standards relating to the transportation of gas or hazardous liquids through pipelines or of the operation of gas or hazardous liquid pipeline facilities.

DATES: Application forms should reach RSPA/OPS on or before October 15, 2003.

ADDRESSES: You may request an application form by writing to Research and Special Programs Administration, Office of Pipeline Safety (DPS–12), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; by calling 202–493–0967; or by faxing 202–366–4566; or by e-mailing *Jean.Milam@rspa.dot.gov*. Send your application in written form to the above street address. This notice and the application form are available on the Internet at *http://dms.dot.gov* under docket number 4470.

FOR FURTHER INFORMATION CONTACT: Cheryl Whetsel, OPS, (202) 366–4431 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: The Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC) are statutorily mandated Federal advisory committees that advise RSPA/OPS on proposed safety standards for gas and liquid pipelines. Federal law requires that RSPA/OPS submit cost-benefit analyses and risk assessment information on proposed safety standards to the advisory committees. The TPSSC and the THLPSSC evaluate the merits of the data provided and the methods used within the analyses to provide recommendations relating to the cost-benefit analyses. Both of the committees are tasked with determining reasonableness, cost-effectiveness, and practicability of RSPA/OPS proposed pipeline safety regulations. Each member must be experienced in the safety regulation of transporting natural gas or hazardous liquids or operating a hazardous liquid pipeline facility or, must be technically qualified, by training experience or knowledge, in at least one field of engineering applicable to transporting gas or hazardous liquids or operating a hazardous liquid pipeline facility.

Each Committee consists of 15 members. Five members each are selected from Federal, State, or local governmental agencies. Two of these are State Commissioners selected after consultation with representatives of the national organization of State Commissions. Five members are selected from the natural gas or hazardous liquids pipeline industry, after consultation with industry representatives. Three must be currently engaged in the active operation of pipelines and at least one of the three must have education background or experience in risk assessment and cost-benefit analysis. Five members are to be selected from the general public. Individuals selected as public members may not have a significant financial interest in the pipeline, petroleum, or natural gas industry. Two of the public members must have education, background, or experience in environmental protection or public safety, and at least one of these will have education, background or experience in risk assessment and cost-benefit analysis.

The Committees meet at least twice during each calendar year. In addition, Committee members may be polled or asked for comments on notices of proposed rulemaking or other matters at any time without formally assembling at one place.

We will consider applications for 11 positions that expire or become vacant in mid-2003 in the following categories: (a) Federal, state, or local government (1 liquid vacancy; 3 gas vacancies—one must be a Commissioner); (b) Natural Gas/Hazardous Liquid Industry (No vacancies at this time); (c) General Public (5 liquid vacancies and 2 gas vacancies).

Each member serves a 3-year term, but may be reappointed. All members serve at their own expense and receive no salary from the Federal Government, although travel reimbursement and per diem are provided.

In support of the policy of the Department of Transportation on gender and ethnic diversity, we encourage qualified women and members of minority groups to apply.

We may not release a completed application or the information in it to the public, except under an order issued by a Federal court or as otherwise provided under the Privacy Act (5 U.S.C. 552a).

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC on August 21, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–21964 Filed 8–26–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–853 (Sub–No. 1X)]

Kansas & Oklahoma Railroad, Inc.—Abandonment Exemption—in Hodgeman, Comanche, Kiowa, and Pratt Counties, KS

Kansas & Oklahoma Railroad, Inc. (K&O), has filed a notice of exemption under 49 CFR 1152 subpart F—*Exempt Abandonments* to abandon two rail line segments as follows: (1) A 10.7-mile rail line between milepost 36.3 at Hanston, and milepost 47.0 at Jetmore, in Hodgeman County, KS; and (2) a 46.8-mile rail line between milepost 589.2 at Coats, and milepost 636.0 at Protection, in Comanche, Kiowa, and Pratt Counties, KS. The lines traverse United States Postal Service Zip Codes 67849, 67854, 67028, 67155, 67029, and 67127.

K&O has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 26, 2003, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 8, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 16, 2003, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Karl Morell, 1455 F St., NW., Suite 225, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

K&O has filed an environmental report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by August 29, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. (Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.) Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), K&O shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by K&O's filing of a notice of consummation by August 27, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 18, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–21572 Filed 8–26–03; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer program matching Railroad Retirement Board (RRB) benefit recipient records with VA pension and parents' dependency and indemnity compensation (DIC) records. The goal of this match is to compare income status as reported to VA with benefit records maintained by the RRB.

VA plans to match records of veterans and surviving spouses and children who receive pension, and parents who receive DIC, with railroad retirement benefit records maintained by RRB. The match with RRB will provide VA with data from the RRB Research File of Retirement and Survivor Benefits.

VA will use this information to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. Otherwise, information about a VA beneficiary's income is obtained only from reporting by the beneficiary. The proposed matching program will enable VA to ensure accurate reporting of income.

Records to be Matched: The VA records involved in the match are the VA system of records, Compensation, Pension and Education and Rehabilitation Records—VA (58 VA 21/22), first published at 41 FR 924 (March 3, 1976), and last amended at 63 FR 37941 (7/14/98), with other amendments as cited therein. The RRB records consist of information from the Research File of Retirement and Survivor Benefits, Systems of Records RRB 225 and RRB 26 contained in the Privacy Act Issuances, 1991 compilation, Volume V, pages 518–519. In accordance with Title 5 U.S.C., subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget. This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Pub. L. 100–503.

The match will start no sooner than 30 days after publication of this Notice in the **Federal Register**, or 40 days after copies of this Notice and the agreement of the parties is submitted to Congress and the Office of Management and Budget, whichever is later, and end not

more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested individuals may submit written comments to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge (212B), (202) 273–7218.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: August 11, 2003.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 03–21838 Filed 8–26–03; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Wednesday,
August 27, 2003

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1032

Milk in the Central Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1032

[Docket No. AO–313–A44; DA–01–07]

Milk in the Central Marketing Area; Decision on Proposed Amendments to Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document proposes to adopt as a final rule, order language contained in the interim final rule published in the **Federal Register** on February 12, 2003, concerning pooling provisions of the Central Federal milk order. It sets forth the decision of the Secretary and is subject to approval by producers. Specifically, this final decision would continue to amend the *Pool plant* provisions which: establish lower but year-round supply plant performance standards; would not consider the volume of milk shipments to distributing plants regulated by another Federal milk order as a qualifying shipment on the Central order; exclude from receipts diverted milk made by a pool plant to another pool plant in determining pool plant diversion limits; and establish a "net shipments" provision for milk deliveries to distributing plants. For *Producer milk*, this final decision would continue to adopt amendments which: establish higher year-round diversion limits; would base diversion limits for supply plants on deliveries to Central order distributing plants; and eliminate the ability to simultaneously pool milk on the Central order and a State-operated milk order that has marketwide pooling.

FOR FURTHER INFORMATION CONTACT: Jack Rower or Carol S. Warlick, Marketing Specialists, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, Stop—0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 720–2357, e-mail address: *jack.rower@usda.gov*, or (202) 720–9363, e-mail address: *carol.warlick@usda.gov*.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

These proposed amendments have been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Department would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Department's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees.

For the purposes of determining which dairy farms are "small businesses," the $750,000 per year criterion was used to establish a production guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

Approximately 9,695 of the 10,108 dairy producers (farmers), or 95.9 percent, whose milk was pooled under the Central order at the time of the hearing (November 2001) would meet the definition of small businesses. On the processing side, approximately 10 of the 56 milk plants associated with the Central order during November 2001 would qualify as "small businesses," constituting about 17.9 percent of the total.

Based on these criteria, more than 95 percent of the producers would be considered as small businesses. The adoption of the proposed pooling standards serves to revise established criteria that determine those producers, producer milk, and plants that have a reasonable association with, and are consistently serving the fluid needs of, the Central milk marketing area and are not associated with other marketwide pools concerning the same milk. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I fluid needs and, by doing so, determine those that are eligible to share in the revenue that arises from the classified pricing of milk. Criteria for pooling are established without regard to the size of any dairy industry organization or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities. Therefore, the proposed amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

This action does not require additional information collection that requires clearance by the Office of Management and Budget beyond currently approved information collection. The primary sources of data used to complete the forms are routinely used in most business transactions. Forms require only a minimal amount of information which can be supplied without data processing equipment or a trained statistical staff. Thus, the information collection and reporting burden is relatively small. Requiring the same reports for all handlers does not significantly disadvantage any handler that is smaller than the industry average.

Prior Documents in This Proceeding

Notice of Hearing: Issued October 17, 2001; published October 23, 2001 (66 FR 53551).

Tentative Final Decision: Issued November 8, 2002; published November 19, 2002 (67 FR 69910).

Interim Final Rule: Issued February 6, 2003; published February 12, 2003 (68 FR 7070).

Preliminary Statement

A public hearing was held upon proposed amendments to the marketing agreement and the order regulating the handling of milk in the Central marketing area. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), at Kansas City, Missouri, on November 14–15, 2001, pursuant to a notice of hearing issued October 17, 2001, and published October 23, 2001 (66 FR 53551).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Administrator, on November 8, 2002, issued a Tentative Final Decision containing notice of the opportunity to file written exceptions thereto.

The material issues, findings, and conclusions, rulings, and general findings of the tentative final decision are hereby approved and adopted and are set forth in full herein. The material issues on the record of the hearing relate to:

1. Pooling Standards

a. Supply plant pooling standards.

b. Cooperative supply plant performance standards.

c. Supply plant system standards.

d. Standards applicable for Producer milk.

e. Establishing pooling standards for "State units."

2. Simultaneous pooling of milk on the order and on a State-operated milk order providing for marketwide pooling.

3. Rate of partial payments to producers.

4. Determining whether emergency marketing conditions existed warranting the omission of a recommended decision and the opportunity to file written exceptions.

Findings and Conclusions

The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. Pooling Standards

a. Supply Plant Pooling Standards

Several amendments to the pooling provisions of the Central order, previously adopted on an interim basis, are proposed to be adopted on a permanent basis by this final decision. According to the tentative decision, certain inadequacies of the supply plant pooling provisions were resulting in disorderly marketing conditions and the unwarranted erosion of the blend price received by those producers who consistently provide milk to meet the fluid demands of the Central marketing area. Specifically, the following amendments to the Central order (Order 32) for pool supply plants, previously adopted on an interim basis, are proposed to be adopted on a permanent basis by this final decision: (1) Lower the performance standards to 20 percent in each of the months of August through February and 15 percent in each of the months of March through July. Accordingly, automatic pool plant status during the 3-month period of May through July is thereby eliminated from the order; (2) Eliminate the volume of milk shipments made by supply plants to distributing plants regulated by another Federal milk marketing order as qualifying shipments in meeting the Central order supply plant shipping standard; (3) Exclude from receipts the diversions made by a pool plant to a second pool plant from the calculation of the diversion limits established for pool plants; and (4) Provide a "net shipments" standard for supply plant deliveries to the order's distributing plants for the purpose of meeting the Central order's supply plant shipping standard. Expanding pool supply plant qualification to include milk shipments to any plant that is part of a distributing plant unit was not adopted in the interim rule and is not adopted in this final rule.

Prior to the adoption of the interim rule, the Central order provided a supply plant performance standard whereby 35 percent of the milk received directly from dairy farms and cooperative handlers had to be transferred or diverted to distributing plants, including milk diverted by the plant operator, during each of the months of September through November and January. For all other months a 25 percent standard applied.

In addition, the Central marketing order provided automatic pool plant status during the 3-month period of May through July for supply plants provided they were pool plants during each of the immediately preceding months of August through April. The order did not include a performance standard which considered shipments to any plant that was part of a distributing plant unit as a qualifying shipment. The order did not limit supply plant shipments to distributing plants on a "net shipments" basis.

Prior to adoption of the interim rule, handlers could qualify supply plants as pool plants located inside or outside the market area by diverting milk to a pool distributing plant regulated by the Central order. Supply plant transfers to distributing plants regulated by another Federal order were considered as qualifying shipments for the purpose of determining if the Central supply plant shipping standard had been met.

The following amendments to the supply plant pooling standards were presented in testimony related to a proposal published in the hearing notice as Proposal 1. This proposal was offered by Dairy Farmers of America (DFA), Prairie Farms Cooperative (Prairie Farms), and Swiss Valley Farms (Swiss Valley). These organizations are cooperative associations that historically have pooled milk on the Central milk order or one of the nine orders consolidated to form the Central milk order. Hereinafter, this decision will refer to these proponents as "DFA, *et al.*" All three cooperative associations have ownership interests in fluid milk processing plants. Prairie Farms and Swiss Valley operate fluid plants.

Amendments to the supply plant pooling standards were offered, the proponents assert, because the pooling provisions of the order are not appropriately linking the ability to pool milk on the order with demonstrating consistent service in supplying the fluid needs of the market. DFA, *et al.*, proposed changing the seasonally adjusted performance standard for supply plants to 25 percent during each of the months of August through November and to 20 percent for each of the months of December through July. Adopting these standards would also eliminate automatic pool plant status for the 3-month period of May through July provided by the order. DFA, *et al.*, expressed continued support for these performance levels during the same periods in their comments on the tentative final decision.

Proposal 1 as offered would no longer consider milk deliveries to distributing plants regulated by another Federal milk marketing order as qualifying shipments for determining if the supply plant performance standard for the Central Order had been met. Similarly, the proposal would not consider milk deliveries to distributing plants that are part of a distributing plant unit as

qualifying shipments for determining if the supply plant performance standard had been met.

Proposal 1 also would limit a handler's ability to qualify supply plants located outside the Central Order marketing area as pool plants through direct deliveries of milk to pool distributing plants. The proposal also calls for establishing a "net shipments" provision. A net shipments standard would exclude from a supply plant's qualifying shipments any transfer or diversion of bulk fluid milk products made by a distributing plant receiving a qualifying shipment.

In support for Proposal 1, the DFA, *et al.*, witness testified that the orderly marketing of milk requires appropriate performance standards for supply plants to ensure that distributing plants are adequately supplied with milk as a condition for receiving the Central order's blend price. The witness explained that performance standards should require a level of association to a market by demonstrating the ability to supply the Class I needs of that market. The witness testified that milk located far from the market also should have performance standards that are workable and consistent with Federal order policy. According to the witness, the current practice of using direct deliveries from farms to distributing plants located inside the marketing area as a method to qualify plants located outside of the Central order marketing area as pool supply plants is inappropriate because milk pooled in this manner does not provide any reasonable service to the Class I needs of the market.

According to the DFA, *et al.*, witness, the reform of Federal milk orders provided unique pooling standards that apply to each market on an individual basis. The witness testified that during the reform process, the more lenient performance standard was often selected for the new consolidated orders. According to the witness, such standards are proving to be inappropriate for the larger consolidated Central milk marketing order.

As evidence that milk is being inappropriately pooled on the order, the DFA, *et al.*, witness noted that at the time of implementing Federal milk order reform, the consolidated Central order was expected to have Class I use of nearly 50 percent. Instead, Class I use is averaging below 30 percent, the witness noted. The witness was of the opinion that this shortfall in projected Class I use was due to pooling much more milk from sources outside the marketing area than could be explained by consolidating the nine pre-reform orders into the current Central order. The DFA, *et al.*, witness asserted that milk order reform did not intend to provide for pooling milk supplies on the Central order that would not also provide a consistent and reliable service to the Class I needs of the market. Stressing that such milk does not provide a consistent and reliable service to the Class I needs of the market, the witness maintained that such milk should not be pooled on the Central order and receive the order's blend price.

The DFA, *et al.*, witness testified that the ability of handlers to pool large volumes of milk from distant sources without having to actually deliver the milk to the market has resulted in a significant reduction of the blend price received by producers who are serving the market's Class I needs. The witness also asserted that some Central order fluid handlers are having difficulties in obtaining sufficient milk supplies and find themselves competing for a supply of milk with other fluid handlers regulated under adjacent orders where blend prices are higher.

The DFA, *et al.*, witness also explained that a portion of the pre-reform Southwest Plains order area had contributed a significant share of the milk supply needed for fluid use in the southeastern portion of the current Central marketing area. Much of the milk produced in Arkansas and southern Missouri became part of the milk supply for the Southeast order area, added the DFA, *et al.*, witness. The witness was of the opinion that adoption of Proposal 1 would result in a higher blend price for the Central order dairy farmers and enhance the ability of local Class I handlers to procure local milk supplies.

A DFA, *et al.*, witness from Prairie Farms testified that the significantly higher blend prices paid to producers under the neighboring Southeast and Appalachian orders are attracting milk supplies located in the southern and southeastern areas of the Central marketing area. The witness observed that these producers receive a higher price for their milk without incurring a significant change in hauling costs. The witness indicated that this situation is resulting in distributing plants needing to pay substantial over-order premiums to obtain a supply of milk for distribution in the Central marketing area.

Witnesses representing several distributing plant operators confirmed that they are experiencing problems obtaining an adequate supply of milk for fluid use, especially during the fall months. These fluid handlers supported the adoption of Proposal 1 because the link between milk pooled on the Central order needs to be tied to actual deliveries of milk to the order's pool distributing plants.

A witness from Anderson-Erickson (A–E), a distributing plant operator regulated by the Central order, testified that the order's pooling provisions need to be revised to better condition the receiving of the order's blend price to actual performance in supplying the market's Class I needs. Similarly, a witness representing Suiza Foods (Suiza), a company which owns and operates distributing plants regulated by the Central order, testified that the pooling of milk on the Central order needs to be directly tied to actual performance in serving the fluid market. The Suiza witness stressed that actual performance in serving the fluid market should be necessary because it is the fluid market that generates the additional dollars to the marketwide pool.

The Suiza witness testified that their costs and ability to obtain raw milk for Class I use are tied directly to the pooling provisions of Federal milk orders, including the Central milk order. The witness stressed that blend prices, especially relative blend prices, provide the incentives for producers to move milk to where it is needed. However, explained the witness, Suiza faces new challenges in the Central marketing area since its formation under milk order reform. Specifically, the witness noted difficulty in procuring milk at one of their plants because local dairy farmers are delivering their milk to plants regulated on the Southeast and Appalachian orders. According to the witness, the blend prices in those orders are higher than in the Central milk order and therefore attract milk to those markets.

The Suiza witness was of the opinion that milk order reform placed other Central order distributing plants at a similar competitive disadvantage in competing for a supply of milk. While noting that the purpose of this proceeding is to address pooling problems resulting in lower blend prices to Central order dairy farmers, the witness stressed that in their opinion, the real issue that needs to be addressed is whether the Central order is too large. The witness cited the geographic diversity of the order and vastly differing marketing conditions within the marketing area's boundaries to question whether the Central order is truly a viable, single milk marketing area.

A witness from Mid States Dairy, an organization that operates a distributing

plant regulated by the Central order, testified that they were no longer able to source milk from their usual milksheds in southern Missouri and central Illinois. This witness stated that until recently, they had to rely on contracts with southern milk sources at premium prices to obtain a supply of milk because milk supplies were not available locally.

The DFA, *et al.*, witness testified that the order's supply plant performance standards should continue to be adjusted seasonally but at slightly different times. According to the witness, a higher standard of performance is needed for the months of August through November because increased customer demand occurs in those months. More importantly, the witness indicated that performance should be specified for every month of the year. In this regard, the witness from Prairie Farms added that specifying August through November for increased performance would help to ease their need to obtain additional milk supplies from other marketing areas.

Using milk located within the marketing area to qualify milk for pooling at plants located far from the marketing area was described by the DFA, *et al.*, witness as "pyramiding." The witness also attributed pyramiding to inadequate performance standards. As an illustration, the witness provided evidence to show how pooling provisions permit the pooling of milk volumes that cannot reasonably demonstrate performance in serving the Class I needs of the Central marketing area. As an example, the witness explained how a single tanker load of milk delivered to a pool plant within the Central order marketing area can qualify as many as 15 additional tanker loads of milk for pooling on the order through diversions. The witness contended that the ability to pyramid milk for pooling in this way reveals the inadequacy of the current pooling standards. Eliminating the ability to pyramid milk for pooling, the witness stressed, provides a basis for lowering the order's supply plant performance standard.

The DFA, *et al.*, witness testified that supply plants delivering milk to distributing plants not regulated by the Central milk order should not be counted in determining if the Central order's performance standards have been met. The witness indicated that such milk does not serve the Class I needs of the Central order. The witness offered that standards allowing for pool qualification to be earned from shipments to another order's distributing plants stem from pre-reform pooling provisions that were generally associated with "reserve supply" orders where Class I use was relatively small. The witness contended that the consolidated Central order is not such an order. While deliveries of milk to another order could still occur, noted the witness, the deliveries should not count toward pool qualification.

The witness from DFA, *et al.*, also offered a modification to Proposal 1 for incorporating a "net shipments" feature for pool supply plants as a way to ensure that fluid milk was actually received and retained at a distributing plant for Class I use. According to the witness, this feature would prevent a supply plant from physically shipping milk into the facilities of a distributing plant only to have the milk reloaded and moved to another plant for uses other than Class I. The witness also noted that without a "net shipments" provision, suppliers could qualify milk for pooling on the Central order without that milk ever being available to service the Class I needs of the market.

The witnesses from A–E concurred with the need for a "net shipments" provision, as did a witness from Foremost Farms, USA, a cooperative whose plants were regulated under the Central and Upper Midwest milk marketing orders. A witness from Suiza, testified that while they did not oppose a "net shipments" provision, they were of the view that milk actually delivered to a distributing plant was performing a service to the Class I needs of the market. To the extent that the same milk is subsequently pumped back out of the plant, indicated the witness, that decision is made by the receiving handler. Therefore, concluded the Suiza witness, such milk should be counted in determining if the supply plant performance standard is being met.

Briefs from both A–E and Dean Foods [1] reaffirmed their opposition to the inclusion of supply plant shipments to distributing plant unit plants as counting towards meeting pool qualifying performance standards noting that a relatively large non-Class I volume of milk is often associated with distributing plant units. The briefs contended that pooling stand-alone Class II operations could result in placing pooling priority for milk used in Class II dairy products on a par with milk used for Class I. They viewed that adoption of expanding supply plant qualifying deliveries to distributing plant units would create inequities and perhaps even result in creating new disorderly marketing conditions.

Exceptions to the tentative final decision from A–E and Dean Foods agreed that the decision adequately and appropriately addressed the disorderly conditions raised by them and others in the record.

A group of cooperative associations with members located primarily in the Upper Midwest milk marketing area opposed amendments included in Proposal 1 because it was their view that the amendments would limit their ability to pool milk on the Central order. The cooperative associations included: Associated Milk Producers, Inc. (AMPI); Foremost Farms, USA (Foremost); Land O'Lakes (LOL); First District Association (FDA); Family Dairies USA (Family Dairies); and Lakeshore Federated Dairy Cooperative (Lakeshore), comprised of Midwest Dairymen's (Midwest Dairymen) Company, Manitowoc Milk Producers Cooperative, and Milwaukee Cooperative Milk Producers. Hereinafter this decision will collectively refer to this group of cooperative associations as the "Upper Midwest Cooperatives."

Testimony by the Upper Midwest Cooperatives" witnesses argued that the adoption of more restrictive pooling standards would force milk that currently is pooled on the Central order to be pooled instead with the Upper Midwest pool. According to the witnesses, this would result in lower blend prices to Upper Midwest producers because of the lower Class I use in that area. The witnesses also argued that adopting the amendments contained in Proposal 1 would establish the more stringent pooling provisions that were in effect prior to milk order reform. According to the witnesses, this would establish a barrier to pooling the milk of producers who had long been associated with the markets merged to form the Central order.

To illustrate their point that the amendments of Proposal 1 would limit their ability to pool milk on the Central order, an Upper Midwest Cooperatives' witness testified that under current pooling provisions, every pound of milk delivered to Central order pool distributing plants provides the ability to pool 15 additional pounds of milk. If the pooling provisions proposed are adopted, the witnesses indicated that only 3 additional pounds of milk could be pooled for each pound of milk delivered on the Central order.

The Foremost witness, testifying on behalf of AMPI, LOL, Family Dairies, Midwest Dairymen, and FDA, testified that if Proposals 1 and 5 (Proposal 5 is discussed in more detail later in this decision) were adopted, and if they

[1] Suiza Foods Corporation merged with Dean Foods Company on December 21, 2001, at which time the name of the merged company became Dean Foods Company.

were pooling the maximum amount of milk allowed in the pre-reform orders, approximately 400 million pounds of milk per month would no longer be pooled on the Central order. Instead, the witness testified, this milk would be pooled on the Upper Midwest order. The witness maintained that this would increase the blend price differences between the two orders.

According to the Foremost witness, the blend price differences would have ranged between 32 cents per hundredweight (cwt) to as much as 91 cents per cwt for the one-year period of September 2000 through August 2001 if the pooling standards proposed had been in effect during that time. The witness emphasized this would have had an enormous adverse effect on the net income of Upper Midwest producers.

An Upper Midwest Cooperatives' witness from Family Dairies testified in opposition to pooling provision amendments that would limit the ability to pool milk on the Central Order and result in lower blend prices to producers located in the Upper Midwest. The witness stated that adoption of such proposals would result in creating more regional pricing problems and give selected handlers the ability to use the blend price as a procurement tool in areas outside the Central Order.

A witness for Lakeshore joined other Upper Midwest Cooperatives' witnesses by also stating their concern that the proposed pooling changes specifically in Proposals 1, 3, 5, and 7 (Proposals 3, 5, and 7 are discussed later in this decision) could force milk currently pooled on the Central order to instead be pooled on the Upper Midwest order. According to the witness, this would result in decreasing producer returns for those dairy farmers located in Northern Illinois and the surrounding area. Specifically, the Lakeshore witness explained that while a fluid milk plant at Rockford, Illinois, and a Dubuque, Iowa, distributing plant have the same federal order-dictated Class I price, the Rockford plant is disadvantaged because it has to pay a higher competitive value to attract Class I milk, adversely impacting their northern Illinois businesses.

A witness from LOL emphasized the necessity of basing pooling provisions on performance in serving the Class I needs of the market rather than the location of where milk originates. The witness was also of the opinion that the current order provisions provide adequate incentives to service Central order distributing plants. Stating that producers who share in the pool must be willing to serve the market, the LOL witness nevertheless stressed that the ability to pool milk on the Central order pool should not be restricted for the benefit of a select few. The LOL witness testified that milk no longer pooled on the Central order would instead be pooled on adjoining milk orders such as the Upper Midwest or Western marketing areas and characterized these areas as already carrying a disproportionate volume of reserve milk.

In response to concerns that Central order Class I handlers are having difficulty in obtaining a supply of milk, the LOL witness provided an analysis which suggested that tightening pooling provisions would not achieve what the proponents of Proposal 1 assert. The witness estimated that adopting the proposed pooling provisions would result in an increase of 35 cents per cwt in the Central Order blend price. According to the witness, such an increase would still leave the Central order blend price $1.48 per cwt below the blend price of the Southeast order thus weakening the argument that the higher blend price would mitigate the problem of Central order distributing plants securing a supply of milk.

The LOL witness asserted that the combination of Proposals 1, 3, 5, and 7 would place unreasonable restrictions on milk produced outside the marketing area relative to milk produced inside the marketing area. The witness indicated that supply plants located outside the marketing area would be required to receive milk and transfer it to distributing plants, thereby causing uneconomic movements of milk, adding costs and degrading milk quality due to additional handling. Furthermore, barriers to trade would be created by adopting these proposals, indicated the witness.

Two of the Upper Midwest Cooperatives' witnesses introduced cost-of-production studies conducted by universities indicating that dairy farmers in northern Illinois and Wisconsin enjoy little financial return from their dairy operations. The Foremost witness cited the Wisconsin study to indicate that in Wisconsin the marginal return of producing milk can be less than zero. According to the witnesses, the financial impact by limiting participation in the Central order pool through increased performance standards would be detrimental to Upper Midwest dairy farmers. In this regard, all of the Upper Midwest Cooperatives' witnesses stressed that their member producers are considered small businesses pursuant to the Regulatory Flexibility Act and that such status should be considered in determining appropriate performance standards for the Central order.

The witnesses for A–E and Suiza testified in opposition to considering supply plant shipments to distributing plant "units" as counted in determining pool-qualifying deliveries unless each plant of the "unit" could independently be a distributing plant under the terms of the order. The witness noted that relatively large non-Class I volumes of milk associated with a distributing plant unit could result in reducing the actual need for qualifying shipments made to distributing plants. In post-hearing briefs, Dean Foods indicated opposition to expanding qualifying shipments to any plant that is part of a distributing plant unit, noting that such performance standards would be inequitable and result in the creation of new disorderly marketing conditions.

The record of this proceeding strongly supports the conclusion in the tentative decision that the various features of the Central milk marketing order's supply plant pooling standards were either inadequate or unnecessary. These deficiencies contained in the pooling standards for supply plants were causing much more milk to be pooled on the Central milk order than could reasonably be considered as properly associated with the Central marketing area. Such milk does not demonstrate reasonable levels of performance necessary to conclude that it provides a regular and reliable service in satisfying the Class I milk demands of the Central marketing area.

The pooling standards of all milk marketing orders, including the Central order, are intended to ensure that an adequate supply of milk is supplied to meet the Class I needs of the market and to provide the criteria for identifying those who are reasonably associated with the market as a condition for receiving the order's blend price. The pooling standards of the Central order are represented in the *Pool Plant*, *Producer*, and *Producer milk* provisions of the order. Taken as a whole, these provisions are intended to ensure that an adequate supply of milk is supplied to meet the Class I needs of the market. In addition, it provides the criteria for identifying those whose milk is reasonably associated with the market by meeting the Class I needs and thereby sharing in the marketwide distribution of proceeds arising primarily from Class I sales. Pooling standards of the Central order are based on performance, specifying standards that, if met, qualify a producer, the milk of a producer, or a plant to share in the

benefits arising from the classified pricing of milk.

Pooling standards that are performance-based provide the only viable method for determining those eligible to share in the marketwide pool. This is because it is the additional revenue from the Class I use of milk that adds additional income, and it is reasonable to expect that only those producers who consistently bear the costs of supplying the market's fluid needs should be the ones to share in the distribution of pool proceeds. Pool plant standards—specifically standards that provide for the pooling of milk through supply plants—also need to reflect the supply and demand conditions of the marketing area. This is important because producers whose milk is pooled receive the market's blend price.

Similarly, supply plant pooling standards should provide for those features and accommodations that reflect the needs of proprietary handlers and cooperatives in providing the market with milk and dairy products. When a pooling feature's use deviates from its intended purpose, and its use results in pooling milk that cannot reasonably be determined as serving the fluid needs of the market, it is appropriate to re-examine the need for continuing to provide that feature as a necessary component of the pooling standards of the order. Because one of the objectives of pooling standards is ensuring an adequate supply of fluid milk for the market, a feature which results in pooling milk on the order that does not provide such service should be considered as unnecessary for that marketing area.

Pooling standards are needed to identify the milk of those producers who are providing service in meeting the Class I needs of the market. If a pooling provision does not reasonably accomplish this end, the proceeds that accrue to the marketwide pool from fluid milk sales are not properly shared with the appropriate producers. The result is the unwarranted lowering of returns of those producers who actually incur the costs of servicing and supplying the fluid needs of the market.

The post-hearing brief received from the Upper Midwest Cooperatives continued to stress opposition to the amendments offered by Proposals 1 (and Proposals) 3, 5, and 7. They view that such changes to the Central milk marketing order are discriminatory and that the proposed amendments would foster inefficiencies in milk marketing. The brief re-iterated their view that the Department's policy has been to design plant and producer pooling provisions that provide a regulatory balance between the fluid needs of the market and transportation efficiency to meet those needs. In this regard, the brief stressed the opinion that orderly marketing is promoted by not requiring shipments to distributing plants when such shipments are not needed for fluid uses. Additionally, the brief asserts that the Department has long recognized that excluding milk from the pool under rigid performance rules is a greater threat to orderly marketing in surplus marketing areas than is the pooling of surplus milk supplies.

The Upper Midwest Cooperatives' brief added that marketwide pooling has been determined as a constitutional means for surplus Grade A milk to share in the additional revenue resulting from fluid sales. Additionally, the brief noted that the 43-day national hearing review and reform proceeding of 1990—and the Second Amplified Decision of 1996 of that proceeding—articulate the policy of the Department to allow milk to shift to different markets in response to blend price changes. The brief also cited case law to maintain that the statutory scheme for promoting orderly marketing is the sharing of proceeds among producers in the form of uniform, or blend, prices. The opinion expressed in the Upper Midwest brief cites that case law has concluded that producer blend prices cannot be thwarted by a discriminatory transportation burden imposed on distant producers by government mandate..

The Upper Midwest Cooperatives objected to the tentative final decision, as restricting the amount of pooled milk on the Central Marketing order by mechanisms such as committed and controlled supplies from established producer organizations. The Upper Midwest Cooperatives continued by stating that the decision would eliminate much "out-of-area" milk from the pool and would also exclude Grade A milk produced inside the Central order.

The record of this proceeding clearly supports a finding that certain features of pooling standards of the Central Order established under the Federal order reform process, especially as they relate to supply plants, were either inadequate or unnecessary and that the Department was justified in adopting the interim rule. The Final Decision of milk order reform examined and discussed the various pooling standards and features of the pre-reform orders for their applicability in a new, larger consolidated milk order. The pooling standards and features adopted for the consolidated Central Order were designed to reflect and retain those standards and features of the pre-reform orders so as not to cause a significant change and indeed to provide for the continued pooling of milk that had been pooled by those market participants.

As noted in the tentative decision, the record provides strong evidence to conclude that several features of the *Pool plant* definition, specifically the provisions and features for supply plants, were not being used for the reasons they were intended. Other shortcomings of the Central order, specifically as they relate to producer milk (discussed later in this decision) also have contributed to the inappropriate pooling of the milk of producers who are not a legitimate part of the Central milk marketing area. Here too the impact has been an unwarranted pooling of milk classed at lower prices resulting in a lower blend price to those producers who actually and consistently supply the Class I needs of the market.

The tentative decision and this final decision find that the milk of some producers was benefitting from the blend price of the Central order while not demonstrating actual and consistent service in satisfying the Class I needs of the Central milk marketing area. This finding was attributed to improper and inadequate features of the pooling standards. The pooling provisions provided in the Final Decision of milk order reform established pooling standards and pooling features that envisioned the needs of the market participants resulting from the consolidation of nine pre-reform milk marketing areas consolidated to form the current Central milk marketing area. The reform Final Decision, as it related to the Central marketing area, did not intend or envision that the pooling standards and pooling features adopted would result in the sharing of Class I revenues with those persons, or the milk of those persons, who would not be demonstrating a measure of service in providing the Class I needs of the Central marketing area.

The reform Final Decision examined and discussed various pooling standards and features of the pre-reform orders for applicability in new, larger consolidated milk orders. The pooling standards and features adopted for the Central order were intended to reflect and retain those standards and features of the pre-reform orders so as to not cause a significant change, and indeed to provide for the continued pooling of milk that had been pooled by market participants. The pooling provisions of the Central order were based largely on the predecessor Iowa milk marketing order (then known as Order 79). The Iowa order contained the more liberal pooling provisions of the nine orders consolidated to form the

Central order. The record of this proceeding reveals that the combination and features adopted for pool plants, especially as they apply to pool supply plants, have not been reasonable or appropriate standards for the much larger consolidated Central order.

The record of this proceeding reveals that two-thirds of the Central marketing area population (and corresponding demand for fluid milk) is located in the southern and western portions of the marketing area. However, the adoption of the Central order pooling provisions did not anticipate that the adopted pooling standards would not adequately consider the impact on the northern Central marketing area resulting from the Arkansas and southern Missouri portions of the pre-reform Southwest Plains marketing area becoming part of the current Southeast marketing area. Milk produced in these regions had been regularly pooled on the Southeast milk order prior to the expansion of the Southeast order as part of milk order reform and is an integral part of the current Southeast marketing area milkshed. Changes in marketing conditions, as revealed in the record, have resulted from the pooling standards existing prior to the interim rule as an important factor in explaining why fluid handlers in the southern reaches of the Central order have had difficulties obtaining a supply of milk.

As previously indicated, pooling milk on the Central order without demonstrating actual performance in servicing the Class I needs of the market area is neither appropriate nor intended. The record indicates that the volume of milk pooled on the Central Order originating from sources far outside the marketing areas of the nine predecessor marketing areas increased by 186 percent when comparing, for example, the pre-reform month of December 1998 with the post-reform month of December 2000. Of the increase shown in this comparison, milk pooled on the order and originating within the marketing area increased by only 10 percent. Of the additional milk pooled on the Central order, the greatest increase is represented by milk priced at lower class prices. Additionally, testimony by Upper Midwest Cooperatives' witnesses clearly indicated that under the Central order's current pooling provisions, milk pooled on the Central order is not necessarily available to fill the Central market's fluid needs.

The tentative decision as well as this final decision agree with the proponents and those entities who expressed support for adopting Proposal 1 that the order's pooling standards warrant changes. Both the tentative decision and this final decision find, however, that the performance standards of Proposal 1 are unreasonably high when considering the complete context of the pooling provision modifications made in this decision. If adopted as proposed, together with the other amendments adopted in this decision, milk that has had a long-established association in supplying those pre-reform marketing order areas consolidated to form the Central order may no longer be pooled on the Central order. Most of this milk originates from areas in the Upper Midwest marketing area. The performance standards sought in Proposal 1 may unintentionally compound the difficulties of Central order distributing plants in securing needed milk supplies that could be made available if not for unreasonably high performance standards. Accordingly, this final decision proposes to adopt on a permanent basis the following amendments to the pooling standards and features of the order that were adopted in the interim final rule:

1. Performance standards for supply plants are reduced to (1) 20 percent in each of the months of August through February and (2) 15 percent in each of the months of March through July. Lower supply plant shipping performance standards are established because of accompanying adjustments to the order's other pooling provisions and features. Lowering supply plant performance standards also addresses the concern by Upper Midwest Cooperatives that a "tightening" of the order's performance standards would erect an unreasonable barrier in supplying to, and to pooling milk on, the Central order. As noted in the tentative decision, it should also be emphasized in this final decision that, to the extent that the supply plant performance standards may warrant further refinement, the order provides the means for initiating a change by providing authority for the Market Administrator to consider and make needed changes.

Given that performance standards are specified in every month, the need to continue with the automatic pool plant feature for supply plants during the 3-month period of May through July is rendered unnecessary and contrary to establishing such standards of performance in the first place. The adoption of year-round performance standards, adjusted seasonally, will better assure that a consistent and reliable supply of milk will be provided to the fluid market throughout the year.

August should be included for those months in which a higher performance standard is warranted. Including August in the higher performance months is supported by record evidence which reveals August as the beginning of seasonal increased demand due to the opening of schools occurring at the same time as a general overall decline in milk supplies.

2. As in the tentative decision, this final decision would eliminate a handler's ability to qualify plants located outside the marketing area by cooperative handlers (as defined in § 1000.9(c)) or diversions from a pool plant of the Central order to another pool plant of the Central order. The record supports a finding that milk pooled in this manner does not actually demonstrate real service in meeting the Class I needs of the Central marketing area. Milk pooled in this manner was often referred to in record testimony as "pyramiding." No reasonable basis can be found in the record evidence to conclude that milk pooled in this manner warrants receiving the Central order blend price. The record can only support concluding that milk pooled in this manner serves to lower the blend price paid to producers who actually do supply the market's Class I needs.

3. The tentative decision and this final decision find that shipments of milk to distributing plants regulated by another Federal milk marketing order should not be considered in determining if a supply plant meets the specified performance standard of the Central order for pooling. The performance standards proposed to be adopted by this decision for the Central order are designed so that its distributing plants are adequately supplied with milk. Milk shipments to distributing plants regulated by another Federal order only serve the Class I needs of that other order. Pooling standards for the Central marketing area provide the criteria for determining the milk of those producers who are serving the Class I needs of the Central marketing area and who would thereby receive the Central order blend price. It is reasonable in light of this objective to conclude that serving the needs of another market is not providing a service to the Central marketing area. Accordingly, such milk should not be considered as a qualifying shipment for meeting the supply plant performance standards of the Central order.

4. The tentative decision and this final decision find that the modification of Proposal 1 offered by DFA to limit pool qualifying deliveries to distributing plants on a "net shipments" basis is warranted. Milk deliveries to

distributing plants will be limited to milk transferred or diverted and physically received by distributing pool plants, less any transfers or diversions of bulk fluid milk products from the distributing plant. Relying on net shipments for determining pool qualifying deliveries to distributing plants is applicable to both supply plant deliveries and milk moved to distributing plants directly from the farms of producers. Adoption of this feature will help ensure that milk not serving the market's Class I needs will not be counted towards meeting the specified performance standard.

Providing a net shipments feature for the Central order is reasonable and will likely not be burdensome despite opposition to its adoption. Even with the inappropriate pooling of milk on the order, lower supply plant performance standards adopted in the tentative decision and this final decision are at levels below the Central market's Class I use of milk. While distributing plants do have some transfers and diversions of milk resulting from variations in demand arising from changing fluid milk needs on weekend days and holidays, the tentative decision and this final decision find it is doubtful that the magnitude of these transfers and diversions would be such that a supply plant would risk loss of pool plant status. Additionally, other changes to the order's pooling standards continuing to be adopted in this decision (discussed below) would provide the necessary safeguards that would make it even more unlikely that a supply plant would lose its pool status. This final decision continues to find that adoption of a net shipments feature in the pooling standards of the Central order also would aid in properly identifying the milk of those producers who actually supply milk to meet the Central marketing area's fluid needs.

b. Cooperative Supply Plant Performance Standards

A cooperative supply plant pooling provision, together with the feature of authorizing the market administrator to adjust the performance standards for cooperative supply plants, should be retained as suggested in the tentative decision. It was unclear at the time the tentative decision was issued whether Proposals 2 and 4, seeking removal of the cooperative supply plant performance standard and the corresponding provision authorizing the market administrator to adjust those standards, should be adopted in the tentative decision. Because the evidence in the record did not support the removal of these provisions and because there were no additional persuasive comments on this subject in response to the tentative decision, the Department has not proposed adopting these proposals in this final decision.

The Central marketing order provides for a cooperative association plant as a type of supply plant on the order provided the cooperative association's plant is located within the marketing area and that at least 35 percent of the milk which the cooperative association handles is shipped to a Central order distributing plant during any current month or in the immediately preceding 12-month period. In addition, the provision requires that the cooperative association plant not qualify as a distributing or supply plant under the Central order or any other Federal milk marketing order.

The DFA, *et al.*, witness stated that adoption of some of the other proposals considered in this proceeding, such as modifying supply plant performance standards and providing for net shipments and a one-time "touch base" standard, makes retaining this provision unnecessary. The witness also testified that the provision has not been used since implementation of the consolidated Central order.

Elimination of the provision was supported in testimony by witnesses representing both A–E and Suiza Foods. Both witnesses stated that the provision is unnecessary and is not being used. In their post-hearing briefs, both A–E and Dean Foods reiterated that no plant is presently qualified under the cooperative supply plant definition.

Although there was no opposition testimony to the removal of the cooperative supply plant provision in the Central Order, both the tentative decision and this final decision find that this provision and the corresponding provision authorizing the market administrator to make needed adjustments should be retained. The testimony contained in the record does not contain sufficient reason for a finding to eliminate this standard other than it is a provision that is not used. The provision allows pool qualification for cooperative supply plants on either an average of the preceding 12-month's shipments or the current month's shipments and provides pooling flexibility for cooperatives. The cooperative supply plant definition contains features that are unique and intentional. While the proponents and supporters of Proposals 2 and 4 testified that the cooperative supply plant provision is not currently being used, testimony received did not address the apparently diminished importance of this pooling provision that was used in four of the nine pre-reform milk orders consolidated to form the Central order. The provision also is a pooling feature provided in most other Federal orders and, as with the Central order, is not currently being used in most of the other Federal orders containing this provision. Given the current record, removing this provision from the Central order may result in the unintended removal of a pooling provision intended for cooperative associations that may be needed at some future time. Accordingly, this final decision does not adopt Proposals 2 and 4.

c. Supply Plant System Standards

Proposal 3 of the hearing notice seeking to increase the performance standards for a system of supply plants—and modified at the hearing to limit supply plant system formation to single handler entities instead of currently allowing such systems to be formed by multiple handlers—was not adopted in the tentative decision and is not proposed to be adopted in this final decision. As previously discussed, the record contains evidence that distributing plants regulated by the Central milk order are having difficulty obtaining an adequate supply of milk for fluid use. While this proposal's aim is, in part, to address this problem, there nevertheless remains the potential for a supply plant system to pool milk supplies that may not demonstrate actual service to the fluid needs of the Central marketing area. The modification of the proposal seeking to limit supply plant system formation to a single handler entity has merit. However, taking into account the current record and the fact that there were no exceptions to the tentative decision on this issue, it is not adopted as a modification to the order's current system pooling provision in this final decision. It is noted that the hearing testimony often referred to supply plant systems as "supply plant units." Nevertheless, it is clear that hearing participants intended to mean "supply plant systems" and, accordingly, this final decision continues to consider the testimony in the context intended.

The supply plant system provisions of the Central order currently provide that a system of supply plants may qualify for pooling if 2 or more plants operated by one or more handlers meet the applicable performance standards established for a supply plant. A supply plant system would qualify to pool all of its milk receipts, including diversions, by meeting a performance standard of 25 percent in each of the months of September through November

and January and 35 percent for all other months. The order currently limits the formation of a supply plant system to plants located within the marketing area.

Proposal No. 3, by DFA, *et al.*, would raise the performance standards for supply plant systems by 5 percentage points for each of the months of August through November and by 3 percentage points higher in all other months. The proponent witness (representing DFA, *et al.*) testified that providing for supply plant systems extends benefits and efficiencies not otherwise available for individual handlers to reduce transportation costs by delivering milk from a more advantageously located supply plant at a volume that would satisfy the performance standards as if all supply plants not as advantageously located had individually met the indicated performance standard. According to the witness this also would avail plant efficiencies in the manufacturing operation of all supply plants that are part of the system. The witness also envisioned that the proposal could ease otherwise disruptive shipping obligations to their manufacturing operations, potentially reduce paperwork, and provide the opportunity for producers to receive prices higher than regulated minimum prices. Because system pooling offers a rewarding degree of pooling flexibility, the witness was of the opinion that a supply plant system should meet slightly higher performance standards than those applicable for a single supply plant. This rationale is consistent, the witness indicated, with the pre-reform Chicago Regional order which specified a performance standard at twice the rate for supply plant systems than was applicable for individual supply plants.

According to the DFA, et. al., witness, a higher performance standard for supply plant systems would contribute to making it easier to obtain additional milk supplies in the most efficient manner. Additionally, the witness was of the opinion that this change, together with other changes proposed, would eliminate the ability to "pyramid" the pooling of milk on the order and renew interest in supply plant systems for the market.

A witness from AMPI, who also testified on behalf of the Upper Midwest Cooperatives, opposed adoption of Proposal 3. The witness explained that increased performance standards would simply cause a handler to discontinue pooling its plants as a system, thus forcing the handler to ship a lower percentage of milk receipts from each of the individual supply plants. The witness asserted that this alternative would increase transportation costs without providing additional milk to distributing plants.

The AMPI witness also testified that a supply plant system operated by multiple handlers has the potential for one handler with substantially more sales to distributing plants than needed to meet the supply plant performance standard to pool the milk receipts of other handlers. According to the witness, this could reduce the total volume of milk shipments to distributing plants while technically meeting the order's performance standards. According to the witness, such a provision allows some handlers to entirely escape responsibility for supplying the fluid market and encourages handlers to pay other handlers to qualify their milk supplies for pooling. In light of these concerns, the witness offered a modification to Proposal 3 that limits supply plant system formation to single handler entities.

A witness testifying on behalf of Foremost, AMPI, LOL, Family Dairies, Midwest Dairymen, and FDA supported the advantages supply plant systems offer as a means to promote more efficient movement of milk to distributing plants. However, given the higher performance standards called for by the proposal, the witness indicated opposition to Proposal 3. The witness was of the opinion that there is no justification for supply plant systems to be required to meet higher performance standards than individual supply plants. The witness did note that a higher performance standard for a supply plant system formed by multiple handlers may be appropriate.

Providing pooling flexibility by permitting more than a single supply plant to form into a single pooling system offers the potential to increase efficiencies by minimizing transportation costs that may not be obtainable when each supply plant of the handler would need to meet the performance standards separately for each plant. Additionally, providing for supply plant systems serves to accommodate the specialization of plant operations without otherwise encouraging such a plant to deliver milk to a distributing plant solely to retain pool status. Providing the opportunity to gain such efficiencies is intended by the supply plant system provision because it does not disrupt the flow of milk for Class I use from supply plants to distributing plants.

The record suggests that supply plant systems formed by multiple handler entities offer the potential to pool milk on the Central order without meeting intended performance standards. The modification to Proposal 3, which would limit the formation of a supply plant system to a single handler entity, may offer a warranted change in the current supply plant system provisions without changing the current performance standards. However, the tentative decision found that the record did not provide sufficient evidence to tentatively adopt a change in the performance standards for supply plant systems or to limit the formation of supply plant systems to a single handler entity. Because there were no comments to the tentative decision on the provisions which would limit the formation of supply plant systems to a single handler entity, such provisions are not adopted in this final decision.

d. Standards Applicable for Producer Milk

Several changes to the pooling standards contained in the *Producer milk* definition of the Central Order that were previously adopted on an interim basis are proposed to be adopted on a permanent basis by this final decision. The adopted amendments were largely contained in a proposal, published in the hearing notice as Proposal 5, which was modified at the hearing by its proponents. The changes in the producer milk pooling standard are necessary to more accurately identify the milk of those dairy farmers who actually serve the Class I needs of the market. The amendments include: (1) Continue to establish year-round diversion limits, adjusted seasonally, for the amount of milk that a pool plant may divert to nonpool plants at 80 percent for each of the months of August through February and at 85 percent for each of the months of March through July. Accordingly, the provision, adopted on an interim basis, corrected the lack of diversion limits for the months of May through August; (2) Diversion limits for supply plants will continue to be based on deliveries to Central order pool distributing plants and will not include deliveries to other pool supply plants of the Central order. This eliminates the ability of a pool plant to pool increased volumes of milk by diversion to nonpool plants by diverting milk to a second pool plant; and (3) Continue to establish a net shipments feature for producer milk. These amendments maintain the integrity of the performance standards for pool plants of the Central marketing area and more appropriately identify those producers whose milk actually supplies the Central marketing area's Class I milk needs.

Prior to the adoption of the interim final rule, the *Producer milk* provision of the Central order provided for diversion limits of 65 percent during the months of September through November and January and limits of 75 percent during the months of February through April and December. While the Central order limits the pooling eligibility of diverted milk to nonpool plants in specified months, the order placed no limits on milk diversions to other pool supply plants of the order. Milk diverted from one pool plant to another pool plant enabled the diverting pool plant to increase the amount of milk that could be pooled but diverted to nonpool plants. During the months of May through August, an unlimited amount of producer milk could be diverted by pool plants to nonpool plants. The milk of a producer was not eligible for diversion until at least one day's production of a dairy farmer was physically received at a pool plant and the producer continually retained producer status on the Central order both before and after adoption of the interim rule. Finally, the order did not determine producer milk on a net-shipments basis until adoption of the interim rule.

Proposal No. 5, offered by DFA, *et al.*, seeks to establish new year-round diversion limits for producer milk at 75 percent for each of the months of August through November and at 80 percent for each of the months of December through July. These limits are subject to satisfying certain performance measures and would specify that at least 20 percent of receipts in each of the months of August through February and 15 percent in each month of all other months are delivered to Central order distributing plants. Because year-round diversion limits would be established for all months, the proposal is intended to eliminate the ability to pool an unlimited amount of milk on the order during May through August by diversion. As noted in the discussion of supply plant performance requirements earlier, DFA, *et al.*, repeated their argument for these diversion limits in their exceptions to the tentative decision.

Proposal 5, offered by DFA, *et al.*, was modified in testimony by the DFA witness. The modification proposed sought also to incorporate a net-shipments feature for producer milk as they had proposed as a modification to Proposal 1. According to the witness, the net-shipments feature would be used to determine pool-qualifying diverted milk on the basis of milk receipts transferred or diverted to and physically received by Central order distributing plants less any transfers or diversions of milk from such distributing plants. In exceptions to the tentative decision, DFA, *et al.*, stated that the net shipment provision for producer milk is at least as important as it is for supply plant milk.

The DFA, *et al.*, witness testified that the core issues of the hearing are restoring orderly marketing conditions and economically justifying the appropriate performance standards that, if met, warrant receiving the Central Order blend price. The witness explained that orderly marketing embodies the principles of common terms and pricing that attracts milk to move to the highest-valued use when needed and for milk to clear the market when not needed in higher-valued uses. The DFA witness was of the opinion that the percentage of allowable diversions should be increased over those currently applicable in the Central order. The witness indicated that this becomes possible with the adoption of the other pooling provision amendments, including changing performance standards and considering milk deliveries to distributing plants on a net shipments basis.

The DFA, *et al.*, witness testified that the Central order should provide a limit on the amount of milk that can be diverted to nonpool plants each month by conditioning diversions on the basis of milk shipments to pool distributing plants or distributing plant units of the Central order. The witness stated that the aim of these features is to provide a better correlation between the order's pooling provision standards.

A witness representing several fluid milk processing plants joined in expressing their support for adopting year-round diversion limits. They were of the opinion that this would enhance pooling the milk of only those who provide an adequate supply of milk for fluid uses.

Witnesses representing the Upper Midwest cooperatives testified in opposition to the adoption of Proposal 5 and to the proposal's modification to incorporate a net-shipments feature. In their opinion, these changes would unnecessarily limit the amount of milk that could be pooled on the Central order. The witnesses indicated that this would force surplus milk supplies to be pooled instead on the Upper Midwest order. As a result, they testified, the Upper Midwest pool would be diluted and result in a lower blend price for their producers in the Upper Midwest.

A witness for the First District Association testified that diversion limits are not always needed for every month. The witness maintained that having year-round diversion limits would reduce competition and result in lower milk prices for producers of the Central marketing area. The witness argued that diversion limits should be provided only for ensuring the orderly marketing of fluid milk but should not be used so as to constitute a barrier to pooling milk.

In their exceptions to the tentative decision, the Upper Midwest Cooperatives reiterated their opposition to the addition of a net shipments provision and the limitation on diversions to only distributing plants, not milk received by any pool plant. They stated that this provision would eliminate a large amount of the milk that does not have a committed share of the Class I market. These cooperatives believe this unfairly allows nearby suppliers to accrue a higher blend.

The Central milk order, as all other Federal milk marketing orders, provides and accommodates for diverting milk because it facilitates the orderly and efficient disposition of the market's milk not needed for fluid use without the loss of the benefits that arise from being pooled on the order. When producer milk is not needed by the market for Class I use, its movement to nonpool plants for manufacturing should be provided for without loss of producer milk status. Preventing or minimizing the inefficient movement of milk solely for pooling purposes also needs to be reasonably accommodated. However, it is just as necessary to safeguard against excessive milk supplies becoming associated with the market through the diversion process.

A diversion limit establishes the amount of producer milk that may be an integral milk supply of a pool plant. With regard to the pooling issues of the Central order, the tentative decision as well as this final decision stress that it is the lack of diversion limits to nonpool plants, in part, that significantly contributes to the pooling of much more milk on the order that does not provide service to the Class I market yet receives the Central order blend price. Such milk is not a legitimate part of the reserve supply of the plant.

According to the tentative decision and this final decision, milk diverted to nonpool plants is milk not physically received at a pool plant. However, it is included as a part of the total producer milk receipts of the diverting plant. While diverted milk is not physically received at the diverting plant, it is nevertheless an integral part of the milk supply of that plant. If such milk is not part of the integral supply of the diverting plant, then that milk should not be associated with the diverting

plant. Therefore, such milk should not be pooled.

Both the tentative decision and this final decision state that the lack of diversion limits only provides a means for associating much more milk with the market without the burden of demonstrating actual service in meeting the Class I needs of the market. Associating more milk than is actually part of the legitimate reserve supply of the diverting plant unnecessarily reduces the potential blend price paid to dairy farmers. Without diversion limits, the order's ability to provide for effective performance standards and orderly marketing is weakened.

The lack of diversion limit standards applicable to pool plants opens the door for pooling much more milk on the market. While the potential size of the pool should be established by the order's pooling standards, the lack of diversion limits renders the potential size of the pool as undefined. With respect to the marketing conditions of the Central marketing area evidenced by the record, both the tentative decision as well as this final decision find that the lack of year-round diversion limits on producer milk has caused much more milk to be pooled on the order than can reasonably be considered part of the legitimate reserve supplies of the pool plants and does not provide any actual service in meeting the Central market's Class I needs.

The lack of standards applicable for diversions to nonpool plants for the months of May through August prior to the interim rule resulted in the pooling of much more milk than can demonstrate any actual service in meeting the Class I needs of the Central marketing area. The diversion limit standards of Proposal 5 address this concern. However, the diversion limits adopted in the tentative decision and proposed to be adopted on a permanent basis by this final decision are higher than those proposed. Increasing the diversion limit standard is made possible because of other changes adopted in the tentative decision that would also be adopted in this final decision. The changes to the diversion limits standards adopted in the tentative decision are also proposed to be adopted in this final decision at a level to appropriately complement the performance standards. Accordingly, this decision proposes to establish a diversion limit for producer milk of 80 percent for each of the months of August through February and 85 percent for each of the months of March through July. In addition, the diversion limits may be adjusted by the Market Administrator.

As previously discussed, both the tentative decision and this final decision have determined that only deliveries or diversions to pool distributing plants, and not deliveries to pool supply plants, should be allowed to qualify subsequent supply plant diversions for pooling on the order. Such conditions are carried into the producer milk definition as a condition for diversion eligibility. It is also consistent, in light of such linkage, that a net shipments feature should be provided as part of the producer milk provision. However, as discussed earlier in the section on pooling standards, the evidence contained in the record does not support the inclusion of deliveries to pool distributing plant units to qualify supply plant diversions for pooling. Accordingly, this feature of Proposal 5 is not adopted.

A proposal, published in the hearing notice as Proposal 9, seeking to allow milk to be eligible for diversion to nonpool plants and for such milk to retain its association with the market for any months during which a handler failed to pool a dairy farmer's milk under any milk marketing order is not adopted. The tentative decision as well as this final decision find that a dairy farmer's milk must be physically received at a pool plant of the Central order before it is eligible for diversion to nonpool plants. Additionally, this final decision continues to find that if milk is not continuously pooled, it again must be received at a pool plant before regaining pooling eligibility.

The Central order currently specifies that the milk of a new producer, or a producer who has broken association with the market, is not eligible for diversion until one day's production is physically received at a pool plant in the first month, and the dairy farmer continuously retained producer status in following months. The dairy farmer's milk is associated with the market if it is included in the pool each month, except as a result of a temporary loss of Grade A approval.

Proposal 9 would allow milk diverted to a nonpool plant before the producer's milk is actually delivered to a pool plant in the same month to be considered producer milk. Proposal 9 also included a provision to allow the milk of a dairy farmer to retain its association with the market for any months during which the handler failed to pool the producer's milk under any order.

Proposal 9 was offered by the Upper Midwest Cooperatives. A witness from AMPI, testifying on behalf of the Upper Midwest Cooperatives, explained that Proposal 9 is needed to assure that producers' milk can be pooled for the entire month as long as one day's production is physically received at a pool plant any day during the month. According to the witness, producers could miss several days of being able to pool milk on the Central order due to unexpected phenomena, such as weather, trucking problems, and scheduling conflicts.

According to the AMPI witness, Proposal 9 also would allow milk to return for pooling on the order in the month following the month in which it was not pooled because the blend price was less than the Class III or Class IV price. In this regard, the witness noted that the order currently provides for milk to be pooled at least one day each month before being eligible for diversion to nonpool plants regardless of whether it is economically sound to pool milk based on the blend price that would result for the month.

The touch base standard of an order establishes an initial association by the producer, and the milk of the producer, with the market. In this way, the touch base provision serves to maintain the integrity of the order's performance standards. The record does not contain sufficient evidence for setting conditions that negate the need to properly re-establish association with the market. Doing so is neither burdensome nor unreasonable considering that only one day's milk production of a dairy farmer needs to be delivered to a plant and pooled in order to maintain association with the market. Accordingly, Proposal 9 is not adopted.

e. Establishing Pooling Standards for "State Units"

A proposal, published in the hearing notice as Proposal 7, seeks to establish pooling units organized and reported by State, specifying that in order to pool milk from those States located outside of the States and specified counties that comprise the Central marketing area, each State unit would need to meet the performance standards applicable for pool supply plants. This proposal was not adopted in the tentative decision and is not adopted in this final rule. The Central order does not currently provide for pooling milk located outside of the marketing area in this manner.

Proposal 7, offered by Dairy Farmers of America (DFA), would group and report milk in State units and specify performance standards for such State units as those applicable to pool supply plants. The milk that would be affected would be milk located outside the States of Colorado, Illinois, Iowa, Kansas, Missouri, Nebraska, Oklahoma, and South Dakota, the Minnesota counties of Fillmore, Houston, Lincoln, Mower,

Murray, Nobles, Olmstead, Pipestone, Rock, and Winona, and the Wisconsin counties of Crawford, Grant, Green, Iowa, Lafayette, Richland, and Vernon.

The DFA witness testified that milk is being pooled on the Central order that is located in areas so far from the marketing area that such milk cannot and does not service the Class I needs of the Central market. The witness argued that milk from such distant areas was never intended to be a source of milk or a part of the Central order milkshed. According to the witness, large portions of the States of Minnesota and Wisconsin, characterized as a "distant" source of milk, had not historically been part of the supply area for the pre-reform marketing areas consolidated to form the Central milk marketing area. DFA argued that milk from these areas should be subject to the same performance standards as milk from other distant areas such as California or New Mexico.

According to the DFA witness, distant milk currently pooled on the Central order likely would not seek to be pooled on the order because the benefits of receiving a higher blend price for milk actually delivered to Central order pool plants would not offset the costs that would be incurred in transporting milk. In attempting to clarify what would be determined as being not distant, the DFA witness offered a method to distinguish between historical and distant milk supplies. Milk from counties associated with the Central market's pre-reform orders, which in 1998 had a daily supply volume in excess of one 50,000 pound load, would be included with milk considered to be local or in-area and not distant milk.

The principal problem confronting the Central order, as identified by the DFA witness, is that the distant milk receives the order's blend price without the burden of providing any regular and consistent service to the market beyond meeting a one-day touch-base standard. The witness argued that their proposal would set standards for milk from distant areas identical to local milk as a condition for receiving the order's blend price. Providing for this would not, according to the witness, discriminate, penalize, or establish any barriers to the pooling of milk on the Central order because the standards for local milk supplies and distant milk supplies would be the same. Support was given in testimony for establishing State units by witnesses representing Prairie Farms and Suiza. In their exceptions to the tentative final decision, DFA, *et al.*, reiterated their support for requiring performance on a unit basis by out of area milk.

A number of hearing participants opposed the adoption of the State unit pooling proposal, specifically the witnesses representing Upper Midwest cooperative associations. The Foremost Farms witness argued that adoption of the proposal would discourage efficient movements of milk to distributing plants and that such a provision would be inconsistent with the Agricultural Marketing Agreement Act (AMAA). This witness questioned why an organization with milk in the Central marketing area should be required to transport milk from distant areas in Minnesota and Wisconsin when the same organizations already have enough milk in the marketing area to satisfy the order's pooling standards. The witness indicated that this could result in forcing milk located within the marketing area to be hauled long distances to make room for the receipt of milk from distant locations.

The AMPI witness agreed with the Foremost witness' testimony and the witness representing the First District Association, both of which asserted that adopting State unit pooling for distant milk would destroy the benefits of pooling milk on the Central order. They held this opinion because the differences between Class I use and blend prices between the Central and Upper Midwest orders would narrow.

In post-hearing briefs, the Upper Midwest Cooperatives continued to express opposition to DFA's Proposal 7 (and to Proposals 1, 3, and 5). They characterized their opposition as establishing barriers to pooling on the basis of where milk is located through government-mandated transportation costs. As indicated above on proposals affecting pool plants and producer milk, their brief cited case law to advance their contention that such amendments would not be legal.

The record does not support the adoption of performance standards for pooling milk on the order on the basis of its location or as the proponent and supporters of Proposal 7 describe as State units. The marketing conditions of the Central order do not exhibit the need to require additional performance standards for milk located outside of the marketing area beyond those adopted in the tentative decision and proposed to be adopted by this final decision. Accordingly, all plants, regardless of location, may become eligible to have the milk of producers pooled on the Central order by meeting the performance standards specified for the various types of pool plants.

It is not important who provides the milk for Class I use or from where this milk originates. The order boundaries of the Central order were not intended to limit or define which producers, which milk of those producers, or which handlers could enjoy the benefits of being pooled on the Central order. What is important and fundamental to all Federal orders, including the Central order, is assuring an adequate supply of milk to meet the market's fluid needs, the proper identification of those producers who supply the market, and an equitable means of compensating those producers from the market's pool proceeds.

As discussed earlier on pooling standards for pool supply plant qualification, the provisions of the consolidated Federal milk orders were not intended to exclude any milk from being pooled on any order, as long as the fluid needs of a marketing area are being served by the milk. At the same time, reform of Federal milk orders did not adopt open pooling, but attempted to provide that each market pool would include the milk that actually is available for serving the fluid needs of the market. The determination of the boundaries of the Central marketing area was guided by the identification of the common characteristics of the predecessor orders that could be consolidated to form the marketing area and to promulgate a marketing order to provide for orderly marketing conditions. The consolidation of the pre-reform orders into the current Central order was not intended to determine those areas from which milk should, or should not, be obtained to serve the market. The adoption of revised pooling standards proposed to be adopted by this final decision should assure milk will be available for the Central market's fluid needs and therefore renders the proposed State unit provision unnecessary. Proposal 7 is not adopted.

2. Simultaneous Pooling of Milk on the Order and on a State-Operated Milk Order Providing for Marketwide Pooling

A proposal, published in the hearing notice as Proposal 8, seeking to exclude the same milk from being simultaneously pooled on the Central order and any State-operated order which provides for marketwide pooling, previously adopted on an interim basis, is proposed to be adopted on a permanent basis by this final decision. The practice of pooling milk on a Federal order and simultaneously pooling the same milk on a State-operated order also has come to be referred to as "double dipping." The Central order did not prohibit milk from being simultaneously pooled on the order and a State-operated order that

provides for marketwide pooling prior to adoption of the interim rule. Proposal 8 was offered by A-E, Swiss Valley Dairy, AMPI, Family Dairies USA, FDA, Foremost, Milwaukee Cooperative Milk Producers, Manitowoc Milk Producers Cooperative, and Mid-West Dairymen's Company.

The AMPI witness, testifying on behalf of all the proponents of Proposal 8, stressed that a producer is prohibited from pooling the same milk on more than one Federal order. The witness maintained that the same restriction should be applicable between the Central order and any other regulatory authority that provides for marketwide pooling and the marketwide distribution of pooling revenue. According to the witness, this has been occurring with milk pooled under the California State-operated milk order program since March 2001 and continues.

The AMPI witness explained that the Central order pooling provisions allow a one-time minimal delivery of a single day's milk production of California producers to a Central order pool plant to qualify all subsequent milk production of those California producers on the Central order by diversion. However, the witness stressed, all of the diverted California milk is pooled on the State's milk order program and receives the pricing benefits that the California State program offers its dairy farmers.

The AMPI witness testified that the volume of California milk pooled on the Central order has been increasing since March 2001 and is unnecessarily reducing milk prices paid to Central order producers. The witness presented calculations that indicated that the impact on the Central order blend price was an average reduction of about 2 cents per hundredweight, amounting to almost $2 million in the 7-month period of March through September 2001. The witness stated that due to the obvious injurious effect on Midwest dairy farmers, the Department should put an end to the practice of double dipping and to do so on an emergency basis.

A witness testifying on behalf of the proponents explained that the reason milk used in manufactured products is included in a marketwide pool is that such milk represents a reserve supply of milk that is available to serve fluid distributing plants when needed. Accordingly, the witness stressed that the same milk cannot be considered to be available as a supply for fluid distributing plants regulated under two different marketwide pools. The witness explained that Proposal 8 would not preclude the pooling of California milk or milk from any other jurisdiction that has marketwide pooling on the Central order. However, the proposal would preclude the pooling of the same milk on the Central order when also pooled under some other order, like the California State milk order that provides for marketwide pooling. In this regard, the witness stated that there is no doubt that California's milk order pooling plan provides for marketwide pooling, adding that those who say it does not probably are basing their conclusion on California's quota and overbase pricing for milk.

Several other proponent witnesses representing cooperative associations whose member milk is pooled under the Central order supported the adoption of the proposal to eliminate "double dipping" as did two distributing plant operators. Both of the fluid processor representatives argued that milk originating from outside of a 500-mile radius of any of the order's distributing plants is not realistically available to serve the Class I market on a regular basis.

The representative from Land O'Lakes was opposed to adopting Proposal 8. The witness asserted that, despite evidence to the contrary, California does not have a marketwide pool. The witness explained that producers are paid on the basis of a quota price for milk used in fluid and soft dairy product uses, while the basis for non-quota milk is manufacturing values. The returns to producers arising from quota uses of milk, stated the LOL witness, are not distributed marketwide.

The LOL witness proposed a modification to Proposal 8 that would eliminate "double dipping" only with respect to the "quota" portion of the milk associated with the Central order and allow simultaneous pooling of "overbase" California milk on both the California and Central orders. The witness expressed concern that elimination of the ability of the same milk to be pooled simultaneously under a Federal order and a State order with marketwide pooling would cause problems in dealing with milk supplies from other States—such as Pennsylvania and North Dakota—that are considering modifying provisions to include marketwide pooling.

For over 60 years, the Federal government has operated the milk marketing order program. The law authorizing the use of milk marketing orders, the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides authority for milk marketing orders as an instrument which dairy farmers may voluntarily opt to use to achieve objectives consistent with the AMAA and that are in the public interest. An objective of the AMAA, as it relates to milk, was the stabilization of market conditions in the dairy industry. The declaration of the AMAA is specific: "the disruption of the orderly exchange of commodities in interstate commerce impairs the purchasing power of farmers and destroys the value of agricultural assets which support the national credit structure and that these conditions affect transactions in agricultural commodities with a national public interest, and burden and obstruct the normal channels of interstate commerce."

The AMAA provides authority for employing several methods to achieve more stable marketing conditions. Among these is classified pricing, which entails pricing milk according to its use by charging processors differing milk prices on the basis of form and use. In addition, the AMAA provides for specifying when and how processors are to account for and make payments to dairy farmers. Plus, the AMAA requires that milk prices established by an order be uniform to all processors and that the price charged can be adjusted by, among other things, the location at which milk is delivered by producers (Section 608c(5)).

As these features and constraints provided for in the AMAA were employed in establishing prices under Federal milk orders, some important market stabilization goals were achieved. The most often recognized goal was the near elimination of ruinous pricing practices of handlers competing with each other on the basis of the price they paid dairy farmers for milk and in price concessions made by dairy farmers. The need for processors to compete with each other on the price they paid for milk was significantly reduced because all processors are charged the same minimum amount for milk, and processors had assurance that their competitors were paying the same value-adjusted minimum price.

The AMAA also authorizes the establishment of uniform prices to producers as a method to achieve stable marketing conditions. Marketwide pooling has been adopted in all Federal orders because of its superior features of providing equity to both processors and producers, thereby helping to prevent disorderly marketing conditions. A marketwide pool, using the mechanism of a producer settlement fund to equalize on the use-value of milk pooled on an order, meets that objective of the AMAA of ensuring uniform prices to producers supplying a market.

The California State milk order program clearly has objectives similar to

those of the AMAA. Exhibits presented at the hearing indicate that the California State order program has a long history in the development and evolution of a classified pricing plan and in providing equity in pricing to handlers and producers. Important as classified pricing has been in setting minimum prices, the issue of equitable returns to producers for milk could not be satisfied by only the use of a classified pricing plan. Some California plants had higher Class I fluid milk use than did others and some plants processed little or no fluid milk products. As with the Federal order system, producers who were fortunate enough to be located nearer Class I processors had been receiving a much larger return for their milk than producers shipping to plants with lower Class I use or to plants whose main business was the manufacturing of dairy products. Over time, disparate price differences grew between producers located in the same production area of the State which, in turn, led to disorderly marketing conditions and practices. These included producers who became increasingly willing to make price concessions with handlers by accepting lower prices and in paying higher charges for services such as hauling. Contracts between producers and handlers were the norm, but the contracts were not long-term (rarely more than a single month) and could not provide a stable marketing relationship from which the dairy farmers could plan their operations.

In 1967, the California State legislature passed and enacted the Gonsalves Milk Pooling Act. The law provided the authority for the California Agriculture Secretary to develop and implement a pooling plan, which was implemented in 1968. The California pooling plan provides for the operation of a State-wide pool for all milk that is produced in the State and delivered to California pool plants. It uses an equalization fund that equalizes prices among all handlers and sets minimum prices to be paid to all producers pooled on the State order. While the pooling plan details vary somewhat from pooling details under the Federal order program, the California pooling objectives are basically identical to those of the Federal program.

It is clear from this review of the Federal and the California State programs that the orderly marketing of milk is intended in both systems. Both plans provide a stable marketing relationship between handlers and dairy farmers and both serve the public interest. It would be incorrect to conclude that the Federal and California milk order programs have differing purposes when the means, mechanisms, and goals are so nearly identical. In fact, the Federal order program has precedent in recognizing that the California State milk order program has marketwide pooling. Under milk order provisions in effect prior to milk order reform, and under § 1000.76(c), a provision currently applicable to all Federal milk marketing orders, the Department has consistently recognized California as a State government with marketwide pooling.

Since the 1960's the Federal milk order program recognized the harm and disorder that resulted to both producers and handlers when the same milk of a producer was simultaneously pooled on more than one Federal order. When this occurs, producers do not receive uniform minimum prices, and handlers receive unfair competitive advantages. The need to prevent "double pooling" became critically important as distribution areas expanded and orders merged. The issue of California milk, already pooled under its State-operated program and able to simultaneously be pooled under a Federal order, has, essentially, the same undesirable outcomes that Federal orders once experienced and subsequently corrected. It is clear that the Central order should be amended to prevent the ability of milk to be pooled on more than one order when both orders employ marketwide pooling.

There are other State-operated milk order programs that provide for marketwide pooling. For example, New York operates a milk order program for the western region of that State. A key feature explaining why this State-operated program has operated for years alongside the Federal milk order program is the exclusion of milk from the State pool when the same milk is already pooled under a Federal order. Because of the impossibility of the same milk being pooled simultaneously, the Federal order program has had no reason to specifically address double dipping or double pooling issues, the disorderly marketing conditions that arise from such practice, or the primacy of one regulatory program over another. The other States with marketwide pooling similarly do not double-pool Federal order milk.

The record testimony and evidence show milk pooled on the Central order originating from places distant from the area. However, the tentative decision and this decision acknowledge that with the advent of the economic incentives for California milk to be pooled on the Central order and, at the same time, enjoy the benefits of being pooled under California's State-operated milk order program, more milk has come to be pooled on the order that has no legitimate association with the integral milk supplies of the Central order pool plants. The association was possible only through what some market participants describe as a regulatory loophole.

California milk should only be eligible for pooling on the Central order when it is not pooled on the California State order and when it meets the Central's pooling standards. It is the ability of milk from California to "double dip" that is a source of disorderly marketing conditions and for much more milk being pooled on the Central order.

Proposal 8 offers a reasonable solution for adding a prohibition on allowing the same milk to draw pool funds from Federal and State marketwide pools simultaneously. It is consistent with the current prohibition against allowing the same milk to participate in two Federal order pools simultaneously. Adoption of Proposal 8 in both the tentative and this final decision will not establish any barrier to the pooling of milk from any source that actually demonstrates performance in supplying the Central market's need for milk used in Class I.

3. Rate of Partial Payments to Producers

A proposal that would change the rate of the partial payment to producers and cooperatives for milk delivered during the first 15 days of the month to the lowest class price for the prior month times 110 percent, published in the hearing notice as Proposal 6, was not adopted in the tentative decision and is not proposed to be adopted in this final decision. Therefore, the partial payment rate will remain as currently provided for by the order—at the lowest class price for the prior month.

This proposal offered by DFA intends to improve producer cash flow by bringing the partial payment into a closer relationship to the final blend price and to have the partial payment more closely reflect the value of the milk delivered to handlers during the first 15 days of the month. According to the DFA *et al.*, witness, the partial payment rate has declined as a share of the final payment since the consolidation of the Central market under milk order reform.

The DFA, *et al.*, witness stressed that producers need a more consistent cash flow than they currently are experiencing. The witness acknowledged that overpayment in the partial payment could be a problem if the producer does not have enough funds coming in the month's final

payment to cover the producer's authorized deductions. The witness noted that the existing $1.00 per hundredweight premiums above minimum order prices enjoyed by Central order producers are probably adequate to cover any overpayments made to producers.

Data provided by the DFA, *et al.*, witness sought to indicate that since order reform on January 1, 2000, the amount of the partial payment received by producers relative to the total payment for milk each month has been reduced when compared to the pre-reform orders. The analysis consisted of approximating a weighted average blend price as a proxy for a comparable order from the pre-reform order's information. The analysis, explained the witness, is a comparison of the current month's blend price with the lowest of the two lower class prices of the prior month. For the entire 56-month period, the witness stated, the average of the blend price minus the lowest class price was $1.59; the first 36 months the average was $1.52; and the last 20 months the average was $1.75. The witness concluded that the main concern revealed by this data is that the spread is widening. After evaluating several differing partial payment rates, the witness concluded that a five percent inflation at the prior month's lowest class price was a reasonable adjustment to approximating the spread that existed over the first 36-month period.

The DFA, *et al.*, witness also testified that there are a wide variety of payment dates and payment levels among the 11 orders. There are currently, said the DFA witness, three groupings: the Southern orders' payments are a percentage of the prior month's blend price adjusted for location; the Northwest and Central orders set the advanced payment at the prior month's lowest class price; and the Western orders use an add-on percentage applied to the prior month's lowest class price. The witness also noted that while most orders have one partial payment, the Florida order has two partial payments before a final payment is due.

Several individual dairy farmers also testified that their cash flow situations have deteriorated since the current partial payment rate provisions became effective. In this regard, all dairy farmers testified in support of increasing the rate of partial payment.

A representative of Leprino Foods, a national cheese-processing firm, testified that USDA should reject Proposal 6 since it does not appropriately address the issue it purports to remedy and it violates the minimum pricing concepts for manufacturers, but not because there is lack of need for an amendment. The Leprino witness testified that the cause of the disparity between the partial and final payment rates is a combination of a failure to blend the pool's higher use values into the partial payment and the use of a price level from the previous month rather than the current month. This witness argued that rather than addressing these problems in the proposal, the proposed increase in the rate merely transfers the burden to processors. The witness stated that the proposal violates minimum pricing principles by setting the partial rate above the equivalent market value for Classes III and IV, with the resulting differences in partial payment rates between orders causing disparate economic positions for competing Class III and IV handlers in different orders.

The witness from Leprino concluded that the most appropriate approach to address the root cause of the disparity between the partial and final payment would be the implementation of a similar minimum payment in pooling structure for the partial payment that exists in the final payment. However, the witness did not propose its adoption because such a remedy would require significant administration in terms of plant reporting, report analysis, pool calculation, and movement of funds into and out of the pool than the current system of minimum payment at the lowest class price. This concept was not properly noticed, the witness argued, and a more comprehensive review of all provisions of the order that would be affected and the magnitude of the impact would be necessary.

The Department reconstructed noticed data that recreated the intended analysis presented by witnesses. The Department's reconstruction relied, in part, on the partial payment provisions of the pre-reform orders. The Department used the previous month's Class III price of the pre-reform orders as the lowest class price because the Class III price was used then to set the rate of partial payment. In this regard, comparing partial payment relationship outcomes using actual historical provisions provided for comparing pre- and post-reform partial payment relationships as to the total payment for milk in a month.

Even with the limited amount of data available since the implementation of order reform, the Department's comparison of pre- and post-reform partial payment relationships to total payments does appear to support the observations made by the DFA witness. However, this initial observation alone is not a sufficient basis for changing the rate of the partial payment. Some significant differences in certain key assumptions were made by the proponents of Proposal 6 from those assumptions used by the Department in comparing pre- and post-reform time periods.

Also of concern is the limitation inherent in comparing a 36-month period to one of only 21 months. The 36-month time period shows price trends rising and falling, while the 21-month time shows a period of generally an upward trend in prices. This may suggest that there has not yet been a sufficient period of elapsed time to infer the impact of downward trends in prices and the possible effect on the relationship between the partial and final payments to producers.

With regard to Leprino's concern about uniformity of partial payment rates between orders, the current milk orders have a variety of partial payment rates. Several orders use a partial payment rate based on a percentage of the previous month's blend price, and the Florida order, for example, provides for two partial payments. Additionally, the Western and Arizona-Las Vegas orders, both of which pool significant volumes of milk used in cheese, provide for partial payment rates of 120 and 130 percent, respectively, of the previous month's lowest class price.

There may be times when the partial payment rate exceeds the balance due for the month. In this regard, handler interests point to this outcome as requiring them to pay more for milk for part of the month than its actual total value for the month. It is appropriate to note that this exact outcome occurred several times during the pre-reform 36-month period used by DFA. This decision finds the concerns of handlers in this regard as unpersuasive.

Deductions authorized by producers are more often made in the final payments for milk. There could be times when the amount deducted from the final payment exceeds the amount of the final payment. If the deductions are high enough for this to happen, it would be reasonable to conclude that producers desiring to smooth their cash flow would opt to allow a larger portion of their deductions to be made with receipt of the partial payment, as the order allows.

The partial payment provision in Federal orders is a minimum requirement placed on handlers to pay producers for milk delivered. It is notable that cooperatives and handlers are not restricted to paying only one partial payment at the rate specified in the order; partial payments for milk can be made more often. Additionally,

cooperatives and handlers are also at liberty to negotiate agreements for more frequent billings for milk and payments for milk above the minimum established by the order. As made evident by the record, more flexible partial payment options are available to both producers and handlers than relying solely on changing the minimum payment provisions.

As the Leprino witness noted, DFA's proposal does not incorporate or blend the higher-valued uses of milk in their analysis. In response to this observation, the Department compared the relationships between the partial and total payment using various percentages of the Central orders's previous month's blend price. Interestingly, if the desired objective is to more closely approximate the partial payment rate using the 36-month period before order reform, the proponents' 105 percent rate of the previous month's lowest class price does seem to best accomplish this. Nevertheless, the same limitations and concerns mentioned above prevent a finding that the Central order's rate for partial payment should be increased.

The tentative decision and this final decision find that the cash flow concerns of producers may be better served by the adoption of other proposals considered in this proceeding. Other amendments adopted in this decision affecting the pooling of milk in the Central order will likely reduce the erosion in the blend price received by Central producers. It is expected that higher blend prices would result from more accurately identifying those producers and the milk of those producers who actually serve the Class I needs of the market. Similarly, the relationship between the partial payment and the total price received by producers may change by the adoption of these pooling standard amendments. Accordingly, a finding that the rate of partial payment to producers by handlers should be increased is not supported by the evidence contained in the record of this proceeding.

4. Determining Whether Emergency Marketing Conditions Existed Warranting the Omission of a Recommended Decision and the Opportunity To File Written Exceptions

Evidence presented at the hearing established that the pooling standards of the Central order were inadequate and were resulting in the erosion of the blend price received by producers serving the Class I needs of the market and should be changed on an emergency basis. The unwarranted erosion of such producers' blend prices stems from improper performance standards as they relate to pool supply plants and the lack of limits for pool plant diversions to pool and nonpool plants. These shortcomings of the pooling provisions have allowed milk that does not provide a reasonable or consistent service to meeting the needs of the Class I market to be pooled on the Central order. Consequently, it was determined that emergency marketing conditions existed, and the issuance of a recommended decision was therefore omitted. The record clearly established a basis, as noted above, for amending the order on an interim basis and provided an opportunity to file written exceptions to the proposed amended order.

Evidence presented at the hearing also established that California milk pooled simultaneously on the California State-operated order and the Central Federal order, a practice commonly referred to as double dipping, rendered the Central Federal milk order unable to establish prices uniform to producers and to handlers and also has contributed to the unwarranted erosion of milk prices to Central producers.

In view of this situation, an interim final rule amending the order was issued as soon as the procedures were completed to determine the approval of producers.

Rulings on Proposed Findings and Conclusions

Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions, and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General Findings

The findings and determinations hereinafter set forth supplement those that were made when the Central order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the tentative marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on Exceptions

In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing Agreement and Order

Annexed hereto and made a part hereof is one document: A Marketing Agreement regulating the handling of milk. The Order amending the order regulating the handling of milk in the Central marketing area was approved by producers and published in the **Federal Register** on February 12, 2003 (68 FR 7070) as an Interim Final Rule. Both of these documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, that this entire final decision and the Marketing Agreement annexed hereto be published in the **Federal Register**.

Determination of Producer Approval and Representative Period

May 2003 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the order, as amended in the Interim Final Rule published in the **Federal Register** on February 12, 2003 (68 FR 7070), regulating the handling of milk in the Central marketing area is approved or favored by producers, as defined under the terms of the order (as amended and as hereby proposed to be amended) who during such

representative period were engaged in the production of milk for sale within the aforesaid marketing area.

List of Subjects in 7 CFR Part 1032

Milk marketing orders.

Dated: August 18, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Milk in the Central Marketing Area

This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the order was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

(a) *Findings.* A public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central marketing area. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR Part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing area. The minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Central marketing area shall be in conformity to and in compliance with the terms and conditions of the order, as amended, and as hereby amended, as follows:

The provisions of the order amending the order contained in the interim amendment of the order issued by the Administrator, Agricultural Marketing Service, on February 6, 2003, and published in the **Federal Register** on February 12, 2003 (68 FR 7070), are adopted without change and shall be and are the terms and provisions of this order.

[This marketing agreement will not appear in the Code of Federal Regulations]

Marketing Agreement Regulating the Handling of Milk in Certain Marketing Areas

The parties hereto, in order to effectuate the declared policy of the Act, and in accordance with the rules of practice and procedure effective thereunder (7 CFR part 900), desire to enter into this marketing agreement and do hereby agree that the provisions referred to in paragraph I hereof as augmented by the provisions specified in paragraph II hereof, shall be and are the provisions of this marketing agreement as if set out in full herein.

I. The findings and determinations, order relative to handling, and the provisions of §§ 1032.1 to 1032.86, all inclusive, of the order regulating the handling of milk in the Central marketing area (7 CFR PART 1032) which is annexed hereto; and

II. The following provisions: Record of milk handled and authorization to correct typographical errors.

(a) Record of milk handled. The undersigned certifies that he/she handled during the month of _____ 2001, _____ hundredweight of milk covered by this marketing agreement.

(b) Authorization to correct typographical errors. The undersigned hereby authorizes the Deputy Administrator, or Acting Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to correct any typographical errors which may have been made in this marketing agreement.

Effective date. This marketing agreement shall become effective upon the execution of a counterpart hereof by the Secretary in accordance with Section 900.14(a) of the aforesaid rules of practice and procedure.

In Witness Whereof, The contracting handlers, acting under the provisions of the Act, for the purposes and subject to the limitations herein contained and not otherwise, have hereunto set their respective hands and seals.

Signature

By (Name) _____

(Title) _____

(Address) _____

(Seal)

Attest

[FR Doc. 03–21527 Filed 8–26–03; 8:45 am]

BILLING CODE 3410–02–P

Federal Register

Wednesday,
August 27, 2003

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI93

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks from which the States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 2003–04 migratory bird hunting seasons. Early seasons are those that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations.

DATES: This rule takes effect on August 27, 2003.

ADDRESSES: States and Territories should send their season selections to: Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms MBSP–4107–ARLSQ, 1849 C Street, NW., Washington, DC 20240. You may inspect comments during normal business hours at the Service's office in room 4107, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2003

On May 6, 2003, we published in the **Federal Register** (68 FR 24324) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2002–03 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 23, 2003, we published in the **Federal Register** (68 FR 37362) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2003–04 duck hunting season. The June 23 supplement also provided detailed information on the 2003–04 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) meetings. On June 18 and 19, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2003–04 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2003–04 regular waterfowl seasons. On July 17, we published in the **Federal Register** (68 FR 42546) a third document specifically dealing with the proposed frameworks for early-season regulations. This document is the fourth in a series of proposed, supplemental, and final rulemaking documents. It establishes final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 2003–04 season. These selections will be published in the **Federal Register** as amendments to §§ 20.101 through 20.107, and § 20.109 of title 50 CFR part 20.

Review of Public Comments

The preliminary proposed rulemaking, which appeared in the May 6 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The public comment period for early-season issues ended on July 30, 2003. We have considered all pertinent comments received. Comments are summarized below and numbered in the order used in the May 6 **Federal Register**. We have included only the numbered items pertaining to early-seasons issues for which we received comments. Consequently, the issues do not follow in direct numerical or alphabetical order. We received recommendations from all Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the Councils' annual review of the frameworks, we assume support for continuation of last year's frameworks for items for which we received no recommendation. Council recommendations for changes are summarized below.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) General Harvest Strategy, (B) Regulatory Alternatives, (C) Zones and Split Seasons, and (D) Special Seasons/Species Management. The categories correspond to previously published issues/discussion, and only those containing substantial recommendations are discussed below.

D. Special Seasons/Species Management

i. September Teal Seasons

Council Recommendations: The Atlantic Flyway Council recommended that States that have participated in the recent experimental teal season (Delaware, Maryland, Virginia, North Carolina, South Carolina, and Georgia) be offered an operational September teal season beginning in 2003. They recommend that the season run for nine consecutive days during September 1–30, 2003, with a bag limit not to exceed four teal, whenever the breeding population estimate for blue-winged teal exceeds 3.3 million in the traditional survey area. Delaware, Georgia, North Carolina, and Virginia may have shooting hours between one-half hour before sunrise and sunset, while shooting hours for Maryland and South Carolina may be between sunrise and sunset. In a subsequent recommendation in response to the July 17 proposed rule, the Council recommended the Service reverse its proposal to discontinue September teal seasons in North Carolina and South Carolina.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the 16-day September teal seasons continue to be used when the blue-winged teal breeding population is at or above 4.7 million, based on the recently completed report, "Assessment of 16-Day September Teal Seasons 1998–2000 in the Central and Mississippi Flyways."

The Central Flyway Council recommended that Nebraska's experimental September teal season become operational.

Written Comments: The North Carolina Wildlife Resources Commission and the South Carolina Department of Natural Resources requested we reverse our proposal to discontinue September teal seasons in North Carolina and South Carolina.

Both agencies cited inconsistencies in the application of criteria for these seasons, the lack of a detrimental impact upon nontarget species from these seasons, the performance of hunters in both States (as measured by the surveys) may not have exceeded the 0.25 attempt rate at nontargets, and the relatively low incidence of available nontarget species. In addition, six individuals from South Carolina requested a reconsideration of the Service's proposal to discontinue September teal seasons in North Carolina and South Carolina.

Service Response: In 1998, we approved the establishment of an experimental 9-day special September teal season in the Atlantic Flyway (63 FR 46124). Memorandums of Understanding (MOUs) were developed and implemented between the Service and all six participating States to stipulate the guidelines and implementation of these seasons. Because of the desire to assess these seasons on a Flyway-wide basis, we strongly encouraged as many of the States as possible to participate in the experimental evaluation since sampling requirements were based on the number of States involved. In 1999, the MOUs were revised to also include individual State-evaluation criteria.

In 2001, the Atlantic Flyway Council requested operational season status for the four States (Delaware, Georgia, Maryland, and Virginia) that met the individual State criteria. During the comment period, North Carolina and South Carolina requested that we reconsider our proposed decision to discontinue their September season, based upon data-analysis inconsistencies, and requested further analysis. We decided to continue the 9-day special season experimentally in all six States until a final report was submitted (66 FR 44010). The seasons were continued again on the same basis in 2002.

In March 2003, the Atlantic Flyway Council submitted its final report and requested approval of these seasons as operational for all six States in the experiment. Based on State-specific criteria that were established and approved in the MOUs by the individual participating States and the Service, we proposed in the July 17 **Federal Register** operational September teal seasons in Delaware, Virginia, Maryland, and Georgia. We further proposed to discontinue seasons in North Carolina and South Carolina, based on criteria that were not fully addressed in the MOU, particularly that State-specific nontarget attempt rates by hunters exceeded the 25 percent criterion over the 3-year experimental period. During the comment period, North Carolina and South Carolina submitted supplementary information related to hunter performance and the availability of nontarget species. Upon further review of the MOUs, we recognized that criteria governing the evaluation of these seasons were presented at both the State and Flyway level, while the original design for their evaluation was based only on a Flyway-wide approach. Given the origin of these criteria and subsequent ambiguity in the MOUs, we believe it is appropriate to apply the hunter-performance criteria at the Flyway level. Consequently, in view of the additional information submitted by the States, and the application of these data at the Flyway level, we are granting operational status to these seasons. Finally, with regard to other ongoing or future MOUs involving similar cooperative activities, we will invite additional participation and review by both Flyway Council and State personnel to ensure that all criteria used to evaluate program success are unambiguous and clearly understood by all parties. Further, any changes to MOU criteria will be affected only through complete replacement of the MOU, rather than amendment.

Regarding Nebraska's special teal season, we do not concur with the Central Flyway Council's recommendation for operational status of this season at this time. We believe that the season should remain experimental until a final report on the experiment is completed.

ii. September Teal/Wood Duck Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the bag limit for Florida's special September wood duck and teal season remain at 4 wood ducks and teal in the aggregate.

Service Response: In 2001, we granted operational status to September teal/wood duck seasons in the States of Florida, Kentucky, and Tennessee. The September teal/wood duck season in all three States is a 5-day season, with a daily bag limit of four birds, no more than two of which can be wood ducks. We do not support the Council's request for a 4-wood duck daily bag limit in Florida, as previously existed. This change was a condition of grandfathering these special seasons. Additionally, we have concerns about our ability to track the status of Florida's wood duck population and the low hen wood duck survival rates noted during the recently completed Monitoring Initiative.

vii. Youth Hunt

Council Recommendations: The Atlantic Flyway Council recommended that the Service allow all States the option of holding "youth waterfowl hunt days" on nonconsecutive hunting days, while maintaining the requirement that they must be held on non-school days.

Service Response: In 2000, in light of continuing interest from the Flyway Councils, we decided to expand the special youth waterfowl hunt from 1 day to 2 consecutive days. Anecdotal data suggested that the hunt is very popular and has provided an excellent opportunity to introduce youth hunters to the sport of waterfowling and waterfowl and wetland conservation. Expansion of the special hunt to 2 consecutive days was implemented to help reduce travel difficulties and scheduling conflicts inherent with the 1-day hunt previously implemented. In 2001, the Service concurred with the Atlantic Flyway Council's recommendation to expand the youth hunt to 2 consecutive hunting days because Sunday hunting is prohibited in some States in the Flyway. We do not support further expansion of the special youth hunt to 2 nonconsecutive hunting days. Further separation of hunting days would be inconsistent with the purpose identified earlier by the Flyway Councils for expanding the special hunt to 2 days, which was to reduce travel difficulties and scheduling conflicts inherent with the former 1-day hunt.

2. Sea Ducks

During last year's season, we were made aware of a conflict between the framework closing date for ducks and that for sea ducks. The latest closing dates for ducks was extended to the last Sunday in January, while the closing date for sea ducks remained at January 20. To avoid the complications of sea ducks in the regular-duck-season bag, we have changed the sea duck closing date to January 31.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the Service increase the special September Canada goose hunting season bag limit to 8, with no possession limit, beginning with the 2003–04 hunting season. They further recommended that the framework closing date for the special September Canada goose season in North Carolina's Northeast Hunt Zone be extended from September 20 to September 30. They also recommended that the September 1–30 framework

dates for Rhode Island's September resident Canada goose season be made operational.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended a 1-year extension to the experimental early Canada goose season in Huron, Tuscola, and Saginaw counties in Michigan. Further, the Committees recommended that we grant operational status to Minnesota's Special September Canada Goose Season extension (16–22 September).

The Central Flyway Council recommended that South Dakota's 3-year experimental September Canada goose season (September 16–30) become operational for all of eastern South Dakota (east of the Missouri River), beginning in 2003.

The Pacific Flyway Council recommended that Wyoming's special-season framework for the Rocky Mountain population of western Canada geese consist of an 8-day season during September 1–15 in Bear River, Salt River, Farson-Eden Area, Bridger Valley, and Teton Counties, and the Little Snake River drainage portion of Carbon County. All participants must have a valid State permit for the special season. The number of permits may not exceed 240 in the Bear River, Salt River, Farson-Eden Area, and Bridger Valley area, and 20 permits in the Little Snake River drainage portion of Carbon County. The daily bag limit would be 3, with season and possession limits of 6. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

Service Response: We concur with the recommendations from the Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council and the Pacific Flyway Council. We also concur with the Atlantic Flyway Council's request regarding North Carolina and Rhode Island. Regarding the recommendation to increase the daily bag limit in the September Canada goose seasons from 5 to 8, we concur, but believe that the possession limit should be 16.

Regarding South Dakota's experimental September Canada goose season, we believe the season should remain experimental until a final report is prepared, approved by the Flyway Council, and transmitted to us. This is consistent with the normal procedures experimental season approval. We do not concur with the recommendation for operational status of any areas outside the current experimental area. Special seasons after September 15 in other portions of the State initially must be experimental.

B. Regular Seasons

Council Recommendations: The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2003.

Service Response: We concur.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended the 2002 Rocky Mountain population of sandhill cranes harvest allocation be 668 birds as proposed by the Pacific Flyway.

Service Response: We concur.

20. Puerto Rico

Written Comments: The Puerto Rico Department of Natural and Environmental Resources requested increasing the aggregate dove daily bag limit from 10 to 15, including no more than 3 mourning doves.

Service Response: We concur.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under **ADDRESSES.** Additionally, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. We plan to begin the public scoping process in 2005.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *." Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES.**

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, and then updated in 1998. We will update again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 1998 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $50 to $192 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES.**

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996 and 1998 and will be updated in 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 1998 Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in

2003. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES.**

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 10/31/2004). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Thus, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act (MBTA). Annually, we prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. We develop the frameworks in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will ultimately make season selections, thereby having an influence on their own regulations. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Further, any State or Tribe may be more restrictive than the Federal frameworks at any time. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season and option selections from these officials, we will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 2003–04 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2003–04 hunting season are authorized under 16 U.S.C.

703–712 and 16 U.S.C. 742 a-j, Pub. L. 106–108.

Dated: August 8, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 2003–04 Early Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following frameworks, which prescribe season lengths, bag limits, shooting hours, and outside dates, within which States may select for certain migratory game birds between September 1, 2003, and March 10, 2004.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions:

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, and Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Florida, Georgia, Maryland, North Carolina, South Carolina, and Virginia.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, Nebraska (part), New Mexico (part), Oklahoma, and Texas. The season in Nebraska is experimental.

Hunting Seasons and Daily Bag Limits: Not to exceed 16 consecutive days, except in the Atlantic Flyway and Nebraska in the Central Flyway, where the season may not exceed 9 consecutive days. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset except in Maryland, where the hours are from sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida, Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks that are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 20). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Days

Outside Dates: States may select two consecutive days (hunting days in Atlantic Flyway States with compensatory days) per duck-hunting zone, designated as "Youth Waterfowl Hunting Days," in addition to their regular duck seasons. The days must be held outside any regular duck season on a weekend, holidays, or other non-school days when youth hunters would have the maximum opportunity to participate. The days may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limits may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as those allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult may not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 31.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a

daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons: Canada goose seasons of up to 15 days during September 1–15 may be selected for the Eastern Unit of Maryland and Delaware. Seasons not to exceed 30 days during September 1–30 may be selected for the Northeast Hunt Unit of North Carolina, New Jersey, and Rhode Island. Except for experimental seasons described below, seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 8 Canada geese.

Experimental Seasons: Experimental Canada goose seasons of up to 25 days during September 1–25 may be selected for the Montezuma Region of New York and the Lake Champlain Region of New York and Vermont. Experimental seasons of up to 30 days during September 1–30 may be selected by Connecticut, Florida, Georgia, New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 8 Canada geese.

Mississippi Flyway

General Seasons: Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in Minnesota (except in the Northwest Goose Zone), where a season of up to 22 days during September 1–22 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

An experimental Canada goose season of up to 10 consecutive days during September 1–10 may be selected by Michigan for Huron, Saginaw, and Tuscola Counties, except that the Shiawassee National Wildlife Refuge, Shiawassee River State Game Area Refuge, and the Fish Point Wildlife Area Refuge will remain closed. The daily bag limit may not exceed 2 Canada geese.

Central Flyway

General Seasons: Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons: An experimental Canada goose season of up to 12 consecutive days during September 16–27 may be selected by South Dakota. The daily bag limit may not exceed 5 Canada geese.

An experimental Canada goose season of up to 9 consecutive days during September 22–30 may be selected by Oklahoma. The daily bag limit may not exceed 5 Canada geese.

Pacific Flyway

General Seasons: California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Colorado may select a 9-day season during the period of September 1–15. The daily bag limit is 3.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone in Oregon, a 15-day season may be selected during the period September 1–20. Daily bag limits may not exceed 5 Canada geese.

Idaho may select a 7-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All participants must have a valid State permit, and the total number of permits issued is not to exceed 110 for this zone. The daily bag limit is 2.

Idaho may select a 7-day Canada goose season during the period September 1–15 in Nez Perce County, with a bag limit of 4.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 5 Canada geese.

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.
2. All participants must have a valid State permit for the special season.
3. A daily bag limit of 3, with season and possession limits of 6, will apply to the special season.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 16 in Wisconsin and Michigan. Season lengths, bag and possession limits, and other provisions will be established during the late-season regulations process.

Sandhill Cranes

Regular Seasons in the Central Flyway:

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 37 consecutive days may be selected in designated portions of North Dakota (Area 2) and Texas (Area 2). Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes, except 2 sandhill cranes in designated portions of North Dakota (Area 2) and Texas (Area 2).

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane

hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting in their possession while hunting.

Special Seasons in the Central and Pacific Flyways: Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population (RMP) subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

1. In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived, and 100 percent of the harvest will be assigned to the RMP quota;

2. In Arizona, the annual requirement for monitoring the racial composition of the harvest is changed to once every 3 years;

3. In Idaho, seasons are experimental, and the requirement for monitoring the racial composition of the harvest is waived; 100 percent of the harvest will be assigned to the RMP quota; and

4. In New Mexico, the season in the Estancia Valley is experimental, with a requirement to monitor the level and racial composition of the harvest; greater sandhill cranes in the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 18) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks, and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Zoning: Seasons may be selected by zones established for duck hunting.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits: Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

Zoning: Seasons may be selected by zones established for duck hunting.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 1 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 20) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Eastern Region and 45 days in the Central Region. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with a daily bag limit of 2 band-tailed pigeons.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 3.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, and Louisiana may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15 mourning and white-winged doves in the aggregate.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods.

Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Daily bag limits are aggregate bag limits with mourning, white-winged, and white-tipped doves (see white-winged dove frameworks for specific daily bag limit restrictions).

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits: Idaho, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves.

Nevada—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves, except in Clark and Nye Counties where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

Arizona and California—Not more than 60 days, which may be split between two periods, September 1–15 and November 1-January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is 10 mourning doves. In California, the daily bag limit is 10 mourning doves, except in Imperial, Riverside, and San Bernardino Counties where the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits: Except as shown below, seasons must be concurrent with mourning dove seasons.

Eastern Management Unit

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the remainder of the Eastern Management Unit, the season is closed.

Central Management Unit

In Texas, the daily bag limit may not exceed 12 mourning, white-winged, and white-tipped doves (15 under the alternative) in the aggregate, of which no more than 2 may be white-tipped doves. In addition, Texas also may select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

In the remainder of the Central Management Unit, the daily bag limit may not exceed 12 (15 under the alternative) mourning and white-winged doves in the aggregate.

Western Management Unit

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In the remainder of the Western Management Unit, the season is closed.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession Limits: Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone, they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession and may not include sea ducks.

In addition to the basic duck limits, Alaska may select sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers.

Light Geese—A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit-only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required. Hunters must check in and check out. The bag limit is 1 daily and 1 in possession. The season will close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.

3. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—Bag and possession limits of 2 and 4, respectively, in the Southeast, Gulf Coast, Kodiak, and Aleutian Zones, and Unit 17 in the Northern Zone. In the remainder of the Northern Zone (outside Unit 17), bag and possession limits of 3 and 6, respectively.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In Game Management Unit (GMU) 17, an experimental season may be selected. No more than 200 permits may be issued for this during the experimental season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season. An evaluation of the season must be completed, adhering to the guidelines for experimental seasons as described in the Pacific Flyway Management Plan for the Western Population of (tundra) Swans.

4. In Game Management Unit (GMU) 18, no more than 500 permits may be issued during the operational season.

Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 22, no more than 300 permits may be issued during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

6. In GMU 23, no more than 300 permits may be issued during the operational season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 15 Zenaida, mourning, and white-winged doves in the aggregate, of which not more than 3 may be mourning doves. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe:

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons:

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks:

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons must not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds must not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-Winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Georgia

Northern Zone—That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone—Remainder of the State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the

Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Nevada

White-Winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

South Zone—Remainder of the State.

Maryland

Eastern Unit—Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Anne's, St. Mary's, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Western Unit—Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince George's Counties west of I–95.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge will be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: That portion of Vermont west of the Lake Champlain Zone and eastward of a line extending from the Massachusetts border at Interstate 91; north along Interstate 91 to U.S. 2; east along U.S. 2 to VT 102; north along VT 102 to VT 253; north along VT 253 to the Canadian border.

Connecticut River Zone: The remaining portion of Vermont east of the Interior Zone.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone—Cook, Du Page, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois

Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Cedar Rapids/Iowa City Goose Zone. Includes portions of Linn and Johnson Counties bounded as follows: Beginning at the intersection of the west border of Linn County and Linn County Road E2W; thence south and east along County Road E2W to Highway 920; thence north along Highway 920 to County Road E16; thence east along County Road E16 to County Road W58; thence south along County Road W58 to County Road E34; thence east along County Road E34 to Highway 13; thence south along Highway 13 to Highway 30; thence east along Highway 30 to Highway 1; thence south along Highway 1 to Morse Road in Johnson County; thence east along Morse Road to Wapsi Avenue; thence south along Wapsi Avenue to Lower West Branch Road; thence west along Lower West Branch Road to Taft Avenue; thence south along Taft Avenue to County Road F62; thence west along County Road F62 to Kansas Avenue; thence north along Kansas Avenue to Black Diamond Road; thence west on Black Diamond Road to Jasper Avenue; thence north along Jasper Avenue to Rohert Road; thence west along Rohert Road to Ivy Avenue; thence north along Ivy Avenue to 340th Street; thence west along 340th Street to Half Moon Avenue; thence north along Half Moon Avenue to Highway 6; thence west along Highway 6 to Echo Avenue; thence north along Echo Avenue to 250th Street; thence east on 250th Street to Green Castle Avenue; thence north along Green Castle Avenue to County Road F12; thence west along County Road F12 to County Road W30; thence north along County Road W30 to Highway 151; thence north along the Linn-Benton County line to the point of beginning.

Des Moines Goose Zone. Includes those portions of Polk, Warren, Madison and Dallas Counties bounded as follows: Beginning at the intersection of Northwest 158th Avenue and County Road R38 in Polk County; thence south along R38 to Northwest 142nd Avenue; thence east along Northwest 142nd Avenue to Northeast 126th Avenue; thence east along Northeast 126th Avenue to Northeast 46th Street; thence south along Northeast 46th Street to Highway 931; thence east along Highway 931 to Northeast 80th Street; thence south along Northeast 80th Street to Southeast 6th Avenue; thence west along Southeast 6th Avenue to Highway 65; thence south and west along Highway 65 to Highway 69 in Warren County; thence south along Highway 69 to County Road G24; thence west along County Road G24 to Highway 28; thence southwest along Highway 28 to 43rd Avenue; thence north along 43rd Avenue to Ford Street; thence west along Ford Street to Filmore Street; thence west along Filmore Street to 10th Avenue; thence south along 10th Avenue to 155th Street in Madison County; thence west along 155th Street to Cumming Road; thence north along Cumming Road to Badger Creek Avenue; thence north along Badger Creek Avenue to County Road F90 in Dallas County; thence east along County Road F90 to County Road R22; thence north along County Road R22 to Highway 44; thence east along Highway 44 to County Road R30; thence north along County Road R30 to County Road F31; thence east along County Road F31 to Highway 17; thence north along Highway 17 to Highway 415 in Polk County; thence east along Highway 415 to Northwest 158th Avenue; thence east along Northwest 158th Avenue to the point of beginning.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities of Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid

Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Southeast Goose Zone—That part of the State within the following described boundaries: beginning at the intersection of U.S. Highway 52 and the south boundary of the Twin Cities Metro Canada Goose Zone; thence along the U.S. Highway 52 to State Trunk Highway (STH) 57; thence along STH 57 to the municipal boundary of Kasson; thence along the municipal boundary of Kasson County State Aid Highway (CSAH) 13, Dodge County; thence along CSAH 13 to STH 30; thence along STH 30 to U.S. Highway 63; thence along U.S. Highway 63 to the south boundary of the State; thence along the south and east boundaries of the State to the south boundary of the Twin Cities Metro Canada Goose Zone; thence along said boundary to the point of beginning.

Five Goose Zone—That portion of the State not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Southeast Goose Zone.

West Zone—That portion of the State encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, DeKalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington , and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Early-Season Subzone B—The remainder of the State.

Central Flyway

Kansas

September Canada Goose Kansas City/Topeka Unit—That part of Kansas bounded by a line from the Kansas-Missouri State line west on K–68 to its junction with K–33, then north on K–33 to its junction with U.S.–56, then west on U.S.–56 to its junction with K–31, then west-northwest on K–31 to its junction with K–99, then north on K–99 to its junction with U.S.–24, then east on U.S.–24 to its junction with K–63, then north on K–63 to its junction with K–16, then east on K–16 to its junction with K–116, then east on K–116 to its junction with U.S.–59, then northeast on U.S.–59 to its junction with the Kansas-Missouri line, then south on the Kansas-Missouri line to its junction with K–68.

September Canada Goose Wichita Unit—That part of Kansas bounded by a line from I–135 west on U.S. 50 to its junction with Burmac Road, then south on Burmac Road to its junction with 279 Street West (Sedgwick/Harvey County line), then south on 279 Street West to its junction with K–96, then east on K–96 to its junction with K–296, then south on K–296 to its junction with 247 Street West, then south on 247 Street West to its junction with U.S.–54, then west on U.S.–54 to its junction with 263 Street West, then south on 263 Street West to its junction with K–49, then south on K–49 to its junction with 90 Avenue North, then east on 90 Avenue North to its junction with KS–55, then east on KS–55 to its junction with KS–15, then east on KS–15 to its junction with U.S.–77, then north on U.S.–77 to its junction with Ohio Street, then north on Ohio to its junction with KS–254, then east on KS–254 to its junction with KS–196, then northwest on KS–196 to its junction with I–135, then north on I–135 to its junction with U.S.–50.

South Dakota

September Canada Goose North Unit—Clark, Codington, Day, Deuel, Grant, Hamlin, Marshall, and Roberts County.

September Canada Goose South Unit—Beadle, Brookings, Hanson, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, and Turner Counties,

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont, and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union, and Wasco Counties.

Washington

Area 1—Skagit, Island, and Snohomish Counties.

Area 2A (SW Quota Zone)—Clark County, except portions south of the Washougal River; Cowlitz, and Wahkiakum counties.

Area 2B (SW Quota Zone)—Pacific and Grays Harbor counties.

Area 3—All areas west of the Pacific Crest Trail and west of the Big White Salmon River that are not included in Areas 1, 2A, and 2B.

Area 4—Adams, Benton, Chelan, Douglas, Franklin, Grant, Kittitas, Lincoln, Okanogan, Spokane, and Walla Walla Counties.

Area 5—All areas east of the Pacific Crest Trail and east of the Big White Salmon River that are not included in Area 4.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area—Those portions of Teton County described in State regulations.

Bridger Valley Area—The area described as the Bridger Valley Hunt Unit in State regulations.

Little Snake River—That portion of the Little Snake River drainage in Carbon County.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Colorado

Special Teal Season Area: Lake and Chaffee Counties and that portion of the State east of Interstate Highway 25.

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S. 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Nebraska

Special Teal Season Area: That portion of the State south of a line beginning at the Wyoming State line; east along U.S. 26 to Nebraska Highway L62A; east to U.S. 385; south to U.S. 26; east to NE 92; east along NE 92 to NE 61; south along NE 61 to U.S. 30; east along U.S. 30 to the Iowa border.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: In that portion of California lying east and north of a line beginning at the intersection of the Klamath River with the California-Oregon line; south and west along the Klamath River to the mouth of Shovel Creek; along Shovel Creek to its intersection with Forest Service Road 46N05 at Burnt Camp; west to its junction with Forest Service Road 46N10; south and east to its Junction with County Road 7K007; south and west to its junction with Forest Service Road 45N22; south and west to its junction with Highway 97 and Grass Lake Summit; south along to its junction with Interstate 5 at the town of Weed; south to its junction with Highway 89; east and south along Highway 89 to Main Street Greenville; north and east to its junction with North Valley Road; south to its junction of Diamond Mountain Road; north and east to its junction with North Arm Road; south and west to the junction of North Valley Road; south to the junction with Arlington Road (A22); west to the junction of Highway 89; south and west to the junction of Highway 70; east on Highway 70 to Highway 395; south and east on Highway 395 to the point of intersection with the California-Nevada state line; north along the California-Nevada state line to the junction of the California-Nevada-Oregon state lines west along the California-Oregon state line to the point of origin.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east 7 miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Sandhill Cranes

Central Flyway

Colorado

The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande, and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Estancia Valley Area—Those portions of Santa Fe, Torrance and Bernallilo Counties within an area bounded on the west by New Mexico Highway 55 beginning at Mountainair north to NM 337, north to NM 14, north to I–25; on the north by I–25 east to U.S. 285; on the east by U.S. 285 south to U.S. 60; and on the south by U.S. 60 from U.S. 285 west to NM 55 in Mountainair.

Southwest Zone—Sierra, Luna, Dona Ana Counties, and those portions of Grant and Hidalgo Counties south of I–10.

Oklahoma

That portion of the State west of I–35.

Texas

Area 1—That portion of the State west of a line beginning at the International Bridge at Laredo, north along I–35 to the Oklahoma border.

Area 2—That portion of the State east and south of a line from the International Bridge at Laredo northerly along I–35 to U.S. 290; southeasterly along U.S. 290 to I–45; south and east on I–45 to State Highway 87, south and east on TX 87 to the channel in the Gulf of Mexico between Galveston and Point Bolivar; EXCEPT: That portion of the State lying within the area bounded by the Corpus Christi Bay Causeway on U.S. 181 at Portland; north and west on U.S. 181 to U.S. 77 at Sinton; north and east along U.S. 77 to U.S. 87 at Victoria; east and south along U.S. 87 to Texas Highway 35; north and east on TX 35 to the west end of the Lavaca Bay Bridge; then south and east along the west shoreline of Lavaca Bay and Matagorda Island to the Gulf of Mexico; then south and west along the shoreline of the Gulf of Mexico to the Corpus Christi Bay Causeway.

North Dakota

Area 1—That portion of the State west of U.S. 281.

Area 2—That portion of the State east of U.S. 281.

South Dakota

That portion of the State west of U.S. 281.

Montana

The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Big Horn County Unit—Portions of Park and Big Horn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich, Cache, and Unitah Counties and that portion of Box Elder County beginning on the Utah-Idaho State line at the Box Elder-Cache County line; west on the State line to the Pocatello Valley County Road; south on the Pocatello Valley County Road to I–15; southeast on I–15 to SR–83; south on SR–83 to Lamp Junction; west and south on the Promontory Point County Road to the tip of Promontory Point; south from Promontory Point to the Box Elder-Weber County line; east on the Box Elder-Weber County line to the Box Elder-Cache County line; north on the Box Elder-Cache County line to the Utah-Idaho State line.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Eden Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10 (Unimak Island only).

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10 (except Unimak Island).

Kodiak Zone—State Game Management Unit 8.

All Migratory Game Birds in the Virgin Islands

Ruth Cay Closure Area—island of Ruth Cay, just south of St. Croix.

All Migratory Game Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for 1 kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas Buenas, Caguas, Cayey, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of the beginning.

[FR Doc. 03–21760 Filed 8–26–03; 8:45 am]

BILLING CODE 4310–55–P

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Vol. 68, No. 166

Wednesday, August 27, 2003

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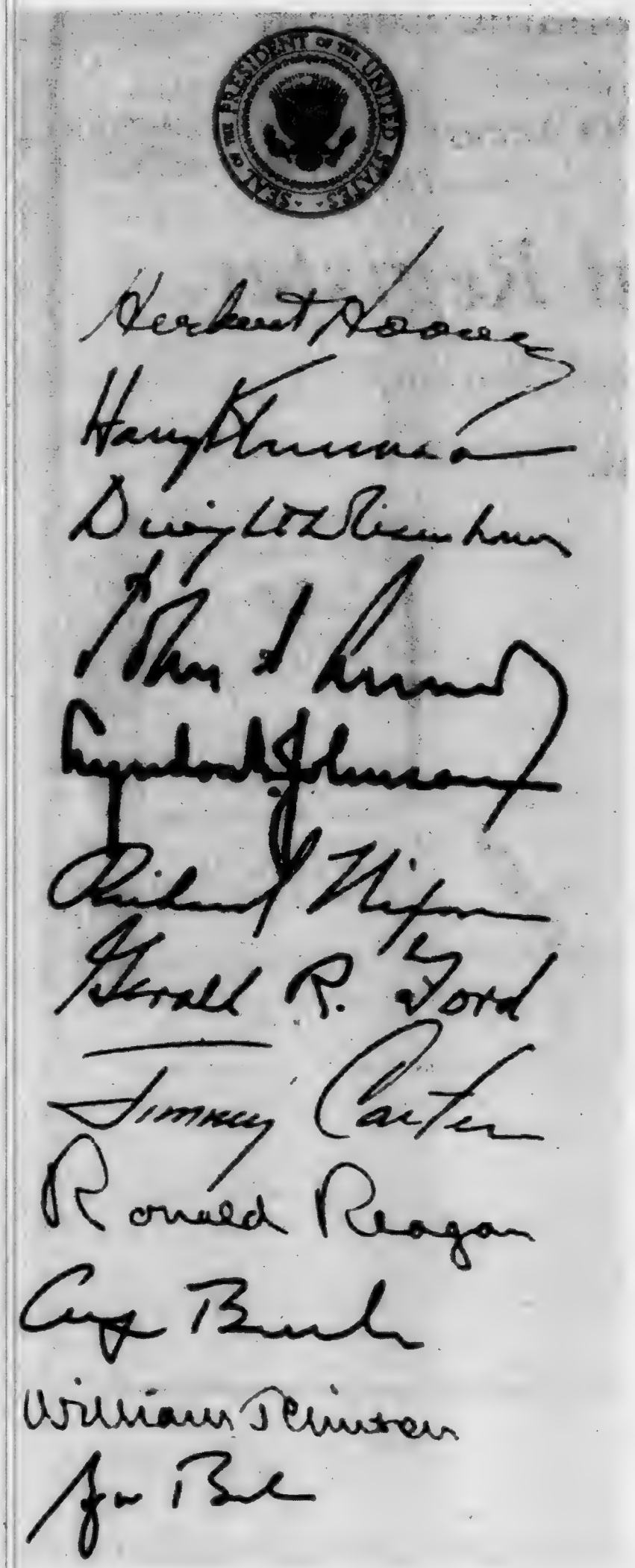

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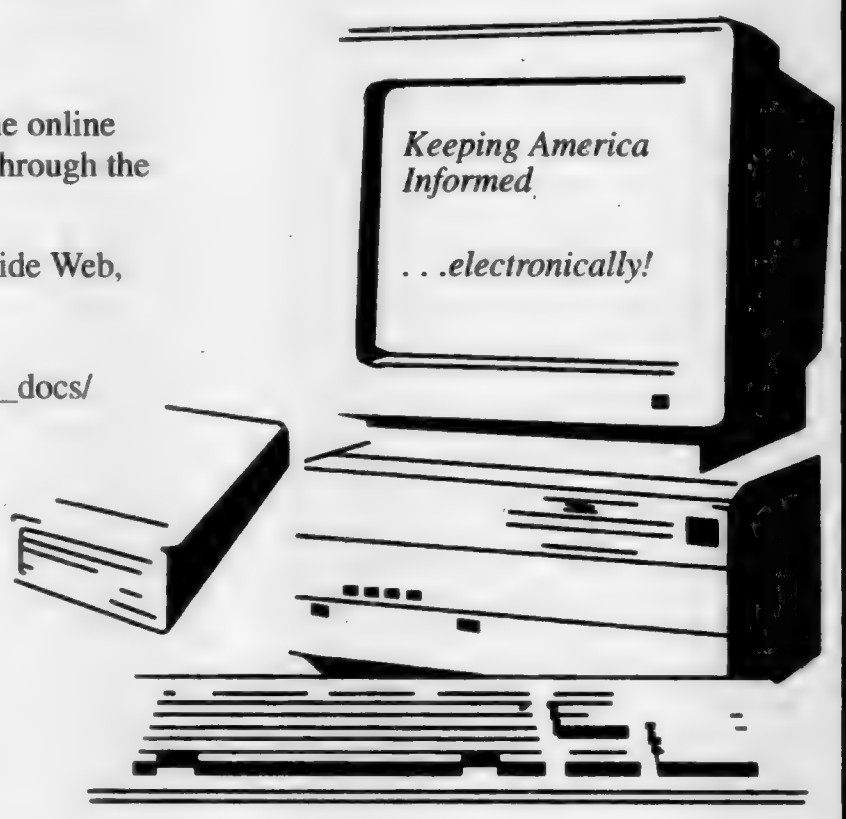

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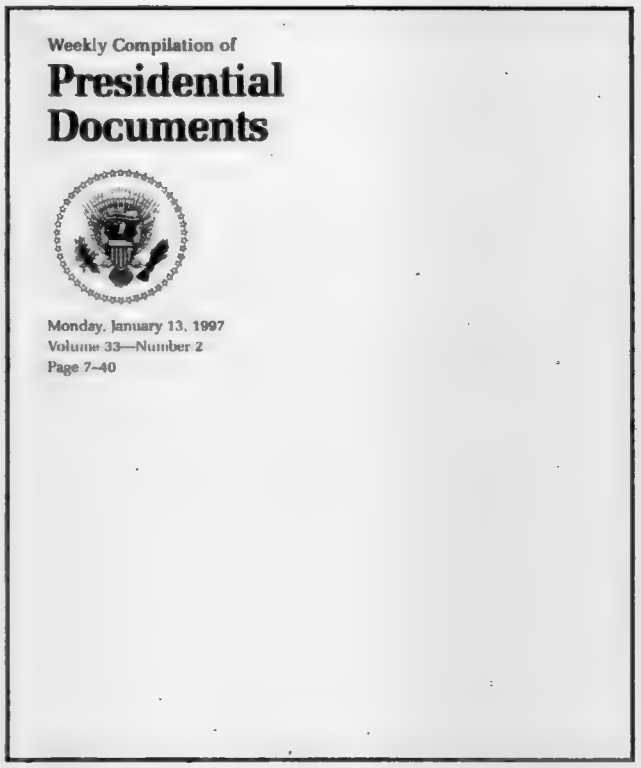

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Title 3—

The President

Proclamation 7695 of August 26, 2003

Women's Equality Day, 2003

By the President of the United States of America

A Proclamation

The 19th Amendment to the Constitution, ratified on August 26, 1920, guaranteed the right to vote for American women. Women's Equality Day commemorates this constitutional amendment and is an opportunity for citizens across our country to honor those who took part in the long and difficult struggle for women's suffrage, as well those since 1920 who have continued to fight for equal rights for women.

Beginning with the Seneca Falls Convention in 1848, women's suffrage supporters lectured, wrote, marched, and lobbied for enfranchisement of American women. Susan B. Anthony, Elizabeth Cady Stanton, and Lucretia Mott led this movement and advocated an amendment to the Constitution that would guarantee women the right to vote. Through their vision and dedication, these women advanced the fight for equal rights.

Today, American women are making a difference in their communities and workplaces. Women's accomplishments in education, business, science, art, medicine, athletics, and every other field have made America better and stronger. The courage and determination of American women are exemplified in the personnel serving in our Armed Forces. Women across America are also helping to secure our country by serving as police officers, firefighters, doctors, nurses, paramedics, and first-responders.

Americans believe in opportunity for all and on this day, we honor the achievements of women who have charted the path to equal opportunity.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 2003, as Women's Equality Day. I call upon the people of the United States to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-sixth day of August, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

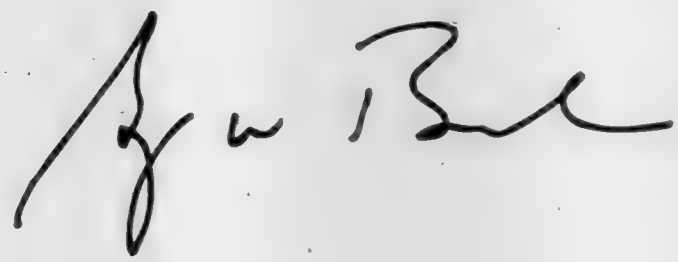

[FR Doc. 03–22244
Filed 8–27–03; 8:45 am]
Billing code 3195–01–P

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Rules and Regulations

Federal Register
Vol. 68, No. 167
Thursday, August 28, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 247

RIN 0584–AD33

Commodity Supplemental Food Program—Allocation of Administrative Funds

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Commodity Supplemental Food Program regulations to implement nondiscretionary provisions of the Farm Security and Rural Investment Act of 2002 affecting the allocation of administrative funds to State agencies. In accordance with that Act, using whatever funds are appropriated for the fiscal year to support the program, and any program funds remaining available from the preceding fiscal year, this rule requires the allocation of an administrative grant per assigned caseload slot, adjusted each year for inflation, to pay State and local agency administrative costs. This method of allocation provides States a specific amount of administrative funds to support each caseload slot assigned.

DATES: This rule will become effective on September 29, 2003. The statutory formula for determining the grant per assigned caseload slot for fiscal year 2003 will apply for the entire fiscal year. The formula for fiscal years 2004 through 2007 differs from that for 2003 and will apply to each of those years respectively.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 500, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2662. Inquiries may also be sent via Internet to *Lillie.Ragan@FNS.USDA.GOV.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service (FNS) generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The program addressed in this action is listed in the Catalog of Federal Domestic Assistance under 10.565, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, and final rule-related notices published at 48 FR 29114, June 24, 1983, and 49 FR 22676, May 31, 1984).

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implications, agencies are directed to provide a statement for inclusion in the preamble to the regulations describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132. The FNS has considered the impact of this rule on State and local governments and has determined that this rule does not have Federalism implications. This rule does not impose substantial or direct compliance costs on State and local governments. Therefore, under section 6(b) of the Executive Order, a federalism summary impact statement is not required.

Regulatory Impact Analysis

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). The regulatory provisions contained in this rule will benefit State and local agencies by providing a stable level of funding to support administration of the program. Under the Farm Security and Rural Investment Act of 2002, State agencies will receive a grant per assigned caseload slot to pay for administrative program costs. The per caseload slot grant will be adjusted for inflation each year. Funding to support the program, including administrative grants, is discretionary. Therefore, an increase in program funds is not mandatory. However, if additional funds are not appropriated, the number of caseload slots allocated to each State will be reduced.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. The rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect. Prior to any judicial action challenging the application of Commodity Supplemental Food Program (CSFP) rules, exhaustion of administrative remedies, as set out in 7 CFR 247.33, would be required.

Paperwork Reduction Act

This final rule reflects no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The existing reporting and recordkeeping requirements for 7 CFR part 247, which were approved under OMB control number 0584–0293, will not change as a result of this rule.

Government Paperwork Elimination Act

FNS is committed to compliance with the Government Paperwork Elimination Act (Pub. L. 105–277), which requires Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

This action is published as a final rule without prior notice or public comment under authority of 5 U.S.C. 553(b)(3)(B). This final rule implements section 4201, a non-discretionary statutory provision of the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171, by mandating the allocation of an administrative grant per assigned caseload slot, adjusted each year for inflation, to pay State and local agencies' administrative costs of the CSFP. Thus, the Department has determined in accordance with 5 U.S.C. 553(b)(3)(B) that notice of proposed rulemaking and opportunity for public comments are impracticable and contrary to the public interest. The provisions will become effective 30 days after publication in the **Federal Register**.

Background

Through the CSFP, the Department of Agriculture's FNS provides commodities and administrative funds to participating State agencies, which, through local agencies, distribute a package of foods each month to participating pregnant, postpartum, and breastfeeding women, infants, children up to age 6, and seniors (age 60 or older). FNS utilizes funds provided in the CSFP appropriation and funds carried over from the previous year to assign caseload and allocate administrative funds to State agencies each year. State and local agencies serve participants in accordance with their assigned caseload limits, and utilize administrative funds to meet program costs, which may include costs of storage and distribution of foods, determination of eligibility, provision of nutrition education and other costs.

The Farm Security and Rural Investment Act of 2002 (2002 Act), Pub. L. 107–171, which was enacted on May 13, 2002, amended the means by which the Department provides administrative funds to State agencies. Section 4201(b) of the 2002 Act amended section 5(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c *note*) to provide State agencies with a grant per assigned caseload slot to pay for administrative program costs. It also deleted the limitation of total administrative funding for the program, which before the deletion was limited to 20 percent of the program appropriation and of food funds carried over from the previous year.

Prior to the deletion of the 20 percent limit, as discussed above, State agencies received a portion of the total administrative funding equal to their share of total assigned caseload.

Thus, a State agency with a caseload assignment that was 10 percent of the total for all State agencies would have received funds totaling 10 percent of the total funds allocated. However, since the cost of food per caseload slot and related factors fluctuate from year to year while the 80/20 split between food funds and administrative funds remained constant, the actual amount of administrative funding available for each assigned caseload slot could change from year to year, having nothing to do with the State and local government price index.

In order to remedy the situation described above, Congress allotted specific amounts for CSFP administrative support in excess of the 20 percent limit, in the program appropriations legislation for each of fiscal years (FY) 2001 and 2002. In FY 2001, Congress allotted $20,781,000 to meet administrative costs, and in FY 2002 allotted $20,820,000. These administrative allocations allowed FNS to provide administrative support, on a per-caseload slot basis, of $50.89 in FY 2001 and $50.25 in FY 2002. This provided considerably more administrative funding for each caseload slot assigned than in previous years. However, administrative funding per slot continued to fluctuate from year to year.

Section 4201(b)(2) of the 2002 Act stipulates the per-caseload slot amounts State agencies are to receive in FY 2003, and for subsequent fiscal years. For FY 2003, the grant per assigned caseload slot is $51.49, an amount equal to the per-caseload slot amount provided in FY 2001 ($50.89), adjusted by the percentage change between:

(1) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 2001; and

(2) The value of that index for the 12-month period ending June 30, 2002.

For subsequent fiscal years, the amount of the grant per assigned caseload slot is equal to the amount of the grant per assigned caseload slot for the preceding fiscal year, adjusted by the percentage change between:

(1) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(2) The value of that index for the 12-month period ending June 30 of the preceding fiscal year.

FNS issued two memoranda to State Directors of CSFP which explained and implemented these changes to the means of allocating administrative funds to State agencies participating in CSFP. The first memorandum, dated July 24, 2002, explained generally the statutory change resulting in the method for calculating CSFP administrative funding based on the per caseload slot formula. The second memorandum, dated September 16, 2002, specifically calculated the legislatively mandated administrative grant assigned per caseload slot for FY 2003.

Regulatory provisions pertaining to the allocation of administrative funds to State agencies administering CSFP are described under 7 CFR 247.10(b). This rule revises subsections (b)(1), (b)(2), and (b)(3) of § 247.10 to reflect the new method of allocation of administrative funds. Subsection (b)(1) describes the allocation to the States of an administrative grant per assigned caseload slot, adjusted each year for inflation. Subsection (b)(2) describes the means of determining the amount of the per-caseload slot grant for FY 2003, and subsection (b)(3) codifies the means for determining the amounts for subsequent fiscal years, as set forth in the 2002 Act.

In accordance with the 2002 Act, the current language in subsections (b)(1), (b)(2), and (b)(3) which limits administrative funding to a percentage of total program funds, and describing the portion of the total that each State receives, has been deleted. The current language describing the separate allocation of administrative funds to support the distribution of surplus commodities provided to CSFP was rendered ineffective by legislation enacted previous to the enactment of the 2002 Act, and has also been deleted.

List of Subjects in 7 CFR Part 247

Agricultural commodities, Food assistance programs, Infants and

children, Maternal and child health, Public assistance programs, nutrition, women, aged.

■ Accordingly, 7 CFR part 247 is amended as follows:

PART 247—COMMODITY SUPPLEMENTAL FOOD PROGRAM

■ 1. The authority citation for part 247 is revised to read as follows:

Authority: Sec. 5, Pub. L. 93–86, 87 Stat. 249, as added by Sec. 1304(b)(2), Pub. L. 95–113, 91 Stat. 980 (7 U.S.C. 612c *note*); sec. 1335, Pub. L. 97–98, 95 Stat. 1293 (7 U.S.C. 612c *note*); sec. 209, Pub. L. 98–8, 97 Stat. 35 (7 U.S.C. 612c *note*); sec. 2(8), Pub. L. 98–92, 97 Stat. 611 (7 U.S.C. 612c *note*); sec. 1562, Pub. L. 99–198, 99 Stat. 1590 (7 U.S.C. 612c *note*); sec. 101(k), Pub. L. 100–202; sec. 1771(a), Pub. L 101–624, 101 Stat. 3806 (7 U.S.C. 612c *note*); sec. 402(a), Pub. L. 104–127, 110 Stat. 1028 (7 U.S.C. 612c *note*), Sec. 4201(b), Pub. L. 107–171.

■ 2. In § 247.10, paragraphs (b)(1), (b)(2), and (b)(3) are revised to read as follows:

§ 247.10 Caseload assignment and administrative funding.

* * * * *

(b) Administrative Funding. * * *

(1) FNS allocates to each State agency an administrative grant per assigned caseload slot, adjusted each year for inflation.

(2) For fiscal year 2003, the amount of the grant per assigned caseload slot is equal to the per-caseload slot amount provided in fiscal year 2001, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30, 2001; and

(ii) The value of that index for the 12-month period ending June 30, 2002.

(3) For subsequent fiscal years, the amount of the grant per assigned caseload slot is equal to the amount of the grant per assigned caseload slot for the preceding fiscal year, adjusted by the percentage change between:

(i) The value of the State and local government price index, as published by the Bureau of Economic Analysis of the Department of Commerce, for the 12-month period ending June 30 of the second preceding fiscal year; and

(ii) The value of that index for the 12-month period ending June 30 of the preceding fiscal year.

* * * * *

Dated: August 21, 2003.

Eric M. Bost,

Under Secretary for Food, Nutrition, and Consumer Services.

[FR Doc. 03–22021 Filed 8–27–03; 8:45 am]

BILLING CODE 3410–30–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245–AE68

Business Loans and Development Company Loans

AGENCY: Small Business Administration (SBA).

ACTION: Direct final rule.

SUMMARY: Statutory amendments to the Small Business Act require changes to SBA rules concerning maximum loan guaranty and gross loan amounts, percentages of financing which can be guaranteed by SBA, guarantee fees paid by lenders, real estate occupancy rules, and borrower subsidy recoupment fees. This direct final rule implements the statutory provisions.

DATES: This rule is effective October 14, 2003 without further action, unless adverse comment is received by September 29, 2003. If an adverse comment is received, SBA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Written comments should be sent to LeAnn Oliver, Deputy Associate Administrator for Financial Assistance, Office of Financial Assistance, Small Business Administration, 409 Third Street SW., Washington, DC 20416. Comments also may be sent by e-mail to *leann.oliver@sba.gov* or submitted electronically at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Charles W. Thomas, Acting Director, Office of Loan Programs, Office of Financial Assistance, (202) 205–6656, *charles.thomas@sba.gov*.

SUPPLEMENTARY INFORMATION: The Small Business Reauthorization Act of 2000, Pub. L. 106–554, Appendix I—H.R. 3667, Titles II–III, 114 Stat. 2763A–681 to 689 (2000 Act) became effective on December 21, 2000. The Veterans Entrepreneurship and Small Business Development Act of 1999, Public Law 106–50, 113 Stat. 236, became effective August 17, 1999 (Veterans' Act). This direct final rule is necessary to amend SBA regulations to incorporate certain legislative changes made by the 2000 Act and the Veterans' Act.

Previously, SBA was authorized to guarantee no more than 80 percent of a loan if the gross amount of the loan was $100,000 or less, and no more than 75 percent of a loan over that amount. Section 202 of the 2000 Act amends the 7(a) business loan program by authorizing SBA to guarantee up to 85 percent of a loan if the gross amount of the loan is no more than $150,000. Under the 2000 Act, the maximum SBA guaranty on a loan greater than $150,000 is 75 percent except as otherwise authorized by law. To reflect these changes, SBA is amending § 120.210 of the regulations.

Section 203 of the 2000 Act increases the maximum amount that SBA may guarantee to a single borrower from $750,000 to $1 million. Section 203 provides that the gross amount of any one SBA guaranteed loan cannot exceed $2 million. Previously, there was no limit on the maximum gross loan amount. SBA is amending § 120.151 of its regulations to implement these changes.

Section 205 of the 2000 Act imposes a subsidy recoupment fee on some borrowers with respect to certain SBA 7(a) guaranteed loans. A subsidy recoupment fee applies if a prepaid loan has a maturity of 15 years or more, the prepayment is voluntary, the amount of prepayment in the aggregate in any 12 month period is more than 25 percent of the outstanding balance of the loan in that period, and the prepayment is made within the first three years of the initial disbursement of the loan proceeds. The subsidy recoupment fee is paid to SBA and applies to the full amount of the prepayment, not just to the guaranteed portion of the prepayment, as follows: if a borrower prepays during the first year after initial disbursement, the prepayment charge is 5 percent of the amount of the prepayment; if a borrower prepays during the second year after initial disbursement, the prepayment charge is 3 percent of the amount of the prepayment; and if a borrower prepays during the third year after initial disbursement, the prepayment charge is 1 percent of the amount of the prepayment. SBA is adding a new § 120.223 to its regulations to reflect this statutory amendment.

Section 206 of the 2000 Act simplifies the calculation of the guaranty fee payable to SBA by a participating lender. This provision continues to allow a lender to pass this fee on to the borrower. Under the new simplified calculation for all loans with a maturity of over 12 months, if the total loan amount is $150,000 or less, a lender must pay a guaranty fee equal to 2 percent of the SBA guaranteed portion, however, the lender may retain 25 percent of the fee. In addition, for all loans with a maturity of over 12 months, if the total loan amount is more than $150,000, but not more than $700,000, a lender must pay a guaranty fee of 3 percent of the SBA guaranteed portion, and if the total amount is more than $700,000, a lender must pay a guaranty

fee equal to 3.5 percent of the SBA guaranteed portion. (This rule does not change guaranty fees payable or timing of fee payment for loans with maturities for 12 months or less.) SBA is revising § 120.220 to implement these provisions, and will replace the chart currently in the regulations with text. (SBA notes that legislation enacted after the 2000 Act lowered the guarantee fees for some 7(a) loans for the two-year period beginning October 1, 2002. This temporary reduction in the guarantee fee will be reflected in regulations to be published at a later date.)

Section 207 of the 2000 Act added section 7(a)(28) to the Small Business Act with respect to the ability of a borrower in the 7(a) business loan program to lease out a portion of a building constructed with the proceeds of a guaranteed loan. Borrowers under the 7(a) business loan program will now be treated the same as borrowers under SBA's 504 program, established under Title V of the Small Business Investment Act (SBI Act). Specifically, when the use of proceeds is for new construction, section 7(a)(28) allows a 7(a) borrower to permanently lease to one or more tenants not more than 20 percent of any property constructed with the proceeds of a 7(a) guaranteed loan, if the borrower permanently occupies and uses not less than 60 percent of the total space at the outset. This provision is substantially similar to section 502(5) of the SBI Act, which is applicable to the 504 program.

To reflect this statutory change, SBA is revising § 120.131 of its regulations to cover the leasing of space in new and existing buildings in both the 7(a) and 504 programs, under the terms permitted by sections 7(a)(28) and 502(5). All the leasing options permitted by the current § 120.131(a) (which reflects leasing options under sections 502(4) and 502(5) of the SBI Act) would be permitted under revised § 120.131(a) and will be available in both the 7(a) and 504 programs.

Section 120.131(a) is being revised to cover the construction of a new building financed with 7(a) or 504 financing. A borrower would be authorized to permanently lease up to 20 percent of the space to one or more tenants if it permanently occupies and uses no less than 60 percent of the rentable property. It would have to plan to permanently occupy and use within three years some of the remaining space not immediately occupied and not permanently leased and to plan to permanently use and occupy within ten years all of the remaining space not permanently leased. All the leasing options permitted by the current § 120.131(a), which now reflects section 502(4) of the SBI Act, will continue to be available under the revised § 120.131(a). Therefore, the language in the current regulations for § 120.131(a) is being replaced by language that describes sections 7(a)(28) and 502(5) only.

Section 120.131(b) is revised to emphasize that this regulation applies to both the 7(a) and 504 loan programs and it deletes the cross reference to section 120.870(c).

Section 209 of the 2000 Act allows the SBA guaranteed portions of export working capital loans to be sold in the secondary market. The provision accomplishes this by eliminating, for export working capital program (EWCP) loans only, the requirement that a loan be fully disbursed before it can be sold in the secondary market. Any other SBA guaranteed loan made under the 7(a) business loan program still must be fully disbursed before a lender can sell the guaranteed portion in the secondary market. SBA is amending § 120.613(b) to reflect this statutory change. Other provisions concerning EWCP loans remain the same.

Section 306 of the 2000 Act amends Section 508 of the SBI Act (15 U.S.C. 697e), which relates to Premier Certified Lenders Program (PCLP). Section 306 requires that, if upon default in repayment, SBA acquires a loan guaranteed under this section (a PCLP loan) and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, it shall give prior notice to any CDC which has a contingent liability under this section. Currently, only a Premier CDC under the PCLP has a contingent liability with respect to a 504 loan even if SBA's loss is not caused by the Premier CDC's negligence, fraud, or misrepresentation. Thus, SBA is adding a new § 120.540(f) to make clear that SBA is required to give notice only to a Premier CDC which has a contingent liability with respect to a PCLP loan SBA intends to include in a bulk asset sale.

Section 306 requires that SBA give notice to the Premier CDC as soon as possible after the financing is identified for sale, but not less than 90 days before the date SBA first makes any records on such financing available for examination by prospective purchasers prior to such loan being offered in a package of loans for bulk sale. SBA is adding this requirement in new § 120.540(f).

Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C., Ch. 35)

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, for the purposes of Executive Order 13132, SBA determines that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

The Office of Management and Budget (OMB) has determined that this rule does not constitute a "significant regulatory action" under section 3(f) of Executive Order 12866.

SBA has determined that this direct final rule does not impose additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

This rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. This rule also will not have retroactive or preemptive effect.

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small entities, including small businesses, small non-profit enterprises, and small local governments. Pursuant to the RFA, when an agency issues a rulemaking, the agency must prepare a regulatory flexibility analysis which describes the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. If the head of the agency makes such a certification, that certification must be published along with a statement providing the factual basis for such certification. Within the meaning of RFA, SBA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The factual basis for that certification is provided below.

Section 202 of the Act raises SBA's guaranty from 75 percent for loans of $100,000 or less to 85 percent for loans of $150,000 or less, which is intended to reduce lender risk and reduce lender cost for providing small business loans and thus increase the availability of

financing to the small business community. SBA estimates that for FY 2000, it approved approximately 6,300 loans between $100,000 and $150,000. For FY 2002, SBA estimates that it approved approximately 7,600 loans between $100,000 and $150,000. This represents an increase of approximately 1,300 additional SBA loans between $100,000 and $150,000 in FY 2002 compared to FY 2000. This compares to a total of about 52,000 loans SBA approved in FY 2002. (The SBA estimates that annually about 3 percent of its 7(a) loans go to an existing SBA borrower—For example, SBA may approve a term loan and a separate working capital loan to the same borrower—Thus, the actual number of small businesses receiving an SBA loan in a given year will be about 50,000 businesses.)

Section 203 of the Act raises the maximum amount the SBA may guarantee to a single borrower from $750,000 to $1 million, which will allow SBA and its lending partners to provide additional small business financing, particularly to growing small businesses and to businesses located in more costly, higher growth areas of the country. In FY 2002, the first full year during which SBA could guaranty loans up to $1 million, about 2,000 small businesses benefited from SBA's expanded guaranty authority. Section 203 also limits the maximum size of an SBA loan to $2 million, where formerly there was no maximum. However, historically the Agency has approved very few loans over $2 million, generally less than 20 per year. But, with continuing limitations to SBA 7(a) loan authority due to budget constraints, the 7(a) authority that would have been used by these 20 or so larger SBA borrowers can now be channeled to smaller borrowers. Thus, while annually about 20 or so larger borrowers will no longer have access to SBA financing due to this limitation, the Agency estimates that with an average SBA loan size of approximately $163,000, about 370 other small business borrowers will receive SBA financing that would not otherwise be available.

Section 205 imposes a subsidy recoupment fee on SBA borrowers that pre-pay longer term loans. This recoupment fee was instituted to ensure SBA loan subsidy costs are not distorted and effectively increased due to the pre-payment of longer term loans by SBA borrowers, which could reduce the overall availability of SBA financing to the small business community as a whole. SBA's analysis of management information data indicates that approximately 80 SBA loans were pre-paid in FY 2002 and subject to the subsidy recoupment fee. This compares to a total of approximately 52,000 SBA loans approved during FY 2002.

Section 206 modifies, simplifies and, in many cases, reduces the fees that the SBA charges lenders for SBA's guaranty, which the lenders usually pass on to the borrowers. It also establishes a guaranty fee of 3.5 percent for loans over $700,000, the majority of which are loans made under SBA's new authority (under section 203 above) to approve guaranties up to $1 million. The simplification and modification of the fee structure was intended to reduce the administrative complexity of SBA loan programs and reduce the administrative costs associated with an SBA loan, thereby encouraging lenders to make more SBA loans. Section 206 also revised and reduced the cost of SBA's guaranty for some SBA loans. In FY 2002, under the revised fee structure about 17,000 SBA borrowers paid lower guaranty fees (from several hundred to over $1,000 less), about 33,000 borrowers paid the same, and about 3,000 borrowers paid slight guaranty fees. As a result of these and other program changes, SBA approved about 8,000 additional loans in FY 2002 compared to FY 2000. The SBA also estimates that in FY 2002 about 2,500 small businesses were approved for an SBA guaranty between $700,000 and $1 million and were thus impacted by the 3.5 percent guaranty that applies to these loans. However, these loans were approved for small businesses that, without the SBA guaranty, would not have had access to financing. As a result, they benefited economically from the availability of these loans, which was in part made possible by the 3.5 percent guaranty fee.

Section 207 allows borrowers under the 7(a) business loan program to lease out a portion of a building constructed with the proceeds of an SBA guaranteed loan, which provides additional flexibility to some borrowers and enhances their longer term prospects for success. SBA's analysis indicates that of the approximately 52,000 loans approved during FY 2002, only about 100 small businesses took advantage of this increased flexibility.

Section 209 allows the SBA guaranteed portions of export working capital loans to be sold in the secondary market, which is expected to improve lender liquidity and encourage lenders to provide additional financing to small business exporters. From an analysis of its management information data, the Agency estimates that about 370 small businesses benefited from SBA guaranteed export working capital loans in FY 2002, which is about the same number of small businesses that received export working capital loans in FY 2000. The SBA estimates about 60 of those loans were sold on the secondary market.

Section 306 requires that SBA provide no less than 90 days notice to Premier Certified Lenders (PCL) of its intent to include PCL loans in a bulk sale of SBA loans. About 30 CDCs currently participate in the PCL program, through which about 780 loans were approved in FY 2002. However, SBA has not as yet included any PCL loans in bulk asset sales and currently has no plans to do so.

List of Subjects in 13 CFR Part 120

Loan programs—business, Small businesses.

■ For the reasons set forth in the preamble, amend part 120 of title 13 of Code of Federal Regulations as follows:

■ 1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(a) and (h), 696(3), and 697(a)(2).

■ 2. Revise § 120.131 to read as follows:

§ 120.131 Leasing part of new construction or existing building to another business.

(a) If the SBA financing (whether 7(a) or 504) is for the construction of a new building, a Borrower may permanently lease up to 20 percent of the Rentable Property to one or more tenants if the Borrower permanently occupies and uses no less than 60 percent of the Rentable Property, and plans to permanently occupy and use within three years some of the remaining space not immediately occupied and not permanently leased and plans to permanently occupy and use within ten years all of the remaining space not permanently leased. If the Borrower is an Eligible Passive Company which leases 100 percent of the new building's space to one or more Operating Companies, the Operating Company, or Operating Companies together, must follow the same rules set forth in this paragraph.

(b) If the SBA financing (whether 7(a) or 504) is for the acquisition, renovation, or reconstruction of an existing building, the Borrower may permanently lease up to 49 percent of the Rentable Property if the Borrower permanently occupies and uses no less than 51 percent of the Rentable Property. If the Borrower is an Eligible Passive Company which leases 100 percent of the space of the existing building to one or more Operating Companies, the Operating Company, or

Operating Companies together, must follow the same rules set forth in this paragraph.

■ 3. Remove the first sentence of § 120.151 and add in its place two new sentences to read as follows:

§ 120.151 What is the statutory limit for total loans to a Borrower?

The aggregate amount of the SBA portions of all loans to a single Borrower, including the Borrower's affiliates as defined in § 121.103 of this chapter, must not exceed a guaranty amount of $1,000,000, except as otherwise authorized by statute for a specific program. The maximum loan amount for any one 7(a) loan is $2,000,000. * * *

■ 4. Revise the third and fourth sentences of § 120.210 to read as follows:

§ 120.210 What percentage of a loan may SBA guarantee?

* * * Effective December 21, 2000, loans of $150,000 or less may receive a maximum guaranty of 85 percent. Loans more than $150,000 may receive a maximum guaranty of 75 percent, except as otherwise authorized by law.

■ 5. Amend § 120.220 by adding introductory text, revising paragraph (a), redesignating paragraphs (b) and (c) as (e) and (f), and adding new paragraphs (b), (c), and (d) to read as follows:

§ 120.220 Fees that Lender pays SBA.

A Lender must pay a guaranty fee to SBA for each loan it makes. If the guarantee fee is not paid, SBA may terminate the guarantee. Acceptance of the guaranty fee by SBA does not waive any right of SBA arising from a Lender's negligence, misconduct or violation of any provision of these regulations, the guaranty agreement, or the loan authorization.

(a) *Amount of guaranty fee.* For a loan with a maturity of twelve (12) months or less, the guaranty fee which the Lender must pay to SBA is one-quarter (1/4) of one percent of the guaranteed portion of the loan. For a loan with a maturity of more than twelve (12) months, the guaranty fee is:

(i) 2 percent of the guaranteed portion of the loan if the total amount of the loan is not more than $150,000,

(ii) 3 percent of the guaranteed portion of a loan if the total amount is more than $150,000 but not more than $700,000, and

(iii) 3.5 percent of the guaranteed portion of a loan if the total amount is more than $700,000.

(b) *When the guaranty fee is payable.* For a loan with a maturity of twelve (12) months or less, the Lender must pay the guaranty fee to SBA with its application for a guaranty. The Lender may charge the Borrower for the fee when the loan is approved by SBA. For a loan with a maturity in excess of twelve (12) months, the Lender must pay the guaranty fee to SBA within 90 days after SBA gives its loan approval. The Lender may charge the Borrower the fee after the Lender has made the first disbursement of the loan. The Borrower may use the loan proceeds to pay the guaranty fee. However, the first disbursement must not be made solely or primarily to pay the guaranty fee.

(c) *Refund of guaranty fee.* For a loan with a maturity of twelve (12) months or less, SBA will refund the guaranty fee if the loan application is withdrawn prior to approval by SBA; if SBA declines to guarantee the loan; or if SBA substantially changes the Lender's loan terms and then approves the loan, but SBA's modified terms are unacceptable to the Lender. In the latter case, the Lender must request a refund in writing within 30 calendar days of SBA's approval. For a loan with a maturity of more than twelve (12) months, SBA will refund the guaranty fee if the Lender has not made any disbursement and the lender requests in writing the refund and cancellation of the SBA guaranty.

(d) *Lender's retention of portion of guaranty fee.* With respect to a loan with a maturity of more than twelve (12) months, where the total loan amount is no more than $150,000 Lender may retain not more than 25 percent of the guaranty fee.

* * * * *

■ 6. Add new § 120.223 to read as follows:

§ 120.223 Subsidy recoupment fee payable to SBA by Borrower.

(a) The subsidy recoupment fee is payable to SBA when:

(1) Loan has a maturity of 15 years or more.

(2) Borrower makes a voluntary prepayment (or several prepayments in the aggregate) during any one of the first three successive 12 month periods following the first disbursement of the loan. Prepayment is defined as a payment of principal in excess of the amount due according to the amortization schedule.

(3) The prepayment (or several prepayments in the aggregate) is more than 25 percent of the highest outstanding principal balance of the loan in any one of the first three successive 12 month periods following the first disbursement.

(b) When all the conditions above exist, the following subsidy recoupment fees apply:

(1) If the prepayment is made during the first 12 month period after first disbursement, the charge is 5 percent of the total amount of all prepayments made during such period;

(2) If the prepayment is made during the second 12 month period after first disbursement, the charge is 3 percent of the total amount of all prepayments made during that period; and

(3) If the prepayment is made during the third 12 month period after first disbursement, the charge is 1 percent of the total amount of all prepayments made during that period.

■ 7. Add a new § 120.540(f) to read as follows:

§ 120.540 What are SBA's policies concerning the liquidation of collateral and the sale of business loans and physical disaster assistance loans, physical disaster business loans and economic injury disaster loans?

* * * * *

(f) *Notice.* If upon default in repayment, SBA acquires a Premier Certified Lenders Program (PCLP) loan and identifies such loan for inclusion in a bulk asset sale of defaulted or repurchased loans or other financings, SBA must give prior notice to any Premier Certified Lenders ("Premier CDC") which has a contingent liability with respect to the PCLP loan. SBA must give the notice to the Premier CDC as soon as possible after the loan is identified for inclusion in such sale, but not less than 90 days before the date SBA first makes any records on such loan available for examination by prospective purchasers prior to such loan being offered in a package of loans for bulk sale.

■ 8. Revise § 120.613(b) to read as follows:

§ 120.613 Secondary Participation Guarantee Agreement.

* * * * *

(b) Except for export working capital loans, disburse to the Borrower the full amount of the loan; and

* * * * *

Dated: August 19, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–22012 Filed 8–27–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–SW–34–AD; Amendment 39–13276; AD 2003–15–51]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SE3160, SA315B, SA316B, SA316C, and SA319B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 2003–15–51, which was sent previously to all known U.S. owners and operators of the specified model Eurocopter France (Eurocopter) helicopters by individual letters. This AD requires inspecting each main rotor blade (blade) root end bolt (bolt) and bolt hole for a crack or corrosion or a crack on the blade root end fitting (fitting) and for certain serial-numbered blades, a one-time pull test on each fitting and blade root end doubler (doubler) to detect disbonding. This amendment is prompted by a report from the blade manufacturer of the discovery of a cracked blade; the cause of the crack remains under investigation. The actions specified by this AD are intended to prevent failure of a blade and subsequent loss of control of the helicopter.

DATES: Effective September 12, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2003–15–51, issued on July 16, 2003, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 12, 2003.

Comments for inclusion in the Rules Docket must be received on or before October 27, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–34–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov*.

The service information referenced in this AD may be obtained from Rotor Trends, LLC, 1715 N. Pinal Avenue, Casa Grande, Arizona 85222, telephone: (520) 421–7482, fax: (520) 421–7458, E-mail: *jmp@helisupport.com*. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone: (562) 627–5322, fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION: On July 16, 2003, the FAA issued Emergency AD 2003–15–51 for the specified model helicopters, which requires inspecting the blade bolts and bolt holes for a crack or corrosion or a crack on the blade fittings using a 10x or higher magnifying glass, and for certain serial-numbered blades, a one-time pull test on the blade fittings and doublers to detect disbonding. That action was prompted by a report from the blade manufacturer of a cracked blade, which was discovered on May 27, 2003. The cause of the crack is unknown at this time, however investigation indicates that the crack may be attributable to a quality control system problem. This condition, if not corrected, could result in failure of a blade and subsequent loss of control of the helicopter.

The FAA has reviewed Rotor Trends, LLC Service Bulletin No. 01.03, dated July 9, 2003, which describes procedures for initial and repetitive inspections of the bolts and bolt holes for a crack or corrosion using a 10x magnifying glass and light. A one-time pull test on the blade fittings and doublers to detect disbonding is also described. If a crack is found on a blade fitting or in a bolt hole, or if any corrosion is found in a bolt hole or radiating from a bolt hole, or if disbonding is detected in the blade fittings or doublers, removing the blade and replacing it with an airworthy blade is specified. If corrosion is detected only on bolts, replacing the affected bolts with airworthy bolts is specified.

Since the unsafe condition described is likely to exist or develop on other Eurocopter Model SE3160, SA315B, SA316B, SA316C, and SA319B helicopters of the same type designs, the FAA issued Emergency AD 2003–15–51 to prevent failure of a blade and subsequent loss of control of the helicopter. The AD requires, for blades, part number (P/N) L3160–100–01 (all serial numbers), within 10 hours time-in-service (TIS) or 30 days, whichever occurs first, inspecting the blade bolts and bolt holes for a crack or corrosion using a 10x or higher magnifying glass. If a crack is found on a blade fitting or in a bolt hole, or if any corrosion is found in a bolt hole or radiating from a bolt hole, removing the blade and replacing it with an airworthy blade is required. If corrosion is detected only on bolts, replacing the affected bolts with airworthy bolts, P/N NAS1105, is required. The AD also requires, for blades, P/N L3160–100–01, serial numbers 600 through 671, within 50 hours TIS or 90 days, whichever occurs first, a one-time pull test on the blade fittings and doublers to detect disbonding. The actions must be accomplished in accordance with the service bulletin described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect controllability and structural integrity of the helicopter. Therefore, inspections, pull test, and replacements, if necessary, are required at short compliance times, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on July 16, 2003 to all known U.S. owners and operators of Eurocopter Model SE3160, SA315B, SA316B, SA316C, and SA319B helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD.

The FAA estimates that this AD will affect 30 helicopters of U.S. registry, and the visual inspection and pull test will take approximately 4 work hours each per helicopter to accomplish, and replacing the blades (if necessary) will take approximately 3 hours to accomplish at an average labor rate of $65 per work hour. Required parts will cost approximately $100,000 per

helicopter, if replacement of the blades is necessary. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be $115,795 per helicopter, assuming one inspection per year and one pull test for each helicopter in the entire fleet; and, replacing the blades on one helicopter.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2003–SW–34–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–15–51 Eurocopter France: Amendment 39–13276. Docket No. 2003–SW–34–AD.

Applicability: Model SE3160, SA315B, SA316B, SA316C, and SA319B helicopters, with main rotor blade (blade), part number (P/N) L3160–100–01, produced under a Parts Manufacturer Approval approved by Supplemental Type Certificate SH778GL, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a blade and subsequent loss of control of the helicopter, accomplish the following:

(a) For helicopters that have a blade, part number (P/N) L3160–100–01 (all serial numbers), installed, within 10 hours time-in-service (TIS) or 30 days, whichever occurs first, using a 10x or higher magnifying glass, visually inspect each blade root end bolt (bolt) and bolt hole for corrosion in a bolt hole or radiating from a bolt hole, or for a crack on a blade root end fitting (fitting) or in a bolt hole, in accordance with Part A of Rotor Trends, LLC Service Bulletin No. 01.03, dated July 9, 2003 (SB).

(b) If corrosion or a crack is found, replace the blade with an airworthy blade before further flight. If corrosion is detected only on a bolt, P/N NAS1105, replace the affected bolt with an airworthy bolt before further flight.

(c) For helicopters that have a blade, P/N L3160–100–01, serial numbers 600 through 671, installed, within 50 hours TIS or 90 days, whichever occurs first, conduct a one-time pull test on each fitting and blade root end doubler to detect disbonding in accordance with Part B of the SB, except that you are not required to contact or return a form to Rotor Trends, LLC.

(d) If disbonding is detected, replace the blade with an airworthy blade before further flight.

(e) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Los Angeles Aircraft Certification Office, Transport Airplane Directorate, FAA, for information about previously approved alternative methods of compliance.

(f) Special flight permits will not be issued.

(g) The visual inspections and pull test shall be done in accordance with Rotor Trends, LLC Service Bulletin No. 01.03, dated July 9, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rotor Trends, LLC, 1715 N. Pinal Avenue, Casa Grande, Arizona 85222, telephone: (520) 421–7482, fax: (520) 421–7458, Email: jmp@helisupport.com. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2003–SW–34–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 12, 2003, to all persons except those persons to whom it was made immediately effective by Emergency AD 2003–15–51, issued July 16, 2003, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on August 8, 2003.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–21520 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NE–16–AD; Amendment 39–13290; AD 2003–17–15]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc. RB211–535 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD)

that applies to Rolls-Royce plc. (RR) models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, with certain part number (P/N) low pressure (LP) turbine stage 2 discs installed. That AD currently requires establishing new reduced LP turbine stage 2 disc cyclic limits. That AD also requires removing from service affected discs that already exceed the new reduced cyclic limits, and removing other affected discs before exceeding their cyclic limits, using a drawdown schedule. This amendment requires changing certain cyclic limits, changing the effective date of certain disc cyclic lives, and would allow intermix of Flight Plan A and Flight Plan B intermix calculations. This amendment is prompted by a reassessment of the thermal and stress data from recent operational experience and comments received from operators on the current AD. We are issuing this AD to prevent LP turbine stage 2 disc failure, which could result in uncontained engine failure and possible loss of the airplane.

DATES: Effective October 2, 2003. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 2, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Rolls-Royce plc, P.O. Box 31 Derby, DE24 8BJ, United Kingdom; telephone 011–44–1332–242424; fax 011–44–1332–249936. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2002–23–08, Amendment 39–12952 (67 FR 71094, November 29, 2002), which applies to RR models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, with certain P/N low pressure LP turbine stage 2 discs installed was published in the **Federal Register** on March 25, 2003 (68 FR 14355). That action proposed to require establishing new reduced LP turbine stage 2 disc cyclic limits. That AD also requires removing from service affected discs that already exceed the new reduced cyclic limits, and removing other affected discs before exceeding their cyclic limits, using a drawdown schedule in accordance with mandatory service bulletin (MSB) RB.211–72–D181, Revision 3, dated August 16, 2002.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing Amendment 39–12952 (67 FR 71094, November 29, 2002) and by adding a new airworthiness directive, Amendment 39–13290, to read as follows:

2003–17–15 Rolls-Royce plc: Amendment 39–13290. Docket No. 2002–NE–16–AD. Supersedes AD 2002–23–08, Amendment 39–12952.

Applicability: This airworthiness directive (AD) is applicable to Rolls-Royce plc. (RR) models RB211–535E4–37, RB211–535E4–B–37, and RB211–535E4–B–75 turbofan engines, with low pressure (LP) turbine stage 2 discs part numbers (P/Ns) UL11508, UL17141, UL18947, UL29029, and UL37352 installed. These engines are installed on, but not limited to, Boeing 757 and Tupolev Tu204 airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

To prevent LP turbine stage 2 disc failure, which could result in an uncontained engine failure and possible loss of the airplane, do the following:

Cycle Limits

(a) Change the RR Time Limits Manual cyclic limits for LP turbine stage 2 discs as specified in the following Table 1:

TABLE 1.—TIME LIMITS MANUAL (TLM) CYCLIC LIMITS

Date of reduced life limit	Life limits for RB211–535E4 engines operating in flight plan A, and RB211–535E4–B engines	Life limits for RB211–535E4 engines operating in flight plan B
(1) December 31, 2001	23,200 cycles-since-new (CSN)	19,700 CSN.
(2) December 31, 2002	22,500 CSN	19,000 CSN.
(3) December 31, 2003	21,500 CSN	18,000 CSN.
(4) December 31, 2004	20,000 CSN	16,500 CSN.
(5) December 31, 2005	18,100 CSN	14,600 CSN.

RB211–535E4 Engines Operating to Flight Plan A, and RB211–535E4–B Engines

(b) For RB211–535E4 engines operating to flight plan A, and RB211–535E4–B engines, remove the LP turbine stage 2 disc from service using the CSN and Action times listed in the following Table 2.

TABLE 2.—DRAWDOWN SCHEDULE FOR RB211–535E4 ENGINES OPERATING TO FLIGHT PLAN A, AND RB211–535E4–B ENGINES

Disc CSN	Action	Replace disc	
		Without eddy current inspection	With eddy current inspection
(1) 20,001 CSN or greater on December 31, 2000.	Remove disc from service or perform optional on-wing eddy current disc inspection within 21 days after the effective date of this AD.	Within 21 days after the effective date of this AD.	Within 3,000 cycles-in-service (CIS) after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this ▲D
(2) 18,100 to 20,000 CSN on December 31, 2000.	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 21,000 CSN or within 21 days after the effective date of this AD, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(3) Fewer than 18,100 CSN on December 31, 2000 and greater than 20,000 CSN on December 31, 2004.	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 20,500 CSN or by December 31, 2004, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(4) Fewer than 18,100 CSN on December 31, 2000 and greater than 18,100 CSN on December 31, 2005.	Remove disc from service or perform on-wing eddy current disc inspection.	Before accumulating 20,000 CSN or by December 31, 2005, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(5) Fewer than 18,100 CSN on December 31, 2000 and fewer than 18,100 CSN on December 31, 2005.	No action required	N/A	N/A.

(c) Information regarding disc removal may be found in 3.A. of the Accomplishment Instructions of Mandatory Service Bulletin (MSB) RB.211–72–D181, Revision 3, dated August 16, 2002.

(d) The optional on-wing eddy current disc inspection noted in Table 2 of this AD must be performed in accordance with 3.C.(1) through 3.C.(6) of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

RB211–535E4 Engines Operating to Flight Plan B

(e) For RB211–535E4 engines operating to flight plan B, remove the LP turbine stage 2 disc from service using the CSN and Action times listed in the following Table 3.

TABLE 3.—DRAWDOWN SCHEDULE FOR RB211–535E4 ENGINES OPERATING TO FLIGHT PLAN B

Disc CSN	Action	Replace disc	
		Without eddy current inspection	With eddy current inspection
(1) 16,501 CSN or greater on December 31, 2000.	Remove disc from service or perform optional on-wing eddy current disc inspection within 21 days after the effective date of this AD.	Within 21 days after the effective date of this AD.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.
(2) Greater than 14,600 CSN on December 31, 2000.	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 17,500 CSN or within 21 days after the effective date of this AD, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 of this AD.

TABLE 3.—DRAWDOWN SCHEDULE FOR RB211–535E4 ENGINES OPERATING TO FLIGHT PLAN B—Continued

Disc CSN	Action	Replace disc	
		Without eddy current inspection	With eddy current inspection
(3) Fewer than 14,600 CSN on December 31, 2000 and greater than 16,500 CSN on December 31, 2004.	Remove disc from service or perform optional on-wing eddy current disc inspection.	Before accumulating 17,000 CSN or by December 31, 2004, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in Table 1 this AD.
(4) Fewer than 14,600 CSN on December 31, 2000 and greater than 14,600 CSN on December 31, 2005.	Remove disc from service or perform on-wing eddy current disc inspection.	Before accumulating 16,500 CSN or by December 31, 2005, whichever occurs first.	Within 3,000 CIS after the inspection, but do not exceed the new reduced life limit specified in this AD.
(5) Fewer than 14,600 CSN on December 31, 2000 and fewer than 14,600 CSN on December 31, 2005.	No action required	N/A	N/A.

(f) Information regarding disc removal may be found in 3.A. of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

(g) The optional on-wing eddy current disc inspection must be performed in accordance with 3.C.(1) through 3.C.(6) of the Accomplishment Instructions of MSB RB.211–72–D181, Revision 3, dated August 16, 2002.

Note 2: For engines moving from Flight Plans A to B or B to A, the intermix calculations found in MSB RB.211–72–D181, Revision 3, dated August 16, 2002, may be applied to the life limits.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(j) The actions must be done in accordance with Rolls-Royce plc mandatory service bulletin RB.211–72–D181, Revision 3, dated August 16, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Rolls-Royce plc, P.O. Box 31 Derby, DE24 8BJ, United Kingdom; telephone 011–44–1332–242424; fax 011–44–1332–249936. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in CAA airworthiness directive 006–05–2001, dated August 3, 2001.

Effective Date

(k) This amendment becomes effective on October 2, 2003.

Issued in Burlington, Massachusetts, on August 20, 2003.

Francis A. Favara,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–21740 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

RIN 2120–AA66

[Docket No. FAA–2003–15978; Airspace Docket No. 03–AAL–14]

Establishment of Jet Routes 618 and 623, and Revocation of Jet Routes 600 and 601; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the designation of Jet Routes 600 and 601 (J–600 and J–601) to J–618 and J–623. Currently, there are two jet routes in Canada with the same designation of J–600 and J–601, which is creating continuous data processing problems and confusion. This action will eliminate the dual designation of the jet route numbers. There are no changes to any of the existing route alignments, radials, or altitudes. This action will enhance safety by eliminating the likelihood of flight plan processing problems.

EFFECTIVE DATES: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

The FAA has identified a duplication in jet route number designations in Canada and the U.S. The jet routes, J–600 and J–601, have caused repeated route validation problems in flight plan processing. By changing the U.S. designations of J–600 and J–601 to J–618 and J–623, the FAA will eliminate any confusion between Canada and the U.S. jet routes.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 (part 71) by changing the designation of J–600 and J–601 to J–618 and J–623. There are no changes to any of the existing route alignments, radials, or altitudes. This action will enhance safety by eliminating the likelihood of flight plan processing problems, and reduce controller workload. Because this action is needed for safety reasons, the FAA finds that notice and public comment under 5 U.S.C. 552(b) is impracticable and contrary to public interest.

Jet routes are published in paragraph 2004, of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The jet routes listed in this document would be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, and the National Environmental Policy Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 2004 Jet Routes

* * * * *

J–600 [Revoke]

J–601 [Revoke]

* * * * *

J–618 [New]

From Mt. Moffett, AK, NDB; to Elfee, AK, NDB.

* * * * *

J–623 [New]

From Port Heiden NDB; Cold Bay, AK; INT Dutch Harbor, AK, NDB, 006° and St. Paul Island, AK, NDB, 111° radials; to St. Paul Island, NDB.

* * * * *

Issued in Washington, DC, August 20, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–22043 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30384; Amdt. No. 3072]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective August 28, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 28, 2003.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125), telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on August 15, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

* * * *Effective Upon Publication*

FDC date	State	City	Airport	FDC NO.	Subject
08/01/03	NM	Alamogordo	Alamogordo-White Sands Regional	3/6917	RNAV (GPS) Rwy 3 Orig.
08/01/03	NM	Alamogordo	Alamogordo-White Sands Regional	3/6918	VOR/DME Rwy 3 Orig.
08/01/03	NM	Alamogordo	Alamogordo-White Sands Regional	3/6919	VOR Rwy 3 Amdt 2.
08/01/03	NM	Alamogordo	Alamogordo-White Sands Regional	3/6920	NDB Rwy 3 Amdt 5.
08/06/03	OR	Redmond	Roberts Field	3/7052	ILS Rwy 22, Amdt 1A.
08/07/03	TX	McKinney	McKinney Muni	3/7065	VOR/DME–A, Orig-C.
08/07/03	TX	McKinney	McKinney Muni	3/7066	GPS Rwy 17, Orig-C.
08/07/03	TX	McKinney	McKinney Muni	3/7067	GPS Rwy 35, Orig-B.
08/07/03	TX	Rock Springs	Edwards County	3/7107	VOR Rwy 14, Amdt 4.
08/12/03	ND	Fargo	Hector Intl	3/7247	RNAV (GPS) Rwy 35, Orig-A.
08/12/03	SC	Beaufort	Beaufort County	3/7090	RNAV (GPS) Rwy 25, Orig.
08/12/03	SC	Beaufort	Beaufort County	3/7089	RNAV (GPS) Rwy 7, Orig.

[FR Doc. 03–21767 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30383; Amdt. No. 3071]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under

instrument flight rules at the affected airports.

DATES: This rule is effective August 28, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of August 28, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located;
3. The Flight Inspection Area Office which originated the SIAP; or,
4. The Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC on August 15, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

** * * Effective September 4, 2003*

Denver, CO, Denver Intl, ILS OR LOC RWY 16R, Orig
Denver, CO, Denver Intl, ILS OR LOC RWY 34L, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 16R, Orig
Denver, CO, Denver Intl, RNAV (GPS) RWY 34L, Orig
Miami, FL, Miami Intl, LOC/DME, RWY 8, Orig
Miami, FL, Miami Intl, LOC/DME RWY 26, Orig
Miami, FL, Miami Intl, RNAV (GPS) RWY 8, Orig
Miami, FL, Miami Intl, RNAV (GPS) RWY 26, Orig
Lawrence, KS, Lawrence Muni, ILS OR LOC RWY 33, Amdt 1
Lawrence, KS, Lawrence Muni, NDB RWY 33, Amdt 1
Shreveport, LA, Shreveport Regional, RNAV (GPS) RWY 14, Orig
Shreveport, LA, Shreveport Regional, RNAV (GPS) RWY 32, Orig
Shreveport, LA, Shreveport Regional, RNAV (GPS) RWY 5, Orig
Shreveport, LA, Shreveport Regional, RNAV (GPS) RWY 23, Orig
Shreveport, LA, Shreveport Regional, ILS OR LOC RWY 14, Amdt 24

Frederick, MD, Frederick Muni, RNAV (GPS) RWY 23, Amdt 2
Gaithersburg, MD, Montgomery County Airpark, RNAV (GPS) RWY 14, Amdt 1
Gaithersburg, MD, Montgomery County Airpark, RNAV (GPS) RWY 32, Orig
New York, NY, La Guardia, VOR/DME–E, Amdt 2A
New York, NY, La Guardia, VOR–F, Amdt 2A
New York, NY, La Guardia, VOR/DME–G, Amdt 2A
New York, NY, La Guardia, RNAV (GPS) RWY 22, Orig
New York, NY, La Guardia, RNAV (GPS) RWY 31, Orig
New York, NY, La Guardia, RNAV (GPS) RWY 4, Orig
New York, NY, La Guardia, ILS RWY 22, Amdt 19
New York, NY, La Guardia, VOR/DME–H, Amdt 2A
New York, NY, La Guardia, NDB RWY 22, Amdt 12C
New York, NY, La Guardia, NDB RWY 4, Amdt 36A
Midland, TX, Midland Intl, RNAV (GPS) RWY 4, Orig
Midland, TX, Midland Intl, RNAV (GPS) RWY 16R, Orig
Midland, TX, Midland Intl, RNAV (GPS) RWY 22, Orig
Midland, TX, Midland Intl, RNAV (GPS) RWY 28, Orig
Midland, TX, Midland Intl, RNAV (GPS) RWY 34L, Orig
Midland, TX, Midland Intl, GPS RWY 16R, Orig, CANCELLED
Midland, TX, Midland Intl, GPS RWY 34L, Orig, CANCELLED
Midland, TX, Midland Intl, VOR/DME RNAV RWY 16R, Amdt 3A, CANCELLED
Midland, TX, Midland Intl, VOR/DME RNAV RWY 34L, Amdt 2, CANCELLED
Leesburg, VA, Leesburg Executive, RNAV (GPS) RWY 17, Orig
Leesburg, VA, Leesburg Executive, GPS RWY 17, Amdt 1A, CANCELLED
Manassas, VA, Manassas Regional/Harry P. Davis Field, GPS RWY 16L, Orig-A, CANCELLED
Manassas, VA, Manassas Regional/Harry P. Davis Field, RNAV (GPS) RWY 16L, Orig

* * * *Effective October 2, 2003*

Savannah, GA, Savannah/Hilton Head Intl, RNAV (GPS) RWY 9, Orig-A
Savannah, GA, Savannah/Hilton Head Intl, RNAV (GPS) RWY 18, Orig-A
Savannah, GA, Savannah/Hilton Head Intl, RNAV (GPS) RWY 27, Orig-A
Savannah, GA, Savannah/Hilton Head Intl, RNAV (GPS) RWY 36, Orig-A

* * * *Effective October 30, 2003*

Atlanta, GA, Cobb County-McCollum Field, RNAV (GPS) RWY 9, Orig-A
Atlanta, GA, Cobb County-McCollum Field, RNAV (GPS) RWY 27, Orig-A
Atlanta, GA, Cobb County-McCollum Field, VOR/DME RWY 9, Orig-F
Atlanta, GA, Cobb County-McCollum Field, ILS RWY 27, Amdt 1A
Blackfoot, ID, McCarley Field, VOR/DME RWY 19, Orig, CANCELLED
Portland, ME, Portland Intl Jetport, NDB RWY 11, Amdt 15B
Portland, ME, Portland Intl Jetport, ILS OR LOC RWY 11, Orig
Portland, ME, Portland Intl Jetport, ILS OR LOC RWY 29, Orig
Portland, ME, Portland Intl Jetport, RNAV (GPS) RWY 11, Orig
Portland, ME, Portland Intl Jetport, RNAV (GPS) RWY 29, Orig
Portland, ME, Portland Intl Jetport, ILS RWY 11, Amdt 20, CANCELLED
Portland, ME, Portland Intl Jetport, ILS RWY 29, Orig, CANCELLED
Duncan, OK, Halliburton Field, VOR RWY 35, Amdt 11
Duncan, OK, Halliburton Field, RNAV (GPS) RWY 17, Orig
Duncan, OK, Halliburton Field, RNAV (GPS) RWY 35, Orig
Duncan, OK, Halliburton Field, GPS RWY 35, Orig-A, CANCELLED
Milwaukee, WI, General Mitchell Intl, ILS RWY 1L, Amdt 8
Milwaukee, WI, General Mitchell Intl, ILS RWY 7R, Amdt 15
Milwaukee, WI, General Mitchell Intl, ILS RWY 19R, Amdt 10
Milwaukee, WI, General Mitchell Intl, NDB RWY 1L, Amdt 4B
Milwaukee, WI, General Mitchell Intl, NDB RWY 7R, Amdt 10D
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 1L, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 1R, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 7R, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 7L, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 13, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 19L, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) Y RWY 19R, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) Z RWY 19R, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 25L, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 25R, Orig
Milwaukee, WI, General Mitchell Intl, RNAV (GPS) RWY 31, Orig

[FR Doc. 03–21766 Filed 8–27–03; 8:45 am]
BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AF95

Revised Medical Criteria for Evaluating Amyotrophic Lateral Sclerosis

AGENCY: Social Security Administration
ACTION: Final rules.

SUMMARY: We are revising the criteria in the Listing of Impairments (the listings) that we use to evaluate Amyotrophic Lateral Sclerosis (ALS). We apply these criteria when you claim benefits based on disability under title II or title XVI of the Social Security Act (the Act). The revision provides that we will find you disabled if you have medical evidence showing that you have ALS.

Because of this change, we are also adding guidance about ALS to our listings. We are also adding ALS to the list of specific impairment categories in our regulation that provides for presumptive disability payments under title XVI.

DATES: These rules are effective August 28, 2003.

FOR FURTHER INFORMATION CONTACT: Martin Sussman, Regulations Officer, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, (410) 965–1767 or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, *Social Security Online*, at *http://www.socialsecurity.gov*.

Electronic Version: The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html*. It is also available on the Internet site for SSA (*i.e.*, Social Security Online): *http://www.socialsecurity.gov/regulations*.

SUPPLEMENTARY INFORMATION: For the reasons we explain below, we are revising listing 11.10, our listing for ALS, in our neurological body system listings. The new listing provides that we will find you disabled if you have medical evidence that shows that you have ALS. Because of this change, we are also making two additional changes:

- We are adding a new section 11.00G to the introductory material to the neurological listings to provide information about ALS and the evidence we need so that we can evaluate ALS under the new listing.
- We are amending § 416.934 of our regulations to include ALS on the list of "specific impairment categories" our field offices and State agencies use to make findings of presumptive disability under the Supplemental Security Income (SSI) program. This change will allow us to make findings of presumptive disability in claims involving allegations of ALS, without obtaining any medical evidence. We are also making a nonsubstantive technical change to the specific impairment category for Down syndrome in § 416.934, so that the category reflects the current terminology for the condition.

What Programs Do These Final Regulations Affect?

These final regulations affect disability determinations and decisions that we make under title II and title XVI of the Act. In addition, to the extent that Medicare entitlement and Medicaid eligibility are based on whether you qualify for disability benefits under title II or title XVI, these final regulations also affect the Medicare and Medicaid programs.

Who Can Get Disability Benefits?

Under title II of the Act, we provide for the payment of disability benefits if you are disabled and belong to one of the following three groups:

- Workers insured under the Act,
- Children of insured workers, and
- Widows, widowers, and surviving divorced spouses (*see* § 404.336) of insured workers.

Under title XVI of the Act, we provide for SSI payments on the basis of disability if you are disabled and have limited income and resources.

How Do We Define Disability?

Under both the title II and title XVI programs, the Act says that disability must be the result of any medically determinable physical or mental impairment or combination of impairments that is expected to result in death or which has lasted or is expected to last for a continuous period of at least 12 months. Our definitions of disability are shown in the following table:

If you file a claim under . . .	And you are . . .	Disability means you have a medically determinable impairment(s) as described above and that results in . . .
title II	an adult or child	the inability to do any substantial gainful activity (SGA).
title XVI	an individual age 18 or older	the inability to do any SGA.
title XVI	an individual under age 18	marked and severe functional limitations.

How Do We Decide Whether You Are Disabled?

To decide whether you are disabled under the Act, we use a five-step "sequential evaluation process," which we describe in our regulations at §§ 404.1520 and 416.920. We follow the five steps in order and stop as soon as we can make a determination or decision. The steps are:

1. Are you working, and is the work you are doing substantial gainful activity? If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled, regardless of your medical condition or your age, education, and work experience. If you are not, we will go on to step 2.

2. Do you have a "severe" impairment? If you do not have an impairment or combination of impairments that significantly limits your physical or mental ability to do basic work activities, we will find that you are not disabled. If you do, we will go on to step 3.

3. Do you have an impairment(s) that meets or equals the severity of an impairment in the listings? If you do, and the impairment(s) meets the duration requirement, we will find that you are disabled. If you do not, we will go on to step 4.

4. Does your impairment(s) prevent you from doing your past relevant work? If it does not, we will find that you are not disabled. If it does, we will go on to step 5.

5. Does your impairment(s) prevent you from doing any other work, considering your residual functional capacity, age, education, and work experience? If it does, and it meets the duration requirement, we will find that you are disabled. If it does not, we will find that you are not disabled.

We use different sequential evaluation processes for children who apply for disability payments under SSI and, if you are already receiving benefits, when we are deciding whether your disability continues. See §§ 404.1594, 416.424, 416.994, and 416.994a of our regulations. However, all of these different processes also include steps that consider whether your impairment meets or medically equals one of our listings.

What Are the Listings?

The listings are examples of impairments that we consider severe enough to prevent you as an adult from doing any gainful activity. If you are a child seeking SSI benefits based on disability, the listings describe impairments that we consider severe enough to result in marked and severe functional limitations. Although the listings are contained only in appendix 1 to subpart P of part 404 of our rules, we incorporate them by reference in the SSI program in § 416.925 of our regulations, and apply them to claims under both title II and title XVI of the Act.

How Do We Use the Listings?

The listings are in two parts. There are listings for adults (part A) and for children (part B). If you are an individual age 18 or over, we apply the listings in part A when we assess your claim, and we never use the listings in part B.

If you are an individual under age 18, we first use the criteria in part B of the listings. If the listings in part B criteria do not apply, and the specific disease process(es) has a similar effect on adults and children, we then use the criteria in part A. (See §§ 404.1525 and 416.925.)

If your impairment(s) does not meet any listing, we will also consider whether it medically equals any listing; that is, whether it is as medically severe. (See §§ 404.1526 and 416.926.)

What If You Do Not Have an Impairment That Meets or Medically Equals a Listing?

We use the listings only to decide that individuals are disabled or that they are still disabled. We will never deny your claim because your impairment(s) does not meet or medically equal a listing. If you are not working and you have a severe impairment(s) that does not meet or medically equal any listing, we may still find you disabled based on other rules in the sequential evaluation process that we use to evaluate all disability claims. Likewise, we will never decide that you no longer qualify for benefits because your impairment(s) does not meet or medically equal a listing.

Also, when we conduct reviews to determine whether your disability continues, we will not find that your disability has ended because we have changed a listing. Our regulations explain that, when we change our listings, we continue to use our prior listings when we review your case, if you qualified for disability benefits or SSI payments based on our determination or decision that your impairment(s) met or medically equaled the listings. In these cases, we determine whether you have experienced medical improvement, and if so, whether the medical improvement is related to the ability to work. If your condition(s) has medically improved so that you no longer meet or medically

equal the prior listing, we evaluate your case further to determine whether you are currently disabled. We may find that you are currently disabled, depending on the full circumstances of your case. See §§ 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A). If you are a child who is eligible for SSI payments, we follow a similar rule when we decide whether you have experienced medical improvement in your condition(s). See § 416.994a(b)(2).

What Is ALS?

ALS, sometimes called Lou Gehrig's disease, is a progressive, invariably fatal neurological disease that attacks the nerve cells (motor neurons) responsible for controlling voluntary muscles.

ALS most commonly strikes people between 40 and 60 years of age. The diagnosis of ALS is based on history, clinical findings, and electrophysiological and neuroimaging studies. It is also arrived at by ruling out the existence of other neurological disorders that may have similar effects, such as neuropathy.

Eventually, all muscles under voluntary control are affected and individuals with ALS ultimately lose the ability to move their arms and legs, and the capacity to effectively swallow, speak, and breathe. Most people with ALS die from respiratory failure, usually within 3 to 5 years from the onset of symptoms. There is currently no cure for ALS.

What Did the Prior Listing for ALS Require?

The prior listing for ALS, listing 11.10, required that you have ALS with either:

- "Significant bulbar signs" (listing 11.10A) or
- "Disorganization of motor function as described in 11.04B" (listing 11.10B).

"Significant bulbar signs" include difficulty in the ability to chew, swallow, and speak. Listing 11.04B requires "[s]ignificant and persistent disorganization of motor function in two extremities, resulting in sustained disturbance of gross and dexterous movements, or gait and station"; in other words, inability to use both of your upper extremities effectively or to walk effectively.

Why Are We Revising the Listing for ALS?

We are revising listing 11.10 because we have determined that it is not necessary to include the requirements in paragraphs A and B of prior listing 11.10. We expect that these final rules will simplify and expedite our adjudication of claims filed by individuals with ALS.

We receive very few applications based on ALS, and we approve almost all of them at the first level of our decisionmaking process. For example, in calendar year 2002 we received a total of only 1,384 claims based on ALS under titles II and XVI, and the State agencies that review disability claims for us allowed 1,324, or almost 96 percent of them, at the initial level of our administrative review process. The vast majority of the people who appealed their initial determinations denying their claims were also found disabled. In 2002, the State agencies found disabled about 80 percent of the people with claims based on ALS who asked for a reconsideration of their initial determinations. There were similar approval rates for every year since 1999.

There has also been significant Congressional action to help people with ALS qualify for benefits and services as quickly as possible. For example, in 2000, Congress amended the Act to provide that people who are disabled with ALS do not have to wait until they have received benefit payments under title II for 24 months before they can qualify for Medicare, as do all other people who are entitled to disability benefits under title II. See section 226(h) of the Act. These rules will help some people who are disabled with ALS to qualify for Medicare sooner.

We have decided that the simplest and fastest way to process claims of individuals with ALS without sacrificing the quality of our disability determinations and decisions is to revise the listing to provide that anyone who shows that he or she has ALS, established by clinical and laboratory findings, will be found disabled.

Why Are We Adding ALS to § 416.934 of Our Regulations?

The Act and our regulations provide that we may make SSI payments to you for up to 6 months on the basis of presumptive disability before we make a formal determination about whether you are disabled. You must also meet all other eligibility requirements before we may make presumptive disability payments. See section 1631(a)(4) of the Act and § 416.932 of our regulations. (There are no provisions in the Act that would allow us to make presumptive disability payments under title II.) Under § 416.933 of our regulations, we explain that we make these payments if there is a high degree of probability that we will find that you are disabled when we make our formal determination. If our formal determination is that you are not disabled, the Act provides that you do not have to pay us back.

We may make findings of presumptive disability with or without medical evidence. Section 416.934 of our regulations provides a list of "specific impairment categories" that we use to find presumptive disability without medical evidence. For example, we may make a finding of presumptive disability without medical evidence based on an allegation of Down syndrome. A person meets a listing for Down syndrome (10.06 or 110.06) simply by showing medical evidence establishing that he or she has non-mosaic Down syndrome. Therefore, there is a high degree of probability that we will find people who allege Down syndrome disabled. The new rules for ALS are similar. There is a high degree of probability that we will find people who have ALS disabled when we make our formal determination because everyone who applies for SSI and who has medical evidence showing that they have ALS will be found disabled under revised listing 11.10.

When Will We Start To Use These Final Rules?

We will apply the final rules starting today.

As is our usual practice when we make changes to our regulations, we will apply these final rules to the claims of applicants for benefits that are pending at any stage of our administrative review process, including any claims that are pending administrative review after remand from a Federal court.

What Revisions Are We Making?

We are adding a new section 11.00G to the introductory material in the neurological body system section of our listings. The new section contains three paragraphs. Section 11.00G1 provides some basic information about ALS. Sections 11.00G2 and 11.00G3 provide information about how ALS is diagnosed and the information we need to establish that you meet the requirements of revised listing 11.10. The language of paragraphs 11.00G2 and 11.00G3 is based on language we use in the introductory material to the Down syndrome listings (sections 10.00A and B, and 110.00A and B) and the introductory material to our immune system listings regarding documentation of HIV infection (sections 14.00D and 114.00D).

We are revising listing 11.10 to provide that, if you have a diagnosis of ALS established by the medical evidence described in section 11.00G,

we will find that you are disabled. We are not adding a corresponding listing in part B of our listings, the listings we use to evaluate people who are under 18 years old, because ALS is rare in children. We will use revised listing 11.10 to evaluate all people with ALS, including people who are under age 18, as we did under the prior listing.

As already noted, we are also adding a new paragraph (i) to § 416.934 to allow us to make findings of presumptive disability without medical evidence in cases involving allegations of ALS. Together with this addition, we are also making minor editorial changes for context and to update one of our rules. We needed to revise paragraph (g) near the end of prior § 416.934 to remove the word "and" at the end of the section because paragraph (h) is no longer the last paragraph in the section. In addition, we are changing the language of paragraph (g) from "Allegation of Down's syndrome (Mongolism)" to "Allegation of Down syndrome." This is the current terminology for the condition.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), the Social Security Administration follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its Notice of Proposed Rulemaking (NPRM) procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. In the case of these rules, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiving the NPRM procedures.

As we have noted above, we receive very few claims each year based on ALS. In light of the nature of ALS, we find disabled at the initial level of our administrative review process about 96 percent of people who apply for disability benefits under title II and title XVI based on the condition. Many of the remaining few people whose claims are denied initially are found disabled on appeal. Ultimately, we find that almost all people who apply based on ALS are disabled. We expect that the changes we are making in these rules will simplify and expedite our processing of claims based on ALS. The main differences between these rules and our prior rules are that a small number of people who would be required to appeal an unfavorable determination under our prior rules will no longer have to do so, and a very small number of people whose claims were denied incorrectly under our prior rules will now properly be found to be disabled. Consequently, we find that prior notice and comment is unnecessary with respect to these rules.

We also find that good cause exists for waiving the APA's notice-and-comment rulemaking procedures because use of notice-and-comment rulemaking procedures would be contrary to the public interest. In light of the serious consequences caused by ALS, ultimately, we find that almost all people who apply for disability benefits based on the condition are disabled. The serious consequences caused by ALS are also reflected in Congress' judgment, set out in section 226(h) of the Act, to eliminate for individuals who are disabled with ALS the normal 24-month Medicare waiting period that applies to people who are found disabled under title II of the Act. The changes we are making in these rules will allow us to make more timely determinations of disability for individuals with a progressive and invariably fatal disorder. The changes we are making in these rules will also help to implement Congress' judgment that individuals who are disabled under title II of the Act based on ALS should also receive immediate entitlement to Medicare rather than having to wait 24 months. It is critical that we issue these rules as soon as possible so that more people can qualify as quickly as possible for Medicare benefits and other services. Likewise, the small number of individuals who file applications for SSI will be able to benefit from the presumptive eligibility provisions of these rules. For these reasons, we find that use of the APA's notice-and-comment rulemaking procedures is contrary to the public interest in this instance.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, as provided for by 5 U.S.C. 553(d)(3). For the reasons that we have discussed above, we find that it is in the public interest to make these rules effective upon publication.

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were subject to OMB review.

Regulatory Flexibility Act

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they affect only individuals. Thus, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These final rules contain reporting requirements at sections 11.00G and 11.10. The public reporting burden is accounted for in the Information Collection Requests for the various forms that the public uses to submit the information to SSA. Consequently, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules. We are seeking clearance of the burden referenced in these rules because the rules were not considered during the clearance of the forms. An Information Collection Request has been submitted to OMB. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted to the Office of Management and Budget at the following fax number and to the Social Security Administration at the following address or fax number:

Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax Number: 410–965–6400.

Comments can be received for between 30 and 60 days after publication of this notice and will be most useful if received by SSA within 30 days of publication.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security—Disability Insurance; 96.002, Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; and 96.006, Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping

requirements, Supplemental Security Income.

Dated: July 22, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set forth in the preamble, subpart P of part 404 of chapter III of title 20 of the Code of Federal Regulations is amended as set forth below:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

■ 1. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub. L. 104–193, 110 Stat. 2105, 2189.

Appendix 1 to Subpart P of Part 404—[Amended]

■ 2. Add new section 11.00G to section 11.00 in part A of appendix 1 and revise section 11.10 to read as follows:

Appendix 1 to Subpart P of Part 404—Listing of Impairments

* * * * *

11.00 Neurological

* * * * *

G. Amyotrophic Lateral Sclerosis (ALS). 1. Amyotrophic lateral sclerosis (ALS), sometimes called Lou Gehrig's disease, is a progressive, invariably fatal neurological disease that attacks the nerve cells (motor neurons) responsible for controlling voluntary muscles. Eventually, all muscles under voluntary control are affected, and individuals with ALS ultimately lose their ability to move their arms and legs, and their capacity to swallow, speak, and breath. Most people with ALS die from respiratory failure. There is currently no cure for ALS, and most treatments are designed only to relieve symptoms and improve the quality of life.

2. Diagnosis of ALS is based on history, neurological findings consistent with the diagnosis of ALS, and electrophysiological and neuroimaging testing to rule out other impairments that may cause similar signs and symptoms. The diagnosis may also be supported by electrophysiological studies (electromyography or nerve conduction studies), but these tests may be negative or only suggestive of the diagnosis. There is no single test that establishes the existence of ALS.

3. For purposes of 11.10, documentation of the diagnosis must be by generally accepted methods consistent with the prevailing state of medical knowledge and clinical practice. The evidence should include documentation of a clinically appropriate medical history, neurological findings consistent with the diagnosis of ALS, and the results of any electrophysiological and neuroimaging testing.

* * * * *

11.10 *Amyotrophic lateral sclerosis* established by clinical and laboratory findings, as described in 11.00G.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

■ 3. The authority citation for subpart I of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

■ 4. In § 416.934, revise paragraph (g) and add new paragraph (i) to read as follows:

§ 416.934 Impairments which may warrant a finding of presumptive disability or presumptive blindness.

* * * * *

(g) Allegation of Down syndrome.

* * * * *

(i) Allegation of amyotrophic lateral sclerosis (ALS, Lou Gehrig's disease).

[FR Doc. 03–22016 Filed 8–27–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2003N–0346]

Food Labeling: Ingredient Labeling of Dietary Supplements That Contain Botanicals

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulation on declaring botanical ingredients in dietary supplements to incorporate by reference the latest editions of two books. Currently, the regulation incorporates by reference *Herbs of Commerce* (1992) and the *International Code of Botanical Nomenclature (Tokyo Code) 1994*. FDA is replacing the references to these editions with the 2000 editions of the same books. This action is intended to provide industry with current and more comprehensive references to use in identifying on product labels the common or usual name of each botanical ingredient contained in dietary supplements. In addition, FDA is incorporating new statutory restrictions on the use of the word "ginseng" in dietary supplement labeling. Finally, FDA is making minor wording changes in its regulation on declaring botanical ingredients in dietary supplements. These changes are intended to improve the reader's understanding, consistent with the principles of plain English, or to be more technically accurate, consistent with internationally accepted botanical terminology. FDA is issuing a direct final rule for this action because FDA expects there will be no significant adverse comments on the rule. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule through the usual notice-and-comment rulemaking process. If FDA receives significant adverse comment on either rule, FDA intends to withdraw the direct final rule and proceed with the rulemaking. The companion proposed rule and direct final rule are substantively identical.

DATES: This rule is effective January 1, 2006. Submit written or electronic comments on this direct final rule by November 12, 2003. If FDA receives no significant adverse comments within the specified comment period, the agency intends to publish a document in the **Federal Register** confirming the effective date of this direct final rule. If the agency receives any timely significant adverse comments, FDA intends to publish a document in the **Federal Register** withdrawing this direct final rule before its effective date. The Director of the Office of the Federal Register approves the incorporation by reference, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, of certain publications in 21 CFR 101.4(h) as of January 1, 2006.

ADDRESSES: Submit written comments on this direct final rule to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Victoria Lutwak, Office of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2375.

SUPPLEMENTARY INFORMATION:

I. Background

A. Rulemaking Process

FDA has determined that the subject of this rulemaking is suitable for a direct final rule because it does not involve controversial regulatory changes and FDA does not anticipate receiving any significant adverse comments. This direct final rule has a companion proposed rule addressing the same topic published in the proposed rules section of this issue of the **Federal Register**. The direct final rule and its companion proposed rule are substantively identical. The proposed rule provides the procedural framework to finalize the rule in the event that the direct final rule is withdrawn because FDA receives significant adverse comment.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. A comment recommending additional changes in the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the recommended revision. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

The comment periods for the direct final rule and its companion proposed rule run concurrently. We have identified and discussed the regulatory changes in the preambles to both rules. Any comments received under the direct final rule will be treated as comments regarding the proposed rule and vice versa. FDA is publishing this direct final rule because the rule does not contain controversial changes and FDA does not anticipate receiving significant adverse comments about it. If no significant adverse comments are received in response to either rule, FDA will take no further action on the proposed rule. Instead, after the comment period ends, FDA intends to publish a document in the **Federal Register** to confirm the January 1, 2006, effective date of the direct final rule. This is the applicable uniform effective date for compliance with food labeling requirements published in the **Federal Register** (see the **Federal Register** of December 31, 2002 (67 FR 79851), designating January 1, 2006, as the effective date for food labeling regulations issued between January 1, 2003, and December 31, 2004). However, if FDA receives significant adverse comment on either rule, FDA will withdraw the direct final rule and will proceed to respond to all comments received on both rules under the companion proposed rule using the usual notice-and-comment procedures. A full description of FDA's policy on direct final rule procedures appears in a guidance document published in the **Federal Register** on November 21, 1997 (62 FR 62466).

B. Current Regulatory and Legislative Requirements Related to Direct Final Rule Amendments

FDA issued a final rule entitled "Food Labeling: Statement of Identity, Nutrition Labeling and Ingredient Labeling of Dietary Supplements" in the **Federal Register** on September 23, 1997 (62 FR 49826). This rule incorporated by reference under § 101.4(h) (21 CFR 101.4(h)) the two books entitled *Herbs of Commerce* (1992) (Ref. 1) and *International Code of Botanical Nomenclature (Tokyo Code) 1994* (Ref. 2) for industry's use in identifying on product labels the common or usual name of each botanical ingredient contained in dietary supplements. Both books were incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Section 101.4(h) currently requires that a dietary supplement that contains one or more botanical ingredients (including fungi and algae) state the common or usual name for each of these ingredients on the label. This common or usual name must be consistent with the "standardized common name" listed in *Herbs of Commerce* (1992) for the corresponding plant from which the ingredient is derived. Therefore, the "standardized common name" of each botanical used as an ingredient of a dietary supplement is its common or usual name for labeling purposes.

Current § 101.4(h)(2) also requires that if no standardized common name for a particular botanical ingredient is listed in *Herbs of Commerce* (1992), the label must state the Latin binomial name of the plant from which that ingredient is derived. All names in Latin binomial form must be stated on the label in accordance with internationally accepted rules on nomenclature, such as those found in the *International Code of Botanical Nomenclature (Tokyo Code) 1994*. Further, the name in Latin binomial form must include the designation of the author or authors who published the Latin name [hereafter referred to as author citation] when a positive identification of the dietary ingredient cannot be made without identifying the author(s).

Since 1997, both of the books incorporated by reference for use by industry in the labeling of dietary supplements that contain botanical ingredients have been updated and now the 2000 editions supersede the earlier ones. *Herbs of Commerce, 2nd Edition* (2000) (Ref. 3) added standardized common names for approximately 1,500 more botanicals than were included in the earlier edition, and changed the standardized common names for approximately 140 botanicals listed in the earlier edition. The *International Code of Botanical Nomenclature (Saint Louis Code) 2000* (Ref. 4) reflects the International Botanical Congress's latest decisions on the rules for the scientific naming of plants. Botanical nomenclature is an evolving science that is influenced by new discoveries and the correction of past misidentifications of plants.

Further, in 2002, Congress passed and the President signed into law the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) [hereafter referred to as the Farm Bill]. Section 10806 of the Farm Bill amended the misbranding provisions in section 403 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343) by adding a new paragraph (u), which states that a dietary supplement is misbranded "[i]f it purports to be or is represented as ginseng, unless it is an herb or herbal ingredient derived from a plant classified within the genus Panax." Section 10806(b)(1)(A) of the Farm Bill states that "the term 'ginseng' may only be considered to be a common or usual name (or part thereof) for any herb or herbal ingredient derived from a plant classified within the genus Panax." Section 10806(b)(1)(B) further provides that "only labeling or advertising for herbs or herbal ingredients classified within that genus may include the term 'ginseng.'"

The Farm Bill requirements about use of the term "ginseng" are in effect today because the law is self-executing. Congress did not direct FDA to issue regulations in order to implement these new requirements; therefore, industry must comply with them currently.

C. Updated Books To Be Incorporated by Reference

Herbs of Commerce, 2nd Edition (2000) establishes a "standardized common name," expressed primarily in English, for each plant used in commerce, including fungi and algae. However, in a few instances, the standardized common name is expressed in another language or is the same as the plant's Latin binomial name (i.e., genus and species) when that name has become common. For example, the Spanish word "mate" is the standardized common name for the plant "*Ilex paraguariensis* A. St.-Hil.," and the Latin binomial name "*Phyllanthus amarus*" is the standardized common name for the plant "*Phyllanthus amarus* Schumach." The standardized common name generally applies to the whole plant, but in some instances it applies to a plant part. For example, the standardized common names "mace" and "nutmeg" pertain specifically to the plant parts "aril" and "seed," respectively, of the same plant "*Myristica fragrans* Houtt."

All standardized common names listed in *Herbs of Commerce, 2nd Edition* (2000) are printed in boldface letters. In this book under "Section One: Latin Binomials," each plant name is listed first alphabetically by its Latin binomial name. The plant's corresponding standardized common name is stated after the acronym "SCN" on the first indented line of text underneath its Latin binomial name. Under "Section Two: Standardized Common Names," each plant name is listed first alphabetically by its standardized common name. The plant's corresponding Latin binomial name is stated on the first indented line of text underneath its standardized common name.

In addition to the standardized common name, *Herbs of Commerce, 2nd Edition* (2000) identifies the currently recognized Latin binomial name and four other categories of common names for each of the plants listed, as applicable. These other categories are:

- "botanical synonym,"
- "Ayurvedic name,"
- "pinyin name," and
- "other common name."

The botanical synonym, if any, represents one or more examples of other Latin binomial names that have been broadly used for the plant in the past. The Ayurvedic name, if any, generally represents the plant's Sanskrit name; however, the Hindi name may be cited if the plant is primarily known by it instead. The pinyin name, if any, may be one or more of the plant's Chinese common names. Other common names, if any, represent any additional names frequently used for the plant.

The "standardized common name" is different and distinct from all of the other categories of common names for a plant. There is only one *standardized* common name that is selected for each plant listed in *Herbs of Commerce, 2nd Edition* (2000); however, there may be several names cited within one or more of the other categories of common names that are associated with the same plant.

The *International Code of Botanical Nomenclature (Saint Louis Code) 2000* (the Code) establishes the current internationally accepted rules that govern the scientific naming of plants, including fungi and algae. The scientific name, which identifies the plant's genus and species, is expressed in Latin and applies to the whole plant without exception. The Latin binomial name of a plant is followed by the name(s) of the person(s) who described and published the plant name in accordance with the Code's guidelines. The Code refers to such notation about authors as an "author citation."

II. Direct Final Rule

FDA is revising § 101.4(h) to substitute *Herbs of Commerce, 2nd Edition* (2000) for its 1992 edition, and the *International Code of Botanical Nomenclature (Saint Louis Code) 2000* for its 1994 edition, as books incorporated by reference. Requirements on how these references are to be used for dietary supplement labeling purposes remain the same and are not affected by this direct final rule, with one minor exception.

Currently, § 101.4(h)(2) uses the phrase "such as" when referring to the *International Code of Botanical Nomenclature* as a reference that industry may use to ensure that any Latin binomial name of a botanical ingredient listed on the label of a dietary supplement conforms to the internationally accepted rules of botanical nomenclature. As presently worded, the regulation could be interpreted to allow other references to be consulted for this purpose. We are revising the language in the Code of Federal Regulations (CFR) to make the *International Code of Botanical Nomenclature* the only reference that may be used on the rules for determining and formatting the Latin binomial name of a botanical ingredient for dietary supplement labeling purposes. This book is internationally recognized by botany experts from nations around the world as the foremost authoritative reference on botanical nomenclature. We are not aware of any comparable reference that comprehensively addresses the rules on the scientific naming of plants and has as broad international support. The *International Code of Botanical Nomenclature* is regulated by the Nomenclature Section of an International Botanical Congress. This group meets under the auspices of the International Union of Biological Sciences, of which the U.S. National Research Council/National Academy of Sciences is a member. The XVI International Botanical Congress brought together more than 4,000 scientists from more than 100 countries at its most recent meeting held in Saint Louis, MO in 1999 when the *International Code of Botanical Nomenclature (Saint Louis Code) 2000* was voted on and adopted. Therefore, to be in harmony with this international cooperation and to be consistent with FDA's science-based philosophy, this direct final rule is incorporating by reference the *International Code of Botanical Nomenclature (Saint Louis Code) 2000* as the one that industry must follow on the rules to determine and format the Latin binomial names of any botanical ingredients stated on dietary supplement labels.

Some dietary supplements may contain a botanical ingredient that is not listed in the 2000 edition of *Herbs of Commerce* and therefore does not have a standardized common name. Like the former regulation, in such cases the direct final rule is requiring that the common or usual name for that botanical ingredient listed on the label be accompanied, in parentheses, by the Latin binomial name of the plant from which it is derived. When needed to positively identify the botanical ingredient, the direct final rule is continuing to require that the Latin binomial name also must include the author citation, stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

FDA is aware that there may be instances when a botanical ingredient belongs to a subspecies or variety of a species that is not listed in the 2000 edition of *Herbs of Commerce*. In those cases, the Latin binomial name and author citation alone will not identify the subspecies or variety of that species. Although not a requirement, FDA encourages industry to voluntarily state the following on dietary supplement labels directly after the Latin binomial name when needed to positively identify a botanical ingredient below the species level: The name of any

applicable subspecies, variety, or other subdivision and its corresponding author citation, stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000.*

FDA is further revising § 101.4(h) to incorporate statutory restrictions on the use of the term "ginseng" that were imposed by section 10806 of the Farm Bill. Specifically, the direct final rule includes the following statement in § 101.4(h): "The use of the term 'ginseng' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus '*Panax*.'"

Finally, FDA is making minor wording changes in § 101.4(h) to improve the reader's understanding, consistent with the principles of plain English, or to improve technical accuracy, consistent with internationally accepted botanical terminology. Examples of changes we are making to improve the reader's understanding are using simpler language throughout, substituting the word "must" for "shall," and dividing very long sentences into shorter ones. To be more technically accurate, the direct final rule replaces the current wording under § 101.4(h)(2) that refers to the "designation of the author or author(s) who published the Latin name" with the term "author citation" to refer to the "name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000.*" For technical clarity, the direct final rule also adds the notation "(i.e., genus and species)" after the first reference to the term "Latin binomial name" under § 101.4(h).

III. Use of the Incorporated References and Implementation of Pertinent Farm Bill Provisions

Over the years, FDA has received several inquiries from representatives of the dietary supplement industry about the use of *Herbs of Commerce* and the *International Code of Botanical Nomenclature*. These books are references for industry to use in determining the common or usual name of each botanical ingredient or to consult on the rules for determining and formatting any required Latin binomial names corresponding to the botanical ingredients declared on dietary supplement labels. The act of "incorporation by reference," however, does not imply that all of the botanicals that have standardized common names listed in *Herbs of Commerce* or that follow the scientific naming rules found in the *International Code of Botanical Nomenclature* are safe for consumption as dietary supplements or other foods by man or other animals. Citation of these books in the CFR is specific and limited to the sole purpose of identifying authoritative references for industry to use to determine the correct plant nomenclature. Neither reference addresses the safety or uses of plants.

This direct final rule focuses only on the naming of botanical ingredients of dietary supplements for labeling purposes. It is the responsibility of manufacturers and distributors to ensure that the particular botanicals they use as ingredients of dietary supplements are safe for human consumption, do not contain contaminants, are properly identified on the label, are legally marketed, and conform to all governing regulations.

In addition, *Herbs of Commerce, 2nd Edition* (2000) does not represent an authoritative compilation of botanical dietary ingredients that were marketed in the United States before October 15, 1994 (i.e., botanicals that are not new dietary ingredients under section 413(c) of the act (21 U.S.C. 350b(c))). The book's disclaimer explains that the publisher did not verify whether or not the companies that submitted botanical information for inclusion in this reference had valid documentation that supported such marketing. The book's disclaimer further states: "The listing of a particular species of plant in this work is not, therefore, in and of itself, evidence that such species was marketed in the United States prior to October 15, 1994" (Ref. 3, page xx). This direct final rule does not confer FDA endorsement of *Herbs of Commerce, 2nd Edition* (2000) for any other purpose than to serve as a reference on the common or usual names of botanical ingredients contained in dietary supplements.

In most cases, *Herbs of Commerce, 2nd Edition* (2000) assigns a unique standardized common name to each plant. However, the book indicates that the same standardized common name is given to more than one plant when the plants are used interchangeably in commerce. There are over 100 instances in *Herbs of Commerce, 2nd Edition* (2000) where the same standardized common name applies to two or more different species, subspecies, or varieties of the same genus of plant.

In other cases in *Herbs of Commerce, 2nd Edition* (2000), a name listed under one of the categories of common names (e.g., Pinyin names) for one botanical may be shared by another botanical from a different genus of plants. For example, the botanical *Ammi majus* L. has the standardized common name bishop's weed, whereas bishop's weed is also listed as the other common name for the botanical *Aegopodium podagraria* L. that has the standardized common name ash weed.

Confusion and mistakes in the identity of botanicals can be caused when the ingredients have the same or similar common names. Therefore, it is important that manufacturers know a botanical's true identity, including its Latin binomial name with author citation and its biological and chemical properties, before substituting one botanical for another as an ingredient of a dietary supplement. It is the responsibility of manufacturers and distributors to ensure that any botanical used as an ingredient of a dietary supplement or other food marketed in the United States is safe for consumption and complies with all applicable requirements of the act.

The "standardized common names" of botanicals listed in both the 1992 and 2000 editions of *Herbs of Commerce* are consistent with the Farm Bill's definition of the term "ginseng." However, both editions note that the term "ginseng" has been used as part of "other common names" associated with botanicals from genera other than *Panax*, including blue ginseng, lesser ginseng, prince ginseng, and Siberian ginseng. We remind industry that names that include the term "ginseng" may be used as the common or usual name for a botanical ingredient only if the botanical is derived from the plant genus "*Panax*."

IV. Environmental Impact

FDA has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environment assessment nor an environmental impact statement is required.

V. Regulatory Impact Analysis

FDA has examined the economic implications of this direct final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The

Executive order classifies a regulatory action as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. The Executive order also classifies a regulatory action as significant if it raises novel legal or policy issues. We have determined that this direct final rule is not a significant regulatory action as defined by the Executive order.

A. Regulatory Options

We have identified the following major regulatory alternatives or options: (1) Take no action, (2) take the direct final rule action, and (3) take an alternative action. These options are explained in the next section of this document.

1. Option One: Take No Action

The incorporation by reference citations under § 101.4(h) would remain unchanged. Under this option, the following requirements and provisos apply:

- The label of a dietary supplement containing a botanical ingredient must use the "standardized common name" for that botanical ingredient listed in the 1992 edition of *Herbs of Commerce*.
- For a botanical ingredient not listed in the 1992 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax*."
- Any common or usual name *other than* the "standardized common name" for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (1992), and must be accompanied by the Latin binomial name of the plant from which it is derived.
- The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature, such as those found in the *International Code of Botanical Nomenclature (Tokyo Code) 1994*.
- The Latin binomial name of a botanical ingredient also must include the designation of the author or authors who published the Latin name, when a positive identification of the botanical cannot be made in its absence.

2. Option Two: Take the Direct Final Rule Action

The direct final rule option would update the incorporation by reference citations under § 101.4(h). Under this option, the following requirements and provisos apply:

- The label of a dietary supplement containing a botanical ingredient must use the "standardized common name" for that botanical ingredient listed in the 2000 edition of *Herbs of Commerce*.
- For a botanical ingredient not listed in the 2000 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. As in Option One, in accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax*."
- Any common or usual name other than the "standardized common name" for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.
- The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.
- When needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code), 2000*).

3. Option Three: Take an Alternative Action

This option is similar to the direct final rule option. We would still update the incorporation by reference citations under § 101.4(h), but firms would have slightly more flexibility when labeling supplements containing a botanical ingredient. Under this option, the following requirements and provisos apply:

- As in Option Two, if the "standardized common name" for a botanical ingredient has changed from the 1992 to the 2000 edition of *Herbs of Commerce*, firms must use the revised "standardized common name" listed in the 2000 edition of *Herbs of Commerce*.
- If a botanical ingredient listed in the 2000 edition of *Herbs of Commerce* was not previously listed in the 1992 edition of that reference, firms could elect to use any of the names (i.e., botanical synonym, Ayurvedic name, pinyin name, or other common name) listed for that botanical in the 2000 edition as the common or usual name, with the following exception. As in Options One and Two, in accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax*."
- Similar to Options One and Two, if the botanical ingredient is not listed in either the 1992 or 2000 edition of *Herbs of Commerce*, firms could use any appropriately descriptive name as the common or usual name for that ingredient with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax*."
- As in Option Two, any common or usual name *other than* the "standardized common name" for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.
- As in Option Two, the Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.
- As in Option Two, when needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

B. Impacts of Regulatory Options

1. Option One: Take No Action

This option would retain the 1992 edition of *Herbs of Commerce* as the source for standardized common names and the 1994 edition of the *International Code of Botanical Nomenclature* as the reference on how to state the Latin

binomial names of botanical ingredients of dietary supplements. By convention, we treat the option of taking no action as the baseline for defining the costs and benefits of the other options. Therefore, we discuss the impacts of this option indirectly via the costs and benefits of the other options.

For this direct final rule, we include as part of the baseline costs for Option One (take no action) the cost of section 10806 of the Farm Bill, which restricts the use of the term "ginseng" in the labeling of dietary supplements as discussed under section II, Direct Final Rule, of this document. This is because the requirements of the Farm Bill are already in effect and are not dependent upon this rule for implementation.

2. Option Two: Take the Direct Final Rule Action

a. *Costs of option two.* The direct final rule would generate two basic types of costs: (1) Costs associated with changing certain dietary supplement labels and (2) potential one-time increases in product search costs for some consumers.

We estimate the first type of cost by using a model developed for that purpose by Research Triangle Institute (RTI) under contract to us (Ref. 5). This model estimates the total cost to change product labels by estimating and then adding together the following types of costs: (1) Internal administrative, (2) graphic design, (3) pre-press, (4) plate or cylinder engraving or etching, and (5) inventory disposal. The first four costs depend, in part, on the number of stockkeeping units (SKUs) involved. According to this model, dietary supplements are associated with 29,514 SKUs (Ref. 5).

The direct final rule would not affect all of these SKUs, only those associated with dietary supplements containing botanicals. We do not have direct estimates of the number of SKUs associated specifically with dietary supplements containing botanicals. However, a 1999 report by RTI on the economic characteristics of the dietary supplement industry found that herbals and botanicals made up 28 percent of sales in the dietary supplement market (Ref. 6). A statement submitted to us by the American Herbal Products Association (AHPA) noted that the *Nutrition Business Journal* "has consistently stated that herbal products represent approximately 25 percent of the sales of all supplements" (Ref. 7). In the following analysis, we use the 28 percent figure rather than the 25 percent figure because it is better documented and because the 28 percent figure is consistent with the phrase "approximately 25 percent." In the absence of other information, we assume that the share of SKUs associated with products containing botanicals is similar to the share of sales associated with such products; that is, we assume that 28 percent of the total number of SKUs associated with dietary supplements is associated with dietary supplements containing botanicals. Therefore, we assume that approximately 8,300 SKUs (29,514 SKUs x 28 percent) are associated with dietary supplements containing botanicals.

In addition, the direct final rule would only affect dietary supplements containing the following botanicals: (1) Any of the 1,500 additional botanicals for which the 2000 edition of *Herbs of Commerce* establishes standardized common names, if the labels of those products do not already list those botanicals under those names, (2) any of the 140 botanicals that the 2000 edition of *Herbs of Commerce* lists under a different standardized common name than in the 1992 edition, and (3) any botanical that the 2000 edition of the *Herbs of Commerce* does not list and for which using the naming conventions in the 2000 edition of the *International Code of Botanical Nomenclature* would result in a different Latin binomial name or author citation than using the naming conventions in the 1994 edition.

We do not know how many Latin binomial names the 2000 edition of the *International Code of Botanical Nomenclature* has changed, because that reference contains naming conventions rather than a list of names that we could compare with another list of names. Firms may need to change the labels of products containing botanicals that were listed under the same standardized common names in both the 1992 and 2000 editions of *Herbs of Commerce*, if the firms voluntarily listed the Latin binomial names of those botanicals and the 2000 edition of the *International Code of Botanical Nomenclature* has changed those names.

We do not have information on the number of dietary supplements this direct final rule would likely affect. AHPA reportedly reviewed the labels of several hundred dietary supplements containing botanicals and found that 85 percent fully conformed to the 2000 edition of *Herbs of Commerce* (Ref. 7). Additional samples might find higher or lower rates of compliance. In addition, labels that are already in compliance with the 2000 edition of *Herbs of Commerce* might not be in compliance with the 2000 edition of the *International Code of Botanical Nomenclature*. To better reflect the uncertainty about the number of dietary supplements this direct final rule would be likely to affect, we assume it would affect between 10 and 20 percent of the 8,300 SKUs associated with botanical supplements or from 830 SKUs (8,300 SKUs x 10 percent) to 1,660 SKUs (8,300 SKUs x 20 percent). This range corresponds to an overall percentage of 3 (830 SKUs ÷ 29,514 SKUs) to 6 percent (1,660 SKUs ÷ 29,514 SKUs) of dietary supplement SKUs.

The labeling cost model we use does not base inventory disposal costs specifically on SKUs, but on the types of labels firms generally use for different types of products and assumptions about the amount of inventory remaining under different compliance periods for different types of products. We assume that the direct final rule would generate between 3 and 6 percent of the inventory disposal costs the model estimates for changing all dietary supplement SKUs.

The cost of changing product labels also varies with the amount of time we give firms to change the labels. The effective date for this direct final rule is January 1, 2006, which is the uniform effective date for food labeling regulations published between January 1, 2003, and December 31, 2004. We have chosen the uniform effective date for implementing the direct final rule in part because it provides a compliance period of at least 1 year following the publication of this rule. Under this compliance period, the label cost model estimates that the direct final rule would generate one-time relabeling costs of between $2 million (830 SKUs x $2,400 per SKU) and $7 million (1,660 SKUs x $4,200 per SKU).

In addition, the direct final rule may generate a one-time increase in product search costs for some consumers. Affected consumers would include those who currently identify desired botanical ingredients by: (1) Common or usual names that are different from the 1,500 new standardized common names listed in the 2000 edition of the *Herbs of Commerce*, (2) one of the 140 standardized common names changed by the 2000 edition of the *Herbs of Commerce*, or (3) one of the Latin binomial names changed by the 2000 edition of the *International Code of Botanical Nomenclature*. These consumers would need to learn the new names for desired ingredients. We do not know the number of affected consumers, but approximately 100 million adults (49 percent of adults times 202,493,000 adults ages 18 and older in the United States in 1999) consumed dietary supplements

containing botanicals in 1999 (Refs. 8 and 9). Probably only a small percentage of these consumers would be interested in one or more of the botanicals whose names would be affected by this direct final rule. In the absence of other information, we assume that the proportion of consumers using the botanical ingredient names that the direct final rule would change is the same as the proportion of labels bearing those names or 3 to 6 percent. These percentages correspond to 3 to 6 million consumers.

We do not know the amount of time these consumers would need to discover that they cannot locate a product containing a desired botanical ingredient by the name under which they were accustomed to finding it, investigate the cause, and discover the new name. The methods consumers would use to resolve these issues are probably: (1) Asking a salesperson, (2) reading information on current botanical names in books or the Internet, or (3) reading additional product labels or brochures, some of which might voluntarily indicate the relevant name changes. The amount of time particular consumers devote to finding ingredients that have different names will vary with their interest in the ingredient and the number of ingredients involved. Consumers interested in multiple affected ingredients would probably spend the greatest amount of time on the first change they encounter because they could use some of the information they discover about that change to deal with additional changes. For example, they might learn that names have changed and develop a method for finding the new name. We assume that each affected consumer might spend between 0 and 30 minutes to process the name changes. The average value of 1 hour of leisure time should be similar to the average value of 1 hour of working time, which was $15.66 in January 2001 (Ref. 10). Therefore, we estimate a maximum search cost increase of between $23 million (3 million x 0.5 hours x $15.66 per hour) and $47 million (6 million x 0.5 hours x $15.66 per hour). This burden is a one-time cost, because future consumers of these products would not need to switch from the old name to the new name.

Combining the two types of costs, relabeling and search costs, gives a range of total one-time costs of $25 to $54 million.

b. *Benefits of option two.* The direct final rule would reduce product search costs for consumers who currently shop for dietary supplements containing desired botanical ingredients by using Latin binomial names or the nonstandardized names that might appear along with Latin binomial names, but who would be able to use one or more of the 1,500 additional standardized common names in the 2000 edition of the *Herbs of Commerce*. The direct final rule would reduce these consumers' search costs because standardized common names tend to be shorter and more distinctive than Latin binomial names, and the same ingredients would always appear under the same standardized common name.

Other consumers who would benefit from the direct final rule are those who shop for dietary supplements containing botanical ingredients by using the standardized common names listed in the 1992 edition of *Herbs of Commerce*, but who are currently unable to differentiate desired ingredients from undesired ingredients using those standardized names. Some of these consumers might be better able to differentiate these ingredients using the more specific standardized common names in the 2000 edition. As noted previously, the 2000 edition reports that it has changed 140 names to improve specificity, accuracy, or both.

Additional consumers who would benefit are those who shop for dietary supplements containing botanical ingredients using: (a) One or more of the standardized common names that the 2000 edition of *Herbs of Commerce* has changed to improve accuracy or (b) one or more of the Latin binomial names that the 2000 edition of the *International Code of Botanical Nomenclature* has changed due to a better understanding about the taxonomic relationships between plants. These consumers shop for dietary supplements using the botanical ingredient names in the 2000 edition of *Herbs of Commerce* or stated in accordance with the rules in the 2000 edition of the *International Code of Botanical Nomenclature* but sometimes have difficulty finding those dietary supplements because the product labeling may use a name from or stated in accordance with previous editions of those texts. The direct final rule would reduce search costs for these consumers by reducing inconsistencies between the botanical names in the 2000 editions of *Herbs of Commerce* and the *International Code of Botanical Nomenclature* and the names used to refer to those botanicals on dietary supplement labels.

We do not know the number of consumers in each of these categories. Therefore, we again assume that the total number of consumers in all affected categories would be between 3 and 6 percent of the estimated 100 million consumers who used a dietary supplement containing a botanical ingredient in 1999, or 3 to 6 million consumers.

We also do not know the decrease in search costs that the consumers in each of these categories would experience. However, we estimate the possible range of total search cost reductions using three studies on consumer behavior. The first study recorded the amount of time people in drug stores spent looking at an item on the shelf before making a purchase (Ref. 11) and found that customers, on average, spent approximately 4 minutes studying a product before purchasing it. According to data from RTI, adult consumers bought an average of six units of dietary supplements containing a botanical ingredient in 1999. Therefore, this study suggests that consumers of dietary supplements containing botanicals spend an average of 24 minutes per year (six units per year x 4 minutes per unit) looking at these products on shelves before purchasing them.

The second study, called the Americans' Use of Time Project, used time diaries to study how over 3,500 adults spent their time (Ref. 12). This study found that adult Americans spent about 371 minutes per week shopping for personal consumption items in 1985, such as groceries and other household products. This study did not provide information on time spent searching specifically for dietary supplements. To estimate this time, we assume that the share of shopping time devoted to dietary supplements is proportional to the share of consumers' budgets spent on dietary supplements. According to an industry source and FDA projections, consumers spent about $4.8 billion on dietary supplements containing botanical ingredients in 1999 (Ref. 13). Consumers spent $6,250 billion on personal consumption in 1999 (Ref. 14). We do not know the personal consumption expenditures of people who specifically purchase dietary supplements containing botanicals. Therefore, we assume that the personal consumption expenditures of those consumers are 49 percent of the personal consumption expenditures of all consumers. We base this assumption on the estimate that 49 percent of adult consumers used such a supplement in 1999, and the assumption that those consumers spent about the same amount on personal consumption as did other consumers. Under these assumptions, we estimate on the basis of this study that consumers spend an average of 30 minutes per year [($4.8 billion ÷ [$6,250 billion X 0.49]) x 371 minutes per week

x 52 weeks per year] shopping for supplements containing botanicals.

The third study used hidden observers to track and record shopping time in grocery stores (Ref. 15). This study found that people spent an average of about 21 minutes shopping in the grocery store per trip to the grocery store. By combining the estimated time per trip with the Food Marketing Institute's finding that consumers average about 2.2 grocery shopping trips per week, we estimate shopping time for all grocery store purchases to be 46.2 minutes per week (2.2 trips per week x 21 minutes per trip) (Ref. 16). Again, we assume that the proportion of shopping time devoted to dietary supplements equals the proportion of grocery store expenditures on dietary supplements. In 1999, consumers spent approximately $711 billion on grocery store purchases (here defined as food, alcoholic beverages, housekeeping supplies, personal care products, and tobacco products and smoking supplies) (Ref. 17).

We again assume that 49 percent of this amount was spent by adults who consumed dietary supplements containing botanicals. Based upon this study and the stated assumptions, we estimate that consumers spend about 33 minutes per year [($4.8 billion ÷ [$711 billion X 0.49]) x 46 minutes per week x 52 weeks per year] shopping for dietary supplements containing botanical ingredients.

All of the estimates of search costs are imprecise. None of these studies looks at product search activity that does not involve shopping, such as looking up material in books or on the Internet. The grocery store and use of time studies both addressed shopping time, which includes activities other than reading product labels. Nevertheless, in the absence of additional information, we estimate that this direct final rule could reduce one's shopping time by a maximum of about 33 minutes (0.55 hours) per year. Applying this time savings to the estimated 3 to 6 million affected consumers and the average value of time of $15.66 gives maximum search cost savings of between $26 million (0.55 hours per year x 3 million x $15.66 per hour) and $52 million (0.55 hours per year x 6 million x $15.66 per hour) per year. The direct final rule, however, would not eliminate all search costs associated with dietary supplements containing botanical ingredients for consumers interested in the affected products. To reflect this fact, we assume that this direct final rule would eliminate between 10 and 20 percent of those search costs, which would result in a range of search cost savings of $3 to $10 million per year ($2.6 million x 10 percent to $52 million x 20 percent). These benefits would recur annually because they would apply whenever a consumer actively searched for products containing the relevant ingredients, unlike the one-time increases in search costs that some consumers might face because the direct final rule would change existing botanical ingredient names.

Based on the preceding discussion, we estimate this direct final rule would generate net costs in the first year of between $15 to $51 million, and net benefits of $3 to $10 million every year after the first year. Under a discount rate of 7 percent, the present value of an infinite stream of benefits of $3 million per year is $43 million ($3 million ÷ 7 percent), and the present value of an infinite stream of benefits of $10 million per year is $143 million ($10 million ÷ 7 percent). Therefore, over time, this option would generate net benefits of negative $8 million ($43 million - $51 million) to $128 million ($143 million - $15 million). The stream of benefits that would exactly offset the maximum estimated cost of $51 million to give zero net costs is $4 million ($4 million ÷ 7 percent = $57 million) per year out of the potential range of $3 to $10 million per year. Therefore, this direct final rule would probably generate net benefits.

3. Option Three: Take an Alternative Action (as described under section V.A, Regulatory Options, of this document)

As discussed under section I, Background, of this document, in addition to standardized common names and Latin binomial names, the 2000 edition of *Herbs of Commerce* includes up to four other categories of names (i.e., botanical synonyms, Ayurvedic names, pinyin names and other common names) for each plant listed, when applicable. In order to reduce the number of label and name changes that we would require under Option Two, we could allow firms using any of the 1,500 botanicals that were not listed in the 1992 edition of *Herbs of Commerce*, but that are listed in the 2000 edition, to continue to label their products as they do now, as long as the name used for a botanical ingredient meets one of the following requirements: (1) Is among the names for the respective botanical listed in the 2000 edition and complies with the Farm Bill requirement concerning the use of the term "ginseng" and (2) is accompanied by the corresponding Latin binomial name, stated to conform to the naming conventions of the 2000 edition of the *International Code of Botanical Nomenclature*, including the author citation when needed for a positive identification of the botanical.

a. *Costs of option three.* This option would generate the same labeling costs as Option Two, except that some firms manufacturing or labeling dietary supplements containing one or more of the 1,500 botanical ingredients for which the 2000 edition of *Herbs of Commerce* establishes new standardized common names would not need to revise the labels of those products. The product whose labels would not need to be revised are, with some exceptions, those that currently list botanical ingredients by any one of their corresponding names found in the 2000 edition of *Herbs of Commerce*. The exceptions whose labels would nonetheless need to be revised, are those with names that conflict with the Farm Bill restriction on the use of the term "ginseng," or that do not state the correct Latin binomial names must be stated in accordance with the naming conventions of the 2000 edition of the *International Code of Botanical Nomenclature* and include the author citations when needed for a positive identification of the botanicals. We do not know the number of such products. Using the cost estimated for Option Two, we estimate that the label change costs for Option Three would also be between $2 and $7 million, except that the cost of this option must be the same or less than the costs of Option Two.

Option Three would also generate the same short-term increases in product search costs as Option Two, except that some consumers who currently use one of the other names listed in the 2000 edition of *Herbs of Commerce* to identify botanical ingredients would be able to continue to use those names to identify those ingredients. We do not know the number of such consumers. Using the cost estimated for Option Two, we estimate that the increase of search costs under Option Three would also be between $23 and $47 million, except that these costs must be the same or less than the corresponding costs of Option Two, because the consumers affected by this cost under Option Three are a subset of the consumers affected by this cost under Option Two.

b. *Benefits of option three.* This option would generate the same reduction in long-term search costs as Option Two, except that fewer consumers who currently shop for dietary supplements using nonstandardized names would instead be able to use standardized common names to more easily identify those ingredients in other supplements. Again, we do not have sufficiently

detailed information to distinguish the size of this benefit from that of Option Two, so we again estimate the benefits to be between $3 and $10 million per year, except that they must be the same or less than the benefits of Option Two because the source of benefits under Option Three is a subset of the sources of benefits under Option Two.

We cannot compare the net benefits of Option Three to those of Option Two because the costs and benefits of Option Three are both lower, and we do not know the relative size of the changes in costs and benefits. If, however, the costs and benefits of Option Three were below those of Option Two by the same proportion, then Option Three would probably have lower net benefits than Option Two.

VI. Regulatory Flexibility Analysis

FDA has examined the economic implications of this direct final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options that would minimize the economic effect of the rule on small entities. We find that this direct final rule will have a significant economic impact on a substantial number of small entities.

A. Regulatory Options

In the preceding preliminary regulatory impact analysis under section V.A, Regulatory Options, of this document, we identified the following major regulatory alternatives or options: (1) Take no action, (2) take the direct final rule action, and (3) take an alternative action. We request comments on these and any other plausible alternatives.

B. Impacts of Regulatory Options

1. Option One: Take No Action

The incorporation by reference citations under § 101.4(h) would remain unchanged. Under this option, the following requirements and provisos apply:

- The label of a dietary supplement containing a botanical ingredient must use the "standardized common name" for that botanical ingredient listed in the 1992 edition of *Herbs of Commerce*.
- For a botanical ingredient not listed in the 1992 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax*."
- Any common or usual name *other than* the "standardized common name" for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (1992), and must be accompanied by the Latin binomial name of the plant from which it is derived.
- The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature, such as those found in the *International Code of Botanical Nomenclature (Tokyo Code) 1994*.
- The Latin binomial name of a botanical ingredient also must include the designation of the author or authors who published the Latin name, when a positive identification of the botanical cannot be made in its absence.

Taking no additional action beyond the current regulatory regime that we described in the previous paragraphs would have no effect on small entities relative to the status quo.

2. Option Two: Take the Direct Final Rule Action

The direct final rule action is to update the incorporation by reference citations under § 101.4(h). Under this option, the following requirements and provisos apply:

- The label of a dietary supplement containing a botanical ingredient must use the "standardized common name" for that botanical ingredient listed in the 2000 edition of *Herbs of Commerce*.
- For a botanical ingredient not listed in the 2000 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. As in Option One, in accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax*."
- Any common or usual name *other than* the "standardized common name" for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.
- The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.
- When needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

The direct final rule would cause some small businesses to change product labels as described in the preceding regulatory impact analysis. It would not affect any other class of small entities. RTI developed a Dietary Supplement Enhanced Establishment Database (DS–EED) under contract to us. RTI based the DS–EED on our official establishment inventory and supplemented it with information from trade organizations, trade shows, and electronic databases (Ref. 6). According to these data, approximately 350 to 1,260 establishments might manufacture, repackage, or relabel supplements containing botanicals.

The Small Business Administration (SBA) defines a small business in the dietary supplement industry as a business having 500 or fewer employees. RTI traced the establishments to the parent company to determine how many establishments belonged to small firms. Based on that study, between 60 and 90 percent of the 1,260 establishments belong to small firms, or between approximately 700 and 1,200 establishments. However, the RTI study did not provide information on the total number of firms associated with those establishments.

In a letter to FDA, AHPA claims that between 600 and 1,100 firms produce at least one dietary supplement product containing an herbal ingredient and are also involved in labeling products (Ref. 7). The letter also states that the editor of the *Nutrition Business Journal* told APHA that between 95 and 96 percent of dietary supplement companies have 500 or fewer employees. This information appears consistent with the information on establishments provided by RTI. We do not know how many of these firms would actually need to revise their labels. Therefore, we estimate that the direct final rule would affect between 0 and 1,045 small firms.

We assume that these firms would face 96 percent of the maximum total labeling costs for all firms we estimated in this document's preceding section V.B.2.a, Costs of Option Two, which were $2 to $7 million. Therefore, we estimate that this direct final rule would generate one-time costs for small firms

of between $2 and $7 million, after rounding to the nearest million.

3. Option Three: Take an Alternative Action

This option is similar to the direct final rule action. We would still update the incorporation by reference citations under §101.4(h), but firms would have slightly more flexibility when labeling dietary supplements containing a botanical ingredient. Under this option, the following requirements and provisos apply:

- As in Option Two, if the "standardized common name" for a botanical ingredient has changed from the 1992 to the 2000 edition of *Herbs of Commerce*, firms must use the revised "standardized common name" listed in the 2000 edition of *Herbs of Commerce*.
- If a botanical ingredient listed in the 2000 edition of *Herbs of Commerce* was not previously listed in the 1992 edition of that reference, firms could elect to use any of the names (i.e., botanical synonym, Ayurvedic name, pinyin name, or other common name) listed for that botanical in the 2000 edition as the common or usual name, with the following exception. As in Options One and Two, in accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax*."
- Similar to Options One and Two, if the botanical ingredient is not listed in either the 1992 or 2000 edition of *Herbs of Commerce*, firms could use any appropriately descriptive name as the common or usual name for that ingredient with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax*."
- As in Option Two, any common or usual name *other than* the "standardized common name" for a botanical ingredient may be used only if the botanical is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.
- As in Option Two, the Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.
- As in Option Two, when needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

We discussed this option under this document's preceding section V.B.3.a, Costs of Option Three, and concluded that it would generate lower relabeling costs for all firms than the direct final rule action. However, we were unable to estimate the size of the cost reduction and again concluded that labeling costs could be anywhere from $2 to $7 million, except that the costs of this option must be the same or less than the costs of Option Two. These conclusions also hold for small firms, which make up the vast majority of the affected firms. Although Option Three would reduce the impact of the direct final rule on small firms, it would also reduce the benefits by an unknown amount. We have decided not to pursue this option because the potential cost savings for small firms would be modest and we do not know the impact on benefits.

VII. Paperwork Reduction Act of 1995

FDA concludes that the labeling requirements in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, these dietary supplement labeling requirements are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VIII. Unfunded Mandates Reform Act of 1995

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the direct final rule, because the direct final rule is not expected to result in any one-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $112 million.

IX. Federalism

FDA has analyzed this direct final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule has a preemptive effect on State law. Section 4(a) of the Executive order requires agencies to:

> * * * construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision, or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. That section provides that "no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce" certain food labeling requirements, unless an exemption is provided by the Secretary of Health and Human Services (and, by delegation, FDA). Relevant to this rule, one such requirement that States and political subdivisions may not adopt is "any requirement for the labeling of food of the type required by section * * * 403(i)(2) that is not identical to the requirement of such section," (section 403A(a)(2) of the act). Another such requirement that States and political subdivisions may not adopt is "any requirement for the labeling of food of the type required by section * * * 403(i)(1) that is not identical to the requirement of such section," (section 403A(a)(3) of the act). Prior to the effective date of this direct final rule, this provision operates to preempt States from imposing requirements concerning the use of botanical names in dietary supplement labeling if the requirements concerning the use of those names are not identical to those contained in § 101.4(h) (incorporating by reference *Herbs of Commerce* (1992) and the *International Code of Botanical Nomenclature (Tokyo Code) 1994*). Specifically, the preemptive effect applies to requirements concerning the use of botanical names in the common or usual name on the label of a dietary supplement (section 403(i)(1) of the act) and to requirements for listing individual botanical ingredients on the label of a dietary supplement (section 403(i)(2) of the act). Once this direct final rule becomes effective, States will be preempted from imposing any such requirements concerning the use of

botanical names on dietary supplement labels that are not identical to those required by the new rule, which amends the existing § 101.4(h) to incorporate by reference *Herbs of Commerce* (2000) and the *International Code of Botanical Nomenclature (Tokyo Code) 2000*, and to incorporate new Federal legislative restrictions on the use of the term "ginseng" in dietary supplement labeling.

Section 403A(a)(2) to (a)(3) of the act displaces both State legislative requirements and State common-law duties (*Medtronic* v. *Lohr*, 518 U.S. 470, 503 (1996) (Breyer, J., concurring in part and concurring in the judgment); *id.* at 510 (O'Connor, J., joined by Rehnquist, C. J., Scalia, J., and Thomas, J., concurring in part and dissenting in part); *Cipollone* v. *Liggett Group, Inc.*, 505 U.S. 504, 521 (1992) (plurality opinion); *id.* at 548–49 (Scalia, J., joined by Thomas, J., concurring in part in the judgment and dissenting in part)). Although this rule has preemptive effect in that it would preclude States from adopting statutes, issuing regulations, or adopting or enforcing any requirements, including State tort-law imposed requirements, that are not identical to the requirements of this rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act.

Section 4(e) of the Executive order states that "when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings." Similarly, section 6(c) of the Executive order states that:

> * * * to the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts state law, unless the agency, prior to the formal promulgation of the regulation
> * * * consulted with State and local officials early in the process of developing the proposed regulation.

This requirement, that FDA provide the States with an opportunity for appropriate participation in this rulemaking, has been met. This rule updates and makes minor changes to a rule that was first proposed through full notice-and-comment rulemaking procedures in 1995 and finalized in 1997. During the comment period prior to the issuance of the 1997 final rule, and after the publication of the final rule, the agency received no comments, correspondence, or other communications from any State or local government concerning preemption of an existing legislative or common-law requirement. In its consultation with states prior to the publication of this direct final rule, FDA was not informed about any State requirements that would be in conflict with the Federal requirements in this rule, and no States expressed concerns over the rule's preemptive effect. Moreover, FDA is providing an opportunity for State and local officials to comment through this rulemaking, and intends to withdraw the direct final rule if significant adverse comments are received.

In conclusion, the agency believes that it has complied with all of the applicable requirements under the Executive order, and has determined that the preemptive effects of this rule are consistent with Executive Order 13132.

X. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. This comment period runs concurrently with that for the companion proposed rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will consider any comments received on either this direct final rule or the companion proposed rule to be comments received on both rules.

XI. Effective Date

FDA periodically establishes, by final rule in the **Federal Register**, uniform effective dates for compliance with food labeling regulations (see, e.g., the **Federal Register** of December 31, 2002 (67 FR 79851), designating the effective date of January 1, 2006, for food labeling regulations issued between January 1, 2003, and December 31, 2004). FDA intends to make this direct final rule effective on January 1, 2006, the uniform effective date for compliance with food labeling regulations published between January 1, 2003, and December 31, 2004. FDA will publish a document in the **Federal Register** to confirm the effective date of this direct final rule, if FDA receives no significant adverse comments on it or its companion proposed rule.

XII. References

Copies of the following references have been placed on display and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday at the Division of Dockets Management (see **ADDRESSES**). FDA has verified the Web site addresses, but is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. Foster, Steven, editor, *Herbs of Commerce*, American Herbal Products Association, Austin, TX, 1992.
2. Greuter, W., editor (chairman), *International Code of Botanical Nomenclature (Tokyo Code) 1994*, adopted by the 15th International Botanical Congress, Koeltz Scientific Books, D–61453 Königstein, Germany, 1994.
3. McGuffin, Michael, managing editor, *Herbs of Commerce, 2nd Edition*, American Herbal Products Association, Silver Spring, MD, 2000.
4. Greuter, W., editor (chairman), *International Code of Botanical Nomenclature (Saint Louis Code) 2000*, adopted by the 16th International Botanical Congress, Koeltz Scientific Books, D–61453 Königstein, Germany, 2000.
5. *FDA Labeling Cost Model: Final Report*, Research Triangle Institute (RTI) International, April 2002, Revised.
6. *Economic Characterization of the Dietary Supplement Industry*, Research Triangle Institute (RTI), March 1999, p. 5–1.
7. Letter from Michael McGuffin, President, American Herbal Products Association, to Rhonda R. Kane, Consumer Safety Officer, FDA, May 13, 2002, pp. 1–6 with 3 attachments.
8. "Consumer Use of Dietary Supplements," Prevention Magazine Survey, Table A, *Prevention Magazine*, 2000, p. 13.
9. *Statistical Abstract of the United States: 2000*, Table Number 13—Resident Population by Sex and Age: 1999, U.S. Census Bureau, Washington, DC, p. 14. Obtained data at the Internet site *http://www.census.gov/prod/2001pubs/statab/sec01.pdf* on June 19, 2002.
10. *National Employment, Hours, and Earnings*, Bureau of Labor Statistics, U.S. Department of Labor, Washington, DC. Obtained data from the Internet site *http://data.bls.gov/cgi-bin/srgate* on August 14, 2002. To view the data used, enter the number EES00510006 in the series id window, select the year 2001–2002 in the years to report window, and select the button "retrieve data."
11. "The Power of Persuasion at the Moment of Truth," *Drug Store News*, 19(20):3–8, 22, and 24, December 8, 1997.
12. Robinson, J. P. and G. Godbey, *Time for Life: The Surprising Ways Americans Use Their Time*, Second Edition, The Pennsylvania State University Press, University Park, PA, 1997, Appendix A, 1985 column, categories 30 to 39, pp. 355 and 356.
13. Guthrie, J. F., K. M. Koehler, and R. A. Scharff: *Trends in the Consumption of Dietary Supplements 1994–2000*, Table 11–Growth in Market Size and Per Capita Consumption of Dietary Supplements, 1994–2000, Panel A, Unpublished document, Center for Food Safety and Applied Nutrition, FDA, Washington, DC, July 12, 2000, p. 29.

14. *Economic Report of the President*, Table B–16—Personal Consumption Expenditures, 1959–2001, U.S. Government Printing Office, Washington, DC, February 2002. Obtained data at the Internet site *http://w3.access.gpo.gov/usbudget/fy2003/sheets/b16.xls* on August 14, 2002.

15. "Customer Behavior: How Consumers Shop," *Progressive Grocer*, December 1992, pp. 62–64.

16. "A Shopping for Health Report, 1998: A Look at the Self-Care Movement," *Food Marketing Institute*, Research Department, Washington, DC, and *Prevention Magazine*, Research Department, Emmaus PA, 1998, p. 2.

17. *Consumer Expenditures in 1999*, Report 949, Table A—Average Annual Expenditures of All Consumer Units and Percent Changes, Consumer Expenditure Survey, 1997–99, Bureau of Labor Statistics, U.S. Department of Labor, Washington, DC, May 2001, p. 3. Obtained data from the Internet site *http://stats.bls.gov/cex/csxann99.pdf* on July 25, 2002.

List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

■ 1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 2. Section 101.4 is amended by revising paragraph (h) to read as follows:

§ 101.4 Food; designation of ingredients.

* * * * *

(h) The common or usual name of a botanical ingredient (including fungi and algae) listed on the label of a dietary supplement must be consistent with the "standardized common name" listed in *Herbs of Commerce, 2nd Edition* (2000) for the plant from which the ingredient is derived. The use of the term "ginseng" as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax*." *Herbs of Commerce, 2nd Edition* (2000) is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this book may be obtained from the American Herbal Products Association, 8484 Georgia Ave., suite 370, Silver Spring, MD 20910, 301–588–1171, FAX: 301–588–1174, e-mail: *ahpa@ahpa.org*. Copies also may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(1) The listing of the common or usual name on the label must be followed by statements of:

(i) The part of the plant (e.g., root, leaves) from which the dietary ingredient is derived (e.g., "Garlic bulb" or "Garlic (bulb)"), except that this designation is not required for algae. The name of the part of the plant must be expressed in English (e.g., "flower" rather than "flos"); and

(ii) The Latin binomial name (i.e., genus and species) of the plant from which the botanical ingredient is derived, stated in parentheses, when no "standardized common name" for the plant is listed in *Herbs of Commerce, 2nd Edition* (2000). In such cases, this Latin binomial name may be listed before the part of the plant and must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*. When needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*). The *International Code of Botanical Nomenclature (Saint Louis Code) 2000*, a publication of the International Association for Plant Taxonomy, is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this book may be obtained from Koeltz Scientific Books, D–61453 Königstein, Germany; University Bookstore, Southern Illinois University, Carbondale, IL 62901–4422, 618–536–3321, FAX: 618–453–5207, e-mail: *siu@bkstr.com*; and from Lubrecht & Cramer, 18 East Main St., Port Jervis, NY 12771, 800–920–9334, FAX: 800–920–9334, e-mail: books@lubrechtcramer.com. Copies also may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(2) On labels of single-ingredient dietary supplements that do not include an ingredient list, the identification of the Latin binomial name, when needed, and the part of the plant may be prominently placed on the principal display panel or information panel, or included in the nutrition label.

Dated: August 14, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–21980 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Etodolac

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Fort Dodge Animal Health, Division of American Cyanamid Co. The supplemental NADA provides for a 500-milligram (mg) tablet size of etodolac for oral use in dogs.

DATES: This rule is effective August 28, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, (301) 827–7540, e-mail: *mberson@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Fort Dodge Animal Health, Division of American Cyanamid Co., P.O. Box 1339, Fort Dodge, IA 50501, filed a supplement to NADA 141–108 that provides for a 500-mg tablet size of ETOGESIC (etodolac) Tablets used for the management of pain and inflammation associated with osteoarthritis in dogs. The supplemental application is approved as of May 8, 2003, and the regulations are amended in 21 CFR 520.870 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm.

1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.870 [Amended]

■ 2. Section 520.870 *Etodolac* is amended in paragraph (a) by removing "150 or 300" and by adding in its place "150, 300, or 500".

Dated: August 13, 2003.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 03–21835 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Lincomycin; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Veterinary Laboratories, Inc. The ANADA provides for the use of lincomycin injectable solution in swine for the treatment of infectious arthritis and mycoplasma pneumonia. Additional action is also being taken because we did not specify the concentration of lincomycin solution approved under the ANADA in the final rule that published in the **Federal Register** of May 14, 2002.

DATES: This rule is effective August 28, 2003.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Veterinary Laboratories, Inc., 12340 Santa Fe Dr., Lenexa, KS 66215, filed ANADA 200–315 that provides for use of Lincomycin (lincomycin hydrochloride monohydrate) Injection in swine for the treatment of infectious arthritis and mycoplasma pneumonia. Veterinary Laboratories, Inc.'s Lincomycin Injection is approved as a generic copy of Pharmacia & Upjohn Co.'s LINCOMIX Injectable, approved under NADA 034–025. The ANADA is approved as of April 2, 3003, and the regulations are amended in 21 CFR 522.1260 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

Section 522.1260 is also being revised to specify the concentration of lincomycin solutioin approved under ANADA 200–274 (67 FR 34387, May 14, 2002).

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 522.1260 is amended by revising paragraphs (a) and (b) to read as follows:

§ 522.1260 Lincomycin.

(a) *Specifications.* Each milliliter of solution contains lincomycin hydrochloride monohydrate equivalent to:

(1) 25, 50, 100, or 300 milligrams (mg) lincomycin.

(2) 25, 100, or 300 mg lincomycin.

(3) 300 mg lincomycin.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for uses as in paragraph (e) of this section.

(1) No. 000009 for use of concentrations in paragraph (a)(1) of this section as in paragraph (e) of this section.

(2) No. 000857 for use of concentrations in paragraph (a)(2) of this section as in paragraph (e)(2) of this section.

(3) No. 046573 for use of concentration in paragraph (a)(3) of this section as in paragraph (e)(2) of this section.

* * * * *

Dated: August 7, 2003.

Linda Tollefson,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 03–21986 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA86

Coordination of Benefits Between TRICARE and the Department of Veterans Affairs

AGENCY: Department of Defense.

ACTION: Final rule; withdrawal.

SUMMARY: The Department of Defense published a final rule on Coordination

of Benefits Between TRICARE and the Department of Veterans Affairs. This rule should not have been published in accordance with the Regulatory Review Plan, therefore, this document is published to withdraw the rule. It will, however, be republished upon approval by the Office of Management and Budget.

DATES: The rule published on Tuesday, August 19, 2003 is withdrawn as of Tuesday, August 19, 2003.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum 703–601–4722 ext. 109.

Dated: August 21, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 03–21987 Filed 8–27–03; 8:45 am]

BILLING CODE 5001–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[GN Docket No. 01–74; FCC 01–364]

Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59)

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Commission adopted new rules on the reallocation and service rules for the 698–746 MHz spectrum band (Lower 700 MHz Band). Certain rules contained new and modified information collection requirements and were published in the **Federal Register** on February 6, 2002. This document announces the effective date of the published rules.

DATES: The amendment to § 27.50 published at 67 FR 5511, February 6, 2002, became effective on July 30, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy J. Brooks, Office of Engineering and Technology, Policy and Rules Division, (202) 418–2454.

SUPPLEMENTARY INFORMATION: On July 30, 2002, the Office of Management and Budget (OMB) approved the information collection requirements contained in Section 27.50 pursuant to OMB Control No. 3060–1008. Accordingly, the information collection requirements contained in these rules became effective on July 30, 2002.

Federal Communications Commission

William F. Caton,

Deputy Secretary.

[FR Doc. 03–22069 Filed 8–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2689, MM Docket No. 01–84, RM–10067]

Television Broadcast Service; Bay City, MI

AGENCY: Federal Communications Commission.

ACTION: Final rule..

SUMMARY: The Commission, at the request of Vista Communications, Inc. and Pelican Broadcasting Company, Inc. substitutes channel 46+ for channel 61+ at Bay City, Michigan. *See* 66 FR 20128, April 19, 2001. TV channel 46+ can be allotted to Bay City with a plus offset in compliance with the principal community coverage requirements of § 73.610 at coordinates 43–26–07 N. and 84–26–12 W. However, the allotment of channel 46+ does not provide protection to the DTV channel 46 allotments at Sarnia, Hanover and Straford, Ontario. Nevertheless, Canadian concurrence in the allotment of channel 46+, as a specially negotiated allotment, has been received since Vista Communications could limit its power in the direction of Sarnia, Hanover and Straford to avoid prohibited overlap. With this action, this proceeding is terminated.

DATES: Effective October 9, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–84, adopted August 18, 2003, and released August 25, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Television broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under Michigan, is amended by removing TV channel 61+ and adding TV channel 46+ at Bay City.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–22014 Filed 8–27–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 02–12480; Notice 2]

[RIN 2127–AI86]

Federal Motor Vehicle Safety Standards; Head Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Interim final rule, request for comments.

SUMMARY: This interim final rule amends the schedule for compliance by manufacturers of vehicles built in two or more stages with the upper interior head protection requirements of Federal Motor Vehicle Safety Standard No. 201, Occupant Protection in Interior Impact.

This interim final rule delays the date on which manufacturers of vehicles built in two or more stages must produce vehicles meeting the upper interior head protection performance requirements of Standard No. 201 from September 1, 2003, until September 1, 2006. The agency is issuing this interim final rule to provide time to complete a rulemaking action initiated by petitions for rulemaking requesting that NHTSA consider modifying the requirements of Standard No. 201 as they apply to vehicles manufactured in two or more stages. Since that rulemaking action may result in modification of Standard No. 201 as it applies to these multi-stage vehicles, the agency has decided to extend the compliance date until the final action is taken on the petitions. It

expects to take final action before September 1, 2006.

DATES: This interim final rule becomes effective on September 1, 2003. Comments on this interim rule are due no later than September 29, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number 12480] by any of the following methods:

- *Web site: http://dms.dot.gov* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call Dr. William Fan, Office of Crashworthiness Standards, at (202) 366–4922, facsimile (202) 366–4329.

For legal issues, you may call Otto Matheke, Office of the Chief Counsel, at (202) 366–5263.

SUPPLEMENTARY INFORMATION:

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I. Background

NHTSA issued a final rule on August 18, 1995, amending Federal Motor Vehicle Safety Standard No. 201, Occupant Protection in Interior Impact, to require passenger cars, and trucks, buses and multipurpose passenger vehicles with a gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less, to provide head protection during a crash when an occupant's head strikes the upper interior, *i.e.*, the roof pillars, side rails, headers, and the roof itself of the vehicle. (60 FR 430341) The final rule responded to the NHTSA Authorization Act of 1991 (sections 2500–2509 of the Intermodal Surface Transportation Efficiency Act ("ISTEA"), Pub. L. 102–240). ISTEA required NHTSA to address several vehicle safety matters through rulemaking. One of these matters, set forth in section 2503(5), was improved head impact protection from interior components of passenger cars.

The final rule, which mandated compliance with the new requirements beginning on September 1, 1998, significantly expanded the scope of Standard No. 201. Previously, the standard applied to the instrument panel, seat backs, interior compartment doors, arm rests and sun visors. To determine compliance with the upper interior impact requirements, the final rule added procedures for a new in-vehicle component test in which a Free Motion Headform (FMH) is fired at certain target locations on the upper interior of a vehicle at an impact speed of up to and including 24 km/h (15 mph). Data collected from a FMH impact are translated into a value known as a Head Injury Criterion (HIC) score. The resultant HIC must not exceed 1000.

The standard, as further amended on April 8, 1997 (62 FR 16718), provided manufacturers with four alternate phase-in schedules for complying with the upper interior impact requirements. First, as set forth in S6.1.1, manufacturers could comply by having the following percentages of their production meet the upper interior impact requirements: 10 percent of production on or after September 1, 1998 and before September 1, 1999; 25 percent of production on or after September 1, 1999 and before September 1, 2000, 40 percent of production on or after September 1, 2000 and before September 1, 2001, 70 percent of production on or after September 1, 2001 and before September 1, 2002, and 100 percent of production after September 1, 2002.

Second, an alternative schedule set forth in S6.1.2 provided that manufacturers could comply by meeting the following phase-in schedule: 7 percent of the vehicles manufactured on or after September 1, 1998 and before September 1, 1999; 31 percent of vehicles manufactured on or after September 1, 1999 and before September 1, 2000; 40 percent of vehicles manufactured on or after September 1, 2000 and before September 1, 2001; 70 percent of vehicles manufactured on or after September 1, 2001 and before September 1, 2002; and 100 percent of all vehicles manufactured after September 1, 2002.

Third, under a third phase-in schedule set forth in S6.1.3, manufacturers did not have to produce any complying vehicles before September 1, 1999. However, all vehicles produced on or after that date had to comply.

Fourth, S6.1.4 of the April 8, 1997 final rule provided that multi-stage vehicles produced after September 1, 2002, were required to comply.

II. Petitions for Rulemaking and the June 2002 Interim Final Rule

The Recreation Vehicle Industry Association (RVIA) filed a petition for rulemaking on October 4, 2001 requesting that the agency modify Standard No. 201 to exclude conversion vans and motor homes with gross vehicle weight rating of 4,536 kilograms (10,000 pounds) or less from the application of the upper interior head protection requirements of the Standard. The National Truck Equipment Association (NTEA) filed a petition for rulemaking on November 27, 2001 seeking similar relief for vehicles manufactured in two or more stages. Both petitions requested that NHTSA extend the existing phase-in for manufacturers of multi-stage vehicles (*i.e.*, the fourth one described above) from September 1, 2002 to March 1, 2004. By letters dated March 28 and April 5, 2002, NHTSA indicated it was granting the petitions. The agency is currently embarking on a rulemaking proceeding to address the issues raised in the petitions.

NHTSA published an interim final rule in the **Federal Register** (67 FR 41348, June 18, 2002) extending the date by which vehicles manufactured in two or more stages must comply with the upper interior head protection requirements. As we explained in the

preamble to the June 18, 2002 interim final rule, the agency found that the RVIA and NTEA petitions raised questions regarding NHTSA's earlier estimates of the compliance costs that the upper interior head protection requirements imposed on multi-stage manufacturers. We indicated that some of the points raised by the RVIA and NTEA could have merit, including the possibility that NHTSA had overestimated the degree by which cooperative and component, rather than full vehicle, testing could lower compliance costs. We also observed that incomplete vehicle manufacturers who supply unfinished vehicles to intermediate and final stage manufacturers appeared to be certifying smaller areas of the upper interior of the vehicles than was anticipated when the upper interior head protection requirements were promulgated.

The Regulatory Flexibility Act of 1980 requires agencies to evaluate the potential impacts of their proposed and final rules on small businesses. When NHTSA issued the final rule establishing the upper interior head impact protection requirements of Standard No. 201 in August 1995, the agency determined that the new requirements would impose a burden on small manufacturers, but that this burden would not result in a significant economic impact. The October 2001 petition filed by RVIA and the November 2001 petition filed by NTEA disputed the agency's position that compliance with the upper interior head protection requirements of Standard No. 201 would not be unduly burdensome. Both petitioners argued that efforts by their member companies to meet the upper interior requirement suggest that NHTSA's prior estimates may have been incorrect.

The member companies of RVIA and NTEA are manufacturers who purchase incomplete vehicles from major manufacturers to serve as the basis for specialty vehicles to meet certain uses and markets. As such, they may face a variety of challenges in certifying that their vehicles meet applicable safety standards. To afford final stage manufacturers sufficient leadtime to comply with the new upper interior head protection requirements, the agency's August 18, 1995 final rule stated that final stage manufacturers did not have to meet the standard until the last year of the phase-in. Nonetheless, our June 2002 interim final rule indicated that NHTSA could, when establishing the aforementioned deadline, have underestimated the difficulties faced by final stage manufacturers in meeting the new requirements.

In particular, we indicated that cooperative testing—which we had considered as one option for reducing costs when we issued the final rule in 1995—might not be practicable depending on the uniqueness of the vehicle interior and the features incorporated into it. In this market, where the uniqueness of the interior and the features incorporated into that interior are primary concerns of buyers, competitors are not likely to share their designs. We also observed that reducing compliance test costs by testing components outside of a vehicle rather than testing a complete vehicle may not be as practical as we had estimated in the 1995 final rule. Finally, we noted that final stage manufacturer modifications, such as raising or replacing the original roof, would likely result in relocation of certain specified target areas and reduce the ability of these manufacturers to rely on the incomplete vehicle manufacturer's certification that the vehicle met the standard for the target areas at their original location.

Because NHTSA needed further time to complete rulemaking, we issued an interim final rule extending the existing compliance date for final stage manufacturers to September 1, 2003. Although RVIA and NTEA requested that the agency extend the compliance date to March 1, 2004, we indicated our belief that such an extension was not necessary and that any future rulemaking could further modify the deadline established by this interim final rule.

III. Comments in Response to the June 2002 Interim Final Rule

The comment period for the June 2002 interim final rule closed on August 19, 2002. NHTSA did not receive any comments regarding the June 2002 interim final rule. However, as noted below in Section V, the agency has received a comment opposing additional extensions to the compliance date as requested by the January 20, 2003 RVIA and February 6, 2003 NTEA petitions for rulemaking.

IV. RVIA and NTEA Petitions For Rulemaking

On January 20, 2003, RVIA submitted a petition for rulemaking requesting that NHTSA grant an extension of the September 1, 2003 compliance date applicable for vehicles built in two or more stages to September 1, 2004. The organization stated that conversion vehicle and motorhome manufacturers are often small business entities who need additional time to develop required safety devices and designs. These small businesses also, according to RVIA, would need additional time to conduct research and certification testing on their vehicles. RVIA noted that since NHTSA was still completing rulemaking that may involve changes to the Standard as it applies to multi-stage vehicles, its members could not complete all the necessary testing to conform to any new requirements. Accordingly, RVIA indicated that an additional extension would be appropriate.

On February 6, 2003, NTEA submitted a petition for rulemaking seeking to extend the compliance date for vehicles built in two or more stages from September 1, 2003 to a future date that would provide its members with sufficient time to comply with any new requirements imposed by the pending rulemaking. In support of its request, NTEA observed that the preamble to the agency's June 18, 2002 interim final rule indicated that extension of the compliance deadline for multi-stage manufacturers was necessitated by NHTSA's ongoing consideration of potential changes to the upper interior head protection requirements applicable to these manufacturers. Since NHTSA had not yet completed the rulemaking action that led to the original grant of an extension, NTEA stated that the agency should further extend the compliance date to complete the rulemaking and provide manufacturers of multi-stage vehicles with sufficient leadtime to meet any new requirements issued as a result of that rulemaking.

The petition also referred NHTSA to some of the issues raised by NTEA in its November 2001 petition. In particular, NTEA reiterated that its members are small businesses with limited financial resources. Given these limited resources and its estimate that compliance would impose costs of more than $160,000,000 on the work truck industry, NTEA argued that requiring its members to meet the existing upper interior head protection provisions of Standard No. 201 is economically impracticable. Moreover, NTEA argued again that the volume of testing that would have to be completed by its members—who produce large numbers of unique vehicles customized for different applications—also made compliance impracticable.

Since NHTSA had not completed its ongoing rulemaking action and would not do so in time for its members to comply with the September 1, 2003 compliance date, NTEA requested that NHTSA extend the compliance deadline for multi-stage manufacturers to an

appropriate date after NHTSA completes the pending rulemaking.

V. Interim Final Rule

When NHTSA issued the final rule establishing the upper interior head impact protection requirements of Standard No. 201 in August 1995, the agency determined that the new requirements would impose a burden on small manufacturers, but that this burden would not result in a significant economic impact. The petitions filed by RVIA and NTEA in the fall of 2001 disputed this finding and submitted information suggesting that NHTSA's prior estimate of the burdens imposed by the head impact protection requirements may have been incorrect. NHTSA has granted the NTEA and RVIA petitions and is now engaged in a rulemaking action. Unfortunately, NHTSA's consideration of the aforementioned rulemaking action has not yet been concluded. The compliance date set by our June 2002 interim final rule—September 1, 2003—is now only weeks away.

Given the imminence of the September 1, 2003 compliance date and the fact that NHTSA has not yet issued any formal proposal responding to the original NTEA and RVIA petitions for rulemaking, the agency has determined that it is appropriate to again extend the deadline. In order to minimize the possibility of an additional extension, this interim final rule extends the compliance date for vehicles built in two or more stages for an additional three years. Accordingly, vehicles built in two or more stages are required to meet the upper interior head protection requirements of Standard No. 201 on or after September 1, 2006. However, as we noted when issuing the June 2002 interim final rule, future rulemaking can, if needed, further modify the deadline.

The agency believes that there is good cause to find that providing notice and comment in connection with this rulemaking action is impracticable, unnecessary, and contrary to the public interest. NHTSA notes that time constraints prevent the completion of notice and comment rulemaking before the current September 1, 2003 compliance date. Moreover, this interim final rule does not alter any provisions other than the foregoing compliance date. Substantive changes to Standard No. 201, if any, will be addressed in a subsequent rulemaking.

Although NHTSA did not receive any comments regarding the extension of the compliance date contained in our June 2002 interim final rule, the agency has received a letter opposing further extensions. A manufacturer of motorhomes and camper vans, Home And Park Motorhomes (Home and Park), indicated that it understood that RVIA was requesting that NHTSA further extend the September 1, 2003 compliance date. Based on its belief that NHTSA had extended the compliance date to be sure that final stage manufacturers would have the opportunity to purchase incomplete vehicles offering pass-through certification, Home and Park indicated that it had brought its vehicles into compliance in anticipation of having to comply with the upper interior head protection requirements by September 1, 2003. Having expended considerable resources to do so, Home and Park stated that further extensions of the compliance deadline would penalize conscientious manufacturers and delay introduction of safer interiors for recreational vehicles.

NHTSA is aware that delaying the compliance date could arguably result in a decrease in safety if multi-stage manufacturers that have the capability to meet the upper interior head protection requirements do not do so. When we issued our June 2002 interim final rule, we estimated that the safety benefit of requiring one year's production of vehicles manufactured in two or more stages to meet the upper interior head protection requirements is approximately 18–24 equivalent lives saved each year for the front seats and one equivalent life saved each year for the rear seats. Although this estimate may overstate the safety risks of extending the compliance date due to the fact that many recreational vehicles and conversion vans are not driven as much as more conventional vehicles, these benefits could be lost during the period of the extension.

The potential safety loss would only be realized if multi-stage manufacturers would be able to meet the upper interior head protection requirements while maintaining production. When issuing our June 2002 interim final rule, we indicated that NHTSA may have underestimated the costs and difficulties faced by final stage manufacturers in meeting the upper interior head protection requirements. While Home and Park indicated that it had brought its vehicles into compliance, it appears to have done so based on the expectation that the compliance date was extended to increase the availability of pass-through certification. However, a limit on the ability to rely on pass-through certification was recognized by NHTSA as but one source of the challenges facing final stage manufacturers. Our June 2002 interim final rule cited a number of reasons why the agency believed that further relief for multi-stage manufacturers might be appropriate.

For reasons more fully discussed in our June 18, 2002 interim final rule, NHTSA has granted the NTEA and RVIA petitions and is now engaged in a rulemaking action considering whether to adopt further amendments to Standard No. 201. NHTSA has not yet resolved these issues, so this interim final rule extends the compliance date to September 1, 2006 to afford the agency time to take further action.

We note also that in extending the compliance date for vehicles built in two or more stages, NHTSA is also extending the compliance date for vehicles modified by alterers. Unlike final stage manufacturers, alterers begin with a certified vehicle and modify it to meet the needs of a particular market. Giving alterers additional time to comply with a standard allows the alterer to take a certified vehicle out of compliance, an action that NHTSA is normally reluctant to take. However, the challenges involved in meeting Standard No. 201 that are faced by final stage manufacturers also apply to alterers. If a vehicle manufacturer waits until the last possible moment to certify vehicles, alterers will not have the opportunity to do any engineering analysis to determine if the alterations affect compliance. Alterers also have limited engineering resources and testing capabilities. This may be telling where the alterer needs to change an original design to meet the demands of a particular application.

The agency requests written comments on extending the phase-in for vehicles manufactured for two or more stages. All comments submitted in response to this document will be considered by the agency. Following the close of the comment period, the agency will publish a document in the **Federal Register** responding to the comments and, if appropriate, will make further amendments to the extension of the phase-in requirements amended by this interim final rule.

VI. Public Participation

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that two copies be submitted to the Office of Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit (49

CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by September 29, 2003.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date.

NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all comments will be placed in the Docket for this interim final rule in the Office of Docket Management, Room PL–401, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

VII. Regulatory Analyses and Notices

A. Economic Impacts

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. It does not impose any burden on manufacturers and extends the compliance date for existing regulatory requirements for a period of three years. The agency believes that this impact is so minimal as to not warrant the preparation of a full regulatory evaluation.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this final rule under the National Environmental Policy Act. This rulemaking action extends the date by which manufacturers of vehicles built in two or more stages must comply with the upper interior head impact protection requirements of Standard No. 201. It does not impose any change that would have any environmental impacts. Accordingly, no environmental assessment is required.

C. Impacts on Small Entities

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking will have on small entities. As this action will provide a short term benefit for small entities by delaying the compliance date, it will have a significant economic impact on a substantial number of small entities within the context of the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires each agency to evaluate the potential effects of a rule on small businesses. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or fewer.

Most of the intermediate and final stage manufacturers of vehicles built in two or more stages have 1,000 or fewer employees. This interim final rule extends the date by which these manufacturers must produce vehicles that meet the upper interior head protection requirements of Standard No. 201. Although this action does not modify those requirements, it provides these small businesses additional time to meet them. In the agency's view, issuance of this interim final rule is necessary to prevent adverse effects that may have been underestimated in a prior rulemaking establishing the requirements at issue. For this reason, this interim final rule regarding the compliance date will have a significant economic impact on a substantial number of small entities. The agency performed a Regulatory Flexibility Analysis for the previous one-year extension and placed a copy in the docket. *See* "Final Regulatory Flexibility Analysis, Head Impact Protection, FMVSS 201," June 2002, Docket # 02–12480. That analysis is applicable to this three-year extension as well.

D. Federalism

E.O. 13132 requires NHTSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." E.O. 13132 defines the term "Policies that have federalism implications" to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under E.O. 13132, NHTSA may not issue a regulation that has federalism implication, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This interim final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in E.O. 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This action, which extends the compliance date by which manufacturers of vehicles built in two or more stages must meet the upper interior head impact protection requirements of Standard No. 201, will not result in additional expenditures by

State, local or tribal governments or by any members of the private sector. Therefore, the agency has not prepared an economic assessment pursuant to the Unfunded Mandates Reform Act.

F. Paperwork Reduction Act

There are no information collection requirements in this rule.

G. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

H. Plain Language

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please forward them to Otto Matheke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

We are not aware of any available and potentially applicable voluntary consensus standards, *i.e.*, ones regarding the performance of vehicle interior components in protecting against head impacts. Therefore, this rule is not based on any voluntary consensus standards.

J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

■ In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571.201—[AMENDED]

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 21411, 21415, 21417, and 21466; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.201 is amended by revising S6.1 introductory text, S6.1.4.1, S6.1.4.2 and S6.2 introductory text to read as follows:

* * * * *

S6.1 *Vehicles manufactured on or after September 1, 1998.* Except as provided in S6.3 and S6.1.4, for vehicles manufactured on or after September 1, 1998 and before September 1, 2002, a percentage of the manufacturer's production, as specified in S6.1.1, S6.1.2, or S6.1.3 shall conform, at the manufacturer's option, to either S6.1(a) or S6.1(b). For vehicles manufactured by final stage manufacturers on or after September 1, 1998 and before September 1, 2006, a percentage of the manufacturer's production as specified in S6.1.4 shall, except as provided in S6.3, conform, to either S6.1(a) or S6.1(b). The manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle.

* * * * *

S6.1.4.1 Vehicles manufactured on or after September 1, 1998 and before September 1, 2006 are not required to comply with the requirements specified in S7.

S6.1.4.2 Vehicles manufactured on or after September 1, 2006 shall comply with the requirements specified in S7.

* * * * *

S6.2 *Vehicles manufactured on or after September 1, 2002 and vehicles built in two or more stages manufactured after September 1, 2006.* Except as provided in S6.1.4 and S6.3, vehicles manufactured on or after September 1, 2002 shall, when tested under the conditions of S8, conform, at the manufacturer's option, to either S6.2(a) or S6.2(b). Vehicles manufactured by final stage manufacturers on or after September 1, 2006 shall, except as provided in S6.3, when tested under the conditions of S8, conform, at the manufacturer's option, to either S6.2(a) or S6.2(b). The manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle.

* * * * *

Issued on August 22, 2003.

Jeffrey W. Runge,

Administrator.

[FR Doc. 03–22010 Filed 8–25–03; 2:09 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021213310–3170–02; I.D. 101702B]

RIN 0648–AP92

Individual Fishing Quota (IFQ) Program for Pacific Halibut and Sablefish; Technical Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects errors in the amendatory instructions and table titles of the final rule published in the **Federal Register** on July 29, 2003. That final rule implemented Amendment 72

to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (Amendment 72) and Amendment 64 to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (Amendment 64) (collectively, Amendments 72/64).

DATES: Effective August 28, 2003.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907–586–7228 or by E-mail at *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on July 29, 2003 (FR Doc. 03–19132) modified Table 14 to part 679 (68 FR 9907). However, Table 14 is a collection of three tables, each of which is included in a separate appendix to 50 CFR part 679: Tables14a, 14b, and 14c. The language contained in amendatory instruction number 9, referenced only a change in Table 14a, although text was provided that effectively modified both 14a and 14b and left 14c unchanged. This change did not reflect accurately the intended revision.

The intent of the revision in the final rule was to add the contents of Table 14c to Table 14b, remove Table 14c, and modify the contents of both Table 14a and 14b. The net effect of this action would have been to combine the Washington State Port of Landing Codes into the table containing those codes for non-Alaska ports, including Canada and the States of California and Oregon, and remove the CDQ/IFQ Primary Ports for Vessel Clearance information from Tables 14a and 14b. This correction modifies the table titles to accurately reflect the intent of the final rule.

In addition, the table title was inserted into the body of the table, rather than added to the table title. This action corrects the table titles.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 22, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs,National Marine Fisheries Service.

■ For the reasons set forth in the preamble, 50 CFR part 679 is corrected as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

Tables 14a and b [Amended]

■ 2. In FR Doc. 03–19132 (July 29, 2003), on page 44487, second column, second to last line, amendatory instruction 9 is corrected to read as follows:

"9. In part 679, Tables 14a and b are revised to read, and Table 14c is removed as follows:"

■ 3. On page 44487, third column, first line of the first column in Table 14a, the words "a. Alaska:" are removed, and the title of Table 14a is corrected to read as follows:

"Table 14a to Part 679. Port of Landing Codes: Alaska[1]"

■ 4. On page 44488, second column, second line of the first column in Table 14b, the words "b. Non-Alaska (California, Oregon, Canada, Washington):" are removed, and the title of Table 14b is corrected to read as follows:

"Table 14b to Part 679. Port of Landing Codes: Non-Alaska (California, Oregon, Canada, Washington"

[FR Doc. 03–22038 Filed 8–27–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 167
Thursday, August 28, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 373

9 CFR Part 60

[Docket No. 02–062–2]

RIN 0579–AB50

Cost-Sharing for Animal and Plant Health Emergency Programs

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: We are extending the comment period for our proposed rule that would establish criteria to determine the Federal share of financial responsibility relative to States and other cooperators in an emergency in which an animal or plant pest or disease threatens the agricultural production of the United States. This action will allow interested persons additional time to prepare and submit comments.

DATES: We will consider all comments that we receive on or before November 7, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–062–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–062–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–062–1" on the subject line.

You may read any comments that we receive on Docket No. 02–062–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Shea, Deputy Administrator, Policy and Program Development, APHIS, 1400 Independence Avenue, SW., Jamie L. Whitten Building, Room 316–E, Washington, DC 20250–3432; (202) 720–3668.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 2003, we published in the **Federal Register** (68 FR 40541–40553, Docket No. 02–062–1) a proposed rule that would establish criteria to determine the Federal share of financial responsibility relative to States and other cooperators in an emergency in which an animal or plant pest or disease threatens the agricultural production of the United States.

Comments on the proposed rule were required to be received on or before September 8, 2003. We are extending the comment period for an additional 60 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 7701–7772 and 8301–8317; 7 CFR 2.22, 2.80, 371.3, and 371.4.

Done in Washington, DC, this 21st day of August 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–21991 Filed 8–27–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 945

[Docket No. FV03–945–1 PR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate established for the Idaho-Eastern Oregon Potato Committee (Committee) for the 2003–04 and subsequent fiscal periods from $0.0026 to $0.0045 per hundredweight of potatoes handled. The Committee locally administers the marketing order which regulates the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and appropriate to administer the program. The fiscal period begins August 1 and ends July 31. The increased assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by September 12, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Suite 385, Portland,

Oregon 97204–2807; Telephone: (503) 326–2724, Fax: (503) 326–7440 or E-mail: *Barry.Broadbent@usda.gov;* or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945, both as amended (7 CFR part 945), regulating the handling of Irish potatoes grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Idaho-Eastern Oregon potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable potatoes beginning on August 1, 2003, and continue until amended, suspended, or terminated. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 2003–04 and subsequent fiscal periods from $0.0026 to $0.0045 per hundredweight of potatoes handled.

Section 945.40 of the order provides authority for the Committee, with the approval of the Secretary, to incur reasonable expenses for its maintenance and functioning. Section 945.41 requires the Committee to formulate an annual budget estimating its income and expenditures for the upcoming fiscal year and to present such budget to the Secretary for approval. Section 945.42(a) authorizes the Committee to assess handlers for their pro rata share of such expenses and § 945.42(b) provides that the rate of assessment be set by the Secretary based on the recommendation of the Committee. The members of the Committee are producers and handlers of potatoes grown in Idaho and Eastern Oregon. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are therefore in a position to formulate an appropriate budget and assessment rate. The assessment rate was discussed in a public meeting before the Committee members voted to recommend an increase. Thus, all directly affected persons had an opportunity to participate and provide input.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on June 16, 2003, and unanimously recommended 2003–04 expenditures of $149,417 and an assessment rate of $0.0026 per hundredweight of potatoes handled, the same rate currently in effect. The Committee estimated the 2003–04 potato shipments at 36,500,000 hundredweight, which would generate $94,900 in assessment revenue. At that meeting, the Committee discussed increasing the assessment rate to respond to rising Committee expenses, declining assessment revenue, and shrinking operating reserves. After discussion, the Committee postponed any action until later in the fiscal period, believing that assessment revenue and operating reserves were sufficient to maintain Committee operations through the fiscal period.

As a consequence, the Committee conducted a telephone vote on July 18, 2003, and unanimously recommended a revised budget of $145,317 (down from $149,417) and to raise the assessment rate to $0.0045 per hundredweight of potatoes handled (up from $0.0026). In comparison, last fiscal period's budgeted expenditures were $137,094. The recommended assessment rate is $0.0019 higher than the rate currently in effect. The increase is necessary to offset an increase in salaries and operating expenses, declining potato shipments, and the depletion of operating reserves.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $95,067 for salaries and benefits, $16,500 for transportation, $13,500 for travel, $6,800 for rent and utilities, and $4,800 for office expenses. Budgeted expenses for these items in 2002–2003 were $92,144, $9,000, $14,000, $6,300, and $6,500, respectively. The transportation budget item covers the purchase of a new Committee vehicle and all of the operating and maintenance costs associated with it. The manager uses a Committee vehicle for handler compliance visits throughout the season, and other authorized Committee activities. Travel covers the cost of travel, lodging, and meals for the Committee manager and members when attending Committee meetings and conventions involving Committee authorized business.

The Committee estimates potato shipments for the 2003–04 fiscal period at 36,500,000 hundredweight, which should provide $164,250 in assessment income at the proposed assessment rate. This income would be adequate to cover budgeted expenses. The Committee estimates that monetary reserves will be approximately $33,000 at the beginning of the 2003–04 fiscal period and will potentially increase to $51,933 by the fiscal period end. The order permits an operating reserve in an amount not to exceed approximately one fiscal period's budgeted expenses (§ 945.44). Funds held in reserve would be kept within the maximum permitted by the order.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the

Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 2003–04 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 900 producers of potatoes in the production area and approximately 54 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a three-year average fresh potato production of 35,448,000 hundredweight as calculated from Committee records, a three-year average of producer prices of $6.10 per hundredweight reported by the National Agricultural Statistics Service, and 900 Idaho-Eastern Oregon potato producers, the average annual producer revenue is approximately $240,259. It can be concluded, therefore, that most of these producers would be classified as small entities.

In addition, based on Committee records and 2002–03 f.o.b. shipping point prices ranging from $5.00 to $35.00 per hundredweight reported by USDA's Market News Service, many of the Idaho-Eastern Oregon potato handlers may ship over $5,000,000 worth of potatoes. In view of the foregoing, few of the handlers may be classified as small entities as defined by the SBA.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 2003–04 and subsequent fiscal periods from $0.0026 to $0.0045 per hundredweight of potatoes handled. The Committee unanimously recommended 2003–04 expenditures of $145,317 and an assessment rate of $0.0045 per hundredweight. The proposed assessment rate is $0.0019 per hundredweight higher than the rate currently in effect. The quantity of assessable potatoes for the 2003–04 fiscal period is estimated to be 36,500,000 hundredweight. Income derived from handler assessments (approximately $164,250) would be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2003–04 fiscal period include $95,067 for salaries and benefits, $16,500 for transportation, $13,500 for travel, $6,800 for rent and utilities, and $4,800 for office expenses. Budgeted expenses for these items in 2002–2003 were $92,144, $9,000, $14,000, $6,300, and $6,500, respectively.

The assessment rate increase is necessary to offset increases in salaries and operating expenses, declining potato shipments, and the depletion of operating reserves. The Committee estimates the reserve to be $33,000 at the 2002–03 fiscal period end. At the current rate of $0.0026 per hundredweight, on the estimated potato production of 36,500,000 hundredweight for the 2003–04 fiscal period, the projected income for the 2003–04 fiscal period would be $94,900. This amount, along with the projected reserve of $33,000, would be approximately $19,417 less than required to fund the proposed 2003–04 budget and $9,194 less than the 2002–03 budgeted amount. Thus, the Committee believes that the projected assessment income at the current assessment rate and funds held in reserve would not be sufficient to fund the Committee's operations without increasing the assessment rate.

At the recommended rate of $0.0045 per hundredweight (assessment income of $164,250) and expenditures of $145,317, the Committee may increase its reserve by up to $18,933. The projected reserve would be approximately $51,933 on July 31, 2004, which the Committee determined to be both appropriate and acceptable.

The Committee considered alternate levels of assessment but determined that increasing the assessment rate to $0.0045 per hundredweight would allow the Committee to adequately fund operations and replenish the reserve to an acceptable level. The Committee decided that any assessment rate between $0.0026 per hundredweight and $0.0045 per hundredweight would not be sufficient to accomplish the Committee's goals. Prior to arriving at the budget and assessment rate recommendations, the Committee considered information from various sources, including the Committee's Finance and Executive Committees.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–04 fiscal period could range between $4.50 and $6.00 per hundredweight of potatoes. Therefore, the estimated assessment revenue as a percentage of total producer revenue could range between 0.1 and 0.075 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, this cost would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the June 16, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large production area commodity handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may

be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 15-day comment period is provided to allow interested persons to respond to this proposed rule. Fifteen days is deemed appropriate because: (1) The fiscal period is August 1 to July 31 and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period; (2) handlers usually begin shipping Idaho-Eastern Oregon potatoes on or about August 1; (3) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was unanimously recommended by the Committee and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is proposed to be amended as follows:

PART 945—POTATOES GROWN IN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 945.249 is revised to read as follows:

§ 945.249 Assessment rate.

On and after August 1, 2003, an assessment rate of $0.0045 per hundredweight is established for Idaho-Eastern Oregon potatoes.

Dated: August 22, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–21990 Filed 8–27–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 00–022–1]

Standards for Privately Owned Quarantine Facilities for Ruminants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations for the importation of ruminants into the United States to establish standards for privately owned quarantine facilities. The regulations authorize the establishment of privately operated quarantine facilities for ruminants, which are subject to approval and oversight by the Animal and Plant Health Inspection Service. However, the regulations do not provide specific standards for the approval, operation, and oversight of such facilities, with the exception of privately operated quarantine facilities for sheep or goats. Based on recent interest in establishing such facilities for cattle, we are proposing standards for privately owned quarantine facilities covering all ruminants to ensure public participation in their development and to ensure that any facilities that may be approved for this purpose operate in a manner that protects the health of the U.S. livestock population.

DATES: We will consider all comments that we receive on or before October 27, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 00–022–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–022–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 00–022–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Arnaldo Vaquer, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, USDA, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 govern the importation into the United States of specified animals and animal products in order to help prevent the introduction of various animal diseases into the United States. The regulations in part 93 require, among other things, that certain animals, as a condition of entry, be quarantined upon arrival in the United States. The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture operates animal quarantine facilities. We also authorize the use of quarantine facilities that are privately owned and operated for certain animal importations.

The regulations at subpart D of part 93 (9 CFR 93.400 through 93.435, and referred to below as the regulations) pertain to the importation of ruminants. Ruminants include all animals that chew the cud, such as cattle, buffaloes, sheep, goats, deer, antelopes, camels, llamas, and giraffes. Section 93.411 requires that ruminants imported into the United States be quarantined upon arrival for at least 30 days, with certain exceptions. Ruminants from Canada and Mexico are not subject to this quarantine requirement.

In § 93.412, paragraph (a) authorizes the establishment of privately operated quarantine facilities, subject to APHIS approval and oversight. Paragraph (a) provides, in part, that the "quarantine facility must be suitable for the quarantine of such ruminants and must be approved by the Administrator prior to the issuance of any import permit." This paragraph also provides that APHIS will "supervise the quarantine" at such facilities.

Section 93.434 of the regulations contains standards for approval, operation, and APHIS oversight of privately operated quarantine facilities

for sheep or goats. The standards covering quarantine facilities for sheep or goats were first implemented in 1988 (53 FR 21794–21809, Docket No. 88–057, published June 10, 1988), based on considerable interest at that time in importing large numbers of sheep into the United States from New Zealand. Since then, privately operated quarantine facilities have been used from time to time for the importation of sheep and goats into the United States.

APHIS has recently received requests from livestock importers who wish to import cattle into the United States through private quarantine facilities. Because there are no approved privately operated quarantine facilities for cattle in operation at the present time, imported cattle subject to quarantine must enter the United States through facilities maintained by APHIS.

Given the interest in establishing private quarantine facilities for cattle, we are proposing specific standards for the approval, operation, and APHIS oversight of such facilities. The requirements contained in this proposed rule are designed to ensure that the health of the U.S. livestock population is not jeopardized by the release of unhealthy animals or communicable disease agents from quarantine facilities. We would refer to these facilities as "privately owned" instead of "privately operated" to underscore that these facilities are privately owned, operated, and financed, but subject to APHIS approval and oversight.

For purposes of consistency, we are proposing that these standards apply not only to privately owned quarantine facilities for imported cattle, but also to privately owned facilities that wish to handle other imported ruminants. Therefore, we would remove from our regulations the existing standards applicable to privately operated quarantine facilities for sheep or goats.

In this time of shrinking Federal resources, we believe that it is appropriate to allow the establishment of privately owned quarantine facilities for ruminants so long as inspection and other activities related to the quarantine are subject to APHIS oversight and direction. We further believe that these facilities, if carefully regulated and monitored by APHIS, would provide an effective and efficient means of bringing ruminants into the United States without compromising our ability to protect against the introduction of communicable animal diseases. The full text of the proposed regulations appears in the rule portion of this document. Our discussion of the proposed provisions follows.

Definitions

We are proposing to add to § 93.400 definitions for the terms *area veterinarian in charge (AVIC), Federal veterinarian, lot, lot-holding area, nonquarantine area, Office International des Epizooties (OIE), operator, privately owned medium security quarantine facility (medium security facility), privately owned minimum security quarantine facility (minimum security facility), quarantine area, State veterinarian,* and *temporary inspection facility.* We also would make several minor technical changes to the definitions of *immediate slaughter* and *recognized slaughtering establishment.*

The *area veterinarian in charge (AVIC)* would refer to the veterinary official of APHIS who is assigned by the Administrator to supervise and perform the official animal health work of APHIS in a particular State.

A *Federal veterinarian* would be defined as a veterinarian employed and authorized by the Federal Government to perform the tasks required by the regulations.

The term *lot* would be defined as a group of ruminants that, while held on a conveyance or premises, has opportunity for physical contact with each other or with each other's excrement or discharges at any time between arrival at the quarantine facility and 60 days prior to export to the United States. A *lot-holding* area would describe that area in a privately owned medium or minimum security quarantine facility in which a single lot of ruminants is held at one time.

The *nonquarantine area* would refer to that area of a privately owned medium or minimum security quarantine facility that includes offices, storage areas, and other areas outside the quarantine area, and that is off limits to ruminants, samples taken from ruminants, and any other objects or substances that have been in the quarantine area during the quarantine of ruminants.

The *Office International des Epizooties (OIE)* would refer to the international organization recognized by the World Trade Organization for setting animal health standards, reporting global animal situations and disease status, and presenting guidelines and recommendations on sanitary measures related to animal health.

We would define an *operator* as a person other than the Federal Government who owns or operates, subject to APHIS' approval and oversight, a privately owned medium or minimum security quarantine facility.

A *privately owned medium security quarantine facility (medium security facility)* would refer to a facility that:

- Is owned, operated, and financed by a person other than the Federal Government;
- Is subject to the strict oversight of APHIS representatives;
- Is constructed, operated, and maintained in accordance with the requirements for medium security facilities in § 93.412(d); and
- Provides the necessary level of quarantine services for the holding of ruminants in an indoor, vector-proof environment prior to the animals' entry into the United States. Quarantine services must include testing or observation for any OIE list A diseases and other livestock diseases exotic to the United States, as well as any other diseases, as necessary, to be determined by the Administrator.

A *privately owned minimum security quarantine facility (minimum security facility)* would refer to a facility that:

- Is owned, operated, and financed by a person other than the Federal Government;
- Is subject to the strict oversight of APHIS representatives;
- Is constructed, operated, and maintained in accordance with the requirements for minimum security facilities in § 93.412(d);
- Is used for the quarantine of ruminants that pose no significant risk, as determined by the Administrator, of introducing or transmitting to the U.S. livestock population any livestock disease that is biologically transmissible by vectors; and
- Provides the necessary level of quarantine services for the outdoor holding of ruminants, prior to the animals' entry into the United States. Quarantine services must include testing or observation for any OIE list A diseases and other livestock diseases exotic to the United States, as well as any other diseases, as necessary, to be determined by the Administrator.

The term *quarantine area* would refer to that area of a privately owned medium or minimum security quarantine facility that comprises all of the lot-holding areas in the facility and any other areas in the facility that ruminants have access to, including loading docks for receiving and releasing ruminants. The *quarantine area* also would include any areas in the facility that are used to conduct examinations of ruminants and take samples, as well as areas where samples are processed or examined.

A *State veterinarian* would be defined as a veterinarian employed and authorized by a State or political

subdivision of a State to perform the tasks required by the regulations.

The term *temporary inspection facility* would refer to a facility owned, operated, and financed by a person other than the Federal Government that is located within 1 mile of the port of entry and used for the inspection of ruminants imported into the United States in accordance with § 93.408.

We are also proposing to make several minor technical changes to the footnotes that accompany the existing definitions of immediate slaughter and recognized slaughtering establishment by providing additional information on how to find the names and addresses of the area veterinarian in charge in any State. We also would make a minor change to the definition of immediate slaughter for stylistic purposes.

Ports of Entry

Section 93.403, paragraph (g), of the regulations provides that sheep to be quarantined at privately operated facilities may be entered into the United States at any air and ocean port designated for the importation of ruminants under § 93.403(a), as well as any other international port or airport so designated by the U.S. Customs Service (now the Bureau of Customs and Border Protection, U.S. Department of Homeland Security). This provision appears in the regulations to ensure that sheep are imported into the United States only at those ports at which appropriate Federal personnel are available to provide necessary services.

We are proposing to amend § 93.403(g), including the paragraph heading, so that it applies to all ruminants, not just sheep, and so that it refers to "privately owned quarantine facilities" instead of "privately operated quarantine facilities," for consistency with the use of the term "privately owned quarantine facilities" in the proposed standards to appear in § 93.412(d). These changes would clarify near what ports operators could potentially build a privately owned quarantine facility for imported ruminants.

We would make several more technical changes to § 93.403(g). First, for purposes of clarity, we would amend the phrase "may be entered" in § 93.403(g) by substituting the word "imported" in place of "entered." "Imported" means moved into the United States, whereas "entered" can mean released into the commerce of the United States, which does not occur until release from quarantine. We would change the reference to "U.S. Customs Service" to appear as "Bureau of Customs and Border Protection." We also would remove the cross references to § 93.433 and § 93.434 that appear in § 93.403(g). Section 93.433 is currently reserved and contains no regulatory text. Section 93.434 provides the standards for the approval of privately operated quarantine facilities for sheep or goats. As mentioned previously, in proposing to establish quarantine standards applicable to ruminants, we would remove from our regulations the existing standards applicable to privately operated quarantine facilities for sheep or goats.

Import Permits

Section 93.404 contains permit requirements for the importation of ruminants and ruminant test specimens for diagnostic purposes from certain regions. Paragraph (a)(1) specifies the information to be included in the application to APHIS for an import permit.

In order that we receive sufficient notice of the importer's intention to utilize the services of a privately owned quarantine facility, we would amend § 93.404(a)(1) to require that the permit application specify the name and address of the quarantine facility in cases where the ruminants are to be quarantined at a privately owned quarantine facility.

Privately Owned Quarantine Facilities

Paragraph (a) of § 93.412 authorizes the establishment of privately operated quarantine facilities, subject to APHIS approval and oversight. We are proposing to amend § 93.412(a), including the paragraph heading, by removing references to the word "operated" as it is used in the terms "privately operated quarantine facility" or "privately operated quarantine facilities" and substituting the word "owned" in each instance. We also would amend § 93.412(a) by substituting the word "operator" in place of "importer or his or her agent," and substituting the words "APHIS representative'or "overseeing APHIS representative" in place of "inspector assigned to supervise," for purposes of consistency with the new provisions in proposed § 93.412(d). We also would make other minor technical changes, either to be consistent with proposed § 93.412(d), or for stylistic purposes.

Paragraph (c) of § 93.412 provides that amounts collected from the importer, or his or her agent, for quarantine services furnished by APHIS shall be deposited so as to be available to defray such services as they are rendered. We would amend § 93.412(c) and add a reference to "operator" alongside the current reference to importer, and also make a minor stylistic change. As a result, this provision would apply to operators of privately owned quarantine facilities under § 93.412(a) and importers of ruminants who utilize the services of APHIS quarantine facilities under § 93.412(b).

Standards for Privately Owned Quarantine Facilities for Ruminants

We are proposing to add a new paragraph (d) to § 93.412 that would set forth the standards for the establishment, operation, and maintenance of privately owned medium and minimum security quarantine facilities for ruminants imported into the United States. The risk of the spread of disease into, within, and from these facilities dictates that security, disease detection, and other prevention measures meet certain standards to ensure the biological security of approved facilities.

We are proposing standards for two types of quarantine facilities: Privately owned medium security quarantine facilities (medium security facilities) and privately owned minimum security quarantine facilities (minimum security facilities). Medium security facilities would need to be built to hold ruminants in an indoor, vector-proof environment that protects the animals against the spread of livestock diseases that are biologically transmitted by vectors.

A minimum security facility would allow for the outdoor holding of ruminants in quarantine. Unlike a medium security facility, the quarantine area of a minimum security facility would not have to be constructed to provide a vector-proof environment against livestock diseases that are transmissible by vectors. However, a minimum security facility could only accept imported animals that the Administrator determines pose no significant risk of harboring livestock diseases that are transmissible by vectors. The Administrator would make this determination on a case-by-case basis, taking into account such factors as the prevalence of diseases transmissible by vectors in the exporting country, and whether any steps have been taken in the exporting country to mitigate the disease risk (*i.e.*, holding the animals in a vector free zone over a prescribed time period prior to shipment).

Importers wishing to utilize the services of a privately owned quarantine facility would be required to state their intention on their application for a permit to import the ruminants. (See discussion under the heading "Import Permits.") We would determine whether the animals are eligible for importation

and the required level of quarantine security based on review of the application, as well as existing animal import regulations and any protocols that we have with the exporting country. For example, we view certain OIE list A diseases, such as rinderpest and foot-and-mouth disease, to be so serious that § 93.404(a)(2) prohibits the importation of domestic ruminants from regions where those diseases are known to exist. The presence of certain other infectious diseases in the exporting region, such as diseases of the respiratory complex or vesicular diseases such as vesicular stomatitis, could necessitate that the imported ruminants be quarantined in a medium security facility in the absence of mitigating factors such as testing. The Administrator would have the discretion to order testing or observation for any OIE list A diseases and other livestock diseases exotic to the United States, as well as any other diseases, as necessary. The Administrator also would have the discretion to decide what type of quarantine facility (medium or minimum security facility) to use for a particular importation of ruminants, based on the ruminant species and the health conditions in the region or regions from which the ruminants would be exported.

We are proposing that medium and minimum security facilities receive and hold imported ruminants as a "lot" on an "all-in, all-out" basis. The standards we are proposing would allow for medium security facilities to accommodate more than one lot of ruminants at a time, provided certain requirements are met. The option of holding multiple lots of ruminants simultaneously would not be available for minimum security facilities. We would limit minimum security facilities to one lot for purposes of biosecurity since there would be little, if any, separation between lots of animals. Also, because of the potentially larger number of animals that can be accommodated as a single lot at a minimum security facility, it would not be prudent to put such a large number of animals at risk by allowing another lot of imported ruminants to use the facility at the same time.

Proposed § 93.412(d) would be organized by subparagraphs addressing the following: (1) APHIS approval of facilities; (2) compliance agreement; (3) physical plant requirements; (4) operating procedures; (5) environmental quality; (6) other laws; and (7) variances.

APHIS Approval of Facilities

We would provide information in § 93.412(d)(1) on how to obtain APHIS approval to operate a medium or minimum security facility, as well as the basis for denying or withdrawing such approval. As explained earlier, obtaining our approval to operate a medium or minimum security facility, as discussed in this proposed rule, would be separate from the import permit application process for specific animal shipments, which is covered in § 93.404 and elsewhere in the regulations.

Approval Procedures

Under proposed § 93.412(d)(1)(i), interested persons would be required to make written application to the Administrator, c/o National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231. The application would need to include:

- The full name and mailing address of the applicant;
- The location and street address of the facility for which approval is sought;
- Blueprints of the facility;
- A description of the financial resources available for construction, operation, and maintenance of the facility;
- Copies of all approved State permits for construction and operation of the facility (but not local building permits), as well as copies of all approved Federal, State, and local environmental permits;
- The anticipated source(s) and origin(s) of ruminants to be quarantined, as well as the expected size and frequency of shipments; and
- A contingency plan for the possible destruction and disposal of all ruminants capable of being held in the facility.

The written application for facility approval would have to be submitted to APHIS at least 120 days prior to the date of application for local building permits in order to ensure that APHIS has adequate time to evaluate the plans for the facility, assess potential environmental effects, and determine that sufficient APHIS personnel are available to staff the facility.

Requests for approval of a proposed facility would be evaluated on a first-come, first-served basis.

If APHIS determines that an application is complete and merits further consideration, the person applying for facility approval would have to agree to pay the costs of all APHIS services associated with APHIS' evaluation of the application and facility. APHIS charges for evaluation services at hourly rates are listed in 9 CFR 130.30. If the facility is approved by APHIS, the operator would then enter into a compliance agreement, which is explained in more detail under the heading "Compliance Agreement," under § 93.412(d).

Proposed § 93.412(d)(1)(ii) would set out the criteria for APHIS approval. Before granting approval, we would have to find, based on our own environmental assessment, as well as any required Federal, State, and local environmental permits or evaluations issued by Federal, State, or local authorities, that the operation of the facility would not have significant environmental effects. The operator would have to secure the required permits or evaluations and provide copies to APHIS before we would consider granting approval to build and operate the facility. The facility would also have to comply with all requirements in § 93.412(d). Approval would be subject to the facility meeting any additional conditions that the Administrator believes are necessary to ensure that adequate safeguards are in place to monitor the health status of the ruminants in quarantine and prevent the transmission of livestock diseases into, within, or from the facility. These additional conditions would be set forth in a compliance agreement required under § 93.412(d)(2). The compliance agreement provides us with further assurances that the privately owned quarantine facility would be operated in accordance with the regulations. Finally, the Administrator would have to determine whether sufficient APHIS personnel (including one or more APHIS veterinarians and other animal health technicians) are available to provide continuous oversight and other technical services to ensure the biological security of the facility. In assigning APHIS personnel to a facility, long-term personnel plans and arrangements would need to be made, including the possible hiring of personnel or the transfer of existing personnel. The operator of the facility, not APHIS, would be responsible for hiring other attendants and workers for the care and handling of ruminants and for the maintenance, operation, and administration of the facility.

If a facility meets all of these requirements, APHIS would approve the facility and assign personnel to it. The assignment of APHIS personnel would be handled on a first-come, first-served basis; therefore, the deployment of APHIS personnel at one facility could result in another facility not being staffed due to the lack of necessary

APHIS personnel. The Administrator would have sole discretion in determining the number of APHIS personnel to be assigned to a facility.

Proposed § 93.412(d)(1)(iii) would provide that the operator of a medium or minimum security facility, after receiving our approval, would have to continue to comply with all requirements of § 93.412(d), as well as the terms of the compliance agreement, in order for the facility to maintain its approved status.

Proposed § 93.412(d)(1)(iv) would cover the process for APHIS denying an initial application or withdrawing the approval of a medium or minimum security facility already in operation. Before we would deny or withdraw approval, we would first inform the operator, and include the reasons for our action. We would provide an opportunity for a hearing if there is a conflict as to any material fact regarding our action. The withdrawal of approval of an existing facility would become effective pending a final determination in the proceeding if the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal would take effect upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, we would also provide written confirmation to the operator as promptly as circumstances allow. The withdrawal of approval of a facility would continue in effect pending the completion of the proceeding and any judicial review, unless otherwise ordered by the Administrator.

Under proposed § 93.412(d)(1)(iv), we could deny an initial application or withdraw the approval of an existing facility for failure to comply with the requirements provided in § 93.412(d), or with the terms of the compliance agreement, or for failure to comply with any other requirement under the Animal Health Protection Act (7 U.S.C. 8301–8317) or the regulations thereunder. We would also withdraw approval if the operator notifies us that the facility has ceased operations, or, if the facility has not been used to quarantine ruminants for a period of at least 1 year. The operator's failure to remit outstanding charges for APHIS services at the facility would also be grounds for withdrawing approval. Finally, we could deny approval of an initial application, or withdraw the approval of an existing facility, if the operator or a person responsibly connected with the business of the facility is or has been convicted of a crime under any law regarding the importation or quarantine of any animal, or any crime involving fraud, bribery, extortion, or any other crime involving a lack of integrity needed for the conduct of operations affecting the importation of animals. A person is considered to be responsibly connected with the business of the facility if such person has an ownership, mortgage, or lease interest in the facility's physical plant, or if such person is a partner, officer, director, holder, or owner of 10 percent or more of its voting stock, or an employee in a managerial or executive capacity.

Compliance Agreement

We are proposing that all medium and minimum security facilities operate in accordance with a compliance agreement required under § 93.412(d)(2). We would require that the compliance agreement be executed by the operator or other designated representative of the facility and by the Administrator before the facility could commence operations. The compliance agreement would signify the operator's commitment to follow our regulations, as well as underscore the operator's financial responsibilities with respect to building and operating a privately owned quarantine facility.

Under the compliance agreement, the operator would be bound by § 93.412(d) and subject to the strict oversight of APHIS representatives. The operator would agree to be responsible for the cost of building the facility, as well as any costs associated with its maintenance and operation. These costs would include all expenses associated with the hiring of personnel to attend to the ruminants and maintain and operate the facility; all expenses associated with the care of quarantined ruminants, such as feed, bedding, medicines, inspections, testing, laboratory procedures, and necropsy examinations; all costs associated with the death or destruction and disposition of quarantined ruminants; and all charges for the services of APHIS representatives at the facility, in accordance with § 93.412 of the regulations and 9 CFR part 130.

The compliance agreement would provide that the operator obtained, prior to execution of the agreement, a financial instrument (insurance or surety bond) approved by APHIS that financially guarantees the operator's ability to cover all costs and other financial liabilities and obligations of the facility. This includes financial liability coverage in the event of a worst case scenario in which all quarantined ruminants would have to be destroyed and disposed of because of an animal health emergency, as determined by the Administrator.

The compliance agreement would also provide that, prior to commencing quarantine operations, the operator would deposit with the Administrator a certified check or U.S. money order to cover the estimated costs, as determined by the Administrator, of APHIS professional, technical, and support services at the facility over the duration of the quarantine. The compliance agreement would also provide that if the actual costs incurred by APHIS exceed the deposited amount, the operator would be liable for those additional costs, based on APHIS official accounting records. We would require the compliance agreement to specify that payment for our services received in connection with each lot of ruminants in quarantine must be made prior to the release of the ruminants. The operator would also be responsible for any other costs incurred by us with respect to the quarantine following the release of the ruminants, based on official records, within 14 days of receipt of the bill showing the balance due. Any unobligated funds deposited with us would be returned to the operator after the release of the lot of ruminants from the quarantine facility and termination or expiration of the compliance agreement, or, if requested, credited to the operator's account and applied towards payment of APHIS services at a future date. We would require that, prior to the entry of each subsequent lot of ruminants into the medium or minimum security facility, the operator execute a new compliance agreement with APHIS, as well as deposit a certified check or U.S. money order to cover our estimated costs over the duration of the quarantine for that lot of ruminants.

Physical Plant Requirements

Proposed § 93.412(d)(3) would set forth the standards for the physical plant at medium and minimum security facilities. These physical plant standards address issues related to location, construction, sanitation, and security. Any requirements that are applicable to only one type of facility would be clearly noted in the regulations. We would inspect a facility to ensure that these standards are met before imported ruminants could be admitted to the facility.

Location

Proposed § 93.412(d)(3)(i) would require that imported ruminants arrive at a port designated for the importation of ruminants under § 93.403(g) (discussed earlier under "Ports of Entry"). Proposed § 93.412(d)(3)(i) also would require that a medium or

minimum security facility be located at a site approved by the Administrator and that the specific routes for the movement of ruminants from the port to the medium or minimum security facility be approved in advance by the Administrator. Approval would be based on a consideration of whether the site or routes would put animals in a position that could result in their transmitting communicable livestock diseases.

We have decided for several reasons not to require that the port and the medium or minimum security facility be located within a certain distance of one another. Some ports will be in large metropolitan areas where the nearest concentrations of livestock are many miles away, while other ports may be in towns with rural areas where concentrations of livestock are within very short distances of the port. Considering the diversity of places in which persons may consider locating quarantine facilities, it would be difficult to stipulate a maximum distance from the port. Doing so could prove unjustified and burdensome for the importer in some circumstances or, in other circumstances, allow construction of a quarantine facility in a location that could prove inadequate in ensuring against the spread of disease into or from the quarantine facility.

For medium security facilities only, the facility would have to be situated at least one-half mile from any premises holding livestock in order to prevent the possible transmission of diseases from ruminants in the facility to livestock outside the facility and vice versa. Our experience in operating indoor quarantine facilities for imported animals indicates that a distance of one-half mile is adequate to prevent the transmission of livestock diseases into and from a medium security facility. In the case of a minimum security facility (outdoor facility), the Administrator would establish the required minimum distance between the facility and other premises holding livestock on a case-by-case basis, taking into account such factors as possible diseases of concern and whether or not the facility is to be located in an agricultural region in proximity to other susceptible animals.

All imported ruminants, upon arrival at the port of entry, are subject to inspection in accordance with § 93.408 of the regulations. If the medium or minimum security facility is to be located more than 1 mile from a designated port, the operator would have to make arrangements for the imported ruminants to be held in a temporary inspection facility, which is within 1 mile of the port and approved by the Administrator, to allow for the inspection of the imported ruminants by a Federal or State veterinarian prior to the animals' movement to the quarantine facility. We would require that this inspection take place within 1 mile of the port so that in the event the ruminants are found to be infected with or exposed to a disease that precludes their entry, the lot of ruminants could be expeditiously re-exported, if necessary.

The temporary inspection facility would have to provide adequate space for Federal or State veterinarians to conduct examinations and testing of the imported ruminants. The examination space of the temporary inspection facility would have to be equipped with appropriate animal restraining devices for the safe inspection of ruminants. The temporary inspection facility also could hold no more than one lot of animals at the same time.

In seeking APHIS approval of the temporary inspection facility, the operator would have to provide APHIS with the following information: The location and street address, as well as blueprints or a description of the temporary inspection facility; a description of the financial resources available for its construction (if applicable), operation, and maintenance; copies of all approved State permits for construction and operation of the temporary inspection facility, as well as copies of all approved Federal, State, and local environmental permits; and the anticipated source(s) or origin(s), lot size, and frequency of shipments of imported ruminants to be handled at the facility. Following APHIS approval of the temporary inspection facility, the operator would also provide APHIS with a copy of the local building permit, when obtained.

If the ruminants, upon inspection at the temporary inspection facility, are determined to be infected with or exposed to a disease that precludes their entry into the United States, the ruminants would be refused entry. Ruminants refused entry would remain the responsibility of the operator, but subject to further handling or disposition as directed by the Administrator in accordance with § 93.408.

APHIS' approval to build and operate a medium or minimum security quarantine facility outside the 1-mile boundary of a designated port would be contingent upon APHIS' approval of a temporary inspection facility within 1 mile of the port of entry, as well as approval of the routes for the movement of ruminants from the port to the medium or minimum security facility.

The operator or the operator's designated representative would have the opportunity to confirm with us that the location requirements for the facility would be satisfactory before moving ahead with any firm decisions about the site of the facility.

Construction

Proposed § 93.412(d)(3)(ii) would provide the basic construction and design standards for medium and minimum security facilities. We would require that each facility be of sound construction, good repair, and designed to prevent the escape of quarantined ruminants. The facility would have to provide adequate capacity to receive and hold ruminants as a "lot" on an "all-in, all-out" basis.

We are proposing that medium and minimum security facilities must provide separate docks for animal receiving and releasing and for general receiving and pickup of supplies and materials such as feed, bedding, disinfectants, pesticides, and equipment. Alternatively, a single dock may be used for both purposes if the dock is cleaned and disinfected after each use with a disinfectant that is either authorized in 9 CFR part 71, § 71.10(a)(5), or is otherwise approved by the Administrator. Paragraph (a)(5) of § 71.10 authorizes, for general use purposes, disinfectants that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 135 *et seq.*) with tuberculocidal claims.

We are proposing that medium and minimum security facilities must be surrounded by double-security perimeter fencing separated by at least 30 feet and of sufficient height and design to prevent the entry of unauthorized persons and animals from outside the facility and to prevent the escape of ruminants in quarantine. The fence's height and design should take into consideration the species of wildlife in the surrounding area, as well as the impact of snowfall and other climatic changes. Double-security fencing would further ensure against possible contact between quarantined ruminants and animals outside the facility.

Medium and minimum security facilities would have to provide pens, chutes, and other animal restraining devices, as appropriate, for inspection and identification of each animal, as well as for segregation, treatment, or both, of any ruminant exhibiting signs of illness. We also are proposing that the lot-holding areas in medium and minimum security facilities be of sufficient size to prevent overcrowding.

A medium security facility could hold more than one lot of ruminants at the same time so long as the lots are separated by physical barriers so that ruminants in one lot would not have physical contact with ruminants in another lot, or with their excrement or discharges. A minimum security facility could not hold more than one lot of animals at the same time. These measures would help prevent ruminants infected with or exposed to a disease from spreading it to other ruminants in the facility.

Because of the need for APHIS representatives to examine ruminants and draw samples for testing, we would require that medium and minimum security facilities provide adequate space for such purposes, and that the space include appropriate animal restraining devices for the safe inspection of ruminants. The facility would have to provide sufficient storage space for necessary examination equipment and supplies, work space for preparing and packaging samples for mailing, and storage space for duplicate samples. The facility also would have to provide a secure, lockable office for APHIS use with enough room for a desk, chair, and filing cabinet.

Medium and minimum security facilities would also have to provide sufficient storage space for equipment and supplies used in quarantine operations, including separate, secure storage areas for pesticides and for medical and other biological supplies, as well as a separate storage area for feed and bedding, if feed and bedding are to be stored at the facility.

Medium and minimum security facilities would also have to include work areas for the repair of equipment and for cleaning and disinfecting equipment used in the facility.

Additional Construction Requirements for Medium Security Facilities

Proposed § 93.412(d)(3)(iii) would contain additional physical plant requirements that would apply to medium security facilities only. These additional requirements, which primarily relate to building design, windows and other openings, surfaces, and ventilation and climate control, would help ensure that a medium security facility is capable of providing an indoor environment for ruminants in quarantine that is free of vectors, biologically secure, and safe for the animals.

A medium security facility would have to be constructed so that the quarantine area is located in a secure, self-contained building that includes appropriate control measures against the spread of livestock diseases biologically transmissible by vectors. All entryways into the nonquarantine area of the building would have to be equipped with a secure and lockable door. While ruminants are in quarantine, all access to the quarantine area would have to be from within the building. Each entryway to the quarantine area would have to be equipped with a solid, self-closing door. Separate access would have to be provided within the quarantine area to each lot-holding area so that it is not necessary to move through one lot-holding area to gain access to another lot-holding area. Entryways to each lot-holding area within the quarantine area would also have to be equipped with a solid lockable door. Emergency exits to the outside would be permitted in the quarantine area if required by local fire ordinances. Such emergency exits would have to be constructed so as to permit their opening from the inside of the facility only.

We would require that all windows and other openings in the quarantine area of a medium security facility be double-screened with screening (separated by at least 3 inches or 7.62 centimeters) of sufficient gauge and mesh to prevent the entry or exit of insects and other vectors of livestock diseases, as well as provide ventilation sufficient to ensure the comfort and safety of all ruminants in the facility. All screening would have to be easily removable for cleaning, yet otherwise remain locked and secure at all times in a manner satisfactory to APHIS representatives in order to ensure the biological security of the facility.

We would also require that the floor, wall, and ceiling surfaces in a medium security facility meet certain standards. The floor surfaces with which the ruminants have contact would have to be nonslip and wear-resistant. In addition, all floor surfaces with which the ruminants, their excrement, or discharges have contact would have to slope gradually to the center, where one or more drains of at least 8 inches in diameter are located for adequate drainage, or alternatively, be of slatted or other floor design that allows for adequate drainage. We are also proposing that any floor and wall surfaces in a medium security facility with which the ruminants, their excrement, or discharges have contact would have to be impervious to moisture and be able to withstand frequent cleaning and disinfection without deterioration. Other ceiling and wall surfaces with which the ruminants, their excrement, or discharges do not have contact would have to be able to withstand cleaning and disinfection between shipments of ruminants. Since the animals would be housed in an enclosed building for the duration of the quarantine, the cleaning and disinfection of floor and wall surfaces would be necessary to help maintain the general health of the ruminants in quarantine, as well as reduce the risk of diseases spreading from one lot of ruminants to another. Finally, all floor and wall surfaces would also have to be free of sharp edges that could cause injury to ruminants.

We would also require that a medium security facility be equipped with a heating, ventilation, and air conditioning (HVAC) system that would be capable of controlling and maintaining the ambient temperature, air quality, moisture, and odor at levels not injurious or harmful to the health of ruminants in quarantine. Air supplied to lot-holding areas could not be recirculated or reused for other ventilation needs. The HVAC systems used for lot-holding areas would have to be separate from air handling systems for other operational and administrative areas of the facility. In addition, if a medium security facility is approved to handle more than one lot of ruminants at a time, each lot-holding area would have to be equipped with its own separate HVAC system in order to prevent cross-contamination between the separate lot-holding areas. Physical separation alone is not always an adequate safeguard against the transmission of diseases from one lot to another.

Medium security facilities would have to be adequately illuminated. This would include lighting in the lot-holding areas, as well as other areas where animals would be inspected or examined. We would also require that a medium security facility, including the lot-holding areas, be equipped with a fire alarm and voice communication system so that personnel working in those areas can be readily warned of any potential emergency and vice versa. A medium security facility would also have to provide a television monitoring system or other arrangement sufficient to provide a full view of the lot-holding areas. In addition, we are proposing that a medium security facility would have to be equipped with a communication system between the nonquarantine and quarantine areas of the facility so that persons inside the quarantine area can readily communicate with persons elsewhere in the facility in cases of emergency without necessarily leaving the quarantine area, and vice versa.

Each medium security facility would have to include an area that is of

sufficient size to perform necropsies on ruminants. We would require that the necropsy area have adequate lighting and be equipped with hot and cold running water, a drain, a cabinet for storing instruments, a refrigerator-freezer for storing specimens, and an autoclave to sterilize veterinary equipment. The necropsy area would be used to perform postmortem inspection of animals that die in the medium security facility and to collect samples for laboratory diagnosis. Having the capability to conduct necropsies at the facility would reduce the risk of diseases being transmitted to animals outside the facility.

In addition to the storage requirements discussed previously, the feed storage areas of a medium security facility would have to be vermin-proof. Also, if the medium security facility has multiple lot-holding areas, we would require that separate storage space for supplies and equipment be provided for each lot-holding area. This would help prevent equipment and supplies used on quarantined ruminants in one lot from coming in contact with ruminants in another lot or with the equipment or supplies used on those other ruminants. Such contact could cause the spread of diseases between lots of ruminants.

Medium security facilities would have to provide adequate shower facilities for use by those individuals who have access to the quarantine area. In a medium security facility, there would have to be a shower at the entrance to the quarantine area. A shower also would have to be located at the entrance to the necropsy area. We would also require that a clothes-storage and clothes-changing area be located at each end of each shower area. In addition, there would have to be one or more receptacles near each shower so that clothing that has been worn into a lot-holding area or elsewhere in the quarantine area can be deposited in the receptacle(s) prior to entering the shower.

Medium security facilities would have to provide permanent restrooms in both the nonquarantine and quarantine areas of the facility, and also provide an area for breaks and meals within the quarantine area. We would also require that medium security facilities provide a separate area for washing and drying clothes, linens, and towels used in the facility.

Sanitation

Proposed § 93.412(d)(3)(iv) would require that all medium and minimum security facilities meet certain sanitation standards as another safeguard against the transmission of livestock diseases into, within, or from the facility. Operators would have to have adequate equipment and supplies on hand to clean, disinfect, and maintain the facility and control pests. If more than one lot of ruminants is to be held in the facility at the same time (applies to medium security facilities only), then the facility would have to maintain separate equipment and supplies for carrying out such tasks in the different lot-holding areas. We would also require that the facility have a sufficient supply of potable water to meet the watering needs of the ruminants, as well as any cleaning needs at the facility. Water faucets for hoses would have to be located throughout the facility so that personnel would not have to drag hoses across areas that have already been cleaned and disinfected. We also would require that facilities maintain an emergency supply of water for the ruminants in quarantine, as well as a supply of disinfectant that is sufficient to disinfect the entire facility. Disinfectants would have to be authorized under 9 CFR part 71, § 71.10(a)(5), or otherwise approved by the Administrator.

Medium and minimum security facilities would have to be capable of disposing of wastes, including urine, manure, and used bedding, by means of burial, incineration, or public sewer. Other waste material would have to be handled in such a manner that would minimize spoilage and the attraction of pests and then disposed of by incineration, public sewer, or other preapproved manner that prevents the spread of disease. Waste disposal would have to be carried out under the direct oversight of APHIS representatives. Each facility would also have to be capable of disposing of ruminant carcasses in a manner approved by the Administrator and under conditions that would prevent the spread of disease from the carcasses.

If incineration is to be carried out on the premises of a medium or minimum security facility, we are proposing that the incineration equipment would have to be detached from other facility structures and be capable of burning wastes as required. The incineration site would also have to provide an area sufficient for solid waste holding. Incineration also may occur at a local site away from the facility. All incineration activities would have to take place under the direct oversight of an APHIS representative.

We are proposing that medium and minimum security facilities have the capability to adequately control surface drainage and effluent in order to prevent the spread of disease into, within, and from the facility. If a facility is approved to handle more than one lot of ruminants at the same time, we would require that separate drainage systems be provided for each lot-holding area in order to prevent cross-contamination. A facility's capability to adequately control surface drainage and effluent would depend on a number of factors including the water table, water pressure, angles at which the pipes are placed, number and location of drain openings, and the frequency in cleaning manure and other excreta from drains.

Security

Under proposed § 93.412(d)(3)(v), a medium or minimum security facility would ave to exercise certain security measures in order to prevent unauthorized persons, as well as animals, from coming in contact with quarantined ruminants. The facility and premises would have to be locked and secure at all times while the ruminants are in quarantine. In addition, the facility and premises would have to have posted signs indicating that the facility is a quarantine area and that no visitors are allowed. We would also require that the operator furnish us with one or more telephone numbers at which the operator or his or her agent can be reached at all times.

This paragraph would state that APHIS may place seals on any or all entrances and exits of the facility, as necessary to ensure security, and to take all necessary steps to ensure that the seals are broken only in the presence of an APHIS representative. Should someone other than an APHIS representative break such seals, we would consider such action a breach in security and would carry out an immediate accounting of all ruminants in the facility. If a breach of security occurs, we could extend the quarantine period as long as necessary to determine that the ruminants are free of communicable livestock diseases.

In the event that a communicable livestock disease is diagnosed in quarantined ruminants, the Administrator would have the discretion to order the facility to be guarded by a bonded security company, at the expense of the operator of the facility, in a manner that the Administrator deems is necessary to ensure the biological security of the facility.

In the case of medium security facilities only, we would also require that the facility be guarded at all times by one or more representatives of a bonded security company or, alternatively, the facility have an electronic security system that prevents

the entry of unauthorized persons into the facility and prevents animals outside the facility from having contact with ruminants in quarantine. If an electronic security system is used, we would require that the system be coordinated through or with the local police so that monitoring of the facility is maintained whenever APHIS representatives are not at the facility. The electronic security system would have to be of the "silent type," approved by Underwriter's Laboratories, and triggered to ring at the monitoring site and, if the operator chooses, at the facility. The operator would have to provide written instructions to the monitoring agency that specify that the police and an APHIS representative designated by APHIS would have to be notified by the monitoring agency if the alarm is triggered. The operator would have to provide a copy of those instructions to the Administrator. The operator would also have to notify the designated APHIS representative whenever a break in security occurs or is suspected of occurring.

Operating Procedures

Proposed § 93.412(d)(4) would set forth the operating procedures that medium and minimum security facilities would have to observe with respect to APHIS oversight, personnel, authorized access, sanitary practices, handling of quarantined ruminants, and recordkeeping. We would require that these procedures be followed at all times in order to ensure the overall biological security of the quarantine operation, as well as to maintain the health of the animals in quarantine.

APHIS Oversight

In proposed § 93.412(d)(4)(i), we would make clear that while the facility would be owned, operated, and maintained by the operator, the quarantine of ruminants at the facility would be subject to the strict oversight of APHIS representatives. The deployment of APHIS representatives to oversee and provide other professional, technical, and support services at a facility would be determined solely by the Administrator.

APHIS representatives would retain ultimate authority over the quarantine of ruminants at the facility. If, for any reason, the operator fails to properly care for, feed, or handle the quarantined ruminants as required in § 93.412(a), or in accordance with animal health and husbandry standards provided elsewhere in 9 CFR chapter 1, or fails to maintain and operate the facility as provided in proposed § 93.412(d), APHIS representatives would be authorized to furnish such neglected services or make arrangements for the sale or disposal of quarantined ruminants at the operator's expense, as authorized in § 93.412(a).

Personnel

Under proposed § 93.412(d)(4)(ii), the operator of a medium or minimum security facility would be responsible for hiring personnel to attend to the animals and otherwise maintain, operate, and administer the facility. We would require that the operator provide us with an updated list of all personnel who have access to the facility. The list would have to include the names, current residential addresses, and identification numbers of each person, and must be updated with any changes or additions in advance of such person having access to the quarantine facility. We also would require that the operator provide us with signed statements from all personnel having access to the facility in which the person agrees to comply with proposed § 93.412(d) and other provisions of part 93, all terms of the compliance agreement, and any related instructions from APHIS representatives pertaining to quarantine operations, including contact with animals both inside and outside the facility. We would require these signed statements so that personnel are made aware of their responsibilities and obligations while working with the animals in quarantine.

Authorized Access

To ensure the biological security of medium and minimum security facilities, proposed § 93.412(d)(4)(iii) would restrict facility access to APHIS representatives and other persons specifically authorized to work at the facility. All others would be prohibited from the premises unless specifically granted access by an APHIS representative. We would also require that an APHIS representative accompany at all times any visitors granted access to the facility.

In addition, we would require that all visitors, except veterinary practitioners who enter the facility to provide emergency care, would have to sign an affidavit before entering the quarantine area, if determined necessary by the overseeing APHIS representative, declaring that they will not have contact with any susceptible animals outside the facility for at least 7 days after contact with the ruminants in quarantine, or for a period of time determined by the overseeing APHIS representative as necessary to prevent the transmission of communicable livestock diseases of ruminants.

Sanitary Practices

Proposed § 93.412(d)(4)(iv) sets forth certain sanitary practices that would need to be followed by all those persons granted access to a medium or minimum security facility. We would require that everyone entering the quarantine area of the facility wear clean protective clothing and footwear. Disposable gloves would have to be worn when handling sick animals. Persons would have to wash their hands after removing the gloves. Persons also would have to change out of protective clothing, footwear, and gloves that have become soiled or contaminated.

If determined necessary by the overseeing APHIS representative, we also would prohibit persons having contact with quarantined ruminants from coming in contact with susceptible animals outside the facility for at least 7 days after their last contact with ruminants in quarantine, or, alternatively, for a longer period of time determined necessary by the overseeing APHIS representative. The period of time may vary, depending on the health status of the quarantined ruminants at the time the person had access to that lot of ruminants. The overseeing APHIS representative would be familiar with the health status of the ruminants under quarantine to determine whether there should be a prohibition against contact with animals outside the facility for a period of 7 days or longer.

We would require that any equipment (including tractors) to be used in the quarantine area of a medium or minimum security facility would first have to be cleaned and disinfected, and would then have to remain dedicated to the facility for the entire quarantine period. In addition, any equipment used with quarantined ruminants would have to remain dedicated to that particular lot of ruminants for the duration of the quarantine period or be cleaned and disinfected before coming in contact with ruminants from another lot. Prior to its use on another lot of ruminants or its removal from the quarantine area, such equipment would have to be cleaned and disinfected to the satisfaction of an APHIS representative.

Vehicles would also have to be cleaned and disinfected immediately prior to entering and leaving the quarantine area of the facility. If the facility utilizes a single loading dock, the loading dock would have to be immediately cleaned and disinfected after each use under the oversight of an APHIS representative. And upon the release of a lot of ruminants from quarantine, the operator would be required to clean and disinfect the lot-

holding area and other portions of the facility in which the ruminants had access before a new lot of ruminants could be placed in that same area of the facility. When disinfecting equipment, vehicles, or other areas of the facility, operators would have to use a disinfectant that is authorized in 9 CFR part 71, § 71.10(a)(5), or is otherwise approved by the Administrator. These measures would be necessary in order to minimize the risk of transmitting diseases into, within, or from the facility.

In addition to the sanitary practices already discussed, medium security facilities would be subject to the following additional requirements. Any persons granted access to the quarantine area would have to shower when entering and leaving the quarantine area, as well as when moving from one lot-holding area to another within the quarantine area. Persons also would have to shower when leaving the necropsy area, if a necropsy is in the process of being performed or has just been completed, or if all or portions of the examined animal remain exposed in the necropsy area. For medium security facilities that handle more than one lot of animals at the same time, all persons entering the quarantine area of the facility would be prohibited, unless specifically allowed otherwise by the overseeing APHIS representative, from coming in contact with any ruminants in quarantine, other than the lot or lots of ruminants to which the person is assigned or granted access.

The operator of a medium security facility would have to provide a sufficient supply of clothing and footwear to ensure that persons with access to the facility's quarantine area have clean, protective clothing and footwear after showering. We would also make the operator responsible for the proper handling, washing, and disposal of soiled and contaminated clothing worn in the quarantine area in a manner approved by an APHIS representative as adequate to preclude the transmission of diseases within and from the facility. At the end of each workday, all work clothing worn into each lot-holding area and other areas of the quarantine area would have to be collected and bagged until the clothing is washed. Used footwear would have to either be left in the clothes changing area or cleaned with hot water (148 °F minimum) and detergent and disinfected as directed by an APHIS representative.

Handling of Quarantined Ruminants

Our standards for the care and handling of ruminants in a medium or minimum security facility would appear in proposed § 93.412(d)(4)(v). Each lot of ruminants would have to be placed in the facility on an "all-in, all-out" basis. Once in quarantine, no ruminants would be removed from the lot except for diagnostic purposes, and no ruminants could be added to the lot during the quarantine period. These requirements would simplify the management of ruminants in the facility while reducing the risk of disease spread. The operator would be responsible for providing adequate feed and bedding from APHIS-approved sources. The feed and bedding would have to be free of vermin and not spoiled. In addition, breeding of ruminants or collection of germ plasm from ruminants would be prohibited during the quarantine period unless required for an import testing procedure.

Ruminants in quarantine in a medium or minimum security facility would be subject to such tests and procedures as directed by the overseeing APHIS representative to determine whether the ruminants are free of communicable livestock diseases. The use of vaccines for ruminants in quarantine would have to be approved by the APHIS representative, licensed in accordance with 9 CFR part 102, and administered by an APHIS veterinarian or an accredited veterinarian under the direct supervision of an APHIS representative.

The death or suspected illness of ruminants in quarantine would have to be reported to the overseeing APHIS representative. The affected ruminants would have to be disposed of as the Administrator may direct or, depending on the nature of the disease, would have to be cared for as directed by APHIS to prevent the spread of disease. We are proposing that animals that require specialized medical attention or additional postmortem testing may be transported off the quarantine site, if authorized by APHIS. If this occurs, a second quarantine site would be established at the off-site location where the affected animal(s) are being held. In such cases, APHIS could extend the quarantine period until the results of the outstanding tests or postmortems are received.

Should the Administrator determine that an animal health emergency exists at the facility, we would require that arrangements for the final disposition of the infected or exposed lot of ruminants be accomplished within 4 workdays following disease confirmation. The ultimate disposition of the ruminants would then have to occur under the direct oversight of APHIS representatives.

Recordkeeping

In proposed § 93.412(d)(4)(vi), operators of a medium or minimum security facility would have to follow certain recordkeeping practices while ruminants are in quarantine. For purposes of security, we would require the operator to maintain a current daily log to record the entry and exit of all persons entering and leaving the facility. We would also require that the operator retain the daily security log, as well as any logs maintained by APHIS and deposited with the operator, for at least 2 years following the date of release of the ruminants from quarantine. These logs would have to be made available to APHIS representatives upon request.

Environmental Quality

To ensure that APHIS would not assent to or facilitate activities that are not in conformance with environmental quality control standards, proposed § 93.412(d)(5) would provide that if APHIS determines that a privately owned medium or minimum security quarantine facility does not meet applicable local, State, or Federal environmental regulations, APHIS may deny or suspend approval of the facility until appropriate remedial measures have been applied.

Other Laws

Proposed § 93.412(d)(6) would put operators of a medium or minimum security facility on notice that they would be responsible for complying with any other applicable Federal, State, and local laws and regulations with respect to the construction, operation, and maintenance of the facility.

Variances

In proposed § 93.412(d)(7), we would permit variances from the proposed standards of § 93.412(d) on a case-by-case basis, subject to approval by the Administrator. The Administrator would be authorized to grant a variance to existing facility requirements relating to location, construction and design, sanitation, security, operating procedures, recordkeeping, or other provisions in proposed § 93.412(d), but only if the Administrator determines that there would be no detrimental effect on the health of the ruminants or to the overall biological security of the quarantine operations. The operator would have to submit any request for variance in writing to the Administrator at least 30 days in advance of the arrival of ruminants at the facility. Any variance would also have to be provided for in the compliance agreement.

Miscellaneous Changes

Section 93.413 generally restricts visitors from entering the quarantine area of a quarantine facility while ruminants are in quarantine. Section 93.413 does provide that importers whose animals are in quarantine may be admitted to the quarantine area, as necessary, subject to any conditions imposed by the inspector in charge. We are proposing to amend § 93.413 by inserting references to "APHIS representative" alongside "inspector in charge." "APHIS representative" is the term we propose to use in describing APHIS personnel assigned to oversee and provide other technical services at privately owned medium or minimum security quarantine facilities. We also propose to make a minor technical change by revising "quarantine station" to read "quarantine facility or station."

Section 93.414 restricts the use of milk or cream from quarantined ruminants. We are proposing to amend § 93.414 by inserting "APHIS representative" alongside "inspector in charge" for the same reason as noted previously for amending § 93.413.

We are also proposing to redesignate the footnote numbers of several footnotes that appear in the regulations. Footnote 7, which appears in the heading "Canada" immediately above § 93.417, would be redesignated as footnote 9. Footnote 8, which appears in the heading "Central America And West Indies" immediately above § 93.422, would be redesignated as footnote 10. And footnote 9, which appears in the heading "Mexico" immediately above § 93.424, would be redesignated as footnote 11. These redesignations would be necessary because of two new footnotes that would be added to the regulations if § 93.412(d) is implemented.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

The regulations for the importation of ruminants appear at 9 CFR part 93, subpart D, §§ 93.400 through 93.435 (the regulations). Section 93.411 requires that ruminants arriving in the United States, with certain exceptions, be quarantined upon arrival for at least 30 days. Ruminants from Canada and Mexico are not subject to this quarantine requirement.

Section 93.412, paragraph (a), authorizes the establishment of privately operated quarantine facilities for ruminants, subject to APHIS approval and oversight. Section 93.434 contains standards for the approval, operation, and oversight of privately operated quarantine facilities for sheep or goats. After these standards were first established in 1988, privately operated quarantine facilities were briefly used for the importation of sheep and goats into the United States. However, there are currently no approved private quarantine facilities for sheep or goats, or for other ruminants. Therefore, imported ruminants subject to quarantine must enter the United States through facilities maintained by APHIS.

We have received requests to import cattle into the United States through quarantine facilities that are privately owned and operated.

Given the current interest in establishing privately owned quarantine facilities for cattle, we are proposing to amend our regulations and publish standards for approval and oversight of such facilities. The standards would have to be consistent with the standards followed at APHIS quarantine facilities to ensure that the health of the U.S. livestock population is not jeopardized by the release of unhealthy animals or communicable disease agents from quarantine facilities.

We are proposing that these standards apply not only to privately owned facilities intended for imported cattle, but for privately owned and operated facilities that wish to handle other imported ruminants, including sheep and goats. Therefore, as part of this proposal, we would remove from our regulations the existing standards for the approval of privately operated quarantine facilities for sheep or goats.

In 2001, about 2,440,000 live cattle worth an estimated $1.1 billion were imported into the United States. Over a 10-year period, 1992–2001, U.S. bovine imports averaged more than 2.2 million head per year, with an annual average value of $1.2 billion. In comparison, the U.S. cattle inventory has averaged about 100 million head over the last 10 years. According to the 1997 Census of Agriculture, the value of U.S. cattle sales in that year was approximately $40.5 billion, based on the sale of 74 million head. Thus, cattle imports represent about 2 percent of the U.S. cattle and calf population, and about 3 percent, by value, of domestic sales.

Almost all U.S. imports of cattle come from Canada and Mexico. In 2001, Canada exported 1,308,670 animals into the United States, while Mexico exported 1,130,168 animals in that same year. The only other sources of imports in 2001 were Norway (350 head) and Australia (12 head). The only other source of imports besides Canada and Mexico in 1999 and 2000 was Australia, which exported a total of 21 and 15 head to the United States in those two years. Based on the historic record, the number of cattle imported into the United States that would be affected by this rule would likely be small, given that ruminants from Canada and Mexico are generally not subject to quarantine as a condition of entry into the United States. However, the number of imports from countries other than Canada and Mexico may be more substantial, depending on the number and type of facilities (medium or minimum security facility) that are approved for operation.

Over the 10-year period, 1991–2000, U.S. sheep imports averaged 39,106 head annually, showing a steady increase from about 23,000 head in 1991, to about 52,000 head in 2000. In 2001, there was a significant increase in sheep imports, to 85,042 head. Canada dominates this market, supplying over 99 percent of U.S. sheep imports over the past 5 years. Very small numbers of sheep are imported from Mexico and New Zealand, and there have been imports previously from Australia, the Republic of South Africa, and the European Union. The annual average value of sheep imports over the 1991–2000 period was approximately $4 million (about $104 per head). Hence, the number of imported sheep affected by this rule would likely be small, given that almost all U.S. imports come from Canada.

Goats imported into the United States numbered only 6 head in 1991, while in 1994, they totaled 28,500 head (27,935 from New Zealand). These extreme import numbers during the early 1990s distort a more steady import pattern over the latter half of the 1990s. Therefore, annual averages over the 6-year period, 1995–2000, are appropriate. During this period, an average of 1,459 goats were imported into the United States yearly. Since 1999, all goat imports have come from Canada. Prior to 1999, Canada dominated the market, but Mexico and New Zealand were also significant in some years. The annual average value of goat imports over the 1996–2001 period was about $535,000 (about $244 per head). Hence, the number of imported goats affected by this rule would likely be small, given that the majority of goats imported into the United States typically come from Canada and Mexico.

U.S. imports of sheep and goats represent a small fraction of total U.S. domestic production of these animals. In 2000, the U.S. sheep population numbered about 7 million, with an

approximate value of $668 million. Based on average sheep imports of 39,106 head per year over the 1991–2000 period, U.S. sheep imports represent less than 1 percent of total U.S. domestic production. In 2000, there were approximately 436,000 Angora goats in the United States with a value of about $17 million. Based on average goat imports of 1,459 head per year over the 1995–2000 period, U.S. goat imports comprise less than 1 percent of total U.S. domestic production, and represent about 3.1 percent of the value of domestically-produced goats (signifying the generally higher value of imported goats).

APHIS and other Federal agencies are required to evaluate whether proposed regulations are likely to have a significant economic impact on a substantial number of small entities. Privately owned and operated quarantine facilities have been used from time to time for the importation of sheep and goats into the United States. However, no such approved facilities are currently in operation. Therefore, the standards contained in this proposed rule would not adversely affect any such entities, large or small. However, should one or more privately owned quarantine facilities be approved for operation, importers should benefit by having additional options for the placement of ruminants to be imported into the United States. And, particularly in the case of minimum security facilities, importers may have the opportunity to import ruminants from certain regions in larger lot sizes as compared to the current situation of having the animals placed in an APHIS indoor quarantine facility.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment has not been prepared for this proposed rule. Because the environmental impacts that could result from implementation of this proposal would vary according to the location and design of the facility being approved, APHIS has determined site-specific environmental assessments must be conducted for each privately owned quarantine facility for ruminants prior to approval of the facility. APHIS will publish a notice in the **Federal Register** for each environmental assessment we conduct in this regard if this proposed rule is finalized, and we would invite public comment on each site-specific environmental assessment.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 00–022–1. Please send a copy of your comments to: (1) Docket No. 00–022–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing standards for the establishment and operation of privately owned quarantine facilities for imported ruminants prior to their release into the United States. Satisfying the proposed requirements in this rule would entail several information collection activities, including an application for facility approval, a compliance agreement explaining the conditions under which the facility must be operated, certification that the facility meets all applicable environmental regulations, and maintenance of certain records covering quarantine operations.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 9.64 hours per response.

Respondents: Operators of privately owned quarantine facilities for ruminants.

Estimated annual number of respondents: 25.

Estimated annual number of responses per respondent: 1.8.

Estimated annual number of responses: 45.

Estimated total annual burden on respondents: 434 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

2. In part 93, subpart D, footnotes 7, 8, and 9 would be redesignated as footnotes 9, 10, and 11, respectively.

3. Section 93.400 would be amended by revising the footnote and the definition of *immediate slaughter* and the footnote to *recognized slaughtering establishment* and by adding, in alphabetical order, new definitions for *area veterinarian in charge, Federal veterinarian, lot, lot-holding area, nonquarantine area, Office International des Epizooties (OIE), operator, privately owned medium security quarantine facility (medium security facility), privately owned minimum security quarantine facility (minimum security facility), quarantine area, State veterinarian,* and *temporary inspection facility* to read as follows:

§ 93.400 Definitions.

* * * * *

Area veterinarian in charge (AVIC). The veterinary official of the Animal and Plant Health Inspection Service, who is assigned by the Administrator to supervise and perform the official animal health work of the Animal and Plant Health Inspection Service in the State concerned.

* * * * *

Federal veterinarian. A veterinarian employed and authorized by the Federal Government to perform the tasks required by this subpart.

* * * * *

Immediate slaughter. Consignment directly from the port of entry to a recognized slaughtering establishment [1] and slaughtered within 2 weeks from the date of entry.

* * * * *

Lot. A group of ruminants that, while held on a conveyance or premises, has opportunity for physical contact with each other or with each other's excrement or discharges at any time between arrival at the quarantine facility and 60 days prior to export to the United States.

Lot-holding area. That area in a privately owned medium or minimum security quarantine facility in which a single lot of ruminants is held at one time.

* * * * *

Nonquarantine area. That area of a privately owned medium or minimum security quarantine facility that includes offices, storage areas, and other areas outside the quarantine area, and that is off limits to ruminants, samples taken from ruminants, and any other objects or substances that have been in the quarantine area during the quarantine of ruminants.

Office International des Epizooties (OIE). The international organization recognized by the World Trade Organization for setting animal health standards, reporting global animal situations and disease status, and presenting guidelines and recommendations on sanitary measures related to animal health.

Operator. A person other than the Federal Government who owns or operates, subject to APHIS' approval and oversight, a privately owned medium or minimum security quarantine facility.

* * * * *

Privately owned medium security quarantine facility (medium security facility). A facility that:

(1) Is owned, operated, and financed by a person other than the Federal Government;

(2) Is subject to the strict oversight of APHIS representatives;

(3) Is constructed, operated, and maintained in accordance with the requirements for medium security facilities in § 93.412(d); and

(4) Provides the necessary level of quarantine services for the holding of ruminants in an indoor, vector-proof environment prior to the animals' entry into the United States. Quarantine services would have to include testing or observation for any OIE list A diseases and other livestock diseases exotic to the United States, as well as any other diseases, as necessary, to be determined by the Administrator.

Privately owned minimum security quarantine facility (minimum security facility). A facility that:

(1) Is owned, operated, and financed by a person other than the Federal Government;

(2) Is subject to the strict oversight of APHIS representatives;

(3) Is constructed, operated, and maintained in accordance with the requirements for minimum security facilities in § 93.412(d);

(4) Is used for the quarantine of ruminants that pose no significant risk, as determined by the Administrator, of introducing or transmitting to the U.S. livestock population any livestock disease that is biologically transmissible by vectors; and

(5) Provides the necessary level of quarantine services for the outdoor holding of ruminants, prior to the animals' entry into the United States. Quarantine services would have to include testing or observation for any OIE list A diseases and other livestock diseases exotic to the United States, as well as any other diseases, as necessary, to be determined by the Administrator.

Quarantine area. That area of a privately owned medium or minimum security quarantine facility that comprises all of the lot-holding areas in the facility and any other areas in the facility that ruminants have access to, including loading docks for receiving and releasing ruminants, and any areas used to conduct examinations of ruminants and take samples and any areas where samples are processed or examined.

Recognized slaughtering establishment.[2] * * *

* * * * *

State veterinarian. A veterinarian employed and authorized by a State or political subdivision of a State to perform the tasks required by this subpart.

* * * * *

Temporary inspection facility. A facility owned and operated by a person other than the Federal Government that is located within 1 mile of the port of entry and used for the inspection of ruminants imported into the United States in accordance with § 93.408 of this subpart.

* * * * *

4. In § 93.403, paragraph (g) would be revised to read as follows:

§ 93.403 Ports designated for the importation of ruminants.

* * * * *

(g) *Ports and privately owned quarantine facilities.* Ruminants may be imported into the United States at any port specified in paragraph (a) of this section, or at any other port designated as an international port or airport by the Bureau of Customs and Border Protection, and quarantined at an APHIS-approved privately owned quarantine facility, provided the applicable provisions of §§ 93.401,

[1] The name of recognized slaughtering establishments approved under this part may be obtained from the area veterinarian in charge for the State of destination of the shipment. The name and address of the area veterinarian in charge of any State is available from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road, Unit 38, Riverdale, MD 20737–1231.

[2] See footnote 1.

93.404(a), 93.407, 93.408, and 93.412 are met.

§ 93.404 [Amended]

5. In § 93.404, paragraph (a)(1) would be amended by adding the words "the name and address of the quarantine facility, if the ruminants are to be quarantined at a privately owned quarantine facility;" after the words "and the port of entry in the United States;".

6. In § 93.412, paragraphs (a) and (c) would be revised and a new paragraph (d) would be added to read as follows:

§ 93.412 Ruminant quarantine facilities.

(a) *Privately owned quarantine facilities.* The operator of a privately owned medium or minimum security quarantine facility subject to the regulations in this subpart shall arrange for acceptable transportation from the port to the privately owned quarantine facility and for the care, feeding, and handling of the ruminants from the time of unloading at the port to the time of release from the quarantine facility. Such arrangements shall be agreed to in advance by the Administrator. All expenses related to these activities shall be the responsibility of the operator. The privately owned quarantine facility must be suitable for the quarantine of the ruminants and must be approved by the Administrator prior to the issuance of any import permit. The facilities occupied by the ruminants should be kept clean and sanitary to the satisfaction of the APHIS representatives. If for any cause, the care, feeding, or handling of ruminants, or the sanitation of the facilities is neglected, in the opinion of the overseeing APHIS representative, such services may be furnished by APHIS in the same manner as though arrangements had been made for such services as provided by paragraph (b) of this section, and/or the ruminants may be disposed of as the Administrator may direct, including through their sale in accordance with the procedure described in paragraph (b) of this section. The operator must request in writing inspection and other services as may be required, and shall waive all claims against the United States and APHIS or any employee of APHIS for damages which may arise from such services. The Administrator may prescribe reasonable rates for the services provided under this paragraph. When APHIS finds it necessary to extend the usual minimum quarantine period, APHIS shall advise the operator in writing, and the operator must pay for such additional quarantine and other services required. The operator must pay for all services received in connection with each separate lot of ruminants by certified check or U.S. money order prior to release of the ruminants. If such payment is not made, the ruminants may be sold in accordance with the procedure described in paragraph (b) of this section, or otherwise disposed of as directed by the Administrator.

* * * * *

(c) APHIS collection of payments from the importer, or his or her agent, or the operator, for service rendered shall be deposited so as to be available for defraying the expenses involved in this service.

(d) *Standards for privately owned quarantine facilities for ruminants.*—(1) *APHIS approval of facilities.*—(i) *Approval procedures.* Persons seeking APHIS approval of a privately owned medium or minimum security quarantine facility for ruminants must make written application to the Administrator, c/o National Center for Import and Export, Veterinary Services, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231. The application must include the full name and mailing address of the applicant; the location and street address of the facility for which approval is sought; blueprints of the facility; a description of the financial resources available for construction, operation and maintenance of the facility; copies of all approved State permits for construction and operation of the facility (but not local building permits), as well as copies of all approved Federal, State, and local environmental permits; the anticipated source(s) or origin(s) of ruminants to be quarantined, as well as the expected size and frequency of shipments, and a contingency plan for the possible destruction and disposal of all ruminants capable of being held in the facility.

(A) If APHIS determines that an application is complete and merits further consideration, the person applying for facility approval must agree to pay the costs of all APHIS services associated with APHIS' evaluation of the application and facility. APHIS charges for evaluation services at hourly rates are listed in § 130.30 of this chapter. If the facility is approved by APHIS, the operator must enter into a compliance agreement in accordance with paragraph (d)(2) of this section.

(B) Requests for approval must be submitted at least 120 days prior to the date of application for local building permits. Requests for approval will be evaluated on a first-come, first-served basis.

(ii) *Criteria for approval.* Before a facility may be built to operate as a privately owned medium or minimum security quarantine facility for ruminants, it must be approved by APHIS. To be approved:

(A) APHIS must find, based on an environmental assessment, and based on any required Federal, State, and local environmental permits or evaluations secured by the operator and copies of which are provided to APHIS, that the operation of the facility will not have significant environmental effects;

(B) The facility must meet all the requirements of paragraph (d) of this section;

(C) The facility must meet any additional requirements that may be imposed by the Administrator in each specific case, as specified in the compliance agreement required under paragraph (d)(2) of this section, to ensure that the quarantine of ruminants in the facility will be adequate to enable determination of their health status, as well as to prevent the transmission of livestock diseases into, within, and from the facility; and

(D) The Administrator must determine whether sufficient personnel, including one or more APHIS veterinarians and other professional, technical, and support personnel, are available to serve as APHIS representatives at the facility and provide continuous oversight and other technical services to ensure the biological security of the facility, if approved. APHIS will assign personnel to facilities requesting approval in the order that the facilities meet all of the criteria for approval. The Administrator has sole discretion on the number of APHIS personnel to be assigned to the facility.

(iii) *Maintaining approval.* To maintain APHIS approval, the operator must continue to comply with all the requirements of paragraph (d) of this section as well as the terms of the compliance agreement executed in accordance with paragraph (d)(2) of this section.

(iv) *Withdrawal or denial of approval.* Approval of a proposed privately owned medium or minimum security quarantine facility may be denied or approval of a facility already in operation may be withdrawn at any time by the Administrator for any of the reasons provided in paragraph (d)(1)(iv)(C) of this section.

(A) Before facility approval is denied or withdrawn, APHIS will inform the operator of the proposed or existing facility and include the reasons for the proposed action. If there is a conflict as to any material fact, APHIS will afford

the operator, upon request, the opportunity for a hearing with respect to the merits or validity of such action in accordance with rules of practice that APHIS adopts for the proceeding.

(B) Withdrawal of approval of an existing facility will become effective pending final determination in the proceeding when the Administrator determines that such action is necessary to protect the public health, interest, or safety. Such withdrawal will be effective upon oral or written notification, whichever is earlier, to the operator of the facility. In the event of oral notification, APHIS will give written confirmation to the operator of the facility as promptly as circumstances allow. This withdrawal will continue in effect pending the completion of the proceeding and any judicial review, unless otherwise ordered by the Administrator. In addition to withdrawal of approval for the reasons provided in paragraph (d)(1)(iv)(C) of this section, the Administrator will also automatically withdraw approval when the operator of any approved facility notifies the area veterinarian in charge for the State in which the facility is located, in writing, that the facility is no longer in operation.[7]

(C) The Administrator may deny or withdraw the approval of a privately owned medium or minimum security quarantine facility if:

(*1*) Any requirement of paragraph (d) of this section or the compliance agreement is not met; or

(*2*) The facility has not been in use to quarantine ruminants for a period of at least 1 year; or

(*3*) The operator fails to remit any charges for APHIS services rendered; or

(*4*) The operator or a person responsibly connected with the business of the facility is or has been convicted of any crime under any law regarding the importation or quarantine of any animal; or

(*5*) The operator or a person responsibly connected with the business of the facility is or has been convicted of a crime involving fraud, bribery, extortion, or any other crime involving a lack of integrity needed for the conduct of operations affecting the importation of animals; or

(*6*) Any other requirement under the Animal Health Protection Act (7 U.S.C. 8301–8317) or the regulations thereunder are not met.

[7] The name and address of the area veterinarian in charge of any State is available from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20737–1231.

(D) For the purposes of paragraph (d)(1)(iv) of this section, a person is deemed to be responsibly connected with the business of the facility if such person has an ownership, mortgage, or lease interest in the facility, or if such person is a partner, officer, director, holder, or owner of 10 percent or more of its voting stock, or an employee in a managerial or executive capacity.

(2) *Compliance agreement.* (i) A privately owned medium or minimum security quarantine facility must operate in accordance with a compliance agreement executed by the operator or other designated representative of the facility and by the Administrator. The compliance agreement must be signed by both parties before a facility may commence operations. The compliance agreement must provide that:

(A) The facility must meet all applicable requirements of paragraph (d) of this section;

(B) The facility's quarantine operations are subject to the strict oversight of APHIS representatives;

(C) The operator agrees to be responsible for the cost of building the facility; all costs associated with its maintenance and operation; all costs associated with the hiring of personnel to attend to the ruminants, as well as to maintain and operate the facility; all costs associated with the care of quarantined ruminants, such as feed, bedding, medicines, inspections, testing, laboratory procedures, and necropsy examinations; all costs associated with the death or destruction and disposition of quarantined ruminants; and all APHIS charges for the services of APHIS representatives in accordance with this section and part 130 of this chapter;

(D) The operator obtained, prior to execution of this agreement, a financial instrument (insurance or surety bond) approved by APHIS that financially guarantees the operator's ability to cover all costs and other financial liabilities and obligations of the facility, including a worst case scenario in which all quarantined ruminants must be destroyed and disposed of because of an animal health emergency, as determined by the Administrator.

(E) The operator will deposit with the Administrator, prior to commencing quarantine operations, a certified check or U.S. money order to cover the estimated costs, as determined by the Administrator, of professional, technical, and support services to be provided by APHIS at the facility over the duration of the quarantine. If actual costs incurred by APHIS over the quarantine period exceed the deposited amount, the operator will pay for any additional costs incurred by APHIS, based on official accounting records. Payment for all services received in connection with each lot of ruminants in quarantine shall be made prior to release of the ruminants. The operator must pay for any other costs incurred by APHIS with respect to the quarantine following the release of the ruminants, based on official records, within 14 days of receipt of the bill showing the balance due. APHIS will return to the operator any unobligated funds deposited with APHIS, after the release of the lot of ruminants from the facility and termination or expiration of the compliance agreement, or, if requested, credit to the operator's account such funds to be applied towards payment of APHIS services at a future date.

(ii) Prior to the entry of each subsequent lot of ruminants into the medium or minimum security facility, a new compliance agreement must be executed, and a certified check or U.S. money order to the Administrator must be deposited to cover the estimated costs, as determined by the Administrator, of professional, technical, and support services to be provided by APHIS at the facility over the duration of the quarantine.

(3) *Physical plant requirements.* A privately owned medium or minimum security quarantine facility must meet the following requirements as determined by an APHIS inspection before ruminants may be admitted to it.

(i) *Location.* (A) The medium or minimum security facility must be located at a site approved by the Administrator, and the specific routes for the movement of ruminants from the port must be approved in advance by the Administrator, based on consideration of whether the site or routes would put the animals in a position that could result in their transmitting communicable livestock diseases.

(B) In the case of a medium security facility, the facility must be located at least one-half mile from any premises holding livestock. In the case of a minimum security facility, the Administrator will establish the required minimum distance between the facility and other premises holding livestock on a case-by-case basis.

(C) If the medium or minimum security facility is to be located more than 1 mile from a designated port, the operator must make arrangements for the imported ruminants to be held in a temporary inspection facility, which is within 1 mile of the port and approved by the Administrator, to allow for the inspection of the imported ruminants by a Federal or State veterinarian prior to

the animals' movement to the medium or minimum security facility.

(*1*) The temporary inspection facility must have adequate space for Federal or State veterinarians to conduct examinations and testing of the imported ruminants.

(*2*) The examination space of the temporary inspection facility must be equipped with appropriate animal restraining devices for the safe inspection of ruminants.

(*3*) The temporary inspection facility may not hold more than one lot of animals at the same time.

(*4*) In seeking APHIS approval of the temporary inspection facility, the operator must provide APHIS with the following information: The location and street address, as well as blueprints or a description of the temporary inspection facility; a description of the financial resources available for its construction (if applicable), operation, and maintenance; copies of all approved State and local permits for construction and operation of the temporary inspection facility, as well as copies of all approved Federal, State, and local environmental permits; and the anticipated source(s) or origin(s), lot size, and frequency of shipments of imported ruminants to be handled at the facility. Following APHIS approval of the temporary inspection facility, the operator will also provide APHIS with a copy of the local building permit, when obtained.

(*5*) If the ruminants, upon inspection at the temporary inspection facility, are determined to be infected with or exposed to a disease that precludes their entry into the United States, the animals will be refused entry. Ruminants refused entry remain the responsibility of the operator, but subject to further handling or disposition as directed by the Administrator in accordance with § 93.408 of this subpart.

(*6*) APHIS' approval to build and operate medium or minimum security facility outside the immediate vicinity of a designated port is contingent upon APHIS' approval of the temporary inspection facility at the port, as well as approval of the routes for the movement of ruminants from the port to the medium or minimum security facility.

(ii) *Construction.* The medium or minimum security facility must be of sound construction, in good repair, and properly designed to prevent the escape of quarantined ruminants. It must have adequate capacity to receive and hold a shipment of ruminants as a lot on an "all-in, all-out" basis and must include the following:

(A) *Loading docks.* The facility must include separate docks for animal receiving and releasing and for general receiving and pickup, or, alternatively, a single dock may be used for both purposes if the dock is cleaned and disinfected after each use in accordance with paragraph (d)(4)(iv)(D) of this section.

(B) *Perimeter fencing.* The facility must be surrounded by double-security perimeter fencing separated by at least 30 feet and of sufficient height and design to prevent the entry of unauthorized persons and animals from outside the facility and to prevent the escape of any ruminants in quarantine.

(C) *Means of isolation.* The facility must provide pens, chutes, and other animal restraining devices, as appropriate, for inspection and identification of each animal, as well as for segregation, treatment, or both, of any ruminant exhibiting signs of illness. The medium or minimum security facility must also have lot-holding areas of sufficient size to prevent overcrowding. A medium security facility may hold more than one lot of ruminants as long as the lots are separated by physical barriers such that ruminants in one lot do not have physical contact with ruminants in another lot or with their excrement or discharges. A minimum security facility may not hold more than one lot of animals at the same time.

(D) *APHIS space.* The facility must have adequate space for APHIS representatives to conduct examinations and draw samples for testing of ruminants in quarantine, prepare and package samples for mailing, and store duplicate samples and the necessary equipment and supplies for each lot of ruminants. The examination space must be equipped with appropriate animal restraining devices for the safe inspection of ruminants. The facility must also provide a secure, lockable office for APHIS use with enough room for a desk, chair, and filing cabinet.

(E) *Storage.* The facility must have sufficient storage space for equipment and supplies used in quarantine operations. Storage space must include separate, secure storage for pesticides and for medical and other biological supplies, as well as a separate storage area for feed and bedding, if feed and bedding are stored at the facility.

(F) *Other work areas.* The facility must include work areas for the repair of equipment and for cleaning and disinfecting equipment used in the facility.

(iii) *Additional construction requirements for medium security facilities.* For medium security facilities only, the following requirements must also be met:

(A) *Self-contained building.* The medium security facility must be constructed so that the quarantine area is located in a secure, self-contained building that contains appropriate control measures against the spread of livestock diseases biologically transmissible by vectors. All entryways into the nonquarantine area of the building must be equipped with a secure and lockable door. While ruminants are in quarantine, all access to the quarantine area must be from within the building. Each entryway to the quarantine area must be equipped with a solid self-closing door. Separate access must be provided within the quarantine area to each lot-holding area so that it is not necessary to move through one lot-holding area to gain access to another lot-holding area. Entryways to each lot-holding area within the quarantine area would also have to be equipped with a solid lockable door. Emergency exits to the outside may exist in the quarantine area if required by local fire ordinances. Such emergency exits must be constructed so as to permit their opening from the inside of the facility only.

(B) *Windows and other openings.* Any windows or other openings in the quarantine area must be double-screened with screening of sufficient gauge and mesh to prevent the entry or exit of insects and other vectors of livestock diseases and to provide ventilation sufficient to ensure the comfort and safety of all ruminants in the facility. The interior and exterior screens must be separated by at least 3 inches (7.62 cm). All screening of windows or other openings must be easily removable for cleaning, yet otherwise remain locked and secure at all times in a manner satisfactory to APHIS representatives in order to ensure the biological security of the facility.

(C) *Surfaces.* The medium security facility must be constructed so that the floor surfaces with which ruminants have contact are nonslip and wear-resistant. All floor surfaces with which the ruminants, their excrement, or discharges have contact must slope gradually to the center, where one or more drains of at least 8 inches in diameter are located for adequate drainage, or, alternatively, must be of slatted or other floor design that allows for adequate drainage. All floor and wall surfaces with which the ruminants, their excrement, or discharges have contact must be impervious to moisture and be able to withstand frequent cleaning and disinfection without deterioration. Other ceiling and wall

surfaces with which the ruminants, their excrement, or discharges do not have contact must be able to withstand cleaning and disinfection between shipments of ruminants. All floor and wall surfaces must be free of sharp edges that could cause injury to ruminants.

(D) *Ventilation and climate control.* The medium security facility must be constructed with a heating, ventilation, and air conditioning (HVAC) system capable of controlling and maintaining the ambient temperature, air quality, moisture, and odor at levels that are not injurious or harmful to the health of ruminants in quarantine. Air supplied to lot-holding areas must not be recirculated or reused for other ventilation needs. HVAC systems for lot-holding areas must be separate from air handling systems for other operational and administrative areas of the facility. In addition, if the facility is approved to handle more than one lot of ruminants at a time, each lot-holding area must have its own separate HVAC system that is designed to prevent cross-contamination between the separate lot-holding areas.

(E) *Lighting.* The medium security facility must have adequate lighting throughout, including in the lot-holding areas and other areas used to examine ruminants and conduct necropsies.

(F) *Fire protection.* The medium security facility, including the lot-holding areas, must have a fire alarm and voice communication system.

(G) *Monitoring system.* The medium security facility must have a television monitoring system or other arrangement sufficient to provide a full view of the lot-holding areas.

(H) *Communication system.* The medium security facility must have a communication system between the nonquarantine and quarantine areas of the facility.

(I) *Necropsy area.* The medium security facility must have an area that is of sufficient size to perform necropsies on ruminants and that is equipped with adequate lighting, hot and cold running water, a drain, a cabinet for storing instruments, a refrigerator-freezer for storing specimens, and an autoclave to sterilize veterinary equipment.

(J) *Additional storage requirements.* Feed storage areas in the medium security facility must be vermin-proof. Also, if the medium security facility has multiple lot-holding areas, then separate storage space for supplies and equipment must be provided for each lot-holding area.

(K) *Showers.* In a medium security facility, there must be a shower at the entrance to the quarantine area. A shower also must be located at the entrance to the necropsy area. A clothes-storage and clothes-changing area must be provided at each end of each shower area. There also must be one or more receptacles near each shower so that clothing that has been worn in a lot-holding area or elsewhere in the quarantine area can be deposited in the receptacle(s) prior to entering the shower.

(L) *Restrooms.* The medium security facility must have permanent restrooms in both the nonquarantine and quarantine areas of the facility.

(M) *Break room.* The medium security facility must have an area within the quarantine area for breaks and meals.

(N) *Laundry area.* The medium security facility must have an area for washing and drying clothes, linens, and towels.

(iv) *Sanitation.* To ensure that proper animal health and biological security measures are observed, a privately owned medium or minimum security quarantine facility must provide the following:

(A) Equipment and supplies necessary to maintain the facility in a clean and sanitary condition, including pest control equipment and supplies and cleaning and disinfecting equipment with adequate capacity to disinfect the facility and equipment.

(B) Separately maintained sanitation and pest control equipment and supplies for each lot-holding area if the facility will hold more than one lot of ruminants at a time (applicable to medium security facilities only).

(C) A supply of potable water adequate to meet all watering and cleaning needs, with water faucets for hoses located throughout the facility. An emergency supply of water for ruminants in quarantine also must be maintained.

(D) A stock of disinfectant authorized in § 71.10(a)(5) of this chapter or otherwise approved by the Administrator that is sufficient to disinfect the entire facility.

(E) The capability to dispose of wastes, including manure, urine, and used bedding, by means of burial, incineration, or public sewer. Other waste material must be handled in such a manner that minimizes spoilage and the attraction of pests and must be disposed of by incineration, public sewer, or other preapproved manner that prevents the spread of disease. Disposal of wastes must be carried out under the direct oversight of APHIS representatives.

(F) The capability to dispose of ruminant carcasses in a manner approved by the Administrator and under conditions that prevent the spread of disease from the carcasses.

(G) For incineration to be carried out at the facility, incineration equipment that is detached from other facility structures and is capable of burning wastes or carcasses as required. The incineration site must include an area sufficient for solid waste holding. Incineration may also take place at a local site away from the facility premises. All incineration activities must be carried out under the direct oversight of an APHIS representative.

(H) The capability to control surface drainage and effluent into, within, and from the facility in a manner that prevents the spread of disease into, within, and from the facility. If the facility is approved to handle more than one lot of ruminants at the same time, there must be separate drainage systems for each lot-holding area in order to prevent cross contamination.

(v) *Security.*

(A) A privately owned medium or minimum security quarantine facility must provide the following security measures:

(*1*) The facility and premises must be kept locked and secure at all times while the ruminants are in quarantine.

(*2*) The facility and premises must have signs indicating that the facility is a quarantine area and no visitors are allowed.

(*3*) The operator must furnish a telephone number or numbers to APHIS at which the operator or his or her agent can be reached at all times.

(*4*) APHIS is authorized to place seals on any or all entrances and exits of the facility, when determined necessary by APHIS to ensure security, and to take all necessary steps to ensure that the seals are broken only in the presence of an APHIS representative. If the seals are broken by someone other than an APHIS representative, it will be considered a breach in security, and an immediate accounting of all ruminants in the facility will be made by an APHIS representative. If a breach in security occurs, APHIS may extend the quarantine period as long as necessary to determine that the ruminants are free of communicable livestock diseases.

(*5*) In the event that a communicable livestock disease is diagnosed in quarantined ruminants, the Administrator may require that the operator have the facility guarded by a bonded security company, at the expense of the operator of the facility, in a manner that the Administrator deems necessary to ensure the biological security of the facility.

(B) A privately owned medium security facility also must provide the following security measures:

(*1*) The medium security facility and premises must be guarded at all times by one or more representatives of a bonded security company, or, alternatively, the medium security facility must have an electronic security system that prevents the entry of unauthorized persons into the facility and prevents animals outside the facility from having contact with ruminants in quarantine;

(*2*) If an electronic security system is used, the electronic security system must be coordinated through or with the local police so that monitoring of the facility is maintained whenever APHIS representatives are not at the facility. The electronic security system must be of the "silent type" and must be triggered to ring at the monitoring site and, if the operator chooses, at the facility. The electronic security system must be approved by Underwriter's Laboratories. The operator must provide written instructions to the monitoring agency stating that the police and an APHIS representative designated by APHIS must be notified by the monitoring agency if the alarm is triggered. The operator also must submit a copy of those instructions to the Administrator. The operator must notify the designated APHIS representative whenever a break in security occurs or is suspected of occurring.

(4) *Operating procedures.* The following procedures must be followed at a privately owned medium or minimum security quarantine facility at all times:

(i) *APHIS oversight.* (A) The quarantine of ruminants at the facility will be subject to the strict oversight of APHIS representatives authorized to perform the services required by this subpart.

(B) If, for any reason, the operator fails to properly care for, feed, or handle the quarantined ruminants as required in paragraph (d) of this section, or in accordance with animal health and husbandry standards provided elsewhere in this chapter, or fails to maintain and operate the facility as provided in paragraph (d) of this section, APHIS representatives are authorized to furnish such neglected services or make arrangements for the sale or disposal of quarantined ruminants at the operator's expense, as authorized in paragraph (a) of this section.

(ii) *Personnel.* (A) The operator must provide adequate personnel to maintain the facility and care for the ruminants in quarantine, including attendants to care for and feed ruminants, and other personnel as needed to maintain, operate, and administer the facility.

(B) The operator must provide APHIS with an updated list of all personnel who have access to the facility. The list must include the names, current residential addresses, and identification numbers of each person, and must be updated with any changes or additions in advance of such person having access to the quarantine facility.

(C) The operator must provide APHIS with signed statements from all personnel having access to the facility in which the person agrees to comply with paragraph (d) of this section and applicable provisions of this part, all terms of the compliance agreement, and any related instructions from APHIS representatives pertaining to quarantine operations, including contact with animals both inside and outside the facility.

(iii) *Authorized access.* (A) Access to the facility premises as well as inside the quarantine area will be granted only to APHIS representatives and other persons specifically authorized to work at the facility. All other persons are prohibited from the premises unless specifically granted access by an APHIS representative. Any visitors granted access must be accompanied at all times by an APHIS representative while on the premises.

(B) All visitors, except veterinary practitioners who enter the facility to provide emergency care, must sign an affidavit before entering the quarantine area, if determined necessary by the overseeing APHIS representative, declaring that they will not have contact with any susceptible animals outside the facility for at least 7 days after contact with the ruminants in quarantine, or for a period of time determined by the overseeing APHIS representative as necessary to prevent the transmission of communicable livestock diseases of ruminants.

(iv) *Sanitary practices.* (A) All persons granted access to the quarantine area must:

(*1*) Wear clean protective work clothing and footwear upon entering the quarantine area.

(*2*) Wear disposable gloves when handling sick animals and then wash hands after removing gloves.

(*3*) Change protective clothing, footwear, and gloves when they become soiled or contaminated.

(*4*) Be prohibited, if determined necessary by the overseeing APHIS representative, from having contact with any susceptible animals outside the facility for at least 7 days after the last contact with ruminants in quarantine, or for a longer period of time determined necessary by the overseeing APHIS representative to prevent the transmission of livestock diseases.

(B) All equipment (including tractors) must be cleaned and disinfected prior to being used in the quarantine area of the facility with a disinfectant that is authorized in § 71.10(a)(5) of this chapter or that is otherwise approved by the Administrator. The equipment must remain dedicated to the facility for the entire quarantine period. Any equipment used with quarantined ruminants must remain dedicated to that particular lot of ruminants for the duration of the quarantine period or be cleaned and disinfected before coming in contact with ruminants from another lot. Prior to its use on another lot of ruminants or its removal from the quarantine area, such equipment must be cleaned and disinfected to the satisfaction of an APHIS representative.

(C) Any vehicle, before entering or leaving the quarantine area of the facility, must be immediately cleaned and disinfected under the oversight of an APHIS representative with a disinfectant that is authorized in § 71.10(a)(5) of this chapter or that is otherwise approved by the Administrator.

(D) If the facility has a single loading dock, the loading dock must be immediately cleaned and disinfected after each use under the oversight of an APHIS representative with a disinfectant that is authorized in § 71.10(a)(5) of this chapter or that is otherwise approved by the Administrator.

(E) That area of the facility in which a lot of ruminants had been held or had access must be thoroughly cleaned and disinfected under the oversight of an APHIS representative upon release of the ruminants, with a disinfectant that is authorized in § 71.10(a)(5) of this chapter or that is otherwise approved by the Administrator, before a new lot of ruminants is placed in that area of the facility.

(F) For medium security facilities only, the following additional sanitary practices also must be followed:

(*1*) All persons granted access to the quarantine area, must:

(*i*) Shower when entering and leaving the quarantine area.

(*ii*) Shower before entering a lot-holding area if previously exposed from access to another lot-holding area.

(*iii*) Shower when leaving the necropsy area if a necropsy is in the process of being performed or has just been completed, or if all or portions of the examined animal remain exposed.

(*iv*) Be prohibited, unless specifically allowed otherwise by the overseeing APHIS representative, from having contact with any ruminants in the facility, other than the lot or lots of ruminants to which the person is assigned or is granted access.

(*2*) The operator is responsible for providing a sufficient supply of clothing and footwear to ensure that workers and others provided access to the quarantine area of the facility have clean, protective clothing and footwear after showering.

(*3*) The operator is responsible for the proper handling, washing, and disposal of soiled and contaminated clothing worn in the quarantine area in a manner approved by an APHIS representative as adequate to preclude the transmission of disease within and from the facility. At the end of each workday, work clothing worn into each lot-holding area and elsewhere in the quarantine area must be collected and kept in bags until the clothing is washed. Used footwear must either be left in the clothes changing area or cleaned with hot water (148 °F minimum) and detergent and disinfected as directed by an APHIS representative.

(v) *Handling of ruminants in quarantine.* (A) Each lot of ruminants to be quarantined must be placed in the facility on an "all-in, all-out" basis. No ruminant may be taken out of a lot while the lot is in quarantine, except for diagnostic purposes, and no ruminant may be added to a lot while in quarantine.

(B) The facility must provide sufficient feed and bedding for the ruminants in quarantine, and it must be free of vermin and not spoiled. Feed and bedding must originate from a region that has been approved by APHIS as a source for feed and bedding.

(C) Breeding of ruminants or collection of germ plasm from ruminants is prohibited during the quarantine period unless necessary for a required import testing procedure.

(D) Ruminants in quarantine will be subjected to such tests and procedures as directed by an APHIS representative to determine whether the ruminants are free of communicable livestock diseases. While in quarantine, ruminants may be vaccinated only with vaccines that have been approved by the APHIS representative and licensed in accordance with § 102.5 of this chapter.[8] Vaccines must be administered either by an APHIS veterinarian or an accredited veterinarian under the direct oversight of an APHIS representative.

(E) Any death or suspected illness of ruminants in quarantine must be reported immediately to the overseeing APHIS representative. The affected ruminants must be disposed of as the Administrator may direct or, depending on the nature of the disease, must be cared for as directed by APHIS to prevent the spread of disease.

(F) Quarantined ruminants requiring specialized medical attention or additional postmortem testing may be transported off the quarantine site, if authorized by APHIS. A second quarantine site must be established to house the ruminants at the facility of destination (*e.g.*, veterinary college hospital). In such cases, APHIS may extend the quarantine period until the results of any outstanding tests or postmortems are received.

(G) Should the Administrator determine that an animal health emergency exists at the facility, arrangements for the final disposition of the infected or exposed lot of ruminants must be accomplished within 4 workdays following disease confirmation. Subsequent disposition of the ruminants must occur under the direct oversight of APHIS representatives.

(vi) *Recordkeeping.* (A) The operator must maintain a current daily log, to record the entry and exit of all persons entering and leaving the facility.

(B) The operator must retain the daily log, along with any logs kept by APHIS and deposited with the operator, for at least 2 years following the date of release of the ruminants from quarantine and must make such logs available to APHIS representatives upon request.

(5) *Environmental quality.* If APHIS determines that a privately owned medium or minimum security quarantine facility does not meet applicable local, State, or Federal environmental regulations, APHIS may deny or suspend approval of the facility until appropriate remedial measures have been applied.

(6) *Other laws.* A privately owned medium or minimum security quarantine facility must comply with other applicable Federal laws and regulations, as well as with all applicable State and local codes and regulations.

(7) *Variances.* The Administrator may grant variances to existing requirements relating to location, construction, and other design features of a privately owned medium security quarantine facility or minimum security quarantine facility as well as to sanitation, security, operating procedures, recordkeeping, and other provisions in paragraph (d) of this section, but only if the Administrator determines that the variance causes no detrimental impact to the health of the ruminants or to the overall biological security of the quarantine operations. The operator must submit a request for a variance to the Administrator in writing at least 30 days in advance of the arrival of the ruminants to the facility. Any variance also must be expressly provided for in the compliance agreement.

7. Section 93.413 would be revised to read as follows:

§ 93.413 Quarantine stations, visiting restricted; sales prohibited.

Visitors are not permitted in the quarantine enclosures during any time that ruminants are in quarantine unless the APHIS representative or inspector in charge specifically grants access under such conditions and restrictions as may be imposed by the APHIS representative or inspector in charge. An importer (or his or her accredited agent or veterinarian) may be admitted to the yards and buildings containing his or her quarantined ruminants at such intervals as may be deemed necessary, and under such conditions and restrictions as may be imposed, by the APHIS representative or the inspector in charge of the quarantine facility or station. On the last day of the quarantine period, owners, officers, or registry societies, and others having official business or whose services may be necessary in the removal of the ruminants may be admitted upon written permission from the APHIS representative or inspector in charge. No exhibition or sale shall be allowed within the quarantine grounds.

§ 93.414 [Amended]

8. In § 93.414, the first sentence would be amended by adding the words "APHIS representative or" immediately before the words "inspector in charge".

§ 93.434 [Removed and Reserved]

9. Section 93.434 would be removed and reserved.

Done in Washington, DC, this 21st day of August 2003.

Bobby R. Acord,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–21857 Filed 8–27–03; 8:45 am]

BILLING CODE 3410–34–P

[8] A list of approved vaccines is available from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road, Unit 38, Riverdale, MD 20737–1231.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–173–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, –400D, and –400F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400, –400D, and –400F series airplanes. This proposal would require reviewing airplane maintenance records; inspecting the yaw damper actuator portion of the upper and lower rudder power control modules (PCM) for cracking, and replacing the PCMs if necessary; and reporting airplane maintenance records review and inspection results to the manufacturer. This action is necessary to detect and correct cracking in the yaw damper actuator portion of the upper and lower rudder PCMs, which could result in an uncommanded left rudder hardover, consequent increased pilot workload, and possible runway departure upon landing. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by September 29, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–173–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Doug Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–173–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–173–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that the lower rudder of a Boeing Model 747–400 series airplane made an uncommanded move to the full left position (hardover) during flight. The flight crew used lateral and upper rudder controls to compensate for the lower rudder hardover. The flight crew used these controls and differential engine thrust to land the airplane. Investigation revealed that the yaw damper actuator portion of the lower rudder power control module (PCM) manifold was broken. The broken manifold is attributed to fatigue cracking in the lower rudder PCM, which caused the yaw damper to move out of its correct position and generate the uncommanded lower rudder hardover. An uncommanded left rudder hardover could result in increased pilot workload and possible runway departure upon landing.

The upper rudder PCM has the same design as the lower rudder PCM and can fail in the same manner. An upper rudder PCM failure will result in an upper rudder surface hardover to the left and would create a similar unsafe condition as for a failure of the lower rudder PCM.

The PCM part numbers installed on the 747–400D and 747–400F series airplanes are the same part numbers installed on the affected Model 747–400 series airplane. Therefore those airplanes may be subject to the unsafe condition identified on the Model 747–400 series airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003. This service bulletin describes the following procedures:

- Reviewing airplane maintenance records to determine if each PCM has a main manifold with less than 15,000 total flight hours or 2,000 total flight cycles.
- Performing ultrasonic inspections for cracking of the yaw damper actuator portion of upper and lower rudder PCMs that have 15,000 or more total flight hours and 2,000 or more total flight cycles.
- Recording the results of the ultrasonic inspections and reporting them to Boeing.
- Replacing subject PCMs that have evidence of possible cracking.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or

develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between This Proposed AD and the Service Bulletin

The Boeing service bulletin recommends accomplishing the review of airplane maintenance records and ultrasonic inspection within 6 months of the issue date of the service bulletin. We have determined that that interval would address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this AD, we considered the 6-month compliance time recommended by the manufacturer, as well as the time required for the rulemaking process. In consideration of these factors, we find that 3 months after the effective date of this final rule will fall approximately at the same time for compliance as recommended by the manufacturer. We find that a 3-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

Interim Action

We consider this proposed AD interim action. The inspection reports that are required by this AD will enable the manufacturer and the FAA to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, we may consider further rulemaking.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 180 airplanes of the affected design in the worldwide fleet. The FAA estimates that 13 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed airplane maintenance records review, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed airplane maintenance records review on U.S. operators is estimated to be $845, or $65 per airplane.

Should an operator be required to accomplish the inspection, it would take approximately 4 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the proposed inspection is estimated to be $260 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2003–NM–173–AD.

Applicability: Model 747–400, –400D, and –400F series airplanes; as listed in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking in the yaw damper actuator portion of the upper and lower rudder power control modules (PCM), which could result in an uncommanded left rudder hardover, consequent increased pilot workload, and possible runway departure upon landing, accomplish the following:

Review of Airplane Maintenance Records

(a) Within 3 months after the effective date of this AD: Review the airplane maintenance records to determine if each PCM has a main manifold with less than 15,000 total flight hours or fewer than 2,000 total flight cycles, or do the inspection required by paragraph (c) of this AD.

Follow-On Actions: PCMs With Less Than 15,000 Total Flight Hours or Less Than 2,000 Flight Cycles

(b) If it can be positively determined from the review of the airplane maintenance records that each rudder PCM is below either of the thresholds specified in paragraph (a) of this AD: Submit a report to the manufacturer in accordance with paragraph (d) of this AD.

Follow-On Actions: PCMs With 15,000 Total Flight Hours or More and 2,000 Flight Cycles or More

(c) If it cannot be positively determined that each rudder PCM is below either of the thresholds specified in paragraph (a) of this AD: Within 3 months after the effective date of this AD, do an ultrasonic inspection of the yaw damper actuator portion of the upper

and lower rudder PCMs in accordance with the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003. After completing the actions required by paragraphs (c)(1) or (c)(2) of this AD, as applicable, submit a report to the manufacturer in accordance with paragraph (d) of this AD.

(1) If no cracking is found: Apply sealant and a torque stripe and install a lockwire on the applicable rudder PCM per Figure 1 or Figure 2, as applicable, and the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003.

(2) If any cracking is found: Before further flight, replace the affected PCM with a PCM having less than 15,000 total flight hours and less than 2,000 total flight cycles, or a PCM that has been ultrasonically inspected (either by the operator or the supplier) in accordance with the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003.

Reporting Requirements

(d) At the applicable time specified in paragraph (d)(1) or (d)(2) of this AD, accomplish paragraph (e).

(1) If the inspection was done after the effective date of this AD: Submit the report and PCM, if applicable, within 20 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report and PCM, if applicable, within 20 days after the effective date of this AD.

(e) Do the requirements of paragraphs (e)(1) and (e)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) Submit a report of the airplane maintenance records review or the inspection findings (positive and negative) to: The Boeing Company, Service Engineering—Mechanical Systems, Attn: R. Adams, fax: (425) 342–5224. The report must contain the airplane and rudder PCM serial numbers, the total flight hours and flight cycles for each rudder PCM, and a description of any damage found. Submission of the Inspection Report Form (Figure 3 of Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003) is an acceptable method of complying with this requirement.

(2) Send parts to Parker Hannifin Corporation in accordance with the shipping instructions specified in Appendix A of the service bulletin.

Parts Installation

(f) As of the effective date of this AD, no person shall install on any airplane a rudder PCM with 15,000 total flight hours or more, or 2,000 total flight cycles or more, unless it has been ultrasonically inspected (either by the operator or the supplier) in accordance with the Accomplishment Instructions specified in Boeing Alert Service Bulletin 747–27A2397, dated July 24, 2003.

Alternative Methods of Compliance

(g) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on August 22, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22001 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15529; Airspace Docket No. 03–ANM–03]

RIN 2120–AA66

Proposed Establishment of VOR Federal Airway 584

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Very High Frequency Omnidirectional Range (VOR) Federal Airway 584 (V–584) between the Helena, MT, Very High Frequency Omnidirectional Radio Range and Tactical Air Navigation Aid (VORTAC), and the Missoula, MT, VORTAC. This proposed airway would allow aircraft to fly a direct route between Helena, MT, and Missoula, MT, during outages of the Drummond VOR. This airway is intended to improve the management of aircraft operations in Montana.

DATES: Comments must be received on or before October 14, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify "FAA Docket No. FAA–2003–15529, and Airspace Docket No. 03–ANM–03," at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers (FAA Docket No. FAA–2003–15529, and Airspace Docket No. 03–ANM–03) and be submitted in triplicate to the Docket Management System (see **ADDRESSES** section for address and phone number). You may also submit comments through the Internet at *http://dms.dot.gov*.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA Docket No. FAA–2003–15529, and Airspace Docket No. 03–ANM–03." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received.

All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the **Federal Register**'s Web page at *http://www.gpoaccess.gov/fr/index.html*.

You may review the public docket containing the proposal; any comments received; and any final disposition in person at the Dockets Office (see address in "Comments Invited" section) between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation

Administration, 15000 Aviation Boulevard, Hawthorne, CA 90261.

Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is proposing an amendment to Title 14 Code of Federal Regulations (CFR) part 71 (part 71) to establish V–584 between the Helena, MT, VORTAC, and the Missoula, MT, VORTAC. This proposed airway would provide a direct route between Helena, MT, and Missoula, MT, during outages of the Drummond VOR. V–584 would also allow for lower enroute altitudes through the mountainous terrain of Montana.

Domestic VOR Federal airways are published in paragraph 6010(a), of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airway listed in this document would be published subsequently in the order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–584 [New]

From Helena, MT; to Missoula, MT.

* * * * *

Issued in Washington, DC, August 21, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–22042 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 2003N–0346]

Food Labeling: Ingredient Labeling of Dietary Supplements That Contain Botanicals

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulation on declaring botanical ingredients in dietary supplements to incorporate by reference the latest editions of two books. Currently, the regulation incorporates by reference *Herbs of Commerce* (1992) and the *International Code of Botanical Nomenclature (Tokyo Code) 1994*. FDA proposes to replace the references to these editions with the 2000 editions of the same books. This action is intended to provide industry with current and more comprehensive references to use in identifying on product labels the common or usual name of each botanical ingredient contained in dietary supplements. In addition, FDA is proposing to incorporate new statutory restrictions on the use of the word "ginseng" in dietary supplement labeling. Finally, FDA is proposing to make minor wording changes in its regulation on declaring botanical ingredients in dietary supplements. These proposed changes are intended to improve the reader's understanding, consistent with the principles of plain English, or to be more technically accurate, consistent with internationally accepted botanical terminology. This proposed rule is a companion to a direct final rule published elsewhere in this issue of the **Federal Register**.

DATES: Submit written or electronic comments on this proposed rule by November 12, 2003. See section XI of this document for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: Submit written comments on this companion proposed rule to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Victoria Lutwak, Office of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2375.

SUPPLEMENTARY INFORMATION:

I. Background

A. Rulemaking Process

This proposed rule is a companion to a direct final rule on the same topic published in the final rules section of this issue of the **Federal Register**. The companion proposed rule and its related direct final rule are substantively identical. This proposed rule provides the procedural framework to finalize the rule in the event that the direct final rule is withdrawn because FDA receives significant adverse comments.

A significant adverse comment is one that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why it would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments

that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. A comment recommending additional changes in the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the recommended revision. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of the rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

The comment periods for this proposed rule and its related direct final rule run concurrently. We have identified and discussed the proposed regulatory changes in the preambles to both rules. Any comments received under this proposed rule will be treated as comments regarding the direct final rule and vice versa. FDA is publishing a direct final rule because the rule does not contain controversial changes and FDA does not anticipate receiving significant adverse comments about it. If no significant adverse comments are received in response to either rule, FDA will take no further action on the proposed rule. Instead, after the comment period ends, FDA intends to publish a document in the **Federal Register** to confirm the January 1, 2006, effective date of the direct final rule. This is the applicable uniform effective date for compliance with food labeling requirements published in the **Federal Register** (see the **Federal Register** of December 31, 2002 (67 FR 79851), designating January 1, 2006, as the effective date for food labeling regulations issued between January 1, 2003, and December 31, 2004). However, if FDA receives significant adverse comment on either rule, FDA will withdraw the direct final rule and will proceed to respond to all comments received on both rules under this companion proposed rule using the usual notice-and-comment procedures. A full description of FDA's policy on direct final rule procedures appears in a guidance document published in the **Federal Register** on November 21, 1997 (62 FR 62466).

B. Current Regulatory and Legislative Requirements Related to Proposed Rule Amendments

FDA issued a final rule entitled "Food Labeling: Statement of Identity, Nutrition Labeling and Ingredient Labeling of Dietary Supplements" in the **Federal Register** on September 23, 1997 (62 FR 49826). This rule incorporated by reference under § 101.4(h) (21 CFR 101.4(h)) the two books entitled *Herbs of Commerce* (1992) (Ref. 1) and *International Code of Botanical Nomenclature (Tokyo Code) 1994* (Ref. 2) for industry's use in identifying on product labels the common or usual name of each botanical ingredient contained in dietary supplements. Both books were incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Section 101.4(h) currently requires that a dietary supplement that contains one or more botanical ingredients (including fungi and algae) state the common or usual name for each of these ingredients on the label. This common or usual name must be consistent with the "standardized common name" listed in *Herbs of Commerce* (1992) for the corresponding plant from which the botanical ingredient is derived. Therefore, the "standardized common name" of each botanical used as an ingredient of a dietary supplement is its common or usual name for labeling purposes.

Current § 101.4(h)(2) also requires that if no standardized common name for a particular botanical ingredient is listed in *Herbs of Commerce* (1992), the label must state the Latin binomial name of the plant from which that ingredient is derived. All names in Latin binomial form must be stated on the label in accordance with internationally accepted rules on nomenclature, such as those found in the *International Code of Botanical Nomenclature (Tokyo Code) 1994*. Further, the name in Latin binomial form must include the designation of the author or authors who published the Latin name [hereafter referred to as author citation] when a positive identification of the dietary ingredient cannot be made without identifying the author(s).

Since 1997, both of the books incorporated by reference for use by industry in the labeling of dietary supplements that contain botanical ingredients have been updated and now the 2000 editions supersede the earlier ones. *Herbs of Commerce, 2nd Edition* (2000) (Ref. 3) added standardized common names for approximately 1,500 more botanicals than were included in the earlier edition, and changed the standardized common names for approximately 140 botanicals listed in the earlier edition. *The International Code of Botanical Nomenclature (Saint Louis Code) 2000* (Ref. 4) reflects the International Botanical Congress's latest decisions on the rules for the scientific naming of plants. Botanical nomenclature is an evolving science that is influenced by new discoveries and the correction of past misidentifications of plants.

Further, in 2002, Congress passed and the President signed into law the Farm Security and Rural Investment Act of 2002 (Public Law 107–171) [hereafter referred to as the Farm Bill]. Section 10806 of the Farm Bill amended the misbranding provisions in section 403 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343) by adding a new paragraph (u), which states that a dietary supplement is misbranded "[i]f it purports to be or is represented as ginseng, unless it is an herb or herbal ingredient derived from a plant classified within the genus Panax." Section 10806(b)(1)(A) of the Farm Bill states that "the term 'ginseng' may only be considered to be a common or usual name (or part thereof) for any herb or herbal ingredient derived from a plant classified within the genus Panax." Section 10806(b)(1)(B) further provides that "only labeling or advertising for herbs or herbal ingredients classified within that genus may include the term 'ginseng.'"

The Farm Bill requirements about use of the term "ginseng" are in effect today because the law is self-executing. Congress did not direct FDA to issue regulations in order to implement these new requirements; therefore, industry must comply with them currently.

C. Updated Books To Be Incorporated by Reference

Herbs of Commerce, 2nd Edition (2000) establishes a "standardized common name," expressed primarily in English, for each plant used in commerce, including fungi and algae. However, in a few instances, the standardized common name is expressed in another language or is the same as the plant's Latin binomial name (i.e., genus and species) when that name has become common. For example, the Spanish word "maté" is the standardized common name for the plant "*Ilex paraguariensis* A. St.-Hil.," and the Latin binomial name "*Phyllanthus amarus*" is the standardized common name for the plant "*Phyllanthus amarus* Schumach." The standardized common name generally applies to the whole plant, but in some instances it applies to a plant part. For example, the standardized common names "mace" and "nutmeg" pertain specifically to the plant parts "aril" and "seed," respectively, of the same plant "*Myristica fragrans* Houtt."

All standardized common names listed in *Herbs of Commerce, 2nd Edition* (2000) are printed in boldface letters. In this book under "Section One: Latin Binomials," each plant name is

listed first alphabetically by its Latin binomial name. The plant's corresponding standardized common name is stated after the acronym "SCN" on the first indented line of text underneath its Latin binomial name. Under "Section Two: Standardized Common Names," each plant name is listed first alphabetically by its standardized common name. The plant's corresponding Latin binomial name is stated on the first indented line of text underneath its standardized common name.

In addition to the standardized common name, *Herbs of Commerce, 2nd Edition* (2000) identifies the currently recognized Latin binomial name and four other categories of common names for each of the plants listed, as applicable. These other categories are:

- "botanical synonym,"
- "Ayurvedic name,"
- "pinyin name," and
- "other common name."

The botanical synonym, if any, represents one or more examples of other Latin binomial names that have been broadly used for the plant in the past. The Ayurvedic name, if any, generally represents the plant's Sanskrit name; however, the Hindi name may be cited if the plant is primarily known by it instead. The pinyin name, if any, may be one or more of the plant's Chinese common names. Other common names, if any, represent any additional names frequently used for the plant.

The "standardized common name" is different and distinct from all of the other categories of common names for a plant. There is only one *standardized* common name that is selected for each plant listed in *Herbs of Commerce, 2nd Edition* (2000); however, there may be several names cited within one or more of the other categories of common names that are associated with the same plant.

The *International Code of Botanical Nomenclature (Saint Louis Code) 2000* (the Code) establishes the current internationally accepted rules that govern the scientific naming of plants, including fungi and algae. The scientific name, which identifies the plant's genus and species, is expressed in Latin and applies to the whole plant without exception. The Latin binomial name of a plant is followed by the name(s) of the person(s) who described and published the plant name in accordance with the Code's guidelines. The Code refers to such notation about authors as an "author citation."

II. Proposed Rule

FDA is proposing to revise § 101.4(h) to substitute *Herbs of Commerce, 2nd Edition* (2000) for its 1992 edition, and the *International Code of Botanical Nomenclature (Saint Louis Code) 2000* for its 1994 edition, as books incorporated by reference. Requirements on how these references are to be used for dietary supplement labeling purposes remain the same and are not affected by this proposed rule, with one minor exception.

Currently, § 101.4(h)(2) uses the phrase "such as" when referring to the *International Code of Botanical Nomenclature* as a reference that industry may use to ensure that any Latin binomial name of a botanical ingredient listed on the label of a dietary supplement conforms to the internationally accepted rules of botanical nomenclature. As presently worded, the regulation could be interpreted to allow other references to be consulted for this purpose. We are proposing to revise the language in the Code of Federal Regulations (CFR) to make the *International Code of Botanical Nomenclature* the only reference that may be used on the rules for determining and formatting the Latin binomial name of a botanical ingredient for dietary supplement labeling purposes. This book is internationally recognized by botany experts from nations around the world as the foremost authoritative reference on botanical nomenclature. We are not aware of any comparable reference that comprehensively addresses the rules on the scientific naming of plants and has as broad international support. The *International Code of Botanical Nomenclature* is regulated by the Nomenclature Section of an International Botanical Congress. This group meets under the auspices of the International Union of Biological Sciences, of which the U.S. National Research Council/National Academy of Sciences is a member. The XVI International Botanical Congress brought together more than 4,000 scientists from more than 100 countries at its most recent meeting held in Saint Louis, MO in 1999 when the *International Code of Botanical Nomenclature (Saint Louis Code) 2000* was voted on and adopted. Therefore, to be in harmony with this international cooperation and to be consistent with FDA's science-based philosophy, FDA is proposing to incorporate by reference the *International Code of Botanical Nomenclature (Saint Louis Code) 2000* as the one that industry must follow on the rules to determine and format the Latin binomial names of any botanical ingredients stated on dietary supplement labels.

Some dietary supplements may contain a botanical ingredient that is not listed in the 2000 edition of *Herbs of Commerce* and therefore does not have a standardized common name. Like the current regulation, in such cases the proposed rule would require that the common or usual name for that botanical ingredient listed on the label be accompanied, in parentheses, by the Latin binomial name of the plant from which it is derived. When needed to positively identify the botanical ingredient, the proposed rule would similarly require that the Latin binomial name also include the author citation, stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

FDA is aware that there may be instances when a botanical ingredient belongs to a subspecies or variety of a species that is not listed in the 2000 edition of *Herbs of Commerce*. In those cases, the Latin binomial name and author citation alone will not identify the subspecies or variety of that species. Although not a proposed requirement, FDA encourages industry to voluntarily state the following on dietary supplement labels directly after the Latin binomial name when needed to positively identify a botanical ingredient below the species level: The name of any applicable subspecies, variety, or other subdivision and its corresponding author citation, stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

FDA is proposing to further revise § 101.4(h) to incorporate statutory restrictions on the use of the term "ginseng" that were imposed by section 10806 of the Farm Bill. Specifically, we are proposing to include the following statement in § 101.4(h): "The use of the term 'ginseng' as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus '*Panax*.'"

Finally, FDA is proposing to make minor wording changes in § 101.4(h) to improve the reader's understanding, consistent with the principles of plain English, or to improve technical accuracy, consistent with internationally accepted botanical terminology. Examples of changes we are proposing to improve the reader's understanding are using simpler language throughout, substituting the word "must" for "shall," and dividing

very long sentences into shorter ones. To be more technically accurate, the proposal would replace the current wording under § 101.4(h)(2) that refers to the "designation of the author or author(s) who published the Latin name" with the term "author citation" to refer to the "name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*." For technical clarity, we are proposing to also add the notation "(i.e., genus and species)" after the first reference to the term "Latin binomial name" under § 101.4(h).

III. Use of the Incorporated References and Implementation of Pertinent Farm Bill Provisions

Over the years, FDA has received several inquiries from representatives of the dietary supplement industry about the use of *Herbs of Commerce* and the *International Code of Botanical Nomenclature*. These books are references for industry to use in determining the common or usual name of each botanical ingredient or to consult on the rules for determining and formatting any required Latin binomial names corresponding to the botanical ingredients declared on dietary supplement labels. The act of "incorporation by reference," however, does not imply that all of the botanicals that have standardized common names listed in *Herbs of Commerce* or that follow the scientific naming rules found in the *International Code of Botanical Nomenclature* are safe for consumption as dietary supplements or other foods by man or other animals. Citation of these books in the CFR is specific and limited to the sole purpose of identifying authoritative references for industry to use to determine the correct plant nomenclature. Neither reference addresses the safety or uses of plants.

This proposed rule focuses only on the naming of botanical ingredients of dietary supplements for labeling purposes. It is the responsibility of manufacturers and distributors to ensure that the particular botanicals they use as ingredients of dietary supplements are safe for human consumption, do not contain contaminants, are properly identified on the label, are legally marketed, and conform to all governing regulations.

In addition, *Herbs of Commerce, 2nd Edition* (2000) does not represent an authoritative compilation of botanical dietary ingredients that were marketed in the United States before October 15, 1994 (i.e., botanicals that are not new dietary ingredients under section 413(c) of the act (21 U.S.C. 350b(c))). The book's disclaimer explains that the publisher did not verify whether or not the companies that submitted botanical information for inclusion in this reference had valid documentation that supported such marketing. The book's disclaimer further states: "The listing of a particular species of plant in this work is not, therefore, in and of itself, evidence that such species was marketed in the United States prior to October 15, 1994" (Ref. 3, page xx). This proposed rule does not confer FDA endorsement of *Herbs of Commerce, 2nd Edition* (2000) for any other purpose than to serve as a reference on the common or usual names of botanical ingredients contained in dietary supplements.

In most cases, *Herbs of Commerce, 2nd Edition* (2000) assigns a unique standardized common name to each plant. However, the book indicates that the same standardized common name is given to more than one plant when the plants are used interchangeably in commerce. There are over 100 instances in *Herbs of Commerce, 2nd Edition* (2000) where the same standardized common name applies to two or more different species, subspecies, or varieties of the same genus of plant.

In other cases in *Herbs of Commerce, 2nd Edition* (2000), a name listed under one of the categories of common names (e.g., Pinyin names) for one botanical may be shared by another botanical from a different genus of plants. For example, the botanical *Ammi majus L.* has the standardized common name bishop's weed, whereas bishop's weed is also listed as the other common name for the botanical *Aegopodium podagraria* L. that has the standardized common name ash weed.

Confusion and mistakes in the identity of botanicals can be caused when the ingredients have the same or similar common names. Therefore, it is important that manufacturers know a botanical's true identity, including its Latin binomial name with author citation and its biological and chemical properties, before substituting one botanical for another as an ingredient of a dietary supplement. It is the responsibility of manufacturers and distributors to ensure that any botanical used as an ingredient of a dietary supplement or other food marketed in the United States is safe for consumption and complies with all applicable requirements of the act and related regulations.

The "standardized common names" of botanicals listed in both the 1992 and 2000 editions of *Herbs of Commerce* are consistent with the Farm Bill's definition of the term "ginseng." However, both editions note that the term "ginseng" has been used as part of "other common names" associated with botanicals from genera other than *Panax*, including blue ginseng, lesser ginseng, prince ginseng, and Siberian ginseng. We remind industry that names that include the term "ginseng" may be used as the common or usual name for a botanical ingredient only if the botanical is derived from the plant genus "*Panax*."

IV. Environmental Impact

FDA has determined under 21 CFR 25.30(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environment assessment nor an environmental impact statement is required.

V. Preliminary Regulatory Impact Analysis

FDA has examined the economic implications of this proposed rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive order classifies a regulatory action as significant if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. The Executive order also classifies a regulatory action as significant if it raises novel legal or policy issues. We have determined that this proposed rule is not a significant regulatory action as defined by the Executive order.

A. Regulatory Options

We have identified the following major regulatory alternatives or options: (1) Take no action, (2) take the proposed action, and (3) take an alternative action. These options are explained in the next section of this document.

1. Option One: Take No Action

The incorporation by reference citations under § 101.4(h) would remain unchanged. Under this option, the following requirements and provisos apply:

• The label of a dietary supplement containing a botanical ingredient must use the "standardized common name" for that botanical ingredient listed in the 1992 edition of *Herbs of Commerce.*

• For a botanical ingredient not listed in the 1992 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax.*"

• Any common or usual name *other than* the "standardized common name" for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (1992), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature, such as those found in the *International Code of Botanical Nomenclature (Tokyo Code) 1994.*

• The Latin binomial name of a botanical ingredient also must include the designation of the author or authors who published the Latin name, when a positive identification of the botanical cannot be made in its absence.

2. Option Two: Take the Proposed Action

The proposed action is to update the incorporation by reference citations under § 101.4(h). Under this option, the following requirements and provisos apply:

• The label of a dietary supplement containing a botanical ingredient must use the "standardized common name" for that botanical ingredient listed in the 2000 edition of *Herbs of Commerce.*

• For a botanical ingredient not listed in the 2000 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. As in Option One, in accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax.*"

• Any common or usual name *other than* the "standardized common name" for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000.*

• When needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

3. Option Three: Take an Alternative Action

This option is similar to the proposed action. We would still update the incorporation by reference citations under § 101.4(h), but firms would have slightly more flexibility when labeling supplements containing a botanical ingredient. Under this option, the following requirements and provisos apply:

• As in Option Two, if the "standardized common name" for a botanical ingredient has changed from the 1992 to the 2000 edition of *Herbs of Commerce*, firms must use the revised "standardized common name" listed in the 2000 edition of *Herbs of Commerce.*

• If a botanical ingredient listed in the 2000 edition of *Herbs of Commerce* was not previously listed in the 1992 edition of that reference, firms could elect to use any of the names (i.e., botanical synonym, Ayurvedic name, pinyin name, or other common name) listed for that botanical in the 2000 edition as the common or usual name, with the following exception. As in Options One and Two, in accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax.*"

• Similar to Options One and Two, if the botanical ingredient is not listed in either the 1992 or 2000 edition of *Herbs of Commerce*, firms could use any appropriately descriptive name as the common or usual name for that ingredient with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax.*"

• As in Option Two, any common or usual name used *other than* the "standardized common name" for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• As in Option Two, the Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000.*

• As in Option Two, when needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

We request comments on these and other plausible alternatives.

B. Impacts of Regulatory Options

1. Option One: Take No Action

This option would retain the 1992 edition of *Herbs of Commerce* as the source for standardized common names and the 1994 edition of the *International Code of Botanical Nomenclature* as the reference on how to state the Latin binomial names of botanical ingredients of dietary supplements. By convention, we treat the option of taking no action as the baseline for defining the costs and benefits of the other options. Therefore, we discuss the impacts of this option indirectly via the costs and benefits of the other options.

For this proposed rule, we include as part of the baseline costs for Option One (take no action) the cost of section 10806 of the Farm Bill, which restricts the use of the term "ginseng" in the labeling of dietary supplements as discussed under section II, Proposed Rule, of this document. This is because the requirements of the Farm Bill are already in effect and are not dependent upon this rule for implementation.

2. Option Two: Take the Proposed Action

a. *Costs of option two.* The proposed rule would generate two basic types of costs: (1) Costs associated with changing certain dietary supplement labels and (2) potential one-time increases in product search costs for some consumers.

We estimate the first type of cost by using a model developed for that purpose by Research Triangle Institute (RTI) under contract to us (Ref. 5). This model estimates the total cost to change product labels by estimating and then adding together the following types of costs: (1) Internal administrative, (2) graphic design, (3) pre-press, (4) plate or cylinder engraving or etching, and (5) inventory disposal. The first four costs depend, in part, on the number of stockkeeping units (SKUs) involved. According to this model, dietary supplements are associated with 29,514 SKUs (Ref. 5).

The proposed rule would not affect all of these SKUs, only those associated with dietary supplements containing botanicals. We do not have direct estimates of the number of SKUs associated specifically with dietary supplements containing botanicals. However, a 1999 report by RTI on the economic characteristics of the dietary supplement industry found that herbals and botanicals made up 28 percent of sales in the dietary supplement market (Ref. 6). A statement submitted to us by the American Herbal Products Association (AHPA) noted that the *Nutrition Business Journal* "has consistently stated that herbal products represent approximately 25 percent of the sales of all supplements" (Ref. 7). In the following analysis, we use the 28 percent figure rather than the 25 percent figure because it is better documented and because the 28 percent figure is consistent with the phrase "approximately 25 percent." In the absence of other information, we assume that the share of SKUs associated with products containing botanicals is similar to the share of sales associated with such products; that is, we assume that 28 percent of the total number of SKUs associated with dietary supplements is associated with dietary supplements containing botanicals. Therefore, we assume that approximately 8,300 SKUs (29,514 SKUs x 28 percent) are associated with dietary supplements containing botanicals.

In addition, the proposed rule would only affect dietary supplements containing the following botanicals: (1) Any of the 1,500 additional botanicals for which the 2000 edition of *Herbs of Commerce* establishes standardized common names, if the labels of those products do not already list those botanicals under those names, (2) any of the 140 botanicals that the 2000 edition of *Herbs of Commerce* lists under a different standardized common name than in the 1992 edition, and (3) any botanical that the 2000 edition of the *Herbs of Commerce* does not list and for which using the naming conventions in the 2000 edition of the *International Code of Botanical Nomenclature* would result in a different Latin binomial name or author citation than using the naming conventions in the 1994 edition.

We do not know how many Latin binomial names the 2000 edition of the *International Code of Botanical Nomenclature* has changed, because that reference contains naming conventions rather than a list of names that we could compare with another list of names. Firms may need to change the labels of products containing botanicals that were listed under the same standardized common names in both the 1992 and 2000 editions of *Herbs of Commerce*, if the firms voluntarily listed the Latin binomial names of those botanicals and the 2000 edition of the *International Code of Botanical Nomenclature* has changed those names.

We do not have information on the number of dietary supplements this proposed rule would likely affect. AHPA reportedly reviewed the labels of several hundred dietary supplements containing botanicals and found that 85 percent fully conformed to the 2000 edition of *Herbs of Commerce* (Ref. 7). Additional samples might find higher or lower rates of compliance. In addition, labels that are already in compliance with the 2000 edition of *Herbs of Commerce* might not be in compliance with the 2000 edition of the *International Code of Botanical Nomenclature*. To better reflect the uncertainty about the number of dietary supplements this proposed rule would be likely to affect, we assume it would affect between 10 and 20 percent of the 8,300 SKUs associated with botanical supplements or from 830 SKUs (8,300 SKUs x 10 percent) to 1,660 SKUs (8,300 SKUs x 20 percent). This range corresponds to an overall percentage of 3 (830 SKUs ÷ 29,514 SKUs) to 6 percent (1,660 SKUs ÷ 29,514 SKUs) of dietary supplement SKUs.

The labeling cost model we use does not base inventory disposal costs specifically on SKUs, but on the types of labels firms generally use for different types of products and assumptions about the amount of inventory remaining under different compliance periods for different types of products. We assume that the proposed rule would generate between 3 and 6 percent of the inventory disposal costs the model estimates for changing all dietary supplement SKUs.

The cost of changing product labels also varies with the amount of time we give firms to change the labels. The proposed effective date for any final rule based upon this proposed rule is January 1, 2006, which is the uniform effective date for food labeling regulations published between January 1, 2003, and December 31, 2004. We have chosen this effective date in part because it would provide a compliance period of at least 1 year following the publication of the direct final rule. Under this compliance period, the label cost model estimates that the proposed rule would generate one-time relabeling costs of between $2 million (830 SKUs x $2,400 per SKU) and $7 million (1,660 SKUs x $4,200 per SKU).

In addition, the proposed rule may generate a one-time increase in product search costs for some consumers. Affected consumers would include those who currently identify desired botanical ingredients by: (1) Common or usual names that are different from the 1,500 new standardized common names listed in the 2000 edition of the *Herbs of Commerce*, (2) one of the 140 standardized common names changed by the 2000 edition of the *Herbs of Commerce*, or (3) one of the Latin binomial names changed by the 2000 edition of the *International Code of Botanical Nomenclature*. These consumers would need to learn the new names for desired ingredients. We do not know the number of affected consumers, but approximately 100 million adults (49 percent of adults times 202,493,000 adults ages 18 and older in the United States in 1999) consumed dietary supplements containing botanicals in 1999 (Refs. 8 and 9). Probably only a small percentage of these consumers would be interested in one or more of the botanicals whose names would be affected by this proposed rule. In the absence of other information, we assume that the proportion of consumers using the botanical ingredient names that the proposed rule would change is the same as the proportion of labels bearing those names or 3 to 6 percent. These percentages correspond to 3 to 6 million consumers.

We do not know the amount of time these consumers would need to discover that they cannot locate a product containing a desired botanical ingredient by the name under which they were accustomed to finding it, investigate the cause, and discover the new name. The methods consumers would use to resolve these issues are probably: (1) Asking a salesperson, (2) reading information on current botanical names in books or the Internet, or (3) reading additional product labels or brochures, some of which might voluntarily indicate the

relevant name changes. The amount of time particular consumers devote to finding ingredients that have different names will vary with their interest in the ingredient and the number of ingredients involved. Consumers interested in multiple affected ingredients would probably spend the greatest amount of time on the first change they encounter because they could use some of the information they discover about that change to deal with additional changes. For example, they might learn that names have changed and develop a method for finding the new name. We assume that each affected consumer might spend between 0 and 30 minutes to process the name changes. The average value of 1 hour of leisure time should be similar to the average value of 1 hour of working time, which was $15.66 in January 2001 (Ref. 10). Therefore, we estimate a maximum search cost increase of between $23 million (3 million x 0.5 hours x $15.66 per hour) and $47 million (6 million x 0.5 hours x $15.66 per hour). This burden is a one-time cost, because future consumers of these products would not need to switch from the old name to the new name.

Combining the two types of costs, relabeling and search costs, gives a range of total one-time costs of $25 to $54 million.

b. *Benefits of option two.* The proposed rule would reduce product search costs for consumers who currently shop for dietary supplements containing desired botanical ingredients by using Latin binomial names or the nonstandardized names that might appear along with Latin binomial names, but who would be able to use one or more of the 1,500 additional standardized common names in the 2000 edition of the *Herbs of Commerce.* The proposed rule would reduce these consumers' search costs because standardized common names tend to be shorter and more distinctive than Latin binomial names, and the same ingredients would always appear under the same standardized common name.

Other consumers who would benefit from the proposed rule are those who shop for dietary supplements containing botanical ingredients by using the standardized common names listed in the 1992 edition of *Herbs of Commerce,* but who are currently unable to differentiate desired ingredients from undesired ingredients using those standardized names. Some of these consumers might be better able to differentiate these ingredients using the more specific standardized common names in the 2000 edition. As noted previously, the 2000 edition reports that it has changed 140 names to improve specificity, accuracy, or both.

Additional consumers who would benefit are those who shop for dietary supplements containing botanical ingredients using: (a) One or more of the standardized common names that the 2000 edition of *Herbs of Commerce* has changed to improve accuracy or (b) one or more of the Latin binomial names that the 2000 edition of the *International Code of Botanical Nomenclature* has changed due to a better understanding about the taxonomic relationships between plants. These consumers shop for dietary supplements using the botanical ingredient names in the 2000 edition of *Herbs of Commerce* or stated in accordance with the rules in the 2000 edition of the *International Code of Botanical Nomenclature* but sometimes have difficulty finding those dietary supplements because the product labeling may use a name from or stated in accordance with previous editions of those texts. The proposed rule would reduce search costs for these consumers by reducing inconsistencies between the botanical names in the 2000 editions of *Herbs of Commerce* and the *International Code of Botanical Nomenclature* and the names used to refer to those botanicals on dietary supplement labels.

We do not know the number of consumers in each of these categories. Therefore, we again assume that the total number of consumers in all affected categories would be between 3 and 6 percent of the estimated 100 million consumers who used a dietary supplement containing a botanical ingredient in 1999, or 3 to 6 million consumers.

We also do not know the decrease in search costs that the consumers in each of these categories would experience. However, we estimate the possible range of total search cost reductions using three studies on consumer behavior. The first study recorded the amount of time people in drug stores spent looking at an item on the shelf before making a purchase (Ref. 11) and found that customers, on average, spent approximately 4 minutes studying a product before purchasing it. According to data from RTI, adult consumers bought an average of six units of dietary supplements containing a botanical ingredient in 1999. Therefore, this study suggests that consumers of dietary supplements containing botanicals spend an average of 24 minutes per year (six units per year x 4 minutes per unit) looking at these products on shelves before purchasing them.

The second study, called the Americans' Use of Time Project, used time diaries to study how over 3,500 adults spent their time (Ref. 12). This study found that adult Americans spent about 371 minutes per week shopping for personal consumption items in 1985, such as groceries and other household products. This study did not provide information on time spent searching specifically for dietary supplements. To estimate this time, we assume that the share of shopping time devoted to dietary supplements is proportional to the share of consumers' budgets spent on dietary supplements. According to an industry source and FDA projections, consumers spent about $4.8 billion on dietary supplements containing botanical ingredients in 1999 (Ref. 13). Consumers spent $6,250 billion on personal consumption in 1999 (Ref. 14). We do not know the personal consumption expenditures of people who specifically purchase dietary supplements containing botanicals. Therefore, we assume that the personal consumption expenditures of those consumers are 49 percent of the personal consumption expenditures of all consumers. We base this assumption on the estimate that 49 percent of adult consumers used such a supplement in 1999, and the assumption that those consumers spent about the same amount on personal consumption as did other consumers. Under these assumptions, we estimate on the basis of this study that consumers spend an average of 30 minutes per year [($4.8 billion ÷ [$6,250 billion X 0.49]) x 371 minutes per week x 52 weeks per year] shopping for supplements containing botanicals.

The third study used hidden observers to track and record shopping time in grocery stores (Ref. 15). This study found that people spent an average of about 21 minutes shopping in the grocery store per trip to the grocery store. By combining the estimated time per trip with the Food Marketing Institute's finding that consumers average about 2.2 grocery shopping trips per week, we estimate shopping time for all grocery store purchases to be 46.2 minutes per week (2.2 trips per week x 21 minutes per trip) (Ref. 16). Again, we assume that the proportion of shopping time devoted to dietary supplements equals the proportion of grocery store expenditures on dietary supplements. In 1999, consumers spent approximately $711 billion on grocery store purchases (here defined as food, alcoholic beverages, housekeeping supplies, personal care products, and tobacco products and smoking supplies) (Ref. 17).

We again assume that 49 percent of this amount was spent by adults who consumed dietary supplements containing botanicals. Based upon this study and the stated assumptions, we estimate that consumers spend about 33 minutes per year [($4.8 billion ÷ [$711 billion X 0.49]) x 46 minutes per week x 52 weeks per year] shopping for dietary supplements containing botanical ingredients.

All of the estimates of search costs are imprecise. None of these studies looks at product search activity that does not involve shopping, such as looking up material in books or on the Internet. The grocery store and use of time studies both addressed shopping time, which includes activities other than reading product labels. Nevertheless, in the absence of additional information, we estimate that this rule could reduce one's shopping time by a maximum of about 33 minutes (0.55 hours) per year. Applying this time savings to the estimated 3 to 6 million affected consumers and the average value of time of $15.66 gives maximum search cost savings of between $26 million (0.55 hours per year x 3 million x $15.66 per hour) and $52 million (0.55 hours per year x 6 million x $15.66 per hour) per year. The proposed rule, however, would not eliminate all search costs associated with dietary supplements containing botanical ingredients for consumers interested in the affected products. To reflect this fact, we tentatively assume that this proposed rule would eliminate between 10 and 20 percent of those search costs, which would result in a range of search cost savings of $3 to $10 million per year ($2.6 million x 10 percent to $52 million x 20 percent). These benefits would recur annually because they would apply whenever a consumer actively searched for products containing the relevant ingredients, unlike the one-time increases in search costs that some consumers might face because the proposed rule would change existing botanical ingredient names.

Based on the preceding discussion, we estimate this proposed rule would generate net costs in the first year of between $15 to $51 million, and net benefits of $3 to $10 million every year after the first year. Under a discount rate of 7 percent, the present value of an infinite stream of benefits of $3 million per year is $43 million ($3 million ÷ 7 percent), and the present value of an infinite stream of benefits of $10 million per year is $143 million ($10 million ÷ 7 percent). Therefore, over time, this option would generate net benefits of negative $8 million ($43 million - $51 million) to $128 million ($143 million - $15 million). The stream of benefits that would exactly offset the maximum estimated cost of $51 million to give zero net costs is $4 million ($4 million ÷ 7 percent = $57 million) per year out of the potential range of $3 to $10 million per year. Therefore, this rule would probably generate net benefits.

3. Option Three: Take an Alternative Action (as described under section V.A, Regulatory Options, of this document)

As discussed under section I, Background, of this document, in addition to standardized common names and Latin binomial names, the 2000 edition of *Herbs of Commerce* includes up to four other categories of names (i.e., botanical synonyms, Ayurvedic names, pinyin names and other common names) for each plant listed, when applicable. In order to reduce the number of label and name changes that we would require under Option Two, we could allow firms using any of the 1,500 botanicals that were not listed in the 1992 edition of *Herbs of Commerce*, but that are listed in the 2000 edition, to continue to label their products as they do now, as long as the name used for a botanical ingredient meets one of the following requirements: (1) Is among the names for the respective botanical listed in the 2000 edition and complies with the Farm Bill requirement concerning the use of the term "ginseng" and (2) is accompanied by the corresponding Latin binomial name, stated to conform to the naming conventions of the 2000 edition of the *International Code of Botanical Nomenclature*, including the author citation when needed for a positive identification of the botanical.

a. *Costs of option three.* This option would generate the same labeling costs as Option Two, except that some firms manufacturing or labeling dietary supplements containing one or more of the 1,500 botanical ingredients for which the 2000 edition of *Herbs of Commerce* establishes new standardized common names would not need to revise the labels of those products. The product whose labels would not need to be revised are with some exceptions, those that currently list botanical ingredients by any one of their corresponding names found in the 2000 edition of *Herbs of Commerce*. The exceptions, whose labels would nonetheless need to be revised, are those with names that conflict with the Farm Bill restriction on the use of the term "ginseng," or that do not state the correct Latin binomial names in accordance with the naming conventions of the 2000 edition of the *International Code of Botanical Nomenclature* and include the author citations when needed for a positive identification of the botanicals. We do not know the number of such products. Using the cost estimated for Option Two, we estimate that the label change costs for Option Three would also be between $2 and $7 million, except that the cost of this option must be the same or less than the costs of Option Two.

Option Three would also generate the same short-term increases in product search costs as Option Two, except that some consumers who currently use one of the other names listed in the 2000 edition of *Herbs of Commerce* to identify botanical ingredients would be able to continue to use those names to identify those ingredients. We do not know the number of such consumers. Using the cost estimated for Option Two, we estimate that the increase of search costs under Option Three would also be between $23 and $47 million, except that these costs must be the same or less than the corresponding costs of Option Two, because the consumers affected by this cost under Option Three are a subset of the consumers affected by this cost under Option Two.

b. *Benefits of option three.* This option would generate the same reduction in long-term search costs as Option Two, except that fewer consumers who currently shop for dietary supplements using nonstandardized names would instead be able to use standardized common names to more easily identify those ingredients in other supplements. Again, we do not have sufficiently detailed information to distinguish the size of this benefit from that of Option Two, so we again estimate the benefits to be between $3 and $10 million per year, except that they must be the same or less than the benefits of Option Two because the source of benefits under Option Three is a subset of the sources of benefits under Option Two.

We cannot compare the net benefits of Option Three to those of Option Two because the costs and benefits of Option Three are both lower, and we do not know the relative size of the changes in costs and benefits. If, however, the costs and benefits of this option were below those of Option Two by the same proportion, then this option would probably have lower net benefits than Option Two.

VI. Initial Regulatory Flexibility Analysis

FDA has examined the economic implications of this proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a

substantial number of small entities, the Regulatory Flexibility Act requires us to analyze regulatory options that would minimize the economic effect of the rule on small entities. We tentatively conclude that this proposed rule would have a significant economic impact on a substantial number of small entities.

A. Regulatory Options

In the preceding preliminary regulatory impact analysis under section V.A, Regulatory Options, of this document, we identified the following major regulatory alternatives or options: (1) Take no action, (2) take the proposed action, and (3) take an alternative action. We request comments on these and any other plausible alternatives.

B. Impacts of Regulatory Options

1. Option One: Take No Action

The incorporation by reference citations under § 101.4(h) would remain unchanged. Under this option, the following requirements and provisos apply:

- The label of a dietary supplement containing a botanical ingredient must use the "standardized common name" for that botanical ingredient listed in the 1992 edition of *Herbs of Commerce*.
- For a botanical ingredient not listed in the 1992 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax*."
- Any common or usual name *other than* the "standardized common name" for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (1992), and must be accompanied by the Latin binomial name of the plant from which it is derived.
- The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature, such as those found in the *International Code of Botanical Nomenclature (Tokyo Code) 1994*.
- The Latin binomial name of a botanical ingredient also must include the designation of the author or authors who published the Latin name, when a positive identification of the botanical cannot be made in its absence.

Taking no additional action beyond the current regulatory regime that we described in the previous paragraphs would have no effect on small entities relative to the status quo.

2. Option Two: Take the Proposed Action

The proposed action is to update the incorporation by reference citations under § 101.4(h). Under this option, the following requirements and provisos apply:

- The label of a dietary supplement containing a botanical ingredient must use the "standardized common name" for that botanical ingredient listed in the 2000 edition of *Herbs of Commerce*.
- For a botanical ingredient not listed in the 2000 edition of *Herbs of Commerce*, the label could use any appropriately descriptive name as the common or usual name, with the following exception. As in Option One, in accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax*."
- Any common or usual name *other than* the "standardized common name" for a botanical ingredient may be used only if the botanical ingredient is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.
- The Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.
- When needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

The proposed rule would cause some small businesses to change product labels as described in the preceding regulatory impact analysis. It would not affect any other class of small entities. RTI developed a Dietary Supplement Enhanced Establishment Database (DS–EED) under contract to us. RTI based the DS–EED on our official establishment inventory and supplemented it with information from trade organizations, trade shows, and electronic databases (Ref. 6). According to these data, approximately 350 to 1,260 establishments might manufacture, repackage, or relabel supplements containing botanicals.

The Small Business Administration (SBA) defines a small business in the dietary supplement industry as a business having 500 or fewer employees. RTI traced the establishments to the parent company to determine how many establishments belonged to small firms. Based on that study, between 60 and 90 percent of the 1,260 establishments belong to small firms, or between approximately 700 and 1,200 establishments. However, the RTI study did not provide information on the total number of firms associated with those establishments.

In a letter to FDA, AHPA claims that between 600 and 1,100 firms produce at least one dietary supplement product containing an herbal ingredient and are also involved in labeling products (Ref. 7). The letter also states that the editor of the *Nutrition Business Journal* told APHA that between 95 and 96 percent of dietary supplement companies have 500 or fewer employees. This information appears consistent with the information on establishments provided by RTI. We do not know how many of these firms would actually need to revise their labels. Therefore, we estimate that the proposed rule would affect between 0 and 1,045 small firms.

We assume that these firms would face 96 percent of the maximum total labeling costs for all firms we estimated in this document's preceding section V.B.2.a, Costs of Option Two, which were $2 to $7 million. Therefore, we estimate that this proposed rule would generate one-time costs for small firms of between $2 and $7 million, after rounding to the nearest million.

3. Option Three: Take an Alternative Action

This option is similar to the proposed action. We would still update the incorporation by reference citations under § 101.4(h), but firms would have slightly more flexibility when labeling dietary supplements containing a botanical ingredient. Under this option, the following requirements and provisos apply:

- As in Option Two, if the "standardized common name" for a botanical ingredient has changed from the 1992 to the 2000 edition of *Herbs of Commerce*, firms must use the revised "standardized common name" listed in the 2000 edition of *Herbs of Commerce*.
- If a botanical ingredient listed in the 2000 edition of *Herbs of Commerce* was not previously listed in the 1992 edition of that reference, firms could elect to use any of the names (i.e., botanical synonym, Ayurvedic name, pinyin

name, or other common name) listed for that botanical in the 2000 edition as the common or usual name, with the following exception. As in Options One and Two, in accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax*."

• Similar to Options One and Two, if the botanical ingredient is not listed in either the 1992 or 2000 edition of *Herbs of Commerce*, firms could use any appropriately descriptive name as the common or usual name for that ingredient with the following exception. In accordance with section 10806 of the Farm Bill, the use of the term "ginseng" as a common or usual name (or part thereof) for a dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax*."

• As in Option Two, any common or usual name *other than* the "standardized common name" for a botanical ingredient may be used only if the botanical is not listed in *Herbs of Commerce* (2000), and must be accompanied by the Latin binomial name of the plant from which it is derived.

• As in Option Two, the Latin binomial name must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*.

• As in Option Two, when needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*).

We discussed this option under this document's preceding section V.B.3.a, Costs of Option Three, and concluded that it would generate lower relabeling costs for all firms than the proposed action. However, we were unable to estimate the size of the cost reduction and again concluded that labeling costs could be anywhere from $2 to $7 million, except that the costs of this option must be the same or less than the costs of Option Two. These conclusions also hold for small firms, which make up the vast majority of the affected firms. Although Option Three would reduce the impact of the proposed rule on small firms, it would also reduce the benefits by an unknown amount. We have tentatively decided not to pursue this option because the potential cost savings for small firms would be modest and we do not know the impact on benefits.

VII. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Rather, the proposed dietary supplement labeling requirements would be a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

VIII. Unfunded Mandates Reform Act of 1995

Section 202(a) of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation).

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for the proposed rule, because the proposed rule is not expected to result in any one-year expenditure that would exceed $100 million adjusted for inflation. The current inflation-adjusted statutory threshold is $112 million.

IX. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule would have a preemptive effect on State law. Section 4(a) of the Executive Order requires agencies to:

> * * * construe * * * a Federal Statute to preempt State law only where the statute contains an express preemption provision, or there is some other clear evidence that the Congress intended preemption of State law, or where the exercise of State authority conflicts with the exercise of Federal authority under the Federal statute.

Section 403A of the act (21 U.S.C. 343–1) is an express preemption provision. That section provides that "no State or political subdivision of a State may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce" certain food labeling requirements, unless an exemption is provided by the Secretary of Health and Human Services (and, by delegation, FDA). Relevant to this rule, one such requirement that States and political subdivisions may not adopt is "any requirement for the labeling of food of the type required by section * * * 403(i)(2) that is not identical to the requirement of such section," (section 403A(a)(2) of the act). Another such requirement that States and political subdivisions may not adopt is "any requirement for the labeling of food of the type required by section * * * 403(i)(1) that is not identical to the requirement of such section," (section 403A(a)(3) of the act). Prior to the effective date of the direct final rule that is being published simultaneously with this proposed rule, this provision operates to preempt States from imposing requirements concerning the use of botanical names in dietary supplement labeling if the requirements concerning the use of those names are not identical to those contained in § 101.4(h) (incorporating by reference *Herbs of Commerce* (1992) and the *International Code of Botanical Nomenclature (Tokyo Code) 1994*). Specifically, the preemptive effect applies to requirements concerning the use of botanical names in the common or usual name on the label of a dietary supplement (section 403(i)(1) of the act) and to requirements for listing individual botanical ingredients on the label of a dietary supplement (section 403(i)(2) of the act). Once the direct final rule that is being published simultaneously with this proposed rule becomes effective, States will be preempted from imposing any such requirements concerning the use of botanical names on dietary supplement labels that are not identical to those required by the new rule, which amends the existing § 101.4(h) to incorporate by reference *Herbs of Commerce* (2000) and the *International Code of Botanical Nomenclature (Tokyo Code) 2000*, and to incorporate new Federal legislative restrictions on the use of the term "ginseng" in dietary supplement labeling.

Section 403A(a)(2) to (a)(3) of the act displaces both State legislative requirements and State common-law duties (*Medtronic v. Lohr*, 518 U.S. 470, 503 (1996) (Breyer, J., concurring in part and concurring in the judgment); *id.* at 510 (O'Connor, J., joined by Rehnquist, C. J., Scalia, J., and Thomas, J., concurring in part and dissenting in part); *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 521 (1992) (plurality

opinion); *id.* at 548–49 (Scalia, J., joined by Thomas, J., concurring in part in the judgment and dissenting in part)). Although this proposed rule would have preemptive effect in that it would preclude States from adopting statutes, issuing regulations, or adopting or enforcing any requirements, including State tort-law imposed requirements, that are not identical to the requirements of this rule, this preemptive effect is consistent with what Congress set forth in section 403A of the act.

Section 4(e) of the Executive order states that "when an agency proposes to act through adjudication or rulemaking to preempt State law, the agency shall provide all affected State and local officials notice and an opportunity for appropriate participation in the proceedings." Similarly, section 6(c) of the Executive order states that:

> * * * to the extent practicable and permitted by law, no agency shall promulgate any regulation that has federalism implications and that preempts state law, unless the agency, prior to the formal promulgation of the regulation * * * consulted with State and local officials early in the process of developing the proposed regulation.

This requirement, that FDA provide the States with an opportunity for appropriate participation in this rulemaking, has been met. This rule proposes to update and make minor changes to a rule that was first proposed through full notice-and-comment rulemaking procedures in 1995 and finalized in 1997. During the comment period prior to the issuance of the 1997 final rule, and after the publication of the final rule, the agency received no comments, correspondence, or other communications from any State or local government concerning preemption of an existing legislative or common-law requirement. In its consultation with states prior to the publication of this proposed rule, FDA was not informed about any State requirements that would be in conflict with the Federal requirements in this rule, and no States expressed concerns over the rule's preemptive effect. Moreover, FDA is providing an opportunity for State and local officials to comment through this rulemaking, and intends to withdraw the direct final rule if significant adverse comments are received.

In conclusion, the agency believes that it has complied with all of the applicable requirements under the Executive order, and has determined that the preemptive effects of this rule are consistent with Executive Order 13132.

X. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. This comment period runs concurrently with that for the direct final rule. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday. FDA will consider any comments received on either this companion proposed rule or the direct final rule to be comments received on both rules.

XI. Effective Date

FDA periodically establishes, by final rule in the **Federal Register**, uniform effective dates for compliance with food labeling regulations (see, e.g., the **Federal Register** of December 31, 2002 (67 FR 79851), designating the effective date of January 1, 2006, for food labeling regulations issued between January 1, 2003, and December 31, 2004). We are proposing that any final rule FDA may issue based upon this proposal, including the related direct final rule, become effective on January 1, 2006, the uniform effective date for compliance with food labeling regulations published between January 1, 2003, and December 31, 2004. FDA will publish a document in the **Federal Register** to confirm the effective date of the direct final rule, if FDA receives no significant adverse comments on it or this companion proposed rule.

XII. References

Copies of the following references have been placed on display and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday at the Division of Dockets Management (see **ADDRESSES**). FDA has verified the Web site addresses, but is not responsible for subsequent changes to the Web sites after this document publishes in the **Federal Register**.

1. Foster, Steven, editor, *Herbs of Commerce*, American Herbal Products Association, Austin, TX, 1992.
2. Greuter, W., editor (chairman), *International Code of Botanical Nomenclature (Tokyo Code) 1994*, adopted by the 15th International Botanical Congress, Koeltz Scientific Books, D–61453 Königstein, Germany, 1994.
3. McGuffin, Michael, managing editor, *Herbs of Commerce, 2nd Edition*, American Herbal Products Association, Silver Spring, MD, 2000.
4. Greuter, W., editor (chairman), *International Code of Botanical Nomenclature (Saint Louis Code) 2000*, adopted by the 16th International Botanical Congress, Koeltz Scientific Books, D–61453 Königstein, Germany, 2000.
5. *FDA Labeling Cost Model: Final Report*, Research Triangle Institute (RTI) International, April 2002, Revised.
6. *Economic Characterization of the Dietary Supplement Industry*, Research Triangle Institute (RTI), March 1999, p. 5–1.
7. Letter from Michael McGuffin, President, American Herbal Products Association, to Rhonda R. Kane, Consumer Safety Officer, FDA, May 13, 2002, pp. 1–6 with 3 attachments.
8. "Consumer Use of Dietary Supplements," *Prevention Magazine Survey*, Table A, *Prevention Magazine*, 2000, p. 13.
9. *Statistical Abstract of the United States: 2000*, Table Number 13—Resident Population by Sex and Age: 1999, U.S. Census Bureau, Washington, DC, p. 14. Obtained data at the Internet site *http://www.census.gov/prod/2001pubs/statab/sec01.pdf* on June 19, 2002.
10. *National Employment, Hours, and Earnings, Bureau of Labor Statistics*, U.S. Department of Labor, Washington, DC. Obtained data from the Internet site *http://data.bls.gov/cgi-bin/srgate* on August 14, 2002. To view the data used, enter the number EES00510006 in the series id window, select the year 2001–2002 in the years to report window, and select the button "retrieve data."
11. "The Power of Persuasion at the Moment of Truth," *Drug Store News*, 19(20):3–8, 22, and 24, December 8, 1997.
12. Robinson, J. P. and G. Godbey: *Time for Life: The Surprising Ways Americans Use Their Time*, Second Edition, The Pennsylvania State University Press, University Park, PA, 1997, Appendix A, 1985 column, categories 30 to 39, pp. 355 and 356.
13. Guthrie, J. F., K. M. Koehler, and R. A. Scharff: *Trends in the Consumption of Dietary Supplements 1994–2000*, Table 11–Growth in Market Size and Per Capita Consumption of Dietary Supplements, 1994–2000, Panel A, Unpublished document, Center for Food Safety and Applied Nutrition, FDA, Washington, DC, July 12, 2000, p. 29.
14. *Economic Report of the President*, Table B–16—Personal Consumption Expenditures, 1959–2001, U.S. Government Printing Office, Washington, DC, February 2002. Obtained data at the Internet site *http://w3.access.gpo.gov/usbudget/fy2003/sheets/b16.xls* on August 14, 2002.
15. "Customer Behavior: How Consumers Shop," *Progressive Grocer*, December 1992, pp. 62–64.
16. "A Shopping for Health Report, 1998: A Look at the Self-Care Movement," *Food Marketing Institute*, Research Department, Washington, DC, and *Prevention Magazine*, Research Department, Emmaus PA, 1998, p. 2.
17. *Consumer Expenditures in 1999*, Report 949, Table A—Average Annual Expenditures of All Consumer Units and Percent Changes,

Consumer Expenditure Survey, 1997–99, Bureau of Labor Statistics, U.S. Department of Labor, Washington, DC, May 2001, p. 3. Obtained data from the Internet site *http://stats.bls.gov/cex/csxann99.pdf* on July 25, 2002.

List of Subjects in 21 CFR Part 101

Food labeling, Incorporation by reference, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

2. Section 101.4 is amended by revising paragraph (h) to read as follows:

§ 101.4 Food; designation of ingredients.

* * * * *

(h) The common or usual name of a botanical ingredient (including fungi and algae) listed on the label of a dietary supplement must be consistent with the "standardized common name" listed in *Herbs of Commerce, 2nd Edition* (2000) for the plant from which the ingredient is derived. The use of the term "ginseng" as a common or usual name (or part thereof) for any dietary supplement or dietary ingredient is limited to those that are derived from a plant classified within the genus "*Panax.*" *Herbs of Commerce, 2nd Edition* (2000) is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this book may be obtained from the American Herbal Products Association, 8484 Georgia Ave., suite 370, Silver Spring, MD 20910, 301–588–1171, FAX: 301–588–1174, e-mail: *ahpa@ahpa.org*. Copies also may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(1) The listing of the common or usual name on the label must be followed by statements of:

(i) The part of the plant (e.g., root, leaves) from which the dietary ingredient is derived (e.g., "Garlic bulb" or "Garlic (bulb)"), except that this designation is not required for algae. The name of the part of the plant must be expressed in English (e.g., "flower" rather than "flos"); and

(ii) The Latin binomial name (i.e., genus and species) of the plant from which the botanical ingredient is derived, stated in parentheses, when no "standardized common name" for the plant is listed in *Herbs of Commerce, 2nd Edition* (2000). In such cases; this Latin binomial name may be listed before the part of the plant and must be stated in accordance with the internationally accepted rules on botanical nomenclature found in the *International Code of Botanical Nomenclature (Saint Louis Code) 2000*. When needed to positively identify the botanical ingredient, the Latin binomial name also must include the author citation (i.e., name(s) of the person(s) who described and published the Latin binomial name in accordance with the internationally accepted rules on botanical nomenclature found *International Code of Botanical Nomenclature (Saint Louis Code) 2000*). The *International Code of Botanical Nomenclature (Saint Louis Code) 2000*, a publication of the International Association for Plant Taxonomy, is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this book may be obtained from Koeltz Scientific Books, D–61453 Königstein, Germany; University Bookstore, Southern Illinois University, Carbondale, IL 62901–4422, 618–536–3321, FAX: 618–453–5207, e-mail: *siu@bkstr.com*; and from Lubrecht & Cramer, 18 East Main St., Port Jervis, NY 12771, 800–920–9334, FAX: 800–920–9334, e-mail: *books@lubrechtcramer.com*. Copies also may be examined at the Center for Food Safety and Applied Nutrition's Library, 5100 Paint Branch Pkwy., College Park, MD, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

(2) On labels of single-ingredient dietary supplements that do not include an ingredient list, the identification of the Latin binomial name, when needed, and the part of the plant may be prominently placed on the principal display panel or information panel, or included in the nutrition label.

Dated: August 14, 2003.

William K. Hubbard,

Associate Commissioner for Policy and Planning.

[FR Doc. 03–21981 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–129709–03]

RIN–1545–BC34

Prohibited Allocations of Securities in an S Corporation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of date for public hearing on proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document provides notice of a change of date for the public hearing on proposed regulations by cross-reference to temporary regulations under sections 409(p), and 409(p)(5).

DATES: The public hearing is being held on Monday, November 17, 2003 at 10 a.m. Outline of oral comments must be received by October 27, 2003.

ADDRESSES: The public hearing is being held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Send submissions to: CC:PA:LPD:PR (REG–129709–03), Room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:PA:LPD:PR (REG–129709–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit an outline of oral comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION: Concerning the regulations, John Ricotta (202) 622–6060; concerning submissions, Sonya M. Cruse (202) 622–4693 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

A notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing appearing in the **Federal Register** on Monday, July 21, 2003 (68 FR 43058), announced that a public hearing on proposed rulemaking by cross-reference to temporary regulations that provided guidance on identifying disqualified persons and determining whether a plan year is a nonallocation year under section 409(p) and on the definition of synthetic equity under section 409 (p)(5) would be held on Thursday, November 20, 2003, in room 6718, Internal

Revenue Building 1111 Constitution Avenue, NW., Washington, DC. Subsequently, the date of the public hearing has been changed to Monday, November 17, 2003. Written or electronic comments must be received by October 17, 2003. Outlines of oral comments must be received by October 27, 2003.

LaNita Van Dyke,

Paralegal Specialist, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–21965 Filed 8–27–03; 8:45 am]

BILLING CODE 4830–01–P

POSTAL SERVICE

39 CFR Part 111

Changes to the Move Update and Address Matching Requirements

AGENCY: Postal Service.

ACTION: Further notice of proposed rulemaking.

SUMMARY: This is a special interim Advance Notice incorporating mailers' comments from the May 31, 2002 **Federal Register** (67 FR 38041–38043), Advance Notice of Proposed Rulemaking and Request for Comment. Prior to publishing a final rule, the Postal Service is requesting additional comments from the mailing industry on the proposed changes to current Domestic Mail Manual (DMM) standards that concern Move Update and/or Address Matching requirements. These proposed standards address specific mail preparation requirements that can effectively assist in reducing the negative impact on delivery service and costs associated with Undeliverable-As-Addressed (UAA) Mail. Due to the significant ongoing UAA mail burden noted in omnibus rate case Docket No. R2001–1, changes are deemed necessary to help mitigate the UAA mail impact on the mailing industry and the Postal Service.

DATES: Comments must be received on or before September 29, 2003. The Postal Service intends to pursue implementation of these proposals within the framework of a future formal rule or rate making process. Please note that a specific rule or rate making will not be forthcoming as a result of this notice, rather any change will be integrated into a future rule or rate making that is part of the Product Redesign initiative or omnibus rate case. In no event will the proposals become effective sooner than 18 months from the date of a future final rule publication.

ADDRESSES: Written comments should be mailed or delivered to the Office of Product Management—Addressing, National Customer Support Center, United States Postal Service, 6060 Primacy Pkwy, Ste 201, Memphis, TN 38188–0001. Comments may also be transmitted via facsimile to 901–681–4440 or via e-mail to *chunt1@email.usps.gov*. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza, SW., 11th Floor N, Washington, DC 20260–1450 between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne Orbke, 901–681–4658; Charles B. Hunt, 901–681–4651; or Neil Berger, 703–292–3645.

SUPPLEMENTARY INFORMATION: On May 31, 2002, the Postal Service requested comments concerning changes to the Move Update and Address Matching standards (Advance Notice). 67 FR 38041–38043. The Postal Service did not suggest specific Domestic Mail Manual provisions at that time, but sought public comments on five general proposals. As discussed in that notice, changes to these standards were recommended in the 2001 Mailing Industry Task Force, a workgroup joining mailing industry and Postal Service leaders, as an important means to decrease the volume of UAA mail and thereby hold down postal processing and delivery costs.

Thirty-six comments were submitted in response to the Advance Notice. After review of the comments, the Postal Service is proposing specific DMM changes to the Move Update and Address Matching standards and seeks public comment concerning these revisions.

Consistent with the recommendation of the Mailing Industry Task Force, the Postal Service believes that appropriate revisions to the standards are vital to the continued vitality of the postal system and the interests of mailers. The Postal Service is committed to taking prudent steps in coordination with the mailing industry to create and maintain a cost-efficient mailstream. Over the years, the Service has invested heavily to create an automated mailstream to help drive costs out of the delivery system. However, although an efficient automated mailstream depends on accurate barcodes for success, barcodes are only as accurate as the quality of the addressing information that is their foundation. As discussed in the Advance Notice, revisions to the Move Update and Address Matching standards are needed to improve the level of address quality for mailings entered at discounted rates. The Postal Service remains convinced that high quality addressing, best possible depth of ZIP+4 codes, and (where applicable) accurate delivery point barcodes that result in the delivery of the mailpiece to the intended recipient, in an efficient manner, should be primary objectives for mailers.

The Advance Notice proposed five changes to existing address quality standards, including: (1) Expand the applicability of a Move Update requirement from Presorted and automation rate First-Class Mail to include Periodicals, Standard Mail, and Package Services, (2) increase the minimum frequency of Move Update processing from 180 days to 90 days, (3) remove the use of ancillary service endorsements with individual hardcopy notifications as a stand-alone option to satisfy the Move Update requirement, (4) increase the frequency of Address Matching processing for automation rate mail from 180 days to 90 days, and (5) require the use of monthly (instead of bimonthly) directory updates for address matching software.

In addition to revisions to DMM standards, the Advance Notice also addressed the timing of the changes. When the Move Update requirement for First-Class Mail was instituted in 1997, a 9-month readiness period was provided. The Postal Service recognizes the magnitude of the adjustments that will have to be made both by the industry and the Service to implement the revisions proposed in this notice and will ensure that ample time is provided. It is not the intention of the Postal Service to create unreasonable barriers to discount rate qualification with these changes, but rather to improve the overall cost effectiveness of the mail delivery system and rate stability for all stakeholders.

As stated in the Advance Notice, the evaluation and implementation of these proposals will continue to be stewarded by the Postal Service Product Management Group, within the framework of the Product Redesign effort.

Part A of this notice summarizes the proposed changes and provides an analysis of comments received to the Advance Notice. Part B summarizes the changes to the DMM, followed by the text of the proposed DMM standards.

Part A

Several comments were outside the scope of the changes that were proposed. These comments, such as

pursuing legislative changes, redefining the characteristics of a mailing list, etc., will not be discussed in this notice. Five proposals were described in the Advance Notice. Each proposal will be discussed separately:

(1) Move Update Requirement for All Classes of Mail

The Postal Service proposes that the Move Update standard, which previously applied only to First-Class Mail, be extended to other classes (*i.e.* Periodicals, Standard Mail, and the Bound Printed Matter subclass of Package Services) (Please note, Package Services was originally proposed but was amended to Bound Printed Matter in response to the comments received). Given the growth and significant impact of UAA mail across all classes of mail, the Postal Service believes it is reasonable to adopt the same standard for those seeking to use discounted rates in other classes of mail. However, the Postal Service also desires that this be done in a manner that does not unreasonably impact the mission and flexibility of each class of mail. To this end, the Postal Service will, where feasible, incorporate features suggested in the comments and add tools that can assist the expansion of Move Update to all classes. As one example, suggested in the comments, the Postal Service has already authorized the printing of the Address Change Service (ACS) participant code on the mailpiece in a location other than within the mailer's keyline of the address block. This option became effective October 3, 2002 (see Postal Bulletin 22086, October 3, 2002) and was incorporated into the online version of DMM M013 (*http://pe.usps.gov*).

Acceptable Methods

Six commenters expressed support for the proposed expansion of the Move Update requirement beyond Presorted and automation rate First-Class Mail to other classes of mail.

Several commenters stated that unless the status quo were maintained, specifically use of ancillary service endorsements as a qualifier, they would not be able to meet the proposed Move Update requirement. The Postal Service respectfully disagrees on this point and believes that the methods that will be available upon implementation are flexible and efficient and that they will meet the needs of all mailers seeking discounted rates when Move Update is a requirement. The current list of authorized methods includes the following:

- National Change of Address (NCOA) processing.
- NCOA^{Link} processing (scheduled availability October 1, 2003).
- FASTforward® MLOCR processing.
- FASTforward® Mailing List Correction (MLC) processing.
- Address Change Service (ACS).
- Postal Service Certification of Mailer Move Update Process, administered by the National Customer Support Center (NCSC).
- NCSC-approved alternate method for mailers with certain legitimate restrictions to incorporating Postal Service supplied change-of-address information into their mailing address lists.

In addition to the seven authorized Move Update methods listed above, as suggested by four of the commenters, addresses utilizing any of the three alternative addressing formats prescribed in DMM A020 (*e.g.*, "John Doe or Current Occupant") will not be subject to the Move Update standard. The Postal Service agrees that this exemption is warranted because mail bearing an alternative address format does not cause the Postal Service to incur additional redirection processing or disposal costs.

Another step already taken by the Postal Service to assist mailers who may not be able to process electronic ACS data files is the augmentation of ACS with a hybrid hardcopy address correction notification. This ACS option brings both quality and efficiency to the process by providing legible hardcopy printout notifications to mailers who desire them. This option is discussed in detail in the third proposal narrative regarding ancillary service endorsements.

Phase-in for Other Mail Classes

One commenter suggested a phased approach to implementation, with First-Class Mail being the first to incorporate the new requirements in 18 months from the publication date of the final rule, followed by the other mail classes 6 months to 1 year later. The Postal Service believes that there are several sound reasons why the phased approach suggested is not warranted in this case: (1) Since the publication of **Federal Register** Advance Notice (67 FR 38041–38043), the Postal Service has decided to integrate the changes proposed in this notice into a future formal Product Redesign initiative or omnibus rate case which will provide sufficient time for mailers to incorporate the new requirements, and significantly more time than the nine months allotted for the Move Update requirement originally instituted for First-Class Mail service in 1997, (2) the technical environment and capabilities of the mailing industry are more advanced and progressive than when Classification Reform was being implemented in 1996/97, (3) many mailers who utilize other mail classes also send First-Class Mail items and are familiar with the Move Update requirement, (4) the Postal Service has made significant efforts since 1996 to acquaint the mailing industry with the necessity of effective Move Update methodology, and (5) a uniform implementation will provide needed consistency for all concerned.

A majority of addresses used by mailers today for Periodicals, Standard Mail, and Package Services mail are also used in Presorted and automation rate First-Class Mail and therefore already receive "Move Update treatment". This is consistent with the policy established in 1997 for First-Class Mail whereby an updated address originally used on another class of mail meets the Move Update requirement for First-Class Mail.

Additional Discounts

Several commenters stated that incentives would be needed to offset their cost of Move Update processing where it has previously not been a requirement, as well as for the increased frequency requirements of Move Update for First-Class Mail and Address Matching for all classes.

The Postal Service believes that ensuring that mail, regardless of the class of mail, is prepared to the correct recipient and address, and thereby removing UAA mail from the mailstream ultimately leads to cost savings for both the mailer and the Postal Service. In addition to helping control Postal Service costs and their associated impact on rates, the increase in address quality will benefit mailers by reducing wasted mail production costs and loss of business opportunities that result from UAA mail.

Periodicals

One commenter stated that a Move Update requirement for Periodicals was "ludicrous."

The Postal Service finds this comment somewhat puzzling in that Periodicals mail has long included an address correction requirement. This requirement is found in the printed request for change-of-address information included in the identification statement that each publication must show. This request for change-of-address information may also appear on the label carrier or the container enclosing publications prepared in envelopes, closed wrappers or polybags. This proposal merely formalizes the requirement and methods.

Ease of Use

The same commenter also stated that the Move Update requirement should be more "user-friendly" and recognize mailers who have their own processes in place to accurately reflect the relocation of their customers for mailing purposes.

The Postal Service agrees with this position; it was the driving force behind the creation of the Mailer Move Update Process Certification (previously known as the 99% rule alternate method) for Move Update compliance. Under this method, mailers can have their own Move Update process tested by the Postal Service. If the test demonstrates that the mailer's addresses are 99% accurate when compared with the Postal Service change-of-address file, the mailer will be certified as having addresses that meet the Move Update requirement for a period of 1 to 2 years (depending on the length of time the mailer has used this option) from the date of the test.

Standard Mail

Eight commenters expressed concerns regarding possible negative impact to Standard Mail.

Although the Postal Service understands this issue, it believes that the requirement is both appropriate and fair for Standard Mail automation rate, Presorted rate, and Enhanced Carrier Route rate eligibility. Many mailers of Standard Mail successfully utilize the NCOA and FASTforward® MLC systems to improve the quality of their lists. Therefore, this requirement should not have a major impact on their business models. The Postal Service also believes that the choices available to meet the Move Update requirement, along with the wide use of alternative addressing formats on Standard Mail (*e.g.* "John Doe or Current Resident"), provide sufficient flexibility for meeting the requirement and will, therefore, not pose a greater challenge for mailers of Standard Mail than for mailers of other classes.

One commenter questioned the proposed application of the Move Update provisions to Standard Mail because unendorsed Standard Mail is disposed of as waste, if undeliverable.

Although it is true that Postal Service procedures call for disposal of such mail (as well as unendorsed BPM), there is a cost associated with this action. The Postal Service incurs an average cost of 4.5 cents per piece for disposal. Additionally, it is doubtful that the sender's intent is for their strategic message not to be delivered and miss potential business opportunities. To continue this scenario is not in the best interests of a cost-efficient mailstream, and the Postal Service maintains that a discount should not be provided for mail bearing addresses where no steps have been taken to mitigate this occurrence.

Bound Printed Matter

One commenter voiced concern regarding possible negative impact to Bound Printed Matter (BPM) mailings.

After due consideration, the Postal Service believes that the Move Update requirement is both appropriate and fair for BPM Presorted and Carrier Route qualification, including machinable parcels claiming a parcel barcoded discount or flat-size pieces claiming a POSTNET barcoded discount. The Postal Service does not believe that the Move Update requirement will pose a greater challenge to BPM mailers than to those in using other classes of mail. A majority of BPM consists of the same content as Standard Mail (*e.g.*, advertising, catalogs, and directories) and would, except for weight, qualify as Standard Mail. In fact, many mailers "bundle" individual Standard Mail pieces for the same address and create a single addressed BPM mailpiece.

After due consideration of the comments expressed, the Postal Service proposes to expand the Move Update standard to include Periodicals, Standard Mail, and the Bound Printed Matter subclass of Package Services mail.

(2) Frequency of Use of Move Update Processing

The Postal Service proposes to increase the minimum frequency of Move Update processing from 180 days to 95 days (90 days was originally proposed but was amended to 95 days in response to the comments received).

Five commenters voiced general support for the proposal, while several other commenters had specific concerns regarding this Move Update provision.

One commenter expressed concern that with the requirement to update addresses more frequently, the existing NCOA licensees would not be able to keep up with the demand for Move Update processing.

The Postal Service believes the existing group of licensees has the capacity to provide the service within the terms of their license (process and return address files within 7 business days of receipt). The Postal Service will continue to monitor this situation and if it determines that a justifiable need exists, it will increase the number of licensees.

One commenter stated that mailers using an NCSC-approved alternate Move Update method would not be able to meet the proposed standard, because they have certain legitimate restrictions on incorporating Postal Service-supplied change-of-address information into their mailing addresses.

The Postal Service believes this change will not have any impact on these alternate processes. Under existing standards, the mailer must contact an addressee within 30 days after receiving the change-of-address information and incorporate the change of address within 30 days of receipt. These timeframes already fall within the proposed requirement.

One commenter voiced concern that the reduced window for processing will have a negative effect due to the planning cycles currently in use by many mailers.

The Postal Service understands that certain operational changes are necessary for the mailing industry to implement this proposal. The UAA mail problem is of such magnitude that it is in the best interests of all stakeholders to modify current practices in order to mitigate it. The Postal Service also recognizes that some mailers who are proactively trying to reduce UAA mail within their own operations have already set quarterly production cycles for their Move Update and Address Matching processing. To allow mailers to continue these processing cycles and not have to periodically make additional processing runs due to variations in calendar dates, the Postal Service proposes that the processing requirement, which is based on the number of day prior to mailing, will be modified from the originally proposed 90 days to 95 days.

(3) Removal of Manual Hardcopy Notifications as a Move Update Option

Ancillary Service Endorsements

The Postal Service proposes to remove the stand-alone use of ancillary service endorsements as an option to satisfy the Move Update standard.

Many of the commenters perceived that the purpose of this proposal was to totally eliminate all use of ancillary service endorsements.

To clarify, this is not the case. All ancillary service endorsements will still be available as mailpiece handling instructions for commercial mail. This proposal is designed to effectively separate basic mailpiece-handling instructions, which is the core function of endorsements, from efficient address correction notification methods where Move Update activity is required. Under

this proposal, stand-alone ancillary service endorsement use will not be recognized as a method to satisfy the Move Update standard. Ancillary Service Endorsements may still be used on mail with addresses that are updated via one of the approved Move Update methods (*e.g.*, Address Change Service, NCOA, FASTforward®, *etc.*). More than six years of practical experience with the Move Update requirement for First-Class Mail has shown that individual manual hardcopy notifications generated from the stand-alone use of ancillary service endorsements are the least effective and most costly Move Update method for all concerned.

"Return Service Requested"

Additionally, one commenter pointed out that mailers who desire mailpieces to be returned and not forwarded would be penalized by this proposal, as there is currently no electronic ACS option available for returns.

The Postal Service agrees that a post-mailing electronic option should be available in this instance and, if this proposal is adopted, will take the necessary action prior to implementation to make the "Return Service Requested" endorsement available within the ACS system.

Hardcopy Notices

Several commenters indicated that, for various reasons, hardcopy address change notices generated from stand-alone ancillary service endorsements are the only method they can use to meet a Move Update requirement. They expressed a concern that the ACS system was not a viable alternative for them.

As previously explained, the Postal Service believes that the options available to comply with Move Update standards are both flexible and efficient enough to meet the needs of all parties seeking discounted rates.

Specifically to this point, at the time Move Update first became a requirement for First-Class Mail automation and Presorted rates, the ability of the Postal Service to provide a robust electronic/hardcopy hybrid ACS service did not exist as it does today. Since the inception of the Move Update standard, the Postal Service has worked to create enough flexibility within the ACS system to meet mailers' needs, while at the same time lowering the cost. There is, for all practical purposes, a limitless supply of ACS participant codes available that can be used in those situations where multiple departments and/or list situations are involved. Additionally, as noted earlier in the Summary section, the option for mailers to print the ACS participant code on the mailpiece itself was made effective on October 3, 2002.

The end-result of these efforts is the ACS printout notification option, which provides printable hardcopy notifications, in an electronic file, to those who desire them. This option provides quality in the form of a computer-generated report, timely fulfillment back to the sender so that the address corrections can be incorporated quickly to prevent future UAA mail, and a cost-effective process for both the mailer and the Postal Service.

The Postal Service is convinced that this ACS hardcopy notification option is a viable alternative to stand-alone ancillary service endorsements since it provides "best practice" efficiency to the business of hardcopy notifications. In addition, effective January 1, 2003, ACS change-of-address information is now available, at no additional charge, on CD–ROM media. This provides small- and medium-sized mailers with an easy, cost-effective method for viewing, searching, and printing change-of-address records in order to update their address files manually.

As put forth in the Advance Notice of May 31, 2002, individual hardcopy address correction notifications triggered from stand-alone use of ancillary service endorsements do not significantly reduce costs for either the mailer or the Postal Service. However, ancillary service endorsements used in conjunction with ACS do provide benefits not obtained by stand-alone use of ancillary service endorsements. Again, these facts cause the Postal Service to conclude that the existing (stand-alone) use of ancillary service endorsements and individual hardcopy notifications or return of UAA mailpieces will no longer be a permissible qualification method in and of itself to meet the Move Update requirement.

(4) Frequency of Use of Address Matching Software

The Postal Service proposes to increase the minimum frequency of Address Matching processing for automation rate mail from 180 days to 95 days (90 days was proposed in the Advance Notice but is now amended to 95 days in response to the comments received).

Five commenters voiced general support for the proposal to increase the frequency of the required use of address matching software.

Schedule

Four commenters recommended that the Postal Service develop a clearly defined schedule when software vendors and end-users must update and implement the Address Matching software changes.

The Postal Service already has a clearly defined process in place for software developers to submit their Address Matching software for Coding Accuracy Support System (CASS) certification. As a condition for CASS certification, all changes in Address Matching software requirements are announced at the annual CASS "Partnership in Tomorrow" meeting each August. Generally, the required changes are effective the following July 31 (11 months later). Furthermore, current DMM A950 sets forth the schedule of frequency of use for Address Matching software and the Postal Service database.

Vendor Deadlines

Several commenters urged the Postal Service to set timeframes and deadlines that vendors must meet for providing their updated products to end-users.

Although the Postal Service understands the end-users' point of view, it is reluctant to regulate the business practices between vendors and their customers. The Postal Service is committed to taking the necessary steps to ensure that its product distribution timetables to the various vendors are met. If the vendor does not provide the software updates in a timely manner, the customer must determine whether to pursue a legal remedy or other action. As is the case with other industries, it is reasonable to expect that substandard vendors will lose their place in the market.

Reduced Processing Period

One commenter voiced concern that the reduced window for processing will have a negative effect due to the planning cycles currently in use by many mailers.

The Postal Service understands that certain operational changes are necessary for the mailing industry to implement this proposal. The UAA mail problem is of such magnitude that it is in the best interests of mailers and the Postal Service to modify current practices in order to mitigate it. The Postal Service also recognizes that some mailers who are proactively trying to reduce UAA mail within their own operations have set quarterly production cycles for their Move Update and Address Matching processing already. To allow mailers to continue these processing cycles and not have to periodically make additional processing runs due to variations in calendar dates, the processing requirement will be

modified from the proposed 90 days to 95 days.

Another option currently available to mailers to assist with narrow processing windows is the use of Z4Change list matching as defined in DMM A950.3.2. Furthermore, in the interest of consistent processing requirements, it is proposed that the 90-day Address Matching standard for Periodicals and Standard Mail sent at carrier route rates be modified to 95 days. It should be noted that although concerns about the frequency of matching were also expressed when the 90-day carrier route rate requirement was first implemented, mailers were able to adjust their mailing processes to meet the list processing window.

Due to the high rate of change in addressing data, the Postal Service believes that the benefits are worth the behavioral changes that the mailing industry and the Postal Service would have to make to reduce UAA mail volumes.

(5) Address Matching Directory Update Frequency

The Postal Service proposes to require the use of monthly (instead of bimonthly) directory updates for address matching software. This proposal goes "hand in hand" with the revisions in the fourth proposal. That is, the adoption of one strategy without the other would sacrifice the desired improvement in efficiency and quality of the Address Matching process.

One commenter felt that there was some confusion regarding the difference between the two.

To clarify, the Postal Service respectfully points out that the fourth proposal from the Advance Notice modifies the cycle time in which addresses must be processed through Postal Service CASS-certified Address Matching software in order to qualify for discounted rates. This proposal modifies the cycle that the address directories used in conjunction with CASS-certified software must be updated prior to processing addresses.

In order to ensure understanding of these standards, the Postal Service will provide further guidance concerning these processes in publications including the CASS Technical Guide, the Postal Bulletin, and the Mailer's Companion.

Part B

It should be remembered that the following DMM revisions are proposals only and are presented to assist mailers with their review and comments. The proposed DMM changes below are to the current DMM which includes "organizational" changes made via Postal Bulletin 22104, June 12, 2003. To view the current DMM go to *http://pe.usps.gov*.

Although exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the Domestic Mail Manual as follow:

Domestic Mail Manual (DMM)

A ADDRESSING

A000 Basic Addressing

* * * * *

A030 Address Quality

1.0 MOVE UPDATE

1.1 Basic Standards

The Move Update standard is a means of reducing the number of mailpieces in a mailing that require forwarding by the periodic matching of a mailer's address records with customer-filed change-of-address orders received and maintained by the USPS. For the purposes of this standard, address means a specific address associated with a specific occupant name. Addresses used on pieces claiming certain rates that are subject to the Move Update standard under 1.2 must meet these requirements:

[Change "180" days to "95" days in 1.1a to read as follows:]

a. Each address and associated occupant name used on the mailpieces in a mailing must be updated within 95 days before the mailing date, with one of the USPS-approved methods in 1.4.

* * * * *

[Change "180" days to "95" days in 1.1c to read as follows:]

c. If an address used on a mailpiece in a mailing at one class of mail and rate is updated with an approved method (*e.g.*, Address Change Service), the same address may be used during the following 95 days and meets the Move Update standard required in 1.2.

1.2 Mail Classes and Rates

[Revise 1.2 to read as follows:]

Except as provided in 1.3, addresses used on pieces claiming the rates listed for the following classes of mail, regardless of processing category and any required surcharges, must meet the Move Update standard:

a. First-Class Mail, nonautomation Presorted rate and automation rates.

b. Periodicals, all rates.

c. Standard Mail, all rates.

d. Bound Printed Matter, Presorted rate and carrier route rate.

1.3 Exception

[Change "First-Class Mail move update standard" to "Move Update standard" in 1.3 to read as follows:]

The Move Update standard does not apply to any mail bearing an alternative addressing format under A020.

1.4 USPS-Approved Methods

[Revise 1.4 by removing 1.4f to read as follows:]

The following methods are authorized for meeting the Move Update standard:

a. Address Change Service (ACS).

b. National Change of Address (NCOA).

c. FASTforward Mailing List Correction (MLC).

d. FASTforward MLOCR processes (letter-size and flat-size mail only) if used each time before mail entry. If a mailpiece that initially uses FASTforward MLOCR processing is rejected and then entered into a Direct View Encoding Desk (DVED) operation (or similar system), the piece does not meet the Move Update standard. The name and address information on the piece must then be processed through a FASTforward RVE system to meet the Move Update standard. FASTforward RVE processes also meet the Move Update standard if used each time before mail entry. As provided in C010.6.0, a letter-size envelope containing a window that intrudes into the barcode clear zone (see C840) is not eligible for MLOCR or RVE FASTforward processing.

e. Mailer Move Update Process Certification and USPS-approved alternative methods for mailers with legitimate restrictions on incorporating USPS-supplied change-of-address information into their mailing lists. The National Customer Support Center (see G043 for address) administers and approves both Mailer Move Update Process Certification and alternative methods.

* * * * *

3.0 CARRIER ROUTE ACCURACY

3.1 Basic Standards

The carrier route accuracy standard is a means of ensuring that the carrier route code correctly matches the delivery address information. For the purposes of this standard, address means a specific address associated with a specific carrier route code. Addresses used on pieces claiming certain rates that are subject to the carrier route accuracy standard under 3.2 must meet these requirements:

[Change "within 90 days" to "within 95 days" in 3.1a to read as follows:]

a. Each address and associated carrier route code used on the mailpieces in a mailing must be updated within 95 days before the mailing date with one of the USPS-approved methods in 3.4. For the First-Class Mail automation carrier route rate and the Enhanced Carrier Route Standard Mail automation rate, USPS City State Product information must also be updated within 95 days before the mailing date.

* * * * *

[Change "within 90 days" to "within 95 days" in 3.1c to read as follows:]

c. If the carrier route code (and accuracy) of an address used on a mailpiece in a carrier route mailing at one class of mail and rate is updated with an approved method, the same address may be used during the following 95 days to meet the carrier route accuracy standard required for mailing at any other class of mail and rate.

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A900 Customer Support

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A950 Coding Accuracy Support System (CASS)

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3.0 DATE OF ADDRESS MATCHING AND CODING

3.1 Update Standards

[Revise 3.1 to read as follows:]

Unless Z4CHANGE is used, all automation and carrier route mailings bearing addresses coded by any AIS product must be coded with current CASS-certified software and the current USPS database and meet these standards:

a. Coding must be done within 95 days before the mailing date for all carrier route mailings and all automation rate mailings.

b. All AIS products may be used immediately on release. New product releases must be installed in address matching systems no later than 45 days after the release date. The overlap in dates for product use allows mailers adequate time to install the new data files and test their systems. Mailers are expected to update their systems with the latest data files as soon as practicable and not wait until the "last permissible use" date. Exhibit 3.1 defines the "current USPS database" product cycle.

c. The mailer's signature on the postage statement certifies that this standard has been met for each address in the corresponding mailing presented to the USPS.

EXHIBIT 3.1.—USPS DATABASE PRODUCT CYCLE

File release	Required use	Last permissible use
Use of file released on:	Must begin no later than:	And must end no later than:
January 15	March 1	March 31
February 15	April 1	April 30
March 15	May 1	May 31
April 15	June 1	June 30
May 15	July 1	July 31
June 15	August 1	August 31
July 15	September 1	September 30
August 15	October 1	October 31
September 15	November 1	November 30
October 15	December 1	December 31
November 15	January 1	January 31
December 15	February 1	February 28/29

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E ELIGIBILITY

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E200 Periodicals

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E220 Presorted Rates

1.0 BASIC INFORMATION

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1.3 Address Quality

All pieces in a Periodicals Presorted rate mailing must bear a delivery address that includes the correct ZIP Code or ZIP+4 code and that meets these address quality standards:

[Add new 1.3a and redesignate current 1.3a and 1.3b as 1.3b and 1.3c, respectively, to read as follows:]

a. The Move Update standard in A030.1.0.

b. The ZIP Code accuracy standard in A030.2.0.

c. If an alternative addressing format is used, the standards in A020.

* * * * *

E230 Carrier Route Rates

1.0 BASIC INFORMATION

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1.3 Address Quality

All pieces in a Periodicals carrier route rate mailing must bear a delivery address that includes the correct ZIP Code or ZIP+4 code and that meets these address quality standards:

[Add new 1.3a and redesignate current 1.3a through 1.3c as 1.3b through 1.3d, respectively, to read as follows:]

a. The Move Update standard in A030.1.0.

b. If an alternative addressing format is used, the additional standards in A020.

c. If flat-size pieces are prepared with detached address labels, the additional standards in A060.

* * * * *

E240 Automation Rates

1.0 BASIC STANDARDS

1.1 All Pieces

All pieces in a Periodicals automation rate mailing must:

* * * * *

c. Bear a delivery address that includes the correct ZIP Code, ZIP+4

code, or numeric equivalent to the delivery point barcode (DPBC) and that meets these address quality standards:

[Add new 1.1c(1) and redesignate current 1.1c(1) and 1.1c(2) as 1.1c(2) and 1.1c(3), respectively, to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The address matching and coding standards in A800 and A950.

(3) If an alternative addressing format is used, the additional standards in A020.

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E600 Standard Mail

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E620 Presorted Rates

1.0 BASIC STANDARDS

1.1 All Pieces

All pieces in a Regular Standard Mail or Nonprofit Standard Mail Presorted rate mailing must:

* * * * *

c. Bear a delivery address that includes the correct ZIP Code or ZIP+4 code and that meets these address quality standards:

[Add new 1.1c(1) and redesignate current 1.1c(1) through 1.1c(3) as 1.1c(2) through 1.1c(4) to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The ZIP Code accuracy standard in A030.2.0.

(3) If an alternative addressing format is used, the additional standards in A020.

(4) If merchandise samples are prepared with detached address labels, the additional standards in A060.

* * * * *

E630 Enhanced Carrier Route Rates

1.0 BASIC STANDARDS

1.1 All Pieces

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route Standard Mail mailing must:

* * * * *

d. Bear a delivery address that includes the correct ZIP Code, ZIP+4 code, or numeric equivalent to the delivery point barcode (DPBC) and that meets these address quality standards:

[Add new 1.1d(1) and redesignate current 1.1d(1) through 1.1d(4) as 1.1d(2) through 1.1d(5), respectively, to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The carrier route accuracy standard in A030.3.0.

(3) If high density and saturation rate letter-size mail is prepared, the address matching and coding standards in A800 and A950.

(4) If an alternative addressing format is used, the additional standards in A020.

(5) If flat-size pieces are prepared with detached address labels, the additional standards in A060.

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E640 Automation Rates

1.0 REGULAR AND NONPROFIT RATES

1.1 All Pieces

All pieces in a Regular Standard Mail or Nonprofit Standard Mail automation rate mailing must:

* * * * *

d. Bear a delivery address that includes the correct ZIP Code, ZIP+4 code, or numeric equivalent to the delivery point barcode (DPBC) and that meets these address quality standards:

[Add new 1.1d(1) and redesignate current 1.1d(1) and 1.1d(2) as 1.1d(2) and 1.1d(3), respectively, to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The address matching and coding standards in A800 and A950.

(3) If an alternative addressing format is used, the additional standards in A020.

* * * * *

2.0 ENHANCED CARRIER ROUTE RATES

2.1 All Pieces

All pieces in an Enhanced Carrier Route or Nonprofit Enhanced Carrier Route Standard Mail automation rate mailing (available only for letter-size mail) must:

* * * * *

d. Bear a delivery address that includes the correct ZIP Code, ZIP+4 code, or numeric equivalent to the delivery point barcode (DPBC) and that meets these address quality standards:

[Add new 2.1d(1) and redesignate current 1.1d(1) through 1.1d(3) as 1.1d(2) through and 1.1d(4), respectively, to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The carrier route accuracy standard in A030.3.0.

(3) The address matching and coding standards in A800 and A950.

(4) If an alternative addressing format is used, the additional standards in A020.

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E700 Package Services

E710 Basic Standards

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E712 Bound Printed Matter

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3.0 ADDITIONAL STANDARDS

3.1 Presorted Rates

In addition to the basic standards in 1.0, all pieces in a Bound Printed Matter Presorted rate mailing must:

a. Bear a delivery address that includes the correct ZIP Code or ZIP+4 code and that meets these address quality standards:

[Add new 3.1a(1) and redesignate current 3.1a(1) through 3.1a(4) as 3.1a(2) through and 3.1a(5), respectively, to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The ZIP Code accuracy standard in A030.2.0.

(3) If the barcoded discount for flat-size pieces is claimed (see 2.0), the additional address matching and coding standards in A800 and A950.

(4) If an alternative addressing format is used, the additional standards in A020.

(5) If pieces are prepared with detached address labels, the additional standards in A060.

* * * * *

3.2 Carrier Route Rates

In addition to the basic standards in 1.0, all pieces in a Bound Printed Matter carrier route rate mailing must:

a. Bear a delivery address that includes the correct ZIP Code or ZIP+4 code and that meets these address quality standards:

[Add new 3.2a(1) and redesignate current 3.2a(1) through 3.2a(3) as 3.2a(2) through and 3.2a(4), respectively, to read as follows:]

(1) The Move Update standard in A030.1.0.

(2) The carrier route accuracy standard in A030.3.0.

(3) If an alternative addressing format is used, the additional standards in A020.

(4) If pieces are prepared with detached address labels, the additional standards in A060.

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F Forwarding and Related Services

F000 Basic Services

F010 Basic Information

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5.0 CLASS TREATMENT FOR ANCILLARY SERVICES

5.1 First-Class Mail and Priority Mail

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EXHIBIT 5.1.—TREATMENT OF UNDELIVERABLE FIRST-CLASS MAIL AND PRIORITY MAIL

[Revise Exhibit 5.1 to read as follows:]

Mailer endorsement	USPS treatment of UAA pieces
* * * * * * * * *	
"Return Service Requested" [1]	If used without ACS: Piece returned with new address or reason for nondelivery attached (in either case, no charge). If used with ACS: Piece returned (no charge); separate notice of new address provided or (only if ACS keyline option also used) separate reason for nondelivery provided (in either case, address correction fee charged).
* * * * * * * * *	

1. Valid for all pieces, including Address Change Service (ACS) participating pieces subject to F030.

5.3 Standard Mail

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EXHIBIT 5.3a.—TREATMENT OF UNDELIVERABLE STANDARD MAIL

[Revise Exhibit 5.3a to read as follows:]

Mailer endorsement	USPS treatment of UAA pieces
* * * * * * * * *	
"Return Service Requested" [1]	If used without ACS: Piece returned with new address or reason for nondelivery attached (in either case, only return postage charged at First-Class Mail single-piece rate or Priority Mail single-piece rate, as appropriate for weight of piece). If used with ACS: Piece returned (return postage charged at First-Class Mail single-piece rate or Priority Mail single-piece rate, as appropriate for weight of piece); separate notice of new address provided or (only if ACS keyline option also used) separate reason for nondelivery provided (address correction fee charged)
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1. Valid for all pieces; including Address Change Service (ACS) participating pieces.

* * * * *

5.4 Package Services

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EXHIBIT 5.4.—TREATMENT OF UNDELIVERABLE PACKAGE SERVICES MAIL

[Revise Exhibit 5.4 to read as follows:]

Mailer endorsement	USPS treatment of UAA pieces
* * * * * * * * *	
"Return Service Requested" [1]	If used without ACS: Piece returned with new address or reason for nondelivery attached (in either case, only return postage charged at appropriate Package Services single-piece rate). If used with ACS: Piece returned at appropriate Package Services single-piece rate; separate notice of new address provided or (only if ACS keyline option also used) separate reason for nondelivery provided (address correction fee charged).
* * * * * * * * *	

1. Valid for all pieces, including Address Change Service (ACS) participating pieces.

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An appropriate amendment to 39 CFR Part 111 will be published if the proposal is adopted.

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Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–22048 Filed 8–27–03; 8:45 am]

BILLING CODE 7710–12–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 021108270–3204–02; I.D. 102802C]

RIN 0648–AQ53

Endangered and Threatened Species; Finding for a Petition to Revise Critical Habitat for Northern Right Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Response to petition; final determination.

SUMMARY: On July 11, 2002, NMFS received a petition dated July 7, 2002, requesting that NMFS revise the present critical habitat designation for the western North Atlantic right whale, Eubalaena glacialis, (right whales) under the Endangered Species Act (ESA) by combining and expanding the current Cape Cod Bay and Great South Channel critical habitats in the Northeast and by expanding the current critical habitat in the Southeast. NMFS has determined that the requested revision, as specified by the petitioner, is not warranted at this time. However, NMFS will continue to analyze the physical and biological habitat features essential to the conservation of right whales.

ADDRESSES: Comments and requests for copies of this determination should be addressed to Assistant Regional Administrator for Protected Resources, Protected Resources Division, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Brian Hopper, Northeast Region, telephone (978) 281–9328 x6509, fax (978) 281–9394; Barb Zoodsma, Southeast Region, telephone 904–321–2806, fax (904) 321–1579; or Kristy Long, telephone (301) 713–1401, fax (301) 713–0376.

SUPPLEMENTARY INFORMATION:

Electronic Access

Several background documents on right whales and the critical habitat designation process can be downloaded from the NOAA Fisheries Web Site at *http://www.nmfs.noaa.gov/*.

Background

Right whales in the North Atlantic are one of three populations of endangered right whales worldwide. The other populations occur in the North Pacific and the Southern Hemisphere. The southern right whale is recognized as a separate species and, until recently, the North Atlantic and North Pacific stocks were defined as a single species. However, recent genetic studies provided evidence that supported separating species status for these two populations, one in the North Atlantic and another in the North Pacific. On April 10, 2003, NMFS published a final rule (68 FR 17560) concerning the nomenclature and taxonomy of right whales, which formally acknowledges these scientific findings by changing the species name of the northern right whale as follows: the North Atlantic right whale, *Eubalaena glacialis*, and the North Pacific right whale, *Eubalaena japonica*. These technical changes did not affect the listing status of these species under the ESA (all three remain "endangered").

Status of North Atlantic Right Whale

The North Atlantic right whale is one of the world's most critically endangered species of large whale (Clapham *et al.* 1999). Despite nearly three-quarters of a century of international legal protection, the right whale has not shown any recovery towards its pre-exploitation numbers. Recent studies on the current population trend in right whales suggest that, if the population decline is not reversed, the species is likely to become extinct in less than 200 years (Caswell et al. 1999). More than 800 years of uncontrolled and intense hunting is the primary reason that the right whale population has declined to such a precarious level. Today, ship strikes and entanglements in fishing gear are the primary, human-related causes of serious injury and mortality to right whales that impede the species' recovery.

Exploitation: North Atlantic right whales were the first target of commercial whaling and, consequently, the first large whale species to be hunted to near extinction by such efforts. Several characteristics specifically attributable to the right whale made it a highly desirable resource, such as its large yield of commercially valuable products (e.g., oil and baleen), its slow swimming speed, its distinction of floating when dead, and its generally coastal distribution. These factors also contributed to the whale's common name, which is said to have originated from the English whalers who designated this species of whale as the "right" (i.e., correct) whale to hunt.

The commercial harvest of right whales began with Basque whalers taking substantial numbers of them as early as the 1500s in the Strait of Belle Isle region (Aguilar, 1986). As the stocks in the eastern North Atlantic became depleted, hunting effort shifted to the western North Atlantic, off the Labrador and New England coasts. This intense period of early whaling may have resulted in a significant reduction in the stock of right whales by the time colonists in the Plymouth area began hunting for right whales in the 1600s (Reeves and Mitchell, 1987). A modest but persistent whaling effort along the coast of the eastern United States lasted three centuries, and the records include one report of 29 whales killed in Cape Cod Bay in a single day during January 1700. The right whales' vulnerability to over-exploitation was noticed as early as the 19th century. For example, in 1851, Herman Melville wrote that, although still numerous at that time, the right whale could vanish from the earth under the hunting pressure then being applied to the species. However, Melville's prophetic observation went largely ignored for over 80 years, and the traditional high-seas Yankee whale fishery made way for a modern, industrial, and efficient whaling fleet. Finally, in 1935, the species had declined to such low levels that the League of Nations was able to get most whaling nations to agree to stop hunting right whales.

Abundance and Trends: An estimate of the pre-exploitation population size of right whales is not available. However, based on historical catch levels, right whale abundance probably exceeded 10,000 animals. The historic range of North Atlantic right whales extended from as far south as Florida and northwestern Africa to as far north as Labrador, southern Greenland, Iceland, and Norway (Kenney, 2002). Commercial whaling severely depleted the population to the point where right whales are no longer abundant in portions of their historical range (e.g., the Strait of Belle Isle, Newfoundland, the coastal waters of Long Island, New York, and Delaware Bay). Therefore, the present range of North Atlantic right whales, from Florida to Nova Scotia, is

considerably reduced from its historic extent.

The best estimate of present abundance is about 300 animals. In 1998, the right whale population size was estimated to be 291 individuals (Kraus *et al.*, 2001) based on a census of individual whales identified using photo-identification techniques. It is assumed that the census of identified and presumed living whales represents a minimum population size estimate. However, the true population size in 1998 may have been higher if: (1) there were animals not photographed and identified; and/or (2) some animals presumed to be dead, actually, were not.

The population growth rate reported for the period 1986–1992 by Knowlton *et al.* (1994) was 2.5 percent (CV=0.12), which suggested that the species was showing signs of a slow recovery. However, more recent work by Caswell *et al.* (1999) has suggested that crude survival probability declined from about 0.99 in the early 1980s to about 0.94 in the late 1990s. The decline in survival probability is statistically significant. Additional work conducted in 1999 concluded that survival had indeed declined during the 1990s (Best et al., 2001). Although heterogeneity of capture could negatively bias survival estimates, subsequent review of this study concluded that this factor could not account for all of the observed decline, which appeared to be particularly marked in adult females.

Seasonal Movement and Habitat: Right whales migrate annually between high-latitude feeding grounds and low-latitude calving and breeding grounds. In general, most of the whales spend the spring and early summer off the coast of New England, then, in the latter part of the summer and fall, move to the waters off southern Canada. Some whales may remain in these northern waters throughout the winter, but the majority leave. Therefore, the exact location of a large segment of the population is unknown during the winter. A small fraction of the population, consisting almost entirely of pregnant females and juveniles, migrates south in the winter to the only known calving ground for the species - the coastal waters of Georgia and northeast Florida.

Breeding and Calving: The precise location of a breeding ground for right whales has not been identified. However, as North Atlantic right whales have been observed engaging in breeding-like behavior throughout much of their range, the concept of a specific breeding ground may not be relevant for this species.

The only known current calving ground in the western North Atlantic is in the coastal waters of the southeastern United States, especially the shallow waters from Savannah, Georgia, south to Cape Canaveral, Florida. It has been speculated that other coastal areas, such as Delaware Bay and Cape Cod Bay, may have been calving grounds before the population was decimated by whaling (Kenney, 2002).

Prey: Right whales feed exclusively on zooplankton, especially on large calanoid copepods (mostly of the genera *Calanus* and *Pseudocalanus*). At times, they also feed on juvenile euphausiids (also known as krill), smaller copepods, pteropods (tiny planktonic snails), or the planktonic larval stages of barnacles and other crustaceans (Kenney, 2002).

The waters along the New England coast are a primary feeding habitat for the right whale. Research suggests that right whales must locate and exploit extremely dense patches of zooplankton to feed efficiently (Mayo and Marx, 1990). These dense zooplankton patches are known to occur in the spring, summer, and fall right whale habitats from Cape Cod Bay to the Bay of Fundy.

Status of North Atlantic Right Whales Under the Endangered Species Act

The right whale was listed as endangered under the Endangered Species Conservation Act, the precursor to the ESA, on June 2, 1970 (35 FR 8495; codified at 50 CFR 17.11). The species was subsequently listed as endangered under the ESA in 1973, and as depleted under the Marine Mammal Protection Act in the same year. NMFS has the lead responsibility for developing, implementing, and monitoring a recovery program for this species.

NMFS published a Final Recovery Plan for the Northern Right Whale (Recovery Plan) in 1991, and a draft, revised Recovery Plan in 2001. Habitat related objectives were identified in the 1991 Recovery Plan, as well as in the 2001 draft revision. One of these objectives was to characterize known habitats of special importance to the species, identify other habitats essential to the conservation of the species, and protect these areas as necessary. Additional objectives of the Recovery Plan concerning habitat include the collection of new data and analysis of available data to assess the need for expanding or modifying the existing critical habitat boundaries.

NMFS was petitioned by the Right Whale Recovery Team to designate critical habitat for right whales on May 18, 1990. A notice was published in the **Federal Register** on July 12, 1990 (55 FR 28670), requesting information and comments on the petition. The proposed critical habitat designation was published on May 19, 1993 (58 FR 29186), and the final rule was published on June 3, 1994 (59 FR 28793; codified at 50 CFR 226.203). Areas included in the initial critical habitat designation were identified primarily on the basis of use by right whales. The designation recognized and discussed important characteristics of these habitats that relate to aspects of right whale biology, such as foraging, calving, and nursing. Specifically, this designation includes portions of Cape Cod Bay and Stellwagen Bank, the Great South Channel (each off the coast of Massachusetts), and waters adjacent to the coasts of Georgia and the east coast of Florida.

Petition To Revise Existing Right Whale Critical Habitat

On July 11, 2002, NMFS received a petition dated July 9, 2002, from The Ocean Conservancy requesting that NMFS revise the current critical habitat designation for North Atlantic right whales by expanding its boundaries in both the Northeast and Southeast U.S. The petitioner requests that NMFS expand the existing Southeast critical habitat designation to the following coordinates: 31° 30′ N to 29° 40′ N from the shoreline out to thirty nautical miles; 29° 40′ N to 28° 00′N from the shoreline out to ten nautical miles. The petitioned area would add approximately 2,700 nm2 (5,003.6 km2) to the current critical habitat coverage. The petitioner also requests that NMFS expand and combine both the existing Northeast critical habitat designations (Cape Cod Bay and Great South Channel) into one critical habitat area bounded by the following coordinates: 41° 41.2′N/69° 58.2′W; 41° 00.0′N/69° 05.0′W; 41° 00.0′N/68° 13.0′W; 42° 12.0′N/68° 13.0′W; 42° 12.0′N/70° 30.0′W; 41° 46.8′N/70° 30.0′W; and on the southwest corner by the shoreline of Cape Cod, MA.

The petitioner states that 10 years of new data regarding right whale distribution and causes of mortality along the east coast of the United States show that the current critical habitat designation is not sufficient to protect right whales from further anthropogenic mortality. According to the petitioner, the additional critical habitat contains several features essential to the conservation of the right whale in the western North Atlantic that may require specific protection or management considerations to ensure the survival and recovery of the species. The petitioner stated that the areas petitioned for expanded critical habitat experience high levels of human disturbance in the form of shipping

activities, fisheries, military activities, dredging operations, increased pollution, and general habitat disturbance. The essential features associated with the petitioned critical habitat according to the petitioner include the following: space for individual and population growth and for normal behavior; food, water, air, light, minerals or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of species.

The petitioner acknowledged that some areas in the northeastern U.S. have already received special management attention in the form of fishing regulations, but maintains that essential right whale habitat along the eastern seaboard lacks protection from ship strikes. In addition, the petitioner noted that when several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat.

The petitioner stated that the continued high mortality of North Atlantic right whales from ship strikes indicates the immediate need for management actions to reduce ship strikes, maintaining that accurately designated critical habitat boundaries will facilitate the management process. In addition, the petitioner stated that since the time critical habitat was originally designated in the southeastern U.S., extensive and expansive survey efforts have shown that right whales occur further offshore than originally known. The petitioner contended that the importance of this area as the only known calving ground for right whales warrants the revision of critical habitat to protect the animals within this region.

Section 4(b)(3)(D) of the ESA requires that NMFS, to the maximum extent practicable, within 90 days after receiving a petition to revise existing critical habitat, make a finding as to whether the petition presents substantial scientific information indicating that the petitioned action may be warranted and publish the finding in the **Federal Register**. If the finding is that substantial scientific information is presented, NMFS is required, within 12 months of the date the petition was received, to make a determination on how it intends to proceed with the requested revision and promptly publish notice of such intention in the **Federal Register**.

On November 19, 2002 (67 FR 69708), NMFS published a notice finding that the subject petition contained substantial scientific information indicating that the requested revision of right whale critical habitat may be warranted and inviting interested persons to submit comments and information concerning revision. NMFS' finding was based on the agency's concurrence with petitioner's statement that extensive and expanded survey efforts in the southeast indicate that right whales occur farther offshore than previously known, and that the draft final recovery plan suggested that data should be analyzed to assess expanding or modifying the critical habitat boundaries.

Response to the Comments Received on the Petition

NMFS received over 2,000 letters and postcards during the comment period. The comments are addressed in the following paragraphs.

Comments in Support of Revising Critical Habitat

Comment 1: Hundreds of people sent form letters and post cards expressing support for the proposed expansion of right whale critical habitat, based on the belief that it will more accurately reflect the distribution and range of the species and provide a mechanism to achieve greater protection. Another commenter suggested that NMFS designate the entire known range of North Atlantic right whales as critical habitat.

Response: Recent NMFS surveys have documented the consistent use of areas outside of the currently designated critical habitats by right whales (Zoodsma et al., 1999; Merrick et al., 2001). However, more analyses of the sightings data and their environmental correlates are necessary to define and designate these areas as critical habitat. Furthermore, the ESA requires that the process for designating critical habitat must focus on the identification of specific habitat features (i.e., primary constituent elements) essential to right whale conservation that may require special management considerations or protection, rather than only on known distribution. If the physical and biological features essential to the conservation of right whales are identified and determined to be distributed outside of current critical habitat boundaries, NMFS will evaluate the addition of areas containing these features to the designated critical habitat, in accordance with the requirements set forth in sections 3(5)(A) and 4(b)(2) of the ESA.

Comment 2: Two commenters recommended that NMFS review the available data and, based on that review, expand the current critical habitat as warranted. In addition, these commenters recommended that NMFS contract or prepare a report similar to the one prepared for the Marine Mammal Commission in 1991, which assesses right whale sighting data and human activities in and around the three existing right whale critical habitat areas. Such a report could be used to identify and evaluate the most appropriate critical habitat boundaries.

Response: NMFS agrees that the available data should be reviewed and, based on that review, NMFS could proceed to revise critical habitat. NMFS intends to proceed with the analyses necessary to evaluate the necessity of revising critical habitat based on the need to protect the habitat features essential to the conservation of right whales. Finally, NMFS will consider the recommendation to solicit a contractor to prepare a report that assesses right whale sighting data and human activities in and around the three existing right whale critical habitat areas.

Comment 3: In addition to supporting the proposed expansion of critical habitat, several commenters suggested that NMFS include other areas shown to be regularly frequented by right whales that are outside of the petitioned area. For example, these commenters specifically suggested including Jeffreys Ledge, Platts Bank, Fippennies Ledge, and Cashes Ledge because of their seasonal use as feeding habitat. Furthermore, these commenters suggested that the Seasonal Area Management (SAM) areas northeast of the Great South Channel should receive equal consideration as critical habitat.

Response: See response to Comment 1.

Comment 4: With respect to the petitioned revision in the Southeast, one commenter expressed support for the need to expand critical habitat beyond the current boundaries because recent surveys have shown regular and significant numbers of right whales in these waters.

Response: See response to Comment 1.

Comments Opposed To Revising Critical Habitat

Comment 5: Several commenters expressed support for federal efforts to protect and recover right whales, including the concept of expanding critical habitat based on the availability of new data, but did not support the petitioned revision because the

information provided by the petitioner is insufficient. Therefore, these commenters suggest that NMFS conduct further analysis and research on right whale distribution, including the identification of "high-risk" areas. Specifically, these commenters recommend an analysis of all right whale sightings since 1994 using a Sightings-Per-Unit-Effort analysis, which will provide scientists and managers with a more precise representation of spatial and temporal patterns of right whale habitat use.

Response: NMFS agrees that further analysis of the available data is warranted to better understand what areas are most frequented by right whales so that we may better manage the threat of takes. In addition, more analyses of the sightings data and their environmental correlates are necessary to define and designate additional areas as critical habitat. NMFS notes, however, that any revision of critical habitat will reflect habitat features essential to conserving the North Atlantic right whale population.

Comment 6: One commenter expressed concern that a revised and expanded critical habitat would unnecessarily restrict military training/operations in additional open ocean areas.

Response: As Federal agencies, under section 7 of the ESA, the branches of the U.S. military are required to consult with NMFS (or U.S. Fish and Wildlife Service) to ensure that their actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. NMFS does not agree that it is a forgone conclusion that the revision of critical habitat will restrict military operations along the East Coast. A designation or revision of critical habitat assists Federal agencies in planning future actions, since the designation or revision identifies, in advance, those habitat features that will be given special consideration through section 7 consultations. Therefore, potential conflicts between projects and endangered species can be identified early in the planning process.

Comment 7: One commenter expressed opposition to the petitioned revision to critical habitat because he/she believes it is unnecessary and would only lead to more petitions to designate critical habitat until the entire Atlantic Ocean is critical habitat.

Response: The public's right to petition NMFS to designate or revise critical habitat is expressly provided for in the ESA, and the agency can neither prohibit the exercise of this right nor ignore the petitions it receives with respect to such actions. In addition, the regulations at 50 CFR 424.12(g) provide NMFS with the authority to revise existing critical habitat when new data become available. As explained later on in this Notice, NMFS believes that the requested revision of critical habitat, as specified by the petitioner, is not warranted at this time. However, NMFS intends to proceed with the specified activities to determine whether a revision of critical habitat is warranted.

Comment 8: One commenter expressed the belief that a revised critical habitat designation would not be an effective mechanism for reducing the levels of right whale mortalities. In light of the commenter's belief that there is no link between the extent of critical habitat boundaries and levels of anthropogenic mortality, this commenter suggests that NMFS take immediate action to require universal gear modifications as the most effective means for enhancing the protection of right whales.

Response: The revision of critical habitat would likely not directly address the "take" issue to which this comment refers. The designation of critical habitat, in itself, does not necessarily lead to additional management measures. Under the ESA, the only direct impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, conducted), and, through the consultation process, requires modifications to those projects that would result in the destruction or adverse modification of the primary constituent elements in designated critical habitat areas. Accordingly, NMFS would address the need for management measures for commercial fishing in critical habitat through the ESAs section 7 consultations on the fisheries regulated by NMFS and the Atlantic Large Whale Take Reduction Plan (ALWTRP). Indirectly, critical habitat designations also help focus Federal, state, and private conservation and management efforts in those areas. Recovery efforts may address special considerations needed in critical habitat, including conservation regulations to restrict private as well as Federal activities. Finally, it is important to note that the recommendation for special gear modifications designed to reduce serious injury to or mortality of right whales is more appropriate within the context of NMFS' Atlantic Large Whale Take Reduction Team (ALWTRT) than in the context of a petition to revise critical habitat.

Comment 9: Three commenters expressed opposition to the proposed expansion of critical habitat because it would lead to further regulation of state fisheries while continuing to bypass the shipping industry. In addition, these commenters urged NMFS to implement rules that would specifically protect right whales from ship strikes.

Response: First, the designation or revision of critical habitat does not, in itself, restrict non-Federal activities within the area or mandate any specific management or recovery action; as discussed above, a designation of critical habitat triggers an inter-agency consultation requirement designed to ensure that Federal activities avoid destruction or adverse modification of critical habitat. In addition, a critical habitat designation or revision contributes to the conservation of a species by identifying the physical and biological features within those areas that are essential to conservation of the species, thereby alerting both public and private entities to the importance of the area to the species. Second, the regulations found at 50 CFR 224.103(c) are intended to protect right whales from ship strikes by prohibiting vessels from approaching within 500 yards (460 m) of a right whale. Finally, NMFS is currently working toward developing and implementing a ship strike reduction strategy.

Comment 10: One commenter expressed opposition to the petitioned expansion of critical habitat because he/she felt that the petitioners have not presented sufficient evidence that expanding critical habitat and implementing regulations to reduce vessel speeds within critical habitat will provide protection for right whales.

Response: See response to comment 9.

Comments on the Process for Revising Critical Habitat

Comment 11: One commenter suggested that NMFS advise the relevant regulated communities (i.e., commercial fisheries and shipping) on the possible effects that the petition and any subsequent critical habitat designation may have on future management measures.

Response: NMFS agrees that the relevant regulated communities should be informed about the petition to revise critical habitat, NMFS's responses to the petition, and how the agency intends to proceed with the requested revision. NMFS provided copies of the petition and 90–day notice and finding to team members and interested parties at the recent meeting of the ALWTRT. A presentation was also given at the meeting on critical habitat in general and made specific reference to the

petitioned revision. In addition, prior to the meeting, the ALWTRT was made aware of the petitioned action through an email distribution and by posting the relevant documents on the Web Site for the ALWTRP as well as on the NOAA Fisheries home page (*see* Electronic Access). NMFS provided similar notice to the shipping community through the Ship Strike Reduction e-mail distribution list and a presentation to the Southeast U.S. Right Whale Recovery Plan Implementation Team.

Comment 12: One commenter expressed concern that neither the petition nor the **Federal Register** notice provided a substantive discussion of economic impacts. Furthermore, this commenter suggested that NMFS carefully analyze the data relied upon to designate critical habitat and apply designation criteria uniformly to avoid undue economic costs or economic dislocation to the shipping industry as the agency proceeds with ship strike mitigation measures. Finally, this commenter suggested that NMFS articulate to the public that management measures may not have the same or coincident boundaries as those of a revised critical habitat.

Response: Both the ESA and the regulations for designating critical habitat found at 50 CFR 424.12 require NMFS to consider economic impacts, and any other relevant impact, of specifying any particular area as critical habitat. At this time, an analysis of economic impacts is not required, because NMFS has not yet proposed any areas for designation as part of an effort to revise right whale critical habitat. In other words, the agency has not defined the area in which an analysis of economic impacts may be applied. However, NMFS has determined that an economic analysis will be included among the steps the agency has identified for any future revision of critical habitat. NMFS agrees with the final point made by the commenter, and the public will be notified if the agency decides to implement management measures whether or not it revises critical habitat.

Determination on the Petition

Critical habitat is defined in section 3(5)(A) of the ESA as the specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection. In addition, under section 3(5)(A) of the ESA, critical habitat may include specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

NMFS has decided not to designate critical habitat in accordance with the petitioned revision because the information presented in the petition does not adequately support the petitioned new boundaries for critical habitat. The revisions proposed by the petitioner are largely based on where whales have been found and general information on what the whales may be doing in those areas rather than on the specific nature and location of the physical or biological features of the habitat that are essential to the conservation of the species.

For example, in discussing the value of "space" for individual and population growth and for normal behavior, the petitioner states that the requested revision will "cover areas that consistently maintain large numbers of western North Atlantic right whales and the conditions they require for individual and population growth as well as normal behavior" (Petition p. 21). However, the petitioner fails to identify or discuss with the necessary degree of detail what those conditions are that would be necessary for individual and population growth, and normal behavior, or how these features are essential to the conservation of right whales. Therefore, without establishing a nexus between the specific habitat feature and the requested revision, beyond the premise that the area is used by large numbers of right whales, the petition does not support the suggested changes to critical habitat boundaries.

With regard to its discussion of "food, water, air, light, minerals, or other nutritional or physiological requirements," the petition indicates that right whales require high densities of prey for effective feeding. However, the petition does not present information identifying what those densities are, what features of the habitat lead to the concentration of prey, or evidence that the expanded boundaries incorporate additional areas in which sufficiently high densities of prey are likely to exist.

With regard to its discussion of "cover or shelter," the petition indicates that the proposed additions to the northern and southern areas "exhibit temperature, salinity, and bathymetric requirements needed to provide shelter for western North Atlantic right whales." However, the petition does not indicate specifically what those temperature, salinity, and bathymetric features are or provide evidence that the expanded boundaries incorporate additional areas in which those features are likely to exist.

With regard to its discussion of "sites for breeding, reproduction, and rearing of offspring," the petition indicates that new information suggests that female right whales and calves utilize the waters farther offshore of the Southeastern U.S. than initially documented. While NMFS agrees that new information does indicate females and calves use waters farther offshore than initially believed, the existence of right whales farther offshore is not, in and of itself, a physical and biological feature essential to the conservation of the species. The petition does not indicate what the physical and biological features are of these waters that make them appeal to female right whales and their calves. As a result, the petition does not provide sufficient support for the proposed expansion of the critical habitat area in the southeast U.S.

With regard to its discussion of "habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of species," the petition indicates that the areas petitioned for inclusion as critical habitat "focus on the most vital portions of the historic range where current data indicate that large numbers of right whales aggregate for extended periods of time." However, the petition does not support the expanded boundaries by indicating what specific physical and biological features make those areas vital.

Accordingly, based on the language found in section 3(5)(A)(i)(I) of the ESA that defines critical habitat, in part, as specific areas "on which are found those physical or biological features essential to the conservation of the species," and for the reasons previously discussed, NMFS believes that the petition does not provide sufficient information to support the requested revision. However, a review of scientific information suggests that physical and biological features essential to the conservation of right whales may include, but are not necessarily limited to, the occurrence of copepods and the features that concentrate them in the water off of the Northeast U.S., as well as sea surface temperature and possibly bathymetry in the waters off of the Southeast U.S. Further investigation and analysis needs to be performed regarding the specific nature of those features and/or others, whether they are essential to the conservation of right whales, and, if so, where they are located and whether they may require

special management considerations or protection.

How Does NMFS Intend To Proceed?

Section 4(b)(3)(D)(ii) of the ESA requires that NMFS, within 12 months of the date a petition is received, make a determination on how it intends to proceed with the requested revision and promptly publish notification of such intention in the **Federal Register**. NMFS made its determination in the previous section of this notice that the requested revision, as specified by the petitioner, is not warranted at this time. However, NMFS intends to continue with planned research activities during 2003 and evaluate new information to determine whether physical and biological features essential to the conservation of the species exist that may warrant a revision of critical habitat. To further investigate those physical or biological features essential to the conservation of the North Atlantic right whale, and to propose any revisions to designated critical habitat that might be supported by new information and analysis, NMFS would have to complete at least the following steps:

(1) In the waters off of the Southeast U.S., continue analysis of right whale distribution data in relation to bathymetry and sea surface temperature derived from Advanced Very High Resolution Radiometer (AVHRR) imagery;

(2) In the waters off of the Northeast U.S., continue its own efforts, as well as collaborate with others working in the Gulf of Maine Ecosystem, to characterize the spatial and temporal distribution of zooplankton;

(3) Examine the available scientific information to assess whether other physical or biological features of the environment are essential to the conservation of the species;

(4) Identify those "specific areas within the geographical area occupied by the species, at the time it is listed..., on which are found" one or more of the physical or biological features determined to be essential for conservation;

(5) Evaluate the current or future special management considerations or protections relevant to the habitat features determined to be essential for conservation;

(6) Evaluate the economic and other relevant impacts of including any particular area in the designation of critical habitat, weigh these benefits and negative impacts, and determine whether exclusion of any area would lead to the extinction of the North Atlantic right whale; and

(7) Identify specific areas outside the geographical areas occupied by the North Atlantic right whale at the time it was listed, that are essential to the conservation of the species, and evaluate the impacts of designating any of these areas as critical habitat.

While NMFS intends to investigate further the nature and location of physical and biological features essential to the conservation of right whales and will evaluate new information to determine whether a proposed rule to revise critical habitat is appropriate, this notice should not be misinterpreted as a commitment to take any particular action because any such commitment would be premature at this time. If a revision of critical habitat is warranted in the future, NMFS will provide notice to the public as required by the ESA.

All references are available upon request (*see* **FOR FURTHER INFORMATION CONTACT**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: August 22, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–22039 Filed 8–27–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030820209–3209–01; I.D. 081203B]

RIN 0648–AR37

Fisheries off West Coast States and in the Western Pacific; Western Pacific Bottomfish Fisheries; Guam and Commonwealth of the Northern Mariana Islands; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS announces that persons who enter the bottomfish fisheries in waters of the U.S. exclusive economic zone (EEZ) around Guam and the Commonwealth of the Northern Mariana Islands (CNMI) after June 13, 2003, ("control date") are not guaranteed future participation in these fisheries. This action does not commit the Council or NMFS to limit entry, or prevent any other date from being selected for eligibility to participate in the bottomfish fishery off Guam and/or CNMI. The Council or NMFS may also use other criteria to limit fishing effort or participation in a limited entry program that is developed in the future. The purpose of this action is to notify persons interested in joining these fisheries after June 13, 2003, that they may be excluded if restrictions are adopted in the future.

DATES: Comments must be submitted in writing by September 29, 2003.

ADDRESSES: Submit written comments to Kitty M. Simonds, Council Executive Director, 1164 Bishop Street, Suite 1400, Honolulu, Hawaii, 96813; or faxed to (808) 522–8226. Comments will not be accepted if submitted via E-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds at 808–522–8220.

SUPPLEMENTARY INFORMATION: On June 13, 2003, at its 118th meeting, the Council adopted a "control date" of June 13, 2003, as a notice to persons contemplating entering the fisheries for bottomfish species in the EEZ around Guam and CNMI. This action would not impose any restrictions on the public, but is intended solely to notify persons who joined or may join these fisheries after June 13, 2003, that they might be excluded if restrictions are adopted in the future under the Magnuson-Stevens Fishery Conservation and Management Act.

This control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the bottomfish fisheries off Guam and/or CNMI. Fishermen are not guaranteed future participation in either or both fisheries, regardless of their level of participation before or after the control date. The Council may choose a different control date or it may choose a management regime that does not involve a limited access program. Documentation of fish landings and sales may be used to determine eligibility for participation in a limited access fishery. The Council also may choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–22040 Filed 8–27–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 167
Thursday, August 28, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Catron County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Catron County Resource Advisory Committee will meet in Reserve, New Mexico, on September 11, 2003, at 10 a.m. m.d.s.t. The purpose of the meeting is to discuss use of project proposal form, establish process for project submission, evaluate submitted projects and select projects for recommendation.

DATES: The meeting will be held September 11, 2003.

ADDRESSES: The meeting will be held at the Catron County Courtroom of the Catron County Court House, 101 Main Street, Reserve, New Mexico, 87830. Send written comments to Michael Gardner, Catron County Resource Advisory Committee, c/o Forest Service, USDA, 3005 E. Camino del Bosque, Silver City, New Mexico 88061–7863 or electronically to *mgardner01@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Michael Gardner, Rural Community Assistant Staff, Gila National Forest, (505) 388–8212.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members unless provided for on the agenda. However, persons who wish to bring Pub. L. 106–393 related matters to the attention of the Committee may file written statements with the Committee Staff before or after the meeting. Public input sessions will be provided and individuals may address the committee at times provided on the agenda in the morning and afternoon.

Dated: August 22, 2003.

Marcia R. Andre,

Forest Supervisor, Gila National Forest.

[FR Doc. 03–22004 Filed 8–27–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees

AGENCY: Bureau of the Census, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Title 5, United States Code, appendix 2, section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a joint meeting, followed by separate and concurrently held meetings of the Census Advisory Committees (CACs) on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations. The Committees will address issues related to the 2010 reengineered decennial census, including the American Community Survey and other related decennial programs. The five Census Advisory Committees on Race and Ethnicity will meet in plenary and concurrent sessions on October 1–3. Last minute changes to the schedule are possible, which could prevent us from giving advance notification.

DATES: October 1–3, 2003. On October 1, the meeting will begin at approximately 12:30 p.m. and end at approximately 5:30 p.m. On October 2, the meeting will begin at approximately 8:30 a.m. and end at approximately 5 p.m. On October 3, the meeting will begin at approximately 8:30 a.m. and end at approximately 12:15 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Hotel and Suites, 625 First Street, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone (301) 763–2070, TTY (301) 457–2540.

SUPPLEMENTARY INFORMATION: The CACs on the African American Population, the American Indian and Alaska Native Populations, the Asian Population, the Hispanic Population, and the Native Hawaiian and Other Pacific Islander Populations are comprised of nine members each. The Committees provide an organized and continuing channel of communication between the representative race and ethnic populations and the U.S. Census Bureau. The Committee provides an outside-user perspective about how research and design plans for the 2010 reengineered decennial census, the American Community Survey, and other related programs realize goals and satisfy needs associated with these communities. They also assist the Census Bureau on ways that census data can best be disseminated to diverse race and ethnic populations and other users.

All meetings are open to the public. A brief period will be set aside at the meeting for public comment. However, individuals with extensive questions or statements must submit them in writing to the Committee Liaison Officer, named above, at least three days before the meeting. Seating is available to the public on a first-come, first-served basis.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Committee Liaison Officer as soon as known and preferably two weeks prior to the meeting.

Dated: August 22, 2003.

Preston Jay Waite,

Acting Director, Bureau of the Census.

[FR Doc. 03–22027 Filed 8–27–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give all interested parties an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD JULY 22, 2003–AUGUST 19, 2003

Firm name	Address	Date petition accepted	Product
Aircraft Precision Products, Inc	185 Industrial Parkway, Ithaca, MI 48847	08/11/03	Machined parts for aircraft turbine engines.
American Machining Services of Virginia, Inc.	198 Dublin Park Road, Dublin, VA 24084	08/11/03	Machined parts for the coal mining industry.
Best Manufacturers, Inc.	P.O. Box 20091, Portland, OR 97294	08/07/03	Kitchen whips (whisks).
C. F. Roark Welding and Engineering Co., Inc.	136 N. Green Street, Brownsburg, IN 46112.	08/12/03	Machined parts for aircraft gas turbine engines.
Cozzoli Machine Company	50 Schoolhouse Road, Somerset, NJ 08873.	08/12/03	Packaging machinery and systems for cleaning, sterilizing, filling and closing applications.
David S. Harsila dba F/V Excel	20103 23rd Avenue NW, Seattle, WA 98160.	08/11/03	Salmon.
Die Cut Technologies, Inc	10943 Leroy Drive, Northglenn, CO 80233.	08/19/03	Gaskets.
LeBaron Foundry, Inc	14 East Union Street, Brockton, MA 02303.	08/04/03	Cast iron frames, covers, rings and grates.
Mack Engineering Corporation	3215 E. 26th Street, Minneapolis, MN 55406.	08/07/03	Machined metal components for hydraulic systems.
North American Rubber Thread Co., Inc	106 Ferry Street, Fall River, MA 02722	07/23/03	Extruded rubber monofilament thread.
Performance Products, Inc. dba ICO Corporation.	29370 Dinkins Drive, Lacombe, LA 70445	08/05/03	Electrical equipment for motorcycles, including odometers.
Rockford Products Corporation	707 Harrison Avenue, Rockford, IL 61104	08/12/03	Vehicle steering components.
Ski Country Imports, Inc. and Ouray Sportswear Wyoming, Inc. dba Ouray Sportswear.	3773 S. Jason Street, Englewood, CO 80110.	08/07/03	Men's T-shirts.
Western Pennsylvania Steel Fabricating, Inc.	RD#3 Wilmington Road, New Castle, PA 16105.	08/07/03	Steel storage containers.
Wrangell Seafoods, Inc	641 Shakes Street, Wrangell, AK 99929	08/07/03	Halibut.
XLI Corporation	950 Exchange Street, Rochester, NY 14608.	08/11/03	Cabinets, components and assemblies for processing data.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm. Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: August 21, 2003.

Brenda A. Johnson,

Technical Assistance Specialist, Trade Adjustment and Technical Assistance.

[FR Doc. 03–22006 Filed 8–27–03; 8:45 am]

BILLING CODE 3510–24–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–001]

Potassium Permanganate From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 18, 2003, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on potassium permanganate from the People's Republic of China (PRC). The review covers potassium permanganate (subject merchandise) exported to the United States by Groupstars Chemical Co., Ltd. (Groupstars Jinan) during the period from January 1, 2001 through December 31, 2001.

Based on our analysis of the comments and additional factual information received after publication of the preliminary results of review, we have made changes in the margin calculation. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled Final Results of Review.

EFFECTIVE DATE: August 28, 2003.

FOR FURTHER INFORMATION CONTACT: John Conniff, Drew Jackson or Howard Smith, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone (202) 482–1009, (202) 482–4406 or (202) 482–5193, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 18, 2003, the Department published the preliminary results of the administrative review of the antidumping duty order on potassium permanganate from the PRC. *See Potassium Permanganate from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review*, 68 FR 7768 (February 18, 2003) (*Preliminary Results*). We invited parties to comment on our preliminary results of review.

Since the publication of the preliminary results, the following events have occurred. On March 10, 2003, Groupstars submitted publicly available surrogate value information regarding manganese ore.[1] In March, April and May of 2003 Groupstars and Carus Chemical Company, the petitioner, submitted new factual information. The Department accepted this information. *See* memorandum from John Conniff, International Trade Compliance Analyst, to the File concerning Submission of technical information by Carus Chemical Company dated April 16, 2003 and memorandum from John Conniff, International Trade Compliance Analyst, to Thomas F. Futtner, Acting Office Director, concerning Submission of Untimely Filed Factual Information by the Petitioner and the Respondent, dated July 30, 2003. The petitioner and the respondent submitted case briefs on May 7, 2003 and rebuttal briefs on May 12, 2003. On July 24, 2003, the Department held a public hearing that had been requested by the petitioner.

On June 11, 2003, the Department extended the time limit for completion of the final results until no later than August 17, 2003. *See Potassium Permanganate from the People's Republic of China: Extension of Time Limit for the Final Results of Antidumping Duty Administrative Review*, 68 FR 34907 (June 11, 2003). The Department has conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

Imports covered by this review are shipments of potassium permanganate, an inorganic chemical produced in free-flowing, technical, and pharmaceutical grades. During the review period, potassium permanganate was classifiable under item 2841.61.0000 of the Harmonized Tariff Schedule of the United States (HTSUS).[2] Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive.

Period of Review

The POR is January 1, 2001 through December 31, 2001.

Analysis of Comments Received

All issues raised in the case briefs and the rebuttal briefs submitted by parties to this administrative review are contained in the *Issues and Decision Memorandum* from Holly A. Kuga, Acting Deputy Assistant Secretary, to Jeffrey May, Acting Assistant Secretary (*Issues and Decision Memorandum*). The *Issues and Decision Memorandum* is dated concurrently with this notice and hereby adopted by this notice. A list of the issues which the parties have raised is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this administrative review, and the corresponding recommendations, in the *Issues and Decision Memorandum* which is on file in the Central Records Unit, room B–099 of the main Department of Commerce building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Changes Since the Preliminary Results—Use of Total Adverse Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline for submission of the information, or in the form and manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides information that cannot be verified, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Because Groupstars was unable to support its response with accurate and reliable records, we have determined that Groupstars' response is not verifiable and the use of total facts available is appropriate. See section 776(a)(2)(D) of the Act. For a complete discussion of our analysis, see the accompanying *Issues and Decision Memorandum* at Comment 1. Moreover, because Groupstars has never established its entitlement to a separate rate in a prior segment of this proceeding, and the Department has determined that the record in the instant review is unreliable and thus not verifiable, we have not granted Groupstars a separate rate.

In selecting from among the facts otherwise available, section 776(b) of the Act provides that if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of the party. The Act provides that an adverse inference may include reliance on information derived from the petition, a final determination in an antidumping investigation or review, or any other information placed on the record. *See* section 776(b)(1)–(4) of the Act. The Department's examination of the instant record shows that Groupstars has repeatedly submitted inconsistent, inaccurate and incomplete information in this review and has withheld information from the Department. This demonstrates that the respondent has failed to cooperate to the best of its ability pursuant to section 776(b) of the Act. Therefore, the use of adverse facts available is appropriate.

Because it is appropriate to assign Groupstars a dumping margin based on adverse facts available and deny the company a separate rate, for these final results, we have assigned the PRC entity, including Groupstars, a dumping margin of 128.94 percent, which is the highest margin calculated for any party in this proceeding and the current PRC-wide rate. For a complete discussion of our analysis, see the accompanying *Issues and Decision Memorandum* at Comment 1.

Final Results of Review

Exporter/Manufacturer	Margin (percent)
PRC-Wide Rate	128.94

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of potassium permanganate from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) For

[1] Groupstars refers to Groupstars Holding Inc. and the entities that it directly or indirectly owns (including Groupstars Jinan).

[2] The scope reflects the HTSUS subheading currently in effect which differs from the HTSUS subheading used in the prior segment of this proceeding.

previously reviewed or investigated companies that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (2) the cash deposit rate for all other PRC exporters will be 128.94 percent; and (3) the cash deposit rate for non-PRC exporters will be the rate applicable to the PRC exporter that supplied that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Assessment

The Department will determine, and the U.S. Bureau of Customs and Border Protection (BCBP) will assess, antidumping duties on all entries of subject merchandise in accordance with these final results. The Department will issue the appropriate assessment instructions directly to the BCBP within 15 days of publication of these final results of review. The Department will direct the BCBP to assess the resulting assessment rate against the entered customs values of the subject merchandise on each of the entries during the review period.

Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Orders

This notice also serves as the only reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 771(I)(1) of the Act.

Dated: August 18, 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memorandum

Comment 1: Whether the Department Should Base Groupstars Jinan's Dumping Margin on Total Adverse Facts Available
Comment 2: Whether the Department Should "Collapse" Groupstars and JCC
Comment 3: Surrogate Value for Manganese Dioxide
Comment 4: Surrogate Value for Potassium Hydroxide
Comment 5: Surrogate Value for Slaked Lime/Lime/Limestone
Comment 6: Surrogate Value for Electricity and Water
Comment 7: Surrogate Value for Coal
Comment 8: Surrogate Value for Salt
Comment 9: Surrogate Value for Silicon Dioxide
Comment 10: Selection of Surrogate Financial Ratios
Comment 11: Allegations of Ministerial Errors Related to the Calculation of Packing Materials
Comment 12: Allegations of Ministerial Errors Related to the Calculation of Distance to the Port
Comment 13: Whether the Department Should Have Included in its Calculations Additional Indirect Selling and Movement Expenses

[FR Doc. 03–22049 Filed 8–27–03; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Solicitation of Applications for Allocation of Tariff Rate Quotas on the Import of Certain Worsted Wool Fabrics

August 22, 2003.

AGENCY: Department of Commerce, International Trade Administration.

ACTION: The Department of Commerce (Department) is soliciting applications for an allocation of the 2004 tariff rate quotas on certain worsted wool fabric.

SUMMARY: The Department hereby solicits applications from persons (including firms, corporations, or other legal entities) who cut and sew men's and boys' worsted wool suits and suit-like jackets and trousers for an allocation of the 2004 tariff rate quotas on certain worsted wool fabric. Interested persons must submit an application on the form provided to the address listed below by 5 p.m. on September 29, 2003.

The Department will cause to be published in the **Federal Register** its determination to allocate the 2004 tariff rate quotas and will notify applicants of their respective allocation as soon as possible after that date. Promptly thereafter, the Department will issue licenses to eligible applicants.

DATES: To be considered, applications must be received or postmarked by 5 p.m. on September 29, 2003.

ADDRESSES: Applications must be submitted to the Industry Assessment Division, Office of Textiles, Apparel and Consumer Goods Industries, Room 3001, United States Department of Commerce, Washington, D.C. 20230 (telephone: (202) 482–4058). Application forms may be obtained from that office (via facsimile or mail) or from the following Internet address: *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp*.

FOR FURTHER INFORMATION CONTACT: Sergio Botero, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4058.

SUPPLEMENTARY INFORMATION:

Background:

Title V of the Trade and Development Act of 2000 (the Act) created two tariff rate quotas (TRQs), providing for temporary reductions in the import duties on limited quantities of two categories of worsted wool fabrics suitable for use in making suits, suit-type jackets, or trousers: (1) for worsted wool fabric with average fiber diameters greater than 18.5 microns (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); and (2) for worsted wool fabric with average fiber diameters of 18.5 microns or less (HTS heading 9902.51.12).

On August 6, 2002, President Bush signed into law the Trade Act of 2002, which includes several amendments to Title V of the Act. These include the extension of the program through 2005; the reduction of the in-quota duty rate on HTS 9902.51.12 (average fiber diameter 18.5 microns or less) from 6 percent to zero, effective for goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2002; and an increase in the 2004 TRQ levels to 3,500,000 square meters for HTS 9902.51.12 and to 4,500,000 square meters for HTS 9902.51.11. These levels may be modified by the President. See 15 CFR 340.

The Act requires that the TRQs be allocated to persons who cut and sew men's and boys' worsted wool suits, suit-type jackets and trousers in the United States. On January 22, 2001 the Department published regulations establishing procedures for allocating the TRQs. 66 FR 6459, 15 CFR 335. In order to be eligible for an allocation, an

applicant must submit an application on the form provided at *http://web.ita.doc.gov/tacgi/wooltrq.nsf/TRQApp* to the address listed above by 5 p.m. on September 29, 2003, in compliance with the requirements of 15 CFR 335.

Any business confidential information that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law.

Dated: August 22, 2003.

James C. Leonard III,

Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods Industries, Department of Commerce.

[FR Doc.03–22028 Filed 8–27–03; 8:45 am]

BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for the Coldwater River Basin Below Arkabutla Lake, MS, Project

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The study area is located in the Coldwater River Watershed in northwest Mississippi, approximately 10 miles southwest of Memphis, TN. The northwest part of this watershed below Arkabutla Lake is the object of the Environmental Impact Statement (EIS) and lies primarily in Tunica County and includes portions of De Soto, Coahoma, Quitman, and Tate Counties. Primary streams represented in the study area include Coldwater River, McKinney Bayou, Lake Cormorant Bayou, White Oak Bayou, Muddy Bayou, Phillips Bayou, and David Bayou. The primary focus of the EIS is to evaluate features designed to alleviate water resource problems in the study area. The local cost-sharing project sponsors are the Tunica County Soil and Water Conservation District and the Yazoo-Mississippi Delta Joint Water Management District.

DATES: A public scoping meeting will be held on September 23, 2003, at 7 p.m. in the Economic Development Building, 3092 U.S. Highway 61 South, Tunica, MS.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS should be directed to Ms. Karen Dove-Jackson (telephone (601) 631–7136), U.S. Army Corps of Engineers, Vicksburg District, ATTN: CEMVK–PP–PQ, 4155 Clay Street, Vicksburg, MS 39180–3435.

SUPPLEMENTARY INFORMATION: This project is authorized by Senate Resolution adopted June 29, 1973, by the Committee on Public Works of the U.S. Senate. The resolution reads as follows:

"Resolved by the Committee on Public Works of the United States Senate, That the Chief of Engineers, U.S. Army, is hereby requested to review the report on the Mississippi River and Tributaries Project contained in House Document No. 308, 88th Congress, 2d Session, and other reports with a view to determining whether any modifications of the recommendations contained therein are advisable at the present time with reference to providing a plan for the development, utilization and conservation of water related land resources of the Yazoo Basin, including the backwater areas of the Mississippi and Yazoo Rivers. Such study should include appropriate considerations of the needs for flood protection, wise use of flood plain lands, bank stabilization, navigation facilities, regional water supply and waste water management facilities systems, general recreation facilities, enhancement and control of water quality, enhancement and conservation of fish and wildlife and other measures for the protection and enhancement of the environment."

1. A Section 905(b) reconnaissance analysis was conducted for the Coldwater River Basin Below Arkabutla Lake, Mississippi, project, and it was determined that the planning process should proceed into the more detailed feasibility phase based on a preliminary appraisal of Federal interest, estimated costs, potential benefits, and possible environmental impacts of various alternatives. The Feasibility Cost-Sharing Agreement was signed by the Vicksburg District and project sponsors on June 18, 2003. The District Engineer has decided to prepare a Draft EIS to fully address/evaluate problems and potential solutions and/or opportunities within the Coldwater River Basin Below Arkabutla Lake, Mississippi, project area.

2. The proposed action involves the development of an integrated and comprehensive plan for addressing multiple project objectives, including water quality, local drainage, low stream base flows, and flood damage reduction from expected increases in development in the study area.

3. A public scoping meeting will be held in Tunica, Mississippi, in the Economic Development Building, on September 23, 2003 (See DATES). Significant issues identified during this scoping process will be analyzed in depth in the Draft EIS. The U.S. Coast Guard; Natural Resources Conservation Service; U.S. Forest Service; Environmental Protection Agency; U.S. Fish and Wildlife Service; Mississippi Department of Environmental Quality; and Mississippi Department of Wildlife, Fisheries and Parks will be invited to become cooperating agencies. Federally recognized Indian tribes will also be invited to become cooperators. These agencies and tribes will be asked to participate in the review of data and the feasibility report and appendixes.

4. Upon completion, the Draft EIS will be distributed for agency and public review and comment. Additionally, a public meeting will be held to present results of the Draft EIS evaluations and the recommended plan.

5. The Draft EIS is estimated to be completed in May 2007.

Dated: August 15, 2003.

Frederick L. Clapp, Jr.,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 03–22023 Filed 8–27–03; 8:45 am]

BILLING CODE 3710–PU–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Coastal Engineering Research Board; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committees: Coastal Engineering Research Board (CERB).

Date: September 10, 2003.

Place: U.S. Army Engineer Division, North Atlantic, Brooklyn, NY.

Time: 10 a.m. to 2:30 p.m.

Proposed Agenda: The Board will meet in Executive Session to discuss updates of ongoing Board activities, such as Region sediment Management (RSM), the National Shoreline Management Study, Section 227, the status of the Louisiana Coastal Area Project, the Gulf of Mexico RSM, and the IOOS Coordination Activities.

FOR FURTHER INFORMATION CONTACT: Inquires and notice of intent to attend the meeting may be addressed to Thomas W. Richardson, Acting Executive Secretary, Coastal and hydraulics Laboratory, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

SUPPLEMENTARY INFORMATION: This meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements for those wishing to attend.

Lutz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–22022 Filed 8–27–03; 8:45 am]

BILLING CODE 3710–61–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Surface Optics Corporation

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy. The Department of the Navy hereby gives notice of its intent to grant to Surface Optics Corporation a revocable, nonassignable, exclusive license to practice in the United States, the Government-Owned invention described below:

Patent application 10/601,893 (Navy Case 84,509): filed June 26, 2003, entitled "TWO BAND IMAGING SYSTEM".

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Naval Surface Warfare Center, Crane Div., Code OCF, Bldg 64, 300 Highway 361, Crane, IN 47522–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Darrell Boggess, Naval Surface Warfare Center, Crane Div., Code OCF, Bldg 64, 300 Highway 361, Crane, IN 47522–5001, telephone (812) 854–1130.

(Authority; 35 U.S.C. 207, 37 CFR part 404)

Dated: August 15, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–22034 Filed 8–27–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; Unique Technologies, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy gives notice of its intent to grant Unique Technologies, Inc., a revocable, nonassignable, partially exclusive license, with exclusive fields of use in commercial and residential bactericide and fungicide, commercial and residential decontamination, fuel additive, post harvest preservation, pre-emergent, and frost mediation, in the United States to practice the Government-owned inventions, U.S. Patent Application Serial Number 10/283,352 entitled "Nitrate-Hydrogen Peroxide Chemical Adducts and Use Thereof," and U.S. Patent Number 6,165,295 entitled "Gas-Generating Liquid Compositions (PERSOL 1)."

DATES: Anyone wishing to object to the grant of this license has fifteen (15) days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with Indian Head Division, Naval Surface Warfare Center, Code OC4, 101 Strauss Avenue, Indian Head, MD 20640–5035.

FOR FURTHER INFORMATION CONTACT: Dr. J. Scott Deiter, Head, Technology Transfer Office, Naval Surface Warfare Center Indian Head Division, Code 05T, 101 Strauss Avenue, Indian Head, MD 20640–5035, telephone (301) 744–6111.

Dated: August 15, 2003.

E.F. McDonnell,

Major, U.S. Marine Corps, Federal Register Liaison Officer.

[FR Doc. 03–22033 Filed 8–27–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC03–714–001, FERC Form 714]

Commission Information Collection Activities, Proposed Collection; Comment Request; Submitted for OMB review

August 21, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission) has submitted the information collection described below to the Office of Management and Budget (OMB) for reinstatement, review and a new expiration date. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission received no comments in response to an earlier **Federal Register** notice of March 31, 2003 (68 FR 15441) and has made this notation in its submission to OMB.

DATES: Comments on the collection of information are due by September 26, 2003.

ADDRESSES: Address comments on the collection of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. The Desk Officer may be reached by fax at 202–395–7285 or by e-mail at *pamelabeverly.oira submission@omb.eop.gov*. A copy of the comments should also be sent to the Federal Energy Regulatory Commission, Office of the Executive Director, ED–30, Attention: Michael Miller, 888 First Street NE., Washington, DC 20426. Comments may be filed either in paper format or electronically. Those persons filing electronically do not need to make a paper filing. For paper filings, such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 and should refer to Docket No. IC03–714–001.

Documents filed electronically via the Internet must be prepared in WordPerfect, MS Word, Portable Document Format, or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's E-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to the e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the FERRIS link. For assistance, please

contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, for TTY (202)502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873, and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Description

The information collection submitted for OMB review contains the following:

1. *Collection of Information:* FERC Form 714 Annual Electric Control and Planning Area Report@.

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0140.

The Commission is now requesting that OMB reinstate and approve this information collection for a period of three years with no changes to the existing collection. The information filed with the Commission is mandatory.

4. *Necessity of the Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing the statutory provisions of Sections 202, 207, 210, 211–213, 304, 309 and 311 of the Federal Power Act (FPA), as amended (49 Stat. 838; 16 U.S.C. 791a-825r) and Section 3(4) of the Public Utility Regulatory Policies Act of 1978 (26 U.S.C. 2602). The Commission implements Form No. 714 filing requirements in the Code of Federal Regulations (CFR) under 18 CFR part 141.51. FERC Form No. 714 gathers basic utility operating and planning information, primarily on a control area basis, for the purpose of evaluating utility operations related to proposed mergers, interconnections, wholesale rate investigations, and wholesale market changes and trends under emerging competitive forces. Such evaluations are made to assess reliability, costs and other operating attributes.

5. *Respondent Description:* The respondent universe currently comprises approximately 238 public utilities.

6. *Estimated Burden:* 17,850 total hours, 238 respondents (average), 75 hours per respondent (average), one response per year.

7. *Estimated Burden:* Estimated Cost Burden to respondents: 17,850 hours × 2080 hours per years × $117,041 per year = $1,004,414. The cost per respondent is equal to $4,220.

Statutory Authority: Sections 202, 207, 210, 211–213, 304, 309, and 311 of the Federal Power Act (FPA), as amended (49 Stat. 838; 16 U.S.C. 791a–825r) and Section 3(4) of the Public Utility Regulatory Policies Act, 26 U.S.C. 2602.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21997 Filed 8–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–572–000]

Northern Natural Gas Company; Notice of Tariff Filing

August 21, 2003.

Take notice that on August 15, 2003, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, Seventh Revised Sheet No. 263H, and Sixth Revised Sheet No. 263H.1, to be effective November 1, 2003.

Northern states that Seventh Revised Sheet No. 263H and Sixth Revised Sheet No. 263H.1 reflect any reallocation of the Carlton Sourcers' annual flow obligations as a result of the Appendix B customers' election to source their flow obligation at Carlton or to buyout their flow obligation. Northern further explains that this filing is made pursuant to Section 29(C)(2) of Northern's tariff.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with ¶ 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 27, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21999 Filed 8–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–221–000]

Borough of Zelienople, PA, Complainant v. American Transmission Systems, Inc., Respondent; Notice of Complaint

August 21, 2003.

Take notice that on August 19, 2003, the Borough of Zelienople, Pennsylvania, (Zelienople) filed with the Federal Energy Regulatory Commission (Commission) a Complaint under Section 206 of the Federal Power Act against American Transmission Systems, Inc. (ATSI). Zelienople complains that ATSI has demanded, charged, and sought to collect from Zelienople a charge for interconnecting its 138 kV transmission line to connect to the Borough's new 138 kV substation that is unjust, unreasonable, unduly discriminatory, preferential, and otherwise unlawful as to Zelienople. Zelienople states that a copy of this complaint was served on ATSI.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary

(FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 10, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21996 Filed 8–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER03–762–001, et al.]

Alliant Energy Corporate Services, Inc., et al.; Electric Rate and Corporate Filings

August 20, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Alliant Energy Corporate Services, Inc.

[Docket No. ER03–762–001]

Alliant Energy Corporate Services, Inc.

[Docket No. ER99–230–004]

Take notice that on August 15, 2003, Alliant Energy Corporate Services, Inc., on behalf of the Alliant Energy Operating Companies, submitted a response to the deficiency letter issued by the Staff of the Federal Energy Regulatory Commission requesting additional analyses and information in support of Alliant Energy's filings.

Comment Date: September 5, 2003.

2. Entergy Services, Inc.

[Docket No. ER03–851–001]

Take notice that on August 14, 2003, Entergy Services, Inc., on behalf of Entergy Gulf States, Inc., tendered for filing with the Federal Energy Regulatory Commission a compliance interconnection and operating agreement with ExxonMobil Oil Corporation in response to the Commission's July 15, 2003, Order in Entergy Services, Inc., 104 FERC ¶ 61,084.

Comment Date: September 4, 2003.

3. PG&E Dispersed Generating Company, LLC

[Docket No. ER03–1026–001]

Take notice that on August 14, 2003, PG&E Dispersed Generating Company, LLC (Dispersed Generating), tendered for filing pursuant to 18 CFR 35.9 and 35.10 a Notice of Termination seeking to terminate the tolling agreement between Dispersed Generating and PG&E Energy Trading—Power, L.P., that was originally filed in Docket No. ER02–449–000.

Comment Date: September 4, 2003.

4. Covanta Union, Inc.

[Docket No. ER03–1085–001]

Take notice that on August 15, 2003, Covanta Union, Inc., (Covanta Union) tendered for filing an amendment to a July 16, 2003, Notice of Succession filed by Covanta Union in Docket No. ER03–1085–000. The amendment consists of tariff sheets for Rate Schedule FERC No. 1 and FERC Electric Tariff, Original Volume No. 1 in compliance with Order No. 614.

Comment Date: September 5, 2003.

5. PacifiCorp

[Docket No. ER03–1210–000]

Take notice that on August 14, 2003, PacifiCorp, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the Control Area Services Agreement between PacifiCorp and Deseret Generation & Transmission Cooperative (Deseret), dated August 13, 2003 (PacifiCorp's Rate Schedule No. 590) and the Second Amended and Restated Transmission Service and Operating Agreement between PacifiCorp and Deseret Dated August 13, 2003 (PacifiCorp's Second Revised Rate Schedule No. 280).

PacifiCorp has requested a waiver of the Commission's notice requirements and an effective date for each of the agreements of August 13, 2003. PacificCorp states that copies of this filing were supplied to the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon, and the Public Service Commission of Utah.

Comment Date: September 4, 2003.

6. American Transmission Company LLC

[Docket No. ER03–1211–000]

Take notice that on August 14, 2003, American Transmission Company LLC (ATCLLC) tendered for filing a revised Generation-Transmission Interconnection Agreement between ATCLLC and Fox Energy Company LLC (Second Revised Service Agreement No. 233) consisting of amendments to Exhibit 11 and otherwise remaining as originally filed and accepted by the Commission by Letter Order dated March 20, 2002, subject to a previous amendment accepted by the Commission on May 29, 2003. ATCLLC requests retention of the original effective date of January 15, 2002.

Comment Date: September 4, 2003.

7. St. Paul Cogeneration, LLC

[Docket No. ER03–1212–000]

Take notice that on August 14, 2003, St. Paul Cogeneration, LLC filed with the Federal Energy Regulatory Commission an application pursuant to section 205 of the Federal Power Act for authorization to sell energy and capacity at market-based rates.

Comment Date: September 4, 2003.

8. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1213–000]

Take notice that on August 14, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, 18 CFR 35.12, submitted for filing an Interconnection and Operating Agreement among Traer Municipal Utilities and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy.

Midwest ISO states that a copy of this filing was served on Traer Municipal Utilities and Interstate Power and Light Company.

Comment Date: September 4, 2003.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1214–000]

Take notice that on August 15, 2003, Midwest Independent Transmission System Operator, Inc., (Midwest ISO), pursuant to Section 205 of the Federal Power Act and Section 35.12 of the Commission's regulations, submitted for filing an Interconnection and Operating Agreement among Maquoketa Municipal Electric Utility and Interstate Power and Light Company, a wholly-owned subsidiary of Alliant Energy.

Midwest ISO states that a copy of this filing was served on Moquoketa Municipal Electric Utility and Interstate Power and Light Company.

Comment Date: September 5, 2003.

10. Southern Company Services, Inc.

[Docket No.ER03–1215–000]

Take notice that on August 14, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed a Notice of Cancellation of Service Schedule A of the Restated Interchange Contract dated December 22, 1988 between Florida Power Corporation and Southern Companies (First Revised Rate Schedule FERC No. 70). This cancellation was made pursuant to a bilateral amendment to the Interchange Contract.

Comment Date: September 4, 2003.

11. Southern Company Services, Inc.

[Docket No.ER03–1216–000]

Take notice that on August 15, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed a Notice of Cancellation of Service Schedule A and Service Schedule EP to the Interchange Contract dated October 18, 1979 between Florida Power & Light Company and Southern Companies (First Revised Rate Schedule FERC No. 47). These cancellations were made pursuant to a bilateral amendment to the Interchange Contract.

Comment Date: September 5, 2003.

12. California Independent System Operator Corporation

[Docket No. ER03–1217–000]

Take notice that on August 15, 2003, the California Independent System Operator Corporation (ISO), tendered for filing revisions to the Transmission Control Agreement for acceptance by the Commission. The ISO states that the purpose of the revisions is to identify the transmission interests that Trans-Elect NTD Path 15, LLC (Trans-Elect) will be turning over to the ISO's Operational Control, by including those interests in a new Appendix A to the TCA, and to identify the persons to contact at Trans-Elect for notice purposes by expanding Appendix F of the TCA.

The ISO states that this filing has been served on the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, the Participating TOs, Trans-Elect, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff.

The ISO is requesting waiver of the 120-day advance filing limit to allow the revisions to be made effective upon notice after January 1, 2004, as described in the transmittal letter.

Comment Date: September 5, 2003.

13. Nevada Power Company

[Docket No. ER03–1218–000]

Take notice that on August 15, 2003, Nevada Power Company (Nevada Power) tendered for filing an executed Letter of Understanding (LOU) between Nevada Power and five generators: Duke Energy Moapa, LLC; GenWest, LLC; Las Vegas Cogeneration II, LLC; Mirant Las Vegas, LLC; and Reliant Energy Bighorn, LLC. The LOU is submitted as Service Agreement No. 03–00980 under Nevada Power's Open Access Transmission Tariff. Nevada Power requests that the LOU be made effective as of August 2, 2003.

Comment Date: September 5, 2003.

14. Power Receivable Finance, L.L.C.

[Docket No. ES03–51–000]

Take notice that on August 15, 2003, Power Receivable Finance, L.L.C (PRF) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue up to $800 million in aggregate debt securities.

PRF also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: September 5, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–21998 Filed 8–27–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000 et al.]

Notice of Technical Conference

August 19, 2003.

In the matter of: RM01–12–000, RT01–2–000, RT01–98–000, ER03–404–000, ER03–405–000, ER03–406–000, EL03–116–000, PA03–12–000, EC98–40–000, ER98–2770–000 and ER98–2876–000, ER03–262–000, ER03–263–000, EL02–65–000, RT01–88–000, ER99–3144–000 and EC99–80–000, ER01–2992–000, RT01–84–000, ER01–123–000, ER01–2999–000, RT01–26–005, ER01–2993–000, RT01–37–000 and ER01–2997–000, ER01–2995–000, EL02–111–000, OA97–261–000 and ER97–1082–000, ER97–3189–000, EC97–38–000, ER97–3273–000, EL97–44–000, OA97–678–000, ER96–2516–000, EC96–28–000, and EL96–69–000, ER96–2668–000 and EC96–29–000; Remedying Undue Discrimination through Open Access Transmission Service and Standard Electricity Market Design; PJM Interconnection, LLC; PJM Interconnection, LLC; PJM Interconnection, LLC; PJM Interconnection, LLC; PJM Interconnection, LLC; Reliant Energy Mid-Atlantic Power Holdings, LLC v. PJM Interconnection, LLC; Transmission Congestion on the Delmarva Peninsula; American Electric Power Company, Inc. and South West Corporation; American Electric Power Service Corporation, Commonwealth Edison Company, Dayton Power and Light Company and Virginia Electric and Power Company (New PJM Companies) and PJM Interconnection, LLC; Commonwealth Edison Company; Alliance Companies, *et al.*; Alliance Companies, *et al.*; Alliance Companies, *et al.*; Exelon Corporation *et al.*; Illinois Power

Company; Northern Indiana Public Service Company; Virginia Electric and Power Company; Dayton Power and Light Company; American Electric Power Service Corporation; Midwest Independent System Operator *et al.*; Pennsylvania-New Jersey-Maryland Interconnection; Atlantic City Electric Company, *et al.*; Pennsylvania Electric Company, *et al.*; Pennsylvania Electric Company, *et al.*; Pennsylvania-New Jersey-Maryland Interconnection Restructuring; PJM Interconnection, L.L.C.; Atlantic City Electric Company, *et al.*; PECO Energy Company.

As announced in the Notice of Technical Conference issued on August 7, 2003, a technical conference will be held on August 28, 2003, to discuss with states and market participants in the PJM region the timetables for addressing wholesale power market design issues and to explore ways to provide flexibility the region may need to meet the requirements of the final rule in this proceeding. Members of the Commission will attend and participate in the discussion.

The conference will focus on the issues identified in the agenda, which is appended to this notice as Attachment A. However, participants/stakeholders may present their views on other important issues that relate to the development of the Wholesale Power Market Platform.

The conference will begin at 1 p.m. Eastern Time and will adjourn at about 5 p.m. Eastern Time at the Wyndham Hotel, 700 King Street, Wilmington, Delaware. The conference is open for the public to attend, and registration is not required; however, in-person attendees are asked to register for the conference on-line at *http://www.ferc.gov /whats-new/registration/smd_0828-form.asp.*

This technical conference will immediately follow a meeting of the PJM Members Committee, which will be held that morning at the same location. PJM offers a web broadcast of its meeting through the PJM Web site and will also broadcast the FERC technical conference. To access the web broadcast, go to *http://www.pjm.com/committees/members/members.html.* To access the broadcast window directly, go to *http://events01.activate.net/pmtv/pjm/10064/.*

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary (FERRIS) seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity to remotely listen to the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on "FERC." If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100).

For more information about the conference, please contact Sarah McKinley at (202) 502–8004 or *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

Appendix A

Agenda

1–1:20 p.m. Opening Remarks.
- Pat Wood, III, Chairman, Federal Energy Regulatory Commission
- Gail C. McDonald, Commissioner, Maryland Public Service Commission
- David W. Hadley, Commissioner, Indiana Utility Regulatory

Commission 1:20–1:45 p.m.—PJM's Compliance with the White Paper Phil Harris, CEO, PJM Interconnection

1:45–2:30 p.m.—State Commission Input
- Glen R. Thomas, Commissioner, Pennsylvania Public Utility Commission
- Frederick F. Butler, Commissioner, New Jersey Board of Public Utilities
- Arnetta McRae, Chair, Delaware Public Service Commission
- Kevin K. Wright, Chairman, Illinois Commerce Commission

2:30–3:15 p.m.—Stakeholder Presentations
- Generator Sector
- Bruce Bleiweis, Director, Asset Commercialization, Reliant Energy Services, Inc.
- Transmission Sector
- Ralph Bourquin, Executive Director, Transmission, Baltimore Gas & Electric Company
- Other Supplier Sector (split time)
- Ronald Matlock, Manager of Regulatory Affairs Duke Energy Trading & Marketing, L.L.C.
- To be named
- Electric Distributor Sector
- Patrick McCullar, President & CEO Delaware Municipal Electric Cooperative
- End Use Sector
- David Kleppinger, Counsel, McNees Wallace & Nurick, L.L.C.

3:15–3:30 p.m.—Break

3:30–5 p.m.—State Commissioner/FERC/Industry Dialogue and Summary of Next Steps
- (All attending State Commissioners, stakeholder representatives, FERC Commissioners)

[FR Doc. 03–22009 Filed 8–27–03; 8:45 am,

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2003–0020, FRL–7550–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Land Disposal Restrictions—Base ICR, EPA ICR Number 1442.18, OMB Control Number 2050–0085

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request to renew an existing approved collection. This ICR is scheduled to expire on February 29, 2004. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 27, 2003.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2003–0020, to EPA online using EDOCKET (our preferred method), by email to *rcra-docket@epamail.epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket Information Center, 5303T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Office of Solid Waste, 5302W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–5477, fax number: (703) 308–8433, email address: *vyas.peggy@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has established a public docket for this ICR under Docket ID number RCRA–2003–0020, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use

EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA within 60 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov./edocket.*

Affected entities: Entities potentially affected by this action are business and government.

Title: Land Disposal Restrictions—Base ICR.

Abstract: Section 3004 of the Resource Conservation and Recovery Act (RCRA), as amended, requires that EPA develop standards for hazardous waste treatment, storage, and disposal as may be necessary to protect human health and the environment. Subsections 3004(d), (e), and (g) require EPA to promulgate regulations that prohibit the land disposal of hazardous waste unless it meets specified treatment standards described in subsection 3004(m).

The regulations implementing these requirements are codified in the *Code of Federal Regulations* (CFR) Title 40, part 268. EPA requires that facilities maintain the data outlined in this ICR so that the Agency can ensure that land disposed waste meets the treatment standards. EPA strongly believes that the recordkeeping requirements are necessary for the agency to fulfill its congressional mandate to protect human health and the environment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement:

- *Average Annual Reporting Burden:* 1,182,708 hours.
- *Estimated Average Burden Hours Per Response:* 4.28 hours.
- *Proposed Frequency of Response:* on occasion.
- *Estimated Number of Likely Respondents:* 167,353.
- *Capital and Start-up Cost:* $1,627,000.
- *Operation and Maintenance:* $71,224,000.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 18, 2003.

Robert Springer,

Director, Office of Solid Waste.

[FR Doc. 03–22055 Filed 8–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7550–1]

First Draft Staff Paper for Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a draft for public review and comment.

SUMMARY: On or about August 29, 2003, the Office of Air Quality Planning and Standards (OAQPS) within EPA's Office of Air and Radiation will make available for public review and comment a draft document, Review of the National Ambient Air Quality Standards for Particulate Matter: Policy Assessment of Scientific and Technical Information (First Draft Staff Paper). The purpose of the Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in a related EPA document, Air Quality Criteria for Particulate Matter, required under sections 108 and 109 of the Clean Air Act (CAA) for use in the periodic review of the national ambient air quality standards (NAAQS) for particulate matter (PM). The OAQPS also will make available for public review and comment a related document, Particulate Matter Health Risk Assessment for Selected Urban Areas (Draft Risk Assessment).

DATES: Comments on the first draft Staff Paper and draft Risk Assessment should be submitted on or before October 28, 2003.

ADDRESSES: For information on how to submit comments, see **SUPPLEMENTARY INFORMATION**, Section C.

Availability of Documents for Review

For information on obtaining copies of the draft documents now being made available for review, see **SUPPLEMENTARY INFORMATION,** Section B.

FOR FURTHER INFORMATION CONTACT: Dr. Mary Ross, Office of Air Quality Planning and Standards (mail code C539–01), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; e-mail: *ross.mary@epa.gov*; telephone: (919) 541–5170; fax (919) 541–0237.

SUPPLEMENTARY INFORMATION:

A. General Information

The EPA is currently reviewing the NAAQS for PM. Sections 108 and 109 of the CAA require that EPA carry out a periodic review and revision, where appropriate, of the scientific criteria and the NAAQS for "criteria" air pollutants such as PM. Details of EPA's plans for

review of the NAAQS for PM were announced in a previous **Federal Register** notice (62 FR 55201, October 23, 1997).

The purpose of the Staff Paper is to evaluate the policy implications of the key scientific and technical information contained in a related EPA document, Air Quality Criteria for Particulate Matter (AQCD), and identify critical elements that EPA staff believe should be considered in reviewing the PM NAAQS. The Staff Paper is intended to "bridge the gap" between the scientific review contained in the Air Quality Criteria document and the public health and welfare policy judgments required of the Administrator in reviewing the NAAQS.

In June, 2001, a preliminary draft of this Staff Paper was released for public review and comment and for consultation with the Clean Air Scientific Advisory Committee (CASAC) at a public meeting in July 2001 (66 FR 32621, June 15, 2001). The preliminary draft Staff Paper was based on information contained in the second external review draft of the AQCD that was previously made available by the National Center for Environmental Assessment of EPA's Office of Research and Development for public review and comment (66 FR 18929, April 12, 2001). A fourth external review draft of the AQCD has recently been made available for public review and comment (66 FR 18929, June 30, 2003), and for review by CASAC at a public meeting on August 25–26, 2003.

Building upon an earlier preliminary draft Staff Paper (EPA, 2001), and taking into account the information in the fourth external review draft of the AQCD, this first draft Staff Paper includes results from initial staff analyses (*e.g.*, analyses of air quality and visibility data, and human health risk analyses), plans for additional analyses to be incorporated into a subsequent draft of this document, and preliminary staff conclusions and recommendations on the PM NAAQS.

As a first step in developing a health risk assessment for the PM NAAQS review, OAQPS previously released for public and CASAC review (67 FR 3897, January 28, 2002) a draft document, Proposed Methodology for Particulate Matter Risk Analysis for Selected Urban Areas. EPA has considered comments provided in a CASAC advisory on this draft document (May 23, 2002, EPA–SAB–CASAC–ADV–02–002, *http://www.epa.gov/sab/pdf/casacadv02002.pdf)* and from a CASAC consultation held on May 1, 2003 (68 FR 17939, April 14, 2003), as well as public comments in developing the draft Risk Assessment being released at this time. The draft Risk Assessment describes and presents the preliminary results from a PM health risk assessment for fine particles ($PM_{2.5}$), coarse fraction particles ($PM_{10-2.5}$), and PM_{10}. The risk assessment methodology and preliminary results also are summarized in the first draft Staff Paper.

The first draft Staff Paper and draft Risk Assessment will be reviewed at a public meeting of the CASAC to be held later this year. A future **Federal Register** notice will inform the public of the date and location of that meeting. Following the CASAC meeting, EPA will prepare a second draft Staff Paper and Risk Assessment, taking into account public and CASAC comments and results of additional analyses, and will make the revised draft documents available for review and comment by CASAC and the public.

B. How Can I Get Copies of These Documents?

1. *Docket.* The EPA has established an official public docket for this action under Docket ID No. OAR–2001–0017. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to the PM NAAQS review. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW, Washington, DC. The Docket telephone number is (202) 566–1744; fax (202) 566–1741. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

2. *Electronic Access.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to access the documents specifically referenced in this action. These documents are also available at *http://www.epa.gov/ttn/naaqs/standards/pm/s_pm_index.html;* the draft Staff Paper is available under "Staff Papers" and the draft Risk Assessment document is available under "Technical Documents." You may also use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket. For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA

Dockets online or see 67 FR 38102, May 31, 2002.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." The EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. The EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2001–0017. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *a-and-r-Docket@epa.gov,* Attention Docket ID No. OAR–2001–0017. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. Any E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified above. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Air and Radiation Docket and Information Center, Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC, 20460, Attention Docket ID No. OAR–2001–0017.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, 101 Constitution Ave., NW., Room B108, Washington, DC 2004, Attention Docket ID No. OAR–2001–0017. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

4. *By Facsimile.* Fax your comments to: 202–566–1741, Attention Docket ID. No. OAR–2001–0017.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Dated: August 21, 2003.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–22051 Filed 8–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7550–6]

Clean Water Act Class II: Proposed Administrative Penalty Assessment and Opportunity To Comment Regarding the Hilo Coast Power Company and Brewer Environmental Industries, Pepeekeo Mill Power Generating Facility, Proceeding Under Clean Water Act Section 309(g)(1), (2)(B) and 40 CFR 22.13(b)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is providing notice of a proposed administrative penalty assessment for alleged violations of the Clean Water Act (the "Act"). EPA is also providing notice of opportunity to comment on the proposed assessment.

EPA is authorized under section 309(g) of the Act, 33 U.S.C. 1319(g), to assess a civil penalty after providing the person subject to the penalty notice of the proposed penalty and the opportunity for a hearing, and after providing interested persons notice of the proposed penalty and a reasonable opportunity to comment on its issuance. Under section 309(g), any person who without authorization discharges a pollutant to a navigable water, as those terms are defined in section 502 of the Act, 33 U.S.C. 1362, may be assessed a penalty in a "Class II" administrative penalty proceeding.

Class II proceedings under section 309(g) are conducted in accordance with the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" ("part 22"), 40 CFR part 22. The procedures through which the public may submit written comment on a proposed Class II order or participate in a Class II proceeding, and the procedures by which a respondent may request a hearing, are set forth in part 22. The deadline for submitting public comment on a proposed Class II order is October 7, 2003.

On August 7, 2003, EPA filed with Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne

Street, San Francisco, California 94105, (415) 744–1391, the following Administrative Complaint:

In the Matter of Hilo Coast Power Company and Brewer Environmental Industries, Pepeekeo Mill Power Generating Facility, Docket No. CWA–9–2003–0002.

For the alleged violations set forth in the Administrative Complaint, EPA proposes to assess penalties of up to One Hundred Thirty-seven Thousand and Five Hundred Dollars ($137, 500) for violations of NPDES Permit No. HI0000191 and section 301(a) of the Act, 33 U.S.C. 1311(a), at the Pepeekeo Mill Power Generating Facility in Pepeekeo, Hawaii.

Procedures by which the public may comment on a proposed Class II penalty or participate in a Class II penalty proceeding are set forth in the Consolidated Rules. The deadline for submitting public comment on a proposed Class II penalty is forty days after issuance of public notice.

FOR FURTHER INFORMATION CONTACT: Persons wishing to receive a copy of EPA's Consolidated Rules, review the Complaint or other documents filed in this proceeding, comment upon the proposed assessment, or otherwise participate in the proceeding should contact Danielle Carr, Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1391. The administrative record for this proceeding is located in the EPA Regional Office identified above, and the file will be open for public inspection during normal business hours. All information submitted by the Respondent is available as part of the administrative record, subject to provisions of law restricting public disclosure of confidential information. In order to provide opportunity for public comment, EPA will issue no final order assessing a penalty in these proceedings prior to forty (40) days after the date of publication of this notice.

Dated: August 19, 2003.

John Kemmerer,

Acting Director, Water Division.

[FR Doc. 03–22054 Filed 8–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7550–4]

Public Water System Supervision Program Revision for the State of New Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of tentative approval.

SUMMARY: Notice is hereby given that the State of New Mexico is revising its approved Public Water System Supervision Program. New Mexico has revised its administrative penalty authority, its public water system definition, adopted the Consumer Confidence Report Rule, the Interim Enhanced Surface Water Treatment Rule, the Stage 1 Disinfection By Products Rule, the new Variances and Exemptions Rule, the revised Public Notification Rule, the new Radionuclides Rule, the Lead and Copper Rule Minor Revisions, the Arsenic Rule, and the Filter Backwash Recycling Rule. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends to approve these program revisions.

DATES: All interested parties may request a public hearing. A request for a public hearing must be submitted by September 29, 2003 to the Regional Administrator at the EPA Region 6 address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by September 29, 2003, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on September 29, 2003. Any request for a public hearing shall include the following information: The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; and the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: New Mexico Environment Department, Drinking Water Bureau, 525 Camino De Los Marquez, Suite 4, Santa Fe, New Mexico, 87505 and the United States Environmental Protection Agency, Region 6, Drinking Water Section (6WQ–SD), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Kim Ngo, EPA Region 6, Drinking Water Section at the Dallas address given above or at telephone (214) 665–7158, or *ngo.kim@epa.gov*.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: August 20, 2003.

Richard E. Greene,

Regional Administrator, Region 6.

[FR Doc. 03–22052 Filed 8–27–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7550–7]

Applicability of the Safe Drinking Water Act to Submetered Properties

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; request for comments.

SUMMARY: The Environmental Protection Agency (EPA) is seeking public comment on revising the current policy regarding regulatory requirements under the Safe Drinking Water Act (SDWA) of submetered properties. The draft revised policy is shown in the Supplementary Information section below, in the memorandum form it would take if the policy is made final. Under SDWA section 1411, the national primary drinking water regulations apply to public water systems (PWS) that have their own water source, treat, or "sell" water. EPA staff and program managers have previously issued memoranda stating that any building or property owner who meets the definition of a PWS and receives water from a regulated public water system, but bills tenants separately for this water, is "selling" the water and therefore is independently subject to SDWA's drinking water requirements. As a way to promote full cost and conservation pricing to achieve water conservation, the EPA now proposes to change its interpretation of section 1411 as it applies to a limited aspect of

submetering and direct billing of residential tenants. EPA believes this change in interpretation would not adversely affect public health protection for consumers served by these submetered systems.

DATES: Comments must be submitted on or before October 27, 2003.

ADDRESSES: Comments may be submitted by mail to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0065. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions as provided in section I.C. of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: For more information please contact Ronald Bergman at *bergman.ronald@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Draft Revised Policy

If the revised policy is made final, the following statement will be announced by EPA Assistant Administrator for Water, G. Tracy Mehan III, to the Regional Administrators

Draft Memorandum

From: G. Tracy Mehan, III, *Assistant Administrator, Office of Water*
To: Regional Administrators Regions I–X
Subject: Applicability of the Safe Drinking Water Act to Submetered Properties

Water conservation is an integral part of watershed protection, particularly in arid and drought-stricken areas. In recent speeches, I have called for full cost and conservation pricing to achieve water conservation. The use of water meters by which to measure consumption is a necessary prerequisite to using these price mechanisms. For those 15% of Americans who live in apartments, submeters are needed if their water consumption is to be linked to prices. Throughout the country, submetering of apartment buildings has been found to be an effective but little-used tool to support water conservation.

Some owners of multifamily housing, however, have expressed concern that, under EPA's current policy, the installation of submeters subjects them to the full regulatory requirements of the Safe Drinking Water Act (SDWA). In 1996, Congress also expressed concern about EPA's policy in this specific situation, and, in response, EPA agreed to reconsider the matter and issue further guidance.[1] This memorandum represents the promised further guidance on this issue and sets out a revised policy with respect to residential properties such as apartment buildings that submeter for water.

Under the revised policy, a property owner who had not previously been (or would not be) subject to SDWA national primary drinking water regulations through SDWA section 1411, and who installs submeters to accurately track usage of water by tenants on his or her property, will not then be subject to SDWA regulations solely as a result of taking the action to submeter and bill. The water being provided would already meet drinking water standards because the water would be coming from a regulated public water system.

Background

Section 1401 of SDWA defines a public water system (PWS) as a system that provides water through pipes or other constructed conveyances to the public for human consumption, if the system has at least 15 service connections or regularly serves at least 25 people. Under SDWA section 1411, the SDWA national primary drinking water regulations apply to PWSs that have their own water source, treat, or "sell" water. EPA staff and program managers have issued several memoranda stating that any building or property owner who meets the definition of a PWS and receives water from a regulated public water system without adding further treatment, but bills tenants separately for this water, is "selling" the water and therefore is independently subject to SDWA's drinking water requirements. Today's memorandum reflects a change in EPA's interpretation of section 1411 as it applies in the specific context of submetering and direct billing of tenants.

The EPA memoranda referenced above were based on a single statement in the 1974 legislative history for the SDWA in which Congress explained its intent in enacting section 1411. In that legislative history, the Committee report states that it "intends to exempt businesses which merely store and distribute water provided by others, unless that business sells water as a separate item or bills separately for water it provides."[2] Under EPA's interpretation to date, an apartment building or similar residential property that is exempt under section 1411 but that merely installs a submeter and bills the tenants for the water, or simply begins billing tenants (even without a submeter), would become a fully regulated public water system, even though there had been no other change relevant to the delivery or potential health concerns associated with the water. This application of the legislative history has been cited as a discouragement to submetering and, as a result, to water conservation measures.

After further review, we no longer believe that Congress intended the legislative history to be applied in this manner for the following reasons:

- The legislative history from 1974 does not specifically address the submetering of apartment buildings for water conservation purposes. Rather, the legislative history was one Committee's attempt to explain broadly what the term "selling" water in section 1411 might mean. The statute itself does not define the term "selling" or suggest an interpretation that any billing of water would automatically trigger full SDWA regulation.
- A Congressional committee expressed its concern that this application of SDWA might discourage the practice of submetering, as owners of a multifamily housing property (*e.g.*, apartment buildings and/or complexes, mobile home parks) would become subject to national primary drinking water regulations if they billed separately for water. Congress asked that EPA review its guidance on this matter to prevent unnecessary requirements that do not further public health protection and that might inhibit water conservation efforts.[3]
- EPA's approach in previous memoranda—simply applying the concept of "sell" to every billing transaction—may have created a disincentive to water conservation, which can undermine water quality over the long term.
- Finally, it makes no sense, as a matter of statutory interpretation, health protection, or SDWA implementation policy, to subject an entity to the full suite of SDWA requirements simply as a result of a decision about who sends a water bill, especially when the water is already coming from a regulated public water system. As a result, we no longer consider that the blanket approach to defining "sell" as meaning any type of billing in any circumstance is appropriate.

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[1] H. Rep. 104–632 (104th Cong., 2d Sess.) at 55 and 134 (1996).

[2] H. Rep. 93–1185 (93rd Cong., 2nd Session), reprinted in *A Legislative History of the Safe Drinking Water Act*, Committee Print Serial 97–9 (1982) at 549.

[3] H . Rep. 104–632 at 55 (1996)

Revised Policy

Consistent with Congressional requests to reconsider this matter, we now believe that, if a property owner, who had not previously been (or would not be) subject to PWS national primary drinking water regulations, installs submeters to accurately track usage of water by residential tenants on his or her property, that owner should not then be subject to regulations solely as a result of taking the action to submeter and bill. Likewise, a property owner who does not submeter, but charges tenants for water based on a ratio utility billing or other apportioning system, would also remain exempt from full SDWA requirements.

The addition of a submeter, or direct billing, should not in any way change the public health protections provided to water consumers on the property, as they are still subject to plumbing codes and provided water from a PWS that is fully regulated by SDWA. The PWS providing water to the property is still responsible for providing public notification under 40 CFR 141.201(c) (or approved State equivalent) to consumers and making "good faith" efforts to provide the tenants with the annual Consumer Confidence Reports under 40 CFR 141.155(b). A submetered property would still be considered a PWS under SDWA section 1401, hence States and EPA would retain the ability to take corrective action under SDWA's emergency powers authority (section 1431) if public health risks arise.

Although EPA is not requiring that submetered systems be tracked, each State has flexibility to determine whether, and how, to best track multifamily residential properties that submeter. For example, in Alabama, the State defines a submetered property as a "segmented public water system" and requires that it have access to a certified operator. Texas requires that submetered properties allow access to the property by the public water system providing water, register with the Texas Commission on Environmental Quality and follow regulations for submetering. Other States may place submetered properties under the jurisdiction of public utility commissions.

While submetering and billing for water usage may positively induce water conservation actions, States may still want to take other steps to ensure that apartment owners convert to water efficient fixtures and appliances. For example, Texas requires that apartment buildings have water-efficient plumbing fixtures and appliances as a condition of approval of a submetered billing system.

This memorandum clarifies EPA's policy change and reconfirms our strong interest in advocating water conservation. Any previous EPA statements or policy memoranda on this issue are superceded by this memorandum.

1. Request for Comments

While comments will be accepted on any portion of the draft revised policy, EPA would specifically appreciate comments on the following issues:

i. Should the parent public water system be required to have access to submetered properties for the purposes of monitoring, inspection, repair, etc., to assure compliance with SDWA?

ii. Are there public health risks raised by this submetering policy that EPA has not taken into consideration?

iii. Should EPA maintain the limitation of the draft revised policy to residential properties such as apartment buildings, or is it appropriate to extend the SDWA exemption for submetering to other property types?

iv. Does data exist that indicates submetering may present a disincentive to landlords to convert to water efficient fixtures and appliances, or could this approach impact other methods that promote water conservation?

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under Docket ID No. OW–2003–0065. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426). For access to docket materials, please call (202) 566–2426 to schedule an appointment.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

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For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will

be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OW–2003–0065. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by electronic mail (e-mail) to *OW-Docket@epa.gov,* Attention Docket ID No. OW–2003–0065. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send three copies of your comments to: Water Docket, Environmental Protection Agency, Mail Code 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. OW–2003–0065.

3. *By Hand Delivery or Courier.* Deliver your comments to: Environmental Protection Agency, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. Attention Water Docket ID No. OW–2003–0065. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To insure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

Dated: August 22, 2003.

G. Tracy Mehan III,

Assistant Administrator, Office of Water.

[FR Doc. 03–22053 Filed 8–27–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 20, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a current valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 27, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0692.

Type of Review: Extension of a currently approved collection.

Title: Home Wiring Provisions.

Form Number: N/A.

Respondents: Business or other for-profit entities; Individuals or households.

Number of Respondents: 30,500.

Estimated Time per Response: 5 mins (0.083 hrs) to 20 hrs.

Frequency of Response: Recordkeeping; Annual and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 46,114 hours.

Total Annual Cost: None.

Needs and Uses: On January 29, 2003, the Commission issued a First Order on Reconsideration and Second Report and Order, FCC 03–9, which grants in part and denies in part the petitions for reconsideration filed in response to the Report and Order. The Commission's home run wiring rules were modified in the First Order on Reconsideration to provide that in the event of sale, the home run wiring be made available to the MDU owner or alternative provider during the 24-hour period prior to actual service termination by the incumbent and that home run wiring located behind sheet rock is physically inaccessible for purposes of determining the demarcation point between home wiring and home run wiring. In the Second Report and Order, the Commission adopted a limited exemption for small non-cable MVPDs from the signal leakage reporting requirements and concluded that the cable and home run wiring rules should apply to all MVPDs in the same manner that they apply to cable operators. The Commission declined to restrict exclusive contracts or ban perpetual contracts. The Commission also declined to allow MDU owners to require sharing of incumbent-owned cable wiring.

OMB Control Number: 3060–1038.

Type of Review: Extension of a currently approved collection.

Title: Digital Television Transition Information Questionnaires.

Form Number: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents: 844.

Estimated Time per Response: 4 to 24 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 4,823 hours.

Total Annual Cost: $251,400.

Needs and Uses: In the Telecommunications Act of 1996, Congress directed that every broadcaster be given a second channel for digital operations. At the end of the transition, broadcasters' analog channels will be returned to the government. Congress set a target date of December 31, 2006 for the end of the transition, although that date can be extended if 85% of viewers in a particular market do not have access to the digital signals. In addition, at the end of the transition the broadcast spectrum will contract from channels 2–69 to channels 2–51. This 108 MHz of spectrum (channels 52–69) can then be used by advanced wireless services and public safety authorities. There are several key building blocks to a successful transition. First, content " consumers must perceive something significantly different than what they have in analog. Second, distribution—the content must be delivered to consumers in a simple and convenient way. Third, equipment—equipment must be capable, affordable and consumer-friendly. And fourth, education—consumers must be educated about what digital television is, and what it can do for them. These information requests are designed to gather data in these key areas.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22070 Filed 8–27–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 11, 2003.

A. Federal Reserve Bank of Minneapolis (Richard M. Todd, Vice President and Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. David A. Frailing, Everett H. Frailing, Cecelia S. Frailing, Ronald J. Frailing, Fay A. Frailing, and Derrick J. Frailing, Iron River, Michigan, to retain voting shares of MSB Bankshares, Inc., Iron River, Michigan, and thereby indirectly retain voting shares of The Miners State Bank, Iron River Michigan.

Board of Governors of the Federal Reserve System, August 22, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–21977 Filed 8–27–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

[Program Announcement 04004]

Public Health Conference Support Grant Program; Notice of Availability of Funds

Application Deadline:
Cycle A: November 19, 2003.
Cycle B: March 8, 2004.
Cycle C: June 1, 2004.

A. Authority and Catalog of Federal Domestic Assistance Number

The Centers for Disease Control and Prevention (CDC) program is authorized under section 317(k)(2) of the Public Health Service Act, (42 U.S.C. 247b(k)(2)) as amended. The Catalog of Federal Domestic Assistance (CFDA) number is 93.283.

The Agency for Toxic Substances and Disease Registry (ATSDR) program is authorized under sections 104(i)(14) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), [42 U.S.C. 9604(i)(14) and (15)]. The CFDA number is 93.161 for ATSDR.

B. Purpose

CDC and ATSDR announce the pending availability of appropriated fiscal year (FY) 2004 funds for a grant program for Public Health Conference Support. This program addresses the "Healthy People 2010" focus areas of Arthritis, Osteoporosis and Chronic Back Conditions, Cancer, Diabetes, Disability and Secondary Conditions, Educational and Community-Based Programs, Environmental Health, Heart Disease and Stroke, Immunization and Infectious Diseases, Injury and Violence

Prevention, Maternal, Infant and Child Health, Occupational Safety and Health, Oral Health, Physical Activity and Fitness, Public Health Infrastructure, Respiratory Diseases, Sexually Transmitted Diseases, and Tobacco Use. Conferences on Access to Quality Health Services, Family Planning, Food Safety, Health Communications, Medical Product Safety, Substance Abuse, and Vision and Hearing, are not priority focus areas of CDC or ATSDR, and should be directed to other Federal Agencies.

HIV Conferences and HIV subject matter are covered under another program and are not permitted under this announcement.

The purpose of conference support funding is to provide partial support for specific non-Federal conferences (not a series) in the areas of health promotion and disease prevention information and education programs, and applied research.

Conference support by CDC/ATSDR creates the appearance of CDC/ATSDR co-sponsorship, and Congress has required that there will be active participation by CDC/ATSDR in the development and approval of the conference agenda to make sure there are no subjects that would embarrass the Government or be an improper use of funds. CDC/ATSDR funds will be expended only for approved portions of the conference.

C. Eligible Applicants

Applications for CDC support may be submitted by public and private non-profit, and faith-based organizations. Public and private non-profit entities include State and local governments or their bona fide agents, faith-based organizations, voluntary associations, foundations, civic groups, scientific or professional associations, universities, and Federally-recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Applications for ATSDR support may be submitted by the official public health agencies of the States, or their bona fide agents. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Island, the Republic of Palau, and Federally-recognized Indian Tribal governments. State organizations, including State universities, State colleges, and State research institutions must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered an eligible applicant.

Also eligible are nationally and internationally recognized associations of health professionals and other chartered organizations generally recognized as demonstrating a need for information to protect the public from the health effects of exposure to hazardous substances. Faith-based organizations are encouraged to apply.

Only conferences planned for May 1, 2004 through September 30, 2005 are eligible to apply under this announcement.

To be eligible to apply the applicant must:

1. Propose a conference that matches only one or two topic areas identified in the "Topic Areas of Programmatic Interest" as listed in Attachment II of this announcement. (All attachments are posted with this announcement on the CDC Web site.)

2. Identify the estimated total cost of the conference and the dollar amount of the total cost requested from CDC/ATSDR (which must be less than 100 percent).

This information should be included in the cover letter submitted with the application. Applications that do not include this information and respond directly to the above information will be determined as non-responsive and will be returned without review.

Note: Title 2 of the United States Code, Chapter 26, Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

D. Funding

Availability of Funds: Approximately $1,100,000 may be available from CDC in FY 2004 to fund approximately 60 to 80 awards. It is expected that the average award will be $20,000.

Approximately $25,000 is available from ATSDR in FY 2004 to fund approximately three to five awards. It is expected that the average award will be $8,000, ranging from $5,000 to $10,000.

Application requests that exceed $50,000 (CDC) or $10,000 (ATSDR) will be determined as non-responsive and will be returned to the applicant without review.

It is expected that the awards will begin on or about sixty days before the date of the conference. For FY 2004, awards will be made for each cycle with a 12-month budget period within a 12-month project period. Funding estimates may change.

Recipient Financial Participation: Matching funds are not required for this program.

Use of Funds

1. Funds may be used for direct cost expenditures: salaries; speaker fees (for services rendered); rental of necessary conference-related equipment; registration fees; and transportation costs (not to exceed economy class fare) for non-Federal individuals.

2. Funds may be used for only those parts of the conference specifically supported by CDC or ATSDR as documented in the grant award.

3. Funds may not be used for the purchase of equipment; payments of honoraria (for conferring distinction); alterations or renovations; organizational dues; support entertainment or personal expenses; food or snack breaks; cost of travel and payment of a Federal employee or per diem or expenses for local participants (other than local mileage). Travel for Federal employees will be supported by CDC/ATSDR. Travel for other Federal employees will be supported by the employees' Federal agency.

4. Funds may not be used for reimbursement of indirect costs.

5. CDC and ATSDR will not fund 100 percent of any conference proposed under this announcement. Part of the cost of the proposed conference must be supported with funds other than Federal funds.

6. CDC and ATSDR will not fund a conference after it has taken place.

7. Federal funds may not be used to fund novelty items or souvenirs.

E. Programmatic Interest Areas

The mission of CDC is to promote health and improve the quality of life by preventing and controlling disease, injury, and disability.

Through the support of conferences and meetings (not a series) in the areas of public health research, education, prevention research in program and policy development, managed care, and prevention application, CDC is meeting its overall goal of dissemination and implementation of new cost-effective intervention strategies.

The mission of ATSDR is to prevent both exposure and adverse human health effects that diminish the quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment.

ATSDR's systematic approaches are needed for linking applicable resources in public health with individuals and organizations involved in the practice of applying such research. Mechanisms are also needed to shorten the time frame between the development of disease prevention and health promotion

techniques and their practical application. ATSDR believes that conferences and similar meetings (not a series) that permit individuals to engage in hazardous substances and environmental health research, education, and application (related to actual and/or potential human exposure to toxic substances) to interact, are critical for the development and implementation of effective programs to prevent adverse health effects from hazardous substances.

(See Attachment II for the specific topic areas that each Center/Agency is requesting.)

F. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

1. The conference organizer(s) may use CDC's/ATSDR's name only in factual publicity for the conference. CDC/ATSDR involvement in the conference does not necessarily indicate support for the organizer's general policies, activities, products, or the content of speakers' presentations.

2. Any national conference co-sponsored under this announcement shall be held in facilities that are fully accessible to the public as required by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Accessibility under ADAAG addresses accommodations for persons with sensory impairments as well as persons with physical disabilities or mobility limitations.

3. Manage all activities related to program content (*e.g.*, objectives, topics, attendees, session design, workshops, special exhibits, speaker's fees, agenda composition, and printing). Many of these items may be developed in concert with assigned CDC or ATSDR project personnel.

4. Provide draft copies of the agenda and proposed ancillary activities to CDC or ATSDR for approval. All but ten percent of the total funds awarded for the proposed conference will be initially restricted pending approval by CDC or ATSDR of a full, final agenda. The remaining 90 percent of funds will be released by letter to the grantee upon the approval of the final agenda. Because conference support by CDC and ATSDR creates the appearance of CDC co-sponsorship, there will be active participation by CDC or ATSDR in the development and approval of those portions of the agenda supported by CDC funds. CDC funds will not be expended for non-approved portions of meetings. In addition, CDC will reserve the right to approve or reject the content of the full agenda, press events, promotional materials (including press releases), speaker selection, and site selection. CDC and ATSDR reserves the right to terminate co-sponsorship if it does not concur with the final agenda.

5. Determine and manage all promotional activities (*e.g.*, title, logo, announcements, mailers, press, *etc.*). CDC or ATSDR must review and approve any materials with reference to CDC or ATSDR involvement or support.

6. Manage all registration processes with participants, invitees, and registrants (*e.g.*, travel, reservations, correspondence, conference materials and handouts, badges, registration procedures, *etc.*).

7. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

G. Content

Letter of Intent (LOI): A Letter of Intent (LOI) is required for this Program Announcement. The LOI will not be evaluated or scored. Your letter of intent will be used to estimate the potential reviewer workload and to avoid conflicts of interest during the review. If you do not submit a LOI, you will not be allowed to submit an application.

You must submit an original and two copies. The LOI should be two to three pages in-depth, single-spaced, and typewritten. Use English only and avoid jargon and unusual abbreviations.

Applications: Beginning October 1, 2003, applicants will be required to have a Dun and Bradstreet Number (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

You are encouraged to obtain a DUNS number now if you believe you will be submitting an application to any Federal agency on or after October 1, 2003. Proactively obtaining a new DUNS number at the current time will facilitate the receipt and acceptance of applications after September 2003.

To obtain a DUNS number, access the following Web site: *http://www.dunandbradstreet.com* OR call 1–866–705–5711.

Use the information in the Program Requirements and Evaluation Criteria sections to develop the application content. The application narrative should be no longer than 12 double-spaced pages, printed on one side, with one-inch margins, and 12-point font. Use English only and avoid jargon and unusual abbreviations. Pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and two required copies of the application must be submitted unstapled and unbound. Materials that are part of the basic plan should not be in the appendices.

The application should include:

1. A one-page cover letter addressing Eligibility. Include the Announcement title, number and programmatic interest area being addressed by your conference. This cover letter does not count toward the 12-page narrative limit.

2. A one-page project summary cover sheet that includes:

a. Name of organization
b. Name of conference
c. Location of conference
d. Date(s) of conference
e. Intended audience and number
f. Dollar amount requested
g. Total conference budget amount

This project summary cover sheet does not count toward the 12-page narrative limit.

3. A narrative that includes:

a. A brief background of your organization—include the organizational history, purpose, and previous experience related to the proposed conference topic.

b. A clear statement of the need for, and purpose of, the conference. This statement should also describe any problems the conference will address or seek to solve, and the action items or resolutions it may stimulate.

c. An elaboration on the conference objectives and target audience. A list should be included of the principal areas or topics to be addressed. A proposed or final agenda must be included.

d. A clear description of the evaluation plan and how it will assess the accomplishments of the conference objectives. A sample of the evaluation instrument that will be used must be included and a step-by-step schedule and detailed operation plan of major conference planning activities necessary to attain specified objectives.

e. Budget plan and justification—A clearly justified budget narrative that is consistent with the purpose, objectives, and operation plan of the conference. It should include the share requested from this grant as well as those funds from other sources, including organizations, institutions, conference income, and/or registration fees.

4. Biographical sketches are required of the individuals responsible for planning and implementing the conference. Experience and training related to conference planning and implementation as it relates to the

proposed topic should be noted. The biosketches should be placed in an appendix, and will not be counted toward the 12-page narrative limit.

5. Letters of endorsement or support—Letters of endorsement or support for the sponsoring organization and its capability to perform the proposed conference activity. Letters of support should be placed in an appendix, and will not be counted toward the 12-page narrative limit.

H. Submission and Deadline (For All Applicants) Deadline

LOI and application deadlines have now been imposed for all conference support grants, and dates should be strictly followed by applicants to ensure that their LOI's and applications are received in a timely manner.

There will be three conference support reviews this year:

If your conference dates fall between May 1, 2004 and April 30, 2005, you should apply under Cycle A under this announcement.

If your conference dates fall between August 1, 2004 and July 31, 2005, you should apply under Cycle B under this announcement.

If your conference dates fall between November 1, 2004 and September 30, 2005, you should apply under Cycle C under this announcement.

If your conference dates fall between October 1, 2003 and April 30, 2004, you should have applied under the previous Program Announcement 03012, and your LOI will be considered non-responsive to Program Announcement 04004.

Letter of Intent Due Dates

Cycle A: October 1, 2003.
For conferences May 1, 2004–April 30, 2005.
Cycle B: January 6, 2004.
For conferences August 1, 2004–July 31, 2005.
Cycle C: April 1, 2004.
For conferences November 1, 2004–September 30, 2005.

Letter of Intent (LOI) Submission: On or before October 1, 2003; January 6, 2004; and April 1, 2004 submit an original and two signed copies of the LOI to: Technical Information Management (TIMS)—PA#04004, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applicants who do not submit a LOI will not be eligible to submit an application for review or funding.

Application Forms: Applicants must also submit the original and two copies of PHS form 5161–1, (OMB Number 0937–0189). Forms are available on the CDC Web site at: *http://forms.psc.gov/forms/PHS/PHS–5161–1.pdf.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Application due dates	Earliest possible award dates
Cycle A: November 19, 2003.	April 1, 2004.
Cycle B: March 8, 2004.	June 30, 2004.
Cycle C: June 1, 2004.	September 1, 2004.

Application Submission: On or before November 19, 2003; March 8, 2004; and June 1, 2004 submit an original and two signed copies of the application to: Technical Information Management—PA#04004, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted electronically. Applications received that were not preceded by a LOI will not be reviewed or funded.

CDC Acknowledgement of Application Receipt: If you have a question about the receipt of your application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the application deadline. This will allow time for applications to be processed and logged.

Letters of Intent and applications shall be considered as meeting the deadline if they are received in the CDC Procurement and Grants Office before 4 p.m. Eastern Time on the deadline date. Any applicant who sends their application by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Any application that does not meet the above criteria will not be eligible for competition, and will be discarded. The applicant will be notified of their failure to meet the submission requirements.

I. Evaluation Criteria

Letter of Intent: The required Letter of Intent will not be evaluated or scored.

A conference is a symposium, seminar, workshop, or any other organized and formal meeting lasting one day or more (not a series), where persons assemble to exchange information and views, explore, or clarify a defined subject, problem, or area of knowledge, whether or not a published report results from such meeting. The conference should support CDC or ATSDR's public health principles in furtherance of CDC's mission or ATSDR's mission.

Application: Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

Section 1.a., is ATSDR specific.

Section 1.b., is CDC specific.

Section 1.c., and all other sections in these criteria are applicable to both CDC and ATSDR. Each application will be evaluated based on the following criteria:

1. Proposed Program and Technical Approach (25 Points)

a. The public health significance of the proposed conference, including the degree to which the conference can be expected to influence the prevention of exposure, adverse human health effects, and diminished quality of life associated with exposure to hazardous substances from waste sites, unplanned releases, and other sources of pollution present in the environment (Applicable to ATSDR applications only).

b. The applicant's description of the proposed conference as it relates to specific non-Federal conferences in the areas of health promotion and disease prevention information/education programs (except substance abuse), including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices. Evaluation will also be based on the extent of the applicant's collaboration with other organizations serving the intended audience (Applicable to all CDC applications except ATSDR).

c. The applicant's description of conference objectives, in terms of quality, specificity, and the feasibility of the conference based on the operational plan, will also be evaluated.

2. Conference Objectives (25 Points)

a. The overall quality, reasonableness, feasibility, and logic of the designed conference objectives, including the overall work plan and timetable.

b. The likelihood of accomplishing conference objectives, as they relate to

disease prevention and health promotion goals, and the feasibility of the project in terms of the operational plan.

3. The Qualifications of Program Personnel (20 Points)

a. The extent to which the application provides evidence of the qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership.

b. The extent to which the application provides evidence of the competence of associate staff persons, discussion leaders, speakers, and presenters to accomplish conference objectives.

c. The extent to which the application demonstrates the knowledge of nationwide and educational efforts currently underway which may affect, and be affected by, the proposed conference.

4. Evaluation Methods (20 Points)

Evaluation instrument(s) for the conference should adequately assess increased knowledge, attitudes, and behaviors of the target audience.

5. Applicant's Capability (10 Points)

a. The applicant's capability includes the adequacy of the applicant's resources (additional sources of funding, organization's strengths, staff time, proposed physical facilities, *etc.*) available for conducting conference activities.

b. The extent to which the applicant demonstrates a history (at least three years) of managing conferences.

6. Budget Justification and Adequacy of Facilities (Not Scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistent with the intended use of grant funds. The application will also be reviewed as to the adequacy of existing or proposed facilities and resources for conducting conference activities.

J. Other Requirements

Technical Reporting Requirements: Provide the CDC with original plus two copies of:

1. A performance report or, in lieu of a performance report, proceedings of the conference, no later than 90 days after the end of the budget/project period.

2. Financial status report, no later than 90 days after the end of the budget/project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Additional Requirements: The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of this announcement as posted on the CDC Web site.

AR–7—Executive Order 12372 Review.

AR–9—Paperwork Reduction Act Requirements.

AR–10—Smoke-Free Workplace Requirements.

AR–11—Healthy People 2010.

AR–12—Lobbying Restrictions.

AR–13—Prohibition on Use of CDC Funds for Certain Gun Control Activities.

AR–15—Proof of Non-Profit Status.

AR–20—Conference Support.

K. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications and associated forms can be found on the CDC Web site, Internet address: *http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

For general questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2700.

For business management assistance, contact: Rick Jaeger, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Atlanta, Georgia 30341–4146, Telephone: (770) 488–2727, e-mail address: *rjaeger@cdc.gov*.

For program technical assistance, contact: Janet Telman, Funding Resource Specialist, Office of the Director Extramural Services Activity, Public Health Practice Program Office (PHPPO), Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, MS K38, Atlanta, Georgia 30341–3714, Telephone: (770) 488–2834, e-mail address: *jtelman@cdc.gov*.

Dated: August 21, 2003.

Sandra R. Manning,

Director, Program and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–22007 Filed 8–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–195]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from April 2003 through June 2003. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE, Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on August 8, 2003 [68 FR 47324]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 1825, Century Blvd., Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield,

Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between April 1, 2003 and June 30, 2003, public health assessments were issued for the sites listed below:

NPL Sites

California

Edwards Air Force Base (PB2003–104567)

Markleeville (PB2003–104568)

Illinois

Circle Smelting Corporation (PB2003–104617)

Hartford Residential Vapor Resources (a/k/a Hartford Residences) (PB2003–105779)

Maine

Callahan Mining Corporation (PB2003–104534)

Massachusetts

General Electric Site—Unkamet Brook (a/k/a GE-Housatonic River) (PB2003–104653)

General Electric Site—Lyman Street (a/k/a GE-Housatonic River) (PB2003–104654)

General Electric Site—Former Oxbows (a/k/a GE-Housatonic River) (PB2003–104655)

Sutton Brook Disposal Area (PB2003–104569)

New York

Cayuga County Groundwater Contamination (PB2003–105778)

Petitioned

Florida

Eglin Air Force Base (a/k/a USAF Eglin Air Force Base Armament Division) (PB2003–104185)

Dated: August 22, 2003.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 03–22002 Filed 8–27–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 8:30 a.m.–5 p.m.; September 17, 2003. 8:30 a.m.–3:30 p.m.; September 18, 2003.

Place: Sheraton Colony Square Hotel, 188 14th Street NE., Atlanta, Georgia 30361.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact on medical and laboratory practice of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include updates from CDC, the Centers for Medicare & Medicaid Services, and the Food and Drug Administration; a report on the results of the General Services Administration's Office of Government-wide Policy Federal Advisory Committee Stakeholder Engagement Survey; presentations and discussion on the CLIA waiver criteria and process, previous CLIAC recommendations related to such, and AdvaMed's CLIAC waiver criteria proposal; a report on the Coordinating Council for Clinical Laboratory Workforce's June 2003 meeting; a report on the April 2003 Quality Institute; a summary of the March 2003 CLIAC meeting on direct access testing; a presentation on Lab Tests Online; a report on the first meeting of the Secretary's Advisory Committee on Genetics, Health and Society; and several presentations on CDC's various genetic testing activities.

Agenda items are subject to change as priorities dictate.

Providing Oral or Written Comments: It is the policy of CLIAC to accept written public comments and provide a brief period for oral public comments whenever possible. *Oral Comments:* In general, each individual or group requesting to make an oral presentation will be limited to a total time of five minutes (unless otherwise indicated). Speakers must also submit their comments in writing for inclusion in the meetings Summary Report. *Written Comments:* For individuals or groups unable to attend the meeting, CLIAC accepts written comments until the date of the meeting (unless otherwise stated). However, the comments should be received at least one week prior to the meeting date so that the comments may be made available to the Committee for their consideration and public distribution. Written comments, one hard copy with original signature, should be provided to the contact person below. Written comments will be included in the meetings Summary Report.

Contact Person for Additional Information: Rhonda Whalen, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE., Mailstop F–11, Atlanta, Georgia 30341–3717; telephone (770) 488–8042; fax (770) 488–8279; or via e-mail at *RWhalen@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 20, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–22008 Filed 8–27–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Information Relevant to Toluene Exposure

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of request for comments and information relevant to occupational exposure to toluene.

SUMMARY: NIOSH is reviewing the recommendations in its document "Criteria for a Recommended Standard: Occupational Exposure to Toluene" [NIOSH 1973] (*http://www.cdc.gov/niosh/73–11023.html*). A review of recent literature indicates that the NIOSH recommended exposure limit (REL) of 100 ppm as an 8-hr time-weighted average (TWA) does not sufficiently protect workers from the adverse effects of exposure to toluene. NIOSH is requesting (1) comments and information relevant to the evaluation of the health risks associated with occupational exposure to toluene, (2) reports or other data that demonstrate adverse health effects in workers exposed to toluene at or below the NIOSH REL, and (3) information pertinent to establishing a more protective REL for toluene.

Comments concerning this notice must be received within 60 days after date of publication.

ADDRESSES: Comments may be transmitted either electronically to *niocindocket@cdc.gov*, by facsimile to 513/533–8230, or by regular mail or hand delivery to NIOSH Docket Office, M/S C–34, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226. E-mail attachments should be formatted as WordPerfect 7/8/9 or Microsoft Word.

FOR FURTHER INFORMATION CONTACT: Henryka Nagy, M/S C–32, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, 513/533–8369.

SUPPLEMENTARY INFORMATION: In the document "Criteria for a Recommended Standard: Occupational Exposure to Toluene" [NIOSH 1973] (*http://www.cdc.gov/niosh/73–11023.html*), NIOSH recommended that exposure to toluene be limited to 100 ppm as an 8-hr TWA. This exposure limit was expected to prevent acute and chronic effects on the central and peripheral nervous system from exposures to toluene. NIOSH has conducted a literature review of the health effects data on toluene exposure and finds evidence that adverse effects on the central and peripheral nervous systems and reproductive system, as well as irritation of the eye and respiratory tract may occur in workers exposed to concentrations at and below the current NIOSH REL of 100 ppm [Andersen *et al.* 1983; Larsen and Leira 1988; Ørbæk and Nise 1989; Foo *et al.* 1990; Ng *et al.* 1992; ATSDR 2000; NEG 2000].

NIOSH seeks to obtain materials, including published and unpublished reports and research findings, to evaluate the possible health risks of occupational exposure to toluene at concentrations below 100 ppm. Examples of requested information include, but are not to be limited to, the following:

1. Identification of industries or occupations in which exposures to toluene may occur.
2. Trends in production, use, and import of toluene over the past 10 years.
3. Description of work tasks and scenarios with a potential for exposure to toluene.
4. Current occupational exposure concentrations in various types of industries and jobs and, if available, data to document these concentrations.
5. Case reports or other health data that demonstrate adverse health effects in workers exposed to toluene, or animal data (published or peer-reviewed data are preferred).
6. Description of work practices and engineering controls used to reduce or prevent workplace exposure.
7. Educational materials for worker safety or training on the safe handling of toluene.
8. Data pertaining to the technical feasibility of establishing a more protective REL for toluene.

NIOSH will use this information to determine the need for developing new recommendations for reducing occupational exposure to toluene.

All information received in response to this notice will be available for public examination and copying at the NIOSH Docket Office, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

References

Andersen I, Lundqvist GR, Molhave L, Pedersen OF, Proctor DF, Væth M, Wyon DP [1983]. Human response to controlled levels of toluene in six-hour exposures. Scand J Work Environ Health 9:405–418.

ATSDR [2000]. Toxicological profile for toluene (update). Atlanta, GA: U.S. Department of Health and Human Services, Public Health Service, Agency for Toxic Substances and Disease Registry.

Foo SC, Jeyaratnam J, Koh D [1990]. Chronic neurobehavioural effects of toluene. Br J Ind Med 47:480–484.

Larsen F, Leira HL [1988]. Organic brain syndrome and long-term exposure to toluene: a clinical, psychiatric study of vocationally active printing workers. J Occup Med 30(11):875–878.

NEG [2000]. Toluene. Stockholm, Sweden: The Nordic Expert Group for Criteria Documentation of Health Risks from Chemicals.

Ng TP, Swee CF, Yoong T [1992]. Risk of spontaneous abortion in workers exposed to toluene. Br J Ind Med 49:804–808.

NIOSH [1973]. Criteria for a recommended standard occupational exposure to toluene. Rockville, MD: U.S. Department of Health, Education, and Welfare, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHEW (NIOSH) Publication No. 73–11023.

Ørbæk P, Nise G [1989]. Neurasthenic complaints and psychometric function of toluene-exposed rotogravure printers. Am J Ind Med 16:67–77.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: July 23, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–22102 Filed 8–26–03; 10:03 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0199]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Importer's Entry Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by September 29, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on

the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Importer's Entry Notice—(OMB Control Number 0910–0046)—Extension

Section 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381) charges FDA with the following responsibilities: (1) Ensuring that foreign-origin FDA-regulated foods, drugs, cosmetics, medical devices, and radiological health products offered for import into the United States meet the same requirements of the act as do domestic products, and (2) preventing shipments from entering the country if they are not in compliance.

The information collected by FDA consists of the following: (1) Product code, an alpha-numeric series of characters that identifies each product FDA regulates; (2) FDA country of origin, the country where the FDA-registered or FDA-responsible firm is located; (3) FDA manufacturer, the party who manufactured, grew, assembled, or otherwise processed the goods, (if more than one, the last party who substantially transformed the product); (4) shipper, the party responsible for packing, consolidating, or arranging the shipment of goods to their final destinations; (5) quantity and value of the shipment; and (6) if appropriate, affirmation of compliance, a code that conveys specific FDA information, such as registration number, foreign government certification, etc. This information is collected electronically by the entry filer via the U.S. Customs Service's Automated Commercial System at he same time he/she files an entry for import with the U.S. Custom Service. FDA uses this information to make admissibility decisions about FDA-regulated products offered for import into the United States.

The annual reporting burden is derived from the basic processes and procedures used in fiscal year (FY) 1995. The total number of entries submitted to the automated system in FY 2002 was 5,496,954. The total number of entries less the disclaimer entries will represent the total FDA products entered into the automated system. A total of 53 percent of all entries entered into the automated system were entries dealing with FDA-regulated products. The number of respondents is a count of filers who submit entry data for foreign-origin FDA-regulated products. The estimated reporting burden is based on information obtained by FDA contacting some potential respondents. Disclaimer entries are not FDA commodities.

In the **Federal Register** of May 23, 2003 (68 FR 28235), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

FDA estimates the burden for this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Section of the Act	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Section 801 for FY 2002 Updated	3,406	652	2,955,595	.14	413,833

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21982 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0191]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Submission of Validation Data for Reprocessed Single-Use Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Submission of Validation Data for Reprocessed Single-Use Devices" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 8, 2003 (68 FR 40676), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0514. The approval expires on January 31, 2004.

A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: August 22, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21983 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0364]

Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Annual Reports for New Drug Applications and Abbreviated New Drug Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—

Annual Reports for NDAs and ANDAs." This draft guidance is one in a series of guidance documents on providing regulatory submissions to FDA in electronic format. The draft guidance discusses issues related to the electronic submission of annual reports for approved new drug applications (NDAs) and abbreviated new drug applications (ANDAs) to FDA's Center for Drug Evaluation and Research (CDER). It is expected that the submission of these reports in electronic format will improve the agency's efficiency in processing, archiving, and reviewing the reports.

DATES: Submit written or electronic comments on the draft guidance by October 27, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Randy Levin, Center for Drug Evaluation and Research (HFD–001), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5411, e-mail: *levinr@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—Annual Reports for NDAs and ANDAs." The draft document provides guidance to industry regarding submission of annual reports in electronic format for approved NDAs and ANDAs. This draft guidance is consistent with the forthcoming guidance being developed on the submission of annual reports based on the Electronic Common Technical Document.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on providing annual reports for approved NDAs and ANDAs in electronic format. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two paper copies of mailed comments are to be submitted, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comment on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques and other forms of information technology, when appropriate.

Title: Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Annual Reports for NDAs and ANDAs.

Description: FDA is issuing a draft guidance for industry on the electronic submission of annual reports for approved NDAs and ANDAs. The guidance is one in a series of guidance documents on providing regulatory submissions to FDA in electronic format. It is expected that the submission of these reports in electronic format will improve the agency's efficiency in processing, archiving, and reviewing the reports.

Sections 314.70(d), 314.81(b)(2), and 314.98 of FDA regulations (21 CFR 314.70(d), 314.81(b)(2), and 314.98) provide reporting requirements for submitting annual reports for approved NDAs and ANDAs. Section 314.81(b)(2) and FDA Form 2252 (Transmittal of Periodic Reports for Drugs for Human Use) specify the information required in the submission of annual reports. The submission of annual reports under these regulations, including FDA Form 2252, is approved by OMB until March 31, 2005, under OMB control number 0910–0001. The draft guidance states that this information, currently required to be submitted on paper, may be submitted in electronic format as described in the draft guidance.

The draft guidance also requests information that is not specifically required in the regulations and is not approved by OMB under control number 0910–0001. Section 314.81(b)(2)(iv) requires that chemistry, manufacturing, and controls (CMC) changes be submitted in the annual report. To facilitate the review of this information, the draft guidance requests that applicants provide in electronic format a current list of approved CMC information to better document the changes occurring in applications. This information is currently requested in paper format in the guidance for industry entitled "Format and Content for the CMC Section of an Annual Report" (September, 1994) (see sections I and IV of part IV. Format and also attachment 1 of the guidance). The draft guidance requests that the list of approved CMC information include all information shown in attachment 1 of the September 1994 guidance, including: (1) The type and date of each change to each component; (2) the type of submission used to report the change (original, supplemental, or annual report); and (3) the date the change was reported and approved, if applicable.

Description of Respondents: Applicants that are required to submit annual reports updating information in an approved NDA or ANDA.

Burden Estimate: Table 1 of this document provides an estimate of the annual reporting burden for the

submission of the current list of approved CMC information. Based on the number of annual reports received for approved NDAs and ANDAs in calendar year 2002, FDA estimates that approximately 2,589 annual reports will be submitted by approximately 295 applicants for approved NDAs, and approximately 4,991 annual reports will be submitted by approximately 240 applicants for approved ANDAs. FDA estimates that it will take an applicant approximately 1 hour to prepare and attach the list of approved CMC information as requested in the draft guidance.

FDA invites comments on this analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

	No. of Respondents	Annual of Responses per Respondent	Total Responses	Hours per Response	Total Hours
NDAs	295	9	2,589	1	2,589
ANDAs	240	21	4,991	1	4,991
Total Hours					7,580

To ensure that comments on the information collection are received, OMB recommends that written comments be electronically mailed to *fyokata@omb.eop.gov* or faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Desk Officer for FDA, FAX: 202–395–6974.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: August 20, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21985 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0165]

Draft Guidance for Industry on the Current Good Manufacturing Practices for Medical Gases; Availability; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period on the draft guidance for industry entitled "Current Good Manufacturing Practice for Medical Gases." The agency issued this draft guidance in the **Federal Register** of May 6, 2003 (68 FR 24005). The initial comment period closes on September 3, 2003. To provide interested persons additional time to review the draft guidance and submit comments, the agency has decided to extend the comment period.

DATES: Written comments on the draft guidance may be submitted by November 3, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Duane S. Sylvia, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–9040, e-mail: *Sylviad@cder.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is extending the comment period on the draft guidance for industry entitled "Current Good Manufacturing Practice for Medical Gases." This draft guidance is intended to provide recommendations on how to comply with current good manufacturing practice (CGMP) regulations for manufacturing, filling, transfilling, cascading, and transferring compressed and cryogenic medical gases. The guidance should help manufacturers and distributors comply with the CGMP requirements to ensure the identity, strength, quality, and purity of medical gases.

The agency issued this draft guidance on May 6, 2003. The initial comment period closes on September 3, 2003, but at the request of the medical gas industry, the agency has decided to extend the comment period for an additional 60 days, until November 3, 2003.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance . Two copies of any mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Copies of this draft guidance for industry are available on the Internet at *http://www.fda.gov/cder/guidance/index.htm*, *http://www.fda.gov/ohrms/dockets/default.htm*, and *http://www.fda.gov/cder/dmpq/gases.htm*.

Dated: August 20, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–21984 Filed 8–27–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Treatment; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given that the 37th meeting of the Substance Abuse and Mental Health Service Administration's (SAMHSA)

Center for Substance Abuse Treatment (CSAT) National Advisory Council will be held in September 2003.

A portion of the meeting is open and includes discussion of the Center's policy issues and current administrative, legislative, and program developments. The Council's meeting will include reports on Proposed Standard Funding Mechanisms; SAMHSA's Competitive Sourcing Activities; Collaboration with other Health and Human Services (HHS) Agencies; Overview of SAMHSA's Center for Substance Abuse Prevention's Programs and Initiatives; National Institute on Drug Abuse's Clinical Trials Network; Methadone Deaths; How Sovereignty Impacts Funding for Native Americans; Partners for Recovery Initiative; and Nicotine/Tobacco Substance Abuse and Mental Health Issues. In addition, the CSAT Director will provide an update on CSAT's program and activities.

The meeting will also include the review, discussion, and evaluation of individual grant applications. Therefore a portion of the meeting will be closed to the public as determined by the SAMHSA Administrator, in accordance with Title 5 U.S.C. 552b (c) and (6) and 5 U.S.C. App. 2, Sec. 10(d).

SAMHSA/CSAT welcomes the attendance of the public at its advisory committee, and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please inform the contact person at least 7 days in advance of the meeting. Substantive program information, a summary of the meeting and a roster of Council members may also be obtained from the contact person.

Committee Name: Center for Substance Abuse Treatment National Advisory Council.

Meeting Dates: September 16—8:30 a.m.–4:30 p.m.; September 17—8:30 a.m.–12:30 p.m.

Place: Sheraton Four Points Hotel, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Type: Closed: September 16, 2003—8:30 a.m.–10 a.m.; Open: September 16, 2003—10 a.m.–4:30 p.m.; Closed: September 17, 2003—8:30 a.m.–9:30 a.m.; Open: September 17, 2003—9:30 a.m.–12:30 p.m.

FOR FURTHER INFORMATION CONTACT: Cynthia Graham, NAC Executive Secretary, SAMHSA/CSAT NAC, 5600 Fishers Lane, RW II, Ste 619, Rockville, MD 20857, (301) 443–5923, Fax: (301) 480–6077.

Dated: August 21, 2003.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 03–21979 Filed 8–27–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary for Management, Homeland Security.

ACTION: Submission for OMB review; comment request.

DATE: August 22, 2003.

SUMMARY: The Department of Homeland Security (DHS) has submitted the following (see below) information collection request (ICR), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Homeland Security, Theresa M. O'Malley ((202) 358–3571), or by e-mail to: *Terry.OMalley@dhs.gov.*

Comments: Comments and questions concerning this ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Homeland Security, Office of Management and Budget, Room 10235, Washington, DC 20503 (Fax (202) 395–6974).

Comments must be received by September 29, 2003. The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Department of Homeland Security, Under Secretary of Management, Office of the Chief Information Officer.

Title: Supplemental Investigative Data.

OMB Number: 1620–0001.

Agency Form Number: SSF 86A.

Frequency: On occasion—reporting.

Affected Public: Individuals or households; Federal Government; State, Local or Tribal Government.

Number of Respondents: 10,000.

Estimated Time Per Respondent: 3 hours.

Total Burden Hours: 30,000.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $250,000 ($25 per application × 10,000).

Description: Respondents are all Secret Service applicants. Applicants approved for hire require a Top Secret Clearance, and possibly Special Compartmented Information (SCI) Access. Responses to questions on the SSF 886A form provide information necessary for the adjudication for eligibility of the clearance, as well as ensuring that the applicant meets all internal agency requirements.

Steven I. Cooper,

Chief Information Officer.

[FR Doc. 03–22056 Filed 8–25–03; 2:39 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license and any and all associated local and national permits are canceled without prejudice:

Name	License #	Issuing port
Ronald Milton Clarke	03549	Los Angeles.
Edward K. Devlin	04174	Los Angeles.
Jesse Peralez	04783	Los Angeles.
Elio Vivante	07102	Los Angeles.
Robert K. Copeland	07382	Los Angeles.
Emerald Customs Brokers, Inc.	13115	Los Angeles.
Lisa Kearney	15340	Champlain.
James A. Daily	04341	Champlain.
Midas Express, Inc.	12860	San Francisco.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–22063 Filed 8–27–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker License

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker license are canceled without prejudice.

Name	License #	Issuing Port
Michael Dugan	04718	Champlain.
Douglas McKenny	09061	Champlain.

These brokers hold multiple Customs broker licenses. They continue to hold other valid Customs broker licenses.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–22065 Filed 8–27–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Revocation of Customs Broker License

AGENCY: Customs Service, DHS.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930 as amended (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.53) the following Customs broker license is revoked with prejudice.

Name	License	Port
Byung Wu Lee	10535	Los Angeles, California.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–22066 Filed 8–27–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Notice of Cancellation of Customs Broker Permit

AGENCY: Customs Service, DHS.

ACTION: General notice.

SUMMARY: Pursuant to section 641 of the Tariff Act of 1930, as amended, (19 U.S.C. 1641) and the Customs Regulations (19 CFR 111.51), the following Customs broker local permits are canceled without prejudice.

Name	Permit #	Issuing port
Masterpiece International, Ltd.	21–02–002	Port Arthur.
R.W. Smith and Co., Inc.	95–2101–1	Port Arthur.
CK Logistics, Inc.	53–02–KT5	Houston.
Holland Custom Brokers, Inc.	01–17–007	Atlanta.
International Cargo Exchange Logistics Inc.	17–02	Atlanta.
USF Worldwide, Inc.	85011	Houston.
USF Worldwide, Inc.	99038	Los Angeles.
Clasquin Laperriere CHB, Inc.	00–17–001	Atlanta.
DHL Airways, Inc.	9174	San Francisco.

Name	Permit #	Issuing port
DHL Airways, Inc.	30–87–F11	Seattle.
Rajendra Lal	28–02–NZ2	San Francisco.
Hankyu International Transport (USA), Inc.	5200610	Miami.
The following local permits were incorrectly cancelled for the Port of Houston:		
Rulewave, Inc.	96–2101–1	Port Arthur.
Jeanette Larbardini CHB	98–007	Port Arthur.
W.R. Zanes & Co., of LA, Inc.	96–2101–2	Port Arthur.
XL Brokers International, Inc.	97–003	Port Arthur.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–22068 Filed 8–27–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Retraction of Revocation Notice

AGENCY: Customs Service, DHS.

ACTION: General notice.

SUMMARY: The following Customs broker license was erroneously included in a list of revoked Customs broker licenses.

Name	License	Port name
Linda K. Pettingill	17122	San Diego.

Customs broker license No. 17122 remains valid.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–22067 Filed 8–27–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Cancellation of Customs Broker License Due to Death of the License Holder

AGENCY: Bureau of Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: General notice.

SUMMARY: Notice is hereby given that, pursuant to 19 CFR 111.51(a), the following individual Customs broker license and any and all associated permits have been cancelled due to the death of the broker:

Name	License #	Port name
Jose A. Roman	04800	San Juan.
David Michael Cline	17369	Los Angeles.
Roger Mann	14963	Los Angeles.
Oscar Zaldivar	15660	Los Angeles.
Harvey Yaffe	02484	New Orleans.

Dated: August 20, 2003.

Jayson P. Ahern,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 03–22064 Filed 8–27–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Recovery Plan for *Fritillaria gentneri* (Gentner's Fritillary)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service ("we"), announce the availability of the final Recovery Plan for *Fritillaria gentneri* (Gentner's fritillary). This plan includes specific criteria and measures to be taken in order to effectively recover the species to the point that delisting is warranted.

ADDRESSES: Copies of this final recovery plan are available by written request to the Field Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266–1398. An electronic copy of this recovery plan is also available at: *http://endangered.fws.gov/recovery/index.html#plans.*

FOR FURTHER INFORMATION CONTACT: Andy Robinson, Fish and Wildlife Biologist, at the Portland address above (telephone: 503–231–6179).

SUPPLEMENTARY INFORMATION:

Background

Recovery of endangered or threatened animals and plants is a primary goal of our endangered species program and the Endangered Species Act (Act) (16 U.S.C. 1531 *et seq.*). Recovery means improvement of the status of listed species to the point at which listing is no longer appropriate under the criteria set out in section 4(a)(1) of the Act. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the measures needed for recovery.

The Act requires the development of recovery plans for listed species unless

such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. The draft recovery plan for *Fritillaria gentneri* was available for public comment from November 22, 2002 through January 21, 2003 (67 FR 70452). Information presented during the public comment period has been considered in the preparation of this final recovery plan, and is summarized in the appendix to the recovery plan. We will forward substantive comments regarding recovery plan implementation to the appropriate Federal or other entities so they can take these comments into account in the course of implementing recovery actions.

Fritillaria gentneri, also known as Gentner's fritillary and/or Gentner's mission-bells, is a rare, red-flowered member of the lily family (Liliaceae). This species is found primarily in very small, scattered occurrences in Jackson and Josephine Counties in southwestern Oregon; one small additional population was recently discovered in northern California, near the Oregon border. *Fritillaria gentneri* is threatened by a variety of factors including habitat loss associated with rapidly expanding residential and agricultural development, alteration of habitat by invasive weeds and successional encroachment by trees and brush, habitat disturbance from timber harvest and recreational activities, and vulnerability associated with extremely small population sizes. Other potential threats to *Fritillaria gentneri* include bulb collecting for gardens, and herbivory by deer and livestock.

Recovery of *Fritillaria gentneri* will be based on the conservation of the species through protected populations ("*Fritillaria* management areas") distributed in natural densities across the historical range of the species in four designated recovery units. Recovery units are geographically bounded areas containing extant *Fritillaria gentneri* populations that are the focus of recovery actions. Recovery units include lands both essential and not essential to the long-term conservation of *Fritillaria gentneri*.

The overall objective of this recovery plan is to reduce the threats to *Fritillaria gentneri* to the point where it can be reclassified (downlisted) to threatened, with the ultimate goal of being removed from the Act's protection entirely (delisted). The recovery measures identified include: (1) Establishing, managing, and maintaining a minimum number of *Fritillaria* management areas within the four designated recovery units, to be achieved through protection of existing populations, population augmentation, and reintroduction at historically occupied sites; (2) providing information to private landowners to assist with the identification of *Fritillaria gentneri* and management of its habitat; (3) conducting surveys and research essential to the conservation of the species; and (4) development of off-site germplasm banks to maintain reproductive materials.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: July 21, 2003.

David J. Wesley,

Acting Regional Director, Region 1, Fish and Wildlife Service.

[FR Doc. 03–22000 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meetings of the Klamath River Basin Fisheries Task Force

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public. The purpose of the meeting is to continue providing recommendations from the affected interests to the Department of the Interior on implementation of their program to restore anadromous fisheries, including salmon and steelhead, of the Klamath River in California and Oregon.

DATES: The first meeting will be from 9 a.m. to 5 p.m. on February 18, 2004, and from 8 a.m. to 1 p.m. on February 19, 2004. The second meeting will be from 9 a.m. to 5 p.m. on June 23, 2004, and from 8 a.m. to 1 p.m. on June 24, 2004. The third meeting will be from 9 a.m. to 5 p.m. on October 13, 2004, and from 8 a.m. to 1 p.m. on October 14, 2004.

ADDRESSES: The first meeting will be held at the Best Western Beachfront Inn, 16008 Boat Basin Road, Brookings, Oregon. The second meeting will be held at the Olympic Inn, 2627 South 6th Street, Klamath Falls, Oregon. The third meeting will be held at the Convention Center, Best Western Miner's Inn, 112 E. Miner Street, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Phil Detrich, Field Supervisor, U.S. Fish and Wildlife Service, 1829 South Oregon Street, Yreka, California 96097, telephone (530) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: August 22, 2003.

John Engbring,

Acting Manager, California/Nevada Operations, Fish and Wildlife Service.

[FR Doc. 03–22062 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–360–1430–EU; CACA–42659]

Notice of Realty Action, Noncompetitive Sale of Public Land in Siskiyou County, CA

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice to Withdraw Lands from Exchange Proposal, Opening of Public Land Notice of Segregation for Exchange, Notice of Segregation for Sale and Sale of Public Land.

SUMMARY: Notice is hereby given that the Bureau of Land Management has withdrawn certain lands in Siskiyou County from proposed land exchange CACA–41373. This notice terminates the temporary segregation of those lands for exchange effective August 28, 2003. Notice is also hereby given that those same certain lands have been found suitable for direct sale at not less than the estimated fair market value of $7,250.00.

DATES: Submit comments on or before October 14, 2003.

FOR FURTHER INFORMATION CONTACT: Susie Rodriguez, Redding Field Office, 355 Hemsted Drive, Redding, CA 96002; 530–224–2142.

SUPPLEMENTARY INFORMATION: Pursuant to the regulations contained in 43 CFR 2091.3–2(b), the following described land will be relieved of the temporary segregative effect of the exchange application CACA–41373. The following public land has been found suitable for direct sale under section 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713). Mount Diablo

Meridian, T. 43 N., R.10 W., Section 11, Lots 12&13.

The land described contains 7.36 acres.

The land will not be offered for sale until at least 60 days after the date of this notice.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

This land is being offered by direct sale to Richard Dews, consistent with 43 CFR 2711.3–3(a)(1). It has been determined that the parcel contains no known minerals; therefore, mineral interests may be conveyed simultaneously.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued, will contain certain reservations to the United States and will be subject to all existing rights. Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Redding Field Office, Bureau of Land Management, 355 Hemsted Drive, Redding, California 96002.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit written comments regarding the proposed sale to Charles M. Schultz, Field Office Manager, Redding Field Office, Bureau of Land Management, 355 Hemsted Dr., Redding, CA 96002. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: June 20, 2003.

Charles M. Schultz,

Field Manager.

[FR Doc. 03–22057 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–040–1430–EU; SDM 89350]

Notice of Realty Action, Direct Sale of Public Lands, Lawrence County, SD

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The below described lands are suitable for disposal by direct sale.

DATES: Interested parties may submit comments pertaining to this action. The lands will not be offered for sale until October 14, 2003.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Bureau of Land Management, South Dakota Field Office, 310 Roundup Street, Belle Fourche, South Dakota 57717.

FOR FURTHER INFORMATION CONTACT: You may contact Chuck Berdan, at 605–892–7000. Additional information concerning the land sale, including relevant planning and environment documentation, may be obtained from the South Dakota Field Office at the above address.

SUPPLEMENTARY INFORMATION: Under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1719), the following described lands are available for direct sale. The subject land will be sold at the approved appraised fair market value of $700. The potential buyer of the land will also make application under section 209 of the Federal Land Policy and Management Act of October 21, 1976, to purchase the mineral estate along with the surface estate.

Black Hills Meridian, South Dakota

T. 4 N., R. 2 E.,
Sec. 1, lots 22, 23 and 27;
Sec. 12, lot 1.
T. 4 N., R. 3 E.,
Sec. 6, lots 7, 13–18 inclusive, 27 and 30;
Sec. 7, lot 2.
Containing 8.93 acres.

The purpose of the proposed sale is to dispose of parcels that are isolated and uneconomic to manage as a part of the public lands and are not suitable for management by another Federal department or agency. The parcels are small tracts with no public access. The proposed sale is consistent with the South Dakota Resource Management Plan (November 1985), and the public interest will be served by offering the parcels for sale.

The adjoining land ownership pattern and lack of access indicate that a direct sale is appropriate. The parcels will be offered for non-competitive sale to Golden Reward Mining Company, LP, the adjacent and surrounding landowner.

A mineral examination of the subject lands determined that any minerals associated with these parcels have been removed by prior mining operations in the area, and that they now have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. Conveyance of the available mineral interests would occur simultaneously with the sale of the land. The applicant will be required to pay a $50 non-returnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservation: A right-of-way thereon for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

The State Director, who may sustain, vacate, or modify this realty action, will review objections to the sale. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Publication of this notice in the **Federal Register** will segregate the public lands from appropriations under the public land laws, including the mining laws, pending disposition of this action or May 24, 2004, which ever occurs first. Under the application to convey the mineral estate, the mineral interests of the United States are segregated from appropriation under the public land laws, including the mining laws, for a period of 2 years from the date of filing the application.

Russell W. Pigors,

Acting South Dakota Field Manager.

[FR Doc. 03–22058 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–040–1430–EU; SDM 87107]

Notice of Realty Action, Direct Sale of Public Lands, Lawrence County, SD

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The below described lands are suitable for disposal by direct sale.

DATES: Interested parties may submit comments pertaining to this action. The lands will not be offered for sale until October 14, 2003.

ADDRESSES: Written comments concerning the proposed sale should be sent to the Bureau of Land Management, South Dakota Field Office, 310 Roundup Street, Belle Fourche, South Dakota 57717.

FOR FURTHER INFORMATION CONTACT: You may contact Chuck Berdan, at 605–892–7000. Additional information concerning the land sale, including relevant planning and environment documentation, may be obtained from the South Dakota Field Office at the above address.

SUPPLEMENTARY INFORMATION: Under section 203 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C 1719), the following described lands are available for direct sale. The subject land will be sold at the approved appraised fair market value of $300. The potential buyer of the land will also make application under section 209 of the Federal Land Policy and Management Act of October 21, 1976, to purchase the mineral estate along with the surface estate.

Black Hills Meridian, South Dakota

T. 4 N., R. 2 E.,
Sec. 1, lots 7 and 25.
T. 4 N., R. 3 E.,
Sec. 36, lots 10, 22 and 23.
Containing 4.05 acres.

The purpose of the proposed sale is to dispose of parcels that are isolated and uneconomic to manage as a part of the public lands and are not suitable for management by another Federal department or agency. The parcels are small tracts with no public access. The proposed sale is consistent with the South Dakota Resource Management Plan (November 1985), and the public interest will be served by offering the parcels for sale.

The adjoining land ownership pattern and lack of access indicate that a direct sale is appropriate. The parcels will be offered for non-competitive sale to Wharf Resources (U.S.A.), Inc., who is the adjacent and surrounding landowner.

A mineral examination of the subject lands determined that any minerals associated with these parcels have been removed by prior mining operations in the area, and that they now have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests.

Conveyance of the available mineral interests would occur simultaneously with the sale of the land. The applicant will be required to pay a $50 non-refundable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservation: a right-of-way thereon for ditches and canals constructed by the authority of the United States, under the Act of August 30, 1890 (43 U.S.C. 945).

The State Director, who may sustain, vacate, or modify this realty action, will review objections to the sale. In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Publication of this notice in the **Federal Register** will segregate the public lands from appropriations under the public land laws, including the mining laws, pending disposition of this action or May 24, 2004, which ever occurs first. Under the application to convey the mineral estate, the mineral interests of the United States are segregated from appropriation under the public land laws, including the mining laws, for a period of 2 years from the date of filing the application.

Russell W. Pigors,

Acting South Dakota Field Manager.

[FR Doc. 03–22059 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–072–1220–HB]

Notice of Proposed Supplementary Rules for Developed Recreation Sites Within the area managed by the Butte Field Office, Montana

AGENCY: Bureau of Land Management, Butte Field Office, Montana, Interior.

ACTION: Proposed supplementary rules.

SUMMARY: The Bureau of Land Management (BLM), Butte Field Office, is proposing supplementary rules. These supplementary rules will apply to the public lands within developed campgrounds and day-use areas managed by the Butte Field Office. BLM has determined these supplementary rules necessary to protect natural resources in the areas, to protect public health, to enhance the safety of area visitors and neighboring residents, and to provide campsites to visitors in a more equitable manner at higher use areas.

DATES: You should submit your comments on or before September 29, 2003. In developing final supplementary rules, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: You may hand-deliver comments on the proposed rule to Bureau of Land Management, Butte Field Office, 106 N. Parkmont, Butte, Montana 59701, or mail comments to Bureau of Land Management, Butte Field Office, at the same address. You may also comment via the Internet to: *MT_Butte_FO@blm.gov.*

FOR FURTHER INFORMATION CONTACT: Brad Rixford, Outdoor Recreation Planner, 106 N. Parkmont, Butte, Montana 59701, 406–533–7600.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures.
II. Background.
III. Areas Covered by the Supplementary Rules.
IV. Discussion of the Supplementary Rules.
V. Procedural Matters.

I. Public Comment Procedures

Please submit your comments on issues related to the proposed supplementary rules, in writing, according to the **ADDRESSES** section above. Comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed supplementary rules, and should explain the reason for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (*see* **DATES**) or comments delivered to an address other than those listed above (*see* **ADDRESSES**).

BLM will make your comments, including your name and address, available for public review at the Butte Field Office address listed in **ADDRESSES** above during regular business hours (8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays).

Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

BLM is proposing these supplementary rules under the authority of 43 CFR 8365.1–6, which allows State Directors to issue such rules for the protection of persons, property, and public lands and resources. This provision allows BLM to issue rules of less than national effect without overloading or expanding the Code of Federal Regulations.

The overall program authority for the operation of these campgrounds is found in Sections 302 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732, 1740).

The campgrounds for which fees are charged are operated under the Fee Demo Project, which allows BLM to collect fees and use the revenues for the

management of recreation sites within the state where the fees are collected.

III. Areas Covered by the Supplementary Rules

The proposed supplementary rules containing rules of conduct would apply to the developed campgrounds at Holter Dam, Holter Lake, Log Gulch, Departure Point, Devil's Elbow, Clark's Bay, Divide Bridge Campground, Upper Divide Bridge, Upper and Lower Toston Dam, Beartooth Landing, Carbella, Galena, Crow Creek, East Bank, Bryant Creek, Jerry Creek, and Dickie Bridge campgrpounds, except as otherwise noted in the specific supplementary rules. All of these campgrounds are on public lands managed by the Butte Field Office, BLM.

A second set of the supplementary rules relating to permits and campsite administration apply at Holter Dam, Holter Lake, Log Gulch, Departure Point, Devil's Elbow, Clark's Bay, Divide Bridge Campgrounds.

IV. Discussion of the Supplementary Rules

The rules of conduct in section 1 of the supplementary rules are self-explanatory and do not require any commentary here. However, the administrative rules in section 2 may need a bit of background explanation.

a. We would require that you pay for boat ramp and other day-use facilities before you launch or otherwise use them, rather than waiting for the end of the day when you may be in a hurry to return home. At campgrounds, the BLM personnel will advise you what campsites are available. Once you select a site, you must return to the entrance station to make payment and complete your registration.

b. Each campsite has a wooden post to which you must attach your payment receipt. This way, we can see that you are properly registered without searching around your vehicle or otherwise bothering you during your visit.

c. We have had problems with people claiming or holding campsites for friends arriving later by placing coolers, deck chairs, vehicles, or other equipment on the sites. This is unfair to other visitors. Our campsites are available first come, first served.

d. Because of increasing demand for recreational sites, and because some of BLM's sites have been closed for maintenance and road construction, we propose to reduce the length-of-stay rule from 14 to 7 days for some campgrounds, as listed. We may restore the longer term at a later date if it turns out that demand does not increase as we expect.

f. The same reasoning applies to claiming extra boat dock slips as to claiming extra campsites in paragraph c., discussed above.

h. We have had problems with vandalism and after-dark keg parties getting out of hand at the Clark's Bay day-use area, so we propose to close the area temporarily each day after dark to 9 a.m. from May through September and for the entire day during the off-season from October through April.

i. Although the Clark's Bay day-use area would be closed to vehicles and social gatherings during the periods identified in the preceding paragraph, individuals wishing to hike, jog, walk their dogs, or otherwise make pedestrian use of the area during the closure periods are welcome.

V. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These supplementary rules are not a significant regulatory action and are not subject to review by Office of Management and Budget under Executive Order 12866. These supplementary rules will not have an effect of $100 million or more on the economy. They are not intended to affect commercial activity, but contain rules of conduct for public use of certain recreational areas. They will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These proposed supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The supplementary rules do not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed supplementary rules clearly stated?

(2) Do the proposed supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the proposed supplementary rules (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?

(4) Would the supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the proposed supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed supplementary rules? How could this description be more helpful in making the supplementary rules easier to understand?

Please send any comments you have on the clarity of the supplementary rules to the address specified in the **ADDRESSES** section.

National Environmental Policy Act

BLM has prepared an environmental assessment (EA) or management agreement and has found that the proposed supplementary rules would not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the Environmental Protection Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The supplementary rules merely contain rules of conduct for certain recreational lands in Montana. These rules are designed to protect the environment and the public health and safety. A detailed statement under NEPA is not required. BLM has placed the EA and the Finding of No Significant Impact (FONSI) on file in the BLM Administrative Record at the address specified in the **ADDRESSES** section. The BLM invites the public to review these documents and suggests that anyone wishing to submit comments in response to the EA and FONSI do so in accordance with the "Public comment procedure" section above.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, BLM has determined under the RFA that these proposed supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These supplementary rules do not constitute a "major rule" as defined at 5 U.S.C. 804(2). Again, the supplementary rules merely contain rules of conduct for recreational use of certain public lands. The supplementary rules have no effect on business, commercial or industrial use of the public lands.

Unfunded Mandates Reform Act

These supplementary rules do not impose an unfunded mandate on State, local or tribal governments or the private sector of more than $100 million per year; nor do these proposed supplementary rules have a significant or unique effect on State, local, or tribal governments or the private sector. The supplementary rules do not require anything of State, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*)

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The supplementary rules do not represent a government action capable of interfering with constitutionally protected property rights. The supplementary rules do not address property rights in any form, and do not cause the impairment of anybody's property rights. Therefore, the Department of the Interior has determined that the supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The supplementary rules will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The supplementary rules affect land in only one state, Montana, and do not address jurisdictional issues involving the State government. Therefore, in accordance with Executive Order 13132, BLM has determined that these proposed supplementary rules do not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that these proposed supplementary rules would not unduly burden the judicial system and that they meet the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

These proposed supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.*

Dated: May 7, 2003.

A. Jerry Meredith,

State Director, Acting, Bureau of Land Management, Montana State Office.

[FR Doc. 03–22060 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plats of surveys.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657.

SUPPLEMENTARY INFORMATION: This survey was executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Land Management. The lands we surveyed are:

The plat representing the dependent resurvey of a portion of the Boise Meridian (west boundary), subdivisional lines, and the adjusted 1896 record meanders of "Gamble" Lake in section 7, and the subdivision of section 7, and the survey of the 2002 meanders of an unnamed island within Gamlin Lake in section 7, and the metes-and-bounds survey of the public land boundary in the E½, the right-of-way lines of Camp Bay Road in the SW¼, and the north line of lot 12, all in section 7, in T. 56 N., R. 1 E., Boise Meridian, Idaho, was accepted August 15, 2003.

Dated: August 22, 2003.

Harry K. Smith,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 03–22003 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–BJ–5040]

ES–051987, Group No. 157, Wisconsin; Eastern States: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of filing of plat of survey; Wisconsin.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey, in two (2) sheets, of the lands described below in the BLM Eastern States Office, Springfield, Virginia, 30 calender days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153. Attn: Cadastral Survey.

SUPPLEMENTARY INFORMATION: This survey was requested by the Bureau of Indian Affairs and the Lac Courte Oreilles Tribal Governing Board because of extensive obliteration of original corner evidence within the reservation boundaries.

The lands we surveyed are:

Fourth Principal Meridian, Wisconsin

T. 39 N., R. 7 W.

The plat of survey represent the dependent resurvey of the north boundary, a portion of the south, east, and west boundaries, a portion of the subdivisional lines, the subdivision of certain sections, a survey of a portion of the present shoreline of Blueberry Lake, and the corrective resurvey of a portion of the subdivisional lines, the reestablishment of a portion of the original meander line, the apportionment of the shoreline frontage to original lots 5 and 6, in section 9, and the subdivision of section 9, Township 39 North, Range 7 West, Fourth Principal Meridian, in the state of Wisconsin, and was accepted August 21, 2003.

We will place a copy of the plat we described in the open files. It will be available to the public as a matter of information.

If BLM receives a protest against this survey, as shown on the plat, prior to the date of the official filing, we will stay the filing pending our consideration of the protest. We will not officially file the plat until the day after

we have accepted or dismissed all protests and they have become final, including decisions on appeals.

Dated: August 22, 2003.

Stephen D. Douglas,

Chief Cadastral Surveyor.

[FR Doc. 03–22005 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Joshua Tree National Park, CA: Boundary Revision To Include Certain Adjacent Real Property

Pursuant to the authority contained in the Act of September 3, 1964 (Pub. L. 88–578, 78 Stat. 27), "The Land and Water Conservation Fund Act of 1965," as amended (16 U.S.C. 460*l*–9(c)(1)(ii)), notice is hereby given that the boundary of Joshua Tree National Park is modified to include approximately 70 acres of real property adjacent to the park's prior boundary. This adjustment is accomplished to include two pieces of private property which the owners have desired to donate to the United States for the use of Joshua Tree National Park, as well as contiguous acreage which the Bureau of Land Management has identified as excess to its needs. The properties are described below:

Tract 1

Parcel 1: The Southwest ¼ of the Southeast ¼ of the Southwest ¼ of Section 34, Township 1 North Range 8 East, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat thereof.

Parcel 2: The South ½ of the Northeast ¼ of the Southeast ¼ of the Southwest ¼ of Section 34, Township 1 North Range 8 East, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat thereof.

Parcel 3: The West ½ of the North ½ of the Southeast ¼ of the Southwest ¼ of Section 34, Township 1 North, Range 8 East, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat thereof.

Parcel 4: The Southeast ¼ of the Southeast ¼ of the Southwest ¼ of Section 34, Township 1 North, Range 8 East, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat thereof.

Tract 2

Lots 26, 27, 28, 33 and 34 in Section 34, Township 1 North, Range 8 East, San Bernardino Meridian, according to the Official Plat thereof.

Tract 3

Parcel 1: The North Half of the Southeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 14, Township 1 South, Range 6 East, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat thereof.

Parcel 2: The South Half of the Southeast Quarter of the Southeast Quarter of the Southeast Quarter of Section 14, Township 1 South, Range 6 East, San Bernardino Meridian, in the County of San Bernardino, State of California, according to the Official Plat thereof.

These revisions in the park boundary are depicted on Drawing No. 156/80,049, Sheet 1 of 1, dated April 1, 2003. This map is on file and available for inspection, and further information regarding this boundary change is available, at the following addresses:

Director, National Park Service, Department of the Interior, Washington, DC 20240;
Regional Director, Pacific West Region, National Park Service, 1111 Jackson St., Ste. 700, Oakland, CA 94607;
Superintendent, Joshua Tree National Park, 74485 National Park Drive, Twentynine Palms, CA 92277.

Dated: April 24, 2003.

Jonathan B. Jarvis,

Regional Director, Pacific West Region.

[FR Doc. 03–21968 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–EK–M

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Assessment for the Arlington County Virginia Potomac Interceptor Sewer System Improvements Project

AGENCY: National Park Service, Interior.

ACTION: Availability of the Environmental Assessment for the Potomac Interceptor Sewer System Improvements Project, Arlington County, Virginia.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service (NPS) policy, the NPS announces the availability of an Environmental Assessment (EA) for the construction of a replacement sewer for the existing Potomac Interceptor sewer. The Potomac Interceptor sewer system is a major regional sanitary sewer which serves the east-central portions of Arlington County, including the Ballston-Courthouse-Rosslyn Metro Corridor area. The existing sewer system was constructed in the mid-1930s and is nearing the end of its useful life. The existing sewer system is also undersized and does not have the capacity to convey the peak flows produced by severe past and projected storm events. Additionally, the existing sewer system will experience surcharging on a daily basis under future build-out land use conditions. The EA examines several alternatives for construction of a replacement sewer system for the portion of the Potomac Interceptor sanitary sewer extending from the River Place Co-Op south to Columbia Pike. The subject project is designed to maintain continuous sewer service to existing local users, increase the carrying capacity of the sewer in order to eliminate surcharging and overflows which have occurred in this portion of the system, provide capacity for anticipated build-out conditions, and allow for future maintenance. The NPS is soliciting comments on this EA. These comments will be considered in evaluating it and making decisions pursuant to the National Environmental Policy Act.

DATES: The EA will remain available for public comment 30 days from the date of publication in the **Federal Register**. Written comments should be received no later than this date.

ADDRESSES: Comments on this EA should be submitted in writing to: Ms. Audrey F. Calhoun, Superintendent, George Washington Memorial Parkway, Turkey Run Park, McLean, Virginia 22101. The EA will be available for public inspection Monday through Friday, 8 a.m. through 4 p.m. at the GWMP Headquarters, Turkey Run Park, McLean, Virginia; and at the following libraries: Columbia Pike Library, Arlington, Virginia; and Arlington County Central Library, Arlington, Virginia.

SUPPLEMENTARY INFORMATION: Arlington County proposes to construct a replacement sanitary sewer for the Potomac Interceptor sewer extending from the River Place Co-Op to Columbia Pike. The goals and objectives of the proposed action include the following:

1. Provide additional sewer capacity to eliminate sewer overflows, backups, and surcharging (overflows have occurred at River Place),

2. Minimize environmental and community impacts,

3. Comply with pending Environmental Protection Agency Sanitary Sewer Overflow Regulations,

4. Address aging elements of the sewer system (the subject sewer is nearing the end of its useful life) and maintain system operating conditions at an adequate level of functionality,

5. Maintain continuous sewer service to existing local users,

6. Provide service availability to potential future users (Arlington Ridge Park, Arlington National Cemetery, etc.,

7. Consolidate utilities in Eisenhower Drive in accordance with the 1998 Master Plan for Arlington National Cemetery,

8. Maximize acreage for additional grave sites at Arlington National Cemetery,

9. Implement a cost-effective project for the ratepayers, and

10. Minimize capital and operating costs and operation and maintenance requirements.

All interested individuals, agencies, and organizations are urged to provide comments on the EA. The NPS, in making a final decision regarding this matter, will consider all comments received by the closing date.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Germaine (703) 289–2540.

Audrey F. Calhoun,

Superintendent, George Washington Memorial Parkway.

[FR Doc. 03–21973 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–DL–P

DEPARTMENT OF THE INTERIOR

National Park Service

Record of Decision, General Management Plan, Final Environmental Impact Statement, Tonto National Monument, Arizona

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a Record of Decision on the Final Environmental Impact Statement for the General Management Plan, Tonto National Monument.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91–190, 83 Stat. 852, 853, codified as amended at 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of the Record of Decision for the General Management Plan, Tonto National Monument, Arizona. On July 28, 2003, the Acting Director, Intermountain Region approved the Record of Decision for the project. As soon as practicable, the National Park Service will begin to implement the Preferred Alternative contained in the FEIS issued on March 14, 2003. The following course of action will occur under the preferred alternative:

The selected alternative integrates a combination of actions that will preserve cultural and natural resources and provide opportunities for high quality visitor experiences based on resource values. This alternative provides the balance and flexibility necessary to accomplish both of these objectives in a realistic manner. A new administrative facility constructed inside the monument will improve staff needs. The existing visitor center will be remodeled to increase visitor orientation and education opportunities. A 10-to 50-vehicle transportation staging area will be built and an alternative transportation system to access park resources will be developed and implemented to transport visitors from the new staging area near the entrance station to the visitor center during the busiest times of the year. A seasonal employee/volunteer residence will be constructed increasing the park's ability to obtain needed help for resource stewardship and visitor services. The management of cultural and natural resources will improve with more staff and the information needed to conduct preservation programs.

This course of action plus three other alternatives were analyzed in the Draft and Final Environmental Impact Statements. The full range of foreseeable environmental consequences was assessed, and appropriate mitigating measures were identified.

The Record of Decision includes a statement of the decision made, synopses of other alternatives considered, the basis for the decision, a description of the environmentally preferable alternative, a finding on impairment of park resources and values, a listing of measures to minimize environmental harm, and an overview of public involvement in the decision-making process.

FOR FURTHER INFORMATION CONTACT: Shirley Hoh, HC02 Box 4602, Roosevelt, Arizona 85545, (928) 467–2241, *TONTSuperintendent@nps.gov.*

SUPPLEMENTARY INFORMATION: Copies of the Record of Decision may be obtained from the contact listed above or online at *www.nps.gov/tont/index.html.*

Dated: July 26, 2003.

Michael D. Snyder,

Acting Director, Intermountain Region, National Park Service.

[FR Doc. 03–21969 Filed 8–27–03; 8:45 am]

BILLING CODE 4312–ON–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Impact Statement, Harpers Ferry National Historical Park, West Virginia, Virginia, and Maryland

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an environmental impact statement for the general management plan, Harpers Ferry National Historical Park.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the general management plan for Harpers Ferry National Historical Park. The Regional Director, National Capital Region, will approve the environmental impact statement.

Harpers Ferry National Historical Park is in Jefferson County, West Virginia; Loudoun County, Virginia; and Washington County, Maryland. The park was authorized by Congress in June 1944. Congress charged the National Park Service with managing the site as "a public national memorial commemorating historical events at or near Harpers Ferry." The enabling legislation also states that the Director of the National Park Service "shall maintain and preserve it for the benefit and enjoyment of the people of the United States, subject to the provisions of the [NPS Organic Act]."

The general management plan will prescribe the resource conditions and visitor experiences that are to be achieved and maintained in the park over the next 15 to 20 years. The clarification of what must be achieved according to law and policy will be based on review of the park's purpose, significance, special mandates, and the body of law and policies directing park management. Management decisions to be made where law, policy, or regulations do not provide clear guidance or limits will be based on the purposes of the park; the range of public expectations and concerns; resource analysis; an evaluation of the natural, cultural, and social impacts of alternative courses of action; and consideration of long-term economic costs. Based on determinations of desired conditions, the general management plan will outline the kinds of resource management activities, visitor activities, land acquisition and development that would be appropriate in the park in the future. Alternatives will be developed through this planning

process and will include, at a minimum, no-action and the preferred alternative.

Major issues include protection and interpretation of natural and cultural resources, adaptive re-use of historic structures, quality of visitor experience, land acquisition, and potential partnerships with other agencies, organizations, and local interests.

DATES: The National Park Service will conduct public scoping for 60 days from the date of publication of this notice in the **Federal Register**. Open meetings regarding the general management plan will be held during the public scoping period. Specific dates, times, and locations will be made available in the local media, on the Harpers Ferry National Historical Park Web site (*http://www.nps.gov/hafe*), or by contacting the Superintendent.

ADDRESSES: Throughout the scoping and planning process, information will be available for public review and comment in the office of the superintendent (Donald Campbell, Harpers Ferry National Historical Park, PO Box 65, Harpers Ferry, WV 25425).

FOR FURTHER INFORMATION CONTACT: Superintendent Donald Campbell, Harpers Ferry National Historical Park, PO Box 65, Harpers Ferry, WV 25425; Tel: (304) 535–6224; FAX: (304) 535–4022.

SUPPLEMENTARY INFORMATION: If you wish to comment on the general management planning process for Harpers Ferry National Historical Park, or on any issues associated with the plan, you may submit your comments by any one of several methods. You may mail comments to Superintendent Donald Campbell, Harpers Ferry National Historical Park, PO Box 65, Harpers Ferry, WV 25425. You may also e-mail comments to the Superintendent's Office at *Judy_Coleman@nps.gov*. Finally, you may hand-deliver comments to the Harpers Ferry Visitor Center (off U.S. Highway 340). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations, businesses, or individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: June 13, 2003.

Terry Carlstrom,

Regional Director, National Capital Region.

[FR Doc. 03–21972 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–71–P

DEPARTMENT OF THE INTERIOR

National Park Service

Environmental Statements: Notice of Intent

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a General Management Plan and Environmental Impact Statement.

SUMMARY: Pursuant to section 102 (2)(C) of the National Environmental Policy Act of 1969, the National Park Service announces its intent to prepare a General Management Plan and Environmental Impact Statement (GMP/EIS) for the Hopewell Furnace National Historic Site, Elverson, Pennsylvania. The park comprises 848 acres, including the finest surviving example of a cold-blast charcoal fired furnace, and related structures, including 50 listed on the National Register of Historic Places. Prepared by planners in the NPS Northeast Region, with assistance from advisors and consultants, the GMP/EIS will propose a long-term approach to managing the Hopewell Furnace National Historic Site. Consistent with the site's mission, NPS policy, and other laws and regulations, alternatives will be developed to guide the management of the site over the next 15 to 20 years. The alternatives will incorporate various zoning and management prescriptions to ensure resource preservation and public enjoyment of the site. The environmental consequences that could result from implementing the various alternatives will be evaluated in the plan. Impact topics will include cultural and natural resources, visitor experience, park operations, the socioeconomic environment, impairment, and sustainability. The public will be invited to express concerns about the management of the site early in the process through public meetings and other media; and will have an opportunity to review and comment on a draft GMP/EIS. Following public review processes outlined under NEPA, the final plan will become official, authorizing implementation of a preferred alternative. The target date for the Record of Decision is October 28, 2005.

FOR FURTHER INFORMATION CONTACT: Superintendent, Hopewell Furnace National Historic Site, (610) 582–8773.

Dated: July 10, 2003.

William A. Sanders,

Superintendent, Hopewell Furnace National Historic Site.

[FR Doc. 03–21975 Filed 8–27–03; 8:45 am]

BILLING CODE 4312–JJ–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Impact Statement, Hovenweep National Monument, Colorado and Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to prepare an environmental impact statement for a general management plan for Hovenweep National Monument.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for a general management plan for Hovenweep National Monument. This effort will result in a comprehensive general management plan that provides a framework for making management decisions regarding the preservation of natural and cultural resources, visitor use and interpretation, and development of appropriate park facilities. In cooperation with the Bureau of Land Management, the United States Forest Service, the Colorado and Utah State Historic Preservation Offices, and Utah State Parks, attention will also be given to resources outside the boundaries that affect the integrity of Hovenweep National Monument. Alternatives to be considered include no-action, the proposed action and other reasonable alternatives.

Major opportunities and concerns at Hovenweep National Monument include:

1. Hovenweep NM does not have a general management plan to provide a comprehensive vision for the monument and forum for public input on the management of the monument. The creation of a new national monument, the Canyon of the Ancients increases the need for interagency cooperation and consultation on issues relating to resource protection, visitor education and enjoyment of these resources.

2. Oil and gas development and pressure to explore and develop other reserves on lands adjacent to the monument poses the potential for impacts on the monument's natural and cultural resources.

3. Grazing on lands adjacent to the monument has resulted in domestic livestock encroaching on park lands, posing adverse impacts on the park's archeological resources and habitat for native species.

4. The monument does not have an adequate maintenance facility.

5. The monument relies heavily on partnerships with a number of state, tribal, private and academic agencies, organizations and institutions. The general management planning process will provide a forum for discussion and consultation that will strengthen the foundations of these partnerships.

A public forum for comment on the full range of appropriate visitor experiences will be provided throughout the course of the GMP process. Public involvement is essential for the development of creative solutions to guide future park management.

A briefing statement has been prepared that summarizes the issues identified to date. Copies of that information may be obtained from: Superintendent, Hovenweep National Monument.

DATES: The Park Service will accept comments from the public for 30 days from the date this notice is published in the **Federal Register**.

ADDRESSES: Information will be available for public review and comment in the office of the Superintendent, Greg Dudgeon, Hovenweep National Monument. The director, Intermountain Region, National Park Service will approve the environmental impact statement.

The National Park Service will conduct public scoping (public meetings and solicitation of comments from state, county and town agencies and organizations; park neighbors; state historic preservation officer; and associated American Indian tribes) for the Hovenweep General Management Plan/Environmental Impact Statement from July, 2003 to August, 2005. Public involvement will play a critical role in the preparation of the environmental impact statement that will analyze the impacts of the management alternatives in the draft general management plan.

DATES: The National Park Service will conduct further public scoping for the draft alternatives and environmental impact statement for a period of 30-days beyond publication of this Notice of Intent.

ADDRESSES: You may mail comments to: Superintendent's Office, Hovenweep National Monument, McElmo Route, Cortez, CO 81321. You may also hand-deliver comments to the Superintendent's Office, Hovenweep National Monument, Cortez, CO. (Attn: General Management Plan).

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Greg Dudgeon at 435.719.2100 or e-mail: *hove_superintendent@nps.gov*.

SUPPLEMENTARY INFORMATION: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish us to withhold your address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: June 20, 2003.

Karen P. Wade,

Director, Intermountain Region, National Park Service.

[FR Doc. 03–21974 Filed 8–27–03; 8:45 am]

BILLING CODE 4312–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 9, 2003. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by September 12, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

DISTRICT OF COLUMBIA

District of Columbia

Immaculate Conception Church, 1315 8th St., NW., Washington, 03000946.

Seventh Street Savings Bank (Banks and Financial Institutions MPS), 1300 7th St., NW., Washington, 03000944.

United Brotherhood of Carpenters and Joiners—Local 132, 1010 10th St., NW., 1001 K St. NW., Washington, 03000945.

FLORIDA

Manatee County

Terra Ceia Village Improvement Association Hall (Clubhouses of Florida's Woman's Clubs MPS), 1505 Center Rd., Terra Ceia, 03000942.

Pinellas County

Pass-A-Grille Historic District (Boundary Increase), Pass-a-Grille Way, 1st Ave., Gulf Way, Sunset Way, 32 Ave., St. Pete Beach, 03000943.

ILLINOIS

Cook County

Bersbach, Alfred, House, 1120 Michigan Ave., Wilmette, 03000941.

NORTH CAROLINA

Pitt County

Greenville Commercial Historic District: Roughly bounded by West Third, South Evans and East and West Fifth Sts. Greenville, 03000419.

A request for removal has been made for the following resource:

SOUTH DAKOTA

Yankton County

Yankton County Courthouse, 3rd St. and Broadway, Yankton, 76001759.

[FR Doc. 03–21970 Filed 8–27–03; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 2, 2003. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed

comments should be submitted by September 12, 2003.

Carol D. Shull,

Keeper of the National Register of Historic Places.

ARIZONA

Maricopa County

Rancho Arroyo, 6737 N. 20th St., Phoenix, 03000901

Pima County

Arizona Hotel (Downtown Tucson, Arizona MPS) 31–47 N. Sixth Ave., 135 E. Tenth St., Tucson, 03000902
El Paso and Southwestern Railroad Depot, (Downtown Tucson, Arizona MPS), 419 W. Congress St., Tucson, 03000903
First Hittinger Block (Downtown Tucson, Arizona MPS), 116 E. Congress St., Tucson, 03000904
Foz Theatre (Downtown Tucson, Arizona MPS), 17 W. Congress St., Tucson, 03000905
Hotel Congress (Downtown Tucson, Arizona MPS), 303–311 E. Congress St., Tucson, 03000906
J. C. Penney—Chicago Store (Downtown Tucson, Arizona MPS), 130 E. Congress St., Tucson, 03000907
Rebell Block (Downtown Tucson, Arizona MPS), 72 E. Congress, Tucson, 03000910
Rialto Building (Downtown Tucson, Arizona MPS), 300–320 E. Congress St., Tucson, 03000908
Rialto Theatre (Downtown Tucson, Arizona MPS), 318 E. Congress St., Tucson, 03000909
Valley National Bank Building (Downtown Tucson, Arizona MPS), 27 S. Stone Ave., Tucson, 03000911

Santa Cruz County

Barrio de Tubac Archeological District (Tubac Settlement MPS), Address Restricted, Tubac, 03000912

Yuma County

Camp Horn Monument, Approx 7 mi. of Dateland, Dateland, 03000900

ILLINOIS

Cook County

Flat Iron Building, 1441–1449 Emerald Ave., Chicago Heights, 03000917

Du Page County

Pentecost, John L., House, 259 Cottage Hill Ave., Elmhurst, 03000916

Lake County

Stevenson, Adlai E., II, Farm, 25200 N. Saint Mary's Rd., Mettawa, 03000918

Winnebago County

Jamesun, H.D., House, 900 N. Prairie St., Rockton, 03000915

IOWA

Cedar County

Cedar County Sheriff's House and Jail (Municipal, County and State Corrections Properties MPS), 118 W. 4th St., Tipton, 03000913

Jefferson County

Louden, R. Bruce, House (Louden Machinery Company, Fairfield Iowa MPS), 501 W. Adams Ave., Fairfield, 03000940

Page County

Stauer, Peter, House, 629 Main St., McGregor, 03000914

KENTUCKY

Menifee County

Red River Gorge District, Address District, Menifee, 03000919

MAINE

York County

Spiller Farm Paleoindian Site (Maine Fluted Point Paleoindian Sites MPS) Address Restricted, Wells, 03000922

MASSACHUSETTS

Franklin County

Whately Center Historic District, 155–215 Chestnut Plain Rd. and 330–348 Haydenville Rd., Whately, 03000920

Norfolk County

First Baptist Church of Medfield, 438 Main St., Medfield, 03000921

MONTANA

Cascade County

Union Bethel African Methodist Episcopal Church, 916 Fifth Ave. S, Great Falls, 03000924

Custer County

Snell, Walrond and Elizabeth, House, 402 S. Lake St., Miles City, 03000923

NEW HAMPSHIRE

Merrimack County

Waterloo Historic District, 78–183 Waterloo St., 12 and 68 Newmarket Rd., 4 Willoughby-Colby Rd., Bean Road Cemetery, Warner, 03000926

Rockingham County

Freewill Baptist Church—Peoples Baptist Church—New Hope Church, 45 Pearl St., Portsmouth, 03000925

NEW JERSEY

Somerset County

St. John's Church Complex, 154–158 W. High School, Somerville, 03000933

NORTH CAROLINA

Surry County

Cedar Point, 350 W. Main St., Elkin, 03000927

Wake County

Avera, Dr. Thomas H., House, (Wake County MPS) 6600 Robertson Pond Rd., Wendell, 03000928
Green, Herman, House (Wake County MPS), NC 1371, 0.4 N of NC 1375 (5500 Lake Wheeler Rd.), Raleigh, 03000930
Occidental Life Insurance Company Building, 1001 Wade Ave., Raleigh, 03000929
Pugh House (Wake County MPS), 10018 Chapel Hill Rd., Morrisville, 03000932
Smith, Frank and Mary, House (Wake County MPS), 2935 John Adams Rd., Willow Spring, 03000931

PENNSYVLANIA

Bradford County

Wyalusing Borough Historic District, Roughly bounded by Prospect, First, Second, Third, Noble Sts., and Taylor Ave., Wyalusing Borough, 03000934

TEXAS

Harris County

Myers-Spalti Manufacturing Plant, 2115 Runnels St., Houston, 03000936

Menard County

Menard County Courthouse, 206 E. San Saba St., Menard, 03000935

Travis County

Old West Austin Historic District, Roughly bounded by W. 13th, Lamar Blvd., W. 35th and Mo-Pac Expy., Austin, 03000937

WISCONSIN

Barron County

Wajiwan ji Mashkode Archeological District, Address Restricted, Rice Lake, 03000938

WYOMING

Teton County

Jackson Hole American Legion Post No. 43, 182 N. Cache, Jackson, 03000939

[FR Doc. 03–21971 Filed 8–27–03; 8:45 am]
BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: American Museum of Natural History, New York, NY

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the American Museum of Natural History, New York, NY. The human remains and associated funerary objects were removed from Skamania County, WA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations within this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not

responsible for the determinations within this notice.

A detailed assessment of the human remains was made by American Museum of Natural History professional staff in consultation with representatives of the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Samish Indian Tribe, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington.

In 1882, human remains representing a minimum of 10 individuals were removed from Chenoworth Rock, Little White Salmon, in the vicinity of the Columbia River, Skamania County, WA, by James Terry. In 1891, the American Museum of Natural History purchased the human remains from Mr. Terry. No known individuals were identified. No associated funerary objects are present.

In 1891, the American Museum of Natural History purchased additional human remains representing a minimum of two individuals from Mr. Terry. Museum records indicate the provenience of the human remains as "WA?, Skamania County?, Columbia River?, Little White Salmon?, Chenoworth rock?" No known individuals were identified. The 13 associated funerary objects are 9 metal bracelets, 3 metal finger rings, and 1 string of brass and glass beads. The metal and glass objects indicate a postcontact date for the burials.

Based on geographic location and the presence of cranial shaping, the individuals have been identified as Native American. The associated funerary objects suggest a postcontact age for some of the human remains, and the geographic origin for all of the human remains is consistent with the postcontact territory of Chinook- and Sahaptin-speaking groups of the Confederated Tribes and Bands of the Yakama Nation, Washington and the Confederated Tribes of the Warm Springs Reservation of Oregon.

Officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9-10), the human remains described above represent the physical remains of a minimum of 12 individuals of Native American ancestry. Officials of the American Museum of Natural History also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 13 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the American Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Confederated Tribes and Bands of the Yakama Nation, Washington and Confederated Tribes of the Warm Springs Reservation of Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Luc Litwinionek, Director of Cultural Resources, American Museum of Natural History, Central Park West at 79th Street, New York, NY 10024-5192, telephone (212) 769-5846, before September 29, 2003. Repatriation of the human remains and associated funerary objects to the Confederated Tribes and Bands of the Yakama Nation, Washington and Confederated Tribes of the Warm Springs Reservation of Oregon may proceed after that date if no additional claimants come forward.

The American Museum of Natural History is responsible for notifying the Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Jamestown S'Klallam Tribe of Washington; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Samish Indian Tribe, Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; the Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and Upper Skagit Indian Tribe of Washington that this notice has been published.

Dated: June 20, 2003.

John Robbins,

Assistant Director, Cultural Resources.

[FR Doc. 03–21976 Filed 8–27–03; 8:45 am]

BILLING CODE 4310–70–S

INTERNATIONAL TRADE COMMISSION

[Investigation No. TA–131–25 and TA–2104–7]

U.S.-Dominican Republic Free Trade Agreement: Advice Concerning the Probable Economic Effect

AGENCY: United States International Trade Commission.

ACTION: Correction of notice of investigation.

SUMMARY: The Commission's notice published in the **Federal Register** on August 22, 2003 (68 F.R. 50808–50809) contained a typographical error that incorrectly identified the TA–2104 investigation number for the U.S.-Dominican Republic Free Trade Agreement: Advice Concerning the Probable Economic Effect study. The study was instituted August 15, 2003

under section 131 of the Trade Act of 1974 and section 2104(b)(2) of the Trade Act of 2002. The correct investigation Nos. are TA–131–25 and TA–2104–7.

By order of the Commission.

Issued: August 22, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–21978 Filed 8–26–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office on Violence Against Women; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Semi-Annual Progress Report for the Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program.

The Department of Justice (DOJ), Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 27, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cynthia J. Schwimer, Comptroller (202) 307–0623, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 18 grantees from the Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program. These grants provide funds for training programs to assist law enforcement officers, prosecutors, and relevant officers of Federal, State, tribal, and local courts in recognizing, addressing, investigating, and prosecuting instances of elder abuse, neglect, and exploitation and violence against individuals with disabilities, including domestic violence and sexual assault, against older or disabled individuals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 18 respondents (grantees from Training Grants to Stop Abuse and Sexual Assault Against Older Individuals or Individuals with Disabilities Program) approximately one hour to complete a Semi-annual Progress Report. The Semi-annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Semi-annual Progress Report is 36 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 22, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–21993 Filed 8–27–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office on Violence Against Women; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Semi-Annual Progress Report for the Safe Havens: Supervised Visitation and Safe Exchange Grant Program.

The Department of Justice (DOJ), Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 27, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cynthia J. Schwimer, Comptroller (202) 307–0623, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for the Safe Havens: Supervised Visitation and Safe Exchange Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 33 grantees from the Safe Havens: Supervised Visitation and Safe Exchange Grant Program who are States, Indian tribal governments, and units of local government. The Safe Havens Program provides an opportunity for communities to support the supervised visitation and safe exchange of children, by and between parents, in situations involving domestic violence, child abuse, sexual assault, or stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 33 respondents (grantees from the Safe Havens: Supervised Visitation and Safe Exchange Grant Program) approximately one hour to complete a semi-annual progress report. The Semi-annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the Semi-annual Progress Report is 66 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, D.C. 20530.

Dated: August 22, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–21994 Filed 8–27–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office on Violence Against Women; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Semi-Annual Progress Report for the Grants to State Sexual Assault and Domestic Violence Coalitions Program.

The Department of Justice (DOJ) Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 27, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cynthia J. Schwimer, Comptroller (202) 307–0623, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for Grants to State Sexual Assault and Domestic Violence Coalitions Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 88 grantees from the Grants to State Sexual Assault and Domestic Violence Coalitions Program. The Grants to State Sexual Assault and Domestic Violence Coalitions Program is intended to provide federal financial assistance to state coalitions to support the coordination of state victim services activities, and collaboration and coordination with federal, state, and local entities engaged in violence against women activities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 88 respondents (grantees from the Grants to State Sexual Assault and Domestic Violence Coalitions Program) approximately one hour to complete a semi-annual progress report. The Semi-annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in with grant funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total annual hour burden to complete the Semi-annual Progress Report is 176 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 22, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–22011 Filed 8–27–03; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the Compact Council for the National Crime Prevention and Privacy Compact

AGENCY: Federal Bureau of Investigation, DOJ.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce a meeting of the Compact Council created by the National Crime Prevention and Privacy Compact Act of 1998 (Compact). Thus far, the federal government and 19 states are parties to the Compact which governs the exchange of criminal history records for licensing, employment, and similar purposes. The Compact also provides a legal framework for the establishment of a cooperative federal-state system to exchange such records.

The United States Attorney General appointed 15 persons from federal and state agencies to serve on the Compact Council. The Council will prescribe system rules and procedures for the effective and proper operation of the Interstate Identification Index system.

Matters for discussion are expected to include:

(1) Noncriminal Justice Outscourcing Initiatives and the Development of a Security and Management Control Outsourcing Standard; and

(2) Searching Federal Civil Fingerprint Records on Applicants in Positions of Trust; and

(3) Critique on the Draft Compliance Sanctions Rule; and

(4) FBI National Fingerprint File Qualification Requirements and Audit Criteria.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement with the Compact Council or wishing to address this session of the Compact Council should notify Mr. Todd C. Commodore at (304) 625–2803, at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. Requestors will ordinarily be allowed up to 15 minutes to present a topic.

DATES: The Compact Council will meet in open session from 9 a.m. until 5 p.m., on October 2–3, 2003.

ADDRESSES: The meeting will take place at the Radisson Hotel Old Town Alexandria, 901 North Fairfax Street, Alexandria, Virginia, telephone (703) 683–6000.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mr. Todd C. Commodore, FBI Compact Officer, Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0148, telephone (304) 625–2803, facsimile (304) 625–5388.

Dated: August 15, 2003.

Monte C. Strait,

Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 03–22036 Filed 8–27–03; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Semi-annual Progress Report for the Grants to Reduce Violent Crimes Against Women on Campus Program.

The Department of Justice (DOJ), Office on Violence Against Women has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 27, 2003. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Cynthia J. Schwimer, Comptroller, (202) 307–0623, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-annual Progress Report for Grants to Reduce Violent Crimes Against Women on Campus Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: OMB Number 1121–0258. The U.S. Department of Justice, Office on Violence Against Women is sponsoring the collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: The affected public includes the 100 grantees (institutions of higher education) from the Grants to Reduce Violent Crimes Against Women on Campus Program. Campus Program grants may be used to enhance victim services and develop programs to prevent violent crimes against women on campuses. The Campus Program also enables institutions of higher education to develop and strengthen effective security and investigation strategies to combat violent crimes against women on campuses, including domestic violence, dating violence, sexual assault, and stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 100 respondents (grantees from the Grants to Reduce Violent Crimes Against Women on Campus Program—institutions of higher education)

approximately one hour to complete a semi-annual progress report. The Semi-annual Progress Report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. Grantees must complete only those sections that are relevant to their activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden to complete the Semi-annual Progress Report is 155.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 22, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–21922 Filed 8–27–03; 8:45 am]

BILLING CODE 4410–18–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act; Meeting; Regular Board of Directors Meeting

TIME & DATE: 10 a.m., Wednesday, September 3, 2003.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Suite 800, Washington, DC 2005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary (202) 220–2372; *jbryson@nw.org.*

AGENDA:

I. Call to Order
II. Approval of Minutes: May 28, 2003, Annual Meeting
VIII. Audit Committee Meeting
IX. Budget Committee Meeting
X. Treasurer's Report
XI. Executive Directors Quarterly Management Report
c. Strategic Planning Update
d. Friends of NeighborWorks®
XII. Adjournment

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 03–22121 Filed 8–26–03; 11:25 am]

BILLING CODE 7570–01–M

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Customer Satisfaction Surveys and Focus Groups

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation is requesting that the Office of Management and Budget extend its approval of a collection of information under the Paperwork Reduction Act. The purpose of the information collection, which will be conducted through focus groups and surveys over a three-year period, is to help the PBGC assess the efficiency and effectiveness with which it serves its customers and to design actions to address identified problems.

DATES: Comments should be submitted on or before September 29, 2003.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503.

Copies of the request for extension (including the collection of information) may be obtained by writing to the PBGC's Communications and Public Affairs Department, suite 240, 1200 K Street NW., Washington, DC 20005–4026, or by visiting that office or calling (202) 326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4040.)

FOR FURTHER INFORMATION CONTACT: Thomas H. Gabriel, Attorney, Office of the General Counsel, Suite 340, 1200 K Street NW., Washington, DC 20005, (202) 326–4020. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to (202) 326–4020.)

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC is requesting that OMB extend its approval, for a three-year period, of a generic collection of information consisting of customer satisfaction focus groups and surveys (OMB No. 1212–0053; expires September 30, 2003). The information collection will further the goals of Executive Order 12862, Setting Customer Service Standards, which states the Federal Government must seek to provide "the highest quality of service delivered to customers by private organizations providing a comparable or analogous service."

The PBGC uses customer satisfaction focus groups and surveys to find out about the needs and expectations of its customers and assess how well it is meeting those needs and expectations. By keeping these avenues of communication open, the PBGC can continually improve service to its customers, including plan participants and beneficiaries, plan sponsors and their affiliates, plan administrators, pension practitioners, and others involved in the establishment, operation and termination of plans covered by the PBGC's insurance program. Because the areas of concern to the PBGC and its customers vary and may quickly change, it is important that the PBGC have the ability to evaluate customer concerns quickly by developing new vehicles for gathering information under this generic approval. The focus groups and surveys will provide important information on customer attitudes about the delivery and quality of agency services and will be used as part of an ongoing process to improve PBGC programs.

Participation in the focus groups and surveys will be voluntary. The PBGC estimates that the average annual burden will total 2,500 burden hours for 9,500 respondents (an average of about one-quarter hour per respondent). The PBGC will consult with OMB regarding each specific information collection during the approval period.

On March 7, 2003, the PBGC published in the **Federal Register** a notice of intention to request extension of OMB approval of this collection. No comments were received in response to the notice.

Issued at Washington, DC this 22nd day of August 2003.

Gail Sevin,

Acting Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 03–22017 Filed 8–27–03; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request; Copies Available From: Securities and Exchange Commission, Office of Filings and

Information Services, Washington, DC 20549.

Extension:

Schedule 13E–4F, OMB Control No. 3235–0375, SEC File No. 270–340.

Form F–X, OMB Control No. 3235–0379, SEC File No. 270–336.

Form DF, OMB Control No. 3235–0482, SEC File No. 270–430.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for approval.

Schedule 13E–4F (OMB Control No. 3235–0375; SEC File No. 270–340) may be used by any foreign private issuer if: (1) The issuer is incorporated or organized under the laws of Canada; (2) the issuer is making a cash tender or exchange offer for the issuer's own securities; and (3) less than 40 percent of the class of such issuer's securities outstanding that is the subject of the tender offer is held by U.S. holders. The information collected must be filed with the Commission and is publicly available. We estimate that it takes 2 burden hours to prepare Schedule 13E–4F and that the information is filed by 3 respondents for a total of 6 burden hours.

Form F–X (OMB Control No. 3235–0379; SEC File No. 270–336) is used to appoint an agent for service of process by Canadian issuers registering securities on Form F–7, F–8, F–9 or F–10 or filing periodic reports on Form 40-F under the Exchange Act. The information collected must be filed with the Commission and is publicly available. We estimate that it takes 2 hours to prepare and is filed 129 respondents for a total of 258 burden hours.

Form DF (OMB Control No. 3235–0482; SEC File No. 270–430) allows registrants to identify a filing that was filed late because of electronic filing difficulties in order to preserve the timeliness of the filing. The information collected must be filed with the Commission and is publicly available. We estimate that it takes 12 minutes to prepare and is filed by an estimated 500 respondents for a total annual burden of 100 hours.

Written comments are invited on: (a) Whether these proposed collection of information are necessary for the performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comment to Kenneth A. Fogash, Acting Associate Executive Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: August 22, 2003.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22029 Filed 8–27–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 1, 2003:

A Closed Meeting will be held on Tuesday, September 2, 2003 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (4), (5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (4), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

The subject matter of the Closed Meeting scheduled for Tuesday, September 2, 2003 will be: Institution and settlement of administrative proceedings of an enforcement nature; Institution and settlement of injunctive actions; Regulatory matter involving enforcement implications; Formal orders of investigation; and Adjudicatory matter.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: August 26, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–22224 Filed 8–26–03; 4:02 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27716]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 22, 2003.

Notice is hereby given that the following filings have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 15, 2003 to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 15, 2003, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Xcel Energy Inc. (70–10072)

Xcel Energy Inc., a registered holding company, 800 Nicollet Mall, Minneapolis, Minnesota 55402 ("Declarant" or "Xcel Energy") has filed a declaration under section 12(d) of the Act and rules 44 and 54 under the Act.

Declarant requests authority to sell its ownership interest in Black Mountain Gas Company, a Minnesota corporation and gas utility company ("Black

Mountain") to a non-affiliated third party, Southwest Gas Corporation ("Southwest").

Xcel Energy directly owns six utility subsidiaries that serve electric and/or natural gas customers in twelve states. These six utility subsidiaries are Black Mountain; Northern States Power Company; Northern States Power Company; Public Service Company of Colorado; Southwestern Public Service Co.; and Cheyenne Light, Fuel and Power Company. Their service territories include portions of Arizona, Colorado, Kansas, Michigan, Minnesota, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin and Wyoming. Xcel Energy also owns or has an interest in a number of nonregulated businesses, the largest of which is NRG Energy Inc. ("NRG"), an independent power producer.[1]

Black Mountain operates in Arizona and is certified by the Arizona Corporation Commission to provide natural gas and propane service within the State of Arizona. Black Mountain currently provides service to approximately 8,500 gas customers and about 2,500 propane customers and had revenues of approximately $9.5 million in 2002.

Southwest is a natural gas service company serving over 1.4 million households, businesses and industries in Arizona, Nevada and portions of California. Southwest is certified to provide natural gas service in Arizona.

On May 24, 2002, Xcel and Southwest entered into a Stock Purchase Agreement under which Xcel Energy agreed to sell and transfer to Southwest, and Southwest agreed to purchase from Xcel Energy, all of the issued and outstanding common stock of Black Mountain (the "Stock"). In consideration for the sale and transfer of the Stock, Southwest agreed to pay to Xcel Energy $18,700,000 in cash plus an additional amount of up to $6,500,000 necessary to redeem, retire or defease certain long-term debt of Black Mountain at or prior to closing ("Consideration"). Declarant maintains that the Consideration was determined through arms-length negotiations between representatives of Xcel Energy and Southwest and that the Consideration constitutes fair and adequate compensation for the Stock. Declarant states that in order to verify the fairness and adequacy of Consideration, Xcel Energy considered, among other factors, the discounted cash flow of Black Mountain and examined comparable transactions, including Xcel Energy's acquisition of Black Mountain. The Consideration to be received by Xcel Energy will be contributed to Xcel Energy's general funds and used for general corporate purposes.

[1] On May 14, 2003, NRG filed a voluntary petition for relief under chapter 11 of the U.S. Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (the "New York Bankruptcy Court"). The making of this voluntary filing constitutes an order for relief under the Bankruptcy Code and NRG as a result became a debtor in possession subject to the jurisdiction of the bankruptcy court and the requirements of the Bankruptcy Code. Under the requirements of the Bankruptcy Code (11 U.S.C. 363), any significant or out of the ordinary course transactions by NRG require the prior approval of the New York Bankruptcy Court.

Progress Energy, Inc., et al. (70–10130)

Progress Energy, Inc. ("Progress Energy"), a registered holding company; Progress Energy's utility subsidiaries: Carolina Power & Light Company ("CP&L"), Florida Power Corporation ("FPC"), and North Carolina Natural Gas Corporation ("NCNG"); and Progress Energy's nonutility subsidiaries: Florida Progress Corporation ("Florida Progress"), Progress Energy Service Company, LLC ("Progress Service"), PV Holdings, Inc. ("PV Holdings"), Progress Ventures, Inc. ("Progress Ventures"), Strategic Resource Solutions Corp. ("SRS"), Progress Energy Solutions, Inc. ("Progress Solutions"), Progress Real Estate Holdings, Inc. ("Progress Real Estate"), CaroFund, Inc., CaroHome, LLC, Capitan Corporation, Caronet, Inc. ("Caronet"), CaroFinancial, Inc., NCNG Cardinal Pipeline Investment Corporation, NCNG Pine Needle Investment Corporation, Cape Fear Energy Corp., Progress Capital Holdings, Inc. ("Progress Capital"), Progress Fuels Corporation ("Progress Fuels"), Progress Telecommunications Corporation ("Progress Telecommunications"), FPC Del, Inc. ("FPC Del"), and Florida Progress Funding Corporation ("Progress Funding") have filed an application-declaration, as amended ("Application"), under sections 6(a), 7, 9(a), 10, and 12 of the Act and rules 26(c), 42, 43, 45, 46, 53, and 54 under the Act. The address for all of the Applicants is 410 South Wilmington Street, Raleigh, North Carolina 27602, except for FPC, Florida Progress, Progress Capital, FPC Del, and Progress Funding, for whom the address is One Progress Plaza, St. Petersburg, Florida 33701.

CP&L, FPC and NCNG are referred to collectively as the "Utility Subsidiaries." The term "Nonutility Subsidiaries" includes the nonutility subsidiaries named above and their respective subsidiaries, as well as any other nonutility company later acquired or formed, directly or indirectly, by Progress Energy under rule 58 or pursuant to an order of the Commission. The Utility Subsidiaries and Nonutility Subsidiaries are referred to collectively as the "Subsidiaries." Progress Energy, Florida Progress and the Subsidiaries are referred to collectively as the "Applicants."

Applicants request authority to engage in various financing transactions, credit support arrangements, and other related proposals, as more fully discussed below, commencing on the effective date of an order issued in this proceeding and ending September 30, 2006 ("Authorization Period").

In a separate application (File No. 70–10115), Progress Energy is seeking authorization pursuant to section 12(d) of the Act to sell all of the issued and outstanding common stock of NCNG, and NCNG's interest in Eastern North Carolina Natural Gas Company ("Eastern NCNG"). If the sale of NCNG and Eastern NCNG is consummated before the issuance of an order in this proceeding, the Application will be amended to delete NCNG and its subsidiaries as Applicants.

I. Introduction

Progress Energy is authorized under its Amended and Restated Articles of Incorporation to issue 500,000,000 shares of common stock, without par value ("Common Stock"), of which 239,823,869 shares were issued and outstanding as of March 31, 2003. Progress Energy is also authorized under its Amended and Restated Articles of Incorporation to issue 20,000,000 shares of preferred stock, without par value ("Preferred Stock"), of which none are currently issued and outstanding.

At March 31, 2003, Progress Energy had outstanding $4.8 billion principal amount of senior unsecured notes having various maturity dates from 2004 through 2031. Progress Energy also has in place $880.2 million in committed bank lines of credit primarily used to support its commercial paper program. At March 31, 2003 Progress Energy had $91.8 million of commercial paper outstanding. Progress Energy's senior unsecured debt is currently rated BBB by Standard & Poor's Inc. ("S&P") and Baa2 by Moody's Investor Service ("Moody's"). Progress Energy's commercial paper is rated A–2 by S&P and P–2 by Moody's.

For the twelve months ended December 31, 2002, Progress Energy had total operating revenues of $7,945,120,000 of which $6,600,689,000 (83.1%) were derived from electric utility operations and $1,344,431,000

(16.9%) from nonutility businesses, including sales of electricity by Progress Energy's exempt wholesale generator ("EWG") subsidiaries. For the three months ended March 31, 2003, Progress Energy had total operating revenues of $2,016,004,000, of which $1,653,887,000 (82%) were derived from electric utility operations and $362,117,000 (18%) from nonutility businesses.

At March 31, 2003, Progress Energy had total consolidated assets of $23,172,892,000 including net utility plant of $12,033,791,000 (as of December 31, 2002 and March 31, 2003, NCNG's results of operations and assets and liabilities were reported as "discontinued operations" and, therefore, are not included in Progress Energy's year-end or March 31, 2003 year-to-date consolidated operating revenues and utility plant accounts).

II. Current Financing Authority

By order dated December 12, 2000 in File No. 70–9659 (Holding Co. Act Release No. 27297), as supplemented and modified by orders dated September 20, 2001 (Holding Co. Act Release No. 27440), March 15, 2002 (Holding Co. Act Release No. 27500), April 18, 2002 (Holding Co. Act Release No. 27522), and May 5, 2003 (Holding Co. Act Release No. 27673) (collectively, the "December 2000 Order"), the Commission authorized Progress Energy and its Subsidiaries to engage in a program of external financing, intrasystem financing, and other related transactions from time to time through September 30, 2003.

Under the December 2000 Order, the Commission authorized, among other things:

(i) Progress Energy to issue and sell common stock, preferred securities, unsecured long-term debt, short-term debt and other securities, including to issue and/or purchase shares of its common stock in the open market for purposes of reissuing the shares under its dividend reinvestment plan and other stock-based plans maintained for the benefit of employees, officers, and non-employee directors (collectively, the "Stock Plans");

(ii) Progress Energy to maintain the credit arrangements entered into to finance, in part, the acquisition of Florida Progress;

(iii) Progress Energy to enter into and perform interest rate hedging transactions to manage volatility of interest rates associated with its outstanding indebtedness and with respect to anticipated debt offerings;

(iv) CP&L to issue and sell short-term debt;

(v) NCNG to issue and sell long-term debt and preferred securities;

(vi) Progress Energy to issue guarantees and provide other forms of credit support with respect to obligations of its subsidiaries;

(vii) Florida Progress to maintain guarantees of obligations outstanding at the time Florida Progress was acquired, as well as other forms of credit support provided by Progress Capital to its nonutility subsidiaries;

(viii) Nonutility subsidiaries of Progress Energy to provide guarantees and other forms of credit support for other Nonutility subsidiaries;

(ix) Progress Energy to establish and fund, and the Utility Subsidiaries and certain Nonutility Subsidiaries to participate in separate money pool systems (the "Utility Money Pool," the "Nonutility Money Pool" and, together, the "Money Pools");

(x) Progress Energy and the Nonutility Subsidiaries to make loans to less than wholly-owned Nonutility Subsidiaries;

(xi) Progress Energy and Subsidiaries to acquire, directly or indirectly, the equity securities of one or more special purpose entities ("Financing Subsidiaries") created specifically for the purpose of facilitating a financing and to guarantee the securities issued by such Financing Subsidiary;

(xii) Nonutility Subsidiaries to declare and pay dividends out of capital and unearned surplus, subject to certain limitations;

(xiii) Progress Energy and its consolidated subsidiaries to enter into an agreement allocating taxes;

(xiv) Progress Energy to invest up to $1 billion in certain nonutility assets in the United States; and

(xv) Progress Energy to spend up to $250 million on certain development activities relating to nonutility business activities.

In addition to the financing and investment activities authorized above, the Applicants are also authorized under to the December 2000 Order to engage in the following transactions for a period of time that is not limited by the authorization period under the December 2000 Order:

(xvi) Progress Energy to organize and acquire, directly or indirectly, the securities of one or more intermediate Nonutility Subsidiaries ("Intermediate Subsidiaries") to act as holding companies for Nonutility Subsidiaries and to consolidate or otherwise reorganize its ownership interests in existing and future Nonutility Subsidiaries under Intermediate Subsidiaries, and to engage in development and administrative activities relating to the nonutility businesses;

(xvii) Wholly-owned Subsidiaries are authorized to change their capitalization;

(xviii) Nonutility Subsidiaries are authorized to engage in certain energy-related activities permitted by rule 58 outside the United States, subject to the reservation of jurisdiction of certain energy-related activities;

(xix) Nonutility Subsidiaries are authorized to render services to each other at fair market prices in certain circumstances; and

(xx) Progress Energy and NCNG are authorized to pay dividends out of capital surplus, subject to specified limitations.

Finally, pursuant to an order dated July 17, 2002 (Holding Co. Act Release No. 27551), the Commission authorized Progress Energy to increase its "aggregate investment" as defined under rule 53(a) in EWGs to $4 billion using the proceeds of financings and guarantees previously authorized, or authorized in the future. The Commission reserved jurisdiction over the use of the proceeds of authorized financings to invest in foreign utility companies ("FUCOs").

Applicants state that the authority sought in the current Application will supersede and replace the current authorization of the Applicants under the December 2000 Order to engage in the financing activities and related transaction described above in subsections (i) through and including (xv). The authorizations for the transactions described in paragraphs (xvi) through and including (xix) will remain unchanged. Progress Energy and NCNG are requesting a modification of their authority to pay dividends out of capital and unearned surplus (as set forth in paragraph (xx) above) in order to reflect changes to purchase accounting rules that became effective after the December 2000 Order.

III. Financing Conditions

Applicants request authority to engage in various financing transactions during the Authorization Period. Applicants state that the following general terms will be applicable, where appropriate, to the proposed financing activities requested by the Applicants:

A. Effective Cost of Money

The effective cost of capital on unsecured notes and debentures and other forms of unsecured long-term debt securities ("Long-term Debt"), Preferred Stock or other types of preferred securities (including specifically trust preferred securities or monthly income

preferred securities) (together, "Preferred Securities"), equity-linked securities ("Equity-Linked Securities), and commercial paper, unsecured promissory notes and other forms of unsecured indebtedness having maturities of less than one year ("Short-term Debt") will not exceed competitive market rates available at the time of issuance for securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality; provided that in no event will the effective cost of capital (1) on any series of Long-term Debt exceed 500 basis points over a U.S. Treasury security having a remaining term equal to the term of such series, (2) on any series of Preferred Securities or Equity-Linked Securities exceed 600 basis points over a U.S. Treasury security having a remaining term equal to the term of such series, and (3) on Short-term Debt exceed 500 basis points over the London Interbank Offered Rate for maturities of less than one year.

B. Maturity

The maturity date of any Long-term Debt will not exceed 50 years after issuance. Preferred Securities and Equity-Linked Securities will be redeemed no later than 50 years after the issuance, unless converted into shares of Common Stock, except that Preferred Stock issued directly by Progress Energy may be perpetual in duration.

C. Issuance Expenses

The underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of securities pursuant to this Application will not exceed the greater of (1) 5% of the principal or total amount of the securities being issued or (2) issuance expenses that are generally paid at the time of the pricing for sales of the particular issuance, having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

D. Common Equity Ratio

At all times during the Authorization Period, Progress Energy and each Utility Subsidiary will maintain common equity of at least 30% of its consolidated capitalization (common equity, preferred stock, long-term debt and short-term debt); provided that Progress Energy will in any event be authorized to issue Common Stock (including pursuant to the Stock Plans) to the extent authorized by Commission order.

E. Investment Grade Ratings

Applicants further represent that, except for securities issued for the purpose of funding Money Pool operations, no guarantees or other securities, other than Common Stock, may be issued in reliance upon the authorization that may be granted by the Commission in accordance with this Application, unless (1) the security to be issued, if rated, is rated investment grade; (2) all outstanding securities of the issuer that are rated are rated investment grade; and (3) all outstanding securities of the top level registered holding company that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated "investment grade" if it is rated investment grade by at least one nationally recognized statistical rating organization, as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. Applicants request that the Commission reserve jurisdiction over the issuance of any such securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions set forth in clauses (1) through (3) above are not satisfied.

F. Use of Proceeds

The proceeds from the sale of securities in external financing transactions will be used for general corporate purposes including (1) financing, in part, of the capital expenditures of Subsidiaries, (2) financing working capital requirements of Progress Energy and its Subsidiaries, (3) the acquisition, retirement or redemption under rule 42 of securities previously issued by Progress Energy or its Subsidiaries or as otherwise authorized by Commission, (4) direct or indirect investments in companies authorized under the Act or by rule, including investments in EWGs and "energy-related companies" under rule 58, and (5) other lawful purposes. The Applicants represent that no such financing proceeds will be used to acquire the securities of a new subsidiary unless such acquisition is consummated in accordance with an order of the Commission or an available exemption under the Act.

IV. Progress Energy External Financing

Progress Energy requests authority to increase its capitalization by issuing and selling from time to time during the Authorization Period, directly or indirectly through one or more Financing Subsidiaries: (1) additional shares of Common Stock and/or options, warrants, forward equity purchase contracts, or other rights that are exercisable or exchangeable for or convertible into Common Stock, (2) Preferred Securities and Equity-Linked Securities, and (3) Long-term Debt, in an aggregate amount not to exceed $2.8 billion (excluding securities issued for purposes of refunding or replacing other outstanding long-term securities where Progress Energy's capitalization is not increased as a result) ("External Financing Limit"). In addition, Progress Energy requests authorization to issue and sell Short-term Debt in an aggregate principal amount at any time outstanding not to exceed $1.5 billion.

Progress Energy may issue and sell Common Stock (and/or options, warrants, forward equity purchase contracts, or other rights that are exercisable or exchangeable for or convertible into Common Stock), Preferred Securities, Equity-Linked Securities and Long-term Debt: (1) Through underwriters, initial purchasers or dealers, (2) through agents, (3) directly to a limited number of purchasers or a single purchaser, or (4) directly to employees of Progress Energy or its Subsidiaries (or to trusts established for their benefit), shareholders, officers and directors under the Stock Plans. If underwriters are used, the securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. The securities may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by Progress Energy) or directly by one or more underwriters acting alone, or may be sold directly by Progress Energy or through agents designated by Progress Energy from time to time. If dealers are utilized, Progress Energy will sell the securities to the dealers, as principals. Any dealer may then resell the securities to the public at varying prices to be determined by the dealer at the time of resale. If Common Stock is being sold in an underwritten offering, Progress Energy may grant the underwriters a "green shoe" option permitting the purchase from Progress Energy at the same price additional shares then being offered solely for the purpose of covering over-allotments.

A. Common Stock

Progress Energy proposes to issue and sell Common Stock (and/or options, warrants, forward equity purchase contracts or other rights exercisable or exchangeable for or convertible into Common Stock) in accordance with underwriting agreements of a type generally standard in the industry. Public distributions may be made through private negotiation with underwriters, dealers or agents or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All such sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

Progress Energy also proposes to issue Common Stock in public or privately-negotiated transactions as consideration for the equity securities or assets of other companies, provided that the acquisition of any such equity securities or assets has been authorized by the Commission or is exempt under the Act or the rules thereunder. Progress Energy may use original issue shares of Common Stock in such transactions or use Common Stock purchased on the open market for such purpose.

The ability to offer Common Stock as consideration in connection with an acquisition may make the transaction more economical for Progress Energy as well as for the seller of the business being acquired. If original issue shares of Common Stock are used in such transactions, the value of such shares would be based upon the closing price on the day prior to the date of issuance (or, if appropriate, the date of a binding contract providing for the issuance of the Common Stock) or based upon average high and low prices for a period as negotiated by the parties and counted against the proposed External Financing Limit.

B. Preferred Securities

Applicants request authorization to issue Preferred Securities in one or more series with such rights, preferences and priorities as may be designated in the document creating each series, as determined by Progress Energy's Board of Directors. Dividends or distributions on the securities will be made periodically and to the extent funds are legally available for such purpose, but may be made subject to terms which allow the issuer to defer dividend payments for specified periods. Progress Energy may also issue and sell Equity-Linked Securities, typically in the form of stock purchase units, which combine a security with a fixed obligation (*e.g.*, preferred stock or debt) with a stock purchase contract that is exercisable (either mandatorily or at the option of the holder) within a relatively short period (*e.g.*, three to six years after issuance).

C. Long-Term Debt

Applicants request authority to issue Long-term Debt directly by Progress Energy or indirectly through one or more Financing Subsidiaries in the form of notes, medium-term notes or debentures under one or more indentures, or long-term indebtedness under agreements with banks or other institutional lenders. Each series of Long-term Debt would have such designation, aggregate principal amount, maturity, interest rate(s) or methods of determining the same, terms of payment of interest, redemption provisions, sinking fund terms and other terms and conditions as Progress Energy may determine at the time of issuance. Any Long-term Debt (1) may be convertible into any other securities of Progress Energy, (2) will have maturities ranging from one to 50 years, (3) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (4) may be entitled to mandatory or optional sinking fund provisions, (5) may provide for reset of the coupon under a remarketing arrangement, (6) may be subject to tender or the obligation of the issuer to repurchase at the election of the holder or upon the occurrence of a specified event, (7) may be called from existing investors by a third party, and (8) may be entitled to the benefit of affirmative or negative financial or other covenants.

D. Short-Term Debt

Progress Energy proposes to issue and sell from time to time Short-term Debt in an aggregate principal amount at any time outstanding not to exceed $1.5 billion. Specifically, Progress Energy may sell commercial paper, from time to time, in established domestic or European commercial paper markets. Such commercial paper would typically be sold to dealers at the discount rate per annum prevailing at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers acquiring commercial paper from Progress Energy will reoffer such paper at a discount to corporate, institutional and, with respect to European commercial paper, individual investors. It is anticipated that Progress Energy's commercial paper will be reoffered to investors such as commercial banks, insurance companies, pension funds, investment trusts, foundations, colleges and universities, finance companies and nonfinancial corporations. Progress Energy also proposes to maintain and renew from time to time committed bank lines of credit, provided that only the principal amount of any actual borrowings under the lines of credit will be counted against the proposed limit on Short-term Debt set forth above. Progress Energy may also engage in other types of short-term financing, including borrowings under uncommitted lines, generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

E. Stock Plans

Progress Energy requests authorization to issue shares of its Common Stock, and/or options, warrants, stock appreciation rights, units, hypothetical shares and similar securities for purposes of delivery under its Stock Plans, as they may be amended or extended, or similar plans or plan funding arrangements that may be adopted in the future. The net proceeds of any new issuances of shares of Common Stock by Progress Energy will be counted toward the external Financing Limit. Progress Energy also requests authorization to purchase or cause to be purchased on the open market up to 11 million shares of Common Stock for purposes of delivery under its Stock Plans.

V. Utility Subsidiary Financing

CP&L and NCNG request authorization to issue and sell the following securities during the Authorization Period:

A. Short-Term Debt of CP&L

CP&L requests authorization to issue and sell from time to time during the Authorization Period Short-term Debt in an aggregate principal amount outstanding at any one time not to exceed $1 billion. Subject to such limitation, CP&L would engage in short-term financing as it may deem appropriate in light of its needs and market conditions at the time of issuance. Short-term financing could include, without limitation, commercial paper sold in established domestic or European commercial paper markets in a manner similar to Progress Energy, bank lines and debt securities issued under its indentures and note programs.

B. Long-term Debt of NCNG

NCNG requests authorization (for so long as it shall remain a subsidiary of Progress Energy) to make direct borrowings from Progress Energy in an amount which, when added to borrowings by NCNG under the Utility Money Pool shall not exceed $750 million. The interest rate and maturity on any note evidencing direct borrowings from Progress Energy will be designed to parallel the effective cost of capital of Progress Energy. The maturity on any note issued to Progress Energy will not exceed 50 years from the date of issuance.

VI. Financing by Nonutility Subsidiaries

If a Nonutility Subsidiary that is not wholly-owned engages in activities related to the development and expansion of energy, transportation, telecommunications or other functionally-related, nonutility businesses, authority is requested for Progress Energy or a Nonutility Subsidiary, as the case may be, to make loans to the non-wholly owned subsidiaries at interest rates and maturities designed to provide a return to the lendor of not less than its effective cost of capital. The borrower will not sell any services to any associate Nonutility Subsidiary unless the associate Nonutility Subsidiary falls within one of the categories of companies to which goods and services may be sold on a basis other than "at cost" under the terms of the December 2000 Order. Furthermore, if any loans are made, Progress Energy will include in the next certificate filed under rule 24 in this proceeding substantially the same information as that required on Form U–6B–2 with respect to the transaction.

VII. Guarantees

A. Progress Energy Guarantees

Progress Energy requests authorization to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support (collectively, "Progress Guarantees") with respect to the obligations of any Subsidiary as may be appropriate to enable the Subsidiary to carry on in the ordinary course of its business, in an aggregate principal amount not to exceed $3 billion outstanding at any one time; *provided however,* that the amount of any Progress Guarantees in respect of obligations of any Subsidiaries shall also be subject to the limitations of rule 53(a)(1) or rule 58(a)(1), as applicable.

Progress Energy proposes to charge each Subsidiary a fee for each guarantee provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses) for the period of time the guarantee remains outstanding.

The debt of a Financing Subsidiary guaranteed by Progress Energy will comply with the External Financing Limit. However, in order to avoid double counting the amount of any Progress Guarantee issued with respect to securities issued by a Financing Subsidiary will not be counted against the proposed limit on Progress Guarantees.

Progress Guarantees may, in some cases, be provided to support obligations of Subsidiaries that are not readily susceptible of exact quantification or that may be subject to varying quantification. In that event, Progress Energy will determine the exposure under the guarantee for purposes of measuring compliance with the proposed limit on Progress Guarantees set forth above by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. Any estimates will be made in accordance with generally accepted accounting principles, and will be reevaluated periodically.

B. Nonutility Subsidiary Guarantees

In addition to guarantees that may be provided by Progress Energy, Nonutility Subsidiaries request authority to provide to other Nonutility Subsidiaries guarantees and other forms of credit support ("Nonutility Guarantees") in an aggregate principal amount not to exceed $500 million outstanding at any one time, in addition to any guarantees and other forms of credit support that are exempt under rule 45(b) and rule 52(b); *provided however,* that the amount of Nonutility Guarantees in respect of obligations of any Subsidiary that is an "energy-related company" as that term is defined under rule 58 shall remain subject to the limitations of rule 58(a)(1). The Nonutility Subsidiary providing any credit support may charge its associate company a fee for each guarantee provided on its behalf determined in the same manner as specified above.

C. Guarantees Issued by Florida Progress and Its Nonutility Subsidiaries

Florida Progress has in the past provided guarantees with respect to certain long-term and short-term indebtedness of Progress Capital and preferred securities issued by Progress Funding (via a special purpose trust), the proceeds of which are used to provide financing for Florida Progress's other subsidiaries. In addition, Florida Progress and Progress Capital have provided guarantees and/or other forms of credit support to third parties on behalf of Florida Progress's Nonutility Subsidiaries in the form of standby letters of credit, surety bonds, and guarantees of performance under leases and other agreements. Florida Progress and its Nonutility Subsidiaries request authorization to maintain in effect all of the outstanding guarantees and other forms of credit support described above, and to amend, renew, extend or replace such guarantees, as necessary. Further, the Applicants request that such guarantees and other forms of credit support not count against the $500 million limit proposed above on future Nonutility Guarantees.

VIII. Hedging Transactions

A. Interest Rate Hedges

Progress Energy, and to the extent not exempt under rule 52, the Subsidiaries, request authorization to enter into interest rate hedging transactions with respect to existing indebtedness ("Interest Rate Hedges"), subject to certain limitations and restrictions, in order to reduce or manage interest rate cost. Interest Rate Hedges would only be entered into with counterparties whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by S&P, are equal to or greater than BBB, or an equivalent rating from Moody's, Fitch-Ratings, or Duff and Phelps ("Approved Counterparties").

Interest Rate Hedges will involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations. The transactions would be for fixed periods and stated notional amounts. In no case will the notional principal amount of any interest rate swap exceed that of the underlying debt instrument and related interest rate exposure. Thus the Applicants will not engage in speculative transactions. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in

competitive markets for parties of comparable credit quality.

B. Anticipatory Hedges

Progress Energy and the Subsidiaries request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings (the "Anticipatory Hedges"), subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (1) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a "Forward Sale"), (2) the purchase of put options on U.S. Treasury obligations (a "Put Options Purchase"), (3) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (a "Zero Cost Collar"), (4) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations, or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges.

Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade ("CBOT"), the opening of over-the-counter positions with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. Progress Energy or a Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. Progress Energy or a Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases.

The Applicants will comply with Statement of Financial Accounting Standard ("SFAS") 133 (Accounting for Derivative Instruments and Hedging Activities) and SFAS 138 (Accounting for Certain Derivative Instruments and Certain Hedging Activities) or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board ("FASB"). The Applicants represent that each Interest Rate Hedge and each Anticipatory Hedge will qualify for hedge accounting treatment under the current FASB standards in effect and as determined as of the date such Interest Rate Hedge or Anticipatory Hedge is entered into. The Applicants will also comply with any future FASB financial disclosure requirements associated with hedging transactions.

IX. Money Pools

Progress Energy and the Utility Subsidiaries request authorization to continue to maintain and fund the Utility Money Pool, and CP&L and NCNG also request authorization to make unsecured short-term borrowings from the Utility Money Pool. The Utility Subsidiaries request authorization to contribute surplus funds to the Utility Money Pool, and to lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool. In addition, Progress Energy and the Nonutility Subsidiaries request authorization to continue to maintain and fund the Nonutility Money Pool. The Nonutility Money Pool activities of all of the Nonutility Subsidiaries are exempt from the prior approval requirements of the Act under rules 45(b) and 52. Progress Energy is requesting authorization to contribute surplus funds and/or to lend and extend credit to (1) the Utility Subsidiaries through the Utility Money Pool and (2) the Nonutility Subsidiaries through the Nonutility Money Pool.

A. Utility Money Pool

Under the Utility Money Pool agreement, short-term funds are available from the following sources for short-term loans to the Utility Subsidiaries from time to time: (1) Surplus funds in the treasuries of Utility Money Pool participants other than Progress Energy; (2) surplus funds in the treasury of Progress Energy (funds in clauses (1) and (2) being referred to as "Internal Funds"); and (3) proceeds from bank borrowings by Utility Money Pool participants or the sale of commercial paper by Progress Energy or the Utility Subsidiaries for loan to the Utility Money Pool (the "External Funds").

Funds are made available from sources, and in the order, as Progress Service, as administrator for the Utility Money Pool, may determine would result in a lower cost of borrowing, consistent with the individual borrowing needs and financial standing of the companies providing funds to the pool. The determination of whether a Utility Money Pool participant at any time has surplus funds to lend to the Utility Money Pool is made by the participant's chief financial officer or treasurer, or their designee, on the basis of cash flow projections and other relevant factors, and in the participant's sole discretion.

The cost of compensating balances, if any, and fees paid to banks to maintain credit lines and accounts by Utility Money Pool participants lending External Funds to the Utility Money Pool are initially paid by the participant maintaining the line. A portion of such costs—or all of such costs if a Utility Money Pool participant establishes a line of credit solely for purposes of lending any External Funds obtained into the Utility Money Pool—are retroactively allocated every month to companies borrowing the External Funds in proportion to each participant's estimated peak short-term borrowing requirement.

Borrowings by Utility Money Pool participants are made *pro rata* from each participant that lends funds to the Utility Money Pool, in the proportion that the total amount loaned by each such lending company bears to the total amount then loaned through the Utility Money Pool. On any day when more than one fund source (*e.g.*, if there are External Funds as well as Internal Funds), with different rates of interest, is used to fund loans through the Utility Money Pool, each borrower would borrow *pro rata* from each such fund source in the Utility Money Pool in the same proportion that the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Utility Money Pool. CP&L and NCNG (for so long as it remains a subsidiary of Progress Energy) each request authorization to borrow up to $400 million at any time outstanding under the Utility Money Pool. No loans through the Utility Money Pool may be made to, and no borrowings through the Utility Money Pool may be made by, Progress Energy.

If only Internal Funds make up the funds available in the Utility Money Pool, the interest rate applicable and payable to or by Utility Subsidiaries for all loans of Internal Funds would be equal to the rate for high-grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in *The Wall Street Journal*.

If only External Funds comprise the funds available in the Utility Money Pool, the interest rate applicable to loans of External Funds would be equal to the lending company's cost for the External Funds (or, if more than one Utility Money Pool participant had made available External Funds on such day, the applicable interest rate would be a composite rate equal to the weighted average of the cost incurred by the respective Utility Money Pool participants for the External Funds).

In cases where both Internal Funds and External Funds are concurrently borrowed through the Utility Money Pool, the rate applicable to all loans comprised of such "blended" funds would be a composite rate equal to the weighted average of (1) the cost of all Internal Funds contributed by Utility Money Pool participants (determined as set forth in the second-preceding paragraph above) and (2) the cost of all such External Funds (determined as set forth in the immediately preceding paragraph above). In circumstances where Internal Funds and External Funds are available for loans through the Utility Money Pool, loans may be made exclusively from Internal Funds or External Funds, rather than from a "blend" of such funds, to the extent it is expected that such loans would result in a lower cost of borrowing.

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including: (1) Interest-bearing accounts with banks; (2) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (3) obligations issued or guaranteed by any state or political subdivision thereof, provided that such obligations are rated not less than "A" by a nationally recognized rating agency; (4) commercial paper rated not less than "A–1" or "P–1" or their equivalent by a nationally recognized rating agency; (5) money market funds; (6) bank certificates of deposit; (7) Eurodollar funds; and (8) such other investments as are permitted by section 9(c) of the Act and rule 40.

The interest and investment income earned on loans and investments of surplus funds is allocated among the participants in the Utility Money Pool in accordance with the proportion each participant's contribution bears to the total amount of funds in the Utility Money Pool and the cost of funds contributed to the Utility Money Pool by the participant. Each Applicant receiving a loan through the Utility Money Pool is required to repay the principal amount, together with interest accrued thereon, on demand and in any event no later than one year after the date of the loan. All loans made through the Utility Money Pool may be prepaid by the borrower without premium or penalty.

B. Nonutility Money Pool

The Nonutility Money Pool is operated and funded in substantially the same manner as the Utility Money Pool, except that funds contributed by Progress Energy to the Money Pools are made available to the Utility Money Pool first and then to the Nonutility Money Pool. The manner of calculating interest on funds contributed to, and borrowings from, the Nonutility Money Pool is as described above under Utility Money Pools. No loans through the Nonutility Money Pool may be made to, and no borrowings through the Nonutility Money Pool may be made by, Progress Energy.

The current participants in the Nonutility Money Pool are Progress Energy, Progress Service, SRS, PV Holdings, Progress Ventures, and Progress Capital. It is proposed that the following additional Nonutility Subsidiaries be permitted to participate in the Nonutility Money Pool: Progress Real Estate, Progress Fuels, Progress Solutions, Progress Telecommunications, and Caronet. The Applicants request that the Commission reserve jurisdiction over the addition of any other existing or future Nonutility Subsidiaries as participants in the Nonutility Money Pool.

X. Other Transactions

A. Financing Subsidiaries

The Applicants request authority to acquire, directly or indirectly, the equity securities of one or more Financing Subsidiaries created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of Progress Energy and the Subsidiaries through the issuance of Long-term Debt or Preferred Securities to third parties. Any Financing Subsidiary organized in accordance with the authority granted by the Commission in this proceeding shall be organized only if, in management's opinion, the creation-and utilization of such Financing Subsidiary will likely result in tax savings, increased access to capital markets and/or lower cost of capital to the parent company of the Financing Subsidiary.

Authorization also is requested for any Financing Subsidiary to dividend, loan or otherwise transfer the proceeds of a financing to, or as directed by, the Financing Subsidiary's parent company; *provided however*, that a Financing Subsidiary of a Utility Subsidiary will dividend, loan or otherwise transfer proceeds of a financing only to a Utility Subsidiary.

Progress Energy and its Subsidiaries request authorization to guarantee or enter into expense agreements in respect of the obligations of any Financing Subsidiaries that they organize, to the extent not otherwise exempt under rules 45(b)(7) and 52. The amount of any equity or long-term debt securities issued by any Financing Subsidiary shall be counted against any limitation on the amounts of similar types of securities that may be issued directly by the parent company of a Financing Subsidiary, as set forth in this Application or in any other application/declaration that may be filed in the future, to the extent that such securities are guaranteed by such parent company. In that case, however, the guaranty by the parent company would not also be counted against the limitations on Progress Guarantees or Nonutility Guarantees, as the case may be.

Progress Energy and, to the extent not exempt under rule 52, Subsidiaries also request authorization to issue their subordinated unsecured notes ("Subordinated Notes") to any Financing Subsidiary to evidence the loan of financing proceeds by a Financing Subsidiary to its parent company. The principal amount, maturity and interest rate on any such Subordinated Notes will be designed to parallel the amount, maturity and interest or distribution rate on the securities issued by a Financing Subsidiary in respect of which the Subordinated Note is issued.

B. Investments in Energy-Related Assets

Progress Energy currently has authority to acquire or construct in one or more transactions from time to time nonutility energy assets in the United States, including, without limitation, natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities (collectively, "Energy-Related Assets"), that are incidental to the energy marketing, brokering and trading operations of Progress Energy's subsidiaries, subject to an investment limitation of $1 billion ("Investment Limitation").

Progress Energy seeks to extend its authorization to invest in Energy-Related Assets (or in the equity securities of companies substantially all of whose assets consist of Energy-Related Assets), subject to the Investment Limitation. Such Energy-Related Assets (or equity securities of companies substantially all of whose assets consist of Energy-Related Assets) may be acquired for cash or in exchange for Common Stock or other securities of

Progress Energy or a Nonutility Subsidiary of Progress Energy, or any combination of the foregoing.[2] If Common Stock of Progress Energy is used as consideration in connection with any such acquisition, its market value on the date of issuance will be counted against the proposed Investment Limitation. The stated amount or principal amount of any other securities issued as consideration in any such transaction will also be counted against the Investment Limitation. Under no circumstances will any Nonutility Subsidiary acquire, directly or indirectly, any assets or properties the ownership or operation of which would cause such company to be considered an "electric utility company" or "gas utility company" as defined under the Act.

C. Payment of Dividends

1. *By Progress Energy and NCNG.* Progress Energy seeks authorization to declare and pay dividends on Common Stock and/or redeem or repurchase outstanding shares of Common Stock from time to time out of capital and unearned surplus, to the extent permitted under applicable corporate law and the terms of any applicable covenants in their respective financing documents, in an amount equal to (A) the sum of (1) CP&L's consolidated retained earnings prior to formation of Progress Energy as a holding company over CP&L in 2000, (2) Florida Progress's retained earnings prior to its acquisition in 2000 by Progress Energy, and (3) NCNG's retained earnings prior to the acquisition of NCNG by CP&L in 1999, plus (B) the amount, if any, recorded as an impairment to goodwill in accordance with SFAS No. 142. Progress Energy and NCNG request that the Commission reserve jurisdiction over the preceeding proposals pending completion of the record.

NCNG seeks authorization to pay dividends out of capital and unearned surplus in an amount equal to NCNG's retained earnings prior to the acquisition of NCNG by CP&L in 1999.

2. *By Nonutility Subsidiaries.* Progress Energy also proposes, on behalf of itself and each of its current and future non-exempt Nonutility Subsidiaries that they be permitted to pay dividends with respect to their securities and/or acquire, retire or redeem any of their securities that are held by any associate company or affiliate from time to time, out of capital and unearned surplus (including revaluation reserve), to the extent permitted under applicable corporate law.

D. Expenditures in Connection With Development Activities

Progress Energy, through its Nonutility Subsidiaries (including Intermediate Subsidiaries) requests a continuation of its current authority to make expenditures in connection with certain preliminary development activities relating to exempt or authorized nonutility businesses in an amount at any time outstanding not to exceed $250 million. Progress Energy proposes a "revolving fund" concept for permitted expenditures on the development activities. Thus, to the extent a Nonutility Subsidiary in respect of which expenditures for development activities were made subsequently becomes an EWG or FUCO or qualifies as an "energy-related company" under rule 58, the amount so expended will cease to be considered an expenditure for development activities, but will instead be considered as part of the "aggregate investment" in such entity under rule 53 or 58, as applicable.

E. Tax Allocation Agreement

The Applicants are authorized to file consolidated income tax returns and allocate the consolidated income tax liability of the group in accordance with a Tax Allocation agreement that does not satisfy all of the requirements of rule 45(c). Under the Tax Allocation agreement, Progress Energy is permitted to retain the benefit (*i.e.*, the tax savings) in consolidated tax liability that is attributable to the interest expense on the debt incurred to acquire Florida Progress, subject to certain limitations and restrictions.

The Applicants request authorization to continue to file consolidated income tax returns for tax years ending during the Authorization Period under the previously approved Tax Allocation agreement. The Applicants will supplement the quarterly report under rule 24 filed in this proceeding for the quarterly period in which they file their consolidated federal income tax return with information showing the calculation of the portion of Progress Energy's loss that is attributable to interest expense on the debt incurred to acquire Florida Progress and a spreadsheet showing the actual allocation of income taxes to each of the members of the consolidated group and the allocation of income taxes to each of the members of the consolidated group that would be required by rule 45(c).

[2] In some instances, companies substantially all of whose assets consist of Energy-Related Assets may also be engaged in nonutility activities that would be permitted by rule 58 (*e.g.*, energy marketing, ownership, operation and servicing of fuel procurement, transportation, handling and storage facilities).

Interstate Power and Light Company (70–10150)

Interstate Power and Light Company ("IP&L"), a wholly-owned public-utility subsidiary of Alliant Energy Corporation ("Alliant"), a registered holding company under the Act, 200 First Street SE., Cedar Rapids, Iowa, has filed an application-declaration ("Application") under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 under the Act.

IP&L requests authority to enter into an amendment to a fuel lease it has with Arnold Fuel Inc. ("Arnold"). IP&L is engaged principally in the generation, purchase, transmission, distribution and sale of electric power and the purchase, distribution, transportation and sale of natural gas in portions of Iowa, Minnesota and Illinois. IP&L also provides steam service in selected markets in Iowa. IP&L owns a 70% undivided interest in the Duane Arnold Energy Center ("DAEC"), a 580 megawatt (net capacity) boiling water nuclear reactor located near Palo, Iowa, which was placed in commercial operation in 1974.[3] IP&L[4] leases its 70% undivided interest in the nuclear fuel required for the DAEC according to a fuel lease, dated August 21, 1973, as amended ("Fuel Lease") with Arnold. Unless terminated by either party, the term of the Fuel Lease is automatically extended on an annual basis, provided that the term of the Lease Agreement may not be extended beyond December 31, 2023.

Under the terms of the Fuel Lease, Arnold is obligated to acquire and pay the acquisition costs relating to IP&L's 70% undivided interest in the separate nuclear fuel assemblies and components (including replacement nuclear material) which, when acquired, becomes a part of the nuclear fuel leased to IP&L ("Nuclear Fuel"). Arnold currently finances the costs relating to the Nuclear Fuel by issuing commercial paper promissory notes and/or receiving revolving credit loans under a credit agreement ("Credit Agreement") between Arnold and Bank One, NA, individually and as agent bank, and other banks that may become parties to the financing. Commercial paper notes may have maturities of up to 270 days. Revolving credit loans under the Credit Agreement mature on April 28, 2004 and bear interest at the "Alternate Base Rate," which is a fluctuating rate of

[3] The remaining 30% undivided interest in the DAEC is owned by Central Iowa Power Cooperative and Corn Belt Power Cooperative. The DAEC is operated by Nuclear Management Company, LLC, an indirect, 20% owned, non-utility subsidiary of Alliant.

[4] IP&L is successor to Iowa Electric Light and Power Company.

interest equal to the higher of (1) the Federal Funds Effective Rate plus 0.5% or (2) the corporate base rate of Bank One from time to time. The aggregate amount of commercial paper notes and revolving credit loans under the Credit Agreement may not exceed $60 million. Arnold is currently obligated under the Credit Agreement to pay a facility fee of 10 basis points per annum on each lending bank's commitment.

IP&L is obligated under the Fuel Lease to make quarterly lease payments ("Basic Rent"), consisting of a "Quarterly Lease Charge," which, for any calendar quarter, is the sum of the aggregate of the "Daily Lease Charges," plus a "Burn-Up Charge," which is the portion of the Nuclear Fuel that is consumed in producing heat during the quarterly rent period. The Daily Lease Charge for any calendar day is equal to the sum of (1) an accrual for all interest expense and amortization of debt discount with respect to all commercial paper issued by and all revolving credit loans obtained by Arnold under the Credit Agreement which are outstanding at the close of business of such day, (2) an accrual for such day with respect to all commitment fees and other fees, costs and expenses (including issuing agent's fees) of Arnold under the Credit Agreement, and (3) a charge determined by dividing (x) ⅛th of 1% of the "Stipulated Loss Value" of the Nuclear Fuel (essentially Arnold's unrecovered cost of the Nuclear Fuel purchased and leased to IP&L) at the close of business on such day by (y) 365. The Fuel Lease and Arnold's current financing arrangements were all in place at the time Alliant became a registered holding company in 1998.

IP&L requests authorization to enter into an amendment to the Fuel Lease to reflect certain proposed changes to the financing arrangements by which Arnold will finance the cost of Nuclear Fuel. Specifically, authorization is requested for Arnold to issue from time to time during the term of the Lease Agreement up to $30 million of senior secured notes ("Notes") under one or more note purchase agreements with banks, insurance companies or other institutional lenders. Each Note will have a maturity date of between one year and seven years from the date of issuance and bear interest on the unpaid principal prior to maturity or default at a rate not to exceed 400 basis points over the yield to maturity of a U.S. Treasury security having a comparable term. Each Note may be subject to redemption at IP&L's option upon payment of a premium equal to the excess, if any, of (a) the net present value of the future stream of payments under the Note as if held to maturity, discounted at a rate determined pursuant to the applicable note purchase agreement, over (b) the principal amount of the Note. Under the Fuel Lease, as amended, the calculation of the "Daily Lease Charge" will be modified to reflect accruals for interest on and placement fees and other expenses relating to the Notes.

In connection with the foregoing, IP&L and Bank One, NA will enter into an amended Credit Agreement under which the aggregate commitments of the lending banks will be reduced from $60 million to $30 million. Under the amended Credit Agreement, the facility fee will be increased from 10 basis points per year to 15 basis points per year on each lending bank's commitment. The interest rate options applicable to borrowings under the Credit Agreement will remain unchanged.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22030 Filed 8–27–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48382; File No. SR–Amex–2003–71]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to the Elimination of the Minor Floor Violation Disciplinary Committee

August 20, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 25, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend Amex Rule 590 to eliminate its Minor Floor Violation Disciplinary Committee ("MFVDC" or "Committee") and to transfer the MFVDC's responsibilities to the Exchange's Enforcement Department. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has had a Minor Rule Violation Fine Plan since 1976 that provides a simplified procedure for the resolution of specified rule violations. Codified in Amex Rule 590, the Minor Rule Violation Fine Plan has three distinct sections: Part 1 ("General Rule Violations"), which covers more substantive matters; Part 2 ("Floor Decorum"), which covers Floor Decorum and operational matters; and Part 3 ("Reporting Violations"), which covers the late submission of routine reports.

The Exchange's Enforcement Department and MFVDC[3] currently divide responsibility for administering Part 1 of Amex Rule 590. The Enforcement Department enforces those rules enumerated in paragraph (g) of Part 1 of Amex Rule 590, and the MFVDC enforces the rules enumerated in paragraph (h) of Part 1 of Amex Rule 590. The rules that currently may be enforced by the MFVDC follow:

Failure to comply with the Exchange's Auto-Ex Policy relating to signing on and off the Auto-Ex system

Failure to comply with the Exchange's rules regarding openings. (Amex Rules 108(a) and (b) and 950(b))

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange established the MFVDC in 1993. *See* Securities Exchange Act Release No. 32989 (September 29, 1993), 58 FR 52122 (October 6, 1993) (SR–Amex–92–11). The structure of the Committee recently changed to include two floor members, two members of the Amex staff and one representative of an upstairs member firm.

Failure to comply with the Exchange's delayed opening policy. (Amex Floor Transaction Handbook, Part IV, B.3.(g))
Failure to comply with the Exchange's procedures for stopping orders. (Amex Rule 109 and 950(o))
Failure to properly mark or identify and represent Floor orders as required under Exchange rules:
1. Amex Rule 111, Commentary .04; Amex Rule 114, Commentary .09; and Amex Rule 153(g) (which are made applicable to options by Amex Rule 950(a)).
2. Amex Rule 950(c) & (d); 957(d); Amex Rule 958, Commentary .09; and Amex Rule 958A(b)).
Failure to comply with requirements relating to block sized cross transactions. (Amex Rule 126(g), Commentaries .01 and .02)
Failure to comply with the Exchange's procedures for executing "cross" transactions. (Amex Rule 151 which is made applicable to options by Amex Rule 950(a))
Failure to comply with Exchange procedures regarding stop orders. (Amex Rules 154, Commentary .04 and 950(f))
Violation of the Exchange's rules regarding orders left with specialists. (Amex Rules 154 and 950(f))
Failure to comply with the "2, 1, 1/2 Point Rule". (Amex Rules 154, Commentary .08 and 950(f), Commentary .04)
Failure to comply with the Exchange's rules regarding the execution of orders. (Amex Rules 156 and 950(g))
Failure by specialists to obtain Floor Official approval when establishing, increasing or liquidating a position. (Amex Rule 170, Commentaries .01 and .02)
Failure to obtain Exchange approval, or failure to comply with the terms of approval, for member or member firm proprietary electronic devices or systems used on the Exchange Floor. (Amex Rule 220)
Violation of Intermarket Trading System (ITS) rules relating to Pre-Opening Applications (Amex Rule 232) and Trade Throughs, Locked Markets, and the Block Trade Policy (Amex Rule 236).
Failure to comply with the Exchange's "facilitation" policy. (Amex Rule 950(d), Commentary .02)
Failure to comply with the Exchange's "solicitation" policy. (Amex Rule 950(d), Commentary .03)
Failure to quote options markets within the maximum quote spread differentials. (Amex Rules 950(n), Commentary .10; 958(c)(i); and 958(c)(ii))
Failure to comply with the Exchange's rules regarding the announcement of trader orders. (Amex Rule 958, Commentary .09)
Failure to comply with the Exchange's modified firm quote rule. (Amex Rule 958A)

Part 1 of Amex Rule 590 allows the Enforcement Department and the Committee to issue abbreviated "written statements" to persons who may have violated the specified rules identifying the rules violated, the act or omission constituting the violation, and the amount of the fine. The issuance of a "written statement" by the Enforcement Department or MFVDC does not constitute a finding of guilt. Persons receiving a written statement may plead "no contest" and return the statement to the Exchange with the specified fine. In the alternative, persons who are charged under the Plan may contest the fine and receive a hearing before an Exchange Disciplinary Panel. The Exchange is not required to use Amex Rule 590 to impose a fine for a violation of the rules enumerated in the rule and is free to pursue disciplinary action under Article V of the Amex Constitution or Amex Rule 345.

In this filing, the Exchange is proposing to eliminate the MFVDC and to transfer its responsibilities to the Exchange's Enforcement Department so that responsibility for initiating disciplinary action under Part 1 of the Minor Rule Violation Fine Plan will rest exclusively with the Amex enforcement staff. The Exchange currently has one rule filing pending with the Commission that would add a violation to paragraph (h) of Part 1 of Amex Rule 590.[4] This filing is being amended to transfer this violation to the list of rules that may be the subject of Enforcement Department action under paragraph (g) of Part 1 of Amex Rule 590. In connection with the elimination of the MFVDC, the Amex also is proposing to eliminate reference to the Committee wherever it appears in the Exchange's rules.[5]

[4] SR–Amex–2002–09 would add to the list of violations that may be sanctioned by the MFVDC, "Failure to use best efforts to attempt to ensure that the next Auto-Ex execution is appropriately allocated to the price improving registered options trader. (Amex Rule 933, Commentary .04(d))." *See* Amendment No. 9 to Amex–2002–09. Amex proposes to transfer this rule to the list of rules enforced by the Enforcement Department under paragraph (g) of Part 1 of Amex Rule 590.

[5] The MFVDC is mentioned in Commentaries .04 and .06 to Amex Rule 26. These Commentaries concern the calculation of performance ratings for option and ETF specialists.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(1),[7] 6(b)(6),[8] and 6(b)(7)[9] in particular in that it will enhance the ability of the Exchange to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the Exchange; it will help ensure that members and persons associated with members are appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the rules of the Exchange; and it will provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which The Amex consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

[6] 15 U.S.C. 78f(b).
[7] 15 U.S.C. 78f(b)(1).
[8] 15 U.S.C. 78f(b)(6).
[9] 15 U.S.C. 78f(b)(7).

Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–2003–71 and should be submitted by September 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–22032 Filed 8–27–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48388; File No. SR–CSE–2003–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Cincinnati Stock Exchange, Inc. Relating to Market Order Exposure Requirements

August 21, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 7, 2003, The Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CSE. The Exchange filed the proposal pursuant to Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1)[4] thereunder, as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE is proposing to amend CSE Rule 11.9(u), Interpretation .01, concerning market order exposure requirements ("Market Order Exposure Requirement"). The proposed rule change would modify the rule language in light of the current $0.01 minimum price variation and codify certain of the Exchange's stated policies and interpretations contained in CSE Regulatory Circulars.[5]

The text of the proposed rule change is set forth below. Proposed new language is in *italics;* proposed deletions are in [brackets].[6]

* * * * *

Rule 11.9(u), Interpretations and Policies

* * * * *

.01 Market Order Exposure Requirement

(*a*) Consistent with his or her agency responsibility to exercise due diligence, a member must comply with the following procedures which provide the opportunity for public agency buy/sell market orders in securities other than Nasdaq/NM securities to receive a price lower/higher than the disseminated national best offer/bid.

Except under unusual market conditions or if it is not in the best interests of the customer, [when the spread between the national best bid and offer is greater than the minimum price variation a member must either immediately execute the market order at an improved price or expose the market order on the Exchange for a minimum of fifteen seconds in an attempt to improve the price.] *Preferencing Dealers must immediately price improve or expose for a minimum of five seconds in an attempt to improve the price:*

1. market orders with sizes less than or equal to 1000 shares when the NBBO at time of order receipt is more than 5 cents ($0.05) wide;

2. market orders with sizes between 1001 shares and 5000 shares when the NBBO at time of order receipt is more than 10 cents ($0.10) wide; and

3. market orders with sizes above 5000 shares when the NBBO at time of order receipt is more than 15 cents ($0.15) wide.

(b) to assist Preferencing Dealers in satisfying their obligations under the rule, the following exceptions apply:

1. Unusual Market Conditions

Unusual market conditions include the following conditions:

i. The NBBO is more than 1 dollar ($1.00) wide at receipt;

ii. the market is locked or crossed at receipt or becomes that way during exposure;

iii. when circuit breakers have been activated;

iv. during and immediately after the opening (a period not to exceed 5 minutes);

v. immediately prior to the close (a period not to exceed 5 minutes);

vi. when the Exchange has declared a fast market; and

vii. when non-firm markets exist.

2. Best Interests of the Customer

In order to protect the best interests of the customer, the following orders may require unique handling subject to the application of a member's brokerage judgment and experience as required by CSE Rule 12.10, Best Execution:

i. block size market orders as defined in the Intermarket Trading System Plan;

ii. odd-lot orders;

iii. contingent orders;

iv. a market order for a quantity that exceeds the existing NBBO size;

v. NBBO moves in direction of market order stop price; and

vi. Primary market trades at market order stop price.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend CSE Rule 11.9(u),

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* Regulatory Circulars 01–07, 99–03, 98–06, 97–07 and 96–04.

[6] At the request of the Exchange, the Commission has revised the proposed rule change to insert the word "wide" at the end of clauses (a)1, (a)2 and (a)3. Telephone conversation between John Polise, Senior Special Counsel, Joseph P. Morra, Special Counsel and Ann E. Leddy, Attorney, Division of Market Regulation, Commission, and Jeffrey T. Brown, Senior Vice President, Regulation and General Counsel, Exchange (August 20, 2003).

Interpretation .01, to modify the rule language in light of the current $0.01 minimum price variation in quoted spreads.[7] In addition, the proposed rule change would codify certain of the Exchange's stated policies and interpretations contained in CSE Regulatory Circulars.[8] Rule 11.9(u), Interpretation .01, which applies only to ITS eligible securities, requires Preferencing Designated Dealers ("PDDs") in greater than minimum price variation spreads between the national best bid and offer ("NBBO") to, except under unusual market conditions or if it is not in the best interest of the customer, either immediately execute a market order at an improved price or expose it on the Exchange for a minimum of fifteen seconds.[9]

The Market Order Exposure Requirement was adopted when the industry minimum price variation was one-eighth of a dollar ($0.125) resulting in the CSE's market order exposure rule applying when bid/ask spreads were one-fourth of a dollar ($0.25).[10] Given the advent of decimal pricing and today's narrow spreads, the CSE proposes to update its rule. The CSE seeks to reduce the exposure period from 15 seconds to 5 seconds and to impose the Market Order Exposure Requirement based on the size of the market order received by the CSE PDDs. Specifically, the CSE proposes a three-tiered application of the rule to require PDDs to: (1) Expose for 5 seconds or execute immediately at an improved price market orders of 1000 shares or less received when the NBBO is more than 5 cents ($0.05) wide; (2) expose for 5 seconds or execute immediately at an improved price market orders with share size between 1001 and 5000 shares received when the NBBO is more than 10 cents ($0.10) wide; and (3) expose for 5 seconds or execute immediately at an improved price market orders with size greater than 5001 shares when the NBBO is more than 15 cents ($0.15) wide.[11]

As noted above, the CSE's Market Order Exposure Requirement anticipates that certain market conditions preclude application of the rule. The rule carves out these market conditions by providing that: "[e]xcept under unusual market conditions or if it is not in the best interests of the customer * * *"[12] Over the years, the CSE has disseminated Regulatory Circulars describing the Exchange's interpretations of "unusual market conditions" or when "it is not in the best interests of the customer" to expose a market order.[13] The CSE proposes now to incorporate these interpretations into the language of the rule. Therefore, to assist PDDs in satisfying their obligations under the rule, the following exceptions apply:

Unusual Market Conditions

Unusual market conditions include the following conditions:

1. The NBBO is more than 1 dollar ($1.00) wide at receipt;
2. the market is locked or crossed at receipt or becomes that way during exposure;
3. when circuit breakers have been activated;
4. during and immediately after the opening (a period not to exceed 5 minutes);
5. immediately prior to the close (a period not to exceed 5 minutes);
6. when the exchange has declared a fast market; and
7. when non-firm markets exist.

Best Interests of the Customer

In order to protect the best interests of the customer, the following orders may require unique handling subject to the application of a member's brokerage judgment and experience as set forth by CSE Rule 12.10, Best Execution:[14]

1. block size market orders as defined in the Intermarket Trading System Plan;
2. odd-lot orders;
3. contingent orders;
4. a market order for a quantity that exceeds the existing NBBO size;
5. NBBO moves in direction of market order stop price; and
6. primary market trades at market order stop price.

1. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[15] in general, and with Section 6(b)(5) of the Act,[16] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system and, generally, in that it protects investors and the public interest.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CSE does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(i) of the Act,[17] and Rule 19b–4(f)(1)[18] thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

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[7] While over time the minimum trading increment has decreased from one-eighth to subpenny increments, under the current interpretation the requirements of Rule 11.9(u) Interpretation .01 remain applicable only when the price variation in the spread between the best national bid and offer is greater than or equal to one-fourth of a $1 ($0.25). *See* CSE Regulatory Circular 97–07; *see also* Securities Exchange Act Release Nos. 39720 (March 4, 1998), 63 FR 11942 (March 11, 1998)(SR–CSE–97–13); 43471 (October 20, 2000), 65 FR 64463 (October 27, 2000) (SR–CSE–00–08); and 43653 (December 1, 2000), 65 FR 77055 (December 8, 2000) (SR–CSE–00–08) (each of which references CSE Regulatory Circular 97–07 for further discussion of CSE's Market Order Exposure Requirement).

[8] *See supra*, note 5.

[9] This provision applies only to public agency buy/sell market orders in securities other than Nasdaq national market securities.

[10] *See supra*, note 7.

[11] In a separate rule filing, SR–CSE–2003–10, CSE is proposing to eliminate the Market Order Exposure Requirement completely.

[12] CSE Rule 11.9(u), Interpretations and Policies .01.

[13] *See supra*, note 5.

[14] CSE Rule 12.10, Best Execution.

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] 15 U.S.C. 78s(b)(3)(A)(i).

[18] 17 CFR 240.19b–4(f)(1).

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CSE–2003–09 and should be submitted by September 18, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22031 Filed 8–27–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3537]

State of Mississippi

Lee County and the contiguous counties Chickasaw, Itawamba, Monroe, Pontotoc, Prentiss and Union in the State of Mississippi constitute a disaster area due to damages caused by severe storms and flooding that occurred on August 6, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 20, 2003 and for economic injury until the close of business on May 20, 2004 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	5.125
Homeowners without Credit Available Elsewhere	2.562
Businesses with Credit Available Elsewhere	6.199
Businesses and Non-Profit Organizations without Credit Available Elsewhere	3.100
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	3.100

[19] 17 CFR 200.30–3(a)(12).

The number assigned to this disaster for physical damage is 353711 and the number for economic injury is 9W7200.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 20, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–22013 Filed 8–27–03; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). This notice transfers the agency Press Office from the Office of the Commissioner to the Office of the Deputy Commissioner, Communications. The new material and changes are as follows:

Section SA.10 *The Office of the Commissioner*—(Organization):
Delete
F. The Press Office (SAT)

Section SA.20 *The Office of the Commissioner*—(Functions):
Delete in entirety
F. The Press Office (SAT)

Section TE.00 *The Office of Communications*—(Mission):
Add second line
Performs SSA Press Office function to ensure a unified and consistent message to the public.

Section TE.10 *The Office of the Communications*—(Organization):
C. The Immediate Office of the Deputy Commissioner, Communications (TEA)
Add
which includes: 1. The Press Office (TEA–1)

Section TE.20 *The Office of the Communications*—(Functions):
C. The Immediate Office of the Deputy Commissioner, Communications (TEA), provides the Deputy Commissioner and Assistant Deputy Commissioner with staff assistance on the full range of their responsibilities.
Add
It includes 1. The Press Office (TEA–1)
(a) Guides and coordinates all SSA press activities. It prepares and distributes news releases, fact sheets, and other materials for national distribution and for local release through SSA field offices.
(b) Initiates and maintains contacts with members of the news media and responds to press inquiries and requests from newspapers, radio and television news departments; news and general print magazines, internet news providers, and other specialized press. Advises Agency executives, Regional Communications Directors, Public Affairs Specialists, and other employees on matters related to news media.
(c) Monitors press coverage of Social Security programs and employees, and distributes summaries of media coverage to Agency executives. When appropriate, the Press Office works to correct inaccuracies in coverage.

Dated: August 14, 2003.

Jo Anne B. Barnhart,

Commissioner of Social Security.

[FR Doc. 03–22015 Filed 8–27–03; 8:45 am]

BILLING CODE 4191–02–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Notice of Availability and Request for Public Comment on Interim Environmental Review of United States-Central America Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of availability and request for public comment.

SUMMARY: The Office of the U.S. Trade Representative (USTR), on behalf of the Trade Policy Staff Committee (TPSC), seeks comment on the interim environmental review of the proposed U.S.-Central America Free Trade Agreement (CAFTA). The interim environmental review is available at *http://www.ustr.gov/environment/environmental.shtml*. Copies of the review will also be sent to interested members of the public by mail upon request.

DATES: Comments on the draft environmental review are requested no later than October 15, 2003, and earlier if possible. Comments received before September 15, 2003, will be used to inform the seventh round of negotiations, currently scheduled for September 15–19. Comments received after September 15, 2003, will be used to inform subsequent rounds of negotiations. After the seventh round, two more rounds of negotiations are scheduled, with the concluding round in December 2003.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review, or requests for copies, should be addressed to Alice Mattice or David Brooks, Environment and Natural Resources Section, Office of the USTR, telephone 202–395–7320.

SUPPLEMENTARY INFORMATION: The Trade Act of 2002, signed by the President on August 6, 2002, provides that the President shall conduct environmental reviews of [certain] trade agreements consistent with Executive Order 13121—*Environmental Review of Trade Agreements* (64 FR 63,169, Nov. 18, 1999) and its implementing guidelines (65 FR 79,442, Dec. 19, 2000) and report on such reviews to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate. The Order and guidelines are available at *http://www.ustr.gov/environment/environmental.shtml.*

The purpose of environmental reviews is to ensure that policymakers and the public are informed about reasonably foreseeable environmental impacts of trade agreements (both positive and negative), to identify complementarities between trade and environmental objectives, and to help shape appropriate responses if environmental impacts are identified. Reviews are intended to be one tool, among others, for integrating environmental information and analysis into the fluid, dynamic process of trade negotiations. USTR and the Council on Environmental Quality jointly oversee implementation of the Order and Guidelines. USTR, through the Trade Policy Staff Committee (TPSC), is responsible for conducting the individual reviews.

Written Comments

In order to facilitate prompt processing of submissions of comments, the Office of the United States Trade Representative strongly urges and prefers e-mail submissions in response to this notice. Persons submitting comments by e-mail should use the following e-mail address: *FR0097@ustr.gov* with the subject line: "CAFTA Interim Environmental Review." Documents should be submitted as either WordPerfect, MSWord, or text (.TXT) files. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files. If submission by e-mail is impossible, comments should be made by facsimile to (202) 395–6143, attention: Gloria Blue.

Written comments will be placed in a file open to public inspection in the USTR Reading Room at 1724 F Street, NW., Washington DC. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10–12 a.m. and from 1–4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 03–22035 Filed 8–27–03; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Request for Comments and Notice of Public Hearing Concerning Proposed United States-Dominican Republic Free Trade Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of intent to initiate free trade negotiations between the United States and the Dominican Republic, request for comments, and notice of public hearing.

SUMMARY: The United States intends to initiate free trade negotiations with the Dominican Republic. The interagency Trade Policy Staff Committee (TPSC) will convene a public hearing and seek public comment to provide the United States Trade Representative (USTR) advice on how specific goods and services and other matters should be treated under an agreement resulting from the proposed negotiations.

DATES: Persons wishing to testify orally at the hearing must provide written notification of their intention, as well as their testimony, by October 1, 2003. A hearing will be held in Washington, DC beginning on October 8, 2003, and will continue as necessary on subsequent days. Written comments are due by noon, November 2, 2003.

ADDRESSES: Submissions by electronic mail: *FR0089@ustr.gov* (notice of intent to testify and written testimony); *FR0090@ustr.gov* (written comments). Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143. The public is strongly encouraged to submit documents electronically rather than by facsimile. (*See* requirements for submissions below.)

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning written comments or participation in the public hearing, contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395-3475. All other questions should be directed to Andrea Gash Durkin, Director for Central America and the Caribbean, (202) 395–6135.

SUPPLEMENTARY INFORMATION:

1. Background

Under section 2104 of the Trade Act of 2002 (Trade Act) (19 U.S.C. 3804), for agreements that will be approved and implemented through trade promotion authority (TPA) procedures, the President must provide the Congress with at least 90 days written notice of his intent to enter into negotiations and must identify the specific objectives for the negotiations. Before and after the submission of this notice, the President must consult with appropriate Congressional committees and the Congressional Oversight Group regarding the negotiations.

Under section 131 of the Trade Act of 1974, as amended (19 U.S.C. 2151), the President must seek the advice of the U.S. International Trade Commission (ITC) regarding the probable economic effects on U.S. industries and consumers of the removal of tariffs and non-tariff barriers on imports pursuant to any proposed agreement. In addition, pursuant to section 133, the President must afford interested persons an opportunity to present their views regarding any matter relevant to any proposed agreement.

On August 4, 2003, after consulting with relevant Congressional committees and the Congressional Oversight Group, the USTR notified the Congress that the President intends to initiate free trade agreement negotiations with the Dominican Republic and identified specific objectives for the negotiations. Through these negotiations, we expect to provide for essentially the same disciplines as those in the Free Trade Agreement we are currently negotiating with the five member countries of the Central American Economic Integration System (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) (CAFTA), and to negotiate specific market access commitments with the Dominican Republic. On August 6, 2003, the USTR requested the ITC to provide advice on probable economic effects. The ITC intends to provide this advice within four months of its receipt of the request. This notice solicits views

from the public on these negotiations and provides information on a hearing that will be conducted pursuant to the requirements of the Trade Act of 1974.

2. Public Comments and Testimony

To assist the Administration in pursuing these negotiations, the Chairman of the TPSC invites written comments and/or oral testimony of interested persons at a public hearing. Comments and testimony may address the reduction or elimination of tariffs or non-tariff barriers on any articles provided for in the Harmonized Tariff Schedule of the United States (HTSUS) that are products of the Dominican Republic, any concession which should be sought by the United States, or any other matter relevant to the proposed agreement.

The TPSC invites comments and testimony on all of these matters and, in particular, seeks comments and testimony addressed to:

(a) General and commodity-specific negotiating objectives for the proposed agreement.

(b) Economic costs and benefits to U.S. producers and consumers of removal of tariffs and non-tariff barriers to U.S.-Dominican Republic trade.

(c) Treatment of specific goods (described by Harmonized System tariff numbers) under the proposed agreement, including comments on

(1) Product-specific import or export interests or barriers,

(2) Experience with particular measures that should be addressed in the negotiations, and

(3) In the case of articles for which immediate elimination of tariffs is not appropriate, a recommended staging schedule for such elimination.

(d) Adequacy of existing customs measures to ensure Dominican Republic origin of imported goods, and appropriate rules of origin for goods entering the United States under the proposed agreement.

(e) Existing Dominican Republic sanitary and phytosanitary measures and technical barriers to trade.

(f) Existing barriers to trade in services between the United States and the Dominican Republic that should be addressed in the negotiations.

(g) Investment issues that should be addressed in the negotiations.

(h) Government procurement issues that should be addressed in the negotiations and other relevant issues.

Comments may address issues such as trade-related intellectual property rights, labor, and environment, noting that we expect to provide for essentially the same disciplines for the Dominican Republic that are negotiated with CAFTA. Comments identifying present or potential trade barriers, laws or regulations that are not primarily trade-related should address the economic, political and social objectives of such regulations and the degree to which they discriminate against U.S. producers. At a later date, the USTR, through the TPSC, will publish notice of the U.S. environmental and employment impact reviews.

A hearing will be held on October 8, 2003, in Rooms 1 and 2, 1724 F Street, NW., Washington, DC. If necessary, the hearing will continue on subsequent days. Persons wishing to testify at the hearing must provide written notification of their intention by October 1, 2003. The notification should include: (1) The name, address, and telephone number of the person presenting the testimony; and (2) a short (one or two paragraph) summary of the presentation, including the subject matter and, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects to be discussed. A copy of the testimony must accompany the notification. Remarks at the hearing should be limited to no more than five minutes to allow for possible questions from the TPSC. Persons with mobility impairments who will need special assistance in gaining access to the hearing should contact the TPSC Executive Secretary.

Interested persons, including persons who participate in the hearing, may submit written comments by noon, November 2, 2003. Written comments may include rebuttal points demonstrating errors of fact or analysis not pointed out in the hearing. All written comments must state clearly the position taken, describe with particularity the supporting rationale, and be in English. The first page of written comments must specify the subject matter, including, as applicable, the product(s) (with HTSUS numbers), service sector(s), or other subjects.

3. Requirements for Submissions

In order to facilitate prompt processing of submissions, the Office of the United States Trade Representative strongly urges and prefers electronic (e-mail) submissions in response to this notice. In the event that an e-mail submission is impossible, submissions should be made by facsimile. Persons making submissions by e-mail should use the following subject line: "United States—Dominican Republic Free Trade Negotiations" followed by (as appropriate) "Notice of Intent to Testify," "Testimony," or "Written Comments." Documents should be submitted as WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC–", and the file name of the public version should begin with the characters "P–". The "P–" or "BC–" should be followed by the name of the submitter.

Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments, notice of testimony, and testimony will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly marked "Business Confidential" at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 p.m. and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–22018 Filed 8–27–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R,E&D) Advisory Committee

AGENCY: Federal Aviation Administration.

ACTION: Notice of meeting.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: September 17–9 a.m.–5 p.m. September 18–9 a.m.–5 p.m.

Place: Sheraton Pentagon South, 4641 Kenmore Avenue, Alexandria, Virginia.

Purpose: On September 17 from 9 a.m. to 5 p.m. will be a joint meeting with NASA's Revolutionize Aviation Subcommittee. The meeting agenda will include briefings on the National Plan, SATS/Capstone 21, Unmanned Aerial Vehicles in the National Airspace System, Environmental R&D and NASA/FAA Safety R&D Roadmaps. On September 18 from 9 a.m. to 5 p.m. the meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy.

Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267–8937 or *gloria.dunderman@faa.gov.*

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on August 25, 2003.

Herman A. Rediess,

Director, Office of Aviation Research.

[FR Doc. 03–22061 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–C–00–BGM To Impose/Use the Revenue From a Passenger Facility Charge (PFC) at Greater Binghamton Airport, Binghamton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose/use the revenue from a PFC at Greater Binghamton Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before September 29, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Carl R. Beardsley, Jr., Deputy Commissioner of Aviation, of the Broome County Department of Aviation at the following address: Broome County Department of Aviation, Greater Binghamton Airport, 2534 Airport Road, Box 16, Johnson City, NY 13790.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Broome County Department of Aviation under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Levine, Airport Engineer, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530, (516) 227–3807. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose/use the revenue from a PFC at Greater Binghamton Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 15, 2003, the FAA determined that the application to impose/use the revenue from a PFC submitted by the Broome County Department of Aviation was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 27, 2003.

The following is a brief overview of the application.

PFC Application No.: 03–06–C–00–BGM.

Level of the proposed PFC: $4.50.

Proposed charge effective date: February 1, 2005.

Proposed charge expiration date: March 1, 2005.

Total estimated PFC revenue: $7,996.

Brief description of proposed project(s):

—ARFF Facility Refurbishment.

—Passenger Boarding Bridge Purchase.

—Airport Security Access Control System Enhancement.

—Airport Security Fence Improvements.

Class or classes or air carriers which the public agency has requested not be required to collect PFCs: Non-Scheduled/On Demand Air Carriers filling FAA form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Federal Aviation Administration, Airports Division, AEA–610, Eastern Region, 1 Aviation Plaza, Jamaica, New York, 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Broome County Department of Aviation.

Issued in Garden City, New York, on August 21, 2003.

Philip Brito,

Manager, New York Airports District Office, Eastern Region.

[FR Doc. 03–22046 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (03–07–C–00–SLC) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Salt Lake City International Airport, Submitted by the Salt Lake City Department of Airports, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Salt Lake City International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before September 29, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Craig A. Sparks, Manager; Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy

L. Campbell, Executive Director, at the following address: Salt Lake City Department of Airports, 776 N. Terminal Dr., TUI, Suite 250, Salt Lake City, Utah 84122.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Salt Lake City International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 03–07–C–00–SLC to impose and use PFC revenue at Salt Lake City International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 20, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 20, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: February 1, 2004.

Proposed charge expiration date: May 31, 2006.

Total requested for use approval: $68,667,132.

Brief description of proposed project: Construct West Runway 34L/16R.

Class or classes of air carriers, which the public agency has requested, not be required to collect PFC's: All air taxi/commercial operators filing or required to file FAA Form 188–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Salt Lake City International Airport.

Issued in Renton, Washington on August 20, 2003.

Carolyn T. Read,

Acting Manager, Planning, Programming, and Capacity Branch Northwest Mountain Region.

[FR Doc. 03–22044 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (03–08–C–00–SLC) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Salt Lake City International Airport, Submitted by the Salt Lake City Department of Airports, Salt Lake City, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Salt Lake City International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before September 29, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Craig A. Sparks, Manager; Denver Airports District Office, DEN–ADO, Federal Aviation Administration; 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Timothy L. Campbell, Executive Director, at the following address: Salt Lake City Department of Airports, 776 N. Terminal Dr., TUI, Suite 250, Salt Lake City, Utah 84122.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Salt Lake City International Airport, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258, 26805 East 68th Avenue, Suite 224, Denver, Colorado 80249. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application 03–08–C–00–SLC to impose and use PFC revenue at Salt Lake City International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 20, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Salt Lake City Department of Airports, Salt Lake City, Utah, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 20, 2003. The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: June 1, 2006.

Proposed charge expiration date: July 31, 2006.

Total requested for use approval: $7,649,000.

Brief description of proposed projects: Apron D Rehabilitation East, Taxiway M Reconstruction, Tooele Valley AWOS, West Apron Paving (Phase III) and Supporting Infrastructure, Electronic Visual Information Display Systems (EVIDS) Upgrade, East Side Oil/Water Separator, Airport Layout Plan (ALP)/Environmental Update (Phase II), Airfield Equipment, Park and Wait Sign, Tooele Valley Airport Land Acquisition.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: All air taxi/commercial operators filing or required to file FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Salt Lake City International Airport.

Issued in Renton, Washington on August 20, 2003.

Carolyn T. Read,

Acting Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 03–22045 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Montgomery and Prince George's Counties, MD

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Draft Environmental Impact Statement (EIS)/ Draft Section 4(f) Evaluation will be prepared for a proposed roadway improvement project in Montgomery and Prince George's Counties, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel W. Johnson, Environmental Program Specialist, Federal Highway Administration, Maryland Division, The Rotunda, Suite 220, 711 W. 40th Street, Baltimore, Maryland 21211, Telephone: (410) 962–4342, extension 145.

SUPPLEMENTARY INFORMATION: The FHWA along with the Maryland State Highway Administration will prepare a Draft EIS with a draft Section 4(f) Evaluation for transportation improvements along the MD 28/MD 198 Corridor in Montgomery and Prince George's Counties. The U.S. Army Corps of Engineers and U.S. Environmental Protection Agency will be invited to be cooperating agencies. The proposed project includes widening improvements along MD 28 (Norbeck Road), Norbeck Road Extended and MD 198 (Spencerville Road/Sandy Spring Road) from the vicinity of MD 97 (Georgia Avenue) to the vicinity of I–95 (approximately 10.6 miles).

Proposed improvements along this corridor are necessary because MD 28 and MD 198 are currently operating near capacity in some areas between MD 97 in Montgomery County and I–95 in Prince George's County. The 2002 completion of Montgomery County's Norbeck Road Extended project provides a direct connection of MD 28 and MD 198, reducing travel time between MD 182 (Layhill Road) and MD 650 (New Hampshire Avenue). Traffic operations in the study corridor are expected to worsen as planned and future development occurs and congestion increases. The local roadway network will reach capacity and will be unable to accommodate this increased travel demand leading to stop-and-go conditions at locations along the corridor. Improvements within the corridor will accommodate existing and projected travel demand, while addressing safety concerns.

The alternates under consideration include (1) No-Build Alternate—taking no action, (2) Transportation Systems Management Alternate—providing a wide range of spot improvements throughout the corridor that address the most serious concerns at specific location or segments of roadway (*e.g.*, intersection improvements, geometric improvements, access management strategies, and center turn lanes) and (3) Master Plan Features Alternate—incorporating roadway improvements, including roadway widening, to MD 28, Norbeck Road Extended and MD 198 within the study limits as called for in the local area master plans.

Other transportation projects within the vicinity of the MD 28/MD 198 Corridor Improvement Study are under way or under study; including the MD 28/MD 97 interchange, the MD 198/US 29 interchange and the Intercounty Connector (ICC). A Public Hearing was held for the MD 28/MD 97 interchange in December 2002. The MD 198/US 29 interchange is currently under construction, anticipated to be complete in the Fall 2004. The Public Hearing for the ICC is tentatively scheduled for the Fall 2004.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, local agencies, private organizations, and citizens who have previously expressed or are known to have an interest in this project. A Public Hearing is tentatively scheduled for the Winter 2003/2004. The Draft EIS/Draft Section 4(f) Evaluation will be available for public and agency review and comment prior to a Public Hearing. Public notice will be given of the availability of the Draft EIS/4(f) for review and of the time and place of this hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments or questions concerning these proposed actions and EIS should be directed to the FHWA at the address provided above (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program).

Issued on: August 14, 2003.

Daniel W. Johnson,

Environmental Program Manager, Baltimore, Maryland.

[FR Doc. 03–22037 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14229; Notice 2]

Kawasaki Motors Corporation, U.S.A.; Grant of Application for Decision of Inconsequential Noncompliance

Kawasaki Motors Corporation U.S.A. of Irvine, California (KMC) has determined that some 2002 and 2003 model year Kawasaki motorcycles produced for sale in the U.S. fail to comply with a requirement in Federal Motor Vehicle Safety Standard (FMVSS) No. 123, "Motorcycle Controls and Displays". The motorcycles in question have ignition switches that are not labeled with the word "ignition". Pursuant to 49 U.S.C. 30118(d) and 30120(h), KMC has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports".

Notice of receipt of the application was published, with a 30-day comment period, on February 3, 2003, in the **Federal Register** (67 FR 72026). NHTSA received no comment on this application.

Federal Motor Vehicle Safety Standard No. 123 standardizes motorcycle controls to minimize the risk of crashes resulting from operator errors in the use of controls. In FMVSS No. 123, paragraph S5.2.3 specifies that the ignition shall be labeled with the word "ignition" as well as the word "off" at the appropriate ignition switch position. Proper labeling of the ignition helps to ensure that a rider who needs to quickly turn off a motorcycle for safety reasons will be able to locate, identify, and operate the ignition control.

Kawasaki Motors Corporation described the operation of the motorcycles with the noncompliance as follows:

> The ignition switch is located in a pod positioned immediately in front of the operator, just ahead of the fuel filler opening on the top of the fuel tank. The switch is operated by an ignition key and has three positions, sequentially in a clockwise direction: "off" where the ignition is disabled; "on" where the ignition is enabled; and "park" where the ignition is disabled but minimal lighting functions are enabled. These ignition switch positions are labeled on a metal plate that surrounds the ignition switch and which also contains the turn signal indicator lamps, neutral and high beam indicators. Unlike standard automotive practice, the ignition switch does not operate the starter motor—the starter button is located on the handlebar. Starting the

motorcycle involves insertion of the key into the switch and turning the ignition to the "on" position, then operating the separate starter button. An operator would not be able to start the engine inadvertently by using only the ignition switch.

Kawasaki Motors Corporation stated the following in support of its application for inconsequential noncompliance:

No safety consequences attach to the omission of the "ignition" identification for the switch. Operators are familiar with the function and location of the ignition switch as well as the use of the ignition key to operate the switch. The location of the switch, in combination with frequently referenced displays such as turn signal, neutral, and high beam indicators means that the operator is quite familiar with the switch and its location, and experiences no adverse consequences from the lack of "ignition" identification for the switch. In fact, an operator unable to identify the ignition switch, due to the lack of labeling, would be unable to start or operate the motorcycle in the first place.

The other ignition switch labeling, *i.e.*, the word "off" at the appropriate switch position, is present as required, and the remainder of the vehicle controls and displays comply with the requirements of FMVSS No. 123.

In their application, KMC stated that it is unaware of any accidents, injuries, owner complaints or field reports for the subject vehicles vis-à-vis this noncompliance, and has received no communications of any kind from owners, dealers, or anyone else indicating any awareness of the missing label.

After reviewing KMC's application, NHTSA concludes that the noncompliance of KMC with respect to FMVSS No. 123 does not constitute a consequential vehicle safety concern. Motorcycles, including the non-complying Kawasaki motorcycles, are equipped with an engine kill switch located on the right handlebar where it is within reach of the rider's right hand. A motorcycle operator confronted with the need to quickly shut off the engine can do so without moving his hand from the handgrip. By using the kill switch, there is no need for the operator to locate the ignition switch. As a result, the missing label on the ignition switch should not prevent immediate engine shut-down.

Accordingly, KMC's application is granted and the applicant is exempted from providing the notification of the noncompliance as required by 49 U.S.C. 30118, and from remedying the noncompliance as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 15, 2003.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 03–22041 Filed 8–27–03; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 223X)]

Norfolk Southern Railway Company—Abandonment Exemption—in Mingo County, WV

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 1.59-mile line of railroad between milepost TE–1.50 at Licks Fork Spur and milepost TE–3.09 at Elda, in Mingo County, WV. The line traverses United States Postal Service Zip Code 24293.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 27, 2003,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 8, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 17, 2003, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by September 2, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by August 28, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

[1] While NSR initially indicated a proposed consummation date of September 26, 2003, because the verified notice was filed on August 8, 2003, consummation may not take place prior to September 27, 2003. NSR's representative has subsequently confirmed that consummation cannot occur before September 27, 2003.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Decided: August 22, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–22019 Filed 8–27–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for extension approval by the Office of Management and Budget. The Office of International Monetary and Financial Policy within the Department of the Treasury is soliciting comments concerning Extension of Foreign Currency Form FC–1 (OMB No. 1505–0012) Weekly Consolidated Foreign Currency Report of Major Market Participants, Form FC–2 (OMB No. 1505–0010) Monthly Consolidated Foreign Currency Report of Major Market Participants, and Form FC–3 (OMB No. 1505–0014) Quarterly Consolidated Foreign Currency Report. The reports are mandatory.

DATES: Written comments should be received on or before October 27, 2003 to be assured of consideration.

ADDRESSES: Direct all written comments to Timothy D. DuLaney, Office of International Monetary and Financial Policy, Department of the Treasury, Room 4423–1440NYA, 1500 Pennsylvania Avenue NW., Washington DC 20220. In view of possible delays in mail delivery, please also notify Mr. DuLaney by e-mail (*Tim.Dulaney@do.treas.gov*), FAX (202–622–2021) or telephone (202–622–2052).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Federal Reserve Bank of New York's website, in the U.S. Department of the Treasury section of the webpage for Regulatory Reports Forms and Instructions at: *http://www.ny.frb.org/bankinfo/regrept/regrept.html*. Requests for additional information should be directed to Mr. DuLaney.

SUPPLEMENTARY INFORMATION:

Title: Weekly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC–1.

OMB Control Number: 1505–0012.

Title: Monthly Consolidated Foreign Currency Report of Major Market Participants, Foreign Currency Form FC–2.

OMB Control Number: 1505–0010.

Title: Quarterly Consolidated Foreign Currency Report, Foreign Currency Form FC–3.

OMB Control Number: 1505–0014.

Abstract: Foreign Currency Forms FC–1, FC–2, and FC–3 are required by Pub. L. 93–110 (31 U.S.C. 5315), which directs the Secretary of the Treasury to prescribe regulations and reports on foreign currency transactions conducted by a United States person or a foreign person controlled by a United States person. The regulations governing forms FC–1, FC–2, and FC–3 are contained in Title 31 part 128 of the Code of Federal Regulations (31 CFR part 128) which were published in the **Federal Register** on November 2, 1993.

Current Actions: No changes to the current forms and instructions are being proposed.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents:

Foreign Currency Form FC–1: 21 respondents.

Foreign Currency Form FC–2: 21 respondents.

Foreign Currency Form FC–3: 51 respondents.

Estimated Average Time Per Respondent:

Foreign Currency Form FC–1: One (1) hour per respondent per response.

Foreign Currency Form FC–2: Four (4) hours per respondent per response.

Foreign Currency Form FC–3: Eight (8) hours per respondent per response.

Estimated Total Annual Burden Hours:

Foreign Currency Form FC–1: 1,092 hours, based on 52 reporting periods per years.

Foreign Currency Form FC–2: 1,008 hours, based on 12 reporting periods per year.

Foreign Currency Form FC–3: 1,632 hours, based on 4 reporting periods per year.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Foreign Currency Forms FC–1, FC–2, and FC–3 are necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimates of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Timothy D. DuLaney,

Office of International Monetary and Financial Policy, U.S. Department of the Treasury.

[FR Doc. 03–21989 Filed 8–27–03; 8:45 am]

BILLING CODE 4810–25–P

Corrections

Federal Register
Vol. 68, No. 167
Thursday, August 28, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

OAR–2002–0040, FRL–7461–4]

RIN 2060–A174

National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands

Correction

In rule document 03–5521 beginning on page 28774 in the issue of Tuesday, May 27, 2003 make the following correction:

PART 63—[Corrected]

On page 28785, in the second column, "**Subpart PPPPP—National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Standards** " should read "**Subpart PPPPP—National Emission Standards for Hazardous Air Pollutants for Engine Test Cells/Stands**".

[FR Doc. 03–5521 Filed 8–27–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
August 28, 2003

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI93

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits taking of designated species during the 2003–04 season.

DATES: This rule is effective on September 1, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2003

On May 6, 2003, we published in the **Federal Register** (68 FR 24324) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2002–03 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 23, 2003, we published in the **Federal Register** (68 FR 37362) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2003–04 duck hunting season. The June 23 supplement also provided detailed information on the 2003–04 regulatory schedule and announced the Service Migratory Bird Regulations Committee (SRC) meetings.

On June 18 and 19, 2003, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2003–04 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2003–04 regular waterfowl seasons. On July 17, 2003, we published in the **Federal Register** (68 FR 42546) a third document specifically dealing with the proposed frameworks for early-season regulations.

On July 30–31, 2003, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2003–04 regulations for these species. Proposed hunting regulations were discussed for late seasons. We published proposed frameworks for the 2003–04 late-season migratory bird hunting regulations on August 19, 2003, in the **Federal Register** (68 FR 50016). On August 27, 2003, we published a fifth document in the **Federal Register** which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits.

The final rule described here is the sixth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; youth waterfowl hunting day; and some extended falconry seasons.

NEPA Consideration

NEPA considerations are covered by the programmatic document "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under **ADDRESSES.** Additionally, in a proposed rule published in the April 30, 2001, **Federal Register** (66 FR 21298), we expressed our intent to begin the process of developing a new EIS for the migratory bird hunting program. We plan to begin the public scoping process in 2005.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *." Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES.**

Executive Order 12866

The migratory bird hunting regulations are economically significant and were reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, and then updated in 1998. We will update again in 2004. It is further discussed below under the heading Regulatory

Flexibility Act. Results from the 1998 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $50 to $192 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES.**

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996 and 1998 and will be updated again in 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 1998 Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 2003. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES.**

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date required by 5 U.S.C. 801 under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 10/31/2004). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Thus, this action is not a significant energy action and no Statement of Energy Effects is required.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act (MBTA), does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this rule will allow hunters to exercise otherwise unavailable privileges, and, therefore, it will reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the MBTA. Annually, we prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. We develop the frameworks in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will ultimately make season selections, thereby having an influence on their own regulations. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Further, any State or Tribe may be more restrictive than the Federal frameworks at any time. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there was a delay in the effective date

of these regulations after this final rulemaking, the States would have insufficient time to implement their selected season dates and limits and start their seasons in a timely manner. We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 8, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

■ For the reasons set out in the preamble, title 50, chapter I, subchapter B, Part 20, subpart K of the Code of Federal Regulations is amended as follows:

■ 1. The authority citation for Part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a-j, Pub. L. 106–108.

BILLING CODE 4310–55–P

-Note - The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Puerto Rico

	Season Dates	Limits	
		Bag	Possession
Doves and Pigeons			
Zenaida, white-winged, and mourning doves	Sept. 6-Nov. 3	15	15
Scaly-naped pigeons	Sept. 6-Nov. 3	5	5
Ducks	Nov. 16-Dec. 22 &	6	12
	Jan. 10-Jan. 26	6	12
Common Moorhens	Nov. 16-Dec. 22 &	6	12
	Jan. 10-Jan. 26	6	12
Common Snipe	Nov. 16-Dec. 22 &	8	16
	Jan. 10-Jan. 26	8	16

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, and Caribbean coot, white-crowned pigeon and plain pigeon. Hunting is closed in the area known as Caño Tiburones.

Closed Areas: Closed areas are described in the July 17, 2003, Federal Register (68 FR 42546).

(b) Virgin Islands

	Season Dates	Limits	
		Bag	Possession
Zenaida doves	Sept. 1-Sept. 30	10	10
Ducks	CLOSED		

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

§20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the July 17, 2003, Federal Register (68 FR 42546).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area Seasons	Dates
North Zone	Sept. 1-Dec. 16
Gulf Coast Zone	Sept. 1-Dec. 16
Southeast Zone	Sept. 1-Dec. 16
Pribilof & Aleutian Islands Zone	Oct. 8-Jan. 22
Kodiak Zone	Oct. 8-Jan. 22

Daily Bag and Possession Limits

Area	Ducks(1)	Dark Geese(2)(3)	Light Geese (2)	Brant	Common Snipe	Sandhill Cranes(4)
North Zone	10-30	4-8	3-6	2-4	8-16	3-6
Gulf Coast Zone	8-24	4-8	3-6	2-4	8-16	2-4
Southeast Zone	7-21	4-8	3-6	2-4	8-16	2-4
Pribilof and Aleutian Islands Zone	7-21	4-8	3-6	2-4	8-16	2-4
Kodiak Zone	7-21	4-8	3-6	2-4	8-16	2-4

(1) The basic duck bag limits may include no more than 1 canvasback daily, 3 in possession, and may not include sea ducks. In addition to the basic duck limits, sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks, are allowed. Special sea duck limits will be available to non-residents, but at lower daily limits than residents, and they may take no more than a possession limit of 20 per season , including no more than 4 each of harlequin and long-tailed ducks, black, surf, and white-winged scoters, and king and common eiders. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers. The season for Steller's and spectacled eiders is closed statewide.

(2) Dark geese include Canada and white-fronted geese. Light geese include snow geese and Ross' geese. Separate limits apply to brant. The season for emperor geese is closed Statewide.

(3) In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In the Middleton Island portion of Unit 6, the taking of Canada geese is by special permit and archery only, with a daily bag and possession limit of 1. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession. In Unit 10 (except Unimak Island) the season for Canada geese is closed. Canada goose season will be closed in Unit 8 (Kodiak).

(4) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Units 18, 22, and 23, there will be a tundra swan season from September 1 through October 31 with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report after the season is completed. Up to 500 permits may be issued in Unit 18 and 300 permits each in Units 22 and 23. In Unit 17, there will be an experimental tundra swan season from September 1 through October 31, with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report after the season is completed. Up to 200 permits may be issued. Evaluation of experimental seasons must adhere to guidelines described in the Pacific Flyway Management Plan for the Western Population of Tundra Swans.

4. Section 20.103 is revised to read as follows:

§20.103 Seasons, limits, and shooting hours for doves and pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 17, 2003, Federal Register (68 FR 42546).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

	Season Dates	Limits: Bag	Limits: Possession
EASTERN MANAGEMENT UNIT			
Alabama			
North Zone			
12 noon to sunset	Sept. 6 only	15	15
1/2 hour before sunrise to sunset	Sept. 7-Oct. 19 &		
	Dec. 20-Jan. 4	15	15
South Zone			
12 noon to sunset	Oct. 18 only	12	12
1/2 hour before sunrise to sunset	Oct. 19-Nov. 9 &		
	Nov. 26-Nov. 30 &		
	Dec. 5-Jan. 15	12	12
Delaware			
12 noon to sunset	Sept. 1-Sept. 20	12	24
1/2 hour before sunrise to sunset	Oct. 20-Nov. 1 &	12	24
	Dec. 8-Jan. 13	12	24
Florida (1)			
12 noon to sunset	Oct. 4-Oct. 27	12	24
1/2 hour before sunrise to sunset	Nov. 15-Nov. 30 &	12	24
	Dec. 13-Jan. 11	12	24
Georgia			
Zone 1			
12 noon to sunset	Sept. 6 only	12	24
1/2 hour before sunrise to sunset	Sept. 7-Oct. 5 &	12	24
	Nov. 27-Nov. 29 &	12	24
	Dec. 10-Jan. 15	12	24
Zone 2			
12 noon to sunset	Sept. 27 only	12	24
1/2 hour before sunrise to sunset	Sept. 28-Oct. 26 &	12	24
	Nov. 27-Nov. 29 &	12	24
	Dec. 10-Jan. 15	12	24
Illinois			
sunrise to sunset	Sept. 1-Oct. 14 &	15	30
	Nov. 1-Nov. 16	15	30
Indiana	Sept. 1-Oct. 16 &	15	30
	Nov. 7-Nov. 16 &	15	30
	Nov. 27-Nov. 30	15	30

	Season Dates	Limits Bag	Limits Possession
Kentucky			
11 a.m. to sunset	Sept. 1-Oct. 24	15	30
1/2 hour before sunrise to sunset	Nov. 27-Dec. 2	15	30
Louisiana			
12 noon to sunset	Sept. 6-Sept. 7 &	12	24
	Oct. 11-Oct. 12 &	12	24
	Dec. 20-Dec. 21	12	24
1/2 hour before sunrise to sunset	Sept. 8-Sept. 14 &	12	24
	Oct. 13-Nov. 23 &	12	24
	Dec. 22-Jan. 5	12	24
Maryland			
12 noon to sunset	Sept. 1-Oct. 18	12	24
1/2 hour before sunrise to sunset	Nov. 10-Nov. 15 &	12	24
	Dec. 20-Jan. 3	12	24
Mississippi	Sept. 1-Sept. 21 &	15	30
	Oct. 11-Nov. 2 &	15	30
	Dec. 27-Jan. 11	15	30
North Carolina			
12 noon to sunset	Sept. 1-Sept. 7	12	24
1/2 hour before sunrise to sunset	Sept. 8-Oct. 4 &	12	24
	Nov. 24-Nov. 29 &		
	Dec. 17-Jan. 15	12	24
Ohio	Sept. 1-Oct. 19 &	15	30
	Dec. 13-Dec. 23	15	30
Pennsylvania			
12 noon to sunset	Sept. 1-Oct. 4 &	12	24
	Nov. 1-Nov. 29 &	12	24
	Dec. 26-Jan. 1	12	24
Rhode Island			
12 noon to sunset	Sept. 27-Oct. 13	12	24
1/2 hour before sunrise to sunset	Oct. 18-Nov. 23 &	12	24
	Dec. 31-Jan. 15	12	24

	Season Dates	Limits	
		Bag	Possession
South Carolina			
12 noon to sunset	Sept. 1-Sept. 6	12	24
1/2 hour before sunrise to sunset	Sept. 7-Oct. 4 &	12	24
	Nov. 22-Nov. 29 &	12	24
	Dec. 19-Jan. 15	12	24
Tennessee			
12 noon to sunset	Sept. 1 only	15	30
1/2 hour before sunrise to sunset	Sept. 2-Sept. 26 &	15	30
	Oct. 11-Oct. 26 &	15	30
	Dec. 20-Jan. 6	15	30
Virginia			
12 noon to sunset	Sept. 1-Sept. 27	12	24
1/2 hour before sunrise to sunset	Oct. 8-Nov. 8 &	12	24
	Dec. 31-Jan. 10	12	24
West Virginia			
12 noon to sunset	Sept. 1 only	12	24
1/2 hour before sunrise to sunset	Sept. 2-Oct. 4 &	12	24
	Oct. 27-Nov. 8 &	12	24
	Dec. 12-Jan. 3	12	24
Wisconsin	Sept. 1-Oct. 30	15	30
CENTRAL MANAGEMENT UNIT			
Arkansas	Sept. 6-Sept. 28 &	15	30
	Nov. 22-Nov. 30 &	15	30
	Dec. 20-Jan. 15	15	30
Colorado	Sept. 1-Oct. 30	15	30
Kansas (2)	Sept. 1-Oct. 28	15	30
	Nov. 8-Nov. 9	15	30
Missouri (3)	Sept. 1-Nov. 9	12	24
Montana	Sept. 1-Oct. 30	15	30
Nebraska	Sept. 1-Oct. 30	15	30
New Mexico (4)			
North Zone	Sept. 1-Oct. 30	15	30
South Zone	Sept. 1-Sept. 30 &	15	30
	Nov. 15-Dec. 14	15	30

	Season Dates	Limits	
		Bag	Possession
North Dakota	Sept. 1-Oct. 26	15	30
Oklahoma (5)	Sept. 1-Oct. 30	15	30
South Dakota (6)	Sept. 1-Oct. 17	15	30
Texas (7)			
North Zone	Sept. 1-Oct. 30	15	30
Central Zone	Sept. 1-Oct. 30 &	12	24
	Dec. 26-Jan. 4	12	24
South Zone			
Special Area	Sept. 20-Nov. 5 &	12	24
	Dec. 20-Jan. 7	12	24
(Special Season)			
12 noon to sunset	Sept. 6-Sept. 7 &	10	20
	Sept. 13-Sept. 14	10	20
Remainder of the			
South Zone	Sept. 20-Nov. 5 &	12	24
	Dec. 20-Jan. 11	12	24
Wyoming	Sept. 1-Oct. 30	15	30
WESTERN MANAGEMENT UNIT			
Arizona (8)	Sept. 1-Sept. 15 &	10	20
	Nov. 21-Jan. 4	10	20
California (9)	Sept. 1-Sept. 15 &	10	20
	Nov. 8-Dec. 22	10	20
Idaho	Sept. 1-Sept. 30	10	20
Nevada (9)	Sept. 1-Sept. 30	10	20
Oregon	Sept. 1-Sept. 30	10	20
Utah	Sept. 1-Sept. 30	10	20
Washington	Sept. 1-Sept. 15	10	20
OTHER POPULATIONS			
Hawaii (10)	Nov. 1-Nov. 30 &	10	10
	Dec. 3-Dec. 28 &	10	10
	Dec. 31-Jan. 19	10	10

(1) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is twice the daily bag limit.

(2) In Kansas, the daily bag limit is 15 and the possession limit is 30 mourning white-winged doves in the aggregate. See State regulations for additional information on daily bag and possession limits.

(3) In Missouri, the daily bag limit is 12 and the possession limit is 24 mourning and white-winged doves in the aggregate.

(4) In New Mexico, the daily bag limit is 15 and the possession limit is 30 mourning white-winged doves in the aggregate. See State regulations for additional information on daily bag and possession limits.

(5) In Oklahoma, the daily bag limit is 15 and the possession limit is 30 mourning white-winged doves in the aggregate. See State regulations for additional information on daily bag and possession limits.

(6) In South Dakota, shooting hours are from sunrise to sunset.

(7) In Texas, the daily bag limit is either15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 60-day season or 12 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be whie-tipped doves with a maximum 70-day season. Possession limits are twice the daily bag limit. During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 10 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

(8) In Arizona, during September 1 through 15, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During November 22 through January 5, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit. See State regulations for restrictive shooting hours in certain areas.

(9) In the areas of California and Nevada open to white-winged dove hunting, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.

(10) In Hawaii, the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning doves, spotted doves and chestnut-bellied sandgrouse in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is permitted only on weekends and State holidays.

(b) Band-tailed Pigeons

	Season Dates	Limits	
		Bag	Possession
Arizona	Sept. 26-Oct. 6	5	10
California			
North Zone	Sept. 20-Sept. 28	2	4
South Zone	Dec. 20-Dec. 28	2	4
Colorado	Sept. 1-Sept. 30	5	10
New Mexico (1)			
North Zone	Sept. 1-Sept. 20	5	10
South Zone	Oct. 1-Oct. 20	5	10
Oregon	Sept. 15-Sept. 23	2	4
Utah (2)	Sept. 1-Sept. 30	5	10
Washington	Sept. 15-Sept. 23	2	4

(1) In New Mexico, each band-tailed pigeon hunter must have a band-tailed pigeon hunting permit issued by the State. The North Zone is defined as that area lying either norht or east of a line following U. S. Highway 60 from the Arizona State line east to Interstate Highway 25 at Socorro and then south along Interstate Highway 25 to the Texas State line. The South Zone is that area lying south and west of the North Zone.
(2) In Utah, each band-tailed pigeon hunter must have either a band-tailed pigeon hunting permit or a special bird permit stamp issued by the respective State.

5. Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 17, 2003, Federal Register (68 FR 42546).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16
ATLANTIC FLYWAY				
Connecticut (3)	Sept. 2-Nov. 1	Sept. 2-Nov. 1	Oct. 25-Nov. 22	Oct. 25-Nov. 22
Delaware	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Nov. 24-Dec. 13 & Dec. 18-Dec. 27	Nov. 24-Jan.31
Florida	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Dec. 20-Jan. 18	Nov. 1-Feb. 15
Georgia	Sept. 20-Nov. 28	Sept. 20-Nov. 28	Dec. 20-Jan. 18	Nov. 15-Feb. 28
Maine	Sept. 1-Nov. 8	Closed	Deferred	Sept. 1-Dec. 16
Maryland	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Oct. 25-Nov. 15 & Jan. 10-Jan. 17	Sept. 24-Nov. 28 & Dec. 15-Jan. 24
Massachusetts (4)	Sept. 1-Nov. 9	Closed	Deferred	Sept. 1-Dec. 14
New Hampshire	Closed	Closed	Oct. 1-Oct. 30	Sept. 15-Oct. 30
New Jersey (5)				
North Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Oct. 16-Nov. 8	Sept. 19-Jan. 3
South Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Nov. 8-Nov. 29 & Dec. 26-Dec. 27	Sept. 19-Jan. 3
New York (6)	Sept. 1-Nov. 9	Closed	Oct. 6-Nov. 4	Sept. 1-Nov. 9
North Carolina	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Dec. 17-Jan. 15	Nov. 14-Feb. 28

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Pennsylvania	Sept. 1-Nov. 8	Closed	Oct. 18-Nov. 15	Oct. 18-Nov. 22
Rhode Island (7)	Sept. 6-Nov. 14	Sept. 6-Nov. 14	Oct. 30-Nov. 28	Sept. 6-Nov. 14
South Carolina	Sept. 26-Sept. 30 & Oct. 24-Dec. 27	Sept. 26-Sept. 30 & Oct. 24-Dec. 27	Jan. 2-Jan. 31	Nov. 14-Feb. 28
Vermont	Closed	Closed	Deferred	Deferred
Virginia	Sept. 10-Nov. 18	Sept. 10-Nov. 18	Nov. 1-Nov. 15 & Dec. 20-Jan. 3	Oct. 8-Oct. 11 & Oct. 21-Jan. 31
West Virginia	Sept. 1-Nov. 8	Closed	Oct. 24-Nov. 22	Sept. 1-Dec. 13
MISSISSIPPI FLYWAY				
Alabama (8)	Sept. 6-Sept. 21 & Nov. 28-Jan. 20	Sept. 6-Sept. 21 & Nov. 28-Jan. 20	Dec. 18-Jan. 31	Nov. 14-Feb. 28
Arkansas	Sept. 1-Nov. 9	Closed	Nov. 8-Dec. 6 & Dec. 27-Jan. 11	Nov. 1-Feb. 15
Illinois (9)	Sept. 6-Nov. 14	Closed	Oct. 18-Dec. 1	Sept. 6-Dec. 21
Indiana (10)	Sept. 1-Nov. 9	Closed	Oct. 3-Nov. 16	Sept. 1-Dec. 16
Iowa (11)	Sept. 6-Nov. 14	Closed	Oct. 4-Nov. 17	Sept. 6-Nov. 30
Kentucky	Sept. 1-Nov. 9	Closed	Oct. 18-Dec. 1	Sept. 17-Nov. 2 & Nov. 27-Jan. 25
Louisiana (12)	Sept. 13-Sept. 28	Sept. 13-Sept. 28	Dec. 18-Jan. 31	Nov. 14-Feb. 28
Michigan (13)	Sept. 15-Nov. 14	Closed	Sept. 20-Nov. 3	Sept. 15-Nov. 14
Minnesota	Sept. 1-Nov. 4	Closed	Sept. 20-Nov. 3	Sept. 1-Nov. 4
Mississippi	Oct. 11-Dec. 19	Oct. 11-Dec. 19	Dec. 18-Jan. 31	Nov. 14-Feb. 28
Missouri	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
Ohio	Sept. 1-Nov. 9	Closed	Oct. 17-Nov. 30	Sept. 1-Nov. 30 & Dec. 8-Dec. 23
Tennessee	Deferred	Closed	Oct. 25-Dec. 8	Nov. 15-Feb. 28
Wisconsin	Deferred	Closed	Sept. 20-Nov. 3	Deferred

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
CENTRAL FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Kansas	Sept. 1-Nov. 9	Closed	Oct. 11-Nov. 24	Sept. 1-Dec. 16
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nebraska (14)	Sept. 1-Nov. 9	Closed	Sept. 20-Nov. 3	Sept. 1-Dec. 16
New Mexico	Sept. 20-Nov. 28	Closed	Closed	Oct. 11-Jan. 25
North Dakota	Closed	Closed	Sept. 20-Nov. 2	Sept. 20-Nov. 30
Oklahoma	Sept. 1-Nov. 9	Closed	Nov. 1-Dec. 15	Oct. 1-Jan. 15
South Dakota (15)	Closed	Closed	Closed	Sept. 1-Oct. 31
Texas	Sept. 20-Sept. 28 & Oct. 25-Dec. 24	Sept. 20-Sept. 28 & Oct. 25-Dec. 24	Dec. 18-Jan. 31	Oct. 18-Feb. 1
Wyoming	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
PACIFIC FLYWAY				
Arizona	Closed	Closed	Closed	Deferred
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Idaho:				
Area 1	Closed	Closed	Closed	Deferred
Area 2	Closed	Closed	Closed	Deferred
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nevada	Closed	Closed	Closed	Oct. 4-Jan. 16
New Mexico	Sept. 20-Nov. 28	Closed	Closed	Oct. 11-Jan. 25
Wyoming	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16

NOTE: For all other States in the Pacific Flyway, snipe seasons have been deferred and no seasons are prescribed for woodcock and rails.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, and New Jersey, the limits for clapper and king rails are 10 daily and 20 in possession.

(3) In Connecticut, the daily bag and possession limits may not contain more than 1 king rail. The common snipe daily bag and possession limits are 3 and 6, respectively.

(4) In Massachusetts, the sora rail limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.

(5) In New Jersey, the season for king rails is closed by State regulation.

(6) In New York, the rail daily bag and possession limits are 8 and 16, respectively. Seasons for sora and Virginia rails and common snipe are closed on Long Island.

(7) In Rhode Island, the sora and Virginia rails limits are 5 daily and 10 in possession, singly or in the aggregate; the clapper and king rail limits are 5 daily and 10 in possession, singly or in the aggregate; the common snipe limits are 5 daily and 10 in possession.

(8) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(9) In Illinois, shooting hours are from sunrise to sunset.

(10) In Indiana, the sora rail limit is 25 daily and 25 in possession. The season on Virginia rails is closed.

(11) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.

(12) In Louisiana, additional days occurring after September 30 will be published with the late season selections.

(13) In Michigan, the aggregate limits for sora and Virginia rails are 8 daily and 16 in possession.

(14) In Nebraska, the rail limits are 10 daily and 20 in possession.

(15) In South Dakota, the snipe limits are 5 daily and 15 in possession.

6. Section 20.105 is amended by revising paragraphs (a) through (f) to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 17, 2003, Federal Register (68 FR 42546).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules

	Season Dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Delaware	Sept. 1-Nov. 5	15	30
Florida (1)	Sept. 1-Nov.9	15	30
Georgia	Deferred	--	--
Maine	Closed	--	--
New Jersey	Sept. 1-Nov. 8	10	20
New York			
Long Island	Closed	--	--
Remainder of State	Sept. 1-Nov. 9	8	16
North Carolina	Sept. 1-Nov. 8	15	30
Pennsylvania	Sept. 1-Nov. 8	15	30
South Carolina	Sept. 26-Sept. 30 &	15	30
	Oct. 24-Dec. 27	15	30
Virginia	Deferred	--	--
West Virginia	Deferred	--	--
MISSISSIPPI FLYWAY			
Alabama	Sept. 6-Sept. 21 &	15	15
	Nov. 28-Jan. 20	15	15
Arkansas	Sept. 1-Nov. 9	15	30
Indiana	Sept. 1-Nov. 9	15	30
Kentucky	Sept. 1-Nov. 9	15	30
Louisiana (2)	Sept. 13-Sept. 28	15	30
Michigan	Deferred	--	--
Minnesota	Deferred	--	--
Mississippi	Oct. 11-Dec. 19	15	30

	Season Dates	Limits	
		Bag	Possession
Ohio	Sept. 1-Nov. 9	15	30
Tennessee	Deferred	--	--
Wisconsin	Deferred	--	--
CENTRAL FLYWAY			
New Mexico			
Zone 1	Oct. 11-Dec. 19	1	2
Zone 2	Oct. 11-Dec. 19	1	2
Oklahoma	Sept. 1-Nov. 9	15	30
Texas	Sept. 20-Sept. 28 &	15	30
	Oct. 25-Dec. 24	15	30
Wyoming	Deferred	--	--
PACIFIC FLYWAY			
All States	Deferred	--	--

(1) The season applies to common moorhens only.

(2) Additional days occurring after September 30 will be published with the late season selections.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits	
		Bag	Possession
Connecticut	Sept. 24-Jan. 24	7	14
Delaware	Sept. 19-Jan. 20	7	14
Georgia	Deferred	--	--
Maine	Deferred	--	--

	Season Dates	Limits Bag	Possession
Maryland	Deferred	--	--
Massachusetts	Deferred	--	--
New Hampshire (1)	Sept. 15-Dec. 30	7	14
New Jersey	Sept. 18-Jan. 20	7	14
New York	Oct. 11-Jan. 25	7	14
North Carolina	Deferred	--	--
Rhode Island	Oct. 11-Jan. 25	7	14
South Carolina	Deferred	--	--
Virginia	Deferred	--	--

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(1) In New Hampshire, the daily bag limit may include no more than 4 scoters, 4 eiders, or 4 oldsquaws.

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season Dates	Limits Bag	Possession
ATLANTIC FLYWAY			
Delaware (1)(2)	Sept. 4-Sept. 13	4	8
Florida (3)	Sept. 20-Sept. 24	4	8
Georgia	Sept. 20-Sept. 28	4	8
Maryland (1)	Sept. 11-Sept. 20	4	8
North Carolina (1)	Sept. 11-Sept. 20	4	8
South Carolina (4)	Sept. 19-Sept. 27	4	8

	Season Dates	Limits	
		Bag	Possession
Virginia (1)	Sept. 13-Sept. 23	4	8
MISSISSIPPI FLYWAY			
Alabama	Sept. 6-Sept. 21	4	8
Arkansas (4)	Sept. 13-Sept. 28	4	8
Illinois (4)	Sept. 6-Sept. 21	4	8
Indiana (4)	Sept. 1-Sept. 16	4	8
Iowa (5)			
North Zone	Sept. 20-Sept. 24	--	--
South Zone	Sept. 20-Sept. 22	--	--
Kentucky (6)	Sept. 17-Sept. 21	4	8
Louisiana	Sept. 13-Sept. 28	4	8
Mississippi	Sept. 13-Sept. 28	4	8
Missouri (4)	Sept. 6-Sept. 21	4	8
Ohio (4)	Sept. 1-Sept. 16	4	8
Tennessee (6)	Sept. 13-Sept. 17	4	8
CENTRAL FLYWAY			
Colorado (1)	Sept. 6-Sept. 14	4	8
Kansas			
Low Plains	Sept. 20-Sept. 27	4	8
High Plains	Sept. 13-Sept. 28	4	8
Nebraska (1)	Sept. 13-Sept. 21	4	8
New Mexico	Sept. 20-Sept. 28	4	8
Oklahoma			
Low Plains	Sept. 13-Sept. 28	4	8
High Plains	Sept. 13-Sept. 28	4	8
Texas	Sept. 13-Sept. 28	4	8

(1) Area restrictions. See State regulations.

(2) In Delaware, the shooting hours are from ½ hour before sunrise to 10:00 a.m.

(3) In Florida, the daily bag limit is 4 wood ducks and teal in the aggregate, no more than 2 of which may be wood ducks. The possession limit is twice the daily bag limit.

(4) Shooting hours are from sunrise to sunset.

(5) In Iowa, the September season is part of the regular season, and limits will conform to those set for the regular season.

(6) In Kentucky and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(d) Special Early Canada Goose Seasons.

	Season Dates	Limits	
		Bag	Possession
ATLANTIC FLYWAY			
Connecticut			
North Zone	Sept. 2-Sept. 30	8	16
South Zone	Sept. 17-Sept. 30	8	16
Delaware	Sept. 1-Sept. 15	8	16
Florida (1)	Sept. 20-Sept. 24	5	10
Georgia	Sept. 20-Sept. 28	5	10
Maine	Sept. 2-Sept. 25	3	6
Maryland			
Eastern Unit	Sept. 1-Sept. 15	5	10
Western Unit	Sept. 1-Sept. 25	5	10
Massachusetts (2)			
Central Zone	Sept. 2-Sept. 25	5	10
Coastal Zone	Sept. 2-Sept. 25	5	10
Western Zone	Sept. 2-Sept. 25	5	10
New Hampshire	Sept. 2-Sept. 25	3	6
New Jersey	Sept. 1-Sept. 30	8	16
New York			
Lake Champlain Zone	Sept. 2-Sept. 25	3	6
Northeastern Zone	Sept. 1-Sept. 25	8	16
Western Zone	Sept. 1-Sept. 25	8	16
Southeastern Zone	Sept. 1-Sept. 25	8	16
Long Island Zone (3)	Sept. 2-Sept. 30	8	16

	Season Dates	Limits	
		Bag	Possession
North Carolina (4)	Sept. 1-Sept. 30	5	10
Pennsylvania			
Southeast Zone	Sept. 1-Sept. 25	8	16
Rest of State	Sept. 1-Sept. 25	5	10
Rhode Island	Sept. 1-Sept. 30	8	16
South Carolina			
Early-Season Hunt Unit	Sept. 12-Sept. 27	8	16
Vermont			
Lake Champlain Zone	Sept. 2-Sept. 25	3	6
Interior Vermont Zone	Sept. 2-Sept. 25	3	6
Connecticut River Zone (6)	Sept. 2-Sept. 25	3	6
Virginia	Sept. 1-Sept. 25	5	10
West Virginia	Sept. 1-Sept. 13	5	10
MISSISSIPPI FLYWAY			
Alabama	Sept. 1-Sept. 15	5	10
Illinois			
Northeast Zone	Sept. 1-Sept. 15	5	10
North Zone	Sept. 1-Sept. 15	2	4
Central Zone	Sept. 1-Sept. 15	2	4
South Zone	Sept. 1-Sept. 15	2	4
Indiana	Sept. 1-Sept. 15	5	10
Iowa (3)			
Des Moines Goose Zone	Sept. 1-Sept. 15	3	3
Cedar Rapids/Iowa City Goose Zone	Sept. 1-Sept. 15	3	3
Kentucky	Sept. 6-Sept. 10	2	4
Michigan			
Upper Peninsula	Sept. 1-Sept. 10	5	10
Lower Peninsula:			
Huron, Saginaw, and Tuscola Counties	Sept. 1-Sept. 10	2	4
Remainder	Sept. 1-Sept. 15	5	10
Minnesota			
Twin Cities Metro Zone	Sept. 6-Sept. 22	5	10
Southeast Goose Zone	Sept. 6-Sept. 22	2	4
Five Goose Zone	Sept. 6-Sept. 22	5	10
Northwest Goose Zone	Sept. 6-Sept. 15	2	4

	Season Dates	Limits	
		Bag	Possession
Mississippi (5)	Sept. 1-Sept. 15	5	10
Ohio (3)	Sept. 1-Sept. 15	5	10
Tennessee	Sept. 1-Sept. 15	5	10
Wisconsin			
Early-Season Subzone A	Sept. 2-Sept. 15	5	10
Early-Season Subzone B	Sept. 2-Sept. 15	3	6
CENTRAL FLYWAY			
Kansas:			
Sept. Canada Goose Units	Sept. 6-Sept. 15	3	6
North Dakota	Sept. 1-Sept. 15	5	10
Oklahoma	Sept. 13-Sept. 22	3	6
South Dakota (3):			
West Unit (7)	Sept. 1-Sept. 15	5	10
North Unit	Sept. 1-Sept. 26	5	10
South Unit	Sept. 13-Sept. 26	5	10
PACIFIC FLYWAY			
California:			
Humboldt County	Closed		
Colorado:	Sept. 6-Sept. 14	3	6
Idaho			
East Canada Goose Zone	Closed		
Nez Perce County	Closed		
Oregon:			
Northwest Zone	Sept. 6-Sept. 19	5	10
Southwest Zone	Sept. 6-Sept. 12	5	10
East Zone	Sept. 6-Sept. 12	5	10
Washington:			
Mgmt. Area 2B	Sept. 1-Sept. 15	5	10
Mgmt. Areas 1 & 3	Sept. 6-Sept. 11	5	10
Mgmt. Area 4 & 5	Sept. 6-Sept. 7	3	6
Mgmt. Area 2A	Sept. 6-Sept. 11	3	6
Wyoming (2)	Sept. 1-Sept. 8	3	6 per season

(1) In Florida, the September Canada goose season is only open in the Florida waters of Lake Seminole in Jackson County that are south of State Route 2, north of the Jim Woodruff Dam, and east of State Route 2.

(2) State permit required.

(3) See State regulations for additional information.

(4) In North Carolina, in Currituck and Dare Counties, the daily bag and possession limits are 2 and 4, respectively.

(5) In Mississippi, the season is closed on Roebuck Lake in Leflore County.

(6) In Vermont, the Connecticut River Zone set by New Hampshire, is the same as the New Hampshire Inland Zone.

(7) In South Dakota, the West Unit includes Brown, Campbell, Edmunds, Faulk, McPherson, Spink, and Walworth Counties.

(e) Regular Goose Seasons.

Note: Bag and possession limits will conform to those set for the regular season.

	Season Dates
MISSISSIPPI FLYWAY	
Michigan (1)	
Canada:	
MVP Zone	Sept. 20-Nov. 6 & Dec. 13-Dec. 19
SJBP Zone	Sept. 20-Oct. 12 & Dec. 13-Dec. 19
White-fronted and Brant	Sept. 20-Dec. 7
Light geese	Sept. 20-Dec. 7
Wisconsin	
Horicon Zone	Sept. 16-Sept. 30
Collins Zone	Sept. 16-Sept. 30
Exterior Zone	Sept. 20-Sept. 30

(1) In Michigan, season dates for the Muskegon Wastewater, Saginaw County, Allegan County, Tuscola/Huron Goose Management Units in the South Zone will be established in the late-season regulatory process.

(f) Youth Waterfowl Hunting Days

The following seasons are open only to youth hunters. Youth hunters must be accompanied into the field by an adult at least 18 years of age. This adult cannot duck hunt but may participate in other open seasons.

Definitions

Youth Hunters: Includes youths 15 years of age or younger.

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the

Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Note: Bag and possession limits will conform to those set for the regular season.

	Season Dates
ATLANTIC FLYWAY	
Connecticut	Deferred
Delaware	
Ducks, geese, and coots	Oct. 25
Florida	
Deferred	
Georgia	
Ducks, geese, mergansers, coots, moorhens and gallinules	Nov. 15 & 16
Maine	
Ducks, mergansers, and coots	Sept. 20
Maryland (1)	
Ducks, mergansers, coots, and Canada geese	Deferred
Massachusetts	Deferred
New Hampshire	
Ducks, geese, mergansers, and coots	Sept. 27 & 28
New Jersey	
Ducks, geese, mergansers, coots, moorhens and gallinules	Sept. 27
New York	
Ducks, mergansers, coots, and Canada geese (2)	
Long Island Zone	Nov. 8 & 9
Lake Champlain Zone	Sept. 27 & 28
Northeastern Zone	Sept. 20 & 21
Southeastern Zone	Sept. 27 & 28
Western Zone	Oct. 4 & 5
North Carolina	Deferred
Pennsylvania	
Ducks, mergansers, Canada geese, coots and moorhens	Sept. 27
Rhode Island	
Ducks, mergansers and coots	Nov. 1 & 2
South Carolina	Deferred

	Season Dates
Vermont	
Ducks, mergansers and coots	Sept. 27 & 28
Virginia	Deferred
West Virginia (3)	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 20
MISSISSIPPI FLYWAY	
Alabama	
Ducks, mergansers, coots, geese, moorhens and gallinules	Feb. 7 & 8
Arkansas	Deferred
Illinois	Deferred
Indiana	Deferred
Iowa	
Ducks, geese, mergansers and coots	Oct. 4 & 5
Kentucky	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
East Zone	Oct. 11 & 12
West Zone	Feb. 7 & 8
Louisiana	Deferred
Michigan	
Ducks, geese, mergansers, coots, moorhens and gallinules	Sept. 20 & 21
Minnesota (4)	
Ducks, geese, mergansers, coots, moorhens and gallinules	Sept. 20
Mississippi	Deferred
Missouri	Deferred
Ohio	Deferred
Tennessee	Deferred

	Season Dates
Wisconsin	
Ducks, geese, mergansers, coots, moorhens and gallinules	Sept. 20 & 21
CENTRAL FLYWAY	
Colorado	
Ducks, dark geese, mergansers and coots	Sept. 27 & 28
Kansas (5)	
Ducks, dark geese, mergansers and coots	
High Plains	Deferred
Low Plains	
Early Zone	Deferred
Late Zone	Deferred
Montana	
Ducks, geese, mergansers and coots	Sept. 27 & 28
Nebraska (6)	
Ducks, mergansers, coots, and geese	Sept. 27 & 28
New Mexico	
Ducks, mergansers, and coots	
North Zone	Oct. 4 & 5
South Zone	Oct. 18 & 19
North Dakota	
Ducks, geese, mergansers and coots	Sept. 20 & 21
Oklahoma	
Ducks, geese, mergansers, coots	
High Plains	Deferred
Low Plains	Deferred
South Dakota (7)	
Ducks, Canada geese, mergansers, and coots	Sept. 20 & 21
Texas	Deferred
Wyoming	
Ducks, geese, mergansers and coots	
Zone 1	Sept. 27
Zone 2	Sept. 20

	Season Dates
PACIFIC FLYWAY	
Arizona	
Ducks, geese, mergansers, coots, moorhens and gallinules	
North Zone	Deferred
South Zone	Deferred
California	
Ducks, geese, mergansers, coots, moorhens and gallinules	
Northeastern Zone	Sept. 27 & 28
Colorado River Zone	Deferred
Southern Zone	Deferred
Southern San Joaquin Valley Zone	Deferred
Balance-of-State Zone	Deferred
Colorado	
Ducks, geese, mergansers, and coots	Sept. 27 & 28
Idaho	
Ducks, Canada geese, mergansers, coots, moorhens and gallinules	Sept. 27 & 28
Montana	
Ducks, geese, mergansers, coots, moorhens and gallinules	Sept. 27 & 28
Nevada	
Ducks, geese, mergansers, coots, moorhens and gallinules	
Clark and Lincoln Counties	Jan. 31-Feb. 1
Rest of State	Sept. 27 & 28
New Mexico	
Ducks, geese, mergansers and coots	Oct. 11-Oct. 12
Oregon (8)	
Ducks, Canada geese, mergansers, coots, moorhens and gallinules	Sept. 27 & 28
Utah	
Ducks, geese, mergansers, coots, moorhens and gallinules	Sept. 27
Washington	
Ducks, Canada geese, mergansers, coots, moorhens and gallinules	Sept. 20 & 21
Wyoming	
Ducks, dark geese, mergansers, coots, moorhens and gallinules	Sept. 20

(1) In Maryland, the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). This accompanying adult may not shoot or possess a firearm.

(2) In New York, the daily bag limit for Canada geese is 2.

(3) In West Virginia, the accompanying adult must be at least 21 years of age.

(4) In Minnesota, the Canada goose limit is 5, except that in the Twin Cities, Southeast, and Northwest Goose Zones, Swan Lake Area, and Carlos Avery Wildlife Management Area the limit is 1.

(5) In Kansas, the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

(6) In Nebraska, see State regulations for additional information on the daily bag limit.

(7) In South Dakota, the limit for Canada geese is 3, except in areas where the Special Early Canada goose season is open. In those areas, the limit is the same as for that special season.

(8) In Oregon, the Canada goose season is closed for the youth hunt in Western Washington Goose Management Area 2.

7. Section 20.106 is revised to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 17, 2003, Federal Register (68 FR 42546).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Season Dates	Limits	
		Bag	Possession
CENTRAL FLYWAY			
Colorado (1)	Oct. 4-Nov. 30	3	6
Kansas (2)	Nov. 1-Dec. 28	3	6
Montana			
Regular Season Area (1)	Sept. 27-Nov. 23	3	6
Special Season Area (3)	Sept. 6-Sept. 14	1 per season	

	Season Dates	Limits Bag	Possession
New Mexico			
Regular Season Area (1)	Oct. 31-Jan. 31	3	6
Middle Rio Grande Valley Area (3)(4)(5)	Oct. 25-Oct. 26 &	1	2
	Nov. 15-Nov. 16 &	1	2
	Dec. 6-Dec. 7 &	1	2
	Jan. 10-Jan. 11	1	2
Southwest Area (3)(4)(5)	Nov. 1-Nov. 2 &	2	4
	Jan. 3-Jan. 4	2	4
Estancia Valley (4)(5)	Oct. 25-Oct. 26	2	4
North Dakota (2)			
Area 1	Sept. 20-Nov. 16	3	6
Area 2	Sept. 20-Oct. 26	2	4
Oklahoma (1)	Deferred	--	--
South Dakota (1)	Sept. 27-Nov. 23	3	6
Texas (1)			
Zone A	Deferred	--	--
Zone B	Deferred	--	--
Zone C	Deferred	--	--
Wyoming			
Regular Season Area (1)	Sept. 13-Nov. 9	3	6
Riverton-Boysen Unit (Area 4) (3)	Sept. 20-Oct. 10	1 per season	
Big Horn and Park Counties (Area 6) (3)	Sept. 20-Oct. 5	1 per season	
PACIFIC FLYWAY			
Arizona (3)	Oct. 31-Nov. 2 &	2 per season	
	Nov. 4-Nov. 6 &	2 per season	
	Nov. 8-Nov. 10 &	2 per season	
	Nov. 12-Nov. 14 &	2 per season	
	Nov. 16-Nov. 18	2 per season	
Idaho (3)	Sept. 1-Sept. 15	2	9 per season
Montana			
Special Season Area (3)	Sept. 6-Sept. 14	1 per season	
Utah (3)			
Rich County	Sept. 6-Sept. 14	1 per season	
Cache County	Sept. 6-Sept. 14	1 per season	
Eastern Box Elder County	Sept. 6-Sept. 14	1 per season	
Uintah County	Sept. 27-Oct. 5	1 per season	

	Season Dates	Limits Bag	Possession
Wyoming (3)			
Bear River Area (Area 1)	Sept. 1-Sept. 14	1 per season	
Salt River Area (Area 2)	Sept. 1-Sept. 8	1 per season	
Eden-Farson Area (Area 3)	Sept. 1-Sept. 8	1 per season	

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his or her possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

(2) In Kansas and North Dakota, each hunter participating in a regular sandhill crane hunting season must obtain and carry in his or her possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit issued and validated by the State. The permit must be displayed to any authorized law enforcement official upon request.

(3) Hunting is by State permit only.

(4) In New Mexico, the seasonal bag limit is 2 in the Middle Rio Grande Valley Area, 4 in the Estancia Valley, and 8 in the Southwest Area.

(5) Shooting hours are one-half hour before sunrise to sunset.

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 17, 2003, Federal Register (68 FR 42546). For those extended seasons for ducks, mergansers, and coots, area descriptions were published in the August 19, 2003, Federal Register (68 FR 50016) and will be published again in a September 2003 Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Daily bag limit . . . . . 3 migratory birds, singly or in the aggregate.

Possession limit . . . . . 6 migratory birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless

further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

	Extended Falconry Dates
ATLANTIC FLYWAY	
Delaware	
Mourning dove	Sept. 22-Oct. 18 & Jan. 14-Jan. 23
Rail	Nov. 10-Dec. 17
Woodcock	Oct. 1-Nov. 14 & Feb. 1-Mar. 3
Snipe	Feb. 1-Mar. 9
Florida	
Mourning and white-winged doves	Oct. 28-Nov. 14 & Dec. 1-Dec. 12 & Jan. 12-Jan. 18
Rails	Nov. 10-Dec. 16
Woodcock	Nov. 24-Dec. 19 & Jan. 19-Mar. 9
Common moorhens	Nov. 10-Dec. 14
Georgia	
Moorhens, gallinules, and sea ducks	Nov. 15-Nov. 21 & Dec. 1-Dec. 5 & Jan. 26-Feb. 15
Maryland	
Mourning doves	Oct. 19-Nov. 9 & Dec. 14-Dec. 19 & Jan. 4- Jan. 13
Rails	Nov. 9-Dec. 16
Woodcock	Oct. 1-Oct. 24 & Jan. 20-Mar. 10

	Extended Falconry Dates
Pennsylvania	
Mourning doves	Oct. 6-Oct. 31 & Dec. 1-Dec. 11
Virginia	
Doves	Sept. 28-Oct. 7 & Dec. 11-Dec. 30 & Jan. 11-Jan. 17
Woodcock	Oct. 29-Oct. 31 & Nov. 16-Dec. 19 & Jan. 4-Feb. 1
MISSISSIPPI FLYWAY	
Illinois	
Mourning doves	Oct. 15-Oct. 31 & Nov. 17-Dec. 16
Rails	Sept. 1-Sept. 5 & Nov. 15-Dec. 16
Woodcock	Sept. 1-Oct. 17 & Dec. 2-Dec. 16
Indiana	
Mourning doves	Oct. 17-Nov. 6 & Jan. 1-Jan. 26
Woodcock	Sept. 20-Oct. 2 & Nov. 17-Jan. 4
Ducks, mergansers, and coots (1) North Zone	Sept. 27-Sept. 30
Michigan	
Ducks, mergansers, coots, and moorhens	Deferred

	Extended Falconry Dates
Minnesota	
Woodcock	Sept. 1-Sept. 19 & Nov. 4-Dec. 16
Rails and snipe	Nov. 5-Dec. 16
Mississippi	Deferred
Missouri	
Mourning and white-winged doves	Nov. 10-Dec. 16
Ducks, mergansers, and coots	Sept. 6-Sept. 21
Ohio	Deferred
Tennessee	
Mourning doves	Sept. 27-Oct. 10 & Oct. 27-Nov. 28
Ducks (1)	Sept. 18-Sept. 30
Wisconsin	
Rails, snipe, moorhens, and gallinules (1)	Sept. 1-Sept. 26
Woodcock	Sept. 1-Sept. 19
Ducks, mergansers, and coots	Sept. 20-Sept. 21
CENTRAL FLYWAY	
Montana (2)	
Ducks, mergansers, and coots (1)	Sept. 24-Sept. 30
Nebraska	
Ducks, mergansers, and coots	
High Plains	Sept. 13-Sept. 21 & Sept. 27-Sept. 28
Low Plains	Sept. 6-Sept. 28
New Mexico	
Doves	
North Zone	Oct. 31-Dec. 16
South Zone	Oct. 1-Nov. 14 & Dec. 15-Dec. 16

	Extended Falconry Dates
New Mexico (cont.)	
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Sandhill cranes	
Regular Season Area	Oct. 17-Oct. 30
Ducks and coots	Sept. 20-Sept. 28
Common moorhens	Dec. 20-Jan. 25
Sora and Virginia rails	Nov. 29-Jan. 4
North Dakota	
Ducks, mergansers, and coots	Sept. 8-Sept. 12 & Sept. 15-Sept. 19
Snipe	Sept. 1-Sept. 19
South Dakota	
Ducks, mergansers, and coots (1)	
High Plains	Sept. 4-Sept. 11
Low Plains	
North Zone	Sept. 4-Sept. 19 & Sept. 22-Sept. 26
Middle Zone	Sept. 4-Sept. 19 & Sept. 22-Sept. 26
South Zone	Sept. 4-Sept. 19 & Sept. 22-Sept. 30
Texas	
Mourning and white-winged doves	Nov. 19-Dec. 25
Rails and gallinules	Dec. 26-Jan. 31
Woodcock	Nov. 24-Dec. 17 & Feb. 1-Mar. 10
Wyoming	
Rails	Nov. 10-Dec. 16
Ducks, mergansers, and coots (1)	
Zone 1	Sept. 24-Oct. 3
Zone 2	Sept. 17-Sept. 26

	Extended Falconry Dates
PACIFIC FLYWAY	
Arizona	
Doves	Sept. 12-Oct. 28
Idaho	
Mourning doves	Nov. 1-Jan. 16
New Mexico	
Doves	
North Zone	Oct. 31-Dec. 16
South Zone	Oct. 1-Nov. 14 & Dec. 14-Dec. 16
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Oregon (3)	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Utah	
Mourning doves and band-tailed pigeons	Oct. 1-Dec. 16
Washington	
Mourning doves	Oct. 1-Dec. 31
Wyoming	
Rails	Nov. 10-Dec. 16
Ducks, mergansers, and coots (1)	Sept. 20

(1) Additional days occurring after September 30 will be published with the late-season selections.

(2) In Montana, the bag limit is 2 and the possession limit is 6.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.

[FR Doc. 03–21759 Filed 8–27–03; 8:45 am]
BILLING CODE 4310–55–C

Federal Register

Thursday,
August 28, 2003

Part III

Department of Homeland Security

Bureau of Customs and Border Protection

Department of the Treasury

19 CFR Chapters I and IV

Delegations of Authority: Signature of Customs and Border Protection Regulations Published in the Federal Register; Final Rule

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Chapters I and IV

[CBP Dec. 03–24]

RIN 1515 AD 39

Delegations of Authority: Signature of Customs and Border Protection Regulations Published in the Federal Register

AGENCY: Bureau of Customs and Border Protection; Department of Homeland Security; Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document revises the title and structure of title 19 of the Code of Federal Regulations (CFR) to reflect changes caused by the creation of the Department of Homeland Security and the consequent governmental reorganization. The document also specifies the signatures that indicate the exercise of authority for documents that appear in 19 CFR chapter I. In addition, this document adds and reserves for future use a chapter under which the bureau of Immigration and Customs Enforcement (ICE) may issue regulations.

EFFECTIVE DATE: August 28, 2003.

FOR FURTHER INFORMATION CONTACT: Harold Singer, Chief, Regulations Branch, Customs and Border Protection (202) 572–8767.

SUPPLEMENTARY INFORMATION:

Background

Prior to March 1, 2003, the United States Customs Service was a component of the Department of the Treasury (Treasury). In accordance with Treasury Department Order No. 165, Revised (Treasury Decision 53654), issued on November 2, 1954, the Commissioner of Customs prescribed the regulations contained in Title 19 of the Code of Federal Regulations, Chapter I (19 CFR Chapter I) (the Customs Regulations), and with certain limited exceptions, the Customs Regulations required the approval of the Secretary of the Treasury (or his or her delegate). On November 25, 2002, the President signed the Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*, Pub. L. 107–296, (the Act), establishing the Department of Homeland Security (DHS). Under section 403(1) of the Act (6 U.S.C. 203(1)), the United States Customs Service, including functions of the Secretary of the Treasury relating thereto, transferred to the Secretary of Homeland Security.

Notwithstanding the transfer of the Customs Service to DHS, section 412 of the Act (6 U.S.C. 212) provides that the legal authority vested in the Secretary of the Treasury over customs revenue functions is to be retained by the Secretary of the Treasury. Section 412 of the Act also authorizes the Secretary of the Treasury to delegate any of the retained legal authority over the customs revenue functions to the Secretary of Homeland Security.

By Treasury Department Order No. 100–16, dated May 15, 2003 and published in the **Federal Register** on May 23, 2003 (68 FR 28322), the Secretary of the Treasury delegated to the Secretary of Homeland Security authority to prescribe regulations pertaining to the customs revenue functions. This Order further provided that the Secretary of the Treasury retained the sole authority to approve any Customs Regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Schedules, eligibility or requirements for preferential trade programs, and the establishment of recordkeeping requirements relating thereto.

The Code of Federal Regulations (CFR) is divided into 50 titles based on subject matter. Within each CFR title, departments and agencies are assigned individual chapters.

Because title 19 chapter I of the Code of Federal Regulations is currently named for the "United States Customs Service, Department of the Treasury," and that agency is now known as the bureau of "Customs and Border Protection" (CBP) and is a component of DHS, the title of 19 CFR chapter I is revised in this document to reflect the new name of the agency and to add DHS. The Department of the Treasury remains in the title of chapter I because of the retained authority of the Secretary of the Treasury with respect to regulations concerning the customs revenue functions.

This document also amends the Customs Regulations by adding a new part 0 that prescribes the signatures that indicate the exercise of authority to amend, revise, or revoke regulations in 19 CFR chapter 1. The document specifies that signatures of the Secretary of the Treasury and of the Secretary of Homeland Security include the signatures of his or her Treasury or DHS delegate (respectively). Thus, the signature of the Commissioner of Customs and Border Protection indicates exercise of the Secretary of Homeland Security's authority as his or her DHS delegate.

Lastly, section 442 of the Homeland Security Act of 2002 (6 U.S.C. 252) established the Bureau of Border Security. Pursuant to section 1502 of the Act, the President transmitted to the House of Representatives the "Reorganization Plan Modification for the Department of Homeland Security" which, effective March 1, 2003, renamed the Bureau of Border Security as the bureau of "Immigration and Customs Enforcement" (ICE). ICE brings together the investigation arms of the former Customs Service, the investigative functions of the former Immigration and Naturalization Service, and the former Federal Protective Service. Under the savings provisions of the Homeland Security Act and general principles of federal law, the "Customs Regulations" in Title 19 CFR chapter I apply as relevant to both components of the legacy "United States Customs Service"—*i.e.* to ICE and CBP. Nonetheless, in the future it is anticipated that ICE may issue regulations unique to ICE. Thus, this document creates a new chapter IV in 19 CFR for any regulations that ICE may promulgate in the future. However, absent such express regulatory action, the creation of this new chapter does not in itself supersede any Customs Regulations that currently apply for ICE in Chapter I.

Inapplicability of Prior Public Notice and Delayed Effective Date Requirements

This regulation involves matters relating to agency management. It involves the relationship between cabinet Departments on issues of authority over Customs Regulations. For this reason, pursuant to 5 U.S.C. 553 (a)(2), prior notice and public procedure and a delayed effective date are not required.

The Regulatory Flexibility Act and Executive Order 12866

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Further, this amendment does not meet the criteria for a "significant regulatory action" for purposes of Executive Order 12866.

List of Subjects in 19 CFR Part 0

Customs duties and inspection, Delegations of authority.

Amendments to the Regulations

■ For the reasons set forth in the preamble and under the Homeland Security Act of 2002, Pub. L. 107–296, Title 19 chapter I is amended and chapter IV is added as set forth below:

CHAPTER I—BUREAU OF CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY; DEPARTMENT OF THE TREASURY

■ 1. Revise the chapter I heading to read as set forth above.

■ 2. Add part 0 to chapter I to read as follows:

PART 0—TRANSFERRED OR DELEGATED AUTHORITY

Sec.

0.1 Customs revenue function regulations issued under the authority of the Departments of the Treasury and Homeland Security.
0.2 All other Customs Regulations issued under the authority of the Department of Homeland Security.
Appendix to 19 CFR Part 0—Treasury Department Order No. 100–16

Authority: 5 U.S.C. 301, 6 U.S.C. 101 *et seq.*, 19 U.S.C. 66, 19 U.S.C. 1624, 31 U.S.C. 321.

§ 0.1 Customs revenue function regulations issued under the authority of the Departments of the Treasury and Homeland Security.

(a) *Regulations requiring signatures of Treasury and Homeland Security.* (1) By Treasury Department Order No. 100–16, set forth in the appendix to this part, the Secretary of the Treasury has delegated to the Secretary of Homeland Security the authority to prescribe all Customs regulations relating to customs revenue functions, except that the Secretary of the Treasury retains the sole authority to approve such Customs regulations concerning subject matters listed in paragraph 1(a)(i) of the order. Regulations for which the Secretary of the Treasury retains the sole authority to approve will be signed by the Secretary of Homeland Security (or his or her DHS delegate), and by the Secretary of the Treasury (or his or her Treasury delegate) to indicate approval.

(2) When a regulation described in paragraph (a)(1) of this section is published in the **Federal Register**, the preamble of the document accompanying the regulation will clearly indicate that it is being issued in accordance with paragraph (a)(1) of this section.

(b) *Regulations with respect to which the Department of Homeland Security is authorized to sign for the Department of the Treasury.* (1) By Treasury Department Order No. 100–16, set forth in the appendix to this part, the Secretary of the Treasury delegated to the Secretary of Homeland Security the authority to prescribe and approve regulations relating to customs revenue functions on behalf of the Secretary of the Treasury when the subject matter of the regulations is not listed in paragraph 1(a)(i) of the order. Such regulations are the official regulations of both Departments notwithstanding that they are not signed by an official of the Department of the Treasury. These regulations will be signed by the Secretary of Homeland Security (or his or her DHS delegate).

(2) When a regulation described in paragraph (b)(1) of this section is published in the **Federal Register**, the preamble of the document accompanying the regulation will clearly indicate that it is being issued in accordance with paragraph (b)(1) of this section.

(c) *Sole signature by Secretary of the Treasury.* (1) Pursuant to Treasury Department Order No. 100–16, set forth in the appendix to this part, the Secretary of the Treasury reserves the right to promulgate regulations related to the customs revenue functions. Such regulations are signed by the Secretary of the Treasury (or his or her delegate) after consultation with the Secretary of Homeland Security (or his or her delegate), and are the official regulations of both Departments.

(2) When a regulation described in paragraph (c)(1) of this section is published in the **Federal Register**, the preamble of the document accompanying the regulation will clearly indicate that the regulation is being issued in accordance with paragraph (c)(1) of this section.

§ 0.2 All other Customs regulations issued under the authority of the Department of Homeland Security.

(a) The authority of the Secretary of the Treasury with respect to Customs regulations that are not related to customs revenue functions was transferred to the Secretary of Homeland Security pursuant to section 403(1) of the Homeland Security Act of 2002. Such regulations are signed by the Secretary of Homeland Security (or his or her delegate) and are the official regulations of the Department of Homeland Security.

(b) When a regulation described in paragraph (a) of this section is published in the **Federal Register**, the preamble accompanying the regulation shall clearly indicate that it is being issued in accordance with paragraph (a) of this section.

Appendix to 19 CFR Part 0—Treasury Department Order No. 100–16

Delegation from the Secretary of the Treasury to the Secretary of Homeland Security of general authority over Customs revenue functions vested in the Secretary of the Treasury as set forth in the Homeland Security Act of 2002.

Treasury Department, Washington, DC, May 15, 2003.

By virtue of the authority vested in me as the Secretary of the Treasury, including the authority vested by 31 U.S.C. 321(b) and section 412 of the Homeland Security Act of 2002 (Pub. L. 107–296) (Act), it is hereby ordered:

1. Consistent with the transfer of the functions, personnel, assets, and liabilities of the United States Customs Service to the Department of Homeland Security as set forth in section 403(1) of the Act, there is hereby delegated to the Secretary of Homeland Security the authority related to the Customs revenue functions vested in the Secretary of the Treasury as set forth in sections 412 and 415 of the Act, subject to the following exceptions and to paragraph 6 of this Delegation of Authority:

(a)(i) The Secretary of the Treasury retains the sole authority to approve any regulations concerning import quotas or trade bans, user fees, marking, labeling, copyright and trademark enforcement, and the completion of entry or substance of entry summary including duty assessment and collection, classification, valuation, application of the U.S. Harmonized Tariff Schedules, eligibility or requirements for preferential trade programs, and the establishment of recordkeeping requirements relating thereto. The Secretary of Homeland Security shall provide a copy of all regulations so approved to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance every six months.

(ii) The Secretary of the Treasury shall retain the authority to review, modify, or revoke any determination or ruling that falls within the criteria set forth in paragraph 1(a)(i), and that is under consideration pursuant to the procedures set forth in sections 516 and 625(c) of the Tariff Act of 1930, as amended (19 U.S.C. 1516 and 1625(c)). The Secretary of Homeland Security periodically shall identify and describe for the Secretary of the Treasury such determinations and rulings that are under consideration under sections 516 and 625(c) of the Tariff Act of 1930, as amended, in an appropriate and timely manner, with consultation as necessary, prior to the Secretary of Homeland Security's exercise of such authority. The Secretary of Homeland Security shall provide a copy of these identifications and descriptions so made to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance every six months. The Secretary of the Treasury shall list any case where Treasury modified or revoked such a determination or ruling.

(b) Paragraph 1(a) notwithstanding, if the Secretary of Homeland Security finds an overriding, immediate, and extraordinary security threat to public health and safety, the Secretary of Homeland Security may take action described in paragraph 1(a) without the prior approval of the Secretary of the Treasury. However, immediately after taking any such action, the Secretary of Homeland Security shall certify in writing to the Secretary of the Treasury and to the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance the specific reasons therefor. The action shall terminate within 14 days or as long as the overriding, immediate, and extraordinary security threat exists, whichever is shorter, unless the Secretary of the Treasury approves the continued action and provides notice of such approval to the Secretary of Homeland Security.

(c) The Advisory Committee on Commercial Operations of the Customs Service (COAC) shall be jointly appointed by the Secretary of the Treasury and the Secretary of Homeland Security. Meetings of COAC shall be presided over jointly by the Secretary of the Treasury and the Secretary of Homeland Security. The COAC shall advise the Secretary of the Treasury and the Secretary of Homeland Security jointly.

2. Any references in this Delegation of Authority to the Secretary of the Treasury or the Secretary of Homeland Security are deemed to include their respective delegees, if any.

3. This Delegation of Authority is not intended to create or confer any right, privilege, or benefit on any private person, including any person in litigation with the United States.

4. Treasury Order No. 165–09, "Maintenance of delegation in respect to general authority over Customs Revenue functions vested in the Secretary of the Treasury, as set forth and defined in the Homeland Security Act of 2002," dated February 28, 2003, is rescinded. To the extent this Delegation of Authority requires any revocation of any other prior Order or Directive of the Secretary of the Treasury, such prior Order or Directive is hereby revoked.

5. This Delegation of Authority is effective May 15, 2003. This Delegation is subject to review on May 14, 2004. By March 15, 2004, the Secretary of the Treasury and the Secretary of Homeland Security shall consult with the Chairman and Ranking Member of the Committee on Ways and Means and the Chairman and Ranking Member of the Committee on Finance to discuss the upcoming review of this Delegation.

6. The Secretary of the Treasury reserves the right to rescind or modify this Delegation of Authority, promulgate regulations, or exercise authority at any time based upon the statutory authority reserved to the Secretary by the Act.

John W. Snow, *Secretary of the Treasury.*

* * * * *

■ 3. Add Chapter IV to Title 19 to read as follows:

CHAPTER IV—BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT; DEPARTMENT OF HOMELAND SECURITY

PARTS 400 to 599—[RESERVED]

Dated: August 5, 2003.

Asa Hutchinson,

Under Secretary for Border and Transportation Security, Department of Homeland Security.

Dated: August 6, 2003.

Timothy E. Skud,

Deputy Assistant Secretary, Department of the Treasury.

[FR Doc. 03–21995 Filed 8–27–03; 8:45 am]

BILLING CODE 4410–10–P

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Thursday, August 28, 2003

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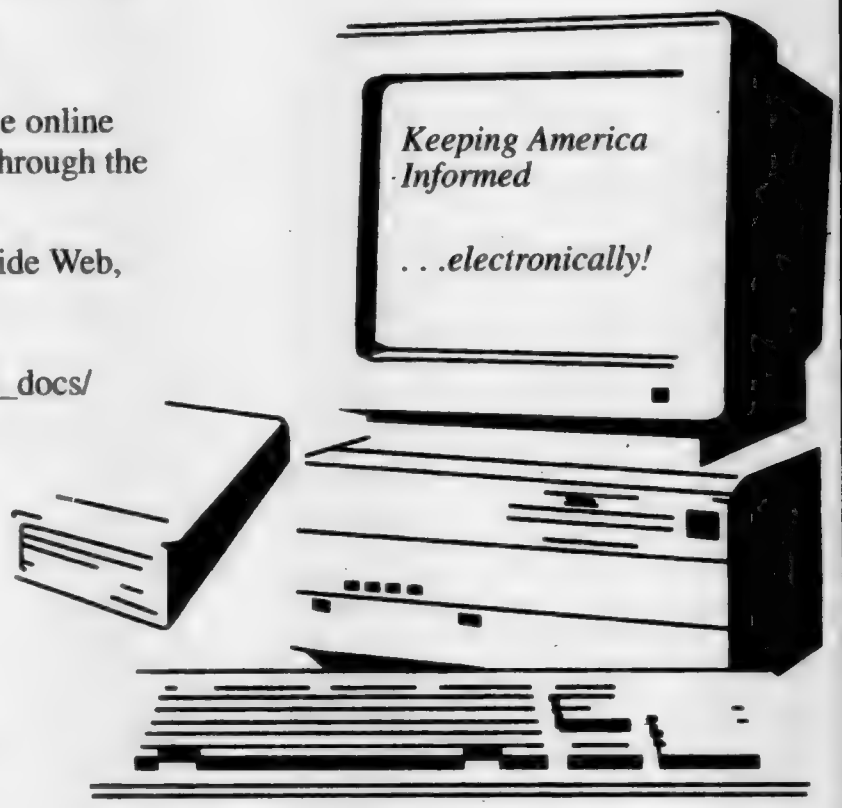

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Federal Register

8–29–03 Friday
Vol. 68 No. 168 Aug. 29, 2003

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8–29–03
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Friday
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Pages 51871–52076

Federal Register

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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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Presidential Documents

Title 3—

The President

Proclamation 7696 of August 27, 2003

To Extend Duty-Free Treatment for Certain Agricultural Products of Israel

By the President of the United States of America

A Proclamation

1. On April 22, 1985, the United States entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (FTA), which the Congress approved in the United States-Israel Free Trade Area Implementation Act of 1985 (the "FTA Act")(19 U.S.C. 2112 Note).

2. On November 4, 1996, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products, effective from December 4, 1996, through December 31, 2001 (the "1996 Agreement"), in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade while acknowledging differing interpretations as to the meaning of certain rights and obligations in the FTA as to such trade.

3. Section 4(b) of the FTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the FTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties as the President determines to be required or appropriate to carry out the FTA.

4. Consistent with section 4(b) of the FTA Act, President Clinton issued Proclamation 6962 of December 2, 1996, to provide to Israel through the close of December 31, 2001, access into the United States customs territory for specified quantities of certain agricultural products of Israel free of duty or certain fees or other import charges, consistent with the 1996 Agreement.

5. On December 31, 2001, the United States entered into an agreement with Israel to extend the 1996 Agreement through December 31, 2002, in order to allow for additional time to negotiate a successor arrangement to the 1996 Agreement. Consistent with section 4(b) of the FTA Act, I issued Proclamation 7554, of May 3, 2002, to provide to Israel through the close of December 31, 2002, access into the United States customs territory for specified quantities of certain agricultural products of Israel free of duty or certain fees or other import charges. Several rounds of negotiations were held in 2002 but did not result in conclusion of a successor arrangement to the 1996 Agreement.

6. On December 31, 2002, the 1-year extension of the 1996 Agreement expired. In order to allow additional time to conclude negotiations, the United States and Israel each have elected to extend through 2003 the tariff treatment provided for agricultural products in 2002 under the 1996 Agreement. Israel has already extended through 2003 the tariff benefits for United States agricultural imports provided in 2002 under the 1996 Agreement.

7. Consistent with section 4(b) of the FTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and

mutually advantageous concessions with respect to Israel provided for by the FTA, to provide through the close of December 31, 2003, duty-free treatment for specified quantities of certain agricultural products of Israel.

8. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) (the "Trade Act") authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that act, and of other acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 4 of the FTA Act and section 604 of the Trade Act, do hereby proclaim:

(1) In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the FTA, and, in particular, to provide duty-free treatment for specified quantities of certain agricultural products of Israel, subchapter VIII of chapter 99 of the HTS is modified as provided in the Annex to this proclamation.

(2) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(3)(a) The modifications to the HTS made by the Annex to this proclamation shall be effective with respect to goods that are the product of Israel and are entered, or withdrawn from warehouse for consumption, on or after January 1, 2003, including entries for which the liquidation of duties has not become final under section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514).

(b) The provisions of subchapter VIII of chapter 99 of the HTS, as modified by the Annex to this proclamation, shall continue in effect through the close of December 31, 2003.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of August, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

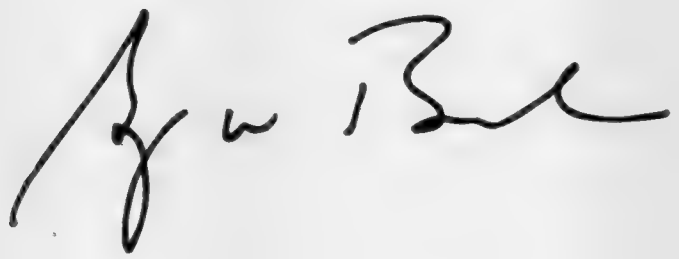

Billing code 3195–01–P

Annex

Modifications to Subchapter VIII of Chapter 99 of the Harmonized Tariff Schedule of the United States

Effective with respect to goods that are the product of Israel and are entered, or withdrawn from warehouse for consumption, on or after January 1, 2003, and through the close of December 31, 2003, subchapter VIII of chapter 99 of the HTS is modified as provided herein:

1. U.S. note 1 to such subchapter is modified by striking "December 31, 2002," and by inserting in lieu thereof "December 31, 2003,".

2. U.S. note 3 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: "Calendar year 2003.....383,000".

3. U.S. note 4 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: "Calendar year 2003.....1,160,000".

4. U.S. note 5 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: "Calendar year 2003.....1,279,000".

5. U.S. note 6 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: "Calendar year 2003.....116,000".

6. U.S. note 7 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: "Calendar year 2003.....405,317".

[FR Doc. 03–22347
Filed 8–28–03; 8:45 am]
Billing code 3190–01–M

Rules and Regulations

Federal Register
Vol. 68, No. 168
Friday, August 29, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–042–2]

Witchweed; Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are adopting as a final rule, with several changes, an interim rule that amended the witchweed quarantine and regulations by updating the list of regulated areas to add or remove areas in North Carolina and South Carolina. Based on information received from the States of North Carolina and South Carolina, this final rule adds two farms and removes four from the list of regulated areas that appeared in the interim rule. These actions are necessary to prevent the artificial spread of witchweed from areas where the weed has been detected and to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated.

EFFECTIVE DATE: August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Dr. Alan V. Tasker, National Weed Program Coordinator, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5708.

SUPPLEMENTARY INFORMATION:

Background

Witchweed (*Striga.* spp.) is a parasitic plant that feeds off the roots of its host, causing degeneration of corn, sorghum, and other grassy crops. Within the United States, witchweed is only found in parts of North Carolina and South Carolina. The witchweed quarantine and regulations, contained in 7 CFR 301.80 through 301.80–10 (referred to below as the regulations), quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain articles from regulated areas in those States for the purpose of preventing the spread of witchweed.

In an interim rule effective February 4, 2003, and published in the **Federal Register** on February 10, 2003 (68 FR 6603–6605, Docket No. 02–042–1), we amended the list of regulated areas in the regulations by adding and removing areas in North Carolina and South Carolina. These actions were necessary to prevent the artificial spread of witchweed from areas where the weed has been detected and to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated.

We solicited comments concerning the interim rule for 60 days ending April 11, 2003. We received one comment by that date, from a weed specialist with the North Carolina Department of Agriculture and Consumer Services. The commenter informed us that one of the farms in Cumberland County that was listed in the interim rule has been released from quarantine by the State of North Carolina and thus should no longer be listed as a regulated area in the regulations. Given that the witchweed regulated areas described in our regulations are derived from, and are intended to be consistent with, the regulated areas described by our State cooperators in their quarantine regulations, we have removed the farm cited by the commenter from the list in § 301.80–2a of regulated areas in North Carolina. Similarly, following the close of the comment period, the State of South Carolina brought to our attention that it had amended its witchweed quarantine by adding two farms in Horry County and by removing three farms, one in Horry County and two in Marion County. Again, for consistency with the regulated areas described by our State cooperators in their quarantine regulations, we have amended the list in § 301.80–2a of regulated areas in South Carolina to reflect the changes made by the State of South Carolina. We have also reordered the listing of regulated areas in South Carolina so that they appear in alphabetical order, and have made several nonsubstantive editorial changes for clarity or to correct typographical errors.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document.

This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Effective Date

Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause for making this rule effective less than 30 days after publication in the **Federal Register**. The interim rule adopted as final by this rule was effective on February 4, 2003. This rule amends the description of the regulated areas in the interim rule. Immediate action is necessary to amend the description of the regulated areas in order to prevent the artificial spread of witchweed from areas where the weed has been detected and to remove restrictions that are no longer necessary on the interstate movement of regulated articles from areas where witchweed has been eradicated. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, the interim rule amending 7 CFR part 301 that was published at 68 FR 6603–6605 on February 10, 2003, is adopted as a final rule with the following changes:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–

16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

■ 2. Section 301.80–2a is amended as follows:

■ a. Under the heading "North Carolina," paragraph (2), under Cumberland County, by removing the entry for the Lewis, David, farm.

■ b. Under the heading "South Carolina," by revising paragraph (2) to read as set forth below.

§ 301.80–2a Regulated areas; generally infested and suppressive areas.

* * * * *

South Carolina

* * * * *

(2) *Suppressive areas.*

Horry County. That area bounded by a line beginning at a point where U.S. Highway 9 intersects the Horry-Marion County line, then east along U.S. Highway 9 to State Secondary Highway 19, then southeast along State Secondary Highway 19 to Lake Swamp, then southwest along Lake Swamp to State Secondary Highway 99, then south and southwest along State Secondary Highway 99 to U.S. Highway 501, then west along U.S. Highway 501 to the Little Pee Dee River, then north along the Little Pee Dee River to the Lumber River, then north along the Lumber River to U.S. Highway 9, the point of beginning.

The Adams, Lena J., farm located on the west side of State Highway 90, 1.2 miles west of its junction with the State Secondary Road known as Pint Circle.

The Chestnut, Alberta, farm located on the west side of State Highway 90, 0.3 mile west of its junction with the State Secondary Road known as Pint Circle.

The James, Norman, farm located west of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Thompson Road.

The Jenerette, Miriam, farm located on the east side of State Secondary Road 23, 3.4 miles south of its junction with State Highway 917.

The Lewis, Lula, farm located on the west side of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Livingston Lane and 0.1 mile east of its junction with an unpaved road known as Beecher Lane.

The Livingston, Donnie, farm located on the east side of State Highway 90, 0.5 mile southeast of its junction with the State Secondary Road known as Bombing Range Road, 0.6 mile southeast of its junction with an unpaved road known as Dewitt Road, and 0.2 mile west of its junction with an unpaved road known as Sand Hill Lane.

The Livingston, Pittman, farm located on the east side of State Highway 90, 2.2 miles north of its junction with State Highway 22.

The Montgomery, Harry, farm located on the northwest side of State Highway 76 in the Causey community, 2.2 miles northwest of its junction with the State Secondary Road known as Sand Trap Road, 3.7 miles northeast of its junction with an unpaved road known as Causey Road, 0.1 mile northwest of its junction with an unpaved road known as Griffins Landing, and 0.15 mile northeast of its junction with an unpaved road known as Flat River Road.

The Permenter, Lucille, farm located on the east and west side of State Highway 57 at Worthar Cutoff junction, 0.5 mile south of the North Carolina/South Carolina State line.

The Stanley, Andrew, farm located on the east side of State Highway 90, 0.2 mile east of its junction with an unpaved road known as Andrew Road.

The Todd, Don, farm located west of State Highway 90, 0.4 mile west of its junction with an unpaved road known as Tilley Swamp Road.

The Vereen, Rufus C., farm located east of State Highway 90, 0.4 mile east of its junction with the State Secondary Road known as Old Chesterfield Road.

Marion County. The Brown, Lewis, farm located on the south side of State Highway 76, 1.4 miles south of its junction with State Secondary Road 201.

The Fowler, Herbert, Estate, farm located east of State Highway 501, 1.4 miles northeast of its junction with an unpaved road known as Bowling Green Road and 0.1 mile north of its junction with an unpaved road known as Salem Road.

The Rowell, Molite, farm located on the west side of State Secondary Road 9, 0.2 mile west of its junction with an unpaved road known as Molite Road.

The Taw Caw Plantation farm located on the south side of State Highway 76, 1.3 miles south of its junction with an unpaved road known as Bubba Road.

Done in Washington, DC, this 26th day of August, 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–22142 Filed 8–28–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–121–3]

Mexican Fruit Fly; Removal of Regulated Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mexican fruit fly regulations by removing a portion of Los Angeles County, CA, from the list of regulated areas and removing restrictions on the interstate movement of regulated articles from that area. This action is necessary to relieve restrictions that are no longer necessary to prevent the spread of the Mexican fruit fly into noninfested areas of the United States.

DATES: This interim rule was effective August 26, 2003. We will consider all comments that we receive on or before October 28, 2003.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–121–3, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–121–3. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–121–3" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Knight, Senior Staff Officer, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mexican fruit fly (*Anastrepha ludens*) is a destructive pest of citrus and many other types of fruit. The short life cycle of the Mexican fruit fly allows rapid development of serious outbreaks that can cause severe economic losses in commercial citrus-producing areas.

The Mexican fruit fly regulations, contained in 7 CFR 301.64 through 301.64–10 (referred to below as the regulations), were established to prevent the spread of the Mexican fruit fly to noninfested areas of the United States. The regulations impose restrictions on the interstate movement of regulated articles from the regulated areas.

In an interim rule effective on December 13, 2002, and published in the **Federal Register** on December 23, 2002 (67 FR 78127–78128, Docket No. 02–121–1), we amended the regulations by adding the Monterey Park area of Los Angeles County, CA, as a regulated area. In a second interim rule effective on January 17, 2003, and published in the **Federal Register** on January 24, 2003 (68 FR 3373–3374, Docket No. 02–121–2), we amended the regulations by expanding the regulated area to include the South Pasadena area of Los Angeles County, CA.

Based on trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal Plant Health Inspection Service, we have determined that the Mexican fruit fly has been eradicated from the Monterey Park and South Pasadena areas of Los Angeles County, CA. The last findings of Mexican fruit fly in the Los Angeles County, CA, regulated area was October 12, 2002, in Monterey Park and December 2, 2002, in South Pasadena. Since then, no evidence of Mexican fruit fly infestation has been found in the area.

Accordingly, we are amending the regulations in § 301.64–3 by removing that portion of Los Angeles County, CA, from the list of areas regulated for the Mexican fruit fly.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. A portion of Los Angeles County, CA, was regulated to prevent the Mexican fruit fly from spreading to noninfested areas of the United States. Since we have concluded that the Mexican fruit fly no longer exists in that portion of Los Angeles County, immediate action is warranted to remove the area from the list of regulated areas and to relieve restrictions on the interstate movement of regulated articles from that area. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (*see* **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review under Executive Order 12866.

This rule amends the Mexican fruit fly regulations by removing a portion of Los Angeles County, CA, from the list of regulated areas. County records indicate that within that area there are approximately 389 small entities that may be affected by this rule. These include 351 fruit sellers, 3 growers, 33 nurseries, 1 certified farmers' market, and 1 swapmeet. These 389 entities comprise less than 1 percent of the total number of similar entities operating in the State of California.

We expect that the effect of this interim rule on the small entities referred to above will be minimal. Small entities located within the regulated area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the previous interim rules establishing the regulated area in Los Angeles County, CA, had little effect on the small growers in the area, the lifting of the quarantine in this interim rule will also have little effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

■ Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 7701–7772; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 *note*).

§ 301.64–3 [Amended]

■ 2. In § 301.64–3, paragraph (c) is amended by removing, under the heading "California", the entry for Los Angeles County.

Done in Washington, DC, this 26th day of August 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–22143 Filed 8–28–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

9 CFR Parts 97 and 130

[Docket No. 02–040–2]

Veterinary Services User Fees; Fees for Endorsing Export Certificates for Ruminants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the user fees for endorsing export health certificates by establishing a separate user fee that covers the cost of endorsing certificates that do not require verification of tests or vaccinations for ruminants. We are making this change to ensure that we recover all of the costs associated with providing that service. We are also making several miscellaneous changes to clarify the existing regulations.

EFFECTIVE DATE: October 1, 2003.

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Ms. Inez Hockaday, Director, Management Support Staff, VS, APHIS, 4700 River Road, Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

For information concerning rate development, contact Ms. Kris Caraher, Accountant, User Fee Section, Financial Management Division, APHIS, 4700 River Road, Unit 54, Riverdale, MD 20737–1231; (301) 734–5901.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors are contained in 9 CFR part 130. Section 130.20 lists user fees we charge for endorsing health certificates for animals, birds, or animal or nonanimal products exported from the United States.

On March 21, 2003, we published a proposal in the **Federal Register** (68 FR 13861–13872, Docket No. 02–040–1) to establish a new certificate category and user fee that would cover all of the costs associated with endorsing export health certificates that do not require verification of tests or vaccinations for ruminants, except for ruminants exported for slaughter to Mexico or Canada, which would continue to be covered by a separate category. In that document, we also proposed to make several miscellaneous changes to clarify the existing regulations.

We solicited comments concerning our proposal for 60 days ending May 20, 2003. We received two comments by that date. They were from a representative of a State government and a private citizen. They are discussed below.

One commenter stated that he or she was opposed to the new user fees based on his or her dissatisfaction with APHIS in general, but did not offer any specific information regarding user fees to which we could respond. Another commenter also stated that he or she was opposed to the new user fees and, moreover, the application of any user fee for export-related services, because he or she believes that those fees reduce the competitiveness of United States livestock in international trade. That commenter urged APHIS to seek funding from Congress to meet the needs of Veterinary Services without the use of user fees.

In response to that comment, we note that APHIS has received no directly appropriated funds to provide import- and export-related services for animals, animal products, birds, germ plasm, organisms, and vectors since fiscal year (FY) 1992. Rather, the Food, Agriculture, Conservation, and Trade Act of 1990 authorized the United States Department of Agriculture to prescribe and collect user fees for those services. Therefore, to continue to provide those services, we must recover our costs from the customers who benefit from them. As our costs increase, we must increase our user fees. We realize that any increase in user fees will increase the up-front cost of doing business for exporters. However, we do not anticipate that exports will decline significantly as a result of the new user fees set forth in this final rule. As discussed below under the heading "Executive Order 12866 and Regulatory Flexibility Act," the increase in user fees represents a small amount of the average export value of cattle and is small compared to the total value of livestock usually included on a single health certificate, as most certificates are issued for more than one animal and the new user fee will apply to a single certificate, regardless of the number of animals covered.

Our proposal concerned the establishment of a specific user fee, not the administration of our user fee program in general or the allocation of tax dollars for our export-related services. As a result, we are not making any changes to the rule in response to those comments. However, we are making two changes in this document to correct errors contained in our proposal. In § 130.20, the table in paragraph (b) lists user fees we charge to endorse export health certificates that require verification of tests or vaccinations. When we set out that table in our proposal, we inadvertently omitted the row of user fees for certificates that require verification of 1–2 tests or vaccinations for nonslaughter horses exported to Canada. We did not intend to remove that row of user fees. Therefore, we have restored the correct user fees for that service in this final rule. Furthermore, when we set out the table in § 130.20(a) in our proposal, we inadvertently omitted part of the title for the new user fee category we are establishing in this final rule. Therefore, we have set out the complete title for this category in this document, which is "Ruminants, except slaughter animals moving to Canada or Mexico."

In addition, we are also making several miscellaneous changes in this document to clarify the existing regulations. In our proposal, we proposed to amend the user fee tables in 7 CFR part 354 and 9 CFR parts 97 and 130 by removing columns that list fees for fiscal years 2001 and 2002. Because this final rule will take effect on the first day of fiscal year 2004 (October 1, 2003), we are also amending the tables in 7 CFR part 354 and 9 CFR parts 97 and 130 by removing the columns that list fees for fiscal year 2003.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

APHIS charges flat-rate user fees to individuals, firms, corporations, and other entities for the endorsement of export health certificates for animals, birds, or animal or nonanimal products. These user fees vary, depending on whether or not the importing country requires verification of tests and the type and quantity of animals, birds, or products covered by the certificate. There is one user fee schedule for certificates that require verification of tests or vaccinations and another

schedule for certificates that do not require such verification.

Certifications for ruminants that do not require verification of tests or vaccinations, other than certifications for slaughter ruminants exported to Mexico or Canada, have been covered by a miscellaneous "catchall" user fee certificate category. (Ruminants exported to Mexico and Canada for slaughter are covered by a separate user fee that includes all slaughter animals, except poultry, exported to those two countries). Based on our review of the costs associated with endorsing export health certificates, we have determined that the user fee charged for the miscellaneous certificate category does not cover all of our costs to endorse such certificates for ruminants. As a result, we are establishing a new certificate category and user fee for that service, which will increase the amount charged to endorse certificates that do not require verification of tests or vaccinations for ruminants, except slaughter ruminants exported to Mexico or Canada. Under the miscellaneous user fee category, the fiscal year 2004 user fee will be $24 for each endorsement; under the new certificate category, the user charged for each endorsement will be $33, an increase of $9. We are making this change to ensure that we recover our costs for providing that service, which include direct labor costs, administrative support costs, billing and collection costs, Agency overhead, departmental charges, and a reserve component.

This final rule will affect entities that export ruminants, other than slaughter ruminants exported to Mexico or Canada, to countries that do not require that export health certificates include verification of tests or vaccinations. Because entities who export ruminants to Mexico or Canada for immediate slaughter are covered by a separate user fee category, such entities will not be affected by this final rule. Whether or not an importing country requires verification of tests or vaccinations for ruminants depends upon such factors as the type of animal exported, the time of year exportation occurs, and the health status of an animal's herd or State of origin. A representative overview of countries that import ruminants from the United States (including Brazil, Canada, China, the Dominican Republic, Japan, Mexico, Nicaragua, the Philippines, and Turkey) indicates that most countries require that export health certificates include verification of testing or vaccinations for ruminants.[1] For example, importing countries almost always require U.S.-origin ruminants to be tested for brucellosis and tuberculosis, and frequently require those animals to be tested for such diseases as anaplasmosis, bluetongue, Johne's disease, leptospirosis, and vesicular stomatitis, among others. However, two countries, Mexico and Canada, do not currently require verification of tests or vaccinations for some cattle, sheep, and goats, under certain conditions.

As shown in table 1, below, trade statistics indicate that the majority of U.S.-origin cattle, sheep, and goats are exported to Mexico and Canada. For example, 56.6 percent of purebred cattle, 99.6 percent of not purebred cattle, 99.5 percent of sheep, and 82.3 percent of goats exported from the United States during 1999–2001 were shipped to Mexico or Canada. Of those animals listed in table 1, animals categorized as "not purebred cattle" (which include feeder cattle, cattle exported for immediate slaughter, and other not purebred cattle) comprise the single largest category, accounting for 83 percent of the total number of cattle, sheep, and goats exported from the United States during 1999–2001.

TABLE 1.—VALUE OF U.S. EXPORTS OF CATTLE, SHEEP, AND GOATS TO MEXICO, CANADA, AND THE REST OF THE WORLD (DOLLAR AMOUNTS AND PERCENTAGE SHARES OF EACH LIVESTOCK CATEGORY AS ANNUAL AVERAGES FOR 1999–2001)

	Mexico	Canada	Rest of the world
Purebred cattle	$9.86 million (45.8%)	$2.39 million (10.8%)	$9.39 million (43.4%)
Not purebred cattle	70.77 million (32.4%)	145.74 million (67.2%)	718,000 million (0.4%)
Sheep	18.00 million (97.4%)	391,000 (2.1%)	85,000 (0.5%)
Goats	1.95 million (74.2%)	206,000 (8.1%)	487,000 (17.7%)

Source: World Trade Atlas, based on U.S. Census data.

Because Mexico and Canada are the principal markets for ruminants exported from the United States that do not require health certificates to include verification of tests or vaccinations, we can expect that entities who export cattle, sheep, and goats to those two countries will be most affected by this final rule. As a result, this analysis focuses on the importation requirements of Mexico and Canada for U.S.-origin cattle, sheep, and goats.

U.S. Ruminant Exports to Mexico

Mexico does not require verification of tests or vaccinations for the following ruminants imported from the United States: Steers and spayed heifers shipped as feeder cattle; slaughter cattle, unless from Texas or Missouri; sheep other than rams; and goats other than breeding stock. Because Texas and Missouri are not designated as brucellosis Class-Free States, cattle imported for slaughter from those two States must be tested for that disease. Breeding cattle imported into Mexico from any State are required to be tested for brucellosis only if the animal is less than 6 months of age, or is an official calfhood vaccinate less than 20 months of age raised for dairy production or a vaccinate less than 24 months of age raised for beef. However, all breeding cattle, except for those animals under 1 month of age, must be tested for tuberculosis. For sheep and goats, Mexico requires that breeding and feeder rams be tested for brucellosis and breeding goats be tested for tuberculosis.

As mentioned above, animals other than poultry exported to Mexico and Canada for slaughter are covered by a separate user fee category. As a result, exporters of slaughter ruminants, including slaughter cattle, exported to Mexico or Canada will not be affected by this final rule. Slaughter cattle account for the majority of not purebred cattle exported to Mexico from the United States.[2] As shown in table 1, the annual value of not purebred cattle exported to Mexico from the United States is estimated to be about $71 million. APHIS export certification data indicate that approximately 62 percent of not purebred cattle shipped to

[1] Import health requirements of foreign countries, including required certification statements and testing, may be found on the Internet at *http://www.aphis.usda.gov/vs/ncie/iregs/animals/*.

[2] APHIS, Centers for Epidemiology & Animal Health (CEAH), 1999–2001.

Mexico were exported from the United States for purposes other than slaughter.[3] We can expect, therefore, that the annual value of not purebred cattle exported to Mexico that will be affected by this final rule will be approximately $44 million ($70.77 million multiplied by 0.62).

This final rule will have a negligible economic impact on exporters of sheep and goats shipped to Mexico, as over 99 percent of sheep and 96 percent of goats from the United States to Mexico are intended for slaughter and are not, therefore, covered by the certificate category and user fee established in this document.

U.S. Ruminant Exports to Canada

Ruminants exported to Canada that do not require testing or vaccination are feeder cattle from Hawaii, Montana, and Washington; sheep and goats intended for immediate slaughter; and some purebred cattle, sheep, and goats, depending on the health status of the State or herd from which the animal originated and the time of year the animals are shipped.

Canada requires feeder cattle imported from most States to be tested for tuberculosis and anaplasmosis, and requires certain feeder cattle to be tested for brucellosis and bluetongue. Brucellosis testing is not required for steers and spayed heifers and official calfhood vaccinates that were vaccinated with Strain 19 vaccine. For all other cattle, brucellosis testing requirements depend on the brucellosis status of the animal's herd and State. Currently, all States except Missouri and Texas are classified as brucellosis Class-Free. As a result, feeder cattle exported to Canada from all States except Missouri and Texas are exempt from brucellosis testing. Bluetongue testing requirements depend on whether the animal comes from a low-, medium-, or high-incidence State and/or the time of year the animal is exported. For example, feeder cattle imported into Canada between October 1 and December 31 are not required to be tested for bluetongue, regardless of the State of origin.

As an alternative to the foregoing testing requirements, Canada accepts shipments of untested feeder cattle under its Restricted Feeder Cattle Program.[4] To participate in this program, a State must meet certain requirements, including being free of brucellosis and tuberculosis and classified as a low risk for bluetongue, and must submit to Canada summary data for anaplasmosis. Currently, Hawaii, Montana, and Washington are allowed to export untested feeder cattle to Canada under the Restricted Feeder Cattle Program. Cattle imported by Canada under this program may only enter the country between October 1 and March 31.

Testing requirements for breeding cattle exported to Canada depend on an animal's particular circumstances. For example, brucellosis and anaplasmosis testing requirements depend on the health status of the herd and State, and bluetongue testing requirements depend on the State's classification and/or the time of year the animal is exported to Canada. Breeding cattle need not be tested for tuberculosis if the entire herd from which the animal originated is tested within the 12 months preceding exportation.

Sheep and goats exported to Canada for immediate slaughter need not be tested for bluetongue. For all other sheep and goats, testing for bluetongue depends on the status of the exporting State and/or the time of year of the export. For example, Canada does not require sheep and goats exported from any State between October 1 and December 31 to be tested for bluetongue, assuming that the animals have resided only in the United States or Canada.

As shown in table 1, "not purebred cattle," which predominantly consist of feeder cattle, account for the single largest category of ruminants exported to Canada that could be affected by this final rule. Because Hawaii, Montana, and Washington are the only States currently allowed to export feeder cattle to Canada without tests or vaccinations under the Restricted Feeder Cattle Program, we can expect that exporters of ruminants from those three States will be most affected by this final rule. Table 2 shows approximate average annual values of feeder cattle exported to Canada from Hawaii, Montana, and Washington, 1999–2001. These values are for cattle classified under Harmonized Schedule code 010290 (not purebred), and, therefore, may include animals exported for immediate slaughter and other not purebred animals; however, the majority of cattle under this classification are imported by Canada under its Restricted Feeder Cattle Program for feeding and subsequent slaughter.

TABLE 2.—APPROXIMATE AVERAGE ANNUAL VALUES OF FEEDER CATTLE EXPORTS TO CANADA FROM THE STATES OF HAWAII, MONTANA, AND WASHINGTON, 1999–2001

Hawaii	$2,383,000
Montana	84,999,000
Washington	8,821,000
Total	96,203,000

Source: Industry Canada, Trade Data Online, based on data obtained from Statistics Canada and the U.S. Census Bureau, U.S. Department of Commerce.

Note: Values are for Harmonized Schedule code 010290—Bovine, live—Not Pure-bred, which are predominantly feeder cattle, but may include other cattle. The values, therefore, are only approximate feeder cattle values.

Montana's livestock exporters, in particular, have benefitted from the Restricted Feeder Cattle Program. A total of 127,643 restricted feeder cattle were shipped to Canada from Montana during the 1999–2000 season. In the 2000–2001 season, Montana shipped 133,240 head.[5] The total value of feeder cattle exported from the three States to Canada, shown in table 2 to be approximately $96 million, comprises two-thirds of the approximately $146 million shown in table 1 for all "not purebred cattle" exported to Canada.

Statistics on other ruminants exported to Canada and affected by this final rule are not available. However, as mentioned above, exports of such ruminants, which include certain breeding stock, are not nearly as important as exports of not purebred cattle.

The User Fee Increase and Ruminant Export Values

The total value of ruminant exports that could be affected by this final rule and for which statistics are available is approximately $140 million annually. This figure accounts for about 54 percent of the cattle, sheep, and goats exported from the United States.[6] However, even though a sizable percentage of U.S. ruminant exports may be affected by the user fee increase, we do not expect that this final rule will have a significant impact on a

[3] APHIS, CEAH, 1999–2001.

[4] Canadian Food Inspection Agency, Client Services Information Sheet No. 14, Restricted Feeder Cattle from the United States.

[5] Montana Department of Livestock.

[6] Feeder cattle exports to Canada from Hawaii, Montana, and Washington ($96 million) + not purebred cattle exports to Mexico ($44 million) = $140 million. (Overcounting of affected cattle and smallstock shipments to Mexico is assumed to be balanced by undercounting of affected cattle and smallstock shipments to Canada.) All U.S. exports total about $260 million (Table 1).

substantial number of entities. The $9 increase in user fees for the endorsement of certificates that do not require verification of tests or vaccinations for ruminants represents a small amount of the average export value of cattle. Furthermore, the $9 increase in user fees is small compared to the total value of livestock usually included on a single health certificate, as most health certificates are issued for more than one animal and the new user fee of $33 will apply for all animals covered by a single certificate.

This final rule will have the largest effect on exporters of "not purebred cattle" intended for export to Mexico and Canada. Table 3 shows the average value for each animal for those ruminant categories. The $9 increase in user fees represents approximately 2 percent of the average value of "not purebred cattle" exported to Mexico and Canada from the United States.

TABLE 3.—AVERAGE VALUES OF NOT PUREBRED CATTLE EXPORTED TO MEXICO AND CANADA AND PERCENTAGES OF THE VALUES REPRESENTED BY THE PROPOSED $9 INCREASE IN USER FEES

	Average value per animal ($)	$9 user fee increase as a percentage of the average value
Not Purebred Cattle:		
Exported to Mexico	464	2.0
Exported to Canada	504	1.8

Source: World Trade Atlas, based on U.S. Census Bureau data. Values are annual averages for 1999, 2000, and 2001.

However, these percentages overstate the impact of the user fee increase, as numerous animals are usually exported using a single certificate. For example, from 1999 through 2001, the average number of feeder cattle exported to Canada per certificate numbered 798 head.[7] Based on this average number of cattle per certificate, the $9 user fee increase would account for only 0.002 percent of the total value of livestock included in a single health certificate.[8]

Impact on Small Entities

The Regulatory Flexibility Act requires agencies to consider the economic impact of their rules on small entities, such as small businesses, organizations, and governmental jurisdictions. This final rule could affect livestock operations that export ruminants to Mexico or Canada, which include such entities as cattle ranches and farms, sheep and goat farms, and cattle feedlots.

Under the standards established by the Small Business Administration (SBA), a business, firm, organization, or other entity engaged in cattle ranching and farming, sheep farming, or goat farming is considered small if the entity has annual sales of $750,000 or less.[9] In 1997, there were 651,542 cattle farms and 29,790 sheep and goat farms. Of those entities, 99 percent of cattle farms (656,181) and 99 percent of sheep and goat farms (29,938) are small entities under the SBA's standards.[10]

Cattle feedlots are considered small under the SBA's standards if their annual sales are $1.5 million or less.[11] Over 97 percent of feedlots (95,000 of 97,091) have capacities of fewer than 1,000 head, and average annual sales of about 420 head.[12] Assuming each head sold for $1,000, fewer-than-1,000 head capacity feedlots would generate, on average, $420,000 in sales. Clearly, most feedlots that export ruminants to Mexico or Canada are small entities under the SBA's standards.

The $9 increase in user fees for the endorsement of ruminant export health certificates that do not require verification of testing or vaccination, except for ruminants exported from Mexico or Canada, will not have a significant economic impact on a substantial number of entities, large or small, given the value, and number, of animals usually listed on a single health certificate. Although the majority of entities affected by this final rule are small entities, and the majority of cattle, sheep, and goats exported by the United States do not require testing or vaccination, the user fee increase is small compared to the average total value of livestock normally included on a single health certificate.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

9 CFR Part 97

Exports, Government employees, Imports, Livestock, Poultry and poultry products, Travel and transportation expenses.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

[7] Calculated from data obtained from APHIS CEAH.

[8] Average total value of feeder cattle exported to Canada, for each health certificate, is $402,192: ($9 divided by $402,192) multiplied by 100 = 0.002 percent.

[9] Cattle ranching and farming, North American Industry Classification System (NAICS) code 112120; sheep farming, NAICS 112410; and goat farming, NAICS 112420.

[10] 1997 Census of Agriculture, USDA National Agricultural Statistics Service (NASS). Sales information for these farms identifies a data break at annual sales of $500,000, not at $750,000.

[11] Cattle feedlots, NAICS 112112.

[12] "Cattle on Feed," NASS, February 2001.

■ Accordingly, we are amending 7 CFR part 354 and 9 CFR parts 97 and 130 to read as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

■ 1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 354.1 is amended as follows:

■ a. In paragraph (a)(1), introductory text, the table is revised to read as set forth below.

■ b. In paragraph (a)(1)(iii), the table is revised to read as set forth below.

§ 354.1 Overtime work at border ports, sea ports, and airports.

(a)(1) * * *

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF PLANT, PLANT PRODUCTS, ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour)		
	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$48.00	$49.00	$51.00
Sundays	63.00	65.00	67.00

* * * * *

(iii) * * *

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]

Outside the employee's normal tour of duty	Overtime rates (per hour)		
	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$39.00	$40.00	$41.00
Sundays	51.00	53.00	55.00

[1] These charges exclude administrative overhead costs.

* * * * *

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

■ 3. The authority citation for part 97 continues to read as follows:

Authority: 7 U.S.C. 8301–8317; 49 U.S.C. 80503; 7 CFR 2.22, 2.80, and 371.4.

■ 4. Section 97.1 is amended as follows:

■ a. In the introductory text of paragraph (a), the table is revised to read as set forth below.

■ b. In paragraph (a)(3), the table is revised to read as set forth below.

§ 97.1 Overtime services relating to imports and exports.

(a) * * *

OVERTIME FOR INSPECTION, LABORATORY TESTING, CERTIFICATION, OR QUARANTINE OF ANIMALS, ANIMAL PRODUCTS OR OTHER REGULATED COMMODITIES

Outside the employee's normal tour of duty	Overtime rates (per hour)		
	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$48.00	$49.00	$51.00
Sundays	63.00	65.00	67.00

* * * * *

(3) * * *

OVERTIME FOR COMMERCIAL AIRLINE INSPECTION SERVICES [1]

Outside the employee's normal tour of duty	Overtime rates (per hour)		
	Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Monday through Saturday and holidays	$39.00	$40.00	$41.00
Sundays	51.00	53.00	55.00

[1] These charges exclude administrative overhead costs.

* * * * *

PART 130—USER FEES

■ 5. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

■ 6. Section 130.2 is amended as follows:

■ a. In paragraph (a), the table is revised to read as set forth below.

■ b. In paragraph (b), the table is revised to read as set forth below.

§ 130.2 User fees for individual animals and certain birds quarantined in APHIS-owned or -operated animal quarantine facilities, including APHIS Animal Import Centers.

(a) * * *

Animal or bird	Daily user fee Beginning Oct. 1, 2003
Birds (excluding ratites and pet birds imported in accordance with Part 93 of this subchapter):	
0–250 grams	$1.75
251–1,000 grams	5.75
Over 1,000 grams	13.00
Domestic or zoo animals (except equines, birds, and poultry):	
Bison, bulls, camels, cattle, or zoo animals	102.00
All others, including, but not limited to, alpacas, llamas, goats, sheep, and swine	27.00
Equines (including zoo equines, but excluding miniature horses):	
1st through 3rd day (fee per day)	270.00
4th through 7th day (fee per day)	195.00
8th and subsequent days (fee per day)	166.00
Miniature horses	61.00
Poultry (including zoo poultry):	
Doves, pigeons, quail	3.50
Chickens, ducks, grouse, guinea fowl, partridge, pea fowl, pheasants	6.25
Large poultry and large waterfowl, including, but not limited to game cocks, geese, swans, and turkeys	15.00
Ratites:	
Chicks (less than 3 months old)	9.25
Juveniles (3 months through 10 months old)	14.00
Adults (11 months old and older)	27.00

(b) * * *

Bird or poultry (nonstandard housing, care, or handling)	Daily user fee Beginning Oct. 1, 2003
Birds 0–250 grams and doves, pigeons, and quail	$5.75
Birds 251–1,000 grams and poultry such as chickens, ducks, grouse, guinea fowl, partridge, pea fowl, and pheasants	13.00
Birds over 1,000 grams and large poultry and large waterfowl, including, but not limited to game cocks, geese, swans, and turkeys	25.00

* * * * *

■ 7. In § 130.3, paragraph (a)(1), the table is revised to read as follows:

§ 130.3 User fees for exclusive use of space at APHIS Animal Import Centers.

(a)(1) * * *

Animal import center	Monthly user fee Beginning Oct. 1, 2003
Newburgh, NY:	
Space A—5,396 sq. ft. (503.1 sq. m.)	$59,254
Space B—8,903 sq. ft. (827.1 sq. m.)	97,764
Space C—905 sq. ft. (84.1 sq. m.)	9,938

* * * * *

■ 8. In § 130.4, the table is revised to read as follows:

§ 130.4 User fees for processing import permit applications.

* * *

Service	Unit	User fee Beginning Oct. 1, 2003
1. Import compliance assistance:		
i. Simple (2 hours or less)	Per release	$70.00
ii. Complicated (more than 2 hours)	Per release	180.00

Service	Unit	User fee Beginning Oct. 1, 2003
2. Processing an application for a permit to import live animals, animal products or byproducts, organisms, vectors, or germ plasm (embryos or semen) or to transport organisms or vectors [1]		
i. Initial permit	Per application	94.00
ii. Amended permit	Per amended application.	47.00
iii. Renewed permit [2]	Per application	61.00
3. Processing an application for a permit to import fetal bovine serum when facility inspection is required.	Per application	322.00

[1] Using Veterinary Services Form 16–3, "Application for Permit to Import or Transport Controlled Material or Organisms or Vectors," or Form 17–129, "Application for Import or In Transit Permit (Animals, Animal Semen, Animal Embryos, Birds, Poultry, or Hatching Eggs)."
[2] Permits to import germ plasm and live animals are not renewable.

■ 9. In § 130.6, paragraph (a), the table is revised to read as follows:

§ 130.6 User fees for inspection of live animals at land border ports along the United States-Mexico border.

(a) * * *

Type of live animal	Per head user fee Beginning Oct. 1, 2003
Any ruminants (including breeder ruminants) not covered below	$9.00
Feeder	2.50
Horses, other than slaughter	44.00
In-bond or in-transit	5.75
Slaughter	3.75

* * * * *

■ 10. In § 130.7, paragraph (a), the table is revised to read as follows:

§ 130.7 User fees for import or entry services for live animals at land border ports along the United States-Canada border.

(a) * * *

Type of live animal	Unit	User fee Beginning Oct. 1, 2003
Animals being imported into the United States:		
Breeding animals (Grade animals, except horses):		
Sheep and goats	Per head	$0.50
Swine	Per head	0.75
All others	Per head	3.25
Feeder animals:		
Cattle (not including calves)	Per head	1.50
Sheep and calves	Per head	0.50
Swine	Per head	0.25
Horses (including registered horses), other than slaughter and in-transit	Per head	29.00
Poultry (including eggs), imported for any purpose	Per load	50.00
Registered animals (except horses)	Per head	6.00
Slaughter animals (except poultry)	Per load	25.00
Animals transiting [1] the United States:		
Cattle	Per head	1.50
Sheep and goats	Per head	0.25
Swine	Per head	0.25
Horses and all other animals	Per head	6.75

[1] The user fee in this section will be charged for in-transit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the hourly user fee rate in § 130.30 will apply.

* * * * *

■ 11. In § 130.8, paragraph (a), the table is revised to read as follows:

§ 130.8 User fees for other services.

(a) * * *

Service	Unit	User fee Beginning Oct. 1, 2003
Germ plasm being exported: [1]		

Service	Unit	User fee Beginning Oct. 1, 2003
Embryo:		
Up to 5 donor pairs	Per certificate	$83.00
Each additional group of donor pairs, up to 5 pairs per group, on the same certificate	Per group of donor pairs.	37.00
Semen	Per certificate	51.00
Release from export agricultural hold:		
Simple (2 hours or less)	Per release	70.00
Complicated (more than 2 hours)	Per release	180.00

[1] This user fee includes a single inspection and resealing of the container at the APHIS employee's regular tour of duty station or at a limited port. For each subsequent inspection and resealing required, the hourly user fee in § 130.30 will apply.

* * * * *

■ 12. Section 130.10 is amended as follows:

■ a. In paragraph (a), the table is revised to read as set forth below.

■ b. In paragraph (b), the table is revised to read as set forth below.

§ 130.10 User fees for pet birds.

(a) * * *

Service	Unit	User fee Beginning Oct. 1, 2003
(1) Which have been out of the United States 60 days or less	Per lot	$108.00
(2) Which have been out of the United States more than 60 days	Per lot	257.00

(b) * * *

Number of birds in isolette	Daily user fee Beginning Oct. 1, 2003
1	$9.25
2	11.00
3	13.00
4	15.00
5 or more	18.00

* * * * *

■ 13. In § 130.11, paragraph (a), the table is revised to read as follows:

§ 130.11 User fees for inspecting and approving import/export facilities and establishments.

(a)

* * * * *

Service	Unit	User fee Beginning Oct. 1, 2003
Embryo collection center inspection and approval (all inspections required during the year for facility approval).	Per year	$380.00
Inspection for approval of biosecurity level three laboratories (all inspections related to approving the laboratory for handling one defined set of organisms or vectors).	Per inspection	977.00
Inspection for approval of pet food manufacturing, rendering, blending, or digest facilities:		
Initial approval	For all inspections required during the year.	404.75
Renewal	For all inspections required during the year.	289.00
Inspection for approval of pet food spraying and drying facilities:		
Initial approval	For all inspections required during the year.	275.00
Renewal	For all inspections required during the year.	162.00
Inspection for approval of slaughter establishment:		
Initial approval (all inspections)	Per year	373.00

Service	Unit	User fee Beginning Oct. 1, 2003
Renewal (all inspections)	Per year	323.00
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:		
Approval (compliance agreement) (all inspections for first year of 3-year approval)	Per year	398.00
Renewed approval (all inspections for second and third years of 3-year approval)	Per year	230.00

* * * * *

■ 14. Section 130.20 is amended as follows:

■ a. In paragraph (a), the table is revised to read as set forth below.

■ b. In paragraph (b)(1), the table is revised to read as set forth below.

130.20 User fees for endorsing export certificates.

(a) * * *

Certificate categories	User fee Beginning Oct. 1, 2003
Animal and nonanimal products	$32.00
Hatching eggs	30.00
Poultry, including slaughter poultry	30.00
Ruminants, except slaughter ruminants moving to Canada or Mexico	33.00
Slaughter animals (except poultry but including ruminants) moving to Canada or Mexico	35.00
Other endorsements or certifications	24.00

(b)(1) * * *

Number of tests or vaccinations and number of animals or birds on the certificate	User fee Beginning Oct. 1, 2003
1–2 tests or vaccinations	
Nonslaughter horses to Canada:	
First animal	$38.00
Each additional animal	4.25
Other animals or birds:	
First animal	76.00
Each additional animal	4.25
3–6 tests or vaccinations	
First animal	94.00
Each additional animal	7.25
7 or more tests or vaccinations	
First animal	109.00
Each additional animal	8.50

* * * * *

■ 15. Section 130.30 is amended to read as follows:

■ a. In paragraph (a), the table is revised to read as set forth below.

■ b. In paragraph (b), the table is revised to read as set forth below.

§ 130.30 Hourly rate and minimum user fees.

(a) * * *

	User fee Beginning Oct. 1, 2003
Hourly rate	
Per hour	$84.00
Per quarter hour	21.00
Per service minimum fee	25.00

(b) * * *

Overtime rates (outside the employee's normal tour of duty)	Premium rate user fee Beginning Oct. 1, 2003
Premium hourly rate Monday through Saturday and holidays:	

Overtime rates (outside the employee's normal tour of duty)	Premium rate user fee Beginning Oct. 1, 2003
Per hour	$100.00
Per quarter hour	25.00
Premium hourly rate for Sundays:	
Per hour	112.00
Per quarter hour	28.00

* * * * *

■ 16. In § 130.50, paragraph (b)(3)(i), the table is revised to read as follows:

§ 130.50 Payment of user fees.

* * * * *

(b) * * *

(3) * * *

(i) * * *

OVERTIME FOR FLAT RATE USER FEES [1, 2]

	Outside of the employee's normal tour of duty	Overtime rates (per hour)		
		Oct. 1, 2003–Sept. 30, 2004	Oct. 1, 2004–Sept. 30, 2005	Beginning Oct. 1, 2005
Rate for inspection, testing, certification or quarantine of animals, animal products or other commodities.[3]	Monday-Saturday and holidays	$48.00	$49.00	$51.00
	Sundays	63.00	65.00	67.00
Rate for commercial airline inspection services.[4]	Monday-Saturday and holidays	39.00	40.00	41.00
	Sundays	51.00	53.00	55.00

[1] Minimum charge of 2 hours, unless performed on the employee's regular workday and performed in direct continuation of the regular workday or begun within an hour of the regular workday.

[2] When the 2-hour minimum applies, you may need to pay commuted travel time. (*See* § 97.1(b) of this chapter for specific information about commuted travel time.)

[3] *See* § 97.1(a) of this chapter or 7 CFR 354.3 for details.

[4] *See* § 97.1(a)(3) of this chapter for details.

* * * * *

Done in Washington, DC, this 26th day of August 2003.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–22141 Filed 8–28–03; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM/TP–99–500]

RIN 1904–AB10

Energy Conservation Program for Consumer Products: Test Procedure for Dishwashers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: Under Part B of title III of the Energy Policy and Conservation Act (EPCA or the Act), the Department of Energy (DOE or the Department) promulgates a rule amending its test procedure to determine the energy efficiency of residential dishwashers. This amendment provides a new test procedure for testing the energy consumption of soil-sensing models, requires that manufacturers or private labelers include the measurement of standby power consumption in the estimated annual operating cost and estimated annual energy use calculations for all dishwasher models, and adds new specifications for instrumentation requirements. It also revises the number of cycles per year used for calculating the estimated annual operating cost, based on new survey data concerning consumer practices.

EFFECTIVE DATES: This rule is effective September 29, 2003. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of September 29, 2003.

ADDRESSES: You can read copies of all materials related to this rulemaking in the Freedom of Information Reading Room (Room 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Barbara Twigg, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–2J, 1000 Independence Avenue, SW., Washington, DC 20585–0121, (202) 586–8714, e-mail: *barbara.twigg@ee.doe.gov;* Francine Pinto, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7432, e-mail: *Francine.Pinto@hq.doe.gov;* or Thomas DePriest, Esq., U.S. Department of Energy, Office of General Counsel, GC–72, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2946, e-mail: *Thomas.DePriest@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: You may obtain copies of the standard referenced in this final rule and referred to as ANSI/AHAM DW–1 (American National Standard, Household Electric Dishwashers, ANSI/AHAM DW–1–1992) from the Association of Home Appliance Manufacturers (AHAM), 1111 19th Street, NW., Suite 402, Washington, DC 20036, (202) 872–5955. Information regarding this rulemaking is also available on the Buildings Program Web site at the following address: *http://www.eere.energy.gov/buildings/appliance_standards/.*

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I. Introduction

A. Authority

Title III of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles (Program). The products currently subject to this Program ("covered products") include residential dishwashers, the subject of today's final rule. (42 U.S.C. 6291 *et seq.*)

Under the Act, the Program consists of three parts: Testing, labeling, and the Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (NIST), may amend or establish test procedures as appropriate for each of the covered products. (42 U.S.C. 6293) The purpose of the test procedures is to measure energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle or period of use. The test procedures must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

If DOE amends a test procedure, EPCA requires DOE to determine whether the new test procedure would change the measured energy efficiency or measured energy use of any covered product as determined under the existing test procedure. (42 U.S.C. 6293(e)(1)) If DOE determines that a change would result, DOE must amend the applicable energy conservation standard during the rulemaking that establishes the new test procedure. (42 U.S.C. 6293(e)(2)) In setting any new energy conservation standard, DOE is required to measure, with the new test procedure, the energy efficiency or energy use of a representative sample of covered products that minimally comply with the existing standard. The average energy efficiency or energy use of these representative samples under the new test procedure shall constitute the amended energy conservation standard for the applicable covered products. (42 U.S.C. 6293(e)(2))

Effective 180 days after DOE prescribes or establishes an amended or new test procedure for a covered product, no manufacturer, distributor, retailer, or private labeler may make any representation with respect to the energy use, efficiency, or cost of energy consumed by the product, unless the product has been tested in accordance with such amended or new DOE test procedure and the representation fairly discloses the results of that testing. (42 U.S.C. 6293(c)(2)) This restriction on representations will take effect 180 days after the date this final rule is "prescribed" (*i.e.*, the date this rule is published in the **Federal Register**). Because this final rule itself will become effective 30 days after its publication in the **Federal Register**, a manufacturer, distributor, retailer, or private labeler may begin using the new test procedure to make representations with respect to the energy use, efficiency, or cost of energy consumed by the product beginning with the effective date of this rule.

B. Background

On December 18, 2001, the Department published a final rule amending the dishwasher test procedure that had been in effect since 1987 (hereafter referred to as the "2001 final rule"). 66 FR 65091. That rulemaking tightened some testing specifications, changed the definitions of compact and standard models, and reduced the average number of use cycles per year from 322 to 264. It did not, however, finalize the revised test procedure that the Department had proposed to measure the energy consumption of the newer soil-sensing models. Manufacturers were unable to adequately test these models with the existing test load of clean dishes. In the 2001 final rule, the Department concluded that it needed to conduct additional research regarding how to test accurately the variety of soil-sensing technologies used, and to collect more data regarding consumer dishwasher behavior. In the following year, the Department worked with industry and other stakeholders to explore possible approaches and to collect additional data to support the development of a new test method. In addition, the Department hired an independent research organization, Arthur D. Little, Inc. (ADL), whose technology and innovation business has become known as TIAX LLC, to collect and evaluate all available surveys and studies regarding consumer dishwasher use. The ADL research addressed both frequency of use and frequency of pre-rinsing the dish load. DOE placed the December 18, 2001, ADL report and the March 5, 2002, ADL research addendum on its Building Research and Standards website for stakeholder review and comment.

The Department published a Notice of Proposed Rulemaking (NOPR) on September 3, 2002 (hereafter referred to as the September 2002 NOPR or NOPR), defining two types of dishwashers, soil-sensing and non-soil-sensing, according to whether a dishwasher could automatically adjust its wash cycle in response to the amount of food left on the dish load. 67 FR 56232. The Department did not propose any changes to the existing test procedure for non-soil-sensing dishwashers, which still would use clean dishes, tested during the normal cycle. However, using the recommendations from the ADL research, the Department proposed for soil-sensing dishwashers a new test procedure using soiled dishes instead of clean ones. The procedure required that manufacturers or private labelers run a series of three tests using heavy, medium, and light soil loads in order to test a dishwasher's soil-sensing mechanism at different soil levels. This procedure allowed the energy factor for a soil-sensing dishwasher to become an aggregated number, the average of the energy consumption figures from the three soiled test loads, weighted according to user frequency. For soiling the dishes, the test procedure required

the same food soils used in the ANSI/AHAM DW–1 performance test, but with fewer soiled place-settings for each of the three test levels. 67 FR 56243.

In the September 2002 NOPR, DOE also proposed adding a method for calculating the standby power consumption for all dishwashers, both soil-sensing and non-soil-sensing, and including that energy in the estimated annual operating cost and estimated annual energy use calculations, but not in the energy factor. 67 FR 56242, 56244. The NOPR provided instrumentation requirements for measuring standby power and proposed changing the electrical energy supply requirements to 120 volts ±2 percent, instead of 115 volts. The NOPR also proposed a further reduction in the average number of use cycles from 264 to 215 per year based on new consumer use data.

This final rule adopts most of the test procedure provisions proposed in the September 2002 NOPR, and also incorporates certain changes that were presented and discussed at the October 22, 2002, public hearing with some modifications as discussed below. A few additional changes in test specifications resulted from information learned when NIST began testing two soil-sensing dishwashers using the proposed test procedure. The Department used NIST testing to verify that the test procedure language was clear and that the test was able to capture the machine's energy performance.

C. Summary of the Test Procedure Revisions

The following are the major revisions to the dishwasher test procedure included in this final rule:

1. Updated representative average dishwasher use
2. New three-level test procedure for soil-sensing dishwashers:
   - Detergent and rinse agent
   - Specifications for dish load
3. New test procedure to measure standby power consumption:
   - "Standby mode" definition
   - New measurement procedures
   - New instrumentation requirements
   - Corrected calculation procedure for the estimated annual energy use
4. New definitions:
   - Non-soil-sensing dishwashers
   - Soil-sensing dishwashers
   - Sensor heavy response
   - Sensor light response
   - Sensor medium response
   - Truncated sensor heavy response
   - Truncated sensor light response
   - Truncated sensor medium response
5. Modifications to improve the clarity and repeatability of the test procedure:
   - Clarify the definition of water-heating dishwasher
   - Retain testing voltage of 115 Volts
   - Reword definition of dryer energy, E_D
   - Reword calculation of the number of standby hours per year, H_s, and duration of wash cycle, L
   - Correct typographical error in equation for Energy Factor (EF)
   - Reword flow rate tolerance
   - Reduce 140 °F tolerance from ±5 °F to ±2 °F
   - Revise format of measurement descriptions of machine electrical energy consumption and water consumption

II. Discussion

A. General Discussion

This final rule defines two types of dishwashers, soil-sensing and non-soil-sensing models, provides a new test procedure for soil-sensing dishwashers, and makes some modifications applicable to both soil-sensing and non-soil sensing test procedures. Manufacturers or private labelers must calculate the energy factor for soil-sensing models using a weighted average of the results from three tests with three different soiled loads of dishes: Heavy, medium, and light. The test procedure for non-soil-sensing models requires only one test using a load of clean dishes. In addition, manufacturers or private labelers must use a new test method to calculate the standby power consumption of any dishwasher that uses standby power technology (including both soil-sensing and non-soil-sensing dishwashers) and must add that value to the Estimated Annual Operating Cost (EAOC) and Estimated Annual Energy Use (EAEU) figures. At this time, however, the energy factor for dishwashers will not include the standby power consumption amounts. This final rule also reduces the representative average number of use cycles per year in the calculations for the EAOC to 215, down from 264 cycles per year.

The new test procedure for soil-sensing dishwashers reflects the combined efforts of many stakeholders who have worked with the Department to find a more accurate way of testing dishwasher models which use smart technology to sense and adjust the length of the wash cycle according to the soil level of the dish load. A series of meetings and discussions and the sharing of DOE draft proposals for comment on the web revealed a coincidence of views on the major features of the test procedure among stakeholders at the October 22, 2002, public hearing on the NOPR. The Association of Home Appliance Manufacturers (AHAM) commented that it was in general agreement with the NOPR. (Public Hearing Tr. p. 39) [1] The Consortium for Energy Efficiency (CEE) also stated that it was very supportive of the proposed test for soil-sensing dishwashers. (Public Hearing Tr. p. 89)

Although AHAM and CEE would like to see standby power energy consumption included in the energy factor at some point in the future, these stakeholders agreed that the more important goal at this time was the completion of a test procedure for soil-sensing models as quickly as possible. (AHAM No. 33 at 4; CEE No. 35 at 1) [2] The following sections discuss specific components of the new test procedure and changes that the Department made to the NOPR as a result of stakeholder comments.

B. Updated Representative Average Dishwasher Use

One figure needed for computing the EAOC is a number the Department selects to represent the average number of times consumers run their dishwashers in the course of one year. In 1983, DOE amended the dishwasher test procedure to reduce the representative average use from 416 cycles per year to 322 cycles per year based on surveys of consumer use conducted prior to 1982. In 2001, DOE further reduced the representative average use from 322 cycles per year to 264 cycles per year based on the Soap and Detergent Association's data for available years between 1985 and 1995. (66 FR 65092, December 18, 2001) For this rulemaking, DOE commissioned a study by ADL to identify new consumer use data that could be used to evaluate the 264 cycle requirement and update it if appropriate. The findings of this study established that consumer use ranged from 200 to 233 cycles per year. (ADL No. 25 at 20) Therefore, in the September 2002 NOPR, DOE proposed 215 as the average number of dishwasher use cycles per year, selecting the approximate midpoint of the 200–233 cycle range.

At the October 22, 2002, public hearing, the Oregon Office of Energy (OOE) stated that the American Water Works Association (AWWA) had data

[1] "Public Hearing Tr. p. 39" refers to the page number of the transcript of the "Dishwasher Test Procedure Proposed Rule Public Hearing" held in Washington, DC on October 22, 2002.

[2] No. 33 and No. 35 refer to the numbers of the written comments and supporting documents included in the docket for this rulemaking (Docket Number EE–RM/TP–99–500). Numbers 4 and 1 refer to the cited page numbers in those written comments.

obtained by sub-metering consumers that could establish the number of dishwasher cycles per year more accurately than surveys. (OOE, Public Hearing Tr. p. 124) Following the public hearing, DOE obtained the AWWA data and found: (1) That water use specific to dishwashers was not listed separately from other appliances and (2) that the study was not nationally representative. Later, in a written comment, OOE stated that further research into the data from AWWA on dishwasher cycles per year determined that the dishwasher data was combined with, and inseparable from, household lavatory and kitchen sink water use. As a result, OOE concluded "that the data and analysis presented by ADL at the October 22nd public hearing probably represents the best basis for establishing today's annual dishwasher use, in cycles per year." (OOE No. 36 at 2) As a result of DOE's own analysis and OOE's comment, the Department has decided not to use the AWWA data in this rulemaking.

AHAM commented that DOE should consider selecting 208 cycles per year, a value that exactly represents using a dishwasher four times per week (4 cycles per week × 52 weeks = 208 cycles per year). It stated that since that number is reasonably close to DOE's proposal of 215, and still within the range of 200 to 233 supported by ADL research, the selection of 208 cycles per year would aid the consumer in understanding the content of the Federal Trade Commission's (FTC) EnergyGuide label. (AHAM No. 33 at 3) The OOE, however, stated that it concurred with the Department's proposed cycles-per-year estimate of 215, and found no issue in not using four cycles per week on EnergyGuide labels, in spite of the resulting mathematical difference between 208 and 215. It believed that the annual dollar cost difference of slightly more than a dollar, if consumers noticed it at all, would be a negligible difference. (OOE No. 36 at 2)

While the Department recognizes that the FTC generally rounds average use to an integer value and the number 208 would represent a perfect four wash cycles per week, the Department does not believe that the number of cycles per year should be selected on the basis of numerical alignment.

The best data available to DOE establishes a consumer use range from 200 to 233 cycles per year, and DOE proposed a midpoint in this range because "this range is appropriate but no definitive number within that range appears to be better than any other." 67 FR 56235. Comment was divided on the best number to use in this range, but none of the comments offered any persuasive argument or analysis for adopting a number different from the one DOE had proposed. Therefore, DOE is retaining 215 cycles per year as the representative average number of use cycles per year. This number represents a significant drop from the current value of 264 cycles per year and is appropriate because it is based on an analysis of the best available data. Section 430.23(c) of subpart B of the test procedure now includes 215 as the value of "N", the representative average number of dishwasher cycles per year used in the formula for calculating the EAOC.

C. New Three-Level Test Procedure for Soil-Sensing Dishwashers

At the October 22nd public hearing and in the written comments DOE received, there was general agreement regarding the major components of the proposed procedure for testing soil-sensing dishwashers. The new test procedure adopts a three-level soil test based on the soils used in ANSI/AHAM DW–1. The energy factor for a soil-sensing dishwasher will be computed using a weighted average of the normal wash responses from testing the dishwasher three separate times with three soil levels: heavy, medium, and light. Those conducting the tests will measure and calculate the energy consumption responses for each of the three cycles (*i.e.*, sensor heavy, sensor medium, and sensor light for soil-sensing dishwashers) in the same way as the test procedure for non-soil-sensing dishwashers which uses clean dishes in the normal cycle. However, DOE will base the machine energy and water energy components for a soil-sensing dishwasher on a weighted average of the three energy consumption tests, according to the frequency with which consumers wash light, medium, and heavy loads. Thus, under sections 5.1.2, 5.2.2, and 5.3.2 of the test procedure, the energy factor will be a number computed from the three test cycles to represent the normal energy efficiency of the soil-sensing machine.

From available survey data, ADL determined the following distributions of typical soil levels for U.S. households using dishwashers: 5 percent heavy level of soil, 33 percent medium level of soil, and 62 percent light level of soil. (Review of Survey Data to Support Revisions to DOE's Dishwasher Test Procedure, December 18, 2001; ADL No. 25 at 8) The Department is using the distribution of these three soil level categories to establish the weighting factors, F, as follows: for the heavy response, $F_{hr} = 0.05$; for the medium response, $F_{mr} = 0.33$; and for the light response, $F_{lr} = 0.62$. The resulting equation for the machine energy, M, for soil-sensing dishwashers is:

$M = (M_{hr} \times F_{hr}) + (M_{mr} \times F_{mr}) + (M_{lr} \times F_{lr})$.

The resulting equation for the amount of water used, V, for soil-sensing dishwashers is:

$V = (V_{hr} \times F_{hr}) + (V_{mr} \times F_{mr}) + (V_{lr} \times F_{lr})$.

AHAM submitted a written comment supporting the weighting factors for the three soil levels, stating that "the proposed test procedure aligns well with actual consumer practices." (AHAM No. 33 at 2) Along with supporting the soil weighting factors, the OOE also agreed with the Department's selection of the soils and soiling method specified for industry use in the ANSI/AHAM DW–1 standard, commenting that it is confident that AHAM's DW–1 test method is the best basis for a methodology that can deliver repeatable results for these models. (OOE No. 36 at 2)

Detergent and Rinse Agent

In addition to supporting the overall test methodology, commenters recommended two changes regarding the amount of detergent and rinse agent (also referred to as rinse additive or rinse aid) used in the proposed test. In its comment, Maytag Corporation suggested the Department reduce by at least half the amount of detergent which DOE specified in the September 2002 NOPR because of the smaller size of the test loads. The firm commented that the ANSI/AHAM DW–1 soiled dish load which industry uses as a performance test "is 10–12 place settings and the 0.5 percent detergent concentration that is stated in the ANSI/AHAM DW–1 test protocol is based on that amount of soil level. The detergent amount is to improve cleanability not to impact energy consumption." (Maytag No. 32 at 1) AHAM also indicated that, because the soil levels in the DOE test procedure are so much smaller than the soil level in the original ANSI/AHAM DW–1 procedure, the amount of detergent stated in the September 2002 NOPR should be reduced accordingly: to one-half the amount of detergent used in the AHAM performance test. (AHAM No. 33 at 6) Maytag also stated, "Rinse additive should not be used in the test for the following reason. Rinse additive is usually released into the dishwasher in the last rinse before the heated dry [cycle] and is used to help improve drying and reduce spotting. It does not impact energy consumption of the dishwasher." (Maytag No. 32 at 1) The OOE commented that since the use of

rinse aid has no demonstrated impact on energy or water use, to require it for energy use testing would amount to a senseless waste of money and chemicals. (OOE No. 36 at 4) The Department agrees with these comments regarding the reduction of unnecessary chemical use and is therefore reducing the amount of detergent by half in section 2.8 of the test procedure and omitting the instruction to use rinse agent that DOE had proposed in section 2.7 of the NOPR.

This final rule reflects the consensus on the appropriateness of the current soil loads and weighting factors of the new test procedure as proposed, and incorporates the above changes regarding detergent and rinse agent.

Specifications for Dish Load

In the September 2002 NOPR, DOE proposed incorporating the August 20, 1999, "Addendum to Appendix A of AHAM DW–1–1992" by reference into the final rule to specify the type of dishes to be used in the test procedure. At the October 22 public hearing, however, AHAM stated that because some dishes in the ANSI/AHAM DW–1 Addendum are no longer available, DOE should use a new reference list which will be included in the ANSI/AHAM DW–1 revision currently under consideration. (Public Hearing Tr. p. 54) AHAM further suggested that since the new list is not yet available as part of ANSI/AHAM DW–1 for formal incorporation by reference, the Department should publish the specific table containing the recommended dishware, glassware, and flatware in the rule to address manufacturers' concerns about availability. (Public Hearing Tr. p. 54)

There was considerable discussion at the public hearing that confirmed both the comparability of the new list of dishware with what is currently being used during testing, and also the availability problems regarding the ANSI/AHAM DW–1 Addendum list as DOE had proposed in the September 2002 NOPR. The Department agrees that it would be best to use the most current list of available dishware, and therefore has directly included that list in the text of the test procedure as section 2.7. This test load list supercedes the specifications for dishware included in ANSI/AHAM DW–1. Thus, when testing soil-sensing dishwashers, ANSI/AHAM DW–1 should be used for determining the types and quantities of soils and the size of a place setting, but the table in section 2.7 of the test procedure should be used for determining the specific types of dishware, glassware, and flatware. The insertion of this table in section 2.7 (previously the section for detergent and rinse agent) alters the numbering sequence for sections 2.7 through 2.9 as they appeared in the September 2002 NOPR, and creates a new section 2.10 for preconditioning requirements (previously section 2.9). The following sections of the test procedure now include references to section 2.7 for specifying the test load of dishware, glassware, and flatware: sections 1.2, 1.13, 2.6.2, 2.6.3.1, 2.6.3.2, and 2.6.3.3 of Appendix C to Subpart B, and paragraph (f) of section 430.32 of Subpart C.

D. New Test Procedure To Measure Standby Power Consumption

The Department presented a comprehensive method for computing standby power consumption in the September 2002 NOPR. Later, however, DOE learned that the International Electrotechnical Commission (IEC) was circulating a July 12, 2002, committee draft document for measuring standby power in household electrical appliances which contained some alternate technical specifications. (IEC No. 39 at 6–9, 14–15) The IEC is a worldwide organization which publishes international standards and promotes international cooperation on questions concerning standardization in the electrical and electronic fields. Thus, in order to make the proposed dishwasher test procedure as consistent as possible with international specifications that the IEC is developing on standby power, DOE presented at the October 22 public hearing an enhanced version of the original method set out in the September 2002 NOPR, based on specifications the Department adapted from the draft IEC document. These changes addressed the definition for "standby mode" and the instrumentation requirements, as well as the measurement and calculation procedures. (Public Hearing Tr. p. 131). The Department used the discussions at the hearing and comments received to improve the test procedure as described below.

"Standby Mode" Definition

AHAM commented that the definition of standby mode in the September 2002 NOPR, "the power consumption condition when the dishwasher is connected to the main electricity supply and the door lock is unlatched" (67 FR 56242), would not be appropriate for all dishwashers. (AHAM No. 30FF at 4). AHAM stated that some new models of dishwashers may not be in the standby mode when a door is unlatched, and that some did not even have traditional doors. As a result of this comment, DOE presented for discussion at the public hearing the following alternative definition which was based on the draft definition in the IEC document:

" '*Standby mode*' means the lowest power consumption mode which cannot be switched off or influenced by the user, a non-operational mode not affected by the dishwasher's primary function which may persist for an indefinite time when the dishwasher is connected to the main electricity supply and used in accordance with the manufacturer's instructions." (Public Hearing Tr. p. 132)

At the public hearing, AHAM also presented the IEC draft definition but did not include the words "a non-operational mode not affected by the dishwasher's primary function" which the IEC draft had listed as a note in its draft, but not as part of the definition itself. (AHAM No. 30FF at 4) The AHAM representative explained at the hearing that the inclusion of those words seemed like adding "redundant and unnecessary verbiage to the definition because you've already defined the fact that you're in the non-operational mode by saying it's the lowest power consumption mode that can't be switched off." (Public Hearing Tr. p. 138) The Department reviewed the text and agrees that the words AHAM cited are redundant for defining standby mode. Overall, there was broad support among commenters for drawing from the IEC expertise on this issue. For example, the OOE commented that it supported DOE's test procedure being consistent with the IEC definition. (Public Hearing Tr. p. 129) In light of the discussion at the public hearing and the comments received, the Department agrees with the criticisms of the "standby mode" definition in the September 2002 NOPR and believes that the IEC draft definition for standby mode is the better choice. Therefore, the Department has adopted it in section 1.14 of this rule. The Department's text, however, specifically names dishwashers in the definition, rather than using the more general term "appliance" which the IEC uses in its broader definition for standby mode.

New Measurement Procedures

The September 2002 NOPR proposed a procedure for the measurement of standby power which required measuring the standby energy consumption using a watt-hour meter and prorating the value over the measurement period. (67 FR 56243) Based on an AHAM comment and the IEC draft document containing a procedure for measuring standby power, DOE presented revisions to the

September 2002 NOPR at the October 22 public hearing. These revisions added provisions for measuring stable standby power consumption using a wattmeter and for measuring unstable standby power consumption using a watt-hour meter.

The modified measurement method, which is set forth in section 4.4 of the test procedure, requires allowing the dishwasher's standby power consumption to stabilize for five minutes, and then monitoring the dishwasher for an additional five minutes to determine whether the dishwasher's standby power consumption meets the criteria for stability (discussed below). If stable, the standby power could be measured directly using a wattmeter to obtain an instantaneous reading in watts. AHAM had recommended this alternative to measuring standby power in watt-hours and prorating the value for the measurement period as a way to simplify, and perhaps improve, the accuracy of the measurement. (AHAM No. 33 at 5)

The Department presented the criteria for stability as a power level drift of not more than 1 percent from the maximum observed value during the monitoring period with no cyclic or pulsing behavior. (Public Hearing Tr. p. 154) AHAM pointed out that the U.S. Technical Advisory Group had submitted comments to the IEC recommending a 5 percent drift instead of a 1 percent drift, stating that "at the levels that you're monitoring, typically three to five watts, a drift of five percent is almost negligible. One percent drift is extremely tight." (Public Hearing Tr. p. 156) The Department followed up with the IEC committee and learned that the IEC was in the process of revising its July 12, 2002, committee draft and had accepted the 5 percent drift as a revised specification. The March 7, 2003, IEC committee draft included the 5 percent specification in section 4.3.1. (IEC No. 40 at 8) In the interest of harmonization, and because DOE agrees based on the data and comments presented that the 1 percent drift tolerance is too restrictive, DOE is changing the 1 percent drift tolerance to 5 percent drift tolerance in section 4.4 of the test procedure.

The modified procedure, which is based on the March 7, 2003, IEC committee draft document, provides instructions for measuring the standby power for dishwashers which fail to meet the stability criteria presented above. In the case where the standby power varies over a cycle, the energy must be accumulated over a period of one or more complete cycles and prorated over a period of at least five minutes in order to get the average standby power. (Public Hearing Tr. p. 154) The final rule also includes the editorial change of replacing "not less than 5 minutes" with "at least 5 minutes" to express the required time interval consistently throughout section 4.4, and retains the original NOPR method for measuring standby power using a watt-hour meter.

The Department is making these modifications to provide more flexibility in testing, to increase harmonization with the IEC, and to maintain accuracy and improve clarity of the procedure. The Department believes that permitting the use of a single point measurement using a wattmeter has no negative impact on measurement accuracy and is an acceptable alternative to measuring in watt-hours and prorating the value for the measurement period. Thus, section 4.4 of the test procedure now includes two measurement options, allowing standby power measurements using a wattmeter or a watt-hour meter.

New Instrumentation Requirements

Section 3.5 of the September 2002 NOPR defined the instrumentation requirements for the standby power meter. At the October 22 public hearing, DOE stated that it was considering an additional requirement: "The meter shall have a maximum error no greater than 1 percent of the measured value." This specification establishes a level of accuracy for the instrumentation used to measure standby power. It is the same level of accuracy already required of the watt-hour meter used for measuring the machine electrical energy consumption of the dishwasher to ensure reliable results and does not present a significant test burden. There were no written or public hearing comments regarding this proposed requirement.

Discussion at the public hearing, however, did explore the differences in the RMS (root mean squared) value and the crest factor value (a measure of the instrument's capability to get good readings during power fluctuations). The NOPR proposed a value of 5 RMS whereas the IEC draft proposed a value of 3 or more RMS. Whirlpool Corporation recommended 3 RMS, commenting that 5 RMS would potentially increase the cost of the measuring equipment beyond what is practical for this level. (Public Hearing Tr. p. 152) The OOE raised the question of whether independently modifying the requirements for total harmonic distortion (THD) and the crest factor created a conflict in the specifications, and recommended that the test procedure be consistent with the IEC whenever possible. (Public Hearing Tr. p. 154)

Following the public hearing, DOE contacted an equipment manufacturer of power meters, Yokogawa Electric Corporation, to determine if there was any conflict in the specifications as written in the NOPR and to discuss whether 5 RMS was unnecessarily restrictive. From this discussion, DOE learned that it is important to match the crest factor with RMS and that the way DOE had written the specification in the NOPR was incorrect. The manufacturer also confirmed that the 5 RMS requirement would be more restrictive than necessary for ensuring accurate testing and would require manufacturers or private labelers to purchase equipment that was considerably more expensive.

As a result of this discussion and the public comments, DOE has concluded that reducing the crest factor requirement to 3 or more RMS would still ensure accurate testing, while at the same time reduce unnecessary manufacturer expense and establish a testing value consistent with the IEC. Therefore, DOE has adopted this change. For clarification purposes, DOE also restructured the format of the instrumentation section to present the requirements for each of the power meters separately. The requirements for the watt-hour meter to measure the machine electrical energy consumption of the dishwasher are in section 3.5. The requirements for the standby wattmeter to measure standby power are in section 3.6. The requirements for the standby watt-hour meter to measure standby power are in section 3.7.

Corrected Calculation Procedure for the Estimated Annual Energy Use

The September 2002 NOPR provided equations for incorporating standby power into the calculations of the EAOC and EAEU. Those equations only calculated the per-cycle energy consumption and did not calculate values for annual usage. In written comments, AHAM suggested a change in the way DOE calculated the EAEU in the NOPR, editing the equations for EAEU to include the number of cycles per year so that the energy consumption is calculated for annual consumption. (AHAM No. 30FF at 7) The Department agrees that this change improves the utility of the EAEU equations proposed in the NOPR. The revised equations for EAEU in section 10 CFR 430.23(c)(3) now reflect the total annual energy use of the dishwasher.

It should be noted that only the EAOC and EAEU calculations include standby power consumption; the energy factor

calculation does not include it at this time. As currently defined in the test procedure, the energy factor represents the amount of energy used during a cycle. Since standby power is energy consumed outside the wash cycle of a dishwasher, it is not a parameter in the energy factor calculation. Stakeholders supported this as an initial strategy. Both AHAM and CEE commented that they supported the proposal to include standby power in the EAOC and EAEU. However, they also voiced strong support for including standby power in the energy factor whenever in the future the energy efficiency standard for dishwashers is revised. (AHAM No. 33 at 4; CEE No. 35 at 1)

E. New Definitions

The Department presented nine new definitions in the September 2002 NOPR (67 FR 56242), all of which elicited comments. The change in the definition for "standby mode" was discussed in the previous section. This section addresses all other definitions.

Non-Soil-Sensing Dishwasher and Soil-Sensing Dishwasher

For this test procedure, the Department developed definitions for two types of dishwashers: non-soil-sensing dishwasher and soil-sensing dishwasher. The designation of dishwasher type determines whether a dishwasher will be tested with clean or soiled dishes. The two definitions use the ability or lack of ability to adjust automatically any energy consuming aspect of a wash cycle based on the soil load of the dishes as the determinant for distinguishing dishwasher type.

AHAM questioned the wording of these proposed definitions and recommended that the Department change the more general phrase of "wash cycle" to "normal wash cycle," since the test procedure only tests the normal cycle. (Public Hearing Tr. p. 88) However, in order to provide a clear definition for the purposes of classification, DOE believes that a dishwasher should be classified as a soil-sensing dishwasher if it can sense soils and respond to that information, regardless of the cycle type. Using the more narrow specification of "normal cycle" in the definition could provide an incentive for manufacturers to have a separate button activating the use of a soil sensor so that the normal cycle would operate as a non-soil-sensing dishwasher. This cycle configuration would enable a dishwasher to be tested on the normal cycle with clean dishes, thus avoiding the more difficult and costly test method using soils. For these reasons, DOE is retaining the original definitions with the more general reference to "wash cycle" and is not adding the word "normal" to sections 1.5 and 1.12.

Sensor Response

In the September 2002 NOPR, the Department proposed a set of six definitions to characterize the energy consumption test cycles that would result when soil-sensing dishwashers were tested with the three levels of soil used in the test procedure in sections 1.9, 1.10, 1.11, 1.15, 1.16, 1.17, and 1.18. AHAM recommended that the Department change this entire set of soil-sensing cycle definitions, suggesting that the word "response" replace the word "cycle." It believes that the word "response" more accurately characterizes the way that a dishwasher will react to the varying soiled loads in the soil-sensing tests, since there is no actual button or setting which can initiate the cycle in the way that a traditional cycle can be selected by a dishwasher user. (AHAM No. 33 at 8)

The Department agrees that changing the word "cycle" to "response" would more accurately reflect the way a dishwasher is challenged to react to the heavy, medium, and light soil levels, and therefore DOE has adopted this change. However, by using the word "response" as part of the term to be defined, the Department believes that the later words in the proposed definitions, "that constitutes the response," become redundant and should be eliminated. Thus, DOE has made conforming changes to the NOPR definitions set out in section 1 of this final rule. In addition, the Department has modified references to these terms throughout the test procedure to reflect the change, specifically in section 2.6.3 and its subsections, sections 5.1.2 and 5.2.2, and section 5.6.

F. Modifications To Improve the Clarity and Repeatability of the Test Procedure

Clarify the Definition of Water-Heating Dishwasher

Discussion at the October 22nd public hearing brought forth one issue that DOE had not raised in the September 2002 NOPR. CEE questioned the clarity of the existing definition of the normal cycle for water-heating dishwashers in section 1.19 of the regulations proposed in the NOPR, believing that the language as written offered a possible testing "loophole." (Public Hearing Tr. p. 174) It was the intent of the definition, already in effect with the December 18, 2001, final rule, to require that all water-heating dishwashers heat water to 120 °F during testing. However, the wording of the definition using the phrase "may operate" did not seem to require it definitively. CEE suggested that under the current definition, one might interpret the requirement to allow the testing of a water-heating dishwasher using 50 °F water, instead of the 120 °F temperature, thereby reducing its apparent energy consumption. The CEE representative stated, "Our position is that it leaves too much wiggle room for someone to abuse that. * * * We would suggest that you require at least one cycle be heated to 120 degrees." (Public Hearing Tr. p. 170)

Much discussion ensued at the hearing as stakeholders offered their interpretations of the definition. Whirlpool, for example, commented that a reading of the definition could be that the test procedure did not require a dishwasher that uses cold inlet, defined as nominal 50 °F, to heat at least one wash phase to 120 °F. (Public Hearing Tr. p. 173) The stakeholders at the hearing agreed that the intent of the definition was to require the necessary water-heating in at least one cycle, and several offered suggestions as to how the language might be clarified to make sure that the definition includes that requirement. AHAM and CEE submitted additional suggestions in written comments for revising the definitions. AHAM's and CEE's definitions proposed replacing the word "may" with the word "must." (AHAM No. 33 at 9; CEE No. 35 at 2) After reviewing the suggested changes, the Department selected the wording submitted by AHAM for use in section 1.9 of this test procedure. The Department believes that AHAM's proposed language most clearly states the requirement that all water-heating dishwashers must heat to at least 120 °F, regardless of the inlet temperature. The change in this definition represents a clarification of language to support the original intent of the test procedure, not a new definition.

OOE also questioned in written comments whether there is any justification for even providing the option of testing water heating dishwashers with 50 °F inlet temperature, since it would lengthen the dishwashing test cycle significantly. (OOE No. 36 at 5) Dropping the 50 °F testing option, however, was not discussed at the public hearing as part of the discussion to tighten the definition. Commenters' concern focused on closing the testing loophole that may have existed within the definition of water-heating dishwashers for conducting 50-degree tests, and not on eliminating the 50-degree testing

option entirely. Since the new definition for water-heating dishwashers in this final rule clarifies the testing procedure for those models, the Department believes that it is appropriate to retain the option to test a dishwasher using cold water. The Department does not wish to restrict manufacturers from developing a dishwasher that heats cold water (nominal 50 °F) as long as it can meet the testing requirements.

Retain Testing Voltage of 115 Volts

The September 2002 NOPR proposed changing the testing voltage from 115 volts within 2 percent of the nameplate frequency to 120 volts ±2 percent to be consistent with manufacturers' instructions which specify 120 volts in the installation procedures. AHAM commented that although this change was potentially a good one, at this time, it would endanger the compliance of minimally compliant models. While AHAM conceptually supported a test voltage revision to 120 volts ±2 percent, it was concerned with the impact of this proposed change on the ratings of all dishwashers, especially on minimally compliant models. AHAM explained that since wattage use increases based on the square of the voltage, the tested power consumption could increase by 3 to 5 percent. Therefore, to avoid triggering the statutory requirement that the applicable energy conservation standard (presently 2.174 kWh per cycle maximum) be amended, AHAM recommended that DOE retain the existing voltage ranges. (AHAM No. 30FF at 4) OOE also recommended keeping 115 volts for the time being and suggested that DOE examine this issue in more detail when developing a new efficiency standard. (OOE No. 36 at 3)

The Department agrees that it would be more appropriate to address this change during a standards rulemaking at a future time, since it would alter the power consumption of all models and potentially impact compliance. The Department is therefore retaining the 115 volt specification in section 2.2.1 of the test procedure. In order to make the test procedure instructions more clear and precise, DOE is rewriting the existing tolerance "within two percent of 115 volts" as "115 volts ±2 percent," and the existing tolerance in section 2.2.2 as "240 volts ±2 percent." This wording change does not change in any way the meaning or effect of the existing tolerance.

Reword Definition of Drying Energy, E_D

In testing two soil-sensing dishwashers using the proposed test procedure, NIST found that more detailed instructions were necessary to complete the determination of the drying energy, E_D, for soil-sensing dishwashers. NIST observed that while the new test procedure required testing soil-sensing dishwashers with three different soil levels, it did not specify how to compile the drying energy from the heavy response, medium response, and light response. Although there was no negative comment on this issue at the October 22nd public hearing or in written comments in response to the September 2002 NOPR, DOE is correcting this omission by defining the drying energy, E_D, for soil-sensing dishwashers as the mathematical average of the three soil level tests. This approach compiles the results of three tests to represent the normal cycle for a soil-sensing dishwasher and is consistent with the procedure for calculating representative machine energy and water consumption values. For non-soil-sensing dishwashers, the procedure is unchanged. The instructions for determining the E_D for soil-sensing and non-soil-sensing dishwashers are in section 5.2 of this rule.

The Department also determined that an additional clarification was necessary regarding the definition of the drying energy, E_D, that the NOPR described as "the energy consumed after the normal cycle is interrupted to eliminate the power-dry portion of the cycle." 67 FR 56241. The definition provides instructions on when to begin recording the drying energy: at the point separating the truncated normal cycle from the normal cycle. 67 FR 56241. Rather than representing the energy consumed by the drying portion of the cycle, the Department was concerned that use of the word "eliminate" could inaccurately suggest that the drying cycle is stopped entirely, resulting in zero drying energy. Because DOE's intent is to capture the drying energy for the normal cycle, the Department concluded that the definition should clearly state that E_D is the energy consumed using the power-dry feature. With this non-substantive clarification, the Department believes the revised definition will clearly instruct manufacturers or private labelers to measure the energy consumed during the drying cycle, correcting an oversight in the computation method for drying energy presented in the September 2002 NOPR. The revised definition, located in section 430.23 (c)(1)(i) of the test procedure, specifies E_D as the drying energy consumed after the termination of the last rinse option.

Reword Calculation of the Number of Standby Hours Per Year, H_s, and Duration of Wash Cycle, L

The test procedures for both soil-sensing, non-soil-sensing dishwashers calculate the number of standby hours per year, H_s, by subtracting the number of hours that the dishwasher is in use from the total number of hours per year. The estimated usage value is the product of the representative average number of use cycles per year, N, (215 in this final rule), and the average duration of the test wash cycle, L. In a written comment, OOE called attention to an inconsistency in the way that the manufacturers calculated the duration of the normal wash cycle for determining the number of standby hours. It stated that the computation proposed in the September 2002 NOPR for the number of standby hours was inconsistent with the method of calculating annual energy use because it multiplied the number of cycles times the normal cycle time to get the number of hours the dishwasher was operating and did not take into account any use of the truncated normal cycle. 67 FR 56244. OOE recommended "that the treatment of normal cycle time be consistent with normal cycle energy use computations—namely, that half of the normal cycles be *with* heated drying, and half *without*. It would be *highly* inappropriate to be inconsistent in this regard." (OOE No. 36 at 4, emphasis in original)

Although this change was not discussed at the hearing, the Department believes this suggested change corrects an oversight in the NOPR concerning the computation method for standby power. Not making this change would result in a slight overestimation of the annual wash time because the use of the truncated normal cycle shortens the wash time. By more accurately dividing the time spent in a wash cycle and the time spent in standby mode (for both conventional and soil-sensing dishwashers), DOE is making the calculation consistent with the current method of averaging the normal and truncated normal cycle values. Therefore, the Department has changed the definition of "L" in section 5.6 of this final rule in response to this comment to improve the accuracy in estimating the duration of the wash cycle.

In written comments after the public hearing, AHAM requested that DOE change the words "sensor medium cycle" to "sensor medium response" in the definition of L. (AHAM No. 33 at 10) The Department will make this change which is consistent with the

modification to the definition of "sensor medium response" in this rule. The Department will also make conforming changes with the additions of "sensor heavy response" and "sensor light response" to the definition of L. The Department has also modified the equation of H_s published in the NOPR by replacing "215 cycles/year" with "N" and defining "N" in section 5.6 of the final rule as "the representative average dishwasher use of 215 cycles per year." This change has no effect on the value calculated, but gives a clearer presentation of the equation, and is consistent with the definition of N presented in section 430.23 (c)(1)(i) for computing the EAOC.

Correct Typographical Error in Equation for Energy Factor (EF)

This final rule corrects a typographical error, a missing equal sign in the equation for EF on the first column of page 56242 of the September 2002 NOPR. (67 FR 56242)

Reword Flow Rate Tolerance

In section 3.3 of the September 2002 NOPR, the specifications for the water meter stated that the maximum error can be no greater than 1.5 percent for all water flow rates from one to five gallons per minute. AHAM suggested that the specification be changed to plus or minus 1.5 percent of the actual measured flow rate. This would "reflect the actual range of dishwasher operating flow rates for the tested product instead of a blanket range of one to five gallons per minute." (AHAM No. 33 at 7) Following the October 22nd public hearing, OOE submitted a comment endorsing this change. (OOE No. 36 at 4) The Department recognizes that the revised specification has the potential to reduce the testing burden for manufacturers or private labelers because the flow meter would only need to meet the specification of a maximum error of 1.5 percent at the test flow rate. Because it is irrelevant how the flow meter operates at flow rates outside of the testing range, manufacturers or private labelers would no longer be required to ensure a maximum error of 1.5 percent at flow rates outside of the test range. The Department believes this revision retains the original testing accuracy while potentially reducing instrumentation costs. Therefore, DOE has made this change in section 3.3 of the test procedure.

Reduce 140 °F Tolerance from ±5 °F to ±2 °F

Section 2.3.2 of the existing test procedure requires a tolerance of plus or minus 2 °F for maintaining the water supply temperature when testing with 120 °F inlet water temperature. Section 2.3.1 requires plus or minus 5 °F when testing with 140 °F inlet water temperature. Because water temperature is an important factor in calculating energy consumption, AHAM proposed that the tolerance at 140 °F be reduced to plus or minus 2 °F as well. (AHAM No. 33 at 7) This change narrows the testing band and thereby reduces variability in the test procedure. Because of this, and because industry suggested the change and does not view it as a test burden, DOE is incorporating the change into section 2.3.1 of this final rule.

Revise Format of Measurement Descriptions of Machine Electrical Energy Consumption and Water Consumption

The measurement instructions presented in sections 4.2 and 4.3 of the September 2002 NOPR contained some minor inconsistencies regarding the placement order of machine electrical energy consumption, "M", and water consumption, "W". With some minor rewording, the Department has improved the clarity of the instructions and the consistency of the format. These editorial modifications improve the description of the measurements without changing any test procedure requirements.

G. Effective Date of New Test Procedure

In the interest of making the new test procedure effective and available for use as soon as possible, Whirlpool, AHAM, OOE, and CEE recommended that the new rule take effect 30 days after publication of the rule. (Whirlpool No. 34 at 2; AHAM No. 33 at 6; OOE No. 36 at 4; CEE No. 35 at 1) Because the new test procedure will enable manufacturers or private labelers to test soil-sensing machines with greater accuracy, DOE agrees with this comment and has adopted a 30-day effective date to facilitate accuracy in testing and labeling. Thus, as early as 30 days after this final rule is published in the **Federal Register**, a manufacturer, distributor, retailer, or private labeler may begin using the new test procedure to make representations with respect to the energy use, efficiency, or cost of energy consumed by a dishwasher model. As noted above, effective 180 days after this final rule is published in the **Federal Register**, no manufacturer, distributor, retailer, or private labeler may make any representation with respect to the energy use, efficiency, or cost of energy consumed by a dishwasher model, unless the dishwasher has been tested in accordance with the new DOE test procedure and the representation fairly discloses the results of that testing.

H. Reporting Requirements

In the September 2002 NOPR, DOE requested comments regarding the possibility that the Department would at some future time "require manufacturers to produce reports concerning the testing of soil-sensing models pursuant to the amended test procedure." (67 FR 56238–56239) AHAM commented that the requirement of additional reports would be "misguided," believing that present reporting requirements adequately communicate energy usage of residential dishwashers. (AHAM No. 33 at 4) It commented that existing penalties would continue to deter incorrect reporting, and did not support new reporting requirements that would increase the complexity of, or the effort for, reporting energy usage. (AHAM No. 33 at 4) Whirlpool reiterated that it would not want to have to create additional documentation other than modifications to documents that it was already submitting. (Public Hearing Tr. p. 199)

The Department agrees that current reporting requirements do appear to cover the information necessary for conveying the energy usage of both non-soil-sensing and soil-sensing machines and will not require additional reports to DOE at this time. Although this final rule requires that the EAOC and EAEU must be calculated to include standby power, it does not require these figures be submitted to the DOE as part of a certification report. At the October 22 public hearing, there were no objections to calculating the EAEU in addition to the EAOC that manufacturers or private labelers already calculate. Manufacturers or private labelers should maintain their test records, including the EAOC and EAEU, as part of their permanent appliance files on each dishwasher model.

This final rule clarifies one change in a reporting requirement. The December 18, 2001, final rule (66 FR 65097) changed the definitions of compact and standard dishwashers, making place-setting capacity the determining factor instead of the width of the dishwasher. That final rule, however, did not eliminate the existing requirement in section 430.62(a)(4)(vi) to report the width of a dishwasher to DOE in certification reports. Because the width measurement no longer determines whether a dishwasher is a compact or standard model, DOE is not requiring manufacturers or private labelers to measure and report it. Instead, they

must report in their certification reports whether a dishwasher is a compact or standard model, determined according to the number of ANSI/AHAM DW–1 place settings it will hold at one time. (Section 430.62(a)(4)(vi)) This is a conforming change in light of the 2001 final rule.

I. Determination of Non-Compliant Models

Recognizing that the proposed new test procedure would alter the energy factors for soil-sensing models, the Department requested in the September 2002 NOPR that manufacturers or private labelers provide the Department with information on whether soil-sensing models that minimally comply with energy conservation standards when tested under the current test procedure would comply with the standards using the proposed new test procedure. AHAM submitted a written comment that one of the proposed changes in the test procedure would affect compliance for some dishwasher models: The proposal to change the test voltage from 115 volts to 120 volts. (67 FR 56243) If that change were made, AHAM stated that a significant number of units would no longer comply with the current energy conservation standards, since the 120 volts requirement would affect energy consumption by between three and five percent. However, if the test voltage were to remain at 115 volts, AHAM stated that it was not aware of any units that would fall out of compliance with the applicable energy conservation standards by using the proposed new test procedure. (AHAM No. 33 at 8) This issue was discussed at the October 22 public hearing, and the manufacturers agreed that aside from changing the voltage, the new test procedure would not create any compliance issues. AHAM commented at the public hearing, "We feel very confident that our response represents the entire industry in saying that there are not products that would approach minimal compliance from a soil sensor standpoint." (Public Hearing Tr. p. 115) When DOE asked the stakeholders at the hearing to confirm the Department's understanding that there are no soil-sensing models that are minimally compliant with the existing standard or that would fall out of compliance once the new test procedure is used, AHAM responded, "correct." (Public Hearing Tr. p. 115)

Since DOE has decided to maintain the test voltage at 115V and the comments and information DOE received demonstrate there are no dishwasher models that "minimally comply" with the energy conservation standards using the existing test procedure and that would fall out of compliance once the new test procedure is used, the Department is not required by EPCA section 323(e)(2) to make any changes to energy conservation standards at this time. The Department has therefore determined that although today's amended test procedure will alter the measured efficiency or measured energy use of some dishwasher models, it is not necessary to test models with the new test procedure or to consider or make any modifications to energy conservation standards.

J. Comments Outside the Scope of This Rulemaking

The previous sections of this Supplementary Information discussed comments concerning issues which directly affect this rulemaking. Many comments submitted to DOE in this proceeding, however, made suggestions which fell outside the scope and authority of this rulemaking, but raised interesting questions for the future. For example, although stakeholders reached a general consensus that the Department is using the best available data and information to determine the weighted soil loads at this time, Consumers Union (CU) and OOE questioned the process by which DOE would update that data in the future, if consumer pre-rinsing habits change. (CU No. 27 at 1; OOE No. 36 at 4) Because pre-rinsing consumes significant amounts of water, and overall a household uses less energy if dishes are not pre-rinsed before they are placed in a dishwasher, it is possible and desirable that consumer pre-rinsing habits will decrease over time. For example, CU expressed concern about the high percentage weighting which the light soil load receives in the test procedure and felt that the energy efficiency standard should also encourage the most efficient use patterns possible, rather than reflect the current widespread practice of pre-rinsing dishes. It urged the Department to establish a specific goal for improving consumer behavior, and to include in the rulemaking a system for making periodic adjustments to the weighting factors. It recommended that DOE conduct a survey of consumer rinsing practices at least every four years, beginning in 2006. (CU No. 27 at 1) However, AHAM stated that based on industry experience, customer usage habits do not change quickly. It commented that the dishwasher industry has lobbied consumers for years to reduce or eliminate pre-rinsing with little success, as the number of pre-rinsers has consistently hovered around two-thirds. AHAM believes that pre-rinsing practices and the associated soil levels going into the dishwasher are likely to remain stable for a long period of time. (AHAM No. 30FF at 6) The Department recognizes the importance of accurate consumer use data and urges stakeholders to inform DOE of any new information or studies. Interested parties can petition the Department to amend the test procedure when changes in consumer practices justify it. (42 U.S.C. 6293(b)(2))

General Electric (GE) requested that the ENERGY STAR® requirements stay at the current levels after the new test procedure takes effect. (GE No. 30EE at 1) Although the ENERGY STAR program is outside the scope of this test procedure rulemaking, the issue was discussed at the October 22nd public hearing. A DOE representative of the ENERGY STAR program explained that currently, the ENERGY STAR level for dishwashers is set at a level 25 percent higher (more efficient) than the minimum Federal energy efficiency standard. Recognizing that this rulemaking concerns test procedures and not energy efficiency standards, the DOE representative stated that ENERGY STAR levels would be revised only if the new test procedure also resulted in changes to the applicable energy conservation standards. As discussed above, no changes in applicable energy conservation standards are necessitated or are being made at this time. As far as standby energy was concerned, the DOE representative indicated that the ENERGY STAR program is also interested in how test results with the new test procedure come in, and how that would play into any future ENERGY STAR criteria. (Public Hearing Tr. p. 74–75)

Representatives of Energy Efficient Strategies and the Australian Greenhouse Office together submitted extensive comments addressing components of the dishwasher test procedure and broader issues concerning the U.S. testing and labeling program for appliances. Their comments addressed the following: Requiring both non-soil-sensing and soil-sensing dishwashers to use the soil test; the importance of assessing wash performance along with energy consumption to prevent the subversion of the test; incorporating the use of a reference machine with which to compare test results; measuring the energy of low power modes in addition to standby; and following the IEC test procedure as much as possible. They believed the dishwasher test procedure as proposed in the September 2002

NOPR would be too complex and prohibitively expensive from the manufacturers' perspective. Rather than relying on unquantifiable consumer behavior to set three different test levels, they stated that it would be better to use an arbitrarily selected soil load such as the IEC soil load of dishes that would provide a realistic basis for testing all dishwashers—an artificial but fair rating point for comparing products. (Australia No. 37 at 5)

These comments touch on many important questions. However, DOE rejects these suggestions. The rule DOE has decided to finalize today has received extensive scrutiny from U.S. manufacturers and stakeholders and earned significant consensus support. The commenters have not demonstrated that DOE's proposed test procedure is too complex or expensive; in fact, stakeholder consensus in support of the new test procedure and other modifications demonstrates otherwise. DOE further believes that the best empirical data available to it supports DOE's final rule. Finally the issue of coupling an assessment of wash performance with energy consumption testing is outside the scope of the Department's current appliance testing program and outside the scope of this rulemaking.

K. Implementation and Effect of New Test Procedure

Today's final rule will produce a more accurate and complete picture of dishwasher energy consumption by providing two test procedures according to dishwasher type. Manufacturers or private labelers first determine whether a dishwasher is a soil-sensing or non-soil-sensing model according to the definitions in sections 1.12 and 1.5 of the rule, and then follow instructions specific to that type of model. They must test soil-sensing dishwashers using a three-level, soil-based test which will yield an energy factor that is based on a range of challenges to the machines' automatic sensing systems. For non-soil-sensing dishwashers, manufacturers or private labelers still will use the original test procedure with clean dishes to determine the energy factor as the average of the test results from the normal and truncated normal cycles. In addition, manufacturers or private labelers must calculate the standby power consumption for any dishwasher using energy in standby mode and add that figure to the EAOC and EAEU totals, but not to the energy factor.

The test procedure for soil-sensing dishwashers requires manufacturers or private labelers to use ANSI/AHAM DW–1 to specify the size and composition of the place settings and the quantities and types of soils which they must apply to the dishes for the series of three soil tests: Heavy, medium and light. This final rule specifies in section 2.7 of the test procedure the type of dishware for manufacturers or private labelers to use, and in section 2.8 requires only half the detergent used in the ANSI/AHAM DW–1 performance test and no rinse agent. After they run a preconditioning cycle (section 2.10), the test procedure for standard size dishwasher models requires manufacturers or private labelers to conduct the following three tests in this order: First, the test for a dishwasher's heavy response, using four soiled place settings; second, the test for the medium response, using two soiled place settings; and third, the test for the light response, using one half the soil load for a single place setting. (Section 2.6.3) Tests of compact models follow the same order, but reduce the soiled loads for the heavy and medium tests by half. The light soil load is the same as for standard models. During each of the three test runs, the test procedure requires manufacturers or private labelers to calculate the machine energy consumption, drying energy consumption, water consumption, and water energy consumption. For soil-sensing dishwashers, the energy factor will combine the results of the three tests, averaged with the following weighted percentages which represent the frequency of those consumer loads: 0.05 for the heavy response, 0.33 for the medium response, and 0.62 for the light response. (Sections 5.1.2 and 5.2.2)

The test procedure defines standby mode and details the equipment and method for calculating standby energy consumption. (Section 4.4) Two options are available for measuring standby energy consumption, depending on whether the power is stable. If the stability criteria in section 4.4 are met, manufacturers or private labelers can measure the standby power directly using a wattmeter. If the standby power consumption is not stable, that is, there is excessive variation in the power levels, then the manufacturers or private labelers must measure the power consumption using a watt-hour meter over a period of at least five minutes. Then they calculate the average standby power by dividing the value measured using the watt-hour meter by measurement period. These changes provide the means to obtain a quantitative value for the level of standby power which the dishwasher consumes. Manufacturers or private labelers must add this standby power amount to the machine and water energy computed for the normal cycle and representative normal cycle for soil-sensing models, and include those amounts in the EAOC and EAEU.

By combining standby power consumption with the energy consumed by the wash cycle, this test procedure will calculate information that will provide consumers with more realistic and accurate estimates of the complete operating cost and energy use of each dishwasher. With the soil test, soil-sensing dishwashers have a test procedure that challenges the cycle responses which the sensing technology controls. It will provide a better approximation of the actual energy consumption of soil-sensing models as consumers use them than did the original test which used clean dishes and did not engage the action of the soil-sensing mechanisms to take a dishwasher beyond the lightest wash cycles.

III. Procedural Requirements

A. Review Under the National Environmental Policy Act of 1969

In this rule, the Department finalizes amendments to test procedures that are used to implement energy conservation standards for dishwashers. The Department has reviewed the rule under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality, 40 CFR parts 1500–1508, and the Department's regulations for compliance with NEPA, 10 CFR part 1021. The Department has determined that this rule falls into a class of actions that are categorically excluded from review under NEPA. This rule will not affect the quality or distribution of energy usage and, therefore, will not result in any environmental impacts. The Department has therefore determined that this rule is covered by Categorical Exclusion A5, for rulemakings that interpret or amend an existing rule without changing its environmental effect, as set forth in the Department's NEPA regulations in appendix A to subpart D, 10 CFR part 1021. Accordingly, neither an environmental impact statement nor an environmental assessment is required.

B. Review Under Executive Order 12866, "Regulatory Planning and Review"

Today's final rule is not a "significant regulatory action" as defined in section 3(f) of Executive Order 12866, "Regulatory Planning and Review" 58 FR 51735 (October 4, 1993). Accordingly, today's action is not subject to review under the Executive

Order by the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget.

C. Review Under Executive Order 13211, "Action Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use"

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OIRA a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to the promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's final rule is not a significant regulatory action, nor will it have a significant adverse effect on the supply, distribution, or use of energy. Therefore, today's final rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

D. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for every rule which the agency must propose for public comment, by law, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and considers alternative ways of reducing negative impacts. 5 U.S.C. 605.

Today's rule prescribes test procedures that will be used to test compliance with energy conservation standards and labeling. Because the rule affects only test procedures and not the minimum energy efficiency standard levels for dishwasher models, the Department believes that it will not have a significant economic impact. Instead, it will provide common testing methods for all dishwasher manufacturers or private labelers, and will improve the accuracy of information provided to consumers. The overall size of the dishwasher manufacturing industry also negates the necessity for a regulatory flexibility analysis. The Small Business Administration (SBA) considers an entity to be a small business if, together with its affiliates, it employs fewer than a threshold number of workers specified in 13 CFR part 121 according to the North American Industry Classification System (NAICS) codes. The threshold number for NAICS classification 335228, which includes dishwashers with other major household appliances, is 500 workers. Using this SBA size standard, the Department determined that there are very few small entities among dishwasher manufacturers or private labelers. Furthermore, two such companies identified as small do not manufacture or distribute any dishwasher models that would be affected by the new test procedure. Because the companies presently have no models using soil-sensing technology or standby power, their testing requirements would not change as a result of this rule. Therefore, DOE certifies that today's rule would not have a "significant economic impact on a substantial number of small entities," and the preparation of a regulatory flexibility analysis is not warranted.

E. Review Under Executive Order 13132, "Federalism"

Executive Order 13132, "Federalism," (64 FR 43255, August 4, 1999), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are substantial direct effects, then this Executive Order requires preparation of a Federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

The rule published today would not regulate or otherwise affect the States. Accordingly, DOE has determined that preparation of a Federalism assessment is unnecessary.

F. Review Under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights"

DOE has determined under Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights," (52 FR 8859, March 18, 1988), that this rule will not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

G. Review Under the Paperwork Reduction Act

No new information or record keeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

H. Review Under Executive Order 12988, "Civil Justice Reform'

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by sections 3(a) and 3(b) of the Executive Order, Executive agencies must make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of the Executive Order requires agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them.

DOE reviewed today's final rule under the standards of section 3 of the Executive Order and determined that, to the extent permitted by law, the final regulations meet the requirements of those standards.

I. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91), the Department of Energy must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of

1977. (15 U.S.C. 788). Section 32 provides in essence that, where a rule contains or involves use of commercial standards, the rulemaking must inform the public of the use and background of such standards.

The September 2002 NOPR proposed a new test procedure for soil-sensing dishwashers. This test procedure incorporated a commercial standard (i.e., ANSI/AHAM DW–1–1992) that previously had been incorporated into the test procedure applicable to dishwashers generally, and therefore the public already had been informed about the use and background of that standard and DOE already had performed any consultation required prior to its incorporation into a test procedure. The September 2002 NOPR also proposed incorporating an August 20, 1999 addendum to ANSI/AHAM DW–1–1992, and therefore DOE stated that as required by section 32 of the Federal Energy Administration Act of 1974, it would consult with the Attorney General and the Chairman of the Federal Trade Commission concerning its impact on competition, prior to prescribing a final rule. (67 FR 56240) This addendum specified the kind of test load (dishware and flatware) to be used in the test procedure. However, so that the test procedure will use the most up to date specifications for currently available dishware and flatware, the Department has decided not to incorporate this addendum in its test procedure. Instead, the Department is listing the specified dishware and flatware in the text of the test procedure as set forth in this final rule. Because the final rule does not incorporate by reference any new industry standards, the Department is not required by section 32(c) to consult with the Attorney General and the Chairman of the Federal Trade Commission concerning the impact on competition of any such new standards. Therefore, the Department has not done so.

J. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and tribal governments and the private sector. The Act also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under the Act (62 FR 12820). The rule published today does not contain any Federal mandate, so these requirements do not apply.

K. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. No. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule or policy that may affect family well-being. Today's final rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

L. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). The Department has reviewed today's notice under the OMB and DOE guidelines, and has concluded that it is consistent with applicable policies in those guidelines.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 6 U.S.C. 801(2).

N. Approval by the Office of the Secretary

The Secretary of Energy has approved issuance of this final rule.

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances, Incorporation by reference.

Issued in Washington, DC, on August 25, 2003.

David K. Garman,

Assistant Secretary, Energy Efficiency and Renewable Energy.

■ For the reasons set forth in the preamble, the Department amends part 430 of chapter II of title 10, Code of Federal Regulations, to read as follows:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 1. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

■ 2. Section 430.22 is amended in subpart B by revising paragraph (b)(7) to read as follows:

§ 430.22 Reference Sources.

* * * * *

(b) * * *

(7) Association of Home Appliance Manufacturers, 1111 19th Street, NW., Suite 402, Washington, DC 20036, (202) 872–5955, "American National Standard, Household Electric Dishwashers, ANSI/AHAM DW–1–1992," hereinafter referred to as ANSI/AHAM DW–1.

* * * * *

■ 3. Section 430.23 of subpart B is amended by revising paragraph (c) to read as follows:

* * * * *

(c) *Dishwashers.* (1) The Estimated Annual Operating Cost (EAOC) for dishwashers must be rounded to the nearest dollar per year and is defined as follows:

(i) When cold water (50 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart,

$$EAOC = (D_e \times S) + (D_e \times N \times (M - (E_D/2))).$$

(B) For dishwashers not having a truncated normal cycle,

$$EAOC = (D_e \times S) + (D_e \times N \times M)$$

Where,

D_e = the representative average unit cost of electrical energy, in dollars per kilowatt-hour, as provided by the Secretary,

S = the annual standby electrical energy in kilowatt-hours per year and determined according to section 5.6 of Appendix C to this subpart,

N = the representative average dishwasher use of 215 cycles per year,

M = the machine electrical energy consumption per-cycle for the normal cycle as defined in section

1.6 of Appendix C to this subpart, in kilowatt-hours and determined according to section 5.1 of Appendix C to this subpart,

E_D = the drying energy consumption defined as energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle and determined according to section 5.2 of appendix C to this subpart.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart,

$EAOC = (D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_e \times N \times W)$

(B) For dishwashers not having a truncated normal cycle,

$EAOC = (D_e \times S) + (D_e \times N \times M) + (D_e \times N \times W)$

Where,

D_e, S, N, M, and E_D, are defined in paragraph (c)(1)(i) of this section, and

W = the total water energy consumption per cycle for the normal cycle as defined in section 1.6 of Appendix C to this subpart, in kilowatt-hours per cycle and determined according to section 5.4 of Appendix C to this subpart.

(iii) When gas-heated or oil-heated water is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart,

$EAOC_g = (D_e \times S) + (D_e \times N \times (M - (E_D/2))) + (D_g \times N \times W_g)$

(B) For dishwashers not having a truncated normal cycle,9

$EAOC_g = (D_e \times S) + (D_e \times N \times M) + (D_g \times N \times W_g)$

Where,

D_e, S, N, M, and E_D are defined in paragraph (c)(1)(i) of this section,

D_g = the representative average unit cost of gas or oil, as appropriate, in dollars per Btu, as provided by the Secretary, and

W_g = the total water energy consumption per cycle for the normal cycle as defined in section 1.6 of appendix C to this subpart, in Btu's per cycle and determined according to section 5.5 of appendix C to this subpart.

(2) The energy factor for dishwashers, EF, expressed in cycles per kilowatt-hour is defined as follows:

(i) When cold water (50 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart,

$EF = 1/(M - (E_D/2))$

(B) For dishwashers not having a truncated normal cycle,

$EF = 1/M$

Where,

M, and E_D are defined in paragraph (c)(1)(i) of this section.

(ii) When electrically-heated water (120 °F or 140 °F) is used,

(A) For dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart,

$EF = 1/(M - (E_D/2) + W)$

(B) For dishwashers not having a truncated normal cycle,

$EF = 1/(M + W)$

Where,

M, and E_D are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii)of this section.

(3) The estimated annual energy use, EAEU, expressed in kilowatt-hours per year is defined as follows:

(i) For dishwashers having a truncated normal cycle as defined in section 1.15 of appendix C to this subpart,

$EAEU = (M - (E_D/2) + W) \times N + S$

Where,

M, E_D, N and S are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii) of this section.

(ii) For dishwashers not having a truncated normal cycle,

$EAEU = (M + W) \times N + S$

Where,

M, N and S are defined in paragraph (c)(1)(i) of this section, and W is defined in paragraph (c)(1)(ii) of this section.

(4) Other useful measures of energy consumption for dishwashers are those which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix C to this subpart.

* * * * *

■ 4. Appendix C to subpart B of part 430 is revised to read as follows:

Appendix C to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Dishwashers

The provisions of this Appendix C shall apply to products manufactured after September 29, 2003. The restriction on representations concerning energy use or efficiency in 42 U.S.C. 6293(c)(2) shall apply on February 25, 2004.

1. Definitions

1.1 "*AHAM*" means the Association of Home Appliance Manufacturers.

1.2 "*Compact dishwasher*" means a dishwasher that has a capacity of less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 (*see* § 430.22), using the test load specified in section 2.7 of this Appendix.

1.3 "*Cycle*" means a sequence of operations of a dishwasher which performs a complete dishwashing function, and may include variations or combinations of washing, rinsing, and drying.

1.4 "*Cycle type*" means any complete sequence of operations capable of being preset on the dishwasher prior to the initiation of machine operation.

1.5 "*Non-soil-sensing dishwasher*" means a dishwasher that does not have the ability to adjust automatically any energy consuming aspect of a wash cycle based on the soil load of the dishes.

1.6 "*Normal cycle*" means the cycle type recommended by the manufacturer for completely washing a full load of normally soiled dishes including the power-dry feature.

1.7 "*Power-dry feature*" means the introduction of electrically generated heat into the washing chamber for the purpose of improving the drying performance of the dishwasher.

1.8 "*Preconditioning cycle*" means any cycle that includes a fill, circulation, and drain to ensure that the water lines and sump area of the pump are primed.

1.9 "*Sensor heavy response*" means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, four place settings of which are soiled according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22). For compact dishwashers, this definition is the same, except that two soiled place settings are used instead of four.

1.10 "*Sensor light response*" means, for both standard and compact dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, one place setting of which is soiled with half of the gram weight of soils for each item specified in a single place setting according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22).

1.11 "*Sensor medium response*" means, for standard dishwashers, the set of operations in a soil-sensing dishwasher for completely washing a load of dishes, two place settings of which are soiled according to ANSI/AHAM DW–1 (Incorporated by reference, see § 430.22). For compact dishwashers, this definition is the same, except that one soiled place setting is used instead of two.

1.12 "*Soil-sensing dishwasher*" means a dishwasher that has the ability to adjust any energy consuming aspect of a wash cycle based on the soil load of the dishes.

1.13 "*Standard dishwasher*" means a dishwasher that has a capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 (Incorporated by reference, see § 430.22), using the test load specified in section 2.7 of this Appendix.

1.14 "*Standby mode*" means the lowest power consumption mode which cannot be switched off or influenced by the user and

that may persist for an indefinite time when the dishwasher is connected to the main electricity supply and used in accordance with the manufacturer's instructions.

1.15 "*Truncated normal cycle*" means the normal cycle interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.16 "*Truncated sensor heavy response*" means the sensor heavy response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.17 "*Truncated sensor light response*" means the sensor light response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.18 "*Truncated sensor medium response*" means the sensor medium response interrupted to eliminate the power-dry feature after the termination of the last rinse operation.

1.19 "*Water-heating dishwasher*" means a dishwasher which, as recommended by the manufacturer, is designed for heating cold inlet water (nominal 50 °F) or designed for heating water with a nominal inlet temperature of 120 °F. Any dishwasher designated as water-heating (50 °F or 120 °F inlet water) must provide internal water heating to above 120 °F in at least one wash phase of the normal cycle.

2. Testing conditions:

2.1 *Installation Requirements.* Install the dishwasher according to the manufacturer's instructions. A standard or compact under-counter or under-sink dishwasher must be tested in a rectangular enclosure constructed of nominal 0.374 inch (9.5 mm) plywood painted black. The enclosure must consist of a top, a bottom, a back, and two sides. If the dishwasher includes a counter top as part of the appliance, omit the top of the enclosure. Bring the enclosure into the closest contact with the appliance that the configuration of the dishwasher will allow.

2.2 *Electrical energy supply.*

2.2.1 *Dishwashers that operate with an electrical supply of 115 volts.* Maintain the electrical supply to the dishwasher at 115 volts ± 2 percent and within 1 percent of the nameplate frequency as specified by the manufacturer.

2.2.2 *Dishwashers that operate with an electrical supply of 240 volts.* Maintain the electrical supply to the dishwasher at 240 volts ± 2 percent and within 1 percent of its nameplate frequency as specified by the manufacturer.

2.3 *Water temperature.* Measure the temperature of the water supplied to the dishwasher using a temperature measuring device as specified in section 3.1 of this Appendix.

2.3.1 *Dishwashers to be tested at a nominal 140 °F inlet water temperature.* Maintain the water supply temperature at 140° ± 2 °F.

2.3.2 *Dishwashers to be tested at a nominal 120 °F inlet water temperature.* Maintain the water supply temperature at 120° ± 2 °F.

2.3.3 *Dishwashers to be tested at a nominal 50 °F inlet water temperature.* Maintain the water supply temperature at 50° ± 2 °F.

2.4 *Water pressure.* Using a water pressure gauge as specified in section 3.4 of this Appendix, maintain the pressure of the water supply at 35 ± 2.5 pounds per square inch gauge (psig) when the water is flowing.

2.5 *Ambient and machine temperature.* Using a temperature measuring device as specified in section 3.1 of this Appendix, maintain the room ambient air temperature at 75° ± 5 °F, and ensure that the dishwasher and the test load are at room ambient temperature at the start of each test cycle.

2.6 *Test Cycle and Load.*

2.6.1 *Non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 140 °F.* These units must be tested on the normal cycle and truncated normal cycle without a test load if the dishwasher does not heat water in the normal cycle.

2.6.2 *Non-soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F or 120 °F.* These units must be tested on the normal cycle with a clean load of eight place settings plus six serving pieces, as specified in section 2.7 of this Appendix. If the capacity of the dishwasher, as stated by the manufacturer, is less than eight place settings, then the test load must be the stated capacity.

2.6.3 *Soil-sensing dishwashers to be tested at a nominal inlet temperature of 50 °F, 120 °F, or 140 °F.* These units must be tested first for the sensor heavy response, then tested for the sensor medium response, and finally for the sensor light response with the following combinations of soiled and clean test loads.

2.6.3.1 For tests of the sensor heavy response, as defined in section 1.9 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. Four of the eight place settings must be soiled according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. Two of the four place settings must be soiled according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22) while the remaining place settings, serving pieces, and all flatware are not soiled.

2.6.3.2 For tests of the sensor medium response, as defined in section 1.11 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. Two of the eight place settings must be soiled according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the four place settings must be soiled according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22) while the remaining place settings, serving pieces and all flatware are not soiled.

2.6.3.3 For tests of the sensor light response, as defined in section 1.10 of this Appendix:

(A) For standard dishwashers, the test unit is to be loaded with a total of eight place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the eight place settings must be soiled with half of the soil load specified for a single place setting according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22) while the remaining place settings, serving pieces, and all flatware are not soiled.

(B) For compact dishwashers, the test unit is to be loaded with four place settings plus six serving pieces as specified in section 2.7 of this Appendix. One of the four place settings must be soiled with half of the soil load specified for a single place setting according to the ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22) while the remaining place settings, serving pieces, and all flatware are not soiled.

2.7 *Test Load.*

Dishware/glassware/flatware item	Primary source	Description	Primary No.	Alternate source	Alternate source No.
Dinner Plate	Corning Comcor®/Corelle®	10 inch Dinner Plate	6003893		
Bread and Butter Plate	Corning Comcor®/Corelle®	6.75 inch Bread & Butter	6003887	Arzberg	8500217100
Fruit Bowl	Corning Comcor®/Corelle®	10 oz. Dessert Bowl	6003899	Arzberg	3820513100
Cup	Corning Comcor®/Corelle®	8 oz. Ceramic Cup	6014162	Arzberg	3824732100
Saucer	Corning Comcor®/Corelle®	6 inch Saucer	6010972	Arzberg	3824731100
Serving Bowl	Corning Comcor®/Corelle®	1 qt. Serving Bowl	6003911		
Platter	Corning Comcor®/Corelle®	9.5 inch Oval Platter	6011655		
Glass-Iced Tea	Libbey		551 HT		
Flatware—Knife	Oneida®—Accent		2619KPVF		
Flatware—Dinner Fork	Oneida®—Accent		2619FRSF		
Flatware—Salad Fork	Oneida®—Accent		2619FSLF		
Flatware—Teaspoon	Oneida®—Accent		2619STSF		
Flatware—Serving Fork	Oneida®—Flight		2865FCM		

Dishware/glassware/flatware item	Primary source	Description	Primary No.	Alternate source	Alternate source No.
Flatware—Serving Spoon	Oneida®—Accent	.....	2619STBF		

2.8 *Detergent.* Use half the quantity of detergent specified according to ANSI/AHAM DW–1 (Incorporated by reference, *see* § 430.22).

2.9 *Testing requirements.* Provisions in this Appendix pertaining to dishwashers that operate with a nominal inlet temperature of 50 °F or 120 °F apply only to water-heating dishwashers as defined in section 1.19 of this Appendix.

2.10 *Preconditioning requirements.* Precondition the dishwasher by establishing the testing conditions set forth in sections 2.1 through 2.5 of this Appendix. Set the dishwasher to the preconditioning cycle as defined in section 1.8 of this Appendix, without using a test load, and initiate the cycle.

3. Instrumentation

Test instruments must be calibrated annually.

3.1 *Temperature measuring device.* The device must have an error no greater than ± 1 °F over the range being measured.

3.2 *Timer.* Time measurements for each monitoring period shall be accurate to within 2 seconds.

3.3 *Water meter.* The water meter must have a resolution of no larger than 0.1 gallons and a maximum error no greater than ± 1.5% percent of the measured flow rate for all water temperatures encountered in the test cycle.

3.4 *Water pressure gauge.* The water pressure gauge must have a resolution of one pound per square inch (psi) and must have an error no greater than 5 percent of any measured value over the range of 35 ± 2.5 psig.

3.5 *Watt-hour meter.* The watt-hour meter must have a resolution of 1 watt-hour or less and a maximum error of no more than 1 percent of the measured value for any demand greater than 50 watts.

3.6 *Standby wattmeter.* The standby wattmeter must have a resolution of 0.1 watt or less, a maximum error of no more than 1 percent of the measured value, and must be capable of operating within the stated tolerances for input voltages up to 5 percent total harmonic distortion. The standby wattmeter must be capable of operating at frequencies from 47 hertz through 63 hertz. Power measurements must have a crest factor of 3 or more at currents of 2 amps RMS or less.

3.7 *Standby watt-hour meter.* The standby watt-hour meter must meet all the requirements of the standby wattmeter and must accumulate watt-hours at a minimum power level of 20 milliwatts.

4. Test Cycle and Measurements

4.1 *Test cycle.* Perform a test cycle by establishing the testing conditions set forth in section 2 of this Appendix, setting the dishwasher to the cycle type to be tested, initiating the cycle, and allowing the cycle to proceed to completion.

4.2 *Machine electrical energy consumption.* Measure the machine electrical energy consumption, M, expressed as the number of kilowatt-hours of electricity consumed by the machine during the entire test cycle, using a water supply temperature as set forth in section 2.3 of this Appendix and using a watt-hour meter as specified in section 3.5 of this Appendix.

4.3 *Water consumption.* Measure the water consumption, V, expressed as the number of gallons of water delivered to the machine during the entire test cycle, using a water meter as specified in section 3.3 of this Appendix.

4.4 *Standby power.* Connect the dishwasher to a standby wattmeter or a standby watt-hour meter as specified in sections 3.6 and 3.7, respectively, of this Appendix. Select the conditions necessary to achieve operation in the standby mode as defined in section 1.14 of this Appendix. Monitor the power consumption but allow the dishwasher to stabilize for at least 5 minutes. Then monitor the power consumption for at least an additional 5 minutes. If the power level does not change by more than 5 percent from the maximum observed value during the later 5 minutes and there is no cyclic or pulsing behavior of the load, the load can be considered stable. For stable operation, standby power, S_m, can be recorded directly from the standby watt meter in watts or accumulated using the standby watt-hour meter over a period of at least 5 minutes. For unstable operation, the energy must be accumulated using the standby watt-hour meter over a period of at least 5 minutes and must capture the energy use over one or more complete cycles. Calculate the average standby power, S_m, expressed in watts by dividing the accumulated energy consumption by the duration of the measurement period.

5. Calculation of Derived Results From Test Measurements

5.1 *Machine energy consumption.*

5.1.1 *Machine energy consumption for non-soil-sensing electric dishwashers.* Take the value recorded in section 4.2 of this Appendix as the per-cycle machine electrical energy consumption. Express the value, M, in kilowatt-hours per cycle.

5.1.2 *Machine energy consumption for soil-sensing electric dishwashers.* The machine energy consumption for the sensor normal cycle, M, is defined as:

$$M = (M_{hr} \times F_{hr}) + (M_{mr} \times F_{mr}) + (M_{lr} \times F_{lr})$$

where,

M_{hr} = the value recorded in section 4.2 of this Appendix for the test of the sensor heavy response, expressed in kilowatt-hours per cycle,

M_{mr} = the value recorded in section 4.2 of this Appendix for the test of the sensor medium response, expressed in kilowatt-hours per cycle,

M_{lr} = the value recorded in section 4.2 of this Appendix for the test of the sensor light response, expressed in kilowatt-hours per cycle,

F_{hr} = the weighting factor based on consumer use of heavy response = 0.05,

F_{mr} = the weighting factor based on consumer use of medium response = 0.33,

F_{lr} = the weighting factor based on consumer use of light response = 0.62.

5.2 Drying energy.

5.2.1 *Drying energy consumption for non-soil-sensing electric dishwashers.* Calculate the amount of energy consumed using the power-dry feature after the termination of the last rinse option of the normal cycle. Express the value, E_D, in kilowatt-hours per cycle.

5.2.2 *Drying energy consumption for soil-sensing electric dishwashers.* The drying energy consumption, E_D, for the sensor normal cycle is defined as:

$$E_D = (E_{Dhr} + E_{Dmr} + E_{Dlr})/3$$

Where,

E_{Dhr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor heavy response, expressed in kilowatt-hours per cycle,

E_{Dmr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor medium response, expressed in kilowatt-hours per cycle,

E_{Dlr} = energy consumed using the power-dry feature after the termination of the last rinse option of the sensor light response, expressed in kilowatt-hours per cycle.

5.3 *Water consumption.*

5.3.1 *Water consumption for non-soil-sensing dishwashers using electrically heated, gas-heated, or oil-heated water.*

Take the value recorded in section 4.3 of this Appendix as the per-cycle water energy consumption. Express the value, V, in gallons per cycle.

5.3.2 *Water consumption for soil-sensing dishwashers using electrically heated, gas-heated, or oil-heated water.*

The water consumption for the sensor normal cycle, V, is defined as:

$$V = (V_{hr} \times F_{hr}) + (V_{mr} \times F_{mr}) + (V_{lr} \times F_{lr})$$

Where,

V_{hr} = the value recorded in section 4.3 of this Appendix for the test of the sensor heavy response, expressed in gallons per cycle,

V_{mr} = the value recorded in section 4.3 of this Appendix for the test of the sensor medium response, expressed in gallons per cycle,

V_{lr} = the value recorded in section 4.3 of this Appendix for the test of the sensor light response, expressed in gallons per cycle,

F_{hr} = the weighting factor based on consumer use of heavy response = 0.05,

F_{mr} = the weighting factor based on consumer use of medium response = 0.33,

F_{lr} = the weighting factor based on consumer use of light response = 0.62.

5.4 *Water energy consumption for non-soil-sensing or soil-sensing dishwashers using electrically heated water.*

5.4.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.* For the normal and truncated normal test cycle, calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$W = V \times T \times K$

Where,

V = water consumption in gallons per cycle, as determined in section 5.3.1 of this Appendix,

T = nominal water heater temperature rise = 90 °F,

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.4.2 *Dishwashers that operate with a nominal inlet water temperature of 120 °F.* For the normal and truncated normal test cycle, calculate the water energy consumption, W, expressed in kilowatt-hours per cycle and defined as:

$W = V \times T \times K$

Where,

V = water consumption in gallons per cycle, as determined in section 5.3.1 of this Appendix,

T = nominal water heater temperature rise = 70 °F,

K = specific heat of water in kilowatt-hours per gallon per degree Fahrenheit = 0.0024.

5.5 *Water energy consumption per cycle using gas-heated or oil-heated water.*

5.5.1 *Dishwashers that operate with a nominal 140 °F inlet water temperature, only.* For each test cycle, calculate the water energy consumption using gas-heated or oil-heated water, W_g, expressed in Btu's per cycle and defined as:

$W_g = V \times T \times C/e$

Where,

V = reported water consumption in gallons per cycle, as determined in section 5.3.2 of this Appendix,

T = nominal water heater temperature rise = 90 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2,

e = nominal gas or oil water heater recovery efficiency = 0.75.

5.5.2 *Dishwashers that operate with a nominal inlet water temperature of 120 °F.* For each test cycle, calculate the water energy consumption using gas heated or oil heated water, W_g, expressed in Btu's per cycle and defined as:

$W_g = V \times T \times C/e$

Where,

V = reported water consumption in gallons per cycle, as determined in section 5.3.2 of this Appendix,

T = nominal water heater temperature rise = 70 °F,

C = specific heat of water in Btu's per gallon per degree Fahrenheit = 8.2,

e = nominal gas or oil water heater recovery efficiency = 0.75,

5.6 *Annual standby energy consumption.* Calculate the estimated annual standby energy consumption. First determine the number of standby hours per year, H_s, defined as:

$H_s = H - (N \times L)$.

Where,

H = the total number of hours per year = 8766 hours per year,

N = the representative average dishwasher use of 215 cycles per year,

L = the average of the duration of the normal cycle and truncated normal cycle, for non-soil-sensing dishwashers with a truncated normal cycle; the duration of the normal cycle, for non-soil-sensing dishwashers without a truncated normal cycle; the average duration of the sensor light response, truncated sensor light response, sensor medium response, truncated sensor medium response, sensor heavy response, and truncated sensor heavy response, for soil-sensing dishwashers with a truncated cycle option; the average duration of the sensor light response, sensor medium response, and sensor heavy response, for soil-sensing dishwashers without a truncated cycle option.

Then calculate the estimated annual standby power use, S, expressed in kilowatt-hours per year and defined as:

$S = S_m \times ((H_s)/1000)$

Where,

S_m = the average standby power in watts as determined in section 4.4 of this Appendix.

■ 5. Section 430.32 of subpart C is amended by revising paragraph (f) to read as follows:

§ 430.32 Energy and water conservation standards and effective dates.

* * * * *

(f) *Dishwashers.* The energy factor of dishwashers manufactured on or after May 14, 1994, must not be less than:

Product class	Energy factor (cycles/kWh)
(1) Compact Dishwasher (capacity less than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 [Incorporated by reference, see § 430.22] using the test load specified in section 2.7 of Appendix C in subpart B)	0.62
(2) Standard Dishwasher (capacity equal to or greater than eight place settings plus six serving pieces as specified in ANSI/AHAM DW–1 [Incorporated by Reference, see § 430.22] using the test load specified in section 2.7 of Appendix C in subpart B)	0.46

* * * * *

■ 6. Section 430.62 is amended in subpart F by revising paragraph (a)(4)(vi) to read as follows:

§ 430.62 Submission of data.

(a) * * *

(4) * * *

(vi) Dishwashers, the energy factor expressed in cycles per kilowatt-hour.

* * * * *

[FR Doc. 03–22120 Filed 8–28–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

19 CFR Part 12

[CBP Dec. 03–25]

RIN 1515–AD38

Extension of Emergency Import Restrictions Imposed on Ethnological Material From Cyprus

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: In T.D. 99–35, the Customs Regulations were amended to reflect the imposition of emergency import restrictions on certain ethnological material from Cyprus. These restrictions were imposed pursuant to a determination by the United States Information Agency issued under the terms of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Recently, the United States Department of State determined that conditions continue to warrant the imposition of these emergency import restrictions for a period not to exceed 3 years. Thus, this document amends the Customs regulations to reflect that the emergency import restrictions currently in place continue, without interruption, for 3 years from September 4, 2003. T.D. 99–35 contains the Designated List describing the Byzantine ecclesiastical and ritual ethnological material from Cyprus to which the restrictions apply.

EFFECTIVE DATE: This regulation and the extension of emergency import restrictions reflected in this regulation become effective on September 4, 2003.

FOR FURTHER INFORMATION CONTACT: (Regulatory Aspects) Joseph Howard,

Intellectual Property Rights Branch (202) 572–8701; (Operational Aspects) Michael Craig, Office of Field Operations (202) 927–0370.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the 1970 UNESCO Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601, *et seq.*) (the Act), the United States, after a request was made by the Government of Cyprus on September 4, 1998, imposed emergency import restrictions on Byzantine ecclesiastical and ritual ethnological material from Cyprus for a period of 5 years from the date of the request. These restrictions and the list of materials covered by them were published in the **Federal Register** (64 FR 17529, April 12, 1999) by the U.S. Customs Service in Treasury Decision (T.D.) 99–35. The T.D. amended § 12.104g(b) of the Customs Regulations which lists emergency import restrictions on cultural property imposed under the Act. The restrictions became effective on April 12, 1999.

Under 19 U.S.C. 2603(c)(3), emergency restrictions may be extended for a period of 3 years upon a determination by the United States that the emergency condition continues to apply with respect to the articles covered by the restrictions. On August 25, 2003, the Acting Assistant Secretary for Educational and Cultural Affairs, Department of State, issued the determination that the emergency condition continues to apply to the articles covered in T.D. 99–35. Accordingly, Customs and Border Protection is amending § 12.104g(b) to reflect the extension of the emergency import restrictions for a 3-year period; this extension of restrictions commences on September 4, 2003. The list of ethnological materials contained in T.D. 99–35 and an accompanying image database may also be found at the following Internet website address: *http://exchanges.state.gov/culprop.*

Based on the foregoing, importation of these materials continues to be restricted unless the conditions set forth in 19 U.S.C. 2606 and 19 CFR 12.104c are met. For example, these materials may be permitted entry if accompanied by appropriate export certification issued by the Government of Cyprus or by documentation showing that exportation from Cyprus occurred before April 12, 1999.

The document also amends 19 CFR 12.104g(a) and 104g(b), in the third column heading of the lists set forth in those sections, by removing the words "T.D. No." and replacing them with the words "Decision No." This change is made in recognition of the fact that import restrictions are now published by CBP Decisions as opposed to Treasury Decisions. A conforming change is also made to the text of 19 CFR 12.104g(b).

This amendment to the regulations is being issued in accordance with § 0.2(a) of the Customs Regulations (19 CFR 0.2(a)) pertaining to the authority of the Secretary of Homeland Security (or his/her delegate) to prescribe regulations not involving customs revenue functions in accordance with the delegation of such authority by the Secretary of the Treasury.

Inapplicability of Notice and Delayed Effective Date

Because the amendment to the Customs Regulations contained in this document extends emergency import restrictions already imposed on the referenced cultural property of Cyprus under the terms of the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*), in accordance with the 1970 UNESCO Convention and in furtherance of a foreign affairs function of the United States, pursuant to the Administrative Procedure Act (5 U.S.C. 553(a)(1)), no notice of proposed rulemaking or public procedure is necessary and a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Accordingly, this final rule is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Executive Order 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in E.O. 12866.

Drafting Information

The principal author of this document was Bill Conrad, Regulations Branch, Office of Regulations and Rulings, Bureau of Customs and Border Protection.

List of Subjects in 19 CFR Part 12

Customs duties and inspections, Imports, Cultural property.

Amendment to the Regulations

■ Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended, as set forth below:

PART 12—[AMENDED]

■ 1. The general authority and specific authority citations for Part 12, in part, continue to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

* * * * *

§ 12.104g [Amended]

■ 2. Section 12.104g is amended as follows:

■ a. In paragraph (a), in the heading of column three of the chart, by removing the words "T.D. No." and adding in their place the words "Decision No.";

■ b. In paragraph (b), in the second sentence, by removing the words "Treasury Decision" and adding in their place the word "decision";

■ c. In paragraph (b), in the heading of column three of the chart, by removing the words "T.D. No." and adding in their place the words "Decision No."; and

■ d. In paragraph (b), in the third column of the chart relative to the entry for Cyprus, by removing the citation "99–35" and adding in its place "T.D. 99–35 extended by CBP Dec. 03–25".

Dated: August 26, 2003.

Robert C. Bonner,

Commissioner, Customs and Border Protection.

[FR Doc. 03–22137 Filed 8–28–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Lufenuron Tablets; Milbemycin Oxime and Lufenuron Tablets; Nitenpyram Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of two original new animal drug applications (NADAs) and three supplemental NADAs filed by Novartis Animal Health US, Inc. The original NADAs provide for the concurrent oral use in dogs of approved milbemycin oxime and lufenuron flavor tablets with nitenpyram tablets to kill adult fleas and

prevent flea eggs from hatching and for the concurrent oral use in dogs and cats of approved lufenuron flavor tablets with nitenpyram tablets to kill adult fleas and prevent flea eggs from hatching. The supplemental NADAs provide appropriate labeling for the concurrent uses of the individual products and, for lufenuron flavor tablets, use in puppies and kittens as young as 4 weeks of age.

DATES: This rule is effective August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540; e-mail: *mberson@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Novartis Animal Health US, Inc., 3200 Northline Ave., suite 300, Greensboro, NC 27408, filed NADA 141–204 for the concurrent use in dogs of their SENTINEL (milbemycin oxime and lufenuron) FLAVOR TABS, approved under NADA 141–084, with their CAPSTAR (nitenpyram) Tablets, approved under NADA 141–175, to kill adult fleas and prevent flea eggs from hatching. Novartis Animal Health US also filed NADA 141–205 for the concurrent use in dogs and cats of their PROGRAM (lufenuron) FLAVOR TABS, approved under NADA 141–035, with CAPSTAR Tablets to kill adult fleas and prevent flea eggs from hatching. Supplemental NADAs were also filed to NADA 141–035, NADA 141–084, and NADA 141–175 to provide appropriate labeling for the concurrent uses of these products under NADA 141–204 and NADA 141–205, and to NADA 141–035 for use of lufenuron flavor tablets in puppies and kittens as young as four weeks of age. The NADAs and supplemental NADAs are approved as of, June 11, 2003, and the regulations are amended in 21 CFR 520.1288, 520.1446, and 520.1510 to reflect the approval. The basis of approval is discussed in the freedom of information summaries.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), summaries of safety and effectiveness data and information submitted to support approval of these applications may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under sections 512(c)(2)(F)(ii) or (iii) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(c)(2)(F)(ii) or (iii)), these NADAs and supplemental NADAs qualify for 3 years of marketing exclusivity beginning Jue 11, 2003.

The agency has determined under 21 CFR 25.33(d)(1) that these actions are of a type that do not individually or cumulatively have a significant effect on the human environment. Therefore, neither environmental assessments nor environmental impact statements are required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801 808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Section 520.1288 is revised to read as follows:

§ 520.1288 Lufenuron tablets.

(a) *Specifications*—(1) Tablets containing 45, 90, 204.9, or 409.8 milligrams (mg) lufenuron for use as in paragraphs (c)(1)(i), (c)(1)(ii)(A), (c)(1)(iii), (c)(2)(i), (c)(2)(ii)(A), and (c)(2)(iii) of this section.

(2) Flavored tablets containing 45, 90, 204.9, or 409.8 milligrams (mg) lufenuron for use as in paragraphs (c)(1)(i), (c)(1)(ii)(A) or (c)(1)(ii)(B), and (c)(1)(iii) of this section.

(3) Flavored tablets containing 90 or 204.9 mg lufenuron for use as in paragraphs (c)(2)(i), (c)(2)(ii)(A) or (c)(2)(ii)(B), and (c)(2)(iii) of this section.

(4) Flavored tablets containing 135 or 270 mg lufenuron for use as in paragraphs (c)(2)(i), (c)(2)(ii)(A), and (c)(2)(iii) of this section.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Conditions of use*—(1) *Dogs*—(i) *Amount.* Minimum of 10 mg lufenuron per kilogram (4.5 mg per pound (lb)) of body weight, once a month.

(ii) *Indications for use*—(A) For the prevention and control of flea populations.

(B) The concurrent use of flavored lufenuron tablets described in paragraph (a)(2) of this section as in paragraph (c)(1)(ii)(A) of this section with nitenpyram tablets as in § 520.1510(d)(1) of this chapter is indicated to kill adult fleas and prevent flea eggs from hatching.

(iii) *Limitations.* For use in dogs and puppies 4 weeks of age and older.

(2) *Cats*—(i) *Amount.* Minimum of 30 mg lufenuron per kilogram (13.6 mg/lb) of body weight, once a month.

(ii) *Indications for use*—(A) For the control of flea populations.

(B) The concurrent use of flavored lufenuron tablets described in paragraph (a)(3) of this section as in paragraph (c)(2)(ii)(A) of this section with nitenpyram tablets as in § 520.1510(d)(2) of this chapter is indicated to kill adult fleas and prevent flea eggs from hatching.

(iii) *Limitations.* For use in cats and kittens 4 weeks of age and older.

■ 3. Section 520.1446 is amended by revising the section heading, paragraphs (a), (d)(1)(i), (d)(1)(ii), and (d)(1)(iii) to read as follows:

§ 520.1446 Milbemycin oxime and lufenuron tablets.

(a) *Specifications*—(1) Tablets containing: 2.3 milligrams (mg) milbemycin oxime and 46 mg lufenuron, 5.75 mg milbemycin oxime and 115 mg lufenuron, 11.5 mg milbemycin oxime and 230 mg lufenuron, or 23 mg milbemycin oxime and 460 mg lufenuron.

(2) Flavored tablets containing: 2.3 mg milbemycin oxime and 46 mg lufenuron, 5.75 mg milbemycin oxime and 115 mg lufenuron, 11.5 mg milbemycin oxime and 230 mg lufenuron, or 23 mg milbemycin oxime and 460 mg lufenuron.

* * * * *

(d) * * *

(1) * * *

(i) *Amount.* 0.5 mg milbemycin oxime and 10 mg lufenuron per kilogram of body weight, once a month.

(ii) *Indications for use*—(A) For use in dogs and puppies for the prevention of heartworm disease caused by *Dirofilaria immitis*, for prevention and control of flea populations, for control of adult *Ancylostoma caninum* (hookworm), and for removal and control of adult *Toxocara canis*, *Toxascaris leonina* (roundworm), and *Trichuris vulpis* (whipworm) infections.

(B) The concurrent use of flavored milbemycin oxime and lufenuron tablets described in paragraph (a)(2) of this section as in paragraph (d)(1)(ii)(A) of this section with nitenpyram tablets as in § 520.1510(d)(1) of this chapter is indicated to kill adult fleas and prevent flea eggs from hatching.

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

* * * * *

■ 4. Section 520.1510 is revised to read as follows:

§ 520.1510 Nitenpyram tablets.

(a) *Specifications.* Each tablet contains 11.4 or 57 milligrams (mg) nitenpyram.

(b) *Sponsor.* See No. 058198 in § 510.600(c) of this chapter.

(c) *Special considerations.* The concurrent use of nitenpyram tablets and flavored milbemycin/lufenuron tablets as in paragraph (d)(1)(ii)(B) of this section shall be by or on the order of a licensed veterinarian.

(d) *Conditions of use*—(1) *Dogs*—(i) *Amount*—(A) One 11.4-mg tablet for dogs weighing less than 25 pounds (lb) or one 57-mg tablet for dogs weighing more than 25 lb, as needed, for use as in paragraph (d)(1)(ii)(A) of this section.

(B) One 11.4-mg tablet for dogs weighing less than 25 lb or one 57 mg tablet for dogs weighing more than 25 lbs, once or twice weekly, for use as in paragraph (d)(1)(ii)(B) of this section.

(ii) *Indications for use*—(A) For the treatment of flea infestations on dogs and puppies 4 weeks of age and older and 2 lbs of body weight or greater.

(B) The concurrent use of nitenpyram tablets as in paragraph (d)(1)(i)(B) of this section with either flavored lufenuron tablets as in § 520.1288(c)(1) of this chapter or flavored milbemycin and lufenuron tablets as in § 520.1446(d)(1) of this chapter is indicated to kill adult fleas and prevent flea eggs from hatching.

(2) *Cats*—(i) *Amount*—(A) One 11.4-mg tablet, as needed, for use as in paragraph (d)(2)(ii)(A) of this section.

(B) One 11.4-mg tablet, once or twice weekly, for use as in paragraph (d)(2)(ii)(B) of this section.

(ii) *Indications for use*—(A) For the treatment of flea infestations on cats and kittens 4 weeks of age and older and 2 lbs of body weight or greater.

(B) The concurrent use of nitenpyram tablets as in paragraph (d)(2)(i)(B) of this section with flavored lufenuron tablets as in § 520.1288(c)(2) of this chapter is indicated to kill adult fleas and prevent flea eggs from hatching.

Dated: August 18, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–22072 Filed 8–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–03–125]

RIN 1625–AA08

Special Local Regulations for Marine Events; Hampton River, Hampton, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.508 during the Hampton Bay Days Festival to be held September 5–7, 2003, on the waters of the Hampton River at Hampton, Virginia. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the festival events. The effect will be to restrict general navigation in the regulated area for the safety of event participants, spectators and vessels transiting the event area.

EFFECTIVE DATES: 33 CFR 100.508 is effective from 12 noon on September 5, 2003 to 6 p.m. on September 7, 2003.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer J. Saffold, Marine Events Coordinator, Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Blvd., Portsmouth, VA 23703–2199, (757) 483–8521.

SUPPLEMENTARY INFORMATION: Hampton Bay Days, Inc. will sponsor the Hampton Bay Days Festival on September 5–7, 2003 on the Hampton River, Hampton, Virginia. The festival will include water ski demonstrations, personal watercraft and wake board competitions, paddle boat races, classic boat displays, fireworks displays and a helicopter rescue demonstration. A fleet of spectator vessels is expected to gather nearby to view the festival events. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.508 will be in effect for the duration of the festival activities. Under provisions of 33 CFR 100.508, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may enter and anchor in the special spectator anchorage areas if they proceed at slow, no wake speed. The Coast Guard Patrol Commander will allow vessels to transit the regulated area between festival events. Because these restrictions will be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: August 20, 2003.

Ben R. Thomason, III,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 03–22136 Filed 8–28–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI–113–3; FRL–7528–7]

Approval and Promulgation of State Implementation Plans; Wisconsin

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a revision to Wisconsin's State Implementation Plan (SIP) for the attainment of the one-hour ozone standard for the Milwaukee-Racine area. This SIP revision, submitted to EPA on December 16, 2002, allows emissions averaging for sources subject to the state's rules limiting emissions of nitrogen oxides (NO_X) from large electricity generating units in southeast Wisconsin. In addition, the revision creates a new categorical emissions limit for new integrated gasification combined cycle units. On April 10, 2003, the EPA proposed approval of this SIP revision and published a direct final approval as well. EPA received adverse comments on the proposed rulemaking, and therefore withdrew the direct final rulemaking on June 6, 2003.

DATES: This final rule is effective September 29, 2003.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. We recommend that you telephone Alexis Cain at (312) 886–7018 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Alexis Cain, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), USEPA,

Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7018.

SUPPLEMENTARY INFORMATION:

The supplemental information is organized in the following order:

I. What action is EPA taking today?
II. What is EPA's response to comments received on the proposed rulemaking?
III. Statutory and Executive Order Reviews

I. What Action Is EPA Taking Today?

EPA is approving, as part of the Wisconsin ozone SIP, rules that would allow sources to use emissions averaging and an emissions cap as a option for complying with ozone season limits on emissions of NO_X. These limits apply to large electricity generating units in Southeast Wisconsin. EPA approved the rules setting the NO_X emissions limits into Wisconsin's SIP on November 13, 2001 (66 FR 56931). The limits are expressed in mass of allowable emissions per unit of heat input (pounds per million Btu).

Emissions averaging will allow units subject to the NO_X emissions limits of NR 428 of the Wisconsin Administrative Code to create emissions averaging plans in which the compliance of multiple sources would be assessed collectively. Participating sources would need to submit such plans to the Wisconsin Department of Natural Resources (WDNR) at least 90 days prior to the start of the ozone season, and would need to identify the participating units, their owners or operators, applicable emissions limitations, projected heat input and emissions rate, and projected mass emissions for the ozone season. The plan would establish an aggregate ozone season emissions rate limit for participating units through a formula that sums allowable emissions for each unit (based on projected heat input and each source's individual emissions rate), and divides it by the total projected heat input. To provide an environmental benefit from averaging, the formula subtracts 0.01 pounds/mmbtu from each unit's allowable emissions.

As a result, total emissions under an averaging plan would be lower than they would be if each unit demonstrated compliance on an individual basis. However, individual units would be allowed to exceed emissions rates specified in the NO_X reduction rules, while other units would emit less than allowed under the rules. Thus, averaging allows companies to minimize the cost of emissions reductions by allocating reductions at the units that can achieve them most inexpensively.

In addition, units participating in an averaging plan are subject to a mass emission limitation, beginning with the 2008 ozone season. This feature of the program "caps" the aggregate ozone season NO_X emissions of participating sources at a level that could not be exceeded regardless of heat input. This level is determined by the participating units' share of actual heat input during the 1995, 1996 and 1997 ozone seasons, multiplied by 15,912 tons, an amount consistent with the state's one-hour ozone attainment demonstration.

Within 60 days of the end of each ozone season, owners or operators of the participating units must submit compliance reports demonstrating compliance with the plan's emission rate and mass emission limit.

II. What Is EPA's Response to Comments Received on the Proposed Rulemaking?

The Midwest Environmental Advocates provided adverse comments on EPA's proposed approval of Wisconsin's averaging program. The Natural Resources Defense Council requested clarification of an issue related to the proposed approval of the new categorical emissions limit for new integrated gasification combined cycled units. In addition, EPA received two positive comments on the proposed rulemaking from citizens. This section responds to the adverse comments and to the request for clarification.

The Midwest Environmental Advocates noted areas where Wisconsin's averaging program may differ from the EPA's guidance on Improving Air Quality with Economic Incentive Programs, EPA–452/R–01–001, January 2001 (EIP Guidance). The comments by Midwest Environmental Advocates are addressed in detail below, and in many cases EPA disagrees that Wisconsin's averaging program is inconsistent with the EIP. In general, EPA notes that the EIP Guidance is neither a law nor a regulation. While it provides important guidance on the development of economic incentive programs, differences between a SIP submittal and the EIP Guidance are not necessarily sufficient reason to disapprove a SIP submittal.

Comment: Wisconsin's NO_X averaging program should not be approved because it would not result in clear environmental benefit, as required under the EIP Guidance.

Response: The averaging program should be considered as an element of Wisconsin's overall NO_X reduction rules. EPA has determined that these rules will achieve the results that the state attributed to them in the one-hour ozone attainment plan (proposed rule, July 2, 2001, 66 FR 34878; final rule November 13, 2001, 66 FR 56931). The averaging portion of the rules provides compliance provisions that make it possible for sources subject to the rules to comply with them in a timely way, which otherwise would not be possible. Therefore, the averaging program is an essential element in an overall package that will lead to actual emissions decreases, and conforms with the EIP Guidance provisions on environmental benefit. Moreover, units that enter into NO_X averaging plans must collectively accept a lower NO_X emissions limit than they would have individually, which will promote further reductions in actual emissions.

Comment: Wisconsin's NO_X averaging program fails to take source compliance margins into account, contrary to the EIP Guidance. The averaging program could lead to the disappearance of the margin between actual and allowable emissions that would occur in the absence of the averaging program, creating the potential for "an overall increase in actual emissions, despite a theoretical decrease in allowable emissions."

Response: The EIP Guidance (section 6.5(g)) states that in areas that have a required attainment demonstration, no provisions for considering compliance margins are necessary if the relevant attainment plan "includes the emissions from compliance margins as actual emissions" and "the relevant emissions inventories include emissions from the compliance margins for all sources covered under the EIP." Since the Milwaukee-Racine attainment and ROP plan and associated NO_X emissions inventories assume that the NO_X sources covered by the averaging program all emit as much as allowed, the compliance margin is already taken into account, and emissions will be reduced even if sources emit the maximum allowed. See "Technical Support Document for the Post-1999 Rate-of-Progress Plan Revision to the State Implementation Plan for the Milwaukee-Racine, Wisconsin Area," from Jacqueline Nwia to Randall Robinson, June 7, 2001, p. 27 (Docket WI 108–7338).

Comment: The rules require that excess emissions reductions used in an averaging plan be "beyond those required to meet all State and Federal requirements," but they do not require that reductions be in excess of those that would have occurred in the absence of the EIP, for instance due to upgrades, replacement or repair. The use of such reductions in averaging would frustrate

the goal of achieving additional reductions.

Response: Since it is difficult to determine which emissions-reducing upgrades, replacements, and repairs are motivated by an averaging program and which would occur in its absence, it is reasonable for the state to allow all reductions that are not otherwise required to be used in emissions averaging. It is sufficient to show that the overall effect of the program is to create lower emissions than would occur in the program's absence, even if some of the specific reductions used in an averaging plan would have occurred in any case. The EIP guidance requirement that economic incentive programs produce a clear environmental benefit is met because of the role that the averaging program plays in making compliance with the NO_X reduction rules possible, by the reduced emissions rate on sources that participate in averaging, and by the imposition of an emissions cap.

Comment: It is unclear that the imposition of an emissions cap results in "any appreciable environmental benefit that would not have otherwise been achieved by complying with the state's one-hour ozone attainment plan."

Response: The one-hour ozone attainment plan is a tool for managing air quality, through projecting the impacts of regulations and economic changes on emissions of ozone precursors and on concentrations of ozone in ambient air. The attainment plan, however, does not impose requirements on sources. While the attainment plan includes projections of future emissions, based on projected activity levels and allowable emissions rates, these future emissions and activity levels are not regulatory requirements on sources. This SIP revision will create a new emissions cap, consistent with the attainment demonstration, for sources that participate in emissions averaging. This emissions cap provides certainty, which would not otherwise exist, that emissions from participating sources will be capped despite the potential for activity level increases beyond those projected.

Comment: The emissions cap does not apply until 2008, by which time it is likely that other factors will reduce NO_X emissions in the Milwaukee-Racine area.

Response: It may be true that other programs or events will reduce future emissions beyond what is required under Wisconsin's current NO_X rules. However, for the purpose of this rulemaking, EPA cannot assume the implementation of these future programs prior to 2008, and therefore counts the 2008 emissions cap as an environmental benefit.

Comment: The program "fails to account for the relationship between NO_X averaging plans and Title V permits." A unit operating under a Title V permit might use emissions averaging to increase its emissions, violating the facility's Title V permit and constituting a major modification necessitating new source review.

Response: Any unit that increases emissions sufficiently to violate its permit would be subject to enforcement, and any unit that increases emissions sufficiently to constitute a major modification would be subject to new source review, notwithstanding averaging for the purpose of compliance with the NO_X emissions limits contained in NR 428.04(2) and NR 428.05(3). The averaging program cannot be used for compliance with any other requirement, and it cannot be used to avoid any requirement. Proper use of the averaging program for compliance with the NR 428 NO_X emissions limits will be consistent the Title V permit, because when these limits are included in the permits of sources eligible for averaging, the permits will specify that averaging is a compliance option.

Comment: "The proposed SIP revision does not explicitly require units participating in averaging plans to modify their Title V permit accordingly." Unless the public can determine from a facility's Title V permit whether a unit is part of an averaging plan, which other units are included in the plan, and how to determine the applicable emissions limits among and between those units, public participation in the Title V permit process will be undermined." Moreover, "the public is charged with obtaining a copy of an averaging plan from the participating parties," potentially inhibiting the public's ability to assess a source's compliance status.

Response: While NR 428 does not itself contain a requirement that units participating in averaging plans modify their Title V permits, NR 407, which is part of Wisconsin's SIP, does require that new requirements and compliance options be incorporated into permits as they are issued. Therefore, permits issued for sources that may use averaging must authorize the use of the averaging program as a compliance option. The Clean Air Act does not require that the details of averaging plans be included in Title V permits, but rather that the Title V permit identify whether a unit may use emissions averaging as a compliance option. EPA agrees with the commenter that the public should have access to the averaging plan when viewing a company's Title V permit, and the public should not have to obtain the averaging plan from the source. The WDNR has clarified, in a letter dated May 28, 2003, that it will keep any prospective averaging plan, DNR comments on the plan, the final plan, and all compliance reports, in the Title V permit file for each participating source. It should also be noted that participants in an emissions averaging plan must provide public notice of the plan in a local newspaper at least 60 days prior to the start of the ozone season.

Comment: The proposed SIP revision fails to include provisions preventing a unit receiving excess emissions credits from increasing emissions sufficient to constitute a major modification without undergoing PSD or NSR review.

Response: The PSD and NSR programs require sources to undergo review when increasing emissions sufficient to constitute a major modification. Nothing in Wisconsin's averaging program changes this requirement.

Comment: EPA's "justifications for failing to apply agency guidance [on averaging among sources not under common ownership] are insufficient because they fail to address the purported purpose behind the unified owner requirement." The unified owner requirement "is meant to ensure enforcement and compliance." A cap, whatever its environmental benefits, cannot substitute for lack of enforceability.

Response: A cap provides assurances that if enforcement of average emission rates proves difficult, the state and EPA can nonetheless protect the environment by enforcing against any violation of the cap.

Comment: Saying that WDNR staff will be able to review averaging plants is irrelevant because the guidance prohibits emissions averaging between facilities owned by different companies to ensure enforcement and compliance. Given the difficulty of predicting activity levels, "merely making sure that projected activity levels are reasonable does not ensure that day to day averaging is achieved."

Response: The commenter is correct that projecting reasonable activity levels does not ensure that day to day averaging is achieved. In looking at the question of whether Wisconsin will be able to check the reasonableness of projected activity levels, EPA is seeking to ensure that averaging plan participants will not be able to

deliberately "game" the system by projecting excessive activity by a unit with a reduced emissions rate. In the situation where non-compliance occurs because a unit has a lower-than-projected activity level, emissions will be lower than projected. This situation is of less concern if the activity levels projected are reasonable and similar to those of previous years, than if intentionally-erroneous significant growth in activity levels were projected. In the latter situation, emissions could increase even if activity levels are lower than the inflated projections of the averaging plan. It is important to note that it is a violation of the NO_X averaging rules to exceed the allowable aggregate emissions rate, regardless of whether total emissions are greater or less than projected.

Comment: "Wisconsin's air management program is already under-staffed and under-funded," is late in issuing permits, and is having difficulty ensuring compliance with the Title V program. "Even if DNR staff review of averaging plans could adequately address the concerns in EPA guidance, air management staff are not in a position to adequately complete this task."

Response: The staff time required to verify that a small number of averaging plans contain reasonable projections of activity levels is minimal. EPA is confident that Wisconsin staff can perform this function, regardless of staffing and funding problems that may affect the Title V program.

Comment: A company operating a high-emissions unit cannot ensure that sufficient reductions exist unless it controls the low emission unit creating those credits. The fact that eligible facilities operate close to capacity is irrelevant, since activity levels can change.

Response: The commenter is correct that in averaging plans involving multiple owners, the ability to comply of all participants in the averaging plan can be compromised if the owner of the unit with a reduced emission rate does not maintain sufficient activity level. Averaging plan participants must take the risk of failing to comply with the averaging plan as a result of unexpected reductions in activity level by sources with reduced emissions rates. EPA could bring enforcement actions for such non-compliance, even though non-compliance with the emissions rate would be accompanied by lower actual emissions than projected.

Comment: The proposed SIP fails to indicate that all units participating in an averaging plan are in violation each and every day within the plan's averaging period if the aggregate NO_X emissions exceed the averaging plan's emission limits, multiplied by the number of participating units, as required under the EIP guidance.

Response: NR 428(j) states that "all emissions units participating in an ozone season NO_X emissions averaging program may be considered out of compliance" if the averaging plan aggregate emissions rate or emissions cap is exceeded. Furthermore, "each emissions unit is considered out of compliance for each day of non-compliance until corrective action is taken to reduce emissions and achieve compliance." In the case of a violation of the averaging plan's aggregate emission rate or emissions cap, these provisions would give Wisconsin the ability to bring enforcement actions for violations for each participating unit, for each day during the ozone season up to the point when corrective action was taken. These provisions provide significant deterrence, are consistent with the requirements of the Clean Air Act and Title V regulations, and are substantially consistent with the EIP guidance. While the EIP guidance might be interpreted to indicate that a source may be in violations for each day of the ozone season even after corrective action is taken, EPA is willing to be flexible on this point.

Comment: The proposed rules do not indicate that source shutdowns and production activity curtailments are not eligible as emission reductions, nor that a source's emissions reductions must be "permanent," as required under the EIP.

Response: Given the structure of Wisconsin's averaging program, such provisions against counting source shutdowns and curtailments are unnecessary, and not required under the EIP. In Wisconsin's averaging program, compliance depends on emissions rates, not total emissions. Therefore, shutdowns and curtailments intrinsically do not generate reductions that can be used in averaging programs. Regarding the permanence of emissions reductions, the EIP states that "permanent" means that a source "commits to actions or achieves reductions for a future period of time as defined in the EIP" (EIP Guidance, Section 4.2(a)). In Wisconsin's program, sources must commit to making reductions during the period defined by the NO_X reduction rules—the ozone season. Thus, averaging plans in Wisconsin must use reductions that meet the EIP's general definition of permanent. The EIP also provides an additional definition of permanent specifically for averaging. In addition to the general definition, in an averaging program "the source's emission reduction must last throughout the life of the program defined in the SIP" (EIP Guidance, Table 4.3(b)). If "the life of the program" is defined as the period of time during which the program will be in operation, then Wisconsin's program, which has an indefinite life, would not seem to meet this requirement. However, EPA believes that a more reasonable interpretation is that the reduction must last through a time period defined by the program—the ozone season. In this case, Wisconsin's program does require permanent reductions.

Comment: The proposed SIP revision would allow geographic shifting of emissions without protecting communities of concern from emissions increases, as required under the EIP. In addition, EPA should determine whether the proposed SIP revision satisfies the environmental justice requirements in Executive Order 12898.

Response: The EIP does not require special protections for communities of concern in trading or averaging programs that involve emissions of NO_X, because NO_X, unlike volatile organic compounds, is not a pollutant that raises significant concerns about localized impacts. NO_X emissions impact regional concentrations of ozone, but do not cause elevated ozone concentrations on a local level. NO_X emissions are also associated with emissions of nitrogen oxides (NO_2), a criteria pollutant for which the Clean Air Act provides a variety of protections for local communities. Wisconsin has no NO_2 nonattainment areas, and any significant increases in NO_2 emissions at sources subject to the averaging plan would be subject to New Source Review. Since the averaging program creates no adverse local impacts, there is no potential to create "disproportionately high and adverse human health or environmental effects * * * on minority populations and low-income populations," as addressed in Executive Order 12898.

Comment: Wisconsin's NO_X averaging rule "may frustrate the state's new 8-hour attainment needs". EPA should disapprove this SIP revision until Wisconsin submits an 8-hour attainment demonstration plan.

Response: The NO_X averaging rule is a necessary component of Wisconsin's NO_X control rules, which will reduce NO_X emissions and contribute to reductions in ambient ozone concentrations. The rule contributes to Wisconsin's efforts to meet the 8-hour attainment standard; it does not frustrate them.

Comment: "The proposed SIP revision appears to be promulgated for one company," raising "issues of the appropriateness and legality of regulation created and implemented for individual companies."

Response: Several companies are eligible to use the NO_X averaging program, and EPA anticipates that more than one company will be involved in emissions averaging. In any case, as long as the program is protective of the environment, it would not be a cause for concern if only one company chose to use the program.

Comment: "The direct final rule approves inclusion of a new categorical emission limit for new integrated gasification combined cycle (IGCC) units in the Wisconsin SIP. We call upon EPA to clarify that this emissions limit does not and cannot, pre-ordain, or substitute for, BACT or LAER analysis required under the NSR and PSD requirements of the Clean Air Act."

Response: None of the emissions limits in Wisconsin's NO_X rules, including the categorical emission limit for new integrated gasification combined cycle (IGCC) units, do or can predetermine or substitute for BACT or LAER analysis required under the NSR and PSD requirements of the Clean Air Act.

III. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272 note, requires Federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 28, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Oxides of Nitrogen.

Dated: June 30, 2003.

William E. Muno,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart YY—Wisconsin

■ 2. Section 52.2570 is amended by adding paragraph (c)(108) to read as follows:

§ 52.2570 Identification of plan.

* * * * *

(c) * * *

(108) On December 16, 2002, Lloyd L. Eagan, Director, Wisconsin Department of Natural Resources, submitted revised rules to allow use of NO_X emissions averaging for sources subject to NO_X emission limits in the Milwaukee-Racine area. The revised rules also establish a NO_X emissions cap for sources that participate in emissions averaging, consistent with the emissions modeled in Wisconsin's approved one-hour ozone attainment demonstration for the Milwaukee-Racine area. The rule revision also creates a new categorical emissions limit for new integrated gasification combined cycle units.

(i) Incorporation by reference.

(A) NR 428.02(6m) as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 2, 2002.

(B) NR 428.04(2)(g)(3) as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 2, 2002.

(C) NR 428.06 as published in the (Wisconsin) Register, November 2002, No. 563 and effective December 2, 2002.

[FR Doc. 03–22050 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Case 2003–306; FTR Amendment 2003–05]

RIN 3090–AH87

Federal Travel Regulation (FTR); Per Diem (Incidental Expense Increase)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) by increasing the incidental expense allowance under the per diem expenses from $2.00 to $3.00 for all per diem localities.

DATES: *Effective Date:* October 1, 2003.

FOR FURTHER INFORMATON CONTACT: The Regulatory Secretariat, Room 4035, GSA Building, Washington, DC 20405, (202) 208–7312, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Umeki G. Thorne, Program Analyst, Office of Governmentwide Policy, Travel Management Policy at (202) 208–7636. Please cite FTR case 2003–306.

SUPPLEMENTARY INFORMATION:

A. Background

An analysis of lodging and meal cost survey data reveals that the listing of maximum per diem rates for locations within the continental United States (CONUS) should be updated to provide for the reimbursement of Federal employees' expenses covered by per diem. As a result of this analysis, the incidental expense under the per diem expenses will be increased from $2 to $3 for all per diem localities.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FTR do not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This final rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Part 301–11

Government employees, Travel and transportation expenses.

Dated: August 22, 2003.

Stephen A. Perry,

Administrator of General Services.

■ For the reasons set forth in the preamble, under 5 U.S.C. 5701–5709, GSA amends 41 CFR chapter 301 as set forth below:

CHAPTER 301—TEMPORARY DUTY (TDY) TRAVEL ALLOWANCES

PART 301–11—PER DIEM EXPENSES

■ 1. The authority citation for 41 CFR part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

§ 301–11.18 [Amended]

■ 2. Amend § 301–11.18 by revising the table to read as follows:

* * * * *

M&IE	$31	$35	$39	$43	$47	$51
Breakfast	6	7	8	9	■	10
Lunch	■	7	8	9	11	12
Dinner	16	18	20	22	24	26
Incidentals	3	3	3	3	3	3

[FR Doc. 03–22108 Filed 8–28–03; 8:45 am]
BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 447

[CMS–2175–FC]

RIN 0938–AM20

Medicaid Program; Time Limitation on Price Recalculations and Recordkeeping Requirements Under the Drug Rebate Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: On September 19, 1995, we published a proposed rule in the **Federal Register** that introduced requirements for States and manufacturers pertaining to the Medicaid drug rebate program. We received several comments from States and manufacturers regarding recordkeeping requirements and drug price recalculations. This final rule with comment period finalizes separately, in an accelerated timeframe, two specific provisions of the September 1995 proposed rule. It establishes new recordkeeping requirements for drug manufacturers under the Medicaid drug rebate program. It also sets forth a 3-year time limitation during which manufacturers must report changes to average manufacturer price and best price for purposes of reporting data to us. In addition, it announces the pressing need for codification of fundamental recordkeeping requirements. Furthermore, it announces our intention to continue to work on finalizing the complete drug rebate regulation for the Medicaid drug rebate program.

DATES: *Effective Date:* October 1, 2003.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 28, 2003.

ADDRESSES: In commenting, please refer to file code CMS–2175–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail. Mail written comments (one original and three copies) to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–2175–FC, PO Box 8016, Baltimore, MD 21244–8016.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and three copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Marge Watchorn, (410) 786–4361.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, call telephone number: (410) 786–7195.

To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, PO Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO access, a service of the U.S. Government Printing Office. The Web site address is *http://www.access.gpo.gov/nara/index.html.*

I. Background

A. Overview

We are publishing this final rule with comment period to address the issues of manufacturer recordkeeping requirements and price recalculations under the Medicaid drug rebate program. We decided to issue a final rule with comment period rather than a final rule to give interested parties an additional opportunity to provide comments on these provisions. We believe the additional comment period is appropriate given the time that has elapsed between the publication of the September 19, 1995 proposed rule (60 FR 48442) and the publication of this rule.

We are publishing this rule to address concerns regarding the administration of the Medicaid drug rebate program for manufacturers and States. In the absence of a regulatory recordkeeping requirement, manufacturers are in effect required to retain pricing data for an indefinite period. The 3-year recordkeeping requirement will enable manufacturers to close their books within a reasonable timeframe. This recordkeeping requirement will mirror the 3-year timeframe established for States to retain records at 42 CFR 433.32.

We believe establishing a timeframe for manufacturers to submit revised pricing data to us also streamlines the administration of the Medicaid drug rebate program. Due to recalculations involving hundreds of millions of State and Federal Medicaid dollars and over 10 years of paperwork, we believe it is essential that a standard timeframe be established within which manufacturers and CMS, or States, are permitted to submit revised drug prices. This timeframe will also assist States that would otherwise be required to retain their drug utilization data indefinitely to verify changes in rebate amounts resulting from retroactive manufacturer recalculations. Therefore, as of the effective date of this rule, manufacturers will have 12 quarters from the quarter in which the data were originally due to submit revised pricing data to us. This timeframe is described in further detail in section IV of the preamble, "Provisions of the Final Rule."

In this rule, we intend the terms "manufacturer," "average manufacturer price (AMP)," and "best price (BP)" to have the same meaning as described and set forth in the national drug rebate agreements signed by manufacturers and the Secretary (on behalf of States). We also have used these terms in guidance documents that we have issued over the years pertaining to the Medicaid drug rebate program. We do not intend to alter these definitions in this rule. Rather, the primary purpose of this rule is to establish procedural requirements pertaining to manufacturer recordkeeping and pricing changes. We will set forth regulatory definitions of these terms in a subsequent document we will publish in the **Federal Register**.

B. 1995 Proposed Rule

On September 19, 1995, we published a proposed rule (60 FR 48442) in the **Federal Register** that specified requirements for State Medicaid agencies and conditions under which Federal payments would be made under the Medicaid program for covered outpatient drugs. The rule also specified the conditions for approval and renewal of rebate agreements with drug manufacturers participating in the Medicaid program.

In the September 1995 proposed rule, we also discussed prior period adjustments and pricing changes. A prior period adjustment is a change in the unit rebate amount based on a manufacturer's revised AMP or BP data for a prior rebate period after that rebate period's pricing data have been submitted to us. The prior period adjustments generally consist of a manufacturer's changes to pricing data resulting from sales data not being available before pricing submissions to us or changes in the methodology used to establish AMP or BP. We use the manufacturer's pricing data to generate the unit rebate amount for each 9-digit national drug code, which States use to calculate rebate amounts due from manufacturers. Any changes to a manufacturer's AMP or BP result in changes to the unit rebate amount and rebates due from the manufacturer. Thus, the prior period adjustments are necessary to correct rebate amounts that are owed by manufacturers or credits due to manufacturers.

Since the publication of the September 1995 proposed rule, States have expressed concerns regarding pricing changes and recalculations under the Medicaid drug rebate program. We have received requests for pricing recalculations for drug prices submitted as far back as 1991. The statute does not specifically provide for such recalculations; however, we have permitted the recalculations where revisions were made to conform to the statute or rebate agreement. Unfortunately, there is a significant burden on States and manufacturers to maintain pricing data and supporting documentation for timeframes dating back to 1991. We have seen a recent increase in the number of these requests and the dollar value of the recalculations. In addition, manufacturers have expressed concerns regarding recordkeeping burdens. In response to these concerns, we are finalizing the recordkeeping requirements and the time limit on pricing recalculations proposed in the September 1995 rule. We will address the remaining provisions of the September 1995 rule in a subsequent rule we will publish in the **Federal Register**.

C. Legislative History

Section 1927 of the Social Security Act (the Act) authorizes the Medicaid drug rebate program. Section 1927 of the Act was amended by section 4401 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) and section 13602 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93). Under section 1927 of the Act, manufacturers that have entered into a national rebate agreement must provide each State Medicaid program with rebate period payments (or other periodic rebate payments, as determined by the Secretary).

D. Requirements for Manufacturer's Data

Section 1927(b) of the Act gives the Secretary the authority to publish regulations that establish manufacturer recordkeeping requirements and the time limit for manufacturer pricing changes. To implement these provisions, we will require that a manufacturer must retain pricing data for 3 years from the date the manufacturer reports that period's data to us. Although the statute sets forth requirements on data reported to us by manufacturers, it does not provide recordkeeping requirements for manufacturer data. In the national drug rebate agreement, we did not establish a timeframe during which records must be maintained. The 3-year time period comports with the requirements for the maintenance of records on State Medicaid expenditures imposed on States. Section 433.32 requires that States retain records for 3 years from the date of submission of a final expenditure report for Federal financial participation.

E. Manufacturer's Pricing Data

Section 1927(b)(3)(A)(i) requires that manufacturers submit pricing information no later than 30 days after the end of each quarter. However, it does not establish a time limitation regarding pricing changes. While we recognize the need to permit manufacturers to submit revised prices within a timeframe, States and manufacturers should be protected from potential liabilities resulting from no time limit. We will require that manufacturers submit changes to AMP or BP within 3 years from the date that period's data are due. The timeframe for pricing changes set forth in this final rule is more fully described in section IV of the preamble, "Provisions of the Final Rule."

II. Provisions of the Proposed Rule

In the September 19, 1995 proposed rule, we solicited comments on proposed requirements for State Medicaid agencies, the conditions under which Federal payments would be made under the Medicaid program for covered outpatient drugs, and the conditions for approval and renewal of rebate agreements with drug manufacturers. In this final rule with comment period, we are finalizing two of the provisions of the September 1995 proposed rule. We will address the remaining provisions of the September 1995 proposed rule and will publish a subsequent rule in the **Federal Register**.

In the September 1995 proposed rule, we proposed to add to part 447 a new subpart I entitled "Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements." Within that subpart, we proposed a new § 447.534(g) to establish a 3-year recordkeeping requirement for manufacturer data pertaining to AMP and BP calculations. We also proposed a new § 447.534(h) to establish a 3-year time limit for manufacturers to report revised AMP or BP to us.

III. Analysis of and Response to Public Comments on the September 19, 1995 Proposed Rule

We received 19 timely comments in response to the September 19, 1995 proposed rule. We received comments from State government officials and representatives of the pharmaceutical industry including manufacturers, pharmacists, attorneys, and consultants. Although we received comments on a variety of topics pertaining to the proposed rule, we are addressing only the comments that pertain to the manufacturer recordkeeping requirements and the 3-year limitation

on price recalculations set forth in this final rule with comment period. These comments and our responses are summarized below:

A. Manufacturer Recordkeeping Requirements

Comment: One commenter noted that the 3-year records retention standard will provide a useful records management timeframe.

Response: We agree; therefore, we are issuing this final rule with comment period to establish the 3-year recordkeeping requirements for manufacturers.

B. Time Limitation on Manufacturer Price Recalculations

Comment: One commenter expressed the opinion that the burden for calculating the amount of rebate adjustments should rest with the manufacturer when the adjustment results from changes to AMP or BP, rather than the State.

Response: The State has never been responsible for calculating the amount of rebate adjustments. The manufacturer is responsible for recalculating the amount of rebate adjustments.

Comment: One commenter noted the need to clarify the 3-year timeframe as it applies to prior period adjustments.

Response: We concur with the need to provide clarification. We define the 3-year limitation as equivalent to 12 quarters because the Medicaid drug rebate program operates on a quarterly basis. Pricing information is exchanged and processed on a quarterly basis and rebates are due and paid on a quarterly basis. Therefore, wherever we refer in this document to a 3-year timeframe for recalculations and pricing changes, we interpret it as 12 quarters from the quarter in which the data were due.

Comment: One commenter noted that 3 years is too long a timeframe for applying retroactive prior period adjustments and recommended that the allowed retroactive period not exceed 24 months.

Response: We recognize the potential burden for States and manufacturers to apply prior period adjustments during a 3-year retroactive timeframe, as opposed to a 24-month timeframe. Nevertheless, as we discussed earlier in the "Background" section of this preamble, we continue to believe that a 3-year timeframe is reasonable because it comports with requirements for maintenance of records on State Medicaid expenditures. Furthermore, it is consistent with the manufacturer's recordkeeping requirements set forth in this document.

Comment: One commenter noted that the 3-year prior period adjustment standard will provide a useful records management timeframe. Other commenters expressed appreciation for the 3-year time limitation, saying that it is essential to enable a manufacturer to close its books for a fiscal year.

Response: As discussed earlier in the "Background" section of this preamble, we agree.

IV. Provisions of the Final Rule

This final rule with comment period incorporates two of the provisions in the proposed rule issued on September 19, 1995. We will address the remaining provisions of the September 1995 proposed rule in a subsequent document we will publish in the **Federal Register**. This rule adopts the following provisions in the September 1995 proposed rule:

Under part 447, "Payments for Services," we are adding a new subpart I, entitled "Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements." We are reserving § 447.500 through § 447.532 and § 447.536 through § 447.550.

Under § 447.534, "Manufacturer reporting requirements," we are reserving paragraphs (a) through (f). We are redesignating paragraph (g) in the September 1995 proposed rule as paragraph (h) and are reserving the newly redesignated paragraph (g). We are also redesignating paragraph (h) as paragraph (i). We are revising newly redesignated paragraphs (h) and (i).

Under § 447.534(h), we are establishing a requirement that manufacturers must retain for 3 years from the date the manufacturer reports that rebate period's data to us, all records (written or electronic) of these data, and any other materials from which the calculations of the AMP and BP were derived. A manufacturer must retain records beyond the 3-year period if one or more of the following circumstances exist:

- The records are the subject of an audit or of a government investigation of which the manufacturer is aware related to average manufacturer price or best price.
- The audit findings or investigation related to the AMP and BP have not been resolved.

If the audit findings or investigation have been resolved, manufacturers are not required to retain historical pricing data that fall outside the 3-year recordkeeping requirement. We want to clarify that § 447.534(h) was not designed to address recordkeeping requirements when a manufacturer is the subject of an audit or government investigation by the Office of Inspector General (OIG) or any other government entity. In the September 1995 proposed rule, we proposed requiring manufacturers to retain data beyond the 3-year timeframe if the records are the subject of an audit. Because we did not specifically address OIG investigations in the September 1995 proposed rule, we want to clarify this point in this final rule. Therefore, we are revising § 447.534(h) from the language in the September 1995 proposed rule to specify that manufacturers must retain data beyond 3 years if the records are the subject of an audit or a government investigation.

Under § 447.534(i), we are establishing a 3-year time limitation for a manufacturer to submit drug pricing changes. We define the 3-year period as 12 quarters. Therefore, we require that the manufacturer report to us changes to AMP or BP for a period not to exceed 12 quarters from the quarter in which the data were due.

The terms of the Medicaid Drug Rebate Agreement require manufacturers to submit pricing data for each calendar quarter no later than 30 days after the end of that quarter. For example, for data pertaining to the second quarter of 2003 (April 1, 2003 through June 30, 2003), the due date for submitting pricing data is July 30, 2003, which falls during the third quarter of 2003.

For purposes of implementing the 3-year timeframe for reporting pricing changes to us, we define 3 years as 12 quarters from the quarter in which the data were due. For example, data from the second quarter of the year 2000 (April 1, 2000 through June 30, 2000) were due July 30, 2000 (the third quarter of 2000). Twelve quarters from the third quarter of 2000 (the quarter in which the data were due) is the third quarter of 2003. Based on the due date for submitting pricing data, data submitted during the third quarter of 2003 were due on July 30, 2003. Therefore, pricing changes pertaining to data from the second quarter of 2000 were due to us no later than July 30, 2003.

As with all pricing data submitted under the Medicaid drug rebate program, if CMS, the Office of Inspector General, or another authorized government agency reviews a manufacturer's pricing data and determines that adjustments or revisions are necessary, irrespective of the quarter, the manufacturer is bound under the Medicaid Drug Rebate Agreement to comply with that determination.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Under paragraph (h) of § 447.534, there are two recordkeeping requirements:

(1) A manufacturer must retain records (written or electronic) for 3 years from the date the manufacturer reports that rebate period's data to CMS. The records must include these data and any other materials from which the calculations of the average manufacturer price and best price are derived, including a record of any assumptions made in the calculations.

(2) A manufacturer must retain records beyond the 3-year period if one or more of the following circumstances exist: (A) The records are the subject of an audit or of a government investigation of which the manufacturer is aware related to average manufacturer price or best price, and (B) The audit findings or investigation related to the average manufacturer price and best price have not been resolved.

Under paragraph (i), there is a reporting requirement: A manufacturer must report to CMS changes to average manufacturer price or best price for a period not to exceed 12 quarters from the quarter in which the data were due.

These information collection requirements already exist. The recordkeeping requirements are in the contract between the drug manufacturer and CMS and are in any event usual and customary business practices. The regulation specifies timeframes; however, under the contract, we did not establish a timeframe.

The reporting requirement is currently approved under OMB number 0938–0578. The regulation merely adds a time limit in which the manufacturer must report changes; currently, there is none.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Groups, Attn.: Julie Brown, CMS–2175–FC, Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn.: Brenda Aguilar, CMS Desk Officer.

VII. Regulatory Impact Analysis

A. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 (as amended by Executive Order 13258, which merely assigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We believe this rule will have an economically significant effect. We believe the rule will save $90 million annually over the next 5 years ($50 million Federal savings and $40 million State savings as shown in the table below). This figure represents 0.4 percent of total Medicaid drug expenditures in Federal fiscal year 2002. We consider this rule to be a major rule.

STATE AND FEDERAL SAVINGS OVER 5 YEARS

FY	2004	2005	2006	2007	2008
State	*$40,000	$40,000	$40,000	$40,000	$40,000
Federal	$50,000	$50,000	$50,000	$50,000	$50,000

*Note: Figures are in thousands.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million or less in any 1 year. For purposes of the RFA, pharmaceutical manufacturers with 750 or fewer employees are considered small businesses according to the Small Business Administration's size standards matched to North American Industry Classification System, effective October 1, 2002, *http://www.sba.gov/size/sizetable2002.html)*. Use of the Small Business Administration's size standards matched to North American Industry Classification System is in compliance with the Small Business Administration's regulation that set forth size standards for health care industries at 65 FR 69432. Individuals and States are not included in the definition of a small entity. This rule will not have a significant impact on small businesses.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a

significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. This rule will not have a significant impact on small rural hospitals because the provisions contained herein do not pertain to hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. We anticipate this rule will impact State governments through increased Medicaid savings, in the aggregate, of $40 million per year. We anticipate this rule will impact the private sector, in the aggregate, by less than $110 million. We anticipate this rule will cost drug manufacturers, in the aggregate, $90 million per year.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We do not anticipate this rule will impose direct requirement costs on State governments.

B. Anticipated Effects

1. Effects on Drug Manufacturers

We anticipate the rule will cost drug manufacturers $90 million in the aggregate. To derive this estimate, we examined the rebate adjustment data from several States for the four quarters from the third quarter of 2001 through the second quarter of 2002. We separated the data from adjustments for each quarter into two parts:

- Adjustments over the previous 12 quarters; and
- Adjustments beyond the previous 12 quarters. From those data, we estimated the percentage of total rebate adjustments within 12 quarters nationally. We then projected what percentage of total adjustments would not occur given the 12-quarter limit. Then we estimated the national rebate adjustments by quarter by calculating the adjustments as a percentage of total rebates by State and multiplying that by the total national rebates. We then multiplied the projected total national rebate adjustments by the projected percentage of rebates that would not occur within 12 quarters to estimate the total impact of the proposal. Over the four quarters of data (third quarter of 2001 through the second quarter of 2002), we found that that resulted in approximately $90 million.

The estimated number of drug manufacturers currently participating in the Medicaid Drug Rebate Program is approximately 550. As previously indicated, businesses with 750 employees or fewer are considered small businesses. At this time, we are unable to determine how many of the 550 drug manufacturers have 750 or fewer employees. No single manufacturer will be affected significantly by this rule. As a group, the participating drug manufacturers will probably have a mixed reaction to this rule. We anticipate that some drug manufacturers will likely object to a narrowing of their window of opportunity to submit pricing changes to us. We are unable to quantitatively address the burden to manufacturers with respect to recordkeeping. Absent this rule, manufacturers are in effect required to retain their pricing and sales records indefinitely. Therefore, some of the manufacturers may be relieved that we are setting forth clear guidelines for records retention that closely mirror the industry standard for records retention.

We do not anticipate that this rule will adversely affect a drug manufacturer's participation in the Medicaid Drug Rebate program nor impact the current level of access and availability of prescription drugs for Medicaid beneficiaries. There is no impact to contractors or providers.

2. Effects on the Medicaid Program

We anticipate the rule will result in $50 million in Federal Medicaid savings and save State Medicaid programs $40 million in the aggregate. This rule will have a positive effect on the State Medicaid agencies. State Medicaid agencies are having difficulty fully funding their Medicaid programs. They will likely be relieved that we are setting forth a rule that will limit their fiscal vulnerability for manufacturers implementing retroactive pricing changes that result in greatly increased costs to their programs.

We are unable to quantitatively address the burden to States with respect to recordkeeping. Absent this rule, States are in effect required to retain drug utilization data indefinitely in order to verify the revised or reduced rebates from manufacturers attributable to retroactive pricing changes. Therefore, we expect that a majority of the States will be relieved that we are setting forth clear guidelines for manufacturer records retention.

This rule will not adversely affect a State's ability to obtain manufacturers rebates nor impact the current level of access and availability of prescription drugs for Medicaid beneficiaries. There is no impact to Medicaid providers or contractors.

C. Alternatives Considered

Delay Publication of This Final Rule

We considered not publishing this final rule. However, we believe this rule is necessary to address the burden to States and manufacturers with respect to recordkeeping in the Medicaid drug rebate program. We chose to issue this rule given the concerns repeatedly expressed by manufacturers and States regarding the recordkeeping requirements and the time limit on pricing changes.

Establish a Different Time Limitation

Another alternative would be to establish a longer or a shorter time limitation for recordkeeping and pricing changes. We did not choose a longer recordkeeping timeframe because it would not relieve a reasonable amount of the burden to manufacturers. In addition, a longer time limit on pricing changes would not sufficiently alleviate States' fiscal vulnerability with regard to retroactive pricing changes. We did not choose a shorter recordkeeping timeframe because it would create a disparity among Federal recordkeeping requirements. The 3-year timeframe set forth for both requirements mirrors existing records retention requirements for States. Furthermore, because the recordkeeping and pricing change provisions are interrelated, we believe the timeframes should be the same for these provisions.

D. Conclusion

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 447

Accounting, Administrative practice and procedure, Drugs, Grant programs-health, Health facilities, Health professions, Medicaid, Reporting and

recordkeeping requirements, Rural areas.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV part 447 as set forth below:

PART 447—PAYMENTS FOR SERVICES

■ 1. The authority citation for part 447 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

■ 2. A new subpart I, consisting of § 447.500 through § 447.550, is added to read as follows:

Subpart I—Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements

Sec.

447.500–447.532 [Reserved]
447.534 Manufacturer reporting requirements.
447.536–447.550 [Reserved]

Subpart I—Payment for Outpatient Prescription Drugs Under Drug Rebate Agreements

§§ 447.500–447.532 [Reserved]

§ 447.534 Manufacturer reporting requirements.

(a)–(g) [Reserved]

(h) *Recordkeeping requirements.* (1)(i) A manufacturer must retain records (written or electronic) for 3 years from the date the manufacturer reports that rebate period's data to CMS. The records must include these data and any other materials from which the calculations of the average manufacturer price and best price are derived, including a record of any assumptions made in the calculations.

(ii) A manufacturer must retain records beyond the 3-year period if one or more of the following circumstances exist:

(A) The records are the subject of an audit or of a government investigation of which the manufacturer is aware related to average manufacturer price or best price.

(B) The audit findings or investigation related to the average manufacturer price and best price have not been resolved.

(2) [Reserved]

(i) *Timeframe for reporting revised average manufacturer price or best price.* A manufacturer must report to CMS revisions to average manufacturer price or best price for a period not to exceed 12 quarters from the quarter in which the data were due.

(ii) [Reserved]

§§ 447.536–447.550 [Reserved]

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: January 16, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 29, 2003.

Tommy G. Thompson,

Secretary.

Editorial Note: This document was received in the Office of the Federal Register on August 19, 2003.

[FR Doc. 03–21548 Filed 8–28–03; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7815]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification

addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorizataion/cancellation of sale or flood insuranc ein community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region				
Pennsylvania:				
Bedminster, Township of, Bucks County.	421049	February 5, 1976, Emerg.; December 1, 1983. Reg.; September 3, 2003, Susp.	Sept. 3, 2003	Sept. 3, 2003.
Plumstead, Township of, Bucks County	420199	February 25, 1973, Emerg.; September 29, 1978, Reg.; September 3, 2003, Susp.	.....do	Do.
Region VII				
Missouri: Denver, Village of, Worth County	290453	January 25, 1977, Emerg.; September 4, 1985, Reg.; September 3, 2003, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Susp.—Suspension.

Dated: August 22, 2003.

Anthony S. Lowe,

Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 03–22071 Filed 8–28–03; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2709, MB Docket No. 03–110, RM–10700]

Digital Television Broadcast Service; Conway, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of the South Carolina Educational Television Commission, substitutes DTV channel *9 for DTV channel *58 at Conway, South Carolina. *See* 68 FR 28806, May 27, 2003. DTV channel *9 can be allotted to Conway, South Carolina, in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates 33–56–58 N. and 79–06–31 W. with a power of 20, HAAT of 250.2 meters and with a DTV service population of 619 thousand. With this action, this proceeding is terminated.

DATES: Effective October 14, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–110, adopted August 20, 2003, and released August 27, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under South Carolina, is amended by removing

DTV channel *58 and adding DTV channel *9 at Conway.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–22170 Filed 8–28–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1137

[STB Ex Parte No. 637 (Sub-No. 1)]

Removal of Divisions of Revenue Regulations

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is removing its regulations concerning divisions of revenue proceedings because of changes in the statute and the infrequency of divisions of revenue complaints.

EFFECTIVE DATE: This rule is effective on September 28, 2003.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565–1661. [Federal Information Relay Service for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On May 6, 2003, at 68 FR 23947–48,[1] the Board published a notice of proposed rulemaking (NPR) in this proceeding seeking comments on the Board's proposal to remove the regulations at 49 CFR 1137.1 concerning divisions of revenue cases between carriers participating in a joint rate. The NPR indicated that the regulations were issued in response to the enactment of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act). The 4R Act amended former section 15(6) of the Interstate Commerce Act by adding provisions that would expedite the handling of divisions of revenue cases. In response, the Interstate Commerce Commission (ICC) issued the original divisions of revenue rules in *Expeditious Handling of Divisions of Revenue Cases*, 353 I.C.C. 349 (1976).[2] As noted in the notice of proposed rulemaking, section 15(6) was recodified at former 49 U.S.C. 10705, which was later modified by the Staggers Rail Act of 1980. Former section 10705 in general required that evidentiary proceedings in cases brought by complaint be completed in 9 months and a final decision be issued within 180 days after the close of the record.[3]

The NPR noted that, under the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995), section 10705 had been modified. Although the Board retains jurisdiction over divisions of joint rates, the provision for the filing of a notice of intent and the deadlines for gathering evidence and issuing a final decision have been removed.

In proposing to remove the rules at section 1137.1, the Board stated that agency records indicated that there had not been a divisions of revenue complaint in over 20 years,[4] and, accordingly, retaining the regulations appeared to be administratively inefficient. Furthermore, the rules contained the notice of intent and deadline provisions that no longer had a statutory basis. The Board noted that the general rules for filing complaints at 49 CFR part 1111 appeared adequate for divisions complaints. Comments were sought on whether the rules should be retained, updated, or eliminated.

In response to the notice, the Board received one comment, from the Association of American Railroads (AAR). The AAR supports the proposal for the reasons expressed in the NPR. It submits that the Board's current general complaint rules are sufficient for any potential divisions complaint.

The regulations at 49 CFR 1137.1 concerning divisions of revenue cases will be removed. It would be administratively inefficient to retain rules that are outdated and have not been used in over 20 years where general complaint rules are in place. The only party responding to the NPR supports the elimination of the rules. Finally, parties in a prospective complaint can propose on a case-by-case basis to use any evidence they consider relevant, including the evidence referenced in the former guidelines.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1137

Administrative practice and procedure, Railroads.

Decided: August 25, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

■ For the reasons set forth in the preamble, the Surface Transportation Board amends title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1137—[REMOVED]

■ 1. Part 1137 consisting of § 1137.1 is removed.

[FR Doc. 03–22130 Filed 8–28–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI93

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 2003–04 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 1, 2003.

ADDRESSES: You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Tina Chouinard, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (318/201–0400), or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1967).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones

[1] A corrected notice was served on May 8, 2003, and published in the **Federal Register** on May 14, 2003 (68 FR 25859).

[2] The regulations were originally issued at 49 CFR 1109.5. They were later redesignated at 49 CFR 1137.1 in *Revision of the Rules of Practice*, Ex Parte No. 55 (Sub-No. 55), 47 FR 49534 (Nov. 1, 1982).

[3] The ICC subsequently modified the regulations in section 1137.1 in *Revised Procedures for Divisions of Revenue Cases*, 367 I.C.C. 353 (1983).

[4] *Increases in Freight Rates and Charges*—1973, 365 I.C.C. 193 (1981).

of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 8, 2003, **Federal Register** (68 FR 47424), we proposed special migratory bird hunting regulations for the 2003–04 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by non-tribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the May 6, 2003, **Federal Register** (68 FR 24324), we requested that tribes desiring special hunting regulations in the 2003–04 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Late-season hunting will be addressed in late-September. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **ADDRESSES** or from our Web site at *http://migratorybirds.fws.gov*.

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area is comprised of Alaska, Canada, and the northcentral United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

Habitat conditions for breeding waterfowl have greatly improved over last year in most of the prairie survey areas. These improved conditions are reflected in the numbers of ponds counted this year. The estimate of May ponds (U.S. Prairies and Prairie and parkland Canada combined) of 5.2 ± 0.2 [SE] million is 91% higher than last year ($P < 0.001$) and 7% above the long-term average ($P = 0.034$). Numbers of ponds in Canada (3.5 ± 0.2 million) and the United States (1.7 ± 0.1 million) were above 2002 estimates (+145% in Canada and +30% in the U.S.; $P < 0.001$). Canadian ponds were similar to the 1974–2002 average ($P = 0.297$), while ponds in the United States were 10% above the 1974–2002 average ($P = 0.037$).

Most prairie areas had warm temperatures and abundant rain this spring. Two areas of dramatic improvement over the past several years were south-central Alberta and southern Saskatchewan, where conditions went from poor to good after much-needed precipitation relieved several years of drought. Other areas in the prairies also improved compared with 2002, but to a lesser extent. However, years of dry conditions in parts of the United States and Canadian prairies, combined with agricultural practices, have reduced the quality and quantity of residual nesting cover and overwater nest sites in many regions. This could potentially limit production for both dabbling and diving ducks, if the warm spring temperatures and good moisture of 2003 do not result in rapid growth of new cover. Eastern South Dakota was the one area of the prairies where wetland habitat conditions were generally worse than last year, mostly due to low soil moisture, little winter precipitation, and no significant rains in April. This region received several inches of rain in May, but most birds had probably flown to other regions with more favorable wetland conditions.

In the northern part of the traditional survey area, habitat was in generally good condition and most areas had normal water levels. The exception was northern Manitoba, where low water levels in small streams and beaver ponds resulted in overall breeding habitat conditions that were only fair. Warm spring temperatures arrived much earlier this year than the exceptionally late spring last year. However, a cold snap in early May may have hurt early nesting species such as mallards and pintails, particularly in the northern Northwest Territories.

This spring, habitat conditions in the eastern survey area ranged from excellent to fair. In the southern and western part of this survey area, water and nesting cover were plentiful and temperatures were mild. Habitat quality decreased to the north, especially in northern and western Quebec, where many shallow marshes and bogs were either completely dry or reduced to mudflats. Beaver pond habitat was also noticeably less common than normal. To the east in Maine and most of the Maritime provinces, conditions were excellent, with adequate water and vegetation, and warm spring temperatures.

Weather and habitat conditions during the summer months can

influence waterfowl production. Good wetland conditions increase renesting and brood survival. July wetland conditions were rated fair to good over most of Prairie Canada, the Dakotas, and eastern Montana, but poor conditions prevailed in eastern South Dakota, south-central Manitoba, central Saskatchewan, and north-central Montana.

However, uniformly good conditions were found in the northern portions of the prairie provinces, and spring and summer rains made for good-to-excellent conditions along the border of Saskatchewan and eastern Montana. Results of the July Production Survey indicate that the number of ponds in Prairie Canada and the north-central United States combined was 2.5 ± 0.1 million ponds. This was 35 percent above last year's estimate of 1.8 ± 0.1 million ponds, but still 8 percent below the long-term average. July ponds in Prairie Canada were estimated to be 1.5 ± 0.1 million. This was 47 percent above last year's estimate of 1.0 ± 0.1 million but 16 percent below the long-term average. July ponds in the north-central United States were estimated at 1.0 ± 0.1 million. This was 21 percent above last year's estimate of 0.8± 0.1 million, but similar to the long-term average.

Breeding Population Status

In the traditional survey area, the total duck population estimate was 36.2 ± 0.7 million birds, 16 percent above ($P < 0.001$) last year's estimate of 31.2 ± 0.5 million birds, and 9 percent above ($P < 0.001$) the 1955–2002 long-term average. Mallard abundance was 7.9 ± 0.3 million birds, which was similar to last year's estimate of 7.5 ± 0.2 million birds ($P = 0.220$) and the long-term average ($P = 0.100$). Blue-winged teal abundance was estimated to be 5.5 ± 0.3 million birds. This value was 31 percent above last year's estimate of 4.2 ± 0.2 million birds ($P<0.001$) and 23 percent above the long-term average ($P = 0.001$). Estimates of shovelers (3.6 ± 0.2 million; +56%) and pintails (2.6 ± 0.2 million; +43%) were above 2002 estimates ($P < 0.001$), while estimates of gadwall (2.5 ± 0.2 million), wigeon (2.6 ± 0.2 million), green-winged teal (2.7 ± 0.2 million), redheads (0.6 ± 0.1 million), canvasbacks (0.6 ± 0.1 million), and scaup (3.7 ± 0.2 million) were unchanged from 2002 estimates ($P \geq 0.149$). Gadwall (+55%) and shovelers (+72%) were above their 1955–2002 averages ($P < 0.001$), as were green-winged teal (+46%; $P < 0.001$), which were at their second highest level since 1955. Pintails (-39%) and scaup (-29%) remained well below their long-term averages ($P < 0.001$). Wigeon, redheads, and canvasbacks were unchanged from their long-term averages ($P \geq 0.582$).

The eastern survey area comprises strata 51–56 and 62–69. The 2003 total duck population estimate for this area was 3.6 ± 0.3 million birds. This estimate is 17 percent lower than that of last year (4.4 ± 0.3 million birds, $P = 0.065$), but is similar to the 1996–2002 average ($P = 0.266$). Numbers of the individual species were similar to those of last year and the 1996–2002 average, with the exception of mergansers (0.6 ± 0.1 million), which decreased 30 percent from the 2002 estimate ($P = 0.035$).

Breeding Activity and Production

The number of broods in the north-central United States and Prairie Canada combined was 434,900, 23 percent higher than last year, and 7 percent below the long-term average. The number of broods in Prairie Canada and the north-central United States were 142 percent and 18 percent above last year's estimates, respectively. Brood indices in Prairie Canada were 24 percent below the long-term average, while brood counts were 31 percent above the long-term average in the north-central United States. Reflecting the lower concentration of ducks in the Canadian boreal forest this year compared to 2002, the brood index in this region was 72 percent lower than last year, and 76 percent below the long-term average. The late-nesting index, that is, the number of pairs and lone drakes without broods seen during July surveys, was 17 percent higher than last year, and 51 percent lower than the long-term average, for all areas combined. The late-nesting index was down 43 percent and 30 percent relative to last year in boreal Canada and Prairie Canada, respectively, but up 67 percent in the north-central United States. Late nesting indices were below the long-term average by 74 percent in boreal Canada, by 43 percent in the north-central United States, and by 46 percent in Prairie Canada.

Fall Flight Estimate

The size of the mid-continent mallard population, which comprises mallards from the traditional survey area, plus Michigan, Minnesota, and Wisconsin, was 8.8 million birds. This is similar to that of 2002 (8.6 million). The 2003 mid-continent mallard fall-flight estimate is 10.3 million birds, statistically similar to the 2002 estimate of 9.1 million birds. These estimates were based on revised mid-continent mallard population models and, therefore, differ from those previously published.

For further discussion on the implications of this information for this year's selection of the appropriate hunting regulations in the United States, see the August 19, 2003, **Federal Register** (68 FR 50016).

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross's geese (*C. rossii*), emperor geese (*C. canagicus*), white-fronted geese (*Anser albifrons*) and tundra swans (*Cygnus columbianus*). The timing of snowmelt and goose nesting activities in most areas of the Arctic and subarctic was near average in 2003. Only Alaska's North Slope, Banks and adjacent Arctic Islands, and Akimiski Island reported substantially delayed nesting phenology this year. Although Alaska's Yukon-Kuskokwim Delta experienced an early spring snowmelt, we observed poor production of young by brant, cackling Canada geese, and emperor geese, likely due to low wetland levels and high fox predation. Conditions in 2003 were especially favorable for greater snow geese. Of the 25 populations for which current primary population indices were available, 8 populations (Atlantic Population, Aleutian, Dusky, and 3 temperate-nesting populations of Canada geese; Pacific Population White-fronted Geese; and Eastern Population Tundra Swans) displayed significant positive trends, and only Short Grass Prairie Population Canada geese displayed a significant negative trend over the most recent 10-year period. Forecasts for production of geese and swans in North America in 2003 varied regionally, but generally will be similar to or higher than in 2002.

Comments and Issues Concerning Tribal Proposals

For the 2003–04 migratory bird hunting season, we proposed regulations for 28 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 19 tribes have proposals with early seasons. Comments and revised proposals received to date are addressed in the following section. The comment period for the proposed rule, published on August 8, 2003, closed on August 18, 2003. Because of the necessary brief comment period, we will respond to any

comments received on the proposed rule and/or these late-season regulations not responded to herein in the September late-season final rule.

We received two comments regarding the notice of intent published on May 6, 2003, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. The Wisconsin Department of Natural Resources endorsed the 2003 seasons proposed by the Great Lakes Indian Fish and Wildlife Commission. The Michigan Department of Natural Resources commented on the establishment of tribal regulations on 1836 Treaty areas. Michigan believed it was premature of the Service to establish waterfowl regulations in areas covered by the 1836 Treaty until such time as the issue of 1836 Treaty hunting rights are affirmed by a court of competent jurisdiction.

Service Response: We have addressed this issue several times in the last few years. Our position is that the Federal Government does recognize the Treaty of 1836 as reserving to the affected tribes or bands hunting rights in the ceded territory. Further, the Federal courts have already confirmed the retention of reserved fishing rights in the territory ceded by the Treaty of 1836 in *United States* v. *Michigan*, 471 F.Supp. 192 (W.D. Mich. 1979), *remanded*, 623 F.2d 448 (6th Cir. 1980), *order modified*, 653 F.2d 277 (6th Cir. 1981), *cert. denied*, 454 U.S. 1124 (1981). That case and cases dealing with other treaty cessions, such as *Lac Courte Oreilles* v. *Wisconsin* (*i.e.*, both the 1837 and the 1842 Treaties), provide persuasive precedent for the belief that hunting as well as fishing rights were reserved by the tribes in the Treaty of 1836. We have not altered our position on this matter.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582) and our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under **ADDRESSES**. In addition, an August 1985 Environmental Assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available under **ADDRESSES**.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

Executive Order 12866

Collectively, the rules covering the overall frameworks for migratory bird hunting are economically significant and have been reviewed by the Office of Management and Budget (OMB) under Executive Order 12866. This rule is a small portion of the overall migratory bird hunting frameworks and was not individually submitted and reviewed by OMB under Executive Order 12866. As such, a cost/benefit analysis was initially prepared in 1981. This analysis was subsequently revised annually from 1990–96, and then updated in 1998. We will update again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 1998 analysis indicate that the expected welfare benefit of the annual migratory bird hunting frameworks is on the order of $50 to $192 million. Copies of the cost/benefit analysis are available upon request from the address indicated under **ADDRESSES**.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis discussed under Executive Order 12866. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis). The Analysis was subsequently updated in 1996 and 1998 and will be updated again in 2004. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The 1998 Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend between $429 million and $1.084 billion at small businesses in 2003. Copies of the Analysis are available upon request from the address indicated under **ADDRESSES**.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1) and this rule will be effective immediately.

Energy Effects—Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, it is not a significant energy action and no Statement of Energy Effects is required.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 10/31/2004). This information is used to provide a sampling frame for voluntary national surveys to improve

our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned control number 1018–0023 (expires 10/31/2004). The information from this survey is used to estimate the magnitude and the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not "significantly or uniquely" affect small governments, and will not produce a Federal mandate of $100 million or more in any given year on local or State government or private entities. Therefore, this proposed rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the MBTA, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the MBTA. Annually, we prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. We develop the frameworks in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will ultimately make season selections, thereby having an influence on their own regulations. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Further, any State or Tribe may be more restrictive than the Federal frameworks at any time. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the MBTA. Thus, in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals received in response to the May 6, 2003, request for proposals and the August 8, 2003, proposed rule, we have consulted with all the tribes affected by this rule.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the tribes would have insufficient time to communicate these seasons to their member and non-tribal hunters and to establish and publicize the necessary regulations and procedures to implement their decisions. We, therefore, find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will take effect immediately upon publication.

Therefore, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), we prescribe final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

■ Accordingly, part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub L. 106–108.

(**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature).

■ 2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Nontribal Hunters)

Doves

Season Dates: Open September 1, close September 15, 2003; then open November 15, 2003, close December 29, 2003.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required and must be in possession of all persons 14 years and older before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may

be obtained at the Fish and Game Office in Parker, Arizona.

(b) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Nontribal Hunters)

Sandhill Cranes

Season Dates: Open September 13, close October 19, 2003.

Daily Bag Limit: Three sandhill cranes.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in their possession while hunting.

Doves

Season Dates: Open September 1, close October 30, 2003.

Daily Bag Limit: 15 mourning doves.

General Conditions: The possession limit is twice the daily bag limit. Tribal and nontribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

(c) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only)

All seasons in Minnesota, 1854 and 1837 Treaty Zones:

Ducks and Mergansers

Season Dates: Open September 20, close December 1 2003.

Daily Bag Limit for Ducks: 18 ducks, including no more than 12 mallards (only 6 of which may be hens), 3 black ducks, 9 scaup, 6 wood ducks; 6 redheads, 3 pintails and 3 canvasbacks. Daily Bag Limit for Mergansers: 15 mergansers, including no more than 3 hooded mergansers.

Geese (All species)

Season Dates: Open September 2, close December 1, 2003.

Daily Bag Limit: 12 geese.

Coots and Common Moorhens (Gallinule)

Season Dates: Open September 20, close December 1, 2003.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Open September 20, close December 1, 2003.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. There is no possession limit.

Common Snipe and Woodcock

Season Dates: Open September 2, close December 1, 2003.

Daily Bag Limit: Eight snipe and three woodcock.

General Conditions:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation, and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. There are no possession limits on any species, unless otherwise noted above. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds that fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(d) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

All seasons in Michigan, 1836 Treaty Zone:

Ducks

Season Dates: Open September 15, 2003, close January 15, 2004.

Daily Bag Limit: 12 ducks, which may include no more than 2 pintail, 2 canvasback, 3 black ducks, 1 hooded merganser, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

Canada Geese

Season Dates: Open September 1, close November 30, 2003, and open January 1, 2004, close February 8, 2004.

Daily Bag Limit: Five geese.

Other Geese (white-fronted geese, snow geese, and brant)

Season Dates: Open September 20, close November 30, 2003.

Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1, close November 14, 2003.

Daily Bag Limit: Ten rails, ten snipe, and five woodcock.

Mourning Doves

Season Dates: Open September 1, close November 14, 2003.

Daily Bag Limit: Ten mourning doves.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(e) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Ducks

A. Wisconsin and Minnesota 1837 and 1842 Zones

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

B. Michigan 1836 and 1842 Treaty Zones

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers: All Ceded Areas.

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: Five mergansers.

Geese: All Ceded Areas.

Season Dates: Begin September 1 and end December 1, 2003. In addition, any portion of the ceded territory which is open to State-licensed hunters for goose hunting after December 1 shall also be open concurrently for tribal members.

Daily Bag Limit: 10 geese in aggregate.

Other Migratory Birds: All Ceded Areas except where noted below.

A. Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

B. Sora and Virginia Rails

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: 25 sora and Virginia rails singly, or in the aggregate.

Possession Limit: 25.

C. Common Snipe

Season Dates: Begin September 15 and end December 1, 2003.

Daily Bag Limit: Eight common snipe.

D. Woodcock

Season Dates: Begin September 2 and end December 1, 2003.

Daily Bag Limit: Five woodcock.

E. Mourning Doves: 1837 and 1842 Ceded Territories

Season Dates: Begin September 2 and end October 30, 2003.

Daily Bag Limit: Fifteen mourning doves.

General Conditions

A. All tribal members will be required to obtain a valid tribal waterfowl hunting permit.

B. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the model ceded territory conservation codes approved by federal courts in the *Lac Courte Oreilles* v. *State of Wisconsin (Voigt)* and *Mille Lacs Band* v. *State of Minnesota cases*. The respective Chapters 10 of these model codes regulate ceded territory migratory bird hunting. They parallel federal requirements as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting. They also automatically incorporate by reference the federal migratory bird regulations adopted in response to this proposal.

C. Particular regulations of note include:

1. Nontoxic shot will be required for all off-reservation waterfowl hunting by tribal members.

2. Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

3. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession and custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as taken on reservation lands. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

4. The baiting restrictions can be obtained at the Tribal office in the model ceded territory conservation codes. These codes will be amended to include language which parallels that in place for nontribal members as published in 64 FR 29804, June 3, 1999.

5. The shell limit restrictions of the model ceded territory conservation codes will be removed.

D. Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(f) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members and Nontribal Hunters)

Nontribal Hunters on Reservation

Geese

Season Dates: Open September 1, 2003, close September 15, 2003.

Daily Bag Limits: 5 and 10, respectively.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 15, 2003, close January 26, 2004.

Daily Bag Limit: 7 ducks, including no more than 2 female mallards, 1 canvasback, 1 pintail, 4 scaup, and 2 redheads.

Geese

Season Dates: Open September 1, 2003, close January 31, 2004.

Daily Bag Limit: 3 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(g) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

Ducks

Season Dates: Open September 13, close December 31, 2003.

Daily Bag Limits: 10 birds.

Geese

Season Dates: Open September 1, close December 31, 2003.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

(h) Little River Band of Ottawa Indians, Manistee, Michigan (Tribal Members Only)

Canada Geese, White-fronted Geese, Snow Geese, Ross Geese, and Brant

Season Dates: Open September 1, close November 30, 2003, for all species, and open for Canada geese only, January 1, close February 7, 2004.

Daily Bag and Possession Limits: 5 Canada geese and a combination of 10 of all other species. The possession limit is twice the daily bag limit.

Rails, Snipe, and Woodcock

Season Dates: Open September 1, close November 14, 2003.

Daily Bag and Possession Limits: 10 rails, 10 snipe, and 5 woodcock. The possession limit is twice the daily bag limit.

Mourning Doves

Season Dates: Open September 15, close November 14, 2003.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General:

A. All tribal members are required to obtain a valid tribal resource card and 2003–04 hunting license.

B. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel all Federal regulations contained in 50 CFR part 20.

C. Particular regulations of note include:

(1) Nontoxic shot will be required for all waterfowl hunting by tribal members.

(2) Tribal members in each zone will comply with tribal regulations providing for closed and restricted waterfowl hunting areas. These regulations generally incorporate the same restrictions contained in parallel State regulations.

(3) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

D. Tribal members hunting in Michigan will comply with tribal codes that contain provisions parallel to Michigan law regarding duck blinds and decoys.

(i) The Little Traverse Bay Bands of Odawa Indians, Petoskey, Michigan (Tribal Members Only)

Ducks

Season Dates: Open September 15, 2003, close January 20, 2004.

Daily Bag Limits: 12 ducks, including no more than 6 mallards (only 3 of which may be hens), 3 black ducks, 3 redheads, 3 wood ducks, 2 pintail, 1 hooded merganser, and 2 canvasback.

Canada Geese

Season Dates: Open September 1, 2003, close November 30, 2003, and open January 1, 2004, close February 7, 2004.

Daily Bag Limit: Five geese.

White-fronted Geese, Snow Geese, and Brant

Season Dates: Open September 1, close November 30, 2003.

Daily Bag Limit: 10 of each species.

Sora Rails, Snipe, and Mourning Doves

Season Dates: Open September 1, close November 14, 2003.

Daily Bag Limit: 10 of each species.

Woodcock

Season Dates: Open September 1, close November 14, 2003.

Daily Bag Limit: Five woodcock.

General: Possession limits are twice the daily bag limits.

(j) Makah Indian Tribe, Neah Bay, Washington (Tribal Members)

Band-Tailed Pigeons

Season Dates: Open September 1, 2003, close October 31, 2003.

Daily Bag Limit: Two band-tailed pigeons.

Ducks and Coots

Season Dates: Open September 15, 2003, close January 13, 2004.

Daily Bag Limit: Seven ducks including no more than one redhead and one canvasback. The seasons on wood duck and harlequin are closed.

Geese

Season Dates: Open September 15, 2003, close January 13, 2004.

Daily Bag Limit: Four. The seasons on Aleutian and dusky Canada geese are closed.

General

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the Tribe: (1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area; (2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl; (3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation; (4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited; (5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited; (6) The use of dogs is permitted to hunt waterfowl.

(k) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers).

Band-Tailed Pigeons

Season Dates: Open September 1, close September 30, 2003.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 30, 2003.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(l) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members Only)

Geese

Season Dates: Open September 1, close November 22, 2003, and open December 1, close December 31, 2003.

Daily Bag and Possession Limits: Three and Six Canada geese, respectively. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 13, close November 16, 2003.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

General Conditions: Tribal member shooting hours be one-half hour before sunrise to one-half hour after sunset. Nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe must comply with all State of Wisconsin regulations, including season dates, shooting hours, and bag limits which differ from tribal member seasons. Tribal members and nontribal members hunting on the Reservation or on lands under the jurisdiction of the Tribe will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, with the following exceptions: Tribal members are exempt from the purchase of the Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp); and shotgun capacity is not limited to three shells.

(m) Point No Point Treaty Tribes, Kingston, Washington (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 15, 2003, close March 10, 2004.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2003, close March 10, 2004.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open November 1, 2003, close March 10, 2004.

Daily Bag and Possession Limits: Two brant. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 15, 2003, close March 10, 2004.

Daily Bag Limits: 25 coots.

Mourning Doves

Season Dates: Open September 1, 2003, close March 10, 2004.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 15, 2003, close March 10, 2004.

Daily Bag and Possession Limits: 10 and 20 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 1, 2003, close March 10, 2004.

Daily Bag and Possession Limits: 2 and 4, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

(n) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members Only)

Ducks

Season Dates: Open September 15, 2003, close January 15, 2004.

Daily Bag and Possession Limits: Five ducks, which may include only one canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2003, close January 15, 2004.

Daily Bag and Possession Limits: Four geese, and may include no more than two snow geese. The season on Aleutian and Cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 15, close December 31, 2004.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 15, 2003, close January 15, 2004.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 2003, and close January 15, 2004.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 1, close December 31, 2003.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the Tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(o) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members and Nontribal Hunters)

Tribal Members

Ducks (Including Coots and Mergansers)

Season Dates: Open September 15, 2003, and close February 29, 2004.

Daily Bag and Possession Limits: 7 and 14 ducks, respectively, except that bag and possession limits may include no more than 2 female mallards, 1 pintail, 4 scaup, and 2 redheads.

Geese

Season Dates: Open September 15, 2003, and close February 29, 2004.

Daily Bag and Possession Limits: 7 and 14 geese, respectively; except that the bag limits may not include more than 2 brant and 1 cackling Canada goose. The Tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting of 365 ducks and 365 geese.

Snipe

Season Dates: Open September 15, 2003, through February 29, 2004.

Daily Bag and Possession Limits: 8 and 16, respectively.

General Conditions: All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp. Other tribal regulations apply, and may be obtained at the tribal office in Marysville, Washington.

(p) Upper Skagit Indian Tribe, Sedro Woolley, Washington (Tribal Members Only)

Mourning Dove

Season Dates: Open September 1, end December 31, 2003.

Daily Bag and Possession Limits: 12 and 20 mourning doves, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

(q) Wampanoag Tribe of Gay Head, Aquinnah, Massachusetts (Tribal Members Only)

Geese

Season Dates: Open September 13, 2003, and close September 27, 2003, and open November 1, 2003, close February 28, 2004.

Daily Bag Limits: 5 Canada geese during the first period, 3 during the second, and 15 snow geese.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All basic Federal migratory bird hunting regulations contained in 50 CFR will be observed.

(r) White Earth Band of Ojibwe, White Earth, Minnesota (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 13, close December 14, 2003.

Daily Bag Limit for Ducks: 10 ducks, including no more than 2 mallards and 2 canvasback.

Daily Bag Limit for Mergansers: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1, close December 14, 2003.

Daily Bag Limit: Five geese.

Coots

Season Dates: Open September 7, close December 31, 2003.

Daily Bag Limit: 20 coots.

Sora and Virginia Rails

Season Dates: Open September 7, close December 31, 2003.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe and Woodcock

Season Dates: Open September 7, close December 31, 2003.

Daily Bag Limit: 10 snipe and 10 woodcock.

Mourning Dove

Season Dates: Open September 7, close December 31, 2003.

Daily Bag Limit: 25 doves.

General Conditions: Shooting hours are one-half hour before sunrise to one-

half hour after sunset. Nontoxic shot is required.

(s) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Nontribal Hunters

Band-tailed Pigeons (Wildlife Management Unit 10 and areas south of Y–70 in Wildlife Management Unit 7, only)

Season Dates: Open September 3, close September 17, 2003.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and areas south of Y–70 in Wildlife Management Unit 7, only)

Season Dates: Open September 3, close September 17, 2003.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

Dated: August 22, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–22119 Filed 8–28–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 081503B]

Fisheries of the Exclusive Economic Zone off Alaska; Reallocation of Pollock in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation.

SUMMARY: NMFS is reallocating projected unused amounts of Bering Sea subarea (BS) pollock from the incidental catch account to the directed fisheries. This action is necessary to allow the 2003 total allowable catch (TAC) of pollock to be harvested.

DATES: Effective August 26, 2003, until 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(5)(i)(A)(*1*) and the American Fisheries Act (AFA) (Public Law 105–277, Division C, Title II), NMFS specified a pollock incidental catch allowance equal to 3.5 percent of the pollock total allowable catch after subtraction of the ten percent Community Development Quota reserve in the final 2003 harvest specifications for groundfish in the BSAI (68 FR 9907, March 3, 2003).

As of August 6, 2003, the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that approximately 21,887 metric tons (mt) of pollock remain in the incidental catch account. Based on projected harvest rates of other groundfish species and the expected incidental catch of pollock in those fisheries, the Regional Administrator has determined that 6,500 mt of pollock specified in the incidental catch account will not be necessary as incidental catch. Therefore, NMFS is apportioning the projected unused amount, 6,500 mt, of pollock from the incidental catch account to the directed fishing allowances established pursuant to § 679.20(a)(5)(i)(A). Pursuant to the pollock allocation requirements set forth in § 679.20(a)(5)(i), this transfer will increase the allocation to catcher vessels harvesting pollock for processing by the inshore component by 3,250 mt, to catcher/processors and catcher vessels harvesting pollock for processing by catcher processors in the offshore component by 2,600 mt and to catcher vessels harvesting pollock for processing by motherships in the offshore component by 650 mt. Pursuant to § 679.20(a)(5)(i)(A)(*4*), no less than 8.5 percent of the 2,600 mt allocated to catcher processors in the offshore component, 221 mt, will be available for harvest only by eligible catcher vessels delivering to listed catcher processors. Pursuant to § 679.20(a)(5)(i)(A)(*4*)(*iii*), an additional 13 mt or 0.5 percent of the catcher/processor sector allocation of pollock will be available to unlisted AFA catcher/processors.

Pursuant to § 679.20(a)(5)(i)(A)(*3*), Table 1 revises the final 2003 BS subarea allocations for the seven inshore catcher vessel pollock cooperatives that have been approved and permitted by NMFS and the open access AFA vessels for the 2003 fishing year consistent with this reallocation.

TABLE 1.—2003 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

Cooperative name and member vessels	Sum of member vessel's official catch histories[1](mt)	Percentage of inshore sector allocation	Annual co-op allocation (mt)
Akutan Catcher Vessel Association ALDEBARAN, ARCTIC EXPLORER, ARCTURUS, BLUE FOX, CAPE KIWANDA, COLUMBIA,DOMINATOR, EXODUS, FLYING CLOUD, GOLDEN DAWN, GOLDEN PISCES, HAZEL LORRAINE, INTREPID EXPLORER, LESLIE LEE, LISA MELINDA, MAJESTY, MARCY J, MARGARET LYN, NORDIC EXPLORER, NORTHERN PATRIOT, NORTHWEST EXPLORER, PACIFIC RAM,	245,527	28.085%	182,845

TABLE 1.—2003 BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS—Continued

Cooperative name and member vessels	Sum of member vessel's official catch histories[1](mt)	Percentage of inshore sector allocation	Annual co-op allocation (mt)
PACIFIC VIKING, PEGASUS, PEGGY JO, PERSEVERANCE, PREDATOR, RAVEN, ROYAL AMERICAN, SEEKER, SOVEREIGNTY, TRAVELER, VIKING EXPLORER			
Arctic Enterprise Association BRISTOL EXPLORER, OCEAN EXPLORER, PACIFIC EXPLORER	36,807	4.210%	27,410
Northern Victor Fleet Cooperative ANITA J, COLLIER BROTHERS, COMMODORE, EXCALIBUR II, GOLDRUSH, HALF MOON BAY, MISS BERDIE, NORDIC FURY, PACIFIC FURY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, STORM PETREL	73,656	8.425%	54,852
Peter Pan Fleet Cooperative AMBER DAWN, AMERICAN BEAUTY, ELIZABETH F, MORNING STAR, OCEAN LEADER, OCEANIC, PROVIDIAN, TOPAZ, WALTER N	18,693	2.138%	13,921
Unalaska Cooperative ALASKA ROSE, BERING ROSE, DESTINATION, GREAT PACIFIC, MESSIAH, MORNING STAR, MS AMY, PROGRESS, SEA WOLF, VANGUARD, WESTERN DAWN	106,737	12.209%	79,488
UniSea Fleet Cooperative ALSEA, AMERICAN EAGLE, ARGOSY, AURIGA, AURORA, DEFENDER, GUN-MAR, NORDIC STAR, PACIFIC MONARCH, SEADAWN, STARFISH, STARLITE	201,566	23.056%	150,107
Westward Fleet Cooperative A.J., ALASKAN COMMAND, ALYESKA, ARCTIC WIND, CAITLIN ANN, CHELSEA K, DONA MARTITA, FIERCE ALLEGIANCE, HICKORY WIND, OCEAN HOPE 3, PACIFIC CHALLENGER, PACIFIC KNIGHT, PACIFIC PRINCE, STARWARD, VIKING, WESTWARD I	189,942	21.727%	141,451
Open access AFA vessels	1,309	0.150%	975
Total inshore allocation	874,238	100%	651,047

[1] According to regulations at § 679.62 the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the implementation of these measures in a timely fashion in order to allow full utilization of the pollock TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is taken under 50 CFR 679.20, and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22181 Filed 8–26–03; 3:01 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 081403C]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments; openings and closures.

SUMMARY: NMFS issues an inseason adjustment opening the B season for Atka mackerel with gears other than jig in the Eastern Aleutian District (area 541) and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI) for 12 hours, from 2400 hrs, Alaska local time (A.l.t.), September 1, 2003, until 1200 hrs, A.l.t., September 2, 2003. This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Atka mackerel in these areas and to allow the harvest limit area (HLA) fisheries in the Central (area 542) and Western (area 543) Aleutian Districts, which are by regulation scheduled to open 48 hours after the closure of the Eastern Aleutian District and Bering Sea subarea fishery, to begin at 1200 hrs. NMFS is also announcing the opening and closure dates of the first and second directed fisheries within the HLA in areas 542 and 543. These actions are necessary to prevent exceeding the B season HLA limits established for area 542 and area 543.

DATES: Opening of directed fishing for Atka mackerel with gears other than jig in the Eastern Aleutian District and the Bering Sea subarea: Effective 2400 hrs, A.l.t., September 1, 2003, until 1200 hrs, A.l.t., September 2, 2003. The first directed fisheries in the HLA in area 542 and area 543 open effective 1200 hrs, A.l.t., September 4, 2003. The first HLA fishery in area 542 and area 543 will remain open until 1200 hrs, A.l.t., September 10, 2003. The second directed fisheries in the HLA in area 542 and area 543 open effective 1200 hrs, A.l.t., September 12, 2003. The second HLA fishery in area 542 and area 543 will remain open until 1200 hrs, A.l.t., September 18, 2003. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 12, 2003.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Hand delivery or courier delivery of comments may be sent to NMFS at the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. Comments also may be sent via facsimile (fax) to (907) 586–7557. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Atka mackerel for gears other than jig in the Eastern Aleutian District and the Bering Sea subarea is 9,753 metric tons (mt) as established by the final 2003 harvest specifications for Groundfish of the BSAI (68 FR 9907, March 3, 2003).

As of August 7, 2003, 2,100 mt remain in the 2003 Eastern Aleutian District and Bering Sea subarea TAC of Atka mackerel for gears other than jig. Current information shows the catching capacity of vessels expected to fish Atka mackerel in Statistical Area 541 of the BSAI is about 2,500 mt per day. Regulations at § 679.23(b) specifies that the time of all openings and closures of fishing seasons, other than the beginning and end of the calendar fishing year, is 1200 hrs, A.l.t. However, the Administrator, Alaska Region, NMFS, has determined that the B season allowance of the Atka mackerel TAC could be exceeded if a 24–hour fishery were allowed to occur. NMFS intends that the seasonal allowance not be exceeded and, therefore, cannot allow a 24–hour directed fishery.

NMFS, in accordance with § 679.25(a)(1)(i) and § 679.25(a)(2)(i)(A), is adjusting the B season for Atka mackerel in the Eastern Aleutian District and Bering Sea subarea by opening the fishery at 2400 hrs, A.l.t., September 1, 2003, and closing the fishery at 1200 hrs, A.l.t., September 2, 2003, at which time directed fishing for Atka mackerel will be prohibited. This action has the effect of opening the fishery for 12 hours.

Regulations at § 679.20(a)(8)(iii)(C) require the HLA fisheries in areas 542 and 543 open 48 hours after the seasonal closure of area 541. To provide for openings in the subsequent HLA fisheries at 1200 hrs, A.l.t., the fishery in the Eastern Aleutian District and Bering Sea subarea is being opened at 2400 hrs, A.l.t., September 1, 2003, and closed at 1200 hrs, A.l.t., September 2, 2003.

In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 1200 hrs, A.l.t., September 2, 2003, after a 12–hour opening is the least restrictive management adjustment to achieve the 2003 Atka mackerel TAC in Eastern Aleutian District and Bering Sea subarea and will allow other fisheries to continue in noncritical areas and time periods. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit of effort and rate of harvest in making this adjustment.

In accordance with § 679.20(a)(8)(iii)(C), the Regional Administrator is opening the first directed fisheries for Atka mackerel within the HLA in areas 542 and 543. These regulations require the opening to occur 48 hours after the closure of the area 541 Atka mackerel directed fishery. The Regional Administrator has established the opening date for the second HLA directed fisheries in areas 542 and 543 as 48 hours after the closure of the first HLA fisheries. NMFS is opening directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the DATES section of this notice and as justified below.

In accordance with § 679.20(a)(8)(iii), vessels using trawl gear for directed fishing for Atka mackerel have previously registered with NMFS to fish in the HLA fisheries in areas 542 and/or 543. NMFS has randomly assigned each vessel to the directed fishery or fisheries for which they have registered. NMFS has notified each vessel as to which fishery each vessel has been assigned by NMFS. A notification of vessel assignments was published elsewhere in this issue.

In accordance with § 679.20(a)(8)(ii)(C)(1), the B season harvest limit of the seasonal TAC in areas 542 and 543 are 8,147 mt and 5,547 mt, respectively. Based on those seasonal apportionments and the proportion of the number of vessels in each platoon compared to the total number of vessels participating in the HLA directed fishery for area 542 or 543 during the B season, the harvest limit for each HLA directed fishery for areas 542 and 543 are as follows: For the first directed fishery in area 542, 4,074 mt; for the first directed fishery in area 543, 2,774 mt; for the second directed fishery in area 542, 4,074 mt; for the second directed fishery in area 543, 2,774 mt.

In accordance with § 679.20(a)(8)(iii)(E), the Regional Administrator has established the closure dates of the Atka mackerel directed fisheries in the HLA for areas 542 and 543 based on the amount of the harvest limit and the estimated fishing capacity of the vessels assigned to the respective fisheries. Consequently, NMFS is prohibiting directed fishing for Atka mackerel in the HLA of areas 542 and 543 in accordance with the periods listed under the DATES section of this notice.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of these fisheries, lead to exceeding the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA for Fisheries, NOAA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the Atka mackerel TAC in the Eastern Aleutian District and Bering Sea subarea of the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 12, 2003.

This action is required by §§ 679.20 and 679.25 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22191 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212307–3037–02; I.D. 081403D]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel Harvest Limit Area Fisheries in Areas 542 and 543

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of Atka mackerel assignments.

SUMMARY: NMFS is notifying registered vessels of their assignments for the 2003 B season Atka mackerel fishery in harvest limit areas (HLA) 542 and/or 543 of the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of the B season HLA limits established for area 542 and area 543.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 28, 2003, until 1200 hrs, A.l.t., November 1, 2003.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, (907) 586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(a)(8)(iii)(A), 10 vessels using trawl gear for directed fishing for Atka mackerel have registered with NMFS to fish in the 2003 B season HLA fisheries in areas 542 and/or 543. In accordance with § 679.20(a)(8)(iii)(B) the Administrator, Alaska Region, has randomly assigned each vessel to the HLA directed fishery for Atka mackerel for which they have registered and is now notifying each vessel of its assignment.

Vessels assigned to participate in the first HLA directed fishery in area 542 and/or the second HLA directed fishery in area 543 in accordance with the vessel's registration under § 679.20(a)(8)(iii)(A) are as follows: Federal Fishery Permit number (FFP) 3423 Alaska Warrior, FFP 3819 Alaska Spirit, FFP 2134 Ocean Peace, FFP 3835 Seafisher, and FFP 2800 U.S. Intrepid.

Vessels assigned to participate in the first HLA directed fishery in area 543 and/or the second HLA directed fishery in area 542 in accordance with the vessel's registration under § 679.20(a)(8)(iii)(A) are as follows: FFP 2443 Alaska Juris, FFP 2733 Seafreeze Alaska, FFP 4093 Alaska Victory, FFP 3400 Alaska Ranger, and FFP 1879 American No. 1.

Classification

This action responds to the best available information. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action that notifies each vessel of their fishery assignment to allow the harvest of the B season HLA limits established for area 542 and area 543 constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) and 50 CFR 679.20(a)(8)(iii), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion that notifies each vessel of their fishery assignment to allow the harvest of the B season HLA limits established for area 542 and area 543 constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22192 Filed 2–28–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 168
Friday, August 29, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

RIN 0584–AD13

Food Stamp Program: Vehicle and Maximum Excess Shelter Expense Deduction Provisions of Public Law 106–387

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department proposes to amend its regulations to implement Sections 846 and 847 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies—Appropriations Act 2001 (Agriculture Appropriations Act of 2001). This rule would increase the maximum amount of the food stamp excess shelter expense deduction and index it to the Consumer Price Index, and allow State agencies the option to use their Temporary Assistance for Needy Families (TANF) Program vehicle allowance rules rather than the vehicle rules used in the Food Stamp Program (FSP) where doing so will result in a lower attribution of resources to food stamp households. The proposed rule would increase benefits for some participants, make additional households eligible for food stamps, and provide greater flexibility for States in determining the value of vehicles.

DATES: Send your comments to reach us by October 28, 2003.

ADDRESSES: You may mail comments to Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302, attention Program Design Branch. You may fax comments to us at (703) 305–2486, attention Program Design Branch. You may also hand-deliver comments to us on the 8th floor at the above address. For information about filing electronically, see the **SUPPLEMENTARY INFORMATION** section under Electronic Access and Filing Address.

FOR FURTHER INFORMATION CONTACT: John Knaus, Chief, Program Design Branch, Program Development Division, Food Stamp Program, FNS, at (703) 305–2098. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

Electronic Access and Filing Address

You may view and download an electronic version of this proposed rule at *http://www.fns.usda.gov/fsp/rules/Regulations/default.htm*. You may also send comments to PRGDEV.WEB at the same Internet address after clicking "Email Us" in the yellow bar near the top of the screen. Please include "Attention RIN 0584–AD13" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your message, please contact us directly at (703) 305–2098.

Written Comments

Please make your written comments on the proposed rule specific, confine them to issues pertinent to the proposed rule, and explain the reason for any change you recommend. Where possible, you should cite the specific section or paragraph of the proposed rule you are addressing. We may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period or comments delivered to an address other than those listed above. We will make all comments, including names, street addresses, and other contact information of respondents, available for public inspection on the 8th floor, 3101 Park Center Drive, Alexandria, Virginia 22302 between 8:30 a.m. and 5 p.m. Eastern time, Monday through Friday, excluding Federal holidays. Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address, or other contact information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

Background

Section 846: Recognizing that many low-income households have extremely high shelter expenses, Section 5(e)(7) of the Food Stamp Act of 1977 (FSA), 7 U.S.C. 2014(e)(7), provides a deduction from income for households whose shelter expenses exceed 50 percent of their income, after other applicable deductions are made. Because families with comparable amounts of income may have substantially different shelter expenses, affecting their ability to purchase food, the deduction is a means of targeting benefits to those in need. Households without elderly or disabled members are subject to a limit on the amount of shelter expenses that can be deducted. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) set limits that reached a maximum of $300 in fiscal year (FY) 2001. Those limits are set forth in Section 5(e)(7)(B) of the FSA. In FY 2000, the year prior to implementation of this provision, about three in five households participating in the Food Stamp Program received an excess shelter expense deduction. In FY 2000, 5.3 percent of all households (about 384,000 households) were at the shelter limit and could have received larger benefits if the limit were increased. Almost all of these households contained children. The excess shelter deduction limits in effect at the start of FY 2001 were: $300, $521, $429, $364, and $221 respectively, for the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam, and the United States Virgin Islands. Households with elderly or disabled members are not subject to the limits.

Section 847: Since 1964, food stamp legislation has limited the value of resources households may own while remaining eligible for food stamps. The FSA specifically addresses the valuation of vehicles as resources that count toward the resource limit of $2,000 per

household, or $3,000 for households with one or more members who are disabled, or aged 60 years or over. In 1977, the FSA designated the fair market value (FMV) of vehicles in excess of $4,500 as a countable resource. Subsequent laws and regulations have raised the FMV exclusion to $4,650, excluded the value of vehicles used for various purposes from household resources, and designated vehicles whose sale would net no more than $1,500, after payment of liens, as inaccessible resources.

Discussion of the Proposed Rule

Section 846: Section 846 of the Agriculture Appropriations Act of 2001 amends § 5(e)(7)(B) of the FSA to set new limits on the excess shelter expense deduction and to provide for annual fiscal year adjustments based on the Consumer Price Index. The Act set the fiscal year 2001 maximum excess shelter expense deductions at the levels specified in § 846: $340, $543, $458, $399, and $268 per month for, respectively, the contiguous 48 States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands effective March, 2001. Section 846 also amends § 5(e)(7)(B) of the FSA to set the maximum excess shelter expense deductions for fiscal year 2002 and beyond. For this reason, the Department proposes to amend 7 CFR 273.9(d)(6)(ii) to state its obligation to compute and announce maximum excess shelter expense deductions for FY 2002 and other future years by adjusting the previous year's maximums to changes in the Consumer Price Index for All Urban Consumers for each 12-month period ending the preceding November 30. The Department proposes to use the Shelter and the Fuels and Utilities Components of the Consumer Price Index rather than the Consumer Price Index for All Items because doing so provides a more accurate measure of changes in shelter and utility expenses.

The Department posts the updated maximum excess shelter expense deductions annually at *http://www.fns.usda.gov/fsp/government/FY03_Allot_Deduct.htm.*

Section 847: 7 CFR 273.8 excludes from household resources the value of vehicles that produce income, are used as a home, transport a physically disabled household member, are used for long distance travel other than daily commuting, carry most of a household's heating fuel or drinking water, or are considered inaccessible resources because their sale would net $1,500 or less after any loans are repaid. The FMV (in excess of $4,650) of one licensed vehicle per adult household member is counted as a household resource, as is the FMV (in excess of $4,650) of any other licensed vehicles that teenagers in the household drive to work, job training, or job hunting. The value of any remaining licensed vehicles is included as a household resource, using the greater of the vehicle's FMV (in excess of $4,650) or its equity value. Unlicensed vehicles are counted at their equity value.

Section 847 of the Agriculture Appropriations Act of 2001 amends § 5(g)(2)(B)(iv) of the FSA to allow States to substitute their TANF vehicle rules for the food stamp vehicle rules when doing so would result in a lower attribution of resources to households. Implementation of § 847 will streamline the process of determining eligibility, make more households eligible for food stamps, reduce errors, and facilitate conformance of TANF and food stamp vehicle policies. This proposed rule would amend 7 CFR 273.8(f)(4) to implement the vehicle provisions set forth in § 847. Below, we answer questions we believe are likely to arise in connection with the proposed rule.

Which TANF Programs Qualify as Sources of Substitute Vehicle Rules?

In lieu of the food stamp vehicle rules at 7 CFR 273.8(f), the Department proposes that a State may substitute the vehicle rules from a program in that State that uses TANF funds, or State or local funds to meet TANF maintenance-of-effort (MOE) requirements, *and* meets the definition of "assistance" according to TANF regulations at 45 CFR 260.31.

This definition includes cash payments, vouchers, and other forms of benefits designed to meet a household's ongoing basic needs, including benefits provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients and conditioned on participation in work experience, community service, or any other work activity under TANF regulations. It also includes supportive services such as transportation and child-care provided to families without employment.

How May State Agencies Apply § 847?

The Department proposes that State agencies electing to use § 847 must apply either the TANF or food stamp rules, whichever produces the lower attribution of resources to the household, on a vehicle-by-vehicle basis, using any exclusions allowed by either set of rules. The statute does not permit a blanket substitution of TANF rules for food stamp rules unless, of course, a State's TANF rules invariably result in a lower attribution of resources, as in States whose TANF policies exclude all vehicles from household assets. Although § 847 mentions only the food stamp FMV test, the rule proposes to apply it equally to the food stamp equity test because the intent of the law is to permit TANF policy to substitute for food stamp policy. Under the proposed rule, State agencies electing to apply § 847 must, therefore, apply their TANF rules to any vehicles that would previously have been subject to the food stamp equity test, where doing so would result in a lower attribution of resources. States whose TANF rules exclude one vehicle must apply the exclusion to the vehicle with the highest value unless prohibited by their rules. States whose TANF vehicle rules exclude all vehicles completely, or contain no resource provisions at all, would exclude any vehicle owned by any household in the State from resources when determining eligibility for food stamps. For example, suppose a State agency is evaluating a vehicle with a FMV of $5,000 and an unpaid loan balance of $2,400. The State's TANF vehicle rules exclude equity under $3,000, while food stamp rules exclude FMV under $4,650. In this case, the TANF rules result in the lower attribution of resources because they exclude the vehicle's entire equity value of $2,600, while the food stamp rules would count $350 excess FMV ($5,000–$4,650) toward household resources. Consequently, the State agency would use the TANF rules.

What Happens When a Household Owns Multiple Vehicles?

Where a household has more than one vehicle, the rule proposes that a State must exclude any vehicles it can under either TANF or food stamp rules, and evaluate each remaining vehicle separately under whichever rules will result in the lower attribution of resources to the household. For example, a State could exclude a vehicle used to transport a disabled household member (under food stamp rules), exclude one vehicle per licensed driver (under its TANF rules) and value a remaining vehicle at the greater of its equity value or its FMV in excess of $4,650 (under food stamp rules, assuming its TANF rules offered no option more favorable to the household).

Can a State Agency Mix Provisions of the TANF Vehicle Rules With Provisions of the Food Stamp Vehicle Rules When Evaluating the Same Vehicle?

No. The rule proposes that a State has the option to apply its TANF vehicle rules in lieu of food stamp vehicle rules,

not to combine them or parts of them to evaluate any given vehicle or category of vehicles. To illustrate how the TANF and FSP rules might interact, suppose that a State's TANF vehicle rules exclude equity under $3,000, while food stamp vehicle rules exclude FMV under $4,650. This State would improperly mix TANF and food stamp vehicle rules if it excludes equity under $4,650, thus combining the type of exclusion (equity) from its TANF rules and the exclusion limit ($4,650) from food stamp rules.

IV. Procedural Matters

Executive Order 12866

This proposed rule has been determined to be economically significant and was reviewed by the Office of Management and Budget in conformance with Executive Order 12866.

Executive Order 12372

The Food Stamp Program (Program) is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of the final rule preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted.

Federalism Summary Impact Statement

Executive Order 13132 requires Federal agencies to consider the impact of their regulatory actions on State and local governments. Where such actions have federalism implication, agencies are directed to provide a statement for inclusion in the preamble to the regulation describing the agency's considerations in terms of the three categories called for under section (6)(b)(2)(B) of Executive Order 13132.

Prior Consultation With State Officials

Prior to drafting this proposed rule, we consulted with State and local agencies at various times. Because the Food Stamp Program (FSP) is a State administered, Federally funded program, our regional offices have formal and informal discussions with State and local officials on an ongoing basis regarding program implementation and policy issues.

This arrangement allows State and local agencies to provide comments that form the basis for many discretionary decisions in this and other FSP rules. We have also had numerous written requests for policy guidance on the implications of Public Law 106–387 from the State agencies that deliver food stamp services. These questions have helped us make the rule responsive to concerns presented by State agencies.

Nature of Concerns and the Need To Issue This Rule

State agencies generally want greater flexibility in their implementation of FSP asset policy, especially with regard to vehicle ownership. The proposed rule provides much greater flexibility in this area and also addresses another major State concern, the need to conform FSP rules to the rules of other means-tested Federal programs. Specific policy questions submitted by State agencies after enactment of Public Law 106–387, but prior to the promulgation of regulations, helped us identify issues that needed to be clarified in the proposed rule.

Extent To Which We Meet Those Concerns

The Department has considered the impact of the proposed rule on State and local agencies. This rule makes changes required by law, and made effective in 2001. The effects on State agencies are minimal. While the vehicle provision of the rule will require eligibility workers to make additional computations in some cases, the ability to substitute TANF vehicle rules for FSP vehicle rules, when doing so results in a lower attribution of resources, allows a growing number of States to exclude some or all vehicles from household assets. The maximum excess shelter expense deduction provision simply increases the amount of the deduction and indexes it to the Consumer Price Index, resulting in no additional requirements for State agencies. In the proposed rule, we have addressed every question submitted by State agencies regarding both of these provisions. The Department is not aware of any case where the discretionary provisions of the rule would preempt State law. In addition, the Department is willing to approve a waiver of any discretionary provision in this rule where (1) a State agency can demonstrate that its own procedures would be more effective and efficient; (2) such a waiver would not result in a material impairment of any statutory or regulatory rights of participants or potential participants; and (3) such a waiver would otherwise be consistent with the waiver authority set out at 7 CFR 272.39(c).

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Eric M. Bost, Under Secretary for Food, Nutrition, and Consumer Services, has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not regulate the activities of small businesses or other small entities; instead it regulates the administration of the Food Stamp Program, which is administered only by State or county social service agencies.

Paperwork Reduction Act

Burden associated with the food stamp certification process is approved under OMB control number 0584–0064. Burden estimates in that submission are based on the only recent data available, data from the actual operation of the Food Stamp Program in Mississippi. The data provided by Mississippi indicate that the burden associated with completing a new food stamp application or a re-certification application is 19 minutes for each applicant and 36 minutes per applicant for each State agency. These burden estimates are based on total time required for certification (or re-certification) processing and are not broken down into sub-categories for gathering data on such variables as household income, resources, or deductions.

The maximum excess shelter expense deduction provisions of this proposed rule would result in no change in the burden for either applicants or State agencies. For applicants and State agencies, the effect of this provision is simply to substitute new maximum deductions for the previous ones.

The vehicle provisions of this rule do not change the burden on applicants. Applicants will need to supply the same information as under current regulations, except in States that elect to use TANF vehicle rules that exclude the value of all vehicles from household resources. The vehicle provisions are exercised at State option and may be selected by many States or by few States. States that elect to substitute their TANF vehicle rules for their food

stamp vehicle rules will experience minor increases or decreases in burden associated with the complexity or simplicity of each case. States that elect to retain the food stamp vehicle rules will experience no change in burden. The Department has concluded that burden will vary from case to case and State to State but not enough to affect the average total processing time data upon which all burden estimates for food stamp certification (and re-certification) are based.

Unfunded Mandate Reform Act of 1995 (UMRA)

Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under § 202 of the UMRA, the Department generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, § 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This notice contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. This rule is, therefore, not subject to the requirements of § 202 and § 205 of the UMRA.

Civil Rights Impact Analysis

The Department has reviewed this proposed rule in accordance with the Department Regulation 4300–4, "Civil Rights Impact Analysis" to identify and address any major civil rights impacts the proposed rule might have on minorities, women, and persons with disabilities. After a careful review of the rule's intent and provisions, and the characteristics of food stamp households and individuals participants, the Department has determined that there is no adverse effect on any of the protected classes. The Department has minimal discretion in implementing many of these changes. The changes required by law have been implemented. All data available to the Department indicate that protected individuals have the same opportunity to participate in the Food Stamp Program as non-protected individuals. The Department specifically prohibits the State and local government agencies that administer the program from engaging in actions that discriminate based on race, color, national origin, gender, age, disability, marital or family status. Regulations at 7 CFR 272.6 specifically state that "State agencies shall not discriminate against any applicant or participant in any aspect of program administration, including, but not limited to, the certification of households, the issuance of coupons, the conduct of fair hearings, or the conduct of any other program service for reasons of age, race, color, sex, handicap, religious creed, national origin, or political beliefs. Discrimination in any aspect of program administration is prohibited by these regulations, the FSA, the Age Discrimination Act of 1975 (Pub. L. 94–135), the Rehabilitation Act of 1973 (Pub. L. 93–112, § 504), and title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d). Enforcement action may be brought under any applicable Federal law. Title VI complaints shall be processed in accord with 7 CFR part 15." Where State agencies have options, and they choose to implement a certain provision, they must implement it in such a way that it complies with the regulations at 7 CFR 272.6.

Regulatory Impact Analysis

Need for Action

This action is needed to implement § 846 and § 847 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act 2001, Public Law 106–387. The proposed rule would increase the amounts of the maximum excess shelter expense deductions, and for future years, index them to the Consumer Price Index. It would also allow States the option of substituting their TANF vehicle rules for their food stamp vehicle rules when doing so would result in a lower attribution of resources to a household.

Benefits

Section 846, maximum excess shelter expense deduction provision: the proposed rule would allow a larger income deduction for shelter expenses to low-income families whose shelter expenses exceed 50 percent of their monthly income, after all other applicable deductions have been made. The Department does not expect raising the excess shelter deduction limit to significantly increase food stamp participation. Instead, we estimate that the change will raise benefits for 7.6 percent of current participants. Applying this percentage to the participation projections for the President's FY 2004 budget baseline, we estimate that 1.65 million persons will each receive an average of $6.02 more per month in food stamp benefits in FY 2004. These impacts are already incorporated into the President's FY 2004 budget baseline.

Section 847, vehicle provision: the proposed rule will allow food stamp applicants to benefit when State agencies elect to use more expansive vehicle policy rules that will allow them to own a reliable vehicle and still be eligible for food stamps. The Department estimates that this provision will increase average participation in the FSP by 243,000 persons in FY 2004 and that their average monthly food stamp benefit will be $74.11. These impacts are already incorporated into the President's FY 2004 budget baseline. State agencies will benefit from the increased flexibility in program administration afforded by the proposed rule and from an anticipated decrease in payment errors.

Costs

Section 846: the Department estimates that the cost of implementing § 846 will be $119 million in FY 2004 and $705 million over the five years, FY 2004 through FY 2008. These impacts are already incorporated into the President's FY 2004 budget baseline.

Section 847: the Department estimates that the cost of implementing § 847 will be $216 million in FY 2004 and $1.115 billion over the five years, FY 2004 through FY 2008. These impacts are already incorporated into the President's FY 2004 budget baseline.

List of Subjects in 7 CFR Part 273

Administrative practice and procedure, Food stamps, Fraud, Grant programs, Social programs, Resources, Vehicles.

Accordingly, the Department proposes to amend 7 CFR part 273 as follows:

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

1. The authority citation for part 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

2. In § 273.8, add new paragraph (f)(4) to read as follows:

§ 273.8 Resource eligibility standards.

* * * * *

(f) * * *

(4) A State agency may substitute for the vehicle evaluation provisions in

paragraphs (f)(1) through (f)(3) of this section the vehicle evaluation provisions of a program in that State that uses TANF or State or local funds to meet TANF maintenance of effort requirements and provides benefits that meet the definition of "assistance" according to TANF regulations at 45 CFR 260.31, where doing so results in a lower attribution of resources to the household. States electing this option must:

(i) Apply the substituted TANF vehicle rules to all food stamp households in the State, whether or not they receive or are eligible to receive TANF assistance of any kind;

(ii) Exclude from household resources any vehicles excluded by either the substituted TANF vehicle rules or the food stamp vehicle rules;

(iii) Apply either the substituted TANF rules or the food stamp vehicle rules to each of a household's vehicles in turn, using whichever set of rules produces the lower attribution of resources to the household;

(iv) Apply any vehicle exclusions allowed by their TANF vehicle rules to the vehicles with the highest values; and

(v) Exclude any vehicle owned by any household in the State if it selects TANF vehicle rules that exclude all vehicles completely or contain no resource provisions at all.

* * * * *

3. In § 273.9, add two sentences after the second sentence of paragraph (d)(6)(ii) to read as follows:

§ 273.9 Income and deductions.

* * * * *

(d) * * *

(6) * * *

(ii) * * * For fiscal year 2001, effective March 1, 2001, the maximum monthly excess shelter expense deduction limits are $340 for the 48 contiguous States and the District of Columbia, $543 for Alaska, $458 for Hawaii, $399 for Guam, and $268 for the Virgin Islands. FNS will set the maximum monthly excess shelter expense deduction limits for fiscal year 2002 and future years by adjusting the previous year's limits to reflect changes in the shelter component and the fuels and utilities component of the Consumer Price Index for All Urban Consumers for the 12 month period ending the previous November 30.

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Dated: August 21, 2003.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

Note: This appendix will not be published in the Code of Federal Regulations.

Appendix: Regulatory Impact Analysis

1. *Title:* Vehicle and maximum excess shelter expense deduction provisions of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001, Public Law 106–387.

2. *Action:*

(a) Nature: Proposed Rule

(b) Need: This action is required as a result of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001, Public Law 106–387.

(c) Background: On October 28, 2000, the President signed the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act of 2001 (Agriculture Appropriations Act of 2001). This rule is being proposed to implement sections 846 and 847 of the Agriculture Appropriations Act of 2001. Section 846 increases the maximum amount of the food stamp excess shelter expense deduction for fiscal year 2001 and indexes it for future years to the Consumer Price Index. Section 847 allows State agencies the option to use their Temporary Assistance for Needy Families (TANF) Program vehicle allowance rules rather than the vehicle rules used in the Food Stamp Program (FSP) where doing so will result in a lower attribution of resources to food stamp households.

3. *Justification of Alternatives:* These provisions are statutorily mandated and have already been implemented. In the case of the vehicle provision, FNS could have interpreted the statute to offer a more restrictive definition of TANF-funded programs, which would have limited the number of households gaining eligibility due to the provision. Instead, we propose a comprehensive definition of TANF-funded programs, which maximizes the benefits of the provision and is consistent with both our understanding of Congressional intent and prior policy guidance issued by the Food and Nutrition Service to States.

4. *Effects:* (a) Effects on food stamp recipients, and (b) Program costs: These provisions are expected to increase Food Stamp Program costs by $335 million in FY 2004 and $1.82 billion over the five years FY 2004 to FY 2008. Likewise, these provisions are expected to add 243,000 new participants and increase benefits among 1.65 million current participants in FY 2004. These impacts are already incorporated into the President's FY 2004 budget baseline.

Section 846: Increase the Excess Shelter Deduction Limits

Discussion: Recognizing that shelter expenses reduce the amount of income available to purchase food, the Food Stamp Act of 1977 (FSA) provides a deduction from income for households whose shelter expenses exceed 50 percent of their income, after other applicable deductions are made. Because households with larger shelter expenses relative to their income generally receive a larger excess shelter deduction for food stamp benefit determination, the deduction is a means of targeting benefits to those in need.

The FSA also sets limits on how large the excess shelter deduction can be, often referred to as the "excess shelter deduction cap." Since households with elderly or disabled members are not subject to the shelter deduction cap, most households affected by the cap are households with children. Legislation enacted since 1977 has adjusted the caps to the Consumer Price Index (Omnibus Budget Reconciliation Act of 1981); required that calculations of excess shelter deductions be rounded down to the next lower dollar (Omnibus Budget Reconciliation Act of 1982); removed the caps altogether (Omnibus Budget Reconciliation Act of 1993, Mickey Leland Childhood Hunger Relief Act); and most recently, reset caps and froze them at current levels for households without elderly or disabled members (Personal Responsibility and Work Opportunity Reconciliation Act of 1996). The excess shelter deduction caps in effect for FY 2001 were: $300, $521, $429, $364, and $221 respectively, for the 48 contiguous States and the District of Columbia, Alaska, Hawaii, Guam, and the United States Virgin Islands. Households with elderly or disabled members are not subject to the excess shelter caps.

Since the caps were frozen by the 1996 legislation, many FSP participants, State agencies, and advocacy organizations have sought legislation that would bring the maximum excess shelter expense deduction more closely in line with current housing costs and index it to the cost of living. Section 846 of the Agriculture Appropriations Act of 2001 accomplishes those objectives by: (a) setting the fiscal year 2001 maximum excess shelter expense deductions at $340, $543, $458, $399, and $268 per month for, respectively, the contiguous 48 States and the District of Columbia, Alaska, Hawaii, Guam, and the Virgin Islands, effective March 1, 2001; and (b) setting the maximum excess shelter expense deductions for fiscal year 2002 and beyond by adjusting the previous year's maximums to changes in the Consumer Price Index for All Urban Consumers for each 12-month period ending the preceding November 30.

Effect on Low-Income Families: This provision will affect low-income households without an elderly or disabled member, who certify or re-certify for food stamp benefits on or after March 1, 2001, and who have shelter expenses that are high enough relative to their net income to be eligible for the excess shelter deduction and subject to the current shelter cap. Most households affected by the provision are households with children. It will allow affected households to claim a larger income deduction for shelter expenses and to obtain higher food stamp benefits.

Cost Impact: We estimate that the cost of this provision will be $119 million in FY 2004, and $705 million over the five years,

FY 2004 through FY 2008. These impacts are already incorporated into the President's FY 2004 budget baseline.

Cost estimates were based on food stamp cost projections from the President's FY 2004 budget baseline of December 2002. While we recognize that the President's FY 2004 budget baseline is an imperfect baseline for this analysis because it already incorporates the impacts of this provision and subsequent legislation, it is preferable to the alternatives because it reflects the most recent economic and participation trends. The new values of the shelter cap for FY 2002 and beyond were calculated by inflating the FY 2001 values, using actual and projected values of the Consumer Price Index for All Urban Consumers from the Office of Management and Budget's economic assumptions for the President's FY 2004 budget. The benefit and participation impacts of raising the shelter deduction cap to the new values were modeled using data from the 2001 food stamp quality control sample regarding household characteristics, income and expenses. Using the 2001 quality control mini-model program, we were able to measure expected changes in household benefits resulting from the changes in the shelter cap. The program suggested that raising the cap would increase program benefits by less than one percent nationally. The estimated percentage increase was multiplied by the baseline cost projections to estimate the expected cost increase for each fiscal year. Because this provision became effective on March 1, 2001 for households who are newly certified or re-certified, the provision was considered fully implemented in FY 2004. Cost estimates were rounded to the nearest million dollars.

Participation Impacts: We estimate that raising the shelter deduction cap will raise benefits among those households currently participating and subject to the shelter deduction cap. We do not expect any significant impacts on participation due to nature of the rule change and the small benefit increase per recipient. FY 2001 quality control data indicate that 7.6 percent of food stamp participants will receive higher benefits due to this provision. (These are persons in households that claim the maximum shelter deduction but receive less than the maximum food stamp benefit. Households that already receive the maximum food stamp allotment cannot have their benefits raised as a result of this provision.) Applying this percentage to the participation projections for the President's FY 2004 budget baseline, we estimate that 1.65 million persons will each receive an average of $6.02 more per month in food stamp benefits in FY 2004.

Section 847: State Option To Use TANF Vehicle Rules

Discussion: Since 1964, food stamp legislation has limited the value of resources households may own while remaining eligible for food stamps. The FSA specifically addresses the valuation of vehicles as resources that count toward the resource limit of $2,000 per household, or $3,000 for households with one or more members who are disabled, or aged 60 years or over. In 1977, the FSA designated the fair market value (FMV) of vehicles in excess of $4,500 as a countable resource. Subsequent laws have raised the FMV limit to $4,650, excluded the value of vehicles used for various purposes from household resources, and designated vehicles whose sale would net no more than $1,500, after payment of liens, as inaccessible resources. Current food stamp vehicle rules apply the excess FMV test to one licensed vehicle per adult household member and any other licensed vehicle a teenager drives to work, school, job training, or job hunting. Additional non-exempt licensed vehicles are valued at the higher of excess FMV or equity value (fair market value minus any outstanding loan balance). Unlicensed vehicles are counted at their equity value.

Section 847 of the Agriculture Appropriations Act of 2001 amends section 5(g)(2) of the Food Stamp Act of 1977 to allow States to substitute their TANF vehicle rules for the food stamp vehicle rules when doing so would result in a lower attribution of food stamp resources to households. In lieu of the food stamp vehicle rules at 7 CFR 273.8(f), the Department proposes that States may substitute the vehicle rules from any program that receives TANF or TANF maintenance of effort funds and meets the definition of "assistance" according to TANF regulations at 45 CFR 260.31. Implementation of section 847 will streamline the process of determining eligibility, make many more households eligible for food stamps, reduce errors, and facilitate processing of TANF and food stamp joint applications. The effect of section 847 will vary from State to State, according to the TANF vehicle rules developed by each State.

Effect on Low-Income Families: This provision will allow States to adopt more generous vehicle rules from their TANF-funded programs for use in determining food stamp eligibility. By adopting more generous TANF vehicle rules, some income-eligible food stamp households who were previously ineligible because of the value of their vehicle(s), are made eligible to participate. Persons will be affected by the provision to the extent that States adopt this provision and to the extent that States have less restrictive vehicle rules in their relevant TANF-funded programs.

Cost Impact: We estimate that the cost of implementing section 847 will be $216 million in FY 2004 and $1.115 billion over the five years FY 2004 to FY 2008. These impacts are already incorporated into the President's FY 2004 budget baseline.

As of FY 2003, 27 States reported adopting their more generous TANF-cash vehicle rules for the purpose of determining food stamp eligibility. Ten other States reported adopting vehicle rules from their TANF-funded child care and foster care programs for the purpose of determining food stamp eligibility. For the impact analysis, it is assumed that States interested in adopting vehicle rules from any of their TANF-funded programs have done so and that no additional States will switch to TANF vehicle rules in the future.

In order to estimate the impact of this provision on food stamp participation and benefit costs, we used data from the 1997 Survey of Income and Program Participation (SIPP), which contains information about household characteristics, income and assets—including vehicle ownership data. Using this dataset, we created the 1997 MATH SIPP simulation program, which models food stamp eligibility, participation and benefits under regular FSP vehicle rules and allows us to compare them to participation and benefits under alternative vehicle rules. For each State that originally chose to adopt TANF vehicle rules for determining food stamp eligibility, we modeled their specific TANF vehicle rules and used the dataset to determine the cost and participation impacts on the Food Stamp Program. Information on State TANF vehicle rules was from a review of States in FY 2000 and is the most recent data available, as States are not required to regularly report such information to the U.S. Department of Health and Human Services. The cost and participation impacts were then adjusted to reflect the most recent choices States have made in FY 2003 regarding the adoption of TANF vehicle rules for determining food stamp eligibility. The adjustment reflected both the number of food stamp cases in each State and the relative generosity of their TANF vehicle rules.

FY 2003 STATE VEHICLE RULES FOR DETERMINING FSP ELIGIBILITY (AS OF 02/03)

FSP vehicle rules (9 States)	TANF-cash vehicle rules (27 States)	TANF child care or foster care vehicle rules (10 States)	Other: States with expanded categorical eligibility (7 States)
CA, GA, IA, MS, RI, TN, VI, VA, WA.	AL, AK, AZ, AR, CT, DC, FL, GU, HI, IL, KS, KY, LA, MD, MN, MT, NV, NH, NJ, NC, OH, OK, PA, SD, UT, VT, WY.	CO, ID, IN, MA, MO, NE, NM, NY, WV, WI.	DE, ME, MI, ND, OR, SC, TX

The adjusted impact was calculated as a 2.00 percent expected increase in benefits. This impact was multiplied by expected benefits for each fiscal year, based on the President's FY 2004 budget baseline of December 2002. While we recognize that the

President's FY 2004 budget baseline is an imperfect baseline for this analysis because it already incorporates the impacts of this provision and subsequent legislation, it is preferable to the alternatives because it reflects the most recent economic and participation trends. Based on a January 1999 FNS report, *Relaxing the FSP Vehicle Asset Test: Findings from the North Carolina Demonstration*, an additional adjustment was made. The report indicates that the participation effects of this type of policy reform are about half of what our model predicts on the basis of the characteristics of current participants, so the estimates were adjusted by half for all years. Given that this provision was effective on July 1, 2001, we considered it to be fully implemented in FY 2004 and no further adjustments were made. Cost estimates were rounded to the nearest million dollars.

Participation Impacts: We estimate that this provision will increase average participation in the Food Stamp Program by 243,000 persons in FY 2004 and that their average monthly food stamp benefit will be $74.11. These impacts are already incorporated into the President's FY 2004 budget baseline.

Participation impacts were estimated using the same method as the cost impacts. The adjusted participation impact was calculated as a 2.25 percent expected increase in participation. This impact was multiplied by expected participation for each fiscal year, based on the President's FY 2004 budget baseline of December 2002. As with the cost estimate, participation estimates were adjusted by half to reflect the finding in the 1999 FNS vehicle report. Participation estimates were rounded to the nearest thousand persons.

While this regulatory impact analysis details the expected impacts on Food Stamp Program costs and the number of participants likely to be affected by the food stamp provisions of the Agricultural Appropriation Act of 2001, it does not provide an estimate of the overall social costs of the provisions, nor does it include a monetized estimate of the benefits they bring to society. We anticipate that the provisions will improve program operations by providing States with the ability to coordinate food stamp and TANF vehicle rules. In addition, by increasing food stamp benefits to low-income families, we believe that these statutory changes will increase food expenditures, which may strengthen food security.

[FR Doc. 03–22144 Filed 8–28–03; 8:45 am]
BILLING CODE 3410–30–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1159]

Bank Holding Companies and Change In Bank Control: Exception to Anti-Tying Restrictions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule with request for public comment.

SUMMARY: The Board proposes to adopt an exception to the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 in order to equalize the treatment of financial subsidiaries of banks under section 106. The proposed exception provides that a financial subsidiary of a state nonmember bank shall be treated as an affiliate of the bank, and not as a subsidiary of the bank, for purposes of section 106. The anti-tying restrictions of section 106 generally apply to subsidiaries, but not affiliates, of banks. Financial subsidiaries of national and state member banks already are treated as affiliates (and not subsidiaries) of the parent bank for purposes of section 106.

DATES: Comments must be received on or before September 30, 2003.

ADDRESSES: Comments should refer to Docket No. R–1159 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov* or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information (12 CFR 261.12 and 261.14).

FOR FURTHER INFORMATION CONTACT: Kieran J. Fallon, Senior Counsel (202–452–5270), Mark E. Van Der Weide, Counsel (202–452–2263), or Andrew S. Baer, Counsel (202–452–2246), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869.

SUPPLEMENTARY INFORMATION:

Background

Section 106 of the Bank Holding Company Act Amendments of 1970 (section 106) generally prohibits a bank from conditioning the availability or price of one product or service (the "desired product") on a requirement that the customer obtain another product or service (the "tied product") from the bank or an affiliate of the bank.[1] For example, the statute prohibits a bank from requiring that a prospective borrower purchase homeowners insurance from the bank or an affiliate of the bank in order to obtain a mortgage loan from the bank. Section 106 also contains several exceptions to its general prohibitions and authorizes the Board to grant any additional exception from the statute's prohibitions, by regulation or order, that the Board determines "will not be contrary to the purposes" of the statute.[2]

Section 106 applies only to tying arrangements imposed by a bank, and generally does not apply to tying arrangements imposed by a nonbank affiliate of a bank. Because a subsidiary of a bank is considered to be part of the bank for most supervisory and regulatory purposes under the Federal banking laws, the restrictions in section 106 generally apply to tying arrangements imposed by a subsidiary of a bank in the same manner that the statute applies to the parent bank itself. Thus, a subsidiary of a bank generally is prohibited from conditioning the availability or price of a product on the customer's purchase of another product from the subsidiary, its parent bank, or any affiliate of its parent bank.

The Board is publishing elsewhere in today's **Federal Register** a proposed interpretation of section 106 and related supervisory guidance with a request for public comment. The interpretation includes an extensive discussion of the scope and restrictions of section 106, as well as the statutory and regulatory exceptions to the statute's prohibitions.

Proposed Rule

Federal law authorizes national and state member banks that meet certain conditions to own or control a financial subsidiary.[3] A financial subsidiary of a national or state member bank may engage in certain activities—such as underwriting and dealing in corporate debt and equity securities—that the parent bank is not permitted to conduct directly. Unlike other subsidiaries, a financial subsidiary of a national or state member bank is treated as an

[1] 12 U.S.C. 1972(1)(A) and (B). Section 106 also prohibits a bank from conditioning the availability or price of one product on a requirement that the customer (i) *provide* another product to the bank or an affiliate of the bank; or (ii) *not* obtain another product from a competitor of the bank or from a competitor of an affiliate of the bank. 12 U.S.C. 1972(1)(C), (D), and (E).

[2] 12 U.S.C. 1972(1).

[3] *See* 12 U.S.C. 24a, 335. In order to be eligible to own or control a financial subsidiary, the national or state member bank and its depository institution affiliates must satisfy certain capital, managerial, Community Reinvestment Act (12 U.S.C. 2901 *et seq.*), and other requirements.

affiliate of the bank, and not as a subsidiary of the bank, for purposes of section 106.[4] Accordingly, a financial subsidiary of a national or state member bank is not subject to the anti-tying restrictions of section 106. However, tying arrangements imposed by a financial subsidiary of a national or state member bank, like tying arrangements imposed by any other affiliate of a bank, remain subject to the tying restrictions contained in the Federal antitrust laws.[5]

Federal law also authorizes state nonmember banks that meet certain eligibility requirements to own or control a financial subsidiary.[6] The Board proposes to adopt an exception under section 106 that would allow a financial subsidiary of a state nonmember bank to be treated as an affiliate of the parent bank, and not as a subsidiary of the bank, for purposes of section 106. The Board believes that providing equal treatment of all financial subsidiaries of banks under section 106 is appropriate to ensure competitive equality and would not be contrary to the purposes of section 106.[7] The Board invites comment on all aspects of the proposed exception.

Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000.[8] In light of this requirement, the Board has sought to present the proposed rule in a simple and straightforward manner. The Board invites comment on whether the Board could take additional steps to make the proposed rule easier to understand.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this proposed rule. The proposed rule, if adopted, would exempt financial subsidiaries of state nonmember banks from the anti-tying restrictions in section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972). A description of the reasons for the Board's decision to issue the proposed rule and a statement of the objectives of, and legal basis for, the proposed rule are contained in the supplementary information provided above.

The proposed rule would apply to all state nonmember banks regardless of their size. The proposed rule would exempt any financial subsidiary of a state nonmember bank (including a small state nonmember bank) from the restrictions of section 106 and, thus, should reduce the regulatory burden imposed on state nonmember banks with financial subsidiaries. The proposed rule also would equalize the treatment of financial subsidiaries of national and state banks under section 106 and, thus, promotes competitive equality. The Board specifically seeks comment on the likely burden the proposed rule would have on banks, especially small banks.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board has reviewed the proposed rule under authority delegated to the Board by the Office of Management and Budget. The proposed rule contains no collections of information pursuant to the Paperwork Reduction Act.

List of Subjects in 12 CFR Part 225

Administrative practice and procedures, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1843(k), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909; and 15 U.S.C. 6801 and 6805.

2. Section 225.7 is amended as follows:

a. By revising the introductory sentence of paragraph (b);

b. By redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively; and

c. By adding a new paragraph (c).

§ 225.7 Exceptions to tying restrictions.

* * * * *

(b) *Exceptions to statute.* Subject to the limitations of paragraph (d) of this section, a bank may—

* * * * *

(c) *Financial subsidiaries of state banks.* A financial subsidiary of a state member bank held in accordance with section 9 of the Federal Reserve Act (12 U.S.C. 335) and a financial subsidiary of a state nonmember bank held in accordance with section 46 of the Federal Deposit Insurance Act (12 U.S.C. 1831w) shall be deemed to be a subsidiary of a bank holding company of the bank and an affiliate of the bank, and not a subsidiary of the bank, for purposes of section 106 and this section.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–22090 Filed 8–28–03; 8:45 am]

BILLING CODE 6210–02–P

[4] *See* 12 U.S.C. 1971; 12 CFR 208.73(e).

[5] 15 U.S.C. 1 *et seq.* (Sherman Act); 15 U.S.C. 12 *et seq.* (Clayton Act).

[6] *See* 12 U.S.C. 1831w.

[7] As noted above, section 208.73(e) of the Board's Regulation H currently provides that a financial subsidiary of a state member bank is treated as an affiliate (and not a subsidiary) of the bank for purposes of section 106. 12 CFR 208.73(e). In order to consolidate the regulatory provisions relating to the treatment of financial subsidiaries of state banks under section 106, the Board also is proposing to include in section 225.7 of Regulation Y the provision that states that a financial subsidiary of a state member bank is treated as an affiliate of the bank for purposes of section 106.

[8] Pub. L. 106–102, 113 Stat. 1338 (1999), codified at 12 U.S.C. 4809.

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 030815201–3201–01]

RIN 0691–AA50

International Services Surveys: BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth a proposed rule to institute a new survey, BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, to be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce.

The proposed survey is mandatory and will be conducted under the International Investment and Trade in Services Survey Act and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988. The first survey conducted under this proposed rule will cover transactions in the first quarter of 2004. Data from the proposed BE–85 survey are needed to monitor

trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, improve the ability of U.S. businesses to identify and evaluate market opportunities, and for other Government uses.

The proposed survey will cover the same financial services presently covered by the BE–82, Annual Survey of Financial Service Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, which the proposed quarterly survey would replace, following a final annual data collection for 2003.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before October 28, 2003.

ADDRESSES: Direct all written comments to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington DC 20230. Because of slow mail, and to assure that comments are received in a timely manner, please consider using one of the following delivery methods: (1) Fax to (202) 606–5318, (2) deliver by courier to U.S. Department of Commerce, Bureau of Economic Analysis, BE–50, Shipping and Receiving Section M100, 1441 L Street, NW., Washington, DC 20005, or (3) e-mail to *Obie.Whichard@bea.gov*. Comments will be available for public inspection in room 7006, 1441 L Street, NW., between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Assistant Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; or via the Internet at *Obie.Whichard@bea.gov* (Telephone (202) 606–9890).

SUPPLEMENTARY INFORMATION: This proposed rule would amend 15 CFR 801.9 to set forth the reporting requirements for the BE–85, Quarterly Survey of Financial Services Transactions Between Financial Services Providers and Unaffiliated Foreign Persons. The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), and under Section 5408 of the Omnibus Trade and Competitiveness Act of 1988 (15 U.S.C. 4908). Section 4(a) of the Act (22 U.S.C. 3103(a)) provides that the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information related to international investment and trade in services and publish for the use of the general public and United States Government agencies periodic, regular, and comprehensive statistical information collected pursuant to this subsection. In section 3 of Executive Order 11961, as amended by Executive Order 12518, the President delegated authority granted under the Act as concerns international trade in services to the Secretary of Commerce, who has redelegated that authority to BEA.

The major purposes of the survey are to monitor trade in financial services, analyze its impact on the U.S. and foreign economies, compile and improve the U.S. economic accounts, support U.S. commercial policy on financial services, conduct trade promotion, and improve the ability of U.S. businesses to identify and evaluate market opportunities.

As proposed, BEA will conduct the BE–85 survey on a quarterly basis beginning with the first quarter of 2004. BEA will send the survey to potential respondents in March of 2004, responses will be due by May 15, 2004. The survey will update the data provided on the universe of financial services transactions between U.S. financial services providers and unaffiliated foreign persons. Reporting is required from U.S. financial services providers whose sales of covered services to unaffiliated foreign persons exceeded $20 million for the previous fiscal year or that expect such sales to exceed that amount during the current fiscal year, or whose purchases of covered services from unaffiliated foreign persons exceeded $15 million for the previous fiscal year or that expect such purchases to exceed that amount during the current fiscal year. Financial services providers meeting any of these criteria must supply data on the amount of their sales or purchases for each covered type of service, disaggregated by country. U.S. financial services providers that do not meet the mandatory reporting requirements are requested to provide voluntary estimates of their total sales or purchases of each type of financial service.

Executive Order 12866

This proposed rule is not significant for purposes of E.O. 12866.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Paperwork Reduction Act

This proposed rule contains a collection of information requirement subject to the Paperwork Reduction Act (PRA) and has been submitted to the Office of Management and Budget for review under the PRA.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget Control Number.

The BE–85 survey, as proposed, is expected to result in the filing of reports containing mandatory data from about 55 respondents on a quarterly basis, or 220 responses annually. The average burden for completing the BE–85 is estimated to be 10 hours. Thus, the total respondent burden of the survey is estimated at 2,200 hours (220 responses times 10 hours average burden). The actual burden will vary from reporter to reporter, depending upon the number and variety of their financial services transactions and the ease of assembling the data. Thus, for each quarter it may range from 4 hours for a reporter that has a small number and variety of transactions and easily accessible data to 100 hours for a very large reporter that engages in a large number and variety of financial services transactions and has difficulty in locating and assembling the required data. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; or faxed (202–395–7245) or e-mailed (*pbugg@omb.eop.gov*) to the Office of Management and Budget, O.I.R.A., (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. The information collection excludes most small businesses from mandatory reporting. Companies that engage in international financial services transactions tend to be quite large. In addition, the reporting threshold for this survey is set at a level that will exempt most small businesses from reporting. The proposed BE–85 quarterly survey will be required from U.S. financial services providers whose sales of covered services to unaffiliated foreign persons exceeded $20 million for the previous fiscal year or that expect such sales to exceed that amount during the current fiscal year, or whose purchases of covered services from unaffiliated foreign persons exceeded $15 million for the previous fiscal year or that expect such purchases to exceed that amount during the current fiscal year. Thus, the exemption level will exclude most small businesses from mandatory coverage. Of those smaller businesses that must report, most will tend to have specialized operations and activities, so they will likely report only one type of transaction; therefore, the burden on them should be small.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, International transactions, Penalties, Reporting and recordkeeping requirements.

Rosemary D. Marcuss,

Deputy Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 801, as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS

1. The authority citation for 15 CFR Part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961, 3 CFR, 1977 Comp., p. 86 as amended by E.O. 12013, 3 CFR, 1977 Comp., p. 147, E.O. 12318, 3 CFR, 1981 Comp., p. 173, and E.O. 12518 3 CFR, 1985 Comp., p. 348.

2. Section 801.9 is amended by adding new paragraph (c)(4) to read as follows:

§ 801.9 Reports required.

(c) *Quarterly surveys.* * * *

(4) BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons:

(i) A BE–85, Quarterly Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, will be conducted covering the first quarter of the 2004 calendar year and every quarter thereafter.

(A) *Who must report—(1) Mandatory reporting.* Reports are required from each U.S. person who is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary or part that is a financial services provider or intermediary, and that had sales of covered services to unaffiliated foreign persons that exceeded $20 million for the previous fiscal year or expects sales to exceed that amount during the current fiscal year, or had purchases of covered services from unaffiliated foreign persons that exceeded $15 million for the previous fiscal year or expects purchases to exceed that amount during the current fiscal year. These thresholds should be applied to financial services transactions with unaffiliated foreign persons by all parts of the consolidated U.S. enterprise combined that are financial services providers or intermediaries. Because the thresholds are applied separately to sales and purchases, the mandatory reporting requirement may apply only to sales, only to purchases, or to both sales and purchases.

(*i*) The determination of whether a U.S. financial services provider or intermediary is subject to this mandatary reporting requirement may be based on the judgement of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(*ii*) Reporters who file pursuant to this mandatory reporting requirement must provide data on total sales and/or purchases of each of the covered types of financial services transactions and must disaggregate the totals by country.

(*2*) *Voluntary reporting.* If a financial services provider or intermediary, or all of a firm's subsidiaries or parts combined that are financial services providers or intermediaries, had covered sales of $20 million or less, or covered purchases of $15 million or less during the previous fiscal year, and if covered sales or purchases are not expected to exceed these amounts in the current fiscal year, a person is requested to provide an estimate of the total for each type of service for the most recent quarter. Provision of this information is voluntary. The estimates may be based on the reasoned judgement of the reporting entity. Because these thresholds apply separately to sales and purchases, voluntary reporting may apply only to sales, only to purchases, or to both.

(B) *BE–85 definition of financial services provider.* The definition of financial services provider used for this survey is identical in coverage to Sector 52—Finance and Insurance—of the North American Industry Classification System, United States, 2002. For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, holding companies, savings institutions, check cashing, and debit card issuing); nondepository credit intermediation (including credit card issuing, sales financing, and consumer lending); securities, commodity contracts, and other financial investments and related activities (including security and commodity futures brokers, dealers, exchanges, traders, underwriters, investment bankers, and providers of securities custody services); insurance carriers and related activities (including agents, brokers, and services providers); investment advisors and managers and funds, trusts, and other financial vehicles (including mutual funds, pension funds, real estate investment trusts, investors, stock quotation services, etc.).

(C) *Covered types of services.* The BE–85 survey covers the following types of financial services transactions (purchases and/or sales) between U.S. financial services providers and unaffiliated foreign persons: Brokerage services, including foreign exchange brokerage services; underwriting and private placement services; financial management services; credit-related services, except credit card services; credit card services; financial advisory and custody services; security lending services; electronic funds transfers; and other financial services.

(ii) [Reserved]

* * * * *

[FR Doc. 03–22140 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 030818205–3205–01]

RIN 0691–AA48

Direct Investment Surveys: BE–15, Annual Survey of Foreign Direct Investment in the United States

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule amends regulations that set forth reporting requirements for the BE–15, Annual Survey of Foreign Direct Investment in the United States. The annual survey is comprised of four forms—the BE–15(LF) long form, the BE–15(SF) short form, the BE–15(EZ) form, which is a new form, and the BE–15 Supplement C—Claim for Exemption From Filing a BE–15(LF), BE–15(SF), or BE–15(EZ).

Overall respondent burden for the 2003 annual survey is estimated at 107,900 hours, down 20,100 hours from 128,000 hours estimated for the previous (2001) annual survey. The decrease in the estimated total respondent burden is primarily attributable to the proposed changes to the reporting requirements.

DATES: Comments on this proposed rule will receive consideration if submitted in writing on or before October 28, 2003.

ADDRESSES: Direct all written comments to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230. To assure that comments are received in a timely manner, please consider using one of the following delivery methods: (1) Fax to (202) 606–5318, (2) deliver by courier to U.S. Department of Commerce, Bureau of Economic Analysis, BE–49(A), Shipping and Receiving, Section M100, 1441 L Street NW., Washington, DC 20005, or (3) e-mail to *Obie.Whichard@bea.gov*. Comments received will be available for public inspection in Room 7006, 1441 L Street NW., between 8:30 a.m. and 4:30 p.m., eastern time Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Obie G. Whichard, Acting Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: This proposed rule amends 15 CFR part 806.15 to set forth reporting requirements for the BE–15, Annual Survey of Foreign Direct Investment in the United States. The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

Description of Revisions

The BE–15, Annual Survey of Foreign Direct Investment in the United States, is mandatory and is conducted annually by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce, under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108)—hereinafter, "the Act." BEA will send the survey to potential respondents in March of each year; responses will be due by May 31.

BEA proposes to introduce a sampling procedure to help reduce respondent burden for some U.S. businesses. The procedure will utilize the new BE–15(EZ) form; this form will provide a few basic indicators for non-sample firms that can be used as a basis for estimating data that they otherwise would have to report on the lengthier BE–15(LF) and BE–15(SF) forms. To bring the annual survey into conformity with the Benchmark Survey of Foreign Direct Investment in the United States—2002, BEA proposes the following changes to the Code of Federal Regulations: (1) Direct that only nonbank majority-owned U.S. affiliates of foreign companies report on the BE–15(LF) long form (minority-owned affiliates will report on the BE–15(SF) short form, or the BE–15(EZ) form, regardless of size); (2) raise the exemption level on the BE–15(LF) long form from $100 million to $125 million (reporting on a given form is required if the affiliate's assets, sales, or net income (or loss) exceed the exemption level); and (3) exempt nonbank subsidiaries or units of U.S. bank or bank holding company affiliates from reporting.

In addition, BEA proposes to make the following changes to the forms: (1) Add questions to the BE–15 (LF) long form to collect detail on premiums earned and claims paid for U.S. affiliates operating in the insurance industry, and to collect detail on finished goods purchased for resale for U.S. affiliates operating in the wholesale and retail trade industries; (2) in conjunction with increasing the exemption level for reporting on the BE–15(LF) long form, add four items to the short form that will serve to improve estimates of gross product for majority-owned U.S. affiliates—certain realized and unrealized gains and losses, U.S. income taxes, interest received, and interest paid; (3) in conjunction with requiring all minority-owned U.S. affiliates to file on the short form, revise the State Schedule to collect additional detail, by State, for minority-owned U.S. affiliates with activities in more than five States; and (4) to reduce overall respondent burden, drop several questions that BEA feels are no longer of significant analytical interest to the data users.

Survey Background

The Bureau of Economic Analysis (BEA), U.S. Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, "the Act." Section 4(a) of the Act provides that with respect to foreign direct investment in the United States, the President shall, to the extent he deems necessary and feasible, conduct a regular data collection program to secure current information on international capital flows and other information related to international investment and trade in services, including (but not limited to) such information as may be necessary for computing and analyzing the United States balance of payments, the employment and taxes of United States parents and affiliates, and the international investment and trade in services position of the United States.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The annual survey is a sample survey that collects data on the financial structure and operations of nonbank U.S. affiliates of foreign companies needed to update similar data for the universe of U.S. affiliates collected once every 5 years in the BE–12 benchmark survey. The data are used to derive annual estimates of the operations of U.S. affiliates of foreign companies, including their balance sheets; income statements; property, plant, and equipment; external financing; employment and employee compensation; merchandise trade; sales of goods and services; taxes; and research and development activity. The data are needed to measure the size and economic significance of foreign direct investment in the United States, to measure changes in such investment, and to assess its impact on the U.S. economy. Such data are generally found

in enterprise-level accounting records of respondent companies. The data are disaggregated by industry of U.S. affiliate, by country and industry of foreign parent or ultimate beneficial owner, and, for selected items, by State.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

This proposed rule contains a collection-of-information requirement subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). The requirement has been submitted to OMB for approval as a revision to a collection currently approved under OMB control number 0608–0034.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget control number.

The survey, as proposed, is expected to result in the filing of reports from approximately 4,950 U.S. affiliates. The respondent burden for this collection of information is expected to vary from 20 minutes for the smallest and least complex company reporting on the BE–15 Supplement C form to 550 hours for the largest and most complex company reporting on the BE–15(LF) long form, with an average burden of 21.8 hours per response (down from 32 hours for the previous annual survey), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Total respondent burden for the previous (2001) annual survey was estimated at 128,000 hours. Total respondent burden for this proposed survey is estimated at about 107,900 hours (4,950 responses times 21.8 hours average burden). The decrease of 20,100 hours in the estimated total respondent burden is largely attributable to the proposed changes to the reporting requirements.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0034, Attention PRA Desk Officer for BEA, via the Internet at *pbugg@omb.eop.gov*, or by fax at (202) 395–7245.

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rulemaking, if adopted, will not have a significant economic impact on a substantial number of small entities. Few, if any, small U.S. businesses are subject to the reporting requirements of this survey. Most small businesses are not foreign owned; those that are and have total assets, sales or gross operating revenues, and net income each equal to or less than $30 million are not required to report on the BE–15(LF) long form, BE–15 (SF) short form, or BE–15(EZ) form. Such entities need only file, on a one-time basis, a BE–15, Supplement C-Claim for Exemption.

BEA estimates that each year there will be approximately 300 small business that file the BE–15, Supplement C—Claim for Exemption. Of the 300 small entities that will be filing the BE–15, Supplement C, the respondent burden for this collection of information is expected to range from 20 minutes to 75 minutes, with an average burden of 1 hour, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the aggregate respondent burden would be 300 hours.

Because there are few small businesses that are subject to the reporting requirements and because those small businesses that are subject to reporting are subject to minimal recordkeeping burdens, the Chief Counsel for Regulation certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

List of Subjects in 15 CFR Part 806

International transactions, Economic statistics, Foreign investment in the United States, Penalties, Reporting and record keeping requirements.

Dated: August 19, 2003.

Rosemary Marcuss,

Deputy Director, Bureau of Economic Analysis.

For reasons set forth in the preamble, BEA proposes to amend 15 CFR part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.15(i) is revised to read as follows:

§ 806.15 Foreign direct investment in the United States.

* * * * *

(i) *Annual report form.* BE–15—Annual Survey of Foreign Direct Investment in the United States: One report is required for each consolidated U.S. affiliate, except a U.S. banking affiliate or U.S. bank holding company affiliate (including all of the subsidiaries and units of the bank holding company), exceeding an exemption level of $30 million. A long form, BE–15(LF), must be filed by each nonbank majority-owned U.S. affiliate (a "majority-owned" U.S. affiliate is one in which the combined direct and indirect ownership interests of all foreign parents of the U.S. affiliate exceed 50 percent) for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds $125 million (positive or negative), unless the nonbank majority-owned U.S. affiliate is selected to file a BE–15(EZ) form. A short form, BE–15(SF), must be filed by each nonbank majority-owned U.S. affiliate for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds $30 million but no one item exceeds $125 million (positive or negative), and by each nonbank minority-owned U.S. affiliate (a "minority-owned" U.S. affiliate is one in which the combined direct and

indirect ownership interest of all foreign parents of the U.S. affiliate is 50 percent or less) for which at least one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—exceeds $30 million (positive or negative), unless the nonbank U.S. affiliate is selected to file a BE–15(EZ) form. A BE–15(EZ) form must be filed by each nonbank U.S. affiliate that is selected to file this form in lieu of filing the BE–15(LF) or BE–15(SF). A BE–15 Supplement C (Exemption Claim) must be filed by each nonbank U.S. affiliate to claim exemption from filing a BE–15(LF), BE–15(SF), or BE–15(EZ). Following an initial filing, the BE–15 Supplement C is not required annually from those nonbank U.S. affiliates that meet the stated exemption criteria from year to year.

* * * * *

[FR Doc. 03–22074 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106486–98; INTL–0015–91]

RIN 1545–AW33; RIN 1545–PP78

Guidance Regarding the Treatment of Certain Contingent Payment Debt Instruments With One or More Payments That Are Denominated in, or Determined by Reference to, a Nonfunctional Currency

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking; notice of public hearing; and withdrawal of previous proposed regulations section.

SUMMARY: This document contains proposed regulations regarding the treatment of contingent payment debt instruments for which one or more payments are denominated in, or determined by reference to, a currency other than the taxpayer's functional currency. These regulations are necessary because current regulations do not provide guidance concerning the tax treatment of such instruments. The proposed regulations generally provide that taxpayers should apply the existing rules under section 1275 of the Internal Revenue Code, with certain modifications, to nonfunctional currency contingent payment debt instruments. This document also withdraws existing proposed regulations and provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments and requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for December 3, 2003, at 10 a.m. must be submitted by November 12, 2003.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–106486–98), room 5203, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 4 p.m. to: REG–106486–98, Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs*. The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Milton Cahn at (202) 622–3870; concerning submission and delivery of comments and the public hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP Washington, DC 20224. Comments on the collection of Information should be received by October 28, 2003. Comments are specifically requested concerning:

Whether the proposed collections of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collections of information in this proposed regulation are in § 1.988–6(a)(1) (cross reference to § 1.1275–4) and § 1.988–6(d)(3). This information is required to ensure consistency in the treatment of the debt instrument between the issuer and the holders. This information will be used for audit and examination purposes. The disclosure of information is mandatory as regards the issuers of nonfunctional currency contingent payment debt instruments. The reporting of information is mandatory as regards holders of debt instruments which determine their own projected payment schedule. The recordkeeping requirement is mandatory for any party that determines the comparable yield and projected payment schedule for a debt instrument. The likely respondents are business or other for-profit institutions.

Taxpayers provide the information on a statement attached to its timely filed federal income tax return for the taxable year that includes the acquisition date of the debt instrument.

Estimated total annual reporting, and/or recordkeeping burden: 100 hours.

Estimated average annual burden hours per respondent and/or recordkeeper: 1 hour.

Estimated number of respondents and/or recordkeepers: 100.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On March 17, 1992, Treasury and the IRS issued proposed regulations (INTL–0015–91), §§ 1.988–1(a)(3), (4) and (5), regarding contingent payment debt instruments, dual currency debt instruments and multi-currency debt

instruments. The proposed regulations followed the general approach in the then-proposed § 1.1275–4(g) contingent payment debt regulations (LR–189–84; 51 FR 12022 (1986), amended at 56 FR 8308 (1991)) and bifurcated such debt instruments into contingent and noncontingent components. After an instrument was bifurcated, the proposed regulations applied the rules in §§ 1.988–1 through 1.988–5, as appropriate, to the resulting components.

On December 16, 1994, Treasury and the IRS withdrew the then proposed § 1.1275–4(g) regulations and proposed a new set of § 1.1275–4 regulations (FI–59–91, 59 FR–64884). These regulations were finalized on June 14, 1996.

Section 1.1275–4 of the final regulations adopted the "noncontingent bond method" for certain contingent payment debt instruments. Under the noncontingent bond method, interest accrues on a contingent payment debt instrument at a rate equal to the instrument's comparable yield, which is the yield at which an issuer would issue a fixed rate debt instrument with terms and conditions similar to those of the contingent payment debt instrument. In addition, the noncontingent bond method treats all interest on a debt instrument as original issue discount, which must be taken into account as it accrues, regardless of the taxpayer's normal method of accounting.

Under the noncontingent bond method, the comparable yield is used to construct a projected payment schedule for the debt instrument, which includes a projected amount for each contingent payment. If the actual amount of a contingent payment is greater than the projected amount, the difference is treated as additional interest. If the actual amount of a contingent payment is less than the projected amount, the difference generally offsets current interest accruals. In some cases, the difference may result in a loss to the holder and income to the issuer.

On August 2, 1999, as a result of the withdrawal of the 1994 proposed § 1.1275–4(g) regulations and the promulgation of the final § 1.1275–4 regulations, the IRS issued Announcement 99–76 (1999–2 C.B. 223) which provided a description of a regulatory approach that Treasury and the IRS were considering as a replacement to the proposed regulations in §§ 1.988–1(a)(3), (4) and (5) for contingent payment debt instruments with one or more payments denominated in, or determined by reference to, a nonfunctional currency. Announcement 99–76 stated that Treasury and the IRS were considering issuing regulations that would apply the noncontingent bond method in the taxpayer's nonfunctional currency and would translate payments received on the instrument into functional currency under the rules of §§ 1.988–1 through 1.988–5. Announcement 99–76 requested comments on this approach. No comments were received.

Treasury and the IRS believe that proposed regulations § 1.988–1(a)(3), (4) and (5) should be withdrawn because they incorporate the bifurcation approach rather than the noncontingent bond method ultimately adopted under § 1.1275–4. Treasury and the IRS believe, as reflected in Announcement 99–76, that nonfunctional currency contingent payment debt instruments should be accounted for under rules similar to those that govern the treatment of functional currency contingent payment debt instruments. Treasury and the IRS believe that providing a consistent set of rules in this area is in the best interests of sound tax administration.

Explanation of Provisions

In General

These proposed regulations provide guidance for four different types of debt instruments: (1) Debt instruments issued for money or publicly-traded property for which all payments of principal and interest are denominated in, or determined by reference to, a single nonfunctional currency and which have one or more non-currency contingencies, (2) debt instruments issued for money or publicly-traded property for which payments of principal or interest are denominated in, or determined by reference to, more than one currency and which have no non-currency contingencies, (3) debt instruments issued for money or publicly-traded property for which payments of principal or interest are denominated in, or determined by reference to, more than one currency and which also have one or more non-currency contingencies, and (4) debt instruments which otherwise would fall into one of the three foregoing categories but for the fact that the instruments are not issued for money or publicly-traded property. These proposed regulations do not discuss the treatment of tax-exempt obligations described in § 1.1275–4(d) which are denominated in one or more nonfunctional currencies. Comments are requested as to the proper treatment of such instruments.

Consistent with the approach described in Announcement 99–76, these proposed regulations generally apply the rules of § 1.1275–4(b) (*i.e.*, the noncontingent bond method) to nonfunctional currency contingent payment debt instruments issued for money or publicly traded property. The proposed regulations generally provide that the noncontingent bond method is applied in the currency in which the instrument is denominated (the denomination currency).

Application of the § 1.1275–4(b) rules to nonfunctional currency contingent instruments generally requires taxpayers (i) to accrue interest in the denomination currency at a yield at which the issuer would issue a fixed rate debt instrument denominated in the denomination currency with terms and conditions similar to those of the contingent payment debt instrument, (ii) to translate the interest accrued from the denomination currency into the functional currency (and account for foreign currency gain or loss on payments of interest and principal) under the principles of § 1.988–2(b), and (iii) to account for gain or loss arising from contingencies in a manner consistent with the rules of § 1.1275–4(b).

Applying the Noncontingent Bond Method in the Denomination Currency

As noted, the proposed regulations require taxpayers to apply the noncontingent bond method in the instrument's denomination currency. For example, in the case of an instrument whose denomination currency is the British pound, an issuer whose functional currency is the U.S. dollar would first determine the comparable yield of the instrument, that is, the yield at which the issuer would issue a fixed rate instrument in British pounds with terms and conditions similar to those of the instrument actually being issued. Second, the issuer would construct a projected payment schedule applying that yield. Third, the amount of interest accrued in each taxable year would be determined in British pounds based on the comparable yield and translated into dollars under the principles of section 988. Fourth, the issuer and holder would account for differences between the projected amount of payments and the actual amount of payments (so-called positive adjustments and negative adjustments) under rules similar to those in § 1.1275–4(b). Consistent with the rules of § 1.1275–4(b), the proposed regulations provide that net positive adjustments are treated as additional interest on the instrument. Net negative adjustments generally offset current interest accruals, and in some cases may result in a loss to the holder and income to the issuer. Finally, the issuer and holders would

determine foreign currency gain or loss with respect to interest and principal payments on the instrument.

Determination of the Comparable Yield and Projected Payment Schedule

Consistent with § 1.1275–4(b)(4)(iv), the holder uses the yield and projected payment schedule determined by the issuer to determine the holder's interest accruals and adjustments for a debt instrument. If the issuer does not determine a comparable yield and projected payment schedule for the debt instrument, or if the issuer's comparable yield or projected payment schedule is unreasonable, the holder of the debt instrument must determine the comparable yield and the projected payment schedule for the debt instrument under the rules of the proposed regulations. A holder that determines its own comparable yield and projected payment schedule must explicitly disclose, in the manner set forth in § 1.1275–4(b)(4)(iv), both this fact and the reason why the holder made its own determination.

Determination of Basis

In general, the proposed regulations provide that a holder maintains its adjusted basis in functional currency by computing basis adjustments in the denomination currency under the rules of § 1.1275–4(b)(7)(iii) and then translating such adjustments into functional currency. Thus, the proposed regulations provide that a holder's basis is increased by the holder's accrued but unpaid interest inclusions on the debt instrument, generally without regard to any positive or negative adjustments, and decreased by the amount of any noncontingent payment and the projected amount of any contingent payment previously made on the debt instrument to the holder. These amounts are translated into functional currency under the principles of § 1.988–2(b).

Determination of Amount Realized

The proposed regulations generally follow § 1.1275–4(b)(7)(iv) in determining the amount realized, but do so in the denomination currency. Thus, for purposes of determining the amount realized by a holder on the scheduled retirement of a debt instrument, the holder generally is treated as receiving the projected amount of any contingent payment due at maturity. In the case of a sale, exchange or unscheduled retirement of a debt instrument, general recognition principles of tax law generally apply (*e.g.*, section 1001(b)). However, the amount realized by a holder on either the scheduled retirement, or the sale, exchange, or unscheduled retirement of a debt instrument, is reduced by any negative adjustment carryforward existing in the taxable year of the sale, exchange or retirement.

To calculate gain or loss other than foreign currency gain or loss, the proposed regulations require the translation of the amount realized into functional currency. Foreign currency gain or loss is computed separately, as described below. The proposed regulations generally translate the amount realized by reference to the rates used to translate the components of interest and principal that make up adjusted basis. The amount realized is translated using the adjusted basis rates in order to separate from the foreign currency gain or loss the amount of gain or loss on the sale, exchange or retirement of the debt instrument which does not result from changes in foreign exchange rates. Thus, where the amount realized in the denomination currency equals the adjusted basis of the instrument in the denomination currency prior to translation, the amount realized is translated in its entirety by reference to the rates used to translate adjusted basis. Where the amount realized differs from the adjusted basis prior to translation, additional attribution and translation rules are required.

Where the amount realized in the denomination currency is less than the adjusted basis in the denomination currency, that is, where the holder realizes a loss (not taking into account foreign currency gain or loss), the following rules apply as to which parts of adjusted basis are not recovered. In the case of a scheduled retirement at maturity, the loss is attributable to principal (the amount in denomination currency which the holder paid to purchase the debt instrument). The loss is attributable to principal because the holder will not entirely recover the holder's original investment in the debt instrument. In the case of a sale or exchange, the loss is first attributable to accrued interest. Attributing the loss first to interest results in symmetrical treatment between a loss resulting from a negative adjustment and a loss resulting from a sale.

When the holder's amount realized in the denomination currency exceeds the amount of its basis in the denomination currency prior to translation, that is, where the holder realizes a gain (not taking into account foreign currency gain or loss), the excess of amount realized over adjusted basis is translated at the spot rate on the date of receipt. This rule ensures symmetrical treatment between a positive adjustment and a gain on the instrument.

Determination of Foreign Currency Gain or Loss

The proposed regulations provide that foreign currency gain or loss is determined on an instrument with respect to principal and interest based on the comparable yield and projected payment schedule under the principles of § 1.988–2(b). In general, no foreign currency gain or loss is recognized until payment is made or received pursuant to the instrument, and no foreign currency gain or loss is computed with respect to positive or negative adjustments. However, foreign currency gain or loss is determined with respect to positive adjustments described in § 1.1275–4(b)(9)(ii) (relating to certain fixed but deferred contingent payments), based upon the difference between the spot rate on the date the positive adjustment becomes fixed and the spot rate on the date the positive adjustment is paid or received.

Source Rules

Consistent with the rules of § 1.1275–4(b)(6)(ii), the proposed regulations provide that all gain (other than foreign currency gain) on an instrument is characterized as interest for all tax purposes, including source and character rules. Losses of a holder from a contingent payment debt instrument are generally sourced by reference to the rules of § 1.1275–4(b)(9)(iv). Under § 1.1275–4(b)(9)(iv), a holder's deductions or loss related to a contingent payment debt instrument that are treated as ordinary losses are treated as deductions that are definitely related to the class of gross income to which income from such debt instrument belongs. Deductions or losses that the holder treats as capital losses are allocated, consistently with the general principles of § 1.865–1(b)(2), to the class of gross income with respect to which interest income from the instrument would give rise.

Treatment of Subsequent Holders

The proposed regulations provide that the rules of § 1.1275–4(b)(9) generally apply to subsequent holders of an instrument who purchase the instrument for an amount greater or less than the instrument's adjusted issue price (determined in the denomination currency). Accordingly, to the extent that the purchase price for an instrument exceeds the adjusted issue price of the instrument, the holder is required to allocate such excess to interest accrued on the instrument or to projected payments on the instrument

in a reasonable manner. Each such allocation is treated as a negative adjustment on the instrument, and the holder's basis on the instrument is decreased as these negative adjustments are taken into account.

To the extent that the adjusted issue price of the instrument exceeds its purchase price, the holder is required to allocate such excess to interest accrued on the instrument or to projected payments on the instrument in a reasonable manner. As the difference is taken into account, the holder is treated as receiving a positive adjustment on the instrument, and the holder's basis is increased as these positive adjustments are taken into account.

The proposed regulations generally translate the difference between the purchase price and adjusted issue price into functional currency at the rate used to translate the interest or projected payment subject to the adjustment. Thus, for example, a positive adjustment attributable to interest is translated at the same rate used to translate interest in the period in which it accrues (*e.g.*, the average rate for the accrual period). The basis adjustment corresponding to such a positive or negative adjustment is translated at the same rate applicable to the positive or negative adjustment itself.

Netting

The proposed regulations do not provide for the netting of market gain or loss with currency gain or loss on nonfunctional currency contingent payment debt instruments. On the one hand, different character and source rules generally apply to market gain or loss and currency gain or loss, and netting such items may produce results inconsistent with the tax treatment of other types of instruments. On the other hand, where market gain or loss and currency gain or loss counteract each other with respect to a taxpayer, requiring separate recognition of such gain and loss may not accurately reflect the economic benefits and burdens associated with the instrument. Accordingly, Treasury and the IRS request comments regarding the extent to which netting should be permitted or required. *Examples 2* and *4* of the proposed regulations demonstrate cases in which netting potentially could be permitted or required because both illustrate instances in which market loss could be netted against currency gain.

Debt Instruments Denominated in Multiple Currencies

In the case of an instrument for which payments are denominated in, or determined by reference to, more than one currency, the proposed regulations provide that the issuer must first determine the instrument's predominant currency, which will be used as the instrument's denomination currency for purposes of applying the rules of the proposed regulations. The predominant currency of the instrument is determined on the issue date by comparing the present value in functional currency of the noncontingent and projected payments denominated in, or determined by reference to, each currency. For this purpose, the applicable discount rate must be a nonfunctional currency discount rate, but the rate may be determined using any method, consistently applied, that reasonably reflects the instrument's economic substance. If a taxpayer does not determine a discount rate using such a method, the Commissioner may choose a method for determining the discount rate that does reflect the instrument's economic substance.

After the denomination currency has been determined, all payments on the instrument that are denominated in, or determined by reference to, a currency other than the denomination currency are treated as non-currency related contingent payments for purposes of applying the rules of the proposed regulations. Treasury and the IRS request comments regarding whether all gain or loss with respect to a debt instrument for which payments are denominated in, or determined by reference to, more than one currency and which has no non-currency contingencies should be treated as foreign currency gain or loss.

Debt Instruments Issued for Non-Publicly Traded Property

In the case of a nonfunctional currency contingent debt instrument issued for non-publicly traded property, the instrument is not accounted for using the noncontingent bond method. Rather, the debt instrument is separated into its components based on the currency in which the payments are denominated and whether the payments are contingent or noncontingent. The noncontingent components in each currency are treated as a separate debt instrument denominated in the currency in which the payment (or payments) is denominated. A component consisting of a contingent payment is generally treated in the manner provided in § 1.1275–4(c)(4). For purposes of the contingent payment, the test rate (the interest rate which is used to discount the contingent payment so as to determine the amount of the payment which is treated as principal, and the amount which is treated as interest) is determined by reference to the dollar unless the dollar does not reasonably reflect the economic substance of the contingent component.

Proposed Effective Dates

Section 1.988–6 is proposed to apply to nonfunctional currency contingent payment debt instruments issued 60 days or more after the date § 1.988–6 is published as a final regulation in the **Federal Register**.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that few, if any, small entities issue or hold foreign currency denominated contingent payment debt instruments. Generally, it is expected that the only domestic holders of these instruments will likely be financial institutions, investment banking firms, investment funds, and other sophisticated investors, due to the foreign currency risk and other contingencies inherent in these instruments. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 3, 2003, at 10 a.m. in room 6718 Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building.

Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 12, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Milton Cahn of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Section 1.988–1(a)(3), (4) and (5) as proposed on March 17, 1992 at 57 FR 9218 income tax regulations are withdrawn, and 26 CFR Part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.988–2 is amended by:

1. Adding the text of paragraph (b)(2)(i)(B)(*1*).

2. Removing the last sentence of paragraph (b)(2)(i)(B)(*2*).

The addition reads as follows:

§ 1.988–2 Recognition and computation of exchange gain or loss.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(B) * * * (*1*) *Operative rules.* See § 1.988–6 for rules applicable to contingent debt instruments for which one or more payments are denominated in, or determined by reference to, a nonfunctional currency.

* * * * *

Par. 3. Section 1.988–6 is added to read as follows:

§ 1.988–6 Nonfunctional currency contingent payment debt instruments.

(a) *In general*—(1) *Scope.* This section determines the accrual of interest and the amount, timing, source, and character of any gain or loss on nonfunctional currency contingent payment debt instruments described in this paragraph (a)(1). Except as set forth by the rules in this section, the rules in § 1.1275–4 (relating to contingent payment debt instruments) apply to the following instruments—

(i) A debt instrument described in § 1.1275–4(b)(1) for which all payments of principal and interest are denominated in, or determined by reference to, a single nonfunctional currency and which has one or more non-currency related contingencies;

(ii) A debt instrument described in § 1.1275–4(b)(1) for which payments of principal or interest are denominated in, or determined by reference to, more than one currency and which has no non-currency related contingencies;

(iii) A debt instrument described in § 1.1275–4(b)(1) for which payments of principal or interest are denominated in, or determined by reference to, more than one currency and which has one or more non-currency related contingencies; and

(iv) A debt instrument otherwise described in paragraph (a)(1)(i), (ii) or (iii) of this section, except that the debt instrument is described in § 1.1275–4(c)(1) rather than § 1.1275–4(b)(1) (*e.g.*, the instrument is issued for non-publicly traded property).

(2) *Exception for hyperinflationary currencies*—(i) *In general.* Except as provided in paragraph (a)(2)(ii) of this section, this section shall not apply to an instrument described in paragraph (a)(1) of this section if any payment made under such instrument is determined by reference to a hyperinflationary currency, as defined in § 1.985–1(b)(2)(ii)(D). In such case, the amount, timing, source and character of interest, principal, foreign currency gain or loss, and gain or loss relating to a non-currency contingency shall be determined under the method that reflects the instrument's economic substance.

(ii) *Discretion as to method.* If a taxpayer does not account for an instrument described in paragraph (a)(2)(i) of this section in a manner that reflects the instrument's economic substance, the Commissioner may apply the rules of this section to such an instrument or apply the principles of § 1.988–2(b)(15), reasonably taking into account the contingent feature or features of the instrument.

(b) *Instruments described in paragraph (a)(1)(i) of this section*—(1) *In general.* Paragraph (b)(2) of this section provides rules for applying the noncontingent bond method (as set forth in § 1.1275–4(b)) in the nonfunctional currency in which a debt instrument described in paragraph (a)(1)(i) of this section is denominated, or by reference to which its payments are determined (the denomination currency). Paragraph (b)(3) of this section describes how amounts determined in paragraph (b)(2) of this section shall be translated from the denomination currency of the instrument into the taxpayer's functional currency. Paragraph (b)(4) of this section describes how gain or loss (other than foreign currency gain or loss) shall be determined and characterized with respect to the instrument. Paragraph (b)(5) of this section describes how foreign currency gain or loss shall be determined with respect to accrued interest and principal on the instrument. Paragraph (b)(6) of this section provides rules for determining the source and character of any gain or loss with respect to the instrument. Paragraph (b)(7) of this section provides rules for subsequent holders of an instrument who purchase the instrument for an amount other than the adjusted issue price of the instrument. Paragraph (c) of this section provides examples of the application of paragraph (b) of this section. See paragraph (d) of this section for the determination of the denomination currency of an instrument described in paragraph (a)(1)(ii) or (iii) of this section. See paragraph (e) of this section for the treatment of an instrument described in paragraph (a)(1)(iv) of this section.

(2) *Application of noncontingent bond method*—(i) *Accrued interest.* Interest accruals on an instrument described in paragraph (a)(1)(i) of this section are initially determined in the denomination currency of the instrument by applying the noncontingent bond method, set forth in § 1.1275–4(b), to the instrument in its denomination currency. Accordingly, the comparable yield, projected payment schedule, and comparable fixed rate debt instrument, described in § 1.1275–4(b)(4), are determined in the denomination currency. For purposes of applying the noncontingent bond method to instruments described in this paragraph, the applicable Federal rate described in § 1.1275–4(b)(4)(i) shall be

the rate described in § 1.1274–4(d) with respect to the denomination currency.

(ii) *Net positive and negative adjustments.* Positive and negative adjustments, and net positive and net negative adjustments, with respect to an instrument described in paragraph (a)(1)(i) of this section are determined by applying the rules of § 1.1275–4(b)(6) (and § 1.1275–4(b)(9)(i) and (ii), if applicable) in the denomination currency. Accordingly, a net positive adjustment is treated as additional interest (in the denomination currency) on the instrument. A net negative adjustment first reduces interest that otherwise would be accrued by the taxpayer during the current tax year in the denomination currency. If a net negative adjustment exceeds the interest that would otherwise be accrued by the taxpayer during the current tax year in the denomination currency, the excess is treated as ordinary loss (if the taxpayer is a holder of the instrument) or ordinary income (if the taxpayer is the issuer of the instrument). The amount treated as ordinary loss by a holder with respect to a net negative adjustment is limited, however, to the amount by which the holder's total interest inclusions on the debt instrument (determined in the denomination currency) exceed the total amount of the holder's net negative adjustments treated as ordinary loss on the debt instrument in prior taxable years (determined in the denomination currency). Similarly, the amount treated as ordinary income by an issuer with respect to a net negative adjustment is limited to the amount by which the issuer's total interest deductions on the debt instrument (determined in the denomination currency) exceed the total amount of the issuer's net negative adjustments treated as ordinary income on the debt instrument in prior taxable years (determined in the denomination currency). To the extent a net negative adjustment exceeds the current year's interest accrual and the amount treated as ordinary loss to a holder (or ordinary income to the issuer), the excess is treated as a negative adjustment carryforward, within the meaning of § 1.1275–4(b)(6)(iii)(C), in the denomination currency.

(iii) *Adjusted issue price.* The adjusted issue price of an instrument described in paragraph (a)(1)(i) of this section is determined by applying the rules of § 1.1275–4(b)(7) in the denomination currency. Accordingly, the adjusted issue price is equal to the debt instrument's issue price in the denomination currency, increased by the interest previously accrued on the debt instrument (determined without regard to any net positive or net negative adjustments on the instrument) and decreased by the amount of any noncontingent payment and the projected amount of any contingent payment previously made on the instrument. All adjustments to the adjusted issue price are calculated in the denomination currency.

(iv) *Adjusted basis.* The adjusted basis of an instrument described in paragraph (a)(1)(i) of this section is determined by applying the rules of § 1.1275–4(b)(7) in the taxpayer's functional currency. In accordance with those rules, a holder's basis in the debt instrument is increased by the interest previously accrued on the debt instrument (translated into functional currency), without regard to any net positive or net negative adjustments on the instrument (except as provided in paragraph (b)(7) or (8) of this section, if applicable), and decreased by the amount of any noncontingent payment and the projected amount of any contingent payment previously made on the instrument to the holder (translated into functional currency). See paragraph (b)(3)(iii) of this section for translation rules.

(v) *Amount realized.* The amount realized by a holder and the repurchase price paid by the issuer on the scheduled or unscheduled retirement of a debt instrument described in paragraph (a)(1)(i) of this section are determined by applying the rules of § 1.1275–4(b)(7) in the denomination currency. For example, with regard to a scheduled retirement at maturity, the holder is treated as receiving the projected amount of any contingent payment due at maturity, reduced by the amount of any negative adjustment carryforward. For purposes of translating the amount realized by the holder into functional currency, the rules of paragraph (b)(3)(iv) of this section shall apply.

(3) *Treatment and translation of amounts determined under noncontingent bond method*—(i) *Accrued interest.* The amount of accrued interest, determined under paragraph (b)(2)(i) of this section, is translated into the taxpayer's functional currency at the average exchange rate, as described in § 1.988–2(b)(2)(iii)(A), or, at the taxpayer's election, at the appropriate spot rate, as described in § 1.988–2(b)(2)(iii)(B).

(ii) *Net positive and negative adjustments*—(A) *Net positive adjustments.* A net positive adjustment, as referenced in paragraph (b)(2)(ii) of this section, is translated into the taxpayer's functional currency at the spot rate on the last day of the taxable year in which the adjustment is taken into account under § 1.1275–4(b)(6), or, if earlier, the date the instrument is disposed of or otherwise terminated.

(B) *Net negative adjustments.* A net negative adjustment is treated and, where necessary, is translated from the denomination currency into the taxpayer's functional currency under the following rules:

(*1*) The amount of a net negative adjustment determined in the denomination currency that reduces the current year's interest in that currency shall first reduce the current year's accrued but unpaid interest, and then shall reduce the current year's interest which was accrued and paid. No translation is required.

(*2*) The amount of a net negative adjustment treated as ordinary income or loss under § 1.1275–4(b)(6)(iii)(B) first is attributable to accrued but unpaid interest accrued in prior taxable years. For this purpose, the net negative adjustment shall be treated as attributable to any unpaid interest accrued in the immediately preceding taxable year, and thereafter to unpaid interest accrued in each preceding taxable year. The amount of the net negative adjustment applied to accrued but unpaid interest is translated into functional currency at the same rate used, in each of the respective prior taxable years, to translate the accrued interest.

(*3*) Any amount of the net negative adjustment remaining after the application of paragraphs (b)(3)(ii)(B)(*1*) and (*2*) of this section is attributable to interest accrued and paid in prior taxable years. The amount of the net negative adjustment applied to such amounts is translated into functional currency at the spot rate on the date the debt instrument was issued or, if later, acquired.

(*4*) Any amount of the net negative adjustment remaining after application of paragraphs (b)(3)(ii)(B)(*1*), (*2*) and (*3*) of this section is a negative adjustment carryforward, within the meaning of § 1.1275–4(b)(6)(iii)(C). A negative adjustment carryforward is carried forward in the denomination currency and is applied to reduce interest accruals in subsequent years. In the year in which the instrument is sold, exchanged or retired, any negative adjustment carryforward not applied to interest reduces the holder's amount realized on the instrument (in the denomination currency). An issuer of a debt instrument described in paragraph (a)(1)(i) of this section who takes into income a negative adjustment carryforward (that is not applied to interest) in the year the instrument is

retired, as described in § 1.1275–4(b)(6)(iii)(C), translates such income into functional currency at the spot rate on the date the instrument was issued.

(iii) *Adjusted basis*—(A) *In general.* Except as otherwise provided in this paragraph and paragraphs (b)(7) or (8) of this section, a holder determines and maintains adjusted basis by translating the denomination currency amounts determined under § 1.1275–4(b)(7)(iii) into functional currency as follows:

(*1*) The holder's initial basis in the instrument is determined by translating the amount paid by the holder to acquire the instrument (in the denomination currency) into functional currency at the spot rate on the date the instrument was issued or, if later, acquired.

(*2*) An increase in basis attributable to interest accrued on the instrument is translated at the rate applicable to such interest under paragraph (b)(3)(i) of this section.

(*3*) Any noncontingent payment and the projected amount of any contingent payments determined in the denomination currency that decrease the holder's basis in the instrument under § 1.1275–4(b)(7)(iii) are translated as follows:

(*i*) The payment first is attributable to the most recently accrued interest to which prior amounts have not already been attributed. The payment is translated into functional currency at the rate at which the interest was accrued.

(*ii*) Any amount remaining after the application of paragraph (b)(3)(iii)(A)(*3*)(*i*) of this section is attributable to principal. Such amounts are translated into functional currency at the spot rate on the date the instrument was issued or, if later, acquired.

(B) *Exception for interest reduced by a negative adjustment carryforward.* Solely for purposes of this § 1.988–6, any amounts of accrued interest income that are reduced as a result of a negative adjustment carryforward shall be treated as principal and translated at the spot rate on the date the instrument was issued or, if later, acquired.

(iv) *Amount realized*—(A) *Instrument held to maturity*—(*1*) *In general.* With respect to an instrument held to maturity, a holder translates the amount realized by separating such amount in the denomination currency into the component parts of interest and principal that make up adjusted basis prior to translation under paragraph (b)(3)(iii) of this section, and translating each of those component parts of the amount realized at the same rate used to translate the respective component parts of basis under paragraph (b)(3)(iii) of this section. The amount realized first shall be translated by reference to the component parts of basis consisting of accrued interest during the taxpayer's holding period as determined under paragraph (b)(3)(iii) of this section and ordering such amounts on a last in first out basis. Any remaining portion of the amount realized shall be translated by reference to the rate used to translate the component of basis consisting of principal as determined under paragraph (b)(3)(iii) of this section.

(*2*) *Subsequent purchases at discount and fixed but deferred contingent payments.* For purposes of this paragraph (b)(3)(iv) of this section, any amount which is required to be added to adjusted basis under paragraph (b)(7) or (8) of this section shall be treated as additional interest which was accrued on the date the amount was added to adjusted basis. To the extent included in amount realized, such amounts shall be translated into functional currency at the same rates at which they were translated for purposes of determining adjusted basis. See paragraphs (b)(7)(iv) and (b)(8) of this section for rules governing the rates at which the amounts are translated for purposes of determining adjusted basis.

(B) *Sale, exchange, or unscheduled retirement*—(*1*) *Holder.* In the case of a sale, exchange, or unscheduled retirement, application of the rule stated in paragraph (b)(3)(iv)(A) of this section shall be modified as follows. The holder's amount realized first shall be translated by reference to the principal component of basis as determined under paragraph (b)(3)(iii) of this section, and then to the component of basis consisting of accrued interest as determined under paragraph (b)(3)(iii) of this section and ordering such amounts on a first in first out basis. Any gain recognized by the holder (*i.e.*, any excess of the sale price over the holder's basis, both expressed in the denomination currency) is translated into functional currency at the spot rate on the payment date.

(*2*) *Issuer.* In the case of an unscheduled retirement of the debt instrument, any excess of the adjusted issue price of the debt instrument over the amount paid by the issuer (expressed in denomination currency) shall first be attributable to accrued unpaid interest, to the extent the accrued unpaid interest had not been previously offset by a negative adjustment, on a last-in-first-out basis, and then to principal. The accrued unpaid interest shall be translated into functional currency at the rate at which the interest was accrued. The principal shall be translated at the spot rate on the date the debt instrument was issued.

(C) *Effect of negative adjustment carryforward with respect to the issuer.* Any amount of negative adjustment carryforward treated as ordinary income under § 1.1275–4(b)(6)(iii)(C) shall be translated at the exchange rate on the day the debt instrument was issued.

(*4*) *Determination of gain or loss not attributable to foreign currency.* A holder of a debt instrument described in paragraph (a)(1)(i) of this section shall recognize gain or loss upon sale, exchange, or retirement of the instrument equal to the difference between the amount realized with respect to the instrument, translated into functional currency as described in paragraph (b)(3)(iv) of this section, and the adjusted basis in the instrument, determined and maintained in functional currency as described in paragraph (b)(3)(iii) of this section. The amount of any gain or loss so determined is characterized as provided in § 1.1275–4(b)(8), and sourced as provided in paragraph (b)(6) of this section.

(*5*) *Determination of foreign currency gain or loss*—(i) *In general.* Other than in a taxable disposition of the debt instrument, foreign currency gain or loss is recognized with respect to a debt instrument described in paragraph (a)(1)(i) of this section only when payments are made or received. No foreign currency gain or loss is recognized with respect to a net positive or negative adjustment, as determined under paragraph (b)(2)(ii) of this section (except with respect to a positive adjustment described in paragraph (b)(8) of this section). As described in this paragraph (b)(5), foreign currency gain or loss is determined in accordance with the rules of § 1.988–2(b).

(ii) *Foreign currency gain or loss attributable to accrued interest.* The amount of foreign currency gain or loss recognized with respect to payments of interest previously accrued on the instrument is determined by translating the amount of interest paid or received into functional currency at the spot rate on the date of payment and subtracting from such amount the amount determined by translating the interest paid or received into functional currency at the rate at which such interest was accrued under the rules of paragraph (b)(3)(i) of this section. For purposes of this paragraph, the amount of any payment that is treated as accrued interest shall be reduced by the amount of any net negative adjustment treated as ordinary loss (to the holder) or ordinary income (to the issuer), as provided in paragraph (b)(2)(ii) of this

section. For purposes of determining whether the payment consists of interest or principal, see the payment ordering rules in paragraph (b)(5)(iv) of this section.

(iii) *Principal.* The amount of foreign currency gain or loss recognized with respect to payment or receipt of principal is determined by translating the amount paid or received into functional currency at the spot rate on the date of payment or receipt and subtracting from such amount the amount determined by translating the principal into functional currency at the spot rate on the date the instrument was issued or, in case of the holder, if later, acquired. For purposes of determining whether the payment consists of interest or principal, see the payment ordering rules in paragraph (b)(5)(iv) of this section.

(iv) *Payment ordering rules*—(A) *In general.* Except as provided in paragraph (b)(5)(iv)(B) of this section, payments with respect to an instrument described in paragraph (a)(1)(i) of this section shall be treated as follows:

(*1*) A payment shall first be attributable to any net positive adjustment on the instrument that has not previously been taken into account.

(*2*) Any amount remaining after applying paragraph (b)(5)(iv)(A)(*1*) of this section shall be attributable to accrued but unpaid interest, remaining after reduction by any net negative adjustment, and shall be attributable to the most recent accrual period to the extent prior amounts have not already been attributed to such period.

(*3*) Any amount remaining after applying paragraphs (b)(5)(iv)(A)(*1*) and (*2*) of this section shall be attributable to principal. Any interest paid in the current year that is reduced by a net negative adjustment shall be considered a payment of principal for purposes of determining foreign currency gain or loss.

(B) *Special rule for sale or exchange or unscheduled retirement.* Payments made or received upon a sale or exchange or unscheduled retirement shall first be applied against the principal of the debt instrument (or in the case of a subsequent purchaser, the purchase price of the instrument in denomination currency) and then against accrued unpaid interest (in the case of a holder, accrued while the holder held the instrument).

(C) *Subsequent purchaser that has a positive adjustment allocated to a daily portion of interest.* A positive adjustment that is allocated to a daily portion of interest pursuant to paragraph (b)(7)(iv) of this section shall be treated as interest for purposes of applying the payment ordering rule of this paragraph (b)(5)(iv).

(6) *Source of gain or loss.* The source of foreign currency gain or loss recognized with respect to an instrument described in paragraph (a)(1)(i) of this section shall be determined pursuant to § 1.988–4. Consistent with the rules of § 1.1275–4(b)(8), all gain (other than foreign currency gain) on an instrument described in paragraph (a)(1)(i) of this section is treated as interest income for all purposes. The source of an ordinary loss (other than foreign currency loss) with respect to an instrument described in paragraph (a)(1)(i) of this section shall be determined pursuant to § 1.1275–4(b)(9)(iv). The source of a capital loss with respect to an instrument described in paragraph (a)(1)(i) of this section shall be determined pursuant to § 1.865–1(b)(2).

(7) *Basis different from adjusted issue price*—(i) *In general.* The rules of § 1.1275–4(b)(9)(i), except as set forth in this paragraph (b)(7), shall apply to an instrument described in paragraph (a)(1)(i) of this section purchased by a subsequent holder for more or less than the instrument's adjusted issue price.

(ii) *Determination of basis.* If an instrument described in paragraph (a)(1)(i) of this section is purchased by a subsequent holder, the subsequent holder's initial basis in the instrument shall equal the amount paid by the holder to acquire the instrument, translated into functional currency at the spot rate on the date of acquisition.

(iii) *Purchase price greater than adjusted issue price.* If the purchase price of the instrument (determined in the denomination currency) exceeds the adjusted issue price of the instrument, the holder shall, consistent with the rules of § 1.1275–4(b)(9)(i)(B), reasonably allocate such excess to the daily portions of interest accrued on the instrument or to a projected payment on the instrument. To the extent attributable to interest, the excess shall be reasonably allocated over the remaining term of the instrument to the daily portions of interest accrued and shall be a negative adjustment on the dates the daily portions accrue. On the date of such adjustment, the holder's adjusted basis in the instrument is reduced by the amount treated as a negative adjustment under this paragraph (b)(7)(iii), translated into functional currency at the rate used to translate the interest which is offset by the negative adjustment. To the extent related to a projected payment, such excess shall be treated as a negative adjustment on the date the payment is made. On the date of such adjustment, the holder's adjusted basis in the instrument is reduced by the amount treated as a negative adjustment under this paragraph (b)(7)(iii), translated into functional currency at the spot rate on the date the instrument was acquired.

(iv) *Purchase price less than adjusted issue price.* If the purchase price of the instrument (determined in the denomination currency) is less than the adjusted issue price of the instrument, the holder shall, consistent with the rules of § 1.1275–4(b)(9)(i)(C), reasonably allocate the difference to the daily portions of interest accrued on the instrument or to a projected payment on the instrument. To the extent attributable to interest, the difference shall be reasonably allocated over the remaining term of the instrument to the daily portions of interest accrued and shall be a positive adjustment on the dates the daily portions accrue. On the date of such adjustment, the holder's adjusted basis in the instrument is increased by the amount treated as a positive adjustment under this paragraph (b)(7)(iv), translated into functional currency at the rate used to translate the interest to which it relates. For purposes of determining adjusted basis under paragraph (b)(3)(iii) of this section, such increase in adjusted basis shall be treated as an additional accrual of interest during the period to which the positive adjustment relates. To the extent related to a projected payment, such difference shall be treated as a positive adjustment on the date the payment is made. On the date of such adjustment, the holder's adjusted basis in the instrument is increased by the amount treated as a positive adjustment under this paragraph (b)(7)(iv), translated into functional currency at the spot rate on the date the adjustment is taken into account. For purposes of determining the amount realized on the instrument in functional currency under paragraph (b)(3)(iv) of this section, amounts attributable to the excess of the adjusted issue price of the instrument over the purchase price of the instrument shall be translated into functional currency at the same rate at which the corresponding adjustments are taken into account under this paragraph (b)(7)(iv) for purposes of determining the adjusted basis of the instrument.

(8) *Fixed but deferred contingent payments.* In the case of an instrument with a contingent payment that becomes fixed as to amount before the payment is due, the rules of § 1.1275–4(b)(9)(ii) shall be applied in the denomination currency of the instrument. For this purpose, foreign currency gain or loss shall be recognized on the date payment

is made or received with respect to the instrument under the principles of paragraph (b)(5) of this section. Any increase or decrease in basis required under § 1.1275–4(b)(9)(ii)(D) shall be taken into account at the same exchange rate as the corresponding net positive or negative adjustment is taken into account.

(c) *Examples.* The provisions of paragraph (b) of this section may be illustrated by the following examples. In each example, assume that the instrument described is a debt instrument for federal income tax purposes. No inference is intended, however, as to whether the instrument is a debt instrument for federal income tax purposes. The examples are as follows:

Example 1. Treatment of net positive adjustment—(i) *Facts.* On December 31, 2004, Z, a calendar year U.S. resident taxpayer whose functional currency is the U.S. dollar, purchases from a foreign corporation, at original issue, a zero-coupon debt instrument with a non-currency contingency for £1000. All payments of principal and interest with respect to the instrument are denominated in, or determined by reference to, a single nonfunctional currency (the British pound). The debt instrument would be subject to § 1.1275–4(b) if it were denominated in dollars. The debt instrument's comparable yield, determined in British pounds under paragraph (b)(2)(i) of this section and § 1.1275–4(b), is 10 percent, compounded annually, and the projected payment schedule, as constructed under the rules of § 1.1275–4(b), provides for a single payment of £1210 on December 31, 2006 (consisting of a noncontingent payment of £975 and a projected payment of £235). The debt instrument is a capital asset in the hands of Z. Z does not elect to use the spot-rate convention described in § 1.988–2(b)(2)(iii)(B). The payment actually made on December 31, 2006, is £1300. The relevant pound/dollar spot rates over the term of the instrument are as follows:

Date	Spot rate (pounds to dollars)
Dec. 31, 2004	£1.00=$1.00
Dec. 31, 2005	£1.00=$1.10
Dec. 31, 2006	£1.00=$1.20

Accrual period	Average rate (pounds to dollars)
2005	£1.00=$1.05
2006	£1.00=$1.15

(ii) *Treatment in 2005*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £100 of interest on the debt instrument for 2005 (issue price of £1000 × 10 percent). Under paragraph (b)(3)(i) of this section, Z translates the £100 at the average exchange rate for the accrual period ($1.05 × £100 = $105). Accordingly, Z has interest income in 2005 of $105.

(B) *Adjusted issue price and basis.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued in 2005. Thus, on January 1, 2006, the adjusted issue price of the debt instrument is £1100. For purposes of determining Z's dollar basis in the debt instrument, the $1000 basis ($1.00 × £1000 original cost basis) is increased by the £100 of accrued interest, translated at the rate at which interest was accrued for 2005. See paragraph (b)(3)(iii) of this section. Accordingly, Z's adjusted basis in the debt instrument as of January 1, 2006, is $1105.

(iii) *Treatment in 2006*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £110 of interest on the debt instrument for 2006 (adjusted issue price of £1100 × 10 percent). Under paragraph (b)(3)(i) of this section, Z translates the £110 at the average exchange rate for the accrual period ($1.15 × £110 = $126.50). Accordingly, Z has interest income in 2006 of $126.50.

(B) *Effect of net positive adjustment.* The payment actually made on December 31, 2006, is £1300, rather than the projected £1210. Under paragraph (b)(2)(ii) of this section, Z has a net positive adjustment of £90 on December 31, 2006, attributable to the difference between the amount of the actual payment and the amount of the projected payment. Under paragraph (b)(3)(ii)(A) of this section, the £90 net positive adjustment is treated as additional interest income and is translated into dollars at the spot rate on the last day of the year ($1.20 × £90 = $108). Accordingly, Z has a net positive adjustment of $108 resulting in a total interest inclusion for 2006 of $234.50 ($126.50 + $108 = $234.50).

(C) *Adjusted issue price and basis.* Based on the projected payment schedule, the adjusted issue price of the debt instrument immediately before the payment at maturity is £1210 (£1100 plus £110 of accrued interest for 2006). Z's adjusted basis in dollars, based only on the noncontingent payment and the projected amount of the contingent payment to be received, is $1231.50 ($1105 plus $126.50 of accrued interest for 2006).

(D) *Amount realized.* Even though Z receives £1300 at maturity, for purposes of determining the amount realized, Z is treated under paragraph (b)(2)(v) of this section as receiving the projected amount of the contingent payment on December 31, 2006. Therefore, Z is treated as receiving £1210 on December 31, 2006. Under paragraph (b)(3)(iv) of this section, Z translates its amount realized into dollars and computes its gain or loss on the instrument (other than foreign currency gain or loss) by breaking the amount realized into its component parts. Accordingly, £100 of the £1210 (representing the interest accrued in 2005) is translated at the rate at which it was accrued (£1 = $1.05), resulting in an amount realized of $105; £110 of the £1210 (representing the interest accrued in 2006) is translated into dollars at the rate at which it was accrued (£1 = $1.15), resulting in an amount realized of $126.50; and £1000 of the £1210 (representing a return of principal) is translated into dollars at the spot rate on the date the instrument was purchased (£1 = $1), resulting in an amount realized of $1000. Z's total amount realized is $1231.50, the same as its basis, and Z recognizes no gain or loss (before consideration of foreign currency gain or loss) on retirement of the instrument.

(E) *Foreign currency gain or loss.* Under paragraph (b)(5) of this section Z recognizes foreign currency gain under section 988 on the instrument with respect to the consideration actually received at maturity (except for the net positive adjustment), £1210. The amount of recognized foreign currency gain is determined based on the difference between the spot rate on the date the instrument matures and the rates at which the principal and interest were taken into account. With respect to the portion of the payment attributable to interest accrued in 2005, the foreign currency gain is $15 [£100 × ($1.20 − $1.05)]. With respect to interest accrued in 2006, the foreign currency gain equals $5.50 [£110 × ($1.20 − $1.15)]. With respect to principal, the foreign currency gain is $200 [£1000 × ($1.20 − $1.00)]. Thus, Z recognizes a total foreign currency gain on December 31, 2006, of $220.50.

(F) *Source.* Z has interest income of $105 in 2005, interest income of $234.50 in 2006 (attributable to £110 of accrued interest and the £90 net positive adjustment), and a foreign currency gain of $220.50 in 2006. Under paragraph (b)(6) of this section and section 862(a)(1), the interest income is sourced by reference to the residence of the payor and is therefore from sources without the United States. Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $220.50 is sourced by reference to Z's residence and is therefore from sources within the United States.

Example 2. Treatment of net negative adjustment—(i) *Facts.* Assume the same facts as in *Example 1*, except that Z receives £975 at maturity instead of £1300.

(ii) *Treatment in 2005.* The treatment of the debt instrument in 2005 is the same as in Example 1. Thus, Z has interest income in 2005 of $105. On January 1, 2006, the adjusted issue price of the debt instrument is £1100, and Z's adjusted basis in the instrument is $1105.

(iii) *Treatment in 2006*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section and based on the comparable yield, Z's accrued interest for 2006 is £110 (adjusted issue price of £1100 × 10 percent). Under paragraph (b)(3)(i) of this section, the £110 of accrued interest is translated at the average exchange rate for the accrual period ($1.15 × £110 = $126.50).

(B) *Effect of net negative adjustment.* The payment actually made on December 31, 2006, is £975, rather than the projected £1210. Under paragraph (b)(2)(ii) of this section, Z has a net negative adjustment of £235 on December 31, 2006, attributable to the difference between the amount of the actual payment and the amount of the

projected payment. Z's accrued interest income of £110 in 2006 is reduced to zero by the net negative adjustment. Under paragraph (b)(3)(ii)(B)(*1*) of this section the net negative adjustment which reduces the current year's interest is not translated into functional currency. Under paragraph (b)(2)(ii) of this section, Z treats the remaining £125 net negative adjustment as an ordinary loss to the extent of the £100 previously accrued interest in 2005. This £100 ordinary loss is attributable to interest accrued but not paid in the preceding year. Therefore, under paragraph (b)(3)(ii)(B)(*2*) of this section, Z translates the loss into dollars at the average rate for such year (£1 = $1.05). Accordingly, Z has an ordinary loss of $105 in 2006. The remaining £25 of net negative adjustment is a negative adjustment carryforward under paragraph (b)(2)(ii) of this section.

(C) *Adjusted issue price and basis.* Based on the projected payment schedule, the adjusted issue price of the debt instrument immediately before the payment at maturity is £1210 (£1100 plus £110 of accrued interest for 2006). Z's adjusted basis in dollars, based only on the noncontingent payments and the projected amount of the contingent payments to be received, is $1231.50 ($1105 plus $126.50 of accrued interest for 2006).

(D) *Amount realized.* Even though Z receives £975 at maturity, for purposes of determining the amount realized, Z is treated under paragraph (b)(2)(v) of this section as receiving the projected amount of the contingent payment on December 31, 2006, reduced by the amount of Z's negative adjustment carryforward of £25. Therefore, Z is treated as receiving £1185 (£1210 − £25) on December 31, 2006. Under paragraph (b)(3)(iv) of this section, Z translates its amount realized into dollars and computes its gain or loss on the instrument (other than foreign currency gain or loss) by breaking the amount realized into its component parts. Accordingly, £100 of the £1185 (representing the interest accrued in 2005) is translated at the rate at which it was accrued (£1 = $1.05), resulting in an amount realized of $105; £110 of the £1185 (representing the interest accrued in 2006) is translated into dollars at the rate at which it was accrued (£1 = $1.15), resulting in an amount realized of $126.50; and £975 of the £1185 (representing a return of principal) is translated into dollars at the spot rate on the date the instrument was purchased (£1 = $1), resulting in an amount realized of $975. Z's amount realized is $1206.50 ($105 + $126.50 + $975 = $1206.50), and Z recognizes a capital loss (before consideration of foreign currency gain or loss) of $25 on retirement of the instrument ($1206.50 − $1231.50 = −$25).

(E) *Foreign currency gain or loss.* Z recognizes foreign currency gain with respect to the consideration actually received at maturity, £975. Under paragraph (b)(5)(ii) of this section, no foreign currency gain or loss is recognized with respect to unpaid accrued interest reduced to zero by the net negative adjustment resulting in 2006. In addition, no foreign currency gain or loss is recognized with respect to unpaid accrued interest from 2005, also reduced to zero by the ordinary loss. Accordingly, Z recognizes foreign currency gain with respect to principal only. Thus, Z recognizes a total foreign currency gain on December 31, 2006, of $195 [£975 × ($1.20 − $1.00)].

(F) *Source.* In 2006, Z has an ordinary loss of $105, a capital loss of $25, and a foreign currency gain of $195. Under paragraph (b)(6) of this section and § 1.1275–4(b)(9)(iv), the $105 ordinary loss generally reduces Z's foreign source passive income under section 904(d) and the regulations thereunder. Under paragraph (b)(6) of this section and § 1.865–1(b)(2), the $25 capital loss is sourced by reference to how interest income on the instrument would have been sourced. Therefore, the $25 capital loss generally reduces Z's foreign source passive income under section 904(d) and the regulations thereunder. Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $195 is sourced by reference to Z's residence and is therefore from sources within the United States.

Example 3. Negative adjustment and periodic interest payments—(i) *Facts.* On December 31, 2004, Z, a calendar year U.S. resident taxpayer whose functional currency is the U.S. dollar, purchases from a foreign corporation, at original issue, a two-year debt instrument with a non-currency contingency for £1000. All payments of principal and interest with respect to the instrument are denominated in, or determined by reference to, a single nonfunctional currency (the British pound). The debt instrument would be subject to § 1.1275–4(b) if it were denominated in dollars. The debt instrument's comparable yield, determined in British pounds under §§ 1.988–2(b)(2) and 1.1275–4(b), is 10 percent, compounded semiannually. The debt instrument provides for semiannual interest payments of £30 payable each June 30, and December 31, and a contingent payment at maturity on December 31, 2006, which is projected to equal £1086.20 (consisting of a noncontingent payment of £980 and a projected payment of £106.20) in addition to the interest payable at maturity. The debt instrument is a capital asset in the hands of Z. Z does not elect to use the spot-rate convention described in § 1.988–2(b)(2)(iii)(B). The payment actually made on December 31, 2006, is £981.00. The relevant pound/dollar spot rates over the term of the instrument are as follows:

Date	Spot rate (pounds to dollars)
Dec. 31, 2004	£1.00=$1.00
June 30, 2005	£1.00=$1.20
Dec. 31, 2005	£1.00=$1.40
June 30, 2006	£1.00=$1.60
Dec. 31, 2006	£1.00=$1.80

Accrual period	Average rate (pounds to dollars)
Jan.–June 2005	£1.00=$1.10
July–Dec. 2005	£1.00=$1.30
Jan.–June 2006	£1.00=$1.50
July–Dec. 2006	£1.00=$1.70

(ii) *Treatment in 2005*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £50 of interest on the debt instrument for the January–June accrual period (issue price of £1000 × 10 percent/2). Under paragraph (b)(3)(i) of this section, Z translates the £50 at the average exchange rate for the accrual period ($1.10 × £50 = $55.00). Similarly, Z accrues £51 of interest in the July–December accrual period [(£1000 + £50 − £30) × 10 percent/2], which is translated at the average exchange rate for the accrual period ($1.30 × £51 = £66.30). Accordingly, Z accrues £121.30 of interest income in 2005.

(B) *Adjusted issue price and basis*—(*1*) *January–June accrual period.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued, and decreased by the interest payment made, in the January–June accrual period. Thus, on July 1, 2005, the adjusted issue price of the debt instrument is £1020 (£1000 + £50 − £30 = £1020). For purposes of determining Z's dollar basis in the debt instrument, the $1000 basis is increased by the £50 of accrued interest, translated, under paragraph (b)(3)(iii) of this section, at the rate at which interest was accrued for the January–June accrual period ($1.10 × £50 = $55). The resulting amount is reduced by the £30 payment of interest made during the accrual period, translated, under paragraph (b)(3)(iii) of this section and § 1.988–2(b)(7), at the rate applicable to accrued interest ($1.10 × £30 = $33). Accordingly, Z's adjusted basis as of July 1, 2005, is $1022 ($1000 + $55 − $33).

(*2*) *July–December accrual period.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued, and decreased by the interest payment made, in the July–December accrual period. Thus, on January 1, 2006, the adjusted issue price of the instrument is £1041 (£1020 + £51 − £30 = £1041). For purposes of determining Z's dollar basis in the debt instrument, the $1022 basis is increased by the £51 of accrued interest, translated, under paragraph (b)(3)(iii) of this section, at the rate at which interest was accrued for the July–December accrual period ($1.30 × £51 = $66.30). The resulting amount is reduced by the £30 payment of interest made during the accrual period, translated, under paragraph (b)(3)(iii) of this section and § 1.988–2(b)(7), at the rate applicable to accrued interest ($1.30 × £30 = $39). Accordingly, Z's adjusted basis as of January 1, 2006, is $1049.30 ($1022 + $66.30 − $39).

(C) *Foreign currency gain or loss.* Z will recognize foreign currency gain on the receipt of each £30 payment of interest actually received during 2005. The amount of foreign currency gain in each case is determined, under paragraph (b)(5)(ii) of this section, by reference to the difference between the spot rate on the date the £30 payment was made and the average exchange

rate for the accrual period during which the interest accrued. Accordingly, Z recognizes $3 of foreign currency gain on the January–June interest payment [£30 × ($1.20 − $1.10)], and $3 of foreign currency gain on the July–December interest payment [£30 × ($1.40 − $1.30)]. Z recognizes in 2005 a total of $6 of foreign currency gain.

(D) *Source.* Z has interest income of $121.30 and a foreign currency gain of $6. Under paragraph (b)(6) of this section and section 862(a)(1), the interest income is sourced by reference to the residence of the payor and is therefore from sources without the United States. Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $6 is sourced by reference to Z's residence and is therefore from sources within the United States.

(iii) *Treatment in 2006*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z's accrued interest for the January–June accrual period is £52.05 (adjusted issue price of £1041 × 10 percent/2). Under paragraph (b)(3)(i) of this section, Z translates the £52.05 at the average exchange rate for the accrual period ($1.50 × £52.05 = $78.08). Similarly, Z accrues £53.15 of interest in the July–December accrual period [(£1041 + £52.05 − £30) × 10 percent/2], which is translated at the average exchange rate for the accrual period ($1.70 × £53.15 = $90.35). Accordingly, Z accrues £105.20, or $168.43, of interest income in 2006.

(B) *Effect of net negative adjustment.* The payment actually made on December 31, 2006, is £981.00, rather than the projected £1086.20. Under paragraph (b)(2)(ii)(B) of this section, Z has a net negative adjustment of £105.20 on December 31, 2006, attributable to the difference between the amount of the actual payment and the amount of the projected payment. Z's accrued interest income of £105.20 in 2006 is reduced to zero by the net negative adjustment. Elimination of the 2006 accrued interest fully utilizes the net negative adjustment.

(C) *Adjusted issue price and basis*—(1) *January–June accrual period.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued, and decreased by the interest payment made, in the January–June accrual period. Thus, on July 1, 2006, the adjusted issue price of the debt instrument is £1063.05 (£1041 + £52.05 − £30 = £1063.05). For purposes of determining Z's dollar basis in the debt instrument, the $1049.30 adjusted basis is increased by the £52.05 of accrued interest, translated, under paragraph (b)(3)(iii) of this section, at the rate at which interest was accrued for the January–June accrual period ($1.50 × £52.05 = $78.08). The resulting amount is reduced by the £30 payment of interest made during the accrual period, translated, under paragraph (b)(3)(iii) of this section and § 1.988–2(b)(7), at the rate applicable to accrued interest ($1.50 × £30 = $45). Accordingly, Z's adjusted basis as of July 1, 2006, is $1082.38 ($1049.30 + $78.08 − $45).

(2) *July–December accrual period.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued, and decreased by the interest payment made, in the July–December accrual period. Thus, immediately before maturity on December 31, 2006, the adjusted issue price of the instrument is £1086.20 (£1063.05 + £53.15 − £30 = £1086.20). For purposes of determining Z's dollar basis in the debt instrument, the $1082.38 adjusted basis is increased by the £53.15 of accrued interest, translated, under paragraph (b)(3)(iii) of this section, at the rate at which interest was accrued for the July–December accrual period ($1.70 × £53.15 = $90.36). The resulting amount is reduced by the £30 payment of interest made during the accrual period, translated, under paragraph (b)(3)(iii) of this section and § 1.988–2(b)(7), at the rate applicable to accrued interest ($1.70 × £30 = $51). Accordingly, Z's adjusted basis on December 31, 2006, immediately prior to maturity is $1121.74 ($1082.38 + $90.36 − $51).

(D) *Amount realized.* Even though Z receives £981.00 at maturity, for purposes of determining the amount realized, Z is treated under paragraph (b)(2)(v) of this section as receiving the projected amount of the contingent payment on December 31, 2006. Therefore, Z is treated as receiving £1086.20 on December 31, 2006. Under paragraph (b)(3)(iv) of this section, Z translates its amount realized into dollars and computes its gain or loss on the instrument (other than foreign currency gain or loss) by breaking the amount realized into its component parts. Accordingly, £20 of the £1086.20 (representing the interest accrued in the January–June 2005 accrual period, less £30 interest paid) is translated into dollars at the rate at which it was accrued (£1 = $1.10), resulting in an amount realized of $22; £21 of the £1086.20 (representing the interest accrued in the July–December 2005 accrual period, less £30 interest paid) is translated into dollars at the rate at which it was accrued (£1 = $1.30), resulting in an amount realized of $27.30; £22.05 of the £1086.20 (representing the interest accrued in the January–June 2006 accrual period, less £30 interest paid) is translated into dollars at the rate at which it was accrued (£1 = $1.50), resulting in an amount realized of $33.08; £23.15 of the £1086.20 (representing the interest accrued in the July 1–December 31, 2006 accrual period, less the £30 interest payment) is translated into dollars at the rate at which it was accrued (£1 = $1.70), resulting in an amount realized of $39.36; and £1000 (representing principal) is translated into dollars at the spot rate on the date the instrument was purchased (£1 = $1), resulting in an amount realized of $1000. Accordingly, Z's total amount realized is $1121.74 ($22 + $27.30 + $33.08 + $39.36 + $1000), the same as its basis, and Z recognizes no gain or loss (before consideration of foreign currency gain or loss) on retirement of the instrument.

(E) *Foreign currency gain or loss.* Z recognizes foreign currency gain with respect to each £30 payment actually received during 2006. These payments, however, are treated as payments of principal for this purpose because all 2006 accrued interest is reduced to zero by the net negative adjustment. See paragraph (b)(5)(iv)(A)(*3*) of this section. The amount of foreign currency gain in each case is determined, under paragraph (b)(5)(iii) of this section, by reference to the difference between the spot rate on the date the £30 payment is made and the spot rate on the date the debt instrument was issued. Accordingly, Z recognizes $18 of foreign currency gain on the January–June 2006 interest payment [£30 × ($1.60 − $1.00)], and $24 of foreign currency gain on the July–December 2006 interest payment [£30 × ($1.80 − $1.00)]. Z separately recognizes foreign currency gain with respect to the consideration actually received at maturity, £981.00. The amount of such gain is determined based on the difference between the spot rate on the date the instrument matures and the rates at which the principal and interest were taken into account. With respect to the portion of the payment attributable to interest accrued in January–June 2005 (other than the £30 payments), the foreign currency gain is $14 [£20 × ($1.80 − $1.10)]. With respect to the portion of the payment attributable to interest accrued in July–December 2005 (other than the £30 payments), the foreign currency gain is $10.50 [£21 × ($1.80 − $1.30)]. With respect to the portion of the payment attributable to interest accrued in 2006 (other than the £30 payments), no foreign currency gain or loss is recognized under paragraph (b)(5)(ii) of this section because such interest was reduced to zero by the net negative adjustment. With respect to the portion of the payment attributable to principal, the foreign currency gain is $752 [£940 × ($1.80 − $1.00)]. Thus, Z recognizes a foreign currency gain of $42 on receipt of the two £30 payments in 2006, and $776.50 ($14 + $10.50 + $752) on receipt of the payment at maturity, for a total 2006 foreign currency gain of $818.50.

(F) *Source.* Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $818.50 is sourced by reference to Z's residence and is therefore from sources within the United States.

Example 4. Purchase price greater than adjusted issue price—(i) *Facts.* On July 1, 2005, Z, a calendar year U.S. resident taxpayer whose functional currency is the U.S. dollar, purchases a debt instrument with a non-currency contingency for £1405. All payments of principal and interest with respect to the instrument are denominated in, or determined by reference to, a single nonfunctional currency (the British pound). The debt instrument would be subject to § 1.1275–4(b) if it were denominated in dollars. The debt instrument was originally issued by a foreign corporation on December 31, 2003, for an issue price of £1000, and matures on December 31, 2006. The debt instrument's comparable yield, determined in British pounds under §§ 1.988–2(b)(2) and 1.1275–4(b), is 10.25 percent, compounded semiannually, and the projected payment schedule for the debt instrument (determined as of the issue date under the rules of

§ 1.1275–4(b)) provides for a single payment at maturity of £1349.70 (consisting of a noncontingent payment of £1000 and a projected payment of £349.70). At the time of the purchase, the adjusted issue price of the debt instrument is £1161.76, assuming semiannual accrual periods ending on June 30 and December 31 of each year. The increase in the value of the debt instrument over its adjusted issue price is due to an increase in the expected amount of the contingent payment. The debt instrument is a capital asset in the hands of Z. Z does not elect to use the spot-rate convention described in § 1.988–2(b)(2)(iii)(B). The payment actually made on December 31, 2006, is £1400. The relevant pound/dollar spot rates over the term of the instrument are as follows:

Date	Spot rate (pounds to dollars)
July 1, 2005	£1.00=$1.00
Dec. 31, 2006	£1.00=$2.00

Accrual period	Average rate (pounds to dollars)
July 1–December 31, 2005	£1.00=$1.50
January 1–June 30, 2006	£1.00=$1.50
July 1–December 31, 2006	£1.00=$1.50

(ii) *Initial basis.* Under paragraph (b)(7)(ii) of this section, Z's initial basis in the debt instrument is $1405, Z's purchase price of £1405, translated into functional currency at the spot rate on the date the debt instrument was purchased (£1 = $1).

(iii) *Allocation of purchase price differential.* Z purchased the debt instrument for £1405 when its adjusted issue price was £1161.76. Under paragraph (b)(7)(iii) of this section, Z allocates the £243.24 excess of purchase price over adjusted issue price to the contingent payment at maturity. This allocation is reasonable because the excess is due to an increase in the expected amount of the contingent payment and not, for example, to a decrease in prevailing interest rates.

(iv) *Treatment in 2005*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £59.54 of interest on the debt instrument for the July–December 2005 accrual period (issue price of £1161.76 × 10.25 percent/2). Under paragraph (b)(3)(i) of this section, Z translates the £59.54 of interest at the average exchange rate for the accrual period ($1.50 × £59.54 = $89.31). Accordingly, Z has interest income in 2005 of $89.31.

(B) *Adjusted issue price and basis.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued in July–December 2005. Thus, on January 1, 2006, the adjusted issue price of the debt instrument is £1221.30 (£1161.76 + £59.54). For purposes of determining Z's dollar basis in the debt instrument on January 1, 2006, the $1405 basis is increased by the £59.54 of accrued interest, translated at the rate at which interest was accrued for the July–December 2005 accrual period. Paragraph (b)(3)(iii) of this section. Accordingly, Z's adjusted basis in the instrument, as of January 1, 2006, is $1494.31 [$1405 + (£59.54 × $1.50)].

(v) *Treatment in 2006*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £62.59 of interest on the debt instrument for the January–June 2006 accrual period (issue price of £1221.30 × 10.25 percent/2). Under paragraph (b)(3)(i) of this section, Z translates the £62.59 of accrued interest at the average exchange rate for the accrual period ($1.50 × £62.59 = $93.89). Similarly, Z accrues £65.80 of interest in the July–December 2006 accrual period [(£1221.30 + £62.59) × 10.25 percent/2], which is translated at the average exchange rate for the accrual period ($1.50 × £65.80 = $98.70). Accordingly, Z accrues £128.39, or $192.59, of interest income in 2006.

(B) *Effect of positive and negative adjustments*—(*1*) *Offset of positive adjustment.* The payment actually made on December 31, 2006, is £1400, rather than the projected £1349.70. Under paragraph (b)(2)(ii) of this section, Z has a positive adjustment of £50.30 on December 31, 2006, attributable to the difference between the amount of the actual payment and the amount of the projected payment. Under paragraph (b)(7)(iii) of this section, however, Z also has a negative adjustment of £243.24, attributable to the excess of Z's purchase price for the debt instrument over its adjusted issue price. Accordingly, Z will have a net negative adjustment of £192.94 (£50.30 − £243.24 = −£192.94) for 2006.

(*2*) *Offset of accrued interest.* Z's accrued interest income of £128.39 in 2006 is reduced to zero by the net negative adjustment. The net negative adjustment which reduces the current year's interest is not translated into functional currency. Under paragraph (b)(2)(ii) of this section, Z treats the remaining £64.55 net negative adjustment as an ordinary loss to the extent of the £59.54 previously accrued interest in 2005. This £59.54 ordinary loss is attributable to interest accrued but not paid in the preceding year. Therefore, under paragraph (b)(3)(ii)(B)(*2*) of this section, Z translates the loss into dollars at the average rate for such year (£1 = $1.50). Accordingly, Z has an ordinary loss of $89.31 in 2006. The remaining £5 of net negative adjustment is a negative adjustment carryforward under paragraph (b)(2)(ii) of this section.

(C) *Adjusted issue price and basis*—(*1*) *January–June accrual period.* Under paragraph (b)(2)(iii) of this section, the adjusted issue price of the debt instrument on July 1, 2006, is £1283.89 (£1221.30 + £62.59 = £1283.89). Under paragraphs (b)(2)(iv) and (b)(3)(iii) of this section, Z's adjusted basis as of July 1, 2006, is $1588.20 ($1494.31 + $93.89).

(*2*) *July–December accrual period.* Based on the projected payment schedule, the adjusted issue price of the debt instrument immediately before the payment at maturity is £1349.70 (£1283.89 + £65.80 accrued interest for July–December). Z's adjusted basis in dollars, based only on the noncontingent payments and the projected amount of the contingent payments to be received, is $1686.90 ($1588.20 plus $98.70 of accrued interest for July–December).

(*3*) *Adjustment to basis upon contingent payment.* Under paragraph (b)(7)(iii) of this section, Z's adjusted basis in the debt instrument is reduced at maturity by £243.24, the excess of Z's purchase price for the debt instrument over its adjusted issue price. For this purpose, the adjustment is translated into functional currency at the spot rate on the date the instrument was acquired (£1 = $1). Accordingly, Z's adjusted basis in the debt instrument at maturity is $1443.66 ($1686.90 − $243.24).

(D) *Amount realized.* Even though Z receives £1400 at maturity, for purposes of determining the amount realized, Z is treated under paragraph (b)(2)(v) of this section as receiving the projected amount of the contingent payment on December 31, 2006, reduced by the amount of Z's negative adjustment carryforward of £5.01. Therefore, Z is treated as receiving £1344.69 (£1349.70 − £5.01) on December 31, 2006. Under paragraph (b)(3)(iv) of this section, Z translates its amount realized into dollars and computes its gain or loss on the instrument (other than foreign currency gain or loss) by breaking the amount realized into its component parts. Accordingly, £59.54 of the £1344.69 (representing the interest accrued in 2005) is translated at the rate at which it was accrued (£1 = $1.50), resulting in an amount realized of $89.31; £62.59 of the £1344.69 (representing the interest accrued in January–June 2006) is translated into dollars at the rate at which it was accrued (£1 = $1.50), resulting in an amount realized of $93.89; £65.80 of the £1344.69 (representing the interest accrued in July–December 2006) is translated into dollars at the rate at which it was accrued (£1 = $1.50), resulting in an amount realized of $98.70; and £1156.76 of the £1344.69 (representing a return of principal) is translated into dollars at the spot rate on the date the instrument was purchased (£1 = $1), resulting in an amount realized of $1156.76. Z's amount realized is $1438.66 ($89.31 + $93.89 + $98.70 + $1156.76), and Z recognizes a capital loss (before consideration of foreign currency gain or loss) of $5 on retirement of the instrument ($1438.66 − $1443.66 = −$5).

(E) *Foreign currency gain or loss.* Z recognizes foreign currency gain under section 988 on the instrument with respect to the entire consideration actually received at maturity, £1400. While foreign currency gain or loss ordinarily would not have arisen with respect to £50.30 of the £1400, which was initially treated as a positive adjustment in 2006, the larger negative adjustment in 2006 reduced this positive adjustment to zero. Accordingly, foreign currency gain or loss is recognized with respect to the entire £1400. Under paragraph (b)(5)(ii) of this section, however, no foreign currency gain or loss is recognized with respect to unpaid accrued interest reduced to zero by the net negative adjustment resulting in 2006, and no foreign currency gain or loss is recognized with respect to unpaid accrued interest from 2005,

also reduced to zero by the ordinary loss. Therefore, the entire £1400 is treated as a return of principal for the purpose of determining foreign currency gain or loss, and Z recognizes a total foreign currency gain on December 31, 2001, of $1400 [£1400 × ($2.00 − $1.00)].

(F) *Source.* Z has an ordinary loss of $89.31, a capital loss of $5, and a foreign currency gain of $1400. Under paragraph (b)(6) of this section and § 1.1275–4(b)(9)(iv), the $89.31 ordinary loss generally reduces Z's foreign source passive income under section 904(d) and the regulations thereunder. Under paragraph (b)(6) of this section and § 1.865–1(b)(2), the $5 capital loss is sourced by reference to how interest income on the instrument would have been sourced. Therefore, the $5 capital loss generally reduces Z's foreign source passive income under section 904(d) and the regulations thereunder. Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $1400 is sourced by reference to Z's residence and is therefore from sources within the United States.

Example 5. Sale of an instrument with a negative adjustment carryforward—(i) *Facts.* On December 31, 2003, Z, a calendar year U.S. resident taxpayer whose functional currency is the U.S. dollar, purchases at original issue a debt instrument with non-currency contingencies for £1000. All payments of principal and interest with respect to the instrument are denominated in, or determined by reference to, a single nonfunctional currency (the British pound). The debt instrument would be subject to § 1.1275–4(b) if it were denominated in dollars. The debt instrument's comparable yield, determined in British pounds under §§ 1.988–2(b)(2) and 1.1275–4(b), is 10 percent, compounded annually, and the projected payment schedule for the debt instrument provides for payments of £310 on December 31, 2005 (consisting of a noncontingent payment of £50 and a projected amount of £260) and £990 on December 31, 2006 (consisting of a noncontingent payment of £940 and a projected amount of £50). The debt instrument is a capital asset in the hands of Z. Z does not elect to use the spot-rate convention described in § 1.988–2(b)(2)(iii)(B). The payment actually made on December 31, 2005, is £50. On December 30, 2006, Z sells the debt instrument for £940. The relevant pound/dollar spot rates over the term of the instrument are as follows:

Date	Spot rate (pounds to dollars)
Dec. 31, 2003	£1.00=$1.00
Dec. 31, 2005	£1.00=$2.00
Dec. 30, 2006	£1.00=$2.00

Accrual period	Average rate (pounds to dollars)
January 1—December 31, 2004.	£1.00=$2.00
January 1—December 31, 2005.	£1.00=$2.00
January 1—December 31, 2006.	£1.00=$2.00

(ii) *Treatment in 2004*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £100 of interest on the debt instrument for 2004 (issue price of £1000 × 10 percent). Under paragraph (b)(3)(i) of this section, Z translates the £100 at the average exchange rate for the accrual period ($2.00 × £100 = $200). Accordingly, Z has interest income in 2004 of $200.

(B) *Adjusted issue price and basis.* Under paragraphs (b)(2)(iii) and (iv) of this section, the adjusted issue price of the debt instrument determined in pounds and Z's adjusted basis in dollars in the debt instrument are increased by the interest accrued in 2004. Thus, on January 1, 2005, the adjusted issue price of the debt instrument is £1100. For purposes of determining Z's dollar basis in the debt instrument, the $1000 basis ($1.00 × £1000 original cost basis) is increased by the £100 of accrued interest, translated at the rate at which interest was accrued for 2004. See paragraph (b)(3)(iii) of this section. Accordingly, Z's adjusted basis in the debt instrument as of January 1, 2005, is $1200 ($1000 + $200).

(iii) *Treatment in 2005*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z's accrued interest for 2005 is £110 (adjusted issue price of £1100 × 10 percent). Under paragraph (b)(3)(i) of this section, the £110 of accrued interest is translated at the average exchange rate for the accrual period ($2.00 × £110 = $220).

(B) *Effect of net negative adjustment.* The payment actually made on December 31, 2005, is £50, rather than the projected £310. Under paragraph (b)(2)(ii) of this section, Z has a net negative adjustment of £260 on December 31, 2005, attributable to the difference between the amount of the actual payment and the amount of the projected payment. Z's accrued interest income of £110 in 2005 is reduced to zero by the net negative adjustment. Under paragraph (b)(3)(ii)(B)(*1*) of this section, the net negative adjustment which reduces the current year's interest is not translated into functional currency. Under paragraph (b)(2)(ii) of this section, Z treats the remaining £150 net negative adjustment as an ordinary loss to the extent of the £100 previously accrued interest in 2004. This £100 ordinary loss is attributable to interest accrued but not paid in the preceding year. Therefore, under paragraph (b)(3)(ii)(B)(*2*) of this section, Z translates the loss into dollars at the average rate for such year (£1 = $2.00). Accordingly, Z has an ordinary loss of $200 in 2005. The remaining £50 of net negative adjustment is a negative adjustment carryforward under paragraph (b)(2)(ii) of this section.

(C) *Adjusted issue price and basis.* Based on the projected payment schedule, the adjusted issue price of the debt instrument on January 1, 2006 is £900, *i.e.*, the adjusted issue price of the debt instrument on January 1, 2005 (£1100), increased by the interest accrued in 2005 (£110), and decreased by the projected amount of the December 31, 2005, payment (£310). See paragraph (b)(2)(iii) of this section. Z's adjusted basis in dollars, based only on the noncontingent payments and the projected amount of the contingent payments to be received, is $900 (determined as described below). Z's adjusted basis on January 1, 2006 is Z's adjusted basis on January 1, 2005 ($1200), increased by the functional currency amount of interest accrued in 2005 ($220), and decreased by the amount of the payments made in 2005, based solely on the projected payment schedule, (£310). The amount of the projected payment is first attributable to the interest accrued in 2005 (£110), and then to the interest accrued in 2004 (£100), and the remaining amount to principal (£100). The interest component of the projected payment is translated into functional currency at the rates at which it was accrued, and the principal component of the projected payment is translated into functional currency at the spot rate on the date the instrument was issued. See paragraph (b)(3)(iii) of this section. Accordingly, Z's adjusted basis in the debt instrument, following the increase of adjusted basis for interest accrued in 2005 ($1200 + $220 = $1420), is decreased by $520 ($220 + $200 + $100 = $520). Z's adjusted basis on January 1, 2006 is therefore, $900.

(D) *Foreign currency gain or loss.* Z will recognize foreign currency gain on the receipt of the £50 payment actually received on December 31, 2005. Based on paragraph (b)(5)(iv) of this section, the £50 payment is attributable to principal since the accrued unpaid interest was completely eliminated by the net negative adjustment. The amount of foreign currency gain is determined, under paragraph (b)(5)(iii) of this section, by reference to the difference between the spot rate on the date the £50 payment was made and the spot rate on the date the debt instrument was issued. Accordingly, Z recognizes $50 of foreign currency gain on the £50 payment. [($2.00 − $1.00) × £50 = $50]. Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $50 is sourced by reference to Z's residence and is therefore from sources within the United States.

(iv) *Treatment in 2006*—(A) *Determination of accrued interest.* Under paragraph (b)(2)(i) of this section, and based on the comparable yield, Z accrues £90 of interest on the debt instrument for 2004 (adjusted issue price of £900 × 10 percent). Under paragraph (b)(3)(i) of this section, Z translates the £90 at the average exchange rate for the accrual period ($2.00 × £90 = $180). Accordingly, prior to taking into account the 2005 negative adjustment carryforward, Z has interest income in 2006 of $180.

(B) *Effect of net negative adjustment.* The £50 negative adjustment carryforward from 2005 is a negative adjustment for 2006. Since there are no other positive or negative adjustments, there is a £50 negative adjustment in 2006 which reduces Z's accrued interest income by £50. Accordingly, after giving effect to the £50 negative

adjustment carryforward, Z will accrue $80 of interest income. [(£90 − £50) × $2.00 = $80]

(C) *Adjusted issue price.* Under paragraph (b)(2)(iii) of this section, the adjusted issue price of the debt instrument determined in pounds is increased by the interest accrued in 2006 (prior to taking into account the negative adjustment carryforward). Thus, on December 30, 2006, the adjusted issue price of the debt instrument is £990.

(D) *Adjusted basis.* For purposes of determining Z's dollar basis in the debt instrument, Z's $900 adjusted basis on January 1, 2006 is increased by the accrued interest, translated at the rate at which interest was accrued for 2006. See paragraph (b)(3)(iii)(A) of this section. Note, however, that under paragraph (b)(3)(iii)(B) the amount of accrued interest which is reduced as a result of the negative adjustment carryforward, *i.e.*, £50, is treated for purposes of this section as principal, and is translated at the spot rate on the date the instrument was issued, *i.e.*, £1.00 =$1.00. Accordingly, Z's adjusted basis in the debt instrument as of December 30, 2006, is $1030 ($900 + $50 + $80).

(E) *Amount realized.* Z's amount realized in denomination currency is £940, *i.e.*, the amount of pounds Z received on the sale of the debt instrument. Under paragraph (b)(3)(iv)(B)(*1*) of this section, Z's amount realized is first translated by reference to the principal component of basis (including the amount which is treated as principal under paragraph (b)(3)(iii)(B) of this section) and then the remaining amount realized, if any, is translated by reference to the accrued unpaid interest component of adjusted basis. Thus, £900 of Z's amount realized is translated by reference to the principal component of adjusted basis. The remaining £40 of Z's amount realized is treated as principal under paragraph (b)(3)(iii)(B) of this section, and is also translated by reference to the principal component of adjusted basis. Accordingly, Z's amount realized in functional currency is $940. (No part of Z's amount realized is attributable to the interest accrued on the debt instrument.) Z realizes a loss of $90 on the sale of the debt instrument ($1030 basis—$940 amount realized). Under paragraph (b)(4) of this section and § 1.1275–4(b)(8), $80 of the loss is characterized as ordinary loss, and the remaining $10 of loss is characterized as capital loss. Under §§ 1.988–6(b)(6) and 1.1275–4(b)(9)(iv) the $80 ordinary loss is treated as a deduction that is definitely related to the interest income accrued on the debt instrument. Similarly, under §§ 1.988–6(b)(6) and 1.865–1(b)(2) the $10 capital loss is also allocated to the interest income from the debt instrument.

(F) *Foreign currency gain or loss.* Z recognizes foreign currency gain with respect to the £940 he received on the sale of the debt instrument. Under paragraph (b)(5)(iv) of this section, the £940 Z received is attributable to principal (and the amount which is treated as principal under paragraph (b)(3)(iii)(B) of this section). Thus, Z recognizes foreign currency gain on December 31, 2006, of $940. [($2.00 − $1.00) × £940]. Under paragraph (b)(6) of this section and § 1.988–4, Z's foreign currency gain of $940 is sourced by reference to Z's residence and is therefore from sources within the United States.

(d) *Multicurrency debt instruments*—(1) *In general.* Except as provided in this paragraph (d), a multicurrency debt instrument described in paragraph (a)(1)(ii) or (iii) of this section shall be treated as an instrument described in paragraph (a)(1)(i) of this section and shall be accounted for under the rules of paragraph (b) of this section. Because payments on an instrument described in paragraph (a)(1)(ii) or (iii) of this section are denominated in, or determined by reference to, more than one currency, the issuer and holder or holders of the instrument are required to determine the denomination currency of the instrument under paragraph (d)(2) of this section before applying the rules of paragraph (b) of this section.

(2) *Determination of denomination currency.* The denomination currency of an instrument described in paragraph (a)(1)(ii) or (iii) of this section shall be the predominant currency of the instrument. The predominant currency of the instrument shall be determined by comparing the functional currency value of the noncontingent and projected payments denominated in, or determined by reference to, each currency on the issue date, discounted to present value (in each relevant currency), and translated (if necessary) into functional currency at the spot rate on the issue date. For this purpose, the applicable discount rate may be determined using any method, consistently applied, that reasonably reflects the instrument's economic substance. If a taxpayer does not determine a discount rate using such a method, the Commissioner may choose a method for determining the discount rate that does reflect the instrument's economic substance. The predominant currency is determined as of the issue date and does not change based on subsequent events (*e.g.*, changes in value of one or more currencies).

(3) *Issuer/holder consistency.* The issuer determines the denomination currency under the rules of paragraph (d)(2) of this section and provides this information to the holders of the instrument in a manner consistent with the issuer disclosure rules of § 1.1275–2(e). If the issuer does not determine the denomination currency of the instrument, or if the issuer's determination is unreasonable, the holder of the instrument must determine the denomination currency under the rules of paragraph (d)(2) of this section. A holder that determines the denomination currency itself must explicitly disclose this fact on a statement attached to the holder's timely filed federal income tax return for the taxable year that includes the acquisition date of the instrument.

(4) *Treatment of payments in currencies other than the denomination currency.* For purposes of applying the rules of paragraph (b) of this section to debt instruments described in paragraph (a)(1)(ii) or (iii) of this section, payments not denominated in (or determined by reference to) the denomination currency shall be treated as non-currency-related contingent payments. Accordingly, if the denomination currency of the instrument is determined to be the taxpayer's functional currency, the instrument shall be accounted for under § 1.1275–4(b) rather than this section.

(e) *Instruments issued for nonpublicly traded property*—(1) Applicability. This paragraph (e) applies to debt instruments issued for nonpublicly traded property that would be described in paragraph (a)(1)(i), (ii), or (iii) of this section, but for the fact that such instruments are described in § 1.1275–4(c)(1) rather than § 1.1275–4(b)(1). For example, this paragraph (e) generally applies to a contingent debt instrument denominated in a nonfunctional currency that is issued for non-publicly traded property. Generally the rules of § 1.1275–4(c) apply except as set forth by the rules of this paragraph (e).

(2) *Separation into components.* An instrument described in this paragraph (e) is not accounted for using the noncontingent bond method of § 1.1275–4(b) and paragraph (b) of this section. Rather, the instrument is separated into its component payments. Each noncontingent payment or group of noncontingent payments which is denominated in a single currency shall be considered a single component treated as a separate debt instrument denominated in the currency of the payment or group of payments. Each contingent payment shall be treated separately as provided in paragraph (e)(4) of this section.

(3) *Treatment of components consisting of one or more noncontingent payments in the same currency.* The issue price of each component treated as a separate debt instrument which consists of one or more noncontingent payments is the sum of the present values of the noncontingent payments contained in the separate instrument. The present value of any noncontingent payment shall be determined under § 1.1274–2(c)(2), and the test rate shall be determined under § 1.1274–4 with respect to the currency in which each separate instrument is considered denominated. No interest payments on the separate debt instrument are

qualified stated interest payments (within the meaning of § 1.1273–1(c)) and the *de minimis* rules of section 1273(a)(3) and § 1.1273–1(d) do not apply to the separate debt instrument. Interest income or expense is translated, and exchange gain or loss is recognized on the separate debt instrument as provided in § 1.988–2(b)(2), if the instrument is denominated in a nonfunctional currency.

(4) *Treatment of components consisting of contingent payments*—(i) *General rule.* A component consisting of a contingent payment shall generally be treated in the manner provided in § 1.1275–4(c)(4). However, except as provided in paragraph (e)(4)(ii) of this section, the test rate shall be determined by reference to the U.S. dollar unless the dollar does not reasonably reflect the economic substance of the contingent component. In such case, the test rate shall be determined by reference to the currency which most reasonably reflects the economic substance of the contingent component. Any amount received in nonfunctional currency from a component consisting of a contingent payment shall be translated into functional currency at the spot rate on the date of receipt. Except in the case when the payment becomes fixed more than six months before the payment is due, no foreign currency gain or loss shall be recognized on a contingent payment component.

(ii) *Certain delayed contingent payments*—(A) *Separate debt instrument relating to the fixed component.* The rules of § 1.1275–4(c)(4)(iii) shall apply to a contingent component the payment of which becomes fixed more than 6 months before the payment is due. For this purpose, the denomination currency of the separate debt instrument relating to the fixed payment shall be the currency in which payment is to be made and the test rate for such separate debt instrument shall be determined in the currency of that instrument. If the separate debt instrument relating to the fixed payment is denominated in nonfunctional currency, the rules of § 1.988–2(b)(2) shall apply to that instrument for the period beginning on the date the payment is fixed and ending on the payment date.

(B) *Contingent component.* With respect to the contingent component, the issue price considered to have been paid by the issuer to the holder under § 1.1275–4(c)(4)(iii)(A) shall be translated, if necessary, into the functional currency of the issuer or holder at the spot rate on the date the payment becomes fixed.

(5) *Basis different from adjusted issue price.* The rules of § 1.1275–4(c)(5) shall apply to an instrument subject to this paragraph (e).

(6) *Treatment of a holder on sale, exchange, or retirement.* The rules of § 1.1275–4(c)(6) shall apply to an instrument subject to this paragraph (e).

(f) *Rules for nonfunctional currency tax exempt obligations described in § 1.1275–4(d).* [RESERVED]

(g) *Effective date.* This section shall apply to debt instruments issued 60 days or more after the date final regulations are published in the **Federal Register**.

Par. 4. In § 1.1275–4, paragraph (a)(2)(iv) is revised to read as follows:

§ 1.1275–4 Contingent payment debt instruments.

(a) * * *

(2) * * *

(iv) A debt instrument subject to section 988 (except as provided in § 1.988–6);

* * * * *

David A. Mader,

Acting Deputy Commissioner of Internal Revenue.

[FR Doc. 03–21827 Filed 8–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

32 CFR Part 806b

[Air Force Instruction 37–132]

Privacy Act; Implementation

AGENCY: Department of the Air Force, DoD.

ACTION: Proposed rule.

SUMMARY: The Department of the Air Force is proposing to amend an existing exemption rule for the Privacy Act system of records notice F031 AF SP A, entitled Correction and Rehabilitation Records. The amendments consist of changing the system identifier to F031 AF SF A, and revising the reasons for exempting from disclosure certain subsections of the Privacy Act of 1974.

DATES: Comments must be received on or before October 28, 2003 to be considered by this agency.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043 or DSN 329–4043.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review".

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6).

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35).

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act".

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism".

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 806b

Privacy.

Accordingly, 32 CFR part 806b is proposed to be revised to read as follows:

PART 806b—AIR FORCE PRIVACY ACT PROGRAM

1. The authority citation for 32 CFR part 806b continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Paragraph (a)(5) of Appendix C to part 806b is revised to read as follows:

Appendix C to Part 806b—General and Specific Exemptions

* * * * *

(a) General exemptions. * * *

(5) *System identifier and name:* F031 AF SF A, Correction and Rehabilitation Records.

(i) *Exemption:* (A) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(B) Portions of this system of records may be exempt pursuant to 5 U.S.C. 552a(j)(2) from the following subsections of 5 U.S.C. 552a(c)(3), (c)(4), (d), (e)(3), (e)(4)(G), (H) and (I), (e)(5), (e)(8), (f), and (g).

(ii) *Authority:* 5 U.S.C. 552a(j)(2).

(iii) *Reasons:* (A) From subsection (c)(3) because the release of the disclosure accounting, for disclosures pursuant to the routine uses published for this system, would permit the subject of a criminal investigation or matter under investigation to obtain valuable information concerning the nature of that investigation which will present a serious impediment to law enforcement.

(B) From subsection (c)(4) because an exemption is being claimed for subsection (d), this subsection will not be applicable.

(C) From subsection (d) because access to the records contained in this system would inform the subject of a criminal investigation of the existence of that investigation, provide the subject of the investigation with information that might enable him to avoid detection or apprehension, and would present a serious impediment to law enforcement.

(D) From subsection (e)(3) would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation, reveal the identity of confidential sources of information and endanger the life and physical safety of confidential informants.

(E) From subsections (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (j)(2) of the Privacy Act of 1974.

(F) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(G) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(H) From subsection (e)(8) because the individual notice requirements of subsection (e)(8) could present a serious impediment to law enforcement as this could interfere with the ability to issue search authorizations and could reveal investigative techniques and procedures.

(I) From subsection (f) because this system of records has been exempted from the access provisions of subsection (d).

(J) From subsection (g) because this system of records compiled for law enforcement purposes and has been exempted from the access provisions of subsections (d) and (f).

(K) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Air Force will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Air Force's Privacy Instruction, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis necessary for effective law enforcement.

Dated: August 22, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22114 Filed 8–28–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 082503C]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public Meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a three-day public meeting on September 16, 17, and 18, 2003, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, September 16, 2003 at 9 a.m., Wednesday, September 17, 2003 at 8:30 a.m., and on Thursday, September 18, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn Express, 110 Middle Street, Fairhaven, Massachusetts 02719; telephone (508) 997–1281. Requests for special accommodations should be addressed to the New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, Massachusetts 01950; telephone: (978) 465–0492.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Tuesday, September 16, 2003

Following introductions, the Council will elect its 2003–2004 slate of officers followed by reports on recent activities from the Council Chairman and Executive Director, NMFS Regional Administrator, NOAA General Counsel, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the U.S. Coast Guard, NMFS Enforcement and the Atlantic States Marine Fisheries Commission. Following reports, the Council will receive a NMFS report on the status and implementation of electronic reporting for federally permitted seafood dealers. The Council is then scheduled to take action on the final Atlantic Sea Scallop Fishery Management (FMP) Amendment 10 documents, including draft regulations, for submission to the Secretary of Commerce. The FMP will implement DAS allocations for the 2004

and 2005 fishing years, increase twine top mesh to 10–inches, increase dredge ring size to 4–inches, implement a rotation area management closure system, and allocate Hudson Canyon Area trips with a 21,000 lb. possession limit and a 9 day-at-sea tradeoff. NMFS will hold a special session to gather input from stakeholders on broad themes related to fisheries management, including information on daily operations and potential ways to evaluate solutions to problems.

Wednesday, September 17, 2003

The meeting will commence with a report by the Monkfish Committee requesting that the Council review and possibly approve the Monkfish FMP Amendment 2 Draft Supplemental Environmental Impact Statement (DSEIS). If approved, the Mid-Atlantic Fishery Management Council (MAFMC) will consider approval of the DSEIS in October. Following this report, the Council will discuss vessel upgrading and permit issues. The Council will discuss its intent concerning the vessel permit upgrading baseline during the development of the Monkfish FMP; develop a response to the MAFMC's request to examine the issue of small vessel length and horsepower upgrade limits in the "Consistency Amendment" now in effect for a number of the Council and MAFMC FMPs; and develop a position about the 30–day sign-in requirement for exempted fisheries programs. The day will conclude with a report from the Marine Protected Areas (MPA) Committee which will review and seek approval of committee recommendations concerning a Council position on MPAs; review and approve committee comments developed in response to a **Federal Register** notice on proposed criteria for building an Inventory of Existing Marine Managed Areas; and review and approve a draft work plan to address MPA issues for consideration in setting 2004 Council priorities.

Thursday, September 18, 2003

The meeting will convene with a Herring Committee Report requesting that the Council review and approve a range of management alternatives to be analyzed in the Draft Environmental Impact Statement (DEIS) for Amendment 1 to the Atlantic Herring FMP. The amendment may include the following: revised estimates of maximum sustainable yield and optimum yield; changes to the process for determining area-specific total allowable catch levels (TACs); initial area-specific TACs upon implementation of Amendment 1; adjustments to the timing of the specification process; adjustments to management area boundaries; a limited access program for the Atlantic herring fishery; observer coverage requirements; measures to address fixed gear fisheries and other effort controls. Following this agenda item, the Council will provide a brief opportunity for comments from the public on issues that are not otherwise listed on the agenda, but relevant to Council business. The Red Crab Committee will review and approve recommendations concerning the annual specifications for the red crab fishery for fishing year 2004 (March 1, 2004 February 28, 2005). The Research Steering Committee will discuss approval of a policy concerning the incorporation of cooperative research results into the management process. The day will conclude with approval of the Council's Standard Operating Procedures and Practices.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (*see* **ADDRESSES**) at least five days prior to the meeting date.

Dated: August 25, 2003.

Bruce C. Morehead,

Acting Director, office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22189 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 168
Friday, August 29, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Settlement Pursuant to CERCLA; Jordan Road Shooting Range, Coconino County, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice of settlement.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9622(i), notice is hereby given of an administrative settlement for recovery of past response costs with Coconino County (the Settling Party) concerning the Jordan Road Shooting Range, Coconino County, Arizona. The settlement requires the Settling Party to pay $155,000 to the USDA Forest Service, Southwestern Region, pursuant to section 122(h)(1) of CERCLA, 42 U.S.C. 9622(h)(1). The settlement includes a covenant not to use the Settling Party pursuant to sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), with regard to the Site.

For thirty (30) days following the date of publication of this notice, the United States will receive written comments relating to the settlement. The United States will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at the Red Rock Ranger District, P.O. Box 300, 250 Brewer Road, Sedona, AZ 86339–0330, and at the offices of the USDA Forest Service Southwestern Region, 333 Broadway, SE., Albuquerque, NM 87102.

DATES: Comments must be submitted on or before September 29, 2003.

ADDRESSES: The proposed settlement is available for public inspection at the Red Rock Ranger District, P.O. Box 300, 250 Brewer Road, Sedona, AZ 86339–0330 and at the offices of the USDA Forest Service Southwestern Region, 333 Broadway, SW., Albuquerque, NM 87102. A copy of the proposed settlement may be obtained from Ken Anderson on the Red Rock Ranger District at 928–203–7501 (direct) or 928–282–4119 (backup) or from Kirk M. Minckler with USDA's Office of the General Counsel, (303) 275–5549. Comments should reference the Jordan Road Shooting Range, Coconino County, Arizona, and should be addressed to Kirk M. Minckler, USDA Office of the General Counsel, P.O. Box 25005, Denver, CO 80225–0005.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Maria McGaha, USDA Forest Service Southwestern Region, 333 Broadway, SE., Albuquerque, NM 87102, phone (505) 842–3837. For legal information, contact Kirk M. Minckler, USDA Office of the General Counsel, P.O. Box 25005, Denver, CO 80225–0005; phone (303) 275–5549.

Dated: August 20, 2003.

Marlin A. Johnson,

Assistant Director, Forestry, USDA Forest Service, Southwestern Region.

[FR Doc. 03–22075 Filed 8–28–03; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments must be received on or before September 28, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: H2Orange2
7930–00–NIB–0163—Ultimate Cleaner/Degreaser
7930–00–NIB–0326—Concentrate 117 Cleaner/Degreaser
7930–00–NIB–0327—Grout Safe
7930–00–NIB–0341—Crystal Carpet Concentrate
7930–00–NIB–0342—Quick Spot Crystal Carpet Spot Remover
7930–00–NIB–0353—Mineral Shock Cleaner
NPA: Blind Industries & Services of

Maryland, Baltimore, Maryland
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Skilcraft SAVVY Cleaning Products
7930–00–NIB–0080—SKILCRAFT SAVVY Green Plus—1 gallon
7930–00–NIB–0081—SKILCRAFT SAVVY Green Plus—5 gallon
7930–00–NIB–0082—SKILCRAFT SAVVY Green Plus—55 gallon
7930–00–NIB–0152—SKILCRAFT SAVVY Unreal Spot Remover—32 ounce
7930–00–NIB–0153—SKILCRAFT SAVVY Unreal Spot Remover—1 gallon
7930–00–NIB–0154—SKILCRAFT SAVVY Unreal Spot Remover—5 gallon
7930–00–NIB–0155—SKILCRAFT SAVVY Unreal Spot Remover—55 gallon
7930–00–NIB–0156—SKILCRAFT SAVVY Non Acid Bathroom Cleaner—32 ounce
7930–00–NIB–0157—SKILCRAFT SAVVY Non Acid Bathroom Cleaner—1 gallon
7930–00–NIB–0158—SKILCRAFT SAVVY Non Acid Bathroom Cleaner—5 gallon
7930–00–NIB–0159—SKILCRAFT SAVVY Non Acid Bathroom Cleaner—55 gallon
7930–00–NIB–0173—SKILCRAFT SAVVY Green Plus—32 ounce
7930–00–NIB–0183—SKILCRAFT SAVVY Green—32 ounce
7930–00–NIB–0184—SKILCRAFT SAVVY Green—5 gallon
7930–00–NIB–0185—SKILCRAFT SAVVY Green—1 gallon
7930–00–NIB–0189—SKILCRAFT SAVVY Green—55 gallon
NPA: Susquehanna Association for the Blind and Visually Impaired, Lancaster, Pennsylvania
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Staple Remover.
7520–00–162–6177
Product/NSN: Stapler, Stand Up—Vertical Grip
7520–00–NSH–0200
NPA: The Arc of Bergen and Passaic Counties, Inc., Hackensack, New Jersey
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Telephone Cards
M.R. 987
M.R. 988
M.R. 993
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Louis R. Bartalot,

Acting Deputy Executive Director.

[FR Doc. 03–22145 Filed 8–28–03; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: September 28, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On June 27, July 3, and July 11, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 38288/38289, 39894 and 41297) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. The action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

Product/NSN: Jumbo Butterfly Mop, M.R. 1035.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contract Activity: Defense Commissary Agency (DeCA), Ft. Lee, Virginia.

Services

Service Type/Location: Commissary Custodial and Warehousing, Naval Education Training Center, Newport, Rhode Island.
NPA: Newport County Chapter, Rhode Island Association for Retarded Citizens, Middletown, Rhode Island.
Contract Activity: Defense Commissary Agency (DeCA)—East Region, Virginia Beach, Virginia.
Service Type/Location: Custodial Services, Patrick AFB, Florida.
NPA: Brevard Achievement Center, Inc., Rockledge, Florida.
Contract Activity: AFSPC-Patrick, Patrick AFB, Florida.
Service Type/Location: Janitorial/Custodial, Federal Building, U.S. Post Office and Courthouse, Hannibal, Missouri.
NPA: Learning Opportunities/Quality Works, Inc., Monroe City, Missouri.
Contract Activity: GSA/PBS, Kansas City, Missouri.
Service Type/Location: Janitorial/Custodial, New Federal Courthouse, Seattle, Washington.
NPA: Northwest Center for the Retarded, Seattle, Washington.
Contract Activity: GSA/PBS (Region 10), Auburn, Washington.
Service Type/Location: Laundry/Dry Cleaning, 911th Airlift Wing, Coraopolis, Pennsylvania.
NPA: Hancock County Sheltered Workshop, Inc., Weirton, West Virginia.
Contract Activity: 911th Airlift Wing (AFRES), Pittsburgh, Pennsylvania.
Service Type/Location: Mailroom Operation, Department of Commerce, Boulder Laboratories, Building 1 and 2, Boulder, Colorado.
NPA: Bayaud Industries, Inc., Denver, Colorado.
Contract Activity: National Oceanic and Atmospheric Administration, Boulder, Colorado.

Deletion

On June 20, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 36972) of proposed deletion to the Procurement List. After consideration of the relevant matter presented, the committee has

determined that the service listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Operation of Self Service Supply Store, GSA, Sam Nunn Federal Center, Atlanta, Georgia

NPA: Raleigh Lions Clinic for the Blind, Inc., Raleigh, North Carolina.

Contract Activity: GSA, Sam Nunn Federal Center, Atlanta, Georgia.

Louis R. Bartalot,

Acting Deputy Executive Director.

[FR Doc. 03–22146 Filed 8–28–03; 8:45 am]

BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Proposed Collection Reinstatement; Comment Request

AGENCY: The Broadcasting Board of Governors.

ACTION: Proposed collection reinstatement; comment request.

SUMMARY: The Broadcasting Board of Governors (BBG), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on an information collection titled, "Interviews and Other Audience Research for Radio and TV Marti." This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

The information collection activity involved with this program is conducted pursuant to the mandate given to the BBG (formerly the United States Information Agency) in accordance with Pub. L. 98–11, the Radio Broadcasting to Cuba Act, dated, October 4, 1983, to provide for the broadcasting of accurate information to the people of Cuba and for other purposes. This act was then amended by Pub. L. 101–246, dated, February 16, 1990, which established the authority for TV Marti.

DATES: Comments must be submitted on or before October 28, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Jeannette Giovetti, the BBG Clearance Officer, BBG, M/AO, Room 1657A–1, 330 Independence Avenue, SW., Washington, DC 20237, telephone (202) 205–9692, e-mail address *JGiovett@IBB.GOV*.

Copies: Copies of the Request for Clearance (OMB 83–I), supporting statement, and other documents that will be submitted to OMB for approval may be obtained from the BBG Clearance Officer.

SUPPLEMENTARY INFORMATION: Public reporting burden for this proposed collection of information is estimated to average 30 minutes (.50 of an hour) per response for field survey respondents (700), and 240 minutes (4 hours) for Focus Group Study respondents (48), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Responses are voluntary and respondents will be required to respond only one time. Comments are requested on the proposed information collection concerning:

(a) Whether the proposed collection of information is necessary for the proper performance of the agency, including whether the information has practical utility;

(b) The accuracy of the Agency's burden estimates;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate or any other aspect of this collection of information to Ms. Jeannette Giovetti, the BBG Clearance Officer, BBG, M/AO, Room 1657A–1, 330 Independence Avenue, SW, Washington, D.C. 20237, telephone (202) 205–9692, e-mail address *JGiovett@IBB.GOV*.

Current Actions: BBG is requesting reinstatement of this collection for a three-year period and approval for a revision to the burden hours.

Title: Interviews and Other Audience Research for Radio and TV Marti.

Abstract: Data from this information collection are used by BBG's Office of Cuba Broadcasting (OCB) in fulfillment of its mandate to evaluate effectiveness of Radio and TV Marti operations by estimating the audience size and composition for broadcasts; and assess signal reception, credibility and relevance of programming through this research.

Proposed Frequency of Responses:
No. of Respondents—700 Field Study + 48 Group Study = 748
Recordkeeping Hours—.50 Field Study + 4 Group Study = (350) + (192) =
Total Annual Burden—542

Dated: August 25, 2003.

Carol F. Baker,

Director of Administration.

[FR Doc. 03–22098 Filed 8–28–03; 8:45 am]

BILLING CODE 8230–01–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into the cause of a deadly flash fire at an oilfield waste recovery facility south of Houston, which killed two workers and injured three others on Monday, January 13, 2003, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 9:30 am local time on September 17, at the George Washington University Conference Center's Third Floor Amphitheater, 800 21st Street, NW., Washington, DC.

The accident occurred at the BLSR Operating Ltd. petroleum storage and separation facility on Route 521 in Rosharon, TX. The CSB is an independent federal agency charged with determining root causes of chemical accidents and making recommendations to prevent their recurrence.

The CSB will also hear presentation on a case study on a hydrogen sulfide exposure incident that occurred December 11, 2002 at the Environmental Enterprises, Inc. facility in Cincinnati, Ohio. One injury was reported. Using the incorrect vessel for waste treatment caused the hydrogen sulfide exposure.

At the meeting CSB staff will present to the Board the results of their investigations into these incidents, including an analysis of the incident together with a discussion of the key

findings, root and contributing causes, and draft recommendations.

Recommendations are issued by a vote of the Board and address an identified safety deficiency uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident investigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others.

After the staff presentation, the Board will allow a time for public comment. Following the conclusion of the public comment period, the Board will consider whether to vote to approve the final report and recommendations. When a report and its recommendations are approved, this will begin CSB's process for disseminating the findings and recommendations of the report not only to the recipients of recommendations but also to other public and industry sectors. The CSB believes that this process will ultimately lead to the adoption of recommendations and the growing body of safety knowledge in the industry, which, in turn, should save future lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, at least 5 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board at (202)–261–7600, or visit our Web site at: *http://www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 03–22237 Filed 8–26–03; 4:31 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1279]

Grant of Authority for Subzone Status; Ricoh Electronics, Inc. Manufacturing Facilities (Copier, Printer, Thermal Paper, and Related Products), Orange County, CA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for " * * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved; and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Board of Harbor Commissioners of the City of Long Beach, grantee of Foreign-Trade Zone 50, has made application to the Board for authority to establish special-purpose subzone status at the copier, printer, thermal paper, and related products manufacturing facilities of Ricoh Electronics, Inc., located at sites in the Orange County, California area, (FTZ Docket 52–2002, filed November 19, 2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 72641, 12/06/2002; amended, 68 FR 9973, 3/03/2003); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application, as amended, would be in the public interest, if approval, with respect to thermal paper, were subject to the time limit described below;

Now, Therefore, the Board hereby grants authority for subzone status at the copier, printer, thermal paper, and related products manufacturing plant of Ricoh Electronics, Inc., located at sites in the Orange County, California, area (Subzone 50J), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including section 400.28. Further, the approval for manufacturing of thermal paper under zone procedures is limited to an initial period of four years (from activation), subject to extension upon review.

Signed at Washington, DC, this 14th day of August 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22167 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1280]

Grant of Authority for Subzone Status; Ricoh Electronics, Inc. Manufacturing Plant (Toner Cartridges, Related Toner Products and Thermal Paper Products), Lawrenceville, GA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved; and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Georgia Foreign-Trade Zone, Inc., grantee of FTZ 26, has made application to the Board for authority to establish special-purpose subzone status at the toner cartridges, related toner products, and thermal paper products manufacturing plant of Ricoh Electronics, Inc., located in Lawrenceville, Georgia (FTZ Docket 53–2002, filed November 19, 2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 72642, 12/06/2002; amended, 68 FR 9973, 3/03/2003); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied,

and that approval of the application, as amended, would be in the public interest, if approval, with respect to thermal paper, were subject to the time limit described below;

Now, Therefore, the Board hereby grants authority for subzone status at the toner cartridges, related toner products, and thermal paper products manufacturing plant of Ricoh Electronics, Inc., located in Lawrenceville, Georgia (Subzone 26H), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28. Further, the approval for manufacturing of thermal paper under zone procedures is limited to an initial period of four years (from activation), subject to extension upon review.

Signed at Washington, DC, this 14th day of August 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–22168 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1281]

Expansion of Foreign-Trade Zone 214; Lenoir County, NC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the North Carolina Global TransPark Authority, grantee of Foreign-Trade Zone 214, submitted an application to the Board for authority to expand FTZ 214 to include a site (35 acres) in Rocky Mount, North Carolina, adjacent to the Durham Customs port of entry (FTZ Docket 34–2002; filed 9/3/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 57376. 9/10/02) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 214 is approved, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 14th day of August 2003.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–22169 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-475–819]

Certain Pasta From Italy: Notice of Extension of Time Limit for Countervailing Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the countervailing duty new shipper review on certain pasta from Italy. The period of review is January 1 through December 31, 2002.

EFFECTIVE DATE: August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Daniel J. Alexy, Office of AD/CVD Enforcement I, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1540.

SUPPLEMENTARY INFORMATION:

Background:

On February 27, 2003, the Department of Commerce ("the Department") initiated a countervailing duty new shipper review for certain pasta from Italy, covering calendar year 2002. *See Notice of Initiation of Countervailing Duty New Shipper Review*, 68 FR 10446 (March 5, 2003). Corrections to the initiation notice were published in the **Federal Register** on March 24, 2003 (*See* 68 FR 14198). The preliminary results are currently due no later than August 26, 2003.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), requires the Department to issue the preliminary results within 180 days after the date on which the new shipper review is initiated. However, if the proceeding is extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend this deadline to a maximum of 300 days.

Postponement

The Department has determined that additional time is necessary to issue the preliminary results in this new shipper review for the reasons stated in our memorandum from Susan Kuhbach to Jeffrey May, dated August 25, 2003. Therefore, in accordance with section 751 (a)(2)(B)(iv) of the Act, we are postponing the preliminary results of this new shipper review until no later than December 24, 2003.

This notice is published pursuant to section 777(i)(1) of the Act.

Dated: August 25, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–22166 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 000724217–3200–05]

Solicitation of Applications for the Minority Business Development Center (MBDC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate Minority Business Development Centers (MBDCs) under its Minority Business Development Center (MBDC) Program.

In order to receive consideration, applicants must comply with all information and requirements contained in this Notice. For-profit entities (including sole-proprietorships, partnerships, and corporations), non-profit organizations, state and local government entities, American Indian Tribes and educational institutions are eligible to operate MBDCs.

The current MBDC Program, as described in this Notice, requires MBDC staff to provide standardized business assistance services to rapid growth potential minority businesses directly; to develop a network of strategic partnerships; to charge client fees; and to provide strategic business consulting.

These requirements will be used to generate increased results with respect to financing and contracts awarded to minority-owned firms and thus, are a key component of this program.

DATES: The closing date for applications for each MBDC project is October 10, 2003. Anticipated time for processing of applications is one hundred twenty (120) days from the date of publication of this notice.

MBDA anticipates that awards for the MBDC program will be made with a start date of January 1, 2004. Completed applications for the MBDC program must be (1) mailed (USPS postmark) to the address below; or (2) received by MBDA no later than 5 p.m. Eastern Daylight Time. Applications postmarked later than the closing date or received after the closing date and time will not be considered.

ADDRESSES: If the application is mailed by the applicant or its representative, they must submit one signed original plus two (2) copies of the application. Completed application packages must be mailed to: Office of Business Development, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

If the application is hand-delivered by the applicant or his/her representative, one signed original plus two (2) copies of the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW., between Pennsylvania and Constitution Avenues.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain an application package, contact the specified MBDA National Enterprise Center (NEC) for the geographic service area in which the project will be located or visit MBDA's Minority Business Internet Portal (MBDA Portal) at *http://www.mbda.gov.*

SUPPLEMENTARY INFORMATION: Electronic Access: Applicants are encouraged to submit their proposal electronically via the Internet and mail or hand-deliver only the pages that require original signatures by the closing date and time stated above. Applicants may submit their applications on MBDA's website: *http://www.mbda.gov.* All required forms are located at this web address. However, the following paper forms must be submitted with original signatures in conjunction with any electronic submissions by the closing date and time stated above: (1) SF–424, Application for Federal Assistance; (2) the SF–424B, Assurances-Non-Construction Programs; (3) the SF–LLL (Rev. 7–97) (if applicable), Disclosure of Lobbying Activities; (4) Department of Commerce Form CD–346 (if applicable), Applicant for Funding Assistance; and (5) the CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.

Pre-Application Conference: A pre-application conference will be held for the MBDC project solicitation. Contact the specified MBDA NEC for the geographic service area in which the project will be located to receive further information. Proper identification is required for entrance into any Federal building. Notice of the pre-application conference will be available on MBDA Portal at *http://www.mbda.gov.*

Authority: Executive Order 11625 and 15 U.S.C. 1512.

Catalog of Federal Domestic Assistance (CFDA): 11.800 Minority Business Development Center Program.

Program Description

MBDA is soliciting applications for the following geographic service areas: Georgia Statewide, North Carolina Statewide, Puerto Rico Islandwide, South Carolina Statewide, Illinois Statewide, Ohio Statewide, Michigan Statewide, Dallas/Ft. Worth/Arlington, El Paso, New Mexico Statewide, San Antonio, Manhattan/Bronx/Westchester, Queens/Nassau/Suffolk, New Jersey Statewide, Pennsylvania Statewide, Washington Metro, Williamsburg (Brooklyn), Alaska Statewide, Arizona Statewide, Los Angeles Metro, Inland Empire, Central/Northern California, Washington Statewide.

The MBDC Program will concentrate on rapid growth potential minority business enterprises (MBEs), *e.g.*, those generating $500,000 or more in annual revenues or capable of generating significant employment and long-term economic growth. The MBDC Program shall continue to leverage telecommunications technology, including the Internet, and a variety of online computer-based resources to dramatically increase the level of service that the MBDC can provide to minority-owned firms, including micro-enterprises.

The MBDC program incorporates an entrepreneurial approach to building market stability and improving the quality of services delivered. This strategy expands the reach of the MBDC by requiring project operators to develop and build upon strategic alliances with public and private sector partners, as a means of serving the growing numbers of minority firms with rapid growth potential within the project's geographic service area. In addition, MBDA will establish specialized business consulting training programs to support the MBDC client assistance services. These MBDC training programs are designed specifically to foster growth assistance to its clients. The MBDC will also encourage increased collaboration and client/non-client referrals among the MBDA-sponsored networks. This will provide a comprehensive approach to serving the emerging sector of the minority business community.

The MBDC will operate through the use of trained professional business consultants who will assist minority entrepreneurs through direct client engagements.

Entrepreneurs eligible for assistance under the MBDC Program are African Americans, Puerto Ricans, Spanish-speaking Americans, Aleuts, Asian Pacific Americans, Asian Indians, Native Americans, Eskimos, and Hasidic Jews.

As part of its strategy for continuous improvement, the MBDC shall expand its delivery capacity to all minority firms, with greater emphasis on emerging/rapid growth-potential minority firms capable of impacting economic growth and employment. MBDA wants to ensure that MBDC clients are receiving a consistent level of service throughout its funded network. To that end, MBDA will require MBDC consultants to attend a series of training courses designed to achieve standardized services and quality expectations. Further information about the training is provided in this document under the heading of Work Requirements.

Background

Under the MBDC Program, MBDA has selected locations for the establishment of Centers based on the size of the population in those markets and the density of rapid growth-potential minority business enterprises (MBE), as established by MBDA and U.S. Census Bureau data, as well as other available information.

The MBDC Program is one of MBDA's core competencies of overall business development efforts. Under this strategy, the MBDC will be expected to provide the following four types of client services:

1. *Client Assessment*—This activity requires the MBDC to conduct a standardized client assessment, which includes identifying the client's immediate and long term needs, and establishes a projected growth track. MBDA shall provide a new and innovative electronic tool to support

this function (see Business Needs Analyzer under the heading of Enhancing the MBDCs through Technology for more details). This activity shall be conducted three times for each client on an annual basis: one at the onset of service delivery, one prior to the end of the second quarter and one prior to the end of the funding year. This process may also include referring the client to any of MBDA's other funded projects that specialize in specific growth assistance and/or strategic partners that are capable of continuing client growth. The referral process may occur in conjunction with MBDC direct assistance.

2. *Strategic Business Consulting*—This involves providing intensive business consulting services that can be delivered by two methods:

• *Personalized Consulting*—defined as one-on-one business consulting services utilizing an integrative systems approach to foster the growth of minority firms (see Integrative Systems Approach under the heading Client Services).

• *Group Consulting*—seminars that provide education and training to minority entrepreneurs on important business topics. The consulting should be hands-on, practical, and streamlined in order to reflect the time constraints of the typical entrepreneur. In addition, given the proliferation of online resources from MBDA as well as others, this training should be designed to educate MBEs in the use of the Agency's electronic business assistance tools and in the use of electronic commerce generally to better access suppliers, customers and information.

3. *Access to Capital*—This involves assisting MBEs to secure the financial capital necessary to start-up, and thereafter to fuel growth and expansion of their businesses. Undercapitalization has been a major contributor to the failure of business ventures in the minority community over the years. The goal of this activity is to help minority entrepreneurs obtain the amount of financing appropriate to the scope of the proposed business, thereby helping to ensure the greatest likelihood of success for the minority venture in the marketplace.

4. *Access to Markets*—This involves assisting MBEs to identify and access opportunities for increased sales and revenue. Activities include conducting market analysis, identifying sales leads, bid preparation assistance, creating market promotions, and assisting in the development of joint ventures and strategic alliances.

Enhancing the MBDCs Through Technology

Over the last several years, MBDA has developed a variety of new technology tools designed to leverage the benefits of information technology to assist the minority business community. MBDA uses a high-speed network strategy that links all of its funded projects into a single virtual organization. The goal of MBDA is to allow all funded projects to have access to this technology through the MBDA Portal.

The technology tools that will be available to the MBDCs include but are not limited to the following:

• *Business Needs Analyzer*—a software package designed to standardize and electronically record the Client Assessment process. This tool assists MBDC counselors to interview and benchmark the status, needs and potential growth of its clients. The program is designed and maintained by MBDA and operated by the MBDC.

• *Phoenix/Opportunity*—an electronic bid-matching system that alerts participating MBEs of contract and teaming opportunities directly via e-mail. Procurement leads are transmitted to minority firms on a targeted basis according to the company's industry classification and geographic market.

• *Resource Locator*—a software application that allows MBEs to search for business resources interactively on the Internet. Resource Locator can help MBEs identify trade associations representing their industries, government licensing and permit offices, management and technical assistance providers, and a host of other resources quickly and efficiently.

• *Capital Locator*—an Internet-based tool that allows MBDC consultants to inquire about, identify and locate potential financiers nearest them. This tool shall provide basic financing criteria for each identified capital resource. The tool is designed to give users the benefit of a nationwide market for identifying financing needs and products.

• *Business and Market Planning*—a software package designed to streamline and enhance the development of business plans, marketing plans and other strategic business documents.

• *Business Analyst GIS*—a software operated at an individual computer workstation that provides strategic business data through geographic-based information system. This software will be awarded to select MBDCs, based on availability of funds and competition.

These electronic tools will help streamline the process of delivering client assistance to minority business enterprises, free up time so that the MBDC can implement MBDA's strategic goals and generate critical outcomes as described under the heading Performance Measures.

In addition, MBDA strongly encourages the MBDC to use these electronic tools daily because of the significant value they add to the MBDC and to minority businesses. These tools are designed to reinforce the standardization of services received throughout MBDA's extended network.

Work Requirements

The work requirements specify the duties and responsibilities of each recipient operating a MBDC.

Although it is not necessary for the applicant to have an office in the geographic service area at the time of application, one must be opened and be fully operational within thirty (30) days after receipt of the award. Fully operational means that all staff are hired, all signs are up, all items of furniture and equipment (*e.g.*, hardware, software, Internet services, phones, faxes, *etc.*) are in place, and the MBDC's doors have been fully opened to the public for service.

The MBDC must be accessible to disabled persons and strategically located in the geographic service area (as defined in this Notice) to ensure that it is: (1) Close to the available public and private sector resources, and (2) within a reasonable commuting distance to the minority business community.

The MBDC operator must provide services to eligible clients within its specified geographic service area. Each MBDC operator must contribute its efforts to help support MBDA's online business assistance network as established by Agency policies.

All MBDC consultants and its project director shall be required to attend a one-time five (5) day mandatory training session on "Implementing a System for High-Quality Service." This training will be held three (3) times during the first year of program operation; in the east, in the west, and in the middle of the country (exact locations and dates will be announced). The training sessions may be conducted in the second and third year of operation based on availability of funding. The costs of tuition, materials, conference facilities and amenities for the training program will be covered by MBDA. However, the MBDC shall budget lodging, food and travel expenditures for its attending staff. The program will be conducted approximately forty-five (45) days after receipt of the award. The training shall focus on:

- Orientation to the MBDA strategy
- Instilling the entrepreneurial mindset
- Standardization of client intake services
- Skills and information needed to provide high-quality services to emerging firms

Successful completion of this program, which involves a competency examination, will result in certification of the MBDC staff member by MBDA. In the event that one or more MBDC staff member should fail the competency examination, the MBDC shall lose two (2) points from the assessment score during the evaluation of the project. This training may be provided a second time by the MBDA after mid-year review. The second training session will require the attendance of MBDC staff not previously trained, and/or those who failed to successfully complete the initial training program.

In addition to the initial training, the MBDC is required to have one staff member attend a one-time five (5) day advanced program, held in a Midwest location during the second quarter of 2004. This training session will teach MBDC staff how to transform high-potential minority businesses and put them on a high-growth trajectory. The purpose of this program is to ensure that at least one staff member in each MBDC will have the skills to nurture the growth of MBEs to become large companies, thereby helping to fulfill MBDA's strategic priority. Successful completion of this program, which involves a competency examination, will result in certification of the MBDC staff member by MBDA.

The MBDC shall budget for one staff member's lodging, food and travel expenditures, probably to the Chicago area. The costs of tuition, materials, and registration for the advanced training program will be covered by MBDA.

The MBDC is required to perform work in four (4) basic areas. These elements are designed to increase the exposure and visibility of MBEs (as defined in this Notice). MBDC efforts in these activities should provide quantifiable results.

1. *Market Development*—is designed to facilitate the identification of potential MBEs, methods to solicit potential clients and to identify, develop and leverage public and private sector resources and business opportunities for their clients:

(a) *Market Research and Development*: systematically investigate the service area market to see what business and capital opportunities exist for MBE development and search for sources of capital, sales opportunities, business buy-outs and new start possibilities. As market research is conducted, the MBDC will make optimum use of the MBDA network to ensure that the information is made available to fellow MBDC operators and to MBEs throughout the country.

(b) *Market Promotion*: Promote minority business development in the local business community by obtaining support from the community for the utilization of MBEs.

The MBDC will promote individual MBEs to the public and private sectors to build market awareness of the capability, talent and capacity of its clients. The MBDC may utilize public service announcements and paid advertising. The MBDC may promote its clients locally to entities such as: Chambers of Commerce, business and trade associations, corporations and company trade fairs and meetings, state and local government agency purchasing departments, economic development and planning offices and MBE events.

The MBDC shall carry out a plan-of-action that will include, but is not limited to the following actions: (1) Develop an MBDC brochure for mail-out and distribution to the public; (2) Develop an MBDC program description for inclusion on the MBDA Portal and the MBDC web site; and (3) Adhere to MBDA's communication plan (see Operational Quality, item (j) under this section).

The MBDC shall promote and participate in one Regional NEC and one national Minority Enterprise Development (MED) Week activities. MED Week is an annual event, coordinated through MBDA that celebrates the success of minority businesses. Participation is defined as follows:

(1) NEC MED Week—This event is held annually in late summer or early fall, in or near the MBDA NEC. It involves full participation and collaboration with the designated MBDA NEC. The MBDC shall participate in MBDA's process of nominating their outstanding clients for various awards. The MBDC may be asked to coordinate/host panel discussions and support its MBDA NEC. At a minimum, travel expenditures for the MBDC's project director and (at least) one staff must be included in the proposal.

(2) National MED Week—This event is held annually in the fall in Washington, DC. It shall require at a minimum, travel expenditures for the MBDC's project director and (at least) one staff. During the 2004 National MED Week program, optional training in accounting and finance will be offered to MBDC staff. There will be no charge for tuition or materials. Successful completion of this program, which involves a competency examination, will result in certification of the staff member by MBDA.

(c) *Resource Development* requires the MBDC to identify and electronically record on the MBDA Portal likely sources of the following:

(1) Market Opportunities—e.g., public (Federal, state and local government) and private (domestic and foreign) sector contracting opportunities;

(2) Capital Resources—e.g., standard commercial and alternative debt (loans, lines of credit, *etc.*), equity (venture capital, angel, *etc.*), and mezzanine (near equity, subordinated debt, *etc.*) financing, bonds (performance and surety), and trade credit opportunities;

(3) Business Ownership Opportunities—e.g., franchises, licensing arrangements, mergers and buy-outs;

(4) Education and Training Resources—e.g., educational institution programs and other training resources; and,

(5) Registration of MBEs—e.g., register eligible local MBEs in MBDA's Phoenix system, which is a national electronic inventory of minority firms capable of selling their goods and services to the public and private sector. The identified and recorded resources shall be verified by MBDA prior to publishing on the MBDA Portal.

(d) Develop and Maintain a Network of Strategic Partners and Intra-Strategic Relationships—The work requirements for an award recipient under the MBDC Program include the development of key networks. The purpose for establishing strategic partners is to: assist the MBDC to achieve its goals for assisting minority businesses (as defined in this solicitation, under the heading of Performance Measures); synchronize outreach efforts between the MBDC and MBDA; and, foster collaboration among the MBDA funded network as established under the terms of the award. Each Strategic Partnership shall be documented by a written Memorandum of Understanding (MOU) that shall document the terms and conditions of the partnership. The terms and conditions should assist the MBDC in achieving its goals for assisting MBEs.

A minimum of five (5) strategic partners between the MBDC and key local entities selected by the recipient must be established within one hundred twenty (120) days after receipt of the award. The MBDC is required to maintain these partnerships throughout the life of the award. The MBDC must

replace a Strategic Partner within forty-five (45) days after termination of a previously established partnership. The MBDC shall consult with its MBDA National Enterprise Center prior to completing the MOU. The MBDA shall have no relationship with or responsibility to the MBDC's Strategic Partners.

The Strategic Partners shall be public or private sector organizations located within the project's geographic service area. Strategic Partners may include:

- Minority Business Enterprise (MBE) programs operated by state, county or city governments;
- Chambers of Commerce or trade associations focused on the needs of the minority business community;
- Small Business Development Centers, or other college and university entrepreneurial development programs;
- Community Development Corporations;
- Banks and financial institutions; and
- Faith-based organizations having economic development components, whose activities are *not* used for sectarian purposes.

Also, the MBDC shall establish Intra-Strategic Relationships with other MBDA funded programs in support of their goals for assisting larger minority businesses as defined under the terms of the award. The MBDC is required to meet with other MBDA-funded programs in the NEC (in person or by phone conference) at quarterly meetings conducted by MBDA staff. The MBDC is encouraged to refer and/or accept clients from these Relationships. The Intra-Strategic Relationships shall *not* be counted towards the MBDC goal of obtaining Strategic Partnerships as described above.

(e) *Facilitate Matches* which identify and refer eligible MBEs with specific viable businesses, market and/or capital opportunities.

This function contributes to an MBDC's financing and/or procurement performance goals, and is the *only* MBDC market development function outside of the standard client business assistance in which a portion of an MBDC's time can be directly associated to *individual* minority business clients and resource customers. This client specific time, no matter how small, is considered client assistance and may be subject to client fees. Under this function, the MBDC shall match qualified minority entrepreneurs with identified opportunities and resources by: (1) Accessing vendor information systems, including the Phoenix/Opportunity system; (2) Providing follow-up communication to Phoenix-registered minority firms that receive Opportunity matches within the MBDC geographic area; (3) Maintaining a constant awareness of the minority firms that operate within the geographic service area and their capabilities; (4) Maintaining direct contact with purchasing executives, government procurement officials, banking officials and others so that representatives of the MBDC are in a position to learn about available business opportunities, both formally and informally; (5) Engaging in relationship brokering between purchasing organizations and individual minority firms capable of fulfilling their requirements; and (6) Assisting in direct negotiations between purchasing organizations and individual minority firms, in appropriate cases, in order to help resolve issues, serve as an advocate for the minority firm, or otherwise assist in bringing the transaction to closure.

2. *Client Services*—Provides direct client assistance to MBEs on the basis of individualized professional engagements. Rapid growth-potential minority businesses shall be assisted primarily through one-on-one business consulting.

Rapid growth-potential minority businesses are defined as those firms with $500,000 in annual sales or more or capable of generating significant employment and long term economic growth. Under these duties, the MBDC shall assist minority firms and individuals, which have agreed in writing to become MBDC clients, in establishing, improving and/or successfully maintaining their businesses. *All new clients* shall be entered into the Performance system and registered in the Phoenix system. The MBDC is *required* to enter clients and service hours into the Performance system within seventy-two (72) hours from the time of service. Clients assisted more than once during the funding period may only be counted once in that funding period.

Business consulting to rapid growth-potential minority businesses requires the delivery of sophisticated management and technical assistance based on the client size (see below for definition of sales range). The MBDC shall operate a *systems-integrated approach* (as described below) to assist in minority business growth and development. The MBDC must define its business consulting service approach for each of the following annual sales range categories:

(a) $500,000–$999,999

(b) $1,000,000–$5,000,000

(c) Other rapid growth-potential minority firms (as defined above)

A systems-integrated approach is defined as a customer-based service model supported by the following functions:

- Strategy—*e.g.*, plans for achieving sustainable competitive advantage and creating customer value
- Processes—*e.g.*, efficient, effective ways of manufacturing products or delivering services
- Architecture—*e.g.*, organizational and value chain (outsourcing) structure to implement the strategy and key processes
- Resources—*e.g.*, the acquisition and management of financial, human, and technical assets
- Systems—*e.g.*, mechanisms for control and communication, including management information systems (MIS)
- Empowerment—*e.g.*, delegation in a way that encourages staff to pursue strategic initiatives and continuous improvement.

The MBDC shall be responsible for providing business consulting to MBEs based on these principles.

Business consulting services are (as defined under this section) provided by the MBDC to eligible MBEs and individuals (as referenced in Executive Orders 11625 and 12432) seeking assistance from the MBDC, including 8(a) certified and graduate firms. These client services are segments to the systems-integrated approach. They are designed to assist minority firms to bridge operational and strategic gaps. They cannot provide long term business viability without aligning all aspects of the business and its environment. Client services include, but are not limited to, the following types of assistance:

(a) Client Assessment—Provides the MBDC client with a fundamental business evaluation. This process is designed to standardize services across the MBDC network nationwide and to facilitate the client referral process among the MBDA funded network. It requires an interview to be conducted between client and MBDC consultant. This service is designed to provide:

- Background and contact information on the client;
- Client business analysis with respect to its core competency, organizational structure, market and industry placement, production of products/delivery of services, marketing plan, resources and financial viability;
- Analysis and benchmarking of the client;
- Development of an intervention plan utilizing a systems-integrated approach (as defined under Client Services) & client report; and,

- Identification of resources and referrals.

(b) *Functional Assistance*—Provides the MBDC client with detailed business consulting services including but not limited to:

(1) *Marketing, e.g.*, market research, promotion, advertising and sales, sales forecasting, market feasibility studies, pricing, product and customer service, brochure design (excludes mass printing);

(2) *Financial Management, e.g.*, capital budgeting, general accounting, break-even analysis, cost accounting, financial planning and analysis budgeting, tax planning, business consulting (excludes bookkeeping, tax preparation, and audits);

(3) *Financial Assistance, e.g.*, identification, preparation and packaging of standard commercial and alternative debt (loans, lines of credit, etc.), equity (venture capital, angel, *etc.*), and mezzanine (near equity, subordinated debt, *etc.*) financing and trade credit opportunities;

(4) *Procurement Assistance, e.g.*, preparation and planning for the identification of private and public-sector contracting opportunities;

(5) *Operations & Quality Management, e.g.*,

- Manufacturing—plant location and site selection, plant management, materials handling and distribution, total quality management, metrication for world market, and business consulting;
- Construction—estimating, bid preparation, bonding, take-offs, and business consulting;
- International Trade Assistance—exporting, importing, letters of credit, bank draft, dealerships, agencies, distributorship, exporting trading companies, joint ventures, business consulting, and freight forwarding and handling;
- Specialized Certification—ISO 9000 knowledge of program and standards, how to implement standards, how to report and properly apply for ISO 9000 Quality Systems certification;
- Total Quality Management—process engineering, inventory control, purchasing, continuous improvement programs;
- Technology & Systems—automation design, development and integration of technology to support infrastructure, knowledge management, data mining, performance based reporting;

(6) *Organization & Administration, e.g.*, human resource management, job evaluation and rating system, employee stock option programs, training, business consulting; and,

(7) *General Management, e.g.*, organization and structure, formulating corporate policy, feasibility studies, reports and controls, public relations, staff scheduling, legal services (excludes litigation), business planning, organizational development, bid preparation, and business consulting.

The MBDC shall not perform or engage in the day-to-day operations or make decisions for its clients.

Group training sessions are considered a form of business development services that can be provided to minority clients. This function may be subject to client fees and directly contributes to an MBDC's performance goals.

3. *Operational Quality*—Maintains the efficiency and effectiveness of its overall operations as well as the quality of its client services. These duties are the means by which the MBDC manages its overall operations as well as the quality of its client services. The function directly contributes to the MBDC's overall qualitative evaluation and rating as well as the successful completion of all work requirements. Under this function, the MBDC shall:

(a) Execute signed work plan agreements and engagement letters with clients; (b) Formally describe the methodology that will be used in achieving the work plan objectives for each client; (c) Input progress/results to the performance database within seventy-two (72) hours from the time of service; (d) Establish procedures for collecting and accounting for all fees charged to clients; (e) Maintain records/files for all work charged to the program and clients; (f) Obtain *written* acceptance and verification (with client signatures) of services provided to its clients and any financings/contracts obtained. For services reported, documentation must be in the MBDC's client files within thirty (30) days after the end of every quarter in which a client receives services; (g) Comply with all reporting requirements provided upon award; (h) Cooperate with MBDA in maintaining content for the Phoenix/Opportunity system, Resource Locator, and other online tools located at *http://www.mbda.gov;* (i) Promote and utilize the services and resources of other MBDA programs, sponsored efforts and/or voluntary activities; and (j) The MBDC shall adhere to MBDA's trademark and licensing requirements for all forms of communication including but not limited to signage, stationary and other MBDC-related publications. Such requirements shall be provided at the time of award. These requirements include but are not limited to specific size, location, and font of the MBDA logo.

- Signage—Signs should be highly visible to the MBDC clients and general public. They should be prominently displayed on entrances or doors.
- Printed Materials—These items shall include the name of MBDA on all stationery, letterhead, brochures, *etc.*
- Internet Presence and Information—The MBDC is to maintain an Internet presence (see Computer Requirements) and shall include standardized language as provided by MBDA.
- Telephonic Communication—Identify the MBDC immediately upon answering the telephone. If the recipient also requires that its organization's name be given, it should be provided only after the MBDC has been verbally identified to a caller. Refer to MBDA in all advocacy and outreach efforts such as speaking engagements, news conferences, *etc.*

The MBDC is not authorized to use either the Department of Commerce's (DOC) official seal or the MBDA logo in any of its publications, documents or materials without specific written approval from the Department of Commerce.

The term *Minority Business Development Center (MBDC)* is a trademark of the Federal Government, and the Government reserves exclusive rights in the term. Permission to use the term is granted to the award recipient for the sole purpose of representing the activities of the award recipient in the fulfillment of the terms of the financial assistance award. The Minority Business Development Agency reserves the right to control the quality of the use of the term by the award recipient. Whenever possible, for example in promotional literature and stationery, use the ™ designation as in *Minority Business Development Center*™.

Computer Requirements

MBDA requires that all award recipients meet certain requirements related to the acquisition, installation, configuration, maintenance and security of information technology (IT) assets in order to ensure seamless and productive interface between and among all grant recipients, minority-owned businesses, the MBDA federal IT system and the public. These required assets and their configuration are hereinafter referred to as the "enterprise." The basic components of the enterprise are the

desktop workstations, the server, local area network (LAN) components and a connection to the Internet.

At a minimum, each grantee shall provide one (1) desktop computer for the exclusive use of each employee delivering minority business assistance to the public under an award from MBDA. All desktop computers shall be inter-connected with a Server computer using an Ethernet protocol enabling communication with all workstations on the network. The Server shall have a constant, high-speed Internet connection, active during all business hours, preferably through a DSL or cable modem connection. The recipient shall ensure that each of his/her employees, to include management, administrative personnel, contractors, full-time, part-time, and non-paid (volunteer) staff have a unique electronic mail (email) address available to the public. Each grantee shall design, develop and maintain, in accordance with the computer requirements, a presence on the Internet's World Wide Web and shall maintain appropriate computer and network security precautions during all periods of funding by MBDA. All IT requirements, as described herein, shall be met within thirty (30) calendar days after the award.

1. *Network Design:* At all locations where services are delivered to the eligible public as defined by Executive Order 11625, the recipient shall operate a "Client-Server" configured local area network (LAN) enabling each staff person delivering services to the eligible public exclusive access to a personal computer workstation during all business hours. MBDA shall, from time to time, designate certain configurations of the enterprise hardware and software to meet interface requirements.

Currently, MBDA recommends servers using an operating system that is fully compatible with Microsoft Windows 2000 with a service pack three (3) or greater. Domain Controller (DC) servers or any server providing principal service to the desktops shall contain 18 or more gigabytes (GB) of hard drive space using two or more 9 GB+ disks configured appropriately to ensure data retention should one disk fail. At least one (1) Pentium IV central processing unit (CPU), or a CPU ensuring similar speed, shall be used in the DC server or any other server providing principal service to the desktops. Web servers, mail servers and/or servers maintained by a third party such as an Internet Service Provider (ISP) shall meet the minimum server specifications as stated herein. A "trusted" relationship, as appropriate, shall be established and maintained between the MBDA DC server and those operated by, or operated for, the recipient to ensure access by MBDA system administration personnel during normal business hours. (In a network that consists of two or more domains, each domain acts as a separate network with its own accounts database. Even in the most rigidly stratified organizations, some users in one domain will need to use some or all of the resources in another domain. The usual solution to confirming user access levels among domains is what's called a *trust relationship*.) From time to time, MBDA will require access to servers and desktop workstations after business hours and on holidays and weekends. For this purpose, the recipient shall ensure appropriate communications links are active and appropriate personnel on station, upon 24-hour notice from MBDA.

2. *Desktop Workstations:* All desktop systems shall not be more than two (2) calendar years old at time of award and shall contain a Pentium IV central processing unit (CPU), or a CPU ensuring similar speed, operating at speeds not less than 2+ Gigahertz (GHz). Each desktop system shall contain a hard drive with a storage capacity of at least twenty (20) GB and 512 Megabytes of RAM. All desktop systems shall have installed an operating system fully compatible with Microsoft Windows 2000 with MS Office 2000 Professional (SP1) or higher, Microsoft Internet Explorer 6.x as well as some form of regularly updated antivirus protection software. Additionally, it is suggested that at least one workstation have installed both a full-page scanner and feed, along with software fully compatible with Adobe Acrobat software (version 4.0 or higher) for the production of electronic document submissions.

Since workstations may be linked to a live, two-way conference connection with potential clients, at least 50% of all employee workstations shall be fully operational with a qualified staff person positioned at the keyboard during all business hours to include lunch and break periods.

3. *Maintenance and Security:* A network map ("as-built") reflecting adherence to the computer and networking requirements set forth herein shall be maintained by the recipient for review by MBDA at any time. Each recipient shall designate and train one administrative person competent in the operation of an operations system fully compatible with Windows 2000 network and local area network (LAN) technology as described herein. If a firewall, proxy server or similar security component is used, MBDA's server shall be "trusted" for full access to all files relevant for network and administrative operations. From time to time, MBDA may require certain software be loaded on servers and desktops. In any given year, the cost of this additional software may be $200.00 per workstation and $500.00 per server, such additional cost may be borne by MBDA. Every employee of the MBDC shall be assigned a unique username and password to access the system. Every employee shall be required to sign a written computer security agreement. (A suggested format for the computer security agreement will be provided at the time of award.) Every manager, employee, and contractor and any other person given access to the computer system shall sign the security agreement and an original copy of the signed agreement shall be kept in the MBDC's files. A photocopy of the agreement shall be sent by fax to MBDA at: (202) 482–2693 no later than thirty (30) days after receipt of the award. All subsequent new hires and associations requiring access to the MBDC or MBDA systems shall read, understand and sign the security agreement prior to issuance of a password. No employee shall have access to the MBDA system without a signed security agreement on file at MBDA.

4. *Web site:* Each recipient shall create and maintain a public web site using a unique address (*e.g., http://www.center-name.com*). The first page (Index page) of the web site shall clearly identify the recipient as a Minority Business Development Center funded by the U.S. Department of Commerce's Minority Business Development Agency. The Index page of the web site shall load on software fully compatible with Windows Internet Explorer 6.x browser software using a normal home computer with 56 Kb/s analog phone line connection in less than ten (10) seconds. The web site shall contain the names of all managers and employees, the business and mailing address of the Center, business phone and fax numbers and email addresses of the MBDC and employees, a statement referencing the services available at the MBDC, the hours under which the MBDC operates and a link to the MBDA homepage at *http://www.mbda.gov*. For purpose of electronically directing clients to the appropriate MBDC staff, the web site shall also contain a short biographical statement for each employee of the MBDC including management, contractors, part-time, full time, and non-paid (volunteer) personnel,

providing services directly to the eligible public under an award from MBDA. This biographical statement shall contain: the full name of the employee, and a brief description of the expertise of the employee to include academic degrees, certifications and any other pertinent information with respect to that employee's qualifications to deliver minority business assistance services to eligible members of the public.

No third party advertising of commercial goods and services shall be permitted on the site. All links from the site to other than federal, state or local government agencies and non-profit educational institutions must be requested, in advance and in writing, through the Chief Information Officer, MBDA Office of Information Technology Services to the Grants Office for written approval. Such approval shall not be unreasonably withheld but approval is subject to withdrawal if MBDA determines the linked site unsuitable. No employee of the MBDC, nor any other person, shall use the MBDC web site for any purpose other than that approved under the terms of the agreement between the recipient and MBDA. Every page of the web site shall comply with Federal standards of the Americans With Disabilities Act, Section 508, and be reviewed by the recipient for accuracy, currency, and appropriateness every three (3) months. Appropriate privacy notices and handicapped accessibility will be predominately featured. From time to time, MBDA shall audit the recipient's web site and recommend changes in accordance with the guidelines set forth herein.

5. *Time for Compliance:* Within thirty (30) days after receipt of the award, the recipient shall report via email to the Chief Information Officer, MBDA Office of Information Technology Services and the MBDA Office of Business Development that he/she has complied with all technical requirements as specified herein. Within thirty (30) days after receipt of the award, the recipient shall report the name, contact telephone number and email address of the Project Director, Network or System Administrator. As appropriate, the recipient shall also provide the telephone number and email address for the Technical Contact at the Internet Service Provider (ISP) providing Internet access for the grantee, the IP number of the Domain Name Server (DNS) and/or Domain Control (DC) server, and any other technical information as specified in the Technology Requirements.

6. *Performance System*—All required performance reporting to MBDA shall be conducted via the Internet using the Performance system to be found at a secure web site (*http://www.mbda.gov*). Within thirty (30) days after the receipt of award, each MBDC business consultant and/or anyone providing business assistance to the public under the award shall have satisfactorily completed the Performance System Training Course (PSTC). This course is available on-line from the Performance web site (*http://www.mbda.gov*). Only trained staff shall enter data into the Performance system. There shall be no "sharing" of passwords on the Performance system. MBDA encourages input of information on a daily basis.

7. *Data Integrity:* The recipient shall take the necessary steps to ensure that all data entered into MBDA systems, and systems operated by the recipient in support of the award, or by any employee of the recipient is accurate and timely.

Performance Measures

In accordance with 15 CFR parts 14 and 24, applicants selected will be responsible for the effective management of all functions and activities supported by the financial assistance award. Award recipients will be required to use program performance measures in a performance report due thirty (30) days after the end of the second quarter and to provide an end-of-year assessment of the accomplishments of the project using these measures. The end-of-year or final performance report is due ninety (90) days after the end of the funding year. Once the project is awarded, the evaluation criteria, along with the assigned weight value, to be used for measuring the MBDC project performance on an ongoing basis are:

1. The dollar value of transactions (65);
2. Number of jobs created (10);
3. Number of new clients (5);
4. Administrative Management & Operational Quality (20)
   - Client satisfaction (5);
   - Management assessment (5);
   - Market promotion (1);
   - Resource entries (5);
   - Establish strategic partners (2);
   - Facilitated matches (2).

The *minimum* performance goals required for the above listed performance measures for each of the solicited geographic service areas are outlined under the Funding Availability sub-heading for each geographic service area. The *minimum* performance goals are listed on an annual basis by MBDA and will be broken out into quarterly increments by the applicant and submitted as part of their proposal.

The MBDC is required to utilize, in a good faith effort, all of its resources to achieve the stated goals. Should the MBDC exceed its performance requirements prior to the end of a funding year, the MBDC is expected to maintain operations at full strength and *continue to provide services and reach greater performance outcomes*. MBDA views the MBDC as a designated cooperative partner and an envoy to the greater minority business community. Thus, high achievement in one performance measure cannot excuse failure to reach other goals as stated in this notice.

Definitions

1. *Dollar Value of Transactions*—The dollar value of transactions are defined as:

(a) *Dollar Value of Completed Financial Transactions* which represent the total principal value of approved loans, equity financings, bonds, or other binding financial agreements secured by clients of the project, with the assistance of MBDC staff. For purposes of this performance element, eligible financial transactions are those which have a specific dollar value, and which expand its capital base/operations, or produce some other direct commercial benefit for client firms. In order to be deemed complete, a financial transaction must be documented by an executed and binding agreement between the MBDC client (firm) and a party (financier) capable of performing its obligations under the terms of the agreement.

(b) *Dollar Value of Gross Receipts* which represent the total dollar value of successfully awarded contracts and/or the total principal value of executed sales/delivery contracts of services/products/intellectual rights and/or increase in sales and/or completed Mergers and Acquisitions or other binding financial considerations secured by clients of the project, with the assistance of project staff. For purposes of this performance element, Dollar Value of Gross Receipts are those transactions which have a specific dollar value, and which produce some other direct commercial benefit for client firms. In order to be deemed complete, successfully awarded contracts or mergers and acquisitions must be documented by an executed and binding agreement between the client firm and a party capable of performing its obligations under the terms of the agreement. Increase in sales must be documented through an initial client assessment and a midyear and year-end client assessment (see Client

Assessment under Client Services) supported by client submitted financial documentation.

MBDA recognizes that the financial obligations evidenced by these transactions may be long-term, and require performance over an extended period. Consequently it is not necessary that the funds or other financial value specified under the agreements have actually changed hands for the project to receive credit under this performance element, so long as the agreement of the parties is documented and binding.

2. *Number of Jobs Created*—This is defined as the number of new full time and/or part time employment opportunities reported on the client's payroll during the funding year. Persons on paid sick leave, paid holiday and paid vacations are included as employees as are salaried officers and executives of corporations. However, proprietors and partners of unincorporated business are not considered employees under this definition.

3. *Number of New Clients*—This represents the actual number of new clients in a funding year. New clients are defined as those MBEs that complete a written engagement with the MBDC for specific services and registered with the MBDC.

4. *Administrative Management & Operational Quality*—Operational quality refers to the quality and effectiveness of the project operator's delivery of client services and project scope, as evidenced by the following performance elements relating to the day-to-day management of the project:

a. *Client Satisfaction*—An MBDA consultation process with clients of the MBDC used to verify and rate the qualitative level of services rendered by the MBDC.

b. *Management Assessment*—The management assessment reflects MBDA's own evaluation of the overall management of the MBDC project, based on the Agency's internal review of the project's operations. The management assessment reflects such areas as the development of written engagement letters and work plans, proper staffing, adherence to scheduled work hours, recordkeeping, successful completion of Agency training, and any other areas which MBDA may deem to be relevant in determining the overall quality of the project's operations.

c. *Market Promotion*—This represents the total number of successfully completed activities (per reporting period) as proposed in the applicant's response to this Notice.

d. *Resource Entries*—This is defined as the total quantity of accurate and timely records entered into MBDA's Portal tools (*e.g.*, Phoenix, Opportunity, Capital Locator, Resource Locator, etc.) in support of its efforts to disseminate information electronically.

e. *Establish Strategic Partners*—This represents formalized memoranda of understanding between the MBDC and its strategic partners.

f. *Facilitated Matches*—This represents the number of minority firms directed by the MBDC to strategic partners, the MBDA funded network, and other business resources that result in a financial transaction (as described above under Dollar Value of Transactions).

Extraordinary Performance—Support of MBDA's Strategic Initiative

An element of MBDA's overall mission is to advocate on behalf of all MBEs. In part, MBDA recognizes successful efforts of MBDC operators to establish new opportunities for all MBEs. *Extraordinary performance* by a MBDC or the MBDC operator may result in bonus points for the MBDC. The MBDC may receive up to a maximum of (5) performance bonus points (one (1) point for each fully completed initiative as defined below) in any funding period for the successful execution of the following four items:

(a) The MBDC and/or the MBDC operator may develop and maintain a maximum of five (5) *strategic initiatives designed to benefit the minority business community* within the MBDC geographic area.

(b) The strategic initiative(s) should be framed to expand market and financing opportunities for MBEs in areas not previously established by MBDA or the MBDA funded network.

(c) A desired and measurable economic impact that benefits MBEs must be established and accounted for at the end of the MBDC funding year. Economic impact can be formulated by identifying the dollar value of transactions (financings, contracts/procurements) and/or other means of economic opportunities.

(d) The strategic initiative(s) should be documented in writing and should include

—The name(s) and contact information of the collaborating entities;
—Responsibilities and duties of the collaborating entities;
—The resources which each party agrees to commit to the relationship; and,
—The goals which the initiative is to accomplish.

Performance Standards

The year-to-date performance of an MBDC for Year One of the award will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above *	100 ** & above	Outstanding
At least 90	90–99	Commendable
At least 80	80–89	Good
At least 75	75–79	Satisfactory
Below 75	Below 75.0	Unsatisfactory

* Not to exceed 110%.
** Not to exceed 110 Points.

The year-to-date performance of an MBDC for Year Two of the award will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above *	100 ** & above	Outstanding
At least 90	90–99	Commendable
At least 80	80–89	Good

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
At least 77	77–79	Satisfactory
Below 77	Below 77.0	Unsatisfactory

* Not to exceed 110%.
** Not to exceed 110 Points.

The year-to-date performance of an MBDC for Year Three of the award will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above *	100 ** & above	Outstanding
At least 90	90–99	Commendable
At least 85	85–89	Good
At least 80	80–84	Satisfactory
Below 80	Below 80.0	Unsatisfactory

* Not to exceed 110%.
** Not to exceed 110 Points.

Funding Availability

MBDA anticipates that a total of approximately $7.2 million will be available in FY 2004 for Federal assistance under this program. Applicants are hereby given notice that funds have not yet been appropriated for this program. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is canceled because of other agency priorities.

Financial assistance awards under this program may range from $155,000 to $346,463 in Federal funding per year based upon minority population, the size of the market and its need for MBDA resources. Applicants must submit project plans and budgets for each of the three years. Projects will be funded for no more than one year at a time. Funding for subsequent years will be at the sole discretion of the Department of Commerce and will depend on satisfactory performance by the recipient, the availability of funds to support the continuation of the project, and Agency priorities.

Geographic Service Areas

An operator must provide services to eligible clients within its specified geographic service area. MBDA has defined the service area for each award below. To determine its geographic service areas, MBDA uses states, counties, Metropolitan Areas (MA), which comprise metropolitan statistical areas (MSA), consolidated metropolitan statistical areas (CMSA), and primary metropolitan statistical areas (PMSA) as defined by the OMB Committee on MAs *http://www.whitehouse.gov/omb/bulletins* and other demographic boundaries as specified herein. Services to eligible clients outside of an operator's specified service area may be requested, on a case-by-case basis, through the appropriate MBDA Regional Director and granted by the Grants Officer.

1. MBDC Application: Georgia Statewide

Geographic Service Area: State of Georgia.

Award Number: 04–10–04001–01.

The recipient is required to maintain its MBDC in Atlanta, Georgia. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $283,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta National Enterprise Center at (404) 730–3300 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Robert Henderson, Regional Director.

2. MBDC Application: North Carolina Statewide

Geographic Service Area: State of North Carolina.

Award Number: 04–10–04002–01.

The recipient is required to maintain its MBDC in Raleigh/Durham, North Carolina. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $285,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta National Enterprise Center at (404) 730–3300 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Robert Henderson, Regional Director.

3. MBDC Application: Puerto Rico Islandwide

Geographic Service Area: Island of Puerto Rico.

Award Number: 04–10–04003–01.

The recipient is required to maintain its MBDC in San Juan, Puerto Rico. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $285,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta National Enterprise Center at (404) 730–3300 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Robert Henderson, Regional Director.

4. MBDC Application: South Carolina Statewide

Geographic Service Area: State of South Carolina.

Award Number: 04–10–04004–01.

The recipient is required to maintain its MBDC in Columbia, South Carolina. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $285,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta National Enterprise Center at (404) 730–3300 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Robert Henderson, Regional Director.

5. MBDC Application: Illinois Statewide

Geographic Service Area: State of Illinois.

Award Number: 05–10–04001–01.

The recipient is required to maintain its MBDC in Chicago, Illinois. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $283,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Chicago National Enterprise Center at (312) 353–0182 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Carlos Guzman, Acting Regional Director.

6. MBDC Application: Ohio Statewide

Geographic Service Area: State of Ohio.

Award Number: 05–10–04002–01.

The recipient is required to maintain its MBDC in Cincinnati, Ohio. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $283,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta National Enterprise Center at (312) 353–0182 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Carlos Guzman, Acting Regional Director.

7. MBDC Application: Michigan Statewide.

Geographic Service Area: State of Michigan.

Award Number: 05–10–04003–01.

The recipient is required to maintain its MBDC in Detroit, Michigan. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $283,058. The total Federal amount is $240,599. The application must include a minimum cost share of 15% or $42,459 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $21,023,588.

Number of Jobs Created: 65.

Number of New Clients: 135.

Resource Entries: 281.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Chicago National Enterprise Center at (312) 353–0182 or visit MBDA's website at *http://www.mbda.gov.* For Further Information and a copy of the application kit, contact Carlos Guzman, Acting Regional Director.

8. MBDC Application: Dallas/Ft.Worth/ Arlington, Texas

Geographic Service Area: Dallas/Ft. Worth/Arlington MAs.

Award Number: 06–10–04001–01.

The recipient is required to maintain its MBDC in Dallas, Texas. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $367,811. The total Federal amount is $312,639. The application must include a minimum cost share of 15% or $55,172 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $27,318,191.

Number of Jobs Created: 84.

Number of New Clients: 175.

Resource Entries: 365.

Facilitated Matches: 9.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

9. MBDC Application: El Paso, Texas.

Geographic Service Area: El Paso, Texas MA.

Award Number: 06–10–04002–01.

The recipient is required to maintain its MBDC in El Paso, Texas. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $236,046. The total Federal amount is $200,639. The application must include a minimum cost share of 15% or $35,047 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $17,532,131.

Number of Jobs Created: 54.

Number of New Clients: 113.

Resource Entries: 235.

Facilitated Matches: 5.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

10. MBDC Application: New Mexico Statewide

Geographic Service Area: State of New Mexico.

Award Number: 06–10–04003–01.

The recipient is required to maintain its MBDC in Albuquerque, New Mexico. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $258,824. The total Federal amount is $220,000. The application must include a minimum cost share of 15% or $38,824 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $19,223,643.

Number of Jobs Created: 59.

Number of New Clients: 123.

Resource Entries: 257.

Facilitated Matches: 6.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

11. MBDC Application: San Antonio

Geographic Service Area: San Antonio, Texas MA.

Award Number: 06–10–04004–01.

The recipient is required to maintain its MBDC in San Antonio, Texas. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $301,929. The total Federal amount is $256,639. The application must include a minimum cost share of 15% or $45,289 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $22,425,161.

Number of Jobs Created: 69.

Number of New Clients: 144.

Resource Entries: 300.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

12. MBDC Application: Manhattan/ Bronx/Westchester

Geographic Service Area: The Counties of New York (Manhattan), Bronx and Westchester.

Award Number: 02–10–04001–01.

The recipient is required to maintain its MBDC in New York County (Manhattan). Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $339,670. The total Federal amount is $288,719. The application must include a minimum cost share of 15% or $50,950 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $25,228,306.

Number of Jobs Created: 78.

Number of New Clients: 162.

Resource Entries: 338.

Facilitated Matches: 8.

Pre-Application Conference: For the exact date, time and place, contact the New York National Enterprise Center at (212) 264–3262 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Heyward Davenport, Regional Director.

13. MBDC Application: New Jersey Statewide

Geographic Service Area: State of New Jersey.

Award Number: 02–10–04002–01.

The recipient is required to maintain its MBDC in Newark, New Jersey. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $339,670. The total Federal amount is $288,719. The application must include a minimum cost share of 15% or $50,950 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $25,228,306.

Number of Jobs Created: 78.

Number of New Clients: 162.

Resource Entries: 338.

Facilitated Matches: 8.

Pre-Application Conference: For the exact date, time and place, contact the New York National Enterprise Center at (212) 264–3262 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Heyward Davenport, Regional Director.

14. MBDC Application: Pennsylvania Statewide

Geographic Service Area: State of Pennsylvania.

Award Number: 02–10–04003–01.

The recipient is required to maintain its MBDC in Philadelphia, Pennsylvania. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $339,670. The total Federal amount is $288,719. The application must include a minimum cost share of 15% or $50,950 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $25,228,306.

Number of Jobs Created: 78.

Number of New Clients: 162.

Resource Entries: 338.

Facilitated Matches: 8.

Pre-Application Conference: For the exact date, time and place, contact the New York National Enterprise Center at (212) 264–3262 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Heyward Davenport, Regional Director.

15. MBDC Application: Queens/Nassau/ Suffolk

Geographic Service Area: The Counties of Queens/Nassau/Suffolk.

Award Number: 02–10–04004–01.

The recipient is required to maintain its MBDC in Queens, New York.

Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $339,670. The total Federal amount is $288,719. The application must include a minimum cost share of 15% or $50,950 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $25,228,306.

Number of Jobs Created: 78.

Number of New Clients: 162.

Resource Entries: 338.

Facilitated Matches: 8.

Pre-Application Conference: For the exact date, time and place, contact the New York National Enterprise Center at (212) 264–3262 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Heyward Davenport, Regional Director.

16. MBDC Application: Washington Metro

Geographic Service Area: DC/MD/VA/ WVA MAs.

Award Number: 02–10–04005–01.

The recipient is required to maintain its MBDC in the District of Columbia. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $339,670. The total Federal amount is $288,719. The application must include a minimum cost share of 15% or $50,950 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $25,228,306.

Number of Jobs Created: 78.

Number of New Clients: 162.

Resource Entries: 338.

Facilitated Matches: 8.

Pre-Application Conference: For the exact date, time and place, contact the New York National Enterprise Center at (212) 264–3262 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Heyward Davenport, Regional Director.

17. MBDC Application: Williamsburg

Geographic Service Area: Kings County (Brooklyn), and Richmond County (Staten Island).

Award Number: 02–10–04006–01.

The recipient is required to maintain its MBDC in Williamsburg in Kings County (Brooklyn). Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $374,412. The total Federal amount is $318,250. The application must include a minimum cost share of 15% or $56,162 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $27,633,017.

Number of Jobs Created: 86.

Number of New Clients: 178.

Resource Entries: 372.

Facilitated Matches: 9.

Pre-Application Conference: For the exact date, time and place, contact the New York National Enterprise Center at (212) 264–3262 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Heyward Davenport, Regional Director.

18. MBDC Application: Alaska Statewide

Geographic Service Area: State of Alaska.

Award Number: 09–10–04001–01.

The recipient is required to maintain its MBDC in Anchorage, Alaska. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $203,802. The total Federal amount is $173,232. The application must include a minimum cost share of 15% or $30,570 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $15,136,984.

Number of Jobs Created: 47.

Number of New Clients: 97.

Resource Entries: 203.

Facilitated Matches: 5.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

19. MBDC Application: Arizona Statewide

Geographic Service Area: State of Arizona.

Award Number: 09–10–04002–01.

The recipient is required to maintain its MBDC in Phoenix, Arizona. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $407,604. The total Federal amount is $346,463. The application must include a minimum cost share of 15% or $61,141 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $30,273,967.

Number of Jobs Created: 93.

Number of New Clients: 194.

Resource Entries: 405.

Facilitated Matches: 10.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

20. MBDC Application: Central/Northern California

Geographic Service Area: The counties south of the Oregon/California border through, and including Santa Barbara, Inyo and Kern Counties.

Award Number: 09–10–04003–01.

The recipient is required to maintain its MBDC in Oakland, California. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $407,604. The total Federal amount is $346,463. The application must include a minimum cost share of 15% or $61,141 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $30,273,967.

Number of Jobs Created: 93.

Number of New Clients: 194.

Resource Entries: 405.

Facilitated Matches: 10.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

21. MBDC Application: Inland Empire

Geographic Service Area: The Counties of Orange, Riverside, San Bernardino, Imperial and San Diego, California.

Award Number: 09–10–04004–01.

The recipient is required to maintain its MBDC in Riverside/San Bernardino, California. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $407,604. The total Federal amount is $346,463. The application must include a minimum cost share of 15% or $61,141 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $30,273,967.

Number of Jobs Created: 93.

Number of New Clients: 194.

Resource Entries: 405.

Facilitated Matches: 10.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

22. MBDC Application: Los Angeles Metro

Geographic Service Area: The Counties of Ventura and Los Angeles, California.

Award Number: 09–10–04005–01.

The recipient is required to maintain its MBDC in the greater Los Angeles

Metropolitan Area. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $407,604. The total Federal amount is $346,463. The application must include a minimum cost-share of 15% or $61,141 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $30,273,967.

Number of Jobs Created: 93.

Number of New Clients: 194.

Resource Entries: 405.

Facilitated Matches: 10.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

23. MBDC Application: Washington Statewide

Geographic Service Area: State of Washington.

Award Number: 09–10–04006–01.

The recipient is required to maintain its MBDC in Seattle, Washington. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $203,802. The total Federal amount is $173,232. The application must include a minimum cost share of 15% or $30,570 in non-Federal contributions.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $15,136,984.

Number of Jobs Created: 47.

Number of New Clients: 97.

Resource Entries: 203.

Facilitated Matches: 5.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

Matching Requirements

Cost sharing of at least 15% is required. Cost sharing is the portion of the project cost not borne by the Federal Government. Applicants must meet this requirement in client fees and any one or more of remaining three means or a combination thereof: (1) Client fees (mandatory); (2) cash contributions; (3) non-cash applicant contributions; and/or (4) third party in-kind contributions.

The MBDC must charge client fees for services rendered. The fees may range from $10 to $60 per hour based on the gross receipts of the client's business ranging from $0 to $5 million and above. The MBDC must comply with the following policy restrictions when charging client service fees: (1) Client fees charged for one-on-one assistance must be based on a rate of $100 per hour, (2) the MBDC must set fee rates based on the following chart:

Gross receipts of client	Base rate for services rendered	Percent of cost borne by client	Client fee per hour
$0–99,999	$100.00	10	$10.00
$100,000–299,999	100.00	20	20.00
$300,000–999,999	100.00	30	30.00
$1 Million–2,999,999	100.00	40	40.00
$3 Million–4,999,999	100.00	50	50.00
$5 Million and Above	100.00	60	60.00

(3) the MBDC must contribute cash for uncollected fees that were included as part of the cost sharing contribution committed for this award, and (4) client fees applied directly to the award's cost sharing requirement must be used in furtherance of the program objectives.

Type of Funding Instrument

Financial assistance awards in the form of cooperative agreements will be used to fund this program. MBDA's substantial involvement with recipients will include performing the following duties to further the MBDC's objectives:

Post-Award Conferences

MBDA shall conduct post-award conferences for all new MBDC awards to ensure that each MBDC has a clear understanding of the program and its components. The conference will: (1) Provide an MBDA Directory of Business Resources; (2) Orient MBDC program officers; (3) Explain program reporting requirements and procedures; (4) Identify available resources that can enhance the capabilities of the MBDC; and (5) Provide detailed information about MBDA's business and other information systems.

Training

MBDA shall conduct various qualitative training sessions for the MBDC staff. The training sessions are designed (in part) to improve communications, understandings, client service delivery, performance and reporting. The following training sessions are designated for the 2004 funding year:

(1) A systems integrated approach to client services, including client assessment and functional assistance (initial 5-day training), and subsequent advanced training (5-day follow-up training), and

(2) MBDA Portal tools including (but not limited to) Performance, Resource Locator, Capital Locator, Business Plan, Phoenix and Opportunity System. We anticipate that the training will be provided at MBDA's annual National conference. Training sessions may be offered each funding year based on the availability of funds. Locations for the training sessions are subject to change.

Networking, Promotion and Information Exchange

MBDA shall provide the following: (1) Access to business information systems, which support the work of the MBDC as described in the Enhancing the MBDCs Through Technology section. This information will be provided by MBDA's Office of Information Technology. The specific information systems and access to them will be provided at the time of the award for a particular MBDC; (2) Sponsor one national and at least one NEC conference; (3) Expand the Phoenix data bank of minority-owned firms by requiring other MBDA-funded programs to provide additional entries; (4) Promote the exchange of business opportunity information within the MBDA funded system using the Capital Locator, Resource Locator, Phoenix and

Opportunity system on the MBDA Portal located at *http://www.mbda.gov*; (5) Work closely with the MBDC to establish a system in which procurement and contract opportunities can be shared with the network of MBDCs. This system will include opportunities identified throughout the MBDA network using the Phoenix and Opportunity system located at *http://www.mbda.gov;* (6) Help promote special events to be scheduled at the local community, state and national levels in celebration of MED Week, which occurs annually; and (7) Identify Federal, state and local governments, and private sector market opportunities to the MBDC using the Capital Locator, Resource Locator, Phoenix and Opportunity system on the MBDA Portal located at *http://www.mbda.gov.*

Project Monitoring

MBDA will systematically monitor the performance of the MBDC. This monitoring includes regular review of data input to the performance system, assessment of the end of the second quarter progress report, an on-site review of the center's client files to verify MBDC performance, reported assistance and interviews with clients assisted. In consultation with clients of the individual MBDC, MBDA will assess the Center's effectiveness in providing business development services to their respective minority business communities. MBDA will then provide a report of findings and recommendations for improvement as a result of evaluations and monitoring visits. MBDA will also assess the MBDC's performance for the first and third quarters of performance data (as recorded in the Performance System) and provide a written report of findings. MBDA will approve qualifications of key MBDC staff and respond in a timely manner to correspondence requesting MBDA action.

Eligibility Criteria

For-profit entities (including sole-proprietorships, partnership, and corporations), and non-profit organizations, state and local government entities, American Indian Tribes, and educational institutions are eligible to operate MBDCs.

Award Period

The total award period is three (3) years. Funding will be provided annually at the discretion of MBDA and DoC, and will depend upon satisfactory performance by the award recipient, availability of funds to continue the project, and Agency priorities. Project proposals accepted for funding will not compete for funding in subsequent budget periods within the approved award period. Publication of this notice does not obligate MBDA or DoC to award any specific cooperative agreement or to obligate all or any part of available funds.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Proposal Format

The structure of the proposal should contain the following headings and information, in the following order:

I. Table of Contents

II. Program Narrative

a. Applicant Capability—Include a resume setting forth the qualifications of the project director as part of the application, along with a copy of a college transcript, as appropriate. Position descriptions and qualification standards for all staff should be included as part of the application. Applicants must provide a copy of their Articles of Incorporation, by-laws and IRS 501(c)(3) non-profit letter or other evidence of non-profit status.

b. Resources—Include original commitment letters from those resources listed and indicate their willingness to work with the applicant. These resources can include such items as facilities, equipment, voluntary staff time and space, and financial resources. One to two letters of support (with contact information) from prior assisted larger minority firms *and* community organizations should be included from those resources willing to work with the applicant.

c. Techniques and Methodologies—The applicant's proposal shall include a specific plan-of-action detailing *how* the work requirements will be met and how those techniques will be implemented. MBDA requires the applicant to provide a quarterly breakdown of the goals.

d. Costs—Include how client fees will be used to meet the cost-share.

III. Forms

Note: Pages of the proposal should be numbered consecutively.

Application Forms and Package

One (1) original and two (2) signed copies of the application must consist of: Standard Forms 424, Application for Federal Assistance; 424A, Budget Information-Non-Construction Programs; and 424B, Assurances-Non-Construction Programs, SF–LLL (Rev. 7–97); Department of Commerce forms, CD–436, Applicant for Funding Assistance, CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility matters: Drug-Free Workplace Requirements and Lobbying, CD–512, Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying. These forms may be obtained by (1) contacting MBDA as described in the **FOR FURTHER INFORMATION CONTACT** section above; (2) by downloading Standard forms at *http://www.whitehouse.gov/omb/grants* and Department of Commerce at *http://www.doc.gov/forms,* or (3) by applying on-line via the World Wide Web at MBDA's web site located at *http://www.mbda.gov.*

Failure to submit a signed, original SF–424 with the application, or separately in conjunction with submitting a proposal electronically, by the deadline will result in the application being rejected and returned to the applicant. Failure to sign and submit with the application, or separately in conjunction with submitting a proposal electronically, the forms identified above by the deadline will automatically cause an application to lose two (2) points. Failure to submit other documents or information may adversely affect an applicant's overall score. MBDA shall not accept any changes, additions, revisions or deletions to competitive applications after the closing date for receiving applications, except through a formal negotiation process.

Evaluation Criteria

Proposals will be evaluated and applicants will be selected based on the following criteria. An application must receive at least 70% of the total points available for each evaluation criterion, in order for the application to be considered for funding.

1. Applicant Capability (45 Points)

The applicant's proposal will be evaluated with respect to the applicant firm's experience and expertise in providing the work requirements listed. Specifically, the proposals will be evaluated as follows:

• MBE Community—experience in and knowledge of the minority business

sector and strategies for enhancing its growth and expansion (5 points);

• Business Consulting—experience in and knowledge of business consulting of rapid growth-potential minority firms (10 points);

• Financing—experience in and knowledge of the preparation and formulation of successful financial transactions (5 points);

• Procurements and Contracting—experience in and knowledge of the public and private sector contracting opportunities for minority businesses (5 points);

• Financing Networks—resources and professional relationships within the corporate, banking and investment community that may be beneficial to minority-owned firms (5 points);

• MBE Advocacy—experience and expertise in advocating on behalf of minority businesses, both as to specific transactions in which a minority business seeks to engage, and as to broad market advocacy for the benefit of the minority community at large (5 points); and

• Key Staff—assessment of the qualifications, experience and proposed role of staff who will operate the MBDC. In particular, an assessment will be made to determine whether proposed staff possess the expertise in utilizing information systems as contemplated under the heading entitled, "Computer Requirements" (10 points).

2. Resources (20 Points)

The applicant's proposal will be evaluated according to the following criteria:

• *Resources*—discuss those resources (not included as part of the cost-sharing arrangement) that will be used. (10 points);

• *Partners*—discuss how you plan to establish and maintain the network of five (5) Strategic Partners (5 points);

• *Equipment*—discuss how you plan to accomplish the computer hardware and software requirements (5 points).

3. Techniques and Methodologies (25 Points)

The applicant's proposal will be evaluated as follows:

• *Performance Measures*—relate each performance measure to the financial, information and market resources available in the geographic service area to the applicant and how the goals will be met. Specific attention should be placed on the Dollar Value of Transactions (as described under Definitions). This goal represents the sum of (a) Dollar Value of Financial Transactions and (b) Dollar Value of Gross Receipts. When proposing the minimum goal under Dollar Value of Transactions, the applicant is given the flexibility to address the percentage breakdown for items (a) and (b) above within a specific range—not more than 60% and not less than 40%. The applicant should consider existing market conditions and its strategy to achieve the goal. The applicant may vary the percentage breakdown for items (a) and (b) above as long as the sum meets the required goal as provided by MBDA in this Notice (as described under Geographic Service Areas). (15 points);

• *Plan of Action*—provide specific detail on how the applicant will start operations. MBDCs have thirty (30) days to become fully operational after an award is made. Fully operational means that all staff are hired, all signs are up, all items of furniture and equipment are in place and operational, all necessary forms are developed (*e.g.*, client engagement letters, other standard correspondence, etc.), and the center is ready to open its doors to the public (5 points);

• *Work Requirement Execution Plan*—The applicant will be evaluated on how effectively and efficiently all staff time will be used to achieve the work requirements (5 points).

4. Proposed Budget and Supporting Budget Narrative (10 Points)

The applicant's proposal will be evaluated on the following sub-criteria:

• Reasonableness, allowability and allocability of costs (5 points).

• Proposed cost sharing of 15% is required. The non-Federal share must be adequately documented, including how client fees will be used to meet the cost-share (5 points).

Bonus Points

Proposals with cost sharing which exceeds 15% will be awarded bonus points on the following scale: 16–20%—1 point; 21–25%—2 points; 26–30%—3 points; 31–35%—4 points; and over 36%—5 points.

• *Key points to remember:* The Federal amount is not negotiable! The full amount of Federal funds designated for the award *must* be used in its entirety in the proposal.

• All proposed costs must be accompanied by written narrative. Read the budget narrative requirements in the application kit carefully. All costs must be explained in writing.

• Indirect Costs. The indirect cost policies contained in OMB Circulars A–21, A–87 and A–122 will apply to MBDA awards for its business development programs. Indirect costs are those costs proposed for *common* or *joint* objectives and which cannot be readily identified with a particular cost objective. Therefore, if the MBDA award is to be the sole source of support for the applicant organization, all costs are direct costs and no indirect costs should be proposed.

Organizations with indirect costs that do not have an established indirect cost rate negotiated and approved by a cognizant Federal agency may still propose indirect costs. For the recipient to recover indirect costs, however, the proposed budget must include a line item for such costs. Also, the recipient must prepare and submit a cost allocation plan and indirect cost rate proposal as required by applicable OMB circulars (A–21, A–87 and A–122). The allocation plan and the rate proposal must be submitted to the Department's Office of Acquisition Management within 90 days from the effective date of the proposed award.

• Audit Costs. Audits shall be performed in accordance with audit requirements contained in Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 27, 2003. OMB Circular A–133 requires that non-profit organizations, government agencies, Indian tribes and educational institutions expending $500,000 or more in federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Applicants are reminded that other audits may be conducted by the Office of Inspector General.

• Management Fee. For-profit as well as not-for-profit organizations may negotiate their management fees, but they shall not exceed 7% of total estimated direct costs (Federal plus non-Federal) for the proposed award.

• Program Income. Many of MBDA's business development services programs allow their awardees to charge a fee for services rendered to clients. Where applicable, fees are considered program income and shall be accounted for and used to finance the non-Federal cost-share of the project. Any excess fee income shall be used to further the program purpose in accordance with the terms and conditions of the award.

Selection Procedures: Prior to the formal paneling process, each application will receive an initial screening to ensure that all required forms, signatures and documentation are present. Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. MBDA anticipates that the review panel will be made up of at least three independent

reviewers who are Federal employees who will review all applications based on the above evaluation criteria. Each reviewer will evaluate and provide a score for each proposal. The Director of MBDA makes the final recommendation to the Department of Commerce Grants Officer regarding the funding of applications, taking into account the following selection criteria:

1. The evaluations and rankings of the independent review panel;

2. The following funding priorities: (1) Identifying and working to eliminate barriers which limit the access of minority businesses to markets and capital; (2) Identifying and working to meet the special needs of minority businesses seeking to obtain large-scale contracts (in excess of $500,000) with institutional customers; and (3) Promoting the understanding and use of Electronic Commerce by the minority business community. The National Director or his designee reserves the right to conduct a site visit (subject to the availability of funding) to applicant organizations receiving at least 70% of the total points available for each evaluation criterion, in order to make a better assessment of the organization's capability to achieve the three funding priorities.

3. The availability of funding.

Unsuccessful Competition

On occasion, competitive solicitations or competitive panels may produce less than optimum results, such as competition resulting in the receipt of no applications or competition resulting in all unresponsive applications received. If the competition results in the receipt of only one application, it may or may not require additional action from MBDA depending upon the competitive history of the area, the quality of the application received, and the time and cost limits involved. In the event that any or all of these conditions arise, MBDA shall take the most time and cost-effective approach available that is in the best interest of the Government. This includes, but is not limited to: (1) Re-competition or (2) Re-Paneling or (3) Negotiation.

Universal Identifier

Applicants should be aware that they may be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the June 27, 2003 (68 FR 38402) **Federal Register** notice for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or on MBDA's website at *http://www.mbda.gov.*

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Executive Order 12866

This notice has been determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, CD 346, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0605–0001, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Dated: August 25, 2003.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. 03–22131 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Minority Business Development Agency

[Docket No. 000724218–3211–06]

Solicitation of Applications for the Native American Business Development Center (NABDC) Program

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate Native American Business Development Centers (NABDCs) under its Native American Development Center (NABDC) Program.

In order to receive consideration, applicants must comply with all information and requirements contained in this Notice. For-profit entities (including sole-proprietorships, partnerships and corporations), non-profit organizations, state and local government entities, American Indian Tribes and educational institutions are eligible to operate NABDCs.

The NABDC Program has been in operation since 1982. The NABDCs provide generalized management and technical assistance and business development services to Native American business enterprises within their designated geographic service areas.

The NABDC Program requirements further increase the impact of the NABDC projects by requiring that project operators deploy standardized business assistance services to the Native American business public directly, develop a network of strategic partnerships and provide strategic business consulting within the geographic service area. These requirements will be used to generate increased results with respect to financing and contracts awarded to Native American and minority-owed firms and thus, are a key component of this program.

DATES: The closing date for applications for each NABDC project is October 10, 2003. Anticipated time for processing of applications is one hundred twenty (120) days from the date of the publication of this notice.

MBDA anticipates that awards for the NABDC program will be made with a start date of January 1, 2004. Completed applications for the NABDC program must be (1) mailed (USPS postmark) to the address below; or (2) received by

MBDA no later than 5:00 p.m. Eastern Daylight Time. Applications postmarked later than the closing date or received after the closing date and time will not be considered.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the application. Completed application packages must be submitted to: Office of Business Development, Native American Business Development Center Program Office, Office of Executive Secretariat, HCHB, Room 5063, Minority Business Development Agency, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

If the application is hand-delivered by the applicant or his/her representative, one signed original plus two (2) copies of the application must be delivered to Room 1874, which is located at Entrance #10, 15th Street, NW., between Pennsylvania and Constitution Avenues.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain an application package, contact the MBDA National Enterprise Center (NEC) for the geographic service area in which the project will be located or visit MBDA's Minority Business Internet Portal (MBDA Portal) at *http://www.mbda.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

Applicants are encouraged to submit their proposal electronically via the Internet *and* mail or hand-deliver the original proposal with original signatures by the closing date and time stated above. Applicants may submit their applications on MBDA's website: *www.mbda.gov.* All required forms are located at this web address. However, the following paper forms must be submitted with original signatures in conjunction with any electronic submissions by the closing date and time stated above: (1) SF–424, Application for Federal Assistance; (2) the SF–424B, Assurances-Non-Construction Programs; (3) the SF-LLL (Rev. 7–97) (if applicable), Disclosure of Lobbying Activities; (4) Department of Commerce Form CD–346 (if applicable), Applicant for Funding Assistance; and (5) the CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.

Pre-Application Conference: A pre-application conference will be held for the NABDC project solicitation. Contact the MBDA Regional Office for the geographic service area in which the project will be located to receive further information. Proper identification is required for entrance into any Federal building. Notice of the pre-application conference will be available on the MBDA Portal at *http://www.mbda.gov.*

Authority: Executive Order 11625 and 15 U.S.C. 1512.

Catalog of Federal Domestic Assistance (CFDA): 11.801 Native American Business Development Center Program.

Program Description

MBDA is soliciting applications for the following geographic service areas: North Carolina Cherokee/Ashville, Minnesota Statewide, New Mexico Statewide, North/South Dakota Statewide, Oklahoma Statewide, California Statewide, Arizona Statewide, Northwest (Washington, Oregon, and Idaho).

Through this NABDC Program, MBDA is improving the traditional NABDC Program, by leveraging the full benefit of telecommunications technology, including the Internet, and a variety of online computer-based resources to dramatically increase the level of service that the Centers can provide to Native American and minority-owned firms.

This Program shall also incorporate an entrepreneurial approach to building market stability and improving quality of services delivered. This strategy expands the reach of the Centers by requiring project operators to develop and build upon strategic alliances with public and private sector partners, as a means of reaching out and serving Native American and minority-owned firms with rapid growth potential within the project's geographic service area. In addition, MBDA will establish specialized advanced programs for growth assistance to clients with the capacity to grow and expand. These programs are designed to foster growth assistance to its clients. The NABDC will also encourage collaboration and referrals of clients and non-clients that meet the requirements of these specialized programs and other MBDA sponsored networks. This will provide a comprehensive approach to serving the emerging sector of the Native American business community.

The NABDC will operate through the use of trained professional business consultants who will assist minority entrepreneurs through direct client engagements.

Entreprenuers eligible for assistance under the NABDC Program are Native Americans, Eskimos, African Americans, Puerto Ricans, Spanish-speaking Americans, Aleuts, Asian Pacific Americans, Asian Indians and Hasidic Jews. References throughout this Notice to provide assistance to Native Americans also include the eligible non-Native Americans listed in the preceding sentence. No service will be denied to any member of all eligible groups listed above.

MBDA's new strategic growth initiative is focused on serving emerging minority and Native American firms capable of impacting economic growth and employment. MBDA wants to ensure that NABDC clients are receiving a consistent level of service throughout its funded network. To that end, MBDA will require NABDC consultants to attend a series of training courses designed to achieve standardized services and quality expectations. Further information about the training is provided in this document under the heading of Work Requirements.

Background

Under the NABDC Program, MBDA has selected locations for the establishment of Centers based on the size of the population in those markets and the density of Native American-owned companies, as established by U.S. Census Bureau. While this approach to site selection continues, MBDA shall fund a consistent level of projects from prior years. The NABDC Program stands to gain from the increased use of technology, training and strategic partnering in support of its prescribed performance measures.

The NABDC Program is a mainstay of MBDA's overall business development efforts. The NABDC Program is at the core of the Agency's comprehensive strategy for addressing the needs of growing Native American firms. Under this strategy, the NABDC will be expected to provide the following four types of client services:

1. *Client Assessment*—This new activity requires the NABDC to conduct a standardized client assessment, which includes identifying the client's immediate and long-term needs, and establishes a projected growth track. MBDA shall provide a new and innovative electronic tool to support this function (see Business Needs Analyzer under the heading of Enhancing the NABDCs through Technology for more details). This activity shall be conducted three times for each client on an annual basis: one at the onset of service delivery, one prior to the end of the second quarter and one prior to the end of the funding year. This process may also include referring the client to any of MBDA's other funded projects that specialize in specific growth assistance and/or strategic partners that are capable of continuing client growth. The referral

process may occur in conjunction with NABDC direct assistance.

2. *Strategic Business Consulting*—This involves providing intensive business consulting services that can be delivered by two methods:

• *Personalized Consulting*—defined as one-on-one business consulting services utilizing an integrative systems approach to foster the growth of minority firms (see Integrative Systems Approach under the heading Client Services).

• *Group Consulting*—seminars that provide education and training to Native American entrepreneurs on important business topics. The consulting should be hands-on, practical, and streamlined in order to reflect the time constraints of the typical entrepreneur. In addition, given the proliferation of online resources from MBDA as well as others, this training should be designed to educate clients in the use of the Agency's electronic business assistance tools and in the use of electronic commerce generally to better access suppliers, customers and information.

3. *Access to Capital*—This involves assisting clients to secure the financial capital necessary to start-up, and thereafter to fuel growth and expansion of their businesses. Undercapitalization has been a major contributor to the failure of business ventures in the minority community over the years. The goal of this activity is to help the entrepreneur obtain the amount of financing appropriate to the scope of the proposed business, thereby helping to ensure the greatest likelihood of success for the client in the marketplace.

4. *Access to Markets*—This involves assisting clients to identify and access opportunities for increased sales and revenue. Activities include conducting market analysis, identifying sales leads, bid preparation assistance, creating market promotions, and assisting in the development of joint ventures and strategic alliances.

Enhancing the NABDCs Through Technology

Over the last several years, MBDA has developed a variety of new technology tools designed to leverage the benefits of information technology to assist the minority business community. The Agency uses a high-speed network strategy that links all of its funded projects into a single virtual organization. The goal of MBDA is to allow all funded projects to have access to this technology through the MBDA Portal.

The technology tools that will be available to the NABDCs include but are not limited to the following:

• *Business Needs Analyzer*—a software package designed to standardize and electronically record the Client Assessment process. This tool assists NABDC consultants to interview and benchmark the status, needs and potential growth of its clients. The program is designed and maintained by MBDA and operated by the NABDC.

• *Phoenix/Opportunity*—an electronic bid-matching system that alerts participating Native American and minority-owned firms of contract and teaming opportunities directly via e-mail. Procurement leads are transmitted to registered firms on a targeted basis according to the company's industry classification and geographic market.

• *Resource Locator*—a software application that allows MBEs to search for business resources interactively on the Internet. Resource Locator can help Native American and minority-owned firms identify trade associations representing their industries, government licensing and permit offices, management and technical assistance providers, and a host of other resources quickly and efficiently.

• *Capital Locator*—an Internet-based tool that allows NABDC consultants to inquire about, identify and locate potential financiers nearest them. This tool shall provide basic financing criteria for each identified capital resource. The tool is designed to give users the benefit of a nationwide market for identifying financing needs and products.

• *Business and Market Planning*—a software package designed to streamline and enhance the development of business plans, marketing plans and other strategic business documents.

• *Business Analyst GIS*—a software operated at an individual computer workstation that provides strategic business data through geographic-based information system. This software will be awarded to select NABDCs, based on availability of funds and competition.

These electronic tools will help streamline the process of delivering client assistance to Native American and other minority business enterprises, free up time so that the NABDC can implement MBDA's strategic goals and generate critical outcomes as described under the heading Performance Measures.

In addition, MBDA strongly encourages the NABDC to use these electronic tools daily because of the significant value they add to the NABDC and to Native American and other minority businesses. These tools are designed to reinforce the standardization of services received throughout the MBDA extended networks.

Work Requirements

The work requirements specify the duties and responsibilities of each recipient operating a NABDC.

Although it is not necessary for the applicant to have an office in the geographic service area at the time of application, one must be opened and be fully operational within thirty (30) days after receipt of the award. Fully operational means that all staff are hired, all signs are up, all items of furniture and equipment (*e.g.*, hardware, software, Internet services, phones, faxes, *etc.*) are in place, and the NABDC's doors have been fully opened to the public for service

The NABDC must be accessible to disabled persons and strategically located in the geographic service area (as defined in this Notice) to ensure that it is: (1) Close to the available public and private sector resources, and (2) within a reasonable commuting distance to the Native American business community.

The NABDC operator must provide services to eligible clients within its specified geographic service area. Each NABDC operator must contribute its efforts to help support MBDA's online business assistance network as established by Agency policies.

All NABDC consultants and its project director shall be required to attend a one-time five (5) day mandatory training session on "Implementing a System for High-Quality Service." This training will be held three (3) times during the first year of program operation; in the east, in the west, and in the middle of the country (exact locations and dates will be announced). The training sessions may be conducted in the second and third year of operation based on availability of funding. The costs of tuition, materials, conference facilities and amenities for the training program will be covered by MBDA. However, the NABDC shall budget lodging, food and travel expenditures for its attending staff. The program will be conducted approximately forty-five (45) days after receipt of the award. The training shall focus on:

• Orientation to the MBDA strategy;

• Instilling the entrepreneurial mindset;

• Standardization of client intake services; and

• Skills and information needed to provide high-quality services to emerging firms.

Successful completion of this program, which involves a competency examination, will result in certification of the NABDC staff member by MBDA. In the event that one or more NABDC staff members should fail the competency examination, the NABDC shall lose two (2) points from the assessment score during the evaluation of the project. This training may be provided a second time by the MBDA after mid-year review. The second training session will require the attendance of NABDC staff not previously trained, and/or those who failed to successfully complete the initial training program.

In addition to the initial training, the NABDC is required to have one staff member attend a one-time five (5) day advanced program, held in a Midwest location during the second quarter of 2004. This training session will teach NABDC staff how to transform high-potential minority businesses and put them on a high-growth trajectory. The purpose of this program is to ensure that at least one staff member in each NABDC will have the skills to nurture the growth of clients to become larger companies, thereby helping to fulfill MBDA's strategic priority. Successful completion of this program, which involves a competency examination, will result in certification of the NABDC staff member by MBDA.

The NABDC shall budget for one staff member's lodging, food and travel expenditures, probably to the Chicago area. The costs of tuition, materials, and registration for the advanced training program will be covered by MBDA.

The NABDC is required to perform work in four (4) basic areas. These elements are designed to increase the exposure and visibility of Native American firms and MBEs (as defined in this notice). NABDC efforts in these activities should provide quantifiable results.

1. *Market Development*—is designed to facilitate the identification of potential clients, methods to solicit potential clients and to identify, develop and leverage public and private sector resources and business opportunities for their clients:

(a) *Market Research and Development:* Systematically investigate the service area market to see what business and capital opportunities exist for client development, and search for sources of capital, sales opportunities, business buy-outs and new start possibilities. As market research is conducted, the NABDC will make optimum use of the MBDA network to ensure that the information is made available to fellow NABDC operators, and to Native American firms throughout the country.

(b) *Market Promotion:* Promote Native American business development in the local business community by obtaining support from the community for the utilization of Native American firms.

The NABDC will promote Native American firms to the public and private sectors to build market awareness of the capability, talent and capacity of its clients. The NABDC may utilize public service announcements and paid advertising. The NABDC may promote its clients locally to entities such as: Chambers of Commerce, business and trade associations, corporations and company trade fairs and meetings, state and local government agency purchasing departments, economic development and planning offices and business events.

The NABDC shall carry out a plan-of-action that will include, but is not limited to the following actions: (1) Develop an NABDC brochure for mail-out and distribution to the public; (2) Develop an NABDC program description for inclusion on the MBDA Portal and the NABDC web site; (3) Adhere to MBDA's communication plan (see Operational Quality, item (j) under this section).

The NABDC shall promote and participate in one regional NEC and one national Minority Enterprise Development (MED) Week activities. MED Week is an annual event, coordinated through MBDA that celebrates the success of minority businesses. Participation is defined as follows:

(1) NEC MED Week—This event is held annually in late summer or early fall, in or near the MBDA NEC. It involves full participation and collaboration with the designated MBDA NEC. The NABDC shall participate in MBDA's process of nominating their outstanding clients for various awards. The NABDC may be asked to coordinate/host panel discussions and support its MBDA NEC. At a minimum, travel expenditures for the NABDC's program director and (at least) one staff must be included in the proposal.

(2) National MED Week—This event is held annually in the fall in Washington, DC. It shall require at a minimum, travel expenditures for the NABDC's project director and (at least) one staff. During the 2004 National MED Week program, optional training in accounting and finance will be offered to NABDC staff. There will be no charge for tuition or materials. Successful completion of this program, which involves a competency examination, will result in certification of the staff member by MBDA.

(c) *Resource Development* requires the NABDC to identify and electronically record on the MBDA Portal likely sources of the following:

(1) *Market Opportunities—e.g.*, public (Federal, state and local government) and private (domestic and foreign) sector contracting opportunities;

(2) *Capital Resources—e.g.*, standard commercial and alternative debt (loans, lines of credit, etc.), equity (venture capital, angel, etc.), and mezzanine (near equity, subordinated debt, etc.) financing, bonds (performance and surety), and trade credit opportunities;

(3) *Business Ownership Opportunities—e.g.*, franchises, licensing arrangements, mergers and buy-outs;

(4) *Education and Training Resources—e.g.*, educational institution programs and other training resources; and,

(5) *Registration of MBEs—e.g.*, register eligible local Native American firms in MBDA's Phoenix system, which is a national electronic inventory of minority firms capable of selling their goods and services to the public and private sector. The identified and recorded resources shall be verified by MBDA prior to publishing on the MBDA Portal.

(d) *Develop and Maintain a Network of Strategic Partners and Intra-Strategic Relationships*—The work requirements for an award recipient under the NABDC Program include the development of key networks. The purpose for establishing strategic partners is to: assist the NABDC to achieve its goals for assisting Native American and minority businesses (as defined in this solicitation, see Performance Measures); synchronize outreach efforts between the NABDC and MBDA; and, foster collaboration among the MBDA funded network as established under the terms of the award. Each Strategic Partnership shall be documented by a written Memorandum of Understanding (MOU) that shall document the terms and conditions of the partnership. The terms and conditions should assist the NABDC in achieving its goals for assisting MBEs.

A minimum of five (5) strategic partners between the NABDC and key local entities selected by the recipient must be established within one hundred-twenty (120) days after receipt of the award. The NABDC is required to

maintain these partnerships throughout the life of the award. The NABDC must replace a Strategic Partner within forty-five (45) days after termination of a previously established partnership. The NABDC shall consult with its MBDA National Enterprise Center prior to completing the MOU. The MBDA shall have no relationship with or responsibility to the NABDC's Strategic Partners.

The Strategic Partners shall be public or private sector organizations located within the project's geographic service area. Strategic Partners may include:

- Native American and Minority Business Enterprise (MBE) programs operated by state, county or city governments;
- Chambers of Commerce or trade associations focused on the needs of the minority business community;
- Small Business Development Centers, or other college and university entrepreneurial development programs;
- Community Development Corporations (CDCs);
- Banks and financial institutions; and
- Faith-based organizations having economic development components, whose activities are *not* used for sectarian purposes.

Also, the NABDC shall establish Intra-Strategic Relationships with other MBDA funded programs in support of their goals for assisting Native American businesses as defined under the terms of the award. The NABDC is required to meet with other MBDA-funded programs in the NEC (in person or by phone conference) at quarterly meetings conducted by MBDA staff. The NABDC is encouraged to refer and/or accept clients from these Relationships. The Intra-Strategic Partnerships shall *not* be counted towards the NABDC goal of obtaining Strategic Partnerships as described above.

(e) *Facilitate Matches* which identify and refer eligible Native American and minority business enterprises with specific viable businesses, market and/or capital opportunities.

This function contributes to a NABDC's financing and/or procurement performance goals, and is the *only* NABDC market development function outside of the standard client business assistance in which a portion of a NABDC's time can be directly associated to *individual* clients and resource customers. This client specific time, no matter how small, is considered client assistance and may be subject to client fees. Under this function, the NABDC shall match qualified Native American entrepreneurs with identified opportunities and resources by: (1) Accessing vendor information systems, including the Phoenix/Opportunity system; (2) Providing follow-up communication to Phoenix-registered clients that receive Opportunity matches within the NABDC geographic area; (3) Maintaining a constant awareness of the Native American firms that operate within the geographic service area and their capabilities; (4) Maintaining direct contact with purchasing executives, government procurement officials, banking officials and others so that representatives of the NABDC are in a position to learn about available business opportunities, both formally and informally; (5) Engaging in relationship brokering between purchasing organizations and individual clients capable of fulfilling their requirements; and, (6) Assisting in direct negotiations between purchasing organizations and individual clients, in appropriate cases, in order to help resolve issues, serve as an advocate for the client firm, or otherwise assist in bringing the transaction to closure.

2. *Client Services*—Provides direct client assistance to Native American and minority business enterprises on the basis of individualized professional engagements. Under these duties, the NABDC shall assist clients and individuals, which have written agreements to become clients, in establishing, improving and/or successfully maintaining their businesses. *All new clients* shall be entered into the Performance system and registered in the Phoenix system. The NABDC is *required* to enter clients and service hours into the Performance system within seventy-two (72) hours from the time of service. Clients assisted more than once during the funding period may only be counted once in that funding period.

The NABDC shall operate a systems-integrated approach (as described below) to assist in Native American and minority business growth and development.

A systems-integrated approach—which is defined as a customer-based service model supported by the following functions:

- Strategy—*e.g.*, plans for achieving sustainable competitive advantage and creating customer value
- Processes—*e.g.*, efficient, effective ways of manufacturing products or delivering services
- Architecture—*e.g.*, organizational and value chain (outsourcing) structure to implement the strategy and key processes
- Resources—*e.g.*, the acquisition and management of financial, human, and technical assets
- Systems—*e.g.*, mechanisms for control and communication, including management information systems (MIS)
- Empowerment—*e.g.*, delegation in a way that encourages staff to pursue strategic initiatives and continuous improvement.

The NABDC shall be responsible for providing business consulting to MBEs based on these principles. Business consulting services are (as defined under this section) provided by the NABDC to eligible Native American, minority-owned firms and individuals (as referenced in Executive Orders 11625 and 12432) seeking assistance from the NABDC, including 8(a) certified and graduate firms. These client services are segments to the systems-integrated approach. They are designed to assist client firms to bridge operational and strategic gaps. They cannot provide long-term business viability without aligning all aspects of the business and its environment. Client services include, but are not limited to, the following types of assistance:

(a) *Client Assessment*—Provides the NABDC client with a fundamental business evaluation. This process is designed to standardize services and to facilitate the client referral process among the MBDA funded network. It requires an interview to be conducted between client and NABDC consultant. This service is designed to provide—

- Background and contact information on the client;
- Client business analysis with respect to its core competency, organizational structure, market and industry placement, production of products/delivery of services, marketing plan, resources and financial viability;
- Analysis and benchmarking of the client;
- Development of an intervention plan utilizing a systems-integrated approach (as defined under Client Services) & client report; and,
- Identification of resources and referrals.

(b) *Functional Assistance*—Provides the NABDC client with detailed business consulting services including but not limited to:

(1) *Marketing, e.g.*, market research, promotion, advertising and sales, sales forecasting, market feasibility studies, pricing, product and customer service, brochure design (excludes mass printing);

(2) *Financial Management, e.g.*, capital budgeting, general accounting, break-even analysis, cost accounting, financial planning and analysis

budgeting, tax planning, business consulting (excludes bookkeeping, tax preparation, and audits);

(3) *Financial Assistance, e.g.*, identification, preparation and packaging of standard commercial and alternative debt (loans, lines of credit, etc.), equity (venture capital, angel, etc.), and mezzanine (near equity, subordinated debt, etc.) financing and trade credit opportunities;

(4) *Procurement Assistance, e.g.*, preparation and planning for the identification of private and public-sector contracting opportunities;

(5) *Operations & Quality Management, e.g.*,

- Manufacturing—plant location and site selection, plant management, materials handling and distribution, total quality management, metrication for world market, and business consulting;
- Construction—estimating, bid preparation, bonding, take-offs, and business consulting;
- International Trade Assistance—exporting, importing, letters of credit, bank draft, dealerships, agencies, distributorship, exporting trading companies, joint ventures, business consulting, and freight forwarding and handling;
- Specialized Certification—ISO 9000 knowledge of program and standards, how to implement standards, how to report and properly apply for ISO 9000 Quality Systems certification;
- Total Quality Management—process engineering, inventory control, purchasing, continuous improvement programs;
- Technology & Systems—automation design, development and integration of technology to support infrastructure, knowledge management, data mining, performance based reporting;

(6) *Organization & Administration, e.g.*, human resource management, job evaluation and rating system, employee stock option programs, training, business consulting; and,

(7) *General Management, e.g.*, organization and structure, formulating corporate policy, feasibility studies, reports and controls, public relations, staff scheduling, legal services (excludes litigation), business planning, organizational development, bid preparation, and business consulting.

The NABDC shall not perform or engage in the day-to-day operations or make decisions for its clients.

Group training sessions are considered a form of business development services that can be provided to clients. This function may be subject to client fees and directly contributes to an NABDC's performance goals.

3. *Operational Quality*—Maintains the efficiency and effectiveness of its overall operations as well as the quality of its client services. These duties are the means by which the NABDC manages its overall operations as well as the quality of its client services. The function directly contributes to the NABDC's overall qualitative evaluation and rating as well as the successful completion of all work requirements. Under this function, the NABDC shall: (a) Execute signed work plan agreements and engagement letters with clients; (b) Formally describe the methodology that will be used in achieving the work plan objectives for each client; (c) Input progress/results to the performance database within seventy-two (72) hours from the time of service; (d) Establish procedures for collecting and accounting for all fees charged to clients; (e) Maintain records/files for all work charged to the program and clients; (f) Obtain *written* acceptance and verification (with client signatures) of services provided to its clients and any financings/contracts obtained. For services reported, documentation must be in the NABDC's client files within thirty (30) days after the end of every quarter in which a client receives services; (g) Comply with all reporting requirements provided upon award; (h) Cooperate with MBDA in maintaining content for the Phoenix/Opportunity system, Resource Locator, and other online tools located at *http://www.mbda.gov;* and, (i) Promote and utilize the services and resources of other MBDA programs, sponsored efforts and/or voluntary activities. (j) The NABDC shall adhere to MBDA's trademark and licensing requirements for all forms of communication including but not limited to signage, stationary and other NABDC-related publications. Such requirements shall be provided at the time of award. These requirements include but are not limited to specific size, location, and font of the MBDA logo.

- Signage—Signs should be highly visible to the NABDC clients and general public. They should be prominently displayed on entrances or doors.
- Printed Materials—These items shall include the name of MBDA on all stationery, letterhead, brochures, etc.
- Telephonic Communication—Identify the NABDC immediately upon answering the telephone. If the recipient also requires that its organization's name be given, it should be provided only *after* the NABDC has been verbally identified to a caller. Refer to MBDA in all advocacy and outreach efforts such as speaking engagements, news conferences, etc.

The NABDC is *not* authorized to use either the Department of Commerce's (DOC) official seal or the MBDA logo in any of its publications, documents or materials without specific written approval from the Department of Commerce.

The term *Native American Business Development Center (NABDC)* is a trademark of the Federal Government, and the Government reserves exclusive rights in the term. Permission to use the term is granted to the award recipient for the sole purpose of representing the activities of the award recipient in the fulfillment of the terms of the financial assistance award. The Minority Business Development Agency reserves the right to control the quality of the use of the term by the award recipient. Whenever possible, for example in promotional literature and stationery, use the ™ designation as in *Native American Business Development Center*™.

Computer Requirements

MBDA requires that all award recipients meet certain requirements related to the acquisition, installation, configuration, maintenance and security of information technology (IT) assets in order to ensure seamless and productive interface between and among all grant recipients, Native American and other minority-owned businesses, the MBDA Federal IT system and the public. These required assets and their configuration are hereinafter referred to as the "enterprise." The basic components of the enterprise are the desktop workstations, the server, local area network (LAN) components and a connection to the Internet.

At a minimum, each grantee shall provide one (1) desktop computer for the exclusive use of each employee delivering minority business assistance to the public under an award from MBDA. All desktop computers shall be inter-connected with a Server computer using an Ethernet protocol enabling communication with all workstations on the network. The Server shall have a constant, high-speed Internet connection, active during all business hours, preferably through a DSL or cable modem connection. The recipient shall ensure that each of his/her employees, to include management, administrative personnel, contractors, full-time, part-time, and non-paid (volunteer) staff have a unique electronic mail (email) address available to the public. Each grantee shall design, develop and maintain, in accordance with the

computer requirements, a presence on the Internet's World Wide Web and shall maintain appropriate computer and network security precautions during all periods of funding by MBDA. All IT requirements, as described herein, shall be met within thirty (30) calendar days after the award.

1. *Network Design:* At all locations where services are delivered to the eligible public as defined by Executive Order 11625, the recipient shall operate a "Client-Server" configured local area network (LAN) enabling each staff person delivering services to the eligible public exclusive access to a personal computer workstation during all business hours. MBDA shall, from time to time, designate certain configurations of the enterprise hardware and software to meet interface requirements.

Currently, MBDA recommends servers using an operating system that is *fully compatible* with Microsoft Windows 2000 with a service pack three (3) or greater. Domain Controller (DC) servers or any server providing principal service to the desktops shall contain 18 or more gigabytes (GB) of hard drive space using two or more 9 GB+ disks configured appropriately to ensure data retention should one disk fail. At least one (1) Pentium IV central processing unit (CPU), or a CPU ensuring similar speed, shall be used in the DC server or any other server providing principal service to the desktops. Web servers, mail servers and/or servers maintained by a third party such as an Internet Service Provider (ISP) shall meet the minimum server specifications as stated herein. A "trusted" relationship, as appropriate, shall be established and maintained between the MBDA DC server and those operated by, or operated for, the recipient to ensure access by MBDA system administration personnel during normal business hours. (In a network that consists of two or more domains, each domain acts as a separate network with its own accounts database. Even in the most rigidly stratified organizations, some users in one domain will need to use some or all of the resources in another domain. The usual solution to confirming user access levels among domains is what's called a trust relationship.) From time to time, MBDA will require access to servers and desktop workstations after business hours and on holidays and weekends. For this purpose, the recipient shall ensure appropriate communications links are active and appropriate personnel on station, upon 24-hour notice from MBDA.

2. *Desktop Workstations:* All desktop systems shall not be more than two (2) calendar years old at time of award and shall contain a Pentium IV central processing unit (CPU), or a CPU ensuring similar speed, operating at speeds not less than 2+ Gigahertz (GHz). Each desktop system shall contain a hard drive with a storage capacity of at least twenty (20) GB and 512 Megabytes of RAM. All desktop systems shall have installed an operating system fully compatible with Microsoft Windows 2000 with MS Office 2000 Professional (SP1) or higher, Microsoft Internet Explorer 6.x as well as some form of regularly updated antivirus protection software. Additionally, it is suggested that at least one workstation have installed both a full page scanner and feed, along with software fully compatible with Adobe Acrobat software for the production of electronic document submissions.

Since workstations may be linked to a live, two-way conference connection with potential clients, at least 50% of all employee workstations shall be fully operational with a qualified staff person positioned at the keyboard during all business hours to include lunch and break periods.

3. *Maintenance and Security:* A network map ("as-built") reflecting adherence to the computer and networking requirements set forth herein shall be maintained by the recipient for review by MBDA at any time. Each recipient shall designate and train one administrative person competent in the operation of an operations system fully compatible with Windows 2000 network and local area network (LAN) technology as described herein. If a firewall, proxy server or similar security component is used, MBDA's server shall be "trusted" for full access to all files relevant for network and administrative operations. From time to time, MBDA may require certain software be loaded on servers and desktops. In any given year, the cost of this additional software may be $200.00 per workstation and $500.00 per server, such additional cost may be borne by MBDA. Every employee of the NABDC shall be assigned a unique username and password to access the system. Every employee shall be required to sign a written computer security agreement. (A suggested format for the computer security agreement will be provided at the time of award.) Every manager, employee, and contractor and any other person given access to the computer system shall sign the security agreement and an original copy of the signed agreement shall be kept in the NABDC's files. A photocopy of the agreement shall be sent by fax to MBDA at: (202) 482–2693 no later than thirty (30) days after receipt of the award. All subsequent new hires and associations requiring access to the NABDC or MBDA systems shall read, understand and sign the security agreement prior to issuance of a password. No employee shall have access to the MBDA system without a signed security agreement on file at MBDA.

4. *Web site:* Each recipient shall create and maintain a public web site using a unique address (*e.g., http://www.center-name.com*). The first page (Index page) of the web site shall clearly identify the recipient as a Native American Business Development Center funded by the U.S. Department of Commerce's Minority Business Development Agency. The Index page of the web site shall load on software fully compatible with Windows Internet Explorer 6.x browser software using a normal home computer with 56Kb/s analog phone line connection in less than ten (10) seconds. The web site shall contain the names of all managers and employees, the business and mailing address of the Center, business phone and fax numbers and email addresses of the NABDC and employees, a statement referencing the services available at the NABDC, the hours under which the NABDC operates and a link to the MBDA homepage (*http://www.mbda.gov*). For purpose of electronically directing clients to the appropriate NABDC staff, the web site shall also contain a short biographical statement for each employee of the NABDC including management, contractors, part-time, full-time, and non-paid (volunteer) personnel, providing services directly to the eligible public under an award from MBDA. This biographical statement shall contain: the full name of the employee, and a brief description of the expertise of the employee to include academic degrees, certifications and any other pertinent information with respect to that employee's qualifications to deliver minority business assistance services to eligible members of the public.

No third party advertising of commercial goods and services shall be permitted on the site. All links from the site to other than federal, state or local government agencies and non-profit educational institutions must be requested, in advance and in writing, through the Chief Information Officer, MBDA Office of Information Technology Services to the Grants Office for written approval. Such approval shall not be unreasonably withheld but approval is subject to withdrawal if MBDA determines the linked site unsuitable. No employee of

the NABDC, nor any other person, shall use the NABDC web site for any purpose other than that approved under the terms of the agreement between the recipient and MBDA. Every page of the web site shall comply with Federal standards of the American With Disabilities Act, Section 508, and be reviewed by the recipient for accuracy, current, and appropriateness every three (3) months. Appropriate privacy notices and handicapped accessibility will be predominately featured. From time to time, MBDA shall audit the recipient's web site and recommend changes in accordance with the guidelines set forth herein.

5. *Time for Compliance:* Within thirty (30) days after receipt of the award, the recipient shall report via email to the Chief Information Officer, MBDA Office of Information Technology Services and the MBDA Office of Business Development that he/she has complied with all technical requirements as specified herein. Within thirty (30) days after receipt of the award, the recipient shall report the name, contact telephone number and email address of the Project Director, Network or System Administrator. As appropriate, the recipient shall also provide the telephone number and email address for the Technical Contact at the Internet Service Provider (ISP) providing Internet access for the grantee, the IP number of the Domain Name Server (DNS) and/or Domain Control (DC) server, and any other technical information as specified in the Technology Requirements.

6. *Performance System:* All required performance reporting to MBDA shall be conducted via the Internet using the Performance system to be found at a secure web site (*http://www.mbda.gov*). Within thirty (30) days after the receipt of award, each NABDC business consultant and/or anyone providing business assistance to the public under the award shall have satisfactorily completed the Performance System Training Course (PSTC). This course is available on-line from the Performance web site (*www.mbda.gov*). Only those persons giving direct assistance to the eligible public shall be given passwords and access to enter Performance data into the system. Only trained staff shall enter data into the Performance system. There shall be no "sharing" of passwords on the Performance system. MBDA encourages input of information on a daily basis.

7. *Data Integrity:* The recipient shall take the necessary steps to ensure that all data entered into MBDA systems, and systems operated by the recipient in support of the award, or by any employee of the recipient is accurate and timely.

Performance Measures

In accordance with 15 CFR Parts 14 and 24, applicants selected will be responsible for the effective management of all functions and activities supported by the financial assistance award. Award recipients will be required to use program performance measures in a performance report due thirty (30) days after the end of the second quarter and to provide an end-of-year assessment of the accomplishments of the project using these measures. The end-of-year or final performance report is due ninety (90) days after the end of the funding year. Once the project is awarded, the evaluation criteria, along with the assigned weight value, to be used for measuring the MBDC project performance on an ongoing basis are:

1. The dollar value of transactions (65);
2. Number of jobs created (10);
3. Number of new clients (5);
4. Administrative Management & Operational Quality (20);
   - Client satisfaction (5);
   - Management assessment (5);
   - Market promotion (1);
   - Resource entries (5);
   - Establish strategic partners (2);
   - Facilitate matches (2).

The *minimum* performance goals required for the above listed performance measures for each of the solicited geographic service areas are outlined under the Funding Availability sub-heading for each geographic service area. The *minimum* performance goals are listed on an annual basis by MBDA and will be broken out into quarterly increments by the applicant and submitted as part of their proposal.

The NABDC is required to utilize, in a good faith effort, all of its resources to achieve the stated goals. Should the NABDC exceed its performance requirements prior to the end of a funding year, the NABDC is expected to *maintain operations at full strength and continue to provide services and reach greater performance outcomes.* MBDA views the NABDC as a designated cooperative partner and an envoy to the greater Native American business community. Thus, high achievement in one performance measure cannot excuse failure to reach other goals as stated in this Notice.

Definitions

1. *Dollar Value of Transactions*—The *dollar value of transactions* are defined as:

(a) *Dollar Value of Completed Financial Transactions* which represent the total principal value of approved loans, equity financings, bonds, or other binding financial agreements secured by clients of the project, with the assistance of NABDC staff. For purposes of this performance element, eligible financial transactions are those which have a specific dollar value, and which expand its capital base/operations, or produce some other direct commercial benefit for client firms. In order to be deemed complete, a financial transaction must be documented by an executed and binding agreement between the NABDC client (firm) and a party (financier) capable of performing its obligations under the terms of the agreement.

(b) *Dollar Value of Gross Receipts* which represent the total dollar value of successfully awarded contracts and/or the total principal value of executed sales/delivery contracts of services/products/intellectual rights and/or increase in sales and/or completed Mergers and Acquisitions or other binding financial considerations secured by clients of the project, with the assistance of project staff. For purposes of this performance element, Dollar Value of Gross Receipts are those transactions which have a specific dollar value, and which produce some other direct commercial benefit for client firms. In order to be deemed complete, successfully awarded contracts or mergers and acquisitions must be documented by an executed and binding agreement between the client firm and a party capable of performing its obligations under the terms of the agreement. Increase in sales must be documented through an initial, a midyear and a year-end client assessment (*see* Client Assessment under the heading Client Services) supported by client submitted financial documentation.

MBDA recognizes that the financial obligations evidenced by these transactions may be long-term, and require performance over an extended period. Consequently it is not necessary that the funds or other financial value specified under the agreements have actually changed hands for the project to receive credit under this performance element, so long as the agreement of the parties is documented and binding.

2. *Number of Jobs Created*—This is defined as the number of new full time and/or part time employment opportunities reported on the client's payroll during the funding year. Persons on paid sick leave, paid holiday and paid vacations are included as employees as are salaried officers and executives of corporations. However, proprietors and partners of unincorporated businesses are not

considered employees under this definition.

3. *Number of New Clients*—This represents the actual number of new clients in a funding year. New clients are defined as those Native American and other minority business enterprises that complete a written engagement with the NABDC for specific services and registered with the NABDC.

4. *Administrative Management & Operational Quality*—Operational quality refers to the quality and effectiveness of the project operator's delivery of client services and project scope, as evidenced by the following performance elements relating to the day-to-day management of the project:

a. *Client Satisfaction*—An MBDA consultation process with clients of the NABDC used to verify and rate the qualitative level of services rendered by the NABDC.

b. *Management Assessment*—The management assessment reflects MBDA's own evaluation of the overall management of the NABDC project, based on the Agency's internal review of the project's operations. The management assessment reflects such areas as the development of written engagement letters and work plans, proper staffing, adherence to scheduled work hours, recordkeeping, successful completion of Agency training, and any other areas which MBDA may deem to be relevant in determining the overall quality of the project's operations.

c. *Market Promotion*—This represents the total number of successfully completed activities (per reporting period) as proposed in the applicant's response to this notice.

d. *Resource Entries*—This is defined as the total quantity of accurate and timely records entered into MBDA's Portal tools (*e.g.*, Phoenix, Opportunity, Capital Locator, Resource Locator, *etc.*) in support of its efforts to disseminate information electronically.

e. *Establish Strategic Partners*—This represents formalized memoranda of understanding between the NABDC and its strategic partners.

f. *Facilitated Matches*—This represents the number of minority firms directed by the NABDC to strategic partners, the MBDA funded network, and other business resources that result in a financial transaction (as described above under Dollar Value of Transactions).

Extraordinary Performance—Support of MBDA's Strategic Initiative

An element of MBDA's overall mission is to advocate on behalf of all Native American and minority firms. In part, MBDA recognizes successful efforts of NABDC operators to establish new opportunities for all Native American and minority firms. *Extraordinary performance* by a NABDC or the NABDC operator may result in bonus points for the NABDC. The NABDC may receive up to five (5) performance bonus points (one (1) point for each fully completed initiative as defined below) in any funding period for the successful execution of the following four items:

(a) The NABDC and/or the NABDC operator may develop and maintain a maximum of five (5) *strategic initiatives designed to benefit the Native American and minority business community* within the NABDC geographic area.

(b) The strategic initiative(s) should be framed to expand market and financing opportunities for Native American and minority business enterprises in areas not previously established by MBDA or the MBDA funded network.

(c) A desired and measurable economic impact that benefits Native American and minority business enterprises must be established and accounted for at the end of the NABDC funding year. Economic impact can be formulated by identifying the dollar value of transactions (financings, contracts/procurements) and/or other means of economic opportunities.

(d) The strategic initiative(s) should be documented in writing and should include

—the name(s) and contact information of the collaborating entities;

—responsibilities and duties of the collaborating entities;

—the resources which each party agrees to commit to the relationship; and

—the goals which the initiative is to accomplish.

Performance Standards

The year-to-date performance of an NABDC for Year One of the award will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above*	100** and above	Outstanding
At least 90	90–99	Commendable
At least 80	80–89	Good
At least 75	75–79	Satisfactory
Below 75	Below 75	Unsatisfactory

*Not to exceed 110%
**Not to exceed 110 Points

The year-to-date performance of an NABDC for Year Two of the award will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above*	100** and above	Outstanding
At least 90	90–99	Commendable
At least 80	80–89	Good
At least 77	77–79	Satisfactory
Below 77.	Below 77	Unsatisfactory

*Not to exceed 110%
**Not to exceed 110 Points

The year-to-date performance of an NABDC for Year Three of the award will be based on the following rating system:

Minimum required percent of goals needed for each rating category	Minimum required points needed for each rating category	Rating categories
100% and above*	100** and above	Outstanding
At least 90	90–99	Commendable
At least 85	85–89	Good
At least 80	80–84	Satisfactory
Below 80	Below 80	Unsatisfactory

*Not to exceed 110%
**Not to exceed 110 Points

Funding Availability

MBDA anticipates that a total of approximately $1.6 million will be available in FY 2004 for Federal assistance under this program. Applicants are hereby given notice that funds have not yet been appropriated for this program. In no event will MBDA or the Department of Commerce be responsible for proposal preparation costs if this program fails to receive funding or is canceled because of other agency priorities.

Financial assistance awards under this program may range from $155,000 to $287,500 in Federal funding per year based upon minority population, the size of the market and its need for MBDA resources. Applicants must submit project plans and budgets for each of the three years. Projects will be funded for no more than one year at a time. Funding for subsequent years will be at the sole discretion of the Department of Commerce and will depend on satisfactory performance by the recipient, the availability of funds to support the continuation of the project and Agency priorities.

Geographic Service Areas

An operator must provide services to eligible clients within its specified geographic service area. MBDA has defined the service area for each award below. To determine its geographic service areas, MBDA uses States, counties, Metropolitan Areas (MA), which comprise metropolitan statistical areas (MSA), consplidated metropolitan statistical areas (CMSA), and primary metropolitan statistical areas (PMSA) as defined by the OMB Committee on MAs (*http://www.whitehouse.gov/omb/bulletins*), and other demographic boundaries as specified herein. Services to eligible clients outside of an operator's specified service area may be requested, on a case-by-case basis, through the appropriate MBDA Regional Director and granted by the Grants Officer.

1. NABDC Application: North Carolina/Cherokee/Ashville

Geographic Service Area: Cherokee/Ashville, North Carolina MA.

Award Number: 04–10–04005–01.

The recipient is required to maintain the primary NABDC on the Cherokee reservation and a satellite office in the Ashville, North Carolina MA.

Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004, to December 31, 2006, is estimated at $188,000. The total Federal amount is $188,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the MBDC are:

Dollar Value of Transactions: $13,976,471.

Number of Jobs Created: 64.

Number of New Clients: 146.

Resource Entries: 285.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Atlanta National Enterprise Center at (404) 730–3300 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Robert Henderson, Regional Director.

2. NABDC Application: Minnesota Statewide

Geographic Service Area: State of Minnesota.

Award Number: 05–10–04004–01

The recipient is required to maintain its NABDC in Cass Lake, Minnesota.

Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004, to December 31, 2006, is estimated at $160,000. The total Federal amount is $160,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $12,000,000.

Number of Jobs Created: 55.

Number of New Clients: 125.

Resource Entries: 243.

Facilitated Matches: 6.

Pre-Application Conference: For the exact date, time and place, contact the Chicago National Enterprise Center at (312) 353–0182 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Carlos Guzman, Acting Regional Director.

3. NABDC Application: New Mexico Statewide

Geographic Service Area: State of New Mexico.

Award Number: 06–10–04005–01.

The recipient is required to maintain its NABDC in Albuquerque, New Mexico. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004, to December 31, 2006, is estimated at $188,000. The total Federal amount is $188,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $13,976,471.

Number of Jobs Created: 64.

Number of New Clients: 146.

Resource Entries: 285.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

4. NABDC Application: Oklahoma Statewide

Geographic Service Area: State of Oklahoma.

Award Number: 06–10–04007–01.

The recipient is required to maintain its NABDC in Tulsa, Oklahoma.

Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $235,000. The total Federal amount is $235,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $20,117,647.

Number of Jobs Created: 93.

Number of New Clients: 210.

Resource Entries: 356.

Facilitated Matches: 11.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

5. NABDC Application: North/South Dakota Statewide

Geographic Service Area: States of North and South Dakota.

Award Number: 06–10–04006–01.

The recipient is required to maintain its NABDC in Bismarck, North Dakota. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $155,000. The total Federal amount is $155,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $12,000,000.

Number of Jobs Created: 55.

Number of New Clients: 125.

Resource Entries: 235.

Facilitated Matches: 6.

Pre-Application Conference: For the exact date, time and place, contact the Dallas National Enterprise Center at (214) 767–8001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact John F. Iglehart, Regional Director.

6. NABDC Application: Arizona Statewide

Geographic Service Area: State of Arizona.

Award Number: 09–10–04007–01.

The recipient is required to maintain its NABDC in Mesa, Arizona. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $188,000. The total Federal amount is $180,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $13,411,765.

Number of Jobs Created: 62.

Number of New Clients: 140.

Resource Entries: 273.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

7. MBDC Application: California Statewide

Geographic Service Area: State of California.

Award Number: 09–10–04008–01.

The recipient is required to maintain its NABDC in greater Los Angeles, California. Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $287,500. The total Federal amount is $287,500.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $21,176,471.

Number of Jobs Created: 97.

Number of New Clients: 221.

Resource Entries: 436.

Facilitated Matches: 11.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

8. NABDC Application: Northwest

Geographic Service Area: States of Washington, Oregon and Idaho.

Award Number: 09–10–04007–01.

Contingent upon the availability of Federal funds, the cost of performance for each of three 12-month funding periods from January 1, 2004 to December 31, 2006, is estimated at $190,000. The total Federal amount is $190,000.

The minimum cost share of 15% is not required.

The minimum performance goals for the NABDC are:

Dollar Value of Transactions: $14,117,647.

Number of Jobs Created: 65.

Number of New Clients: 147.

Resource Entries: 288.

Facilitated Matches: 7.

Pre-Application Conference: For the exact date, time and place, contact the San Francisco National Enterprise Center at (415) 744–3001 or visit MBDA's website at *http://www.mbda.gov.*

For Further Information and a copy of the application kit, contact Linda Marmolejo, Deputy Regional Director.

Matching Requirements

It is not required that an applicant for an award to operate an NABDC propose a cost-share contribution. Cost sharing is the portion of the project cost not borne by the Federal Government. However, an applicant may propose a cost-share contribution in any of the following four means or a combination thereof: (1) cash contributions; (2) non-cash applicant contributions; (3) third party in-kind contributions, and (4) client fees.

The NABDC may charge client fees for services rendered. The fees may range from $10 to $60 per hour based on the gross receipts of the client's business ranging from $0 to $5 million and above. The NABDC must comply with the following policy restrictions when charging client service fees: (1) client fees charged for one-on-one assistance must be based on a rate of $100 per hour; (2) the NABDC must set fee rates based on the following chart:

Gross receipts of client	Base rate for services rendered	Percent of cost borne by client	Client fee per hour
$0–99,999	$100.00	10	$10.00
100,000–299,999	100.00	20	20.00

Gross receipts of client	Base rate for services rendered	Percent of cost borne by client	Client fee per hour
300,000–999,999	100.00	30	30.00
1 Million–2,999,999	100.00	40	40.00
3 Million–4,999,999	100.00	50	50.00
5 Million and Above	100.00	60	60.00

(3) if the NABDC chooses to contribute a cost-share amount, it must contribute cash for uncollected fees that were included as part of the cost sharing contribution committed for this award; (4) if the NABDC chooses to contribute a cost-share amount, client fees applied directly to the award's cost sharing requirement must be used in furtherance of the program objectives; and (5) fees must be charged to all eligible clients, regardless of minority group identification.

Type of Funding Instrument

Financial assistance awards in the form of cooperative agreements will be used to fund this program. MBDA's substantial involvement with recipients will include performing the following duties to further the NABDC's objectives:

Post-Award Conferences

MBDA shall conduct post-award conferences for all new NABDC awards to ensure that each NABDC has a clear understanding of the program and its components. The conference will: (1) Provide an MBDA Directory for Business Resources; (2) orient NABDC program officers; (3) explain program reporting requirements and procedures; (4) identify available resources that can enhance the capabilities of the NABDC; and (5) provide detailed information about MBDA's business and other information systems.

Training

MBDA shall conduct various qualitative training sessions for the NABDC staff. The training sessions are designed (in part) to improve communications, understandings, client service delivery, performance and reporting. The following training sessions are designated for the 2004 funding year:

(1) A systems integrated approach to client services, including client assessment and functional assistance (initial 5-day training), and subsequent advanced training (5-day follow-up training), and

(2) MBDA Portal tools including (but not limited to) Performance, Resource Locator, Capital Locator, Business Plan, Phoenix and Opportunity System. We anticipate that the training will be provided at MBDA's annual National conference.

Networking, Promotion and Information Exchange

MBDA shall provide the following: (1) Access to business information systems, which support the work of the NABDC as described in the Enhancing the NABDCs Through Technology section. This information will be provided by MBDA's Office of Information Technology. The specific information systems and access to them will be provided at the time of the award for a particular NABDC. (2) Sponsor one national and at least one NEC conference. (3) Expand the Phoenix data bank of Native American and minority-owned firms by requiring other MBDA-funded programs to provide additional entries. (4) Promote the exchange of business opportunity information within the MBDA funded system using the Capital Locator, Resource Locator, Phoenix and Opportunity system on the MBDA Portal located at *http://www.mbda.gov*. (5) Work closely with the NABDC to establish a system in which procurement and contract opportunities can be shared with the network of NABDCs. This system will include opportunities identified throughout the MBDA network using the Phoenix and Opportunity system located at *http://www.mbda.gov*. (6) Help promote special events to be scheduled at the local community, state and national levels in celebration of MED Week, which occurs annually, and (7) Identify Federal, state and local governments, and private sector market opportunities to the NABDCs using the Capital Locator, Resource Locator, Phoenix and Opportunity system on the MBDA Portal located at *http://www.mbda.gov*.

Project Monitoring

MBDA will systematically monitor the performance of the NABDC. This monitoring includes regular review of data input to the performance system, assessment of the end of the second quarter progress report, an on-site review of the center's client files to verify NABDC performance, reported assistance and interviews with clients assisted. In consultation with clients of the individual NABDC, MBDA will assess the Center's effectiveness in providing business development services to their respective minority business communities. MBDA will then provide a report of findings and recommendations for improvement as a result of evaluations and monitoring visits. MBDA will also assess the NABDC's performance for the first and third quarters of performance data (as recorded in the Performance System) and provide a written report of findings. MBDA will approve qualifications of key NABDC staff and respond in a timely manner to correspondence requesting MBDA action.

Eligibility Criteria

For-profit entities (including sole-proprietorships, partnerships, and corporations); non-profit organizations, state and local government entities, American Indian Tribes, and educational institutions are eligible to operate NABDCs.

Award Period

The total award period is three (3) years. Funding will be provided annually at the discretion of MBDA and DoC, and will depend upon satisfactory performance by the award recipient, availability of funds to continue the project, and Agency priorities. Project proposals accepted for funding will not compete for funding in subsequent budget periods within the approved award period. Publication of this Notice does not obligate MBDA or DoC to award any specific cooperative agreement or to obligate all or any part of available funds.

Indirect Costs

The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Proposal Format

The structure of the proposal should contain the following headings and information, in the following order:

I. Table of Contents
II. Program Narrative
a. Applicant Capability—Include a resume setting forth the qualifications of the project director as part of the application, along with a copy of a college transcript, as appropriate. Position descriptions and qualification standards for all staff should be included as part of the application. Applicants must provide a copy of their Articles of Incorporation, by-laws and IRS 501(c)(3) non-profit letter or other evidence of non-profit status.
b. Resources—Include original commitment letters from those resources listed and indicate their willingness to work with the applicant. These resources can include such items as facilities, equipment, voluntary staff time and space, and financial resources. One to two letters of support (with contact information) from prior assisted larger minority firms *and* community organizations should be included from those resources willing to work with the applicant.
c. Techniques and Methodologies—The applicant's proposal shall include a specific plan-of-action detailing *how* the work requirements will be met and how those techniques will be implemented. MBDA requires the applicant to provide a quarterly breakdown of the goals.
d. Costs
III. Forms

Note: Pages of the proposal should be numbered consecutively.

Application Forms and Package

One (1) original and two (2) signed copies of the application must consist of: Standard Forms 424, Application for Federal Assistance; 424A, Budget Information-Non-Construction Programs; and 424B, Assurances-Non-Construction Programs, SF-LLL (Rev. 7–97); Department of Commerce forms, CD–436, Applicant for Funding Assistance, CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility matters: Drug-Free Workplace Requirements and Lobbying, CD–512, Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying. These forms may be obtained by (1) contacting MBDA as described in the **FOR FURTHER INFORMATION CONTACT** section above; (2) by downloading Standard forms at *http://www.whitehouse.gov/omb/grants* and Department of Commerce at *http://www.doc.gov/forms,* or (3) by applying on-line via the World Wide Web at MBDA's web site located at *http://www.mbda.gov.*

Failure to submit a signed, original SF–424 with the application, or separately in conjunction with submitting a proposal electronically, by the deadline will result in the application being rejected and returned to the applicant. Failure to sign and submit with the application, or separately in conjunction with submitting a proposal electronically, the forms identified above by the deadline will automatically cause an application to lose two (2) points. Failure to submit other documents or information may adversely affect an applicant's overall score. MBDA shall not accept any changes, additions, revisions or deletions to competitive applications after the closing date for receiving applications, except through a formal negotiation process.

Evaluation Criteria

Proposals will be evaluated and applicants will be selected based on the following criteria. An application must receive at least 70% of the total points available for each evaluation criterion, in order for the application to be considered for funding.

1. Applicant Capability (45 points)

The applicant's proposal will be evaluated with respect to the applicant firm's experience and expertise in providing the work requirements listed. Specifically, the proposals will be evaluated as follows:

- Native American Community—experience in and knowledge of the minority business sector and strategies for enhancing its growth and expansion (5 points);
- Business Consulting—experience in and knowledge of business consulting of Native American and minority firms (10 points);
- Financing—experience in and knowledge of the preparation and formulation of successful financial transactions (5 points);
- Procurements and Contracting—experience in and knowledge of the public and private sector contracting opportunities for Native American and minority businesses (5 points);
- Financing Networks—resources and professional relationships within the corporate, banking and investment community that may be beneficial to Native American and minority-owned firms (5 points);
- Native American Advocacy—experience and expertise in advocating on behalf of minority businesses, both as to specific transactions in which a Native American business seeks to engage, and as to broad market advocacy for the benefit of the Native American community at large (5 points); and
- Key Staff—assessment of the qualifications, experience and proposed role of staff who will operate the NABDC. In particular, an assessment will be made to determine whether proposed staff possess the expertise in utilizing information systems as contemplated under the heading entitled, "Computer Requirements" (10 points).

2. Resources (20 points)

The applicant's proposal will be evaluated according to the following criteria:

- Resources—discuss those resources (not included as part of the cost-sharing arrangement) that will be used. (10 points);
- Partners—discuss how you plan to establish and maintain the network of five (5) Strategic Partners (5 points);
- Equipment—discuss how you plan to accomplish the computer hardware and software requirements (5 points).

3. Techniques and Methodologies (25 points)

The applicant's proposal will be evaluated as follows:

- Performance Measures—each performance measure should be related to the financial and market resources available and other information, as appropriate, in the geographic service area to the applicant and how the goals will be met. Specific attention should be placed on the Dollar Value of Transactions (as described under Definitions). This goal represents the sum of (a) Dollar Value of Financial Transactions and (b) Dollar Value for Gross Receipts. When proposing the minimum goal under Dollar Value of Transactions, the applicant is given the flexibility to address the percentage breakdown for items (a) and (b) within a specific range—not more than 60% and not less than 40%. The applicant should consider existing market conditions and its strategy to achieve the goal. The applicant may vary the percentage breakdown for items (a) and (b) as long as the sum meets the required goal as provided by MBDA in this Notice (as described under Geographic Service Areas). (15 points);
- Plan of Action—provide specific detail on how the applicant will start operations. NABDCs have thirty (30) days to become fully operational after an award is made. Fully operational means that all staff are hired, all signs are up, all items of furniture and equipment are in place and operational, all necessary forms are developed (*e.g.*,

client engagement letters, other standard correspondence, etc.), and the center is ready to open its doors to the public (5 points);

• Work Requirement Execution Plan—The applicant will be evaluated on how effectively and efficiently all staff time will be used to achieve the work requirements (5 points).

4. Proposed Budget and Supporting Budget Narrative (10 points).

The applicant's proposal will be evaluated on the following criteria:

• Reasonableness, allowability and allocability of costs (10 points).

Bonus Points

Proposed cost sharing, although not a requirement for NABDC application will be awarded bonus points on the following scale: more than 0–5%—1 point; 6–10%—2 points; 11–15%—3 points; 16–20%—4 points; and over 20%—5 points.

Key Points to Remember

• The Federal amount is not negotiable! The full amount of Federal funds designated for the award *must* be used in its entirety in the proposal.

• All proposed costs must be accompanied by written narrative. Read the budget narrative requirements in the application kit carefully. All costs must be explained in writing.

• Indirect Costs. The indirect cost policies contained in OMB Circulars A–21, A–87 and A–122 will apply to MBDA awards for its business development programs. Indirect costs are those costs proposed for *common* or *joint* objectives and which cannot be readily identified with a particular cost objective. Therefore, if the MBDA award is to be the sole source of support for the applicant organization, all costs are direct costs and no indirect costs should be proposed.

Organizations with indirect costs that do not have an established indirect cost rate negotiated and approved by a cognizant Federal agency may still propose indirect costs. For the recipient to recover indirect costs, however, the proposed budget must include a line item for such costs. Also, the recipient must prepare and submit a cost allocation plan and indirect cost rate proposal as required by applicable OMB circulars (A–21, A–87 and A–122). The allocation plan and the rate proposal must be submitted to the Department's Office of Acquisition Management within 90 days from the effective date of the proposed award.

• Audit Costs. Audits shall be performed in accordance with audit requirements contained in Office of Management and Budget Circular A–133, Audits of States, Local Governments, and Non-Profit Organizations, revised June 27, 2003. OMB Circular A–133 requires that non-profit organizations, government agencies, Indian tribes and educational institutions expending $500,000 or more in federal funds during a one-year period conduct a single audit in accordance with guidelines outlined in the circular. Applicants are reminded that other audits may be conducted by the Office of Inspector General.

• Management Fee. For-profit as well as not-for-profit organizations may negotiate their management fees, but they shall not exceed 7% of *total* estimated direct costs (Federal plus non-Federal) for the proposed award.

• Program Income. Many of MBDA's business development services programs allow their awardees to charge a fee for services rendered to clients. Where applicable, fees are considered program income and shall be accounted for and may be used to finance the non-Federal cost-share of the project. Any excess fee income shall be used to further the program purpose in accordance with the terms and conditions of the award.

Selection Procedures

Prior to the formal paneling process, each application will receive an initial screening to ensure that all required forms, signatures and documentation are present. Each application will receive an independent, objective review by a panel qualified to evaluate the applications submitted. MBDA anticipates that the review panel will be made up of at least three independent reviewers who are Federal employees who will review all applications based on the above evaluation criteria. Each reviewer will evaluate and provide a score for each proposal. The Director of MBDA makes the final recommendation to the Department of Commerce Grants Officer regarding the funding of applications, taking into account the following selection criteria:

1. The evaluations and rankings of the independent review panel;

2. The following funding priorities: (1) Identifying and working to eliminate barriers which limit the access of minority businesses to markets and capital; (2) Identifying and working to meet the special needs of minority businesses seeking to obtain large-scale contracts (in excess of $500,000) with institutional customers; and (3) Promoting the understanding and use of Electronic Commerce by the minority business community. The National Director or his designee reserves the right to conduct a site visit (subject to the availability of funding) to applicant organizations receiving at least 70% of the total points available for each evaluation criterion, in order to make a better assessment of the organization's capability to achieve the three funding priorities.

3. The availability of funding.

Unsuccessful Competition

On occasion, competitive solicitations or competitive panels may produce less than optimum results, such as competition resulting in the receipt of no applications or competition resulting in all unresponsive applications received. If the competition results in the receipt of only one application, it may or may not require additional action from MBDA depending upon the competitive history of the area, the quality of the application received, and the time and cost limits involved. In the event that any or all of these conditions arise, MBDA shall take the most time and cost-effective approach available that is in the best interest of the Government. This includes, but is not limited to: (1) Re-competition or (2) Re-Paneling or (3) Negotiation.

Universal Identifier

Applicants should be aware that they may be required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number during the application process. See the June 27, 2003 (68 FR 38402) **Federal Register** notice for additional information. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711 or on MBDA's website at *http://www.mbda.gov.*

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements

The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice of October 1, 2001 (66 FR 49917), as amended by the **Federal Register** notice published on October 30, 2002 (67 FR 66109), are applicable to this solicitation.

Executive Order 12866

This notice was determined to be not significant for purposes of E.O. 12866.

Administrative Procedure Act/ Regulatory Flexibility Act

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

Paperwork Reduction Act

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 424, 424A, 424B, CD–346, and SF–LLL have been approved by OMB under the respective control numbers 0348–0043, 0348–0044, 0348–0040, 0605–0001, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

Dated: August 25, 2003.

Ronald N. Langston,

National Director, Minority Business Development Agency.

[FR Doc. 03–22132 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082103B]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that the Oregon Department of Fish and Wildlife (ODFW) has submitted a Fisheries Management and Evaluation Plan (FMEP) pursuant to the protective regulations promulgated for Oregon Coast coho salmon under the Endangered Species Act (ESA). The FMEP proposes a fishery for coho salmon in Siltcoos and Tahkenitch Lakes, located along the Oregon Coast. This document serves to notify the public of the availability of the FMEP for review and comment before a final approval or disapproval is made by NMFS.

DATES: Written comments on the draft FMEPs must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific daylight time on September 29, 2003.

ADDRESSES: Written comments and requests for copies of the draft FMEP should be addressed to Lance Kruzic, NMFS, 2900 NW Stewart Parkway, Roseburg, OR 97470 or faxed to (541) 957–3386. The document is also available on the internet at http://www.nwr.noaa.gov/. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Lance Kruzic, Roseburg, OR, at phone number (541) 957–3381, or e-mail: *lance.kruzic@noaa.gov*.

SUPPLEMENTARY INFORMATION: This notice is relevant to the Oregon Coast coho salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU).

Background

ODFW has submitted to NMFS an FMEP for a recreational fishery for coho salmon returning to Siltcoos and Tahkenitch Lakes, located south of Florence, Oregon, in years when returns of coho salmon are high and expected to exceed specified spawning escapement guidelines. The objectives of the FMEP are to provide some fishing opportunity in years when coho salmon returns are high and in a manner that does not affect the viability of the local coho population and the Oregon Coast ESU as a whole. The FMEP specifies the monitoring and evaluation tasks for the proposed fishery.

Authority

Under section 4 of the ESA, the Secretary of Commerce is required to adopt such regulations as he deems necessary and advisable for the conservation of species listed as threatened. The ESA salmon and steelhead 4(d) rule specifies categories of activities that contribute to the conservation of listed salmonids and sets out the criteria for such activities. The rule further provides that the prohibitions of paragraph (a) of the rule will not apply to activities associated with fishery harvest provided that those fisheries are managed in accordance with an FMEP that has been approved by NMFS and implemented in accordance with a letter of concurrence from NMFS.

As specified in § 223.203 (b)(4) of the ESA 4(d) Rule, NMFS may approve an FMEP if it ¶meets criteria set forth in § 223.203 (b)(4)(i)(A) through (I). Prior to final approval of an FMEP, NMFS must publish notification announcing its availability for public review and comment.

Dated: August 26, 2003.

Susan Pultz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–22184 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082503I]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Social Sciences Advisory Committee in September, 2003 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on Monday, September 15, 2003 at 10 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn Express, 110 Middle Street, Fairhaven, MA 02719; telephone: (508) 997–1281.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Social Science Advisory Committee will review the analyses of economic and social impacts, including community impacts in the Draft Environmental Impact Statement for Amendment 2 to the Monkfish Fishery Management Plan. The Committee will also discuss progress on developing a clearinghouse for social and economic data and a workshop to further the development of social and economic analyses of fishery management actions.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22186 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082503G]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Red Crab Oversight Committee and Advisory Panel in September, 2003. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Wednesday, September 17, 2003 at 7 p.m.

ADDRESSES: The meeting will be held at Holiday Inn Express 110 Middle Street, Fairhaven, MA 02719; telephone: (508) 997–1281.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review recommendations from the Red Crab Plan Development Team related to annual specifications for the Red Crab Fishery Management Plan for fishing year 2004 (March 1, 2004–February 28, 2005).

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22188 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082503E]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Stock Assessment Review (STAR) Panel for cabezon and lingcod will hold a work session which is open to the public.

DATES: The cabezon and lingcod STAR Panel will meet beginning at 1 p.m., September 15, 2003. The meeting will continue on September 16, 2003 beginning at 8 a.m. through September 19, 2003. The meetings will end at 5 p.m. each day, or as necessary to complete business.

ADDRESSES: The cabezon and lingcod STAR Panel meeting will be held at the National Marine Fisheries Service, Northwest Fisheries Science Center, Auditorium, 2725 Montlake Blvd. E, Seattle, WA 98112; telephone: 206–860–3200.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, Groundfish Staff Officer; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review draft stock assessment documents and any other pertinent information, work with the Stock Assessment Team to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons.

Entry to the Northwest Fisheries Science Center requires identification with photograph (such as a student ID, state drivers license, etc.) A security guard will review the identification and issue a Visitor's Badge valid only for the date of the meeting. Since parking is at a premium at the Northwest Fisheries Science Center, car pooling and mass transit are encouraged.

Although non-emergency issues not contained in STAR Panel agendas may come before the STAR Panel for discussion, those issues may not be the subject of formal Panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least 5 days prior to the meeting date.

Dated: August 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22190 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082503F]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Snapper Grouper Committee, Highly Migratory Species Committee, Information and Education Committee and a joint meeting of its Executive Committee and Finance Committee. In addition, a public comment period will be held regarding Snapper Grouper Amendment 13A addressing the Oculina Experimental Closed Area. There will also be a full Council Session.

DATES: The meetings will be held Tuesday, September 16, 2003 through Thursday, September 18, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at Pawleys Plantation, 70 Tanglewood Drive, Pawleys Island, SC, 29585; telephone: (1–800) 267–9959 or (843) 237–6100.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free at 866/SAFMC–10; fax: 843–769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. *Snapper Grouper Committee Meeting: September 16, 2003, 8:30 a.m.- 5 p.m. and September 17 from 8:30 a.m. until 10:30 a.m.*

The Snapper Grouper Committee will receive a report on the Southeastern Data, Assessment and Review (SEDAR) process for yellowtail snapper and goliath grouper, and an update on the overall SEDAR process. The Committee will review the final version of Amendment 13A to the Snapper Grouper Fishery Management Plan (FMP) and develop recommendations for Council. In addition, the Committee will review a draft of Amendment 13B to the Snapper Grouper FMP and develop recommendations for staff. The Committee will also receive a report on the status of Amendment 14 to the Snapper Grouper FMP addressing the use of marine protected areas as a management tool.

2. *Highly Migratory Species Committee and SSC Meeting: September 17, 2003, 10:30 a.m. until 12 noon.*

The Highly Migratory Species Committee will receive a presentation from NOAA Fisheries on the proposed rule for Atlantic sharks and Amendment 1 to the Highly Migratory FMP and provide comment.

3. Information & Education Committee: September 17, 2003, 1:30 p.m.- 3:30 p.m.

The Committee will review and develop recommendations regarding options for the Council's web site hosting and design. The Committee will also review and comment on a draft publication about the Council and discuss outreach/education plans for the Oculina Experimental Closed Area and Habitat Area of Particular Concern off the coast of Florida.

4. *Joint Executive Committee and Finance Committee Meeting: September 17, 2003, 3:30 p.m. until 5:30 p.m.*

The Executive Committee will meet jointly with the Finance Committee and receive an update on the Calendar Year (CY) 2003 budget and the status of the Fiscal Year 2004 Congressional budget. The Committees will develop recommendations for CY 2004 Fishery Management Plan, Plan Amendment and Framework timelines as well as approve the CY 2004 budget.

5. *Council Session: September 18, 2003, 8:30 a.m. 12 noon and September 19, 2003 from 8:30 a.m. until 12 noon.*

September 18, 2003

From 8:30 a.m. - 8:45 a.m., the Council will have a Call to Order, introductions and roll call, adoption of the agenda, and approval of the June 2003 meeting minutes.

From 8:45 a.m. - 9:15 a.m., the Council will conduct an election for Chairman and Vice-Chairman.

From 9:15 a.m. - 10:15 a.m., the Council will hear a report from the Snapper Grouper Committee. Beginning at 9:15 a.m., a public comment period will be held for Snapper Grouper Amendment 13A. Following public comment, the Council will approve Amendment 13A for submission to the Secretary of Commerce.

From 10:15 a.m. - 10:45 a.m., the Council will hear a report from the Highly Migratory Species Committee and provide comment of the proposed rule for Atlantic sharks and Amendment 1 to the Highly Migratory Species FMP.

From 10:45 a.m. - 12 noon, the Council will receive a briefing on litigation and other legal issues affecting the Council (CLOSED SESSION).

September 19, 2003

From 8:30 a.m. - 9 a.m., the Council will receive a report from the Information and Education Committee.

From 9 a.m. - 9:30 a.m., the Council will receive a joint report from the Executive and Finance Committees and take action to approve the 2004 Activities Schedule and timelines. The Council will also approve the 2004 Administrative Budget.

From 9:30 a.m. - 10 a.m., the Council will receive an update on the status of the Federal Fisheries Managers Conference.

From 10 a.m. - 11 a.m., the Council will receive NOAA Fisheries status reports on the Sargassum FMP final rule, the Dolphin Wahoo FMP and implementation of the Atlantic Coast Cooperative Statistics Program (ACCSP) in the Southeast Region. NOAA Fisheries will also give status reports on landings for Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish mackerel, snowy grouper, golden tilefish, wreckfish, greater amberjack and south Atlantic octocorals.

From 11 a.m. - 12 noon, the Council will hear agency and liaison reports, discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 11, 2003.

Dated: August 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22187 Filed 8–28–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session at the Pentagon on September 18, 2003 from 1000 to 2100 and September 19, 2003 from 0900 to 1500.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters on defense policy. the Board will hold classified discussions on national security matters.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (15 U.S.C. App. II (1982)), it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: August 22, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22118 Filed 8–28–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

United States Marine Corps; Privacy Act of 1974; System of Records

AGENCY: United States Marine Corps, DoD.

ACTION: Notice to delete a records system.

SUMMARY: The U.S. Marine Corps is deleting one system of records notice from its inventory of records systems subject to the Privacy Act of 1974, as amended (5 U.S.C. 552a).

DATES: The deletion will be effective on September 29, 2003 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Headquarters, U.S. Marine Corps, FOIA/PA Section (CMC–ARSE), 2 Navy Annex, Room 1005, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. Tracy D. Ross at (703) 614–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps' records system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The U.S. Marine Corps proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The records system being amended is set forth below, as amended, published in its entirety.

Dated: August 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

MFD00002

SYSTEM NAME:

Primary Management Efforts (PRIME)/ Operations Subsystem (February 22, 1993, 58 FR 10630).

Reason: Records being maintained under this system of records notice are now covered by an umbrella system for 'all organizational elements of the Department of the Navy' to include the U.S. Marine Corps. The system of records notice is identified as N05000–2, entitled 'Administrative Personnel Management System'.

[FR Doc. 03–22117 Filed 8–28–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Amend Systems of Records.

SUMMARY: The Department of the Air Force is amending eight systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

Six of the amendments being made are to alert the users of these systems of records of the additional requirements of the Health Insurance Portability and Accountability Act (HIPAA) of 1996, as implemented by DoD 6025.18–R, DoD Health Information Privacy Regulation. Language being added under the "Routine Use" category is as follows:

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

DATES: This proposed action will be effective without further notice on September 29, 2003 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 22, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F031 AF SP A

SYSTEM NAME:

Correction and Rehabilitation Records (June 11, 1997, 62 FR 31793).

Changes

SYSTEM IDENTIFIER:

Delete entry and replace with 'F031 AF SF A'.

* * * * *

CATEGORIES OF RECORDS:

Replace "prisoner" with "inmate" throughout notice. In the second paragraph, delete 'from escaped'.

* * * * *

PURPOSE(S):

Delete Historical records in microfilm are used as a research data base' from entry.

* * * * *

SAFEGUARDS:

Add to entry 'Those in computer storage devices are protected by computer system software.'

RETENTION AND DISPOSAL:

Add at end "63132–2001. Some records pertaining to clemency/parole actions are retained for five years after final action."

* * * * *

F031 AF SF A

SYSTEM NAME:

Correction and Rehabilitation Records.

SYSTEM LOCATION:

Headquarters, Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–5226, and elements; the Air Force Clemency and Parole Board, Office of the Secretary of the Air Force Personnel Council, 1535 Command Drive, EE–Wing, Third Floor, Andrews Air Force Base MD 20762–7002.

Chief of Security Forces at local installation where individual is assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices. Records may also be at the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals placed in confinement at an installation or federal prison as the result of military criminal conviction.

Individuals placed in confinement or rehabilitation and assigned to Headquarters, Air Force Security Forces Center (AFSFC) or any element of operating location.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inmate personnel records consisting of confinement orders, release orders, personal history records, medical examiners report, request and receipt for health and comfort supplies, recommendations for disciplinary action, inspection records, inmate classification summaries and records pertaining to any clemency/parole actions.

Corrections officers records including personal deposit fund records and related documents, disciplinary books, correction facility blotters and visitor registers; requests for interview and evaluation reports; inmate records consisting of daily strength records and reports of escaped and returned inmates.

Psychological or rehabilitation test records.

Clemency and Parole Board decisional documents and related records reflecting the action of the Board, the Board's recommendations to the Secretary and the rationale for actions taken or proposed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 31–205, Air Force Corrections System, and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a life file on the individual as an inmate on an Air Force installation, or as an Air Force inmate serving a sentence in a federal prison.

The records are used to establish background for either disciplinary or good conduct action as well as general administration uses of the records concerning health and welfare of the individual, as well as clemency and parole actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may also be disclosed Federal, state, and local law enforcement and investigation agencies for investigation and possible criminal prosecution, civil court actions or regulatory orders, confinement/correctional agencies for use in the administration of correctional programs, including custody classification, employment, training and educational assignments, treatment programs, clemency, restoration to duty or parole actions, verification of offender's criminal records, employment records, and social histories.

The DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in notebooks/binders, in card files, on computer and computer output products, and as photographs.

RETRIEVABILITY:

Retrieved by any or a combination of name, Social Security Number and fingerprint classification, or by date of board hearing.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and controlled by visitor registers. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Depending on the type of record within the system, it is either destroyed after release of the inmate, maintained for one year after the release of the individual, or retained in the files at the facility in which the individual was confined for three months, after which time the record is forwarded to Headquarters, Air Force Security Forces Agency, Corrections Division, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–5226. Within two years after receipt, records are sent to the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001. Some records pertaining to clemency/parole actions are retained for five years after final action.

SYSTEM MANAGER(S) AND ADDRESS:

Director, AF Corrections, Headquarters, Air Force Security Forces Center, Corrections Division, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–5226.

Executive Secretary, Air Force Clemency and Parole Board, Office of the Secretary of the Air Force Personnel Council, 1535 Command Drive, EE–Wing, Third Floor, Andrews Air Force Base, MD 20762–7002.

Chief of Security Forces at local installation where individual is assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains

information on themselves should address written inquiries to the Director, AF Corrections, Corrections Division, Headquarters, Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–5226; Executive Secretary, Air Force Clemency and Parole Boulevard, Office of the Secretary of the Air Force Personnel Council, 1535 Command Drive, EE–Wing, Third Floor, Andrews Air Force Base, MD 20762–7002; or Chief of Security Forces at local installation where individual was last assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written requests to the Director, AF Corrections, Corrections Division, Headquarters, Air Force Security Forces Center, 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–5226; Executive Secretary, Air Force Clemency and Parole Boulevard, Office of the Secretary of the Air Force Personnel Council, 1535 Command Drive, EE–Wing, Third Floor, Andrews Air Force Base, MD 20762–7002; or Chief of Security Forces at local installation where individual was last assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Financial and medical institutions, police and investigative officers, state or local government, witnesses or source documents.

Installation level confinement facilities, courts-martial, and court-martial reviews, and submissions received directly from, or in behalf of the inmate.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

F031 AF SP E

SYSTEM NAME:

Security Forces Management Information System (SFMIS) (August 21, 2001, 66 FR 43843).

Changes

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SYSTEM MANAGER(S) AND ADDRESS:

Replace '1720 Patrick Street, Lackland Air Force Base, TX 78236–5226' with '1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–0119.'

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F031 AF SP E

SYSTEM NAME:

Security Forces Management Information System (SFMIS).

SYSTEM LOCATION:

DISA MegaCenter, Building 857, 401 E. Drive, Maxwell Air Force Base—Gunter Annex, AL 36114–3001; security forces units at all levels can access the system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals involved in incidents and accidents occurring on Air Force (AF) installations, or reportable incidents occurring off base, including all active duty military personnel, reserve and guard; DoD civilians and other civilians; and retirees, who may be victims, witnesses, complainants, offenders, suspects, drivers; individuals who have had tickets issued on base, or had their license suspended or revoked; those persons barred from the installation; and persons possessing a licensed firearm.

CATEGORIES OF RECORDS IN THE SYSTEM:

Data on individuals (victims, witnesses, complainants, offenders, suspects, and drivers) involved in incidents may include, but is not limited to, name; Social Security Number; date of birth; place of birth; home address and phone; alias; race; ethnicity; sex; marital status; identifying marks (tattoos, scars, etc.); height; weight; eye and hair color; date, location, nature and details of the incident/offense to include whether alcohol, drugs and/or weapons were involved; driver's license information; tickets issued; vehicle information; suspension/revocation or barment records; whether bias against any particular group was involved; if offense involved sexual harassment; actions taken by military commanders (*e.g.*, administrative and/or non-judicial measures, to include sanctions imposed); referral actions; court-martial results and punishments imposed; confinement information, to include location of correctional facility, gang/cult affiliation if applicable; and release/parole/clemency eligibility dates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; DoD Directive 7730.47, Defense Incident Based Reporting System (DIBRS); Air Force Instruction 31–203, Security Forces Management Information System; 18 U.S.C. 922 note, Brady Handgun Violence Prevention Act; 28 U.S.C. 534 note, Uniform Federal Crime Reporting Act; 42 U.S.C. 10601 et seq., Victims Rights and Restitution Act of 1990; and E.O. 9397 (SSN).

PURPOSE(S):

Serves as a repository of criminal and specified other non-criminal incidents used to satisfy statutory and regulatory reporting requirements, specifically to provide crime statistics required by the Department of Justice (DoJ) under the Uniform Federal Crime Reporting Act; to provide personal information required by the DoJ under the Brady Handgun Violence Prevention Act; and statistical information required by DoD under the Victim's Rights and Restitution Act; and to enhance AF's capability to analyze trends and to respond to executive, legislative, and oversight requests for statistical crime data relating to criminal and other high-interest incidents.

Security Forces commanders will use criminal/statistical data for local law enforcement purposes. The system generates reports for use by the Air Force Security Forces at all levels of command, provides security forces commanders the ability to view criminal statistics and apply whatever actions are necessary for enforcement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Justice for criminal reporting purposes and as

required by the Brady Handgun Violence Prevention Act.

To courts and state, local, and foreign law enforcement agencies for valid judicial proceedings.

To victims and witnesses to comply with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990.

The DoD "Blanket Routine Uses" published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computers and computer output products; some paper reports are generated.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties, and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in computer storage devices which are protected by computer system software.

RETENTION AND DISPOSAL:

Disposition pending. No records will be destroyed until authorization is granted from the National Archives and Records Administration. All records will be retained until approval is granted.

SYSTEM MANAGER(S) AND ADDRESS:

Reports and Analysis Program Manager, Police Services Branch, Headquarters Air Force Security Forces Center (HQ AFSFC/SFOP), 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–0119.

NOTIFICATION PROCEDURE:

Individuals seeking to access records about themselves contained in the system should address written requests to their servicing Security Forces Administrative Reports Section (SFAR) or visit the system manager at HQ Air Force Security Forces Center, Police Services Branch (HQ AFSFC/SFOP), 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–0119.

Individuals must identify themselves by full name, rank, home address, Social Security Number and present a military ID, valid driver's license, or some other form of identification when appearing in person.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in the system should address written requests to their servicing Security Forces Administrative Reports Section (SFAR) or visit the system manager at HQ Air Force Security Forces Center, Police Services Branch (HQ AFSFC/SFOP), 1517 Billy Mitchell Boulevard, Lackland Air Force Base, TX 78236–0119.

Individuals must identify themselves by full name, rank, home address, and Social Security Number.

CONTESTING RECORDS PROCEDURES:

The Air Force rules for accessing records, for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individuals; DoD and civilian law enforcement authorities, security flight personnel, desk sergeants, operations personnel, staff judge advocates, courts-martial, correctional institutions and facilities, and administrative reports branch personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency, which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this exemption has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

F044 AFPC A

SYSTEM NAME:

Medical Assignment Limitation Record System (June 11, 1997, 62 FR 31793).

Changes

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Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add a new paragraph to the end of the entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

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F044 AFPC A

SYSTEM NAME:

Medical Assignment Limitation Record System.

SYSTEM LOCATION:

Headquarters Air Force Personnel Center, Medical Service Officer Utilization Division, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force members whose cases have been presented to a Medical Evaluation Board and were returned to duty by Medical Evaluation Board or Physical Evaluation Board action and have been assigned an Assignment limitation Code "C".

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical Evaluation Board, Report of Medical Examination, Report of Medical History, Narrative Summary, Clinical Record Consultation Sheet, Electrocardiographic Record, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Air Force Instruction 36–2902, Physical Evaluation for Retention, Retirement and Separation; and Air Force Instruction 36–2110.

PURPOSE(S):

To determine if previous action has been taken by the system manager, and what the previous disposition was.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may

place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files for two years or no longer needed for reference, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters Air Force Personnel Center, Chief, Medical Service Officer Utilization Division, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Headquarters Air Force Personnel Center, Chief, Medical Service Officer Utilization Division, Randolph Air Force Base, TX 78150–4703.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to Headquarters Air Force Personnel Center, Chief, Medical Service Officer Utilization Division, Randolph Air Force Base, TX 78150–4703.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG D

SYSTEM NAME:

Automated Medical/Dental Record System (June 11, 1997, 62 FR 31793).

Changes

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CATEGORIES OF RECORDS IN THE SYSTEM:

Delete from entry "Subsystems of the Automated Medical/Dental Data System include: Air Force Clinical Laboratory Automation System (AFCLAS); Automated Cardiac Catheterization Laboratory System (ACCLS); Computer Assisted Practice of Cardiology (CAPOC) System; DATA STAT Pharmacy System (formerly PROHECA); Occupational Health and Safety System; Patient Appointment and Scheduling System (PAS); Tri-Laboratory System (TRILAB); Tri-Pharmacy System; Tri-Radiology System (TRIRAD); Health Evaluation and Risk Tabulation (HEART)."

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry "**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice."

* * * * *

STORAGE:

Delete entry and replace with "Data maintained primarily on magnetic or optical media."

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RECORD SOURCE CATEGORIES:

After "when the patient is a child," add "deemed incompetent".

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F044 AF SG D

SYSTEM NAME:

Automated Medical/Dental Record System.

SYSTEM LOCATION:

At Air Force medical centers, hospitals and clinics, major command headquarters and field operating agencies. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who is hospitalized in, is dead on arrival at, or has received medical or dental care at an Air Force medical treatment facility.

Individuals who have received medical care at other DOD or civilian medical facilities but whose records are maintained at or processed by Air Force medical facilities.

Any military active duty member who is on an excused-from-duty status, on quarters, or subsistence elsewhere, on convalescent leave, meets Medical Evaluation Board (MEB), or a Physical Evaluation Board (PEB), on an outpatient basis or who is hospitalized in a non-federal hospital and for whom an Air Force medical facility has assumed administrative responsibility.

Any individual who has undergone medical or dental examinations at any Air Force medical facility (or whose records are maintained or processed by the Air Force), *e.g.*, pre-employment examinations and food handlers examinations, or who has otherwise had medical or dental tests performed at any Air Force medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files consist of automated records of treatment received and medical/dental tests performed on an inpatient/outpatient basis in military medical treatment facilities and of military members treated in civilian facilities. These records may include radiographic images and reports, Electrocardiographic tracings and reports, laboratory test results and reports, blood gas analysis reports, occupational health records, dental radiographic reports and records, automated cardiac catheterization data and reports, physical examination reports, patient administration and scheduling reports, pharmacy prescriptions and reports, food service reports, hearing conservation tests, cardiovascular fitness examinations and reports, reports of medical waivers granted for flight duty, and other inpatient and outpatient data and reports. They may contain information relating to medical/dental examinations and treatments, inoculations, appointment and scheduling information, and other medical and/or dental information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and Dental Care, and E.O. 9397 (SSN).

PURPOSE(S):

Used as a record of patient's medical/dental health, diagnosis, and treatment and disposition while authorized care.

Used to help determine individual's qualification for duty, for security clearances and for assignments.

Used by an individual or his legal representative for further medical care, legal purposes, or other uses such as insurance requests or compensation and other health care providers for further care of the patient, research teaching, and legal purposes.

Used by medical treatment facility staff for evaluation of staff performance in the care rendered; for preparation of statistical reports; for reporting communicable diseases and other conditions required by law to federal and state agencies.

Used by Army, Navy, Department of Veterans Affairs, Public Health Service or civilian hospitals for continued medical care of the patient.

Used by insurance companies (only with the patient's written consent for release, except as authorized in 10 U.S.C. 1095) for arbitrating insurance claims.

Used by other federal agencies such as Department of Veterans Affairs and Department of Labor (workmen's compensation) for adjudication of claims; for reporting communicable diseases or other conditions required by law.

Used to provide input to other DoD medical records systems including the Medical Record System, the Dental Personnel Actions, and other DoD agencies (*e.g.*, Army, Navy) when such agency is normally the primary source or repository of medical information about the individual.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from the inpatient or outpatient medical records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Pub. L. 99–272, for the purpose of collecting reasonable inpatient/outpatient hospital care costs incurred on behalf of retirees or dependents. In addition, records may be disclosed to:

(1) Officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force.

(2) Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies.

(3) Private organizations (including educational institutions) and individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

(4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

(5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs.

(6) Authorized surveying bodies for professional certification and accreditation.

(7) The individual's organization or government agency as necessary when required by Federal statute, Executive Order, or by treaty.

(8) Public Health Service or civilian hospitals for continued medical care of the patient.

(9) Other federal agencies such as Department of Labor (workman's compensation) for adjudication of claims; for reporting communicable diseases of other conditions required by law.

The DoD 'Blanket Routine Uses' published at the beginning of the agency's compilation of record system notices apply to this system, except as stipulated in 'Note' below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2, and 5 U.S.C. 552. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD "Blanket Routine Uses" do not apply to these records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Data maintained primarily on magnetic or optical media.

RETRIEVABILITY:

Retrieved by Social Security Number. May also be retrieved by sponsor's Social Security Number in combination with the family member prefix; by name, or by inpatient register number, laboratory accession number, or pharmacy prescription number.

RETENTION AND DISPOSAL:

Computer files are retained for variable lengths of time depending upon the type of information involved and the size and mission of the medical treatment facility. Retention time may vary from one day to ten years. Records are disposed of by erasure of the magnetic computer records and destruction of the computer related worksheets on paper, film, or other media by tearing, shredding, pulping, burning or other destructive methods. Identical medical/dental information may be retained for longer periods of time in other medical records systems (such as inpatient or outpatient charts), including the Medical Record System (F168 AF SG C) and Dental Personnel Actions (SG 162 SG A).

SYSTEM MANAGER(S) AND ADDRESS:

Major command and field operating agencies; commanders of United States Air Force medical treatment facilities. Official mailing addresses are published as an appendix to the Air Force's compilation of systems notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should

address inquires to the appropriate system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address requests to the appropriate system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

Requests should include complete name (including maiden name), sponsor's name, Social Security Number or Service Number of person through whom eligibility is established, category of record desired, year in which treatment was provided, whether treatment was inpatient or outpatient. If the individual establishes eligibility through a sponsor other than self, the request should include the relationship to the sponsor, *e.g.*, spouse, second oldest child, parent, *etc.*

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained directly from the individual whenever practical and possible; from other individuals when necessary, e.g., when the patient is a child deemed incompetent or is in coma; from other medical institutions; from automated systems interfaces; from medical records, and from patient interactions with physicians and other health care providers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG E

SYSTEM NAME:

Medical Record System (June 11, 1997, 62 FR 31793).

Changes

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CATEGORY OF RECORDS IN THE SYSTEM:

Replace first sentence with 'Inpatient, outpatient, and ambulatory procedure visit (APV) records of care received in Air Force medical facilities.'

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Replace first sentence in second paragraph to read 'Information from the inpatient, outpatient, or APV medical records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Public Law 99–272, for the purpose of collecting reasonable inpatient/outpatient/APV hospital care costs incurred on behalf of retirees or dependents.'

Add a new paragraph to the end of the entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

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F044 AF SG E

SYSTEM NAME:

Medical Record System.

SYSTEM LOCATION:

Headquarters, United States Air Force, Surgeon General (HQ USAF/SG), medical centers, hospitals and clinics, medical aid stations, National Personnel Record Centers, Air National Guard activities, and Air Force Reserve units. Official mailing addresses are published as an appendix to the Air Force compilation of systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons treated in an Air Force medical facility and active duty members for whom primary care is provided.

CATEGORIES OF RECORDS IN THE SYSTEM:

Inpatient, outpatient, and ambulatory procedure visit (APV) records of care received in Air Force medical facilities. Documentation includes, but is not limited to, patient's medical history; physical examination; treatment received; supporting documentation such as laboratory and x-ray reports; cover sheets and summaries of hospitalization; diagnoses; procedures or surgery performed; administrative forms which concern medical conditions such as Line of Duty Determinations; physical profiles, and medical recommendations for flying duty. Secondary files are maintained such as patient registers, nominal indices, x-ray and laboratory files, indices and registers

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and Dental Care; 10 U.S.C. 8013, Secretary of the Air Force; and E.O. 9397 (SSN).

PURPOSE(S):

Used to document, plan, and coordinate the health care of patients; aid in preventative health and communicable disease control programs; determine eligibility and suitability for benefits for various programs; adjudicate claims; evaluate care rendered; teach compile statistical data, and conduct research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from the inpatient, outpatient, or APV medical records of retirees and dependents may be disclosed to third party payers in accordance with 10 U.S.C. 1095 as amended by Public Law 99–272, for the purpose of collecting reasonable inpatient/outpatient/APV hospital care costs incurred on behalf of retirees or dependents. Records are used and reviewed by health care providers in the performance of their duties. Health care providers include military and civilian providers assigned to the medical facility where care is being provided. Students participating in a training affiliation program with a USAF medical facility may also use and review records as part of their training program. In addition, records may be disclosed to:

(1) Officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to the adjudication of veterans claims and in providing medical care to members of the Air Force.

(2) Officials and employees of other departments and agencies of the Executive Branch of government upon request in the performance of their official duties relating to review of the official qualifications and medical history of applicants and employees who are covered by this record system and for the conduct of research studies.

(3) Private organizations (including educational institutions) and

individuals for authorized health research in the interest of the Federal government and the public. When not considered mandatory, patient identification data shall be eliminated from records used for research studies.

(4) Officials and employees of the National Research Council in cooperative studies of the National History of Disease; of prognosis and of epidemiology. Each study in which the records of members and former members of the Air Force are used must be approved by the Surgeon General of the Air Force.

(5) Officials and employees of local and state governments and agencies in the performance of their official duties pursuant to the laws and regulations governing local control of communicable diseases, preventive medicine and safety programs, child abuse and other public health and welfare programs.

(6) Authorized surveying bodies for professional certification and accreditations.

(7) The individual's organization or government agency as necessary when required by Federal statute, E.O., or by treaty.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system, except as stipulated in "Note" below.

Note: Records of identity, diagnosis, prognosis or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol/drug abuse treatment function conducted, requested, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided herein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. These statutes take precedence over the Privacy Act of 1974 in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper and machine-readable form.

RETRIEVABILITY:

By name, Social Security Number, or by Military Service Number.

SAFEGUARDS:

Records are accessed by commanders of medical centers, hospitals, and clinics; by custodian of the record system, and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets, and access to automated records is controlled and limited.

RETENTION AND DISPOSAL:

While on active duty, the Health Record of a U.S. military member is maintained at the medical unit at which the person receives treatment. On separation or retirement, records are forwarded to National Personnel Records Center/Military Personnel Records (NPRC/MPR) or other designated depository, such as Commandant, U.S. Coast Guard for that agency's personnel, to appropriate Department of Veterans Affairs (DVA) Regional Office if a DVA claim has been filed. Records of non-active duty personnel may be hand carried or mailed to the next military medical facility at which treatment will be received or the records are retained at the treating facility for a minimum of 1 year after date of last treatment then retire to NPRC or other designated depository, such as, but not limited to, Medical Director, American Red Cross, Washington, DC 20037–1898 for Red Cross personnel. At NPRC records for military personnel are retained for 50 years after date of last document, for all others 25 years.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters United States Air Force.

Chief of Air Force Reserve, Headquarters United States Air Force.

Director of Air National Guard, Headquarters United States Air Force.

Commanders of medical centers, hospitals, clinics, medical aid stations; Commander, Air Force Personnel Center. Official mailing addresses are published as an appendix to the Air Force's compilation of system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contain information about themselves should address inquiries to or visit the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address requests to the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of systems notices.

Requester must submit full name; Social Security Number (or Military Service Number) through whom eligibility for care is established; date (at least year) treatment was provided; name of facility providing treatment, and whether treatment was as inpatient or outpatient.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 1806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Physicians and other patient care providers such as nurses, dietitians, and physicians assistants. Administrative forms are completed by appropriate military or civilian officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG F

SYSTEM NAME:

Medical Service Accounts (June 11, 1997, 62 FR 31793).

Changes

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Uniform Business Office Records'.

* * * * *

CATEGORIES OF RECORDS COVERED BY THE SYSTEM:

Add to the end of the entry 'and information required for billing third party insurers.'

PURPOSE(S):

Delete entry and replace with 'Used by the Uniform Business Office Manager to keep a record of billing, receipts, and an instrument for cash posting. Used by

Food Service Officer as a receipt for cash collected and turned in to the Medical Service Account officer.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph to the end of the entry '**NOTE:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

F044 AF SG F

SYSTEM NAME:

Uniform Business Office Records.

SYSTEM LOCATION:

Air Force hospitals, medical centers and clinics.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel, retired military personnel, dependents of active duty, retired and deceased military personnel, and civilians treated in emergencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Hospital Invoice/Receipt/Accounts Receivable Records showing charges for subsistence and medical service and information required for billing third party insurers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force and Air Force Instruction 41–120, Medical Resource Operations.

PURPOSE(S):

Used by the Uniform Business Office Manager to keep a record of billing, receipts, and an instrument for cash posting. Used by Food Service Officer as a receipt for cash collected and turned in to the Medical Service Account officer.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained electronically and in file folders at Clinics, Hospitals, and Medical Centers.

RETRIEVABILITY:

Retrieved by name and invoice receipt or voucher number.

SAFEGUARDS:

Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties and Air Force auditors.

RETENTION AND DISPOSAL:

Retained in office files for one year after annual cut-off, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Uniform Business Office Managers at all Clinics, Hospitals, Medical Centers. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Uniform Business Office Managers at all Clinics, Hospitals, and Medical Centers. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Uniform Business Office Managers at all Clinics, Hospitals, and Medical Centers. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from source documents such as records, reports and accounts maintained by medical facilities.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG G

SYSTEM NAME:

Nursing Service Records (June 11, 1997, 62 FR 31793).

Changes

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add a new paragraph to the end of the entry '**NOTE:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

F044 AF SG G

SYSTEM NAME:

Nursing Service Records.

SYSTEM LOCATION:

Air Force hospitals, medical centers and clinics. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty and retired military personnel; Air Force civilian employees; Air Force Reserve and National Guard personnel; Air Force Academy cadets; dependents of military personnel; Foreign Nationals residing in the United States; American Red Cross personnel,

Peace Corps, and State Department personnel; Exchange officers, anyone admitted to inpatient status in Air Force medical facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains 24-hour nursing reports, listings of ward patients and registers containing information on operations performed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 55, Medical and dental care, and 10 U.S.C. 8067(e), Designation: Officers to perform certain professional functions, as implemented by Air Force Instruction 46–102, Nursing Care.

PURPOSE(S):

Used by Chief Nurse and other management personnel to determine nursing care work loads and allocate resources.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records are used and reviewed by health care providers in the performance of their duties. Health care providers include military and civilian providers assigned to the medical facility where care is being provided. Students participating in a training affiliation program with a USAF medical facility may also use and review records as part of their training program.

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, notebooks and binders.

RETRIEVABILITY:

Retrieved by name, dates of admission and discharge from medical facility, date of operation.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files for three months after monthly cutoff, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Operation registers are destroyed after five years.

SYSTEM MANAGER(S) AND ADDRESS:

The Surgeon General, Headquarters, United States Air Force. Chief Nurses of medical centers and hospitals. Official mailing addresses are published as an appendix to the Air Force's compilation of system notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on them should address inquiries to or visit the system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the system manager.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From medical records and personal observations of Nursing Service personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F044 AF SG M

SYSTEM NAME:

Compression Chamber Operations (June 11, 1997, 62 FR 31793).

Changes

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Hyperbaric Medical Operations'.

SYSTEM LOCATION:

Delete entry and replace with 'Treatment records (original) are retained in individual health record at United States Air Force or other DoD medical treatment facilities or at the National Personnel Records Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118–4126. A copy is retained at USAF School of Aerospace Medicine, Hyperbaric Medicine Division (USAFSAM/FEH), 2601 Louis Bauer Drive, Brooks City-Base TX 78235–5130. If Hyperbaric medical treatment is provided at system locations other than USAFSAM/FEH, a copy of emergency Hyperbaric treatment records, *i.e.*, treatment records generated for decompression sickness (DCS), arterial gas embolism (AGE), carbon monoxide poisoning (CO-poisoning) or gas gangrene will be sent to USAFSAM/FEH. Compression Chamber Reactor Case Report (AF Form 361; original) is retained indefinitely at USAFSAM/FEH, Brooks City-Base and for 3 years at individual Aerospace Physiology Training Units.'

CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Personnel performing treatments; patients who are active duty military personnel, retired Air Force military personnel, dependents of military personnel, dependents of retired military, selected international students, and civilians treated on an emergency basis.'

CATEGORY OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Treatment records of patient and records of personnel conducting treatment. Records of training dives are maintained on officers and technicians performing treatment dives.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Provide an exact record for a patient treated by recompression therapy and documents patient's response to treatment.

Records are maintained on persons performing treatments because they are exposed to the same treatment profiles as their patients and to insure their capability of performing treatment. Records are used for research and statistical analysis by the Air Force Medical Operations Agency.

Records are maintained on technicians/officers conducting

procedures at treatment site to determine professional adequacy to participate in treatment dives.'

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Add a new paragraph to the end of the entry '**Note:** This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by patient's medical care provider(s) and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel conducting IRB-approved research protocols. Records are stored in locked rooms and cabinets.'

* * * * *

F044 AF SG M

SYSTEM NAME:

Hyperbaric Medical Operations.

SYSTEM LOCATION:

Treatment records (original) are retained in individual health record at United States Air Force or other DoD medical treatment facilities or at the National Personnel Records Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118–4126. A copy is retained at USAF School of Aerospace Medicine, Hyperbaric Medicine Division (USAFSAM/FEH), 2601 Louis Bauer Drive, Brooks City-Base.TX 78235–5130. If Hyperbaric medical treatment is provided at system locations other than USAFSAM/FEH, a copy of emergency Hyperbaric treatment records, *i.e.*, treatment records generated for decompression sickness (DCS), arterial gas embolism (AGE), carbon monoxide poisoning (CO-poisoning) or gas gangrene will be sent to USAFSAM/FEH. Compression Chamber Reactor Case Report (AF Form 361; original) is retained indefinitely at USAFSAM/FEH, Brooks City-Base and for 3 years at individual Aerospace Physiology Training Units.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Personnel performing treatments; patients who are active duty military personnel, retired Air Force military personnel, dependents of military personnel, dependents of retired military, selected international students, and civilians treated on an emergency basis.

CATEGORIES OF RECORDS IN THE SYSTEM:

Treatment records of patient and records of personnel conducting treatment. Records of training dives are maintained on officers and technicians performing treatment dives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. 55, Medical and Dental Care, as implemented by Air Force Instruction 48–104, Aerospace Medicine; and Air Force Instruction 48–112, Hyperbaric Chamber Program.

PURPOSE(S):

Provide an exact record for a patient treated by recompression therapy and documents patient's response to treatment.

Records are maintained on persons performing treatments because they are exposed to the same treatment profiles as their patients and to insure their capability of performing treatment. Records are used for research and statistical analysis by the Air Force Medical Operations Agency.

Records are maintained on technicians/officers conducting procedures at treatment site to determine professional adequacy to participate in treatment dives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by patient's medical care provider(s) and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel conducting IRB-approved research protocols. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Treatment Records (original) retained in individual health record for fifty years after date of latest document and then destroyed. First copy and other copies at Armstrong Laboratory, Air Force Medical Operations Agency and major commands are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Copies at Physiological Training Units are destroyed after 3 years; Compression Chamber Operation Record at Physiological Training Units are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Compression Chamber Reaction Case Report (original) retained in individual health record for fifty years after date of latest document, then destroyed. First copy at Armstrong Laboratory and other copies at Headquarters Air Force Medical Operations Agency and major commands are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Copies at Physiological Training Units retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Oxygen Sensitivity Tolerance/Pressure Test retained in individual health record for fifty years after date of latest document, then destroyed. All records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Force Medical Operation Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should apply to the Medical Records Section of the relevant medical treatment facility for access.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should apply to the Medical Records Section of the relevant medical treatment facility for access.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Physicians regarding diagnosis/ treatment.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–22113 Filed 8–29–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Department of the Air Force is deleting one system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 29, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Manager, Office of the Chief Information Officer, AF–CIO/P, 1155 Air Force Pentagon, Washington, DC 20330–1155.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 601–4043.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 22, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AETC H

SYSTEM NAME:

Processing and Classification of Enlistees (PACE) (June 11, 1997, 62 FR 31793).

Reason: These records have been incorporated into the Air Force system of records identified as F036 AF PC Q, entitled 'Personnel Data System (PDS)'.

[FR Doc. 03–22115 Filed 8–28–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 29, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/ Privacy Act Office, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 25, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0608–18 DASG

SYSTEM NAME:

Army Family Advocacy Program Files (April 4, 2003, 68 FR 16484).

Changes

* * * * *

SYSTEM LOCATION:

Delete first paragraph and replace with "Primary location: Commander, U.S. Army Medical Command, ATTN: MCHO–CL–H(ACR), 2050 Worth Road, Fort Sam Houston, TX 78234–6010."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Records are destroyed 25 years after case is closed."

* * * * *

A0608–18 DASG

SYSTEM NAME:

Army Family Advocacy Program Files.

SYSTEM LOCATION:

Primary location: Commander, U.S. Army Medical Command, ATTN: MCHO-CL-H(ACR), 2050 Worth Road, Fort Sam Houston, TX 78234–6010.

Secondary location: Any Army medical treatment facility that supports the Family Advocacy Program (FAP). Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Eligible military members and their family, and DoD civilians who participate in the Family Advocacy Program (FAP).

CATEGORIES OF RECORDS IN THE SYSTEM:

Family Advocacy Case Review Committee (CRC) records of established cases of child/spouse abuse or neglect to include those occurring in Army sanctioned or operated activities.

Files may contain extracts of law enforcement investigative reports, correspondence, Case Review

Committee reports, treatment plans and documentation of treatment, follow-up and evaluative reports, supportive data relevant to individual family advocacy Case Review Committee files, summary statistical data reports and similar relevant files.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 42 U.S.C. 10606 *et seq.*, Victims' Rights, as implemented by Department of Defense Instruction 1030.2, Victim and Witness Assistance Program; Army Regulation 608–18, The Family Advocacy Program; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain records that identify, monitor, track and provide treatment to alleged offenders, eligible victims and their families of substantiated spouse/child abuse, and neglect. To manage prevention programs to reduce the incidence of abuse throughout the Army military communities.

To perform research studies and compile statistical data.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to departments and agencies of the Executive Branch of government in performance of their official duties relating to coordination of family advocacy programs, medical care and research concerning child abuse and neglect, and spouse abuse.

The Attorney General of the United States or his authorized representatives in connection with litigation or other matters under the direct jurisdiction of the Department of Justice or carried out as the legal representative of the Executive Branch agencies.

To federal, state, or local governmental agencies when it is deemed appropriate to use civilian resources in counseling and treating individuals or families involved in child abuse or neglect or spouse abuse; or when appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement; or when a state, county, or municipal child protective service agency inquires about a prior record of substantiated abuse for the purpose of investigating a suspected case of abuse.

To the National Academy of Sciences, private organizations and individuals for health research in the interest of the Federal government and the public and authorized surveying bodies for professional certification and accreditation such as Joint Commission on the Accreditation of Health Care Organizations.

To victims and witnesses of a crime for purposes of providing information consistent with the requirements of the Victim and Witness Assistance Program, regarding the investigation and disposition of an offense.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: This system of records contains individually identifiable health information. The DoD Health Information Privacy Regulation (DoD 6025.18–R) issued pursuant to the Health Insurance Portability and Accountability Act of 1996, applies to most such health information. DoD 6025.18–R may place additional procedural requirements on the uses and disclosures of such information beyond those found in the Privacy Act of 1974 or mentioned in this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By the sponsor's Social Security Number of an abused victim.

SAFEGUARDS:

Records are maintained in various kinds of filing equipment in specified monitored or controlled areas. Public access is not permitted. Records are accessible only to authorized personnel who are properly screened and trained, and have an official need-to-know. Computer terminals are located in supervised areas with access controlled by password or other user code system.

RETENTION AND DISPOSAL:

Records are destroyed 25 years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Medical Command, ATTN: MCHO–CL–H(ACR), 2050 Worth Road, Fort Sam Houston, TX 78234–6010.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the local Patient Administration Division Office; to the commander of the medical center or hospital where treatment was received; or to the Commander, U.S. Army Medical Command, ATTN: MCHO–CL–H(ACR), 2050 Worth Road, Fort Sam Houston, TX 78234–6010. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number of the patient's sponsor, and current address, date and location of treatment, and any details that will assist in locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this record system should address written inquiries to the local Patient Administration Division Office; to the commander of the medical center or hospital where treatment was received; or to the Commander, U.S. Army Medical Command, ATTN: MCHO–CL–H(ACR), 2050 Worth Road, Fort Sam Houston, TX 78234–6010. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

For verification purposes, the individual should provide the full name, Social Security Number of the patient's sponsor, and current address, date and location of treatment, and any details that will assist in locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations by the concerned individual are published in the Department of the Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, educational institutions, medical institutions, police and investigating officers, state and local government agencies, witnesses, and records and reports prepared on behalf of the Army by boards, committees, panels, auditors, etc. Information may also derive from interviews, personal history statements, and observations of behavior by professional persons (*i.e.*, social workers, physicians, including psychiatrists and pediatricians, psychologists, nurses, and lawyers).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be

exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 03–22116 Filed 8–28–03; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice—computer matching between the U.S. Department of Education and the Social Security Administration.

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988, Public Law 100–503, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the renewal of the computer matching program between the U.S. Department of Education (ED)(recipient agency), and the Social Security Administration (SSA) (the source agency). This renewal of the computer matching program between SSA and ED will become effective as explained below.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), the OMB Final Guidelines on the Conduct of Matching Programs (see 54 FR 25818, June 19, 1989), and OMB Circular A–130, we provide the following information:

1. Names of Participating Agencies

The U.S. Department of Education and the Social Security Administration.

2. Purpose of the Match

The purpose of this matching program between ED and SSA is to assist the Secretary of Education in his obligation to verify immigration status and social security numbers (SSN) under 20 U.S.C. 1091(g) and (p). The SSA will verify the issuance of an SSN to, and the citizenship status of, those students and parents who provide their SSNs in the course of applying for aid under a student financial assistance program authorized under Title IV of the Higher Education Act of 1965, as amended (HEA). Verification of this information by SSA will help ED satisfy its obligation to ensure that individuals applying for financial assistance meet eligibility requirements imposed by the HEA.

Verification by this computer matching program effectuates the purpose of the HEA, because it provides an efficient and comprehensive method of verifying the accuracy of each individual's SSN and claim to a citizenship status that permits that individual to qualify for Title IV, HEA assistance.

3. Legal Authority for Conducting the Matching Program

ED is authorized to participate in the matching program under sections 484(p)(20 U.S.C. 1091(p)); 484(g)(20 U.S.C. 1091(g)); 483(a)(7)(20 U.S.C. 1090(a)(7)); and 428B(f)(2)(20 U.S.C. 1078–2(f)(2)) of the HEA.

The SSA is authorized to participate in the matching program under section 1106(a) of the Social Security Act, (42 U.S.C. 1306(a)), and the regulations promulgated pursuant to that section (20 CFR part 401).

4. Categories of Records and Individuals Covered by the Match

The Federal Student Aid Application File (18–11–01), which contains the applicant information on authority from ED and the ED PIN Registration System of Records (18–11–12), which contains the applicant's information to receive an ED PIN, will be matched against SSA's Master Files of Social Security Numbers Holders and SSN Applications System, SSA/OEEAS, 60–0058, which maintains records about each individual who has applied for and obtained an SSN.

5. Privacy Impact Assessment

Section 208 of the E-Government Act of 2002 (44 U.S.C. 3501 *note*) requires ED to conduct the following privacy impact assessment of this information collection:

The information collected by ED under this computer matching agreement is the verification of SSNs and citizenship by SSA, for the purpose of assisting ED to satisfy its obligation to ensure that an individual applying for financial assistance meets the requirements imposed under the HEA. This verification is mandated by the HEA. The information obtained from SSA by ED will only be used as provided for under Section X of the agreement. Notice that ED verifies an individual's SSN through a computer matching agreement with agencies such as SSA is provided to individuals in the Privacy and Security section of the Free Application for Federal Student Aid (FAFSA), and in Federal student loan program forms; submission of a FAFSA and participation in the Federal student loan programs is voluntary. The information obtained from SSA under this computer matching agreement will be secured pursuant to the procedures described in Section IX of the agreement. No new system of records is being created for this collection because, as noted above, the verification of SSNs is already included as a routine use in the System of Records for Federal student aid programs. Thus, this collection comports with applicable Privacy Act standards and Section 208.

6. Effective Date of the Matching Program

This matching program must be approved by the Data Integrity Board of each agency. This matching agreement will become effective on: (1) October 10, 2003; (2) 40 days after the approved agreement is sent to Congress and OMB (or later if OMB objects to some or all of the agreement); or (3) 30 days after publication of this notice in the **Federal Register**, whichever date is last.

The matching agreement will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552(o)(2)(D) have been met.

7. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program, or to obtain additional information about the program, including a copy of the computer matching agreement between ED and SSA, should contact Ms. Edith Bell, Management and Program Analyst, Union Center Plaza, 830 First Street, NE., Washington, DC 20002–5454. Telephone: (202) 377–3231. If you use a telecommunications device for the deaf

(TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Dated: August 26, 2003.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 03–22179 Filed 8–28–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–74–000 and RP03–90–000]

Enbridge Pipelines (KPC); Notice of Motion To Terminate Proceedings

August 22, 2003.

Take notice that on July 16, 2003, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.212, Enbridge Pipelines (KPC) and Kansas Gas Service, a division of ONEOK, Inc. (KGS) tendered for filing a request that the Commission terminate the above-referenced proceeding. In support of the motion, Enbridge KPC and KGS state the following.

Pending in these unconsolidated cases is a disputed issue concerning the level of refunds attributed to IT transportation revenues which Enbridge KPC is obligated to provide to KGS pursuant to Section 24.5 of the General Terms and Conditions of Enbridge KPC's tariff.

Enbridge KPC states that on May 1, 2003, Enbridge KPC and KGS, along with the Staff of the Kansas Corporation Commission (KCC), executed a settlement agreement which resolved all pending litigation between and among Enbridge KPC, KGS and the KCC, including the proceedings in Docket Nos. RP02–74–000 and RP03–90–000. The settlement agreement permits Enbridge KPC to retain the IT revenues at issue.

Enbridge KPC states that no other issues are presented in these cases and therefore no other customer or party will be affected by the termination of these dockets. In addition, Enbridge KPC and KGS are authorized to state that the KCC does not oppose this motion.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22112 Filed 8–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12462–000]

Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests

August 22, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption.

b. *Project No.:* 12462–000.

c. *Date Filed:* July 28, 2003.

d. *Applicant:* Indian River Power Supply, LLC.

e. *Name of Project:* Indian River Project.

f. *Location:* On the Westfield River in the town of Russell, Hampden County, Massachusetts. The project does not utilize lands of the United States.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Mr. Richard E. Lynch Sr, 22 Woodland Avenue, Westfield, Massachusetts. 01085. i. *FERC Contact:* Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

j. *Cooperating Agencies:* We are asking Federal, state, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* September 29, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents

with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-filing link.

m. This application is not ready for environmental analysis at this time.

n. *Description of Project:* The Indian River Project consists of: (1) The existing 30-foot-high Russell dam; (2) a small reservoir; (3) a powerhouse and; (4) appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the three digits in the docket number field to access the document. For assistance, please contact FERC Online Supoort at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

p. With this notice, we are initiating consultation with the Massachusetts State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Note: The above paragraph initiating consultation with the SHPOs may be unnecessary if that language was included in the pre-filing notice requesting preliminary terms and conditions.

q. *Procedural schedule and final amendments:* The application should be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Deficiency Letter: October 2003.

Issue Acceptance Letter: January 2004.

Issue Scoping Document for Comments: February 2004.

Request Additional Information: April 2004.

Notice of application is ready for environmental analysis: August 2004.

Notice of the availability of the EA: October 2004.

Ready for Commission's decision on the Application: December 2004.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22109 Filed 8–28–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM01–12–000 and RT01–67–000]

Remedying Undue Discrimination Through Open Access Transmission Service and Standard Electricity Market Design, GridFlorida, LLC; Notice of Technical Conference

August 22, 2003.

As announced in the Notice of Technical Conference issued on June 18, 2003, a technical conference will be held on September 15, 2003, to discuss with state commissioners and market participants in the GridFlorida region the timetables for addressing wholesale power market design issues and to explore ways to provide flexibility the region may need to meet the requirements of the final rule in this proceeding. Members of the Commission will attend and participate in the discussion.

The conference will focus on the issues identified in the agenda, which is appended to this notice as Attachment A. However, participants/stakeholders may present their views on other important issues that relate to the development of the Wholesale Power Market Platform.

The conference will begin at 9:30 a.m. Eastern Time and will adjourn at about 3:30 p.m. Eastern Time at the offices of the Florida Public Service Commission, Room 148 Betty Easley Conference Center, 4075 Esplanade Way, Tallahassee, Florida. The conference is open for the public to attend, and registration is not required; however, in-person attendees are asked to register for the conference on-line at *http://www.ferc.gov/whats-new/registration/smd_0915-form.asp.*

Transcripts of the conference will be immediately available from Ace Reporting Company (202–347–3700 or 1–800–336–6646) for a fee. They will be available for the public on the Commission's eLibrary system seven calendar days after FERC receives the transcript. Additionally, Capitol Connection offers the opportunity to remotely listen to the conference via the Internet or a Phone Bridge Connection for a fee. Interested persons should make arrangements as soon as possible by visiting the Capitol Connection Web site at *http://www.capitolconnection.gmu.edu* and clicking on "FERC." If you have any questions contact David Reininger or Julia Morelli at the Capitol Connection (703–993–3100).

Questions about the conference program should be directed to:

Steve Rodgers, Director, Division of Tariffs & Market Development—South, Office of Markets, Tariffs & Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8227, *steve.rodgers@ferc.gov.*

Sarah McKinley, Manager of State Outreach, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–8368, *sarah.mckinley@ferc.gov.*

Magalie R. Salas,

Secretary.

Appendix A—Agenda

9:30–9:45 a.m. Opening Remarks.
Lila A. Jaber, Chairman, Florida Public Service Commission, Pat Wood, III, Chairman, Federal Energy Regulatory Commission.

9:45–10:30 a.m. Discussion on the State of Florida Market.
Moderator: Roberta Bass, Florida PSC Staff.
Overview of Florida's Electric System: Ken Wiley, Florida Reliability Coordinating Council (FRCC).
Florida Statutory Framework: Susan Clark, Radey, Thomas, Yon, and Clark.
History and Status of GridFlorida: Mike Naeve, Skadden, Arps, Slate, Meagher & Flom.

10:30–11:15 a.m. Regional State Committees.
Moderator: Roberta Bass, Florida PSC Staff.
GridFlorida Applicants: Mike Naeve, Skadden, Arps, Slate, Meagher & Flom.
Municipals: Ed Regan, Gainesville Regional Utilities.
Independent Power Producers: Mike Green, Partnership for Affordable Competitive Energy. (PACE)

11:15–11:30 a.m. Break.

11:30–12:15 p.m. Discussion of Participant Funding Issues.
Moderator: Jim Dean, Florida PSC Staff.
GridFlorida Applicants: Bill Ashburn, Tampa Electric Company (TECO).
Independent Power Producers, Tim Eaves, Calpine Corporation,
Transmission Dependent Utility, Bob Williams, Florida Municipal Power Agency (FMPA).

12:15–1:15 p.m. Lunch.
1:15–2:30 p.m. Discussion of Market Design Issues.
Moderator: Tom Ballinger, Florida PSC Staff.
GridFlorida Applicants: Greg Ramon, Tampa Electric Company (TECO),
Independent Power Producers, John Orr, Reliant Energy,
Transmission Dependent Utility, Tim Woodbury, Seminole Electric Cooperative.
2:30–3 p.m. Next Steps for GridFlorida.
Florida Public Service Commission: Jennifer Brubaker, Florida PSC Staff.
GridFlorida Applicants: Ken Hoffman, Rutledge, Ecenia, Purnell & Hoffman
3–3:30 p.m. Discussion and Public Input.
State and Federal Commissioners.

[FR Doc. 03–22110 Filed 8–28–03; 8:45 am]
BILLING CODE 5717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

August 22, 2003.

This constitutes notice, in accordance with 18 CFR 385 § 2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Docket No.	Date filed	Presenter or requester
Prohibited		
1. ER03–1118–000	8–15–03	Stephen G. Kozey.
2. Project No. 2343–000	8–20–03	Chuck Simons
3. EL03–219–000	8–21–03	Mark Runquist.
4. EL03–219–000	8–21–03	Bruce Banister.
5. EL03–219–000	8–21–03	Betty Turner.
6. EL03–219–000	8–21–03	Betty Yunek.
7. EL03–219–000	8–21–03	Randy Schon.
Exempt		
1. EL02–101–001	7–31–03	Jim Sullivan.
2. CP03–33–000	8–21–03	John J. Wisniewski.
3 Project No. 2069–000	8–21–03	Frank Winchell.

Magalie R. Salas,
Secretary.

[FR Doc. 03–22111 Filed 8–28–03; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7551–1]

Proposed Stipulation of Settlement Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed stipulation of settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed stipulation of settlement to address a lawsuit filed by the New York Public Interest Research Group, Inc. (NYPIRG) in the United States District Court for the Southern District of New York. The lawsuit was filed pursuant to section 304(a) of the Act, 42 U.S.C. 705(a) and alleges that the Administrator failed to meet a mandatory sixty day deadline under section 505(b)(2) of the Act, 42 U.S.C. 7661d(b)(2), for granting or denying petitions seeking the Agency's objection to two Clean Air Act Title V operating permits issued by the New York State Department of Environmental Conservation (DEC). In addition, NYPIRG petitioned the Administrator seeking the Agency's objection to twelve other operating permits issued by the DEC. These fourteen petitions are addressed by the proposed stipulation of settlement, which establishes a schedule for the Administrator to respond to these petitions.

DATES: Written comments on the proposed stipulation of settlement agreement must be received by September 29, 2003.

ADDRESSES: Submit your comments, identified by docket ID number OGC–2003–0001, online at *http://www.epa.gov/edocket* (EPA's preferred method); by e-mail to *oei.docket@epa.gov*; mailed to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD-ROM should be formatted in Wordperfect or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Apple Chapman or Padmini Singh, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Stipulation of Settlement

NYPIRG alleges that the United States Environmental Protection Agency Administrator failed to meet a mandatory sixty day deadline under section 505(b)(2) of the Act, 42 U.S.C. 7662d(b)(2), for granting or denying petitions seeking EPA's objection to a total of fourteen Title V permits (two in this case and an additional twelve pending before the Agency) issued by the New York State Department of Environmental Conservation.

The proposed stipulation establishes a schedule for EPA's responses to these petitions. The proposed stipulation of settlement requires EPA to sign orders responding to the plaintiffs' petitions for the following facilities no later than the dates specified:

(a) the Huntley Steam Generating Station petition, by July 31, 2003;

(b) the Dunkirk Steam Generating Station petition, by July 31, 2003;

(c) the Consolidated Edison Company of New York's Hudson Avenue Generating Station petition, by September 30, 2003;

(d) the Consolidated Edison Company of New York's Ravenswood Steam Plant petition, by September 30, 2003;

(e) the Al Turi Landfill petition, by January 23, 2004;

(f) the New York Organic Fertilizer Corporation petition, by May 22, 2004;

(g) the Sirmos Division of Bromante Corporation petition, by May 22, 2004;

(h) the New York City Transit Authority's East NY Bus Depot petition, by May 22, 2004;

(i) the Keyspan Generation Far Rockaway Station petition, by September 24, 2004;

(j) the North River Water Pollution Control Plant petition, by September 24, 2004;

(k) the Motiva Enterprises petition, by September 24, 2004;

(l) the Bristol Myers Squibb petition, by February 18, 2005;

(m) the Eastman Kodak Power Plant petition by February 18, 2005; and

(n) the Eastman Kodak Manufacturing Plant petition, by February 18, 2005.

The Administrator signed orders responding to (a) the Huntley Steam Generating Station petition, and (b) the Dunkirk Steam Generating Station petition on July 31, 2003.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed stipulation of settlement from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed stipulation of settlement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, based on any comment which may be submitted, that consent to the stipulation of settlement should be withdrawn, the terms of the stipulation will be affirmed.

II. Additional Information About Commenting on the Proposed Stipulation of Settlement

A. How Can I Get A Copy of the Stipulation of Settlement?

EPA has established an official public docket for this action under Docket ID No. OGC–2003–0001 which contains a copy of the stipulation of settlement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in EPA's electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to Whom Do I Submit Comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic

public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic public docket system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (e-mail) system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, your e-mail address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: August 21, 2003.

Lisa K. Friedman,

Associate General Counsel.

[FR Doc. 03–22159 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0275; FRL–7324–3]

Pesticide Program Dialogue Committee; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs (OPP) is inviting nominations of qualified candidates to be considered for appointment to the Pesticide Program Dialogue Committee (PPDC). EPA's current Charter for the PPDC will expire in November 2003. EPA intends to seek renewal of the PPDC Charter for another 2–year term, November 2003 to November 2005, in accordance with the Federal Advisory Committee Act.

DATES: Nominations must be postmarked no later than October 1, 2003.

ADDRESSES: Nominations should be submitted in writing to Margie Fehrenbach at the address listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: *By mail*: Margie Fehrenbach, Designated Federal Officer for PPDC, Office of Pesticide Programs, (7501C), Environmental Protection Agency, 1200 Pennsylvania Ave.,NW., Washington, DC 20460; telephone number: (703) 308–4775 or(703) 305–7090; fax number: (703) 308–4776; e-mail address:*Fehrenbach.Margie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general; however, persons may be interested who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); and the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA), (Public Law 104–170) of 1996. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**. Potentially affected entities may include but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer and farmworker groups; pesticide users and growers; pest consultants; State, local and Tribal governments; academia; public health organizations; food processors; and the public. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0275. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this**Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at*http://www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at*http://www.epa.gov/edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background

EPA is entrusted with the responsibility of ensuring the safety of the American food supply, the protection and education of those who apply or are exposed to pesticides occupationally or through use of products from unreasonable risk, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Pesticide Program Dialogue Committee (PPDC) is a federal advisory committee under the Federal Advisory Committee Act (FACA), Public Law 92–463. It was originally established in September 1995 for a 2–year term and renewed every 2 years. EPA is seeking to renew the current PPDC Charter, which expires in November 2003, for another 2–year term. PPDC provides advice and recommendations to EPA's Office of Pesticide Programs on a broad range of pesticide regulatory, policy and program implementation issues that are associated with evaluating and reducing risks from use of pesticides.

EPA intends to appoint members to 1– or 2–year terms. An important consideration in EPA's selection of members will be to maintain balance and diversity of experience and expertise. EPA also intends to seek broad geographic representation from the following sectors: Environmental/public interest and consumer groups; farm worker organizations; pesticide industry and trade associations; pesticide user, grower, and commodity groups; Federal and State/local/Tribal governments; the general public; academia; and public health organizations.

Potential candidates should submit the following information: Name, occupation, organization, position, address, telephone number and a brief resume containing their background, experience, qualifications, and other relevant information as part of the consideration process. Any interested person and/or organization may submit the name(s) of qualified persons.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

List of Subjects

Environmental protection, Agriculture, Agricultural workers, Chemicals, Foods, Pesticides, Pests, Risk assessment, Tolerance reassessment, Public health.

Dated: August 24, 2003.

James Jones

Director, Office of Pesticide Programs.

[FR Doc. 03–22163 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7550–8]

Access to Confidential Business Information by Enrollees Under the Senior Environmental Employment Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized grantee organizations under the Senior Environmental Employment (SEE) Program, and their enrollees; access to information which has been submitted to EPA under the environmental statutes administered by the Agency. Some of this information may be claimed or determined to be confidential business information (CBI).

DATES: Comments concerning CBI access will be accepted five days from the date of publication of this document.

ADDRESSES: Comments should be submitted to: Susan Street, National Program Director, Senior Environmental Employment Program (MC 3650A), U.S. Environmental Protection Agency; Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460. (Telephone (202) 564–0410).

SUPPLEMENTARY INFORMATION: The Senior Environmental Employment (SEE) program is authorized by the Environmental Programs Assistance Act of 1984 (Pub. L. 98–313), which provides that the Administrator may "make grants or enter into cooperative agreements" for the purpose of "providing technical assistance to: Federal, State, and local environmental agencies for projects of pollution prevention, abatement, and control." Cooperative agreements under the SEE program provide support for many functions in the Agency, including clerical support, staffing hot lines, providing support to Agency enforcement activities, providing library services, compiling data, and support in scientific, engineering, financial, and other areas.

In performing these tasks, grantees and cooperators under the SEE program and their enrollees may have access to potentially all documents submitted under the Resource Conservation and Recovery Act (RCRA), Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA), Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), Emergency Planning And Community Rights to Know Act (EPCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), to the extent that these statutes allow disclosure of confidential information to authorized representatives of the United States (or to "contractors" under the Federal Insecticide, Fungicide, and Rodenticide Act). Some of these documents may contain information claimed as confidential.

EPA provides confidential information to enrollees working under the following cooperative agreements:

Cooperative agreement number	Organization
	National Association for Hispanic Elderly
CQ–830600	NAHE
CQ–830835	NAHE
	National Asian Pacific Center on Aging
CQ–830804	NAPCA
	National Caucus and Center on Black Aged, Inc.
CQ–830940	NCBA
CQ–830977	NCBA
CQ–830978	NCBA
CQ–830979	NCBA
CQ–830981	NCBA
CQ–831052	NCBA
NONE	National Council On the Aging, Inc.
	National Older Worker Career Center
CQ–829511	NOWCC
CQ–830915	NOWCC
CQ–830916	NOWCC
CQ–830917	NOWCC
CQ–830919	NOWCC
CQ–830920	NOWCC
CQ–830967	NOWCC
CQ–830968	NOWCC
	Senior Service America, Inc.
CQ–829805	SSAI
CQ–830406	SSAI
CQ–830407	SSAI
CQ–831290	SSAI

Among the procedures established by EPA confidentiality regulations for granting access is notification to the submitters of confidential data that SEE grantee organizations and their enrollees will have access. 40 CFR 2.201(h)(2)(iii). This document is intended to fulfill that requirement.

The grantee organizations are required by the cooperative agreements to protect confidential information. SEE enrollees are required to sign confidentiality agreements and to adhere to the same security procedures as Federal employees.

Dated: August 19, 2003.

Noel R. Jamison,

Director, Human Resources Staff #1.

[FR Doc. 03–22161 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6643–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 4, 2003 (68 FR 16511).

Draft EISs

ERP No. D–AFS–F65040–WI Rating EC2, Programmatic EIS—Cheguamegon-Nicolet National Forests Revised Land and Resource Management Plan, Implementation, Ashland, Bayfield, Florence, Forest, Langlade, Oconto,

Oneida, Price, Sawyer, Taylor and Vilas Counties, CA.

Summary: EPA expressed environmental concerns regarding lack of management strategies for watershed protections, problem species, alternative descriptions, and unauthorized ATV traffic.

ERP No. D–AFS–J65381–SD Rating EC2, Sioux Ranger District Oil and Gas Leasing Project, Implementation, Sioux Ranger District, Custer National Forest, Harding County, SD.

Summary: EPA expressed environmental concerns with potential adverse impacts to air quality and cultural resources. The final EIS should include information on potential air quality impacts from the fire flood oil recovery method and consideration of both direct and indirect project impacts to traditional cultural properties.

ERP No. D–AFS–J65386–MT Rating EC2, Programmatic EIS—Winter Motorized Recreation Amendment 24, Proposal to Change the Flathead National Land and Resource Management Plan, Flathead National Forest, Flathead, Lake and Lincoln Counties, MT.

Summary: EPA expressed environmental concerns with potential impacts to air quality and human health in areas of concentrated use. Also, EPA expressed environmental concerns with the preferred alternative which potentially reduces protection to grizzly bear security.

ERP No. DC–AFS–L65155–00 Rating EC2, Northern Spotted Owl Management Plans, Removal or Modification of the Survey and Manage Mitigation Measure Standards and Guidelines in the Final Supplemental EIS (1994) and Final Supplement EIS (2002) for Amendments, Northwest Forest Plan, WA, CA and OR.

Summary: EPA expressed environmental concerns about the protection of high risk species. An alternative limiting Survey and Manage requirements to a smaller number of species at high risk should be considered. More detail is needed on implementing special species programs, including a detailed implementation and proposed mitigation plan and for species removed from Survey and Manage.

Final EISs

ERP No. F–AFS–F65037–MI, Interior Wetlands Project, Timber Harvest, White Pine Trees Pruning, Growth System Adjustment, Wildlife Openings Creation and Maintenance and Transportation System Improvements, Hiawatha National Forest, Eastside Administrative Unit, Chippewa County, MI.

Summary: EPA continues to have no objections to the project, since no major changes have been made. The preferred alternative was also the alternative favored by EPA.

ERP No. F–AFS–J65342–00, Wasatch-Cache National Forest Revised Land and Resource Management Plan, Implementation, several counties, UT and Uinta County, WY.

Summary: EPA has remaining environmental concerns regarding protection of the watershed and ecological values. Implementation of the monitoring plan is critical to assuring that environmental improvements targets are met.

ERP No. F–AFS–K65417–CA, Blue Fire Forest Recovery Project, Proposal to Move the Existing Condition Caused by the Blue Fire of 2001 Towards the Desired Condition, Modoc National Forest, Warner Mountain Ranger District, Lassen and Modoc Counties, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65410–ID, Gaylord North Timber Sale Project, Harvesting Timber, Council Ranger District, Payette National Forest, Adam County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65416–ID, Upper Bear Timber Sale Project, Fuel Reduction, Forest Vegetation and Roads Management, Payette National Forest, Council Ranger District, Adams County, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–COE–J28021–CO, Rueter-Hess Reservoir Project, Construction and Operation, Proposed Water Supply Reservoir and Off-Stream Dam, U.S. Army COE Section 404 Permit, Endangered Species Act (Section 7) Permit and Right-of-Way Use Permit, Located on Newlin Gulch along Cherry Creek, Town of Parker, Douglas County, CO.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–UAF–K11110–CA, Los Angeles Air Force Base Land Conveyance, Construction and Development Project, Transfer Portions of Private Development in Exchange for Construction of New Seismically Stable Facilities, Cities of EL Sequndo and Hawthorne, Los Angeles County, CA.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–AFS–J65353–MT, Threemile Stewardship Project, Additional Information concerning the Potential Effects on the Goshawk Habitat, Ashland Ranger District, Custer National Forest, Powder and Rosebud Counties, MT.

Summary: EPA did not object to the preferred alternative to harvest and thin timber, use prescribed fire, and manage road systems. EPA continues to have environmental concerns with potential project effects to goshawk nest territories, and measures for implementing adequate oversight of the timber contractor during project implementation via stewardship contracting to adequately address environmental and ecological concerns.

ERP No. FS–COE–E36154–FL, Upper St. Johns River Basin and Related Areas, Central and Southern Florida Flood Control Project, Proposed Modifications to Project Features North of the Fellsmere Grade to Preserve and Enhance Floodplain and Aquatic Habitats, Brevard County, FL.

Summary: EPA has no objections to the proposed project modifications to improve water quality.

Dated: August 26, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–22164 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6643–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa.*

Weekly receipt of Environmental Impact Statements

Filed August 18, 2003 through August 22, 2003.

Pursuant to 40 CFR 1506.9.

EIS No. 030387, Draft EIS, AFS, AL, Forest Health and Red-Cockaded Woodpecker (RCW) Initiative, Implementation, Talladega National Forest, Talladega and Shoal Creek Ranger Districts, Calhoun, Cherokee, Clay, Clebourne and Talladega Counties, AL, Comment Period Ends: October 14, 2003, Contact: Jeff Seefeldt (265) 362–2909.

EIS No. 030388, Draft EIS, CGD, WA, Seattle Monorail Project (SMP), Construct and Operate a 14-mile Monorail Transit System called the Green Line, Reviewing Green Line's water crossing at the Lake Washington Ship Canal Bridge and Duwamish Waterway Bridge Modification, USCG

Bridge Permit, Endangered Species Act Section 7 Permit and U.S. Army COE Section 404 Permit, City of Seattle, WA, Comment Period Ends: October 14, 2003, Contact: Austin Pratt (206) 220–7282.

EIS No. 030389, Draft EIS, FHW, NC, Greensboro-High Point Road (NC–1486-NC–4121) Improvements from U.S. 311 (I–74) to Hilltop Road (NC–1424), Cities of Greensboro and High Point, the Town of Jamestown, Guilford County, NC, Comment Period Ends: October 14, 2003, Contact: John F. Sullivan (919) 856–4346.

EIS No. 030390, Final EIS, AFS, CO, Green Ridge Mountain Pine Beetle Analysis Project, Proposal to Reduce the Spread of Mountain Pine Beetle and Associated Tree Mortality, Medicine Bow-Routt National Forest and Thunder Basin National Grassland, Parks Ranger District, Jackson County, CO, Wait Period Ends: September 29, 2003, Contact: Terry De Lay (307) 326–2518. This document is available on the Internet at: *http://www.fs.fed.us/mrnf.*

EIS No. 030391, Draft EIS, NPS, MI, Pictured Rocks National Lakeshore, General Management Plan and Wilderness Study, Implementation, Lake Superior, Munising and Grand Marais, Alger County, MI, Comment Period Ends: November 23, 2003, Contact: Karen Gustin (906) 387–2607. This document is available on the Internet at: *http://www.nps.gov/PIRO.*

EIS No. 030392, Revised Draft EIS, NOA, AK, Alaska Groundfish Fisheries, New Information concerning the Ecosystem and Preferred Alternative, North Pacific Fishery Management Council, Fishery Management Plans for Groundfish Fishery. Gulf of Alaska and the Groundfish Fishery of the Bering Sea and Aleutain Islands Area, AK, Comment Period Ends: October 15, 2003, Contact: James W. Balsiger (907) 586–7221. This document is available on the Internet at: *http://www.fakr.noaa.gov/sustainablefisheries/seis/default.com.*

EIS No. 030393, Draft EIS, NOA, TX, MS, FL, LA, AL, Generic Essential Fish Habitat Amendment to the Fishery Management Plans of the Gulf of Mexico (GOM) for Shrimp Fishery; Red Drum Fishery; Spiny Lobster Fishery of the GOM and South Atlantic Coastal Migratory Pelagic Resources of GOM and South Atlantic, TX, LA, MS, FL and AL, Comment Period Ends: November 26, 2003, Contact: Roy E. Crabtree (727) 570–5301.

EIS No. 030394, Draft Supplement, NOA, ME, VT, CT, NY, DE, NH, MA, RI, NJ, MD, VA, NC, Essential Fish Habitat Components of Amendment 13 to the Northeast Multispecies Fishery Management Plan, Detailed Information on Rebuilding Overfished Stocks, Ending Overfishing and Reducing Unused Effort, New England Management Council, ME, NH, VT, MA, RI, CT, NY, NJ, DE, MD, VA and NC, Comment Period Ends: October 15, 2003, Contact: Paul Howard (978) 465–0492. This document is available on the Internet at: *http://www.nefmc.org.*

EIS No. 030395, Draft Supplement, AFS, WA, Deadman Creek Ecosystem Management Projects, Information on the Planning and Analysis of the Watershed, Three Rivers Ranger District, Colville National Forest, Ferry County, WA, Comment Period Ends: October 14, 2003, Contact: Tom Pawley (509) 738–6111.

EIS No. 030396, Final EIS, CGD, LA, Port Pelican Deepwater Port Construction and Operation, License Approval, Vermillion Lease Block 140 on the Continental Shelf in the Gulf of Mexico southwest of Freshwater City, LA, Wait Period Ends: October 2, 2003, Contact: Mark A. Prescott (202) 267–0225. This document is available on the Internet at: *http://dms.dot.gov.*

EIS No. 030397, Draft EIS, AFS, CO, Arapaho National Recreation Area Forest Health and Fuels Reduction Project, To Implement Pre-Suppression Measures on a Mountain Pine Beetle Infestation in Stands of Lodgepole Pine, Arapaho National Forest, Sulphur Ranger District, Grand County, CO, Comment Period Ends: October 14, 2003, Contact: Rick Caissie (970) 887–4112. This document is available on the Internet at: *http://www.fs.fed.us/r2/districts/srd/arapaho-national-recreation-area/forest-health/Index.htm.*

Dated: August 26, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–22165 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7550–9]

Proposed Administrative Order on Consent Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 Regarding the Sav-Cote Chemical Labs. Superfund Site, Lakewood, NJ

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed Administrative Order on Consent and opportunity for public comment.

SUMMARY: The United States Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.* In accordance with EPA guidance, notice is hereby given of a proposed administrative settlement pursuant to section 122(h)(1) of CERCLA concerning the Sav-Cote Chemical Labs. Superfund Site, located in Lakewood, New Jersey. Notice is being published to inform the public of the proposed settlement and provide an opportunity to comment. This settlement is intended to resolve the civil liability of certain responsible parties for response costs incurred by EPA at the Sav-Cote Chemical Labs. Superfund Site. CERCLA provides EPA the authority to settle certain claims for response costs incurred by the United States with the approval of the Attorney General of the United States.

The proposed settlement provides that the potentially responsible parties Mr. William Moskowitz and Mrs. Joan Moskowitz will pay $67,486.11, in addition to $607,513.89 already paid by Mr. William Moskowitz, in reimbursement of response costs incurred by EPA in performing a removal action to remove the contaminants and hazardous substances from the Sav-Cote Chemical Labs. Superfund Site in return for a covenant not sue under section 107 of CERCLA from the United States.

DATES: Comments must be provided on or before September 29, 2003.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866 and should refer to: In the Matter of Sav-Cote Chemical Labs. Superfund Site, William Moskowitz and Joan

Moskowitz, Settling Parties, U.S. EPA Region II Docket No. CERCLA–02–2003–2020.

FOR FURTHER INFORMATION CONTACT: U.S. Environmental Protection Agency, Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866, Attention: Muthu S. Sundram, Esq. (212) 637–3148.

SUPPLEMENTARY INFORMATION: A copy of the proposed administrative settlement agreement, as well as background information relating to the settlement, may be obtained in person or by mail from EPA's Region II Office of Regional Counsel, 290 Broadway—17th Floor, New York, New York 10007–1866.

Dated: August 19, 2003.

William McCabe,

Acting Director, Emergency & Remedial Response Division.

[FR Doc. 03–22160 Filed 8–28–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

August 25, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 29, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Kim A. Johnson, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–7232, or via fax at 202–395–5167, or via Internet at *Kim_A._Johnson@omb.eop.gov;* and Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB processing review of this new information collection with an approval by September 5, 2003.*

OMB Control Number: 3060–XXXX.

Title: Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, CC Docket Nos. 01–338, 96–98, and 98–147, Report and Order and Order on Remand and Further NPRM.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit and not-for-profit institutions.

Number of Respondents: 2,369.

Estimated Time Per Response: 8–40 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 74,120 hours.

Total Annual Cost: $5,275,000.

Needs and Uses: In the Report and Order on Remand and Further Notice of Proposed Rulemaking, issued in FCC 03–36, the Commission adopts new rules to govern the availability of unbundled network elements to competitive local exchange carriers from incumbent local exchange carriers. The Commission amended its standard for determining which network elements must be provided on an unbundled basis and determines which network elements meet this standard. The Commission establishes eligibility criteria for certain combination of unbundled network elements. The Commission allows state regulatory commissions to initiate proceedings to make additional determinations consistent with specific Commission guidance.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–22171 Filed 8–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 18, 2003.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 29, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov;* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562, or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les

Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0249.
Title: Section 74.781, Station Records.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business and other for-profit entities; Not-for-profit institutions; State, Federal or Tribal governments.
Number of Respondents: 7,400.
Estimated Time per Response: 15 to 45 minutes.
Frequency of Response: Recordkeeping
Total Annual Burden: 5,735 hours.
Total Annual Costs: $666,000.
Needs and Uses: 47 CFR 74.781 requires licensees of low power television, TV translator, and TV booster stations to maintain adequate records. FCC staff in field inspections use the records to ensure that reasonable measures are taken to maintain proper station operations and to ensure compliance with the Commission's rules.

OMB Control Number: 3060–0568.
Title: Commercial Leased Access Rates, Terms, and Conditions.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities; State, local, or Tribal government.
Number of Respondents: 6,330.
Estimated Time per Response: 2 mins to 10 hrs.
Frequency of Response: Recordkeeping; Third party disclosure.
Total Annual Burden: 94,171 hours.
Total Annual Costs: $74,000.
Needs and Uses: The FCC and prospective leased access programmers use this information to verify rate calculations for leased access channels and to eliminate uncertainty negotiations for leased commercial access. The Commission's leased access requirements are designed to promote programming diversity and competition in programming delivery as required by section 612 of the Cable Television Consumer Protection and Competition Act of 1992.

OMB Control Number: 3060–0569.
Title: Section 76.975, Commercial Leased Access Dispute Resolution.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities; State, local, or tribal government.
Number of Respondents: 60.
Estimated Time per Response: 4 to 40 hours.
Frequency of Response: On occasion filing requirement; Third party disclosure.
Total Annual Burden: 1,320 hours.
Total Annual Costs: $69,000.
Needs and Uses: 47 CFR 76.975 permits any person aggrieved by the failure or refusal of a cable operator to make commercial channel capacity available or to charge rates for such capacity in accordance with the provisions of Title VI of the Communications Act of 1934 may file a petition for relief with the Commission. The Commission reviews the information to resolve leased access disputes.

OMB Control Number: 3060–0912.
Title: Cable Attribution Rules.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business and other for-profit entities; Individuals or households.
Number of Respondents: 20.
Estimated Time per Response: 4 hours.
Frequency of Response: On occasion reporting requirements.
Total Annual Burden: 80 hours.
Total Annual Costs: None.
Needs and Uses: The FCC uses filings required under 47 CFR 76.501, 76.503, and 76.504 of Commission rules to determine the nature of the corporate, financial, partnership, ownership and other business relationships that confer on their holders a degree of ownership or other economic interest, or influence or control over an entity engaged in the provision of communications services such that the holders are subject to the Commission's regulations.

OMB Control Number: 3060–0938.
Title: Application for a Low Power FM Broadcast Station License, FCC Form 319.
Form Number: FCC Form 319.
Type of Review: Extension of a currently approved collection.
Respondents: Not-for-profit institutions; State, local, or Tribal government.
Number of Respondents: 1,200.
Estimated Time per Response: 1.0 hours.
Frequency of Response: On occasion filing requirements.
Total Annual Burden: 1,800 hours.
Total Annual Costs: $105,000.
Needs and Uses: The FCC Form 319 is required to apply for a new or modified low power FM broadcast station. The data are used by FCC staff to determine whether an applicant has constructed its station in accordance with the outstanding construction permit and to update FCC station files. Data are extracted from the FCC Form 319 for inclusion in the subsequent license to operate the station.

Federal Communications Commission.
William F. Caton,
Deputy Secretary.

[FR Doc. 03–22172 Filed 8–28–03; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 20, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before September 29, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street., SW., DC 20554,

or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0921.

Title: Petitions for LATA Boundary Modification for the Deployment of Advanced Services.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 5 respondents; 20 responses.

Estimated Time Per Response: 8 hours.

Frequency of Response: On occasion reporting requirement and third party disclosure requirement.

Total Annual Burden: 160 hours.

Total Annual Cost: N/A.

Needs and Uses: Bell Operating Companies (BOCs) that petition for LATA boundary modifications to encourage the deployment of advanced service on a reasonable and timely basis are requested to include information in accordance with specified criteria. The criteria will serve to ease the petition process on Bell Operating Companies by providing guidelines that will serve to narrow the scope of their petitions to the issues and facts that the Commission is primarily concerned with. In addition, the request will also expedite the petition process by ensuring that petitioners will provide all the information the Commission needs to properly review their requests.

OMB Control No.: 3060–0710.

Title: Policy and Rules Concerning the Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96–98.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 12,250 respondents; 1,052,693 responses.

Estimated Time Per Response: .50–2,880 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 1,134,050 hours.

Total Annual Cost: $469,000.

Needs and Uses: The Commission rules and regulations implement parts of sections 251 and 252 that affect local competition. Incumbent local exchange carriers (LECs) are required to offer interconnection, unbundled network elements, transport and termination, and wholesale rates for certain services to new entrants. Incumbent LECs must price such services at rates that are cost-based and just and reasonable and provide access to right-of-way as well as establish reciprocal compensation arrangements for the transport and termination of telecommunications traffic.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–22173 Filed 8–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 22, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 28, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214, or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–1007.

Title: Streamlining and Other Revisions of Part 25 of the Commission's Rules.

Form No.: FCC Form 312, Schedule S.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 180 respondents; 1,001 responses.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion, annual and other reporting requirements, and third party disclosure requirement.

Total Annual Burden: 9,746 hours.

Total Annual Cost: $107,194,000.

Needs and Uses: On June 20, 2003, the Commission released a Second Report and Order in IB Docket Nos. 02–34 and 00–248, and a Declaratory Order in IB Docket No. 96–111, FCC 03–128, hereinafter referred to as the "Fleet Management Order." The Fleet Management Order adopts a procedure that will give operators the flexibility to operate satellites in their fleets at any one of their orbit locations assigned to their fleet without individual prior Commission approval. In addition, the Order adopts a rule that permits receive-only earth stations to access foreign-licensed satellites on the "Permitted List." The Order adopts a streamlined procedure for minor modifications of space station licenses in section 25.118(e) of the Commission's rules and it eliminates a licensing requirement for certain receive-only stations. The Commission's adoption of a streamlined procedure for minor modifications of space station licenses expedites the grant of applications that do not involve increase interference potential and facilitates service to the public. Under this new streamlined procedure, a space station operator may modify its license without prior authorization, but upon 30 days prior notice to the Commission and any potentially affected licensed

spectrum user, provided that the operator meets the certain technical requirements. The Commission uses this information to determine the technical, legal and financial qualifications of applicants or licensees to operate a station, transfer or assign a license, and to determine whether the authorization is in the public interest, convenience and necessity.

OMB Control No.: 3060–1022.

Title: Section 101.1403, Broadcast Carriage Requirements.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 214 hours.

Total Annual Cost: N/A.

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) respondents that meet the statutory definition of Multiple Video Programming Distributor (MVPD) to comply with the broadcast carriage requirements located at 47 U.S.C. 325(b)(1). Any MVDDS licensee that is an MVPD must obtain the prior express authority of a broadcast station before retransmitting that station's signal, subject to the exceptions contained in Section 325(b)(2) of the Communications Act of 1934, as amended. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

OMB Control No.: 3060–1023.

Title: Section 101.103, Frequency Coordination Procedures.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 107 hours.

Total Annual Cost: N/A.

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to provide notice of intent to construct a proposed antenna to NGSO FSS licensing operating in the 12.2–12.7 GHz frequency band and to maintain an Internet web site of all existing transmitting sites and transmitting antennas that are scheduled for operation within one year including the "in service" dates. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

OMB Control No.: 3060–1024.

Title: Section 101.1413, License Term and Renewal Expectancy; Section 101.1421, Coordination of Adjacent Area MVDDS Stations and Incumbent Public Safety POFS Stations.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: .50 hours.

Frequency of Response: On occasion reporting and 10 year reporting requirements, and third party disclosure requirement.

Total Annual Burden: 107 hours.

Total Annual Cost: $8,900.

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) renewal applicants to comply with the requirements to provide substantial service by the end of the ten year initial license term. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

OMB Control No.: 3060–1025.

Title: Section 101.1440, MVDDS Protection of Direct Broadcast Satellites (DBS).

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: 40 hours.

Frequency of Response: On occasion reporting requirement, and third party disclosure requirement.

Total Annual Burden: 8,560 hours.

Total Annual Cost: N/A.

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to conduct a survey of the area around its proposed transmitting antenna site to determine the location of all DBS customers that may potentially be effected by the introduction of its MVDDS service. The MO&O and Second Report and Order will ensure that MVDDS signal will not be in excess of the appropriate Equivalent Power Flux Density (EPFD) limits as written in 47 CFR 101.105(a)(4)(ii)(B) is causing interference to DBS customers. If the MVDDS licensee determines that its signal level will exceed the EPFD limit at any DBS customer site, it shall take whatever steps are necessary, up to and including finding a new transmission site. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

OMB Control No.: 3060–1026.

Title: Section 101.1417, Annual Report.

Form No.: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 214.

Estimated Time Per Response: 1 hour.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 214 hours.

Total Annual Cost: N/A.

Needs and Uses: On July 7, 2003, the FCC released a Third Report and Order in ET Docket No. 98–206, FCC 03–152, which requires Multichannel Video Distribution and Data Service (MVDDS) licensees to file two copies of a "licensee information report" by March 1st of each year with the Commission, for the preceding calendar year. This report must include the name and address of the licensee, station(s) call letters and primary geographic service area(s), and statistical data for the licensee's station(s). This report enables the Commission to keep track of the number of MVDDS licensee stations. Additionally, the Commission decided to change from the original Component Economic Areas (CEAs) to Designated Market Areas (DMAs) to allow for advanced wireless services.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–22174 Filed 8–28–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

[Docket No. OP–1158]

Anti-Tying Restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed interpretation and supervisory guidance with request for public comment.

SUMMARY: The Board proposes to adopt an interpretation of the anti-tying restrictions of section 106 of the Bank Holding Company Act Amendments of 1970 and related supervisory guidance. The interpretation describes the scope and purposes of section 106, the elements of a tying arrangement prohibited by section 106, and the statutory and regulatory exceptions to the prohibitions of section 106. The interpretation also includes examples of the types of conduct, actions and arrangements by banks that are prohibited and permissible under section 106. The Board believes that adoption of the interpretation will assist banks and their customers in understanding the scope of the anti-tying restrictions of the statute. The related supervisory guidance discusses the types of internal controls that should help banks comply with section 106. The proposed interpretation and guidance reflect the principles that the Board will apply in enforcing section 106 and conducting anti-tying reviews at banking organizations.

DATES: Comments must be received on or before September 30, 2003.

ADDRESSES: Comments should refer to Docket No. OP–1158 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to *regs.comments@federalreserve.gov* or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays pursuant to section 261.12, except as provided in section 261.14, of the Board's Rules Regarding Availability of Information (12 CFR 261.12 and 261.14).

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202–452–3583), Kieran J. Fallon, Senior Counsel (202–452–5270), Mark E. Van Der Weide, Counsel (202–452–2263), or Andrew S. Baer, Counsel (202–452–2246), Legal Division; or Michael G. Martinson, Associate Director (202–452–3640), or Michael J. Schoenfeld, Senior Supervisory Financial Analyst (202–452–2836), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. For users of Telecommunications Device for the Deaf (TDD) only, contact 202–263–4869.

SUPPLEMENTARY INFORMATION:

Background

Section 106 of the Bank Holding Company Act Amendments of 1970 (section 106) generally prohibits a bank from conditioning the availability or price of one product on a requirement that the customer also obtain another product from the bank or an affiliate of the bank.[1] Thus, for example, the statute prohibits a bank from conditioning the availability of a loan from the bank (or a discount on the loan) on the requirement that the customer also purchase an insurance product from the bank or an affiliate.[2]

Congress adopted section 106 in 1970 at the same time that it expanded the ability of bank holding companies to engage in nonbanking activities under section 4(c)(8) of the Bank Holding Company Act (BHC Act).[3] Congress expressed concern that banks might use their ability to offer bank products—credit in particular—in a coercive manner to gain a competitive advantage in markets for nonbanking products and services (such as insurance sales).[4] Congress therefore decided to impose the special anti-tying restrictions in section 106 on banks.

Section 106 does not apply to the nonbank affiliates of a bank or other nonbank entities.[5] The nonbank affiliates of banks, as well as banks themselves, however, are subject to the anti-tying restrictions contained in the Federal antitrust laws (the Sherman and Clayton Acts).[6]

Although section 106 prohibits banks from imposing certain types of tying arrangements on their customers, the statute also expressly permits banks to engage in other forms of tying and authorizes the Board to grant additional exceptions to the statute's restrictions by regulation or order. For example, section 106 and the Board's regulations expressly permit a bank to condition the availability or price of a product or service on a requirement that the customer also obtain a "loan, discount, deposit, or trust service" (a "traditional bank product") from the bank or an affiliate of the bank.[7]

Although the general prohibitions of section 106 can be stated fairly simply, determining whether a violation of the statute has occurred often requires a careful analysis of the facts and circumstances associated with the particular transaction (or proposed transaction) at issue. For example, as noted above, several important exceptions exist to the statute's prohibitions. Moreover, the actions, statements and policies of the bank involved in the particular transaction often play an important role in determining whether the bank has violated section 106.

The Federal banking agencies have long required that banking organizations establish and maintain appropriate policies and procedures to ensure compliance with the anti-tying restrictions of section 106,[8] and the agencies monitor these policies and procedures through the supervisory process. For example, the anti-tying policies and procedures of bank holding companies and state member banks are reviewed and evaluated by Federal Reserve examiners as part of the compliance examinations of these organizations. In addition, examiners may conduct more targeted examinations of the marketing programs, anti-tying training materials, internal reports and internal tying investigations of a banking organization.

Over the past several months, Board staff also has met with customers of

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[1] 12 U.S.C. 1972. Although part of the Bank Holding Company Act Amendments of 1970, section 106 applies to a bank whether or not the bank is owned or controlled by a bank holding company.

[2] Section 106 also generally prohibits a bank from conditioning the availability or price of one product on a requirement that the customer (i) *provide* another product to the bank or an affiliate of the bank or (ii) *not obtain* another product from a competitor of the bank or a competitor of an affiliate of the bank. 12 U.S.C. 1972(1)(C), (D) and (E). The arrangements prohibited by section 106 are collectively referred to as "tying arrangements."

[3] 12 U.S.C. 1843(c)(8).

[4] *See* S. Rep. No. 1084, 91st Cong., 2d Sess. (1970).

[5] In 1971, the Board by regulation extended the anti-tying restrictions of section 106 to bank holding companies and their nonbank subsidiaries. In 1997, however, the Board rescinded this regulatory extension of the statute. *See* 62 FR 9290, Feb. 28, 1997.

[6] 15 U.S.C. 1 *et seq.*; 15 U.S.C. 12 *et seq.*

[7] *See* 12 U.S.C. 1972(1)(A); 12 CFR 225.7(b)(1).

[8] *See, e.g.*, Federal Reserve Board Bank Holding Company Supervision Manual 3500.0; Office of the Comptroller of the Currency Insurance Activities Handbook, Federal Prohibitions on Tying (June 2002); Office of the Comptroller of the Currency Bulletin 95–20 (April 14, 1995).

banks, professional associations representing customers of banks, competitors of banks, and banking organizations and their trade associations concerning the scope, effectiveness and impact of the anti-tying restrictions of section 106 and related issues. In addition, the Board has received inquiries from banks, competitors of banks, customers of banks and a member of Congress regarding section 106 and its application to specific situations.

In light of these events, the complexities associated with section 106, and the increasing importance of section 106 in the wake of the Gramm-Leach-Bliley Act,[9] the Board believes it would be useful and appropriate at this time to publish, and seek public comment on, an official interpretation of section 106 and supervisory guidance for banks concerning section 106. In supervising compliance by banking organizations with section 106 and this interpretation, the Board will take into account whether the manner of applying section 106 or the Board's interpretation in the context of a particular practice was unclear before this document was issued.

Outline of the Proposed Interpretation and Supervisory Guidance

The proposed statement explains the Board's interpretation of section 106. The statement also sets forth the principles that the Board will apply in enforcing the statute and in assessing the anti-tying policies, procedures and systems of banks during the supervisory process. The Board has consulted extensively with the Office of the Comptroller of the Currency in developing the interpretation and supervisory guidance.

The statement is divided into several parts. The first six parts (Parts I–VI) are a proposed Board interpretation of section 106. These parts describe the types of bank conduct that are prohibited by section 106 (Part II), explain the essential elements of a tying arrangement prohibited by section 106 (Part III), and describe the statutory and regulatory exceptions to the anti-tying prohibitions of section 106 (Part IV). The remainder of these six parts provide an introduction to the statement (Part I) and discuss the scope of the terms "bank" and "affiliate" for purposes of section 106 and the statement (Parts V and VI).

The final part of the statement (Part VII) discusses the policies, procedures and systems that should help banks ensure and monitor their compliance with section 106. This section is guidance that the Board proposes to follow in its supervision of banking organizations going forward.

The interpretation discusses a wide variety of issues related to section 106. Among other matters, the Board's interpretation addresses (i) the scope of the statutory and regulatory traditional bank product exceptions, including the types of products that would qualify as a traditional bank product (*i.e.*, a "loan, discount, deposit, or trust service") for purposes of the exceptions; (ii) the permissibility under section 106 of relationship banking programs that involve both traditional bank products and other products (referred to in the interpretation and guidance as "mixed-product arrangements"); and (iii) whether tying arrangements voluntarily sought or demanded by a customer are permissible under section 106. The interpretation also includes examples of the types of conduct, actions and arrangements by banks that are prohibited and permissible under section 106. These examples, which are included for illustrative purposes, are based solely on the facts stated in the example. Because the determination of whether a violation of section 106 has occurred is fact specific, these examples by themselves do not represent a finding that any past action by a particular bank violated the statute.

The Board seeks comment on all aspects of the proposed interpretation and supervisory guidance. In addition, the Board asks commenters to identify and discuss any section 106 interpretive or compliance issues that are not addressed in the statement but that, in the view of commenters, would be of sufficient importance and general interest to address either in the Board's interpretation or supervisory guidance.

The proposed interpretation and related supervisory guidance follows.

Interpretation of the Anti-tying Restrictions of Section 106 of the Bank Holding Company Act Amendments of 1970 and Related Supervisory Guidance

I. Introduction

The anti-tying provisions of section 106 of the Bank Holding Company Act Amendments of 1970 ("section 106" or the "anti-tying prohibitions") prohibit certain forms of tying by banks.[10] The statute is intended to prevent banks from using their ability to offer bank products, credit in particular, in a coercive manner to gain a competitive advantage in markets for other products and services. Although section 106 sets forth an absolute bar to certain forms of tying by banks, the statute permits other types of tying and permits the Board to grant additional exceptions to its prohibitions. Violations of section 106 may be addressed by the bank's appropriate Federal banking agency through an enforcement action, by the Department of Justice through a request for an injunction, or by a customer or other person injured by the illegal tying arrangement through a request for an injunction or an action for damages.[11]

This statement explains the Board's interpretation of the prohibitions of, and statutory and regulatory exceptions to, section 106. This statement also reflects the principles and factors that the Board will apply in conducting anti-tying reviews at banking organizations and enforcing section 106. In addition, Part VII of this statement includes supervisory guidance outlining the types of anti-tying policies, procedures and systems that the Board believes will help banks ensure compliance with section 106.

Banks and their affiliates also are subject to the tying restrictions contained in the Sherman Act and the Clayton Act that apply to all persons acting in interstate commerce.[12] This statement does not address the applicability of these general antitrust laws, which are within the jurisdiction of the Department of Justice. This statement also does not address the treatment of arrangements involving customers and banks and their affiliates under other Federal or state laws, including sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1) and the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*).

II. What Conduct Is Prohibited by Section 106?

Section 106 prohibits a bank from extending credit, leasing or selling any property or furnishing any service, or fixing or varying the consideration for any of the foregoing, on the condition or requirement that the customer do any of the following:

1. Obtain some additional credit, property or service from the bank, *other than* a loan, discount, deposit or trust service;

2. Provide some additional credit, property or service to the bank, *other than* those related to and usually provided in connection with a loan, discount, deposit or trust service;

[9] Pub. L. No. 106–102, 113 Stat. 1338 (1999).

[10] 12 U.S.C. 1972(1).

[11] 12 U.S.C. 1972, 1973, 1975 and 1976.

[12] 15 U.S.C. 1 *et seq.*; 15 U.S.C. 12 *et seq.*

3. Obtain from or provide to an affiliate of the bank some additional credit, property or service; or

4. *Not* obtain some additional credit, property or service from a competitor of the bank or of an affiliate of the bank, *unless* the condition is reasonably imposed in a credit transaction to ensure the soundness of the credit.[13]

As this list illustrates, section 106 prohibits banks from imposing certain tying arrangements as well as certain reciprocity and exclusive dealing arrangements on their customers.[14] Thus, for example, section 106 prohibits a bank from imposing a condition on a prospective borrower that requires the borrower to do any of the following in order to obtain a loan from the bank—

- Purchase an insurance product from the bank or an affiliate of the bank (a prohibited tie);
- Obtain corporate debt or equity underwriting services from an affiliate of the bank (a prohibited tie);
- Sell the bank or an affiliate of the bank a piece of real estate unrelated to the requested loan (a prohibited reciprocity arrangement); or
- Refrain from obtaining insurance products or securities underwriting services from a competitor of the bank or from a competitor of an affiliate of the bank (a prohibited exclusive dealing arrangement).

For ease of reference, this statement uses the phrase "tying arrangement" to refer to all types of tying, reciprocity and exclusive dealing arrangements described in section 106. In addition, although section 106 generally refers to "credit," "property" or "service" in describing the items sought or required to be obtained from (or provided to) the bank or an affiliate, this statement uses the term "product" to refer to any type of credit, property or service.

There are several noteworthy points about the anti-tying prohibitions of section 106. First, section 106 does not require a bank to extend credit or provide any other product to any customer. That is, section 106 does not prohibit a bank from declining to provide credit or any other product to a customer so long as the bank's decision is not based on the customer's failure to satisfy a condition or requirement prohibited by section 106. Thus, for example, section 106 does not prohibit a bank from denying credit to a customer on the basis of the customer's financial condition, financial resources or credit history, or because the bank does not offer (or seeks to exit the market for) the type of credit requested by the customer.

Second, section 106 applies only to tying arrangements that are imposed by a *bank*. The statute does *not* apply to tying arrangements imposed by a nonbank affiliate of a bank.[15] For example, section 106 prohibits a bank from requiring a person to purchase insurance from the bank's insurance affiliate in order to obtain a reduced interest rate on a loan from the bank. Importantly, such an arrangement is prohibited by section 106 even if the customer is informed of the bank's reduced-rate offer by the bank's insurance affiliate (for example, when the customer applies to the insurance affiliate to obtain insurance). In either case, it is the bank that is varying the price of a bank product (the loan) based on a requirement that the customer obtain another product (insurance) from an affiliate. Such action by the bank violates section 106.

On the other hand, section 106 does not apply to the insurance agency affiliate of the bank.[16] Thus, section 106 would *not* prohibit the insurance agency affiliate of a bank from offering a discount on the premiums the affiliate charges to customers that purchase more than one type of insurance (*e.g.*, homeowners and automobile insurance) from the affiliate. In addition, section 106 would *not* prohibit the insurance agency affiliate from offering discounts on premiums to customers who also have a loan from, or deposit account with, the bank. In both of these cases, it is the affiliate (and not the bank) that has imposed the condition governing the sale of its products.[17]

Third, section 106 covers some activities that are not included in the conventional notion of tying. Namely, section 106 prohibits banks from granting certain types of price discounts—that is, varying the price of a product on the condition that the customer purchase one or more other products from the bank or an affiliate. Thus, section 106 may restrict the ability of banks to provide price discounts (including rebates) on bundled products depending on what products are in the bundle and which ones are discounted. Section 106 does not, however, prohibit a bank from discounting the price of an individual product for reasons that are unrelated to another product. For example, a bank may offer a customer a discount on the purchase of an individual product in light of the amount of the individual product proposed to be purchased by the customer, the creditworthiness of the customer, or the unique features of the product or transaction.

Fourth, several important exceptions exist to the general prohibitions of section 106. For example, the statute itself expressly permits a bank to condition the availability or price of a product on a requirement that the customer also obtain a loan, discount, deposit or trust service from the bank. The statute also expressly permits a bank to condition the availability or price of a product on a requirement that the customer provide the bank some additional product that is related to and usually provided in connection with a loan, discount, deposit or trust service. The Board, acting pursuant to authority conferred by section 106, also has adopted by regulation several important exceptions to the statute's anti-tying restrictions.[18] The statutory and regulatory exceptions to section 106 are discussed in Part IV of this statement.

Because of the statute's complexity and the importance of the actions, statements and policies of the bank in analyzing whether section 106 has been violated, the determination of whether a violation of section 106 has occurred often requires a careful review of the specific facts and circumstances associated with the relevant transaction (or proposed transaction) between the bank and the customer. Banks should establish and maintain policies, procedures and systems that, in light of the nature, scope and complexity of the bank's activities, are reasonably designed to ensure that the bank's employees and representatives are trained appropriately concerning the

[13] For a discussion of the definition of the terms "bank" and "affiliate," see Parts V and VI, respectively.

[14] "Tying arrangements" are arrangements that require a customer to *obtain* a product from the bank or one of its affiliates as a condition of the bank providing another product to the customer. "Reciprocity arrangements" are arrangements that require a customer to *provide* a product to the bank or one of its affiliates as a condition of the bank providing another product to the customer. "Exclusive dealing arrangements" are arrangements that require a customer *not to obtain* a product from a competitor of the bank or of an affiliate as a condition of the bank providing another product to the customer.

[15] Tying arrangements imposed by a nonbank affiliate of a bank are, however, subject to the anti-tying restrictions of the general antitrust laws.

[16] There is one exception to the general rule that affiliates of a bank are not subject to section 106. This exception is discussed in Part V.

[17] A bank, however, may not evade the prohibitions of section 106 by engaging jointly with an affiliate in a transaction in which the affiliate nominally imposes a condition on the customer that the bank is prohibited from imposing on the customer under section 106. Part VI of this statement provides some examples of situations when a tie that is nominally imposed by an affiliate of a bank will be viewed as a tie imposed by the bank for purposes of section 106.

[18] 12 U.S.C. 1972(1). The exceptions to section 106 adopted by the Board by regulation are codified in section 225.7 of the Board's Regulation Y (12 CFR 225.7).

anti-tying prohibitions of section 106 and that the bank complies with the statute. Part VII of this statement discusses the types of policies, procedures and systems that should help banks comply with the anti-tying restrictions of section 106.

Bank customers that believe they have been the object of a tying arrangement prohibited by section 106 are encouraged to contact the appropriate Federal banking agency for the bank involved. These agencies are the Office of the Comptroller of the Currency for national banks, the Board for state-chartered banks that are members of the Federal Reserve System ("state member banks"), and the Federal Deposit Insurance Corporation for state-chartered banks that are not members of the Federal Reserve System ("state non-member banks").

Savings associations are subject to anti-tying restrictions under the Home Owners' Loan Act (HOLA) that are virtually identical to those applicable to banks under section 106.[19] Customers of a savings association that believe the savings association has violated the anti-tying restrictions of the HOLA should contact the Office of Thrift Supervision.

III. What Are the Essential Elements of an Impermissible Tying Arrangement Under Section 106?

Congress modeled section 106 on the anti-tying principles developed under the general antitrust laws (the Sherman and Clayton Acts), which apply to all companies, including banks and their affiliates, that act in interstate commerce. As a general matter, a tying arrangement violates the Sherman and Clayton Acts if:

(1) The arrangement involves two or more separate products;

(2) The seller forces a customer seeking to purchase one of the products (the "desired product") also to purchase the other product;

(3) The seller has sufficient economic power in the market for the desired product to enable it to restrain trade in the market for the other product;

(4) The arrangement has anti-competitive effects in the market for the other product; and

(5) The arrangement affects a "not insubstantial" amount of interstate commerce.[20]

Although tying arrangements by banks are subject to the general antitrust laws, Congress determined to subject tying arrangements by a *bank* to a stricter standard. As a general matter, there are only two essential elements that must be shown to establish that a tying arrangement by a bank violates section 106:

(1) The arrangement must involve two or more separate products: the customer's desired product(s) and one or more separate tied products; and

(2) The bank must force the customer to obtain (or provide) the tied product(s) from (or to) the bank or an affiliate in order to obtain the customer's desired product(s) from the bank.[21]

This Part III discusses the essential elements of any prohibited tying arrangement under section 106.[22] Part IV discusses the statutory and regulatory exceptions to these general rules, as well as special issues that arise in applying these exceptions.

A. Arrangement Must Involve Two Products—a Desired Product and a Tied Product.

In order for a tying arrangement to exist under section 106, the arrangement must involve two or more separate products. A bank does not violate section 106 by requiring a customer to obtain (or provide) two or more aspects of a single product from (or to) the bank or an affiliate, or by conditioning the availability or varying the price of a product on the basis of the characteristics or terms of that product.[23] For example, a bank does not violate section 106 by requiring—

- A prospective borrower to provide the bank specified collateral in order to obtain the loan or to obtain the loan at a favorable interest rate; or
- An existing borrower to post additional collateral, accept a higher interest rate, or provide updated or additional financial information as a condition of renewal of the loan.

In such circumstances, the bank's conditions relate to the single product sought by the customer (a loan) and do not involve separate, distinguishable products.[24]

In applying section 106, it is useful to identify which of the separate products is the "tied product" and which is the "desired product." The "tied product" is the product that the customer is required to obtain (or provide) in order to have access to or get a price discount on the "desired product." Section 106 is premised on the notion that the "desired product" is the product the customer really seeks.

To illustrate, suppose a customer seeks a mortgage loan (the desired product) from a bank. Section 106 prohibits a bank from requiring that the customer purchase homeowners insurance (the tied product) from the bank or an affiliate of the bank as a condition to granting the customer the mortgage loan or a discount on the loan. However, as discussed in Part IV, some exceptions from the statute's prohibitions are available where the tied product is a traditional bank product (that is a loan, discount, deposit or trust service). The Board notes that certain types of derivative products, such as interest rate and foreign exchange swaps, often are sold by banks and purchased by customers in connection with lending transactions. The Board

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[19] *See* 12 U.S.C. 1464(q); *Integon Life Insurance Corp.* v. *Browning*, 989 F.2d 1143, 1149 (11th Cir. 1993).

[20] *See Yentsch* v. *Texaco, Inc.*, 630 F.2d 46 (2d Cir. 1980); *Tic-X-Press, Inc.* v. *Omni Promotions Co.*, 815 F.2d 1407 (11th Cir. 1987); *see also* 9 Phillip Areeda, *Antitrust Law* at ¶1702 (1991). A tying arrangement may be found to be *per se* illegal under the general antitrust laws without any showing of anti-competitive effects in the market for the other product if the seller has sufficiently strong economic power in the market for the desired product. *See Jefferson Parish Hospital District No. 2* v. *Hyde*, 466 U.S. 2 (1984). In these cases, the courts essentially assume that the tying arrangement, combined with the seller's strong economic position in the market for the desired product, has or will produce anti-competitive effects. *Id.* at 16, n. 25.

In conventional antitrust parlance, the desired product is known as the "tying product," because it is customers' desire to obtain it that allows a producer to tie other, possibly unwanted products—the tied products—to it. In the interest of clarity, this statement uses the term "desired product" instead of "tying product."

[21] Legislative history indicates that economic power, anti-competitive effects, and effects on interstate commerce are not necessary elements of a section 106 claim. *See* S. Rep. No. 1084, 91st Cong., 2d Sess. (1970), *reprinted in* 1970 U.S.C.C.A.N. 5519, 5558 ("Senate Report") (Supplementary views of Sen. Brooke); Senate Report at 5547 (Supplementary views of Senators Bennett, Tower, Percy and Packwood); *see also Integon Life Insurance Corp.* v *Browning*, 989 F.2d 1143 (11th Cir. 1993); *Amerifirst Properties, Inc.* v. *FDIC*, 880 F.2d 821 (5th Cir. 1989); 62 FR 9290, 9313, Feb. 28, 1997; 59 FR 65473, Dec. 20, 1994.

[22] The exclusive dealing prohibition in section 106 (12 U.S.C. 1972(1)(E)) also prohibits a bank from requiring that a customer refrain from obtaining another product from a competitor of the bank or of an affiliate in order to obtain the customer's desired product. Although exclusive dealing arrangements are not specifically discussed in this Part III, the elements discussed in this Part III are equally applicable to exclusive dealing arrangements prohibited by section 106.

[23] As a general matter, two products are separate and distinct for purposes of section 106 only if there is sufficient consumer demand for each of the products individually that it would be efficient for a firm to provide the two products separately. *See Eastman Kodak Co.* v. *Image Technical Services, Inc.*, 504 U.S. 451, 462 (1992); *Jefferson Parish Hospital District No. 2* v. *Hyde*, 466 U.S. 2, 19 (1984). Determining whether sufficient consumer demand exists for the two products separately often is a highly fact-intensive inquiry that depends on the nature and character of the products and markets involved. *See* 2 Joseph P. Bauer and William H. Page, Kintner Federal Antitrust Law 13:17 (2002).

[24] A tying arrangement, however, may exist where a bank imposes a condition that involves two separate products of the same type (*e.g.*, two separate insurance products).

requests comment on how interest rate swaps, foreign exchange swaps, and other derivative products that often are connected with lending transactions should be treated under section 106.

B. Bank—Imposed Condition or requirement.

Section 106 applies only if a bank provides or offers to provide a customer one product (the desired product), or a discount on the desired product, "*on the condition or requirement*" that the customer obtain (or provide) an additional product (the tied product) from (or to) the bank or an affiliate. This element of section 106 was modeled on the tying prohibitions in the general antitrust laws.

Under the general antitrust laws, an illegal tie exists only where the seller forces the customer to purchase the tied product in order for the customer to obtain its desired product.[25] Accordingly, a seller engages in an illegal tie under the general antitrust laws only if it requires the customer to purchase the tied product to obtain the customer's desired product.[26] Moreover, the evidence must demonstrate that the seller imposed the arrangement on the customer through some type of coercion.[27] Thus, the courts have held that a seller's bundled sale of multiple products to a customer does not violate the general antitrust laws if the customer *voluntarily* decided to purchase the package of products from the seller.[28] In such circumstances, the seller has not coerced or forced the buyer to purchase any product from the seller.

The language and legislative history of section 106 indicate that this distinction between an arrangement imposed by the seller and one voluntarily sought by the customer also is embedded in section 106.[29] Accordingly, section 106 applies only if each of two requirements are met: (1) A condition or requirement exists that ties the customer's desired product to another product; and (2) this condition or requirement was imposed or forced on the customer by the bank.[30]

1. *Existence of a condition or requirement.*

First, a violation of section 106 may occur only when a customer is *required* to obtain an additional product from, or provide an additional product to, the bank or an affiliate in order to obtain the customer's desired product or a discount on the desired product.[31] It is the existence of such a requirement that forms the heart of an illegal tying arrangement. Absent a requirement that the customer obtain a separate product from, or provide a separate product to, the bank or an affiliate, there is no "tie" between the customer's desired product and another product.

Thus, for example, a bank would violate section 106 if the bank informs a customer seeking only a loan from the bank that the bank will make the loan only if the customer commits to hire the bank's securities affiliate to underwrite an upcoming bond offering for the customer. In this example, the bank has conditioned the availability of credit to the customer on a requirement that the customer obtain another product (bond underwriting services) from an affiliate of the bank.

Section 106, however, does not prohibit a customer from deciding on its own to award some of its business to a bank or an affiliate as a reward for the bank previously providing credit or other products to the customer. Using the example in the previous paragraph, if the bank made the loan to the customer *without* conditioning it on a requirement that the customer obtain one or more additional products from the bank or an affiliate, then no tie actionable under section 106 would exist if the customer later voluntarily decides to award some of its securities underwriting business to the bank's securities affiliate.

In addition, section 106 does not prohibit a bank from granting credit or providing any other product to a customer based solely on a *desire* or *hope* (but not a requirement) that the customer will obtain additional products from the bank or its affiliates in the future. This is true even if the bank conveys to the customer this desire or hope for additional business. Section 106 also does *not* prohibit a bank from cross-marketing the full range of products offered by the bank or its affiliates to a customer or encouraging an existing customer to purchase additional products offered by the bank or its affiliates. Cross-marketing and cross-selling activities, whether suggestive or aggressive, are part of the nature of ordinary business dealings and do not, in and of themselves, represent a violation of section 106. However, bank actions that go beyond cross-marketing or cross-selling and that

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[25] *See Times-Picayune Publishing Co.* v. *United States*, 345 U.S. 594, 614 (1953) ("The common core of . . . unlawful tying arrangements is the *forced* purchase of a second distinct commodity with the desired purchase of a dominant 'tying' product")(emphasis added); *see also Datagate, Inc.* v. *Hewlett-Packard Co.*, 60 F.3d 1421 (9th Cir. 1995), *cert. denied* 517 U.S. 1115 (1996); *Thompson* v. *Multi-List, Inc.*, 934 F.2d 1566, 1577–78 (11th Cir. 1991), *reh'g en banc denied* 946 F.2d 906 (1991); *Yentsch* v. *Texaco, Inc.*, 630 F.2d 46, 56–57 (2d Cir. 1980); *Response of Carolina, Inc.* v. *Leasco Response, Inc.*, 537 F.2d 1307, 1327 (5th Cir. 1976); *American Manufacturers Mut. Ins. Co.* v. *American Broadcasting-Paramount Theatres, Inc.*, 446 F.2d 1131, 1137 (2d Cir. 1971), *cert. denied* 404 U.S. 1063 (1972).

[26] *See, e.g., Northern Pacific Ry.* v. *United States*, 356 U.S. 1, 5–6 (1958) ("a tying arrangement may be defined as an agreement by one party to sell one product *only on the condition* that the buyer also purchases a different (or tied) product") (emphasis supplied); *Tic-X-Press, Inc.* v. *Omni Promotions Co.*, 815 F.2d 1407, 1415–17 (11th Cir. 1987); 9 Phillip Areeda, *Antitrust Law* at ¶1752 (1991) ("There is no tie for any antitrust purpose unless the defendant improperly imposes conditions that explicitly or practically require buyers to take the second product if they want the first one.")

[27] *See, e.g., Thompson* v. *Multi-List, Inc.*, 934 F.2d 1566, 1577–78 (11th Cir. 1991), *reh'g en banc denied* 946 F.2d 906 (1991); *Tic-X-Press, Inc.* v. *Omni Promotions Co.*, 815 F.2d 1407, 1415 & 1418–19 (11th Cir. 1987); *Unijax, Inc.* v. *Champion Int'l, Inc.*, 683 F.2d 678, 685 (2d Cir. 1982) ("Actual coercion by the seller that in fact forces the buyer to purchase the tied product is an indispensable element of a tying violation."); *Bob Maxfield, Inc.* v. *American Motors Corp.*, 637 F.2d 1033, 1037 (5th Cir.) ("actual coercion is an indispensable element of a tie-in charge"), *cert. denied* 454 U.S. 860 (1981).

[28] *See, e.g., Tic-X-Press, Inc.* v. *Omni Promotions Co.*, 815 F.2d 1407, 1417 (11th Cir. 1987) ("two products are not tied as a matter of antitrust law if the buyer voluntarily purchases the tied product"); *Sports Form, Inc.* v. *United Press International, Inc.*, 686 F.2d 750, 754 (9th Cir. 1982) ("Where a company is simply sold what it wishes to buy, there can be no tying problem."); *Dunkin Donuts of America, Inc.* v. *Dunkin Donuts, Inc.*, 531 F.2d 1211, 1224 (3d Cir.), *cert. denied* 429 U.S. 823 (1976) ("a voluntary purchase of two products is simply not a tie-in"); *Capital Temporaries, Inc.* v. *Olsten Corporation*, 506 F.2d 658, 662 (2d Cir. 1974) ("We do not think that there can be any question that no tying arrangement can possibly exist unless the person aggrieved can establish that he has been required to purchase something which he does not want to take.")

[29] *See* Conf. Rep. No. 1747, 91st Cong., 2d Sess., *reprinted in* 1970 U.S.C.C.A.N. 5561, 5569 ("Conference Report").

[30] As discussed in Part IV, exceptions to section 106 *allow* a bank to impose a condition on a customer in certain circumstances where the tied product is a traditional bank product. In addition, as discussed in Part IV, arrangements that allow the customer the option to satisfy a condition imposed by the bank through the purchase of traditional bank products *or* other products do not force a customer to purchase a non-traditional product in violation of section 106 if the customer has a meaningful choice of satisfying the condition solely through the purchase of traditional bank products.

[31] *See* Conference Report at 5580 (Section 106 "prohibits any subsidiary bank from providing any credit, property or service for a customer on the condition that he must obtain from, or provide to, the holding company or any other subsidiary thereof some additional credit, property or service."); Senate Report at 5535 ("The purpose of [the anti-tying provisions] is to prohibit anti-competitive practices which require bank customers to accept or provide some other service or product or refrain from dealing with other parties in order to obtain the bank product or services they desire."); *see also Integon Life Insurance Corp.* v *Browning*, 989 F.2d 1143 (11th Cir. 1993); *Tose* v. *First Pennsylvania Bank*, 648 F.2d 879 (3rd Cir. 1981), *cert. denied* 454 U.S. 893 (1981); *Duryea* v. *Third Northwestern National Bank*, 606 F.2d 823 (8th Cir. 1979); *Stefiuk* v. *First Union*, 61 F. Supp.2d 1294 (S.D. Fla. 1999), *aff'd without opinion* 207 F.3d 664 (11th Cir. 2000).

indicate that the bank will not provide the customer the desired product unless the customer obtains (or provides) another product from (or to) the bank or an affiliate do raise issues under section 106.

Importantly, a prohibited tying arrangement does not exist if the bank offers the customer the opportunity to obtain the customer's desired product (or a discount on the desired product) from the bank separately from the allegedly tied product. That is, if the customer was offered the option of obtaining the customer's desired product or discount from the bank *without* also obtaining (or providing) the allegedly tied product from (or to) the bank or an affiliate, then the customer was not *required* to obtain (or provide) the other product to obtain the desired product or discount. In such circumstances, no "tie" would exist between the two products for purposes of section 106.[32]

2. *Condition or requirement was imposed or forced on the customer by the bank.*

Even if a condition or requirement exists tying the customer's desired product to another product, a violation of section 106 may occur only if the condition or requirement was imposed or forced on the customer by the bank.[33] In this regard, section 106 was intended to prohibit banks from using their ability to offer bank products, and credit in particular, as leverage to force a customer to purchase (or provide) another product from (or to) the bank or an affiliate.[34] It was *not* the purpose of the statute to prohibit bank customers from using their own bargaining power to obtain a package of desired products from a bank and its affiliates or a price discount on those products. Similarly, it was not the purpose of the statute to prohibit customers from *voluntarily* seeking and obtaining multiple products that the customer desires from a bank or its affiliates.[35]

Accordingly, if a condition or requirement exists, further inquiry may be necessary to determine whether the condition or requirement was imposed or forced on the customer by the bank. If the condition or requirement resulted from coercion by the bank, then the condition or requirement violates section 106, unless an exemption is available for the transaction.[36] Prohibited coercive actions may be explicit or implicit. In some cases, a bank's coercive behavior may be clear from the agreement or conversations between the bank and the customer. In other cases, coercion may be implicit and reasonably inferred from the facts and circumstances surrounding the transaction.

On the other hand, if a condition or requirement was voluntarily sought or imposed by the customer, then the arrangement results from the free choice of the customer and no violation of section 106 has occurred. Thus, for example, a violation of section 106 does not occur if a large corporate customer of a bank demands that the bank provide the customer one product (such as a loan) in order for the bank or its affiliates to obtain other business from the customer (such as bond underwriting business), and the bank agrees to the customer's condition. In such circumstances, it is the *customer* that is using its business as leverage to obtain the products it desires—an action that does not implicate the purposes or proscriptions of section 106. Likewise, a violation of section 106 does not occur if a customer seeking to engage in a multi-faceted corporate transaction voluntarily solicits a bid from a bank and its securities affiliate for a package of products related to the transaction (such as a bridge loan, strategic advisory services, and bond underwriting services) and the bank and the securities affiliate offer to provide the customer all of the requested products.

3. *Factual inquiry required.*

As the foregoing illustrates, the specific facts and circumstances surrounding the bank-customer relationship often will be critical in determining whether a prohibited condition or requirement existed and whether the condition or requirement was imposed or forced on the customer by the bank or was volunteered or sought by the customer. Typically, the terms of the bank's offer to the customer or the agreement entered into between the bank and the customer will provide the best evidence of whether the customer was required to purchase (or provide) an additional product as a condition of obtaining the customer's desired product. The timing and sequence of the offers, purchases or other transactions between the customer and the bank or its affiliates that form the basis of the alleged tying arrangement, and the nature of the condition or requirement itself, also may be particularly relevant in determining whether the customer was required to obtain (or provide) the tied product in order to obtain the desired product.

Other information that may be useful in determining whether a condition or requirement exists and, if so, whether the bank coerced the customer into accepting the condition or requirement include any correspondence and conversations between the bank and the customer concerning the transaction; the marketing or other materials presented to the customer by the bank or an affiliate; the bank's course of dealings with the customer and other similarly situated customers; the banking organization's policies and procedures; the customer's course of dealings with the bank and other financial institutions; the financial resources and level of sophistication of the customer; and whether the customer was represented by legal counsel or other advisors.

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[32] *See John Doe* v. *Norwest Bank Minnesota, N.A.*, 107 F.3d 1297, 1304 (8th Cir. 1997); *Stefiuk* v. *First Union Nat'l Bank*, 61 F. Supp. 2d 1294, 1299 (S.D. Fla. 1999), *aff'd without opinion* 207 F.3d 664 (11th Cir. 2000); *Nordic Bank PLC* v. *Trend Group, Ltd.*, 619 F. Supp. 542, 553 (S.D.N.Y. 1985).

[33] *See* 116 Cong. Rec. S15708 (daily ed. Sept. 16, 1970) ("The bill as amended would require that a condition or requirement imposed by the bank must be demonstrated in order to prove that a violation of [section 106] has occurred.") (Statement of Sen. Bennett).

[34] *See* Conference Report at 5569 ("Section 106 of the bill, which has become known as the anti-tie-in section, will largely prevent coercive tie-ins and reciprocity."); 116 Cong. Rec. S20647 (daily ed. Dec. 18, 1970) (Statement of Sen. Brooke) (violation of section 106 occurs "where the totality of the circumstances indicates that the customer has not voluntarily entered into the transaction, but rather has been induced into doing so through coercion"); 116 Cong. Rec. S15709 (daily ed. Sept. 16, 1970) (attaching letter from Arthur Burns, Chairman of the Board of Governors of the Federal Reserve System, noting that section 106 "would prohibit coercive tie-ins involving banks, bank holding companies, and their subsidiaries").

[35] *See* Conference Report at 5569; 116 Cong. Rec. S16316 (daily ed. Sept. 23, 1970) (Remarks of Donald I. Baker, Deputy Director of Policy Planning, Antitrust Division, Department of Justice, submitted by Senator Proxmire). The statute's legislative history, for example, indicates that a voluntary tie-in may occur when a customer believes that it stands a better chance of "securing a scarce and important commodity (such as credit) by 'volunteering' to accept other products or services" from the bank or its affiliates. Although the statute's legislative history characterizes this type of voluntary tying as generally being undesirable, it also explicitly states that such voluntary tying is not prohibited by section 106. *See* Conference Report at 5569. The Board also has noted previously that section 106 prohibits coercive tying arrangements, but does not prohibit voluntary tying. *See, e.g., Mercantile Bancorporation*, 66 Federal Reserve Bulletin 799 (1980); *Barnett Banks, Inc.*, 61 Federal Reserve Bulletin 678 (1975).

[36] The Board recognizes that some courts have held that a tying arrangement may violate section 106 without a showing that the arrangement resulted from any type of coercion by the bank. *See, e.g., Dibidale of Louisiana, Inc.* v. *American Bank & Trust Company*, 916 F.2d 300 (5th Cir. 1990). After carefully reviewing the language, legislative history and purposes of the statute, the Board believes the better interpretation of section 106 is that a violation may exist only if a bank forces or coerces a customer to obtain (or provide) the tied product as a condition to obtaining the customer's desired product.

IV. What Are the Exceptions to the Anti-Tying Prohibitions of Section 106?

Section 106 contains several exceptions to its anti-tying prohibitions. Congress also authorized the Board to grant additional exceptions from the statute's prohibitions, by regulation or order, if the Board determines the exception "will not be contrary to the purposes of [section 106]." [37] The exceptions adopted by Congress and the authorization granted to the Board to grant additional exceptions were intended in part to ensure that section 106 did not interfere with the conduct of appropriate traditional banking practices.[38]

A. Tying Arrangements Involving Traditional Bank Products.

1. *Statutory and regulatory exceptions.*

Section 106 specifically allows a bank to condition both the availability and price of any bank product (the desired product) on the requirement that the customer obtain a "traditional bank product" (the tied product) from the bank. One of the purposes of this exception was to allow banks and their customers to continue to negotiate their fee arrangements on the basis of the customer's entire banking relationship with the bank.[39] The Board has extended this exception by regulation to include situations where the tied product is a traditional bank product offered by an affiliate of the bank, rather than by the bank itself.[40] Taken together, these exceptions allow a bank to restrict the availability or vary the price of *any* bank product on the condition that the customer also obtain a traditional bank product from the bank or an affiliate of the bank.

Several facts are important in determining whether the traditional bank product exceptions apply in a given situation. First, the exceptions are available only if the *tied* product is a traditional bank product. The availability of the exceptions, however, does *not* depend on the type of *desired* product involved; the desired product may or may not be a traditional bank product.

Second, the exceptions apply only if the tied product is a *defined* traditional bank product. The statute defines a traditional bank product to be a "loan, discount, deposit, or trust service." [41] The statute also defines a "trust service" to mean any service customarily performed by a bank trust department.[42] Products that fall within the scope of these terms include, among other things, the following:

- All types of extensions of credit, including loans, lines of credit, and backup lines of credit; [43]
- Letters of credit and financial guarantees;
- Lease transactions that are the functional equivalent of an extension of credit; [44]
- Credit derivatives where the bank or affiliate is the seller of credit protection;
- Acquiring, brokering, arranging, syndicating and servicing loans or other extensions of credit;
- All forms of deposit accounts, including demand, negotiable order of withdrawal ("NOW"), savings and time deposit accounts;
- Safe deposit box services;
- Escrow services;
- Payment and settlement services, including check clearing, check guaranty, ACH, wire transfer, and debit card services;
- Payroll services;
- Traveler's check and money order services;
- Cash management services; [45]
- Services provided as trustee or guardian, or as executor or administrator of an estate;
- Discretionary asset management services provided as fiduciary; [46]
- Custody services (including securities lending services); and
- Paying agent, transfer agent and registrar services.

Thus, for example, the traditional bank product exceptions permit a bank to condition the availability or price of a particular loan on a requirement that the customer maintain a specified amount of deposits with the bank or its affiliates. Similarly, a bank may inform a customer that it will lend (or continue lending) to the customer only if the customer obtains cash management services from the bank or its affiliates. In both cases, the bank's actions are permissible because the tied products (deposits and cash management services) are traditional bank products.

A bank, however, may *not* require a customer seeking an auto loan from the bank to purchase automobile insurance from the bank or from an insurance agency affiliate of the bank. Although the desired product (an auto loan) in this case is a traditional bank product, the tied product (automobile insurance) is not and, accordingly, the traditional bank product exceptions are not available for this transaction.

2. *Mixed-product arrangements.*

As discussed above, section 106 does not prohibit a bank from conditioning the grant of a loan to a customer on a requirement that the customer also obtain one or more traditional bank products, or a specified amount of traditional bank products, from the bank or its affiliates. In some cases, however, a bank may wish to provide a customer the freedom to choose whether to satisfy a condition imposed by the bank through the purchase of one or more traditional bank products *or* other "non-traditional" products (a "mixed-product arrangement").[47] Allowing a bank to offer the customer the *option* of satisfying a condition by purchasing either traditional bank products *or* non-traditional products can provide benefits to the customer (by increasing the choices available to the customer) *without* requiring the customer to purchase any non-traditional product from the bank or an affiliate in violation of section 106.[48]

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[37] 12 U.S.C. 1972(1). The exceptions that the Board has adopted by regulation are set forth at section 225.7(b) of the Board's Regulation Y (12 CFR 225.7(b)). Regulation Y expressly permits the Board to terminate the eligibility of a bank to operate under any exception set forth in section 225.7(b) if the Board finds the activities conducted by the bank under the exception result in anti-competitive practices. 12 CFR 225.7(c).

[38] *See* 116 Cong. Rec. S15708 (daily ed. Sept. 16, 1970) (Statement of Sen. Bennett); *see also* Senate Report at 5535.

[39] *See id.*

[40] *See* 12 CFR 225.7(b)(1)(i).

[41] 12 U.S.C. 1972(1)(A).

[42] *Id.* at section 1971. A product that meets this "trust service" standard is a traditional bank product even if the bank or affiliate providing the product does not have, or does not provide the product through, a trust department.

[43] An "extension of credit" for this purpose does not include underwriting, privately placing or brokering debt securities.

[44] "CEBA leases" that are entered into by banks pursuant to 12 U.S.C. 24 (Tenth) are *not* considered to be the functional equivalent of an extension of credit.

[45] The term "cash management services" refers generally to the payment and collection services that are provided to customers to speed collection of receivables, control payments and efficiently manage deposit balances. Cash management services may include one or more of the traditional bank products listed separately above, such as deposit, payment and lockbox services.

[46] A bank has discretionary authority over an account for these purposes if the bank, acting in a fiduciary capacity, has sole or shared authority (whether or not that authority is exercised) to determine what assets to purchase or sell on behalf of the account. *See* 12 CFR 9.2(i).

[47] As used in this discussion, a mixed-product arrangement involves a choice among traditional bank products and non-traditional products. The term does not apply to arrangements that involve only traditional bank products (which, as discussed in Part IV.A.1., are permissible under section 106) or arrangements that involve only non-traditional products (which, as discussed throughout this statement, may be prohibited by section 106).

[48] The Board previously has noted that the addition of non-traditional products to a menu of traditional bank products offered a customer may, in some circumstances, increase customer choice in a manner consistent with the purposes and intent of section 106. *See* 60 FR 20186, 20187–88, April 25, 1995. Indeed, this rationale formed the basis of the safe harbor that the Board adopted in 1995, as

Accordingly, where a bank offers a customer a mixed-product arrangement, further analysis may be necessary to determine whether the offer constitutes a tying arrangement prohibited by section 106. If the customer that is offered the mixed-product arrangement has a meaningful option to satisfy the bank's condition solely through the purchase of the traditional bank products included in the arrangement, then the bank's offer would not, in fact, require the customer to purchase any non-traditional product from the bank or its affiliates in violation of section 106.[49] In these circumstances, the customer has been provided a meaningful choice in determining whether to satisfy the bank's condition through the purchase of traditional bank products or non-traditional products, and the bank's inclusion of non-traditional products within the range of tied products may be viewed as giving the customer additional flexibility in determining how it may choose to satisfy a condition that the bank is permitted by law to impose.

If, on the other hand, the customer does not have a meaningful option to satisfy the bank's condition solely through the purchase of the traditional bank products included in the arrangement, then the arrangement violates section 106 because the arrangement effectively requires the customer to purchase one or more non-traditional products in order to obtain the customer's desired product or a discount on the desired product. A mixed-product arrangement also would violate section 106 if the facts indicate that the bank did not provide the customer the freedom to choose to satisfy the bank's condition solely through the purchase of one or more of the traditional bank products included in the mixed-product arrangement.[50]

To illustrate a mixed-product arrangement, assume Company, a large manufacturing concern with an investment-grade credit rating, has a backup credit facility with Bank that will shortly come up for renewal. Assume also that Bank and its affiliates periodically review the overall profitability of their combined business relationships with their large corporate customers to determine whether the profitability of the customers' aggregate business relationships with Bank and its affiliates meets the internal profitability threshold (the "hurdle rate") established by Bank and its affiliates for that customer or type of customer. In accordance with this policy, Bank conducts a review of the overall profitability of Company's relationships with Bank and its affiliates and determines that the profitability of Company's existing relationships with Bank and its affiliates (*i.e.*, the credit facility with Bank) does not meet the hurdle rate.

In light of this review, Bank informs Company that Bank will not renew Company's credit facility unless Company commits to provide Bank or its affiliates sufficient additional business to allow Company's overall relationships with Bank and its affiliates to meet the hurdle rate. Bank does *not* tie renewal of the credit to the purchase by Company of any *specific* product or package of products from Bank or its affiliates. Rather, Bank informs Company that Company is free to choose from among all of the products offered by Bank and its affiliates in determining how Company may seek to meet the hurdle rate. Bank and its affiliates offer a wide variety of products, including deposits, trust services, cash management services and several other traditional bank products as well as bond underwriting services and several other non-traditional products.

Bank's actions would be permissible under section 106 if, for example, Company could reasonably obtain sufficient cash management services from Bank to permit Company to meet the hurdle rate. In such circumstances, Company would have a meaningful option to satisfy the hurdle rate solely through the purchase of one or more of the traditional bank products that are offered by Bank and its affiliates (cash management services in this example),[51] and Bank's actions would not effectively require Company to purchase any non-traditional product in order to obtain renewal of the credit facility. This is true regardless of the product(s), if any, that Company ultimately chooses to obtain from Bank or its affiliates.

On the other hand, Bank's actions would violate section 106 if, for example, Company could satisfy the hurdle rate only by obtaining insurance, securities underwriting or strategic advisory services from Bank or an affiliate of Bank. In such circumstances, Company would not have a meaningful option to satisfy the hurdle rate solely through the purchase of one or more of the traditional bank products that are offered by Bank and its affiliates.

As the foregoing illustrates, the determination of whether a mixed-product arrangement comports with section 106 often will depend on the nature and characteristics of the arrangement itself and the customers to whom the arrangement is offered. Part VII of this statement discusses the types of policies, procedures and systems, including internal audit and recordkeeping systems, that should help banks offering mixed-product arrangements ensure that these arrangements are structured and offered in a manner consistent with section 106. The Board will review these policies, procedures and systems during the supervisory process as part of its examination and review of bank anti-tying policies, procedures and systems.

B. Reciprocity Exceptions

The reciprocity restrictions of section 106 generally prohibit a bank from conditioning the availability or price of a product (the desired product) on a requirement that the customer *provide* another product (the tied product) to the bank or an affiliate.[52] Section 106, however, contains an exception for situations where the tied product is to be provided to the bank and is "related to and usually provided in connection with a loan, discount, deposit, or trust service" (a "usually connected product").[53] The Board has extended this exception by regulation to include situations where a bank requires the customer to provide a usually connected product to an *affiliate* of the bank, rather than to the bank itself.[54] Taken together, these exceptions allow a bank to restrict the availability or vary the price of any bank product on the condition that the customer provide a usually connected product to the bank or an affiliate of the bank.

Both the statutory and regulatory reciprocity exceptions are intended to ensure that section 106 does not restrict appropriate traditional banking

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an exception to section 106, for certain types of combined-balance discount programs. *Id.* This safe harbor is discussed further in Part IV.D.

[49] *Cf. Tic-X-Press, Inc.* v. *Omni Promotions Co.*, 815 F.2d 1407, 1416–17 (11th Cir. 1987) (a tying arrangement does not exist under the Sherman Act if the buyer had "meaningful freedom of choice" in deciding whether or not to purchase allegedly tied product from the seller); *Stephen Jay Photography, Ltd.* v. *Olan Mills, Inc.*, 903 F.2d 988, 991 (4th Cir. 1990) (tying arrangement does not exist if customer had the option to purchase, or not purchase, the allegedly tied product).

[50] Thus, a bank would violate section 106 if it ostensibly offered a customer a mixed-product arrangement, but informed the customer that the customer could satisfy the bank's condition only by purchasing one or more of the non-traditional products included in the arrangement.

[51] Company would have a meaningful option even though Company had a long-standing cash management arrangement with another financial institution so long as Company may legally transfer its cash management business to Bank and Bank is able to satisfy Company's cash management needs.

[52] 12 U.S.C. 1972(1)(C) and (D).

[53] *Id.* at 1972(1)(C).

[54] *See* 12 CFR 225.7(b)(1)(ii).

practices. Thus, for example, the exceptions permit a bank to condition the availability of secured credit on a requirement that the customer obtain insurance, for the benefit of the bank, that protects the value of the bank's security interest in the collateral securing the loan.[55] Similarly, the exceptions permit a bank to take a wide variety of steps to protect the bank's financial interest in its credit relationships, such as, for example, requiring the affiliated parties of a troubled borrower to pay down their loans with the bank prior to renewing or advancing additional credit to the troubled borrower or requiring the owners of a corporate borrower to provide a personal guarantee of the corporation's debt to the bank.

Facts that may be relevant in determining whether a bank's demand that a customer provide an additional product is usual and appropriate and, thus, permissible under the exceptions include the relationship between the tied product and the desired product; whether the practice protects the value of the bank's credit or other exposures to the customer and associated parties; whether the practice is usual in the banking industry in connection with the type of product involved; and whether the condition was imposed by the bank principally to reduce competition or allow it to compete unfairly in the market for the tied product. The Board notes, however, that a reciprocity arrangement involving a loan or other product does not violate section 106 simply because the arrangement is not frequently imposed in banking transactions. Contractual agreements between banks and their customers, and loan agreements in particular, often are tailored to account for the characteristics of the individual customer and the specific transaction at issue. Accordingly, even though a particular reciprocal arrangement is uncommon, it still may reflect an appropriate banking practice in light of the facts and circumstances surrounding the transaction.[56]

[55] The bank, however, may not require that the customer obtain the insurance from the bank or an affiliate of the bank.

[56] For example, as one court has noted, debtors in "serious financial straits, working with their creditors, [often] enter into numerous types of transactions that protect the creditors' investments while permitting the debtors' businesses to continue. The complexity of the transactions and special needs of the parties involved determine the type of arrangement that will be made to secure the joint aims of the debtor and creditor. Due to the complicated circumstances of many bailout cases, the specific banking transactions utilized may appear uncommon, yet, in the milieu of bailouts, they constitute appropriate banking practices. As such, they do not violate [section 106]." *See Continental Bank of Pennsylvania* v. *Barclay Riding Academy, Inc.*, 93 N.J. 153, 459 A.2d 1163, *cert. denied* 464 U.S. 994 (1983).

[57] 12 U.S.C. 1972(1)(E).

[58] *Id.*

[59] *See* 116 Cong. Rec. S15708 (daily ed. Sep. 16, 1970) (Statement of Sen. Bennett).

C. Exclusive Dealing Exception

The statute's exclusive dealing restriction generally prohibits a bank from conditioning the availability or price of a bank product (the desired product) on a requirement that the customer *not obtain* another product (the tied product) from a competitor of the bank or a competitor of an affiliate of the bank.[57] This restriction, for example, prohibits a bank that has a securities affiliate engaged in bond underwriting activities from threatening a corporate customer that the bank will terminate the bank's credit relationships with the customer if the customer uses the bond underwriting services of a competitor of the bank's securities affiliate.

Section 106 contains an exception to its exclusive dealing restriction for situations where the condition was reasonably imposed by the bank in a credit transaction to ensure the soundness of the credit.[58] This exception, like the statutory reciprocity exception, was intended to preserve the ability of banks to take appropriate steps to protect their credit extensions to customers.

This exception, for example, permits a bank, when consistent with appropriate banking standards, to condition the availability of a loan to a customer on the requirement that the customer not borrow from other sources (or pledge any collateral securing the loan to other entities) during the term of the loan.[59] Similarly, this exception would permit a bank to condition the availability of floating-rate credit on a requirement that the prospective borrower hedge its floating-rate exposure by purchasing a fixed-to-floating interest rate swap, and limiting the permitted swap counterparties to those with a certain minimum credit rating. Although this condition may prevent the borrower from obtaining the swap from some less creditworthy competitors of the bank, the condition would appear to be reasonably designed to enhance the collectibility of the credit.

D. Regulatory Safe Harbors

1. *Combined-balance discount safe harbor.*

The Board has granted a regulatory safe harbor for combined-balance discount packages, provided that they are structured in a way that does not, as a practical matter, obligate customers to purchase non-traditional products in order to obtain the discount.[60] This safe harbor allows a bank to vary the consideration for a product or package of products based on a customer's maintaining a combined minimum balance in certain products specified by the bank if three conditions are met: the bank offers deposits; all deposits are eligible to be counted toward the minimum balance; and deposits count at least as much as nondeposit products toward the minimum balance.[61] Although the products included in the combined-balance discount program must be specified by the bank, the products may be offered by the bank or by an affiliate of the bank.

2. *Foreign transaction safe harbor.*

The Board also has granted a regulatory safe harbor for bank transactions with foreign persons.[62] The foreign transaction safe harbor provides that the anti-tying prohibitions of section 106 do not apply to transactions between a bank and a customer if: (i) The customer is a company that is incorporated, chartered, or otherwise organized outside the United States and has its principal place of business outside the United States (a "foreign company"); or (ii) the customer is an individual who is a citizen of a country other than the United States and is not resident in the United States.

The foreign transaction safe harbor would generally be available for a loan transaction entered into by a bank with a foreign company even if the loan is partially guaranteed by a U.S. incorporated affiliate of the foreign company, or the foreign company directs the bank to disburse a portion of the loan proceeds to a U.S. incorporated affiliate of the foreign company that is not a party to the loan agreement. Such a loan transaction with a foreign company, however, would *not* qualify for the foreign transaction safe harbor if

[60] 12 CFR 225.7(b)(2).

[61] The Board recently issued an interpretive letter clarifying that any financial product, including insurance products, may be included in a combined-balance discount program and explaining the permissible methods for weighting insurance products within a combined-balance discount program. *See* Letter dated May 16, 2001, from J. Virgil Mattingly, Jr., General Counsel of the Board, to Carl Howard. The Board also recently issued a letter indicating that, for purposes of applying the regulatory safe harbor for combined-balance discount programs, the term "customer" may include separate individuals who are all members of the same immediate family (as defined in 12 CFR 225.41(b)(3)) and who all reside at the same address. *See* Letter dated November 26, 2002, from J. Virgil Mattingly, Jr., General Counsel of the Board, to Oliver I. Ireland.

[62] 12 CFR 225.7(b)(3).

the facts and circumstances surrounding the transaction indicate that the borrower, in substance, was the U.S. incorporated affiliate and not the foreign company. The safe harbor also would *not* protect tying arrangements where the customer itself is a U.S. incorporated subsidiary of a foreign company.

3. *Transactions outside a "safe harbor".*

The combined-balance discount and foreign transaction provisions discussed above are regulatory safe harbors. Accordingly, some combined-balance discount programs that are outside the regulatory safe harbor still may not be covered by section 106 because the arrangement does not satisfy the essential elements of a prohibited tying arrangement under section 106 or qualifies for another statutory or regulatory exception from section 106. In addition, some tying arrangements that are outside the foreign transaction safe harbor still may not be covered by section 106 because the transactions involved are so foreign in nature that they do not raise the competitive concerns that section 106 was designed to address.

V. What Is a "Bank" for Purposes of Section 106?

Section 106 applies, by its terms, to any depository institution that meets the definition of "bank" in section 2(c) of the Bank Holding Company Act (BHC Act), including a grandfathered "nonbank bank" that is controlled by a company under section 4(f) of the BHC Act.[63] The statute also applies to any depository institution that is described in section 2(c)(2)(D), (F), (G), (H), (I) or (J) of the BHC Act and, thus, excluded from the definition of "bank" under the BHC Act.[64] As a result, virtually every type of institution that is chartered as a bank, including every "insured bank" (as defined in section 3 of the Federal Deposit Insurance Act), is subject to section 106.[65] This is true whether or not the covered depository institution is owned or controlled by a bank holding company registered under the BHC Act.

Section 106 also applies to any U.S. branch, agency, or commercial lending company of a foreign bank (as those terms are defined in section 8 of the International Banking Act).[66] In addition, although affiliates of a bank generally are not subject to section 106, the BHC Act specifically provides that an affiliate of an institution controlled pursuant to section 4(f) or described in section 2(c)(2)(D), (F), (G), (H), (I), or (J) of the BHC Act is subject to the anti-tying prohibitions of section 106 in connection with any transaction involving the products of both the affiliate and the institution as if the affiliate were a bank and the institution were an affiliate.[67]

Section 106 also applies to most, but not all, subsidiaries of banks. In particular, section 106 applies to all subsidiaries of a bank—other than a financial subsidiary—in exactly the same manner as the statute applies to the bank itself. A financial subsidiary of a national bank or a state member bank, however, is treated as an affiliate of the bank, and not as a subsidiary of the bank, for purposes of the statute.[68]

This statement uses the term "bank" to refer to all entities that are subject to section 106. As noted above, savings associations are subject to anti-tying restrictions that are virtually identical to those applicable to banks under section 106.[69]

VI. What Is an "Affiliate" for Purposes of Section 106?

Section 106 prohibits a bank from requiring that a customer obtain any additional product from, or provide any additional product to, "a bank holding company of such bank, or * * * any other subsidiary of such bank holding company."[70] For purposes of these restrictions, any company that controls a bank that is subject to section 106 is treated as a bank holding company (even if the company is not a bank holding company under the BHC Act), and any subsidiary of such a company is treated as a subsidiary of a bank holding company.[71] In addition, for purposes of section 106, any *natural person* that controls a bank that is subject to section 106 is treated as a "bank holding company" of the bank, and any other company controlled by such a natural person is treated as a subsidiary of the "bank holding company" of such bank.[72]

To reflect the scope of section 106, the term "affiliate" as used in this statement with respect to a bank means any company or natural person that controls the bank, and any company that is controlled by such company or person (other than the bank itself).

As noted previously, section 106 generally does not apply to tying arrangements imposed by an affiliate of a bank. However, a bank may not participate in a transaction in which an affiliate has nominally imposed a condition on a customer that the bank is prohibited from directly imposing under section 106 if the affiliate was acting on behalf of, as agent for, or in conjunction with the bank. For example, a bank should not have a pre-arrangement or understanding with an affiliate to fund a syndicated loan for which the affiliate acts as syndicate manager if the affiliate has conditioned the availability (or price) of its syndication services on a requirement that the customer obtain securities underwriting services from the affiliate. Similarly, if an affiliate of a bank has conditioned the availability (or price) of a bridge loan on a requirement that the customer hire the bank's securities affiliate as an underwriter for the company's follow-on bond offering, the bank should not have an arrangement or understanding with the affiliate at the time the bridge loan is made to purchase the loan (or a participation in the loan) from the affiliate.

VII. What Internal Controls Should Banks Have to Ensure Compliance With the Anti-Tying Prohibitions of Section 106?

The board of directors and senior management of a bank are responsible for ensuring that the bank establishes and maintains an effective system of internal controls that, among other things, provides reasonable assurances that the bank complies with applicable laws and regulations, including the anti-tying prohibitions of section 106. An effective system of internal controls and a management environment that emphasizes compliance not only helps an organization operate in an efficient and safe and sound manner, but also helps mitigate the legal and reputational risks that may arise from actual or perceived violations of the anti-tying prohibitions of section 106.

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[63] *See* 12 U.S.C. 1971 and 1841(c)(1).

[64] 12 U.S.C. 1843(f)(9) and (h)(1). These institutions include limited-purpose trust companies, credit card banks, Edge Act and Agreement corporations, and industrial loan companies and similar institutions.

[65] *See* 12 U.S.C. 1813.

[66] *See* 12 U.S.C. 3106.

[67] *See* 12 U.S.C. 1843(f)(9)(B) and (h)(2).

[68] *See* 12 U.S.C. 1971; 12 CFR 208.73(e). Tying arrangements imposed by a financial subsidiary of a bank, like tying arrangements imposed by any other affiliate of a bank, remain subject to the general antitrust laws.

[69] *See* 12 U.S.C. 1464(q).

[70] *See* 12 U.S.C. 1972(1)(B) and (D). The exclusive dealing prohibition in section 106(1)(E) similarly prohibits a bank from requiring that a customer not obtain an additional product from a competitor of the "bank holding company of such bank, or any subsidiary of such bank holding company." *Id.* at 1972(1)(E).

[71] *See* 12 U.S.C. 1843(f)(9) and (h)(1). A company that controls a bank (as defined under section 2(c) of the BHC Act) and that is not considered a bank holding company by reason of section 2(a)(5) of the BHC Act, however, is not considered a bank holding company for purposes of section 106 and, thus, is not considered an affiliate of the bank for purposes of this statement.

[72] *See* 12 U.S.C. 1971.

A. Anti-Tying Policies, Procedures and Systems

Banks should have policies, procedures and systems in place that are reasonably designed to ensure that the bank complies with the anti-tying prohibitions of section 106. The types of anti-tying policies, procedures and systems appropriate for a particular bank depends on the size of the bank, and the nature, scope and complexity of the bank's activities (including activities conducted in conjunction with affiliates). Banks should review and update their anti-tying policies, procedures and systems periodically to ensure that these policies, procedures and systems reflect any changes in the nature, scope or complexity of the bank's activities or applicable law, regulations or supervisory guidance.

The anti-tying policies and procedures of banks should describe the scope of section 106 and the types of tying arrangements prohibited by the statute. Banks should ensure that the anti-tying prohibitions of section 106 are appropriately reflected or incorporated in the institution's corporate policies and procedures, including the institution's policies and procedures concerning credit approval, new product approval and pricing, and marketing.

Banks also should ensure that appropriate bank personnel receive education and training concerning the anti-tying prohibitions of section 106. The scope and frequency of the education and training provided an individual or department should be tailored to the nature and scope of the person's or department's functions at the bank, with greater focus and resources devoted to those positions or departments that present the greatest legal or reputational risk to the bank. Corporate relationship managers, syndicated lending personnel, persons with authority to approve credit extensions or establish pricing policies for the bank and other personnel that have direct contact with customers for purposes of marketing or selling the bank's products, for example, should receive comprehensive and regular anti-tying training.[73]

In addition, the policies and procedures of a bank should—

- Permit personnel with questions concerning section 106 or its application to a particular transaction to discuss the issue with an appropriate representative of the institution's compliance or legal department;
- Include procedures for the receipt, handling and resolution of customer complaints alleging a violation of section 106 by the bank; and
- Prohibit the bank or any employee of the bank from taking adverse action against a customer because the customer submitted a complaint to the bank or a Federal banking agency alleging a violation of section 106 by the bank.

A bank's compliance function should take a lead role in monitoring the bank's compliance with section 106. Appropriate compliance activities may include reviewing periodically the bank's policies and procedures to ensure they are updated as necessary to reflect changes in the bank's business or applicable laws, regulations or supervisory guidance and conducting training sessions for appropriate bank personnel. The compliance function also should review the bank's marketing materials and individual transactions to test the bank's compliance with the anti-tying restrictions of section 106. In performing such tests, compliance personnel typically should review the documentation associated with the transaction and discuss the transaction with the relevant bank personnel involved in the transaction.

Internal audit also plays an important role in ensuring a bank's compliance with the anti-tying restrictions. A bank's internal audit function should periodically review and test the institution's anti-tying policies, procedures and systems in order to confirm that they are working effectively and in the manner intended. The appropriate scope and frequency of these reviews and tests will depend on the size, nature and complexity of the bank's business operations and the effectiveness of the bank's compliance function. Thus, for example, if the bank's compliance function properly conducts transaction testing on a regular basis, the bank's internal audit reviews may focus on reviewing the adequacy of the bank's policies and procedures and validating the compliance function's work. Banks should ensure that the compliance and internal audit personnel responsible for monitoring and assessing the institution's compliance with section 106 are well trained with respect to the anti-tying rules.

B. Internal Control and Recordkeeping Requirements for Banks Offering Mixed-Product Arrangements Outside a Regulatory Safe Harbor

As discussed above, a bank may offer a mixed-product arrangement under which the bank provides the customer the option of satisfying a condition imposed by the bank through the purchase of traditional bank products or non-traditional products where the customer has a meaningful option to satisfy the condition solely through the purchase of traditional bank products.[74] Because mixed-product arrangements present special compliance issues under section 106, the anti-tying policies, procedures and systems of a bank offering a mixed-product arrangement play a particularly important role in demonstrating and ensuring that the bank's actions with respect to these arrangements are consistent with section 106. Accordingly, in conducting anti-tying compliance reviews at banking organizations, the Board expects to carefully review the anti-tying policies, procedures and systems used by banks that offer mixed-product arrangements.

A bank's policies, procedures and documentation should reflect how the bank will and does establish a good faith belief that a customer offered a mixed-product arrangement would be able to satisfy the condition associated with the arrangement solely through the purchase of traditional bank products. For example, the bank's policies, procedures and documentation generally should address—

- The factors and types of information that the bank will review in forming a good faith belief that any customer offered a mixed-product arrangement has a meaningful option to satisfy the bank s condition *solely* through the purchase of one or more of the traditional bank products included in the arrangement. Information relevant to this determination may include:
- The range and types of traditional bank products that are offered by the bank and its affiliates and included in the mixed-product arrangement;
- The manner in which traditional bank products and non-traditional products are treated for purposes of determining whether a customer has or would meet the condition associated with the arrangement; [75]
- The types and amounts of traditional bank products typically required or obtained by companies that are comparable in size, credit quality, and nature, scope and complexity of business operations to the customer; and

[73] Banks also should review their employee compensation programs in order to ensure that such programs do not provide employees inappropriate incentives to tie products in a manner prohibited by section 106.

[74] *See* Part IV.A.2.

[75] In mixed-product arrangements, banks may not weight, discourage the use of, or otherwise treat traditional bank products in a manner that is designed to deprive customers of a meaningful choice.

• Information provided by the customer concerning the types and amounts of traditional bank products needed or desired by the customer and the customer s ability to obtain those products from the bank or its affiliates; and

• The bank personnel authorized to make the analysis described above for individual customers or classes of customers and the training and guidelines provided these personnel; and

• The internal processes and controls, including approval and documentation requirements, the bank uses to ensure that the analysis described above is (i) performed by the bank for a customer before the customer is offered a mixed-product arrangement and (ii) adequately reflected in the records of the bank.

The bank's policies and procedures also should ensure that any material information relied on by the bank in analyzing the types and amounts of traditional bank products likely required by a customer is current and reliable, and that the assessment of a customer's ability to satisfy the condition associated with a mixed-product arrangement solely through the purchase of traditional bank products is made prior to, and reasonably current with, the time the arrangement is offered to the customer.

The types and amount of information and level of analysis necessary for a bank to establish a good faith belief that a customer has a meaningful choice under a mixed-product arrangement may vary depending on the nature and characteristics of the arrangement and the types of customer(s) to which it is offered. For example, a less detailed and granular review likely would be required for a bank to establish a good faith belief that a large, complex company has a meaningful option of satisfying a condition solely through the purchase of traditional bank products than a smaller company with less complex business operations. In addition, a less detailed review likely would be necessary for a bank to develop a good faith estimate of the need for traditional bank products of an existing customer with a long history with the bank than of a potential customer or a customer with only a brief relationship with the bank.

C. Ability of Banks to Offer Mixed-Product Arrangements to Individuals

Bank products directed to individuals typically are standardized. Although such standardization may allow the product to be offered economically to large numbers of individual customers, it also means that the terms of the product typically are not modified to the same extent as with corporate customers to reflect the specific needs and resources of the customer.

Furthermore, because individuals typically have less bargaining power and may be less financially sophisticated, individuals may be more susceptible to subtle pressure by a bank that encourages the customer to purchase a non-traditional product from the bank or an affiliate. The potential for such subtle pressure to be applied in a manner that is both effective and difficult to uncover is particularly strong in mixed-product arrangements because these arrangements include both traditional bank products and non-traditional products and individuals often believe that they do not have (and, in fact, may not have) the ability to negotiate with a bank. These facts make it difficult for a bank to establish a good faith belief that a mixed-product arrangement provides an individual a meaningful option to satisfy the condition associated with the arrangement solely through the purchase of traditional bank products without a detailed and, in many cases, uneconomical analysis of the financial needs and capabilities of each individual offered the arrangement.

The Board recognizes that section 106 limits the ability of banking organizations to provide individual consumers with discounts on packages of bundled products and, thus, pass along the cost savings that may arise from bundled offerings in ways that are both pro-consumer and not anti-competitive. It was in part to allow banks some flexibility to provide individual consumers with the benefits of discounts on bundled offerings that the Board in 1995 exercised its exemptive authority to adopt a safe-harbor for combined-balance discount programs, which are a type of mixed-product arrangement that typically are marketed to individuals.[76] Moreover, the Board notes that section 106 does not impede the ability of a bank to provide individual consumers with discounts on packages of bundled *traditional* bank products and does not restrict the ability of a *nonbank* affiliate of a bank to offer mixed-product arrangements to individual consumers.

[76] This exception, which is discussed in Part IV.D, allows banks to offer certain combined-balance discount programs to individuals without making a specific determination that the particular customer has a meaningful option of qualifying for the discounts within the program solely through the use of the deposit products (a traditional bank product) included in the program. *See* 12 CFR 225.7(b)(2).

By order of the Board of Governors of the Federal Reserve System, August 25, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–22091 Filed 8–28–03; 8:45 am]

BILLING CODE 6210–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 12, 2003.

A. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Laurie L. McClellan and Walter L. McClellan, Minerva, Ohio; to acquire voting shares of Consumers Bancorp, Inc., and thereby indirectly acquire voting shares of Consumers National Bank, Minerva, Ohio.

Board of Governors of the Federal Reserve System, August 25, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–22092 Filed 8–28–03; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for the Continental United States (CONUS)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 04–1, Fiscal Year (FY) 2004 continental United States (CONUS) per diem rates.

SUMMARY: An analysis of lodging and meal cost survey data reveals that the FY 2004 maximum per diem rates for locations within the continental United

States (CONUS) should be updated to provide for the reimbursement of Federal employees' expenses covered by per diem. Per Diem Bulletin 04–1 increases/decreases the maximum lodging amounts in certain existing per diem localities, adds new per diem localities, and increases the incidental expenses from $2 to $3 for all per diem localities. The per diems prescribed in Bulletin 04–1 may be found at *http://www.gsa.gov/perdiem*. In an effort to improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. The FPLP continues to grow as GSA has awarded virtually all contracts in the top 70 Federal metropolitan travel destinations. The FPLP enhances the Government's ability to better meet its overall room night demand and allows travelers to find lodging close to where they need to conduct business. If a CONUS per diem rate is insufficient to meet necessary expenses bulletin 04–1 also contains a listing of pertinent lodging and meal cost data that must be submitted through an agency requesting a location be resurveyed.

DATES: This notice is effective October 1, 2003, and applies for travel performed on or after October 1, 2003.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Patrick McConnell, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–2362. Please cite Notice of Per Diem Bulletin 04–1.

SUPPLEMENTARY INFORMATION:

A. Background

After an analysis of additional data, GSA has determined that current lodging and meals and incidental expenses (M&IE) allowances for certain localities do not adequately reflect the cost of lodging in those areas.

B. Change in Standard Procedure

GSA will issue/publish the CONUS per diem rates, formerly published in appendix A to 41 CFR chapter 301, solely on the Internet at *http://www.gsa.gov/perdiem*. This new process ensures timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: August 22, 2003.

John Sindelar,

Deputy Associate Administrator.

[FR Doc. 03–22107 Filed 8–28–03; 8:45 am]

BILLING CODE 5820–14–M

HARRY S TRUMAN SCHOLARSHIP FOUNDATION

Notice of Intent To Extend an Information Collection

AGENCY: Harry S Truman Scholarship Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Truman Scholarship Foundation [Foundation] has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the second notice for public comment: the first was published in the **Federal Register** (June 27, 2003 (Volume 68, Number 124), Page 38341), and no comments were received. The Foundation is forwarding the proposed renewal submission to OMB for clearance simultaneously with the publication of this second notice.

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Harry S Truman Scholarship Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Louis H. Blair, Executive Secretary, Harry S Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20005, or send e-mail to *lblair@truman.gov*.

DATES: Comments regarding this information collection are best assured of having their full effect if received on or before September 28, 2003. Copies of the submission may be obtained at 202–395–7434.

FOR FURTHER INFORMATION CONTACT: Contact Louis H. Blair, Executive Secretary, Harry S Truman Scholarship Foundation, 712 Jackson Place, NW., Washington, DC 20006; telephone 202–395–4831; or send e-mail to *lblair@truman.gov*. You also may obtain a copy of the data collection instrument and instructions from Mr. Blair.

The Foundation may not conduct a collection of information unless the collection displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such person are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Truman Scholarship Application.

OMB Approval Number: 3200–0004.

Expiration Date of Approval: 08/03.

Type of Request: Intent to seek approval to extend an information collection for three years.

Proposed Project: The Foundation has been providing scholarships since 1977 in compliance with Public Law 93–642. This data collection instrument is used to collect essential information to enable the Truman Scholarship Finalists Selection Committee to determine whom to invite to interviews. It is used by Regional Review Panels as essential background information on the Finalists whom they interview and ultimately the Truman Scholars they select. A total response rate of 100% was provided by the 635 candidates who applied for Year 2003 Truman Scholarships.

Estimate of Burden: The Foundation estimates that, on average, 50 hours per respondent will be required to complete the application, for a total of 35,000 hours for all respondents.

Respondents: Individuals.

Estimated Number of Responses: 700.

Estimated Total Annual Burden on Respondents: 35,000 hours.

Dated: August 25, 2003.

Louis H. Blair,

Executive Secretary.

[FR Doc. 03–22203 Filed 8–28–03; 8:45 am]

BILLING CODE 6820–AD–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Continuation of a Cooperative Agreement for the Responsible Conduct of Research (RCR) Program for Academic Societies

AGENCY: Department of Health and Human Services (DHHS), Office of the Secretary, Office of Public Health and Science, Office of Research Integrity.

ACTION: Notice.

Project Title: Responsible Conduct of Research Program for Academic Societies.

OMB Catalog of Federal Domestic Assistance: Application has been made for a CFDA number.

Authority: This Cooperative Agreement is authorized under section 301 of the Public Health Service (PHS) Act, as amended.

SUMMARY: The Department of Health and Human Services (DHHS), Office of the Secretary, Office of Public Health and Science, Office of Research Integrity announces its plan to continue a non-competitive continuation award through a single source cooperative agreement with the Association of American Medical Colleges (AAMC) to continue to provide programmatic administration of the RCR Program for Academic Societies. The ultimate goal of the continuation of this cooperative agreement is to provide fiscal support through sub-award contracts to U.S. biomedical and behavioral academic societies for the promotion of RCR and research integrity (RI) education, and/or other society initiatives focusing on the responsible conduct of research. This program is designed to benefit not only the researchers who are members of academic societies, but the U.S. public who will benefit from biomedical and behavioral research conducted in a responsible manner worthy of the public's trust.

DATES: To receive consideration, applications must be received no later than September 29, 2003. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked by the U.S. Postal Service on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier such as FedEx will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Applications hand-carried by applicants or by applicant couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date between the hours of 8 a.m. to 5 p.m. at the address indicated below. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

ADDRESSES: For this cooperative agreement, Form PHS 5161–1 (Revised July, 2000 and approved by OMB under Control Number 0937–0189) must be used. An applicant is advised to pay close attention to the specific program guidelines and general instructions provided in the application kit. To obtain an application kit, write to: Office of Grants Management, Ms. Karen Campbell, Director of Grants Management, Suite 550, 1101 Wootton Parkway, Rockville, MD 20852; or call Ms. Karen Campbell at (301) 594–0758.

This program is subject to the Intergovernmental Review of Federal Programs as governed by Executive Order 12372. Executive Order 12372 sets up a system for State and local government review of proposed Federal Assistance Applications. Applicants (other than federally-recognized Indian Tribal Governments) should contact their State Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current list is included in the application kit.

Submission Information: Applications for this announcement shall be submitted to: Office of Grants Management, Ms. Karen Campbell, Director of Grants Management, Suite 550, 1101 Wootton Parkway, Rockville, MD 20852. Send the original application with signatures in blue ink and 2 copies of the complete application to this address. Application receipt will be acknowledged by the Office of Grants Management issuing form (PHS–3038–1) Application Receipt Card to the applicant.

Background

The Department of Health and Human Services, Office of Public Health and Science, Office of Research Integrity carries out its mission of promoting research integrity in order to reduce the incidence of research misconduct in DHHS supported biomedical and behavioral research by, among other activities, working to educate the biomedical and behavioral sciences research community in the responsible conduct of research. Toward this end, the ORI works in collaboration with universities, medical schools, research centers, and academic and professional societies to educate researchers.

For more than a decade, the ORI has been initiating efforts to work with organizations representing the biomedical and behavioral research community to foster a joint commitment to RCR education understanding the crucial role these organizations have in the promotion of research integrity. In 1989, the Institute of Medicine (IOM) stated that "Professional and scientific organizations representing the research community should develop educational and training activities and materials to improve the integrity of research." IOM noted that "Professional organizations, including the various disciplinary societies, play an important role in developing consensus about the goals and values that should shape research practice" and "* * *that more can be done by these and other organizations to promote the responsible conduct of research" (IOM, 1989:36).

Academic societies are well-positioned to play a crucial and pivotal role in defining and promoting standards for the responsible conduct of research as has been widely recognized by the IOM and others. While some academic and professional societies have demonstrated leadership in educating their members to further integrity in the conduct of research they perform, others are just recently turning their attention toward such initiatives.

Over the past several years, ORI efforts to educate researchers in the responsible conduct of research have been growing. Nonetheless, they are still limited given the thousands of researchers yet to be reached. In order to continue to effectively extend its reach in educating researchers in the RCR, to encourage increased and sustained leadership by academic societies in this regard, and to build stronger ties with the biomedical and behavioral sciences research community in promoting the responsible conduct of research, ORI intends to continue the RCR Program for Academic Societies with the AAMC as the single source administrator.

Purpose

The ORI announces its plan to continue a non-competitive continuation award through a single source cooperative agreement with the AAMC as the programmatic administrator for the RCR Program for Academic Societies for four (4) more years subject to available funding. (The current project period is from 09/30/02 through 09/29/03). The purposes of this cooperative agreement are: (1) To provide sub-awards contracts to U.S. biomedical and behavioral academic societies to promote responsible conduct of research education and other RCR initiatives with their members in order to foster research integrity in DHHS sponsored research specifically; and generally, within the research conducted by the U.S. biomedical and behavioral research scientists; and (2) to continue utilizing the AAMC as a

programmatic administrator for the program.

For the purposes of this program, "academic societies" are non-profit organizations active in the United States in the fields of medicine, biomedical, or the behavioral sciences, whose primary missions include advancing medical education and/or biomedical or behavioral research. Eligibility for sub-award funding is not limited to societies within the AAMC Council of Academic Societies. Of particular interest are academic societies whose membership base consists largely of university and medical school faculty members, a significant portion of whom conduct DHHS (*i.e.*, National Institutes of Health, Centers for Disease Control, Food and Drug Administration, Health Resources and Services Administration, Agency for Healthcare Research and Quality, and Indian Health Service) funded research.

Award Information

The ORI intends to make available approximately $275,000 for the purposes of this program in fiscal year 2003. This award will begin prior to or on September 30, 2003, for a 12 month budget period with a project period of four years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

Of the $275,000, ORI intends to direct $25,000 (*i.e.*, less than 10%) to the AAMC for programmatic administration. (The cooperative agreement does not require fund matching or sharing in project costs.) The remaining $250,000 will support approximately 12 sub-awards in the form of contracts to academic societies following a competitive, peer reviewed process administered by the AAMC.

SUPPLEMENTARY INFORMATION:

Sub-Awards

The purpose of the sub-awards is to provide funds to academic societies to specifically address some, or all, of the nine core components of responsible conduct of research education described on the ORI Web site (*http://ori.hhs.gov*). These are: (1) Data acquisition, management, sharing, and ownership (2) mentor/trainee responsibilities (3) publication practices and responsible authorship (4) peer review (5) collaborative science (6) human subjects (7) research involving animals (8) research misconduct, and (9) conflicts of interest and commitment.

It is envisioned that the sub-awards would be directed toward establishing a long-term commitment to RCR education involving multiple generations of researchers. Such a commitment would move beyond more traditional, episodic educational events, and emphasize a well-conceived long-term plan, and attendant process of creating and coordinating RCR/RI initiatives that are then adopted, integrated, and sustained as enduring elements into an academic society's infrastructure, and into the culture of the discipline.

During FY 2003, as a result of the first two rounds of competitive review for the RCR Program for Academic Societies administered by the AAMC, sub-award contracts were made to 13 academic societies for 15 projects or programs. Examples of past sub-awards include a one day workshop, *A Course in Responsible Research*, for emergency medical personnel; a mini-conference in RCR education for chairpersons in departments of physiology; an association session at annual meeting on *Promoting Research Integrity in Obesity Research*; the development of a multi-step process focused on defining and communicating RCR and ethical guidelines for the genetic disease intervention clinical research community; the development and distribution of *Guidelines for the Ethical and Legal Conduct of Clinical Research Involving Critically Ill Patients*; a workshop and development of a *Code of Research Ethics for General Pediatrics*; and the development, dissemination, and evaluation of an *Ethics Curriculum for Psychiatric Research*.

Sub-awards made to academic societies following a competitive review process administered by the AAMC will be subdivided into three categories. The first category will fund approximately five (5) sub-awards of up to $5,000 to support single events or activities such as a special meeting, a national conference, or a publication. The second category of sub-awards will fund approximately five (5) sub-awards of up to $25,000, and the third category will fund approximately two (2) sub-awards up to $50,000. These two latter categories will be used for major program initiatives aimed at promoting the responsible conduct of research.

Successful proposals for the sub-awards categories will demonstrate an understanding and focus on RCR education as distinct from bioethics. (Sub-award applicants unfamiliar with the distinction are referred to the ORI web site information on RCR Education). Areas of emphasis for the $25,000 sub-awards would include, but not be limited to: (1) The use of leadership summit meetings, national symposia, focus groups, and/or needs assessments to identify RCR/RI educational gaps, and/or (2) the development of a society RCR task force, subcommittee, or committee to begin to identify a society's RCR needs, goals, objectives, strategies, and effective actions central to sustaining RCR education as a core component of its members' professional research development, and their life-long learning, or (3) a RCR national symposium or conference (teleconferences and/or satellite broadcasts would be acceptable) to include some discussion on methods for integrating RCR education into existing coursework for graduate students, and/or (4) the development of a publication addressing a RCR topic(s) of particular interest to a society (*e.g.*, "Instructions to Authors," or responsible resource sharing), (5) the development of a society *inter-generational dialogue* (through one, or a series of sessions) on RCR to include new and experienced researchers on a particular component, or aspect, of RCR education, (6) an RCR plenary at an annual conference to launch an RCR educational and/or evaluative initiative, (7) a national colloquium addressing a comprehensive RCR program for its members with proceedings published in a society journal on the nine core areas of RCR, and/or (8) the development, and publication, of a 1-year series on some of the core RCR instructional areas in a society's journal.

Areas of emphasis for the larger category of sub-awards of up to $50,000 will include proposals featuring the development of a multi-year RCR educationally-directed plan with a focus on goals, measurable objectives, and intermediate outcomes to address RCR education across a full-spectrum of generations of researchers, as well as providing specific actions to be taken. Examples of specific actions that a society may choose to focus on as part of its plan are: (1) The development of a curriculum, and an outcomes focused evaluation, for a practically-oriented (*i.e.*, with both knowledge and skills development emphasis) RCR training program for society members (with special focus on new society members, or with a goal of providing a basic RCR education to members who are graduate students, and postdoctoral fellows on an ongoing basis), with the findings to be shared with the membership at an annual meeting, and/or through an article(s) in the society's journal, (2) the development of an outcomes-directed RCR educational program evaluative tool(s) to assess the impact, and quality of a society's activities to increase its

members' RCR knowledge, skills development, and formal research practice, (3) the creation of a multi-year plan with strategies and actions to provide professional development sessions, or workshops on educating its members on RCR and reinforcing standards for the responsible conduct of research (*e.g.*, in the areas of data acquisition, management, sharing, and ownership; publications practices; and mentoring).

Expected Program Outcomes for Sub-Awards

Expected outcomes of the sub-awards made through this cooperative agreement include: (1) Increased numbers of researchers receiving RCR education; or (2) increased numbers of other academic society endeavors (*e.g.*, developing new RCR "infrastructure" such as an RCR committee, subcommittee, or task force) in order to begin to establish, or to strengthen, the institutionalization of RCR in academic societies representing the research community largely responsible for conducting DHHS-supported research; or (3) increased numbers of society publications on one, or more, of the 9 core areas of RCR education described previously in this announcement, or (4) an increase in the number of programmatic development plans for RCR education and evaluation.

ORI Activities and the Cooperative Agreement

The ORI uses cooperative agreements to support its mission to promote research integrity with the biomedical and behavioral research community. Through current cooperative agreements, ORI has increased its capacity to create public-non-profit partnerships to extend the reach and effectiveness of its work.

With the continuation of this non-competitive continuation award through a single source cooperative agreement with the AAMC, the ORI will continue its substantial programmatic involvement along with the AAMC in the RCR Program for Academic Societies. ORI will continue working cooperatively with the AAMC in establishing specific goals and areas of emphasis for this program, and will participate in the development of the RCR Program for Academic Societies Request for Applications (RFA). It will assist the AAMC in locating reviewers for the peer review process, and participate in the review process. ORI will also assist in announcing the RFA, and the competitive review sub-award results. Along with the AAMC, the ORI will promote the academic societies' RCR projects and programs, and ORI staff will attend some of the professional societies' programs, and review the final report on these initiatives from the AAMC.

Eligible Applicants

Assistance will be provided only to the Association of American Medical Colleges. No other applications are solicited for this activity. The AAMC is uniquely suited to conduct the activities under this cooperative agreement because:

1. The AAMC has the unique distinction of having established access, and ongoing, daily communication with 96 biomedical and behavioral academic societies through its Council of Academic Societies (CAS). As the AAMC states, "The mission of the CAS is to help the faculty of academic medical centers in their primary responsibilities of research education, and patient care, with an ultimate goal of improving the health of all Americans." The CAS is comprised of "faculty who represent medical school departments and their chairs, academic societies, and individual faculty members." It is because of this organizational relationship that the AAMC has a unique capacity to work directly with key academic societies that intersect with the DHHS supported research community. Ready access to the CAS network makes the AAMC unique in terms of suitability over other biomedical and behavioral institutional associations in terms of having ready, daily access to a substantially larger network of academic societies for the promotion of the RCR Program for Academic Societies RFA, and the announcements following the competitive review process of sub-award projects and programs. (Although sub-award eligibility for the RCR Program for Academic Societies is not limited to the CAS members, the extensive AAMC's CAS network is a distinct competitive advantage for performing the services related to the program).

2. The AAMC, founded in 1876, is a leading biomedical non-profit association with education and research emphases comprised of 126 accredited U.S. medical schools, 400 major teaching hospitals including 56 health systems, 75 Department of Veterans Affairs medical centers, and 96 academic and professional societies representing more than 100,000 members, including the nation's 67,000 medical students and 103,000 residents. The AAMC has been nationally prominent and instrumental in providing continuing forums for the discussion and exchange of RCR/RI information for over a decade; not only within its membership but also among academic researchers more broadly, from the clinical sciences to basic research. No other academic organization has such a diverse membership and at the same time is so directly associated with the research programs sponsored by DHHS. Significantly, no public comments were received by ORI following the first **Federal Register** announcement (June 12, 2002) of ORI's intention to enter into the current single source cooperative agreement with the AAMC to support the RCR and the promotion of research integrity with academic societies.

During the current project period (09/30/02 through 09/29/03), the AAMC has assisted ORI in forming vital partnerships with the extramural community to foster the responsible conduct of research and promote research integrity. It has demonstrated that it can work successfully with both the ORI and the scientific community in launching and providing programmatic administration for the RCR Program for Academic Societies. Accordingly, the ORI intends to continue to substantially enhance and increase its performance in reaching larger numbers of researchers in the future by promoting RCR education and research integrity through the continuation of a non-competitive continuation cooperative agreement with the AAMC.

Application Review Criteria

Criteria to be utilized with this non-competitive continuation award sole source cooperative agreement include the following, listed in order of priority: (1) Linkage to a large network of biomedical and behavioral academic societies (*i.e.*, greater than 75) comprised of scientific researchers (2) demonstrated experience in the programmatic administration of a DHHS program to increase RCR education and other RCR related initiatives with biomedical and behavioral academic societies to promote research integrity, and (3) a demonstrated commitment to RCR education as indicated by a history of RCR programs, policies, and other publications.

Recipient Activities

The AAMC will provide programmatic administration of the RCR Program for Academic Societies as it is performing currently. It will develop a (revised) RFA for the program as well as criteria for competitive review of sub-award applications; promote the RFA to academic societies to encourage application submissions through two

cycles; select external AAMC reviewers for the competitive sub-awards review process; select an internal AAMC staff member (who is experienced in working with RCR activities and academic societies) to participate in the review of proposals; make sub-award selections; announce the results of the sub-awards competitive review; disperse sub-award funds; and review reports from the sub-awardees. The AAMC will also prepare and submit a final report to ORI evaluating the short-term implementation of the program. As it has done this during the current project period, the AAMC will assist the ORI in efforts to nurture the process of institutionalization of RCR into the infrastructure of biomedical and behavioral academic societies as part of its commitment to educating researchers which is central to the educational mission of the AAMC.

FOR FURTHER INFORMATION CONTACT: Carolyn R. Fassi, MPH, DPA, Director, ORI RCR Program for Academic Societies, Division of Education and Integrity, Office of Research Integrity, Suite 750, 1101 Wootton Parkway, Rockville, MD 20852; or call Dr. Carolyn Fassi at (301) 443–5300.

Dated: August 26, 2003.

Chris B. Pascal,

Director, Office of Research Integrity.

[FR Doc. 03–22299 Filed 8–28–03; 8:45 am]

BILLING CODE 4150–31–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–112]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Weekly Morbidity and Mortality Reports and Annual Morbidity Series—OMB #0920–0007—Extension—Epidemiology Program Office (EPO), Centers for Disease Control and Prevention (CDC). In 1878, Congress authorized the U. S. Marine Hospital Service (later renamed the U.S. Public Health Service (PHS) to collect morbidity reports on cholera, smallpox, plague, and yellow fever from U.S. consuls overseas; this information was to be used for instituting quarantine measures to prevent the introduction and spread of these diseases into the United States. In 1879, a specific Congressional appropriation was made for the collection and publication of reports of these notifiable diseases. Congress expanded the authority for weekly reporting and publication in 1893 to include data from state and municipal authorities throughout the United States. To increase the uniformity of the data, Congress enacted a law in 1902 directing the Surgeon General of the Public Health Service (PHS) to provide forms for the collection and compilation of data and for the publication of reports at the national level.

Reports on notifiable diseases were received from very few states and cities prior to 1900, but gradually more states submitted monthly and annual summaries. In 1912, state and territorial health authorities—in conjunction with PHS—recommended immediate telegraphic reports of five diseases and monthly reporting by letter of 10 additional diseases, but it was not until after 1925 that all states reported regularly. In 1942, the collection, compilation, and publication of morbidity statistics, under the direction of the Division of Sanitary Reports and Statistics, PHS, was transferred to the Division of Public Health Methods, PHS.

A PHS study in 1948 led to a revision of the morbidity reporting procedures, and in 1949 morbidity reporting activities were transferred to the National Office of Vital Statistics. Another committee in PHS presented a revised plan to the Association of State and Territorial Health Officers (ASTHO) at its meeting in Washington, DC, October 1950. ASTHO authorized a Conference of State and Territorial Epidemiologists (CSTE) for the purpose of determining the diseases that should be reported by the states to PHS. Beginning in 1951, national meetings of CSTE were held every two years until 1974, then annually thereafter.

In 1961, responsibility for the collection of data on nationally notifiable diseases and deaths in 122 U.S. cities was transferred from the National Office of Vital Statistics to CDC. For 37 years the Morbidity and Mortality Weekly Report (MMWR) has consistently served as CDC premier communication channel for disease outbreaks and trends in health and health behavior. In collaboration with the Council of State and Territorial Epidemiologists (CSTE), CDC has demonstrated the efficiency and effectiveness of computer transmission of data. The data collected electronically for publication in the MMWR provides information which CDC and State epidemiologists use to detail and more effectively interrupt outbreaks. Reporting also provides the timely information needed to measure and demonstrate the impact of changed immunization laws or a new therapeutic measure. Users of data include, but are not limited to, congressional offices, state and local health agencies, health care providers, and other health related groups.

The dissemination of public health information is accomplished through the MMWR series of publications. The publications consist of the MMWR, the CDC Surveillance Summaries, the Recommendations and Reports, and the Annual Summary of Notifiable Diseases. There are no costs to respondents.

Type of respondents	Number of respondents	Frequency of response	Average time of response	Annual hour burden
State and Local Health Departments	179	52	30/60	4,654

Type of respondents	Number of respondents	Frequency of response	Average time of response	Annual hour burden
Total				4, 654

Dated: August 25, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–22101 Filed 8–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Government-Owned Inventions; Availability for Licensing and Cooperative Research and Development Agreements (CRADAs)

AGENCY: Centers for Disease Control and Prevention (CDC), Technology Transfer Office, Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The invention named in this notice is owned by agencies of the United States Government and is available for licensing in the United States (U.S.) in accordance with 35 U.S.C. 207, and is available for cooperative research and development agreements (CRADAs) in accordance with 15 U.S.C. 3710, to achieve expeditious commercialization of results of federally funded research and development. U.S. and foreign patent applications are expected to be filed in the near future to extend market coverage for U.S. companies and may also be available for licensing.

ADDRESSES: Licensing and CRADA information, and information related to the technology listed below, may be obtained by writing to Suzanne Seavello Shope, J.D., Technology Licensing and Marketing Scientist, Technology Transfer Office, Centers for Disease Control and Prevention (CDC), Mailstop K–79, 4770 Buford Highway, Atlanta, GA 30341, telephone (770) 488–8613; facsimile (770) 488–8615; or e-mail *sshope@cdc.gov*. A signed Confidential Disclosure Agreement (available under Forms at *http://www.cdc.gov/tto)* will be required to receive copies of unpublished patent applications and other information.

Occupational Safety

Air Sampler for Collecting Airborne Pollutants in a Micro Centrifuge Tube for Molecular Analysis

Occupational exposure to small particles, such as fungal spores, bacteria, dust, *etc.*, is of concern in a number of places that exhibit air quality problems, for example, school buildings and agricultural settings. The conventional approach for assessing human exposure to bioaerosols has been to take samples using filters, impingers, or impactors and then perform laboratory analyses, which could be directly counting the organisms or indirectly counting their colony-forming units. While these methods provide reasonably adequate assessment in bioaerosol concentration, they are time-consuming and sometimes take days or even weeks to conduct the analysis. In addition, although the health consequence is evident, there has been difficulty in establishing exposure-response relationship because of the poor correlation between measured biomass and recorded health effect. Recent attention paid to indoor air quality, biological warfare and terrorist attacks has revealed a need for highly specific and sensitive techniques, such as immunoassays and polymerase chain reactions (PCR), for detecting a variety of air pollutants. However, there is a lack of sampling devices that could provide adequate sampling of airborne pollutants and match these advanced analytical techniques.

Researchers at NIOSH have evaluated sampling techniques matched to the analytical procedures used in PCR, immunoassays, and other procedures, and developed a personal sampler for collecting airborne pollutants. Preliminary data have demonstrated an excellent aspiration and collection efficiency for the sampler. It is the intent that use of this sampler would solve the technical compatibility problem between sampling and analyzing as well as allow sample analysis without the need for sample extraction which is required by most current air sampling methods. In turn, the whole scheme of sampling and analysis would help enhance the assessment of exposure to airborne pollutants.

Inventors: The-hsun "Bean" Chen *et al.*

U.S. Patent Application SN: Not yet filed.

(*CDC Ref. #:* I–020–03).

Dated: August 25, 2003.

Joseph R. Carter,

Deputy Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–22100 Filed 8–28–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–1537, CMS–R–200, CMS–10094 and CMS–R–247]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, with change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare/Medicaid Hospital Surveyor's Worksheet Form and Supporting Regulations in 42 CFR 488.26 and 442.30; *Form No.:* CMS–1537 (OMB #0938–0382); *Use:* Section 1861(e) of the Social Security Act (the Act) provides that hospitals participating in

Medicare under the Act must meet specific requirements. These requirements are presented as Condition of Participation. State agencies can determine compliance with these conditions through the use of this worksheet form; *Frequency:* Other: 3–5 years; *Affected Public:* State, Local, or Tribal Government, Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 3323; *Total Annual Responses:* 3323; *Total Annual Hours:* 553.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Health Plan Employer Data and Information Set (HEDIS) and Health Outcome Survey (HOS) and supporting regulations at 42 CFR 422.152; *Form No.:* CMS–R–200 (OMB #0938–0701); *Use:* The Centers for Medicare and Medicaid Services (formerly HCFA) collects quality performance measures in order to hold the Medicare managed care industry accountable for the care being delivered, to enable quality improvement, and to provide quality information to Medicare beneficiaries in order to promote informed choice. It is critical to CMS's mission that we collect and disseminate information that will help beneficiaries choose among health plans, contribute to improved quality of care through identification of improvement opportunities and assist CMS in carrying out its oversight and purchasing responsibilities; *Frequency:* Annually; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Individuals or Households; *Number of Respondents:* 166,709; *Total Annual Responses:* 70,992; *Total Annual Hours:* 498,436.

3. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Evaluation of the Medicaid Health Reform Demonstrations; *Form No.:* CMS–10094 (OMB #0938–NEW); *Use:* This survey is part of an evaluation of the State of Vermont's pharmacy assistance programs, which principally serve low income Medicare beneficiaries who do not have other coverage for prescription drugs. The surveys will explore the issues of self-selection into the pharmacy programs, motivations for joining or not joining, the extent of pharmacy coverage among low income Medicare beneficiaries who are not enrolled and the impact of coverage on Medicare spending. The Vermont evaluation is part of a larger evaluation of Section 1115 Medicaid demonstration programs in five states. (The other states are California, Kentucky, Minnesota, and New York. The survey will take place only in Vermont); *Frequency:* Other: One-time; *Affected Public:* Individuals or Households; *Number of Respondents:* 11,310; *Total Annual Responses:* 11,310; *Total Annual Hours:* 1,087.

4. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection; *Title of Information Collection:* Expanded Coverage for Diabetes Outpatient Self-Management Training Services and Supporting Regulations Contained in 42 CFR 410.141–410.146 and 414.63; *Form No.:* CMS–R–247 (OMB #0938–0818); *Use:* 42 CFR 410.141–410.146 and 414.63 provide for uniform coverage of diabetes outpatient self-management training services. These services include educational and training services furnished to a beneficiary with diabetes by an entity approved to furnish the services. The physician or qualified nonphysician practitioner treating the beneficiary's diabetes certifies that these services are needed as part of a comprehensive plan of care. The regulations set forth the quality standards that an entity is required to meet in order to participate in furnishing diabetes outpatient self-management training services; *Frequency:* On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 1,708; *Total Annual Responses:* 6,832; *Total Annual Hours:* 53,013.5.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://cms.hhs.gov/regulations/pra/default.asp,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov,* or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: August 21, 2003.

Dawn Willinghan,

Acting Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–22076 Filed 8–28–03; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–372]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS)(formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Annual Report on Home and Community Based Services Waivers and Supporting Regulations in 42 CFR 440.180 and 441.300–.310; *Form No.:* CMS–372 (OMB# 0938–0272); *Use:* States request waivers in order for beneficiaries to have the option of receiving hospital services in their homes. States with an approved waiver under section 1915(c) of the Act are required to submit the CMS–372 or CMS–372(S) annually in order for CMS to: (1) Verify that State assurances regarding waiver-cost-neutrality are met, and (2) determine the waiver's impact on the type, amount and cost of services provided under the State plan and health and welfare of recipients; *Frequency:* Annually; *Affected Public:* State, local or tribal government; *Number of Respondents;* 50; *Total Annual Responses:* 277; *Total Annual Hours:* 20,775. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http:/*

/cms.hhs.gov/regulations/pra/default.asp, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hefa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room CS–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 21, 2003.

Dawn Willinghan,

Acting, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–22077 Filed 8–28–03; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Oklahoma Medicaid State Plan Amendment (SPA) 02–14

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on October 7, 2003, 10 a.m.; Room 714, 1301 Young Street; CMS Dallas Regional Office; Dallas, Texas 75202 to reconsider our decision to disapprove Oklahoma State Plan Amendment 02–14.

Closing Date: Requests to participate in the hearing as a party must be received by the presiding officer by September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen Scully-Hayes, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, Telephone: (410) 786–2055.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider the decision dated May 28, 2003, to disapprove Oklahoma Medicaid State Plan Amendment (SPA) 02–14.

Oklahoma submitted SPA 02–14 on October 22, 2002, and revised it on May 14, 2003. On May 28, 2003, CMS disapproved SPA 02–14, after consultation with the Secretary as required under 42 CFR 430.15(c)(2). The State requested reconsideration by letter dated July 25, 2003.

At issue is whether the proposed supplemental payment methodology contained in the SPA complies with the requirement at section 1902(a)(30)(A) of the Social Security Act (the Act) that payment methodologies must assure that "payments are consistent with efficiency, economy and quality of care." The proposed payment methodology would provide supplemental payment for services rendered by doctors of medicine, osteopathy, and dentists who are State employees. The State asserted that increased payment was warranted because of the specialized services provided by these State employees. The State failed to demonstrate, however, that delivering Medicaid services through State employees generated significantly higher costs sufficient to justify the requested supplemental payment. Moreover, the supplemental payment methodology proposed by the State is not a customary method for paying physicians and other health professionals. The methodology would make it difficult to track payments for specific services and would complicate auditing processes. In sum, at issue is whether it is consistent with efficiency, economy, and quality of care to use a methodology that: (1) Is not justified by any increased costs to the State to ensure access to services for Medicaid beneficiaries; (2) is not a usual and customary payment methodology; and (3) would unduly complicate tracking and audit processes.

Section 1116 of the Act and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The CMS is required to publish a copy of the notice to a state Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Oklahoma announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Jim Hancock, Director
Health Policy Division
Oklahoma Health Authority
4545 North Lincoln Boulevard, Suite 124
Oklahoma City, OK 73105

Dear Mr. Hancock: I am responding to your request for reconsideration of the decision to disapprove Oklahoma State Plan Amendment (SPA) 02–14.

Oklahoma submitted SPA 02–14 on October 22, 2002, and revised it on May 14, 2003. On May 28, 2003, I disapproved SPA 02–14, after consultation with the Secretary as required under 42 CFR 430.15(c)(2). You requested reconsideration by letter dated July 25, 2003.

At issue is whether the proposed supplemental payment methodology contained in the SPA complies with the requirement at section 1902(a)(30)(A) of the Social Security Act that payment methodologies must assure that "payments are consistent with efficiency, economy and quality of care." The proposed payment methodology would provide supplemental payment for services rendered by doctors of medicine, osteopathy, and dentists who are State employees. The State asserted that increased payment was warranted because of the specialized services provided by these State employees. The State failed to demonstrate, however, that delivering Medicaid services through State employees generated significantly higher costs sufficient to justify the requested supplemental payment. Moreover, the supplemental payment methodology proposed by the State is not a customary method for paying physicians and other health professionals. The methodology would make it difficult to track payments for specific services and would complicate auditing processes. In sum, at issue is whether it is consistent with efficiency, economy, and quality of care to use a methodology that: (1) Is not justified by any increased costs to the State to ensure access to services for Medicaid beneficiaries; (2) is not a usual and customary payment methodology; and (3) would unduly complicate tracking and audit processes. For the above stated reasons, and after consulting with the Secretary as required by 42 CFR 430.15(c)(2), the Centers for Medicare & Medicaid Services (CMS) disapproved Oklahoma SPA 02–14.

I am scheduling a hearing on your request for reconsideration to be held on October 7, 2003, at 10 a.m., 1301 Young Street, Room 714, CMS Dallas Regional Office, Dallas, Texas 75202. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Ms. Kathleen Scully-Hayes as the presiding officer. If these arrangements present any problems, please contact the presiding officer. In order to

facilitate any communication which may be necessary between the parties to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the State at the hearing. The presiding officer may be reached at (410) 786–2055.

Sincerely,
Thomas A. Scully

Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR Section 430.18)

(Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: August 25, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 03–22245 Filed 8–28–03; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Community Services

Grant to the Rural Community Assistance Program

AGENCY: Office of Community Services, Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Award announcement.

CFDA: The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.570. The title is Rural Community Development Activities Program (RF Program).

Amount of Award: $500,000.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the Rural Community Assistance Program, Inc. to provide training and technical assistance to small communities struggling to deal with the safety and security of small and very small community water and wastewater treatment systems. This award addresses Congressional concern that many small and very small community water and wastewater treatment systems might be most vulnerable to terrorist attack, yet the least prepared to deal with the issues.

The application is not within the scope of any existing or expected to be issued program announcement for the Fiscal Year 2003—Rural Community Development Activities Program (RF) as authorized under the Community Services Block Grant Act of 1998, as amended; sections 680(a)(3)(B) of the Community Opportunities Accountability, and Training and Educational Services (COATES) Act (Pub. L. 105–285). This application is expected to provide valuable on-site training and technical assistance to small and very small communities struggling to deal with the safety and security of small community water and wastewater treatment systems. This announcement is inviting application for a 12-month budget period and a 24 month project period.

The funds are not being competed due to the Senate appropriation language in FY 2003 that directs the Office of Community Services to support a Rural Community Assistance Program Small Community Infrastructure Safety and Training and Technical project. Congress intends the funds to go to an organization that is capable of conducting a project that is national in scope that provides State, regional and national infrastructure safety training workshops and on-site technical assistance targeted to small and very small community water and wastewater treatment systems.

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Veronica Terrell—(202) 401–5295, *vterrell@acf.hhs.gov.*

Dated: August 22, 2003.

Clarence H. Carter,

Director, Office of Community Services.

[FR Doc. 03–22099 Filed 8–28–03; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0367]

Draft Guidance for Industry on Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Applications and Related Submissions; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Applications and Related Submissions." This is one in a series of guidance documents on providing regulatory submissions to FDA in electronic format. This guidance discusses issues related to the electronic submission of new drug applications (NDAs), abbreviated new drug applications (ANDAs), biologics licensing applications (BLAs), investigational new drug applications (INDs), master files, advertising material, and promotional labeling. The submission of these documents in electronic format should improve the agency's efficiency in processing, archiving, and reviewing them.

DATES: Submit written or electronic comments on the draft guidance by October 28, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Randy Levin, Center for Drug Evaluation and Research (HFD–001), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301/594–5411, e-mail: *levinr@cder.fda.gov*, or R. Yetter, Center for Biologics Evaluation and Research (HFM–25), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–5349.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Providing Regulatory Submissions in Electronic Format—Human Pharmaceutical Product Applications and Related Submissions." This draft document provides guidance to industry regarding submission of marketing applications (NDAs, ANDAs, BLAs), INDs, and related submissions (master files, advertising, and promotional

labeling) in electronic format based on the International Conference on Harmonisation Electronic Common Technical Document specification.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on providing applications and related submissions in electronic format. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Paperwork Reduction Act of 1995

This notice contains no new collections of information. The information requested for human drug and biological products is already covered by the collection of information on postmarketing safety reporting regulations (21 CFR parts 312, 314, and 601) submitted to the Office of Management and Budget (OMB) for review and clearance. This notice announces the availability of a guidance that provides applicants with an alternative mechanism for submitting applications and related submissions to the agency.

IV. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/cder/guidance/index.htm* or at *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: August 21, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22183 Filed 8–28–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on the National Health Service Corps; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on the National Health Service Corps.

Dates and Times: September 18, 2003, 5 p.m.–7 p.m.; September 19, 2003, 8:30 a.m.–5 p.m.; September 20, 2003, 9 a.m.–5:30 p.m.; and September 21, 2003, 8 a.m.–10:30 a.m.

Place: Embassy Suites Hotel Raleigh/Crabtree, 4700 Creedmoor Road, Raleigh, NC 27612, 919–881–0000.

Status: The meeting will be open to the public.

Agenda: The agenda will focus on the implementation of the National Health Service Corps program within the state of North Carolina. Meeting will further cover the continuing needs of health professional shortage areas within the state. Agenda items and times are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Tira Robinson, Division of National Health Service Corps, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8A–55, 5600 Fishers Lane, Rockville, Maryland 20857, telephone (301) 594–4140.

Dated: August 21, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–22073 Filed 8–28–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request: Pretesting of NCI Office of Communications Messages

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 3, 2003, page 16295 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Pretesting of NCI Office of Communications Messages.

Type of Information Collection Request: Extension (OMB # 0925–0046, expires 8/31/03).

Need and Use of Information Collection: In order to carry out NCI's legislative mandate to educate and disseminate information about cancer prevention, detection, diagnosis, and treatment to a wide variety of audiences and organizations (*e.g.*, cancer patients, their families, the general public, health providers, the media, voluntary groups, scientific and medical organizations), the NCI Office of Communications (OC) needs to pretest its communications strategies, concepts, and messages while they are under development. The primary purpose of this pretesting, or formative evaluation, is to ensure that the messages, communication materials, and information services created by OC have the greatest capacity of being received, understood, and accepted by their target audiences. By utilizing appropriate qualitative and quantitative methodologies, OC is able to (1) understand characteristics of the intended target audience—their attitudes, beliefs and behaviors—and use this information in the development of effective communication tools and strategies; (2) produce or refine messages that have the greatest potential to influence target audience attitudes and behavior in a positive manner; and (3) expend limited program resource dollars wisely and effectively.

Frequency of Response: On occasion.

Affected Public: Individuals or households; Businesses or other for profit; Not-for-profit institutions; Federal Government; State, local or tribal Government.

Type of Respondents: Adult cancer patients; members of the public; health care professionals; organizational representatives.

The annual reporting burden is as follows:

Estimated Number of Respondents: 13,780;

Estimated Number of Responses per Respondent: 1;

Average Burden Hours Per Response: .1458; and

Estimated Total Annual Burden Hours Requested: 2,010. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ellen Eisner, Communications Research Manager, OC Director's Office, NCI, NIH, Building 31, Room 10A03, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 435–7783 or e-mail your request, including your address to: *EisnerE@occ.nci.nih.gov.*

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: August 21, 2003.

Reesa Nichols,

Project Clearance Liaison, NCI.

[FR Doc. 03–22085 Filed 8–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of PO1 Applications.

Date: September 30, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Homewood Suites by Hilton-RDU Airport, 4603 Central Park Dr., Durham, NC 27703.

Contact Person: Leroy Worth, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 919/541–0670, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation-Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances-Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 22, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22083 Filed 8–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, Concept Review—"The Synthesis and Testing of Norsteroidal and Nonhormonal Male Contraceptive Agents".

Date: September 17, 2003.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Hameed Khan, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E01, Bethesda, MD 20892, (301) 435–6902, *khanh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22084 Filed 8–28–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection ("COAC")

AGENCY: Department of Homeland Security.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the fourth meeting of the eighth term of the Departmental Advisory Committee on Commercial Operations of the Bureau of Customs and Border Protection (COAC), and the expected agenda for its consideration.

DATES: The next meeting of the COAC will be held on Friday, September 19, 2003, at 9 a.m. in the Rotunda Room, 9th Floor, Ronald Reagan Building, located at 1300 Pennsylvania Ave., NW., Washington, DC 20229 (take elevator to 8th floor and follow signs to the steps leading to the 9th floor). The duration of the meeting will be approximately four hours.

FOR FURTHER INFORMATION CONTACT: Donna Montiel, Department of Homeland Security, 202–282–8472.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. However, participation in the COAC's deliberations is limited to COAC members, Homeland Security and Treasury Department officials, and persons invited to attend the meeting for special presentations. All persons entering the building must be cleared by building security at least 72 hours in advance of the meeting. Personal data to obtain this clearance must be submitted to Donna Montiel, 202–282–8472, no later than 2 p.m. e.s.t on Tuesday, September 16, 2003.

Agenda

The COAC is expected to pursue the following agenda, which may be modified prior to the meeting:

(1) Security Sub-Committee Report (Advance Manifest Rules, Free and Secure Trade (FAST program), Customs-Trade Partnership Against Terrorism and the Container Security Initiative (CTPAT and CSI), CBP Human Capital Plan).

(2) DHS Briefing on DHS Re-Organization.

(3) Other Issues (E-Rulings Project; CBP Participation on WTO Task Force for Global Security Standard, Customs Broker Exam, and Revision of Customs Forms).

Dated: August 25, 2003.

C. Stewart Verdery,

Assistant Secretary for Border and Transportation Security Policy and Planning.

[FR Doc. 03–22138 Filed 8–28–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-Day notice of information collection under review; Application for Asylum and for Withholding of Removal; Form I–589.

The Department of Homeland Security (DHS) has submitted the following information collection to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995.

The former Immigration and Naturalization Service (Service) published a **Federal Register** notice on February 25, 2003 at 68 FR 8784 to solicit public comments for a 60-day period regarding the proposed Form I–589, Application for Asylum and for Withholding of Removal. At the close of the public comment period on April 28, 2003, the DHS had not received any comments.

This notice allows an additional 30 days for public comments. Comments are encouraged and will be accepted until September 29, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Department of Homeland Security Desk Officer, Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Asylum and for Withholding of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–589, Office of International Affairs, Asylum Division, Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households: The information collected on this form will be used to determine whether an alien applying for asylum and/or withholding of removal in the United States is classifiable as a refugee, or eligible for protection under the Convention Against Torture, and is eligible to remain in the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 78,000 responses at 12 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 936,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard S. Sloan (202) 514–3291, Director, Regulations and Forms Services Division, Bureau of Citizenship and Immigration Services (BCIS), U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Ms. Terry O'Malley, Clearance Officer, U.S. Department of Homeland Security, 7th and D Streets, NW., 4th Floor, Washington, DC (202) 358–3571.

Dated: August 26, 2003.

Richard A. Sloan,

Department Clearance Officer, U.S. Department of Homeland Security, Bureau of Immigration and Customs Enforcement.

[FR Doc. 03–22129 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2002–14134]

Port Pelican LLC Deepwater Port License Application

AGENCY: Coast Guard, DHS, and Maritime Administrative, DOT.

ACTION: Final environmental impact statement, notice of availability.

SUMMARY: The U.S. Coast Guard and the Maritime Administration announce the availability of the final environmental impact statement for the Port Pelican LLC Deepwater Port License Application. We request your input on this final environmental impact statement, which covers the construction and operation of a liquefied natural gas deepwater port known as "Port Pelican" and associated anchorage on the Outer Continental Shelf in the Gulf of Mexico, approximately 36 miles south southwest of Freshwater City, Louisiana.

DATES: The final environmental impact statement (FEIS) will be available on August 29, 2003. Comments must reach the Coast Guard on or before October 2, 2003.

ADDRESSES: The FEIS will be available in the docket on the Internet at *http://dms.dot.gov* under docket number USCG–2002–14134 or by contacting the U.S. Coast Guard as indicated under **FOR FURTHER INFORMATION CONTACT:** Comments may be submitted in several ways. To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov.*

(2) By mail to the Docket Management Facility (USCG–2002–14134), U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at (202) 493–2251.

(4) By delivery to Room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments will become part of this docket and will be available along with the FEIS for inspection or copying at Room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays. You may also view this docket, including this notice and comments, on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions about the project, you may contact Commander Mark Prescott, U.S. Coast Guard at (202) 267–0225 or *mprescott@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Authority: 33 U.S.C. 1504(f).

Request For Comments

We encourage you to submit comments on this FEIS. If you do so, please include your name and address, identify this notice (USCG–2002–14134), and give the reason for each comment. You may submit your comments by mail, hand delivery, fax or electronic means to the Docket Management Facility at the address given under **ADDRESSES**, but please submit your comments and materials by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail, and would like to know if they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period.

Proposed Action

The application plan calls for construction of the Port Pelican Deepwater Port and associated anchorage in an area situated in the Gulf of Mexico approximately 36 miles south southwest of Freshwater City, Louisiana, in Vermilion Block 140. Additional information on the application can be found on the Internet at *http://dms.dot.gov* under docket number USCG–2002–14134, or in the notice of application published in the **Federal Register** at 67 FR 79234 (Dec. 27, 2002).

The proposed project would deliver natural gas to the United States Gulf Coast using existing gas supply and gathering systems in the Gulf of Mexico and southern Louisiana. Gas would then be delivered to shippers using the national pipeline grid through interconnections with major interstate and intrastate pipelines.

The project would consist of the Port Pelican Terminal (the Terminal), an LNG receiving, storage and regasification facility and the Pelican Interconnector Pipeline (PIPL) to transport the gas to the existing offshore gas gathering system.

The project would consist of two concrete gravity based structure (GBS) units fixed to the seabed, which would include integral LNG storage tanks, support deck mounted LNG receiving and vaporization equipment and utilities, berthing accommodations for LNG carriers, facilities for delivery of natural gas to a pipeline transportation system, and personnel accommodations.

The Terminal would be able to receive the largest LNG carriers in service or on order in 2002. LNG carrier arrival frequency will be planned to match specified terminal gas delivery rates. All marine systems, communication, navigation aids and equipment necessary to conduct safe LNG carrier operations and receiving of product during specified atmospheric and sea states would be provided at the port.

The regasification process would consist of lifting the LNG from storage tanks, pumping the cold liquid to pipeline pressure, vaporization across heat exchanging equipment and delivery through custody transfer metering to the gas pipeline network. No gas conditioning would be required for the Terminal since the incoming LNG would be pipeline quality.

A 42-inch diameter offshore PIPL, 37 nautical miles in length, would be constructed as part of the project. The PIPL would transport gas from the Terminal to a point near the Tiger Shoal Platform "A" where it would connect to Henry-Floodway Gas Gathering System (HFGGS). The HFGGS would deliver the gas to the onshore U.S. gas pipeline network.

The Terminal would be constructed in two phases. Phase I would include the installation of two GBS units with internal storage tanks and facilities for LNG offloading, and vaporization capability to deliver a peak 1.0 billion standard cubic feet per day (SCFD) of

natural gas to the pipeline system. Additional vaporization equipment and associated support equipment and facilities would be installed during Phase II to increase the facility vaporization and send out rate to 2.0 billion SCFD peak.

Alternatives

The FEIS examines in detail an alternative location for siting of the project and a no action alternative. The alternative site, approximately 30 miles east of Vermilion Block 140, would involve use of South Marsh Island Block 4. Evaluation of the no action alternative, defined as not approving the license application, provides a baseline for comparing the impacts associated with the proposed action and use of the alternative site.

Dated: August 29, 2003.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

Raymond R. Barberesi,

Director, Office of Ports and Domestic Shipping, Maritime Administration.

[FR Doc. 03–22139 Filed 8–28–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–15797]

Draft Environmental Impact Statement for the Proposed Lake Washington Ship Canal Bridge and Proposed Modification of the Duwamish Waterway Bridge

AGENCY: Coast Guard, DHS.

ACTION: Notice of availability; notice of public hearing; and request for public comments.

SUMMARY: The Coast Guard announces the availability of a Draft Environmental Impact Statement (Draft EIS) for the Seattle Monorail Project "Green Line" monorail in Seattle, Washington. The Draft EIS has been prepared in cooperation with the Seattle Monorail Project, which is a municipal transportation agency of the State of Washington and is proposing the transit project analyzed in the Draft EIS. The Coast Guard and the Seattle Monorail Project agreed to prepare this Draft EIS to satisfy the requirements of both the National Environmental Policy Act (NEPA) and the Washington State Environmental Policy Act (SEPA) for the proposed Green Line monorail project. We request your comments on the Statement. The Coast Guard will hold a public hearing to receive comments on the Draft EIS. The proposed location of the bridge is across the Lake Washington Ship Canal, approximate milepoint 1.0, at Seattle, Washington. The proposed bridge modification is across the Duwamish Waterway, approximate milepoint 0.3, at Seattle, Washington. The hearing will allow interested persons to present comments and information concerning the impact of the proposed bridgework on navigation and the human environment. Because the Coast Guard is using the EIS process to also conduct public outreach under the National Historic Preservation Act, this public hearing is also an opportunity for the public to comment on the proposed project's impacts to cultural resources, such as historic resources or archaeological resources.

DATES: This hearing will be held on Monday, September 29, 2003, with an afternoon and evening session. The afternoon session will begin promptly at 1 p.m. and adjourn at 3 p.m. The evening session will begin promptly at 5 p.m. and adjourn when all evening speakers have spoken. Requests to speak, with session preference, and requests for services must be received in the Bridge Section at the address given under **ADDRESSES** by September 22, 2003. Attendees at the hearing, who wish to present testimony and have not previously made a request to do so, will follow those having submitted a request, as time permits. Comments pertaining to the Draft EIS must be received by the docket October 14, 2003.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

(2) By mail to the Docket Management Facility, (USCG–2003–15797), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) By delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as the Draft EIS, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket, including the Draft EIS, on the Internet at *http://dms.dot.gov*.

The hearing will be held at the Northwest Rooms, Seattle Center, 305 Harrison Street, Seattle, Washington. The Northwest Rooms are near the northwest corner of the Seattle Center campus, just to the north of the Key Arena.

The Coast Guard point of contact is Mr. Austin Pratt, Bridge Section, Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Room 3510, Seattle, WA 98174–1067.

Requests to receive copies of the Draft EIS should be sent to the Seattle Monorail Project, ATTN: Mr. Ross Macfarlane, 1904 Third Avenue, Suite 105, Seattle, WA 98101. Alternatively, the Draft EIS is available on the Internet at *http://www.elevated.org*. Copies are also available for inspection at the offices of the Seattle Monorail Project, 1904 Third Avenue, Suite 105, Seattle, WA 98191 (telephone (206) 328–1220), and are available at the City of Seattle public libraries, and at the U.S. Coast Guard Bridge Section address given under **ADDRESSES.**

Comments, including names and home addresses, may be published as part of the Final EIS. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, the proposed project, or the associated Draft EIS, call Mr. Austin Pratt, Bridge Administrator, telephone (206) 220–7282. Information may also be obtained from the Seattle Monorail Project, 1904 Third Avenue, Suite 105, Seattle, WA 98101, telephone (206) 382–1220. Information, including copies of the Draft EIS, is available over the Internet at the Seattle Monorail Project Web site: *http://www.elevated.org*. If you have questions on viewing or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of

Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material on the Draft EIS. If you do so, please include your name and address, identify the docket number for this notice (USCG–2003–15797) and give the reasons for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Proposed Action

The project under consideration is a 14-mile monorail line in Seattle, Washington, that will provide transit service serving a number of Seattle communities and destinations. The project is being proposed by the Seattle Popular Monorail Authority (also known as Seattle Monorail Project or SMP), which is a city transportation authority organized under Washington Revised Code Chapter 35.95A. The Green Line would use traditional monorail technology, which consists of linked train cars straddling an elevated guideway beam that provides electric power to propel the train cars. Green Line trains would run on rubber tires that are locked into the beams and would be operated automatically and not require drivers.

The Green Line includes a new bridge crossing of the Lake Washington Ship Canal (near the existing Ballard Bridge), for which a bridge permit from the Coast Guard and environmental review pursuant to the National Environmental Policy Act (NEPA) are required. A crossing of the Duwamish Waterway on the existing West Seattle High-Rise Bridge is proposed, and may also require a bridge permit from the Coast Guard depending on final design drawings. Comments regarding impacts that the proposed Green Line bridgework may have on navigation of the Lake Washington Ship Canal or the Duwamish Waterway will be of particular relevance to the Coast Guard's bridge permitting responsibilities. In order to evaluate indirect and cumulative environmental impacts of the Coast Guard's bridge permit actions, the Coast Guard and the SMP have agreed that the scope of NEPA review should be the entire 14-mile Green Line proposal.

The Green Line is being proposed in accordance with Seattle Citizens' Petition No. 1, which was passed by Seattle voters in November 2002. In Petition No. 1, voters adopted the Seattle Popular Monorail Plan, created the SMP, required the SMP to adopt and implement the Seattle Popular Monorail Plan, and authorized funding for the construction and operation of the Green Line as described in the Plan. The proposed Green Line would run from the Ballard neighborhood of Seattle, through the Interbay and Ballard industrial areas, through downtown Seattle, through the South Downtown (SODO) industrial area, and then to the West Seattle neighborhood. The Green Line would connect the urban neighborhoods in Ballard and West Seattle with the industrial/manufacturing areas in the Interbay and SODO areas and with the downtown urban core and central business district of the City of Seattle.

Procedural

Individuals and representatives of organizations who wish to present testimony at the hearing or who want to be placed on the project mailing list, may submit a request to the Bridge Section at the address listed under **ADDRESSES** clearly indicating name and organization represented, if applicable. Requests to speak should be received no later than September 22, 2003, in order to ensure proper scheduling for the hearing. Attendees at the hearing, who wish to present testimony and have not previously made a request to do so, will follow those having submitted a request, as time permits. Speakers will be called in the order of receipt of the request. Depending upon the number of scheduled statements, the Coast Guard may limit the amount of time allowed for each speaker. Written statements and other exhibits in lieu of, or in addition to, oral statements at the hearing may be submitted to the Bridge Section at the address listed under **ADDRESSES** until October 14, 2003, to be included in the Public Hearing transcript. Beginning at 1 p.m. on the hearing date, Seattle Monorail Project representatives will be available with project display materials adjacent to the hearing room to explain the project and answer questions from the public.

Information on Services for Individuals with Disabilities

For information about facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the Commander (oan), Thirteenth Coast Guard District. Please request these services by contacting the Bridge Section at the phone number under **FOR FURTHER INFORMATION CONTACT** or in writing at the address listed under **ADDRESSES.** Any requests for an oral or sign language interpreter must be received by September 22, 2003.

Authority: Section 102(2) of the National Environmental Policy Act of 1969, 40 CFR 1503.1, 36 CFR 800.2(d).

Dated: July 30, 2003.

N.E. Mpras,

Chief, Office of Bridge Administration, U.S. Coast Guard.

[FR Doc. 03–21954 Filed 8–28–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4820–N–35]

Notice of Proposed Information Collection: Comment Request; Application and Re-Certification Packages for Approval of Nonprofit Organizations in FHA Activities

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410, or *Wayne_Eddins@hud.gov.*

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street, SW.,

Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Application and Re-Certification Packages for Approval of Nonprofit Organizations for FHA Activities.

OMB Control Number, if applicable: 2502–0540.

Description of the need for the information and proposed use: The information collection is essential to the Department's mission to expand homeownership opportunities and strengthen neighborhoods and communities by standardizing the process throughout the country. The information that nonprofit organizations must submit to be eligible to participate as a mortgagor in HUD's single-family housing programs is in the form of an application, re-certification, or other reporting criteria. Nonprofit organizations are viewed as a significant partner in rehabilitating and reselling residential housing to low- and moderate-income families, particularly in the nation's urban centers. Each nonprofit organization seeking to become approved as a mortgagor must submit a completed Application Package for Nonprofit Agency Approval and an Affordable Housing Plan-Format for Narrative to the appropriate HUD Homeownership Center (HOC). The Affordable Housing Plan-Format for Narrative details the nonprofit organization's plan to develop successful homeownership opportunities for low- and moderate-income persons. Nonprofit agencies applying for approval to provide secondary financing only do not need to include an Affordable Housing Plan in their submission.

Approvals granted to nonprofit applicants are for a period of two years. An approval letter will be issued setting forth the activities for which the nonprofit was approved to perform, and any conditions associated with the approval. Approvals granted by one HOC would be recognized and accepted by all others, with the exception of the affordable housing plan. The affordable housing plan must be approved by each HOC having jurisdiction over the areas in which the nonprofit agency wishes to do business. Nonprofit agencies must be re-certified by FHA every two years. Re-certification includes an updating of the nonprofit's activities. FHA has also placed a limitation on the number of 203(k) FHA insured mortgages a nonprofit may have at one time in order to ensure that nonprofit agencies do not overextend their financial and management capabilities. Generally, a nonprofit agency will be prohibited from borrowing under the 203(k) program if the agency has 10 or more incomplete 203(k) developments at one time. This limitation may be waived based upon an exceptional performance record.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of respondents are estimated to be 1,900 generating approximately 3,400 annual responses; the frequency of response is annually, biennially, and on occasion, the estimated time needed to prepare the responses varies from 3 hours to 24 hours; and the total estimated annual burden hours are 23,200.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: August 22, 2003.

Margaret A. Young,

Deputy Assistant Secretary for Finance and Budget.

[FR Doc. 03–22086 Filed 8–28–03; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4817–N–14]

Notice of Proposed Information Collection for Public Comment for Public Housing, Contracting With Resident-Owned Businesses

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review and approval, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35, as amended). The Department is soliciting public comment on the subject proposal.

DATES: *Comments Due Date:* October 28, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: *Mildred M. Hamman,* Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4249, Washington, DC 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–0614 extension 4128. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In order to be eligible for the alternative procurement process provided by 24 CFR part 963, resident-owned businesses must submit evidence to PHAs indicating that they meet eligibility requirements as defined in 24 CFR 963.10. Resident owned-businesses must furnish evidence to PHAs that they are: A legally formed business; a resident-owned business; have the capacity to complete the work contract; and have a limited number of contracts obtained through the alternative procurement process. Although PHAs are not required to use the alternative procurement method, they are required to collect eligibility requirements from resident-owned businesses when using this procurement method.

This Notice is soliciting comments from members of the public and affected agencies (PHAs) concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agencies, including

whether the information will have practical utility; (2) evaluate the accuracy of HUD's estimate of the burden for collecting said information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond.

This Notice also lists the following information:

Title of Proposal: Public Housing, Contracting with Resident-Owned Businesses Application Requirements.

OMB Control Number: 2577–0161.

Description of the need for the information and proposed use: The information is Necessary so that the applicants (resident-owned businesses) seeking to qualify for non-Competitive contracting the Public Housing Agency (PHA) will be eligible to be solicited by the PHA as a contractor for a proposed contract.

Members of the affected public: Individuals or households; State or local governments; nonprofit institutions; small businesses or organizations.

Estimate of the total number of hours needed to prepare the information collection including the number of respondents, frequency of response and hours of response: 500 respondents, annually, 16 hours per response, 8,000; recordkeeping, 500 respondents, annually, one hour per response, 500 hours. The total burden is 8,500.

Status of the proposed information collection: Extension, without change.

Authority: Sec. 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, as amended.

Dated: August 22, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–22087 Filed 8–20–03; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–35]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 21, 2003.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–21926 Filed 8–28–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–5853–EU]

Notice of Realty Action: Competitive Sale of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following described lands have been designated for disposal and will be offered at a competitive sale of public lands in Clark County, Nevada.

FOR FURTHER INFORMATION CONTACT: You may contact Judy Fry, Program Lead, Sales, on (702) 515–5081 or e-mail to *JFry@NV.blm.gov.*

SUPPLEMENTARY INFORMATION: The following lands have been designated for disposal under Pub. L. 105–263, the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343) and Pub. L. 107–282, Clark County Conservation of Public Land and Natural Resources Act of 2002 (116 Stat. 1995). Sixty parcels for a total of 2,728.49 acres, more or less, will be offered competitively on November 6, 2003, at an oral auction in accordance with Section 203 and Section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713 and 1719) at not less than the appraised fair market value (FMV).

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E.,
  Sec. 19, W½NE¼NE¼SE¼, E½NW¼NE¼SE¼;
  Sec. 29, NE¼NE¼SE¼NE¼, N1/2SE¼NE¼SE¼NE¼;
  Sec. 31, NW¼NW¼NE¼NW¼, SW¼NW¼NE¼NW¼, NE¼NW¼NE¼NW¼, SE¼NW¼NE¼NW¼, NW¼SW¼NE¼NW¼, SW¼SW¼NE¼NW¼, NE¼SW¼NE¼NW¼, SE¼SW¼NE¼NW¼, NE¼NE¼NE¼NW¼, SE¼NE¼NE¼NW¼, NE¼NE¼SE¼NW¼, SE¼NE¼SE¼NW¼.

T. 20 S., R. 60 E.,
  Sec. 6, Lot 20, NW¼NW¼SW¼NE¼, SW¼NW¼SW¼NE¼, NE¼NW¼SW¼NE¼, SE¼NW¼SW¼NE¼, NE¼SW¼SW¼NE¼, SE¼SW¼SW¼NE¼, E½SE¼SE¼SW¼.

T. 21 S., R. 60 E.,
  Sec. 10, NE¼SE¼NW¼NW¼, SE¼SE¼NW¼NW¼, NW¼SW¼NE¼NW¼, SW¼SW¼NE¼NW¼.

T. 22 S., R. 60 E.,
  Sec. 13, W½SW¼NE¼NW¼;
  Sec. 18, NE¼SW¼SE¼SW¼, SE¼SW¼SE¼SW¼;
  Sec. 19, SE¼NE¼NE¼NE¼, SE¼NW¼NW¼NE¼, SW¼NW¼NW¼NE¼, NE¼SW¼NW¼NE¼;
  Sec. 22, NW¼NE¼NE¼NW¼, SE¼NW¼NE¼NW¼, SW¼NW¼NE¼NW¼, SW¼NE¼NW¼NW¼, SE¼NW¼NW¼NW¼, NW¼SE¼NW¼NW¼, SW¼SE¼NW¼NW¼, NW¼SW¼NE¼NW¼;
  Sec. 23, NE¼NE¼NW¼NW¼, NW¼NE¼NW¼NW¼, SW¼NE¼NW¼NW¼, SE¼NE¼NW¼NW¼, NW¼NW¼NW¼, NW¼SW¼NW¼NW¼, NW¼SE¼NW¼NW¼, NW¼SW¼NE¼NW¼, E½SW¼NE¼NW¼, NW¼SE¼NE¼NW¼, SE¼SW¼NW¼NW¼, NW¼NW¼SW¼NW¼;
  Sec. 24, NW¼SW¼SW¼NE¼, SE¼SW¼SE¼NE¼, NW¼SW¼SE¼NE¼, SE¼SW¼SW¼NW¼, SW¼SE¼SW¼NW¼;
  Sec. 35, NE¼SW¼NE¼NE¼, SE¼SW¼NE¼NE¼, NE¼SE¼NE¼NE¼, SE¼SE¼NE¼NE¼, NE¼NW¼SE¼NE¼, E½NE¼SE¼NE¼.

T. 22 S., R. 61 E.,
Sec. 29, NW¼SE¼SW¼SE¼;
Sec. 34, S½S½SW¼NW¼,
S½SE¼NW¼, N½NW¼NW¼SW¼,
NE¼NW¼SW¼, N½NW¼NE¼SW¼,
NE¼NE¼SW¼, N½SE¼NE¼SW¼,
S½SW¼SW¼,NE¼SE¼SW¼,
N½SE¼SE¼SW¼, SW¼SE¼SW¼,
S½NW¼SE¼SW¼.
T. 23 S., R. 61 E.,
Sec. 11, S½S½NW¼SE¼, SW¼SE¼,
W½W½SE¼SE¼, E½SE¼SW¼,
S½SE¼NE¼SW¼;
Sec. 14, W½NE¼, W½W½NE¼NE¼,
SE¼SW¼NE¼NE¼,
W½SE¼NE¼,W½E½SE¼NE¼,
E½E½NW¼, E½NE¼SW¼,
SE¼SW¼,
S½SW¼SW¼,NE¼SW¼NE¼SW¼,
S½SW¼NE¼SW¼,
NE¼NE¼SW¼SW¼,
S½NE¼SW¼SW¼,
SW¼NW¼SW¼SW¼, SE¼;
Sec. 15, S½SE¼, S½NW¼SE¼,
SW¼NE¼SE¼, SW¼SE¼NE¼SE¼,
SW¼NW¼NE¼SE¼,
S½NE¼NW¼SE¼,
NE¼NE¼NW¼SE¼;
Sec. 22, E½, SW¼;
Sec. 23, All;
Sec. 24, W½E½SW¼NW¼,
SW¼NW¼NW¼NW¼,
SW¼NW¼NW¼,
SW¼SE¼NW¼NW¼, W½SW¼NW¼,
E½SE¼SW¼NW¼,
SE¼NE¼SW¼NW¼,
W½SW¼SE¼NW¼, W½SW¼,
W½E½SW¼, W½NE¼SE¼SW¼,
SE¼SE¼SW¼.
T. 23 S., R. 62 E.,
Sec. 19, Lots 13, 15, 17, 21, 22, 24, 25, 27, 28, and 29;
Sec. 20, Lots 12, 15, 17, 18, and 20;
Sec. 29, Lot 3;
Sec. 30, Lots 6, 7, 10, and 11.
Containing 2,728.49 acres, more or less.

In addition to the lands described herein, parcels that have been published in a previous Notice of Realty Action (NORA) and were previously offered but did not sell, may be re-offered at this sale.

When the land is sold, conveyance of the locatable mineral interests will occur simultaneously with the sale of the land. The locatable mineral interests being offered have no known mineral value. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. In conjunction with the final payment, the applicant will be required to pay a $50.00 non-refundable filing fee for processing the conveyance of the locatable mineral interests.

The terms and conditions applicable to the sale are as follows:

All Parcels Are Subject to the Following

1. All leaseable and saleable mineral deposits are reserved on land sold; permittees, licensees, and lessees retain the right to prospect for, mine, and remove the minerals owned by the United States under applicable law and any regulations that the Secretary of the Interior may prescribe, including all necessary access and exit rights.

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945).

3. All land parcels are subject to all valid existing rights. Parcels may also be subject to applications received prior to publication of this Notice if processing the application would have no adverse affect on the appraised Fair Market Value (FMV). Encumbrances of record are available for review during business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, at the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV.

4. All land parcels are subject to reservations for roads, public utilities and flood control purposes, both existing and proposed, in accordance with the local governing entities' Transportation Plans.

5. All purchasers/patentees, by accepting a patent, agree to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind or nature arising from the past, present, and future acts or omissions of the patentee or their employees, agents, contractors, or lessees, or any third-party, arising out of or in connection with the patentee's use, occupancy, or operations on the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee and their employees, agents, contractors, or lessees, or any third party, arising out of or in connection with the use and/or occupancy of the patented real property which has already resulted or does hereafter result in: (1) Violations of federal, state, and local laws and regulations that are now or may in the future become, applicable to the real property; (2) Judgments, claims or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Other releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws; off, on, into or under land, property and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used or otherwise disposed of on the patented real property, and any cleanup response, remedial action or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

Maps delineating the individual sale parcels are available for public review at the BLM Las Vegas Field Office (LVFO). Appraisals for each parcel will be available for public review at the LVFO on or about September 15, 2003.

Each parcel will be offered by sealed bid (with the exception of N–75200, N–76789, and N–76570), and at oral auction. All sealed bids must be received at the BLM LVFO, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130, no later than 4:30 p.m., PST, November 4, 2003. Sealed bid envelopes must be marked on the lower front left corner with the BLM Serial Number for the parcel and the sale date. Bids must be for not less than the appraised FMV and a separate bid must be submitted for each parcel.

Each sealed bid shall be accompanied by a certified check, money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 10 percent of the amount bid. The highest qualified sealed bid for each parcel will become the starting bid at the oral auction. If no sealed bids are received, oral bidding will begin at the appraised FMV.

All parcels will be offered for competitive sale by oral auction beginning at 10 a.m., PST, November 6, 2003, at Sam's Town, 5111 Boulder Highway, Las Vegas, Nevada. The location inside Sam's Town is the Sam's Town Live venue located near the Box Office and close to the movie theatres. Registration for oral bidding will begin at 8:30 a.m. the day of sale and will continue throughout the auction. All oral bidders are required to register.

The highest qualifying bid for any parcel, whether sealed or oral, will be declared the high bid. The apparent high bidder, if an oral bidder, must submit the required bid deposit immediately following the close of the sale in the form of cash, personal check, bank draft, cashiers check, money order or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid. If not paid by close of the auction, *funds must be delivered no later than 4:30 p.m. the day of the sale* to the BLM Las Vegas Field Office.

The remainder of the full bid price, whether sealed or oral, must be paid within 180 calendar days of the sale date. Failure to pay the full price within the 180 days will disqualify the apparent high bidder and cause the entire bid deposit to be forfeited to the BLM.

Parcels N–75200 and N–76789 (West Henderson), as well as N–76570, will be offered only at the oral auction. Sealed bids for these parcels will not be accepted. If these parcels are not sold at the oral auction, they will not be offered on the Online Internet Auction. Should the apparent high bidders for parcels N–75200, N–76789 and N–76570 default, and if BLM decides to proceed with the sale, the second high bidder for each parcel will be declared the apparent high bidder.

Oral bids will be considered only if received at the place of sale and made at least for the appraised fair market value as determined by the Bureau of Land Management. For parcels designated *Serial Numbers N–75200 and N–76570* specifically, each prospective bidder will be required to show by certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management an amount of money which shall be no less than 20% of the federally appraised fair market value of the designated parcels, *Serial Numbers N–75200 and N–76570,* in order to be eligible to bid on each respective parcel. In order to bid on both designated parcels listed, a separate certified check, postal money order, bank draft or cashier's check made payable to the Bureau of Land Management in an amount of money which shall be no less than 20% of the appraised fair market value for each designated parcel will be required.

The apparent high bidders for parcels N–75200 and N–76789 will be required within 30 days from the date of the oral auction, November 6, 2003, to reach an agreement to develop with the City of Henderson. Failure to reach an agreement within will disqualify the apparent high bidder(s), the deposit(s) will be returned, and if BLM decides to proceed with the sale, the property shall be offered to the second highest bidder(s) at his/her highest bid. The second highest bidder will be required to submit to the Bureau of Land Management, a deposit in the amount of 20% of their bid. He/she will also be given 30 days from the date of the offer to reach an agreement to develop with the City of Henderson. Failure by the second high bidder(s) to reach an agreement within 30 days will disqualify the second high bidder, their deposit will be returned, the sale cancelled. Having been published once in the **Federal Register**, the property may be re-offered for sale at a later date without further legal notice. The parcels will not be offered to the third high bidder in the event of the second high bidder's default.

Unsold parcels, with the exception of parcels N–75200, N–76789 and N–76570, may be offered on the Internet. Internet auction procedures will be available at *http://www.auctionrp.com.* If unsold on the Internet, parcels may be offered at future auctions without additional legal notice. Upon publication of this notice and until the completion of the sale, the BLM is no longer accepting land use applications affecting any parcel being offered for sale, including parcels being offered for sale that have been published in a previous Notice of Realty Action. However, land use applications may be considered after completion of the sale for parcels that are not sold through sealed, oral, or online Internet auction procedures.

Federal law requires bidders to be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State Instrumentality, or political subdivision authorized to hold property, or an entity including, but not limited to, associations or partnerships capable of holding property or interests therein under the laws of the State of Nevada. *Certification of qualification, including citizenship or corporation or partnership, must accompany the bid deposit.*

In order to determine the fair market value of the subject public lands through appraisal, certain extraordinary assumptions may have been made of the attributes and limitations of the lands and potential effects of local regulations and policies on potential future land uses. Through publication of this NORA, the Bureau of Land Management gives notice that these assumptions may not be endorsed or approved by units of local government. Furthermore, no warranty of any kind shall be given or implied by the United States as to the potential uses of the lands offered for sale, and conveyance of the subject lands will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable local government policies and regulations that would affect the subject lands. It is also the buyer's responsibility to be aware of existing or projected use of nearby properties. When conveyed out of federal ownership, the lands will be subject to any applicable reviews and approvals by the respective unit of local government for proposed future uses, and any such reviews and approvals would be the responsibility of the buyer. Any land lacking access from a public road or highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and environmental documents is available for review at the Bureau of Land Management, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, NV 89130, or by calling (702) 515–5114. This information will also be available on the Internet at *http://propertydisposal.gsa.gov.* Click on NV for Nevada. It will also be available on the Internet at *http://www.nv.blm.gov.* Click on Southern Nevada Public Land Management Act and go to Land Sales.

The general public and interested parties may submit comments to the Field Manager, Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada 89130 until October 14, 2003. Any adverse comments will be reviewed by the State Director, who may sustain, vacate, or modify this realty action in whole or in part. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from the sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA or other applicable laws or is determined to not be in the public interest. Any comments received during this process, as well as the commentor's name and address, will be available to the public in the administrative record and/or pursuant to a Freedom of Information Act request. You may indicate for the record that you do not wish to have your name and/or address made available to the public. Any determination by the Bureau of Land Management to release or withhold the names and/or addresses of those who comment will be made on a case-by-case basis. A commentor's request to have their name and/or address withheld from public release will be honored to the extent permissible by law.

Lands will not be offered for sale until at least October 28, 2003.

Dated: August 1, 2003.

Mark T Morse,

Field Manager.

[FR Doc. 03–22182 Filed 8–28–03; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Task Force for Faith-Based and Community Initiatives; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Survey on Ensuring Equal Opportunity for Applicants.

The Department of Justice, Task Force for Faith-Based and Community Initiatives has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (Volume 68, Number 100, and page 28263 on May 23, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until September 29, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) Type of information collection: Extension of a currently approved collection.

(2) The title of the form/collection: Survey on Ensuring Equal Opportunity for Applicants.

(3) The agency form number, if any, and the applicable component of the department sponsoring the collection: Form Number: none. Task Force for Faith-Based and Community Initiatives, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: not-for-profit institutions. Abstract: To ensure equal opportunity for all applicants including small, community-based, faith-based and religious groups, it is essential to collect information that enables the Federal agencies to determine the level of participation of such organizations in Federal grant programs while ensuring that such information is not used in grant-making decisions.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: There are approximately 15,361 respondents who will each require an average of five minutes to respond.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual public burden hours associated with this information collection is estimated to be 1,229 hours.

If additional information is required contact: Brenda E. Dyer, Department Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, 601 D Street, NW., Patrick Henry Building, Suite 1600, Washington, DC 20530.

Dated: August 26, 2003.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–22180 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–20–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on August 8, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cisco Learning Institute, Phonex, AZ; European Schoolnet, Brussels, Belgium; Question Mark Computing Limited, London, United Kingdom; and Xtensis, London, United Kingdom have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to fille additional written notification disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on May 27, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 17, 2003 (68 FR 35913).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22082 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Inter Company Collaboration for AIDS Drug Development

Notice is hereby given that, on August 5, 2003, pursuant to section 6(a) of the

National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Inter Company Collaboration for AIDS Drug Development has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's previsions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, although there are no other changes in the membership, Collaboration member Pfizer, Inc. of New York, NY, has acquired Collaboration member Pharmacia Corporation of Peapack, NJ.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Inter Company Collaboration for AIDS Drug Development intends to file additional written notification disclosing all changes in membership.

On May 27, 1993, Inter Company Collaboration for AIDS Drug Development filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 6, 1993 (58 FR 36223).

The last notification was filed with the Department on April 4, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on May 16, 2003 (68 FR 26648).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22079 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Optical Internetworking Forum

Notice is hereby given that, on July 23, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Optical Internetworking Forum has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Movaz Networks, McLean, VA; and FCI, Etters, PA have been added as parties to this venture.

Also, Accelight Networks, Bridgeville, PA: ADC Communications, Charlotte, NC; Altamar Networks, Mountain View, CA; Alvesta Corporation, Sunnyvale, CA; Ample Communications, Fremont, CA; Axonlink, Petah Tikva, ISRAEL; Bandwidth9, Fremont, CA; Blue Sky Research, Milpitas, CA; Calix Networks, Petaluma, CA; Celion Networks, Tinton Falls, NJ; Centellax, Santa Rosa, CA; Centerpoint Broadband Technologies, San Jose, CA; Centre Tecnologic de Telecommunicacions de Catalunya, Barcelona, SPAIN; Ceybe, Kanata, Ontario, CANADA; Chiaro Networks, Richardson, TX; Cognigine, Fremont, CA; Coherent Telecom, San Jose, CA; Coriolis Networks, Boxboro, MA; E2O Communications, Rockland, DE; Equant Telecommunications, Sophia Antipolis, FRANCE; Extreme Networks, Santa Clara, CA; Fujikura, Santa Clara, CA; Future Soft Communications, San Jose, CA; JCP Photonics, Sunnyvale, CA; Kirana Networks, Red Bank, NJ; LuxN, Sunnyvale, CA; Nayna Networks, Milpitas, CA; Optillion, Stockholm, SWEDEN; Paxonet, Fremont, CA; Peta Switch Solutions, Santa Clara, CA; Pine Photonics, Fremont, CA; RF Micro Devices, Billerica, MA; RHK, North Attleborough, MA; Santel Networks, Newark, CA; Southampton Photonics, Southampton, UNITED KINGDOM; Stratos Lightwave, Mountain View, CA; Sumitomo Electric, Durham, NC; Taconic, Petersburgh, NY; Transpera Networks, San Jose, CA; Vativ, San Diego, CA; Velocium, El Segundo, CA; Wavium AB, Stockholm, SWEDEN; West Bay Semiconductor, Vancouver, British Columbia, CANADA; and Xindium, Champaign, IL have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Optical Internetworking Forum intends to file additional written notification disclosing all changes in membership.

On October 5, 1998, Optical Internetworking Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 29, 1999 (64 FR 4709).

The last notification was filed with the Department on July 22, 2002. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on December 5, 2002 (67 FR 72429).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22081 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on July 22, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Leonardo Marques Alves de Pinho (individual member), Sao Paulo, BRAZIL has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on May 6, 2003. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 3, 2003 (68 FR 33183).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22078 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Silicon Integration Initiative, Inc.

Notice is hereby given that, on July 30, 2003, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Silicon Integration Initiative, Inc. ("SI2") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Agere, Allentown, PA; Renesas Technology Corp., Tokyo, Japan; Tektronix, Beaverton, OR; Artisan Components, Inc., Sunnyvale, CA; Multi-Gig, Ltd., Wellingborough, United Kingdom; Nassda, Santa Clara, CA; Sagantec, Fremont, CA; Silicon Canvas, San Jose, CA; Synplicity, Sunnyvale, CA; and Verisity Design, Inc, Mountain View, CA have been added as parties to this venture. Also, Avant!, Sunnyvale, CA; Lucent Technologies, Murray Hill, NJ; Matsushita Electronic Ind. Company, Osaka, Japan; Mitsubishi Electric Corporation, Hyogo, Japan; Silicon Graphics, Mountain View, CA; Sony Corporation, Tokyo, Japan; Texas Instruments, Inc., Dallas, TX; Toshiba Corporation, Tokyo, Japan; Agile Software, San Jose, CA; Partminer, Englewood, CO; Aprisa, Westlake Village, CA; Chronology, Inc., Redmond, WA; Circuit Semantics, San Jose, CA; eChips, Austin, TX; eSilicon, Palo Alto, CA; IC Master, Garden City, NJ; Infoquick, Irvine, CA; Intime Software, Cupertino, CA; Numerical Technologies, San Jose, CA; Saqqara Systems, Inc., Sunnyvale, CA; Synapticad, Blacksburg, VA; Virtual Component Exchange, Livingston, Scotland, United Kingdom; VSI Alliance, Los Gatos, CA; and Web-Pro, Ltd., Hong Kong, Hong Kong-China have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SI2 intends to file additional written notifications disclosing all changes in membership.

On December 30, 1988, SI2 filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 13, 1989 (54 FR 10456).

The last notification was filed with the Department on May 2, 2001. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 4, 2001 (66 FR 30007).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22080 Filed 8–28–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 19, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316/ this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment and Training Administration.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title: Youth Employment Survey.

OMB Number: 1205–0373.

Affected Public: Individuals or households.

Type of Response: Reporting.

Frequency: One time.

Number of Respondents: 169,152.

Information collection activity	Number of responses	Average response time (hours)	Annual burden hours
Screener Interview	147,814	0.08	12,318
Questionnaire	21,338	0.25	5,335
Total	169,152		17,653

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/ maintaining systems or purchasing services): $0.

Description: The U.S. Department of Labor's Employment and Training Administration is seeking OMB approval to reinstate with modifications the Youth Employment Survey (YES). Follow-up data from this survey are needed to complete the evaluation of the Youth Opportunity (YO) Grants. Specifically, follow-up data from the YES will be used to estimate the change in the employment and educational

attainment levels of youth residing in the 36 YO areas.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–22123 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 18, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment Standards Administration (ESA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316—this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Type of Review: Extension of a currently approved collection.

Title: Overpayment Recovery Questionnaire.

OMB Number: 1215–0144.

Affected Public: Individuals or households.

Frequency: On occasion.

Type of Response: Reporting.

Number of Respondents: 4,500.

Number of Annual Responses: 4,500.

Average Response Time: 60 minutes.

Total Burden Hours: 4,500.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,800.

Description: The Federal Coal Mine Health and Safety Act of 1969, as amended, 30 U.S.C. 923(b) and 20 CFR 725.544(c), and the Federal Employees' Compensation Act, 5 U.S.C. 8129(b) and 20 CFR 10.430–10.441, provide for the recovery, waiver, compromise, or termination of overpayment of benefits to beneficiaries. The Form OWCP–20 collects information used to ascertain the financial condition of the beneficiary who has been overpaid to determine if the concealment or improper transfer of assets, and to identify and consider present and potential income and current assets for enforced collection proceedings. The form also provides a means for the beneficiary to explain why he/she is not at fault for the overpayment. If this information were not collected, DOL would have little basis to decide on collection proceedings.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–22124 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–CK–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 18, 2003.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503 (202–395–7316—this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Mine Safety and Health Administration.

Title: Petitions for Modification—Pertains to All Mines.

OMB Number: 1219–0065.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Type of Response: Reporting and Third party disclosure.

Number of Respondents: 138.

Annual Responses: 138.

Average Response Time: 40 Hours.

Annual Burden Hours: 5,342.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $40,434.

Description: Section 101(c) of the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 811(c), provides that a mine operator or a representative of miners may petition the Secretary of Labor (Secretary) to modify the application of a mandatory safety standard. A petition for modification may be granted if the Secretary determines (1) that an alternative method of achieving the results of the

standard exists and that it will guarantee, at all times, no less than the same measure of protection for the miners affected as that afforded by the standard, or (2) that the application of the standard will result in a diminution of safety to the miners affected.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 03–22125 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Advisory Council of Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an "Advisory Council on Employee Welfare and Pension Benefit Plans" (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be a representative of an organization whose members are participants in a multi employer plan); three representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multi employer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year, and recommendations of the Council to the Secretary will be included in the Secretary's annual report to the Congress ERISA.

The terms of five members of the Council expire on November 14, 2003. The groups or fields they represented are as follows: (1) Employee organizations (this member must represent an organization whose members participate in a multi employer plan); (2) a person who is an investment counselor or works for or ore presents an investment counseling firm; (3) a person who is an actuary or works for or represents an actuarial firm; (4) a person representing employer groups and interests, and (5) the general public (this member must represent persons actually receiving benefits from a private-sector pension plan). The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse ERISA Advisory Council membership.

Accordingly, notice is hereby given that any person or organization desiring to recommend one or more individuals for appointment to the ERISA Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph, may submit recommendations to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue, NW., Suite N–5677, Washington, DC 20210. Recommendations must be delivered or mailed on or before October 1, 2003. Recommendations may be in the form of a letter, resolution or petition, signed by the person making the recommendation or, in the case of a recommendation by an organization, by an authorized representative of the organization.

Signed at Washington, DC, this 22nd day of August, 2003.

Paul Zurawski,

Deputy Assistant Secretary for Policy, Employee Benefits Security Administration.

[FR Doc. 03–22126 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 8, 2003.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than September 8, 2003.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 15th day of August, 2003.

Linda G. Poole,

Acting Director, Division of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED BETWEEN 08/04/2003 AND 08/08/2003

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,450	VF Imagewear (Comp)	Tupelo, MS	08/04/2003	08/01/2003
52,451	Saurer, Inc. (Wkrs)	Charlotte, NC	08/04/2003	07/28/2003
52,452	Elastic Corp. of America, Inc. (Comp)	Woolwine, VA	08/04/2003	07/22/2003
52,453	National Metal Abrasive (USWA)	Wadsworth, OH	08/04/2003	07/30/2003
52,454	Pillowtex Corporation (UNITE)	Scottsboro, AL	08/04/2003	07/31/2003
52,455	Waterloo Industries (Wkrs)	Pocahontas, AR	08/04/2003	07/24/2003

APPENDIX.—PETITIONS INSTITUTED BETWEEN 08/04/2003 AND 08/08/2003—Continued

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
52,456	Cutler Hammer, Inc. (Comp)	Brooksville, FL	08/04/2003	08/01/2003
52,457	Coherent, Inc. (Comp)	Auburn, CA	08/05/2003	08/04/2003
52,458	APW (Comp)	Creedmoor, NC	08/05/2003	08/04/2003
52,459	Tingley Rubber (USWA)	So. Plainfield, NJ	08/05/2003	08/04/2003
52,460	Alice Manufacturing (Wkrs)	Easley, SC	08/05/2003	08/01/2003
52,461	Fishing Vessel (F/V) Alert (Comp)	Veronia, OR	08/05/2003	07/22/2003
52,462	F/V Joseph Booney (Comp)	Cordova, AK	08/05/2003	07/29/2003
52,463	Kannapolis Energy Partners, LLC (Comp)	Kannapolis, NC	08/05/2003	07/31/2003
52,464	Ace Packaging Systems (Comp)	Newport, MI	08/05/2003	08/04/2003
52,465	Moog Aircraft (Comp)	Salt Lake City, UT	08/05/2003	07/31/2003
52,466	USR Optonix, Inc. (Comp)	Hackettstown, NJ	08/05/2003	07/30/2003
52,467	Johnson and Johnson Wound Management (Comp)	Sherman, TX	08/05/2003	08/04/2003
52,468	Union Underwear Co., Inc. (Comp)	Fayette, AL	08/05/2003	08/04/2003
52,469	Shell E and P Company (Comp)	Houston, TX	08/05/2003	07/30/2003
52,470	Premium Security (Wkrs)	Kentwood, MI	08/05/2003	08/01/2003
52,471	Eureka Company (The) (Wkrs)	Bloomington, IL	08/05/2003	08/04/2003
52,472	Arlee Home Fashions (Wkrs)	Mexico, MO	08/05/2003	07/31/2003
52,473	Maytag Corporation (Comp)	Galesburg, IL	08/06/2003	08/06/2003
52,474	Kulicke and Soffa (Wkrs)	Austin, TX	08/07/2003	07/28/2003
52,475	Pillowtex Corporation (UNITE)	Scottsboro, Al	08/08/2003	08/06/2003
52,476	Pillowtex Corporation (Comp)	Fieldale, VA	08/08/2003	08/06/2003
52,477	Pillowtex Corporation (Comp)	Eden, NC	08/08/2003	08/06/2003
52,478	Pillowtex Corporation (Comp)	China Grove, NC	08/08/2003	08/06/2003
52,479	Pillowtex Corporation (Comp)	Rockwell, NC	08/08/2003	08/06/2003
52,480	Pillowtex Corporation (Comp)	Concord, NC	08/08/2003	08/06/2003
52,481	Pillowtex Corporation (Comp)	Union, SC	08/08/2003	08/06/2003
52,482	Pillowtex Corporation (Comp)	Mauldin, SC	08/08/2003	08/06/2003
52,483	Pillowtex Corporation (Comp)	Dallas, TX	08/08/2003	08/06/2003
52,484	Pillowtex Corporation (Comp)	Chicago, IL	08/08/2003	08/06/2003
52,485	Pillowtex Corporation (Comp)	Hanover, PA	08/08/2003	08/06/2003
52,486	Pillowtex Corporation (Comp)	Los Angeles, CA	08/08/2003	08/06/2003
52,487	Pillowtex Corporation (Comp)	Tunica, MS	08/08/2003	08/06/2003
52,488	McKenzie Forest Products, LLC (Comp)	Myrtle Point, OR	08/08/2003	08/06/2003
52,489	Portola Packaging, Inc. (Comp)	Sumter, SC	08/08/2003	08/07/2003
52,490	Vernon Plastics (UNITE)	Haverhill, MA	08/08/2003	08/07/2003
52,491	Tembec Woodsville, Inc. (Wkrs)	Woodsville, NH	08/08/2003	08/06/2003
52,492	Buckeye Lumberton, Inc. (Comp)	Lumberton, NC	08/08/2003	08/06/2003

[FR Doc. 03–22122 Filed 8–28–03; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension for collection of the ETA 227 Report, Overpayment Detection and Recovery Activities. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 28, 2003.

ADDRESSES: Submit written comments to the Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Room S4231, Washington, DC 20010, Attention: Bob Whiting. Telephone number: (202) 693–3215 (this is not a toll-free number). Fax: (202) 693–3975. E-mail: *whiting.robert@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303(a)(1) of the Social Security Act requires a state's unemployment insurance (UI) law to include provisions for:

"Such methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due * * *"

Section 303(a)(5) of the Social Security Act further requires a state's UI law to include provisions for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation * * *"

Section 3304(a)(4) of the Internal Revenue Code of 1954 provides that:

"All money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation * * *"

The Secretary of Labor has interpreted the above sections of federal law in Section 7511, Part V, ES Manual to further require a state's UI law to include provisions for such methods of administration as are, within reason, calculated (1) to detect benefits paid through error by the State Workforce Agency (SWA) or through willful misrepresentation or error by the claimant or others, (2) to deter claimants from obtaining benefits through willful misrepresentation, and (3) to recover benefits overpaid. The ETA 227 is used to determine whether SWAs meet these requirements of the Secretary of Labor's interpretation of the federal laws.

The ETA–227 contains data on the number and amounts of fraud and nonfraud overpayments established, the methods by which overpayments were detected, the amounts and methods by which overpayments were collected, the amounts of overpayments waived and written off, the accounts receivable for overpayments outstanding, and data on criminal/civil actions. These data are gathered by 53 SWAs and reported to the Department of Labor following the end of each calendar quarter. The overall effectiveness of SWAs' UI integrity efforts can be determined by examining and analyzing the data.

These data are also used by SWAs as a management tool for effective UI program administration.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The UI program paid approximately $42 billion in benefits in 2002. Although the overpayment rate is relatively low (less than one percent), high amounts of money are involved, and it is in the national interest to maintain the program's integrity. Therefore, we are proposing to extend the authorization to continue collecting data to measure the effectiveness of the benefit payment control programs in the SWAs.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Overpayment Detection and Recovery Activities.

OMB Number: 1205–0173.

Agency Number: ETA–227.

Record Keeping: State agencies are required to maintain all documentation supporting the information reported on the ETA–227 for three years following the end of each report period.

Affected Public: State Government.

Cite/Reference/Form/etc: Form.

Total Respondents: 53 state agencies.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 14 hours.

Estimated Total Burden Hours: 2968.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 21, 2003.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 03–22127 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection of the ETA 205, Preliminary Estimates of Average Employer Contribution Rates; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on a proposed continuance for a collection of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the ETA 205, Preliminary Estimates of Average Employer Contribution Rates. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before October 28, 2003.

ADDRESSES: Thomas Stengle, Office of Workforce Security, Employment and Training Administration, U.S. Department of Labor, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210; telephone number (202) 693–2991; fax: (202) 693–3229 (these are not toll-free numbers) or e-mail *stengle.thomas@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 205 reports preliminary information on the taxation efforts in States relative to taxable and total wages and allows for comparison among states. The information is used for projecting unemployment insurance tax revenues for the Federal budget process as well as for actuarial analyses of the Unemployment Trust Fund. The data is published in several forms and is often requested by data users. In addition, this report helps to fulfill two statutory requirements. Section 3302(d)(7) of the Federal Unemployment Tax Act (FUTA) requires the Secretary of Labor to notify "the Secretary of the Treasury before June 1 of each year, on the basis of a report furnished by such state to the Secretary of Labor before May 1 of such year" of the difference between the average tax rate in a state and the 2.7 percent (*i.e.* section 3302(c)(2)(B) or (C)). These differences are used to calculate the loss of FUTA offset credit for borrowing states. In addition, the tax schedules are used to assure that states are in compliance with provisions of the Tax Equity and Fiscal Responsibility Act (Pub. L. 97–248), section 281.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension.
Agency: Employment and Training Administration.
Title: Preliminary Estimates of Average Employer Contribution Rates.
OMB Number: 1205–0228.
Agency Number: ETA.
Affected Public: State Governments.
Cite/Reference/Form/etc: ETA 205.
Total Respondents: 53.
Frequency: Annual.
Total Responses: 53.
Average Time per Response: 15 minutes.
Estimated Total Burden Hours: 14.
Total Burden Cost (capital/startup): $0.00.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 21, 2003.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. 03–22128 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of labor are issued in accordance with applicable law and are based on the information obtained by the Department of labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The nunmber of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*. They

are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 21st day of August, 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–21808 Filed 8–28–03; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities."

2. *Current OMB approval number:* 3150–0011.

3. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities to conduct a detailed review of applications for licenses and amendments thereto to construct and operate nuclear power plants, preliminary or final design approvals, design certifications, research and test facilities, reprocessing plants and other utilization and production facilities, licensed pursuant to the Atomic Energy Act of 1954, as amended (the Act) and to monitor their activities.

4. *Who is required or asked to report:* Licensees and applicants for nuclear power plants and research and test facilities.

5. *The number of annual respondents:* 175.

6. *The number of hours needed annually to complete the requirement or request:* 5.2M: 1.8M hours reporting (average of 288 hrs/response) + 3.4M hours recordkeeping (average of 19K hrs/recordkeeper).

7. *Abstract:* 10 CFR part 50 of the NRC's regulations "Domestic Licensing of Production and Utilization Facilities," specifies technical information and data to be provided to the NRC or maintained by applicants and licensees so that the NRC may take determinations necessary to protect the health and safety of the public, in accordance with the Act. The reporting and recordkeeping requirements contained in 10 CFR part 50 are mandatory for the affected licensees and applicants.

Submit, by October 28, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 C3, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *Infocollects@nrc.gov.*

Dated at Rockville, Maryland, this 22nd day of August 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–22104 Filed 8–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light, Turkey Point Units 3 and 4; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License (FOL) Nos. DPR–31 and DPR–41, issued to Florida Power and Light Company (the licensee), for operation of the Turkey Point Nuclear Plant Units 3 and 4, located in Miami-Dade County, Florida. Therefore, pursuant to Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action: The proposed action would revise the Turkey Point, Units 3 and 4, FOLs and Technical Specifications (TSs) to correct, update, and reorder the TS Index, reformat TS equations with more appropriate mathematical symbols, delete irrelevant information, correct an error in the titling of a figure, correct ACTION and APPLICABILITY statements to improve consistency and readability, and would enhance, through administrative means, the overall clarity of the TSs.

The proposed action is in accordance with the licensee's application dated December 20, 2002, as supplemented in a letter dated August 15, 2003.

The Need for the Proposed Action: The proposed action is needed in order to achieve consistency with previously approved TS amendments, and other parts of the existing TSs through administrative changes.

Environmental Impacts of the Proposed Action: The NRC has completed its evaluation of the

proposed action and concludes that the proposed license amendment and associated changes to the TSs are administrative in nature and have no effect on the physical aspect or operation of components or structures within the restricted area as defined in 10 CFR part 20.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types or amounts of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impacts. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action: As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources: The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the Turkey Point Nuclear Plant, Units 3 and 4, dated July 1972.

Agencies and Persons Consulted: Based upon a letter dated March 8, 1991, from Ms. Mary E. Clark of the State of Florida, Department of Health and Rehabilitative Services, to Ms. Deborah A. Miller, Licensing Assistant, NRC, the State of Florida does not desire notification of issuance of license amendments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 20, 2002. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 25th day of August 2003.

For the Nuclear Regulatory Commission.

Eva A. Brown,

Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Nuclear Regulation Reactor.

[FR Doc. 03–22105 Filed 8–28–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NUREG/CR–6595, Revision 1, An Approach for Estimating the Frequencies of Various Containment Failure Modes and Bypass Events, Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Announcement of issuance for public comment, availability.

SUMMARY: The Nuclear Regulatory Commission has issued for public comment a document entitled: NUREG/CR–6595 Revision 1, "An Approach for Estimating the Frequencies of Various Containment Failure Modes and Bypass Events, Draft Report for Comment".

DATES: Please submit comments by October 31, 2003. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: NUREG/CR–6595 Revision 1, "An Approach for Estimating the Frequencies of Various Containment Failure Modes and Bypass Events, Draft Report for Comment" is available for inspection and copying for a fee at the NRC Public Document Room, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland. Publically available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS Accession Number for NUREG/CR–6595, Revision 1 is ML032330225. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

A free single copy of NUREG/CR–6595 Revision 1, "An Approach for Estimating the Frequencies of Various Containment Failure Modes and Bypass Events, Draft Report for Comment", to the extent of supply, may be requested by writing to Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Printing and Graphics Branch, Washington, DC 20555–0001; facsimile: 301–415–2289; e-mail: *DISTRIBUTION@nrc.gov*.

Please submit comments to Chief, Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. You may also deliver comments to 11545 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:30 p.m. Federal workdays, or e-mail to: *NRCREP@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Daniel O'Neal, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: 301–415–4146, e-mail: *dmo@nrc.gov*.

SUPPLEMENTARY INFORMATION: NUREG/CR–6595 Revision 1, "An Approach for Estimating the Frequencies of Various Containment Failure Modes and Bypass Events, Draft Report for Comment" incorporates updated information and expands on the NUREG/CR–6595 report, published in January 1999. The updated full power analyses take into account recent direct containment heating studies and information gathered from the Individual Plant Examination Level 2 studies. In addition, a new chapter provides event trees which reflect containment insights for shutdown conditions.

Dated at Rockville, Maryland, this 21st day of August 2003.

For the Nuclear Regulatory Commission.

Scott F. Newberry,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

[FR Doc. 03–22103 Filed 8–28–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

TIMES AND DATES: 11 a.m., Monday, September 8, 2003; and 8:30 a.m., Tuesday, September 9, 2003.

PLACE: Washington, DC, at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., in the Benjamin Franklin Room.

STATUS: September 8–11 a.m. (Closed); September 9–8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, September 8–11 a.m. (Closed)

1. Office of Inspector General Fiscal Year 2004 Budget.
2. Financial Update.
3. Fiscal Year 2004 Integrated Financial Plan.
4. Strategic Planning.
5. Personnel Matters and Compensation Issues.

Tuesday, September 9–8:30 a.m. (Open)

1. Minutes of Previous Meetings, August 4–5, August 7, and August 11, 2003.
2. Remarks of the Postmaster General and CEO.
3. Postal Rate Commission Fiscal Year 2004 Budget. (Chairman David Fineman).
4. Fiscal Year 2004 Annual Performance Plan/Five-Year Strategic Plan—Government Performance and Results Act. (Chairman David Fineman).
5. Fiscal Year 2004 Operating Plan. (Mr. Dick Strasser).
6. Fiscal Year 2004 Capital Investment Plan. (Mr. Dick Strasser).
7. Fiscal Year 2004 Financing Plan. (Mr. Dick Strasser).
8. Preliminary Fiscal Year 2005 Appropriation Request. (Mr. Dick Strasser).
9. Capital Investment.
   a. Advanced Facer Canceller System (AFCS) Improvements. (Mr. Tom Day).
10. Tentative Agenda for the October 2–3, 2003, meeting in Wilmington, Delaware.

FOR FURTHER INFORMATION CONTACT: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 03–22340 Filed 8–27–03; 2:09 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48393; File No. SR–NYSE–2002–64]

Self-Regulatory Organizations; The New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto To Amend the Interpretation of NYSE Rule 345A

August 22, 2003.

On December 16, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its interpretation of NYSE Rule 345A ("Continuing Education for Registered Persons"). On June 11, 2003, the Exchange amended the proposed rule change.

The proposed rule change, as amended, was published for comment in the **Federal Register** on July 17, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(c)(3)(A)[6] of the Act, which requires the Exchange to prescribe standards of training, experience and competence for persons associated with Exchange members and member organizations.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–NYSE–2002–64) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22089 Filed 8–28–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48159 (July 17, 2003), 68 FR 42447.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(c)(3)(A)(i).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48392; File No. SR–PCX–2003–17]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. Relating to the Exchange's Rules Under the Minor Rule Plan

August 22, 2003.

On April 15, 2003, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Recommended Fine Schedule ("RFS") of the Exchange's Minor Rule Plan ("MRP") in order to increase the fines for Late Trade Reporting violations pursuant to PCX Rule 6.69(a). The Exchange amended the proposed rule change on June 6, 2003.

The proposed rule change, as amended, was published for comment in the **Federal Register** on July 17, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder, and finds specifically that the proposed rule change is consistent with Section 6(b)(6)[6] of the Act. The Commission believes that the rule change should strengthen the ability of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48158 (July 17, 2003), 68 FR 42449.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(6).

the Exchange to carry out its oversight and enforcement responsibilities as a self-regulatory organization. The rule should also aid the Exchange in carrying out its surveillance and enforcement functions.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with PCX Rule 6.69(a), and all other rules subject to the imposition of fines under the Exchange's MRP. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, in an effort to provide the Exchange with greater flexibility in addressing certain violations, the Exchange's minor rule violation plan provides a reasonable means to address rule violations that do not rise to the level of requiring formal disciplinary proceedings. The Commission expects that the PCX will continue to conduct surveillance with due diligence, and make a determination based on its findings whether fines of more or less than the recommended amount are appropriate for violations of rules under the Exchange's minor rule violation plan, on a case by case basis, or if a violation requires formal disciplinary action.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–PCX–2003–17) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22088 Filed 8–28–03; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4463]

Culturally Significant Objects Imported for Exhibition Determinations: "Colorful Impressions: The Printmaking Revolution in Eighteenth Century France"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition "Colorful Impressions: The Printmaking Revolution in Eighteenth Century France," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about November 23, 2003, to on or about February 29, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 25, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–22151 Filed 8–28–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4462]

Culturally Significant Objects Imported for Exhibition Determinations: "Manet and the Sea"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition "Manet and the Sea," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Art Institute of Chicago from on or about October 20, 2003, until on or about January 19, 2004, at the Philadelphia Museum of Art from on or about February 15, 2004, until on or about May 30, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**. Additionally, notice is hereby given that five objects for which Determinations were previously made, and published in the **Federal Register** on May 16, 2003, are included in this exhibition.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 25, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–22152 Filed 8–28–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4461]

Culturally Significant Objects Imported for Exhibition Determinations: "Turning Point: Oribe and the Arts of Sixteenth-Century Japan"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition "Turning Point: Oribe and the Arts of Sixteenth-Century Japan," imported from abroad for temporary exhibition within the United States, are of cultural

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY, from on or about October 20, 2003, to on or about January 11, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 25, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–22149 Filed 8–28–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4460]

Culturally Significant Object Imported for Exhibition Determinations: "Two and One: Printmaking in Germany, 1945–1991"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999 (64 FR 56014), Delegation of Authority No. 236 of October 19, 1999 (64 FR 57920), as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the object to be included in the exhibition, "Two and One: Printmaking in Germany, 1945–1991," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit object at the Davis Museum and Cultural Center, Wellesley College, Wellesley, Massachusetts, from on or about October 9, 2003, to on or about January 18, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a description of the exhibit object, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: August 25, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–22148 Filed 8–28–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4464]

International Joint Commission: Boundary Waters Treaty of 1909; Notice of Public Hearing and Invitation for Written Comment on Order of Approval for Duck Lake

In February 2003, the International Joint Commission (IJC) announced that it would review its Order of Approval governing the dykes surrounding Duck Lake, and operations inside Duck Lake, located on the Kootenay River in British Columbia. The IJC will hold a public hearing in Creston, British Columbia, on September 11, 2003, and invites written comment, to be received by October 15, 2003, before it makes any decisions about its Order for Duck Lake.

The IJC approved the construction of dykes encompassing Duck Lake in 1950 and within Duck Lake in 1970. It charged the International Kootenay Lake Board of Control with overseeing the Orders on behalf of the IJC. The dykes encompassing Duck Lake have the potential to increase water levels on the Kootenay River in the United States for certain rare floods, by about 4 or 5 inches (10–13 centimeters) at the international boundary and about half that amount at Bonners Ferry. The likelihood of such rare floods has been reduced by Duncan and Libby Dams. The Creston Valley Wildlife Management Authority operates gates and pumps that affect water levels within Duck Lake in accordance with the IJC's 1950 Order of Approval, as amended in 1956 and 1970.

Public concern has been raised over the effects of water levels management on bass, and a request has been made to transfer the management of Duck Lake water levels to local authorities. Given the public concerns, the 30-year period since the Order was last considered, and the reduced potential for transboundary effects, the Commission decided to review the Order of Approval for Duck Lake without prejudice to the end result.

More information, including an information paper about Duck Lake is available at *http://www.ijc.org.*

The International Joint Commission is an international organization established by the Boundary Waters Treaty of 1909 to prevent and resolve disputes over the use of waters shared by the United States and Canada. Its responsibilities include approving certain projects in one country that would increase the natural water levels in the other country, such as the dykes encompassing Duck Lake along the Kootenay River. If it approves the project, the IJC's Orders of Approval may specify certain conditions to protect the interests in both countries.

The public hearing will be held at the following time and place: Thursday, September 11, 2003, 7:30 p.m., Creston Valley Seniors Association Hall, 810 Canyon Street, Creston, British Columbia.

In addition to the public hearing, the International Joint Commission invites written comment on its Duck Lake Order of Approval. Written comments may be sent to one of the addresses below for receipt by October 15, 2003.

James Chandler, Acting Secretary, U.S. Section, International Joint Commission, 1250 23rd Street NW., Suite 100, Washington, DC 20037, Fax (202) 467–0746, E-mail *commission @washington.ijc.org.*

Murray Clamen, Secretary, Canadian Section, International Joint Commission, 234 Laurier Avenue West, 22nd Floor, Ottawa, ON K1P 6K6, Fax (613) 993–5583, E-mail *commission @ottawa.ijc.org.*

Dated: August 25, 2003.

James G. Chandler,

Acting Secretary, United States Section.

[FR Doc. 03–22150 Filed 8–28–03; 8:45 am]

BILLING CODE 4710–14–P

DEPARTMENT OF STATE

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Public Notice 4411]

Secretary of State's Advisory Committee on Private International Law: Study Group on International Transport Law: Meeting Notice

There will be a public meeting of a Study Group of the Secretary of State's Advisory Committee on Private International Law on Thursday, September 4, 2003, to consider the draft instrument on International Transport Law, under negotiation at the United Nations Commission on International Trade Law (UNCITRAL). The meeting will be held from 1:30 p.m. to 5 p.m. in the offices of Holland & Knight, Suite 100, 2099 Pennsylvania Avenue, NW., Washington, DC.

The purpose of the Study Group meeting is to assist the Departments of State and Transportation in preparing for the next session of the UNCITRAL Working Group on this draft instrument, to be held in Vienna, Austria from October 6, 2003 to October 17, 2003.

The draft text and the report of prior meetings of the UNCITRAL Working Group on this subject constitute the basic working documents of the UNCITRAL Working Group. These documents are available on UNCITRAL's Web site, *http://www.uncitral.org.* (The documents are listed under Working Group III (Transportation).)

The Study Group meeting is open to the public up to the capacity of the meeting room. Persons who wish to have their views considered are encouraged to submit written comments in advance of the meeting. Comments should refer to Docket number MARAD–2001–11135. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th Street, SW., Washington, DC 20490–0001. You may also send comments electronically via the internet at *http://dmses.dot.gov/submit/.* All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., EST, Monday through Friday, except federal holidays. An electronic version of all documents entered into this docket is available on the internet at *http//dms.dot.gov.*

For further information, you may contact Mary Helen Carlson at 202–776–8420, or by e-mail at *carlsonmh@ms.state.gov.*

Dated: August 21, 2003.

Mary Helen Carlson,

Legal Adviser for Private International Law, Department of State.

Edmund T. Sommer, Jr.,

Chief, Division of General Law, International Law and Litigation, Office of the Chief Counsel, Maritime Administration, Department of Transportation.

[FR Doc. 03–22147 Filed 8–28–03; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Tennessee Valley Authority.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 51062 (August 25, 2003).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING 9 a.m. (EDT), Wednesday, August 27, 2003.

PREVIOUSLY ANNOUNCED PLACE OF MEETING: TVA Knoxville West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

CHANGES IN THE MEETING: The TVA Board of Directors has approved the addition of the following item to the previously announced agenda:

A—Budget and Financing

A3. Approval of Fiscal Year 2004 TVA Budget.

FOR FURTHER INFORMATION CONTACT: Please call TVA News Bureau at (865) 632–6000, Knoxville, Tennessee. Information is also available through TVA's Washington Office at (202) 898–2999.

Maureen H. Dunn,

General Counsel and Secretary.

[FR Doc. 03–22249 Filed 8–27–03; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed Between August 4 and August 15, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application

Agreements filed during week ending August 8, 2003:

Docket Number: OST–2003–15916.

Date Filed: August 8, 2003.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 319, PTC3 0653 dated 8 August 2003, Resolution 010x—Special Passenger Amending, Resolution between Korea (Rep. of) and China (excluding Hong Kong SAR and Macao SAR) r1–r5, Intended effective date: 1 September 2003.

Docket Number: OST–2003–15917.

Date Filed: August 8, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC1 0264 dated 8 August 2003, TC1 Caribbean Expedited Resolutions 002zz and 015v r1–r6, Intended effective date: 15 September 2003.]

Docket Number: OST–2003–15918.

Date Filed: August 8, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC1 0265 dated 8 August 2003, TC1 Longhaul (except USA-Chile, Panama), Expedited Resolution 002t r1–r5, Intended effective date: 15 September 2003.

Docket Number: OST–2003–15919.

Date Filed: August 8, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC1 0266 dated 8 August 2003, TC1 Within South America Expedited Resolution 002w, Intended effective date: 15 September 2003.

Docket Number: OST–2003–15923.

Date Filed: August 8, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC2 EUR–ME 0168 dated 15 July 2003, TC12 Europe-Middle East Resolutions r1–r23, Technical Correction—PTC2 EUR–ME 0171 dated 31 July 2003, Minutes—PTC2 EUR–ME 0173 dated 8 August 2003, Tables—PTC2 EUR–ME Fares 0082 dated 1 August 2003, Intended effective date: 1 January 2004.

Agreement filed during week ending August 15, 2003:

Docket Number: OST–2003–15963.

Date Filed: August 14, 2003.

Parties: Members of the International Air Transport Association.

Subject: PTC12 USA–EUR Fares 0079 dated 18 July 2003, Resolution 015h—USA Add-Ons between USA and UK, Intended effective date: 1 October 2003.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–22094 Filed 8–28–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) Filed with the Department Between August 4, and August 15, 2003

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (*See* 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Applications filed during week ending: August 8, 2003:

Docket Number: OST–2003–15880.
Date Filed: August 6, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 27, 2003.
Description: Application of Brasmex Brasil Minas Express Ltda., pursuant to 49 U.S.C. 41301, *et seq.* and Subpart B, requesting a foreign air carrier permit authorizing it to engage in scheduled and charter foreign air transportation of property and mail between Brazil and the United States.

Docket Number: OST–2003–15893.
Date Filed: August 8, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 29, 2003.
Description: Application of Scott Aviation, Inc., pursuant to 49 U.S.C. 41102 and Subpart B, requesting a certificate of public convenience and necessity authorizing interstate charter air transportation of persons, property, and mail.

Application filed during week ending: August 15, 2003:

Docket Number: OST–2003–15955.
Date Filed: August 14, 2003.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 9, 2003.
Description: Application of Global Supply Systems Limited, pursuant to 49 U.S.C. 41301, 14 CFR part 211 and Subpart B, requesting a foreign air carrier permit authorizing it to engage in charter foreign air transportation of property and mail between any point or points in the United Kingdom and any point or points in the United States, and other all-cargo charters in accordance with Part 212.

Andrea M. Jenkins,
Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–22095 Filed 8–28–03; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before September 29, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted to triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590, or at *http://dms.dot.gov.*

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 19, 2003.

R. Ryan Posten,
Exemptions Program Officer, Office of Hazardous Materials Exemptions and Approvals.

NEW EXEMPTIONS

Application	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13274–N		Department of Defense (MTMC), Fort Eustis, VA.	49 CFR 180.509	To authorize the filling of tank cars that are past their test dates. (Mode 1).
13275–N		Enviro-Safe Refrigerants, Inc., Pekin, IL.	49 CFR 173.304a(d)(3)(ii), 178.33a–8	To authorize the transportation of certain DOT Specification 2Q containers containing liquefied petroleum gas with a charging pressure of 230 psig at 130 degrees F. (Modes 1, 2, 3, 4).
13276–N		Ocenco Inc., Pleasant Prairie, WI.	49 CFR 173.301(f)(5)(i)	To authorize the the transportation in commerce of 3AA cylinders pressurized to 2100 psi with oxygen, without the use of a pressure relief device. (Modes 1, 4, 5)
13280–N		Texaco Ovonic Hydrogen Systems, L.L.C., Rochester Hills, MI.	49 CFR 173.301(a)(1)(d) and (f)	To authorize the manufacture, mark, sale and use of a specially designed storage device consisting of a non-DOT specification cylinder similar to a DOT 3AL cylinder for use in transporting hydrogen, Division 2.1. (Modes 1, 2, 3, 4).

NEW EXEMPTIONS—Continued

Application	Docket No.	Applicant	Regulation(s) affected	Nature of exemption thereof
13281–N		The Dow Chemical Company, Midland, MI.	49 CFR 174.67(i)&(j)	To authorize rail cars containing certain hazardous materials to remain connected while standing without the physical presence of an unloader. (Mode 1).
13284–N		Sovereign Specialty Chemicals, Buffalo, NY.	49 CFR 173.242(c) & (d), 173.35, 180.352.	To authorize the transportation in commerce of residual amounts of Adhesives, Class 3 in UN designed portable tanks that are currently missing their UN name plates. (Mode 1).
13285–N		EP Container Corp., Cerritos, CA.	49 CFR 173.12(b)(2)(i)	To authorize the manufacture, marking, sale and use of a UN4G fiberboard box as the outer packaging for lab pack applications. (Modes 1, 2, 3).
13286–N		Nestle Ice Cream Company, LLC, Washington, DC.	49 CFR 173.306(a)(3)(v)	To authorize the transportation in commerce of aerosol containers that have received alternative testing method for use in transporting limited quantities of compressed gases. (Modes 1, 2, 3).

[FR Doc. 03–22096 Filed 8–28–03; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, *etc.*) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before September 15, 2003.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW., Washington, DC, or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of exemptions is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on August 19, 2003.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials, Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
3302–M		Air Products and Chemicals, Inc., Allentown, PA [1]	3302
6263–M		Amtrol, Inc., West Warwick, RI [2]	6263
10019–M		Structural Composites Industries, Pomona, CA [3]	10019
10319–M		Amtrol, Inc., West Warwick, RI [4]	10319
12756–M	RSPA–01–10112.	Bechtel Jacobs Company LLC, Oak Ridge, TN [5]	12756
12827–M	RSPA–01–10586.	Bechtel Jacobs Company, LLC, Oak Ridge, TN [6]	12827
12871–M	RSPA–01–11072.	Southern Calif. Edison-San Onofre Nuclear Gen Stn, San Clemente, CA [7]	12871
13080–M	RSPA–02–12999.	Pressed Steel Tank Co., Milwaukee, WI [8]	13080
13230–M	RSPA–03–15116.	FIBA Technologies, Inc., Westboro, MA [9]	13230
13258–M	RSPA–03–15629.	FIBA Technologies, Inc., Westboro, MA [10]	13258

Application No.	Docket No.	Applicant	Modification of exemption
13270–M	.....	Takata Corporation, Minato-Ku Tokyo 106–8510, JA [11]	13270

[1] To modify the exemption to authorize the construction of a newer lightweight outer protective shipping case for non-DOT specification sampling bottles transporting certain Division 2.2 materials.
[2] To modify the exemption to authorize an increased working pressure to 300 psig for the non-DOT specification pressure vessels and a change to the pressure vessel testing requirements.
[3] To modify the exemption to authorize the transportation of an additional Division 2.2 material in non-DOT specification fiber reinforced plastic (FRP) full wrapped composite (FC) cylinders.
[4] To modify the exemption to authorize additional pressure vessel model numbers and eliminate the hydrostatic pressure testing requirement.
[5] To modify the exemption to authorize a change to the destination for delivery requirement to allow operational flexibility for treatment of the Division 1.1, 4.1 and 5.2 materials before their final destination.
[6] To modify the exemption to authorize a change to the destination for delivery requirement to allow operational flexibility for treatment of various hazardous materials before their final destination.
[7] To modify the exemption to authorize route changes for the one-time transportation of a package containing a nuclear generating-station reactor pressure vessel having Class C waste internal components by cargo vessel and motor vehicle for disposal.
[8] To modify the exemption to authorize a maximum filling limit of 106% for the non-DOT specification cylinders used to transport a Division 2.3 material and to upgrade/revise cylinder markings and drawings.
[9] To reissue the exemption originally issued on an emergency basis for the use of non-DOT specification cylinders transporting Division 2.1, 2.2 and 2.3 materials.
[10] To reissue the exemption originally issued on an emergency basis for the use of non-DOT specification cylinders transporting Division 2.1, 2.2 and 2.3 materials.
[11] To reissue the exemption originally issued on an emergency basis for the transportation of Division 2.1 and 2.2 materials in non-DOT specification pressure vessels.

[FR Doc. 03–22097 Filed 8–28–03; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Notice of Pub.lic Information Collection Submitted to OMB for Review

AGENCY: Surface Transportation Board, DOT.

ACTION: Extension of a currently approved collection.

SUMMARY: The Surface Transportation Board has submitted to the Office of Management and Budget for review and approval the following proposal for collection of information as required by the Paperwork Reduction Act of 1995, Public Law No. 104–13 (44 U.S.C. chapter 35).

Title: Annual Waybill Compliance Survey.
OMB Form Number: 2140–0010.
Frequency: Annually.
No. of Respondents: 600.
Total Burden Hours: 300.

DATES: Persons wishing to comment on this information collection should submit comments by September 26, 2003.

ADDRESSES: Direct all comments to the Surface Transportation Board, room 705, 1925 K Street, NW., Washington, DC 20423. When submitting comments refer to the OMB number and title of the information collection.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339. Requests for copies of the information collection may be obtained by contacting L. Scott Decker (202) 565–1531.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board is, by statute, responsible for the economic regulation of surface transportation carriers operating in interstate and foreign commerce. The ICC Termination Act of 1995, Public Law No. 104–88, 109 Stat. 803 (1995), which took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred the responsibility for regulating rail transportation, including the collection and administration of the STB Carload Waybill Sample. The Board needs to collect annually information on railroad revenues and carloads of traffic terminated by U.S. railroads. The Board will use the information in order to classify railroads by revenue category and determine if they must participate in the STB Carload Waybill Sample. The Board has the Congressionally mandated responsibility to collect this information. The consequences of failure to collect data related to the STB Carload Waybill Sample and railroad revenues will be an inability to fulfill responsibilities under 49 U.S.C. 11144, 11145, 11901, 11326(b), 11327, and 11328(b), and 49 CFR 1244.2(f).

Dated: August 27, 2003.

Vernon A. Williams,

Secretary.

[FR Doc. 03–22308 Filed 8–28–03; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34394]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF) has agreed to grant overhead trackage rights to Union Pacific Railroad Company (UP) over a line of BNSF's railroad between BNSF milepost 210.2 and BNSF milepost 211.7, a distance of approximately 1.5 miles in Wichita, KS.

The transaction was scheduled to be consummated on or after August 22, 2003.

The purpose of the trackage rights is to facilitate the City of Wichita's Central Rail Corridor Project (the City). This project is designed to minimize rail/vehicle conflicts at existing grade crossings in central Wichita by constructing grade crossings and other improvements on the BNSF route.[1]

Any employees affected by the subject transaction will be protected by the labor conditions prescribed in *Norfolk and Western Ry. Co.—Trackage Rights-BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d)

[1] UP states that the actual use of the trackage rights will not commence until the City has progressed sufficiently to permit the existing UP–BNSF connection near BNSF milepost 211.7 to be moved to a location near BNSF milepost 210.2.

may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34394, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert T. Opal, 1416 Dodge Street, Room 830, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 22, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–22020 Filed 8–28–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 21, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW, Washington, DC 20220.

DATES: Written comments should be received on or before September 29, 2003 to be assured of consideration.

Departmental Offices/Community Development Financial Institutions (CDFI) Fund

OMB Number: 1559–0006.

Form Number: CDFI–0008.

Type of Review: Revision.

Title: Community Development Financial Institutions (CDFI) Program Awardee Annual Report.

Description: For compliance purposes, the Fund requires each Awardee to annual report on certain performance goals and its financial and managerial health and soundness.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 600.

Estimated Burden Hours Per Respondent: 8 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 4,800 hours.

Clearance Officer: Lois K. Holland, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220, (202) 622–1563.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–22133 Filed 8–28–03; 8:45 am]

BILLING CODE 4811–16–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 22, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 29, 2003 to be assured of consideration.

Internal Revenue Service

OMB Number: 1545–0687.

Form Number: IRS Form 990–T.

Type of Review: Extension.

Title: Exempt Organization Business Income Tax Return.

Description: Form 990–T is needed to compute the section 511 tax on unrelated business income of a charitable organization. IRS uses the information to enforce the tax.

Respondents: Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers:

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping
67 hr., 12 min.
Learning about the law or the form
25 hr., 41 min.
Preparing the form
41 hr., 52 min.
Copying, assembling, and sending the form to the IRS
4 hr., 1 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 5,149,155 hours.

OMB Number: 1545–1547.

Form Number: IRS Form W–7A.

Type of Review: Extension.

Title: Application for Taxpayer Identification Number for Pending U.S. Adoptions.

Description: Form W–7A is used to apply for an Internal Revenue Service Taxpayer Identification Number (an ATIN) for use in pending adoptions. An ATIN is A temporary nine-digit number issued by the IRS to individuals who are in the process of adopting a U.S. resident child but who cannot get a social security number for that child until the adoption is final.

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 50,000.

Estimated Burden Hours Respondent/Recordkeeper:

Learning about the law or the form
8 min.
Preparing the form
16 min.
Copying, assembling, and sending the form to the IRS
16 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 35,000 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411–03, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–3428.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 03–22134 Filed 8–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Engraving and Printing

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury's Bureau of Engraving and Printing, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Engraving and Printing within the Department of the Treasury is soliciting comments concerning survey research designed to establish benchmark measures of awareness, confidence and behavior relating to the Bureau's NexGen currency program.

DATES: Written comments should be received on or before October 27, 2003 to be assured consideration.

ADDRESSES: Direct all written comments to Department of Treasury, Bureau of Engraving & Printing, Ellen Gano, 14th & C Streets, SW., Washington, DC 20228, (202) 874–1211.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Department of Treasury, Bureau of Engraving & Printing, Pamela Grayson, 14th & C Streets, SW., Washington, DC 20228, (202) 874–2212.

SUPPLEMENTARY INFORMATION:

Title: 2004 Series Currency Monitoring and Evaluation Surveys.

Abstract: The Bureau of Engraving and Printing requests approval to survey the public to track and measure changes in public awareness regarding the introduction of redesigned U.S. currency. The survey will be used to measure the extent to which the public has seen and remembers information about the new currency, its key design and authentication features, and to measure confidence in the currency and authentication behavior. The data is required to be collected as part of the assessment process to determine the effectiveness of the public education effort connected to the new currency design.

Current Actions: This is a new collection.

Type of Review: Regular.

Affected Public: The affected public includes all adult (18 or older) members of the U.S. population.

Estimated Number of Respondents: 4,000.

Estimated Total Annual Burden Hours: Estimated number of annual burden hours is 1,000 hours.

Request for Comments: The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Dated: August 20, 2003.

Pamela V. Grayson,

Management Analyst.

[FR Doc. 03–22135 Filed 8–28–03; 8:45 am]

BILLING CODE 4840–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee Will Be Conducted (VIA Teleconference)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Amended notice as to time change.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel (TAP) Multilingual Initiative Issue (MLI) Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Friday, September 19, 2003 from 1 p.m. EDT to 2:30 p.m. EDT.

FOR FURTHER INFORMATION CONTACT: Inez E. De Jesus at 1–888–912–1227, or 954–423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Multilingual Initiative Issue Committee will be held Friday, September 19, 2003 from 1 p.m. EDT to 2:30 p.m. EDT via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7977, or write Inez E. De Jesus, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Inez E. De Jesus. Ms. De Jesus can be reached at 1–888–912–1227 or 954–423–7977. The agenda will include the following: Various IRS issues.

Dated: August 25, 2003.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 03–22177 Filed 8–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference).

DATES: The meeting will be held Wednesday, September 24, 2003 from 12 noon EDT to 1 pm EDT.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, September 24, 2003, from 12 noon EDT to 1 pm EDT via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979. The agenda will include various IRS issues.

Dated: August 22, 2003.

Deryle J. Temple,

Director, Taxpayer Advocacy Panel.

[FR Doc. 03–22178 Filed 8–28–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Performance Review Board

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: The purpose of this notice is to publish the names of the members of IRS' FY2003 SES Performance Review Board(s).

DATES: This notice is effective October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Ann Pope, 1111 Constitution Avenue, NW, OS:HC:S, Room 3511, Washington DC 20224, (202) 622–0601

SUPPLEMENTARY INFORMATION: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Internal Revenue Service's Senior Executive Service Performance Review Board. The names and titles of the executives serving on this board follow:

John M. Dalrymple, Deputy Commissioner for Operations Support, and Chairperson, Service-wide Performance Review Board
Mark E. Matthews, Deputy Commissioner for Services and Enforcement
Kevin M. Brown, Chief of Staff
Tyrone B. Ayers, Director, Customer Assistance, Relationships and Education (W&I)
Gary D. Bell, National Director, Refund Crimes (CI)
Brady R. Bennett, Director, Strategy and Finance (SBSE)
John E. Binnion, Director, Management and Support (SBSE)
Helen H. Bolton, Director, Management Services (MITS)
C. John Crawford III, Director, Customer Account Services (SBSE)
Richard J. Cronin, Director, Personnel Services (AWSS)
Mary E. Davis, Director, Strategy and Finance (W&I)
John C. Duder, Deputy Commissioner, Wage and Investment Division
James P. Falcone, Assistant Director, Real Estate and Facilities Management (AWSS)
Fred L. Forman, Associate Commissioner for Business Systems Modernization (MITS)
W. Todd Grams, Chief Information Officer, Modernization and Information Technology Services
David A. Grant, Director, Procurement (AWSS)
Thelma Harris, Director, EEO and Diversity Field Services (AWSS)
Dale F. Hart, Commissioner, Small Business and Self-Employed Division
Thomas R. Hull, Deputy Director, Compliance Field Operations (SBSE)
Robert L. Hunt, Director, Taxpayer Education & Communications (SBSE)
Henry O. Lamar, Jr., Commissioner, Wage and Investment Division
Janis G. Landis, Director, Customer Support (AWSS)
Deborah Nolan, Commissioner, Large and Mid-Size Business Division
Richard J. Morgante, Deputy Commissioner, Tax Exempt and Government Entities Division
David B. Palmer, Chief, Criminal Investigation
Evelyn A. Petschek, Commissioner, Tax Exempt and Government Entities Division
William E. Porter, Director, Resource Allocation & Measure (MITS)
Ronald S. Rhodes, Director, Customer Account Services (W&I)
David B. Robison, Chief, Appeals
Julie Rushin, Chief of Staff (MITS)
Richard Speier, Jr., Director of Field Operations (CI)
Linda E. Stiff, Director, Compliance (W&I)
Martha Sullivan, Director, Compliance (SBSE)
Toni L. Zimmerman, Chief, Information Technology Services (MITS)

This document does not meet the Department of Treasury's criteria for significant regulations.

Dated: August 21, 2003.

John M. Dalrymple,

Deputy Commissioner for Operations Support, Internal Revenue Service.

[FR Doc. 03–22176 Filed 8–28–03; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 68, No. 168

Friday, August 29, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27713; 70–10083]

Hydro-Quebec, et al.; Order Granting Limited Approval to Application of Hydro Quebec, et al.

August 15, 2003.

Correction

In notice document 03–21401 beginning on page 50561 in the issue of Thursday, August 21, 2003, make the following correction:

On page 50561, in the first column, the date should appear as set forth above.

[FR Doc. C3–21401 Filed 8–28–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15724; Airspace Docket No. 03–ACE–66]

Modification of Class E Airspace; Centerville, IA

Correction

In rule document 03–21076 beginning on page 49691 in the issue of Tuesday, August 19, 2003, make the following corrections:

§71.1 [Corrected]

1. On page 49692, in the third column, in § 71.1, under the heading **"ACE IA E5 Centerville, IA"**, in the second line "(Lat. 40°41′02″ N., long. 92°54′00″ W.)" should read "(Lat. 40°41′02″ N., long. 92°54′04″ W.)".

2. On the same page, in the same column, in the same section, under the same heading, in the 13th line, "6.5-mile radius northwest" should read "6.5-mile radius to 7.4 miles northwest.

[FR Doc. C3–21076 Filed 8–28–03; 8:45 am]

BILLING CODE 1505–01–D

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 29, 2003

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Noxious weeds:

Witchweed; regulated areas; published 8-29-03; comments due by 12-30-99; published 8-29-03 [FR 03-22142]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Alaska; fisheries of Exclusive Economic Zone—

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ENVIRONMENTAL PROTECTION AGENCY

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H.R. 2195/P.L. 108–72

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H.R. 2465/P.L. 108–73

Family Farmer Bankruptcy Relief Act of 2003 (Aug. 15, 2003; 117 Stat. 891)

H.R. 2854/P.L. 108–74

To amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program, and for other purposes. (Aug. 15, 2003; 117 Stat. 892)

S. 1015/P.L. 108–75

Mosquito Abatement for Safety and Health Act (Aug. 15, 2003; 117 Stat. 898)

H.R. 1412/P.L. 108–76

Higher Education Relief Opportunities for Students Act of 2003 (Aug. 18, 2003; 117 Stat. 904)

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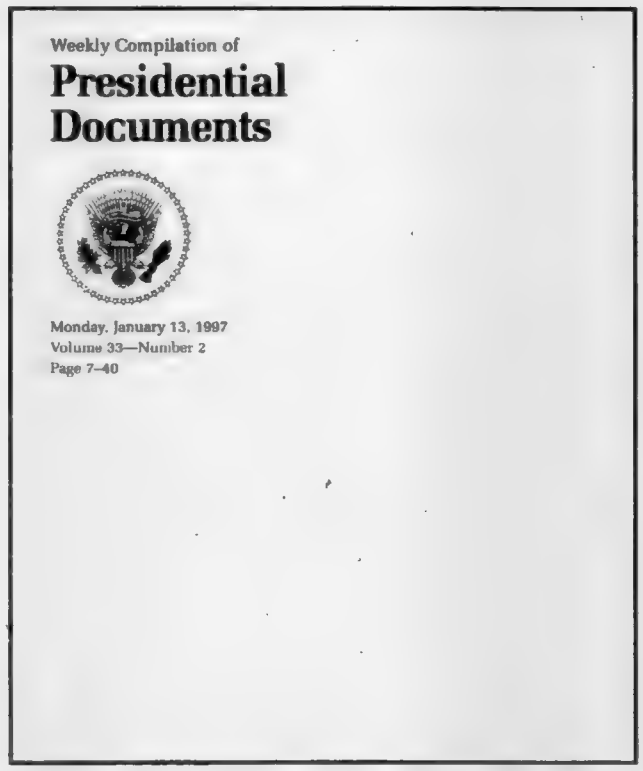

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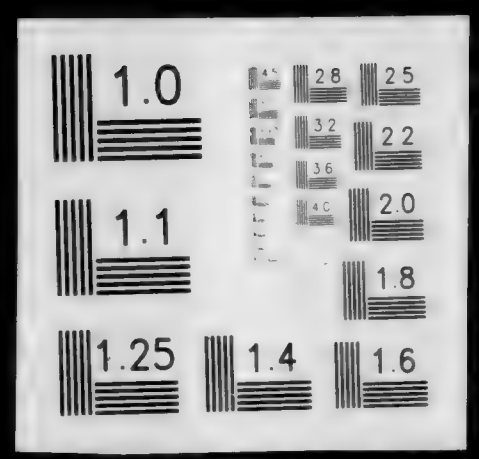
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Federal Register

9–2–03 Tuesday
Vol. 68 No. 169 Sept. 2, 2003

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Pages 52077–52312

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1160]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors is amending appendix A of Regulation CC to delete the reference to the Pittsburgh check processing office of the Federal Reserve Bank of Cleveland and reassign the Federal Reserve routing symbols currently listed under that office to the head office of the Federal Reserve Bank of Cleveland. These amendments reflect the restructuring of check processing operations within the Federal Reserve System. The Board also is amending appendices A and E of Regulation CC to replace all references to Thomson Financial Publishing Inc. with more general references to "an agent of the American Bankers Association."

DATES: The final rule will become effective on November 1, 2003.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Assistant Director, (202) 452–2660, or Jeffrey S. H. Yeganeh, Manager, (202) 728–5801, Division of Reserve Bank Operations and Payment Systems; or Adrianne G. Threatt, Counsel, (202) 452–3554, Legal Division. For users of Telecommunications Devices for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: Regulation CC establishes the maximum period a depositary bank may wait between receiving a deposit and making the deposited funds available for withdrawal.[1] A depositary bank generally must provide faster availability for funds deposited by a "local check" than by a "nonlocal check." A check drawn on a bank is considered local if it is payable by or at a bank located in the same Federal Reserve check processing region as the depositary bank. A check drawn on a nonbank is considered local if it is payable through a bank located in the same Federal Reserve check processing region as the depositary bank. Otherwise, a check is nonlocal.

Appendix A to Regulation CC contains a routing number guide that assists banks in identifying local and nonlocal banks and thereby determining the maximum permissible hold periods for most deposited checks. The appendix includes a list of each Federal Reserve check processing office and the first four digits of the routing number, known as the Federal Reserve routing symbol, of each bank that is served by that office. Banks whose Federal Reserve routing symbols are grouped under the same office are in the same check processing region and thus are local to one another.

Earlier this year, the Federal Reserve Banks decided to reduce the number of locations at which they process checks.[2] As part of this restructuring process, the Pittsburgh office of the Federal Reserve Bank of Cleveland will cease processing checks on November 1, 2003. As of that date, banks with routing symbols currently assigned to the Pittsburgh office for check processing purposes will be reassigned to the Cleveland Reserve Bank's head office. As a result of this change, some checks that are drawn on and deposited at banks located in the Pittsburgh and Cleveland check processing regions and that currently are nonlocal checks will become local checks subject to faster availability schedules.

The Board accordingly is amending the list of routing symbols assigned to Fourth District check processing offices to reflect the transfer of operations from Pittsburgh to Cleveland and to assist banks in identifying local and nonlocal banks. These amendments are effective November 1, 2003, to coincide with the effective date of the underlying check processing changes. The Board is providing advance notice of these amendments to give affected banks ample time to make any needed processing changes. The advance notice will also enable affected banks to amend their availability schedules and related disclosures, if necessary, and provide their customers with notice of these changes.[3] The Federal Reserve routing symbols assigned to all other Federal Reserve branches and offices will remain the same at this time. The Board of Governors, however, will issue similar notices at least sixty days prior to the elimination of check operations at some other Reserve Bank offices, as described in the announcement earlier this year.

The Board also is amending Regulation CC and its appendices to eliminate all references to Thomson Financial Publishing Inc., which has changed its name to TFP. To avoid having to make future changes because of a name change or substitution of service provider, the rule and appendices henceforth simply will refer to "an agent of the American Bankers Association."

Administrative Procedure Act

The Board has not followed the provisions of 5 U.S.C. 553(b) relating to notice and public participation in connection with the adoption of this final rule. The revisions to the appendices are technical in nature, and the routing symbol revisions are required by the statutory and regulatory definitions of "check-processing region." Because there is no substantive change on which to seek public input, the Board has determined that the section 553(b) notice and comment procedures are unnecessary.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. This technical amendment to appendix A of Regulation CC will delete the reference to the Pittsburgh check processing office of the Federal Reserve Bank of Cleveland and reassign the routing symbols listed under that office to the

[1] For purposes of Regulation CC, the term "bank" refers to any depository institution, including commercial banks, savings institutions, and credit unions.

[2] See 68 FR 31592, May 28, 2003.

[3] Section 229.18(e) of Regulation CC requires that banks notify account holders who are consumers within 30 days after implementing a change that improves the availability of funds.

head office of the Federal Reserve Bank of Cleveland. The depository institutions that are located in the affected check processing regions and that include the routing symbols in their disclosure statements would be required to notify customers of the resulting change in availability under § 229.18(e). However, because all paperwork collection procedures associated with Regulation CC already are in place, the Board anticipates that no additional burden will be imposed as a result of this rulemaking.

List of Subjects in 12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR part 229 to read as follows:

PART 229—AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION CC)

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001 *et seq.*

■ 2. The first sentence of paragraph A and the Fourth Federal Reserve District routing symbol list in appendix A are revised to read as follows:

Appendix A to Part 229—Routing Number Guide to Next-Day Availability Checks and Local Checks

A. Each bank is assigned a routing number by an agent of the American Bankers Association. * * *

* * * * *

Fourth Federal Reserve District

[Federal Reserve Bank of Cleveland]

Head Office

0410	2410
0412	2412
0430	2430
0432	2432
0433	2433
0434	2434

Cincinnati Branch

0420	2420
0421	2421
0422	2422
0423	2423

Columbus Office

0440	2440
0441	2441
0442	2442

* * * * *

■ 3. Appendix E is amended by removing the phrase "Thomson Financial Publishing Inc." in sections II.DD., XVIII.A.2.b.ii., and XXII.B.2.b.i. and adding the phrase "an agent of the American Bankers Association" in its place.

By order of the Board of Governors of the Federal Reserve System, August 27, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–22333 Filed 8–29–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–64–AD; Amendment 39–13291; AD 2003–17–16]

RIN 2120–AA64

Airworthiness Directives; Robert E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Robert E. Rust (R.E. Rust) Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. This AD requires you to repetitively inspect the tailplane attachment brackets and replace each bracket at a specified time. This AD also requires you to repetitively inspect each joint of the port and starboard engine mount frame and the rear upper mount frame tubes for cracks and/or damage and repair any cracks and/or damage found. This AD is the result of reports of stress corrosion cracking found on the tailplane attachment brackets and fatigue cracking and chaffing of the engine mount frame. The actions specified by this AD are intended to prevent failure of the tailplane attachment brackets caused by stress corrosion cracking and failure of the engine mount, which could result in loss of the tail section and separation of the engine from the airplane respectively. Such failures could lead to loss of control of the airplane.

DATES: This AD becomes effective on October 10, 2003.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of October 10, 2003.

ADDRESSES: You may get the service information referenced in this AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com*. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–64–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

We received reports that an unsafe condition exists on certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. After reviewing several of these airplanes, stress corrosion cracking was found on the tailplane attachment brackets and fatigue cracks and chaffing were found on the engine mount frame.

Cracks in the engine mount frame were found in the area of the junction of the front and rear top tube and engine mounting foot support brackets and in the front of the frame. We have determined that fatigue is the cause of the cracks. The upper aft mount frame tubes were also found to have damage caused by chaffing by the cowling support rod.

What Is the Potential Impact if FAA Took No Action?

These conditions, if not corrected, could result in failure of the tailplane attachment brackets and failure of the engine mount. Such failures could lead to loss of control of the airplane.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes. This proposal was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on April 15, 2003. (68 FR 18571). The supplemental NPRM proposed to require you to repetitively inspect the tailplane attachment brackets and replace each bracket at a specified time. The NPRM also proposed to require you to repetitively inspect each joint of the port and starboard engine mount frame and the

rear upper mount frame tubes for cracks and/or damage and repair any cracks and/or damage found.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the supplemental NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the Supplemental NPRM.

How Does the Revision to 14 CFR Part 39 Affect This AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 54 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish an inspection of the tailplane attachment brackets:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
32 workhours × $60 per hour = $1,920	No parts required	$1,920	$1,920 × 54 = $103,680

We estimate the following costs to accomplish any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of airplanes that may need such replacement:

Labor cost	Parts cost	Total cost per bracket
3 workhours × $60 per hour = $180 per bracket	$600 per bracket (2 brackets per airplane)	$180 + 600 = $780

We estimate the following costs to accomplish an inspection of the engine mount frame:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
16 workhours × $60 per hour = $960	No parts required	$960	$960 × 54 = $51,840

The FAA has no method of determining the number of repairs or replacements each owner/operator will incur over the life of each of the affected airplanes based on the results of the proposed inspections. We have no way of determining the number of airplanes that may need such repair. The extent of damage may vary of each airplane.

Compliance Time of This AD

What Will Be the Compliance Time of This AD?

The compliance time for the initial inspections in this AD is "within the next 90 days after the effective date of this AD."

Why Is the Compliance Time Presented in Calendar Time Instead of Hours Time-in-Service (TIS)?

An unsafe condition specified by this AD is caused by corrosion. Corrosion can occur regardless of whether the aircraft is in operation or is in storage. Therefore, to assure that the unsafe condition specified in this AD does not go undetected for a long period of time, the compliance is presented in calendar time instead of TIS.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the

Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2003–17–16 Robert E. Rust: Amendment 39–13291; Docket No. 2000–CE–64–AD.

(a) *What airplanes are affected by this AD?* This AD affects R.E. Rust Models DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, that are type certificated in any category.

Note 1: We recommend all owners/operators of DeHavilland DH.C1 Chipmunk 21, 22, and 22A airplanes, serial numbers C1–001 through C1–1014, with experimental airworthiness certificates comply with the actions required in this AD.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent failure of the tailplane attachment brackets caused by stress corrosion cracking and failure of the engine mount, which could result in loss of the tail section and separation of the engine from the airplane respectively. Such failures could lead to loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

(1) TAILPLANE ATTACHMENT BRACKETS

Compliance	Actions	Procedures
(i) Initially inspect within the next 90 days after October 10, 2003 (the date of this AD). (A) Inspect thereafter at intervals not to exceed 6 months or 150 fatigue hours, whichever occurs first, until the modification required by paragraph (d)(1)(ii) of this AD is incorporated. (B) When the modification required by paragraph (d)(1)(ii) is incorporated, you may terminate the repetitive inspections of the tailplane attachment brackets.	Inspect, using dye penetrant, the tailplane attachment brackets, part-number (P/N) C1.TP.167 (or FAA-approved equivalent part) for cracks.	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997; and Civil Modification Mandatory Modification No. Chipmunk H357, dated March 12, 1984. Calculate fatigue hours by multiplying the TIS by the role factor in accordance with British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985.
(ii) At whichever of the following that occurs first: (A) Prior to further flight after the inspection where any crack is found; or (B) Upon accumulating 9,984 fatigue hours or within the next 90 days after October 10, 2003 (the effective date of this AD), whichever occurs later.	Replace the tailplane attachment bracket by incorporating Modification H357 (P/N C1.TP.313) or FAA-approved equivalent part number. Installing P/N C1.TP.313)or FAA-approved equivalent part number) terminates the repetitive inspection requirement of the tailplane attachment brackets.	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997; and Civil Modification No. Chipmunk H357, dated March 12, 1984. Calculate fatigue hours by multiplying the TIS by the role in accordance with British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985.
(iii) As of October 10, 2003 (the effective date of this AD).	Only install a tailplane attachment bracket that is P/N C1.TP.313. or FAA-approved equivalent part number.	Not applicable.
(iv) As of October 10, 2003 (the effective date of this AD).	Incorporate the following into the Aircraft Logbook: "In accordance with AD 2003–17–16, the tailplane attachment bracket is life limited to 9,984 fatigue hours."	In accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997.

(2) ENGINE MOUNT FRAMES

Actions	Compliance	Procedures
(i) Inspect each joint of the port and starboard engine mount and the rear upper mount frame tubes for cracks and damage.	Initially inspect within the next 90 days after October 10, 2003 (the effective date of this AD). Repetitively inspect thereafter at intervals not to exceed 600 hours TIS.	In accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995.

(2) ENGINE MOUNT FRAMES—Continued

Actions	Compliance	Procedures
(ii) If cracks or damage is found during any inspection required in paragraph (d)(2)(i) of this AD: (A) obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (e) of this AD and incorporate this repair scheme, or repair in accordance with FAA Advisory Circular (AC) 43.13–1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4–99; or (B) replace with a new or serviceable part.	Prior to further flight after the inspection in which any crack or damage is found. Repetitively inspect as required in paragraph (d)(2)(i) of this AD.	Repair in accordance with AC 43.13–1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4–99 or in accordance with the repair scheme obtained from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD. Replace in accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995, or AC 43.13–1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4–99.
(iii) Bind the rear upper mount frame tubes with a high density polythene tape at the location where the cowling support rod clip is secured.	Prior to further flight after any inspection required in paragraph (d)(2)(i) of this AD if no cracks or damage is found, and prior to further flight after any repairs or replacement is made as required in paragraph (d)(2)(ii) of this AD .	In accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, use the procedures in 14 CFR 39.19. Send these requests to the Manager, Atlanta Aircraft Certification Office (ACO). Contact Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703–6078; facsimile: (770) 703–6097.

(f) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with British Aerospace Military Aircraft and Aerostructures (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 176, Issue 2, dated November 1, 1997; Civil Modification Mandatory Modification No. Chipmunk H357, dated March 12, 1984; British Aerospace Mandatory Technical News Sheet Series: Chipmunk (C1), No. 138, Issue: 5, dated August 1, 1985; and British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, including Appendix 1 (Part B), dated April 1, 1995. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: *info@dhsupport.com*. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) *When does this amendment become effective?* This amendment becomes effective on October 10, 2003.

Issued in Kansas City, Missouri, on August 19, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21742 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–74–AD; Amendment 39–13287; AD 2003–17–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and MD–11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 and MD–11F airplanes, that requires a one-time visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed, and corrective action if necessary. This action is necessary to prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin. This action is intended to address the identified unsafe condition.

DATES: Effective October 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 2003.

ADDRESSES: The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and MD–11E airplanes series airplanes was published in the **Federal Register** on June 11, 2003 (68 FR 34847). That action proposed to

require a one-time visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed, and corrective action if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 193 airplanes of the affected design in the worldwide fleet. The FAA estimates that 69 airplanes of U.S. registry will be affected by this AD, that it will take approximately 80 work hours per airplane to accomplish the required inspection of the circuit breakers (over 700 installed on each airplane), and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $358,800, or $5,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–17–12 McDonnell Douglas: Amendment 39–13287. Docket 2002–NM–74–AD.

Applicability: Model MD–11 and MD–11F airplanes, as listed in Boeing Alert Service Bulletin MD11–24A137, Revision 01, dated March 11, 2003; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin, accomplish the following:

Inspection and Replacement

(a) Within 24 months after the effective date of this AD: Perform a one-time general visual inspection of the circuit breakers to determine if discrepant circuit breakers are installed (includes circuit breakers manufactured by Wood Electric and Wood Electric Division of Brumfield Potter Corporations, and incorrect circuit breakers installed per Boeing Alert Service Bulletin MD11–24A137, dated February 28, 2002), per Boeing Alert Service Bulletin MD11–24A137, Revision 01, dated March 11, 2003.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no discrepant circuit breaker is found: No further action is required by this paragraph.

(2) If any discrepant circuit breaker is found: At the next scheduled maintenance visit, but not later than 24 months after the effective date of this AD, replace the circuit breaker with a new, approved circuit breaker, per Revision 01 of the service bulletin.

Part Installation

(b) As of the effective date of this AD, no person shall install, on any airplane, a circuit breaker having a part number listed in the "Existing Part Number" column in the table specified in paragraph 2.C.2., of Boeing Alert Service Bulletin MD11–24A137, Revision 01, dated March 11, 2003.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permit

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin MD11–24A137, Revision 01, dated March 11, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(f) This amendment becomes effective on October 7, 2003.

Issued in Renton, Washington, on August 20, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21869 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–109–AD; Amendment 39–13288; AD 2003–17–13]

RIN 2120–AA54

Airworthiness Directives; Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This AD requires replacement of the elevator stop bumpers of the horizontal stabilizer with new bumpers. The actions specified by this AD are intended to prevent damage to the elevator trailing edge due to a broken or missing elevator stop bumper, which could result in jamming of the spring tab and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective October 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Serge Napoleon, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7512; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–201 and –202 airplanes; and Model DHC–8–301, –311, and –315 airplanes; was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 2, 2003 (68 FR 32695). That action proposed to require replacement of the elevator stop bumpers of the horizontal stabilizer with new bumpers.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

Request To Provide for Incorporation of Temporary Revisions (TRs) Into General Revisions of Maintenance Program Support Manual (PSM)

One commenter requests that the FAA revise the supplemental NPRM to address the issue of the future incorporation of the TRs referenced in the supplemental NPRM into the general revisions of the applicable PSMs. The commenter states that providing for this eventuality in this AD would eliminate the need for operators to request approval from the FAA of an alternative method of compliance (AMOC) with this AD in the future.

We concur. Once TRs have been incorporated into the PSM, the TRs are voided. Thus, referring to the TRs alone may necessitate that operators must apply for an AMOC once the information in the applicable TR has been incorporated into the applicable PSM. We have added a new paragraph (c) to this AD, and re-identified subsequent paragraphs accordingly, to state that, when the information in the applicable TR has been included in the general revisions of the applicable PSM, the general revisions may be inserted in the PSM, and the applicable TR may be removed from the Airworthiness Limitations section of the Instructions for Continued Airworthiness.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action until final action is identified, at which time we may consider further rulemaking.

Change to Labor Rate Estimate

Since the issuance of the supplemental NPRM, we have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

We estimate that 195 Bombardier Model DHC–8–102, –103, and –106 airplanes; Model DHC–8–201 and –202 airplanes; and Model DHC–8–301, –311, and –315 airplanes; of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $25,350, or $130 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–17–13 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–13288. Docket 2001–NM–109–AD.

Applicability: Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; serial numbers 003 and subsequent.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the elevator trailing edge due to a broken or missing elevator stop bumper, which could result in jamming of the spring tab and consequent reduced controllability of the airplane, accomplish the following:

Revision of Airworthiness Limitation (AWL) Section

(a) For all airplanes: Within 30 days after the effective date of this AD, revise the AWL section of the Instructions for Continued Airworthiness by inserting a copy of the following applicable de Havilland, Inc., temporary revision into the AWL section:

TABLE—TEMPORARY REVISIONS

For model Nos.—	de Havilland, Inc., TR	Dated	Of maintenance program support manual (PSM)
DHC–8–102, –103, and –106 airplanes	AWL–84	December 20, 2002	1–8–7
DHC–8–201 and –202 airplanes	AWL 2–24	December 20, 2002	1–82–7
DHC–8–301, –311, –314, and –315 airplanes	AWL 3–91	December 20, 2002	1–83–7

(b) Thereafter, except as provided in paragraphs (d) and (e) of this AD, no alternative replacement intervals may be approved for the elevator stop bumpers.

Incorporation of TRs Into General Revisions

(c) When the information in the applicable de Havilland, Inc., TR listed in the table in this AD has been included in the general revisions of the applicable PSM listed in the table in this AD, the general revisions may be inserted in the PSM, and the applicable TR may be removed from the AWL section of the Instructions for Continued Airworthiness.

Phase-In Replacement

(d) For elevator stop bumpers that have accumulated more than 5,000 total flight hours or have more than 30 months total time-in-service as of the effective date of this AD: Within 6 months or 1,000 flight hours after the effective date of this AD, whichever occurs first, replace the left and right upper and lower elevator stop bumpers of the horizontal stabilizer with new bumpers having the same part numbers as the existing bumpers, per the procedures specified in the applicable Dash 8 (de Havilland, Inc.) Maintenance Task Card 2730/22, dated April 25, 2001 (for series 100, 200, and 300). Repeat the replacement thereafter per the intervals specified in the AWL revision required by paragraph (a) of this AD.

Alternative Methods of Compliance

(e) Per 14 CFR 39.19, the Manager, New York Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with de Havilland, Inc., Temporary Revision AWL–84, dated December 20, 2002, to the Airworthiness Limitations List of Maintenance Program Support Manual 1–8–7, and Dash 8 Series 100 (de Havilland, Inc.) Maintenance Task Card 2730/22, dated April 25, 2001; or de Havilland, Inc., Temporary Revision AWL 2–24, dated December 20, 2002, to the Airworthiness Limitations List of Maintenance Program Support Manual 1–82–7, and Dash 8 Series 200 (de Havilland, Inc.) Maintenance Task Card 2730/22, dated April 25, 2001; or de Havilland, Inc., Temporary Revision AWL 3–91, dated December 20, 2002, to the Airworthiness Limitations List of Maintenance Program Support Manual 1–83–7, and Dash 8 Series 300 (de Havilland, Inc.) Maintenance Task Card 2730/22, dated April 25, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be

obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW, Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note: The subject of this AD is addressed in Canadian airworthiness directive CF–2001–08R1, effective January 10, 2003.

Effective Date

(g) This amendment becomes effective on October 7, 2003.

Issued in Renton, Washington, on August 20, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21870 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–50–AD; Amendment 39–13289; AD 2003–17–14]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and B4; A300 B4–600, A300 B4–600R, and A300 F4–600R (Collectively Called A300–600); A310; A319; A320; A321; A330; and A340 Series Airplanes; Equipped With PPG Aerospace Windshields

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 B2 and B4; A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600); A310; A319; A320; A321; A330; and A340 series airplanes; equipped with certain PPG Aerospace windshields. This AD requires replacement of certain windshields manufactured by PPG Aerospace with new windshields. This action is necessary to prevent failure of both structural plies of the windshield caused by overheating of the power lead wire, which could cause reduced structural integrity of the windshield assembly, and consequent loss of the windshield during flight. This action is intended to address the identified unsafe condition.

DATES: Effective October 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 B2 and B4; A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600); A310; A319; A320; A321; A330; and A340 series airplanes; equipped with certain PPG Aerospace windshields; was published in the **Federal Register** on June 4, 2003 (68 FR 33416). That action proposed to require replacement of certain windshields manufactured by PPG Aerospace with new windshields.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received. The commenter concurs with the proposed AD.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

We estimate that 622 airplanes of U.S. registry will be affected by this AD. Currently, there are no Model A340 series airplanes on the U.S. registry.

The following table shows the estimated cost impact to do the required actions for airplanes affected by this AD. The following table also shows the estimated cost impact for Model A340 series airplanes affected by this AD, should an affected airplane be imported and placed on the U.S. Register in the future. The average labor rate is $65 per work hour, and there are 2 windshields per airplane. The estimated maximum cost for all airplanes affected by this proposed AD is $12,029,480 (assuming both windshields must be replaced on all affected airplanes); however, some warranty relief may be available.

Model	Number of U.S. registered airplanes	Work hours per windshield (estimated)	Parts cost per windshield (estimated)	Maximum Cost Per airplane (estimated)
A300 B2 and B4, A300–600, A310, A319, A320, A321, A330	622	8	$9,150	$19,340
A340	0	8	9,150	19,340

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of replacement parts associated with this AD, subject to warranty conditions. As a result, the costs attributable to the AD may be less than stated above.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–17–14 Airbus: Amendment 39–13289. Docket 2002–NM–50–AD.

Applicability: Airplanes listed in Table 1 of this AD, certificated in any category, as follows:

TABLE 1.—APPLICABILITY

Model	Equipped with PPG aerospace windshields having—	
	Part number (P/N)	And serial numbers (S/N) as listed in
A300 B2 and B4 series airplanes	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A300–56A0011, dated October 2, 2001.
A300 B4–600, A300 B4–600R, and A300 F4–600R (collectively called A300–600) series airplanes.	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A300–600-56A6004, dated October 2, 2001.
A310 series airplanes	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A310–56A2005, dated October 2, 2001.
A319, A320, and A321 series airplanes	NP–165311–2, NP–165311–3, NP–165311–4, NP–165311–5, or NP–165311–6.	Airbus All Operators Telex A320–56A1010, Revision 01, dated October 1, 2001.
A330 series airplanes	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A330–56A3005, dated October 2, 2001.
A340 series airplanes	NP–175201–1, NP–175201–2, or NP–175201–4.	Airbus All Operators Telex A340–56A4005, dated October 2, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of both structural plies of the windshield caused by overheating of the power lead wire, which could cause reduced structural integrity of the windshield assembly, and consequent loss of the windshield during flight, accomplish the following:

Windshield Replacement

(a) Within 6 months after the effective date of this AD, replace windshields manufactured by PPG Aerospace having certain P/Ns and S/Ns listed in the applicable Airbus all operators telex (AOT) listed in Table 1 of this AD with new windshields, per the applicable Airbus AOT listed in Table 1 of this AD.

Note 2: The Airbus AOTs reference PPG Aerospace Service Bulletin NP–175201–56–001, dated September 26, 2001, as an additional source of service information for accomplishing the replacement required by this AD.

Part Installation

(b) As of the effective date of this AD, no person shall install on any airplane a windshield manufactured by PPG Aerospace having a certain P/N and S/N listed in the applicable AOT listed in Table 1 of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with the applicable Airbus all operators telex (AOT) listed in Table 2 of this AD, as shown below:

TABLE 2.—AIRBUS ALL OPERATORS TELEXES

Airbus all operators telex	Revision level	Date
A300–56A0011	Original	October 2, 2001.
A300–600–56A6004	Original	October 2, 2001.
A310–56A2005	Original	October 2, 2001.
A320–56A1010	01	October 1, 2001.
A330–56A3005	Original	October 2, 2001.
A340–56A4005	Original	October 2, 2001.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 2001–606(B), dated December 12, 2001.

Effective Date

(f) This amendment becomes effective on October 7, 2003.

Issued in Renton, Washington, on August 20, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21871 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–169–AD; Amendment 39–13284; AD 2003–17–09]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–500 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–500 and ATR72 series airplanes, that requires inspecting the wire bundle in the area of electrical rack 90VU to detect damage, verifying that the conduit around the wire bundle is in the proper position, and installing a clamp between the wire bundles and the carbon shelves structure. This action is necessary to prevent chafing of a wire bundle, which could result in an electrical short and potential loss of several functions essential for safe flight. This action is intended to address the identified unsafe condition.

DATES: Effective October 7, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 7, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer; International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–500 and ATR72 series airplanes was published in the **Federal Register** on June 18, 2003 (68 FR 36525). That action proposed to require inspecting the wire bundle in the area of electrical rack 90VU to detect damage, verifying that the conduit around the wire bundle is in the proper position, and installing a clamp between the wire bundles and the carbon shelves structure.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 86 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost approximately $259 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $44,634, or $519 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time

required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–17–09 Aerospatiale: Amendment 39–13284. Docket 2002–NM–169–AD.

Applicability: Model ATR42–500 and ATR72 series airplanes, certificated in any category, on which ATR Modification 1447 has been incorporated and ATR Modification 4840 has not been incorporated.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of a wire bundle in the area of electrical rack 90VU, which could result in an electrical short and potential loss of several functions essential for safe flight, accomplish the following:

Modification

(a) Within 500 flight hours or 6 months after the effective date of this AD, whichever occurs first: Do a detailed inspection to detect damage of the wire bundles in the area of electrical rack 90VU, ensure that the conduit around the wire bundles is in the proper position, and install a clamp between the wire bundles and the carbon shelves structure (93VU, 94VU, 95VU); in accordance with Avions de Transport Regional Service Bulletin ATR42–92–0007 (for Model ATR42–500 series airplanes) or ATR72–92–1007 (for Model ATR72 series airplanes), both dated January 25, 2002, as applicable. Repair any damaged wiring before further flight in accordance with Chapter 20–27–17 of the applicable ATR Aircraft Schematic Manual.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Incorporation by Reference

(c) The actions shall be done in accordance with Avions de Transport Regional Service Bulletin ATR42–92–0007, dated January 25, 2002, or Avions de Transport Regional Service Bulletin ATR72–92–1007, dated January 25, 2002, as applicable; and Chapter 20–27–17, dated October 1, 1995, of Avions de Transport Regional ATR42 Aircraft Schematic Manual, or Chapter 20–27–17, dated October 1, 1995 of the Avions de Transport Regional ATR72 Aircraft Schematic Manual, as applicable. The Avions de Transport Regional ATR42 Aircraft Schematic Manual contains the following list of effective pages:

Page Number	Date shown on page
List of Effective Pages 1–9	April 2001.

(Only the title page of the Avions de Transport Regional ATR42 Aircraft Schematic Manual references the airplane model; no other page contains this information.) The Avions de Transport Regional ATR72 Aircraft Schematic Manual contains the following list of effective pages:

Page Number	Date shown on page
List of Effective Pages 1–9	April 2001.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in French airworthiness directives 2002–090–092(B) and 2002–091–066(B), both dated February 20, 2002.

Effective Date

(d) This amendment becomes effective on October 7, 2003.

Issued in Renton, Washington, on August 15, 2003.

Kyle L. Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–21413 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

RIN 2120–AA66

[Docket No. FAA 2003–15061; Airspace Docket No. ASD 03–ASW–1]

Revision of Federal Airways V–13 and V–407; Harlingen, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises Federal Airway 13 (V–13) northeast of the McAllen, TX, Very High Frequency Omni-directional Range/Distance Measuring Equipment (VOR/DME) by realigning the airway to intersect with V–163 south of the Corpus Christi, TX, Very High Frequency Omni-directional Range/Tactical Air Navigation (VORTAC) rather than proceeding to the Harlingen, TX, VOR/DME. Additionally, this action revises the point of origin of V–407 from the Harlingen VOR/DME to the Brownsville, TX, VORTAC and realigns V–407 north of the Harlingen VOR/DME to reflect a change of the radial of the airway. The FAA is taking this action due to the relocation of the Harlingen VOR/DME and to enhance the management of aircraft operations over the Harlingen, TX, area.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence

Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The FAA is relocating the Harlingen VOR/DME approximately 8 nautical miles to the southeast of its current location. As a part of that effort, on May 23, 2003, the FAA proposed to realign V–13 northeast of the McAllen VOR/DME to intersect with V–163 south of the Corpus Christi VORTAC (68 FR 28179). Additionally, the FAA proposed to revise the point of origin of V–407 from the Harlingen VOR/DME to the Brownsville VORTAC and to revise a segment of V–407 north of the Harlingen VOR/DME from the current Harlingen VOR/DME 357° radial to the new Harlingen VOR/DME 351° radial. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on this proposal to the FAA. No comments were received in response to the proposal. Except for editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This amendment to 14 CFR part 71 revises V–13 and V–407 in the Harlingen, TX, area. Specifically, this action realigns V–13 northeast of the McAllen VOR/DME to intersect with V–163 south of the Corpus Christi VORTAC; revises the point of origin of V–407 from the Harlingen VOR/DME to the Brownsville VORTAC; and realigns V–407 north of the Harlingen VOR/DME to reflect the change of radial due to the relocation of the Harlingen VOR/DME. The FAA is taking this action due to the relocation of the Harlingen VOR/DME and to enhance the management of aircraft operations over the Harlingen, TX, area.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Federal airways listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS, AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways.

* * * * *

V–13 [Revised]

From McAllen, TX, via INT McAllen 060° radial and Corpus Christi, TX, 178° radials; Corpus Christi; INT Corpus Christi 039° and Palacios, TX, 241° radials; Palacios; Humble, TX; Lufkin, TX; Belcher, LA; Texarkana, AR; Rich Mountain, OK; Fort Smith, AR; INT Fort Smith 006° and Razorback, AR, 190° radials; Razorback; Neosho, MO; Butler, MO; Napoleon, MO; Lamoni, IA; Des Moines, IA; Mason City, IA; Farmington, MN; INT Farmington 017° and Siren, WI, 218° radials; Siren; Duluth, MN; to Thunder Bay, ON, Canada. The airspace outside the United States is excluded.

* * * * *

V–407 [Revised]

From Brownsville, TX; Harlingen, TX; via INT Harlingen 351° and Corpus Christi, TX, 193° radials; Corpus Christi; via INT Corpus Christi 039° and Palacios, TX, 241° radials; Palacios; via INT Palacios 017° and Humble, TX, 242° radials; Humble; Daisetta, TX; Lufkin, TX; Elm Grove, LA; to El Dorado, AR.

* * * * *

Issued in Washington, DC, on August 22, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–22207 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 16, 141 and 157

[Docket No. RM03–6–000; Order No. 643]

Amendments to Conform Regulations With Order No. 630 (Critical Energy Infrastructure Information Final Rule)

July 23, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: This final rule revises the Federal Energy Regulatory Commission's regulations requiring companies to make information directly available to the public under certain circumstances. The revisions are necessary to conform these regulations to Order No. 630, which established guidelines for the handling of Critical Energy Infrastructure Information (CEII). In Order No. 630, the Commission determined that it must take steps to restrict the availability of sensitive information about the nation's energy infrastructure so as to reduce the possibility of terrorist attacks. In doing so, the Commission explained that CEII would be exempt from disclosure under the Freedom of Information Act (FOIA). The order set out a definition of CEII and established procedures for persons with a legitimate need for such information to follow in seeking access to it. Order No. 630 only covered information submitted to or prepared by the Commission. The revisions in this final rule address instances in which the Commission's rules and regulations require companies to make information available directly to the public. The revisions are necessary to ensure that protection of CEII is consistent in both contexts.

EFFECTIVE DATE: The rule will become effective October 23, 2003.

FOR FURTHER INFORMATION CONTACT: Wilbur Miller, Office of General Counsel, Federal Energy Regulatory Commission, 888 First Street, NW., Washington, DC 20426, (202) 502–8953.

SUPPLEMENTARY INFORMATION: *Before Commissioners:* Pat Wood, III,

Chairman; William L. Massey, and Nora Mead Brownell.

I. Introduction

1. This final rule makes specific changes to the Commission's regulations that require companies to make certain information available directly to the public. The changes are necessary to reconcile those regulations with Order No. 630, which established standards and procedures for the handling of Critical Energy Infrastructure Information (CEII) submitted to or created by the Commission. 68 FR 9857 (Mar. 3, 2003); III FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003). Because Order No. 630 addressed only situations in which a person might seek access to CEII that is in the Commission's possession, further changes to ensure consistent treatment and protection of CEII are needed where companies possess CEII and are required by the Commission's regulations to make it available to the public unconditionally.

2. This final rule revises the Commission's regulations in the following areas: (1) 18 CFR part 4, which requires that applicants for hydropower licenses, permits, and exemptions make various types of information available to the public; (2) 18 CFR part 16, which requires that applicants for projects subject to sections 14 and 15 of the Federal Power Act, 18 U.S.C. 807–808, make specified information available to the public; (3) 18 CFR 141.300, establishing requirements for filing FERC Form No. 715, Annual Transmission Planning and Evaluation Report, which requires that portions of the form be made available to the public by the public utility upon request; and (4) 18 CFR part 157, which governs applications for certificates of public convenience and necessity, and for orders permitting and approving abandonment under Section 7 of the Natural Gas Act.

II. Background

3. As explained in the Notice of Proposed Rulemaking (NOPR), 68 FR 18538, 18540 (Apr. 21, 2003), IV FERC Stats. & Regs. ¶ 32,569 (Apr. 9, 2003), Order No. 630 arose from the Commission's concern that CEII could be employed by terrorists to engineer attacks against the nation's energy facilities. The Commission had previously taken steps to remove various categories of documents that were likely to contain CEII from public availability through the internet, the Federal Energy Regulatory Records Information System (FERRIS), and the Commission's public reference room. 68 FR at 9858. Order No. 630 reaffirmed that conclusion and established that the Commission would institute procedures to protect CEII submitted to it. *Id.*

4. Order No. 630 defined CEII in § 388.113(c)(1) of the Commission's regulations as information about proposed or existing critical infrastructure that:

(i) Relates to the production, generation, transportation, transmission, or distribution of energy;

(ii) Could be useful to a person in planning an attack on critical infrastructure;

(iii) Is exempt from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. § 552; and

(iv) Does not simply give the location of the critical infrastructure. 68 FR at 9870. The order defined "critical infrastructure" in § 388.113(c)(2) as:

existing and proposed systems and assets, whether physical or virtual, the incapacity or destruction of which would negatively affect security, economic security, public health or safety, or any combination of those matters. Id.

5. Order No. 630 adopted a process for submission of CEII to the Commission that largely parallels the process for submission of confidential materials in Section 388.112 of the Commission's regulations. That section now provides that an entity submitting CEII to the Commission is responsible for identifying and marking CEII with the legend "Contains Critical Energy Infrastructure Information—Do Not Release." Information identified as CEII is placed in a nonpublic file, with the Commission retaining the right to make a determination whether CEII treatment has been properly claimed. The submitter is notified in the event any person or entity requests release of the CEII, and also prior to any release of the information being made. 68 FR at 9870.

6. To handle requests for release of CEII, Order No. 630 established the position of CEII Coordinator. A person desiring access to CEII must file a written request with the CEII Coordinator containing the following information:

Requester's name, date and place of birth, title, address, and telephone number; the name, address, and telephone of the person or entity on whose behalf the information is requested; a detailed statement explaining the particular need for and intended use of the information; and a statement as to the requester's willingness to adhere to limitations on the use and disclosure of the information requested. Requesters are also requested to include their social security number for identification purposes.

68 FR at 9870–71.[1] The CEII Coordinator will consider the requester's need for the information, as well as the information's sensitivity. In the event the request is granted, the CEII Coordinator may impose conditions upon the requester's use of the information, including the requirement that the requester sign a non-disclosure agreement. Determinations by the CEII Coordinator are subject to rehearing under § 385.713 of the Commission's regulations. *Id.* at 9870.

7. The Commission issued the final rule on February 21, 2003. 68 FR 9857 (Mar. 3, 2003), III FERC Stats. & Regs. ¶ 31,140 (Feb. 21, 2003). In doing so, it recognized that its regulations in some areas require companies to make information that might constitute CEII available directly to the public. Because Order No. 630 addressed only CEII in the possession of the Commission, this situation created a window of vulnerability whereby CEII that would be protected under Order No. 630 could become available to persons of malicious intent. This final rule is intended to close that window. 68 FR at 18540.

A. The NOPR

8. The NOPR identified the following portions of the Commission's regulations as provisions that might require the disclosure of CEII:

Electric Transmission Provisions

FERC Form No. 715, Annual Transmission Plan and Evaluation Report, contains information that will likely constitute CEII. For example, part 2 requires power flow data, part 3 requires system maps and diagrams, and parts 4 and 5 require transmission planning data. The instructions to the form require submitting companies to make it available to the public upon request. 68 FR at 18540.

Natural Gas Provisions

Several provisions of part 157, which governs applications for certificates of public convenience and necessity and for orders permitting and approving abandonment, require that information be made available to the public that might constitute CEII. Information such as flow diagrams and gas supply data must be supplied on request to intervenors and made available in central locations in the project area. These provisions are found in 18 CFR 157.5(d), 157.10(b), 157.22(e)(3)–(4), and 157.203(d). 68 FR at 18540.

[1] In an order on rehearing of Order No. 630 being issued concurrently, the Commission has added the requirement that these requests be signed by the requester.

Hydropower Provisions

Part 4, which governs licenses, permits, exemptions and other applications under the Federal Power Act, requires that applicants make various types of information about their projects available to the public, including items such as detailed maps and scientific studies. Specifically, under 18 CFR 4.32(a)(3), an applicant for a preliminary license, permit or exemption must provide notification to affected property owners. Under § 4.32(b)(3)–(4), an applicant must make a copy of the application and exhibits available to the public for inspection and copying at specified locations. Under §§ 4.34(i)(4)(i) and 4.34(i)(6)(iii), an applicant using alternative procedures must distribute an information package and maintain a public file of all relevant documents. Finally, under § 4.38(g), which provides for pre-filing consultation in the case of an original license, the applicant must make available for public inspection various items, including detailed maps and design information. 68 FR 18540. In addition, part 16 of the Commission's hydropower regulations, which specifies procedures for takeover and relicensing of existing projects, contains notice provisions that require applicants to make items such as drawings, diagrams and emergency action plans available for public inspection. Such provisions are found at 18 CFR 16.7(d)–(e) and 16.8(i). 68 FR 18540

9. The NOPR also proposed to revise several sections that require information possibly constituting CEII to be made available to Indian tribes and other government agencies. Such provisions are found at 18 CFR 4.32(b)(1)–(2), 4.38(b)(1), 4.38(c)(4), 4.38(d), 16.8(b)(1), 16.8(c)(4), and 16.8(d). As explained in the NOPR, the Federal Records Act, 44 U.S.C. 3510(b), does not require one federal agency to accord the same treatment to information as another federal agency where the former receives the information directly from a third party. Consequently, to ensure consistent treatment of CEII, the Commission proposed to add provisions for instances where information must be provided to other agencies and to tribes that would parallel the proposed provisions applicable to information made available to the public. The Commission noted that its proposed revisions would not prohibit a company from sharing CEII with a government agency, but would only ensure that the Commission's regulations did not require it to disclose CEII. 68 FR 18541.

10. The changes proposed by the NOPR were intended to parallel the treatment of CEII under Order No. 630. The NOPR proposed that a company required by the affected regulations to make available information that might constitute CEII would make a determination whether the information was in fact CEII. If it was, the company would omit the CEII from the information being made available and instead include a brief statement describing the omitted information without revealing CEII, and informing the reader of his or her right to challenge the omission through submission to the CEII Coordinator under the procedures adopted in Order No. 630 and found in 18 CFR 388.112 and 388.113. The NOPR added that companies would be expected to adhere to previous determinations made by the Commission or the Coordinator with respect to specific information. 68 FR 18541.

11. The Commission issued the NOPR on April 9, 2003, and ultimately received twelve comments.[2]

B. Related Orders

12. The Commission on this date is issuing two other orders that have some bearing on this rulemaking. As noted, one is the order on rehearing from Order No. 630. The other is a final rule, in RM02–16, revising the Commission's hydropower licensing procedures. The hydropower revisions contain provisions requiring companies to make information available to the public that may constitute CEII. Consequently, the licensing rulemaking is adding a provision to 18 CFR part 5 that will parallel the revisions made in this Final Rule.

III. Discussion

13. Some of the comments supported the proposals in the NOPR in whole or in large part.[3] Disagreements or suggestions centered on several areas.

A. Availability of Needed Information

14. Some commenters expressed concern that the NOPR, if adopted, would restrict market opportunities and interfere with other interests by keeping information away from persons with a legitimate need for it. One commenter expressed significant concerns that the NOPR would interfere with the operation of the electric market by making it difficult for market participants to obtain needed data.[4] For example, the Study Group was concerned that information would become unavailable from OASIS;[5] that transmission owners would selectively withhold Form No. 715 information, resulting in discrimination;[6] that industry councils would be unable to obtain information for studies and models, or that some companies would be unable to obtain the studies or models themselves;[7] and that intervenors would be unable to obtain needed information in a timely fashion.[8] The Study Group specifically contends that the Commission should enunciate and enforce a comparability standard to ensure equal access to information.[9] It also suggests a system under which CEII owners would be required to accept OASIS passwords, identification numbers employed by regional councils, or certifications made by regional transmission organizations (RTOs) as proof that a person was a suitable recipient. Any dispute would be appealable to the CEII Coordinator.[10]

15. Other comments expressed similar concerns. One commenter stated that the use of the word "shall" in the proposed regulations might lead companies to believe that they were prohibited from disclosing CEII voluntarily.[11] The Bonneville Power Administration (BPA) noted that the Commission cannot prohibit it from disclosing information pursuant to statutory requirements such as the Freedom of Information Act (FOIA) and the National Environmental Policy Act (NEPA).[12] The Department of Interior (Interior) expressed concern that its access to information pursuant to its own statutory authorities might be hampered.[13]

16. The Commission believes that these concerns are misplaced. As the Commission stated in the NOPR, neither the revisions proposed there nor in Order No. 630 is intended to require companies to withhold CEII, or to prohibit voluntary arrangements for sharing information. These revisions are intended only to ensure that the Commission's regulations do not require the disclosure of CEII. 68 FR 18541. There is nothing in these revisions that affects one entity's ability to reach appropriate arrangements for sharing CEII and the Commission in fact encourages such arrangements. In many

[2] A list of commenters is appended to this order.

[3] MidAmerican Energy Company at pp. 1–3; PJM Interconnection, L.L.C. at pp. 2–3; Southern California Edison at pp. 1–2.

[4] American Public Power Association & Transmission Access Policy Study Group (Study Group) at pp. 6–20.

[5] *Id.* at 6.

[6] *Id.* at 7–9.

[7] *Id.* at 10–18, 21.

[8] *Id.* at 18–20.

[9] *Id.* at 21.

[10] *Id.* at 22–23.

[11] Consumers Energy Company at pp. 2–3.

[12] BPA, at p. 2.

[13] Interior at pp. 1–3.

cases, companies and persons that have had dealings with one another in the past will be in a better position than the Commission to judge the security of such an arrangement. There is thus nothing in these revisions that would, for example, prevent a regional council from obtaining data from member companies or from sharing it both with member and non-member companies. Nevertheless, in new §§ 4.32(k)(4), 16.7(d)(4), 141.300(d)(4), and 157.10(d)(4) of the Commission's regulations, the Commission has added language to the revisions to make as it as clear as possible that its CEII regulations do not prohibit or restrict voluntary disclosures of information pursuant to private arrangements.

17. With respect to the specific concerns raised by these commenters, the Commission does not believe such concerns are justified. Nothing in these revisions, or in Order No. 630 for that matter, addresses OASIS in any way and there should be no impact on it. The revisions made in this final rule apply only to specific sections and do not cover the Commission's regulations generally; the Commission has decided against including a "catch-all" provision, as suggested by one commenter,[14] so as to avoid such unwanted consequences. The Commission also does not believe companies should be disadvantaged in obtaining Form No. 715 data. As Form No. 715 is an annual report, its timing can be anticipated and gaining access to CEII contained in it should be possible in a timely manner. Most likely, the same entities will seek access every year, so that permission in most cases will be quickly granted. The Commission's numerous statutory mandates are undergirded by principles of non-discrimination (*i.e.*, comparability). Thus, these revisions contemplate that all persons with a legitimate need for CEII will be able to gain access to it with a minimum of difficulty. The revisions already envision and intend to provide comparable treatment in access to CEII.

18. The Commission understands the Study Group's concern that CEII owners might discriminate in making information available to market participants, but believes that its concern may be premature. Failure to provide required Form No. 715 data would be a violation of the Commission's regulations, even without the changes to the regulations effected by this rule and Order No. 630. The Commission remains responsible for ensuring that companies comply with its regulations, and the Commission will not tolerate abuses. Nor does the Commission believe that this final rule will necessarily do anything to enhance a CEII owner's ability to engage in such abuses. Form No. 715 data must still be submitted in full to the Commission. Should a company fail to disclose the data fully to a requester that has been granted access to CEII, that failure would be easy to identify. Furthermore, the Commission anticipates that companies such as the Study Group's members will have little trouble, and experience little delay, in obtaining such access. Finally, the Commission wishes to emphasize again that this final rule affects only those informational provisions that are specifically listed here. It does not apply generally across the industries that the Commission regulates. In the case of the electric market, no requirements are being affected in any way other than Form No. 715.

19. The Study Group recommended several suggestions to facilitate access to CEII consistent with security concerns. Their concern is that whatever process ultimately adopted by the Commission is reliable, non-discriminatory and easy to use. While we share the Study Group's concerns with the need to facilitate access, we continue to believe that the process contained in the final rule is sufficiently straightforward and should operate quickly in situations involving access to Form No. 715 data. Moreover, by employing standards set by outside entities in determining whether to grant access to CEII under the Commission's regulations, the Study Group's proposals would have the undesirable effect of requiring the Commission to monitor approval processes employed by these organizations to ensure that they provided sufficient security.

20. With respect to access and dissemination of information by entities such as BPA and Interior, it goes without saying that the Commission lacks authority to override obligations imposed by statute or regulation. Clearly, this final rule cannot, and is not intended to, prevent agencies from complying with the FOIA or NEPA, or to prevent persons or companies from complying with lawfully enacted regulations that require the provision of information. Finally, the question of intervenors obtaining information in a timely fashion was addressed in Order No. 630. 68 FR 9866.

B. Approval Process

21. Several commenters expressed concerns about the process for handling requests for access to CEII. Some believed that the process for approval would be too slow and suggested changes to speed it up. Some recommended a pre-approval process.[15] One commenter suggested that CEII owners be required to provide CEII to persons with OASIS passwords, or that regional transmission organizations be able to certify customers for access automatically.[16] Another suggested a process whereby a requester must first go to the company, then file a request with the Coordinator.[17] One commenter requested assurance that the Commission will not place requests for access on separate tracks, the point presumably being that there should not be a "slow track."[18]

22. Some of the comments about the approval process concerned the handling of CEII. One suggested that a CEII owner be required to notify everybody on the service list when information is determined not to be CEII.[19] One asked the Commission to establish a time limit in which a CEII owner must provide information once a request for access has been granted.[20] Another suggested that the Commission employ standardized non-disclosure agreements, and that it specify that a recipient, once granted access to CEII, be permitted to use it for ongoing business activities, such as a consultant with more than one client.[21] The Study Group also asked the Commission to clarify that, once a requester is granted access, it may communicate directly with the CEII owner.[22] One commenter asked that the Commission establish guidelines for the Coordinator to follow, and suggested that CEII owners be involved in any negotiations over non-disclosure agreements.[23] Finally, one commenter requested that the Coordinator perform a monitoring role intended to determine whether companies are making required information available. This commenter stated that outsiders to the system cannot tell what information is being withheld.[24]

23. All of the above comments address the approval process generally and, thus, are not appropriate for consideration as part of this docket. The NOPR proposed to follow the approval

[14] National Hydropower Association at p. 6.

[15] Interior at pp. 1–2; Consumers Energy Company at pp. 3–6; Study Group at pp. 23–24.

[16] Study Group at p. 22.

[17] National Hydropower Association at pp. 3–4.

[18] Northern Natural Gas at pp. 5–6.

[19] Interior at p. 3.

[20] Northern Natural Gas at p. 4.

[21] Study Group at pp. 22–23.

[22] *Id.* at 24.

[23] PJM Interconnection, L.L.C. at pp. 3–5.

[24] Southwest Transmission Dependent Utility Group at pp. 1–2.

process already established in Order No. 630 and stated that the Commission would not revisit issues already addressed in that order. 68 FR 18541. The procedures and guidelines for requesting and obtaining access to CEII, and for challenging CEII designations, were addressed at length in Order No. 630. This included timeliness, verification issues, standards for granting access, and the viability of a pre-approval process. *Id.* at 9863–65. Some of these issues are addressed again in the order on rehearing being issued concurrently. The Commission will not revisit these issues here.

24. Some clarification is, however, required with respect to several of these suggestions. The Commission does not have separate tracks for CEII access requests. There also is nothing in the Commission's regulations to prevent a requester from directly contacting a CEII owner, either before or after access is granted. Finally, the Commission does not believe it would be practical for the CEII Coordinator to perform a monitoring role. For the most part, the Commission's various regulations requiring that regulated companies make information available rely on voluntary compliance, regardless of whether CEII is involved. The Commission does not believe that the risk of a company simply flouting the regulations is any greater when CEII is involved than it has ever been. Existing mechanisms for dealing with companies that do not comply with their legal responsibilities should suffice in such situations.

25. This rule, as well as Order No. 630, represents the Commission's best efforts to achieve a delicate balance between the due process rights of interested persons to participate fully in its proceedings and its responsibility to protect public safety by ensuring that access to CEII does not facilitate acts of terrorism. The Commission believes that it has struck an appropriate balance; however, it intends to monitor the experiences under these two rules to ensure that it has done so. Therefore, in six months the Commission will solicit public comment to determine whether submitters or requesters of CEII are experiencing any problems with the new processes.

C. Miscellaneous Issues

26. The Interstate Natural Gas Association of America (INGAA) suggests that the Commission include 18 CFR 157.18 in the provisions being revised in this final rule.[25] That section governs applications to abandon facilities or service and requires the applicant to file exhibits, including material, such as flow diagrams and detailed location information, that likely would include CEII. 18 CFR 157.18(c) and (g). The section includes only filing requirements, however, rather than requirements that information be made available to the public. Consequently, any CEII that the section requires be disclosed should already be covered by Order No. 630.

27. One commenter states that the use of the term "landowner" in proposed 18 CFR 157.6(d)(6) is too restrictive.[26] The revision as proposed in the NOPR referred to situations where the regulation might require disclosure of CEII "to a landowner." The notification provision is worded more broadly to require notification to "affected landowners and towns, communities, and local, state and federal governments and agencies." 18 CFR 157.6(d)(1). The Commission thus has replaced the phrase "to a landowner" with "to any person."

28. The Commission received a suggestion that it establish procedures specifying how and where information denied CEII treatment must be made available.[27] The Commission considers this unnecessary and potentially confusing, because different situations may be presented depending on the exact context. If a request that information be treated as CEII is rejected, then the underlying requirement to disclose the information remains operative and, absent any other provision or direction from the Commission, the owning company must comply as promptly as practicable.

29. The National Hydropower Association comments that the Commission should include a provision stating that a company may withhold information considered to be CEII even though it was made publicly available before the Commission enacted these revisions.[28] The Commission agrees with the underlying principle, but considers an explicit provision unnecessary. Neither Order No. 630 nor this final rule contains any provision requiring that CEII be disclosed because it was previously disclosed. In fact, as noted in Order No. 630, the Commission went to considerable effort to remove from its Web site documents that previously had been available to the public. 68 FR 9858. Absent an explicit provision requiring previously available CEII to remain available, the logical and intended conclusion is that such information may be removed or made unavailable.

30. The National Hydropower Association also comments that a company owning CEII should not be required to make the information available to one requester solely because it was made available to another requester.[29] The Commission has already indicated its agreement with this principle. Order No. 630 explained that access is to be determined on a case-by-case basis. 68 FR 9864. The fact that one person or organization has been determined not to present a security risk obviously does not mean that a different person or organization would not do so. The Commission cautions owners of CEII, however, that it will not tolerate abuse of these revisions designed to discriminate against competitors or otherwise adversely affect competition in the energy markets. The revised rules are intended solely to enable owners of CEII to prevent information from getting into a terrorist's hands.

31. INGAA expresses concern over the provision in 18 CFR 157.10(d) requiring treatment of CEII to adhere to previous determinations, because companies may not be aware of previous determinations.[30] This should rarely be a problem because in most instances the previous determination will involve information owned by the same company. Nevertheless, the Commission has added the phrase "to the extent practicable" to new §§ 4.32(k)(2), 16.7(d)(2), 141.300(d)(2), and 157.10(d)(2).

32. Except as discussed above, the Commission adopts the proposed revisions to its regulations.

Information Collection Statement

33. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule. 5 CFR 1320.12. The public disclosure of information originally supplied by an agency to the recipient is, however, excluded from the coverage of the regulations. 5 CFR 1320.3(c)(2). The only information collection requirement contained in this final rule is a requirement that companies include a statement outlining the procedures for seeking access to CEII. Because that statement would be supplied by the Commission, the information collection regulations do not apply to this final rule.

[25] INGAA at pp. 2–3.

[26] Northern Natural Gas at p. 3.

[27] *Id.* at 4–5.

[28] National Hydropower Association at p. 6.

[29] National Hydropower Association at p. 5.

[30] INGAA at pp. 3–4.

Environmental Analysis

34. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment. Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987). The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.

Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended. 18 CFR 380.4(a)(2)(ii). This rule is procedural in nature and therefore falls under this exception; consequently, no environmental consideration is necessary.

Regulatory Flexibility Act Certification

35. The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. §§ 601–612, generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The Commission is not required to make such analyses if a rule would not have such an effect. The Commission certifies that this proposed rule, if finalized, would not have such an impact on small entities.

Document Availability

36. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

37. From FERC's Home Page on the Internet, this information is available in the Federal Energy Regulatory Records Information System (FERRIS). The full text of this document is available on FERRIS in PDF and WordPerfect format for viewing, printing, and/or downloading. To access this document in FERRIS, type the docket number excluding the last three digits of this document in the docket number field.

38. Assistance is available for FERRIS and the FERC's Web site during normal business hours. Contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866)208–3676, or for TTY, contact (202)502–8659.

Effective Date

39. These regulations are effective October 23, 2003. The provisions of 5 U.S.C. 801 regarding Congressional review of final rules do not apply to this final rule, because the rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

List of Subjects

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 16

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Magalie R. Salas,

Secretary.

■ In consideration of the foregoing, the Commission amends Parts 4, 16, 141 and 157, Chapter I, Title 18, *Code of Federal Regulations*, as follows:

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 42 U.S.C. 7101–7352.

■ 2. Section 4.32 is amended by adding paragraph (k) to read as follows:

§ 4.32 Acceptance for filing or rejection; information to be made available to the public; requests for additional studies.

* * * * * *

(k) *Critical Energy Infrastructure Information.* (1) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to any person, the applicant shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."

(2) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

(4) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

■ 3. Section 4.34 is amended by adding paragraph (i)(9) to read as follows:

§ 4.34 Hearings on applications; consultation on terms and conditions; motions to intervene; alternative procedures.

* * * * * *

(i) *Alternative procedures.*

* * * * * *

(9) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 4.32(k).

■ 4. Section 4.38 is amended by adding paragraph (h) to read as follows:

§ 4.38 Consultation requirements.

* * * * * *

(h) *Critical Energy Infrastructure Information.* If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 4.32(k).

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

■ 5. The authority citation for part 16 continues to read as follows:

Authority: 16 U.S.C. 791a–825r; 42 U.S.C. 7101–7352.

■ 6. Section 16.7 is amended by adding paragraph (d)(7) to read as follows:

§ 16.7 Information to be made available to the public at the time of notification of intent under section 15(b) of the Federal Power Act.

* * * * *

(d) *Information to be made available.*

* * *

(7)(i) If paragraph (d) of this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to any person, the applicant shall omit the CEII from the information made available and insert the following in its place:

(A) A statement that CEII is being withheld;

(B) A brief description of the omitted information that does not reveal any CEII; and

(C) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."

(ii) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(iii) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

(iv) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

* * * * *

■ 7. Section 16.8 is amended by adding paragraph (j) to read as follows:

§ 16.8 Consultation requirements.

* * * * *

(j) *Critical Energy Infrastructure Information.* If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 16.7(d)(7).

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

■ 8. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a-828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 9. Section 141.300 is amended by adding paragraph (d) to read as follows:

§ 141.300 FERC Form No. 715, Annual Transmission Planning and Evaluation Report.

* * * * *

(d) *Critical Energy Infrastructure Information.* (1) If the instructions in Form No. 715 require a utility to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to any person, the utility shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."

(2) The utility completing Form No. 715, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that utility has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the utility will be directed to make the information available to the requester.

(4) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 10. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

■ 11. Section 157.6 is amended by adding paragraph (d)(6) to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

(d) *Landowner notification.*

* * * * *

(6) If paragraph (d)(3) of this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

■ 12. Section 157.10 is amended by adding paragraph (d) to read as follows:

§ 157.10 Interventions and protests.

* * * * *

(d) *Critical Energy Infrastructure Information.* (1) If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined in § 388.113(c) of this chapter, to the public, the applicant shall omit the CEII from the information made available and insert the following in its place:

(i) A statement that CEII is being withheld;

(ii) A brief description of the omitted information that does not reveal any CEII; and

(iii) This statement: "Procedures for obtaining access to Critical Energy Infrastructure Information (CEII) may be found at 18 CFR 388.113. Requests for access to CEII should be made to the Commission's CEII Coordinator."

(2) The applicant, in determining whether information constitutes CEII, shall treat the information in a manner consistent with any filings that applicant has made with the Commission and shall to the extent practicable adhere to any previous determinations by the Commission or the CEII Coordinator involving the same or like information.

(3) The procedures contained in §§ 388.112 and 388.113 of this chapter regarding designation of, and access to, CEII, shall apply in the event of a challenge to a CEII designation or a

request for access to CEII. If it is determined that information is not CEII or that a requester should be granted access to CEII, the applicant will be directed to make the information available to the requester.

(4) Nothing in this section shall be construed to prohibit any persons from voluntarily reaching arrangements or agreements calling for the disclosure of CEII.

■ 13. In § 157.14, paragraph (a) introductory text is amended by adding the following sentence at the end, to read as follows:

§ 157.14 Exhibits.

(a) *To be attached to each application.* * * * If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

■ 14. In § 157.16, the introductory text is amended by adding the following sentence at the end to read as follows:

§ 157.16 Exhibits relating to acquisitions.

* * * If this section requires an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

■ 15. Section 157.22 is amended by adding paragraph (e)(9) to read as follows:

§ 157.22 Collaborative procedures for applications for certificates of public convenience and necessity and for orders permitting and approving abandonment.

* * * * *

(e) * * *

(9) If paragraphs (e)(3) or (e)(4) of this section require an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

* * * * *

■ 16. Section 157.203 is amended by adding paragraph (d)(4) to read as follows:

§ 157.203 Blanket certification.

* * * * *

(d) *Landowner notification.* * * *

(4) If paragraphs (d)(1) or (d)(2) of this section require an applicant to reveal Critical Energy Infrastructure Information (CEII), as defined by § 388.113(c) of this chapter, to any person, the applicant shall follow the procedures set out in § 157.10(d).

Note: The following appendix will not be published in the Code of Federal Regulations.

Appendix—List of Commenters

American Public Power Association and Transmission Access Policy Study Group
Bonneville Power Administration
Consumers Energy Company
Interstate Natural Gas Association of America
ISO New England
Mid-American Energy Company
National Hydropower Association
Northern Natural Gas
PJM Interconnection, L.L.C.
Southern California Edison
Southwest Transmission Dependent Utility Group
United States Department of the Interior

[FR Doc. 03–19606 Filed 8–29–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09–03–265]

RIN 1625–AA97

Safety Zone; Motor Vessel FAIRLANE, Port Washington, WI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around the anchored motor vessel FAIRLANE while she transfers equipment to a barge in the vicinity of Port Washington, WI. The rule is necessary to prevent vessels from transiting too close to the M/V FAIRLANE and causing wakes that may hinder the safe transfer of equipment from the ship to the barge. This rule is intended to restrict vessel traffic from a portion of Lake Michigan.

DATES: This rule is effective from 12:01 a.m. (CST) on September 5, 2003 until 11:59 p.m. (CST) on September 15, 2003.

ADDRESSES: Comments on this rule may be addressed to Commanding Officer, U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, WI 53207 between 7 a.m. (CST) and 3:30 p.m. (CST), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Marine Science Technician Michael Schmidtke, Marine Safety Office Milwaukee, (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of those working on the M/V FAIRLANE, as well as other workers in the area, while extremely heavy machinery is being unloaded. This rule also ensures that any interested spectators do not accidentally place themselves in danger should any problems occur. As such, immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

This Safety Zone is established to safeguard the vessel and the public while the M/V FAIRLANE is unloading heavy equipment and machinery in the vicinity of Port Washington, WI. The size of the zone was determined by the necessities of safe navigation in the Captain of the Port zone and local knowledge about wind, waves, and currents in this particular area.

The safety zone is effective from 12:01 a.m. (CST) on September 5, 2003 until 11:59 p.m. (CST) on September 15, 2003. This rule will be enforced when the motor vessel FAIRLANE is in the vicinity of Port Washington conducting transfer operations on Lake Michigan.

Discussion of Rule

The Coast Guard will implement a safety zone around the motor vessel FAIRLANE while anchored in the vicinity of Port Washington, WI. Vessels are not to come within 100 yards of the motor vessel FAIRLANE. The purpose of the safety zone is to prevent vessels from transiting too close to the M/V FAIRLANE and causing wakes that may hinder the safe transfer of equipment from the ship to the barge. In addition, the Coast Guard will notify the public, in advance, by way of Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and for those who request it from Marine Safety Office Milwaukee, by facsimile (fax).

All persons and vessels shall comply with the instructions of the Captain of

the Port Milwaukee or his designated on-scene representative. Entry into, transiting through, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Milwaukee or his designated on-scene representative. The Captain of the Port Milwaukee may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities: the owners or operators of vessels intending to transit in the vicinity of the motor vessel FAIRLANE, while conducting transfer operations in the vicinity of Port Washington on Lake Michigan, from 12:01 a.m. (CST) on September 5, 2003 until 11:59 p.m. (CST) on September 15, 2003.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will be enforced to safeguard the navigation of the boating public and the transfer operation of the FAIRLANE while the vessel is conducting transfer operations on Lake Michigan. In addition, commercial vessels transiting the area can transit around the safety zone. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect. Vessel traffic may enter or transit through the safety zone with the permission of the Captain of the Port Milwaukee or his designated on-scene representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee. (*See* **ADDRESSES**.)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and

have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2. of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Commandant Instruction M16475.1D, from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. A new temporary § 165.T09–265 is added to read as follows:

§ 165.T09–265 Safety Zone; Motor Vessel FAIRLANE, Port Washington, WI.

(a) *Location.* The following area is designated a safety zone: all waters of Lake Michigan within a 100 yard radius of the motor vessel FAIRLANE while the vessel is conducting transfer operations at anchor in the vicinity of Port Washington, WI.

(b) *Effective period.* This section is effective from 12:01 a.m. (CST) on September 5, 2003 until 11:59 p.m. (CST) on September 15, 2003. This rule will be enforced when the FAIRLANE is conducting transfer operations at anchor in Lake Michigan in the vicinity of Port Washington, WI.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Milwaukee or the designated on-scene representative. Coast Guard patrol personnel include commissioned, warrant or petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) This safety zone should not adversely affect shipping. However, commercial vessels may request permission from the Captain of the Port Milwaukee to enter or transit the safety zone. Approval will be made on a case-by-case basis. Requests must be in advance and approved by the Captain of the Port Milwaukee before transits will be authorized. The Captain of the Port Milwaukee may be contacted via U.S. Coast Guard Group Milwaukee on Channel 16, VHF–FM.

Dated: August 22, 2003.

H.M. Hamilton,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 03–22204 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD05–03–122]

RIN 1625–AA00

Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Port of Baltimore, Maryland for the USS CONSTELLATION. This action is necessary to provide for the safety of life on navigable waters during the dead ship tow of the vessel from its mooring, to the Patapsco River, and return. This action will restrict vessel traffic in portions of the Inner Harbor, the Northwest Harbor, and the Patapsco River.

DATES: This rule is effective from 3:30 p.m. to 7:30 p.m. local time on September 5, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD05–03–122 and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Building 70, Port Safety, Security and Waterways Management Branch, Baltimore, Maryland, 21226–1791, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Ron Houck, at Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2674 or (410) 576–2693.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM is impracticable due to the unique nature of the rule and its short duration. The USS CONSTELLATION will be towed "dead ship," which means that the vessel will be underway without the benefit of mechanical or sail propulsion. However, it is imperative that there be a clear transit route and a safe buffer zone around the USS CONSTELLATION and the vessels towing her. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The Coast Guard expects a large spectator fleet. For safety concerns, it is in the public interest to have a safety zone in place for the event, since immediate action is needed to protect mariners against potential hazards associated with the turn-around of the USS CONSTELLATION.

Background and Purpose

The USS CONSTELLATION Foundation, Inc. is sponsoring its "turn-around" of the historic sloop-of-war USS CONSTELLATION in Baltimore, Maryland. The event is part of the ongoing maintenance and care of the ship, making sure that it weathers evenly on both sides. Planned events include the "dead ship" tow of the USS CONSTELLATION and an onboard salute with navy pattern cannon while off Fort McHenry National Monument and Historic Site.

The Coast Guard anticipates a large recreational boating fleet during this event. Operators should expect significant vessel congestion along the planned route.

The purpose of this rule is to promote maritime safety and protect participants and the boating public in the Port of Baltimore immediately prior to, during, and after the scheduled event. The rule will provide for a clear transit route for the participating vessels, and provide a safety buffer around the participating vessels while they are in transit. The rule will impact the movement of all vessels operating in the specified areas of the Port of Baltimore.

Interference with normal port operations will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled event.

Discussion of Rule

The historic sloop-of-war USS CONSTELLATION is scheduled to conduct a "turn-around" on September 5, 2003. The USS CONSTELLATION is

scheduled to be towed from its berth, to Fort McHenry, and return, along a route of approximately 2.5 nautical miles (5 nautical miles total) that includes specified waters of the Inner Harbor, Northwest Harbor and Patapsco River.

The safety of dead ship tow participants requires that spectator craft be kept at a safe distance from the intended route during this evolution. The Coast Guard is establishing a temporary moving safety zone around the USS CONSTELLATION "turn-around" participants on September 5, 2003, to ensure the safety of participants and spectators immediately prior to, during, and following the dead ship tow.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This finding is based on the limited size of the zone, the minimal time that vessels will be restricted from the zone, vessels may transit a portion of the Inner Harbor, Northwest Harbor, and Patapsco River around the zone, and the zone will be well publicized to allow mariners to make alternative plans for transiting the affected area. In addition, vessels that may need to enter the zone may request permission on a case-by-case basis from the COTP Baltimore or his designated representatives.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or anchor in portions of the Inner Harbor, the Northwest Harbor, and the Patapsco River in the Port of Baltimore, Maryland. Because the zone is of limited size and duration, it is expected that there will be minimal disruption to the maritime community. Before the effective period, the Coast Guard will issue maritime advisories widely available to users of the river to allow mariners to make alternative plans for transiting the affected areas. In addition, smaller vessels, which are more likely to be small entities, may transit around the zones and request permission from the COTP Baltimore on a case-by-case basis to enter the zones.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not

require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because this rule establishes a safety zone. A final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T05–122 to read as follows:

§ 165.T05–122 Safety Zone; Patapsco River, Northwest and Inner Harbors, Baltimore, MD.

(a) *Definitions.* As used in this section—

Captain of the Port means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

USS CONSTELLATION "turn-around" participants means the USS CONSTELLATION and its accompanying towing vessels.

(b) *Location.* The following area is a moving safety zone: *all* waters within 200 yards ahead of or 100 yards outboard or aft of the historic sloop-of-war USS CONSTELLATION, while operating on the Inner Harbor, Northwest Harbor and Patapsco River, Baltimore, Maryland.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones found in § 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through a safety zone must first request authorization from the Captain of the Port or his designated representative. The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at (410) 576–2693.

(3) No vessel movement is allowed within the safety zone unless expressly authorized by the Captain of the Port or his designated representative.

(d) *Enforcement period.* This section will be enforced from 3:30 p.m. to 7:30 p.m. local time on September 5, 2003.

Dated: August 15, 2003.

Curtis A. Springer,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 03–22206 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

Indemnity Claims for Domestic Mail

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for indemnity claims as set forth in the *Domestic Mail Manual* (DMM) S010, Indemnity Claims and related provisions of DMM S913, Insured Mail and DMM S921, Collect on Delivery (COD) Mail. Other than the changes concerning time periods for filing claims and retention periods for undelivered accountable mail, the changes clarify existing DMM provisions or codify, in the DMM, policies not currently set forth in that manual.

DATES: This rule becomes effective on October 1, 2003.

FOR FURTHER INFORMATION CONTACT: Gilbert LeMarier, 202–268–4632.

SUPPLEMENTARY INFORMATION: In a proposed rule published in the **Federal Register** on December 6, 2002 [Vol. 67, No. 235, pages 72626–72629], the Postal Service proposed to revise the procedures in the DMM for filing indemnity claims, to clarify the standards for payment of claims, and to incorporate policies not currently set forth in the DMM. One comment was received. After thorough consideration to the issues raised in this comment, the Postal Service adopts the proposed revisions with the modifications discussed below.

The revisions to the procedures for filing claims are made in conjunction with the redesign of the Postal Service's claim system and are intended to facilitate the provision of more timely decisions to Postal Service customers' claims. For example, customers are permitted to file claims sooner in some circumstances, thereby allowing decisions to be made closer to the mailing date. In addition, either the sender or the addressee, whoever is in possession of the original mailing receipt, will be permitted to file a claim for the complete loss of a numbered Insured Mail, Registered Mail™, COD, or Express Mail® article. Under past rules, only the sender was permitted to submit such claims. The revisions do not change the procedures for unnumbered Insured Mail articles (insured for $50 or less). As before, only the sender will be allowed to file a claim for the complete loss of an unnumbered Insured Mail article.

The revisions also provide further clarification of what is acceptable evidence of value, codifying current policies into the DMM. Claims for damage require that the article, packaging, and mailing container must be presented by the addressee to the Postal Service for inspection regardless of whether the sender or addressee files the claim.

The new revisions will also:

(1) Clarify situations under which indemnity will not be paid, ensuring that current policies are codified in the DMM.

(2) Clarify the time limit in which a customer may forward an appeal to the Consumer Advocate at Headquarters.

(3) Provide that the original sales receipt from a Postal Service retail terminal listing the mailing receipt number and insurance amount is acceptable evidence of insurance when the original mailing receipt is not available.

(4) Clarify that a mailer of a collect on delivery (COD) article may not stipulate "Cash Only."

(5) Provide that all appeals must be sent directly to Claims Appeals at the St. Louis Accounting Service Center.

(6) Provide that local adjudication of unnumbered Insured Mail articles will end with the implementation of the Customer Claims Response System (CCRS).

Discussion of Comments

A summary of the comments and our analysis of each follows:

1. S010.2.2. The commenter raised two issues regarding the changes in the time for filing a claim for a lost or damaged COD article. First, the

commenter stated that the requirement for waiting 45 days before filing a claim for a lost COD article is excessive compared to the time frame for mail receiving other special services.

The Postal Service does not believe the proposed rule should be changed. Since handling procedures differ depending on the special service provided, it is inappropriate to establish uniform limits for filing claims. A COD article may be held at a delivery unit for up to 30 days before being returned to the sender if unclaimed by the addressee (*see* DMM, D042.1.7.f). It should also be noted, the Postal Service proposal reduced the current waiting period for filing a claim for a lost COD article from 60 days to 45 days. As for other classes of mail or service, the new time frames took into consideration that the holding period is 5 days for Express Mail and 15 days for Insured Mail items or Registered Mail items.

Secondly, the commenter objected to the new requirement that a customer must file a claim no later than 45 days from the mailing date when the contents of an article are damaged or missing from the container. The commenter states that if the COD article were not delivered until the 45th day after mailing, the sender could not file a damage claim because the 45 days would have already passed.

Although the likelihood of the commenter's hypothetical occurring is remote, the Postal Service believes there is merit in the concern raised. Accordingly, the Postal Service will revise the proposed rule to allow customers to submit damage claims no later than 60 days from the mailing date.

2. S010.2.5.a. The commenter states that the requirement for the original postmarked mailing receipt is inappropriate in that not all receipts will be postmarked.

The Postal Service agrees that it erred in that Express Mail and point of service (POS) retail terminal imprinted receipts do not require a postmark. Therefore, the Postal Service withdraws this proposed rule.

The commenter also states that the requirement for the original receipt is inappropriate in the case of Registered Mail or Express Mail service when the Postal Service has a copy of the mailing receipt, and can validate the claim because the mailer has provided the article number and date of mailing either from a photocopy or from other records.

The Postal Service does not believe the rules should be amended to accommodate this suggestion. The requirement for the original receipt is to ensure that the proper party is indemnified. It is the customer's responsibility to provide the proof of insurance evidenced by an original mailing receipt. Moreover, under existing procedures, mailers utilizing these services are also permitted to submit the mailing wrapper as evidence of insurance.

3. S010.2.6.b. The commenter states that the addition of the phrase, "For items valued up to $100," appears to be a major change. The Postal Service maintains this revision does not represent a change in policy but merely codifies current policy. Acceptance of a customer's statement of value, in lieu of actual evidence of value, creates an opportunity for abuse, particularly when permitted for higher-value items.

The commenter also suggests that Postal Service retail clerks should inform mailers what evidence will be needed to support claims. Mailers needing such information have access to policies concerning indemnity claims through the DMM, which is readily available on the Postal Service's Web site. They can also seek such information from Postal Service clerks or other Postal Service personnel.

The commenter also asserts that eliminating reimbursement of the cost of labor from handmade items is too broad. The Postal Service offers coverage for the value of goods, based on the established value in the marketplace, whether or not those goods are handmade. However, if the item mailed is not commonly sold (*e.g.*, a hobby, craft, or similar handmade item), there is no established value. In that case, the Postal Service provides compensation for the costs of the materials used, but not for the time used in making it. The Postal Service will amend the proposed rule to clarify this policy.

4. S010.2.6.h. The commenter requests clarification of this proposed rule referring to a printout of a transaction that is made on the Internet. This comment pertains to the proposal for the provision of evidence of value for goods obtained through Internet transactions. These transactions are typically conducted through a Web-based payment network that offers payment services through a stored value account, commonly used to buy or sell items at online auctions.

For transactions involving the use of a credit card online or payment by check, a copy of a credit card statement or canceled check could serve as evidence of value. The Postal Service will amend the proposed rule to clarify this policy.

5. S010.2.14.r. The commenter states that this section appears to require the use of Registered Mail for obtaining insurance on negotiable items, currency, or bullion, which would be a change in current policy.

Although the Postal Service generally recommends that customers send these items as Registered Mail items, it did not intend to eliminate the option of mailing them as Insured Mail items. Accordingly, in order to avoid confusion, the Postal Service will withdraw this proposed change to the DMM.

6. S010.2.14.ae. The commenter objects to the proposed regulation that event or transportation tickets, received after the event, are not insured when there is a provable loss because of the delay and the article was mailed using Express Mail service. With Express Mail's guaranteed delivery time, if the article is not delivered by that time, and a provable loss results from the delay in delivery, then, the commenter argues, the loss should be covered by Postal Service insurance.

The commenter raised a valid concern and the final rule incorporates an exception for Express Mail service.

7. S010.2.14.af. The commenter objects to this revision regarding nonpayable claims for software installed onto computers that have been lost or damaged. The commenter states that if one paid to have software loaded on the lost or damaged computer, then the insurance should cover the cost of having the same software installed on a replacement computer. In addition, if software, recorded on compact disc or diskette(s), enclosed with the computer when shipped, is also lost or damaged, it should be covered by the insurance purchased.

The Postal Service does not believe a change in the rule is warranted. Software loaded onto personal computers is licensed for use to the purchaser. Whether on compact disc or diskette(s), the software provides the purchaser the ability to reinstall the software on a computer. Software is generally designed to self load when the appropriate drive is selected with limited prompting or assistance from an individual. Also, a replacement personal computer typically will include replacement software. Software on a medium, such as compact discs or diskettes, recognized as a means to load the software onto a computer, would be covered for loss or damage dependent upon the amount of insurance coverage purchased at the time of mailing.

8. S010.2.14.ag. The commenter observes that this proposed rule does not comply with the provisions stated in S921.1.5, Fee and Postage, in that it states that if the mailer does not receive the personal check that was mailed by

the delivery Post Office, it will be the mailer's responsibility to obtain a replacement check from the addressee. The fees for COD service include insurance against failure to receive a postal money order or the recipient's check.

The Postal Service agrees that the proposed rule is in conflict with S921.1.5, and, therefore, the proposed rule is withdrawn.

9. S010.2.14.ai. The commenter states that the concept of personal time should be clarified.

The commenter previously raised this issue in item 3 and it was addressed by the Postal Service above.

10. S913.2.7. The commenter raises the same issue as identified in item 2 regarding the requirement that all mailing receipts have a postmark (round date).

The Postal Service does not believe the proposed rule should be changed. This revision relates to Insured Mail receipts, PS Form 3813, *Receipt for Domestic Insured Parcel*, or PS Form 3813–P, *Insured Mail Receipt*. There is an area on each of these receipts annotated either "Postmark of Mailing Office," or "Postmark Here," that clearly indicates that a postmark (round date) or point of service (POS) retail terminal imprint, which includes a date, is required. Because these Postal Service mailing receipts are readily available in retail lobbies, a postmark or POS retail terminal imprint is required in order to provide validation that the special service was actually purchased.

Based on the reasons discussed above, the Postal Service hereby amends the following standards of the DMM, incorporated by reference into the *Code of Federal Regulations. See* 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

■ 1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

■ 2. The following sections of the *Domestic Mail Manual* (DMM) are revised as set forth below:

Domestic Mail Manual (DMM)

* * * * *

S Special Services

S000 Miscellaneous Services

S010 Indemnity Claims

* * * * *

2.0 GENERAL FILING INSTRUCTIONS

2.1 Who May File

A claim may be filed by:

[Reletter current items a, b, c, and d as new items b, c, d, and e. Add new item a to read as follows:]

a. Only the sender, for the complete loss of an unnumbered Insured Mail article.

[Revise new item b to read as follows:]

b. Either the sender or addressee, who is in possession of the original mailing receipt, for the complete loss of a numbered Insured Mail, Registered Mail, COD, or Express Mail® article.

* * * * *

2.2 When to File

[Revise 2.2 to read as follows:]

A customer must file a claim immediately but no later than 60 days from the mailing date when the contents of an article are damaged or missing from the mailing container. For a lost article, a customer must file a claim within the time limits in the chart below.

Mail type or service	When to file (from mailing date)	
	No sooner than	No later than
Bulk Insured	21 days	180 days
COD	45 days	180 days
Express Mail	7 days	90 days
Express Mail COD	45 days	90 days
Insured Mail	21 days	180 days
Registered Mail	15 days	180 days
Registered Mail COD	45 days	180 days

Exceptions: Claims for loss of insured and COD articles (including insured articles sent to APO and FPO addresses) originating at or addressed to Post Offices outside the contiguous 48 states may be filed only at the following times:

a. After 45 days if article sent First-Class Mail service, space available mail (SAM), or parcel airlift (PAL) services.

b. After 45 days if article sent COD.

c. After 75 days if article sent by surface.

2.3 Where to File

A claim may be filed:

* * * * *

[Insert item c to read as follows:]

c. On the Web at *http://www.usps.com.*

2.4 How to File

[Revise 2.4 to read as follows:]

A customer may file a claim by presenting evidence of insurance, evidence of value, proof of damage, and for unnumbered Insured Mail claims, proof of loss or damage. (Proof of loss is not required for numbered Insured Mail, Registered Mail, COD, or Express Mail claims.) If the article was mailed Express Mail COD, the sender must provide both the original COD and Express Mail receipts. The customer must complete the applicable spaces on Form 1000.

2.5 Evidence of Insurance

[Revise introductory text to read as follows:]

For a claim involving Insured Mail, Registered Mail, COD, or Express Mail service, the customer must present any of the following evidence showing that the particular service was purchased:

* * * * *

[Insert new item d to read as follows:]

d. The original sales receipt from the USPS® listing the mailing receipt number and insurance amount, if the original mailing receipt is not available. Reproduced copies of the USPS sales receipt are not acceptable.

2.6 Evidence of Value

The customer must submit acceptable evidence to establish the cost or value of the article at the time it was mailed. (Other evidence may be requested to

help determine an accurate value.) Examples of acceptable evidence are:

* * * * *

[Revise item b to read as follows:]

b. For items valued up to $100, the customer's own statement describing the lost or damaged article and including the date and place of purchase, the amount paid, and whether the item was new or used (only if a sales receipt or invoice is not available). If the article mailed is a hobby, craft, or similar handmade item, the statement must include the cost of the materials used in making the item. The statement must describe the article in sufficient detail to determine whether the value claimed is accurate.

* * * * *

[Add new item g to read as follows:]

g. A copy of a canceled check, money order receipt, credit card statement, or other documentation indicating the amount paid.

[Add new item h to read as follows:]

h. For Internet transactions conducted through a Web-based payment network that offers payment services through a stored value account, a computer printout of an online transaction identifying the purchaser and seller, price paid, date of transaction, description of item purchased, and assurance that the transaction status is completed. The printout must clearly identify the Web-based payment network provider through which the Internet transaction was conducted.

2.7 Missing Contents

[Revise 2.7 to read as follows:]

If a claim is filed because some or all of the contents are missing, the addressee must present the container and packaging to the USPS with the claim. Failure to do so will result in denial of the claim.

2.8 Damage

[Revise 2.8 to read as follows:]

If the addressee files the claim, the addressee must present the article with the packaging and mailing container to the USPS for inspection. If the sender files the claim, the St. Louis ASC will notify the addressee by letter to present the article, packaging, and container to the USPS for inspection. Failure to do so will result in denial of the claim.

2.9 Proof of Loss

[Revise 2.9 to read as follows:]

To file a claim, the sender must provide proof of loss for unnumbered Insured Mail. Proof of loss is not required for numbered Insured Mail, Registered Mail, COD, or Express Mail claims. For proof of loss, the addressee must provide a letter or statement, dated at least 21 days after the date that the unnumbered Insured Mail article was mailed, reporting that the addressee did not receive the article. The statement or a copy of it must be attached to the claim.

2.10 Duplicate Claim

[Revise 2.10 to read as follows:]

A customer must file any duplicate claim no sooner than 30 days and no later than 60 days from the date the original claim was filed.

[Delete the table.]

* * * * *

2.14 Nonpayable Claims

[Revise introductory text to read as follows:]

Indemnity is not paid for Insured Mail, Registered Mail, COD, or Express Mail services in these situations:

* * * * *

[Add items ac through ah to read as follows:]

ac. Mailer refuses to accept delivery of the parcel on return.

ad. Mail not bearing the complete names and addresses of the sender and addressee, or that is undeliverable as addressed to either the addressee or sender.

ae. Event or transportation tickets (*e.g.*, concert, theater, sport, airline, bus, train, *etc.*) received after the event date. Such items are insured for loss, but not for delay or receipt after the event date for which they were purchased unless sent by Express Mail service and the loss is attributable solely to the failure to meet the guaranteed delivery standard under the terms and conditions for the Express Mail offering selected.

af. Software installed onto computers that have been lost or damaged.

ag. Damaged articles not claimed within 30 days.

ah. Personal time used to make hobby, craft, or similar handmade items.

* * * * *

3.0 PAYMENT

* * * * *

3.3 Dual Claim

[Revise 3.3 to read as follows:]

If the sender and the addressee both claim insurance and cannot agree on which one should receive the payment, any payment due is made to the sender unless the claim has already been paid to the addressee upon presentation of the original mailing receipt.

* * * * *

4.0 ADJUDICATION

4.1 Initial

[Revise 4.1 to read as follows:]

The St. Louis Accounting Service Center (ASC) adjudicates and pays or disallows all domestic claims except those appealed under 4.3.

4.2 Appeal

[Revise 4.2 to read as follows:]

A customer may appeal a claim decision by filing a written appeal within 60 days of the date of the original decision. The customer must send the appeal directly to Claims Appeals (see G043 for address).

4.3 Final USPS Decision

[Revise 4.3 to read as follows:]

If the manager of Claims Appeals at the St. Louis ASC sustains the denial of a claim, the customer may submit an additional appeal within 60 days for final review and decision to the Consumer Advocate, USPS Headquarters, who may waive the standards in S010 in favor of the customer.

[Delete 5.0. Sampling process will be discontinued with the implementation of CCRS.]

* * * * *

S900 Special Postal Services

S910 Security and Accountability

* * * * *

S913 Insured Mail

* * * * *

2.0 MAILING

* * * * *

2.7 Receipt

[Revise 2.7 to read as follows:]

For each Insured Mail article mailed, the mailer receives a USPS sales receipt and the appropriate postmarked (*i.e.*, round date) Insured Mail form as follows:

a. Form 3813 when the insurance coverage is $50 or less.

b. Form 3813–P when the insurance coverage is more than $50.

* * * * *

S920 Convenience

S921 Collect on Delivery (COD) Mail

1.0 BASIC INFORMATION

[Insert text after first sentence to read as follows:]

* * * The recipient has the option to pay the COD charges using either cash or personal check. Only one form of

payment may be used for a single mailpiece. * * *

* * * * *

3.0 MAILING

* * * * *

3.4 Indelible Ink, Mailer Errors

[Revise 3.4 to read as follows:]

The particulars required on the COD form must be handwritten with ink, typewritten, or computer-printed. The USPS is not responsible for errors that a mailer makes in stating the charges to be collected. The mailer cannot stipulate "Cash Only" on the COD form.

* * * * *

We will publish an appropriate amendment to 39 CFR 111.3 to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 03–22047 Filed 8–29–03; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI83–01–7292a, FRL–7526–9]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to Michigan's definition of volatile organic compound (VOC). EPA's approval will revise Michigan's State Implementation Plan (SIP) for ozone. The Michigan Department of Environmental Quality (MDEQ) submitted this SIP revision on April 25, 2003.

DATES: This rule is effective on November 3, 2003, unless EPA receives adverse written comments by October 2, 2003. If EPA receives adverse comments, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You may inspect copies of the documents relevant to this action during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.

Send written comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in Part (I)(B)(1)(i) through (iii) of the Supplementary Information section.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767; *dagostino.kathleen@epa.gov*.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

I. General Information.
II. What Has Michigan Submitted?
III. What Action is EPA Taking?
IV. Is This Action Final, or May I Submit Comments?
V. Statutory and Executive Order Reviews.

I. General Information.

A. How Can I Get Copies of This Document and Other Related Information ?

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under "Region 5 Air Docket MI83". The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. Electronic Access. You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket MI83" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot

contact you for clarification, EPA may not be able to consider your comment.

i. E-mail. Comments may be sent by electronic mail (e-mail) to *nash.carlton@epa.gov.* Please include the text "Public comment on proposed rulemaking Region 5 Air Docket MI83" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. Regulations.gov. Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket MI83" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. What Has Michigan Submitted?

On April 25, 2003, the MDEQ submitted a revision to Michigan's definition of volatile organic compound. Michigan's revised definition of the term volatile organic compound is "any compound of carbon or mixture of compounds of carbon that participates in photochemical reactions, excluding the following materials, all of which have been determined by the United States Environmental Protection Agency to have negligible photochemical reactivity: * * *." The definition goes on to list the exempt compounds. When test methods measure exempt compounds, *i.e.* any of those contained in the list of excluded compounds, Michigan's definition allows for their exclusion providing that two specific criteria are met: (1) The exempt compounds must be accurately quantified and (2) MDNR must approve the exclusion.

This submittal replaces the revision to Michigan's definition of VOC that MDNR submitted on August 20, 1998, and supplemented on November 3, 1998. EPA proposed to disapprove this previous submittal on June 10, 1999 (64 FR 31168), because it was not consistent with the federal definition of VOC contained in 40 CFR 51.100(s) or EPA policy guidance documents.

III. What Action Is EPA Taking?

EPA is approving the April 25, 2003, revision to Michigan's definition of VOC. Michigan's revised definition, including the compounds listed, is consistent with the federal definition of VOC contained in 40 CFR 51.100(s), and EPA policy guidance documents, including: "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Bluebook) (notice of availability published in the **Federal Register** on May 25, 1988); EPA's policy memorandum dated June 8, 1989, from G.T. Helms, Chief, Ozone/Carbon Monoxide Programs Branch, entitled Definition of VOC: Rationale;" EPA's policy memorandum dated April 17, 1987, from G.T. Helms, Chief, Control Programs Operations Branch, entitled "Definition of VOC;" and EPA's policy memorandum dated April 17, 1987, from G.T. Helms, Chief, Control Programs Operations Branch, entitled "Definition of Volatile Organic Compounds (VOC's)." EPA's approval of the new definition of VOC will revise Michigan's SIP for ozone.

IV. Is This Action Final, or May I Submit Comments?

EPA is publishing this action without prior proposal, because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision. Should EPA receive adverse written comments by October 2, 2003, we will withdraw this direct final and respond to any comments in a final action. If EPA does not receive adverse comments, this action will be effective without further notice. Any parties interested in commenting on this action should do so at this time. If we do not receive comments, this action will be effective on November 3, 2003.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget.

Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

For this reason, this action is also not subject to Executive Order 13211,

"Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

Regulatory Flexibility Act

This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

National Technology Transfer Advancement Act

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Dated: June 18, 2003.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart X—Michigan

■ 2. Section 52.1170 is amended by adding paragraph (c)(119) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(119) The Michigan Department of Environmental Quality submitted a revision to Michigan's State Implementation Plan for ozone on April 25, 2003. This submittal contained a revised definition of volatile organic compound.

(i) Incorporation by reference.

(A) R 336.1122 Definitions; V, effective March 13, 2003.

[FR Doc. 03–22155 Filed 8–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN73–1–7298a; FRL–7541–5]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency is approving a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for Lafarge Corporation's (Lafarge) facility located on Red Rock Road in Saint Paul, Ramsey County, Minnesota. By its submittal dated July 18, 2002, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Lafarge's state operating permit into the Minnesota PM SIP. The request is approvable because it meets the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this rulemaking action.

DATES: This direct final rule will be effective November 3, 2003, unless EPA receives adverse comment by October 2, 2003. If EPA receives adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in part (I)(B)(1)(i) through (iii) of the Supplementary Information section.

Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), Room M1500, United States Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328. *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. General Information.
II. EPA Action and Review.
1. What action is EPA taking today?
2. Why is EPA taking this action?
III. Background on Minnesota Submittal.
1. What is the background for this action?
2. What information did Minnesota submit, and what were its requests?
3. What is a "Title I Condition?"
IV. Final Rulemaking Action.
V. Administrative Requirements.

I. General Information.

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under "Region 5 Air Docket MN73". The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the *Regulations.gov* Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket MN73" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *nash.carlton@epa.gov.* Please include the text "Public comment on proposed rulemaking Region 5 Air Docket MN73" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII

file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket MN73" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. EPA Action and Review

1. What Action Is EPA Taking Today?

In this action, EPA is approving into the Minnesota PM SIP certain portions of Minnesota Air Emission Permit No. 12300353–002, issued to Lafarge Corporation—Red Rock Terminal on May 7, 2002. Specifically, EPA is only approving into the SIP those portions of the permit cited as "Title I condition: SIP for PM10 NAAQS."

2. Why Is EPA Taking This Action?

EPA is taking this action because the state's request does not change any of the emission limitations currently in the SIP. The revised permit includes the addition of a pneumatic vacuum pump and a new cement silo. The revision to the SIP does not approve any new construction or allow an increase in emissions, thereby continuing to provide for attainment and maintenance of the PM National Ambient Air Quality Standards (NAAQS) and satisfying the applicable PM requirements of the Act.

The pneumatic vacuum pump, which was in place and already controlled by a baghouse, had inadvertently been omitted from the Red Rock Road permit approved into the SIP by EPA in 1999. After consulting EPA, MPCA was advised that a major amendment to the permit was not needed to include this existing unit and that the pneumatic vacuum pump unit should be added into the permit during the next major amendment. Therefore, MPCA included the emission unit and baghouse in the 2002 permit amendment.

The 2002 permit includes a major amendment authorizing the additional emission point associated with a new cement silo. The silo emissions are to be controlled by a baghouse located on the top of the silo. Although actual emissions of PM from the facility would most likely decrease, the installation of the new unit did change the modeling parameters for the facility, thereby requiring a revision to the SIP.

III. Background on Minnesota Submittal

1. What Is the Background for This Action?

Lafarge's Red Rock Road facility is located at 1363 Red Rock Road in Saint Paul, Ramsey County, Minnesota. On July 22, 1998, MPCA submitted to EPA a SIP revision for Ramsey County, Minnesota, for the control of PM emissions from certain sources located along Red Rock Road. Included in this submittal was a state operating permit for Lafarge Corporation (Air Emission Permit No. 12300353–001 issued by MPCA on April 14, 1998), which includes and identifies the Title I SIP conditions for the Red Rock Road facility. The EPA took final action approving the Lafarge Red Rock Road permit into the PM SIP on August 13, 1999 (64 FR 44131).

2. What Information Did Minnesota Submit, and What Were Its Requests?

The SIP revision submitted by MPCA on July 18, 2002, consists of a revised state operating permit issued to the Lafarge Red Rock Road facility. The state has requested that EPA approve the following: the inclusion into the Minnesota PM SIP of only the portions of the revised Lafarge—Red Rock Terminal permit cited as "Title I condition: SIP for PM10 NAAQS."

3. What Is a "Title I Condition?"

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not federally enforceable because the permits expire. The state then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's Title V permitting rule, approved into the state SIP on May 2, 1995 (60 FR 21447), includes the term "Title I condition" which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent. A "Title I condition" is defined as "any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * *" The rule also states that "Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit." Further, "any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit."

Minnesota has since resumed using permits as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in the permit submitted by MPCA are cited as "Title I condition: SIP for PM10 NAAQS," therefore assuring that the SIP requirements will remain permanent and enforceable. In addition, EPA reviewed the state's procedure for using permits to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Act (July 3, 1997 letter from David Kee, EPA, to Michael J. Sandusky, MPCA). The MPCA has committed to using this procedure if the Title I SIP conditions in the permit issued to the

Lafarge Red Rock Road facility and included in the SIP submittal need to be revised in the future.

IV. Final Rulemaking Action

EPA is approving the site-specific SIP revision for the Lafarge Red Rock Road facility, located in Saint Paul, Ramsey County, Minnesota. Specifically, EPA is approving into the SIP only those portions of Lafarge's state operating permit cited as "Title I condition: SIP for PM10 NAAQS."

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective November 3, 2003 without further notice unless we receive relevant adverse comments by October 2, 2003. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. We will then address all public comments received in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective November 3, 2003.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

V. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules: (1) Rules of particular applicability; (2) rules relating to agency management or personnel; and (3) rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 16, 2003.

Norman Neidergang,

Acting Regional Administrator, Region 5.

■ Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 52.1220 is amended by adding paragraph (c)(64) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(64) On July 18, 2002, the State of Minnesota submitted a site-specific revision to the Minnesota particulate matter (PM) SIP for the Lafarge Corporation (Lafarge) Red Rock Road facility, located in Saint Paul, Ramsey County, Minnesota. Specifically, EPA is

approving into the PM SIP only those portions of the Lafarge Red Rock Road facility state operating permit cited as "Title I condition: SIP for PM10 NAAQS."

(i) Incorporation by reference.

(A) AIR EMISSION PERMIT NO. 12300353–002, issued by the Minnesota Pollution Control Agency (MPCA) to Lafarge Corporation—Red Rock Terminal on May 7, 2002, Title I conditions only.

[FR Doc. 03–22157 Filed 8–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN79–1a; FRL–7543–6]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a site-specific revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for the Xcel Energy (formerly known as Northern States Power Company) Inver Hills Generating Plant located in the city of Inver Grove Heights, Dakota County, Minnesota. By its submittal dated August 9, 2002; the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Xcel's federally enforceable Title V operating permit into the Minnesota SO2 SIP and remove the Xcel Administrative Order from the state SO_2 SIP. The state is also requesting in this submittal, that EPA rescind the Administrative Order for Ashbach Construction Company (Ashbach) from the Ramsey County particulate matter (PM) SIP. The requests are approvable because they satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this rulemaking action.

DATES: This "direct final" rule is effective November 3, 2003, unless EPA receives written adverse comment by October 2, 2003. If written adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in Part(I)(B)(1)(i) through (iii) of the Supplementary Information section. A copy of the SIP revision is available for inspection at the Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), United States Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.
panos.christos@epa.gov.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

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1. What is the background for this action?
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3. What is a "Title I Condition?"
IV. Final Rulemaking Action.
V. Statutory and Executive Order Reviews.

I. General Information

A. How Can I Get Copies Of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under "Region 5 Air Docket MN79". The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the regulations.gov web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket "MN79" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or

CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *nash.carlton@epa.gov.* Please include the text "Public comment on proposed rulemaking Region 5 Air Docket MN79" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket MN79" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. EPA Action and Review

1. What Action Is EPA Taking Today

In this action, EPA is approving into the Minnesota SO_2 SIP certain portions of the Title V permit for Xcel Energy's Inver Hills Generating Plant (Xcel) located in the city of Inver Grove Heights, Dakota County, Minnesota. Specifically, EPA is only approving into the SIP those portions of the permit cited as "Title I Condition: State Implementation Plan for SO_2." In this same action, EPA is removing the Xcel Administrative Order from the state SO_2 SIP, and the Ashbach Administrative Order from the state PM SIP.

2. Why Is EPA Taking This Action?

EPA is taking this action for Xcel because the state's request does not change any of the emission limitations currently in the SO_2 SIP or their accompanying supportive documents, such as the SO_2 air dispersion modeling. The revision to the SO_2 SIP does not approve any new construction or allow an increase in emissions, thereby providing for attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS) and satisfying the applicable SO_2 requirements of the Act. The only change to the SO_2 SIP is the enforceable document for Xcel, from the Administrative Order to the Title V permit.

EPA is taking action to rescind the Administrative Order for Ashbach from the Ramsey County PM SIP because, as described below, the Administrative Order for this facility is no longer necessary since the company has permanently ceased operations at the Saint Paul asphalt plant.

III. Background on Minnesota Submittal

1. What Is the Background for This Action?

Xcel Energy Inver Hills Generating Plant

Xcel's Inver Hills Generating Plant is located in Inver Grove Heights, Dakota County, Minnesota, in the Pine Bend SO_2 maintenance area. Monitored violations of the primary SO_2 NAAQS from 1975 through 1977 led EPA to designate Air Quality Control Region (AQCR) 131 as a primary SO_2 nonattainment area on March 3, 1978 (43 FR 8962). AQCR 131 includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington Counties in the State of Minnesota. In response to Part D requirements of the Clean Air Act, MPCA submitted a final SO_2 plan on August 4, 1980. EPA approved the Minnesota Part D SO_2 SIP for AQCR 131 on April 8, 1981 (46 FR 20996).

Subsequent monitored violations of the SO_2 NAAQS prompted a 1982 notice of SIP inadequacy for the Dakota County area of AQCR 131. Also, as a result of the promulgation of the Good Engineering stack height rule in 1985, the MPCA identified modeled attainment problems in other areas of AQCR 131. The submittal of a revised plan was further delayed by the passage of the 1990 Amendments to the Act. The plan for the Pine Bend area of Dakota County of AQCR 131, which included an Administrative Order for Northern States Power-Inver Hills Station, was approved by EPA on September 9, 1994 (59 FR 46553). EPA approved Amendments Two and Three to the administrative order for Northern States

Power-Inver Hills Station on June 13, 1995 (60 FR 31088), and October 13, 1998 (63 FR 54585), respectively.

The state submitted a request to redesignate the Twin Cities and Pine Bend areas of AQCR 131 (excluding the Saint Paul Park area), to attainment of the SO_2 NAAQS on September 7, 1994. EPA approved the redesignation request on May 31, 1995 (60 FR 28339).

Ashbach Construction Company

Ashbach was located in Saint Paul, Ramsey County, Minnesota. A portion of the Saint Paul area was designated nonattainment of the PM NAAQS upon enactment of the 1990 Amendments to the Act. The State submitted SIP revisions satisfying the attainment demonstration requirements of the Act in 1991 and 1992. The enforceable element of the State's submittals were administrative orders for nine facilities in the Saint Paul area. An Administrative Order for Ashbach was included in these submittals. EPA took final action on February 15, 1994 at 59 FR 7218, to approve Minnesota's submittals as satisfying the applicable requirements for the Saint Paul PM nonattainment area. The facility ceased operations at the end of the 1996 asphalt producing season and was permanently shut down in 1997.

On June 20, 2002, MPCA requested that EPA redesignate the Saint Paul PM nonattainment area to attainment. EPA took final action on July 26, 2002 at 67 FR 48787, redesignating the Saint Paul PM nonattainment area to attainment of the PM NAAQS.

2. What Information Did Minnesota Submit, and What Were Its Requests?

The SIP revision submitted by MPCA on February 6, 2000, consists of a Title V permit issued to Xcel. The state has requested that EPA approve the following:

(1) The inclusion into the Minnesota SO_2 SIP only the portions of the Xcel Inver Hills Generating Plant Title V permit cited as "Title I Condition: State Implementation Plan for SO_2.";

(2) The removal from the Minnesota SO_2 SIP of the Administrative Order for Xcel previously approved into the SIP; and,

(3) The removal from the Minnesota PM SIP of the Administrative Order for Ashbach previously approved into the SIP.

3. What Is a "Title I Condition"?

SIP control measures were contained in permits issued to culpable sources in Minnesota until 1990 when EPA determined that limits in state-issued permits are not federally enforceable because the permits expire. The state then issued permanent Administrative Orders to culpable sources in nonattainment areas from 1991 to February of 1996.

Minnesota's operating permitting program, approved into the state SIP on May 2, 1995 (60 FR 21447), includes the term "Title I condition" which was written, in part, to satisfy EPA requirements that SIP control measures remain permanent and requires all state permits, not only Title V permits, to contain all applicable requirements. A "Title I condition" is defined as "any condition based on source-specific determination of ambient impacts imposed for the purposes of achieving or maintaining attainment with the national ambient air quality standard and which was part of the state implementation plan approved by EPA or submitted to the EPA pending approval under section 110 of the act * * * ." The rule also states that "Title I conditions and the permittee's obligation to comply with them, shall not expire, regardless of the expiration of the other conditions of the permit." Further, "any title I condition shall remain in effect without regard to permit expiration or reissuance, and shall be restated in the reissued permit."

Minnesota has since resumed using permits as the enforceable document for imposing emission limitations and compliance requirements in SIPs. The SIP requirements in the permit submitted by MPCA are cited as "Title I Condition: State Implementation Plan for SO_2," therefore assuring that the SIP requirements will remain permanent and enforceable. In addition, EPA reviewed the state's procedure for using permits to implement site-specific SIP requirements and found it to be acceptable under both Titles I and V of the Act (July 3, 1997 letter from EPA to MPCA). The MPCA has committed to using this procedure if the Title I SIP conditions in the permit issued to Xcel and included in the SIP submittal need to be revised in the future.

IV. Final Rulemaking Action

EPA is approving the SIP revision for Xcel's Inver Hills Generating Plant located in the city of Inver Grove Heights, Dakota County, Minnesota. Specifically, EPA is approving into the SIP only those portions of Xcel's Title V permit cited as "Title I Condition: State Implementation Plan for SO_2." In this same action, EPA is removing from the state SO_2 SIP the Xcel Inver Hills Generating Plant Administrative Order which had first been approved into the SO_2 SIP on September 9, 1994 and amended on June 13, 1995 and October 13, 1998. In addition, EPA is removing from the state PM SIP the Ashbach Administrative Order which had previously been approved into the PM SIP on February 15, 1994.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective November 3, 2003 without further notice unless we receive relevant adverse written comments by October 2, 2003. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective November 3, 2003.

V. Statutory and Executive Orders Reviews

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate nor does it significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship

between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not a significant regulatory action under Executive Order 12866.

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. § 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry out policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a SIP submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a SIP submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order, and has determined that the rule's requirements do not constitute a taking. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur Dioxide.

Dated: May 23, 2003.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

■ Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

■ 2. Section 52.1220 is amended by:
■ a. Removing and reserving paragraphs (c)(29)(i)(A) and (c)(35)(i)(B).
■ b. Revising paragraph (c)(41)(i)(A).
■ c. Removing and reserving paragraph (c)(41)(i)(C).
■ d. Adding paragraph (c)(63).

The revision and addition read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(41) * * *

(i) * * *

(A) Amendments, all effective December 21, 1994, to Administrative Orders approved in paragraph (c)(29) of this section for Commercial Asphalt, Inc.; Great Lakes Coal and Dock Company; Harvest States Cooperatives; LaFarge Corporation; Metropolitan Council; North Star Steel Company; Rochester Public Utilities; J. L. Shiely Company.

* * * * *

(63) On August 9, 2002, the State of Minnesota submitted a revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for Xcel Energy's Inver Hills Generating Plant (Xcel) located in the city of Inver Grove Heights, Dakota County, Minnesota. Specifically, EPA is only approving into the SO_2 SIP those portions of the Xcel Title V operating permit cited as "Title I Condition: State Implementation Plan for SO_2".

(i) Incorporation by reference.

(A) AIR EMISSION PERMIT NO. 03700015–001, issued by the Minnesota Pollution Control Agency to Northern States Power Company Inver Hills Generating Plant on July 25, 2000, Title I conditions only.

[FR Doc. 03–22153 Filed 8–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7550–3]

South Carolina: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: South Carolina has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization, and is authorizing the State's changes through this immediate final action. EPA is publishing this rule

to authorize the changes without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we get written comments which oppose this authorization during the comment period, the decision to authorize South Carolina's changes to their hazardous waste program will take effect. If we get comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on November 3, 2003, unless EPA receives adverse written comment by October 2, 2003. If EPA receives such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303–3104; (404) 562–8448. You can view and copy South Carolina's applications from 9 a.m. to 4 p.m. at the following addresses: South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, (803) 896–4174; and EPA Region 4, Atlanta Federal Center, Library, 61 Forsyth Street, SW., Atlanta, Georgia 30303; (404) 562–8190.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA, 30303–3104; (404) 562–8448.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that South Carolina's applications to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant South Carolina Final authorization to operate its hazardous waste program with the changes described in the authorization applications. South Carolina has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in South Carolina, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in South Carolina subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. South Carolina has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- do inspections, and require monitoring, tests, analyses or reports
- enforce RCRA requirements and suspend or revoke permits
- take enforcement actions regardless of whether the State has taken its own actions

This action does not impose additional requirements on the regulated community because the regulations for which South Carolina is being authorized by today's action are already effective, and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has South Carolina Previously Been Authorized for?

South Carolina initially received Final authorization on November 8, 1985, effective November 22, 1985 (50 FR 46437) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on September 8, 1988, effective November 7, 1988 (53 FR 34758), February 10, 1993, effective April 12, 1993 (58 FR 7865), November 29, 1994, effective January 30, 1995 (59 FR 60901), April 26, 1996, effective June 25, 1996 (61 FR 18502), October 4, 2000, effective December 4, 2000 (65 FR 59135) and August 21, 2001, effective October 22, 2001 (66 FR 43798).

G. What Changes Are We Authorizing With Today's Action?

On November 15, 2000 and December 20, 2001, South Carolina submitted final complete program revision applications, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that South Carolina's hazardous waste program revisions satisfy all of the requirements

necessary to qualify for Final authorization. Therefore, we grant South Carolina Final authorization for the following program changes:

Federal requirements	Federal Register	Analogous state authority [1]
Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance, Amendment, Checklist 160, RCRA Cluster VIII, HSWA Provision.	62 FR 37694–37699, July 14, 1997.	SCHWMA § 44–56–30. SCHWMA § 44–56–130. SCHWM R.61–79.268.39(c).
Emergency Revision of the Carbamate Land Disposal Restrictions, Checklist 161, RCRA Cluster VIII, HSWA Provision.	62 FR 45568, August 28, 1997.	SCHWMA § 44–56–30. SCHWMA § 44–56–130. SCHWM R.61–79.268.4040(g). SCHWM R.61–79.268.48(a)/Table.
Clarification of Standards for Hazardous Waste LDR Treatment Variances, Checklist 162, RCRA Cluster VIII, HSWA Provision.	62 FR 64504–64509, December 5, 1997.	SCHWMA § 44–56–30. SCHWMA § 44–56–130. SCHWM R.61–79.268.44(h)into SCHWM R.61–79.268.44(h)(1). SCHWM R.61–79.268.44(h)(2) intro. SCHWM R.61–79.268.44(h)(2)(i). SCHWM R.61–79.268.44(h)(2)(ii). SCHWM R.61–79.268.44(h)(3). SCHWM R.61–79.268.44(m). SCHWM R.61–79.268.44(p).
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers: Clarification and Technical Amendment, Checklist 163, RCRA Cluster VIII, HSWA Provision.	62 FR 64636–64671, December 8, 1997.	SCHWMA § 44–56–30. SCHWMA § 44–56–130. SCHWM R.61–79.264.15(b)(4). SCHWM R.61–79.264.73(b)(6). SCHWM R.61–79.264.1030(b)(3). SCHWM R.61–79.264.1030(c). SCHWM R.61–79.264.1030(e). SCHWM R.61–79.264.1031. SCHWM R.61–79.264.1033(a)(2)(i). SCHWM R.61–79.264.1033(a)(2)(ii). SCHWM R.61–79.264.1033(a)(2)(iii). SCHWM R.61–79.264.1033(a)(2)(iv). SCHWM R.61–79.264.1050(b)(3). SCHWM R.61–79.264.1050(c). SCHWM R.61–79.264.1050(f). SCHWM R.61–79.264.1060(a). SCHWM R.61–79.264.1060(b)(1). SCHWM R.61–79.264.1060(b)(2). SCHWM R.61–79.264.1060(b)(3). SCHWM R.61–79.264.1060(b)(4). SCHWM R.61–79.264.1062(b)(2). SCHWM R.61–79.264.1062(b)(3). SCHWM R.61–79.264.1064(g)(6). SCHWM R.61–79.264.1064(m). SCHWM R.61–79.264.1080(b)(1). SCHWM R.61–79.264.1080(c). SCHWM R.61–79.264.1082(b). SCHWM R.61–79.264.1082(c)(2)(ix)(A). SCHWM R.61–79.264.1082(c)(2)(ix)(B). SCHWM R.61–79.264.1082(c)(3). SCHWM R.61–79.264.1082(c)(4)(ii). SCHWM R.61–79.264.1083(a)(2). SCHWM R.61–79.264.1083(b)(1). SCHWM R.61–79.264.1084(c)(2)(iii). SCHWM R.61–79.264.1084(c)(2)(iii)(B). SCHWM R.61–79.264.1084(c)(2)(iii)(B)(1). SCHWM R.61–79.264.1084(c)(2)(iii)(B)(2). SCHWM R.61–79.264.1084(e)(4). SCHWM R.61–79.264.1084(f)(3)(i)(D)(4). SCHWM R.61–79.264.1084(f)(3)(iii). SCHWM R.61–79.264.1084(f)(4). SCHWM R.61–79.264.1084(j)(2)(iii). SCHWM R.61–79.264.1085(b)(2). SCHWM R.61–79.264.1085(d)(1)(iii). SCHWM R.61–79.264.1085(d)(2)(i)(B). SCHWM R.61–79.264.1085(e)(2)(iii). SCHWM R.61–79.264.1086(c)(2). SCHWM R.61–79.264.1086(c)(4)(i). SCHWM R.61–79.264.1086(d)(2). SCHWM R.61–79.264.1086(d)(4)(i). SCHWM R.61–79.264.1086(g).

Federal requirements	Federal Register	Analogous state authority [1]
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers: Clarification and Technical Amendment, Checklist 163 cont., RCRA Cluster VIII, HSWA Provision.	62 FR 64636–64671, December 8, 1997.	SCHWM R.61–79.264.1087(c)(3)(ii) SCHWM R.61–79.264.1087(c)(7) SCHWM R.61–79.264.1089(a) SCHWM R.61–79.264.1089(b)(1)(ii)(B) SCHWM R.61–79.264.1089(f)(1) SCHWM R.61–79.264.1089(j) SCHWM R.61–79.264.1089(j)(1) SCHWM R.61–79.264.1089(j)(2) SCHWM R.61–79.265.15(b)(4) SCHWM R.61–79.265.73(b)(6) SCHWM R.61–79.265.1030(b)(3) SCHWM R.61–79.265.1030(d) SCHWM R.61–79.265.1033(a)(2)(i) SCHWM R.61–79.265.1033(a)(2)(ii) SCHWM R.61–79.265.1033(a)(2)(iii) SCHWM R.61–79.265.1033(a)(2)(iv) SCHWM R.61–79.265.1033(f)(2)(iv)(B) SCHWM R.61–79.265.1050(b)(3) SCHWM R.61–79.265.1050(e) SCHWM R.61–79.265.1060(a) SCHWM R.61–79.265.1060(b)(1) SCHWM R.61–79.265.1060(b)(2) SCHWM R.61–79.265.1060(b)(3) SCHWM R.61–79.265.1060(b)(4) SCHWM R.61–79.265.1062(b)(2) SCHWM R.61–79.265.1062(b)(3) SCHWM R.61–79.265.1064(g)(6) SCHWM R.61–79.265.1064(m) SCHWM R.61–79.265.1080(b)(1) SCHWM R.61–79.265.1080(c) SCHWM R.61–79.265.1081 SCHWM R.61–79.265.1082(a) SCHWM R.61–79.265.1082(a)(1) SCHWM R.61–79.265.1082(a)(2) SCHWM R.61–79.265.1082(a)(2)(i) SCHWM R.61–79.265.1082(a)(2)(ii) SCHWM R.61–79.265.1082(a)(2)(iii) SCHWM R.61–79.265.1082(a)(2)(iv) SCHWM R.61–79.265.1082(b) SCHWM R.61–79.265.1082(b)(1) SCHWM R.61–79.265.1082(b)(2) SCHWM R.61–79.265.1082(b)(2)(i) SCHWM R.61–79.265.1082(b)(2)(ii) SCHWM R.61–79.265.1082(b)(2)(iii) SCHWM R.61–79.265.1082(c) SCHWM R.61–79.265.1082(d) SCHWM R.61–79.265.1083(b) SCHWM R.61–79.265.1083(c)(2)(i) SCHWM R.61–79.265.1083(c)(2)(ix)(A) SCHWM R.61–79.265.1083(c)(2)(ix)(B) SCHWM R.61–79.265.1083(c)(3) SCHWM R.61–79.265.1083(c)(4)(ii) SCHWM R.61–79.265.1084(a)(2) SCHWM R.61–79.265.1084(a)(3)(ii)(B) SCHWM R.61–79.265.1084(a)(3)(iii) SCHWM R.61–79.265.1084(a)(3)(iii)(A) SCHWM R.61–79.265.1084(a)(3)(iii)(F) SCHWM R.61–79.265.1084(a)(3)(iii)(G) SCHWM R.61–79.265.1084(a)(3)(iii)(G)(1) SCHWM R.61–79.265.1084(a)(3)(iv) SCHWM R.61–79.265.1084(a)(3)(iv)(A) SCHWM R.61–79.265.1084(a)(3)(iv)(B) SCHWM R.61–79.265.1084(a)(3)(iv)(B)(1) SCHWM R.61–79.265.1084(a)(3)(iv)(B)(2) SCHWM R.61–79.265.1084(a)(3)(v) SCHWM R.61–79.265.1084(a)(4)(iv) SCHWM R.61–79.265.1084(b)(1) SCHWM R.61–79.265.1084(b)(3)(ii)(B) SCHWM R.61–79.265.1084(b)(3)(iii) SCHWM R.61–79.265.1084(b)(3)(iii)(F) SCHWM R.61–79.265.1084(b)(3)(iii)(G) SCHWM R.61–79.265.1084(b)(3)(iv) SCHWM R.61–79.265.1084(b)(3)(v) SCHWM R.61–79.265.1084(b)(8)(iii)
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers: Clarification and Technical Amendment, Checklist 163 cont., RCRA Cluster VIII, HSWA Provision.	62 FR 64636–64671, December 8, 1997.	

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		SCHWM R.61–79.265.1084(b)(9)(iv) SCHWM R.61–79.265.1084(d)(5)(ii) SCHWM R.61–79.265.1085(c)(2)(iii) SCHWM R.61–79.265.1085(c)(2)(iii)(B) SCHWM R.61–79.265.1085(c)(2)(iii)(B)(1) SCHWM R.61–79.265.1085(c)(2)(iii)(B)(2) SCHWM R.61–79.265.1085(e)(4) SCHWM R.61–79.265.1085(f)(3)(i)(D)(4) SCHWM R.61–79.265.1085(f)(4) SCHWM R.61–79.265.1085(j)(2)(iii) SCHWM R.61–79.265.1086(b)(2) SCHWM R.61–79.265.1086(d)(1)(iii) SCHWM R.61–79.265.1086(d)(2)(i)(B) SCHWM R.61–79.265.1086(e)(2)(iii) SCHWM R.61–79.265.1087(c)(4)(i) SCHWM R.61–79.265.1087(d)(4)(i) SCHWM R.61–79.265.1087(g) SCHWM R.61–79.265.1088(c)(3)(ii) SCHWM R.61–79.265.1088(c)(7) SCHWM R.61–79.265.1090(a) SCHWM R.61–79.265.1090(b)(1)(ii)(B) SCHWM R.61–79.265.1090(f)(1) SCHWM R.61–79.265.1090(j) SCHWM R.61–79.265.1090(j)(1) SCHWM R.61–79.265.1090(j)(2) SCHWM R.61–79.265 Appendix VI SCHWM R.61–79.270.14(b)(5)
Kraft Mill Steam Stripper, Condensate Exclusion, Checklist 164,RCRA Cluster VIII non-HSWA Provision.	63 FR 18504–18751, April 15, 1998.	SCHWMA § 44–56–30 SCHWM R.61–79.261.4(a)(15)
Land Disposal Restrictions Phase IV–Treatment Standards for Metal Wastes and Mineral Processing Waste, Checklist 167 A, RCRA Cluster VIII, HSWA Provision.	63 FR 28556–28753, May 26, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.268.2(i) SCHWM R.61–79.268.3(d) SCHWM R.61–79.268.34(a) SCHWM R.61–79.268.34(b) SCHWM R.61–79.268.34(c) SCHWM R.61–79.268.34(d) SCHWM R.61–79.268.34(d)(1) SCHWM R.61–79.268.34(d)(2) SCHWM R.61–79.268.34(d)(3) SCHWM R.61–79.268.34(d)(4) SCHWM R.61–79.268.34(d)(e) SCHWM R.61–79.268.40(e) SCHWM R.61–79.268.40(h) SCHWM R.61–79.268.40/Table "Treatment Standards for Hazardous Waste" SCHWM R.61–79.268.40/Table UTS
Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards and Exclusions, Checklist 167 B, RCRA Cluster VIII, HSWA Provision.	63 FR 28556–28753, May 26, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.268.2(k) SCHWM R.61–79.268.7(a)(1) SCHWM R.61–79.268.7(a)(2) SCHWM R.61–79.268.7(a)(2)(i) SCHWM R.61–79.268.7(a)(2)(ii) SCHWM R.61–79.268.7(a)(3) intro SCHWM R.61–79.268.7(a)(3)(ii) SCHWM R.61–79.268.7(a)(4) SCHWM R.61–79.268.7(a)(4)/Table SCHWM R.61–79.268.7(a)(5) SCHWM R.61–79.268.7(a)(6) SCHWM R.61–79.268.7(b)(1) SCHWM R.61–79.268.7(b)(2) SCHWM R.61–79.268.7(b)(3) SCHWM R.61–79.268.7(b)(4) intro SCHWM R.61–79.268.7(e) intro SCHWM R.61–79.268.7(e)(1) SCHWM R.61–79.268.7(e)(2) SCHWM R.61–79.268.44(h)(3) intro SCHWM R.61–79.268.44(h)(3)(i) SCHWM R.61–79.268.44(h)(3)(i)(A) SCHWM R.61–79.268.44(h)(3)(i)(B)

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Land Disposal Restrictions Phase IV–Hazardous Soils Treatment Standards and Exclusions, Checklist 167 cont., RCRA Cluster VIII, HSWA Provision.	63 FR 28556–28753, May 26, 1998.	SCHWM R.61–79.268.44(h)(3)(ii) SCHWM R.61–79.268.44(h)(4) SCHWM R.61–79.268.44(h)(5) SCHWM R.61–79.268.49(a) SCHWM R.61–79.268.49(b) SCHWM R.61–79.268.49(c) intro SCHWM R.61–79.268.49(c)(1) intro SCHWM R.61–79.268.49(c)(1)(A) SCHWM R.61–79.268.49(c)(1)(B) SCHWM R.61–79.268.49(c)(1)(C) SCHWM R.61–79.268.49(c)(2) SCHWM R.61–79.268.49(c)(3) intro SCHWM R.61–79.268.49(c)(3)(A) SCHWM R.61–79.268.49(c)(3)(B) SCHWM R.61–79.268.49(d) SCHWM R.61–79.268.49(e) intro SCHWM R.61–79.268.49(e)(1) SCHWM R.61–79.268.49(e)(2) intro SCHWM R.61–79.268.49(e)(2)(A) SCHWM R.61–79.268.49(e)(2)(B)
Land Disposal Restrictions Phase IV—Corrections, Checklist 167 C, RCRA Cluster VIII, HSWA Provision.	63 FR 28556–28753, May 26, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.268.4(a)(2)(ii) SCHWM R.61–79.268.4(a)(2)(iii) SCHWM R.61–79.268.4(a)(7) SCHWM R.61–79.268.4(b)(3)/Table SCHWM R.61–79.268.4(b)(4)(iv) SCHWM R.61–79.268.4(b)(4)(v) SCHWM R.61–79.268.4(b)(5) SCHWM R.61–79.268.4(b)(6) SCHWM R.61–79.268.40(e) SCHWM R.61–79.268.40/Table "Treatment Standard for Hazardous Wastes" SCHWM R.61–79.268.42(a) SCHWM R.61–79.268.45(a) intro SCHWM R.61–79.268.45(d)(3) SCHWM R.61–79.268.45(d)(4) SCHWM R.61–79.268.48(a)/Table UTS SCHWM R.61–79.268.45(d)(3) SCHWM R.61–79.268 Appendix VII, Table 1 SCHWM R.61–79.268 Appendix VII, Table 2 SCHWM R.61–79.268 Appendix VIII
Mineral Processing Secondary Materials Exclusion, Checklist 167 C, RCRA Cluster VIII, HSWA Provision.	63 FR 28556–28753, May 26, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.261.2(c)(3) SCHWM R.61–79.261.2(c)(4)/Table SCHWM R.61–79.261.2(e)(1)(iii) SCHWM R.61–79.261.4(a)(16) intro SCHWM R.61–79.261.4(a)(16)(i) SCHWM R.61–79.261.4(a)(16)(ii) SCHWM R.61–79.261.4(a)(16)(iii) SCHWM R.61–79.261.4(a)(16)(iv) SCHWM R.61–79.261.4(a)(16)(iv)(A) SCHWM R.61–79.261.4(a)(16)(iv)(B) SCHWM R.61–79.261.4(a)(16)(iv)(C) SCHWM R.61–79.261.4(a)(16)(v) SCHWM R.61–79.261.4(a)(16)(vi)
Bevill Exclusion Revisions and Clarifications, Checklist 167E, RCRA Cluster VIII, HSWA Provision.	63 FR 28556–28753, May 26, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.261.3(a)(2)(i) SCHWM R.61–79.261.3(a)(2)(iii) SCHWM R.61–79.261.4(b)(7) intro SCHWM R.61–79.261.4(b)(7)(i) SCHWM R.61–79.261.4(b)(7)(ii) SCHWM R.61–79.261.4(b)(7)(ii)(A)–(T) SCHWM R.61–79.261.4(b)(7)(iii) SCHWM R.61–79.261.4(b)(7)(iii)(A) SCHWM R.61–79.261.4(b)(7)(iii)(B)

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Exclusion of Recycled Wood Preserving Wastewaters, Checklist 167F, RCRA Cluster VIII, HSWA Provision.	63 FR 28556–28753, May 26, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.261.4(a)(9)(iii) SCHWM R.61–79.261.4(a)(9)(iii)(A) SCHWM R.61–79.261.4(a)(9)(iii)(B) SCHWM R.61–79.261.4(a)(9)(iii)(C) SCHWM R.61–79.261.4(a)(9)(iii)(D) SCHWM R.61–79.261.4(a)(9)(iii)(E)
Hazardous Waste Combustors; Revised Standards, Checklist 168, RCRA Cluster VIII, non-HSWA Provision.	63 FR 33782–33829, June 19, 1998.	SCHWMA § 44–56–30 SCHWM R.61–79.261.4(a)(16) SCHWM R.61–79.261.38(a) intro SCHWM R.61–79.261.38(b) intro SCHWM R.61–79.261.38/Table 1 SCHWM R.61–79.261.38(c) intro SCHWM R.61–79.261.38(c)(1) SCHWM R.61–79.261.38(c)(1)(i) intro SCHWM R.61–79.261.38(c)(1)(i)(A) SCHWM R.61–79.261.38(c)(1)(i)(B)
Hazardous Waste Combustors; Revised Standards, Checklist 168 cont., RCRA Cluster VIII, non-HSWA Provision.	63 FR 33782–33829, June 19, 1998.	SCHWM R.61–79.261.38(c)(1)(i)(C) SCHWM R.61–79.261.38(c)(1)(ii) intro SCHWM R.61–79.261.38(c)(2) intro SCHWM R.61–79.261.38(c)(2)(i) SCHWM R.61–79.261.38(c)(2)(ii) intro SCHWM R.61–79.261.38(c)(2)(ii)(A) SCHWM R.61–79.261.38(c)(2)(ii)(B) SCHWM R.61–79.261.38(c)(2)(iii) SCHWM R.61–79.261.38(c)(3) intro SCHWM R.61–79.261.38(c)(4) intro SCHWM R.61–79.261.38(c)(4)(i) intro SCHWM R.61–79.261.38(c)(4)(ii) SCHWM R.61–79.261.38(c)(5) intro SCHWM R.61–79.261.38(c)(5)(i) intro SCHWM R.61–79.261.38(c)(5)(ii) SCHWM R.61–79.261.38(c)(6) intro SCHWM R.61–79.261.38(c)(7) intro SCHWM R.61–79.261.38(c)(7)(i) intro SCHWM R.61–79.261.38(c)(7)(ii) intro SCHWM R.61–79.261.38(c)(7)(iii) SCHWM R.61–79.261.38(c)(8) intro SCHWM R.61–79.261.38(c)(8)(i) intro SCHWM R.61–79.261.38(c)(8)(ii) SCHWM R.61–79.261.38(c)(8)(iii) intro SCHWM R.61–79.261.38(c)(8)(iii)(A) SCHWM R.61–79.261.38(c)(8)(iii)(B) SCHWM R.61–79.261.38(c)(8)(iv) SCHWM R.61–79.261.38(c)(8)(v) SCHWM R.61–79.261.38(c)(8)(vi) SCHWM R.61–79.261.38(c)(8)(vii) SCHWM R.61–79.261.38(c)(8)(viii) intro SCHWM R.61–79.261.38(c)(8)(viii)(A) SCHWM R.61–79.261.38(c)(8)(viii)(B) SCHWM R.61–79.261.38(c)(8)(ix) SCHWM R.61–79.261.38(c)(9) SCHWM R.61–79.261.38(c)(10) intro SCHWM R.61–79.261.38(c)(10)(i) intro SCHWM R.61–79.261.38(c)(10)(ii) SCHWM R.61–79.261.38(c)(10)(iii) SCHWM R.61–79.261.38(c)(10)(iv) SCHWM R.61–79.261.38(c)(10)(v) SCHWM R.61–79.261.38(c)(10)(vi) SCHWM R.61–79.261.38(c)(10)(vii) SCHWM R.61–79.261.38(c)(10)(viii) intro SCHWM R.61–79.261.38(c)(10)(viii)(A) SCHWM R.61–79.261.38(c)(10)(ix) intro SCHWM R.61–79.261.38(c)(11) SCHWM R.61–79.261.38(c)(12) intro SCHWM R.61–79.261.38(c)(13) SCHWM R.61–79.270.42(j).intro SCHWM R.61–79.270.42(j)(1) SCHWM R.61–79.270.42(j)(2) SCHWM R.61–79.270.42 Appendix I SCHWM R.61–79.270.72(b)(8)
Hazardous Waste Combustors; Revised Standards, Checklist 168 continued. RCRA Cluster VIII, non-HSWA Provision.	63 FR 33782–22829, June 19, 1998.	

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Petroleum Refining Wastes, Checklist 169, RCRA Cluster IX, HSWA/non-HSWA Provision.	63 FR 42110–42189, August 6, 1998 as amended at 63 FR 54356–54357, October 9, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.261.3(a)(2)(iv)(C) SCHWM R.61–79.261.3(c)(2)(ii)(B) SCHWM R.61–79.261.3(c)(2)(ii)(E) SCHWM R.61–79.261.4(a)(12)(i) SCHWM R.61–79.261.4(a)(12)(ii) SCHWM R.61–79.261.4(a)(18 SCHWM R.61–79.261.4(a)(18)(i) SCHWM R.61–79.261.4(a)(18)(ii) SCHWM R.61–79.261.4(a)(19) SCHWM R.61–79.261.6(a)(3)(v)(C) SCHWM R.61–79.261.6(a)(3)(vi) SCHWM R.61–79.261.31(a) SCHWM R.61–79.261.42 SCHWM R.61–79.261 Appendix VII SCHWM R.61–79.266.100(b)(3) SCHWM R.61–79.268.35(a) SCHWM R.61–79.268.35(b) intro SCHWM R.61–79.268.35(b)(1) SCHWM R.61–79.268.35(b)(2) SCHWM R.61–79.268.35(b)(3) SCHWM R.61–79.268.35(b)(4) SCHWM R.61–79.268.35(b)(5) SCHWM R.61–79.268.25(c) SCHWM R.61–79.268.40/Table
Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment, Checklist 170, RCRA Cluster IV, HSWA.	63 FR 46332–46334, August 31, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.268.40(i)
Emergency Revision of the Land Disposal Restrictions (LDR) Treatment Standards for Listed Hazardous Waste from Carbamate Production. CHecklist 171, RCRA Cluster IX, HSWA.	63 FR 47410–47418, September 4, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.268.40(i) SCHWM R.61–79.268.40/Table SCHWM R.61–79.268.48(a)/Table
Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags, Checklist 172, RCRA Cluster IV, HSWA Provision.	63 FR 48124–48127, September 9, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.268.34(b)–(f)
Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K0888); Final Rule, Checklist 173, RCRA Cluster IX, HSWA Provision.	63 FR 51254–51267, September 24, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWM R.61–79.268.40/Table
Post-Closure Permit Requirement and Closure Process, Checklist 174, RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 56710–56735, October 22, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–40 SCHWMA § 44–56–50 SCHWMA § 44–56–60 SCHWMA § 44–56–130 SCHWM R.61–79.264.90(e) SCHWM R.61–79.264.90(f) intro SCHWM R.61–79.264.90(f) SCHWM R.61–79.264.90(f)(1) SCHWM R.61–79.264.90(f)(2) SCHWM R.61–79.264.110(c) SCHWM R.61–79.264.110(c)(1) SCHWM R.61–79.264.110(c)(2) SCHWM R.61–79.264.112(b)(8) SCHWM R.61–79.264.112(c)(2)(iv) SCHWM R.61–79.264.118(b)(4) SCHWM R.61–79.264.118(d)(2)(iv) SCHWM R.61–79.264.140(d) SCHWM R.61–79.264.140(d)(1) SCHWM R.61–79.264.140(d)(2)
Post-Closure Permit Requirement and Closure Process, Checklist 174 cont., RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 56710–56735, October 22, 1998.	SCHWM R.61–79.264.90(f) SCHWM R.61–79.264.90(f)(1) SCHWM R.61–79.264.90(f)(2) SCHWM R.61–79.264.110(c) SCHWM R.61–79.264.112(b)(8) SCHWM R.61–79.264.112(c)(1)(iv) SCHWM R.61–79.264.118(c)(4) SCHWM R.61–79.264.118(c)(5) SCHWM R.61–79.264.118(d)(1)(iii) SCHWM R.61–79.265.140(d)(2) SCHWM R.61–79.270.14(a) SCHWM R.61–79.264.28(a)

Federal requirements	Federal Register	Analogous state authority [1]
HWIR-Media, Checklist 175, RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 65874–65947, November 30, 1998.	SCHWMA § 44–56–30 SCHWMA § 44–56–60 SCHWM 61–79.260.10 "CAMU" SCHWM R.61–79.260.10 "facility" SCHWM R.61–79.260.10 "miscellaneous unit" SCHWM R.61–79.260.10 "remediation waste" SCHWM R.61–79.260.10 "remediation waste management site" SCHWM R.61–79.260.10 "staging pile" SCHWM R.61–79.261.4(g) intro SCHWM R.61–79.261.4(g)(1) SCHWM R.61–79.261.4(g)(2) intro SCHWM R.61–79.261.4(g)(2)(i) SCHWM R.61–79.261.4(g)(2)(ii) SCHWM R.61–79.261.4(g)(2)(iii) SCHWM R.61–79.264.1(j) intro SCHWM R.61–79.264.1(j)(1) SCHWM R.61–79.264.1(j)(2) SCHWM R.61–79.264.1(j)(3) intro SCHWM R.61–79.264.1(j)(3)(i) SCHWM R.61–79.264.1(j)(3)(ii) SCHWM R.61–79.264.1(j)(4) SCHWM R.61–79.264.1(j)(5) SCHWM R.61–79.264.1(j)(6) SCHWM R.61–79.264.1(j)(7) SCHWM R.61–79.264.1(j)(8) SCHWM R.61–79.264.1(j)(9) SCHWM R.61–79.264.1(j)(10) SCHWM R.61–79.264.1(j)(11) SCHWM R.61–79.264.1(j)(12) SCHWM R.61–79.264.1(j)(13) SCHWM R.61–79.264.73(b)(17) SCHWM R.61–79.264.101(d) SCHWM R.61–79.264.552(a) intro SCHWM R.61–79.264.552(a)(1) SCHWM R.61–79.264.552(a)(2) SCHWM R.61–79.264.553(a) SCHWM R.61–79.264.554 intro SCHWM R.61–79.264.554(a) SCHWM R.61–79.264.554(b) SCHWM R.61–79.264.554(c) intro SCHWM R.61–79.264.554(c)(1) SCHWM R.61–79.264.554(c)(2) SCHWM R.61–79.264.554(c)(3) SCHWM R.61–79.264.55(d) intro SCHWM R.61–79.264.554(d)(1) intro SCHWM R.61–79.264.554(d)(1)(i) SCHWM R.61–79.264.554(d)(1)(ii) SCHWM R.61–79.264.554(d)(1)(iii) SCHWM R.61–79.264.554(d)(2) SCHWM R.61–79.264.554(d)(2)(ii) SCHWM R.61–79.264.554(d)(2)(iii) SCHWM R.61–79.264.554(d)(2)(iv) SCHWM R.61–79.264.554(d)(2)(v) SCHWM R.61–79.264.554(d)(2)(vi) SCHWM R.61–79.264.554(e) intro SCHWM R.61–79.264.554(e)(1) SCHWM R.61–79.264.554(e)(1)(i) SCHWM R.61–79.264.554(e)(1)(ii) SCHWM R.61–79.264.554(e)(2) SCHWM R.61–79.264.554(f) intro SCHWM R.61–79.264.554(f)(1) SCHWM R.61–79.264.554(f)(2) SCHWM R.61–79.264.554(f)(3) SCHWM R.61–79.264.554(g) SCHWM R.61–79.264.554(h) SCHWM R.61–79.264.554(i) intro SCHWM R.61–79.264.554(i)(1) SCHWM R.61–79.264.554(i)(1)(i) SCHWM R.61–79.264.554(i)(1)(ii) SCHWM R.61–79.264.554(i)(2) SCHWM R.61–79.264.554(j) intro SCHWM R.61–79.264.554(j)(1) SCHWM R.61–79.264.554(j)(1)(i)
HWIR-Media, Checklist 175 cont., RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 65874–65947, November 30, 1998.	

Federal requirements	Federal Register	Analogous state authority [1]
		SCHWM R.61–79.264.554(j)(1)(ii)
		SCHWM R.61–79.264.554(j)(1)(iii)
		SCHWM R.61–79.264.554(j)(2)
		SCHWM R.61–79.264.554(j)(3)
		SCHWM R.61–79.264.554(k) intro
		SCHWM R.61–79.264.554(k)(1)
		SCHWM R.61–79.264.554(k)(2)
		SCHWM R.61–79.264.554(l) intro
		SCHWM R.61–79.264.554(l)(1)
		SCHWM R.61–79.264.554(l)(1)(i)
		SCHWM R.61–79.264.554(l)(1)(ii)
		SCHWM R.61–79.264.554(l)(2)
		SCHWM R.61–79.264.554(l)(3)
		SCHWM R.61–79.264.554(l)(4)
		SCHWM R.61–79.264.554(m)
		SCHWM R.61–79.265.1(b)
		SCHWM R.61–79.268.2(c)
		SCHWM R.61–79.268.50(g)
		SCHWM R.61–79.270.2
		SCHWM R.61–79.270.11(d)(1)
		SCHWM R.61–79.270.11(d)(2)
		SCHWM R.61–79.270.42 Appendix 1
HWIR-Media, Checklist 175 cont., RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 65874–65947, November 30, 1998.	SCHWM R.61–79.270.80(b)
		SCHWM R.61–79.270.80(c)
		SCHWM R.61–79.270.80(d) intro
		SCHWM R.61–79.270.80(d)(1)
		SCHWM R.61–79.270.80(d)(2)
		SCHWM R.61–79.270.80(e)
		SCHWM R.61–79.270.80(f)
		SCHWM R.61–79.270.85(a) intro
		SCHWM R.61–79.270.85(a)(1)
		SCHWM R.61–79.270.85(a)(2)
		SCHWM R.61–79.270.85(b)
		SCHWM R.61–79.270.85(c)
		SCHWM R.61–79.270.90
		SCHWM R.61–79.270.95
		SCHWM R.61–79.270.100
		SCHWM R.61–79.270.105
		SCHWM R.61–79.270.110intro
		SCHWM R.61–79.270.110(a)
		SCHWM R.61–79.270.110(b)
		SCHWM R.61–79.270.110(c)
		SCHWM R.61–79.270.110(d)
		SCHWM R.61–79.270.110(e) intro
		SCHWM R.61–79.270.110(e)(1)
		SCHWM R.61–79.270.110(e)(2)
		SCHWM R.61–79.270.110(e)(3)
		SCHWM R.61–79.270.110(f) intro
		SCHWM R.61–79.270.110(f)(1)
		SCHWM R.61–79.270.110(f)(2)
		SCHWM R.61–79.270.110(f)(3)
		SCHWM R.61–79.270.110(g)
		SCHWM R.61–79.270.110(h)
		SCHWM R.61–79.270.110(i)
		SCHWM R.61–79.270.115
		SCHWM R.61–79.270.120
		SCHWM R.61–79.270.125
		SCHWM R.61–79.270.130(a)
		SCHWM R.61–79.270.130(b)
		SCHWM R.61–79.270.135intro
		SCHWM R.61–79.270.135(a)
		SCHWM R.61–79.270.135(b) intro
		SCHWM R.61–79.270.135(b)(1)
		SCHWM R.61–79.270.135(b)(2)
		SCHWM R.61–79.270.135(b)(3)
		SCHWM R.61–79.270.135(b)(4)
		SCHWM R.61–79.270.135(c)
		SCHWM R.61–79.270.140 intro
		SCHWM R.61–79.270.140(a)
		SCHWM R.61–79.270.140(b) intro
		SCHWM R.61–79.270.140(b)(4)

Federal requirements	Federal Register	Analogous state authority [1]
HWIR-Media, Checklist 175 cont., RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 65874–65947, November 30, 1998.	SCHWM R.61–79.270.140(b)(1) SCHWM R.61–79.270.140(b)(2) SCHWM R.61–79.270.140(b)(3) SCHWM R.61–79.270.140(c) SCHWM R.61–79.270.145(a) intro SCHWM R.61–79.270.145(a)(1) SCHWM R.61–79.270.145(a)(2) SCHWM R.61–79.270.145(a)(3) SCHWM R.61–79.270.145(a)(4) SCHWM R.61–79.270.145(b) SCHWM R.61–79.270.145(c) intro SCHWM R.61–79.270.145(c)(1) SCHWM R.61–79.270.145(c)(2) SCHWM R.61–79.270.145(c)(3) SCHWM R.61–79.270.145(c)(4) SCHWM R.61–79.270.145(c)(5) SCHWM R.61–79.270.145(c)(6) SCHWM R.61–79.270.145(c)(7) SCHWM R.61–79.270.145(c)(8) SCHWM R.61–79.270.145(c)(9) SCHWM R.61–79.270.145(d) intro SCHWM R.61–79.270.145(d)(1) SCHWM R.61–79.270.145(d)(2) SCHWM R.61–79.270.145(d)(3) SCHWM R.61–79.270.150(a) SCHWM R.61–79.270.150(b) SCHWM R.61–79.270.150(c) SCHWM R.61–79.270.150(d) SCHWM R.61–79.270.150(e) SCHWM R.61–79.270.150(f) SCHWM R.61–79.270.150(f)(1) SCHWM R.61–79.270.150(f)(2) SCHWM R.61–79.270.150(f)(3) SCHWM R.61–79.270.150(f)(4) SCHWM R.61–79.270.150(f)(5) SCHWM R.61–79.270.150(f)(6) SCHWM R.61–79.270.150(f)(7) SCHWM R.61–79.270.150(g) SCHWM R.61–79.270.155(a) SCHWM R.61–79.270.155(a)(1) SCHWM R.61–79.270.155(a)(2) SCHWM R.61–79.270.155(a)(3) SCHWM R.61–79.270.155(b) SCHWM R.61–79.270.160 SCHWM R.61–79.270.160(a) SCHWM R.61–79.270.160(b) SCHWM R.61–79.270.160(c) SCHWM R.61–79.270.165 SCHWM R.61–79.270.170 SCHWM R.61–79.270.175(a) intro SCHWM R.61–79.270.175(a)(1) SCHWM R.61–79.270.175(a)(1) SCHWM R.61–79.270.175(a)(2) SCHWM R.61–79.270.175(a)(3) SCHWM R.61–79.270.175(a)(4) SCHWM R.61–79.270.175(a)(5) SCHWM R.61–79.270.175(a)(6) SCHWM R.61–79.270.175(a)(7) SCHWM R.61–79.270.175(a)(8) SCHWM R.61–79.270.175(b) SCHWM R.61–79.270.175(c) SCHWM R.61–79.270.180(a) SCHWM R.61–79.270.180(b) SCHWM R.61–79.270.185 SCHWM R.61–79.270.190(a) SCHWM R.61–79.270.195 SCHWM R.61–79.270.200 SCHWM R.61–79.270.205 SCHWM R.61–79.270.210 intro SCHWM R.61–79.270.210(a) SCHWM R.61–79.270.210(b) SCHWM R.61–79.270.215(a) SCHWM R.61–79.270.215(b) SCHWM R.61–79.270.215(c)
HWIR-Media, Checklist 75 cont., RCRA Cluster IX, HSWA/non HSWA Provision.	63 FR 65874–65947, November 30, 1998.	

Federal requirements	Federal Register	Analogous state authority [1]
		SCHWM R.61–79.270.215(d)
		SCHWM R.61–79.270.220(a)
		SCHWM R.61–79.270.220(b)
		SCHWM R.61–79.270.225
		SCHWM R.61–79.270.230(a)
		SCHWM R.61–79.270.230(b)
		SCHWM R.61–79.270.230(c)
		SCHWM R.61–79.270.230(d) intro
		SCHWM R.61–79.270.230(d)(1)
		SCHWM R.61–79.270.230(d)(2)
		SCHWM R.61–79.270.230(d)(3)
		SCHWM R.61–79.270.230(d)(4)
		SCHWM R.61–79.270.230(e)
		SCHWM R.61–79.270.230(e)(1)
		SCHWM R.61–79.270.230(e)(2)
Organic Air Emissions Standards: Clarification and Technical, Amendments, Checklist 177, RCRA Cluster IX, HSWA Provision.	64 FR 3382, January 21, 1999.	SCHWMA § 44–56–30 SCHWMA § 44–56–130 SCHWMA R.61–79.262.34(a)(1)(i) SCHWM R.61–79.262.34(a)(1)(ii) SCHWM R.61–79.264.1031 SCHWM R.61–79.264.1080(b)(5) SCHWM R.61–79.264.1083(a)(1)(i)
Organic Air Emissions Standards: Clarificaiton and Technical Amendments, Checklist 177 cont., RCRA Cluster, IX, HSWA Provision.	64 FR 3382, January 21, 1999.	SCHWM R.61–79.264.1083(a)(1)(ii) SCHWM R.61–79.264.1083(b)(1)(i) SCHWM R.61–79.264.1083(b)(1)(ii) SCHWM R.61–79.264.1084(h)(3) intro SCHWM R.61–79.264.1084(h)(3)(i) SCHWM R.61–79.264.1084(h)(3)(ii) SCHWM R.61–79.264.1086(e)(6) SCHWM R.61–79.265.1080(b)(5) SCHWM R.61–79.265.1084(a)(1)(i) SCHWM R.61–79.265.1084(a)(1)(ii) SCHWM R.61–79.265.1084(a)(3)(ii)(B) SCHWM R.61–79.265.1084(a)(3)(ii)(B) SCHWM R.61–79.265.1084(a)(3)(ii)(D) SCHWM R.61–79.265.1084(a)(3)(iii) SCHWM R.61–79.265.1084(b)(1)(i) SCHWM R.61–79.265.1084(b)(1)(ii) SCHWM R.61–79.265.1084(b)(3)(ii)(B) SCHWM R.61–79.265.1084(b)(3)(ii)(D) SCHWM R.61–79.265.1084(b)(3)(iii) SCHWM R.61–79.265.1085(h)(3) SCHWM R.61–79.265.1085(h)(3)(i) SCHWM R.61–79.265.1085(h)(3)(ii) SCHWM R.61–79.265.1087(e)(6)
Petroleum Refining Process Wastes Leachate Exemption, Checklist 178, RCRA Cluster IX, HSWA Provision.	64 FR 6806, February 11, 1999.	SCHWMA § 44–56–30 SCHWM R.61–79.261.4(b)(15) intro SCHWM R.61–79.261.4(b)(15)(i) SCHWM R.61–79.261.4(b)(15)(ii) SCHWM R.61–79.261.4(b)(15)(iii) SCHWM R.61–79.261.4(b)(15)(iv) SCHWM R.61–79.261.4(b)(15)(v)
Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards, Checklist 179, RCRA Cluster IX, HSWA/non-HSWA Provision.	64 FR 25408–25417, May 11, 1999.	SCHWMA § 44–45–30 SCHWMA § 44–56–130 SCHWM R.61–79.261.2(c)(3) SCHWM R.61–79.261.2(c)(4)/Table SCHWM R.61–79.261.2(e)(1)(iii) SCHWM R.61–79.261.4(a)(16) SCHWM R.61–79.261.4(a)(17) intro SCHWM R.61–79.261.4(b)(7)(iii) SCHWM R.61–79.261.4(b)(7)(iii)(A) SCHWM R.61–79.262.34(d)(4) SCHWM R.61–79.268.2(h) SCHWM R.61–79.268.2(k) SCHWM R.61–79.268.7(a)(4)/Table SCHWM R.61–79.268.7(b)(3)(ii)/Table SCHWM R.61–79.268.7(b)(4)(iv) SCHWM R.61–79.268.9(d)(2) intro SCHWM R.61–79.268.9(d)(2)(i) SCHWM R.61–79.268.40(i) first

Federal requirements	Federal Register	Analogous state authority [1]
Land Disposal Restrictions Phase IV—Technical Corrections and Clarifications to Treatment Standards, Checklist 179 cont., RCRA Cluster IX, HSWA/non-HSWA Provision.	64 FR 25408–25417, May 11, 1999.	SCHWM R.61–79.268.40(i) second SCHWM R.61–79.268.40(j) SCHWM R.61–79.268.40/Table. SCHWM R.61–79.268.48(a)/Table SCHWM R.61–79.268.49(c)(3) intro SCHWM R.61–79.268.49(c)(3)(A) SCHWM R.61–79.268.49(c)(3)(B)
Test Procedures for the Analysis of Oil and Grease and Non-Polar Material, Checklist 180, RCRA Cluster IX, non-HSWA Provision.	64 FR 26315–26327, May 14, 1999.	SCHWMA § 44–56–30 SCHWMA § 44–56–40 SCHWMA § 44–56–50 SCHWMA § 44–56–130 SCHWM R.61–79.260.11(a)(11) SCHWM R.61–79.260.11(a)(16)
Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps, Checklist 181, RCRA Cluster X, non-HSWA Provision.	64 FR 36466–36490, July 6, 1999.	SCHWMA § 44–56–30 SCHWM R.61–79.260.10 SCHWM R.61–79.261.9(b) SCHWM R.61–79.261.9(c) SCHWM R.61–79.261.9(d) SCHWM R.61–79.264.1(g)(11)(ii) SCHWM R.61–79.264.1(g)(11)(iii) SCHWM R.61–79.264.1(g)(11)(iv) SCHWM R.61–79.265.1(c)(14)(ii) SCHWM R.61–79.265.1(c)(14)(iii) SCHWM R.61–79.265.1(c)(14)(iv) SCHWM R.61–79.268.1(f)(2) SCHWM R.61–79.268.1(f)(3) SCHWM R.61–79.268.1(f)(4) SCHWM R.61–79.270.1(c)(2)(viii)(B) SCHWM R.61–79.270.1(c)(2)(viii)(C) SCHWM R.61–79.270.1(c)(2)(viii)(D) SCHWM R.61–79.273.1(a)(2) SCHWM R.61–79.273.1(a)(3) SCHWM R.61–79.273.1(a)(4) SCHWM R.61–79.273.2(a)(1) SCHWM R.61–79.273.2(b)(2) SCHWM R.61–79.273.2(b)(3) SCHWM R.61–79.273.3(a) SCHWM R.61–79.273.4(a) SCHWM R.61–79.273.5(a) SCHWM R.61–79.273.5(b) SCHWM R.61–79.273.5(c) SCHWM R.61–79.273.6 SCHWM R.61–79.273.7 SCHWM R.61–79.273.8(a)
Universal Waste Rule: Specific Provisions for Hazardous Waste Lamps, Checklist 181, RCRA Cluster IX, non-HSWA Provision.	64 FR 36466–36490, July 6, 1999.	SCHWM R.61–79.273.8(a)(1) SCHWM R.61–79.273.8(a)(2) SCHWM R.61–79.273.8(b) SCHWM R.61–79.273.9 SCHWM R.61–79.273.10 SCHWM R.61–79.273.13(d) SCHWM R.61–79.273.13(d)(1) SCHWM R.61–79.273.13(d)(2) SCHWM R.61–79.273.14(e) SCHWM R.61–79.273.30 SCHWM R.61–79.273.32(b)(4) SCHWM R.61–79.273.32(b)(5) SCHWM R.61–79.273.32(d) SCHWM R.61–79.273.33(d)(1) SCHWM R.61–79.273.33(d)(2) SCHWM R.61–79.273.34(e) SCHWM R.61–79.273.50 SCHWM R.61–79.273.60(a) SCHWM R.61–79.273.81(a)
Land Disposal Restrictions Phase IV—Technical Corrections, Checklist 183, RCRA Cluster X, non-HSWA Provision.	64 FR 56469–56472, October 20, 1999.	SCHWMA § 44–56–30 SCHWM R.61–79.261.32 SCHWM R.61–79.262.34(a)(4) SCHWM R.61–79.268.32(a)(3)(iii) SCHWM R.61–79.268.40(j) SCHWM R.61–79.268.40/Table SCHWM R.61–79.268.49(c)(1)(A) SCHWM R.61–79.268.49(c)(1)(B)

Federal requirements	Federal Register	Analogous state authority [1]
Accumulation Time for Waste Water Treatment Sludges, Checklist 184, RCRA Cluster X, non-HSWA Provision.	64 FR 12378–12398, March 8, 2000.	SCHWMA § 44–56–30 SCHWMA § 44–56–50 SCHWM R.61–79.262.34(a)(4) SCHWM R.61–79.262.34(g) intro SCHWM R.61–79.262.34(g)(1) SCHWM R.61–79.262.34(g)(2) SCHWM R.61–79.262.34(g)(3) SCHWM R.61–79.262.34(g)(4) intro SCHWM R.61–79.262.34(g)(4)(i) intro SCHWM R.61–79.262.34(g)(4)(i)(A) SCHWM R.61–79.262.34(g)(4)(i)(B) SCHWM R.61–79.262.34(g)(4)(i)(C) intro SCHWM R.61–79.262.34(g)(4)(i)(C)(1) & (2) SCHWM R.61–79.262.34(g)(4)(ii) SCHWM R.61–79.262.34(g)(4)(iv) SCHWM R.61–79.262.34(g)(4)(v) SCHWM R.61–79.262.34(h) SCHWM R.61–79.262.34(i)
Organobromide Production Wastes Vacatur, Checklist 185, RCRA Cluster X, HSWA Provision.	64 FR 14472–14475, March 17, 2000.	SCHWMA § 44–56–30 SCHWM R.61–79.261.32/Table SCHWM R.61–79.261.33(f)/Table SCHWM R.61–79.261 Appendix VII SCHWM R.61–79.261 Appendix VIII SCHWM R.61–79.268.33 SCHWM R.61–79.268.40/Table SCHWM R.61–79.268.48(a)/Table
Petroleum Refining Process Wastes Clarification, Checklist 187, RCRA Cluster X, HSWA Provision.	64 FR 36365–36367, June 8, 2000.	SCHWMA § 44–56–30 SCHWM R.61–79.261.31(a)/table SCHWM R.61–79.268 Appendix VII

[1] The South Carolina provisions are from the South Carolina Hazardous Waste Management Regulations, August 20, 2000 (RCRA 8 and 9) and October 26, 2001 (RCRA 10), unless otherwise stated.

H. Where Are the Revised State Rules Different From the Federal Rules?

There are no State requirements that are more stringent or broader in scope than the Federal requirements.

I. Who Handles Permits After the Authorization Takes Effect?

South Carolina will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which South Carolina is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in South Carolina?

South Carolina is not authorized to carry out its hazardous waste program in Indian country within the State, which includes the Catawba Indian Nation. Therefore, this action has no effect on Indian country. EPA will continue to implement and administer the RCRA program in these lands.

K. What is Codification and is EPA Codifying South Carolina's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart PP for this authorization of South Carolina's program changes until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 6, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 F.R. 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective November 3, 2003.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 18, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–22312 Filed 8–29–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 99–363; FCC 00–99]

Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document makes a minor correction to Part 76 of the Commission's rules pertaining to retransmission consent issues which were published in the **Federal Register** at 65 FR 15559, March 23, 2000 regarding carriage of television broadcast signals by multichannel video programming distributors ("MVPDs").

DATES: Effective September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Kenneth Lewis, Media Bureau, (202) 418–2622.

SUPPLEMENTARY INFORMATION: The First Report and Order, FCC 00–99, adopted March 14, 2000; released March 16, 2000, approved a final rule governing the negotiation of agreements for the retransmission of television broadcast stations by MVPDs, established standards for implementing a good faith negotiation requirement of broadcasters to MVPDs, and provided clarification regarding the prohibition against exclusive retransmission consent contracts. In this document we make a non-substantive rule change to correct an error in the publication of § 76.65 of the Commission's rules.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and needs to be clarified.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Accordingly, 47 CFR Part 76 is corrected by making the following correcting amendments:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE.

■ 1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

■ 2. In § 76.65, revise paragraph (c) to read as follows:

§ 76.65 Good faith and exclusive retransmission consent complaints.

* * * * *

(c) Any multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the regulations set forth in this section or § 76.64(l) may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7.

* * * * *

[FR Doc. 03–22201 Filed 8–29–03; 8:45 am]

BILLING CODE 6712–01–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 538 and 552

[GSAR Case No. 2002–G506; GSAR Change 5]

RIN 3090–AH25

General Services Administration Acquisition Regulation; Identification of Products That Have Environmental Attributes

AGENCIES: General Services Administration (GSA), Office of Acquisition Policy.

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is amending the General Services Administration Acquisition Regulation (GSAR) by revising the clause concerning identification of energy-efficient office equipment and supplies containing recovered materials or other environmental attributes for consistency with the Federal Acquisition Regulation (FAR) and issuance of Executive Order 13101, Greening the Government Through Waste Prevention, Recycling, and Federal Acquisition, and Executive Order 13123, Greening the Government Through Efficient Energy Management.

DATES: *Effective Date:* September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Duarte, Regulatory Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4225, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Laura Auletta, GSA Acquisition Policy Division, at (202) 208–7279. Please cite GSAR case 2002–G506.

SUPPLEMENTARY INFORMATION:

A. Background

GSAR 538.273(a)(3) is revised to reflect the new clause title for GSAR clause 552.238–72, "Identification of Products that have Environmental Attributes." The clause has been revised to update environmental definitions and to reflect language consistent with the FAR and with Executive Orders 13101 and 13123. GSA published a proposed rule, Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes, in the **Federal Register** at 65 FR 44508, July 18, 2000. One respondent submitted comments in response to the proposed rule. GSA considered the comments in developing the final rule by revising the clause 552.238–72 to make editorial changes for consistency and clarification with respect to the definition of "energy-efficient product." The clause was also revised to clarify the requirement to identify products designated by the Environmental Protection Agency (EPA) in their Comprehensive Procurement Guidelines (CPGs) that meet EPA purchasing recommendations for recovered and post-consumer material content. These specifically designated products should be identified separate from the umbrella category of products containing recovered materials. The rule includes information on attaching icons to product offerings in GSA *Advantage!* to indicate specific environmental attributes.

B. Executive Order 12866

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

The General Services Administration certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* These environmental attributes are salient characteristics of the products offered and, therefore, are well known to vendors who market to Government customers required or encouraged to purchase products with specific environmental attributes. Therefore, the identification of such attributes in the offer and other marketing materials such as brochures, catalogs, websites, and GSA *Advantage!* does not constitute a significant economic impact.

D. Paperwork Reduction Act

The revised clause at 552.238–72, Identification of Products that have Environmental Attributes, contains an information collection requirement subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). However, the revisions to the clause made by this rule do not affect the information collection requirement approved previously by the Office of Management and Budget (OMB) and assigned OMB Control Number 3090–0262.

List of Subjects in 48 CFR Parts 538 and 552

Government procurement.

Dated: August 26, 2003.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy.

■ Therefore, GSA amends 48 CFR parts 538 and 552 as set forth below:

■ 1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

■ 2. Amend section 538.273 by revising paragraph (a)(3) to read as follows:

538.273 Contract clauses.

(a) * * *

(3) 552.238–72, Identification of Products that have Environmental Attributes.

* * * * *

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 552.212–72 by revising the date of the clause; and in paragraph (b) by revising entry 552.238–72 to read as follows:

552.212–72 Contract terms and conditions required to implement statutes or Executive Orders applicable to GSA acquisition of commercial items.

* * * * *

Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to GSA Acquisition of Commercial Items (Sept 2003)

* * * * *

(b) * * *

552.238–72 Identification of Products that have Environmental Attributes

■ 4. Revise section 552.238–72 to read as follows:

552.238–72 Identification of products that have environmental attributes.

As prescribed in 538.273(a)(3), insert the following clause:

Identification of Products That Have Environmental Attributes (Sept. 2003)

(a) Several laws, Executive orders, and Agency directives require Federal buyers to purchase products that are less harmful to the environment, when they are life cycle cost-effective (*see* FAR Subpart 23.7). The U.S. General Services Administration (GSA) requires contractors to highlight environmental products under Federal Supply Service schedule contracts in various communications media (*e.g.*, publications and electronic formats).

(b) *Definitions.* As used in this clause—

Energy-efficient product means a product that—

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the ENERGY STAR® trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

GSA Advantage! is an on-line shopping mall and ordering system that provides customers with access to products and services under GSA contracts.

Other environmental attributes refers to product characteristics that provide environmental benefits, excluding recovered materials and energy and water efficiency. Several examples of these characteristics are biodegradable, recyclable, reduced pollutants, ozone safe, and low volatile organic compounds (VOCs).

Post-consumer material means a material or finished product that has served its intended use and has been discarded for disposal or recovery, having completed its life as a consumer item. Post-consumer material is part of the broader category of "recovered material." The Environmental Protection Agency (EPA) has developed a list of EPA-designated products in their Comprehensive Procurement Guidelines (CPGs) to provide Federal agencies with purchasing recommendations on specific products in a Recovered Materials Advisory Notice (RMAN). The RMAN contains recommended recovered and post-consumer material content levels for the specific products designated by EPA (40 CFR part 247 and *http://www.epa.gov/cpg/*).

Recovered materials means waste materials and by-products recovered or diverted from solid waste, but the term does not include those materials and by-products generated from, and commonly reused within, an original manufacturing process (Executive Order 13101 and 42 U.S.C. 6903(19) and *http://www.epa.gov/cpg/*). For paper and paper products, see the definition at FAR 11.301 (42 U.S.C. 6962(h)).

Remanufactured means factory rebuilt to original specifications.

Renewable energy means energy produced by solar, wind, geothermal, and biomass power.

Renewable energy technology means—

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

(c)(1) The offeror must identify products that—

(i) Are compliant with the recovered and post-consumer material content levels recommended in the Recovered Materials Advisory Notices (RMANs) for EPA-designated products in the CPG program (*http://www.epa.gov/cpg/*);

(ii) Contain recovered materials that either do not meet the recommended levels in the RMANs or are not EPA-designated products in the CPG program (*see* FAR 23.401 and *http://www.epa.gov/cpg/*);

(iii) Are energy-efficient, as defined by either ENERGY STAR® and/or FEMP's designated top 25th percentile levels (*see* ENERGY STAR® at *http://www.energystar.gov/* and FEMP at *http://www.eere.energy.gov/femp/procurement/*);

(iv) Are water-efficient;

(v) Use renewable energy technology;

(vi) Are remanufactured; and

(vii) Have other environmental attributes.

(2) These identifications must be made in each of the offeror's following mediums:

(i) The offer itself.

(ii) Printed commercial catalogs, brochures, and pricelists.

(iii) Online product website.

(iv) Electronic data submission for GSA *Advantage!* submitted via GSA's Schedules Input Program (SIP) software or the Electronic Data Inter-change (EDI). Offerors can use the SIP or EDI methods to indicate environmental and other attributes for each product that is translated into respective icons in GSA *Advantage!*.

(d) An offeror, in identifying an item with an environmental attribute, must possess evidence or rely on a reasonable basis to substantiate the claim (*see* 16 CFR part 260, Guides for the Use of Environmental Marketing Claims). The Government will accept an offeror's claim of an item's environmental attribute on the basis of—

(1) Participation in a Federal agency-sponsored program (*e.g.*, the EPA and DOE ENERGY STAR® product labeling program);

(2) Verification by an independent organization that specializes in certifying such claims; or

(3) Possession of competent and reliable evidence. For any test, analysis, research, study, or other evidence to be "competent and reliable," it must have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

(End of clause)

[FR Doc. 03–22239 Filed 8–29–03; 8:45 am]

BILLING CODE 5820–BR–P

DEPARTMENT OF ENERGY

48 CFR Parts 923 and 970

RIN 1991–AB59

Acquisition Regulation: Motor Vehicle Fleet Fuel Efficiency

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is amending its acquisition regulation to implement Executive Order 13149, dated April 21, 2000, entitled *Greening the Government Through Federal Fleet and Transportation Efficiency*. Specifically, the Department is addressing the requirements relating to Procurement of Environmentally Preferable Motor Vehicle Products and Government-Owned Contractor Operated Vehicles, as they relate to the Department's acquisition program, including its management contracts with motor vehicle fleet responsibilities.

EFFECTIVE DATE: October 2, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Langston at (202) 586–8247 or *richard.langston@pr.doe.gov*.

SUPPLEMENTARY INFORMATION

I. Background
II. Section-by-Section Analysis
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under Executive Order 12988
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under the National Environmental Policy Act
F. Review Under Executive Order 13132
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Review Under the Treasury and General Government Appropriations Act, 1999
I. Congressional Review
J. Review Under Executive Order 13211
K. Review Under the Treasury and General Government Appropriations Act, 2001
L. Approval by the Office of the Secretary of Energy

I. Background

The purpose of this rulemaking is to implement the goals and requirements of Executive Order 13149, dated April 21, 2000 (65 FR 24593), entitled *Greening the Government Through Federal Fleet and Transportation Efficiency*.

The purpose of the Executive Order is to ensure that the Federal Government exercises leadership in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles and alternative fuels. The specific provisions affecting the Department's acquisition program including its management contracts with motor vehicle fleet responsibilities are as follows. Part 2 of the Executive Order establishes goals for the reduction of petroleum consumption in the Federal Government motor vehicle fleet and requires the development of strategies for the increased use of alternative fuel vehicles, increased use of alternative fuels accompanied by improved alternative fuel infrastructure, and the acquisition of higher fuel economy vehicles. In addition, section 403 of the Executive Order encourages the acquisition by Federal agencies of environmentally preferable motor vehicle products, including the use of biobased motor vehicle products. Section 403.a emphasizes the current restriction on the use of other than re-refined motor vehicle lubricating oils (found in section 507 of Executive Order 13101, and implemented by 48 CFR (FAR) 23.404) by restating that restriction as a prohibition on the acquisition of virgin petroleum motor vehicle lubricating oils. That restriction and the requirements of Sections 403.b and 403.c are addressed by the Department's Affirmative Procurement Program. An Affirmative Procurement Program is required of Federal agencies by 48 CFR (FAR) 23.404, Agency affirmative procurement programs, and is implemented in DOE by 48 CFR (DEAR) 923.405, Procedures [DOE supplemental coverage—paragraph (e)]. The Department's Affirmative Procurement Program extends to its management contractors pursuant to 48 CFR (DEAR) 970.2304, Use of recovered/recycled materials. Section 505 of the Executive Order requires agencies to ensure that the goals and requirements of the Executive Order are incorporated into management contracts which involve management of Federal fleet motor vehicles. Finally, Section 506 of the Executive Order exempts military tactical, law enforcement and emergency vehicles from the requirements of the Executive Order.

The clause specified by this rule is a mandatory clause for use in management and operating contracts involving motor vehicle fleet operations.

Contracting officers are strongly encouraged to add the clause at the next fee negotiation following the effective date of this rule. The clause should be included in new management and operating contracts.

II. Section-by-Section Analysis

The Department of Energy amends the regulation as follows:

1. A new subpart 923.7, Contracting For Environmentally Preferable and Energy-Efficient Products and Services, is added. It contains § 923.703, Policy.

2. A new § 970.2307, Contracting for environmentally preferable and energy-efficient products and services, is added. It includes Subsections 970.2307–1, Motor vehicle fleet operations, and 970.2307–2, Contract clause.

3. A new clause, DOE Motor Vehicle Fleet Fuel Efficiency, is added as § 970.5223–5.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, this rule is not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and, (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, these regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which requires preparation of an initial regulatory flexibility analysis for any rule that must be proposed for public comment and that is likely to have significant economic impact on a substantial number of small entities. DOE is not required by the Administrative Procedure Act (5 U.S.C. 553) or any other law to propose this procurement rule for public comment. Accordingly, the Regulatory Flexibility Act requirements do not apply to this rulemaking, and no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

There are no new information collection or record keeping requirements associated with this action.

E. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this rule falls into a class of actions which would not individually or cumulatively have significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, subpart D) implementing the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*). Specifically, this rule is categorically excluded from NEPA review because the rule establishes internal procedures and a DEAR contract clause and is considered to be strictly procedural (categorical exclusion A6); therefore, this rule does not require an environmental impact statement or environmental assessment pursuant to NEPA.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking would only affect private sector entities, and the impact is less than $100 million.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277), requires Federal agencies to issue a Family Policymaking Assessment for any rule or policy that may affect family well-being. This rulemaking will have no impact on family well-being.

I. Congressional Review

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of this rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

J. Review Under Executive Order 13211

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use, (66 FR 28355, May 22, 2001) requires Federal agencies to prepare and submit to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget, a Statement of Energy Effects for any significant energy action. A "significant energy action" is defined as any action by an agency that promulgates or is expected to lead to promulgation of a final rule, and that: (1) Is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have

a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

Today's rule is not a significant energy action. Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001, 44 U.S.C. 3516, *note*, provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (February 22, 2002), and DOE's guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed today's notice under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in these guidelines.

L. Approval by the Office of the Secretary of Energy

Issuance of this final rule has been approved by the Office of the Secretary of Energy.

List of Subjects in 48 CFR Parts 923 and 970

Government procurement.

Issued in Washington, DC, on August 26, 2003.

Stephen D. Mournighan,

Acting Director, Office of Procurement and Assistance Management, Office of Management, Budget and Evaluation, Department of Energy.

Robert C. Braden, Jr.,

Director, Office of Procurement and Assistance Management, National Nuclear Security Administration.

■ For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as follows.

PART 923—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

■ 1. The authority citation for part 923 continues to read:

Authority: 42 U.S.C. 7101 *et seq.*; 41 U.S.C. 418b; 50 U.S.C. 2401 *et seq.*

■ 2. Subpart 923.7 is added to read as follows:

Subpart 923.7—Contracting for Environmentally Preferable and Energy-efficient Products and Services

§ 923.703 Policy.

Executive Order 13149, dated April 21, 2000, entitled *Greening the Government Through Federal Fleet and Transportation Efficiency*, provides that the Federal Government exercise leadership in the reduction of petroleum consumption through improvements in its motor fleet fuel efficiency and increases in its use of alternative fuel vehicles and alternative fuels. The specific provisions affecting the Department's acquisition program are as follows. Part 2 of the Executive Order establishes goals for the reduction of petroleum consumption in the motor vehicle fleet and requires the development of strategies for the increased use of alternative fuel vehicles, increased use of alternative fuels accompanied by improved alternative fuel infrastructure, and the acquisition of higher fuel economy vehicles. Procurement personnel involved in the acquisition of motor vehicles, including lease, and motor vehicle products should familiarize themselves with these requirements and assist their fleet management personnel in acquiring vehicles and products which comply with the requirements of the Executive Order and the Department's compliance strategy. In addition, section 403 of the Executive Order provides for the acquisition of environmentally preferable motor vehicle products, including the use of biobased motor vehicle products. Environmentally preferable motor vehicle products include re-refined motor vehicle lubricating oils, retread tires, recycled engine coolants, and bio-based motor vehicle products. Use of these products is addressed by the Department's Affirmative Procurement Program required by 48 CFR (FAR) 23.404, Agency affirmative procurement programs, as implemented by 48 CFR (DEAR) 923.405, Procedures [DOE supplemental coverage—paragraph (e)]. Environmentally preferable motor vehicle products are among the items designated in the Comprehensive Procurement Guidelines, which lists products with recovered content that Federal agencies and their contractors are to buy. That list is published by the Environmental Protection Agency pursuant to the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6962, and regulations published at 40 CFR part 247.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

■ 3. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 2201; 42 U.S.C. 7101 *et seq.*; 50 U.S.C. 2401 *et seq.*

Subpart 970.23—Environmental, Conservation, and Occupational Safety Programs

■ 4. Sections 970.2307, 970.2307–1, and 970.2307–2 are added to read as follows:

§ 970.2307 Contracting for Environmentally Preferable and Energy-Efficient Products and Services.

§ 970.2307–1 Motor vehicle fleet operations.

Executive Order 13149 provides that the Federal motor vehicle fleet will serve as an example and provide a leadership role in the reduction of petroleum consumption through improvements in fleet fuel efficiency and the use of alternative fuel vehicles and alternative fuels. Part 2 of the Order establishes goals for Federal Government fleet efficiency and requires the development of strategies to accomplish the goals. Section 403 of the Order provides that environmentally preferable motor vehicle products, including biobased motor vehicle products, will be used in the maintenance of Federal fleet motor vehicles when these products are reasonably available and meet vehicle manufacturers' recommended performance standards. Environmentally preferable motor vehicle products are among the products contained in the Comprehensive Procurement Guidelines list of products with recycled content to be procured pursuant to the clause at 48 CFR 970.5223–2. Section 505 of Executive Order 13149 requires that the goals and requirements of the Order be included in all management contracts which include Federal motor vehicle fleet operations. Section 506 of Executive Order 13149 exempts military tactical, law enforcement, and emergency vehicles from the requirements of the order.

§ 970.2307–2 Contract clause.

Include the clause at 970.5223–5, DOE Motor Vehicle Fleet Fuel Efficiency, in all management contracts providing for Contractor management of the motor vehicle fleet.

Subpart 970.52—Contract Clauses for Management and Operating Contracts

■ 5. Section 970.5223–5 is added to read as follows:

§ 970.5223–5 DOE motor vehicle fleet fuel efficiency.

As prescribed in 48 CFR 970.2307–2, insert the following clause in contracts providing for Contractor management of the motor vehicle fleet.

DOE MOTOR VEHICLE FLEET FUEL EFFICIENCY

(Oct 2003)

When managing Government-owned vehicles for the Department of Energy, the Contractor will conduct operations relating to such vehicles in accordance with the goals and requirements of *Executive Order 13149, Greening the Government Through Federal Fleet and Transportation Efficiency*, and implementing guidance contained in the document entitled *U.S. Department of Energy Compliance Strategy for Executive Order 13149* (April 2001) and future revisions of this compliance strategy that are identified in writing by the Contracting Officer. Section 506 of Executive Order 13149 exempts military tactical, law enforcement, and emergency vehicles from the requirements of the order.

[FR Doc. 03–22301 Filed 8–29–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 030421095–3202–02; I.D. 111902C]

RIN 0648–AQ61

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy, is issuing regulations to govern the unintentional takings of small numbers of marine mammals incidental to missile launch operations from San Nicolas Island, CA (SNI). Issuance of regulations, and Letters of Authorization under these regulations, governing the unintentional incidental takes of marine mammals in connection with particular activities is required by the Marine Mammal Protection Act (MMPA) when the Secretary of Commerce (Secretary), after notice and opportunity for comment, finds, as here, that such takes will have a negligible impact on the species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of them for subsistence uses. These regulations do not authorize the Navy's missile launch activities as such authorization is not within the jurisdiction of the Secretary. Rather, these regulations authorize the unintentional incidental take of marine mammals in connection with this activity and prescribe methods of taking and other means of effecting the least practicable adverse impact on marine mammal species and their habitat, and on the availability of the species for subsistence uses.

DATES: Effective from October 2, 2003 through October 2, 2008.

ADDRESSES: A copy of the Navy application which contains a list of the references used in this document may be obtained by writing to Kaja A. Brix, Acting Chief, Marine Mammal Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226 or by telephoning the contact listed here (*see* **FOR FURTHER INFORMATION CONTACT**). The NMFS' Administrative Record for this action is available for viewing, by appointment during regular business hours, at the above address. Copies of letters, and documents are available, at copy cost, from this address.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this final rule should be sent to the Acting Chief, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead (301) 713–2322, ext. 128.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

Permission may be granted for periods of 5 years or less if the Secretary finds that the total taking will have a negligible impact on the species or stock(s) of affected marine mammals, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if regulations are prescribed setting forth the permissible methods of taking and the requirements pertaining to the monitoring and reporting of such taking. NMFS has defined "negligible impact" in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Under section 18(A), the MMPA defines "harassment" as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Summary of Request

On October 23, 2002, NMFS received an application from the Naval Air Weapons Station, China Lake (NAWS), under section 101(a)(5)(A) of the MMPA, requesting an authorization, effective from August 26, 2003 through August 25, 2008, for the harassment of small numbers of three species of marine mammals incidental to target missile launch operations conducted by the Naval Air Warfare Center Weapons Division (NAWCWD) on SNI, one of the Channel Islands in the Southern California Bight. These regulations, if implemented, would allow NMFS to issue annual LOAs to NAWS, which would replace the process of issuance of annual Incidental Harassment Authorizations (IHAs) under section 101(a)(5)(D) of the MMPA (*see* 66 FR 41843, August 9, 2001; 67 FR 56271, September 3, 2002). This action is being undertaken in part based upon recommendations made by the Marine Mammal Commission, under section 202(a)(4) of the MMPA. The current IHA expires on August 20, 2003.

According to the NAWS' application, these missile launch operations may occur at any time during the year depending on test and training requirements and meteorological and logistical limitations. On occasion, two or three launches may occur in quick succession on a single day. NAWS anticipates an average of 40 launches annually of Vandal (or similar sized)

vehicles from SNI's Alpha Launch Complex (ALC) and smaller supersonic and subsonic missiles and targets from either ALC or the Building 807 Launch Site (Building 807). Launches at this annual level would be approximately double the recent activities at SNI. The NAWCWD conducted a total of 19 launches (including one dual launch) between August 15, 2001 and July 18, 2002 (14 Vandal launches and 5 other missiles and targets) under an IHA.

The purpose of these launches is to support activities associated with operations on the NAWCD's Point Mugu Sea Range. The Sea Range is used by the U.S. and Allied military services to test and evaluate sea, land, and air weapon systems; to provide realistic training opportunities; and to maintain operational readiness of these forces. Some of the SNI launches are used for practicing defensive drills against the types of weapons simulated by these vehicles. Some launches may be conducted for the related purpose of testing new types of targets to verify that they are suitable for use as operational targets. While SNI is under the land management responsibility of NAWS, planned missile and other target launches are conducted by the NAWCWD. A detailed description of the operations is contained in the NAWS application (NAWS, 2002) which is available upon request (*see* **ADDRESSES**).

Measurement of Airborne Sound Levels

The following section is provided to facilitate understanding of airborne and impulsive noise characteristics. In its application, NAWS has referenced both pressure and energy measurements for sound levels. For pressure, the sound pressure level (SPL) is described in terms of decibels (dB) re micro-Pascal (micro-Pa), and for energy, the sound exposure level (SEL) is described in terms of dB re micro-Pa2 -second. In other words, SEL is the squared instantaneous sound pressure over a specified time interval, where the sound pressure is averaged over 5 percent to 95 percent of the duration of the sound (in this case, one second).

Airborne noise measurements are usually expressed relative to a reference pressure of 20 micro-Pa. Also, airborne sounds are often expressed as broadband A-weighted (dBA) or C-weighted (dBC) sound levels. A-weighting refers to frequency-dependent weighting factors applied to sound in accordance with the sensitivity of the human ear to different frequencies. With A-weighting, sound energy at frequencies below 1 kHz and above 6 kHz is de-emphasized and approximates the human ear's response to sounds below 55 dB. C-weighting corresponds to the relative response to the human ear to sound levels above 85 dB. C-weight scaling is useful for analyses of sounds having predominantly low-frequency sounds, such as sonic booms.

While it is unknown whether the pinniped ear responds similarly to the human ear, a study by C. Malme (pers. commun. to NMFS, March 5, 1998) found that for predicting noise effects, the Navy believes that A-weighting is better than unweighted pressure levels because the pinniped's highest in-air hearing sensitivity is at higher frequencies than that of humans. In this document, whenever possible sound levels have been provided with A-weighting.

Description of the Specified Activity

In general, launch vehicles are the Vandal and a variety of other supersonic and subsonic missiles and targets. Most other vehicles used would be similar in size and weight or slightly smaller and would have characteristics similar to the Vandal. NAWS has also requested that its incidental take authorization include coverage for up to three launches annually by vehicles that are larger than the Vandal (but under 50,000 lbs (23,000 kilograms (kg)) in weight). Potential impacts to pinnipeds by launch vehicles of that size are unanalyzed and must be assessed before NMFS can issue an authorization to take pinnipeds incidentally to that activity. Any proposed modification of these regulations to include these larger launch vehicle activities would be published in the **Federal Register** with opportunity for public comment.

Vandal Target Missiles

The Vandal (designated MQM–8G) target missile is a relatively large, air-breathing (ramjet) vehicle with no explosive warhead that is designed to provide a realistic simulation of the mid-course and terminal phase of a supersonic anti-ship cruise missile. These missiles are 7.7 m (25.2 ft) in length with a mass at launch of 3,674 kg (8,100 lbs) including the solid propellant booster. There are variants of the Vandal; they all have the same dimensions, but differ in their operational range. The Vandals are remotely controlled, non-recoverable missiles. At launch, the Vandal is accelerated for several seconds by a solid propellant rocket booster to a speed sufficient for the ram-jet engine to start. After several seconds of thrust, the booster is discarded, falls into the water of the Sea Range, and the Vandal continues along its flight path at supersonic speed under ramjet power.

The Vandal and most other targets are launched from the ALC on the west-central part of SNI, a land-based launch site. The ALC is 192 m (630 ft) above sea level and is approximately 2 kilometers (km)(1.25 miles (mi)) from the nearest pinniped haul-out site. Launch trajectories from ALC may vary from a near-vertical liftoff, crossing the west end of SNI at an altitude of approximately 3,962 m (13,000 ft) to a nearly horizontal liftoff, crossing the west end of SNI at an altitude of approximately 305 m (1,000 ft). However, to date, most Vandal launches during NAWS first IHA monitoring program had low angles (8 degrees) crossing the SNI beaches at an altitude of about 1,300 ft (396 m)(Lawson, 2002). Four Vandals however, had high angle (42 degrees) profiles, crossing SNI beaches at an altitude of about 9,600 ft (2,926 ft)(Lawson, 2002).

Vandal launches produce strong noise levels. Sound measurements collected during two Vandal launches in 1997 and 1999 indicated received A-weighted SPLs ranged from 123 dB (re 20 micro-Pa) (SEL of 126 dB re 20 micro-Pa2 -sec) at 945 m (3,100 ft) to 136 dB (re μ20 Pa) (SEL of 131 dB re 20 micro-Pa^2 -sec) at 370 m (1,215 ft) (Burgess and Greene, 1998; Greene, 1999). The most intense sounds occurred during the first 0.4 to 4.1 seconds after launch (Greene, 1999; Greene and Malme, 2002). However, what is important for this action is not the noise level near the launch site but the noise level over the pinniped haulouts on the SNI beaches. This issue will be discussed later in this document.

Supersonic and Subsonic Targets and Other Missiles

The Navy also plans to launch other subsonic and supersonic vehicles to simulate various types of threat missiles and aircraft. These are small unmanned aircraft that are launched using jet-assisted take-off (JATO) rocket bottles. Once launched, they continue offshore where they are used in training exercises to simulate various types of subsonic threat missiles and aircraft. The larger target, BQM–34, is 7 m (23 ft) long and has a mass of approximately 1,134 kg (2,500 lbs) plus the JATO bottle. The smaller BQM–74, is 420 centimeters (cm) (165.5 inches (in)) long and has a mass of approximately 250 kg (550 lbs) plus the JATO bottle. Additional types of small vehicles that may be launched include the Exocet and Tomahawk missiles, and the Rolling Airframe Missile (RAM).

All of these smaller targets are launched from either the ALC or from Building 807. Building 807 is approximately 10 m (30 ft) above sea

level and accommodates several fixed and mobile launchers that range from 30 m (98 ft) to 150 m (492 ft) from the nearest shoreline. For these smaller vehicles, launch trajectories from Building 807 may range from 6 to 45 degrees and cross over the nearest beach at altitudes from 15 to 190 m (50 to 625 ft).

Sound measurements were collected from the launch of a BQM–34 at the Point Mugu Naval Air Station (NAS) in 1997. Burgess and Greene (1998) found that for this launch, the A-weighted SPL ranged from 92 dB (re 20 micro-Pa) (SEL of 102.2 dB re 20 micro-Pa^2 -sec) at 370 m (1,200 ft) to 145 dB (re 20 micro-Pa) (SEL of 142.2 dB re 20 micro-Pa2 -sec) at 15 m (50 ft). These estimates are approximately 20 dB lower than that of a Vandal launch at similar distances (Greene, 1999). The measured Terrior Orion SPL ranged from 89 to 138 dB and the SEL from 93 to 138 dB, although the SPL/SEL of 138 dB appears to be anomalously high (Lawson, 2002). The SPL/SELs for the AGS launches ranged from 95 to 150 dB (93 to 137 dB SEL) and the RAM launch SPL was 126 dB (131 dB SEL). These measurements were all flat-weighted, meaning that A-weighted SPL/SELs values were several decibels lower.

General Launch Operations

Aircraft and helicopter flights between NAS on the mainland, the airfield on SNI and the target sites in the Sea Range will be a routine part of any planned launch operation. These operational flights do not pass at low level over the beaches where pinnipeds are expected to be hauled out. In addition, movements of personnel are restricted near the launch sites 2 hours prior to a launch, no personnel are allowed on the western end of SNI during Vandal and other vehicle launches, and various environmental protection restrictions exist near the island's beaches during other times of the year.

Comments and Responses

On May 9, 2003 (68 FR 24905), NMFS published a notice of proposed rulemaking on the Navy's application for an incidental take authorization and requested comments, information and suggestions concerning the request. During the 45–day public comment period, NMFS received comments from several members of the public and the Marine Mammal Commission (Commission). The letters from individuals did not raise significant issues on the proposed rule, and only expressed concern over missile launches based on an article in the media, so a response is not necessary. The Commission supports NMFS' intent to implement incidental take regulations for the Navy's activities on SNI provided that the mitigation and monitoring activities described in the NAWS petition for regulations are incorporated into the proposal.

Comment 1: The Commission requests clarification in the final rule document regarding the statement that mitigation measures would be followed when "operationally practicable."

Response: The NAWS request noted that mitigation measures would be followed whenever operationally practicable, provided that doing so would not compromise operational safety requirements or mission goals. For example, the Navy will avoid night launches whenever the parameters of the test or training do not require a night launch. However, if a night launch is required by the parameters of the test, the Navy will need to launch at night. Last year, for example, the Navy raised the elevation on one launch from what was originally proposed and the objectives were still met. The problem is that the mitigation requirements cannot be unconditional; some tests may require night launching or launching in quick succession and some launches may require low azimuths, etc.

Comment 2: The Commission asks how the proposed mitigation measures satisfy the requirement of section 101(a)(5)(ii)(I) of the MMPA that the activity will result in the least practicable adverse impact on the subject species or stocks and their habitat.

Response: In order for NMFS to implement effective mitigation, it must determine that such measures would be practical. The practical mitigation measures identified by the NAWCD are provided later in this document (*see* Mitigation) and in more detail in the Final Environmental Assessment on the Navy Request for a Letter of Authorization (Final EA). These measures have been in place under previous and current IHAs for this activity. No comments were received during the public comment periods for this and previous authorizations that suggested additional practical mitigation measures, and NMFS is unaware of additional measures that could be imposed.

Comment 3: The Commission notes that NMFS is attempting to modify the statutory definition of Level B harassment to be only activities which pose "biologically significant disturbance" (i.e., "a disturbance of a behavior pattern that has the potential to have an effect on the reproduction or survival of the animal or species"). As the Commission has pointed out in several previous letters, the Commission believes that the proposed NMFS modification is contrary to the existing statutory definition of harassment.

Response: NMFS addressed the Commission's concern most recently in the notice of issuance of an IHA for Vandal launches from SNI (67 FR 56271, September 3, 2002). In addition, the scientific basis for determining the appropriate isopleths (lines of equal pressure) for the onset of marine mammal harassment can be found in the preamble to the proposed rule (68 FR 24905, May 9, 2003) and this document. For this action, NMFS agrees with the applicant that California sea lions and northern elephant seals will sometimes be harassed by launch sounds with SEL's of 100 dBA (re 20 micro-Pa2 -sec) or higher and Pacific harbor seals will sometimes be similarly harassed at an SEL of 90 dBA or higher. Pinnipeds inside those isopleths at the time of the missile launch are presumed to be harassed, whether or not an actual disturbance is noted. However, NMFS does not consider reactions such as a pinniped assuming an alert posture by raising its head or exhibiting other minor body movements to be level B harassment, because these kinds of behaviors are not disruptions of a biologically important behavior pattern. In contrast, sounds that cause some or all of the animals to move along the beach or leave a haul-out beach for the water would be harassment because there is a disruption of haulout activities. This is consistent with the MMPA definition of Level B harassment. NMFS is interested in receiving any scientific information indicating that pinnipeds are harassed at lower noise levels.

Description of Habitat and Marine Mammals Affected by the Activity

A detailed description of the Channel Islands/southern California Bight ecosystem and its associated marine mammals can be found in several documents (Le Boeuf and Brownell, 1980; Bonnell *et al.*, 1981; Lawson *et al.*, 1980; Stewart, 1985; Stewart and Yochem, 2000; Sydeman and Allen, 1999) and is not repeated here.

Many of the beaches in the Channel Islands provide resting, molting or breeding places for species of pinnipeds including: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), northern fur seals (*Callorhinus ursinus*), and Steller sea lions (*Eumetopias jubatus*). On SNI, three of these species, northern elephant

seals, harbor seals, and California sea lions, can be expected to occur on land in the area of the proposed activity regularly in large numbers during certain times of the year. Descriptions of the biology and distribution of these three species and others in the region can be found in NAWS (2002), Stewart and Yochem (2000, 1994), Sydeman and Allen (1999), Lowry *et al.* (1996), Schwartz (1994), Lowry (1999) and several other documents (Barlow *et al.*, 1997; NMFS, 2000; NMFS, 1992; Koski *et al.*, 1998; Gallo-Reynoso, 1994; Stewart *et al.*, 1987). General information on harbor seals and other marine mammal species found in Central California waters can be found in Caretta et al. (2001, 2002), which are available at the following URL: *http://www.nmfs.noaa.gov/prot_res/PR2/Stock_Assessment_Program/sars.html*. Please refer to those documents and the application for further information on these species.

Potential Effects of Target Missile Launches and Associated Activities on Marine Mammals

The effects of noise on marine mammals are highly variable, and can be categorized as follows (based on Richardson et al., 1995):

(1) The noise may be too weak to be heard at the location of the pinniped (i.e., lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both);

(2) The noise may be audible but not strong enough to elicit any overt behavioral response;

(3) The noise may elicit reactions of variable conspicuousness and variable relevance to the well being of the pinniped; these can range from temporary alert responses to active avoidance reactions such as stampedes into the sea from terrestrial haulout sites;

(4) Upon repeated exposure, pinnipeds may exhibit diminishing responsiveness (habituation), or disturbance effects may persist; the latter is most likely with sounds that are highly variable in characteristics, infrequent and unpredictable in occurrence (as are vehicle launches), and associated with situations that the pinniped perceives as a threat;

(5) Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of pinnipeds to hear natural sounds at similar frequencies, including calls from conspecifics, and environmental sounds such as surf noise;

(6) If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

(7) Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS). For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound. Received sound levels must be even higher for there to be risk of permanent hearing impairment.

Sounds generated by the launches of Vandal and similar target missiles and smaller subsonic targets and missiles (BQM–34 or BQM–74 type), as they depart sites on SNI towards operational areas in the Point Mugu Sea Range, have the potential to result in the incidental harassment of seals and sea lions. Taking by harassment will potentially result from these launches when pinnipeds on the beaches near the launch sites are exposed to the sounds produced by the rocket boosters and the high-speed passage of the missiles as they depart the island on their routes to the Sea Range. However, the extremely rapid departure of the Vandal and other targets means that pinnipeds would be exposed to increased sound levels for very short time intervals (i.e., a few seconds). In addition, because launches are conducted relatively infrequently (i.e., approximately 40 launch events over the course of a year), neither physiological stress nor hearing related injuries are likely for pinnipeds exposed to more than a single launch event.

Noise generated from aircraft and helicopter activities associated with the launches may provide a potential secondary source of incidental harassment of seals and sea lions. The physical presence of aircraft could also lead to non-acoustic effects on marine mammals involving visual or other cues. There are no anticipated effects from human presence on the beaches, since movements of personnel are restricted near the launch sites two hours prior to launches for safety reasons.

Reactions of pinnipeds on the western end of SNI to Vandal target launches have not been well-studied, but based on monitoring studies conducted under the IHAs for this activity on SNI in 2001 and 2002, and on other rocket launch activities and their effects on pinnipeds in the Channel Islands (Stewart et al., 1993), anticipated impacts can be predicted. In general, studies have shown that responses of pinnipeds on beaches to acoustic disturbance arising from rocket and target missile launches are highly variable. This variability may be due to many factors, including species, age class, and time of year. Among species, northern elephant seals seem very tolerant of acoustic disturbances (Stewart, 1981), whereas harbor seals (particularly outside the breeding season) seem more easily disturbed. Research and monitoring at Vandenberg Air Force Base found that prolonged or repeated sonic booms, very strong sonic booms, or sonic booms accompanying a visual stimulus, such as a passing aircraft, are most likely to stimulate seals to leave the haul-out area and move into the water. During three launches of Vandal missiles from SNI, California sea lions near the launch track line were observed from video recordings to be disturbed and to flee (both up and down the beach) from their former resting positions. Launches of the smaller BQM–34 targets from NAS have not normally resulted in harbor seals leaving their haul-out area at the mouth of Mugu Lagoon, which is approximately 3.2 km (2 mi) from the launch site. An Exocet missile launched from the west end of SNI appeared to cause far less disturbance to hauled out California sea lions than Vandal launches.

Given the variability of pinniped responses to acoustic disturbance, as supported by recent IHA monitoring (Lawson *et al.*, 2002), the Navy (NAWS, 2002) assumes that Level B harassment, as evidenced by beach flushing, will sometimes occur upon exposure to launch sounds with SEL's of 100 dBA (re 20 micro-Pa^2 -sec) or higher for California sea lions and northern elephant seals and 90 dBA for Pacific harbor seals.

A conservative estimate of the SEL at which TTS may be elicited in harbor seals, California sea lions and northern elephant seals has been determined to be 145 dB (re 20 micro-Pa2 -sec) and 165 dB (re 20 micro-Pa2 -sec), respectively (Lawson et al., 1998). The sound levels necessary to elicit mild TTS in captive California sea lions and harbor seals exposed to impulse noises, such as sonic booms, were tens of decibels higher (Bowles *et al.*, 1999) than sound levels measured during Vandal launches (Burgess and Greene, 1998; Greene, 1999). This evidence, in combination with the known sound levels produced by vehicles launched from SNI, suggests that no pinnipeds will be exposed to TTS-inducing SELs during planned launches.

Based on modeling of sound propagation in a free field situation, Burgess and Greene (1998) data were used by the Navy to predict that Vandal target launches from SNI could produce a 100–dBA acoustic contour that extends an estimated 4,263 m (13,986 ft) perpendicular to its launch track. In other words, Vandal target launch sounds are predicted to exceed the SEL (100 dBA) disturbance criteria for pinipeds out to a distance of 4,263 m (13,986 ft) from the ALC. Northern elephant seals, harbor seals, and California sea lions haul out in areas within the perimeter of this 100–dBA contour for Vandal launches. For BQM–34 launches from ALC, the Navy assumes that the 100–dBA contour extends an estimated 1,372 m (4,500 ft), perpendicular to its launch track (C. Malme, Engineering and Scientific Services, Hingham, MA, unpublished data). Along the launch track and ahead of the BQM–34, the 100–dBA contour extends a shorter distance (549 m or 1,800 ft). For the smaller BQM–74 and Exocet missiles, the Navy predicts that the 100–dBA contours will be smaller still. The free field modeling scenario used to predict these acoustic contours does not account for transmission losses caused by wind, intervening topography, and variations in launch trajectory or azimuth. Therefore, the predicted 100–dBA contours may be smaller at certain beach locations and for different launch trajectories.

In general, the extremely rapid departure of the Vandal and smaller targets means that pinnipeds could be exposed to increased sound levels for very short time intervals (a few seconds) potentially leading to alert and startle responses from individuals on haul out sites in the vicinity of launches. Some animals may flee to the water. Since recorded observations of the responses of pinnipeds to Vandal launches along with post-launch surveys at the SNI haulouts have not shown injury, mortality, or extended biological disturbance, the Navy anticipates and NMFS concurs that the effects of the planned target launches will have no more than a negligible impact on pinniped populations.

Since the launches are relatively infrequent, and of brief duration, it is unlikely that the pinnipeds near the launch site will become habituated to launch sounds. Pinnipeds that haul out on beaches at the western end of SNI for extended periods, or that return to haul-out sites regularly over the course of the year, may be exposed to sounds of more than a single launch, and may be "harassed" more than once each year. However, given the infrequency and brevity of these events, it is unlikely that much, if any, habituation to target missile launch activities will occur.

In addition, the infrequent and brief nature of these sounds will cause masking for not more than a very small fraction of the time (usually less than 2 seconds per launch) during any single day. These occasional and brief episodes of masking will have no significant effects on the abilities of pinnipeds to hear one another or to detect natural environmental sounds that may be relevant to the animals.

Numbers of Marine Mammals Expected To Be Taken by Harassment

NAWS provisionally estimates that the following numbers of pinnipeds may be subject to Level B harassment annually: 1,403 northern elephant seals, 457 harbor seals, and 1,637 California sea lions. To determine the number of takings by harassment annually, one would need to multiply those numbers by the number of launches conducted annually. The animals affected may be the same animals or may be different animals, depending upon the level of site fidelity of the species. Based on the results of recent monitoring of the haulouts, the estimated number of potential harassment takes would be significantly less than estimated under the two recent IHAs.

Effects of Target Missile Launches and Associated Activities on Subsistence Needs

There are no subsistence uses for these pinniped species in California waters, and, thus, there are no anticipated effects on subsistence needs.

Effects of Target Missile Launches and Associated Activities on Marine Mammal Habitat on SNI

Harbor seals, California sea lions, and northern elephant seals use various beaches around SNI as places to rest, molt, and breed. These beaches consist of sand (e.g., Red Eye Beach), rock ledges (e.g., Phoca Beach) and rocky cobble (e.g., Vizcaino Beach). Pinnipeds do not feed when hauled out on these beaches, and the airborne launch sounds will mostly reflect or refract from the water surface and, except for sounds within a diameter of approximately 30 degrees directly below the launch vehicle, will not penetrate into the water column. The sounds that do penetrate will not persist in the water for more than a few seconds. Therefore, the Navy does not expect that launch activities will have any impact on the food or feeding success of these animals. The solid rocket booster from the Vandal target and the JATO bottles from the BMQs are jettisoned shortly after launch and fall into the sea west of SNI. While it is theoretically possible that one of these boosters might instead land on a beach, the probability of this occurring is very low. Fuel contained in the boosters and JATO bottles is consumed rapidly and completely, so there would be no risk of contamination even if a booster or bottle did land on the beach. Overall, the proposed target missile launches and associated activities are not expected to cause significant impacts on habitats or on food sources used by pinnipeds on SNI.

Mitigation

To avoid additional harassment to pinnipeds on beach haul out sites and to avoid any possible sensitizing or predisposing of pinnipeds to greater responsiveness towards the sights and sounds of a launch, NAWCWD Point Mugu will limit its activities near the beaches in advance of launches. Existing safety protocols for Vandal launches provide a built-in mitigation measure. That is, personnel are normally not allowed near any of the pinniped beaches close to the flight track on the western end of SNI within 2 hours prior to a launch. Where practicable, NAWCWD Point Mugu will adopt the following additional mitigation measures when doing so will not compromise operational safety requirements or mission goals: (1) The Navy will attempt to limit launch activities during pinniped pupping seasons, particularly harbor seal pupping season; (2) the Navy will attempt not to launch vehicles at low elevation on launch azimuths that pass close to beach haul-out site(s); (3) the Navy will attempt to avoid multiple target launches in quick succession over haul-out sites, especially when young pups are present; and, (4) the Navy will attempt to limit launch activities during the night.

Monitoring

As part of its application, NAWS provided a monitoring plan, similar to that adopted for the 2001/2002 and 2002/2003 IHAs (*see* 66 FR 41834, August 9, 2001; 67 FR 56271, September 3, 2002), for assessing impacts to marine mammals from Vandal and smaller subsonic target and missile launch activities on SNI. This monitoring plan is described in their application (NAWS, 2002).

The Navy will conduct the following monitoring during the first year under an LOA and regulations.

Land-Based Monitoring

In conjunction with a biological contractor, the Navy will continue its land-based monitoring program to assess effects on the three common pinniped species on SNI: northern elephant seals, harbor seals, and California sea lions. This monitoring will occur at three different sites of varying distance from the launch site before, during, and after each launch. The monitoring will be via autonomous video cameras.

During the day of each missile launch, the observer will place three digital video cameras overlooking chosen haul out sites. Each camera will be set to record a focal subgroup within the haul out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

Following each launch, all digital recordings will be transferred to DVDs for analysis. A DVD player/computer with high-resolution freeze-frame and jog shuttle will be used to facilitate distance estimation, event timing, and characterization of behavior. Details of analysis methods can be found in LGL Ltd. Environmental Research Associates et al. (LGL, 2002).

Acoustical Measurements

During each launch, the Navy will obtain calibrated recordings of the levels and characteristics of the received launch sounds. Acoustic data will be acquired using three Autonomous Terrestrial Acoustic Recorders (ATAR) at three different sites of varying distances from the target's flight path. ATARs can record sounds for extended periods (dependent on sampling rate) without intervention by a technician, giving them the advantage over traditional digital audio tape (DAT) recorders should there be prolonged launch delays of as long as 10 hours. To the extent possible, acoustic recording locations will correspond with the sites where video monitoring is taking place. The collection of acoustic data will provide information on the magnitude, characteristics, and duration of sounds that pinnipeds may be exposed to during a launch. In addition, the acoustic data can be combined with the behavioral data collected via the land-based monitoring program to determine if there is a dose-response relationship between received sound levels and pinniped behavioral reactions. Once collected, sound files will be transferred onto compact discs (CDs) and sent to the acoustical contractor for sound analysis.

For further details regarding the installation and calibration of the acoustic instruments and analysis methods refer to LGL (2002).

Reporting Requirements

An interim technical report must be submitted to NMFS 60 days prior to the expiration of each annual LOA issued under these regulations, along with a request for a follow-on annual LOA. This interim technical report will provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks for launches during the period covered by the LOA. However, only preliminary information will be available to be included for any launches during the 60–day period immediately preceding submission of the interim report to NMFS. In the unanticipated event that any cases of pinniped mortality are judged to result from launch activities at any time during the period covered by these regulations, this event will be reported to NMFS immediately.

The proposed 2003–04 launch monitoring activities will constitute the third year of formal, concurrent pinniped and acoustical monitoring during launches from SNI. The impacts of launch activities on pinnipeds ashore were monitored under the 2001–2003 IHAs. Additional monitoring will take place under an LOA in 2003–2004. Following submission in 2004 of the interim report on the monitoring under that LOA, the Navy and NMFS will discuss the scope of future launch monitoring work on SNI. Some biological or acoustic parameters may be documented adequately prior to or during the first LOA (2003–2004), and it may not be necessary to continue all aspects of the monitoring work after the first year. Any modifications to the monitoring program will be documented through publication in the **Federal Register**.

In addition to annual LOA reports, NMFS is requiring NAWS to submit a draft comprehensive final technical report to NMFS 180 days prior to the expiration of these regulations. This technical report will provide full documentation of methods, results, and interpretation of all monitoring tasks for launches during the first four LOAs, plus preliminary information for launches during the first 6 months of the final LOA.

Determinations

Based on the evidence provided in the application, the EA, and this document, and taking into consideration the comments submitted on the application and proposed regulations, NMFS has determined that it will authorize the taking, by Level B harassment, of small numbers of marine mammals incidental to missile launch operations on SNI. The total taking of marine mammals by Level B harassment from vehicle launch operations on SNI over the period of these regulations will have no more than a negligible impact on affected marine mammal stocks. NMFS is assured that the short-term impact of conducting missile launch operations from SNI in the Channel Islands off southern California will result, at worst, in temporary modifications in behavior by three species of pinnipeds. No take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is unlikely. NMFS has determined that the requirements of section 101(a)(5)(A) of the MMPA have been met and the LOAs can be issued.

National Environmental Policy Act (NEPA)

NMFS has prepared an EA and made a Finding of No Significant Impact (FONSI). Therefore, preparation of an environmental impact statement on this action is not required by section 102(2) of the NEPA or its implementing regulations. A copy of the EA and FONSI are available upon request (*see* **ADDRESSES**).

ESA

No species listed under the ESA is expected to be affected by these activities. Therefore, NMFS has determined that a section 7 consultation under the ESA is not required. It should be noted however that an experimental population of sea otters may be affected by this action. Under Public Law 99–625, this experimental population of sea otters is treated as a proposed species for purposes of section 7 when the action (as here) is defense related. Proposed species require an action agency to confer with NMFS or the U.S. Fish and Wildlife Service under section 7 when the action is likely to jeopardize the continued existence of the species. The information available does not indicate that sea otters are likely to be jeopardized by this action. Therefore, a conference is not required.

CZMA Consistency

On February 14, 2001, by a unanimous vote, the California Coastal Commission concluded that, with the monitoring and mitigation commitments the Navy has incorporated into their various testing and training activities on the Point Mugu Sea Range, including activities on SNI, and including the commitment to enable continuing Commission staff review of finalized monitoring plans and ongoing

monitoring results, the activities are consistent with the marine resources, environmentally sensitive habitat and water quality policies (Sections 30230, 30240, and 30231) of the California Coastal Act.

National Marine Sanctuaries Act

According to the Navy, except for aircraft and vessel traffic transiting the area, none of the Navy's proposed activities would take place within the Channel Islands National Marine Sanctuary (CINMS). Also, all Navy Sea Range test and training activities are consistent with CINMS regulations (15 CFR 920.70).

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

At the proposed rule stage, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration, that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities since it would apply only to the U.S. Navy and would have no effect, directly or indirectly, on small businesses. It may affect a small number of contractors providing services related to reporting the impact of the activity on marine mammals, some of whom may be small businesses, but the number involved would not be substantial. Further, since the monitoring and reporting requirements are what would lead to the need for their services, the economic impact on them would be beneficial. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This final rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151, and include applications for LOAs, and reports.

The reporting burden for the approved collections-of-information is estimated to be approximately 120 hours for the annual applications for an LOA, and a total of 120 hours for the quarterly and annual reports. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (*see* **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: August 25, 2003.

Rebecca Lent.

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

■ 2. Subpart N is added to read as follows:

Subpart N—Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

Sec.

216.151 Specified activity, geographical region, and incidental take levels.
216.152 Effective dates.
216.153 Permissible methods of taking; mitigation.
216.154 Prohibitions.
216.155 Requirements for monitoring and reporting.
216.156 Letter of Authorization.
216.157 Renewal of the Letter of Authorization.
216.158 Modifications to the Letter of Authorization.

Subpart N—Taking of Marine Mammals Incidental to Missile Launch Operations from San Nicolas Island, CA

§ 216.151 Specified activity, geographical region, and incidental take levels.

(a) Regulations in this subpart apply only to the incidental taking of marine mammals specified in paragraph (b) of this section by U.S. citizens engaged in target missile launch activities at the Naval Air Warfare Center Weapons Division facilities on San Nicolas Island, California.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited to the following species: northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina*), and California sea lions (*Zalophus californianus*).

(c) This Authorization is valid only for activities associated with the launching of a total of 40 Vandal (or similar sized) vehicles from Alpha Launch Complex and smaller missiles and targets from Building 807 on San Nicolas Island, California.

§ 216.152 Effective dates.

Regulations in this subpart are effective from October 2, 2003 through October 2, 2008.

§ 216.153 Permissible methods of taking; mitigation.

(a) Under a Letter of Authorization issued pursuant to § 216.106, the U.S. Navy may incidentally, but not intentionally, take those marine mammal species specified in § 216.151(b) by Level B harassment, in the course of conducting target missile launch activities within the area described in § 216.151(a), provided all terms, conditions, and requirements of these regulations and such Letter of Authorization are complied with.

(b) The activity specified in § 216.151 must be conducted in a manner that minimizes, to the greatest extent possible, adverse impacts on marine mammals and their habitat. When conducting these activities, the following mitigation measures must be utilized:

(1) The holder of the Letter of Authorization must prohibit personnel from entering pinniped haul-out sites below the missile's predicted flight path for 2 hours prior to planned missile launches.

(2) The holder of the Letter of Authorization must avoid launch activities during harbor seal pupping season (February to April), when operationally practicable.

(3) The holder of this Authorization must limit launch activities during other pinniped pupping seasons, when operationally practicable.

(4) The holder of the Letter of Authorization must not launch Vandal target missiles from the Alpha Complex at low elevation (less than 1,000 feet (304.8 m) on launch azimuths that pass close to pinniped haul-out sites).

(5) The holder of the Letter of Authorization must avoid, where practicable, launching multiple target missiles in quick succession over haul-out sites, especially when young pups are present.

(6) The holder of the Letter of Authorization must limit launch

activities during nighttime hours when operationally practicable.

(7) Aircraft and helicopter flight paths must maintain a minimum altitude of 1,000 feet (304.8 m) from pinniped haul-outs.

(8) If injurious or lethal take is discovered during monitoring conducted under § 216.155, the holder of the Letter of Authorization must contact the Regional Administrator, Southwest Region, National Marine Fisheries Service, or his/her designee, at (562) 980–4023 within 48 hours and, in cooperation with the National Marine Fisheries Service, launch procedure, mitigation measures, and monitoring methods must be reviewed and appropriate changes made prior to the next launch.

(9) If post-test surveys determine that an injurious or lethal take of a marine mammal has occurred, the test procedure and the monitoring methods must be reviewed and appropriate changes must be made prior to conducting the next missile launch.

§ 216.154 Prohibitions.

Notwithstanding takings authorized by § 216.151(b) and by a Letter of Authorization issued under § 216.106, the following activities are prohibited:

(a) The taking of a marine mammal that is other than unintentional.

(b) The violation of, or failure to comply with, the terms, conditions, and requirements of this part or a Letter of Authorization issued under § 216.106.

(c) The incidental taking of any marine mammal of a species not specified, or in a manner not authorized, in this subpart.

§ 216.155 Requirements for monitoring and reporting.

(a) The holder of the Letter of Authorization is required to cooperate with the National Marine Fisheries Service and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(b) The National Marine Fisheries Service must be notified immediately of any changes or deletions to any portions of the proposed monitoring plan submitted in accordance with the Letter of Authorization.

(c) The holder of the Letter of Authorization must designate biologically trained, on-site observer(s), approved in advance by the National Marine Fisheries Service, to record the effects of the launch activities and the resulting noise on pinnipeds.

(d) The holder of the Letter of Authorization must implement the following monitoring measures:

(1) *Visual Land-Based Monitoring.* (i) Prior to each missile launch, an observer(s) will place 3 autonomous digital video cameras overlooking chosen haul-out sites located varying distances from the missile launch site. Each video camera will be set to record a focal subgroup within the larger haul-out aggregation for a maximum of 4 hours or as permitted by the videotape capacity.

(ii) Systematic visual observations, by observers described in paragraph (c) of this section, on pinniped presence and activity will be conducted and recorded in a field logbook a minimum of 2 hours prior to the estimated launch time and for at least 1 hour immediately following the launch of all launch vehicles.

(iii) Documentation, both via autonomous video camera and human observer, will consist of:

(A) Numbers and sexes of each age class in focal subgroups;

(B) Description and timing of launch activities or other disruptive event(s);

(C) Movements of pinnipeds, including number and proportion moving, direction and distance moved, and pace of movement;

(D) Description of reactions;

(E) Minimum distances between interacting and reacting pinnipeds;

(F) Study location;

(G) Local time;

(H) Substratum type;

(I) Substratum slope;

(J) Weather condition;

(K) Horizontal visibility; and

(L) Tide state.

(2) *Acoustic Monitoring.* (i) During all target missile launches, calibrated recordings of the levels and characteristics of the received launch sounds will be obtained from 3 different locations of varying distances from the target missile's flight path. To the extent practicable, these acoustic recording locations will correspond with the haul-out sites where video and human observer monitoring is done.

(ii) Acoustic recordings will be supplemented by the use of radar and telemetry systems to obtain the trajectory of target missiles in three dimensions.

(iii) Acoustic equipment used to record launch sounds will be suitable for collecting a wide range of parameters, including the magnitude, characteristics, and duration of each target missile.

(e) The holder of the Letter of Authorization must implement the following reporting requirements:

(1) For each target missile launch, the lead contractor or lead observer for the holder of the Letter of Authorization must provide a status report on the information required under § 216.155(d)(1)(iii) to the National Marine Fisheries Service, Southwest Regional Office, unless other arrangements for monitoring are agreed in writing.

(2) An initial report must be submitted to the Office of Protected Resources, and the Southwest Regional Office at least 60 days prior to the expiration of each annual Letter of Authorization. This report must contain the following information:

(i) Timing and nature of launch operations;

(ii) Summary of pinniped behavioral observations;

(iii) Estimate of the amount and nature of all takes by harassment or by other means.

(3) A draft comprehensive technical report will be submitted to the Office of Protected Resources and Southwest Regional Office, National Marine Fisheries Service, 180 days prior to the expiration of these regulations and providing full documentation of the methods, results, and interpretation of all monitoring tasks for launches to date plus preliminary information for missile launches during the first 6 months of the final Letter of Authorization.

(4) A revised final technical report, including all monitoring results during the entire period of the Letter of Authorization, will be due 90 days after the end of the period of effectiveness of these regulations.

(5) Both the 60–day and draft comprehensive technical reports will be subject to review and comment by the National Marine Fisheries Service. Any recommendations made by the National Marine Fisheries Service must be addressed in the final comprehensive report prior to acceptance by the National Marine Fisheries Service.

(f) Activities related to the monitoring described in paragraph (d) of this section, or in the Letter of Authorization issued under § 216.106, may be conducted without the need for a separate scientific research permit.

(g) In coordination and compliance with appropriate Navy regulations, at its discretion, the National Marine Fisheries Service may place an observer on San Nicolas Island for any activity involved in marine mammal monitoring either prior to, during, or after a missile launch in order to monitor the impact on marine mammals.

§ 216.156 Letter of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time specified in the Letter of Authorization but may not exceed the period of validity of this subpart.

(b) A Letter of Authorization with a period of validity less than the period of validity of this subpart may be renewed subject to renewal conditions in § 216.157.

(c) A Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Specified geographic area for taking;

(3) Means of effecting the least practicable adverse impact on the species of marine mammals authorized for taking and its habitat; and

(4) Requirements for monitoring and reporting incidental takes.

(d) Issuance of a Letter of Authorization will be based on a determination that the number of marine mammals taken by the activity will be small, and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(e) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.157 Renewal of a Letter of Authorization.

(a) A Letter of Authorization issued under § 216.106 and § 216.156 for the activity specified in § 216.151 will be renewed annually upon:

(1) Notification to the National Marine Fisheries Service that the activity described in the application for a Letter of Authorization submitted under § 216.156 will be undertaken and that there will not be a substantial modification to the described work, mitigation, or monitoring undertaken during the upcoming season;

(2) Timely receipt of the monitoring reports required under § 216.155, and acceptance by the National Marine Fisheries Service;

(3) A determination by the National Marine Fisheries Service that the mitigation, monitoring, and reporting measures required under §§ 216.153 and 216.155 and the Letter of Authorization were undertaken and will be undertaken during the upcoming period of validity of a renewed Letter of Authorization; and

(4) A determination that the number of marine mammals taken by the activity continues to be small and that the level of taking will be consistent with the findings made for the total taking allowable under these regulations.

(b) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.158 Modifications to the Letter of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.151(b), the Letter of Authorization issued pursuant to § 216.106 may be substantively modified without prior notice and an opportunity for public comment. Notification will be published in the **Federal Register** subsequent to the action.

[FR Doc. 03–22185 Filed 8–29–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 082203D]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Atlantic bluefin tuna retention limit adjustment.

SUMMARY: This action adjusts the Atlantic bluefin tuna (BFT) General category daily retention limit to allow for maximum utilization of the General category adjusted September time-period subquota. NMFS increases the daily retention limit to two large medium or giant BFT through September 30, 2003. This action is being taken to provide increased fishing opportunities in all areas without risking overharvest of the General category quota.

DATES: Effective September 1, 2003 through September 30, 2003.

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. Section 635.27 subdivides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) among the various domestic fishing categories, and General category effort controls (including time-period subquotas and restricted fishing days (RFDs)) are specified annually under 50 CFR 635.23(a) and 635.27(a). The 2003 BFT Quota Specifications and General category effort controls were proposed on July 10, 2003 (68 FR 41103).

Adjustment of Daily Retention Limit

Under § 635.23 (a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. Based on a review of dealer reports, daily landing trends, available quota, and the availability of BFT on the fishing grounds, NMFS has determined that an increase of the daily retention limit for the September time-period is appropriate and necessary to maximize use of the full, adjusted September subquota. Based on current and historical General category landings rates in the June through August time-period, it is highly unlikely that the June through August subquota will be filled in the remaining fishing days. At current catch rates and a daily retention limit of one BFT per vessel, it is also unlikely that the adjusted September subquota will be attained in the September time-period. Therefore, NMFS adjusts the General category daily retention limit through September 30 to two large medium or giant BFT per vessel.

The intent of this adjustment is to allow for maximum utilization by General category participants of the subquota for the September time-period (specified under 50 CFR 635.27(a)), (which has been adjusted by the quota carryover from the June through August time-period subquota), to help achieve optimum yield in the General category fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Closures or subsequent adjustments to the daily retention limit, if any, will be published in the **Federal Register**. In addition, owners/operators may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9305 for updates

on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action. Catch rates for the 2003 BFT season have been extremely low and, at the current rate of landings, it is highly unlikely that the available quota will be harvested by September 30, 2003. Delaying this action would further exacerbate this problem. Large amounts of unharvested quota will have negative social and economic impacts to U.S. fishermen that depend upon catching the available quota within the time periods designated in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks. Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., allows the retention of more fish), there is also good cause under 5 U.S.C. 553(d) to waive the delay in effectiveness of this action.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 26, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22339 Filed 8–27–03; 2:54 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 021122284–2323–02; I.D. 052503B]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Commercial Quota Harvested for Massachusetts

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a closure of a commercial fishery.

SUMMARY: NMFS announces that the summer flounder commercial quota available to Massachusetts has been harvested. Vessels issued a commercial Federal fisheries permit for the summer flounder fishery may not land summer flounder in Massachusetts for the remainder of calendar year 2003, unless additional quota becomes available through a transfer. Regulations governing the summer flounder fishery require publication of this notification to advise Massachusetts that the quota has been harvested and to advise vessel permit holders and dealer permit holders that no commercial quota is available for landing summer flounder in Massachusetts.

DATES: Effective 0001 hours, September 2, 2003, through 2400 hours, December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Jason Blackburn, Fishery Management Specialist, (978) 281–9326, e-mail *jason.blackburn@noaa.gov*

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 648. The regulations require annual specification of a commercial quota that is apportioned on a percentage basis among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.100.

The initial total commercial quota for summer flounder for the 2003 calendar year was set equal to 13,980,028 lb (6,341,235 kg)(68 FR 60, January 2, 2003). The percent allocated to vessels landing summer flounder in Massachusetts is 6.82046 percent, resulting in an initial commercial quota of 953,502 lb (432,501 kg). The 2003 allocation was adjusted downward due to an overage of the 2002 quota of 42,498 lb (19,277 kg) as of October 31, 2002. The resulting adjusted 2003 commercial quota for Massachusetts is 911,004 lb (413,229 kg). The 2003 allocation was further reduced to 907,274 lb (411,537 kg) due to research set-aside.

Section 648.101(b) requires the Administrator, Northeast Region, NMFS (Regional Administrator) to monitor state commercial quotas and to determine when a state's commercial quota has been harvested. NMFS then publishes a notification in the **Federal Register** to advise the state and to notify Federal vessel and dealer permit holders that, effective upon a specific date, the state's commercial quota has been harvested and no commercial quota is available for landing summer flounder in that state. The Regional Administrator has determined, based upon dealer reports and other available information, that Massachusetts has harvested its quota for 2003.

The regulations at § 648.4(b) provide that Federal permit holders agree, as a condition of the permit, not to land summer flounder in any state that the Regional Administrator has determined no longer has commercial quota available. Therefore, effective 0001 hours, September 2, 2003, further landings of summer flounder in Massachusetts by vessels holding summer flounder commercial Federal fisheries permits are prohibited for the remainder of the 2003 calendar year, unless additional quota becomes available through a transfer and is announced in the **Federal Register**. Effective 0001 hours, September 2, 2003, federally permitted dealers are also notified that they may not purchase summer flounder from federally permitted vessels that land in Massachusetts for the remainder of the calendar year, or until additional quota becomes available through a transfer.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22337 Filed 8–27–03; 2:53 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 082603A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the pollock total allowable catch (TAC) for Statistical Area 630 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 27, 2003, through 1200 hrs, A.l.t., September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the pollock TAC in Statistical Area 630 is 3,517 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003). In accordance with § 679.20(a)(5)(iii)(B), the Administrator, Alaska Region, NMFS, (Regional Administrator) hereby reduces the C season pollock TAC by 387 mt, the amount of the harvest previously taken in excess of the A and B season pollock allowances in Statistical Area 630 and split equally between the C and D seasons. The revised C season allowance of pollock TAC in Statistical Area 630 is therefore 3,130 mt (3,517 mt minus 387 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the revised C season allowance of the pollock TAC in Statistical Area 630 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,080 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the C season TAC in Statistical Area 630, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22338 Filed 8–27–03; 2:53 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030320066–3192–02; I.D. 022103D]

RIN 0648–AQ78

Fisheries of the Exclusive Economic Zone Off Alaska; Removal of Full Retention and Utilization Requirements for Rock Sole and Yellowfin Sole

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulatory changes to implement the partial approval of Amendment 75 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). As partially approved, this amendment eliminates all reference to the requirements for 100–percent retention and utilization of rock sole and yellowfin sole in the groundfish fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to amend regulations to maintain consistency with the the Magnuson-Stevens Fishery Management and Conservation Act (Magnuson-Stevens Act), the FMP, and other applicable laws.

DATES: Effective on October 2, 2003.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this action may be obtained from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall, or by calling (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, NMFS, Alaska Region, 907–586–8743 or jeff.hartman@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the exclusive economic zone of the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*). Regulations implementing the FMP appear at 50 CFR part 679. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

Purpose and Need for Amendment 75

The Sustainable Fisheries Act of 1996 (Public Law 104—297) effected numerous amendments to the Magnuson-Stevens Act, including the addition of a new National Standard 9. This standard requires that conservation and management measures, to the extent practicable, (A) minimize bycatch and, to the extent bycatch cannot be avoided, (B) minimize the mortality of such bycatch. In response to National Standard 9 the Council adopted a regulatory program in 1997 to reduce the amount of groundfish discards in the groundfish fisheries off Alaska. This program, known as the Improved Retention/Improved Utilization (IR/IU) Program, was adopted as Amendment 49 to the FMP. The IR/IU program requires that vessels fishing for groundfish in Alaska retain all pollock and Pacific cod beginning in 1998 when directed fishing for those species is open. Under Amendment 49, the IR/IU program expanded on January 1, 2003, to include all rock sole and yellowfin sole in the BSAI (flatfish IR/IU).

As the effective date of flatfish IR/IU approached, industry representatives testified to the Council that some sectors of the BSAI trawl fleet would not be able to accommodate full retention and utilization of rocksole and yellowfin sole due to insufficient markets and/or processing constraints and costs. Thus, flatfish IR/IU would force vessel owners to choose to no longer participate in the BSAI fisheries. In response, the Council initiated an analysis to assess these concerns and whether alternative management programs could be implemented by January 1, 2003, to reduce discard rates while still providing for historical participation in the BSAI fisheries.

In October 2002, the Council concluded that while several alternative proposals under consideration showed

merit, they were not sufficiently developed and analyzed in a manner that would allow for implementation on January 1, 2003. Therefore, the Council adopted a preferred alternative for Amendment 75 to the FMP to delay implementing the 100–percent retention requirements for rock sole and yellowfin sole until June 1, 2004. The intent of this action was to provide the Council and industry with additional time to develop alternative regulatory proposals to reduce discard amounts.

The Council submitted Amendment 75 for review by the Secretary of Commerce and a Notice of Availability of the FMP amendment was published in the **Federal Register** on February 28, 2003 (68 FR 9630). Comments on this proposed Amendment were invited through April 29, 2003. The proposed rule was published on March 28, 2003 (68 FR 15144), and was followed by a notice of additional supplementary information on April 18, 2003 (68 FR 19182), to summarize additional information on the Initial Regulatory Flexibility Analysis (IRFA). Comments on the proposed rule and supplementary information were invited through May 12, 2003. NMFS received 4 letters by the end of the comment periods on the proposed amendment and its implementing rule, all requesting an indefinite delay or removal of the flatfish IR/IU requirement for the BSAI groundfish fisheries. These comments are summarized and responded to in the Response to Comments section, below.

A summary of the analysis on Amendment 75, including the Council's preferred alternative, was provided in the proposed rule (68 FR 15144, March 28, 2003) and the Notice of Availability of Supplemental Information (68 FR 19182 April 18, 2003). On May 29, 2003, the Secretary of Commerce partially approved the Council's preferred alternative for Amendment 75. In doing so, the Secretary continued the IR/IU program for pollock and Pacific cod, but delayed indefinitely the flatfish IR/IU program by removing reference to this program from the FMP. Full approval of the Council's preferred alternative would have been inconsistent with the Administrative Procedure Act, which requires that the administrative record for an action include an explanation of the rational connection between the analysis and decision. The administrative record for Amendment 75 shows that if flatfish IR/IU regulations were to be implemented after the 18–month delay date of June 2004, they would result in significant adverse economic impacts on some participants in the groundfish fisheries. However, the record for this action does not show how overall benefits outweigh the costs. Approval of Amendment 75 also would have resulted in significant adverse economic impacts that are inconsistent with the problem statement for Amendment 75, National Standard 7 and National Standard 9. Thus, partial approval of Amendment 75 was necessary to provide sufficient opportunity for the Council to either develop a record for Amendment 75 or develop other options for refining the IR/IU program, without the immediate imposition of full retention of IR/IU flatfish species in the BSAI.

Elements of the Final Rule

This final rule would remove regulatory requirements for retention and utilization of rock sole and yellowfin sole in the BSAI. No other regulatory actions are contained in this final rule.

Changes from the Proposed Rule to the Final Rule

This final rule differs from the proposed rule in that it does not include a delay in the implementation of the IR/IU retention and utilization requirements for rock sole and yellowfin sole in the BSAI. Instead, regulatory provisions for flatfish IR/IU are removed. This change is necessary to conform regulations to the partial approval of Amendment 75.

Response to Comments

The proposed rule to implement Amendment 75 was published on March 28, 2003 (68 FR 15144), with comments invited through May 12, 2003. NMFS received 4 comment letters on the proposed rule, all of which address the adverse economic implications of the BSAI flatfish IR/IU program.

Comment: NMFS should rescind the flatfish IR/IU program in the BSAI, or put it on indefinite hold, because a delay until June 2004 will not provide sufficient time to implement alternative strategies to reduce discards of these species. Furthermore, significant progress already has been made voluntarily to reduce discards since 1997. The non-American Fisheries Act trawl catcher processor fleet alone has reduced yellowfin sole and rock sole discards by over 40 percent during the past 5 years.

Response: As explained above, the Secretary has determined that the proposed delay of the flatfish IR/IU program was inconsistent with the Administrative Procedure Act and National Standards 7 and 9. Thus, the existing provisions for flatfish IR/IU in the BSAI were removed from the FMP and its implementing regulations.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Council prepared an initial regulatory flexibility analysis (IRFA) that described the economic impact of the proposed rule, if adopted, would have on small entities. A summary of the IRFA was included in the Notice of Availability of Supplementary Information (68 FR 19182, April 18, 2003). The IRFA identified small and large entities that could be affected by the proposed rule and associated alternatives in the analysis. In Alternative 1 (the status quo) the imposition of a 100 percent IR/IU flatfish retention standard for rock sole and yellowfin sole in the BSAI would decrease revenues of small vessels while having little impact on larger vessels. This reduction in revenues could cause some of the smaller sized head and gut trawl catcher/processor vessels to exit fisheries in which these species are caught. Alternative 2, which would have allowed some discards of flatfish species, was anticipated to have some economic and operational impacts on small entities, but also was deemed to be impossible to enforce. Alternative 3 would have delayed imposition of IR/IU flatfish rules for up to 3 years, with the expectation that some form of fishing cooperative system would ease the economic burden of IR/IU flatfish rules in the BSAI. Alternative 4 would have exempted selected fisheries from IR/IU flatfish regulations based upon historical flatfish discard rates, but this would not mitigate the immediate burden on small head and gut catcher/processor vessels. The Council's preferred alternative was a modification of Alternative 3 that proposed a delay of IR/IU flatfish regulations for 18 months to temporarily ease the economic burden of flatfish IR/IU but ultimately would impose the full economic burden, unless other mitigating regulatory actions were to be implemented before the date that IR/IU flatfish rules would be implemented. No comments were submitted in response to the IRFA.

NMFS prepared a final regulatory flexibility analysis (FRFA) for the partial approval of Amendment 75 that contains the items specified in 5 U.S.C. 604(a). The FRFA consists of the IRFA, the comments and responses to the proposed rule, and the analyses completed in support of this action. A copy of the IRFA is available from the Council (see **ADDRESSES**). The preamble

to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that discussion is not repeated in its entirety here.

Statement of Objective and Need

A description of the reasons why this action is being considered, and the objectives of and legal basis for this action are contained in the preamble to the proposed rule and are not repeated here.

Summary of Significant Issues Raised in Public Comments

No public comments were received that related to the IRFA on this rule. Although 4 comments were received on the general economic impacts of the IR/IU program, these comments were not specific to the analyses contained in the IRFA. For a summary of the comments received, refer to the section above titled "Comments and Responses."

Description and Estimate of Number of Small Entities to Which the Rule Will Apply

A description and estimate of the number of small entities to which the rule will apply is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and in the notice of additional supplementary information and is not repeated here. The final rule has been modified from the proposed rule and the FRFA includes an analysis of the approved alternative that would permanently mitigate the impacts of flatfish IR/IU upon small entities by removing all reference to flatfish IR/IU in the BSAI FMP and implementing regulations. The number of small entities to which the rule will apply has not been affected by these changes.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

A description of projected reporting, recordkeeping, and other compliance requirements is provided in the IRFA and IRFA summary contained in the Classification section of the proposed rule and is not repeated here.

Steps Taken to Minimize Economic Impacts on Small Entities

Environmental impacts of the alternatives, including the Council's preferred Alternative and the Approved alternative, are expected to be insignificant based on the information and assessments are contained in Chapter 2 of the EA/RIR/FRFA. The Council's preferred alternative, and alternatives 1 through 4, would not have fully mitigated the adverse economic effects of IR/IU rules for flatfish on small entities because neither the Council nor the Secretary could guarantee that mitigating actions would have relieved the costs of full retention of IR/IU flatfish species by June 2004. The partial approval action of May 2003, will allow the benefits of the economic activity associated with these fisheries to accrue to vessel operators, crew and fishing communities, until the Council chooses to implement new IR/IU policies. Furthermore, the partial approval action will provide Council, industry, and the managing agencies time to develop measures that may meet bycatch reduction needs, while allowing the industry to continue to provide fishery benefits to the nation. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. This paragraph serves as the small entity compliance guide. Small entities are not required to take any additional actions to comply with this action. This action does not require any additional compliance from small entities. Copies of this final rule are available from NMFS (see **ADDRESSES**) and at the following web site: *http://www.fakr.noaa.gov/*

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: August 26, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulation Programs, National Marine Fisheries Service.

■ For the reasons set forth in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31, 113 Stat. 57.

§ 679.27 [Amended]

■ 2. In § 679.27, paragraphs (b)(3) and (b)(4) are removed and paragraph (b)(5) is redesignated as (b)(3).

[FR Doc. 03–22342 Filed 8–29–03; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 169
Tuesday, September 2, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–31–AD]

RIN 2120–AA64

Airworthiness Directives; Anjou Aeronautique Safety Belts and Restraint Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Anjou Aeronautique (ANJOU) (formerly TRW Repa S.A., formerly L'AIGLON) safety belts and restraint systems that are installed in aircraft. This proposed AD would require you to inspect safety belts and restraint systems for defects and service life limits, and, if necessary, repair safety belts and restraint systems that have not reached service life limits; and replace safety belts and restraint systems that have reached service life limits. This proposed AD is the result of field reports of inadvertent unbuckling of the ANJOU seat belts and two safety recommendations to take AD action. The actions specified by this proposed AD are intended to detect and correct defective safety belts and restraint systems, which could result in failure of the safety belts and restraint systems. Such failure could lead to lack of occupant restraint during normal or crash loads.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this proposed rule on or before November 10, 2003.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–31–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2003–CE–31–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Anjou Aeronautique, 13 Avenue De L'Osier, 49125 Tierce, France; telephone: 33 0 2 41 42 88 92; facsimile: 33 0 2 41 42 15 77. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention to?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How Can I Be Sure FAA Receives My Comment?

If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2003–CE–31–AD." We will date stamp and mail the postcard back to you.

Discussion

What Events Have Caused This Proposed AD?

The FAA issued Special Airworthiness Information Bulletin (SAIB) Number CE–02–44, dated September 4, 2002, for SOCATA—Groupe AEROSPATIALE (SOCATA) Model TBM 700 airplanes, concerning ANJOU seat belts. At that time, FAA did not make a determination of an unsafe condition and take AD action.

Later, FAA issued SAIB Number CE–03–06, dated November 7, 2002, for SOCATA Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes, concerning ANJOU seat belts. Again, FAA then did not make a determination of an unsafe condition and take AD action.

Continued field reports were received of inadvertent unbuckling of the ANJOU seat belts. Two safety recommendations were made to take FAA AD action (NPRM) to propose to require replacement of certain safety belts and restraint systems.

In light of the field reports and safety recommendations, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all SOCATA Models TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 7, 2003 (68 FR 11015). The NPRM proposed to require you to replace certain safety belts and restraint systems.

Comments received on the NPRM suggest that FAA withdraw the proposal and that FAA consider issuing a new NPRM to propose that you:

- Inspect certain ANJOU safety belts and restraint systems that are installed in airplanes for defects and service life limits;

- Repair defective safety belts and restraint systems that have not reached service life limits; and
- Replace safety belts and restraint systems that have reached service life limits.

We agree, and therefore, are withdrawing that NPRM.

What Are the Consequences if the Condition Is Not corrected?

These defective safety belts and restraint systems could result in failure of the safety belts and restraint systems. Such failure could lead to lack of occupant restraint during normal or crash loads.

Is There Service Information That Applies to This Subject?

ANJOU has issued this service information:

- Service Bulletin No. 343–25–02, Issue 1, dated October 23, 2001; and
- Service Bulletin No. 343–1–25–01, Issue 1, dated October 23, 2001.

What Are the Provisions of This Service Information?

The service bulletins include procedures for:

- Inspecting the buckles of the safety belts and restraint systems for defects;
- Replacing defective buckle springs; and
- Replacing safety belts and restraint systems when the service life limit is reached.

The FAA's Determination and an Explanation of the Provisions of This Proposed AD

What Has FAA Decided?

After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

- The unsafe condition referenced in this document exists or could develop on type design aircraft that incorporate ANJOU safety belts and restraint systems, types 343 and 343–1;
- The ANJOU safety belts and restraint systems, types 343 and 343–1, should be immediately inspected for correct installation and eventually replaced; and
- AD action should be taken in order to correct this unsafe condition.

What Would This Proposed AD Require?

This proposed AD would require you to incorporate the actions in the previously-referenced service bulletins.

How Does the Revision to 14 CFR Part 39 Affect This Proposed AD?

On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Cost Impact

How Many Aircraft Would This Proposed AD Impact?

We estimate that at least 617 aircraft in the U.S. registry could have the affected ANJOU safety belts and restraint systems installed. Some aircraft have more than one unit installed.

What Would Be the Cost Impact of This Proposed AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish this proposed inspection and repair:

Labor cost	Parts cost	Total cost per 6 safety belts and restraint systems
1 workhour per 6 safety belts and restraint systems × $65 per hour = $65	No cost	$65.

The number of installed safety belts and restraint systems may vary by individual aircraft configuration. Therefore, we have no way of determining the replacement cost for this proposed AD.

Compliance Time of This Proposed AD

What Would Be the Compliance Time of This Proposed AD?

The compliance time of this proposed AD is within 50 hours time-in-service or 4 calendar months after the effective date of this AD, whichever occurs first.

Why Is The Compliance Time of This Proposed AD Presented in Both Hours TIS and Calendar Time?

Defective safety belts and restraint systems are a direct result of use of the safety belts and restraint systems. However, defective safety belts and restraint systems are not necessarily a result of repetitive airplane operation. For example, defective safety belts and restraint systems could occur on an affected airplane within a short period of airplane operation while you could operate another affected airplane for a considerable amount of time without experiencing defective safety belts and restraint systems. Therefore, to assure that any defective safety belt and restraint system is detected and corrected in a timely manner without inadvertently grounding any of the affected airplanes, we are utilizing a compliance time based upon both hours TIS and calendar time.

Regulatory Impact

Would This Proposed AD Impact Various Entities?

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

Would This Proposed AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator,

the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

Anjou Aeronautique (Formerly TRW REPA S.A., Formerly L'Aiglon): Docket No. 2003–CE–31–AD

(a) This AD affects Anjou Aeronautique safety belts and restraint systems specified in paragraph (a)(1) that are installed on, but not limited to, the aircraft specified in paragraph (a)(2) that are certificated in any category:

(1) *Anjou Aeronautique safety belts and restraint systems:* Part Numbers/Types 343, 343–1, 343AM, 343B, 343BM, 343C, 343CM, 343D, and 343M.

(2) *Affected aircraft:* The following is a list of aircraft that may incorporate the affected Anjou Aeronautique safety belts and restraint systems:

(i) Eurocopter France Models AS332C, AS332L, AS332L1, AS332L2, and AS350B2 helicopters; and

(ii) SOCATA—Groupe Aerospatiale TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes.

(b) *Who must comply with this AD?* Anyone who wishes to operate an aircraft equipped with one of the affected safety belts and restraint systems must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct defective safety belts and restraint systems, which could result in failure of the safety belts and restraint systems. Such failure could lead to lack of occupant restraint during normal or crash loads.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Inspect the installed Anjou Aeronautique/TRW Repa S.A./L'Aiglon safety belts and restraint systems (types 343, 343–1, 343AM, 343B, 343BM, 343C, 343CM, 343D, or 343M) for: (i) defective buckle latch; and (ii) exceeded service life.	Within the next 50 hours time-in-service (TIS) after the effective date of this AD or 4 calendar months after the effective date of this AD, whichever occurs first, unless already accomplished. Repetitively inspect thereafter at every 12 calendar months until the affected safety belt and restraint system is replaced as specified by paragraph (d)(3) of this AD.	*For types 343, 343AM, 343B, 343BM, 343C, 343CM, 343D, or 343M:* In accordance with Aujou Aeronautique Service Bulletin No. 343–25–02, Issue 1, dated October 23, 2001. *For type 343–1:* In accordance with Anjou Aeronautique Service Bulletin No. 343–1–23–01, Issue 1, dated October 23, 2001.
(2) If any defective buckle latch or safety belt and restraint systems with exceeded service-life is found during any inspection required by paragraph (d)(1) of this AD: (i) For any defective buckle latch, replace defective parts with new parts. (ii) For any safety belt and restraint system that has exceeded its service life, replace with a non-Anjou Aeronautique/TRW Repa S.A./L'Aiglon FAA-approved safety belt and restraint system. The service life limit for the Anjou Aeronautique/TRW Repa S.A./L'Aiglon is 60 calendar months after the date of manufacture.	Prior to further flight after any inspection required by paragraph (d)(1) of this AD.	*For Types 343, 343AM, 343B, 343BM, 343C, 343CM, 343D, or 343M:* In accordance with Anjou Aeronautique Service Bulletin No. 343–1–25–02, Issue 1, dated October 23, 2001. *For type 343–1:* In accordance with Anjou Aeronautique Service Bulletin No. 343–1–23–01, Issue 1, dated October 23, 2001.
(3) Replace any installed Anjou Aeronautique/TRW Repa S.A./L'Aiglon safety belts and restraint systems (types 343, 343–1, 343AM, 343B, 343BM, 343C, 343CM, 343D, or 343M). Replacement of all safety belts and restraint systems eliminates the need for the repetitive inspections of paragraph (d)(1) of this AD.	Prior to exceeding the service life limit of 60 calendar months after the date of manufacture or 4 calendar months after the effective date of this AD, whichever occurs later.	Not Applicable.
(4) Do not install any Anjou Aeronautique/TRW Repa S.A./L'Aiglon types 343, 343–1, 343M, 343AM, 343B, 343BM, 343C, 343CM, and 343D safety belts and restraint systems.	As of the effective date of this AD.	Not Applicable.

Note: All inertia-reel type safety belts and restraint systems or fixed rear safety belts and restraint systems from another manufacturer are not affected by this AD.

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.19. Send these requests to the Manager, Standards Office, Small Airplane Directorate. For information on any already approved alternative methods of compliance, contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from Anjou Aeronautique, 13 Avenue De L'Osier, 49125 Tierce, France; telephone: 33 0 2 41 42 88 92; facsimile: 33 0 2 41 42 15 77. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on August 25, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22257 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–05–AD]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Models TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document withdraws a notice of proposed rulemaking (NPRM) that would have applied to all SOCATA—Groupe AEROSPATIALE (SOCATA) Models TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes. The proposed AD would have required you to replace certain safety belts and restraint systems. Comments received on the NPRM suggest that FAA withdraw the proposal and that FAA consider issuing a new NPRM to propose that you do similar actions on any aircraft that incorporates the affected seatbelts, not just the SOCATA airplanes. We agree and are withdrawing the NPRM.

ADDRESSES: You may look at information related to this action at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–05–AD, 901 Locust, Room 506, Kansas City, Missouri 64106, between 8 a.m. and 4 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What Action Has FAA Taken to Date?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all SOCATA Models TB 9, TB 10, TB 20, TB 21, TB 200, TMB 700, Rallye 100S, Rallye 150T, Rallye 150ST, Rallye 235E, and Rallye 235C airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 7, 2003 (68 FR 11015). The NPRM proposed to require you to replace certain safety belts and restraint systems.

Was the Public Invited To Comment?

The FAA invited interested persons to participate in the making of this amendment. We received 23 comments from 3 commenters on the proposed AD. The majority of the comments reflect the public's desire to have FAA withdraw the proposal and recommend that FAA consider issuing an NPRM to:

—Inspect certain safety belts and restraint systems that are installed in airplanes for defects and service life limits;

—Repair defective safety belts and restraint systems that have not reached service life limits; and

—Replace safety belts and restraint systems that have reached service life limits.

The commenters request that these actions apply to any aircraft that incorporates the affected seatbelts, not just the SOCATA airplanes.

The FAA's Analysis and Final Determination

Is There Additional Information Related to This Subject?

The following information applies to the subject of this AD Action:

—The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued French ADs Number 2002–104(AB), Revision 2; and Number 2002–105(AB) Revision 2;

—The above French ADs are equipment-related ADs and apply to all aircraft equipped with certain Anjou Aeronautique (ANJOU) (formerly TRW Repa S.A., formerly L'AIGLON) safety belts and restraint systems; and

—Aircraft that are equipped with the Anjou safety belts and restraint systems include small airplanes, transport airplanes, and helicopters.

What Is FAA's Final Determination on This Issue?

Based on this information, we have determined that we should withdraw the NPRM and initiate a separate AD action (NPRM) for certain ANJOU safety belts and restraint systems that are installed in aircraft.

Withdrawal of this NPRM does not prevent us from issuing another notice in the future, nor does it commit us to any future action.

Regulatory Impact

Does This AD Involve a Significant Rule or Regulatory Action?

Since this action only withdraws a proposed AD, it is not an AD and, therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, FAA withdraws the notice of proposed rulemaking, Docket No. 2003–CE–05–AD, which was published in the **Federal Register** on March 7, 2003 (68 FR 11015).

Issued in Kansas City, Missouri, on August 25, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22258 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15846; Airspace Docket No. 03–ASO–12]

Proposed Amendment of Class E Airspace; Jacksonville, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E5 airspace at Jacksonville, NC. A Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Onslow Memorial Hospital, Jacksonville, NC. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to contain the SIAP.

DATES: Comments must be received on or before October 2, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2003/15846 Airspace Docket No. 03–ASO–12, at the beginning of your comments. You may also submit comments on the Internet at

http://dms.dot.gov. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the Office of the Regional Air Traffic Division, Federal Aviation Administration, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2003–15846/Airspace Docket No. 03–ASO–12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov* or the Superintendent of Document's Web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being place on a mailing list future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E5 airspace at Jacksonville, NC. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Jacksonville, NC [REVISED]

Jacksonville, New River MCAS, NC
(Lat. 34°42′39″ N, long. 77°26′21″ W)
Albert J. Ellis Airport
(Lat. 34°49′45″ N, long. 77°36′44″ W)
Onslow Memorial Hospital
Point In Space Coordinates
(Lat. 34°45′36″ N, long. 77°22′28″ W)

That airspace extending upward from 700 feet or more above the surface within a 7-mile radius of New River MCAS, within a 6.4-mile radius of Albert J. Ellis Airport and that airspace within a 6-mile radius of the point in space (lat. 34°45′36″ N, long. 77°22′28″ W) serving Onslow Memorial Hospital.

* * * * *

Issued in College Park, Georgia, on August 13, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–21325 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

RIN 2120–AA66

[Docket No. FAA 2003–15562; Airspace Docket No. ASD 03–AGL–10]

Proposed Revision of Federal Airways V–233; Capitol, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Federal Airway 233 (V–233) northeast of the Capitol, IL, area Very High Frequency Omni-directional Range/ Tactical Air Navigation (VORTAC). The FAA is proposing this action due to the relocation of the Capitol VORTAC and to enhance the management of aircraft operations over the Capitol, IL, area.

DATES: Comments must be received on or before October 15, 2003.

ADDRESSES: Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street SW., Washington, DC 20590–0001. You must identify docket numbers FAA–2003–15562/Airspace Docket No. 03–AGL–10, at the beginning of your comments.

You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, O'Hare Lake Office Center, 2300 East Devon Avenue, Des Plaines, IL 60018.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA 2003–15562/Airspace Docket No. 03–AGL–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov*. Recently published rulemaking documents can also be accessed through the FAA's webpage at *http://www.faa.gov* or the Superintendent of Document's webpage at *http://www.access.gpo.gov/nara*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The FAA is relocating the Capitol VORTAC 3.96 nautical miles to the southwest of its current location. As a part of that effort, the FAA plans to realign V–233 northeast of the Capitol VORTAC.

The Proposal

The FAA is proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise V–233 in the Capitol, IL, area. Specifically, this action proposes to realign V–233 northeast of the Capitol VORTAC to reflect the radial change due to the relocation of the Capitol VORTAC and to enhance the management of aircraft operations over the Capitol, IL, area.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9K dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows:

Paragraph 6010(a) Domestic VOR Federal Airways

* * * * *

V–233 [Revised]

From Capitol, IL; INT Capitol 061°T(062°M) and Roberts, IL, 233° radials; Roberts; Knox, IN; Goshen, IN; Litchfield, MI; Lansing, MI; INT Mount Pleasant 351° and Gaylord, MI, 207° radials; Gaylord; to Pellston, MI.

* * * * *

Issued in Washington, DC on August 22, 2003.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 03–22208 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Chapter I

Meeting of the No Child Left Behind Negotiated Rulemaking Committee

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Announcement of negotiated rulemaking committee meeting.

SUMMARY: The Secretary of the Interior has established an advisory Committee to develop recommendations for proposed rules for Indian education under six sections of the No Child Left Behind Act of 2001. As required by the Federal Advisory Committee Act, we are announcing the date and location of the next meeting of the No Child Left Behind Negotiated Rulemaking committee.

DATES: The Committee's next meeting will be held September 15–19, 2003. The meeting will begin at 8:30 am (CDT) on Monday, September 15 and end at noon (CDT) on Friday, September 19.

ADDRESSES: The meeting will be held at the Gaylord Opryland Resort and Convention Center, 2800 Opryland Drive, Nashville, TN 37214, telephone (615) 883–2211.

FOR FURTHER INFORMATION CONTACT: Barbara James or Shawna Smith, No Child Left Behind Negotiated Rulemaking Project Management Office, P.O. Box 1430, Albuquerque, NM 87103–1430; telephone (505) 248–7241/6569; fax (505) 248–7242; email *bjames@bia.edu* or *ssmith@bia.edu*. We will post additional information as it becomes available on the Office of Indian Education Programs Web site under "Negotiated Rulemaking" at *http://www.oiep.bia.edu*.

SUPPLEMENTARY INFORMATION: For more information on negotiated rulemaking under the No Child Left Behind Act, see the **Federal Register** notices published on December 10, 2002 (67 FR 75828) and May 5, 2003 (68 FR 23631) or the Web site at *http://www.oiep.bia.edu* under "Negotiated Rulemaking".

The items for negotiation include: Student Rights/Geographic Boundaries; Tribally Controlled Schools Act/Grants; Adequate Yearly Progress; and Funding and Distribution of Funds. The Committee will meet in work groups and in full session each day for work group reports, public comments, and logistics. All meetings are open to the public. There is no requirement for advance registration for members of the public who wish to attend and observe the Committee meetings or the work group meetings or to make public comments. Members of the public may also make written comments to the Committee by sending them to the NCLB Negotiated Rulemaking Committee, Project Management Office, P.O. Box 1430, Albuquerque, New Mexico 87103. We will provide copies of the comments to the Committee.

The agenda for the September 15–19, 2003, meeting is as follows:

Agenda for No Child Left Behind Negotiated Rulemaking Committee Meeting September 15–19, 2003, Nashville, Tennessee

Meetings end at 5:30 pm each day (except September 19)

September 15
- Opening Remarks—8:30 am
- Public Comments (30 minutes)
- Introductions, Logistics, and Housekeeping
- Approval of summary from Seattle meeting
- Review agenda
- Plenary Committee considers consensus on proposed rule language
- Work Group meetings

September 16
- Public comments—8:30—9 am
- Work Group meetings
- Plenary Committee considers consensus on proposed rule language

September 17
- Public comments—8:30—9 am
- Work Group meetings
- Plenary Committee considers consensus on proposed rule language

September 18
- Public comments—8:30—9 am
- Work Group meetings
- Plenary Committee considers consensus on proposed rule language

September 19
- Public Comments—8:30—9 am
- Plenary Committee meeting
- Considers consensus on proposed rule language
- Set agenda for next meeting
- Evaluations
- Closing remarks
- Closing—noon

Dated: August 26, 2003.

Aurene M. Martin,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 03–22228 Filed 8–29–03; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 57

RIN 1219–AB29

Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Proposed rule; correction.

SUMMARY: This document corrects printing and other errors in the preamble to a proposed rule published in the **Federal Register** of August 14, 2003 (68 FR 48668) regarding diesel particulate matter exposure in underground metal and nonmetal mines.

FOR FURTHER INFORMATION CONTACT: Marvin W. Nichols, Jr., Director, Office of Standards, Regulations, and Variances, MSHA, 1100 Wilson Blvd., Room 2350, Arlington, Virginia 22209–3939, *Nichols.Marvin@dol.gov*, (202) 693–9440 (telephone), or (202) 693–9441 (facsimile).

Correction

In proposed rule FR Doc. 03–20190, beginning on page 48668 in the issue of August 14, 2003, make the following corrections:

1. On page 48669, in the first column, in the fourth paragraph, the date "October 7, 2003" is corrected to read "October 14, 2003."

2. On page 48676, in Chart V–3 at the top of the page, the term "400 µg/m3" in the label of the x-axis is corrected to read "400 µg/m^3".

3. On page 48678, at the top of the third column, the word "avoided" is corrected to read "voided".

4. On page 48678, in Chart V–5 beginning in the middle of the page, the

term "µg/m3" in the label of the y-axis is corrected to read "µg/m³".

5. On page 48683, in the title of Table VI–2 at the bottom of the page, the term "µG/M³" is corrected to read "µg/m³".

6. On page 48684, in the second column, in the first paragraph, in the last sentence, the term "200DPM" is corrected to read "200DPM".

7. On page 48684, in the third column, in the last sentence of the first paragraph, the term "Tables VI–7 and VI–8" is corrected to read "Tables VI–1 and VI–2".

8. On page 48688, in Table VI–4 at the top of the page, the term "µG/M³" appearing twice the title is corrected to read "µg/m³".

9. On page 48689, in the continuation of Table VI–5, under the column heading "Key results," the term "exposure__100" in the first sentence is corrected to read "exposure equal to or greater than 100".

10. On page 48690, in Table VI–7 at the top of the page, in the column labeled "Key Results," the third entry is corrected to read "After adjustment for other risk factors and potential confounders, using a variety of statistical methods, fine particulate ($PM_{2.5}$) exposures were significantly associated with cardiopulmonary mortality (and also with lung cancer)."

11. On page 48690, in Table VII–8 beginning in the middle of the page, in the table's title on this page and in the continuation on page 48691, the term "Table VII.–8" is corrected to read "Table VI–8" and the word "Article" is corrected to read "Articles"; in the column labeled "Description," in the last sentence of the second entry, the term "NO²" is corrected to read "NO_2"; and in the column labeled "Key results," in the third entry, the word "cofounders" is corrected to read "confounders" and the term "10 g/m³" is corrected to read "10 µg/m³".

12. On page 48691, in Table VI–8 beginning in the middle of the page, in the table's title, the term "Table VI–8" is corrected to read "Table VI–9"; in the column labeled "Key results", the term "polynuclear aromatic engine compounds" in the second entry is corrected to read "polynuclear aromatic compounds".

13. On page 48692, in the continuation of Table VI–8, the term "Table VI–8" in the title is corrected to read "Table VI–9"; in the column labeled "Description," in the third entry, the term "PM2.5 (fine PM) and PM2.5–10" is corrected to read "$PM_{2.5}$ (fine PM) and $PM_{2.5-10}$", and in the sixth entry, the term "100 µg/m3 or 3 mg/m3" is corrected to read "100 µg/m³ or 3 mg/m³"; in the column labeled "Key results," in the last entry at the bottom of the page, the term "DMP" is corrected to read "DPM" and the term "reactivity/" is corrected to read "reactivity/responsiveness"; and in the column labeled "Agent(s) of toxicity," in the sixth entry, the term "SO2 and NO2" is corrected to read "SO_2 and NO_2".

14. On page 48693, in the continuation of Table VI–8 at the top of the page, the term "Table VI–8" in the title is corrected to read "Table VI–9"; in the entry in the column labeled "Key results", the word "Thio" is corrected to read "Thiol"; and the key directly beneath the table is deleted.

15. On page 48693, in Table VI–9 in the middle of the page, the term "Table VI–9" in the title is corrected to read "Table VI–10" and the key directly beneath the table is deleted.

16. On page 48694, in the second column, in the first paragraph, in the legal citation after the first full sentence, the term "647 F.2d 1273" is corrected to read "647 F.2d 1189, 1273", and in the forth full sentence the term "feasible when Aif through" is corrected to read "feasible "if through".

17. On page 48694, in the second column, in the second paragraph, the term "647 F.2d 1164" is corrected to read "647 F.2d 1189, 1266 (D.C. Cir. 1981)".

18. On page 48705, in the "Summary of Costs and Benefits" section in the first column, in the second paragraph, the first sentence is corrected to read "The proposed rule would result in a net cost of $4,539 per year."; in the third sentence, the term "cost savings of $86" is corrected to read "cost of $25"; and the fifth sentence is corrected to read "The cost or cost savings (negative cost) per mine for mines in these three size classes would be −$34, $58 and $58, respectively."

19. On page 48705, in the second column, under the section-by-section discussion of the proposed rule, in the first paragraph, in the third sentence, the term "308_{TC} µg/m³ is corrected to read 308_{EC} µg/m3" .

20. On page 48714, in the third column, the term "AMSHA" in the second sentence of the first paragraph is corrected to read ""MSHA".

21. On page 48719, in the alphabetical list of references, the reference listed as "Holgate, *et al.*, 2002." in the second column is corrected to read "Holgate, Stephen T., *et al.*, "Health Effects of Acute Exposure to Air Pollution, Part I: Healthy and Asthmatic Subjects Exposed to Diesel Exhaust", Health Effects Institute Research Report No. 112 (Partial Preprint Version), December 2002.", and the references listed as "Patton and Lopez, 2002." and "Polosa, *et al.*, 2003 (Italian)." are deleted.

Dated: August 26, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

[FR Doc. 03–22320 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–43–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MI83–01–7292b, FRL–7526–8]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; Definition of Volatile Organic Compound

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to Michigan's definition of volatile organic compound (VOC). EPA's approval will revise Michigan's State Implementation Plan (SIP) for ozone. The Michigan Department of Environmental Quality (MDEQ) submitted this SIP revision on April 25, 2003. In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If we receive no adverse comments in response to that direct final rule, we plan to take no further action on this proposed rule. If we receive significant adverse comments, in writing, which we have not addressed, we will withdraw the direct final rule and address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document.

DATES: EPA must receive written comments on or before October 2, 2003.

ADDRESSES: Send written comments to:

Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in Part(I)(B)(1)(i) through (iii) of the Supplementary Information section.

You may inspect copies of the documents relevant to this action during normal business hours at the following location:

Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Kathleen D'Agostino at (312) 886–1767 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Kathleen D'Agostino, Environmental Engineer; Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–1767, *dagostino.kathleen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under "Region 5 Air Docket MI83". The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the For Further Information Contact section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text "Public comment on proposed rulemaking Region 5 Air Docket MI83" in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *nash.carlton@epa.gov.* Please include the text "Public comment on proposed rulemaking Region 5 Air Docket MI83" in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

ii. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then click on the button "TO SEARCH FOR REGULATIONS CLICK HERE", and select Environmental Protection Agency as the Agency name to search on. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket MI83" in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

C. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so

marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

7. Make sure to submit your comments by the comment period deadline identified.

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

E. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**.

Dated: June 18, 2003.

Cheryl L. Newton,

Acting Regional Administrator, Region 5.

[FR Doc. 03–22156 Filed 8–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN73–1–7298b; FRL–7541–6]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for Lafarge Corporation's (Lafarge) facility located on Red Rock Road in Saint Paul, Ramsey County, Minnesota. By its submittal dated July 18, 2002, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Lafarge's state operating permit into the Minnesota PM SIP. The request is approvable because it meets the requirements of the Clean Air Act. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before October 2, 2003.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590. Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in part(I)(B)(1)(i) through (iii)of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information?

1. *The Regional Office has established an official public rulemaking file available for inspection at the Regional Office.* EPA has established an official public rulemaking file for this action under "Region 5 Air Docket MI83". The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Air Programs Branch, Air and Radiation Division, EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the Regulations.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

B. How and To Whom Do I Submit Comments?

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iii. Disk or CD ROM. You may submit comments on a disk or CD ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please include the text "Public comment on proposed rulemaking Regional Air Docket MI83" in the subject line on the first page of your comment.

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In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

E. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: May 16, 2003.

Norman Niedergang,

Acting Regional Administrator, Region 5.

[FR Doc. 03–22158 Filed 8–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN79–1b; FRL–7543–7]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a site-specific revision to the Minnesota

sulfur dioxide (SO_2) State Implementation Plan (SIP) for the Xcel Energy (formerly known as Northern States Power Company) Inver Hills Generating Plant located in the city of Inver Grove Heights, Dakota County, Minnesota. By its submittal dated August 9, 2002, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Xcel's federally enforceable Title V operating permit into the Minnesota SO_2 SIP and remove the Xcel Administrative Order from the state SO_2 SIP. The state is also requesting in this submittal, that EPA rescind the Administrative Order for Ashbach Construction Company (Ashbach) from the Ramsey County particulate matter (PM) SIP. The requests are approvable because they meet the requirements of the Clean Air Act. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before October 2, 2003.

Comments may also be submitted electronically or through hand delivery/courier, please follow the detailed instructions described in Part(I)(B)(1)(i) through (iii)of the **SUPPLEMENTARY INFORMATION** section of the related direct final rule which is published in the Rules section of this **Federal Register**.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, *nash.carlton@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@epa.gov*.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: May 23, 2003.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 03–22154 Filed 8–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7550–2]

South Carolina: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: South Carolina has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to South Carolina. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by October 2, 2003.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW Atlanta, GA, 30303–3104; (404) 562–8448. You can examine copies of the materials submitted by South Carolina during normal business hours at the following locations: EPA Region 4 Library, Atlanta Federal Center, Library, 61 Forsyth Street, SW., Atlanta, Georgia 30303; (404) 562–8190; or South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201, (803) 896–4174.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, at the above address and phone number.

SUPPLEMENTARY INFORMATION:

For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: August 18, 2003.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 03–22311 Filed 8–29–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 15, 27, 87, and 97

[ET Docket No. 00–258 and WT Docket No. 02–8; FCC 03–134]

Federal Government 3G Relocation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes to make spectrum available for Federal Government operations that will be displaced from the band 1710–1850 MHz as a result of making the 1710–1755 MHz segment available to support the introduction of new non-Federal Government advanced wireless services (AWS), including third generation wireless (3G) systems. The implementation of these proposals would substantially clear the band 1710–1755 MHz of Federal Government operations that would have otherwise impeded the development of new nationwide AWS services.

DATES: Written comments are due November 3, 2003, and reply comments are due December 1, 2003.

ADDRESSES: Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 418–2450, TTY (202) 418–2989, e-mail: *Tom.Mooring@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Notice of Proposed Rule Making*, ET Docket 00–258 and WT Docket No. 02–8, FCC 03–134, adopted June 13, 2003, and released July 7, 2003. The full text of this document is available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room, CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before November 3, 2003, and reply comments on or before December 1, 2003. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary Fourth Notice of Proposed Rulemaking

The Band 2025–2110 MHz

1. The Commission proposes to revise footnote US346 to permit the U.S. Department of Defense (DOD) to operate tracking, telemetry, and commanding (TT&C) transmit earth stations at the 11 existing sites requested by the National Telecommunications and Information Administration (NTIA) on a co-equal, primary basis with Television Broadcast Auxiliary Service (BAS), the Local Television Transmission Service (LTTS), and the Cable Television Relay Service (CARS) (together these three services will be referred to as BAS in this document) operations in the band 2025–2110 MHz. The band 2025–2110 MHz is the principal band for TT&C Earth-to-space transmissions (uplinks) outside of the United States and the proposed action would allow the military services to have access to it, thereby better harmonizing U.S. space operations with the rest of the world. The Commission makes this proposal so that the band 1710–1755 MHz can be substantively cleared of Federal operations, thereby assisting in the introduction of new AWS, including 3G. Specifically, the proposal would give DOD the option of moving any or all of its TT&C uplinks at 11 specific sites up in frequency from 1761–1842 MHz to 2025–2110 MHz in order to clear spectrum in a geographic area for military fixed and mobile systems, including those that must be relocated out of the band 1710–1755 MHz. If specific frequencies within the band 2025–2110 MHz are successfully coordinated, then that earth station would operate on a co-equal, primary basis with BAS. The Commission states that this action would provide a reasonable opportunity for clearing the band 1710–1755 MHz for new nationwide AWS uses and that permitting DOD earth stations access to the band 2025–2110 MHz would also provide greater use of the band 2025–2110 MHz without a significant impact on incumbent operations.

2. DOD transmit earth stations are used to control satellites in both geostationary and non-geostationary orbits (NGSOs). Further, DOD TT&C earth stations use extremely large antennas and high transmitter output powers to produce highly focused and very powerful mainbeams and could have large coordination areas. Thus, these transmit earth stations could potentially cause interference to BAS operations. Accordingly, the Commission finds that coordination will be necessary between DOD earth stations operating in the band 2025–2110 MHz and 2 GHz BAS operations. In this regard, the Commission will maintain its longstanding policy that first-licensed facilities have the right of protection from later-licensed facilities operating in the same frequency band. The Commission states that—with coordination—DOD earth stations at an additional 11 sites may also successfully share frequencies in this band with the incumbent BAS operations based on a variety of factors that can facilitate sharing of this spectrum. These include terrain shielding and the facts that some of the antennas may be pointed out to sea, that each TT&C channel is generally used only for relatively short periods of time, that a TT&C channel is expected to impact only one BAS channel, that earth stations controlling GSO satellites may point at such high elevation angles as to have a minimal impact on BAS operations, etc. The Commission solicits comment on the specific factors that would permit proposed spectrum sharing.

3. Ordinarily in a Federal/non-Federal Government shared band, DOD would follow NTIA's procedures in securing coordination; that is, NTIA would approve the change in frequency for the earth stations and submit the frequency change to the Commission through the Frequency Assignment Subcommittee (FAS) of the Interdepartment Radio Advisory Committee (IRAC). Commission engineers would then provide input to ensure that incumbent non-Federal Government operations would be protected. However, in this case, the Commission does not believe that the ordinary processes in Federal/non-Federal Government shared bands can be used without some

modifications. For example, frequency coordination of the 2 GHz BAS band has long been entrusted to private coordinators, such as SBE. The Commission also notes that the band 1990–2110 MHz supports a mix of mobile TV pickup (TVPU) stations and fixed links and that BAS stations are currently transitioning to narrower channels in the band 2025–2110 MHz, to accommodate new services in the 1990–2025 MHz segment. In addition, because each local TV market may transition to a new BAS channel plan at different times, local frequency coordinators may be in the best position to assess requests that affect local operating conditions. Thus, the Commission proposes to require that, prior to submitting applications for the authorization of the 11 earth stations to the Commission through the FAS, DOD frequency coordinators and technical representatives work with the local frequency coordinator (in most cases, this would be SBE) and the affected BAS licensees to ensure that the DOD operations not cause interference to incumbent non-Federal Government operations. Further, the Commission proposes that operation of these earth stations in the band 2025–2110 MHz not be authorized in the absence of successful coordination between the affected parties. The Commission expects that it may be necessary to jointly establish with NTIA other non-standard coordination procedures during the course of this proceeding. The Commission seeks comment on coordination procedures that can be implemented which will ensure that both fixed and mobile BAS stations are adequately protected and accommodate the introduction of Federal earth stations in this band. The Commission acknowledges that the short separation distances identified above present coordination challenges. The Commission seeks comment on how these challenges can be addressed. The Commission recognizes that its Rules do not currently include coordination rules that protect the normal operating areas of TVPU stations, but it is hopeful that coordination between the parties is achievable for the 11 DOD transmit earth stations without adversely affecting TVPU operations, particularly reception at fixed sites, including receive-only sites and at venues where sports or news events routinely occur. While the Commission does not believe that non-Federal Government operations are likely to cause interference to Federal Government operations, it will require that once a DOD earth station has been coordinated, new BAS stations within these 11 areas coordinate their systems with the local DOD facility.

4. The Commission does not make this proposal without concerns. Notably, it is concerned about the impact on future BAS growth in areas near the 11 TT&C uplink earth stations, especially in light of the ongoing digital television (DTV) transition. The Commission solicits comment on its proposal and on methods that could be employed to ensure future BAS growth. After coordination, local BAS users should be able to work around Federal operations in the coordinated area. Specifically, the Commission notes that new BAS stations can be added in areas near the 11 earth stations, if they are located near incumbent BAS stations, which will be protected as a result of the coordination process. Nonetheless, the Commission solicits comment on whether other frequency bands are more appropriate for the 11 TT&C uplink earth stations.

5. The Commission also observes that the adjacent frequency bands (1990–2025 MHz and 2110–2155 MHz) have been reallocated to the fixed and mobile services and addresses a concern that interference could be caused to these future services due to the placement of the 11 TT&C earth stations in the band 2025–2110 MHz. In particular, interference could be caused by out-of-band emissions and by receiver overload. In addressing out-of-band emission interference, the Commission notes that the unwanted emission standards for Federal Government earth stations operating above 960 MHz are specified as follows:

> For all systems operating in this frequency range the emissions radiated outside of the necessary bandwidth shall roll-off at a rate equal to or greater than 40 dB/decade (12 dB/octave) from the attenuation level at the limit of necessary bandwidth. The emissions power shall roll-off to a level of at least 60 dB below the transmissions Maximum Peak SPD [Spectral Power Density] or less. The requirements in this standard specify the upper bounds on unwanted emissions from space and earth stations associated with the space services.

TT&C uplink channels in the band 1761–1842 MHz have a necessary bandwidth of 4 MHz and the Commission anticipates that new TT&C channels in the band 2025–2110 MHz will be approximately the same bandwidth. NTIA indicates that currently the signal level two-megahertz away from a TT&C center frequency is normally attenuated 20–25 dB below the maximum peak SPD. TT&C uplink transmitter output power is expected to range from 100 watts to 10 kW. The Commission solicits comment on how such high power levels coupled with the noted attenuation characteristics would impact BAS operations in the band 2025–2110 MHz.

6. The Commission requests comment on whether the limits specified above will be sufficient to protect the mobile and fixed receivers that will operate on spectrum above and below the band 2025–2110 MHz, or whether additional requirements, *e.g.*, specific limits on emissions generated outside the band 2025–2110 MHz, will be necessary. The Commission notes that emissions produced by the TT&C transmitters are expected to be greater than those that will be produced by future digital BAS transmitters that will operate in the band 2025–2110 MHz. The Commission therefore seeks comment on whether the Federal Government's unwanted emission standard is sufficient to protect out-of-band operations, or whether TT&C earth station emission limitations outside the band 2025–2110 MHz should be further limited. The Commission observes that limiting emissions outside the band 2025–2110 MHz could be accomplished by reducing power, by increasing the attenuation roll-off rate and the maximum roll-off, and by not using spectrum immediately adjacent to the band edges, *i.e.*, by providing for guard bands. The Commission requests comment on whether such measures should be taken, and specifically whether TT&C transmitter emissions outside the band 2025–2110 MHz should be limited to those of a digital BAS transmitter with a bandwidth of 12 MHz and an output power of 13 dBW, centered 6.5 MHz from the band edge and meeting the emission mask in § 74.637(a)(2).

7. With regard to the potential for receiver overload interference, the Commission notes that TT&C transmitters are expected to operate with transmitter output power levels ranging from 100 watts to 10 kW. This raises concerns about the potential for overload of fixed and/or mobile receivers operating near TT&C stations receiving on spectrum above and below the band 2025–2110 MHz. The Commission thus seeks comment on whether, based on the geographic location of TT&C transmitters, interference of this type could occur. If such interference is likely, the Commission seeks comment on what limits on TT&C transmitters (*e.g.*, reduced power levels, avoidance of the upper and lower edges of the band 2025–2110 MHz) might reduce the likelihood of overload interference to adjacent band mobile and fixed receivers. Similarly, the Commission

seeks comment on measures that need to be taken by fixed and mobile receivers to protect against this type of interference.

8. The Commission also proposes to permit DOD to operate stations in the fixed and mobile except aeronautical mobile services on a secondary basis in the band 2025–2110 MHz at the six sites identified by NTIA in the southwestern United States. NTIA states that because these operations (such as tactical radio relay systems) are usually in remote areas, it would appear to be feasible for DOD to operate on a coordinated basis in this band. The Commission agrees with NTIA that it appears feasible for DOD to operate stations in the fixed and land mobile services on a secondary basis at six sites in the southwestern United States and to also operate stations in the maritime service in the Pacific Missile Test Range/Pt. Mugu on a secondary basis without hindering BAS fixed and mobile operations. The Commission requests comment on this tentative finding and proposes to adopt a United States footnote.

9. The Commission requests comment on all of the above proposals for the band 2025–2110 MHz. The Commission is particularly interested in commenters' suggestions regarding how best to share the band 2025–2110 MHz between incumbent uses and the proposed extremely high powered transmitting earth stations. In addition, if commenters believe any of the 11 proposed earth station locations to be particularly problematic with regard to protecting BAS receive sites, it requests specific suggestions and detailed engineering analysis showing how such situations can be resolved.

The Band 2360–2400 MHz

10. Consistent with the 2002 *Viability Assessment*, the Commission proposes to allocate the band 2360–2395 MHz for aeronautical mobile purposes on a primary basis for Federal Government use so that aeronautical mobile systems that currently operate in the band 1710–1755 MHz at the 16 protected sites can be relocated by December 2008. This relocation would substantively clear the band 1710–1755 MHz of Federal Government systems so that this spectrum can be used to accommodate AWS, including 3G systems.

11. The Commission also proposes to allocate the band 2390–2395 MHz to the mobile service on a primary basis for non-Federal Government use and to generally limit the use of this allocation and of the existing non-Federal Government mobile service allocation in the band 2385–2390 MHz to aeronautical telemetry use. This action would provide 10 megahertz of needed spectrum for commercial aeronautical telemetry operations. The Commission observes that aeronautical telemetry bandwidth requirements have significantly increased in recent years as aircraft manufacturers collect increasing amounts of data and video concerning the performance of prototype aircraft. Given the increasing amounts of data being collected in flight tests, and the higher and higher data rates being utilized for such purposes, the Commission tentatively finds that additional spectrum for aeronautical telemetry use is necessary.

12. In addition, the Commission observes that the aircraft manufacturers that make military aircraft are the same as those that make commercial aircraft. Further, Federal and non-Federal Government users have traditionally shared the aeronautical telemetry bands on a co-primary basis, including the band 2385–2390 MHz. Therefore, the Commission considers it beneficial to expand the primary non-Federal Government aeronautical telemetry allocation to include the band 2385–2395 MHz. This action would make the band available to non-Federal Government aeronautical telemetry operations, as well as to Federal Government aeronautical mobile operations. As a consequence of these proposals, the Commission proposes to make a number of specific changes to rules affecting various portions of the band 2360–2400 MHz.

13. As indicated previously, the band 2360–2385 MHz is currently allocated to the mobile service on a primary basis for Federal and non-Federal Government use. The use of these mobile allocations is limited by footnote US276 to aeronautical telemetering and associated telecommand operations for flight testing of manned and unmanned aircraft, missiles, or major components thereof. In order to implement the proposal, the Commission would allocate the band 2385–2395 MHz to the mobile service on a primary basis for Federal Government use and would modify footnote US276 to permit Federal agencies to conduct all types of aeronautical mobile operations, not just aeronautical telemetering and telecommand operations. The Commission also proposes to expand the permissible uses under the Federal Government mobile service allocation in the band 2360–2395 MHz to include land mobile and maritime mobile applications on a secondary basis to aeronautical mobile applications.

14. Except as described, this approach would return the band 2385–2390 MHz to its allocation status prior to its recent transfer and reallocation. Therefore, the Commission also proposes to allocate the band 2385–2390 MHz to the radiolocation service on a primary basis and to the fixed service on a secondary basis for Federal Government use. NTIA indicates that Federal Government use of the radiolocation allocation in the band 2385–2390 MHz would be limited to the military services and thus, footnote G2 would be revised to reflect this limitation. Consistent with the above proposal to allocate the band 2390–2395 MHz to the aeronautical mobile service on a primary basis for Federal Government use, the Commission proposes to revise footnote G122 so that Federal Government operations in the band 2390–2395 MHz would no longer be shown as being on a non-interference basis to non-Federal Government operations.

15. By footnote G120, NTIA prohibits the development of airborne primary radars in the band 2310–2385 MHz with a peak transmitter power in excess of 250 watts for use in the United States. NTIA has previously applied footnote G120 to the band 2385–2390 MHz. During its work on this proposed rule, Commission staff noticed that the bands 2310–2320 MHz and 2345–2360 MHz are no longer allocated to the Federal radiolocation service on a primary basis. In addition, the Commission has recently proposed to downgrade the Federal radiolocation service allocation from primary to secondary status in the band 2320–2345 MHz because Satellite DARS licensees have commenced operations. Therefore, the Commission proposes, with NTIA's concurrence, to amend footnote G120 by removing the band 2310–2360 MHz and by adding the band 2385–2390 MHz.

16. In order to promote spectrum sharing between Federal and non-Federal Government operations, the Commission proposes to remove the recently added, but still unused, fixed allocation from the band 2385–2390 MHz in the non-Federal Government Table. The Commission also proposes to re-apply the prior footnote US276 limitations on non-Federal Government mobile use of the band 2385–2390 MHz and to also apply the footnote US276 limitations on non-Federal Government mobile use of the band 2390–2395 MHz. These actions would return the band 2385–2390 MHz to use for non-Federal Government flight test stations and would also make available replacement spectrum for non-Federal Government flight test stations that are displaced from the band 2310–2360 MHz, thereby providing 35 megahertz (2360–2395 MHz) of primary spectrum for non-Federal Government aeronautical

telemetry purposes. In consideration of all the proposals for the band 2360–2395 MHz, the Commission proposes to revise footnote US276.

17. Under the proposal, the amateur service would retain its current primary allocation at 2390–2400 MHz, but would be required to share the lower 5 megahertz with new Federal and non-Federal Government operations on a co-primary basis. The Commission indicates that such sharing would not have a significant impact on amateur operations. Under its band plan, the Amateur Radio Relay League (ARRL) has designated the 2390–2396 MHz segment for use by "Fast Scan TV," which is a form of Amateur Television (ATV). However, there are numerous other bands designated for ATV. Because of equipment availability, most ATV use appears to be in the bands 420–450 MHz and 902–928 MHz. The Commission proposes to amend § 97.303 of its amateur Rules to reflect this spectrum sharing proposal. The Commission solicits comment on whether limits should be imposed on the amateur and/or mobile services in order to enhance spectrum sharing; if limits are necessary, comment is sought on the limits that should be adopted.

18. The Commission observes that non-Federal Government flight test stations in the band 2310–2390 MHz have long been subject to the emission limitations that are specified in § 87.139 of its Rules. The Commission proposes to continue to employ these emission limitations for non-Federal Government flight test stations in the band 2385–2390 MHz. NTIA has established significantly less stringent limits for unwanted emissions from aeronautical telemetry operations in this band than those requested by the Satellite Radio Licensees (25 to 55 dB less stringent than the WCS fixed and mobile limits). Therefore, the Commission requests comment on the appropriate out-of-band emission limits that are necessary to protect Satellite DARS reception from both aeronautical (ground) stations and from aircraft stations.

19. Under the proposal, the band 2385–2390 MHz would be available for aeronautical telemetering and associated telecommand for both Federal and non-Federal Government licensees and thus, footnote US363, which grandfathered various Federal and non-Federal Government sites for aeronautical telemetering and associated telecommand purposes, would no longer be needed. The Commission therefore proposes to delete footnote US363. The proposal would also limit non-Federal Government use of the band 2385–2390 MHz to flight test stations and thus, footnote NG174, which states that frequencies in the band 2385–2400 MHz are not available for assignment to stations in the aeronautical mobile service in Puerto Rico, would no longer be needed. The Commission also proposes to delete footnote NG174.

20. The Commission proposes to rescind numerous changes to its WCS service rules that were made as part of its action on the transfer and reallocation of the band 2385–2390 MHz. Specifically, the Commission proposes to add the band 2385–2390 MHz back to the frequencies available to flight test stations in § 87.303 of its aviation service rules. It also proposes to rescind the changes made in the *27 Megahertz Service Rules R&O* for the band 2385–2390 MHz in parts 1, 27, and 87 of its Rules by removing regulations containing this band from § 1.1307 (Environmental Assessments); 27.1(b)(7) (Basis and Purpose); 27.4 (Terms and definitions); 27.5(g) (Frequencies); 27.6(g) (Service areas); 27.11(h) (Initial authorization); 27.12(b) (Eligibility); 27.13(f) (License period); 27.50(f) (Power and antenna height limits); 27.53(i) (Emission limits); and 87.173, note 1 (Frequencies); and by removing part 27, Subpart K (2385–2390 MHz Band). In the Table of Frequency Allocations, the Commission also proposes to revise the entry for the band 2385–2390 MHz by replacing the cross reference to part 27 of its Rules (Miscellaneous Wireless Communications Services) with a cross reference to part 87 of its Rules (Aviation Services) to reflect the re-designation of the band 2385–2390 MHz.

21. Nearly seven years after the Commission made the band 2390–2400 MHz available for unlicensed use, there is still no equipment authorized or anticipated for this band. In order to remove possible sources of harmful interference to primary radiocommunication services in the 2390–2395 MHz segment, the Commission proposes to no longer make the band 2390–2400 MHz available for unlicensed PCS use. Specifically, the Commission proposes to revise part 15 of its Rules by removing the band 2390–2400 MHz from various technical rules that apply to asynchronous devices, *i.e.*, §§ 15.301 (Scope); 15.303(a), (g), and (i) (Definitions); 15.319(a) (General technical requirements); and 15.321(a), (b), and (g) (Specific requirements for asynchronous devices operating in the 2390–2400 MHz band).

Initial Regulatory Flexibility Analysis

22. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Fourth Notice of Proposed Rule Making (4th NPRM)*. Written public comments are requested on this IRFA and must be filed by the deadlines for comments on the *4th NPRM* provided in paragraph 66 of the *4th NPRM*. The Commission will send a copy of the *4th NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.[2] In addition, the *4th NPRM* (or summaries thereof), including the IRFA, will be published in the **Federal Register**.[3]

A. Need for, and Objectives of, the Proposed Rules

23. The Commission proposes to allow DOD to use the band 2025–2110 MHz on a co-equal, primary basis with non-Federal Government operations for DOD earth stations at 11 sites that support DOD space operations. DOD access to the band 2025–2110 MHz may make more spectrum available in the band 1755–1850 MHz for absorbing certain DOD systems displaced from the band 1710–1755 MHz. In addition, the Commission proposes to permit the military services to operate stations in the fixed and mobile services in the band 2025–2110 MHz on a secondary (non-interference) basis at six sites in the southwestern region of the United States.

24. The Commission also proposes to make numerous allocation changes to the band 2360–2400 MHz, the most significant of which would rescind the recent establishment of Wireless Communications Services at 2385–2390 MHz, allow Federal and non-Federal Government flight test stations to operate in the band 2385–2395 MHz, and no longer make the band 2390–2400 MHz available for use by unlicensed Personal Communications Services devices. These allocation changes would permit DOD to relocate all aeronautical mobile systems out of the band 1710–1755 MHz, which is a major objective for facilitating the introduction of AWS. In addition, these allocation changes would provide needed

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601—612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1966 (SBREFA), Public Law 104–121, 110 Stat. 847 (1996).

[2] 5 U.S.C. 603(a).

[3] Id.

replacement spectrum for use by DOD and commercial flight test stations, which may shortly lose access to the 35 megahertz of spectrum at 1525–1535 MHz and 2320–2345 MHz.

B. Legal Basis

25. This action is authorized under Sections 1, 4(i), 302, 303(f) and (r), 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 1, 4(i), 154(i), 302, 303(f) and (r), 332, 337.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

26. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the rules adopted herein.[4] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[5] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[6] A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[7]

27. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[8] Nationwide, as of 1992, there were approximately 275,801 small organizations.[9] "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[10] As of 1997, there were approximately 87,453 governmental entities in the United States.[11] This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer then 50,000 and 1,498 have populations of 500,000 or more. Thus, the Commission estimates the number of small governmental jurisdictions overall to be approximately 84,098 or fewer.

28. In the band 2025–2110 MHz, the proposals in this *4th NPRM* would affect licensees in the Television Broadcast Auxiliary Service (BAS), the Local Television Transmission Service (LTTS), and the Cable Television Relay Service (CARS).

Broadcast Auxiliary Service (BAS) involves a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (from a remote news gathering unit back to the stations). There are approximately 568 TV BAS licensees in the band 1990–2025 MHz. It is unclear how many of these would be affected by our proposals.

29. The Commission has not developed a definition of small entities specific to broadcast auxiliary licensees. The U.S. Small Business Administration (SBA) has developed small business size standards, as follows: For TV BAS, The Commission will use the size standard for Television Broadcasting, which consists of all such companies having annual receipts of no more than $12.0 million.[12] According to Census Bureau data for 1997, there were 906 Television Broadcasting firms, total, that operated for the entire year.[13] Of this total, 734 firms had annual receipts of $9,999,999.00 or less and an additional 71 had receipts of $10 million to $24,999,999.00.[14] Thus, under this standard, the majority of firms can be considered small.

Cable Antenna Relay Service (CARS) There are nine CARS mobile licensees in the band 1990–2025 MHz. It is unclear how many of these would be affected by our proposals. The SBA has developed a small business size standard for Cable and other Program Distribution, which consists of all such companies having annual receipts of no more than $12.5 million.[15] According to Census Bureau data for 1997, there were 1,311 firms within the industry category Cable and Other Program Distribution, total, that operated for the entire year.[16] Of this total, 1,180 firms had annual receipts of $9,999,999.00 or less, and an additional 52 firms had receipts of $10 million to $24,999,999.00.[17] Thus, under this standard, the majority of firms can be considered small.

Local Television Transmission Service (LTTS) There are 33 LTTS licensees in the band 1990–2025 MHz. It is unclear how many of these would be affected by our proposals. The Commission has not yet defined a small business with respect to local television transmission services. For purposes of this IRFA, The Commission will use the SBA's definition applicable to wireless and other telecommunications companies—*i.e.*, an entity with no more than 1,500 persons.[18] According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year.[19] Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.[20] Thus, under this size standard, the great majority of firms can be considered small.

30. In the band 2360–2390 MHz, the proposals are not expected to impact licensees of flight test stations, except to provide continued access to the band 2385–2390 MHz segment. That is, Federal and non-Federal Government licensees of flight test stations have long shared the band 2360–2390 MHz and our proposals would essentially return the band 2385–2390 MHz to its state prior to reallocation. The additional flexibility given to Federal Government users is not expected to impact licensees of flight test stations because this use would be on a secondary basis.

31. In the band 2390–2400 MHz, the proposals are not expected to greatly impact licensees in the amateur service or manufacturers of unlicensed PCS. Federal and non-Federal Government use of the band 2390–2395 MHz is expected to occur at only a limited number of aeronautical telemetry ranges in remote areas. The Commission reviewed its files and found that no

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[4] 5 U.S.C. 604(a)(3).

[5] 5 U.S.C. 601(6).

[6] 5 U.S.C. 601(3) (incorporating by reference the definition of "small-business concern" in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

[7] 15 U.S.C. 632.

[8] 5 U.S.C. 601(4).

[9] Department of Commerce, U.S. Bureau of the Census, 1992 Economic Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[10] 5 U.S.C. 601(5).

[11] U.S. Census Bureau, Statistical Abstract of the United States: 2000, Section 9, pages 299–300, Tables 490 and 492.

[12] 13 CFR 121.201, NAICS code 515120.

[13] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Receipts Size of Firms Subject to Federal Income Tax: 1997," Table 4, NAICS code 515120 (issued Oct. 2000).

[14] *Id.* The census data do not provide a more precise estimate.

[15] *Id.* at NAICS code 515120.

[16] *Id.* at NAICS code 515120.

[17] *Id.* The census data do not provide a more precise estimate.

[18] 13 CFR 121.201, NAICS code 517212.

[19] U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, "Employment Size of Firms Subject to Federal Income Tax: 1997," Table 5, NAICS code 517212 (issued Oct. 2000).

[20] *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is "Firms with 1,000 employees or more."

unlicensed PCS device has been authorized in the band 2390–2400 MHz.

32. The Commission seeks comment on this analysis. In providing such comment, commenters are requested to provide information regarding how many total and small business entities would be affected.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

33. The proposed rules would require that DOD coordinate a request for use of frequencies in the band 2025–2110 MHz prior to submitting an application to the Commission. Commission licensees may choose to conduct studies or incur other expenses during the coordination process. The Commission is unable to estimate the costs involved with the coordination process.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

34. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[21]

35. The Commission has proposed to require that the 11 Federal Government earth stations prior coordinate their frequency use. Such a requirement will ensure that these earth stations operate in a manner that minimizes the potential of causing harmful interference. This action is expected to protect incumbent BAS, LTTS, and CARS systems from service disruptions caused by receiving harmful interference. The Commission seeks comment on significant alternatives commenters believe should be adopted.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

36. None.

Ordering Clauses

37. Pursuant to Sections 1, 4(i), 7(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, 332, 334, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 151, 154(i), 157(a), 301, 302(a), 303(f), 303(g), 303(r), 307, 308, 309(j), 316, 332, 334, and 336, the *Fourth Notice of Proposed Rulemaking* is hereby *adopted.*

38. The Commission's Consumer Information and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Fourth Notice of Proposed Rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 1

Administrative practice and procedures, Radio.

47 CFR Part 2

Radio, Telecommunications.

47 CFR Part 15

Communications equipment.

47 CFR Part 27

Radio.

47 CFR Part 87

Radio.

47 CFR Part 97

Communications equipment, Radio.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 2, 15, 27, 87, and 97 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309, and 325(e).

2. Section 1.1307 is amended by revising the entry for "Wireless Communications Service (part 27)" in paragraph (b)(1) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assignments (EAs) must be prepared.

* * * * *

(b) * * *

(1) * * *

TABLE 1.—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation requirement if:
* * * * * * * * *	
Wireless Communications Service (Part 27)	(1) For the 1390–1392 MHz, 1392–1395 MHz, 1432–1435 MHz , and 1670–1675 MHz bands: *Non-building-mounted antennas:* height above ground level to lowest point of antenna < 10 m *and* total power of all channels > 2000 W ERP (3280 W EIRP) *Building-mounted antennas:* total power of all channels > 2000 W ERP (3280 W EIRP) (2) for the 746–764 MHz, 776–794 MHz, 2305–2320 MHz, and 2345–2360 MHz bands Total power of all channels > 1000 W ERP (1640 W EIRP)
* * * * * * * * *	

[21] 5 U.S.C. 603(c).

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PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

3. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

4. Amend § 2.106 as follows:

a. Revise pages 48, 50, and 51 of the Table.

b. In the list of United States footnotes, revise footnotes US276 and US346, remove US363, and add footnote USxxx.

c. In the list of non-Federal Government footnotes, remove footnote NG174.

d. In the list of Federal Government footnotes, revise footnotes G2, G120, and G122.

The revisions and additions read as follows:

§ 2.106 Table of Frequency Allocations.

* * * * *

BILLING CODE 6712–01–P

5.149 5.341 5.385 5.386 5.387 5.388			1755-1850 FIXED MOBILE G42	1755-1850	
1930-1970 FIXED MOBILE 5.388A 5.388	1930-1970 FIXED MOBILE 5.388A Mobile-satellite (Earth-to-space) 5.388	1930-1970 FIXED MOBILE 5.388A 5.388	1850-2025	1850-2000 FIXED MOBILE NG177	Personal Communications (24) Fixed Microwave (101)
1970-1980 FIXED MOBILE 5.388A 5.388					
1980-2010 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.351A 5.388 5.389A 5.389B 5.389F				2000-2020 MOBILE-SATELLITE (Earth-to-space) US380 NG156	Satellite Communications (25)
2010-2025 FIXED MOBILE 5.388A 5.388	2010-2025 FIXED MOBILE MOBILE-SATELLITE (Earth-to-space) 5.388 5.389C 5.389D 5.389E 5.390	2010-2025 FIXED MOBILE 5.388A 5.388		2020-2025 FIXED MOBILE NG177	
2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) FIXED MOBILE 5.391 SPACE RESEARCH (Earth-to-space) (space-to-space) 5.392			2025-2110 SPACE OPERATION (Earth-to-space) (space-to-space) EARTH EXPLORATION-SATELLITE (Earth-to-space) (space-to-space) SPACE RESEARCH (Earth-to-space) (space-to-space) 5.391 5.392 US90 US222 US346 US347 USxxx	2025-2110 FIXED NG23 NG118 MOBILE 5.391 5.392 US90 US222 US346 US347 USxxx	TV Auxiliary Broadcasting (74F) Cable TV Relay (78) Local TV Transmission (101J)

5.392		MOBILE (line-of-sight only including aeronautical telemetry, but excluding flight testing of manned aircraft) SPACE RESEARCH (space-to-Earth) (space-to-space) 5.392 US303	US303	
2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)		2290-2300 FIXED MOBILE except aeronautical mobile SPACE RESEARCH (deep space) (space-to-Earth)	2290-2300 SPACE RESEARCH (deep space) (space-to-Earth)	
2300-2450 FIXED MOBILE Amateur Radiolocation	2300-2450 FIXED MOBILE RADIOLOCATION Amateur	2300-2305 G123	2300-2305 Amateur	Amateur (97) Note: 2300-2305 MHz became non-Federal Government exclusive spectrum in August 1995
		2305-2310 US338 G123	2305-2310 FIXED MOBILE except aeronautical mobile RADIOLOCATION Amateur US338	Wireless Communications (27) Amateur (97)
		2310-2360 Fixed Mobile US339 Radiolocation G2	2310-2320 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE US327 5.396 US338	Wireless Communications (27)
			2320-2345 BROADCASTING-SATELLITE US327 Mobile US276 US328 5.396	Satellite Communications (25)
5.150 5.282 5.395	5.150 5.282 5.393 5.394 5.396	5.396 US327 US328 See next page	See next page for 2345-2450 MHz	See next page for 2345-2450 MHz

2345-2655 MHz (UHF) — Page 51

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
See previous page for 2300-2450 MHz			See previous page for 2310-2360 MHz	2345-2360 FIXED MOBILE US339 RADIOLOCATION BROADCASTING-SATELLITE US327 5.396	Wireless Communications (27)
			2360-2390 MOBILE US276 RADIOLOCATION G2 G120 Fixed	2360-2390 MOBILE US276	Aviation (87)
			2390-2395 MOBILE US276	2390-2395 AMATEUR MOBILE US276	Aviation (87) Amateur (97)
			2395-2400 G122	2395-2400 AMATEUR	Amateur (97)
			2400-2402 5.150 G123	2400-2417 AMATEUR	ISM Equipment (18) Amateur (97)
			2402-2417 5.150 G122	5.150 5.282	
			2417-2450 Radiolocation G2 5.150 G124	2417-2450 Amateur 5.150 5.282	
2450-2483.5 FIXED MOBILE Radiolocation 5.150 5.397		2450-2483.5 FIXED MOBILE RADIOLOCATION 5.150 5.394	2450-2483.5 5.150 US41	2450-2483.5 FIXED MOBILE Radiolocation 5.150 US41	ISM Equipment (18) Private Land Mobile (90) TV Auxiliary Broadcasting (74F) Fixed Microwave (101)

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United States (US) Footnotes

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US276 Except as otherwise provided for herein, use of the bands and 2320–2345 MHz and 2360–2395 MHz by the mobile service is limited to Federal Government aeronautical mobile applications and to non-Federal Government aeronautical telemetering and associated telecommand operations for flight testing of aircraft, missiles or major components thereof. The following four frequencies are shared on a co-equal basis by Federal and non-Federal Government stations for telemetering and associated telecommand operations of expendable and reusable launch vehicles whether or not such operations involve flight testing: 2332.5 MHz, 2364.5 MHz, 2370.5 MHz, and 2382.5 MHz. Other Federal Government mobile uses and other non-Federal Government mobile telemetering uses shall be secondary to the above uses.

* * * * *

US346 Except as provided for below and by footnote US222, Federal Government use of the band 2025–2110 MHz by the space operation service (Earth-to-space), Earth exploration-satellite service (Earth-to-space), and space research service (Earth-to-space) shall not constrain the deployment of the Television Broadcast Auxiliary Service, the Cable Television Relay Service, or the Local Television Transmission Service. To facilitate compatible operations between non-Federal Government terrestrial receiving stations and Federal Government earth station transmitters, coordination is required. To facilitate compatible operations between non-Federal Government terrestrial transmitting stations and Federal Government spacecraft receivers, the terrestrial transmitters shall not be high-density systems (see Recommendations ITU–R SA.1154 and ITU–R F.1247). Military satellite control stations at the following sites shall operate on a co-equal, primary basis with non-Federal Government operations:

Facility	Coordinates
Naval Satellite Control Network, Prospect Harbor, ME	44° 24′55″ N 068°00′50″ W
New Hampshire Tracking Station, New Boston AFS, NH	42°56′52″ N 071°37′37″ W
Eastern Vehicle Check-out Facility & GPS Ground Antenna Monitoring Station, Cape Canaveral, FL.	28°29′10″ N 080°34′34″ W
Buckley AFB, CO	39°42′55″ N 104°46′29″ W
Colorado Tracking Station, Schriever AFB, CO	38°48′21″ N 104°03′43″ W
Kirtland AFB, NM	35°03′00″ N 106°24′00″ W
Camp Parks Communications Annex, Pleasanton, CA	37°44′00″ N 121°52′00″ W
Naval Satellite Control Network, Laguna Peak, CA	34°06′55″ N 119°04′50″ W
Vandenberg Tracking Station, Vandenberg AFB, CA	34°49′24″ N 120°31′54″ W
Hawaii Tracking Station, Kaena Pt, Oahu, HI	21°33′48″ N 158°14′54″ W
Guam Tracking Stations, Anderson AFB, and Naval CTS, Guam	13°36′48″ N 144°51′12″ E

* * * * *

USxxx In the band 2025–2110 MHz, the military services may operate stations in the fixed and mobile except aeronautical mobile services on a secondary and coordinated basis at the following sites:

Site	Coordinates	Radius of operation (km)
Nellis AFB, NV	36°14′ N 115°02′ W	80
China Lake, CA	35°41′ N 117°41′ W	50
Ft. Irwin, CA	35°16′ N 116°41′ W	50
Pacific Missile Test Range/Pt. Mugu, CA	34°07′ N 119°30′ W	80
Yuma, AZ	32°32′ N 113°58′ W	80
White Sands Missile Range, NM	33°00′ N 106°30′ W	80

* * * * *

Federal Government (G) Footnotes

* * * * *

G2 In the bands 216–225 MHz, 420–450 MHz (except as provided by US217), 890–902 MHz, 928–942 MHz, 1300–1390 MHz, 2310–2390 MHz, 2417–2450 MHz, 2700–2900 MHz, 5650–5925 MHz, and 9000–9200 MHz, the Government radiolocation service is limited to the military services.

* * * * *

G120 Development of airborne primary radars in the band 2360–2390 MHz with peak transmitter power in excess of 250 watts for use in the United States is not permitted.

G122 In the bands 2395–2400 MHz, 2402–2417 MHz, and 4940–4990 MHz, Federal Government operations may be authorized on a non-interference basis to authorized non-Federal Government operations, but shall not hinder the implementation of any non-Federal Government operations.

* * * * *

PART 15—RADIO FREQUENCY DEVICES

5. The authority citation for part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307, 336, and 554A.

6. Section 15.301 is revised to read as follows:

§ 15.301 Scope.

This subpart sets out the regulations for unlicensed personal communications services (PCS) devices operating in the 1920–1930 MHz band.

7. Section 15.303 is amended by removing and reserving paragraphs (a) and (i) and by revising paragraph (g) to read as follows:

§ 15.303 Definitions.

* * * * *

(g) *Personal Communications Services (PCS) Devices [Unlicensed].* Intentional radiators operating in the frequency band 1920–1930 MHz that provide a wide array of mobile and ancillary fixed communication services to individuals and businesses.

* * * * *

8. Section 15.319 is amended by revising paragraph (a) to read as follows:

§ 15.319 General technical requirements.

(a) The 1920–1930 MHz band is limited to use by isochronous devices under the requirements of § 15.323.

* * * * *

§ 15.321 [Removed]

9. Section 15.321 is removed.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

10. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337, unless otherwise noted.

§ 27.1 [Amended]

11. In § 27.1 remove paragraph (b)(7).

12. Section 27.4 is amended by revising the definition of "Band Manager" to read as follows:

§ 27.4 Terms and definitions.

* * * * *

Band Manager. The term *Band Manager* refers to a licensee in the paired 1392–1395 MHz and 1432–1435 MHz bands and the unpaired 1390–1392 MHz, and 1670–1675 MHz bands that functions solely as a spectrum broker by subdividing its licensed spectrum and making it available to system operators or directly to end users for fixed or mobile communications consistent with Commission Rules. A *Band Manager* is directly responsible for any interference or misuse of its licensed frequency arising from its use by such non-licensed entities.

* * * * *

§ 27.5 [Amended]

13. In § 27.5 remove paragraph (g).

§ 27.6 [Amended]

14. In § 27.6 remove paragraph (g).

§ 27.11 [Amended]

15. In § 27.11 remove paragraph (h).

16. Section 27.12 is amended by revising paragraph (b) introductory text to read as follows.

§ 27.12 Eligibility.

* * * * *

(b) *Band Manager licenses.* For the 1392–1395 MHz and 1670–1675 MHz bands and the paired 1392–1395 MHz and 1432–1435 MHz bands, applicants applying for an initial license may elect to operate as a Band Manager, subject to the rules governing Guard Band Managers under subpart G, *provided however,* that the following rules do not apply to Band Managers:

* * * * *

§ 27.13 [Amended]

17. In § 27.13 remove paragraph (f).

§ 27.50 [Amended]

18. In § 27.50 remove paragraph (f), and redesignate paragraph (g) as paragraph (f).

§ 27.53 [Amended]

19. Section 27.53 is amended by removing paragraph (j) and by redesignating paragraph (k) as paragraph (j).

Subpart K [Removed]

20. Subpart K is removed.

PART 87—AVIATION SERVICES

21. The authority citation for part 87 continues to read as follows:

Authority: 47 U.S.C. 154, 303 and 307(e), unless otherwise noted.

§ 87.173 [Amended]

22. Section 87.173 is amended by revising the entry "2310–2390 MHz" to read "2310–2395 MHz" in paragraph (b).

23. Section 87.303 is amended by revising paragraph (d)(1) to read as follows:

§ 87.303 Frequencies.

* * * * *

(d)(1) Frequencies in the bands 1435–1525 MHz and 2360–2395 MHz are assigned primarily for telemetry and telecommand operations associated with the flight testing of aircraft and missiles, or their major components. The bands 1525–1535 MHz and 2310–2360 MHz are also available for these purposes on a secondary basis. Permissible uses of these bands include telemetry and telecommand transmissions associated with the launching and reentry into the Earth's atmosphere, as well as any incidental orbiting prior to reentry, of manned or unmanned objects undergoing flight tests. In the band 1435–1530 MHz, the following frequencies are shared with flight telemetry mobile stations: 1444.5, 1453.5, 1501.5, 1515.5, 1524.5, and 1525.5 MHz. In the band 2360–2390 MHz, the following frequencies may be assigned on a co-equal basis for telemetry and associated telecommand operations in fully operational or expendable and re-usable launch vehicles, whether or not such operations involve flight testing: 2364.5, 2370.5 and 2382.5 MHz. In the band 2360–2395 MHz, all other mobile telemetry uses are secondary to the above stated launch vehicle uses.

* * * * *

PART 97—AMATEUR RADIO SERVICE

24. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended: 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

25. Section 97.303 is amended by revising paragraph (j)(2)(iii) to read as follows:

§ 97.303 Frequency sharing requirements.

* * * * *

(j) * * *

(2) * * *

(iii) The 2390–2417 MHz segment is allocated to the amateur service on a primary basis.

(A) The 2390–2395 MHz segment is shared with Federal and non-Federal Government mobile services on a co-equal basis. See 47 CFR 2.106, footnote US276.

(B) Amateur stations operating in the 2400–2417 MHz segment must accept harmful interference that may be caused by industrial, scientific and medical equipment.

* * * * *

[FR Doc. 03–22200 Filed 8–29–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1152

[STB Ex Parte No. 537 (Sub-No. 1)]

Public Participation in Railroad Abandonment Proceedings

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (Board) is proposing to amend its regulations concerning the service of a notice of intent to abandon or discontinue rail service by removing an obsolete reference to a labor organization and making technical changes.

DATES: Comments are due October 2, 2003.

ADDRESSES: Send an original and 10 copies of comments referring to "STB Ex Parte No. 537 (Sub-No. 1)" to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565–1661. [Federal Information Relay Service for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: The regulations at 49 CFR 1152.20(a)(2) provide that applicants seeking to abandon or discontinue rail service must serve their notices of intent on certain interested parties, including, under section 1152.20(a)(2)(xi), "[t]he headquarters of the Railroad Labor

Executives' Association" (RLEA). It is the Board's understanding that RLEA no longer exists, and it is proposed that section 1150.20(a)(2)(xi) be removed. The regulations, however, still provide labor interests with notice of proposed abandonments or discontinuances, because current section 1150.20(a)(2)(xiii) requires service on "[t]he headquarters of all duly certified labor organizations that represent employees on the affected rail line."[1] This paragraph also contains language that should be moved for clarity: "For the purposes of this subsection 'directly affected states' are those in which any part of the line sought to be abandoned is located." This language would be more appropriate in section 1150.20(a)(2)(ii), and the Board proposes to move the substance of that language to that location. Finally, we propose to redesignate sections 1150.20(a)(2)(xii) and (xiii) as sections 1150.20(a)(2)(xi) and (xii), respectively.

The Board certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, because the rule simply removes an obsolete reference and makes technical changes. The Board seeks comments on all matters raised by this notice.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1152

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements, and Uniform System of Accounts.

Decided: August 25, 2003.

By the Board, Chairman Nober.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend part 1152, of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1152—ABANDONMENT AND DISCONTINUANCE OF RAIL LINES AND RAIL TRANSPORTATION UNDER 49 U.S.C. 10903

1. The authority citation for Part 1152 continues to read as follows:

Authority: 11 U.S.C. 1170; 16 U.S.C. 1247(d) and 1248; 45 U.S.C. 744; and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721(a), 10502, 10903–10905, and 11161.

2. Section 1152.20 is amended by removing paragraph (a)(2)(xi) and redesignating paragraphs(a)(2)(xii) and (xiii) as paragraphs 1150.20(a)(2)(xi) and (xii), respectively.

3. Revise § 1150.20(a)(2)(ii) and newly redesignated § 1150.20(a)(2)(xii) to read as follows:

§ 1152.20 Notice of intent to abandon or discontinue service.

(a) * * *

(2) * * *

(ii) The Governor (by certified mail) of each state directly affected by the abandonment or discontinuance (for the purposes of this paragraph (a)(2) "states directly affected" are those in which any part of the line sought to be abandoned is located);

* * * * *

(xii) The headquarters of all duly certified labor organizations that represent employees on the affected rail line.

* * * * *

[FR Doc. 03–22292 Filed 8–29–03; 8:45 am]

BILLING CODE 4915–00–P

[1] Similar language for giving notice to labor representatives is found at sections 1121.4(h), 1150.32(e), 1150.35(c)(3), 1150.42(e), 1150.45(c)(3) and 1151.2(a)(6) concerning acquisition or operation of rail lines or feeder line applications.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI04

Endangered and Threatened Wildlife and Plants; Proposed Removal of the Scarlet-chested Parakeet and Turquoise Parakeet from the List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to remove the scarlet-chested parakeet *(Neophema splendida)* and the turquoise parakeet *(Neophema pulchella)* from the List of Endangered and Threatened Wildlife established under the Endangered Species Act of 1973, as amended (Act), because the endangered designation no longer correctly reflects the current conservation status of these birds. Our review of the status of these species shows that the wild populations of these species are stable or increasing, trade in wild-caught specimens is strictly limited, and the species are protected through domestic regulation within the range country (Australia) and through additional national and international treaties and laws. This determination is based on available data indicating that these species have recovered.

DATES: We must receive your written comments on this proposed rule by December 1, 2003 in order to consider them. We must receive your written request for a public hearing by October 17, 2003.

ADDRESSES: Submit comments, information, questions, and hearing requests to the Chief, Division of Scientific Authority; U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 750; Arlington, VA 22203; fax, 703–358–2276; E-mail, *ScientificAuthority@fws.gov*. Comments and materials received will be available for public inspection by appointment, from 8 a.m. to 4 p.m., Monday through Friday, at the Arlington, VA, address.

FOR FURTHER INFORMATION CONTACT: Dr. Michael D. Kreger, Division of Scientific Authority (See **ADDRESSES** section; phone, 703–358–1708; fax, 703–358–2276; E-mail, *ScientificAuthority@fws.gov*.

SUPPLEMENTARY INFORMATION:

Background

Scarlet-Chested Parakeet

The splendid or scarlet-chested parakeet *(Neophema splendida)* is found from the interior southwest to southeast Australia in arid mixed mallee eucalypt (*Eucalyptus salubris*)—mulga (*Acacia* spp.) woodlands with an understory of *Triodia* spp. hummock grassland (Higgins 1999). Its habitat preference is burnt areas. It is frequently found in open areas (Garnett and Crowley 2000). The species breeds between August and January and lays four to six eggs. It may be nomadic in response to environmental conditions (*e.g.*, rainfall; Collar 1997). Collar (1997) notes that the birds are generally rare, but large numbers have occurred in certain years, which suggests that the populations may increase relatively quickly and the species may not be as rare as thought in the more remote parts of its range. The size of the species' range is stable, but the distribution of the population within the range fluctuates according to environmental conditions such as grazing and fire regimes (Garnett and Crowley 2000).

Turquoise Parakeet

The turquoise parakeet *(Neophema pulchella)* is found in southeastern Australia from southeast Queensland to northern Victoria. It is found in open forest, woodland, and native grasslands, where it is patchily distributed (Collar 1997). It feeds on seeds, fruits, and flowers; breeds from August to

December and lays four to five eggs; and is mostly sedentary, with local dispersals resulting from rainfall which stimulates production of food such as seeds (Collar 1997). The species declined to near extinction from 1880 through the 1920s, possibly because of habitat clearance, drought, or an epidemic, but recovered rapidly after 1930 (Collar 1997; Garnett and Crowley 2000). Numbers appear to be greatest in protected reserves, indicating that surrounding agricultural land may reduce foraging opportunities (Collar 1997). The size of the species' range is stable, and the area of population distribution within the range is increasing (Garnett and Crowley 2000).

Previous Federal Actions

The scarlet-chested parakeet and the turquoise parakeet of the genus *Neophema* are listed under the Endangered Species Act of 1973 (Act) (16 U.S.C. 1531 *et seq.*) as endangered throughout their entire ranges. The scarlet-chested parakeet was listed on December 2, 1970 (35 FR 18320). The turquoise parakeet was listed on June 2, 1970 (35 FR 8495). Both species were originally listed under the Endangered Species Conservation Act of 1969 (Pub. L. 91–135, 83 Stat. 275 (1969)) as part of a list of species classified as endangered. This list was absorbed into the current Act. The endangered listing under the Act prohibits imports, exports, and re-exports of the species into or out of the United States as well as interstate and foreign commerce. On July 1, 1975, the scarlet-chested parakeet was placed in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES; 42 FR 10465; February 22, 1977). On June 6, 1981, the turquoise parakeet was also added to CITES Appendix II. Listing in CITES Appendix II allows for regulated commercial trade based on certain findings. Furthermore, because no wild-caught specimens of these two species are in international trade, and they only occur in trade as captive-bred specimens, they were included in the approved list of captive-bred species under the regulations of the Wild Bird Conservation Act of 1992 (WBCA; 16 U.S.C. 4901–4916). Inclusion in this list allows for imports of these species without requiring a WBCA permit.

On September 22, 2000, we announced a review of all endangered and threatened foreign species in the Order Psittaciformes (parrots, parakeets, macaws, cockatoos, and others; also known as psittacine birds) listed under the Act (65 FR 57363). Section 4(c)(2) of the Act requires such a review at least once every 5 years. The purpose of the review is to ensure that the Lists of Endangered and Threatened Wildlife (50 CFR 17.11) accurately reflect the most current status information for each listed species. We requested comments and the most current scientific or commercial information available on these species, as well as information on other species that may warrant future consideration for listing. If the present classification of species is not consistent with the best scientific and commercial information available at the conclusion of this review, we may propose changes to the list accordingly. One commenter suggested that we review the listing of these species and provided enough scientific information, including information and correspondence with Australian Government officials, to merit review of these species by the Service.

The Australian Government classifies the conservation status of the scarlet-chested parakeet as "Least Concern" and the turquoise parakeet as "Near Threatened." "Least Concern" indicates that the habitat in which the species occurs or the species' population density within the habitat has not declined by more than half of the size that it was a century ago. This is the lowest level of species risk. "Near Threatened" indicates that the habitat within the range and/or the size of the population within the available habitat is probably less than half of what it was a century ago. *The Action Plan for Australian Birds 2000* (Garnett and Crowley 2000), a strategic document produced by Environment Australia to recommend actions to government and non-government organizations in establishing national conservation priorities, includes recommendations for these species. The plan, however, is not a regulatory document, and the conservation priority for least concerned and near threatened birds is low (P. Blackwell, Environment Australia, pers. comm. with M. Kreger, DSA, 2002).

Commercial exports of these species from Australia have been prohibited since 1962. The prohibition is covered under Australia's Environment Protection and Biodiversity Act 1999. Although there are recommended actions for protection of both species under *The Action Plan for Australian Birds 2000* (Garnett and Crowley 2000), Australian has no recovery plan for either. Both species are, however, protected by State legislation and may not be trapped from the wild for commercial purposes (G. Maynes, Environment Australia, pers. comm. with M. Kreger, DSA, 2002). The 2000 IUCN (International Union for Conservation of Nature and Natural Resources) Red List of Threatened Species downlisted the scarlet-chested parakeet from vulnerable (facing high risk of extinction in the wild in the medium-term future, but not very high or extremely high) to lower risk/near threatened (taxa that do not qualify as Conservation Dependent, but which are close to qualifying as vulnerable). This status was maintained in the 2002 IUCN Red List of Threatened Species. The turquoise parakeet is not included in the 2002 IUCN Red List of Threatened Species.

Summary of Factors Affecting the Scarlet-Chested Parakeet *Neophema splendida* and the Turquoise Parakeet *Neophema pulchella*

Section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth five factors to be used in determining whether to add, reclassify, or remove a species from the List of Endangered and Threatened Wildlife and Plants. These factors and their applicability to populations of the scarlet-chested parakeet and the turquoise parakeet of Australia are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Scarlet-Chested Parakeet

The scarlet-chested parakeet population has increased rapidly in favorable conditions such as increased rainfall (Collar 1997; Garnett and Crowley 2000), but habitat clearance has fragmented roosting and foraging habitat in southern South Australia and northwest Victoria. This species is frequently found in open agricultural areas during years of unusually high nest production likely due to competition among birds for optimal nest sites and foraging areas in forests. Thus, livestock grazing and burn management to clear land for agriculture may reduce habitat availability (Garnett and Crowley 2000). However, most of the species' foraging, roosting, and nesting habitat is outside agricultural areas, and the area over which the species flies is so vast (range exceeds 2,000 km^2) that fires would not likely adversely affect a significant portion of the population (Snyder *et al.* 2000). *The Action Plan for Australian Birds 2000* (Garnett and Crowley 2000) recommends maintaining low fire frequency and grazing rates throughout the range of the species, particularly in protected reserves in Murray Mallee. It

also recommends determining environmental correlates of patterns of abundance in the Great Victoria Desert. However, these recommendations are voluntary, and because the species is categorized as least concern, it is not a high conservation priority for the Australian Government. Because of the area of occupancy and observed flock sizes, researchers think as many as 10,000 breeding-age birds may exist. This estimate is not reliable because of the lack of research on patterns of abundance and movement of this species; however, even if the population is smaller, there is no reason to suspect a decline (Snyder *et al.*, 2000). According to C. Mobbs, Deputy Director, Wildlife Protection, Environment Australia (faxed letter to aviculturist M. Runnals, 1999), this species is considered common with a stable population in the wild.

Turquoise Parakeet

Much of the turquoise parakeet's habitat available before the 1890s has been cleared for agriculture, preventing the species' recovery in more than half of its former range. However, the population is rapidly increasing, with as many as 20,000 breeding-age birds (Garnett and Crowley 2000). An additional habitat threat is the loss of hollow trees necessary for nesting in forests managed for timber, but the species can be prolific when nestboxes are substituted. Poorly managed burn regimens tend to encourage shrubby vegetation that outcompetes the grassy understory required by parrots for foraging (Garnett and Crowley 2000). *The Action Plan for Australian Birds 2000* (Garnett and Crowley 2000) recommends conserving native pasture and promoting its use, maintaining a buffer zone around known nesting areas, and improving fire management to encourage forage diversity. However, these recommendations are voluntary, and because the turquoise parakeet is categorized as near threatened, it is not a high conservation priority for the Australian Government.

Therefore, we find that the populations of these species are stable or increasing despite some habitat loss.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Action Plan for Australian Birds 2000 does not indicate overutilization as a threat to these species (Garnett and Crowley 2000). Both species are strictly protected by Australian State legislation and may not be trapped from the wild for commercial purposes (Environment Protection and Biodiversity Act 1999). Since 1990, there has been no trade in wild-caught specimens of these species, according to the World Conservation Monitoring Centre (WCMC) and the Service's Law Enforcement Management Information System (LEMIS) databases, probably because these species breed readily in aviculture (Brown *et al.* 1994; Dingle 2000; Vriends 2000). The WCMC database indicates that the only specimens of these species traded internationally between 1990 and 1999 were captive-bred (9,980 scarlet-chested parakeets; 12,001 turquoise parakeets). Therefore, we find that overutilization for commercial, recreational, scientific, or educational purposes is not a threat to wild turquoise parakeets or scarlet-chested parakeets.

C. Disease or Predation

No threats from disease or predation have been reported for scarlet-chested parakeets (Garnett and Crowley 2000; Snyder *et al.* 2000). The turquoise parakeet was driven to near extinction in the early 1900s due to introduced herbivores, drought, and possibly an epidemic. However, the numbers are recovering rapidly, and the species is locally common (Collar 1997). The birds are vulnerable to predation by foxes because they nest close to the ground in hollow eucalyptus trees and stumps, but fox predation is not considered a threat to the survival of this species.

Therefore, we have no evidence, at this time, that disease and predation are significant factors affecting scarlet-chested parakeets or turquoise parakeets.

D. The Inadequacy of Existing Regulatory Mechanisms

As noted under Previous Federal Actions above, the Australian Government prohibits the commercial export of these species. Domestic use of these species is regulated by Australian State laws. Internationally, both species are listed in CITES Appendix II, which regulates their international commerce. Appendix–II specimens cannot be traded without a permit from the Management Authority of the exporting country. One consideration for approving or denying an export permit is whether or not the proposed export may be detrimental to the survival of the species in the wild.

The United States has additional domestic measures that regulate the trade of these species. The Lacey Act prohibits the import, export, transport, possession, sale, or purchase of birds or their products in violation of State, Federal, or foreign laws or regulations. If these species are removed from the List of Endangered and Threatened Wildlife, Endangered Species Act protection would no longer apply. In addition, the Wild Bird Conservation Act of 1992 requires a WBCA import permit for wild-caught specimens of these species.

Because the only international trade in these species is limited to captive-bred specimens and specimens not of Australian origin, because the species are prohibited from commercial export in Australia, and because stricter domestic measures govern the importation of these species in the United States, the existing regulatory mechanisms appear to be sufficient.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The scarlet-chested parakeet may be affected by competition with Bourke's parakeet (*Neopsephotus bourkii*) where permanent water has been provided by humans in semi-arid rangelands (Landsberg *et al.* 1997). Such competition, however, does not appear to be detrimental at a specieswide level. There is no information to indicate any other natural or manmade factors that affect the continued existence of these species.

Summary of Findings

We have carefully assessed the best available biological and conservation status information regarding the past, present, and future threats faced by the scarlet-chested and turquoise parakeets. We find few threats to the species in the wild. Enforcement of existing national and international laws and treaties has minimized the potential impact of trade, and wild populations are stable or increasing, with more than 20,000 breeding-age turquoise parakeets and 10,000 breeding-age scarlet-chested parakeets. In the 2002 IUCN Red List of Threatened Species, the turquoise parakeet is not listed and the scarlet-chested parakeet is included only as lower risk/near threatened. On the basis of this evaluation, we propose to remove *Neophema pulchella* and *Neophema splendida* from the List of Endangered and Threatened Wildlife under the Act.

Effects of This Rule

This rule, if made final, would revise 50 CFR 17.11(h) to remove the scarlet-chested parakeet and the turquoise parakeet from among the species included in the List of Endangered and Threatened Wildlife. Because no critical habitat was ever designated for these species, this rule would not affect 50 CFR 17.95.

If these species are removed from the List of Endangered and Threatened Wildlife, Endangered Species Act

protection would no longer apply. The Endangered Species Act currently prohibits the export, import, and interstate commerce of specimens unless certain biological and legal criteria are met, including a demonstrable benefit to the wild population. However, the protections under the Lacey Act and the Wild Bird Conservation Act (for wild-caught specimens only) would remain unchanged. These species are prohibited from commercial export by the Government of Australia and receive additional domestic protection through the Australian States. Removing these species from the List of Endangered and Threatened Wildlife does not alter or supersede their designations as near threatened (turquoise parakeet) and least concern (scarlet-chested parakeet) by the Government of Australia. In addition, removing them from the List will not increase the level of trade in wild-caught specimens or decrease the level of protection provided by CITES.

Public Comments Solicited

We will accept written comments and information during this comment period from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party. In particular, we are seeking comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the scarlet-chested parakeet and the turquoise parakeet;

(2) Additional information concerning the range, distribution, and population size of the scarlet-chested parakeet and the turquoise parakeet;

(3) Current planned activities in the habitat and their possible impacts on the scarlet-chested parakeet and the turquoise parakeet; and

(4) Impacts on the species caused by removing them from the List of Endangered and Threatened Wildlife.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Any persons commenting may request that we withhold their home addresses, and we will honor these requests to the extent allowable by law. In some circumstances, we may also withhold a commenter's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, from 8 a.m. to 4 p.m. at the Division of Scientific Authority (*see* **ADDRESSES** section).

You may also request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your request to the Division of Scientific Authority (*see* **ADDRESSES** section).

Peer Review

Under our peer review policy (59 FR 34270; July 1, 1994), we will solicit the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information on this proposed rule. The purpose of such review is to ensure that we base listing decisions on scientifically sound data, assumptions, and analysis. To that end, we will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to the following: (1) Are the requirements of the rule clear? (2) Is the discussion of the rule in the Supplementary Information section of the preamble helpful to understanding the rule? (3) What else could we do to make the rule easier to understand?

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this rule is Dr. Michael D. Kreger, Division of Scientific Authority, U.S. Fish and Wildlife Service, Washington, DC 20240 (703–358–1708).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

We propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. We propose to amend § 17.11(h) by removing the entries for "Parakeet, scarlet-chested (*Neophema splendida*)" and "Parakeet, turquoise (*Neophema pulchella*)," under "BIRDS" from the List of Endangered and Threatened Wildlife.

Dated: August 19, 2003.

Marshall P. Jones, Jr.,

Deputy Director, Fish and Wildlife Service.

[FR Doc. 03–22225 Filed 8–29–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[ID 082503D]

RIN 0648–AQ98

Fisheries of the Exclusive Economic Zone off Alaska; Individual Fishing Quota Program; Community Purchase

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability; request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 66 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This amendment would modify the Individual Fishing Quota (IFQ) Program by revising the definition of an eligible quota share holder to allow eligible communities in the Gulf of Alaska (GOA) to purchase and hold sablefish quota share (QS) for lease to and use by community residents.

DATES: Comments on Amendment 66 must be received at the following address by November 3, 2003.

ADDRESSES: Comments on the FMP amendment may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Comments may be delivered in person or by courier to the Federal Building, 709 West 9th St., Room 413–1, Juneau, AK, 99801. Comments also may be sent via facsimile to (907) 586–7557, Attn: Lori Durall. Copies of Amendment 66 to the FMP and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action by the Council and NMFS are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, (907) 586–7228, or *glenn.merrill@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or FMP amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that the Secretary, upon receiving an FMP, immediately publish a notice in the **Federal Register** that the FMP or amendment is available for public review and comment.

Amendment 66 was adopted by the Council in April 2002. If approved by NMFS, this amendment would allow certain remote communities to designate non-profit entities to purchase and hold QS and lease the resulting IFQ to community residents. To be eligible for this community purchase program, a community would have to have of population of less than 1,500 people, no road access to larger communities, and have direct access to marine waters of the GOA. Further, the Council determined which communities would meet these criteria and this list of eligible communities would be specified in the implementing rules. A non-profit entity of an eligible community also would have to meet criteria to receive QS by transfer and would have to submit annual reports. These non-profit entities would be subject to restrictions on the amount of quota they may hold individually and in the aggregate, on the sale of QS, and the leasing of IFQ.

Amendment 66 would be necessary to allow sablefish QS to be purchased and held by eligible communities because the current FMP limits the transfer of QS, with certain exemptions, to individuals and not corporate entities. The IFQ Program for Pacific halibut is implemented under authority of the North Pacific Halibut Act of 1982 (Halibut Act) instead of the Magnuson -Stevens Act, and the Council does not have a halibut fishery management plan. If this proposed policy change is approved, however, the halibut and sablefish components would be implemented with the same rules. Amendment 66, and its companion regulatory amendment for halibut also is designed to comply with the Magnuson-Stevens Act mandate that Regional Councils must take into account the importance of fishery resources to communities in order to provide for the sustained participation of such communities, and to the extent practicable, minimize adverse economic impacts on such communities.

Public comments are being solicited on the amendment through the end of the comment period (see **DATES**). A proposed rule that would implement the amendment may be published in the **Federal Register** for public comment following NMFS' evaluation under Magnuson-Stevens Act procedures. All comments received by the end of the comment period whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision on the amendment. To be considered in the approval/disapproval decision on the amendment, comments must be received by the close of business on the last day of the comment period on the amendment; that does not mean postmarked or otherwise transmitted by that date.

Dated: August 27, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22343 Filed 8–29–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 169
Tuesday, September 2, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—7 CFR Part 226 Child and Adult Care Food Program

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this Notice announces the Food and Nutrition Service's (FNS) intention to request Office of Management and Budget (OMB) review of the information collection related to the Child and Adult Care Food Program. This notice also invites the general public and other public agencies to comment on the proposed information collection.

DATES: To be assured of consideration, comments must be received by November 3, 2003.

ADDRESSES: Send comments and requests for copies of this information collection to: Mr. Robert Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 636, Alexandria, Virginia 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Eadie at (703) 305–2590.

SUPPLEMENTARY INFORMATION: *Title:* 7 CFR part 226, Child and Adult Care Food Program.

OMB Number: 0584–0055.

Expiration Date: December 31, 2003.

Type of Request: Extension of a currently approved collection.

Abstract: Section 17 of the Richard B. Russell National School Lunch Act (42 U.S.C. 1766), authorizes the Department to carry out a program to assist States through grants-in-aid and other means to initiate and maintain nonprofit food service programs for children in institutions providing child care.

Estimate of Burden: The reporting burden for this collection of information is estimated at 4,431,068 burden hours. The recordkeeping burden is estimated at 662,784 burden hours.

Affected Public: 2,604,449.

Estimate of Burden:

Annual Reporting Burden:

(1) *Estimated number of respondents:* 2,604,449.

(2) *Estimated number of responses per respondent:* 1.8440.

(3) *Estimated time per response:* 1.084 hours.

Estimated Total Annual Reporting Burden: 4,431,068 hours.

Annual Recordkeeping Burden:

(1) *Estimated total number of Recordkeepings:* 4,802,804.

(2) *Estimated time per Recordkeeping:* .138 hours.

Estimated Total Annual Recordkeeping Burden: 662,784.

Total Annual Reporting and Recording Burden: 5,093,852.

Dated: August 25, 2003.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. 03–22295 Filed 8–29–03; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 03–031N]

FSIS Public Meeting on Pre-Harvest Food Safety Issues and *Escherichia coli (E. coli) O157:H7*

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing that it will hold a public meeting on pre-harvest food safety issues and *E. coli O157:H7* on September 9, 2003, in Washington, DC. The meeting will consist of presentations on the research and practical experiences aimed at reducing *E. coli O157:H7* at the livestock production level before livestock reach federally inspected plants. The meeting will also include a brief review of on-farm interventions for pathogens other than *E. coli O157:H7* that have already been adopted by producers.

This meeting is one of a number of public meetings FSIS is conducting to discuss new approaches for strengthening food safety.

DATES: The public meeting is scheduled for September 9, 2003, from 8:30 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at The Washington Plaza Hotel, 10 Thomas Circle, NW., Massachusetts Avenue, at 14th Street, Washington, DC 20005. A tentative agenda will be available in the FSIS Docket Room and on the FSIS Web site at *http://www.fsis.usda.gov/*. The official transcript of the meeting, when it becomes available, will be kept in the FSIS Docket Room at room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700, and will represent public comments. FSIS welcomes comments on the topics to be discussed at the public meeting. Please send an original and two copies of comments to the FSIS Docket Clerk, Docket 03–031N, Room 102, Cotton Annex, Washington, DC 20250–3700. All comments and the official transcript, when it becomes available, will be kept in the FSIS Docket Room at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Nathan Bauer at (979) 260–9562.

There will be no pre-registration for this meeting. Persons requiring a sign language interpreter or other special accommodations should contact Sheila Johnson at (202) 690–6498, fax: (202) 690–6500, or e-mail: *Sheila.johnson@fsis.usda.gov* as soon as possible.

SUPPLEMENTARY INFORMATION: The scientific community continues to work with animal agriculture to investigate methods to reduce food safety risks through the use of specific production practices. Although much has been learned about the ecology of biological, chemical, and physical hazards during animal production, there are as of yet no specific production practices addressing biological hazards that consistently and predictably lead to improvement in food safety. Results are promising in some cases, and investigation of those avenues continues. A key point to recognize is that risk reduction interventions that can be expected will arise from those areas under research or from new areas that are added to the research agenda. It is important, therefore, for producers to be aware of the practices being explored, so that they can have input into the process and raise concerns about (1) areas that are not under investigation but that should be, (2) the economic impact of implementing new practices on the farm, and (3) the impact of food safety hazards on the marketability of their products.

To further pursue initiatives related to production practices, FSIS is holding a public meeting on pre-harvest food safety issues and *E. coli O157:H7*. The meeting has three goals.

The first goal is to determine whether interventions available to producers can form the basis for best management practices to reduce the load of *E. coli O157:H7* in livestock before slaughter. The second goal is to identify promising interventions and determine what steps need to be taken to make the interventions available at the livestock production level. The third goal is to identify which research gaps should be the focus of the research community, including government, academia, and industry.

Based on the input from the conference, and any other information available to the Agency, FSIS will develop materials for producers that address pre-harvest food safety issues and *E. coli O157:H7* and take other actions that appear to advance its food safety goals.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and make copies of this **Federal Register** publication available through the FSIS Constituent Update. FSIS provides a weekly Constituent Update, which is communicated via Listserv, a free e-mail subscription service. In addition, the update is available on-line through the FSIS Web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent Listserv consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through the Listserv and web page, FSIS is able to provide information to a much broader, more diverse audience.

For more information contact the Congressional and Public Affairs Office, at (202) 720–9113. To be added to the free e-mail subscription service (Listserv) go to the "Constituent Update" page on the FSIS Web site at *http://www.fsis.usda.gov/oa/update/update.htm*. Click on the "Subscribe to the Constituent Update Listserv" link, then fill out and submit the form.

Done in Washington, DC on August 27, 2003.

Garry L. McKee,

Administrator.

[FR Doc. 03–22297 Filed 8–29–03; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Assessment of Fees for Dairy Import Licenses for the 2004 Tariff-Rate Import Quota Year.

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces that the fee to be charged for the 2004 tariff-rate quota (TRQ) year for each license issued to a person or firm by the Department of Agriculture authorizing the importation of certain dairy articles which are subject to tariff-rate quotas set forth in the Harmonized Tariff Schedule of the United States (HTS) will be $170.00 per license.

EFFECTIVE DATES: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Michael Hankin, Dairy Import Quota Manager, Import Policies and Programs Division, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Washington, DC 20250–1021 or telephone at (202) 720–9439 or e-mail at *Michael.Hankin@fsa.usda.gov*.

SUPPLEMENTARY INFORMATION: The Dairy Import Tariff-Rate Quota Licensing Regulation promulgated by the Department of Agriculture and codified at 7 CFR 6.20–6.37 provides for the issuance of licenses to import certain dairy articles that are subject to TRQs set forth in the HTS. Those dairy articles may only be entered into the United States at the in-quota TRQ tariff-rates by or for the account of a person or firm to whom such licenses have been issued and only in accordance with the terms and conditions of the regulation.

Licenses are issued on a calendar year basis, and each license authorizes the license holder to import a specified quantity and type of dairy article from a specified country of origin. The use of licenses by the license holder to import dairy articles is monitored by the Dairy Import Quota Manager, Import Policies and Programs Division, Foreign Agricultural Service, U.S. Department of Agriculture, and the U.S. Customs Service.

The regulation at 7 CFR 6.33(a) provides that a fee will be charged for each license issued to a person or firm by the Licensing Authority in order to reimburse the Department of Agriculture for the costs of administering the licensing system under this regulation.

The regulation at 7 CFR 6.33(a) also provides that the Licensing Authority will announce the annual fee for each license and that such fee will be set out in a notice to be published in the **Federal Register**. Accordingly, this notice sets out the fee for the licenses to be issued for the 2004 calendar year.

Notice

In order to establish a fee appropriate to defray the costs of administering the licensing system, the Department of Agriculture has reviewed the costs estimated to be incurred during the 2003 quota year and will base the fee for the 2004 quota year on those costs. The total cost to the Department of Agriculture of administering the licensing system during 2003 has been determined to be $433,000 and the estimated number of licenses expected to be issued is 2,560. Of the total cost, $200,000 represents staff and supervisory costs directly related to administering the licensing system for 2003; $50,000 represents the total

computer costs to monitor and issue import licenses for 2003; and $183,000 represents other miscellaneous costs, including travel, postage, publications, forms, and ADP system contractors.

Accordingly, notice is hereby given that the fee for each license issued to a person or firm for the 2004 calendar year, in accordance with 7 CFR 6.33, will be $170.00 per license.

Issued at Washington, DC the 27th day of August, 2003.

Michael Hankin,

Licensing Authority.

[FR Doc. 03–22296 Filed 8–29–03; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Madera County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Committee Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra National Forest's Resource Advisory Committee for Madera County will meet on Monday, September 15, 2003. The Madera Resource Advisory Committee will meet at the Spring Valley Elementary School in O'Neals, CA. The purpose of the meeting is: review any new RAC proposals, review new Forest Service Region 5 RAC Web site, finalize Madera County RAC mission, clarify voting procedures, discuss how to get voting members to meeting to vote, how to better advertise for RAC projects from the community and discuss participation in the Regional RAC conference.

DATES: The Madera Resource Advisory Committee meeting will be held Monday, September 15, 2003. The meeting will be held from 7 p.m. to 9 p.m.

ADDRESSES: The Madera County RAC meeting will be held at the Spring Valley Elementary School, 46655 Road 200, O'Neals, CA 93645.

FOR FURTHER INFORMATION CONTACT: Dave Martin, U.S.D.A., Sierra National Forest, 57003 Road 225, North Fork, CA, 93643 (559) 877–2218 ext. 3100; e-mail: *dmartin05@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review any new RAC proposals, (2) review new Forest Service Region 5 RAC Web site, (3) finalize Madera County RAC mission, (4) clarify voting procedures, (5) discuss how to get voting members to meeting to vote, (6) how to better advertise for RAC projects from the community and (7) discuss participation in the Regional RAC conference. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 25, 2003.

David W. Martin,

District Ranger.

[FR Doc. 03–22251 Filed 8–29–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–A–W]

Designation of Keokuk (IA) To Provide Class X or Class Y Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration (USDA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Keokuk Grain Inspection Service (Keokuk) to provide Class X or Class Y weighing services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: August 6, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 8, 2001, **Federal Register** (66 FR 13875), GIPSA announced the designation of Keokuk to provide official inspection services under the Act, effective May 1, 2001, and ending March 31, 2004. Subsequently, Keokuk asked GIPSA to amend their designation to include official weighing services. Section 7A(c)(2) of the Act authorizes GIPSA's Administrator to designate authority to perform official weighing to an agency providing official inspection services within a specified geographic area, if such agency is qualified under section 7(f)(1)(A) of the Act. GIPSA evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act, and determined that Keokuk is qualified to provide official weighing services in their currently assigned geographic area.

Effective August 6, 2003, and terminating March 31, 2004 (the end of Keokuk's designation to provide official inspection services), Keokuk's present designation is amended to include Class X or Class Y weighing within their assigned geographic area, as specified in the September 1, 2000, **Federal Register** (65 FR 53263). Official services may be obtained by contacting Keokuk at 319–524–6482.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–22307 Filed 8–29–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–01–SB]

Designation for the Minnesota Area

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the Minnesota Department of Agriculture (Minnesota) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: October 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 3, 2003, **Federal Register** (68 FR 9971), GIPSA asked persons interested in providing official services in the geographic areas assigned to

Minnesota to submit an application for designation. Applications were due by April 1, 2003.

There were six applicants for the Minnesota area: Minnesota, North Dakota Grain Inspection Service, Inc. (North Dakota), D. R. Schaal Agency, Inc. (Schaal), and Sioux City Inspection and Weighing Service Company (Sioux City), all currently designated official agencies; Paul B. Bethke, Terry D. Pladson, and Ryan M. Kuhl proposing to do business as Northern Plains Grain Inspection Service, Inc. (Northern Plains), and Kathleen Duea, Kyle Duea, Ben Duea, and Nicole Youel proposing to do business as Southern Minnesota Grain Inspection (Southern Minnesota). Minnesota applied for designation to provide official services in the entire area currently assigned to them. North Dakota and Northern Plains applied for all or part of the area currently assigned to Minnesota. Schaal made application but subsequently withdrew their application. Sioux City applied for all or part of the following Minnesota Counties: Brown, Cottonwood, Jackson, Lincoln, Lyon, Martin, Murray, Nobles, Pipestone, Redwood, Renville, Rock, Watonwan, and Yellow Medicine. Southern Minnesota Grain Inspection applied for all or part of the area currently assigned to Minnesota, and specified all or part of the following Minnesota Counties: Blue Earth, Cottonwood, Faribault, Jackson, Martin, Murray, Nobles, and Watonwan.

GIPSA asked for comments on the applicants for providing service in the Minnesota area in the May 1, 2003, **Federal Register** (68 FR 23279). Comments were due by May 1, 2003. GIPSA received 203 comments by the due date. Minnesota received four favorable comments, one from current Minnesota employees, one from an elevator manager, and two from managers representing grain elevator trade groups; and one unfavorable comment from a member of the Minnesota House of Representatives. North Dakota received five favorable comments from elevator managers. Northern Plains received 12 favorable comments and one unfavorable comment from grain elevator managers. Southern Minnesota received a total of 180 favorable comments, seven from grain elevator managers, two from current employees, one from a Minnesota State Senator, one from a Montana grain elevator trade association, one from a banker, one from an accounting firm, one from a crop insurance company, one from a railroad manager, and 165 from members of a grain coop. Sioux City received no comments.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that, effective October 1, 2003, and ending March 31, 2005, Minnesota is better able to provide official services in the geographic area specified in the March 3, 2003, **Federal Register** for which they applied.

Minnesota is designated for 18 months to provide official services in the geographic area for which they applied. Interested persons may obtain official services by calling Minnesota at 612–297–2200.

During the upcoming designation period GIPSA plans to announce a pilot program in Minnesota, which would allow multiple official agencies to provide official inspection and weighing services within the State of Minnesota.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–22304 Filed 8–29–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–01–S]

Designation for the Idaho (ID), Lewiston (ID), Ohio Valley (IN), and Utah Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: Grain Inspection, Packers and Stockyards Administration (GIPSA) announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act):

Idaho Grain Inspection Service, Inc. (Idaho);

Lewiston Grain Inspection Service, Inc. (Lewiston);

Ohio Valley Grain Inspection, Inc. (Ohio Valley); and

Utah Department of Agriculture and Food (Utah).

EFFECTIVE DATE: October 1, 2003.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov*.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 3, 2003, **Federal Register** (68 FR 9971), GIPSA asked persons interested in providing official services in the geographic areas assigned to the official agencies named above to submit an application for designation. Applications were due by April 1, 2003.

Idaho, Lewiston, Ohio Valley, and Utah were the sole applicants for designation to provide official services in the entire area currently assigned to them, so GIPSA did not ask for additional comments on them.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Idaho, Lewiston, Ohio Valley, and Utah are able to provide official services in the geographic areas specified in the March 3, 2003, **Federal Register**, for which they applied. Interested persons may obtain official services by calling the telephone numbers listed below.

Official agency	Headquarters location and telephone	Designation start—end
Idaho	Pocatello, ID, 208–233–8303	10/01/2003–09/30/2006
Lewiston	Lewiston, ID, 208–746–0451	10/01/2003–09/30/2006
Ohio Valley	Evansville, IN, 513–251–6571	10/01/2003—09/30/2006
Utah	Salt Lake City, UT, 801–538–7100	10/01/2003–09/30/2006

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–22305 Filed 8–29–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

[03–03–A]

Opportunity for Designation in the Champaign (IL), Detroit (MI), Eastern Iowa (IA), Enid (OK), Keokuk (IA), and Michigan (MI) Areas, and Request for Comments on the Official Agencies Serving These Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

SUMMARY: The designations of the official agencies listed below will end in March 2004. Grain Inspection, Packers and Stockyards Administration (GIPSA) is asking persons interested in providing official services in the areas served by these agencies to submit an application for designation. GIPSA is also asking for comments on the quality of services provided by these currently designated agencies: Champaign-Danville Grain Inspection Departments, Inc. (Champaign); Detroit Grain Inspection Service, Inc. (Detroit); Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa); Enid Grain Inspection Company, Inc. (Enid); Keokuk Grain Inspection Service (Keokuk); and Michigan Grain Inspection Services, Inc. (Michigan).

DATES: Applications and comments must be postmarked or electronically dated on or before October 1, 2003.

ADDRESSES: Submit applications and comments to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604; FAX 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications and comments will be made available for public inspection at Room 1647–S, 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart at 202–720–8525, e-mail *Janet.M.Hart@usda.gov.*

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the United States Grain Standards Act, as amended (Act), authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act.

1. Current Designations Being Announced for Renewal.

Official agency	Main office	Designation start	Designation end
Champaign	Champaign, IL	6/01/2001	3/31/2004
Detroit	Emmett, MI	5/01/2001	3/31/2004
Eastern Iowa	Davenport, IA	6/01/2001	3/31/2004
Enid	Enid, OK	6/01/2001	3/31/2004
Keokuk	Keokuk, IA	5/01/2001	3/31/2004
Michigan	Marshall, MI	5/01/2001	3/31/2004

a. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and Indiana, is assigned to Champaign.

Bounded on the North by the northern Livingston County line from State Route 47; the eastern Livingston County line to the northern Ford County line; the northern Ford and Iroquois County lines east to the Illinois-Indiana State line; the Illinois-Indiana State line south to U.S. Route 24; U.S. Route 24 east to U.S. Route 41;

Bounded on the East by U.S. Route 41 south to the northern Parke County line; the northern Parke and Putnam County lines; the eastern Putnam, Owen and Greene County lines;

Bounded on the South by the southern Greene County line; the southern Sullivan County line west to U.S. Route 41(150); U.S. Route 41(150) south to U.S. Route 50; U.S. Route 50 west across the Indiana-Illinois State line to Illinois State Route 33; Illinois State Route 33 north and west to the Western Crawford County line; and

Bounded on the West by the western Crawford and Clark County lines; the Southern Coles County line; the western Coles and Douglas County lines; the western Champaign County line north to Interstate 72; Interstate 72 southwest to the Piatt County line; the western Piatt County line; the southern McLean County line west to a point 10 miles west of the western Champaign County line, from this point through Arrowsmith to Pontiac along a straight line running north and south which intersects with State Route 116; State Route 116 east to State Route 47; State Route 47 north to the northern Livingston County line.

The following grain elevators, all in Illinois, located outside of the above contiguous geographic area, are part of this geographic area assignment: Moultrie Grain Association, Cadwell, Moultrie County; Tabor Grain Company (3 elevators), Farmer City, Dewitt County; and Topflight Grain Company, Monticello, Piatt County (located inside Decatur Grain Inspection, Inc.'s, area).

Champaign's assigned geographic area does not include the following grain elevators inside Champaign's area which have been and will continue to be serviced by the following official agency: Titus Grain Inspection, Inc.: Kentland Elevator and Supply, Boswell, Benton County, Indiana; ADM, Dunn, Benton County, Indiana; and ADM, Raub, Benton County, Indiana.

b. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Michigan, is assigned to Michigan.

Bounded on the North by the northern Clinton County line; the eastern Clinton County line south to State Route 21; State Route 21 east to State Route 52; State Route 52 north to the Shiawassee County line; the northern Shiawassee County line east to the Genesee County line; the western Genesee County line; the northern Genesee County line east to State Route 15; State Route 15 north to Barnes Road; Barnes Road east to

Sheridan Road; Sheridan Road north to State Route 46; State Route 46 east to State Route 53; State Route 53 north to the Michigan State line;

Bounded on the East by the Michigan State line south to State Route 50;

Bounded on the South by State Route 50 west to U.S. Route 127; and

Bounded on the West by U.S. Route 127 north to U.S. Route 27; U.S. Route 27 north to the northern Clinton County line.

The following grain elevator, located outside of the above contiguous geographic area, is part of this geographic area assignment: Caldonia Farmers Elevator, St. Johns, Clinton County (located inside Michigan Grain Inspection Services, Inc.'s, area).

c. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and Iowa, is assigned to Eastern Iowa.

The southern area:

Bounded on the North, in Iowa, by Interstate 80 from the western Iowa County line east to State Route 38; State Route 38 north to State Route 130; State Route 130 east to Scott County; the western and northern Scott County lines east to the Mississippi River;

Bounded on the East, from the Mississippi River, in Illinois, by the eastern Rock Island County line; the northern Henry and Bureau County lines east to State Route 88; State Route 88 south; the southern Bureau County line; the eastern and southern Henry County lines; the eastern Knox County line;

Bounded on the South by the southern Knox County line; the eastern and southern Warren County lines; the southern Henderson County line west to the Mississippi River; in Iowa, by the southern Des Moines, Henry, Jefferson, and Wapello County lines; and

Bounded on the West by the western and northern Wapello County lines; the western and northern Keokuk County lines; the western Iowa County line north to Interstate 80.

The northern area:

Bounded on the North, in Iowa, by the northern Delaware and Dubuque County lines; in Illinois, by the northern Jo Daviess, Stephenson, Winnebago, Boone, McHenry, and Lake County lines;

Bounded on the East by the eastern Illinois State line south to the northern Will County line; the northern Will County line west to Interstate 55; Interstate 55 southwest to the southern Dupage County line;

Bounded on the South by the southern Dupage, Kendall, Dekalb, and Lee County lines; and

Bounded on the West by the western Lee and Ogle County lines; by the southern Stephenson and Jo Daviess County lines; in Iowa, by the southern Dubuque and Delaware County lines; and the western Delaware County line.

Eastern Iowa's assigned geographic area does not include the export port locations inside Eastern Iowa's area which are serviced by GIPSA.

d. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the State of Oklahoma, is assigned to Enid.

Adair, Alfalfa, Atoka, Blaine, Bryan, Caddo, Canadian, Carter, Cherokee, Choctaw, Cleveland, Coal, Comanche, Cotton, Craig, Creek, Custer, Delaware, Dewey, Garfield, Garvin, Grady, Grant, Greer, Harmon, Haskell, Hughes, Jackson, Jefferson, Johnston, Kay, Kingfisher, Kiowa, Latimer, Le Flore, Lincoln, Logan, Love, McClain, McCurtain, McIntosh, Major, Marshall, Mayes, Murray, Muskogee, Noble, Nowata, Okfuskee, Oklahoma, Okmulgee, Osage, Ottawa, Pawnee, Payne, Pittsburg, Pontotoc, Pottawatomie, Pushmataha, Rogers, Seminole, Sequoyah, Stephens, Tillman, Tulsa, Wagoner, Washington, Washita, Woods, and Woodward Counties.

e. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and Iowa, is assigned to Keokuk.

Adams, Brown, Fulton, Hancock, Mason, McDonough, and Pike (northwest of a line bounded by U.S. Route 54 northeast to State Route 107; State Route 107 northeast to State Route 104; State Route 104 east to the eastern Pike County line) Counties, Illinois.

Davis, Lee, and Van Buren Counties, Iowa.

f. Pursuant to section 7(f)(2) of the Act, the following geographic area, in the States of Michigan and Ohio, is assigned to Michigan.

Bounded on the North by the northern Michigan State line;

Bounded on the East by the eastern Michigan State line south and east to State Route 53; State Route 53 south to State Route 46; State Route 46 west to Sheridan Road; Sheridan Road south to Barnes Road; Barnes Road west to State Route 15; State Route 15 south to the Genesee County line; the northern Genesee County line west to the Shiawassee County line; the northern Shiawassee County line west to State Route 52; State Route 52 south to State Route 21; State Route 21 west to Clinton County; the eastern and northern Clinton County lines west to U.S. Route 27; U.S. Route 27 south to U.S. Route 127; U.S. Route 127 south to the Michigan-Ohio State line. In Ohio, the northern State line east to the eastern Fulton County line; the eastern Fulton, Henry, and Putnam County lines; the eastern Allen County line south to the northern Hardin County line; the northern Hardin County line east to U.S. Route 68; U.S. Route 68 south to State Route 47; Bounded on the South by State Route 47 west-southwest to Interstate 75 (excluding all of Sidney, Ohio); Interstate 75 south to the Shelby County line; the southern and western Shelby County lines; the southern Mercer County line; and

Bounded on the West by the Ohio-Indiana State line from the southern Mercer County line to the northern Williams County line; in Michigan, by the southern Michigan State line west to the Branch County line; the western Branch County line north to the Kalamazoo County line; the southern Kalamazoo and Van Buren County lines west to the Michigan State line; the western Michigan State line north to the northern Michigan State line.

Michigan's assigned geographic area does not include the following grain elevators inside Michigan's area which has been and will continue to be serviced by the following official agencies:

1. Detroit Grain Inspection Service, Inc.: Caldonia Farmers Elevator, St. Johns, Clinton County, Michigan.

2. Northeast Indiana Grain Inspection, Inc.: E.M.P. Coop, Payne, Paulding County, Ohio.

2. Opportunity for designation. Interested persons, including Champaign, Detroit, Eastern Iowa, Enid, Keokuk, and Michigan, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning April 1, 2004, and ending March 31, 2007. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information, or obtain applications at the GIPSA Web site, *www.usda.gov/gipsa/oversight/parovreg.htm.*

3. Request for Comments. GIPSA also is publishing this notice to provide interested persons the opportunity to present comments on the quality of services for the Champaign, Detroit, Eastern Iowa, Enid, Keokuk, and Michigan official agencies. In commenting on the quality of services, commenters are encouraged to submit pertinent data including information on the timeliness, cost, and scope of services provided. All comments must

be submitted to the Compliance Division at the above address.

Applications, comments, and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 03–22306 Filed 8–29–03; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2004 Overseas Enumeration Test.

Form Number(s): DO–1.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 75,000 hours.

Number of Respondents: 450,000.

Avg Hours Per Response: 10 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget to conduct the 2004 Overseas Enumeration Test. In response to Congressional direction and stakeholder inquiries and interest, the Census Bureau has embarked on a research and evaluation program that will provide information regarding the feasibility of counting U.S. citizens living overseas and their dependents, including private U.S. citizens living overseas, as part of its 2010 Census data collection process.

The 2004 test will include U.S. citizens living in France, Kuwait, and Mexico, regardless of how long they have resided abroad (this does not include those on vacations or short business trips). People who are not U.S. citizens will not be included in the counts. France, Kuwait, and Mexico were selected as test sites based on several criteria such as geographic diversity, significant numbers of U.S. citizens, and estimates from administrative records that could be compared to the test census counts for evaluation purposes.

The 2004 Overseas Enumeration Test will be a "mixed-mode" test, which will employ the use of paper questionnaires and the Internet. For the respondent-initiated paper returns, the Census Bureau will provide questionnaires to U.S. citizens to pick up at embassies, consulates, and from organizations that serve Americans overseas. Questionnaires can be returned by mail or completed via the Internet.

The Census Bureau is developing a comprehensive communications strategy, consisting of a marketing and promotional campaign that will address educating overseas Americans about the overseas enumeration test, motivating participation, and reaching them through local venues such as radio and print media.

The objectives of the 2004 Overseas Enumeration Test are to determine the feasibility, quality and cost of collecting data from U.S. citizens living overseas. The results of the 2004 Overseas Enumeration Test will be used to provide information and recommendations to inform a test in 2006. If Congress decides to include an expanded overseas enumeration in the 2010 census, a "dress rehearsal" would be conducted in 2008.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or email (*susan_schechter@omb.eop.gov*).

Dated: August 26, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–22243 Filed 8–29–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Decennial Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Title 5, United States Code, Appendix 2, Section 10(a)(b), the Bureau of the Census (Census Bureau) is giving notice of a meeting of the Decennial Census Advisory Committee. The Committee will address issues related to the reengineered 2010 decennial census of population and housing, including the American Community Survey, the short-form-only 2010 census, and other related decennial programs. Last minute changes to the schedule are possible, which could prevent advance notification.

DATES: October 9–10, 2003. On October 9, the meeting will begin at approximately 9 a.m. and end at approximately 5 p.m. On October 10, the meeting will begin at approximately 8:30 a.m. and end at approximately 12:15 p.m.

ADDRESSES: The meeting will be held at the U.S. Census Bureau, 4700 Silver Hill Road, Suitland, Maryland 20746.

FOR FURTHER INFORMATION CONTACT: Jeri Green, Committee Liaison Officer, Department of Commerce, U.S. Census Bureau, Room 3627, Federal Office Building 3, Washington, DC 20233, telephone (301) 763–2070, TTY (301) 457–2540.

SUPPLEMENTARY INFORMATION: The Decennial Census Advisory Committee is composed of a Chair, Vice-Chair, and up to 40 member organizations, all appointed by the Secretary of Commerce. The Committee considers the goals of the decennial census and users' needs for information provided by the decennial census. The Committee provides an outside-user perspective about how research-and-design plans for the 2010 reengineered decennial census and the development of the American Community Survey and other related programs will realize those goals and satisfy those needs. The members of the Advisory Committee will draw on their experience with Census 2000 planning and operational processes, results of research studies, test censuses, and results of the Census 2000 evaluation program to provide input on the design and related operations of the 2010

reengineered decennial census, the American Community Survey, and other related programs.

A brief period will be set aside at the meeting for public comment. However, individuals with extensive statements for the record must submit them in writing to the Census Bureau Committee Liaison Officer named above at least three working days prior to the meeting. Seating is available to the public on a first-come, first-served basis.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Census Bureau Committee Liaison Officer as soon as known and preferably two weeks prior to the meeting.

Dated: August 26, 2003.

Keith Hall,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 03–22319 Filed 8–29–03; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

License Exception TMP: Special Requirements

ACTION: Proposed Information Collection: Comment Request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 3, 2003.

ADDRESSES: Direct all written comments to Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Marna Dove, BIS ICB Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

License Exception TMP of the Export Administration Regulations (15 CFR 740.8) authorizes temporary (not more than one year) exports and reexports of some commodities and software in some situations in which a license otherwise would be required. Information not covered by any other approved collection is obtained from the public in two situations covered by this collection. The first situation is when the exporter or reexporter wishes to keep the commodities or software abroad for more than one year. In such instances, the exporter or reexporter must submit an application for an extension (up to six months) or to convert the transaction to a permanent export or reexport. The second situation occurs when members of the news media wish to use TMP as authorization to take items that otherwise would require a license to destinations in Country Groups D:1 or E:2 or Sudan (*see* 15 CFR part 740, Supp. No. 1 for the constituents of each country group). In this situation, the exporter or reexporter must submit a copy of the packing list or similar information to BIS before the export or reexport.

II. Method of Collection

The information will be collected in written form.

III. Data

OMB Number: 0694–0029.
Form Number: N/A.
Type of Review: Regular Submission.
Affected Public: Businesses and other for-profit institutions, small businesses or organizations.
Estimated Number of Respondents: 3.
Estimated Time Per Response: 20 minutes.
Estimated Total Annual Burden Hours: 1 hour.
Estimated Total Annual Cost: $15 for respondents—no equipment or other materials will need to be purchased to comply with the requirement.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 26, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–22242 Filed 8–29–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (2002) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than the last day of September 2003, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
Antidumping Duty Proceedings	
ARGENTINA:	
Certain Hot-Rolled Carbon Steel Flat Products A–357–814	9/1/02–8/31/03
BELARUS:	
Steel Concrete Reinforcing Bars A–822–804	9/1/02–8/31/03
CANADA:	
New Steel Rail, Except Light Rail A–122–804	9/1/02–8/31/03
INDONESIA:	
Steel Concrete Reinforcing Bars A–560–811	9/1/02–8/31/03
ITALY:	
Stainless Steel Wire Rod A–475–820	9/1/02–8/31/03
JAPAN:	
Flat Panel Displays A–588–817	9/1/02–8/31/03
Stainless Steel Wire Rod A–588–843	9/1/02–8/31/03
LATVIA:	
Steel Concrete Reinforcing Bars A–449–804	9/1/02–8/31/03
MOLDOVA:	
Steel Concrete Reinforcing Bars A–841–804	9/1/02–8/31/03
POLAND:	
Steel Concrete Reinforcing Bars A–455–803	9/1/02–8/31/03
REPUBLIC OF KOREA:	
Stainless Steel Wire Rod A–580–829	9/1/02–8/31/03
Steel Concrete Reinforcing Bars A–580–844	9/1/02–8/31/03
SOUTH AFRICA:	
Certain Hot-Rolled Carbon Steel Flat Products A–791–809	9/1/02–8/31/03
SPAIN:	
Stainless Steel Wire Rod A–469–807	9/1/02–8/31/03
SWEDEN:	
Stainless Steel Wire Rod A–401–806	9/1/02–8/31/03
TAIWAN:	
Stainless Steel Wire Rod A–583–828	9/1/02–8/31/03
THE PEOPLE'S REPUBLIC OF CHINA:	
Foundry Coke A–570–862	9/1/02–8/31/03
Freshwater Crawfish Tail Meat A–570–848	9/1/02–8/31/03
Greige Polyester/Cotton Printcloth A–570–101	9/1/02–8/31/03
Steel Concrete Reinforcing Bars A–570–860	9/1/02–8/31/03
UKRAINE:	
Silicomanganese A–823–805	9/1/02–8/31/03
Solid Agricultural Grade Ammonium Nitrate A–823–810	9/1/02–8/31/03
Steel Concrete Reinforcing Bars A–823–809	9/1/02–8/31/03
Countervailing Duty Proceedings	
ARGENTINA:	
Certain Hot-Rolled Carbon Steel Flat Products C–357–815	1/1/02–12/31/02
CANADA:	
New Steel Rail, Except Light Rail C–122–805	1/1/02–12/31/02
ITALY:	
Stainless Steel Wire Rod C–475–821	1/1/02–12/31/02
Suspension Agreements: None.	

In accordance with section 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 69 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://www.ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation

of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of September 2003. If the Department does not receive, by the last day of September 2003, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 27, 2003.

Gary Taverman,

Acting Deputy Assistant Secretary, Group II for Import Administration.

[FR Doc. 03–22345 Filed 8–29–03; 8:45am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–879]

Notice of Amended Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Alice Gibbons, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3874 or (202) 482–0498, respectively.

Amendment to Final Determination

In accordance with sections 735(a) and 777(i)(1) of the Tariff Act of 1930, as amended, (the Act), on August 11, 2003, the Department published its notice of final determination of sales at less than fair value (LTFV) in the investigation of polyvinyl alcohol (PVA) from the People's Republic of China (PRC). *See Notice of Final Determination of Sales at Less Than Fair Value: Polyvinyl Alcohol From the People's Republic of China*, 68 FR 47538 (Aug. 11, 2003). On August 11, 2003, we received an allegation, timely filed pursuant to 19 CFR 351.224(c)(2), from the respondent, Sinopec Sichuan Vinylon Group (SVW), that the Department had made a ministerial error in its final determination. We did not receive comments on SVW's submission from the petitioners in this investigation, Celanese Chemicals Ltd. and E.I. Dupont de Nemours & Company. After analyzing SVW's submission, we have determined, in accordance with 19 CFR 351.224(e), that we made a ministerial error in our calculation of total freight expenses for certain sales with CIF Chongqing delivery terms in the margin calculations performed for the final determination.

Further, in reviewing the calculation of SVW's freight expenses for these CIF Chongqing transactions, we discovered two other clerical errors in the margin program directly related to the one identified by the respondent. First, we discovered that the error in total freight expenses discussed above also relates to SVW's FOB Chongqing sales. Second, in determining which inland freight expenses were applicable to SVW's CIF Chongqing sales, we discovered that we had incorrectly recalculated marine insurance expenses. Correcting these errors resulted in a revised margin for SVW.

For a detailed discussion of the ministerial errors noted above, as well as the Department's analysis, see the August 25, 2003, memorandum to Jeffrey May from the Team entitled "Ministerial Error Allegation in the Final Determination of the Antidumping Duty Investigation on Polyvinyl Alcohol from the People's Republic of China."

Therefore, in accordance with 19 CFR 351.224(e), we are amending the final determination of sales at LTFV in the antidumping duty investigation of PVA from the PRC. The revised dumping margins are as follows:

Manufacturer/exporter	Original final margin (percent)	Amended final margin (percent)
Sinopec Sichuan Vinylon Works	7.40	6.91
PRC-wide	97.86	97.86

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the U.S. Bureau of Customs and Border Protection (BCBP) to continue to suspend liquidation of all entries of PVA from the PRC. The BCBP shall require a cash deposit or the posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart above. These instructions suspending liquidation will remain in effect until further notice.

This determination is issued and published pursuant to sections 735(d) and 777(i)(1) of the Act.

Dated: August 26, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22346 Filed 8–29–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082503H]

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Tilefish Committee, together with the Tilefish Industry Advisors and Tilefish Technical Team, will hold a public meeting.

DATES: The meeting will be held on Wednesday, September 18, 2003, from 10 a.m. to 4 p.m.

ADDRESSES: This meeting will be held at the Crowne Plaza Meadowlands, Two Harmon Plaza, Secaucus, NJ; telephone: 201–348–6900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to address the decision of the court in *Hadaja* v. *Evans* which raised questions with respect to the Administrative Record for tilefish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice

that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Mid-Atlantic Council Office (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: August 25, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22341 Filed 8–29–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Invention Promoters/Promotion Firms Complaints.

Form Number(s): PTO/SB/2048.

Agency Approval Number: 0651–0044.

Type of Request: Revision of a currently approved collection.

Burden: 38 hours annually.

Number of Respondents: 100 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 15 minutes (0.25 hours) to gather the necessary information, complete the form, and submit the complaint to the USPTO. The USPTO estimates that it will take an invention promoter or promotion firm approximately 30 minutes (0.5 hours) to prepare and submit a response to a complaint.

Needs and Uses: The Inventors' Rights Act of 1999 requires the USPTO to provide a forum for publishing complaints concerning invention promoters and responses by the invention promoters to these complaints. An individual may submit a complaint to the USPTO, which is then forwarded to the identified invention promoter for response. Complaints and responses are published on the USPTO web site. The public uses this collection to submit a complaint to the USPTO regarding an invention promoter or to respond to a complaint. The USPTO uses this information to comply with its statutory duty to publish the complaint along with any response from the invention promoter.

Affected Public: Individuals or households, businesses or other for-profits, and not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 2, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503.

Dated: August 26, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22253 Filed 8–29–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. 2003–C–014]

Revision of the United States Patent and Trademark Office Seal

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice; Revision of agency seal.

SUMMARY: The United States Patent and Trademark Office revises its agency seal.

ADDRESSES: Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Maulsby at (703) 305–8341.

SUPPLEMENTARY INFORMATION: The USPTO is revising its official seal established under 35 U.S.C. 2(b)(1). Effective October 1, 2003, the USPTO adopts the following as its seal with which letters patent, certificates of trademark registrations, and papers issued by USPTO will be authenticated and which shall be judicially noticed:

Dated: August 26, 2003.

James E. Rogan,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 03–22291 Filed 8–29–03; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Denying Entry to Textiles and Textile Products Allegedly Manufactured by a Certain Company in Botswana

August 26, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection to deny entry to shipments allegedly manufactured by a certain company in Botswana.

EFFECTIVE DATE: September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

The Bureau of Customs and Border Protection has conducted on-site verification of textile and apparel production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, the Bureau of Customs and Border Protection has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the Bureau of Customs and Border Protection to issue regulations regarding the denial of entry of shipments from such companies. (See **Federal Register** notice 64 FR 41395, published on July 30, 1999). In order to secure compliance with U.S. law, including Section 204 and Bureau of Customs and Border Protection law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA is directing the Bureau of Customs and Border Protection to deny entry to textile and textile products allegedly manufactured by Uni-Oriental (Pty) Ltd. of Botswana for two years. The Bureau of Customs and Border Protection has informed CITA that this company was found to have been illegally transhipping, closed, or unable to produce records to verify production.

Should CITA determine that this decision should be amended, such amendment will be published in the **Federal Register**.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 26, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: The Bureau of Customs and Border Protection has conducted on-site verification of textile and textile product production in a number of foreign countries. Based on information obtained through on-site verifications and from other sources, the Bureau of Customs and Border Protection has informed CITA that certain companies were illegally transshipping, were closed, or were unable to produce records to verify production. The Chairman of CITA has directed the Bureau of Customs and Border Protection to issue regulations regarding the denial of entry of shipments from such companies (see directive dated July 27, 1999 (64 FR 41395), published on July 30, 1999). In order to secure compliance with U.S. law, including Section 204 and Bureau of Customs and Border Protection law, to carry out textile and textile product agreements, and to avoid circumvention of textile agreements, the Chairman of CITA directs the Commissioner, Bureau of Customs and Border Protection, effective for goods exported on and after September 2, 2003 and extending through September 1, 2005, to deny entry to textiles and textile products allegedly manufactured by the company Uni-Oriental (Pty) Ltd. of Botswana. The Bureau of Customs and Border Protection has informed CITA that this company was found to have been

illegally transshipping, closed, or unable to produce records to verify production.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.03–22202 Filed 8–29–03; 8:45 am]
BILLING CODE 3510–DR–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0136]

Federal Acquisition Regulation; Information Collection; Commercial Item Acquisitions

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance (9000–0136).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning the clauses and provisions required for use in commercial item acquisitions. The OMB clearance expires on October 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jerry Zaffos, Acquisition Policy Division, GSA (202) 208–6091.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat, 1800 F Street, NW., Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act of 1994 included Title VIII, entitled Commercial Items. The title made numerous additions and revisions to both the civilian agency and Armed Service acquisition statutes to encourage and facilitate the acquisition of commercial items and services by Federal Government agencies.

To implement these changes, DoD, NASA, and GSA amended the Federal Acquisition Regulation(FAR) to include several streamlined and simplified clauses and provisions to be used in place of existing clauses and provisions. They were designed to simplify solicitations and contracts for commercial items.

Information is used by Federal agencies to facilitate the acquisition of commercial items and services.

B. Annual Reporting Burden

Respondents: 37,500.
Responses Per Respondent: 34.
Total Responses: 1,275,000.
Hours Per Response: .312.
Total Burden Hours: 397,800.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0136 regarding Commercial Item Acquisitions in all correspondence.

Dated: August 26, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–22248 Filed 8–29–03; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF EDUCATION

Office of Management; Performance Review Board; Notice of Membership

AGENCY: Department of Education.

ACTION: Notice of membership of the Performance Review Board.

SUMMARY: The Secretary announces the members of the Performance Review Board (PRB) for the Department of Education for the Senior Executive Service (SES) performance cycle that ended June 30, 2003. Under 5 U.S.C. 4314(c)(1) through (5), each agency is required to establish one or more PRBs.

Composition and Duties

The PRB of the Department of Education is composed of career senior executives, non-career senior executives, and Presidential appointees.

The PRB reviews and evaluates the initial appraisal of each senior executive's performance, along with any comments by that senior executive and by any higher-level executive or executives. The PRB makes recommendations to the appointing authority relative to the performance of the senior executive, including recommendations on performance awards. The Department of Education's PRB also makes recommendations on SES pay level adjustments for career senior executives.

Membership

The Secretary has selected the following executives of the Department of Education to serve on the PRB of the Department of Education for the specified SES performance cycle: Chair: William Leidinger, Gerald Reynolds, Jack Martin, John Higgins, Maria Ferrier, Susan Sclafani, Thomas Skelly, Philip Link, Steven Winnick, Patricia Guard, Veronica Trietsch, Jeannette Lim, and Thomas Pestka.

FOR FURTHER INFORMATION CONTACT: Althea Watson, Director, Executive Resources Team, Human Resources Services, Office of Management, U.S. Department of Education, room 2E124, FOB–6, 400 Maryland Avenue, SW., Washington, DC 20202–4573. Telephone: (202) 401–2548.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free

at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: August 27, 2003.

Rod Paige,

Secretary of Education.

[FR Doc. 03–22318 Filed 8–27–03; 2:28 pm]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–280]

Application To Export Electric Energy; Direct Energy Marketing Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Direct Energy Marketing Inc. (DEMI) has applied for authority to export electric energy from the United States to Canada, pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before October 2, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On August 13, 2003, DEMI applied to the Office of Fossil Energy of the Department of the Department of Energy (DOE) for authority to export electric energy from the Unites States to Canada. DEMI is a Delaware corporation with its principal place of business in Stamford, Connecticut. DEMI is wholly-owned by Centrica U.S. Holdings Inc., an indirect, wholly-owned subsidiary of Centrica plc. Centrica plc is a major supplier of energy, telecommunications, and financial services in the United Kingdom. DEMI and its affiliates have no franchised service territory in the United States or Canada for the sale of natural gas or electricity, nor do DEMI or its affiliates own or operate any generation or transmission facilities in the United States or Canada. DEMI will operate as a marketer and broker of electric power at wholesale and may arrange services in related areas such as fuel supplies and transmission services.

DEMI proposes to export electric energy to Canada over the international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company and Vermont Electric Transmission Company. DEMI will purchase the energy to be exported from electric utilities and Federal power marketing agencies within the United States as defined in the FPA.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by DEMI has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with section 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the DEMI application to export electric energy to Canada should be clearly marked with Docket EA–280. Additional copies are to be filed directly with Catherine P. McCarthy, LeBeouf, Lamb, Greene & MacRae, L.L.P. 1875 Connecticut Avenue, NW., Suite 1200, Washington, DC 20007 *AND* Robert Frank, Vice President, Regulatory Affairs, Centrica North America, 8 Greenway Plaza, Suite 1000, Houston, TX 77046.

A final decision will be made on this application after the environmental impact has been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov.* Upon reaching the Fossil Energy Home page select "Electricity regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on August 26, 2003.

Anthony Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–22302 Filed 8–29–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. PP–66–1]

Application to Transfer Presidential Permit; Citizens Communications Company and Vermont Electric Power Company, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Citizens Communications Company (Citizens) and Vermont Electric Power Company, Inc. (VELCO) have jointly applied to transfer Presidential Permit PP–66 from Citizens to VELCO.

DATES: Comments, protests or requests to intervene must be submitted on or before October 2, 2003.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038. Existing Presidential permits are not transferable or assignable. However, in the event of

a proposed voluntary transfer of physical facilities, in accordance with the regulations at 10 CFR 205.323, the existing holder of a permit and the transferee are required to file joint application for transfer with the Department of Energy (DOE) that includes a statement of reasons for the transfer.

On June 21, 1979, DOE issued Presidential Permit PP–66 to Citizens Utilities Company (now Citizens Communications Company) for one 120,000-volt (120-kV) electric transmission line that crosses the United States border with Canada near Derby Line, Vermont, and interconnects with similar transmission facilities in Canada owned by Hydro Quebec.

On August 21, 2003, Citizens and VELCO (collectively, the "Applicants") jointly filed an application with DOE to transfer Presidential Permit PP–66 from Citizens to VELCO. VELCO is a Vermont corporation comprised of several electric utilities operating in Vermont (as further described in the application). VELCO currently owns and operates most of the bulk transmission facilities in Vermont, other than those currently owned by Citizens. VELCO proposes to purchase from Citizens transmission facilities in northern Vermont, including the international transmission facilities that are the subject of PP–66.

In this application, the Applicants state that there will be no physical changes to the existing permitted facilities.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with section 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the joint application to transfer Presidential Permit PP–66 from Citizens to VELCO should be clearly marked with Docket PP–66–1. Additional copies are to be filed directly with L. Russell Mitten, Esq., VP, General Counsel, Citizens Communications Company, 3 High Ridge Park, Stamford, CT 06905; Mr. Gary Parker, V.P., Director of Planning, Engineering, Construction and Transmission, Vermont Electric Power Company, Inc., 366 Pinnacle Ridge Road, Rutland, VT 05701; *and* Kenneth G. Hurwitz, Esq., Haynes and Boone, LLP, 550 11th Street, NW, Suite 650, Washington, DC 20004–1314; and John H. Marshall, Esq., Downs Rachlin Martin PLLC, 90 Prospect Street, P.O. Box 99, St. Johnsbury, VT 05819–0099.

Before a Presidential permit may be issued or amended, the DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.*, granting the Presidential permit with any conditions and limitations, or denying it) pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrence of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.doe.gov*. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on August 26, 2003.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 03–22303 Filed 8–29–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–347–002]

Chandeleur Pipe Line Company; Notice of Compliance Filing

August 25, 2003.

Take notice that on August 18, 2003, Chandeleur Pipe Line Company (Chandeleur) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, 2nd Substitute Third Revised Sheet No. 69B, to become effective July 1, 2003.

Chandeleur asserts that the purpose of this filing is to correct a typographical error on this sheet.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with ¶ 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with ¶ 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: September 2, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22218 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP01–76–007 and CP01–77–007]

Dominion Cove Point LNG, LP.; Notice of Tariff Filing

August 25, 2003.

Take notice that on August 19, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of August 18, 2003:

Third Revised Sheet No. 5.
Third Revised Sheet No. 6.
Third Revised Sheet No. 7.
Third Revised Sheet No. 10.
Third Revised Sheet No. 11.

On May 20, 2003, Cove Point filed revised tariff sheets (Second Revised Sheet Nos. 5, 6, 7, 10, and 11) to reflect the correct rates to be effective until the Commission authorized commencement of commercial operations at Cove Point's LNG import terminal. The tariff sheets superseded at that time, which had been approved in a letter order issued February 28, 2003, in Docket No. CP01–76–003, *et al.*, implemented the rates and fuel retention to become applicable upon reactivation. In a letter order issued on June 18, 2003 in Docket Nos. CP01–76–005 and CP01–77–005, the Commission approved the correct rates to be effective June 1, 2003.

In its May 20 filing, Cove Point indicated that, as soon as the Commission approved a date for placing the import facilities in service, it would immediately file to reinstate the postreactivation rate and fuel sheets to be effective on that date. The Commission authorized the commencement of commercial operations of the import facilities in a letter order issued on August 18, 2003. To coincide with the reactivation, Cove Point respectfully requests that the Commission approve the filed tariff sheets with an August 18, 2003 effective date.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with

§ 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with

§ 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Protest Date: September 2, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22214 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–222–000]

Maine Public Utilities Commission, et al., Complainants, v. New England Power Pool and ISO New England, Inc., Respondents; Notice of Complaint

August 25, 2003.

Take notice that on August 21, 2003, the Maine Public Utilities Commission, the Maine Public Advocate, the Rhode Island Public Utilities Commission, the Rhode Island Division of Public Utilities and Carriers, the Rhode Island Attorney General, Pinpoint Power, NRG Energy, Inc. and Gen Power, LLC (collectively, Complainants) filed a Complaint Requesting Fast Track Processing against the New England Power Pool and ISO New England, Inc. (NEPOOL/ISO–NE) pursuant to Sections 206 and 306 of the Federal Power Act and Rule 206 of the Commission's Rules (18 CFR 385.206). Complainants request that the Commission reject the methodology currently proposed by NEPOOL/ISO-NE for allocating the costs of transmission upgrades in New England. Complainants request the Commission to adopt instead the Complainants' proposal, which Complainants assert provides an appropriate method for allocating transmission upgrade costs to the load that benefits from the upgrade.

Any person desiring to be heard or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. The answer to the complaint and all comments, interventions or protests must be filed on or before comment date. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov*; or toll free at (866)208–3676, or for TTY, contact (202)502–8659. The answer to the complaint, comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

September 5, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22216 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–573–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

August 25, 2003.

Take notice that on August 15, 2003, PG&E Transmission, Northwest Corporation, (GTN) as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of September 15, 2003:

Fourth Revised Sheet No. 6.
Second Revised Sheet No. 211.
Second Revised Sheet no. 212.
Original Sheet No. 229.

GTN states that the filing is being made to establish a mechanism that will allow GTN's incremental fuel rate, established in conjunction with GTN's 2002 Pipeline Expansion Project, to roll down over time.

GTN states that copies of the filing have been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: August 29, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22221 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–574–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

August 25, 2003.

Take notice that on August 19, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Third Revised Sheet No. 138 and Second Revised Sheet No. 139, with an effective date of September 18, 2003.

GTN states that these sheets are being filed to provide shippers with an alternative means of establishing security for interruptible transportation (IT) service that is in addition to the current methods available to IT shippers.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Comment Date: September 2, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22222 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–048]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

August 25, 2003.

Take notice that on August 15, 2003, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing to be part of its FERC Gas Tariff, Second Revised Volume No. 1–A, Second Revised Sheet No. 21B, with an effective date of September 14, 2003.

GTN states that it is submitting Second Revised Sheet No. 21B in order to establish negotiated rate tariff language that it expects will be utilized in conjunction with future negotiated rate transactions for purposes of establishing a value for fuel gas that is retained in-kind by the pipeline.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with the protest date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Protest Date: August 29, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22223 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–568–000]

Questar Pipeline Company; Notice of Tariff Filing

August 25, 2003.

Take notice that on August 14, 2003, Questar Pipeline Company (Questar) tendered for filing has part of its FERC Gas Tariff, the following tariff sheets, with an effective date of October 1, 2003:

First Revised Volume No. 1.
Twenty-Ninth Revised Sheet No. 5.
Sixteenth Revised Sheet No. 6.
Original Volume No. 3.
Thirty-Sixth Revised Sheet No. 8.

Questar states that the filing incorporates into its storage and transportation rates, the revised annual charge adjustment (ACA) unit rate of $0.00210 per Dth.

Questar states that copies of the filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with the comment date below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Comment Date: August 29, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22220 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–544–001]

Texas Gas Transmission, LLC (formerly Texas Gas Transmission Corporation); Notice of Compliance Filing

August 25, 2003.

Take notice that on August 4, 2003, Texas Gas Transmission, LLC (Texas Gas) (formerly Texas Gas Transmission Corporation) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of July 7, 2003:

First Revised Sheet No. 201.
First Revised Sheet No. 293.

Texas Gas states that the filing is an administrative filing. Texas Gas further states that the purpose the filing is to submit a tariff provision already accepted by the Commission for incorporation in Texas Gas's Second Revised Volume No. 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Protest Date: September 2, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22219 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER96–25–022. et al.]

Coral Power, L.L.C., et al.; Electric Rate and Corporate Filings

August 21, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Coral Power, L.L.C., Coral Energy Management, LLC, Coral Canada U.S. Inc.

[Docket Nos. ER96–25–022, ER01–1363–002, ER01–3017–002]

Take notice that on August 18, 2003, Coral Power, L.L.C. (Coral Power), Coral Energy Management, LLC (Coral EM) and Coral Canada U.S. Inc. (Coral Canada), filed with the Federal Energy Regulatory Commission their consolidated three-year updated market power analysis. Coral Power, Coral EM and Coral Canada state that they are power marketers and brokers with their principal place of business in Houston, Texas and do not directly own or control generation or transmission assets.

Comment Date: September 8, 2003.

2. Galt Power, Inc.

[Docket No. ER03–1001–001]

Take notice that on August 12, 2003, Galt Power, Inc. (Galt Power) submitted an amended petition to the Commission for acceptance of Galt Power Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Galt Power states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Galt Power also states that it is not in the business of generating or transmitting electric power.

Comment Date: September 3, 2003.

3. Tex Par Energy, Inc.

[Docket No. ER03–1219–000]

Take notice that on August 15, 2003, TexPar Energy, Inc. tendered for filing a Notice of Cancellation of its market-based rate authority and reporting of electric power sales transactions and agreements. TexPar Energy, Inc., states that the cancellation should take effect August 8, 2003, and has not entered into any contracts to sell power. *Comment Date:* September 5, 2003.

4. Southern Company Services, Inc.

[Docket No. ER03–1220–000]

Take notice that on August 18, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed a Notice of Cancellation of Service Schedules A and B of the Interchange Contract dated December 15, 1980 between the City of Tallahassee, Florida, and Southern Companies (Rate Schedule FERC No. 62). These cancellations were made pursuant to a bilateral amendment to the Interchange Contract. *Comment Date:* September 8, 2003.

5. California Independent System Operator Corporation

[Docket No. ER03–1221–000]

Take notice that on August 18, 2003, the California Independent System Operator Corporation (ISO), tendered for filing a revision to the ISO Tariff, Amendment No. 56 for acceptance by the Commission. The ISO states that the purpose of the amendment is to modify Tariff provisions regarding Dispatching and Scheduling Reliability Must-Run Energy to reflect the demise of the California Power Exchange.

The ISO states that this filing has been served on the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, the Participating TOs, Trans-Elect, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff. The ISO is requesting the amendment to be made effective in sixty days.

Comment Date: September 8, 2003.

6. California Independent System Operator Corporation

[Docket No. ER03–1222–000]

Take notice that on August 18, 2003, the California Independent System Operator Corporation (ISO), tendered for filing a revision to the ISO Tariff, Amendment No. 57, for acceptance by the Commission. The ISO states that this filing is an addendum to Amendment No. 49 and that this filing should complete resolution of revenue

disbursement to a New Participating Transmission Owner that does not serve End-Use Customers.

The ISO states that this filing has been served on the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, the Participating TOs, Trans-Elect, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff. The ISO is requesting the amendment to be made effective in sixty days.

Comment Date: September 8, 2003.

7. Montana Mid-Merit Power, LLC, NorthWestern Energy Division of NorthWestern Energy Corp.

[Docket No. ER03–1223–000]

Take notice that on August 18, 2003, Montana Megawatts I, LLC (MMI) and NorthWestern Energy Division of NorthWestern Corporation (NWE), tendered for filing a power purchase agreement, as amended, under which MMI states it will sell capacity and energy at cost-based rates to NWE pursuant to Section 205 of the Federal Power Act.

Comment Date: September 8, 2003.

8. Philadelphia Gas Works

[Docket No. ER03–1225–000]

Take notice that on August 18, 2003, Philadelphia Gas Works tendered for filing a Notice of Cancellation, pursuant to 18 CFR 35.15, giving notice of cancellation of its market-based electric tariff filed with the Commission.

Comment Date: September 8, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22217 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–126–000, et al.]

Global Common Greenport, LLC, et al.; Electric Rate and Corporate Filings

August 22, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Global Common Greenport, LLC

[Docket No. EC03–126–000]

Take notice that on August 18, 2003, Global Common Greenport LLC (GCG or the Applicant) filed with the Federal Energy Regulatory Commission (the Commission) an application pursuant to Section 203 of the Federal Power Act seeking authorization to dispose of its jurisdictional assets. Specifically, as part of a corporate reorganization, GCG's member interests will be transferred to its corporate affiliates WJH Holding, LLC and William J. Haugland. GCG is a Commission-authorized power marketer.

Comment Date: September 8, 2003.

2. Southern California Edison Company

[Docket No. EL02–126–001]

Take notice that on August 14, 2003, Southern California Edison Company (Edison) tendered for filing with the Federal Energy Regulatory Commission (Commission) a compliance filing pursuant to the Commission's July 16, 2003 Order Directing the Submission of Additional Information. Edison states that it is unable to supply the Commission with all of the requested information at this time.

Edison states that copies of this filing were served upon the parties listed on the service list in Docket No. EL02–126–000.

Comment Date: September 15, 2003.

3. Entergy Services, Inc.

Generator Coalition (Consolidated) v. Entergy Services, Inc.

[Docket No. EL02–46–003 and ER01–2201–004]

Take notice that on August 14, 2003, Entergy Services, Inc, (Entergy) filed a refund report in the above-referenced dockets relating to Entergy's Generator Imbalance Agreement. A copy of the refund report has been served on all parties to the service lists in the above-referenced proceedings and the state commissions in the Entergy region.

Comment Date: September 4, 2003.

4. MDU Resources Group, Inc.

[Docket No. ES03–52–000]

Take notice that on August 19, 2003, MDU Resources Group, Inc. submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue additional shares of common stock in connection with a three-for-two stock split of common stock, to be effected in the form of a fifty-percent stock dividend.

Comment Date: September 12, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The

Commission strongly encourages electronic filings.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22215 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG01–127–000, et al.]

PPL Martins Creek, LLC, et al.; Electric Rate and Corporate Filings

August 15, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PPL Martins Creek, LLC

[Docket No. EG01–127–000]

Take notice that on August 8, 2003, PPL Martins Creek, LLC (PPL Martins Creek) tendered for filing an Amended Application for Redetermination of Status as an Exempt Wholesale Generator.

PPL Martins Creek states it has served copies of its Application on the parties listed on the Commission=s official service list for this proceeding and on the Pennsylvania Public Utility Commission and the Securities and Exchange Commission.

Comment Date: September 5, 2003.

2. Green Field Wind Farm, L.L.C.

[Docket No. EG03–90–000]

Take notice that on August 12, 2003, Green Field Wind Farm, L.L.C. (the Applicant), with its principal office at 3001 Broadway Street, NE., Suit 695, Minneapolis, MN 55413, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Minnesota limited liability company engaged directly and exclusively in the business of owning and operating an approximately 80 MW wind-powered generation facility located in Eastern Wisconsin. Applicant further states that electric energy produced by the facility will be sold exclusively at wholesale.

Comment Date: September 5, 2003.

3. Blue Sky Wind Farm, LLC

[Docket No. EG03–91–000]

Take notice that on August 11, 2003, Blue Sky Wind Farm, LLC (the Applicant), with its principal office at 3001 Broadway Street NE., Suite 695, Minneapolis, MN 55413, filed with the Federal Energy Regulatory Commission (the Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Minnesota limited liability company engaged directly and exclusively in the business of owning and operating an approximately 80 MW wind-powered generation facility located in Eastern Wisconsin. Applicant also states that the electric energy produced by the facility will be sold exclusively at wholesale.

Comment Date: September 5, 2003.

4. NRG Energy Center Dover LLC, NEO Freehold "Gen LLC, NEO Chester-Gen LLC

[Docket No. ER00–3160–001]

Take notice that on August 12, 2003, NRG Energy Center Dover, NEO Freehold-Gen LLC and NEO Chester-Gen LLC tendered for filing their triennial review in compliance with the Commission's Order issued August 9, 200, in NRG Energy Center Dover LLC, Docket No. ER00–3160–000.

Comment Date: September 3, 2003.

5. Sithe Energy Marketing L.P., Sithe/ Independence Power Partners, L.P., AG–Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling, Power Partners, L.P.

[Docket Nos. ER02–2202–002, ER03–42–003, ER98–2782–004]

Take notice that on August 11, 2003, Sithe Energy Marketing, L.P., AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power partners, L.P., and Sithe/ Independence Power Partners, L.P. (collectively, the Sithe Entities), tendered for filing a notice of change in status pursuant to section 205 of the Federal Power Act with respect to each entity's authority to engage in wholesale sales of capacity, energy and ancillary services at market-based rates. The Sithe Entities state that the change in status involves the indirect transfer of indirect ownership interests in the Sithe Entities from Apollo Energy LLC and subsidiaries of Marubeni Corporation to RCSE, LLC (RCSE), so that Sithe is owned equally by Exelon SHC, Inc., and RCSE

Comment Date: September 2, 2003.

6. Westar Energy, Inc.

[Docket No. ER03–1183–000]

Take notice that on August 8, 2003, Westar Energy, Inc. (Westar) submitted for filing revised sheets for Second Revised Rate Schedule FERC No.264, Electric Transmission and Service Contract between Westar and Kansas Electric Power Cooperative, Inc. (KEPCo) and revised sheets for Original Rate Schedule FERC No.183, Electric Power Transmission and Service Contract between Westar's wholly owned subsidiary, Kansas Gas and Electric Company, Inc. and KEPCo. Westar states that these revised sheets remove points of delivery and add points of interconnection between Westar and KEPCo to accommodate the transaction between Westar and Midwest Energy, Inc. (Midwest) under which Midwest will acquire certain transmission and distribution assets from Westar. Additionally, Westar states that the revised sheets permit KEPCo to apply to the Southwest Power Pool (SPP) to convert existing transmission service to regional network service under SPP's open access transmission tariff.

Westar states that a copy of this filing was served upon the Kansas Corporation Commission and KEPCo.

Comment Date: August 29, 2003.

7. Metropolitan Chicago Healthcare Council

[Docket No. ER03–1185–000]

Take notice that on August 11, 2003, Metropolitan Chicago Healthcare Council tendered for filing a Notice of Cancellation for Market-based Rate Authority in Docket No. 99–3705–000 dated July 22, 1999.

Comment Date: September 2, 2003.

8. Power Access Management

[Docket No. ER03–1186–000]

Take notice that on August 11, 2003, Power Access Management tendered for filing a Notice of Cancellation for Market-based Rate Tariff in Docket No. ER97–1084–000 dated January 2, 1997. Access Management states that the company is no longer in business and has not entered into any contracts to sell power.

Comment Date: September 2, 2003.

9. Midwest Generation, LLC

[Docket No. ER03–1187–000]

Take notice that on August 11, 2003, Midwest Generation, LLC (Midwest) tendered for filing Midwest's FERC Electric Tariff, Original Volume No. 2. Midwest states that this is a rate schedule designating compensation to be paid by Commonwealth Edison Company for black start service provided from certain designated Midwest generating facilities.

Comment Date: September 2, 2003.

10. NorthWestern Energy

[Docket No.ER03–1188–000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 17, which is the Upper Mississippi Valley Power Pool Agreement which was superseded by the Mid-Continent Area Power Pool Agreement (NorthWestern's Rate Schedule 29) in 1972.

Comment Date: September 2, 2003.

11. NorthWestern Energy

[Docket No. ER03–1189–000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18.CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 25, which is an electric power wheeling agreement between NorthWestern and Rushmore Gas & Transmission Company that was superseded by NorthWestern's FERC Electric Rate Schedule No. 33.

Comment Date: September 2, 2003.

12. NorthWestern Energy

[Docket No. ER03–1190–000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 26, which is an electric power wheeling agreement between NorthWestern and the State of South Dakota on behalf of Southern State College, Springfield, South Dakota and Northern State College, Aberdeen, South Dakota. NorthWest states that the service originally provided under FERC Electric Rate Schedule No. 26 is now being provided under NorthWestern's Service Agreement No. 15, which was executed pursuant to NorthWestern's Open Access Transmission Tariff and accepted by the Commission on June 4, 2001.

Comment Date: September 2, 2003.

13. NorthWestern Energy

[Docket No. ER03–1191–000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 27, which is an electric power wheeling agreement between NorthWestern and the State of South Dakota on behalf of Southern State College, Springfield, South Dakota. The service originally provided under FERC Electric Rate Schedule No. 27 is now being provided under NorthWestern's Service Agreement No. 14, which was executed pursuant to NorthWestern's Open Access Transmission Tariff and accepted by the Commission on June 4, 2001.

Comment Date: September 2, 2003.

14. NorthWestern Energy

[Docket No. ER03–1192–000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 28, which is an electric power wheeling agreement between NorthWestern and the City of Groton, South Dakota. The service originally provided under FERC Electric Rate Schedule No. 28 is now being provided under NorthWestern's Service Agreement No. 11, which was executed pursuant to NorthWestern's Open Access Transmission Tariff and accepted by the Commission on June 4, 2001.

Comment Date: September 2, 2003.

15. NorthWestern Energy

[Docket No. ER03–1193–000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No.32, which is a firm power sales agreement for the winter seasons 1990 through 1993 between NorthWestern and Minnesota Power & Light that expired by its terms on April 30, 1993.

Comment Date: September 2, 2003.

16. NorthWestern Energy

[Docket No. ER03–1194–000]

Take notice that on August 11, 2003, NorthWestern Energy, division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of FERC Electric Rate Schedule No. 35, which is an interconnection agreement between NorthWestern and Western Area Power Administration that expired by its terms on December 31, 2000.

Comment Date: September 2, 2003.

17. NorthWestern Energy

[Docket No. ER03–1195–000]

Take notice that on August 11, 2003, NorthWestern Energy, a division of NorthWestern Corporation (NorthWestern), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, to reflect cancellation of the Non-Firm Point to Point Transmission Service Agreement between NorthWestern and Tenaska Power Services Company The non-firm transmission service agreement is a conforming agreement under NorthWestern's Open Access Transmission Tariff. The agreement was executed November 25, 1997; however, NorthWestern has never provided any service pursuant to that agreement.

Comment Date: September 2, 2003.

18. Georgia Power Company

[Docket No. ER03–1197–000]

Take notice that on August 12, 2003, Southern Company Services, Inc., on behalf of Georgia Power Company, filed revisions to the Interchange Contract dated July 1, 1980 between Georgia Power Company and Crisp County Power Commission (Georgia Power Company's First Revised Rate Schedule FERC No. 803). Southern Company Services, Inc., states that this revision is made pursuant to a bilateral amendment to the Interchange Contract. Southern Company Services, Inc. requests that the revisions to the Interchange Contract be given an effective date of August 12, 2003.

Comment Date: September 3, 2002.

19. Southern Company Services, Inc.

[Docket No. ER03–1198–000]

Take notice that on August 12, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed a Notice of Cancellation of Service Schedule A of the Interchange Contract dated February 27, 1981 between Jacksonville Electric Authority and Southern Companies. This Interchange contract is (Southern Operating Companies' First Revised Rate Schedule FERC No. 53). SCS states that this cancellation was made pursuant to a bilateral amendment to the Interchange Contract.

Comment Date: September 3, 2003.

20. Southern Company Services, Inc.

[Docket No. ER03–1199–000]

Take notice that on August 12, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power

Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed a Notice of Cancellation of Service Schedule A of the Restated Interchange Contract dated June 30, 1991, between Cajun Electric Power Cooperative, Inc. and Southern Companies. This Interchange Contact is (Southern Operating Companies' First Revised Rate Schedule FERC No. 76. SCS states that this cancellation was made pursuant to a bilateral amendment to the Interchange Contract.

Comment Date: September 3, 2003.

21. Southern Company Services, Inc.

[Docket No.ER03–1200–000]

Take notice that on August 12, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed an amendment to the Interchange Contract dated August 7, 1981 between South Carolina Public Service Authority and Southern Companies. This Interchange Contract is Southern Operating Companies' First Revised Rate Schedule FERC No. 51. SCS states that this revision is made pursuant to a bilateral amendment to the Interchange Contract. Southern Companies request that the revisions to the Interchange Contract be effective on July 30, 2003.

Comment Date: September 3, 2003.

22. Monongahela Power Company

[Docket No. ER03–1201–000]

Take notice that on August 12, 2003, Monongahela Power Company (Monongahela), tendered for filing pursuant to Commission's regulations 18 CFR 35.15, a Notice of Cancellation of Monongahela's Rate Schedule FERC No. 28, consisting of a Power Delivery Agreement (Agreement) dated January 1, 1968 among Monongahela, Buckeye Power Inc., The Cincinnati Gas & Electric Company, Columbus and Southern Ohio Electric Company, The Dayton Power and Light Company, Ohio Power Company and The Toledo Edison Company. Monongahela states that the Agreement terminated by its own terms effective June 20, 2003, and Monongahela request an effective date of June 20, 2003 for the cancellation and waiver of the Commission's regulations.

Monongahela states that a copy of this filing has been served on Buckeye Power Inc., the Public Utilities Commission of Ohio, American Electric Power Service Corporation on behalf of Ohio Power Company and Columbus and Southern Power Company (now Columbus Southern), FirstEnergy Service Corporation on behalf of The Toledo Edison Company, The Cincinnati Gas & Electric Company and The Dayton Power and Light Company.

Comment Date: September 3, 2003.

23. NEPA Energy LP

[Docket No. ER03–1203–000]

Take notice that on August 12, 2003, NEPA Energy LP (NEPA) tendered for filing a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1 pursuant to Section 35.15 of the Federal Energy Regulatory Commission=s (Commission) regulations, 18 CFR 35.15. FERC Electric Tariff, Original Volume No. 1 was filed with the Commission in Docket No. ER00–2316–000 on June 13, 2000.

NEPA requests an effective date of August 1, 2003 for the cancellation. NEPA states it has no customers under this tariff.

Comment Date: September 3, 2003.

24. Virginia Electric and Power Company

[Docket No. ER03–1204–000]

Take notice that on August 12, 2003, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an executed Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and Fauquier Landfill Gas, L.L.C. (Fauquier). Dominion Virginia Power states that the Interconnection Agreement sets forth the terms and conditions governing the interconnection between Fauquier's generating facility, located in Fauquier County, Virginia, and Dominion Virginia Power's transmission system.

Dominion Virginia Power requests that the Commission accept this filing to make the Interconnection Agreement effective on August 13, 2003, the day after the filing. Dominion Virginia Power states that copies of the filing were served upon Fauquier and the Virginia State Corporation Commission.

Comment Date: September 3, 2003.

25. DTE East China, LLC

[Docket No. ER03–1206–000] DTE Energy Trading, Inc.

Take notice that on August 12, 2003, DTE East China, LLC (DTE East China) and DTE Energy Trading, Inc. (DTE Energy Trading) submitted for filing, pursuant to Section 205 of the Federal Power Act, and part 35 of the Commission's regulations, a revision to the cost-based ceiling applicable, respectively, to DTE East China's sales and DTE Energy Trading's re-sales of electric capacity and energy from the electric generating facilities owned and operated by DTE East China.

Comment Date: September 3, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22351 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC03–70–000, et al.]

PSEG Fossil LLC, et al.; Electric Rate and Corporate Filings

August 18, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PSEG Fossil LLC, PSEG Nuclear LLC

[Docket No. AC03–70–000]

Take notice that on August 8, 2003, PSEG Fossil LLC (PSEG Fossil) and PSEG Nuclear LLC (PSEG Nuclear) submitted a filing seeking to comply with Commission's Order No. 631, 103 FERC ¶ 61,021. PSEG Fossil and PSEG Nuclear state that, as required by Order No. 631, on January 1, 2003, the difference between the liabilities on the books and the Asset Retirement Obligations (ARO) has been debited or credited to net income, as appropriate, since no amounts are to be refunded to customers.

Comment Date: August 28, 2003.

2. Portland General Electric Company

[Docket No. AC03–71–000]

Take notice that on August 7, 2003, Portland General Electric Company (PGE) submitted a filing in compliance with Commission's Order No. 631, 103 FERC 61,021. PGE states that, as required by Order No. 631, on January 1, 2003, PGE has recorded a cumulative effect of an accounting charge on net income for an Asset Retirement Obligation associated with the Boardman Coal Plant. PGE requests that the Commission grant waiver of the requirement that such compliance filing be made within 60 days of the effective date of the final rule and grant any other waivers as necessary to accept the compliance filing.

Comment Date: August 27, 2003.

3. Blue Spruce Energy Center, LLC

[Docket No. EG03–93–000]

Take notice that on August 14, 2003, Blue Spruce Energy Center, LLC (Blue Spruce), c/o/ Calpine Corporation, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Blue Spruce owns and operates a nominal 336 MW generation facility located in Aurora, Colorado and previously obtained an exempt wholesale generator determination. Blue Spruce states that it is seeking a new determination that it will remain an exempt wholesale generator notwithstanding a material change in facts. Blue Spruce further states that copies of the application were served upon the United States Securities and Exchange Commission and Colorado Public Utilities Commission.

Comment Date: September 8, 2003.

4. St. Paul Cogeneration, LLC

[Docket No. EG03–94–000]

Take notice that on August 14, 2003, St. Paul Cogeneration, LLC (Applicant), filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Minnesota limited liability company engaged directly and exclusively in the business of owning and operating an up to 35 MW biomass-fired cogeneration facility located in St. Paul, Minnesota. Applicant also states that electric energy produced by the facility will be sold exclusively at wholesale.

Comment Date: September 8, 2003.

5. Minnesota Power

[Docket No. ER03–831–001]

Take notice that on August 14, 2003, Minnesota Power tendered for filing in compliance with Commission Order No. 614, a Second Revised Rate Schedule FERC No. 125 for the Public Utilities Commission of Brainerd, Minnesota (Brainerd). Minnesota Power requests an effective date of February 28, 2003.

Comment Date: September 4, 2003.

6. New York State Electric & Gas Corporation

Docket No. ER03–927–001]

Take notice that August 14, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to FERC's July 31, 2003 acceptance letter, Docket No. ER03–927–000, paginated tariff sheets to the Service Agreements For Network Integrated Transmission Service consistent with Order No. 614, FERC 31,096.

NYSEG states it has served copies of the paginated tariff sheets to the customers under the Service Agreements For Network Integrated Transmission Service and the New York State Public Service Commission.

Comment Date: September 4, 2003.

7. Texxon Utilities, Ltd. Co.

[Docket No. ER03–1150–001]

Take notice that on August 14, 2003, Texxon Utilities, Ltd. Co., tendered for filing a revised Rate Schedule No. 1 amending their petition filed July 29, 2003 in Docket No. ER03–1150–000.

*Comment Date:*September 4, 2003.

8. Liberty Electric Power LLC

[Docket No. ER03–1209–000]

Take notice that on August 13, 2003, Liberty Electric Power, LLC (Liberty) tendered for filing, pursuant to Section 205 of the Federal Power Act (16 U.S.C. 824d) and part 35 of the Commission's Rules of Practice and Procedure, a revised rate schedule for reactive power to be provided to the PJM Interconnection, LLC transmission grid. Liberty requests an effective date of September 1, 2003.

Comment Date: September 3, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22349 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC03–122–000, et al.]

Sithe Energies, Inc., et al., Electric Rate and Corporate Filings

August 19, 2003.

The following filings have been made with the Commission. The filings are

listed in ascending order within each docket classification.

1. Sithe Energies, Inc., Apollo Energy LLC, Exelon (Fossil) Holdings, Inc., Exelon Power Holdings, LP, Exelon SHC, Inc., ExRes SHC, Inc. Marubeni Corporation, National Energy Development Inc. and RCSE, LLC.

[Docket No. EC03–122–000]

Take notice that on August 11, 2003, Sithe Energies, Inc. (Sithe), Apollo Energy LLC (Apollo Energy), Exelon (Fossil) Holdings, Inc. (Exelon Fossil), Exelon Power Holdings, LP (Exelon Power), Exelon SHC, Inc. (Exelon SHC), ExRes SHC, Inc., (ExRes SHC), Marubeni Corporation (Marubeni), National Energy Development Inc. (NEDI) and RCSE, LLC (RCSE and collectively, the Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities. The Applicants state that the disposition will occur through a three-step Transaction whereby Apollo, Marubeni and Exelon Power will effectively transfer all of their interests in Sithe to Exelon SHC, which in turn, will contribute its interest in Sithe to ExRes SHC. The Applicants further state that in the final step of the transaction, RCSE will purchase a fifty percent interest in ExRes SHC, making Sithe an indirect subsidiary equally owned by Exelon SHC and RCSE. Sithe states it is engaged primarily, through various subsidiaries, in the development and operation of non-utility generation facilities. Applicants state that the transaction will have no adverse effect on competition, rates or regulation.

Comment Date: September 2, 2003.

2. PSEG Energy Holdings L.L.C., PSEG Energy Technologies Inc., Quonset Point Cogen, L.P., DG Kingston LLC.

[Docket No. EC03–123–000]

Take notice that on August 14, 2003, pursuant to Section 203 of the Federal Power Act (FPA), 16 U.S.C. 824b (2000), and part 33 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 33, Quonset Point Cogen, L.P. (Quonset), and DG Kingston LLC (DG Kingston or Buyer) (collectively, the Applicants) respectfully request Commission approval to permit PSEG Energy Holdings L.L.C. (PSEG Holdings) to sell and Buyer to acquire 100 percent of the shares of PSEG Holdings' wholly-owned subsidiary PSEG Energy Technologist Inc (PSEG ET). PSEG ET states that it currently owns 100 percent of the outstanding shares of 50 Belver Avenue Associates Corporation and QPC Corporation, the sole general and limited partners, respectively, of Quonset, a public utility subject to the Commission's jurisdiction under the FPA. The applicants state that the proposed transaction will result in DG Kingston indirectly acquiring control over Quonset's 7.5 MW gas-fired electric generating facility in Washington County, Rhode Island, as well as associated jurisdictional facilities, a wholesale power purchase agreement and Quonset's market-based rate schedule on file with the Commission.

DG Kingston states this is a new market entrant in New England that does not currently own or control generation or inputs to electric generation in the New England markets. The Applicants, therefore, request that Commission proceed in an expedited manner and issue an order granting this application by September 15, 2003 in order to facilitate closing of this transaction by September 20, 2003.

Comment Date: September 4, 2003.

3. Tenaska Virginia Partners, L.P.

[Docket No. EC03–124–000]

Take notice that on August 14, 2003, Tenaska Virginia Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Virginia), tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to Section 203 of the Federal Power Act and part 33 of the Commission's regulations, an Application for authorization to effect the transfer of a 30% indirect beneficial interest in Tenaska Virginia's Fluvanna County, Virginia electric generating project and the accompanying jurisdictional assets to affiliates of Harbert Power Corporation and The Northwestern Mutual Life Insurance Company.

Tenaska Viginia states that a copy of the filing was served on the Virginia State Corporation Commission.

Comment Date: September 4, 2003.

4. Cinergy Solutions Holding Company, Inc. Trigen Solutions, Inc.

[Docket No. EC03–125–000]

Take notice that on August 14, 2003, Cinergy Solutions Holding Company, Inc. (Cinergy Solutions) and Trigen Solutions, Inc. (Trigen, and collectively, Applicants) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Trigen will transfer to Cinergy Solutions its indirect interests in a 35 megawatt electric generation facility located in St. Paul, Minnesota. Applicants state that the transaction will have no adverse effect on competition, rates or regulation.

Comment Date: September 4, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22350 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1273–009]

Parowan City Utah; Notice of Availability of Draft Environmental Assessment

August 26, 2003.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission)

regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Center Creek Hydroelectric Project located on Center Creek, in Iron County, Utah, and has prepared a draft Environmental Assessment (EA) for the project. The project occupies 21.43 acres of United States lands administered by the Bureau of Land Management.

The draft EA contains Commission staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the draft EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

Any comments on this draft EA should be filed within 30 days from the date of this notice and should be addressed to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 1273–009 to all comments. Comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site *http://www.ferc.gov* under the "e-Filing" link.

For further information, contact Gaylord Hoisington at (202) 502–6032 or *gaylord.hoisington@ferc.gov*.

Linda Mitry,

Acting Secretary.

Draft Environmental Assessment for Hydropower License, Center Creek Hydroelectric Project, Utah

[FERC Project No. 1273–009]

Federal Energy Regulatory Commission, Office of Energy Projects, Division of Hydropower—Environment and Engineering, 888 First Street, NE Washington, DC 20426, August 2003

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Summary

On November 15, 2002, Parowan City filed an application for a subsequent license for the existing 600-kilowatt, Center Creek Hydroelectric Project located at the confluence of Center Creek (aka Parowan Creek) and Bowery Creek (a tributary to Parowan Creek) near the City of Parowan, in Iron County, Utah. The project occupies 21.43 acres of land managed by the U.S. Department of the Interior, Bureau of Land Management. The project generates about 2,300 megawatt-hours (MWh) annually.

The issues addressed in this draft environmental assessment are the potential effects of the continued operation and maintenance of the proposed project on: (1) Aquatic resources; (2) terrestrial resources, (3) threatened and endangered species; and (4) cultural resources. There are no major issues with this project.

Parowan City's proposal to relicense the project includes the environmental measure to monitor and remove any noxious and undesirable plants after any ground-disturbing activities. Parowan City does not propose any changes to the project's facilities or operations.

In this draft environmental assessment (EA), Commission staff analyze the effects of Parowan City's proposed project, with one additional staff recommended environmental measure (to develop a cultural resources management plan if any new or undocumented archeological or historic sites are discovered during project operation or maintenance) and the no-action alternative.

We estimate the proposed project would generate an average of 2,300 MWh annually at an annual cost of $18,000 and an annual net power benefit of $56,000. The cost of the staff's measure is minimal and would not affect project economics.

Based on our independent analysis, we conclude that issuing a subsequent license for the project, with the environmental measure that we recommend, would not be a major federal action significantly affecting the quality of the human environment.

Environmental Assessment
Office of Energy Projects
Center Creek Hydroelectric Project

[FERC No. 1273–009-Utah]

I. Application

On November 15, 2002, Parowan City (Parowan) filed an application for a subsequent license for the existing 600-kilowatt (kW) Center Creek Hydroelectric Project (project), located at the confluence of Center Creek (aka Parowan Creek) and Bowery Creek (a tributary to Parowan Creek) near the City of Parowan, in Iron County, Utah (figure 1). The project occupies 21.43 acres of land managed by the U.S. Department of the Interior, Bureau of Land Management (BLM).

II. Purpose of Action and Need for Power

A. Purpose of Action

The Federal Power Act (FPA) provides the Commission with the exclusive authority to license non-federal water power projects on navigable waterways and federal lands.

For the project, the Commission must decide (1) whether to issue a license to Parowan, and if so, (2) what, if any, conditions should be placed on that license to protect or enhance existing

environmental resources and/or to mitigate for any adverse environmental impacts that would occur due to operation and maintenance of the project.

This draft environmental assessment (EA) assesses the effects associated with operation of the proposed project and alternatives to the proposed project, and makes recommendations to the Commission on whether to issue a license, and if so, recommends terms and conditions to become a part of any license issued. In deciding whether to issue a license for a hydroelectric project, the Commission must determine that.

Public access for the above information is available only through the Public Reference Room, or by e-mail at *public.refernceroom@ferc.gov.*

The project would be best adapted to a comprehensive plan for improving or developing the waterway. In addition to the power and developmental purposes for which licenses are issued, the Commission must give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of fish and wildlife (including related spawning grounds and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality.

In this draft EA, we, the Commission staff, assess the effects of operating the project as proposed by Parowan, and operating the project as proposed by Parowan with staff's mitigative and enhancement measures. We also consider the effects of the no-action alternative.

B. Need for Power

Parowan operates the Center Creek Project (FERC No. 1273) and Red Creek Project (FERC No. 2782) to provide power to its customers through its municipal power system. In addition to these two sources, Parowan also meets its power needs by: (1) purchasing power through the Utah Association of Municipal Power Systems (UAMPS), of which Parowan is a member, and (2) encouraging power conservation by its customers.

Power demand for Parowan in recent years is summarized in table 1. Included in this power demand are residential, commercial, and other customers. Over the given 4-year period, total demand has risen about 7 percent. As part of its energy conservation effort, Parowan annually distributes energy saving inserts that are provided by UAMPS. Additionally, Parowan is in the process of upgrading from a 2,400-volt delta system to a 12,470-volt wye system Parowan is also converting street lighting from 200-watt mercury bulbs to 100-watt sodium fixtures.

TABLE 1.—RECENT RETAIL POWER LOAD FOR PAROWAN CITY

[Source: Parowan City]

Year	Retail power load (MWh)
1998	12.89
1999	13.07
2000	13.49
2001	13.81

The project is located in the Northwest Power Pool Area (NWPP) of the Western Electricity Coordinating Council (WECC) region of the North American Electric Reliability Council (NERC). WECC annually forecasts electrical supply and demand in the region for a 10-year period. The most recent report on annual supply and demand indicates that, for the period from 2002–2011, the average annual growth rate is projected to be 2.5 percent. In response to projected growth, WECC members will be adding or contracting for about 16,000 megawatts (MW) of new capacity generation during the 10-year period. The electricity generated from the project would benefit the region by providing a portion of the needed regional power.

If relicensed, the project would continue to contribute to Parowan's power needs as well as meeting a small portion of the regional need for power. The project would also continue to displace non-renewable fossil-fueled power generation used by some of the facilities in the UAMPS, thereby conserving fossil fuel resources and avoiding associated atmospheric emissions.

III. Proposed Action and Alternatives

A. Parowan's Proposal

1. Parowan's Project Facilities and Operation

The existing project consists of: (1) A 15-foot-high, 54-foot-long concrete overflow type diversion dam; (2) a radial gate; (3) trash racks; (4) a 19.9 acre-foot de-silting pond; (4) an 18 to 26-inch-diameter, 19,300-foot-long steel penstock; (5) a 600-kW powerhouse; (6) an 80-foot-long, 2.4-kilovolt underground transmission line; and (7) appurtenant facilities (figure 2).

Parowan proposes to continue operating the project run-of-river. When operating, the project diverts a maximum of 24 cubic feet per second (cfs) of stream flow from Center Creek. Water exiting the powerhouse goes into an irrigation canal for the use of downstream irrigation right-holders.

2. Proposed Environmental Measures

Parowan proposes to monitor and remove any noxious and undesirable plants after any ground-disturbing activities. Parowan does not propose any changes to project facilities or operation.

Public access for the above information is available only through the Public Reference Room, or by e-mail at *public.refernceroom@ferc.gov.*

B. Staff's Preferred Alternative

The staff considered what, if any, protection, mitigation, and enhancement measures would be beneficial to those resources affected by the project and its operation. We recommend in addition to Parowan's proposal that if any archeological or historic sites should be discovered during project operation or maintenance, Parowan prepare a site-specific plan in consultation with the Utah State Historic Preservation Officer (SHPO) and BLM to evaluate the significance of the sites and to mitigate impacts to those sites that are determined to be eligible for inclusion in the National Register of Historic Places.

C. No-Action Alternative

Under the no-action alternative, the project would continue to operate under the terms and conditions of the existing license, and no new environmental protection, mitigation, or enhancement measures would be implemented. We use this alternative to establish the baseline environmental condition for comparison with other alternatives.

D. Alternatives Considered But Eliminated From Detailed Study

We considered the following alternatives to Parowan's proposal but eliminated them from detailed study because they are not reasonable in the circumstances of this case.

1. Nonpower License

A nonpower license is a temporary license that the Commission would terminate whenever it would determine that another governmental agency would assume regulatory authority and supervision over the lands and facilities covered by the nonpower license. In this case, no government agency has suggested its willingness or ability to do so. No party has sought a nonpower license, and we have no basis for concluding that the project should no longer be used to produce power.

Issuing a nonpower license, therefore, is not a realistic alternative in these circumstances.

2. Denial of License and Decommissioning the Project

Project decommissioning could be accomplished with or without removing the project facilities. Either alternative would involve denial of the license application and surrender or termination of the existing license. In both cases, the energy that the project would generate would be lost, and consequently Parowan's need for the project's power would not be satisfied. Additionally, no participant has suggested decommissioning. For these reasons, we have no basis for recommending decommissioning of the project with or without removing the project facilities.

IV. Consultation and Compliance

A. Agency Consultation

The Commission's regulations (18 CFR Section 4.38) require applicants to consult with the appropriate resource agencies before filing an application for a license. This consultation is the first step in complying with the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, and other federal statutes. Pre-filing consultation must be complete and documented according to the Commission's regulations.

When the Commission issues a notice that the application is ready for environmental analysis, formal comments may be submitted by concerned entities in accordance with section 4.34(b) of the Commission's regulations under the FPA. The comments provided by concerned entities are made part of the record and are considered during review of the proposed project.

On May 8, 2003, the Commission issued a public notice indicating that the project was ready for environmental analysis, and soliciting motions to intervene, comments, terms and conditions, and prescriptions. We received one letter from the U.S. Department of the Interior's Fish and Wildlife Service (FWS) filed July 1, 2003, in response to that notice. FWS recommends that Parowan monitor and remove any noxious and undesirable plants after ground-disturbing activities. As discussed in Section V.2 of this draft EA, Parowan has agreed to this recommendation making the recommendation a part of its proposed project.

B. Interventions

In addition to filing comments, organizations and individuals may petition to intervene and become a party to the licensing proceedings. There are no interventions in this proceeding.

C. Scoping

We issued Scoping Document 1 (SD1) on March 4, 2003, to enable appropriate federal, state, and local resource agencies, Indian tribes, other nongovernmental organizations, and individuals to participate in the identification of issues, concerns, and opportunities associated with this proposed action. Specifically, we requested the entities to forward written information that they believed would assist the Commission in conducting an accurate and thorough analysis of the site-specific, as well as the cumulative effects of licensing the proposed project.

On April 7, 2003, the FWS filed comments recommending that we address the effects of the project on terrestrial resources and make two changes to the endangered species list. We have addressed the FWS comments in the draft EA. Also, after we received SD1 comments, we issued a letter saying we would not issue an SD2 but would use SD1 as a basis for the environmental assessment taking into account the recommendations of the FWS.

D. Water Quality Certification

Under Section 401(a) of the Clean Water Act,[1] the Commission may not issue a license for a hydroelectric project unless the state certifying agency has either issued water quality certification for the project or has waived certification by failing to act on a request for certification within a reasonable period of time, not to exceed 1 year.[2]

On April 13, 2001, Parowan applied to the Utah State Department of Environmental Quality (DEQ) for water quality certification (WQC) for the project. DEQ received the request on April 16, 2001. On June 17, 2002, DEQ granted certification to Parowan for the project. The WQC contains no conditions.

[1] 33 U.S.C. "1341(a)(1).

[2] Section 401(a)(1) requires an applicant for a federal license or permit to conduct any activity that may result in any discharge into navigable waters to obtain from the state in which the discharge originates certification that any such discharge would comply with applicable water quality standards.

V. Environmental Analysis

A. General Description of Center Creek Basin

The project powerhouse is located near the south edge of town. The diversion structure is high in the mountains originating at the confluence of Center Creek (Parowan Creek) and Bowrey Creek. Parowan Creek upstream of the project area flows largely through the Dixie National Forest.

The climate in the lower part of the Parowan Valley is semi-arid, with the mountains having somewhat cooler temperates. The average annual precipitation recorded at Parowan is 12.4 inches/year. Record high and low temperatures are 101 and minus 23 degrees Fahrenheit, respectively.

The canyons have highly varied geologic formations with multicolored layers of rock, highly complex cliff formations, talus slopes, and towering spirals. Varied forms of shape, color, and complex patterns of rock and vegetation make the canyons in which the project is located, highly scenic. Natural vegetation is sparse in Parowan Valley but begins to increase gradually as increased elevation provides cooler temperatures and more precipitation. These higher and cooler canyons support different types and more abundant vegetation than is found in the arid foothills. East of the project, within the Dixie National Forest, mountain peaks range from 7,500 to 10,000 feet.

B. Cumulative Effects

According to the Council on Environmental Quality's regulations for implementing NEPA (§thnsp;1508.7), an action may cause cumulative impacts on the environment if its impacts overlap in time and/or space with the impacts of other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative effects can result from individually minor but collectively significant actions taking place over a period of time, including hydropower and other land and water development activities.

Based on staff's review of Parowan's license application, and agency and public comments, we have determined that there are no cumulative impacts as a result of continued operation of the project. No other development activities exist or are anticipated, to the extent that we know, in the project area that, in conjunction with the continued operation of the project, would cumulatively affect resources within the project area.

C. Proposed Action and Action Alternatives

In this section, we discuss the effects of the project alternatives on environmental resources. For each resource, we first describe the affected environment, which is the existing condition and baseline against which we measure effects. We then discuss and analyze the specific environmental issues.

Only the resources that would be affected, or about which comments have been made by interested parties, are included in detail in this draft EA. At this time no new construction or modifications to the project are planned. Therefore, we have determined, based on our review of Parowan's license application, and as a result of our scoping process including agency and public comments, that geology and soils, aesthetics, recreation and land use, and socioeconomics would not be affected by the continued operation of the project and, therefore, will not be analyzed in detail in this EA.

1. Aquatic Resources

Affected Environment

Water Quantity

The project's diversion dam collects water from Parowan Creek immediately below the confluence with Bowery Creek at an elevation of about 6,275 feet. Parowan Creek at the diversion dam drains an area of about 50 square miles. Lands within the Parowan Creek subbasin upstream of the diversion dam are largely within the Dixie National Forest with a small amount of private lands scattered throughout the area. The average elevation of the subbasin is about 8,900 feet. Parowan Creek drains into the greater Bonneville Basin, which is a closed basin (letter by Willie R. Taylor, Director, Office of Environmental Policy and Compliance, USFWS, Washington, DC, July 1, 2003).

Surface water in Parowan Creek derives mostly from rainfall and snowmelt runoff. Snow is the dominant form of precipitation in the subbasin from October through April. Average total annual precipitation in the subbasin varies by elevation and temperature ranging from 12.4 inches at the project powerhouse (6,000 feet) in the hot and arid, lowest portion of the subbasin to 35.8 inches near Brian Head Station (9,770 feet) in the cooler and wetter, upper portion of the subbasin. Parowan calculates the average total annual precipitation at the diversion dam to be about 30.4 inches.

There are numerous springs in the project area fed by snowmelt originating in the upper subbasin. Additionally, the Parowan Creek bed is largely gravel and green vegetation carpets the landscape on both sides of the creek indicating that there is some sub-surface flow through the alluvium.

Parowan Reservoir Company,[3] at its Yankee Meadows Reservoir located on Bowery Creek about 7 creek miles upstream of the project diversion dam, largely regulates inflow to the immediate area of the project diversion dam intake. Parowan Reservoir Company impounds snowmelt runoff in the spring and releases it throughout the latter part of the summer to satisfy irrigation water supply needs. Under an unregulated flow condition, the annual hydrograph would show low or no flows occurring from November through March and again in July, peak flows in May and June, and transition flows in April and August through October (figure 1). Under the existing, regulated condition, the annual hydrograph is flat with flows ranging from a low of around 6.0 to 7.0 cfs from September through March to 8.0 to 10.0 cfs from April through August. Parowan calculates the existing average annual inflow at the diversion dam to be about 8.0 cfs.

Although the existing average monthly inflows at the diversion dam are much below the hydraulic capacity of the project (24 cfs),[4] peak flow data for the period of record 1964 to 1987 on Center Creek (USGS gage no. 10241470),[5] a tributary to Parowan Creek about 0.5 miles upstream of the diversion dam, shows that flows upwards of 200 cfs occur in the project area, although infrequently.[6]

Figure 3. Natural and regulated inflow at the project diversion dam as calculated by Parowan. "Regulated inflow" is a calculation of surface flow at the diversion based on the generation record. "Natural inflow" is a theoretical projection of the hydrograph based on the drainage area, mean annual precipitation, and main channel slope. The project does not account for surface flow that infiltrates the stream gravel before reaching the diversion dam; therefore, the projection somewhat overestimates surface flow at the project. (Source: staff)

Water Quality

Parowan Creek upstream of the project area flows largely through the Dixie National Forest. The drainage area is high elevation, remote, and sparsely populated. The Utah Water Quality Board classifies Parowan Creek in the project area as a Category 1 High Quality Water protected for secondary contact recreation (Class 2B), coldwater species of game fish and other cold water aquatic life (Class 3A), and agricultural uses, including irrigation of crops and stock watering (Class 4).[7]

There are no recent water quality data for Parowan Creek to our knowledge, however, because Parowan Creek largely flows through a sparsely populated area upstream of the project, we expect that the water quality of Parowan Creek in the project area is good.

Fisheries

Parowan Creek upstream of the project diversion dam contains a self-sustaining population of rainbow trout and brown trout; however, there are no known fish populations downstream of the project diversion dam. (letter by Willie R. Taylor, Director, Office of Environmental Policy and Compliance, USFWS, Washington, DC, July 1, 2003). A BLM habitat assessment of Parowan Creek conducted in 1982[8] describes Parowan Creek as possessing Agood habitat" overall but that trout habitat is limited to Parowan Creek upstream of the project diversion dam. The BLM assessment states that although the bypassed reach is dewatered during the summer months, the stream banks are stable and there is a Afair" amount of cover.

Environmental Impacts and Recommendations

Project Operation

Parowan has a Utah state water right (#75–27) to divert up to 24.0 cfs, the hydraulic capacity of the project, out of Parowan Creek, Center Creek, and Bowery Creek and its tributaries to be used for power generation. Parowan's right to this water is for non-consumptive use; therefore, after using it for power generation, Parowan returns the diverted creek flows to an irrigation canal downstream of the powerhouse so as not to adversely affect downstream

[3] Parowan Reservoir Company is a separate company that controls flows the flows for irrigation and for Parowan City to use at the Center Creek Project. Yankee Meadows Reservoir is an irrigation storage reservoir owned and operated by the Parowan Reservoir Company.

[4] Because the flow on average is much below the hydraulic capacity of the project, Parowan normally diverts all the flow in Parowan Creek at the diversion dam.

[5] Flow data accessed from the USGS Web site (*http://waterdata.usgs.gov/nwis/peaks/?site no=10241470&agency cd=USGS*) on June 27, 2003.

[6] Parowan calculates that a 200-cfs flow at the diversion dam has a recurrence interval of about 10 years.

[7] Utah Administrative Code, R317–2, Standards of Quality for Waters of the State, effective March 1, 2003.

[8] Parowan included a copy of the BLM habitat assessment in Appendix E–7 of the license application.

irrigation water rights holders. By diverting the flow into the penstock, Parowan actually benefits some irrigators, because the diverted flow would otherwise pass downstream of the diversion dam and seep into the canyon alluvium where the water would have to be pumped to be utilized.

Parowan also possesses a state water right (#75–5) to pump 1.047 cfs from the project forebay well to be used for power generation at the project.[9] Parowan's right to the well water is for non-consumptive use, and Parowan utilizes the water to increase penstock flow and also to keep the project forebay, desilting pond, and penstock from freezing during the winter.

Parowan states that it generally operates the project run-of-river, but occasionally utilizes the 19.9 acre-foot desilting pond for peaking purposes. Parowan proposes to continue operating the project in this fashion, which they term Arun-of-the-river'with a minor peaking capability component." No federal or state agency or Indian tribe has filed recommendations related to project operation.

There is no indication that Parowan's mode of project operation in any way affects downstream water rights holders or aquatic resources. Parowan returns up to 24 cfs of diverted creek water to an irrigation canal after they use it for project generation, so there is no consumption of the diverted water. Because Parowan Creek drains into a closed basin where all the flow is either diverted by irrigators or lost to evaporation or seepage, there are no fisheries resources downstream of the project powerhouse affected by the project operation.

Project Flow Releases

By letter to the applicant dated May 17, 2001 (*see* appendix E–1 of the license application), the FWS inquired if the project had the flexibility to provide flows that follow a more natural hydrograph. The natural hydrograph for the project area shows annual high flows occurring in the months of April through May and lower down to no flow (freezing conditions in December) the remainder of the year (figure 1). Parowan Reservoir Company largely regulates the inflow that comes into the immediate area of the project intake. The regulation of the inflow is done to ensure that irrigation needs downstream of the project are met throughout the growing season and not for meeting hydroelectric operational needs. Parowan Reservoir Company stores flows at its Yankee Meadows Reservoir and then releases the flows more evenly throughout the course of the year, thereby flattening the annual hydrograph (figure 1). The project has minor storage capacity, and therefore, is incapable of re-regulating Parowan Reservoir Company's shaping of the river flows. By flattening the natural hydrograph, Parowan Reservoir Company causes monthly average inflows to the project in most years to never exceed 10 cfs, so there is very little flow during the months of April through June relative to natural conditions from which to work.[10] Therefore, we conclude that the project has no capacity to provide a flow regime that follows a more natural hydrograph.

Water Quality

Parowan proposes no new construction or land-disturbance at the project that would lead to water quality problems,[11] and there is no evidence to suggest that current project operation and maintenance adversely affect water quality. No federal or state agency or Indian tribe has filed recommendations related to water quality, and ODEQ's Section 401 WQC for the project has no water quality conditions.

Unavoidable Adverse Impacts

None.

2. Terrestrial Resources

Affected Environment

Vegetation

The project area is wooded with a mixture of riparian vegetation. In general, a narrow band of riparian vegetation gives way to drier pinyon-juniper and sagebrush plant communities. The riparian and upland vegetation along the creek is a mixture of large narrowleaf cottonwoods, sandbar willows, box elder, a few river birch and maples, pines, Gambel oaks, skunkbrush, Mountain juniper, and sagebrush. The presence of both riparian species and more upland-drier species creates good wildlife habitat with varied structure and streamside shading.

Green vegetation on both sides of the creek, above and below the diversion during low flow periods when the majority of the flow is diverted into the penstock signals the presence of sub-surface water flowing through the alluvium. Add to this, the flow from small springs and several smaller tributary canyons below the diversion, and the result is, the stream is seldom, if ever, completely without water and there is no evidence to suggest the riparian community will be affect by the continued operation and maintenance of the project.

Wildlife

The habitat along the penstock and in the vicinity of the diversion supports many different animals including: cottontail rabbit, ground squirrels, chipmunks, woodrat, western harvest mouse, porcupine, and deer mouse and a variety of birds, both neotropical migrants and residents such as the grosbeak, towhee, bunting, warbler and thrush.

Environmental Impacts and Recommendations

Parowan does not propose any ground-disturbing activities that would disturb or remove important riparian vegetation. Given there are no proposed changes to project structures or operations, riparian vegetation along the project area would likely remain the same.

In its letter filed July 1, 2003, the FWS makes the following Section 10(j) recommendation:

The licensee shall monitor for noxious and undesirable plant species in any areas of surface disturbance caused by project related activities, including maintenance activities. If noxious and undesirable plant species are located, they shall be removed or treated with appropriate herbicide applications until destroyed. Surface disturbance shall include any activity resulting in vegetation clearing or breaking of the soil surface.

FWS says the above condition is needed because noxious and undesirable plant species alter plant communities, generally resulting in a decline of native plant species which provide food and cover for wildlife. FWS says controlling noxious and

[9] Parowan states that they use the forbay well for irrigation as well as power generation, and therefore, that the well is not considered part of the project. However, we note that the water right for the well provides for the use of the well for power generation by Parowan. Water is pumped from the well to be used, at least in part, for the generation of electricity at the project.

[10] When we say "from which to work," we envision a situation where we establish a relatively high bypassed reach minimum flow in April, May, and June, and a lower or no minimum flow requirement the remainder of the year so as to mimic the natural hydrograph.

[11] However, we note that on page 4 of the license application, Parowan states that it will at some point need to install a direct bypass line around the project desilting pond to allow the pond to be drained for cleaning. Parowan states that they are not certain whether they will seek authorization for this modification as part of this relicense proceeding or through a separate proceeding, presumably through amendment of any license issued for the project. Due to Parowan's uncertainty, we do not recognize the modification as part of their formal proposal for this relicense proceeding, and therefore, we do not discuss the water quality-related effects of this action in this EA.

undesirable plants is necessary to protect and enhance wildlife habitat in the project area.

Parowan agreed to implement this recommendation and Commission staff also agrees that this recommendation would ensure that noxious and undesirable plants do not become established because of project-related activities. We recommend Parowan prepare a plan to control noxious and invasive weeds.

Unavoidable Adverse Impacts

None.

3. Threatened and Endangered Species

Affected Environment

By letter dated December 3, 2002, Commission staff requested a list of any threatened and endangered species at the project from the FWS. The FWS responded on December 26, 2002, saying that the following listed or candidate species may occur in the project area:

Species	Status
Bald eagle	Threatened.
California condor	Endangered.
Mexican spotted owl	Threatened.
Utah prairie dog	Threatened.

Environmental Impacts and Recommendations

Parowan surveyed the project area for threatened and endangered species and did not observe any of the above species. We have no other sources of information indicating these species exist in the area. Because we have no data indicating the above species exist within the project area, and because Parowan does not propose any changes to project structures or operations, we find that the proposed project would have no effect on threatened and endangered species.

Unavoidable Adverse Impacts

None.

4. Cultural Resources

Affected Environment

On May 4, 2001, and March 21, 2002, the State Historic Preservation Officer (SHPO) commented that no cultural resources, listed or eligible for inclusion in the National Register of Historic Places would be affected by the continued operation and maintenance of the project (letter from Barbara L. Murphy and James L. Dykmann, respectively, State of Utah, Department of Community and Economic Development, Division of State History, Utah State Historical Society, Salt Lake City, Utah).

Environmental Impacts and Recommendations

If the project continues to operate as it has in the past, it is unlikely that any new sites would be discovered. However, if any new or undocumented archeological or historic sites are discovered during project operation or maintenance, Parowan should: (1) Consult with the SHPO and BLM about the discovered sites; (2) prepare a site-specific cultural resource management plan, including a schedule to evaluate the significance of the sites and to avoid or mitigate any impacts to sites found eligible for inclusion in the National Register of Historic Places; (3) base the site-specific plan on recommendations of the SHPO and BLM and the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation; (4) file the site-specific plan for Commission approval, together with the written comments of the SHPO and BLM; and (5) take the necessary steps to protect the discovered archeological or historic sites from further impact until notified by the Commission that all of these requirements have been satisfied.

The Commission may require cultural resources work and changes to cultural resources management plans based on the filings. Parowan would not be allowed to implement a cultural resources management plan or begin any land-clearing or land-disturbing activities in the vicinity of any discovered sites until informed by the Commission that the requirements have been fulfilled.

Unavoidable Adverse Impacts

None.

VI. Developmental Analysis

In previous sections of this draft EA, we assess the effects of continued operation of the project on the environment. In this section, we look at the effect proposed environmental measures would have on the project's power benefits and summarize the cost of environmental and developmental measures considered in our analysis. Also in this section, we show: (1) the cost of the proposed environmental measures for the project and (2) how the proposed environmental measures would affect the project's economics.

A. Power and Economic Benefits of the Project

The project has an installed capacity of 600 kW and provides an average annual energy generation of 2,300 MWh. Parowan does not propose any changes to project structures or operations. To calculate the economic benefits of the project, we equate the value of project power benefits to the current cost Parowan would have to pay for the same amount of energy and capacity using alternative generating resources. We do not consider future inflation effects in our analysis.

The cost of alternative power is used as a threshold in our determination of positive or negative project power benefits. A positive net annual power benefit shows how much less it would cost Parowan to use the project's power instead of the most likely alternative power source. A negative net annual power benefit shows how much more it would cost to use the project's power instead of the most likely alternative power source.

B. Cost of Environmental Enhancement Measures

Any measures proposed or recommended by Parowan, agencies, or Commission staff could affect project economics because of the cost of these measures or their effect on power generation.

In this draft EA, we consider the implementation of a plan to control noxious and invasive weeds. The added cost of this measure is considered minimal. Such a plan would have negligible effects on project economics and would not affect annual generation.

C. Cost of Proposed Project

The economic parameters we used for our analysis are shown in table 3. The project, as proposed by Parowan, would have an annual cost of $18,000 (7.4 mills/kWh). The current annual value of power from the project would be $74,000 (32.1 mills/kWh). To determine whether the proposed project is economically beneficial, we subtract the cost of the project from the value of its power. As proposed, this project would yield a net annual power benefit of about $56,000 (24.7 mills/kWh).

TABLE 2.—PARAMETERS FOR ECONOMIC ANALYSIS OF THE CENTER CREEK PROJECT

[Source: Parowan City and Commission staff]

Economic parameter	Value
Period of analysis	30 years.
Discount/interest rate	6.0 percent.[1]
Operation and maintenance	$17,118 per year.[2]
Alternative energy value	32.1 mills per kWh.[3]

[1] The discount and interest rates of 6.0 percent are provided by Commission staff as typical values for this type of analysis.

[2] The annual operation and maintenance cost is estimated by Commission staff.

[3] The alternative energy value for the project is based on Utah Power & Light Company's current avoided cost as found in Electric Service Schedule No. 37, effective March 11, 2002.

D. Cost of Staff-Recommended Alternatives

Commission staff recommended one additional environmental measure: a cultural resource management plan, if during project operation and maintenance any new or undocumented archeological sites are discovered. The added cost of this measure and a plan to control noxious and invasive weeds is minimal and these measures would not affect project generation. Therefore, the staff-recommended alternative would have the same cost and generation benefits as the no-action alternative.

VII. Comprehensive Development and Recommended Alternative

Sections 4(e) and 10(a)(1) of the FPA require the Commission to give equal consideration to all uses of the waterway on which a project is located. When we review a proposed project, we equally consider the environmental, recreational, fish and wildlife, and other non-developmental values of the project, as well as power and developmental values. Accordingly, any license issued shall be best adapted to a comprehensive plan for improving or developing a waterway or waterways for all beneficial public uses.

Based on our independent review of agency and public comments filed on this project and our review of the environmental and economic effects of the proposed project and its alternatives, we selected the proposed project, with staff's additional measure, as the preferred option. We recommend this option because: (1) Issuance of a new hydropower license by the Commission would allow Parowan to operate the project as an economically beneficial and dependable source of electrical energy; (2) the 600-kW project would eliminate the need for an equivalent amount of fossil-fuel derived energy and capacity, which helps conserve these nonrenewable resources and limits atmospheric pollution; (3) the public benefits of the selected alternative would exceed those of Parowan's proposal and the no-action alternative, and (4) the recommended measures would protect existing environmental resources.

We recommend the following environmental measures be included in any license issued by the Commission for the Center Creek Project: (1) monitor and remove any noxious and undesirable plants after ground-disturbing activities; and (2) should archeological or historic sites be discovered during project operation or maintenance, prepare a site-specific cultural resource management plan in consultation with the SHPO and BLM to evaluate the significance of the sites and to mitigate impacts to those sites that are determined to be eligible for inclusion in the National Register of Historic Places.

From our evaluation of the environmental and economic effects of the project, we conclude that licensing the Center Creek Project with our additional recommended environmental protection measures would best adapt the project to a comprehensive plan for the Center Creek Basin.

VIII. Recommendations of Fish and Wildlife Agencies

Under the provisions of Section 10(j) of the FPA, each hydropower license issued by the Commission shall include conditions based on recommendations provided by federal and state fish and wildlife agencies for the protection, mitigation, and enhancement of fish and wildlife resources affected by the project, where those conditions are not inconsistent with the purpose and requirements of the FPA or other applicable law.

We received one Section 10(j) recommendation from the FWS in its letter filed July 1, 2003. FWS recommends that Parowan monitor and remove any noxious and undesirable plants after any ground-disturbing activities. As discussed in this draft EA, Parowan now includes this recommendation in its proposed project. Commission staff recommends Parowan prepare a plan to implement this recommendation.

IX. Consistency With Comprehensive Plans

Section 10(a)(2) of the FPA requires the Commission to consider the extent to which a project is consistent with federal or state comprehensive plans for improving, developing, or conserving a waterway or waterways affected by the project. We identified 9 plans filed by federal, and state agencies that address various resources in Utah; however, none are relevant to the continued operation of the project.

X. Finding of No Significant Impact

We've prepared this environmental assessment for the project pursuant to the National Environmental Policy Act of 1969. Should the Commission decide to issue a license for the project, staff analysis shows that licensing the project would not be a major federal action significantly affecting the quality of the human environment. With our recommended measures existing environmental resources would be protected.

XI. Literature Cited

Sunrise Engineering, Inc., 2001. Application for a License for a Minor Water Power Project—Center Creek Hydroelectric Project—Parowan City (FERC Project No. 1273). November 15, 2002.

XII. List of Preparers

Gaylord W. Hoisington B Project Coordinator B Terrestrial, Cultural Resources, and Threatened and Endangered Species; Soil Conservationist; B.S., Recreation.

Nicholas Jayjack B Aquatic Resources B Fishery Biologist; M.S., Environmental Science in Civil Engineering; B.S., Fisheries and Aquatic Sciences.

Linda Lehman B Civil Engineer; M.S., Civil Engineering; B.S., Civil Engineering.

[FR Doc. 03–22352 Filed 8–29–03; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 178–017]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 178–017.

c. *Date filed:* April 14, 2003.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Kern Canyon Hydroelectric Project.

f. *Location:* On the Kern River, near the Town of Bakersfield, Kern County, California. The project occupies approximately 11.26 acres of public land located within the Sequoia National Forest.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Randal S. Livingston, Pacific Gas and Electric Company, Power Generation, Mail Code N11E, P.O. Box 770000, San Francisco, CA 94177 (415)973–7000.

i. *FERC Contact:* Allison Arnold, (202) 502–6346 or *allison.arnold@ferc.gov.*

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. The Kern Canyon Hydroelectric Project consists of: (1) An existing 150-foot-long and 23-foot-high dam; (2) an existing 3-acre reservoir having a usable capacity of 27-acre-feet; (3) a 1.58-mile-long horseshoe shaped tunnel; (4) a 520-foot-long steel penstock varying in diameter from 96 inches to 90 inches; (5) a powerhouse containing one generating unit with an installed capacity of 9,540 kilowatts; (6) existing transmission facilities; and (7) appurtenant facilities. The project is estimated to generate an average of 67.6 gigawatthours annually. The dam and existing project facilities are owned by the applicant.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov* /docs-filing/esubscription.asp to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22353 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2192–013 and 2590–040]

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 26, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application type:* Amendment of License to Revise Project Boundary.

b. *Projects Nos:* 2192–013 and 2590–040.

c. *Date Filed:* June 9, 2003; amended July 15, 2003.

d. *Applicant:* Consolidated Water Power Company.

e. *Name of Projects:* Biron Hydroelectric Project and Whiting Hydroelectric Project.

f. *Location:* The Biron Hydroelectric Project is located on the Wisconsin River, in Wood and Portage Counties, Wisconsin. The Whiting Hydroelectric Project is located on the Wisconsin River, in Portage County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 7919(a)–825(r) and 799 and 801.

h. *Applicant Contact:* Mark E. Anderson, Resource Manager, Consolidated Water Power Company, P.O. Box 8050, Wisconsin Rapids, WI 54495–8050, (715) 422–3972, or e-mail *mark.anderson@storaenso.com.*

i. *FERC Contact:* Any questions on this notice should be addressed to Etta Foster at (202) 502–8769, or e-mail address: *etta.foster@ferc.gov.*

j. *Deadline for filing comments and/or motions:* September 26, 2003.

All documents (original and eight copies) should be filed with Magalie R.Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project numbers (P–2192–013 and 2590–040) on any comments or motions filed.

k. *Description of Request:* Consolidated Water Power Company (CWPCo) proposes to add approximately 19.14 acres to the Whiting project boundary, and approximately 49.79 acres to the Biron project boundary. The additional acres will provide various forms of public access to the water or on lands already associated with the projects.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene-Anyone may submit comments, a protest, or a motion to

intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments-Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by the agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site as *http://www.ferc.gov* under the "e-filing link.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22354 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–056]

Notice of Application to Amend License and Soliciting Comments, Motions To Intervene, and Protests

August 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-project use of project lands and waters.

b. *Project No:*. 2413–056.

c. *Date Filed:* July 15 and August 21, 2003.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Wallace Dam Project.

f. *Location:* The project is located on the Oconee River in Putnam and Morgan Counties, Georgia and on the Altahama River in Oglethorpe, Greene, and Hancock Counties, Georgia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. ""791(a)–825(r).

h. *Applicant Contact:* Larry Wall, Georgia Power Company, 241 Ralph McGill Boulevard, NE., Atlanta, GA 30308–3374, Phone (404) 506–2054.

i. *FERC Contact:* Rebecca Martin, *rebecca.martin@ferc.gov* Phone (202) 502–6012.

j. *Deadline for filing comments and or motions:* September 12, 2003.

All documents (original and eight copies) should be filed with Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please reference "Wallace Dam Project, FERC Project No. 2413–056" on any comments or motions filed.

k. *Description of the Application:* Georgia Power Company requests Commission approval to construct a non-project electric transmission line that will cross a portion of the project lands and waters at Lake Oconee.

l. *Locations of the Application:* This filing is available for review at the Commission in the Public Reference Room or may viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22355 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2670–022]

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

August 26, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2670–022.

c. *Date Filed:* August 4, 2003.

d. *Applicants:* Northern States Power Company (NSP) and City of Eau Claire, Wisconsin (City) (Transferor) and NSP (Transferee).

e. *Name of Project:* Dells Hydroelectric Project.

f. *Location:* Located on the Chippewa River, in Chippewa County, Wisconsin. The project occupies 6.6 acres of land under the administration of the U. S. Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicants Contacts:* Mr. William Zawacki, Northern States Power Company, 1414 West Hamilton Avenue, Eau Claire, Wisconsin 54702–0008; Mr. Donald Norrell, City of Eau Claire, 203 South Farwell Street, Eau Claire, Wisconsin 54701.

i. *FERC Contact:* Regina Saizan, (202) 502–8765.

j. *Deadline for filing comments and or motions:* September 26, 2003.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P–2670–022) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing a document with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Transfer:* NSP and the City, co-licensees, seek Commission approval to transfer the license for the Dells Hydroelectric Project from NSP and the City to NSP. NSP has exercised a purchase option for all of the City's interest in the project and seeks to become the sole licensee for the project.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22356 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 26, 2003.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Temporary Variance of Minimum Flow Requirement.

b. *Project No:* 10440–085.

c. *Date filed:* August 15, 2003.

d. *Applicant:* Alaska Power and Telephone Company.

e. *Name of Project:* Black Bear Lake Hydroelectric Project.

f. *Location:* Black Bear Lake on Prince of Wales Island in southeast Alaska in Prince of Wales-Outer Ketchikan Borough.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Glen Martin, P.O. Box 222, Port Townsend, WA 98368.

i. *FERC Contact:* John K. Novak, *john.novak@ferc.gov*, (202)–502–6076.

j. *Deadline for filing comments, motions to intervene and protest:* September 29, 2003.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Application:* The licensee is requesting a temporary waiver of the minimum flow requirements as set forth in Article 405 of the project license. Article 405 requires monthly minimum flows ranging from 9 cubic feet per second (cfs) to 24 cfs; for August and September the flow requirement is 17 cfs and 24 cfs, respectively. As a result of drought conditions in Southeast Alaska and Prince of Wales Island caused by lower than normal snow pack and minimal rainfall during the spring and summer months, the licensee has not been able to maintain the required August flows even though Black Bear Lake has been drawn down greater than the 15 feet allowed under the license. Currently the licensee has reduced flows to 4.5 cfs and requests approval to continue this release through the remainder of August, until inflow to Black Bear Lake increases. However, prolonged drought conditions may necessitate a continuation of reduced flow. The licensee has consulted with the appropriate resource agencies, and these agencies are in agreement with the licensee=s mode of operation during this drought.

l. The filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the AFERRIS@ link. Enter the docket number excluding the last three digits in the docket number field to access the document. For

assistance, call toll-free 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov*. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the addresses in item h.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing an original and eight copies to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described applications. A copy of the applications may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22357 Filed 8–29–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

Regional Docket Nos. II–2002–01, –02 FRL–7552–1]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permits for the Dunkirk Steam Generating Station; the Huntley Generating Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final orders on petitions to object to two State operating permits.

SUMMARY: This document announces that the EPA Administrator has responded to two citizen petitions asking EPA to object to operating permits issued to two facilities by the New York State Department of Environmental Conservation (NYSDEC). Specifically, the Administrator has partially granted and partially denied each of the petitions submitted by the New York Public Interest Research Group (NYPIRG) to object to each of the State operating permits issued to the following facilities: Dunkirk Steam Generating Station in Dunkirk, NY, and Huntley Generating Station in Tonawanda, NY.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioner may seek judicial review of those portions of the petitions which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final orders, the petitions, and other supporting information at the EPA Region 2 Office, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final orders for the Dunkirk Steam Generating Station, and the Huntley Generating Station are available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2002.htm*.

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone (212) 637–4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

I. Dunkirk Steam Generating Station

On January 11, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for Dunkirk Steam Generating Station. The petition raises issues regarding the permit application, the permit issuance process, and the permit itself. NYPIRG asserts that: (1) The permit lacks a compliance schedule to address notices of violations issued for alleged opacity violations and violations under the Prevention of Significant Deterioration of Air Quality (PSD) regulations; (2) DEC improperly denied NYPIRG's request for a public hearing on the permit; (3) the permit is based on an incomplete permit application in violation of 40 CFR 70.5(c); (4) the permit distorts annual certification requirements; (5) the permit does not require prompt reporting of any deviations from permit requirements as mandated by 40 CFR 70.6(a)(3)(iii)(B); (6) the permit's startup/shutdown, malfunction, maintenance, and upset provision violates part 70; (7) the permit fails to include federally enforceable emission limits established under pre-existing permits; and (8) the permit lacks monitoring sufficient to assure the facility's compliance with all applicable requirements.

On July 31, 2003, the Administrator issued an order partially granting and partially denying the petition on the Dunkirk Steam Generating Station. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Move a startup/shutdown, malfunction, maintenance, and upset provision from the federal

side to the State-side of the permit; (2) either incorporate into the title V permits provisions from pre-existing permits, or delete such applicable requirements by following the requisite public participation procedures (pre-existing permit conditions relating to the ash silo, spray paint booth, emergency generators, amount of sludge burned, and boilers 1 through 4); and (3) establish and monitor operating parameters at each electrostatic precipitator to assure compliance of particulate matter emissions from the facility boilers. The order also explains the reasons for denying NYPIRG's remaining claims.

II. Huntley Generating Station

On January 7, 2002, the EPA received a petition from NYPIRG, requesting that EPA object to the issuance of the title V operating permit for the Huntley Generating Station. NYPIRG raises each of the above eight issues in its petition for the Huntley Generating Station, as well. In addition, NYPIRG raises three additional issues in the petition for the Huntley Generating Station: (1) The permit lacks federally enforceable conditions that govern the procedures for permit renewal; (2) the permit inappropriately placed compliance requirements that pertain to the ash silo in the State-only side of the permit; and (3) the proposed permit improperly describes the annual compliance certification process. On July 31, 2003, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the NYSDEC must reopen the permit to: (1) Incorporate into the permit prompt reporting of violations relating to boiler particulate matter requirements; (2) move a startup/shutdown, malfunction, maintenance, and upset provision from the federal side to the State-side of the permit; (3) either incorporate into the title V permits provisions from pre-existing permits, or delete such requirements by following the requisite public participation procedures (pre-existing permit conditions relating to the facility boilers, welding booths and tables, and the wastewater treatment plant lime silo); (4) incorporate additional parametric monitoring of particulate matter emissions from the facility boilers; and (5) incorporate additional monitoring, recordkeeping and reporting of fugitive particulate matter emissions from the coal handling processes. The order also explains the reasons for denying NYPIRG's remaining claims.

Dated: August 8, 2003.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 03–22316 Filed 8–29–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7549–9]

Clean Water Act section 303(d): Notice of Availability of 4 Total Maximum Daily Loads (TMDLs), Informational Meetings and Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability, request for comment, informational meetings and public hearing.

SUMMARY: This notice announces the date of availability for comment of four draft total maximum daily loads (TMDLs) being established under section 303(d) of the Clean Water Act for polychlorinated biphenyls (PCBs) in Delaware River Zones 2 through 5 (from Trenton, New Jersey to the head of Delaware Bay). The U.S. Environmental Protection Agency (EPA), jointly with the Delaware Department of Natural Resources and Environmental Control (DNREC), the New Jersey Department of Environmental Protection (NJDEP), the Pennsylvania Department of Environmental Protection (PADEP), and the Delaware River Basin Commission (DRBC), will hold three informational meetings and a single public hearing on the proposed TMDLs, which will be established in final form by December 15, 2003.

DATES: Electronic and faxed comments must be received by, and mailed comments must be postmarked no later than, October 21, 2003. Electronic submission of comments is encouraged. The dates of the three informational meetings are as follows: September 22, 24 and 25, 2003, from 7 to 9 p.m. The public hearing on the TMDLs will be held on October 16, 2003, from 7 to 9 p.m and may be extended, if necessary. The draft TMDLs, along with background information, will be published electronically on or before September 15, 2003.

ADDRESSES: By the deadlines set out above, written comments on the draft TMDLs should be sent electronically to *berlin.lenka@epamail.epa.gov* or in hard copy to: Lenka Berlin, Office of Watersheds (3WP10), USEPA, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, or faxed to Lenka Berlin at 215–814–2301. The draft TMDLs, along with background information, will be published on the DRBC Web site, *http://www.drbc.net*. The September 22 informational meeting will be held at the Carvel State Office Building, 820 North French Street, 2nd Floor, Wilmington, Delaware. The September 24 informational meeting will be held at the NJDEP Office, Public Hearing Room, 401 East State Street, Trenton, New Jersey.

The September 25 informational meeting will be held at the PADEP Southeast Regional Office, Lee Park, Hearing Room, 555 North Lane, Conshohocken, Pennsylvania. The October 16 public hearing will be held at the Independence Visitor Center, Independence Ballroom, 2nd Floor, One North Independence Mall West (6th & Market), Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Susan Schulz, EPA Region 2; at 212–637–3829; Mary Kuo, EPA Region 3, at 215–814–5721; Pamela Bush, DRBC, at 609–883–9500 x203.

SUPPLEMENTARY INFORMATION: The USEPA proposes to establish TMDLs for PCBs in the Delaware River. Technical development and interstate coordination necessary to support the TMDLs has been provided by DRBC. Issuance of the TMDLs is required by December 15, 2003, pursuant to a May 1997 Consent Decree and Settlement Agreement in an action entitled *American Littoral Society and Sierra Club* v. *the United States Environmental Protection Agency et al.*, which decree establishes dates for the adoption of TMDLs in the State of Delaware. The December 15, 2003 deadline will satisfy a revised Memorandum of Agreement between EPA and NJDEP, dated September 16, 2002, which provides for completion of the TMDLs in New Jersey by December 31, 2003. A Memorandum of Understanding between EPA and PADEP, dated April 7, 1997, provides for the adoption of certain TMDLs in Pennsylvania, including the TMDLs for PCBs in the Delaware River, within ten years. No deadline was set for completion of the Pennsylvania TMDLs. Following review and appropriate consideration of public comments, EPA will establish in final form TMDLs for PCBs in the Delaware River. EPA then will forward the TMDLs to DNREC, NJDEP and PADEP, respectively. These agencies will incorporate the TMDLs into their current water quality management plans.

The informational meetings on September 22, 24 and 25 will begin with a presentation by representatives of EPA, the state environmental agency (DNREC, PADEP or NJDEP) and DRBC

and followed by an informal question and answer session. The informational meetings will not be conducted as part of the record. Comments for the record will be accepted at the public hearing on October 16 and in writing as described above during the comment period. No agency responses will be offered at the hearing. However, EPA will review all data and information submitted during the comment period and will revise the TMDLs as appropriate. A written response document will be prepared prior to final EPA action.

Walter E. Mugdan,

Director, Division of Environmental Planning and Protection, Region 2.

John A. Armstead,

Acting Director, Water Protection Division, Region 3.

[FR Doc. 03–22162 Filed 8–29–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 03–2739]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On August 27, 2003, the Commission released a public notice announcing the September 25, 2003 meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATES: Thursday, September 25, 2003, 9 a.m.

ADDRESSES: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *dblue@fcc.gov*. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: August 27, 2003.

The North American Numbering Council (NANC) has scheduled a meeting to be held Thursday, September 25, 2003, from 9 a.m. until 5 p.m. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC. This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting.

Proposed Agenda—Thursday, September 25, 2003, 9 a.m.

1. Announcements and Recent News
   —New NANC Members
2. Approval of Minutes
   —Meeting of May 13, 2003
   —Meeting of July 15, 2003
3. Report from Summer Sleuths regarding Number Exhaust Solutions
4. Report of Cost Recovery Working Group
5. Report from NBANC
6. Report of NAPM, LLC status
7. Report of 3-Digit DIG IMG
   —Pros and cons of N11 and 344
   —Cost estimates and cost recovery
8. Report of National Thousands Block Pooling Administrator
   —Activity report
9. Status of Industry Numbering Committtee (INC) activities
   —VoIP Workshop
   —Analysis of multiple LRNs for multiple tandems; alternatives
   —Issues associated with PA change orders
   —Porting of wireless grandfathered numbers
10. Report of Local Number Portability Administration (LNPA) Working Group
    —Wireless Number Portability Operations (WNPO) Subcommittee
11. Report of the North American Numbering Plan Administrator (NANPA)
    —CO Code Activity
    —NPA Relief Report
    —NRUF Update
    —Conference call regarding INC's technical analysis of LRN on multiple tandems
12. Report of Oversight Working Group
    —Change Order review
    —Status of NANPA and PA annual reviews
13. New assignment from FCC: Report to FCC by April 30, 2004 regarding Impact on Increasing Contamination Threshold in Area Codes 310 and 909
14. Update on ENUM from ENUM Forum
15. List of NANC Accomplishments
16. Summary of Action Items
17. Public Comments and Participation (5 minutes per speaker)
18. Other Business

Adjourn no later than 5 p.m.

Federal Communications Commission.

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 03–22290 Filed 8–29–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL LABOR RELATIONS AUTHORITY

Membership of the Federal Labor Relations Authority's Senior Executive Service Performance Review Board

AGENCY: Federal Labor Relations Authority.

ACTION: Notice.

SUMMARY: Notice is hereby given of the members of the Performance Review Board.

DATE: September 2, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Ellerman, Director; Human Resources Division; Federal Labor Relations Authority (FLRA); 1400 K Street, NW., Washington, DC 20424–0001; (202) 218–7963.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires that each agency establish, in accordance with the regulations prescribed by the Office of Personnel Management, one or more Performance Review Boards. The Boards shall review and evaluate the initial appraisal of a senior executive. The following persons will serve on the FLRA's FY 2003 Performance Review Board: Barbara Reed Bradford, Deputy Director, U.S. Trade and Development Agency; Doris Brown, Human Resources Officer, International Trade Commission, Department of Commerce; Jill M. Crumpacker, Director, Policy, Planning & Performance Management, Federal Labor Relations Authority; David A. Dobbs, Deputy Assistant Inspector General for Aviation, Office of the Inspector General, Department of Transportation; and Joe Schimansky, Executive Director, Federal Service Impasses Panel, Federal Labor Relations Authority.

Authority: 5 U.S.C. 4134(c)(4).

Dated: August 26, 2003.

Dan Ellerman,

Director, Human Resources Division.

[FR Doc. 03–22238 Filed 8–29–03; 8:45 am]

BILLING CODE 6727–01–U

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for Texas and California

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Notice of Per Diem Bulletin 03–4, revised continental United States (CONUS) per diem rates.

SUMMARY: To improve the ability of the per diem rates to meet the lodging demands of Federal travelers to high cost travel locations, the General Services Administration (GSA) has integrated the contracting mechanism of the new Federal Premier Lodging Program (FPLP) into the per diem rate-setting process. An analysis of FPLP contracting actions and the lodging rate survey data reveals that the maximum per diem rate should be adjusted to provide for the reimbursement of Federal employees' lodging expenses covered by the per diem. The per diems prescribed in Bulletin 03–4 may be found at *http://www.gsa.gov/perdiem*, to be effective for travel 15 days after publication of this notice.

DATES: This notice is effective September 2, 2003 and applies to travel performed 15 days after this date.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Patrick McConnell, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–2362. Please cite Notice of Per Diem Bulletin 03–4.

SUPPLEMENTARY INFORMATION:

A. Background

In the past, properties in high cost travel areas have been under no obligation to provide lodging to Federal travelers at the prescribed per diem rate. Thus, GSA established the FPLP to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas. In addition, the FPLP enhances the Government's ability to better meet its overall room night demand, and allows travelers to find lodging close to where they need to conduct business. After an analysis of this additional data, the maximum lodging amount published in the **Federal Register** at 67 FR 56160, August 30, 2002, and amended at 67 FR 69634, November 18, 2002, 68 FR 25034, May 9, 2003, and 68 FR 31706, May 28, 2003, is being changed in the following locations:

State of Texas

- Arlington/Grapevine, including Tarrant County.
- Dallas, including Dallas County.
- City limits of Forth Worth.

State of California

- Los Angeles, including Los Angeles, Orange and Ventura Counties, Edwards AFB; Naval Weapons Center and Ordnance Test Station, China Lake.
- Oakland, including Alameda County.
- Sacramento, including Sacramento County.
- San Francisco, including San Francisco County.
- San Mateo/Redwood City, including San Mateo County.
- City limits of Santa Monica.
- Sunnyvale/Palo Alto/San Jose, including Santa Clara County.

B. Change in Standard Procedure

Since per diem rates frequently change, effective April 28, 2003 (68 FR 22314), the Office of Governmentwide Policy (OGP), GSA, will issue/publish the CONUS per diem rates, formerly published in Appendix A to 41 CFR chapter 301, solely on the Internet at *http://www.gsa.gov/perdiem*. This new process will ensure more timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. This notice advises agencies of revisions in per diem rates prescribed by OGP for CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: August 22, 2003.

David Drabkin,

Acting Associate Administrator.

[FR Doc. 03–22240 Filed 8–29–03; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Time and Date:

September 23, 2003 9 a.m.–4:30 p.m.
September 24, 2003 1 p.m.–3 p.m.

Place: Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 705A, Washington, DC 20201.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the morning of the first day the full Committee will hear updates and status reports from the Department on several topics including an update on HHS Data Council activities, and the adoption of data standards including clinical data standards. A presentation on an ICD 10 impact study is also planned with a subsequent discussion. In the afternoon there will be reports from Subcommittees on selected activities. On the second day the Committee will hear reports from the Subcommittees and discuss agendas for future NCVHS meetings.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions are scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

For Further Information Contact: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS Web site: *http://www.ncvhs.hhs.gov/*, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458–4EEO (4336) as soon as possible.

Dated: August 25, 2003.

James Scanlon,

Acting Deputy Assistant Secretary for Science and Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 03–22300 Filed 8–29–03; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–67–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project: Possession, Use, and Transfer of Select Agents and Toxins (42 CFR part 73) (OMB Control No. 0920–0576)—Revision—Office of the Director (OD), Centers for Disease Control and Prevention (CDC). The Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188) specifies that the Secretary of Health and Human Services shall provide for the establishment and enforcement of standards and procedures governing the possession, use, and transfer of select biological agents and toxins. The Act specifies that facilities that possess, use, and transfer select agents register with the Secretary. The Secretary has designated CDC as the agency responsible for collecting this information.

CDC is requesting continued OMB approval to collect this information through the use of five separate forms. This request reflects revisions to the forms approved in February, 2003 as a result of public comments to the Interim Final Rules that CDC and USDA/APHIS published in February, 2003. These forms are: (1) Application for Registration; (2) Facility Notification Form; (3) Request for Exemption; (4) Transfer of Select Agent form; and (5) Clinical and Diagnostic Laboratory Reporting Form. The revisions to the forms are primarily changes to the Guidance documents to clarify instructions and the inclusion of a supplemental form to the Application form for Biosafety Level 4 (BSL4) laboratories. CDC is requesting a 3-year approval for this data collection.

The Application for Registration will be used by facilities to register with CDC. The Application for Registration requests facility information, a list of select agents in use, possession, or for transfer by the facility, characterization of the select agent, and laboratory information. Estimated average time to complete this form is 3 hours, 45 minutes for an entity with one principal investigator working with one select agent. CDC estimates that entities will need an additional 45 minutes for each additional investigator or select agent. BSL4 laboratories will also complete and submit Section 6 of the Application for Registration. CDC is requesting OMB approval to add this section to the Application for Registration because of the unique data required for these facilities. We identified the need for this section during the registration process following the February, 2003 approval of the Application form. Although there are less than 10 respondents for this form, CDC has decided to voluntarily comply with the Paperwork Reduction Act and seek OMB approval for this form. Estimated time to complete and submit Section 6 is 2 hours.

Facilities may amend their registration if any changes occur in the information submitted to the Secretary. To apply for an amendment to a certificate of registration, an entity must obtain the relevant portion of the application package and submit the information requested in the package to CDC. Estimated time to amend a registration package is 60 minutes.

The Facility Notification Form must be completed by facilities whenever there is release of a select agent or theft or loss of a select agent. Estimated average time to complete this form is 60 minutes.

The Request for Exemption form will be used by facilities that are using select agents in investigational new drug testing or in cases of public health emergency. Estimated average time to complete this form is 70 minutes.

The Transfer of Select Agent Form will be used by facilities requesting transfer of a select agent to their facilities and by the facility transferring the agent. Estimated average time to complete this form is 1 hour, 45 minutes.

The Clinical and Diagnostic Laboratory Exemption Report will be used by clinical and diagnostic laboratories to notify the Secretary that select agents identified as the result of diagnosis or proficiency testing have been properly disposed of. Estimated average time to complete this form is 60 minutes.

In addition to the standardized forms, this regulation also outlines situations in which an entity must notify or make a request of the Secretary in writing and CDC is requesting OMB approval to collect this information. The regulation states that an entity must notify the Secretary in writing at least five business days before destroying all select agent or toxin covered by a certificate of registration. The estimated time to gather the information and submit this notification is 30 minutes.

An entity may also apply to the Secretary for an expedited review of an individual by the Attorney General. To apply for this expedited review, an entity must submit a request in writing to the Secretary establishing the need for such action. The estimated time to gather the information and submit this request is 30 minutes. Entities should be aware that CDC is not developing standardized forms to use in these situations. Rather, the entity should provide the information as requested in the appropriate section of the regulation.

As part of the safety requirements of this regulation, the Responsible Official is required to conduct regular inspections (at least annually) of the laboratory where select agents and toxins are stored. The results of these inspections must be documented. CDC estimates that, on the average, such documentation will take 1 hour.

Also, as part of the safety requirements of this regulation, the entity is required to record the identity of the individual trained, the date of training, and the means used to verify that the employee understood the training. Estimated time for this documentation is 2 hours per principal investigator.

An entity or an individual may request administrative review of a decision denying or revoking either a certification of registration or approval based on a security risk assessment. This request must be in writing within 30 calendar days after the adverse decision. This request should include a statement of the factual basis for the review. CDC estimates the time to prepare and submit such a request is 4 hours.

Finally, an entity must implement a system to ensure that certain records and databases are accurate and that the authenticity of records may be verified. The time to implement such a system is estimated to average 4 hours. Total annualized burden for this data collection is 17,905 hours.

CFR reference	Data collection	No. of respondents	Responses per respondent	Avg burden per response (in hrs.)
73.7(b)	Registration Application	575	1	3.75
73.7(b)	BSL4 Supplement	4	1	2
73.7(e)	Amendment to Registration Application	575	2	1
73.17(a)(e)	Notification Form	10	1	1
73.6(c-e)	Request for Exemption	17	1	1.16
73.14	Transfer of Select Agent	575	5	1.75
73.6(a)(2)	Clinical and Diagnostic Laboratory Exemption Report	1,000	4	1
73.7(i)	Notification of Inactivation	6	1	30/60
73.8(g)	Request Expedited Review	6	1	30/60
73.10(b)	Documentation of Self-inspection	575	1	1
73.13(f)	Documentation of Training	575	1	2
73.18	Administrative Review	14	1	4
73.15(d)	Ensure Secure Record keeping System	575	1	30/60

Dated: August 25, 2003.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–22254 Filed 8–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–68–03]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210. Send written comments to CDC, Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

Menthol Crossover Study—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC). CDC proposes a study to measure differences in African-American and Caucasian smokers in the dose and metabolism of chemicals in smoke from menthol and non-menthol cigarettes.

African-American smokers are more likely than Caucasian smokers to develop some forms of cancer and to have shorter long-term survival after diagnosis. More than 65% of African American smokers smoke menthol cigarettes, compared with about 23% of white smokers. Smoking menthol cigarettes has been associated with higher blood-cotinine levels. Cotinine is a product of the metabolism of nicotine, and the higher cotinine levels suggest that menthol may enable a smoker to obtain more nicotine from each cigarette. In addition, people who smoke menthol cigarettes also have higher levels of carbon monoxide in their breath than do people who smoke non-menthol cigarettes, and an elevated carbon monoxide level is a risk factor for cardiovascular disease. Additionally, the presence of menthol in cigarettes may change the way people smoke cigarettes.

All previous studies have compared people who smoke menthol cigarettes with those who smoke non-menthol cigarettes; and it is not known whether increased cotinine and carbon monoxide levels in people who smoke menthol cigarettes are attributable to racial or ethnic differences, or a combination of multiple factors. In addition, no previous study has examined the differences between urinary levels of cancer-causing chemicals in people who smoke menthol or non-menthol cigarettes and correlated these findings with smoke exposure intake estimates using salivary cotinine and filter solanesol.

For this two-part crossover study, we will recruit African-American and Caucasian smokers of both sexes who smoke either menthol or non-menthol cigarettes as study subjects. We will determine smoking history then randomly assign each participant to smoking either menthol or non-menthol cigarettes for an initial 2-week period. Study participants then will switch to the opposite type of cigarette for the next 2 weeks. At baseline, and after each 2-week period, we will measure the way the participants smoke the test cigarettes to determine smoking topography. Saliva, urine, and breath samples will be collected to measure by-products of smoking, and participants will complete a brief smoking-history questionnaire. There is no cost to respondents.

Forms	No. of respondents	No. of responses/respondent	Average burden/response (in hours)	Total burden in hours
Response to Flyer: Screening Interview Form	200	1	5/60	17
Site Visits: Check in, Study Information, Visit 1, 2, 3	71	3	15/60	53
Consent Form, Questionnaire, Visit 1, 2, 3	71	3	15/60	53
Urine Sample and Saliva Sample, Visit 1, 2, 3	71	3	15/60	53
Breath Carbon monoxide (CO) Sample: Test Smoke 1, Breath CO Sample; Test Smoke 2, Breath CO Sample; Visit 1, 2, 3	71	3	45/60	160
Sample Test Cigarettes, Distribute Baggies & Cigarettes, Visit 1 and 2	71	2	15/60	36
Instructions and Check out, Visit 1 and 2	71	2	15/60	36
Smoking Cessation Advice, Visit 3 only	71	1	15/60	18

Forms	No. of respondents	No. of responses/respondent	Average burden/response (in hours)	Total burden in hours
Final Check Out, Visit 3 only	71	1	15	18
Total				444

Dated: August 25, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–22255 Filed 8–29–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines) published in the **Federal Register** on April 11, 1988 (53 FR 11970), and revised in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from HHS' National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2, Room 815, Rockville, Maryland 20857; 301–443–6014 (voice), 301–443–3031 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection.

To maintain that certification, a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines, the following laboratories meet the minimum standards set forth in the Mandatory Guidelines:

ACL Laboratories,
8901 W. Lincoln Ave.,
West Allis, WI 53227,
414–328–7840/800–877–7016
(Formerly: Bayshore Clinical Laboratory);

ACM Medical Laboratory, Inc.,
160 Elmgrove Park,
Rochester, NY 14624,
585–429–2264;

Advanced Toxicology Network,
3560 Air Center Cove, Suite 101,
Memphis, TN 38118,
901–794–5770/888–290–1150;

Aegis Analytical Laboratories, Inc.,
345 Hill Ave.,
Nashville, TN 37210,
615–255–2400;

Alliance Laboratory Services,
3200 Burnet Ave.,
Cincinnati, OH 45229,
513–585–6870
(Formerly: Jewish Hospital of Cincinnati, Inc.);

Baptist Medical Center-Toxicology Laboratory,
9601 I–630, Exit 7,
Little Rock, AR 72205–7299,
501–202–2783
(Formerly: Forensic Toxicology Laboratory Baptist Medical Center);

Clinical Reference Lab,
8433 Quivira Rd.,
Lenexa, KS 66215–2802,
800–445–6917;

Diagnostic Services Inc., dba DSI,
12700 Westlinks Dr.,
Fort Myers, FL 33913,
239–561–8200/800–735–5416;

Doctors Laboratory, Inc.,
P.O. Box 2658, 2906 Julia Dr.,
Valdosta, GA 31602,
912–244–4468;

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC,
1229 Madison St., Suite 500, Nordstrom Medical Tower,
Seattle, WA 98104,
206–386–2661/800–898–0180
(Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.);

DrugScan, Inc.,
P.O. Box 2969, 1119 Mearns Rd.,
Warminster, PA 18974,
215–674–9310;

Dynacare Kasper Medical Laboratories*,
10150–102 St., Suite 200,
Edmonton, Alberta,
Canada TJ5 5E2,
780–451–3702/800–661–9876;

ElSohly Laboratories, Inc.,
5 Industrial Park Dr.,
Oxford, MS 38655,
662–236–2609;

Express Analytical Labs,
3405 7th Ave., Suite 106,
Marion, IA 52302,
319–377–0500;

Gamma-Dynacare Medical Laboratories*,
A Division of the Gamma-Dynacare Laboratory Partnership,
245 Pall Mall St.,
London, ONT,
Canada N6A 1P4,
519–679–1630;

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

General Medical Laboratories,
36 South Brooks St.,
Madison, WI 53715,
608–267–6225;

Kroll Laboratory Specialists, Inc.,
1111 Newton St.,
Gretna, LA 70053,
504–361–8989/800–433–3823
(Formerly: Laboratory Specialists, Inc.);

LabOne, Inc.,
10101 Renner Blvd.,
Lenexa, KS 66219,
913–888–3927/800–873–8845,
(Formerly: Center for Laboratory Services, a Division of LabOne, Inc.);

Laboratory Corporation of America Holdings,
7207 N. Gessner Rd.,
Houston, TX 77040,
713–856–8288/800–800–2387;

Laboratory Corporation of America Holdings,
69 First Ave.,
Raritan, NJ 08869,
908–526–2400/800–437–4986,
(Formerly: Roche Biomedical Laboratories, Inc.);

Laboratory Corporation of America Holdings,
1904 Alexander Dr.,
Research Triangle Park, NC 27709,
919–572–6900/800–833–3984,
(Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group);

Laboratory Corporation of America Holdings,
10788 Roselle St.,
San Diego, CA 92121,
800–882–7272,
(Formerly: Poisonlab, Inc.);

Laboratory Corporation of America Holdings,
1120 Stateline Rd. West,
Southaven, MS 38671,
866–827–8042/800–233–6339 ,
(Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center);

Marshfield Laboratories,
Forensic Toxicology Laboratory,
1000 North Oak Ave.,
Marshfield, WI 54449,
715–389–3734/800–331–3734;

MAXXAM Analytics Inc.*,
5540 McAdam Rd.,
Mississauga, ON,
Canada L4Z 1P1,
905–890–2555,
(Formerly: NOVAMANN (Ontario) Inc.);

MedTox Laboratories, Inc.,
402 W. County Rd. D,
St. Paul, MN 55112,
651–636–7466/800–832–3244;

MetroLab-Legacy Laboratory Services,
1225 NE 2nd Ave.,
Portland, OR 97232,
503–413–5295/800–950–5295;

Minneapolis Veterans Affairs Medical Center,
Forensic Toxicology Laboratory,
1 Veterans Dr.,
Minneapolis, MN 55417,
612–725–2088;

National Toxicology Laboratories, Inc.,
1100 California Ave.,
Bakersfield, CA 93304,
661–322–4250/800–350–3515;

Northwest Drug Testing, a Division of NWT Inc.,
1141 E. 3900 S.,
Salt Lake City, UT 84124,
801–293–2300/800–322–3361,
(Formerly: NWT Drug Testing, NorthWest Toxicology, Inc.);

One Source Toxicology Laboratory, Inc.,
1705 Center St.,
Deer Park, TX 77536,
713–920–2559,
(Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory);

Oregon Medical Laboratories,
P.O. Box 972, 722 East 11th Ave.,
Eugene, OR 97440–0972,
541–687–2134;

Pacific Toxicology Laboratories,
9348 DeSoto Ave.,
Chatsworth, CA 91311,
800–328–6942,
(Formerly: Centinela Hospital Airport Toxicology Laboratory);

Pathology Associates Medical Laboratories,
110 West Cliff Dr.,
Spokane, WA 99204,
509–755–8991/800–541–7891x8991;

PharmChem Laboratories, Inc.,
4600 N. Beach,
Haltom City, TX 76137,
817–605–5300,
(Formerly: PharmChem Laboratories, Inc., Texas Division; Harris Medical Laboratory);

Physicians Reference Laboratory,
7800 West 110th St.,
Overland Park, KS 66210,
913–339–0372/800–821–3627;

Quest Diagnostics Incorporated,
3175 Presidential Dr.,
Atlanta, GA 30340,
770–452–1590/800–729–6432
(Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories);

Quest Diagnostics Incorporated,
4770 Regent Blvd.,
Irving, TX 75063,
800–824–6152,
(Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories);

Quest Diagnostics Incorporated,
4230 South Burnham Ave., Suite 250,
Las Vegas, NV 89119–5412,
702–733–7866/800–433–2750,
(Formerly: Associated Pathologists Laboratories, Inc.);

Quest Diagnostics Incorporated,
400 Egypt Rd.,
Norristown, PA 19403;610–631–4600/877–642–2216
(Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories);

Quest Diagnostics Incorporated,
506 E. State Pkwy.,
Schaumburg, IL 60173,
800–669–6995/847–885–2010
(Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories);

Quest Diagnostics Incorporated,
7600 Tyrone Ave.,
Van Nuys, CA 91405,
818–989–2520/800–877–2520
(Formerly: SmithKline Beecham Clinical Laboratories);

Scientific Testing Laboratories, Inc.,
450 Southlake Blvd.,
Richmond, VA 23236,
804–378–9130;

Sciteck Clinical Laboratories, Inc.,
317 Rutledge Rd.,
Fletcher, NC 28732,
828–650–0409;

S.E.D. Medical Laboratories,
5601 Office Blvd.,
Albuquerque, NM 87109,
505–727–6300/800–999–5227;

South Bend Medical Foundation, Inc.,
530 N. Lafayette Blvd.,
South Bend, IN 46601,
574–234–4176 x276;

Southwest Laboratories,
2727 W. Baseline Rd.,
Tempe, AZ 85283,
602–438–8507/800–279–0027;

Sparrow Health System,
Toxicology Testing Center, St. Lawrence Campus,
1210 W. Saginaw,
Lansing, MI 48915,
517–377–0520
(Formerly: St. Lawrence Hospital & Healthcare System);

St. Anthony Hospital Toxicology Laboratory,
1000 N. Lee St.,
Oklahoma City, OK 73101,
405–272–7052;

Sure-Test Laboratories, Inc.,
2900 Broad Ave.,
Memphis, TN 38112,
901–474–6026;

Toxicology & Drug Monitoring Laboratory,
University of Missouri Hospital & Clinics,
2703 Clark Lane, Suite B, Lower Level,
Columbia, MO 65202,
573–882–1273;

Toxicology Testing Service, Inc.,
5426 N.W. 79th Ave.,
Miami, FL 33166,
305–593–2260;

US Army Forensic Toxicology Drug Testing Laboratory,
2490 Wilson St.,
Fort George G. Meade, MD 20755–5235,
301–677–7085.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on June 9, 1994 (59 FR 29908) and on September 30, 1997 (62 FR 51118). After receiving DOT certification, the laboratory will be included in the monthly list of HHS certified laboratories and participate in

the NLCP certification maintenance program.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–22374 Filed 8–29–03; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD08–03–034]

Houston/Galveston Navigation Safety Advisory Committee Meetings

AGENCY: Coast Guard, DHS.

ACTION: Notice of meetings.

SUMMARY: The Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC) and its working groups will meet to discuss waterway improvements, aids to navigation, area projects impacting safety on the Houston Ship Channel, and various other navigation safety matters in the Galveston Bay area. All meetings will be open to the public.

DATES: The next meeting of HOGANSAC will be held on Thursday, October 9, 2003, from 9 a.m. to 12 a.m. (noon). The meeting of the Committee's working groups will be held on Thursday, September 25, 2003, at 9 a.m. to 11 a.m. The meetings may adjourn early if all business is finished. Members of the public may present written or oral statements at either meeting. Requests to make oral presentations or distribute written materials should reach the Coast Guard 5 working days before the meeting at which the presentation will be made. Requests to have written materials distributed to each member of the committee in advance of the meeting should reach the Coast Guard at least 10 working days before the meeting at which the presentation will be made.

ADDRESSES: The full Committee meeting will be held at the Houston Yacht Club, 3620 Miramar Drive, La Porte, Texas (281) 471–1255. The working groups meeting will be held at the Port of Texas City, 2425 Highway 146 North, Texas City, Texas (409) 945–4461. Written materials and requests to make presentations should be sent to Commanding Officer, VTS Houston-Galveston, Attn: LT Tobey, 9640 Clinton Drive, Floor 2, Houston, TX 77029. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Captain Richard Kaser, Executive Director of HOGANSAC, telephone (713) 671–5199, Commander Tom Marian, Executive Secretary of HOGANSAC, telephone (713) 671–5164, or Lieutenant (LT) Kelly Tobey, assistant to the Executive Secretary of HOGANSAC, telephone (713) 671–5155, e-mail *katobey@vtshouston.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of these meetings is given pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of the Meetings

Houston/Galveston Navigation Safety Advisory Committee (HOGANSAC). The tentative agenda includes the following:

(1) Opening remarks by the Committee Sponsor (RADM Duncan) (or the Committee Sponsor's representative), Executive Director (CAPT Kaser) and Chairman (Tim Leitzell).

(2) Approval of the June 5, 2003 minutes.

(3) Old Business:

(a) Dredging projects.

(b) Electronic navigation.

(c) AtoN (Aids to Navigation) Knockdown Working Group.

(d) Mooring subcommittee report.

(e) Texas City Container Terminal Update.

(f) Education initiative.

(g) Port Security Subcommittee report.

(h) Bridge Allision Prevention Working Group.

(4) New Business.

Working Groups Meeting. The tentative agenda for the working groups meeting includes the following:

(1) Presentation by each working group of its accomplishments and plans for the future.

(2) Review and discuss the work completed by each working group.

Procedural

Working groups have been formed to examine the following issues: dredging and related issues, electronic navigation systems, AtoN knockdowns, impact of passing vessels on moored ships, boater education issues, and port security. Not all working groups will provide a report at this session. Further, working group reports may not necessarily include discussions on all issues within the particular working group's area of responsibility. All meetings are open to the public. Please note that the meetings may adjourn early if all business is finished.

Members of the public may make presentations, oral or written, at either meeting. Requests to make oral or written presentations should reach the Coast Guard 5 working days before the meeting at which the presentation will be made. If you would like to have written materials distributed to each member of the committee in advance of the meeting, you should send your request along with 15 copies of the materials to the Coast Guard at least 10 working days before the meeting at which the presentation will be made.

Information on Services for the Handicapped

For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Executive Director, Executive Secretary, or assistant to the Executive Secretary as soon as possible.

Dated: August 20, 2003.

J.W. Stark,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 03–22205 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1481–DR]

Florida; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1481–DR), dated July 29, 2003, and related determinations.

EFFECTIVE DATE: August 21, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 29, 2003:

Pasco County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management

Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations, 83.560, Individual and Household Program-Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22264 Filed 8–29–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1481–DR]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Florida (FEMA–1481–DR), dated July 29, 2003, and related determinations.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 22, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560, Individual and Household Program—Other Needs; 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22265 Filed 8–29–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1476–DR]

Indiana; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 6, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response.

[FR Doc. 03–22260 Filed 8–29–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1476–DR]

Indiana; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

EFFECTIVE DATE: August 12, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 11, 2003:

Fountain, Wabash, and White Counties for Public Assistance (already designated for Individual Assistance.)

Greene County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22261 Filed 8–29–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1476–DR]

Indiana; Amendment No. 7 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

EFFECTIVE DATE: August 18, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 11, 2003:

Lake, Porter, and Vanderburgh Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22262 Filed 8–29–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1476–DR]

Indiana; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Indiana (FEMA–1476–DR), dated July 11, 2003, and related determinations.

EFFECTIVE DATE: August 22, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Indiana is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 11, 2003:

Owen County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22263 Filed 8–29–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3173–EM]

New York; Amendment No. 3 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the State of New York (FEMA–3173–EM), dated February 25, 2003, and related determinations.

EFFECTIVE DATE: August 13, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the State of New York is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 25, 2003:

Madison County for emergency protective measures (Category B) under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22267 Filed 8–29–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1484–DR]

Ohio; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–1484–DR), dated August 1, 2003, and related determinations.

EFFECTIVE DATE: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 1, 2003:

Franklin County for Individual Assistance.

Jefferson County for Individual Assistance (already designated for Public Assistance.)

Carroll County for Public Assistance (already designated for Individual Assistance.)

Monroe County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program—Other Needs, 83 544, Public Assistance

Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22266 Filed 8–29–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Radiological Emergency Preparedness: Review of Exercise Evaluation Criteria and Methodology

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is announcing the opening of a 60-day comment period for a review of FEMA's radiological emergency preparedness (REP) exercise evaluation criteria and methodology. FEMA published a **Federal Register** notice entitled "Radiological Emergency Preparedness: Exercise Evaluation Methodology" at 66 FR 47526, September 12, 2001, for FEMA's use when evaluating exercises. FEMA published a **Federal Register** notice with the same title at 67 FR 20580, April 25, 2002, correcting and superseding our notice of September 12, 2001. Since January 1, 2002, FEMA has evaluated REP exercises using the approach and criteria contained in the **Federal Register** notices, and it is appropriate at this time for FEMA to examine the results of their use. We invite your comments pursuant to our review.

DATES: Please submit your comments on or before November 3, 2003.

ADDRESSES: Please submit your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington DC 20472; or send them by e-mail to *rules@fema.gov*. Please refer to "REP: Review of Exercise Evaluation Criteria and Methodology" in the subject line of your e-mail or comment letter.

FOR FURTHER INFORMATION CONTACT: Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Technological Services Division, Federal Emergency Management Agency, 500 C Street SW., Washington DC 20472; (202) 646–3664, or (e-mail) *vanessa.quinn@dhs.gov*.

SUPPLEMENTARY INFORMATION: FEMA, through its REP program, evaluates exercises of offsite response plans and procedures. The REP exercises test the capability of Offsite Response Organizations, which are the State and local agencies responsible for responding to incidents involving nuclear power plants, to perform in accordance with the provisions of their plans. This activity is undertaken pursuant to FEMA regulations, which appear in 44 CFR part 350, and a Memorandum of Understanding (MOU) between FEMA and the Nuclear Regulatory Commission (NRC), which appears at 44 CFR part 353, appendix A.

In 1996, the FEMA Director announced a strategic review of the REP Program. FEMA then established a Strategic Review Steering Committee (SRSC), with membership from FEMA and the NRC, to carry out the review. The SRSC completed its work in 1999 and forwarded recommendations to FEMA management for implementation. A key SRSC recommendation, strongly supported by the REP community, called for FEMA to streamline its exercise program and change from an objective-based approach to exercise evaluation to a results-oriented approach. FEMA implemented the SRSC's recommendation in a **Federal Register** notice entitled "Radiological Emergency Preparedness: Exercise Evaluation Methodology" at 66 FR 47526, September 12, 2001, for FEMA's use when evaluating exercises. FEMA published a **Federal Register** notice of the same title at 67 FR 20580, April 25, 2002, correcting and superseding our notice of September 12, 2001.

The new approach and criteria have been in effect for over a year, and it is appropriate at this time to examine the results of their use. We are requesting comments on specific criteria that might require some fine-tuning, as well as comments on the efficacy of the outcome-oriented methodology. The April 25, 2002, notice containing the criteria and methodology subject to review is posted on the REP home page at *http://www.fema.gov/rrr/rep/repfrn.shtm#eval*.

Coordination With the Nuclear Regulatory Commission

FEMA conducts the REP program in part under authority of an MOU with the NRC. The text of the current MOU is published in appendix A to 44 CFR part 353. Section E of the MOU provides that each agency will provide an opportunity for the other agency to review and comment on emergency planning and preparedness guidance (including interpretations of agreed joint guidance) prior to adoption as formal agency guidance. FEMA has transmitted a copy of this document to the NRC and requested their comments no later than the date upon which the public comment period closes.

Dated: August 12, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness & Response.

[FR Doc. 03–22259 Filed 8–29–03; 8:45 am]

BILLING CODE 6718–06–P

DEPARTMENT OF HOMELAND SECURITY

Secret Service

Appointment of Performance Review Board (PRB) Members

This notice announces the appointment of members of the Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning October 1, 2002, and ending September 30, 2003. Each PRB will be composed of at least three of the Senior Executive Service members listed below:

Name and Title

Carlton D. Spriggs—Deputy Director, U.S. Secret Service.
Barbara S. Riggs—Chief of Staff (USSS).
Brian K. Nagel—Assistant Director, Investigations (USSS).
Mark J. Sullivan—Assistant Director, Protective Operations (USSS).
Carl J. Truscott—Assistant Director, Protective Research (USSS).
Stephen T. Colo—Assistant Director, Administration (USSS).
Donald A. Flynn—Assistant Director, Inspection (USSS).
Keith L. Prewitt—Assistant Director, Human Resources & Training (USSS).
George D. Rogers—Assistant Director, Government & Public Affairs (USSS).
Paul D. Irving—Assistant Director, Homeland Security (USSS).
John J. Kelleher—Chief Counsel (USSS).

FOR FURTHER INFORMATION CONTACT: Sheila M. Lumsden, Chief, Personnel Division, 950 H Street, NW., Suite 7400, Washington, DC 20223, Telephone No. (202) 406–5307.

W. Ralph Basham,

Director.

[FR Doc. 03–22213 Filed 8–29–03; 8:45 am]

BILLING CODE 4810–42–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–61]

Notice of Submission of Proposed Information Collection to OMB: Application for Approval—FHA Title I/ Title II Lender/Mortgagee or Ginnie Mae Mortgage-Backed Securities Issuer

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Information obtained determines if an entity meets the criteria required for approval to participate as Title I/Title II lenders/mortgagees or Ginnie Mae mortgage-backed securities issuers.

DATES: *Comments Due Date:* October 2, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0005) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may also be obtained through HUD's Information Collection Budget Tracking System at *http://mf.hud.gov.63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Application for Approval—FHA Lender and/or Mortgage-Backed Securities Issuer.

OMB Approval Number: 2502–0005.

Form Numbers: HUD–11701, HUD 92001–B.

Description of the Need for the Information and its Proposed Use: Information obtained determines if an entity meets the criteria required for approval to participate as Title I / Title II lenders/mortgagees of Ginnie Mae mortgage-backed securities issuers.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion, Annually.

Reporting Burden: Number of Respondents 25,450: Average annual responses per respondent 1.2; Total annual responses 32,250; Average burden per response 3.5 hrs.

Total Estimated Burden Hours: 8,938.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 21, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22247 Filed 8–29–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Las Vegas National Wildlife Refuge, Las Vegas, NM

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that a Draft Comprehensive Conservation Plan (CCP) and Environmental Analysis (EA) for the Las Vegas National Wildlife Refuge is available for review and comment. This CCP/EA, prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969, describes how the Service intends to manage this refuge over the next 15 years.

ADDRESSES: A copy of the CCP is available on compact diskette or hard copy, and you may obtain a copy by writing: Yvette Truitt, Biologist/Natural Resource Planner, U.S. Fish and Wildlife Service, PO Box 1306, Albuquerque, NM 87103–1306. Requests may also be made via electronic mail to: *yvette_truitt@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Yvette Truitt, Biologist/Natural Resource Planner, 505–248–6452 or Joe Rodriguez, Refuge Manager, 505–425–3581.

SUPPLEMENTARY INFORMATION: The National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd-668ee *et seq.*) requires a CCP. The purpose in developing CCPs is to provide refuge managers with a 15-year strategy for achieving refuge purposes and contributing toward the mission of the National Wildlife Refuge System, consistent with sound principles of fish and wildlife science, conservation, legal mandates, and Service policies. In addition to outlining broad management direction on conserving wildlife and their habitats, the CCPs identify wildlife-dependent recreational opportunities available to the public, including opportunities for hunting, fishing, wildlife observation and photography, and environmental education and interpretation. We will review and update these CCPs at least every 15 years in accordance with the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370d).

Background: The Las Vegas National Wildlife Refuge was established on August 24, 1965 by the authority of the Migratory Bird Conservation Act (16 U.S.C. 712d) for use as an inviolate sanctuary, or any other management purpose, for migratory birds. Located in northeastern New Mexico, the 8672 acre

Refuge is comprised of prairie grasslands, ponderosa pine forest, pinon-juniper woodlands, steep canyons, lakes and ponds, small disjointed patches of riparian areas and irrigated lands. Management efforts focus on enhancing and restoring native grassland, riparian and wetland communities for migratory birds, fish and other wildlife species.

The Draft CCP/EA addresses a range of topics including habitat and wildlife management, public use opportunities, land acquisition, invasive species control, and administration and staffing for the Refuge. The key refuge issues and how they are addressed in the plan alternatives are summarized below. Alternative A is the current management, or what is currently offered at the Refuge. Alternative B is the proposed action. Alternative C would call for no active management on the Refuge.

Improvements to public use facilities: Alternative A: The public use program would remain at current levels and no new facilities would be developed on the Refuge. Alternative B: The public use program would increase and/or enhance educational and outreach activities, recreational opportunities, community involvement, and improve facilities. Alternative C: The public use program would be discontinued.

Refuge Land and Boundary Protection: Alternative A: There would be no acquisition of in holdings and, no exploration of possible refuge boundary expansion. Alternative B: The Service would actively pursue acquisition of in holdings under existing authorities and policies from willing sellers. The Service would begin discussions with adjacent land owners regarding habitat conservation partnership opportunities to cooperatively enhance or protect wildlife habitats through agreements. The refuge would consider *(in concept only)* future purchase of fee simple and less than fee simple interest in lands adjacent the refuge from willing sellers only. Any purchase of interest in lands would be subject to additional NEPA compliance and other policy considerations. Alternative C: Same as Alternative A.

Water management activities: Alternative A: Improvements to the water delivery system would remain secondary to other immediate management needs on the Refuge. Alternative B: Improvements to water management activities would be accomplished. Costs would be spread over a long period of time and to the degree possible shared through the development of partnerships and in-kind efforts. Alternative C: There would be no water delivery improvements.

Comment Period: Please submit comments within 45 days after the date of this publication in the **Federal Register**.

Public Meetings/Hearings: An open house/public involvement session to receive comments on the Draft CCP/EA will be held in September 17, 2003. Special mailings, newspaper articles, and other media announcements will be used to inform the public of the time and location of the meeting.

Send Comments To: Yvette Truitt, Biologist/Natural Resource Planner, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico, 87103–1306. Comments may also be sent via electronic mail to: *yvette_truitt@fws.gov.*

Dated: August 20, 2003.

Geoffrey L. Haskett,

Acting Regional Director, U.S. Fish and Wildlife Service, Albuquerque, New Mexico.

[FR Doc. 03–22256 Filed 8–29–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of an extension of a currently approved information collection (OMB Control Number 1010–0140).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under 30 CFR part 210—Forms and Reports and part 206—Product Valuation. This notice also provides the public a second opportunity to comment on the paperwork burden of these regulatory requirements. The ICR is titled "30 CFR part 210—Forms and Reports and part 206—Product Valuation (Form MMS–2014, Report of Sales and Royalty Remittance)."

DATES: Submit written comments on or before October 2, 2003.

ADDRESSES: Submit written comments by either fax (202) 395–6566 or e-mail (*OIRA_DOCKET@omb.eop.gov*) directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0140). Mail or hand-carry a copy of your comments to Sharron L. Gebhardt, Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 320B2, Denver, Colorado 80225. If you use an overnight courier service, our courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225. You may also e-mail your comments to us at *mrm.comments@mms.gov.* Include the title of the information collection and the OMB Control Number in the "Attention" line of your comment. Also include your name and return address. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. If you do not receive a confirmation that we have received your e-mail, contact Ms. Gebhardt at (303) 231–3211.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt at telephone (303) 231–3211 or FAX (303) 231–3781. You may also contact Sharron Gebhardt to obtain a copy at no cost of the form and regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 210—Forms and Reports and part 206—Product Valuation (Form MMS–2014, Report of Sales and Royalty Remittance).

OMB Control Number: 1010–0140.

Bureau Form Number: Form MMS–2014.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) under The Mineral Leasing Act (30 U.S.C. 1923) and The Outer Continental Shelf Lands Act (43 U.S.C. 1353) is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions and assists the Secretary in carrying out DOI's Indian trust responsibility.

The Federal Oil and Gas Royalty Management Act (FOGRMA) of 1982, 30 U.S.C. 1701 *et seq.*, states in Section 101(a) that the Secretary "* * * shall establish a comprehensive inspection, collection, and fiscal and production

accounting and auditing system to provide the capability to accurately determine oil and gas royalties, interest, fines, penalties, fees, deposits, and other payments owed, and collect and account for such amounts in a timely manner." The persons or entities described at 30 U.S.C. 1713 are required to make reports and provide reasonable information as defined by the Secretary.

Form MMS–2014, Report of Sales and Royalty Remittance, is the only document used for reporting oil and gas royalties, certain rents, and other lease-related transactions to MMS (*e.g.*, transportation and processing allowances, lease adjustments, and quality and location differentials).

MMS is requesting OMB's approval to continue to collect this information. Not collecting this information would limit the Secretary's ability to discharge his/her duties and may also result in loss of royalty payments. Proprietary information submitted is protected, and there are no questions of a sensitive nature included in this information collection.

We have also changed the title of this ICR from "Report of Sales and Royalty Remittance" to "30 CFR part 210—Forms and Reports and part 206—Product Valuation (Form MMS–2014, Report of Sales and Royalty Remittance)" to clarify the regulatory language we are covering under 30 CFR parts 210 and 206.

Frequency: Monthly.

Estimated Number and Description of Respondents: 1,600 payors.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 125,856 hours.

The following chart details the individual components and estimated hour burdens. In calculating the burden hours, we assumed that respondents perform certain requirements in the normal course of their activities. These business activities are considered to be usual and customary, which we took into account in estimating the burden.

RESPONDENT ANNUAL BURDEN HOUR CHART

30 CFR section parts 210 and 206	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
210.20(a); 210.21(c)(1); 210.50; and 210.52(a)(1), (2), (b), (c), and (d); 210.354.	You must submit Form MMS–2014 * * * to MMS electronically * * * You must submit an electronic sample of your report for MMS approval * * * Records may be maintained in microfilm, microfiche, or other recorded media * * * You must submit a completed Form MMS–2014 (Report of Sales and Royalty Remitttance) to MMS with: (1) All royalty payments; and, (2) Rents on nonproducing leases, * * * When you submit Form MMS–2014 data electronically, you must not submit the form itself, Completed Forms MMS–2014 for royalty payments are due by the end of the month following the production month * * * completed Forms MMS–2014 for rental payments are due no later than the anniversary date of the lease * * *.	.1167 (Manual 1%)	24,840	2,898
		.05 (Electronic 99%)	2,459,160	122,958
	A completed Report of Sales and Royalty Remittance (Form MMS–2014) must be submitted each month once sales or utilization of production occur, * * * This report is due on or before the last day of the month following the month in which production was sold or utilized, * * *.			
206.55(c)(4)	Transportation allowances must be reported as a separate line item on Form MMS–2014 * * *.	Burden hours included in hours above.		
206.55(e)(2)	For lessees transporting production from Indian leases, the lessee must submit a corrected Form MMS–2014 to reeflect actual costs, * * *.	Burden hours included in hours above.		
206.110(c)(1)	You may use your proposed procedure to calculate a transportation allowance until MMS accepts or rejects your cost allocation. If MMS rejects your cost allocation, you must amend your Form MMS–2014 for the months that you used the rejected method * * *.	Burden hours included in hours above.		
206.114 and 206.115(a)	You or your affiliate must use a separate entry on Form MMS–2014 to notify MMS of an allowance based on transportation costs you or your affiliate incur.	Burden hours included in hours above.		
206.157(a)(1)(i); 206.157(b)(1)	Arm's-length transportation contracts and non-arm's-length or no contract. The lessee must claim a transportation allowance by reporting it as a separate line entry on the Form MMS–2014.	Burden hours included in hours above.		
206.157(c)(1)(i) and (c)(2)(i); 206.159(c)(1)(i) and (c)(2)(i).	Arm's-length contracts and non-arm's-length or no contract. The lessee must notify MMS of an allowance based on incurred costs by using a separate line entry on the Form MMS–2014.	Burden hours included in hours above.		
206.157(e)(2)	For lessees transporting production from onshore Federal leases, the lessee must submit a corrected Form MMS–2014 to reflect actual costs, * * *.	Burden hours included in hours above.		

RESPONDENT ANNUAL BURDEN HOUR CHART—Continued

30 CFR section parts 210 and 206	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
206.157(e)(3)	For lessees transporting gas production from leases on the OCS, * * * the lessee must submit a corrected Form MMS–2014 to reflect actual costs, * * *.	Burden hours included in hours above.		
206.157(f)(1); 206.178(f)(1)	You must modify the Form MMS–2014 by the amount received or credited for the affected reporting period.	Burden hours included in hours above.		
206.159(a)(1)(i) and (b)(1)	Arm's-length processing contracts and non-arm's-length or no contract. The lessee must claim a processing allowance by reporting it as a separate line entry on the Form MMS–2014.	Burden hours included in hours above.		
206.159(e)(3)	For lessees processing gas production from leases on the OCS, * * * the lessee must submit a corrected Form MMS–2014 to reflect actual costs, * * *.	Burden hours included in hours above.		
206.172(e)(6)(ii)	You must pay and report on Form MMS–2014 additional royalties due * * *.	Burden hours included in hours above.		
206.174(a)(4)(ii)	If the major portion value is higher, you must submit an amended Form MMS–2014 to MMS * * *.	Burden hours included in hours above.		
206.178(d)(2)	You must report transportation allowances as a separate line item on Form MMS–2014.	Burden hours included in hours above.		
206.180(c)(2)	You must report gas processing allowances as a separate line item on Form MMS–2014.	Burden hours included in hours above.		
206.353(d)(2); 206.354(d)(2)	Lessees must submit corrected Forms MMS–2014 to reflect adjustments to royalty payments * * *.	Burden hours included in hours above.		
Total			2,484,000	125,856

Estimated Annual Reporting and Recordkeeping "Non-hour" Cost Burden: We have identified no "non-hour" cost burdens.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, we published a notice in the **Federal Register** on May 13, 2003, (68 FR 25622) announcing that we would submit this ICR to OMB for approval. The notice provided the required 60-day comment period. We received no comments in response to this notice.

If you wish to comment in response to this notice, you may send your comments to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by October 2, 2003.

Public Comment Policy: We will post all comments in response to this notice on our Web site at *http://www.mrm.mms.gov/Laws_R_D/InfoColl/InfoColCom.htm*. We will also make copies of the comments available for public review, including names and addresses of respondents, during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the public record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you request that we withhold your name and/or address, state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Acting Information Collection Clearance Officer: Nicolette Humphries (202) 208–7744.

Dated: August 21, 2003.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 03–22336 Filed 8–29–03; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–028]

Sunshine Act Meeting

AGENCY: International Trade Commission.

TIME AND DATE: September 4, 2003 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. *Agenda for future meetings:* none.
2. Minutes.

3. Ratification List.

4. Inv. No. 731–TA–1020 (Final) (Barium Carbonate from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before September 12, 2003.)

5. *Outstanding action jackets:* none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: August 27, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–22388 Filed 8–28–03; 10:30 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on July 30, 2003, American Radiolabeled Chemical Inc., 11624 Bowling Green Drive, St. Louis, Missouri 63146, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Gamma Hydroxybutyric Acid (2010).	I
Lysergic acid diethylamide (7315)	I
Dimethyltryptamine (7435)	I
Dihydromorphine (9145)	I
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Meperidine (9230)	II
Morphine (9300)	II
Thebaine (9333)	II
Metazocine (9240)	II
Oxymorphone (9652)	II

The firm plans to bulk manufacture small quantities of the listed controlled substances as radiolabeled compounds.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than November 3, 2003.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 03–22332 Filed 8–29–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on June 2, 2003, Bristol Myers Squibb Pharma Company, 1000 Stewart Avenue, Garden City, New York 11530, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Oxycodone (9143), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture the controlled substances to make finished products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than November 3, 2003.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control.

[FR Doc. 03–22329 Filed 8–29–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on May 2, 2003, Cambrex Charles City, Inc., 1205 11th Street, Charles City, Iowa 50619, made application by letter to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of Dextropropoxyphene (9273), a basic class of Schedule II controlled substance.

The firm plans to manufacture bulk controlled substance for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such a substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCD) and must be filed no later than November 3, 2003.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–22331 Filed 8–29–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 22, 2003, Cambridge Isotope Laboratories, Inc., 50 Frontage Road, Andover, Massachusetts 01801, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Dimethyltryptamine (7435)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	I
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Methadone (9250)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II

Drug	Schedule
Fentanyl (9801)	II

The firm plans to manufacture small quantities of the listed controlled substances to produce isotope labeled standards for drug analysis.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Office of Chief Counsel (CCD) and must be filed no later than November 3, 2003.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–22328 Filed 8–29–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF justice

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Withdrawal of Application

As set forth in the **Federal Register** on April 2, 2003, (68 FR 16089), ISP Freetown Fine Chemicals, Inc., 238 South Main Street, Assonet, Massachusetts 02702, made application by letter to the Drug Enforcement Administration to be registered as a bulk manufacturer of Levorphanol (9220) a basic class of controlled substance listed in Schedule II.

By letter dated June 30, 2003, ISP Freetown Fine Chemicals, Inc., requested that their application to manufacture Levorphanol be withdrawn. Therefore, said application is hereby withdrawn.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–22327 Filed 8–29–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated April 29, 2003 and published in the **Federal Register** on May 29, 2003, (68 FR 32088), Johnson Matthey, Inc., Pharmaceutical Materials, 2003 Nolte Drive West Deptford, New Jersey, 08066, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import Phenylacetone for conversion to amphetamine base to sell in bulk to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Johnson Matthey, Inc., to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time.

DEA has investigated Johnson Matthey, Inc., on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 3101.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–22326 Filed 8–29–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on February 9, 2003, Lin-Zhi International, Inc., 687 North Pastoria Avenue, Sunnyvale, California 94085–2917, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxymethamphetamine (7405).	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Secrobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Methadone (9250)	II
Dextropropoxyphene (9273)	II
Morphine (9300)	II

The firm plans to manufacture small quantities of controlled substances to make drug testing reagents and controls.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quituplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: Federal Register Representative, Officer of Chief Counsel (CCD) and must be filed no later than November 3, 2003.

Dated: August 19, 2003.

Laura M. Nagel,

Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–22330 Filed 8–29–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated May 7, 2003, and published in the **Federal Register** on April 29, 2003, (68 FR 32088), Lonza Riverside, 900 River Road, Conshohocken, Pennsylvania 19428, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Gamma hydroxybutyric acid (2010).	I

Drug	Schedule
Amphetamine (1100)	II
Phenylacetone (8501)	II
Methypenidate (1724)	II

The firm plans to produce bulk products for finished dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Lonza Riverside to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Lonza Riverside to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed is granted.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–22324 Filed 8–29–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Registration

By Notice dated April 29, 2003, and published in the **Federal Register** on May 29, 2003, (68 FR 32089), Organichem Corporation, 33 Riverside Avenue, Rensselaer, New York 12144, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic class of Schedule II of controlled substance listed below:

Drug	Schedule
Dextropoxyphene (9273)	II

The firm plans to manufacture bulk products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Organichem Corporation to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Organichem Corporation to ensure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed is granted.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–22325 Filed 8–29–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated May 2, 2003 and published in the **Federal Register** on May 29, 2003, (68 FR 32089), Roche Diagnostics Corporation, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of Schedules I & II, for the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic Acid Diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Alphamethadol (9605)	I
Phencyclidine (7471)	II
Benzoylecogonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to import the listed controlled substances to manufacture diagnostic products for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Roche Diagnostics Corporation to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Roche Diagnostics Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. This investigation included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 03–22322 Filed 8–29–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated may 2, 2003, and published in the **Federal Register** on May 29, 2003, (68 FR 32089), Roche Diagnostics corporation, Attn: Regulatory Compliance, 9115 Hague Road, Indianapolis, Indiana 46250, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic Acid Diethylamide (7515)	I
Tetrahydrocannabinol (7370)	I
Alphamethadol (9605)	I
Phencyclidine (7471)	II
Benzoylecogonine (9180)	II
Methadone (9250)	II
Morphine (9300)	II

The firm plans to manufacture small quantities of controlled substances for use in diagnostic products.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Rocke Diagnostics

Corporation to manufacture the listed controlled substances is consistent with the public interested at this time. DEA has investigated Roche Diagnostics Corporation to insure that the company's registration is consistent with the public interest. This investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed in granted.

Dated: August 19, 2003.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration

[FR Doc. 03–22323 Filed 8–29–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of August 2003.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following case, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.C.) (Increased imports) and (a)(2)(B)(II.B.) (No shift in production to a foreign country) have not been met.

TA–W–51,958; UTI Star Guide, Arvada, CO

TA–W–52,093; Mendocino Forest Products, Fort Bragg, CA

TA–W–52,149; OEC Medical Systems, Inc., d/b/a GE OEC Medical Systems, Inc., a subsidiary of The General Electric Co., Warsaw, IN

TA–W–52,215; Cooper B-Line, Portland, OR

TA–W–51,918; Alstom T&D Industries, High Voltage Switchgear Div., Charleroi, PA

TA–W–51,995; Occidental Chemical Corp., New Owner—Elementis Chromium LP, a subsidiary of Elementis PLC, Castle Hayne, NC

TA–W–52,267; Ken-Bar Manufacturing Co., Baldwin, GA

TA–W–52,292; Manning Lighting, Sheboygan, WI

TA–W–52,297; Intermet, Radford Foundry, Radford, VA

TA–W–52,327; NIBCO, Inc., Central Tooling Services Center, Elkhart, IN

TA–W–51,800; Meridian Automotive Systems, Exterior Composites Div., Centralia, IL

TA–W–51,838; Rio Grande Forest Products, Inc., Espanola, NM

TA–W–52,128 & A, B; Control Engineering Co., Pellston, MI, Harbor Springs, MI and Boyne City, MI

TA–W–52,171; Read-Rite Corp., Fremont, CA

TA–W–52,293; Hilti North America, a Div. of Hilti Corp., Plant 5, Tulsa, OK

The workers firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–52,003; Menlo Logistics, Inc., d/b/a Menlo Worldwide Logistics, a wholly owned subsidiary of Menlo Worldwide, LLC, Edison, NJ

TA–W–52,357; Motorola, Inc., Personal Communications Sector (PCS), Libertyville, IL

TA–W–52,255; Solectron Technology, Inc., Charlotte, NC

TA–W–52,403; Jones Equipment, Inc., Missoula, MT

TA–W–51,970; Northwest Airlines, Inc., St. Paul, MN

TA–W–52,358; JDS Uniphase, Rochester, MN

The investigation revealed that criteria (a)(2)(A)(I.A) (no employment declines) have not been met.

TA–W–52,421; State of Alaska Commercial Fisheries Entry Commission Permit #S04T64920J, Dillingham, AK

TA–W–52,326; Bojud Knitting Mills, Inc., Amsterdam, NY

The investigation revealed that criteria (a)(2)(A) (I.C) (increased imports) and (a)(2)(B) (II.C) (has shifted production to a foreign country) have not been met.

TA–W–52,052; Corning Cable Systems, Telecommunications Cable Plant (TCP), Hickory, NC

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of section 222 have been met.

TA–W–52,117; Johnstown America Corp., Johnstown, PA: June 9, 2002.

TA–W–52,202; Lexel Company, Hutsonville, IL: June 23, 2002.

TA–W–52,274; Thomson, Inc., Circleville Glass Operations, Circleville, OH: June 27, 2002.

TA–W–52,336; Consolidated Diesel Co., Whitakers, NC: July 16, 2002.

TA–W–52,349; Terry Apparel, a/k/a Mariana Apparel, Mariana, AR: July 18, 2002.

TA–W–52,173; Carr Lowrey Glass Co., Baltimore, MD: June 27, 2002.

TA–W–52,332; Aircraft Precision Products, Inc., Ithaca, MI: July 15, 2002.

TA–W–52,252; Richmond Management, LLC, Talbott, TN: July 3, 2002.

TA–W–52,319; Akron Porcelain and Plastics Co., Inc., Akron, OH: June 20, 2002.

TA–W–52,340; RST&B Curtain and Drapery, Florence, SC: July 17, 2002.

TA–W–52,431; PFC, Inc., Athens, TN: July 29, 2002.

TA–W–52,465; Moog Aircraft, Salt Lake City, UT: July 31, 2002.

TA–W–52,276; Bureau of Engraving, Inc., Electronics Group, Minneapolis, MN: July 10, 2002.

TA–W–52,197; Specialty Mode, Inc., Jacksonville, NC.

TA–W–52,072; Colson Associates, Inc., a div. of Colson Caster Corp., Jonesboro, AR: June 16, 2002.

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of section 222 have been met.

TA–W–52,080; MJJ Brilliant, Inc., New York, NY: June 2, 2002.

TA–W–52,187; General Electric, Industrial Systems/Motors Div., a subsidiary of General Electric Co., Jonesboro, AR: June 27, 2002.

TA–W–52,194; Cascades Diamond, Inc., including leased workers of Dunhill Staffing Systems, Thorndike, MA: June 24, 2002.

TA–W–52,275; Cordis Corp., Miami Lakes, FL: June 20, 2002.

TA–W–52,300; A.O. Smith, Water Products Co., including leased workers of Manpower, ESI and Quantum, McBee, SC: July 8, 2002.

TA–W–52,328; Photocircuits Corp., including leased workers of Express Personnel Services, Peachtree City, GA: July 16, 2002.

TA–W–52,341; Firestone Tube Co., Russellville, AR: July 16, 2002.

TA–W–52,401; Ivaco Steel Processing, Tonawanda, NY: July 24, 2002.

TA–W–52,443; Formica Corp., Evendale Facility, Cincinnati, OH: July 31, 2002.

TA–W–52,456; Cutler Hammer, Inc. (formerly Innovative Technology, Inc.), div. of The Eaton Corp., Brooksville, FL: August 1, 2002.

TA–W–52,457; Coherent, Inc., Printed Circuit Boards Department, Auburn, CA: August 4, 2002.

TA–W–52,458; APW, Creedmoor, NC: August 4, 2002.

TA–W–51,502; Ericsson Micro Electronics, Inc., Power Modules Div., Richardson, TX: April 7, 2002.

TA–W–52,237; Alstom Power, Inc., Performance Projects, Chattanooga, TN: July 3, 2002.

TA–W–52,299; Gerber Plumbing Fixtures, LLC, Gerber Plumbing Fixtures Corp., Globe Valve Div., Delphi, IN: July 11, 2002.

TA–W–52,375; Sanmina-SCI Corp., EMS Div., Huntsville, AL: July 22, 2002.

TA–W–52,450; VF Imagewear, Tupelo, MS: August 1, 2002.

TA–W–52,037; Swan Finishing Co., Inc., Fall River, MA: June 13, 2002.

TA–W–52,115; Penn Iron Works, Inc., Sinking Spring, PA: June 16, 2002.

TA–W–52,226 & A; Yorkshire Americas, Inc., Charlotte, NC and Lowell Manufacturing facility, Lowell, NC: July 2, 2002.

TA–W–52,254; Alexander Fabrics LLLP, Burlington, NC: July 1, 2002.

TA–W–52,263; Trelleborg YSH, Inc., a div. of Trelleborg Industries, Inc., a div. of Trelleborg AB, Logansport, IN: July 1, 2002.

TA–W–52,424; Emglo Products, LLC, a wholly owned subsidiary of Flack and Decker (USA), Inc., including leased workers of Rom Ruggeri Enterprise, d/b/a Spherion, Johnstown, PA: July 29, 2002.

The following certification has been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–52,335; American Bag Corp., a div. of Milliken and Company, Stearns, KY: November 21, 2002.

I hereby certify that the aforementioned determinations were issued during the months of August. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, during normal business hours or will be mailed to persons who write to the above address.

Dated: August 18, 2003.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 03–22287 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,381]

Belding Hausman, Inc., Lincolnton, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 24, 2003, in response to a petition filed by the company on behalf of workers at Belding Hausman, Inc., Lincolnton, North Carolina.

The petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 19th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22286 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–51,768]

Chilkoot Fish Company, Haines, AK; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 14, 2003, in response to a worker petition filed by a company official on behalf of workers at Chilkoot Fish Company, Haines, Alaska.

The petitioner no longer wants to pursue the petition investigation. Consequently, further investigation would serve no purpose and the investigation is terminated.

Signed at Washington, DC, this 13th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22276 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,511]

Cooper Crouse-Hinds Myers-Hub, Montebello, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003 in response to a worker petition filed on behalf of workers at Cooper Crouse-Hinds Myers-Hub, Montebello, California.

A petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 18th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22281 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,428]

Edison Fashion, Inc., Bronx, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 30, 2003, in response to a petition filed by UNITE!, New York Apparel and Allied Workers Joint Board, Local 10, Local 89–22–1 and Local 189, on behalf of workers at Edison Fashion, Inc., Bronx, New York.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22271 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,447]

Fisher Controls, LLC, a Division of Emerson Electric Company, North Stonington, CT; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 1, 2003 in response to a petition filed by a company official on behalf of workers at Fisher Controls, LLC, a division of Emerson Electric Company, North Stonington, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22269 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,505]

Flextronics Logistics, Mt. Juliet, TN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003 in response to a worker petition filed on behalf of workers at Flextronics Logistics, Mt. Juliet, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22282 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,442]

Fruit Of The Loom, Harlingen, TX; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 31, 2003 in response to a worker petition filed by a company official on behalf of workers at Fruit Of The Loom, Harlingen, Texas.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22270 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,510]

General Binding Corporation (GBC), Booneville, MS; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on August 11, 2003 in response

to a worker petition which was filed by a company official on behalf of workers at General Binding Corporation (GBC), Booneville, Mississippi.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 13th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22268 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,211]

Heraeus Quartztech, Inc., Fairfield, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 2, 2003, in response to a worker petition filed by a company official on behalf of workers at Heraeus Quartztech, Inc., Fairfield, New Jersey.

The petitioner has requested that the petition be with-drawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22275 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,425]

Home Products International, Inc., Eagan, MN; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 30, 2003, in response to a worker petition filed by the International Association of Machinists and Aerospace Workers, District Lodge Number 77, Egan, Minnesota, on behalf of workers at Home Products International, Eagan, Minnesota.

The petitioner union representative has requested the petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation is terminated.

Signed at Washington, DC, this 15th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22285 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,407]

Jonathan Reed, Inc., Lumberton, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 28, 2003 in response to a petition filed by a company official on behalf of workers at Jonathan Reed, Inc., Lumberton, North Carolina.

The company official has requested that the investigation be terminated. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 11th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22272 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,518]

Paper Converting Machine Co., Green Bay, WI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003 in response to a worker petition filed by the United Auto Workers Union Local 1102, on behalf of workers at Paper Converting Machine Company, Green Bay, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22279 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,470]

Premium Security, Kentwood, MI; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 5, 2003 in response to a petition filed by the company on behalf of workers at Premium Security, Kentwood, Michigan.

The petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 18th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22283 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,469 and TA–W–52,469A]

Shell E & P Company, Houston, TX, Shell E & P Company, New Orleans, Louisiana; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 5, 2003 in response to a worker petition filed on behalf of workers at Shell E & P Company, Houston, Texas (TA–W–52,469) and Shell E & P Company, New Orleans, Louisiana (TA–W–52,469A).

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 15th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22284 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,584]

Siebel Systems, Emeryville, CA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 18, 2003 in response to a worker petition filed by the One Stop Career Center, on behalf of workers at Siebel Systems, Emeryville, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22278 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,324]

Sierra Pine, Ltd, Medite Division, Medford, OR; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 16, 2003 in response to a petition filed by the Association of Western Pulp and Paper Workers (AWPPW) on behalf of workers at Sierra Pine, LTD, Medite Division, Medford, Oregon.

The petitioner requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 11th day of August, 2003.

Linda Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22273 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,345]

SPX Dock Products, A Division of SPX Corporation, Milwaukee, WI; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 18, 2003, in response to a petition filed by the International Union of Teamsters, "General" Local Union, No. 200, on behalf of workers at SPX Dock Products, a division of SPX Corporation, Milwaukee, Wisconsin.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22277 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,512]

Triquint Optoelectronics, Breinigsville, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 11, 2003, in response to a petition filed by a company official on behalf of workers at TriQuint Optoelectronics, Breinigsville, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 20th day of August, 2003.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22280 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,306]

York International Corporation, Grantley Plant, York, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 15, 2003, in response to a worker petition filed on behalf of workers at York International Corporation, Grantley Plant, York, Pennsylvania.

The company official has requested that this petition be withdrawn. Consequently, further investigation would serve no purpose and the investigation is terminated.

Signed at Washington, DC, this 12th day of August, 2003.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 03–22274 Filed 8–29–03; 8:45 am]

BILLING CODE 4510–30–P

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, September 11, 2003, and Friday, September 12, 2003, at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on September 11, and at 9 a.m. on September 12.

Topics for discussion include: setting the context for Medicare spending; disease management and care coordination services in traditional Medicare; the quality of care in Medicare; outpatient dialysis payment issues; risk adjustment in Medicare+Choice; inpatient hospital issues; workplans for payment adequacy analyses, including physicians, hospital outpatient departments, and post-acute care providers. There will also be a panel on the growth and variation in the use of physician services.

Agendas will be e-mailed approximately one week prior to the meeting. The final agenda will be available on the Commission's Web site (*http://www.MedPAC.gov*).

ADDRESSES: MedPAC's address is: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001. The telephone number is (202) 220–3700.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 220–3700.

Mark E. Miller,

Executive Director.

[FR Doc. 03–22344 Filed 8–29–03; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 03–097]

Aerospace Safety Advisory Panel Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the Aerospace Safety Advisory Panel.

DATES: Thursday, September 18, 2003, 1 p.m. to 4 p.m. eastern daylight time.

ADDRESSES: Florida Space Authority, Auditorium, 100 Spaceport Way, Cape Canaveral, Florida 32920, (321) 730–5301.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Erminger, Aerospace Safety Advisory Panel Executive Director, Code Q–1, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0074.

SUPPLEMENTARY INFORMATION: The first 30 minutes of the meeting will be reserved for public comment on safety at Kennedy Space Center specifically or in NASA in general. Following public comment, the Aerospace Safety Advisory Panel will discuss potential content of the next annual report to the NASA Administrator. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The major subjects covered will be: Space Shuttle Program, International Space Station Program, Aviation Safety Program, and Cross-Program Areas. The Aerospace Safety Advisory Panel is chaired by Ms. Shirley C. McCarty and is composed of nine members and two consultants.

The meeting will be open to the public up to the seating capacity of the room (150). Photographs will only be permitted during the first 10 minutes of the meeting. Visitors will be requested to sign a visitor's register.

Members of the public that would like to make a 5 minute verbal presentation to the Panel should contact Ms. Susan Burch on (202) 358–0550 at least 24 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting.

Verbal presentation and written comments should be limited to the subject of safety at Kennedy Space Center specifically or in NASA in general.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–22195 Filed 8–29–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–098)]

Revolutionize Aviation Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: The National Aeronautics and Space Administration announces a forthcoming meeting of the Revolutionize Aviation Subcommittee (RAS).

DATES: Wednesday, September 17, 2003, 9 a.m. to 5 p.m.

ADDRESSES: Sheraton Pentagon South (Capital Ballroom), 4641 Kenmore Avenue, Alexandria, VA 22304, 703/751–4510.

FOR FURTHER INFORMATION CONTACT: Ms. Bernice Lynch, National Aeronautics and Space Administration, NASA Headquarters, Washington, DC 20546, 202/358–4594.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Agenda topics for the Joint Revolutionize Aviation Subcommittee (RAS) and Research, Engineering, and Development (RE&D) Advisory Committee meeting are as follows:

—National Plan

—SATS/Capstone 21

—Unmanned Aerial Vehicles in the National Airspace System

—Environmental R&D

—NASA/FAA Safety R&D Roadmaps

It is imperative that the meeting be held on the above date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

June W. Edwards,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 03–22335 Filed 8–29–03; 8:45 am]

BILLING CODE 7510–01–P

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

SES Performance Review Board

AGENCY: The National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: This notice announces the membership of the Performance Review Board of the National Endowment for the Humanities.

FOR FURTHER INFORMATION CONTACT: Timothy G. Connelly, Director of Human Resources, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; telephone (202) 606–8415.

SUPPLEMENTARY INFORMATION: 5 U.S.C. 3393 and 4314(c)(1) through (5) require each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, both an executive resources board and a performance review board for SES. The National Endowment for the Humanities has a combined Board, which is referred to as the Executive Resources and Performance Review Board (ERPRB).

Effective September 1, 2003, the members of the National Endowment for the Humanities SES Performance Review Board selected to serve are Jeffrey Thomas, Assistant Chairman for Planning and Operations—Board Chairman, Cherie Harder, Senior Counselor to the Chairman, Stephen Ross, Director, Office of Challenge Grants and George Farr, Director, Division of Preservation and Access. All members will serve "until replaced."

Bruce Cole,

Chairman.

[FR Doc. 03–22241 Filed 8–29–03; 8:45 am]

BILLING CODE 7536–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The NSF management officials having responsibility for NSB Public Service

Award Committee (#5195) have determined that renewing this group for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Authority for this Committee will expire on September 4, 2003, unless they are renewed. For more information contact Susanne Bolton at (703) 292–7488.

Dated: August 27, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–22289 Filed 8–29–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, August 8, 2003, through August 21, 2003. The last biweekly notice was published on August 19, 2003, (68 FR 49812).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 2, 2003, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the

contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. Because of continuing disruptions in delivery of mail to United States Government offices, it is requested that petitions for leave to intervene and requests for hearing be transmitted to the Secretary of the Commission either by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and because of continuing disruptions in delivery of mail to United States Government offices, it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov*. A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: April 3, 2003.

Description of amendment request: The proposed amendment would permit application of an alternative source term (AST) methodology, according to Section 50.67, "Accident source term," of title 10 of the Code of Federal Regulations (10 CFR) with the exception that Technical Information Document (TID) 14844, "Calculation of Distance Factors for Power and Test Reactor Sites," will continue to be used as the radiation dose basis for equipment qualification. The proposed amendment would include Technical Specifications (TS) and associated Bases revisions to reflect implementation of AST assumptions; TS and associated Bases revisions to increase main steam isolation valve allowable leakage; TS and associated Bases revisions to decrease allowed feedwater isolation valve leakage to allow margin to be used for other release paths; TS and associated Bases revisions to delete requirements for the main steam isolation valve leakage control system; TS and associated Bases revisions to reflect requirements for availability of Standby Liquid Control (SLC) System in Mode 3 and use of the SLC System to buffer suppression pool pH to prevent iodine re-evolution during a postulated radiological release; TS and associated Bases revisions to reflect higher allowed charcoal adsorber penetrations in laboratory testing; TS Bases revision to reflect an increased allowed secondary containment drawdown time; TS Bases revision to identify additional containment leakage exclusions from L_a and exclusions from secondary containment bypass allowances; additional allowance for filtered and unfiltered inleakage into the control room envelope; and development of new offsite and control room atmospheric dispersion factors calculated using site-specific meteorology data collected between 2000 and 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed amendment implements alternative source term (AST) assumptions in revisions to the analyses of the following limiting design basis accidents at Clinton Power Station (CPS).

- Loss-of-Coolant Accident
- Main Steam Line Break Accident, and
- Control Rod Drop Accident

The AST does not require modification of the facility; rather, once the occurrence of an accident has been postulated the new source term is an input to evaluate the potential consequences. The implementation of the AST has been evaluated in revisions to the analyses of the limiting design basis accidents at CPS. Based upon the results of these analyses, it has been demonstrated that, with the requested changes, the dose consequences of these limiting events is

within the regulatory guidance provided by the NRC for use with the AST. This guidance is presented in 10 CFR 50.67 and associated Regulatory Guide 1.183, and Standard Review Plan Section 15.0.1.

The equipment affected by the revised operational conditions is not considered an initiator to any previously analyzed accident and therefore, inoperability of the equipment cannot increase the probability of any previously evaluated accident. The radiological consequences of the above design basis accidents have been evaluated with applications of AST assumptions. The results conclude that the radiological consequences remain within applicable regulatory limits.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The application of AST does not affect the design, functional performance or operation of the facility. Similarly, it does not affect the design or operation of any structures, systems or components involved in the mitigation of any accidents, nor does it affect the design or operation of any component in the facility such that new equipment failure modes are created.

As such the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Approval of the basis change from the original source term developed in accordance with Technical Information Document (TID) 14844 to a new AST, as described in Regulatory Guide 1.183, is requested. The results of the accident analyses revised in support of the proposed changes, and the requested Technical Specification changes, are subject to revised acceptance criteria. These analyses have been performed using conservative methodologies as specified in Regulatory Guide 1.183.

Safety margins and analytical conservatisms have been evaluated and have been found acceptable. The analyzed events have been carefully selected and margin has been retained to ensure that the analyses adequately bound postulated event scenarios. The dose consequences due to design basis accidents comply with the requirements of 10 CFR 50.67 and the guidance of Regulatory Guide 1.183.

The margin of safety is considered to be that provided by meeting the applicable regulatory limits. Relaxation of these Technical Specification requirements results in an increase in dose following certain design basis accidents. However, since the doses following these design basis accidents remain within the regulatory limits, there is not a significant reduction in a margin of safety. The changes continue to ensure that the doses at the exclusion area and low population zone boundaries, as well as the control room, are within the corresponding regulatory limits.

Therefore, operation of CPS in accordance with the proposed changes will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Edward J. Cullen, Deputy General Counsel Exelon BSC—Legal, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: Anthony J. Mendiola.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2, Oswego County, New York

Date of amendment request: August 15, 2003.

Description of amendment request: The licensee proposed to revise the reactor coolant system pressure-temperature (P–T) limit curves specified in Section 3.4.11, "RCS [Reactor Coolant System] Pressure and Temperature (P/T) Limits," of the Technical Specifications (TSs). The proposed P–T limit curves will be based, in part, on an alternative methodology and will be valid for 22 effective full-power years. The alternative methodology, identified as American Society of Mechanical Engineers Boiler and Pressure Vessel Code Case N–640, has been previously approved for generic use by the Nuclear Regulatory Commission (NRC).

The associated licensee-controlled TSs Bases pages would also be changed to reflect the above TS changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the three standards of 10 CFR 50.92(c). The NRC staff's analysis is presented below:

The first standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes, if approved by the NRC, will be made in a manner such that conservatism is maintained through compliance with applicable NRC regulations and guidance. No hardware design change is involved with the proposed amendment, thus there will be no adverse effect on the functional performance of any plant structure, system, or component (SSC). All SSCs will continue to perform their design functions with no decrease in their capabilities to mitigate the consequences of postulated accidents. P–T limit curves were not previously factored into the probability of accidents, nor were they factored into scenarios of previously analyzed accidents. Accordingly, the revised P–T limit curves will lead to no increase in the consequences of an accident previously evaluated, and no increase of the probability of an accident previously evaluated.

The second standard requires that operation of the unit in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment is not the result of a hardware design change, nor does it lead to the need for a hardware design change. There is no change in the methods the unit is operated. As a result, all SSCs will continue to perform as previously analyzed by the licensee, and previously evaluated and accepted by the NRC staff. Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any previously evaluated.

The third standard requires that operation of the unit in accordance with the proposed amendment will not involve a significant reduction in a margin of safety. Since the licensee did not propose to exceed or alter a design basis or safety limit, the proposed amendment will not affect in any way the performance characteristics and intended functions of any SSC. Therefore, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the NRC staff's analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Richard J. Laufer.

Nuclear Management Company, LLC, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: October 17, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification Table 3.3.1–2 by modifying a constant in the variable

thermal margin/low pressure (TM/LP) trip equation. The proposed change would reduce calculated values for the variable TM/LP trip equation. The proposed equation constant value change results from improvements in plant equipment used to establish the TM/LP trip setpoint. Ultrasonic feedwater flow measurement devices, recently installed at the Palisades Plant, result in less uncertainty applied in the methodology used for determining core power level. Additionally, the devices used to calculate the TM/LP trip setpoint have previously been replaced with devices having less uncertainty. These reduced uncertainties, when combined using the NRC-endorsed methodology described in ANSI/ISA–S67.04–1994, "Setpoints for Nuclear Safety-Related Instrumentation," result in a reduction in the constant (bias term) used to calculate the TM/LP trip setpoint.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The following evaluation supports the finding that operation of the facility in accordance with the proposed change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not involve operation of any required structures, systems or components (SSCs) in a manner or configuration different from those previously recognized or evaluated. The methodology that was used in determining the recommended change in the constant follows Nuclear Regulatory Commission endorsed standard ANSI/ISA–S67.04–1994, "Setpoints for Nuclear Safety-Related Instrumentation." The probability of an accident previously evaluated will not be increased since the proposed change to the constant value in the Thermal Margin/Low Pressure (TM/LP) trip equation maintains all necessary considerations in the development of uncertainties.

The consequences of an accident previously evaluated will not be increased since the reactor is still protected from violating the TM/LP trip setpoint used in the safety analysis for the Palisades Nuclear Plant.

Therefore, operation of the facility in accordance with the proposed change to the Technical Specifications would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change to the constant value for the TM/LP trip equation in the Technical Specifications would not change or add a system function. The proposed amendment does not involve operation of any required SSCs in a manner or configuration different from those previously recognized or evaluated. No new failure mechanisms will be introduced by the change being requested.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change to the constant value for the TM/LP trip equation in the Technical Specifications accounts for all uncertainties that affect the TM/LP trip setpoint. The revised TM/LP trip setpoint will continue to assure that the acceptance criteria established in the safety analysis will be met.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: L. Raghavan.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment requests: July 24, 2003.

Description of amendment requests: The proposed change will revise Technical Specification (TS) Section 3.8.4, "DC Sources—Operating"; TS Section 3.8.5, "DC Sources—Shutdown"; and TS Section 3.8.6, "Battery Cell Parameters." The proposed change will also add a new section to TS 5.5, "Programs and Manuals" for the maintenance and monitoring of the station safety-related batteries that is based on the recommendations of the Institute of Electrical and Electronics Engineers (IEEE) Standard 450–1995.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects Technical Specification (TS) sections 3.8.4 "DC Sources—Operating," TS 3.8.5 "DC Sources—Shutdown," TS 3.8.6 "Battery Cell Parameters," and TS Administrative Controls section 5.5.

The proposed change restructures the TS for the direct current (DC) electrical power subsystem and adds new Conditions and Required Actions with increased Completion Times to address battery charger inoperability. Neither the DC electrical power subsystem nor associated battery chargers are initiators of any accident sequence analyzed in the Final Safety Analysis Report Update (FSARU). Operation in accordance with the proposed TS ensures that the DC electrical power subsystem is capable of performing its function as described in the FSARU. Therefore the mitigating functions supported by the DC electrical power subsystem will continue to provide the protection assumed by the analysis.

The relocation of preventive maintenance surveillances, and certain operating limits and actions to a newly-created, licensee-controlled TS 5.5.17, "Battery Monitoring and Maintenance Program," will not challenge the ability of the DC electrical power subsystem to perform its design function. The maintenance and monitoring required by current TS, which are based on industry standards, will continue to be performed. In addition, the DC electrical power subsystem is within the scope of 10 CFR 50.65, "Requirements for monitoring the effectiveness of maintenance at nuclear power plants," which will ensure the control of maintenance activities associated with the DC electrical power subsystem.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve any physical alteration of the units. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints at which protective or mitigating actions are initiated that are affected by the proposed changes. The operability of the DC electrical power subsystems in accordance with the proposed TS is consistent with the initial assumptions of the accident analyses and is based upon meeting the design basis of the plant. The proposed change will not alter the manner in which equipment operation is initiated, nor will the functional demands on credited equipment be changed. No alteration in the operating procedures, which ensure the unit remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed change does not alter assumptions made in the safety analyses.

Therefore, the proposed change does not create the possibility of a new or different accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will not adversely affect operation of plant equipment and will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The changes associated with the new battery maintenance and monitoring program will ensure that the station batteries are maintained in a highly reliable manner. The equipment fed by the DC electrical system will continue to provide adequate power to safety-related loads in accordance with analysis assumptions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Richard F. Locke, Esq., Pacific Gas and Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Section Chief: Stephen Dembek.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: December 20, 2002, as supplemented by letter dated May 30, 2003.

Brief description of amendment: The amendment approves changes to the Clinton facility as described in the Updated Safety Analysis Report. The amendment modifies the basis for compliance with the requirements of Appendix H to title 10 of the Code of Federal Regulations part 50 (appendix H to 10 CFR part 50), "Reactor Vessel Material Surveillance Program Requirements," by approving implementation of the Boiling-Water Reactor Vessel and Internals Project reactor pressure vessel integrated surveillance program.

Date of issuance: August 12, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 157.

Facility Operating License No. NPF–62: The amendment approved revisions to the Updated Safety Analysis Report.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5669). The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** Notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 2003.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendment: September 30, 2002, as supplemented by letter dated March 19, 2003.

Brief description of amendment: The amendment revised Technical Specification Section 6.8.5, "Reactor Building Leakage Rate Testing Program," to reflect a one-time deferral of the scheduled performance of the next Type A Containment Integrated Leak Rate Test from October, 2003, to no later than September 2008.

Date of issuance: August 14, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 244.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68730). The supplement provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 2003.

No significant hazards consideration comments received: No.

Arizona Public Service Company, *et al.*, Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3 Maricopa County, Arizona

Date of application for amendments: April 25, 2003.

Brief description of amendments: The amendments revise Section 5.3, "Unit Staff Qualifications," of the Technical Specifications to state new education and experience eligibility requirements for operator license applicants. As stated in the letter dated April 25, 2003, the new requirements are outlined by the National Academy for Nuclear Training in its "Guidelines for Initial Training and Qualification of Licensed Operators," which were issued January 2000.

Date of issuance: August 13, 2003.

Effective date: August 13, 2003, and shall be implemented within 90 days of the date of issuance.

Amendment Nos.: Unit 1–148, Unit 2–148, Unit 3–148.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The

amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 10, 2003 (68 FR 34662). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 2003.

No significant hazards consideration comments received: No.

Entergy Nuclear Operations, Inc., Docket No. 50–003, Indian Point Nuclear Generating Station, Unit 1

Date of amendment request: May 30, 2002.

Brief description of amendment: It would revise the Indian Point Nuclear Generating Station, Unit 1 (IP1) Technical Specifications (TSs) to facilitate the Indian Point Generating Station, Unit 2 (IP2) transition to the Improved TSs. The amendment also revises the requirements of the "Order Approving Decommissioning Plan and Authorizing Decommissioning of Facility" [1] to ensure compliance with the current requirements of 10 CFR 50.59 and 10 CFR 50.83. It also revises the expiration date of Provisional Operating License No. DPR–5 for IP1 to be current with the expiration date for the Facility Operating License No. DPR–26 for IP2.

Date of issuance: August 11, 2003.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No: 52.

Provisional Operating License No. DPR–5: The amendment revised the Technical Specifications, and made changes to and revised the expiration date for IP1 Provisional Operating License DPR–5.

Date of initial notice in ***Federal Register:*** July 9, 2002 (67 FR 45564).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 2003.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: September 19, 2002, as supplemented by letters dated January 8, May 22, and July 1, 2003.

Brief description of amendment: The amendment extends the allowable outage time for the emergency diesel generators from 72 hours to a maximum of 14 days.

Date of issuance: August 8, 2003.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 249.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68733). The January 8, May 22, and July 1, 2003, supplemental letters provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: August 7, 2002, as supplemented by your letters dated February 28, and May 27, 2003.

Brief description of amendments: The amendments revised the limiting condition for operation, the associated Conditions and Required Actions of Technical Specification (TS) 3.7.1, "Main Steam Safety Valves (MSSVs)," and the values in Table 3.7.1–1, "Operable Main Steam Safety Valves versus Applicable Power in Percent of Rated Thermal Power," by requiring five MSSVs per steam generator to be operable consistent with the accident analyses assumptions. The amendments also modify the associated Required Actions of TS 3.7.1 by adding a requirement to reduce the Power Range Neutron Flux-High reactor trip setpoint when one or more steam generators with one or more MSSVs are inoperable.

Date of issuance: August 12, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 133/133, 128/128.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 1, 2002 (67 FR 61681). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 12, 2003.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: December 20, 2002, as supplemented by letters dated May 30, and June 27, 2003.

Brief description of amendments: The amendments approve changes to the LaSalle County Station facility as described in the Updated Final Safety Analysis Report. The amendments modify the basis for compliance with the requirements of appendix H to title 10 of the Code of Federal Regulations part 50 (appendix H to 10 CFR part 50), "Reactor Vessel Material Surveillance Program Requirements," by approving implementation of the Boiling-Water Reactor Vessel and Internals Project reactor pressure vessel integrated surveillance program.

Date of issuance: August 13, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 160/146.

Facility Operating License Nos. NPF–11 and NPF–18: The amendments approve revisions to the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** February 4, 2003 (68 FR 5669). The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** Notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 13, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: November 30, 2001.

Brief description of amendment: This amendment revises Technical Specification 3/4.4.4, "Reactor Coolant System—Pressurizer," to adopt a new pressurizer high-level limit and to revise the required action when the pressurizer is inoperable.

Date of issuance: August 12, 2003.

[1] NRC letter to Consolidated Edison. "Order to Authorize Decommissioning and Amendment No. 45 to License No. DPR–5 for Indian Point Unit 1 (TAC No. M59664)," dated January 31, 1996.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 255.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 24, 2003 (68 FR 37578). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 2003.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: May 21, 2003.

Brief description of amendment: This amendment relocates to the Technical Requirements Manual the Technical Specification surveillance requirement pertaining to flow balance testing of the emergency core cooling system (ECCS) high pressure injection and low pressure injection subsystems following system modifications that alter subsystem flow characteristics. Also, the amendment adds an ECCS pump operability requirement to the Technical Specifications.

Date of issuance: August 12, 2003.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 256.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 10, 2003 (68 FR 34669). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 2003.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket No. 50–331, Duane Arnold Energy Center, Linn County, Iowa

Date of application for amendment: May 30, 2003.

Brief description of amendment: The amendment deletes technical specification (TS) 5.5.3, "Post Accident Sampling," and thereby eliminates the requirements to have and maintain the post accident sampling system (PASS) at the Duane Arnold Energy. The amendment also addresses related changes to TS 5.5.2, "Primary Coolant Sources Outside Containment."

Date of issuance: August 8, 2003.

Effective date: As of the date of issuance and shall be implemented within 180 days.

Amendment No.: 252.

Facility Operating License No. DPR–49: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 8, 2003 (68 FR 40713).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 2003.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002.

Brief description of amendment: The October 8, 2002, submittal proposed the following: (1) The use of a pressure temperature limits report (PTLR), (2) change the minimum boltup temperature, (3) revise the low temperature overpressure protection (LTOP) methodology and analysis, (4) perform the LTOP analyses "in-house," (5) change the LTOP enable temperature, (6) modify TS 2.10.1 to exactly specify the reactor coolant system (RCS) temperature at which the reactor can be made critical, and (7) add a TS for a maximum pressure value for the safety injection tanks. This amendment approves the use of a PTLR for the Fort Calhoun Station. As such TS Figure 2–1 (RCS Pressure—Temperature Limits for Heatup, Cooldown, and In-service Test) will be relocated into Figure 5–1 of the PTLR. In addition, the following TSs were either modified or added for the implementation of the PTLR: define the PTLR in Definitions; TS 2.1.1(8); TS 2.1.1(11); TS 2.1.2 and 2.1.2 References; TS 2.1.6(4); TS 2.3(1)(c); TS 2.3(3); TS 2.3 References; TS 2.10.1; Table 3–5, item 23, TS 3.3(1)(c); and TS 5.9.6. The following TS Bases sections were modified to reflect the implementation of the PTLR: TS 2.1.1, TS 2.1.2, and TS 2.10.1.

Date of issuance: August 15, 2003.

Effective date: August 15, 2003. The amendment shall be implemented within 30 days from the date of issuance, including submitting the first Pressure Temperature Limits Report to the NRC Document Control Desk with copies to the Region IV Regional Administration and Resident Inspector.

Amendment No.: 221.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 24, 2003 (68 FR 37579). The April 10, June 4, July 31, and August 5, 2003, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 15, 2003.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 8, 2002, as supplemented by letters dated April 11 and May 21, 2003.

Brief description of amendment: The amendment grants a one-time five-year extension to the current ten-year test interval for the containment integrated leak rate testing.

Date of issuance: August 15, 2003.

Effective date: August 15, 2003, and shall be implemented within 60 days from the date of issuance.

Amendment No.: 220.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 12, 2002 (67 FR 68742). The April 11 and May 21, 2003, supplemental letters provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 15, 2003.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: June 5, 2003.

Brief description of amendments: The amendments extend from 1 hour to 24 hours the completion time for Condition B of Technical Specification 3.5.1, which defines requirements for the restoration of an emergency core cooling system accumulator when it has been declared inoperable for a reason other than boron concentration.

Date of issuance: August 15, 2003.

Effective date: August 15, 2003, and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1—160; Unit 2—161.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 8, 2003 (68 FR 40716). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 2003.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 31, 2003.

Brief description of amendments: The amendments replace "Central Power and Light Company (CPL)" with "AEP Texas Central Company" throughout the Operating License of each unit.

Date of issuance: August 11, 2003.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment Nos.: Unit 1—155; Unit 2—143.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses.

Date of initial notice in ***Federal Register:*** June 10, 2003 (68 FR 34673). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 11, 2003.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: December 13, 2002, as supplemented May 19 and July 11, 2003.

Brief description of amendment: The amendment revised Technical Specification (TS) 5.7.2.12, "Steam Generator (SG) Tube Surveillance Program." The revised TS allows the use of Westinghouse leak-limiting Alloy 800 sleeves to repair defective SG tubes as an alternative to plugging the tube.

Date of issuance: August 15, 2003.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 44.

Facility Operating License No. NPF–90: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 18, 2003 (68FR12958). The supplemental letters provided clarifying information that did not expand the scope of the original request and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 15, 2003.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–280 and 50–281, Surry Power Station, Units 1 and 2, Surry County, Virginia

Date of application for amendments: November 5, 2002.

Brief Description of amendments: These amendments delete the requirement to perform a 15-minute degassed beta and gamma activity test of the secondary coolant and require that the dose equivalent I–131 analysis be performed on a more conservative monthly basis.

Date of issuance: August 15, 2003.

Effective date: August 15, 2003.

Amendment Nos.: 234 and 233.

Renewed Facility Operating License Nos. DPR–32 and DPR–37: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 24, 2002 (67 FR 78525). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 15, 2003.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 25th day of August, 2003.

For the Nuclear Regulatory Commission.

Eric J. Leeds,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–22106 Filed 8–29–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Request for Medicare Payment.

(2) *Form(s) submitted:* G–740S, CMS–1500.

(3) *OMB Number:* 3220–0131.

(4) *Expiration date of current OMB clearance:* 10/31/2003.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* See Justification (Item No. 12).

(8) *Total annual responses:* 1.

(9) *Total annual reporting hours:* 1.

(10) *Collection description:* The Railroad Retirement Board (RRB) administers the Medicare program for persons covered by the Railroad Retirement System. The collection obtains the information needed by Palmetto GBA, the RRB's carrier, to pay claims for services covered under Part B of the program.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–22227 Filed 8–29–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26170; File No. 812–13010]

The Equitable Life Assurance Society of the United States, et al.; Notice of Application

August 26, 2003.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940, as amended ("Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder.

APPLICANTS: The Equitable Life Assurance Society of the United States ("Equitable Life"), The Equitable of Colorado, Inc. ("EOC," and together with Equitable Life, "Equitable"), Separate Account No. 45 of Equitable Life ("SA 45"), Separate Account No. 49 of Equitable Life ("SA 49"), Separate Account VA of EOC ("SA VA," the foregoing separate accounts each an "Account" and collectively, the

"Accounts"), AXA Advisors, LLC,[1] and AXA Distributors, LLC[2] (collectively, "Applicants").

SUMMARY OF APPLICATION: Applicants seek an order to amend an Existing Order (described below) to grant exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit Applicants to recapture certain credits applied to contributions made under certain amended deferred variable annuity contracts and certificates, described herein, including certain amended certificate data pages and endorsements, that Equitable will issue through the Accounts (the "Amended Contracts"), and under contracts and certificates, including certain certificate data pages and endorsements, that Equitable may issue in the future through the Accounts, and any other separate accounts of Equitable Life or EOC (collectively, "Future Accounts") that are substantially similar in all material respects to the Amended Contracts (the "Future Contracts"). Applicants also request that the order being sought extend to "Equitable Broker-Dealers," as defined in the applications for the Existing Order (defined below) ("Prior Applications").[3]

FILING DATE: The application was filed on August 22, 2003.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 25, 2003, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest; the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549–0609. Applicants, c/o The Equitable Life Assurance Society of the United States, 1290 Avenue of the Americas, New York, New York 10104, Attn: Robin Wagner, Esq. Copy to Foley & Lardner, 3000 K Street, Suite 500, Washington, DC 20007, Attn: Richard T. Choi.

FOR FURTHER INFORMATION CONTACT: Mark A. Cowan, Senior Counsel, or Zandra Y. Bailes, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549 (tel. (202) 942–8090).

Applicants' Representations

1. On May 3, 1999, the Commission issued an order ("May 1999 Order")[4] exempting certain transactions of Applicants from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder. The May 1999 Order specifically permits the recapture, under specified circumstances, of certain 3% Credits applied to contributions made under Contracts or Future Contracts as defined in the application for the May 1999 Order.[5] Specifically, the May 1999 Order permits recapture of Credits if the Contract is returned during the free look period, or if contributions are made within 3 years of annuitization.

2. On July 28, 1999, the Commission issued an order of exemption amending the May 1999 Order ("July 1999 Order")[6] to permit the recapture of Credits of up to 5% under Contracts and Future Contracts under the same specified circumstances.

3. On May 21, 2001, the Commission issued an order of exemption ("May 2001 Order") amending the July 1999 Order (together with the May 1999 Order and the July 1999 Order, the "Existing Order")[7] to permit the recapture of Credits of up to 6% under Contracts and Future Contracts under the same and certain additional circumstances. The additional circumstances include the recapture of Excess Credits when a Contract owner's Net First Year Contributions are lower than Total First Year Contributions, and when a Contract owner fails to fulfill the conditions of a Letter of Intent, all as described in the application for the May 2001 Order.[8]

4. Applicants believe that the Contracts and Amended Contracts are substantially similar in all material respects relevant to the Existing Order, and that the Amended Contracts would constitute Future Contracts covered by the Existing Order. Nevertheless, in view of certain differences from the Contracts reflected in the Amended Contracts, Applicants filed an Application to avoid any uncertainty regarding the availability of such relief with respect to the recapture of Credits of up to 6% under the Amended Contracts under the same circumstances described in the Prior Applications,[9] and under one additional circumstance described in paragraph 8 of Applicants' Representations, below.

5. The respective Accounts will fund the variable benefits available under the Amended Contracts. Units of interest in Accounts under the Amended Contracts they fund will be registered under the Securities Act of 1933 (the "1933 Act"). Equitable may issue Future Contracts through the Accounts. Equitable also may issue Future Contracts through Future Accounts. That portion of the respective assets of the Accounts that is equal to the reserves and other Amended Contract liabilities with respect to the Accounts is not chargeable with liabilities arising out of any other business of Equitable Life or EOC, as the case may be. Any income, gains or losses, realized or unrealized, from assets allocated to the Accounts are, in accordance with the respective Accounts' Amended Contracts, credited to or charged against the Accounts, without regard to other income, gains or losses of Equitable Life or EOC, as the case may be. The same will be true of any Future Account of Equitable Life or EOC.

6. Equitable Life previously offered Contracts as described in the Prior Applications ("2001 Contracts covered by the Existing Order"). Equitable Life currently offers Contracts that constitute Future Contracts covered by the Existing Order. At the appropriate time after

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[1] Formerly named EQ Financial Consultants, Inc.

[2] On January 1, 2002, AXA Distributors, LLC succeeded by merger to all of the functions, rights and obligations of Equitable Distributors, Inc. ("EDI"). Like EDI, AXA Distributors, LLC is owned by Equitable Holdings, LLC.

[3] *The Equitable Life Assurance Society of the United States*, Investment Company Act Release Nos. 23774 (Apr. 7, 1999) (File No. 812–11388), 23889 (July 2, 1999) (File No. 812–11662), and 24963 (April 26, 2001) (File No. 812–12392).

[4] *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 23822 (File No. 812–11388).

[5] *The Equitable Life Assurance Society of the United States*, Investment Company Act Release Nos. 23774 (Apr. 7, 1999)(File No. 812–11388).

[6] *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 23924 (File No. 812–11662).

[7] *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 24980 (File No. 812–12392).

[8] *The Equitable Life Assurance Society of the United States*, Investment Company Act Release No. 24963 (April 26, 2001) (File No. 812–12392).

[9] Pursuant to Rule 0–4 under the Act, Applicants incorporate by reference the statement of facts set out in the Prior Applications to the extent necessary to support this Application. Applicants represent that all of the acts asserted in the Prior Application remain true and accurate in all material aspects to the extent that such facts are relevant to any relief on which Applicants continue to rely.

effectiveness of the amended registration statements describing the Amended Contracts, Equitable Life will begin offering the Amended Contracts, as well.

7. The Amended Contracts reflect certain differences from the 2001 Contracts covered by the Existing Order. However, Applicants respectfully submit that these differences do not preclude the Amended Contracts from being substantially similar in all material respects to the 2001 Contracts covered by the Existing Order such that they constitute Future Contracts covered by the Existing Order. Nevertheless, as stated above, Applicants are filing this Application to avoid any uncertainty that may arise as a result of the following differences between the 2001 Contracts covered by the Existing Order and the Amended Contracts:

a. Separate Account Charges

2001 Contracts covered by the Existing Order have a mortality and expense risk charge at the annual rate of 1.10% and an administrative expense charge at the annual rate of 0.25%. Amended Contracts have a mortality and expense risk charge at the annual rate of 0.90% and an administrative expense charge of 0.35%.

b. Death Benefit Options and Death Benefit Charges

2001 Contracts covered by the Existing Order offer a guaranteed minimum death benefit ("GMDB") of either a "5% roll up to age 80" or an "annual ratchet to age 80" at no additional charge. Amended Contracts offer a GMDB (return of premiums) at no additional charge; an optional "annual ratchet to age 85" death benefit for a charge at the annual rate of 0.25% of the applicable benefit base; and an optional "greater of 5% roll up to age 85 or annual ratchet to age 85" death benefit for a charge at the annual rate of 0.50% of the applicable benefit base.

Under 2001 Contracts covered by the Existing Order, withdrawals reduce the GMDB as follows: (i) For Contracts with the 5% roll up to age 80, withdrawals reduce the GMDB on a dollar-for-dollar basis to the extent the sum of withdrawals in a contract year is 5% or less of the GMDB on the most recent contract date anniversary, and on a pro-rata basis thereafter; and (ii) for Contracts with the annual ratchet to age 80, all withdrawals reduce the GMDB on a pro-rata basis. Under Amended Contracts, for all death benefit options, withdrawals reduce the GMDB benefit base on a pro-rata basis.

c. Income Benefit

2001 Contracts covered by the Existing Order may offer an optional baseBuilder income benefit for a charge at the annual rate of 0.30% of the applicable benefit base. Amended Contracts offer an optional guaranteed minimum income benefit for a charge at the annual rate of 0.55% of the guaranteed minimum income benefit base.

d. Protection Plus Benefit

2001 Contracts covered by the Existing Order offer an optional Protection Plus benefit for an annual charge 0.20% of account value (deducted on each contract date anniversary). Amended Contracts offer an optional Protection Plus benefit for an annual charge of 0.35% of account value (deducted on each contract date anniversary).

For Contract owners who elect the Protection Plus benefit (available for nonqualified contracts, subject to state availability), the death benefit is equal to: (i) The greater of the account value or any applicable death benefit, plus (ii) 40% (25% for annuitant issue ages 70–75) of the lesser of total net contributions or the death benefit less total net contributions. For Amended Contract owners who elect the Protection Plus benefit (available for nonqualified, IRA and tax sheltered annuity contracts, subject to state availability), the death benefit is equal to: (i) The greater of the account value or any applicable death benefit, plus (ii) 40% (25% for annuitant issue ages 71–75) of such death benefit less total net contributions.

e. Guaranteed Principal Benefits

Amended Contracts offer a guaranteed principal benefit Option 1 for no additional charge, and a guaranteed principal benefit Option 2 for a charge of 0.50% as a percentage of account value (deducted annually on the first 10 contract date anniversaries).

f. Administrative Charge

2001 Contracts covered by the Existing Order do not impose an annual administrative expense charge. Amended Contracts have an annual administrative expense charge of $30 (deducted from account value on each contract date anniversary).[10] The charge is waived for account values of $50,000 or more on the contract date anniversary.

g. Contract Withdrawal Charge

2001 Contracts covered by the Existing Order and Amended Contracts impose a withdrawal charge equal to a percentage of contributions determined by the contract year in which such contributions are withdrawn as follows[11]:

(In percentages)

Contract year	1	2	3	4	5	6	7	8	9	10+
2001 contracts covered by the existing order	8	8	7	6	5	4	3	2	1	0
Amended contracts	8	8	7	7	6	5	4	3	0	0

2001 Contracts covered by the Existing Order offer an annual 15% "free corridor" amount. Amended Contracts offer an annual 10% "free withdrawal" amount.

h. Credits

2001 Contracts covered by the Existing Order offered Credits based on contributions as described in the Prior Applications according to the following schedule:

Contributions		Credit rate (as a percentage of contribution)
At Least	But Less Than	
Minimum	$ 250,000	4.0
$ 250,000	$ 1,000,000	5.0
$ 1,000,000	Maximum	6.0

[10] During the first two contract years, the charge is the lesser of $30 or 2% of the account value.

[11] A withdrawal charge applies in two circumstances: (1) if one or more withdrawals are made during a contract year that, in total, exceed the free withdrawal amount or (2) the contract is surrendered in order to receive its cash value or cash value is applied to a non-life contingent annuity payout option.

Amended Contracts Order may offer Credits based on contributions as described in the Prior Applications Credits according to the following schedule:

Contributions		Credit rate (as a percentage of contribution)
At least	But less than	
Minimum	$ 500,000	4.0
$ 500,000	$ 1,000,000 ...	4.5
$ 1,000,000 ...	Maximum	5.0

i. Fixed Investment Options

2001 Contracts covered by the Existing Order do not offer a "guaranteed interest account." Amended Contracts offer a "guaranteed interest account" that pays a guaranteed rate of interest and is not subject to a market value adjustment. Equitable will recapture Credits on a pro rata basis from the value in the variable investment options and the guaranteed interest account. If those amounts are insufficient, Equitable will deduct the balance from the fixed maturity options in order of the earliest maturity dates first.

j. Annuitization

Under 2001 Contracts covered by the Existing Order and Amended Contracts (except in Florida) annuity payments may not begin earlier than the fifth contract date anniversary. Under Amended Contracts issued in Florida, annuity payments may begin as early as the first contract date anniversary

8. Applicants may recapture Credits of up to 6% under the Amended Contracts under the same circumstances covered by the Existing Order, described above. In addition, if an Amended Contract owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary, Equitable will recover the Credit that applies to any contribution made within such five-year period.

9. Applicants submit that their request for an order that applies to the Accounts or any Future Account, in connection with the issuance of Amended Contracts described herein and Future Contracts that are substantially similar in all material respects to the Amended Contracts and underwritten or distributed by AXA Advisors, LLC, AXA Distributors, LLC, or Equitable Broker-Dealers, is appropriate in the public interest for the same reasons as those given in support of the Existing Order.

Applicants' Legal Analysis

1. Section 6 (c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the Act, granting exemptions from the provisions of Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder, to the extent necessary to permit Applicants to recapture Credits under Amended Contracts under the same circumstances covered by the Existing Order, and if an Amended Contract owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary, as described in paragraph 8 of Applicants' Representations, above.[12]

3. Applicants submit that the recapture of Credits under the Amended Contracts will not raise concerns under Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act, and Rule 22c–1 thereunder for the same reasons given in support of the Existing Order. Applicants submit that when Equitable recaptures any Credit, it is simply retrieving its own assets. Applicants submit that a Contract owner's interest in any Credit allocated before an owner starts receiving annuity payments under a life contingent payout option within the first five contract years is not vested. Rather, Equitable retains the right to, and interest in, the Credit, although not any earnings attributable to the Credit.

4. Applicants state that because a Contract owner's interest in any recapturable Credit is not vested, the owner will not be deprived of a proportionate share of the applicable Account's assets, *i.e.*, a share of the applicable Account's assets proportionate to the Contract owner's annuity account value (taking into account the investment experience attributable to any Credit). The amounts recaptured will never exceed the Credits provided by Equitable from its own general account assets, and Equitable will not recapture any gain attributable to the Credit.

[12] Pursuant to Rule 0–4 under the Act, Applicants incorporate by reference the legal analysis set out in the Prior Application.

5. Applicants submit that the recapture of Credits relating to contributions made prior to the date an owner starts receiving annuity payments under a life contingent annuity payout option before the fifth contract date anniversary is designed to provide Equitable with a measure of protection against "anti-selection." The risk here is that rather than investing contributions over a number of years, a Contract owner could make an initial contribution, receive Credits, then annuitize under a life contingent annuity payout option within the first five contract years leaving Equitable less time to recover the cost of the Credits applied, to its financial detriment. Like the recapture of Credits permitted by the Existing Order, the amounts recaptured will equal the Credits provided by Equitable from its own general account assets, and any gain associated with the Credit will remain part of the Contract owner's Contract value.

6. For the foregoing reasons, Applicants submit that the provisions for recapture of any Credit under the Amended Contracts do not violate Section 2(a)(32), 22(c), and 27(i)(2)(A) of the Act, and Rule 22c–1 thereunder, and that the requested relief therefrom is consistent with the exemptive relief provided under the Existing Order.

Conclusion

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22293 Filed 8–29–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48410; File No. SR–Amex–2003–76]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Extend a Suspension of Transaction Charges for Certain Exchange Traded Funds

August 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 22, 2003, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to extend until September 30, 2003, the suspension of Amex transaction charges for the iShares Lehman 1–3 year Treasury Bond Fund and iShares Lehman 7–10 year Treasury Bond Fund for specialist, Registered Trader and broker-dealer orders. The text of the proposed rule change is available at the Amex and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange provided the Commission with notice of its intention to file this proposed rule change on August 20, 2003. The Commission reviewed the pre-filing notice and advised the Amex to file the proposed rule change. August 20, 2003 conversation between Michael Cavalier, Associate General Counsel ("AGC"), Amex, and Joseph P. Morra, Special Counsel, Division of Market Regulation ("Division"), Commission. On August 26, 2003, the Amex asked the Commission to waive the 30-day operative delay. August 26, 2003 telephone conversation between Michael Cavalier, AGC, Amex, and Joseph P. Morra, Special Counsel, Division, Commission. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b-4(f)(6)(iii).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex is extending until September 30, 2003, the suspension of transaction charges in iShares Lehman 1–3 year Treasury Bond Fund (Symbol: SHY) and iShares Lehman 7–10 year Treasury Bond Fund (Symbol: IEF), for specialist, Registered Trader and broker-dealer orders. The Exchange initially filed a suspension in such charges until November 30, 2002 in SR–Amex–2002–91. The fee suspension has subsequently been extended, most recently until August 30, 2003, in SR–Amex–2003–73. No other changes are proposed with this filing.

The Exchange believes a suspension of fees for the two iShares Funds is appropriate to enhance the competitiveness of executions in these securities on the Amex. The Exchange will reassess the fee suspension as appropriate, and will file any modification to the fee suspension with the Commission pursuant to section 19(b)(3)(A) of the Act.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(4)[7] in particular in that it is intended to assure the equitable allocation of reasonable dues, fees, and other charges among the Amex's members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose a burden on competition.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Amex has requested that the Commission waive the 30-day operative delay. The Commission believes waiving the 30-day operative delay is consistent with the protection of investors and the public interest. Acceleration of the operative date will permit the Amex to suspend these fees immediately. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR-Amex-2003-76 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-22233 Filed 8-29-03; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48398; File No. SR-Amex-2003-75]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Eight Series of the iShares Trust Based on a Specified Fixed Income Index

August 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 20, 2003, the American Stock Exchange LLC (the "Amex" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list under Rule 1000A the following eight additional series of the iShares Trust ("Trust"), each a "New Fund": (1) iShares Lehman Short U.S. Treasury Bond Fund; (2) iShares Lehman 3-7 Year U.S. Treasury Bond Fund; (3) iShares Lehman 10-20 Year U.S. Treasury Bond Fund; (4) iShares Lehman U.S. Treasury Inflation Protected Securities Fund; (5) iShares Lehman U.S. Credit Bond Fund; (6) iShares Lehman Intermediate U.S. Credit Bond Fund; (7) iShares Lehman Intermediate U.S. Government/Credit Bond Fund; and (8) iShares Lehman U.S. Aggregate Bond Fund.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

Purpose

Amex Rule 1000A provides standards for listing Index Fund Shares, which are securities issued by an open-end management investment company (open-end mutual fund) for Exchange trading. These securities are registered under the Investment Company Act of 1940 ("1940 Act") as well as the Exchange Act. The Commission previously approved amendments to Rule 1000A to accommodate the listing of Index Fund Shares based on an index of fixed income securities, and in particular, series of the iShares Trust based on indexes of fixed income securities.[3]

The Exchange proposes to list under Rule 1000A the following eight additional series of the iShares Trust ("Trust"), each a "New Fund": (1) iShares Lehman Short U.S. Treasury Bond Fund; (2) iShares Lehman 3-7 Year U.S. Treasury Bond Fund; (3) iShares Lehman 10-20 Year U.S. Treasury Bond Fund; (4) iShares Lehman U.S. Treasury Inflation Protected Securities Fund; (5) iShares Lehman U.S. Credit Bond Fund; (6) iShares Lehman Intermediate U.S. Credit Bond Fund; (7) iShares Lehman Intermediate U.S. Government/Credit Bond Fund; and (8) iShares Lehman U.S. Aggregate Bond Fund.

Each New Fund will hold certain fixed income securities ("Portfolio Securities") selected to correspond generally to the performance of a specified U.S. bond index (each, an "Underlying Index"), as described in Exhibit A to the Rule 19b-4 filing. Each of the New Funds intends to qualify as a "regulated investment company" (a "RIC") under the Internal Revenue Code (the "Code").

Barclays Global Fund Advisors (the "Advisor" or "BGFA") is the investment adviser to each New Fund. The Advisor is registered under the Investment Advisers Act of 1940 (the "Advisers Act"). The Advisor is a wholly owned subsidiary of Barclays Global Investors, N.A. ("BGI"), a national banking association. BGI is an indirect subsidiary of Barclays Bank PLC of the United Kingdom.

SEI Investments Distribution Co. (the "Distributor"), a Pennsylvania corporation and broker-dealer registered under the Exchange Act, is the principal underwriter and distributor of Creation Unit Aggregations of iShares. The Distributor is not affiliated with the Exchange or the Advisor.

Administrator/Custodian/Fund Accountant/Transfer Agent/Dividend Disbursing Agent. The Trust has appointed Investors Bank & Trust Co. ("IBT") to act as administrator (the "Administrator"), custodian, fund accountant, transfer agent, and dividend disbursing agent for each of the New Funds. The performance of their duties and obligations will be conducted within the provisions of the 1940 Act and the rules thereunder. There is no affiliation between IBT and the Trust, the Advisor, or the Distributor.

a. Operation of the New Funds

The investment objective of each New Fund will be to provide investment results that correspond generally to the performance of its Underlying Index. In seeking to achieve its respective investment objective, each New Fund will utilize "passive" indexing investment strategies. Each New Fund may fully replicate its Underlying Index, but currently intends to use a "representative sampling" strategy to track its Underlying Index. A Fund utilizing a representative sampling strategy generally will hold a basket of the component securities ("Component Securities") of its Underlying Index, but it may not hold all of the Component Securities of its Underlying Index (as compared to a Fund that uses a replication strategy which invests in substantially all of the Component Securities in its Underlying Index in the same approximate proportions as in the

[11] 17 CFR 200.30-3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 46252 (July 24, 2002), 67 FR 49715 (July 31, 2002) ("Previous Approval Order").

Underlying Index).[4] The representative sampling techniques that will be used by the Advisor to manage the New Funds do not differ from the representative sampling techniques it uses to manage the Funds that were the subject of the Commission's June 25, 2002 order under the 1940 Act relating to other series of the iShares Trust indexes of fixed income securities.[5]

When using a representative sampling strategy, the Advisor attempts to match the risk and return characteristics of a New Fund's portfolio to the risk and return characteristics of the Underlying Index. As part of this process, the Advisor subdivides each Underlying Index into smaller, more homogeneous pieces. These subdivisions are sometimes referred to as "cells." A cell will contain securities with similar characteristics. For fixed income indices, the Advisor generally divides the index according to the five parameters that determine a bond's risk and expected return: (1) Duration, (2) sector, (3) credit rating, (4) coupon, and (5) the presence of embedded options. When completed, all bonds in the index will have been assigned a cell. The Advisor then begins to construct the portfolio by selecting representative bonds from these cells. The representative sample of bonds chosen from each cell is designed to closely correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of each cell. The characteristics of each cell when combined are, in turn, designed to closely correlate to the duration, sector, credit rating, coupon, and embedded option characteristics of the Underlying Index as a whole. The Advisor may exclude less liquid bonds in order to create a more tradable portfolio and improve arbitrage opportunities.

According to the Original Application, the representative sampling techniques used by the Advisor to manage fixed income funds do not materially differ from the representative sampling techniques it uses to manage equity funds. Due to the differences between bonds and equities, the Advisor analyzes different information—such as dividend payments instead of coupon rates, for example.

According to the Original Application, the New Funds' use of the representative sampling strategy is beneficial for a number of reasons. First, the Advisor can avoid bonds that are "expensive names" (*i.e.*, bonds that trade at perceived higher prices or lower yields because they are in short supply) but have the same essential risk, value, duration and other characteristics as less expensive names. Second, the use of representative sampling techniques permits the Advisor to exclude bonds that it believes will soon be deleted from the Underlying Index. Third, the Advisor can avoid holding bonds it deems less liquid than other bonds with similar characteristics. Fourth, the Advisor can develop a basket that is easier to construct and cheaper to trade, thereby potentially improving arbitrage opportunities.

From time to time, adjustments may be made in the portfolio of each New Fund in accordance with changes in the composition of the Underlying Index or to maintain RIC compliance. For example, if at the end of a calendar quarter a New Fund would not comply with the RIC diversification tests, the Advisor would make adjustments to the portfolio to ensure continued RIC status. The Exchange represents that the Advisor expects that each New Fund will have a tracking error relative to the performance of its respective Underlying Index of no more than five percent (5%).[6] Each New Fund's investment objectives, policies and investment strategies will be fully disclosed in its Prospectus and Statement of Additional Information. Each New Fund (except the iShares Lehman U.S. Aggregate Bond Fund) will invest at least 90% of its assets in Component Securities of its respective Underlying Index. Each of these New Funds may also invest up to 10% of its assets in bonds not included in its Underlying Index, but which the Advisor believes will help the New Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents. For example, these New Funds may invest in securities not included in the relevant Underlying Index in order to reflect prospective changes in the relevant Underlying Index (such as future corporate actions and index reconstitutions, additions and deletions).

According to the Application, with respect to the iShares Lehman U.S. Aggregate Bond Fund (the "Lehman Aggregate Fund"), additional portfolio flexibility would benefit the Fund, while at the same time permitting it to closely track the performance of its Underlying Index. The Lehman Aggregate Fund will: (i) seek to track the performance of that portion of its Underlying Index comprised of U.S. Treasury securities, U.S. agency securities, corporate bonds, non-corporate bonds (*e.g.*, bonds issued by supra-national entities such as the International Monetary Fund), asset-backed securities, and commercial mortgage-backed securities (approximately 65% of the Underlying Index as of April 30, 2003) by investing a corresponding percentage of its net assets (*i.e.*, approximately 65%) in the Component Securities of its Underlying Index;[7] and (ii) seek to track the performance of that portion of its Underlying Index invested in U.S. agency mortgage pass-through securities (approximately 35% of the Underlying Index as of April 30, 2003) by investing a corresponding percentage of its net assets (*i.e.*, approximately 35%) through TBA transactions (as defined below) on U.S. agency mortgage pass-through securities. Through the Lehman Aggregate Fund's direct investments in Component Securities of its Underlying Index and its investments in mortgage pass-through securities through TBA transactions as described above, the Lehman Aggregate Fund will have at least 90% of its net assets invested (i) in Component Securities of its Underlying Index and (ii) in investments that have economic characteristics that are substantially identical to the economic characteristics of the Component

[4] The Trust, Advisor and Distributor ("Applicants") have filed with the Commission an Application for an Amended Order ("Application") under Sections 6(c) and 17(b) of the 1940 Act for the purpose of exempting the New Funds of the Trust from various provisions of the 1940 Act. (File No. 812–13003). A notice of the Application was issued in Investment Company Act Release No. 26151, August 15, 2003. The information provided in this Rule 19b-4 filing related to the New Funds is based on information included in the Application, which includes additional information regarding the Trust and the New Funds. The initial Application for additional series of the iShares Trust based on indexes of fixed income securities (File No 812–12390) is referred to herein as the "Original Application." The Original Application was approved in Investment Company Act Release No. 25622, June 25, 2002 ("Order"). *See also*, the Previous Approval Order, *supra* note 3, for additional information relating to series of the iShares Trust, as described in the Original Application.

[5] *See In the Matter of iShares Trust, et al.*, Investment Company Act Release No. 25622 (June 25, 2002) (relating to the iShares 1–3 Year Treasury Index Fund, 7–10 Year Treasury Index Fund, 20+ Year Treasury Index Fund, Treasury Index Fund, Government/Credit Index Fund, Lehman Corporate Bond Fund and GS$ InvesTop Corporate Bond Fund).

[6] Telephone call among Mike Cavalier, Associate General Counsel, Amex; Marc McKayle, Special Counsel, Division of Market Regulation ("Division"), Commission; and Jennifer Lewis, Special Counsel, Division, Commission, on August 20, 2003.

[7] With respect to this portion of its portfolio, the Lehman Aggregate Fund may invest up to 10% of its portfolio in bonds not included in its Underlying Index, but which the Adviser believes will help the Lehman Aggregate Fund track its Underlying Index, as well as in certain futures, options and swap contracts, cash and cash equivalents.

Securities of its Underlying Index (*i.e.*, TBA transactions).

According to the Application, the Lehman Aggregate Fund needs the investment flexibility to engage in TBA transactions as described above primarily because approximately 35% of the securities in the Lehman Aggregate Fund's Underlying Index are expected to be pools of U.S. agency mortgage pass-through securities.[8] As discussed below, it is easier to trade and obtain intra-day prices of TBAs than it is to trade and obtain intra-day prices of specific pools of mortgage pass-through securities. The readily available information about intra-day pricing of TBAs and the ease with which they can be traded should make it easier to create and redeem Creation Unit Aggregations and help maintain the efficiency of the Fund's arbitrage mechanism.

The Application states that, although the market for mortgage pass-through securities is extremely deep and liquid, it is impractical to trade mortgage pass-through securities on a pool-by-pool basis, particularly when large dollar amounts are involved. For this reason, the vast majority of mortgage pools are traded using "to-be-announced" or "TBA transactions." A "TBA transaction" essentially is a purchase or sale of a pass-through security for future settlement at an agreed upon date.[9] It has been estimated that 90% of mortgage pass-through securities (as measured by total dollar volume) are executed as TBA trades.[10] TBA transactions increase the liquidity and pricing efficiency of transactions in mortgage pass-through securities since they permit similar mortgage pass-through securities to be traded interchangeably pursuant to commonly observed settlement and delivery requirements.

The Lehman Aggregate Fund intends to use TBA transactions to acquire and maintain exposure to that portion of the Lehman U.S. Aggregate Index comprised of pools of mortgage pass-through securities in either of two ways. First, and more commonly, the Lehman Aggregate Fund will enter into TBA agreements and "roll over" such agreements prior to the settlement date stipulated in such agreements. This type of TBA transaction is commonly known as a "TBA roll." In a "TBA roll" the Lehman Aggregate Fund generally will sell the obligation to purchase the pools stipulated in the TBA agreement prior to the stipulated settlement date and will enter into a new TBA agreement for future delivery of pools of mortgage pass-through securities. Second, and less frequently, the Lehman Aggregate Fund will enter into TBA agreements and settle such transactions on the stipulated settlement date by actual receipt or delivery of the pools of mortgage pass-through securities stipulated in the TBA agreement. Since intra-day prices of TBA agreements are more readily available than intra-day prices on specific mortgage pools and because mortgage pools tend to be less liquid than TBA agreements, the use of TBA agreements should help maintain the efficiency of the Fund's arbitrage mechanism. The Lehman Aggregate Fund will accept actual delivery of mortgage pools only when the Adviser believes it is in the best interests of the Lehman Aggregate Fund and its shareholders to do so. In determining whether to accept actual delivery of mortgage pools, the Adviser will consider, among other things, the potential impact of such acceptance on the efficiency of the Lehman Aggregate Fund's arbitrage mechanism and the Lehman Aggregate Fund's ability to track its Underlying Index. For these reasons, the Adviser believes that the ability to invest a significant portion of the Lehman Aggregate Fund's assets through TBA transactions and to maintain such exposure through the use of TBA rolls would increase the liquidity and pricing efficiency of the Lehman Aggregate Fund's portfolio. In addition, since holding a TBA position exposes the holder to substantially identical market and economic risks as holding a position in a corresponding pool of mortgage pass-through securities, the Adviser believes that the use of TBA transactions as described herein should permit the Lehman Aggregate Fund to closely track the performance of its Underlying Index.

The use of TBA transactions is not intended to help the Lehman Aggregate Fund outperform its Underlying Index, but rather to increase pricing efficiency while at the same time maintaining the Lehman Aggregate Fund's exposure to its Underlying Index.[11]

b. Issuance of Creation Unit Aggregations

The issuance of Creation Unit Aggregations will operate, except as noted below, in a manner identical to that of the Funds described in the Previous Approval Order, and in the Original Application. The only difference between the creation process for the New Funds and that of the Funds that are the subject of the Order involves the Lehman Aggregate Fund (discussed below).

1. *In General.* Shares of each New Fund (the "iShares") will be issued on a continuous offering basis in groups of 50,000 or more. These "groups" of shares are called "Creation Unit Aggregations." The New Funds will issue and redeem iShares only in Creation Unit Aggregations.[12] As with other open-end investment companies, iShares will be issued at the net asset value ("NAV") per share next determined after an order in proper form is received. The anticipated price at which the iShares will initially trade is approximately $100.

The NAV per share of each New Fund is determined as of the close of the regular trading session on the Amex on each day that the Amex is open. The Trust sells Creation Unit Aggregations of

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[8] As used herein, the term "U.S. agency mortgage pass-through security" or "mortgage pass-through security" refers to a category of pass-through securities backed by pools of mortgages and issued by one of several U.S. Government-sponsored enterprises: the Government National Mortgage Association ("GNMA"), Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC"). In the basic pass-through structure, mortgages with similar issuer, term and coupon characteristics are collected and aggregated into a pool. The pool is assigned a CUSIP number and undivided interests in the pool are traded and sold as pass-through securities. The holder of the security is entitled to a *pro rata* share of principal and interest payments (including unscheduled prepayments) from the pool of mortgage loans. The portion of the Lehman U.S. Aggregate Index representing the mortgage pass-through segment of the U.S. investment grade bond market is comprised of multiple pools of mortgage pass-through securities.

[9] "TBA" refers to a mechanism for the forward settlement of agency mortgage pass-through securities, and not to a separate type of mortgage-backed security. TBA trades generally are conducted in accordance with widely-accepted "Good Delivery" guidelines published by The Bond Market Association. The Good Delivery guidelines facilitate transactions in mortgage pass-through securities by establishing commonly observed terms and conditions for execution, settlement and delivery. In a TBA trade, the buyer and seller decide on general trade parameters, such as agency, coupon, term to maturity, settlement date, par amount, and price. The actual pools delivered are determined two days prior to settlement date. TBA transactions promote efficient pricing because the Good Delivery guidelines permit only a small variance between the face amount of the pools actually delivered and the nominal agreed upon amount. Intra-day and end-of-day pricing of TBAs is available from multiple pricing sources, such as Bloomberg and Tradeweb. The Bond Market Association publishes standard notification and settlement dates for TBA trades specifying uniform settlement dates for specific classes of securities. The most active trading market for TBA trades is usually for next-month settlement. *See generally TBAs: To-Be-Announced Mortgage Securities Transactions*, The Bond Market Association (1999).

[10] *Id.* at 3.

[11] Telephone call between Mike Cavalier, Associate General Counsel, Amex; and Florence Harmon, Senior Special Counsel, Division, Commission, on August 22, 2003.

[12] Generally, each Creation Unit Aggregation will consist of 50,000 or more iShares and the estimated initial value per Creation Unit Aggregation will be approximately $5 million.

each New Fund only on business days at the next determined NAV of each New Fund.

Creation Unit Aggregations will be issued by each Fund in exchange for the in-kind deposit of a portfolio securities designated by the Advisor to correspond generally to the price and yield performance of the New Fund's Underlying Index (the "Deposit Securities"). Purchasers will generally be required to deposit a specified cash payment in the manner more fully described in the Application. Creation Unit Aggregations will be redeemed by each New Fund in exchange for portfolio securities of the New Fund ("Fund Securities") and a specified cash payment in the manner more fully described herein. Fund Securities received on redemption may not be identical to Deposit Securities deposited in connection with creations of Creation Unit Aggregations for the same day.

The Distributor will act on an agency basis and will be the Trust's principal underwriter for the iShares in Creation Unit Aggregations of each New Fund. All orders to purchase iShares in Creation Unit Aggregations must be placed with the Distributor by or through an authorized participant ("Authorized Participant"). Authorized Participants, which are required to be Depository Trust Company ("DTC") participants, must enter into a participant agreement with the Distributor. The Distributor will transmit such orders to the applicable New Fund and furnish to those placing orders confirmation that the orders have been accepted. The Distributor may reject any order that is not submitted in proper form. The Distributor will be responsible for delivering the prospectus to those persons creating iShares in Creation Unit Aggregations and for maintaining records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of iShares.

2. *In-Kind Deposit of Portfolio Securities.* Payment for Creation Unit Aggregations placed through the Distributor will be made by the purchasers generally by an in-kind deposit with the New Fund of the Deposit Securities together with an amount of cash (the "Balancing Amount") specified by the Advisor in the manner described below. The Balancing Amount is an amount equal to the difference between (1) the NAV (per Creation Unit Aggregation) of the New Fund and (2) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities (such value referred to herein as the "Deposit Amount"). The Balancing Amount serves the function of compensating for differences, if any, between the NAV per Creation Unit Aggregation and that of the Deposit Amount. The deposit of the requisite Deposit Securities and the Balancing Amount are collectively referred to herein as a "Portfolio Deposit."

The Advisor will make available to the market through the National Securities Clearing Corporation (the "NSCC") on each Business Day, prior to the opening of trading on the Amex (currently 9:30 a.m. eastern time), the list of the names and the required number of shares of each Deposit Security included in the current Portfolio Deposit (based on information at the end of the previous Business Day) for the relevant New Fund. The Portfolio Deposit will be applicable to a New Fund (subject to any adjustments to the Balancing Amount, as described below) in order to effect purchases of Creation Unit Aggregations of the New Fund until such time as the next-announced Portfolio Deposit composition is made available.

The identity and number of shares of the Deposit Securities required for the Portfolio Deposit for each New Fund will change from time to time. The composition of the Deposit Securities may change in response to adjustments to the weighting or composition of the Component Securities in the relevant Underlying Index. These adjustments will reflect changes, known to the Advisor to be in effect by the time of determination of the Deposit Securities, in the composition of the Underlying Index being tracked by the relevant New Fund, or resulting from rebalance or additions or deletions to the relevant Underlying Index. In addition, the Trust reserves the right with respect to each New Fund to permit or require the substitution of an amount of cash (*i.e.*, a "cash in lieu" amount) to be added to the Balancing Amount to replace any Deposit Security: (1) that may be unavailable or not available in sufficient quantity for delivery to the Trust upon the purchase of iShares in Creation Unit Aggregations, or (2) that may not be eligible for trading by an Authorized Participant or the investor on whose behalf the Authorized Participant is acting.

The Lehman Aggregate Fund may invest in and hold mortgage pass-through securities on a TBA basis. Since a TBA transaction is essentially an agreement for future settlement of a mortgage security, it is not possible to accept TBAs as part of the Portfolio Deposit. Instead, the Fund will designate the mortgage pass-through TBAs to be included in a Portfolio Deposit just as it would any other Deposit Securities of a Portfolio Deposit, and will accept "cash in lieu" of delivery of the designated mortgage pass-through TBAs. The Lehman Aggregate Fund will then enter into TBA agreements included as Deposit Securities in the Portfolio Deposit.[13] According to the Application, this will substantially minimize the Lehman Aggregate Fund's transaction costs, enhance operational efficiencies and otherwise reduce any operational issues which the acceptance of pools of mortgage pass-through securities might otherwise present.[14]

c. Availability of Information Regarding iShares and Underlying Indices

On each Business Day, the list of names and amount of each treasury security, government security or corporate bond constituting the current Deposit Securities of the Portfolio

[13] Prior to settlement of such TBA transactions, the "cash in lieu" portion of the Portfolio Deposit will be invested in cash equivalents, including money market mutual funds, and such investments, along with cash and other liquid assets identified by BGFA, will be segregated on the books and records of the Fund or its Custodian in accordance with section 18 of the 1940 Act and Investment Company Act Release 10666. Since the price of a TBA transaction includes an assumed rate of return on the cash held in anticipation of settlement, the Fund's investment in cash equivalents prior to settlement is not expected to have a material impact on potential tracking error or the Fund's ability to track its Underlying Index. In addition, since the interest or dividends that the Fund accrues on a daily basis on its investment in cash equivalents will be relatively small and will be included as part of the Cash Component published on a daily basis according to the procedures currently used for the Index Funds, Applicants expect that such dividends and interest will be reflected in the secondary market trading price of iShares of the Fund. The Commission's June 25, 2002 order relating to fixed income funds of the iShares Trust (Investment Company Act Release No. 45622) permits acceptance of a "cash-in lieu" amount to replace Deposit Securities that are unavailable for delivery or for other reasons. In addition, prior iShares orders expressly permit "cash-only purchases of Creation Unit Aggregations" where the Adviser believes such transactions would "substantially minimize * * * transactional costs or would enhance * * * operational efficiencies." *See* Investment Company Act Release No. 24452 (May 12, 2000).

[14] Intra-day and end-of-day pricing of TBAs is available from multiple pricing sources, such as Bloomberg and Tradeweb. In addition, the fungible nature of TBAs and commonly observed execution and settlement procedures create significant pricing efficiencies and market liquidity for TBAs. TBAs typically trade at very narrow spreads on transactions of up to $300 million or more. Since intra-day pricing of TBAs is readily available and the market for mortgage pass-through TBAs is extremely liquid, the designation of TBAs in the Portfolio Deposit and their inclusion as Fund Securities should make pricing of the Fund and the Deposit Amount more efficient and transparent, thus increasing arbitrage efficiency.

Deposit and the Balancing Amount effective as of the previous Business Day will be made available. An amount per iShare representing the sum of the estimated Balancing Amount effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per iShare basis (the "Intra-day Optimized Portfolio Value" or "IOPV") will be calculated by an independent third party (such as Bloomberg L.P.) ("Bloomberg") every 15 seconds during the AMEX's regular trading hours and disseminated every 15 seconds by such third party and by AMEX on AMEX's Consolidated Tape B. The IOPV will be updated throughout the day to reflect changing bond prices, as well as TBA prices, using multiple prices from independent third party pricing sources. Information about the intra-day prices for the Deposit Securities of each Fund is readily available to the marketplace.[15] Applicants represent (i) that IOPV will be calculated by an independent third party; (ii) that IOPV will be calculated using prices obtained from multiple independent third-party pricing sources (such as broker-dealers) throughout the day; and (iii) that IOPV will be calculated in accordance with pre-determined criteria and set parameters so that an individual bond "price" based on an analysis of multiple pricing sources is obtained for each security in a Portfolio Deposit.[16] Closing prices of the New Funds' Deposit Securities are readily available from published or other public sources, such as the Trace Reporting and Compliance Engine (commonly known as "TRACE"), or on-line client-based information services provided by Credit Suisse First Boston, Goldman Sachs, Lehman Brothers, Merrill Lynch, IDC, Bridge, Bloomberg, Tradeweb, and other pricing services commonly used by bond mutual funds.[17]

The Lehman Indices will not be calculated or disseminated intra-day. The value and return of each Lehman Index is calculated and disseminated each business day, at the end of the day, by Lehman Brothers.

Each New Fund will make available through NSCC on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the Balancing Amount. The NAV for each New Fund will be calculated and disseminated daily. The Amex also intends to disseminate a variety of data with respect to each New Fund on a daily basis by means of CTA and CQ High Speed Lines; information with respect to recent NAV, shares outstanding, estimated cash amount and total cash amount per Creation Unit Aggregation will be made available prior to the opening of the Amex. In addition, the Web site for the Trust, which will be publicly accessible at no charge, will contain the following information, on a per iShare basis, for each New Fund: (a) the prior Business Day's NAV and the mid-point of the bid-ask price[18] at the time of calculation of such NAV ("Bid/Ask Price"), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters.[19]

d. Redemption of iShares

Creation Unit Aggregations of each New Fund will be redeemable at the NAV next determined after receipt of a request for redemption. Creation Unit Aggregations of each New Fund will be redeemed principally in-kind, together with a balancing cash payment (although, as described below, Creation Unit Aggregations may sometimes be redeemed for cash). The value of each New Fund's redemption payments on a Creation Unit Aggregation basis will equal the NAV per the appropriate number of iShares of such New Fund. Owners of iShares may sell their iShares in the secondary market, but must accumulate enough iShares to constitute a Creation Unit Aggregation in order to redeem through the New Fund. Redemption orders must be placed by or through an Authorized Participant.

Creation Unit Aggregations of any New Fund generally will be redeemable on any Business Day in exchange for Fund Securities and the Cash Redemption Payment (defined below) in effect on the date a request for redemption is made. The Advisor will publish daily through NSCC the list of securities which a creator of Creation Unit Aggregations must deliver to the Fund (the "Creation List") and which a

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[15] Authorized Participants and other market participants have a variety of ways to access the intra-day security prices that form the basis of the Fund's IOPV calculation. For example, intra-day prices for treasury securities, agency securities and TBAs are available from Bloomberg, the Trace Reporting and Compliance Engine (commonly known as "TRACE") and TradeWeb. Intra-day prices for inflation protected public obligations of the U.S. Treasury ("TIPS") are available from Bloomberg and Tradeweb. Intra-day prices of callable agency securities are expected to be available from TradeWeb in July or sometime shortly thereafter. Intra-day prices of corporate bonds are available from TRACE. In addition, intra-day prices for each of these securities are available by subscription or otherwise to Authorized Participants and clients of major U.S. broker-dealers (such as Credit Suisse First Boston, Goldman Sachs and Lehman Brothers).

[16] For example, Bloomberg Generic Prices could be used. Bloomberg Generic Prices are current prices on individual bonds as determined by Bloomberg using a proprietary automated pricing program that analyzes multiple bond prices contributed to Bloomberg by third-party price contributors (such as broker-dealers).

[17] Applicants understand that Credit Suisse First Boston, Goldman Sachs, Lehman Brothers, Merrill Lynch, IDC, Bridge, and Bloomberg provide prices for each type of Deposit Security. Tradeweb provides prices for each type of Deposit Security except mortgage backed securities and corporate bonds. TRACE provides prices for corporate bonds.

[18] The Bid-Ask Price of a New Fund is determined using the highest bid and lowest offer on the Exchange as of the time of calculation of each New Fund's NAV.

[19] The secondary market for Treasury securities is a highly organized over-the-counter market. Many dealers, and particularly the primary dealers, make markets in Treasury securities. Trading activity takes place between primary dealers, non-primary dealers, and customers of these dealers, including financial institutions, non-financial institutions and individuals. Increasingly, trading in Treasury securities occurs through automated trading systems.

The primary dealers are among the most active participants in the secondary market for Treasury securities. The primary dealers and other large market participants frequently trade with each other, and most of these transactions occur through an interdealer broker. The interdealer brokers provide primary dealers and other large participants in the Treasury market with electronic screens that display the bid and offer prices among dealers and allow trades to be consummated.

Quote and trade information regarding Treasury securities is widely available to market participants from a variety of sources. The electronic trade and quote systems of the dealers and interdealer brokers are one such source. Groups of dealers and interdealer brokers also furnish trade and quote information to vendors such as Bloomberg, Reuters, Bridge, Moneyline Telerate, and CQG. GovPX, for example, is a consortium of leading government securities dealers and subscribers that provides market data from leading government securities dealers and interdealer brokers to market data vendors and subscribers. Trade Web, another example, is a consortium of 18 primary dealers that, in addition to providing a trading platform, also provides market data direct to subscribers or to other market data vendors.

Real-time price quotes for corporate and non-corporate debt securities are available to institutional investors via proprietary systems such as Bloomberg, Reuters and Dow Jones Telerate. Additional analytical data and pricing information may also be obtained through vendors such as Bridge Information Systems, Muller Data, Capital Management Sciences, Interactive Data Corporation and Barra.

Retail investors have access to free intra-day bellwether quotes. The Bond Market Association provides links to price and other bond information sources on its investor Web site at *www.investinginbonds.com*. In addition, the transaction prices and volume data for the most actively-traded bonds on the exchanges are published daily in newspapers and on a variety of financial Web sites.

Closing corporate and non-corporate bond prices are also available through subscription services (*e.g.*, IDC, Bridge) that provide aggregate pricing information based on prices from several dealers, as well as subscription services from broker-dealers with a large bond trading operation, such as Lehman Brothers and Goldman, Sachs & Co.

redeemer will receive from the New Fund (the "Redemption List"). The Creation List is identical to the list of the names and the required numbers of shares of each Deposit Security included in the current Portfolio Deposit.[20]

In addition, just as the Balancing Amount is delivered by the purchaser of Creation Unit Aggregations to the New Fund, the Trust will also deliver to the redeeming Beneficial Owner in cash the "Cash Redemption Payment." The Cash Redemption Payment on any given Business Day will be an amount calculated in the same manner as that for the Balancing Amount, although the actual amounts may differ if the Fund Securities received upon redemption are not identical to the Deposit Securities applicable for creations on the same day. To the extent that the Fund Securities have a value greater than the NAV of iShares being redeemed, a cash payment equal to the differential is required to be paid by the redeeming Beneficial Owner to the New Fund. The Trust may also make redemptions in cash in lieu of transferring one or more Fund Securities to a redeemer if the Trust determines, in its discretion, that such method is warranted due to unusual circumstances. An unusual circumstance could arise, for example, when a redeeming entity is restrained by regulation or policy from transacting in certain Fund Securities, such as the presence of such Fund Securities, on a redeeming investment banking firm's restricted list.

e. Clearance and Settlement

The Deposit Securities and Fund Securities of each New Fund will settle via free delivery through the Federal Reserve System for U.S. Government securities and the DTC for corporate securities and non-corporate securities (other than U.S. Government securities). The iShares will settle through the DTC. The Custodian will monitor the movement of the Deposit Securities and will instruct the movement of the iShares only upon validation that the Deposit Securities have settled correctly or that required collateral is in place.

As with the settlement of domestic ETF transactions outside of the NSCC Continuous Net Settlement System (the "CNS System"), (i) iShares of the New Funds and corporate and non-corporate securities (other than U.S. government securities) will clear and settle through DTC, and (ii) U.S. government securities and cash will clear and settle through the Federal Reserve system. More specifically, creation transactions will settle as follows. On settlement date (T + 3) an Authorized Participant will transfer Deposit Securities that are corporate and non-corporate bonds (other than U.S. government securities) through DTC to a DTC account maintained by the New Funds' Custodian, and Deposit Securities that are U.S. government securities, together with any Balancing Amount, to the Custodian through the Federal Reserve system. Once the Custodian has verified the receipt of all of the Deposit Securities (or in the case of failed delivery of one or more bonds, collateral in the amount of 105% or more of the missing Deposit Securities) and the receipt of any Balancing Amount, the Custodian will notify the Distributor and the Advisor. The Fund will issue Creation Unit Aggregations of iShares and the Custodian will deliver the iShares to the Authorized Participant through DTC. DTC will then credit the Authorized Participant's DTC account. The clearance and settlement of redemption transactions essentially reverses the process described above. After the Trust has received a redemption request in proper form and the Authorized Participant transfers Creation Unit Aggregations of iShares to the New Funds' Custodian through DTC, the Trust will cause the Custodian to initiate procedures to transfer the requisite Fund Securities and any Cash Redemption Payment. On T + 3, assuming the Custodian has verified receipt of the Creation Unit Aggregations, the Custodian will transfer Fund Securities that are corporate and non-corporate bonds to the Authorized Participant through DTC and Fund Securities that are U.S. Government securities, together with any Cash Redemption Payment, through the Federal Reserve system.

iShares of the New Funds will be debited or credited by the Custodian directly to the DTC accounts of the Authorized Participants. With respect to domestic equity-based ETFs using the CNS System, Creation Unit Aggregations of iShares are deposited or charged to the Authorized Participants' DTC accounts through the CNS System. Since creation/redemption transactions for iShares of the New Funds will not clear and settle through the CNS System, the failed delivery of one or more Deposit Securities (on a create) or one or more Fund Securities (on a redemption) will not be facilitated by the CNS System. Therefore, Authorized Participants will be required to provide collateral to cover the failed delivery of Deposit Securities in connection with an "in-kind" creation of iShares. In case of a failed delivery of one or more Deposit Securities, the New Funds will hold the collateral until the delivery of such Deposit Security. The New Funds will be protected from failure to receive the Deposit Securities because the Custodian will not effect the Fund's side of the transaction (the issuance of iShares) until the Custodian has received confirmation of receipt of the Authorized Participant's incoming Deposit Securities (or collateral for failed Deposit Securities) and Balancing Amount. In the case of redemption transactions, the New Funds will be protected from failure to receive Creation Unit Aggregations of iShares because the Custodian will not new effect the New Fund's side of the transaction (the delivery of Fund Securities and the Cash Redemption Payment) until the Transfer Agent has received confirmation of receipt of the Authorized Participant's incoming Creation Unit Aggregations. In order to simplify the transfer agency process and align the settlement of iShares of the New Funds with the settlement of the Deposit Securities and Fund Securities, Applicants plan to settle transactions in U.S. Government securities, corporate bonds, non-corporate bonds and iShares on the same T + 3 settlement cycle. Amex represents that according to the Application, the clearance and settlement process will not affect the arbitrage of Shares in the New Fund.[21]

f. Dividends and Distributions

Dividends from net investment income will be declared and paid to Beneficial Owners of record at least annually by each New Fund. Certain of the New Funds may pay dividends, if any, on a quarterly or more frequent basis. Distributions of realized securities gains, if any, generally will be declared and paid once a year, but each New Fund may make distributions on a more frequent basis to comply with the distribution requirements of the Internal Revenue Code and consistent with the 1940 Act.

Dividends and other distributions on iShares of each New Fund will be distributed on a pro rata basis to Beneficial Owners of such iShares. Dividend payments will be made through the Depository and the DTC Participants to Beneficial Owners then

[20] Investors redeeming Creation Unit Aggregations of the Lehman Aggregate Fund will receive cash for any Portfolio Securities that are mortgage pass-through TBAs.

[21] Telephone call among Mike Cavalier, Associate General Counsel, Amex; Marc McKayle, Special Counsel, Division, Commission; and Jennifer Lewis, Special Counsel, Division, Commission, on August 20, 2003.

of record with amounts received from each New Fund.

The Trust will not make the DTC book-entry Dividend Reinvestment Service (the "Service") available for use by Beneficial Owners for reinvestment of their cash proceeds, but certain individual brokers may make the Service available to their clients. The SAI will inform investors of this fact and direct interested investors to contact such investor's broker to ascertain the availability and a description of the Service through such broker. The SAI will also caution interested Beneficial Owners that they should note that each broker may require investors to adhere to specific procedures and timetables in order to participate in the Service and such investors should ascertain from their broker such necessary details. iShares acquired pursuant to the Service will be held by the Beneficial Owners in the same manner, and subject to the same terms and conditions, as for original ownership of iShares.

g. Other Issues

1. Criteria for Initial and Continued Listing. iShares are subject to the criteria for initial and continued listing of Index Fund Shares in Rule 1002A. It is anticipated that a minimum of two Creation Units (100,000 iShares) will be required to be outstanding at the start of trading. This minimum number of iShares required to be outstanding at the start of trading will be comparable to requirements that have been applied to previously listed series of Portfolio Depositary Receipts and Index Fund Shares.

The Exchange believes that the proposed minimum number of iShares outstanding at the start of trading is sufficient to provide market liquidity and to further the Trust's objective to seek to provide investment results that correspond generally to the price and yield performance of the Index.

2. Original and Annual Listing Fees. The Amex original listing fee applicable to the listing of the New Funds is $5,000 for each Fund. In addition, the annual listing fee applicable to the Funds under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding iShares in all funds of the Trust listed on the Exchange.

3. Stop and Stop Limit Orders. Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c) (i–v). The Exchange has designated Index Fund Shares, including iShares, as eligible for this treatment. *See* Release No. 34–29063, note 9, (SR–Amex–90–31) regarding Exchange designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

4. Rule 190. Rule 190, Commentary .04 applies to Index Fund Shares listed on the Exchange, including iShares. Commentary .04 states that nothing in Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

5. Prospectus Delivery. The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, of the prospectus or Product Description delivery requirements applicable to iShares. The Applicants have filed with the Division of Investment Management a separate request for an exemptive order granting relief from certain prospectus delivery requirements under section 24(d) of the 1940 Act. (Investment Company Act Release No. 25595, May 29, 2002). Any product description used in reliance on a Section 24(d) exemptive order will comply with all representations made therein and all conditions thereto.

6. Trading Halts. In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including iShares. These factors would include, but are not limited to, (1) the extent to which trading is not occurring in securities underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[22] In addition, trading in iShares will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

7. Suitability. Prior to commencement of trading, the Exchange will issue an Information Circular informing members and member organizations of the characteristics of the Funds and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

8. Purchases and Redemptions in Creation Unit Size. In the Information Circular referenced above, members and member organizations will be informed that procedures for purchases and redemptions of iShares in Creation Unit Size are described in the Fund prospectus and Statement of Additional Information, and that iShares are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof.

9. Surveillance. Exchange surveillance procedures applicable to trading in the proposed iShares are comparable to those applicable to other Index Fund Shares currently trading on the Exchange. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the New Funds. If the issuer or a broker-dealer is responsible for maintaining (or has a role in maintaining), or calculating the Underlying Index, it would be required to erect and maintain a "Fire Wall" in a form satisfactory to the Exchange to prevent the flow of information regarding the Underlying Index from the index production personnel and index calculation personnel to the sales and trading personnel. The Exchange will implement surveillance procedures to monitor and prevent the misuse of material, non-public information in connection with the indices.[23]

10. Hours of Trading/Minimum Price Variation. The New Funds will trade on the Amex until 4:15 p.m. (eastern time). The minimum price variation for quoting will be $.01.

Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Exchange Act,[24] in general, and furthers the objectives of section 6(b)(5) of the Exchange Act,[25] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

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[22] *See* Amex Rule 918C.

[23] Telephone call among Mike Cavalier, Associate General Counsel, Amex; Marc McKayle, Special Counsel, Division, Commission; and Jennifer Lewis, Special Counsel, Division, Commission, on August 20, 2003.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory agency consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-2003–75 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22234 Filed 8–29–03; 8:45 am]

BILLING CODE 8010–01–P

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48396; File No. SR–BSE–2003–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Boston Stock Exchange, Inc. Relating to Its Transaction and Floor Operations Fee Schedules

August 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 1, 2003, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the BSE. On August 5, 2003, the BSE filed an amendment to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to amend its Floor Operations Fees and Transaction Fees schedules. The text of the proposed rule change is below. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

FLOOR OPERATION FEES

(1) Occupancy/Technology Occupancy Fee	$500.00 per post per month.
Specialist/Floor Trader Technology Fee	$500.00 per BEACON terminal per month.
Floor Broker Technology Fee	$100.00 per BEACON terminal per month.
Security Routing Fee	$500.00 per month per BEACON user-ID that has stocks routed to it.
Floor Facility Fee	$250.00 per person that regularly accesses the trading floor.
Electronic Trading Permit Fee	$1,000.00 per trader trading from a remote location per month.
(2) Specialist Post Clearing and Cashiering Post Cashiering Fee	$750.00 per specialist book for first 3 books per firm. $100.00 per specialist book for any books in excess of 3 per firm.
Clearing Fee	$.05 per trade.
(3) Specialist Trade Processing Fees/Credits Pre-Opening Trades	No Charge.
Trades in CTA Securities ranked 1,001 and greater	No Charge (BSE executions only).
Round lot	$.50 per order.
Odd Lot Trades (includes CSI Issues)	$.05 per order ($400 maximum per account).
Trading Account Trades	$1.50 per order.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from John Boese, Vice President Legal and Compliance, BSE, to Ms. Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 14, 2003 ("Amendment No. 1"). In Amendment No. 1, the BSE added purpose language that elaborates on the overarching purpose of the rulefiling, inserted purpose language to clarify that the rulefiling will apply solely to BSE members, and provided purpose language that describes the necessity of the fee change to offset systems related expenses incurred by the Exchange in providing facilities for its member firms to provide layoff services to the BSE specialist community. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on August 5, 2003.

ETF Trade Credit	$2.00 per trade (maximum annual credit capped at total amount paid in upfront annual registration fees).
Revenue Sharing Program	*100% (50% after 1st 6 months) non specialist revenue and 50% CTA revenue will be shared on all floor broker generated volume in CTA 501+ issues.*
(4) Other Charges ITS User Fee	$[.003] *$.0018* per share on [net] outbound specialist trades [(charge for outgoing trades offset by cumulative credit for incoming trades)]. No charge for non-specialist firms.
Quotation Services	Member assumes 100% of cost.
Specialist Margin Account Financing	Charged daily at current broker call rate.
Solely Listed Issue Credit	$50.00 Credit per issue traded.
Miscellaneous Charges	At cost for phone, postage, courier service, fax usage, after hours BSE staff assistance and other applicable items.
Late Fees	1.5% will be charged on outstanding balances as of the last calendar day of the month.
TRANSACTION FEES	
1. Trade Recording and Comparison Charges	
• All BSE executions up to and including 2,500 shares	No Charge.
• All BSE single-sided executions from 2,501–5,000 shares	No Charge.
• All other executions (excluding automated non-BSE executions)	
First 2,500 trades per month	$.29 per 100 shares
Next 2,500 trades per month	$.25 per 100 shares
Next 2,500 trades per month	$.15 per 100 shares
Over 7,500 trades per month	$.04 per 100 shares
Floor Brokered non-BSE executions	$.05 per 100 shares
Automated non-BSE executions	[$.05 per 100 net non-BSE automated shares]. *$.025 per 100 shares for non-BSE automated shares offset by automated incoming volume routed to BSE* *$.05 per 100 shares for non-BSE automated shares in excess of automated incoming volume routed to BSE.*
Maximum charge per side (single-sided)	$50.00
Maximum charge per side (cross)	$25.00
(all trades accumulate for volume discounts)	
2. Value Charges	

REVENUE SHARING:
TAPE A—Should the Exchange generate its monthly Tape A revenue target, 50% of any amount in excess of this target amount will be shared on a pro-rata basis with those firms that generate a minimum of $50,000 in overall monthly automated transaction fees.
TAPE B—50% of NET Tape B revenues will be shared on a per executed trade routed to the BSE.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Floor Operation Fees schedule with the overall goal of increasing the number of stocks traded on the BSE. The Exchange is proposing to eliminate the credit it offers to specialists for inbound Intermarket Trading System ("ITS") volume and to also reduce the fee that it charges to specialists to execute outbound volume through the same system. The credit was initially implemented to induce specialists to attract volume to the BSE through ITS by openly displaying their limit orders. Since the initial implementation of this credit, overall market conditions have changed and, more importantly, the Limit Order Display Rule, SEC Rule 11Ac1–4,[4] now requires that specialists display their limit orders. The Exchange realizes that eliminating this credit may increase the overall cost to transact business on the BSE for some specialists and, as a result, further proposes to reduce the cost to transact outbound ITS volume from $.003/share to $.0018/share to offset this cost.

The Exchange also proposes to implement a credit program for its specialists by which, for the first six (6) months of the program, the BSE will credit back 100% of the Trade Recording and Value Charge revenue it generates on BSE executed Floor-Brokered trades in the issues ranked 501

[4] 17 CFR 240.11Ac1–4.

or greater in listed securities volume reported to the Consolidated Tape Association ("CTA"). In addition, as part of the credit program, the BSE proposes to include 50% Tape Revenue sharing for revenue generated on the same Floor-Brokered volume.[5] After the first six (6) months of the program, the credit of 100% of the Trade Recording and Value Charge revenue will be reduced to 50%. CTA revenue sharing will remain at the current rate of 50%. The purpose of the credit program for the specialists is to acknowledge the importance of their participation in the Exchange's overall initiative by implementing incentives for specialists to increase the number of issues, and related executions, traded on the BSE.

Additionally, the BSE also proposes to amend its Transaction Fees schedule by revising the rate at which it charges member firms that route orders to the BSE and also provide BSE specialists with the capability of routing order flow to other exchanges (for example, through DOT[6] terminals). A firm may currently use its automated inbound volume that it routes to the BSE to qualify for reduced rates on outbound volume executed through its DOT terminals and will continue to be able to do so. However, a firm that provides automated inbound volume to the BSE, will now be charged rates on its outbound volume (up to the amount of inbound volume routed to the BSE) of $.025/100 shares. Rates on outbound volume executed in excess of automated inbound volume routed to the BSE will continue to be charged at the rate of $.05/100 shares, as previously established. These fees are necessary to offset systems related expenses incurred by the Exchange in providing facilities for its member firms to provide layoff services to the BSE specialist community.

2. Statutory Basis

The Exchange believes that its proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(4) of the Act,[8] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has been designated as a fee change pursuant to Section 19(b)(3)(A)(ii) of the Act[9] and Rule 19b–4(f)(2) thereunder.[10] Accordingly, the proposal will take effect upon filing with the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–2003–12 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22235 Filed 8–29–03; 8:45 am]

BILLING CODE 8010–01–P

[5] The BSE represented to the Commission that the proposed BSE specialist Revenue Sharing Program will not result in a market data revenue rebate that exceeds 50% of Tape A or B market data revenue. *See* Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002)(File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37)(Order of Summary Abrogation). The BSE represented that the instant proposal simply clarifies the BSE's existing Revenue Sharing arrangement, which does not specifically indicate to whom market data revenue rebates are to be awarded. The Commission has relied on the BSE's representations in not abrogating the proposed fee filing. Telephone conference between John Boese, Vice President Legal and Compliance, BSE, and Christopher B. Stone, Special Counsel, Division of Market Regulation, Commission (August 22, 2003).

[6] DOT is the New York Stock Exchange's ("NYSE") Designated Order Turnaround System, an application that permits NYSE members to route market orders and day limit orders on an automated basis directly to the appropriate specialist on the NYSE trading floor. *See* Securities Exchange Act Release No. 16649 (March 13, 1980), 45 FR 18541.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f)(2).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48394; File No. SR–CBOE–2003–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Open Outcry Size Guarantees

August 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 21, 2003, the Chicago Board Options Exchange, Inc. ("Exchange" or "CBOE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The proposed rule change has been filed by CBOE under Rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend its rules relating to open outcry size guarantees in those classes of options that trade on the CBOE Hybrid System ("Hybrid"). Below is the text of the proposed rule change. Proposed new language is in italics.[4]

* * * * *

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The Commission notes that it added language to the rule text that was inadvertently omitted by CBOE. Telephone call between Steve Youhn, Legal

Rule 8.7 Obligations of Market Makers

(a)–(c) No change

(d) No Change

(i) Market Maker Trades Less Than 20% Contract Volume Electronically: No change

(A)–(B) No change

(C) Continuous Open Outcry Quoting Obligation: In response to any request for quote by a floor broker or DPM representing an order as agent, market makers must provide a two-sided market complying with the quote width requirements contained in Rule 8.7(b)(iv) for a minimum of ten contracts *for non-broker-dealer orders and one contract for broker-dealer orders.*

(D) No change

(ii) Market Maker Trades More Than 20% Contract Volume Electronically: No change

(A)–(B) No change

(C) Continuous Open Outcry Quoting Obligation: In response to any request for quote by a floor broker or DPM representing an order as agent, market makers must provide a two-sided market complying with the current quote width requirements contained in Rule 8.7(b)(iv) for a minimum of ten contracts *for non-broker-dealer orders and one contract for broker-dealer orders.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In May 2003, the Commission approved trading rules for Hybrid,[5] a trading platform that alters the fundamental way in which the Exchange conducts business. Hybrid merges the electronic and open outcry trading models and offers market participants the ability to stream electronically their own quotes. Previously (and currently in non-Hybrid classes), CBOE's disseminated quote represented, for the most part, the Designated Primary Market Maker's ("DPM") autoquote price. Market makers ("MMs") were able to affect changes to that quote in open outcry (or by putting up manual quotes). Hybrid offers in-crowd MMs and in-crowd DPMs the opportunity to submit their own firm disseminated market quotes that represent their own trading interest.[6] In addition, Hybrid permits in-crowd floor brokers, who represent orders on behalf of members, broker-dealers, public customers, and the firm's proprietary account, to enter orders on behalf of their customers for display in the CBOE's best bid or offer ("BBO").[7] Whereas, prior to Hybrid, there was only one autoquote price comprising the CBOE disseminated quote, Hybrid allows for the introduction of multiple quotes in the quoting equation.

CBOE Rules 8.7(d)(i)(C) and (d)(ii)(C), which only apply to classes trading on Hybrid, impose a 10-up size requirement for MMs responding to a request for a market in open outcry by a floor broker ("FB") representing an order as agent.[8] CBOE represents that the intent of CBOE Rules 8.7(d)(i)(C) and (d)(ii)(C) when adopted was to ensure that FBs representing public customer orders would receive a quote of sufficient depth whenever they requested a market in open outcry. CBOE believes that the plain language of CBOE Rules 8.7(d)(i)(C) and d(ii)(C), however, is overbroad and could be interpreted to apply to broker-dealer ("BD") orders represented by FBs. Accordingly, the Exchange proposes to amend these two rule provisions to: (a) Limit the applicability of the 10-up size guarantee to public customer orders represented by FBs; and (b) provide that MMs must provide a one-up market to BD orders represented by FBs. This proposed change only affects Hybrid classes and, as such, has no applicability to non-Hybrid classes.

CBOE represents that the proposed changes do not affect the operation of CBOE's Quote Rule (CBOE Rule 8.51), which allows the responsible BD to provide separate quote sizes to public customers and broker-dealers.[9] FBs representing a public customer order in a Hybrid class will be able to request a quote on behalf of such public customer from MMs in the crowd and will be guaranteed to receive a firm quote for at least ten contracts. At the same time, a FB representing a BD order in a Hybrid class will be able to request a quote on behalf of a BD and will be guaranteed to receive a firm quote for at least one contract. Accordingly, allowing MMs to provide 1-up open outcry markets to BD orders is consistent with their obligations under the CBOE Quote Rule because the BD firm quote requirement, which is one contract, is satisfied.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[10] in general, and furthers the objectives of section 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

CBOE neither solicited nor received written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and the Exchange provided the Commission with written notice of its intent to file

Division, CBOE, and Frank N. Genco, Attorney, Division of Market Regulation ("Division"), Commission, on August 19, 2003.

[5] *See* Exchange Act Release 47959 (May 30, 2003), 68 FR 34441 (June 9, 2003) (approving File No. SR–CBOE–2002–05).

[6] Telephone conversation between Steve Youhn, Legal Division, CBOE, and Kelly M. Riley, Senior Special Counsel, Division, on August 20, 2003.

[7] *Id.* Pursuant to CBOE Rule 6.75, floor brokers generally may not execute any orders for which they have been vested with the discretion to choose: the class of options to buy/sell, the number of contracts to buy/sell, or whether the transaction would be one to buy or sell.

[8] CBOE Rule 8.7(d) only applies to Hybrid classes.

[9] The BD firm quote requirement on CBOE is one contract. *See* CBOE Rule 8.51.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

the proposed rule change at least five business days prior to the date of filing of the proposed rule change,[12] it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b-4(f)(6) thereunder.[14]

CBOE has requested that the Commission waive the usual 30-day pre-operative waiting period. The Commission notes that this proposal is substantially similar to existing Pacific Exchange, Inc. ("PCX") Rule 6.37(b)(5) and Interpretation .05 to PCX Rule 6.37 approved by the Commission.[15] As a result, the Commission believes that it is consistent with the protection of investors and the public interest to accelerate the operative date because the proposal raises no new regulatory issues. Therefore, the Commission designates that the proposal become operative immediately.[16]

At any time within 60 days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR–CBOE–2003–28 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22230 Filed 8–29–03; 8:45 am]

BILLING CODE 8010–01–P

[12] On July 3, 2003, CBOE provided the Commission with written notice of its intent to file the proposed rule change. *See* letter from Steve Youhn, Legal Division, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated July 2, 2003.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b-4(f)(6).

[15] *See* Securities Exchange Act Release No. 47211 (January 17, 2003), 68 FR 3924 (January 27, 2003) (approving File No. SR–PCX–2002–55).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48411; File No. SR–GSCC–2002–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Institute Informal Hearing Procedures for Fine Disputes

August 26, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 28, 2002, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") and on August 19, 2003, amended the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

GSCC's current rules provide procedures whereby a member can dispute any fine through a formal hearing process. GSCC's rules also permit GSCC to establish procedures for a hearing not otherwise provided for in its rules. The proposed rule change would allow GSCC to institute informal hearing procedures for disputed fines.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Since 1998, GSCC has had the authority to impose fines in order to promote greater compliance with its funds settlement debit and clearing fund deposit deficiency call deadlines.[3] GSCC Rule 37 contains procedures whereby a member can dispute any fine assessment through a formal hearing process. Rule 37 also permits GSCC to establish procedures for a hearing not otherwise provided for in the rules.[4] With this proposed rule filing, GSCC seeks authority to specifically incorporate into its rules informal hearing procedures with respect to disputed fines.

Pursuant to GSCC's new procedures, when a formal hearing is requested to dispute a fine, an informal hearing will automatically take place prior to a formal hearing occurring. Thus, if a member disputes a fine and asks for a formal hearing in the manner already specified in the rules, GSCC's management will automatically conduct a review of the disputed fine. Based on the documentation already required in the rules and/or a meeting arranged with the member, management may determine to waive the fine. If management determines to waive the fine, it must inform the Membership and Risk Management Committee of the waiver and management's reasons for granting the waiver. The Committee has the ability to accept or reject management's determination. If the Committee accepts management's determination, the fine will be waived. However, if the Committee chooses not to accept management's determination or if management initially determined not to waive the fine after conducting its review, the member has the right to the formal hearing already provided for in Rule 37.

GSCC also seeks to change its rules to reflect that if a fine is assessed, the member must pay the fine within 30 calendar days after it receives the fine

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] Securities Exchange Act Release No. 39746 (March 12, 1998), 63 FR 13439 (March 19, 1998) [File No. SR–GSCC–97–04].

[4] Government Securities Clearing Corporation Rule 37, Section 7.

imposition letter unless the member has requested a hearing to dispute the fine. Currently, GSCC's rules require that fines be paid within 90 days. If a hearing has been requested, the fine is waived until the dispute is resolved.

GSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act[5] and the rules and regulations thereunder applicable to GSCC because it will promote the prompt and accurate clearance and settlement of securities transactions by clearly setting forth in GSCC's rules its procedures for conducting a review with respect to disputed fines, which procedures afford members a fair and less burdensome method for resolving fine disputes than is currently set forth in the rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change will have any impact, or impose any burden, on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not yet been solicited or received. Members will be notified of the rule change filing, and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. SR–GSCC–2002–04. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of GSCC.

All submissions should refer to File No. SR–GSCC–2002–04 and should be submitted by September 23, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22232 Filed 8–29–03; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78q–1.

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48405; File No. SR–ISE–2003–05]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 by the International Securities Exchange, Inc. Relating to the Establishment of Trading Rules for Index Options and Generic Listing and Maintenance Standards for Narrow-Based Index Options

August 25, 2003.

I. Introduction

On February 24, 2003, the International Securities Exchange, Inc. ("ISE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to enable the ISE to trade index options on the Exchange. The ISE filed Amendment No. 1 to the proposed rule change on April 17, 2003.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on May 2, 2003.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

A. Introduction

The ISE proposes to establish trading rules to enable Members to trade index options on the Exchange. In addition, the ISE proposes to establish generic listing standards and maintenance standards for "narrow-based" index options pursuant to Rule 19b–4(e) under the Act.[5] The ISE represents that all of the proposed new Exchange Rules and changes to existing Exchange Rules are based on the existing rules of the other four options exchanges.[6] Many of the new trading rules and generic listing standards will comprise the new Chapter 20 in the ISE Rules.

B. Index Options Trading Rules

The proposed rules, among other things, establish general rules that will govern the trading sessions for index options, including the days and hours of business, the rules governing trading rotations at the opening, and the rules related to the trading halts or suspensions.[7] The proposed rules further provide for the procedures Members must follow with respect to the exercise of American-style, cash settled index options.[8] The proposed rules also provide for position limit and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Katherine Simmons, Vice President and Associate General Counsel, ISE to Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, dated April 16, 2003. In Amendment No. 1, the ISE submitted a new Form 19b-4, which replaced the original filing in its entirety.

[4] *See* Securities Exchange Act Release No. 47749 (April 25, 2003), 68 FR 13348.

[5] 17 CFR 240.19b–4(e). The term "narrow-based index" is defined as an index designed to be representative of a particular industry or a group of related industries. *See* Proposed ISE Rule 2001(i). Narrow-based indices listed and traded on the ISE pursuant to generic listing and maintenance standards, among other characteristics, must consist of ten or more component securities. *See* Proposed ISE Rule 2002(b)(2).

[6] *See, e.g.*, CBOE Rules 4.11, 4.16, 6.2, 6.7, 8.7, 11.1, 15.10, and 24.1 through 24.20, PCX Rules 7.11 and 13.2, Amex Rule 905C, and Phlx Rule 1033A.

[7] *See* Proposed ISE Rule 2008.

[8] *See* Proposed ISE Rule 418(a)(3) and 1100(h).

exercise limits for index options.[9] In addition, the proposed rules provide for exemption standards from position limits and procedures for requesting exemptions from those proposed rules.[10] The proposed position limits and exercise limits, as well as the proposed exemptions, are different for broad-based index options and narrow-based index options.[11] The proposed rules establish standards for when a member seeking to sell short a Nasdaq NMS security included in an index underlying an index option listed and traded on the Exchange is exempt from the NASD short sale rule.[12]

C. Generic Listing Standards and Maintenance Standards for Narrow-Based Index Options

The ISE further proposes to establish generic listing and maintenance standards in Proposed ISE Rule 2002 to enable the Exchange to list and trade new narrow-based index options pursuant to Rule 19b–4(e) under the Act.[13] Proposed ISE Rule 2002 addresses both initial listing and maintenance standards for narrow-based index options.[14] The generic listing and maintenance standards are modeled after standards that the Commission originally approved for streamlined listing and trading pursuant to Section 19(b)(3)(A) of the Act.[15] The options exchange subsequently filed proposed rule changes with the Commission to eliminate the Section 19(b)(3)(A) rule filing requirement from their existing SRO rules, after the Commission indicated that products meeting the listing criteria approved by the Commission in its 1994 Generic Narrow-Based Index Options Approval Order qualified for filing pursuant to Rule 19b–4(e) under the Act.[16]

Notwithstanding the generic listing standards for options on narrow-based indexes, the Exchange will need to file additional proposed rule changes with the Commission when the Exchange identifies specific products because the rules related to trading options on indices are product specific in many areas. For purposes of this proposed rule change, certain rules indicate that they apply to "specified" indices. ISE Rules 2001(l), 2004(a), 2006(a), 2007(a), 2009, and 2011 all contain provisions that are dependant upon the Exchange identifying specific index products in the rule. Accordingly, proposed ISE Rule 2000 states that where the rules in Chapter 20 indicate that particular indices or requirements with respect to particular indices will be "Specified," the ISE shall file a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act[17] and Rule 19b–4 thereunder[18] to specify such indices or requirements.

III. Commission Findings and Order Granting Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6(b)(5) of the Act[19] and the rules and regulations thereunder applicable to a national securities exchange.[20] The Commission believes that the ISE's proposal to establish trading rules and procedures applicable to index options and establish generic listing and maintenance standards for narrow-based index options strikes a reasonable balance between the Commission's mandates under section 6(b)(5) of the Act[21] to remove impediments to and perfect the mechanisms of a free and open market and a national market system while protecting investors and the public interest.

A. Index Options Trading Rules

The Commission believes that trading options on an index of securities (including a narrow-based index) permits investors to participate in the price movements of the index's underlying securities and allows investors holding positions in some or all of such securities to hedge the risks associated with their portfolios. The Commission further believes that trading options on an index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component stocks. In making this finding the Commission notes that all of the proposed new Exchange Rules and changes to existing Exchange Rules are based on the existing rules of the other four options exchanges.[22]

B. Generic Listing and Maintenance Standards for Narrow-Based Index Options

In approving the generic listing and maintenance standards for narrow-based index options, the Commission considered the structure of these securities, their usefulness to investors and to the markets and the ISE rules that govern their trading. The proposal to establish generic standards for narrow-based index options should reduce the ISE's regulatory burden, as well as benefit the public interest, by enabling the ISE to bring qualifying products to the market more quickly. Furthermore, the Commission notes that it has previously approved similar proposals by the Amex, CBOE, NYSE, PSE, and the Phlx to establish generic listing and maintenance standards for narrow-based index options.[23]

The Commission finds that adopting generic listing and maintenance standards for these securities and applying Rule 19b–4(e) should fulfill the intended objective of that rule by allowing those index option products that satisfy the generic standards to start trading, without the need for notice and comment and Commission approval. The Exchange's ability to rely on Rule 19b–4(e) for these products potentially reduces the time frame for listing and

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[9] *See* Proposed ISE Rules 2004, 2005, and 2007.

[10] *See* Proposed ISE Rule 2006.

[11] *See* Proposed ISE Rules 2004 to 2007.

[12] *See* Proposed ISE Rule 1407(d)(1)(ii).

[13] 17 CFR 240.19b–4(e). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization ("SRO") shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that includes the new derivative securities product and the SRO has a surveillance program for the product class. When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the exchange begins trading the new derivative securities products. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7–13–98).

[14] The proposed generic listing standards approved herein do not apply to the listing of options on broad-based indices.

[15] In 1994, the Commission approved a proposed rule change submitted by the American Stock Exchange, Inc. ("Amex"), the Chicago Board Options Exchange, Inc. ("CBOE"), the New York Stock Exchange, Inc. ("NYSE"), the Pacific Stock Exchange, Inc. ("PSE"), and the Philadelphia Stock Exchange, Inc. ("Phlx") (collectively the "options exchanges"), which permitted the options exchanges to list and trade options on narrow-based indexes thirty days after submitting a filing pursuant to Section 19(b)(3)(A) of the Act. The Commission found that such filings would constitute a stated policy, practice, or interpretation with respect to the administration of an existing Exchange rule, pursuant to Section 19(b)(3)(A) of the Act, relieving the Exchange of the former requirement of obtaining specific Commission approval of such narrow-based index options pursuant to Section 19(b)(2) of the Act. See Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30622 (June 10, 1994) (SR–Amex–92–35) (SR–CBOE–93–59) (SR–NYSE–94–17) (SR–PSE–94–07) and (SR–Phlx–94–10) (the "1994 Generic Narrow-Based Index Options Approval Order").

[16] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7–13–98).

[17] *See* note 1 *supra*.

[18] *See* note 2 *supra*.

[19] 15 U.S.C. 78f(b)(5).

[20] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] *See* note 19 *supra*.

[22] *See, e.g.*, CBOE Rules 4.11, 4.16, 6.2, 6.7, 8.7, 11.1, 15.10, and 24.1 through 24.20, PCX Rules 7.11 and 13.2, Amex Rule 905C, and Phlx Rule 1033A.

[23] *See* note 15 *supra*.

trading these securities, and thus enhances investors' opportunities. The Exchange, however, must maintain regulatory oversight over any products listed under the generic listing standards through adequate surveillance. ISE represents that its surveillance procedures are sufficient to detect fraudulent trading among members in the trading of narrow-based index options pursuant to the generic listing and maintenance standards. The Commission believes that these surveillance procedures are adequate to address concerns associated with listing and trading of the narrow-based index options.

The Commission believes that the listing and maintenance standards set forth herein are consistent with the listing and maintenance standards for narrow-based index options that the Amex, CBOE, PCX and the Phlx have developed and are reasonably designed to ensure the protection of investors and the public interest. Specifically, the Commission finds that the generic standards covering minimum capitalization, monthly trading volume, and relative weightings of component stocks are designed to ensure that the trading markets for component stocks are adequately capitalized and sufficiently liquid, and that no one stock or stock group dominates the index. Thus, the Commission believes that the satisfaction of these requirements significantly minimizes the potential for manipulation of the index.

Two other important requirements included in the proposal are that at least 90 percent of the component securities, by weight, and 80 percent of the total number of component securities, must be eligible individually for options trading, and that no more than 20 percent of the weight of the index may be comprised of ADRs that are not subject to a comprehensive surveillance sharing agreement. The Commission believes that these standards are necessary to ensure that index options are not used as surrogate instruments to trade options on stocks and/or ADRs that otherwise are not eligible for options trading.

The Commission also believes that the number of securities required to constitute the narrow-based index is large enough to ensure that an index is not created for the purpose of obtaining more favorable regulatory treatment, *e.g.*, with respect to position and exercise limits, as compared with the trading of options in the underlying stocks.

The Commission also finds the requirements that all securities comprising the index be "reported securities," as defined in Rule 11Aa3–1 under the Act,[24] and that the index value be disseminated at least once every 15 seconds during trading hours of the index, will contribute significantly to the transparency of the market for such index options. The Commission further believes that basing the settlement value of expiring index options upon the opening prices of the component securities on the primary market on which they are listed and traded may help contain the volatility of related markets upon their expiration.

The Commission further notes that ISE's rules that are applicable to narrow-based index options, including provisions addressing sales practices, floor trading procedures, position and exercise limits, margin requirements, and trading halts and suspensions, will continue to apply to any narrow-based index listed pursuant Rule 19b–4(e) under the Act.

The Commission believes that a surveillance sharing agreement between an Exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. The Commission believes that such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. When a new derivative securities product based upon domestic securities is listed and traded on an exchange pursuant to Rule 19b–4(e) under the Act, the exchange should determine that the markets upon which all of the U.S. component securities trade are members of the Intermarket Surveillance Group ("ISG"),[25] which provides information relevant to the surveillance of the trading of securities on other market centers.[26] In this regard, all of the registered national securities exchanges, including the ISE, as well as the National Association of Securities Dealers, Inc. ("NASD"), are members of the ISG.

For new derivative securities products based on securities from a foreign market, the SRO should have a comprehensive Intermarket Surveillance Agreement with the market for the securities underlying the new securities product.[27] Accordingly, the Commission finds that the requirement that no more than 20 percent of the weight of the index may be comprised of ADRs that are not subject to a comprehensive surveillance sharing agreement between the particular U.S. exchange and the primary market of the underlying security will continue to ensure that the Exchanges have the ability to adequately surveil trading in the narrow-based index options and the ADR components of the index.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[28] that the proposed rule change, as amended, (File No. SR–ISE–2003–05) be, and it hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22236 Filed 8–29–03; 8:45 am]

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[24] 17 CFR 240.11Aa3–1.

[25] ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets.

[26] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7–13–98).

[27] *Id.*

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48407; File No. SR–NASD–00–08]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 by the National Association of Securities Dealers, Inc. Relating to Margin Requirements

August 25, 2003.

I. Introduction

On March 3, 2000, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposal to amend NASD Rule 2520, "Margin Requirements." The NASD's proposal was published for comment in the **Federal Register** on May 26, 2000.[3] The Commission received one comment

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42801 (May 19, 2000), 65 FR 34240 ("2000 Release").

letter regarding the proposal,[4] and the NASD responded to the comment.[5]

The NASD filed Amendment Nos. 1 and 2 to the proposal on June 2, 2000, and July 30, 2003, respectively. This order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comments and is simultaneously approving, on an accelerated basis, Amendment Nos. 1 and 2.

II. Description of the Proposal

A. Background

Section 7 of the Exchange Act[6] authorizes the Board of Governors of the Federal Reserve System ("Federal Reserve Board") to establish requirements for the purchase or carrying of securities on margin. Pursuant to this authority, the Federal Reserve Board promulgated Regulation T,[7] which sets minimum initial margin requirements. Regulation T provides that transactions in non-equity securities are subject to either "good faith" margin requirements[8] or the level set by the rules of a self-regulatory organization ("SRO"), whichever is higher.[9] Accordingly, the maintenance margin requirements established by the NASD or another SRO set the minimum margin levels for non-equity securities.[10]

As described more fully below, the proposal amends NASD Rule 2520 to: (1) lower the customer maintenance margin requirements for certain non-equity securities; and (2) permit good faith margin treatment for certain non-equity securities held in "exempt accounts," as defined in the proposal.

B. Reduced Customer Maintenance Margin for Non-Equity Securities Not Held in Exempt Accounts

With respect to non-equity securities that are not held in exempt accounts, the proposal: (1) Reduces the customer maintenance margin requirement for highly rated foreign sovereign debt[11] from 20% of current market value to 1% to 6% of current market value, depending on the time to maturity; (2) reduces the customer maintenance margin requirement for exempted securities other than U.S. government obligations from 15% of current market value to 7% of current market value; (3) reduces the customer maintenance margin requirement for investment grade non-equity securities[12] from 20% of current market value to 10% of current market value; and (4) establishes a customer maintenance margin requirement of 20% of current market value for all other marginable non-equity securities.[13]

C. Good Faith Margin Treatment for Certain Non-Equity Securities Held in Exempt Accounts

1. Good Faith Margin Treatment

The proposal will permit broker-dealers to effect transactions in "exempt accounts" without being required to collect either margin or marked to the market losses[14] on exempted securities, mortgage-related securities,[15] or major foreign sovereign debt securities.[16] However, a broker-dealer must take a capital charge for any uncollected marked to the market losses on exempt account positions in these securities.[17]

For transactions in exempt accounts involving highly rated foreign sovereign debt[18] and investment grade debt,[19] the proposal establishes margin requirements of 0.5% and 3%, respectively.[20] Although a broker-dealer is not required to collect this margin, it must take a capital charge for any uncollected margin and for any uncollected marked to the market losses.[21]

2. Limitation on Capital Charges

The proposal limits the amount of capital charges a broker-dealer may take in lieu of collecting marked to the market losses.[22] Specifically, a broker-dealer may not enter into transactions with exempt accounts that would increase the broker-dealer's capital charges if the broker-dealer's capital charges exceed: (1) 5 % of the broker-dealer's tentative net capital[23] on any one account or group of commonly controlled accounts; or (2) 25% of the broker-dealer's tentative net capital on all accounts combined, unless the excess no longer exists on the fifth business day after it was incurred. The broker-dealer also must notify the NASD that it has reached the 5% or 25% threshold.

D. Amendment No. 1

Under the proposal, a broker-dealer must maintain a written risk analysis methodology for managing the credit risk associated with extending good faith margin on securities transactions in "exempt accounts."[24] Amendment No. 1 provides a draft Notice to Members ("NTM") that addresses the written risk analysis methodology that members must establish and maintain. Specifically, the NTM states that a member's written risk analysis methodology should include the following:

- Procedures for obtaining and reviewing the appropriate customer account documentation and the customer financial information necessary to determine exempt account status for the extension of credit under the Rule;
- Procedures and guidelines for the determination, review and approval of credit limits to customers and across all customers who qualify as exempt accounts under the Rule;
- Procedures and guidelines for monitoring credit risk exposure to the organization relating to exempt account customers;
- Procedures and guidelines for the use of stress testing of exempt accounts in order to monitor market risk exposure

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[4] *See* letter from Wendy Fried, Vice President and Associate General Counsel, The Bond Market Association ("TBMA"), to Jonathan Katz, Secretary, Commission, dated June 30, 2000 ("TBMA Letter").

[5] *See* letter from Patrice M. Gliniecki, Vice President and Deputy General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated July 27, 2000 ("NASD Letter"). The TBMA Letter, and the NASD's response, are discussed below.

[6] 12 U.S.C. 78(g).

[7] 12 CFR 220 *et seq.*

[8] Regulation T defines "good faith" margin as the amount of margin that a broker-dealer would require in exercising sound credit judgment.

[9] 12 CFR 220.12(b).

[10] *See* NASD Rule 2520(c).

[11] The proposal defines "highly rated foreign sovereign debt securities" as debt securities issued or guaranteed by the government of a foreign country, its provinces, states or cities, or a supranational entity that are assigned a rating in one of the two top rating categories by at least one nationally recognized statistical rating organization. *See* NASD Rule 2520(a)(9).

[12] The proposal defines "investment grade debt" as any debt securities assigned a rating in one of the top four rating categories by at least one nationally recognized statistical rating organization. *See* NASD Rule 2520(a)(10).

[13] The proposal defines "other marginable non-equity securities" to include debt securities not traded on a national securities exchange that meet certain requirements and private pass-through securities not guaranteed by a U.S. government agency that meet certain requirements. *See* NASD Rule 2520(a)(16).

[14] Marked to the market losses are unrealized losses on a position in securities resulting from a decline in the position's market value.

[15] The proposal defines "mortgage related securities" to mean securities that fall within the definition in Section 3(a)(41) of the Exchange Act. *See* NASD Rule 2520(a)(12).

[16] The proposal defines "major foreign sovereign debt securities" as debt securities issued or guaranteed by the government of a foreign country or supranational entity that are assigned a rating in the top rating category by at least one nationally recognized statistical rating organization. *See* NASD Rule 2520(a)(11).

[17] *See* NASD Rule 2520(e)(2)(F).

[18] *See* note 11, *supra.*

[19] *See* note 12, *supra.*

[20] *See* NASD Rule 2520(e)(2)(G).

[21] *See* NASD Rule 2520(e)(2)(G).

[22] *See* NASD Rule 2520(e)(2)(H).

[23] Generally, tentative net capital is a broker-dealer's net worth after deducting most illiquid assets but before making haircut deductions.

[24] *See* NASD Rule 2520(e)(2)(H)(i).

from exempt accounts individually and in the aggregate; and

• Procedures providing for the regular review and testing of these risk management procedures by an independent unit such as internal audit, risk management, or other comparable group.

E. Amendment No. 2

Amendment No. 2 revises the proposal by modifying the definition of "exempt account" in proposed NASD Rule 2520(a)(13). The proposed changes to proposed NASD Rule 2520(a)(13), as published in the 2000 Release,[25] appear below. Proposed additions are in *italics*; proposed deletions are in [brackets].

2520. Margin Requirements

(a) Definitions

For purposes of this paragraph, the following terms shall have the meanings specified below:

(1) through (12). No change.

(13) The term "exempt account" means: [a member, non-member broker/dealer registered as a broker or dealer under the Act, "designated account," or any person having net worth of at least forty-five million dollars and financial assets of at least forty million dollars.]

(A) a member, non-member broker/dealer registered as a broker or dealer under the Act, a "designated account," or

(B) any person that:

(i) has a net worth of at least forty-five million dollars and financial assets of at least forty million dollars for purposes of subparagraphs (e)(2)(F) and (e)(2)(G), and

(ii) either:

a. has securities registered pursuant to Section 12 of the Act, has been subject to the reporting requirements of Section 13 of the Act for a period of at least 90 days and has filed all the reports required to be filed thereunder during the preceding 12 months (or such shorter period as it was required to file such reports), or

b. has securities registered pursuant to the Securities Act of 1933, has been subject to the reporting requirements of Section 15(d) of the Act for a period of at least 90 days and has filed all the reports required to be filed thereunder during the preceding 12 months (or such shorter period as it was required to file such reports), or

c. if such person is not subject to Section 13 or 15(d) of the Act, it is a person with respect to which there is publicly available the information specified in paragraphs (a)(5)(i) to (xiv), inclusive, of Rule 15c2–11 under the Act, or

d. furnishes information to the Securities and Exchange Commission as required by Rule 12g3–2(b) of the Act, or

e. makes available to the member such current information regarding such person's ownership, business, operations and financial condition (including such person's current audited statement of financial condition, statement of income and statement of changes in stockholder's equity or comparable financial reports), as reasonably believed by the member to be accurate, sufficient for the purposes of performing a risk analysis in respect of such person.

III. Summary of Comments

The Commission received one comment letter regarding the proposal.[26] The commenter generally supported the proposal, which is substantially identical to a proposal by the New York Stock Exchange, Inc. ("NYSE") that the Commission approved.[27] However, the commenter maintained that the written risk analysis methodology included in the NASD's proposal was not required under the NYSE's proposal and was unnecessary because NASD members already are subject to sophisticated external and internal oversight of credit practices. The NASD responded by noting that the written risk analysis methodology was in fact proposed to be required by the NYSE.[28]

In addition, the commenter referenced its comment letter regarding the NYSE's similar proposal.[29] Specifically, the commenter requested clarification that: (1) the NYSE's proposed definition of "exempt account" would not supersede the existing definition of "exempt account" in NYSE Rule 431(f)(2)(D)(iv); and (2) existing extensions of credit to accounts that met the current requirements for exempt account status, but that would not meet the proposal's higher financial threshold for exempt accounts, would be "grandfathered" and maintained based on exempt account status even after the increased financial threshold became effective. In this regard, the NASD confirmed that the proposal's definition of "exempt account" does not replace the current definition of "exempt account" contained in NASD Rule 2520(f)(2)(D)(iv). With respect to an extension of credit to an account that currently qualifies as exempt but that would not qualify as an exempt account under the proposal, the NASD indicates that an account's exempt status will be determined as of the date of the initial extension of credit. Accordingly, accounts that meet the current requirements for exempt account status would be "grandfathered" on their existing credit transactions, and the proposal's requirements for exempt account status would apply to any new credit transactions or "roll-overs" of existing credit extensions.

IV. Discussion

Section 15A(g)(3)(A) of the Exchange Act[30] provides, among other things, that a national securities association may condition membership privileges on compliance with the association's own financial responsibility rules. Pursuant to this authority, the NASD is authorized to promulgate rules governing the financial responsibility requirements of its members. In addition, the Commission finds that the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to a national securities association.[31] In particular, as described above, for positions not maintained in exempt accounts, the proposal reduces the customer maintenance margin requirement for certain non-equity securities and establishes a customer maintenance margin requirement of 20% of current market value for other marginable non-equity securities. The Commission believes that these

[25] *See* note 3, *supra*.

[26] *See* TBMA Letter, *supra* note 4.

[27] *See* Securities Exchange Act Release No. 48365 (August 19, 2003) (order approving File No. SR–NYSE–98–14) ("NYSE Order"). *See also* Securities Exchange Act Release Nos. 40278 (July 29, 1998), 63 FR 41822 (August 5, 1998) (notice of File No. SR–NYSE–98–14); and 48133 (July 7, 2003), 68 FR 41672 (July 14, 2003) (notice of Amendment Nos. 1, 2, and 3 to File No. SR–NYSE–98–14) ("2003 Release").

[28] *See* NASD Letter, *supra* note 5. The NYSE proposed the requirement that members maintain a written risk analysis methodology in Amendment No. 1 to its proposal, which was filed on January 5, 1999, and published for comment on July 14, 2003. The NYSE subsequently filed an Information Memo providing guidelines for a member's written risk analysis methodology. Amendment No. 1 to the NASD's proposal, set forth in Section II.D., *supra*, contains an NTM with written risk analysis methodology guidelines identical to the guidelines established in the NYSE's Information Memo.

[29] *See* letter from Paul Saltzman, Senior Vice President and General Counsel, TBMA, and Patricia Brigantic, Vice President and Senior Associate General Counsel, TBMA, to Jonathan Katz, Secretary, Commission, dated August 26, 1998 ("TBMA 1998 Letter"). The TBMA 1998 Letter, and the NYSE's response, are discussed in the 2003 Release, *supra* note 27. As noted in the NYSE Order, *supra* note 27, the Commission believes that the NYSE sufficiently addressed the questions raised in the TBMA 1998 Letter.

[30] 15 U.S.C. 78o–3(g)(3)(A).

[31] In approving the proposed rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

requirements are consistent with the risks of those securities.

The proposal also permits the extension of good faith margin to certain non-equity securities held in exempt accounts. The Commission notes that the definition of exempt account is limited to certain regulated entities as well as to persons with net worth of at least $40 million and financial assets of at least $45 million about whom certain information is publicly available or who make available to the broker-dealer certain current financial information. The Commission believes that these requirements are important to the broker-dealer's evaluation of the creditworthiness of the exempt account borrower and its ability to make an informed decision regarding an extension of good faith margin to the exempt account.

The Commission also notes that the proposal limits the amount of capital charges a broker-dealer may take in lieu of collecting marked to the market losses. Specifically, a broker-dealer may not enter into transactions with exempt accounts that would increase the broker-dealer's capital charges if the broker-dealer's capital charges exceed: (1) 5% of the broker-dealer's tentative net capital on any one account or group of commonly controlled accounts; or (2) 25% of the broker-dealer's tentative net capital on all accounts combined, unless the excess no longer exists on the fifth business day after it was incurred. In addition, the proposal requires broker-dealers to maintain a written risk analysis methodology for assessing the amount of good faith credit extended to exempt accounts and assures that a broker-dealer has procedures for determining, approving, and monitoring extensions of credit to exempt accounts. The Commission believes that these requirements establish important safeguards to minimize potential risks to a broker-dealer.

Accordingly, the Commission finds that the proposed rule change is consistent with section 15A(b)(6) of the Exchange Act,[32] which requires, among other things, that the rules of a national securities association be designed to promote just and equitable principles of trade, and to protect investors and the public interest.

The Commission finds good cause for approving Amendment Nos. 1 and 2 to the proposal prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment Nos. 1 and 2 strengthen the proposal by providing guidelines for the written risk analysis methodology that NASD members must develop and maintain, and by requiring a person seeking exempt account status to meet specific registration and reporting requirements, or to provide certain current information concerning the person's ownership, business, operations, and financial condition. In addition, Amendment Nos. 1 and 2 conform the NASD's proposal to an NYSE proposal that the Commission approved previously.[33] Accordingly, the Commission finds that there is good cause, consistent with sections 15A(b)(6) and 19(b) of the Exchange Act, to approve Amendment Nos. 1 and 2 on an accelerated basis.

[32] 15 U.S.C. 78o-3(b)(6).

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether Amendment Nos. 1 and 2 are consistent with the Exchange Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–08 and should be submitted by September 23, 2003.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Exchange Act,[34] that the proposed rule change (SR–NASD–00–08), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[35]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22229 Filed 8–29–03; 8:45 am]

BILLING CODE 8010–01–P

[33] *See* NYSE Order, *supra* note 27.

[34] 15 U.S.C. 78s(b)(2).

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48395; File No. SR–NASD–2003–124]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Institute an Hourly Maintenance Fee Associated With the Use of the Nasdaq Workstation II Service by Persons That Are Not NASD Members

August 22, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on August 6, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[3] Nasdaq has designated the proposed rule change as constituting a "non-controversial" rule change under section 19(b)(3)(A)(iii) of the Act,[4] and paragraph (f)(6) of Rule 19b-4 under the Act,[5] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to institute an hourly fee for maintenance services supplied for equipment used in connection with the Nasdaq Workstation™ II ("NWII") service.[6] Nasdaq proposes to implement the proposed rule change thirty days after August 6, 2003.[7]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] On August 12, 2003, Nasdaq filed an amendment to the proposed rule change, which it subsequently withdrew. Telephone conversation between John M. Yetter, Associate General Counsel, Nasdaq, and Frank N. Genco, Division of Market Regulation ("Division"), Commission, on August 19, 2003.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b-4(f)(6).

[6] This filing applies to persons that are not NASD members. On August 6, 2003, Nasdaq also submitted a proposed rule change to implement an identical charge for NASD members. *See* File No. SR–NASD–2003–123.

[7] In this filing, Nasdaq is also moving the text of the footnote to NASD Rule 7010(f) into the text of

The text of the proposed rule change appears below. New text is in italics. Deleted text is in brackets.

* * * * *

7000. Charges for Services and Equipment

7010. System Services

(a)–(e) No change.

(f) Nasdaq Workstation™ Service

(1) The following charges shall apply to the receipt of Level 2 or Level 3 Nasdaq Service via equipment and communications linkages prescribed for the Nasdaq.

Workstation II Service:	
Service Charge	$2,035/month per service delivery platform ("SDP")
Display Charge	$525/month per logon for the first 150 logons $200/month for each additional logon
Additional Circuit/SDP Charge.	$3,235/month[*]
PD and SDP Maintenance:	
Monthly maintenance agreement.	$55/presentation device ("PD") logon or SDP/month
Hourly fee for maintenance provided without monthly maintenance agreement.	*$195 per hour (two hour minimum), plus cost of parts*

A subscriber that accesses Nasdaq Workstation II Service via an application programming interface ("API") shall be assessed the Service Charge for each of the subscriber's SDPs and shall be assessed the Display Charge for each of the subscriber's logons, including logons of an NWII substitute or quote-update facility. API subscribers also shall be subject to the Additional Circuit/SDP Charge.

A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight logons on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP(s) i.e., the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its logons, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming an eighteen-to-one ratio.

(2) No change.

[* A subscriber shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its SDP(s) by placing eight logons on an SDP and obtains an additional SDP(s); in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP(s) (*i.e.*, the difference between the number of SDPs a subscriber has and the number of SDPs the subscriber would need to support its logons, assuming an eight-to-one ratio). A subscriber also shall be subject to the Additional Circuit/SDP Charge when the subscriber has not maximized capacity on its T1 circuits by placing eighteen SDPs on a T1 circuit; in such case, the subscriber shall be charged the Additional Circuit/SDP Charge (in lieu of the service charge) for each "underutilized" SDP slot on the existing T1 circuit(s). Regardless of the SDP allocation across T1 circuits, a subscriber will not be subject to the Additional Circuit/SDP Charge if the subscriber does not exceed the minimum number of T1 circuits needed to support its SDP, assuming an eighteen-to-one ratio.]

(g)–(u) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NWII service allows market participants to access SuperMontage and other Nasdaq facilities through Nasdaq's Enterprise Wide Network II ("EWN II"). Each NWII subscriber location has at least one service delivery platform ("SDP") that connects to the EWN II by a dedicated T1 circuit pair. The subscriber then connects the workstations used by its employees to the SDP. Workstations may be either Nasdaq Workstation presentation devices ("PDs") provided by Nasdaq, or workstations and software supplied by the subscriber (often referred to as an "application programming interface" device, or an "NWII substitute").

Nasdaq currently allows subscribers to contract with Nasdaq for maintenance of their NWII PDs and SDPs on a monthly basis, at the rate of $55 per PD logon or SDP per month. Maintenance is provided by Nasdaq personnel in the New York metropolitan area and by a contractor in other areas of the country. Nasdaq is now proposing to supplement this monthly maintenance option with an hourly maintenance option for subscribers that may not wish to commit to a monthly maintenance agreement. The fee for maintenance provided without a monthly maintenance agreement will be $195 per hour, with a two-hour minimum charge for all service calls, plus the cost of parts supplied.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A of the Act,[8] in general, and section 15A(b)(5) of the Act,[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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the rule to improve the clarity of the rule's presentation in the NASD Manual.

[8] 15 U.S.C. 78*o*–3.

[9] 15 U.S.C. 78*o*–3(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder,[11] because the proposal does not: (1) Significantly affect the protection of investors or the public interest; (2) impose any significant burden on competition; and (3) become operative until 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, and Nasdaq provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change,[12] or such shorter time as designated by the Commission.

At any time within 60 days of August 6, 2003, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[13]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR-NASD–2003–124 and should be submitted by September 23, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22231 Filed 8–29–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] On July 28, 2003, Nasdaq provided the Commission with written notice of its intent to file the proposed rule change. *See* letter from John M. Yetter, Associate General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division, Commission, dated July 28, 2003.

[13] *See* 15 U.S.C. 78(b)(3)(C).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48397; File No. SR–Phlx–2003–15]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Prohibition Against Specialists Accepting Discretionary Orders on the Limit Order Book

August 22, 2003.

On March 13, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify the prohibition against specialists accepting discretionary orders on the limit order book. On June 5, 2003, the Phlx amended the proposed rule change.

The proposed rule change, as amended, was published for comment in the **Federal Register** on July 17, 2003.[3] The Commission received no comments on the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[4] and, in particular, the requirements of Section 6 of the Act[5] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with Section 6(b)(6)[6] of the Act because it should clarify for Exchange specialists the types of orders that they may, and may not, accept onto the limit order book.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (SR–Phlx–2003–15) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22294 Filed 8–29–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48160 (July 17, 2003), 68 FR 42452.

[4] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(6).

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of final priorities.

SUMMARY: In June 2003, the Commission published a notice of possible policy priorities for the amendment cycle ending May 1, 2004. See 68 FR 39173 (July 1, 2003). After reviewing public comment received pursuant to this notice, the Commission has identified its policy priorities for the upcoming amendment cycle. The Commission hereby gives notice of these policy priorities.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, Telephone: (202) 502–4590.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission, an independent commission in the judicial branch of the United States Government, is authorized by 28 U.S.C. 994(a) to promulgate sentencing guidelines and policy statements for Federal courts. Section 994 also directs the Commission periodically to review and revise promulgated guidelines and authorizes it to submit guideline amendments to Congress not later than the first day of May each year. *See* 28 U.S.C. 994(o), (p).

As part of its statutory authority and responsibility to analyze sentencing issues, including operation of the Federal sentencing guidelines, the Commission has identified certain priorities as the focus of its policy development work, including possible

amendments to guidelines, policy statements, and commentary, for the amendment cycle ending May 1, 2004. While the Commission intends to address these priority issues, it recognizes that other factors, such as the enactment of legislation requiring Commission action, may affect the Commission's ability to complete work on all of the identified policy priorities by the statutory deadline of May 1, 2004. The Commission may address any unfinished policy work from this agenda during the amendment cycle ending May 1, 2005.

For the amendment cycle ending May 1, 2004, and possibly continuing into the amendment cycle ending May 1, 2005, the Commission has identified the following policy priorities:

(1) Implementation of the PROTECT Act, Pub. L. 108–21, including guideline amendments addressing the directives to the Commission in (A) section 401 pertaining to downward departures; (B) sections 401, 504, 512, and 513 pertaining to new and existing sex offenses and offenses involving virtual pornography; and (C) section 608 pertaining to increased penalties for offenses involving the trafficking of GHB;

(2) consideration and implementation of recommendations made by the Commission's Organizational Guidelines Advisory Group;

(3) consideration and implementation of recommendations made by the Commission's Native American Advisory Group;

(4) continuation of its work implementing the 21st Century Department of Justice Appropriations Authorization Act, Pub. L. 107–273, including guideline amendments pertaining to (A) assaulting or threatening Federal judges or other officials described in 18 U.S.C. 111 or 115; and (B) a new offense, at 18 U.S.C. 931, prohibiting violent felons from purchasing, owning, or possessing body armor;

(5) consideration of guideline amendment proposals related to the public corruption guidelines in Chapter Two, Part C (Offenses Involving Public Officials);

(6) continuation of its work on the 15 Year Study, which is composed of a number of projects geared toward analyzing the guidelines in light of the goals of sentencing reform described in the Sentencing Reform Act and the statutory purposes of sentencing set forth in 18 U.S.C. 3553(a)(2);

(7) continuation of its policy work related to manslaughter, particularly consideration of guideline amendment proposals providing specific offense characteristics in 2A1.4 (Involuntary Manslaughter), and other homicide offenses;

(8) continuation of its policy work related to immigration offenses, including offenses under 2L1.1 (Smuggling, Transporting, or Harboring an Unlawful Alien) and 2L1.2 (Unlawfully Entering or Remaining in the United States);

(9) continuation of its work with Congress and other interested parties on cocaine sentencing policy consistent with the recommendations made by the Commission in its 2002 report to Congress, *Cocaine and Federal Sentencing Policy;*

(10) consideration of guideline amendment proposals pertaining to terrorism, including terrorism offenses involving man-portable air defense systems (MANPADS) and other similar weapons and the illegal transportation of hazardous materials;

(11) consideration of guideline amendment proposals pertaining to compassionate release programs;

(12) other miscellaneous and limited issues pertaining to the operation of the sentencing guidelines, including (A) offenses involving the unlawful sale or transportation of drug paraphernalia; and (B) offenses involving the receipt or possession of stolen mail;

(13) implementation of other crime legislation enacted during the first session of the 108th Congress warranting a Commission response;

(14) review of the limitation on the base offense level (*i.e.*, not more than level 30) provided in subsection (a)(3) of 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking (Including Possession with Intent to Commit these Offenses); Attempt or Conspiracy); and

(15) continuation of its multiyear research, policy work, and possible guideline amendments relating to Chapter Four (Criminal History and Criminal Livelihood), which may include (A) assessment of the calculation of criminal history points for first time offenders and offenders who are in the highest criminal history categories; (B) assessment of the criminal history rules for minor offenses, juvenile offenses, and expunged convictions; (C) assessment of the criminal history rules for related cases; and (D) consideration of other application issues relating to simplifying the operation of Chapter Four.

Authority: 28 U.S.C. 994(a), (o); USSC Rules of Practice and Procedure 5.2.

Diana E. Murphy,

Chair.

[FR Doc. 03–22250 Filed 8–29–03; 8:45 am]

BILLING CODE 2210–40–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3534]

State of Ohio (Amendment #2)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective August 25, 2003, the above numbered declaration is hereby amended to include Franklin and Jefferson counties as disaster areas due to damages caused by tornadoes, flooding, severe storms and high winds occurring on July 21, 2003 and continuing.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Belmont, Delaware, Fairfield, Licking, Madison, Pickaway and Union in the State of Ohio; and Brooke and Ohio counties in the State of West Virginia may be filed until the specified date at the previously designated location. All other counties contiguous to the above named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 30, 2003, and for economic injury the deadline is May 3, 2004.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: August 26, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–22321 Filed 8–29–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

National Advisory Council; Public Meeting

The U.S. Small Business Administration (SBA) will be hosting a meeting of the National Advisory Councils (NAC). The meeting will be held from Wednesday, September 17th through Thursday, September 18th, 2003, at the Washington Hilton located at 1919 Connecticut Avenue, Washington, DC 20009.

Anyone wishing to attend and make an oral presentation to the Board must contact Kimberly Mace, no later than

Tuesday, September 2, 2003, via e-mail or fax. Kimberly Mace, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416; (202) 401–8525 phone or (202) 481–2974 fax or e-mail *kimberly.mace@sba.gov.*

Sincerely,

Scott Morris,

Deputy Chief of Staff.

[FR Doc. 03–22226 Filed 8–29–03; 8:45 am]

BILLING CODE 8025–01–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–52]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 22, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X–XXXXX] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 26, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15751.

Petitioner: JetBlue Airways, Inc.

Section of 14 CFR Affected: 14 CFR 91.107 and 121.311.

Description of Relief Sought: To permit JetBlue Airways, Inc., to operate Airbus A–320 aircraft equipped with a child restraint device, in addition to the aircraft's lap belt. The restraint device holds the upper torso of a child who is between 22 and 44 pounds, to the seat back in its own airplane seat. In addition, the devise is being evaluated to determine if it will meet all occupant safety requirements established by the Los Angeles Aircraft Certification Office during the Supplemental Type Certificate process.

Docket No.: FAA–2003–14780.

Petitioner: Ronald DiGiovanni.

Section of 14 CFR Affected: 14 CFR 61.113(c).

Description of Relief Sought: To permit members of Ronald DiGiovanni's family to cover all of his operating expenses when being carried as passengers on an airplane that he is operating as pilot in command under his private pilot certificate.

[FR Doc. 03–22211 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Additional Requirements: Aquila GmbH Engine Mount Connection Design Criteria and Winglets for the Aquila GmbH AT01 JAR–VLA Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed design criteria and request for comments.

SUMMARY: This notice announces the availability of and requests comments on the proposed design criteria for fire protection of the connection between the metal structure of an engine mount and composite airframe on an Aquila GmbH AT01 single-engine aircraft with winglets on the wings. This airplane will be certified under the requirements of JAR–VLA (Joint Aviation Requirements—Very Light Aircraft) Amendment VLA/92/01 as developed by the Joint Aviation Authority, and under Title 14 of the Code of Federal Regulations. Additional provisions addressing JAR–VLA parts 865, 1191, and 445 were issued by the airworthiness authority for Germany, the Luftfahrt-Bundesamt (LBA). The FAA is issuing the same additional requirements.

DATES: Comments must be received on or before October 2, 2003.

ADDRESSES: Send all comments on the proposed design criteria to: Federal Aviation Administration, Attention: Mr. Karl Schletzbaum, Project Support Office, ACE–112, 901 Locust, Kansas City, Missouri 64106. Comments may be inspected at the above address between 7:30 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Karl Schletzbaum, 816–329–4146.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed policy by submitting such written data, views, or arguments as they may desire. Commenters should identify the proposed design criteria on the Aquila GmbH engine mount and winglets, and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Small Airplane Directorate before issuing the final design criteria.

Discussion

Proposed Design Criteria

This airplane will be certified under the requirements of JAR–VLA (Joint Aviation Requirements—Very Light Aircraft) Amendment VLA/92/01 as developed by the Joint Aviation Authority and 14 CFR 21.17.

Additional Requirements: Engine Mount Connection Design Criteria

The Aquila AT01 is a full composite single-engine aircraft with the engine mount fitted to the glass fiber composite fuselage. The airplane will be certified to the requirements of JAR/VLA 865 (Fire protection of flight controls and other flight structure) and JAR/VLA 1191 (Firewalls). However, tests must be performed that demonstrate that the interface between the metallic engine mount and the glass fiber reinforced plastic fuselage withstand a fire for 15 minutes while carrying loads under the following conditions:

(a) With one lost engine mount fitting the loads are distributed over the remaining 3 engine mount fittings. The most critical of these fittings must be chosen for the test.

(1) The loads are:

(i) in Z–direction the mass of the propulsion unit multiplied by a maneuvering load factor resulting from a 30° turn for 15 minutes, superimposed by a maneuvering load of 3 seconds representing the maximum positive limit maneuvering load factor of n=3.8 arising from JAR/VLA 337(a).

(ii) in X–direction the engine propulsion force at maximum continuous power for 5 minutes.

(b) The flame to which the component test arrangement is subjected must provide a temperature of 500° C within the target area.

(c) The flame must be large enough to maintain the required temperature over the entire test zone, *i.e.*, the fitting on the engine compartment side.

(d) It must be shown that the test equipment, *e.g.*, burner and instrumentation are of sufficient power, size, and precision to yield the test requirements arising from paragraphs (a) to (c) above. Guidance will be drawn from advisory material AC 20–135 to AC 23–2.

Additional Requirements: Winglets

Since winglets, as a specific structural element, are not addressed in the JAR/VLA requirements, the following is required:

Compliance must be demonstrated to the requirements of JAR 23.445—Outboard fins or winglets.

Issued in Kansas City, Missouri, on August 15, 2003.

Diane K. Malone,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22209 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Final Policy Statement, Propeller Testing V_d Versus V_{NE}, PS–ACE100–2002–008

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of policy.

SUMMARY: This notice announces the issuance of policy PS–ACE100–2002–008, Final Policy Statement, Propeller Testing V_d Versus V_{NE}. The purpose of this policy statement is to clarify the flight testing requirements for vibration and flutter when a different propeller is installed on an aircraft. The installation of a different propeller model, whether by supplemental, amended, or new type certification, is a significant design change, as defined in Order 8100.5, chapter 1, paragraph 103, subparagraph j, section 2 f:

DATES: PS–ACE100–2002–008 was issued by the Acting Manager of the Small Airplane Directorate on July 23, 2003.

How to Obtain Copies: A paper copy of the policy PS–ACE100–2002–008 may be obtained by contacting Mr. Pete Rouse, (816) 329–4135 Small Airplane Directorate, Standards Office (ACE–110), Aircraft Certification Office, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, MO 64106, or by faxing your request to (816) 329–4090. The policy will also be available on the Internet at *http://www.airweb.faa.gov/policy.*

Issued in Kansas City, Missouri on August 15, 2003.

Diane K. Malone,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22210 Filed 8–29–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Investment Securities (12 CFR 1)." The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by October 2, 2003.

ADDRESSES: You should direct comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0205–2, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Joseph F. Lackey, Jr., OMB Desk Officer for the OCC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Investment Securities (12 CFR 1).

OMB Number: 1557–0205.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 1 are as follows:

Under 12 CFR 1.3(h)(2), a national bank may request an OCC determination that it may invest in an entity that is exempt from registration under section 3(c)(1) of the Investment Company Act of 1940 if the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account. The OCC uses the information contained in the request as a basis for determining that the bank's investment is consistent with its investment authority under applicable law and does not pose unacceptable risk.

Under 12 CFR 1.7(b), a national bank may request OCC approval to extend the five-year holding period of securities held in satisfaction of debts previously contracted (DPC) for up to an additional five years. The bank must provide a clearly convincing demonstration of why any additional holding period is needed. The OCC uses the information in the request to ensure, on a case-by-case basis, that the bank's purpose in retaining the securities is not speculative and that the bank's reasons for requesting the extension are adequate, and to evaluate the risks to the bank of extending the holding period, including potential effects on bank safety and soundness.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 25.

Estimated Total Annual Responses: 25.

Estimated Total Annual Burden: 460 hours.

Frequency of Response: On occasion.

Dated: August 26, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 03–22288 Filed 8–29–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Thrift Financial Report and Monthly Cost of Funds

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995.

DATES: Submit written comments on or before October 2, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, or e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov*. Commenters should be aware that there may be unpredictable and lengthy delays in postal deliveries to the Washington, D.C. area and may prefer to make their comments via facsimile, e-mail, or hand delivery. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov*, (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. You can obtain a copy of the March 2004 Thrift Financial Report form from the OTS Internet Site at *http://www.ots.treas.gov*.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Thrift Financial Report (TFR) and Monthly Cost of Funds

OMB Number: 1550–0023.

Form Number: OTS 1313.

Description: OTS collects financial data from OTS-regulated savings associations and their subsidiaries and holding companies in order to assure their safety and soundness as depositories of the personal monies of the general public. OTS monitors the association's financial position and interest-rate risk so that adverse conditions can be identified promptly.

Discussion of Comments and Requested Form Changes: After publishing in the **Federal Register** on January 23, 2003 (68 FR 3318) notice of its intent to make certain changes to the Thrift Financial Report (TFR) effective March 2004 and reviewing and analyzing all comments, OTS has made the following changes to its information collection request to OMB:

Acceleration of Due Dates: Because the majority of the commenters opposed accelerating the filing due date for the TFR and since OTS does not want to impose additional reporting burden on the industry, OTS will not change the TFR filing due date. OTS will retain the same filing due date that the other banking agencies have for the Call Report, which is 30 days after the end of the quarter. Additionally, the filing due date for Schedules HC (Holding Company) and CMR (Consolidated Maturity/Rate) will remain at 45 days after the close of the quarter.

Average Balance Sheet Data: OTS will collect the average balance sheet data proposed, but at the request of several commenters, OTS will allow all institutions regardless of their asset size to use month-end data in their calculations, rather than requiring the use of daily or weekly balances. The averages will be included in Schedule SI and will be publicly available.

Transactions with Affiliates: Due to public response, OTS will combine its proposed items into two line items: (1) Outstanding balances of covered transactions with affiliates that are subject to quantitative limits (Transactions under section 23A of the Federal Reserve Act) and (2) Activity during the quarter of other covered transactions with affiliates, not subject to quantitative limits (Transactions under section 23B of the Federal Reserve Act). This information will be

confidential and will not be released to the public. These two data items will be included on Schedule SI and will be due 30 days after the close of the quarter.

Holding Company Data: OTS will expand the holding company data collected in Schedule HC as proposed. Clarifications will be made to the TFR instructions to address comments regarding the scope of some of the supplemental questions. For instance, OTS has narrowed which subsidiaries must be included to those determined to be significant based on consolidated assets, consolidated gross revenues, or the volume of affiliate transactions. Additionally, effective with 2004 reporting, OTS will revise Form H-b(11) to reduce duplicative reporting requirements.

Federal Home Loan Bank Dividends: As proposed, OTS will add a line in Schedule SO (Statement of Operations) for Federal Home Loan Bank dividend income. As requested by commenters, OTS will include FHLB dividends in net interest income, conforming to the presentation in the commercial bank Call Report. In Schedule SO (Statement of Operations), OTS will add a new section following Interest Income for Dividend Income on Equity Investments Not Subject to FASB Statement No. 115, which will include Federal Home Loan Bank dividend income. This new section will be included in net interest income. OTS will also revise Schedule SC (Statement of Condition) to include Federal Home Loan Bank stock under the section for equity investments not subject to FASB Statement No. 115.

Refinancing Loans: OTS will change the definition of CF360, Refinancing Loans, to include any mortgage loan that is not a purchase money mortgage.

Schedule CSS (Subsidiary Schedule): In response to comments, OTS will leave the collection frequency of Schedule CSS as annual and, additionally, will require reporting only of those subsidiaries that meet any one of the following criteria: (1) The gross revenue of the consolidated subsidiary is 5% or more of the gross revenue of the consolidated thrift; or (2) the total assets of the consolidated subsidiary are 5% or more of the consolidated thrift assets; or (3) the consolidated subsidiary is regulated by a state insurance department, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or (4) the Regional Director deems there is a supervisory reason for requiring the reporting of the subsidiary. Institutions may continue to report subsidiaries that are not required to be reported if they choose.

All Other Revisions: OTS will adopt as proposed the remaining changes to the 2004 TFR published in the **Federal Register** on January 23, 2003 (68 FR 3318).

Type of Review: Revision of a previously approved collection.

Affected Public: Savings Associations.

Estimated Number of Respondents: 925.

Estimated Frequency of Response: Variable depending on the schedule—Monthly, Quarterly, or Annually.

Estimated Burden Hours per Response: 35.42 hours average for quarterly schedules, 2.5 hours average for schedules required annually, and 0.5 hours for the monthly schedule, plus recordkeeping of an average of one hour per quarter.

Estimated Total Burden: 142,608 hours. Because some of these proposed changes will not affect all savings associations that file the TFR, the burden hours reflected above may vary from institution to institution.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: August 26, 2003.

James E. Gilleran,

Director, Office of Thrift Supervision.

[FR Doc. 03–22246 Filed 8–29–03; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Loan Application Register (HMDA)

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before October 2, 2003.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, or e-mail to *Joseph_F._Lackey_Jr@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Loan Application Register (HMDA).

OMB Number: 1550–0021.

Form Number: N/A.

Regulation requirement: 12 CFR 203.

Description: The Home Mortgage Disclosure Act (HMDA), 12 U.S.C. 2801, requires this collection of information. In accordance with the HMDA, the Board of Governors of the Federal Reserve System (FRB) promulgates and administers HMDA regulations, which are prescribed as part of the FRB's Regulation C (12 CFR 203), implementing the HMDA (12 U.S.C. 2801–2810). HMDA forms as well as collection and recordkeeping requirements are approved under OMB Control No. 7100–0247. The FRB supporting statement forms the decisional basis for the OMB action. This submission discusses the burden imposed by Regulation C on the institutions OTS regulates.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 718 (loan application registers (LARs)).

Estimated Frequency of Response: Annually.

Estimated Burden Hours per Response: 0.03 hours per application (approximately 7,064 applications per LAR).

Estimated Total Burden: 152,159 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Dated: August 27, 2003

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–22334 Filed 8–29–03; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0073]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 2, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0073."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0073" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Enrollment Certification, VA Form 22–1999.

(Note: A reference to VA Form 22–1999 also includes VA Forms 22–1999–1, 22–1999–2, 22–1999–3, 22–1999–4, 22–1999–5, and 22–1999–6 which contains the same information as VA Form 22–1999.)

OMB Control Number: 2900–0073.

Type of Review: Extension of a currently approved collection.

Abstract: Educational institutions and job establishments use VA Form 22–1999 to report information concerning the enrollment or reenrollment into training of veterans, service persons, reservists, and other eligible persons. VA is authorized to make payments in advance if the trainee requests an advance payment. In certain instances, VA is authorized to make a lump sum payment of a claimant's tuition and fees if the trainee requests an accelerated payment. The form serves as the trainee's request for an advance or accelerated payments as well as the educational institutions report to the trainee's enrollment. The information collected on the form is used to determine the amount of educational benefits payable to the trainee during the period of enrollment or training. Without the information, VA would not have a basis upon which to make payment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on June 3, 2003, at page 33227.

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, local or Tribal government.

Estimated Annual Burden: 137,424 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Annual Responses: 916,160.

Estimated Number of Respondents: 8,180.

Dated: August 21, 2003.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 03–22197 Filed 8–29–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0569]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to customer satisfaction surveys.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 2, 2003.

ADDRESSES: Submit written comments on the collection of information to Lynne R. Heltman, Veterans Benefits Administration (245), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *lynne.heltman@mail.va.gov.* Please refer to "OMB Control No. 2900–0569" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Lynne R. Heltman at (202) 273–5440.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use

of automated collection techniques or the use of other forms of information technology.

Title: Generic Clearance for the Veterans Benefits Administration Customer Satisfaction Surveys.

OMB Control Number: 2900–0569.

Type of Review: Extension of a currently approved collection.

Abstract: VBA administers integrated programs of benefits and services, established by law for veterans and their survivors, and service personnel. Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing service. VBA uses customer satisfaction surveys to gauge customer perceptions of VA services as well as customer expectations and desires. The results of these information collections lead to improvements in the quality of VBA service delivery by helping to shape the direction and focus of specific programs and services.

Affected Public: Individuals or households and, Businesses or other for-profits.

NATIONAL SURVEY ACTIVITIES

Year	Number of respondents	Estimated annual burden (hours)	Frequency of response
Survey of Veterans' Satisfaction with the VA Compensation and Pension Claims Process			
2004	24,000	7,290	One-time.
2005	24,000	7,290	One-time.
2006	24,000	7,290	One-time.
Survey of Veterans'/Dependents' and Servicemembers' Satisfaction with the VA Education Claims Process			
2004	2,968	979	One-time.
2005	2,968	979	One-time.
2006	2,968	979	One-time.
Survey of Educational Institution Certifying Officials			
2004	1,000	330	One-time.
2005	1,000	330	One-time.
Survey of Veterans' Satisfaction with the VA Home Loan Guaranty Process			
2004	7,560	1,262	One-time.
2005	7,560	1,262	One-time.
2006	7,560	1,262	One-time.
VA Loan Guaranty Lender Satisfaction Survey			
2004	1,992	498	One-time.
2005	1,992	498	One-time.
2006	1,992	498	One-time.
VA Survey of Veterans' Satisfaction with the Vocational Rehabilitation & Employment Program			
2004	3.300	1,089	One-time.
2005	3,300	1,089	One-time.
2006	3,300	1,089	One-time.
Insurance Customer Surveys			
2004	2,800	280	One-time.
2005	2,800	280	One-time.
2006	2,800	280	One-time.
Undetermined Focus Groups (Targeted population groups are to be decided)			
2004	500	1,000	One-time.
2005	500	1,000	One-time.
2006	500	1,000	One-time.
Telephone Survey			
2004	7,200	1,224	One-time.
2005	7,200	1,224	One-time.
2006	7,200	1,224	One-time.
VA Regional Office-Based Survey Activities—Customer Satisfaction Focus Groups			
2004	600	1,800	One-time.
2005	800	1,800	One-time.

NATIONAL SURVEY ACTIVITIES—Continued

Year	Number of respondents	Estimated annual burden (hours)	Frequency of response
2006	600	1,800	One-time.
VA Regional Office-Specific Service Improvement Initiatives (Comment Card)			
2004	80,000	6,640	One-time.
2005	80,000	6,640	One-time.
2006	80,000	6,640	One-time.

Most customer satisfaction surveys will be recurring so that VBA can create ongoing measures of performance and to determine how well the agency meets customer service standards. Each collection of information will consist of the minimum amount of information necessary to determine customer needs and to evaluate VBA's performance. VBA expects to conduct an estimated 100 focus groups and receive up to 80,000 comment cards involving a total of 6,640 hours each year for 2004, 2005, and 2006. In addition, VBA expects to distribute written surveys with a total annual burden of approximately 16,052 hours in 2004, 16,382 hours in 2005, and 16,382 hours in 2005. The grand totals for both focus groups, comment cards, and written surveys are: 22,692 hours in 2004, 23,022 hours in 2005, and 23,022 hours in 2006.

Anyone may view the results of previously administered surveys on the internet by going to the following VBA surveys Web site: *http://www.vba.va.gov/surveys/*.

The areas of concern to VBA and its customers may change over time, and it is important to have the ability to evaluate customer concerns quickly. OMB will be requested to grant generic clearance approval for a 3-year period to conduct customer satisfaction surveys, focus groups and to send out comment cards. Participation in the surveys, focus groups, and comment cards will be voluntary and the generic clearance will not be used to collect information required to obtain or maintain eligibility for a VA program or benefit. In order to maximize the voluntary response rates, the information collection will be designed to make participation convenient, simple, and free of unnecessary barriers. Baseline data obtained through these information collections will be used to improve customer service standards. VBA will consult with OMB regarding each specific information collection during this approval period.

Dated: August 15, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–22198 Filed 8–29–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0154]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each revision of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine veterans, servicepersons and members of the selected reserve eligibility for education benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 3, 2003.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to "OMB Control No. 2900–0154" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for VA Education Benefits, VA Form 22–1990.

OMB Control Number: 2900–0154.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans, servicepersons and members of the selected reserve must complete VA Form 22–1990 to apply for education benefits under chapters 30 and 32 of title 38 U.S.C, chapter 1606 of title 10 U.S.C., and section 903 of Public Law 96–342. The information requested on VA Form 22–1990 is used to determine the applicant's eligibility to education benefits. The form was modified to enact the transfer of chapter 30 benefits to dependents. Under Public Law 107–107, a veteran's spouse or child can apply for chapter 30 benefits that the veteran has transferred to the spouse or child.

Affected Public: Individuals or households.

Estimated Annual Burden: 72,000 hours.

Estimated Average Burden Per Respondent: 54 minutes.

Frequency of Response: Only once.

Estimated Number of Respondents: 80,000.

Dated: August 21, 2003.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 03–22199 Filed 8–29–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Special Medical Advisory Group will meet on October 15, 2003, from 9 a.m. to 2 p.m. The meeting will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW., Room 830, Washington, DC. The meeting is open to the public.

The purpose of the Special Medical Advisory Group is to advise the Secretary and Under Secretary for Health on matters relating to the care and treatment of veterans, and other matters pertinent to the Veterans Health Administration such as research, education and training, and VA/DOD contingency planning. The agenda for the meeting will include discussions of strategic clinical issues of research, education and training of health care professionals, health manpower, and long term care.

Any member of the public wishing to attend should contact Ms. Sylvia Best, Office of the Under Secretary for Health, Department of Veterans Affairs, at (202) 273–5806. No time will be set aside at this meeting for receiving oral presentations from the public. Statements, in written form, may be filed before the meeting or within 10 days after the meeting.

Dated: August 20, 2003.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–22196 Filed 8–29–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 68, No. 169

Tuesday, September 2, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 04011]

Grants for Injury Control Research Centers; Notice of Availability of Funds

Correction

In notice document 03–21514 beginning on page 50778 in the issue of Friday, August 22, 2003, make the following correction:

On page 50778, in the first column, under the heading *Application Deadline:* " September 22, 2003" should read " November 20, 2003".

[FR Doc. C3–21514 Filed 8–29–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
September 2, 2003

Part II

Federal Communications Commission

47 CFR Part 51

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability; Final Rule and Proposed Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket Nos. 01–338; CC Docket No. 96–98; CC Docket No. 98–147; FCC 03–36]

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) adopts rules which establish a new standard for determining the existence of impairment under section 251(d)(2) of the Act, sets forth a new list of unbundled network elements (UNEs), and creates a specifically defined role for the states in the unbundling inquiry. The new interpretation of the "impair" standard in section 251(d)(2) finds a requesting carrier to be impaired when lack of access to a facility in the incumbent LEC's network poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic. The Commission reaffirms that the "at a minimum" language of section 251(d)(2) permits the Commission to take into account factors other than the "impair" and "necessary" standards, particularly important goals of the 1996 Act, when making unbundling determinations. The Commission applies its unbundling analysis to individual elements in a more granular manner than before. Under this more granular approach, the Commission determines whether impairment varies by geographic location, customer class, and service, including a consideration of the type and capacity of the facilities to be used.

DATES: Effective October 2, 2003.

FOR FURTHER INFORMATION CONTACT: Jeremy Miller, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–1580 or via the Internet at *jmiller@fcc.gov*. The complete text of this Report and Order and Order on Remand is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Wireline Competition Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and Order on Remand in CC Docket No. 01–338, CC Docket No. 96–98, and CC Docket No. 98–147; FCC 03–36, adopted February 20, 2003, and released August 21, 2003. The full text of this document may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*. It is also available on the Commission's Web site at *http://www.fcc.gov/Bureaus/Wireline_Competition/in-region_applications*.

Synopsis of the Report and Order and Order on Remand

1. *Background.* In the *Notice of Proposed Rulemaking (NPRM)* (67 FR 1947, Jan. 15, 2002), the Commission sought comment on many issues concerning the unbundling obligations of incumbent local exchange carriers (LECs) under section 251(c)(3) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 (the Act). After the Commission issued the *NPRM*, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *United States Telecom Association* v. *FCC (USTA)*, in which it vacated and remanded the Commission's prior unbundling rules. The Commission issues this *Report and Order and Order on Remand* (Order) to complete the rulemaking it began with the *NPRM* and respond to the D.C. Circuit's concerns regarding the prior rules.

2. Section 251(c)(3) of the Act requires that incumbent LECs provide UNEs to other telecommunications carriers. Section 153(29) of the Act defines "network element" as "a facility or equipment used in the provision of a telecommunications service," specifying that "[s]uch term also includes features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provisions of a telecommunications service." Section 251(d)(2) of the Act establishes a general federal standard for use in determining the UNEs that must be made available by the incumbent LECs pursuant to section 251. Section 251(d)(2) provides that "[i]n determining what network elements should be made available for purposes of section (c)(3), the Commission shall consider, at a minimum, whether "(A) access to such network elements as are proprietary in nature is necessary; and (B) the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."

3. In addition, the Act preserves a state role in addressing unbundling issues. First, section 252 authorizes states to review and to arbitrate interconnection agreements for compliance with the requirements of sections 251 and 252 and this Commission's implementing rules. Second, section 251(d)(3) also preserves states' independent state law authority to address unbundling issues to the extent that the exercise of that authority does not conflict with federal law.

4. *Definition of Network Element.* The Commission interprets the definition of "network element" in section 153(29) to refer to an element of the incumbent's network that is capable of being used to provide a telecommunications service.

5. *Impair Standard.* The Commission finds a requesting carrier to be "impaired" under section 251(d)(2) when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic. This granular analysis is informed by consideration of the relevant barriers to entry, as well as a careful examination of the evidence, especially marketplace evidence showing whether entry has already occurred in particular markets without reliance on the incumbent LEC's networks but instead through self-provisioning or reliance on third-party sources.

6. Several types of barriers to entry inform the "impair" analysis. Scale economies, particularly when combined with sunk costs and first mover advantages, can pose a powerful barrier to entry. The Commission will consider the pervasiveness of scale economies to determine whether, in combination with other factors, they are likely to make entry uneconomic. For similar reasons, the Commission also examines scope economies to determine whether they, too, could contribute to a barrier to entry. Sunk costs, particularly when combined with scale economies, can pose a formidable barrier to entry. First mover advantages can contribute to the factors described above. First mover advantages can include preferential access to buildings, access to rights of way, the higher risk of a new entrants'

failure (often exacerbated by high sunk costs), the fact that the incumbent LEC has substantial sunk capacity, operational difficulties faced by an entrant that have already been worked out by the incumbent LEC when it built out its network as a monopolist, consumers' reluctance to switch carriers, and advertising and brand name preference. The Commission also examines those barriers to entry that are solely or primarily within the control of the incumbent LEC. The Commission looks to these barriers because it is within the control of the incumbent LEC to eliminate them or mitigate their effects, which could eliminate the need to unbundle network elements to overcome them.

7. *Evidence of Impairment.* Actual marketplace evidence is the most persuasive and useful kind of evidence submitted to show that impairment does not exist, in particular granular evidence that new entrants are providing retail services in the relevant market using non-incumbent LEC facilities. The Commission gives substantial weight to evidence of alternative deployment, but will not find it conclusive or presumptive of no impairment without additional information. On the other hand, if the marketplace evidence shows that new entrants have not widely deployed a particular kind of facility, the Commission will consider the facts as some evidence that barriers to entry in that market for that element are preventing the deployment, but will not presume from lack of entry or lack of deployment, however, that there are barriers to entry in the relevant market, or that any barriers cannot be overcome through means other than unbundling without further analysis. The Commission also gives weight to evidence that intermodal alternatives can be used to provide telecommunications service.

8. The application of the "impair" standard does not change depending on whether a new entrant is providing retail or wholesale services. The Commission also reaffirms its prior conclusion in the *UNE Remand Order*, 65 FR 2367 (Jan. 14, 2000) to afford little weight to evidence that requesting carriers are using incumbent LEC tariffed services.

9. *Granularity of the Impairment Analysis.* In the *NPRM*, the Commission asked many questions about whether and how to make the unbundling analysis more granular by considering such factors as specific services, specific geographic locations, the different types and capacities of facilities, and customer and business considerations. Subsequently, the *USTA* decision directed the Commission to approach the section 251(d)(2) impairment analysis by considering market-specific variations in impairment. The Commission applies several types of granularity in the unbundling analysis, including considerations of customer class, geography, and service. In addition, within discussions of specific network elements, the Commission injects granularity into the analysis by considering types and capacities of facilities.

10. In particular, with regard to customer class, the Commission finds that the economic characteristics of the mass market and enterprise market can be sufficiently different that they constitute major market segments. With regard to geographic granularity, the Commission considers whether impairment varies geographically throughout the country. In those instances where the record permits the Commission to create unbundling rules that apply nationally, it does so. In other instances, the Commission may delegate authority to state commissions to ensure that the unbundling rules are implemented on the most accurate level possible while still preserving administrative practicality.

11. Finally, with regard to the different services that competitors may wish to offer using UNEs, the Commission adopts an approach that obligates incumbent LECs to provide access to UNEs only when requesting carriers seek to use those elements to compete against those services that traditionally have been the exclusive domain of incumbent LECs, or "qualifying services." "Qualifying services" include, for example, local exchange service, such as POTS, and access services, such as special access using high-capacity circuits. Once a requesting carrier has obtained access to a UNE to provide a "qualifying service," the carrier may use that UNE to provide any additional services, including non-qualifying telecommunications and information services. In order to gain access to a UNE under section 251(c)(3), a requesting carrier must provide a "telecommunications service," and specifically a qualifying telecommunications service, over that UNE. The Commission has interpreted "telecommunications services" to mean services offered on a common carrier basis.

12. *Implicit Support Flows.* In the *USTA* decision, the D.C. Circuit addressed the question of implicit support flows and their relationship to the Commission's decision making under section 251. The court concluded, among other things, that the Commission had not adequately explained its decision to adopt nationwide unbundling requirements in light of the implicit support flows found in telecommunications rates. In reaching this conclusion, the court expressed concerns about the Commission's approach to unbundling both in areas where the incumbent LEC's retail rates may exceed its costs (presumably referring to historic costs) and in areas where incumbent LEC retail rates may be below cost. By focusing on the economic and operational viability of entry in different market segments, the revised impairment standard addresses the issue of implicit support flows in a manner that is responsive to the concerns raised by the D.C. Circuit. At the same time, the Commission concludes that the statute is best interpreted as giving it considerable discretion to address the relationship between implicit support flows and its impairment analysis. In general terms, the new impairment standard provides that a requesting carrier is deemed to be impaired when lack of access to an incumbent LEC network element poses a barrier or barriers to entry, including operational and economic barriers, that are likely to make entry into a market uneconomic. The impairment standard is unlikely to result in unwarranted unbundling in the case of areas and services for which local exchange rates generally exceed the incumbent LEC's costs. In addition, were the impairment standard to require unbundling for services and areas with "below cost" rates where actual competitive entry does not take place, little harm would result. The statute contains an exemption from the unbundling requirements for rural carriers and provides for state modification or suspension of the unbundling requirements for incumbent carriers serving, in the aggregate, less than two percent of the nation's access lines. This allows the states to prevent any problems that they believe might result from unbundling requirements in these circumstances.

13. *The "Necessary" Standard.* Section 251(d)(2) requires the Commission, in making its unbundling determination, to consider whether "access to such network elements as are proprietary in nature is necessary." The Commission determines to readopt the interpretation of "necessary" that it gave in the *UNE Remand Order*: a proprietary network element is "necessary" if, taking into consideration the availability of alternative elements outside the

incumbent's network, including self-provisioning by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element would, as a practical, economic, and operational matter, *preclude* a requesting carrier from providing the services it seeks to offer.

14. *"At a Minimum"*. Section 251(d)(2) provides that "the Commission shall consider, *at a minimum*, whether * * * the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer." While this phrase permits the Commission to take factors other than "necessary" and "impair" into account in making the unbundling determination, the Commission applies "at a minimum" with restraint. In this Order, the Commission has not required the unbundling of any network element in the absence of impairment. But it has used this authority to inform its consideration of unbundling in contexts where some level of impairment may exist, but unbundling appeared likely to undermine important goals of the 1996 Act, such as in the analyses of fiber-to-the-home and hybrid loops.

15. *Role of the States*. The 1996 Act—specifically sections 251(d)(3) and 252(e)(3)—preserves the states' authority to establish unbundling regulations pursuant to state law as long as the exercise of state authority does not conflict with the Act and its purposes or substantially prevent the Commission's implementation. In addition, sections 261(b) and (c) generally preserve state authority to take action pursuant to state law, provided that such action is consistent with the Act and the federal framework. The Communications Act assigns the Commission the responsibility for establishing a framework to implement the unbundling requirements of section 251(d)(2). In this Order, the Commission creates rules for UNEs based on the impairment standard and marketplace developments over the past three years. The Commission recognizes that competition has evolved at a different pace in different geographic markets and for different market segments. Thus, to ensure that the proper degree of unbundling occurs, the Commission relies, in certain instances when such analysis is necessary, on market-by-market fact-finding determinations made by the states.

16. While the Commission delegates to the states a role in the implementation of the federal unbundling requirements for certain network elements that require this more granular approach, the Commission makes clear that any action taken by the states pursuant to this delegated authority must be in conformance with the Act and the regulations set forth herein. The Commission also finds that the 1996 Act preserved the states' authority to prescribe access obligations pursuant to state law in section 251(d)(3), but only to the extent that state laws or regulations do not conflict with or frustrate the Act and its purposes or substantially prevent the federal implementation regime.

17. If a state commission fails to perform the granular inquiry this Commission delegates to it, any aggrieved party may petition this Commission to step into the state's role. Any carrier seeking Commission review of a state commission's failure to act shall file a petition with this Commission that explains with specificity the bases for the petition and information that supports the claim that the state has failed to act. The Commission will issue a public notice seeking comment on the petition and rule on the petition within ninety days from this public notice. If the Commission agrees that the state has failed to act, it will assume responsibility for the proceeding and make any findings in accordance with the rules set forth herein. These findings will be made nine months from the time the Commission has assumed responsibility for the proceeding.

18. Parties that believe that a particular state unbundling obligation (imposed pursuant to state law) is inconsistent with the limits of section 251(d)(3)(B) and (C) may seek a declaratory ruling from this Commission. If a decision pursuant to state law were to require the unbundling of a network element for which the Commission has either found no impairment—and thus has found that unbundling that element would conflict with the limits in section 251(d)(2)—or otherwise declined to require unbundling on a national basis, it is unlikely that such decision would fail to conflict with, and thus would "substantially prevent" implementation of the federal regime, in violation of section 251(d)(3)(C).

19. *Mass Market Loops*. The Commission finds that requesting carriers are impaired on a national basis without unbundled access to an incumbent LEC's local loops used to provide narrowband services to the mass market. The Commission thus requires that incumbent LECs provide unbundled access to the complete transmission path comprised of a copper local loop between the central office and the customer's premises, including all intermediate devices (*e.g.*, repeaters, load coils) used to establish the transmission path. This network element includes all local loops comprised of copper cable, whether in active service or deployed as spares. Incumbent LECs also must provide the requesting carriers with nondiscriminatory access to the same detailed loop information that is available to the incumbent LEC in the same time intervals it is provided to the incumbent LEC's retail operations.

20. The Commission reaffirms the existing rules that require incumbent LECs to permit competing carriers to engage in line splitting where a competing carrier purchases the whole loop and provides its own splitter. For purposes of clarity and regulatory certainty, however, the Commission also adopts line splitting-specific rules, including the requirement that incumbent LECs modify their OSS to facilitate line splitting.

21. The Commission requires incumbent LECs to provide unbundled access to their copper subloops, *i.e.*, the distribution plant consisting of the copper transmission facility between a remote terminal and the customer's premises, including inside wire. To facilitate competitive LEC access to the copper subloop UNE, the Commission requires incumbent LECs to provide, upon a site-specific request, access to the copper subloop at a splice near their remote terminals. Unlike the Commission's previous subloop unbundling rules, the Commission does not require incumbent LECs to provide unbundled access to their feeder loop plant as stand-alone UNEs. The Commission expects, however, that incumbent LECs will develop wholesale service offerings for access to their fiber feeder, which would be subject to sections 201 and 202 of the Act.

22. The Commission finds that unbundled access to conditioned, stand-alone copper loops is sufficient to overcome impairment for the provision of broadband services. Consequently, the Commission finds that, subject to the grandfather provision and transition period, incumbent LECs do not have to unbundle the high-frequency portion of the local loop (HFPL) for requesting telecommunications carriers.

23. The Commission adopts an interim grandfathering rule to help alleviate the impact of the elimination of the HFPL UNE on competitive LECs and end user customers. Until the next biennial review, the Commission grandfathers all existing line sharing arrangements unless the respective competitive LEC discontinues providing

xDSL service to the particular end user customer. During this interim period, the Commission directs incumbent LECs to charge the same price for access to the HFPL for those grandfathered customers as the incumbent LECs charged prior to the effective date of this Order.

24. The Commission also adopts a three-year transition period for new line sharing arrangements of requesting carriers. During the first year, which begins on the effective date of this Order, competitive LECs may obtain new line sharing customers using the HFPL at recurring charge equal to 25 percent of the state-approved rates or the agreed-upon rates in existing interconnection agreements for stand-alone copper loops for that location. During the second year, the recurring charge for access to the HFPL for customers acquired after the effective date of this Order will increase to 50 percent of the state-approved rate or the agreed-upon rate in existing interconnection agreements for a stand-alone copper loop for that location. In the last year of the transition period, the recurring charge for access to the HFPL for those customers obtained after the effective date of this Order will increase to 75 percent of the state-approved rate or the agreed-upon rate for a stand-alone loop for that location. After the transition period, any new customer must be served through a line splitting arrangement, through use of a stand-alone copper loop, or through an arrangement that a competitive LEC has negotiated with the incumbent LEC to replace line sharing. If line sharing obligations are imposed by a state law decision after the effective date of this Order, any party that believes such decision is inconsistent with the limits of sections 251(d)(3)(B) and (C) may seek a declaratory ruling from this Commission.

25. In addition, incumbent LECs are only required to provide access to the HFPL if the incumbent LEC is providing, and continues to provide, analog circuit-switched voiceband services on the loop over which the requesting carriers seeks access to provide ADSL service. In the event that the customer ceases purchasing voice service from the incumbent LEC, either the new voice provider or the xDSL provider, or both, must purchase the full stand-alone loop to continue providing xDSL service. Incumbent LECs may also maintain control over the loop and splitter equipment and functions.

26. The Commission concludes that the level of impairment without access to fiber to the home (FTTH) loops varies depending on whether such loops are new loops or replacements of a pre-existing copper loops. The Commission does not require incumbent LECs to provide unbundled access to new FTTH loops for either narrowband or broadband services. Regarding "overbuild" deployment in which an incumbent LEC constructs fiber transmission facilities parallel to or in replacement of its existing copper plant, the Commission must ensure continued access to an unbundled transmission path suitable for providing narrowband services to customers served by FTTH loops. In this situation, incumbent LECs have the option to either (1) keep the existing copper loop connected to a particular customer location after deploying FTTH; or (2) provide unbundled access to a 64 kbps transmission path over its FTTH loop. Incumbent LECs do not have to offer unbundled access to overbuilt fiber loops for competing carriers to provide broadband services.

27. The Commission finds that a blanket prohibition on the ability of incumbent LECs to retire any copper loops or subloops they have replaced with FTTH loops is unnecessary at this time because existing rules, with minor modifications, serve as adequate safeguards. Because the retirement of copper loop plant is a network modification that affects the ability of competitive LECs to provide service, the Commission clarifies that incumbent LECs must provide notice of such retirement in accordance with our rules. The Commission revises its network modification rules with respect to the retirement of copper loops to allow parties to file objections to the incumbent LEC's notice of such retirement on the basis that competitors will be denied access to the loop facilities required under our rules. This process does not preempt the ability of any state commission to evaluate an incumbent LEC's retirement of its copper loops to ensure that such retirement complies with any applicable state requirements.

28. In making our unbundling determination for hybrid loops, the Commission considers both impairment and, through our section 251(d)(2) "at a minimum" authority, additional factors. The Commission declines to require incumbent LECs to unbundle the next-generation network, packetized capabilities of their hybrid loops to enable requesting carriers to provide broadband services to the mass market. The Commission concludes that applying section 251(c) unbundling obligations to these next-generation network elements would blunt the deployment of advanced telecommunications infrastructure in direct opposition to the express statutory goals authorized in section 706 of the Telecommunications Act of 1996. Further, a primary benefit of unbundling hybrid loops—to spur competitive deployment of broadband services to the mass market—appears to be obviated to some degree by the existence of cable broadband service competitors, which have a leading position in the marketplace. The Commission thus does not require incumbent LECs to unbundle any transmission path over a fiber transmission facility between the central office and the customer's premises (including fiber feeder plant) that is used to transmit packetized information. Moreover, the Commission does not require incumbent LECs to provide unbundled access to any electronics or other equipment used to transmit packetized information over hybrid loops, such as the xDSL-capable line cards installed in DLC systems or equipment used to provide passive optical networking (PON) capabilities to the mass market.

29. The Commission requires incumbent LECs to provide unbundled access to the entire non-packetized transmission path capable of voice-grade service between the central office and customer's premises. This unbundling obligation for narrowband services is limited to the TDM-based features, functions, and capabilities of these hybrid loops. Incumbent LECs may elect, instead, to provide homerun copper loops rather than a TDM-based narrowband pathway over their hybrid loop facilities if the incumbent LEC has not removed such loop facilities. The Commission further requires incumbent LECs to provide requesting carriers access to a transmission path over hybrid loops served by Integrated DLC systems.

30. The Commission retains competitive LECs' existing right to obtain unbundled access to hybrid loops capable of providing DS1 and DS3 service. Incumbent LECs remain obligated to comply with the nondiscrimination requirements of section 251(c)(3) in their provision of loops to requesting carriers, including stand-alone spare copper loops, copper subloops, and the features, functions, and capabilities for TDM-based services over their hybrid loops. The Commission prohibits incumbent LECs from engineering the transmission capabilities of their loops in a way that would disrupt or degrade the local loop UNEs (either hybrid loops or stand-alone copper loops) provided to competitive LECs.

31. *Enterprise Market Loops.* The Commission concludes that different economic characteristics affect alternative loop deployment according to whether the loop facility is dark fiber or "lit" fiber, as well as the loop capacity level. The Commission finds that incumbent LECs are no longer required to unbundle OCn loops, nationwide. Incumbent LECs must continue to offer, on a nationwide basis, unbundled access to dark fiber loops, DS3 loops (limited to two DS3 loops per requesting carrier per customer location) and DS1 loops, except at specified customer locations where state commissions have found no impairment based on federally-defined triggers within nine months of the effective date of this Order.

32. Specifically, a state commission must determine that unbundling is no longer required at a specific customer location for dark fiber or DS3 loops when two or more unaffiliated competitive LECs have self-provisioned their own transmission facilities at the same loop capacity level to that customer location. A state commission must determine that unbundling is no longer required at a specific customer location for DS3 loops or DS1 loops when two or more unaffiliated competitive providers offer wholesale loops at the same capacity level to competitive LECs at that customer location. State commissions have a continuing responsibility to conduct periodic granular reviews of impairment, which must be completed within six months of a petition to initiate each subsequent review.

33. *Subloops for Multiunit Premises Access.* The Commission concludes that competitive carriers are impaired on a nationwide basis without access to unbundled subloops used to access customers in multiunit premises. Based on evidence in the record, the barriers faced by requesting carriers in accessing customers in multiunit premises are not unique to customers typically associated with the enterprise market residing in such premises but extend to all customers residing therein, including residential or other tenants typically associated with the mass market. Similarly, impairment is also not limited by the type or capacity of the loop the requesting carrier will provide. The Commission finds that incumbent LECs must offer unbundled access to subloops necessary to access wiring at or near multiunit customer premises, including the Inside Wire Subloop, *i.e.*, all incumbent LEC loop plant between the minimum point of entry (MPOE) at a multiunit premise and the point of demarcation, regardless of the capacity level or type of loop the requesting carrier will provision to its customer. Unbundled access must be provided at any technically feasible accessible terminal at or near the multiunit premise, including but not limited to, a pole or pedestal, a network interface device (NID), the MPOE, the single point of interconnection (SPOI) or a feeder distribution interface. Upon notification by a requesting carrier that interconnection at a multiunit premise is required through a SPOI, an incumbent LEC is required to provide a SPOI at that multiunit premise if the incumbent LEC owns, controls or leases the wiring at such premise. A requesting carrier accessing a subloop on the incumbent LEC's network side of the NID obtains the NID functionality as part of that subloop.

34. *Network Interface Device (NID).* The Commission concludes that the NID must remain available as a stand-alone unbundled network element as the means to enable a competitive LEC to connect its loop to customer premise inside wiring. The NID is the gateway to the consumer and thus a key element to local competition. The record shows that the NID may often be the only means through which a competitive LEC can provide facilities-based service to customers, particularly those located in multiunit premises. The NID is defined as any means of interconnecting the incumbent LEC's loop distribution plant to wiring at a customer premises location. Incumbent LECs must offer unbundled access to the NID on a stand alone basis to carriers requesting only stand-alone NID access. An incumbent LEC shall permit a requesting carrier to connect its loop facilities through the incumbent LEC's NID.

35. *Dedicated Transport.* Pursuant to the approach of the *NPRM*, the Commission adopts in this Order a more granular unbundling analysis for transport facilities. *See Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 67 FR 1947 (2002) (proposed Jan. 15, 2002). As an initial matter, the Commission limits its definition of the dedicated transport network element to only those transmission facilities connecting incumbent LEC switches or wire centers as this provides a reasonable interpretation of an incumbent LEC's unbundling obligations. The Commission makes findings regarding impairment by evaluating the attributes of each capacity of transport and the effect of barriers to entry on each. It believes that its analysis of transport will create market certainty and provide incentives for competitive LECs to deploy and utilize alternate facilities. Specifically, based on the evidence in the record, the Commission makes the following determinations. First, due to the ability to self-deploy or utilize unbundled dark fiber or multiple unbundled DS3 circuits, the Commission finds on a national level that requesting carriers are not impaired without access to unbundled OCn transport facilities. Second, due to barriers to entry, including high sunk costs, and the general lack of alternatives in most areas, it finds on a national level that requesting carriers are impaired without access to unbundled dark fiber, DS3, and DS1 transport facilities. However, the record indicates that competitive dark fiber, DS3, and DS1 transport facilities are available on a wholesale basis in some areas, and that competing carriers have deployed their own transport networks in some areas. Because the record is not sufficiently detailed concerning exactly where these facilities have been deployed, and because the nature of transport facilities requires a highly granular impairment analysis, the Commission establishes specific triggers for states to apply in conducting such an analysis. It establishes two ways for states to identify where requesting carriers are not impaired without unbundled transport: (1) By identifying specific point-to-point routes where carriers have the ability to use two or more alternatives to the incumbent's network, or (2) by identifying specific point-to-point routes where three or more competing carriers have self-deployed transport facilities. The Commission delegates to state regulators the authority to make findings of fact within the scope of these triggers to identify on a more granular scale where carriers are not impaired without access to incumbent LEC unbundled transport. In addition to allowing a more precise finding of impairment, the Commission's analysis provides a roadmap for deregulation where regulation does not serve the goals of the Act.

36. *Local Circuit Switching.* The Commission finds that, on the national level, competitive LECs are not impaired without access to unbundled local circuit switching when serving DS1 enterprise customers. DS1 enterprise customers are served using DS1 and above capacity facilities, or served by a sufficient number of DS0 lines that state commissions have determined they could be served using DS1 and above capacity facilities. The record reveals widespread switch deployment by competing carriers to serve the DS1 enterprise market and

establishes that, in most areas, competitive LECs can overcome barriers to serving enterprise customers in an economic manner using their own switching facilities in combination with unbundled loops. The Commission recognizes, however, that in particular markets special circumstances might give rise to impairment without access to unbundled local circuit switching for carriers serving DS1 enterprise customers. The Commission thus allows states 90 days from the effective date of this Order to petition the Commission to waive the finding of no impairment in individual markets based on specific operational and economic factors. State commissions have a continuing responsibility to conduct periodic reviews of impairment for carriers serving the DS1 enterprise market.

37. The Commission further concludes that, on the national level, competitive LECs are impaired without access to unbundled local circuit switching when serving mass market customers. The record indicates that there has been only minimal deployment of competitive LEC-owned switches to serve mass market customers, and that the characteristics of the mass market give rise to significant barriers to competitive LECs' use of self-provisioned switching to serve mass market customers. In particular, inherent difficulties arise from the incumbent LEC hot cut process for transferring DS0 loops, typically used to serve mass market customers, to competing carriers' switches. This national finding of impairment is subject to a more granular review by state commissions within nine months of the effective date of this Order. The state commission must find that competing LECs are not impaired in a particular market if either of two triggers are met: (1) Three or more competing carriers, unaffiliated with the incumbent carrier, each are using their own switches to serve mass market customers in the market or (2) two or more competing carriers, unaffiliated with the incumbent carrier, offer wholesale local circuit switching to carriers serving mass market customers in the market. If the triggers are not satisfied, the state commissions shall examine evidence of the potential for switch self-provisioning in the particular market, taking into account current switch deployment, revenues, costs, processes, network architecture, and the other factors that the Commission identified as potentially giving rise to impairment. If a state commission makes a finding of impairment in a particular market as a result of such a review, it must consider whether this impairment could be addressed by a narrower rule making unbundled switching temporarily available for a minimum of 90 days for customer acquisition purposes, rather than making unbundled switching available for an indefinite period of time. State commissions have a continuing responsibility to conduct periodic reviews of impairment for carriers serving the mass market.

38. The Commission also requires state commissions to take steps to help mitigate the causes of impairment with respect to the mass market. Specifically, within nine months of the effective date of this Order, state commissions must approve and implement a seamless, low-cost process for transferring large volumes of mass market customers or issue detailed findings that such a "batch cut" process is unnecessary in a particular market.

39. On an interim basis, pending state commission determinations pursuant to the framework described above, the Commission retains the rule that incumbent LECs are not obligated to provide unbundled local circuit switching to requesting carriers for serving customers with four or more DS0 loops in density zone one of the top fifty MSAs. Retaining this rule on a temporary basis minimizes the potential service disruptions that could occur from the changes adopted regarding local circuit switching if carriers were free to accumulate more DS0 customers while states pursued their inquiries, only to risk losing those customers after the states had made their determinations.

40. The Commission also establishes a transition plan to migrate the embedded customer base served using unbundled switching to an alternative service arrangement when unbundled local circuit switching is no longer made available. Competitive carriers must transfer their embedded base of enterprise customers to an alternative service arrangement within 90 days from the end of the 90-day state commission consideration period, unless a longer period is necessary to comply with a "change of law" provision in an applicable interconnection agreement.

41. To the extent a state commission finds that competing LECs are not impaired without unbundled local circuit switching in serving mass market customers in a particular market, the Commission requires mass market carriers to commit to an implementation plan with the incumbent LEC within 2 months from the finding of no impairment. Within 5 months after a finding of no impairment, competitive LECs may no longer request access to unbundled local circuit switching. Competitive LECs are required to submit the necessary orders to transition their embedded base of unbundled local circuit switching customers, except rolling use customers, in accordance with the following schedule: (1) 13 months after a finding of no impairment: Each competitive LEC must submit orders for one-third of all its unbundled local circuit switching end users; (2) 20 months after a finding of no impairment: Each competitive LEC must submit orders for half of its remaining unbundled local circuit switching end users; and (3) 27 months after a finding of no impairment: Each competitive LEC must submit orders for its remaining unbundled local circuit switching end users.

42. *Shared Transport.* The Commission finds that shared transport and switching are inextricably linked. Therefore, the Commission finds that requesting carriers are impaired without access to unbundled shared transport to the extent that they are impaired without access to unbundled local circuit switching. Thus, state commissions in identifying impairment for unbundled circuit switching should also incorporate into their analyses the economic characteristics of shared transport.

43. *Packet Switching.* Incumbent LECs are not required to unbundle packet switching, including routers and DSLAMs, as a stand-alone network element. The Order eliminates the current limited requirement for unbundling of packet switching.

44. *Signaling Networks.* The Commission finds that, in the instances in which incumbent LECs will be required to provide access to switching as a UNE, carriers purchasing the switching UNE must also gain access to incumbent LEC signaling. In all other cases, however, the Commission determines that there are sufficient alternatives in the market available and competitive LECs are no longer impaired without access to signaling networks as UNEs for all markets. The Commission concludes that, in the last several years, the market for signaling networks has matured. The Commission explains that multiple alternative providers are available to provide rival signaling services to competitive LECs, and that several competitive carriers are building their own signaling network capabilities. Accordingly, the Commission finds that, for competitive carriers deploying their own switches, there are no barriers to obtaining signaling or self-provisioning signaling

capabilities. The Commission further finds that the appropriate level of granularity for its analysis to be at the national level and its conclusions apply equally to the mass market and the enterprise market.

45. *Call-Related Databases.* The Commission finds that, competitive carriers deploying their own switches are not impaired in any market without access to incumbent LEC call-related databases, with the exception of the 911 and E911 databases. The Commission concludes that, for carriers deploying their own switches, there is evidence in the record of substantial numbers of competitive suppliers that competitive LECs can reliably utilize as an alternative to the incumbent LECs' services. In such instances where switching remains a UNE, however, the Commission finds that competitive carriers purchasing the switching UNE must be able to have access to signaling and the call-related databases that the signaling networks permit carriers to access, and if the incumbent LEC does not provide customized routing, to operator service and directory assistance. As with signaling, the Commission finds that the appropriate level of granularity for its analysis to be at the national level. The alternative call-related database networks are national and regional networks that competitive LECs will be able to use throughout the country. In addition, the Commission states that its conclusions apply equally to the mass market and the enterprise market.

46. With regard to the specific call-related databases, the Commission finds that carriers deploying their own switches are not impaired without access to the incumbent LECs' CNAM and LIDB databases. The Commission concludes that carriers can either self provision or use alternative providers to obtain CNAM and LIDB database services. The Commission similarly concludes that carriers deploying their own switches are not impaired without access to the Toll-Free and LNP databases. Like CNAM and LIDB, the Commission determines that there are third-party vendors available to provide competitive carriers access to Toll-Free and LNP databases. With regard to AIN databases, the Commission also concludes that competitive carriers are no longer impaired without unbundled access to those databases if the carrier deploys its own switches. However, the Commission determines that all competitive carriers continue to be impaired on a national basis without access to the 911 and E911 databases and, therefore, the Commission requires that access to those databases continue to be unbundled.

47. *OSS Functions.* The Commission finds that competitive LECs providing qualifying services continue to be impaired on a national basis without access to OSS functions, including: pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. Accordingly, the Commission requires incumbent LECs to continue to provide unbundled access to OSS. The Commission states that this requirement includes an ongoing obligation on the incumbent LECs to make modifications to existing OSS as necessary to offer competitive carriers nondiscriminatory access and to ensure that the incumbent LEC complies with all of its network element, resale and interconnection obligations in a nondiscriminatory manner. In reaching this conclusion, the Commission finds that the systems, databases, and personnel that the incumbent LEC uses to provide OSS functions represent an extensive infrastructure that would be difficult, if not impossible, for competitors to duplicate. Accordingly, the Commission finds that competitive LECs are impaired without access to incumbent LECs' OSS. The Commission adopts an unbundling requirement for OSS functions on a national basis that applies equally to the mass market and the enterprise market.

48. *Combinations of Network Elements.* The Commission reaffirms its existing rules requiring incumbent LECs to provide UNE combinations upon request where such combinations are technically feasible and do not undermine the ability of other carriers to access UNEs or interconnect with the incumbent LEC's network, and prohibiting incumbent LECs from separating UNE combinations that are ordinarily combined except upon request. The Commission concludes that incumbent LECs shall make UNE combinations, including unbundled loop-transport combinations, available in all areas where the underlying UNEs are available and in all instances where the requesting carrier meets the applicable eligibility requirements. Apart from the applicable service eligibility criteria for high-capacity circuits, incumbent LECs may not impose additional conditions or limitations, such as pre-audits or a requirement to purchase special access services which are subsequently converted to UNE combinations, to obtaining access to EELs and other UNE combinations.

49. The Commission concludes that requesting carriers are permitted to commingle UNEs and combinations of UNEs with other wholesale facilities and services obtained from an incumbent LEC. Incumbent LECs, however, are not required to implement any changes to their systems to bill a single circuit at multiple rates in order to charge competitive LECs a single, blended rate.

50. The Commission concludes that competitive LECs may both convert UNEs and UNE combinations to wholesale services and convert wholesale services to UNEs and UNE combinations, so long as the competitive LEC meets the applicable eligibility criteria. To the extent a competitive LEC fails to meet the eligibility criteria for serving a particular customer, the incumbent LEC may convert the UNE or UNE combination to the equivalent wholesale service in accordance with the procedures established between the parties.

51. The Commission declines to require incumbent LECs to provide requesting carriers an opportunity to supersede or dissolve existing contractual arrangements governing loop-transport combinations. The Commission concludes, however, that incumbent LECs may not assess termination charges, re-connect and disconnect fees, or non-recurring charges associated with establishing a service for the first time because such charges deter legitimate conversions from wholesale services to UNEs or UNE combinations and unjustly enrich an incumbent LEC. Further, because incumbent LECs are never required to perform a conversion in order to continue serving their own customers, the Commission concludes that such charges are inconsistent with an incumbent LEC's duty to provide nondiscriminatory access to UNEs and UNE combinations on just, reasonable, and nondiscriminatory rates, terms, and conditions, and that such charges unlawfully subject competitive LECs purchasing UNEs or UNE combinations to undue or unreasonable prejudice or disadvantage.

52. *Service Eligibility Criteria to Access UNEs.* The Order concludes that a carrier seeking access to an unbundled element of the incumbent LEC's network must provide qualifying service to a customer in order to obtain access to that facility pursuant to the Commission's section 251 unbundling rules. With respect to combinations of high-capacity (DS1 and DS3) loops and interoffice transport only, the Commission adopts additional

eligibility criteria due to the potential for a provider of exclusively non-qualifying service to obtain access to these combinations at UNE prices.

53. The Commission does not, however, impose these additional requirements on access to UNEs other than high-capacity EELs. To ensure that the Commission's rules on service eligibility are not gamed in whole or in part, the Commission makes clear that the service eligibility criteria must be satisfied (1) to convert a special access circuit to a high-capacity EEL; (2) to obtain a new high-capacity EEL; or (3) to obtain at UNE pricing part of a high-capacity loop-transport combination (commingled EEL).

54. *Service Eligibility Criteria for High-Capacity EELs.* The Order concludes that where a requesting carrier satisfies the following three categories of criteria, it is a bona fide provider of qualifying services and thus is entitled to order high-capacity EELs. Requesting carriers must certify to meeting all three criteria (authorization, local number and E911 assignment, and architectural safeguards) to qualify for the high-capacity circuit, subject to the separate certification and auditing requirements.

55. First, the Commission finds that each requesting carrier must have a state certification of authority to provide local voice service. Second, to demonstrate that it actually provides a local voice service to the customer over every DS1 circuit, the Commission finds that the requesting carrier must have at least one local number assigned to each circuit and must provide 911 or E911 capability to each circuit. To ensure the legitimacy of these assignments, the origination and termination of local voice traffic should not include a toll charge, and should not require dialing special digits beyond those normally required for a local voice call. Further, the Commission also clarifies that each DS1-equivalent circuit of a DS3 EEL must have its own local number assignment, so that each DS3 must have at least 28 local voice numbers assigned to it.

56. Third, the Commission finds additional circuit-specific architectural safeguards to prevent gaming are necessary. Each circuit must terminate into a collocation governed by section 251(c)(6) at an incumbent LEC central office within the same LATA as the customer premises. In particular, for this collocation safeguard, the Order finds that termination of a circuit into a section 251(c)(6) collocation arrangement in an incumbent LEC central office is an effective tool to prevent arbitrage, because collocation is a necessary building block for providing local voice services and is traditionally not used by interexchange carriers. More specifically, because traditional interexchange configurations route long-distance traffic from a customer premises over tariffed channel termination and transport facilities directly to an interexchange point-of-presence, a section 251(c)(6) collocation requirement ensures that a carrier has set up an architecture that ensures that traffic can leave the incumbent network prior to hitting the POP. As further evidence that a carrier provides qualifying voice service, the collocation arrangement must be within the same LATA as the customer premises. The Commission determines that a requesting carrier can satisfy this prong through reverse collocation, and that any non-incumbent LEC collocation arrangement pursuant to section 251(c)(6) meets this test.

57. As an additional indicator of providing local voice service, the Commission concludes that each EEL circuit must be served by an interconnection trunk in the same LATA as the customer premises served by the EEL, and that for every 24 DS1 EELs or the equivalent, the requesting carrier must maintain at least one active DS1 interconnection trunk for the exchange of local voice traffic. As a further safeguard against gaming, where a requesting carrier strips off the calling party number on calls exchanged over the interconnection trunk, that trunk shall not be counted towards meeting the trunk/EEL ratio. The costs and difficulties of network configuration necessary to satisfy the interconnection and collocation requirements minimize the potential for these safeguards to be gamed; only a bona fide provider of qualifying local services would undertake these measures, all of which are a necessary precondition to compete directly against the incumbent LEC's voice service. The 24-to-1 EEL to interconnection trunk ratio provides a reliable gauge that the competitive LEC exchanges local traffic with the incumbent LEC in a manner that indicates that it is a bona fide provider of local voice service. The Commission finds that this ratio therefore provides a reasonable proxy for the capacity of interconnection that a bona fide provider of local voice service competing against the incumbent LEC would require.

58. In addition, the Commission finds that each EEL circuit must be served by a Class 5 switch or other switch capable of providing local voice traffic. To ensure that the traffic carried over each EEL is not exclusively non-local, a requesting carrier must certify that the switching equipment is either registered as Class 5 or that it can switch local voice traffic.

59. The Commission applies the service eligibility requirements on a circuit-by-circuit basis, so each DS1 EEL (or combination of DS1 loop with DS3 transport) must satisfy the service eligibility criteria. For a requesting carrier to obtain a DS3 EEL as a UNE, the requesting carrier must satisfy the criteria for service eligibility for the DS1-equivalent circuit capacity of that DS3 EEL. The Commission is persuaded that while no single requirement can prevent gaming, the criteria the Commission adopts are collectively sufficient to restrict the availability of these UNE combinations to legitimate providers of local voice service.

60. *Certification and Auditing.* The Commission concludes that requesting carriers may self-certify to satisfying the qualifying service eligibility criteria for high-capacity EELs. The Order does not specify the form for such a self-certification, but re-adopts the Commission's prior findings that a letter sent to the incumbent LEC by a requesting carrier is a practical method. The Order concludes that incumbent LECs may obtain and pay for an independent auditor to audit, on an annual basis, compliance with the qualifying service eligibility criteria. The independent auditor must perform its evaluation in accordance with the standards established by the American Institute for Certified Public Accountants (AICPA), which will require the auditor to perform an "examination engagement" and issue an opinion regarding the requesting carrier's compliance with the qualifying service eligibility criteria. To the extent the independent auditor's report concludes that the competitive LEC failed to comply with the service eligibility criteria, that carrier must true-up any difference in payments, convert all noncompliant circuits to the appropriate service, and make the correct payments on a going-forward basis.

61. In addition, to the extent the independent auditor's report concludes that the competitive LEC failed to comply in all material respects with the service eligibility criteria, the competitive LEC must reimburse the incumbent LEC for the cost of the independent auditor. Similarly, to the extent the independent auditor's report concludes that the requesting carrier complied in all material respects with the eligibility criteria, the incumbent LEC must reimburse the audited carrier for its costs associated with the audit.

The Commission also expects that requesting carriers will maintain the appropriate documentation to support their certifications.

62. *Modification of Existing Network.* The Commission concludes that incumbent LECs must make routine network modifications to unbundled transmission facilities used by requesting carriers where the requested transmission facility has already been constructed, meaning that incumbent LECs must perform those activities that incumbent LECs regularly undertake for their own customers. Routine modifications, however, do not include the construction of new wires for a requesting carrier. The Commission finds that loop modification functions that the incumbent LECs routinely perform for their own customers, and therefore must perform for competitors, include rearrangement or splicing of cable, and deploying a new multiplexer or reconfiguring an existing multiplexer. The Commission also concludes that incumbent LECs must provide access, on an unbundled basis, to xDSL-capable stand-alone copper loops because competitive LECs are impaired without such loops. Such access may require incumbent LECs to condition the local loop for the provision of xDSL-capable services by removing bridge taps and similar devices as part of this obligation. The Commission concludes that incumbent LECs are not obligated to construct transmission facilities so that requesting carriers can access them as UNEs at cost-based rates. However, the Commission also clarifies that an incumbent LEC's unbundling obligation includes all deployed transmission facilities in its network, unless specifically exempted in the Order. To ensure that no incumbent LEC is obligated to build out facilities at TELRIC pricing, the Commission clarifies that the tariffed termination liabilities for special construction apply to the conversion of special access circuits built to customer specification.

63. *Section 271 Issues.* The Commission concludes that BOCs have an independent obligation, under section 271(c)(2)(B), to provide access to each network element on section 271's "competitive checklist" even where that element is no longer required to be unbundled under section 251(c)(3). This conclusion follows from the plain language and structure of section 271(c)(2)(B) and is a reasonable interpretation of the Act. Sections 251, 252 and 271 do not establish standards for the rates, terms and conditions of offerings pursuant to section 271(c)(2)(B) alone. Rather, the offering of such network elements is governed by the just, reasonable and nondiscriminatory rate standards of sections 201 and 202. The Commission further concludes that following a grant of section 271 authorization, the BOC must continue to comply with any conditions required for approval, subject to changes in the law. It would be inconsistent with public policy to impose different—and potentially out-of-date or vacated—rules on BOCs based solely on the date of section 271 entry.

64. *Clarification of TELRIC Rules.* The Order clarifies two key components of its TELRIC pricing rules to ensure that UNE prices send appropriate economic signals to incumbent LECs and competitive LECs. First, the Order clarifies that the risk-adjusted cost of capital used in calculating UNE prices should reflect the risks associated with a competitive market. The Order also reiterates the Commission's finding from the *Local Competition Order* that the cost of capital may be different for different UNEs. Second, the Order declines to mandate the use of any particular set of asset lives for depreciation, but clarifies that the use of an accelerated depreciation mechanism may present a more accurate method of calculating economic depreciation. In addition to these clarifications, the Order notes that the Commission plans to open a proceeding to consider issues related to its TELRIC pricing rules.

65. *Fresh Look.* The Commission retains the determination made in the *UNE Remand Order* that it will not permit competitive LECs to avoid any liability under contractual early termination clauses in the event that it converts a special access circuit to a UNE. Although "fresh look" has occurred in the past, this rare exercise of Commission discretion is not appropriate here because it would be unfair to both incumbent LECs and other competitors, disruptive to the market place, and ultimately inconsistent with the public interest.

66. *Transition Period.* The Commission will not intervene in the contract modification process to establish a specific transition period for each of the rules established in this Order. Instead, as contemplated in the Act, individual carriers will have the opportunity to negotiate specific terms and conditions necessary to translate our rules into the commercial environment, and to resolve disputes over any new contract language arising from differing interpretations of our rules.

67. *Periodic Review of National Unbundling Rules.* The Commission will evaluate these rules consistent with the biennial review mechanism established in section 11 of the Act. These reviews, however, will not be performed *de novo* but according to the standards of the biennial review process.

68. *Duty to Negotiate in Good Faith.* The Commission amends its duty-to-negotiate rule 51.301(c)(8)(ii) to make the rule conform to the text of the *Local Competition Order.*

Final Regulatory Flexibility Analysis

69. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the **Federal Register** summary of the *NPRM.* The Commission sought written public comments on the proposals in the *NPRM,* including comments on the IRFA. Comments addressed the proposals contained in the *NPRM,* as well as the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) addresses comments on the IRFA and conforms to the RFA.

Need for, and Objectives of, the Rules

70. This Order fulfills the commitment the Commission undertook in its 1999 *UNE Remand Order* to reexamine, in three years, the list of network elements that incumbent LECs must offer to competitors on an unbundled basis, and responds to several significant judicial rulings that have been issued since the Commission last conducted a comprehensive review of its unbundling rules. More specifically, this Order refines the "impair" standard set forth in section 251(d)(2) of the Act, and applies the revised standard to an array of "transmission" and "intelligence" network elements. The revised "impair" standard is designed to reflect both the experience of the local service market during the seven years since the Act's market-opening provisions took effect and the legal guidance mentioned above. Applying this standard, which pays special attention to the requesting carrier's ability to self-provision the element or to obtain it from a source other than the incumbent LEC, this Order adopts a list of network elements that must be unbundled and sets forth the particular circumstances in which unbundling will be required. The approach adopted is substantially more granular than our earlier formulations of the "impair" standard, accounting for considerations of customer class, geography, and service. This Order also reaffirms a state commission's authority to establish unbundling requirements, as long as the unbundling obligations are consistent with the requirements of section 251(d)(3) and do not

substantially prevent implementation of the requirements of that section and the purposes of the Act, and authorizes state commissions to make certain factual determinations necessary to implementation of the granular analysis we adopt here.

Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

71. In this section, the Commission responds to various arguments raised by TeleTruth, the National Federation of Independent Businesses (NFIB), and the Office of Advocacy of the Small Business Administration (SBA Advocacy) relating to the IRFA presented in the *NPRM*. It also addresses concerns raised by Senator (then-Representative) James Talent in a letter submitted in response to the *UNE Remand Order*, which was later incorporated into this proceeding. To the extent the Commission received comments raising general small business concerns during this proceeding, those comments are discussed throughout the Order and are summarized in Part X.A.5, below.

72. As an initial matter, the Commission rejects the contention that it failed to consider the needs of small business customers of competitive LECs in fashioning the analysis set forth in this Order. It has grappled, throughout this proceeding and throughout this Order, with the consequences our determinations will have on all market participants, including small business providers and the small business end users about which TeleTruth, NFIB, SBA Advocacy, and Senator Talent express concern. The Commission has also considered various alternatives to the rules it adopts, and has stated the reasons for rejecting these alternative rules, as commenters have urged. A summary of our analysis regarding small business concerns, and of alternative rules that we considered in light of those concerns, is presented in subsection 5 of the FRFA, *infra*.

73. Many of the complaints raised regarding the Commission's IRFA hinge on the argument that in performing the analysis mandated by the RFA, an agency must analyze the effects its proposed rules will have on "customers" of the entities it regulates. But as the courts have made clear time and again, this is not the case. Indeed, the D.C. Circuit "has consistently held that the RFA imposes no obligation to conduct a small entity impact analysis of effects on entities which [the agency conducting the analysis] does not regulate." Thus, the RFA imposes no independent obligation to examine the effects an agency's action will have on the customers of the companies it regulates unless those customers are, themselves, subject to regulation by the agency. In any event, as noted above, we have considered the needs of small business customers of competitive (and incumbent) LECs throughout this Order. Our analysis of small business concerns is summarized in Part X.A.5, below.

74. TeleTruth argues that the Commission has taken inadequate steps to notify small businesses of this and other proceedings, in violation of the RFA. The Commission disagrees. The RFA requires the Commission to "assure that small entities have been given an opportunity to participate in the rulemaking," and proposes as example five "reasonable techniques" that an agency might employ to do so. In this proceeding, the Commission has employed several of these techniques: it has published a "notice of proposed rulemaking in publications likely to be obtained by small entities"; has "inclu[ded] * * * a statement that the proposed rule may have a significant economic effect on a substantial number of small entities" in the *NPRM;* has solicited comments over its computer network; and has acted "to reduce the cost or complexity of participation in the rulemaking by small entities" by, among other things, facilitating electronic submission of comments. The Commission thus concludes that it has satisfied its RFA obligation to assure that small companies were able to participate in this proceeding.

75. TeleTruth further contends that the Commission's IRFA was flawed by its use of "boilerplate" language that differed little from the language used in the IRFAs prepared for other proceedings. However, the only language it cites does not even appear in the IRFA prepared for this proceeding. Moreover, TeleTruth has suggested no reason why the use of similar language in several proceedings is at all problematic. Indeed, the particular language about which it complains merely describes the "number of telephone companies affected" by a given proceeding—a class that is likely to differ little, if at all, among industry-wide rulemakings such as this.

76. TeleTruth next complains that the IRFA used outdated census data from 1992 in estimating the number of small businesses that might be affected by the Commission's decisions here. While certain 1997 census data became available in late 2000 and were not incorporated into the previous *NPRM,* this updating would not, we believe, have affected a small entity's decisions concerning IRFA. This more recent data are reflected in subsection 3 of the FRFA, *infra*.

77. TeleTruth also contends that "[a] true IRFA analysis about small business telecom competitors would conclude that the current FCC is in violation of the Telecom Act and all of its provisions" because the Commission purportedly has failed to enforce its local competition rules. Such an assertion falls outside the scope of this rulemaking proceeding and our analysis herein. Complaints regarding carriers' compliance with the Commission's Rules are properly addressed in other venues. For example, section 208 of the Communications Act specifically permits small businesses and other entities to lodge complaints regarding other carriers' activities, and to seek enforcement of Commission regulations. Also, to the extent an incumbent LEC's obligations under section 251 are implemented through interconnection agreements, those obligations are enforceable as a matter of contract law through the courts.

78. TeleTruth next argues the RFA requires "an impact study on how [an agency's regulations] will harm small businesses," and that "the FCC has not done anything of the sort for this proceeding." The Commission disagrees: the RFA requires us to provide precisely the information contained in this FRFA, but does not mandate a separate "impact study." The Commission has therefore satisfied its RFA obligations.

79. In a letter challenging the *UNE Remand Order,* Senator Talent argued that that Order violated section 3(a)(2)(C) of the Small Business Act. Specifically, Senator Talent noted that the *UNE Remand Order* differentiated between businesses that used fewer than four access lines and those that used four or more lines, in contravention of the Small Business Act's directive that "unless specifically authorized by statute, no Federal department or agency may prescribe a size standard for categorizing a business concern as a small business concern," unless certain procedural requirements are satisfied. In the present Order, our action does not establish any special small business size standard.

80. TeleTruth and Senator Talent suggest that section 257 of the Act dictates a particular substantive result in this matter. Specifically, TeleTruth claims that this "Triennial Review is mandated in Section [257(c)]," and requires an outcome favorable to entrepreneurs and small businesses. Senator Talent argued that in limiting the class of elements subject to section

251(c), the *UNE Remand Order* "erected a new barrier to entry" by small business carriers, and consequently violated section 257 of the Communications Act. Section 257, however, did not mandate this proceeding and in no way cabins this Commission's exercise of its authority to adopt rules implementing the Act. Section 257 required the Commission to conduct a proceeding designed to identify and eliminate "market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services" within 15 months of the enactment of the 1996 Act, and periodically to review its regulations and report to Congress on any such barriers. The Commission concluded the requisite proceeding in 1997 and issued its first subsequent section 257 Report to Congress in 2000. Thus, this proceeding is *not* mandated (or in any way governed) by section 257. Rather, as described above, this Order fulfills the Commission's commitment—set forth in the *UNE Remand Order*—to reevaluate unbundling requirements, and responds to various judicial rulings regarding those requirements.

81. TeleTruth, the NFIB, and SBA Advocacy caution that this Order may stand in violation of Executive Order 13272. Setting aside the question of whether a multi-member independent agency such as the FCC must comply with that Executive Order, it notes that affected agencies must: (1) Comply with the RFA, (2) give SBA Advocacy advanced notice of any proposed rules that might substantially impact small businesses, and (3) give "appropriate consideration to" and provide a written response to "any comments provided by" SBA Advocacy. Here, the Commission did send SBA Advocacy a copy of the published *NPRM* (which pre-dated the Executive Order). Moreover, in this FRFA, we fully satisfy our obligations under the RFA. Finally, we address SBA Advocacy's other comments below. Therefore, this proceeding stands in compliance with Executive Order 13272.

82. SBA Advocacy argues that the Commission's IRFA "did not consider the impact of delisting unbundled network elements * * * on small competitive local exchange carriers." While SBA Advocacy recommends that we issue a revised IRFA to account more fully for the impact our rules might have on competitive LECs, it recognizes that we might appropriately address any such impact in this FRFA instead. The Commission has adopted the latter course. It notes that we have considered the concerns of competitive LECs throughout this Order, and those considerations are summarized in Part X.A.5, below. Moreover, in Part X.A.3, we attempt to estimate the number of competitive LECs that will be affected by the rules we adopt herein.

83. SBA Advocacy also claims that the proposals contained in the *NPRM* were not sufficiently specific to allow small businesses the opportunity to comment meaningfully. The Commission disagrees. This proceeding has elicited well over one thousand filings, submitted by scores of parties. These parties—which include numerous small businesses—found in the NPRM sufficient specificity to permit meaningful comment. SBA Advocacy notes its "particular concern" that the Commission "is considering removing elements from the list" of incumbent LECs' unbundling obligations, whereas the *NPRM* purportedly gave no indication of this eventuality. The *NPRM* clearly explained that the Commission was considering "an unbundling analysis that is more targeted," including approaches "that take into consideration specific services, facilities, and customer and business considerations." It expressly sought comment "on applying the unbundling analysis to define the network elements" subject to unbundling, and indicated our intention to "probe whether and to what extent we should adopt a more sophisticated, refined unbundling analysis." The Commission officially stated its intention to reexamine unbundling obligations with respect to loops, switching, interoffice transport, OSS, call-related signaling and call-related databases. It is thus not persuaded that the *NPRM* somehow failed to signal our intent to examine rules that might result in modification of the list of elements (including possible removal of elements) subject to section 251(c)(3)'s unbundling requirements.

Description and Estimate of the Number of Small Entities to Which the Actions Taken Will Apply

84. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

85. In this section, we further describe and estimate the number of small entity licensees and regulatees that may be affected by rules adopted in this Order. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Below, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

86. The Commission has included small incumbent LECs in this present RFA analysis. As noted above, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a wired telecommunications carrier having 1,500 or fewer employees), and "is not dominant in its field of operation." SBA Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although it emphasizes that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

87. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

88. *Incumbent LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA

rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

89. *Competitive LECs.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive LEC services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. In addition, 55 carriers reported that they were "Other Local Exchange Carriers." Of the 55 "Other Local Exchange Carriers," an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

90. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 229 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

91. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to OSPs. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 22 companies reported that they were engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the great majority of OSPs are small entities that may be affected by the rules and policies adopted herein.

92. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

93. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, OSPs, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 42 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

94. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

95. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years." These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as

"small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

96. *Narrowband PCS.* To date, two auctions of narrowband PCS licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

97. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

98. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

99. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the Small Business Act. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

100. *Common Carrier Paging.* In the *Paging Third Report and Order,* the Commission developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Metropolitan

Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.

101. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, the Commission adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

102. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

103. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. The Commission will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

104. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

105. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

106. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

107. *Wireless Communications Services (WCS).* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the WCS auction. A "small business" is an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that

qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

108. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for "very small business" is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

109. *Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS), and Instructional Television Fixed Service (ITFS).* MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the MDS and ITFS. In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

110. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 LMDS licenses began on February 18, 1998, and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

111. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry-over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

112. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

113. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

114. *Internet Service Providers.* While internet service providers (ISPs) are only indirectly affected by our present actions, and ISPs are therefore not formally included within this present FRFA, we have addressed them informally to create a fuller record and to recognize their participation in this proceeding. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having $21 million or less in annual receipts. According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year. Of this

total, 2,659 firms had annual receipts of $9,999,999 or less, and an additional 67 had receipts of $10 million to $24,999,999. Thus, under this size standard, the great majority of firms can be considered small.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

115. Pursuant to sections 251(c) and (d) of the Act, incumbent LECs, including those that qualify as small entities, are required to provide nondiscriminatory access to UNEs. The only exception to this rule applies to qualifying rural carriers that have gone through the process of obtaining an exemption, suspension, or modification pursuant to section 251(f) of the Act. This Order represents, in large part, a fresh examination of the issues presented in implementing the unbundling requirements of section 251, based on comments from interested parties responding to the *NPRM*. This Order also interprets the necessary and impair standards of section 251(d)(2) in a manner that satisfies the D.C. Circuit's directives that (1) the Commission eschew broad national standards in favor of more granular analysis, and that, (2) in determining whether a carrier is "impaired" by diminished access to a given element, the Commission distinguish between "cost disparities that are universal as between new entrants and incumbents in any industry" and disparities resulting specifically from the conditions of natural monopoly that the Act is designed to redress.

116. In this Order, we determine that requesting carriers (1) are impaired without access to local circuit switching in providing service to mass market customers using DS0 capacity loops; (2) are not impaired without access to unbundled local circuit switching for the provision of service to enterprise customers using DS1 and higher capacity loops; (3) are not impaired without access to packet switching, including routers and DSLAMs; (4) are not impaired without access to incumbent LECs' signaling systems except where they are also impaired without access to the incumbent LEC's unbundled circuit switching; (5) are impaired without unbundled access to the incumbent LEC's 911 and e911 databases; (6) are not impaired without access to the incumbent LEC's other call-related databases if they deploy their own switches, but otherwise are impaired; (7) are impaired without access to incumbent LECs' OSS; (8) are impaired without access to copper loop or subloop facilities (and must condition copper loops for provision of advanced services), but are not impaired without access to line-sharing (subject to a three-year transition) or hybrid loops; (9) are not impaired without access to new build/greenfield fiber-to-the-home (FTTH) loops for broadband or narrowband services or overbuild/brownfield FTTH loops for broadband services; (10) are not impaired without unbundled access to OCn capacity loop facilities, but are impaired, subject to certain triggers, without access to dark fiber loops, DS1 loops, and DS3 loops; (11) are impaired without access to unbundled subloops associated with accessing customer premises wiring at multiunit premises and are also impaired without unbundled access to the incumbent LEC Inside Wire Subloops and NIDs, regardless of loop type; (12) are not impaired without unbundled access to OCn transport facilities, but are impaired, subject to certain triggers, without access to dark fiber transport facilities, DS1 transport facilities, and DS3 transport facilities; and (13) are impaired without access to unbundled shared transport only to the extent they are impaired without access to local circuit switching. The Order also affirms that incumbent LECs are obligated to provide access to UNE combinations.

117. In this Order, the Commission adopts rules to implement a congressionally-mandated scheme, embodied in section 251 of the Act, that imposes upon incumbent LECs an obligation to provide unbundled access to certain network elements. This Order articulates a new impairment standard to govern which network elements incumbent LECs must unbundle for competitors in accordance with the Act. While this Order imposes no general obligations on competitive LECs, the Order does require competitive LECs to satisfy certain reporting requirements in order to obtain as UNEs certain high-capacity network elements from incumbent LECs. We have attempted to keep the obligations imposed by this Order to the minimum necessary to implement the requirements of the Act.

118. In addition, this Order outlines procedures whereby states may conduct proceedings to determine whether certain network elements satisfy our impairment standard according to specific guidelines and triggers, as outlined in the Order. While this Order does not specifically impose any obligations on carriers in this regard, records regarding facility use may be necessary for these state proceedings.

119. The various compliance requirements contained in this Order will require the use of engineering, technical, operational, accounting, billing, and legal skills. The carriers that are affected by these requirements already possess these skills. This Order contains new or modified information collections, which are subject to Office of Management and Budget review pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

120. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

121. In this Order, the Commission adopts rules regarding the unbundling of network elements. It has modified our impairment analysis to find that a requesting carrier is impaired when lack of access to a facility in the incumbent LEC's network poses barriers that are likely to make entry into the market uneconomic. These can include both operational and economic barriers, such as scale economies, sunk costs, first mover advantages, absolute cost advantages, and barriers within the control of the incumbent LEC. In adopting this interpretation, the Commission considered a variety of factors relating to the size of regulated entities and the customers they serve. It considered a number of barriers to competitive entry, including those faced by small competitors, as well as the importance of scale economies as they relate to small entities. Finally, the Commission considered and rejected a number of suggested approaches to impairment.

122. In applying its impairment analysis to specific network elements, the Commisson adopts a more granular approach, including the considerations of customer class, geography, and service. The Commission found that conducting a more granular analysis permits it to distinguish, with more particularity, those situations for which there is impairment from those for which there is none. It also found that an even more granular analysis—loop by loop, for example—is neither

administratively feasible nor required by the courts. The Commission considered the differing needs of three classes of telecommunications customers: mass market customers (*i.e.*, residential customers and sometimes very small business customers), small and medium enterprise customers, and large enterprise customers. Mass market customers typically generate lower revenue and tighter profit margins than the other classes and therefore require service providers to minimize costs. Small and medium business customers typically are willing to pay higher prices but are more sensitive to reliability and quality of service. Large enterprise customers tend to demand extensive and sophisticated service packages, and reliability and quality of service are essential to these customers.

123. In addition, because requiring unbundling in the absence of impairment imposes unnecessary costs—including for small or rural incumbent LECs—we considered whether impairment varies geographically throughout the country. The Commission makes unbundling decisions on a national scale where the record permits us to, but delegate some determining role to the states where it appears that impairment might exist in some regions of the country but not others. In this regard, we note that Congress provided a mechanism—in section 251(f) of the Act—to exempt small and rural incumbent LECs from several of the Act's obligations. For example, unbundling rules shall not apply to a rural telephone company until it receives a bona fide request for interconnection and until the state commission determines that the request is technically feasible, not unduly economically burdensome, and consistent with section 254. Or, a LEC with fewer than two percent of the nation's subscriber lines may obtain relief from unbundling if the state commission decides, among other things, that relief is necessary to avoid imposing a economically burdensome requirement or other significant adverse economic impact.

124. Through our granular impairment analysis, the Commission has considered the resources and needs of various carriers, including small businesses, and have examined the state of the marketplace to determine whether it was economically feasible for competitors to self-provision network elements or obtain them from competitive sources other than incumbent LECs. This approach strikes the appropriate balance between the needs of competitors—including small competitors—to access certain network elements, against the burdens unbundling imposes upon incumbent LECs—including small incumbents—and yields a more accurate picture of the state of competition for each of the varied network elements composing the local telephone network. For those network elements for which carriers may be impaired only in certain geographic markets, such as certain high capacity loops and transport, we adopt an approach that permits localized determination—with a role for the states—as to where and whether impairment exists. In this way, the Commission has sought to take a more specific view of the needs of differently situated competitors.

125. The Commission also has established service eligibility requirements for UNEs which are designed to ensure that carriers use UNEs primarily to provide local services in competition with incumbent LECs, "while avoiding burdensome administrative rules that serve as a drag on competitive entry." While we recognize that regulatory requirements may disproportionately impact smaller entities, we have adopted the least burdensome of several available alternatives in requiring competitors to satisfy certain service eligibility criteria. For example, rather than requiring carriers to certify to be the sole provider of local service in order to access certain elements (*e.g.*, high capacity loops and transport)—an approach that might require frequent and costly assurance from a carrier's customers—the Commission permits carriers to certify that they are the primary providers of local service. In this regard, being certified as a competitive LEC is probative of providing qualifying service. The Commission also adopts collocation and local interconnection requirements as less burdensome ways of assuring service eligibility. By contrast, we have rejected a number of suggested approaches as unnecessarily burdensome, such as measuring minutes or traffic percentages, separately measuring voice and data use, or permitting UNEs only where a competitive carrier uses certain types of switches. It finds that our adopted indicia of service eligibility serve as adequate and less burdensome assurance that a carrier is using UNEs in a manner consistent with the local competition goals of the Act.

Ordering Clauses

126. Accordingly, pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, 303(r), and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt, the *Report and Order on Remand and Further Notice of Proposed Rulemaking* in CC Docket No. 01–338 *is adopted*, and that part 51 of the Commission's Rules, 47 CFR part 51, is amended as set forth in the rule changes.

127. The rules contained herein are effective October 2, 2003.

128. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the petitions for reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98 by Low Tech Designs, Inc. on February 15, 2000, and by the Telecommunications Resellers Association on February 18, 2000; the petition for partial reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98 by Birch Telecom, Inc. on February 17, 2000; the petition for reconsideration and clarification of the *UNE Remand Order* filed in CC Docket No. 96–98 by Sprint Corporation on February 17, 2000; the petition for clarification on reconsideration of the UNE Remand Order filed in CC Docket No. 96–98, 95–185 by MGC Communications, Inc.; d/b/a Mpower Communications, Corp. on February 17, 2000; the joint petition filed in CC Docket No. 96–98 by BellSouth Corporation and BellSouth Telecommunications, Inc., SBC Communications, Inc., and Verizon Telephone Companies on April 5, 2001; the petitions for waiver of the supplemental order clarification filed in CC Docket No. 96–98 by WorldCom, Inc. on September 12, 2000, and ITC^DeltaCom Communications, Inc. on August 16, 2001; the petition filed in CC Docket Nos. 01–338, 96–98, 98–147 by Promoting Active Competition Everywhere (PACE) Coalition on February 6, 2002; and the petition for declaratory ruling filed in CC Docket No. 01–338 by WorldCom, Inc. on August 8, 2002 *are dismissed as moot.*

129. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the joint petition for declaratory ruling filed in CC Docket No. 96–98 by AT&T Wireless Services, Inc. and VoiceStream Wireless, Corp. on November 19, 2001 *is granted* to the extent indicated herein and otherwise *is moot.*

130. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the petition for reconsideration/clarification of the *UNE Remand Order* filed in CC Docket No. 96–98 by BellSouth Corporation and BellSouth Telecommunications, Inc. on February 17, 2000 *is granted* to the extent indicated herein and otherwise *are denied.*

131. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the petitions for reconsideration of the *UNE Remand Order* filed in CC Docket Nos. 96–98, 95–185 by Rhythms Netconnections Inc. and Covad Communications Co. on January 21, 2000, @Link Networks, Inc., DSL.net, Inc. and MGC Communications, Inc., d/b/a Mpower Communications Corp. on February 17, 2000, McLeodUSA Telecommunications Services, Inc. and the petition for reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98 by RCN Telecom Services, Inc. on February 17, 2000 *are denied.*

132. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the petition of the *UNE Remand Order* filed in CC Docket No. 96–98 by Competitive Telecommunications Association on November 26, 2001; and the petitions for reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98 by Intermedia Communications, Inc. and by MCI WorldCom, Inc. on February 17, 2000 *are denied* to the extent indicated herein and otherwise *are dismissed as moot.*

133. Pursuant to sections 1, 3, 4, 201–205, 251, 256, 271, and 303(r) of the Communications Act, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, and 303(r), and Section 706 of the Telecommunications Act of 1996, 47 U.S.C. 157 nt. that the petition for clarification of the *UNE Remand Order* filed in CC Docket No. 96–98 by MCI WorldCom, Inc. on February 17, 2000; the petition for reconsideration of the *UNE Remand Order* filed in CC Docket No. 96–98 by the Competitive Telecommunications Association on February 17, 2000; the petition for reconsideration and clarification of the *UNE Remand Order* filed in CC Docket No. 96–98 by Bell Atlantic on February 17, 2000; and the petition for reconsideration and clarification of the *UNE Remand Order* filed in CC Docket No. 96–98 by AT&T Corp. on February 17, 2000 *are granted* to the extent indicated herein and otherwise *are denied* or *dismissed as moot.*

134. The Public Notice, *Comments Sought on the Use of Unbundled Network Elements to Provide Exchange Access Service,* CC Docket No. 96–98, DA 01–169 (rel. Jan. 24, 2001); *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order on Reconsideration in CC Docket No. 98–147, Fourth Report and Order on Reconsideration in CC Docket No. 96–98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98–147, and Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96–98, 16 FCC Rcd 2101 (2001); *Implementation of Local Competition Provisions of the Telecommunications Act of 1996,* Third Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket Nos. 96–98 and 95–185, 12 FCC Rcd 12460 (1997); and *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996,* Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96–98, 15 FCC Rcd 3696 (1999) *are terminated.*

135. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Report and Order and Order on Remand,* including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Report to Congress

125. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the Order, including the FRFA, to the Chief Counsel for SBA Advocacy. The Order and FRFA, or summaries thereof, will also be published in the **Federal Register**.

List of Subjects in 47 CFR Part 51

Interconnection, Telecommunications carriers.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

Final Rules

■ Part 51 of title 47 of the Code of Federal Regulations is amended as follows:

PART 51—INTERCONNECTION

■ 1. The authority citation for part 51 is revised to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 225–27, 251–54, 256, 271, 303(r), 332, 47 U.S.C. 157 *note,* unless otherwise noted.

■ 2. Section 51.5 is amended by adding six new definitions in alphabetical order and by revising the definition of "state commission" to read as follows:

§ 51.5 Terms and definitions.

* * * * *

Commingling. Commingling means the connecting, attaching, or otherwise linking of an unbundled network element, or a combination of unbundled network elements, to one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC, or the combining of an unbundled network element, or a combination of unbundled network elements, with one or more such facilities or services. *Commingle* means the act of commingling.

* * * * *

Enhanced extended link. An *enhanced extended link* or *EEL* consists of a combination of an unbundled loop and unbundled dedicated transport, together with any facilities, equipment, or functions necessary to combine those network elements.

* * * * *

Intermodal. The term intermodal refers to facilities or technologies other than those found in traditional telephone networks, but that are utilized to provide competing services. Intermodal facilities or technologies include, but are not limited to, traditional or new cable plant, wireless technologies, and power line technologies.

* * * * *

Non-qualifying service. A *non-qualifying service* is a service that is not a qualifying service.

* * * * *

Qualifying service. A *qualifying service* is a telecommunications service that competes with a telecommunications service that has been traditionally the exclusive or

primary domain of incumbent LECs, including, but not limited to, local exchange service, such as plain old telephone service, and access services, such as digital subscriber line services and high-capacity circuits.

* * * * *

State commission. A *state commission* means the commission, board, or official (by whatever name designated) which under the laws of any state has regulatory jurisdiction with respect to intrastate operations of carriers. As referenced in this part, this term may include the Commission if it assumes responsibility for a proceeding or matter, pursuant to section 252(e)(5) of the Act or § 51.320. This term shall also include any person or persons to whom the state commission has delegated its authority under sections 251 and 252 of the Act and this part.

* * * * *

Triennial Review Order. The *Triennial Review Order* means the Commission's Report and Order and Order on Remand and Further Notice of Proposed Rulemaking in CC Docket Nos. 01–338, 96–98, and 98–147.

* * * * *

■ 3. Section 51.301 is amended by revising paragraph (c)(8)(ii) to read as follows:

§ 51.301 Duty to negotiate.

* * * * *

(c) * * *

(8) * * *

(ii) Refusal by an incumbent LEC to furnish cost data that would be relevant to setting rates if the parties were in arbitration.

■ 4. Section 51.305 is amended by removing paragraph (a)(4), redesignating paragraph (a)(5) as paragraph (a)(4), and revising paragraph (a)(3) to read as follows:

§ 51.305 Interconnection.

(a) * * *

(3) That is at a level of quality that is equal to that which the incumbent LEC provides itself, a subsidiary, an affiliate, or any other party. At a minimum, this requires an incumbent LEC to design interconnection facilities to meet the same technical criteria and service standards that are used within the incumbent LEC's network. This obligation is not limited to a consideration of service quality as perceived by end users, and includes, but is not limited to, service quality as perceived by the requesting telecommunications carrier; and

* * * * *

■ 5. Section 51.309 is amended by revising paragraphs (a) and (b), and by adding paragraphs (d) through (g) to read as follows:

§ 51.309 Use of unbundled network elements.

(a) Except as provided in § 51.318, an incumbent LEC shall not impose limitations, restrictions, or requirements on requests for, or the use of, unbundled network elements for the service a requesting telecommunications carrier seeks to offer.

(b) A requesting telecommunications carrier may not access an unbundled network element for the sole purpose of providing non-qualifying services.

* * * * *

(d) A requesting telecommunications carrier that accesses and uses an unbundled network element pursuant to section 251(c)(3) of the Act and this part to provide a qualifying service may use the same unbundled network element to provide non-qualifying services.

(e) Except as provided in § 51.318, an incumbent LEC shall permit a requesting telecommunications carrier to commingle an unbundled network element or a combination of unbundled network elements with wholesale services obtained from an incumbent LEC.

(f) Upon request, an incumbent LEC shall perform the functions necessary to commingle an unbundled network element or a combination of unbundled network elements with one or more facilities or services that a requesting telecommunications carrier has obtained at wholesale from an incumbent LEC.

(g) An incumbent LEC shall not deny access to an unbundled network element or a combination of unbundled network elements on the grounds that one or more of the elements:

(1) Is connected to, attached to, linked to, or combined with, a facility or service obtained from an incumbent LEC; or

(2) Shares part of the incumbent LEC's network with access services or inputs for non-qualifying services.

■ 6. Section 51.311 is amended by revising paragraphs (a) and (b), removing paragraph (c), redesignating paragraphs (d) and (e) as paragraphs (c) and (d) to read as follows:

§ 51.311 Nondiscriminatory access to unbundled network elements.

(a) The quality of an unbundled network element, as well as the quality of the access to the unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be the same for all telecommunications carriers requesting access to that network element.

(b) To the extent technically feasible, the quality of an unbundled network element, as well as the quality of the access to such unbundled network element, that an incumbent LEC provides to a requesting telecommunications carrier shall be at least equal in quality to that which the incumbent LEC provides to itself. If an incumbent LEC fails to meet this requirement, the incumbent LEC must prove to the state commission that it is not technically feasible to provide the requested unbundled network element, or to provide access to the requested unbundled network element, at a level of quality that is equal to that which the incumbent LEC provides to itself.

* * * * *

■ 7. Section 51.315 is amended by revising paragraphs (c) and (f) to read as follows:

§ 51.315 Combination of unbundled network elements.

* * * * *

(c) Upon request, an incumbent LEC shall perform the functions necessary to combine unbundled network elements in any manner, even if those elements are not ordinarily combined in the incumbent LEC's network, provided that such combination:

(1) Is technically feasible; and

(2) Would not undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

* * * * *

(f) An incumbent LEC that denies a request to combine unbundled network elements pursuant to paragraph (c)(2) of this section must demonstrate to the state commission that the requested combination would undermine the ability of other carriers to obtain access to unbundled network elements or to interconnect with the incumbent LEC's network.

■ 8. Section 51.316 is added to read as follows:

§ 51.316 Conversion of unbundled network elements and services.

(a) Upon request, an incumbent LEC shall convert a wholesale service, or group of wholesale services, to the equivalent unbundled network element, or combination of unbundled network elements, that is available to the requesting telecommunications carrier under section 251(c)(3) of the Act and this part.

(b) An incumbent LEC shall perform any conversion from a wholesale service

or group of wholesale services to an unbundled network element or combination of unbundled network elements without adversely affecting the service quality perceived by the requesting telecommunications carrier's end-user customer.

(c) Except as agreed to by the parties, an incumbent LEC shall not impose any untariffed termination charges, or any disconnect fees, re-connect fees, or charges associated with establishing a service for the first time, in connection with any conversion between a wholesale service or group of wholesale services and an unbundled network element or combination of unbundled network elements.

■ 9. Section 51.317 is revised to read as follows:

§ 51.317 Standards for requiring the unbundling of network elements.

Proprietary network elements. A network element shall be considered to be proprietary if an incumbent LEC can demonstrate that it has invested resources to develop proprietary information or functionalities that are protected by patent, copyright or trade secret law. The Commission shall undertake the following analysis to determine whether a proprietary network element should be made available for purposes of section 251(c)(3) of the Act:

(a) Determine whether access to the proprietary network element is "necessary." A network element is "necessary" if, taking into consideration the availability of alternative elements outside the incumbent LEC's network, including self-provisioning by a requesting telecommunications carrier or acquiring an alternative from a third-party supplier, lack of access to the network element precludes a requesting telecommunications carrier from providing the services that it seeks to offer. If access is "necessary," the Commission may require the unbundling of such proprietary network element.

(b) In the event that such access is not "necessary," the Commission may require unbundling if it is determined that:

(1) The incumbent LEC has implemented only a minor modification to the network element in order to qualify for proprietary treatment;

(2) The information or functionality that is proprietary in nature does not differentiate the incumbent LEC's services from the requesting telecommunications carrier's services; or

(3) Lack of access to such element would jeopardize the goals of the Act.

■ 10. Section 51.318 is added to read as follows:

§ 51.318 Eligibility criteria for access to certain unbundled network elements.

(a) Except as provided in paragraph (b) of this section, an incumbent LEC shall provide access to unbundled network elements and combinations of unbundled network elements without regard to whether the requesting telecommunications carrier seeks access to the elements to establish a new circuit or to convert an existing circuit from a service to unbundled network elements.

(b) An incumbent LEC need not provide access to an unbundled DS1 loop in combination, or commingled, with a dedicated DS1 transport or dedicated DS3 transport facility or service, or to an unbundled DS3 loop in combination, or commingled, with a dedicated DS3 transport facility or service, unless the requesting telecommunications carrier certifies that all of the following conditions are met:

(1) The requesting telecommunications carrier has received state certification to provide local voice service in the area being served or, in the absence of a state certification requirement, has complied with registration, tariffing, filing fee, or other regulatory requirements applicable to the provision of local voice service in that area.

(2) The following criteria are satisfied for each combined circuit, including each DS1 circuit, each DS1 enhanced extended link, and each DS1-equivalent circuit on a DS3 enhanced extended link:

(i) Each circuit to be provided to each customer will be assigned a local number prior to the provision of service over that circuit;

(ii) Each DS1-equivalent circuit on a DS3 enhanced extended link must have its own local number assignment, so that each DS3 must have at least 28 local voice numbers assigned to it;

(iii) Each circuit to be provided to each customer will have 911 or E911 capability prior to the provision of service over that circuit;

(iv) Each circuit to be provided to each customer will terminate in a collocation arrangement that meets the requirements of paragraph (c) of this section;

(v) Each circuit to be provided to each customer will be served by an interconnection trunk that meets the requirements of paragraph (d) of this section;

(vi) For each 24 DS1 enhanced extended links or other facilities having equivalent capacity, the requesting telecommunications carrier will have at least one active DS1 local service interconnection trunk that meets the requirements of paragraph (d) of this section; and

(vii) Each circuit to be provided to each customer will be served by a switch capable of switching local voice traffic.

(c) A collocation arrangement meets the requirements of this paragraph if it is:

(1) Established pursuant to section 251(c)(6) of the Act and located at an incumbent LEC premises within the same LATA as the customer's premises, when the incumbent LEC is not the collocator; and

(2) Located at a third party's premises within the same LATA as the customer's premises, when the incumbent LEC is the collocator.

(d) An interconnection trunk meets the requirements of this paragraph if the requesting telecommunications carrier will transmit the calling party's number in connection with calls exchanged over the trunk.

■ 11. Section 51.319 is revised to read as follows:

§ 51.319 Specific unbundling requirements.

(a) *Local loops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the local loop on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraphs (a)(1) through (a)(9) of this section. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises. This element includes all features, functions, and capabilities of such transmission facility, including the network interface device. It also includes all electronics, optronics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path.

(1) *Copper loops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the copper loop on an unbundled basis. A copper loop is a stand-alone local loop comprised entirely of copper wire or cable. Copper loops include two-wire and four-wire analog voice-grade copper loops, digital copper loops (*e.g.*, DS0s and integrated services digital network

lines), as well as two-wire and four-wire copper loops conditioned to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the copper loops are in service or held as spares. The copper loop includes attached electronics using time division multiplexing technology, but does not include packet switching capabilities as defined in paragraph (a)(2)(i) of this section. The availability of DS1 and DS3 copper loops is subject to the requirements of paragraphs (a)(4) and (a)(5) of this section.

(i) *Line sharing.* Beginning on the effective date of the Commission's *Triennial Review Order*, the high frequency portion of a copper loop shall no longer be required to be provided as an unbundled network element, subject to the transitional line sharing conditions in paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this section. Line sharing is the process by which a requesting telecommunications carrier provides digital subscriber line service over the same copper loop that the incumbent LEC uses to provide voice service, with the incumbent LEC using the low frequency portion of the loop and the requesting telecommunications carrier using the high frequency portion of the loop. The high frequency portion of the loop consists of the frequency range on the copper loop above the range that carries analog circuit-switched voice transmissions. This portion of the loop includes the features, functions, and capabilities of the loop that are used to establish a complete transmission path on the high frequency range between the incumbent LEC's distribution frame (or its equivalent) in its central office and the demarcation point at the end-user customer premises, and includes the high frequency portion of any inside wire owned or controlled by the incumbent LEC.

(A) *Line sharing customers before the effective date of the Commission's Triennial Review Order.* An incumbent LEC shall provide a requesting telecommunications carrier with the ability to engage in line sharing over a copper loop where, prior to the effective date of the Commission's *Triennial Review Order*, the requesting telecommunications carrier began providing digital subscriber line service to a particular end-user customer and has not ceased providing digital subscriber line service to that customer. Until such end-user customer cancels or otherwise discontinues its subscription to the digital subscriber line service of the requesting telecommunications carrier, or its successor or assign, an incumbent LEC shall continue to provide access to the high frequency portion of the loop at the same rate that the incumbent LEC charged for such access prior to the effective date of the Commission's *Triennial Review Order.*

(B) *Line sharing customers on or after the effective date of the Commission's Triennial Review Order.* An incumbent LEC shall provide a requesting telecommunications carrier with the ability to engage in line sharing over a copper loop, between the effective date of the Commission's *Triennial Review Order* and three years after that effective date, where the requesting telecommunications carrier began providing digital subscriber line service to a particular end-user customer on or before the date one year after that effective date. Beginning three years after the effective date of the Commission's *Triennial Review Order*, the incumbent LEC is no longer required to provide a requesting telecommunications carrier with the ability to engage in line sharing for this end-user customer or any new end-user customer. Between the effective date of the Commission's *Triennial Review Order* and three years after that effective date, an incumbent LEC shall provide a requesting telecommunications carrier with access to the high frequency portion of a copper loop in order to serve line sharing customers obtained between the effective date of the Commission's *Triennial Review Order* and one year after that effective date in the following manner:

(*1*) During the first year following the effective date of the Commission's *Triennial Review Order*, the incumbent LEC shall provide access to the high frequency portion of a copper loop at 25 percent of the state-approved monthly recurring rate, or 25 percent of the monthly recurring rate set forth in the incumbent LEC's and requesting telecommunications carrier's interconnection agreement, for access to a copper loop in effect on that date.

(*2*) Beginning one year plus one day after the effective date of the Commission's *Triennial Review Order* until two years after that effective date, the incumbent LEC shall provide access to the high frequency portion of a copper loop at 50 percent of the state-approved monthly recurring rate, or 50 percent of the monthly recurring rate set forth in the incumbent LEC's and requesting telecommunications carrier's interconnection agreement, for access to a copper loop in effect on the effective date of the Commission's *Triennial Review Order.*

(*3*) Beginning two years plus one day after effective date of the Commission's *Triennial Review Order* until three years after that effective date, the incumbent LEC shall provide access to the high frequency portion of a copper loop at 75 percent of the state-approved monthly recurring rate, or 75 percent of the monthly recurring rate set forth in the incumbent LEC's and requesting telecommunications carrier's interconnection agreement, for access to a copper loop in effect on the effective date of the Commission's *Triennial Review Order.*

(ii) *Line splitting.* An incumbent LEC shall provide a requesting telecommunications carrier that obtains an unbundled copper loop from the incumbent LEC with the ability to engage in line splitting arrangements with another competitive LEC using a splitter collocated at the central office where the loop terminates into a distribution frame or its equivalent. Line splitting is the process in which one competitive LEC provides narrowband voice service over the low frequency portion of a copper loop and a second competitive LEC provides digital subscriber line service over the high frequency portion of that same loop.

(A) An incumbent LEC's obligation, under paragraph (a)(1)(ii) of this section, to provide a requesting telecommunications carrier with the ability to engage in line splitting applies regardless of whether the carrier providing voice service provides its own switching or obtains local circuit switching as an unbundled network element pursuant to paragraph (d) of this section.

(B) An incumbent LEC must make all necessary network modifications, including providing nondiscriminatory access to operations support systems necessary for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements.

(iii) *Line conditioning.* The incumbent LEC shall condition a copper loop at the request of the carrier seeking access to a copper loop under paragraph (a)(1) of this section, the high frequency portion of a copper loop under paragraph (a)(1)(i) of this section, or a copper subloop under paragraph (b) of this section to ensure that the copper loop or copper subloop is suitable for providing digital subscriber line services, including those provided over the high frequency portion of the copper loop or copper subloop, whether or not the incumbent LEC offers advanced services to the end-user customer on that copper loop or copper subloop. If the incumbent LEC seeks compensation from the requesting telecommunications carrier for line conditioning, the requesting telecommunications carrier

has the option of refusing, in whole or in part, to have the line conditioned; and a requesting telecommunications carrier's refusal of some or all aspects of line conditioning will not diminish any right it may have, under paragraphs (a) and (b) of this section, to access the copper loop, the high frequency portion of the copper loop, or the copper subloop.

(A) Line conditioning is defined as the removal from a copper loop or copper subloop of any device that could diminish the capability of the loop or subloop to deliver high-speed switched wireline telecommunications capability, including digital subscriber line service. Such devices include, but are not limited to, bridge taps, load coils, low pass filters, and range extenders.

(B) Incumbent LECs shall recover the costs of line conditioning from the requesting telecommunications carrier in accordance with the Commission's forward-looking pricing principles promulgated pursuant to section 252(d)(1) of the Act and in compliance with rules governing nonrecurring costs in § 51.507(e).

(C) Insofar as it is technically feasible, the incumbent LEC shall test and report troubles for all the features, functions, and capabilities of conditioned copper lines, and may not restrict its testing to voice transmission only.

(D) Where the requesting telecommunications carrier is seeking access to the high frequency portion of a copper loop or copper subloop pursuant to paragraphs (a) or (b) of this section and the incumbent LEC claims that conditioning that loop or subloop will significantly degrade, as defined in § 51.233, the voiceband services that the incumbent LEC is currently providing over that loop or subloop, the incumbent LEC must either:

(*1*) Locate another copper loop or copper subloop that has been or can be conditioned, migrate the incumbent LEC's voiceband service to that loop or subloop, and provide the requesting telecommunications carrier with access to the high frequency portion of that alternative loop or subloop; or

(*2*) Make a showing to the state commission that the original copper loop or copper subloop cannot be conditioned without significantly degrading voiceband services on that loop or subloop, as defined in § 51.233, and that there is no adjacent or alternative copper loop or copper subloop available that can be conditioned or to which the end-user customer's voiceband service can be moved to enable line sharing.

(E) If, after evaluating the incumbent LEC's showing under paragraph (a)(1)(iii)(D)(*2*) of this section, the state commission concludes that a copper loop or copper subloop cannot be conditioned without significantly degrading the voiceband service, the incumbent LEC cannot then or subsequently condition that loop or subloop to provide advanced services to its own customers without first making available to any requesting telecommunications carrier the high frequency portion of the newly conditioned loop or subloop.

(iv) *Maintenance, repair, and testing.* (A) An incumbent LEC shall provide, on a nondiscriminatory basis, physical loop test access points to a requesting telecommunications carrier at the splitter, through a cross-connection to the requesting telecommunications carrier's collocation space, or through a standardized interface, such as an intermediate distribution frame or a test access server, for the purpose of testing, maintaining, and repairing copper loops and copper subloops.

(B) An incumbent LEC seeking to utilize an alternative physical access methodology may request approval to do so from the state commission, but must show that the proposed alternative method is reasonable and nondiscriminatory, and will not disadvantage a requesting telecommunications carrier's ability to perform loop or service testing, maintenance, or repair.

(v) *Control of the loop and splitter functionality.* In situations where a requesting telecommunications carrier is obtaining access to the high frequency portion of a copper loop either through a line sharing or line splitting arrangement, the incumbent LEC may maintain control over the loop and splitter equipment and functions, and shall provide to the requesting telecommunications carrier loop and splitter functionality that is compatible with any transmission technology that the requesting telecommunications carrier seeks to deploy using the high frequency portion of the loop, as defined in paragraph (a)(1)(i) of this section, provided that such transmission technology is presumed to be deployable pursuant to § 51.230.

(2) *Hybrid loops.* A hybrid loop is a local loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant.

(i) *Packet switching facilities, features, functions, and capabilities.* An incumbent LEC is not required to provide unbundled access to the packet switched features, functions and capabilities of its hybrid loops. Packet switching capability is the routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, and the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's copper loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel); the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches; the ability to extract data units from the data channels on the loops; and the ability to combine data units from multiple loops onto one or more trunks connecting to a packet switch or packet switches.

(ii) *Broadband services.* When a requesting telecommunications carrier seeks access to a hybrid loop for the provision of broadband services, an incumbent LEC shall provide the requesting telecommunications carrier with nondiscriminatory access to the time division multiplexing features, functions, and capabilities of that hybrid loop, including DS1 or DS3 capacity (where impairment has been found to exist), on an unbundled basis to establish a complete transmission path between the incumbent LEC's central office and an end user's customer premises. This access shall include access to all features, functions, and capabilities of the hybrid loop that are not used to transmit packetized information.

(iii) *Narrowband services.* When a requesting telecommunications carrier seeks access to a hybrid loop for the provision of narrowband services, the incumbent LEC may either:

(A) Provide nondiscriminatory access, on an unbundled basis, to an entire hybrid loop capable of voice-grade service (*i.e.*, equivalent to DS0 capacity), using time division multiplexing technology; or

(B) Provide nondiscriminatory access to a spare home-run copper loop serving that customer on an unbundled basis.

(3) *Fiber-to-the-home loops.* A fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, and serving a residential end user's customer premises.

(i) *New builds.* An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop on an unbundled basis when the incumbent LEC deploys such a loop to a residential unit that previously has not been served by any loop facility.

(ii) *Overbuilds.* An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop on an unbundled basis when the incumbent LEC has deployed such a loop parallel to, or in replacement of, an existing copper loop facility, except that:

(A) The incumbent LEC must maintain the existing copper loop connected to the particular customer premises after deploying the fiber-to-the-home loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless the incumbent LEC retires the copper loop pursuant to paragraph (a)(3)(iii) of this section.

(B) An incumbent LEC that maintains the existing copper loop pursuant to paragraph (a)(3)(ii)(A) of this section need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving a request for access pursuant to that paragraph, in which case the incumbent LEC shall restore the copper loop to serviceable condition upon request.

(C) An incumbent LEC that retires the copper loop pursuant to paragraph (a)(3)(iii) of this section shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the-home loop on an unbundled basis.

(iii) *Retirement of copper loops or copper subloops.* Prior to retiring any copper loop or copper subloop that has been replaced with a fiber-to-the-home loop, an incumbent LEC must comply with:

(A) The network disclosure requirements set forth in section 251(c)(5) of the Act and in § 51.325 through § 51.335; and

(B) Any applicable state requirements.

(4) *DS1 loops.* (i) An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS1 loop on an unbundled basis except where the state commission has found, through application of the competitive wholesale facilities trigger in paragraph (a)(4)(ii) of this section, that requesting telecommunications carriers are not impaired without access to a DS1 loop at a specific customer location. A DS1 loop is a digital local loop having a total digital signal speed of 1.544 megabytes per second. DS1 loops include, but are not limited to, two-wire and four-wire copper loops capable of providing high-bit rate digital subscriber line services, including T1 services.

(ii) *Competitive wholesale facilities trigger for DS1 loops.* A state commission shall find that a requesting telecommunications carrier is not impaired without access to a DS1 loop at a specific customer location where two or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each satisfy the conditions in paragraphs (a)(4)(ii)(A) and (a)(4)(ii)(B) of this section:

(A) The competing provider has deployed its own DS1 facilities, and offers a DS1 loop over its own facilities on a widely available wholesale basis to other carriers desiring to serve customers at that location. For purposes of this paragraph, the competing provider's DS1 facilities may use dark fiber facilities that the competing provider has obtained on an unbundled, leased, or purchased basis if it has attached its own optronics to activate the fiber.

(B) The competing provider has access to the entire customer location, including each individual unit within that location.

(5) *DS3 loops.* Subject to the cap in paragraph (a)(5)(iii), an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a DS3 loop on an unbundled basis except where the state commission has found, through application of either paragraph (a)(5)(i) of this section or the potential deployment analysis in paragraph (a)(5)(ii) of this section, that requesting telecommunications carriers are not impaired without access to a DS3 loop at a specific customer location. A DS3 loop is a digital local loop having a total digital signal speed of 44.736 megabytes per second.

(i) *Triggers for DS3 loops.* A state commission shall find that a requesting telecommunications carrier is not impaired without access to unbundled DS3 loops at a specific customer location where two or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, satisfy either paragraph (a)(5)(i)(A) or paragraph (a)(5)(i)(B) of this section:

(A) *Self-provisioning trigger for DS3 loops.* To satisfy this trigger, a state commission must find that each competing provider has either deployed its own DS3 facilities at that specific customer location and is serving customers via those facilities at that location, or has deployed DS3 facilities by attaching its own optronics to activate dark fiber transmission facilities obtained under a long-term indefeasible right of use and is serving customers via those facilities at that location.

(B) *Competitive wholesale facilities trigger for DS3 loops.* To satisfy this trigger, a state commission must find that each competing provider satisfies the conditions in paragraphs (a)(5)(i)(B)(*1*) and (a)(5)(i)(B)(*2*) of this section.

(*1*) The competing provider has deployed its own DS3 facilities, and offers a DS3 loop over its own facilities on a widely available wholesale basis to other competing providers seeking to serve customers at the specific customer location. For purposes of this paragraph, the competing provider's DS3 facilities may use dark fiber facilities that the competing provider has obtained on an unbundled, leased, or purchased basis if it has attached its own optronics to activate the fiber.

(*2*) The competing provider has access to the entire customer location, including each individual unit within that location.

(ii) *Potential deployment of DS3 loops.* Where neither trigger in paragraph (a)(5)(i) of this section is satisfied, a state commission shall consider whether other evidence shows that a requesting telecommunications carrier is not impaired without access to an unbundled DS3 loop at a specific customer location. To make this determination, a state must consider the following factors: evidence of alternative loop deployment at that location; local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber or copper; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; building access restrictions/costs; and availability/feasibility of similar quality/reliability alternative transmission technologies at that particular location.

(iii) *Cap on unbundled DS3 circuits.* A requesting telecommunications carrier may obtain a maximum of two unbundled DS3 loops for any single customer location where DS3 loops are available as unbundled loops.

(6) *Dark fiber loops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a dark fiber loop on an unbundled basis except where a state commission has found, through application of the self-provisioning trigger in paragraph (a)(6)(i) of this section or the potential deployment analysis in paragraph

(a)(6)(ii) of this section, that requesting telecommunications carriers are not impaired without access to a dark fiber loop at a specific customer location. Dark fiber is fiber within an existing fiber optic cable that has not yet been activated through optronics to render it capable of carrying communications services.

(i) *Self-provisioning trigger for dark fiber loops.* A state commission shall find that a requesting telecommunications carrier is not impaired without access to a dark fiber loop at a specific customer location where two or more competing providers not affiliated with each other or with the incumbent LEC, have deployed their own dark fiber facilities at that specific customer location. For purposes of making this determination, a competing provider that has obtained those dark fiber facilities under a long-term indefeasible right of use shall be considered a competing provider with its own dark fiber facilities. Dark fiber purchased on an unbundled basis from the incumbent LEC shall not be considered under this paragraph.

(ii) *Potential deployment of dark fiber loops.* Where the trigger in paragraph (a)(6)(i) of this section is not satisfied, a state commission shall consider whether other evidence shows that a requesting telecommunications carrier is not impaired without access to an unbundled dark fiber loop at a specific customer location. To make this determination, a state must consider the following factors: evidence of alternative loop deployment at that location; local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; building access restrictions/costs; and availability/feasibility of similar quality/reliability alternative transmission technologies at that particular location.

(7) *State commission proceedings.* A state commission shall complete the proceedings necessary to satisfy the requirements in paragraphs (a)(4), (a)(5), and (a)(6) of this section in accordance with paragraphs (a)(7)(i) and (a)(7)(ii) of this section.

(i) *Initial review.* A state commission shall complete any initial review applying the triggers and criteria in paragraphs (a)(4), (a)(5), and (a)(6) of this section within nine months from the effective date of the Commission's *Triennial Review Order*.

(ii) *Continuing review.* A state commission shall complete any subsequent review applying these triggers and criteria within six months of the filing of a petition or other pleading to conduct such a review.

(8) *Routine network modifications.* (i) An incumbent LEC shall make all routine network modifications to unbundled loop facilities used by requesting telecommunications carriers where the requested loop facility has already been constructed. An incumbent LEC shall perform these routine network modifications to unbundled loop facilities in a nondiscriminatory fashion, without regard to whether the loop facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

(ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; adding a smart jack; installing a repeater shelf; adding a line card; deploying a new multiplexer or reconfiguring an existing multiplexer; and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable a requesting telecommunications carrier to obtain access to a dark fiber loop. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the construction of a new loop, or the installation of new aerial or buried cable for a requesting telecommunications carrier.

(9) *Engineering policies, practices, and procedures.* An incumbent LEC shall not engineer the transmission capabilities of its network in a manner, or engage in any policy, practice, or procedure, that disrupts or degrades access to a local loop or subloop, including the time division multiplexing-based features, functions, and capabilities of a hybrid loop, for which a requesting telecommunications carrier may obtain or has obtained access pursuant to paragraph (a) of this section.

(b) *Subloops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to subloops on an unbundled basis in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraph (b) of this section.

(1) *Copper subloops.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to a copper subloop on an unbundled basis. A copper subloop is a portion of a copper loop, or hybrid loop, comprised entirely of copper wire or copper cable that acts as a transmission facility between any point of technically feasible access in an incumbent LEC's outside plant, including inside wire owned or controlled by the incumbent LEC, and the end-user customer premises. A copper subloop includes all intermediate devices (including repeaters and load coils) used to establish a transmission path between a point of technically feasible access and the demarcation point at the end-user customer premises, and includes the features, functions, and capabilities of the copper loop. Copper subloops include two-wire and four-wire analog voice-grade subloops as well as two-wire and four-wire subloops conditioned to transmit the digital signals needed to provide digital subscriber line services, regardless of whether the subloops are in service or held as spares.

(i) *Point of technically feasible access.* A point of technically feasible access is any point in the incumbent LEC's outside plant where a technician can access the copper wire within a cable without removing a splice case. Such points include, but are not limited to, a pole or pedestal, the serving area interface, the network interface device, the minimum point of entry, any remote terminal, and the feeder/distribution interface. An incumbent LEC shall, upon a site-specific request, provide access to a copper subloop at a splice near a remote terminal. The incumbent LEC shall be compensated for providing this access in accordance with §§ 51.501 through 51.515.

(ii) *Rules for collocation.* Access to the copper subloop is subject to the Commission's collocation rules at §§ 51.321 and 51.323.

(2) *Subloops for access to multiunit premises wiring.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the subloop for access to multiunit premises wiring on an unbundled basis regardless of the capacity level or type of loop that the requesting telecommunications carrier seeks to provision for its customer. The subloop for access to multiunit premises wiring is defined as any portion of the loop that it is technically feasible to access at a terminal in the incumbent

LEC's outside plant at or near a multiunit premises. One category of this subloop is inside wire, which is defined for purposes of this section as all loop plant owned or controlled by the incumbent LEC at a multiunit customer premises between the minimum point of entry as defined in § 68.105 of this chapter and the point of demarcation of the incumbent LEC's network as defined in § 68.3 of this chapter.

(i) *Point of technically feasible access.* A point of technically feasible access is any point in the incumbent LEC's outside plant at or near a multiunit premises where a technician can access the wire or fiber within the cable without removing a splice case to reach the wire or fiber within to access the wiring in the multiunit premises. Such points include, but are not limited to, a pole or pedestal, the network interface device, the minimum point of entry, the single point of interconnection, and the feeder/distribution interface.

(ii) *Single point of interconnection.* Upon notification by a requesting telecommunications carrier that it requests interconnection at a multiunit premises where the incumbent LEC owns, controls, or leases wiring, the incumbent LEC shall provide a single point of interconnection that is suitable for use by multiple carriers. This obligation is in addition to the incumbent LEC's obligations, under paragraph (b)(2) of this section, to provide nondiscriminatory access to a subloop for access to multiunit premises wiring, including any inside wire, at any technically feasible point. If the parties are unable to negotiate rates, terms, and conditions under which the incumbent LEC will provide this single point of interconnection, then any issues in dispute regarding this obligation shall be resolved in state proceedings under section 252 of the Act.

(3) *Other subloop provisions*—(i) *Technical feasibility.* If parties are unable to reach agreement through voluntary negotiations as to whether it is technically feasible, or whether sufficient space is available, to unbundle a copper subloop or subloop for access to multiunit premises wiring at the point where a telecommunications carrier requests, the incumbent LEC shall have the burden of demonstrating to the state commission, in state proceedings under section 252 of the Act, that there is not sufficient space available, or that it is not technically feasible to unbundle the subloop at the point requested.

(ii) *Best practices.* Once one state commission has determined that it is technically feasible to unbundle subloops at a designated point, an incumbent LEC in any state shall have the burden of demonstrating to the state commission, in state proceedings under section 252 of the Act, that it is not technically feasible, or that sufficient space is not available, to unbundle its own loops at such a point.

(c) *Network interface device.* Apart from its obligation to provide the network interface device functionality as part of an unbundled loop or subloop, an incumbent LEC also shall provide nondiscriminatory access to the network interface device on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part. The network interface device element is a stand-alone network element and is defined as any means of interconnection of customer premises wiring to the incumbent LEC's distribution plant, such as a cross-connect device used for that purpose. An incumbent LEC shall permit a requesting telecommunications carrier to connect its own loop facilities to on-premises wiring through the incumbent LEC's network interface device, or at any other technically feasible point.

(d) *Local circuit switching.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to local circuit switching, including tandem switching, on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraph (d) of this section.

(1) *Definition.* Local circuit switching is defined as follows:

(i) Local circuit switching encompasses all line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. The features, functions, and capabilities of the switch shall include the basic switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks.

(ii) Local circuit switching includes all vertical features that the switch is capable of providing, including custom calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions.

(2) *DS0 capacity (i.e., mass market) determinations.* An incumbent LEC shall provide access to local circuit switching on an unbundled basis to a requesting telecommunications carrier serving end users using DS0 capacity loops except where the state commission has found, in accordance with the conditions set forth in paragraph (d)(2) of this section, that requesting telecommunications carriers are not impaired in a particular market, or where the state commission has found that all such impairment would be cured by implementation of transitional unbundled local circuit switching in a given market and has implemented such transitional access as set forth in paragraph (d)(2)(iii)(C) of this section.

(i) *Market definition.* A state commission shall define the markets in which it will evaluate impairment by determining the relevant geographic area to include in each market. In defining markets, a state commission shall take into consideration the locations of mass market customers actually being served (if any) by competitors, the variation in factors affecting competitors' ability to serve each group of customers, and competitors' ability to target and serve specific markets profitably and efficiently using currently available technologies. A state commission shall not define the relevant geographic area as the entire state.

(ii) *Batch cut process.* In each of the markets that the state commission defines pursuant to paragraph (d)(2)(i) of this section, the state commission shall either establish an incumbent LEC batch cut process as set forth in paragraph (d)(2)(ii)(A) of this section or issue detailed findings explaining why such a batch process is unnecessary, as set forth in paragraph (d)(2)(ii)(B) of this section. A batch cut process is defined as a process by which the incumbent LEC simultaneously migrates two or more loops from one carrier's local circuit switch to another carrier's local circuit switch, giving rise to operational and economic efficiencies not available when migrating loops from one carrier's local circuit switch to another carrier's local circuit switch on a line-by-line basis.

(A) A state commission shall establish an incumbent LEC batch cut process for use in migrating lines served by one carrier's local circuit switch to lines served by another carrier's local circuit switch in each of the markets the state commission has defined pursuant to paragraph (d)(2)(i) of this section. In establishing the incumbent LEC batch cut process:

(*1*) A state commission shall first determine the appropriate volume of loops that should be included in the "batch."

(*2*) A state commission shall adopt specific processes to be employed when performing a batch cut, taking into account the incumbent LEC's particular network design and cut over practices.

(*3*) A state commission shall evaluate whether the incumbent LEC is capable of migrating multiple lines served using

unbundled local circuit switching to switches operated by a carrier other than the incumbent LEC for any requesting telecommunications carrier in a timely manner, and may require that incumbent LECs comply with an average completion interval metric for provision of high volumes of loops.

(4) A state commission shall adopt rates for the batch cut activities it approves in accordance with the Commission's pricing rules for unbundled network elements. These rates shall reflect the efficiencies associated with batched migration of loops to a requesting telecommunications carrier's switch, either through a reduced per-line rate or through volume discounts as appropriate.

(B) If a state commission concludes that the absence of a batch cut migration process is not impairing requesting telecommunications carriers' ability to serve end users using DS0 loops in the mass market without access to local circuit switching on an unbundled basis, that conclusion will render the creation of such a process unnecessary. In such cases, the state commission shall issue detailed findings regarding the volume of unbundled loop migrations that could be expected if requesting telecommunications carriers were no longer entitled to local circuit switching on an unbundled basis, the ability of the incumbent LEC to meet that demand in a timely and efficient manner using its existing hot cut process, and the non-recurring costs associated with that hot cut process. The state commission further shall explain why these findings indicate that the absence of a batch cut process does not give rise to impairment in the market at issue.

(iii) *State commission analysis.* To determine whether requesting telecommunications carriers are impaired without access to local circuit switching on an unbundled basis, a state commission shall perform the inquiry set forth in paragraphs (d)(2)(iii)(A) through (d)(2)(iii)(C) of this section:

(A) *Local switching triggers.* A state commission shall find that a requesting telecommunications carrier is not impaired without access to local circuit switching on an unbundled basis in a particular market where either the self-provisioning trigger set forth in paragraph (d)(2)(iii)(A)(*1*) of this section or the competitive wholesale facilities trigger set forth in paragraph (d)(2)(iii)(A)(*2*) of this section is satisfied.

(*1*) *Local switching self-provisioning trigger.* To satisfy this trigger, a state commission must find that three or more competing providers not affiliated with each other or the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each are serving mass market customers in the particular market with the use of their own local circuit switches.

(*2*) *Local switching competitive wholesale facilities trigger.* To satisfy this trigger, a state commission must find that two or more competing providers not affiliated with each other or the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each offer wholesale local circuit switching service to customers serving DS0 capacity loops in that market using their own switches.

(B) *Additional state authority.* If neither of the triggers described in paragraph (d)(2)(iii)(A) of this section has been satisfied, the state commission shall find that requesting telecommunications carriers are not impaired without access to unbundled local circuit switching in a particular market where the state commission determines that self-provisioning of local switching is economic based on the following criteria:

(*1*) *Evidence of actual deployment.* The state commission shall consider whether switches actually deployed in the market at issue permit competitive entry in the absence of unbundled local circuit switching. Specifically, the state commission shall examine whether, in the market at issue, there are either two wholesale providers or three self-provisioners of local switching not affiliated with each other or the incumbent LEC, serving end users using DS1 or higher capacity loops in the market at issue; or there is any carrier, including any intermodal provider of service comparable in quality to that of the incumbent LEC, using a self-provisioned switch to serve end users using DS0 capacity loops. If so, and if the state commission determines that the switch or switches identified can be used to serve end users using DS0 capacity loops in that market in an economic fashion, this evidence must be given substantial weight.

(*2*) *Operational barriers.* The state commission also shall examine the role of potential operational barriers in determining whether to find "no impairment" in a given market. Specifically, the state commission shall examine whether the incumbent LEC's performance in provisioning loops, difficulties in obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC, or difficulties in obtaining cross-connects in an incumbent LEC's wire center render entry uneconomic for requesting telecommunications carriers in the absence of unbundled access to local circuit switching.

(*3*) *Economic barriers.* The state commission shall also examine the role of potential economic barriers in determining whether to find "no impairment" in a given market. Specifically, the state commission shall examine whether the costs of migrating incumbent LEC loops to requesting telecommunications carriers' switches or the costs of backhauling voice circuits to requesting telecommunications carriers' switches from the end offices serving their end users render entry uneconomic for requesting telecommunications carriers.

(*4*) *Multi-line DS0 end users.* As part of the economic analysis set forth in paragraph (d)(2)(iii)(B)(*3*) of this section, the state commission shall establish a maximum number of DS0 loops for each geographic market that requesting telecommunications carriers can serve through unbundled switching when serving multiline end users at a single location. Specifically, in establishing this "cutoff," the state commission shall take into account the point at which the increased revenue opportunity at a single location is sufficient to overcome impairment and the point at which multiline end users could be served in an economic fashion by higher capacity loops and a carrier's own switching and thus be considered part of the DS1 enterprise market.

(C) *Transitional use of unbundled switching.* If the triggers described in paragraph (d)(2)(iii)(A) of this section have not been satisfied with regard to a particular market and the analysis described in paragraph (d)(2)(iii)(B) of this section has resulted in a finding that requesting telecommunications carriers are impaired without access to local circuit switching on an unbundled basis in that market, the state commission shall consider whether any impairment would be cured by transitional ("rolling") access to local circuit switching on an unbundled basis for a period of 90 days or more. "Rolling" access means the use of unbundled local circuit switching for a limited period of time for each end-user customer to whom a requesting telecommunications carrier seeks to provide service. If the state commission determines that transitional access to unbundled local circuit switching would cure any impairment, it shall require incumbent LECs to make unbundled local circuit switching available to requesting telecommunications carriers for 90 days

or more, as specified by the state commission. The time limit set by the commission shall apply to each request for access to unbundled local circuit switching by a requesting telecommunications carrier on a per customer basis.

(iv) *DS0 capacity end-user transition.* If a state commission finds that no impairment exists in a market or that any impairment could be cured by transitional access to unbundled local circuit switching, all requesting telecommunications carriers in that market shall commit to an implementation plan with the incumbent LEC for the migration of the embedded unbundled switching mass market customer base within 2 months of the state commission determination. A requesting telecommunications carrier may no longer obtain access to unbundled local circuit switching 5 months after the state commission determination, except, where applicable, on a transitional basis as described in paragraph (d)(2)(iii)(C) of this section.

(A) *Transition timeline.* Each requesting telecommunications carrier shall submit the orders necessary to migrate its embedded base of end-user customers off of the unbundled local circuit switching element in accordance with the following timetable, measured from the day of the state commission determination. For purposes of calculating the number of customers who must be migrated, the embedded base of customers shall include all customers served using unbundled switching that are not customers being served with transitional unbundled switching pursuant to paragraph (d)(3)(iii)(C) of this section.

(*1*) *Month 13:* Each requesting telecommunications carrier must submit orders for one-third of all its unbundled local circuit switching end-user customers;

(*2*) *Month 20:* Each requesting telecommunications carrier must submit orders for half of its remaining unbundled local circuit switching end-user customers, as calculated pursuant to paragraph (d)(2)(iv)(A)(*1*) of this section; and

(*3*) *Month 27:* Each requesting telecommunications carrier must submit orders for its remaining unbundled local circuit switching end-user customers.

(B) *Operational aspects of the migration.* Requesting telecommunications carriers and the incumbent LEC shall jointly submit the details of their implementation plans for each market to the state commission within two months of the state commission's determination that requesting telecommunications carriers are not impaired without access to local circuit switching on an unbundled basis. Each requesting telecommunications carrier shall also notify the state commission when it has submitted its orders for migration. Each incumbent LEC shall notify the state commission when it has completed the migration.

(3) *DS1 capacity and above (i.e., enterprise market) determinations.* An incumbent LEC is not required to provide access to local circuit switching on an unbundled basis to requesting telecommunications carriers for the purpose of serving end-user customers using DS1 capacity and above loops except where the state commission petitions this Commission for waiver of this finding in accordance with the conditions set forth in paragraph (d)(3)(i) of this section and the Commission grants such waiver.

(i) *State commission inquiry.* In its petition, a state commission wishing to rebut the Commission's finding should petition the Commission to show that requesting telecommunications carriers are impaired without access to local circuit switching to serve end users using DS1 capacity and above loops in a particular geographic market as defined in accordance with paragraph (d)(2)(i) of this section if it finds that operational or economic barriers exist in that market.

(A) In making this showing, the state commission shall consider the following operational characteristics: incumbent LEC performance in provisioning loops; difficulties associated with obtaining collocation space due to lack of space or delays in provisioning by the incumbent LEC; and the difficulties associated with obtaining cross-connects in the incumbent LEC's wire center.

(B) In making this showing, the state commission shall consider the following economic characteristics: the cost of entry into a particular market, including those caused by both operational and economic barriers to entry; requesting telecommunications carriers' potential revenues from serving enterprise customers in that market, including all likely revenues to be gained from entering that market; the prices requesting telecommunications carriers are likely to be able to charge in that market, based on a consideration of the prevailing retail rates the incumbent LEC charges to the different classes of customers in the different parts of the state.

(ii) *Transitional four-line carve-out.* Until the state commission completes the review described in paragraph (b)(2)(iii)(B)(*4*) of this section, an incumbent LEC shall comply with the four-line "carve-out" for unbundled switching established in *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96–98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, 15 FCC Rcd 3822–31, paras. 276–98 (1999), *reversed and remanded in part sub. nom. United States Telecom Ass'n* v. *FCC*, 290 F.3d 415 (D.C. Cir. 2002).

(A) *DS1 capacity and above end-user transition.* Each requesting telecommunications carrier shall transfer its end-user customers served using DS1 and above capacity loops and unbundled local circuit switching to an alternative arrangement within 90 days from the end of the 90-day state commission consideration period set forth in paragraph (d)(5)(i), unless a longer period is necessary to comply with a "change of law" provision in an applicable interconnection agreement.

(4) *Other elements to be unbundled.* Elements relating to the local circuit switching element shall be made available on an unbundled basis as set forth in paragraphs (d)(4)(i) and (d)(4)(ii) of this section.

(i) An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to signaling, call-related databases, and shared transport facilities on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, to the extent that local circuit switching is required to be unbundled by a state commission. These elements are defined as follows:

(A) *Signaling networks.* Signaling networks include, but are not limited to, signaling links and signaling transfer points.

(B) *Call-related databases.* Call-related databases are defined as databases, other than operations support systems, that are used in signaling networks for billing and collection, or the transmission, routing, or other provision of a telecommunications service. Where a requesting telecommunications carrier purchases unbundled local circuit switching from an incumbent LEC, an incumbent LEC shall allow a requesting telecommunications carrier to use the incumbent LEC's service control point element in the same manner, and via the same signaling links, as the incumbent LEC itself.

(*1*) Call-related databases include, but are not limited to, the calling name database, 911 database, E911 database, line information database, toll free calling database, advanced intelligent

network databases, and downstream number portability databases by means of physical access at the signaling transfer point linked to the unbundled databases.

(*2*) Service management systems are defined as computer databases or systems not part of the public switched network that interconnect to the service control point and send to the service control point information and call processing instructions needed for a network switch to process and complete a telephone call, and provide a telecommunications carrier with the capability of entering and storing data regarding the processing and completing of a telephone call. Where a requesting telecommunications carrier purchases unbundled local circuit switching from an incumbent LEC, the incumbent LEC shall allow a requesting telecommunications carrier to use the incumbent LEC's service management systems by providing a requesting telecommunications carrier with the information necessary to enter correctly, or format for entry, the information relevant for input into the incumbent LEC's service management system, including access to design, create, test, and deploy advanced intelligent network-based services at the service management system, through a service creation environment, that the incumbent LEC provides to itself.

(*3*) An incumbent LEC shall not be required to unbundle the services created in the advanced intelligent network platform and architecture that qualify for proprietary treatment.

(C) *Shared transport.* Shared transport is defined as the transmission facilities shared by more than one carrier, including the incumbent LEC, between end office switches, between end office switches and tandem switches, and between tandem switches, in the incumbent LEC network.

(ii) An incumbent LEC shall provide a requesting telecommunications carrier nondiscriminatory access to operator services and directory assistance on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part, to the extent that local circuit switching is required to be unbundled by a state commission, if the incumbent LEC does not provide that requesting telecommunications carrier with customized routing, or a compatible signaling protocol, necessary to use either a competing provider's operator services and directory assistance platform or the requesting telecommunications carrier's own platform. Operator services are any automatic or live assistance to a customer to arrange for billing or completion, or both, of a telephone call. Directory assistance is a service that allows subscribers to retrieve telephone numbers of other subscribers.

(5) *State commission proceedings.* A state commission shall complete the proceedings necessary to satisfy the requirements in paragraphs (d)(2) and (d)(3) of this section in accordance with paragraphs (d)(5)(i) and (d)(5)(ii) of this section.

(i) *Timing.* A state commission shall complete any initial review applying the triggers and criteria in paragraph (d)(2) of this section within nine months from the effective date of the Commission's *Triennial Review Order.* A state commission wishing to rebut the Commission's finding of non-impairment for DS1 and above enterprise switches must file a petition with the Commission in accordance with paragraph (d)(3) of this section within 90 days from that effeetive date.

(ii) *Continuing review.* A state commission shall complete any subsequent review applying these triggers and criteria within six months of the filing of a petition or other pleading to conduct such a review.

(e) *Dedicated transport.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dedicated transport on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part and as set forth in paragraph (e)(1) through (e)(5) of this section. As used in those paragraphs, a "route" is a transmission path between one of an incumbent LEC's wire centers or switches and another of the incumbent LEC's wire centers or switches. A route between two points (*e.g.*, wire center or switch "A" and wire center or switch "Z") may pass through one or more intermediate wire centers or switches (*e.g.*, wire center or switch "X"). Transmission paths between identical end points (*e.g.*, wire center or switch "A" and wire center or switch "Z") are the same "route," irrespective of whether they pass through the same intermediate wire centers or switches, if any.

(1) *Dedicated DS1 transport.* (i) An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dedicated DS1 transport on an unbundled basis except where the state commission has found, through application of the competitive wholesale facilities trigger in paragraphs (e)(1)(ii) of this section, that requesting telecommunications carriers are not impaired without access to dedicated DS1 transport along a particular route. Dedicated DS1 transport consists of incumbent LEC interoffice transmission facilities that have a total digital signal speed of 1.544 megabytes per second and are dedicated to a particular customer or carrier.

(ii) *Competitive wholesale facilities trigger for dedicated DS1 transport.* A state commission shall find that a requesting telecommunications carrier is not impaired without access to dedicated DS1 transport along a particular route where two or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each satisfy the conditions in paragraphs (e)(1)(ii)(A) through (e)(1)(ii)(D) of this section.

(A) The competing provider has deployed its own transport facilities and is operationally ready to use those facilities to provide dedicated DS1 transport along the particular route. For purposes of this paragraph, the competing provider's DS1 facilities may use dark fiber facilities that the competing provider has obtained on an unbundled, leased, or purchased basis if it has attached its own optronics to activate the fiber.

(B) The competing provider is willing immediately to provide, on a widely available basis, dedicated DS1 transport along the particular route.

(C) The competing provider's facilities terminate in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(D) Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's facilities through a cross-connect to the competing provider's collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and though a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(2) *Dedicated DS3 transport.* Subject to the cap in paragraph (e)(2)(iii) of this section, an incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dedicated DS3 transport on an unbundled basis except where the state commission has found, through application of either paragraph (e)(2)(i) of this section or the potential deployment analysis in paragraph (e)(2)(ii) of this section, that requesting telecommunications carriers are not impaired without access to dedicated DS3 transport along a particular route.

Dedicated DS3 transport consists of incumbent LEC interoffice transmission facilities that have a total digital signal speed of 44.736 megabytes per second and are dedicated to a particular customer or carrier.

(i) *Triggers for dedicated DS3 transport.* A state commission shall find that a requesting telecommunications carrier is not impaired without access to unbundled dedicated DS3 transport along a particular route where either of the triggers in paragraphs (e)(2)(i)(A) or (e)(2)(i)(B) of this section is satisfied.

(A) *Self-provisioning trigger for dedicated DS3 transport.* To satisfy this trigger, a state must find that three or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each satisfy the conditions in paragraphs (e)(2)(i)(A)(*1*) and (e)(2)(i)(A)(*2*) of this section.

(*1*) The competing provider has deployed its own transport facilities and is operationally ready to use those transport facilities to provide dedicated DS3 transport along the particular route. For purposes of this paragraph, the competing provider's DS3 transport facilities may use dark fiber facilities that the competing provider has obtained on a long-term, indefeasible-right of use basis and that it has deployed by attaching its own optronics to activate the fiber.

(*2*) The competing provider's facilities terminate at a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(B) *Competitive wholesale facilities trigger for dedicated DS3 transport.* To satisfy this trigger, a state must find that two or more competing providers not affiliated with each other or with the incumbent LEC, including intermodal providers of service comparable in quality to that of the incumbent LEC, each satisfy the conditions in paragraphs (e)(2)(i)(B)(*1*) through (e)(2)(i)(B)(*4*) of this section.

(*1*) The competing provider has deployed its own transport facilities, including transport facilities that use dark fiber facilities that the competing provider has obtained on an unbundled, leased, or purchased basis if it has attached its own optronics to activate the fiber, and is operationally ready to use those facilities to provide dedicated DS3 transport along the particular route.

(*2*) The competing provider is willing immediately to provide, on a widely available basis, dedicated DS3 transport along the particular route.

(*3*) The competing provider's facilities terminate in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(*4*) Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's facilities through a cross-connect to the competing provider's collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and though a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(ii) *Potential deployment of dedicated DS3 transport.* Where neither trigger in paragraph (e)(2)(i) of this section is satisfied, a state commission shall consider whether other evidence shows that a requesting telecommunications carrier is not impaired without access to unbundled dedicated DS3 transport along a particular route. To make this determination, a state must consider the following factors: local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber or copper; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; availability/feasibility of similar quality/reliability alternative transmission technologies along the particular route; customer density or addressable market; and existing facilities-based competition.

(iii) *Cap on unbundled DS3 circuits.* A requesting telecommunications carrier may obtain a maximum of 12 unbundled dedicated DS3 circuits for any single route for which dedicated DS3 transport is available as unbundled transport.

(3) *Dark fiber transport.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to dark fiber transport on an unbundled basis except where the state commission has found, through application of either paragraph (e)(3)(i) of this section or the potential deployment analysis in paragraph (e)(3)(ii) of this section, that requesting telecommunications carriers are not impaired without access to unbundled dark fiber transport along the particular route. Dark fiber transport consists of unactivated optical interoffice transmission facilities.

(i) *Triggers for dark fiber transport.* A state commission shall find that a requesting telecommunications carrier is not impaired without access to dark fiber transport along a particular route where either of the triggers in paragraph (e)(3)(i)(A) or paragraph (e)(3)(i)(B) of this section is satisfied.

(A) *Self-provisioning trigger for dark fiber transport.* To satisfy this trigger, a state commission must find three or more competing providers not affiliated with each other or with the incumbent LEC, each satisfy paragraphs (e)(3)(i)(A)(*1*) and (e)(3)(i)(A)(*2*) of this section.

(*1*) The competing provider has deployed its own dark fiber facilities, which may include dark fiber facilities that it has obtained on a long-term, indefeasible-right of use basis.

(*2*) The competing provider's facilities terminate in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(B) *Competitive wholesale facilities trigger for dark fiber transport.* To satisfy this trigger, a state commission must find that two or more competing providers not affiliated with each other or with the incumbent LEC, each satisfy paragraphs (e)(3)(i)(B)(*1*) through (e)(3)(i)(B)(*4*) of this section. In applying this trigger, the state commission may consider whether competing providers have sufficient quantities of dark fiber available to satisfy current demand along that route.

(*1*) The competing provider has deployed its own dark fiber, including dark fiber that it has obtained from an entity other than the incumbent LEC, and is operationally ready to lease or sell those facilities for the provision of fiber-based transport along the particular route.

(*2*) The competing provider is willing immediately to provide, on a widely available basis, dark fiber along the particular route:

(*3*) The competing provider's dark fiber terminates in a collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and in a similar arrangement at each end of the transport route that is not located at an incumbent LEC premises.

(*4*) Requesting telecommunications carriers are able to obtain reasonable and nondiscriminatory access to the competing provider's dark fiber through a cross-connect to the competing provider's collocation arrangement at each end of the transport route that is located at an incumbent LEC premises and though a similar arrangement at each end of the transport route that is

not located at an incumbent LEC premises.

(ii) *Potential deployment of dark fiber transport.* Where neither trigger in paragraph (e)(3)(i) of this section is satisfied, a state commission shall consider whether other evidence shows that a requesting telecommunications carrier is not impaired without access to unbundled dark fiber transport along a particular route. To make this determination, a state must consider the following factors: local engineering costs of building and utilizing transmission facilities; the cost of underground or aerial laying of fiber; the cost of equipment needed for transmission; installation and other necessary costs involved in setting up service; local topography such as hills and rivers; availability of reasonable access to rights-of-way; availability/feasibility of similar quality/reliability alternative transmission technologies along the particular route; customer density or addressable market; and existing facilities-based competition.

(4) *State commission proceedings.* A state commission shall complete the proceedings necessary to satisfy the requirements in paragraphs (e)(1), (e)(2), and (e)(3) of this section in accordance with paragraphs (e)(4)(i) and (e)(4)(ii) of this section.

(i) *Initial review.* A state commission shall complete any initial review applying the triggers and criteria in paragraphs (e)(1), (e)(2), and (e)(3) of this section within nine months from the effective date of the Commission's *Triennial Review Order.*

(ii) *Continuing review.* A state commission shall complete any subsequent review applying these triggers and criteria within six months of the filing of a petition or other pleading to conduct such a review.

(5) *Routine network modifications.* (i) An incumbent LEC shall make all routine network modifications to unbundled dedicated transport facilities used by requesting telecommunications carriers where the requested dedicated transport facilities have already been constructed. An incumbent LEC shall perform all routine network modifications to unbundled dedicated transport facilities in a nondiscriminatory fashion, without regard to whether the facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier.

(ii) A routine network modification is an activity that the incumbent LEC regularly undertakes for its own customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable; adding an equipment case; adding a doubler or repeater; installing a repeater shelf; and deploying a new multiplexer or reconfiguring an existing multiplexer. They also include activities needed to enable a requesting telecommunications carrier to light a dark fiber transport facility. Routine network modifications may entail activities such as accessing manholes, deploying bucket trucks to reach aerial cable, and installing equipment casings. Routine network modifications do not include the installation of new aerial or buried cable for a requesting telecommunications carrier.

(f) *911 and E911 databases.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to 911 and E911 databases on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part.

(g) *Operations support systems.* An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to operations support systems on an unbundled basis, in accordance with section 251(c)(3) of the Act and this part. Operations support system functions consist of pre-ordering, ordering, provisioning, maintenance and repair, and billing functions supported by an incumbent LEC's databases and information. An incumbent LEC, as part of its duty to provide access to the pre-ordering function, shall provide the requesting telecommunications carrier with nondiscriminatory access to the same detailed information about the loop that is available to the incumbent LEC.

■ 12. Section 51.320 is added to read as follows:

§ 51.320 Assumption of responsibility by the Commission.

If a state commission fails to exercise its authority under § 51.319, any party seeking that the Commission step into the role of the state commission shall file with the Commission and serve on the state commission a petition that explains with specificity the bases for the petition and information that supports the claim that the state commission has failed to act. Subsequent to the Commission's issuing a public notice and soliciting comments on the petition from interested parties, the Commission will rule on the petition within 90 days of the date of the public notice. If it agrees that the state commission has failed to act, the Commission will assume responsibility for the proceeding, and within nine months from the date it assumed responsibility for the proceeding, make any findings in accordance with the Commission's rules.

■ 13. Section 51.325 is amended by adding paragraph (a)(4) to read as follows:

§ 51.325 Notice of network changes: Public notice requirement.

(a) * * *

(4) Will result in the retirement of copper loops or copper subloops, and the replacement of such loops with fiber-to-the-home loops, as that term is defined in § 51.319(a)(3).

* * * * *

■ 14. Section 51.331 is amended by adding paragraph (c) to read as follows:

§ 51.331 Notice of network changes: Timing of notice.

* * * * *

(c) Competing service providers may object to incumbent LEC notice of retirement of copper loops or copper subloops and replacement with fiber-to-the-home loops in the manner set forth in § 51.333(c).

■ 15. Section 51.333 is amended by revising the section heading, paragraph (b), paragraph (c) introductory text, and by adding paragraph (f) to read as follows:

§ 51.333 Notice of Network Changes: Short term notice, objections thereto and objections to retirement of copper loops or copper subloops.

* * * * *

(b) *Implementation date.* The Commission will release a public notice of filings of such short term notices or notices of replacement of copper loops or copper subloops with fiber-to-the-home loops. The effective date of the network changes referenced in those filings shall be subject to the following requirements:

(i) *Short term notice.* Short term notices shall be deemed final on the tenth business day after the release of the Commission's public notice, unless an objection is filed pursuant to paragraph (c) of this section.

(ii) *Replacement of copper loops or copper subloops with fiber-to-the-home loops.* Notices of replacement of copper loops or copper subloops with fiber-to-the-home loops shall be deemed approved on the 90th day after the release of the Commission's public notice of the filing, unless an objection is filed pursuant to paragraph (c) of this section. Incumbent LEC notice of intent to retire any copper loops or copper subloops and replace such loops or subloops with fiber-to-the-home loops shall be subject to the short term notice provisions of this section, but under no circumstances may an incumbent LEC

provide less than 90 days notice of such a change.

(c) *Objection procedures for short term notice and notices of replacement of copper loops or copper subloops with fiber-to-the-home loops.* An objection to an incumbent LEC's short term notice or to its notice that it intends to retire copper loops or copper subloops and replace such loops or subloops with fiber-to-the-home loops may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections filed under this section must:

* * * * *

(f) *Resolution of objections to replacement of copper loops or copper subloops with fiber-to-the-home loops.* An objection to a notice that an incumbent LEC intends to retire any copper loops or copper subloops and replace such loops or subloops with fiber-to-the-home loops shall be deemed denied 90 days after the date on which the Commission releases public notice of the incumbent LEC filing, unless the Commission rules otherwise within that time. Until the Commission has either ruled on an objection or the 90-day period for the Commission's consideration has expired, an incumbent LEC may not retire those copper loops or copper subloops at issue for replacement with fiber-to-the-home loops.

■ 16. Section 51.509 is amended by revising paragraph (a) and adding paragraph (h) to read as follows:

§ 51.509 Rate structure standards for specific elements.

(a) *Local loop and subloop.* Loop and subloop costs shall be recovered through flat-rated charges.

* * * * *

(h) *Network interface device.* An incumbent LEC must establish a price for the network interface device when that unbundled network element is purchased on a stand-alone basis pursuant to § 51.319(c).

[FR Doc. 03–22193 Filed 8–29–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 51

[CC Docket No. 01–338; CC Docket No. 96–98; CC Docket No. 98–147; FCC 03–36]

Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document initiates an inquiry regarding proposed modifications to the Commission's existing rules implementing section 252(i) which requires local exchange carriers (LECs) to make available to other telecommunications carriers interconnection agreements approved under section 252.

DATES: Comments are due October 2, 2003 and Reply Comments are due October 23, 2003. It is also available on the Commission's Web site at *http://www.fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Robert Tanner, Attorney-Advisor, Wireline Competition Bureau, at (202) 418–1580 or via the Internet at *rtanner@fcc.gov*. The complete text of this Notice of Proposed Rulemaking (NPRM) is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. Further information may also be obtained by calling the Common Carrier Bureau's TTY number: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in WC Docket No. 01–338, FCC 03–36, adopted February 20, 2003, and released August 21, 2003. This full text may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Synopsis of the Notice of Proposed Rulemaking (NPRM)

1. The Commission seeks comment on whether to alter its interpretation of section 252(i) to promote more meaningful commercial negotiations. The Commission tentatively concludes that modifying its current approach would better serve the goals of section 252(i) and sections 251–252 generally. The Commission also incorporates into this docket a related Petition for Forbearance and Rulemaking filed by Mpower Communications ("Mpower Petition") and the comments and *ex partes* filed in response to the Mpower Petition. *See Petition of Mpower Communications Corp. for Establishment of New Flexible Contract Mechanism Not Subject to "Pick-and-Choose"*, CC Docket No. 01–117, Petition for Forbearance and Rulemaking (May 25, 2001).

2. *In the Local Competition Order*, (61 FR 52706, October 8, 1996) the Commission adopted an interpretation of section 252(i) of the Act that required incumbent LECs to permit "third parties to obtain access under section 252(i) to any individual interconnection, service or network element arrangement on the same terms and conditions as those contained in any agreement approved under section 252." This interpretation is often referred to as the "pick and choose" rule. *See* 47 CFR 51.809. In its petition, Mpower argues that the current rule "inhibit[s] innovative deal-making" and has led to "a great sameness and very little meaningful choice" in interconnection agreements. Mpower and several carriers filing comments in CC Docket 01–117 propose that carriers seeking to use section 252(i) be required to adopt the entire terms and conditions of an interconnection agreement approved under section 252 rather than allow adoption of individual terms as conditions.

3. The Commission seeks comment on its legal authority to alter its interpretation of the statute in view of the Supreme Court's characterization of the Commission's current rule as "the most readily apparent" reading of the statute. *Iowa Utils. Bd.*, 525 U.S. at 396. The Commission tentatively concludes that it may adopt a different rule pursuant to section 252(i), provided the Commission's modified rule is a reasonable interpretation of the statutory text. The Commission observes that the public record in response to the Mpower petition indicates that under the current rules incumbent LECs seldom make significant concessions in return for some trade-off for fear that third parties will obtain the equivalent benefits without making any trade-off at all. The Commission invites parties to submit concrete evidence to the contrary.

4. The Commission identifies two key concerns expressed by commenters in response to the proposal put forward by Mpower to create "FLEX" contracts that would provide an alternative form of interconnection agreement outside of section 252(i) and not subject to the "pick and choose" rule. First, incumbent LECs might insert "poison pills" into such agreements to make them unsuitable for adoption by third parties. Second, commenters argue that there is not a valid basis for exempting "FLEX" contracts from the requirement to submit interconnection agreements to state commissions for approval or from other requirements in section 252.

5. The Commission seeks comment on a proposal described as follows: If an incumbent LEC does not file and obtain state approval for a statement of generally available terms and conditions (SGAT) the current pick and choose rule would continue to apply to all of that incumbent LEC's interconnection agreements. If an incumbent LEC does file and obtain state approval for an SGAT, the current pick and choose rule would apply solely to the SGAT and all other interconnection agreements entered into by that incumbent would be subject to an "all-or-nothing" rule requiring third parties to adopt the interconnection agreement in its entirety. The Commission notes that the Act only requires Bell Operating Companies (BOCs) to file SGATs and it seeks comment on whether it should apply the above approach to non-BOC incumbent LECs as well. The Commission also seeks comment on whether the SGAT condition, together with preservation of the Act's good faith obligation and non-discrimination safeguards be sufficient to prevent the above described proposal from eviscerating the obligation Congress imposed in section 252(i).

6. The Commission seeks comment on whether the above described proposal would be workable for all classes of carriers, including smaller competitive LECs. The Commission seeks comment on whether there are other means of restoring the Congressional goal of meaningful marketplace negotiations, including modifications to the above described proposal.

Initial Regulatory Flexibility Analysis

7. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are sought on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the NPRM and IRFA (or

summaries thereof) will be published in the **Federal Register.**

Need for, and Objectives of, the Proposed Rules

8. The Commission initiates this NPRM to ensure that market-based incentives exist for incumbent and competitive LECs to negotiate innovative commercial interconnection arrangements. The current pick-and-choose rules implementing section 252(i) may discourage give-and-take negotiation because incumbent LECs may be reluctant to make significant concessions (in exchange for negotiated benefit) if those concessions become automatically available—without any tradeoff—to every potential market entrant. It therefore seeks comment on whether alternate approaches to implementing section 252(i), such as requiring third parties to opt into entire agreements, would promote more innovative and flexible arrangements between parties. Any changes to the current pick-and-choose rule, however, may raise concerns as to whether there is the potential for parties to interconnection agreements to include "poison pill" language that would deter third parties from opting into those agreements under section 252(i). This NPRM proposes an approach that would eliminate the current pick-and-choose regime for incumbent LECs wherever the incumbent LEC has filed and received state approval of a statement of generally available terms and conditions, and this NPRM seeks to build a record from which to judge the wisdom of this approach.

Legal Basis

9. The legal basis for any action that may be taken pursuant to the NPRM is contained in Sections 1, 3, 4, 201–205, 251, 256, 271, 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 252, 256, 271, 303(r).

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Would Apply

10. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

11. In this section, the Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by rules adopted pursuant to this FNPRM. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the number of commercial wireless entities, appears to be the data that the Commission publishes in its *Trends in Telephone Service* report. The SBA has developed small business size standards for wireline and wireless small businesses within the three commercial census categories of Wired Telecommunications Carriers, Paging, and Cellular and Other Wireless Telecommunications. Under these categories, a business is small if it has 1,500 or fewer employees. Further, using the above size standards and others, we discuss the total estimated numbers of small businesses that might be affected by our actions.

12. The Commission has included small incumbent LECs in this present RFA analysis. As noted previously, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (*e.g.*, a wired telecommunications carrier having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. The Commission has therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on its analyses and determinations in other, non-RFA contexts.

13. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 1997, there were 2,225 firms in this category, total, that operated for the entire year. Of this total, 2,201 firms had employment of 999 or fewer employees, and an additional 24 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small.

13. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,329 carriers reported that they were engaged in the provision of local exchange services. Of these 1,329 carriers, an estimated 1,024 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by the rules and policies adopted herein.

14. *Competitive Local Exchange Carriers (competitive LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to providers of competitive exchange services or to competitive access providers or to "Other Local Exchange Carriers," all of which are discrete categories under which TRS data are collected. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 532 companies reported that they were engaged in the provision of either competitive access provider services or competitive LEC services. Of these 532 companies, an estimated 411 have 1,500 or fewer employees and 121 have more than 1,500 employees. In addition, 55 carriers reported that they were "Other Local Exchange Carriers." Of the 55 "Other Local Exchange Carriers," an estimated 53 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, and "Other Local Exchange Carriers" are small entities that may be affected by the rules and policies adopted herein.

15. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 229 companies reported that their primary telecommunications service activity was

the provision of payphone services. Of these 229 companies, an estimated 181 have 1,500 or fewer employees and 48 have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

16. *Operator Service Providers (OSPs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to operator service providers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 22 companies reported that they were engaged in the provision of operator services. Of these 22 companies, an estimated 20 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the great majority of payphone service providers are small entities that may be affected by the rules and policies adopted herein.

17. *Prepaid Calling Card Providers.* The SBA has developed a size standard for a small business within the category of Telecommunications Resellers. Under that SBA size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 32 companies reported that they were engaged in the provision of prepaid calling cards. Of these 32 companies, an estimated 31 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the great majority of prepaid calling card providers are small entities that may be affected by the rules and policies adopted herein.

18. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to "Other Toll Carriers." This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission's data, 42 companies reported that their primary telecommunications service activity was the provision of payphone services. Of these 42 companies, an estimated 37 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most "Other Toll Carriers" are small entities that may be affected by the rules and policies adopted herein.

19. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of Paging and Cellular and Other Wireless Telecommunications. Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the great majority of firms can, again, be considered small.

20. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining "small entity" in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as "small" or "very small" businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

21. *Narrowband Personal Communications Services.* To date, two auctions of narrowband personal communications services (PCS) licenses have been conducted. For purposes of the two auctions that have already been held, "small businesses" were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A "small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A "very small business" is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas (MTAs) and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined under the Commission's Rules.

The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

22. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to "Cellular and Other Wireless Telecommunications" companies. This standard provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

23. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz Third Report and Order, we adopted a small business size standard for "small" and "very small" businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

24. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards "small entity" and "very small entity" bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

25. *Common Carrier Paging.* In the Paging Third Report and Order, we developed a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent Trends in Telephone Service, 471 carriers reported that they were engaged in the provision of either paging and messaging services or other mobile services. Of those, the Commission estimates that 450 are small, under the SBA business size standard specifying that firms are small if they have 1,500 or fewer employees.

26. *700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, we adopted a small business size standard for "small businesses" and "very small businesses" for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A "small business" as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a "very small business" is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

27. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS). The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500

persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

28. Air-Ground Radiotelephone Service. The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. It will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

29. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as "small" businesses under the above special small business size standards.

30. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category "Cellular and Other Telecommunications," which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

31. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

32. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A "small business" is an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as "very small business" entities, and one that qualified as a "small business" entity. We conclude that the number of geographic area WCS licensees affected by this analysis includes these eight entities.

33. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for "very small business" is an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and polices adopted herein.

34. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts

of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

35. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for "very small business" was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

36. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry-over losses), has no more than $2 million in annual profits each year for the previous two years. In the 218–219 MHz Report and Order and Memorandum Opinion and Order, we established a small business size standard for a "small business" as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A "very small business" is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

37. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of "Cellular and Other Wireless Telecommunications" companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

38. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for "small business" is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. "Very small business" in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

39. *Internet Service Providers.* While internet service providers (ISPs) would only be indirectly affected by the proposed rules, and ISPs are therefore not formally included within this present IRFA, we address them informally to create a fuller record. The SBA has developed a small business size standard for Online Information Services, which consists of all such companies having $21 million or less in annual receipts. According to Census Bureau data for 1997, there were 2,751 firms in this category, total, that operated for the entire year. Of this total, 2,659 firms had annual receipts of $9,999,999 or less, and an additional 67 had receipts of $10 million to $24,999,999. Thus, under this size standard, the great majority of firms can be considered small.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Ordering Clauses

12. Accordingly, pursuant to the authority contained in sections 1, 2, 4(i)–4(j), 201, 202, 205, 251, 271, 272, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i)–4(j), 201, 202, 205, 251, 271, 272, and 303(r), this NPRM *is adopted.*

13. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this NPRM, including the Initial Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 51

Interconnection, Telecommunications carriers.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 03–22194 Filed 8–29–03; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 2854/P.L. 108–74

To amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program, and for other purposes. (Aug. 15, 2003; 117 Stat. 892)

S. 1015/P.L. 108–75

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

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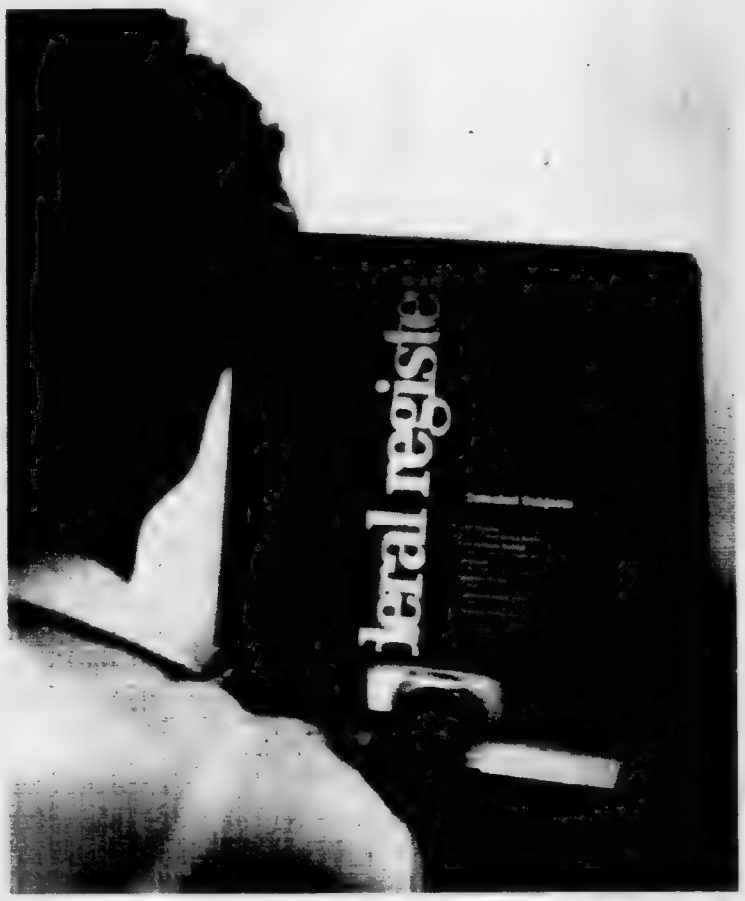

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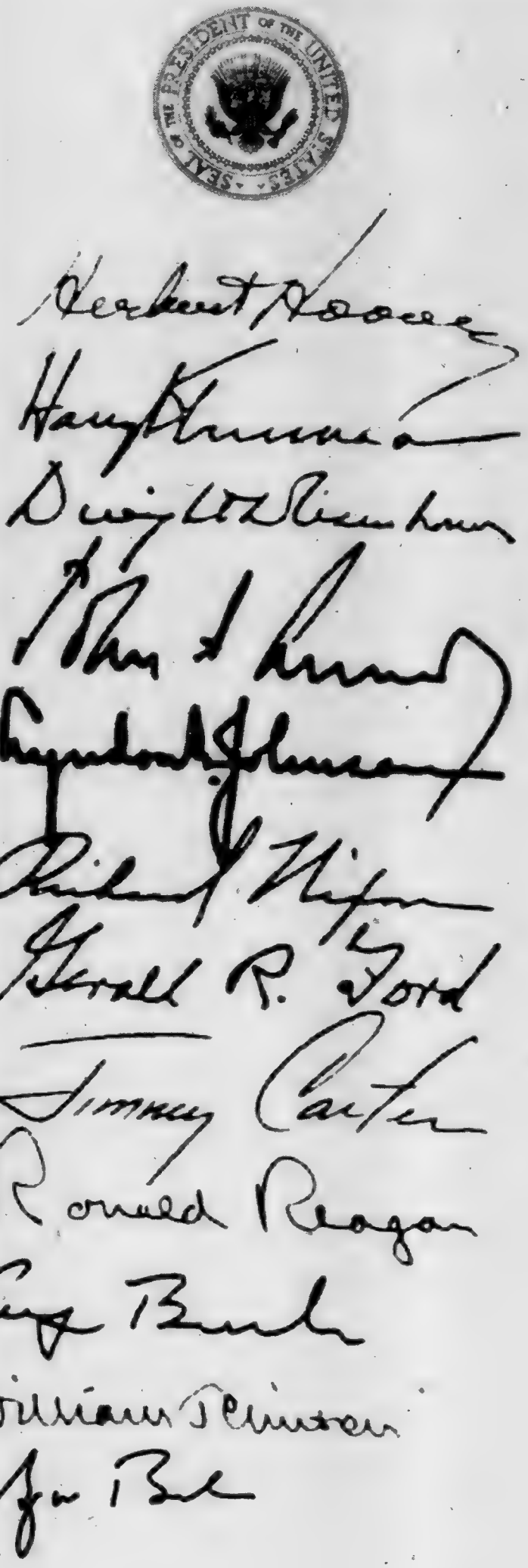

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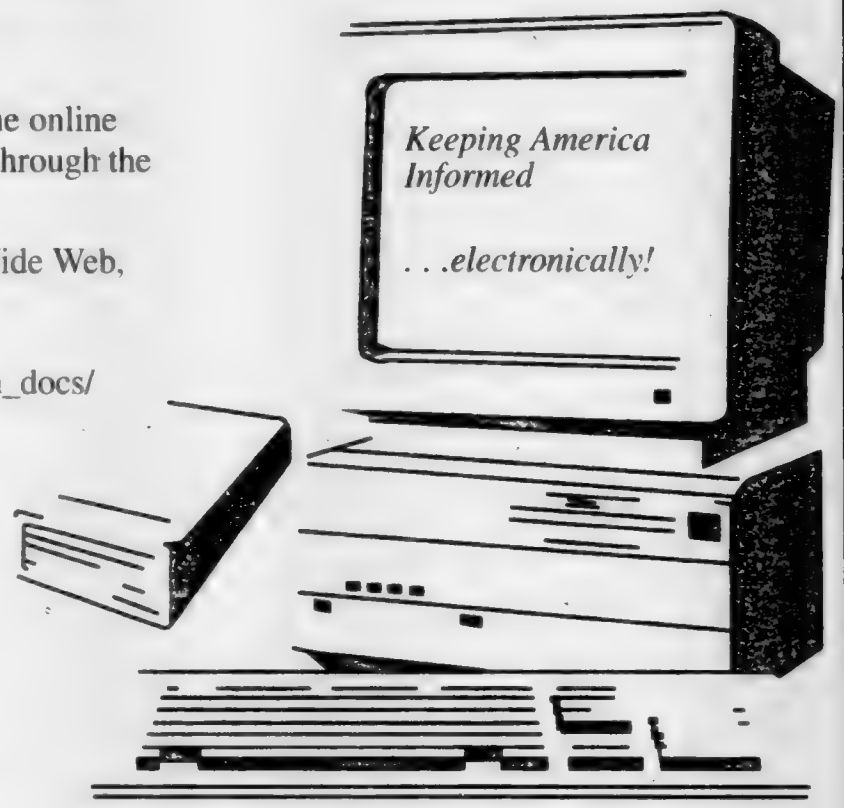

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(ISSN 0097-6326)

Federal Register

9–3–03 Wednesday
Vol. 68 No. 170 Sept. 3, 2003

Pages 52313–52484

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Presidential Documents

Title 3—

The President

Proclamation 7697 of August 28, 2003

Family Day, 2003

By the President of the United States of America

A Proclamation

Children thrive in loving families where they are taught, nurtured, and comforted. By spending time with our children and stressing the importance of making the right choices, parents and other family members help them develop into confident, successful individuals.

Families can help secure a healthy tomorrow for their children by providing guidance, staying involved, and serving as role models. I am committed to supporting strong families and strong marriages to help ensure that every child grows up in a safe, loving family. Statistics show that children from two-parent families are less likely to end up in poverty, drop out of school, become addicted to drugs, have a child out of wedlock, suffer abuse, or become a violent criminal. Because stable families should be the central goal of American welfare policy, I have proposed spending up to $300 million a year to find the most effective programs to strengthen marriage.

Parents play a critical role in discouraging harmful behavior such as experimenting with alcohol, drugs, and tobacco. Research shows that teens often listen to their parents when it comes to decisions about harmful substances and risky behaviors. Regular family activities provide opportunities for parents to communicate important messages and enhance their relationships with their children. Recent studies from the National Center on Addiction and Substance Abuse at Columbia University found that teens from families who eat dinner together were less likely to use illegal drugs, alcohol, and cigarettes, while teenagers who rarely eat dinner with their parents were more likely to engage in these unhealthy activities.

Families and all Americans can act together to educate our youth about the dangers of drugs and alcohol and help them grow into healthy, responsible, compassionate citizens. In order to ensure a brighter future for our Nation, and safe, healthy, and happy lives for our children, our children must learn that avoiding harmful substances is an ongoing responsibility. As we work to educate our next generation about making healthy choices, we renew our commitment to the American family.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 22, 2003, as Family Day. I call upon the people of the United States to observe this day by engaging in activities to strengthen the relationships between parents and children and help fight against substance abuse and risky behaviors.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-eighth day of August, in the year of our Lord two thousand three, and of the

Independence of the United States of America the two hundred and twenty-eighth.

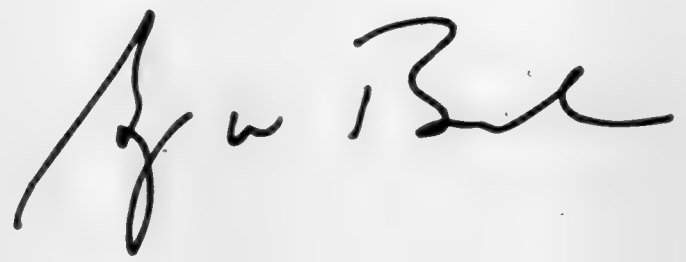

[FR Doc. 03–22542
Filed 9–2–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13315 of August 28, 2003

Blocking Property of the Former Iraqi Regime, Its Senior Officials and Their Family Members, and Taking Certain Other Actions

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (IEEPA), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (UNPA), and section 301 of title 3, United States Code, in view of United Nations Security Council Resolution 1483 of May 22, 2003, and in order to take additional steps with respect to the situation in Iraq,

I, GEORGE W. BUSH, President of the United States of America, hereby expand the scope of the national emergency declared in Executive Order 13303 of May 22, 2003, to address the unusual and extraordinary threat to the national security and foreign policy of the United States posed by obstacles to the orderly reconstruction of Iraq, the restoration and maintenance of peace and security in that country, and the development of political, administrative, and economic institutions in Iraq. I find that the removal of Iraqi property from that country by certain senior officials of the former Iraqi regime and their immediate family members constitutes one of these obstacles. I further determine that the United States is engaged in armed hostilities and that it is in the interest of the United States to confiscate certain additional property of the former Iraqi regime, certain senior officials of the former regime, immediate family members of those officials, and controlled entities. I intend that such property, after all right, title, and interest in it has vested in the Department of the Treasury, shall be transferred to the Development Fund for Iraq. Such property shall be used to meet the humanitarian needs of the Iraqi people, for the economic reconstruction and repair of Iraq's infrastructure, for the continued disarmament of Iraq, for the costs of Iraqi civilian administration, and for other purposes benefiting the Iraqi people. I determine that such use would be in the interest of and for the benefit of the United States. I hereby order:

Section 1. Except to the extent provided in section 203(b)(1), (3), and (4) of IEEPA (50 U.S.C. 1702(b)(1), (3), and (4)), or regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, all property and interests in property of the former Iraqi regime or its state bodies, corporations, or agencies, or of the following persons, that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(a) the persons listed in the Annex to this order; and

(b) persons determined by the Secretary of the Treasury, in consultation with the Secretary of State,

(i) to be senior officials of the former Iraqi regime or their immediate family members; or

(ii) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any of the persons listed in the Annex to this order or determined to be subject to this order.

Sec. 2. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to confiscate property that is blocked pursuant to section 1 of this order and that he determines, in consultation with the Secretary of State, to belong to a person, organization, or country that has planned, authorized, aided, or engaged in armed hostilities against the United States. All right, title, and interest in any property so confiscated shall vest in the Department of the Treasury. Such vested property shall promptly be transferred to the Development Fund for Iraq.

Sec. 3. (a) Any transaction by a United States person or within the United States that evades or avoids, has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in this order is prohibited.

(b) Any conspiracy formed to violate any of the prohibitions set forth in this order is prohibited.

Sec. 4. For purposes of this order:

(a) the term "person" means an individual or entity;

(b) the term "entity" means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization;

(c) the term "United States person" means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States;

(d) the term "former Iraqi regime" means the Saddam Hussein regime that governed Iraq until on or about May 1, 2003;

(e) the term "coalition authority" means the Coalition Provisional Authority under the direction of its Administrator, and the military forces of the United States, the United Kingdom, and their coalition partners present in Iraq under the command or operational control of the Commander of United States Central Command; and

(f) the term "Development Fund for Iraq" means the fund established on or about May 22, 2003, on the books of the Central Bank of Iraq, by the Administrator of the Coalition Provisional Authority responsible for the temporary governance of Iraq and all accounts held for the fund or for the Central Bank of Iraq in the name of the fund.

Sec. 5. I hereby determine that the making of donations of the type specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)) by or to persons determined to be subject to the sanctions imposed under this order would seriously impair my ability to deal with the national emergency declared in Executive Order 13303 and expanded in scope in this order and would endanger Armed Forces of the United States that are engaged in hostilities, and I hereby prohibit such donations as provided by section 1 of this order.

Sec. 6. For those persons listed in the Annex to this order or determined to be subject to this order who might have a constitutional presence in the United States, I find that because of the ability to transfer funds or other assets instantaneously, prior notice to such persons of measures to be taken pursuant to this order would render these measures ineffectual. I therefore determine that for these measures to be effective in addressing the national emergency declared in Executive Order 13303 and expanded in scope in this order, there need be no prior notice of a listing or determination made pursuant to section 1 of this order.

Sec. 7. The Secretary of the Treasury, in consultation with the Secretary of State, is hereby authorized to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA and UNPA as may be necessary to carry out the purposes of this order. The Secretary of the Treasury may redelegate any of these functions to other officers and agencies of the United States Government, consistent with applicable law. All agencies of the United States Government

are hereby directed to take all appropriate measures within their authority to carry out the provisions of this order.

Sec. 8. The Secretary of the Treasury, in consultation with the Secretary of State, is authorized to determine, subsequent to the issuance of this order, that circumstances no longer warrant inclusion of a person in the Annex to this order and that such person is therefore no longer covered within the scope of the order.

Sec. 9. Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under 31 C.F.R. chapter V, except as expressly terminated, modified, or suspended by or pursuant to this order.

Sec. 10. This order shall not apply to such property as is or may come under the control of the coalition authority in Iraq. Nothing in this order is intended to affect dispositions of such property or other determinations by the coalition authority.

Sec. 11. This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, officers or employees, or any other person.

Sec. 12. This order is effective on 12:01 a.m. EDT on August 29, 2003.

Sec. 13. This order shall be transmitted to the Congress and published in the **Federal Register**.

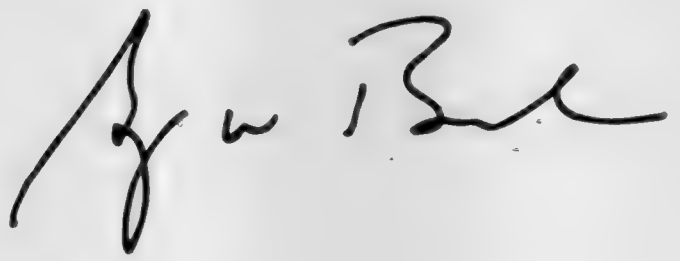

THE WHITE HOUSE,
August 28, 2003.

Billing code 3195–01–P

ANNEX

Saddam Hussein al-Tikriti
[DOB 28 Apr 1937; POB al-Awja, near Tikrit, Iraq; President since 1979; nationality Iraqi; a.k.a. Abu Ali]

Qusay Saddam Hussein al-Tikriti
[DOB 1965; alt. DOB 1966; POB Baghdad, Iraq; Saddam Hussein al-Tikriti's second son; oversaw Special Republican Guard, Special Security Organization, and Republican Guard; nationality Iraqi]

Uday Saddam Hussein al-Tikriti
[DOB 1964; alt. DOB 1967; POB Baghdad, Iraq; Saddam Hussein al-Tikriti's eldest son; leader of paramilitary organization Fedayeen Saddam; nationality Iraqi]

Abid Hamid Mahmud al-Tikriti
[DOB circa 1957; POB al-Awja, near Tikrit, Iraq; Saddam Hussein al-Tikriti's presidential secretary and key advisor; nationality Iraqi; a.k.a. Abid Hamid bid Hamid Mahmud; a.k.a. Col. Abdel Hamid Mahmoud; a.k.a. Abed Mahmoud Hammud]

Ali Hassan al-Majid al-Tikriti
[DOB 1943; POB al-Awja, near Tikrit, Iraq; presidential advisor and senior member of Revolutionary Command Council; nationality Iraqi; a.k.a. al-Kimawi]

Izzat Ibrahim al-Duri
[DOB circa 1942; POB al-Dur, Iraq; deputy commander-in-chief of Iraqi military; deputy secretary, Ba'th party regional command; vice chairman, Revolutionary Command Council; nationality Iraqi; a.k.a. Abu Brays]

Hani abd-al-Latif Tilfah al-Tikriti
[DOB circa 1962; POB al-Awja, near Tikrit, Iraq; Special Security Organization; nationality Iraqi]

Aziz Salih al-Numan
[DOB 1941; alt. DOB 1945; POB An Nasiriyah, Iraq; Ba'th party regional command chairman; nationality Iraqi]

Muhammad Hamza Zubaidi
[DOB 1938; POB Babylon, Babil Governorate, Iraq; former prime minister; nationality Iraqi]

Kamal Mustafa Abdallah
[DOB 1952; alt. DOB 4 May 1955; POB Tikrit, Iraq; Republican Guard Secretary; led Special Republican Guard and commanded both Republican Guard corps; nationality Iraqi; a.k.a. Kamal Mustafa Abdallah Sultan al-Tikriti]

Barzan abd al-Ghafur Sulaiman Majid al-Tikriti
[DOB 1960; POB Salah al-Din, Iraq; commander, Special Republican Guard; nationality Iraqi; a.k.a. Barzan Razuki abd al-Ghafur]

Muzahim Sa'b Hassan al-Tikriti
[DOB circa 1946; alt. DOB 1949; POB al-Awja, near Tikrit, Iraq; led Iraq's Air Defense Forces; Deputy Director, Organization of Military Industrialization; nationality Iraqi]

Ibrahim Ahmad abd al-Sattar Muhammed al-Tikriti
[DOB 1943; alt. DOB 1950; alt. DOB 1952; POB Ba'qubah or al-Sumayda/Shirqat, Iraq; armed forces chief of staff; nationality Iraqi]

Saif-al-Din Fulayyih Hassan Taha al-Rawi
[DOB 1953; POB Ar Ramadi, al-Anbar Governorate, Iraq; Republican Guard chief of staff; nationality Iraqi; a.k.a. Ayad Futayyih al-Rawi]

Rafi abd-al-Latif Tilfah al-Tikriti
[DOB circa 1954; POB Tikrit, Iraq; Director, Directorate of General Security; nationality Iraqi]

Tahir Jalil Habbush al-Tikriti
[DOB 1950; POB Tikrit, Iraq; director of Iraqi Intelligence Service; nationality Iraqi]

Hamid Raja Shalah al-Tikriti
[DOB 1950; POB Bayji, Salah al-Din Governorate, Iraq; air force commander; nationality Iraqi; a.k.a. Hamid Raja-Shalah Hassan al-Tikriti; a.k.a. Hamid Raja-Shalah Hassum al-Tikriti]

Latif Nusayyif Jasim al-Dulaymi
[DOB circa 1941; POB Ar-Rashidiya suburb of Baghdad, Iraq; Ba'ath party military bureau deputy chairman; nationality Iraqi]

Abd-al-Tawab Mullah Huwaysh
[DOB 1957; alt. DOB 14 March 1942; POB Mosul or Baghdad, Iraq; deputy prime minister; director, Organization of Military; nationality Iraqi]

Taha Yassin Ramadan al-Jizrawi
[DOB circa 1938; vice president since 1991; nationality Iraqi]

Rukan Razuki abd-al-Ghafur Sulaiman al-Tikriti
[DOB 1956; POB Tikrit, Iraq; head of Tribal Affairs Office in presidential office; nationality Iraqi; a.k.a. Rukan abdal-Ghaffur Sulayman al-Majid; a.k.a. Rukan abd al-Gafur al-Majid; a.k.a. Rukan abd al-Ghaffur al-Majid al-Tikriti; a.k.a. Rukan Razuqi abd al-Gahfur al-Majid; a.k.a. Rukan 'abd al-Ghaffur al-Majid al-Tikriti; a.k.a. Abu Walid]

Jamal Mustafa Abdallah Sultan al-Tikriti
[DOB 4 May 1955; POB al-Samnah, near Tikrit, Iraq; deputy head of tribal affairs in presidential office; nationality Iraqi]

Mizban Khadr Hadi
[DOB 1938; POB Mandali District, Diyala, Iraq; member, Ba'th party regional command and Revolutionary Command Council since 1991; nationality Iraqi]

Taha Muhyi-al-Din Ma'ruf
[DOB 1924; POB Sulaymaniyah, Iraq; Vice President; member of Revolutionary Command Council; nationality Iraqi]

Tariq Aziz
[DOB 1 Jul 1936; POB Mosul or Baghdad, Iraq; Deputy Prime Minister; Passport No. NO34409/129 (July 1997); nationality Iraqi; a.k.a. Tariq Mikhail Aziz]

Walid Hamid Tawfiq al-Tikriti
[DOB circa 1950; POB Tikrit, Iraq; Governor of Basrah; nationality Iraqi; a.k.a. Walid Hamid Tawfiq al-Nasiri]

Sultan Hashim Ahmad al-Tai
[DOB circa 1944; POB Mosul, Iraq; Minister of Defense; nationality Iraqi]

Hikmat Mizban Ibrahim al-Azzawi
[DOB 1934; POB Diyala, Iraq; Deputy Prime Minister and Finance Minister; nationality Iraqi]

Mahmud Dhiyab al-Ahmad
[DOB 1953; POB Mosul or Baghdad, Iraq; Minister of Interior; nationality Iraqi]

Ayad Futayyih Khalifa al-Rawi
[DOB 1942; POB Rawah, Iraq; Quds Force Chief of Staff; nationality Iraqi]

Zuhair Talib abd-al-Sattar al-Naqib
[DOB circa 1948; Director, Military Intelligence; nationality Iraqi]

Amir Hamudi Hassan al-Sa'di
[DOB 5 Apr 1938; POB Baghdad, Iraq; presidential scientific advisor; Passport No. NO33301/862, issued 17 October 1997, expires 1 October 2005; Passport No. M0003264580; Passport No. H0100009, issued 1 May 2002; nationality Iraqi]

Amir Rashid Muhammad al-Ubaidi
[DOB 1939; POB Baghdad, Iraq; Minister of Oil; nationality Iraqi]

Husam Muhammad Amin al-Yassin
[DOB 1953; alt. DOB 1958; POB Tikrit, Iraq; head, National Monitoring Directorate; nationality Iraqi]

Muhammad Mahdi al-Salih
[DOB 1947; alt. DOB 1949; POB al-Anbar Governorate, Iraq; Minister of Trade; nationality Iraqi]

Sab'awi Ibrahim Hassan al-Tikriti
[DOB 1947; POB Tikrit, Iraq; presidential advisor; half-brother of Saddam Hussein al-Tikriti; nationality Iraqi]

Watban Ibrahim Hassan al-Tikriti
[DOB 1952; POB Tikrit, Iraq; presidential advisor; half-brother of Saddam Hussein al-Tikriti; nationality Iraqi; a.k.a. Watab Ibrahim al-Hassan]

Barzan Ibrahim Hassan al-Tikriti
[DOB 1951; POB Tikrit, Iraq; presidential advisor; half-brother of Saddam Hussein al-Tikriti; Passport No. M0001666/970; Passport No. NM0000860/114; Passport No. M0009851/1; nationality Iraqi]

Huda Salih Mahdi Ammash
[DOB 1953; POB Baghdad, Iraq; member, Ba'ath party regional command; nationality Iraqi]

Abd-al-Baqi abd-al-Karim Abdallah al-Sad'un
[DOB 1947; Ba'th party regional command chairman, Diyala; nationality Iraqi]

Muhammad Zimam abd-al-Razzaq al-Sa'dun
[DOB 1942; POB Suq ash-Shuyukh District, Dhi-Qar, Iraq; Ba'th party regional chairman, at-Tamim; nationality Iraqi]

Samir abd al-Aziz al-Najim
[DOB 1937; POB 1938, Baghdad, Iraq; Ba'th party regional command chairman, East Baghdad; nationality Iraqi]

Humam abd-al-Khaliq abd-al-Ghafur
[DOB 1945; POB ar-Ramadi, Iraq; Minister of Higher Education and Research; Passport No. M0018061/104, issued 12 September 1993; nationality Iraqi; a.k.a. Humam 'abd al-Khaliq 'abd al-Rahman; a.k.a. Humam 'abd al-Khaliq Rashid]

Yahia Abdallah al-Ubaidi
[Ba'th party regional command chairman, al-Basrah; nationality Iraqi]

Nayif Shindakh Thamir Ghalib
[Ba'th party regional command chairman, an-Najaf; member, Iraqi National Assembly; nationality Iraqi]

Saif-al-Din al-Mashhadani
[DOB 1956; POB Baghdad, Iraq; Ba'th party regional command chairman, al-Muthanna; nationality Iraqi]

Fadil Mahmud Gharib
[DOB 1944; POB Dujail, Iraq; Ba'th party regional command chairman, Babil; chairman, General Federation of Iraqi Trade Unions; nationality Iraqi; a.k.a. Gharib Muhammad Fazel al-Mashaikhi]

Muhsin Khadr al-Khafaji
[Ba'th party regional command chairman, al-Qadisiyah; nationality Iraqi]

Rashid Taan Kazim
[Ba'th party regional command chairman, al-Anbar; nationality Iraqi]

Ugla Abid Saqar al-Kubaysi
[DOB 1944; POB Kubaisi, al-Anbar Governorate, Iraq; Ba'th party regional command chairman, Maysan; nationality Iraqi; a.k.a. Saqr al-Kabisi abd Aqala]

Ghazi Hammud al-Ubaidi
[DOB 1944; POB Baghdad, Iraq; Ba'th party regional command chairman, Wasit; nationality Iraqi]

Adil Abdallah Mahdi
[DOB 1945; POB al-Dur, Iraq; Ba'th party regional command chairman, Dhi-Qar; nationality Iraqi]

Hussein al-Awadi
[Ba'th party regional command chairman, Ninawa; nationality Iraqi]

Khamis Sirhan al-Muhammad
[Ba'th party regional command chairman, Karbala; nationality Iraqi; a.k.a. Dr. Khamis]

Sa'd abd-al-Majid al-Faysal al-Tikriti
[DOB 1944; POB Tikrit, Iraq; Ba'th party regional command chairman, Salah al-Din; nationality Iraqi]

Note: The bracketed identifying information with respect to each person listed in this Annex reflects information recently available and is provided solely to facilitate compliance with this order. Each person listed in this Annex remains subject to the prohibitions of this order notwithstanding any change in title, position, or affiliation, unless and until such person is subject to a determination pursuant to section 8 of this order.

[FR Doc. 03–22543
Filed 9–2–03; 8:45 am]
Billing code 4810–25–C

Presidential Documents

Memorandum of August 29, 2003

Assistance for Voluntary Population Planning

Memorandum for the Secretary of State

On March 28, 2001, I issued a memorandum for the Administrator of the United States Agency for International Development (USAID) directing that certain conditions be placed on assistance for family planning activities provided to foreign nongovernmental organizations by USAID.

Because family planning grants are awarded by the Department of State outside of USAID as well as through USAID, you are hereby directed to extend the requirements of the March 28, 2001, memorandum to all assistance for voluntary population planning furnished to foreign nongovernmental organizations and appropriated pursuant to the Foreign Assistance Act, whether such assistance is furnished by USAID or any other bureau, office, or component of the Department of State.

As set forth in the March 28, 2001, memorandum, this policy applies to certain assistance provided to foreign nongovernmental organizations. Such organizations do not include multilateral organizations that are associations of governments. This policy shall not apply to foreign assistance furnished pursuant to the United States Leadership Against HIV/AIDS, Tuberculosis, and Malaria Act of 2003 (Public Law 108–25).

The foregoing directive is issued consistent with the authority vested in me by the Constitution and laws of the United States of America, including sections 104 and 104A of the Foreign Assistance Act of 1961, as amended.

You are authorized and directed to publish this memorandum in the **Federal Register**.

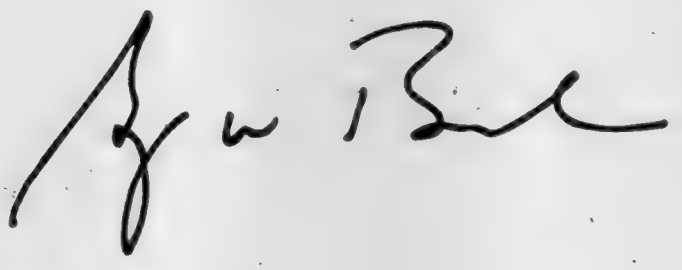

THE WHITE HOUSE,
Washington, August 29, 2003.

[FR Doc. 03–22544
Filed 9–2–03; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 68, No. 170
Wednesday, September 3, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV03–905–1 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Extension and Modification of the Exemption for Shipments of Tree Run Citrus

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule extends for one season the exemption for tree run citrus under the Florida citrus marketing order (order). The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida and is administered locally by the Citrus Administrative Committee (committee). Under this rule, shipments of tree run citrus are exempt from grade, size, and assessment requirements for the 2003–04 season. This rule also increases the limit on the amount of citrus a grower can ship from 1,500 boxes to 3,000 boxes per variety and requires growers to identify their containers with their name and address. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns.

DATES: Effective September 4, 2003; comments received by November 3, 2003 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule extends for one season an exemption to ship tree run citrus free from grade, size, and assessment requirements under the order. This rule also increases the limit on the total amount of citrus a grower can ship under the exemption from 1,500 boxes to 3,000 boxes per variety and requires growers to identify their containers with their name and address. This extension is for the 2003–04 season only. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. This action was recommended unanimously by the committee at its meeting on July 1, 2003.

Section 905.80 of the order provides authority for the Committee to exempt certain types of shipments from regulation. Exemptions can be implemented for types of shipments of any variety in such minimum quantities, or for such purposes as the committee with the approval of USDA may specify. No assessment is levied on fruit so shipped. The committee shall, with the approval of USDA, prescribe such rules, regulations, or safeguards as it deems necessary to prevent varieties handled under the provisions of this section from entering channels of trade for other than the purposes authorized by this section.

Section 905.149 of the order's rules and regulations defines grower tree run citrus and outlines the procedures to be used for growers to apply to the committee to ship their own tree run citrus exempt from grade, size, and assessment requirements. The provisions of this section were originally established just for the 2002–

03 season. It allowed growers to ship a maximum of 150 1⅗ bushel boxes per variety per shipment up to a seasonal total of 1,500 boxes per variety of their tree run fruit free from order requirements.

This rule amends § 905.149 and extends its provisions for another season. This rule extends the exemption to ship tree run citrus free from grade, size, and assessment requirements as specified in § 905.149 for the 2003–04 season. This rule also amends § 905.149 by increasing the limit on the amount of citrus a grower can ship during the season from 1,500 boxes to 3,000 boxes per variety and by requiring that each container in each shipment be labeled with or contain the name and address of the grower. Growers must receive approval from the committee before they can utilize this exemption.

According to Florida Department of Citrus (FDOC) regulation 20–35.006, "Tree run grade is that grade of naturally occurring sound and wholesome citrus fruit which has not been separated either as to grade or size after severance from the tree." Also, FDOC regulation 20–62.002 defines wholesomeness as fruit free from rot, decay, sponginess, unsoundness, leakage, staleness, or other conditions showing physical defects of the fruit. By definition, this fruit is handled by the grower and bypasses normal handler operations. Prior to implementation of the exemption, all tree run citrus had to meet all requirements of the marketing order, as well as State of Florida Statutes and Florida Department of Citrus regulations. Even with this rule, tree run citrus must continue to meet applicable State of Florida Statutes and Florida Department of Citrus regulations, including inspection and any container marking requirements. However, growers will be able to pick, box, and ship directly to buyers, and avoid the costs incurred when citrus is handled by packinghouses.

During the past few seasons, small producers of Florida citrus have expressed concerns about problems incurred when trying to sell their citrus. These concerns include increasing production costs, limited returns, and the availability of markets. For some growers, there is limited demand for the variety of citrus they produce or they do not produce much volume. Consequently, they have difficulty getting packinghouses to pack their fruit. These problems, along with market conditions, have driven a fair number of citrus growers out of the citrus industry.

According to Florida Agricultural Statistics Service, over the past five years, fresh grapefruit sales have dropped 22 percent and fresh orange shipments are down 16 percent. This means fewer cartons are being packed. This can cause problems for varieties that may be out of favor with handlers and consumers, or for a particular variety of fruit where there may be a glut on the market. As a result, packinghouses do not wish to become over stocked with fruit which is difficult to market and, therefore, will not pack less popular minor varieties of fruit or fruit that is in oversupply. Packinghouses do not want to pack what they cannot sell. These factors have caused wholesome fruit to be shipped to processing plants or left on the tree.

When citrus cannot be sold into the fresh market, it can be sold to the processing plants. However, the prices received are considerably lower. During the last five years, only the 1999–2000 season produced on-tree returns for processed grapefruit that exceeded one dollar per box. Over the period from 1977 through 2000, the differential between fresh prices and processed prices has averaged $3.55 per box. The average on-tree price for processed Florida oranges during the 2001–02 season was $3.08 compared to $4.50 for fresh oranges.

In addition, the costs associated with growing for the fresh market are greater than the costs for growing for the processed market. While the costs of growing for the fresh market have been increasing, in many cases the returns to the grower have been decreasing. The cost of picking, packing, hauling, and associated handling costs for fresh fruit is sometimes greater than the grower's return on the fruit. In some cases, where the cost of harvesting exceeds the returns to the grower or the grower cannot find a buyer for the fruit, economic abandonment can occur. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, and 2000–01 had an average economic abandonment of two million boxes or more of red seedless grapefruit alone.

Consequently, growers are looking for other outlets for their fruit in an effort to increase returns. Some growers believe secondary markets exist which are not currently being supplied that would provide additional outlets for their citrus. They think niche markets exist that could be profitable and want the opportunity to service them. They believe they can ship quality fruit directly to out-of-state markets and that it would be well received. These growers contend tree run citrus does not need a minimum grade and size to be marketable, and that they can supply quality fruit to secondary markets not served by packed fruit. However, they believe they need to bypass normal handler operations and the associated costs for it to be profitable.

To address these concerns, the committee recommended that for the 2002–03 season producers be allowed to ship small quantities of their own production directly to market exempt from order requirements. The exemption was for the 2002–03 season and expired July 31, 2003. A final rule on this action was published in the **Federal Register** on January 29, 2003 [68 FR 4361]. The committee agreed that following the 2002–03 season they would review the information provided by growers who applied for and used the tree run exemption to determine if the exemption should be continued.

During the 2002–03 season, 75 growers were approved to ship under the exemption. Approximately 25 growers actually used the exemption, shipping a total of 5,000 1–3/5 bushel boxes of oranges, grapefruit, tangerines, and tangelos. Those producers who took advantage of the exemption believe the program was successful. They were able to sell their fruit and supply markets not already supplied by packed fruit.

The growers who used the exemption believe that one year was not long enough and that it should be extended. They think more time is needed to determine the benefits of the exemption and whether it should be extended on a continuous basis. Growers believe to successfully develop new markets they must demonstrate they can consistently supply new markets with quality fruit and this cannot be done in a single season or without the exemption.

Growers also believe more markets exist. They think more time is needed to identify and research potential markets. In some cases, potential markets were not identified until late in the 2002–03 season when there was not enough fruit available to supply them. Growers want the opportunity to try to supply these markets in the coming season.

In addition, some interested growers did not take advantage of the exemption during the past season. Some stated if the exemption were to be extended for another season, they would use it to try shipping tree run citrus. By extending the exemption for another season, growers will have more time to utilize this opportunity and it will provide the committee with a better indicator of the level of interest and success.

There was also some discussion that the previously established 1,500 box

limit on the total amount of each variety of citrus a grower could ship during the season may prevent growers from fully developing new markets. One concern expressed was that should a buyer want additional fruit during the season, a grower may not be able to supply it because they had reached their shipping limit. Another concern was for growers that only produce one variety of citrus. The limit of 1,500 boxes per variety for the season may prevent them from utilizing more of their fruit. Also, a producer may identify two or more potential markets, but with the limited amount of fruit that can be shipped, the grower can only supply fruit to one market. Growers believe raising the limit on the number of boxes per variety they can ship for the season will allow them to supply the markets previously developed as well as develop additional markets for their tree run fruit.

The committee reviewed this issue and discussed the concerns of small growers and the problems encountered during the past season. The committee determined that offering the exemption for another season will provide additional information on how fruit shipped under the exemption was received by the market. It will also provide a better indication of whether or not other markets exist that packed fruit is not currently supplying, where these markets are located, and approximately how much fruit can be sold in such markets. Extending the exemption also gives other growers an opportunity to try it.

Tree run fruit will be sold primarily to non-competitive, niche markets, such as farmers' markets, flea markets, roadside stands, and similar outlets and will not compete with non-exempt fruit shipped under the order. Fruit is sold in similar markets within the state, and such markets have been successful. Continuing the exemption for another season allows growers to sell directly to similar markets outside of the state, supplying markets that might not otherwise be supplied. The committee believes this action will allow the industry to service more non-traditional markets and may be a way to increase fresh market shipments and to develop new markets.

The committee also discussed the limits on the amount of fruit growers can ship during the season. Several different combinations of shipment totals were discussed. The committee determined the previously established limit of 150 boxes of each variety per shipment was still appropriate, allowing the grower to ship a sufficient amount of fruit to make the exemption cost effective, while preventing too much fruit from entering market channels exempt from order requirements. However, the committee did agree that by raising the total amount of citrus a grower can ship during the season, the grower may be able to service more markets and sell more fruit. The committee supported increasing the volume limit from 1,500 boxes to 3,000 boxes per variety under the exemption. This amount provides additional volume for the grower while limiting the amount of fruit that can be shipped under the exemption. Maintaining shipments at these levels will help keep this fruit in non-competitive outlets.

With the potential for additional fruit entering the market under the exemption, ensuring compliance with the provisions of the exemption and reducing the chances of tree run fruit getting into regular market channels is an important consideration. As a means of tracking the fruit and ensuring compliance, the committee decided that each container of tree run fruit should contain the name and address of the grower. Because tree run fruit can be shipped in a variety of containers, the committee thought requiring a label on the containers themselves may be impractical. For some containers, such as cardboard box, having the name and address printed on the outside of the container would not be problematic. However, on other containers, such as field boxes, plastic boxes, or mesh bags, it can be difficult to print the name and address or affix a label. Therefore, the committee agreed that placing the name and address inside the container provides a means for identifying the owner of the fruit with the least amount of difficulty.

Consequently, for the reasons discussed, the committee voted unanimously to extend the tree run exemption for the 2003–04 season, raise the limit on the amount of citrus a grower can ship from 1,500 boxes to 3,000 boxes per variety, and require that growers identify each container with their name and address. The exemption is being extended for the 2003–04 season only, and will expire on July 31, 2004. At the end of the season, the committee will review all available information and decide whether the exemption should be continued on a permanent basis.

Growers will continue to be required to apply to the committee, on the "Grower Tree Run Certificate Application" form provided by the committee, for an exemption to ship tree run citrus fruit to interstate markets. On this form, the grower must provide their name; address; phone number; legal description of the grove; variety of citrus to be shipped; and the approximate number of boxes produced in the specified grove. The grower must also certify that the fruit to be shipped comes from the grove owned by the grower applicant. The application form will be submitted to the committee manager and reviewed for completeness and accuracy. The manager will also verify the information provided. After the application has been reviewed, the manager will notify the grower applicant in writing whether the application is approved or denied.

Once the grower has received approval for their application for exemption and begins shipping fruit, a "Report of Shipments Under Grower Tree Run Certificate" form, also provided by the committee, must be completed for each shipment. On this form, the grower will provide the location of the grove, the amount of fruit shipped, the shipping date, and the type of transportation used to ship the fruit, along with the vehicle license number. The grower must supply the Road Guard Station with a copy of the grower certificate report for each shipment, and provide a copy of the report to the committee. This report will enable the committee to maintain compliance and gather data, which will be used to determine the effectiveness of the exemption. Failure to comply with these requirements may result in the cancellation of a grower's certificate.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including citrus, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order. Therefore, no change is necessary in the citrus import regulations as a result of this action.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of

this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 11,000 producers of Florida citrus in the production area and approximately 75 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida oranges, grapefruit, tangerines, and tangelos during the 2002–03 season was approximately $8.55 per 4/5 bushel carton, and total fresh shipments for the 2002–03 season where around 49.3 million cartons of oranges, grapefruit, tangerines, and tangelos. Approximately 20 handlers handled 65 percent of Florida's citrus shipments in 2002–03. Considering the average f.o.b. price, at least 55 percent of the oranges, grapefruit, tangerine, and tangelo handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida citrus handlers may be classified as small entities. The majority of Florida citrus producers may also be classified as small entities.

This rule extends the provisions of § 905.149 of the rules and regulations under the order for one more season. This rule exempts shipments of small quantities of tree run citrus from the grade, size, and assessment requirements for the 2003–04 season. This rule also increases the limit on the amount of citrus a grower can ship from 1,500 boxes to 3,000 boxes per variety during the season and requires growers to identify their containers with their name and address. Growers must receive approval from the committee before they can use this exemption. The committee believes this action may be a way to increase fresh market shipments, develop new markets, and improve grower returns. Authority for this action is provided in § 905.80(e).

According to a recent study by the University of Florida—Institute of Food and Agricultural Sciences, production costs for the 2001–02 season ranged from $1.71 per box for processed oranges to $2.41 per box for grapefruit grown for the fresh market. The average packing charge for oranges is approximately $6.50 per box, for grapefruit the charge is approximately $5.75 per box, and for tangerines the charge can be as high as $9 per box. In a time when grower returns are weak, sending fruit to a packinghouse can be cost prohibitive, especially for the small grower. This rule may provide an additional outlet for fruit that might otherwise be forced into the processing market or left on the tree altogether.

This rule will not impose any additional costs on the grower, but have the opposite effect, providing growers the opportunity to reduce the costs associated with having fruit handled by a packinghouse. This action will allow growers to ship small quantities of their tree run citrus directly into interstate commerce exempt from the order's grade, size, and assessment requirements and their related costs. With this action, growers will be able to reduce handling costs and use those savings toward developing additional markets not serviced by packed fruit. This will benefit all growers regardless of size, but it is expected to have a particular benefit for the small grower.

The committee considered alternatives to this action. One possible alternative was not extending the exemption for another season. However, the committee believes the exemption does provide other possible outlets for fruit and may help increase returns to growers, so this alternative was rejected. Another alternative considered was removing the limit on the total amount of citrus a grower could ship during the season. Committee members had concerns about allowing this exemption without some limit on total shipments. The committee agreed that an increase in the limit would provide additional opportunities for growers without causing any market disruption or making it more difficult to keep tree run fruit in noncompetitive outlets. Therefore, this alternative was also rejected.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on extending for one season the exemption to ship tree run citrus free from grade, size, and assessment requirements under the order. The rule also invites comments on the increase in the limit on the total amount of citrus a grower can ship per variety under the exemption from 1,500 boxes to 3,000 boxes and the requirement that growers identify their citrus with their name and address. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register**. This rule needs to be in place as soon as possible to cover as many shipments during the 2003–04 season as possible. Growers need to know this rule is in place so they can begin making plans on how to utilize the exemption. In addition, growers and handlers are aware of this rule, which was recommended at a public meeting. Also, a 60-day comment period is provided for in this rule and any comments

received will be considered prior to finalization.

List of Subjects in 7 CFR Part 905

Grapefruit, Oranges, Tangelos, Tangerines, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 905.149:
■ a. Paragraph (d) is amended by revising "July 31, 2003." to read "July 31, 2004.".
■ b. Paragraph (f)(2) is amended by revising "1,500" to read "3,000".
■ c. Paragraph (f)(3) is amended by revising "for the 2002–03 season only" to read "during the 2003–04 season only" and "July 31, 2003." to read "July 31, 2004.".
■ d. A new paragraph (f)(6) is added to read as follows:

§ 905.149 Procedure for permitting growers to ship tree run citrus fruit.

* * * * *

(f) * * *

(6) Each container of tree run fruit shipped under a Grower Tree Run Certificate shall be labeled with or contain the name and address of the grower shipping under the Grower Tree Run Certificate.

Dated: August 28, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22414 Filed 9–2–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 922, 923, and 924

[Docket No. FV03–922–1 FR]

Increased Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rates established for the Washington Apricot Marketing Committee, the Washington Cherry Marketing Committee, and the Washington-Oregon Fresh Prune Committee (Committees) for the 2003–2004 and subsequent fiscal periods. This rule increases the assessment rates established for the Committees from $2.50 to $3.00 per ton for Washington apricots, from $0.75 to $1.00 per ton for Washington sweet cherries, and $1.00 to $1.50 per ton for Washington-Oregon fresh prunes. The Committees are responsible for local administration of the marketing orders which regulate the handling of apricots and cherries grown in designated counties in Washington, and prunes grown in designated counties in Washington and in Umatilla County, Oregon. Authorization to assess apricot, cherry, and prune handlers enables the Committees to incur expenses that are reasonable and necessary to administer the programs. The fiscal period for these marketing orders begins April 1 and ends March 31. The assessment rates will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 922 (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington; Marketing Agreement and Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington; and Marketing Agreement and Order No. 924 (7 CFR part 924) regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the "orders." The orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing orders now in effect, handlers in the designated areas are subject to assessments. Funds to administer the orders are derived from such assessments. It is intended that the assessment rates fixed herein will be applicable to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes beginning April 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rates established for the Committees for the 2003–2004 and subsequent fiscal periods from $2.50 to $3.00 per ton for Washington apricots, from $0.75 to $1.00 per ton for Washington sweet cherries, and $1.00 to $1.50 per ton for Washington-Oregon fresh prunes.

The orders provide authority for the Committees, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committees are producers and handlers in designated counties in Washington and in Umatilla County, Oregon. They are familiar with the Committees' needs and with the costs for goods and services in their

local areas and are thus in a position to formulate appropriate budgets and assessment rates. The assessment rates are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2002–2003 and subsequent fiscal periods, the Washington Apricot Marketing Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Washington Apricot Marketing Committee met on May 21, 2003, and unanimously recommended 2003–2004 expenditures of $10,559 and an assessment rate of $3.00 per ton of apricots. In comparison, last year's budgeted expenditures were $11,685. The assessment rate of $3.00 is $0.50 higher than the rate currently in effect. The increase is necessary to offset an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2003 apricot crop.

The assessment rate recommended by the Washington Apricot Marketing Committee was derived by dividing anticipated expenses by expected shipments of apricots grown in designated counties in Washington. Applying the $3.00 per ton rate of assessment to the Washington Apricot Marketing Committee's 3,600-ton shipment estimate should provide $10,800 in assessment income. Income derived from handler assessments should be adequate to cover budgeted expenses and allow the Washington Apricot Marketing Committee to maintain an acceptable financial reserve. Funds in the reserve ($8,360 as of March 31, 2003), will be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 922.42).

For the 1997–98 and subsequent fiscal periods, the Washington Cherry Marketing Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Washington Cherry Marketing Committee met on May 22, 2003, and unanimously recommended 2003–2004 expenditures of $71,865 and an assessment rate of $1.00 per ton of cherries. In comparison, last year's budgeted expenditures were $68,715. The assessment rate of $1.00 is $0.25 higher than the rate currently in effect. The higher assessment rate is necessary to offset an anticipated decrease in production due to the adverse effect of cooler temperatures on the size and quality of the 2003 cherry crop.

The assessment rate recommended by the Washington Cherry Marketing Committee was derived by dividing anticipated expenses by expected shipments of sweet cherries grown in designated counties in Washington. Applying the $1.00 per ton rate of assessment to the Washington Cherry Marketing Committee's 64,000-ton shipment estimate should provide $64,000 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve ($33,064 as of March 31, 2003), will be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 923.42).

For the 2001–2002 and subsequent fiscal periods, the Washington-Oregon Fresh Prune Marketing Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Washington-Oregon Fresh Prune Marketing Committee met on June 3, 2003, and unanimously recommended 2003–2004 expenditures of $7,411 and an assessment rate of $1.50 per ton of prunes. In comparison, last year's budgeted expenditures were $8,095. The assessment rate of $1.50 is $0.50 higher than the rate currently in effect. The higher assessment rate is necessary to bring the assessment rate closer to budgeted expenses, and to use less of the reserve to fund expenses.

The assessment rate recommended by the Washington-Oregon Fresh Prune Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes grown in designated counties in Washington, and Umatilla County, Oregon. Applying the $1.50 per ton rate of assessment to the Washington-Oregon Fresh Prune Marketing Committee's 4,300-ton shipment estimate should provide $6,450 in assessment income. Income derived from handler assessments, along with funds from the Washington-Oregon Fresh Prune Marketing Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve ($5,407 as of March 31, 2003), will be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 924.42).

All three Committees are managed from the same office, and as such, major expenses recommended by the Committees for the 2003–2004 year include manager and clerical salaries ($54,500), rent and maintenance ($7,200), compliance officer ($4,840), and Committee travel and compensation ($4,000). Budgeted expenses for these items in 2002–2003 were $49,100, $6,800, $5,120, and $6,100, respectively.

The assessment rates established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committees or other available information.

Although the assessment rates will be in effect for an indefinite period, the Committees will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rates. The dates and times of the Committees' meetings are available from the Committees or USDA. The Committees' meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate the Committees' recommendations and other available information to determine whether modification of the assessment rates is needed. Further rulemaking will be undertaken as necessary. The Committees' 2003–2004 budgets and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 272 Washington apricot producers, 1,800 Washington sweet cherry producers,

and 215 Washington-Oregon fresh prune producers in the respective production areas. In addition, there are approximately 28 Washington apricot handlers, 69 Washington sweet cherry handlers, and 10 Washington-Oregon fresh prune handlers subject to regulation under the respective marketing orders. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a three-year average fresh apricot production of 4,225 tons (Washington Apricot Marketing Committee records), a three-year average producer price of $893 per ton as reported by National Agricultural Statistics Service (NASS), and 272 Washington apricot producers, the average annual producer revenue is approximately $13,871. In addition, based on Washington Apricot Marketing Committee records and 2002 f.o.b. prices ranging from $12.50 to $16.50 per 24-pound container as reported by USDA's Market News Service (MNS), all of the Washington apricot handlers ship under $5,000,000 worth of apricots.

Based on a three-year average fresh cherry production of 71,220 tons (Washington Cherry Marketing Committee records), a three-year average producer price of $1,857 per ton as reported by NASS, and 1,800 Washington cherry producers, the average annual producer revenue is approximately $73,475. In addition, based on Washington Cherry Marketing Committee records and an average 2002 f.o.b. price of $28.00 per 20-pound container as reported by MNS, 81 percent of the Washington cherry handlers ship under $5,000,000 worth of cherries.

Based on a three-year average fresh prune production of 4,893 tons (Washington-Oregon Fresh Prune Marketing Committee records), a three-year average producer price of $210 per ton as reported by NASS, and 215 Washington-Oregon prune producers, the average annual producer revenue is approximately $4,779. In addition, based on Washington-Oregon Fresh Prune Marketing Committee records and 2002 f.o.b. prices ranging from $8.50 to $9.50 per 30-pound container as reported by MNS, all of the Washington-Oregon prune handlers ship under $5,000,000 worth of prunes.

In view of the foregoing, the majority of Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune producers and handlers may be classified as small entities.

This rule increases the assessment rates established for the Committees from $2.50 to $3.00 per ton for apricots, from $0.75 to $1.00 per ton for cherries, and from $1.00 to $1.50 per ton for prunes. For the 2003–2004 fiscal period, the quantity of assessable fruit is estimated at 3,600 tons for apricots, 64,000 tons for cherries, and 4,300 tons for prunes.

All three Committees are managed from the same office, and as such, major expenses recommended by the Committees for the 2003–2004 year include manager and clerical salaries ($54,500), rent and maintenance ($7,200), compliance officer ($4,840), and Committee travel and compensation ($4,000). Budgeted expenses for these items in 2002–2003 were $49,100, $6,800, $5,120, and $6,100, respectively.

The higher assessment rates are necessary to offset increases in salaries and rent and maintenance, and projected decreases in the production of each crop due to the adverse effect of cooler temperatures on the size and quality of the fruit. The additional assessment income will also permit the Washington Apricot Marketing Committee and the Washington-Oregon Fresh Prune Committee to meet budgeted expenses and maintain an acceptable financial reserve. For the Washington Cherry Marketing Committee, the increased assessment rate will allow it to use less reserve funds to meet its budgeted expenses.

The Committees discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the programs with adequate reserves.

Apricot shipments for 2003 are estimated at 3,600 tons, which should provide $10,800 in assessment income. Income derived from handler assessments should be adequate to cover budgeted expenses. Funds in the reserve ($8,360 as of March 1, 2003) will be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 923.42).

Sweet cherry shipments for 2003 are estimated at 64,000 tons, which should provide $64,000 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve ($33,064 as of March 31, 2003) will be kept within the maximum permitted by the order (one fiscal period's operational expenses; § 923.42).

Fresh prune shipments for 2003 are estimated at 4,300 tons, which should provide $6,450 in assessment income. Income derived from handler assessments, along with funds from the authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve ($5,407 as of March 31, 2003) will be kept within the maximum permitted by the order (approximately one fiscal period's operational expenses; § 924.42).

A review of historical information and preliminary information pertaining to the upcoming crop year indicates that the producer price for the 2003–2004 season could range between $783 and $1,050 per ton for Washington apricots, between $1,580 and $2,000 per ton for Washington sweet cherries, and between $166 and $252 per ton for Washington-Oregon fresh prunes. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could range between 0.29 and 0.38 percent for Washington apricots, between 0.05 and 0.06 percent for Washington sweet cherries, and between 0.60 and 0.90 for Washington-Oregon fresh prunes.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing orders. In addition, the Committees' meetings were widely publicized throughout the Washington apricot, Washington sweet cherry, and Washington-Oregon fresh prune industries and all interested persons were invited to attend and participate in the Committees' deliberations on all issues. Like all meetings of these Committees, the May 21, May 22, and June 3, 2003, meetings were public meetings and all entities, both large and small, were able to express views on the issues.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Washington apricot, Washington sweet cherry, or Washington-Oregon fresh prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 25, 2003 (68 FR 43975). Copies of the proposed rule were also mailed or sent via facsimile to all members of the Committees. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending August 11, 2003, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committees and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–2004 fiscal period began on April 1, and the marketing orders require that the rate of assessment for each fiscal period apply to all assessable Washington apricots, Washington sweet cherries, and Washington-Oregon fresh prunes handled during such fiscal period. Further, handlers are aware of this rule which was unanimously recommended by each of the Committees at public meetings. Also, a 15-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects

7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 924

Plums, Prunes, Marketing agreements, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR parts 922, 923, and 924 are amended as follows:

■ 1. The authority citation for 7 CFR parts 922, 923, and 924 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 2. Section 922.235 is revised to read as follows:

§ 922.235 Assessment rate.

On or after April 1, 2003, an assessment rate of $3.00 per ton is established for the Washington Apricot Marketing Committee.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

■ 3. Section 923.236 is revised to read as follows:

§ 923.236 Assessment rate.

On or after April 1, 2003, an assessment rate of $1.00 per ton is established for the Washington Cherry Marketing Committee.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

■ 4. Section 924.236 is revised to read as follows:

§ 924.236 Assessment rate.

On or after April 1, 2003, an assessment rate of $1.50 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: August 28, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22415 Filed 9–2–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV03–948–2 FR]

Irish Potatoes Grown in Colorado; Reinstatement of the Continuing Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule reinstates the continuing assessment rate established for the Area No. 3 Colorado Potato Administrative Committee (Committee) for the 2003–2004 and subsequent fiscal periods at $0.03 per hundredweight of potatoes handled. The Committee locally administers the marketing order regulating the handling of potatoes grown in northern Colorado. The continuing assessment rate was suspended for the 2001–2002 and subsequent fiscal periods to bring the monetary reserve within the program limit of two fiscal periods' operating expenses. Authorization to assess potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, suite 385, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Order No. 948, both as amended (7 CFR part 948), regulating the handling of potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the

assessment rate established herein would be applicable to all assessable potatoes beginning on July 1, 2003, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule reinstates § 948.215 of the order's rules and regulations and establishes a continuing assessment rate for the Committee for the 2003–2004 and subsequent fiscal periods at $0.03 per hundredweight of potatoes handled.

The Colorado potato marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Colorado potatoes. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2001–2002 and subsequent fiscal periods, the Committee recommended, and USDA approved, a suspension of the continuing assessment rate that would remain suspended until reinstated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on May 8, 2003, and unanimously recommended 2003–2004 expenditures of $19,737 and an assessment rate of $0.03 per hundredweight of potatoes. In comparison, last year's budgeted expenditures were also $19,737. For the 2001–2002 fiscal period, the Committee recommended suspending the continuing assessment rate to bring the monetary reserve within program limits of approximately two fiscal periods' operating expenses (§ 948.78). At that time, the reserve fund contained about $60,000. The Committee has been operating for the last two years by drawing income from its reserve. With a suspended assessment rate and a significant decrease in the number of potato producers and acreage in Area No. 3, the reserve has rapidly decreased to the current level of about $24,077. The Committee would like to maintain the reserve at approximately this level, thus reinstatement of the assessment rate at $0.03 per hundredweight is needed.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $8,200 for salaries, $3,000 for rent expense, and $1,750 for office expenses. Budgeted expenses for these items in 2002–2003 were also $8,200, $3,000, and $1,750, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Colorado potatoes. Colorado potato shipments for the year are estimated at 632,500 hundredweight which should provide $18,975 in assessment income. Income derived from handler assessments along with interest and rent income should be adequate to cover budgeted expenses. Funds in the reserve (estimated at $24,077 as of June 30, 2003), will be kept within the maximum permitted by the order (approximately two fiscal period's expenses; § 948.78).

The assessment rate reinstated in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2003–2004 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Based on Committee data, there are 12 producers, (9 of whom are also handlers) and 10 handlers (9 of whom are also producers) in the production area subject to regulation under the order. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $750,000.

Based on Committee data, the production of Area No. 3 Colorado potatoes for the 2001–2002 marketing year was 773,053 hundredweight. Based on National Agricultural Statistics Service data, the average producer price for Colorado summer potatoes for the 2001–2002 marketing year was $6.70 per hundredweight. The average annual producer revenue for the 12 Colorado Area No. 3 potato producers is therefore calculated to be approximately $431,621. Using Committee data regarding each individual handler's total shipments during the 2001–2002 marketing year and a Committee estimated average f.o.b. price during the 2001–2002 marketing year of $8.80 per hundredweight ($6.70 per hundredweight plus estimated packing and handling costs of $2.10 per hundredweight), all of the Colorado Area No. 3 potato handlers ship under $5,000,000 worth of potatoes. In view of the foregoing, it can be concluded that the majority of the Colorado Area No. 3 potato producers and handlers may be classified as small entities.

This rule reinstates § 948.215 of the order's rules and regulations and

establishes a continuing assessment rate for the Committee, to be collected from handlers for the 2003–2004 and subsequent fiscal periods, at $0.03 per hundredweight of potatoes. The Committee recommended 2003–2004 expenditures of $19,727 and an assessment rate of $0.03 per hundredweight. The quantity of Area No. 3 Colorado potatoes for the 2003–2004 fiscal period is estimated at 632,500 hundredweight. Thus, the $0.03 rate should provide $18,975 in assessment income. This together with interest and rent income should be adequate to meet this fiscal period's budgeted expenses.

The major expenditures recommended by the Committee for the 2003–2004 fiscal period include $8,200 for salaries, $3,000 for rent expense, and $1,750 for office expenses. Budgeted expenses for these items in 2002–2003 were also $8,200, $3,000, and $1,750, respectively.

For the 2001–2002 fiscal period, the Committee recommended suspending the continuing assessment rate to bring the monetary reserve within program limits of approximately two fiscal periods' operating expenses (§ 948.78). At that time, the reserve fund contained about $60,000. The Committee has been operating for the last two years by drawing income from its reserve. With a suspended assessment rate and a significant decrease in the number of potato producers and acreage in Area No. 3, the reserve has rapidly decreased to the current level of about $24,000. The Committee would like to maintain the reserve at approximately this level, thus reinstatement of the assessment rate is needed.

The Committee discussed alternatives to this rule, including alternative expenditure levels. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with adequate reserves.

The assessment rate of $0.03 per hundredweight of assessable potatoes was determined by dividing the total recommended budget by the quantity of assessable potatoes, estimated at 632,500 hundredweight for the 2003–2004 fiscal period. This is approximately $1,402 above the anticipated expenses when combined with interest and rent income, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the producer price for the 2003–2004 fiscal period could range between $5.10 and $6.70 per hundredweight of Colorado summer potatoes. Therefore, the estimated assessment revenue for the 2003–2004 fiscal period as a percentage of total producer revenue could range between 0.45 and 0.59 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Area No. 3 Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 8, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Colorado Area No. 3 potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 28, 2003 (68 FR 44239). Copies of the proposed rule were also mailed or sent via facsimile to all Committee members. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 15-day comment period ending August 12, 2003, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the 2003–2004 fiscal period began on July 1, 2003, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period. Further, handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 15-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

■ 1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 948.215 is reinstated and revised to read as follows:

§ 948.215 Assessment rate.

On and after July 1, 2003, an assessment rate of $0.03 per hundredweight is established for Colorado Area No. 3 potatoes.

Dated: August 28, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22416 Filed 9–2–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[Docket No. DA–03–06]

National Dairy Promotion and Research Program; Amendment to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Dairy Promotion and Research Order (Order). The amendment modifies the composition of the National Dairy Promotion and Research Board (Dairy Board) by changing the number of

members in four of the thirteen geographic regions. The Dairy Board, which administers the Order, requested the amendment in order to better reflect the geographic distribution of milk production in the contiguous 48 States.

EFFECTIVE DATE: September 4, 2003.

FOR FURTHER INFORMATION CONTACT: David R. Jamison, USDA, AMS, Dairy Programs, Promotion and Research Branch, Stop 0233—Room 2958–S, 1400 Independence Avenue, SW., Washington, DC 20250–0233, (202) 720–6961, *David.Jamison2@usda.gov.*

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Proposed Rule and Invitation for Comments on Proposed Amendment to the Order: Issued June 27, 2003; published July 3, 2003 (68 FR 39861).

This final rule is issued pursuant to the Dairy Production Stabilization Act of 1983 (Act) (7 U.S.C. 4501, *et seq.*), Public Law 98–108, enacted November 29, 1983.

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule does not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Act authorizes the National Dairy Promotion and Research Program. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 4509 of the Act, any person subject to the Dairy Promotion and Research Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and requesting a modification of the Order or to be exempted from the Order. A person subject to an Order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) is required to examine the impact of this final rule on small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened. For the purpose of the Regulatory Flexibility Act, small businesses in the dairy industry have been defined as those employing less than 500 employees. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $750,000. There are approximately 70,000 dairy farms subject to the provisions of this Order. Most of the parties subject to the Order are considered small entities. This final rule amends the Dairy Promotion and Research Order by modifying the number of members on the National Dairy Promotion and Research Board in four of the 13 geographic regions. The amendment is being made to better reflect the geographic distribution of milk produced within each of the 13 regions of the contiguous 48 States.

The Order currently is administered by the 36-member Board representing 13 geographic regions within the contiguous 48 States. The Order provides that the Dairy Board shall review the geographic distribution of milk production throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from regions in order to best reflect the geographic distribution of milk production volume in the United States.

Based on a review of the 2002 geographic distribution of milk production, it has been determined that the number of Dairy Board members for four of the 13 geographical regions should be changed.

Since the changes only redistribute the representation on the Dairy Board to better reflect geographic milk production in the contiguous 48 States, this amendment will not have a significant economic impact on persons subject to the Order.

Paperwork Reduction Act

This amendment to the Order will not add any burden to persons subject to the Order because it relates to provisions concerning membership of the Dairy Board. The adopted changes do not impose additional reporting or collecting requirements. No relevant Federal rules have been identified that duplicate, overlap, or conflict with this final rule. In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Order have been approved previously by the Office of Management and Budget (OMB).

Statement of Consideration

This final rule amends the Dairy Promotion and Research Order by modifying the number of members on the National Dairy Promotion and Research Board in four of the 13 geographic regions. The amendment modifies the composition of the Board to better reflect current milk production within each of the 13 geographic regions of the contiguous 48 States.

The Order is administered by the 36-member Board representing 13 geographic regions within the contiguous 48 States. The Order provides in § 1150.131 that the Dairy Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from regions in order to best reflect the geographic distribution of milk production in the United States. The Dairy Board is required to conduct the review at least every five years and not more than every three years.

The Order specifies the formula to be used to determine the number of Dairy Board members in each of the 13 geographic regions designated in the Order. Under the formula, total milk production for the contiguous 48 States for the previous calender year is divided by 36-the total number of Dairy Board members—to determine a factor of pounds of milk represented by each Dairy Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Board members for each region. Accordingly, the following table summarizes by region the volume of milk production distribution for 2002, the percentage of total milk production, the current number of Dairy Board members per region, and the adopted number of Dairy Board members for each region.

Region	States	Milk production (mil lbs)*	Percentage of total milk production	Current number of board members	Adopted number of board members
1	Oregon, Washington	7,713	4.5	1	2
2	California	34,884	20.6	6	7
3	Arizona, Colorado, Idaho, Montana, Nevada, Utah, Wyoming.	16,291	9.6	3	3
4	Arkansas, Kansas, New Mexico, Oklahoma, Texas	15,313	9.0	3	3
5	Minnesota, North Dakota, South Dakota	10,447	6.2	3	2
6	Wisconsin	22,074	13.0	5	5
7	Illinois, Iowa, Missouri, Nebraska	8,971	5.3	2	2
8	Alabama, Kentucky, Louisiana, Mississippi, Tennessee	4,265	2.5	1	1
9	Indiana, Michigan, Ohio, West Virginia	13,264	7.8	3	3
10	Florida, Georgia, North Carolina, South Carolina, Virginia	7,194	4.2	2	1
11	Delaware, Maryland, New Jersey, Pennsylvania	12,492	7.4	3	3
12	New York	12,217	7.2	3	3
13	Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont.	4,518	2.7	1	1
Total	48 Contiguous States	169,643	100	36	36

*Based upon preliminary 2002 data that was released in Milk Production, Distribution & Income, NASS, USDA, April 2003. This data will later be updated, revised, and finalized.

Upon the basis of its review of geographic milk production volume, the Dairy Board proposed that the number of members in four of the 13 geographic regions be changed. The Dairy Board was last modified in 1998 based on 1997 milk production data. The current review conducted by the Dairy Board is based on 2002 data. In 2002, total milk production was 169,643 million pounds, which indicates that each of the Dairy Board members would represent 4,712 million pounds of milk. For 1997, total milk production was 156,464, which indicated that each of the Board members represented 4,346 milk pounds of milk.

Based on the 2002 milk production data, the Dairy Board proposed that member representation in Region 1 (Oregon and Washington) and Region 2 (California) each be increased by one member, and member representation in Region 5 (Minnesota, North Dakota, and South Dakota) and Region 10 (Florida, Georgia, North Carolina, South Carolina, and Virginia) each be decreased by one member. Milk production in Region 1 increased to 7,713 million pounds in 2002 up from 6,915 million pounds in 1997, indicating two Dairy Board members (7,713 divided by 4,712 = 2) compared to one Dairy Board member based on 1997 milk production data. Milk production in Region 2 increased in 2002 to 34,884 million pounds up from 27,628 million pounds in 1997, indicating seven Dairy Board members for the region (34,884 divided by 4,712 = 7) compared to 6 Dairy Board members based on 1997 data. Also, in Region 5, milk production decreased to 10,447 million pounds in 2002 down from 11,307 million pounds in 1997, indicating two Dairy Board members (10,447 divided by 4,712 = 2) compared to three Board members based on 1997 milk production data. Additionally, milk production in Region 10 decreased to 7,194 million pounds in 2002 down from 7,523 million pounds in 1997, indicating one Dairy Board member for the region (7,194 divided by 4,712 = 1) compared to two members based on 1997 data.

Interested parties were provided an opportunity to file comments on the proposed rule. One comment from a producer recommended that, due to Region 5's large geographical area, the number of representatives for Region 5 remain at the current level of three Dairy Board members. As discussed above, the proposed number of representatives for Region 5 (*i.e.*, two regional representatives) is reflective of the volume of milk produced in the region.

This final rule adopts the Dairy Board's proposal that member representation in Region 1 be increased from one member to two members, Region 2 representation be increased from six members to seven members, Region 5 representation be decreased from three members to two members, and Region 10 representation be decreased from two members to one member. The amendment is necessary to ensure that regional representation on the Dairy Board reflects geographic milk production in the contiguous 48 States.

The proposed amendment to the Order is made final in this action. The final rule will be effective one day after publication in the **Federal Register** to allow for the timely appointment of Dairy Board members based on current distribution of milk production in the contiguous 48 States.

Thus, good cause exists for making this rule effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1150

Dairy Products, Milk, Promotion, Research.

■ For the reasons set forth in the preamble, 7 CFR part 1150 is amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

■ 1. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4513.

■ 2. In § 1150.131, paragraphs (a)(1), (a)(2), (a)(5), and (a)(10) are revised to read as follows:

§ 1150.131 Establishment and membership.

(a) * * *

(1) Two members from region number one comprised of the following States: Washington and Oregon.

(2) Seven members from region number two comprised of the following State: California.

* * * * *

(5) Two members from region number five comprised of the following States: Minnesota, North Dakota and South Dakota.

* * * * *

(10) One member from region number ten comprised of the following States: Florida, Georgia, North Carolina, South Carolina and Virginia.

* * * * *

Dated: August 28, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22417 Filed 9–2–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–32–AD; Amendment 39–13285; AD 2003–17–10]

RIN 2120–AA64

Airworthiness Directives; McCauley Propeller Systems, Inc. Propeller Hub Models B5JFR36C1101, C5JFR36C1102, B5JFR36C1103, and C5JFR36C1104; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–17–10. That AD applies to McCauley Propeller Systems, Inc. Propeller Hub Models B5JFR36C1101, C5JFR36C1102, B5JFR36C1103, and C5JFR36C1104 propellers. AD 2003–17–10 was published in the **Federal Register** on August 21, 2003 (68 FR 50462). Paragraph (o) incorrectly references Table 3 and should reference Table 2. This document corrects that reference. In all other respects, the original document remains the same.

EFFECTIVE DATE: Effective September 3, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Room 107, Des Plaines, IL 60018; telephone: (847) 294–7132; fax: (847) 294–7834.

SUPPLEMENTARY INFORMATION: A final rule; request for comments to supersede an existing AD, FR Doc, 03–21519 that applies to McCauley Propeller Systems, Inc. Propeller Hub Models B5JFR36C1101, C5JFR36C1102, B5JFR36C1103, and C5JFR36C1104 propellers, was published in the **Federal Register** on August 21, 2003 (68 FR 50462). The following correction is needed:

§ 39.13 [Corrected]

■ On page 50464, in the third column, in the paragraph entitled Material Incorporated by Reference, paragraph (o), in the sixth line, "listed in Table 3 of this AD" is corrected to read "listed in Table 2 of this AD".

Issued in Burlington, MA, on August 27, 2003.

Francis A. Favara,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–22381 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–164–AD; Amendment 39–13292; AD 2003–18–01]

RIN 2120–AA64

Airworthiness Directives; General Dynamics (Convair) Model P4Y–2 Airplanes, General Dynamics (Consolidated-Vultee) (Army) Model LB–30 Airplanes, and General Dynamics (Consolidated) (Army) Model C–87A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to various surplus military airplanes manufactured by Consolidated, Consolidated Vultee, and Convair, that currently requires repetitive inspections to find fatigue cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings; repair or replacement of any cracked part with a new part; and follow-on inspections at new intervals. This amendment continues to require those actions and revises and clarifies the applicability of the existing AD. The actions specified in this AD are intended to find and fix fatigue cracking, which could result in structural failure of the wings and consequent loss of control of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective September 18, 2003.

Comments for inclusion in the Rules Docket must be received on or before November 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–164–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2003–NM–164–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

Information pertaining to this AD may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: John Cecil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5228; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On April 16, 2003, the FAA issued AD 2003–08–13, amendment 39–13126 (68 FR 19728, April 22, 2003), applicable to various surplus military airplanes manufactured by Consolidated, Consolidated Vultee, and Convair, to require repetitive inspections to find fatigue cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings; repair or replacement of any cracked part with a new part; and follow-on inspections at new intervals. That action was prompted by an accident resulting from the structural failure of the center wing of a United States Department of Agriculture (USDA) Forest Service Model P4Y–2 airplane, and results of an investigation, which revealed fatigue cracking of the lower rear cap of the wing font spar, front spar web, and lower skin of the wings. Such fatigue cracking, if not found and fixed in a timely manner, could result in structural failure of the wings and consequent loss of control of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received inquiries concerning the applicability of the AD. The commenters indicate that the applicability of the AD, as published, contains a phrase that could lead the reader to believe that the AD applies to all former military surplus aircraft, rather than just those airplanes specifically called out by model in the AD.

We agree that using the phrase "including, but not limited to, all of the following surplus military airplanes" in the applicability of the existing AD may be misleading; therefore, we have clarified the applicability of this new AD by removing that phrase. We also have revised the applicability to retain only those airplane models for which a U.S. type certificate has been issued: General Dynamics (Consolidated-Vultee) (Army) Model LB–30 airplanes, and General Dynamics (Convair) Model P4Y–2 airplanes. Additionally, this AD adds a new airplane model, General Dynamics (Consolidated) (Army) Model C–87A airplanes, to the applicability of this AD. Other models specified in the existing AD have been removed from the applicability of this new AD.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 2003–08–13 to continue to require repetitive inspections to find fatigue cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings; repair or replacement of any cracked part with a new part; and follow-on inspections at new intervals. As specified above, this AD clarifies and revises the applicability of the existing AD to add another airplane model and remove certain other airplane models.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Changes to 14 CFR part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2003–NM–164–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–13126 (68 FR 19728, April 22, 2003), and by adding a new airworthiness directive (AD), amendment 39–13292, to read as follows:

2003–18–01 General Dynamics (Convair), General Dynamics (Consolidated-Vultee) (Army), and General Dynamics (Consolidated) (Army): Amendment 39–13292. Docket 2003–NM–164–AD. Supersedes AD 2003–08–13, Amendment 39–13126.

Applicability: All Model P4Y–2 airplanes, Model LB–30 airplanes, and Model C–87A airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings, which could result in structural failure of the wings and consequent loss of control of the airplane, accomplish the following:

Initial and Repetitive Inspections for Certain Airplanes

(a) For Models P4Y–2 and LB–30 airplanes: Within 30 days after May 7, 2003 (the effective date of AD 2003–08–13, amendment 39–13126), do the actions specified in

paragraphs (a)(1) and (a)(2) of this AD per a method approved by the Manager, Los Angeles Certification Office (ACO), FAA.

(1) Do an inspection (between 39 and 63 inches outboard of the airplane center line on both the left and right sides of the wings) to find cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings localized under the front spar lower cap. Special detailed inspection procedures must be sufficiently reliable to determine the location, size, and orientation of the cracks.

(2) Develop repetitive inspection intervals that prevent crack growth from exceeding the minimum residual strength required to support limit load on the affected structure. The repetitive inspection intervals must be approved by the Manager, Los Angeles ACO. Thereafter, do the inspection approved per paragraph (a)(1) of this AD at the intervals approved per this paragraph.

Initial and Repetitive Inspections for Model C–87A Airplanes

(b) For all Model C–87A airplanes: Within 30 days after the effective date of this AD, do the actions specified in paragraphs (b)(1) and (b)(2) of this AD per a method approved by the Manager, Los Angeles ACO.

(1) Do an inspection (between 39 and 63 inches outboard of the airplane center line on both the left and right sides of the wings) to find cracks in the lower rear cap of the wing front spar, front spar web, and lower skin of the wings localized under the front spar lower cap. Special detailed inspection procedures must be sufficiently reliable to determine the location, size, and orientation of the cracks.

(2) Develop repetitive inspection intervals that prevent crack growth from exceeding the minimum residual strength required to support limit load on the affected structure. The repetitive inspection intervals must be approved by the Manager, Los Angeles ACO. Thereafter, do the inspection approved per paragraph (b)(1) of this AD at the intervals approved per this paragraph.

If Any Cracking Is Found

(c) If any crack is found during any inspection required by this AD, before further flight, do the action(s) specified in paragraphs (c)(1) and (c)(2) of this AD per a method approved by the Manager, Los Angeles ACO.

(1) Repair or replace the cracked part or structure.

(2) Repeat the inspection required by paragraph (a)(1) of this AD at reduced intervals approved by the Manager, Los Angeles ACO, to find cracks before the growth is critical and exceeds the minimum residual strength required to support limit load on the affected structure.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Los Angeles ACO, FAA, is authorized to approve alternative methods of compliance for this AD.

Effective Date

(e) This amendment becomes effective on September 18, 2003.

Issued in Renton, Washington, on August 19, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22382 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 1998F–0196]

Food Additives Permitted in Feed and Drinking Water of Animals; Selenium Yeast

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for food additives permitted in feed to provide for the safe use of selenium yeast as a source of selenium in animal feeds for beef and dairy cattle and to provide a description of the food additive. This action is in response to a food additive petition filed by Alltech Biotechnology Center.

DATES: This rule is effective September 3, 2003. Submit written objections and request for hearing by November 3, 2003.

ADDRESSES: Submit written objections and requests for a hearing to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic objections to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Sharon Benz, Center for Veterinary Medicine (HFV 228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6656.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of May 12, 1998 (63 FR 26193), FDA announced that a food additive petition (animal use) (FAP 2238) had been filed by Alltech Biotechnology Center, 3031 Catnip Hill Pike, Nicholasville, KY 40356. The petition proposed to amend the food additive regulations in § 573.920 *Selenium* (21 CFR 573.920) to provide for the safe use of selenium yeast as a source of selenium in animal feeds for poultry, swine, and cattle. Based on the information in the petition, the selenium food additive regulation was amended to include the use of selenium yeast in feed for chickens on June 6, 2000 (65 FR 35823). FDA sought additional data from the sponsor before approving use in other species. After this data was submitted for turkeys and swine, the selenium food additive regulation was amended to extend its use in turkeys and swine on July 17, 2002 (67 FR 46850). Additional data submitted by the sponsor and further amendments to the petition provide information to extend its use to beef and dairy cattle. The notice of filing provided for a 60-day comment period on the petitioner's environmental assessment. No substantive comments have been received.

In the regulation in § 571.1(c) (21 CFR 571.1(c)), paragraph E of the form for petitions requires full reports of investigations of the safety of a food additive. The Center for Veterinary Medicine (CVM) evaluated information in the petition and in the scientific literature and has determined that there is an acceptable daily intake of 0.4 milligram (mg) per person per day for selenium in the human diet. It has further determined that when supplemental selenium is incorporated at the maximal allowable levels of 0.3 part per million (ppm) of complete feeds, selenium levels in edible animal products are at or below the upper limit of the normal range of selenium in untreated animals. These upper limits are as follows: Swine, 0.8 ppm in muscle and 1.1 ppm in liver, and dairy cattle (milk) 0.14 ppm. Further, CVM considers the normal range for selenium in beef (liver) is 0.1 to 1.2 ppm; turkeys, 0.6 ppm in muscle and 1.4 ppm in liver; for chicken (liver) 0.1 to 0.9 ppm and for eggs 0.1 to 0.5 ppm.

II. Conclusion

FDA concludes that the data establish the safety and utility of selenium yeast, for use as proposed and that the food additive regulations should be amended as set forth in this document.

III. Public Disclosure

In accordance with § 571.1(h), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person. As provided in § 571.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

IV. Environmental Impact

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Objections and Hearing Requests

Any person who will be adversely affected by this regulation may file with the Division of Dockets Management (see **ADDRESSES**) written objections by (see **DATES**). Each objection must be separately numbered, and each numbered objection must specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested must state that a hearing is requested. Failure to request a hearing for any particular objection will constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested must include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection will constitute a waiver of the right to a hearing on the objection. Three copies of all documents must be submitted and must be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, food additives.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 2. Section 573.920 is amended by revising paragraph (h) to read as follows:

§ 573.920 Selenium.

* * * * *

(h) The additive selenium yeast is added to complete feed for chickens, turkeys, swine, beef cattle and dairy cattle at a level not to exceed 0.3 part per million.

(1) Selenium yeast is a dried, nonviable yeast (*Saccharomyces cerevisiae*) cultivated in a fed-batch fermentation which provides incremental amounts of cane molasses and selenium salts in a manner which minimizes the detrimental effects of selenium salts on the growth rate of the yeast and allows for optimal incorporation of inorganic selenium into cellular organic material. Residual inorganic selenium is eliminated in a rigorous washing process and must not exceed 2 percent of the total selenium content in the final selenium yeast product.

(2) Guaranteed organic selenium content from selenium yeast must be declared on the selenium yeast product label.

(3) Usage of this additive must conform to the requirements of paragraphs (d)(1), (e), and (f) of this section.

Dated: August 19, 2003.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 03–22358 Filed 9–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP Tampa 02–053]

RIN 1625–AA00

Security Zones; Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, and Crystal River, Florida

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing security zones in Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, and Crystal River, Florida. These zones are needed to ensure public safety and security in the greater Tampa Bay area. Entry into these zones is prohibited unless authorized by the Captain of the Port, or their designated representative.

DATES: This final rule is effective on September 3, 2003.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket [COTP Tampa 02–053] and are available for inspection or copying at Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606–3598 between 7:30 a.m. and 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Heath Hartley, Coast Guard Marine Safety Office Tampa, at (813) 228–2189 extension 123.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 12, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; Tampa, Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa and Crystal River, Florida" in the **Federal Register** (68 FR 7093). We did not receive any letters commenting on the proposed rule. No public hearing was requested, and none was held. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest since immediate action is needed to continue to protect the public and the ports and waterways of the United States. The Coast Guard will issue a broadcast notice to mariners and place Coast Guard vessels in the vicinity of these zones from time to time to advise mariners of these restrictions.

Background and Purpose

The terrorist attacks of September 11, 2001, killed thousands of people and heightened the need for development of various security measures throughout the seaports of the United States, particularly those vessels and facilities which are frequented by foreign nationals and are of interest to national security. Following these attacks by well-trained and clandestine terrorists, national security and intelligence officials have warned that future terrorists attacks are likely. The Captain of the Port of Tampa has determined that these security zones are necessary to protect the public, ports, and waterways of the United States from potential subversive acts.

These security zones are similar to temporary security zones established for vessels, waterfront facilities and bridges that were previously published in the **Federal Register** (68 FR 14328, March 25, 2003).

Discussion of Comments and Changes

No comments were received. Therefore no substantive changes have

been made to the proposed rule. We have only made minor wording changes which provide improved descriptions of the regulated area and make the regulation easier to read.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. There is ample room for vessels to navigate around the security zones and the Captain of the Port of Tampa may allow vessels to enter the zones, on a case-by-case basis with the express permission of the Captain of the Port of Tampa or that officer's designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The majority of the zones are limited in size and leave ample room for vessels to navigate around the zones. The zones will not significantly impact commuter and passenger vessel traffic patterns, and vessels may be allowed to enter the zones, on a case-by-case basis, with the express permission of the Captain of the Port of Tampa or that officer's designated representative. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Effect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction, from further environmental documentation. Because it is a security zone, this rule is categorically-excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.760 to read as follows:

§ 165.760 Security Zones; Tampa Bay, Port of Tampa, Port of Saint Petersburg, Port Manatee, Rattlesnake, Old Port Tampa, Big Bend, Weedon Island, and Crystal River, Florida.

(a) *Location.* The following areas, denoted by coordinates fixed using the North American Datum of 1983 (World Geodetic System 1984), are security zones:

(1) *Rattlesnake, Tampa, FL.* All waters, from surface to bottom, in Old Tampa Bay east and south of a line commencing at position 27°53.32′ N, 082°32.05′ W; north to 27°53.36′ N, 082°32.05′ W.

(2) *Old Port Tampa, Tampa, FL.* All waters, from surface to bottom, in Old Tampa Bay encompassed by a line connecting the following points: 27°51.62′ N, 082°33.14′ W; east to 27°51.71′ N, 082°32.5′ W; north to 27°51.76′ N, 082°32.5′ W; west to 27°51.73′ N, 082°33.16′ W; and south to 27°51.62′ N, 082°33.14′ W, closing off the Old Port Tampa channel.

(3) *Sunshine Skyway Bridge, Tampa, FL.* All waters in Tampa Bay, from surface to bottom, 100-feet around all bridge supports, dolphins and rocky outcroppings bounded on the northern portion of the bridge at pier 135, (also designated 24N which is the 24th pier north of the center span), 27°37.85′ N, 082°39.78′ W, running south under the bridge to pier 88, (also designated 24S which is the 24th pier south of the center span) 27°36.59′ N, 082°38.86′ W. Visual identification of the zone can be defined as to the areas to the north and south where the bridge structure begins a distinct vertical rise.

(4) *Vessels Carrying Hazardous Cargo, Tampa, FL.* All waters, from surface to bottom, 200 yards around vessels moored in Tampa Bay carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade "A" and "B" flammable liquid cargo. Any vessel transiting within the outer 100 yards of the zone for moored vessels carrying or transferring Liquefied Petroleum Gas (LPG), Anhydrous Ammonia (NH3) and/or grade "A" and "B" cargo may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100-yard portion of the security zone closest to the vessel.

(5) *Piers, Seawalls, and Facilities, Port of Tampa, Port Sutton and East Bay.* All waters, from surface to bottom, extending 50 yards from the shore, seawall and piers around facilities in Port Sutton and East Bay within the Port of Tampa encompassed by a line connecting the following points: 27°54.15′ N, 082°26.11′ W, east northeast to 27°54.19′ N, 082°26.00′ W, then northeast to 27°54.37′ N, 082°25.72′ W, closing off all of Port Sutton Channel, then northerly to 27°54.48′ N, 082°25.70 ′W, then northeasterly and terminating at point 27°55.27′ N, 082°25.17′ W.

(6) *Piers, Seawalls, and Facilities, Port of Tampa, East Bay and the eastern side of Hooker's Point.* All waters, from surface to bottom, extending 50 yards from the shore, seawall and piers around facilities on East Bay and on the East Bay Channel within the Port of Tampa encompassed by a line connecting the following points: 27°56.05′ N, 082°25.95′ W, southwesterly to 27°56.00′ N, 082°26.07′ W, then southerly to 27°55.83′ N, 082°26.07′ W, then southeasterly to 27°55.55′ N, 082°25.75′ W, then south to 27°54.75′ N, 082°25.75′ W, then southwesterly and terminating at point 27°54.57′ N, 082°25.86′ W.

(7) *Piers, Seawalls, and Facilities, Port of Tampa, on the western side of Hooker's Point.* All waters, from surface to bottom, extending 50 yards from the shore, seawall and piers around facilities on Hillsborough Bay Cut "D" Channel, Sparkman Channel, Ybor Turning Basin, and Ybor Channel within the Port of Tampa encompassed by a line connecting the following points: 27°54.74′ N, 082°26.47′ W, northwest to 27°55.25′ N, 082°26.73′ W, then north-northwest to 27°55.60′ N, 082°26.80′ W, then north-northeast to 27°56.00′ N, 082°26.75′ W, then northeast to 27°56.58′ N, 082°26.53′ W, and north to 27°57.29′ N, 082°26.51′ W, west to 27°57.29′ N, 082°26.61′ W, then southerly to 27°56.65′ N, 082°26.63′ W, southwesterly to 27°56.58′ N, 082°26.69′ W, then southwesterly and terminating at 27°56.53′ N, 082°26.90′ W.

(8) *Piers, Seawalls, and Facilities, Port of Manatee.* All waters, from surface to bottom, within the Port of Manatee extending 50 yards from the shore, seawall and piers around facilities. This security zone encompasses all piers and seawalls of the cruise terminal berths 9 and 10 in Port Manatee, Florida beginning at 27°38.00′ N, 082°33.81′ W; continuing east to 27°38.00′ N, 082°33.53′ W.

(9) *Moving Cruise Ships in the Port of Tampa, Port of Saint Petersburg, and Port Manatee, Florida.* All waters, from surface to bottom, extending 200 yards around all cruise ships entering or departing Port of Tampa, Port of Saint Petersburg, or Port Manatee, Florida. These temporary security zones are activated on the inbound transit when a cruise ship passes the Tampa Lighted Whistle Buoy "T", located at 27°35.35′ N, 083°00.71′ W and terminate when the vessel is moored at a cruise ship terminal. The security zones are activated on the outbound transit when a cruise ship gets underway from a terminal and terminates when the cruise ship passes the Tampa Lighted Whistle Buoy "T", located at 27°35.35′ N, 083°00.71′ W. Any vessel transiting within the outer 100 yards of the zone for a cruise ship may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100-yard portion of the security zone closest to the vessel.

(10) *Moored Cruise Ships in the Port of Tampa, Port of Saint Petersburg, and Port Manatee, Florida.* All waters, from surface to bottom, extending 200 yards around moored cruise ships in the Ports of Tampa, Saint Petersburg, or Port Manatee, Florida. Any vessel transiting within the outer 100 yards of the zone of moored cruise ships may operate unless otherwise directed by the Captain of the Port or his designee but must proceed through the area at the minimum speed necessary to maintain safe navigation. No vessel may enter the inner 100-yard portion of the security zone closest to the vessel.

(11) *Saint Petersburg Harbor, FL.* All waters, from surface to bottom, extending 50 yards from the seawall and around all moorings and vessels in Saint Petersburg Harbor (Bayboro Harbor), commencing on the north side of the channel at dayboard "10" in approximate position 27°45.56′ N, 082°37.55′ W, and westward along the seawall to the end of the cruise terminal in approximate position 27°45.72′ N, 082°37.97′ W. The zone will also include the Coast Guard south moorings in Saint Petersburg Harbor. The zone will extend 50 yards around the piers commencing from approximate position 27°45.51′ N, 082°37.99′ W; to 27°45.52′ N, 082°37.57′ W. The southern boundary of the zone is shoreward of a line between the entrance to Salt Creek easterly to Green Daybeacon 11 (LLN 2500).

(12) *Crystal River Nuclear Power Plant.* All waters, from surface to bottom, around the Florida Power Crystal River nuclear power plant located at the end of the Florida Power Corporation Channel, Crystal River, Florida, encompassed by a line connecting the following points: 28°56.87′ N, 082°45.17′ W (Northwest corner); 28°57.37′ N, 082°41.92′ W (Northeast corner); 28°56.81′ N, 082°45.17′ W (Southwest corner); and 28°57.32′ N, 082°41.92′ W (Southeast corner).

(13) *Crystal River Demory Gap Channel.* All waters, from surface to bottom, in the Demory Gap Channel in Crystal River, Florida, encompassed by a line connecting the following points: 28°57.61′ N, 082°43.42′ W (Northwest corner); 28°57.53′ N, 082°41.88′ W (Northeast corner); 28°57.60′ N, 082°43.42′ W (Southwest corner); and 28°57.51′ N, 082°41.88′ W (Southeast corner).

(b) *Regulations.* (1) Entry into or remaining within these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Tampa, Florida or that officer's designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 813–228–2189/91 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or their designated representative.

(c) *Definition.* As used in this section, "cruise ship" means a vessel required to comply with 33 CFR Part 120.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: August 1, 2003.

James M. Farley,

Captain, U.S. Coast Guard, Captain of The Port, Tampa, Florida.

[FR Doc. 03–22370 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0299; FRL–7324–1]

Acetamiprid; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of acetamiprid in or on canola seed and mustard seed. Bayer Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). The ownership of this petition has subsequently been transferred to Nippon Soda Company, Ltd.

DATES: This regulation is effective September 3, 2003. Objections and requests for hearings, identified by docket ID number OPP–2002–0299, must be received on or before November 3, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Akiva Abramovitch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,Washington, DC 20460–0001; telephone number: (703) 308–8328; e-mail address: *abramovitch.akiva@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop Production (NAICS 111)
- Animal Production (NAICS 112)
- Food Manufacturing (NAICS 311)
- Pesticide Manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2002–0299. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gov/opptsfrs/home/guidelin.htm.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of May 30, 2001 (66 FR 29313) (FRL–6782–9), EPA issued a notice pursuant to section 408 of FFDCA, 21 U.S.C. 346a, as amended by FQPA (Public Law 104–170), announcing the filing of a pesticide petition (PP 0F6082) by Bayer Corporation, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. That notice included a summary of the petition prepared by Bayer Corporation, the registrant. There were no comments received in response to the notice of filing. Subsequent to the notice of filing, the ownership of this

petition was transferred to Nippon Soda Company, Ltd., 220 East 42nd Street, Suite 3002, New York, NY 10017.

The petition requested that 40 CFR 180.578 be amended by establishing a tolerance for residues of the insecticide acetamiprid, N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine, in or on canola seed and mustard seed at 0.01 parts per million (ppm).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a tolerance for residues of acetamiprid on canola seed and mustard seed at 0.01 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by acetamiprid are discussed in Table 1 of this unit as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies reviewed.

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY

Guideline No.	Study Type	Results
870.3100	90–Day oral toxicity in rats	NOAEL: 12.4/14.6 mg/kg/day (M/F) LOAEL: 50.8/56.0 mg/kg/day (M/F: decreased BW, BW gain and food consumption).
870.3100	90–Day oral toxicity in mice	NOAEL: 106.1/129.4 mg/kg/day (M/F) LOAEL: 211.1/249.1 mg/kg/day (reduced BW and BW gain, decreased glucose and cholesterol levels, reduced absolute organ weights).
870.3150	90–Day oral toxicity in dogs	NOAEL: 13/14 mg/kg/day (M/F) LOAEL: 32 mg/kg/day (reduced BW gain in both sexes).
870.3200	21–Day dermal toxicity in rabbits	NOAEL: 1,000 mg/kg/day (HDT) LOAEL: >1,000 mg/kg/day
870.3700	Developmental toxicity in rats	Maternal NOAEL: 16 mg/kg/day Maternal LOAEL: 50 mg/kg/day (reduced BW and BW gain and food consumption, increased liver weights). Developmental NOAEL: 16 mg/kg/day Developmental LOAEL: 50 mg/kg/day (increased incidence of shortening of the 13th rib)
870.3700	Developmental toxicity in rabbits	Maternal NOAEL: 15 mg/kg/day Maternal LOAEL: 30mg/kg/day (BW loss and decreased food consumption). Developmental NOAEL: 30 mg/kg/day (HDT) Developmental LOAEL: > 30 mg/kg/day

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.3800	2–Generation reproduction in rats	Parental systemic NOAEL: 17.9/21.7 mg/kg/day (M/F) Parental systemic LOAEL: 51.0/60.1 mg/kg/day (M/F) (decreased body weight, body weight gain and food consumption). Offspring systemic NOAEL: 17.9/21.7 mg/kg/day (M/F) Offspring systemic LOAEL: 51.0/60.1 mg/kg/day (M/F: reductions in pup weight, litter size, viability and weaning indices; delay in age to attain preputial separation and vaginal opening). Reproductive NOAEL: 17.9/21.7 mg/kg/day (M/F) Reproductive LOAEL: 51.0/60.1 mg/kg/day (M/F: reductions in litter weights and individual pup weights on day of delivery).
870.4100	Chronic toxicity dogs	NOAEL: 20/21 mg/kg/day (M/F) LOAEL: 55/61 mg/kg/day (M/F: initial BW loss and overall reduction in BW gain).
870.4200	Carcinogenicity in mice	NOAEL: 20.3/75.9 mg/kg/day (M/F) LOAEL: 65.6/214.6 mg/kg/day (M/F: decreased BW and BW gain and amyloidosis in numerous organs (M) and decreased BW and BW gain (F)). Not oncogenic under conditions of study.
870.4300	Carcinogenicity in rats	NOAEL: 7.1/8.8 mg/kg/day (M/F) LOAEL: 17.5/22.6 mg/kg/day (M/F, decreases in mean BW and BW gain (F) and hepatocellular vacuolation (M)) Evidence of treatment-related increase in mammary tumors. There was an absence of a dose-response and a lack of a statistically significant increase in the mammary adenocarcinoma incidence by pair with comparison of the mid- and high-dose groups with the controls. Although the incidence exceeded the historical control data from the same lab, it was within the range of values from the supplier.
870.5100	*Salmonella typhimurium/E. coli* Reverse gene mutation assay	Not mutagenic under the conditions of the study.
870.5300	Mammalian cells in culture Forward gene mutation assay - CHO cells	Not mutagenic under the conditions of the study.
870.5375	*In vitro* mammalian chromosomal aberrations - CHO cells	Acetamiprid is a clastogen under the conditions of the study.
870.5385	*In vivo* mammalian chromosome aberrations - rat bone marrow	Acetamiprid did not induce a significant increase in chromosome aberrations in bone marrow cells when compared to the vehicle control group.
870.5395	*In vivo* mammalian cytogenetics - micronucleus assay in mice	Acetamiprid is not a clastogen in the mouse bone marrow micronucleus test.
870.5550	UDS assay in primary rat hepatocytes/ mammalian cell culture	Acetamiprid tested negatively for UDS in mammalian hepatocytes *in vivo*.
870.6200	Acute neurotoxicity in rats	NOAEL: 10 mg/kg LOAEL: 30 mg/kg (reduction in locomotor activity).
870.6200	Subchronic neurotoxicity in rats	NOAEL: 14.8/16.3 mg/kg/day (M/F) LOAEL: 59.7/67.6 mg/kg/day (M/F: reductions in BW, BW gain, food consumption and food efficiency).
N/A	28–Day feeding in dogs	NOAEL: 16.7/19.1 mg/kg/day (M/F) LOAEL: 28.0/35.8 mg/kg/day (reduced BW gain).

TABLE 1.—SUBCHRONIC, CHRONIC, AND OTHER TOXICITY—Continued

Guideline No.	Study Type	Results
870.7485	Metabolism in rats	Extensively and rapidly metabolized. Metabolizes 79–86% of administered dose. Profiles similar for males and females for both oral and intravenous dosing. Three to seven percent of dose recovered in urine and feces as unchanged test article. Urinary and fecal metabolites from 15–day repeat dose experiment only showed minor differences from single-dose test. Initial Phase I biotransformation: Demethylation of parent. 6-chloronicotinic acid most prevalent metabolite. Phase II metabolism shown by increase in glycine conjugate.
870.7485	Metabolism in mice, rats, and rabbits (Special study)	Male mice, rats or rabbits were administered single doses of acetamiprid by gavage, intraperitoneal injection (i.p.) or intravenous injection (i.v.) up to 60 mg/kg. The animals were assessed for a variety of neurobehavioral parameters. *In vitro* experiments were also done using isolated ileum sections from guinea pigs to assess contractile responses in the absence and presence of agonists (acetylcholine, histamine diphosphate, barium chloride and nicotine tartrate). Acetamiprid was also assessed via i.v. in rabbits for effects on respiratory rate, heart rate and blood pressure; via gavage in mice for effects on gastrointestinal motility; and via i.p. in rats for effects on water and electrolyte balance in urine, and blood coagulation, hemolytic potential and plasma cholinesterase activity. Based on a number of neuromuscular, behavioral and physiological effects of acetamiprid in male mice, under the conditions of this study, a overall NOAEL of 10 mg/kg (threshold) and LOAEL of 20 mg/kg could be estimated for a single dose by various exposure routes.
870.7600	Dermal absorption	The majority of the dose was washed off with the percent increasing with dose. Skin residue was the next largest portion of the dose with the percent decreasing with dose. In neither case was there evidence of an exposure related pattern. Absorption was small and increased with duration of exposure. Since there are no data to demonstrate that the residues remaining on the skin do not enter the animal, then as a conservative estimate of dermal absorption, residues remaining on the skin will be added to the highest dermal absorption value. The potential total absorption at 24 hours could be approximately 30%.

B. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intraspecies differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factors (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the LOC. For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects

though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for acetamiprid used for human risk assessment is shown in the following Table 2 of this unit:

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR ACETAMIPRID FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute dietary (general population including infants and children)	NOAEL = 10 mg/kg/day UF = 100 Acute RfD = 0.10 mg/kg/day	FQPA SF = 1X aPAD = acute RfD/FQPA SF = 0.10 mg/kg/day	Acute neurotoxicity study LOAEL = 30 mg/kg/day based on decrease in locomotor activity in males.
Chronic dietary (all populations)	NOAEL= 7.1 mg/kg/day UF = 100 Chronic RfD = 0.07 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 0.07 mg/kg/day	Chronic feeding/oncology study in rats. LOAEL = 17.5 mg/kg/day based on decrease in body weight/body weight gain and hepatocellular vacuolation.
Short-term (1 to 30 days) and intermediate-term (1 to 6 months) Incidental Oral	NOAEL= 15 mg/kg/day	LOC for MOE = 100 (Residential)	13–Week feeding study in rats; subchronic neurotoxicity in rats; developmental toxicity in rats. LOAEL = 50 mg/kg/day based on decrease in body weight/body weight gain, food consumption, and food efficiency.
Short-term (1 to 30 days) and intermediate-erm (1 to 6 months) dermal	Oral NOAEL = 17.9 mg/kg/day (dermal absorption factor = 30%)	LOC for MOE = 100 (Residential) LOC for MOE = 100 (Occupational)	2–Generation reproduction study. LOAEL = 51 mg/kg/day based on delay in preputial separation, vaginal opening, eye opening and pinna unfolding; reduced litter size, viability and weaning indices in offspring.
Long-term dermal (> 6 months)	Oral NOAEL= mg/kg/day (dermal absorption factor = 30%)	LOC for MOE = 100 (Residential) LOC for MOE = 100 (Occupational)	Chronic feeding/oncology study in rats. LOAEL = 17.5 mg/kg/day based on decrease in body weight/body weight gain and hepatocellular vacuolation.
Short-term (1 to 30 days) and intermediate-term (1 to 6 months) Inhalation	Oral NOAEL = 17.9 mg/kg/day (inhalation absorption factor = 100%)	LOC for MOE = 100 (Residential) LOC for MOE = 100 (Occupational)	2–Generation reproduction study. LOAEL = 51 mg/kg/day based on delay in preputial separation, vaginal opening, eye opening and pinna unfolding; reduced litter size, viability and weaning indices in offspring.
Long-term inhalation (> 6 months)	Oral NOAEL = 7.1 mg/kg/day (inhalation absorption factor = 100%)	LOC for MOE = 100 (Residential) LOC for MOE = 100 (Occupational)	Chronic feeding/oncology study in rats. LOAEL = 17.5 mg/kg/day based on decrease in body weight/body weight gain and hepatocellular vacuolation.
	Cancer (oral, dermal, inhalation) - Not likely to be carcinogenic.		

*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.578) for the residues of acetamiprid, in or on a variety of raw agricultural commodities. Tolerances for acetamiprid range from 0.2 to 20 ppm in plant commodities and range from 0.01 to 0.2 ppm in livestock commodities. Risk assessments were conducted by EPA to assess dietary exposures from acetamiprid in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: The assessment assumed that 100% of the proposed crops and all other crops having acetamiprid tolerances were treated and that all treated crops and livestock had residues of concern at the tolerance level. The general U.S. population and all population subgroups have exposure and risk estimates which are below EPA's LOC (i.e., the aPADs are all below 100%). The most highly exposed subgroup is children 1 to 6 years of age, which utilizes 40% of the aPAD.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM™ analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The assessment

assumed that 100% of the proposed crops and all other crops having acetamiprid tolerances were treated and that all treated crops and livestock had residues of concern at the tolerance level. The general U.S. population and all population subgroups have exposure and risk estimates which are below EPA's LOC (i.e., the cPADs are all below 100%). The most highly exposed subgroup is children 1 to 6 years of age, which utilizes 21% of the cPAD.

iii. *Cancer.* EPA has determined that acetamiprid is not likely to be a human carcinogen and EPA, therefore, does not expect it to pose a cancer risk. As a result, a quantitative cancer dietary exposure analysis was not performed.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for acetamiprid in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of acetamiprid.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS), to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentrations in Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to acetamiprid they are further discussed in the aggregate risk sections in Unit III.E.

Based on the FIRST and SCI-GROW models the EECs of acetamiprid for acute exposures are estimated to be 17 parts per billion (ppb) for surface water and 0.0008 ppb for ground water. The EECs for chronic exposures are estimated to be 4 ppb for surface water and 0.0008 ppb for ground water.

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Acetamiprid is currently registered for use on the following residential non-dietary sites: As an outdoor insecticide on ornamentals, flowers, vegetable gardens, and fruit trees. The risk assessment was conducted using the following residential exposure assumptions: Residential handlers (homeowners) are assumed to make the maximum number of applications at maximum use rates with little use of any protective equipment. Potential dermal and inhalation doses that homeowners may receive during applications of pesticides to the garden, around walkways, driveways, foundations, vegetables, and ornamentals were considered; therefore, exposures and risks are calculated for both dermal and inhalation exposures. This scenario assumes that pesticides are available for inhalation or have the potential to come in contact with the skin of adults and youths during the mixing/loading and application of pesticides used around the garden. The short- and intermediate-term handler MOEs for the residential uses of acetamiprid for both age groups of adults and youth are at or greater than 120,000 for all exposure scenarios, and therefore represent risks that are below EPA's level of concern.

Postapplication exposures were calculated assuming dermal exposure to adults and children while working in treated gardens or with various fruit trees and ornamentals. Inhalation exposure was not quantitatively addressed because exposure by inhalation is considered minimal due to the air exchange that occurs in outdoor scenarios. In addition, toddlers are not expected to spend a significant amount of time in a home garden and any resulting incidental oral exposures would be minimal and not quantifiable; therefore, EPA does not believe that incidental oral exposure from the registered homeowner uses will result in significant incidental oral exposures to children. This scenario assumes that pesticide residues are transferred to the skin of adults and youth who enter treated gardens for gardening or other homeowner activities. The short- and intermediate-term postapplication MOEs for the residential uses of acetamiprid for both age groups of adults and youth are at or greater than 18,000 for all exposure scenarios, and therefore represent risks that are below EPA's level of concern.

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether acetamiprid has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to acetamiprid and any other substances, and acetamiprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that acetamiprid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Prenatal and postnatal sensitivity.* Neither quantitative nor qualitative evidence of increased susceptibility of fetuses to *in utero* exposure to acetamiprid was observed in the developmental toxicity studies in rats and rabbits. In the multigeneration reproductive study, qualitative evidence of increased susceptibility of rat pups is observed since the offspring effects are considered to be more severe than the parental effects. However, quantitative evidence of increased susceptibility of rat pups was not observed since the parental and offspring NOAELs and LOAELs are at the same doses.

Since there is qualitative evidence of increased susceptibility of the young following exposure to acetamiprid in the rat reproduction study, EPA performed a Degree of Concern analysis to determine the level of concern for the effects observed when considered in the context of all available toxicity data, and to identify any residual uncertainties after establishing toxicity endpoints and traditional uncertainty factors to be used in the risk assessment of this chemical. If residual uncertainties are identified, EPA examines whether these residual uncertainties can be addressed by a special FQPA safety factor and, if so, the size of the factor needed.

The multigeneration reproduction study in rats was used for the Degree of Concern analysis. In that rat reproduction study, qualitative susceptibility was evidenced as significant reductions in pup weights in both generations, reductions in litter size, and viability and weaning indices among F_2 offspring as well as significant delays in the age to attain vaginal opening and preputial separation in the presence of lesser maternal toxicity (reductions in body weight, body weight gain and food consumption) at the highest dose tested. Considering the overall toxicity profile and the doses and endpoints selected for risk assessment for acetamiprid, the EPA characterized the degree of concern for the effects observed in this study as low, noting that there is a clear NOAEL for the offspring effects observed and that these effects occurred in the presence of parental toxicity and only at the highest dose tested. No residual uncertainties were identified. The NOAEL for offspring effects in this reproduction study (17.9 mg/kg/day) is used as the basis for short- and intermediate-term dermal and inhalation exposure scenarios. For all other toxicity endpoints established for acetamiprid, a NOAEL lower than this offspring NOAEL is used.

For the reasons stated above, EPA has concluded that there is low concern for prenatal and/or postnatal toxicity resulting from exposure to acetamiprid.

3. *Conclusion.* The toxicology data base is not complete for FQPA purposes. EPA has determined that a developmental neurotoxicity study in rats should be conducted. The need for a developmental neurotoxicity study is based on the consideration that clinical signs of neurotoxicity were observed on the day of dosing in the acute neurotoxicity study in rats. In addition, acetapmiprid is structurally related to thiamethoxam and imidacloprid, both of which are neonicotinoids. Imidacloprid is a chloronicotinyl compound and is an analog to nicotine. Studies in the published literature suggest that nicotine, when administered causes developmental toxicity, including functional deficits, in animals and/or humans that are exposed *in utero*. With imidacloprid, there is evidence that administration causes clinical signs of neurotoxicity following a single oral dose in the acute study and alterations in brain weight in rats in the 2–year carcinogenicity study. With thiamethoxam, there was also evidence of clinical signs of neurotoxicity in the acute neurotoxicity study. There are also indications that thiamethoxam may affect the endocrine system.

Recently, EPA has received objections to tolerances for residues of acetamiprid from the Natural Resources Defense Council (NRDC). NRDC asserted that EPA is missing data bearing on oral exposure to acetamiprid from residential uses of the pesticide. The **Federal Register** notice on the contested acetamiprid tolerance notes that "incidental oral exposure is an insignificant pathway of exposure" for acetamiprid (67 FR 14649, 14657; March 27, 2002). As noted above, little or no incidental oral exposure is expected since acetamiprid's residential uses are limited to ornamentals, flowers, vegetable gardens, and fruit trees. Incidental oral exposure to pesticides can occur when young children engage in "mouthing" behavior (i.e. repeatedly placing their hands or other objects in their mouth) in a location where a pesticide is present. EPA assumes that incidental oral exposure to a pesticide may occur when a pesticide is used to treat a home lawn because young children frequently play on home lawns. EPA, however, considers it unlikely that young children would spend an extended time in flower, vegetable, or ornamental gardens, and thus treatment of such gardens with a pesticide is not likely to lead to a significant exposure to children by the incidental oral route.

The NRDC also claimed that a 10X safety factor should be used to account for the lack of the developmental neurotoxicity study. However, it has been noted that reliable developmental neurotoxicity data received and reviewed for other structurally-related compounds in this chemical class (neonicotinoids), including thiacloprid, clothianidin, and imidacloprid, demonstrated that the developmental neurotoxicity had no effect on the regulatory endpoint for those pesticides. Therefore, EPA believes that the results of the required developmental neurotoxicity study will not likely impact the regulatory doses selected for acetamiprid. It is further noted that the requirement of a developmental neurotoxicity study is not based on criteria reflecting special concern for the developing fetuses or young (e.g., neuropathy in adult animals; CNS malformations following prenatal exposure; brain weight or sexual maturation changes in offspring; and/or functional changes in offspring). On this basis, EPA concluded that a data base uncertainty factor is not needed to account for the lack of the developmental neurotoxicity study with acetamiprid, and that reliable data support removing the additional safety factor for the protection of infants and children.

E. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential

uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + residential exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to the pesticide in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of residues of the pesticide in drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to acetamiprid will occupy 17% of the aPAD for the U.S. population, 11% of the aPAD for females 13 years and older, 38% of the aPAD for infants less than 1 year of age and 40% of the aPAD for children 1 to 6 years of age. In addition, there is potential for acute dietary exposure to acetamiprid in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO ACETAMIPRID

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. population	0.10	17	17	0.0008	2,900
All Infants (< 1 year)	0.10	38	17	0.0008	620
Children 1 to 6 years	0.10	40	17	0.0008	600
Females 13 to 50 years	0.10	11	17	0.0008	2,700

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to acetamiprid from food will utilize 8% of the cPAD for the U.S. population, 15% of the cPAD for infants less than 1 year of age and 21% of the cPAD for children 1 to 6 years of age. Based upon the use pattern, chronic residential exposure to residues of acetamiprid is not expected. In addition, there is potential for chronic dietary exposure to acetamiprid in drinking water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 4 of this unit:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO ACETAMIPRID

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. population	0.07	8	4	0.0008	2,260
All infants (< 1 year)	0.07	15	4	0.0008	600
Children 1 to 6 years	0.07	21	4	0.0008	550

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Acetamiprid is currently registered for use that could result in short- and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short- and intermediate-term exposures for acetamiprid.

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 18,000 for U.S. population and 23,000 for children 7 to 12 years of age. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short- and intermediate-term DWLOCs were calculated and compared to the EECs for chronic exposure of acetamiprid in ground and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short- and intermediate-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 5 of this unit:

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR SHORT- AND INTERMEDIATE-TERM EXPOSURE TO ACETAMIPRID

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-/Intermediate-Term DWLOC (ppb)
U.S. population	18,000	100	4	0.0008	1,500
Children 7 to 12 years	23,000	100	4	0.0008	400

5. *Aggregate cancer risk for U.S. population.* Acetamiprid has been classified as a "not likely human carcinogen." Therefore, it is not expected to pose a cancer risk.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to acetamiprid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (solvent extraction followed by gas chromatography/electron capture detection (GC/ECD) determination of residues) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov.*

B. International Residue Limits

No Codex, Canadian, or Mexican maximum residue levels (MRLs) have been established for residues of acetamiprid.

V. Conclusion

Therefore, the tolerance is established for residues of acetamiprid, N1-[(6-chloro-3-pyridyl)methyl]-N2-cyano-N1-methylacetamidine, in or on canola seed and mustard seed at 0.01 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2002–0299 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 3, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2002–0299, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic

copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 22, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.578 is amended by alphabetically adding commodities to the table in paragraph (a)(1) to read as follows:

§ 180.578 Acetamiprid; tolerances for residues.

(a) * * *

(1) * * *

Commodity	Parts per million
Canola, seed	0.010
Mustard, seed	0.010

* * * * *

[FR Doc. 03–22313 Filed 9–2–03; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0288; FRL–7323–9]

Bifenthrin; Pesticide Tolerance for Emergency Exemption; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: EPA issued a final rule in the **Federal Register** of September 27, 2001, to establish a time-limited tolerance for residues of bifenthrin in or on sweet potato. This action was in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sweet potato. This document is being issued to correct typographical errors in that original document.

DATES: This document is effective on September 3, 2003.

FOR FURTHER INFORMATION CONTACT: Andrea Conrath, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9356; e-mail address: *conrath.andrea@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

- Crop Production (NAICS Code 111)
- Animal Production (NAICS Code 112)
- Food Manufacturing (NAICS Code 311)
- Pesticide Manufacturing (NAICS Code 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0288. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_ 40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Does this Technical Amendment Do?

EPA issued a final rule in the **Federal Register** of September 27, 2001 (66 FR 49300)(FRL–6801–5), to establish a time-limited tolerance for residues of bifenthrin in or on sweet potato. This action was in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sweet potato. The amendment to establish the tolerance for bifenthrin inadvertently added the tolerance for "sweet potato" to 40 CFR 180.442(a). However, 40 CFR 180.442(a) is not designated for section 18 emergency exemptions; consequently, the entry for sweet potato could not be added to § 180.442(a) by the Office of the Federal Register. This technical amendment is being issued to correctly add the tolerance for sweet potato to the table in § 180.442(b), which is designated for time-limited tolerances associated with section 18 emergency exemptions.

In addition to correctly adding the tolerance to paragraph (b) of § 180.442, based on a final rule issued by EPA in the **Federal Register** of July 1, 2003 (68 FR 39427)(FRL–7308–9), EPA is also changing the commodity term "sweet potato" to read "sweet potato, roots."

III. Why is this Technical Amendment Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an Agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's technical amendment final without prior proposal and opportunity for comment, because EPA is merely correcting the placement of a tolerance already issued and previously published as a final rule, and the commodity term. EPA finds that this

constitutes good cause under 5 U.S.C. 553(b)(B).

IV. Regulatory Assessment Requirements

This final rule implements technical amendments to the Code of Federal Regulations and it does not otherwise impose or amend any requirements. As such, the Office of Management and Budget (OMB) has determined that a technical amendment is not a "significant regulatory action" subject to review by OMB under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since the action does not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 21, 2003.

Debra Edwards,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S. C. 321(q), 346(a) and 371.

■ 2. Section 180.442 is amended by alphabetically adding the commodity "sweet potato, roots" to the table in paragraph (b) to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
* *	*	*
Sweet potato, roots	0.05	12/31/03
* *	*	*

* * * * *

[FR Doc. 03–22314 Filed 9–2–03; 8:45 a.m.]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0267; FRL–7321–3]

Lambda Cyhalothrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of the pyrethroid lambda-cyhalothrin, 1:1 mixture of (S)-α-cyano-3-phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3-phenoxybenzyl-(Z)-(1S,3S)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and its epimer expressed as epimer of lambda-cyhalothrin, a 1:1 mixture of

(S)-α-cyano-3- phenoxybenzyl-(Z)-(1S,3S) -3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2,2-dimethylcyclopropanecarboxylate and (R)-α-cyano-3- phenoxybenzyl-(Z)-(1R,3R)-3-(2-chloro-3,3,3- trifluoroprop-1-enyl)- 2,2-dimethylcyclopropanecarboxylate in or on clover, forage and clover, hay. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on alfalfa/clover/grass mixed stands. This regulation establishes a maximum permissible level for residues of lambda-cyhalothrin and its epimer in these food commodities. The tolerances will expire and are revoked on December 31, 2005.

DATES: This regulation is effective September 3, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0267, must be received on or before November 3, 2003.

ADDRESSES: Written objections and hearing requests may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number:(703) 308–9367; e-mail address: *sec-18-mailbox@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a Federal or State government agency involved in administration of environmental quality programs (i.e., Departments of Agriculture, Environment, etc). Potentially affected entities may include, but are not limited to:

•Federal or State Government Entity, (NAICS 9241), i.e., Departments of Agriculture, Environment, etc.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0267. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the insecticide lambda-cyhalothrin and its epimer, in or on clover, forage at 5.0 parts per million (ppm) and clover, hay at 6.0 ppm. These tolerances will expire and are revoked on December 31, 2005. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, *i.e.*, without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) of the FFDCA defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Lambda Cyhalothrin on Alfalfa/Clover/Grass Mixed Stands and FFDCA Tolerances

The state of New York requested the use of lambda-cyhalothrin to control alfalfa weevil (*Hypera postica*),

Armyworms (*Spodoptera spp.*) and Potato leafhopper (*Empoasca fabae*) on alfalfa/clover/grass mixed stands. The use of insecticides is the only practical means of controlling the three major pests that infest alfalfa/clover/grass mixed stands and there are no pesticides registered to control insect pests in these stands of mixed of alfalfa/clover/grass. Experts estimate a 35% yield loss if these mixed stands are not protected. EPA has authorized under FIFRA section 18 the use of lambda-cyhalothrin on alfalfa/clover/grass mixed stands for control of alfalfa weevil, armyworms and potato leafhoppers in New York. After having reviewed the submissions, EPA concurs that an emergency condition exists for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of lambda-cyhalothrin in or on clover, forage and clover, hay. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerances under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances will expire and are revoked on December 31, 2005, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on clover, forage and clover, hay after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether lambda-cyhalothrin meets EPA's registration requirements for use on alfalfa/clover/grass mixed stands or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of lambda-cyhalothrin by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than New York to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for lambda-cyhalothrin, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7) .

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of lambda-cyhalothrin and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for the combined residues of lambda-cyhalothrin and its epimer in or on clover, forage at 5.0 ppm and clover, hay at 6.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q^*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q^* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q^* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^{-6} or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for lambda-cyhalothrin used for human risk assessment is shown in the following Table 1:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR LAMBDA-CYHALOTHRIN] FOR USE IN HUMAN RISK ASSESSMENT

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (General population including infants and children)	NOAEL = 0.5 mg/kg/day UF = 100 Acute RfD = 0.005 mg/kg/day	FQPA SF = 1 aPAD = acute RfD ÷ FQPA SF = 0.005 mg/kg/day	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = LOAEL = 3.5 mg/kg/day based on clinical signs of neurotoxicity (ataxia) observed from day 2, 3 to 7 hours post-dosing.
Chronic Dietary (All populations)	NOAEL= 0.1 mg/kg/day UF = 100 Chronic RfD = 0.001 mg/kg/day	FQPA SF = 1 cPAD = chronic RfD ÷ FQPA SF = 0.001 mg/kg/day	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = 0.5 based on gait abnormalities observed in 2 dogs
Incidental Oral Short- and Intermediate-Term (1 - 30 Days and 1 - 6 Months) Residential Only	NOAEL= 0.1	LOC for MOE = 100 (Residential)	Chronic oral study in the dog (lambda-cyhalothrin) LOAEL = 0.5 based on gait abnormalities observed in 2 dogs
Dermal (All Durations; - Short-Term (1 to 7 days) - Intermediate-Term (1 week to several months) - Long-Term (several months to lifetime) (Residential)	dermal (or oral) study NOAEL= 10 mg/kg/day	LOC for MOE = 100 (Residential)	21–Day dermal toxicity study in the rat (lambda-cyhalothrin) LOAEL = 50 mg/kg/day based on clinical signs of neurotoxicity (observed from day 2) and decreased body weight and body weight gain
Inhalation (All Durations; - Short-Term (1 to 7 days) - Intermediate-Term (1 week to several months) - Long-Term (several months to lifetime) (Residential)	inhalation (or oral) study NOAEL= 0.3 Environmental protection, Cut and past remainder of subjects. µg/L (0.08 mg/kg/day) (inhalation absorption rate = 100%)	LOC for MOE = 100 (Residential)	21–Day Inhalation Study in Rats (lambda-cyhalothrin) LOAEL = 3.3 µg/L (0.90 mg/kg/day) based on clinical signs of neurotoxicity, decreased body weight gains, increased incidence of punctuate foci in the cornea, slight reductions in cholesterol in females and slight changes in selected urinalysis parameters.
Cancer (oral, dermal, inhalation)			Classification: Group D chemical (not classifiable as to human carcinogenicity)

*The reference to the FQPA SF refers to any additional SF retained due to concerns unique to the FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Currently established tolerances for residues of lambda-cyhalothrin are listed under 40 CFR 180.438 and include permanent tolerances on plants ranging from 0.01 ppm on soybeans to 6.0 ppm on alfalfa, hay; corn, forage; and tomato, pomace (dry or wet). Tolerances are also established on animal commodities ranging from 0.01 ppm in egg; poultry, meat; and poultry, meat by-products to 5.0 ppm in milk, fat (reflecting 0.2 ppm in whole milk). The Agency has recently established additional tolerances for lambda-cyhalothrin on a number of commodities ranging from 0.05 ppm on sugarcane to 3.0 ppm on peanut, hay. Risk assessments were conducted by EPA to assess dietary exposures from lambda-cyhalothrin in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. A refined Tier 3 probabilistic acute dietary risk assessment was conducted for all currently registered and proposed lambda-cyhalothrin food uses. For the acute dietary risk analysis the entire distribution of residue field trial data was used for not-blended or partially-blended commodities; average residue field trial data was used for blended commodities; information from cooking and processing studies were used when available; and market share data for proposed and established tolerances was used.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. For the chronic dietary risk analysis the average of the residue field trials, information from cooking and processing studies, and market share data were used.

iii. *Cancer.* The data base for carcinogenicity is considered complete, and no additional studies are required at this time. The requirements for oncogenicity studies in the rat and the mouse with lambda-cyhalothrin have been satisfied by a combined chronic/oncogenicity study in rats and an oncogenicity study in mice, both conducted with cyhalothrin. Lambda-cyhalothrin has been classified as a Group D chemical (not classifiable as to human carcinogenicity) with regards to its carcinogenic potential.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue

levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E) of the FFDCA, EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT. A detailed description of how the Agency used PCT information in this assessment can be found in the lambda-cyhalothrin pesticide tolerance document published on September 27, 2002 (67 FR 60902; FRL–7200–1) in Unit III.C.(1)(iv).

The Agency believes that the three conditions listed above] have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which lambda-cyhalothrin may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for lambda-cyhalothrin in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of lambda-cyhalothrin.

The Agency uses the First Index Reservoir Screening Tool (FIRST) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentration in Ground Water (SCI-GROW) model is used to predict pesticide concentrations in shallow groundwater. For a screening-level assessment for surface water EPA will generally use FIRST (a tier 1 model) before using PRZM/EXAMS (a tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to lambda-cyhalothrin they are further discussed in the aggregate risk sections below.

The compounds to be regulated in drinking water are lambda-cyhalothrin and degradate XV (parent hydroxylated in the 4-position of the phenoxy ring). Based on the FIRST, PRZM/EXAMS and SCI-GROW models the estimated environmental concentrations (EECs) of lambda-cyhalothrin and its degradate XV for acute exposures are estimated to be 0.62 parts per billion (ppb) for surface water (0.51 ppb lambda-cyhalothrin and 0.11 ppb degradate XV) and 0.012 ppb (0.006 ppb lambda-cyhalothrin and 0.006 ppb degradate XV) for ground water. The EECs for chronic exposures are estimated to be 0.098 ppb for surface water (0.09 ppb lambda-cyhalothrin and 0.008 ppb degradate XV) and 0.012 ppb for ground water (0.006 ppb lambda-cyhalothrin and 0.006 ppb degradate XV).

3. *From non-dietary exposure.* The term "residential exposure" is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). The residential exposure/risk assessment evaluated both proposed and existing uses for lambda-cyhalothrin. Existing uses on turf, in gardens, on golf courses, and for structural pest control were qualitatively assessed, but a quantitative

calculation was only completed for postapplication exposure on treated turf because this scenario is expected to have the highest associated exposures. This screening level tool is protective for all residential exposures, even the handler scenarios, because the dose levels for children playing on treated lawns are thought to exceed those expected for all other scenarios. For postapplication exposure, all residential MOEs were well above the Agency target MOE of 100 for the inhalation, dermal, and oral routes and therefore do not exceed EPA's level of concern (range 700 to 14,700). Additionally, when total MOEs were aggregated, MOEs were still not of concern (MOEs for children = 500 and for adults = 3,000).

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether lambda-cyhalothrin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, lambda-cyhalothrin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that lambda-cyhalothrin has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies.* In a developmental toxicity study in rats, the maternal NOAEL was 10 mg/kg/day and the LOAEL was 15 mg/kg/day based on uncoordiniated limbs, reduced body weight gain and food consumption. The developmental NOAEL was 15 mg/kg/day (HDT) and the developmental LOAEL was > 15 mg/kg/day.

In a developmental toxicity study in rabbits, the maternal NOAEL was 10 mg/kg/day and the LOAEL was 30 mg/kg/day based on reduced body weight gain and food consumption. The developmental NOAEL was 30 mg/kg/day (HDT) and the developmental LOAEL was >30 mg/kg/day.

3. *Reproductive toxicity study.* In a 3-generation reproduction study in rats, the parental/offspring NOAEL was 1.5 mg/kg/day and the LOAEL was 5.0 mg/kg/day based on decreased parental body weight and body weight gain during premating and gestation periods and reduced pup weight and weight gain during lactation. The reproductive NOAEL was 5.0 mg/kg/day (HDT)

4. *Prenatal and postnatal sensitivity.* There is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with cyhalothrin and there is no evidence of increased susceptibility of young rats in the reproduction study with cyhalothrin.

5. *Conclusion.* Through the use of bridging data, the toxicology data base for lambda-cyhalothrin is complete. The Agency has determined that the special FQPA safety factor should be reduced to 1x because as noted above, there is no evidence of increased susceptibility of rat or rabbit fetuses following *in utero* exposure in the developmental studies with cyhalothrin and there is no evidence of increased susceptibility of young rats in the reproduction study with cyhalothrin. The Agency concluded there are no residual uncertainties for pre- and/or postnatal exposure. The RfDs and other endpoints established for risk assessment are protective of pre-/postnatal toxicity following exposure to cyhalothrin.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water [e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to lambda-cyhalothrin in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of lambda-cyhalothrin on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to lambda-cyhalothrin will occupy 41% of the aPAD for the U.S. population, 24% of the aPAD for females 13 years and older, 71% of the aPAD for all infants <1 year old and 82% of the aPAD for children 1–6 years old. In addition, despite the potential for acute dietary exposure to lambda-cyhalothrin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of lambda-cyhalothrin in surface and

ground water, EPA does not expect the aggregate exposure to exceed 100% of the aPAD, as shown in the following Table 2:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	aPAD (mg/kg)	% aPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Acute DWLOC (ppb)
U.S. Population (total)	0.005	40.86	0.62	0.012	103
All Infants (1 year)	0.005	71.22	0.62	0.012	14
Children 1–6 years	0.005	82.36	0.62	0.012	9
Children 7–12 years	0.005	46.09	0.62	0.012	27
Females 13–50	0.005	23.83	0.62	0.012	114
Males 13–19	0.005	27.61	0.62	0.012	127
Males 20+ years	0.005	21.69	0.62	0.012	137
Seniors 55+	0.005	21.85	0.62	0.012	137

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to lambda-cyhalothrin from food will utilize 8.2% of the cPAD for the U.S. population, 11.7% of the cPAD for all infants < 1 year old and 21.8% of the cPAD for children 1-6 years old. Based on the use pattern, chronic residential exposure to residues of lambda-cyhalothrin is not expected. In addition, despite the potential for chronic dietary exposure to lambda-cyhalothrin in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of lambda-cyhalothrin in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in the following Table 3:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	cPAD mg/kg/day	% cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population (total)	0.001	8.2	0.098	0.012	32
All Infants (< 1 year)	0.001	11.7	0.098	0.012	9
Children 1–6 years	0.001	21.8	0.098	0.012	8
Children 7–12 years	0.001	12.9	0.098	0.012	9
Females 13–50	0.001	5.7	0.098	0.012	28
Males 13–19	0.001	7.9	0.098	0.012	32
Males 20+ years	0.001	6.0	0.098	0.012	33
Seniors 55+	0.001	5.8	0.098	0.012	33

3. *Short- and intermediate-term risk.* Aggregate risk for short- and intermediate-term durations of exposure includes food, drinking water, and residential exposure pathways. The residential exposure pathway includes dermal, inhalation, and incidental oral (hand-to-mouth-type inadvertent exposure) routes of exposure. This aggregate risk assessment included lawn post-application exposure, considered the scenario with the highest potential for exposure and is a day 0 screening level assessment.

Lambda-cyhalothrin is currently registered for use(s) that could result in short- and intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for lambda-cyhalothrin.

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 879 for adults, 239 for children 1–6, and 302 for infants <1 year old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of lambda-cyhalothrin in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in the following Table 4:

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR SHORT AND INTERMEDIATE-TERM EXPOSURE TO LAMBDA-CYHALOTHRIN

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short and Intermediate-Term DWLOC (ppb)
Adults	879	100	0.098	0.012	31
Child (1–6)	239	100	0.098	0.012	6
Infant (<1 yr)	302	100	0.098	0.012	7

5. *Aggregate cancer risk for U.S. population.* Lambda-cyhalothrin has been classified as a Group D chemcial (not classifiable as to human carcinogenicity) with regards to its carcinogenic potential.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to lambda-cyhalothrin residues.

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromotography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: residuemethods@epa.gov.

B. International Residue Limits

There are no Codex, Canadian, or Mexican MRLs established for residues of lambda-cyhalothrin in plant or animal commodities. Codex MRLs for cyhalothrin are established for several commodities which are unrelated to this action. Therefore, a discussion of compatibility with U.S. tolerances is not relevant at this time.

VI. Conclusion

Therefore, the tolerances are established for the combined residues of lambda-cyhalothrin and its epimer in or on clover, forage at 5.0 ppm and clover, hay at 6.0 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2003–0267 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 3, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A., you should also send a copy of your request to the PIRIB for its

inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by the docket ID number OPP–2003–0267, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Regulatory Assessment Requirements

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104—113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 22, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.438 is amended by alphabetically adding commodities to the table in paragraph (b) to read as follows:

§ 180.438 Lambda-cyhalothrin; tolerances for residues.

(b) * * *

* * * * *

Commodity	Parts per million	Expiration/revocation date
Clover, forage	5.0	12/31/05
Clover, hay	6.0	12/31/05

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[FR Doc. 03–22315 Filed 9–2–03; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 96–45; DA 03–2690]

Certifications Required Pursuant to the Children's Internet Protection Act; Approval of FCC Forms 486 and 479 by the Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: This document announces the effective date of the amendments to our rules implementing the revised FCC Form 486 (Receipt of Service Confirmation) and the revised FCC Form 479 (Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act (CIPA)) and instructions have been approved by the Office of Management and Budget (OMB). The Order in CC Docket No. 96–45 was published in the **Federal Register** on August 8, 2003.

DATES: The final rule amending 47 CFR Part 54, published on August 8, 2003 (68 FR 47253), became effective on August 14, 2003.

FOR FURTHER INFORMATION CONTACT: Jennifer Schneider, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY: (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice, CC Docket No. 96–45, released August 19, 2003. The Wireline Competition Bureau announces that the revised FCC Form 486 (Receipt of Service Confirmation) and the revised FCC Form 479 (Certification by Administrative Authority to Billed Entity of Compliance with Children's Internet Protection Act (CIPA)) and instructions have been approved by the Office of Management and Budget (OMB). Accordingly, the effective date of the Order is August 14, 2003. See 68 FR 47253, August 8, 2003.

On August 14, 2003, OMB approved the information collections. See OMB No. 3060–0853.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirement, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22368 Filed 9–2–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 172, 178, and 180

[Docket No. RSPA–98–3554 (HM–213)]

RIN 2137–AC90

Hazardous Materials: Requirements for Cargo Tanks

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; response to appeals.

SUMMARY: On April 18, 2003, the Research and Special Programs Administration published a final rule under Docket No. RSPA–98–3554 (HM–213) to update and clarify requirements in the Hazardous Materials Regulations applicable to construction and maintenance of cargo tank motor vehicles. In response to appeals submitted by persons affected by the April 18, 2003 final rule, this final rule amends certain requirements and makes minor editorial corrections.

DATES: *Effective Date:* This final rule is effective October 1, 2003.

Voluntary Compliance Date: Voluntary compliance is authorized as of September 3, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Olson, Office of Hazardous Materials Technology, RSPA, telephone (202) 366–4504; Ms. Susan Gorsky, Hazardous Materials Standards, RSPA, telephone (202) 366–8553; or Mr. Danny Shelton, Office of Enforcement and Program Delivery, Hazardous Materials Division, Federal Motor Carrier Safety Administration (FMCSA), telephone (202) 366–6121.

SUPPLEMENTARY INFORMATION:

I. Background

On April 18, 2003, the Research and Special Programs Administration (RSPA; we) published a final rule (68 FR 19258) that revised requirements in the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) for cargo tank design, qualification, maintenance, and use. Specifically, the final rule:

- Revised the definitions of "Design Certifying Engineer" and "Registered Inspector" to allow experienced persons without degrees to qualify;
- Permitted cargo tank owners to re-certify cargo tanks to their original specifications;
- Revised minimum road clearance and bottom damage protection requirements for certain cargo tank motor vehicles;
- Clarified current requirements for using the EPA Method 27 leakage test as an alternative to the HMR leak test requirements;
- Revised certain requirements applicable to MC 331 and MC 338 cargo tanks for consistency with regulations applicable to the more recently adopted MC 400 series cargo tanks;
- Required MC 338 cargo tanks to be equipped with a means of thermal activation for automatically closing the internal self-closing stop valve in the event of a fire;
- Clarified cargo tank test and inspection requirements and relaxes the leakage test requirement for cargo tanks in anhydrous ammonia service; and
- Eliminated redundant or unnecessary regulations.

In addition, the April 18 final rule revised the HMR to address three recommendations from the National Transportation Safety Board (NTSB):

- Consistent with Recommendation H–90–91, the April 18 final rule

required controls for internal shut-off valves for the discharge system to be installed at remote locations on all newly constructed and currently authorized MC 330, MC 331, and MC 338 specification cargo tanks. Cargo tanks currently in hazardous materials service must be retrofitted with on-truck remote shut-off controls over a three-year period.

- Consistent with Recommendation H–93–94, the April 18 final rule required all manually activated on-truck remote shutoff devices for closure of the internal valve to be marked "Emergency Shutoff."
- Consistent with Recommendation H–95–14, the April 18 final rule required thickness testing of ring stiffeners and appurtenances on cargo tanks that are constructed of mild steel, high-strength, low-alloy steel, or aluminum, when the ring stiffeners and appurtenances are installed in a manner that precludes an external visual inspection.

The April 18 final rule effective date is October 30, 2003; voluntary compliance is authorized as of May 18, 2003.

II. Appeals

Six organizations submitted appeals to the April 18 final rule in accordance with 49 CFR Part 106: the Compressed Gas Association, Inc. (CGA); the National Propane Gas Association (NPGA); Container Technology, Inc. (Container Technology); the National Tank Truck Carriers, Inc. (NTTC); Baltimore Cargo Tank Service, Inc. (Baltimore Tank); and Fisher Controls (Fisher). The appellants express concern about several revisions included in the final rule; two appellants ask for an extension to the effective date of the final rule. The issues raised by the appellants are discussed in detail below.

A. Appeals Granted

Section 178.320—Definitions. The April 18 final rule revised the definition of "cargo tank." NTTC requests that we consider further modifying the definition to indicate that a cargo tank may be used for the transportation of solids and semi-solids, in addition to liquids or gases. NTTC explains that, in today's operating environment, cargo tanks are used routinely to transport materials that may be tendered as solids (such as powders) and slurries (semi-solids). Many such loads, especially environmentally sensitive materials, are subject to the HMR. We agree; in this final rule we are modifying the definition of "cargo tank" to include solids and semi-solids among the materials for which a cargo tank may be used for transportation.

The April 18 final rule adopted definitions for "sacrificial device" and "shear section" that were developed for the DOT 400 series cargo tanks and made the definitions generally applicable to all cargo tanks. NPGA objects to the new definitions, stating that because of "substantial" differences in design, construction, use and pressure conditions, the definitions for the DOT 400 series cargo tanks are not directly transferable to MC 331 cargo tanks. We agree that the issue requires further analysis and that, until such analysis is complete, the definitions for "sacrificial device" and "shear section" originally adopted for the DOT 400 series cargo tanks should not be applied to MC 331 cargo tanks. Therefore, in this final rule, we are deleting the definitions from § 178.320, which establishes requirements applicable to all DOT specification cargo tank motor vehicles, and placing them in § 178.345–1(c), which sets forth general requirements applicable to DOT 406, DOT 407, and DOT 412 cargo tank motor vehicles. We will consider addressing this issue in a subsequent rulemaking.

The April 18 final rule adopted a definition for "shear section" to mean a sacrificial device fabricated to reduce the wall thickness of the adjacent piping or valve material by at least 30 percent. Based on this definition, the April 18 final rule revised § 178.337–10(f)(2) to require a shear section to break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part, or wall. NPGA suggests that this requirement would necessitate a complete and costly redesign of valves used as sacrificial devices. Therefore, in this final rule we are revising § 178.337–10(f)(2) to remove the requirement adopted in the April 18 final rule for a shear section to break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part, or wall.

Section 178.320—Design certification. The April 18 final rule revised § 178.320(b)(1) to require accident damage protection devices to be certified by a Design Certifying Engineer (DCE). NPGA, Fisher, and Baltimore Tank note that, since the term "accident damage protection devices" is not defined, it could be misinterpreted to include component valves, particularly if the component valve includes a shear section. NPGA and Fisher request that we define "accident damage protection devices." We agree. In this final rule, we are adding a sentence to § 178.320(b)(1) to clarify that the term "accident damage protection devices," means rear-end protection, overturn protection, and piping protection devices.

Baltimore Tank suggests that, as drafted, § 178.320(b)(1) could be interpreted to require a DCE certification of an accident damage protection device design on its own—that is, independent of the cargo tank motor vehicle to which it is attached. This was not our intent. In this final rule, we are revising the section as suggested by Baltimore Tank.

Section 178.337–9—Use of stainless steel for internal cargo tank components. The April 18 final rule adopted a provision in § 178.337–9(b)(2) to prohibit the use of stainless steel for internal components of a cargo tank, such as shutoff discs and springs. NPGA and Container Technology appealed this provision, suggesting that it is overly restrictive and that stainless steel should be permitted for internal components where it is not incompatible with the lading. We agree and are making the appropriate revision in this final rule.

CGA also appealed the April 18 final rule provision in § 178.337–9(b)(2). CGA's concern is that the final rule requires malleable steel, stainless steel, or ductile iron to be used to construct primary valves and fittings used in liquid filling or vapor equalization. CGA points out that malleable metal, including brass, is safely used for fittings on cargo tanks used to transport carbon dioxide. We agree; this revision in § 178.337–9(b)(2) was inadvertent. In this final rule, we are revising this provision to require malleable metal, stainless steel, or ductile iron to be used to construct primary valves and fittings.

In addition, in this final rule we are revising § 178.337–9(b)(2) to make an editorial change suggested by NPGA. The phrase "except for sacrificial devices" should be part of the second sentence in this section, not the third sentence.

Section 178.337–10—Rear end protection. The April 18 final rule adopted rear end protection requirements originally developed for DOT 400 series cargo tanks as an option for MC 331 cargo tanks. In paragraph (c)(1) of § 178.337–10, the final rule requires rear end bumper dimensions to meet the requirements in 49 CFR 393.86 and extend vertically to a height that is adequate to protect all valves and fittings located at the read of the cargo tank. NPGA notes that certain MC 331 cargo tanks used to transport propane have a pressure gauge in a fitting located at the center of the rear cargo tank head

and suggests that, if read literally, the new requirement could require the rear bumper to extend past the center of the rear head. This was not our intent. In this final rule, we are revising the requirement as suggested by NPGA.

Section 178.337–17—Marking. The April 18 final rule requires a name plate on an MC 331 cargo tank to include information about the weld material used on the cargo tank. Container Technology and NPGA suggest that this is unnecessary and that MC 331 cargo tanks typically incorporate several different weld methods and materials. Both appellants suggest that this requirement be deleted. We agree that the requirement is unnecessary. In this final rule, it is deleted from the requirements for information to be included on an MC 331 cargo tank name plate.

The April 18 final rule requires a name plate to include an indication of the pressure to which the cargo tank was tested during its manufacture. NPGA recommends that this mark be deleted, stating that it is not clear how this information will assist operators and enforcement officials. We agree that the original test pressure number is of little value and could create confusion for operators when determining the pressure to which a cargo tank must be retested in accordance with § 180.407(g). In this final rule, therefore, the requirement to include a cargo tank's original test pressure on the name plate is removed.

The April 18 final rule also included a requirement for a specification plate on an MC 331 cargo tank to include the maximum loading and unloading rates. NPGA notes that this was not proposed in the HM–213 NPRM nor were the reasons for including the information on the specification plate discussed in the preamble to the final rule. NPGA suggests that the requirement should therefore be deleted. We agree; in this final rule, the requirement for including maximum loading and unloading rates on an MC 331 specification plate is deleted.

Section 180.405—Recertification of MC 306, MC 307 or MC 312 CTMVs. The April 18 final rule included a provision permitting a cargo tank originally manufactured to the MC 306, MC 307, or MC 312 specification, unless the cargo tank has been stretched, rebarrelled, or modified, to be recertified to its original certification provided certain conditions are met (see § 180.405(b)(2)). Baltimore Tank appealed this provision of the final rule, suggesting that rebarrelled, stretched, or modified MC 306, MC 307, or MC 312 cargo tanks should be treated in the same manner as unmodified cargo tanks and permitted to be recertified provided appropriate records are available to verify the original certifications.

Modifications to non-specification cargo tanks, which includes "decertified" cargo tanks that no longer meet a specification standard, need not be performed in accordance with the standards set forth in Part 180. Our concern in limiting the exception in § 180.405(b)(2) to cargo tanks that have not been stretched, rebarrelled, or modified was to prevent a "decertified" tank that was modified without reference to the Part 180 regulations from being recertified as a specification cargo tank. However, we agree with Baltimore Tank that if the operator can provide documentation to verify that a cargo tank originally built to an MC 306, MC 307, or MC 312 specification was stretched, rebarrelled, or modified in accordance with the procedures in Part 180 and the National Board Inspection Code, then the cargo tank may be recertified to its original specification under the same conditions as for unmodified MC 306, MC 307, or MC 312 cargo tanks. In this final rule, we are revising § 180.405(b) to permit modified MC 306, MC 307, and MC 312 cargo tanks to be recertified to their original specification under certain conditions.

Section 180.413—Leak testing. The April 18 final rule revised paragraph (c) in § 180.413 to clarify leak test requirements performed after maintenance or replacement of piping, hose, valves, or fittings that does not involve welding. The revised paragraph (c) requires a leak test to be performed at not less than 80 percent of the design pressure marked on the cargo tank. NPGA appealed this provision, noting that § 180.407(h)(1)(i) permits an MC 330 or MC 331 cargo tank in dedicated liquefied petroleum gas service to be leak tested at not less than 60 psig (414 kPa) and that the requirement adopted in the April 18 final rule greatly exceeds the 60 psig leak test exception for LPG tanks. NPGA states that the leak test requirement adopted in the final rule will place a significant burden on the propane industry and will be very disruptive to propane distribution operations. NPGA suggests that we revise § 180.413(c) to permit the leak test required after maintenance or replacement operations that do not require welding to be performed at 60 pisg (414 kPa). We agree; this final rule revises § 180.413(c)(1) to permit the leak test to be performed in accordance with § 180.407(h)(1).

B. Appeals Denied

Definition of "manufacturer." Fisher and NPGA ask us to reconsider the definition in the HMR for "manufacturer" in § 178.320 of the HMR. The NPRM did not propose nor did the final rule adopt a revision of this definition. The Fisher and NPGA appeals are thus beyond the scope of this rulemaking and are denied. We will address the definition in a subsequent rulemaking and seek comment on any proposed changes to the definition.

Remote controls for internal self-closing shutoff valves. The April 18 final rule adopted a requirement for all newly constructed and currently authorized MC 338 cargo tank motor vehicles (CTMVs) to be equipped with a means of thermal activation for closing the internal self-closing stop valve, except for cargo tanks used to transport argon, carbon dioxide, helium, krypton, neon, nitrogen, xenon, or mixtures thereof; tanks currently in service must be retrofitted by October 2, 2006. CGA appealed this provision of the final rule with respect to MC 338 cargo tanks used to transport non-flammable ladings; CGA suggests that that this is a "very expensive" modification for MC 338 cargo tanks because installation of the remote controls requires modifications to piping in addition to installation of a valve. CGA asks that we reinstate the grandfather provision excepting MC 338 CTMVs constructed prior to 1995 and used to transport non-flammable ladings from the requirement for a means of thermal activation for closing the internal self-closing stop valve.

As discussed in the preamble to the NPRM, this provision reflects discussions conducted by a negotiated rulemaking committee established under Docket No. RSPA–97–2718 (HM–225A). The committee agreed that fusible elements, which provide a heat-activated means for closing a valve, convey a significant safety benefit, and we adopted a requirement for all MC 331 cargo tanks to be so equipped in the HM–225A final rule. The provision applicable to MC 338 cargo tanks adopted in the HM–213 final rule is consistent with the requirements for MC 331 tanks; moreover, we do not agree that installation of fusible elements on MC 338 cargo tanks will be prohibitively expensive. We estimate that the retrofit provision in the final rule will affect about 100 MC 338 CTMVs, at a cost per vehicle of about $200. For these reasons, the CGA appeal of the final rule provisions concerning installation of fusible links on MC 338 cargo tanks is denied.

Maximum lading density marking. The April 18 final rule requires the name plate on an MC 331 cargo tank to include an indication of the maximum density of lading in pounds per gallon (§ 178.337–17(b)(7)). Container Technology and NPGA appealed this provision of the final rule. NPGA states that the marking serves no purpose; Container Technology asserts that lading density is not necessary for compliance with structural integrity requirements and that the mark limits an operator's flexibility to use an MC 331 cargo tank to transport a variety of ladings with different densities.

We do not agree that the mark serves no purpose nor do we agree that it limits an operator's flexibility. A cargo tank is usually designed with a specific lading or ladings in mind. An indication of the maximum lading density that may safely be transported in a cargo tank helps an operator determine whether the cargo tank should be used to transport a specific cargo. The mark is meant to convey the density for the heaviest lading possible to be transported in the cargo tank based on the structural design calculations for the tank. An operator is free to transport lading for which the maximum density is less than the mark indicated on the name plate or to transport smaller amounts of a lading for which the maximum density is greater than the mark indicated on the name plate. For these reasons, the Container Technology and NPGA appeals of this provision in the April 18 final rule are denied.

Original Test Date Marking. The April 18 final rule requires the name plate to include the original test date for the cargo tank. NPGA suggests that the mark could cause confusion for enforcement personnel and recommends that it be deleted. We disagree that the mark should be deleted. The original test date is the date the cargo tank manufacturer performed the tests required under Part 178 to assure that the cargo tank meets applicable design specifications. Thus, the original test date is the date that the cargo tank is certified to meet the specification to which it was designed. Including the original test date on the name plate enables the owner and/or operator of the cargo tank and enforcement personnel easily to identify specific requirements applicable to the tank's design and manufacture, without having to go back to the certification documentation provided by the cargo tank manufacturer. The marking of the original test date is in keeping with the intent of the regulations to help clarify marking requirements for all cargo tanks and, taken in whole with the definitions adopted in the HM–213 final rule, should not be confusing. For these reasons, the NPGA appeal of this provision in the April 18 final rule is denied.

Pressure greater than MAWP. The April 18 final rule revised § 180.407(a)(2) to clarify that a cargo tank may not be subjected to a pressure greater than its design pressure or maximum allowable work pressure (MAWP) except during a pressure test; the revision removed an exception from this general requirement for loading and unloading operations. CGA appealed this provision of the final rule, stating that, as rewritten, it conflicts with other provisions of the HMR. CGA, citing § 173.318(b)(4)(i), states that, during pressure transfers, an operator may raise the pressure in an MC 338 cargo tank to exceed the tank's MAWP, but not to exceed the set-to-discharge setting of the tank's pressure relief device.

Section 173.318 sets forth requirements for pressure relief devices on cargo tanks used to transport cryogenic liquids. Paragraph (b)(4)(i) of this section establishes the set-to-discharge setting for pressure relief devices—each pressure relief valve in the primary relief system must be set at a pressure no higher than 110% of the cargo tank's design pressure. This setting provides a tolerance level for the pressure relief system to account for small temporary increases in pressure because of temperature or other variances. The set-to-discharge setting does not mean that the pressure in the cargo tank may safely be raised to a level just below the set-to-discharge setting of the pressure relief devices if that level exceeds the MAWP of the tank. Section 173.33(c) establishes maximum lading pressures for materials transported in CTMVs. Specifically with respect to cryogenic liquids, § 173.33(c) states that the MAWP of a cargo tank must be greater than or equal to the pressures prescribed in § 173.318. Thus, the MAWP of the cargo tank must be greater than or equal to the set-to-discharge pressure for a pressure relief device in § 173.318(b)(4)(i). At no time, except during pressure tests, may the pressure in a cargo tank exceed its MAWP. The revision to § 180.407(a)(2) was made to clarify this point. For these reasons, the CGA appeal of this provision of the April 18 final rule is denied.

Periodic inspection of insulated cargo tanks. In § 180.407(d)(1), the April 18 final rule clarified requirements for inspection and testing of insulated cargo tanks where insulation precludes external and/or internal visual inspections. The final rule did not change current requirements for inspection and testing of such tanks; it merely clarified the requirements to make them easier to understand. CGA appealed this provision of the final rule, suggesting that it reduced the interval for conducting internal inspections and pressure tests on MC 331 cargo tanks from 5 years to one year and that such a change is not warranted. This is incorrect; the NPRM did not propose nor did the final rule adopt a provision to change the pressure test interval for MC 331 cargo tanks. The final rule includes a provision to permit operators of insulated MC 330, MC 331, and MC 338 cargo tanks equipped with manholes or inspection openings to perform an internal visual inspection or a pressure test in conjunction with the required annual external visual inspection (see Note 4 to the table in § 180.407 (c)). The pressure test performed in conjunction with the annual external visual inspection requires only that the cargo tank be pressurized to the level indicated in the table in § 180.407(g)(1)(iv); the operator is not required to complete every element of the pressure test set forth in § 180.407(g). The interval for performing a complete pressure test of an MC 331 cargo tank in accordance with § 180.407(g) remains 5 years. The CGA appeal of the April 18 final rule provision in § 180.407(d) is therefore denied.

Use of "weep holes" in mounting pads. Baltimore Tank wants the HMR to require the use of "weep holes" for mounting pads. The NPRM did not propose nor did the final rule adopt any change to the current requirements for "weep holes" in mounting pads. Baltimore Tank's appeal on this issue is beyond the scope of the HM–213 rulemaking and is, therefore, denied.

Modification, stretching, or rebarrelling of a cargo tank. The April 18 final rule revised the provisions in § 180.413(d) concerning modification, stretching, or rebarrelling of cargo tanks. Among other requirements, the revision requires a modified, stretched, or rebarrelled CTMV to be certified by a DCE to meet the structural integrity and accident damage protection requirements of the applicable specification. Baltimore Tank appealed this provision of the final rule, suggesting that modifications to a cargo tank may or may not affect the design of the CTMV and recommending changes to the final rule to clarify when recertification of the modified cargo tank is required and when recertification of the CTMV is required.

For purposes of the HMR, a "cargo tank motor vehicle" or CTMV is a motor vehicle with one or more cargo tanks

permanently attached to or forming an integral part of the motor vehicle. A "modification" is any change to the original design and construction of a cargo tank or a CTMV that affects its structural integrity or lading retention capability (see § 180.403). "Stretching" is a change in the width, length, or diameter of a cargo tank or any change to a CTMV's undercarriage that may affect the cargo tank's structural integrity. Modifying, stretching, or rebarrelling a cargo tank affects the design of the CTMV because the cargo tank is part of the CTMV; thus, whenever a cargo tank is modified, stretched, or rebarrelled, the complete CTMV must be recertified by a DCE. For this reason, Baltimore Tank's appeal of this provision is denied.

Damage to a cargo tank requiring pressure testing. The April 18 final rule restated the current requirement in § 180.407(b)(2) that a cargo tank that has been damaged to an extent that may adversely affect its lading retention capability must be inspected and tested in accordance with § 180.407, including the pressure test requirements in paragraph (g), prior to its return to service. The final rule did not change current requirements for testing damaged tanks; paragraph (b)(2) makes explicit the previous requirement that a cargo tank that has been damaged to an extent that may adversely affect its lading retention capability must be pressure tested in accordance with paragraph (g). Baltimore Tank appealed this provision of the final rule, suggesting that the full pressure test procedure as set forth in paragraph (g) is not necessary to ascertain if a damaged tank may be returned to service. This provision of the April 18 final rule made no changes to the long-standing requirements for inspection and testing of damaged cargo tanks. Baltimore Tank's appeal is beyond the scope of the HM–213 rulemaking and is, therefore, denied.

Test/Inspection reports. The April 18 final rule amended paragraph (b) of § 180.417 to revise the information that must be included on test and inspection reports. Baltimore Tank appealed this provision on several grounds. First, Baltimore Tank suggests that operators of MC 306 and MC 307 tanks will have difficulty providing the required information concerning the minimum thickness of the cargo tank shell and heads (see § 180.417(b)(1)(v)) because such information does not typically appear on the tanks' specification plates or manufacturing documents; Baltimore Tank further states that minimum thickness measurements are rarely needed for MC 306 and MC 307 cargo tanks. We disagree. Corroded or abraded areas of a cargo tank discovered during an external visual inspection, internal visual inspection, or lining inspection must be thickness tested; thus, a cargo tank almost certainly will be subjected to thickness testing at some point during its operating life. There is no point in conducting a thickness test of a corroded or abraded area if there is no number to which the thickness of the corroded or abraded area can be compared. The operator of an MC 306 or MC 307 cargo tank, working with a Registered Inspector, should be able to determine the minimum thickness of the cargo tank and enter this information on the inspection report. In this final rule, however, we are clarifying that an inspection report need only include an indication of the minimum thickness of the cargo tank shell and heads on test and inspection reports documenting that a thickness test has been performed for any reason on any area of the tank shell or heads.

Baltimore Tank also appealed the provision in § 180.417(b)(2)(iii), which requires the test or inspection report to list all items tested or inspected, suggesting that an item count for a multi-compartment MC 306 or DOT 406 CTMV in petroleum service would total in the hundreds and, further, that the items checked would not be the same from tank to tank. Baltimore Tank recommends that we reduce the amount of information required by this section. We disagree that this is an onerous or burdensome requirement. The requirement for a test/inspection report to list all items tested or inspected is not new; current § 180.417(b)(i) includes the same requirement. The August 18 final rule added to this section a list of examples of information that must be included on the test/inspection report, such as information about pressure relief devices, upper coupler assemblies, and leakage and pressure testing. An operator may use a checklist. In addition, an operator may group items—for example, rather than list every item inspected individually, an operator may choose to list items by category. Further, the list of information required on a test or inspection report will vary depending on the inspection or test conducted; all the information listed will not appear on every test or inspection report. For these reasons, Baltimore Tank's appeal of the test and inspection report provisions of the HM–213 final rule is denied.

Final rule effective date. The April 18 final rule is effective October 1, 2003. NPGA and Container Technology request reconsideration of the effective date; they state that some of the provisions of the April 18 final rule will necessitate extensive and complex redesign of certain components of CTMVs. We disagree. The provisions at issue in the NPGA request for reconsideration of the effective date are modified in this final rule (see "Appeals Granted" section above); the clarifications requested by Container Technology are addressed in this preamble (see "Clarifications" section below). The April 18 final rule included extended compliance dates for certain provisions, including the retrofit and certain marking requirements, of from one to three years. For these reasons, the NPGA and Container Technologies appeals of the effective date are denied.

C. Corrections

In addition to the revisions described above, this final rule also makes the following corrections to the final rule published April 18:

1. Corrects several typographical errors in the Hazardous Materials Table in § 172.101 and minor typographical errors in §§ 178.337–3, 178.337–17, 178.338–10, 180.407, 180.415, and 180.417.

2. Inserts the definition for "manufacturer" that was inadvertently omitted from § 178.320(a).

3. Corrects an inadvertent omission in § 178.347–1. In the preamble to the HM–213 final rule, we agreed with a commenter to add paragraph UW–12 to the list of exceptions in paragraph (d)(8), but did not do so in the regulatory text.

D. Clarifications

Container Technologies requested a clarification as to whether, for purposes of pad design, accident damage protection devices should be considered as structures or appurtenances. Accident damage prevention devices are structures. A rear-end damage protection device, such as a bumper, typically is attached to the CTMV chassis or suspension component, not directly to the cargo tank wall. Overturn damage protection devices typically are welded directly to the cargo tank wall.

III. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not a significant action under section 3(f) of Executive Order 12866 and was not reviewed by the Office of Management and Budget. This final rule is not a significant action under DOT's Regulatory Policies and Procedures. The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions

contained in the Regulatory Evaluation prepared for the April 18, 2003 final rule. The Regulatory Evaluation is available for review in the public docket for this rulemaking.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule preempts state, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5127, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts state, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous materials;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

This final rule addresses covered subject item (5) above and preempts state, local, and Indian tribe requirements not meeting the "substantively the same" standard.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. The effective date of Federal preemption is 90 days from the date of publication of this final rule.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply and a tribal summary impact statement is not required.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether the proposed rule is expected to have a significant impact on a substantial number of small entities. The revisions adopted in this final rule do not alter the cost-benefit analysis and conclusions contained in the Regulatory Evaluation prepared for the April 18, 2003 final rule. Based on the assessment in the regulatory evaluation, I certify that, while this final rule applies to a substantial number of small entities, the economic impact on those small entities is not significant.

This final rule has been developed in accordance with Executive Order 13272 ("Proper Consideration of Small Entities in Agency Rulemaking") and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

E. Paperwork Reduction Act

This final rule does not impose new information collection requirements.

F. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

G. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to state, local, or Tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

H. Environmental Assessment

The environmental assessment prepared for the April 18, 2003 final rule can be found in the public docket for this rulemaking. The revisions adopted in this final rule are relatively minor and, thus, do not alter the conclusions contained in the environmental assessment. There are no significant environmental impacts associated with this final rule.

List of Subjects

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, we are making the following revisions and corrections to rule FR Doc. 03–9070, published on April 18, 2003 (68 FR 19258):

■ 1. In the table on page 19275, correct the following entries to read as follows:

§ 172.101 Hazardous Materials Table

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or Division	Identification Numbers	PG	Label Codes	Special provisions	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-Bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	Fuel, aviation, turbine engine.	3	UN1863	I	3	144, T11, TP1, TP8.	150	201	243	1 L	30 L	E.	
	.....	.....	.....	II	3	144, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.	
	.....	.....	.....	III	3	144, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	
	Gas oil	3	UN1202	III	3	144, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	
	Gasoline	3	UN1203	II	3	139, B33, B101, T8.	150	202	242	5 L	60 L	E.	
	Petroleum crude oil	3	UN1267	I	3	144, T11, TP1, TP5.	None	201	243	1 L	30 L	E.	
	.....	.....	.....	II	3	144, IB2, T4, TP1, TP8.	150	202	242	5 L	60 L	B.	
	.....	.....	.....	II	3	144, B1, IB3, T2, TP1.	150	203	242	60 L	220 L	A.	

■ 2. Beginning on page 19277, in the third column, and continuing on page 19278, in paragraph (a) of § 178.320, delete the definitions for "sacrificial device" and "shear section", revise the definition for "cargo tank", and add a definition for "manufacturer" in alphabetical order, to read as follows:

§ 178.320 General requirements applicable to all DOT-specification cargo tank motor vehicles.

(a) * * *

* * * * *

Cargo tank means a bulk packaging that:

(1) Is a tank intended primarily for the carriage of liquids, gases, solids, or semi-solids and includes appurtenances, reinforcements, fittings, and closures (for *tank*, see §§ 178.337–1, 178.338–1, or 178.345–1, as applicable);

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but that, by reason of its size, construction, or attachment to a motor vehicle, is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, intermediate bulk containers, multi-unit tank car tanks, portable tanks, or tank cars.

* * * * *

Manufacturer means any person engaged in the manufacture of a DOT specification cargo tank, cargo tank motor vehicle, or cargo tank equipment that forms part of the cargo tank wall. This term includes attaching a cargo tank to a motor vehicle or to a motor vehicle suspension component that involves welding on the cargo tank wall. A manufacturer must register with the Department in accordance with subpart F of part 107 in subpart A of this chapter.

* * * * *

■ 3. On page 19279, in the first column, revise paragraph (b)(1) of § 178.320, to read as follows:

§ 178.320 General requirements applicable to all DOT-specification cargo tank motor vehicles.

* * * * *

(b) * * * (1) Each cargo tank or cargo tank motor vehicle design type, including its required accident damage protection device, must be certified to conform to the specification requirements by a Design Certifying Engineer who is registered in accordance with subpart F of part 107 of this title. An accident damage protection device is a rear-end protection, overturn protection, or piping protection device.

* * * * *

■ 4. On page 19279, in the first column, revise paragraph (b)(1) of § 178.337–3 to read as follows:

§ 178.337–3 Structural integrity.

* * * * *

(b) *Static design and construction.* (1) The static design and construction of each cargo tank must be in accordance with Section VIII, Division 1 of the ASME Code (incorporated by reference; see § 171.7 of this subchapter). The cargo tank design must include calculation of stresses generated by design pressure, the weight of lading, the weight of structure supported by the cargo tank wall, and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be used in calculation of thermal stresses.

* * * * *

■ 5. On page 19279, in the third column, revise paragraph (b)(2) of § 178.337–9, to read as follows:

§ 178.337–9 Pressure relief devices, piping, valves, hoses, and fittings.

* * * * *

(b) * * *

(2) Pipe joints must be threaded, welded, or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier, except for sacrificial devices. Malleable metal, stainless steel, or ductile iron must be used in the construction of primary valve body parts and fittings used in liquid filling or vapor equalization. Stainless steel may be used for internal components such as shutoff discs and springs except where incompatible with the lading to be transported. Where copper tubing is permitted, joints must be brazed or be of equally strong metal union type. The melting point of the brazing material may not be lower than 538° C (1,000° F). The method of joining tubing may not reduce the strength of the tubing.

* * * * *

■ 6. On page 19280, in the first column and continuing to the second column, revise paragraphs (c) and (f) of § 178.337–10, to read as follows:

§ 178.337–10 Accident damage protection.

* * * * *

(c) *Rear-end tank protection.* Rear-end tank protection devices must:

(1) Consist of at least one rear bumper designed to protect the cargo tank and all valves, piping and fittings located at the rear of the cargo tank from damage that could result in loss of lading in the event of a rear end collision. The bumper design must transmit the force of the collision directly to the chassis of the vehicle. The rear bumper and its attachments to the chassis must be designed to withstand a load equal to twice the weight of the loaded cargo tank motor vehicle and attachments, using a safety factor of four based on the tensile strength of the materials used, with such load being applied horizontally and parallel to the major axis of the cargo tank. The rear bumper dimensions must also meet the requirements of § 393.86 of this title; or

(2) Conform to the requirements of § 178.345–8(d).

* * * * *

(f) *Shear section.* A shear section or sacrificial device is required for the valves specified in the following locations:

(1) A section that will break under strain must be provided adjacent to or outboard of each valve specified in § 178.337–8(a)(3) and (4).

(2) Each internal self-closing stop valve, excess flow valve, and check valve must be protected by a shear section or other sacrificial device. The sacrificial device must be located in the piping system outboard of the stop valve and within the accident damage protection to prevent any accidental loss of lading. The failure of the sacrificial device must leave the protected lading protection device and its attachment to the cargo tank wall intact and capable of retaining product.

■ 7. On page 19280, in the middle column, and continuing to page 19281, revise paragraphs (b) and (c) of § 178.337–17, to read as follows:

§ 178.337–17 Marking.

* * * * *

(b) *Name plate.* The following information must be marked on the name plate in accordance with this section:

(1) DOT-specification number MC 331 (DOT MC 331).

(2) Original test date (Orig. Test Date).

(3) MAWP in psig.

(4) Cargo tank design temperature (Design Temp. Range) ___°F to ___°F.

(5) Nominal capacity (Water Cap.), in pounds.

(6) Maximum design density of lading (Max. Lading density), in pounds per gallon.

(7) Material specification number—shell (Shell matl, yyy***), where "yyy" is replaced by the alloy designation and "***" is replaced by the alloy type.

(8) Material specification number—heads (Head matl. yyy***), where "yyy"

is replaced by the alloy designation and "****" by the alloy type.

(9) Minimum Thickness—shell (Min. Shell-thick), in inches. When minimum shell thicknesses are not the same for different areas, show (top__, side__, bottom__, in inches).

(10) Minimum thickness—heads (Min. heads thick.), in inches.

(11) Manufactured thickness—shell (Mfd. Shell thick.), top__, side__, bottom__, in inches. (Required when additional thickness is provided for corrosion allowance.)

(12) Manufactured thickness—heads (Mfd. Heads thick.), in inches. (Required when additional thickness is provided for corrosion allowance.)

(13) Exposed surface area, in square feet.'

Note to paragraph (b): When the shell and head materials are the same thickness, they may be combined, (Shell&head matl, yyy***).

(c) *Specification plate.* The following information must be marked on the specification plate in accordance with this section:

(1) Cargo tank motor vehicle manufacturer (CTMV mfr.).

(2) Cargo tank motor vehicle certification date (CTMV cert. date).

(3) Cargo tank manufacturer (CT mfr.).

(4) Cargo tank date of manufacture (CT date of mfr.), month and year.

(5) Maximum weight of lading (Max. Payload), in pounds

(6) Lining materials (Lining), if applicable.

(7) Heating system design pressure (Heating sys. press.), in psig, if applicable.

(8) Heating system design temperature (Heating sys. temp.), in °F, if applicable.

(9) Cargo tank serial number, assigned by cargo tank manufacturer (CT serial), if applicable.

Note 1 to paragraph (c): See § 173.315(a) of this chapter regarding water capacity.

Note 2 to paragraph (c): When the shell and head materials are the same thickness, they may be combined (Shell & head matl, yyy***).

* * * * *

■ 8. On page 19282, in the first column, revise paragraph (c)(2) of § 178.338–10, to read as follows:

§ 178.338–10 Accident damage protection.

* * * * *

(c) * * *

(2) Conform to the requirements of § 178.345–8(b).

* * * * *

■ 9. On page 19283, in the third column, in § 178.345–1, revise paragraph (c) introductory text and the definitions for "sacrificial device" and "shear section", to read as follows:

§ 178.345–1 General requirements.

* * * * *

(c) *Definitions.* See § 178.320(a) for the definition of certain terms used in §§ 178.345, 178.346, 178.347, and 178.348. In addition, the following definitions apply to §§ 178.345, 178.346, 178.347, and 178.348:

* * * * *

Sacrificial device means an element, such as a shear section, designed to fail under a load in order to prevent damage to any lading retention part or device. The device must break under strain at no more than 70 percent of the strength of the weakest piping element between the cargo tank and the *sacrificial device.* Operation of the *sacrificial device* must leave the remaining piping and its attachment to the cargo tank intact and capable of retaining lading.

* * * * *

Shear section means a sacrificial device fabricated in such a manner as to abruptly reduce the wall thickness of the adjacent piping or valve material by at least 30 percent.

* * * * *

■ 10. On page 19284, in the third column, correct paragraphs (c)(4) and (c)(7) of § 178.345–14, to read as follows:

§ 178.345–14 Marking.

* * * * *

(c) * * *

(4) Cargo tank date of manufacture (CT date of mfr.), month and year.

* * * * *

(7) Maximum unloading rate in gallons per minute (Max. Unload rate).

* * * * * *

■ 11. On page 19285, in the middle column, add paragraph (d)(8) to § 178.347–1, to read as follows:

§ 178.347–1 General requirements.

* * * * *

(d) * * *

(8) The following paragraphs in parts UG and UW of the ASME Code, Section VIII, Division I do not apply: UG–11, UG–12, UG–22(g), UG–32(e), UG–34, UG–35, UG–44, UG–76, UG–77, UG–80, UG–81, UG–96, UG–97, UW–12, UW–13(b)(2), UW–13.1(f), and the dimensional requirements found in Figure UW–13.1.

* * * * *

■ 12. On page 19286, beginning in the first column and continuing to the middle column, revise paragraph (b)(2) in § 180.405 to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(b) * * *

(2) *Exception.* A cargo tank originally manufactured to the MC 306, MC 307, or MC 312 specification may be recertified to the original specification provided:

(i) Records are available verifying the cargo tank was originally manufactured to the specification;

(ii) If the cargo tank was stretched, rebarrelled, or modified, records are available verifying that the stretching, rebarrelling, or modification was performed in accordance with the National Board Inspection Code and this part;

(iii) A Design Certifying Engineer or Registered Inspector verifies the cargo tank conforms to all applicable requirements of the original specification and furnishes to the owner written documentation that verifies the tank conforms to the original structural design requirements in effect at the time the tank was originally constructed;

(iv) The cargo tank meets all applicable tests and inspections required by § 180.407(c); and

(v) The cargo tank is recertified to the original specification in accordance with the reporting and record retention provisions of § 180.417. The certification documents required by § 180.417(a)(3) must include both the date the cargo tank was originally certified to the specification and the date it was recertified. The specification plate on the cargo tank or the cargo tank motor vehicle must display the date the cargo tank was originally certified to the specification.

* * * * *

■ 13. On page 19286, in the third column, correct amendatory instruction number 52(c) to read as follows:

52. * * *

(c) Paragraphs (a)(2), (b)(1), (b)(2), (c), (d)(1), (g)(1)(ii), (g)(1)(iv) introductory text, (g)(4), (h)(1) introductory text, (h)(2), (i)(5) introductory text, titles and column headings to Tables I and II in (i)(5) and (i)(6) are revised.

* * * * *

§ 180.407 [Amended]

■ 14. On page 19288, make the following corrections to the tables in paragraph (i)(5) of § 180.407:

a. Correct the title to Table I to read "TABLE I.—IN-SERVICE MINIMUM THICKNESS FOR MC 300, MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF STEEL AND STEEL ALLOYS".

b. Correct the title to Table II to read "TABLE II.—IN-SERVICE MINIMUM THICKNESS FOR MC 301, MC 302, MC 304, MC 305, MC 306, MC 307, MC 311, AND MC 312 SPECIFICATION CARGO TANKS CONSTRUCTED OF ALUMINUM AND ALUMINUM ALLOYS".

■ 15. On page 19289, in the middle column, revise paragraph (c)(1) of § 180.413 to read as follows:

§ 180.413 Repair, modification, stretching, rebarrelling, or mounting of specification cargo tanks.

* * * * *

(c) * * *

(1) After maintenance or replacement that does not involve welding on the cargo tank wall, the repaired or replaced piping, valve, hose, or fitting must be tested for leaks. This requirement is met when the piping, valve, hose, or fitting is tested after installation in accordance with § 180.407(h)(1). A hose may be tested before or after installation on the cargo tank.

* * * * *

■ 16. On page 19290, in the middle column, correct the paragraph "Examples to paragraph (b)" in § 180.415 to read as follows:

§ 180.415 Test and inspection markings.

* * * * *

(b) * * *

Examples to paragraph (b). The markings "10–99 P, V, L" represent that in October 1999 a cargo tank passed the prescribed pressure test, external visual inspection and test, and the lining inspection. The markings "2–00 K–EPA27" represent that in February 2000 a cargo tank passed the leakage test under § 180.407(h)(2). The markings "2–00 K, K–EPA27" represent that in February 2000 a cargo tank passed the leakage test under both § 180.407(h)(1) and under EPA Method 27 in § 180.407(h)(2).

* * * * *

■ 17. On page 19290, in the second column and continuing to the third column, revise paragraphs (b)(2)(v) and (b)(2)(viii) of § 180.417 to read as follows:

§ 180.417 Reporting and record retention requirements.

* * * * *

(b) * * *

(2) * * *

(v) Minimum thickness of the cargo tank shell and heads when the cargo tank is thickness tested in accordance with § 180.407(d)(4), § 180.407(e)(3), § 180.407(f)(3), or § 180.407(i);

* * * * *

(viii) Continued qualification statement, such as "cargo tank meets the requirements of the DOT specification identified on this report" or "cargo tank fails to meet the requirements of the DOT specification identified on this report";

* * * * *

Issued in Washington, DC, on August 6, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 03–22212 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 68, No. 170
Wednesday, September 3, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7552–2]

RIN 2060–AK37

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of 4 Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to revise EPA's definition of volatile organic compounds (VOC) for purposes of preparing State implementation plans (SIPs) to attain the national ambient air quality standards (NAAQS) for ozone under title I of the Clean Air Act (CAA). This proposed revision would add four compounds to the list of compounds excluded from the definition of VOC on the basis that these compounds make a negligible contribution to tropospheric ozone formation.

With this proposed action the EPA is not finalizing a decision on how future petitions will be evaluated. EPA is currently in the process of assessing its VOC policy in general. We intend to publish a future notice inviting public comment on the VOC exemption policy and the concept of negligible reactivity as part of a broader review of overall policy.

DATES: Comments on this proposal must be received by October 3, 2003. Requests for a hearing must be submitted by September 18, 2003.

ADDRESSES: Comments should be submitted (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–2002–03, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments should be strictly limited to the subject matter of this proposal, the scope of which is discussed below.

Public Hearing: If anyone contacts EPA requesting a public hearing, it will be held at Research Triangle Park, NC. Persons wishing to request a public hearing, wanting to attend the hearing or wishing to present oral testimony should notify Mr. David Sanders, Air Quality Strategies and Standards Division (C539–02), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–3356. The EPA will publish notice of a hearing, if requested, in the **Federal Register**. Any hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. The EPA has established a public docket for this action, A–2002–03, which is available for public inspection and copying between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays, at EPA's Docket Center, EPA West Building, 1301 Constitution Ave., NW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: David Sanders, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division (C539–02), Research Triangle Park, NC 27711, phone (919) 541–3356. Interested persons may call Mr. Sanders to see if a hearing will be held and the date and location of any hearing.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially affected by this action are those (in the list matrix below) which use and emit VOC as well as States which have programs to control VOC emissions. This action has no substantial direct effects on the States or industry because it does not impose any new mandates on these entities but, to the contrary, removes four chemical compounds from regulation as a VOC.

Category	Examples of regulated entities
Industry	Industries that use or make refrigerants, blowing agents, fire suppressants, or solvents
States	States which have regulations to control volatile organic compounds

This matrix lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table have the potential of being regulated.

The four compounds we are proposing to exclude from the definition of VOC all have potential for use as refrigerants, fire suppressants, aerosol propellants, or blowing agents (used in the manufacture of foamed plastic). In addition, all of these compounds, may be used as an alternative to ozone-depleting substances such as chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs).

Three of the compounds, 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane, 1,1,1,2,3,3,3-heptafluoropropane, and methyl formate are approved by EPA's Significant New Alternatives Policy (SNAP) program (CAA section 612; 40 CFR part 82, subpart G) as acceptable substitutes for ozone-depleting compounds. The fourth compound, 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane, has not been reviewed under SNAP because it was submitted for use in secondary loop refrigeration systems. Fluids used in these systems are not covered by the SNAP program (62 FR 10700). However, this compound is a member of a larger class of compounds known as hydrofluoroethers (HFEs), and other HFEs have been recognized by SNAP as ODS substitutes.

The EPA uses the SNAP program to identify substitutes for ozone-depleting compounds, evaluate the acceptability of these substitutes, promote the use of those substitutes EPA determines to present lower overall risks to human health and the environment (relative to the class I and class II compounds being replaced, as well as to other substitutes for the same end-use), and prohibit the use of those substitutes found, based on the same comparisons, to increase overall risks. The SNAP program has identified the HFCs as a class of replacement substitutes for CFCs. Because they do not contain chlorine or bromine, they do not deplete the ozone layer. All HFCs have an ozone depletion potential (ODP) of 0 although some HFCs have high global warming potential (GWP).

In approving methyl formate as an acceptable substitute for CFC's and HCFC's, the EPA's SNAP Program noted that methyl formate is toxic and flammable and should be handled by users with proper precautions. Methyl formate causes irritation to the eyes,

skin, and lungs, and at high levels may cause pulmonary damage. However, EPA believes that methyl formate is well regulated by other programs; therefore, exposures to this compound will be below levels of concern. OSHA has established an enforceable occupational exposure limit of 100 ppm as an 8-hr time-weighted average. NIOSH has also established a short-term exposure limit (averaged over 15 mins) of 150 ppm. There is only one supplier of methyl formate in the U.S., and their total production is less than 10 million pounds per year. We estimate that use of methyl formate as an HCFC replacement in the foam sector will be relatively small, reaching 2.5 million pounds between 2008–2010. Although we do not have information on all the possible exposure scenarios to methyl formate, based on information provided by industry, the air concentration levels reached in testing methyl formate as a foam blowing agent have been less than 10 ppm (without ventilation), a concentration well below the occupational exposure limits.

The four compounds will continue to be VOC for purposes of all record keeping, emissions reporting, and inventory requirements which apply to VOC. The EPA believes that it is important to continue collecting data on new exempt organic compound emissions for the following reasons:

(a) EPA wants to investigate the possibility that some compounds classified as "negligibly reactive" or which are not defined as VOC for purposes of VOC emissions limitations or VOC content requirements may, in fact, contribute to ozone formation under certain conditions, especially if there are large amounts of such emissions;

(b) EPA wants to investigate whether significant aggregate emissions of "negligibly reactive" compounds or of compounds which are not defined as VOC for purposes of VOC emissions limitations or VOC content requirements may contribute to multi-day ozone events and to ozone transport;

(c) EPA believes that in order to have more accurate modeling, it may be necessary to keep track of exempt compound emissions, especially if there are large amounts of such emissions;

(d) EPA is now in the process of assessing its VOC policy in general, and its VOC exemption policy in particular, and data about the impacts of VOC exemptions on such things as the volume of exempt compound use, the effects of an exemption on ambient ozone conditions, and the verification of VOC substitution are critical information that can only be obtained through continued record keeping and reporting. We intend to publish a future notice inviting public comment on the VOC exemption policy and the concept of negligible reactivity as part of a broader review of overall policy.

Also, we are proposing to make a nomenclature clarification to two previously exempted compounds. We propose to add the designations HFE–7100 to 1,1,1,2,2,3,3,4,4-nonafluoro-4-methoxy-butane (C_4F_9OH) and HFE–7200 to 1-ethoxy-1,1,2,2,3,3,4,4,4-nonafluorobutane ($C_4F_9OCH_2H_5$). These names are widely accepted alternative designations for the two compounds and can be found in the book titled, *Handbook for Critical Cleaning* by Barbara Kanegsberg and Edward Kanegsberg, CRC Press, 2001, p. 77.

To determine whether your organization is regulated by this action, you should carefully examine the applicability criteria in § 51.100 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

Tropospheric ozone, commonly known as smog, occurs when VOCs and nitrogen oxides (NO_X) react in the atmosphere. Because of the harmful health effects of ozone, EPA and State governments limit the amount of VOCs and NO_X that can be released into the atmosphere. Volatile organic compounds are those compounds of carbon (excluding carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, and ammonium carbonate) which form ozone through atmospheric photochemical reactions. Compounds of carbon (also known as organic compounds) have different levels of reactivity—that is, they do not react at the same speed or do not form ozone to the same extent. It has been EPA's policy that organic compounds with a negligible level of reactivity need not be regulated to reduce ozone. The EPA determines whether a given organic compound has "negligible" reactivity by comparing the compound's reactivity to the reactivity of ethane. The EPA lists these compounds in its regulations (at 40 CFR 51.100(s)) and excludes them from the definition of VOCs. The chemicals on this list are often called "negligibly reactive" organic compounds.

In 1977, EPA published the "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314) which established the basic policy that EPA has used regarding organic chemical photochemical reactivity since that time. In that statement, EPA identified the following four compounds as being of negligible photochemical reactivity and said these should be exempt from regulation under SIPs: methane; ethane; 1,1,1-trichloroethane (methyl chloroform); 1,1,2-trichloro-1,2,2-trifluoroethane (CFC–113). That policy statement said that as new information becomes available, EPA may periodically revise the list of negligibly reactive compounds to add compounds to or delete them from the list.

The EPA's decision to exempt certain compounds in its 1977 policy was heavily influenced by experimental smog chamber work done earlier in the 1970's. In this experimental work, various compounds were injected into a smog chamber at a molar concentration that was typical of the total molar concentration of VOC in Los Angeles ambient air (4 ppmv). As the compound was allowed to react with NO_X at concentrations of 0.2 ppm, the maximum ozone formed in the chamber was measured. If the compound in the smog chamber did not result in ozone formation of 0.08 ppm (0.08 ppm was the NAAQS for oxidants at that time), it was assumed that emissions of the compound would not cause the oxidant standard to be exceeded. The compound could then be considered to be negligibly reactive. Ethane was the most reactive compound tested that did not cause the 0.08 ozone level in the smog chamber to be met or exceeded. Based on those findings and judgments, EPA designated ethane as negligibly reactive, and ethane became the benchmark VOC species separating reactive from negligibly reactive compounds.

Since 1977, the primary method for comparing the reactivity of a specific compound to that of ethane has been to compare the k_{OH} values for ethane and the specific compound of interest. The k_{OH} value represents the molar rate constant for reactions between the subject compound (*e.g.*, ethane) and the hydroxyl radical (*i.e.*, ·OH). This reaction is very important since it is the primary pathway by which most organic compounds initially participate in atmospheric photochemical reaction processes. The EPA has exempted 45 compounds or classes of compounds based on a comparison of k_{OH} values since 1977.

In 1994, in response to a petition to exempt volatile methyl siloxanes, EPA, for the first time, considered a comparison to ethane based on incremental reactivity (IR) metrics (59 FR 50693, October 5, 1994). The use of

IR metrics allowed EPA to take into consideration the ozone forming potential of other reactions of the compound in addition to the initial reaction with the hydroxyl radical. Volatile methyl siloxanes proved to be less reactive than ethane both on a per mole and per gram basis. In 1995, EPA considered another compound, acetone, using IR metrics. After considering the IR metrics, EPA exempted acetone based on the fact that acetone was less reactive on the basis of grams of ozone formed per grams of VOC emitted (60 FR 31635, June 16, 1995). Prior to 1994, all exemptions had been based on k_{OH} values. Since 1995, EPA has exempted one additional compound, methyl acetate, based on comparisons of IR metrics. The reactivity of methyl acetate was found to be comparable to or less than that for ethane both under a per gram basis and under a per mole basis.

On February 5, 1999, the Performance Chemicals and Fluid Division of the 3M Company submitted to EPA a petition requesting that the compound 1,1,1;2,2,3,3-heptafluoro-3-methoxy-propane be added to the list of compounds which are considered to be negligibly reactive in the definition of VOC at 40 CFR 51.100(s). The next year on August 21, 2000, the Performance Chemicals and Fluid Division of the 3M Company submitted to EPA a petition requesting that the compound 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane be added to the same list.

Potential uses for these two compounds (and other compounds for consideration under this proposal) are shown in Table 1. In its petition, 3M points out that it has requested the compound 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane be listed as an acceptable substitute for CFCs and hydrochlorofluorocarbons (HCFCs) in certain uses and; as such, use of this substance may mitigate depletion of stratospheric ozone.

TABLE 1.—POTENTIAL USES OF COMPOUNDS ADDRESSED IN THIS PROPOSAL

Compound	Potential use
1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane	—refrigerant —aerosol propellant
3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane	—refrigerant
1,1,1,2,3,3,3-heptafluoropropane	—fire suppressant —aerosol propellant
methyl formate	—blowing agent

Although 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl)hexane has not been identified as a substitute, specifically, the SNAP program has identified hydrofluoroethers (HFEs), as a class, as replacement substitutes for CFCs.

In support of the 1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane and the 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6 -dodecafluoro-2-(trifluoromethyl) hexane petitions, 3M Company supplied information on their respective photochemical reactivities. The 3M Company stated that, as hydrofluoroethers, these compounds are very similar in structure, toxicity, and atmospheric properties to other compounds such as $C_4F_9OCH_3$, $(CH_3)_2CFCF_2OCH_3$, $C_4F_9OC_2H_5$, $(CH_3)_2CFCF_2OC_2H_5$ which are exempt from the VOC definition.

Other information submitted by 3M Company consists mainly of a peer reviewed article entitled "Atmospheric Chemistry of Some Fluoroethers," Guschin, Molina, Molina: Massachusetts Institute of Technology, May 1998, which has been submitted to the docket. This article discusses a study in which the rate constant for the reaction of the compounds with the hydroxyl (OH) radical is shown to be less than that for ethane and slightly more than for methane. This rate constant (k_{OH} value) is commonly used as one measure of the photochemical reactivity of compounds. The petitioner compared the rate constants with that of ethane which has already been listed as photochemically negligibly reactive (ethane is the compound with the highest k_{OH} value which is currently regarded as negligibly reactive). The compounds under consideration are listed with their reported k_{OH} rate constants in Table 2 along with that of ethane. The scientific information which the petitioner has submitted in support of the petition has been added to the docket for this rulemaking. This information includes references for the journal articles where the rate constant values are published.

TABLE 2.—REACTION RATE CONSTANTS (AT 25 °C) WITH OH RADICAL

Compound	cm^3/molecule/sec
ethane	2.4×10^{-13}
n-$C_3F_7OCH_3$	1.2×10^{-14}
HFE–7500	2.2×10^{-14}
HFC–227ea	1.09×10^{-15}
methyl formate	2.27×10^{-13}

Together with 5-day and 28-day inhalation toxicity studies, 3M Company also has included Material Safety Data Sheets indicating both their compounds as having very low toxicity. This information has been placed in the docket.

On February 18, 1998, the Great Lakes Chemical Corporation ("Great Lakes") petitioned EPA for the exclusion of 1,1,1,2,3,3,3-heptafluoropropane (HCF–227ea) from the definition of VOC. The rate constant for the reaction of HFC–227ea with the OH radical was based on studies performed at the laboratories of Aerodyne Research, Inc. and reported by Nelson, Zahniser, and Kolb in the *Geophysical Research Letters.*, Vol. 20, No. 2, pages 197–200. The rate constant for HFC–227ea as reported in this paper (Table 2) is 1.09×10^{-15} cm^3/molecule/sec at 277K (0 °C) which places it well under two orders of magnitude below ethane's reactivity.

Great Lakes also claims that HFC–227ea is not an ozone depleting substance. This compound has been approved under EPA's SNAP program as an acceptable substitute for Halon 1301 and Halon 1211 in various fire suppression applications. Also, EPA has determined HFC–227ea to have a GWP at 3800 times that of carbon dioxide, making it a probable substitute for its competitor fire suppressants which have even higher GWPs.

On February 12, 2002, Foam Supplies, Inc. submitted a petition to exclude methyl formate from the definition of VOC. Foam Supplies, Inc. submitted journal articles showing three separate studies measuring methyl formate's rate constant with hydroxyl radicals and compared this to ethane measured in a like manner as a rate constant (cm^3/molecule/sec). The highest value tested for methyl formate was that of 2.27×10^{-13} cm^3/molecule/sec which is slightly below that of ethane at 2.4×10^{-13} cm^3/molecule/sec (shown in Table 2).

Foam Supplies, Inc. also notes that methyl formate has a zero ODP and a very low or zero GWP.

In addition, Foam Supplies, Inc. notes that this compound has been approved under SNAP as an acceptable alternative to HCFC–141b and HCFC–22 in various blowing agent applications.

Because of the closeness in rate constant values attributed to methyl formate and ethane, in addition to the information on k_{OH} value submitted by the petitioner for methyl formate, EPA has examined further evidence of low reactivity for methyl formate. This evidence, which is desirable when rate constant values are so close (as in the case of methyl formate and ethane), increases the confidence level with which EPA can make a final decision on whether to approve or disapprove of a petition to exempt a compound from the VOC definition. Dr. William P. L. Carter of the University of California at Riverside has published "The SAPRC–99 Chemical Mechanism and Updated VOC Reactivity Scales", (revised 11/29/2000) on his Web site at: *http://ftp.cert.ucr.edu/pub/carter/SAPRC99/appndxc.doc*. Appendix C of his report gives maximum incremental reactivity (MIR) values which are another accepted measure of photochemical reactivity. Dr. Carter's MIR values are given in grams ozone per gram of organic compound. Also, it is easy to calculate the MIR on a basis of grams of ozone per mole of organic compound. On either basis, methyl formate has a reactivity less than half that of ethane. Sections of the Carter report showing ethane and methyl formate values have been added to the docket. Also, the data may be seen on this same website belonging to Dr. Carter.

In a similar action related to a petition to exempt tert-butyl acetate (TBAC) from the VOC definition (64 FR 52731), EPA raised the issue of whether the comparison to ethane should be made on a mass (or gram) basis or a molar basis. In the case of the four compounds considered here, all four are less reactive than ethane on both mass and molar bases and would qualify as negligibly reactive under either test.

While the purpose of exempting negligibly reactive VOCs is to avoid unnecessary regulation that will not help in the attainment of the ozone NAAQS, it is possible that exempting specific compounds from regulation as a VOC could result in significant health risks or other undesirable environmental impacts. EPA has included available information about the toxicity of the four compounds under consideration in the docket. EPA invites public comment on the potential for significant health or environmental risks that may be expected as a result of the proposed exemptions, taking into account the expected uses for the compounds.

II. The EPA Response to the Petitions

For the petitions submitted by the 3M Company, Great Lakes Chemical Corporation, and Foam Supplies, Inc., the data submitted by the petitioners support the contention that the reactivities of the compounds submitted, with respect to reaction with OH radicals in the atmosphere are lower than that of ethane. There is ample evidence in the literature that methyl formate and the halogenated paraffinic VOC, listed above, do not participate in such reactions significantly.

The EPA is responding to the petitions by proposing in this action to add the compounds in Table 3 to the list of compounds appearing in 40 CFR 51.100(s).

TABLE 3.—COMPOUNDS PROPOSED TO BE ADDED TO THE LIST OF NEGLIGIBLY REACTIVE COMPOUNDS

Compound	Chemical Name or Formula
$n\text{-}C_3F_7OCH_3$	1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane
HFE–7500	3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane
HFC–227ea	1,1,1,2,3,3,3-heptafluoropropane
methyl formate	$HCOOCH_3$

III. Proposed Action

Today's proposed action is based on EPA's review of the material in Docket No. A–2002–03. The EPA hereby proposes to amend its definition of VOC at 40 CFR 51.100(s) to exclude the compounds in Table 3 as VOC for ozone SIP and ozone control purposes. States are not obligated to exclude from control as a VOC those compounds that EPA has found to be negligibly reactive. However, if this action is made final, States should not include these compounds in their VOC emissions inventories for determining reasonable further progress under the CAA (*e.g.*, section 182(b)(1)) and may not take credit for controlling these compounds in their ozone control strategy.

In prior VOC exemption decisions, EPA has not required continued record keeping and reporting on the use and emissions of the exempt compounds. However, more current understanding of the complexities of ozone formation suggests that most organic compounds which EPA has exempted as "negligibly reactive" do have some photochemcial reactivity, albeit small. EPA is proposing to retain record keeping and reporting requirements for all new exempt organic compound emissions.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not "significant" because none of the listed criteria apply to this action. Consequently, this action is not submitted to OMB for review under Executive Order 12866.

B. Paperwork Reduction Act

This action does not contain any information collection requirements subject to OMB review under the

Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* It does not contain any recordkeeping or reporting requirement burden.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply, with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency does not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* requires the identification of potentially adverse impacts of Federal regulations upon small business entities. The Act specifically requires the completion of a RFA analysis in those instances where the regulation would impose a substantial impact on a significant number of small entities. Because this proposed rulemaking imposes no adverse economic impacts, an analysis has not been conducted.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities. Today's proposed rule concerns only the definition of VOC and does not directly regulate any entities. The RFA analysis does not consider impacts on entities which the action in question does not regulate. See *Motor & Equipment Manufacturers Ass'n* v. *Nichols*, 142 F. 3d 449, 467 (D.C. Cir. 1998); *United Distribution Cos.* v. *FERC*, 88 F. 3d 1105, 1170 (D.C. Cir. 1996), cert. denied, 520 U.S. 1224 (1997). Pursuant to the provision of 5 U.S.C. 605(b), I hereby certify that the proposed rule will not have an impact on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Since this proposed rule is deregulatory in nature and does not impose a mandate upon any source, this rule is not estimated to result in the expenditure by State, local and tribal governments or the private sector of $100 million in any 1 year. Therefore, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the National government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed action addressing the exemption of four chemical compounds from the VOC definition does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

This action does not impose any new mandates on State or local governments. Thus, Executive Order 13132 does not apply to this rule. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on

the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Today's action does not have any direct effects on Indian tribes. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this proposed rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, EPA has reason to believe that ozone has a disproportionate effect on active children who play outdoors (62 FR 38856; 38859 July 18, 1997). The EPA has not identified any specific studies on whether or to what extent the four above listed chemical compounds affect children's health. The EPA has placed the available data regarding the health effects of these four chemical compounds in docket no. A–2002–03. The EPA invites the public to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assess results of early life exposure to any of the four above listed chemical compounds.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d), (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 27, 2003.

Marianne Lamont Horinko,

Acting Administrator.

For reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7641q.

2. Section 51.100 is proposed to be amended by adding paragraph (s)(5) as follows:

§ 51.100 Definitions.

* * * * * * *

(s) * * *

(5) The following compounds are VOC for purposes of all recordkeeping, emissions reporting, and inventory requirements which apply to VOC, but are not VOC for purposes of VOC emissions limitations or VOC content requirements:

1,1,1,2,2,3,3-heptafluoro-3-methoxy-propane (n-$C_3F_7OCH_3$), 3-ethoxy-1,1,1,2,3,4,4,5,5,6,6,6-dodecafluoro-2-(trifluoromethyl) hexane (HFE–7500), 1,1,1,2,3,3,3-heptafluoropropane (HFC 227ea), and methyl formate ($HCOOCH_3$).

[FR Doc. 03–22449 Filed 9–2–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 030818203–3203–01; I.D. 071503D]

RIN 0648–AR32

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Observer Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS proposes to amend regulations governing the North Pacific Groundfish Observer Program (Observer Program). This action is necessary to amend current regulations to provide flexibility in the deployment of observers in the Exclusive Economic Zone (EEZ) off the coast of Alaska. This action is intended to ensure continued collection of high quality observer data to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs) and to promote the goals and objectives contained in those FMPs.

DATES: Comments must be received by October 3, 2003.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Durall. Hand delivery or courier delivery of comments may be sent to NMFS, 709 West 9th Street, Room 420, Juneau, AK 99801. Comments may also be sent via facsimile to 907–586–7557. Comments

will not be accepted if submitted by email or the Internet. Copies of the Regulatory Impact Review/Initial Regulatory Flexibility Analysis (RIR/IRFA) prepared for this proposed regulatory action and the Environmental Assessment (EA) prepared for the Extension of the Interim North Pacific Groundfish Observer Program beyond 2002 are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Jason Anderson, 907–586–7228 or *jason.anderson@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Management Area (BSAI) in the Exclusive Economic Zone under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations implementing the FMPs appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

The Council adopted and NMFS implemented the Interim Groundfish Observer Program (Interim Program) in 1996, which superseded the North Pacific Fisheries Research Plan (Research Plan). The requirements of the Interim Program were extended through 1997 (61 FR 56425, November 1, 1996), again through 1998 (62 FR 67755, December 30, 1997), again through 2000 (63 FR 69024, December 15, 1998), again through 2002 (65 FR 80381, December 21, 2000), and again through 2007 (67 FR 72595, December 6, 2002). The Interim Program provides the framework for the collection of data by observers to obtain information necessary for the conservation and management of the groundfish fisheries managed under the FMPs. Further, it authorizes mandatory observer coverage requirements for vessels and shoreside processors and establishes vessel, processor, and contractor responsibilities relating to the Observer Program.

A final rule to amend regulations governing observer coverage requirements for vessels and shoreside processors in the North Pacific Groundfish Fisheries was published in the **Federal Register** on January 7, 2003 (68 FR 715). The intent of the final rule was to address concerns about: (1) Shoreside processor observer coverage; (2) shoreside processor observer logistics; (3) observer coverage requirements for vessels fishing with groundfish pot gear; and (4) confidentiality of observer personal information. This proposed rule is intended to correct and clarify specific provisions of the January 7, 2003, final rule.

This proposed rule would amend the current regulations to allow an observer to be housed: (1) On a stationary floating processor; (2) on a vessel he or she will be assigned to for a time period prior to the vessel's departure from port necessary to coordinate the vessel observer's deployment logistics and vessel departure plans; (3) on a vessel for 24 hours following the completion of an offload where the observer has duties and is scheduled to disembark; and (4) on a vessel for 24 hours following the vessel's arrival in port when the observer is scheduled to disembark.

Subsequent to publication of the January 7, 2003, final rule, Observer Program staff received comments from two separate observer providers concerned with their ability to effectively deploy observers under the current regulations at § 679.50 (i)(2)(vi). In order to account for potential logistics problems, both observer providers described a common practice whereby observers are flown to their port of departure 3 or 4 days before the vessel is scheduled to depart. Flight cancellations and delays due to weather are common so fishing companies often request that observers arrive prior to their anticipated departure date.

Observers often arrive at their assigned vessel and encounter delays in the vessel's departure. Vessel operators are often unable to predict exactly when they will be able to leave port for a fishing trip due to weather, mechanical failure, labor disputes, and other unanticipated problems. These delays result in periods of time where an observer may be housed on an assigned vessel that is not traveling to fishing grounds or actively involved in fishing.

As observers arrive, they move onto their assigned vessels and await departure. Under current regulations, observers may not be housed on vessels they are assigned to until 24 hours prior to their departure time. In their attempt to mitigate potential logistical problems and expenses, observer providers may, at times, be in violation of current regulations. This action is meant to provide fishing operations with planning flexibility to deal with these uncertainties, and give observer providers improved opportunities to serve their customers.

The action would have an effect on observers equivalent to the lengthening of a fishing trip. Observers would receive normal contracted compensation for the additional days spent on vessels. Moreover, fishing operations would pay for the extra days of observer availability. This would provide an incentive to the fishing operation to only contract for the additional days that were absolutely necessary to deal with the departure uncertainty.

The proposed regulations also provide for housing aboard stationary floating processors. Current regulations at 679.50(i)(2)(vi)(B) govern the housing requirements for observers assigned to shoreside processing facilities and for observers between vessel or shoreside assignments while still under contract to an observer provider. Observers are commonly deployed to stationary floating processors and catcher vessels delivering to stationary floating processors. Stationary floating processors are often in remote locations and observers are commonly housed on these stationary floating processors before, after, and in between catcher vessel assignments and while assigned to a stationary floating processor. During review of current regulations at 679.50(i)(2)(vi)(B) and (C), NMFS realized stationary floating processors were not accounted for as possible accommodations for observers deployed to catcher vessels delivering to these stationary floating processors. This action would extend the requirements to observers being deployed in these circumstances. Given the remoteness of these stationary floating processors, NMFS considers the practice of housing observers deployed to catcher vessels delivering to stationary floating processors reasonable. Accommodation requirements at 679.50(i)(2)(vi)(B) for observers being housed on stationary floating processors are the same as those for a licensed hotel, motel, bed and breakfast, or other shoreside accommodations.

Regulations at 679.50(i)(2)(vi)(C) would be amended to clarify that these housing requirements apply to observers under contract.

Further, during review of these regulations, NMFS noticed that 679.50(i)(2)(vi)(C)(*2*) and (*3*) were the same. The proposed amendment to the regulations would clarify NMFS intent by accounting for two housing situations where the observer is scheduled to disembark the vessel. First, the observer could be housed on a vessel for up to 24 hours following the completion of an offload where the observer has duties and is scheduled to disembark. This accounts for assignments to catcher boats which target pollock and the observer is required to monitor the offload for prohibited species. Second, the observer

could be housed on a vessel for 24 hours following the vessel's arrival in port where the observer is scheduled to disembark. This accounts for assignments to all other vessels where the observer's duties are complete upon arrival to port.

This proposed rule would amend regulations at 679.50(i)(2)(vi)(D) by moving text to the preamble. It is a requirement that observers are provided housing within the standards outlined in the regulations. Therefore, it is implied that alternative housing must be arranged if the conditions in paragraph D are not met. This statement is interpretive and does not change the intent of NMFS.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

An Initial Regulatory Flexibility Analysis (IRFA) was prepared to evaluate the impacts of this action on directly regulated small entities in compliance with the requirements of Section 603 of the Regulatory Flexibility Act (RFA). The reasons for the action, its objectives, and its legal basis have been described earlier in the preamble. A copy of this analysis is available from NMFS (*see* **ADDRESSES**).

For the proposed actions, the small regulated entities include: (1) Fishing vessels with observer coverage requirements and total annual gross revenues of less than $3.5 million from all the operation's commercial activity taken together; (2) processing facilities with observer coverage requirements and fewer than 500 employees, when all their affiliated operations, worldwide, are combined; (3) the CDQ groups; and (4) observer providers. Therefore about 330 small regulated entities could be affected by the proposed rule, or about 215 if the catcher vessels in the AFA pollock cooperatives are excluded.

The preferred alternative does not appear to have adverse impacts on small entities. The alternative would amend the current regulations to allow an observer to be housed: (1) On a stationary floating processor; (2) on a vessel he or she will be assigned to for a time period prior to the vessel's departure from port necessary to coordinate the vessel observer's deployment logistics and vessel departure plans; (3) on a vessel for 24 hours following the completion of an offload where the observer has duties and is scheduled to disembark; and (4) on a vessel for 24 hours following the vessel's arrival in port when the observer is scheduled to disembark. This alternative provides better opportunities to deal with the uncertainties associated with vessel operations and subsequent placement of the observer.

The status quo is the alternative to the preferred action. The status quo would not clarify the regulations or provide fishing operations with additional flexibility to deal with the uncertainties associated with the deployment of observers. The status quo was rejected because it would not accomplish the objectives of the action, and because it would have a relatively adverse impact on small entities.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities. This analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 27, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.50, paragraphs (i)(2)(vi)(B), (C), and (D) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2007.

* * * * *

(i) * * *

(2) * * *

(vi) * * *

(B) Except as provided in paragraphs (i)(2)(vi)(C) and (i)(2)(vi)(D) of this section, each observer deployed to a shoreside processing facility or stationary floating processor, and each observer between vessel, stationary floating processor or shoreside assignments while still under contract with a permitted observer provider, shall be provided with accommodations at a licensed hotel, motel, bed and breakfast, stationary floating processor, or other shoreside accommodations for the duration of each shoreside assignment or period between vessel or shoreside assignments. Such accommodations must include an assigned bed for each observer and no other person may be assigned that bed for the duration of that observer's stay. Additionally, no more than four beds may be in any room housing observers at accommodations meeting the requirements of this section.

(C) An observer under contract may be housed on a vessel he or she will be, or currently is, assigned to for a period not to exceed:

(*1*) The time period prior to the vessel's departure from port necessary to coordinate the vessel observer's deployment logistics and vessel departure plans;

(*2*) Twenty-four hours following the completion of an offload when the observer has duties and is scheduled to disembark; or

(*3*) Twenty-four hours following the vessel's arrival in port when the observer is scheduled to disembark.

(D) During all periods an observer is housed on a vessel, the observer provider must ensure that the vessel operator or at least one crew member is aboard.

* * * * *

[FR Doc. 03–22456 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 68, No. 170
Wednesday, September 3, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development One Hundred and Thirty-Ninth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and thirty-ninth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 8 a.m. to 1 p.m. on October 6, 2003 in the ground floor meeting room of the National Association of State Universities & Land Grant Colleges (NASULGC), at 1307 New York Avenue, NW., Washington, DC.

The BIFAD at this meeting will hear a report and act on recommendations from SPARE (Strategic Partnership for Agricultural Research & Education, a BIFAD committee), receive an update on the implementation of the BIFAD Long-Term Training initiative; and will consider the report on USAID-university relationships (a BIFAD-commissioned study).

The meeting is free and open to the public. Those wishing to attend the meeting or obtain additional information about BIFAD should contact Curtis Nissly, the Designated Federal Officer for BIFAD. Write him in care of the U.S. Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW., Room 2.11–085, Washington, DC 20523–2110 or telephone him at (202) 712–1064 or fax (202) 216–3010.

Dated: August 28, 2003.

Roger Sloan,

EGAT/AG/ARPG, Director.

[FR Doc. 03–22394 Filed 9–2–03; 8:45 am]

BILLING CODE 6116–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: October 1, 2003 (9 a.m. to 5 p.m.).

Location: National Press Club, 529 14th St., NW., 13th Floor, Washington, DC.

This meeting will feature discussion of gender issues in commemoration of the 30th anniversary of the Percy Amendment. Other topics to be covered include post-conflict reconstruction, the Millennium Challenge Corporation, as well as HIV/AIDS programs. Participants will have an opportunity to ask questions of the speakers and participate in the discussion.

The meeting is free and open to the public. Persons wishing to attend the meeting can fax or e-mail their name to Ashley Mattison, 202–347–9212, *pvcsupport@datexinc.com.*

Dated: August 26, 2003.

Noreen O'Meara,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA).

[FR Doc. 03–22395 Filed 9–2–03; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Glenn/Colusa County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Glenn/Colusa County Resource Advisory Committee (RAC) will meet in Willows, California. Agenda items to be covered include: (1) Introductions, (2) Approval of Minutes, (3) Public Comment, (4) Brochure for Glenn/Colusa, (5) Ski-High Project/ Possible Action, (6) How To Solicit Projects, (7) November Committee Conference, (8) Status of Members, (9) Grants & Agreements, (10) General Discussion, (11) Next Agenda.

DATES: The meeting will be held on September 22, 2003, from 1:30 p.m. and end at approximately 4:30 p.m.

ADDRESSES: The meeting will be held at the Mendocino National Forest Supervisor's Office, 825 N. Humboldt Ave., Willows, CA 95988. Individual wishing to speak or propose agenda items must send their names and proposals to Jim Giachino, DFO, 825 N. Humboldt Ave., Willows, CA 95988.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Public input sessions will be provided and individuals who made written requests by September 18, 2003, will have the opportunity to address the committee at those sessions.

Dated: August 24, 2003.

Robert McCabe,

Acting Designated Federal Official.

[FR Doc. 03–22360 Filed 9–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Ketchikan Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ketchikan Resource Advisory Committee will meet in Ketchikan, Alaska, September 25, 2003, and October 23, 2003. The purpose of these meetings is to discuss potential projects under the Secure Rural Schools and Community Self-Determination Act of 2000.

DATES: The meetings will be held September 25, 2003, and October 23, 2003.

ADDRESSES: The meetings will be held at Southeast Alaska Discovery Center Learning Center (back entrance), 50 Main Street, Ketchikan, Alaska. Send written comments to Ketchikan Resource Advisory Committee, c/o District Ranger, USDA Forest Service, 3031 Tongass Ave., Ketchikan, AK 99901, or electronically to *jingersoll@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Jerry Ingersoll, District Ranger, Ketchikan-Misty Fiords Ranger District, Tongass National Forest, (907) 228–4100.

SUPPLEMENTARY INFORMATION: The meetings are open to the public. Committee discussion is limited to Forest Service staff and Committee members. However, public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 25, 2003.

Virginia D. Nichols,

Acting Forest Supervisor.

[FR Doc. 03–22375 Filed 9–2–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Finding of No Significant Impact for Buck and Duck Creeks Watershed, Nemaha County, NE

Introduction

The Buck and Duck Creeks Watershed is a federally assisted action authorized for planning under Pub. L. 83–566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, State, and Federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Natural Resources Conservation Service, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, Nebraska 68508–3866.

Recommended Action

Proposed is the development of one floodwater retarding dam on Buck Creek with a permanent pool surface area of 45 acres, and one multi-purpose floodwater retarding and recreation dam on Duck Creek with a permanent pool surface area of 49 acres. The Buck and Duck Creeks Watershed contains 17,880 acres of which 4595 acres are upstream of the Buck Creek dam and 4096 acres are upstream of the Duck Creek dam.

Effect of Recommended Action

More efficient drainage will occur on 6000 acres of floodplain cropland, which will reduce standing crop and stored crop damages. An additional 188 acres of floodplain land, within the project area, will have floodwater totally eliminated.

Water quality will be enhanced by decreased concentrations of phosphorus and sediment bound pesticides downstream of the dams.

Sediment delivery to the Missouri floodplain, from this watershed, will be significantly reduced by the two structures, which will control most of the upland drainage area in the watershed. In total, sediment delivery to the Missouri floodplain, from the watershed, will be reduced by 76 percent or 20,700 tons annually. This project will eliminate need for any future construction of sediment basins by the Peru Drainage District.

Fish habitat will be improved by the addition of the pools behind the dams. Deliberate in lake measures, as recommended by the Nebraska Game and Parks Commission, will be installed in the Duck Creek reservoir to enhance fisheries.

Water based recreation will be planned at the Duck Creek dam. This will provide an estimated 9692 annual public recreational visits.

Based on cultural resource identification and evaluation efforts there are no significant historic properties in the project area of potential effect. Consultation has been completed with the Nebraska State Historic Preservation Officer and the nine Indian tribal governments who have indicated historic interests in the general area.

If cultural resources are discovered during construction, appropriate notice will be made by NRCS to the State Historic Preservation Officer, the National Park Service, and the Advisory Council on Historic Preservation. NRCS will take action as prescribed in NRCS GM 420, Part 401, to protect or recover any significant cultural resources discovered during construction.

No threatened or endangered species in the watershed will be affected by the project.

No significant adverse environmental impacts will result from installations except for minor inconveniences to local residents during construction.

Alternatives

Three alternatives were analyzed in the plan.

Alternative 1: Without Project. The problem of flooding and sedimentation requiring the Peru Drainage District to find another location for a sediment catchment basin would persist. The regional shortage of recreation would continue. The value of the Without Project Alternative damages is estimated to be $50,806 annually.

Alternative 2: National Economic Development (NED) Plan. This alternative, the selected alternative, consists of a floodwater retarding dam on Buck Creek. This dam has 345 acre feet of sediment storage and 1137 acre feet of floodwater storage. A multi-purpose floodwater retarding and recreation dam will be located on Duck Creek. This dam will have 379 acre feet of sediment storage, 321 acre feet of recreation storage, and 1123 acre feet of floodwater storage.

Alternative 3: This alternative consists of two floodwater retarding dams, one on Buck Creek and one on Duck Creek. The floodwater retarding dam on Buck Creek would have 345 acre feet of sediment storage and 1137 acre feet of floodwater storage. The floodwater retarding dam on Duck Creek would have 379 acre feet of sediment storage and 981 acre feet of floodwater storage.

Consultation-Public Participation

An application for assistance was submitted by the Nemaha Natural Resources District on November 19, 1999. The request was a result of local concern and interest in addressing flood protection, sedimentation, fish and wildlife, and recreation.

A scoping meeting was held June 27, 2001 to assemble an interdisciplinary team. The purpose of the interdisciplinary was to review all interest and or concerns of the project area. Nebraska Game and Parks Commission, Nebraska Department of Natural Resources, Resource Conservation and Development, Nemaha Natural Resources District, University of Nebraska, Cooperative Extension, local residents and the Natural Resources Conservation Service were in attendance.

Consultation was completed with the Nebraska State Historic Preservation Officer and with the nine Indian tribal governments who have identified historical interests in the watershed area.

The environmental assessment was transmitted to all participating and interested agencies, groups, and individuals for review and comment in January 2002. Public meetings were held throughout the planning process to keep all interested parties informed of the study progress and to obtain public input to the plan and environmental evaluation.

Agency consultation and public participation to date have shown no unresolved conflicts with the implementation of the selected plan.

Conclusion

The Environmental Assessment summarized above indicates that this Federal action will not cause significant local, regional, or national impacts on the environment. Therefore, based on the above findings, I have determined that an environmental impact statement for the Buck and Duck Creeks Watershed Plan is not required.

Dated: August 25, 2003.

Stephen K. Chick,

State Conservationist.

[FR Doc. 03–22419 Filed 9–2–03; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 42–2003]

Foreign-Trade Zone 210—Port Huron, MI; Application for Expansion of Scope of Manufacturing Authority, Cross Hüller-North America (Machine Tools)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Cross Hüller-North America, operator of FTZ 210—Site 2 (Port Huron Industrial Park), pursuant to section 400.32(b)(1) of the Board's regulations (15 CFR Part 400), requesting an expansion of the scope of manufacturing authority to include new foreign-origin components used in the production of metalworking machine tools under FTZ procedures. It was formally filed on August 25, 2003.

Cross Hüller operates a facility within FTZ 210—Site 2 at the Port Huron Industrial Park, in Port Huron, Michigan. The facility is used to produce metal-working equipment under FTZ procedures, including modular transfer machines, computer-controlled machining centers (drilling, boring, broaching, milling), lathes, and flexible manufacturing systems for the U.S. market and export (Board Order 1230, 67 FR 37384, 5–29–2002).

The applicant currently requests that the scope of authority for the sourcing of foreign components be extended to include the following items: Reinforced vulcanized rubber hoses, millstones/grindstones/grinding wheels of agglomerated abrasives or ceramics, laminated safety glass, socket wrenches, molding patterns, distributors, ignition coils, pyrometers and related instruments, revolution counters, production counters and parts thereof, lamps and lamp fittings of base metal, plastic and brass (2003 duty rate range: 1.4—9.0%, 5¢/kg+2%). The list represents an expanded scope of Cross Hüller's existing scope of sourcing authority.

FTZ procedures would continue to exempt Cross Hüller from Customs duty payments on the foreign components used in production for export. On its domestic sales and exports to NAFTA countries, the company can choose the lower duty rate that applies to finished metalworking equipment (3.3—4.4%) for the foreign inputs noted above. In accordance with section 400.32(b)(1) of the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or
2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is October 20, 2003. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 3, 2003).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above.

Dated: August 25, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–22435 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1284]

Approval for Expanded Manufacturing Authority (Construction Equipment) Within Foreign-Trade Subzone 57B; Volvo Construction Equipment North America, Inc., Asheville, North Carolina Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Volvo Construction Equipment North America, Inc. (Volvo CENA), operator of Foreign-Trade Subzone 57B, has applied to expand the scope of manufacturing authority under zone procedures within Subzone 57B, at the Volvo CENA plant located at sites in the Asheville, North Carolina area, to include additional finished products (skid-steer loaders and compaction rollers) (FTZ Doc. 1–2003; filed 1–7–2003);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 1591, 1–13–2003); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–22441 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1295]

Expansion of Foreign-Trade Zone 40; Cleveland, Ohio Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40–Site 8 at the Strongsville Industrial Park, Strongsville, Ohio, within the Cleveland Customs port of entry area (FTZ Docket 14–2003);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 13255, 3/19/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the

examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40–Site 8 is approved, subject to the Act and the Board's regulations, including section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 21st day of August, 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22433 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1290]

Expansion of Foreign-Trade Zone 40, Cleveland, Ohio Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40–Site 1 by adding two parcels at the Cleveland Bulk Terminal (Site 1b) and the Tow Path Valley Business Park (Site 1c) in Cleveland, Ohio, within the Cleveland Customs port of entry area (FTZ Docket 6–2003; filed 1/23/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 5271, 2/3/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40–Site 1 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22437 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1289]

Expansion of Foreign-Trade Zone 40; Cleveland, Ohio, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Cleveland-Cuyahoga County Port Authority, grantee of Foreign-Trade Zone 40, submitted an application to the Board for authority to expand FTZ 40–Site 3 to include the Snow Road Industrial Park (42 acres) in Brook Park, Ohio, within the Cleveland Customs port of entry area (FTZ Docket 38–2002; filed 9/26/02);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 62696, 10/8/02) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 40–Site 3 is approved, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22443 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 35–2003]

Foreign-Trade Zone 33—Pittsburgh, PA; Application for Subzone Status, Mitsubishi Electric Power Products, Inc. (Circuit Breakers), Warrendale and Freedom, PA; Technical Correction of Application

Notice is hereby given that the application of Board (the Board) by the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of FTZ 33, requesting special-purpose subzone status for the circuit breaker manufacturing facilities of Mitsubishi Electric Power Products, Inc. (MEPPI) (a subsidiary of Mitsubishi Electric Corporation, of Japan), located in Warrendale and Freedom, Pennsylvania (68 FR 44281, 7–28–03), has been corrected to revise the scope of manufacturing authority to include full, straight-time production capacity of 1,500 units per year.

The comment period is reopened until September 23, 2003. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. *Submissions via Express/Package Delivery Services*: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or

2. *Submissions via the U.S. Postal Service*: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

A copy of the application is available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above and at the U.S. Department of Commerce Export Assistance Center, Suite 2002, 1000 Liberty Avenue, Pittsburgh, PA 15222.

Dated: August 28, 2003.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 03–22434 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1291]

Approval for Expansion of Subzone 33C, Sony Technology Center—Pittsburgh (Television Manufacturing Facility), Mount Pleasant, PA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Regional Industrial Development Corporation of Southwestern Pennsylvania, grantee of FTZ 33, has requested authority on behalf of Sony Technology Center—Pittsburgh (Sony), to expand the scope of authority under zone procedures within the Sony facility in Mt. Pleasant, Pennsylvania (FTZ Docket 56–2002, filed 12/2/2002);

Whereas, notice inviting public comment has been given in the **Federal Register** (67 FR 72915, 12/9/02);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand the scope of authority under zone procedures within Subzone 33C, is approved, subject to the FTZ Act and the Board's regulations, including 400.28.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22438 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1283]

Grant of Authority for Subzone Status, Faurecia Interior Systems (Inc.) (Automotive Interior Components), Fountain Inn, SC

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the South Carolina State Ports Authority, grantee of Foreign-Trade Zone 38, has made application for authority to establish special-purpose subzone status at the automotive interior components manufacturing plant of Faurecia Interior Systems (Inc.) (a.k.a. SIA Automotive USA), located in Fountain Inn, South Carolina (FTZ Docket 49–2002, filed 10–18–2002);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 66109, 10–30–2002);

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval were subject to a restriction requiring that all foreign textile fabric must be admitted to the subzone under privileged foreign status (19 CFR 146.41);

Now, Therefore, the Board hereby grants authority for subzone status at the automotive interior components manufacturing plant of Faurecia Interior Systems (Inc.), located in Fountain Inn, South Carolina (Subzone 38D), at the location described in the application, subject to the FTZ Act and the Board's regulations, including Section 400.28 and the foregoing restriction.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22440 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1294]

Expansion of Foreign-Trade Zone 148, Knoxville, Tennessee, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Industrial Development Board of Blount County, grantee of Foreign-Trade Zone 148, submitted an application to the Board for authority to expand FTZ 148 to include a new site (Site 4) within the CoLinx warehousing facilities in Crossville, Tennessee, adjacent to the Knoxville Customs port of entry (FTZ Docket 9–2003; filed 2/6/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 9047, 2/27/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that the proposal is in the public interest;

Now, Therefore, the Board hereby orders:

The application to expand FTZ 148 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22439 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1288]

Expansion of Foreign-Trade Zone 62, Brownsville, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Brownsville Navigation District, grantee of Foreign-Trade Zone 62, submitted an application to the

Board for authority to expand FTZ 62 to include a site at the FINSA Industrial Park (758 acres; includes temporary site) in Los Indios (Site 4) and to restore 10 acres at the Harlingen Industrial Airpark in Harlingen (Site 2—Parcel A), Texas, within the Brownsville/Los Indios Customs port of entry (FTZ Docket 8–2003; filed 1/24/03);

Whereas, notice inviting public comment was given in the **Federal Register** (68 FR 5272, 2/3/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 62 is approved, subject to the Act and the Board's regulations, including section 400.28, and further subject to the Board's standard 2,000-acre activation limit for the overall zone project.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22436 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1285]

Approval for Expanded Manufacturing Authority (20-inch TV/VCR and TV/DVD Player Combination Units) Within Foreign-Trade Subzone 86E Matsushita Kotobuki Electronics Industries of America, Inc.; Vancouver, WA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Matsushita Kotobuki Electronics Industries of America, Inc. (MKA), operator of Foreign-Trade Subzone 86E, has applied to expand the scope of manufacturing authority under zone procedures within Subzone 86E, at the MKA plant located at sites in Vancouver, Washington, to include additional finished products (20-inch TV/VCR and TV/DVD player combination units) (FTZ Doc. 31–2002; filed 8–12–2002);

Whereas, notice inviting public comment was given in the **Federal Register** (67 FR 54168, 8–21–2002); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest; Now, therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 21st day of August 2003.

Jeffrey May,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 03–22442 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-357–812]

Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Partial Rescission of Antidumping Duty Administrative Review.

SUMMARY: On January 22, 2003, the Department of Commerce (the Department) published in the **Federal Register** (68 FR 3009) a notice announcing the initiation of the administrative review of the antidumping duty order on honey from Argentina. The period of review (POR) is May 11, 2001, to November 30, 2002. This review has now been partially rescinded for certain companies because the requesting parties withdrew their requests.

EFFECTIVE DATE: September 3, 2003

FOR FURTHER INFORMATION CONTACT: Phyllis Hall, Donna Kinsella or David Cordell, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482–1398, (202) 482–0194, (202) 482–0408, respectively.

Scope of the Review

The merchandise under review is honey from Argentina. For purposes of this review, the products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise under review is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and U.S. Customs Service (Customs) purposes, the Department's written description of the merchandise under this order is dispositive.

BACKGROUND:

On December 31, 2002, the American Honey Producers Association and the Sioux Honey Association (collectively "petitioners") requested an administrative review of the antidumping duty order (*See Notice of Antidumping Duty Order: Honey from Argentina*, 66 FR 63672 (December 10, 2001)) on honey from Argentina in response to the Department's notice of opportunity to request a review published in the **Federal Register**. The petitioners requested the Department conduct an administrative review of entries of subject merchandise made by 21 Argentine producers/exporters. In addition, the Department received requests for reviews from 9 Argentine exporters. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009 (January 22, 2003).

The Department initiated the review for all companies. On January 17, 2003, petitioners requested a withdrawal of request for review of 14 companies and the Department granted this request in *Honey from Argentina: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 68 FR 13895 (March 21, 2003).

On August 13, 2003, two Argentine exporters, Radix S.r.L. ("Radix") and Compania Europeo Americana S.A. ("CEASA"), submitted letters of withdrawal of request for review. On the same date, petitioners also submitted a letter of withdrawal of a request for review with respect to Radix and CEASA.

Ordinarily, parties have 90 days from the publication of the notice of initiation of review in which to withdraw a request for review. *See* 19 CFR 351.213(d)(1). We received

petitioners' and respondents' withdrawal requests after the 90-day period had elapsed. However, in accordance with 19 CFR 351.213(d)(1), the Secretary may extend this time limit if the Secretary decides it is reasonable to do so. In this case, the review has not progressed substantially, nor has the Department conducted verification of the questionnaire responses by Radix or CEASA. Furthermore, the Department has not issued its preliminary results with respect to these 2 companies. As a result, there would be no undue burden on the parties or the Department if the Department were to rescind the review on the basis of these requests. Therefore, the Department has determined that it would be reasonable to grant the withdrawal at this time. Additionally, we conclude that the withdrawal does not constitute an "abuse" of our procedures. *See Antidumping Duties: Countervailing Duties; Final Rule*, 62 FR 27296, 27317 (May 19, 1997). As such, with respect to Radix and CEASA, the Department is rescinding the reviews of the antidumping duty order on honey from Argentina covering the period May 11, 2001, through November 30, 2002.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(l) of the Act and 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: August 26, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22432 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Announcement of Fall 2003 U.S. Coral Reef Task Force Meeting

AGENCY: Department of Commerce.

ACTION: Notice of public meeting and opportunity for public comment.

SUMMARY: The Department of Commerce announces the October 2003 public meeting of the U.S. Coral Reef Task Force (CRTF) in CNMI and Guam. Through the coordinated efforts of its members, including the heads of eleven federal agencies, the Governors of seven states and territories, and the leaders of the Freely Associated States, the Task Force has helped lead U.S. efforts to address the coral reef crisis and sustainably manage the nation's valuable coral reef ecosystems.

Time and Date: Part I—8 a.m. to 5 pm Commonwealth of the Northern Mariana Islands, (CNMI) October 3, 2003; Part II—8 a.m. to 5 p.m. Guam, October 6, 2003. All times Chamorro Standard Time.

Place: Part I—Dai Ichi Hotel, Garapan, Saipan, CNMI; Part II—Hilton Guam Resort & Spa, Tumon Bay, Guam.

Matters To Be Considered: During the October 2003 public meeting, the CRTF will discuss implementation of the National Coral Reef Action Strategy, recognize significant contributions to coral reef conservation, discuss implementation and development of 3-year Local Action Strategies, and accept public comments. Once finalized, the agenda will be available from the contacts below and will also be published on the Web at *http://coralreef.gov/*.

Individuals and organizations will have opportunities to register for both exhibit space and to provide public comments. Wherever possible, those with similar viewpoints or messages are encouraged to make joint statements. Public comments will be received on the afternoons of October 3rd (in CNMI) and October 6th (in Guam). Written public statements may also be submitted to the Task Force prior to the meeting or following the meeting. The deadline for submission of written public statements is October 20, 2003.

Travel information and meeting updates are posted on the Web at *http://coralreef.gov.*

FOR FURTHER INFORMATION CONTACT: Organizations and individuals based outside of Guam and the Commonwealth of the Northern Mariana Islands wishing to register for public comments, submit written public statements or to obtain additional information should contact the CRTF meeting office: Lisa Dawson, Coral Reef Conservation Program, Office of Response and Restoration, N/ORR, 1305 East West Hwy, Silver Spring, MD 20910, Phone (301) 713–2989 x105, Fax (301) 713–4389, e-mail: *coralreef@noaa.gov*, subject: USCRTF meeting.

Organizations or individuals in Guam and CNMI should contact: Becky Cruz Lizama, CNMI Point of Contact, Coastal Resources Management Office, Office of the Governor, P.O. Box 10007, Saipan, MP 96950, Telephone: (670) 664–8305, e-mail: *crm.permit@saipan.com*, subject: USCRTF meeting.

Exhibit space reservations can be made on the on-line meeting registration form at *http://coralreef.gov.*

Dated: August 29, 2003.

Ted I. Lillestolen,

Captain/NOAA, Associate Deputy Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–22531 Filed 9–2–03; 12:33 pm]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[r 082603A]

Endangered Species; File No. 1446

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that North Carolina Division of Marine Fisheries (Mr. Blake Price, Principal Investigator), P.O. Box 769, Morehead City, North Carolina 28557, has applied in due form for a permit to take threatened and endangered sea turtles for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before October 3, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Carrie Hubard or Sarah Wilkin, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The applicant proposes to test two types of large mesh gillnets to ascertain which type of net will better reduce sea turtle interactions while maintaining targeted fish catch rates. The control net will be constructed of 6.5 inch monofilament webbing with a twine diameter of 0.57mm, 25 meshes deep. The low profile net will be constructed

of 6.5 inch monofilament webbing with a twine diameter of 0.57 mm, eight meshes deep. Nets will be set at dusk and retrieved in the early morning. Captured sea turtles will be examined for any possible injuries and held for approximately two hours to ensure they are healthy before being transported away from the fishing area and released. Turtles will be identified to species, measured, photographed, and flipper and PIT tagged. Any comatose or debilitated turtles will be transported to a rehabilitation center. During the life of the permit, the applicant requests authorization to capture 21 animals, representing a combination of Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) sea turtles. An additional 2 hawksbill (*Eretmochelys imbricata*) and 2 leatherback (*Dermochelys coriacea*) turtles may also be captured. Of the captured turtles, 9 of the Kemp's/loggerhead/green turtle aggregate, 1 hawksbill, and 1 leatherback may be mortalities. Research will be conducted in Pamlico Sound, North Carolina and the permit would expire in December 2004.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile to (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: August 28, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–22457 Filed 9–2–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by October 3, 2003.

Title and OMB Number: Defense Security Service—Industrial Security Review Data and Industrial Security Facility Clearance Survey Data; OMB Number 0704–[To Be Determined].

Type of Request: New Collection.

Number of Respondents: 12,975.

Responses Per Respondent: 1.

Annual Responses: 12,975.

Average Burden Per Response: 3.2 hours (average).

Annual Burden Hours: 41,764.

Needs and Uses: Executive Order 12829, "National Industrial Security Program (NISP)," established the NISP to safeguard Federal government classified information. The Defense Security Service administers the Defense portion of the NISP and is the office of record for the maintenance of information pertaining to contractor facility clearance records and industrial security information regarding cleared contractors under its cognizance. Contractors are subject to an initial facility clearance survey and periodic government security reviews to determine their eligibility to participate in the NISP and ensure that safeguards employed are adequate for the protection of classified information. To the extent possible, information required as part of the survey or security review is obtained as a result of observation by the representative of the Cognizant Security Agency (CSA) or its designated Cognizant Security Office. Some of the information may be obtained in conference with key management personnel and/or employees of the company. The information is used to respond to all inquiries regarding the facility clearance status and storage capability of cleared contractors. It is also the basis for verifying whether contractors are appropriately implementing NISP security requirements.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions; State, local or tribal government.

Frequency: On occasion; Annually.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 26, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22402 Filed 9–2–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Notice.

SUMMARY: The meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Defense Acquisition University, Capital and Northeast Region, 9820 Belvoir Road, Fort Belvoir, Virginia, from 0900–1500. The purpose of this meeting is to report back to the BoV on continuing items of interest.

DATES: September 24, 2003 from 9 a.m. to 3 p.m.

ADDRESSES: Defense Acquisition University, Capital and Northeast Region, 9820 Belvoir Road, Fort Belvoir, Virginia.

FOR FURTHER INFORMATION CONTACT: Ms. Particia Cizmadia at 703–805–5134.

SUPPLEMENTARY INFORMATION: The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first-served basis. Persons desiring to attend the meeting should call Ms. Patricia Cizmedia at 703–805–5134.

Dated: August 27, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22403 Filed 9–2–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board of Advisors Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming

meeting of the National Security Education Board Group of Advisors. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Pub. L. 102–183, as amended.

DATES: September 23, 2003.

ADDRESSES: The Academy for Educational Development (AED), 1825 Connecticut Avenue, NW, 8th Floor, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Director for Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu.*

SUPPLEMENTARY INFORMATION: The National Security Education Board Group of Advisors meeting is open to the public.

Dated: August 27, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 03–22361 Filed 9–2–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: National Defense University.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Pub. L. 102–183, as amended.

DATES: October 28, 2003.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu.*

SUPPLEMENTARY INFORMATION: The Board meeting is open to the Public.

Dated: August 27, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 03–22362 Filed 9–2–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice of computer matching program between the U.S. Department of Education (ED) and the Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE).

SUMMARY: Pursuant to the Computer Matching and Privacy Protection Act of 1988 and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, this document gives notice of a computer matching program between ED and HHS.

Background: This computer matching program between the two agencies will become effective, as indicated in paragraph six of this notice. In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503), the Office of Management and Budget (OMB) Final Guidelines on the Conduct of Matching Programs (*see* 54 FR 25818, June 19, 1989), and OMB Circular A–130, we provide the following information:

1. Participating Agencies. U.S. Department of Education (ED), recipient agency. Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE), source agency.

2. Purpose of Match. The purpose of the match is to obtain address information on individuals who owe funds to the Federal government for defaulted student loans or grant overpayments. ED will use this information to initiate independent collection of these debts under the provisions of the Debt Collection Act of 1982 when voluntary payment is not forthcoming. For individuals whose annual wage level exceeds $16,000, these collection efforts will include orders by ED or a guaranty agency to the employing entity, pursuant to statutory, non-judicial, administrative wage garnishment authority, to withhold a portion of the disposable pay of the debtor until such time as the obligation is paid in full.

3. Authority for Conducting the Match. The legal authority for conducting this match is contained in the Social Security Act (42 U.S.C. 653(j)(6)), as amended (Pub. L. 106–113).

4. Records and Individuals Covered by the Match. The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows: ED: 18–11–07, Student Financial Assistance Collection Files, 64 FR 30166–30169 (June 4, 1999), as amended, 64 FR 72407 (December 27, 1999). OCSE: 09–90–0074, Location and Collection System, 65 FR 57817 (September 26, 2000).

5. Description of Computer Matching Program. ED administers student financial assistance programs under the Higher Education Act of 1965 (HEA). OCSE maintains a database that consists of three separate components. The first component, the W4 table, contains all newly hired employees as reported from the State Directory of New Hires (SDNH) and directly from Federal agencies. Component two, the QW table, contains quarterly wage information on individual employees, as received from Federal agencies and States. The final component, the UI table, contains, unemployment insurance information of individuals who have received, or made application for, unemployment benefits, as reported by State Employment Security Agency or other State agencies responsible for the implementation of the Unemployment Insurance Program.

This matching agreement between ED and OCSE will assist ED in locating and collecting funds from delinquent debtors. The identifying elements that the two agencies will match are as follows:

ED: Name and Social Security Number (SSN) of delinquent debtors.

OCSE: Name and SSN of all newly hired employees and individuals who have received, or made application for, unemployment benefits.

OCSE will perform the computer match using all nine digits of the SSN of the ED file against the OCSE computer database. OCSE will produce a file containing the name, SSN, current home address, employer and employer's address for each individual identified, based on the match. The file of matches will be returned to ED.

ED is responsible for verifying and determining that the data on the NDNH reply file is consistent with ED's source file and for resolving any discrepancies

or inconsistencies on an individual basis. ED will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts, as a result of the match.

6. Inclusive Dates of the Matching Program. The matching program will become effective at the latest of the following three dates: (1) 40 days after the signing of the transmittal letters sending the computer matching program report to Congress and OMB, unless OMB disapproves the agreement within the 40 day review period or grants a waiver of the review period for compelling reasons; (2) 30 days after publication of this notice in the **Federal Register**; or (3) July 22, 2003. The matching program will continue for 18 months after the effective date and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

7. Address for Receipt of Comments or Inquiries. If you wish to comment on this matching program or obtain additional information about the program including a copy of the computer matching agreement between ED and OCSE, contact Marian E. Currie, U.S. Department of Education, 400 Maryland Avenue, SW., Union Center Plaza, Room 41B4, Washington, DC 20202–5320, telephone: (202) 377–3212; or, as a secondary contact: Adara L. Walton, 400 Maryland Avenue, SW., Union Center Plaza, Room 44E3, Washington, DC 20202–5320, telephone: (202) 377–3236. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have the Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

You may also view this document in text or PDF at the following site: *http://ifap.ed.gov/csb_html/fedlreg.htm.*

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Authority: (5 U.S.C. 5514(a); 5 U.S.C. 552a).

Dated: August 27, 2003.

Theresa S. Shaw,

Chief Operating Officer, Federal Student Aid.

[FR Doc. 03–22452 Filed 9–2–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah; Notice of Meeting

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 18, 2003 5:30 p.m.–9:30 p.m.

ADDRESSES: 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: Dianna Feireisel, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, Paducah, Kentucky 42001, (270) 441–6812.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m.—Informal Discussion.
6 p.m.—Call to Order; Introductions; Approve July and August Minutes; Review Agenda; Election of Chair and Vice-Chair.
6:10 p.m.—DDFO's Comments
- ES & H issues
- Budget Update
- EM Project Updates
- CAB Recommendation Status
- Cleanup Scope Update
- Other

6:30 p.m.—Federal Coordinator Comments
6:40 p.m.—Ex-officio Comments
6:50 p.m.—Public Comments and Questions
7 p.m.—Administrative Issues
- Review of Workplan
- Review Next Agenda
- September Chairs Meeting

7:20 p.m.—Review of Action Items
7:35 p.m.—Break
7:45 p.m.—Presentation
- S & T Landfills Scoping Plan
- North-South Diversion Ditch Workplan

8:20 p.m.—Public Comments and Questions
8:30 p.m.—Task Force and Subcommittee Reports
- Water Task Force
- Waste Operations Task Force
- Long Range Strategy/Stewardship
- Community Concerns
- Public Involvement/Membership
- Ad Hoc for Chairs' Meeting

9 p.m.—Final Comments
9:30 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on August 27, 2003.

Belinda G. Hood,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 03–22411 Filed 9–2–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–84–000, et al.]

Conectiv Delmarva Generation, Inc., et al.; Electric Rate and Corporate Filings

August 14, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Conectiv Delmarva Generation, Inc.

[Docket No. EG03–84–000]

Take notice that on August 5, 2003, Conectiv Delmarva Generation, Inc. (CDG) filed an amendment to Paragraph 6 of its July 24, 2003 Application for Determination of Exempt Wholesale Generator Status in the above-captioned proceeding.

CDG states that it has served this filing on the Maryland Public Service Commission, the Delaware Public Service Commission, the New Jersey Board of Public Utilities, the Virginia State Corporation Commission, the District of Columbia Public Service Commission and the Securities and Exchange Commission.

Comment Date: September 4, 2003.

2. Conectiv Atlantic Generation, L.L.C.

[Docket No. EG03–85–000]

Take notice that on August 5, 2003, Conectiv Atlantic Generation, L.L.C. (CAG) filed an amendment to Paragraph 6 of its July 24, 2003 Application for Determination of Exempt Wholesale Generator Status in the above-captioned proceeding.

CAG states that it has served this filing on the Maryland Public Service Commission, the Delaware Public Service Commission, the New Jersey Board of Public Utilities, the Virginia State Corporation Commission, the District of Columbia Public Service Commission and the Securities and Exchange Commission.

Comment Date: September 4, 2003.

3. San Marco Bioenergia S.p.A.

[Docket No. EG03–88–000]

Take notice that on August 8, 2003, San Marco Bioenergia S.p.A. (San Marco) with its principal office at Via G. de Castro 4, 20144 Milano, Italy, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

San Marco states that it is a company organized under the laws of Italy. San Marco further states that it will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating an electric generating facility consisting of a 20 MW Power Plant in Italy, selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment Date: September 4, 2003.

4. Stonycreek WindPower LLC

[Docket No. EG03–89–000]

Take notice that on August 8, 2003, Stonycreek WindPower LLC (Applicant) filed with the Federal Energy Regulatory Commission (Commission) an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations.

Applicant states that it is developing a wind-powered eligible facility with a capacity of 72 megawatts, which will be located in Somerset County, Pennsylvania.

Comment Date: September 4, 2003.

5. PJM Interconnection, L.L.C.

[Docket No. EL01–122–006]

Take notice that on August 7, 2003, PJM Interconnection, L.L.C. (PJM) tendered for filing with the Federal Energy Regulatory Commission (Commission), minor revisions to Attachment M of the PJM Open Access Transmission Tariff which is in compliance with the Commission's July 2, 2003 order (104 FERC ¶ 61,020).

PJM states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM region and on all parties listed on the official service list in the above-captioned proceeding.

Comment Date: August 26, 2003.

1. Central Iowa Power Cooperative; Clarke Electric Cooperative, Inc.; Consumers Energy Cooperative; East-Central Iowa Rural Electric Cooperative; Eastern Iowa Light & Power Cooperative; Farmers Electric Cooperative, Inc.; Guthrie County Rural Electric Cooperative Association; Maquoketa Valley Electric Cooperative; Midland Power Cooperative; Pella Cooperative Electric Association; Rideta Electric Cooperative, Inc.; South Iowa Municipal Electric Cooperative; Association; Southwest Iowa Service Cooperative; T.I.P. Rural Electric Cooperative

[Docket No. EL03–219–000]

Take notice that on August 8, 2003, the above-named non-regulated utilities have filed with the Federal Energy Regulatory Commission (Commission) a joint PURPA implementation plan pursuant to Section 292.402 of the Commission's regulations, for waiver of certain obligations imposed on these applicant utilities under Sections 292.303(a) and 292.303(b) of the Commission's regulations which implement Section 210 of the Public Utility Regulatory Policies Act of 1978.

Comment Date: September 8, 2003.

7. Otter Tail Corporation

[Docket No. ER00–3080–001]

Take notice that on August 11, 2003, Otter Tail Corporation, formerly known as Otter Tail Power Company (Otter Tail) filed an updated market analysis as required by the Commission's August 11, 2000 Order in Docket ER00–3080–000 granting Otter Tail market-based rate authority.

Comment Date: September 2, 2003.

8. Panda Gila River, L.P.

[Docket No. ER01–931–002]

Take notice that on August 6, 2003, Panda Gila River, L.P. filed with the Federal Energy Regulatory Commission a notice of change in status in connection with the transfer by Panda GS V, LLC and Panda GS VI, LLC of their respective interests in TECO-PANDA Generating Company, L.P. to TPS GP, Inc. and TPS LP, Inc.

Comment Date: August 27, 2003.

9. Occidental Power Services, Inc.

[Docket No. ER02–1947–004]

Take notice that on August 6, 2003, Occidental Power Services, Inc., (OPSI) filed a Notice of Change in Status in regard to the Asset Management Agreement with Elk Hills Power L.L.C.

Comment Date: August 27, 2003.

10. Sierra Pacific Power Company

[Docket Nos. ER03–37–004 and ER02–2609–004]

Take notice that on August 8, 2003, Sierra Pacific Power Company submitting a refund report in compliance with the Commission Order issued July 1, 2003 in Docket Nos. ER03–37–000 and ER02–2609–000.

Comment Date: August 29, 2003.

11. Idaho Power Company

[Docket No. ER03–488–004]

Take notice that on August 5, 2003, Idaho Power Company (Idaho Power) tendered for filing Second Revised Service Agreement No. 153, Second Revised Service Agreement No. 155, and Second Revised Service Agreement No. 156, under FERC Electric Tariff First Revised Volume No. 5 for Network

Integration Transmission Service between Idaho Power and Bonneville Power Administration. Idaho Power seeks an effective date of January 1, 2003.

Comment Date: August 26, 2003.

12. Devon Power LLC, Middletown Power LLC, Montville Power LLC Norwalk Power LLC and NRG Power Marketing Inc.

[Docket No. ER03–563–013]

Take notice that on August 5, 2003, Devon Power LLC, Middletown Power LLC, Montville Power LLC, Norwalk Power LLC (collectively Applicants) and NRG Power Marketing Inc., on May 28, 2003, tendered for filing in compliance with the Commission's Order, issued July 24, 2003 (July 24 Order) 104 FERC §61,123, Third Revised Cost of Service Agreements (COS Agreements) among each of the Applicants, NRG Power Marketing Inc, as agent for each Applicant, and ISO New England Inc., and changes to Applicants' cost-of-service to reflect rate adjustments determined by the July 24 Order and supporting documents.

Applicants state that they have served a copy of its filing on ISO New England, Inc. and each person designated on the official service list in Docket No. ER03–563..

Comment Date: August 26, 2003.

13. Southern Company Services, Inc.

[Docket No. ER03–872–001]

Take notice that on August 11, 2003, Southern Company Services, Inc., (SCS), acting on behalf of Georgia Power Company (GPC), filed additional material relating to supplement their May 23, 2003 filing of an Interconnection Agreement between Southern Power Company and Georgia Power. The additional material was submitted in response to the Commission's Letter Order issued July 10, 2003 in Docket No. ER03–872–000.

Comment Date: September 2, 2003.

14. New York Independent System Operator, Inc.

[Docket No. ER03–873–001]

Take notice that on August 6, 2003, the New York Independent System Operator, Inc. (NYISO) tendered for filing a compliance filing in connection with the Commission's July 22, 2003, order in Docket No. ER03–873–000.

The NYISO states it has served a copy of this filing to all parties listed on the official service list. The NYISO also states it has served a copy of this filing on all parties that have executed Service Agreements under the NYISO's Open-Access Transmission Tariff or Services Tariff, the New York State Public Service Commission and to the electric utility regulatory agencies in New Jersey and Pennsylvania.

Comment Date: August 27, 2003.

15. PPL Montana LLC

[Docket ER03–1133–001]

Take notice that on August 6, 2003, PPL Montana LLC (PPL), tendered for filing a supplement to its July 30, 2003 filing of Rate Schedule No. 13. PPL states that the supplemental filing contains a complete set of attachments to replace the attachments to the July 30, 2003 filing.

PPL Montana LLC states that copies of this filing have been served on all PNCA parties.

Comment Date: August 27, 2003.

16. Carolina Power & Light Company

[Docket No. ER03–1156–001]

Take notice that on August 8, 2003, Carolina Power & Light Company, d/b/a Progress Energy Carolinas, Inc., (CPL) filed Substitute Tariff Sheets for Rate Schedule No. 121, originally filed on August 4, 2003. CPL states that the substitute tariff sheets correct typographical errors and minor omissions in the August 4, 2003 filing.

Carolina Power & Light Company states that copies of the filing were served on the original list of recipients in the August 4, 2003 filing.

Comment Date: August 29, 2003.

17. Direct Commodities Trading, Inc.

[Docket No. ER03–1162–000]

Take notice that on August 5, 2003, Direct Commodities Trading, Inc (DCT) petitioned the Commission for acceptance of DCT Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

DCT states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. DCT states that it is not in the business of generating or transmitting electric power. DCT also states that it is an independent private corporation, has no affiliates and is not a subsidiary or parent of any other entity.

Comment Date: August 26, 2003.

18. Energy Cooperative Association of Pennsylvania

[Docket No. ER03–1165–000]

Take notice that on August 6, 2003, Energy Cooperative Association of Pennsylvania (ECAP) petitioned the Commission for acceptance of ECAP Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

ECAP states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. ECAP further states it is not in the business of generating or transmitting electric power and that it is not affiliated with any other organization

Comment Date: August 27, 2003.

19. Avista Corporation

[Docket No. ER03–1166–000]

Take notice that on August 6, 2003, Avista Corporation (Avista) tendered for filing revisions to its 18th Revised FERC Rate Schedule No. 105, the General Transfer Agreement between Avista and the Bonneville Power Administration. Avista states that the revisions to the rate schedule consist of changes to data in exhibits to the General Transfer Agreement to reflect changes in transmission facilities and Bonneville Power Administration's customers and correct certain clerical errors in the effective date. Avista requests an effective date for the changes of October 1, 2003.

Avista states that a copy of this filing was served upon the Bonneville Administration, the counterparty to the General Transfer Agreement.

Comment Date: August 27, 2003.

20. PJM Interconnection, L.L.C.

[Docket No. ER03–1167–000]

Take notice that on August 6, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, DuPont Textiles and Interiors, Inc., and Delmarva Power & Light Company d/b/a Conectiv Power Delivery and a notice of cancellation of an Interim ISA that has been superseded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 17, 2003 effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: August 27, 2003.

21. PJM Interconnection, L.L.C.

[Docket No. ER03–1168–000]

Take notice that on August 6, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, U.S. General Service Administration, Heating Operation and Transmission District, and Potomac Electric Power Company.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 14, 2003 effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: August 27, 2003.

22. PJM Interconnection, L.L.C.

[Docket No. ER03–1169–000]

Take notice that on August 6, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an interconnection service agreement (ISA) among PJM, Bethesda Triangle LLC, and Potomac Electric Power Company.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 29, 2003 effective date for the ISA. PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: August 27, 2003.

23. Entegra North America, L.P.

[Docket No. ER03–1170–000]

Take notice that on August 6, 2003, Entegra North America, L.P. (Entegra) petitioned the Commission for acceptance of Entegra Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Entegra states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Entegra also states that it is not in the business of generating or transmitting electric power.

Comment Date: August 27, 2003.

24. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER03–1171–000]

Take notice that on August 6, 2003, Deseret Generation & Transmission Co-operative, Inc. (Deseret) tendered an informational filing in compliance with Service Agreements on file with the Commission. Deseret states that the filing sets forth the revised approved costs for member-owned generation resources and the revised approved reimbursements under its Resource Integration Agreements with two of its members, Garkane Power Association, Inc. and Moon Lake Electric Association, Inc.

Deseret states that a copy of this filing has been served upon all of Deseret's members.

Comment Date: August 27, 2003.

25. Midwest Energy, Inc.

[Docket No. ER03–1172–000]

Take notice that on August 6, 2003, Midwest Energy, Inc. (Midwest) submitted for filing an amendment to FERC Rate Schedule No. 19, superseding Westar Energy, Inc. First Revised FERC No. 264, Transmission Service Contract between Midwest and Kansas Electric Power Cooperative, Inc., (KEPCo).

Midwest states that a copy of this filing was served upon the Kansas Corporation Commission and KEPCo.

Comment Date: August 27, 2003.

26. Nicole Energy Marketing, Inc.

[Docket No. ER03–1179–000]

Take notice that on August 8, 2003, Nicole Energy Marketing, Inc., submitted for filing a Notice of Cancellation of the Market-based Rate Authority for Nicole Energy Marketing of Illinois, Inc., issued in Docket No. ER00–3637–000. Nicole Energy Marketing of Illinois, Inc., states it is no longer in business.

Comment Date: August 29, 2003.

27. Nicole Energy Services, Inc.

[Docket No. ER03–1180–000]

Take notice that on August 8, 2003, Nicole Energy Services, Inc., submitted for filing a Notice of Cancellation of the Market-based Rate Authority for Nicole Energy Services, Inc., issued in Docket No. ER98–2683–000. Nicole Energy Services, Inc. states that it is dissolved and will not be doing any business.

Comment Date: August 29, 2003.

28. New England Power Pool

[Docket No. ER03–1181–000]

Take notice that on August 8, 2003, the New England Power Pool (NEPOOL) Participants Committee submitted a filing pursuant to Section 203 of the Federal Power Act requesting acceptance of Amendment No. 4 (Amendment) to the Interim Independent System Operator Agreement (ISO Agreement) dated July 1, 1997 between ISO New England Inc. (ISO) and the NEPOOL Participants. NEPOOL states that the Amendment is solely to extend the term of the ISO Agreement by up to one year, to December 31, 2004. NEPOOL has requested that the Commission issue an order approving the Amendment on or before October 7, 2003.

NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: August 29, 2003.

29. Tyr Energy, LLC

[Docket No. ER03–1182–000]

Take notice that on August 7, 2003, Tyr Energy, LLC tendered for filing a request for acceptance of Tyr Energy, LLC's FERC Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Tyr Energy, LLC states that it intends to engage in wholesale electric power and energy purchases and sales as a marketer. Tyr Energy, LLC also states that it is not in the business of generating or transmitting electric power.

Comment Date: August 28, 2003.

30. White River Electric Association, Inc.

[Docket No. ER03–1184–000]

Take notice that on August 8, 2003, White River Electric Association, Inc. (White River) filed a rate schedule and a service agreement for the provision of emergency service to Moon Lake Electric Association, Inc., pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d and 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations. White River requests that the Commission grant all waivers necessary to allow the rate schedule to have an effective date of October 26, 1999. White River states that its filing is available for public inspection at its offices in Meeker, Colorado.

White River states that a copy of the filing was served upon Moon Lake Electric Association Inc. and the Colorado Public Utilities Commission.

Comment Date: August 29, 2003.

31. Commonwealth Edison Company

[Docket No. ER03–1196–000]

Take notice that on August 8, 2003, Commonwealth Edison Company (ComEd) tendered for filing with the Federal Energy Regulatory Commission (Commission) an executed Dynamic Scheduling Agreement (DSA) entered into between ComEd and Wisconsin Electric Power Company (Wisconsin Electric) under ComEd's Open Access Transmission Tariff. ComEd states that the executed DSA replaces the unexecuted DSA filed in connection with seven Service Agreements which were previously accepted for filing. ComEd requests effective dates of June 1, 2003 and June 1, 2004 for the respective Service Agreements and associated DSA.

ComEd states that copies of the filing were served upon Wisconsin Electric,

the Illinois Commerce Commission and Wisconsin Public Service Commission.

Comment Date: August 29, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22590 Filed 9–2–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7552–4]

Investigator Initiated Grants for Fellowships: Request for Applications

AGENCY: Environmental Protection Agency.

ACTION: Notice of requests for applications.

SUMMARY: This notice provides information on the availability of fiscal year 2004 fellowship program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research areas within the solicitations.

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency invites fellowship applications in the following areas of special interest to its mission: (1) Fall 2004 EPA Science to Achieve Results (STAR) Fellowships for Graduate Study, (2) Fall 2004 Minority Academic Institutions (MAI) Fellowships for Graduate Study, and (3) Fall 2004 Minority Academic Institutions (MAI) Undergraduate Student Fellowships.

CONTACTS: (1) Fall 2004 EPA Science to Achieve Results (STAR) Fellowships for Graduate Study, Virginia Broadway (phone: 202–564–6923, e-mail: *broadway.virginia@epa.gov*), (2) Fall 2004 Minority Academic Institutions (MAI) Fellowships for Graduate Study, Virginia Broadway (phone: 202–564–6923, e-mail: *broadway.virginia@epa.gov*), and (3) Fall 2004 Minority Academic Institutions (MAI) Undergraduate Student Fellowships, Georgette Boddie, (phone: 202–564–6926, e-mail: *boddie.georgette@epa.gov*).

FOR FURTHER INFORMATION CONTACT: The complete program announcement can be accessed on the Internet at *http://www.epa.gov/ncer*, under "announcements." The required forms for applications with instructions are accessible on the Internet at *http://www.epa.gov/ncer/fellow/*. Forms may be printed from this site.

Dated: August 27, 2003.

John C. Puzak,

Acting Director, National Center for Environmental Research.

[FR Doc. 03–22451 Filed 9–2–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2003–0170; FRL–7320–7]

Diazinon; Product Registrations Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's cancellation order for the cancellations, as requested by Syngenta Crop Protection, Inc., of all of Syngenta's registrations for products containing diazinon (*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl) phosphorothioate) and accepted by EPA, pursuant to section 6(f) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This order follows up a May 30, 2003 Notice of Receipt of Requests from Syngenta for cancellations of all of Syngenta's diazinon product registrations. In the May 30, 2003 Notice, EPA indicated that it would issue an order granting the voluntary product registration cancellations, unless the Agency received substantive comments within the comment period that would merit its further review of these requests. The Agency received one set of comments, which were in support of the cancellation requests. Accordingly, EPA hereby issues in this notice a cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is only permitted in accordance with the terms of the existing stocks provisions of this cancellation order.

DATES: The cancellations are effective immediately.

FOR FURTHER INFORMATION CONTACT: Stephanie Plummer, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0076; e-mail address: *plummer.stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0170. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. EPA also

established two dockets containing documents in support of the diazinon IRED. They are dockets OPP–34225 and OPP–2002–0251. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. What Action is the Agency Taking?

This notice announces cancellation, as requested by Syngenta, of all of Syngenta's diazinon products registered under section 3 of FIFRA. These registrations are listed in sequence by registration number in Tables 1, 2, and 3 of this unit.

A. Background Information

Diazinon is an organophosphorous insecticide and is one of the most widely used insecticides in the U.S. It is used for outdoor non-agricultural, as well as agricultural, pest control.

Under a December 5, 2000 Memorandum of Agreement (MOA) between Syngenta Crop Protection, Inc. and EPA, Syngenta requested, under FIFRA section 6(f), that EPA cancel, effective as of June 30, 2003, the registrations of all of Syngenta's diazinon manufacturing-use products permitting formulation for outdoor non-agricultural use. In the MOA, EPA expressed that it would not contemplate permitting sale, distribution or use of existing stocks of these outdoor non-agricultural manufacturing-use products, except for return to the Registrant for purposes of re-labeling for export or disposal. In a letter dated April 8, 2003, Syngenta Crop Protection, Inc. requested a voluntary cancellation of all its remaining registrations for products containing diazinon, to be effective June 30, 2003. The request applied to outdoor non-agricultural end-use products and agricultural products. The request is contingent upon EPA's granting of certain existing stocks provisions, which are set forth in Unit V. EPA announced its receipt of the above-mentioned cancellation requests in a **Federal Register** Notice dated May 30, 2003 (68 FR 32501) (FRL–7309–2).

Syngenta's April 8, 2003 request for cancellations is consistent with the December 5, 2000 MOA. EPA has approved both the December 5, 2000 and the April 8, 2003 requests to terminate registrations for all of Syngenta's diazinon products and has published its cancellation order in this Notice. All of Syngenta's diazinon products subject to cancellation, which include outdoor non-agricultural and agricultural product registrations, are identified in Tables 1, 2, and 3 of this unit.

The Reregistration Eligibility Decision (RED) document summarizes the findings of EPA's reregistration process for individual chemical cases, and reflects the Agency's decision on risk assessment and risk management for uses of the individual pesticides known as organophosphates (OPs). EPA has issued an Interim Reregistration Eligibility Decision (IRED) document assessing the risks of exposure from agricultural uses of diazinon.

B. Requests for Voluntary Cancellations

The manufacturing-use product registrations for which cancellation was requested are identified below in Table 1. The end-use product registrations for which cancellation was requested are identified below in Tables 2 and 3. EPA did not receive any substantive comments regarding these product registrations. Accordingly, the Agency has issued an order in this notice canceling the registrations identified in Tables 1, 2, and 3.

TABLE 1.—MANUFACTURING-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Registration No.	Product Name	Chemical Name
100–977	D·z·n diazinon MG 56% WBC AG	Diazinon
100–978	D·z·n diazinon MG 22.4% WBC HG	Diazinon
100–979	D·z·n diazinon MG 87% HG	Diazinon
100–980	D·z·n diazinon MG 87% AG	Diazinon

TABLE 2.—OUTDOOR NON-AGRICULTURAL END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Registration No.	Product Name	Chemical Name
100–456	D·z·n Lawn & Garden Insect Control	Diazinon
100–468	D·z·n Granular Lawn Insect Control	Diazinon
100–528	D·z·n 6000 Lawn & Garden Insect Control	Diazinon
100–770	D·z·n diazinon Lawn & Garden WBC	Diazinon

TABLE 2.—OUTDOOR NON-AGRICULTURAL END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS—Continued

Registration No.	Product Name	Chemical Name
100–926	D·z·n diazinon Garden Insect Dust	Diazinon

TABLE 3.—AGRICULTURAL END-USE PRODUCT REGISTRATION CANCELLATION REQUESTS

Registration No.	Product Name	Chemical Name
100–460	D·z·n diazinon 50W	Diazinon
100–461	D·z·n diazinon AG500	Diazinon
100–469	D·z·n diazinon 14G	Diazinon
100–784	D·z·n diazinon AG600 WBC	Diazinon

Table 4 of this unit includes the name and address of record for the registrant of the products in Tables 1, 2, and 3 of this unit:

TABLE 4.—REGISTRANT REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
100	Syngenta Crop Protection, Inc, P.O. Box 18300, Greensboro, NC 27419–8300

III. Cancellation Order

Pursuant to section 6(f) of FIFRA, EPA hereby approves the requested cancellations of diazinon product registrations identified in Tables 1, 2, and 3 in Unit II. Accordingly, the Agency orders that the diazinon manufacturing-use product registrations identified in Table 1 in Unit II., as well as the end-use product registrations listed in Tables 2 and 3 in Unit II., are hereby canceled. Any distribution, sale, or use of existing stocks of the products identified in Tables 1, 2, and 3 in Unit II. in a manner inconsistent with any of the Provisions for Disposition of Existing Stocks set forth below in Unit V. will be considered a violation of FIFRA.

IV. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

V. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The cancellation order issued in this Notice includes the following existing stocks provisions.

A. Outdoor Non-Agricultural Manufacturing-Use Products

1. *Distribution or sale.* The distribution or sale of existing stocks of any outdoor non-agricultural manufacturing-use product identified in Table 1 in Unit II. is no longer lawful under FIFRA, except for the purposes of export consistent with FIFRA section 17 and proper disposal in accordance with applicable law.

2. *Use for producing other products.* The use of existing stocks of any manufacturing-use product identified in Table 1 in Unit II. for formulation into any other product labeled for outdoor non-agricultural use is no longer lawful under FIFRA.

B. Outdoor Non-Agricultural End-Use Products

1. *Distribution or sale by registrant.* The distribution, or sale, of existing stocks by Syngenta of any product listed in Table 2 in Unit II. will not be lawful under FIFRA after August 31, 2003, except for purposes of shipping such stocks for export consistent with the requirements of FIFRA section 17 or proper disposal in accordance with applicable law.

2. *Retail and other distribution or sale.* The distribution or sale of existing stocks by persons other than Syngenta will be prohibited after December 31, 2004, except for purposes of product recovery pursuant to the 2000 MOA, shipping such stocks for export consistent with the requirements of FIFRA section 17, or proper disposal in accordance with applicable law.

3. *Use of existing stocks.* Use of existing stocks may continue until stocks are exhausted. Any such use must be in accordance with the label.

C. Agricultural Manufacturing-Use Products

1. *Distribution or sale, or use by registrant.* The distribution, sale, or use of existing stocks by Syngenta of any manufacturing-use product identified in Table 1 in Unit II. for formulation into any other product labeled for agricultural use will not be lawful under FIFRA after August 31, 2003, except for purposes of shipping such stocks for export consistent with the requirements of section 17 of FIFRA, or proper disposal in accordance with applicable law.

2. *Retail and other distribution, sale, or use.* The distribution, sale, or use of existing stocks of any manufacturing-use product identified in Table 1 in Unit II. for formulation into any other product labeled for agricultural use by any person other than Syngenta may continue until stocks are exhausted. Any such use must be in accordance with the label.

D. Agricultural End-Use Products

1. *Distribution or sale by registrant.* The distribution or sale of existing stocks by Syngenta of any product listed in Table 3 in Unit II. will not be lawful under FIFRA after August 31, 2003, except for purposes of shipping for exports consistent with the requirements of FIFRA section 17 or

proper disposal in accordance with the applicable law.

2. *Retail and other distribution, sale, or use.* The distribution, sale, or use of existing stocks by any person other than Syngenta may continue until stocks are exhausted. Any such use must be in accordance with the label.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 20, 2003.

Betty Shackleford,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 03–22317 Filed 9–2–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7552–3]

Notice of Vacature of Specific Applicability Determinations Concerning National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that EPA has vacated two applicability determinations concerning the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Secondary Aluminum Production, 40 CFR part 63, subpart RRR, which were previously made by EPA in response to requests submitted by the U.S. Granules Corporation. EPA has determined that these two applicability determinations reflect conflicting constructions concerning the applicability of Subpart RRR to operations like those conducted at the U.S. Granules facilities, and that the retention of such conflicting constructions is inappropriate as a matter of law and policy. Now that these determinations have been vacated, EPA will commence a process to adopt a single uniform construction of Subpart RRR which will apply to all operations like those conducted at the U.S. Granules facilities.

FOR FURTHER INFORMATION CONTACT: For specific questions concerning the actions described in this notice, contact Scott Throwe at EPA by phone at: (202) 564–7013, or by e-mail at: *throwe.scott@epa.gov.* For general questions concerning the Applicability Determination Index maintained by the EPA Office of Enforcement and Compliance Assurance (OECA), contact Maria Malave at EPA by phone at: (202) 564–7027, or by e-mail at: *malave.maria@epa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces the vacature of two applicability determinations made concerning the NESHAP for Secondary Aluminum, 40 CFR part 63, subpart RRR. An applicability determination concerning the U.S. Granules facility in Plymouth, Indiana was made by the EPA Region 5 Air Enforcement and Compliance Assurance Branch on August 21, 2002, in response to a request for such a determination by U.S. Granules dated August 14, 2002. Notice of this applicability determination (Control No. M020112) was published in the **Federal Register** on February 13, 2003. 68 FR 7373. The decision to vacate this determination was subsequently announced in a letter to U.S. Granules dated June 19, 2003.

An applicability determination concerning the U.S. Granules facility in Henrietta, Missouri was made by the EPA Region 7 Air Permitting and Compliance Branch on October 22, 2002, in response to a request for such a determination by U.S. Granules dated October 11, 2002. Notice of this applicability determination (Control No. M020117) was also published in the **Federal Register** on February 13, 2003. 68 FR 7373. The decision to vacate this determination was subsequently announced in a letter to U.S. Granules dated June 23, 2003.

After issuance of these two applicability determinations, EPA determined that these determinations reflect conflicting constructions concerning the applicability of Subpart RRR to operations like those conducted at the U.S. Granules facilities. EPA also determined that the retention of such conflicting constructions would be inappropriate as a matter of law and policy. Accordingly, EPA decided to vacate both of these applicability determinations and to commence a process to adopt a single uniform construction of Subpart RRR which will apply to all operations like those conducted at the U.S. Granules facilities.

The vacature of each of the applicability determinations concerning U.S. Granules facilities described in this notice was final and effective on the date that the letter announcing that vacature was signed. This notice is being published to assure that parties other than U.S. Granules who may be interested in these determinations are also notified that they have been vacated. In addition to this notice, EPA will update the Applicability Determination Index maintained by OECA to reflect the vacature of these determinations.

Dated: August 20, 2003.

Michael S. Alushin,

Director, Compliance Assessment and Media Programs Division, Office of Compliance.

[FR Doc. 03–22450 Filed 9–2–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/.*

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 26, 2003.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. KNBT Bancorp Inc., Bethlehem, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Keystone Savings Bank, Bethlehem, Pennsylvania, and

First Colonial Group, Inc., Nazareth, Pennsylvania, and Nazareth National Bank and Trust Company, Nazareth, Pennsylvania.

B. Federal Reserve Bank of Cleveland (Stephen J. Ong, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Sky Financial Group, Inc., Bowling Green, Ohio; to acquire 100 percent of the voting shares of GLB Bancorp, Inc., Mentor, Ohio, and thereby indirectly acquire voting shares of Great Lakes Bank, Mentor, Ohio.

C. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Greene County Bancshares, Inc., Greeneville, Tennessee; to merge with Independent Bankshares Corporation, Gallatin, Tennessee, and thereby indirectly acquire First Independent Bank, Gallatin, Tennessee, and Rutherford Bank & Trust, Murfreesboro, Tennessee.

Board of Governors of the Federal Reserve System, August 27, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–22373 Filed 9–2–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTION GRANTED EARLY TERMINATION

Party name	ET req status	Trans No.	ET date
Invitrogen Corporation	G	20030795	11–Aug–03
Dr. Richard P. Haugland and Dr. Rosaria Haugland	G	.....	
Molecular Probes, Inc	G	.....	
Cypress Merchant Banking Partners II L.P	G	20030833	
J.W. Childs Equity Partners II, L.P	G	.....	
Meow Mix Holdings, Inc	G	.....	
Alliance Data Systems Corporation	G	20030847	
Stage Stores, Inc	G	.....	
Stage Stores, Inc	G	.....	
Cumberland Farms, Inc	G	20030697	12–Aug–03
ConocoPhillips Corp	G	.....	
ConocoPhillips Corp	G	.....	
American International Group, Inc	G	20030824	
General Electric Company	G	.....	
GE Property & Casualty Insurance Company	G	.....	
Crown Finance Foundation	G	20030844	
StoryFirst Communications, Inc	G	.....	
StoryFirst Communications, Inc	G	.....	
Whitney V, L.P	G	20030855	
Matt J. Wollman	G	.....	
Interactive Health LLC	G	.....	
BASF Aktiengesellschaft	G	20030846	13–Aug–03
Mine Safety Appliances Company	G	.....	
Mine Safety Appliances Company	G	.....	
nVIDIA Corporation	G	20030828	15–Aug–03
MediaQ, Inc	G	.....	
MediaQ, Inc	G	.....	
Cisco Systems, Inc	G	20030849	
Andiamo Systems, Inc	G	.....	
Andiamo Systems, Inc	G	.....	
Dex Holdings LLC	G	20030869	
Qwest Communications International Inc	G	.....	
SGN LLC	G	.....	
GPP LLC	G	.....	
Thoma Cressey Fund VII, LP	G	20030831	18–Aug–03
Kings Holdings, LLC	G	.....	
Daticon, Inc	G	.....	
Abbott Laboratories	G	20030832	
Mr. Christopher P. Baker	G	.....	
ZonePerfect Nutrition Company	G	.....	
Associated Materials Holdings, Inc	G	20030848	
Gentek Holdings, Inc	G	.....	
Gentek Holdings, Inc	G	.....	
Bruckmann, Rosser, Sherrill & Co., L.P	G	20030853	
Nestle S.A	G	.....	

TRANSACTION GRANTED EARLY TERMINATION—Continued

Party name	ET req status	Trans No.	ET date
Nestle Prepared Foods Company	G		
Phelps Dodge Corporation	G	20030850	19-Aug-03
Phelps Dodge Corporation	G		
Chino Mines Company	G		
Intelsat Ltd	G	20030852	
Loral Space & Communications Ltd	G		
Loral Space & Communications Corporation ("LSCC")	G		
Loral Satellite, Inc	G		
Loral SpaceCom Corporation	G		
Chico's FAS, Inc	G	20030859	
The White House, Inc	G		
The White House, Inc	G		
Fidelity National Financial, Inc	G	20030863	
WebTone Technologies, Inc	G		
WebTone Technologies, Inc	G		
Fox Paine Capital Fund II, L.P	G	20030876	
Alfonso Romo Garza	G		
Seminis, Inc	G		
Globespan Virata, Inc	G	20030820	20-Aug-03
Intersil Corporation	G		
SICOM, Inc	G		
Choice-Intersil Microsystems, Inc	G		
Intersil B.V. and No Wires Needed	G		
Intersil Corporation	G	20030827	
Globespan Virata, Inc	G		
Globespan Virata, Inc	G		
Morgenthaler Partners, VII, L.P	G	20030857	
Tomkins plc	G		
Gates Formed Fibre LLC	G		
Trelleborg AB	G	20030839	21-Aug-03
Smiths Group plc	G		
Smiths Polymer Sealing Solutions	G		
Citigroup Inc	G	20030821	22-Aug-03
Sears, Roebuck and Co	G		
Sears Life Insurance Company	G		
Sears Financial Holding Corporation	G		
Sears Roebuck de Puerto Rico, Inc	G		
SRFG, Inc	G		
Sears Brands LLC	G		
Sears Intellectual Property Management Company	G		
Sears Insurance Agency of Massachusetts, Inc	G		
Sears Insurance Services of Alabama, LLC	G		
Sears Insurance Agency, Inc	G		
Sears Insurance Services, LLC	G		
SLRR, Inc	G		
SVFT, Inc	G		
SMTB, Inc	G		
Sears Life Holding Corporation	G		
Sears National Bank	G		
Bain Capital Fund VII, L.P	G	20030838	
Allan R. Dragone, Jr	G		
Graphic Communications Holdings, Inc	G		
Macquarie Global Infrastructure Fund A	G	20030841	
KASP Management, L.P	G		
Airport Satellite Parking Newark, L.L.C	G		
Airport Satellite Parking Riteway, LLC	G		
Airport Satellite Parking New Jersey, LLC	G		
Airport Satellite Parking Hartford, L.L.C	G		
Airport Satellite Parking O'Hare, L.L.C	G		
Macquarie Global Infrastructure Fund B	G	20030842	
KASP Management, L.P	G		
Airport Satellite Parking Newark, L.L.C	G		
Airport Satellite Parking Riteway, LLC	G		
Airport Satellite Parking New Jersey, LLC	G		
Airport Satellite Parking Hartford, L.L.C	G		
Airport Satellite Parking O'Hare, L.L.C	G		
Smithfield Foods, Inc	G	20030854	
Cumberland Gap Provision Company	G		
Cumberland Gap Provision Company	G		
General Dynamics Corporation	G	20030862	
Datron Inc	G		

TRANSACTION GRANTED EARLY TERMINATION—Continued

Party name	ET req status	Trans No.	ET date
Intercontinental Manufacturing Company	G		
Exelon Corporation	G	20030877	
Exelon Corporation	G	20030877	22-Aug-03
National Energy Development, Inc	G		
Exelon Corporation	G	20030883	
Equilease Holding Corp	G		
National Energy Development, Inc	G		

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative; or Renee Hallman, Legal Technician, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission

Donald S. Clark,

Secretary.

[FR Doc. 03–22412 Filed 9–2–03; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–190]

Availability of the Draft Online Learning Program, Identifying Exposure Pathways, Public Comment Release

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice of availability and request for public comment on the draft online learning program, Identifying Exposure Pathways.

SUMMARY: This program was developed to provide environmental and public health professionals information about the ATSDR public health assessment process through simulation and interactive learning using the Internet. The program provides learn-by-doing steps on how ATSDR's cooperative agreement partners (agents of ATSDR), ATSDR staff, and other environmental and public health professionals can identify how persons come into contact with hazardous and toxic substances. This program is an interactive simulation involving internal and external communications, site document review, mock site review, video clip review, community involvement activities, and completion of an exposure pathway table.

ATSDR conducts public health assessments to evaluate whether people have come in contact with hazardous substances released into the environment and whether contact with the substances has affected the health of people exposed to those substances.

The process used to conduct public health assessments includes gathering information from community members about how they might have come in contact with hazardous substances released into the environment and the concerns they have about the effect of the substances on their health. In addition to information gathered from community members, ATSDR also evaluates environmental data pertaining to the release, evaluates toxicologic and epidemiologic data relevant to exposures, and evaluates existing health outcome data if appropriate. Recommendations might be made to eliminate or reduce exposure to harmful levels of hazardous substances that have been released into the environment. The online learning program provides information on the basic concepts used by ATSDR staff and agents of ATSDR in conducting public health assessments, specifically how to identify pathways of exposure.

This online learning program is intended to assist environmental public health professionals understand the basic steps and coordination necessary to identify exposure pathways. It is part of the exposure evaluation component of the public health assessment process. Because interaction with the public's environmental public health professionals is a critical component of the public health assessment process, ATSDR believes that public comments may help us improve the quality of the program. All comments received during the public comment period will be considered when making improvements to the program.

Availability: The draft online program, Identifying Exposure Pathways, will be available to the public on or about August 29, 2003. The public comment period will begin on the date the program is first available on the ATSDR Web site. The close of the public comment period will be 60 days from the date of publication and will be indicated on the first page of the Web site. Comments received after the close of the public comment period will be considered at the discretion of ATSDR on the basis of what is deemed to be in the best interest of the general public.

ADDRESSES: Requests for more information about accessing the online learning program should be sent to the Chief, Program Evaluation, Records, and Information Services Branch; Agency for Toxic Substances and Disease Registry; 1600 Clifton Road, NE (MS E–56); Atlanta, GA 30333. The online learning program can be accessed in the Education and Training section of the ATSDR Home page (*http://www.atsdr.cdc.gov*).

Comments may be submitted online through the "Feedback" section of the program, which is accessible through a link at the top of each page. You may also send written comments and supporting documents to the address provided in the previous paragraph. Comments should be received by the end of the comment period. All written comments and data submitted in response to this notice and the draft online learning program should bear the docket control number ATSDR–190.

FOR FURTHER INFORMATION CONTACT: Further information may be obtained by contacting Bob Kay, telephone (404) 498–0382, ATSDR, 1600 Clifton Road, NE (MS E–32), Atlanta, GA 30333, or calling, toll free, 1–888–42–ATSDR (1–888–422–8737). You may also reach Bob Kay through e-mail at *bkay@cdc.gov*.

SUPPLEMENTARY INFORMATION: ATSDR is mandated to conduct public health assessments under Section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) [42 U.S.C. 9604(i)] and the Resource Conservation and Recovery Act (RCRA) [42 U.S.C. 6939a(c)].

The general procedures for the conduct of public health assessments are included in the ATSDR Final Rule on Health Assessments and Health

Effects Studies of Hazardous Substances Releases and Facilities (55 FR 5136, February 13, 1990, codified at 42 CFR Part 90).

Areas emphasized in the online learning program include community involvement, exposure assessment, weight-of-evidence approaches to decision making, and developing public health action plans to address any public health hazards found during investigations.

The online learning program may be used by individuals to learn more about the public health assessment process, by community groups during meetings, and by individuals and groups as a communication tool when discussing concerns with the public health assessment team assigned to a site in their community. The program may also be used by agents of ATSDR to introduce new staff to the concepts of the public health assessment process and as a tool to stimulate communications with community members.

This notice announces the projected availability of the draft online learning program. The program has undergone extensive internal review. ATSDR encourages the public's participation and comment on the further development of this online learning program.

Dated: August 27, 2003.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 03–22376 Filed 9–2–03; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control Initial Review Group (Formerly Injury Research Grant Review Committee): Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the National Center for Injury Prevention and Control Initial Review Group (formerly Injury Research Grant Review Committee), Centers for Disease Control and Prevention of the Department of Health and Human Services, has been renewed for a 2-year period extending through August 20, 2005.

For further information, contact Lynda S. Doll, Ph.D., Acting Executive Secretary, National Center for Injury Prevention and Control Initial Review Group (formerly Injury Research Grant Review Committee), Centers for Disease Control and Prevention of the Department of Health and Human Services, 4770 Buford Highway, NE., M/S K02, Atlanta, Georgia 30341–3717, telephone 770–488–4233.

The Director, Management and Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 26, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–22378 Filed 9–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Council for the Elimination of Tuberculosis

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

Name: Advisory Council for the Elimination of Tuberculosis (ACET).

Times and Dates: 8:30 a.m.–5 p.m., October 1, 2003; 8:30 a.m.–12 p.m., October 2, 2003.

Place: Corporate Square, Building 8, 1st Floor Conference Room, Atlanta, Georgia 30333. Telephone (404) 639–8008.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

Purpose: This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis (TB). Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and reviews the extent to which progress has been made toward eliminating TB.

Matters To Be Discussed: Agenda items include issues pertaining to improving TB efforts in the Southeast, TB among the Foreign-born, and other TB-related topics. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Paulette Ford-Knights, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 26, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 03–22377 Filed 9–2–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Name Change to President's Committee for People With Intellectual Disabilities; Membership Addition

AGENCY: President's Committee on Mental Retardation (PCMR), HHS.

ACTION: Notice of Amendments to Executive Order 12994, renaming the President's Committee on Mental Retardation, the addition of four members to the Committee and continuation of the Committee until September 30, 2005.

DATES: Friday, July 25, 2003.

In conjunction with the 13th Anniversary of the Americans with Disabilities Act, on Friday, July 25, 2003, President Bush amended Executive Order 12994 of March 21, 1996, to change the name of the President's Committee on Mental Retardation to the "President's Committee for People with Intellectual Disabilities." The name change was recommended to the President by the Committee members after a majority vote during the Committee's Third Quarterly Meeting held on May 12, 2003. The name change reflects efforts to promote equality for people with intellectual disabilities.

The President also amended the executive order by adding four additional members to the Committee: The Secretary of Commerce; The Secretary of Transportation; The Secretary of the Interior and the Secretary of Homeland Security.

The Amendment continues the Committee until September 30, 2005.

FOR FURTHER INFORMATION CONTACT: Sally Atwater, Executive Director, President's Committee on Mental Retardation, Aerospace Center Building, Suite 701, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone—(202) 619–0634, Fax—(202) 205–9519, e-mail—*satwater @acf.hhs.gov*.

SUPPLEMENTARY INFORMATION: The President's Committee for People with Intellectual Disabilities acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs, services and supports for persons with mental retardation, and for reviewing legislative proposals that impact on the quality of life that is experienced by citizens with mental retardation and their families.

Dated: August 6, 2003.

Sally Atwater,

Executive Director, President's Committee for People With Intellectual Disabilities.

[FR Doc. 03–22367 Filed 9–2–03; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002N–0178]

Canned Tomatoes Deviating From Identity Standard; Extension of Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the extension of a temporary permit issued to Del Monte Corp. to market test canned tomato products that deviate from the U.S. standard of identity for canned tomatoes. The extension will allow the permit holder to continue to collect data on consumer acceptance of the products while the agency takes action on a petition to amend the standard of identity for canned tomatoes that was submitted by the permit holder.

DATES: The new expiration date of the permit will be either the effective date of a final rule to amend the standard of identity for canned tomatoes that may result from the petition or 30 days after termination of such rulemaking.

FOR FURTHER INFORMATION CONTACT: Ritu Nalubola, Center for Food Safety and Applied Nutrition (HFS–822), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17, FDA issued a temporary permit to Del Monte Corp., One Market @ The Landmark, P.O. Box 193575, San Francisco, CA 94119–3575, to market test canned tomato products that deviate from the U.S. standards of identity for canned tomatoes § 155.190 (21 CFR 155.190) (67 FR 43325, June 27, 2002). The agency issued the permit to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341).

The permit covered limited interstate marketing tests of products identified as "Stewed Tomatoes, Original Recipe," "Chunky Tomatoes, Pasta Style," "Diced Tomatoes, basil, garlic & oregano," "Diced Tomatoes, garlic & onion," "Diced Tomatoes, green pepper & onion," "Tomato Wedges," "Zesty Chunky Tomatoes, Chili Style," "Stewed Tomatoes, Cajun Recipe with pepper, garlic, and Cajun spices," "Stewed Tomatoes, Italian Recipe with basil, garlic & oregano," "Stewed Tomatoes, Mexican Recipe with garlic, cumin, and jalapeños," and "Stewed Tomatoes, no salt added." These canned tomato products deviate from the U.S. standard of identity for canned tomatoes (§ 155.190) in two ways. First, a liquid carbohydrate sweetener, either corn syrup or high fructose corn syrup, is used as an optional ingredient in lieu of dry nutritive carbohydrate sweeteners. The liquid carbohydrate sweetener, corn syrup or high fructose corn syrup, is used in a quantity reasonably necessary to compensate for the tartness resulting from added organic acids, except that such addition of the liquid sweetener, in no case, may result in a finished canned tomato product with a tomato soluble solids content of less than 5.0 percent by weight as defined in 21 CFR 155.3(e) (which accounts for any added salt) and accounting for the soluble solids of the liquid sweetener. Second, the permit provided for use of the term "chunky" in lieu of the styles (i.e., whole, sliced, diced, and wedges) required by the standard. Except for the use of a liquid sweetener and the use of the alternative term "chunky" on some products, the test products meet all the requirements of the standard.

On April 23, 2003, Del Monte Corp. requested that its temporary marketing permit be extended to allow for additional time for the market testing of its test products. The petitioner requested FDA to amend the standard of identity for canned tomatoes. In addition, Del Monte Corp. also requested that additional varieties of canned tomatoes be included under this permit extension. The additional products are as follows: (1) Del Monte Brand "Diced Tomatoes, Petite Cut, garlic and olive oil;" (2) Contadina Brand "Stewed Tomatoes with onions, celery, and green peppers," "Stewed Tomatoes with garlic, oregano, and basil, Italian Style," "Diced Tomatoes with roasted garlic," "Diced Tomatoes, Italian Herbs," "Diced Tomatoes with Roasted Red Pepper," "Diced Tomatoes, Primavera with zucchini, bell peppers, and carrots," "Diced Tomatoes, Marinara with burgundy wine and olive oil;" and (3) S&W Brand "Stewed Tomatoes, Italian Recipe, sliced pear tomatoes with oregano and basil, 14 1/2 ounces," "Stewed Tomatoes, Italian Recipe, sliced pear tomatoes with oregano and basil, 28 ounces," "Diced Tomatoes in tomato juice with roasted garlic," "Stewed Tomatoes with onion, celery, and bell pepper," "Stewed Tomatoes with bell pepper, celery, and onion, no salt added," "Diced tomatoes, Petite Cut, with roasted garlic and sweet onions," "Stewed Tomatoes, Mexican Recipe with mild chili and Mexican seasoning," and "Stewed Tomatoes, Cajun Recipe with bell pepper, onion, and Creole spices."

The agency finds that it is in the interest of consumers to issue an extension of the time period for the market testing of products identified in the original permit (67 FR 43325) as well as to permit limited interstate marketing tests of additional canned tomato products identified in the previous paragraph. FDA is inviting interested persons to participate in the market test under the conditions that apply to Del Monte Corp. except that the designated area of distribution shall not apply. Any person who wishes to participate in the extended market test must notify, in writing, the Team Leader, Regulations and Review Team, Division of Food Labeling and Standards, Office of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. The notification must include a description of the test product to be distributed, a justification statement for the amount requested, the area of distribution, and the labeling that will

be used for the test product (i.e., a draft label for each size of container and each brand of product to be market tested). The information panel of the label must bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the label as required by applicable sections of 21 CFR part 101.

Therefore, under the provisions of 21 CFR 130.17(i), FDA is extending the temporary permit granted to Del Monte Corp., One Market @ The Landmark, P.O. Box 193575, San Francisco, CA 94119–3575 to provide for continued marketing tests of approximately 10.3 million cases (226.6 million pounds or 103.0 million kilograms in weight) annually of canned tomatoes previously identified . FDA is extending the expiration date of the permit so that the permit expires either on the effective date of a final rule to amend the standard of identity for canned tomatoes that may result from the petition, or 30 days after termination of such rulemaking. All other conditions and terms of this permit remain the same.

Dated: August 22, 2003.

Christine Taylor,

Director, Office of Nutritional Products, Labeling and Dietary Supplements, Center for Food Safety and Applied Nutrition.

[FR Doc. 03–22420 Filed 9–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0369]

Solvay Pharmaceuticals, Inc.; Withdrawal of Approval of Two New Drug Applications; Determination That LUVOX (Fluvoxamine Maleate) 25-Milligram, 50-mg, 100-mg, and 150-mg Tablets Was Not Withdrawn for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of the new drug applications (NDAs) for ROWASA (mesalamine) Rectal Suppositories, 500 milligrams (mg), and LUVOX (fluvoxamine maleate) 25-mg, 50-mg, 100-mg, and 150-mg tablets, held by Solvay Pharmaceuticals, Inc., 901 Sawyer Rd., Marietta, GA 30062. Solvay has voluntarily withdrawn these NDAs in response to audit findings indicating possible inaccuracies noted in the chemistry, manufacturing, and controls (CMC) section of the applications. Solvay has agreed to permit FDA to withdraw approval of the applications, thereby waiving its opportunity for a hearing. In addition, FDA has determined that LUVOX (fluvoxamine maleate) 25-mg, 50-mg, 100-mg, and 150-mg tablets was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to continue to approve abbreviated new drug applications (ANDAs) for fluvoxamine maleate 25-mg, 50-mg, 100-mg, and 150-mg tablets.

DATES: Effective September 3, 2003.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: FDA recently became aware of possible inaccuracies in the CMC section of two of Solvay's applications approved by the agency. The two Solvay NDAs involved were: (1) NDA 19–919 for ROWASA (mesalamine) Rectal Suppositories, 500 mg, and (2) NDA 20–243 for LUVOX (fluvoxamine maleate) 25-mg, 50-mg, 100-mg, and 150-mg tablets. These findings, along with other information submitted to the agency by Solvay, provided sufficient justification to initiate proceedings to withdraw approval of these two products. The agency notified Solvay in writing of these eterminations and, in accordance with § 314.150(d) (21 CFR 314.150(d)), offered Solvay the opportunity to permit FDA to withdraw approval of the applications.

Subsequently, in letters dated March 28, 2002, and May 14, 2002, respectively, Solvay requested withdrawal of the NDAs under § 314.150(d), thereby waiving its opportunity for a hearing. Solvay also withdrew these drug products from the market. Under § 314.150(d), approval of these two NDAs is being withdrawn.

In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved under an NDA. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162). Under § 314.161(a), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness: (1) Before an ANDA that refers to that listed drug may be approved or, (2) whenever a listed drug is voluntarily withdrawn from sale, and ANDAs that referred to the listed drug have been approved. FDA may not approve an ANDA that does not refer to a listed drug.

The agency has already determined that ROWASA (mesalamine) Rectal Suppositories, 500 mg, was not withdrawn from sale for reasons of safety and effectiveness. On May 24, 2001, FDA published its determination in the **Federal Register** (66 FR 28753). Since that time, ANDAs that refer to ROWASA (mesalamine) Rectal Suppositories, 500 mg, may be approved by the agency.

Because numerous approved ANDAs for fluvoxamine maleate relied on LUVOX as the reference listed drug in their applications, FDA must also make a determination of reasons for voluntary withdrawal of LUVOX under § 314.161(a)(2). The agency has determined that Solvay Pharmaceuticals, Inc.'s, LUVOX (fluvoxamine maleate) 25-mg, 50-mg, 100-mg, and 150-mg tablets was not withdrawn from sale for reasons of safety or effectiveness.

LUVOX is indicated for the treatment of obsessions and compulsions in patients with obsessive compulsive disorder. In the course of an audit, FDA discovered inaccuracies in the CMC section of the LUVOX (fluvoxamine maleate) application. Although these findings raised concerns about the drug product as manufactured by Solvay, they do not affect the safety or efficacy of fluvoxamine maleate in treating obsessive compulsive disorder. LUVOX was withdrawn from sale following

FDA's written request under § 314.150(d). The agency's independent evaluation of relevant information has not found any data that would indicate LUVOX (fluvoxamine maleate) was withdrawn for reasons of safety or effectiveness.

After reviewing its records, FDA determines that, for the reasons outlined in the previous paragraph, LUVOX (fluvoxamine maleate) 25-mg, 50-mg, 100-mg, and 150-mg tablets was not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will list Solvay's LUVOX (fluvoxamine maleate) 25-mg, 50-mg, 100-mg, and 150-mg tablets in the "Discontinued Drug Product List" section of the "Orange Book." The "Discontinued Drug Product List" identifies, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs for fluvoxamine maleate 25-mg, 50-mg, 100-mg, and 150-mg tablets may continue to be approved by the agency.

Therefore, under section 505(e) of the act approval of the NDAs listed above, and all amendments and supplements thereto, is withdrawn, effective September 3, 2003.

Dated: August 21, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22359 Filed 9–2–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Safe Schools/Healthy Students Sustainability Study—New—This study, a project of SAMHSA's Center for Mental Health Services (CMHS), involves a survey of project directors or other designated staff associated with the Safe Schools/Healthy Students (SS/HS) Initiative. The SS/HS Initiative is a collaborative effort between the U.S. Departments of Education, Health and Human Services, and Justice. Under this initiative, Local education agencies (LEAs) were awarded grants in partnership with their local mental health agency and their local juvenile justice agency. Between September 1999 and September 2002, 143 communities received three-year awards under the SS/HS Initiative.

As this Initiative was designed to facilitate sustainable change within communities, CMHS would like to determine the extent to which systems-level changes, programs, and services initiated as part of SS/HS continue when the grant ends. A web-based survey of project directors will be conducted annually for three years. Respondents will be project directors or other designated staff responsible for continuing programs and services following the SS/HS grant.

This information will be used by CMHS to improve the grant making process and the provision of technical assistance. The following table describes the response burden associated with this data collection.

Year	Number of respondents	Responses per respondent	Hours per response	Total burden hours
One	77	3	.5	116
Two	20	2	.5	20
Three	46	1	.5	23
Total	143			159
3-yr. Annual Average	106			53

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Lauren Wittenberg, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503; due to potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, respondents are encouraged to submit comments by fax to: 202–395–6974.

Dated: August 26, 2003.

Anna Marsh,

Acting Executive Officer, SAMHSA.

[FR Doc. 03–22379 Filed 9–2–03; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Border and Transportation Security; Meeting of the Data Management Improvement Act of 2000 Task Force

AGENCY: Border and Transportation Security Directorate, DHS

ACTION: Notice of meeting.

Committee meeting: Department of Homeland Security (DHS), Data Management Improvement Act of 2000 (DMIA) Task Force.

Date and Time: Tuesday, September 23, 2003, 9 a.m. to 5 p.m.

Place: Double Tree Hotel, 300 Army Navy Drive, Arlington, VA 22202.

Status: Closed meeting. Notice is hereby given that the Data Management Improvement Act Task Force will meet on Tuesday, September 23, 2003, from 9 a.m. to 5 p.m. All times noted are Eastern Time. The information that will be discussed at this meeting could seriously compromise the security and integrity of existing data collection systems as well as the proposed new entry/exit system and integration. Due to the nature of the issues being discussed, the Department of Homeland Security has determined that the meeting will be closed to the public (Section 10(d) of the Federal Advisory Committee Act (FACA)). The information discussed at this meeting is protected from disclosure under the Government in the sunshine Act, 5 U.S.C. 552b(c)(9)(B). In accordance with the provisions of the Federal Advisory Committee Act, minutes of the meeting will be kept for department and congressional review.

Purpose: The DMIA Task Force is focusing on the development of recommendations directly related to the

design and development of an integrated, automated entry and exit system. The Task Force will be discussing, in detail, issues related to United States national security, border security and existing and proposed information technology systems. The discussion will include recommendations on data collection and use, facility and infrastructure issues and information and technology issues. None of this information has been previously disclosed publicly.

Public participation: The meeting is closed to the public, however the Task Force will accept written comments from the public for discussion. Only written comments receive on or before September 16, 2003, will be considered for discussion at the meeting. Written comments may be faxed or e-mailed to the contact persons indicated below.

Contact person: Michael Defensor or Deborah Hemmes, Department of Homeland Security, 425 I Street, NW., Room 7257, Washington, DC 20536; telephone (202) 305–9863; fax: (202) 305–9871; e-mail: *michael.defensor@dhs.gov* or *deborah.hemmes@dhs.gov*.

Dated: August 25, 2003.

Asa Hutchinson,

Under Secretary for Border Transportation and Security.

[FR Doc. 03–22431 Filed 9–2–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2292–03]

RIN 1650–AB05

Extension of the Designation of Burundi Under Temporary Protected Status Program

AGENCY: Bureau of Citizenship and Immigration Services, Homeland Security.

ACTION: Notice.

SUMMARY: The designation of Burundi under the Temporary Protected Status (TPS) Program will expire on November 2, 2003. This notice extends the Secretary of Homeland Security's designation of Burundi for 12 months until November 2, 2004, and sets forth procedures necessary for nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) with TPS to re-register and to apply for an extension of their employment authorization documentation for the additional 12-month period. Re-registration is limited to persons who registered no later than November 3, 1998 under the initial designation and also timely re-registered under each subsequent extension of the designation, or who registered under the re-designation no later than November 2, 2000 and also timely re-registered under the extension of the re-designation. Certain nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of Burundi's TPS designation is effective November 2, 2003, and will remain in effect until November 2, 2004. The 60-day re-registration period begins September 3, 2003 and will remain in effect until November 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jonathan Mills, Residence and Status Services, Office of Programs and Regulations, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 "I" Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Extend the Designation of Burundi Under the TPS Program?

On March 1, 2003, the functions of the Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Pub. L. 107–296. The responsibilities for administering the TPS program held by the Service were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state or (part thereof) for TPS. The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. 8 U.S.C. 1254a(b)(3)(A). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, as provided in section 244(b)(3)(B) of the Act. 8 U.S.C. 1254a(b)(3)(B). Finally, if the Secretary of DHS does not determine that a foreign state (or part thereof) no longer meets the conditions for designation at least 60 days before the designation or extension is due to expire, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the discretion of the Secretary of DHS, a period of 12 or 18 months). 8 U.S.C. 1254a(b)(3)(C).

Why Did the Secretary of DHS Decide To Extend the TPS Designation for Burundi?

On November 4, 1997, the Attorney General published a notice in the **Federal Register** designating Burundi under the TPS program based upon ongoing armed conflict occurring within the country. 62 FR 59735. The Attorney General extended this TPS designation annually and re-designated Burundi by publishing a notice on November 9, 1999, determining in each instance that the conditions warranting such designation continued to be met. 64 FR 61123.

Since the date of the last extension, the Departments of Homeland Security and State have continued to review conditions in Burundi. It is determined that a 12-month extension is warranted due to ongoing armed conflict within Burundi that would pose a serious threat to the personal safety of returning nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi). 8 U.S.C. 1254a(b)(1)(A).

The BCIS Resource Information Center (RIC) notes that, although there have been important advances in the Burundi peace process, fighting between the government and rebel forces has intensified. RIC Report (June 26, 2003). Both sides are still committing serious human rights violations. *Id.* The humanitarian situation remains dire. *Id.*

Burundi has seen some progress. *Id.* The transitional government of Burundi and two of the three main rebel forces signed ceasefire agreements in December 2002. *Id.* In addition, there has been some headway in implementing the Burundian peace accords. *Id.* Cooperation between the major Hutu and Tutsi political parties has improved, laws have been enacted to address past human rights violations and prevent future abuses, and civil service and provincial administration

reforms have been initiated. *Id.* Most significantly, there was a smooth transition of power in May 2003 from a Tutsi to a Hutu president to lead the second half of the three-year transitional power-sharing government set forth in the peace accords. *Id.*

The Department of State (DOS) notes that, despite these advances, the December 2002 ceasefire has been largely ignored. DOS Recommendation (June 19, 2003). The conflict between the government forces and rebel groups continues unabated in many areas of the country. *Id.* Rebel attacks on the military are followed by army reprisals against civilians suspected of cooperating with the insurgents. *Id.* Rebels reportedly often kill persons for suspected collaboration with the government and for their refusal to pay "taxes" to the rebels. *Id.*

The prospects for a sustained halt to the armed conflict are uncertain. *Id.* While the United Nations High Commissioner for Refugees (UNHCR) is currently facilitating voluntary repatriations to the northern provinces of Burundi, much of the country remains unsafe for repatriation. *Id.* UNHCR has yet to begin facilitated returns to the southern and central provinces of Burundi because those regions have not yet been deemed secure. *Id.*

Based upon this review, the Secretary of DHS, after consultation with appropriate government agencies, finds that the conditions that prompted designation of Burundi under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3)(A). There is an ongoing armed conflict within Burundi and, due to such conflict, requiring the return of aliens who are nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) would pose a serious threat to their personal safety. 8 U.S.C. 1254a(b)(1). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Burundi should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Through the Burundi TPS Program, Do I Still Re-register for TPS?

Yes. If you already have received TPS benefits through the Burundi TPS program, your benefits will expire on November 2, 2003. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain their TPS benefits through November 2, 2004. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I Am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted TPS under the Burundi program who wish to maintain such status must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the filing fee; (2) a Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches × 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus need not pay the $50 fingerprint fee. Children beneficiaries of TPS who have reached the age of fourteen (14) but were not previously fingerprinted must pay the fifty dollar ($50) fingerprint fee with the application for extension.

An application submitted without the required fee and/or photos will be returned to the applicant. Submit the completed forms and applicable fee, if any, to the BCIS District Office having jurisdiction over your place of residence during the 60-day re-registration period that begins September 3, 2003 and ends November 3, 2003.

If	Then
You are applying for employment authorization until November 2, 2004	You must complete and file the Form I–765, Application for Employment Authorization, with the $120 fee.
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765 with no fee.[1]
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: 1) Form I–765 and 2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

[1] An applicant who does not seek employment authorization documentation does not need to submit the $120 fee, but must still complete and submit Form I–765 for data gathering purposes.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii); 8 U.S.C. 1254a(c)(2)(B)(ii).

Does This Extension Allow Nationals of Burundi (or Aliens Having No Nationality Who Last Habitually Resided in Burundi) Who Entered the United States After November 9, 1999, To File for TPS?

No. This is a notice of an extension of TPS, not a notice of re-designation of Burundi under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those who do not meet the current eligibility requirements for Burundi. To be eligible for benefits under this extension, nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) must have been continuously physically present and continuously resided in the United States since November 9, 1999.

What Is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A) and 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Burundi (or alien who has no nationality and who last habitually resided in Burundi);

(2) Have been continuously physically present in the United States since November 9, 1999;

(3) Have continuously resided in the United States since November 9, 1999; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period for the initial designation (from November 4, 1997 to November 3, 1998), or during the registration period for the redesignation (from November 9, 1999 to November 2, 2000), he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g).

What Happens When This Extension of TPS Expires on November 2, 2004?

At least 60 days before this extension of TPS expires on November 2, 2004, the Secretary of DHS will review conditions in Burundi and determine whether the conditions for designation under the TPS program continue to be met at that time, or whether the TPS designation should be terminated. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the TPS designation is extended at that time, an alien who has received TPS benefits must re-register under the extension in order to maintain TPS benefits. If, however, the Secretary of DHS terminates the TPS designation, TPS beneficiaries will maintain the immigration status they had before TPS (unless that status had since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien had no lawful immigration status prior to receiving TPS and did not obtain any status during the TPS period, he or she will revert to that unlawful status upon termination of the TPS designation.

Notice of Extension of Designation of Burundi Under the TPS Program

By the authority vested in me as Secretary of DHS under sections 244(b)(1)(A), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions that prompted designation of Burundi for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Burundi under section 244(b)(1)(A) of the Act is extended for an additional 12-month period from November 2, 2003, to November 2, 2004. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 30 nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Burundi (or an alien having no nationality who last habitually resided in Burundi) who was granted TPS during the initial designation period or redesignation period must re-register for TPS during the 60-day re-registration period from September 3, 2003 until November 3, 2003.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). Applications submitted without the required fee and/or photos will be returned to the applicant. There is no fee for filing a Form I–821 for re-registration application. If the applicant requests employment authorization, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on November 2, 2004, the Secretary will review the designation of Burundi under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(6) Information concerning the extension of designation of Burundi under the TPS program will be available at local BCIS offices upon publication of this notice and on the BCIS Web site at *http://www.bcis.gov*.

Dated: August 28, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–22508 Filed 8–29–03; 12:00 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2294–03]

RIN 1650–AB06

Termination of the Designation of Sierra Leone Under the Temporary Protected Status Program; Extension of Employment Authorization Documentation

AGENCY: Bureau of Citizenship and Immigration Services, Homeland Security.

ACTION: Notice.

SUMMARY: The designation of Sierra Leone under the Temporary Protected Status (TPS) Program will expire on November 2, 2003. After reviewing country conditions and consulting with the appropriate Government agencies, the Secretary of Homeland Security has determined that conditions in Sierra Leone no longer support TPS designation and is therefore terminating the TPS designation of Sierra Leone. This termination is effective May 3, 2004, six months from the end of the current extension. To provide for an orderly transition, nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who have been granted TPS under the Sierra Leone designation or redesignation will automatically retain their temporary protected status and have their current Employment Authorization Documents (EADs) extended until the termination date. However, an individual's TPS may still be withdrawn because of ineligibility for TPS, prior failure to timely re-register if there was not good cause for such failure, or failure to maintain continuous physical presence in the United States. On May 3, 2004, nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who have been granted TPS under the Sierra

Leone designation or redesignation will no longer have TPS status.

EFFECTIVE DATE: The TPS designation of Sierra Leone is terminated effective May 3, 2004.

FOR FURTHER INFORMATION CONTACT: Jonathan Mills, Residence and Status Services, Office of Programs and Regulations, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 "I" Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Terminate the Designation of Sierra Leone Under the TPS Program?

On March 1, 2003, the functions of the Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Public Law 107–296. The responsibilities for administering the TPS program held by the Service were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state or (part thereof) for TPS. The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. 8 U.S.C. 1254a(b)(3)(A). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, but such termination may not take effect earlier than 60 days after the date the **Federal Register** notice of termination is published. 8 U.S.C. 1254a(b)(3)(B). The Secretary of DHS may determine the appropriate effective date of the termination in order to provide an orderly transition. 8 U.S.C. 1254a(d)(3).

Why Did the Secretary of DHS Decide To Terminate the TPS Designation for Sierra Leone as of May 3, 2004?

On November 4, 1997, the Attorney General published a notice in the **Federal Register** designating Sierra Leone under the TPS program based upon ongoing armed conflict occurring within the country. 62 FR 59736. The Attorney General extended this TPS designation annually and re-designated Sierra Leone by publishing a notice on November 9, 1999, determining in each instance that the conditions warranting such designation continued to be met. 64 FR 61125.

Since the date of the last extension, the Departments of Homeland Security and State have continued to review conditions in Sierra Leone. It is determined that termination of the TPS designation of Sierra Leone is warranted because there is no longer an ongoing armed conflict within Sierra Leone that would pose a serious threat to the personal safety of returning nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone). 8 U.S.C. 1254a(b)(1)(A) and (B).

The Department of State (DOS) notes that the armed conflict that provided the basis for the Sierra Leone TPS designation is over. DOS Recommendation (June 19, 2003). Most of Sierra Leone has been at peace for nearly three years. *Id.* More than 66,000 ex-combatants have entered into a program of disarmament, demobilization, and reintegration into society. *Id.* Disarmament was largely complete by January 2002, and there has been no fighting since that time. *Id.* Peaceful multiparty presidential and parliamentary elections took place in May 2002. *Id.*

A year ago, the overall political situation was fragile. *Id.* Since then, however, human rights abuses have decreased dramatically nationwide. *Id.* The United Nations High Commissioner for Refugees (UNHCR) considers no area of the country unsafe to return. *Id.* More than 400,000 refugees have returned home to participate in the reconstruction of their country. *Id.* Of the approximately 45,000 refugees remaining in neighboring countries, two-thirds are expected to return home by December 2003. *Id.* In addition, reintegration of the 300,000 internally displaced persons (IDPs) is nearly complete. *Id.*

While there are approximately 60,000 Liberian refugees in Sierra Leone, they are concentrated along the eastern border with Liberia and have not caused any instability in Sierra Leone. *Id.* Furthermore, there have been no recent cross-border attacks from Liberia into Sierra Leone. *Id.*

The BCIS Resource Information Center (RIC) notes additional indications of stability. RIC Report (July 10, 2003). A special court has been created to bring to justice those most responsible for war crimes and other major human rights violations. *Id.* A Truth and Reconciliation Commission has been established to establish a record of the conflict and promote reconciliation. *Id.* Humanitarian and economic conditions have improved markedly. *Id.*

The newly elected government enjoys significant international support and has extended police control across the country. DOS Recommendation. A British-trained police force is in place. RIC Report. The British government continues to assist and train Sierra Leone's 10,000-member armed forces and has committed to providing significant support for at least six years. DOS Recommendation. The United Nations (U.N.) Security Council has determined that security conditions have improved so much that the international U.N. peacekeeping force, which once numbered 17,500 troops, can be phased out. *Id.* The peacekeeping force currently numbers 14,000, and will further decrease to about 9,000 by year's end. *Id.*

Based upon this review, the Secretary of DHS, after consultation with appropriate government agencies, finds that the conditions that prompted designation of Sierra Leone under the TPS program no longer exist. 8 U.S.C. 1254a(b)(3). There is not an ongoing armed conflict within Sierra Leone that would pose a serious threat to the personal safety of returning aliens who are nationals of Sierra Leone (or aliens having no nationality who last habitually resided in Sierra Leone). 8 U.S.C. 1254a(b)(1)(A). Based upon these findings, the Secretary of DHS is terminating the TPS designation for Sierra Leone as of May 3, 2004. 8 U.S.C. 1254a(b)(3)(B).

To provide for an orderly transition, nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who have been granted TPS under the Sierra Leone designation or redesignation will automatically retain TPS status and have their current employment authorization documents (EADs) extended until the termination date. 8 U.S.C. 1254a(a)(2) and (d)(3). These persons are urged to use the time before termination of their TPS to apply for any other immigration benefits they are eligible for or, in the alternative, prepare

for and arrange their return to Sierra Leone.

If I Currently Have TPS Through the Sierra Leone TPS Program, Do I Need to Re-Register To Keep My TPS Until May 3, 2004, the Termination Date?

No. If you already have been granted TPS benefits through the Sierra Leone TPS program, you do not have to re-register to keep your TPS benefits. You will automatically retain TPS until the termination date. However, your TPS status may still be withdrawn pursuant to section 244(c)(3) of the Act because of ineligibility for TPS, prior failure to timely re-register if there was not good cause for such failure, or failure to maintain continuous physical presence in the United States. 8 U.S.C. 1254a(c)(3), 8 CFR 244.14. When termination occurs on May 3, 2004, you will no longer have TPS.

Why Is the Secretary of DHS Automatically Extending the Validity of EADs From November 2, 2003, to May 3, 2004?

The Secretary of DHS has decided to extend automatically the validity of EADs to provide for an orderly transition leading up to the effective date for the termination of the Sierra Leone TPS designation. Therefore, the validity of the applicable EADs is extended for a period of 6 months, to May 3, 2004. 8 U.S.C. 1254a(a)(2) and (d)(3).

Who Is eligible To Receive an Automatic Extension of His or Her EAD?

To receive an automatic extension of his or her EAD, an individual must be a national of Sierra Leone (or an alien having no nationality who last habitually resided in Sierra Leone) who has applied for and received an EAD under the TPS designation or redesignation of Sierra Leone. This automatic extension is limited to EADs issued on either Form I–766, Employment Authorization Document, or Form I–688B, Employment Authorization Card, bearing an expiration date of November 2, 2003. The EAD must also be either (1) a Form I–766 bearing the notation "A–12" or "C–19" on the face of the card under "Category"; or (2) a Form I–688B bearing the notation "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law".

Must Qualified Individuals Apply for the Automatic Extension of Their TPS–Related EADs Until May 3, 2004?

No. Qualified individuals do not have to apply for this extension of their TPS-related EADs to May 3, 2004.

What Documents May a Qualified Individual Show to His or Her Employer as Proof of Employment Authorization and Identity When Completing the Employment Eligibility Verification Form (Form I–9)?

For completion of the Form I–9 at the time of hire or re-verification, qualified individuals who have received an extension of their EADs by virtue of this **Federal Register** notice may present to their employer a TPS-related EAD as proof of identity and employment authorization until May 3, 2004. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present to their employer a copy of this **Federal Register** notice regarding the automatic extension of employment authorization documentation to May 3, 2004. In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

How May Employers Determine Whether an EAD Has Been Automatically Extended Through May 3, 2004 and Is Therefore Acceptable for Completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until May 3, 2004, employers of Sierra Leone TPS class members whose EADs have been automatically extended by this notice must accept such EAD if presented. An EAD that has been automatically extended by this notice will contain an expiration date of November 2, 2003, and must be either (1) a Form I–766 bearing the notation "A–12" or "C–19" on the face of the card under "Category", or (2) a Form I–688B bearing the notation "274A.12(A)(12)" or "274A.12(C)(19)" on the face of the card under "Provision of Law". New EADs or extension stickers showing the May 3, 2004 expiration date will not be issued.

Employers should not request proof of Sierra Leone citizenship. Employers presented with an EAD that this **Federal Register** notice has extended automatically, that appears to be genuine and appears to relate to the employee should accept the document as a valid "List A" document and should not ask for additional Form I–9 documentation. This action by the Secretary of the DHS through this **Federal Register** notice does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. For questions, employers may call the BCIS Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a BCIS representative. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155 or 1–800–362–2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 or 1–800–237–2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html*.

What May I Do if I Believe That Returning to Sierra Leone Would Be Unsafe?

This notice terminates the designation of Sierra Leone for TPS. For nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) in the United States who believe that their particular circumstances make return to Sierra Leone unsafe, there may be avenues of immigration relief and protection available. Such avenues may include, but are not limited to, asylum, withholding of removal, or protection under Article 3 of the Torture Convention.

Eligibility for these and other immigration benefits is determined individually on a case-by-case basis. For information on eligibility and how to apply, visit the BCIS web site at *http://www.bcis.gov* or call the BCIS National Customer Service Center at 1–800–375–5283.

How Does the Termination of TPS Affect Former TPS Beneficiaries?

After the designation of Sierra Leone for TPS is terminated on May 3, 2004, former TPS beneficiaries will maintain the same immigration status they held prior to TPS (unless that status has since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to receiving TPS benefits and did not obtain any other status during the TPS period, he or she will maintain that

unlawful status upon the termination of the TPS designation.

Former TPS beneficiaries will no longer be eligible for a stay of removal or an EAD pursuant to the TPS program. TPS-related EADs will expire on May 3, 2004, and will not be renewed.

Termination of the TPS designation for Sierra Leone does not necessarily affect pending applications for other forms of immigration relief or protection, though former TPS beneficiaries will begin to accrue unlawful presence as of May 3, 2004, if they have not been granted any other immigration status or protection or if they have no pending application for certain benefits.

Notice of Termination of Designation of Sierra Leone Under the TPS Program

By the authority vested in me as Secretary of the Department of Homeland Security under section 244(b)(3) of the Act, I have consulted with the appropriate agencies of government concerning conditions in Sierra Leone. 8 U.S.C. 1254a(b)(3). Based on these consultations, I have determined that Sierra Leone no longer meets the conditions for designation of TPS under section 244(b)(1) of the Act. 8 U.S.C. 1254a(b)(1).

Accordingly, I order as follows:

(1) Pursuant to sections 244(b) of the Act, the TPS designation of Sierra Leone for TPS terminated effective May 3, 2004, six months from the end of the current extension.

(2) I estimate that there are approximately 2,700 nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who currently receive TPS benefits.

(3) To provide for an orderly transition, nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) who have been granted TPS under the Sierra Leone designation or redesignation will automatically retain temporary protected status until the termination date. However, an individual's TPS may still be withdrawn pursuant to section 244(c)(3) of the Immigration and Nationality Act and 8 CFR 244.14 because of ineligibility for TPS, prior failure to timely re-register if there was not good cause for such failure, or failure to maintain continuous physical presence in the United States.

(4) TPS-related Employment Authorization Documents that expire on November 2, 2003, are extended automatically until May 3, 2004, for qualified nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone).

(5) Information concerning the termination of the TPS program for nationals of Sierra Leone (and aliens having no nationality who last habitually resided in Sierra Leone) will be available at local BCIS offices upon publication of this notice and through the BCIS National Customer Service Center at 1–800–375–5283. This information will also be published on the BCIS Web site at *http://www.bcis.gov*.

Dated: August 28, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–22488 Filed 8–29–03; 11:16 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2293–03]

RIN 1650–AB06

Extension of the Designation of Sudan Under Temporary Protected Status Program

AGENCY: Bureau of Citizenship and Immigration Services, Homeland Security.

ACTION: Notice.

SUMMARY: The designation of Sudan under the Temporary Protected Status (TPS) Program will expire on November 2, 2003. This notice extends the Secretary of Homeland Security's designation of Sudan for 12 months until November 2, 2004, and sets forth procedures necessary for nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) with TPS to re-register and to apply for an extension of their employment authorization documentation for the additional 12-month period. Re-registration is limited to persons who registered no later than November 3, 1998, under the initial designation and also timely re-registered under each subsequent extension of the designation, or who registered under the re-designation no later than November 2, 2000, and also timely re-registered under the extension of the re-designation. Certain nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of Sudan's TPS designation is effective November 2, 2003, and will remain in effect until November 2, 2004. The 60-day re-registration period begins September 3, 2003, and will remain in effect until November 3, 2003.

FOR FURTHER INFORMATION CONTACT: Jonathan Mills, Residence and Status Services, Office of Programs and Regulations, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 "I" Street, NW., Room 3040, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Extend The Designation of Sudan Under the TPS Program?

On March 1, 2003, the functions of the Immigration and Naturalization Service (Service) transferred from the Department of Justice to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Pub. L. 107–296. The responsibilities for administering the TPS program held by the Service were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state or (part thereof) for TPS. The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated under the TPS program to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. 8 U.S.C. 1254a(b)(3)(A). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, as provided in section 244(b)(3)(B) of the Act. 8 U.S.C. 1254a(b)(3)(B). Finally, if the Secretary of DHS does not determine that a foreign state (or part thereof) no longer meets the conditions for designation at least 60 days before the designation or extension is due to expire, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the discretion of the Secretary of DHS, a

period of 12 or 18 months). 8 U.S.C. 1254a(b)(3)(C).

Why Did the Secretary of DHS Decide To Extend the TPS Designation for Sudan?

On November 4, 1997, the Attorney General published a notice in the **Federal Register** designating Sudan under the TPS program based upon ongoing armed conflict occurring within the country. 62 FR 59735. The Attorney General extended this TPS designation annually and re-designated Sudan by publishing a notice on November 9, 1999, determining in each instance that the conditions warranting such designation continued to be met. 64 FR 61123.

Since the date of the last extension, the Departments of Homeland Security and State have continued to review conditions in Sudan. It is determined that a 12-month extension is warranted due to ongoing armed conflict within Sudan that would pose a serious threat to the personal safety of returning nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan). 8 U.S.C. 1254a(b)(1)(A).

The Department of State observes that civil war continues to endanger thousands of Sudanese civilians. DOS Recommendation (June 19, 2003). Despite the signing of an October 2002 agreement, fighting between government and rebel forces has continued in several regions, especially those rich in oil. *Id.* In July 2002, warring parties signed the Machakos Protocol, a general framework for peace. *Id.* Peace talks continue in Kenya. *Id.* It remains to be seen whether a working peace agreement will be achieved; past efforts have failed. *Id.*

The BCIS Resource Information Center (RIC) notes that, despite a period of relative peace and stability in southern Sudan, there is a general consensus among human rights monitors and other close observers of Sudan that there the human rights situation in Sudan has not improved significantly. RIC Report (July 16, 2003). The lessening of conflict following the October 2002 agreement appears to have resulted in fewer war-related human rights violations. *Id.* However, human rights abuses, including massacres and the targeting and displacement of civilians, have continued in the South and in other conflicted areas, including the Upper Nile and Darfur regions. *Id.* Detention and harassment of human rights advocates and political opponents remains in the North despite increased organization by civil society groups. *Id.*

The government's human rights record remains extremely poor and includes extrajudicial killings, disappearances, arbitrary arrest and detention, rape, slavery, forced labor, and forced conscription of male children. DOS Recommendation. Rebel groups are also responsible for serious abuses, including killings, beatings, rapes, arbitrary detention, and forced conscription of boys. *Id.*

Based upon this review, the Secretary of DHS, after consultation with appropriate government agencies, finds that the conditions that prompted designation of Sudan under the TPS program continue to be met. 8 U.S.C. 1254a(b)(3). There is an ongoing armed conflict within Sudan and, due to such conflict, requiring the return of aliens who are nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) would pose a serious threat to their personal safety. 8 U.S.C. 1254a(b)(1)(A). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Sudan should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Through the Sudan TPS Program, Do I Still Re-Register for TPS?

Yes. If you already have received TPS benefits through the Sudan TPS program, your benefits will expire on November 2, 2003. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain their TPS benefits through November 2, 2004. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I am Currently Registered for TPS, How Do I Re-Register for an Extension?

All persons previously granted TPS under the Sudan program who wish to maintain such status must apply for an extension by filing (1) a Form I–821, Application for Temporary Protected Status, without the filing fee; (2) a Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches x 1½ inches). See the chart below to determine whether you must submit the one hundred and twenty dollar ($120) filing fee with Form I–765. Applicants for an extension of TPS benefits do not need to be re-fingerprinted and thus need not pay the $50 fingerprint fee. Children beneficiaries of TPS who have reached the age of fourteen (14) but were not previously fingerprinted must pay the fifty dollar ($50) fingerprint fee with the application for extension.

An application submitted without the required fee and/or photos will be returned to the applicant. Submit the completed forms and applicable fee, if any, to the BCIS District Office having jurisdiction over your place of residence during the 60-day re-registration period that begins September 3, 2003 and ends November 3, 2003.

If	Then
You are applying for employment authorization until November 2, 2004	You must complete and file the Form I–765, Application for Employment Authorization, with the $120 fee.
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765 with no fee.[1]
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: 1) Form I–765 and 2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

[1] An applicant who does not seek employment authorization documentation does not need to submit the $120 fee, but must still complete and submit Form I–765 for data gathering purposes.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii); 8 U.S.C. 1254a(c)(2)(B)(ii).

Does This Extension Allow Nationals of Sudan (or Aliens Having No Nationality Who Last Habitually Resided in Sudan) Who Entered the United States After November 9, 1999, to File for TPS?

No. This is a notice of an extension of TPS, not a notice of re-designation of Sudan under the TPS program. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those beyond the current TPS eligibility requirements of Sudan. To be eligible for benefits under this extension, nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) must have been continuously physically present and continuously resided in the United States since November 9, 1999.

What Is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A) and 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Sudan (or alien who has no nationality and who last habitually resided in Sudan);

(2) Have been continuously physically present in the United States since November 9, 1999;

(3) Have continuously resided in the United States since November 9, 1999; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period for the initial designation (from November 4, 1997 to November 3, 1998), or during the registration period for the redesignation (from November 9, 1999 to November 2, 2000), he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g).

What Happens When This Extension of TPS Expires on November 2, 2004?

At least 60 days before this extension of TPS expires on November 2, 2004, the Secretary of DHS will review conditions in Sudan and determine whether the conditions for designation under the TPS program continue to be met at that time, or whether the TPS designation should be terminated. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the TPS designation is extended at that time, an alien who has received TPS benefits must re-register under the extension in order to maintain TPS benefits. If, however, the Secretary of DHS terminates the TPS designation, TPS beneficiaries will maintain the immigration status they had before TPS (unless that status had since expired or been terminated) or any other status they may have acquired while registered for TPS. Accordingly, if an alien had no lawful immigration status prior to receiving TPS and did not obtain any status during the TPS period, he or she will revert to that unlawful status upon termination of the TPS designation.

Notice of Extension of Designation of Sudan Under the TPS Program

By the authority vested in me as Secretary of DHS under sections 244(b)(1)(B), (b)(3)(A), and (b)(3)(C) of the Act, I have consulted with the appropriate government agencies and determine that the conditions that prompted designation of Sudan for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). Accordingly, I order as follows:

(1) The designation of Sudan under section 244(b)(1) of the Act is extended for an additional 12-month period from November 2, 2003, to November 2, 2004. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 520 nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Sudan (or an alien having no nationality who last habitually resided in Sudan) who was granted TPS during the initial designation period or redesignation period must re-register for TPS during the 60-day re-registration period from September 3, 2003 until November 3, 2003.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) two identification photographs (1½ inches by 1½ inches). Applications submitted without the required fee and/or photos will be returned to the applicant. There is no fee for filing a Form I–821 for re-registration application. If the applicant requests employment authorization, he or she must submit one hundred and twenty dollars ($120) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. The fifty-dollar ($50) fingerprint fee is required only for children beneficiaries of TPS who have reached the age of 14 but were not previously fingerprinted. Failure to re-register without good cause will result in the withdrawal of TPS. 8 CFR 244.17(c). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on November 2, 2004, the Secretary will review the designation of Sudan under the TPS program and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(6) Information concerning the extension of designation of Sudan under the TPS program will be available at local BCIS offices upon publication of this notice and on the BCIS Web site at *http://www.bcis.gov.*

Dated: August 28, 2003.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 03–22509 Filed 8–29–03; 12:00 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Proposed Collection; Comment Request; Customs Declaration (Form 6059B)

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, the Bureau of Customs and Border Protection (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the Customs Declaration. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 3, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to the Bureau of Customs and Border Protection, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the Bureau of Customs and Border Protection, Attn.: Tracey Denning, Rm 3.2.C, 1300 Pennsylvania Avenue NW., Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: Customs Declaration.

OMB Number: 1651–0009.

Form Number: CBP Form 6059B.

Abstract: The Customs Declaration, CBP Form 6059B, requires basic information to facilitate the clearance of persons and goods arriving in the United States and helps CBP officers determine if any duties of taxes are due. The form is also used for the enforcement of CBP and other agencies laws and regulations. CBP is proposing to revise this form by expanding question number 11 (which asks about agricultural items entering the U.S.) to include "vegetables" and "seeds."

Current Actions: This information collection includes some increases due to new information that will be collected. This submission is being submitted as a revision to a current collection.

Type of Review: Revision to an existing collection.

Affected Public: Traveling public.

Estimated Number of Respondents: 60,000,000.

Estimated Time Per Respondent: 4 minutes and 5 seconds.

Estimated Total Annual Burden Hours: 4,038,000.

Estimated Total Annualized Cost on the Public: N/A.

Dated: August 25, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–22389 Filed 9–2–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Declaration for Free Entry of Unaccompanied Articles

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; Comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Declaration for Free Entry of Unaccompanied Articles. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 20397) on April 25, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 3, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Declaration for Free Entry of Unaccompanied Articles.

OMB Number: 1651–0014.

Form Number: CBP Form 3299.

Abstract: The Declaration for Free Entry of Unaccompanied Articles, Form

3299, is prepared by the individual or the broker acting as agent for the individual, or in some cases, the CBP officer. It serves as a declaration for duty-free entry of merchandise under one of the applicable provisions of the tariff schedule.

Current Actions: This submission is being submitted to extend the expiration date with no change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 150,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 25,000.

Estimated Total Annualized Cost on the Public: $660,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: August 20, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–22390 Filed 9–2–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Centralized Examination Station

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Centralized Examination Station. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19559) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 3, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Application to Establish Centralized Examination Station.

OMB Number: 1651–0061.

Form Number: N/A.

Abstract: If a port director decides their port needs one or more Centralized Examination Stations (CES), they solicit applications to operate a CES. The information contained in the application will be used to determine the suitability of the applicant's facility, fairness of fee structure, knowledge of cargo handling operations and of CBP procedures.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 2 hours (120 minutes).

Estimated Total Annual Burden Hours: 100.

Estimated Total Annualized Cost on the Public: $1,450.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: August 20, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–22391 Filed 9–2–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Application for Allowance in Duties

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Application for Allowance in Duties. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended without a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 20397) on April 25, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 3, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Application for Allowance in Duties.

OMB Number: 1651–0007.

Form Number: Form CBP–4315.

Abstract: This collection is required by the CBP in instances of claims of damaged or defective merchandise on which an allowance in duty is made in the liquidation of the entry. The information is used to substantiate importer's claims for such duty allowances.

Current Actions: This submission is to extend the expiration date without a change to the burden hours.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 1,600.

Estimated Total Annualized Cost on the Public: $29,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: August 25, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–22392 Filed 9–2–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Delivery Ticket

AGENCY: Bureau of Customs and Border Protection, Department of Homeland Security.

ACTION: Proposed collection; comments requested.

SUMMARY: The Bureau of Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995: Delivery Ticket. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with a change to the burden hours. This document is published to obtain comments form the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (68 FR 19560) on April 21, 2003, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before October 3, 2003.

ADDRESSES: Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–6974.

SUPPLEMENTARY INFORMATION: The Bureau of Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the Proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Title: Delivery Ticket (Form 6043).

OMB Number: 1651–0081.

Form Number: Form-6043.

Abstract: This information is used by CBP to ensure compliance with regulations pertaining to the movement of merchandise into general order facilities. importer, exporter, shipper, or cruise line.

Current Actions: This submission is being submitted to extend the expiration date with a change to the burden hours.

Type of Review: Extension (with change).

Estimated Number of Respondents: 200,000

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 66,000.

Estimated Total Annualized Cost on the Public: $825,000.

If additional information is required contact: Tracey Denning, Bureau of Customs and Border Protection, 1300 Pennsylvania Avenue NW., Room 3.2.C, Washington, DC 20229, at 202–927–1429.

Dated: August 20, 2003.

Tracey Denning,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 03–22393 Filed 9–2–03; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4814–N–08]

Notice of Proposed Information Collection: Comment Request Rural Housing and Economic Development

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sheila E. Jones, Reports Liaison Officer; Department of Housing and Urban Development, 451 7th Street, SW., Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Holly A. Kelly, (202) 708–2290 ext. 6324 (this is not a toll-free number), for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Rural Housing and Economic Development.

OMB Control Number, if applicable: 2506–0169.

Description of the need for the information and proposed use: The information collection is essential so that HUD staff may determine the eligibility, qualifications and capacity of applicants to carry out activities under the Rural Housing and Economic Development program. HUD will review the information provided by the applicants against the selection criteria contained in the NOFA in order to rate and rank the applications and select the best and most qualified applicant for funding. The selection criteria are: (1) Capacity of the Applicant and Relevant Organizational Experience; (2) Need/Extent of the Problem; (3) Soundness of Approach; (4) Leveraging of Resources; and (5) Achieving Results and Program Evaluation.

Agency form numbers, if applicable: SF 424 (including a maximum 15 page application narrative in response to the factors for award).

Members of affected public: Eligible applicants include local rural non-profit organizations, Community Development Corporations, State Housing Finance Agencies, state and community development agencies and Federally Recognized Indian Tribes.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The total number of applicants for Fiscal Years 2000, 2001, and 2002 is 1,252, with 314 awardees. The proposed frequency of the response to the collection of the information is one time; the application needs to be submitted only one time.

Status of the proposed information collection: Reinstatement of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 26, 2003.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 03–22364 Filed 9–2–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–62]

Notice of Submission of Proposed Information Collection to OMB: Certified Eligibility for Adjustments for Damage or Neglect

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

One-time certification by mortgagees to show that they have acquired hazard insurance acceptable to HUD at a reasonable rate and that the mortgagee may convey fire damaged properties without a surcharge to the claim.

DATES: *Comments Due Date:* October 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0349) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will

be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Certified Eligibility for Adjustments for Damage or Neglect.

OMB Approval Number: 2502–0349.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: One-time certification by mortgagees to show that they have acquired hazard insurance acceptable to HUD at a reasonable rate and that the mortgagee may convey fire damaged properties without a surcharge to the claim.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden: Number of Respondents 250: Average annual responses per respondent 1; Total annual responses 250; Average burden per response 30 minutes.

Total Estimated Burden Hours: 125.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 26, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22365 Filed 9–2–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–63]

Notice of Submission of Proposed Information Collection to OMB: Single Family Application for Insurance Benefits

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information collection is used to provide HUD the information needed to process and pay claims on defaulted FHA-insured home mortgage loans.

DATES: *Comments Due Date:* October 3, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0429) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the documentation submitted to OMB can be obtained from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Single Family Application for Insurance Benefits.

OMB Approval Number: 2502–0429.

Form Numbers: HUD–27011, Parts A, B, C, D & E.

Description of the Need for the Information and Its Proposed Use: This information collection is used to provide HUD the information needed to process and pay claims on defaulted FHA-insured home mortgage loans.

Respondents: Business or other for-profit.

Frequency of Submission: On occasion.

Reporting Burden: Number of Respondents 450: Average annual responses per respondent 1–5,000; Total annual responses 200,000; Average burden per response 45 minutes.

Total Estimated Burden Hours: 150,000.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 27, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22366 Filed 9–2–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–C–14]

Corrected Notice of Availability of a Draft Environmental Impact Statement for the Salishan Revitalization Project, City of Tacoma, WA

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Corrected notice.

SUMMARY: This document republishes and corrects a notice appearing in the **Federal Register** on August 27, 2003 (68 FR 51588). The Department of Housing and Urban Development gives notice to the public, agencies, and Indian tribes that the City of Tacoma, WA acting under its authority as the Responsible Entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 24 CFR 58.4, and jointly the City of Tacoma and Tacoma Housing Authority (THA) acting under their authority as lead agencies in accordance with the State Environmental Policy Act (SEPA) (RCW 43.21) that a Draft Environmental Impact Statement (DEIS) for the redevelopment of the Salishan housing project will be available for review and comment on September 5, 2003. This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508.

Notice is also given that the City of Tacoma as Responsible Entity has

decided to combine the National Historic Preservation Act, Section 106 process with the NEPA Environmental Impact Statement (EIS) in accordance with 36 CFR 800.8(c). Comments are also being requested on the Section 106 information presented in the Draft EIS as well as on the Section 106 process itself.

DATES: *Comments Due Date:* Comments must be received on or before October 19, 2003. Written comments on the Draft EIS should be addressed to the individual named below under the heading **FOR FURTHER INFORMATION CONTACT.**

Public Meeting: A public comment meeting will be held during the comment period in order to ensure public participation. The public meeting will be held on September 22, 2003, from 5 p.m. to 8 p.m. (childcare and language translation services will be available at the meeting). The public comment meeting will be held at the following location: Tacoma Housing Authority, Salishan Meeting Rooms, 1724 E. 44th Street, Tacoma, Washington 98404.

FOR FURTHER INFORMATION CONTACT: The DEIS is available on the Internet and can be viewed or downloaded at: *http://govme.cityoftacoma.org/govme/panelBeta/permitInfo/LandUse/landUse.aspx*. Copies of the DEIS are also available from: Karie Hayashi, Land Use Administration Planner, City of Tacoma, 747 Market Street, Tacoma,, Washington, 98402; Phone (253) 591–5387; FAX: (253) 591–5433; e-mail: *khayashi@cityoftacoma.org*.

SUPPLEMENTARY INFORMATION: The Salishan Public Housing Development (Salishan) was originally constructed in 1942 as war-time housing. Located in what is known as the East Side neighborhood, Salishan is bordered on the west by Portland Avenue and on the east by Swan Creek. There are currently 786 housing units on the site, of which 778 are occupied, and other related community/social service buildings.

In 2000, THA submitted a successful HOPE VI grant application for the redevelopment of Salishan. The amount of the HOPE VI grant awarded in connection with the Salishan revitalization project was $35 million. Under the proposed Revitalization Plan, existing housing will be demolished and Salishan will be redeveloped into a mixed-use, mixed-income community of approximately 1,270 to 1,500 units. The project will require the relocation of all existing residents. The new unit mix will incorporate low-income, affordable, and market rate housing with single- and multi-family dwellings, and senior and special needs housing. The redevelopment project will also include a mixture of commercial uses and improvements to community facilities such as expanding the existing health clinic, day care, family investment center, and gymnasium. Alternatives to be considered in the EIS include a no action alternative, a 1,270-unit alternative, and a 1,500-unit development.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Dated: August 29, 2003.

Patricia Carlile,

Deputy Assistant Secretary for Special Needs.

[FR Doc. 03–22534 Filed 8–29–03; 1:55 pm]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Vieques National Wildlife Refuge

AGENCY: Fish and Wildlife Service.

ACTION: Notice of intent to prepare a Comprehensive Conservation Plan and Environmental Impact Statement for Vieques National Wildlife Refuge, located in the Commonwealth of Puerto Rico.

SUMMARY: This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and environmental impact statement pursuant to the National Environmental Policy Act and its implementing regulations. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd et seq.), to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues to include in the environmental document.

Special mailings, newspaper articles, and other media announcements will be used to inform Commonwealth and Municipal governments and the public of the opportunities for input throughout the planning process.

ADDRESSES: Address comments, questions, and requests for more information to the following: Ms. Susan Silander, Project Leader, Caribbean Islands National Wildlife Refuge Complex, P.O. Box 510, Boqueron, Puerto Rico 00622, Telephone: 787/851–7258; Fax: 787/851–7440; E-mail: *CaribbeanIsland@fws.gov*.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuge purposes. The planning process will consider many elements including wildlife and habitat management, public recreational activities, and cultural resource protection. Public input in the planning process is essential as the Service establishes management priorities and explores opportunities for non-invasive and low-impact activities such as ecotourism. Restoration of degraded habitats through reforestation, reestablishment of hydrology, and removal of exotic species will be a priority.

Vieques National Wildlife Refuge, comprising just over 18,000 acres, is the largest national wildlife refuge in Puerto Rico. The refuge includes beaches used by threatened and endangered sea turtles for nesting, subtropical dry forests, mangrove lagoons, salt flats, and bioluminescent bays.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: July 28, 2003.

J. Mitch King,

Acting Regional Director.

[FR Doc. 03–22380 Filed 9–2–03; 8:45 am]

BILLING CODE 4310–55–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–487]

Certain Agricultural Vehicles and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Granting Complainant's Motion to Amend the Complaint and Notice of Investigation Relating to the Leaping Deer Trademark Registration

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the initial determination ("ID") of the presiding administrative law judge ("ALJ") granting the motion of

complainant Deere & Company ("Deere") to amend the complaint and notice of investigation by identifying the registration number of its "leaping deer" trademark.

FOR FURTHER INFORMATION CONTACT: Michael Diehl, Esq, Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3095. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). *The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On February 13, 2003, the Commission instituted this investigation based on a complaint filed by Deere, alleging a violation of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and sale within the United States after importation of certain agricultural vehicles and components thereof by reason of infringement and dilution of U.S. registered Trademark Nos. 1,254,339, 1,502,103, 1,503,576, and 91,860. The complaint further alleged that an industry in the United States exists as required by subsections (a)(1)(A) and (a)(2) of section 337.

In the complaint, Deere stated that it owned an unregistered "leaping deer" mark, in addition to its registered trademarks. It stated also that it had applied for federal registration of the mark, and that it "intend[ed] to amend this Complaint to include the leaping deer registration as soon as the registration is issued." (Complaint at ¶¶ 46–47). In the motion, Deere represented that its application for registration of the mark was granted on June 24, 2003, and it attached certified copies of the registration (U.S. Trademark Registration No. 2,729,766).

By Commission rule 210.14(b), the complaint and notice of investigation may be amended after the institution of the investigation "only * * * for good cause shown and upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties to the investigation." The ALJ found good cause for the amendment because the trademark registration in question did not issue until June 24, 2003. The ALJ also found that the amendment would not result in any prejudice to any of the parties in the investigation. The ALJ noted that Deere disclosed in the original complaint that it intended to assert infringement of the "leaping deer" mark when the registration issued. The ALJ found that the proposed amendments will not change the scope of the investigation in terms of either the products or issues involved. Finally, he noted that "Deere has not asserted infringement of the 'leaping deer' mark by any products other than the agricultural vehicles already at issue."

No party petitioned for review of the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

By order of the Commission.

Issued: August 27, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–22400 Filed 9–2–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–11047]

Proposed Amendment to Prohibited Transaction Exemption (PTE) 84–14 for Plan Asset Transactions Determined by Independent Qualified Professional Asset Managers

AGENCY: Employee Benefits Security Administration.

ACTION: Notice of Proposed Amendment to PTE 84–14.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 84–14. The exemption permits various parties that are related to employee benefit plans to engage in transactions involving plan assets if, among other conditions, the assets are managed by "qualified professional asset managers" (QPAMs), which are independent of the parties in interest and which meet specified financial standards. Additional exemptive relief is provided for employers to furnish limited amounts of goods and services to a managed fund in the ordinary course of business. Limited relief is also provided for leases of office or commercial space between managed funds and QPAMs or contributing employers. Finally, relief is provided for transactions involving places of public accommodation owned by a managed fund.

The proposed amendment would affect participants and beneficiaries of employee benefit plans, the sponsoring employers of such plans, and other persons engaging in the described transactions.

DATES: Written comments must be received by the Department on or before October 20, 2003.

ADDRESSES: All written comments (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Employee Benefits Security Administration, Room N–5649, 200 Constitution Avenue NW., Washington, DC 20210 (attention: PTE 84–14 Amendment). Interested persons are also invited to submit comments to EBSA via e-mail or fax. Any such comments should be sent either by e-mail to *lloyd.karen@dol.gov* or by fax to 202–219–0204 by the end of the scheduled comment period. All comments received will be available for public inspection at the Public Documents Room, Employee Benefits Security Administration, Room N–1513, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Karen E. Lloyd, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, Room N–5649, 200 Constitution Avenue NW., Washington DC 20210, (202) 693–8540 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 84–14 (49 FR 9494, March 13, 1984, as corrected at 50 FR 41430, October 10, 1985). PTE 84–14 provides an exemption from certain of the restrictions of section 406 of ERISA, and from certain taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. The Department is proposing this amendment to PTE 84–14 on its own motion, pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part

2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed amendment has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this proposed amendment is not a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Paperwork Reduction Act Analysis

This Notice of Proposed Rulemaking is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain a "collection of information" as defined in 44 U.S.C. 3502(3).

Background

PTE 84–14, which was proposed on the Department's own motion on December 21, 1982, was granted as part of a continuing effort by the Department to improve the administration of the prohibited transaction rules of ERISA.

[1] Section 102 of the Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), generally transferred the authority of the Secretary of Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

The rules set forth in section 406 of ERISA prohibit various transactions between a plan and a party in interest (including a fiduciary) with respect to such plan. Unless a statutory or administrative exemption applies to the transaction, section 406(a) of ERISA prohibits, among other things: sales, leases, loans or the provision of services between a party in interest and a plan, as well as a use of plan assets by or for the benefit of, or a transfer of plan assets to, a party in interest. In addition, unless exempted, a fiduciary of a plan is not permitted to engage in any acts of self-dealing or make decisions on behalf of a plan if the fiduciary is in a conflict of interest situation.

The Department has frequently exercised its statutory authority under section 408(a) of ERISA to grant both individual and class exemptions from the prohibited transaction provisions where it has been able to find that the criteria for granting such exemptions have been satisfied. Based on its experience considering requests for individual and class exemptions, and in dealing with instances of abusive violations of the fiduciary responsibility rules of ERISA, the Department determined that as a general matter, transactions entered into on behalf of plans with parties in interest are most likely to conform to ERISA's general fiduciary standards where the decision to enter into the transaction is made by an independent fiduciary. As granted, PTE 84–14 provides broad relief for various party in interest transactions that involve plan assets that are transferred to a qualified professional asset manager (QPAM) for discretionary management.

Description of Existing Relief

PTE 84–14 consists of four separate parts. The General Exemption, set forth in Part I, permits an investment fund managed by a QPAM to engage in a wide variety of transactions described in ERISA section 406(a)(1)(A) through (D) with virtually all parties in interest except the QPAM which manages the assets involved in the transaction and those parties most likely to have the power to influence the QPAM. In this regard, under section I(a), the exemption would not be available if a QPAM caused the investment fund to enter into a transaction with a party in interest dealing with the fund, if the party in interest or its "affiliate," (1) was authorized to appoint or terminate the QPAM as a manager of any of the plan's assets, (2) was authorized to negotiate the terms of the management agreement with the QPAM (including renewals or modifications thereof) on behalf of the plan, or (3) had exercised such powers in the immediately preceding one year. Additionally, under section I(d), the QPAM may not cause the investment fund which it manages to engage in a transaction with itself or a "related" party. Section V(h) provides generally that a party in interest and a QPAM are "related" if either entity (or parties controlling or controlled by either entity) owns a five percent or more interest in the other entity. Section I(e) makes explicit the Department's view that a plan (and its sponsor) which provides a significant portion of the QPAM's business as a manager of plan funds would, in many cases, be in a position to improperly influence investment decisions of the QPAM. Accordingly, the exemption would not be available for transactions with parties in interest of a plan if the amount of the plan's assets that are managed by a QPAM, together with the assets managed by the same QPAM that are attributable to other plans maintained by the same employer (or its affiliate), represent more than 20 percent of all client assets under the management of the QPAM at the time of the transaction.

Part II of the exemption provides limited relief under both section 406(a) and (b) of ERISA for certain transactions involving those employers and certain of their affiliates which could not qualify for the General Exemption provided by Part I. Section II(a) of the exemption provides conditional relief for employers and their affiliates to furnish limited amounts of goods and services to an investment fund managed by a QPAM. Section II(b) of the exemption permits such employers and their affiliates to lease office or commercial space from an investment fund managed by a QPAM.

Part III of the exemption provides limited relief under section 406(a) and (b) of ERISA for the leasing of office or commercial space by an investment fund to the QPAM, an affiliate of the QPAM, or a person who could not qualify for the General Exemption provided by Part I because it held the power of appointment described in section I(a).

Part IV of the exemption provides limited relief under section 406(a) and 406(b)(1) and (2) of ERISA for the furnishing of services and facilities by a place of public accommodation owned by an investment fund managed by a QPAM, to all parties in interest, if the services and facilities are furnished on a comparable basis to the general public.

Description of the Proposed Amendments

Although the Department is proposing this amendment on its own motion, its proposal is based, in part, on information received from a number of interested persons concerning the difficulties encountered in complying with several conditions contained in PTE 84–14. The Department has been informed that, due to the consolidation in the financial services industry and the large size of the resulting institutions, many financial institutions have found it more difficult to ensure that section I(a) (power of appointment) and section I(d) (parties "related" to the QPAM), are satisfied.

As understood by the Department, the difficulties encountered by large financial institutions under the current exemption may be illustrated by the following examples:

EXAMPLE 1: A registered investment adviser, QPAM I, manages Commingled Investment Fund F. Fund F has 75 plan investors, all of which utilize various service providers in the administration of their respective plans. Broker-Dealer B is a party in interest to several plan investors. Corporation C was the named fiduciary of Plan P until December 31, 2002, and invested part of the assets of Plan P in Fund F on December 15, 2002. Corporation C is also an affiliate of Broker-Dealer B. On March 1, 2003, QPAM I used Fund F assets to purchase securities from Broker-Dealer B. The exemption would not be available for this transaction because an affiliate of a party in interest involved in the transaction exercised, within the immediately preceding year, its authority to acquire an interest in Fund F.

EXAMPLE 2: Bank B, a QPAM, is a wholly-owned subsidiary of a large financial services institution, Corporation C, and has been retained to manage a fund established by Plan P. Corporation C has numerous subsidiaries, joint ventures and other business structures, including a 10 percent interest in Joint Venture J. Joint Venture J provides actuarial services to Plan P. Bank B uses Plan P assets to purchase, on several occasions, debt instruments issued by Joint Venture J. The general exemption set forth in Part I would not be available for this transaction because Corporation C controls the QPAM and has an interest in the party in interest which exceeds five percent.

EXAMPLE 3: Bank C is a QPAM that manages several investment funds. Bank C also serves as a custodian for employee benefit plan assets and, as a result, holds legal title to securities owned on behalf of the plans. Bank C owns a three percent interest in Corporation Y. Ten employee benefit plans (the Client Plans), for which Bank C acts as custodian and also exercises voting rights for securities holdings, own stock in Corporation Y in varying amounts up to one percent each. Bank C uses assets of one of its investment funds to purchase a parcel of unimproved real property from Corporation Y, a party in interest with respect to a plan investor in the investment fund. The general exemption set forth in Part I may not be available for this transaction because Bank C owns three percent of Corporation Y and also is considered to own, for purposes of the exemption, the interests of the Client Plans in Corporation Y for which it holds legal title and exercises voting rights. Depending on the holdings of the Client Plans, from time to time, Bank C's aggregate ownership interest could exceed five percent of Corporation Y.

To address these concerns, the interested persons made a number of suggestions to modify several of the conditions of PTE 84–14 without sacrificing the protections embodied in the class exemption. First, with respect to section I(a) (power of appointment), several persons suggested that the Department delete the "one year look-back rule" under which the exemption would be unavailable to a party in interest if it had exercised the power of appointment within the one-year period preceding the transaction. Second, the interested persons suggested that the Department clarify that section I(a)'s power of appointment refers only to the power to appoint the QPAM as manager of the assets involved in the transaction, as opposed to any of the plan's assets.

The Department has determined to adopt these suggested modifications. The Department recognizes that the burdens of compliance in the current financial marketplace outweigh the benefits of the one year look-back rule. The Department believes that deletion of the rule would not significantly diminish the safeguards contained in the exemption. In addition, the Department believes that the focus of the "power of appointment" rule should be on the assets involved in the transaction, as opposed to all of the plan's assets. This proposed modification is consistent with the approach taken by the Department in more recent class exemptions.[2]

As amended, section I(a) would provide that at the time of the transaction, the party in interest or its affiliate does not have the authority to: (i) Appoint or terminate the QPAM as a manager of the plan assets involved in the transaction, or (ii) negotiate on behalf of the plan the terms of the management agreement with the QPAM (including renewals or modifications thereof) with respect to the plan assets involved in the transaction.

In addition, one of the interested persons suggested a modification to section I(a) in connection with commingled investment funds. In the preamble to PTE 84–14, the Department explained that a party in interest who has the authority to redeem or acquire units of such a fund is considered, for purposes of the exemption, to have the authority to appoint or terminate the QPAM as a manager of plan assets. To further reduce administrative burdens, it was suggested that section I(a) be amended to make the class exemption available to a party in interest with respect to a plan investing in a commingled investment fund, notwithstanding that the party in interest has the authority to redeem or acquire units of such a fund on behalf of the plan, if the plan's interest in the fund represents less than 25 percent of the investment fund's total assets. According to the interested person, a party in interest to a plan with a relatively small interest in a commingled investment fund is less likely to be in a position to exercise undue influence over the QPAM's investment decisions. On the basis of this suggestion, the Department has proposed an amendment to section I(a) of the class exemption. However, contrary to the opinion of the interested person, the Department views 10 percent, and not 25 percent, as the meaningful measure for determining whether a QPAM may be susceptible to undue influence.

Therefore, the Department proposes to further amend the class exemption by adding the following paragraph at the end of section I(a):

Notwithstanding the foregoing, in the case of an investment fund in which two or more unrelated plans have an interest, a transaction with a party in interest with respect to an employee benefit plan will be deemed to satisfy the requirements of section I(a) if the assets of the plan managed by the QPAM in the investment fund, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of the exemption) or by the same employee organization, and managed in the same investment fund, represent less than 10 percent of the assets of the investment fund.

Finally, the Department proposes to amend section V(c), the definition of affiliate as it applies to section I(a) and Part II. The definition currently provides that "an affiliate of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, 5 percent or more partner, or employee (but only if the

[2] See *e.g.*, PTE 94–20 (59 FR 8022, February 17, 1994) and PTE 98–54 (63 FR 63503, November 13, 1998).

employer or such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of the plan assets. A named fiduciary (within the meaning of section 402(a)(2) of ERISA) of a plan and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of section I(a) if such an employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement." —

Interested persons requested that the Department narrow those persons and entities listed as affiliates under section V(c) of the exemption. According to the interested persons, the definition is difficult to monitor, particularly the portion of the definition that includes 5 percent or more partners and employees. Accordingly, after considering the suggestion, the Department has determined to delete those partnerships in which the person has less than a 10 percent interest. In addition, the Department proposes to amend section V(c)(2) to only include highly compensated employees as defined in section 4975(e)(2)(H) of the Code.

Over the years, a number of interested persons have sought clarification regarding the application of section I(b) of PTE 84–14. Section I(b) excludes from exemptive relief those transactions described in PTEs 81–6 (relating to securities lending arrangements), 83–1 (relating to acquisitions by plans of interests in mortgage pools) and 82–87 (relating to certain mortgage financing arrangements). According to the interested persons, there is uncertainty regarding the application of PTE 84–14 to certain types of transactions that, although similar to the transactions that are the subject of the three specialized exemptions, are beyond the scope of relief provided by those exemptions. Thus, for example, PTE 81–6 would not provide relief for the lending of securities that are assets of a plan to a foreign broker-dealer.[3] It is the view of the Department that PTE 84–14 would provide relief for such transactions if the conditions of that exemption were otherwise met. The Department cautions, however, that PTE 84–14 would not be available for any transaction specifically described in PTEs 81–6, 83–1 or 82–87, if a person determines not to satisfy one or more of the conditions of the specialized exemptions solely in order to take advantage of the relief provided by PTE 84–14.

With respect to section I(d) and the definition of "related" under section V(h), interested persons suggested that the threshold for determining whether a party in interest is related to the QPAM should be increased from a 5 percent ownership interest to a 20 percent ownership interest, and that the definition of "interest" under section V(h)(1) should be narrowed to exclude ownership interests held for the benefit of clients. Additionally, one interested person suggested that section I(d) be revised to make it easier to monitor for compliance. In this regard, the interested person suggested that the exemption permit a determination as to whether a party in interest is related to the QPAM to be made as of the last day of the preceding calendar quarter.

After considering the suggestions, the Department recognizes that compliance with section I(d) may create administrative burdens for a number of financial institutions. However, the Department does not believe that raising the percentage limitation to 20 percent would be appropriate in all cases. For example, while it may be more difficult to monitor the ownership interests of entities that "control" or are "controlled by" the QPAM and the party in interest, the Department believes that the QPAM and the party in interest should be able to determine any ownership interests in each other without excessive administrative burden. Accordingly, the Department is proposing to amend section V(h) to provide that a QPAM is "related" to a party in interest for purposes of section I(d) if:

- The QPAM or the party in interest owns a ten percent or more interest in the other entity;
- A person controlling or controlled by the QPAM or the party in interest owns a twenty percent or more interest in the other entity; or
- A person controlling, or controlled, by the QPAM or the party in interest owns less than a twenty percent interest in the other entity, but nevertheless exercises control over the management or policies of the other party by reason of its ownership interest.

In addition, the Department proposes to modify section V(h) to provide that generally determinations of whether the QPAM is "related" to a party in interest for purposes of section I(d) may be made as of the last day of the most recent calendar quarter. Finally, the Department is proposing to amend section V(h)(1) to provide that shares held in a fiduciary capacity need not be considered in applying the percentage limitation. The Department believes that these modifications should further lessen the compliance burdens under the class exemption.

Accordingly, the Department is proposing to amend the definition of "related" to in section V(h) as follows:

A QPAM is "related" to a party in interest for purposes of section I(d) of this exemption if, as of the last day of its most recent calendar quarter: (i) The QPAM owns a ten percent or more interest in the party in interest; (ii) a person controlling, or controlled by, the QPAM owns a twenty percent or more interest in the party in interest; (iii) the party in interest owns a ten percent or more interest in the QPAM; or (iv) a person controlling, or controlled by, the party in interest owns a twenty percent or more interest in the QPAM. Notwithstanding the foregoing, a party in interest is "related" to a QPAM if: (i) A person controlling, or controlled by, the party in interest owns less than a twenty percent interest in the QPAM and such person exercises control over the management or policies of the QPAM by reason of its ownership interest; or (ii) a person controlling, or controlled by, the QPAM owns less than a twenty percent interest in the party in interest and such person exercises control over the management or policies of the party in interest by reason of its ownership interest.

(1) The term "interest" means with respect to ownership of an entity—(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation, (B) The capital interest or the profits interest of an entity if the entity is a partnership, or (C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest if, other than in a fiduciary capacity, the person has or shares the authority—(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or (B) To dispose or to direct the disposition of such interest.

An interested person also requested that the Department clarify the language in section V(a)(4) which defines a QPAM to include "[a]n investment adviser registered under the Investment Advisers Act of 1940 that has, as of the last day of its most recent fiscal year, total client assets under its management and control in excess of $50,000,000, and either (A) shareholders' or partners' equity (as defined in section V(m)) in excess of $750,000* * *" The interested person noted that section V(m) provides that:

[3] PTE 81–6 does provide relief for broker-dealers registered under the Securities Exchange Act of 1934 (the 1934 Act) or exempted from registration under section 15(a)(1) of the 1934 Act as a dealer in exempted Government securities (as defined in section 3(a)(12) of the 1934 Act).

For purposes of section V(a)(4), the term "shareholders" or partners' equity" means the equity shown in the most recent balance sheet prepared within the two years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

According to the interested person, the two-year time period referenced in section V(m), which defines the term "shareholders" or partners' equity," appears to conflict with the phrase "as of the last day of its most recent fiscal year" contained in section V(a)(4). The Department proposes to amend section V(a)(4) to clarify that the phrase "as of the last day of its most recent fiscal year" only modifies the term "total client assets under management and control in excess of $50,000,000," and does not refer to the shareholders' or partners' equity requirement.

The Department also notes that the $50 million of client assets under management standard utilized in section V(a)(4) for investment advisers has not been revised since 1984 and may no longer provide significant protections for plans in the current financial marketplace. The Department has determined to adjust the $50 million figure to $85 million, to reflect the change in the Consumer Price Index. Additionally, the Department proposes to increase the shareholders' and partners' equity requirement from $750,000 to $1,000,000, to correspond to the preceding subsections of section V(a).

As amended, section V(a)(4) would read as follows:

An investment adviser registered under the Investment Advisers Act of 1940 that has total client assets under its management and control in excess of $85,000,000 as of the last day of its most recent fiscal year, and either (A) shareholders' or partners' equity (as defined in section V(m)) in excess of $1,000,000, or (B) payment of all its liabilities including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 and 406 of ERISA is unconditionally guaranteed by—(i) A person with a relationship to such investment adviser described in section V(c)(1) if the investment adviser and such affiliate have, as of the last day of their most recent fiscal year, shareholders' or partners' equity, in the aggregate, in excess of $1,000,000, or (ii) A person described in (a)(1), (a)(2) or (a)(3) of section V above, or (iii) A broker-dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, net worth in excess of $1,000,000; provided that such bank, savings and loan association, insurance company or investment adviser has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

In response to inquiries regarding the definition of QPAM contained in section V(a), the Department proposes to modify the exemption to specifically provide that a QPAM must be independent of an employer with respect to a plan whose assets are managed by the QPAM. As the Department noted in the preamble to PTE 84–14 (49 FR 9497):

This class exemption was developed, and is being granted, by the Department based on the essential premise that broad exemptive relief from the prohibitions of section 406(a) of ERISA can be afforded for all types of transactions in which a plan engages only if the commitments and the investments of plan assets and the negotiations leading thereto, are the sole responsibility of an independent investment manager.

To avoid further uncertainty on this issue, the Department has amended the definition of QPAM accordingly.

The Department also has received inquiries about section V(i) of PTE 84–14, which defines "the time as of which any transaction occurs." The Department understands there is uncertainty regarding the role of a QPAM in a continuing transaction. Section V(i) states the following with respect to a continuing transaction:

[I]n the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after December 21, 1982, or a renewal that requires the consent of a QPAM occurs on or after December 21, 1982 and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Part I or Part II at such times as the percentage requirement contained in section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to a QPAM. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those plan assets already under the discretionary management of the QPAM. Nothing in this paragraph shall be construed as exempting a transaction entered into by an investment fund which becomes a transaction described in section 406 of ERISA or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

In the Department's view, the exemption would be available for a continuing transaction (*e.g.*, a loan or lease), provided that all the conditions of the exemption are satisfied on the date on which the transaction is entered into (or on the date of a renewal that requires the consent of the QPAM), notwithstanding the subsequent failure to satisfy one or more of the conditions of the exemption. The only exception to the availability of the exemption for a continuing transaction is the requirement that section I(e) must be satisfied throughout the duration of the transaction. Nonetheless, the Department cautions that, although Part I may continue to be available for the entire term of a continuing transaction which subsequently fails to satisfy one or more of the conditions of that Part, no relief would be provided for an act of self-dealing described in section 406(b)(1) of ERISA if the QPAM has an interest in the person which may affect the exercise of its best judgment as a fiduciary. Although Part I provides an exemption from section 406(a)(1)(A) through (D) of ERISA, it does not provide relief from acts described in section 406(b) of ERISA. The Department urges fiduciaries to take appropriate steps to avoid engaging in 406(b) violations should circumstances change during the course of a continuing transaction.

An interested person also was concerned about the availability of Part I in the context of a continuing transaction where the QPAM becomes unable to continue to serve as a QPAM, or is terminated, prior to the appointment of a replacement QPAM. In the Department's view, the exemption would continue to be available provided no decisions were required to be made by the QPAM on behalf of the investment fund with respect to the transaction (*e.g.*, how to respond to a default in payments on a lease) during the interim period before the appointment of the replacement QPAM.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the

requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of ERISA and 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(4) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

The Department invites all interested persons to submit written comments on the proposed amendment to the address and within the time period set forth above. All comments received will be made a part of the record. Comments should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the above address.

Proposed Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department proposes to amend PTE 84–14 as set forth below:

Part I—General Exemption

Effective as of the date of publication of the final class exemption in the **Federal Register**, the restrictions of ERISA section 406(a)(1)(A) through (D) and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (D), shall not apply to a transaction between a party in interest with respect to an employee benefit plan and an investment fund (as defined in section V(b)) in which the plan has an interest, and which is managed by a qualified professional asset manager (QPAM) (as defined in section V(a)), if the following conditions are satisfied:

(a) At the time of the transaction (as defined in section V(i)) the party in interest, or its affiliate (as defined in section V(c)), does not have the authority to—

(1) Appoint or terminate the QPAM as a manager of the plan assets involved in the transaction, or

(2) Negotiate on behalf of the plan the terms of the management agreement with the QPAM (including renewals or modifications thereof) with respect to the plan assets involved in the transaction;

Notwithstanding the foregoing, in the case of an investment fund in which two or more unrelated plans have an interest, a transaction with a party in interest with respect to an employee benefit plan will be deemed to satisfy the requirements of section I(a) if the assets of the plan managed by the QPAM in the investment fund, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of the exemption) or by the same employee organization, and managed in the same investment fund, represent less than 10 percent of the assets of the investment fund;

(b) The transaction is not described in—

(1) Prohibited Transaction Exemption 81–6 (46 FR 7527; January 23, 1981) (relating to securities lending arrangements),

(2) Prohibited Transaction Exemption 83–1 (48 FR 895; January 7, 1983) (relating to acquisitions by plans of interests in mortgage pools), or

(3) Prohibited Transaction Exemption 82–87 (47 FR 21331; May 18, 1982) (relating to certain mortgage financing arrangements);

(c) The terms of the transaction are negotiated on behalf of the investment fund by, or under the authority and general direction of, the QPAM, and either the QPAM, or (so long as the QPAM retains full fiduciary responsibility with respect to the transaction) a property manager acting in accordance with written guidelines established and administered by the QPAM, makes the decision on behalf of the investment fund to enter into the transaction, provided that the transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest;

(d) The party in interest dealing with the investment fund is neither the QPAM nor a person related to the QPAM (within the meaning of section V(h));

(e) The transaction is not entered into with a party in interest with respect to any plan whose assets managed by the QPAM, when combined with the assets of other plans established or maintained by the same employer (or affiliate thereof described in section V(c)(1) of this exemption) or by the same employee organization, and managed by the QPAM, represent more than 20 percent of the total client assets managed by the QPAM at the time of the transaction;

(f) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are at least as favorable to the investment fund as the terms generally available in arm's length transactions between unrelated parties;

(g) Neither the QPAM nor any affiliate thereof (as defined in section V(d)), nor any owner, direct or indirect, of a 5 percent or more interest in the QPAM is a person who within the 10 years immediately preceding the transaction has been either convicted or released from imprisonment, whichever is later, as a result of: Any felony involving abuse or misuse of such person's employee benefit plan position or employment, or position or employment with a labor organization; any felony arising out of the conduct of the business of a broker, dealer, investment adviser, bank, insurance company or fiduciary; income tax evasion; any felony involving the larceny, theft, robbery, extortion, forgery, counterfeiting, fraudulent concealment, embezzlement, fraudulent conversion, or misappropriation of funds or securities; conspiracy or attempt to commit any such crimes or a crime in which any of the foregoing crimes is an element; or any other crime described in section 411 of ERISA. For purposes of this section (g), a person shall be deemed to have been "convicted" from the date of the judgment of the trial court, regardless of whether that judgment remains under appeal.

Part II—Specific Exemption for Employers

Effective December 21, 1982, the restrictions of sections 406(a), 406(b)(1) and 407(a) of ERISA and the taxes imposed by section 4975(a) and (b) of the Code, by reason of Code section 4975(c)(1)(A) through (E), shall not apply to:

(a) The sale, leasing, or servicing of goods (as defined in section V(j)), or to the furnishing of services, to an investment fund managed by a QPAM by a party in interest with respect to a plan having an interest in the fund, if—

(1) The party in interest is an employer any of whose employees are

covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c),

(2) The transaction is necessary for the administration or management of the investment fund,

(3) The transaction takes place in the ordinary course of a business engaged in by the party in interest with the general public,

(4) Effective for taxable years of the party in interest furnishing goods and services after the date this exemption is granted, the amount attributable in any taxable year of the party in interest to transactions engaged in with an investment fund pursuant to section II(a) of this exemption does not exceed one (1) percent of the gross receipts derived from all sources for the prior taxable year of the party in interest, and

(5) The requirements of sections I(c) through (g) are satisfied with respect to the transaction;

(b) The leasing of office or commercial space by an investment fund maintained by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if—

(1) The party in interest is an employer any of whose employees are covered by the plan or is a person who is a party in interest by virtue of a relationship to such an employer described in section V(c),

(2) No commission or other fee is paid by the investment fund to the QPAM or to the employer, or to an affiliate of the QPAM or employer (as defined in section V(c)), in connection with the transaction,

(3) Any unit of space leased to the party in interest by the investment fund is suitable (or adaptable without excessive cost) for use by different tenants,

(4) The amount of space covered by the lease does not exceed fifteen (15) percent of the rentable space of the office building, integrated office park, or of the commercial center (if the lease does not pertain to office space),

(5) In the case of a plan that is not an eligible individual account plan (as defined in section 407(d)(3) of ERISA), immediately after the transaction is entered into, the aggregate fair market value of employer real property and employer securities held by investment funds of the QPAM in which the plan has an interest does not exceed 10 percent of the fair market value of the assets of the plan held in those investment funds. In determining the aggregate fair market value of employer real property and employer securities as described herein, a plan shall be considered to own the same proportionate undivided interest in each asset of the investment fund or funds as its proportionate interest in the total assets of the investment fund(s). For purposes of this requirement, the term "employer real property" means real property leased to, and the term "employer securities" means securities issued by, an employer any of whose employees are covered by the plan or a party in interest of the plan by reason of a relationship to the employer described in subparagraphs (E) or (G) of ERISA section 3(14), and

(6) The requirements of sections I(c) through (g) are satisfied with respect to the transaction.

Part III—Specific Lease Exemption for QPAMs

Effective December 21, 1982, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the leasing of office or commercial space by an investment fund managed by a QPAM to the QPAM, a person who is a party in interest of a plan by virtue of a relationship to such QPAM described in subparagraphs (G), (H), or (I) of ERISA section 3(14) or a person not eligible for the General Exemption of Part I by reason of section I(a), if—

(a) The amount of space covered by the lease does not exceed the greater of 7500 square feet or one (1) percent of the rentable space of the office building, integrated office park or of the commercial center in which the investment fund has the investment,

(b) The unit of space subject to the lease is suitable (or adaptable without excessive cost) for use by different tenants,

(c) At the time the transaction is entered into, and at the time of any subsequent renewal or modification thereof that requires the consent of the QPAM, the terms of the transaction are not more favorable to the lessee than the terms generally available in arm's length transactions between unrelated parties, and

(d) No commission or other fee is paid by the investment fund to the QPAM, any person possessing the disqualifying powers described in section I(a), or any affiliate of such persons (as defined in section V(c)), in connection with the transaction.

Part IV—Transactions Involving Places of Public Accommodation

Effective December 21, 1982, the restrictions of section 406(a)(1)(A) through (D) and 406(b)(1) and (2) of ERISA and the taxes imposed by Code section 4975(a) and (b), by reason of Code section 4975(c)(1)(A) through (E), shall not apply to the furnishing of services and facilities (and goods incidental thereto) by a place of public accommodation owned by an investment fund managed by a QPAM to a party in interest with respect to a plan having an interest in the investment fund, if the services and facilities (and incidental goods) are furnished on a comparable basis to the general public.

Part V—Definitions and General Rules

For purposes of this exemption:

(a) The term "qualified professional asset manager" or "QPAM" means an independent fiduciary (as defined in section V(n)) which is—

(1) A bank, as defined in section 202(a)(2) of the Investment Advisers Act of 1940 that has the power to manage, acquire or dispose of assets of a plan, which bank has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(k)) in excess of $1,000,000 or

(2) A savings and loan association, the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, that has made application for and been granted trust powers to manage, acquire or dispose of assets of a plan by a State or Federal authority having supervision over savings and loan associations, which savings and loan association has, as of the last day of its most recent fiscal year, equity capital (as defined in section V(k)) or net worth (as defined in section V(l)) in excess of $1,000,000 or

(3) An insurance company which is qualified under the laws of more than one State to manage, acquire, or dispose of any assets of a plan, which company has, as of the last day of its most recent fiscal year, net worth (as defined in section V(l)) in excess of $1,000,000 and which is subject to supervision and examination by a State authority having supervision over insurance companies, or

(4) An investment adviser registered under the Investment Advisers Act of 1940 that has total client assets under its management and control in excess of $85,000,000 as of the last day of its most recent fiscal year, and either (A) shareholders' or partners' equity (as defined in section V(m)) in excess of $1,000,000, or (B) payment of all of its liabilities including any liabilities that may arise by reason of a breach or violation of a duty described in sections 404 and 406 of ERISA is unconditionally guaranteed by—(i) A person with a relationship to such investment adviser described in section

V(c)(1) if the investment adviser and such affiliate have, as of the last day of their most recent fiscal year, shareholders' or partners' equity, in the aggregate, in excess of $1,000,000, or (ii) A person described in (a)(1), (a)(2) or (a)(3) of section V above, or (iii) A broker-dealer registered under the Securities Exchange Act of 1934 that has, as of the last day of its most recent fiscal year, net worth in excess of $1,000,000; Provided that such bank, savings and loan association, insurance company or investment adviser has acknowledged in a written management agreement that it is a fiduciary with respect to each plan that has retained the QPAM.

(b) An "investment fund" includes single-customer and pooled separate accounts maintained by an insurance company, individual trusts and common, collective or group trusts maintained by a bank, and any other account or fund to the extent that the disposition of its assets (whether or not in the custody of the QPAM) is subject to the discretionary authority of the QPAM.

(c) For purposes of section I(a) and Part II, an "affiliate" of a person means—

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, 10 percent or more partner (except with respect to part II this figure shall be 5 percent), or highly compensated employee as defined in section 4975(e)(2)(H) of the Code (but only if the employer of such employee is the plan sponsor), and

(3) Any director of the person or any employee of the person who is a highly compensated employee, as defined in section 4975(e)(2)(H) of the Code, or who has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets. A named fiduciary (within the meaning of section 402(a)(2) of ERISA) of a plan and an employer any of whose employees are covered by the plan will also be considered affiliates with respect to each other for purposes of section I(a) if such employer or an affiliate of such employer has the authority, alone or shared with others, to appoint or terminate the named fiduciary or otherwise negotiate the terms of the named fiduciary's employment agreement.

(d) For purposes of section I(g) an "affiliate" of a person means—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any director of, relative of, or partner in, any such person,

(3) Any corporation, partnership, trust or unincorporated enterprise of which such person is an officer, director, or a 5 percent or more partner or owner, and

(4) Any employee or officer of the person who—

(A) Is a highly compensated employee (as defined in section 4975(e)(2)(H) of the Code) or officer (earning 10 percent or more of the yearly wages of such person), or

(B) Has direct or indirect authority, responsibility or control regarding the custody, management or disposition of plan assets.

(e) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(f) The term "party in interest" means a person described in ERISA section 3(14) and includes a "disqualified person," as defined in Code section 4975(e)(2).

(g) The term "relative" means a relative as that term is defined in ERISA section 3(15), or a brother, a sister, or a spouse of a brother or sister.

(h) A QPAM is "related" to a party in interest for purposes of section I(d) of this exemption if, as of the last day of its most recent calendar quarter: (i) The QPAM owns a ten percent or more interest in the party in interest; (ii) a person controlling, or controlled by, the QPAM owns a twenty percent or more interest in the party in interest; (iii) the party in interest owns a ten percent or more interest in the QPAM; or (iv) a person controlling, or controlled by, the party in interest owns a twenty percent or more interest in the QPAM. Notwithstanding the foregoing, a party in interest is "related" to a QPAM if: (i) a person controlling, or controlled by, the party in interest owns less than a twenty percent interest in the QPAM and such person exercises control over the management or policies of the QPAM by reason of its ownership interest; (ii) a person controlling, or controlled by, the QPAM owns less than a twenty percent interest in the party in interest and such person exercises control over the management or policies of the party in interest by reason of its ownership interest. For purposes of this definition:

(1) The term "interest" means with respect to ownership of an entity—

(A) The combined voting power of all classes of stock entitled to vote or the total value of the shares of all classes of stock of the entity if the entity is a corporation,

(B) The capital interest or the profits interest of the entity if the entity is a partnership, or

(C) The beneficial interest of the entity if the entity is a trust or unincorporated enterprise; and

(2) A person is considered to own an interest if, other than in a fiduciary capacity, the person has or shares the authority—

(A) To exercise any voting rights or to direct some other person to exercise the voting rights relating to such interest, or

(B) To dispose or to direct the disposition of such interest.

(i) The time as of which any transaction occurs is the date upon which the transaction is entered into. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into on or after December 21, 1982, or a renewal that requires the consent of the QPAM occurs on or after December 21, 1982 and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, the requirements will continue to be satisfied thereafter with respect to the transaction. Notwithstanding the foregoing, this exemption shall cease to apply to a transaction exempt by virtue of Part I or Part II at such time as the percentage requirement contained in section I(e) is exceeded, unless no portion of such excess results from an increase in the assets transferred for discretionary management to a QPAM. For this purpose, assets transferred do not include the reinvestment of earnings attributable to those plan assets already under the discretionary management of the QPAM. Nothing in this paragraph shall be construed as exempting a transaction entered into by an investment fund which becomes a transaction described in section 406 of ERISA or section 4975 of the Code while the transaction is continuing, unless the conditions of this exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(j) The term "goods" includes all things which are movable or which are fixtures used by an investment fund but does not include securities, commodities, commodities futures, money, documents, instruments, accounts, chattel paper, contract rights and any other property, tangible or intangible, which, under the relevant

facts and circumstances, is held primarily for investment.

(k) For purposes of section V(a)(1) and (2), the term "equity capital" means stock (common and preferred), surplus, undivided profits, contingency reserves and other capital reserves.

(l) For purposes of section V(a)(3), the term "net worth" means capital, paid-in and contributed surplus, unassigned surplus, contingency reserves, group contingency reserves, and special reserves.

(m) For purposes of section V(a)(4), the term "shareholders" or partners' equity" means the equity shown in the most recent balance sheet prepared within the two years immediately preceding a transaction undertaken pursuant to this exemption, in accordance with generally accepted accounting principles.

(n) For purposes of section V(a), the term "independent fiduciary" means a fiduciary managing the assets of a plan in an investment fund that is independent of and unrelated to the employer sponsoring such plan. For purposes of this exemption, the independent fiduciary will not be deemed to be independent of and unrelated to the employer sponsoring the plan if such fiduciary directly or indirectly controls, is controlled by, or is under common control with the employer sponsoring the plan.

Signed at Washington, DC, this 28th day of August, 2003.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–22383 Filed 9–2–03; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Optional Professional Management in Defined Contribution Plans, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, an open public teleconference meeting will be held Monday, September 22, 2003, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study optional professional management for defined contribution plans.

The session will take place in Room N–3437 C–D, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 10:30 a.m. to approximately 1 p.m., is for Working Group members to discuss their findings and begin drafting the Advisory Council's report for the Secretary of Labor.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 20 copies to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before September 17, 2003 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary at the above address or via telephone at (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by September 17 at the address indicated in this notice.

Signed at Washington, DC, this 26th day of August, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–22384 Filed 9–2–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

123rd Full Meeting, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 123rd open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held via teleconference on Tuesday, September 23, 2003.

The session will take place in Room N–3437 C–D, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington, DC 20210. The purpose of the meeting, which will begin at 2 p.m. and end at approximately 3 p.m., is for the chairpersons of the Advisory Council's Working Groups to provide progress reports on their individual study topics.

Organizations or members of the public wishing to submit a written statement pertaining to any topics under consideration by the Advisory Council may do so by submitting 20 copies to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before September 17, 2003 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Advisory Council should forward their request to the Executive Secretary at the above address or via telephone at (202) 693–8668. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by September 17 at the address indicated in this notice.

Signed at Washington, DC, this 26th day of August, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–22385 Filed 9–2–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Defined Benefit Funding and Discount Rate Issues, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, an open public teleconference meeting will be held Tuesday, September 23, 2003, of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study defined benefit plan funding and discount rate issues.

The session will take place in Room N–3437 C–D, U.S. Department of Labor Building, 200 Constitution Avenues, NW., Washington, DC 20210. The purpose of the open meeting, which will run from 10:30 a.m. to approximately 1:30 p.m., is for Working Group members to discuss their findings and begin drafting the Advisory Council's report for the Secretary of Labor.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 20 copies to Sharon

Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before September 17, 2003 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary at the above address or via telephone at (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by September 17 at the address indicated in this notice.

Signed at Washington, DC, this 26th day of August, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–22386 Filed 9–2–03; 8:45 am]

BILLING CODE 4510–29–M

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Working Group on Health Care Security Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, an open public teleconference meeting will be held Monday, September 22, 2003, of the Advisory Council on Employee Welfare and Pension Benefits Plans Working Group assigned to study the issue of health care security, including consumer-directed health plans and self-insured plans.

The session will take place in Room N–3437 C–D, U.S. Department of Labor Building, 200 Constitution Avenue, NW., Washington DC 20210. The purpose of the open meeting, which will run from 1:30 p.m. to approximately 5 p.m., is for Working Group members to discuss their findings and begin drafting the Advisory Council's report for the Secretary of Labor.

Organizations or members of the public wishing to submit a written statement pertaining to the topic may do so by submitting 20 copies to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue, NW., Washington, DC 20210. Statements received on or before September 17, 2003 will be included in the record of the meeting. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary at the above address or via telephone at (202) 693–8668. Oral presentations will be limited to 20 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by September 17 at the address indicated in this notice.

Signed at Washington, DC, this 26th day of August, 2003.

Ann L. Combs,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 03–22387 Filed 9–2–03; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts Teleconference

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held by teleconference on September 12, 2003, from 2 p.m.–3 p.m. from Room 520 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

The Council will meet for discussion of the American Jazz Masters award. If, in the course of the discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may participate, as observers, in Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this teleconference meeting can be obtained from the Council Operations office, National Endowment for the Arts, Washington, DC 20506, at 202/682–5433.

Dated: August 26, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 03–22401 Filed 9–2–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 3, 2003. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (2001–011) to Dr. Wayne Z.

Trivelpiece on September 28, 2000. The issued permit allows the applicant to capture and release up to 1,000 Adelie, Gentoo, Chinstrap penguins, and other various seabirds for banding, weighing, blood sampling, stomach pumping and attaching radio Txs, PTTs, and TDRs. The collection of samples and data will be used to study the behavioral ecology and population biology of the penguins and the interaction among these species and their principal seabird predators.

The applicant requests a modification to his permit to allow: capture and release of 10 individuals each of Brown and South Polar Skuas; collect tissue samples from dead individuals of all species of birds; collect up to 12 uropygial gland oil from 3 species of penguin; and, collect up to 12 eggs each from 3 species of penguins (1 egg per nest) for egg yolk lipid analysis.

Location: ASPA 128—Western Shore of Admiralty Bay, King George Island.

Dates: October 1, 2003 to April 1, 2005.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–22428 Filed 9–2–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field camps during a skiing/climbing expedition in the Antarctic interior. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 3, 2003. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene Kennedy at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of an expedition to Antarctica. Ice Axe Productions, Inc., with a team of 5 experienced climbers and photographers will travel by air from Novolarevskaya Station to the Patriot Hills, then ski to Holtanna in the Orvin Fjella Mountain Range, then proceed to the Wohlthat Mountains. The team's camping facilities will be basic and mobile. The team will use white gas for cooking. All wastes will be collected and transported back to Novolrevskaya for disposition.

Application for the permit is made by: Doug Stoup, President, Ice Axe Productions, Inc., 3650, NW., 5th Avenue, Boca Raton, FL 33431.

Location: Patriot Hills, the Orvin Fjella Mountain Range, and the Wohlthat Mountains, Antarctica.

Dates: October 1, 2003, to March 31, 2008.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–22429 Filed 9–2–03; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On June 27, 2003; the National Science Foundation published a notice in the **Federal Register** of a permit application received. A permit was issued on August 26, 2003, to Erick Chiang, Permit No. 2004–006.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 03–22430 Filed 9–2–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* General Licensee Registration.

2. *Current OMB approval number:* 3150–0198.

3. *How often the collection is required:* Annually.

4. *Who is required or asked to report:* General Licensees of the NRC who possess devices subject to registration under 10 CFR 31.5.

5. *The number of annual respondents:* 3,000.

6. *The number of hours needed annually to complete the requirement or request:* 1,000 hours annually (3,000 respondents x 20 minutes per form).

7. *Abstract:* NRC Form 664 would be used by NRC general licensees to make reports regarding certain generally licensed devices subject to registration. The registration program is intended to allow NRC to better track general licensees, so that they can be contacted or inspected as necessary, and to make sure that generally licensed devices can be identified even if lost or damaged, and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

Submit, by November 3, 2003, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC Worldwide Web site *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F52, Washington, DC 20555–0001, by telephone at (301)415–7233, or by Internet electronic mail at *infocollects@nrc.gov*.

Dated at Rockville, Maryland, this 26th day of August, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–22398 Filed 9–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–33819]

Environmental Assessment and Finding of No Significant Impact Related to Issuance of a License Amendment of U.S. Nuclear Regulatory Commission Byproduct Material License No. 55–14065–03; Unitime Industries, Inc.

I. Summary

The U.S. Nuclear Regulatory Commission (NRC) is considering terminating Byproduct Material License No. 55–14065–03 to authorize the release of the licensee's facilities in Christiansted, St. Croix for unrestricted use and has prepared an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) in support of this action.

The NRC has reviewed the results of the final survey of the Unitime facility in Christiansted, St. Croix. Unitime Industries was authorized by the NRC from March 23, 1995, until the present to use manufactured watch dials and hands containing luminous paint activated with tritium for the manufacture and repair of timepieces. In November 2001, Unitime Industries ceased operations with licensed materials at the Christiansted, St. Croix site, and requested that the NRC terminate the license. Unitime Industries has conducted surveys of the facility and determined that the facility meets the license termination criteria in Subpart E of 10 CFR Part 20. The NRC staff has evaluated Unitime's request and the results of the surveys, performed a confirmatory survey, and has developed an EA in accordance with the requirements of 10 CFR Part 51. Based on the staff evaluation, the conclusion of the EA is a FONSI on human health and the environment for the proposed licensing action.

II. Environmental Assessment

Introduction

Unitime Industries has requested release, for unrestricted use, of their building located at Parcel 1C, Estate Diamond, Plots 8 and 9, in Christiansted, St. Croix, U. S. Virgin Islands, as authorized for use by NRC License No. 55–14065–03. License No. 55–14065–03 was issued on March 23, 1995, and amended periodically since that time. NRC-licensed activities performed at the Christiansted, St. Croix site were limited to the service and repair of returned timepieces the incorporation of timepiece self-luminous parts into timepieces. These activities were typically performed on bench tops. No outdoor areas were affected by the use of licensed materials. Licensed activities ceased completely in November 2001, and the licensee requested release of the facilities for unrestricted use. Based on the licensee's historical knowledge of the site and the condition of the facilities, the licensee determined that only routine decontamination activities, in accordance with licensee radiation safety procedures, were required. The licensee surveyed the facility and provided documentation that the facility meets the license termination criteria specified in Subpart E of 10 CFR Part 20, "Radiological Criteria for License Termination."

The Proposed Action

The proposed action is to terminate NRC Radioactive Materials License Number 55–14065–03 and release the licensee's facilities in Christiansted, St. Croix, for unrestricted use. By letters dated November 30, 2001, February 11, 2002, and July 18, 2003, Unitime Industries provided survey results which demonstrate that the Christiansted, St. Croix facility is in compliance with the radiological criteria for license termination in Subpart E of 10 CFR Part 20, "Radiological Criteria for License Termination." No further actions will be required on the part of the licensee to remediate the facility.

Purpose and Need for the Proposed Action

The purpose of the proposed action is to release the building located at Parcel 1C, Estate Diamond, Plots 8 and 9, in Christiansted, St. Croix, U.S. Virgin Islands, for unrestricted use and to terminate the Unitime Industries materials license. The need for the proposed action is to comply with NRC regulations and the Timeliness Rule. The licensee does not plan to perform any activities with licensed materials at this location. Maintaining the area under a license would reduce options for future use of the property and cause Unitime Industries to continue leasing a building for which it has no more use. NRC is fulfilling its responsibilities under the Atomic Energy Act to make a decision on a proposed license amendment for release of facilities for unrestricted use that ensures protection of the public health and safety and environment.

Alternative to the Proposed Action

The only alternative to the proposed action of terminating the license and releasing the Christiansted, St. Croix facility will result in violation of NRC's Timeliness Rule (10 CFR 30.36), which requires licensees to decommission their facilities when licensed activities cease. The licensee does not plan to perform any activities with licensed materials at these locations. Maintaining the areas under a license would also reduce options for future use of the property.

The Affected Environment and Environmental Impacts

The Unitime building is a one story block building. Work with radioactive materials was done on work benches located within several rooms in the building. Watch parts and finished watches were stored in a safe. The building is located within an industrial park.

The NRC staff has reviewed the surveys performed by Unitime Industries to demonstrate compliance with the 10 CFR 20.1402 license termination criteria and has performed a confirmatory survey. Based on its review and the results of the confirmatory survey, the staff has

determined that the affected environment and environmental impacts associated with the decommissioning of the Unitime facility are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities" (NUREG–1496). The staff also finds that the proposed release for unrestricted use of the Unitime Industries facility is in compliance with 10 CFR 20.1402, "Radiological Criteria for Unrestricted Use." The NRC has found no other activities in the area that could result in cumulative impacts.

Agencies and Persons Contacted and Sources Used

This EA was prepared entirely by the NRC staff. The U. S. Fish and Wildlife Service was contacted and responded by letter dated October 16, 2002, with no opposition to the proposed action. The U.S. Virgin Island's Department of Planning and Natural Resources was also contacted and responded by letter dated October 18, 2002, with no objection.

Conclusion

Based on its review, the NRC staff has concluded that the proposed action complies with 10 CFR Part 20. NRC has prepared this EA in support of the proposed license termination to release the Unitime facility located at Parcel 1C, Estate Diamond, Plots 8 and 9, in Christiansted, St. Croix, U.S. Virgin Islands, for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are not expected to be significant and has determined that preparation of an environmental impact statement for the proposed action is not required.

List of Preparers

Orysia Masnyk Bailey, Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, Health Physicist.

List of References

1. NRC License No. 55–14065–03 inspection and licensing records.

2. Unitime Industries, Inc. "Termination of License for Activities and Storage" Letter from E. Rebmann and B. Buksch to NRC dated November 30, 2001. (ML022060401)

3. Unitime Industries, Inc. "Request for Additional Documents" Letter from E. Rebmann to NRC dated February 11, 2002. (ML020450333)

4. License amendment request and supporting documentation dated July 18, 2003. (ML032030481)

5. NRC Inspection Report No. 55–14065–03/2003–001, dated March 11, 2003. (ML030720115)

6. NRC Inspection Report No. 55–14065–03/2003–001, Supplemental Information dated April 8, 2003. (ML031060560)

7. Title 10 Code of Federal Regulations Part 20, Subpart E, "Radiological Criteria for License Termination."

8. **Federal Register** Notice, Volume 65, No. 114, page 37186, dated Tuesday, June 13, 2000, "Use of Screening Values to Demonstrate Compliance With The Federal Rule on Radiological Criteria for License Termination."

9. NRC. NUREG–1757 "Consolidated NMSS Decommissioning Guidance," Final Report dated September 2002.

10. NRC. NUREG 1496 "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities," Final Report dated July 1997.

11. Virgin Islands State Historic Preservation Office. "Request for Comments Regarding Cultural and Historical Resources at Unitime Industries, Inc. Parcel 1C, Estate Diamond, Plots 8 and (, Christiansted, St. Croix, U.S.V.I." Letter from D. E. Plaskett, Esq. To NRC dated October 18, 2002. (ML023080328)

12. U.S. Fish and Wildlife Service. "Request for comments regarding endangered wildlife, plant and marine resources at a site in U.S. Virgin Islands" Letter from C. A. Diaz to NRC dated October 16, 2002. (ML022950399)

III. Finding of No Significant Impact

Based upon the EA, the staff concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the staff has determined that preparation of an environmental impact statement is not warranted.

IV. Further Information

The references listed above are available for public inspection and may also be copied for a fee at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. These documents are also available for public review through ADAMS, the NRC's electronic reading room, at: *http://www.nrc.gov/reading-rm/adams.html.* Any questions with respect to this action should be referred to Orysia Masnyk Bailey, Materials Licensing/Inspection Branch 1, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region II, Suite 23T85, 61 Forsyth Street, SW., Atlanta, Georgia, 30303. Telephone 404–562–4739.

Dated at Atlanta, Georgia, the 15th day of August, 2003.

For the Nuclear Regulatory Commission.

Douglas M. Collins,

Director, Division of Nuclear Materials Safety, Region II.

[FR Doc. 03–22396 Filed 9–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Peer Review Committee for Source Term Modeling; Notice of Meeting

The Peer Review Committee For Source Term Modeling will hold a closed meeting on September 25–26, 2003 at 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be closed to public attendance to protect information classified as national security information pursuant to 5 U.S.C. 552b(c)(1).

The agenda for the subject meeting shall be as follows: *Thursday September 25 and Friday, September 26, 2003–8:30 a.m. until the conclusion of business.*

The Committee will review Sandia National Laboratories (SNL) activities and aid SNL in development of guidance documents for estimating source terms resulting from sabotage attacks on spent fuel transportation and storage containers. The guidance document will assist the NRC in evaluations of the impact of specific terrorist activities targeted at a range of spent fuel storage casks and radioactive material (RAM) transport packages. The committee's work is expected to result in a committee report on the SNL work to the NRC by September 30, 2003.

Further information contact: Andrew L. Bates, (telephone 301–415–1963) or Dr. Charles G. Interrante (telephone 301–415–3967) between 7:30 a.m. and 4:15 p.m. (ET).

Dated: August 27, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–22399 Filed 9–2–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

Date: Weeks of September 1, 8, 15, 22, 29, October 6, 2003.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and closed.

Week of September 1, 2003

There are no meetings scheduled for the Week of September 1, 2003.

Week of September 8, 2003—Tentative

Wednesday, September 10, 2003

1 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) Contact: John Zabko, 301–415–2308)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

3 p.m. Discussion of Security Issues (Closed—Ex. 1)

Thursday, September 11, 2003

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1)

Week of September 15, 2003—Tentative

There are no meetings scheduled for the Week of September 15, 2003.

Week of September 22, 2003—Tentative

Wednesday, September 24, 2003

9 a.m. Briefing on Emergency Preparedness Program Status (Public Meeting) (Contact: Eric Weiss 301–415–3624)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of September 29, 2003—Tentative

Thursday, October 2, 2003

9:30 a.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 6, 2003—Tentative

Tuesday, October 7, 2003

1:30 p.m. Discussion of Management Issues (Closed—Ex.2)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recordings)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

* * * * *

SUPPLEMENTARY INFORMATION:

By a vote of 3–0 on August 27, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex. 1)" be held August 27, and on less than one week's notice to the public.

By a vote of 3–0 on August 27, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of (1) Final Rule: 10 CFR Parts 30, 40, and 70: Financial Assurance for Materials Licensees; (2) Final Rulemaking—Risk-Informed 10 CFR 50.44, "Combustible Gas Control in Containment"; (3) Final Rule on Electronic Maintenance and Submission of Information; and (4) Tennessee Valley Authority (Watts Bar Nuclear Plant, Units 1 & 2, Browns Ferry Nuclear Plant, Units 1, 2 & 3), Docket Nos. 50–390–CIVP; 50–0327–CIVP; 50–328–CIVP; 50–259–CIVP; 50–260–CIVP; 50–296–CIVP; LBP–03–10 (June 26, 2003)" be held on August 28, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, pleaase contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 28, 2003.

R. Michelle Schroll,

Information Management Specialist, Office of the Secretary.

[FR Doc. 03–22507 Filed 8–29–03; 11:14 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–698]

License No. SNM–770, Westinghouse Electric Company LLC, Waltz Mill Service Center, Madison, PA; Notice of Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards (NMSS), has issued a Directors' Decision with regard to a petition dated October 30, 2002, filed by Viacom, Inc., hereinafter referred to as the "petitioner." The petition concerns the decommissioning of the former Westinghouse Test Reactor (WTR) at the Waltz Mill Service Center, near Madison, PA. In a letter dated December 20, 2002, Westinghouse Electric Company LLC (Westinghouse), the holder of the SNM–770 License at the Waltz Mill Service Center, responded to the Viacom 2.206 petition. Westinghouse submitted supplemental information on the petition on April 14, 2003. Viacom submitted comments on the Westinghouse supplemental information on April 22, 2003. Westinghouse submitted a second supplemental response to the Viacom petition on April 28, 2003.

The petition requested NRC issue an Order to Westinghouse, which would require them to: (1) Provide certain radiological survey data to NRC which NRC has requested, and (2) accept under SNM–770 certain residual byproduct materials now held under Viacom license TR–2 and located at the WTR facility at the Waltz Mill Service Center. As the basis for the request, Viacom states that Westinghouse's refusals to provide the survey data and to accept the residual byproduct materials now held under license TR–2 violates enforceable commitments made to the NRC.

As an alternative, the petitioner states that Westinghouse's refusals constitute a violation of 10 CFR 50.5, Deliberate misconduct, which causes Viacom to be in violation of a license condition, the approved Decommissioning Plan (DP) for the WTR. The petitioner claims that granting the petition is necessary for compliance with both the DP and other commitments under SNM–770 and is needed to abate the violation of 10 CFR 50.5 to promote public health and safety by providing for safe completion of decommissioning of the WTR under the DP.

Lastly, the petitioner requests that NRC interpret certain requirements in the DP for the WTR and decide whether they have been met. In a separate letter dated October 29, 2002, Viacom, Inc. applied to the NRC to issue two orders, requesting that the NRC: (1) Terminate the TR–2 license, and (2) declare that all of Viacom's obligations under the DP have been satisfactorily completed, except for the submission of the survey data and transfer of the TR–2 residual materials to the SNM–770 license. The petitioner requests that the interpretation of the DP be resolved as part of the NRC's consideration of the October 29, 2002 application.

The petitioner and the licensee met with the NMSS petition review board on February 20, 2003, to discuss the petition. The meeting gave the petitioner and the licensee an opportunity to provide additional information and to clarify issues raised in the petition. The results of that

discussion were considered in the determination regarding the petition.

The NRC sent a copy of the proposed Director's Decision to the petitioner and the licensee for comments on June 18, 2003. The petitioner and the licensee responded with comments on July 11, 2003. The comments and the NRC staff's response to them are included in the Director's Decision.

The NMSS Office Director has determined that the request for NRC to issue an Order to Westinghouse to provide certain radiological survey data to NRC which NRC has requested, is moot and will no longer be addressed, and that the request for NRC to issue an Order to Westinghouse to accept under SNM–770 certain residual byproduct materials now held under Viacom license TR–2 and located at the WTR facility is denied. The NMSS Office Director also has denied the request for NRC to issue an Order to Westinghouse to abate a violation of 10 CFR 50.5, and has granted the request for NRC to interpret the Decommissioning Plan for the WTR as part of the response to Viacom's separate request dated October 29, 2002. The reasons for the decisions are explained in the Director's Decision pursuant to 10 CFR 2.206 [DD–03–02], the complete text of which is available in ADAMS for inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and from the ADAMS public access component on the NRC's Web site, *http://www.nrc.gov,* under the "Public Involvement" icon.

A copy of the Director's Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206 of the Commission's regulations. As provided for by this regulation, the Director's Decision will constitute the final action of the Commission 25 days after the date of the decision, unless the Commission, on its own motion, institutes a review of the Director's Decision within that time.

Dated at Rockville, Maryland, this 26th day of August 2003.

For the Nuclear Regulatory Commission.

Margaret V. Federline,

Deputy Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–22397 Filed 9–2–03; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Intervoice, Inc. To Withdraw Its Common Stock, No Par Value, and Preferred Stock Purchase Rights From Listing and Registration on the Chicago Stock Exchange, Inc. File No. 1–15045

August 27, 2003.

Intervoice, Inc., a Texas corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, no par value and Preferred Stock Purchase Rights, ("Security"), from listing and registration on the Chicago Stock Exchange, Inc. ("CHX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on June 24, 2003 to withdraw its Security from listing on the Exchange. In making its decision to delist its Security from the CHX the Issuer notes that the Security has not traded on the CHX for a long period of time because no person has made a market in the Security. In addition, the Security is actively traded on the Nasdaq National Market System ("NMS") and the Company fully intends to maintain the listing and registration on the NMS.

The Issuer stated in its application that it has complied with the rules of the CHX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Security from listing and registration on the CHX and from registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before September 18, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the CHX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–22369 Filed 9–2–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 781(b).

[4] 15 U.S.C. 781(g).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48412; File No. SR–NASD–2003–112]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Locked Markets in the Nasdaq InterMarket

August 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on July 18, 2003 the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed a proposed rule change with the Securities and Exchange Commission ("Commission"). On August 5, 2003, the NASD filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change is described in Items I, II, and III below, which Nasdaq has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is filing a proposed rule change to amend NASD Rule 5263, which addresses locked and crossed markets in exchange-listed securities, to conform Nasdaq's rule more closely with the locked markets rule contained in the ITS Plan. The text of the proposed rule change is below. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

NASD Rule 5263. Locked or Crossed Markets

(a) No Change.

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Mary M. Dunbar, Vice President and Deputy General Counsel, Nasdaq, to Kathy England, Assistant Director, Division of Market Regulation, Commission dated August 4, 2003.

(b) No Change.

(c)(1) [(A)] Unless excused by operation of paragraphs [(c)(1)(B)] *(c)(2)* or (d) below an ITS/CAES Market Maker that makes a bid or offer and in so doing creates a locked or crossed market with an ITS Participant Exchange *or another ITS/CAES Market Maker* and that receives a complaint through ITS/CAES *or CAES* from the party whose bid (offer) was locked or crossed (the "aggrieved party"), the ITS/CAES Market Maker responsible for the locking offer (bid) shall, as specified in the complaint, either promptly "ship" (*i.e.*, satisfy through ITS/CAES *or CAES* the locked bid (offer) up to the size of his locking offer (bid)) or "unlock" (*i.e.*, adjust his locking offer (bid) so as not to cause a locked market). If the complaint specifies "unlock," it may nevertheless ship instead.

([B]*2*) If there is an error in a locking bid or offer that relieves the locking ITS/CAES Market Maker from its obligations under paragraph (c)(2) of Rule 11Ac1–1 and if the ITS/CAES Market Maker receives a "ship" complaint through ITS/CAES *or CAES* from the aggrieved party, the locking ITS/CAES Market Maker shall promptly cause the quotation to be corrected and, except as provided in paragraph (d) below, it shall notify the aggrieved party through ITS/CAES *or CAES* of the error within two minutes of receipt of the complaint. If the locking ITS/CAES Market Maker fails to so notify the aggrieved party, he shall promptly ship.

[(2) An ITS/CAES Market Maker that makes a bid or offer and in so doing creates a locked or crossed market with another ITS/CAES Market Maker shall promptly send to such other ITS/CAES Market Maker an order seeking either the bid or offer which was locked or crossed, unless excused by operation of paragraph (d) below. Such order shall be for either the number of shares he has bid for (offered) or the number of shares offered (bid for) by the ITS/CAES Market Maker, whichever is less.]

(d) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Nasdaq InterMarket is a quotation, communication, and execution system that allows NASD members to trade stocks listed on the New York Stock Exchange ("NYSE") and the American Stock Exchange ("Amex").[4] The InterMarket competes with regional exchanges like the Chicago Stock Exchange ("CHX") and the Cincinnati Stock Exchange ("CSE") for retail order flow in stocks listed on the NYSE and the Amex. InterMarket comprises CAES, a system that facilitates the execution of trades in listed securities between NASD members that participate in InterMarket, and ITS, a system that permits trades between NASD members and specialists on the floors of national securities exchanges that trade listed securities.

The national market system plan governing the Intermarket Trading System ("ITS Plan") requires national securities exchanges and the NASD to adopt a model rule governing locked and crossed markets in ITS-eligible securities. The current wording of the NASD rule differs slightly from that required by the ITS Plan, in that it treats locks and crosses that occur completely within the Nasdaq InterMarket differently than it treats locks and crosses that occur between InterMarket participants and ITS participant exchanges. Nasdaq believes that this difference increases the regulatory and compliance burdens of NASD members that participate in CAES and in ITS, as well as increasing the regulatory burdens on the NASD itself, without any offsetting benefits to the InterMarket or its members.

NASD Rule 5263 currently requires ITS/CAES Market Makers that create locked or crossed markets with another ITS Participant to comply with the precisely defined procedure expressed in the ITS Plan, which requires that a locking participant respond only after a locked market complaint has been properly registered. In contrast, the rule requires that ITS/CAES Market Makers that lock other ITS/CAES Market Makers within CAES promptly send the locked or crossed Market Maker an order seeking the number of shares of the locked/crossed bid or offer without waiting for the locked or crossed Market Maker to complain. Nasdaq believes that the more stringent requirement within the InterMarket can cause CAES Market Makers to prematurely send an order to trade without having the input or an understanding of the locked party's intentions to trade. Nasdaq also believes that it forces ITS/CAES Market Makers to be familiar with and engage in two different procedures in response to the same behavior, creating unnecessary confusion and cost.

To eliminate this disparity vis-à-vis other markets, Nasdaq proposes to simply mirror the language of the ITS Plan and to remove the more restrictive language with respect to locks or crosses that occur between ITS/CAES Market Makers. Nasdaq believes that although locking and crossing behavior can provide valuable price discovery information to market participants, regulatory incentives help minimize the extent to which such locks and crosses interfere with the smooth operation of the InterMarket and with ITS/CAES Market Makers' internal systems.

According to Nasdaq, applying the same locked and crossed rule to both ITS and CAES will also improve Nasdaq's ability to effectively enforce Section 8(d) of the ITS Plan. In a June 13, 2003 letter from Lori Richards, Director of the Office of Compliance Inspections and Examinations to Robert Glauber, Chairman and Chief Executive Officer of the NASD, Ms. Richards recommended that the NASD improve its regulatory program for detecting and disciplining InterMarket participants that violate the lock/cross provisions of the ITS Plan and NASD Rule 5263. Nasdaq is working diligently to respond to that recommendation. This proposal is one of several steps the NASD and Nasdaq will take in response to Ms. Richards' recommendation.

2. Statutory Basis

Nasdaq believes that the proposed rule change, as amended, is consistent with the provisions of Section 15A of the Act,[5] in general and with Section 15A(b)(6) of the Act,[6] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster competition and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

[4] Nasdaq's InterMarket formerly was referred to as Nasdaq's Third Market. *See* Securities Exchange Act Release No. 42907 (June 7, 2000); 65 FR 37445 (June 14, 2000) (SR–NASD–00–32).

[5] 15 U.S.C. 78*o*–3.

[6] 15 U.S.C. 78*o*–3(6).

open market and a national market system, and, in general, to protect investors and, in general, the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–2003–112 and should be submitted by September 24, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 03–22410 Filed 9–2–03; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P012]

State of Florida; Amendment #1

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective August 21, 2003, the above numbered declaration is hereby amended to include Pasco County in the State of Florida as a disaster area due to damages caused by severe storms and flooding occurring on June 13, 2003 and continuing.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is September 29, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

Dated: August 27, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–22423 Filed 9–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9W74]

State of Montana

Flathead, Glacier, Lake, Lewis & Clark, Lincoln, Sanders and Teton Counties and the contiguous Counties of Broadwater, Cascade, Chouteau, Jefferson, Meagher, Mineral, Missoula, Pondera, Powell and Toole Counties in the State of Montana; and Bonner, Boundary and Shoshone Counties in the State of Idaho constitute an economic injury disaster loan area as a result of forest fires that began on July 23, 2003 and continue to burn. The forest fires caused the closures of the entrances to Glacier National Park and have caused several businesses to suffer substantial economic losses. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on May 26, 2004 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 3 Office, 14925 Kingsport Road, FT. Worth, TX 76155–2243.

The interest rate for eligible small businesses and small agricultural cooperatives is 2.953 percent.

The number assigned for economic injury for this disaster is 9W7400 for the State of Montana and 9W7500 for the State of Idaho.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: August 26, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–22424 Filed 9–2–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #P014]

Commonwealth of Pennsylvania

As a result of the President's major disaster declaration for Public Assistance on August 23, 2003 the U.S. Small Business Administration is activating its disaster loan program only for private non-profit organizations that provide essential services of a governmental nature. I find that Crawford, Forest, Mercer, McKean, Venango and Warren Counties in the Commonwealth of Pennsylvania constitute a disaster area due to damages caused by severe storms, tornadoes, and flooding occurring on July 21, 2003 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 22, 2003 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Non-profit organizations without credit available elsewhere	2.953
Non-profit organizations with credit available elsewhere	5.500

The number assigned to this disaster for physical damage is P01411.

(Catalog of Federal Domestic Assistance Program Nos. 59008)

[7] 17 CFR 200.30–3(a)(12).

Dated: August 27, 2003.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 03–22422 Filed 9–2–03; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4465]

Bureau of Political-Military Affairs; Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to section 127.7(c) of the International Traffic in Arms Regulations ("ITAR") (22 CFR 120 to 130) on persons convicted of violating or conspiring to violate section 38 of the Arms Export Control Act ("AECA") (22 U.S.C. 2778).

EFFECTIVE DATE: Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Office of Defense Trade Controls Compliance, Bureau of Political-Military Affairs, Department of State (202) 633–2700.

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA, 22 U.S.C. 2778, prohibits licenses and other approvals for the export of defense articles or defense services to be issued to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA.

In implementing this section of the AECA, the Assistant Secretary of State for Political-Military Affairs is authorized by section 127.7 of the ITAR to prohibit any person who has been convicted of violating or conspiring to violate the AECA from participating directly or indirectly in the export of defense articles, including technical data or in the furnishing of defense services for which a license or approval is required. This prohibition is referred to as "statutory debarment."

Statutory debarment is based solely upon conviction in a criminal proceeding, conducted by a court of the United States, and as such the administrative debarment proceedings outlined in part 128 of the ITAR are not applicable.

The period for debarment will be determined by the Assistant Secretary of State for Political-Military Affairs based upon the underlying nature of the violations, but will normally be three years from the date of conviction. Please note however, that unless licensing privileges are reinstated, the person/entity will remain debarred. At the end of the debarment period, licensing privileges may be reinstated only at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by section 38(g)(4) of the AECA and in accordance with section 127.11(b) of the ITAR.

Department of State policy permits debarred persons to apply to the Director of the Office of Defense Trade Controls Compliance for an exception from the period of debarment, in accordance with section 38(g)(4) of the AECA and section 127.11(b) of the ITAR. Any decision to grant an exception can be made only after the statutory requirements under section 38(g)(4) of the AECA have been satisfied. If the exception is granted, the debarment will be suspended.

Debarred persons are generally ineligible to participate in activity regulated under the ITAR (*see e.g.*, sections 120.1(c) and (d), 126.7, 127.1(c), and 127.11(a)). The Department of State will not consider applications for licenses or requests for approvals that involve any person or any party to the export who has been convicted of violating or conspiring to violate the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for Arms Control and International Security for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision, in accordance with 22 CFR 127.7(d).

Pursuant to section 38 of the AECA and section 127.7 of the ITAR, the following persons have been statutorily debarred by the Assistant Secretary of State for Political-Military Affairs for a period of three years following their AECA conviction:

(1) Saeed Homayouni, June 11, 2001 (entry date of June 14, 2001), U.S. District Court, Southern District of California (San Diego), Docket # 00–CR–3843–ALL.

(2) Quality Aviation & Power Support, Inc., August 21, 2001 (entry date of August 27, 2001), U.S. District Court for the Central District of California (Western Division), Docket # 2:00–CR–787.

(3) Earlene L. Christensen aka Earlene Larson Christenson aka Earlene Larson, August 21, 2002 (entry date August 27, 2002), Central District of California, (Western Diyision), Docket # 2:00–CR–787.

(4) Richard Kelly Smyth, December 28, 2001 (entry date of January 8, 2002), U.S. District Court, Central District of California (Western Division), Docket # 85–CR–483–ALL.

(5) Diaa Mohsen, November 16, 2001 (entry date November 20, 2001), U.S. District Court, Southern District of Florida (West Palm Beach), Docket # 01–CR–8087–ALL.

(6) Jonathan Reynolds, September 28, 2000 (entry date October 2, 2000), U.S. District Court, District of Massachusetts (Boston), Docket # 00–CR–10267–ALL.

(7) Fadi Boutros, aka Fadi E. Sitto, aka Fadi Jirjis, aka Fred Boutros, February 11, 1999 (entry date February 17, 1999), U.S. District Court, District of Connecticut (New Haven), Docket # 3:99–CR–19.

(8) Paul Siroky, October 5, 2000 (entry date October 6, 2000), U.S. District Court, Central District of California (Western Division), Docket # 2:00–CR–884.

(9) Steven Picatti, October 19, 1998 (entry date November 18, 1998), U.S. District Court, Central District of California (Western Division), Docket # 2:98–CR–860.

(10) Peter Appelbaum, August 18, 1999 (entry date August 24, 1999), U.S. District Court, Southern District of Florida (Miami), Docket # 99–CR–530–ALL.

(11) Bing Sun, August 1, 2000 (entry date August 2, 2000), U.S. District Court, Eastern District of Virginia (Norfolk), Docket # 2:00–CR–28.

(12) Patte Sun, August 1, 2000 (entry date August 2, 2000), U.S. District Court, Eastern District of Virginia (Norfolk), Docket # 2:00–CR–28.

(13) All Ports Inc., August 1, 2000 (entry date August 2, 2000), U.S. District Court, Eastern District of Virginia (Norfolk), Docket # 2:00–CR–28.

(14) Beta Trading Company, August 28, 1998 (entry date September 1, 1998), U.S. District Court, District of South Carolina (Charleston), Docket # 98–CR–332–ALL.

(15) Genaro Lopez-Gonsales, October 5, 1999 (entry date October 19, 1999), U.S. District Court, Southern District of Texas (McAllen), Docket #99–CR–434–ALL.

(16) Octabio Merida Gonzalez, July 1, 1998 (entry date July 8, 1998), U.S. District Court, Southern District of

Texas (Brownsville), Docket # 98–CR–255–ALL.

(17) Collin Xu, aka Collin Shu, aka Zhihong Xu, November 9, 2000 (entry date November 15, 2000), U.S. District Court, District of Massachusetts (Boston), Docket #99–CR–10075–ALL.

(18) Yi Yao, aka Yao Yi, February 2, 2000 (entry date February 8, 2000), U.S. District Court of Massachusetts (Boston), Docket # 99–CR–10075–ALL.

(19) Mariano Recinos-Rivera, June 5, 2000 (entry date June 20, 2000), U.S. District Court, Southern District of Texas (McAllen), Docket #00–CR–218–ALL.

(20) Gunther Kohlke, February 27, 2002 (entry date March 1, 2002), U.S. District Court, District of New York (Brooklyn), Docket #01–CR–738–ALL.

(21) Eugene Yon-Tsai Hsu, April 30, 2002 (entry date May 5, 2002), U.S. District Court, District of Maryland (Baltimore), Docket #01–CR–485–ALL.

(22) David Tzuwei Yang, April 30, 2002 (entry date May 5, 2002), U.S. District Court, District of Maryland (Baltimore), Docket #01–CR–485–ALL.

(23) Dennis Ritiche Jones, March 23, 1999 (entry date March 26, 1999), U.S. District Court, District of Arizona, Docket # CR–99–346–01.

(24) Carlos Fernando Chirinos, September 13, 2002 (entry date September 17, 2002), U.S. District Court, District of Arizona, Docket # 02–20605–CR.

(25) Daniel Jose Uribazo, August 29, 2002 (entry date August 30, 2002), U.S. District Court, District of Arizona, Docket # 02–20605–CR.

(26) Maximo de los Santos, November 18, 1999 (entry date November 19, 1999), U.S. District Court, District of Hawaii, Docket # 1:99CR00426–001.

(27) Jesse Radona Ponce, November 18, 1999 (entry date November 19, 1999), U.S. District Court, District of Hawaii, Docket # 1:99CR00426–001.

(28) Jesus Pascual Domingo, April 6, 2000 (entry date April 6, 2000), U.S. District Court, District of Hawaii, Docket # 1:99CR00426–001.

(29) Paul Guzman, November 22, 1999 (entry date November 24, 1999), U.S. District Court, District of Hawaii, Docket # 1:99CR00426–001.

As noted above, at the end of the three-year period, the above-named persons/entities will remain debarred unless licensing privileges are reinstated.

This notice is provided in order to make the public aware that the persons listed above are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles or defense services, including technical data, in all situations covered by the ITAR. Specific case information may be obtained from the Office of the Clerk of Court for each respective US District Court, citing the court docket number where provided.

Exceptions may be made to this denial policy on a case-by-case basis at the discretion of the Directorate of Defense Trade Controls pursuant to 22 CFR 126.3. However, such an exception would be granted only after a full review of all circumstances, paying particular attention to the following factors: whether an exception is warranted by overriding U.S. foreign policy or national security interest; whether an exception would further law enforcement concerns which are consistent with the foreign policy or national security interests of the United States; or whether other compelling circumstances exist which are consistent with the foreign policy or national security interests of the United States, and which do not conflict with law enforcement concerns.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affair function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: August 19, 2003.

Rose M. Likins,

Principal Deputy Assistant Secretary, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 03–22418 Filed 9–2–03; 8:45 am]

BILLING CODE 4710–25–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Generalized System of Preferences (GSP): Notice Regarding the 2001, 2002, and Ongoing Country Practice Reviews

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) received petitions in 2001 and 2002 to review certain practices in certain beneficiary developing countries to determine whether such countries are in compliance with the GSP eligibility criteria. This notice announces the 2001 and 2002 country practice petitions that are accepted for review, and sets forth the schedule for comment and public hearing on these petitions and on other ongoing country practices reviews, for requesting participation in the hearing, and for submitting pre- and post-hearing briefs.

ADDRESSES: The e-mail address for submissions is *FR0052@USTR.GOV*. If unable to submit petitions by e-mail, contact the GSP Subcommittee of the Trade Policy Staff Committee (TPSC).

FOR FURTHER INFORMATION CONTACT: Contact the GSP Subcommittee, Office of the United States Trade Representative, 1724 F Street, NW., Room F–220, Washington, DC 20508. The telephone number is (202) 395–6971 and the facsimile number is (202) 395–9481.

SUPPLEMENTARY INFORMATION: The GSP provides for the duty-free importation of designated articles from designated beneficiary developing countries. The GSP is authorized by title V of the Trade Act of 1974 ("the 1974 Act"), as amended (19 U.S.C. 2461, *et seq.*), and is implemented in accordance with Executive Order 11888 of November 24, 1975, as modified by subsequent Executive Orders and Presidential Proclamations.

In a **Federal Register** notice dated April 13, 2001, USTR initiated the 2001 GSP Annual Review and announced a deadline of June 13, 2001, for the filing of petitions (66 FR 19278). In a **Federal Register** notice dated November 1, 2002, USTR initiated the 2002 GSP Annual Review and announced a deadline of December 2, 2002, for the filing of petitions (67 FR 66699). Several of the petitions received requested the review of certain practices in certain beneficiary developing countries to determine whether such countries are in compliance with the eligibility criteria set forth in sections 502(b) and 502(c) of the 1974 Act.

The GSP program expired on October 1, 2001, and was not reauthorized until August 6, 2002. Consequently, the interagency TPSC made no announcement of the acceptance of country practice petitions for the 2001 GSP Annual Review, and merged the 2001 petitions into the 2002 GSP Annual Review.

The TPSC has decided to accept certain petitions for review, as indicated in Annex I to this notice. Annex I sets out the case number and status of, and subject country and practice addressed in each petition, and updates the status of other, previously initiated, ongoing country practice reviews. If the TPSC decides to accept any other 2001 or 2002 country practice petition for review, it will make an announcement in the **Federal Register** at a later date.

Acceptance of a petition for review does not indicate any opinion with respect to disposition on the merits. Acceptance indicates only that the TPSC has found the petition eligible for review, and that such review will take place. The GSP regulations provide the schedule of dates for conducting a review unless otherwise specified in a **Federal Register** notice. The revised schedule for public comment and hearings is contained in Annex II.

USTR will announce in the **Federal Register** any modifications to the list of beneficiary developing countries or eligible articles for purposes of the GSP program resulting from this Review, as well as the date on which the modifications will take effect.

Opportunities for Public Comment and Requirements for Submissions

The GSP Subcommittee invites comments on any petition included in this Review. Submissions should comply with the GSP regulations (15 CFR Part 2007), including section 2007.0, except as modified below. All submissions should be identified by the relevant case number and country name as shown in Annex I.

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic e-mail submissions in response to this notice. Hand-delivered submissions will not be accepted. Submissions should be single copy transmissions in English, and the total submission should not exceed 50 single-spaced pages. E-mail submissions should use the subject line "GSP Country Practices Review," followed by the case number and country name found in Annex I and, as appropriate, "Written Comments," "Notice of Intent to Testify," "Pre-hearing brief," or "Post-hearing brief." (For example, an e-mail subject line might read, "GSP Country Practices Review, 001–CP–02, Bangladesh, "Pre-hearing brief.") Documents must be submitted as either WordPerfect (.WPD), MSWord (.DOC) , or text (.TXT) files. Documents should not be submitted as electronic image files or contain imbedded images (for example, ".JPG", "PDF", ".BMP", or ".GIF"), as these type files are generally excessively large and may impede electronic transmission and redistribution. E-mail submissions containing such files may not be accepted. Supporting documentation submitted as spreadsheets are acceptable as Quattro Pro or Excel suitable for printing on 8½ x 11 inch paper. To the extent possible, any data attachments to the submission should be included in the same file as the submission itself, and not as separate files.

If the submission contains business confidential information, a non-confidential version of the submission must also be submitted that indicates where confidential information was redacted by inserting asterisks where material was deleted. In addition, the confidential submission must be clearly marked "BUSINESS CONFIDENTIAL" at the top and bottom of every page, and the non-confidential submission must be clearly marked either "PUBLIC VERSION" or "NON-CONFIDENTIAL" at the top and bottom of every page.

The file name of any document containing business confidential information attached to an e-mail transmission should begin with the characters "BC-", and the file name of the public version should begin with the characters "P-". The "P-" or "BC-" should be followed by the name of the party (government, company, union, association, etc.) making the submission. E-mail submissions should not include separate cover letters or messages in the message area of the e-mail; information that might appear in any cover letter should be included directly in the attached file containing the submission itself. The e-mail address for submissions is *FR0052@USTR.GOV*. Documents not submitted in accordance with these instructions might not be considered in this review.

Submissions will be open to public inspection shortly after the due date by appointment with the staff of the USTR public reading room, 1724 F Street, NW., Washington, DC, except for submitted information granted "business confidential" status pursuant to 15 CFR 2003.6 and other qualifying information submitted in confidence pursuant to 15 CFR 2007.7. Appointments may be made from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, by calling (202) 395–6186.

Notice of Public Hearings

The GSP Subcommittee will hold a hearing on October 7, 2003, beginning at 10 a.m. at the Office of the U.S. Trade Representative, 1724 F Street, NW., Washington, DC. The hearing will be open to the public and a transcript will be made available for public inspection or can be purchased from the reporting company. No electronic media coverage will be allowed.

Any interested party wishing to make an oral presentation at the hearing must submit the name, address, telephone number, facsimile number, and e-mail address (if available) of the witness(es) representing the party to the Chairman of the GSP Subcommittee by 5 p.m., September 26, 2003. Requests to present oral testimony in connection with the public hearing must be accompanied by a written brief or statement, in English, which must also be received by 5 p.m., September 26, 2003. Oral presentations should be approximately five-minutes long and summarize or supplement information contained in the brief or statement. Post-hearing briefs or statements must be submitted, in English, by 5 p.m., October 31, 2003. Any party not wishing to appear at the public hearing may submit a post-hearing written brief or statement, in English, by 5 p.m., October 31, 2003. Written briefs, statements, and oral testimony should conform with section 2007.5 of the GSP regulations.

Steven Falken,

Executive Director for GSP, Chairman, GSP Subcommittee.

BILLING CODE 3901–01–P

Annex I

GENERALIZED SYSTEM OF PREFERENCES (GSP) STATUS OF COUNTRY PRACTICE PETITIONS AND ONGOING REVIEWS

CASE NUMBERS	PETITIONER	COUNTRY	ACTION	STATUS
001-CP-02	AFL-CIO	BANGLADESH	WR	Ongoing review continued
002-CP-02	AFL-CIO	COSTA RICA	WR	Rejected for review
003-CP-02	AFL-CIO	EL SALVADOR	WR	Rejected for review
004-CP-02	International Labor Rights Fund (ILRF)	EL SALVADOR	WR	Rejected for review
005-CP-02	AFL-CIO	GUATEMALA	WR	Accepted for review
006-CP-02	ILRF	GUATEMALA	WR	Accepted for review
007-CP-02	International Labor Rights Fund (ILRF); Human Rights Watch	PERU	WR	Rejected for review
008-CP-02	AFL-CIO	SRI LANKA	WR	Rejected for review
009-CP-02	AFL-CIO	SWAZILAND	WR	Accepted for review
010-CP-02	International Intellectual Property Alliance (IIPA)	ARMENIA	IPR	Ongoing review terminated
011-CP-02	IIPA	BRAZIL	IPR	Ongoing review continued
012-CP-02	IIPA	DOMINICAN REPUBLIC	IPR	Ongoing review continued
013-CP-02	Pharmaceutical Research & Manufacturers of America (PhRMA)	DOMINICAN REPUBLIC	IPR	Accepted for review as part of ongoing IPR review
014-CP-02	PhRMA	HUNGARY	IPR	Rejected for review
015-CP-02	IIPA	KAZAKHSTAN	IPR	Ongoing review continued
016-CP-02	IIPA	LEBANON	IPR	Accepted for review
017-CP-02	IIPA	PAKISTAN	IPR	Initiation of review remains under consideration
018-CP-02	PhRMA	POLAND	IPR	Rejected for review
019-CP-02	IIPA	RUSSIA	IPR	Ongoing review continued

Annex I

GENERALIZED SYSTEM OF PREFERENCES (GSP) STATUS OF COUNTRY PRACTICE PETITIONS AND ONGOING REVIEWS

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001-CP-02	AFL-CIO	BANGLADESH	WR	Ongoing review continued
002-CP-02	AFL-CIO	COSTA RICA	WR	Rejected for review
003-CP-02	AFL-CIO	EL SALVADOR	WR	Rejected for review
004-CP-02	International Labor Rights Fund (ILRF)	EL SALVADOR	WR	Rejected for review
005-CP-02	AFL-CIO	GUATEMALA	WR	Accepted for review
006-CP-02	ILRF	GUATEMALA	WR	Accepted for review
007-CP-02	International Labor Rights Fund (ILRF); Human Rights Watch	PERU	WR	Rejected for review
008-CP-02	AFL-CIO	SRI LANKA	WR	Rejected for review
009-CP-02	AFL-CIO	SWAZILAND	WR	Accepted for review
010-CP-02	International Intellectual Property Alliance (IIPA)	ARMENIA	IPR	Ongoing review terminated
011-CP-02	IIPA	BRAZIL	IPR	Ongoing review continued
012-CP-02	IIPA	DOMINICAN REPUBLIC	IPR	Ongoing review continued
013-CP-02	Pharmaceutical Research & Manufacturers of America (PhRMA)	DOMINICAN REPUBLIC	IPR	Accepted for review as part of ongoing IPR review
014-CP-02	PhRMA	HUNGARY	IPR	Rejected for review
015-CP-02	IfPA	KAZAKHSTAN	IPR	Ongoing review continued
016-CP-02	IIPA	LEBANON	IPR	Accepted for review
017-CP-02	IIPA	PAKISTAN	IPR	Initiation of review remains under consideration
018-CP-02	PhRMA	POLAND	IPR	Rejected for review
019-CP-02	IIPA	RUSSIA	IPR	Ongoing review continued

CASE NUMBERS	PETITIONER	COUNTRY	ACTION	STATUS
020-CP-02	Assoc. of American Publishers (AAP); AFMA; Interactive Digital Software Assoc. (IDSA); Motion Picture Assoc. of America (MPAA); Nat. Music Publishers' Assoc. (NMPA); Recording Industry Assoc. of America (RIAA)	THAILAND	IPR	Petition withdrawn
021-CP-02	IIPA	URUGUAY	IPR	Rejected for review
022-CP-02	IIPA	UZBEKISTAN	IPR	Ongoing review continued
023-CP-02	Amer. Natural Soda Ash Corp. (ANSAC)	INDIA	MA	Ongoing review terminated
024-CP-02	American Textile Manufacturers Institute (ATMI)	PAKISTAN	MA	Ongoing review terminated
025-CP-02	Distilled Spirits Council of the United States	BULGARIA	RPT	Accepted for review
026-CP-02	Distilled Spirits Council of the United States	ROMANIA	RPT	Petition withdrawn
027-CP-02	To-Ro Enterprises, Inc.	BANGLADESH	CN	Rejected for review
024-CP-00	IIPA	TURKEY	CP	Ongoing Review Terminated 2001

WR=Worker Rights IPR-Intellectual Property Rights MA=Market Access
RPT=Reverse Preferential Treatment CN=Contract Nullification

CASE NUMBERS	PETITIONER	COUNTRY	ACTION	STATUS
020-CP-02	Assoc. of American Publishers (AAP); AFMA; Interactive Digital Software Assoc. (IDSA); Motion Picture Assoc. of America (MPAA); Nat. Music Publishers' Assoc. (NMPA); Recording Industry Assoc. of America (RIAA)	THAILAND	IPR	Petition withdrawn
021-CP-02	IIPA	URUGUAY	IPR	Rejected for review
022-CP-02	IIPA	UZBEKISTAN	IPR	Ongoing review continued
023-CP-02	Amer. Natural Soda Ash Corp. (ANSAC)	INDIA	MA	Ongoing review terminated
024-CP-02	American Textile Manufacturers Institute (ATMI)	PAKISTAN	MA	Ongoing review terminated
025-CP-02	Distilled Spirits Council of the United States	BULGARIA	RPT	Accepted for review
026-CP-02	Distilled Spirits Council of the United States	ROMANIA	RPT	Petition withdrawn
027-CP-02	To-Ro Enterprises, Inc.	BANGLADESH	CN	Rejected for review
024-CP-00	IIPA	TURKEY	CP	Ongoing Review Terminated 2001

WR=Worker Rights IPR-Intellectual Property Rights MA=Market Access
RPT=Reverse Preferential Treatment CN=Contract Nullification

Annex II

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20508

GSP – 2002 COUNTRY PRACTICES REVIEW

PUBLIC COMMENT AND HEARING SCHEDULE
Address for Electronic Submissions: FR0052@USTR.GOV

September 26, 2003	Due Date for Requests to Appear at Public Hearings and Submission of Pre-hearing Briefs.
	Due Date for Providing the Name, Address, Telephone, Fax, Email Address and Organization of Witnesses.
October 7, 2003	TPSC GSP Subcommittee Public Hearings to Be Held at 10:00 A.M. at the Office of the U.S. Trade Representative, 1724 F Street, N.W., Washington, D.C.
October 31, 2003	Due Date for Submission of Post-hearing and Rebuttal Briefs.
June 30, 2004	Annual Review Decisions Scheduled to Be Announced on or about this Date.
For Further Information Contact:	GSP Information Center Office of the U.S. Trade Representative 1724 F Street, N.W. Washington, D.C. 20508 Telephone (202) 395-6971; Facsimile (202) 395-9481
For Public Documents Related to this Review:	USTR Public Reading Room, 1724 F Street N.W., Washington, D.C. Appointments May Be Made from 9:30 A.M. to Noon and 1 P.M. to 4 P.M., Monday Through Friday by Calling (202) 395-6186.

Notification of Any Changes Will Be Given in the *Federal Register*.

[FR Doc. 03–22426 Filed 9–2–03; 8:45 am]
BILLING CODE 3901–01–C

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2001–9800]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: This notice announces FMCSA's decision to issue exemptions to certain insulin-using diabetic drivers of commercial motor vehicles (CMVs) from the diabetes mellitus prohibitions contained in the Federal Motor Carrier Safety Regulations (FMCSRs). The FMCSA will grant exemptions only to those applicants who meet the specific conditions and comply with all the requirements of the exemption. The FMCSA will issue exemptions for not more than a period of two years. Upon expiration, those holding exemptions may apply to FMCSA for a renewal under procedures in effect at that time. The FMCSA is leaving the docket open so that interested persons can provide comments on any changes to the specific conditions needed to qualify for the exemption program.

DATES: This notice is effective on September 3, 2003. FMCSA will begin accepting applications for exemptions on September 22, 2003.

ADDRESSES: Qualified insulin-treated diabetes mellitus drivers may now request a diabetes exemption from the regulations of 49 CFR 391.41(b)(3) by sending an exemption request to: Diabetes Exemption Program (MC–PSP), Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–4001, FMCSA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time, or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Background

The agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of accident involvement than the general population. The diabetes requirement provides that: A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control (49 CFR 391.41(b)(3)).

Since 1970, the agency has considered the diabetes requirement and undertaken studies to determine if its diabetes standard for commercial drivers in interstate commerce should be amended. It is FMCSA's view that its physical qualification standards should be based on sound medical, scientific and technological grounds, and that individual determinations should be made to the maximum extent possible consistent with FMCSA's responsibility to ensure safety on the nation's highways. The FMCSA published a notice of intent to issue exemptions to insulin-using diabetic drivers in the **Federal Register** on July 31, 2001 (66 FR 39548). This notice of intent discussed the regulatory history and research activity addressing the issue of diabetes and CMV operation.

Feasibility Study To Qualify Insulin-Treated Diabetics to Operate CMVs

Section 4018 of the Transportation Equity Act for the 21st Century (TEA–21) (Pub. L. 105–178, 112 Stat. 107) directed the Secretary of Transportation (the Secretary) to determine if it is feasible to develop a safe and practicable program for allowing individuals with insulin-treated diabetes mellitus (ITDM) to operate CMVs in interstate commerce. In making the determination, the Secretary was directed to evaluate research and other relevant information on the effects of ITDM on driving performance. TEA–21 stated that, to accomplish this, the Secretary shall consult the states with regard to their programs for CMV operation by ITDM drivers, evaluate the DOT policies in other modes of transportation, analyze pertinent risk data, consult with interested groups knowledgeable about diabetes and related issues, and assess the possible legal consequences of permitting ITDM individuals to operate CMVs in interstate commerce. TEA–21 also directed the Secretary to report the findings to Congress and, if a program is feasible, describe the elements of a protocol to permit individuals with ITDM to operate CMVs. The FMCSA submitted the report to Congress on August 23, 2000. It is entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin Treated Diabetes Mellitus to Operate Commercial Motor Vehicles in Interstate Commerce as Directed by the Transportation Equity Act for the 21st Century," July 2000 (TEA–21 Report to Congress). It concludes that a safe and practicable protocol to allow some ITDM individuals to operate CMVs is feasible. For a detailed discussion of the report findings and conclusions, see July 31, 2001 (66 FR 39548). A copy of the report is on FMCSA's Web site at *www.fmcsa.dot.gov/rulesregs/medreports.htm.*

Authority—Exemptions

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption for a period up to two years if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the two-year period, or after the current exemption expires.

FMCSA must publish a notice in the **Federal Register** for each exemption requested, explaining that the request has been filed, and providing the public an opportunity to inspect the safety analysis and any other relevant information known to the agency, and comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

In addition, the agency is required to monitor the implementation of each exemption to ensure compliance with its terms and conditions. If FMCSA denies a request for an exemption, the agency must periodically publish a notice in the **Federal Register** identifying the person(s) whom the agency denied the exemption to and the reasons for the denial.

Generally, the duration of exemptions is limited to two years from the date of approval, but may be renewed. FMCSA is required to immediately revoke an exemption if:

(1) The person fails to comply with the terms and conditions of the exemption;

(2) The exemption has resulted in a lower level of safety than was maintained before the exemption was granted; or

(3) Continuation of the exemption would not be consistent with the goals and objectives of the regulations issued under the authority of 49 U.S.C. 31315 and 31136(e).

Process for Applying for an Exemption

The procedures for applying for an exemption may be found at 49 CFR 381.300 through 381.330. The person applying for an exemption is required to send a written request to the FMCSA Administrator. The written request must include basic information such as the identity of the person who would be covered by the exemption, the name of the motor carrier or other entity that would be responsible for the use or operation of CMVs during the exemption period, and the principal place of business of the motor carrier or other entity. Under section 381.310, the application must include a written statement that:

(1) Describes the event or CMV operation for which the exemption would be used;

(2) Identifies the regulation from which the applicant is requesting relief;

(3) Estimates the total number of drivers and CMVs that would be operating under the terms and conditions of the exemption; and

(4) Explains how the recipient of the exemption would ensure that they achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation.

FMCSA Procedures for the Review of Exemption Applications

Section 381.315 requires FMCSA to review an application for an exemption and prepare, for the Administrator's signature, a **Federal Register** notice requesting public comment. After a review of the comments received, FMCSA staff will make a recommendation to the Administrator. FMCSA will publish a notice of the Administrator's final decision in the **Federal Register**. FMCSA will issue a final decision within 180 days of the date it receives an individual's completed application. However, if the applicant should omit important details or other information necessary for the agency to conduct a comprehensive evaluation, FMCSA will issue a final decision within 180 days of the date that it receives sufficient information (49 CFR 381.315 and 381.320). FMCSA recognizes that this potential six-month waiting period may seem burdensome. However, the agency must carefully evaluate each and every application for regulatory relief from the diabetes standard, to assess the potential safety performance of each applicant. In addition, the agency must prepare and submit the candidate's application for public notice and comment in the **Federal Register** and then evaluate comments received before making a final decision. FMCSA's overriding concern is to ensure the safety of interstate CMV operations. The agency will notify all applicants in writing once it makes a final decision.

Application Information

In considering exemptions, the FMCSA must ensure that the issuance of diabetes exemptions will not be contrary to the public interest and that the exemption achieves an acceptable level of safety. The FMCSA will only grant exemptions, therefore, to ITDM individuals who meet certain conditions. These conditions are set forth below and the FMCSA based the conditions on the research literature, relevant DOT and State exemption programs, and substantial medical input from a panel of endocrinologists. FMCSA will require applicants for an exemption from the ITDM prohibition to submit their applications in a letter (there will be no application form), include all supporting documentation, and use the following format:

Vital Statistics

Name (First Name, Middle Initial, Last Name).
Address (House Number and Street Name, City, State, and ZIP Code).
Telephone Number (Area Code and Number).
Sex (Male or Female).
Date of Birth (Month, Day, Year).
Age.
Social Security Number.
State Driver's License Number (List all licenses held to operate a commercial motor vehicle during the 3-year period immediately preceding the date of application).
Driver's License Expiration Date.
Driver's License Classification Code (If not a commercial driver's license (CDL) classification code, specify what vehicles may be operated under such code).
Driver's License Date of Issuance (Month, Day, Year).

Experience

Number of years driving straight trucks.
Approximate number of miles *per year* driving straight trucks.
Number of years driving tractor-trailer combinations.
Approximate number of miles *per year* driving tractor-trailer combinations.
Number of years driving buses.
Approximate number of miles *per year* driving buses.

Present Employment

Employer's Name (If Applicable).
Employer's Address.
Employer's Telephone Number.
Type of Vehicle Operated and GVWR (Straight Truck, Tractor-Trailer Combination, Bus).
Commodities Transported (*e.g.*, General Freight, Liquids in Bulk (in cargo tanks), Steel, Dry-Bulk, Large Heavy Machinery, Refrigerated Products).
Estimated number of miles driven *per week*.
Estimated number of daylight driving hours *per week*.
Estimated number of nighttime driving hours *per week*.
States in which you will drive if issued an exemption.

In addition, the applications must include supporting documentation showing that the applicant:

(1) Possesses a valid intrastate CDL or a license (non-CDL) to operate a CMV;

(2) Has operated a CMV, with a diabetic condition controlled by the use of insulin, for the three-year period immediately preceding application;

(3) Has a driving record for that three-year period that:

Contains no suspensions or revocations of the applicant's driver's license for the *operation* of *any* motor vehicle (including their personal vehicle),

Contains no involvement in an accident for which the applicant received a citation for a moving traffic violation while operating a CMV,

Contains no involvement in an accident for which the applicant contributed to the cause of the accident, and

Contains no convictions for a disqualifying offense or more than one serious traffic violation, as defined in 49 CFR 383.5, while operating a CMV;

(4) Has no other disqualifying conditions including diabetes-related complications;

(5) Has had no recurrent (two or more) hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia;

(6) Has had no recurrent hypoglycemic reactions requiring the assistance of another person within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia;

(7) Has had no recurrent hypoglycemic reactions resulting in impaired cognitive function that occurred without warning symptoms within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia,

(8) Has been examined by a board-certified or board-eligible endocrinologist (who is knowledgeable about diabetes) who has conducted a complete medical examination. The complete medical examination must consist of a comprehensive evaluation of the applicant's medical history and current status with a report including the following information:

(A) The date insulin use began,

(B) Diabetes diagnosis and disease history,

(C) Hospitalization records,

(D) Consultation notes for diagnostic examinations,

(E) Special studies pertaining to the diabetes,

(F) Follow-up reports,

(G) Reports of any hypoglycemic insulin reactions within the last five years,

(H) Two measures of glycosylated hemoglobin, the first 90 days before the last and current measure,

(I) Insulin dosages and types, diet utilized for control and any significant factors such as smoking, alcohol use, and other medications or drugs taken, and

(J) Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;

(9) Submits a signed statement from an examining endocrinologist indicating the following medical determinations:

The endocrinologist is familiar with the applicant's medical history for the past five years, either through actual treatment over that time or through consultation with a physician who has treated the applicant during that time,

The applicant has been using insulin to control his/her diabetes from the date of the application back to the date the three years of driving experience began,

The applicant has been educated in diabetes and its management, thoroughly informed of and understands the procedures which must be followed to monitor and manage his/her diabetes and what procedures should be followed if complications arise, and

The applicant has the ability and has demonstrated willingness to properly monitor and manage his/her diabetes; and

(10) Submits a separate signed statement from an ophthalmologist or optometrist that the applicant has been examined and that the applicant does not have diabetic retinopathy and meets the vision standard at 49 CFR 391.41(b)(10), or has been issued a valid medical exemption. If the applicant has any evidence of diabetic retinopathy, he or she must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that he or she does not have unstable proliferative diabetic retinopathy (*i.e.*, unstable advancing disease of blood vessels in the retina).

Requirements for ITDM Individuals Who Have Been Issued an Exemption To Operate CMVs

There are special conditions attached to the issuance of any exemption for ITDM. The FMCSA will impose the following requirements:

(1) Individuals with ITDM shall maintain appropriate medical supplies for glucose management while preparing for the operation of a CMV and during its operation. The supplies shall include the following:

(A) An acceptable glucose monitor with memory,

(B) Supplies needed to obtain adequate blood samples and to measure blood glucose,

(C) Insulin to be used as necessary, and

(D) An amount of rapidly absorbable glucose to be used as necessary;

(2) Individuals with ITDM shall maintain a daily record of actual driving time to correlate with the daily glucose measurements; and

(3) Prior to and while driving, the individual with ITDM shall adhere to the following protocol for monitoring and maintaining appropriate blood glucose levels:

Check glucose before starting to drive and take corrective action if necessary. If glucose is less than 100 milligrams per deciliter (mg/dl), take glucose or food and recheck in 30 minutes. Do not drive if glucose is less than 100 mg/dl. Repeat the process until glucose is greater than 100 mg/dl;

While driving check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;

Have food available at all times when driving. If glucose is less than 100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is greater than 100 mg/dl; and

If glucose is greater than 400 mg/dl, stop driving until glucose returns to the 100 to 400 mg/dl range. If more than two hours after last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Do not resume driving until glucose is less than 400 mg/dl.

Monitoring for ITDM Individuals Who Have Been Issued an Exemption To Operate CMVs

In addition to the requirements for controlling ITDM, FMCSA will monitor exemption recipients during the period that the exemption is valid. FMCSA will conduct monitoring by requiring the exemption recipients to submit the following information to the Diabetes Exemption Program, MC–PSP, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590–0001:

(1) Provide written confirmation from the endocrinologist on a quarterly basis:

(A) The make and model of the glucose monitoring device with memory;

(B) The individual's blood glucose measurements and glycosylated hemoglobin are generally in an adequate range based on:

a. All daily glucose measurements taken with the glucose monitoring device and correlated with the daily records of driving time; and

b. A current measurement of glycosylated hemoglobin.

(2) Submit on an annual basis, a comprehensive medical evaluation by an endocrinologist. The evaluation will include a general physical examination and a report of glycosylated hemoglobin concentration. The evaluation will also involve an assessment of the individual's willingness and ability to monitor and manage the diabetic condition;

(3) Provide on an annual basis confirmation by an ophthalmologist or optometrist that there is no diabetic retinopathy and the individual meets the current vision standards at 49 CFR 391.41(b)(10). If there is any evidence of diabetic retinopathy, provide annual documentation by an ophthalmologist that the individual does not have unstable proliferative diabetic retinopathy;

(4) Submit annual documentation by an endocrinologist of ongoing education in management of diabetes and hypoglycemia awareness;

(5) Report all episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; and

(6) Report any involvement in an accident or any other adverse event whether or not they are related to an episode of hypoglycemia.

Medical Examination-Certificate of Physical Examination for ITDM Individuals Who Have Been Issued an Exemption To Operate CMVs

Because diabetes is a chronic disease requiring constant control and monitoring, FMCSA will impose conditions on ITDM individuals, who have been issued an exemption, similar to the provisions that apply to drivers who participated in the agency's diabetes waiver program before March 31, 1996 under 49 CFR 391.64. The required conditions include the following:

(1) Each individual must have a physical examination every year:

(a) The physical examination must first be conducted by an endocrinologist indicating the driver is:

1. Free of insulin reactions. "Free of insulin reactions" in this context means that the individual has had:

(A) No recurrent (two or more) hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia,

(B) No recurrent hypoglycemic reactions requiring the assistance of another person within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia, and

(C) No recurrent hypoglycemic reactions resulting in impaired cognitive function that occurred without warning symptoms within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia,

2. Able to and has demonstrated willingness to properly monitor and manage his/her diabetes, and

3. Will not likely suffer any diminution in driving ability due to his/her diabetic condition; and

(b) Secondly, the physical examination must be conducted by a medical examiner who attests that the individual is physically qualified under 49 CFR 391.41, or holds a valid exemption.

(2) Each individual must agree to and must comply with the following conditions:

(a) Carry a source of rapidly absorbable glucose at all times while driving;

(b) Self-monitor blood glucose levels prior to driving and every two to four hours while driving using a portable glucose monitoring device equipped with a computerized memory;

(c) Submit blood glucose records to both the endocrinologist and medical examiner at the annual examinations or when otherwise directed by an authorized agent of FMCSA; and

(d) Provide a copy of the endocrinologist's report to the medical examiner at the time of the annual medical examination; and

(3) Each individual must provide a copy of the optometrist's or ophthalmologist's report indicating that there is no diabetic retinopathy and the individual meets the current vision standards at 49 CFR 391.41(b)(10). If there is any evidence of diabetic retinopathy, the individual must provide to the medical examiner at the time of the annual medical examination a copy of the ophthalmologist's report indicating that the individual does not have unstable proliferative diabetic retinopathy; and

(4) Each individual must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or must keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the certification when driving for presentation to a duly authorized Federal, State, or local enforcement official.

Basis for Determination

Under 49 U.S.C. 31315 and 31136 (e), the FMCSA may grant an exemption for up to a two-year period if it finds that the action would likely achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved absent such exemption. This requirement sets the criteria for safety in developing new programs. In this context, relative to diabetes, Section 4018 of TEA–21 directed the Secretary to determine if it is feasible to develop a safe and practicable program for allowing individuals with ITDM to operate CMVs in interstate commerce. In making that determination, the primary focus was on whether such a program could achieve a level of safety that is equal to or greater than the level that exists without the program. To do this, multiple sources of information were sought.

The sources of information sought to reach a determination ranged from background research and risk assessment to consultation with experts and an examination of how other similar programs were conducted. Specifically, this involved: (1) Literature reviews to identify earlier risk studies and how ITDM is treated and managed, (2) investigation of the policies and programs of other DOT modal administrations, (3) an examination of how such States treated drivers with ITDM and their experience in allowing such drivers to operate CMVs, and (4) examining the results of recent risk studies. Further, to obtain expert input concerning the treatment of ITDM, the agency assembled a panel of physicians whose main focus was the treatment of diabetes. Overall, the conclusions reached in this determination were, therefore, based on a broad range of relevant information.

The approach was guided by the best principles of risk assessment in conjunction with program development. The feasibility focused primarily on the potential safety of such a program, and the procedures that can ensure safety, while providing a benefit to the public. The results of the determination led to a conclusion that a safe and practicable program was feasible. The conclusions further showed that a viable program protocol for allowing certain individuals with ITDM to operate CMVs would require three components.

The first component is screening applicants to identify qualified drivers. This process examines the applicant's experience and safety in operating a CMV. As stated above, the screening criteria require three years of safe CMV operation with ITDM. The criteria are based on the evidence available from the above referenced waiver program, previous program reviews by researchers in the field, and the safety prediction literature. FMCSA believes that a safe driving history is a required basis for screening, because the primary focus of the determination is to develop a program with the necessary safety level. The screening component requires an acceptable history of hypoglycemia along with the results of examinations by required medical specialists. An important aspect of screening also involves education in the management of the condition and awareness of hypoglycemia.

The second component provides guidelines for managing ITDM for the qualified applicants. This includes direction in the supplies to be used and the protocol for monitoring and maintaining appropriate blood glucose levels. This is based on the experience of other successful programs and detailed input from the above referenced medical panel.

The last component specifies the process to be used for monitoring qualified ITDM operators of CMVs. This addresses the required medical examinations and the schedule for their submission. It also specifies how glucose measures should be taken and reviewed and the methods for reporting episodes of severe hypoglycemia and accidents. The monitoring component increases the degree of rigor to meet the needed level of safety. In the program, qualified drivers will be required to reapply and be screened every two years to renew their exemptions. This means that the drivers in the program will need to verify their safe driving behavior, health status, and education in a manner that involves ongoing monitoring. In addition, to monitor health status, the drivers will be required to be examined by an endocrinologist and obtain medical certification on an annual basis.

The FMCSA believes this is a comprehensive program. It thoroughly addresses the wide range of concerns about this type of program. The program's structure reflects the range of input from numerous sources. It also reflects how the most feasible and effective aspects of each input were combined to develop a program that provides great benefit with a primary focus on safety.

Discussion of Comments

There were 396 comments to the notice of intent to issue exemptions published in the **Federal Register** on July 31, 2001 (66 FR 39548), with 373 commenters generally in favor of the proposal and 23 in opposition. Among the comments submitted, some were sent multiple times by the same individuals or organizations. Those in support of the proposed program largely directed their comments to the removal of a comprehensive prohibition on the operation of CMVs by insulin-using diabetics, which would be replaced by an individual assessment of their ability to drive the CMVs. Those in support often did not agree with all aspects of

the proposed program, citing complexities of the application process, the extent of the medical examination, and the length of time until FMCSA grants an exemption. Among the comments in support, while citing problems with other elements of the program, 191 wrote specific comments about the requirement for three years of driving experience with the condition.

Nine organizations and individuals submitted 23 comments in opposition to the proposal. They argued that available evidence does not support implementation of an exemption program that must meet the safety requirements for new programs. They assert that the medical examination process cannot conclusively identify safe drivers with ITDM, that interstate driving is too arduous for such individuals, and the risk assessment results are not sufficient to justify a program that will be as safe or safer than the existing absence of a program.

The comments on the proposed program are further discussed below. Numerous commenters have substantive concerns about the same issues. The FMCSA presents its response after the comments are described.

Comments In Support

The American Diabetes Association (ADA) generally supports the FMCSA proposal to end the blanket ban prohibiting insulin-treated diabetics from operating CMVs. It believes that this proposal is long overdue and it would institute a process for the individual assessment of applicants. The ADA said that it does not believe all individuals with insulin-treated diabetes should qualify for a CDL. It strongly supports replacing the blanket ban with a medically sound protocol that maximizes safety and employment opportunities for individuals with diabetes. Consistent with that support, the ADA states that it supports most aspects of the proposed program. Specifically, the ADA agrees with three aspects of the proposed protocol; the careful medical screening, the stringent guidelines for drivers to use when driving, and the aggressive monitoring for safety. It supports the rigorous approach to assuring the highest levels of safety and believes that most aspects of the proposal are excellent.

The ADA, however, disagrees with the exemption requirement that insulin-treated drivers should have three years of safe driving experience with the condition. It states that nothing in the TEA–21 Report to Congress supports this requirement, and that the proposed requirement disregards currently available medical treatment and supplies for people with diabetes. The ADA claims that the agency's own medical panel recommended a one or two month period for a person to adjust to insulin before applying for a CDL, and urges the adoption of that standard. It goes on to state that the three-year screening criteria should be replaced with a one-month adjustment period for those with non-ITDM that are moving to the use of insulin, and a two month adjustment period for those newly diagnosed with the ITDM condition. Individual circumstances could extend this latter period. Moreover, the ADA believes that there should be no requirement for the CDL applicant to have any experience driving a CMV.

The ADA also believes that DOT should change the regulations in relation to diabetes. It believes that the proposed exemption program has a number of difficulties that a regulatory change would not. The ADA believes the exemption program could be terminated at any time in the same manner the FHWA did when it ended the diabetes waiver program. It also believes that an exemption program may not be able to protect qualified ITDM drivers from employer discrimination, citing a supreme court decision, *Albertson's Inc.* v. *Kirkingberg*, 527 U.S. 555 (1999). The ADA states that an exemption program could result in more discrimination and litigation. As a result, the ADA argues that the general regulatory standard in 49 CFR 391.41(b)(3) should not continue when the DOT has determined that individual assessment is feasible.

The U.S. Equal Employment Opportunity Commission (EEOC) states that the proposed exemption program is intended to increase employment opportunities for individuals with disabilities while monitoring for safety. In this sense, the EEOC claims that the process is consistent with the Americans with Disabilities Act. However, the EEOC is concerned about the requirement for three years of driving experience with the condition. It is concerned that this screening process may exclude a large number of drivers from interstate commerce, which may limit diabetic drivers to a small number of lower paying jobs. It was also concerned that some drivers may live in states that do not allow diabetic drivers to operate CMVs in intrastate commerce. The EEOC urges the FMCSA to monitor the three-year experience requirement if it is used and reassess it if it becomes too exclusionary.

The Congressional Diabetic Caucus (Caucus) generally supports the program, saying that it is pleased that the TEA–21 Report to Congress "concludes that a safe and practicable protocol to allow some individuals with insulin-treated diabetes mellitus to operate commercial motor vehicles is feasible." However, it has concerns about the three-year requirement for driving experience. It claims that the proposed three-year requirement ignores advances in medical treatment. The Caucus points to the input given by a DOT medical advisory panel which recommended a one to two month adjustment-period before driving for those individuals newly treated with insulin.

The Caucus also believes that DOT should not implement the proposed policy through another exemption or waiver program. It believes the vast majority of States and the Federal Government have successfully experimented with allowing a limited number of insulin-treated drivers to operate CMVs. With the Federal government's analysis of the issue, another exemption (waiver) program would be inadequate to provide benefits for all involved. Based on this, it urged DOT to permanently change the regulations concerning insulin-treated diabetes and the operation of CMVs.

The Civil Rights Division of the U.S. Department of Justice (DOJ) generally supports the proposed exemption program as a positive step toward permitting an individual assessment of persons with ITDM to operate CMVs in interstate commerce. The DOJ, however, has concerns regarding the three-year driving requirement and urged the FMCSA to continue to obtain and analyze data on the safety records of CMV operators with ITDM from all available sources. This should permit the FMCSA to consider if it is appropriate to modify the three-year requirement. The DOJ believes that among those States that allow drivers with ITDM to operate CMVs, some monitor the drivers for a variety of reasons. As a result, those states should be able to provide the FMCSA with several years of data to examine the risk associated with relaxing the three-year requirement.

The Amalgamated Transit Union (ATU), which represents over 175,000 members maintaining and operating bus, light rail, ferry, over-the-road bus, school bus, and paratransit vehicles in the U.S. and Canada, strongly supports the proposed program because advances in the treatment of diabetes make it possible for some ITDM individuals to operate a CMV. However, the ATU strongly opposes the requirement for three years of safe CMV operation with the condition. This aspect of the proposal, the ATU argues, would place

a huge obstacle in the path of qualified individuals with ITDM. This requirement discriminates against drivers in non-waiver States. In light of the medical advances in the treatment of ITDM, the ATU states there is no justification for the three-year requirement. Instead, the ATU claims that the FMCSA should adopt the recommendation of the medical panel in the TEA–21 Report to Congress, wherein a one or two-month period for adjustment to insulin would be required for seeking or maintaining a CDL.

The International Brotherhood of Teamsters (IBT) applauds the FMCSA's efforts to eliminate the blanket ban on insulin-using diabetic drivers. However, the IBT agrees with the other organizations relative to the three-year driving requirement. In their opposition to the requirement, the IBT cites the absence of waivers in some States that would exclude many drivers. The IBT also claims that it is not easy for drivers to obtain the required experience even in States with waiver programs because there are significantly fewer jobs in intrastate operation. They also point to the unfairness of experienced interstate drivers losing their CDL when newly diagnosed with ITDM.

The IBT is also concerned about the requirement that a CDL applicant have a safe driving record. It states that the requirement bears no relation to the applicant's medical condition and that this goes too far even in trying to ensure safety. It is most concerned about the requirement that a driving record could prevent the applicant from obtaining an exemption based on the applicant's accident involvement for which the driver "contributed to the cause." The IBT believes this standard is too broad and subjective.

The IBT also believes that rulemaking rather than an exemption program would better serve the process of granting CDLs to insulin-using diabetics. It sees little benefit in the exemption process of publishing an application in the **Federal Register** and requesting comments on the applicants' diabetic conditions. The IBT states that it understands that rulemaking can be a lengthy process and encourages the FMCSA to proceed with the exemption program while continuing to work on the more permanent solution through a change in the regulations.

The Owner-Operator Independent Drivers Association, Inc. (OOIDA) generally supports and welcomes the changes proposed by the FMCSA in the exemption program. Based on reports from its membership, OOIDA believes that a number of drivers with ITDM can safely operate CMVs in interstate commerce. OOIDA believes that FMCSA's proposed program has a number of steps that will ensure that no increased safety risks will be present. However, OOIDA is concerned about the three-year driving requirement, and believes that it runs counter to the proposal to require an activity currently prohibited in interstate commerce. It believes that the requirement limits access to the CDL program because there are few intrastate driving opportunities. OOIDA is further concerned about experienced drivers who would be using insulin, but choose not to do so because they will lose their CDLs. While the proposed exemption program may help lessen this problem, the three-year requirement places them in a difficult economic and health position.

The National Private Truck Council (NPTC) agrees with the FMCSA that a blanket prohibition on the operation of CMVs by individuals with ITDM is unwarranted and understands the agency's concerns relative to the safe performance of drivers with this condition. The NPTC, however, believes that the protocol is so burdensome that it will discourage participation in the program. The most onerous provision in the program, according to the NPTC, is the requirement for three years of CMV driving experience with the diabetic condition. They believe that the requirement is unnecessary from a safety standpoint, and presents an excessive burden on applicants to the program.

The American Trucking Associations, Inc. (ATA) supports FMCSA's proposed exemption program. ATA recognizes the advances made in the treatment of ITDM, the advances in the treatment of diabetes related heart disease, and the success of the agency's earlier diabetes waiver program. ATA's support is given if the proposed exemption program contains specific components related to screening, safe driving experience, medical history and examinations, guidelines, and monitoring.

The American Optometric Association (AOA), while supporting the proposal, takes exception with the omission of optometrists from the examination requirements in the application process. The AOA states that this omission is inconsistent with all existing Federal guidelines on the matter in addition to those put forth by the AOA, the National Committee on Quality Assurance, and the recommendations of the agency's medical panel member Edward S. Horton, M.D. Moreover, the AOA argues that the omission of optometrists implies that they are not able to monitor proliferative diabetic retinopathy. The AOA states that this is not true because studies indicate that optometrists can detect non-proliferative and proliferative retinopathy, as well as general ophthalmologists. The AOA clinical guidelines for the optometric care of diabetic patients is identical to the procedure used by ophthalmologists to detect proliferative diabetic retinopathy. Finally, the AOA argues that it would be inconsistent for the agency to include optometrists in the annual medical examination for diabetics in 49 CFR 391.64, and then exclude them in the proposed exemption process.

The Oregon Department of Transportation and the Illinois State Police both endorse the proposed exemption program. Oregon has extensive experience in issuing intrastate waivers to insulin-using diabetic CMV drivers based on stringent medical requirements. Oregon maintains crash data for intrastate commercial operations and had found no accidents related to complications from diabetes. Likewise, the State of Illinois currently allows diabetic drivers under its grandfather provisions and has no data to indicate ITDM drivers are a greater safety risk than other drivers. The Illinois State Police takes no exception to the proposed exemption program if there is strict oversight and careful scrutiny of each applicant.

The State of Delaware also supports the proposed exemption program since it has had a similar program in effect for 15 years. Delaware states that it has no indication that the program has reduced highway safety. However, the State believes that the agency proposal is overly complex. It points specifically to the publication of individual exemptions in the **Federal Register** for comment, the decision period of up to six months, the annual physician report, and the quarterly specialist review. It suggests a reduction in these requirements.

FMCSA's Response

The comments about the requirement for three years of driving experience with the ITDM condition are understandable. It does place a constraint on some ITDM drivers who want to operate a CMV in interstate commerce. However, under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the diabetes standard only if the exemption is likely to achieve an equivalent or greater level of safety than would be achieved without the exemption. FMCSA believes that thorough screening of exemption applicants, and periodic monitoring of their safety performance, are the most

practical and effective ways to ensure the diabetes exemption program satisfies the statutory requirement achieving a level of safety equivalent to, or greater than, the level of safety obtained by complying with the safety regulation. FMCSA believes that the three-year requirement is crucial to this screening and monitoring protocol until data supports a different threshold. The three-year requirement provides sufficient time to expose anomalies in driving records that enhance predictability of future driving performance. It also allows the driver to develop a routine for managing his or her diabetic condition and establish a driving record demonstrating those adaptive skills.

FMCSA based the three-year driving experience requirement on the best available scientific evidence. The previous work the agency performed under its diabetes waiver program in the mid-1990s supports the three-year requirement. Drivers in that program, who had three years of experience while using insulin, had accident rates lower than the national rate. The driving performance of those who met the three-year requirement and other program requirements was analyzed relative to 1993 through 1996 large truck national accident rates found in the National Highway Traffic Safety Administration's General Estimates System. The accident rate of the waiver group with over 9 million miles of driving exposure was 1.960 accidents per million miles versus a national accident rate of 2.272 for the same period.

On August 24, 1994, the agency convened a meeting to conduct a review of the vision waiver program. The diabetes waiver program used the same three-year requirement as the vision program. Agency officials and a variety of researchers in highway safety and vision attended the meeting. (See the Final Descriptive Report "Qualification of Drivers—Vision, Diabetes; Hearing and Epilepsy;" FHWA; DTFH61–92–Z–00158, May 30, 1997). The group discussed both the formation of the waiver program and the design of the associated study. Relative to the design of the waiver program and the enrollment of drivers, it was decided that the program was well conceived within the context of congressional mandate expressed in the Motor Carrier Safety Act of 1984. The group determined that the conditions developed for screening and enrolling drivers into the waiver program were appropriate. To qualify for a vision waiver, a driver had to have an extremely safe driving record for three full years before applying to the program. The group agreed based on the safety literature that the best predictor of future driving performance is past performance. As a result, the group concluded that the enrolled drivers would be as safe in the waiver program as they were before the program.

Because the FMCSA is required to develop programs that are as safe as or safer than the prevailing norm, the agency believes this is compelling evidence to require the three-year driving experience requirement in its diabetes exemption program. However, the agency will revisit the issue in the future. FMCSA will examine how reducing the three-year experience requirement can be accomplished while satisfying the statutory requirement under 49 U.S.C. 31315 and 31136(e).

FMCSA believes that its medical advisory panel recommendation that persons could be qualified to drive a CMV, after a one-or two-month period of adjustment to insulin use, does not take into account the complex demands of operating a large vehicle in interstate commerce. Diabetes is a chronic disease requiring constant control and monitoring. CMV drivers, however, are frequently required to work long hours and travel significant distances, often requiring overnight stays away from home. Because of economic pressures to arrive at a delivery site on schedule, drivers may often have difficulty maintaining a regular diet, exercise, and the blood sugar monitoring patterns necessary to manage their diabetes properly. Failure to manage diabetes properly significantly increases the likelihood of an adverse event, such as loss of consciousness while driving due to hypoglycemia (low levels of glucose in the blood). Advances in the medical treatment of diabetes do not equal compliance. There is a strong behavioral component in managing diabetes.

With respect to comments urging FMCSA to change the regulations on ITDM and CMV operation, FMCSA does not believe there is evidence to support such a change. In the TEA–21 Report to Congress conducted for this program, the FMCSA could find no precedence for regulatory change for a condition like ITDM. ITDM is a chronic health problem.

Diabetes is a condition that is potentially quite labile, even if an individual demonstrates good control of blood glucose levels at a point in time. The expert medical panel convened for the TEA–21 Report to Congress agreed that diabetics have special medical problems. For this reason, they concurred that diabetics should be examined by endocrinologists who are experienced with the condition. In relation to monitoring the ITDM driver's management of the condition, the panel suggested, among other things, that quarterly reporting of glucose monitoring data would be a good method of determining whether the driver is following the monitoring guidelines. The panel also agreed that these drivers should receive ongoing education in hypoglycemia awareness, and that this education should be monitored on an annual basis. For this reason, FMCSA believes the evidence supports the requirement that a responsible, qualified driver should undergo periodic examinations. The need for periodic examinations is underscored by the possible occurrence of diabetic complications such as retinal disease and peripheral neuropathy.

FMCSA believes that the periodic examinations, and the monitoring of the examinations, both assure the health of the individual and the safety of the public at large. Consequently, FMCSA has determined that the prefered context in which to guarantee such screening and monitoring is in an exemption program.

IBT was concerned about the driver record requirement that prevents the applicant from obtaining an exemption because of involvement in an accident for which the driver "contributed to the cause." IBT believes this type of assessment is too subjective. However, FMCSA's analysis of the driving record of each individual driver is not subjective. The analysis of the accident report seeks to determine whether the reporting police officer has issued a citation indicating that the driver is at fault or has contributed to the cause of the accident. The analysis also examines the accident report to determine whether there is evidence of driving behavior that could indicate a hypoglycemic event, such as crossing the median, swerving, or driving off the road. In cases where a diabetic driver receives medical attention, reports on glucose levels can be obtained.

The AOA took exception to the exclusion of optometrists from the proposed exemption process. The protocols that were in the proposed program have been revised, today's final disposition notice allows applicants to obtain and submit a signed statement from an ophthalmologist or optometrist, indicating that they have been examined, the applicant does not have diabetic retinopathy, and meets the vision standard at 49 CFR 391.41(b)(10). However, if the driver has any evidence of diabetic retinopathy, FMCSA requires an examination by an ophthalmologist to offer additional expert opinion regarding stability and risk of

progression of the condition. This change covers the screening process in both the initial application and the annual examination.

Comments In Opposition

The Insurance Institute for Highway Safety (IIHS) opposes FMCSA's proposal to issue exemptions to certain insulin-using drivers of CMVs. In voicing its opposition, IIHS resubmitted the various comments it had submitted to the agency between 1991 through 1996 concerning the implementation and disposition of the diabetes waiver program. In those comments, IIHS raised concerns that: (1) Diabetes Mellitus is a risk factor for motor vehicle crash involvement, (2) severe hypoglycemia and hypoglycemia unawareness are a common consequence of insulin therapy and of tight control of blood glucose levels in particular, (3) no studies support the protocols in a program that would issue exemptions, (4) compliance by drivers and employers to program requirements is unlikely, (5) studies designed to investigate the safety of issuing waivers or exemptions would produce no scientifically valid conclusions, and (6) the research design used to investigate safety in an earlier waiver program was inadequate. The issues raised in these previous comments have been addressed at length in 58 FR 40690 (July 29, 1993) (FHWA Docket No. MC–87–17) and 61 FR 13337 (March 26,1996) (FHWA Docket No. MC–96–2). FMCSA will not address these points again here, but refer interested parties to the earlier discussions. The IIHS has, however, raised a new issue and this is discussed in the following paragraph.

The IIHS stated that the agency has ignored the concern that the working conditions of interstate truck drivers are not compatible with the medical needs of people with insulin-treated diabetes. IIHS states that long and irregular work hours, night responsibilities, variations in the amount of exercise, and variations in the amount of food consumed are integral aspects of long-haul trucking. These factors, IIHS argues, make it difficult to calibrate insulin doses to maintain blood glucose at healthy levels.

FMSCA is aware that operating a CMV in interstate commerce is an arduous occupation. The agency designed the screening criteria in the exemption program to identify those insulin-using diabetics, who will have a high degree of responsibility in managing the condition while driving in interstate commerce. The agency bases this assertion on the experience obtained in the above referenced diabetes waiver program. The evidence generated by that program, which had the same screening criteria as that proposed for the exemption program, demonstrated that responsible insulin-using diabetics can safely operate a CMV in interstate commerce. The evidence obtained in that program represents over 9 million miles of CMV operation by individuals who were successfully screened by the criteria. In addition, FMCSA will require that an applicant for the diabetes exemption program be educated in diabetes and its management, and have demonstrated a willingness to properly monitor and manage his or her diabetes. Finally, not all operations in interstate commerce are long-haul.

The Advocates for Highway Safety (AHAS) stated strong opposition to the FMCSA proposal to issue exemptions to selected insulin-using diabetic CMV operators. In stating its opposition, AHAS claims that the proposed exemption program lacks a sufficient scientific foundation. In particular, AHAS argues that FMCSA's assertion that the ITDM exemption is scientifically sound and based on good medical information is conclusionary and not an accurate representation of the factual record. AHAS states that FMCSA is reaching a conclusion that selectively highlights the most salient pieces of evidence in the TEA–21 Report to Congress, to support the implementation of an ITDM exemption program. In making this claim, AHAS points to FMCSA's reference to two studies in the TEA–21 Report to Congress ("The Diabetes Control and Complications Trial" (1995) and the "United Kingdom Prospective Diabetes Study" (1998)), as the most extensive investigation of insulin therapy to date.

In the presentation of these studies, AHAS argues that FMCSA claims the studies show positive results for reduction in blood glucose levels and microvascular complications, and that the agency also reports results that show significantly higher rates of hypoglycemia due to the use of insulin. AHAS states that the agency's notice of intent did not explain how these results support the agency's determination that an exemption program for ITDM will have a safety level that is equal to or better than the prevailing level.

FMCSA is acutely aware of the threat presented by tight control of blood glucose levels and hypoglycemia. It was not the agency's intent to use the results of those studies to support the determination of safety. Rather, the intent was to identify a potential threat that had to be accounted for in the protocols of the proposed exemption program. To this end, the expert medical panel addressed this issue in the FMCSA's TEA–21 Report to Congress. The panel, while clearly recognizing hypoglycemia as a threat, also thought awareness was a bigger problem. It noted that there was a correlation between hypoglycemia awareness and recurrent, severe hypoglycemic episodes, as shown in the Diabetes Control and Complications Trial data. The panel stated that individuals who are prone to severe hypoglycemia should not drive. The panel agreed that severe hypoglycemia in the past year or several episodes in the past five years can predict the future. The panel also agreed that training in the awareness of hypoglycemia is necessary for drivers of CMVs. Because of this, awareness education is a requirement in the protocols of the exemption program announced today.

AHAS points to a 1999 study (Clarke, W. *et al.* "Hypoglycemia and the Decision to Drive a Motor Vehicle by Persons with Diabetes." JAMA, August 1999, Vol. 282, No. 8, 750–754) to raise questions about an exemption program. According to AHAS, the study found that even when individuals accurately estimated low blood sugars levels, a significant proportion still decided to drive. However, the researchers in this study also said that these findings did not mean ITDM individuals should be prohibited from driving. They said it was reasonable for individuals to measure their blood sugar levels before driving and take steps to raise potentially low levels. The researchers said that drivers with ITDM should always carry rapid-acting glucose when they drive. Moreover, these researchers claim that individuals with ITDM could benefit from awareness training. In fact, in a subsequent study by these same researchers, the results showed that awareness training improved the detection of hypoglycemia and improved judgment for knowing when to raise low blood glucose, or to lower elevated blood glucose, and for knowing when not to drive while hypoglycemia is a threat (Cox, D. J. *et al:* "Blood Glucose Awareness Training; Long-Term Benefits, Diabetic Care, 2001, 24:637–642). Because of the concerns about hypoglycemia, FMCSA has incorporated all of the suggested interventions in the protocols of today's exemption program. The California Department of Motor Vehicles also described the same article as AHAS raising the same concerns. There is an additional response to their comments later in this discussion.

AHAS also took exception to FMCSA's interpretation of four recent risk studies presented in the TEA–21 Report to Congress and the July 2001 notice of intent. It first addressed two Canadian studies:

1. Dionne, G. *et al.* "Medical Conditions, Risk Exposure, and Truck Drivers' Accidents: An Analysis with Count Data Regression Models," Accident and Prevention, 27(3): 295–305 (1995); and

2. Dionne G. *et al.* "Analysis of the Economic Impact of Medical and Optometric Driving Standards on Costs Incurred By Trucking Firms and on the Social Costs of Traffic Accidents" in Dionne, G. and Laberge-Nadeau, C. (Eds.) Automobile Insurance: Road Safety, New Drivers, Risk Insurance Fraud and Regulation, Kluwer Academic Publishers, Boston (1999).

AHAS states that these studies do not offer any evidence in support of an exemption program.

The first of these studies (1995) examined truck drivers in two licensure classes. One class was for the operation of large combination trucks, while the other included truck drivers holding all other classes of license that were mostly holders of permits for straight trucks. The risk analysis in each class considered diabetic drivers versus all other drivers. The diabetic drivers of large combination trucks had an accident rate that was not significant, while the diabetic drivers of small trucks had a significantly higher accident rate. The analysis did not consider the use of insulin by the diabetic drivers. Relative to this, AHAS alleges that FMCSA's notice of intent does not state to the public that although the researchers were actually at a loss to explain the results, they believed that the results could be due to the use of insulin since the diabetic drivers of large trucks had fewer individuals treated in this manner than those with other classes of license.

For the second study, AHAS states that the results FMCSA relies on were not the focus of the study nor its primary consideration, and that the primary focus of the study was estimation of cost per accident. FMCSA reported a secondary finding, according to AHAS, in that the data showed that drivers with diabetes did not have significantly more severe accidents than those in the comparison groups. Severity was measured as the total number of individuals injured or killed in an accident. AHAS points out that the work in the second study was based on the data used in the first and was a continuation of that study. It also states that the use of insulin was not considered in the second study.

FMCSA believes the AHAS claim that the studies do not contribute to the finding that ITDM drivers have an acceptable level of risk is unfounded. Aside from the finding that diabetic drivers of small truck CMVs had a significantly higher accident rate, none of the other findings refute the position that diabetics could operate CMVs in interstate commerce with a level of safety that is the same or better than the prevailing standard. While insulin was not taken into consideration in the analyses, the studies do nonetheless offer evidence in support of the exemption program by virtue of not contradicting the conceptual design. Contradiction and refutation are acceptable approaches in science to revise a stated theory. None of the work contradicts the determination that diabetic drivers have an acceptable level of risk. In performing risk assessments through observational studies, it is necessary to examine all of the evidence to determine the direction the preponderance of evidence supports.

After the FMCSA issued the notice of intent, there has been an additional contribution to the collection of evidence on this issue. Some of the same Canadian researchers who conducted the previous studies used the same insurance database to conduct a third study (Laberge-Nadeau, C. *et al.* "Impact of Diabetes on Crash Risks of Truck-Permit Holders and Commercial Drivers." Diabetes Care, Vol. 23(5): 612–617, 2000). These data were augmented with health status data from a public health insurer where insulin use was identified, along with the existence of complications due to diabetes. Portions of the database were analyzed with the new information in a new research design where diabetic driver permit holders were group-matched by age to a random sample of healthy permit-holders. Risk was analyzed relative to type of permit holder (large combination trucks and straight trucks), use of insulin, and diabetic complications. Relative to both classes of trucks, insulin-using diabetics showed no significant risk regardless of complication status. The only group of diabetics to show significant risk was the permit holders for straight trucks who did not use insulin and were without complications. To explain the results concerning insulin use and complications, the researchers stated that employers hiring drivers for large combination trucks use higher medical standards presumably for insulin-using diabetics and other drivers. This is what the protocols in the FMCSA diabetes exemption program are designed to do.

Many of the points argued by AHAS in relation to their criticism of the research design in the waiver program and their rejection of the legal basis for the exemption program, have been previously presented and have been addressed at length in 58 FR 40690 (July 29, 1993) (FHWA Docket No. MC–87–17), 61 FR 13337 (March 26, 1996) (FHWA Docket No. MC–96–2), 63 FR 67601 (December 8, 1998) (DMS Docket No. FMCSA–1998–4145) and 64 FR 51568 (September 23, 1999) (DMS Docket No. FMCSA–1999–5578). FMCSA will not address the points again here. Interested parties are referred to the earlier discussions.

In its comments to this notice, AHAS also raises some new issues. In particular, it has some concerns relative to the most recent risk study conducted by the agency ("A Study of the Risk Associated with the Operation of Commercial Motor Vehicles by Drivers with Insulin-Treated Diabetes Mellitus," FHWA, 1999). AHAS states that the comparisons made in the study could be suspect because the comparison group was composed of interstate drivers, while the diabetes group contained mostly intrastate drivers. While it is true that the diabetes group did primarily contain intrastate drivers, the comparison group of CDL holders also had intrastate drivers, albeit in smaller proportion. This disparity in representation by the two groups did contribute to the range of CMV operation (intrastate versus interstate) being identified as a confounding factor in the study. As a result, FMCSA used the factor to adjust the initial results. Observational study research literature supports this type of adjustment. Had this factor and others been ignored in the analyses, the unadjusted results would have been biased and detracted from the internal validity of the study.

This aspect of FMCSA's response also addresses another AHAS concern involving the nature of the unadjusted study results. AHAS correctly pointed out that the initial (unadjusted) results show that the diabetes group had a higher crash rate than the comparison group. However, since this study was observational in nature, as are almost all practical risk investigations, it is necessary to assess the factors that could introduce bias into the results and invalidate the findings. FMCSA did this and found several factors, including intrastate versus interstate operation and marital status. The other source of potential bias that FMCSA found was over-dispersion in the distribution of accidents (a larger than expected

variation in the number of accidents). Both of these sources of bias tend to produce false positive (significant) results if not subjected to adjustment. FMCSA analyzed the two sources of potential bias with adjustment procedures, both separately and jointly, and found the results were consistent across all analyses showing no significant difference in risk between the two groups. While the AHAS seemed to characterize this multifaceted approach to analysis as a contrived strategy, it is the approach which is required in an observational study (see U.S. General Accounting Office, "Cross Design Synthesis; A New Strategy for Medical Effectiveness Research," March 1992 GAO/PEMD–92–18). It is the consistent results across the varied adjustment procedures that gives the FMCSA confidence that bias was present in the initial (unadjusted) results and was eliminated in the ensuing analysis.

AHAS also claims that the Federal Aviation Administration (FAA) exemption program for ITDM individuals is an inappropriate model for FMCSA's program for the operation of CMVs. It stated that the FAA program issues exemptions only for third-class airman medical certificates and not for commercial pilots. The AHAS is correct in their assessment of the FAA program; however, the FMCSA had no intention of using the FAA's program as a model for the FMCSA program with respect to type of target population. FMCSA used the FAA program as evidence that it could develop a process of medical examination and screening to issue exemptions to individuals with ITDM. To this end, FMCSA used the FAA process as part of the template for development of the proposed medical examination and screening protocol. That is why the protocol is analogous to that of the FAA.

In its opposition, the California Department of Motor Vehicles (California) states that the proposed FMCSA program will unnecessarily increase the risk to the public and the drivers receiving the exemptions. While California regulatory guidelines allow some experienced ITDM individuals to operate intrastate, it believes that the FMCSA exemption program could greatly expand the number of these drivers who operate interstate and thereby increase risk. California limits the number of exemptions because of the risk of hypoglycemia. It states blood sugar is affected by almost everything including exercise and stress. This in combination with arduous work conditions associated with interstate operation makes it difficult for drivers with ITDM to control their blood sugar.

California does not believe that the proposed FMCSA screening procedures adequately address the issue of hypoglycemia. The requirement for a complete medical examination, by a board-certified or eligible endocrinologist with a statement of familiarity with the applicant's five-year medical history, will not preclude an ITDM driver from experiencing a hypoglycemia episode.

FMCSA believes it has addressed this type of circumstance in the exemption program's screening protocol. Specifically, the criteria state that the applicant must have had no recurrent (two or more) hypoglycemia reactions resulting in a loss of consciousness or seizure within the past five years. A period of one year of demonstrated stability is required following the first episode of hypoglycemia. Moreover, the criteria require that the applicant does not have recurrent hypoglycemia reactions requiring the assistance of another person and does not have reactions resulting in impaired cognitive function that occurred without warning symptoms within the past five years. In addition, as a test of these responses under arduous working conditions, the screening criteria also require three years of CMV operation with ITDM. The same screening criteria were used in the agency's previous diabetes waiver program, and in the three years of that program, there were no reported cases of impairment due to episodes of hypoglycemia. Moreover, screening is stricter now. In place of a single screening episode under the previous program, the driver must reapply for an exemption every two years, or sooner if the exemption was issued for a shorter period. Screening is performed at each reapplication. In addition, screening is performed annually by an endocrinologist, as well as the medical examiner performing the annual examination and certification required under 49 CFR 391.43.

In another issue of concern for California, it points out that the protocol proposed in the FMCSA program requires the exempted drivers to check their blood sugar levels every two to four hours. Because of this and other measures needed to control blood sugar, California believes that employers would not let the drivers take the time necessary to perform all of these activities. FMCSA, based on its previous experience, is not aware of any evidence to suggest that employers would not allow drivers to take the time needed to check their blood sugar levels.

California points to a 1999 study as another basis for its opposition (Clark, W. L. *et al.* "Hypoglycemia and the Decision to Drive a Motor Vehicle by Persons with Diabetes." JAMA, August 1999, Vol. 282, No. 8, 750–754). An objective of the study was to examine an ITDM individual's decision to drive during the individual's daily routine, based on perception of blood sugar levels compared to actual levels. The researchers found that significant numbers of subjects did not correctly estimate how low their blood sugar was, and therefore decided to drive. The findings also showed that even when individuals accurately estimated low blood sugar levels, a significant portion still decided to drive. California, however, does not indicate the researchers stated that ITDM individuals should not be permitted to drive. California did say the data suggested that individuals with ITDM need to be cautious before driving a motor vehicle. The researchers said that the suggestion that individuals measure their blood sugar levels, and raise potentially low levels before driving, did not seem unreasonable. They said that drivers with diabetes should always carry rapid-acting glucose with them when they drive. Moreover, the researchers claim that individuals with ITDM could benefit from awareness training to help detect blood sugar levels. They stated that this type of training has been shown to improve the detection abilities of even those with reduced awareness of hypoglycemia, and that the improvement has been sustained for at least a year.

The protocol being adopted in this final disposition is very consistent with the conclusions of these researchers. In the screening component the applicant must present a signed statement prepared by the examining endocrinologist indicating that the applicant has been educated in diabetes and its management, thoroughly informed of and understands the procedures which must be followed to monitor and manage his/her diabetes, and what procedures should be followed if complications arise. In addition, the protocol requires, in the guideline component, that the qualified applicant have a supply of rapidly absorbable glucose to be used as necessary. The protocol also requires, in the monitoring component, that the qualified driver provide annual documentation by a specialist of ongoing education in diabetes management and hypoglycemia awareness. While Clark W. L., *et al.* was valuable in identifying the potential

problems with hypoglycemia awareness, it also suggested methods for intervention. The suggestions of the researchers concerning how they believe the problem should be addressed are clearly contained in the protocols of the exemption program.

Conclusion

After analyzing the comments to the notice of intent, the FMCSA is convinced that the proposed program is responsive to the need and requirements of the various interested individuals and organizations. The comments raised a number of valid issues of concern. The agency believes that it has successfully addressed those concerns in the development of this program. The public's concerns must be addressed because they mainly focus on safety issues. This is the reason there is a three-year driving experience requirement in a part of the exemption program, in addition to medical screening, guidance, and monitoring. The three-year requirement of the program provides certainty to public safety, and also protects ITDM drivers. The ability to operate CMVs safely for three years clearly helps to indicate that applicants can perform the arduous work required in this type of job category. While we believe this requirement to be essential, all of the proposed components are required for a safe and practicable program.

Nonetheless, FMCSA recognizes that the three-year requirement will restrict the number of drivers eligible for an exemption. The agency has no desire to make the program more stringent than necessary and will therefore leave this docket open indefinitely in order to provide a means for the submission of additional views and data on the need for three years of driving experience. FMCSA is particularly interested in obtaining statistical data on the accident rates of ITDM drivers before and after they begin a course of insulin treatment. This analysis depends on knowing, among other things: (1) The number of miles driven and accidents experienced by the driver before beginning insulin treatment, thus providing a baseline accident rate; (2) the length of time an ITDM driver has taken insulin before resuming a driving career; (3) the date the ITDM driver resumed driving and the interval to the first (and any subsequent) accident; and (4) the number of miles driven by an ITDM driver, preferably on a monthly and annual basis. Although FMCSA will not ignore any relevant information that may be submitted, the statutory standard for an exemption requires the agency to focus its attention on the question whether ITDM drivers with less experience driving CMVs can achieve accident rates comparable to those of ITDM drivers who have at least three years of experience driving CMVs prior to applying for an exemption. This is an issue that can be resolved only by more and better data. FMCSA is also interested in learning which segments of the motor carrier industry have work conditions most (or least) conducive to the self-monitoring routines that ITDM drivers must maintain in order to control their blood sugar level.

For the reasons above, the FMCSA has determined that the most desirable structure to support these components is an exemption program. Therefore, in accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA will implement a program that will issue exemptions to qualified ITDM drivers. Each exemption will be valid for up to two years and require renewal at the end of that period. Qualified ITDM drivers may request a diabetes exemption from the 49 CFR 391.41(b)(3) regulation by sending an exemption request on or after September 22, 2003, to the Diabetes Exemption Program at the address in the **ADDRESSES** section above.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. An analysis of this proposal was made by the FMCSA, and it has determined that this Notice of Final Disposition would add an element, *i.e.*, diabetes exemption program, to a currently-approved information collection (OMB Approval No. 2126–0006), titled Medical Qualifications Requirements.

The FMCSA estimates that approximately 700 applications for exemption could be filed annually, and that it would take an average of 90 minutes to complete an application. The addition of the diabetes exemption program to this existing information collection would increase the annual burden by 1,050 hours (700 × 90 minutes / 60 minutes).

Interested parties are invited to send comments regarding any aspect of this information collection requirement, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FMCSA, including whether the information has practical utility, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the collected information, and (4) ways to minimize the collection burden without reducing the quality of the information collected.

You may submit comments on this *information collection burden* directly to OMB. The OMB must receive your comments by November 3, 2003. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

Authority: 49 U.S.C. 322, 31136 and 31315; and 49 CFR 1.73.

Issued on: August 27, 2003.

Annette M. Sandberg,

Administrator.

[FR Doc. 03–22409 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the Bi-County Transitway Project

AGENCY: Federal Transit Administration (FTA), U.S. Department of Transportation.

ACTION: Notice of Intent To Prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA) and the Maryland Transit Administration (MTA) intend to prepare an Environmental Impact Statement (EIS) in accordance to the National Environmental Policy Act (NEPA) of 1969, as amended, on the proposed Bi-County Transitway Project in Montgomery and Prince George's Counties, Maryland, which are in the metropolitan area of Washington, DC. The corridor extends 14 miles from the western branch of the Metrorail Red Line in Bethesda to the New Carrollton Metrorail Station. The Bi-County Transitway will provide high-capacity transit along the corridor. As a result of rapid growth in travel and development, the Bethesda to New Carrollton study area is facing numerous transportation challenges. The growing service sector job base has increased the vitally important need for efficient transit. The transit investment will compliment and support ongoing revitalization efforts currently underway in the study area.

This project includes the alignment previously known as the Georgetown Branch Transitway/Trail (Bethesda to Silver Spring). A notice of intent to prepare an EIS for the Georgetown Branch Transitway and Trail was

published in the **Federal Register** on September 21, 1994. Subsequently, the Georgetown Branch became known as the "Western" segment of the Purple Line. The current Bi-County Transitway Project now also includes what was known as the Purple Line "East", which extended from Silver Spring to New Carrollton. The Bi-County Transitway study area is now defined as all of the earlier Purple Line project area between Bethesda and New Carrollton.

The EIS will address the need to improve transit access, reduce travel times and improve connectivity in response to regional growth, traffic congestion, and land use plans for the area. The EIS will examine potential impacts and benefits to the social, cultural, economic, built and natural environment. The EIS will develop and evaluate alternatives that are cost efficient and beneficial. Improvements that enhance connections to existing transit systems, increase access to transit and to economic development areas, and minimize adverse impacts will be identified. The EIS will evaluate the No-Build Alternative, Transportation Systems Management (TSM) Alternative, Build Alternatives for Bus-Rapid Transit (BRT) and Light Rail Transit (LRT), and any additional alternatives generated by the scoping process. In addition to mode, the Build Alternative will consider alignments, grade options, station locations, and facilities such as maintenance and storage yard, inspection and Operation Control Center (OCC), traction power substations and tiebreaker stations.

Scoping Meetings: Public scoping for the Bi-County Transitway EIS will be held on: September 16 at the Holiday Inn-Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910; September 17 at the Bethesda-Chevy Chase High School, 4301 East West Highway, Bethesda, Maryland 20615; and September 24 at College Park City Hall, 4500 Knox Road, College Park, Maryland 20740. All scoping meetings will be from 4 p.m. to 8 p.m., and will be carried out in an open house format.

Details on meetings dates, project updates, times and locations will be announced on the project Web site *www.Bi-CountyTransitway.com* and in a project newsletter. Comments and input may be provided at the scoping meetings. Information will be available in English and in Spanish and will be published in the following newspapers: *The Washington Post, The Gazette, The Washington City Paper, The Washington Hispanic, The Washington Times, The Takoma Voice,* and *The Washington Afro-American Newspaper.*

ADDRESSES: Written comments on the project scope should be sent by October 31, 2003 to Michael D. Madden, Project Manager, Bi-County Transitway, Maryland Transit Administration, Office of Planning, 9th Floor, 6 St. Paul Street, Baltimore, Maryland 21202. For more information about this project or special assistance needs for the scoping meetings, please contact Michael D. Madden at (410) 767–3694.

FOR FURTHER INFORMATION CONTACT: Gail McFadden-Roberts, AICP, Community Planner, Federal Transit Administration, Region III, Office of Planning and Program Development, 1760 Market Street, Philadelphia, Pennsylvania 19103–4124, (215) 656–7100 (voice).

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and MTA invite all interested individuals and organizations, and Federal, State, regional, and local agencies to provide comments on the scope of the project. The goals of the Bi-County Transitway are to: Provide improved suburb to suburb transit alternatives and enhanced access to key civic, educational and employment activity centers; improve system connectivity and increase transit usage by providing an essential link to the Metrorail radial lines, as well as to other rail or bus services in Montgomery and Prince George's County; optimize public investment by providing, at a reasonable cost, efficient, safe, and reliable transit service, while minimizing environmental impacts; improve regional mobility by increasing the speed, reliability, and access to transit services in Montgomery and Prince George's Counties; support economic development and revitalization through improved connections to central business districts and activity centers; and support regional clean air quality goals with a cost effective transit alternative. Comments should focus on the alternatives for analysis and environmental issues, rather than on a preference for a particular alternative.

Public meetings and hearings, newsletters, project Web site and other outreach methods and forums will be used to inform the public of the progress of the project and to solicit input from the community on the proposed project as it develops. Outreach activities will include meetings with local officials, community leaders, local stakeholders, and the general public throughout the area. Public attendance at meetings will be sought through mailings, notices, advertisements, press releases and other efforts.

Additional agency coordination will be carried out through the Project Team, which will meet throughout the study process to address key issues. Members of the Project Team will include representatives of Montgomery County, Prince George's County, Washington Metropolitan Area Transit Authority, Maryland-National Capital Park and Planning Commission, and the State Highway Administration.

II. Description of Corridor and Transportation Needs

The project is located in Montgomery and Prince George's Counties, north of Washington, DC. The project area includes established communities characterized by medium-density residential uses, with pockets of high-density development (Bethesda, Silver Spring, Langley Park/Takoma Park, College Park, and New Carrollton), and the University of Maryland. The earliest development in the area corresponded with the construction of electric railways that radiated from the District of Columbia and facilitated movement into outlying areas. The primary roadways centered on downtown Washington, DC, and mainly traversed the corridor north to south. These arterials include Wisconsin Avenue (MD 355), Connecticut Avenue (MD 185), Georgia Avenue (MD 97), New Hampshire Avenue (MD 650), and Baltimore Avenue (US 1). The area has limited infrastructure for east-west travel, with two primary routes consisting of East-West Highway (MD 410) and University Boulevard (MD 193).

This portion of the Metropolitan Washington Region experienced rapid suburban development following World War II, and now contains mature neighborhoods accompanied by the development of supportive commercial activity centers along the primary roadways with the majority of housing stock constructed prior to 1960. Many of the commercial activity centers have access, parking, and pedestrian circulation deficiencies. The service employment sector is very strong throughout the corridor. In addition, professional and office employment are located in clusters near Metro stations in Bethesda, Silver Spring and, to a lesser extent, College Park and New Carrollton.

Numerous communities along the corridor contain populations that rely on transit to reach employment and activity centers. New transit services in the corridor have been limited to bus service, which is subject to roadway

congestion. To date, there has been no investment in fixed guideway systems or in new highways to facilitate commuting and links between the development centers along radial transportation routes that cross the corridor. The current east-west connections include bus transit and to a lesser degree, roadways. Commuters must use a north and south means to travel east-west. The area has limited infrastructure for east-west travel, with two primary routes consisting of East-West Highway (MD 410) and University Boulevard (MD 193), neither of which provides a direct connection between Silver Spring and New Carrollton. These routes are heavily congested during peak periods and increasingly unable to accommodate the traffic demands. The focus of the EIS will be to identify a preferred transit alternative that will reduce travel time, provide an alternative to traveling on congested roadways, and improve transit access to central business districts within the area while examining the socioeconomic, cultural and natural environmental considerations on a local and regional basis.

III. Alternatives

The alternatives proposed for evaluation include:

- A no-build alternative, which includes the current network plus all ongoing, programmed, and committed projects listed in the latest Transportation Improvement Program;
- A TSM alternative, which would include improving existing transit services such as additional bus service and routes, and which also serves as a baseline for evaluation against which all other alternatives may be compared for federal funding purposes (referred to as the FTA Future Baseline);
- Bus Rapid Transit alternatives; and
- Light rail alternatives.

Each build alternative will explore the construction of new transportation infrastructure, such as tracks, stations, and maintenance yards. Underground, surface and/or aerial design options may be developed for each of the build alternative alignments. Multi-modal alternatives will also be explored.

IV. Probable Effects

The FTA and MTA will evaluate all potential changes to the social, cultural, economic, built and natural environment, including land acquisition and displacements; land use, zoning, economic development; parklands; community disruption; aesthetics; historical and archaeological resources; traffic and parking; air quality; noise and vibration; water quality; wetlands; environmentally sensitive areas; endangered species; energy requirements and potential for conservation; hazardous waste; environmental justice; safety and security; and secondary and cumulative impacts. Key areas of environmental concern include areas of potential new construction (*e.g.*, structures, new transit stations, new track, *etc.*). Impacts will be evaluated for both the short-term construction period and for the long-term period of operation associated with each alternative. Measures to avoid, minimize and mitigate any significant adverse impacts will be identified.

V. Federal Transit Administration (FTA) Procedures

Previously, a Notice of Intent (NOI) was published in the **Federal Register** on September 21, 1994, which announced the preparation of an Environmental Impact Statement for the Georgetown Branch Transitway/Trail in Montgomery County, Maryland. The subsequent Draft Environment Impact Statement (DEIS) was completed in May 1996, and evaluated transportation improvements between the central business districts (CBDs) in Bethesda and Silver Spring, Maryland. The DEIS evaluated both a busway and light rail transit alternative in conjunction with a parallel hiker/biker trail. A Final Environmental Impact Statement was never produced for this study.

This NOI for the Bi-County Transitway Project extends the previous projects limits beyond Silver Spring to New Carrollton. An EIS will be prepared in accordance with section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 (as amended), as implemented by the Council of Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), Federal Transit Administration (FTA) regulations (23 CFR part 771), and the FTA Statewide Planning/Metropolitan Planning regulations (23 CFR part 450). These studies will comply with the requirements of the National Historical Preservation Act of 1966, as amended, section 4(f) of the 1966 U.S. Department of Transportation Act, the 1990 Clean Air Act Amendments, Executive Order 12898 on Environmental Justice, and other applicable rules, regulations, and guidance documents.

In addition, MTA intends to seek Section 5309 New Starts funding for the project. As provided in the FTA New Starts regulation (49 CFR part 611), New Starts funding requires the submission of certain specific information to FTA to support a request to initiate preliminary engineering, which is normally done in conjunction with the NEPA process.

Upon completion, the Draft EIS will be available for public and agency review and comment. Public hearings will be held. Based on the findings of the Draft EIS and the public and agency comments received, a preferred alternative will be selected that will be further detailed in the Final EIS.

Issued on: August 27, 2003.

Herman C. Shipman,

Acting Regional Administrator, Region III, Federal Transit Administration.

[FR Doc. 03–22371 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–16031]

Notice of Receipt of Petition for Decision That Nonconforming 2001 and 2002 Mitsubishi Evolution VII, Left Hand Drive Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001 and 2002 Mitsubishi Evolution VII, left hand drive (LHD) passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001 and 2002 Mitsubishi Evolution VII LHD passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are capable of being readily altered to conform to the standards, and (2) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards.

DATES: The closing date for comments on the petition is October 3, 2003.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 9 a.m. to 5 p.m. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association,

business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Under 49 U.S.C. 30141(a)(1)(B), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards may also be granted admission into the United States, even if there is no substantially similar motor vehicle of the same model year originally manufactured for importation into and sale in United States, if the safety features of the vehicle comply with or are capable of being altered to comply with those standards based on destructive test information or other evidence that NHTSA decides is adequate.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 2001 and 2002 Mitsubishi Evolution VII LHD passenger cars are eligible for importation into the United States. G&K believes that these vehicles are capable of being modified to meet all applicable Federal motor vehicle safety standards (FMVSS).

In its petition, G&K stated that nonconforming 2001 and 2002 Mitsubishi Evolution VII LHD passenger cars are substantially similar to both the U.S. version 2003 Mitsubishi Evolution VIII and the U.S. version 2001 and 2002 Mitsubishi Lancer 4 door sedan passenger cars. Because it is of a different model year, the 2003 Mitsubishi Evolution VIII cannot be regarded as substantially similar to the 2001 and 2002 Mitsubishi Evolution VII for import eligibility purposes. Moreover, while there may be similarities between the 2003 Mitsubishi Evolution VIII and the 2001 and 2002 Mitsubishi Lancer 4 door sedan vehicles that Mitsubishi has manufactured for importation into and sale in the United States NHTSA has decided that the latter vehicle cannot be categorized as "substantially similar" to the nonconforming 2001 and 2002 Mitsubishi Evolution VII LHD versions for the purpose of establishing import eligibility under section 30141(a)(1)(A). Therefore, we will construe G&K's petition as a petition pursuant to 49 U.S.C. 30141(a)(1)(B), seeking to establish import eligibility for the 2001–2002 Mitsubishi Evolution VII on the basis that it has safety features that comply with, or are capable of being modified to comply with, the FMVSS based on destructive test information or such other evidence that NHTSA decided is adequate.

G&K submitted information with its petition intended to demonstrate that non-U.S. certified 2001 and 2002 Mitsubishi Evolution VII LHD passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards and are capable of being readily altered to conform to all other standards to which they were not originally manufactured to conform.

Specifically, the petitioner claims that non-U.S. certified 2001 and 2002 Mitsubishi Evolution VII LHD passenger cars have safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, Standard No. 114 *Theft Protection*, 116 *Brake Fluid*, 118 *Power Window Systems*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for Driver from Steering Control Systems*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of the word "Brake" for the international ECE warning symbol as the marking for the brake failure indicator lamp; (b) inspection of all vehicles and installation, on vehicles that are not already so equipped, of a U.S. model speedometer reading in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* installation of U.S.-model front and rear side marker lights and reflector assemblies.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* inscription of the required warning statement on the face of the passenger side rearview mirror.

Standard No. 225 *Child Restraint Anchorage Systems:* installation of U.S.-model child restraint anchorage systems.

Standard No. 301 *Fuel System Integrity:* The petitioner stated that modification of fuel system is necessary to meet EPA emission requirements and that after these modifications the vehicle will still comply with this standard.

Standard No. 401 *Interior Trunk Release:* installation of U.S. model interior trunk release handle.

Petitioner states that the front and rear bumper on non-U.S. certified 2001 and 2002 Mitsubishi Evolution VII LHD passenger cars must be reinforced to meet the requirements of the Bumper Standard found in 49 CFR part 581.

The petitioner also states that inspection of all vehicles for compliance with the parts marking requirements of the Theft Prevention Standard in 49 CFR part 541 is necessary, and that required markings will be added to any covered parts that are not already so marked.

In addition, the petitioner states that a vehicle identification number (VIN) plate must be affixed to the vehicle so that it is readable from outside the

driver's windshield pillar to meet the requirements of 49 CFR part 565.

Lastly, the petitioner states that a certification label will be affixed to the driver's side doorjamb to meet the requirements of the vehicle certification regulations in 49 CFR part 567.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. Docket hours are from 9 a.m. to 5 p.m. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: August 27, 2003.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 03–22372 Filed 9–2–03; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Alteration of Privacy Act Systems of Records Notice

AGENCY: Internal Revenue Service, Treasury.

ACTION: The Department of the Treasury, Internal Revenue Service, gives notice of proposed alterations to 11 systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a, as amended, the Department of the Treasury, Internal Revenue Service, proposes to add a routine use to 11 of its systems of records, add another routine use to three of the same systems of records, and to make minor alterations to all 11 systems.

DATES: Comments must be received no later than October 3, 2003. The alteration to the systems of records will be effective October 14, 2003 unless the IRS receives comments, which would result in a contrary determination.

ADDRESSES: Comments should be sent to the Office of Governmental Liaison & Disclosure, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments will be made available for public inspection and copying in the Internal Revenue Service Freedom of Information Reading Room, 1111 Constitution Avenue, NW., Room 1621, Washington, DC, telephone number 202–622–5164 (not a toll-free call).

FOR FURTHER INFORMATION CONTACT: Earl Prater, Office of Professional Responsibility, 1111 Constitution Avenue, NW., Washington, DC 20224, 202–694–1853 (not a toll-free call).

SUPPLEMENTARY INFORMATION: The 11 systems of records listed below are subject to the Privacy Act of 1974, 5 U.S.C. 552a, as amended:

Treasury/IRS 37.001—Abandoned Enrollment Applications
Treasury/IRS 37.002—Files Containing Derogatory Information about Individuals Whose Applications for Enrollment to Practice Before the IRS Have Been Denied and Applicant Appeal Files
Treasury/IRS 37.003—Closed Files Containing Derogatory Information about Individuals' Practice before the Internal Revenue Service and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice
Treasury/IRS 37.004—Derogatory Information (No Action)
Treasury/IRS 37.005—Present Suspensions and Disbarments Resulting from Administrative Proceeding
Treasury/IRS 37.06—General Correspondence File
Treasury/IRS 37.007—Inventory
Treasury/IRS 37.008—Register of Docketed Cases and Applicant Appeals
Treasury/IRS 37.009—Enrolled Agents and Resigned Enrolled Agents (Action pursuant to 31 CFR 10.55(b))
Treasury/IRS 37.010—Roster of Former Enrollees
Treasury/IRS 37.011—Present Suspensions from Practice before the Internal Revenue Service.

In accordance with the Act's requirements, the Department of the Treasury, Internal Revenue Service, proposes:

- To add a routine use to disclose to contractors to each of these 11 systems;
- To add a second routine use to Treasury/IRS 37.005, 37.009, and 37.011,which conforms with 31 CFR part 10, section 10.90, to disclose information regarding persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of disqualified appraisers; and
- To make minor alterations to all 11 systems.

The systems were established to give notice of records collected by the Office of Professional Responsibility ("OPR"), formerly Office of Director of Practice, to accomplish its mission under the regulations governing practice before the IRS, 31 CFR part 10 (published in pamphlet form as Treasury Department Circular No. 230): Enrolling individuals to practice and instituting disciplinary proceedings against IRS practitioners who violate those regulations. The systems were last published in their entirety in the **Federal Register**: December 10, 2001 (Volume 66, Number 237), pages 63826 through 63835.

Major alterations: The IRS has determined that certain work associated with the enrollment function should be contracted out. This work includes: Writing and administering the Special Enrollment Examination ("SEE"); processing applications to take the SEE; grading the SEE; informing examinees of SEE results; processing applications for enrollment and for renewal of enrollment; and operating and maintaining the computerized enrolled agent database. Functions that are inherently governmental will not be contracted out. IRS proposes to add a routine use to allow disclosure to contractors to the extent necessary for the contractors to perform their contractual duties.

A second new routine use is being added to Treasury/IRS 37.005, 37.009, and 37.011 to disclose information regarding persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of disqualified appraisers. Under 31 CFR part 10, section 10.90, the OPR will make available for public inspection the roster of all persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of all disqualified appraisers. The new routine use for Treasury/IRS 37.005, 37.009, and 37.011 is consistent with 31 CFR part 10.

Minor alterations: On January 8, 2003, the IRS announced the creation of the OPR as part of its ongoing modernization effort. The new office replaced the Office of Director of Practice. The IRS proposes to update organizational names and addresses and

to provide a current reference to safeguard standards.

The altered systems of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform and Oversight of the House of Representatives, the Committee on Governmental Affairs of the Senate and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated November 30, 2000.

For the reasons set forth above, the proposed changes are as follows:

Treasury/IRS 37.001

SYSTEM NAME:

Abandoned Enrollment Applications.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, C:AP:P, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

* * * * *

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of the Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

* * * * *

Treasury/IRS 37.002

SYSTEM NAME:

Files Containing Derogatory Information about Individuals Whose Applications for Enrollment to Practice Before the IRS Have Been Denied and Applicant Appeal Files.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

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Treasury/IRS 37.003

SYSTEM NAME:

Closed Files Containing Derogatory Information about Individuals' Practice before the Internal Revenue Service and Files of Attorneys and Certified Public Accountants Formerly Enrolled to Practice.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

* * * * *

Treasury/IRS 37.004

SYSTEM NAME:

Derogatory Information (No Action).

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is

removed and is replaced with "Office of Professional Responsibility".

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Treasury/IRS 37.005

SYSTEM NAME:

Present Suspensions and Disbarments Resulting from Administrative Proceeding.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of changes: The period at the end of routine use 7 is replaced with a semicolon, ";" and the following routine uses are added at the end thereof:

"(8) Disclose information to a contractor when necessary to perform a government contract;

(9) Disclose information (including addresses) sufficient to identify all persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of all disqualified appraisers."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Pescription of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

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Treasury/IRS 37.06

SYSTEM NAME:

General Correspondence File.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

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SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

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RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

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Treasury/IRS 37.007

SYSTEM NAME:

Inventory.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

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SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

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Treasury/IRS 37.008

SYSTEM NAME:

Register of Docketed Cases and Applicant Appeals.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

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SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

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Treasury/IRS 37.009

SYSTEM NAME:

Enrolled Agents and Resigned Enrolled Agents (Action pursuant to 31 CFR 10.55(b)).

SYSTEM LOCATION:

Description of change: Prior to "Detroit Computing Center," insert "Internal Revenue Service, Office of Professional Responsibility, 1099 14th Street, NW, and the".

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of changes: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine uses are added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract;

(8) Disclose information (including addresses) sufficient to identify all persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of all disqualified appraisers."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

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SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

* * * * *

Treasury/IRS 37.010

SYSTEM NAME:

Roster of Former Enrollees.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of change: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine use is added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

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SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

* * * * *

Treasury/IRS 37.011

SYSTEM NAME:

Present Suspensions from Practice before the Internal Revenue Service.

SYSTEM LOCATION:

Description of change: "Office of Director of Practice, 901 D Street, SW" is removed and is replaced with "Office of Professional Responsibility, 1099 14th Street, NW".

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Description of changes: The period at the end of routine use 6 is replaced with a semicolon, ";" and the following routine uses are added at the end thereof:

"(7) Disclose information to a contractor when necessary to perform a government contract;

(8) Disclose information sufficient to identify (including addresses) of all persons enrolled to practice, the roster of all persons censured, suspended, or disbarred from practice before the Internal Revenue Service, and the roster of all disqualified appraisers."

* * * * *

SAFEGUARDS:

Description of change: After the sentence, add "Security controls will be no less than those provided in IRM 25.10.1, Information Technology Security Policy and Guidance."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Description of change: "Office of Director of Practice, C:AP:P" is removed and is replaced with "Office of Professional Responsibility".

* * * * *

RECORDS ACCESS PROCEDURES:

Description of change: "Office of Director of Practice, C:AP:P," is removed and is replaced with "Office of Professional Responsibility".

* * * * *

Dated: August 25, 2003.

W. Earl Wright, Jr.,

Acting Chief Management and Administrative Programs Officer.

[FR Doc. 03–22408 Filed 9–2–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0554]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0554."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0554" in any correspondence.

SUPPLEMENTARY INFORMATION:

Titles:

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN.

e. Compliance Reports for Per Diem and Special Needs Grants. No form needed. May be reported to VA in standard business narrative.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA.

g. Compliance Reports for Technical Assistance Grants. No form needed. May be reported to VA in standard business narrative.

OMB Control Number: 2900–0554.

Type of Review: Extension of a currently approved collection.

Abstract: The information collected on VA Form 10–0361 series, Homeless Providers Grant and Per Diem Program, will be used to determine applicants eligibility to receive a grant/or per diem payments which provide supportive housing/services to assist homeless veterans transition to independent living. The collected information will be used to apply the specific criteria to rate and rank each application; and to obtain information necessary to ensure that Federal funds are awarded to applicants who are financially stable and who will conduct program for which a grant and/or per diem award was made. If this data were not collected, VA would not be able to implement the provisions of Public Law 107–95.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 30, 2003, at pages 32582–32583.

Estimated Annual Burden: 14,340 hours.

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—3,500 hours.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—2,000 hours.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—3,000 hours.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—4,000 hours.

e. Compliance Reports for Per Diem and Special Needs Grants—1,500 hours.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—250 hours.

g. Compliance Reports for Technical Assistance Grants—90 hours.

Estimated Average Burden Per Respondent:

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—35 hours.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—10 hours.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—20 hours.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—20 hours.

e. Compliance Reports for Per Diem and Special Needs Grants—5 hours.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—10 hours.

g. Compliance Reports for Technical Assistance Grants—2.25 hours.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,015.

a. Homeless Providers Grant and Per Diem Program, Capital Grant Application, VA Form 10–0361–CG—100.

b. Homeless Providers Grant and Per Diem Program, Life Safety Code Application, VA Form 10–0361–LSC—200.

c. Homeless Providers Grant and Per Diem Program, Per Diem Only Application, VA Form 10–0361–PDO—150.

d. Homeless Providers Grant and Per Diem Program, Special Needs Application, VA Form 10–0361–SN—200.

e. Compliance Reports for Per Diem and Special Needs Grants—300.

f. Homeless Providers Grant and Per Diem Program, Technical Assistance Application, VA Form 10–0361–TA—25.

g. Compliance Reports for Technical Assistance Grants—40.

Dated: August 15, 2003.

By direction of the Secretary:

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–22404 Filed 9–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0427]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail to: *denise.mclamb@mail.va.gov*. Please refer to "OMB Control No. 2900–0427."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0427" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title and Form Number: Former POW Medical History, VA Form 10–0048.

OMB Control Number: 2900–0427.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–0048 will be used to collect data in response to Public Law 97–37 that liberalizes eligibility requirements and extends the existing benefits. The form is completed by veterans and submitted to a VA physician during a medical examination. Without this information VA physician would be unable to assess

the health care, disability compensation or rehabilitation needs of Former Prisoners of War.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 3, 2003, at page 33230.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 1,575 hours.

Estimated Average Burden Per Respondent: 90 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,050.

Dated: August 15, 2003.

By direction of the Secretary.

Jacqueline Parks,

IT Specialist, Records Management Service.

[FR Doc. 03–22405 Filed 9–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0034]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Records Management Service (005E3), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0034."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0034" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Trainee Request for Leave—Chapter 31, Title 38, U.S.C., VA Form 28–1905h.

OMB Control Number: 2900–0034.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 28–1905h is used to request leave and to provide the necessary information to determine whether to approve a trainee request for leave from Vocational Rehabilitation and Employment Program. A trainer or authorized school official must verify on the form the effect the absence will have on the veteran's progress in the program. Upon approval, the veteran can receive subsistence allowance and other program services during the leave period as if he or she were attending training. Disapproval of the request may result in loss of subsistence allowance for the leave period. Failure to collect the information would create the potential for substantial abuse through receipt of benefits for unauthorized absences.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on June 3, 2003, at page 33226.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: August 21, 2003.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. 03–22406 Filed 9–2–03; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0113]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–21), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 3, 2003.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0113."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0564" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Fee Personnel Designation, VA Form 26–6681.

OMB Control Number: 2900–0113.

Type of Review: Extension of a currently approved collection.

Abstract: The form solicits information on the fee personnel applicant's background and experience in the real estate valuation field. VA regional offices and centers use the information contained on the form to evaluate applicants' experience for the purpose of designating qualified individuals to serve on the fee roster for their stations.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period

soliciting comments on this collection of information was published on March 6, 2003, at page 10781.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,067 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,200.

Dated: August 21, 2003.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Information Management Service.

[FR Doc. 03–22407 Filed 9–2–03; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register

Vol. 67, No. 170

Wednesday, September 3, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 602

[TD 9087]

RIN 1545–BA07

Exclusions From Gross Income of Foreign Corporations

Correction

In rule document 03–21354 beginning on page 51394 in the issue of Tuesday, August 26, 2003, make the following correction:

§ 602.101 [Corrected]

On page 51417, in § 602.101(b), in the table, in the second line, "11.883–2" should read, "1.883–2".

[FR Doc. C3–21354 Filed 9–2–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
September 3, 2003

Part II

Department of the Treasury

Internal Revenue Service

26 CFR Parts 1 and 301
Section 1446 Regulations; Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–108524–00]

RIN 1545–AY28

Section 1446 Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations regarding the obligation of a partnership to pay a withholding tax on effectively connected taxable income allocable under section 704 to a foreign partner. The regulations will affect partnerships engaged in a trade or business in the United States that have one or more foreign partners.

DATES: Written or electronic comments and requests to speak, with outlines of topics to be discussed at the public hearing scheduled for December 4, 2003, must be received by November 13, 2003.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–108524–00), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–108524–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, David J. Sotos, at (202) 622–3860, or to be placed on the attendance list for the hearing, LaNita Van Dyke at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collections of information should be received by November 3, 2003. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in this proposed regulation are in §§ 1.871–10, 1.1446–1, 1.1446–3, and 1.1446–4. This information is required to determine whether a partnership is required to pay a withholding tax with respect to a foreign partner and provide information concerning the tax paid on such partner's behalf, and to determine the foreign person required to report the effectively connected taxable income earned by such partnership and entitled to claim credit for the withholding tax paid by the partnership. This information will be used in issuing refunds to foreign persons claiming credit for withholding tax paid on their behalf, as well as for audit and examination purposes. The reporting requirements in §§ 1.871–10 and 1.1446–3 are mandatory. The reporting requirement in § 1.1446–1 and 1.1446–4 are voluntary. The likely respondents include individuals, business or other for-profit institutions, and small businesses or organizations.

Estimated total annual reporting burden: 7,805 hours.

Estimated average annual burden hours per respondent: 0.5 hours.

Estimated number of respondents: 15,775.

Estimated annual frequency of responses: on occasion and quarterly.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to 26 CFR part 1 under section 1446 of the Internal Revenue Code (Code). Section 1446 was added to the Code by section 1246(a) of the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 2085, 2582 (1986 Act)), to impose withholding at a rate of 20 percent on distributions to a foreign partner by a partnership that was engaged in a U.S. trade or business. Section 1012(s)(1)(A) of the Technical and Miscellaneous Revenue Act of 1988 (Public Law 100–647, 102 Stat. 3342, 3526 (1988 Act)) revised section 1446 to require that a withholding tax (1446 tax) be imposed on effectively connected taxable income (ECTI) allocable to a partner that is a foreign person (foreign partner) at the highest tax rate applicable to such person. Finally, section 7811(i)(6) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239, 103 Stat. 2106, 2410 (1989 Act)), made certain technical amendments to section 1446.

Treasury and the IRS issued Rev. Proc. 88–21 (1988–1 C.B. 777) to provide guidance on the operation of the withholding tax imposed under section 1446 as enacted by the 1986 Act. After the 1988 Act, which revised the withholding approach to apply to a partner's allocable share of ECTI instead of to distributions, Treasury and the IRS published Rev. Proc. 89–31 (1989–1 C.B. 895), which made Rev. Proc. 88–21 obsolete. Rev. Proc. 89–31 was modified by Rev. Proc. 92–66 (1992–2 C.B. 428). Rev. Proc. 89–31, as modified by Rev. Proc. 92–66, provides current guidance to partnerships for calculating, paying over, and reporting the 1446 tax.

Explanation of Provisions

A. In General

Prior to the enactment of section 1446, a partnership generally was not required to withhold on income that was effectively connected with the conduct of a trade or business within the United States (a U.S. trade or business) and allocated or distributed to its foreign partners. Congress enacted section 1446 because it was concerned that passive foreign investors could

escape U.S. tax on their partnership income. See S. Rep. No. 99–313, 99th Cong., 2d Sess. 414 (1986). As originally enacted, section 1446 generally required both domestic and foreign partnerships with any income, gain, or loss that was effectively connected with the conduct of a U.S. trade or business to withhold a tax equal to 20 percent of any amount distributed to a foreign partner. Through a series of modifications and refinements discussed below, this withholding tax regime evolved from its original structure of withholding on distributions to foreign partners to its present form of, generally, withholding on an installment basis on partnership ECTI (whether distributed or not distributed), apart from special provisions for publicly traded partnerships.

In response to the enactment of section 1446, Treasury and the IRS issued Rev. Proc. 88–21 to provide guidance for partnerships to comply with section 1446. After Rev. Proc. 88–21 was issued, the 1988 Act amended section 1446 retroactively and provided that no withholding was required under section 1446 for partnership taxable years beginning before January 1, 1988.

Section 1446, as revised by the 1988 Act, shifted from imposing a withholding tax on partnership distributions to imposing a withholding tax on the amount of ECTI allocable to the partnership's foreign partners. More specifically, section 1446(a) requires partnerships that have ECTI in any taxable year, any portion of which is allocable under section 704 to a foreign partner, to pay the 1446 tax at such time and in such manner as prescribed in regulations. The amount of withholding tax payable by a partnership under section 1446 is equal to the applicable percentage of the partnership's ECTI allocable under section 704 to foreign partners. The applicable percentage for ECTI allocable to a foreign corporation is the highest rate of tax specified in section 11(b), and the applicable percentage for ECTI allocable to a non-corporate foreign partner is the highest rate of tax specified in section 1. Further, section 1446(d), as amended by the 1988 Act, provides that a foreign partner is entitled to a credit under section 33 for such partner's share of the 1446 tax, and, except as provided in regulations, such partner's share of the 1446 tax paid by the partnership is treated as distributed to such partner on the last day of the taxable year for which such tax was paid. The credit under section 33 is applied against the partner's U.S. tax liability for the taxable year in which the partner includes its allocable share of the partnership's effectively connected income.

Treasury and the IRS issued Rev. Proc. 89–31 to provide guidance to partnerships under section 1446, as amended by the 1988 Act. This revenue procedure made Rev. Proc. 88–21 obsolete. In general, Rev. Proc. 89–31 provides guidance concerning the requirement to pay a withholding tax, the determination of whether a partner is a foreign person, the calculation of partnership ECTI, the amount of the withholding tax, and the procedures for reporting and paying over the 1446 tax. The revenue procedure generally follows the regime set forth in section 6655 for estimated tax payments by corporations, and requires a partnership to annualize its ECTI and pay over the 1446 tax in quarterly installments. Further, the revenue procedure provides special rules for publicly traded partnerships and tiered partnership structures. A partnership subject to section 1446 must continue to comply with Rev. Proc. 89–31, as modified by Rev. Proc. 92–66 (discussed below), until the partnership's first taxable year beginning after the date these regulations are issued in final form.

Section 7811(i)(6) of the 1989 Act amended section 1446 in three respects. First, the amendment provides that, except as provided in regulations, a foreign partner's share of the 1446 tax paid by a partnership is treated as distributed to such partner on the earlier of the day on which such tax is paid by the partnership or the last day of the partnership's taxable year for which such tax is paid. Second, the amendment grants Treasury and the IRS regulatory authority to apply the addition to tax under section 6655 to a partnership as if it were a corporation. Third, the amendment clarifies that the applicable percentage for a foreign corporate partner is the highest rate of tax specified in section 11(b)(1). The changes made by the 1989 Act are effective for partnership taxable years beginning after December 31, 1987, as if originally included as part of the 1988 Act amendments.

In 1992, Treasury and the IRS issued Rev. Proc. 92–66, which modified Rev. Proc. 89–31 in three respects. First, Rev. Proc. 92–66 provides that the applicable percentage to be used by publicly traded partnerships in calculating the 1446 tax is the highest rate of tax imposed under section 1, which at that time was 31 percent. Second, the revenue procedure allows a partnership to seek a refund from the IRS in certain circumstances for amounts it has paid under section 1446. Third, the revenue procedure provides that a foreign partnership subject to withholding under section 1445(a) during a taxable year is allowed to credit the amount withheld under section 1445(a), to the extent such amount is allocable to foreign partners, against its liability to pay the 1446 tax for that year.

B. Structure of the Proposed Regulations

In general, the proposed regulations follow the approach in Rev. Proc. 89–31 for computing, paying over and reporting the 1446 tax. The proposed regulations are set forth in six sections. Section 1.1446–1 contains rules regarding a partnership's requirement to pay a withholding tax, and how a partnership should determine the status of its partners (*i.e.*, domestic or foreign, corporate or non-corporate). Section 1.1446–2 contains rules for calculating partnership ECTI allocable to each foreign partner. Section 1.1446–3 contains rules pertaining to a partnership's obligation to pay the 1446 tax on an installment basis, including guidance on calculating the 1446 tax, reporting and paying over the 1446 tax, and penalties for underpayment of the 1446 tax. Section 1.1446–4 contains special rules applicable to publicly traded partnerships. These rules generally implement a withholding regime based upon the distribution of effectively connected income to foreign partners. These regulations also permit publicly traded partnerships to elect to withhold and pay over the 1446 tax based upon the general rules set forth in §§ 1.1446–1 through 1.1446–3 (withholding based upon ECTI allocable under section 704 to foreign partners). Section 1.1446–5 contains rules applicable to tiered partnership structures, including rules for looking through certain upper-tier foreign partnerships to determine the 1446 tax obligation of a lower-tier partnership. Finally, § 1.1446–6 contains the proposed effective date of the regulations.

In addition to the proposed regulatory amendments under section 1446, these regulations also include proposed amendments to §§ 1.871–10, 1.1443–1, 1.1461–1 through 1.1461–3, 1.1462–1, 1.1463–1, 301.6109–1, and 301.6721–1, to coordinate the section 1446 withholding regime with existing regulations.

C. Determining the Status and Classification of Partners—§ 1.1441–1

Section 1446 applies only to partnerships with ECTI allocable under section 704 to one or more foreign partners. Section 1446(e) defines a foreign partner as any partner who is not a United States person. Section

7701(a)(30) defines a United States person to include a citizen or resident of the United States, a domestic partnership, a domestic corporation, any estate other than a foreign estate within the meaning of section 7701(a)(31), and any trust if a court within the United States is able to exercise primary supervision over the administration of the trust and one of more United States persons have the authority to control all substantial decisions of the trust. Section 1446 and the legislative history are silent as to how a partnership is to determine the domestic or foreign status of its partners.

Rev. Proc. 89–31 contains rules for determining whether a partner is a foreign partner for purposes of section 1446. Under the revenue procedure, a partnership may determine a partner's status by relying upon a certification of non-foreign status provided by the partner, or by relying on any other means. See Rev. Proc. 89–31, § 5.02 and § 5.03.

In order to reduce the paperwork burden imposed on taxpayers and avoid conflicting information, the proposed regulations reflect an approach different from the approach taken in Rev. Proc. 89–31 for determining whether a partner is a foreign partner. The proposed regulations generally require a partnership to comply with the paperwork requirements used under section 1441 to determine the status (domestic or foreign) and the tax classification (corporate or non-corporate) of its partners. Under the proposed regulations, a partnership should obtain either a Form W–8BEN, "Certificate of Foreign Status of Beneficial Owner for U.S. Tax Withholding," Form W–8IMY, "Certificate of Foreign Intermediary, Flow Through Entity, or Certain U.S. Branches for United States Tax Withholding," or Form W–9, "Request for Taxpayer Identification Number and Certification," from each of its partners. Additionally, special rules are provided with respect to domestic and foreign trusts all or a portion of which are treated as owned by a grantor or another person under subpart E of subchapter J of the Code. The documentation requirement set forth in the proposed regulations will allow a partnership required to withhold under both section 1441 and section 1446 to receive one form instead of two from each of its partners, and thus will reduce the paperwork and recordkeeping burden imposed upon partners and partnerships. Further, the required documentation will also serve to establish a uniform basis for determining the foreign or non-foreign status of partners and to reduce the instances where a partnership receives inconsistent documentation.

In the absence of a valid Form W–8BEN, Form W–8IMY, or Form W–9 from a partner (or upon the receipt of a form that the partnership has actual knowledge or reason to know is incorrect or unreliable), the proposed regulations contain a presumption that the partner is a foreign person and that the partnership must pay 1446 tax on ECTI allocable to the partner. However, this presumption does not apply, and the partnership shall not be liable for 1446 tax with respect to a partner, to the extent the partnership relies on other means to ascertain the non-foreign status of a partner, and the partnership is correct in its determination that such partner is a U.S. person. This approach is similar to Rev. Proc. 89–31, which permitted partnerships to rely on other means to ascertain the non-foreign status of a partner. See Rev. Proc. 89–31, § 5.03. Under the proposed regulations, when the presumption of foreign status applies, the following rules apply for purposes of determining the applicable rate that will apply in computing the 1446 tax. If the partnership knows that the partner is an individual and not an entity, the partnership shall compute the 1446 tax with respect to such partner using the highest rate in section 1. If the partnership knows that the partner is an entity that is a corporation under § 301.7701–2(b)(8) (included on the per se list of entities under the entity classification regulations), the partnership shall treat the partner as a foreign corporation and compute the 1446 tax with respect to such partner using the highest rate in section 11(b)(1). In all other cases, including where the partnership cannot reliably determine the status of the partner, the proposed regulations presume that the partner is either a corporate or non-corporate partner, based upon whichever classification results in a higher 1446 tax being due. This presumption is necessary to prevent a partner from obtaining a more favorable withholding result than would have been achieved if the partner complied with the documentation requirements. The duration and validity of the forms required for purposes of section 1446 is intended to be consistent with the standards applicable when these forms are submitted in the context of sections 1441, 1442, and 3406. These forms and their instructions will be modified as necessary to facilitate their use under section 1446.

D. Determining a Foreign Partner's Allocable Share of Partnership ECTI—§ 1.1446–2

The proposed regulations contain rules for computing partnership ECTI allocable to foreign partners. Consistent with Rev. Proc. 89–31, the partnership determines its ECTI allocable to a foreign partner using an aggregate approach. The partnership first determines the effectively connected partnership items allocable to each of the partnership's foreign partners. Partnership ECTI allocable to all foreign partners then is computed by combining all of the foreign partners' allocable shares of partnership ECTI.

The proposed regulations also provide guidance concerning capital losses, suspended losses, and loss carryovers and carrybacks when determining a foreign partner's allocable share of partnership ECTI. The proposed regulations permit capital losses allocable to a foreign partner to offset such partner's allocable share of capital gains consistent with section 1211(a). Solely for purposes of section 1446, the proposed regulations do not permit the partnership to consider section 1211(b), which permits an individual to use capital losses in excess of capital gains to the extent of $3,000 per taxable year. Further, the proposed regulations do not permit the partnership to take into account in determining a foreign partner's allocable share of partnership ECTI any losses of a partner that are carried over or back or are suspended.

A number of issues arise under section 1446 where the partnership has cancellation of indebtedness income under section 61(a)(12), including difficulties arising because the exclusion of cancellation of indebtedness income under section 108 is applied at the partner level rather than at the partnership level. See section 108(d)(6). These proposed regulations do not specifically address the treatment of cancellation of indebtedness income of a partnership under section 1446. Comments are requested concerning the appropriate treatment under section 1446 of such income allocable to a foreign partner.

E. Calculating, Paying Over, and Reporting the 1446 Tax—§ 1.1446–3

Section 1446(f)(2) provides that the Secretary shall prescribe such regulations as may be necessary to carry out the purposes of section 1446, including regulations providing (1) that, for purposes of section 6655, the withholding tax imposed under section 1446 be treated as a tax imposed by section 11 and any partnership required

to pay such tax be treated as a corporation, and (2) appropriate adjustments in applying section 6655 with respect to such withholding. Section 6655 generally requires a corporation to make estimated tax payments throughout its taxable year, and determines an addition to tax for any underpayment of the required installments.

Rev. Proc. 89–31 generally requires a partnership, other than a publicly traded partnership, to determine its ECTI allocable to foreign partners, and, ultimately, its 1446 tax obligation, by annualizing its effectively connected items under one of the three options generally available to corporations under section 6655 when paying estimated taxes. As an alternative, Rev. Proc. 89–31 permits a partnership to determine its 1446 tax obligation based upon a safe harbor. Under both the safe harbor and the annualization methods, a partnership must pay the 1446 tax on an installment basis.

The proposed regulations adopt, with some modifications, the estimated tax payment rules set forth in section 6655, including the imposition of an addition to tax for an underpayment of the 1446 tax. Consistent with Rev. Proc. 89–31, the proposed regulations require a partnership to pay its 1446 tax obligation on an installment basis, and pay its 1446 tax either based upon annualizing its income or based upon a safe harbor. The proposed regulations broaden the approaches available in Rev. Proc. 89–31 in certain circumstances. Under the proposed regulations, a partnership that chooses to annualize its income may use certain methods in section 6655 that address the seasonality of income earned by a partnership. See section 6655(e). Further, the proposed regulations modify the safe harbor set forth in Rev. Proc. 89–31 so that a partnership does not need to have filed Form 1065, "U.S. Return of Partnership Income," and Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)," at the time it makes an installment payment. Instead, it is sufficient if the partnership timely files these forms (taking into account extensions).

F. Special Rule for Tiered Trust or Estate Structures—§ 1.1446–3(d)(2)(iii)

Treasury and the IRS are concerned about the potential abuse of tiered trust structures to claim inappropriate refunds of the 1446 tax, to avoid reporting by a beneficiary of ECTI earned by a partnership, or to avoid section 1446 entirely. Existing provisions contemplate that entitlement to a credit or refund of any section 1446 withholding tax follows the liability for tax. Section 1446(d) provides that each foreign partner of a partnership shall be allowed a credit under section 33 for such partner's share of the 1446 tax paid by the partnership. A foreign partner's share of any 1446 tax paid by the partnership is treated as distributed to the partner by such partnership. Section 1462 provides that income on which any tax is required to be withheld at the source under chapter 3 of the Code, including section 1446, shall be included in the return of the recipient of such income, and any amount of tax so withheld may be credited against the amount of income tax as computed in such return. The regulations under section 1462 explain that an amount withheld on a payment to a fiduciary, partnership, or intermediary is deemed to have been paid by the taxpayer ultimately liable for the tax upon such income. See § 1.1462–1(b). Sections 702(b), 652(b), and 662(b) ensure that the character of income (*e.g.*, income that is effectively connected income) of a partnership allocated to a trust (whether domestic or foreign) is preserved in the hands of a beneficiary (see Rev. Rul. 85–60 (1985–1 C.B. 187)).

The proposed regulations include clarification of the regulations under section 1462 to coordinate with section 1446(d) to provide that a foreign trust's or estate's allocable share of ECTI is deemed to have been paid by the taxpayer ultimately liable for tax upon such income. In the case of a foreign grantor trust, the taxpayer ultimately liable for the tax upon such income is the grantor of such trust.

Further, § 1.1446–3 of the proposed regulations includes two rules and several examples pertaining to tiered trust or estate structures. The rules are intended to match the credit claimed under section 33 with the taxpayer that reports and pays tax on the ECTI upon which the credit is based. The first rule applies where a foreign trust or estate is a partner in a partnership required to pay the 1446 tax and the beneficiary of the foreign trust or estate is either another foreign trust (with a foreign person as a beneficiary of such trust) or a foreign person. In such a circumstance, the proposed regulations provide that the foreign trust or estate is only entitled to claim the portion of the credit under section 33 that corresponds to the portion of the associated effectively connected income on which it bears the tax liability.

The second rule addresses the use of a domestic trust. The second rule applies where a partnership knows or has reason to know that a foreign person that is the ultimate beneficial owner of the effectively connected income holds its interest in the partnership through a domestic trust, and such domestic trust was formed or availed of with a principal purpose of avoiding the 1446 tax. The use of a domestic trust in a tiered trust structure may have a principal purpose of avoiding the 1446 tax even though the tax avoidance purpose is outweighed by other purposes when taken together. Where applicable, this rule allows the IRS to impose the 1446 tax obligation on such partnership as if each domestic trust in the chain is a foreign trust.

G. Publicly Traded Partnerships—§ 1.1446–4

Section 1446(f)(1) provides that the Secretary shall prescribe regulations to apply section 1446 in the case of publicly traded partnerships. In this regard, the legislative history to section 1446 specifically notes that special rules may be necessary in identifying a publicly traded partnership's partners as U.S. or foreign. See H.R. Rep. No. 100–795, 100th Cong., 2d Sess. 291 (1988); S. Rep. No. 100–445, 100th Cong., 2d Sess. 305 (1988).

Rev. Proc. 89–31 provides special rules for publicly traded partnerships. Under Rev. Proc. 89–31, the term *publicly traded partnership* means a regularly traded partnership within the meaning of the regulations under section 1445(e)(1), but not a publicly traded partnership treated as a corporation under the general rules of section 7704(a). Generally, publicly traded partnerships with effectively connected income, gain or loss are required to withhold based upon distributions made to foreign partners. Rev. Proc. 92–66 modified the applicable percentage for withholding on distributions to the highest rate of tax imposed under section 1, and applied that percentage to both corporate and non-corporate partners.

Under Rev. Proc. 89–31, a publicly traded partnership generally determines the tax status of its partners by receiving either a certificate of non-foreign status, a Form W–8, or a Form W–9 from its partners, or by relying on other means. Further, nominees that hold interests in a publicly traded partnership on behalf of one or more foreign partners may be responsible for the 1446 tax liability for foreign partners under certain circumstances. Finally, Rev. Proc. 89–31 permits publicly traded partnerships to elect to apply the general rules that determine the 1446 tax based on a foreign partner's allocable share of partnership ECTI rather than on distributions to foreign partners. Under

Rev. Proc. 89–31, the publicly traded partnership makes this election by complying with the payment and reporting requirements of the general rules and attaching a statement to its annual return of withholding tax indicating that the election is being made.

The proposed regulations modify several of the rules for publicly traded partnerships set forth in Rev. Proc. 89–31. First, the proposed regulations define *publicly traded partnership* solely by reference to the definition in section 7704. Second, the proposed regulations provide that the documentation requirements and presumptions of § 1.1446–1 apply to publicly traded partnerships, thereby requiring such partnerships to obtain a Form W–8BEN, Form W–8IMY, or Form W–9 from each of their partners if they do not rely on other means to determine the status of their partners. Third, the proposed regulations provide that the applicable percentage for withholding on distributions is the rate applicable under section 1446(b).

Comments are requested as to whether the special rules applicable to publicly traded partnerships should be extended to other partnerships. Specifically, Treasury and the IRS are considering whether these special rules should apply to partnerships that make an election under section 775 of the Code or partnerships with a specified minimum number of partners.

H. Tiered Partnership Structures—§ 1.1446–5

Special concerns arise when a foreign partnership (upper-tier partnership) is a partner in a second partnership (lower-tier partnership) that is subject to section 1446. Section 1446(f) provides the Secretary with regulatory authority to prescribe rules necessary to carry out the purposes of the section. The legislative history to section 1446 notes that in the context of tiered partnership structures, "rules may be necessary to prevent the imposition of more tax than will be properly due (for example, rules to prevent the tax from being imposed on more than one partnership and rules to determine the applicable percentages)." H.R. Rep. No. 100–795, 100th Cong., 2d Sess. 291 (1988); S. Rep. No. 100–445, 100th Cong., 2d Sess. 305 (1988).

Rev. Proc. 89–31 employs an entity approach in computing the 1446 tax obligation of a partnership that has a foreign partnership as one of its partners. Under the entity approach, a lower-tier partnership must pay a 1446 tax at the highest rate in section 1 on an upper-tier foreign partnership's allocable share of ECTI, regardless of the composition of the upper-tier partnership. Rev. Proc. 89–31 provides the upper-tier partnership a credit for a portion of the 1446 tax paid by the lower-tier partnership to avoid multiple application of the 1446 tax. This approach may result in a partnership paying a 1446 tax that is greater in amount than would have been required if the partners of the upper-tier partnership had been direct partners of the lower-tier partnership, for example, where some of the partners of the upper-tier partnership are U.S. persons.

The proposed regulations modify the rules in Rev. Proc. 89–31 with respect to certain tiered partnership structures to address this situation. The proposed regulations provide that if a partner in a partnership that is required to pay the 1446 tax is a foreign partnership, it may submit a completed Form W–8IMY to the lower-tier partnership. If the upper-tier foreign partnership completes and submits Form W–8IMY to the lower-tier partnership, and passes along the Form W–8BEN, Form W–8IMY, or Form W–9 it received for some or all of its partners, as well as information describing how effectively connected items are allocated among its partners, the lower-tier partnership shall look through the upper-tier partnership to the partners of the upper-tier partnership (to the extent that it has received the appropriate documentation and allocation information and can reliably associate the allocation of its effectively connected items to the partners of the upper-tier partnership) to determine its 1446 tax obligation. To the extent the lower-tier partnership receives a valid Form W–8IMY from the upper-tier partnership but cannot reliably associate the upper-tier partnership's allocable share of effectively connected partnership items with a withholding certificate for each of the upper-tier partnership's partners, the lower-tier partnership shall withhold at the higher of the applicable percentages in section 1446(b).

Therefore, in appropriate circumstances, the lower-tier partnership may determine its 1446 tax obligation based on the status of its indirect partners. This approach generally is consistent with the paperwork requirements under section 1441 applicable to a nonwithholding foreign partnership and will ensure that the 1446 tax paid by the partnership more closely approximates the actual tax liability of the beneficial owner of the income in the case of a tiered partnership structure. An upper-tier foreign partnership with foreign partners remains obligated to file and report with respect to its 1446 tax obligation. Accordingly, the upper-tier partnership must comply with the general rules of section 1446, including requiring payment in installments, and reporting and passing along the credit under section 33 to its partners, which in these situations will also include the tax paid at the lower-tier partnership level.

Comments are requested on the general approach taken in these proposed regulations for situations involving two or more tiers of partnerships. Further, comments are requested as to the desirability and administrability of an alternative approach that allows a domestic upper-tier partnership with foreign partners to elect to pass information regarding its partners to the lower-tier partnership and have the lower-tier partnership pay the 1446 tax based upon the composition of the partners of the upper-tier partnership.

I. Withholding in Excess of Partner's Actual Tax Liability

Since the enactment of section 1446, Treasury and the IRS have received and considered several comments regarding the potential for section 1446 to require a partnership to pay a withholding tax in an amount that exceeds a foreign partner's actual tax liability for a taxable year. This situation may occur for several reasons, including that: (1) Section 1446 does not take into account a partner's losses from outside the partnership during the year, or a partner's loss carryovers; and (2) section 1446 requires withholding at the maximum statutory rates generally applicable to a foreign partner with effectively connected income. Section 1446 does not contain provisions for reducing or eliminating the general withholding obligation like the provisions contained in section 1445 (which impose a withholding tax in the case of the disposition of an interest in United States real property). See section 1445(c). Rev. Proc. 89–31 provides that section 1446 applies instead of section 1445(e)(1) where the two sections overlap, and, accordingly, partnerships owning U.S. real property are not permitted to reduce withholding on gains from the disposition of such property through the use of the procedures available under section 1445. See also § 8.01 of Rev. Proc. 2000–35 (2000–2 C.B. 211).

Treasury and the IRS considered comments regarding alternative approaches for adjusting the withholding tax obligation under section 1446 to more closely approximate a foreign partner's actual

U.S. tax liability. These proposed regulations contain provisions aimed at mitigating the potential for withholding in excess of the partner's actual tax liability (see *e.g.*, § 1.1446–5). These proposed regulations do not contain other provisions that have been suggested because, among other reasons, of concerns regarding the administrability of such approaches. Comments are requested with respect to approaches that would permit an adjustment to the amount of 1446 tax obligation that are consistent with the statute and legislative history and administrable by partnerships, partners and the IRS. In particular, comments are requested on whether the rules coordinating sections 1445 and 1446 should be modified to address these concerns.

J. Effective Date

These regulations are proposed to apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

Effect on Other Documents

The following publications will be obsolete for partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**:
Rev. Proc. 89–31 (1989–1 C.B. 895)
Rev. Proc. 92–66 (1992–2 C.B. 428)

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 533(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) does not apply to these regulations. With respect to the collections of information contained in § 1.871–10, § 1.1446–1 (pertaining to domestic grantor trusts), and § 1.1446–3 (pertaining to foreign trusts), it is hereby certified that these collections of information will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that only limited small entities are impacted by these collections and the burden associated with such collections is .5 hours. With respect to the collections of information in §§ 1.1446–3 (pertaining to a partnership required to notify its foreign partners of an installment payment of 1446 tax paid on behalf of such partner) and 1.1446–4, it is hereby certified that these sections will not impose a significant economic impact on a substantial number of small entities. This certification is based upon the fact that while approximately 15,000 small entities will be impacted by these sections, the estimated annual burden associated with these sections is only .5 hours per respondent. Moreover, the information collection in § 1.1446–4 is voluntary. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet Site at *http://www.irs.gov/regs*. All comments will be available for public inspection and copying. The Treasury Department and IRS request comments on the clarity of the proposed regulations and how they may be made easier to understand.

A public hearing has been scheduled for December 4, 2003, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must come to the Constitution Avenue entrance and present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 13, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is David J. Sotos, Office of the Associate Chief Counsel (International). However, other personnel from the Treasury Department and IRS participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and Recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.1446–3 also issued under 26 U.S.C. 1446(f). * * *
§ 1.1446–4 also issued under 26 U.S.C. 1446(f). * * *

Par. 2. In § 1.871–10, paragraph (d)(3) is amended by adding a sentence at the end of that paragraph, and paragraph (e) is amended by revising the first sentence to read as follows:

§ 1.871–10 Election to treat real property income as effectively connected with U.S. business.

* * * * * * *

(d) * * *

(3) *Election by partnership.* * * * If the nonresident alien or foreign corporation makes an election, such person must provide the partnership a Form W–8BEN, "Certificate of Foreign Status of Beneficial Owner for U.S. Withholding," and must indicate that the nonresident alien or foreign corporation has made the election under this section to treat real property income as effectively connected income.

(e) *Effective date.* This section shall apply for taxable years beginning after December 31, 1966, except the last sentence of paragraph (d)(3) shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**. * * *

Par. 3. § 1.1443–1 is amended by:

1. Revising the first sentence of paragraph (a) and adding a sentence at the end of the paragraph.

2. Revising paragraph (c)(1).

The revision and additions read as follows:

§ 1.1443–1 Foreign tax-exempt organizations.

(a) *Income includible in computing unrelated business taxable income.* In the case of a foreign organization that is described in section 501(c), amounts paid or effectively connected taxable income allocable to the organization that are includible under section 512 in computing the organization's unrelated business taxable income are subject to withholding under §§ 1.1441–1, 1.1441–4, 1.1441–6, and 1.1446–1 through 1.1446–5, in the same manner as payments or allocations of effectively connected taxable income of the same amounts to any foreign person that is not a tax-exempt organization. * * * See also § 1.1446–3(c)(3).

* * * * *

(c) * * *

(1) *In general.* This section applies to payments made after December 31, 2000, except that the references in paragraph (a) of this section to effectively connected taxable income and withholding under section 1446 shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 4. Sections 1.1446–0 through 1.1446–6 are added to read as follows.

§ 1.1446–0 Table of contents.

This section lists the captions contained in §§ 1.1446–1 through 1.1446–6.

§ 1.1446–1 Withholding tax on foreign partners' share of effectively connected taxable income.

(a) In general.
(b) Steps in determining 1446 tax obligation.
(c) Determining whether a partnership has a foreign partner.
(1) In general.
(2) Forms W–8BEN, W–8IMY, and W–9.
(i) In general.
(ii) Effect of Forms W–8BEN, W–8IMY, W–9, and statement.
(iii) Requirements for certificates to be valid.
(A) When period of validity expires.
(B) Required information for Forms W–8BEN and W–8IMY.
(iv) Partner must provide new withholding certificate when there is a change in circumstances.
(v) Partnership must retain withholding certificates.
(3) Presumption of foreign status in absence of valid Form W–8BEN, Form W–8IMY, Form W–9, or statement.
(4) Consequences when partnership knows or has reason to know that Form W–8BEN, Form W–8IMY, or Form W–9 is incorrect or unreliable and does not withhold.

§ 1.1446–2 Determining a partnership's effectively connected taxable income allocable to foreign partners under section 704.

(a) In general.
(b) Computation.
(1) In general.
(2) Income and gain rules.
(i) Application of the principles of section 864.
(ii) Income treated as effectively connected.
(iii) Exempt income.
(3) Deduction and losses.
(i) Oil and gas interests.
(ii) Charitable contributions.
(iii) Net operating losses and other suspended or carried losses.
(iv) Interest deductions.
(v) Limitation on capital losses.
(vi) Other deductions.
(vii) Limitations on deductions.
(4) Other rules.
(i) Exclusion of items allocated to U.S. partners.
(ii) Partnership credits.
(5) Examples.

§ 1.1446–3 Time and manner of calculating and paying over the 1446 tax.

(a) In general.
(1) Calculating 1446 tax.
(2) Applicable percentage.
(b) Installment payments.
(1) In general.
(2) Calculation.
(i) General application of the principles of section 6655.
(ii) Annualization methods.
(iii) Partner's estimated tax payments.
(iv) Partner whose interest terminates during the partnership's taxable year.
(v) Exceptions and modifications to the application of the principles under section 6655.
(A) Inapplicability of special rules for large corporations.
(B) Inapplicability of special rules regarding early refunds.
(C) Period of underpayment.
(D) Other taxes.
(E) 1446 tax treated as tax under section 11.
(F) Prior year tax safe harbor.
(3) 1446 tax safe harbor.
(i) In general.
(ii) Permission to change to standard annualization method.
(c) Coordination with other withholding rules.
(1) Fixed or determinable, annual or periodical income.
(2) Real property gains.
(i) Domestic partnerships.
(ii) Foreign partnerships.
(3) Coordination with section 1443.
(d) Reporting and crediting the 1446 tax.
(1) Reporting 1446 tax.
(i) Reporting of installment tax payments, installment tax payment due dates, and notification to partners of installment tax payments.
(ii) Payment due dates.
(iii) Annual return and notification to partners.
(iv) Information provided to beneficiaries of foreign trusts and estates.
(v) Attachments required of foreign trusts and estates.
(vi) Attachments required of beneficiaries of foreign trusts and estates.
(vii) Information provided to beneficiaries of foreign trusts and estates that are partners in certain publicly traded partnerships.
(2) Crediting 1446 tax against a partner's U.S. tax liability.
(i) In general.
(ii) Substantiation for purposes of claiming the credit under section 33.
(iii) Tiered structures including trusts or estates.
(A) Foreign estates and trusts.
(B) Use of domestic trusts to circumvent section 1446.
(iv) Refunds to withholding agent.
(v) 1446 tax treated as cash distribution to partners.
(vi) Examples.
(e) Liability of partnership for failure to withhold.
(1) In general.
(2) Proof that tax liability has been satisfied.
(3) Liability for interest and penalties.
(f) Effect of withholding on partner.

§ 1.1446–4 Publicly traded partnerships.

(a) In general.
(b) Definitions.
(1) Publicly traded partnership.
(2) Applicable percentage.
(3) Nominee.
(4) Qualified notice.
(c) Time and manner of payment.
(d) Rules for designation of nominees to withhold tax under section 1446.
(e) Determining foreign status of partners.
(1) In general.
(2) Presumptions regarding payee's status in absence of documentation.
(f) Distributions subject to withholding.
(1) In general.
(2) In-kind distributions.
(3) Ordering rule relating to distributions.
(4) Coordination with section 1445.
(g) Election to withhold based upon ECTI allocable to foreign partners instead of withholding on distributions.

§ 1.1446–5 Tiered partnership structures.

(a) In general.
(b) Reporting requirements.
(1) In general.
(2) Publicly traded partnerships.
(c) Look through rules for foreign upper-tier partnerships.
(d) Examples.

§ 1.1446–6 Effective date.

§ 1.1446–1 Withholding tax on foreign partners' share of effectively connected taxable income.

(a) *In general.* If a domestic or foreign partnership has effectively connected taxable income as computed under § 1.1446–2 (ECTI), for any partnership tax year, and any portion of such taxable income is allocable under section 704 to a foreign partner, then the partnership must pay a withholding tax under section 1446 (1446 tax) at the time and in the manner set forth in this section and §§ 1.1446–2 through 1.1446–5.

(b) *Steps in determining 1446 tax obligation.* In general, a partnership determines its 1446 tax as follows. The partnership determines whether it has any foreign partners in accordance with

paragraph (c) of this section. If the partnership does not have any foreign partners (including any person presumed to be foreign under paragraph (c) of this section and any domestic trust treated as foreign under § 1.1446–3(d)) during its taxable year, it generally will not have a 1446 tax obligation. If the partnership has one or more foreign partners, it then determines under § 1.1446–2 whether it has ECTI any portion of which is allocable to one or more of the foreign partners. If the partnership has ECTI allocable to one or more of its foreign partners, the partnership computes its 1446 tax, pays over 1446 tax, and reports the amount paid in accordance with the rules in § 1.1446–3. For special rules applicable to publicly traded partnerships, see § 1.1446–4. For special rules applicable to tiered partnership structures, see § 1.1446–5.

(c) *Determining whether a partnership has a foreign partner*—(1) *In general.* Except as otherwise provided in § 1.1446–3, only a partnership that has at least one foreign partner during the partnership's taxable year can have a 1446 tax liability. The term foreign partner means any partner of the partnership who is not a U.S. person within the meaning of section 7701(a)(30). Thus, a partner of the partnership is a foreign partner if the partner is a nonresident alien individual, foreign partnership, foreign corporation, foreign estate or trust, as those terms are defined under section 7701 and the regulations thereunder, or a foreign government within the meaning of section 892 and the regulations thereunder. For purposes of this section, a partner that is treated as a U.S. person for all income tax purposes (by election or otherwise, see *e.g.*, sections 953(d), 1504(d)) will not be a foreign partner, provided the partner has provided the partnership a valid Form W–9, "Request for Taxpayer Identification Number and Certification," or if the partnership uses other means to determine that the partner is not a foreign partner (see paragraph (c)(3) of this section). A partner that is treated as a U.S. person only for certain specified purposes is considered a foreign partner for purposes of section 1446, and a partnership must pay a withholding tax on the portion of ECTI allocable to that partner. For example, a partnership must generally pay 1446 tax on ECTI allocable to a foreign corporate partner that has made an election under section 897(i).

(2) *Forms W–8BEN, W–8IMY, and W–9*—(i) *In general.* Except as otherwise provided in this paragraph (c)(2) or paragraph (c)(3) of this section, a partnership must determine whether a partner is a foreign partner, and the partner's tax classification (*e.g.*, corporate or non-corporate), by obtaining from the partner a Form W–8BEN, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding," Form W–8IMY, "Certificate of Foreign Intermediary, Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding," or a Form W–9, as applicable. Specifically, a foreign partner that is a nonresident alien individual, a foreign estate or trust (other than a grantor trust described in this paragraph (c)(2)), a foreign corporation, or a foreign government should provide a valid Form W–8BEN. A partner that is a foreign partnership should provide a valid Form W–8IMY. A partner that is a U.S. person (other than a grantor trust described in this paragraph (c)(2)), including a domestic partnership, should provide a valid Form W–9. An entity that is disregarded as an entity separate from its owner under § 301.7701–3 of this chapter may not submit a Form W–8BEN, W–8IMY, or Form W–9. See §§ 301.7701–1 through 301.7701–3 of this chapter for determining the U.S. Federal tax classification of a partner. To the extent that a grantor or another person is treated as the owner of any portion of a trust under subpart E of subchapter J of the Internal Revenue Code, such trust shall not provide a Form W–8BEN or Form W–9 to the partnership, except to the extent that such trust is providing documentation on behalf of the grantor or other person treated as the owner of a portion of such trust as required by this paragraph (c)(2). Instead, if such trust is a foreign trust, the trust shall submit Form W–8IMY to the partnership identifying itself as a grantor trust and shall provide such documentation (*e.g.*, Forms W–8BEN, W–8IMY, or W–9) and information pertaining to its owner(s) to the partnership that permits the partnership to reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)) such portion of the trust's allocable share of partnership ECTI with the grantor or other person that is the owner of such portion of the trust. If such trust is a domestic trust, the trust shall furnish the partnership a statement under penalty of perjury that the trust is, in whole or in part, a grantor trust and identifying that portion of the trust that is treated as owned by a grantor or another person under subpart E of subchapter J of the Internal Revenue Code. The trust shall also provide such documentation and information (*e.g.*, Forms W–8BEN, W–8IMY, or W–9) pertaining to its owner(s) to the partnership that permits the partnership to reliably associate such portion of the trust's allocable share of partnership ECTI with the grantor or other person that is the owner of such portion of the trust. With respect to nominees, only nominees described in § 1.1446–4(b)(3) holding interests in publicly traded partnerships subject to § 1.1446–4 may submit a Form W–9. See § 1.1446–4 for additional documentation that may be submitted by such a nominee. In all other cases where a nominee holds an interest in a partnership, the beneficial owner of the partnership interest, not the nominee, shall submit Form W–8BEN, Form W–8IMY, or Form W–9. A partnership that has obtained a valid Form W–8BEN, Form W–8IMY, or Form W–9 from a partner, nominee, or beneficial owner prior to the due date for paying any 1446 tax may rely on it to the extent provided in this paragraph (c)(2).

(ii) *Effect of Forms W–8BEN, W–8IMY, W–9, and Statement.* In general, for purposes of this section, a partnership may rely on a valid Form W–8BEN, Form W–8IMY, Form W–9, statement described in § 1.1446–4(e)(1), or statement described in this paragraph (c)(2) from a partner, nominee, beneficial owner, or grantor trust to determine whether that person, beneficial owner, or the owner of a grantor trust, is a domestic or foreign partner or a nominee, and if such person is a foreign partner, to determine whether or not such person is a corporation for U.S. tax purposes. To the extent a partnership receives a Form W–8IMY from a foreign grantor trust or a statement described in this paragraph (c)(2) from a domestic grantor trust, but does not receive a Form W–8BEN, Form W–8IMY, or Form W–9 identifying such grantor or other person, the rules of paragraph (c)(3) of this section shall apply. Further, a partnership may not rely on a Form W–8BEN, Form W–8IMY, Form W–9, or statement described in § 1.1446–4(e)(1) or this paragraph (c)(2), and such form or statement is therefore not valid, if the partnership has actual knowledge or has reason to know that any information on the withholding certificate or statement is incorrect or unreliable and, if based on such knowledge or reason to know, it should pay a 1446 tax in an amount greater than would be the case if it relied on the information or certifications. A partnership has reason to know that information on a withholding certificate or statement is incorrect or unreliable if its knowledge

of relevant facts or statements contained on the form or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made. See §§ 1.1441–1(e)(4)(viii) and 1.1441–7(b)(1) and (2). If the partnership does not know or have reason to know that a Form W–8BEN, Form W–8IMY, Form W–9, or statement received from a partner, nominee, beneficial owner, or grantor trust contains incorrect or unreliable information, but it subsequently determines that it does contain incorrect or unreliable information, and, based on such knowledge the partnership should pay 1446 tax in an amount greater than would be the case if it relied on the information or certification, the partnership will not be subject to penalties for its failure to pay the 1446 tax in reliance on such form or statement for any installment payment date prior to the date that the determination is made. See §§ 1.1446–1(c)(4) and 1.1446–3 concerning penalties for failure to pay the withholding tax when a partnership knows or has reason to know that the form or statement is incorrect or unreliable.

(iii) *Requirements for certificates to be valid.* Except as otherwise provided in this paragraph (c), for purposes of this section, the validity of a Form W–9 shall be determined under section 3406 and § 31.3406(h)–3(e) of this chapter which establish when such form may be reasonably relied upon. A Form W–8BEN, or Form W–8IMY is only valid for purposes of this section if its validity period has not expired, the partner submitting the form has signed it under penalties of perjury, and it contains all the required information.

(A) *When period of validity expires.* For purposes of this section, a Form W–8BEN or W–8IMY submitted by a partner shall be valid until the end of the period of validity determined for such form under § 1.1441–1(e). With respect to a foreign partnership submitting Form W–8IMY, the period of validity of such form shall be determined under § 1.1441–1(e) as if such foreign partnership submitted the form required of a nonwithholding foreign partnership. See § 1.1441–1(e)(4)(ii).

(B) *Required information for Forms W–8BEN and W–8IMY.* Forms W–8BEN and W–8IMY submitted under this section must contain the partner's name, permanent address and Taxpayer Identification Number (TIN), the country under the laws of which the partner is formed, incorporated or governed (if the person is not an individual), the classification of the partner for U.S. federal tax purposes (*e.g.*, partnership, corporation), and any other information required to be submitted by the forms or instructions to Form W–8BEN or Form W–8IMY, as applicable.

(iv) *Partner must provide new withholding certificate when there is a change in circumstances.* The principles of § 1.1441–1(e)(4)(ii)(D) shall apply when a change in circumstances has occurred (including situations where the status of a U.S. person changes) that requires a partner to provide a new withholding certificate.

(v) *Partnership must retain withholding certificates.* A partnership or nominee who has responsibility for paying the withholding tax under this section or § 1.1446–4, must retain each withholding certificate and other documentation received from its direct and indirect partners (including nominees) for as long as it may be relevant to the determination of the withholding agent's tax liability under section 1461 and the regulations thereunder.

(3) *Presumption of foreign status in absence of valid Form W–8BEN, Form W–8IMY, Form W–9, or statement.* Except as otherwise provided in this paragraph (c)(3), a partnership that does not receive a valid Form W–8BEN, Form W–8IMY, Form W–9, statement described in § 1.1446–4(e)(1), or statement required by paragraph (c)(2) of this section from a partner, nominee, beneficial owner, or grantor trust, or a partnership that receives a withholding certificate or statement but has actual knowledge or reason to know that the information on the certificate or statement is incorrect or unreliable, must presume that the partner is a foreign person. If the partnership knows that the partner is an individual and not an entity, the partnership shall treat the partner as a nonresident alien individual. If the partnership knows that the partner is an entity, the partnership shall treat the partner as a corporation if the entity is a corporation as defined in § 301.7701–2(b)(8) of this chapter. In all other cases, the partnership shall treat the partner as either a nonresident alien individual or a foreign corporation, whichever classification results in a higher 1446 tax being due, and shall pay the 1446 tax in accordance with this presumption. The presumption set forth in this paragraph (c)(3) that a partner is a foreign person (either because a Form W–9 was not furnished by such partner or the partnership determines that such form is incorrect or unreliable) shall not apply to the extent that the partnership relies on other means to ascertain the non-foreign status of a partner and the partnership is correct in its determination that such partner is a U.S. person. A partnership is in no event required to rely upon other means to determine the non-foreign status of a partner and may demand that a partner furnish a Form W–9. If a certification is not provided in such circumstances, the partnership may presume that the partner is a foreign partner, and for purposes of sections 1461 through 1463, will be considered to have been required to pay 1446 tax on such partner's allocable share of partnership ECTI.

(4) *Consequences when partnership knows or has reason to know that Form W–8BEN, Form W–8IMY, or Form W–9 is incorrect or unreliable and does not withhold.* If a partnership knows or has reason to know that a Form W–8BEN, Form W–8IMY, Form W–9, statement described in § 1.1446–4(e)(1), or statement required by paragraph (c)(2) of this section submitted by a partner, nominee, beneficial owner, or grantor trust contains incorrect or unreliable information (either because the certificate or statement when given to the partnership contained incorrect information or because there has been a change in facts that makes information on the certificate or statement incorrect), and the partnership pays less than the full amount of withholding tax due on ECTI allocable to that partner, the partnership shall be fully liable under section 1461 and § 1.1461–3 (§ 1.1461–1 for publicly traded partnerships subject to § 1.1446–4), § 1.1446–3, and for all applicable penalties and interest, for any failure to pay the 1446 tax for the period during which the partnership knew or had reason to know that the certificate contained incorrect or unreliable information and for all subsequent installment periods. If a partner, nominee, beneficial owner, or grantor trust, submits a new valid Form W–8BEN, Form W–8IMY, Form W–9, or statement, as applicable, the partnership may rely on that form for paying installments of 1446 tax beginning with the installment period during which such form is received.

§ 1.1446–2 Determining a partnership's effectively connected taxable income allocable to foreign partners under section 704.

(a) *In general.* A partnership's effectively connected taxable income (ECTI) is generally the partnership's taxable income as computed under section 703, with adjustments as provided in section 1446(c) and this section, and computed with

consideration of only those partnership items which are effectively connected (or treated as effectively connected) with the conduct of a trade or business in the United States. For purposes of determining the section 1446 withholding tax (1446 tax) under § 1.1446–3, partnership ECTI allocable under section 704 to foreign partners is the sum of the allocable shares of ECTI of each of the partnership's foreign partners as determined under paragraph (b) of this section. The calculation of partnership ECTI allocable to foreign partners as set forth in paragraph (b) of this section, and the determination of the partnership's withholding tax obligation, is a partnership-level computation solely for purposes of determining the 1446 tax. Therefore, any deduction that is not taken into account in calculating a partner's allocable share of partnership ECTI (*e.g.*, percentage depletion), but which is a deduction that under U.S. tax law the foreign partner is otherwise entitled to claim, can still be claimed by the foreign partner when computing its U.S. tax liability and filing its U.S. income tax return, subject to any restriction or limitation that otherwise may apply.

(b) *Computation*—(1) *In general.* A foreign partner's allocable share of partnership ECTI for the partnership's taxable year that is allocable under section 704 to a particular foreign partner is equal to that foreign partner's distributive share of partnership gross income and gain for the partnership's taxable year that is effectively connected and properly allocable to the partner under section 704 and the regulations thereunder, reduced by the foreign partner's distributive share of partnership deductions for the partnership taxable year that are connected with such income under section 873 or 882(c) and properly allocable to the partner under section 704 and the regulations thereunder, in each case, after application of the rules of this section. For these purposes, a foreign partner's distributive share of effectively connected gross income and gain and the deductions connected with such income shall be computed by considering allocations that are respected under the rules of section 704 and § 1.704–1(b)(1), including special allocations in the partnership agreement (as defined in § 1.704–1(b)(2)(ii)(h)), and adjustments to the basis of partnership property described in section 743 pursuant to an election by the partnership under section 754 (see § 1.743–1(j)). The character of effectively connected partnership items (capital versus ordinary) shall be separately considered only to the extent set forth in paragraph (b)(3)(v) of this section.

(2) *Income and gain rules.* For purposes of computing a foreign partner's allocable share of partnership ECTI under this paragraph (b), the following rules with respect to partnership income and gain shall apply.

(i) *Application of the principles of section 864.* The determination of whether a partnership's items of gross income are effectively connected shall be made by applying the principles of section 864 and the regulations thereunder.

(ii) *Income treated as effectively connected.* A partnership's items of gross income that are effectively connected includes any income that is treated as effectively connected income, including partnership income subject to a partner's election under section 871(d) or section 882(d), any partnership income treated as effectively connected with the conduct of a U.S. trade or business pursuant to section 897, and any other items of partnership income treated as effectively connected under another provision of the Code, without regard to whether those amounts are taxable to the partner.

(iii) *Exempt income.* A foreign partner's allocable share of partnership ECTI does not include income or gain exempt from U.S. tax by reason of a provision of the Internal Revenue Code. A foreign partner's allocable share of partnership ECTI also does not include income or gain exempt from U.S. tax by operation of any U.S. income tax treaty or reciprocal agreement. In the case of income excluded by reason of a treaty provision, such income must be derived by a resident of an applicable treaty jurisdiction, the resident must be the beneficial owner of the item, and all other requirements for benefits under the treaty must be satisfied. The partnership must have received from the partner a valid withholding certificate, that is Form W–8BEN or Form W–8IMY (see § 1.1446–1(c)(2)(iii) regarding when a Form W–8BEN or Form W–8IMY is valid for purposes of this section), containing the information necessary to support the claim for treaty benefits required in the forms and instructions to those forms. In addition, for purposes of this section, the withholding certificate must contain the beneficial owner's taxpayer identification number.

(3) *Deduction and losses.* For purposes of computing a foreign partner's allocable share of partnership ECTI under this paragraph (b), the following rules with respect to deductions and losses shall apply.

(i) *Oil and gas interests.* The deduction for depletion with respect to oil and gas wells shall be allowed, but the amount of such deduction shall be determined without regard to sections 613 and 613A.

(ii) *Charitable contributions.* The deduction for charitable contributions provided in section 170 shall not be allowed.

(iii) *Net operating losses and other suspended or carried losses.* The net operating loss deduction of any foreign partner provided in section 172 shall not be taken into account. Further, the partnership shall not take into account any suspended losses (*e.g.*, losses in excess of a partner's basis in the partnership, see section 704(d)) or any capital loss carrybacks or carryovers available to a foreign partner.

(iv) *Interest deductions.* The rules of this paragraph (b)(3)(iv) shall apply for purposes of determining the amount of interest expense that is allocable to income which is (or is treated as) effectively connected with the conduct of a trade or business for purposes of calculating the foreign partner's allocable share of partnership ECTI. In the case of a non-corporate foreign partner, the rules of § 1.861–9T(e)(7) shall apply. In the case of a corporate foreign partner, the rules of § 1.882–5 shall apply by treating the partnership as a foreign corporation and using the partner's pro-rata share of the partnership's assets and liabilities for these purposes. For these purposes, the rules governing elections under § 1.882–5(a)(7) shall be made at the partnership level.

(v) *Limitation on capital losses.* Losses from the sale or exchange of capital assets allocable under section 704 to a partner shall be allowed only to the extent of gains from the sale or exchange of capital assets allocable under section 704 to such partner.

(vi) *Other deductions.* No deduction shall be allowed for personal exemptions provided in section 151 or the additional itemized deductions for individuals provided in part VII of subchapter B of the Internal Revenue Code (section 211 and following).

(vii) *Limitations on deductions.* Except as provided in paragraph (b)(3) or (4) of this section, any limitations on losses or deductions that apply at the partner level when determining ECTI allocable to a foreign partner shall not be taken into account.

(4) *Other rules*—(i) *Exclusion of items allocated to U.S. partners.* In computing ECTI allocable to a foreign partner, the partnership shall not take into account any item of income, gain, loss, or deduction to the extent allocable to any

partner that is not a foreign partner, as that term is defined in § 1.1446–1(c) of this section.

(ii) *Partnership credits.* See § 1.1446–3(a) providing that the 1446 tax is computed without regard to a partner's distrubutive share of the partnership's tax credits.

(5) *Examples.* The following examples illustrate the application of this section:

Example 1. Limitation on capital losses. PRS partnership has two equal partners, A and B. A is a nonresident alien individual and B is a U.S. citizen. A provides PRS with a valid Form W–8BEN, and B provides PRS with a valid Form W–9. PRS has the following annualized tax items for the relevant installment period, all of which are effectively connected with its U.S. trade or business and are allocated equally between A and B: $100 of long-term capital gain, $400 of long-term capital loss, $300 of ordinary income, and $100 of ordinary deductions. Assume that these allocations are respected under section 704(b) and the regulations thereunder. Accordingly, A's allocable share of PRS's effectively connected items includes $50 of long-term capital gain, $200 of long-term capital loss, $150 of ordinary income, and $50 of ordinary deductions. In determining A's allocable share of partnership ECTI, the amount of the long-term capital loss that may be taken into account pursuant to paragraph (b)(3)(v) of this section is limited to A's allocable share of gain from the sale or exchange of capital assets. The amount of partnership ECTI allocable under section 704 to A is $100 ($150 of ordinary income less $50 of ordinary deductions, plus $50 of capital gains less $50 of capital loss).

Example 2. Limitation on capital losses—special allocations. PRS partnership has two equal partners, A and B. A and B are both nonresident alien individuals. A and B each provide PRS with a valid Form W–8BEN. PRS has the following annualized tax items for the relevant installment period, all of which are effectively connected with its U.S. trade or business: $200 of long-term capital gain, $200 of long-term capital loss, and $400 of ordinary income. A and B have equal shares in the ordinary income, however, pursuant to the partnership agreement, capital gains and losses are subject to special allocations. The long-term capital gain is allocable to A, and the long-term capital loss is allocable to B. It is assumed that all of the partnership's allocations are respected under section 704(b) and the regulations thereunder. Pursuant to paragraph (b)(3)(v) of this section, A's allocable share of partnership ECTI is $400 ($200 of ordinary income plus $200 of long-term capital gain), and B's allocable share of partnership ECTI is $200 ($200 of ordinary income).

Example 3. Withholding tax obligation where partner has net operating losses. PRS partnership has two equal partners, FC, a foreign corporation, and DC, a domestic corporation. FC and DC provide a valid Form W–8BEN and Form W–9, respectively, to PRS. Both FC and PRS are on a calendar taxable year. PRS is engaged in the conduct of a trade or business in the United States and for its first installment period during its taxable year has $100 of annualized ECTI that is allocable to FC. As of the beginning of the taxable year, FC had an unused effectively connected net operating loss carryover in the amount of $300. The net operating loss carryover is not taken into account in determining PRS's withholding tax liability for ECTI allocable under section 704 to FC. PRS must pay 1446 tax with respect to the $100 of ECTI allocable to FC.

§ 1.1446–3 Time and manner of calculating and paying over the 1446 tax.

(a) *In general*—(1) *Calculating 1446 tax.* This section provides rules for calculating, reporting, and paying over the section 1446 withholding tax (1446 tax). A partnership's 1446 tax is equal to the amount determined under this section and shall be paid in installments during the partnership's taxable year (see paragraph (d)(1) of this section for installment payment due dates), with any remaining tax due paid with the partnership's annual return required to be filed pursuant to paragraph (d) of this section. For these purposes, a partnership shall not take into account either a partner's liability for any other tax imposed under any other provision of the Internal Revenue Code (*e.g.*, section 55 or 884) or a partner's distributive share of the partnership's tax credits when determining the amount of the partnership's 1446 tax.

(2) *Applicable percentage.* In the case of a foreign partner that is a corporation, the applicable percentage is the highest rate of tax specified in section 11(b)(1) for such taxable year. Except to the extent provided in § 1.1446–5, in the case of a foreign partner that is not taxable as a corporation (*e.g.*, partnership, individual, trust or estate), the applicable percentage is the highest rate of tax specified in section 1.

(b) *Installment payments*—(1) *In general.* Except as provided in § 1.1446–4 for certain publicly traded partnerships, a partnership must pay its 1446 tax by making installment payments of the 1446 tax based on the amount of partnership ECTI allocable under section 704 to its foreign partners, without regard to whether the partnership makes any distributions to its partners during the partnership's taxable year. The amount of the installment payments are determined in accordance with this paragraph (b), and the tax must be paid at the times set forth in paragraph (d) of this section. Subject to paragraph (b)(3) of this section, in computing its first installment of 1446 tax for a taxable year, a partnership must choose whether it will pay its 1446 tax for the entire taxable year by using the safe harbor set forth in paragraph (b)(3) of this section, or by using one of several annualization methods available under paragraph (b)(2)(ii) of this section for computing partnership ECTI allocable to foreign partners. In the case of any underpayment of an installment payment of 1446 tax by a partnership, the partnership shall be subject to an addition to tax equal to the amount determined under section 6655, as modified by this section, as if such partnership were a domestic corporation, as well as any other applicable interest and penalties. See § 1.1446–3(f). Section 6425 (permitting an adjustment for an overpayment of estimated tax by a corporation) shall not apply to a partnership with respect to the payment of its 1446 tax.

(2) *Calculation*—(i) *General application of the principles of section 6655.* Installment payments of 1446 tax required during the partnership's taxable year are based upon partnership ECTI for the portion of the partnership taxable year to which they relate, and, except as set forth in this paragraph (b)(2) or paragraph (b)(3) of this section, shall be calculated using the principles of section 6655. Under the principles of section 6655, the partnership's effectively connected items are annualized to determine each foreign partner's allocable share of partnership ECTI under § 1.1446–2. Each foreign partner's allocable share of partnership ECTI is then multiplied by the applicable percentage for each foreign partner. This computation will yield an annualized 1446 tax with respect to such partner. The installment of 1446 tax due with respect to a foreign partner's allocable share of partnership ECTI equals the excess of the section 6655(e)(2)(B)(ii) percentage of the annualized 1446 tax for that partner (or, if applicable, the adjusted seasonal amount) for the relevant installment period, over the aggregate of any amounts paid under section 1446 with respect to that partner in prior installments during the partnership's taxable year.

(ii) *Annualization methods.* A partnership that chooses to annualize its income for the taxable year shall use one of the annualization methods set forth in section 6655(e) and the regulations thereunder, and as described in the forms and instructions for Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)," Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax," and Form 8813, "Partnership Withholding Tax Payment Voucher."

(iii) *Partner's estimated tax payments.* In computing its installment payments of 1446 tax, a partnership may not take

into account a partner's estimated tax payments.

(iv) *Partner whose interest terminates during the partnership's taxable year.* With respect to a partner whose interest in the partnership terminates prior to the end of the period for which the partnership is making an installment payment, the partnership shall take into account the income that is allocable to the partner for the portion of the partnership taxable year that the person was a partner.

(v) *Exceptions and modifications to the application of the principles under section 6655.* To the extent not otherwise modified in §§ 1.1446–1 through 1.1446–6, or inconsistent with those rules, the principles of section 6655 apply to the calculation of the installment payments of 1446 tax made by a partnership, except that:

(A) *Inapplicability of special rules for large corporations.* The principles of section 6655(d)(2), concerning large corporations (as defined in section 6655(g)(2)), shall not apply.

(B) *Inapplicability of special rules regarding early refunds.* The principles of section 6655(h), applicable to amounts excessively credited or refunded under section 6425, shall not apply. See paragraph (b)(1) of this section providing that section 6425 shall not apply for purposes of the 1446 tax.

(C) *Period of underpayment.* The period of the underpayment set forth in section 6655(b)(2) shall end on the earlier of the 15th day of the 4th month following the close of the partnership's taxable year (or, in the case of a partnership described in § 1.6081–5(a)(1) of this chapter, the 15th day of the 6th month following the close of the partnership's taxable year), or with respect to any portion of the underpayment, the date on which such portion is paid.

(D) *Other taxes.* Section 6655 shall be applied without regard to any references to alternative minimum taxable income and modified alternative minimum taxable income.

(E) *1446 tax treated as tax under section 11.* The principles of section 6655(g)(1) shall be applied to treat the 1446 tax as a tax imposed by section 11.

(F) *Prior year tax safe harbor.* The safe harbor set forth in section 6655(d)(1)(B)(ii) shall not apply and instead the safe harbor set forth in paragraph (b)(3) of this section applies.

(3) *1446 tax safe harbor*—(i) *In general.* The addition to tax under section 6655 shall not apply to a partnership with respect to a current installment of 1446 tax if—

(A) The average of the amount of the current installment and prior installments during the taxable year is at least 25 percent of the total 1446 tax that would be payable on the amount of the partnership's ECTI allocable under section 704 to foreign partners for the prior taxable year;

(B) The prior taxable year consisted of twelve months;

(C) The partnership timely files (including extensions) an information return under section 6031 for the prior year; and

(D) The amount of ECTI for the prior taxable year is not less than 50 percent of the ECTI shown on the annual return of section 1446 withholding tax that is (or will be) timely filed for the current year.

(ii) *Permission to change to standard annualization method.* Except as otherwise provided in this paragraph (b)(3), if a partnership chooses to pay its 1446 tax for the first installment period based upon the safe harbor method set forth in this paragraph (b)(3), the partnership must use the safe harbor method for each installment payment made during the partnership's taxable year. Notwithstanding the foregoing, if a partnership paying over 1446 tax during the taxable year pursuant to this paragraph (b)(3) determines during an installment period (based upon the standard option annualization method set forth in section 6655(e) and the regulations thereunder, as modified by the forms and instructions to Forms 8804, 8805, and 8813) that it will not qualify for the safe harbor in this paragraph (b)(3) because the prior year's ECTI will not meet the 50-percent threshold in paragraph (b)(3)(i)(D) of this section, then the partnership is permitted, without being subject to the addition to tax under section 6655, to pay over its 1446 tax for the period in which such determination is made, and all subsequent installment periods during the taxable year, using the standard option annualization method. A change pursuant to this paragraph shall be disclosed in a statement attached to the Form 8804 the partnership files for the taxable year and shall include information to allow the Service to determine whether the change was appropriate.

(c) *Coordination with other withholding rules*—(1) *Fixed or determinable, annual or periodical income.* Fixed or determinable, annual or periodical income subject to tax under section 871(a) or section 881 is not subject to withholding under section 1446, and such income is independently subject to the withholding requirements of sections 1441 and 1442 and the regulations thereunder.

(2) *Real property gains*—(i) *Domestic partnerships.* A domestic partnership that is otherwise subject to the withholding requirements of sections 1445 and 1446 will be subject to the payment and reporting requirements of section 1446 only and not section 1445(e)(1) and the regulations thereunder, with respect to partnership gain from the disposition of a U.S. real property interest (as defined in section 897(c)), provided that the partnership complies fully with the requirements under section 1446 and the regulations thereunder, including any reporting obligations, with respect to dispositions of U.S. real property interests. A partnership that has complied with such requirements will be deemed to satisfy the withholding requirements of section 1445 and the regulations thereunder. In the event that amounts are withheld under section 1445(a) at the time of the disposition of a U.S. real property interest, such amounts may be credited against the section 1446 tax.

(ii) *Foreign partnerships.* A foreign partnership that is subject to withholding under section 1445(a) during its taxable year may credit the amount withheld under section 1445(a) against its section 1446 tax liability for that taxable year only to the extent such gain is allocable to foreign partners.

(3) *Coordination with section 1443.* A partnership that has ECTI allocable under section 704 to a foreign organization described in section 1443(a) shall be required to withhold under this section.

(d) *Reporting and crediting the 1446 tax*—(1) *Reporting 1446 tax.* This paragraph (d) sets forth the rules for reporting and crediting the 1446 tax paid by a partnership. To the extent that 1446 tax is paid on behalf of a domestic trust (including a grantor or other person treated as an owner of a portion of such trust) or a grantor or other person treated as the owner of a portion of a foreign trust, the rules of this paragraph (d) applicable to a foreign trust or its beneficiaries shall be applied to such domestic or foreign trust and its beneficiaries or owners, as applicable, so that appropriate credit for the 1446 tax may be claimed by the trust, beneficiary, grantor, or other person.

(i) *Reporting of installment tax payments and notification to partners of installment tax payments.* Each partnership required to make an installment payment of 1446 tax must file Form 8813, "Partnership Withholding Tax Payment Voucher (Section 1446)," in accordance with the instructions of that form. When making a payment of 1446 tax, a partnership must notify each foreign partner of the

1446 tax paid on its behalf. A foreign partner generally may credit a 1446 tax paid by the partnership on the partner's behalf against the partner's estimated tax that the partner must pay during the partner's own taxable year. No particular form is required for a partnership's notification to a foreign partner, but each notification must include the partnership's name, the partnership's Taxpayer Identification Number (TIN), the partnership's address, the partner's name, the partner's TIN, the partner's address, the annualized ECTI estimated to be allocated to the foreign partner, and the amounts of tax paid on behalf of the partner for the current and prior installment periods during the partnership's taxable year.

(ii) *Payment due dates.* The 1446 tax is calculated based on partnership ECTI allocable under section 704 to foreign partners during the partnership's taxable year, as determined under section 706. Payments of the 1446 tax generally must be made during the partnership's taxable year in which such income is derived. A partnership must pay to the Internal Revenue Service a portion of its estimated annual 1446 tax in installments on or before the 15th day of the fourth, sixth, ninth, and twelfth months of the partnership's taxable year as provided in section 6655. Any additional amount determined to be due is to be paid with the filing of the annual return of tax required under this section and clearly designated as for the prior taxable year. Form 8813 should not be submitted for a payment made under the preceding sentence.

(iii) *Annual return and notification to partners.* Every partnership (except a publicly traded partnership that has not elected to apply the general withholding tax rules under section 1446) that has effectively connected gross income for the partnership's taxable year allocable under section 704 to one or more of its foreign partners (or is treated as having paid 1446 tax under § 1.1446–5(a)), must file Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)." Additionally, every partnership that is required to file Form 8804 also must file Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax," and furnish this form to the Internal Revenue Service and to each of its partners with respect to which the 1446 tax was paid. Forms 8804 and 8805 are separate from Form 1065, "U.S. Return of Partnership Income," and the attachments thereto, and are not to be filed as part of the partnership's Form 1065. A partnership must generally file Forms 8804 and 8805 on or before the due date for filing the partnership's Form 1065. See § 1.6031(a)-1(c) for rules concerning the due date of a partnership's Form 1065. However, with respect to partnerships described in § 1.6081–5(a)(1), Forms 8804 and 8805 are not due until the 15th day of the sixth month following the close of the partnership's taxable year. Any additional tax owed under section 1446 for the prior taxable year of the partnership must be paid to the Internal Revenue Service with the Form 8804.

(iv) *Information provided to beneficiaries of foreign trusts and estates.* A foreign trust or estate that is a partner in a partnership subject to withholding under section 1446 shall be provided Form 8805 by the partnership. The foreign trust or estate must provide to each of its beneficiaries a copy of the Form 8805 furnished by the partnership. In addition, the foreign trust or estate must provide a statement for each of its beneficiaries to inform each beneficiary of the amount of the credit that may be claimed under section 33 (as determined under this section) for the 1446 tax paid by the partnership. Until an official IRS form is available, the statement from a foreign trust or estate that is described in this paragraph (d)(1)(iv) shall contain the following information—

(A) Name, address, and TIN of the foreign trust or estate;

(B) Name, address, and TIN of the partnership;

(C) The amount of the partnership's ECTI allocated to the foreign trust or estate for the partnership taxable year (as shown on the Form 8805 provided to the trust or estate);

(D) The amount of 1446 tax paid by the partnership on behalf of the foreign trust or estate;

(E) Name, address, and TIN of the beneficiary of the foreign trust or estate;

(F) The amount of the partnership's ECTI allocated to the trust or estate for purposes of section 1446 that is to be included in the beneficiary's gross income; and

(G) The amount of 1446 tax paid by the partnership on behalf of the foreign trust or estate that the beneficiary is entitled to claim on its return as a credit under section 33.

(v) *Attachments required of foreign trusts and estates.* The statement furnished to each foreign beneficiary under this paragraph (d)(1) must also be attached to the foreign trust or estate's U.S. Federal income tax return filed for the taxable year including the installment period to which the statement relates.

(vi) *Attachments required of beneficiaries of foreign trusts and estates.* The beneficiary of the foreign trust or estate must attach the statement provided by the trust or estate, along with a copy of the Form 8805 furnished by the partnership to such trust or estate, to its U.S. income tax return for the year in which it claims a credit for the 1446 tax. See § 1.1446–3(d)(2)(ii) for additional rules regarding a partner or beneficial owner claiming a credit for 1446 tax.

(vii) *Information provided to beneficiaries of foreign trusts and estates that are partners in certain publicly traded partnerships.* A statement similar to the statement required by paragraph (d)(1)(iv) of this section shall be provided by trusts or estates that hold interests in publicly traded partnerships subject to § 1.1446–4.

(2) *Crediting 1446 tax against a partner's U.S. tax liability*—(i) *In general.* A partnership's payment of 1446 tax on the portion of ECTI allocable to a foreign partner relates to the partner's U.S. income tax liability for the partner's taxable year in which the partner is subject to U.S. tax on that income. Subject to paragraphs (d)(2)(ii) and (iii) of this section, a partner may claim as a credit under section 33 the 1446 tax paid by the partnership with respect to ECTI allocable to that partner. The partner may not claim an early refund of these amounts under the estimated tax rules.

(ii) *Substantiation for purposes of claiming the credit under section 33.* A partner may credit the amount paid under section 1446 with respect to such partner against its U.S. income tax liability only if it attaches proof of payment to its U.S. income tax return for the partner's taxable year in which the items comprising such partner's allocable share of partnership ECTI are included in the partner's income. Except as provided in the next sentence, proof of payment consists of a copy of the Form 8805 the partnership provides to the partner (or in the case of a beneficiary of a foreign trust or estate, the statement required under paragraph (d)(1)(iv) of this section to be provided by such trust or estate and the related Form 8805 furnished to such trust or estate), but only if the name and TIN on the Form 8805 (or the statement provided by a foreign trust or estate) match the name and TIN on the partner's U.S. tax return, and such form (or statement) identifies the partner (or beneficiary) as the person entitled to the credit under section 33. In the case of a partner of a publicly traded partnership that is subject to withholding on distributions under § 1.1446–4, proof of payment consists of

a copy of the Form 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding," provided to the partner by the partnership.

(iii) *Tiered structures including trusts or estates*—(A) *Foreign trusts and estates.* Section 1446 tax paid on the portion of ECTI allocable under section 704 to a foreign trust or estate that the foreign trust or estate may claim as a credit under section 33 shall bear the same ratio to the total 1446 tax paid on behalf of the trust or estate as the total ECTI allocable to such trust or estate and not distributed (or treated as distributed) to the beneficiaries of such trust or estate, and, accordingly not deducted under section 651 or section 661 in calculating the trust or estate's taxable income, bears to the total ECTI allocable to such trust or estate. Any 1446 tax that a foreign trust or estate is not entitled to claim as a credit under this paragraph (d)(2) may be claimed as a credit by the beneficiary or beneficiaries of such trust or estate that includes the partnership's ECTI (distributed or deemed distributed) allocated to the trust or estate in gross income under section 652 or section 662 (with the same character as effectively connected income as in the hands of the trust or estate). The trust or estate must provide each beneficiary with a copy of the Form 8805 provided to it by the partnership and prepare the statement required by paragraph (d)(1)(iv) of this section.

(B) *Use of domestic trusts to circumvent section 1446.* This paragraph (d)(2)(iii)(B) shall apply if a partnership knows or has reason to know that a foreign person that is the ultimate beneficial owner of the ECTI holds its interest in the partnership through a domestic trust (and possibly other entities), and such domestic trust was formed or availed of with a principal purpose of avoiding the 1446 tax. The use of a domestic trust in a tiered trust structure may have a principal purpose of avoiding the 1446 tax even though the tax avoidance purpose is outweighed by other purposes when taken together. In such case, a partnership is required to pay 1446 tax under this paragraph as if the domestic trust was a foreign trust for purposes of section 1446 and the regulations thereunder. Accordingly, all applicable penalties and interest shall apply to the partnership for its failure to pay 1446 tax under this paragraph (d)(2)(iii)(B), commencing with the installment period during which the partnership knew or had reason to know that this paragraph (d)(2)(iii)(B) applied.

(iv) *Refunds to withholding agent.* A partnership (or nominee pursuant to § 1.1446–4) may apply for a refund of the 1446 tax paid only to the extent allowable under section 1464 and the regulations thereunder.

(v) *1446 tax treated as cash distribution to partners.* Amounts paid by a partnership under section 1446 with respect to a partner are treated as distributed to that partner on the earliest of the day on which such tax was paid by the partnership, the last day of the partnership taxable year for which the tax was paid, or, the last day during the partnership's taxable year on which the partner owned an interest in the partnership. Thus, for example, 1446 tax paid by a partnership after the close of a partnership taxable year that relates to ECTI allocable to a foreign partner for the prior taxable year will be considered distributed by the partnership to the respective foreign partner on the last day of the partnership's prior taxable year.

(vi) *Examples.* The following examples illustrate the application of this section:

Example 1. Simple trust that reports entire amount of ECTI. PRS is a partnership that has two partners, FT, a foreign trust, and A, a U.S. person. FT is a simple trust under section 651. FT and A each provide PRS with a valid Form W–8BEN and Form W–9, respectively. FT has one beneficiary, NRA, a nonresident alien individual. In computing its installment obligation during the 2004 taxable year, PRS has $200 of annualized income, all of which is ordinary ECTI. The $200 of income will be allocated equally to FT and A under section 704 and it is assumed that such an allocation will be respected under section 704(b) and the regulations thereunder. FT's allocable share of ECTI is $100. PRS withholds $35 under section 1446 with respect to the $100 of ECTI allocable to FT. FT's only income for its tax year is the $100 of income from PRS. Pursuant to the terms of the trust's governing instrument and local law, the $100 of ECTI is not included in FT's fiduciary accounting income and the deemed distribution of the $35 withholding tax paid under paragraph (d)(2)(v) of this section is not included in FT's fiduciary accounting income. Accordingly, the $100 of ECTI is not income required to be distributed by FT, and FT may not claim a deduction under section 651 for this amount. FT must report the $100 of ECTI in its gross income and may claim a credit under section 33 in the amount of $35 for the 1446 tax paid by PRS. NRA is not required to include any of the ECTI in gross income and accordingly may not claim a credit for any amount of the $35 of 1446 tax paid by PRS.

Example 2. Simple trust that distributes a portion of ECTI to the beneficiary. Assume the same facts as in *Example 1*, except that PRS distributes $60 to FT, which is included in FT's fiduciary accounting income under local law. FT will report the $100 of ECTI in its gross income and may claim a deduction for the $60 required to be distributed under section 651(a) to NRA. Pursuant to paragraph (d)(2)(iii) of this section, FT may claim a credit under section 33 in the amount of $14 for the 1446 tax paid by PRS ($40/$100 multiplied by $35). NRA is required to include the $60 of the ECTI in gross income under section 652 (as ECTI) and may claim a credit under section 33 in the amount of $21 for the 1446 tax paid by PRS ($35 less $14 or $60/$100 multiplied by $35).

Example 3. Complex trust that distributes entire ECTI to the beneficiary. Assume the same facts as in *Example 1*, except that FT is a complex trust under section 661. PRS distributes $60 to FT, which is included in FT's fiduciary accounting income. FT distributes the $60 of fiduciary accounting income to NRA and also properly distributes an additional $40 to NRA from FT's principal. FT will report the $100 of ECTI in its gross income and may deduct the $60 required to be distributed to NRA under section 661(a)(1) and may deduct the $40 distributed to NRA under section 661(a)(2). FT may not claim a credit under section 33 for any of the $35 of 1446 tax paid by PRS. NRA is required to include $100 of the ECTI in gross income under section 662 (as ECTI) and may claim a credit under section 33 in the amount of $35 for the 1446 tax paid by PRS ($35 less $0).

(e) *Liability of partnership for failure to withhold*—(1) *In general.* Every partnership required to pay a 1446 tax is made liable for that tax by section 1461. Therefore, a partnership that is required to pay a 1446 tax but fails to do so, or pays less than the amount required under this section, is liable under section 1461 for the payment of the tax required to be withheld under chapter 3 of the Internal Revenue Code and the regulations thereunder unless the partnership can demonstrate pursuant to paragraph (e)(2) of this section, to the satisfaction of the Commissioner or his delegate, that the full amount of effectively connected taxable income allocable to such partner was included in income on the partner's U.S. Federal income tax return and the full amount of tax due on such return was paid by such partner to the Internal Revenue Service. See paragraph (e)(3) of this section and section 1463 regarding the partnership's liability for penalties and interest even though a foreign partner has satisfied the underlying tax liability. See § 1.1461–3 for applicable penalties when a partnership fails to pay 1446 tax. See paragraph (b) of this section for an addition to tax under section 6655 when there is an underpayment of 1446 tax.

(2) *Proof that tax liability has been satisfied.* Proof of payment of tax may be established for purposes of paragraph (e)(1) of this section on the basis of a Form 4669, "Statement of Payments Received," or such other form as the Internal Revenue Service may prescribe

in published guidance (see § 601.601(d)(2) of this chapter), establishing the amount of tax, if any, actually paid by the partner on the income. Such partnership's liability for tax, and the requirement that such partnership file Forms 8804 and 8805 shall be deemed to have been satisfied with respect to such partner as of the date on which the partner's income tax return was filed and all tax required to be shown on the return is paid in full.

(3) *Liability for interest and penalties.* Notwithstanding paragraph (e)(2) of this section, a partnership that fails to pay over tax under section 1446 is not relieved from liability under section 6655 or for interest under section 6601. See § 1.1463–1. Such liability may exist even if there is no underlying tax liability due from a foreign partner on its allocable share of partnership ECTI. The addition to tax under section 6655 or the interest charge under section 6601 that is required by those sections shall be imposed as set forth in those sections, as modified by this section. For example, under section 6601, interest shall accrue beginning on the last date for paying the tax due under section 1461 (which is the due date, without extensions, for filing the Forms 8804 and 8805). The interest shall stop accruing on the 1446 tax liability on the date, and to the extent, that the unpaid tax liability under section 1446 is satisfied. A foreign partner is permitted to reduce any addition to tax under section 6654 or 6655 by the amount of any section 6655 addition to tax paid by the partnership with respect to its failure to pay adequate installment payments of the 1446 tax on ECTI allocable to the foreign partner.

(f) *Effect of withholding on partner.* The payment of the 1446 tax by a partnership does not excuse a foreign partner to which a portion of ECTI is allocable from filing a U.S. tax or informational return, as appropriate, with respect to that income. Information concerning installment payments of 1446 tax paid during the partnership's taxable year on behalf of a foreign partner shall be provided to such foreign partner in accordance with paragraph (d) of this section and such information may be taken into account by the foreign partner when computing the partner's estimated tax liability during the taxable year. Form 1040NR, "U.S. Nonresident Alien Income Tax Return," Form 1065, "U.S. Return of Partnership Income," Form 1120F, "U.S. Income Tax Return of a Foreign Corporation," or such other return as appropriate, must be filed by the partner, and any tax due must be paid, by the filing deadline (including extensions) generally applicable to such person. Pursuant to § 1.1446–3(d), a partner may generally claim a credit under section 33 for its share of any 1446 tax paid by the partnership against the amount of income tax (or 1446 tax in the case of tiers of partnerships) as computed in such partner's return.

§ 1.1446–4 Publicly traded partnerships.

(a) *In general.* This section sets forth rules for applying the section 1446 withholding tax (1446 tax) to publicly traded partnerships. A publicly traded partnership (as defined in paragraph (b) of this section) that has effectively connected gross income, gain or loss must pay 1446 tax by withholding from distributions to a foreign partner. Publicly traded partnerships that withhold on distributions must pay over and report any 1446 tax as provided in paragraph (c), and generally are not to pay over and report the 1446 tax under the rules in § 1.1446–3. However, under paragraph (g) of this section, a publicly traded partnership may elect not to apply the rules of this section, and instead, to pay the 1446 tax based on the effectively connected taxable income (ECTI) allocable under section 704 to foreign partners under the general rules of §§ 1.1446–1 through 1.1446–3. The amount of the withholding tax on distributions, other than distributions excluded under paragraph (f) of this section, that are made during any partnership taxable year, equals the applicable percentage (defined in paragraph (b)(2) of this section) of such distributions.

(b) *Definitions*—(1) *Publicly traded partnership.* For purposes of this section, the term publicly traded partnership has the same meaning as in section 7704 (including the regulations thereunder), but does not include a publicly traded partnership treated as a corporation under that section.

(2) *Applicable percentage.* For purposes of this section, applicable percentage shall have the meaning as set forth in § 1.1446–3(a)(2).

(3) *Nominee.* For purposes of this section, the term nominee means a domestic person that holds an interest in a publicly traded partnership on behalf of a foreign person.

(4) *Qualified notice.* For purposes of this section, a qualified notice is a notice given by a publicly traded partnership regarding a distribution that is attributable to effectively connected income, gain or loss of the partnership, and in accordance with the notice requirements with respect to dividends described in 17 CFR 240.10b–17(b)(1) or (3) issued pursuant to the Securities Exchange Act of 1934, 15 U.S.C. section 78(a).

(c) *Time and manner of payment.* The withholding tax required under this section is to be paid pursuant to the rules and procedures of section 1461, §§ 1.1461–1, 1.1461–2, and 1.6302–2. However, the reimbursement and set-off procedures set forth in those regulations shall not apply. A publicly traded partnership must use Form 1042, "Annual Withholding Tax Return for U.S. Source Income of Foreign Persons," and Form 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding," to report withholding from distributions under this section. See § 1.1461–1(b). See § 1.1446–3(d)(1)(vii) requiring a foreign trust or estate that holds an interest in a publicly traded partnership to provide a statement to the beneficiaries of such foreign trust or estate with respect to the credit to be claimed under section 33. For penalties and additions to the tax for failure to comply with this section, see §§ 1.1461–1 and 1.1461–3.

(d) *Rules for designation of nominees to withhold tax under section 1446.* A nominee that receives a distribution from a publicly traded partnership subject to withholding under this section, and which is to be paid to (or for the account of) any foreign person, may be treated as a withholding agent under this section. A nominee is treated as a withholding agent under this section only to the extent of the amount specified in the qualified notice (as defined in paragraph (b)(4) of this section) that the nominee receives. Where a nominee is designated as a withholding agent with respect to a foreign partner of the partnership, then the obligation to withhold on distributions to such foreign partner in accordance with the rules of this section shall be imposed solely on the nominee. A nominee under this section shall identify itself as a nominee by providing Form W–9, "Request for Taxpayer Identification Number and Certification," to the partnership, along with the statement required by paragraph (e)(1) of this section. If a nominee furnishes Form W–9 and the statement required by paragraph (e)(1) of this section to the partnership, but a qualified notice is not received by the nominee from the partnership, the nominee shall not be a withholding agent subject to the rules of this section and the partnership shall presume that such nominee is a nonresident alien individual or foreign corporation, whichever classification results in a higher 1446 tax being due, and pay a withholding tax consistent with such presumption. A nominee responsible for

withholding under the rules of this section shall be subject to liability under sections 1461 and 6655, as well as for all applicable penalties and interest, as if such nominee was a partnership responsible for withholding under this section.

(e) *Determining foreign status of partners*—(1) *In general.* Except as provided in paragraph (d) of this section permitting nominees to submit a Form W–9 to a publicly traded partnership, the rules of § 1.1446–1 shall apply in determining whether a partner of a publicly traded partnership is a foreign partner for purposes of the 1446 tax (see § 1.1446–4(a)) and a nominee obligated to withhold under this section shall be entitled to rely on a Form W–8BEN, "Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding," Form W–8IMY, "Certificate of Foreign Intermediary, Flow-Through Entity, or Certain U.S. Branches for United States Tax Withholding," or Form W–9, "Request for Taxpayer Identification Number," received from persons on whose behalf it holds interests in the partnership to the same extent a partnership is entitled to rely on such forms under those rules. In addition to the rules stated in §§ 1.1446–1 through 1.1446–3 with respect to certificates establishing a partner as a domestic or foreign person, a nominee shall attach a brief statement to the Form W–9 that it furnishes to the partnership, informing the partnership that the nominee holds interests in the partnership on behalf of one or more foreign persons, including information that permits the partnership to determine the partnership interest held on behalf of such foreign persons. A statement furnished by a nominee pursuant to § 1.6031(c)–1T satisfies the requirements of the previous sentence.

(2) *Presumptions regarding payee's status in absence of documentation.* The rules of § 1.1446–1(c)(3) shall apply to determine a partner's status in the absence of documentation.

(f) *Distributions subject to withholding*—(1) *In general.* Except as provided in this paragraph (f)(1), a publicly traded partnership must withhold at the applicable percentage with respect to any actual distribution made to a foreign partner. The amount of a distribution subject to 1446 tax includes the amount of any 1446 tax required to be withheld on the distribution and, in the case of a partnership that receives a partnership distribution from another partnership in which it is a partner (*i.e.*, a tiered structure described in § 1.1446–5), any 1446 tax that was withheld from such distribution. For example, a foreign publicly traded partnership, UTP, owns an interest in domestic publicly traded partnership, LTP. UTP does not provide LTP any documentation with respect to its domestic or foreign status. LTP and UTP each have a calendar taxable year. LTP makes a distribution subject to section 1446 of $100 to UTP during its taxable year beginning January 1, 2004, and withholds 35 percent (the highest rate in section 1) of that distribution under section 1446. UTP receives a net distribution of $65 which it immediately redistributes to its partners. UTP has a liability to pay 35 percent of the total actual and deemed distribution it makes to its foreign partners as a section 1446 withholding tax. UTP may credit the $35 withheld by LTP against this liability as if it were paid by UTP. When UTP distributes the $65 it actually receives from LTP to its partners, UTP is treated for purposes of section 1446 as if it made a distribution of $100 to its partners ($65 actual distribution and $35 deemed distribution). UTP's partners (U.S. and foreign) may claim a credit against their U.S. income tax liability for their allocable share of the $35 of 1446 tax paid on their behalf.

(2) *In-kind distributions.* If a publicly traded partnership distributes property other than money, the partnership shall not release the property until it has funds sufficient to enable the partnership to pay over in money the required 1446 tax.

(3) *Ordering rule relating to distributions.* Distributions from publicly traded partnerships are deemed to be paid out of the following types of income in the order indicated—

(i) Amounts attributable to income described in section 1441 or 1442 that are not effectively connected, without regard to whether such amounts are subject to withholding because of a treaty or statutory exemption;

(ii) Amounts attributable to recurring dispositions of crops and timber that are subject to withholding under § 1.1445–5(c)(3)(iv) of the regulations, which continue to be subject to the rules of § 1.1445–5(c)(3);

(iii) Amounts effectively connected with a U.S. trade or business, but not subject to withholding under section 1446 (*e.g.*, exempt by treaty);

(iv) Amounts subject to withholding under section 1446; and

(v) Amounts not listed in paragraphs (f)(3)(i) through (iv) of this section.

(4) *Coordination with section 1445(e)(1).* Except as otherwise provided in this section, a publicly traded partnership that complies with the requirements of withholding under section 1446 and this section will be deemed to have satisfied the requirements of section 1445(e)(1) and the regulations thereunder. Notwithstanding the excluded amounts set forth in paragraph (f)(3) of this section, distributions subject to withholding at the applicable percentage shall include the following—

(i) Amounts subject to withholding under section 1445(e)(1) upon distribution pursuant to an election under § 1.1445–5(c)(3); and

(ii) Amounts not subject to withholding under section 1445 because the distributee is a partnership or is a foreign corporation that has made an election under section 897(i).

(g) *Election to withhold based upon ECTI allocable to foreign partners instead of withholding on distributions.* A publicly traded partnership may elect to comply with the requirements of §§ 1.1446–1 through 1.1446–3 (relating to withholding on ECTI allocable to foreign partners) and § 1.1446–5 (relating to tiered partnership structures) instead of the rules of this section. A publicly traded partnership shall make the election described in this paragraph (g) by complying with the payment and reporting requirements of §§ 1.1446–1 through 1.1446–3 and by complying with the information reporting requirements of this paragraph (g). The election is made by attaching a statement to a timely filed Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)," that is required to be filed by the partnership for the taxable year, indicating that the partnership is a publicly traded partnership that is electing to pay the 1446 tax under section 1446 based upon ECTI allocable under section 704 to its foreign partners. Once made, an election under this paragraph (g) may be revoked only with the consent of the Commissioner.

§ 1.1446–5 Tiered partnership structures.

(a) *In general.* The rules of this section shall apply in cases where a partnership (lower-tier partnership) that has effectively connected taxable income (ECTI), has a partner that is itself a partnership (upper-tier partnership). A partnership that directly or indirectly (through a chain of partnerships) owns a partnership interest in a lower-tier partnership shall be allowed a credit against its own section 1446 withholding tax (1446 tax) for the tax paid by the lower-tier partnership on its behalf. If an upper-tier domestic partnership directly owns an interest in a lower-tier partnership, the lower-tier partnership is not required to pay a withholding tax with respect to the upper-tier partnership's allocable share

of effectively connected taxable income (ECTI), regardless of whether the upper-tier domestic partnership's partners are foreign.

(b) *Reporting requirements*—(1) *In general.* To the extent that an upper-tier partnership that is a foreign partnership is a partner in a lower-tier partnership, and the lower-tier partnership has made 1446 tax installment payments on ECTI allocable to the upper-tier partnership, the upper-tier partnership shall receive a copy of the statements and forms filed by the lower-tier partnership allocable to its partnership interest in the lower-tier partnership under §§ 1.1446–1 through 1.1446–3 (*e.g.*, Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax"). The upper-tier partnership may treat the 1446 tax paid by the lower-tier partnership on its behalf as a credit against its liability to pay 1446 tax, as if the upper-tier partnership actually paid over the amounts at the time that the amounts were paid by the lower-tier partnership. See § 1.1462–1(b). However, the upper-tier partnership may not obtain a refund for the amounts paid by the lower-tier partnership, but instead, must file such forms as prescribed by § 1.1446–3 and this section to allow the credits under section 33 to be properly claimed by the beneficial owners of such income. See § 1.1462–1. The upper-tier partnership must file Form 8804, "Annual Return for Partnership Withholding Tax (Section 1446)," and Form 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax," with respect to its 1446 tax obligation, passing the credit for 1446 tax paid by the lower-tier partnership to its partners.

(2) *Publicly traded partnerships.* In the case of an upper-tier foreign partnership that is a publicly traded partnership, the rules of § 1.1446–4(c) shall apply.

(c) *Look through rules for foreign upper-tier partnerships.* For purposes of computing the 1446 tax obligation of a lower-tier partnership, if an upper-tier partnership owns an interest in the lower-tier partnership, the upper-tier partnership's allocable share of the lower-tier partnership's ECTI shall be treated as allocable to the partners of the upper-tier partnership (as if they were direct partners in the lower-tier partnership) to the extent that—

(1) The upper-tier partnership furnishes the lower-tier partnership with a valid Form W–8IMY, "Certificate of Foreign Intermediary, Flow Through Entity, or Certain U.S. Branches for United States Tax Withholding," indicating that it is a look-through foreign partnership for purposes of section 1446, and

(2) The lower-tier partnership can reliably associate (within the meaning of § 1.1441–1(b)(2)(vii)) the effectively connected partnership items allocable to the upper-tier partnership with a Form W–8BEN, "Certificate of Foreign Status of Beneficial Owner for U.S. Tax Withholding," Form W–8IMY, or Form W–9, "Request for Taxpayer Identification Number and Certification," for each of the upper-tier partnership's partners. The principles of § 1.1441–1(b)(2)(vii) shall apply to determine whether a lower-tier partnership can reliably associate effectively connected partnership items allocable to the upper-tier partnership to the partners of the upper-tier partnership. The upper-tier partnership shall provide the lower-tier partnership with a withholding certificate for each partner in the upper-tier partnership and information regarding the allocation of effectively connected items to the respective partners of the upper-tier partnership. To the extent the lower-tier partnership receives a valid Form W–8IMY from the upper-tier partnership but cannot reliably associate the upper-tier partnership's allocable share of effectively connected partnership items with a withholding certificate for each of the upper-tier partnership's partners, the lower-tier partnership shall withhold at the higher of the applicable percentages in section 1446(b). If a lower-tier partnership has not received a valid Form W–8IMY from the upper-tier partnership, the lower-tier partnership shall withhold at the higher of the applicable percentages in section 1446(b). See § 1.1446–1(c)(3). The approach set forth in this paragraph (c) shall not apply to partnerships whose interests are publicly traded. See § 1.1446–4.

(d) *Examples.* The following examples illustrate the provisions of § 1.1446–5:

Example 1. Sufficient documentation—tiered partnership structure. (i) Nonresident alien (NRA) and foreign corporation (FC) are partners in PRS, a foreign partnership, and share profits and losses in PRS 70 and 30 percent, respectively. All of PRS's partnership items are allocated based upon each partner's respective ownership interest and it is assumed that these allocations are respected under section 704(b) and the regulations thereunder. NRA and FC each furnish PRS with a valid Form W–8BEN establishing themselves as a foreign individual and foreign corporation, respectively. PRS holds a 40 percent interest in the profits, losses and capital of LTP, a lower-tier partnership. NRA holds the remaining 60 percent interest in profits, losses and capital of LTP. LTP has $100 of annualized ECTI for the relevant installment period. PRS has no income other than the income allocated from LTP. PRS provides LTP with a valid Form W–8IMY indicating that it is a foreign partnership and attaches the valid Form W–8BENs executed by NRA and FC, as well as a statement describing the allocation of PRS's effectively connected items among its partners. Further, NRA provides a valid Form W–8BEN to LTP.

(ii) LTP must pay 1446 tax on the $60 allocable to its direct partner NRA using the highest rate in section 1.

(iii) With respect to the effectively connected partnership items that LTP can reliably associate with NRA through PRS (70 percent of PRS's allocable share, or $28), LTP will pay 1446 tax on NRA's allocable share of LTP's partnership ECTI (as determined by looking through PRS) using the applicable percentage for non-corporate partners (the highest rate in section 1).

(iv) With respect to the effectively connected partnership items that LTP can reliably associate with FC through PRS (30 percent of PRS's allocable share, or $12), LTP will pay 1446 tax on FC's allocable share of LTP's ECTI (as determined by looking through PRS) using the applicable percentage for corporate partners.

(v) LTP's payment of the 1446 tax is treated as a distribution to NRA and PRS, its direct partners, that those partners may credit against their respective tax obligations. PRS will report its 1446 tax obligation with respect to its direct foreign partners, NRA and FC, on the Form 8804 and Form 8805 that it files with the Internal Revenue Service and will credit the amount withheld by LTP. Thus, PRS will pass along to NRA and FC the credit for the 1446 tax withheld by LTP which will be treated as a distribution to them.

Example 2. Insufficient documentation—tiered partnership structure. PRS is a domestic partnership that has two equal partners A and UTP. A is a nonresident alien individual and UTP is a foreign partnership that has two equal foreign partners, C and D. Neither A nor UTP provide PRS with a valid Form W–8BEN, Form W–8IMY, or Form W–9. Neither C nor D provide UTP with a valid Form W–8BEN, Form W–8IMY, or Form W–9. PRS must presume that UTP is a foreign person subject to withholding under section 1446 at the higher of the highest rate under section 1 or 11(b)(1). PRS has also not received any documentation with respect to A. PRS must presume that A is a foreign person, and, if PRS knows that A is an individual, compute and pay 1446 tax based on that knowledge.

§ 1.1446–6 Effective date.

Sections 1.1446–1 through 1.1446–5 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

Par. 5. Section 1.1461–1 is amended as follows:

1. Paragraph (a)(1) is amended by adding three sentences at the end of the paragraph.

2. The second sentence of paragraph (c)(1)(i) is removed and two sentences are added in its place.

3. Paragraph (c)(1)(ii)(A)(*8*) is redesignated as paragraph (c)(1)(ii)(A)(*9*), and a new paragraph (c)(1)(ii)(A)(*8*) is added.

4. The first sentence of paragraph (c)(2)(i) is removed and two sentences are added in its place.

5. The first sentence of paragraph (c)(3) is removed and two sentences are added in its place.

6. Paragraph (i) is revised.

The additions and revisions read as follows:

§ 1.1461–1 Payment and returns of tax withheld.

(a) * * *

(1) * * * With respect to withholding under section 1446, this section shall only apply to publicly traded partnerships that have not made an election under § 1.1446–4(g). See § 1.1461–3 for penalties applicable to partnerships that fail to withhold under section 1446 on effectively connected taxable income allocable to foreign partners, including a publicly traded partnership that has made an election under § 11446–4(g). The previous two sentences shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * * * *

(c) * * *

(1) * * *

(i) * * * Notwithstanding the preceding sentence, any person that withholds or is required to withhold an amount under sections 1441, 1442, 1443, or § 1.1446–4(a) must file a Form 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding," for the payment withheld upon whether or not that person is engaged in a trade or business and whether or not the payment is an amount subject to reporting. The reference in the previous sentence to withholding under § 1.1446–4 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * *

(ii) * * *

(A) * * *

(*8*) A partner receiving a distribution from a publicly traded partnership subject to withholding under section 1446 and § 1.1446–4. This paragraph (c)(1)(ii)(A)(*8*) shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * * * *

(2) *Amounts subject to reporting*—(i) *In general.* Subject to the exceptions described in paragraph (c)(2)(ii) of this section, amounts subject to reporting on Form 1042–S are amounts paid to a foreign payee or partner (including persons presumed to be foreign) that are amounts subject to withholding as defined in § 1.1441–2(a) or § 1.1446–4(a). The reference in the previous sentence to withholding under § 1.1446–4 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * *

* * * * *

(3) *Required information.* The information required to be furnished under this paragraph (c)(3) shall be based upon the information provided by or on behalf of the recipient of an amount subject to reporting (as corrected and supplemented based on the withholding agent's actual knowledge) or the presumption rules of §§ 1.1441–1(b)(3), 1.1441–4(a); 1.1441–5(d) and (e); 1.1441–9(b)(3), 1.1446–1(c)(3) or 1.6049–5(d). The reference in the previous sentence to presumption rules applicable to withholding under section 1446 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * *

* * * * *

(i) *Effective date.* Unless otherwise provided in this section, this section shall apply to returns required for payments made after December 31, 2000.

Par. 6. Section 1.1461–2 is amended by:

1. Removing the first sentence of paragraph (a)(1) and adding two sentences in its place.

2. Revising paragraphs (b) and (d).

The revisions and addition read as follows:

§ 1.1461–2 Adjustments for overwithholding or underwithholding of tax.

(a) *Adjustments of overwithheld tax*—(1) *In general.* Except for partnerships or nominees required to withhold under section 1446, a withholding agent that has overwithheld under chapter 3 of the Internal Revenue Code, and made a deposit of the tax as provided in § 1.6302–2(a) may adjust the overwithheld amount either pursuant to the reimbursement procedure described in paragraph (a)(2) of this section or pursuant to the set-off procedure described in paragraph (a)(3) of this section. References in the previous sentence excepting from this section certain partnerships withholding under section 1446 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * *

* * * * *

(b) *Withholding of additional tax when underwithholding occurs.* A withholding agent may withhold from future payments (or a partner's allocable share of ECTI under section 1446) made to a beneficial owner the tax that should have been withheld from previous payments (or paid under section 1446 with respect to a partner's allocable share of ECTI) to such beneficial owner under chapter 3 of the Internal Revenue Code. In the alternative, the withholding agent may satisfy the tax from property that it holds in custody for the beneficial owner or property over which it has control. Such additional withholding or satisfaction of the tax owed may only be made before the date that the annual return (*e.g.* Form 1042, Form 8804) is required to be filed (not including extensions) for the taxable year in which the underwithholding occurred. See § 1.6302–2 for making deposits of tax or § 1.1461–1(a) for making payment of the balance due for a calendar year. See also §§ 1.1461–1, 1.1461–3, and 1.1446–1 through 1.1446–5 for rules relating to withholding under section 1446. References in this paragraph (b) to withholding under section 1446 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

* * * * *

(d) *Effective date.* Unless otherwise provided in this section, this section applies to payments made after December 31, 2000.

Par. 7. Section 1.1461–3 is added to read as follows.

§ 1.1461–3 Withholding under section 1446.

For rules relating to the withholding tax liability of a partnership or nominee under section 1446, see §§ 1.1446–1 through 1.1446–6. For penalties and additions to the tax for failure to timely pay the tax required to be paid under section 1446, see sections 6655 (in the case of publicly traded partnerships that have not made an election under § 1.1446–4(g), see section 6656), 6672, and 7202 and the regulations under those sections. For penalties and additions to the tax for failure to file returns or furnish statements in accordance with the regulations under section 1446, see sections 6651, 6662, 6663, 6721, 6722, 6723, 6724(c), 7201, 7203, and the regulations under those sections. This section shall apply to partnership taxable years beginning after the date that these regulations are

published as final regulations in the **Federal Register**.

Par. 8. Section 1.1462–1 is amended by revising paragraphs (b) and (c) to read as follows:

§ 1.1462–1 Withheld tax as credit to recipient of income.

* * * * *

(b) *Amounts paid to persons who are not the beneficial owner.* Amounts withheld at source under chapter 3 of the Internal Revenue Code on payments to (or effectively connected taxable income allocable to) a fiduciary, partnership, or intermediary is deemed to have been paid by the taxpayer ultimately liable for the tax upon such income. Thus, for example, if a beneficiary of a trust is subject to the taxes imposed by section 1, 2, 3, or 11 upon any portion of the income received from a foreign trust, the part of any amount withheld at source which is properly allocable to the income so taxed to such beneficiary shall be credited against the amount of the income tax computed upon the beneficiary's return, and any excess shall be refunded. See § 1.1446–3 for examples applying this rule in the context of a partnership interest held through a foreign trust or estate. Further, if a partnership withholds an amount under chapter 3 of the Internal Revenue Code with respect to the distributive share of a partner that is a partnership or with respect to the distributive share of partners in an upper-tier partnership, such amount is deemed to have been withheld by the upper-tier partnership. See § 1.1446–5 for rules applicable to tiered partnership structures. References in this paragraph (b) to withholding under section 1446 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

(c) *Effective date.* Unless otherwise provided in this section, this section applies to payments made after December 31, 2000.

Par. 9. Section 1.1463–1 is amended by:

1. Adding two sentences at the end of paragraph (a).

2. Revising paragraph (b).

The addition and revision read as follows:

§ 1.1463–1 Tax paid by recipient of income.

(a) * * * See § 1.1446–3(f) for additional rules where the tax was required to be withheld under section 1446. The reference in the previous sentence to withholding under section 1446 shall apply to partnership taxable years beginning after the date that these regulations are published as final regulations in the **Federal Register**.

(b) *Effective date.* Unless otherwise provided in this section, this section applies to failures to withhold occurring after December 31, 2000.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 10. The authority for 26 CFR part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 11. In § 301.6109–1 is amended as follows:

1. In paragraph (b)(2)(vi), remove the word "and".

2. In paragraph (b)(2)(vii), remove the period at the end of the paragraph and add "; and" in its place.

3. Paragraph (b)(2)(viii) is added.

4. In paragraph (c), the first three sentences are revised and a sentence is added at the end of the paragraph.

The amendments and additions read as follows:

§ 301.6109–1 Identifying numbers.

* * * * *

(b) * * *

(2) * * *

(viii) A foreign person that furnishes a withholding certificate described in § 1.1446–1(c)(2) or (3) of this chapter. This paragraph (b)(2)(viii) shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

(c) *Requirement to furnish another's number.* Every person required under this title to make a return, statement, or other document must furnish such taxpayer identifying numbers of other U.S. persons and foreign persons that are described in paragraph (b)(2)(i), (ii), (iii), (vi), (vii), or (viii) of this section as required by the forms and the accompanying instructions. The taxpayer identifying number of any person furnishing a withholding certificate referred to in paragraph (b)(2)(vi) or (viii) of this section shall also be furnished if it is actually known to the person making a return, statement, or other document described in this paragraph (c). If the person making the return, statement, or other document does not know the taxpayer identifying number of the other person, and such other person is one that is described in paragraph (b)(2)(i), (ii), (iii), (vi), (vii), or (viii) of this section, such person must request the other person's number. * * * References in this paragraph (c) to paragraph (b)(2)(viii) of this section shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

* * * * *

Par. 12. In § 301.6721–1, paragraph (g)(4) is revised to read as follows:

§ 301.6721–1 Failure to file correct information returns.

* * * * *

(g) * * *

(4) *Other items.* The term *information return* also includes any form, statement, or schedule required to be filed with the Internal Revenue Service with respect to any amount from which tax is required to be deducted and withheld under chapter 3 of the Internal Revenue Code (or from which tax would be required to be so deducted and withheld but for an exemption under the Internal Revenue Code or any treaty obligation of the United States), generally Forms 1042–S, "Foreign Person's U.S. Source Income Subject to Withholding," and 8805, "Foreign Partner's Information Statement of Section 1446 Withholding Tax." The provisions of this paragraph (g)(4) referring to Form 8805, shall apply to partnership taxable years beginning after the date these regulations are published as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–22175 Filed 9–2–03; 8:45 am]

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H.R. 2854/P.L. 108–74

To amend title XXI of the Social Security Act to extend the availability of allotments for fiscal years 1998 through 2001 under the State Children's Health Insurance Program, and for other purposes. (Aug. 15, 2003; 117 Stat. 892)

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Higher Education Relief Opportunities for Students Act of 2003 (Aug. 18, 2003; 117 Stat. 904)

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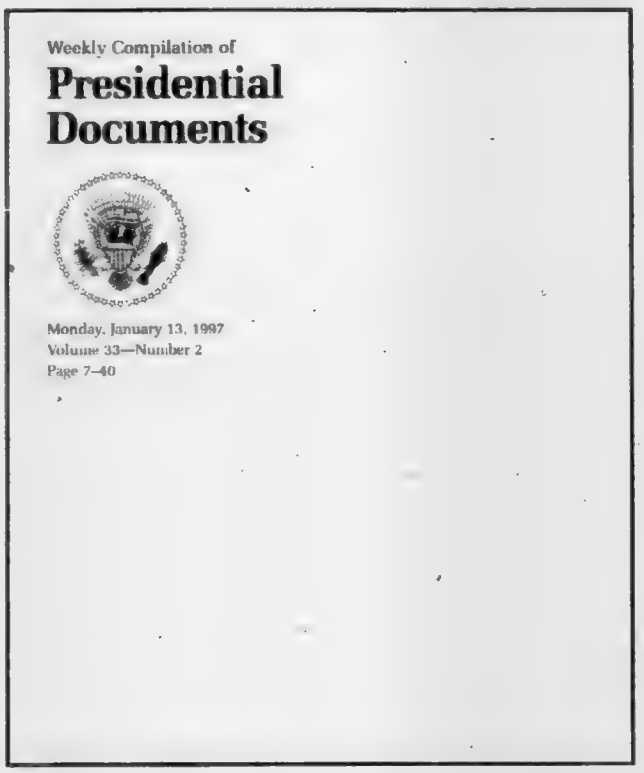

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9–4–03 Thursday
Vol. 68 No. 171 Sept. 4, 2003

Pages 52485–52678

Federal Register

200-001 D Sig-1

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

5 CFR Part 7201

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Equal Employment Opportunity Commission

AGENCY: Equal Employment Opportunity Commission (EEOC or Commission).

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission, with the concurrence of the Office of Government Ethics (OGE), amends the Supplemental Standards of Conduct for Employees of the Equal Employment Opportunity Commission by adding a sentence permitting EEOC employees to represent other EEOC employees in administrative equal employment opportunity (EEO) proceedings unless there is a conflict of interest.

EFFECTIVE DATE: This rule is effective on September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas J. Schlageter, Assistant Legal Counsel, at (202) 663–4668, or Kathleen Oram, Senior Attorney, at (202) 663–4681, or TTY (202) 663–7026. This final rule issuance is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this rule in an alternative format should be made to EEOC's publications center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: On February 26, 1996, with the concurrence and co-signature of OGE, EEOC published its interim rule establishing supplemental standards of ethical conduct for employees of EEOC (61 FR 7065–7067). The Commission, with OGE concurrence and co-signature, published a final rule adopting the interim rule on July 8, 1997 (62 FR 36447). EEOC, again with OGE's concurrence and co-signature, is amending the restriction contained in 5 CFR 7201.102(c) of its supplemental standards, prohibiting certain kinds of outside employment, to permit EEOC employees to represent without compensation other EEOC employees in EEO administrative complaint proceedings. Both exceptions to the general prohibition in paragraph (c), including the existing one for behind-the-scenes assistance to family members, will still require prior approval under § 7201.103 of the supplemental regulation to ensure there are no conflicts. The change will make EEOC's supplemental regulation more consistent with the exception contained in 18 U.S.C. § 205(d)(1)(A), which permits Federal employees, if not inconsistent with the faithful performance of their duties, to represent without compensation other employees who are the subject of disciplinary, loyalty, or other personnel administration proceedings. EEOC notes that this amendment as to representation of other EEOC employees is also consistent with 29 CFR 1614.605, which generally allows an EEO complainant to choose a representative, subject to the possibility of disqualification of the representative if representation would conflict with the representative's official or collateral duties. The prohibition will remain, however, on EEOC employees representing employees of other Federal agencies in EEO proceedings, because the Commission is concerned about a possible perception that EEO office personnel or EEOC administrative judges would give EEOC employees deference in the proceedings.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) and (d), the EEOC has determined that good cause exists for waiving the general notice of proposed rulemaking, opportunity for public comment and 30-day delayed effective date as to these revisions. Notice, comment and delayed effectiveness are being waived because these amendments concern matters of agency organization, practice and procedure. Moreover, it is in the public interest that the revisions take effect promptly.

Regulatory Flexibility Act

The EEOC has determined under the Regulatory Flexibility Act, 5 U.S.C. Chapter 6, that this rule will not have a significant economic impact on a substantial number of small entities because it only affects Commission employees.

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. chapter 35, does not apply to these final rule amendments because they do not contain any information collection requirements subject to approval by the Office of Management and Budget.

Congressional Review Act

The EEOC has determined that this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress. This rulemaking is related to EEOC personnel.

Executive Order Nos. 12866 and 12988

Since this rule relates to EEOC personnel, it is exempt from the provisions of Executive Orders Nos. 12866 and 12988.

List of Subjects in 5 CFR Part 7201

Conflict of interests, Ethics, Executive branch standards of conduct, Government employees.

Dated: August 12, 2003.

For the Commission,

Cari L. Dominguez,

Chair.

Approved: August 22, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

■ For the reasons set forth in the preamble, the Equal Employment Opportunity Commission, with the concurrence of the Office of Government Ethics, is amending part 7201 of title 5 of the Code of Federal Regulations as follows:

PART 7201—SUPPLEMENTAL STANDARDS OF CONDUCT FOR EMPLOYEES OF THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

■ 1. The authority citation for part 7201 continues to read as follows:

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p.

215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.802 and 2635.803.

■ 2. Section 7201.102 is amended by revising paragraph (c) to read as follows:

§ 7201.102 Prohibited outside employment.

* * * * *

(c) No employee of the Equal Employment Opportunity Commission, other than a special Government employee, may engage in outside employment involving a particular matter pending at EEOC or an equal employment opportunity matter in which EEOC or the Federal government is a party. An employee may, however, with prior approval, provide uncompensated behind-the-scenes assistance to immediate family members in matters pending at EEOC or equal employment opportunity matters in which EEOC or the Federal government is a party. An employee may also, with prior approval, represent without compensation another EEOC employee in an administrative equal employment opportunity complaint against EEOC.

[FR Doc. 03–22483 Filed 9–3–03; 8:45 am]
BILLING CODE 6570–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T]

Credit by Brokers and Dealers; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Foreign Margin Stocks (Foreign List) is composed of certain foreign equity securities that qualify as *margin securities* under Regulation T. The Foreign List is published twice a year by the Board.

EFFECTIVE DATE: September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Financial Analyst, Division of Banking Supervision and Regulation, (202) 452–2837, or Scott Holz, Senior Counsel, Legal Division, (202) 452–2966, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Listed below is a complete edition of the Board's Foreign List. The Foreign List was last published on February 27, 2003 (68 FR 8993), and became effective March 1, 2003.

The Foreign List is composed of foreign equity securities that qualify as margin securities under Regulation T by meeting the requirements of § 220.11(c) and (d). Additional foreign securities qualify as margin securities if they are deemed by the Securities and Exchange Commission (SEC) to have a "ready market" under SEC Rule 15c3–1 (17 CFR 240.15c3–1) or a "no-action" position issued thereunder. This includes all foreign stocks in the FTSE World Index Series.

It is unlawful for any creditor to make, or cause to be made, any representation to the effect that the inclusion of a security on the Foreign List is evidence that the Board or the SEC has in any way passed upon the merits of, or given approval to, such security or any transactions therein. Any statement in an advertisement or other similar communication containing a reference to the Board in connection with the Foreign List or the stocks thereon shall be an unlawful representation.

There are no additions to, or deletions from, the Foreign List.

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Foreign List specified in § 220.11(c) and (d). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of the Foreign List as soon as possible. The Board has responded to a request by the public and allowed approximately a one-week delay before the Foreign List is effective.

List of Subjects in 12 CFR Part 220

Brokers, Credit, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

■ Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 220.2 and 220.11, there is set forth below a complete edition of the Foreign List.

Japan

Akita Bank, Ltd., ¥50 par common
Aomori Bank, Ltd., ¥50 par common
Asatsu-Dk Inc., ¥50 par common
Bank of Nagoya, Ltd., ¥50 par common
Chudenko Corp., ¥50 par common
Chugoku Bank, Ltd., ¥50 par common
Daihatsu Motor Co., Ltd., ¥50 par common
Dainippon Screen Mfg. Co., Ltd., ¥50 par common
Denki Kagaku Kogyo, ¥50 par common
Eighteenth Bank, Ltd., ¥50 par common
Futaba Corp., ¥50 par common
Futaba Industrial Co., Ltd., ¥50 par common
Higo Bank, Ltd., ¥50 par common
Hitachi Software Engineering Co., Ltd., ¥50 par common
Hokkoku Bank, Ltd., ¥50 par common
Hokuetsu Paper Mills, Ltd., ¥50 par common
Iyo Bank, Ltd., ¥50 par common
Japan Airport Terminal Co., Ltd., ¥50 par common
Juroku Bank, Ltd, ¥50 par common
Kagoshima Bank, Ltd., ¥50 par common
Kamigumi Co., Ltd., ¥50 par common
Katokichi Co., Ltd., ¥50 par common
Keisei Electric Railway Co., Ltd., ¥50 par common
Keiyo Bank, Ltd., ¥50 par common
Komori Corp., ¥50 par common
Konami Co., Ltd., ¥50 par common
Michinoku Bank, Ltd., ¥50 par common
Musashino Bank, Ltd., ¥500 par common
Namco, Ltd., ¥50 par common
Nichicon Corp., ¥50 par common
Nihon Unisys, Ltd., ¥50 par common
Nishi-Nippon Bank, Ltd., ¥50 par common
Nishi-Nippon Railroad Co., Ltd., ¥50 par common
Nissan Chemical Industries, Ltd., ¥50 par common
Ogaki Kyoritsu Bank, Ltd., ¥50 par common
Q.P. Corp., ¥50 par common
Rinnai Corporation, ¥50 par common
Sagami Railway Co., Ltd., ¥50 par common
Sakata Seed Corp., ¥50 par common
Santen Pharmaceutical Co., Ltd., ¥50 par common
Shimadzu Corp., ¥50 par common
Shimamura Co., Ltd., ¥50 par common
Sumitomo Rubber Indsutries, Ltd., ¥50 par common
Taiyo Yuden Co., Ltd., ¥50 par common
Takara Standard Co., Ltd., ¥50 par common
Toho Bank, Ltd., ¥50 par common
Toho Gas Co., Ltd., ¥50 par common
Tokyo Ohka Kogyo Co., Ltd., ¥50 par common
Uni-Charm Corp., ¥50 par common
Ushio, Inc., ¥50 par common

Yamaha Motor Co., Ltd., ¥50 par common

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), August 28, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–22532 Filed 9–3–03; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–33–AD; Amendment 39–13282; AD 2003–16–51]

RIN 2120–AA64

Airworthiness Directives; Schempp-Hirth Flugzeugbau GmbH Model Duo-Discus Gliders

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2003–16–51, which was published in the **Federal Register** on August 20, 2003 (68 FR 50055), and applies to certain Schempp-Hirth (SCHEMPP–HIRTH) Flugzeugbau GmbH Model Duo-Discus gliders. We inadvertently omitted certain regulatory text in 14 CFR part 39. This action corrects the regulatory text.

EFFECTIVE DATE: The effective date of this AD remains August 20, 2003.

FOR FURTHER INFORMATION CONTACT: Gregory Davidson, Aerospace Engineer, FAA, Small Airplane Directorate, Room 301, 901 Locust, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

On August 12, 2003, FAA issued AD 2003–16–51, Amendment 39–13282 (68 FR 50055, August 20, 2003), which applies to certain SCHEMPP–HIRTH Model Duo-Discus gliders. This AD requires you to accomplish a one-time inspection of the bonding of the spar cap and spar web, and repair any defective bonding of the spar cap and spar web.

Need for the Correction

The FAA inadvertently omitted Amendment 39–13282 in the regulatory portion of the AD (in 14 CFR part 39). The information is included in the preamble of the AD. The amendment number is needed for appropriate logbook entry for the affected airplane owners/operators if the preamble of the AD is not available.

Correction of Publication

■ Accordingly, the publication of August 20, 2003 (68 FR 50055), of Amendment 39–13282; AD 2003–16–51, is corrected as follows:

§ 39.13 [Corrected]

■ On page 50056, in § 39.13 [Amended], in the third column, add the words "Amendment 39–13282; " after "GmbH:".

■ Action is taken herein to correct this reference in AD 2003–16–51 and to add this AD correction to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains August 20, 2003.

Issued in Kansas City, Missouri, on August 28, 2003.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22494 Filed 9–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15721; Airspace Docket No. 03–ACE–63]

Modification of Class E Airspace; Sullivan, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Monday, August 18, 2003, (68 FR 49348) [FR Doc. 03–21081.]. It corrects an error in the Sullivan Regional Airport airport reference point used in the Sullivan, MO Class E airspace area legal description.

DATES: This direct final rule is effective on 0901 UTC, December 25, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register document 03–21081, published on Monday, August 18, 2003 (68 FR 49348) modified Class E airspace at Sullivan, MO. The modification was to correct a discrepancy in the Sullivan Regional Airport airport reference point used in the Sullivan, MO Class E airspace area and to bring the legal description into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. However, the revised Sullivan Regional Airport airport reference point was published incorrectly.

■ Accordingly, pursuant to the authority delegated to me, the Sullivan, MO Class E airspace, as published in the **Federal Register** on Monday, August 18, 2003, (68 FR 49348), [FR Doc. 03–21081] is corrected as follows:

§ 71.1 [Corrected]

■ On page 49349, Column 1, paragraph headed "ACE MO E5 Sullivan, MO," second line, change "long. 92°09′51" to read "long. 91°09′51."

Issued in Kansas City, MO on August 20, 2003.

David H. Hope,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–22466 Filed 9–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9089]

RIN 1545–BC39

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations under section 1502 that govern the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income. These temporary regulations affect corporations filing consolidated returns. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective August 29, 2003.

FOR FURTHER INFORMATION CONTACT: Amber Renee Cook or Marie C. Milnes-Vasquez at (202) 622–7530 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 61(a)(12) of the Internal Revenue Code provides that gross income includes income from the discharge of indebtedness, except as provided by law. Section 108(a) provides that gross income of a C corporation does not include any amount that would otherwise be includible in gross income by reason of the discharge, in whole or in part, of indebtedness of the taxpayer if the discharge occurs in a title 11 case (section 108(a)(1)(A)), the discharge occurs when the taxpayer is insolvent, but only to the extent of the insolvency (section 108(a)(1)(B)), or the indebtedness discharged is qualified farm indebtedness (section 108(a)(1)(C)).

Although section 108 does not require certain taxpayers to include discharge of indebtedness income in gross income, it does require the reduction of tax attributes. Section 108(b)(1) provides that if a taxpayer excludes an amount from gross income under section 108(a)(1)(A), (B), or (C), the taxpayer must reduce its tax attributes by the amount excluded. Absent an election under section 108(b)(5) (described below), pursuant to section 108(b)(2), tax attributes are reduced in the following order: net operating losses and net operating loss carryovers, general business credits under section 38, minimum tax credits under section 53(b), net capital losses and capital loss carryovers, asset basis, passive activity loss and credit carryovers under section 469(b), and foreign tax credits and foreign tax credit carryovers. Section 108(b)(5) provides that the taxpayer may elect to apply any portion of excluded discharge of indebtedness income to first reduce basis in depreciable assets under the rules of section 1017. Any amount of debt discharge that remains after attribute reduction is not includible in income. *See* H.R. Rep. 96–833 at 11 (1980); S. Rep. No. 96–1035 at 12 (1980).

These provisions are designed to "preserve the debtor's 'fresh start' after bankruptcy." H.R. Rep. 96–833 at 9 (1980); *see* S. Rep. No. 96–1035 at 10 (1980). In addition, they are intended to "carry out the Congressional intent of deferring, but eventually collecting within a reasonable period, tax on ordinary income realized from debt discharge." H.R. Rep. 96–833 at 9 (1980); see S. Rep. No. 96–1035 at 10 (1980). By making attributes unavailable to offset income in later years, the provisions offer the debtor a temporary, rather than a permanent, deferral of tax.

Questions have arisen regarding the application of section 108 when the taxpayer with discharge of indebtedness income that is excluded from gross income is a member of a consolidated group. In particular, questions have arisen regarding the determination of the attributes that are available for reduction in a consolidated group and the method for reducing those attributes. These regulations provide guidance regarding those questions.

Explanation of Provisions

A. Application of Section 108(a)(1)(B)

As described above, pursuant to section 108(a)(1)(B), gross income of an insolvent C corporation does not include any amount that would otherwise be includible in gross income by reason of the discharge, in whole or in part, of indebtedness of the taxpayer, but only to the extent of the insolvency. The IRS and Treasury believe that computing the amount of the insolvency for purposes of section 108(a)(1)(B) with respect to only the debtor member reflects that, without an agreement that provides otherwise, the assets of members other than the debtor member will not be available to satisfy claims of the creditors of the debtor member. Therefore, these temporary regulations provide that the amount of discharge of indebtedness income excluded from gross income in the case in which the debtor is insolvent is determined based on the assets and liabilities of only the member with discharge of indebtedness income.

B. Application of Section 108(b)

1. Consolidated Approach

The IRS and Treasury Department have considered a separate entity approach and various consolidated approaches to the application of the attribute reduction rules of section 108(b) in the consolidated group context. As explained below, these regulations adopt a consolidated approach that reduces all attributes that are available to the debtor.

The IRS and Treasury Department have rejected a separate entity approach. Such an approach would reduce only the attributes attributable to the member with excluded discharge of indebtedness income. The IRS and Treasury Department have rejected this approach because it fails to take into account the fact that consolidated attributes that are attributable to other members will be available to offset income of the debtor member as long as the debtor is a member of the group. A separate entity approach could result in the permanent exclusion of discharge of indebtedness income when there are other attributes available to the debtor member.

In the view of the IRS and Treasury Department, the policies underlying section 108 require a consolidated approach that reduces all attributes that are available to the debtor. An approach that does not reduce all of such attributes is inconsistent with Congressional intent that income realized from debt discharge generally be deferred and not permanently eliminated. Furthermore, reducing all of the consolidated attributes available to the debtor member reflects the principle enunciated by the Supreme Court in *United Dominion Indus., Inc.* v. *United States*, 532 U.S. 822 (2001), that, in general, the only net operating loss of a consolidated group or its members for a consolidated return year is the consolidated net operating loss. Consistent with *United Dominion*, the tax attributes subject to reduction under section 108(b) when the debtor is a member of a consolidated group include the group's consolidated attributes in their entirety. Therefore, these temporary regulations provide for the reduction of consolidated net operating losses and all other consolidated tax attributes, including consolidated tax attributes that are attributable to members other than the debtor member.

When the debtor is a member of a consolidated group, consolidated tax attributes attributable to other members may be used to offset income of the debtor member. That ability may enable the debtor member to offset future income with the consolidated attributes attributable to other members. As a result, unless such other attributes are reduced, discharge of indebtedness income that is excluded from gross income may never result in taxable income.

Unlike consolidated attributes, the basis of assets held by members other than the debtor member is not directly available to offset income of the debtor member. In fact, the basis of assets held by members other than the debtor member may never give rise to an attribute that could be directly available to offset income of a member of the group for a consolidated return year. Therefore, as explained below, these temporary regulations provide for a reduction of basis of assets of members other than the debtor member only in limited circumstances.

2. Ordering Rule

Under these temporary regulations, the attributes attributable to the debtor member are first subject to reduction. For this purpose, attributes attributable to the debtor member include (1) consolidated attributes attributable to the debtor member, (2) attributes that arose in separate return limitation years of the debtor member, and (3) the basis of property of the debtor member. The amount of a consolidated attribute attributable to the debtor member is determined pursuant to the principles of § 1.1502–21(b). To the extent that the excluded discharge of indebtedness income exceeds the attributes attributable to the debtor member, these temporary regulations require the reduction of consolidated attributes attributable to other members and attributes attributable to members other than the debtor member that arose (or are treated as arising) in a separate return limitation year to the extent that the debtor member is a member of the separate return limitation year subgroup with respect to such attribute.

The availability of tax attributes attributable to other members of a consolidated group to reduce the future income of the debtor member creates the possibility of shifting the location of tax attributes and future tax liability. Preserving the location of tax items within the group is a fundamental policy underlying the consolidated return regulations which is reflected in a number of such regulations. *See, e.g.*, § 1.1502–13 (regarding intercompany transactions); § 1.1502–21 (regarding the use of attributes that arise in separate return limitation years). Location is particularly important when a member leaves the group and no longer shares the attributes attributable to it with, or uses the attributes attributable to, the other members. This sharing of tax attributes can shift the location of items within the group, affecting the amount of consolidated tax attributes that a member takes with it when it leaves the group.

The IRS and Treasury Department did not adopt an alternative consolidated approach that would require the reduction of consolidated attributes attributable to other members prior to the reduction of all of the attributes attributable to the debtor member. Such an approach would not preserve the location of income in the debtor member resulting from the reduction of attributes as effectively as the approach adopted in these temporary regulations. For example, a reduction of the consolidated attributes attributable to each member before the reduction of all of the attributes attributable to the debtor member could cause a shifting of the tax burden if the debtor member subsequently leaves the group. In that case, the debtor member may take with it a larger portion of the consolidated attributes than it otherwise would, while a portion of the consolidated attributes attributable to other members would be reduced. The larger portion of the consolidated attributes that the debtor member would take with it would be available to offset future income of the debtor member, while the remaining members of the group would bear a higher tax burden as a result of the unavailability of those consolidated attributes.

These temporary regulations achieve the dual objectives of subjecting the entire amount of consolidated attributes to reduction *and* preserving the location of future income that is deferred by first reducing attributes attributable to the debtor member, including consolidated attributes, in the order prescribed in section 108(b) and then reducing the remaining amount of consolidated attributes. This ordering rule reduces the potential to shift the location of attributes within the group.

3. Look-Through Rule

The adopted approach include a look-through rule that applies if the attribute of the debtor member reduced is the basis of stock of another member of the group. In these cases, corresponding adjustments must be made to the attributes attributable to the lower-tier member. To effect those corresponding adjustments, these temporary regulations treat the lower-tier member as a debtor member that has discharge of indebtedness income that is excluded from gross income in the amount of the stock basis reduction for purposes of the rules relating to the reduction of the attributes attributable to a debtor member. For this purpose, the consolidated attributes attributable to the lower-tier member (determined pursuant to the principles of § 1.1502–21(b)) as well as the lower-tier member's separate attributes (including attributes that arose in separate return limitation years and asset basis) are available for reduction. The look-through rule is consistent with the treatment of a group as a single taxpayer under a number of the consolidated return regulations, including the provisions allowing the consolidated tax attributes attributable to one member of a group to offset income of other members of the group and the investment adjustment rules that adjust the basis of subsidiary stock to reflect the income and absorbed losses of the subsidiary.

C. Corresponding Amendments

Included in these temporary regulations are amendments to certain provisions of the consolidated return regulations that reflect the attribute reduction rules that apply when the debtor is a member of a consolidated group. The following paragraphs describe these amendments.

1. The Investment Adjustment Rules

Under § 1.1502–32(b)(3)(ii)(C), discharge of indebtedness income of a subsidiary that is excluded from gross income is treated as tax-exempt income for purposes of the investment adjustment rules only to the extent it is applied to reduce attributes. For this purpose, a discharge of indebtedness is treated as applied to reduce tax attributes only to the extent the attribute reduction is taken into account as a noncapital, nondeductible expense under § 1.1502–32. The investment adjustment rules of § 1.1502–32 do not apply to affect the basis of the stock of the common parent of a group. Therefore, to the extent that discharge of indebtedness income reduces consolidated attributes that are attributable to the common parent, no positive basis adjustment is made to the stock of the subsidiary. Furthermore, because the reduction of a tax credit is not a noncapital, nondeductible expense, to the extent that the discharge of indebtedness income reduces a tax credit, no positive basis adjustment is made to the stock of the subsidiary.

The IRS and Treasury Department believe that a positive basis adjustment should be made to the basis of the stock of a debtor subsidiary even if the discharge of indebtedness income reduces an attribute that is attributable to the common parent. This position is consistent with the approach of § 1.1502–32 that income of a subsidiary that is offset by net operating losses generated by the common parent results in an increase in the basis of the subsidiary stock. In addition, the IRS and Treasury Department believe that a positive basis adjustment should be made to the basis of the stock of a debtor subsidiary even if the discharge of indebtedness income reduces a credit of any member. Accordingly, these temporary regulations treat as tax-exempt income discharge of indebtedness income that is excluded from gross income to the extent that such excluded income reduces tax attributes, including tax attributes attributable to the common parent and any other attribute the reduction of which is not treated as a noncapital, nondeductible expense, such as a credit.

2. The Excess Loss Account Rules

Under § 1.1502–19, an excess loss account attributable to subsidiary stock must be included in income when an indebtedness of that subsidiary is discharged and any part of the amount discharged is not included in gross income and is not treated as tax-exempt income under § 1.1502–32. This rule may require inclusion of an excess loss account in income in an amount that is substantially greater than the amount discharged that is not treated as tax-exempt income.

The IRS and Treasury Department believe that requiring the inclusion of the excess loss account in income only to the extent of the amount discharged that is not treated as tax-exempt income is consistent with the policies underlying section 108 and the consolidated return regulations. Accordingly, these temporary regulations modify the rules of § 1.1502–19 to provide that the excess loss account must be included in income only to the extent that any amount discharged that is excluded from gross income is not treated as tax-exempt income.

3. Rules Governing Apportionment of Net Operating Losses

The temporary regulations also include modifications to the rules of § 1.1502–21 relating to the amount of consolidated net operating losses apportioned to a subsidiary when a consolidated net operating loss is absorbed and when a subsidiary departs from the group. These modifications take into account the reduction of the net operating losses attributable to that member that occurs as a result of discharge of indebtedness.

D. Request for Comments

The IRS and Treasury Department are considering adopting rules under section 1502 (and possibly other Code sections) to address the effect of transitory transactions and other transactions designed to avoid the application of the rules concerning attribute reduction. Comments are requested regarding whether such a rule should be adopted and the appropriate scope of such a rule. Even in the absence of such a rule, such transactions may be challenged under existing law. If the IRS and Treasury Department determine such a rule is necessary to protect the policies underlying section 108 and the consolidated return regulations, the IRS and Treasury Department are prepared to promulgate such a rule with retroactive effect to discharges of indebtedness that occur after August 29, 2003.

Effective Dates

The temporary regulations related to the application of section 108(b) when a member of a consolidated group realizes discharge of indebtedness income that is excluded from gross income apply to discharges of indebtedness that occur after August 29, 2003. The amendments to the investment adjustment rules apply with respect to determinations of stock basis in consolidated return years the original return for which is due (without extensions) after August 29, 2003. The amendments to the excess loss account rules apply to dispositions of subsidiary stock after August 29, 2003. However, taxpayers may apply the amendments to the investment adjustment rules and the excess loss account rules retroactively. Finally, the amendments to the net operating loss rules apply only to taxable years the original return for which the due date (without extensions) is after August 29, 2003.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. These temporary regulations are necessary to provide taxpayers with immediate guidance regarding the application of section 108 when a member of a consolidated group has discharge of indebtedness income that is excluded from gross income. Current circumstances have made the application of section 108 in the consolidated group context an issue that needs to be addressed at this time. In addition, consolidated groups may be taking positions that are inconsistent with the policies underlying section 108 and the principle enunciated by the Supreme Court in *United Dominion Indus., Inc.* v. *United States*, 532 U.S. 822 (2001). Accordingly, good cause is found for dispensing with notice and public procedure pursuant to 5 U.S.C. 553(b)(B) and with a delayed effective date pursuant to 5 U.S.C. 553(d)(3). For applicability of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

Various personnel from the IRS and Treasury Department participated in the development of the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the two entries for § 1.1502–32T and adding the following entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–19T also issued under 26 U.S.C. 1502. * * *

Section 1.1502–28T also issued under 26 U.S.C. 1502. * * *

Section 1.1502–32T also issued under 26 U.S.C. 1502. * * *

■ **Par. 2.** Section 1.1502–19 is amended as follows:

■ 1. Paragraph (b)(1) is revised.

■ 2. The headings for paragraphs (h)(2) and (h)(2)(i) are revised.

■ 3. Paragraph (h)(2)(ii) is redesignated as paragraph (h)(2)(iii).

■ 4. New paragraph (h)(2)(ii) is added.

The revisions and addition read as follows:

§ 1.1502–19 Excess loss accounts.

* * * * *

(b) * * * (1) [Reserved]. For further guidance, *see* § 1.1502–19T(b)(1).

* * * * * *

(h) * * *

(2) *Dispositions of stock*—(i) *Dispositions of stock before effective date.* * * *

(ii) *Application of special limitation.* [Reserved]. For further guidance, *see* § 1.1502–19T(h)(2)(ii).

* * * * *

■ **Par. 3.** Section 1.1502–19T is added to read as follows:

§ 1.1502–19T Excess loss accounts (temporary).

(a) [Reserved]. For further guidance, *see* § 1.1502–19(a).

(b) *Excess loss account taken into account as income or gain*—(1) *Operating rules*—(i) *General rule.* Except as provided in paragraph (b)(1)(ii) of this section, if P is treated under § 1.1502–19 as disposing of a share of S's stock, P takes into account its excess loss account in the share as income or gain from the disposition.

(ii) *Special limitation on amount taken into account.* Notwithstanding

paragraph (b)(1)(i) of this section, if P is treated as disposing of a share of S's stock as a result of the application of § 1.1502–19(c)(1)(iii)(B), the aggregate amount of its excess loss account in the shares of S's stock that P takes into account as income or gain from the disposition shall not exceed the amount of S's indebtedness that is discharged that is neither included in gross income nor treated as tax-exempt income under § 1.1502–32T(b)(3)(ii)(C)(*1*). If more than one share of S's stock has an excess loss account, such excess loss accounts shall be taken into account pursuant to the preceding sentence, to the extent possible, in a manner that equalizes the excess loss accounts in S's shares that have an excess loss account.

(iii) *Treatment of disposition.* Except as provided in § 1.1502–19(b)(4), the disposition is treated as a sale or exchange for purposes of determining the character of the income or gain.

(b)(2) through (h)(2)(i) [Reserved]. For further guidance, *see* § 1.1502–19(b)(2) through (h)(2)(i).

(h)(2)(ii) *Application of special limitation.* If P was treated as disposing of stock of S because S was treated as worthless as a result of the application of § 1.1502–19(c)(1)(iii)(B) after August 29, 2003 and in a consolidated return year beginning on or after January 1, 1995, the amount of P's income, gain, deduction, or loss, and the stock basis reflected in that amount, are determined or redetermined with regard to paragraph (b)(1)(ii) of this section. If P was treated as disposing of stock of S because S was treated as worthless as a result of the application of § 1.1502–19(c)(1)(iii)(B) on or before August 29, 2003 and in a consolidated return year beginning on or after January 1, 1995, the group may determine or redetermine the amount of P's income, gain, deduction, or loss, and the stock basis reflected in that amount with regard to paragraph (b)(1)(ii) of this section.

(h)(2)(iii) through (h)(3) [Reserved]. For further guidance, *see* § 1.1502–19(h)(2)(iii) through (h)(3).

■ **Par. 4.** Section 1.1502–21 is amended as follows:

■ 1. Paragraphs (b)(2)(iv) and (c)(2)(vii) are revised.

■ 2. Paragraphs (h)(6) and (h)(7) are redesignated as paragraphs (h)(7) and (h)(8).

■ 3. New paragraph (h)(6) is added.

■ 4. Newly designated paragraph (h)(8) is revised.

The revision and additions read as follows:

§ 1.1502–21 Net operating losses.

* * * * *

(b) * * *

(2) * * *

(iv) [Reserved]. For further guidance, *see* § 1.1502–21T(b)(2)(iv).

* * * * *

(c) * * *

(2) * * *

(vii) [Reserved]. For further guidance, *see* § 1.1502–21T(c)(2)(vii).

* * * * *

(h) * * *

(6) [Reserved]. For further guidance, see § 1.1502–21T(h)(6).

* * * * *

(8) [Reserved]. For further guidance, see § 1.1502–21T(h)(8).

■ **Par. 5.** Section 1.1502–21T is amended as follows:

■ 1. Paragraphs (b)(1) through (b)(3)(ii)(B) are revised.

■ 2. Paragraphs (c) through (h)(7) are revised.

■ 3. Paragraph (h)(8) is added.

The revisions and addition read as follows:

§ 1.1502–21T Net operating losses (temporary).

* * * * *

(b) * * * (1) *Carryovers and carrybacks generally.* The net operating loss carryovers and carrybacks to a taxable year are determined under the principles of section 172 and this section. Thus, losses permitted to be absorbed in a consolidated return year generally are absorbed in the order of the taxable years in which they arose, and losses carried from taxable years ending on the same date, and which are available to offset consolidated taxable income for the year, generally are absorbed on a pro rata basis. In addition, the amount of any CNOL absorbed by the group in any year is apportioned among members based on the percentage of the CNOL attributable to each member as of the beginning of the year. The percentage of the CNOL attributable to a member is determined pursuant to paragraph (b)(2)(iv)(B) of this section. Additional rules provided under the Internal Revenue Code or regulations also apply. *See, e.g.*, section 382(l)(2)(B) (if losses are carried from the same taxable year, losses subject to limitation under section 382 are absorbed before losses that are not subject to limitation under section 382). *See* § 1.1502–21(c)(1)(iii), *Example 2*, for an illustration of pro rata absorption of losses subject to a SRLY limitation. See paragraph (b)(3)(v) of this section regarding the treatment of any loss that is treated as expired under § 1.1502–35T(f)(1).

(2) (i) through (iii) [Reserved]. For further guidance, see § 1.1502–21(b)(2)(i) through (iii).

(iv) *Operating rules*—(A) *Amount of CNOL attributable to a member.* The amount of a CNOL that is attributable to a member shall equal the product of the CNOL and the percentage of the CNOL attributable to such member.

(B) *Percentage of CNOL attributable to a member*—(*1*) *In general.* Except as provided in paragraph (b)(2)(iv)(B)(*2*) of this section, the percentage of the CNOL attributable to a member shall equal the separate net operating loss of the member for the year of the loss divided by the sum of the separate net operating losses for that year of all members having such losses. For this purpose, the separate net operating loss of a member is determined by computing the CNOL by reference to only the member's items of income, gain, deduction, and loss, including the member's losses and deductions actually absorbed by the group in the taxable year (whether or not absorbed by the member).

(*2*) *Special rule.* If during a taxable year either a member realizes discharge of indebtedness income that is excluded from gross income under section 108(a) and such amount reduces any portion of the CNOL attributable to such member pursuant to section 108 and § 1.1502–28T, or a member that had a separate net operating loss for the year of the CNOL ceases to be a member, the percentage of the CNOL attributable to each member as of the first day of the following taxable year shall be recomputed. In addition, if a portion of the CNOL attributable to a member for a taxable year is carried back to a separate return year, the percentage of the CNOL attributable to each member as of the first day of the taxable year following the taxable year of the CNOL shall be recomputed. In each case, such recomputed percentage shall equal the unabsorbed CNOL attributable to the member on the first day of the following taxable year divided by the sum of the unabsorbed CNOL attributable to all of the members on the first day of the following taxable year. For purposes of the preceding sentence, a CNOL that is reduced pursuant to section 108 and § 1.1502–28T or that is otherwise permanently disallowed or eliminated shall be treated as absorbed.

(b)(2)(v) through (b)(3)(ii)(B) [Reserved]. For further guidance, *see* § 1.1502–21(b)(2)(v) through (b)(3)(ii)(B).

* * * * *

(c)(1) through (c)(2)(vi) [Reserved]. For further guidance, *see* § 1.1502–21(c)(1) through (c)(2)(vi).

(vii) *Corporations that leave a SRLY subgroup.* If a loss member ceases to be affiliated with a SRLY subgroup, the amount of the member's remaining

SRLY loss from a specific year is determined pursuant to the principles of § 1.1502–21(b)(2)(ii)(A) and § 1.1502–21T(b)(2)(iv).

(c)(2)(viii) through (h)(5) [Reserved]. For further guidance, *see* § 1.1502–21(c)(2)(viii) through (h)(5).

(6) *Certain prior periods.* Paragraphs (b)(1), (b)(2)(iv), and (c)(2)(vii) of this section shall only apply to taxable years the original return for which the due date (without extensions) is after August 29, 2003. For taxable years the original return for which the due date (without extensions) is on or before August 29, 2003, see paragraphs (b)(1), (b)(2)(iv), and (c)(2)(vii) of § 1.1502–21 and paragraph (b)(1) of § 1.1502–21T as contained in 26 CFR part 1 revised April 1, 2003.

(7) [Reserved]. For further guidance, *see* § 1.1502–21(h)(7).

(8) *Losses treated as expired under § 1.1502–35T(f)(1).* Paragraph (b)(3)(v) of this section is effective for losses treated as expired under § 1.1502–35T(f)(1) on and after March 7, 2002, and no later than March 11, 2006.

■ **Par. 6.** Section 1.1502–28T is added to read as follows:

§ 1.1502–28T Consolidated section 108 (temporary).

(a) *In general.* This section sets forth rules for the application of section 108(a) and the reduction of tax attributes pursuant to section 108(b) when a member of the group realizes discharge of indebtedness income that is excluded from gross income under section 108(a) (excluded COD income).

(1) *Application of section 108(a).* Section 108(a)(1)(B) is applied separately to each member that realizes excluded COD income. Therefore, the limitation of section 108(a)(3) on the amount of discharge of indebtedness income that is treated as excluded COD income is determined based on the assets (including stock and securities of other members) and liabilities (including liabilities to other members) of only the member that realizes excluded COD income.

(2) *Reduction of tax attributes attributable to the debtor*—(i) *In general.* With respect to a member that realizes excluded COD income in a taxable year, the tax attributes attributable to that member (and its direct and indirect subsidiaries to the extent required by section 1017(b)(3)(D) and paragraph (a)(3) of this section), including basis of assets and losses and credits arising in separate return limitation years, shall be reduced as provided in sections 108 and 1017 and this section. Basis of subsidiary stock, however, shall not be reduced below zero.

(ii) *Consolidated tax attributes attributable to a member.* For purposes of this section, the amount of a consolidated tax attribute that is attributable to a member shall be determined pursuant to the principles of § 1.1502–21T(b)(2)(iv). In addition, if the member is a member of a separate return limitation year subgroup, the amount of a tax attribute that arose in a separate return limitation year that is attributable to that member shall also be determined pursuant to the principles of § 1.1502–21T(b)(2)(iv).

(3) *Look-through rules*—(i) *Priority of section 1017(b)(3)(D).* If a member treats stock of a subsidiary as depreciable property pursuant to section 1017(b)(3)(D), the basis of the depreciable property of such subsidiary shall be reduced pursuant to section 1017(b)(3)(D) prior to the application of paragraph (a)(3)(ii) of this section.

(ii) *Application of additional look-through rule.* If the basis of stock of a member (the lower-tier member) that is owned by another member is reduced pursuant to section 108, section 1017, and paragraph (a)(2) of this section (but not as a result of treating subsidiary stock as depreciable property pursuant to section 1017(b)(3)(D)), solely for purposes of sections 108 and 1017 and this section other than paragraphs (a)(4) and (b)(1) of this section, the lower-tier member shall be treated as realizing excluded COD income. The amount of such excluded COD income shall be the amount of such basis reduction. Accordingly, the tax attributes attributable to such lower-tier member shall be reduced as provided in sections 108 and 1017 and this section. To the extent that the excluded COD income realized by the lower-tier member pursuant to this paragraph (a)(3) does not reduce a tax attribute attributable to the lower-tier member, such excluded COD income shall not be applied to reduce tax attributes attributable to any member under paragraph (a)(4) of this section.

(4) *Reduction of certain tax attributes attributable to other members.* To the extent that, pursuant to paragraph (a)(2) of this section, the excluded COD income is not applied to reduce the tax attributes attributable to the member that realizes the excluded COD income, after the application of paragraph (a)(3) of this section, such amount shall be applied to reduce the remaining consolidated tax attributes of the group as provided in section 108 and this section. Such amount also shall be applied to reduce the tax attributes attributable to members that arose (or are treated as arising) in a separate return limitation year to the extent that the member that realizes excluded COD income is a member of the separate return limitation year subgroup with respect to such attribute. The reduction of each tax attribute pursuant to the two preceding sentences shall be made in the order prescribed in section 108 and pursuant to § 1.1502–21T(b)(1). Except to the extent that the member that realizes excluded COD income is a member of the separate return limitation year subgroup with respect to a tax attribute that arose (or is treated as arising) in a separate return limitation year, such attribute is not subject to reduction pursuant to this paragraph (a)(4). In addition, basis in assets is not subject to reduction pursuant to this paragraph (a)(4). Finally, to the extent that the realization of excluded COD income by a member pursuant to paragraph (a)(3) does not reduce a tax attribute attributable to such lower-tier member, such excess shall not be applied to reduce tax attributes attributable to any member pursuant to this paragraph (a)(4).

(b) *Special rules*—(1) *Multiple debtor members*—(i) *Reduction of tax attributes attributable to debtor members prior to reduction of consolidated tax attributes.* If in a single taxable year multiple members realize excluded COD income, paragraphs (a)(2) and (3) of this section shall apply with respect to the excluded COD income of each such member prior to the application of paragraph (a)(4) of this section.

(ii) *Reduction of higher-tier debtor's tax attributes.* If in a single taxable year multiple members realize excluded COD income and one such member is a higher-tier member of another such member, paragraphs (a)(2) and (3) of this section shall be applied with respect to the excluded COD income of the higher-tier member before such paragraphs are applied to the excluded COD income of the other such member. A member (the first member) is a higher-tier member of another member (the second member) if the first member is the common parent or investment adjustments under § 1.1502–32 or § 1.1502–32T with respect to the stock of the second member would affect investment adjustments with respect to the stock of the first member.

(iii) *Reduction of additional tax attributes.* If more than one member realizes excluded COD income that has not been applied to reduce a tax attribute attributable to such member (the remaining COD amount) and the remaining tax attributes available for reduction under paragraph (a)(4) of this section are less than the aggregate of the remaining COD amounts, after the application of paragraph (a)(2) of this

section, each such member's remaining COD amount shall be applied on a pro rata basis (based on the relative remaining COD amounts), pursuant to paragraph (a)(4) of this section, to reduce such remaining available tax attributes.

(2) *Election under section 108(b)(5).* Any member that realizes excluded COD income may make the election described in section 108(b)(5). The election is made separately for each member. Therefore, an election may be made for one member that realizes excluded COD income (either actually or pursuant to paragraph (a)(3) of this section) while another election, or no election, may be made for another member that realizes excluded COD income (either actually or pursuant to paragraph (a)(3) of this section). *See* § 1.108–4 for rules relating to the procedure for making an election under section 108(b)(5).

(3) *Limitation of section 1017(b)(2).* The limitation of section 1017(b)(2) on the reduction in basis of property shall be applied by reference to the aggregate of the basis of the property held by the member that realizes excluded COD income, not the aggregate of the basis of the property held by all of the members of the group, and the liabilities of such member, not the aggregate liabilities of all of the members of the group.

(c) *Examples.* The principles of paragraphs (a) and (b) of this section are illustrated by the following examples. Unless otherwise indicated, no election under section 108(b)(5) has been made. The examples are as follows:

Example 1. (i) *Facts.* P is the common parent of a consolidated group that includes subsidiaries S1 and S2. P owns 80 percent of the stock of S1 and 100 percent of the stock of S2. In Year 1, the P group sustained a $250 consolidated net operating loss. Under the principles of § 1.1502–21T(b)(2)(iv), of that amount, $125 was attributable to P and $125 was attributable to S1. On Day 1 of Year 2, S2 joined the P group. As of the beginning of Year 2, S2 had a $50 net operating loss carryover from Year 1, a separate return limitation year. In Year 2, the P group sustained a $200 consolidated net operating loss. Under the principles of § 1.1502–21T(b)(2)(iv), of that amount, $90 was attributable to P, $70 was attributable to S1, and $40 was attributable to S2. In Year 3, S2 realized $200 of excluded COD income from the discharge of non-intercompany indebtedness. After the discharge of this indebtedness, S2 had no liabilities. In that same year, the P group sustained a $50 consolidated net operating loss, of which $40 was attributable to S1 and $10 was attributable to S2 under the principles of § 1.1502–21T(b)(2)(iv). As of the beginning of Year 4, S2 had Asset A with a basis of $40 and a fair market value of $10.

(ii) *Analysis*—(A) *Reduction of tax attributes attributable to debtor.* Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to S2 must first be reduced to take into account its excluded COD income in the amount of $200.

(*1*) *Reduction of net operating losses.* Pursuant to section 108(b)(2)(A), the net operating loss and the net operating loss carryovers of S2 are reduced. Pursuant to section 108(b)(4)(B) and paragraph (a) of this section, the net operating loss and the net operating loss carryovers attributable to S2 under the principles of § 1.1502–21T(b)(2)(iv) are reduced first. Accordingly, the consolidated net operating loss for Year 3 is reduced by $10, the portion of the consolidated net operating loss attributable to S2, to $40. Then, again pursuant to section 108(b)(4)(B), S2's net operating loss carryover of $50 from its separate return limitation year is reduced to $0. Finally, the consolidated net operating loss carryover from Year 2 is reduced by $40, the portion of that consolidated net operating loss carryover attributable to S2, to $160.

(*2*) *Reduction of basis.* Following the reduction of the net operating loss and the net operating loss carryovers attributable to S2, S2 reduces its basis in its assets pursuant to section 1017 and § 1.1017–1. Accordingly, S2 reduces its basis in Asset A by $40, from $40 to $0.

(B) *Reduction of remaining consolidated tax attributes.* The remaining $60 of excluded COD income then reduces consolidated tax attributes pursuant to paragraph (a)(4) of this section. In particular, the remaining $40 consolidated net operating loss for Year 3 is reduced to $0. Then, the consolidated net operating loss carryover from Year 1 is reduced by $20 from $250 to $230. Pursuant to paragraph (a)(4) of this section, a pro rata amount of the consolidated net operating loss carryover from Year 1 that is attributable to each of P and S1 is treated as reduced. Therefore, $10 of the consolidated net operating loss carryover from Year 1 that is attributable to each of P and S1 is treated as reduced.

Example 2. (i) *Facts.* P is the common parent of a consolidated group that includes subsidiaries S1 and S2. P owns 100 percent of the stock of S1 and S1 owns 100 percent of the stock of S2. None of P, S1, or S2 has a separate return limitation year. In Year 1, the P group sustained a $50 consolidated net operating loss. Under the principles of § 1.1502–21T(b)(2)(iv), of that amount, $10 was attributable to P, $20 was attributable to S1, and $20 was attributable to S2. In Year 2, the P group sustained a $70 consolidated net operating loss. Under the principles of § 1.1502–21T(b)(2)(iv), of that amount, $30 was attributable to P, $30 was attributable to S1, and $10 was attributable to S2. In Year 3, S1 realized $170 of excluded COD income from the discharge of non-intercompany indebtedness. After the discharge of this indebtedness, S1 and S2 had no liabilities. In that same year, the P group sustained a $50 consolidated net operating loss, of which $10 was attributable to S1 and $40 was attributable to S2 under the principles of § 1.1502–21T(b)(2)(iv). As of the beginning of Year 4, S1's sole asset was the stock of S2, and S1 had a $80 basis in the S2 stock. In addition, at the beginning of Year 4, S2 had an asset with a $0 basis and a $10 value.

(ii) *Analysis*—(A) *Reduction of tax attributes attributable to debtor.* Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to S1 must first be reduced to take into account its excluded COD income in the amount of $170.

(*1*) *Reduction of net operating losses.* Pursuant to section 108(b)(2)(A), the net operating loss and the net operating loss carryovers of S1 are reduced. Pursuant to section 108(b)(4)(B) and paragraph (a) of this section, the net operating loss and the net operating loss carryovers attributable to S1 under the principles of § 1.1502–21T(b)(2)(iv) are reduced first. Accordingly, the consolidated net operating loss for Year 3 is reduced by $10, the portion of the consolidated net operating loss for Year 3 attributable to S1, to $40. Then, the consolidated net operating loss carryover from Year 1 is reduced by $20, the portion of that consolidated net operating loss carryover attributable to S1, to $30, and the consolidated net operating loss carryover from Year 2 is reduced by $30, the portion of that consolidated net operating loss carryover attributable to S1, to $40.

(*2*) *Reduction of basis.* Following the reduction of the net operating loss and the net operating loss carryovers attributable to S1, S1 reduces its basis in its assets pursuant to section 1017 and § 1.1017–1. Accordingly, S1 reduces its basis in the stock of S2 by $80, from $80 to $0.

(*3*) *Tiering down of stock basis reduction.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S2 is treated as realizing $80 of excluded COD income. Accordingly, the consolidated net operating loss for Year 3 is reduced by an additional $40, the portion of the consolidated net operating loss for Year 3 attributable to S2, to $0. Then, the consolidated net operating loss carryover from Year 1 is reduced by $20, the portion of that consolidated net operating loss carryover attributable to S2, to $10. Then, the consolidated net operating loss carryover from Year 2 is reduced by $10, the portion of that consolidated net operating loss carryover attributable to S2, to $30. S2's remaining $10 of excluded COD income does not reduce consolidated tax attributes attributable to P or S1 under paragraph (a)(4) of this section.

(B) *Reduction of remaining consolidated tax attributes.* Finally, pursuant to paragraph (a)(4) of this section, S1's remaining $30 of excluded COD income reduces the remaining consolidated tax attributes. In particular, the remaining $10 consolidated net operating loss carryover from Year 1 is reduced by $10 to $0, and the remaining $30 consolidated net operating loss carryover from Year 2 is reduced by $20 to $10.

Example 3. (i) *Facts.* P is the common parent of a consolidated group that includes subsidiaries S1, S2, and S3. P owns 100 percent of the stock of S1, S1 owns 100 percent of the stock of S2, and S2 owns 100 percent of the stock of S3. In Year 1, the P group sustained a $150 consolidated net operating loss. Under the principles of § 1.1502–21T(b)(2)(iv), of that amount, $50 was attributable to S2, and $100 was attributable to S3. In Year 2, the P group

sustained a $50 consolidated net operating loss. Under the principles of § 1.1502–21T(b)(2)(iv), of that amount, $40 was attributable to S1 and $10 was attributable to S2. In Year 3, S1 realized $170 of excluded COD income from the discharge of non-intercompany indebtedness. After the discharge of this indebtedness, S1, S2, and S3 had no liabilities. In that same year, the P group sustained a $50 consolidated net operating loss, of which $10 was attributable to S1, $20 was attributable to S2, and $20 was attributable to S3 under the principles of § 1.1502–21T(b)(2)(iv). At the beginning of Year 4, S1's only asset was the stock of S2, with a basis of $120, and S2's only asset was the stock of S3 with a basis of $180 and a value of $10. None of P, S1, or S2 had a separate return limitation year.

(ii) *Analysis—Reduction of tax attributes attributable to debtor.* Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to S1 must first be reduced to take into account its excluded COD income in the amount of $170.

(A) *Reduction of net operating losses.* Pursuant to section 108(b)(2)(A), the net operating loss and the net operating loss carryovers of S1 are reduced. Pursuant to section 108(b)(4)(B) and paragraph (a) of this section, the net operating loss and the net operating loss carryovers attributable to S1 under the principles of § 1.1502–21T(b)(2)(iv) are reduced first. Pursuant to section 108(b)(4)(B), S1's net operating loss for the taxable year of the discharge is reduced first. Accordingly, the consolidated net operating loss for Year 3 is reduced by $10, the portion of the consolidated net operating loss attributable to S1, to $40. Then, again pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 2 is reduced by $40, the portion of that consolidated net operating loss carryover attributable to S1, to $10.

(B) *Reduction of basis.* Following the reduction of the net operating loss and the net operating loss carryovers attributable to S1, S1 reduces its basis in its assets pursuant to section 1017 and § 1.1017–1. Accordingly, S1 reduces its basis in the stock of S2 by $120, from $120 to $0.

(C) *Tiering down of stock basis reduction to S2.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S2 is treated as realizing $120 of excluded COD income. Pursuant to section 108(b)(2)(A), therefore, the net operating loss and net operating loss carryovers of S2 are reduced. Pursuant to section 108(b)(4)(B) and paragraph (a) of this section, the net operating loss and the net operating loss carryovers attributable to S2 under the principles of § 1.1502–21T(b)(2)(iv) are reduced. Pursuant to section 108(b)(4)(B), S2's net operating loss for the taxable year of the discharge is reduced. Accordingly, the consolidated net operating loss for Year 3 is further reduced by $20, the portion of the consolidated net operating loss attributable to S2, to $20. Then, again pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 1 is reduced by $50, the portion of that consolidated net operating loss carryover attributable to S2, to $100. Then, again pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 2 is further reduced by $10, the portion of that consolidated net operating loss carryover attributable to S2, to $0. Following the reduction of the net operating loss and the net operating loss carryovers attributable to S2, S2 reduces its basis in its assets pursuant to section 1017 and § 1.1017–1. Accordingly, S2 reduces its basis in its S3 stock by $40 to $140.

(D) *Tiering down of stock basis reduction to S3.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S3 is treated as realizing $40 of excluded COD income. Pursuant to section 108(b)(2)(A), therefore, the net operating loss and the net operating loss carryovers of S3 are reduced. Pursuant to section 108(b)(4)(B) and paragraph (a) of this section, the net operating loss and the net operating loss carryovers attributable to S3 under the principles of § 1.1502–21T(b)(2)(iv) are reduced. Pursuant to section 108(b)(4)(B), S3's net operating loss for the taxable year of the discharge is reduced. Accordingly, the consolidated net operating loss for Year 3 is further reduced by $20, the portion of the consolidated net operating loss attributable to S3, to $0. Then, again pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 1 is reduced by $20, the lesser of the portion of that consolidated net operating loss carryover attributable to S3 and the remaining excluded COD income, to $80.

Example 4. (i) *Facts.* P is the common parent of a consolidated group that includes subsidiaries S1, S2, and S3. P owns 100 percent of the stock of each of S1 and S2. Each of S1 and S2 owns stock of S3 that represents 50 percent of the value of the stock of S3. In Year 1, the P group sustained a $160 consolidated net operating loss. Under the principles of § 1.1502-21T(b)(2)(iv), of that amount, $10 was attributable to P, $50 was attributable to S2, and $100 was attributable to S3. In Year 2, the P group sustained a $110 consolidated net operating loss. Under the principles of § 1.1502–21T(b)(2)(iv), of that amount, $40 was attributable to S1 and $70 was attributable to S2. In Year 3, S1 realized $200 of excluded COD income from the discharge of non-intercompany indebtedness, and S2 realized $270 of excluded COD income from the discharge of non-intercompany indebtedness. After the discharge of this indebtedness, S1, S2, and S3 had no liabilities. In that same year, the P group sustained a $50 consolidated net operating loss, of which $10 was attributable to S1, $20 was attributable to S2, and $20 was attributable to S3 under the principles of § 1.1502–21T(b)(2)(iv). At the beginning of Year 4, S1's basis in its S3 stock was $60, S2's basis in its S3 stock was $120, and S3 had one asset with a basis of $200 and a value of $10. None of P, S1, S2, or S3 had a separate return limitation year.

(ii) *Analysis—Reduction of tax attributes attributable to debtors.* Pursuant to paragraph (b)(1)(i) of this section, the tax attributes attributable to each of S1 and S2 are reduced pursuant to paragraph (a)(2) of this section, and the tax attributes attributable to S3 are reduced pursuant to paragraph (a)(3) of this section so as to reflect a reduction of S1's and S2's basis in the stock of S3 prior to the application of paragraph (a)(4) to reduce additional tax attributes. Pursuant to paragraph (a)(2) of this section, the tax attributes attributable to S1 and S2 must be reduced to take into account their excluded COD income.

(A) *Reduction of net operating losses generally.* Pursuant to section 108(b)(2)(A), the net operating losses and the net operating loss carryovers of S1 and S2 are reduced. Pursuant to section 108(b)(4)(B) and paragraph (a) of this section, the net operating losses and the net operating loss carryovers attributable to S1 and S2 under the principles of § 1.1502–21T(b)(2)(iv) are reduced first.

(B) *Reduction of net operating losses attributable to S1.* Pursuant to section 108(b)(4)(B), S1's net operating loss for the taxable year of the discharge is reduced. Accordingly, the consolidated net operating loss for Year 3 is reduced by $10, the portion of the consolidated net operating loss attributable to S1, to $40. Then, again pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 2 is reduced by $40, the portion of that consolidated net operating loss carryover attributable to S1, to $70.

(C) *Reduction of net operating losses attributable to S2.* Pursuant to section 108(b)(4)(B), S2's net operating loss for the taxable year of the discharge is reduced. Accordingly, the consolidated net operating loss for Year 3 is further reduced by $20, the portion of the consolidated net operating loss attributable to S2, to $20. Then, pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 1 is reduced by $50, the portion of that consolidated net operating loss carryover attributable to S2, to $110. Then, again pursuant to section 108(b)(4)(B), the consolidated net operating loss carryover from Year 2 is further reduced by $70, the portion of that consolidated net operating loss carryover attributable to S2, to $0.

(D) *Reduction of basis.* Following the reduction of the net operating losses and the net operating loss carryovers attributable to S1 and S2, S1 and S2 must reduce their basis in their assets pursuant to section 1017 and § 1.1017–1. Accordingly, S1 reduces its basis in the stock of S3 by $60, from $60 to $0, and S2 reduces its basis in the stock of S3 by $120, from $120 to $0.

(E) *Tiering down of basis reduction.* Pursuant to paragraph (a)(3) of this section, for purposes of sections 108 and 1017 and this section, S3 is treated as realizing $180 of excluded COD income. Pursuant to section 108(b)(2)(A), therefore, the net operating loss and the net operating loss carryovers of S3 are reduced, in the order indicated by section 108(b)(4)(B). Pursuant to paragraph (a)(2) of this section the consolidated net operating loss and any consolidated net operating loss carryovers that are attributable to S3 under the principles of § 1.1502–21T(b)(2)(iv) are reduced. Accordingly, the consolidated net operating loss for Year 3 is further reduced by $20, the portion of the consolidated net operating loss attributable to S3, to $0. Then, the consolidated net operating loss carryover from Year 1 is reduced by $100, the portion

of that consolidated net operating loss carryover attributable to S3, to $10. Following the reduction of the net operating loss and the net operating loss carryover attributable to S3, S3 reduces its basis in its asset pursuant to section 1017 and § 1.1017–1. Accordingly, S3 reduces its basis in its asset by $60, from $200 to $140.

(F) *Reduction of remaining consolidated tax attributes.* Finally, pursuant to paragraph (a)(4) of this section, the remaining $90 of S1's excluded COD income and the remaining $10 of S2's excluded COD income reduce the remaining consolidated tax attributes. In particular, the remaining $10 consolidated net operating loss carryover from Year 1 is reduced by $10 to $0. Because that amount is less than the aggregate amount of remaining excluded COD income, such income is applied on a pro rata basis to reduce the remaining consolidated tax attributes. Accordingly, $9 of S1's remaining excluded COD income and $1 of S2's remaining excluded COD income is applied to reduce the remaining consolidated net operating loss carryover from Year 1. Consequently, of S1's excluded COD income of $200, only $119 is applied to reduce tax attributes, and, of S2's excluded COD income of $270, only $261 is applied to reduce tax attributes.

(d) *Effective date.* This section applies to discharges of indebtedness that occur after August 29, 2003.

■ **Par. 7.** Section 1.1502–32 is amended as follows:

■ 1. Paragraphs (b)(3)(ii)(C)(*1*) and (b)(3)(iii)(A) are revised.

■ 2. Paragraph (b)(4)(vii) is added.

■ 3. Paragraph (b)(5)(ii), *Example 4*, paragraphs (a), (b), and (c), are revised.

■ 4. Paragraph (h)(7) is added.

The revisions and additions read as follows:

§ 1.1502–32 Investment adjustments.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) * * *

(*1*) [Reserved]. For further guidance, *see* § 1.1502–32T(b)(3)(ii)(C)(*1*).

* * * * *

(iii) * * *

(A) [Reserved]. For further guidance, *see* § 1.1502–32T(b)(3)(iii)(A).

* * * * *

(4) * * *

(vii) [Reserved]. For further guidance, *see* § 1.1502–32T(b)(4)(vii).

(5) * * *

(ii) * * *

Example 4(a), (b), and (c) [Reserved]. For further guidance, *see* § 1.1502–32T(b)(5)(ii), *Example 4*(a), (b), and (c).

* * * * *

(h) * * *

(7) [Reserved]. For further guidance, *see* § 1.1502–32T(h)(7).

■ **Par. 8.** Section 1.1502–32T is amended as follows:

■ 1. Paragraphs (b) through (b)(3)(iii)(B) are revised.

■ 2. Add and reserve paragraph (b)(3)(iv), and revise paragraphs (b)(4) through (b)(4)(iv).

■ 3. Add paragraph (b)(5) and revise paragraphs (c) through (h)(5)(ii).

■ 4. Paragraph (h)(7) is added.

The revisions and addition read as follows:

§ 1.1502–32T Investment adjustments (temporary).

* * * * *

(b) through (b)(3)(ii)(B) [Reserved]. For further guidance, *see* § 1.1502–32(b) through (b)(3)(ii)(B).

(C) *Discharge of indebtedness income—(1) In general.* Discharge of indebtedness income of S that is excluded from gross income under section 108 is treated as tax-exempt income only to the extent the discharge is applied to reduce tax attributes attributable to any member of the group under section 108, section 1017, or § 1.1502–28T. If S is treated as realizing discharge of indebtedness income that is excluded from gross income pursuant to § 1.1502–28T(a)(3), S shall not be treated as realizing excluded COD income for purposes of the preceding sentence.

(b)(3)(ii)(C)(*2*) through (b)(3)(ii)(D) [Reserved]. For further guidance, see § 1.1502-32(b)(3)(ii)(C)(*2*) through (b)(3)(ii)(D).

(iii) *Noncapital, nondeductible expenses—*(A) *In general.* S's noncapital, nondeductible expenses are its deductions and losses that are taken into account but permanently disallowed or eliminated under applicable law in determining its taxable income or loss, and that decrease, directly or indirectly, the basis of its assets (or an equivalent amount). For example, S's Federal taxes described in section 275 and loss not recognized under section 311(a) are noncapital, nondeductible expenses. Similarly, if a loss carryover (*e.g.*, under section 172 or 1212) attributable to S expires or is reduced under section 108(b) and § 1.1502–28T, it becomes a noncapital, nondeductible expense at the close of the last tax year to which it may be carried. However, when a tax attribute attributable to S is reduced as required pursuant to § 1.1502-28T(a)(3), the reduction of the tax attribute is not treated as a noncapital, nondeductible expense of S. Finally, if S sells and repurchases a security subject to section 1091, the disallowed loss is not a noncapital, nondeductible expense because the corresponding basis adjustments under section 1091(d) prevent the disallowance from being permanent.

(b)(3)(iii)(B) [Reserved]. For further guidance, *see* § 1.1502–32(b)(3)(iii)(B).

* * * * *

(b)(3)(iv) through (b)(4)(iv) [Reserved]. For further guidance, see § 1.1502–32(b)(3)(iv) through (b)(4)(iv).

* * * * *

(b)(5)(i) through (b)(5)(ii), *Example 3* [Reserved]. For further guidance, *see* § 1.1502–32(b)(5)(i) through (b)(5)(ii), *Example 3.*

Example 4. Discharge of indebtedness. (a) *Facts.* P forms S on January 1 of Year 1 and S borrows $200. During Year 1, S's assets decline in value and the P group has a $100 consolidated net operating loss. Of that amount, $10 is attributable to P and $90 is attributable to S under the principles of § 1.1502–21T(b)(2)(iv). None of the loss is absorbed by the group in Year 1, and S is discharged from $100 of indebtedness at the close of Year 1. P has a $0 basis in the S stock. P and S have no attributes other than the consolidated net operating loss. Under section 108(a), S's $100 of discharge of indebtedness income is excluded from gross income because of insolvency. Under section 108(b) and § 1.1502–28T, the consolidated net operating loss is reduced to $0.

(b) *Analysis.* Under § 1.1502–32(b)(3)(iii)(B), the reduction of $90 of the consolidated net operating loss attributable to S is treated as a noncapital, nondeductible expense in Year 1 because that loss is permanently disallowed by section 108(b) and § 1.1502–28T. Under paragraph (b)(3)(ii)(C)(*1*) of this section, all $100 of S's discharge of indebtedness income is treated as tax-exempt income in Year 1 because the discharge results in a $100 reduction to the consolidated net operating loss. Consequently, the loss and the cancellation of the indebtedness result in a net positive $10 adjustment to P's basis in its S stock.

(c) *Insufficient attributes.* The facts are the same as in paragraph (a) of this *Example 4*, except that S is discharged from $120 of indebtedness at the close of Year 1. Under section 108(a), S's $120 of discharge of indebtedness income is excluded from gross income because of insolvency. Under section 108(b) and § 1.1502–28T, the consolidated net operating loss is reduced to $0 at the close of Year 1. Under § 1.1502–32(b)(3)(iii)(B), the reduction of $90 of the consolidated net operating loss attributable to S is treated as a noncapital, nondeductible expense. Under paragraph (b)(3)(ii)(C)(*1*) of this section, only $100 of the discharge is treated as tax-exempt income because only that amount is applied to reduce tax attributes. The remaining $20 of discharge income excluded under section 108(a) has no effect on P's basis in S's stock.

(b)(5)(ii), *Example 4*(d) through (h)(5)(ii) [Reserved]. For further guidance, *see* § 1.1502–32(b)(5)(ii), *Example 4*(d) through (h)(5)(ii).

* * * * *

(h)(7) *Rules related to discharges of indebtedness excluded from gross income.* Paragraphs (b)(3)(ii)(C)(*1*), (b)(3)(iii)(A), and

(b)(5)(ii), *Example 4*, paragraphs (a), (b), and (c), of this section apply with respect to determinations of the basis of the stock of a subsidiary in consolidated return years the original return for which is due (without extensions) after August 29, 2003. For determinations in consolidated return years the original return for which is due (without extensions) on or before August 29, 2003, groups may apply paragraphs (b)(3)(ii)(C)(*1*), (b)(3)(iii)(A), and (b)(5)(ii), *Example 4*, paragraphs (a), (b), and (c), of this section without regard to the references to § 1.1502–28T or, alternatively, apply paragraphs (b)(3)(ii)(C)(*1*), (b)(3)(iii)(A), and (b)(5)(ii), *Example 4*, paragraphs (a), (b), and (c), of § 1.1502–32 as contained in 26 CFR part 1 edition revised as of April 1, 2003.

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: August 28, 2003.

Gregory F. Jenner,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–22453 Filed 8–29–03; 3:14 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9090]

RIN 1545–BC31

Limitation on Use of the Nonaccrual-Experience Method of Accounting Under Section 448(d)(5)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document revises temporary income tax regulations to provide guidance regarding the use of a nonaccrual-experience method of accounting by taxpayers using an accrual method of accounting and performing services. The revisions reflect changes to section 448(d)(5) of the Internal Revenue Code by the Job Creation and Worker Assistance Act of 2002. The revised temporary regulations will affect taxpayers that no longer qualify to use a nonaccrual-experience method of accounting, and qualifying taxpayers that wish to adopt or change a nonaccrual-experience method of accounting. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section of this issue of the **Federal Register.**

Effective Date: These regulations are effective September 4, 2003.

Applicability Date: These regulations are applicable for taxable years ending after March 9, 2002.

FOR FURTHER INFORMATION CONTACT: Terrance McWhorter, (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in these regulations has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1855. Responses to this collection of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

For further information concerning this collection of information, and where to submit comments on the collection of information and the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register.**

Books and records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 448(d)(5). Section 448(d)(5) was added to the Code by section 801 of the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 2085) and was amended by section 403 of the Job Creation and Worker Assistance Act of 2002 (Public Law 107–147, 116 Stat. 21) (the 2002 Act), effective for taxable years ending after March 9, 2002. These regulations pertain to the nonaccrual of certain amounts by taxpayers using an accrual method of accounting and performing services.

Explanation of Provisions

Background

Prior to being amended by the 2002 Act, pursuant to section 448(d)(5) taxpayers using an accrual method of accounting and performing services were not required to accrue any portion of their service-related income that, on the basis of their experience, would not be collected. Temporary regulations under section 448(d)(5) (former temporary regulations) provided rules for the nonaccrual of certain amounts by service providers, including the use of experience to estimate uncollectible amounts and the mechanics of the nonaccrual-experience method.

Section 448(d)(5) was amended by section 403 of the 2002 Act, effective for taxable years ending after March 9, 2002. Section 448(d)(5) now provides that a nonaccrual-experience method is available only for taxpayers using an accrual method who either provide services in fields described in section 448(d)(2)(A) (*i.e.*, health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting), or that meet the $5 million annual gross receipts test of section 448(c) for all prior taxable years.

The legislative history of the 2002 Act states that Congress believed that for many qualified service providers the formula contained in the former temporary regulations under section 448(d)(5) may not clearly reflect the amount of income that, based on experience, will not be collected. *See* H.R. Rep. No. 107–251. Congress noted that service providers were particularly disadvantaged by the formula contained in the former temporary regulations if significant time elapsed between the time the services were rendered and the time a final determination was made that the account would not be collected. Additionally, Congress noted that taxpayers qualified to use the nonaccrual-experience method of accounting should not be subject to a formula that required the payment of taxes on receivables that would not be collected.

The amendments to section 448(d)(5) made by the 2002 Act require the Secretary to promulgate regulations. Specifically, the Secretary is required to prescribe regulations to permit a taxpayer to use computations or formulas that, based on experience, accurately reflect the amount of income that will not be collected. Section 448(d)(5), as amended, also permits a taxpayer to adopt, or request consent of the Secretary to change to, a computation or formula that clearly reflects the taxpayer's experience. Section 448(d)(5) further requires the Secretary to approve a request to change to a computation or formula that clearly reflects the taxpayer's experience. Lastly, the legislative history to the 2002 Act states that Congress anticipated that the Secretary would consider providing

safe harbors in such regulations that may be relied upon by taxpayers.

In accordance with the amendments to section 448(d)(5) in the 2002 Act, the IRS issued Notice 2003–12 (2003–6 I.R.B. 422) to provide interim guidance under section 448(d)(5), as amended, pending the issuance of new regulations. The interim guidance provided by Notice 2003–12 included: (1) For taxpayers that no longer qualified to use a nonaccrual-experience method, procedures to change their method of accounting; (2) for taxpayers that qualified to use a nonaccrual-experience method, two safe harbor nonaccrual-experience methods that were presumed to clearly reflect the taxpayer's nonaccrual-experience; (3) for taxpayers that qualified to use a nonaccrual-experience method but wished to compute their nonaccrual-experience using a formula other than the two safe harbors provided, the requirements necessary to use an alternative formula to compute their nonaccrual-experience; and (4) for taxpayers that wished to change to a different nonaccrual-experience method, the procedures necessary to obtain automatic consent of the Commissioner to change to one of the safe harbor nonaccrual-experience methods or to an alternative nonaccrual-experience method that clearly reflected their experience.

The guidance provided in Notice 2003–12 has, for the most part, been incorporated as part of these temporary regulations. However, certain provisions in the Notice have been modified to address certain concerns raised by the commentators.

Charging of Interest

Section 448(d)(5) and the former temporary regulations provide that a nonaccrual-experience method of accounting may not be used with respect to amounts due for which interest is required to be paid or for which there is any penalty for failure to timely pay any amounts due (other than, in certain circumstances, discounts offered for early payment of an amount due). One commentator suggested that a taxpayer should not be precluded from using a nonaccrual-experience method of accounting if the taxpayer's agreement contains a provision stating that interest is required to be paid but the taxpayer rarely enforces the provision. The IRS and Treasury Department continue to believe that if a taxpayer's agreement requires interest to be paid, or provides for any penalty for failure to timely pay any amounts due, such taxpayer is precluded from using the nonaccrual-experience method of accounting, regardless of whether the taxpayer actually imposes such interest or penalty.

Safe Harbor Methods

The temporary regulations include the two safe harbor nonaccrual-experience methods that were included in Notice 2003–12. The first safe harbor method (safe harbor 1) is the method provided in former Temp. Reg. § 1.448–2T(e)(2). The second safe harbor method (safe harbor 2) is the actual experience method that may be computed using a three-year moving average beginning in the first taxable year this safe harbor method is used or, for taxpayers that do not have the information necessary to compute a three-year moving average in the first taxable year this method is used, the option of creating a three-year moving average beginning with the first taxable year that the taxpayer uses this safe harbor method. A newly formed taxpayer choosing the option of creating a three-year moving average that does not have any accounts receivable upon formation will not be able to exclude any portion of its year-end accounts receivable from income for its first taxable year because the taxpayer does not have any accounts receivable on the first day of the taxable year to track. Thus, a newly formed taxpayer that does not have any accounts receivable upon formation must begin creating its three-year moving average in its second taxable year.

Commentators requested that the IRS and Treasury Department consider other suggested alternative safe harbor methods for inclusion in the temporary regulations. The IRS and Treasury Department analyzed alternative methods and, based on this analysis, have determined that two other formulas will clearly reflect a taxpayer's nonaccrual-experience. As a result, the temporary regulations provide two additional safe harbor nonaccrual-experience methods that may be relied on by taxpayers as clearly reflecting their nonaccrual-experience.

The third safe harbor method (safe harbor 3) is a variation of the formula addressed in *Black Motor Co.* v. *Commissioner*, 41 B.T.A. 300 (1940), *aff'd*, 125 F.2d 977 (6th Cir. 1942). The nonaccrual-experience amount is computed by first determining the ratio of total bad debts charged off (adjusted for recoveries) for the current taxable year and the five preceding taxable years as compared to the total accounts receivable at the end of the current taxable year and the five preceding taxable years. This ratio is applied against the accounts receivable balance at the end of the current taxable year, and the resulting amount is then reduced by the credit charges (accounts receivable) generated and written off during the current taxable year, which results in the nonaccrual-experience amount for the current taxable year.

The fourth safe harbor method (safe harbor 4) is computed by first determining the ratio of total bad debts charged off (adjusted for recoveries) for the current taxable year and the five preceding taxable years other than the credit charges (accounts receivable) that were charged off in the same taxable year they were generated as compared to the total accounts receivable at the end of the current taxable year and the five preceding taxable years. This ratio is then applied against the accounts receivable balance at the end of the current taxable year, which results in the nonaccrual-experience amount for the current taxable year.

Commentators suggested that the IRS and Treasury Department permit the formula addressed in *Black Motor* ("Black Motor formula") as an additional safe harbor formula in the temporary regulations. The IRS and Treasury Department have analyzed the Black Motor formula and have determined that the formula should not be provided as an additional safe harbor formula because the formula only produces an accurate reflection of a taxpayer's experience in limited circumstances. The IRS and Treasury Department believe that safe harbors 3 and 4 (discussed above), which are modifications of the Black Motor formula, remedy many of the shortcomings of the Black Motor formula and, as a result, safe harbors 3 and 4 have been included in the temporary regulations as additional safe harbor formulas.

The IRS and Treasury Department request comments on these safe-harbor nonaccrual-experience methods and suggestions on any additional safe harbor methods that will clearly reflect a taxpayer's experience. Specifically, the IRS and Treasury Department request comments on any additional modification to the Black Motor formula that will result in an accurate reflection of a taxpayer's experience.

Self-Testing of Any Alternative Method

Notice 2003–12 also allowed a taxpayer to use any alternative nonaccrual-experience method that clearly reflected the taxpayer's actual nonaccrual-experience, provided the taxpayer's alternative nonaccrual-experience method was "self-tested" in the first taxable year ending after March 9, 2002, in which the taxpayer uses the alternative nonaccrual-experience

method and every three taxable years thereafter. The Notice provided that if the taxpayer's total alternative nonaccrual-experience amount for the test period was less than or equal to the total adjusted nonaccrual-experience amount (actual nonaccrual-experience amount multiplied by 105%) for the test period, then the taxpayer's alternative nonaccrual-experience method would be treated as clearly reflecting its nonaccrual-experience for the test period and the taxpayer would be permitted to continue using the alternative nonaccrual-experience method, subject to self-testing again in three taxable years. However, if the taxpayer's total alternative nonaccrual-experience amount for the test period was greater than the total adjusted nonaccrual-experience amount for the test period, the Notice stated that the taxpayer's alternative nonaccrual-experience method would be treated as not clearly reflecting its nonaccrual-experience for the test period and the taxpayer was required to change its nonaccrual-experience method of accounting to a method that would clearly reflect its nonaccrual experience.

Some commentators suggested that the self-testing requirement in Notice 2003–12 should not be included in the regulations. They suggested that the self-testing requirement is inconsistent with the language and purpose of the amendments made by the 2002 Act. The commentators also suggested that it would be burdensome and impractical for many taxpayers using an alternative nonaccrual-experience method to conduct the self-test due to the limitations of their existing automated record keeping systems. Finally, one commentator suggested that if a taxpayer's alternative nonaccrual-experience method fails the self-testing requirements, then the temporary regulations should limit the taxpayer's exclusion under section 448(d)(5) to the taxpayer's adjusted nonaccrual-experience amount, rather than require the taxpayer to change its method of accounting.

The IRS and Treasury Department believe that the self-testing requirement is consistent with the 2002 Act, which provides that "[a] taxpayer may adopt, or * * * change to, a computation or formula that clearly reflects the taxpayer's experience," and that "[a] request [to change] shall be approved if such computation or formula clearly reflects the taxpayer's experience." Public Law 107–147, § 403(a). The IRS and Treasury Department believe that self-testing is necessary for taxpayers that do not use one of the four safe harbor methods provided to ensure that the statutory requirement that the taxpayer's formula or computation accurately reflect the taxpayer's nonaccrual experience is met. Therefore, the temporary regulations continue to permit a taxpayer to use any alternative nonaccrual-experience method, provided such method meets the self-testing requirements described in the temporary regulations. The IRS and Treasury Department welcome comments from taxpayers and practitioners specifically addressing the limitations of their record keeping systems that affect conducting self-testing, and ways in which the burden on taxpayers of self-testing might be reduced without compromising the statute's requirement that the taxpayer's method clearly reflect the taxpayer's experience.

Under the temporary regulations, taxpayers using (or desiring to use) an alternative nonaccrual-experience method must self-test the method in the first taxable year ending after March 9, 2002, that the taxpayer uses, or desires to use, the method (first-year self-test), and every three taxable years thereafter (three-year self-test). When conducting the first-year self-test, a taxpayer is permitted to test its alternative nonaccrual-experience method against any of the four safe harbor methods. If a taxpayer is permitted to use its alternative nonaccrual-experience method as a result of satisfying the first year self-test, the temporary regulations require the taxpayer to include contemporaneous documentation in its books and records stating which safe harbor method was used during the self-test that permitted the taxpayer to use its alternative nonaccrual-experience method. When conducting any three-year self-test, the taxpayer must self-test its alternative nonaccrual-experience method against the same safe harbor method used during the immediately preceding self-test. The temporary regulations also provide rules for taxpayers that want to change the safe harbor method used to test their alternative nonaccrual-experience method.

For purposes of the first-year self-test, if the alternative nonaccrual-experience amount for the first-year self-test is less than or equal to the nonaccrual-experience amount computed under the safe harbor formula selected by the taxpayer for the first-year self-test, then the taxpayer's alternative nonaccrual-experience method will be treated as clearly reflecting its nonaccrual-experience for the test period and the taxpayer may continue to use that alternative nonaccrual-experience method, subject to a requirement to self-test again after three taxable years. If the alternative nonaccrual-experience amount is greater than the nonaccrual-experience amount of the safe harbor method selected by the taxpayer for its self-test method, then the taxpayer's alternative nonaccrual-experience method will be treated as not clearly reflecting its nonaccrual-experience for such taxable year and the taxpayer will not be permitted to use that alternative nonaccrual-experience method for such taxable year. The taxpayer is permitted, however, to adopt (or change to) a safe harbor nonaccrual-experience method provided in the regulations or another alternative nonaccrual-experience method, subject to the first-year self-test requirement.

For purposes of the three-year self-test requirement, if the cumulative alternative nonaccrual-experience amount for the test period is less than or equal to the cumulative nonaccrual-experience amount (computed by using for each taxable year of the test period the safe harbor formula used, and contemporaneously documented, during the immediately preceding self-test) (cumulative safe harbor nonaccrual-experience amount), then the taxpayer's alternative nonaccrual-experience method will be treated as clearly reflecting its nonaccrual experience for the test period and the taxpayer may continue to use that alternative nonaccrual-experience method, subject to a requirement to self-test again in three taxable years. If the cumulative alternative nonaccrual-experience amount for the test period is greater than the cumulative safe harbor nonaccrual-experience amount, then the taxpayer's alternative nonaccrual-experience amount will be limited to the cumulative safe harbor nonaccrual-experience amount for the test period. Any excess of the taxpayer's cumulative alternative nonaccrual-experience amount excluded from income during the test period over the taxpayer's cumulative safe harbor nonaccrual-experience amount must be recaptured into income in the third taxable year of the three-year self-test. The taxpayer may continue to use its alternative nonaccrual-experience method, subject to the three-year self-test requirement.

The IRS and Treasury Department request comments on the first-year self-test, three-year self-test, and recapture provisions of the temporary regulations.

Special Rules

Notice 2003–12 provided that a taxpayer that did not maintain records of the data necessary to determine its actual nonaccrual-experience would be subject to being changed by the IRS on

examination to the specific charge-off method. One commentator noted that a taxpayer should not be changed by the IRS to the specific charge-off method merely because of unintentional and/or immaterial variances between the methods permitted under these regulations and the taxpayers' computations, which are often due to factors beyond the taxpayer's control. Among the factors noted were inherent delays between the time services were rendered and when actual billing occurs (which may affect the determination of the year-end balance of accounts receivable, especially when services are provided at the end of one taxable year and the billing occurs a few days later in the subsequent taxable year), and constraints of the taxpayer's computer systems that limit the taxpayer's ability to maintain the data necessary for a nonaccrual-experience method. For example, a taxpayer may be unable to determine whether a particular recovery relates to an account receivable on hand at the beginning of the taxable year. The commentator noted that a taxpayer may therefore choose to treat all recoveries as relating to an account receivable on hand at the beginning of the taxable year, which under safe harbor 2, reduces the nonaccrual-experience amount that the taxpayer would be entitled to if the taxpayer precisely allocated its recoveries. Because these factors generally will result in a taxpayer claiming less than the proper nonaccrual-experience amount the taxpayer would otherwise be entitled to, the commentator requested that the IRS not change a taxpayer to the specific charge-off method due to variances similar to those noted above.

The IRS and Treasury Department do not intend that a taxpayer be changed to the specific charge-off method due to unintentional and/or immaterial variances, especially if a taxpayer is disadvantaged by such variances. As a result, the temporary regulations require only that a taxpayer maintain records that are sufficient to establish the amount of any exclusion from gross income under section 448(d)(5) for the taxable year. This rule is consistent and in accordance with § 1.6001–1(a) (rules regarding records). However, the IRS maintains the right to change a taxpayer to the specific charge-off method if such taxpayer fails to maintain sufficient records to establish the amount of any claimed exclusion from gross income under section 448(d)(5) for the taxable year. The IRS and Treasury Department request comments on this record keeping standard.

Periodic Systems

Notice 88–51, 1988–1 C.B. 535, provides guidance on the use of a periodic system of applying the nonaccrual-experience method provided in former Temp. Reg. § 1.448–2T(e)(2). The periodic system entails establishing an account based on the aggregate amount of accounts receivable that: (1) Are eligible for the nonaccrual-experience method; and (2) the taxpayer estimates will not be collected. The account is adjusted each year to reflect the taxpayer's estimate (using its nonaccrual-experience method) of the aggregate amount of the accounts receivable outstanding at year-end that will not be collected. A corresponding adjustment is then made to gross income.

The IRS and Treasury Department intend to update Notice 88–51 to provide for the use of a periodic system by taxpayers using any nonaccrual-experience method. Pending the issuance of this guidance, a taxpayer may use the periodic system described in Notice 88–51 in conjunction with any permissible nonaccrual-experience method used by the taxpayer.

Accounting Method Change Procedures

A change from a nonaccrual-experience method by a taxpayer no longer qualified to use such a method, a change to a nonaccrual-experience method, a change from one nonaccrual-experience method to another nonaccrual-experience method, or a change from using one safe harbor method for self-testing to another safe harbor method, is a change in method of accounting to which the provisions of sections 446 and 481, and the regulations thereunder, apply. The temporary regulations provide, in most instances, automatic consent for these changes. Taxpayers making these changes should follow the procedures of Rev. Proc. 2002–9. Additionally, the temporary regulations provide automatic consent procedures for taxpayers changing to a nonaccrual-experience method to also request to change to a periodic system.

Additional Issues to be Addressed in Final Regulations

The IRS and Treasury Department intend to address additional issues in future guidance that are not addressed in these temporary regulations. Specifically, the IRS and Treasury Department request comments on the effect on the computation of a taxpayer's nonaccrual-experience as a result of a short taxable year, and an acquisition or disposition of an entity during a taxable year, including the acquisition or disposition of an entity disregarded for federal income tax purposes. The IRS and Treasury Department also request comments on whether the computation under the Actual Experience Method should be based on the prior three taxable years or, as currently provided, the current taxable year and the two immediately preceding taxable years.

Effect on Other Documents

The following publication is obsolete as of September 4, 2003:

Notice 2003–12 (2003–6 I.R.B. 422).

The following publication is modified to include in section 5.06 of the Appendix as of September 4, 2003, only the changes in method of accounting provided in § 1.448–2T(g)(2)(ii), (g)(3)(i) and (h):

Rev. Proc. 2002–9 (2002–1 C.B. 327).

Special Analyses

It has been determined that these temporary regulations are not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For application of the Regulatory Flexibility Act, please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Drafting Information

The principal author of these regulations is Terrance McWhorter of the Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.448–2T is revised as follows:

§ 1.448–2T Nonaccrual of certain amounts by service providers (temporary).

(a) *In general.* This section applies to taxpayers qualified to use a nonaccrual-experience method of accounting provided for in section 448(d)(5) with respect to amounts to be received for the performance of services. Except as otherwise provided in this section, a taxpayer is qualified to use a nonaccrual-experience method of accounting if the taxpayer uses an accrual method of accounting with respect to amounts to be received for the performance of services by the taxpayer and either—

(1) The services are in fields referred to in section 448(d)(2)(A) and as described in § 1.448–1T(e)(4) (*i.e.*, health, law, engineering, architecture, accounting, actuarial science, performing arts, or consulting); or

(2) The taxpayer meets the $5 million annual gross receipts test of section 448(c) and § 1.448–1T(f)(2) for all prior taxable years.

(b) *Nonaccrual-experience method; treatment as method of accounting.* Any taxpayer who satisfies the requirements of this section is not required to accrue any portion of amounts to be received from the performance of services that, on the basis of such person's experience, and to the extent determined under the computation or formula used by the taxpayer and allowed under this section, will not be collected. This nonaccrual of amounts to be received for the performance of services shall be treated as a method of accounting under the Code (a nonaccrual-experience method).

(c) *Method not available if interest charged on amounts due.* A nonaccrual-experience method of accounting may not be used with respect to amounts due for which interest is required to be paid or for which there is any penalty for failure to timely pay any amounts due. For this purpose, the taxpayer will be treated as charging interest or penalties for late payment if the contract or agreement expressly provides for the charging of interest or penalties for late payment, regardless of the practice of the parties. If the contract or agreement does not expressly provide for the charging of interest or penalties for late payment, the determination of whether the taxpayer charges interest or penalties for late payment will be made based on all of the facts and circumstances of the transaction, and not merely on the characterization by the parties or the treatment of the transaction under state or local law. However, the offering of a discount for early payment of an amount due will not be regarded as the charging of interest or penalties for late payment under this section, if—

(1) The full amount due is otherwise accrued as gross income by the taxpayer at the time the services are provided; and

(2) The discount for early payment is treated as an adjustment to gross income in the year of payment, if payment is received within the time required for allowance of such discount. *See* paragraph (f) *Example 1* of this section for an example of this rule.

(d) *Method not available for certain receivables*—(1) *Amounts earned and recognized through the performance of services.* A nonaccrual-experience method of accounting may be used only with respect to amounts earned by the taxpayer and otherwise recognized in income (an account receivable) through the performance of services by such taxpayer. For example, a nonaccrual-experience method may not be used with respect to amounts owed to the taxpayer by reason of the taxpayer's activities with respect to lending money, selling goods, or acquiring accounts receivable or other rights to receive payment from other persons (including persons related to the taxpayer) regardless of whether those persons earned such amounts through the provision of services.

(2) *Special rule.* Except as otherwise provided, for purposes of this section, accounts receivable do not include amounts that are not billed (*e.g.*, for charitable or pro bono services) or amounts contractually not collectible (*e.g.*, amounts in excess of a fee schedule agreed to by contract). *See* paragraph (f) *Examples 2* and *3* of this section for examples of this rule.

(e) *Use of experience to estimate uncollectible amounts*—(1) *In general.* In determining the portion of any amount due which, on the basis of experience, will not be collected, the taxpayer may use one of four safe harbor nonaccrual-experience methods of accounting provided in paragraphs (e)(2) through (e)(5) of this section. Alternatively, the taxpayer may use any other nonaccrual-experience method ("alternative nonaccrual-experience method") that clearly reflects the taxpayer's nonaccrual-experience, subject to the requirements of paragraph (e)(6) of this section. The safe harbor nonaccrual-experience methods provided in paragraphs (e)(2) through (e)(5) of this section will be presumed to clearly reflect a taxpayer's nonaccrual-experience. For purposes of determining a taxpayer's nonaccrual-experience under any method provided in this paragraph (e), accounts receivable described in paragraphs (c) and (d) of this section are not taken into account. *See* paragraph (g) of this section for procedures to obtain automatic consent to change to one of the safe harbor nonaccrual experience methods or to an alternative nonaccrual-experience method.

(2) *Safe harbor 1: Six-year moving average method*—(i) *General rule.* A taxpayer may use a nonaccrual experience method under which the taxpayer determines the uncollectible amount (six-year moving average amount) by multiplying its accounts receivable balance at the end of the current year by a percentage (six-year moving average percentage). The six-year moving average percentage is computed by dividing—

(A) The total bad debts (with respect to accounts receivable) sustained throughout the period consisting of the taxable year and the five preceding taxable years (or, with the approval of the Commissioner, a shorter period), adjusted for recoveries of bad debts during such period; by

(B) The sum of the accounts receivable earned throughout the entire six (or fewer) taxable year period (*i.e.*, the total amount of sales resulting in accounts receivable). *See* paragraph (f) *Example 4* of this section for an example of this method.

(ii) *Period of less than six taxable years.* A period shorter than six taxable years generally will be appropriate only if the short period consists of consecutive taxable years and there is a change in the type of a substantial portion of the outstanding accounts receivable such that the risk of loss is substantially increased. A decline in the general economic conditions in the area, which substantially increases the risk of loss, is a relevant factor in determining whether a shorter period is appropriate. However, approval to use a shorter period will not be granted unless the taxpayer supplies specific evidence that the accounts receivable outstanding at the close of the taxable years for the shorter period requested are not comparable in nature and risk to accounts receivable outstanding at the close of the six taxable years. A substantial increase in a taxpayer's bad debt experience is not, by itself, sufficient to justify the use of a shorter period. If approval is granted to use a

shorter period, the experience for the excluded taxable years shall not be used for any subsequent year. A request for approval to exclude the experience of a prior taxable year shall be made in accordance with the applicable procedures for requesting a letter ruling and shall include a statement of the reasons such experience should be excluded. A request will not be considered unless it is sent to the Commissioner at least 30 days before the close of the first taxable year for which such approval is requested.

(iii) *Special rule for new taxpayers.* In the case of any current taxable year that is preceded by less than 5 taxable years, paragraph (e)(2)(i) of this section shall be applied by using the experience of the current year and the actual number of preceding taxable years.

(3) *Safe harbor 2: Actual experience method*—(i) *Option A: Three-year moving average.* A taxpayer may use a nonaccrual-experience method under which the taxpayer determines the uncollectible amount (actual nonaccrual-experience amount) by multiplying its year-end accounts receivable balance by a percentage (three-year moving average nonaccrual-experience percentage) reflecting its actual nonaccrual experience with respect to its accounts receivable balance at the beginning of the current taxable year and the two immediately preceding taxable years. Under this safe harbor method, a taxpayer is allowed to increase its actual nonaccrual-experience amount by 5 percent (adjusted nonaccrual-experience amount). The taxpayer's three-year moving average nonaccrual-experience percentage, actual nonaccrual-experience amount, and adjusted nonaccrual-experience amount are determined according to the following steps:

(A) *STEP 1.* Track the receivables in the taxpayer's accounts receivable balance at the beginning of the current taxable year to determine the dollar amount of the accounts receivable actually determined to be uncollectible and charged off and not recovered or determined to be collectible by the date selected by the taxpayer (determination date) for the taxable year. The determination date may not be later than the earlier of the due date, including extensions, for filing the taxpayer's federal income tax return for that taxable year or the date on which the taxpayer timely files such return for that taxable year.

(B) *STEP 2.* Repeat STEP 1 for the taxpayer's accounts receivable balance at the beginning of each of the two immediately preceding taxable years.

(C) *STEP 3.* To determine the taxpayer's three-year moving average nonaccrual-experience percentage, divide the sum of the net uncollectible amounts from STEP 1 and STEP 2 by the sum of the accounts receivable balance at the beginning of the current taxable year and the accounts receivable balance at the beginning of each of the two preceding taxable years.

(D) *STEP 4.* Multiply the percentage computed in STEP 3 by the taxpayer's accounts receivable balance at the end of the current taxable year. The product is the taxpayer's actual nonaccrual-experience amount for the current taxable year.

(E) *STEP 5.* To determine the taxpayer's adjusted nonaccrual-experience amount, multiply the actual nonaccrual-experience amount from STEP 4 by 1.05. See paragraph (f) *Example 5* of this section for an example of this method.

(ii) *Option B: Up to three-year moving average.* Alternatively, except as provided in paragraph (e)(3)(iii) of this section, in computing its adjusted nonaccrual-experience amount described in paragraph (e)(3)(i) of this section, a taxpayer may use: its current year nonaccrual-experience percentage for the first taxable year this method is used; a two-year moving average nonaccrual-experience percentage for the second taxable year this method is used; and a three-year moving average nonaccrual-experience percentage for the third, and each succeeding, taxable year this method is used. *See* paragraph (f) *Examples 6, 7,* and *8* of this section for examples of this method.

(iii) *Special rule for new taxpayers.* Any newly formed taxpayer that wants to use the safe harbor nonaccrual-experience method of accounting described in paragraph (e)(3)(ii) of this section in its first taxable year and does not have any accounts receivable upon formation will not be able to exclude any portion of its year-end accounts receivable from income for its first taxable year because the taxpayer does not have any accounts receivable on the first day of the taxable year to track. Therefore, the taxpayer must begin creating its three-year moving average in its second taxable year by tracking the accounts receivables as of the first day of its second taxable year.

(4) *Safe harbor 3: Modified Black Motor method*—(i) *In general.* A taxpayer may use a nonaccrual-experience method under which the taxpayer determines the uncollectible amount (modified Black Motor amount) by multiplying its accounts receivable balance at the end of the current taxable year by a percentage (Black Motor moving average percentage), and then reducing the resulting amount by the credit charges (accounts receivable) generated and written off during the current taxable year. The Black Motor moving average percentage is computed by dividing—

(A) The total bad debts sustained in the current taxable year and the five preceding taxable years (or, with the approval of the Commissioner, a shorter period), adjusted for recoveries of bad debts during such period; by

(B) The sum of accounts receivable at the end of the current taxable year and the five preceding (or fewer) taxable years. *See* paragraph (f) *Example 10* of this section for an example of this method.

(ii) *Period of less than six taxable years.* The rules of paragraph (e)(2)(ii) of this section (regarding periods of less than six taxable years) shall apply to taxpayers using the Modified Black Motor method.

(iii) *Special rules for new taxpayers.* In the case of any current taxable year that is preceded by less than 5 taxable years, paragraph (e)(4)(i) of this section shall be applied by using the experience of the current taxable year and the actual number of preceding taxable years.

(5) *Safe harbor 4: Modified six-year moving average method*—(i) *In general.* A taxpayer may use a nonaccrual-experience method under which the taxpayer determines the uncollectible amount (modified six-year moving average amount) by multiplying its accounts receivable balance at the end of the current year by a percentage (modified six-year moving average percentage). The modified six-year moving average percentage is computed by dividing—

(A) The total bad debts sustained in the current taxable year and the five preceding taxable years (or, with the approval of the Commissioner, a shorter period) other than the credit charges (accounts receivable) that were written off in the same taxable year they were generated, adjusted for recoveries of bad debts during such period; by

(B) The sum of accounts receivable at the end of the current taxable year and the five preceding (or fewer) taxable years. *See* paragraph (f) *Example 11* of this section for an example of this method.

(ii) *Period of less than six taxable years.* The rules of paragraph (e)(2)(ii) of this section (regarding periods of less than six taxable years) shall apply to taxpayers using the Modified six-year moving average method.

(iii) *Special rules for new taxpayers.* In the case of any current taxable year

that is preceded by less than 5 taxable years, paragraph (e)(5)(i) of this section shall be applied by using the experience of the current taxable year and the actual number of preceding taxable years.

(6) *Alternative nonaccrual-experience method*—(i) *In general.* A taxpayer may use any alternative nonaccrual-experience method that clearly reflects the taxpayer's actual nonaccrual-experience, provided the taxpayer's alternative nonaccrual-experience method meets the self-test requirements described in this paragraph (e)(6).

(ii) *Self-testing.* A taxpayer using, or desiring to use, an alternative nonaccrual-experience method must "self-test" its alternative nonaccrual-experience method for its first taxable year ending after March 9, 2002, for which the taxpayer uses, or desires to use, that alternative nonaccrual-experience method (first-year self-test), and every three taxable years thereafter (three-year self-test). Each self-test shall be performed by comparing the nonaccrual-experience amount under the taxpayer's alternative nonaccrual-experience method (alternative nonaccrual-experience amount) with the nonaccrual-experience amount that would have resulted from use of one safe harbor method described in paragraph (e)(2), (e)(3), (e)(4), or (e)(5) of this section selected by the taxpayer for use in conducting the self test (safe harbor comparison method), for the test period.

(iii) *Selection of safe harbor comparison method*—(A) *First-year self-test.* For purposes of conducting the first-year self-test required under paragraph (e)(6)(ii) of this section, a taxpayer may self-test its alternative nonaccrual-experience method against any safe harbor method provided in paragraphs (e)(2) through (e)(5) of this section. *See* paragraph (f) *Example 12* of this section for an example of this rule.

(B) *Three-year self-test.* For purposes of conducting any three-year self-test required under paragraph (e)(6)(ii) of this section, the taxpayer must self-test its alternative nonaccrual-experience method against the same safe harbor comparison method used for the immediately preceding self-test. For purposes of the three-year self-test, the cumulative nonaccrual-experience amount for the safe harbor comparison method is computed by using, for each taxable year of the test period, the same safe harbor comparison method used during the immediately preceding self test (cumulative safe harbor nonaccrual-experience amount). *See* paragraph (f) *Example 13* of this section for an example of this rule.

(C) *Change of safe harbor comparison method.* (*1*) A taxpayer that wants to change the safe harbor comparison method it uses for purposes of the self-testing requirement of paragraph (e)(6)(ii) of this section may do so only for the first taxable year following any three-year self-test period and in accordance with this paragraph (e)(6)(iii)(C). A change in the taxpayer's safe harbor comparison method is a change in method of accounting to which the procedures of sections 446 and 481, and the regulations thereunder, apply.

(*2*) For the taxable year a taxpayer wishes to change its safe harbor comparison method, the taxpayer must self-test its alternative nonaccrual-experience method against any safe harbor method provided in paragraphs (e)(2) through (e)(5) of this section other than the safe harbor comparison method currently used by the taxpayer and such self-test shall be conducted as if such self-test was a first-year self-test.

(*3*) If the self-test described in paragraph (e)(6)(iii)(C)(*2*) of this section results in the taxpayer's alternative nonaccrual-experience method clearly reflecting the taxpayer's nonaccrual-experience as determined under paragraph (e)(6)(iv) of this section, then the taxpayer may change its safe harbor comparison method in accordance with the procedures under paragraph (g)(3) of this section. Such change shall be made on a cut-off basis and without audit protection.

(*4*) If the self-test described in paragraph (e)(6)(iii)(C)(*2*) of this section results in the taxpayer's alternative nonaccrual-experience method not clearly reflecting the taxpayer's nonaccrual-experience as determined under paragraph (e)(6)(vi)(A) of this section, then the taxpayer cannot use the safe harbor comparison method selected and must either—

(*i*) Continue using its current safe harbor comparison method; or

(*ii*) Select another safe harbor comparison method, subject to the requirements of paragraphs (e)(6)(iii)(C)(*2*) and (*3*) of this section.

(*5*) If a taxpayer meets the requirements of this paragraph (e)(6)(iii)(C) to change its safe harbor comparison method, the new safe harbor comparison method is not used for purposes of conducting the three-year self-test required by paragraph (e)(6)(ii) of this section for the taxable year immediately preceding the taxable year the taxpayer is permitted to change its safe harbor comparison method. The taxpayer's former safe harbor comparison method is used for purposes of conducting such three-year self-test and for purposes of determining any recapture amount under paragraph (e)(6)(vi)(B) of this section.

(iv) *Treated as clearly reflecting nonaccrual-experience.* If the alternative nonaccrual-experience amount for the first-year self-test (or the cumulative nonaccrual-experience amount for the three-year self-test, as applicable) is less than or equal to the nonaccrual-experience amount determined under paragraph (e)(6)(iii)(A) of this section (first-year self-test) or the cumulative safe harbor nonaccrual-experience amount determined under paragraph (e)(6)(iii)(B) of this section (three-year self-test), as applicable, of this section for the test period, then—

(A) The taxpayer's alternative nonaccrual-experience method will be treated as clearly reflecting its nonaccrual-experience for the test period; and

(B) The taxpayer may continue to use that alternative nonaccrual-experience method, subject to a requirement to self-test again after three taxable years.

(v) *Contemporaneous documentation.* For purposes of paragraph (e)(6) of this section, a taxpayer must document in its books and records, in the taxable year any first-year or three-year self-test is performed, the safe harbor comparison method used to conduct the self-test, including appropriate documentation and computations that resulted in the determination that the taxpayer's alternative nonaccrual-experience method clearly reflected the taxpayer's nonaccrual-experience for the applicable test period.

(vi) *Special rules for alternative nonaccrual-experience method.* (A) *First-year self-test.* If, as a result of the first-year self-test requirement of paragraph (e)(6)(ii) of this section, the alternative nonaccrual-experience amount for the test period is greater than the safe harbor nonaccrual-experience amount for the test period, then—

(*1*) The taxpayer's alternative nonaccrual-experience method will be treated as not clearly reflecting its nonaccrual-experience;

(*2*) The taxpayer will not be permitted to use that alternative nonaccrual-experience method in such taxable year; and

(*3*) The taxpayer must change to (or adopt) for such taxable year either—

(*i*) A safe harbor nonaccrual-experience method described in paragraphs (e)(2) through (e)(5) of this section; or

(*ii*) Another alternative nonaccrual-experience method, subject to the first-year self-test requirement of paragraph (e)(6)(ii) of this section. *See* paragraph

(f) *Example 14* of this section for an example of this rule.

(B) *Three-year self-test.* If, as a result of the three-year self-test requirement of paragraph (e)(6)(ii) of this section, the cumulative alternative nonaccrual-experience amount for the test period is greater than the cumulative safe harbor nonaccrual-experience amount for the test period, the taxpayer's alternative nonaccrual-experience amount will be limited to the cumulative safe harbor nonaccrual-experience amount for the test period. Any excess of the taxpayer's cumulative alternative nonaccrual-experience amount over the taxpayer's cumulative safe harbor nonaccrual-experience amount excluded from income during the test period must be recaptured into income in accordance with paragraph (e)(6)(vii) of this section. The taxpayer may continue to use its alternative nonaccrual-experience method, subject to the three-year self-test requirement in paragraph (e)(6)(ii) of this section. *See* paragraph (f) *Example 15* of this section for an example of this rule.

(vii) *Recapture*—(1) *In general.* Any amount required to be recaptured pursuant to paragraph (e)(6)(vi)(B) of this section must be included in income in the third taxable year of the three-year self-test period. *See* paragraph (f) *Example 15* of this section for an example of this rule.

(7) *Special rules—(i) Application to specific accounts receivable.* The nonaccrual-experience method shall be applied with respect to each account receivable of the taxpayer that is eligible for such method. With respect to a particular account receivable, the taxpayer will determine, in the manner prescribed in paragraphs (e)(2) through (e)(6) of this section (whichever applies), the amount of such account receivable that is not expected to be collected. Such determination shall be made only once with respect to each account receivable, regardless of the term of such receivable. The estimated uncollectible amount shall not be recognized as gross income. Thus, the amount recognized as gross income shall be the amount that would otherwise be recognized as gross income with respect to the account receivable, less the amount which is not expected to be collected. A taxpayer that excludes an amount from income during a taxable year as a result of the taxpayer's use of a nonaccrual-experience method cannot deduct in any subsequent taxable year the amount excluded from income. Thus, the taxpayer cannot deduct the excluded amount in a subsequent taxable year in which the taxpayer actually determines that the amount is uncollectible and charges it off. If a taxpayer using a nonaccrual-experience method determines that an amount that was not excluded from income is uncollectible and should be charged off (*e.g.*, a calendar-year taxpayer determines on November 1st that an account receivable that was originated on May 1st of the same year is uncollectible and should be charged off) the taxpayer may deduct the amount charged off when it is charged off, but must include any subsequent recoveries in income. The reasonableness of a taxpayer's determinations that amounts are uncollectible and should be charged off may be considered on examination. *See* paragraph (f) *Example 16* of this section for an example of this rule.

(ii) *Charge-off.* For purposes of this section, amounts charged-off shall include only those amounts that would otherwise be allowable under section 166(a).

(iii) *Recoveries.* Regardless of the nonaccrual-experience method of accounting used by a taxpayer under this section, the taxpayer must take into account recoveries of amounts previously charged off. If, in a subsequent taxable year, a taxpayer recovers an amount previously excluded from income under a nonaccrual-experience method or charged off, the taxpayer must include the recovered amount in income in that subsequent taxable year. *See* paragraph (f) *Example 17* of this section for an example of this rule.

(iv) *Application of nonaccrual-experience method.* The rules of section 448(d)(5) and the regulations thereunder shall be applied separately to each taxpayer. For purposes of section 448(d)(5), the term "taxpayer" has the same meaning as the term "person" defined in section 7701(a)(1) (rather than the meaning of the term "taxpayer" defined in section 7701(a)(14)).

(v) *Record keeping requirements.* (A) A taxpayer using a nonaccrual-experience method shall keep such books and records as are sufficient to establish the amount of any exclusion from gross income under section 448(d)(5) for the taxable year, including books and records demonstrating—

(*1*) The nature of the taxpayer's nonaccrual-experience method;

(*2*) Whether, for any particular taxable year, the taxpayer qualifies to use its nonaccrual-experience method (including the self-testing requirements of paragraph (e)(6)(ii) of this section (if applicable));

(*3*) The taxpayer's determination that amounts are uncollectible; and

(*4*) The proper amount that is excludable under the taxpayer's nonaccrual-experience method.

(B) A taxpayer that does not maintain records of the data that are sufficient to establish the amount of any exclusion from gross income under section 448(d)(5) for the taxable year may be subject to being changed by the IRS on examination to the specific charge-off method. See § 1.6001–1 for rules regarding records.

(f) *Examples.* The following examples illustrate the provisions of this section. In each example, the taxpayer uses a calendar year for federal income tax purposes and an accrual method of accounting, does not require the payment of interest or penalties with respect to past due accounts receivable and, in the case of *Examples 5* through *8* and *12* through *15*, selects an appropriate determination date for each taxable year.

Example 1. Charging interest and/or penalties. A has two billing methods for the amounts to be received from A's provision of services described in paragraph (a)(1) of this section. Under one method, for amounts that are more than 90 days past due, A charges interest at a market rate until such amounts (together with interest) are paid. Under the other billing method, A charges no interest for amounts past due. Pursuant to paragraph (c) of this section, A may not use a nonaccrual-experience method of accounting with respect to any of the amounts billed under the method that charges interest on amounts that are more than 90 days past due. A may, however, use the nonaccrual-experience method with respect to the amounts billed under the method that does not charge interest for amounts past due.

Example 2. Contractual allowance or adjustment. B, a healthcare provider, performs a medical procedure on individual C, who has health insurance coverage with IC, an insurance company. B bills IC and C for $5,000, B's standard charge for this medical procedure. However, B has a contract with IC that obligates B to accept $3,500 as full payment for the medical procedure if the procedure is provided to a patient insured by IC. Under the contract, only $3,500 of the $5,000 billed by B is legally collectible from IC and C. The remaining $1,500 represents a contractual allowance or contractual adjustment. Thus, pursuant to paragraph (d)(2) of this section, the remaining $1,500 is not a contractually collectible amount for purposes of this section and B may not use a nonaccrual-experience method with respect to this portion of the accounts receivable.

Example 3. Charitable or pro bono services. D, a law firm, agrees to represent individual E in a legal matter and to provide services to E on a pro bono basis. D normally charges $500 for these services. Because D performed its services to E pro bono, D's services were never billed or intended to result in revenue. Thus, pursuant to paragraph (d)(2) of this section, the $500 forgone legal fee is not a

collectible amount for purposes of this section and D may not use a nonaccrual-experience method with respect to this portion of the accounts receivable.

Example 4. Safe harbor 1: Six-year moving average method. (i) F uses the six-year moving average method described in paragraph (e)(2) of this section. F's total accounts receivable and bad debt experience for the current taxable year (2002) and the five preceding taxable years are as follows:

Taxable year	Total accounts receivable	Bad debts adjusted for recoveries
1997	$30,000	$5,700
1998	40,000	7,200
1999	40,000	11,000
2000	60,000	10,200
2001	70,000	14,000
2002	80,000	16,800
Total	$330,000	$64,900

(ii) Thus, F's six-year moving average percentage is 19.67% ($64,900/$330,000). Assume that $49,300 of the total $80,000 of accounts receivable earned throughout the taxable year 2002 is outstanding as of the close of that taxable year. F's nonaccrual-experience amount using the six-year moving average safe harbor method is computed by multiplying $49,300 by the six-year moving average percentage of .1967, or $9,697. Thus, F may exclude $9,697 from gross income for 2002.

Example 5. Safe harbor 2: Actual experience method (Option A). (i) G is eligible to use a nonaccrual-experience method and wishes to adopt the actual experience method of paragraph (e)(3)(i) of this section. G has the data necessary to track the uncollectible amounts in its beginning-of-year accounts receivable for the current taxable year and the two immediately preceding taxable years. G determines that its actual accounts receivable collection experience is as follows:

Taxable year	Total A/R balance at beginning of year	Beginning A/R amount charged off by determination date (adjusted for recoveries)
2000	$1,000,000	$35,000
2001	760,000	75,000
2002	1,975,000	65,000
Total	$3,735,000	$175,000

(ii) G's ending A/R Balance on 12/31/2002 is $880,000. In 2002, G chooses to compute its nonaccrual-experience amount by using the three-year moving average under Option A of paragraph (e)(3)(i) of this section. Thus, G's three-year moving average nonaccrual-experience percentage is 4.7%, determined by dividing the sum of the amount of G's receivables in its account on January 1st of 2000, 2001, and 2002, that were determined to be uncollectible and charged off (adjusted for recoveries) on or before the corresponding determination dates, by the sum of the balances of G's accounts receivable account on January 1st of 2000, 2001, and 2002 (*i.e.*, $175,000/$3,735,000 or 4.7%). Thus, G's actual nonaccrual-experience amount for 2002 is determined by multiplying this percentage by the balance of G's accounts receivable account on December 31, 2002 (*i.e.*, $880,000 × 4.7% = $41,360). G is permitted to exclude from gross income in 2002 an amount equal to 105% of G's actual nonaccrual-experience amount, or $43,428 ($41,360 × 105%). This is G's adjusted nonaccrual-experience amount for 2002.

Example 6. Safe harbor 2: Actual experience method (Option B). The facts are the same as *Example 5*, except that G has not maintained the data necessary to use Option A of paragraph (e)(3)(i) of this section. G determines that, of its 2002 beginning-of-year receivables of $1,975,000, $65,000 were determined to be uncollectible and charged off (adjusted for recoveries) on or before September 15, 2003, the date G timely files its federal income tax return for 2002 (the determination date). G chooses to use Option B of paragraph (e)(3)(ii) of this section to compute its adjusted nonaccrual-experience amount for 2002. G's current year nonaccrual-experience percentage is 3.3%, determined by dividing the amount of G's receivables in its account on January 1, 2002, that were charged off as uncollectible (adjusted for recoveries) on or before the determination date, by the balance of G's accounts receivable account on January 1, 2002 (*i.e.*, $65,000/$1,975,000 or 3.3%). Thus, G's actual nonaccrual-experience amount for 2002 is determined by multiplying this percentage by the balance of G's accounts receivable account on December 31, 2002 (*i.e.*, $880,000 × 3.3% = $29,040). G is permitted to exclude from gross income in 2002 an amount equal to 105% of G's actual nonaccrual-experience amount, or $30,492 ($29,040 × 105%). This is G's adjusted nonaccrual-experience amount for 2002.

Example 7. (i) The facts are the same as *Example 6*. G determines that its accounts receivable collection experience for 2003 is as follows:

Taxable year	Total A/R balance at beginning of year	Beginning A/R amount charged off by determination date (adjusted for recoveries)
2002	$1,975,000	$65,000
2003	880,000	95,000
Total	$2,855,000	$160,000

(ii) G's ending A/R Balance on 12/31/2003 is $2,115,000. In 2003, G must compute its nonaccrual-experience amount using an average of its actual nonaccrual-experience for 2002 and 2003 (in accordance with Option B of paragraph (e)(3)(ii) of this section). Thus, G's two-year moving average nonaccrual-experience percentage is 5.6%, determined by dividing the sum of the amount of G's receivables in its accounts on January 1st of 2002 and 2003, that were determined to be uncollectible and charged off (adjusted for recoveries) on or before the corresponding determination dates, by the sum of the balances of G's accounts receivable account on January 1st of 2002 and 2003 (*i.e.*, $160,000/$2,855,000 or 5.6%). Thus, G's actual nonaccrual-experience amount for 2003 is determined by multiplying this percentage by the balance of G's accounts receivable account on December 31, 2003 (*i.e.*, $2,115,000 × 5.6% = $118,440). G is permitted to exclude from gross income in 2003 an amount equal to 105% of G's actual nonaccrual-experience amount, or $124,362 ($118,440 × 105%). This is G's adjusted nonaccrual-experience amount for 2003.

Example 8. (i) The facts are the same as *Example 7*. G determines that its accounts receivable collection experience for 2004 is as follows:

Taxable year	Total A/R balance at beginning of year	Beginning A/R amount charged off by determination date (adjusted for recoveries)
2002	$1,975,000	$65,000
2003	880,000	95,000
2004	2,115,000	105,000
Total	$4,970,000	$265,000

(ii) G's ending A/R Balance on 12/31/2004 is $1,600,000. In 2004, G must compute its nonaccrual-experience amount using an average of its actual nonaccrual-experience for 2002, 2003, and 2004 (in accordance with Option B of paragraph (e)(3)(ii) of this section). Thus, G's actual three-year moving average nonaccrual-experience percentage is 5.3%, determined by dividing the sum of the amount of G's receivables in its account on January 1st of 2002, 2003, and 2004, that were determined to be uncollectible and charged off (adjusted for recoveries) on or before the corresponding determination dates, by the sum of the balances of G's accounts receivable account on January 1st of 2002, 2003, and 2004 (*i.e.*, $265,000/$4,970,000 or 5.3%). Thus, G's actual nonaccrual-experience amount for 2004 is determined by multiplying this percentage by the balance of G's accounts receivable account on December 31, 2004 (*i.e.*, $1,600,000 × 5.3% = $84,800). G is permitted to exclude from gross income in 2004 an amount equal to 105% of G's actual nonaccrual-experience amount, or $89,040 ($84,800 × 105%). This is G's adjusted nonaccrual-experience amount for 2004. Thereafter, G must continue to use a three-year moving average to compute its actual nonaccrual-experience, or obtain approval of the Commissioner to change its nonaccrual-experience method of accounting.

Example 9. H has not tracked its 2002 beginning-of-year accounts receivable. Therefore, H may not use the actual experience method described in paragraph (e)(3) of this section for 2002. H may use this method for 2003 if H tracks its 2003 beginning-of-year receivables, and

otherwisecomplies with the requirements of this section.

Example 10. Safe harbor 3: Modified Black Motor method. (i) J uses the modified Black Motor method described in paragraph (e)(4) of this section. J's total accounts receivable and bad debt experience for the current taxable year (2002) and the five preceding taxable years are as follows:

Taxable year	Accounts receivable at end of taxable year	Bad debts (adjusted for recoveries)
1997	$130,000	$9,100
1998	140,000	7,000
1999	140,000	14,000
2000	160,000	14,400
2001	170,000	20,400
2002	180,000	10,800
Total	$920,000	$75,700

(ii) Thus, J's Black Motor moving average percentage is 8.228% ($75,700/$920,000). Assume that the credit charges (accounts receivable) generated and written off during the current taxable year were $3,600. J's modified Black Motor amount is $11,210, computed by multiplying J's accounts receivable at December 31, 2002 ($180,000) by the Black Motor moving average percentage of .08228 and reducing the resulting amount by $3,600 (J's credit charges (accounts receivable) generated and written off during the 2002 taxable year). Thus, J may exclude $11,210 from gross income for 2002.

Example 11. Safe harbor 4: Modified six-year moving average method. (i) The facts are the same as *Example 10*, except that J uses the modified six-year moving average method described in paragraph (e)(5) of this section. Assume further that the credit charges (accounts receivable) that were written off in the same taxable year they were generated, adjusted for recoveries of bad debts during such period are as follows:

Taxable Year	Credit charges written off in same taxable year as generated (adjusted for recoveries)
1997	$3,033
1998	2,333
1999	4,667
2000	4,800
2001	5,800
2002	3,600
Total	$25,233

(ii) Thus, J's modified six-year moving average percentage is 5.486% (($75,700—$25,233)/$920,000). J's modified six-year moving average amount is $9,875, computed by multiplying J's accounts receivable at December 31, 2002 ($180,000) by the modified six-year moving average percentage of .05486. Thus, J may exclude $9,875 from gross income for 2002.

Example 12. Selection of a safe harbor method. (i) Beginning in 2002, K is eligible to use a nonaccrual-experience method and wishes to adopt an alternative nonaccrual-experience method similar to the method described in Black Motor Co. v. Comm'r, 41 B.T.A. 300 (1940), aff'd, 125 F.2d 977 (6th Cir. 1942). Pursuant to paragraph (e)(6)(ii) of this section, K must self-test its alternative nonaccrual-experience method for the first taxable year it is used (2002), and every three taxable years thereafter for which K uses its alternative nonaccrual-experience method. Pursuant to paragraph (e)(6)(iii) of this section, K selects safe harbor 2 (actual experience method) for purposes of conducting its first year self-test. Thus, beginning in 2002, K must begin tracking its beginning-of-year accounts receivable and computing its actual nonaccrual-experience as provided in paragraph (e)(3) of this section. However, because K lacks the data to use Option A (three-year moving average) under paragraph (e)(3)(i) of this section, K selects Option B (up to three-year moving average) under paragraph (e)(3)(ii) of this section. K's actual nonaccrual-experience amount and alternative nonaccrual-experience amount for 2002 are set forth below:

Taxable year	Total A/R balance at beginning of year	Beginning A/R amount charged off by determination date (adjusted for recoveries)	Alternative nonaccrual-experience amount
2002	$350,000	$14,000	$20,700

(ii) K's ending A/R Balance on 12/31/2002 is $500,000. K's actual nonaccrual-experience percentage is 4%, determined by dividing the amount of K's receivables in its account on January 1, 2002, that were charged off as uncollectible (adjusted for recoveries) on or before the determination date, by the balance of K's accounts receivable account on January 1, 2002 (*i.e.*, $14,000/$350,000 or 4%). Thus, K's actual nonaccrual-experience amount for 2002 is determined by multiplying this percentage by the balance of K's accounts receivable account on December 31, 2002 (*i.e.*, $500,000 × 4% = $20,000). Because K's alternative nonaccrual-experience amount for 2002 ($20,700) is not greater than 105% of its actual nonaccrual-experience amount for 2002 (*i.e.*, $20,000 × 1.05 = $21,000), pursuant to paragraph (e)(6)(iv) of this section, K's alternative nonaccrual-experience method will be treated as clearly reflecting its nonaccrual-experience for the test period 2002. Pursuant to paragraph (e)(6)(iv)(B) of this section, K may continue to use its alternative nonaccrual-experience method. Additionally, pursuant to paragraph (e)(6)(iv)(B) of this section, K is required to self-test its alternative nonaccrual-experience method again in 2006, for taxable years 2003 through 2005 and, pursuant to paragraph (e)(6)(iii)(B) of this section, K must self-test its alternative nonaccrual-experience method against the actual experience method when conducting its three year self-test in 2006.

Example 13. (i) The facts are the same as *Example 12*. K's alternative nonaccrual-experience amounts for taxable years 2003–2005 are as follows:

Taxable Year	Total A/R balance at beginning of year	Beginning A/R amount charged off by determination date (adjusted for recoveries)	Actual non-accrual-experience amount	Alternative nonaccrual-experience amount
2003	$440,000	$30,000	$42,329	$43,050
2004	760,000	65,000	138,183	140,200
2005	1,965,000	65,000	101,106	110,550
Total	$3,165,000	$160,000	$281,618	$293,800

(ii) Assume that K's ending A/R balance on 12/31/05 is $2,000,000. Because K's cumulative alternative nonaccrual-experience amount for the test period ($293,800) is not greater than K's cumulative adjusted nonaccrual-experience amount (cumulative actual nonaccrual-experience amount × 105%) for the same period ($281,618 × 1.05 = $295,699), pursuant to paragraph (e)(6)(iv) of this section K's alternative nonaccrual-experience method will be treated as clearly reflecting its nonaccrual-experience for the test period. Pursuant to paragraph (e)(6)(iv)(B) of this section, K may continue to use its alternative nonaccrual-experience method. Additionally, pursuant to paragraph (e)(6)(iv)(B) of this section, K is required to self-test its alternative nonaccrual-experience method again in 2009, for taxable years 2006 through 2008 and, pursuant to paragraph (e)(6)(iii)(B) of this section. K must self-test its alternative nonaccrual-experience method against the actual experience method when conducting its three year self-test in 2009.

Example 14. The facts are the same as *Example 12*, except that K's alternative nonaccrual-experience amount for 2002 is $22,000. Because K's alternative nonaccrual-experience amount for 2002 ($22,000) is greater than 105% of its actual nonaccrual-experience amount for 2002 (*i.e.*, $20,000 × 1.05 = $21,000), pursuant to paragraph (e)(6)(vi)(A) of this section, K's alternative nonaccrual-experience method will be treated as not clearly reflecting its nonaccrual experience for 2002. Accordingly, K must either adopt a safe harbor nonaccrual-experience method described in paragraphs (e)(2) (six-year moving average method), (e)(3) (actual experience method), (e)(4) (modified Black Motor method), or (e)(5) (modified six-year moving average method) of this section, or an alternative nonaccrual-experience method under paragraph (e)(6) of this section (subject to the self-testing requirements of paragraph (e)(6)(ii) of this section).

Example 15. The facts are the same as *Example 13*, except that K's cumulative alternative nonaccrual-experience amount for 2003–2005 is $300,000. Because K's cumulative alternative nonaccrual-experience amount for the three year test period (taxable years 2003–2005) is greater than its cumulative adjusted nonaccrual-experience amount for the three year test period ($295,699), pursuant to paragraph (e)(6)(vi)(B) of this section the $4,301 excess of K's cumulative alternative nonaccrual-experience amount over K's cumulative adjusted nonaccrual-experience amount for the three year test period must be recaptured into income in 2005 in accordance with paragraph (e)(6)(vii) of this section. K may continue to use its alternative nonaccrual-experience method, subject to the three-year self-test requirement in paragraph (e)(6)(ii) of this section.

Example 16. Subsequent worthlessness of year-end receivable. The facts are the same as *Example 4*. Assume that one of the accounts receivable outstanding at the end of 2002 was for $8,000, and that in 2003, under section 166, the entire amount of this receivable becomes wholly worthless. Because F did not accrue as income $1,573 of this account receivable ($8,000 × .1967) under the nonaccrual-experience method in 2002, pursuant to paragraph (e)(7)(i) of this section F may not deduct this portion of the account receivable as a bad debt deduction under section 166 in 2003. F may deduct the remaining balance of the receivable in 2003 as a bad debt deduction under section 166 ($8,000 − $1,574 = $6,426).

Example 17. Subsequent collection of year-end receivable. The facts are the same as in *Example 4*. Assume that an account receivable of $1,700 outstanding at the end of 2002 was collected in full by F in 2003. Pursuant to paragraph (e)(7)(iii) of this section, F must recognize additional gross income in 2003 equal to the portion of this receivable that F excluded from gross income in the prior year ($1,700 × .1967 = $334).

(g) *Changes to a nonaccrual-experience method of accounting*—(1) *In general.* A change to a nonaccrual-experience method is a change in method of accounting to which the provisions of sections 446 and 481, and the regulations thereunder, apply.

(2) *Taxpayers no longer qualified under section 448 to use a nonaccrual-experience method*—(i) *First taxable year ending after March 9, 2002.* For a taxpayer who no longer qualifies under section 448(d)(5), as amended, to use a nonaccrual-experience method, consent is hereby granted to change from the nonaccrual-experience method to the specific charge-off method for its first taxable year ending after March 9, 2002. Such change shall be made in accordance with the provisions of this paragraph (g)(2). Pursuant to the consent granted by this paragraph (g)(2), a taxpayer described in this paragraph (g)(2) that is using a nonaccrual experience method must change such method of accounting to the specific charge-off method for its first taxable year ending after March 9, 2002. The net amount of the required section 481(a) adjustment is to be taken into account over a period of 4 taxable years (or, if less, the number of taxable years that the taxpayer has used the nonaccrual-experience method). The taxpayer should attach Form 3115 to its income tax return for the year of change, and write "Change from the Nonaccrual-Experience Method under § 1.448–2T(g)" at the top of the form. However, such a taxpayer is not required to file a Form 3115 with the national office, or pay any associated user fee.

(ii) *For taxable years subsequent to first taxable year ending after March 9, 2002.* Taxpayers who no longer qualify under section 448(d)(5), as amended, to use a nonaccrual-experience method in a taxable year subsequent to the first taxable year ending after March 9, 2002, must follow the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method. (For further guidance, for example, *see* Rev. Proc. 2002–9, 2002–1 C.B. 327, and § 601.601(d)(2)(ii)*(b)* of this chapter.)

(3) *Taxpayers permitted to use a nonaccrual-experience method*—(i) *In general.* Except as provided in paragraphs (g)(3)(ii) (regarding scope limitations) and (g)(4) (regarding certain concurrent changes) of this section, a taxpayer that wants to change to a nonaccrual-experience method provided in this section, change from one nonaccrual-experience method to another nonaccrual-experience method provided in this section, and/or change to a periodic system (for further guidance, for example, *see* Notice 88–51, 1988–1 C.B. 535, and § 601.601(d)(2)(ii)(*b*) of this chapter), must follow the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method (for further guidance, for example, *see* Rev. Proc. 2002–9, 2002–1 C.B. 327, and § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Scope limitations.* Any limitations on obtaining the automatic consent of the Commissioner do not apply to a taxpayer that wants to change to a nonaccrual-experience method of accounting provided in this section, and/or change to a periodic system (for further guidance, for example, see Notice 88–51, 1988–1 C.B. 535, and § 601.601(d)(2)(ii)(*b*) of this chapter), for either its first or second taxable year ending after March 9, 2002, provided the taxpayer's nonaccrual-experience method of accounting is not an issue under consideration for taxable years under examination at the time the Form 3115 is filed with the national office. A taxpayer's nonaccrual-experience method of accounting is an issue under consideration for the taxable years under examination if the taxpayer receives written notification (for example, by examination plan, information document request (IDR), or notification of proposed adjustments or income tax examination changes) from the examining agent(s) specifically citing the treatment of the nonaccrual-experience method of accounting as an issue under consideration.

(iii) *Form 3115 must be completed.* When filing the Form 3115, the taxpayer

must complete all applicable parts of the form and write "Automatic Change to Nonaccrual-Experience Method" at the top of the form.

(4) *Certain concurrent changes*—(i) *Taxpayers concurrently changing to an accrual method of accounting*—(A) *Automatic consent.* Taxpayers that want to change to a nonaccrual-experience method of accounting for the same taxable year for which they are required to change to an accrual method of accounting under section 448 and the regulations thereunder may concurrently change their method of accounting to a nonaccrual-experience method (with or without also changing to a periodic system (for further guidance, for example, see Notice 88–51, 1988–1 C.B. 535, and § 601.601(d)(2)(ii)(*b*) of this chapter)), under this paragraph (g)(4)(i) with automatic consent of the Commissioner if they otherwise qualify under this section to use a nonaccrual-experience method of accounting. Taxpayers changing to a nonaccrual-experience method under this paragraph (g)(4)(i) must comply with the provisions of § 1.448–1(h)(2). Moreover, such taxpayers must type or legibly print the following statement at the top of page 1 of Form 3115, "Automatic Change to Nonaccrual-Experience Method and Overall Accrual Method." The consent of the Commissioner to change to a nonaccrual experience method is granted to taxpayers changing to such method under this paragraph (g)(4)(i).

(B) *Section 481(a) adjustment.* In the case of a taxpayer changing to a nonaccrual-experience method under this paragraph (g)(4)(i), the section 481(a) adjustment resulting from the change to a nonaccrual-experience method of accounting will be combined or netted with the net section 481(a) adjustment resulting from the change under § 1.448–1(h)(2), and the resulting net section 481(a) adjustment will be taken into account over the section 481(a) adjustment period as determined under the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's consent to a change in accounting method.

(ii) *Taxpayers concurrently changing to a permissible special method*—(A) *Prior consent.* A taxpayer required to change to an accrual method of accounting under section 448 and the regulations thereunder that, as part of such change, also wants to change to a nonaccrual experience method of accounting and a permissible special method of accounting under § 1.448–1(h)(3), may concurrently change its method of accounting to a nonaccrual-experience method of accounting (with or without also changing to a periodic system (for further guidance, for example, see Notice 88–51, 1988–1 C.B. 535, and § 601.601(d)(2)(ii)(*b*) of this chapter)), under this paragraph (g)(4)(ii) with the prior consent of the Commissioner if the taxpayer otherwise qualifies under this section to use a nonaccrual-experience method of accounting. Taxpayers changing to a nonaccrual-experience method under this paragraph (g)(4)(ii) must comply with the provisions of § 1.448–1(h)(3). Moreover, such taxpayers must type or legibly print the following statement at the top of page 1 of Form 3115, "Change to Nonaccrual-Experience Method and Special Method of Accounting—Section 448."

(B) *Section 481(a) adjustment.* The section 481(a) adjustment resulting from a change in method of accounting described under this paragraph (g)(4)(ii) must be taken into account in accordance with the rules provided in paragraph (g)(4)(i)(B) of this section.

(h) *Transition rules*—(1) *In general.* If a taxpayer adopted or changed to a nonaccrual-experience method of accounting in accordance with the provisions of Notice 2003–12 for any taxable year ending after March 9, 2002, and, on or before October 20, 2003, and for such taxable year the taxpayer would like to change to a different nonaccrual-experience method of accounting as provided in paragraphs (e)(2) through (e)(6) of this section, and/or change to a periodic system (for further guidance, for example, see Notice 88–51, 1988–1 C.B. 535, and § 601.601(d)(2)(ii)(*b*) of this chapter), the taxpayer must follow the administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in accounting method (for further guidance, for example, see Rev. Proc. 2002–9, 2002–1 C.B. 327, and § 601.601(d)(2)(ii)(*b*) of this chapter) and must file the original Form 3115 either—

(i) With an amended federal income tax return (or a qualified amended return under Rev. Proc. 94–69, 1994–2 C.B. 804, if applicable; hereinafter, referred to in this section as a "qualified amended return") on or before December 31, 2003, for the taxpayer's first taxable year ending after March 9, 2002, and any affected subsequent taxable year, and include the statement "Filed Pursuant to § 1.448–2T(h)(1)(i)" at the top of any amended federal income tax return (or qualified amended return);

(ii) With the taxpayer's timely filed federal income tax return for the second taxable year ending after March 9, 2002, if this return has not been filed on or before September 4, 2003; or

(iii) If the taxpayer's federal income tax return for the second taxable year ending after March 9, 2002, was filed on or before September 4, 2003, with an amended federal income tax return (or a qualified amended return) on or before December 31, 2003, for the second taxable year ending after March 9, 2002, and include the statement "Filed Pursuant to § 1.448–2T(h)(1)(iii)" at the top of the amended federal income tax return (or qualified amended return).

(2) *Pending Form 3115.* If a taxpayer filed a Form 3115 under the applicable administrative procedures with the national office to make a change in its method of accounting under section 448(d)(5), as amended, for a year of change for which this regulation is effective and the application or ruling request is pending with the national office on September 4, 2003, the taxpayer must notify the national office in writing prior to November 3, 2003, if the taxpayer wants to withdraw its Form 3115 under such administrative procedures. If the taxpayer notifies the national office within the time provided in this paragraph (h)(2), the taxpayer's Form 3115, and any user fee that was submitted with the Form 3115, will be returned to the taxpayer. A taxpayer whose Form 3115 is returned under this paragraph (h)(2) may file a new Form 3115 under the provisions prescribed in paragraphs (g) and (h) of this section. If the taxpayer does not notify the national office within the time provided in this paragraph (h)(2), the national office will continue to process the taxpayer's Form 3115 in accordance with the administrative procedures under which it was originally filed.

(i) [Reserved]

(j) *Audit protection.* If a taxpayer uses one of the nonaccrual-experience methods of accounting described in paragraphs (e)(3) (actual experience method), (e) (4) (modified Black Motor method), or (e)(5) (modified six-year moving average method) of this section to determine its amount excluded from gross income under section 448(d)(5), as amended, the taxpayer's use of that method will not be raised as an issue by the IRS in a taxable year that ends before September 4, 2003. If the taxpayer uses one of the nonaccrual-experience methods of accounting described in paragraphs (e)(3), (e)(4), or (e)(5) of this section, and its use of such method is an issue under consideration in examination (as defined in paragraph (g)(3)(ii) of this section), in appeals, or before the U.S. Tax Court in a taxable year that ends before September 4, 2003,

that issue will not be further pursued by the IRS.

(k) *Effective date.* This section is applicable for taxable years ending after March 9, 2002. The applicability of this section expires on or before September 5, 2006.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

■ **Par. 3.** The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

■ **Par. 4.** In § 602.101, paragraph (b) is amended by adding an entry in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
1.448–2T	1545–1855
* * * * *	

Judith B. Tomaso,

Acting Deputy Commissioner for Services and Enforcement.

Approved: August 28, 2003.

Gregory Jenner,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 03–22458 Filed 9–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD13–03–029]

RIN 1625–AA00

Security and Safety Zones; Barge BEAUFORT 20, Explosive On-Load and Transit, Puget Sound, WA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary security and safety zones around the Barge BEAUFORT 20 during an explosive on-load and transit in the waters of Puget Sound, WA. The Coast Guard is taking this action to safeguard the public from hazards associated with the loading and transit of explosives and to safeguard the Barge BEAUFORT 20 from sabotage, other subversive acts, or accidents. Entry into these temporary security and safety zones will be prohibited unless you have permission from the Captain of the Port, Puget Sound.

DATES: This rule is effective from 6 a.m. Pacific Daylight Time on August 22, 2003 to 6 a.m. Pacific Daylight Time September 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD13–03–029 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays

FOR FURTHER INFORMATION CONTACT: LT J. R. Morgan, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 217–6230.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and (d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM would be contrary to public interest since immediate action is necessary to safeguard vessels and persons that may be transiting in the vicinity of the Barge BEAUFORT 20 and to protect the BEAUFORT 20. Alaska Marine Lines, the barge owner, was unable to provide the Coast Guard with sufficient details regarding this explosive on-load and transit until less than 30 days prior to the date of the loading. If normal notice and comment procedures were followed, this rule would not become effective until after the date of the explosive loading. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

Background and Purpose

The Coast Guard has determined that it is necessary to establish a temporary security and safety zone around the barge BEAUFORT 20 due to the hazards associated with the handling and transit of explosives. These security and safety zones are required in order to minimize the dangers that the explosive on-load and transit may present to persons and vessels transiting in the vicinity of the BEAUFORT 20. These dangers include, but are not limited to, combustion, explosion and deflagration.

Discussion of Rule

The Coast Guard is adopting a temporary security and safety zone regulation on Puget Sound, WA, around the Barge BEAUFORT 20. The Coast Guard has determined that it is necessary to restrict access to an area within a 1500 yard radius around the Barge BEAUFORT 20 while anchored at a position approximately 3 nautical miles due East of Vendovi Island at 48 degrees, 37 minutes North by 122 degrees, 31.25 minutes West. In addition, the BEAUFORT 20 will transit from Naval Magazine Indian Island to the anchorage located east of Vendovi Island. Accordingly, it is necessary to restrict access to an area within a 200-yard radius around the Barge BEAUFORT 20 while it is underway. The Coast Guard, through this action, intends to promote the security and safety of persons and vessels in the vicinity of the BEAUFORT 20. Entry into this zone will be prohibited unless authorized by the Captain of the Port. Coast Guard personnel will enforce this security and safety zone and may be assisted by other federal, state, or local agencies.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the regulation would encompass a small area that should not impact commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not

dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This expectation is based on the fact that the regulated area established by the regulation would encompass a small area that should not impact commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the (**FOR FURTHER INFORMATION CONTACT**.) section.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard's preliminary review indicates this rule is categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D. The environmental analysis and Categorical Exclusion Determination will be prepared and be available in the docket for inspection and copying where indicated under **ADDRESSES**. All standard environmental measures remain in effect.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From 6 a.m. Pacific Daylight Time (PDT) on August 22, 2003, to 6 p.m. (PDT) September 11, 2003, a temporary § 165.T13–019 is added to read as follows:

§ 165.T13–019 Security and Safety Zone Regulations, Barge BEAUFORT 20, Explosive On-Load and Transit, Puget Sound, WA.

(a) *Location*. The following areas in navigable waters of the United States in Puget Sound east of 123 degrees, 30 minutes West Longitude [Datum: NAD 1983] are security and safety zones:

(1) All waters within a 1500-yard radius of the Barge BEAUFORT 20 while at anchor. The BEAUFORT 20 will anchor in Padilla Bay at approximately 48 degrees, 37 minutes North by 122 degrees, 31.25 minutes West, [Datum: NAD 1983].

(2) All waters within a 200-yard radius of the Barge BEAUFORT 20 while underway from Naval Magazine Indian Island to the anchorage located at the coordinates indicated in paragraph (a)(1) of this section.

(b) *Regulations*. In accordance with the general regulations in 33 CFR part 165, subparts C and D, this section applies to any person or vessel in the navigable waters of the United States. No person or vessel may enter or remain in the security and safety zones established by this section, unless authorized by the Captain of the Port or his designated representatives. Vessels and persons granted authorization to enter the security and safety zone shall obey all lawful orders or directions of the Captain of the Port or his designated representative. The Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this section pursuant to 33 CFR 6.04–11.

(c) *Effective period*. This section applies from 6 a.m. (PDT) August 22,

2003, through 6 p.m. (PDT) on September 11, 2003.

Dated: August 20, 2003.

D. Ellis,

Captain, Coast Guard, Captain of the Port, Puget Sound.

[FR Doc. 03–22464 Filed 9–3–03; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 287–0410a; FRL–7548–3]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Kern County Air Pollution Control District (KCAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). The KCAPCD revisions concern the emission of particulate matter (PM–10) from agricultural burning and prescribed burning. The SJVUAPCD revision concerns the emission of nitrogen oxides (NOX) from lime kilns. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on November 3, 2003 without further notice, unless EPA receives adverse comments by October 6, 2003. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov*.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSDs at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted or amended	Submitted
KCAPCD	417	Agricultural and Prescribed Burning	03/13/03 Amended	06/05/03
SJVUAPCD	4313	Lime Kilns	03/27/03 Adopted	06/05/03

On July 1, 2003, this submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

We approved KCAPCD Rule 417 into the SIP on August 19, 1999 (64 FR 45170), originally adopted on April 18, 1972. SJVUAPCD Rule 4313 is a new rule.

C. What Is the Purpose of the Submitted Rule or Rule Revisions?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X and particulate matter emissions.

The purpose of the revisions to KCAPCD Rule 417 is to make the following changes:

- Added are 19 new definitions.
- Added is the concept of a marginal-burn day, where limited burning would be allowed when conditions are close to those of a permissive-burn day.
- Added is 48-hour forecast, in addition to the present 72-hour outlook.
- Added are the Smoke Management Guidelines promulgated under title 17, California Code of Regulations (CCR) (September 18, 2001). These guidelines require that smoke management plans be prepared for prescribed burning of greater than 10 acres, with additional plan requirements at the 100-acre and 250-acre thresholds.
- Meteorological criteria for permissive-burn days in the Mohave Desert Air Basin are incorporated by reference from title 17, CCR, section 80311 (September 18, 2001).
- Deleted is the exemption to do Range Improvement Burning on a no-burn day if over 50% is brush-treated.

The purpose of new SJVUAPCD Rule 4313 is to regulate NO_X emissions from lime kilns.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the CAA) and must not relax existing requirements (*see* sections 110(l) and 193).

Section 189(a) of the CAA requires moderate nonattainment areas with significant PM–10 sources to adopt reasonably available control measures (RACM), including reasonably available

control technology (RACT). KCAPCD is a PM–10 maintenance attainment area that was previously PM–10 moderate nonattainment. The *PM–10 Attainment Demonstration Maintenance Plan and Redesignation Request,* KCAPCD (September 5, 2003) does not rely on Rule 417 for attainment, therefore fulfilling RACM/RACT is not required.

Major NO_X sources in severe ozone nonattainment areas are required to adopt Reasonably Available Control Technology (RACT) (*see* sections 182(a)(2)(A) and 182(f)). SJVUAPCD is a severe ozone nonattainment area and must fulfill the requirements of RACT.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *General Preamble Appendix C3—Prescribed Burning Control Measures* (57 FR 18072, April 28, 1992).
- *Prescribed Burning Background Document and Technical Information Document for Best Available Control Measures* (EPA–450/2–92–003).
- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 57 FR 13498, 13540 (April 16, 1992).
- *PM–10 Attainment Demonstration Maintenance Plan and Redesignation Request,* KCAPCD (September 5, 2003).
- *Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,* U.S. EPA (May 25, 1988) (the Bluebook).
- *State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (the "NO_X Supplement to the General Preamble"), U.S. EPA, 57 FR 55620 (November 25, 1992).
- *Guidance Document for Correcting Common VOC & Other Rule Deficiencies,* U.S. EPA Region IX (August 21, 2001) (the Little Bluebook).

B. Do the Rules Meet the Evaluation Criteria?

We believe the rules are consistent with the relevant policy and guidance regarding enforceability, SIP relaxations, and fulfilling RACM/RACT or RACT requirements.

The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the CAA, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by October 6, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 3, 2003. This will incorporate these rules into the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality

of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 7, 2003.

Debbie Jordan,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraph (c)(316) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(316) New and amended regulations for the following APCDs were submitted on June 5, 2003, by the Governor's designee.

(i) Incorporation by reference.

(A) Kern County Air Pollution Control District.

(*1*) Rule 417, originally adopted on April 18, 1972, amended on March 13, 2003.

(B) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4313, adopted on March 27, 2003.

* * * * *

[FR Doc. 03–22445 Filed 9–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 249–0409; FRL–7546–5]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing a conditional approval of revisions to the South Coast Air Quality Management District portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on May 13, 2002 and concerns oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) emissions from facilities emitting 4 tons or more per year of NO_X and/or SO_X in the year 1990 or any subsequent year. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action approves local rules that regulate these emission sources and directs California to correct rule deficiencies.

EFFECTIVE DATE: This rule is effective on October 6, 2003.

ADDRESSES: You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Room B–102, 1301 Constitution Avenue, N.W., (Mail Code 6102T), Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

South Coast Air Quality Management District ("SCAQMD"), 21865 E. Copley Dr., Diamond Bar, CA 91765–4182

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm.* Please be advised that this is not an EPA Web site and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, EPA Region IX, (415) 947–4121.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Proposed Action

On May 13, 2002 (67 FR 31998), EPA proposed a conditional approval of the following rules that were submitted for incorporation into the California SIP.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SCAQMD	2000	General	05/11/01	05/31/01
SCAQMD	2001	Applicability	05/11/01	05/31/01
SCAQMD	2002	Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X)	05/11/01	05/31/01
SCAQMD	2004	Requirements	05/11/01	05/31/01
SCAQMD	2005	New Source Review for RECLAIM	04/20/01	10/30/01
SCAQMD	2006	Permits	05/11/01	05/31/01
SCAQMD	2007	Trading Requirements	05/11/01	05/31/01
SCAQMD	2010	Administrative Remedies and Sanctions	05/11/01	05/31/01
SCAQMD	2011	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions.	05/11/01	05/31/01
SCAQMD	2011–2	Protocol for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions.	03/16/01	05/31/01
SCAQMD	2012	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions.	05/11/01	05/31/01
SCAQMD	2012–2	Protocol for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions.	03/16/01	05/31/01
SCAQMD	2015	Backstop Provisions	05/11/01	05/31/01
SCAQMD	2020	RECLAIM Reserve	05/11/01	05/31/01

We proposed conditional approval because we determined that these rules improve the SIP by strengthening reporting provisions. These rules are largely consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. However, we also determined that the rules conflict with section 110 and part D of the Act due to their treatment of excess emissions which occur as a result of equipment breakdown. Rules 2000 and 2004 contain provisions which exempt, under certain circumstances, excess emissions that occur during breakdowns from being counted when a RECLAIM facility reconciles its emissions with its RECLAIM Trading Credit ("RTC") holdings. In our EIP Guidance and our Excess Emissions Policy, EPA interprets the CAA as requiring that such emissions not be exempted.

On April 2, 2002, SCAQMD Executive Officer Barry R. Wallerstein submitted a commitment on behalf of the SCAQMD staff to adopt and submit further revisions to the RECLAIM program rules within one year after publication of today's final conditional approval by EPA of the currently submitted rule revisions. These future revisions will establish a mechanism within the RECLAIM program to mitigate all excess emissions resulting from breakdowns. RECLAIM will be revised to require monitoring and tracking of excess emissions from breakdowns and comparison of the total amount of exempted emissions to the amount of unused RTCs for that year. If total exempted breakdown emissions from all RECLAIM sources exceeds the total amount of unused RTCs program-wide in any year, RECLAIM allocations in the following year will be reduced by an amount equal to that exceedence.

Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following parties.

1. Mike Costa, Our Children's Earth Foundation (OCE); letter dated July 12, 2002 and received July 12, 2002.

2. Suma Peesapati, Communities for a Better Environment (CBE); letter dated July 12, 2002 and received July 12, 2002. Attached to this July 12, 2002 letter was a previous letter from Suma Peesapati, CBE; dated October 9, 2001 that also contained comments pertaining to this rulemaking. We have responded to comments from both of these letters below.

3. Elaine Chang, South Coast Air Quality Management District; letter dated July 11, 2002 and received July 12, 2002. The comments and our responses are summarized below.

Comment #1: CBE stated that the RECLAIM program is fundamentally flawed and, as a result, has not achieved the emission reductions promised during program development. Among the problems that this commenter ascribes to RECLAIM are: (a) Initial over-allocation of credits resulting from artificially inflated baselines; (b) Inadequate safeguards against fraud and uncertainty; (c) Emissions increases from the two largest NO_X source categories.

Response #1: The RECLAIM program establishes a declining cap on emissions from medium and large stationary NO_X sources. The program is not intended to necessarily achieve reductions in every source category. The current enforceable emissions cap is significantly lower than the level of the cap at the time of program inception. Under the subject revised RECLAIM program rules, any emissions in excess of the current emissions cap are required to be mitigated by concurrent reductions in emissions from non-RECLAIM sources, or from subsequent reductions from future-year RECLAIM allocations. EPA has reviewed the submitted revisions to the RECLAIM program rules and has determined that they meet the requirements of the CAA.

Comment #2: CBE stated that SCAQMD has not complied with Rule 2015 which requires SCAQMD to conduct a thorough investigation of the high price of credits in the context of the compliance and enforcement program, and of whether the program provides appropriate incentives to comply.

Response #2: The provisions of Rule 2015 are separate enforceable requirements. Even if the SCAQMD has not complied with Rule 2015, nothing in that rule would bar EPA from approving the subject program rule revisions into the SIP. EPA has reviewed the submitted revisions to the RECLAIM program rules and has determined that they meet the requirements of the CAA.

Comment #3: CBE provided information regarding California's power crisis and commented that the crisis may not have been responsible for the spike in RECLAIM credit prices. If it was, the energy crisis is over and doesn't justify changes to the RECLAIM program. If it wasn't, the price reflects the true cost of foregoing pollution control and represents a healthy market.

Response #3: We believe the subject program rule revisions comply with the CAA and for this reason we proposed their approval. EPA's evaluation of SCAQMD's justification for the submitted rule revisions was not a criterion of our proposed approval of their submittal into the SIP. The rule revisions were evaluated according to the criteria listed in the Technical Support Document ("TSD") prepared for the proposed conditional approval of the submitted revisions and were found to meet all of the applicable requirements of the CAA except as noted above.

Comment #4: OCE stated that EPA concludes the RECLAIM revisions are needed because the price of credits is too high. However prices have gone as low as $0.75/lb, and have remained virtually unchanged since the early 1990s.

Response #4: The SCAQMD's goal in adopting and submitting the subject rule revisions is to lower and stabilize RTC prices. Since December 2000, RTCs have sold for as much as $45,000/ton or $22.50/lb. EPA has not implied that $0.75/lb. is too high a price for RTCs. The $45,000/ton price is significantly higher than prices paid in the early 1990s and is well in excess of the $15,000/ton benchmark for triggering program reevaluation contained in the SIP-approved Rule 2015.

Comment #5: CBE stated that EPA is allowing the price of credits to drop further, thus allowing the current levels of pollution in the South Coast Air Basin to continue indefinitely.

Response #5: One intended effect of the current program rule revisions is to cause a decrease in the price of RTCs. The cap on the total amount of emissions from RECLAIM facilities has decreased steadily since program inception and will continue to do so through the year 2003. After this the cap will remain constant through the year 2010. This schedule has been unchanged since the inception of the RECLAIM program. Any temporary exceedence of the emissions cap allowed under the revised program rules will be offset by emissions reductions from non-RECLAIM sources or by reductions of future RECLAIM facility allocations.

Comment #6: CBE stated that it is illogical to allow power plants to pay mitigation fees since the price of RTCs is so low.

Response #6: As noted above, there has recently been significant volatility in the prices of RTCs. The Mitigation Fee Program is a temporary option that

power producing facilities will likely only choose to make use of if RTC prices exceed the mitigation fee. Emissions in excess of RTC holdings for which power plants pay mitigation fees will be offset by subsequent emissions reductions from non-RECLAIM sources or by reductions of future RECLAIM facility allocations at those power plants which exceeded their holdings.

Comment #7: OCE stated that the revisions to the RECLAIM program rules violate Sec. 110(l) of the CAA because exemptions provided for power producing facilities will interfere with attainment, RFP, and RACT. The mitigation fee program and exemptions given to power producers in Rules 2004 and 2010 will "explode the emissions cap" and interfere with attainment and RFP requirements. The proposed action and associated TSD should have explained the agency's finding that the SIP revisions did not interfere with RFP and attainment.

Response #7: There are no exemptions. Any emissions for which a facility does not possess sufficient RTCs will be offset either by concurrent emissions reductions obtained via the Air Quality Investment Program (for non-power producing facilities) or by concurrent emissions reductions or future reductions of emissions allocations via the Mitigation Fee Program (for power producing facilities). Any emissions for which concurrent offsets are unavailable will be compensated for by subsequent deductions from allocations. Thus the environment will be made whole and RECLAIM facilities will continue to have an incentive to comply with program requirements. The SCAQMD has achieved excess NO_X reductions at present so any temporal shift in RECLAIM reductions between now and 2005 will not affect RFP. Attainment is due in 2010 which is well after the Mitigation Fee Program ends so attainment will not be affected.

Comment #8: OCE stated that the revisions to the RECLAIM program rules immunize power producers from EPA and citizen suits in violation of CAA Section 110 and EPA guidance.

Response #8: While the RECLAIM requirements for power producers have been modified, citizens may still bring suit against RECLAIM facilities to enforce compliance with the revised program requirements.

Comment #9: CBE stated that the proposed SIP revisions remove the incentive for pollution control thereby frustrating RFP and delaying attainment.

Response #9: The RECLAIM cap remains unchanged from the current SIP-approved version of the program. While there may be temporary exceedences of the cap due to power plant emissions in excess of RTC holdings by such facilities, these exceedences will not interfere with RFP because they will be more than offset by surplus reductions already obtained by SCAQMD from mobile sources. Attainment will not be delayed because the MFP will end well before the attainment date.

Comment #10: OCE stated that EPA approved the program rule revisions solely on the basis that the revisions did not relax the SIP. *Hall* v. *EPA* requires EPA to do more.

Response #10: This was not the basis for our action. We performed the analyses described above pertaining to attainment, RFP, and RACT.

Comment #11: OCE stated that requirements for quarterly compliance are lifted for power producing facilities. Because pollution occurs on a daily basis, RECLAIM should continue to assure quarterly rather than annual compliance.

Response #11: The purpose of the quarterly compliance requirements is to assure that correct and timely demand signals are sent to the market and price signals are received by the facilities. Now that power producers are temporarily not allowed to buy credits from the RECLAIM market in general and their price is temporarily capped at $7.50/lb. (if they choose to participate in the MFP) the purposes of quarterly reconciliation are rendered moot for this period of time.

Comment #12: OCE stated that allocations will not be decreased until the year 2004. Sufficient reductions might not be obtained by then to offset all of the emissions of facilities utilizing the MFP.

Response #12: Allocations will be decreased if and when there is a shortfall of reductions obtained through projects funded via the MFP. This will happen beginning in the year 2003 (for year 2000 exceedences) and will end no later than the year 2005. By this point all power plant emissions will have been reconciled with RTCs, offset by reductions funded through the MFP, or deducted from facility allocations.

Comment #13: OCE stated that EPA's proposed action did not demonstrate that RECLAIM fulfills RACT requirements. Does the MFP interfere with RACT requirements by allowing facilities to exceed allocations until 2004?

Response #13: RACT-in-the-aggregate was demonstrated at the beginning of RECLAIM in 1993. Since then the emissions cap has declined significantly. RACT is required in the aggregate across all RECLAIM facilities only. There is no CAA requirement, under an EIP, that individual facilities or particular source categories meet RACT.

Comment #14: OCE stated that it is unclear what is meant by "best available information" which is the basis for environmental dispatch under Rule 2009. Also, Rule 2009 requires power producers to implement BARCT. What is the difference between BARCT and RACT?

Response #14: Rule 2009 was not submitted to EPA and is not part of this rulemaking. BARCT is defined under California state law and not under the CAA. This is a state-only requirement. As it happens, BARCT is more stringent than RACT.

Comment #15: OCE stated that Rule 2009 has not been submitted to EPA. Therefore the BARCT requirement for power plants will not be enforceable by citizens or EPA. Without the implementation of BARCT the MFP will fail.

Response #15: Such enforcement is not necessary to meet the requirements of the CAA. RFP is assured because of the excess NO_X reductions already obtained by the SCAQMD through mobile sources measures. Attainment will not be interfered with by the MFP since the MFP will no longer be in effect well before the attainment date. Power producing facilities may seek to offset any emissions in excess of their RTC holdings via the MFP. Their participation fees will be used by the SCAQMD to obtain offsetting reductions from non-RECLAIM sources. Any shortfall in reductions obtained will be made up for through deductions from future-year allocations for those facilities that experienced exceedences. The MFP is a temporary program that will end by 2005. All exceedences are required to be reconciled by this time irrespective of whether a power producing facility has installed BARCT.

Comment #16: OCE stated that EPA has approved "pilot credits" to be used in the MFP. How can credits not yet acquired meet the EIP requirements for surplus, quantifiable, enforceable, and permanent?

Response #16: EPA has not approved any credits but rather has approved credit generation rules that themselves contain protocols which will assure that credits generated thereunder will meet the EIP requirements. See 67 FR 5729, February 7, 2002.

Comment #17: OCE stated that EPA should have addressed all of the issues raised in these comments in the FRN and especially in the TSD. EPA should remove the proposed conditional

approval until these issues are fully explored and supported.

Response #17: The TSD and FRN listed the documents containing all of the criteria which were used in evaluating the submitted rules. It was not necessary or feasible to state explicitly in the FRN and TSD how each rule met each element contained in all of these documents. The explanation as to why the power plants were separated from the rest of the RECLAIM market and why they were required to put on controls is provided in the Staff Reports drafted by the SCAQMD for each of the subject rules and attached to the TSD as well as in the TSD itself. As stated in the TSD, the power producing facilities were separated from the rest of the RECLAIM market and trading was limited to isolate the rest of the market from RTC demands from the power producing facilities. The current SIP submittal does not require power producing facilities to install controls but does contain enforceable requirements that will assure that their emissions are reconciled with their RTC holdings. It should be noted that adopted state law does require these facilities to install controls.

The next two comments are summarized from letters CBE wrote to SCAQMD during development of five RTC generation rules and were attached to CBE's October 9, 2001 comment letter to EPA. Since CBE's October 9, 2001 letter is quite extensive and raises many of the same issues as its attachments, we believe the attachments were included only as background information and not intended as comments to our May 13, 2002 proposal. We also note that many of the issues in the attachments are not relevant to our proposal because they were raised in context of SCAQMD's local rulemaking. As a result, we do not believe we need to respond to the issues raised in the attachments. As a courtesy to the commenter, however, we have summarized and responded to these comments below.

Comment #18: CBE stated that the RECLAIM program has already violated California Health and Safety Code section 39616(c), which require EIPs to reduce emissions as much or more than the programs they replace. A generous estimate of actual overall reductions resulting from RECLAIM is 16% since 1993. Approving the RECLAIM amendments and associated credit rules will only exacerbate the problem. CBE also stated that the Mitigation Fee Program and the RECLAIM AQIP violate the equivalency requirement under State Law.

Response #18: On February 13, 2003, Jack P. Broadbent, Director of the Air Division for EPA Region IX, sent a letter to Catherine Witherspoon, Executive Officer of the California Air Resources Board ("CARB"), requesting assistance in responding to the above comments. Since CARB is the designated air pollution control agency for purposes of the preparation of SIPs (California Health and Safety Code section 39602) we asked CARB to advise us whether the substantive and/or procedural requirements of section 39616 apply to the promulgation of the RECLAIM revisions. Further we requested that if CARB believed that the requirements of section 39616 did apply, that CARB describe the actions taken by SCAQMD and CARB to comply with these requirements. In a letter dated April 24, 2003, from Catherine Witherspoon to Jack P. Broadbent, CARB responded to our request. CARB's April 24, 2003 letter noted that the subject rule revisions were adopted by SCAQMD and subsequently approved by CARB and submitted to EPA for incorporation into the SIP. In reviewing the SCAQMD rule revisions, CARB considered CBE's claims (which had been raised at that time) and interpreted the relevant provisions of state law. To summarize CARB's findings, they believe that the requirements of section 39616 are limited to the initial adoption of rules to implement the RECLAIM program and that review of amendments to some of the RECLAIM rules to implement necessary program adjustments are not subject to these provisions. CARB also pointed out that they reviewed the RECLAIM rule amendments substantively and are satisfied they do not undermine the SIP. For a much more detailed explanation of CARB's analysis see their April 24, 2003 letter, a copy of which can be obtained from EPA Region IX at the address listed above.

III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(4) of the Act, EPA is finalizing a conditional approval of the submitted rules to improve the SIP. This action incorporates into the SIP both the submitted rules and the commitment to correct the identified deficiency within one year.

This conditional approval shall be treated as a disapproval if the SCAQMD fails to adopt rule revisions to correct the deficiency within the time allowed. If this rule is disapproved, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that corrects the rule deficiency within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the SCAQMD, and EPA's final conditional approval does not prevent the local agency from enforcing them.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Paperwork Reduction Act

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

D. Unfunded Mandates Reform Act

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed

into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132, Federalism

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

H. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 6, 2003.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 3, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be

challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: July 14, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(282)(i)(A)(2) and (c)(288)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(282) * * *

(i) * * *

(A) * * *

(2) Rules 2000, 2001, 2002, 2004, 2006, 2007, 2010, 2011, 2012, 2015, and 2020 adopted on May 11, 2001; and Rules 2011–2 and 2012–2 adopted on March 16, 2001.

* * * * *

(288) * * *

(i) * * *

(E) South Coast Air Quality Management District.

(1) Rule 2005 adopted on April 20, 2001.

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[FR Doc. 03–22444 Filed 9–3–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[Petition IV–2002–1; FRL–7552–6]

Clean Air Act Operating Permit Program; Petition for Partial Objection and Partial Granting to State Operating Permits for TVA John Sevier Fossil Plant, Rogersville, TN and TVA Kingston Fossil Plant, Harriman, TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to partially object and partially grant to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated July 2, 2003, partially denying and partially granting a petition to object to a state operating permit issued by the Tennessee Department of Environment and Conservation (TDEC) to the TVA John Sevier Fossil Plant located in Rogersville, Hawkins County, Tennessee and the TVA Kingston Fossil Plant located in Harriman, Roane County, Tennessee. This order constitutes final action on the petition submitted by attorney Reed Zars on behalf of the National Parks Conservation Association (Petitioner). Pursuant to section 505(b)(2) of the Clean Air Act (the Act) judicial review of this action is available to the extent the petition has been denied by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address:

FOR FURTHER INFORMATION CONTACT: Daphne Wilson, Air Permits Section, EPA Region 4, at (404) 562–9098 or *wilson.daphne@epa.gov*.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, to object to operating permits proposed by state permitting authorities under Title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a Title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Reed Zars submitted a petition on behalf of the National Parks Conservation Association to the Administrator on November 18, 2002, requesting that EPA object to a state Title V operating permit issued by TDEC to TVA John Sevier Fossil Plant and Kingston Fossil Plant. The Petitioner maintains that the TVA permit is inconsistent with the Act because: (1) The permit condition fails to ensure compliance with the applicable opacity limits; (2) TDEC improperly shields the source from its requirement to independently certify compliance; (3) TDEC does not have the ability to make changes to the SIP without EPA approval.

On July 2, 2003, the Administrator issued an order partially denying and partially granting this petition. The order explains the reasons behind EPA's conclusion that the petitioner has demonstrated cause to reopen the permits based on the first and second issues. The order also explains the reason for denying the remaining claim.

Dated: August 25, 2003.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. 03–22545 Filed 9–3–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 0

[FCC 03–180]

Modification of the Commission's Rules; Local and State Government Advisory Committee

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adopts revisions to the rules governing the Commission's Local and State Government Advisory Committee, which is composed of 15 elected and appointed officials of municipal, county, state, and tribal governments, and advises the Commission on a range of telecommunications issues for which these governments explicitly or inherently share responsibility or administration with the Commission. The revisions rename the Committee the Intergovernmental Advisory Committee to reflect the reallocation of two additional membership slots to tribal governments; limit its term of operations to two years, with an option for reauthorization at the end of the two-year period; and provide for greater diversity in the Committee's membership, including increased representation of rural interests and expertise in homeland security matters.

These modifications, and others adopted in the document, are intended to strengthen and improve the Committee's overall structure and operations and to maintain its intergovernmental nature and exemption from the requirements of the Federal Advisory Committee Act.

DATES: Effective September 4, 2003.

FOR FURTHER INFORMATION CONTACT: Jane Phillips, Intergovernmental Affairs, Consumer & Governmental Affairs Bureau, FCC, 202–418–1761.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, FCC 03–180, adopted July 17, 2003, and released August 11, 2003. The complete text of the Order is available on the Commission's Internet site, at *http://www.fcc.gov*, and is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW., Washington, DC. The text may also be purchased from the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B4202, Washington, DC 20554 (telephone 202–863–2893). To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0531 (voice), (202) 418–7365 (TTY). This *Order* can also be downloaded in text and ASCII formats at *http://www.fcc.gov/statelocal/*.

Synopsis of the Order

1. The Order adopts revisions to the rules governing the Commission's Local and State Government Advisory Committee (Committee or LSGAC), which is composed of 15 elected and appointed officials of municipal, county, state, and tribal governments. The Committee advises the Commission on a range of telecommunications issues affecting local, state, and tribal interests. The rule changes adopted in the Order are intended to facilitate the Committee's ability to continue to provide meaningful advice to the Commission by strengthening and improving its overall structure and operations.

2. Over the past six years, the LSGAC has provided ongoing advice and information to the Commission on a broad range of telecommunications issues, for which the Commission explicitly or inherently shares responsibility or administration with local, county, state, or tribal governments. These include cable and local franchising, public rights-of-way, facilities siting, universal service, barriers to competitive entry, and public safety communications. Since its inception in 1997, the Committee has filed 31 "Recommendations" with the Commission.

3. Because the LSGAC is composed exclusively of state, local and tribal officials, it is not subject to the procedures set forth in the Federal Advisory Committee Act (FACA), and presently has no charter or expiration date. In keeping with the Commission's other advisory committees, which have typically been chartered for a period of two years, § 0.701 has been modified to provide for the sunset of the newly-formed Committee two years following its first scheduled meeting. The two-year limit on the Committee's term of operations also limits the duration of individual members' service on the Committee. The Chairman of the Commission may extend the Committee's term of service for an additional two years, consistent with the overall mission, goals and objectives of the Committee.

4. To preserve and enhance the effectiveness of the Committee's operations on a going-forward basis, the number of meetings held per year has been limited to minimize the burdens on Committee members and enable member-officials to attend meetings themselves, rather than sending a representative in their stead.

5. Several other revisions adopted in the Order are intended to maintain and strengthen the Committee's intergovernmental nature so as to ensure its continued qualification as an advisory committee exempt from the FACA. The Order clarifies that Committee members must be officials within the meaning of 2 U.S.C. 1534(b), the intergovernmental exemption from the FACA accorded intergovernmental communications between Federal officials and officials of state, local and tribal governments "acting in their official capacities." *See* 2 U.S.C. 1534(b). The intergovernmental exemption targets communications with officials involved in the governmental process at the state, local and tribal levels, and the clarification will help to ensure that the Committee can continue to operate with the informality and flexibility that have proven so effective in the past and that inhere in its FACA-exempt status.

6. At the beginning of 2003, the Committee was composed of one state official, six municipal officials, two county officials, one local government attorney, one public utility commissioner, and one tribal official, was weighted heavily on the local side, and lacked sufficient rural representation. To address questions of balance and diversity of representation, the Order modifies the composition of the Committee to seven local, five state, and three tribal officials.

7. The Order increases tribal representation on the Committee from one to three seats to enhance the Commission's opportunities to hear directly from tribal government leaders. The Commission believes that an increase in the tribal voice is warranted if tribes are to commit their very scarce human and financial resources to Committee activities. The Committee has been renamed the "Intergovernmental Advisory Committee" to reflect its more diverse representation.

8. The Order also establishes guidelines for the application process that will ensure continued diversity in Committee membership. This is important if the Commission is to have access to that wide range of viewpoints and expertise which is critical to informed decisionmaking.

9. At the beginning of this year, two thirds of the LSGAC's members represented areas west of the Mississippi River. In general, the members represented large, urban metropolitan areas and counties or states containing densely populated urban centers. The Commission intends to use the Public Notice that commences the application process to solicit members from underrepresented geographic areas and from rural areas, in particular, and will seek input and guidance from organizations representing state, local and tribal interests, such as the National Association of Regulatory Utility Commissioners, the National Congress of American Indians, the National Governors Association, the National League of Cities, the U.S. Conference of Mayors, and others.

10. The Commission will also seek Committee members with specific expertise in homeland security matters, because the Commission must work closely with the communications and public safety communities to ensure the reliability and security of the nation's communications infrastructure.

11. As with all other advisory committees and joint boards, the Chairman of the Commission, or Commissioner designated by the Chairman, will oversee the new Committee's activities and serve as liaison between the Committee and the Commission. The Committee will continue to receive logistical assistance and staff support directly from the Chief, Consumer & Governmental Affairs Bureau.

Ordering Clause

12. The rule modifications adopted constitute rules of agency organization, procedure and practice. Therefore, modification of § 0.701 is not subject to the notice and comment and effective date provisions of the Administrative Procedure Act. *See* 5 U.S.C. 553(b)(3)(A), (d). Accordingly, *it is ordered* that, pursuant to sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r), subpart G, § 0.701 of the Rules and Regulations of the Federal Communications Commission, 47 CFR 0.701, modified as set forth, *is adopted*. The rule, as modified, *is effective* September 4, 2003.

13. Part 0 of the Commission's rules is amended as indicated in the Rule Changes section of this summary, effective September 4, 2003.

List of Subjects in 47 CFR Part 0

Organization and functions (Government agencies).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 0 as follows:

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Revise § 0.701 to read as follows:

§ 0.701 Intergovernmental Advisory Committee.

(a) *Purpose and term of operations.* The Intergovernmental Advisory Committee (IAC) is established to facilitate intergovernmental communication between municipal, county, state and tribal governments and the Federal Communications Commission. The IAC will commence operations with its first meeting convened under this section and is authorized to undertake its mission for a period of two years from that date. At his discretion, the Chairman of the Federal Communications Commission may extend the IAC's term of operations for an additional two years, for which new members will be appointed as set forth in paragraph (b) of this section. Pursuant to Section 204(b) of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1534(b), the IAC is not subject to, and is not required to follow, the procedures set forth in the Federal Advisory Committee Act. 5 U.S.C., App. 2 (1988).

(b) *Membership.* The IAC will be composed of the following 15 members (or their designated employees): Four elected municipal officials (city mayors and city council members); two elected county officials (county commissioners or council members); one elected or appointed local government attorney; one elected state executive (governor or lieutenant governor); three elected state legislators; one elected or appointed public utilities or public service commissioner; and three elected or appointed Native American tribal representatives. The Chairman of the Commission will appoint members through an application process initiated by a Public Notice, and will select a Chairman and a Vice Chairman to lead the IAC. The Chairman of the Commission will also appoint members to fill any vacancies and may replace an IAC member, at his discretion, using the appointment process. Members of the IAC are responsible for travel and other incidental expenses incurred while on IAC business and will not be reimbursed by the Commission for such expenses.

(c) *Location and frequency of meetings.* The IAC will meet in Washington, DC four times a year. Members must attend a minimum of fifty percent of the IAC's yearly meetings and may be removed by the Chairman of the IAC for failure to comply with this requirement.

(d) *Participation in IAC meetings.* Participation at IAC meetings will be limited to IAC members or employees designated by IAC members to act on their behalf. Members unable to attend an IAC meeting should notify the IAC Chairman a reasonable time in advance of the meeting and provide the name of the employee designated on their behalf. With the exception of Commission staff and individuals or groups having business before the IAC, no other persons may attend or participate in an IAC meeting.

(e) *Commission support and oversight.* The Chairman of the Commission, or Commissioner designated by the Chairman for such purpose, will serve as a liaison between the IAC and the Commission and provide general oversight for its activities. The IAC will also communicate directly with the Chief, Consumer & Governmental Affairs Bureau, concerning logistical assistance and staff support, and such other matters as are warranted.

[FR Doc. 03–22421 Filed 9–3–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030602142–3212–02; I.D.051403C]

RIN 0648–AQ58

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 17

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 17 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 17 changes the Pacific Fishery Management Council's (Council's) annual groundfish management process from an annual to a biennial process. Amendment 17 is intended to ensure that the specifications and management measures process comports with a Federal Court ruling, to make the Council's development process for specifications and management measures more efficient so that more time is available for other management activities, and to streamline the NMFS regulatory process for implementing the specifications and management measures.

DATES: Effective October 6, 2003.

ADDRESSES: Copies of Amendment 17 and the environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the website of the Office of the **Federal Register** at: *http://www/access/gpo.gov/su__docs/aces140.html*.

Background

A Notice of Availability for Amendment 17 to the FMP was

published on May 22, 2003 (68 FR 27972). NMFS requested comments on the amendment under Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) FMP amendment review provisions for a 60–day comment period, ending July 21, 2003. A proposed rule to implement Amendment 17 was published on June 13, 2003 (68 FR 35354). NMFS requested comment on the proposed rule through July 28, 2003. During the comment periods on the amendment and proposed rule, NMFS received two letters of comment, which are addressed later in the preamble to this final rule. Please see the preamble to the proposed rule for additional background on the fishery and on this rule. Further detail on Amendment 17 also appears in the EA/RIR/IRFA prepared by NMFS for this action.

NMFS approved Amendment 17 on August 20, 2003. Amendment 17 changes the Council's groundfish management process and the NMFS implementation process for specifications and management measures from an annual to a biennial process. Amendment 17 also structures Council development of specifications and management measures so that NMFS has adequate time to implement the biennial specifications and management measures through a notice-and-comment rulemaking. In the FMP, references to the annual specifications process are revised and the biennial fishing period is defined as being the new time unit for specifications and management measures implementation. The regulations to implement Amendment 17 primarily revise references to the annual specifications and management measures process in the Federal groundfish regulations at 50 CFR 660.301–360 so that they reflect the new biennial specifications and management measures process. Amendment 17 does not introduce new regulations or revisions to existing regulations that affect how the groundfish fleets conduct their fishing operations, which is the primary focus of Federal groundfish fishery regulations.

Comments and Responses

NMFS received two letters of comment on the proposed rule for Amendment 17. One letter was received from the U.S. Department of the Interior, providing general support for a more workable approach to groundfish management that provides adequate opportunity for public review and comment on changes to fishery regulations. The second letter was received from an environmental advocacy organization and contained more specific comments, which are addressed here:

Comment 1: We believe that a sentence in the proposed rule at 50 CFR 660.323(b)(1)(i) needs to be altered. That sentence, as laid out in the proposed rule reads: "Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraph (b)(1)(i)(A) and (B) of this section." We believe that the sentence should read: "Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on an inseason basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraph (b)(1)(i)(A) and (B) of this section." We think that the current language implies that parts of the biennial specifications could be established for the two-year period without notice and comment, which is not consistent with applicable law.

Response: The suggested change is unnecessary. The regulations say that "routine management measures" may be imposed or adjusted on a biennial or more frequent basis. This does not, however, mean that some measures in the biennial specifications and management measures package will be imposed without notice and comment rulemaking, just because some of the management measures will have been designated routine. The regulations at 660.323(b) state that management measures that have been designated as routine may be imposed through a single **Federal Register** document if good cause exists under the Administrative Procedure Act to waive notice and comment. Therefore, the regulations recognize the legal obligation to provide prior notice and an opportunity for public comment in order to change any regulation, while stating that in certain, limited circumstances this requirement may be waived. In addition, the regulations at 660.321 (a) state that management will be consistent with standards and procedures in the FMP. The FMP, as amended by this Amendment 17, establishes a biennial management process for establishing the specifications and management measures that specifically includes time for a notice and comment rulemaking.

Finally, it would not be accurate to say routine management measures may only be imposed or adjusted on an inseason basis, because they are also imposed or adjusted during the biennial process. During the biennial process being established by this Amendment 17, however, they will be imposed using notice and comment rulemaking.

Comment 2: We also believe that, in 50 CFR 660.323(b)(1)(i), the last phrase of the paragraph, in referencing paragraphs

§ 660.323(b)(1)(i)(A) and (B), could be read to authorize altering trip landing and frequency limits and size limits without notice and comment where the alteration might cause an exceedance of previously specified harvest levels, in order to "extend the fishing season" or "minimize disruption of traditional fishing and marketing patterns." We recommend that NMFS add the phrase "so long as the change in trip landing limits, trip frequency limits, or size limits would not result in total fishing mortality greater than previously specified harvest levels" at the end of 660.323(b)(1)(i).

Response: The comment is beyond the scope of this rulemaking. The proposal this action implements is the multiyear management process, and regulatory changes are only being imposed to cover that action. The comment suggests revising language regarding the inseason adjustment process. However, the overriding direction for management measures, whether established preseason or adjusted inseason is to achieve, but not exceed, the specifications.

Classification

The Administrator, Northwest Region, NMFS, has determined that Amendment 17 is necessary for the conservation and management of the Pacific coast groundfish fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA) describing the impact of this action on small entities. The initial regulatory flexibility analysis (IRFA) was summarized in the proposed rule on June 13, 2003 (68 FR 35354). The following is a summary of the FRFA.

Amendment 17 revises the Pacific Fishery Management Council's (Council's) annual groundfish management process so that it becomes a biennial process with time for notice and comment rulemaking to implement the biennial specifications and management measures. Amendment 17 is intended to ensure that the

specifications and management measures process responds to a court ruling in *Natural Resources Defense Council, Inc.* v. *Evans*, 316 F.3d 904 (9th Cir. 2002), to make the Council's development process for specifications and management measures more efficient in order to allow time for other management activities, and to streamline the NMFS regulatory process for implementing the specifications and management measures.

The comment period on this proposed rule (68 FR 35354, June 13, 2003) for this action ended on July 28, 2003. The agency received 2 letters of comment on the proposed rule, but none of the comments received addressed the IRFA. Comments on the proposed rule are addressed in the "Comments and Responses" section of this final rule.

This final rule will affect all participants in the West Coast groundfish fisheries. Approximately 2,000 vessels participate in the West Coast groundfish fisheries. Of those, about 500 vessels are registered to limited entry permits issued for either trawl, longline, or pot gear. About 1,500 vessels land groundfish against open access limits while either directly targeting groundfish or taking groundfish incidentally in fisheries directed at non-groundfish species. All but 10–20 of those vessels are considered small businesses by the Small Business Administration. There are also about 450 groundfish buyers on the West Coast, approximately 5 percent of which are responsible for about 80 percent of West Coast groundfish purchases. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast and 415 charter vessels active on the California coast.

This final rule does not impose any new reporting or recordkeeping requirements.

This rule is administrative in nature and is expected to have only a minimal economic impact on small entities. The action would maximize time for stock assessment scientists, Council staff, and NMFS staff to prepare documentation needed to implement specifications and management measures without disrupting the historic January 1 season start date. Under the proposed measure, vessel operators should be able to take advantage of whichever seasonal markets best fit their needs. Small vessel operators should not be forced to fish during inclement weather because of concerns about fishery closures during spring and summer months. Vessel operators afforded the privilege of fishing for both Dungeness crab and groundfish, or groundfish and shrimp, should be able to time their fishing trips based on the migratory patterns of their target species and the needs of their own marketing strategies and those of their associated processors. While implementing multi-year groundfish management will not alleviate all season-related management problems for fisheries participants, it should be a positive step toward improving the stability and certainty of seasonal groundfish allocations for participating harvesters. The improved science and management made possible with multi-year planning will help mitigate the closure cycle by stabilizing groundfish allocations and landings throughout the season.

The Council considered 4 alternatives to the proposed measure including a status quo alternative. All alternatives, with the exception of the status quo, would implement biennial specifications. Two of these alternatives considered a March 1 start date with different Council meeting schedules, and one alternative considered a May 1 start date. Given closure trends under the status quo, a March 1 start date would likely result in early allocation attainment and closures during December-February. The negative effects of this closed period would primarily be felt by vessels and processors that rely on the mid-winter flatfish fishery. Many West Coast flatfish species aggregate more closely during the winter months, lowering the bycatch rates of non-flatfish species in flatfish-directed fisheries. As with the status quo, recreational fishing tends to be slow during the winter months. Given closure trends under the status quo, a May 1 start date would likely result in early allocation attainment and closures during February-April period. This schedule would keep the fisheries open through stronger flatfish months and allow participants to switch between flatfish and Dungeness crab at will. A February-April groundfish closure could also have the negative effect of a very lean 3–month period between Dungeness crab fishing/processing season and the shrimp, salmon and albacore seasons. For some of the small boat fishers, this alternative could also mean a lack of fishing opportunity in their traditional start-up fishing months. Early spring recreational fishing opportunities could also be curtailed under this schedule.

The economic effects of changing the fishing year start date vary with each option and vary by which fishery sectors they affect. In general, the difference between the economic effects of a January 1 start date and a March 1 start date are neutral. A May 1 start date, however, would notably shift fishing effort and could result in small businesses having to reconsider their business practices and reschedule their fishing operations.

The Council will retain a 1–year specification of ABC and OY. This represents no change and will have no economic impact to vessels affected by the proposed rule. The Council also considered a two-year specification period. However, since early attainment of OY could lengthen closure periods under a 2–year specification of these targets, this alternative would be expected to have a potentially adverse economic impact on vessel profitability. With 2–year OYs, management measures would need to be more conservative at the start of the 2–year fishing period to hedge against early closures during the second year in the fishing period. The Council also considered a mixture of 1–year and 2–year specifications for different groundfish species. This approach could also have a potentially adverse economic impact on vessel profitability for vessels fishing under two-year specifications for the reasons listed above.

Compliance requirements do not go beyond general compliance requirements for operating in the Pacific Coast groundfish fishery.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 27, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 660.302, a new definition for "Biennial fishing period" is added and the definitions for "Fishing year," and "Reserve," are revised to read as follows:

§ 660.302 Definitions.

* * * * *

Biennial fishing period means a 24–month period beginning at 0001 local

time on January 1 and ending at 2400 local time on December 31 of the subsequent year.

* * * * *

Fishing year is the year beginning at 0001 local time on January 1 and ending at 2400 local time on December 31 of the same year. There are two fishing years in each biennial fishing period.

* * * * *

Reserve means a portion of the harvest guideline or quota set aside at the beginning of the fishing year or biennial fishing period to allow for uncertainties in preseason estimates.

* * * * *

■ 3. In § 660.321, paragraphs (a) through (c) are revised to read as follows:

§ 660.321 Specifications and management measures.

(a) *General.* NMFS will establish and adjust specifications and management measures biennially or annually and during the fishing year. Management of the Pacific Coast groundfish fishery will be conducted consistent with the standards and procedures in the PCGFMP and other applicable law. The PCGFMP is available from the Regional Administrator or the Council.

(b) *Biennial actions.* The Pacific Coast Groundfish fishery is managed on a biennial, calendar year basis. Harvest specifications and management measures will be announced biennially, with the harvest specifications for each species or species group set for two sequential calendar years. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations, and to protect overfished and depleted stocks.

(c) *Routine management measures.* Management measures designated "routine" at § 660.323(b) may be adjusted during the fishing year after recommendation from the Council, approval by NMFS, and publication in the **Federal Register**.

* * * * *

■ 4. In § 660.323, paragraphs (a)(2)(ii)(C)(*1*), (a)(3)(i)(A)(1), (a)(3)(vi) introductory text, paragraph (b) introductory text, and paragraphs (b)(1)(i) introductory text and (b)(1)(ii) are revised to read as follows:

§ 660.323 Catch restrictions.

(a)* * *

(2)* * *

(ii)* * *

(C) *Cumulative limits.* (*1*) A vessel participating in the primary season will be constrained by the sablefish cumulative limit associated with each of the permits registered for use with that vessel. The Regional Administrator will biennially or annually calculate the size of the cumulative trip limit for each of the three tiers associated with the sablefish endorsement such that the ratio of limits between the tiers is approximately 1:1.75:3.85 for Tier 3:Tier 2:Tier 1, respectively. The size of the cumulative trip limits will vary depending on the amount of sablefish available for the primary fishery and on estimated discard mortality rates within the fishery. The size of the cumulative trip limits for the three tiers in the primary fishery will be announced in the **Federal Register**.

* * * * *

(3)* * *

(i)* * *

(A)* * *

(*1*) *Procedures.* The primary seasons for the whiting fishery north of 40°30′ N. lat. generally will be established according to the procedures of the PCGFMP for developing and implementing harvest specifications and apportionments. The season opening dates remain in effect unless changed, generally with the harvest specifications and management measures.

* * * * *

(vi) *Bycatch reduction and full utilization program for at-sea processors (optional).* If a catcher/processor or mothership in the whiting fishery carries more than one NMFS-approved observer for at least 90 percent of the fishing days during a cumulative trip limit period, then groundfish trip limits may be exceeded without penalty for that cumulative trip limit period, if the conditions in paragraph (a)(3)(vi)(A) of this section are met. For purposes of this program, "fishing day" means a 24–hour period, from 0001 hours through 2400 hours, local time, in which fishing gear is retrieved or catch is received by the vessel, and will be determined from the vessel's observer data, if available. Changes to the number of observers required for a vessel to participate in the program will be announced prior to the start of the fishery, generally concurrent with the harvest specifications and management measures. Groundfish consumed on board the vessel must be within any applicable trip limit and recorded as retained catch in any applicable logbook or report. [Note: For a mothership, non-whiting groundfish landings are limited by the cumulative landings limits of the catcher vessels delivering to that mothership.]

* * * * *

(b) *Routine management measures.* In addition to the catch restrictions in this section, other catch restrictions that are likely to be adjusted on a biennial or more frequent basis may be imposed and announced by a single notification in the **Federal Register** if good cause exists under the APA to waive notice and comment, and if they have been designated as routine through the two-meeting process described in the PCGFMP. The following catch restrictions have been designated as routine:

(1) *Commercial limited entry and open access fisheries—(i) Trip landing and frequency limits, size limits, all gear.* Trip landing and frequency limits have been designated as routine for the following species or species groups: widow rockfish, canary rockfish, yellowtail rockfish, Pacific ocean perch, yelloweye rockfish, splitnose rockfish, bocaccio, cowcod, minor nearshore rockfish or shallow and deeper minor nearshore rockfish, shelf or minor shelf rockfish, and minor slope rockfish; DTS complex which is composed of Dover sole, sablefish, shortspine thornyheads, and longspine thornyheads; petrale sole, rex sole, arrowtooth flounder, Pacific sanddabs, and the flatfish complex, which is composed of those species plus any other flatfish species listed at § 660.302; Pacific whiting; lingcod; and "other fish" as a complex consisting of all groundfish species listed at § 660.302 and not otherwise listed as a distinct species or species group. Size limits have been designated as routine for sablefish and lingcod. Trip landing and frequency limits and size limits for species with those limits designated as routine may be imposed or adjusted on a biennial or more frequent basis for the purpose of keeping landings within the harvest levels announced by NMFS, and for the other purposes given in paragraph (b)(1)(i)(A) and (B) of this section.

* * * * *

(ii) *Differential trip landing and frequency limits based on gear type, closed seasons.* Trip landing and frequency limits that differ by gear type and closed seasons may be imposed or adjusted on a biennial or more frequent basis for the purpose of rebuilding and protecting overfished or depleted stocks.

* * * * *

■ 5. In § 660.324, paragraphs (d) and (j) are revised to read as follows:

§ 660.324 Pacific Coast treaty Indian fisheries.

* * * * *

(d) *Procedures.* The rights referred to in paragraph (a) of this section will be implemented by the Secretary, after consideration of the tribal request, the recommendation of the Council, and the comments of the public. The rights will be implemented either through an allocation of fish that will be managed by the tribes, or through regulations in this section that will apply specifically to the tribal fisheries. An allocation or a regulation specific to the tribes shall be initiated by a written request from a Pacific Coast treaty Indian tribe to the Regional Administrator, prior to the first Council meeting in which biennial harvest specifications and management measures are discussed for an upcoming biennial management period. The Secretary generally will announce the annual tribal allocations at the same time as the announcement of the harvest specifications. The Secretary recognizes the sovereign status and co-manager role of Indian tribes over shared Federal and tribal fishery resources. Accordingly, the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.

* * * * *

(j) *Black rockfish.* Harvest guidelines for commercial harvests of black rockfish by members of the Pacific Coast Indian tribes using hook and line gear will be established biennially for two subsequent one year periods for the areas between the U.S.-Canadian border and Cape Alava (48°.09′30″ N. lat.) and between Destruction Island (47°40′00″ N. lat.) and Leadbetter Point (46°38′10″ N. lat.), in accordance with the procedures for implementing harvest specifications and management measures. Pacific Coast treaty Indians fishing for black rockfish in these areas under these harvest guidelines are subject to the provisions in this section, and not to the restrictions in other sections of this part.

* * * * *

■ 6. In § 660.332, paragraphs (a) introductory text, (b)(3), and (e) are revised to read as follows:

§ 660.332 Allocations.

(a) *General.* The commercial portion of the Pacific Coast groundfish fishery, excluding the treaty Indian fishery, is divided into limited entry and open access fisheries. Separate allocations for the limited entry and open access fisheries will be established biennially or annually for certain species and/or areas using the procedures described in this subpart or the PCGFMP.

* * * * *

(b) * * *

(3) The guidelines in this paragraph (b)(3) apply to recalculation of the open access allocation percentage. Any recalculated allocation percentage will be used in calculating the following biennial fishing period's open access allocation.

* * * * *

(e) *Treaty Indian fisheries.* Certain amounts of groundfish may be set aside biennially or annually for tribal fisheries prior to dividing the balance of the allowable catch between the limited entry and open access fisheries. Tribal fisheries conducted under a set-aside are not subject to the regulations governing limited entry and open access fisheries.

* * * * *

■ 7. In § 660.333, paragraph (c)(2) is revised to read as follows:

§ 660.333 Limited entry fishery eligibility and registration.

* * * * *

(c) * * *

(2) The major limited entry cumulative limit periods will be announced in the **Federal Register** with the harvest specifications and management measures, and with routine management measures when the cumulative limit periods are changed.

* * * * *

■ 8. In § 660.350, paragraph (a)(6) is revised to read as follows:

§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California.

(a) * * *

(6) *Accounting for the compensation catch.* As part of the harvest specifications process (§ 660.321), NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next harvest specifications (ABCs) set by the Council. Fish authorized in an EFP too late in the year to be deducted from the following year's ABCs will be accounted for in the next management cycle where it is practicable to do so.

* * * * *

[FR Doc. 03–22455 Filed 9–3–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030612150–3214–02; I.D. 051503B]

RIN 0648–AQ94

Fisheries Off West Coast States and in the Western Pacific; Coastal Pelagic Species Fishery; Regulatory Amendment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement a regulatory amendment to the Coastal Pelagic Species (CPS) Fishery Management Plan (FMP) that changes the management subareas and the allocation process for Pacific sardine. The purpose of this final rule is to establish a more effective and efficient allocation process for Pacific sardine and increase the possibility of achieving optimum yield (OY).

DATES: Effective August 29, 2003.

ADDRESSES: Copies of the environmental assessment/regulatory impact review/final regulatory flexibility analysis (EA/RIR/FRFA) may be obtained from Donald O. McIssac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220.

FOR FURTHER INFORMATION CONTACT: James Morgan, Sustainable Fisheries Division, NMFS, at 562–980–4036.

SUPPLEMENTARY INFORMATION: On April 28, 2003, the Pacific Fishery Management Council (Council) submitted a regulatory amendment to the FMP that proposed changing the management subareas and the allocation process for Pacific sardine. A range of options were analyzed in the Council's regulatory amendment, which included an environmental assessment, a regulatory impact review, and an initial regulatory flexibility analysis (IRFA). A proposed rule was published in the **Federal Register** on June 26, 2003 (68 FR 37995). The public comment period ended on July 28, 2003. The background on development of the amendment was explained in the proposed rule and is not repeated here.

The Council recommended a preferred option that: (1) Changes the definition of subarea A and subarea B by moving the geographic boundary between the two areas from Pt. Piedras

Blancas, CA at 35° 40′ 00″ N. lat. to Pt. Arena, CA at 39° 00′ 00″ N. lat., (2) moves the date when Pacific sardine that remain unharvested are reallocated to Subarea A and Subarea B from October 1 to September 1, (3) changes the percentage of the unharvested sardine that is reallocated to Subarea A and Subarea B from 50 percent to both subareas to 20 percent to Subarea A and 80 percent to Subarea B, and (4) reallocates all unharvested sardine that remain on December 1 coast wide. This procedure will be in effect for 2003 and 2004, and for 2005 if the 2005 harvest guideline is at least 90 percent of the 2003 harvest guideline. Currently, Subarea A includes the area from Monterey, CA, north to the U.S.-Canada border. Subarea B includes the area south of Monterey, CA to the U.S.-Mexico border. Changing the boundary between the two subareas will move Monterey, CA to Subarea B, and the new geographic boundary will coincide with the boundary for the limited access and open access fisheries.

The change in the allocation system is viewed by the Council as an interim approach. The sardine resource has recovered after decades of low abundance and there is a more detailed process for allocating the resource among the fishing communities along the Pacific coast. The change will most likely avoid the need for an emergency rule to reallocate unharvested portions of the OY, which was necessary in 2002, and will have a greater possibility of achieving OY than the current allocation process. Information from resource surveys scheduled for the Pacific Northwest in 2003 and 2004 plus accumulated data on size and age of sardine from all areas of the fishery will improve the assessment model and provide better data for measuring the impacts of various allocation options for the longer-term.

Comments and Responses

Six letters were received from the fishing industry and one from the city of Monterey, CA. Two electronic mail messages were received. Most respondents opposed the proposed action. One comment was received on the IRFA and is addressed in the Response to Comment 10. Following is a summary of the comments received:

Comment 1: The proposed regulations do not comply with the Magnuson-Steven Fishery Conservation and Management Act (Magnuson-Stevens Act) because the proposed action overcapitalizes the fishery by allowing more vessels in the fishery than are Federally licensed.

Response: The final regulations comply with the Magnuson-Stevens Act. Amendment 8 to the FMP gives the reasons for having an open access area in the Pacific Northwest. Sardine will be available in the Pacific Northwest only when the biomass is around 750,000 mt or more. A high biomass allows benefits to be obtained by a larger number of harvesters. Amendment 8 cautions against investing heavily in harvesting sardine in this area because sardine exhibit wide fluctuations in abundance. The fishing season in the Pacific Northwest is also restricted by deteriorating sea conditions in the fall. The new allocation procedure is only valid through 2005. Resource surveys are being conducted in the Pacific Northwest to obtain better information on the status of Pacific sardine. At this time, there is no indication that there is overcapitalization in the Pacific northwest; however, fishing capacity in this area will be an issue when the Council begins review of alternatives for a longer term allocation procedure.

Comment 2: The Council did not take a precautionary approach when selecting its proposed action. Cooler sea surface temperatures indicate a potential shift in the ocean environment that will likely lead to a decline in sardine abundance. Action was taken without knowing the impact of harvesting the larger fish in the Pacific Northwest.

Response: Recognizing the role of temperature in sardine abundance is one of the risk averse measures utilized in the FMP. If the average sea surface temperature declines, the harvest rate will be reduced, which will yield a smaller harvest guideline, thereby protecting the resource. The size of the fish harvested involves two issues. One is that a disproportional harvest of larger fish in the Pacific Northwest may have a detrimental effect on the resource. Size and age data are collected all along the Pacific coast and, to date, there is no indication of a detrimental impact on the resource from harvesting relatively large fish in the north or relatively small fish in the south. The second issue is that the migration patterns of the resource are poorly understood; therefore, the relationship between fish harvested in the south and fish harvested in the north at any particular time is not known. Although uncertainty does exist, the model used to estimate the current biomass includes a factor to account for migration, which is based on information obtained from the historical fishery. Given the overall conservative harvest formula adopted by the Council, there does not appear to be any risk to the resource from implementing the proposed action.

Comment 3: Including Monterey in the southern California subarea risks preempting Monterey's fall harvest due to the much larger fishing industry in southern California.

Response: Monterey may be at some risk of preemption from southern California and the Pacific Northwest, but preemption is not likely at current harvest guideline levels. Under the current system, Monterey is at risk of early closure if there is strong participation from the northern fisheries, as in 2002. There is less risk to Monterey fisheries under the proposed new system because Monterey often has a strong fall fishery, which might be preempted by the summer fishery in the Pacific Northwest. The Council may address this issue when it considers a more permanent allocation process.

Comment 4: The net result of the proposed action will be to shift economic hardship from the open access area in the Pacific Northwest to the limited access area in California.

Response: Under the proposed alternative, the net gain in producer surplus above the status quo in the open access area would be $1,567,441. The net gain in the limited access area would be $288,712. Of all options considered, the proposed alternative has the largest net gain above the status quo for the limited access while still providing a net gain for the open access area. No economic hardships are anticipated from taking this action.

Comment 5: The proposed action perpetuates the coast wide overfishing of the sardine resource that has occurred from the recent expansion of the Mexican and Canadian harvest, which is not adequately accounted for in setting the harvest guideline.

Response: The Council determined that the proposed alternative is more likely to achieve OY than the status quo, and the analysis in the analytical documents supporting the conclusion. From current figures on the 2002 fishery, the total harvest by Mexico, Canada, and the United States was about 145,000 mt, close to 9,000 mt above the total allowable biological catch. There is no agreement between the United States and any other country on management; however, the harvest formula deals with this uncertainty in two ways. First, a percentage of the biomass is subtracted from the total biomass to account for harvest beyond the jurisdiction of the United States. Second, total removals from the resource in all sectors of the fishery are included in the calculation of the next

year's biomass estimate. A better way to manage the resource would be to have a management agreement with Mexico and Canada. Nevertheless, the formula in the FMP uses the best information available to account for harvests beyond U.S. jurisdiction and is designed to minimize the potential for overfishing. In 2002, the U.S. fishery left about 18,000 mt of the harvest guideline unharvested.

Comment 6: The proposed option encourages further expansion of the open access fishery, which includes more than 40 additional vessels, even though veteran California fishermen were denied limited entry permits.

Response: In 2002, 26 vessels landed sardine in the open access fishery off Oregon and Washington, of which six vessels held limited entry permits for the southern fishery. By the end of July 2003, however, sardine landings in the Pacific Northwest were about 3,000 mt below the landings through July 2002, about 75 percent of the 2002 landings. Only 18 vessels had participated. At this time, there is no indication that this regulation will lead to a substantial increase in the number of participating vessels in the Northwest. Amendment 8 assumes that since high biomass levels of Pacific sardine are transitory, the limited availability of sardine in the Pacific Northwest will tend to limit the number of participating vessels, while offering an opportunity for more northern fisheries to gain benefits when the sardine biomass is large. To date, neither the Council nor any other source of information has indicated a need to change this approach.

Comment 7: The economics of the fishery were not well addressed in California with regard to the impact of shifting the quotas to Oregon and Washington.

Response: Under the proposed option, an additional 2,200 mt is anticipated to be harvested off California. The proposed option provides the greatest increase in producer surplus for California in relation to the benefits that accrue to California from the nine options analyzed. The increase in the estimated Pacific Northwest harvest is not great enough to invite significant increases in vessels and processors in the Pacific Northwest. If the biomass and the harvest guideline increase substantially in the future, there would be pressure to increase capital investment, but larger harvest guidelines would produce this pressure even under the status quo.

Comment 8: If there is a cold water regime shift and the sardine biomass declines, this is a good reason for precaution and to avoid locking up a fixed 33 percent of the sardine quota in the open access fishery. A reduced quota will cause economic hardship on the traditional limited entry fishery.

Response: The harvest formula in the FMP is a risk averse approach to fishing mortality, and the proposed option does not allocate a fixed amount to any fishery. One-third of the harvest guideline would be initially allocated to Subarea A (Pacific Northwest); however, the unharvested portions of the harvest guideline in Subarea A and Subarea B (California) are added together and reallocated on September 1, 20 percent to Subarea A and 80 percent to Subarea B. The amount received in either area depends on performance of the individual fisheries and the limit set by the harvest guideline. The Council also intends to revisit this allocation issue in the near future. With regard to the economic impact on California fisheries, if the biomass declines, there would be economic consequences to all sardine fisheries under all options.

Comment 9: The proposed rule incorrectly assumes that southern California vessels can offset economic impact by fishing in Monterey, California, when such long distance travel is not possible for much of this fleet.

Response: The summary of the initial regulatory flexibility analysis states only that some vessels may be able to participate in more northern fisheries. However, there could be mitigation to a certain extent for some vessels by changing fishing locations to land larger, higher-priced sardines.

Comment 10: The regulatory amendment and the proposed rule do not include impacts on processors, many of which are small businesses.

Response: The impact on processors was addressed in the regulatory impact review, which included calculations of producer surplus based on data supplied by cooperating sardine processors. Some processors may be small businesses, but data are not available on processors in the way that ex-vessel revenue is available for individual vessels. In this regard, the best available data were used. No information on profitability of individual vessels was available, so ex-vessel revenue was used as a proxy for vessel profitability. The producer surplus figures are assumed to reflect profitability for processors in general, and the economic effect of the proposed action on processors is assumed to be related to ex-vessel revenue.

In considering the above comments, NMFS did not change the proposed rule.

Classification

The Administrator, Southwest Region, NMFS, determined that the FMP regulatory amendment is necessary for the conservation and management of the coastal pelagic species fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Assistant Administrator for Fisheries, NOAA (AA), finds that this final rule relieves a restriction under 5 U.S.C. 553 (c)(1), and thus is exempt from the 30 delay in the effective date requirement of 5 U.S.C. 553(d). This rule relieves a restriction because the allocation to Subarea A is likely to be reached before October 1. If the allocation is reached before October 1, the Subarea A fishery will be closed and the fishery will not be able to resume until the reallocation is completed on October 1 under the existing rule. In 2002, the Pacific Northwest fisheries landed more than 36,500 mt before October 1, and the fishery in northern California, which was included in Subarea A in 2002, landed more than 5,000 mt by October 1. The initial allocation to Subarea A in 2003 is 36,969 mt, lower than the allocation in 2002, when an emergency rule was necessary to keep the fishery open following a temporary closure. Keeping the fishery operating will increase landings by about 1,500 mt per week. At an ex-vessel price of $100/mt, this would generate $150,000 per week to fishermen and $300,000 to processors (based on 50 percent recovery rate and a sales price of $400/mt).

The final rule has been determined to be not significant for the purposes of Executive Order 12866.

The Council prepared an IRFA which was summarized in the proposed rule published on June 26, 2003 (68 FR 37995). The Council prepared an FRFA that describes the economic impact of this action on small entities. Two specific comments were received on the IRFA, one regarding the possibility of some vessels minimizing impacts by fishing in more northern fisheries and one regarding the treatment of processors in the IRFA. Responses to these comments are contained in comments 9 and 10 in the preamble to the final rule. The following is the summary of the FRFA. The need for and objectives of this final rule are contained in the **SUPPLEMENTARY INFORMATION** of the preamble and in the proposed rule. Comments and responses regarding the economic impacts of this rule are contained in the preamble.

Approximately 140 vessels are permitted in the sardine fisheries off the U.S. West Coast; 65 vessels are

permitted in the Federal CPS limited entry fishery off California, while approximately 55 vessels are permitted in the sardine fisheries of the States. An additional 18 live bait vessels are permitted in southern California and 2 live bait vessels are permitted in Oregon and Washington. All of these vessels would be considered small businesses by the Small Business Administration. Therefore, there would be no disproportionate economic impacts resulting between small and large vessels under the proposed action. Because cost data are lacking for the harvesting operations of CPS finfish vessels, it was not possible to evaluate the economic impacts from estimated changes in sardine landings in terms of vessel profitability. Instead, economic impacts were evaluated based only on changes in sardine ex-vessel revenues compared to sardine landings under the status quo. Therefore, the difference between vessel revenues generated by 2003 proposed quotas and those generated by 2003 projected landings were used as a proxy for vessel profitability among the three regions evaluated. All projections utilized 2001 data because this was the best available data. CPS finfish vessels typically harvest a number of other species, including anchovy, mackerel, squid, and tuna. However, since data on individual vessel operations were not readily available, it was not possible to evaluate potential changes in fishing strategies by these vessels in response to different opportunities to harvest sardines under each of the allocation alternatives and what this would mean in terms of total ex-vessel revenues from all species.

Under the proposed action, sardine landings for CPS vessels for the entire West Coast are estimated to increase 9,846 metric tons (mt) from the status quo, with a corresponding increase in ex-vessel value of $1,077,540. As used by the Council, the "status quo" harvest levels reflect an increase of 10 percent from 2002 harvest levels. All of the coastwide harvest guideline OY would be caught by the end of the season under the proposed action. Sardine landings by vessels participating in the Oregon/Washington fishery were estimated to be 7,622 mt greater than the status quo (and more than 11,000 mt above the 2002 level), with ex-vessel revenues increasing by $873,526 relative to the status quo. Landings by CPS vessels that historically would have participated in the northern California sardine fishery would increase 2,449 mt above the status quo (and 4000 mt above the 2002 harvest level) with a corresponding rise in ex-vessel revenues of $228,035. Under the proposed action, a loss of 225 mt in landings relative to the status quo was estimated for vessels that historically fished out of southern California ports, which equates to foregone ex-vessel revenues amounting to $24,021, or approximately $370 per vessel, in lost ex-vessel revenue relative to the status quo. However, landing would still be about 4,900 mt greater than in 2002, and revenue would be almost 10 percent higher than in 2002. Twenty live bait vessels landed approximately 2,000 mt per year of mixed species from 1993 through 1997. Those landings were comprised mostly of Pacific sardine and northern anchovy. The estimated 18 live bait vessels fishing in southern California are expected to be only minimally impacted by this action similar to results for the CPS limited entry vessels fishing in that area. The two live bait vessels fishing in Oregon and Washington are not expected to be impacted by this action.

For the 65 CPS limited entry vessels that could participate in either the southern California or northern California sardine fisheries, the 225 mt reduction in harvest relative to the status quo represents a potential loss in ex-vessel revenues for the CPS vessels choosing to operate in southern California. If the 65 CPS limited entry vessels choose to fish in the traditional northern California sardine fishery, the potential gain in ex-vessel revenue for that fishery is estimated to be approximately $3,508 per vessel per year. However, this amount could be underestimated since data from the 2001 SAFE report show that only 27 CPS vessels landed in Monterey/Santa Cruz and only 13 CPS vessels landed in San Francisco.

Even though limited entry vessels based in southern California are not restricted from participating in the northern California or the open access Oregon/Washington sardine fisheries, it is unlikely that it would be profitable for all southern California vessels to do so due to additional travel time and fuel costs. However, any loss in profitability by the CPS vessels choosing to fish in southern California could be mitigated to a certain extent by moving northward to land larger, higher-priced sardines in northern California ports.

Vessels that participate in the Oregon/Washington sector of the fishery are estimated to increase ex-vessel revenues by $15,882 per vessel based on the estimated 55 state sardine permits issued. However, this figure may be underestimated since data show that, of the 35 Washington permitted vessels, only 19 vessels participated in these fisheries in 2002 with the majority of the catch accomplished by only 13 vessels.

The Council considered 3 alternatives to the proposed action in addition to the no-action alternative. All alternatives resulted in ex-vessel revenue gains of various magnitudes for the fishery as a whole. However, the proposed alternative yielded the greatest overall gain, with the least negative impacts to individual vessels from any one region while also providing the fishery with a high likelihood of achieving OY as required under the Magnuson-Stevens Act.

Alternative 1 (status quo)—With a 10-percent increase in harvest from 2002, total landings would be 101,061 mt and total ex-vessel revenues would amount to $10,587,481. Southern California vessels would realize ex-vessel revenues of $5,749,562, northern California vessels $1,039,424, and Oregon/Washington vessels $3,798,405.

Alternative 2 (start year with 66–33 allocation, subarea line to 39° N lat., September (50–50) reallocation, and December (coastwide) reallocation). Relative to 10 percent overall increase in the status quo, southern California vessels would lose 3,618 mt or $386,201 in ex-vessel revenues. Northern California vessels would gain 35 mt or $3,306, and Oregon/Washington would gain 10,108 mt or $1,158,314, for a net increase in coastwide ex-vessel revenues of $775,420.

Alternative 4 (start year with 66–33 allocation, subarea line not changed, September (50–50) reallocation, and December (coastwide) reallocation). Compared to the status quo, southern California vessels would realize no change in landings, northern California vessels would gain 274 mt or $25,518 in ex-vessel revenues, and Oregon/Washington vessels would gain 8,091 mt or $927,167. This results in an overall net increase of $952,685 in ex-vessel revenues.

Alternative 5 (start year with 66–33 allocation, subarea line to 39° N lat., September coastwide reallocation). Relative to the status quo, southern California vessels would lose 2,500 mt or $266,924 in ex-vessel revenues. Northern California vessels would gain 2,239 mt or $208,547, and Oregon/Washington vessels would gain 10,108 mt or $1,099,937, for a net increase in overall ex-vessel revenues of $1,099,937.

There are no new compliance requirements resulting from this rule. Two management subareas and the amount of the harvest guideline allocated to the subareas have been redefined, and the date unharvested

amounts of the resource are reallocated to the subareas has been changed. This action changes how the annual harvest is monitored, but imposes no compliance requirements on the fishing industry beyond those already in effect and well understood by those affected.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 29, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended to read as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 660.503, paragraphs (b)(2) and (c)(1) are revised to read as follows:

§ 660.503 Management subareas.

* * * * *

(b) * * *

(2) Southern boundary—at 39°00′00″ N. lat. (Pt. Arena).

(c) * * *

(1) Northern boundary—at 39°00′00″ N. lat. (Pt. Arena); and

* * * * *

■ 3. Section 660.509 is revised to read as follows:

§ 660.509 Closure of directed fishery.

(a) The date when Pacific sardine that remains unharvested will be reallocated to Subarea A and Subarea B is September 1 for 2003 and 2004, and for 2005 if the 2005 harvest guideline is at least 90 percent of the 2003 harvest guideline.

(b) All unharvested sardine that remains on December 1 will be available for harvest coast wide.

■ 4. In § 660.511 new paragraph (f) is added to read as follows:

§ 660.511 Catch restrictions.

* * * * *

(f) The percentages of the unharvested sardine that are reallocated to Subarea A and Subarea B are 20 percent to Subarea A and 80 percent to Subarea B.

[FR Doc. 03–22548 Filed 8–29–03; 3:46 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 68, No. 171
Thursday, September 4, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 930

RIN 3206–AJ84

Employees Responsible for the Management or Use of Federal Computer Systems

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing a revision of its regulations concerning computer security awareness and training for employees who are responsible for the management or use of Federal computer systems. The purpose of the revisions is to streamline the regulations and make it clearer for expert and novice readers. This proposal will also facilitate timely access to changes in computer security training guidelines and supplementary information technology (IT) training and standards resources. Use of the National Institute for Standards and Technology (NIST) Web site accomplishes this and better supports the larger role that NIST provides in establishing computer security policy.

DATES: Comments must be received on or before October 6, 2003.

ADDRESSES: Send, deliver or fax written comments to Ms. Ellen E. Tunstall, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415–9700; e-mail *employ@opm.gov;* fax: (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: LaVeen Ponds by TTY at (202) 418–3134, by fax at (202) 606–2329, phone at 202–606–1394 or e-mail at *lmponds@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM is issuing proposed regulations to revise the rules that govern the training of employees responsible for the management or use of Federal computer systems. The proposal refers the user to the National Institute of Standards and Technology (NIST) Web site, which will have the most current information on computer security awareness and training guidelines and removes text that is included on the NIST Web site, thus, streamlining the regulation where appropriate. Including the NIST Web site and removal of text such as definitions are not substantive changes. Therefore, we are using a shorter comment period of 30 days. The proposal actually provides users more timely access to the most current applicable definitions and guidelines. By including a Web site and removing text that is redundant, these regulations afford agencies the opportunity to be immediately aware of and come into timely compliance with changing computer security guidelines and requisite employee training for computer security. In light of current threats to national security through information technology systems, this immediate flexibility promotes the protection of Government computer security systems and ensures that the employees who use those systems are knowledgeable and vigilant in protecting them. This proposal will be effective immediately upon final publication.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 930

Administrative practice and procedures; Computer technology; Government employees; Motor vehicles.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM proposes to revise subpart C of part 930 of 5 CFR as follows:

PART 930—PROGRAMS FOR SPECIFIC POSITIONS AND EXAMINATIONS (MISCELLANEOUS)

1. Subpart C is revised to read as follows:

Subpart C—Employees Responsible for the Management or Use of Federal Computer Systems

Sec.
930.301 Computer security training program.

Authority: Computer Security Act of 1987, Public Law 100–235, January 8, 1988.

Subpart C—Employees Responsible for the Management or Use of Federal Computer Systems

§ 930.301 Computer security training program.

An Executive Agency head shall develop a plan for computer security awareness and training and

(a) Identify employees with significant security responsibilities and provide role-specific training in accordance with National Institute of Standards and Technology (NIST) guidance on computer security awareness and training available on NIST Web site, *http://csrc.nist.gov/publications/nistpubs/*, as follows:

(1) All users of information technology (IT) shall be exposed to security awareness materials at least annually. Users of IT include employees, contractors, students, guest researchers, visitors and others who may need access to IT systems and applications.

(2) Executives shall receive training in computer security basics and policy level training in security planning and management.

(3) Program and functional managers shall receive training in computer security basics; management and implementation level training in security planning and system/application security management; and management and implementation level training in system/application life cycle management, risk management, and contingency planning.

(4) Chief Information Officers (CIOs), IT security program managers, auditors and other security-oriented personnel (*e.g.*, system and network administrators, and system/application security officers) shall receive training in computer security basics; and broad training in security planning, system

and application security management, system/application life cycle management, risk management, and contingency planning.

(5) IT function management and operations personnel shall receive training in computer security basics; management and implementation level training in security planning and system/application security management; and management and implementation level training in system/application life cycle management, risk management, and contingency planning.

(b) Provide the computer awareness material/exposure outlined in NIST guidance on computer security awareness and training to all new employees within 60 days of their appointment.

(c) Provide computer security refresher training for agency employees as frequently as determined necessary by the agency, based on the sensitivity of the information that the employees use or process.

(d) Provide training whenever there is a significant change in the agency information security environment or procedures or when an employee enters a new position that requires additional role-specific training.

[FR Doc. 03–22487 Filed 9–3–03; 8:45 am]
BILLING CODE 6325–38–P

FEDERAL ELECTION COMMISSION

11 CFR Part 106

[Notice 2003–16]

Party Committee Telephone Banks

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed changes to its rules regarding the allocation of political party committee expenditures for telephone bank communications made on behalf of a presidential candidate. The proposed rules would address the proper allocation of a party committee's expenditures for such communications that refer to presidential and vice-presidential nominees when the party's other candidates are referred to generically, but not by name. The amount allocated as an expenditure on behalf of, or a contribution to, the presidential nominee would be subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971. The Commission has not made any final decisions on the revisions proposed in this Notice. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before September 25, 2003. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on October 1, 2003, at 9:30 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *phone2003@fec.gov* and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr. Jonathan M. Levin, Senior Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

A. Background

In the months leading up to a presidential general election, party committees, or party committees in conjunction with a principal campaign committee of a presidential nominee, may conduct a phone bank to get out the vote ("GOTV") or otherwise promote the party and its candidates. Such phone banks may involve the reading of scripted messages that include a statement asking the person called specifically to vote, or get their family and friends out to vote, for the named presidential candidate and that then make a general promotional reference or references to the party's other candidates. An example would be: "Please tell your family and friends to come out and vote for President John Doe and our great Party team." Given that no other Federal or non-Federal candidates are specifically mentioned, the question is whether the entire cost of the communication or only a portion of the cost should be attributed to the presidential candidate.

Current 11 CFR 106.1(a)(1) addresses the attribution of expenditures (including in-kind contributions, independent expenditures, and coordinated expenditures) for communications made on behalf of more than one clearly identified Federal candidate. It also addresses expenditures and disbursements on behalf of a combination of clearly identified Federal candidates and non-Federal candidates. In the case of communications other than fundraising communications, the expenditure is generally attributed to a candidate in accordance with the portion of the communication devoted to that candidate. For example, in a publication or broadcast communication, the attribution is determined by the space or time devoted to each candidate as compared to the space or time devoted to all candidates. Similarly, for a phone bank, the attribution is based on the number of questions or statements devoted to each candidate as compared to the total number of questions or statements devoted to all candidates.

Under one interpretation of section 106.1(a)(1), the disbursement for the political party phone bank described above would be 100 percent attributable to the presidential (and vice presidential) candidate because he or she would be the only candidate clearly identified. On the other hand, this section could be read to mandate an attribution of significantly less than fifty percent to the presidential candidate because the actual wording of the message emphasizes support for all the party's Federal and non-Federal candidates. To provide clear guidance as to the attribution of these types of phone banks, the Commission is proposing new 11 CFR 106.8, which is described below.

B. Proposed 11 CFR 106.8 Allocation of Political Party Committee Phone Banks That Refer to a Clearly Identified Presidential or Vice Presidential Nominee

The Commission proposes adding new section 106.8 to address phone banks conducted by national, State and local party committees on behalf of their presidential nominees. In presidential

election years, party committees conduct such phone banks to encourage voters to support the entire ticket. Although the specific mention of the presidential candidate provides something of value to the presidential candidate being promoted, it also provides the party with a benefit. In consideration of the fact that the presidential candidate is the only candidate identified, and balancing that fact with the use of the candidate's name for general party promotion purposes, the Commission seeks comment on two alternative approaches described below regarding phone bank expenses to be attributed to the presidential candidate.

Proposed 11 CFR 106.8(a) begins by stating the conditions under which the special attribution rule in proposed paragraph (b) would apply. First, the proposed rule would apply only if the provisions of 11 CFR 100.89 and 100.149 do not apply. They provide that, under specific conditions, the payment by a State and local party committee for voter registration and GOTV activities it conducts on behalf of a presidential or vice presidential nominee is exempt from the definitions of "contribution" and "expenditure." These sections provide an avenue for State and local party committees to spend on behalf of publicly financed presidential candidates without making a coordinated expenditure or an impermissible contribution. This exemption does not include payments for "any costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising." 11 CFR 100.89(a) and 100.149(a). Phone banks are treated separately and qualify for the exemption when the phone banks are operated by volunteer workers (although the use of paid professionals to design the system, to develop calling instructions, and to train supervisors is permissible under the exemption). 11 CFR 100.89(e) and 100.149(e). Thus, the proposed rules in new 11 CFR 106.8 would not apply, and no amount would have to be attributed to the presidential candidate, if the phones are operated by volunteer workers and if the other conditions pertaining to the source of the funds used in 11 CFR 100.89 and 100.149 are satisfied.

Proposed paragraphs (a)(1) through (4) of section 106.8 would describe the communication that would be subject to the proposed rule. The communication would have to: refer to a clearly identified presidential or vice presidential nominee (proposed paragraph (a)(1)); refer to no other clearly identified candidate (proposed paragraph (a)(2)); and refer generically to the other candidates of the presidential nominee's party without clearly identifying them (proposed paragraph (a)(3)). Generic references to "our great Republican team" or "our great Democratic ticket" would satisfy the latter requirement. Moreover, under proposed paragraph (a)(4), the communication must not be used as a means to solicit contributions, donations, or any funds from any person for any Federal or non-Federal candidate, or for any political committee or political organization, or any entity disbursing funds in connection with a Federal or non-Federal election. If such a solicitation were made, it would change the nature of the communication and may require a different determination as to the attribution of the party's spending for the communication among candidates or committees.

Proposed section 106.8(b) includes two alternatives that would establish the attribution of the party committee's payments for the phone bank. Alternative A would provide that fifty percent of the disbursement must be attributed to the presidential and vice presidential nominees, and the remaining fifty percent would not be attributable to any Federal or non-Federal candidate but must be paid solely with Federal funds. Alternative B would provide that 100 percent of the disbursement must be attributed to the presidential and vice presidential nominees. The Commission seeks comment on which of these two alternatives is preferable, or on whether the percentage should be based on the actual space or time used to refer to the presidential nominee or some other factor.

If the party committee pays for the entire cost of the phone bank mentioning a publicly funded general election candidate (as opposed to the assumption of some of the cost by the presidential candidate's principal campaign committee), the payment may be, in some cases, either a coordinated expenditure under 2 U.S.C. 441a(d) or an independent expenditure under 2 U.S.C. 431(17). In the case of a non-publicly funded general election candidate, it may be either an in-kind contribution to the candidate, or a coordinated or independent expenditure.

The Commission also notes that, unlike the exempt payments in 11 CFR 100.89 and 100.149, a State party committee would be able to use coordinated expenditures (under 2 U.S.C. 441a(d)) to cover phone bank communications subject to proposed 11 CFR 106.8 only if the national party committee has made a written assignment of a specific amount of its spending authority to the State committee in an amount sufficient to cover the expenditure. *See* 11 CFR 109.33(a). The district or local party committee may spend some of the amount authorized by the national to the State committee, subject to the control of the State committee, which ensures that the entire party organization in the State stays within the assigned limit. *See* 11 CFR 109.33(b). The Commission seeks comment on whether the proposed rule should refer to this requirement or whether it is understood that this proposed rule would not exempt a State, district, or local party committee from these requirements.

Barring the unlikely event that the phone bank will involve 500 or fewer calls, a message such as, "Please vote for President John Doe and our great Party team," would be a public communication that refers to a clearly identified Federal candidate and promotes that candidate. It would thus be a form of Federal election activity that must be paid for entirely with Federal funds, pursuant to 11 CFR 300.33(c)(1). *See* 11 CFR 100.24(b)(3), 100.26, and 100.28. Payments by a national party committee must be from Federal funds because such committees are prohibited from maintaining accounts that do not consist entirely of Federal funds. *See* 11 CFR 300.10(a)(1). Thus, under alternative A, the fifty percent that would not be attributed to the presidential nominee would have to be paid for entirely with Federal funds, and would not be allocable between Federal and non-Federal funds or Federal and Levin funds. Similarly, under Alternative B, the entire amount must be paid for with Federal funds.

C. Additional Comments Sought

In addition to the request for comment as to national party committee assignment of its coordinated expenditure authority, the Commission seeks comments on several aspects of the proposed rule. Specifically, comment is sought on whether this attribution should apply only to phone banks or whether it should apply to other media such as broadcast or print media. The Commission also seeks comment on whether the specific condition in 11 CFR 100.89 and 100.149—that the party expenditures not be made from contributions designated for particular Federal candidates—should be included in the

proposed rule. *See* 2 U.S.C. 431(8)(B)(xi)(3) and (9)(B)(ix)(3); 11 CFR 100.89 and 100.149. Finally, the Commission seeks comment on whether proposed 11 CFR 106 .8 should apply to candidates for the Senate and the House of Representatives as well as presidential candidates.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these proposals, which apply only to committees of political parties. National, State and many local party committees of the two major political parties and other political committees are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. The proposed rules are intended to simplify the determination as to the amount of a party committee expenditure that must be attributed to a presidential candidate in the case of certain telephone bank communications and to clarify what funding is permissible. Any increase in the cost of compliance that might result from these proposed rules would not be in an amount sufficient to cause a significant economic impact.

List of Subjects in 11 CFR Part 106

Campaign funds, Political committees and parties, Political candidates.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapter A of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

1. The authority citation for part 106 would continue to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

2. New section 106.8 would be added to read as follows:

§ 106.8 Allocation of expenses for political party committee phone banks that refer to a clearly identified presidential or vice presidential nominee.

(a) *Scope.* Except as provided in 11 CFR 100.89 and 100.149, this section applies to a phone bank conducted by a national, State, district, or local committee or organization of a political party where—

(1) The communication refers to a clearly identified presidential or vice presidential nominee;

(2) The communication does not refer to any other clearly identified Federal or non-Federal candidate;

(3) The communication generically refers to other candidates of the presidential nominee's party without clearly identifying them; and

(4) The communication does not solicit a contribution, donation, or any other funds from any person.

Alternative A

(b) *Attribution.* Each expenditure for the phone bank described in paragraph (a) of this section (including an in-kind contribution, independent expenditure, and coordinated expenditure) shall be attributed as follows:

(1) Fifty percent of the disbursement for the phone bank is attributed to the presidential and vice presidential nominees; and

(2) The remaining fifty percent is not attributable to any other Federal or non-Federal candidate, but must be paid for entirely with Federal funds.

Alternative B

(b) *Attribution.* The entire amount of each expenditure for the phone bank described in paragraph (a) of this section (including an in-kind contribution, independent expenditure, and coordinated expenditure) shall be attributed to the presidential and vice presidential nominees.

Dated: August 29, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–22533 Filed 9–3–03; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 110, 113, 9004, and 9034

[Notice 2003–17]

Mailing Lists of Political Committees

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed additions to its rules covering the sale, rental, and exchange of political committee mailing lists. The proposed rules address when the proceeds of a political committee's rental or sale of its mailing list, or an exchange of its mailing list with another entity, would be considered a contribution to that committee subject to the limitations and prohibitions of the Federal Election Campaign Act of 1971. The proposed rules also address the personal use by a candidate of his or her authorized committee's mailing list. Finally, the proposed rules address the sale or rental of a mailing list by an authorized committee of a publicly funded presidential candidate. The Commission has not made any final decisions on any of the proposed revisions in this Notice. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

DATES: Comments must be received on or before September 25, 2003. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on October 1, 2003, at 9:30 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *mailinglists@fec.gov* and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr. Jonathan M. Levin, Senior Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: One of the principal assets of many political committees is their mailing list. Political committees develop their mailing lists to ensure a high response rate from potential contributors. Several advisory

opinions, audits, and enforcement matters have presented a number of issues concerning the rental, sale, exchange, disposition, and ownership of political committees' mailing lists.[1] Central to the analysis of these issues is whether the proceeds from these transactions are contributions to the political committees that are subject to the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"), 2 U.S.C. 431, *et seq.* The Commission is beginning this rulemaking to adopt formally its historical approach to these issues, or to modify those approaches as appropriate, and to provide candidates and political committees with more comprehensive guidance on commercial transactions involving mailing lists.

I. Proposed Addition of 11 CFR 110.21 Committee Rental or Sale of Mailing Lists to Others

A. Background and Overview

The Act defines the term "contribution" to include "any gift, subscription, loan, advance, or deposit of money or *anything of value* made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. 431(8)(A)(i) (emphasis added); *see also* 11 CFR 100.52(a). The term "anything of value" is defined in the regulations as "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services." 11 CFR 100.52(d)(1). The "usual and normal charge" for goods is defined in 11 CFR 100.52(d)(2) as "the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution." Under 11 CFR 100.52(d)(1), the provision of goods or services at less than the usual and normal charge is an in-kind contribution in the amount of the difference between the usual and normal charge and the amount charged the political committee. The regulations also provide, however, that the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution. 11 CFR 100.53.

Proposed 11 CFR 110.21 would state when certain transactions involving the sale or rental of a mailing list by a political committee are contributions to that committee and when they are not. Proposed paragraph (a) would list the conditions that would need to be satisfied for a mailing list rental payment to not be a contribution by the person leasing the mailing list. Proposed paragraph (b) would incorporate similar conditions for the sale of mailing lists. Proposed paragraph (c) would explain the ramifications of failing to comply with proposed paragraphs (a) or (b). Reporting would be addressed in proposed paragraph (d). Transactions between a candidate and his or her authorized committee would be covered in proposed paragraph (e).

B. 11 CFR 110.21(a)—Rental of Mailing List

Proposed 11 CFR 110.21(a) would affirmatively allow political committees to rent their mailing lists to other persons, including other political committees. Further, it states that the rental payments would not be treated as contributions if certain conditions pertaining to the rental charge and use of the mailing list are met. These conditions are explained in detail below.

1. Usual and Normal Charge

One of the key factors used by the Commission in determining whether a sale or rental of a mailing list results in a contribution is whether the amount paid is the usual and normal charge for the mailing list. *See* AO 2002–14. The usual and normal charge for a mailing list allows the Commission to determine whether the sale or rental of a political committee's mailing list is a transaction for equal value.

A mailing list that is frequently rented on the open market is likely to be listed and described in a catalogue such as the *SRDS Direct Marketing List Source*. For each of thousands of lists, the catalogue states the number of names on the list, the price per thousand names, the minimum number of names that must be ordered, fees for addressing services, the amount of the commission, and credit policies. If a political committee does not routinely rent out its mailing list, it might not be listed in such a catalogue. However, even if a mailing list does not appear in a catalogue, a reasonable rental price might be ascertainable so long as the valuator is aware of the significance of various factors in the market (*e.g.*, he or she knows how lists with comparable characteristics are valued, as well as the pricing ranges for comparable lists). The price may depend upon such factors as how recently the names were updated for accurate addresses, how responsive the individuals on the mailing list have been to other similar solicitations (particularly recent solicitations), the income level of the individuals, and the classification according to list industry sector or other subject matter. The Commission seeks comments on the ways in which mailing list rentals by political committees are similar and/or different from mailing list rentals by non-political entities.

Proposed 11 CFR 110.21(a)(1) would make ascertaining the usual and normal charge of a mailing list in advance one of the conditions that must be satisfied for the rental proceeds not to be contributions. This proposed regulation would not, however, define the factors that a committee should use to determine the usual and normal charge. Without any further specificity, the definition of "usual and normal charge" at 11 CFR 100.52(d)(2) and 100.111(e)(2) would apply. The Commission seeks comment on whether the rule in new 11 CFR 110.21 should specify the appropriate means for determining the usual and normal charge of a mailing list, and if so, whether this should be done by adding additional factors or in some other fashion. If the *SRDS Direct Marketing List Source* is not dispositive on the fair market value of a mailing list, are there other appropriate methodologies that can be used to determine the fair market value of a political committee's list that takes into account the unique nature of political mailing lists?

The Commission also seeks comment on whether the political committee that wishes to rent its mailing list should have the burden of establishing what the usual and normal rental charge is and, if so, whether it should be required to do so prior to renting the list. In the alternative, the Commission seeks comment on a proposed rule that would not specify who has the burden of establishing what the usual and normal charge is or when that charge must be established, but that would still require political committees to rent their mailing lists at the usual and normal charge in order to avoid receiving contributions from the lessees.

Proposed paragraph (a)(1) would also address the other services (*e.g.*, labels) provided with the mailing list in the ordinary course of business because other services appear to be priced separately. The Commission seeks comment on whether it is necessary to enumerate such services in paragraph (a)(1), or whether to assume that the usual and normal rental charge includes such services. Comment is also sought on whether services other than labels should be specifically mentioned in considering the usual and normal charge.

[1] *See* Advisory Opinions ("AO") 2003–16, 2002–14, 1988–12, 1982–41, 1981–53, and 1081–46; Matters Under Review ("MURs") 4382 and 4401 (Dole for President, Inc.), MUR 3371 (Americans United Committee), and MUR 1602 (Republican National Independent Expenditure Committee).

2. Rental at the Usual and Normal Charge With Commercially Reasonable Contractual Terms

Proposed paragraph (a)(2) of 11 CFR 110.21 would require that the mailing list (or list portion) be rented at the usual and normal charge for the contracted use of the list in a *bona fide* arm's length transaction with commercially reasonable contractual terms. Proposed paragraph (a)(2) would also indicate that if there is not a *bona fide* arm's length transaction, a rebuttable presumption would be raised that the exchange is not of equal value.

The Commission has relied on several signposts for ensuring that an arrangement between a political committee and another person constitutes a *bona fide* transaction, rather than serving as a vehicle for making a contribution to the committee. One of the most important of these signposts is whether the transaction represented a bargained-for exchange negotiated at arm's length. For example, the list rentals at issue in AO 2002–14 were approved on the condition that the lists be "leased at the usual and normal charge in a *bona fide*, arm's length transaction." The very concept of "fair market value," which is virtually identical to the concept of "usual and normal charge" as defined in the Commission's regulations, is defined by Black's Law Dictionary as "[t]he price that a seller is willing to accept and a buyer is willing to pay on the open market and in an arm's length transaction." Black's Law Dictionary 1549 (7th ed. 1999). The Commission seeks comment on whether a lack of arm's length bargaining should result in a rebuttable presumption that the exchange is not for fair market value. *Cf. Rybak* v. *Commissioner*, 91 T.C. 524, 536–37 (U.S. Tax Court 1988) (in tax law, where transactions are frequently examined for whether they should be disregarded for lack of economic substance, "[t]he absence of arm's length negotiations is a key indicator that a transaction lacks economic substance.")

To provide guidance on what constitutes commercially reasonable terms, proposed paragraph (a)(2) of new 11 CFR 110.21 would list three factors, although other factors could be considered as well. These factors are intended to ensure that the rental agreement provides that the lessee uses the mailing list in a manner comparable to the use in normal commercial transactions, thereby preventing transactions where the lessee attempts to make a contribution in the guise of a rental payment.

Two factors, in proposed paragraphs (a)(2)(i) and (ii), would examine whether the rental agreement permits use within a specified time only and, if so, whether this specified time is a reasonable period of time. The inclusion of factors in proposed paragraphs (a)(2)(i), (ii) and (iv) is intended to ensure that actual use would occur and that delayed use would be based on reasonable business considerations, such as to avoid competing with a political committee solicitation to the same group of persons. The Commission seeks comment on whether it should define what is a "reasonable" period of time and, if so, how it should do so.

The other factor, at proposed paragraph (a)(2)(iii), would focus on the number and types of uses by the person leasing the mailing list to ensure that the rental agreement represents a *bona fide* commercial transaction consistent with industry norms and not a transaction used to provide something of value to the political committee. The use of the phrases "usual and normal practice of the [list] industry" and "established procedures and past practice" are consistent with the Commission's regulations on extensions of credit in the ordinary course of business. *See* 11 CFR 116.3(c). As to the number of uses under proposed paragraph (a)(2)(iii), the Commission seeks comments as to whether providing for more than one-time use would be commercially reasonable under industry practice. Should the rules establish a rebuttable presumption that multiple uses are not commercially reasonable?

The Commission seeks comment on the appropriateness of these factors and what other factors, if any, should be included. The Commission also seeks comment on whether the presence of a "*bona fide* arm's length transaction" should be required under the proposed rule, particularly if mailing lists are rented out at the usual and normal charge pursuant to commercially reasonable terms. If the Commission does require the presence of a "*bona fide* arm's length transaction," should the Commission conclude that this requirement cannot be satisfied if committees of the same candidate, or party committees of the same political party, rent mailing lists from each other, or if a candidate's authorized committee rents a mailing list from an unauthorized committee such as that candidate's leadership PAC?

In addition, should proposed 11 CFR 110.21(a)(2) include a factor that considers whether a mailing list is developed over time by the political committee primarily for the political committee's own use? Conversely, should the proposed rules state that revenue generated from a mailing list that is owned by the political committee, but not developed over time by it for its own use, is not a form of fundraising, and therefore not a contribution? In AO 1991–34, the Commission stated that generally the use of a political committee's asset to generate income through ongoing business or commercial ventures is fundraising in another form. Consequently the proceeds from such ventures would be contributions. However, this advisory opinion also reiterated the Commission's statement in AO 1988–12 that if an asset such as a mailing list was developed by the political committee primarily for its own use and not as a fundraising activity, then income generated from that asset would not be contributions.

Lastly, while proposed paragraph (a)(4) would focus on the rental agreement, the proposed rule does not include provisions that would examine the conduct of the person leasing the mailing list once the rental has occurred, to verify that the person leasing the mailing list in fact uses the mailing list in accordance with the agreement. The Commission seeks comment on whether the proposed rules should include such a provision.

C. 11 CFR 110.21(b)—Committee Sale of the Mailing List

Proposed 11 CFR 110.21(b) would set forth the conditions under which the proceeds from the sale of a political committee's mailing list would not be a contribution by the purchaser to the political committee. Like proposed paragraph (a)(1), proposed paragraph (b)(1) would require that the political committee ascertain in advance the usual and normal charge for the sale of the mailing list. The political committee would also be required to sell the mailing list at that price under proposed paragraph (b). As in the case of charges for a list rental, the Commission seeks comment on whether the political committee that wishes to sell its mailing list should have the burden of establishing what the sale price is and, if so, whether it should be required to do so prior to selling the list. In the alternative, the Commission seeks comment on a proposed rule that would not specify who has the burden of establishing what the usual and normal charge is or when that sales price must be established, but that would still require political committees to sell their mailing lists at the usual and normal charge in order to avoid receiving contributions from the purchasers.

Proposed paragraph (b) would also include the condition contained in proposed paragraph (a)(2) that the sale agreement be a *bona fide* arm's length transaction on commercially reasonable terms, including terms that address the use of the list by the purchaser. The Commission again seeks comment on whether the presence of a "*bona fide* arm's length transaction" should be a separate requirement under the rule. Comment is also sought as to what factors are appropriate for determining the commercial reasonability of the sale of a mailing list. For the reasons discussed above, there would also be a rebuttable presumption that the exchange is not of equal value if the parties do not engage in a *bona fide* arm's length transaction.

The Commission also seeks comment on whether it is usual and customary in the commercial list marketplace for one entity to provide raw list data to another entity that updates and enhances the data and where both entities consequently have access to the list. If so, comment is sought as to whether such a transaction is a commercially reasonable exchange of equal value that would not be an in-kind contribution.

The Commission understands that outright sales of lists are not common and that the sale price of a usable list would be substantially greater than a rental price. This is particularly true for political committees because they depend upon their mailing lists for the solicitation of funds. In advisory opinions approving the sale (as opposed to rental) of mailing lists, the Commission considered one situation involving a terminating committee, and another situation involving a committee of a Federal officeholder that was selling assets to his gubernatorial campaign committee. AOs 1989–4 and 1981–53. In contrast to a terminating committee, an ongoing political committee's sale of a valuable list in an arm's length transaction, for which it would normally be paid a price much greater than the rental price, would be unusual. The Commission seeks comment on whether its understandings as to the frequency of sales and the differences between sales prices and rental charges are correct. More specifically, the Commission also seeks comment as to the likelihood of, and the circumstances surrounding, an ongoing political committee selling its mailing list (as opposed to updating its current lists).

Related to comments on actual ongoing practices with respect to mailing lists, the Commission seeks comment on whether proposed 11 CFR 110.21(b) should contain a condition that the political committee must be preparing to terminate because the sale of a mailing list by an ongoing political committee is so unusual that it would be *per se* commercially unreasonable. Should the Commission prohibit the sale of mailing lists other than in certain limited circumstances on the basis that there is no readily ascertainable market value for such lists? If not, what sources should the Commission look to in order to determine an objective value for the sale of mailing lists? Furthermore, if the Commission decides to adopt a rule that would limit the sale of a political committee's mailing list to a specified period before it files a termination report, should the Commission adopt exceptions to this special rule? For example, does a purchaser of a political committee's mailing list make a contribution to that committee if the list has not been updated recently and is of substantially depreciated value?

D. 11 CFR 110.21(c)—Rental or Sale Proceeds

Under proposed 11 CFR 110.21(c)(1), a transaction that does not comply with the conditions set forth in proposed paragraphs (a) or (b) would be fundraising, and thus would be treated as an in-kind contribution to the political committee, subject to the applicable limits and source prohibitions of the Act. The contribution amount would be the entirety of the rental or sales proceeds (not just the difference between the usual and normal charge and an amount paid that exceeds that charge). Treatment of the entire payment for a mailing list as a contribution would be consistent with 11 CFR 100.53, which states that "the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution." Nevertheless, the Commission seeks comment on including in proposed paragraph (c)(1) the opposite approach of setting the amount of the contribution as the amount paid that exceeds the usual and normal charge for the sale of the mailing list.

While proposed 11 CFR 110.21(c)(1) would address sale or rental of mailing lists at an amount that exceeds the usual and normal charge, proposed paragraph (c)(2) would retain the current rule at 11 CFR 100.52 for situations where a political committee donates or transfers its mailing list or rents or sells its mailing list at less than the usual or normal charge.

E. 11 CFR 110.21(d)—Rental or Sale to the Candidate

Proposed 11 CFR 110.21(d) would address situations where an authorized committee sells or rents its mailing list to the candidate who formed the authorized committee. The proposed rule would treat the amount paid by the candidate for the mailing list as a contribution from the candidate to the authorized committee in that amount. This provision would recognize that a transaction between these two parties is not at arm's length.

F. 11 CFR 110.21(e)—Reporting of Proceeds

Proposed 11 CFR 110.21(e) would require that proceeds from the rental or sale of a mailing list that complies with the provisions of proposed section 110.21 be reported as "other receipts."

G. 11 CFR 110.21(f)—Recordkeeping

Proposed 11 CFR 110.21(f) would set forth the recordkeeping requirements associated with the sale or rental of a political committee's mailing list. Proposed paragraph (f)(1) would require that political committees maintain and make available the sales or rental agreements. These agreements must be signed and dated. Proposed paragraph (f)(2) would require documentation of the usual and normal charge for a political committee's mailing list. For a mailing list that is listed in the *SRDS Direct Marketing List Source*, the political committee would need to retain a copy of the price list for its mailing list in the *SRDS Direct Marketing List Source* under propose paragraph (f)(2)(A). For a mailing list that is not listed in the *SRDS Direct Marketing List Source*, the political committee would need to obtain a written appraisal from an independent entity. The Commission seeks comment on whether a written appraisal from an independent entity is the appropriate documentation of the usual and normal charge when a mailing list is not in the *SRDS Direct Marketing List Source*. Are there other ways to document the usual and normal charge? Should the rules include more specific requirements regarding the independent entities, such as that they are in the business of appraising the fair market value of mailing lists? Do such entities exist?

H. Other Issues

1. Allocation of Rental Proceeds

The Commission notes that in some cases a political committee's mailing list may be developed with non-Federal, as well as Federal funds, and that, under the proposed rule, the entire amount received from the rental or sale of the list may be deposited in the Federal account without being subject to the amount limitations and source

prohibitions of the Act. The Commission seeks comment on whether proposed 11 CFR 110.21 should specify that only some allocable portion of the rental proceeds, rather than all of the rental proceeds, may be deposited and retained in the committee's Federal account, and that the remainder should be deposited in the non-Federal account, provided that the political committee is permitted to have a non-Federal account under 11 CFR 106.6, 106.7 or part 300.

One possible allocation rule is that the Federal account may only accept and use the portion of the proceeds that reflects the Federal portion of the committee's cost in developing the list. Another possibility is that the Federal account may only accept and use the amounts corresponding to the Federal share of administrative expenses applicable to the political committee under 11 CFR 106.6(c) or 106.7(d)(2). This approach recognizes that the list's development may have been paid for as allocable administrative expenses. If such splitting of the deposit of the rent proceeds is required, comment is also sought on whether national party committees would be allowed to retain the entire amount of proceeds from the rental of lists developed with mixed funds prior to the effective date of the Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107–155 (Mar. 27, 2002), in view of the fact that under BCRA they only have accounts with Federal funds.

2. Scope of Proposed Mailing List Rules

The proposed new rules in 11 CFR 110.21 would apply in the same manner to both authorized and unauthorized committees, *i.e.*, party committees, multicandidate committees, and other kinds of political committees. Nevertheless, the Commission seeks comments as to whether there are material distinctions between different types of political committees that should be reflected in the new mailing list provisions.

II. Proposed 11 CFR 110.22 Committee Exchange of Mailing Lists

A. Background

The Commission has, in its advisory opinions, addressed list exchanges by political committees with other organizations and has concluded that where the exchange is for equal value, a contribution is not made to the political committee. AOs 1982–41 and 1981–46; *see also* AOs 2003–16 and 2002–14. Such exchanges allow each organization or political committee to seek new potential donors, and often allow each organization to add the names of individuals from the other mailing list to its own list where those individuals responded to that organization's solicitation. AO 1981–46 noted variations of equal exchange that went beyond "a direct exchange of the same number of names." In some cases, one organization may use fewer names more times, or the exchange may involve different numbers of names where the names on one mailing list may have a different market value than the names on the other list, or other variations dependent upon the frequency of use or the value of the names.

B. 11 CFR 110.22(a)—Exchanges of Equal Value

Proposed 11 CFR 110.22 would describe the conditions under which a political committee may exchange its mailing list with another organization without receiving a contribution, donation, or other reportable receipt. Proposed paragraph (a) would follow, in some respects, the proposed rules on mailing list rental and sale regarding the period of time and number of uses of the mailing list. It would treat the exchange as neither a contribution nor a reportable receipt if: (1) The usual and normal charge for the mailing list and the services ordinarily provided in the list exchange is ascertained in advance; (2) the mailing lists involved in the exchange are of equal value, as discussed below; and (3) the actual exchange is a *bona fide* arm's length transaction with commercially reasonable terms. For the reasons discussed above, there would also be a rebuttable presumption that the exchange is not of equal value if the parties do not engage in a *bona fide* arm's length transaction. "Equal value" would be defined in proposed paragraph (a)(3)(i) in terms of the usual and normal rental value of each organization's or political committee's mailing list, or list portion being exchanged, as well as the agreed upon use by the organization, and the services provided. Proposed paragraph (a)(3)(ii) would also address the timing of the use of the exchanged lists, including delayed use if provided for in the agreement.

The Commission seeks comment on whether, and under what circumstances, multiple uses of a mailing list would be commercially reasonable; when delayed use would be reasonable; and whether the rule should address delayed use. Comment is also sought on how to determine the usual and normal charge, and whether the proposed rule should affirmatively mandate that the mailing lists be used in a manner consistent with the list exchange agreement. The Commission also seeks comment on whether the proposed rule should require that each party to the exchange establish the fair market value of its own list in advance in order to avoid treating the transaction as entailing an in-kind contribution. The Commission also seeks comment on whether the presence of a "*bona fide* arm's length transaction" should be required, particularly if it has been otherwise established that the exchange of the mailing lists is an exchange of equal value. Moreover, can the requirement of a "*bona fide* arm's length transaction" be satisfied even if campaign committees of the same candidate, or party committees of the same political party, rent mailing lists from each other or if a candidate's authorized committee rents a mailing list from an unauthorized committee such as a leadership PAC?

The Commission also seeks comment on whether the political committee's ability to use the names on the other organization's mailing list to solicit contributions to the Federal account is affected by whether funds from the committee's non-Federal account were used to develop the committee list. (*See* the discussion above on allocation in proposed 11 CFR 110.21.)

Another issue raised previously with respect to the sale of mailing lists may more appropriately relate to the exchange of lists. Specifically, the Commission seeks comment on whether it is usual and customary in the commercial list marketplace for one entity to provide raw list data to another entity that updates and enhances the data and where both entities consequently have access to the list. If so, comment is sought as to whether such a transaction is a commercially reasonable exchange of equal value that would not be treated as an in-kind contribution.

C. 11 CFR 110.22(b)—Exchanges of Unequal Value

Proposed 11 CFR 110.22(b) would address an exchange of mailing lists that does not comply with proposed paragraph (a). Where the value of the mailing list provided by the other person exceeds the value of the political committee's mailing list, only the excess amount is a contribution. This is in contrast to proposed 11 CFR 110.21(c), where the entire amount is a contribution. Also, while proposed 11 CFR 110.21 would treat a sale or rental of a mailing list at a charge that is greater than the usual or normal charge as a fundraising activity that is subject

to 11 CFR 100.53, proposed section 110.22(b) would treat the exchange of mailing lists of unequal value as a good or service that is provided at less than the usual and normal charge under 11 CFR 100.52(d)(1). Consequently, the difference in value between the two mailing lists exchanged would be an in-kind contribution. 11 CFR 100.52(d)(1). The Commission seeks comment on whether this characterization of the exchange of mailing lists of unequal value as an in-kind contribution is appropriate.

III. Proposed 11 CFR 113.2(d) Conversion of Committee's Mailing List to Personal Use

Both 2 U.S.C. 439a, and the Commission's regulations at 11 CFR part 113, bar candidates and other persons from converting to personal use any contributions or donations. This ban is not limited to monetary contributions. Consequently, the Commission has interpreted the personal use ban to apply to assets of the principal or authorized campaign committee, as well as the actual funds in the committee accounts. *See* AOs 1994–20, 1990–11, 1984–50, and 1981–11; *see also* 11 CFR 102.3(a)(2) and 113.2(e)(1)(ii). These assets may have been purchased through the use of funds from contributions or may have been donated to the authorized committee during the campaign. One of the principal assets of a political committee is its mailing list because it is vital to the committee's ability to solicit funds.

On some occasions, particularly after the end of his or her campaign, a candidate may wish to market the mailing list for the rental of names to other organizations and may wish to receive rental proceeds personally. These situations may raise questions as to whether the candidate has a personal ownership interest in the list. The candidate's receipt of proceeds from the rental or sale of the mailing list squarely presents the issue of whether the restrictions of 2 U.S.C. 439a apply. Proposed 11 CFR 113.2(d) would address this issue by explicitly banning the conversion to personal use of the mailing list itself, such as by barring a candidate from retaining the proceeds of a mailing list rental or sale.

In the alternative, the Commission seeks comment on whether a candidate's receipt of proceeds from the rental or sale of a mailing list, or portions thereof, could be permissible under 2 U.S.C. 439a. If permissibility were based on a candidate's ownership of a list or a share of the mailing list, how would the candidate obtain such ownership interest? Could a candidate acquire personal ownership, through purchase or other consideration, of a mailing list developed by his or her principal campaign committee? Is the candidate's signature adequate consideration for candidate ownership of the resulting mailing list? Is such ownership interest assumed on some other basis? The Commission seeks comment on whether the determination of ownership of the mailing list should be premised on who or what entity (*i.e.*, the candidate as opposed to the committee) incurred the costs for the development or purchase of the list or the portion of the list being rented or sold. The Commission also seeks comment on whether a candidate may acquire personal ownership of a list in other ways. For example, a candidate may sign a fundraising appeal for an organization other than his or her principal campaign committee and receive the use of responsive names, in compliance with Commission regulations. Should the use of the list be viewed as a property interest of the candidate's principal campaign committee, the candidate personally, or both? How significant to that determination are the terms of an agreement purporting to confer a property interest on the principal campaign committee, the candidate personally, or both?

The Commission also seeks comment on situations where the candidate owns a mailing list. If the authorized committee uses the mailing list, has it accepted a contribution from the candidate? How should the use be valued? Should the valuation be based on the sale or rental price for the mailing list? Additionally, how should this transaction be reported?

IV. Proposed 11 CFR 9004.9(d)(2)(i) and 9034.5(c)(2)(i)—Rental, Sale, and Valuation of Mailing Lists by Publicly Financed Campaigns

The proposed rules at 11 CFR 9004.9(d)(2)(i) and 9034.5(c)(2)(i) would include the mailing lists of an authorized committee of publicly financed presidential candidates as assets on the candidates' statements of net outstanding campaign obligations ("NOCO") for the primaries and on the candidates' statements of net outstanding qualified campaign expenses ("NOQCE") for the general election, under certain circumstances. Thus, the proposed rules would recognize a presidential campaign committee's use of its mailing list as an income producing asset and would provide that a committee may only rent or sell the mailing list if the list is included as an asset in the NOCO or NOQCE statements. However, the proposed rules at 11 CFR 9004.9(d)(2)(i) and 9034.5(c)(2)(i) would not require the publicly funded committee to include the list as an asset on the NOCO or NOQCE statements if it does not rent or sell the list.

Since 1976, the Commission has not required as a *per se* matter, the inclusion of a mailing list as an asset in NOCO and NOQCE statements, even though a political committee's mailing list is almost invariably one of the most important assets of a political committee. Some presidential campaign committees have indeed rented their lists, or portions thereof, to other political committees or organizations and therefore have received proceeds, which may show up on a NOCO or NOQCE statement as cash.

The current rules list "capital assets" and "other assets" as types of assets listed on the NOCO and NOQCE statements. Unlike "other assets," capital assets have special valuation rules accounting for depreciation. A mailing list developed by a political committee is usually a unique asset developed for the special needs of the committee, and the proposed rules would add mailing lists as a special category of assets. The proposed rules would not subject mailing lists to the depreciation rules for "capital assets." The proposed rules at 11 CFR 9004.9(d)(3)(i) and 9034.5(c)(3)(i) explain that the list would be considered an "other asset;" therefore, it would be valued at "fair market value" without depreciation factored in. The proposed rules would give specific guidance as to the fair market value of a mailing list (discussed below).

As indicated above, the proposed rules in 11 CFR 9004.9(d)(3)(ii) and 9034.5(c)(3)(ii) would specify that the mailing list may be rented or sold only if its fair market value is listed on the NOCO and NOQCE statements. These proposed rules also would require that any such rental or sale be in compliance with the conditions of the proposed rule at 11 CFR 110.21, which describes when a committee may rent or sell a mailing list to others without the proceeds becoming contributions. Transfer of a mailing list from a candidate's primary committee to his or her general election committee would not require the principal campaign committee to include a value for its mailing list on its NOCO statement. However, the donation or transfer of the mailing list to another entity (including the candidate's general election committee, the candidate's general election legal and accounting compliance fund (GELAC) or a leadership PAC) would be

subject to proposed 11 CFR 110.21(c)(2), which would apply 11 CFR 100.52 to such transaction. The Commission also seeks comment on whether donations or transfers that are not sales or rentals should trigger the requirement to include a value for a mailing list on the NOCO or NOQCE statements even if the donation or transfer is to the presidential candidate's GELAC or other authorized committees.

Finally, the proposed rules at 11 CFR 9004.9(d)(3)(iii) and 11 CFR 9034.5(c)(3)(iii) would explain how fair market value would be determined for purposes of the NOCO and NOQCE statements. The proposed rule would allow the presidential campaign committee renting or selling its list to have two choices. For primary candidates, the list would be valued at either: (1) the usual and normal rental revenue that the committee would receive if it rented the list to others over an 18 month period beginning on the date of ineligibility ("DOI"); or (2) the usual and normal sale price at DOI. For general election candidates, the list would be valued at either: (1) the usual and normal rental revenue over the 12-month period beginning on the date of the general election; or (2) the usual and normal sale price as of the date of the election.

Under these proposed rules, Presidential campaign committees would need to estimate the usual and normal rental revenue. This in turn would involve estimates as to how often the committee will rent out the mailing list over the applicable period, as well as the rental value of the list (*e.g.*, $X per 1,000 names). The value may depend upon the rental price of comparable mailing lists and, if comparability is not easily ascertainable, such factors as how recently the names were updated for accurate addresses, how responsive the individuals on the list have been to other similar solicitations (particularly recent solicitations), the income level of the individuals on the list, and the classification according to the list industry or other subject matter. (*See* the discussion above of proposed 11 CFR 110.21(a)(1).) Estimates of the sale price would be based on similar information. The Commission seeks comment on whether the presidential campaign committee should have the burden of establishing the usual and normal rental value and, if so, whether it must establish this value before the mailing list is rented. *See* the request for comments with respect to proposed 11 CFR 110.21.

The proposed rules would provide for a limited time period for the measurement of the rental revenue, *i.e.*, the 18-month and 12-month periods. This recognizes that these campaign committees are in the process of winding down their activities. The 18-month and 12-month periods generally fall within the winding down periods and may very well expire before the end of such periods. Please note that continued or frequent renting out of the mailing list to raise funds beyond what is necessary to pay off debts would be inconsistent with the winding down of campaign activities. The Commission seeks comment on whether mailing list rentals or sales by presidential campaigns should be limited by the amount necessary to pay off the authorized committee's debts.

In the case of either rental or sale, the NOCO and the NOQCE statement would be adjusted subsequently by the actual rental or sale price for the mailing list, similar to the practice of revising those statements to replace estimated winding down costs with actual cost figures. In the case of list rental, the final NOCO or NOQCE statement (which will most likely be filed after the expiration of the 18-month or one year period) would not reflect the anticipated rental figure. Instead, the actual rental proceeds would replace the estimated figure of the value of the mailing list. In the case of a sale, the estimated list sale amount would be replaced with the actual sale proceeds.

The Commission seeks comment on whether the value of mailing lists should be accounted for on the NOCO or NOQCE statements regardless of any subsequent use by the authorized committee. In the alternative, should they not be recognized on NOCO and NOQCE statements under any circumstances? The Commission also seeks comments on the appropriateness of the methods proposed for determining fair market value. Are the proposed 12-month and 18-month time periods for measuring rental value too long? Would they encourage activity by presidential campaign committees that is not consistent with winding down activities? In the alternative, should the time periods be different for some other reason? Should presidential campaigns be permitted to rent or sell their mailing lists regardless of whether such activity is related to winding down the campaign?

The Commission also seeks comment on whether the use of the sale price as of DOI is inappropriate if a list is not updated and is sold many months after DOI. Comment is also sought on what other valuation method should be applied to mailing lists for purposes of the NOCO and NOQCE statements.

Certification of No Effect Pursuant to 5 U.S.C. 605(b)

[Regulatory Flexibility Act]

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these proposals, which apply only to Federal candidates, their campaign committees, party committees, and other political committees. Federal candidates, their committees, and party committees are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. These rules are largely intended to adopt past Commission practice by clarifying the application of various provisions of the Act and presidential public financing statutes to mailing list transactions involving political committees and Federal candidates. Because the proposed rules would not significantly change current practice, those few proposals that might increase the cost of compliance by small entities would not do so in such an amount as to cause a significant economic impact.

List of Subjects

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 113

Campaign funds.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9034

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapters A, E, and F of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441k.

2. Sections 110.21 and 110.22 would be added to read as follows:

§ 110.21 Committee rental or sale of mailing lists to others.

(a) *Rental of mailing list.* A political committee may rent a mailing list, or portions of such list, that it owns to any other person. Rental payments are not contributions if:

(1) Prior to the rental, the political committee ascertains the usual and normal rental charge for the mailing list (or the portion of the mailing list) rented, and other services provided in the ordinary course of business of the rental of such mailing lists (*e.g.*, labels); and

(2) The mailing list or the portion of the list (along with the services provided in the ordinary course of business) is rented at the usual and normal charge, as defined in 11 CFR 100.52(d)(2), for the agreed upon use of the mailing list, including the frequency and duration of the use, in a *bona fide* arm's length transaction with commercially reasonable terms. If the political committee and the person renting the list do not engage in a *bona fide* arm's length transaction, there is a rebuttable presumption that the exchange is not of equal value. To determine whether the terms of the rental agreement are commercially reasonable, the Commission will consider factors that include, but are not limited to:

(i) Whether the person leasing the mailing list is permitted to use the list within a reasonable period of time only;

(ii) Whether any delayed use by the person leasing the mailing list, provided for in the agreement, is based on reasonable business considerations;

(iii) Whether the agreed upon use by the person leasing the mailing list, including the duration of the rental or number of uses, comports with the usual and normal practice of the list industry and the lessee's established procedures and past practice; and

(iv) Whether the person leasing the mailing list actually uses the list.

(b) *Sale of mailing list.* A political committee may sell a mailing list, or portions of a mailing list, that it owns to any other person. Proceeds from the sale are not contributions if prior to the sale, the political committee ascertains the usual and normal charge for the sale of the mailing list, and sells the mailing list at the usual and normal charge, as defined in 11 CFR 100.52(d)(2), in a *bona fide* arm's length transaction with commercially reasonable terms. If the political committee and the person buying the list do not engage in a *bona fide* arm's length transaction, there is a rebuttable presumption that the exchange is not of equal value.

(c) *Rental or sale proceeds as contributions.* (1) Except as provided in paragraph (c)(2) of this section, a sale or rental of a mailing list that does not comply with the conditions set forth in paragraphs (a) or (b) of this section is a fundraising item under 11 CFR 100.53 and all proceeds from such sale or rental are contributions from the person buying or renting the mailing list to the political committee in their full amount.

(2) For the donation or transfer of mailing lists or the sale or rental of mailing lists at less than the usual and normal charge, *see* 11 CFR 100.52.

(d) *Rental or sale to the candidate.* If a candidate rents or buys a mailing list from his or her authorized committee, the amount paid by the candidate is a contribution to the authorized committee.

(e) *Reporting of proceeds.* The proceeds from the rental or sale of a mailing list that complies with the conditions set forth in paragraphs (a) or (b) of this section must be reported as "other receipts."

(f) *Recordkeeping.* A political committee shall maintain and make available upon request the documentation described in paragraph (f)(1) and (2) of this section.

(1) All sales and rental agreements or contracts of its mailing list(s). The agreements must be signed and dated.

(2) Documentation of the usual or normal charge for its mailing lists in the following manner:

(i) If its mailing list is included in the *SRDS Direct Marketing List Source,* a copy of the price list in the *SRDS Direct Marketing List Source;* or

(ii) If its mailing list is not included in the *SRDS Direct Marketing List Source,* a written appraisal of the mailing list from an independent entity that is not directly or indirectly associated with the political committee (including subcontractors of such entities).

§ 110.22 Committee exchange of mailing lists.

(a) *Exchange of equal value.* A political committee may exchange the use of a mailing list or portions of a mailing list with another person for a specific period of time or a specific number of uses. The exchange is not a contribution, donation, or other reportable receipt to the political committee if:

(1) The political committee ascertains in advance the usual and normal charge for the mailing lists, or the portions of the mailing lists, being exchanged and other services provided in the ordinary course of business for the exchange of the mailing lists (*e.g.*, labels); and

(2) The exchange of the mailing lists is a *bona fide* arm's length transaction with commercially reasonable terms that results in an exchange of equal value between the political committee and the other person. If the political committee and the other person in the exchange do not engage in a *bona fide* arm's length transaction, there is a rebuttable presumption that the exchange is not of equal value.

(3) An exchange of equal value takes place when:

(i) The usual and normal rental value for each mailing list, or portion of the mailing list being exchanged, and the agreed upon use for each mailing list, and the services provided in the ordinary course of business are of equal value; and

(ii) The agreement between the political committee and the other person provides that they each use the mailing list they receive within a commercially reasonable period of time. If the agreement provides for a future use by the political committee or the other person, the delay in the use of the mailing list must be based upon reasonable business considerations.

(b) *Exchange of unequal value.* An exchange of mailing lists that does not comply with the conditions set forth in paragraph (a) of this section is a contribution to the extent that the value provided by the other person exceeds the value provided by the political committee.

PART 113—USE OF CAMPAIGN ACCOUNTS FOR NON-CAMPAIGN PURPOSES (2 U.S.C. 439a)

3. The authority citation for part 113 would continue to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, and 441a.

4. In § 113.2, paragraph (d) would be added to read as follows:

§ 113.2 Permissible non-campaign uses of funds (2 U.S.C. 439a).

* * * * * *

(d) *Conversion of committee's mailing list to personal use.* The mailing list of a principal campaign committee or authorized committee of a candidate, or any proceeds from the rental or sale of any names on the mailing list, may not be converted to the personal use of the candidate or any other person.

* * * * *

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

5. The authority citation for part 9004 would continue to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

6. In § 9004.9, new paragraph (d)(3) would be added to read as follows:

§ 9004.9 Net outstanding qualified campaign expenses

* * * * *

(d) * * *

(3) *Mailing lists.* (i) The term *other asset*, as defined in paragraph (d)(2) of this section, includes an authorized committee's mailing list if the mailing list is sold or rented under paragraph (d)(3)(ii) of this section.

(ii) An authorized committee may sell or rent its mailing list only if—

(A) The fair market value of the mailing list is included on the candidate's statement of net outstanding qualified campaign expenses; and

(B) The sale or rental of the mailing list complies with 11 CFR 110.21.

(iii) The fair market value of an authorized committee's mailing list is either:

(A) The usual and normal rental revenue that the authorized committee would receive if it rented the list to others over the 12-month period beginning on the date of the general election; or

(B) The usual and normal sale price for the list as of the date of the general election.

* * * * *

PART 9034—ENTITLEMENTS

7. The authority citation for part 9034 would continue to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

8. In section 9034.5, new paragraph (c)(3) would be added to read as follows:

§ 9034.5 Net outstanding campaign obligations.

* * * * *

(c) * * *

(3) *Mailing lists.* (i) The term *other asset*, as defined in paragraph (c)(2) of this section, includes an authorized committee's mailing list if the mailing list is sold or rented under paragraph (c)(3)(ii) of this section.

(ii) An authorized committee may sell or rent its mailing list only if—

(A) The fair market value of the mailing list is included on the candidate's statement of net outstanding campaign obligations; and

(B) The sale or rental of the mailing list complies with 11 CFR 110.21.

(iii) The fair market value of an authorized committee's mailing list is either:

(A) The usual and normal rental revenue that the authorized committee would receive if it rented the list to others over the 18-month period beginning on the date of ineligibility; or

(B) The usual and normal sale price for the list as of the date of ineligibility.

* * * * *

Dated: August 29, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

[FR Doc. 03–22530 Filed 9–3–03; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–238–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200 Series Airplanes Modified by Supplemental Type Certificate ST00516AT

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 737–200 series airplanes modified by Supplemental Type Certificate ST00516AT (STC). This proposal would require removal of the in-flight entertainment (IFE) system installed per that STC. This action is necessary to eliminate the possibility that the airplane crew could be unable to remove power from the IFE system during a non-normal or emergency situation, which could result in the airplane crew's inability to control smoke or fumes in the airplane flight deck or cabin. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 20, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–238–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–238–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Kosola and Associates, Inc., 5601 Newton Road, P.O. Box 3529, Albany, Georgia 31706. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Myles Jalalian, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6073; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following

statement is made: "Comments to Docket Number 2002–NM–238–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–238–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Federal Aviation Administration (FAA) recently completed a review of in-flight entertainment (IFE) systems certified by supplemental type certificate (STC) and installed on transport category airplanes. The review focused on the interface between the IFE system and airplane electrical system, with the objective of determining if any unsafe conditions exist with regard to the interface. STCs issued between 1992 and 2000 were considered for the review.

The type of IFE systems considered for review were those that contain video monitors (cathode ray tubes or liquid crystal displays; either hanging above the aisle or mounted on individual seat backs or seat trays), or complex circuitry (*i.e.*, power supplies, electronic distribution boxes, extensive wire routing, relatively high power consumption, multiple layers of circuit protection, etc.). In addition, in-seat power supply systems that provide power to more than 20 percent of the total passenger seats were also considered for the review. The types of IFE systems not considered for review include systems that provide only audio signals to each passenger seat, ordinary in-flight telephone systems (*e.g.*, one telephone handset per group of seats or bulkhead-mounted telephones), systems that only have a video monitor on the forward bulkhead(s) (or a projection system) to provide passengers with basic airplane and flight information, and in-seat power supply systems that provide power to less than 20 percent of the total passenger seats.

Items considered during the review include the following:

- Can the electrical bus(es) supplying power to the IFE system be de-energized when necessary without removing power from systems that may be required for continued safe flight and landing?
- Can IFE system power be removed when required without pulling IFE system circuit breakers (*i.e.*, is there a switch (dedicated to the IFE system or a combination of loads) located in the flight deck or cabin that can be used to remove IFE power?)?
- If the IFE system requires changes to flightcrew procedures, has the airplane flight manual (AFM) been properly amended?
- If the IFE system requires changes to cabin crew procedures, have they been properly amended?
- Does the IFE system require periodic or special maintenance?

In all, we reviewed approximately 180 IFE systems approved by STC. The review results indicate that potential unsafe conditions exist on some IFE systems installed on various transport category airplanes. These conditions can be summarized as:

- Electrical bus(es) supplying power to the IFE system cannot be de-energized when necessary without removing power from systems that may be required for continued safe flight and landing.
- Power cannot be removed from the IFE system when required without pulling IFE system circuit breakers (*i.e.*, there is no switch dedicated to the IFE system or combination of systems for the purpose of removing power).
- Installation of the IFE system has affected crew (flightcrew and/or cabin crew) procedures, but the procedures have not been properly revised.

FAA's Determination

As part of our review of IFE systems, we have determined that an unsafe condition exists on all Boeing Model 737–200 series airplanes modified by STC ST00516AT. The IFE system on these airplanes is connected to an electrical bus that cannot be deactivated without also removing power from airplane systems necessary for safe flight and landing. There is no other means to remove power from the IFE system. Additionally, the airplane manufacturer's published flightcrew and cabin crew emergency procedures do not advise that power cannot be removed from the IFE system. This condition, if not corrected, could result in the airplane crew's inability to remove power from the IFE system during a non-normal or emergency situation, and consequent inability to control smoke or fumes in the airplane flight deck or cabin.

Explanation of Relevant Service Information

The FAA has reviewed and approved Kosola and Associates Service Bulletin 2002–1, dated July 16, 2003, which describes a procedure for removing the IFE system installed by STC ST00516AT. The procedure includes disconnecting the power line that leads from the IFE system control unit to the P6 panel, capping and stowing all related wiring or removing that wiring from the airplane, removing the IFE system circuit breaker from the P6 panel, and removing all components of the IFE system from the airplane. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Other Relevant Rulemaking

The FAA has previously issued several ADs that address unsafe conditions and require corrective actions similar to those that would be required by the proposed AD. These other ADs, and the airplane models and STCs to which they apply, are as follows:

Model/series	STC No.	AD reference
Airbus A340–211	ST0902AC–D	AD 2001–18–01, amendment 39–12427 (66 FR 46939, September 10, 2001).
Boeing 737–300	ST00171SE	AD 2001–14–10, amendment 39–12321 (66 FR 36455, July 12, 2001).
Boeing 737–700	ST09100AC–D, ST09104AC–D, ST09105AC–D, ST09106AC–D.	AD 2001–14–12, amendment 39–12323 (66 FR 36452, July 12, 2001).
Boeing 747–100 and –200	SA8622SW	AD 2001–14–11, amendment 39–12322 (66 FR 36453, July 12, 2001).
Boeing 747–100 and –200	ST00196SE	AD 2001–16–19, amendment 39–12388 (66 FR 43068, August 17, 2001).

Model/series	STC No.	AD reference
Boeing 747–400	SA8843SW	AD 2001–14–15, amendment 12326 (66 FR 36447, July 12, 2001).
Boeing 747SP	ST09097AC–D	AD 2001–14–14, amendment 39–12325 (66 FR 36449, July 12, 2001).
Boeing 757–200	SA1727GL	AD 2001–14–01, amendment 39–12311 (66 FR 36149, July 11, 2001).
Boeing 767–200	SA4998NM	AD 2001–16–21, amendment 39–12390 (66 FR 43072, August 17, 2001).
Boeing 767–200	SA5134NM	AD 2001–16–20, amendment 39–12389 (66 FR 43066, August 17, 2001).
Boeing 767–200	ST09022AC–D	AD 2001–14–13, amendment 39–12324 (66 FR 36450, July 12, 2001).
Boeing 767–300	SA5765NM, SA5978NM	AD 2001–16–17, amendment 39–12386 (66 FR 42937, August 16, 2001).
Boeing 767–300	SA7019NM–D	AD 2001–18–08, amendment 39–12434 (66 FR 46517, September 6, 2001).
Boeing 767–300	ST00118SE	AD 2001–14–04, amendment 39–12314 (66 FR 36699, July 13, 2001).
Boeing 767–300	ST00157SE	AD 2001–16–18, amendment 39–12387 (66 FR 43070, August 17, 2001).
McDonnell Douglas DC–9–51 and DC–9–83	SA8026NM	AD 2001–14–02, amendment 39–12312 (66 FR 36456, July 12, 2001).
McDonnell Douglas DC–10–30	SA8452SW	AD 2001–16–22, amendment 39–12391 (66 FR 43074, August 17, 2001).
McDonnell Douglas DC–10–30	ST00054SE	AD 2001–13–03, amendment 39–12313 (66 FR 36150, July 11, 2001).
Boeing 767–300	ST01869AT–D	AD 2002–26–14, amendment 39–13002 (68 FR 1525, January 13, 2003).
Boeing 767–300	STC01783AT–D	AD 2003–07–15, amendment 39–13111 (68 FR 18535, April 16, 2003).

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Explanation of Cost Impact

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

Cost Impact

There are approximately 4 Model 737–200 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $130, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2002–NM–238–AD.

Applicability: Model 737–200 series airplanes modified by Supplemental Type Certificate (STC) ST00516AT, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To eliminate the possibility that the airplane crew could be unable to remove power from the IFE system during a non-normal or emergency situation, which could result in the airplane crew's inability to control smoke or fumes in the airplane flight deck or cabin, accomplish the following:

Removal of IFE System

(a) Within 18 months after the effective date of this AD, remove the IFE system installed by STC ST00516AT per the procedure in Kosola and Associates Service Bulletin 2002–1, dated July 16, 2003. The procedure includes disconnecting the power line that leads from the IFE system control unit to the P6 panel, capping and stowing all related wiring or removing related wiring from the airplane, removing the IFE system circuit breaker from the P6 panel, and removing all components of the IFE system from the airplane.

Inspections Accomplished Per Previous Issue of Service Bulletin

(b) Removal of the IFE system installed by STC ST00516AT before the effective date of this AD per Kosola and Associates Service Bulletin 2002–1, dated June 5, 2002, is considered acceptable for compliance with paragraph (a) of this AD.

Parts Installation

(c) As of the effective date of this AD, no person may install an IFE system approved by STC ST00516AT on any airplane.

Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Atlanta Aircraft Certification Office (ACO), FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on August 27, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22496 Filed 9–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–132760–03]

RIN 1545–BC38

Guidance Under Section 1502; Application of Section 108 to Members of a Consolidated Group

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations that govern the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income. The text of those regulations also serves as the text of these proposed regulations.

DATES: Written or electronic comments must be received by December 3, 2003.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–132760–03), room 5203, Internal Revenue Service, POB 7604 Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–132760–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *http://www.irs.gov/regs.*

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Amber Renee Cook or Marie C. Milnes-Vasquez at (202) 622–7530; concerning submission of comments, Treena Garrett at (202) 622–3401 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 1502. The temporary regulations govern the application of section 108 when a member of a consolidated group realizes discharge of indebtedness income. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Further, it is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations will primarily affect affiliated groups of corporations that have elected to file consolidated returns, which tend to be larger businesses. Moreover, the number of taxpayers affected and the average burden are minimal. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

Various personnel from the IRS and Treasury Department participated in the development of these regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502–28 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502–19 is amended as follows:

1. Paragraph (b)(1) is revised.
2. The headings for paragraphs (h)(2) and (h)(2)(i) are revised.
3. Paragraph (h)(2)(ii) is redesignated as paragraph (h)(2)(iii).
4. New paragraph (h)(2)(ii) is added.

The revisions and addition read as follows:

§ 1.1502–19 Excess loss accounts.

[The text of this proposed section is the same as the text of § 1.1502–19T

published elsewhere in this issue of the **Federal Register**].

Par. 3. Section 1.1502–21 is amended as follows:

1. Paragraphs (b)(2)(iv) and (c)(2)(vii) are revised.
2. Paragraph (h)(6) is redesignated as paragraph (h)(7).
3. New paragraph (h)(6) is added.
4. New paragraph (h)(8) is added.

The revision and additions read as follows:

§ 1.1502–21 Net operating losses.

[The text of this proposed section is the same as the text of § 1.1502–21T published elsewhere in this issue of the **Federal Register**].

Par. 4. Section 1.1502–28 is added to read as follows:

§ 1.1502–28 Consolidated section 108.

[The text of this proposed section is the same as the text of § 1.1502–28T published elsewhere in this issue of the **Federal Register**].

Par. 5. Section 1.1502–32 is amended as follows:

1. Paragraphs (b)(3)(ii)(C)(*1*) and (b)(3)(iii)(A) are revised.
2. Paragraph (b)(4)(vii) is added.
3. Paragraph (b)(5)(ii), *Example 4*, paragraphs (a), (b), and (c) are revised.
4. Paragraph (h)(7) is added.

The revisions and additions read as follows:

§ 1.1502–32 Investment adjustments.

[The text of this proposed section is the same as the text of § 1.1502–32T published elsewhere in this issue of the **Federal Register**].

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–22454 Filed 8–29–03; 3:14 pm]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–141402–02]

RIN 1545–BB43

Limitation on Use of the Nonaccrual-Experience Method of Accounting Under Section 448(d)(5)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the use of the nonaccrual-experience method of accounting by taxpayers using an accrual method of accounting and performing services. The text of those regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 3, 2003. Outlines of topics to be discussed at the public hearing scheduled for December 10, 2003, at 10 a.m. must be received by November 19, 2003.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–141402–02), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG–141402–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments directly to the IRS Internet site at *http://www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Terrance McWhorter, 202–622–4970; concerning submissions of comments, Treena Garrett, 202–622–3401 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 3, 2003. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in § 1.448–2T. This information is required to verify that an alternative nonaccrual-experience method of accounting selected and used by a taxpayer to compute the amount of its otherwise accruable income that will not be collected will, based on the taxpayer's experience, accurately reflect the amount of income that the taxpayer will not collect and will clearly reflect the taxpayer's experience under section 448(d)(5) of the Internal Revenue Code. The collection of information is mandatory. The likely recordkeepers are business or other for-profit institutions, and small businesses or organizations.

Estimated total annual recordkeeping burden: 24,000 hours.

The estimated annual burden per recordkeeper varies from 1 to 5 hours, depending on individual circumstances, with an estimated average of 3 hours.

Estimated number of recordkeepers: 8,000.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background and Explanation of Provisions

Section 448(d)(5) was added to the Code by section 801 of the Tax Reform Act of 1986 (Pub. L. 99–514, 100 Stat. 2085) and was amended by section 403 of the Job Creation and Worker Assistance Act of 2002 (Pub. L. 107–147, 116 Stat. 21) (the 2002 Act), effective for taxable years ending after

March 9, 2002. Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** revise § 1.448–2T of part 1 of title 26 of the Code of Federal Regulations. Those regulations pertain to the nonaccrual of certain amounts by taxpayers using an accrual method of accounting and performing services. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that, as previously noted, the estimated burden associated with the information collection averages three hours per respondent. Moreover, for taxpayers who are eligible to use these regulations and who follow these regulations, any burden imposed on taxpayers due to the collection of information in these regulations will be outweighed by the benefit taxpayers will receive by accruing less income than otherwise would be required. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 10, 2003, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 19, 2003.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Terrance McWhorter, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.448–2 is added as follows:

§ 1.448–2 Nonaccrual of certain amounts by service providers.

[The text of proposed § 1.448–2 is the same as the text of § 1.448–2T published elsewhere in this issue of the **Federal Register**.]

Judith B. Tomaso,

Acting Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–22459 Filed 9–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–116914–03]

RIN 1545–BC06

Transfer of Compensatory Options; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: This document contains a correction to a notice of proposed rulemaking by cross-reference to temporary regulations that were published in the **Federal Register** on Wednesday, July 2, 2003 (68 FR 39498), relating to the sale or other disposition of compensatory nonstatutory stock options to related persons.

FOR FURTHER INFORMATION CONTACT: Stephen Tackney at (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking by cross-reference to temporary regulations that is the subject of this correction is under section 83 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking by cross-reference to temporary regulations contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking by cross-reference to temporary regulations (REG–116914–03), that was the subject of FR Doc. 03–16787, is corrected as follows:

On page 39498, column 2, in the preamble under the paragraph heading "Special Analyses", second line, the language "temporary regulations are not

a" is corrected to read "proposed . regulations are not a".

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–22552 Filed 9–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–131997–02]

RIN 1545–BA85

Section 42 Carryover and Stacking Rule Amendments; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing that was published in the **Federal Register** on Monday, July 7, 2003 (68 FR 40218), that amends several existing regulations concerning the low-income housing tax credit.

FOR FURTHER INFORMATION CONTACT: Lauren R. Taylor, (202) 622–3040, or Christopher J. Wilson, (808) 539–2874 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking and notice of public hearing that is the subject of this correction is under section 42 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking and notice of public hearing contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed regulations and notice of public hearing (REG–131997–02), that was the subject of FR Doc. 03–16941, is corrected as follows:

1. On page 40218, column 3, in the preamble under the paragraph heading **ADDRESSES**, third line from the bottom of the paragraph, the language "room 2615, Internal Revenue Building, " is corrected to read "room 4718, Internal Revenue Building,".

§ 1.42–12 [Corrected]

2. On page 40222, column 2, § 1.42–12(a)(2), second paragraph, line 4 from the bottom, the language, "before these regulations are published as" is corrected to read "before the date these regulations are published as".

3. On page 40222, column 2, § 1.42–12(a)(3), third paragraph, last line, the language, "effect on and before these regulations" is corrected to read "effect on and before the date these regulations".

4. On page 40223, column 2, § 1.42–14(k)(2), *Example 2*, paragraph (ii), line 12, the language, "Pool. The $120 in credit determined by the" is corrected to read "Pool. The $120 in credit determined by".

5. On page 40224, column 1, § 1.42–14(l)(1), "Effective dates", line 2, the language, "Except as provided in paragraph (l)(2), is corrected to read "Except as provided in paragraph (l)(2) of this section,".

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–22551 Filed 9–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–130262–03]

RIN 1545–BC28

Guidance Under Section 1502; Stock Basis After a Group Structure Change; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking that was published in the **Federal Register** on Tuesday, July 8, 2003 (68 FR 40579), that relate to stock basis after a group structure change.

FOR FURTHER INFORMATION CONTACT: Marlene Oppenheim or Ross Poulsen at (202) 622–7770; concerning submission of comments and/or requests for a public hearing, Sonya Cruse, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under section 1502 of the Internal Revenue Code.

Need for Correction

As published, the notice of proposed rulemaking contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed regulations (REG–130262–03), that was the subject of FR Doc. 03–17091, is corrected as follows:

1. On page 40579, column 3, under paragraph heading **FOR FURTHER INFORMATION CONTACT:** lines 5 and 6, the language, "public hearing, Sonya Cruse, (202) 622–7180 (not toll-free numbers)." is corrected to read "public hearing, Sonya Cruse, (202) 622–4693 (not toll-free numbers)."

§ 1.1502–31 . [Corrected]

2. On page 40580, column 2, § 1.1502–31(b)(2), lines 10 through 13, the language, "has, or would otherwise have, a basis determined in whole or in part by reference to the basis of the property exchanged for such stock is" is corrected to read "is, or would otherwise be, transferred basis property is".

3. On page 40580, column 2, § 1.1502–31(d)(2)(ii), lines 14 through 18, the language, "change and the basis of such stock would otherwise be determined in whole or in part by reference to the basis of the property exchanged for such stock, only and allocable part of the basis" is corrected to read "change and such stock would otherwise be transferred basis property, only an allocable part of the basis".

4. On page 40581, column 2, *Example 3.*, lines 11 through 14, the language, "basis in its acquired T stock is not determined in whole or in part by reference to the basis of the property exchanged for such stock. (Because of P's use of cash, the" is corrected to read "acquired T stock is not transferred basis property. (Because of P's use of cash, the".

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–22553 Filed 9–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113007–99]

RIN 1545–AU98

Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the definition of private activity bond applicable to tax-exempt bonds issued by State and local governments.

DATES: The public hearing originally scheduled for Tuesday, September 9, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), (202) 622–3401 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, May 14, 2003, (68 FR 25845), announced that a public hearing was scheduled for Tuesday, September 9, 2003, at 10 a.m. in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 141 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Tuesday, August 19, 2003. Outlines of oral comments were due on Tuesday, August 19, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Thursday, August 28, 2003, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, September 9, 2003, is cancelled.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. 03–22554 Filed 9–3–03; 8:45 am]

BILLING CODE 4830–01–P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2003–5; Order No. 1383]

Negotiated Service Agreements

AGENCY: Postal Rate Commission.

ACTION: Proposed rule.

SUMMARY: This document provides notice that the Commission is establishing a docket to address the first in a series of anticipated rulemakings concerning negotiated service agreement dockets. This initial rulemaking concerns baseline and functionally equivalent negotiated service agreements. It provides guidance to the Postal Service and others on the procedures the Commission proposes following for certain negotiated service agreement requests. It also establishes the organizational framework for the comprehensive set of rules. Adoption of these rules, with any revisions deemed appropriate after considering comments, will facilitate expeditious consideration of negotiated service agreements.

DATES: Initial comments due September 29, 2003; reply comments due October 14, 2003.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system, which can be accessed at *http://www.PRC.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION:

Introduction

In opinion and recommended decision, docket no. MC2002–2, (Opinion) the Commission made a commitment to initiate a series of rulemakings designed to facilitate consideration of Postal Service requests based on negotiated service agreements.[1] See Opinion paras. 1006, 2007, 4026, 4041–2, 7026, and 8023. This notice and order represents the initiation of the first such rulemaking, and will address rules applicable to consideration of Postal Service requests to recommend baseline negotiated service agreements and negotiated service agreements that are functionally equivalent to then-effective negotiated service agreements.[2] The intent of this rulemaking is to facilitate the consideration of baseline negotiated service agreements and the extension of the terms and conditions of ongoing negotiated service agreements to similarly situated mailers. As the first such rulemaking, the proposed rules also establish the organizational framework for the complete set of Commission rules in regard to requests based on negotiated service agreements.

When the Postal Service filed its request of the United States Postal Service for a recommended decision on experimental changes to implement Capital One NSA (request), September 19, 2002, the Commission did not have procedural rules specifically tailored for consideration of negotiated service agreements. The Postal Service filed its request noting potential application of the Commission's rules for requests involving experimental changes. See rules 67–67d. Although the concept of a request based on a negotiated service agreement could be considered somewhat experimental; the functional elements of the request included features that were only of a limited experimental nature. See Opinion Chapter IV. Furthermore, the Commission's rules for experimental changes connote a standard of review and procedures appropriate for consideration of an experiment, which might not be appropriate for the review of a request based on a negotiated service agreement. Considering these issues and others that arose during the proceeding, such as initial intervention by parties to the negotiated service agreement and treatment of co-proponents discussed below, it became apparent that the process could be improved if the Commission's rules were revised specifically to accommodate consideration of negotiated service agreements.

The docket no. MC2002–2 experience provided the impetus for the Commission to propose rules specifically applicable to the review of Postal Service proposals based on negotiated service agreements. The goal of this rulemaking is foremost to develop rules to assure that Commission recommendations on proposals based on negotiated service agreements satisfy the requirements of the Act. The rules must balance the development of an adequate record against the burdens on

[1] Docket No. MC2002–2, Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Capital One, was the first docket in which the Commission considered and recommended a Postal Service request predicated on a Negotiated Service Agreement.

[2] A baseline negotiated service agreement is a negotiated service agreement that is not predicated on a functionally equivalent negotiated service agreement currently in effect. The term "baseline" is used to denote that the negotiated service agreement potentially may form the basis of a future Postal Service request to recommend a functionally equivalent negotiated service agreement. The term emphasizes the policy that functionally equivalent negotiated service agreements should be made available to qualifying similarly situated mailers.

the participants and the Commission. The rules must assure the provision of a timely review, while safeguarding due process requirements. The rules also provide for a standard of review that is appropriate for negotiated service agreements.

This rulemaking considers rules for reviewing Postal Service proposals based on baseline and functionally equivalent negotiated service agreements. The intent of the proposed rules for functionally equivalent negotiated service agreements is to reduce the procedural burden and expedite the proceeding otherwise applicable to a de novo review of a new or unique baseline negotiated service agreement.

The proposed rules do not include a definition for what qualifies as a functionally equivalent negotiated service agreement. The many possible forms and features that a negotiated service agreement can encompass make development of a universal definition of functional equivalency difficult, if not impossible. The proposed rules place the burden on proponents to explain why the newly proposed negotiated service agreement is functionally equivalent to a previously recommended negotiated service agreement.[3] The Commission will be left to decide, on a case by case basis, whether the Postal Service has met this burden. If the case for functional equivalency is not persuasive, the request will be subject to § 3001.195.

A. General Rules

Proposed § 3001.5(r)—Definitions

The proposed rules begin with a definition of the term "negotiated service agreement." The definition is necessary for distinguishing the applicability of the proposed rules from rules that cover other subject areas. Several concepts are important in the definition. First, a negotiated service agreement is a contract. Second, the terms and conditions of the contract apply only to the Postal Service and the specific mailer, or mailers, named in the contract. Third, the contract controls the provision of mailer-specific rates, fees, and/or postal services. Fourth, the duration of the contract must be defined in the contract.[4] Finally, the contract must be memorialized in writing. The proposed definition of a negotiated service agreement appears in attachment A, § 3001.5(r).[5]

Proposed § 3001.51 and § 3001.61—Applicability Amendments

The proposed amendments to rules 51 and 61 specify that Postal Service requests based on negotiated service Agreements, which otherwise would be considered pursuant to subparts B or C, shall instead be considered pursuant to subpart L.

Proposed § 3001.190—Applicability

Subsection (a) establishes that the rules proposed under subpart L, "Rules Applicable to Negotiated Service Agreements," are applicable to Postal Service proposals based on negotiated service agreements. This subsection also incorporates subpart A, "Rules of General Applicability," into subpart L.

Subsection (b) states the general policy considerations of the Commission to justify the need for the proposed rules for negotiated service agreements. These policy considerations do not supercede any provision of the Act, but merely highlight issues that the Commission will consider important when reviewing negotiated service agreements.

This subsection also expresses the Commission's strong preference that negotiated service agreements be limited in duration to three years or less. Negotiated service agreements by their nature have features that are discriminatory, and have the potential to cause harm to the marketplace.[6] There also is a potential for harm to the Postal Service, and thereby to other mailers, where negotiated service agreements are predicated on less than complete knowledge of the mailer-specific mailing costs and characteristics.[7] Furthermore, over time, the material facts on which an agreement is based will tend to change, making uncertain the future benefits of any agreement. Imposing a maximum duration limits the time that any potential risk might be in effect, and allows a fixed time over which an analysis can be performed to quantify this risk. It also provides an opportunity to periodically analyze the pros and cons of allowing the agreement to extend into the future.

The Commission's preference to place a limit on duration is also based on the concern that the interaction between negotiated service agreements and omnibus rate cases is not understood. Overall Postal Service costs and revenues are reviewed during every omnibus rate proceeding—which typically occur every three years. The methodology for incorporating the impact of negotiated service agreements into an omnibus rate case has not been developed. Furthermore, the effect of an omnibus rate case on a negotiated service agreement is not known. There is a potential that the impact of negotiated service agreements on overall costs and revenue, information that is required when considering an omnibus rate case, could perpetually escape review if not properly incorporated. While the preference for a maximum three-year duration does not fully address these concerns, it should at least help by placing bounds on the possible effects of negotiated service agreements which must be evaluated in future omnibus rate proceedings.

The preference for a three-year maximum duration contains two explanatory notes. The proposed subpart L contemplates a procedure for rapid and repeated renewals of a previously recommended negotiated service agreement. There is no known reason that a negotiated service agreement that is shown to benefit the Postal Service, meets the statutory requirements, and does not cause any undue harm, should not be allowed to be renewed indefinitely. The proposed rule also allows for the prompt review of a functionally equivalent negotiated service agreement. The intent of the rule is that the duration of the functionally equivalent negotiated service agreement should not be dependent on the duration of the underlying negotiated

[3] Functional equivalency is broader than the literal terms and conditions of the negotiated service agreement. Just as similarly situated mailers do not necessarily have to have identical characteristics, functionally equivalent negotiated service agreements do not necessarily have to have identical terms and conditions. The Commission will have to examine the facts and surrounding circumstances of each proposal to make a functional equivalency determination. As an example of factors outside of the literal terms and conditions of the negotiated service agreement, whether the Postal Service derives a "functionally equivalent" benefit from the proposed agreement could bear on an argument for functional equivalency.

[4] The proposed language is interpreted to be broad enough to include allowing for triggering events that may initiate or terminate the contract, in addition to setting a fixed duration.

[5] The complete text of each proposed rule appears in attachment A. The proposed rules in attachment A should be read in parallel with the explanations provided in this notice and order.

[6] Negotiated service agreements are discriminatory in that their application is restricted to the contracting parties. The negative connotation of discrimination is presumed to be ameliorated by making similar negotiated service agreements available to similarly situated mailers. The proposed rules are designed to facilitate this process.

[7] For example, the Capital One Negotiated Service Agreement was predicated on Postal Service average costs as opposed to mailer-specific costs, and on less than complete knowledge of Capital One's likely future mailing strategies.

service agreement.[8] The benefits of a functionally equivalent negotiated service agreement could be reduced if it were required to terminate at the same time as the baseline negotiated service agreement.

Proposed § 3001.191—Filing of Formal Requests

Subsection (a) provides general instruction for filing whenever the Postal Service proposes changes to rates, fees, or the mail classification schedule based on a negotiated service agreement. The Postal Service is directed to clearly indicate whether its request is for the review of a baseline negotiated service agreement, the review of a functionally equivalent negotiated service agreement, the review of a renewal for an ongoing negotiated service agreement, or the review of a modification to an ongoing negotiated service agreement. This designation is used to trigger specific rules applicable to each type of request. After receiving the Postal Service's request, the Commission shall provide notice through the **Federal Register** of the Postal Service's request.

Subsection (b) addresses procedural issues in regard to intervention and to the treatment of the proponents of the direct case. In docket no. MC2002–2, motions were filed requesting intervention of Capital One prior to public notice of the docket, and requesting submission of testimony out of turn. This was necessary to allow Capital One to submit direct testimony simultaneous with the Postal Service's direct testimony, and to be treated as a co-proponent with the Postal Service. The rules in proposed subsection (b) eliminate this motions practice. The Postal Service is required to identify all parties to the negotiated service agreement. Identification of the parties shall serve as an automatic notice of intervention. It also shall serve as notice that the identified parties are to be treated as co-proponents with the Postal Service in the proceeding.[9]

Proposed § 3001.192—Filing of Prepared Direct Evidence

Subsection (a) requires the filing of the Postal Service's and, if it is to be filed, its co-proponent's direct evidence simultaneous with the filing of the request. This subsection eliminates the need for a co-proponent to file a motion requesting that its direct testimony be accepted out of turn.

Subsection (b) requires the Postal Service to review and affirm that any direct evidence filed by a co-proponent can be relied on in concert with the Postal Service's direct evidence. Co-proponent testimony that is not consistent with the Postal Service's direct case would in effect be rebuttal testimony, and would be inappropriate as part of a direct case. It is expected that the co-proponents present a unified case. It is also expected that the Postal Service, as the lead proponent, understands and agrees with the parameters of all testimony presented in support of the direct case.

Proposed § 3001.193—Contents of Formal Requests

Currently, when the Postal Service requests a change in rates, fees or the mail classification schedule, it must file a request that conforms with the "contents of formal requests" requirements delineated in § 3001.54 and/or § 3001.64. The requirements direct the Postal Service to produce a large quantity of information. The relevance of the bulk of the information tends to vary in relation to the system-wide significance of the change being proposed. Typically, with more limited proposals, the Postal Service seeks a waiver requesting relief from providing material that is not relevant or not available in regard to that particular proposal. The intent of proposed rule 193 is to tailor the content requirements of rules 54 and 64 to what is necessary to support a proposal based on a negotiated service agreement. This should provide the Postal Service with better direction on what the Commission expects, and should eliminate most of the motions practice requesting waivers for material that is either not available or not relevant.[10]

Subsection (a)(1) provides the general requirements for presentation of a direct case in support of a negotiated service agreement. This is substantively the same general requirement that the Postal Service complies with under rules 54 and 64.

Subsection (a)(2) specifies the procedure to request a waiver of a filing requirement in instances where otherwise required filing information is not available. The explanation accompanying the request for waiver will carry significant weight. The Commission expects that the Postal Service take reasonable steps to compile the necessary information, when practicable, or to take reasonable steps to develop reliable estimates of the required information. This rule recognizes that there might be instances where required information is just not available.

Subsection (a)(3) specifies the procedure to request a waiver of a filing requirement in instances where the Postal Service believes the provision of information is not required. This subsection is to be used where the requested information is considered not relevant to the proceeding, whether or not it is available.

In instances where a waiver is granted under subsection (a)(2) or (a)(3) for unavailable or not required information, subsection (a)(4) precludes future argument related to the absence of such information, except in extraordinary circumstances. Participants contending the absence of such information should bear on the merits of the proposal must demonstrate that the Postal Service was clearly unreasonable, or that there are other compelling or exceptional circumstances, that show why the absence of information that was alleged to be unavailable or not required should be used as a basis for rejection of the request.

Subsections (a)(5) and (a)(6) reserve the right of the Commission and the presiding officer to request whatever information that is deemed necessary to analyze the Postal Service's proposal in the process of issuing an opinion and recommended decision. If a participant contends that information not originally provided is now necessary to develop relevant and material analysis of the request, the burden shifts to the participant that now finds the information necessary to seek this information through discovery.

Subsection (b) requires that a copy of the negotiated service agreement be included with the request. In docket no. MC2002–2, a question arose whether the copy of the negotiated service agreement was or was not executed prior to filing. This occurred because the copy included with the request was not signed. The resolution of this issue favored by the Commission is to file an unsigned text file copy with the request, and not require the Postal Service to file an executed copy. The presumption will be that the Postal Service would not file a request without all parties in agreement to its terms and conditions, and that the parties other that the Postal Service would not support a request as co-proponents unless they agreed to

[8] For example, a functionally equivalent negotiated service agreement may be recommended for a three year duration even though the baseline negotiated service agreement has been in effect for two years.

[9] The Postal Service is recognized as the "lead" co-proponent. This is dictated by the Act, as a co-proponent other than the Postal Service cannot initiate a request before the Commission, nor can the Postal Service be bound to adhere to a proposal that is not in its best interest.

[10] The Postal Service as the lead proponent is required to respond to the items delineated in this section, with the Commission's understanding that some responses may actually be prepared and presented by other co-proponents.

what was filed. Furthermore, even if the agreement were signed, the agreement does not go into effect until after the Commission submits its opinion and recommended decision, and the Governors of the United States Postal Service provide their approval. Thus, the actual signatures have very little effect on the Commission's proceeding and will not be required.

The intent of the Commission is to make the actual contracts publicly available on the Commission's Web site. The Postal Service should take this into consideration while constructing its contracts by avoiding use of what might be considered proprietary information. Public disclosure is necessary to curtail any claim of discrimination or secret dealing, to make the operations of the Postal Service more transparent, and most importantly, to provide other similarly situated mailers the opportunity to seek similar negotiated service agreements. Any request for protective conditions being placed on the contract itself will have to meet a high burden before being granted.

Subsection (c) requires the Postal Service to provide a statement describing and explaining the proposed changes to the domestic mail classification schedule and any associated rate schedule. This includes the actual proposed changes to the text of the domestic mail classification schedule, and any associated rate schedule, presented in legislative format. The requirements of this rule do not differ from similar rules that the Postal Service currently complies with when filing rate, fee, or classification requests.

Subsection (d) requires the Postal Service to describe the operative components of the negotiated service agreement. For instance, the Capital One NSA contained two operative components, the declining block discount component, and the return mail/address correction component. The level of detail provided with the Capital One NSA request and associated testimony was appropriate for meeting this requirement. This subsection generally requires the Postal Service to explain how the components work. There should be a detailed explanation of the actions required by the Postal Service and the actions required by the other co-proponents in implementing the agreement. There also should be an explanation of why each action has a benefit to each party, and an explanation of any risks. This is necessary to provide a fuller understanding of the benefits and risks of proceeding with the agreement.

This subsection also requires an explanation of the reasons and bases for including particular components in the agreement. In the case of agreements based on multiple components, it is expected that there be an explanation of why the components are proposed to be grouped together, and not offered separately. There also should be a discussion of any interactions between the components, where necessary. For example, with the Capital One NSA the block discount acted as an incentive to increase mail volume and as a method of returning to Capital One a portion of the savings earned through the address correction component.

Subsection (e) requires the Postal Service to provide a financial analysis of the proposed agreement. Several concepts are important in the proposed rule. The analysis is to be performed over the duration of the agreement, and for each year that the agreement is in effect. The analysis is to use mailer-specific information, where practical. Both before implementation and after implementation financial conditions must be analyzed. Finally, the proposed rule requires an analysis of the agreement's effect on institutional cost contributions.

In the Capital One NSA case, the Commission had no established guidelines for presenting a classification and rate request premised on a negotiated service agreement. There, the Postal Service used a test-year analysis method. Test-year analysis provides probative estimates for omnibus rate cases, however, it proved ill-suited to requests based on negotiated service agreements where the Postal Service is negotiating detailed custom agreements of specified duration.

The Postal Service is expected to understand the ramifications of its contract negotiations. One of the important issues that the Postal Service should be considering when entering into a new agreement is whether it will be financially better or worse off by entering into the agreement. Positive cash flow in the test-year, especially where the test-year is chosen to be the first year of a multi-year agreement, is not necessarily indicative of cash flow in the subsequent years. The test-year approach is the best way to estimate the vast number of aspects of national economic activities. For a limited participation, limited duration contract, good business practice dictates a more focused analysis. The Postal Service presumably will not make a determination based solely on a test-year analysis, nor should the Commission have to make a recommendation based on the limited insight provided by such an analysis.

The proposed rule provides that the Postal Service use mailer-specific information in its analysis, where practical. Using mailer-specific information should result in an analysis that more accurately represents the actual before and after financial effects of the negotiated service agreement on the Postal Service. Using system average information is less likely to give a true representation of the financial effects of the agreement, especially in cases where the mailer's characteristics do not coincide with the system-wide averages.

Use of mailer-specific information becomes more important where a facet of the agreement is based on the mailer deviating from the averages. For example, part of the justification for the Capital One NSA was Capital One's higher than average return rate. This information was vital in analyzing the benefit of the agreement to the Postal Service. Even more mailer-specific information than presented by the Postal Service would have been helpful in accurately analyzing the true costs that the Postal Service incurs in handling Capital One's mail.

The rule proposes that the Postal Service provide an initial analysis of cost, volume, and revenue assuming the rates and fees in effect absent the implementation of the negotiated service agreement. A second analysis is then required that assumes the implementation of the agreement. Each component or feature of the agreement should be independently analyzed in evaluating the overall financial impact. The results of the individual analyses should then be combined to provide an indication of the overall impact of the agreement on the finances of the Postal Service. When used in conjunction with the data collection plan, discussed below, this analysis also can form the basis for tracking the performance of the agreement.

Finally, the rule proposes that the Postal Service provide an analysis of the effect of the negotiated service agreement on contribution. This analysis should verify that the Postal Service will be no worse off as a result of the agreement. It should consider the effect on contribution from mailers that are not parties to the agreement. This is necessary to evaluate concerns raised by Professor Panzar in docket no. MC2002–2. Panzar discussed a potential problem where contribution to the Postal Service received from parties to an agreement increases, but the system-wide contribution might decrease due to competitive effects in the marketplace.

Such an agreement might not benefit the Postal Service.

Subsection (f) requires the Postal Service to provide an estimate of the competitive effects of the negotiated service agreement on both the competitors of the Postal Service and on the competitors of the other co-proponents. The intent is to have a basis for analyzing the issues raised by Professor Panzar in docket no. MC2002–2. In instances where proposals are strictly cost-based, the competitive issues should take on less significance, with less of a filing burden encountered. In instances where proposals are not cost based, such as with a declining block discount proposal, the filing burden might be greater. Special studies might have to be considered to fully analyze these competitive issues.

An estimate of the impact of the agreement on mail users as a group also is required. It is important that mailers not be made worse off due to the implementation of a negotiated service agreement.

Subsection (g) requires the Postal Service to propose a data collection plan. The intent is not to burden the Postal Service with a data collection plan such as required for an experimental proposal. The intent is for a data collection plan to gather data that would typically be collected in the normal course of business, and that would be useful in making business decisions. The Postal Service should be collecting this data in any event for its own internal use and to determine the success or failure of the agreement. The Commission anticipates that the data will be necessary for consideration of future proposals. The data can be used to justify the renewal of an ongoing negotiated service agreement. It can be used to justify extending a similar agreement to a similarly situated mailer. It can be used if the Postal Service needs to propose modifications to the ongoing agreement. It also can be used, in general, to determine which characteristics of negotiated service agreements work, and which do not. This will be helpful to the Postal Service and the Commission in considering future proposals.

The proposed rule states that the data is to be reported on an annual or more frequent basis. Frequent data reports are not necessary if the data are only to be used to renew, extend to other participants, or modify existing agreements. It would only be necessary to be produced when those events occur. However, annual data reports will help the Commission gain a more real-time understanding of which types of agreements work, and which do not, such that the Commission can make more informed recommendations for future requests. More importantly, the Commission anticipates that methodologies will have to be developed for dealing with the interaction of ongoing negotiated service agreements and future omnibus rate cases. Periodic reporting of data should help in the development and implementation of those methodologies.

Subsections (h), (i), and (j) titled "Workpapers," "Certification by officials," and "Rejection of requests" parallel rule 54 subsections (o), (p), and (s) respectively, and require no further explanation.

Proposed § 3001.194—Failure To Comply

The proposed rules balance the Commission's goal of considering negotiated service agreements in a timely manner against the requirement to develop an adequate record, and to consider the due process requirements of all participants. This section places the Postal Service on notice that failure to provide information necessary for the proceeding could result in the schedule being stayed until satisfactory compliance is achieved.

B. Case Specific Rules

Proposed § 3001.195—Requests To Recommend a Baseline Negotiated Service Agreement

Subsection (a) begins by describing the applicability of § 3001.195 to Postal Service proposals based on baseline negotiated service agreements. It defines a baseline negotiated service agreement as a negotiated service agreement that is not predicated on a functionally equivalent negotiated service agreement currently in effect. This could include a new or unique negotiated service agreement that is being proposed for recommendation for the first time. It also could include a negotiated service agreement that could have been considered functionally equivalent to a previously recommended negotiated service agreement, but for the expiration of the previous negotiated service agreement. This category of negotiated service agreement is included because the rules for a functionally equivalent negotiated service agreement allow for reliance on evidence presented in the baseline docket. The passage of time after the expiration of an agreement (including the time that the agreement was in effect) potentially makes this evidence less reliable. Thus, a more comprehensive presentation is required.

In general, the Postal Service is required to respond to each element of § 3001.193 when submitting a request to consider a proposal based on a negotiated service agreement. In addition, subsection (a)(1) addresses an issue that is unique to consideration of a baseline negotiated service agreement. Subsections (a)(2) and (a)(3) stress issues that the Commission would like the Postal Service to emphasize in its request.

Subsection (a)(1) requires the Postal Service to describe why the proposal is in the form of a negotiated service agreement as opposed to a less restrictive form of classification. The Commission's preference is to recommend classifications that are open to wide participation. Because negotiated service agreements are restrictive in participation, there is a potential for unwarranted discrimination. Proposals that exhibit unwarranted discrimination would not be fair and equitable under §§ 3622(b)(1) or 3323(c)(1), and could not be recommended. The response to this subsection will be used to analyze this issue.

Subsection (a)(2) requires the Postal Service to describe the operational bases of the negotiated service agreement. This requirement emphasizes that the Commission is interested in the specific details of the operational requirements placed on each party.

Subsection (a)(3) requires the Postal Service to describe the expectations of the parties regarding performance. This requirement emphasizes that the Commission is interested in the rationale for entering into the negotiated service agreement, and the anticipated future of the agreement.

Subsection (b) establishes the scheduling requirements for the Commission to consider Postal Service proposals predicated on baseline negotiated service agreements. The proposed scheduling requirement recognizes that a negotiated service agreement can take many forms, and may include unique and novel issues. Because of this, it is difficult to predict the duration of a proceeding before initial review of the actual request. A schedule will be established in each case, to allow for prompt issuance of a decision consistent with procedural fairness.

Proposed § 3001.196—Requests To Recommend a Negotiated Service Agreement That Is Functionally Equivalent to a Previously Recommended Negotiated Service Agreement

In general, the Postal Service is required to respond to each element of § 3001.193 when submitting a request to

consider a proposal based on a negotiated service agreement. However, § 3001.196(a) allows the Postal Service to streamline the responses required by § 3001.193 where a functionally equivalent negotiated service agreement is being proposed, thereby providing the opportunity for expedition of the procedural schedule. The intent is to shift the procedural focus from consideration of the general, functional and operational aspects of the agreement, which are assumed to have been fully litigated in the previous (baseline) docket, to the mailer-specific issues pertinent to consideration of the functionally equivalent docket.

Subsection (a) begins by describing the applicability of § 3001.196 to Postal Service proposals based on functionally equivalent negotiated service agreements. The purpose of proposing rules that expedite procedures for considering functionally equivalent negotiated service agreements is to assure that similarly situated mailers are given timely consideration and not placed at an undue disadvantage when seeking to secure a negotiated service agreement with the Postal Service.

Subsections (a)(1) and (a)(2) require the Postal Service to explain the similarities and differences between the functionally equivalent and baseline agreements. The Commission anticipates using this information to determine whether the proposal is in fact functionally equivalent to the proffered baseline agreement. This determination will bear on the decision of whether or not to proceed under § 3001.196. The comparison of similarities and differences will also alert the participants to areas of the agreement that may require closer inspection.

Assuming that the Postal Service is persuasive in arguing that its proposal is in fact functionally equivalent to an ongoing baseline agreement, subsection (a)(3) allows the Postal Service to cite and rely on record evidence from a baseline docket, or any other completed docket. It should be stressed that the Postal Service is expected to utilize this subsection as the primary method for expediting the procedural schedule. It is expected that the majority of the justification for the agreement has been filed in the baseline docket, and that much of this information will be applicable to the functionally equivalent docket. This should save the Postal Service time and effort by not having to recreate a substantial amount of evidence related to the agreement. If the proposed evidence has been litigated in a previous docket, there should be less need for discovery, or to litigate evidence in the new docket. Developing the record where possible in this fashion should save time and effort and help shorten the procedural schedule.

Subsection (a)(4) requires the Postal Service to provide any special studies pertinent to the negotiated service agreement. Consistent with the intent of focusing on the mailer-specific issues related to the functionally equivalent proposal, it is anticipated that special studies will analyze mailer specific information pertinent to the new proceeding, and thus should be highly relevant.[11]

Subsection (a)(5) requires the Postal Service to identify circumstances that are unique to the new proceeding. While subsections (a)(1) and (a)(2) focus more on the agreement itself, subsection (a)(5) focuses more on the mailer, and the specific interactions between the mailer and the Postal Service. This subpart will provide information relevant to the extent that the agreement is functionally equivalent to a baseline agreement. It will also provide mailer-specific information pertinent to the Commission's analysis.

The anticipated response to the subsection can best be explained by example. Using the Capital One NSA as a baseline, assume a functionally equivalent agreement for a mailer with one half the volume, and twice the return rate. The distinctive volume and return rate would be unique circumstances, which should be identified and discussed. A second example would be a description of the way that the second mailer prepares its mail versus the methods employed by Capital One.

Subsection (a)(6) provides the Postal Service with an opportunity to propose limiting issues to be considered in the proceeding. The responses to subsections (a)(1) through (a)(5) above should have provided the framework for identifying the relevant issues. The proposal to limit issues should focus the proceeding on relevant issues, and suggest elimination of issues that have been previously determined or that are outside the scope of the proceeding. The goal is to aid in expediting the procedural schedule. However, the Postal Service should not seek to avoid presenting the financial impact of the Negotiated Service Agreement over the duration of the agreement, or discussing the fairness and equity issues necessary for the Commission's consideration. These issues are material and relevant to every proceeding.

[11] This does not preclude the disclosure of studies related to any other aspect of the agreement.

Subsection (b) requires the Postal Service to provide written notice of its request to certain participants. This is in addition to the requirement of providing notice by posting on the Commission's web site. The purpose of this is to reduce the potential for participants to allege that notice was inadequate. This purpose should be considered in light of the Commission's intent to limit the time period for intervention in functionally equivalent proceedings. Presumably, parties will be familiar with the nuances of the agreement through the baseline agreement proceeding and will need less time to consider whether or not to intervene. Limiting the intervention period will help expedite consideration of requests under this rule.

Subsections (c) and (d) establish the procedures for considering Postal Service proposals based on functionally equivalent negotiated service agreements. The schedule is expedited based on the assumption that the new proposal is functionally equivalent to a previously recommended negotiated service agreement, for which a Commission record has been developed that can be relied on in the new docket. If it is determined that the proposal does not represent a request for a functionally equivalent negotiated service agreement, § 3001.195 will become applicable.

The Commission will promptly determine, on the basis of materials submitted with the request, and argument presented at or before the initial pre-hearing conference, whether or not it is appropriate to proceed under the rules for functionally equivalent negotiated service agreements. If it is appropriate and no hearing is held, a schedule will be established which allows for a recommended decision to be issued not more than 60 days after determination is made to proceed under the functional equivalency rules. If it is appropriate and a hearing is scheduled, a schedule will be established which allows for a recommended decision to be issued not more than 120 days after determination is made to proceed under the functional equivalency rules.

Where there is no need to expand on the previous record other than to enter evidence pertinent to the specifics of the new proposal, and where no issues warrant further exploration, the issuance of the recommended decision could occur within 10 days of the determination to proceed under the rules for functionally equivalent negotiated service agreements. In such cases, the Postal Service practice of negotiating a stipulation and agreement, which typically helps narrow the issues

for consideration, should become unnecessary.

Proposed §§ 3001.197 and 3001.198—Procedural Rules

Proposed §§ 3001.197 and 3001.198 are reserved for use in future rulemakings governing specific rules for renewal and modifications of negotiated service agreements.

Comments

By this order, the Commission hereby gives notice that comments from interested persons concerning the proposed amendments to the Commission's rules are due on or before September 29, 2003. Reply comments may also be filed and are due October 14, 2003.

Representation of the General Public

In conformance with § 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's office of the consumer advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Ordering Paragraphs

It is ordered:

1. Docket No. RM2003–5 is established to consider Commission rules applicable to Postal Service proposals requesting Commission review of baseline negotiated service agreements and negotiated service agreements that are functionally equivalent to previously recommended negotiated service agreements.

2. Interested persons may submit comments no later than September 29, 2003.

3. Reply comments also may be filed and are due October 14, 2003.

4. Shelley S. Dreifuss, director of the office of the consumer advocate, is designated to represent the interests of the general public in this docket.

5. The Secretary shall arrange for publication of this notice of proposed rulemaking in the **Federal Register**.

Issued: August 27, 2003.

Dated: August 28, 2003.

By the Commission.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons set forth in the preamble, the Commission proposes to amend 39 CFR part 3001 as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622–24, 3661, 3663.

Subpart A—Rules of General Applicability

2. Amend § 3001.5 by adding new paragraph (r) to read as follows:

§ 3001.5 Definitions.

* * * * *

(r) *Negotiated Service Agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, that provides for customer-specific rates or fees and/or postal services in accordance with the terms and conditions of the contract.

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

3. Revise § 3001.51 to read as follows:

§ 3001.51 Applicability.

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to § 3622 of the Act that the Commission submit a recommended decision on changes in a rate or rates of postage or in a fee or fees for postal service if the Postal Service determines that such changes would be in the public interest and in accordance with the policies of the Act. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart. For requests of the Postal Service based on Negotiated Service Agreements, the rules applicable to negotiated service agreements, Subpart L, supersede the otherwise applicable rules of this subpart.

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

4. Revise § 3001.61 to read as follows:

§ 3001.61 Applicability.

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to § 3623 of the Act that the Commission submit a recommended decision on establishing or changing the mail classification schedule. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart. For requests of the Postal Service based on Negotiated Service Agreements, the Rules Applicable to Negotiated Service Agreements, Subpart L, supersede the otherwise applicable rules of this subpart.

5. Amend Part 3001 by adding Subpart L—Rules Applicable to Negotiated Service Agreements to read as follows:

Subpart L—Rules Applicable to Negotiated Service Agreements

Sec.

3001.190 Applicability.
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Subpart L—Rules Applicable to Negotiated Service Agreements

§ 3001.190 Applicability.

(a) The rules in this subpart govern requests of the Postal Service for recommended decisions pursuant to § 3622 or § 3623 that are based on Negotiated Service Agreements. The Rules of General Applicability in subpart A of this part are also applicable to proceedings on requests subject to this subpart. The requirements and procedures specified in these sections apply exclusively to requests predicated on Negotiated Service Agreements, and except where specifically noted, do not supersede any other rules applicable to Postal Service requests for recommendation of changes in rates or mail classifications.

(b) In administering this subpart, it shall be the policy of the Commission to recommend Negotiated Service Agreements that are consistent with statutory criteria, and benefit the Postal Service, without causing unreasonable harm to the marketplace. Except in extraordinary circumstances and for

good cause shown, the Commission shall not recommend Negotiated Service Agreements of more than three years duration; however, this limitation is not intended to bar the Postal Service from requesting:

(1) The renewal of the terms and conditions of a previously recommended Negotiated Service Agreement, *see* § 3001.197; or

(2) Recommendation of a Negotiated Service Agreement that is functionally equivalent to a previously recommended Negotiated Service Agreement, *see* § 3001.196.

§ 3001.191 Filing of formal requests.

(a) Whenever the Postal Service proposes to establish or change rates or fees and/or the mail classification schedule based on a Negotiated Service Agreement, the Postal Service shall file with the Commission a formal request for a recommended decision. The request shall clearly state whether it is a request for a recommended decision pursuant to:

(1) The review of a baseline Negotiated Service Agreement, *see* § 3001.195;

(2) The review of a Negotiated Service Agreement that is functionally equivalent to a previously recommended Negotiated Service Agreement, *see* § 3001.196;

(3) The renewal of the terms and conditions of a previously recommended Negotiated Service Agreement, *see* § 3001.197; or

(4) The modification of the terms and conditions of a previously recommended Negotiated Service Agreement, *see* § 3001.198. Such request shall be filed in accordance with the requirements of §§ 3001.9 through 3001.12. Within 5 days after the Postal Service has filed a formal request for a recommended decision in accordance with this subsection, the Secretary shall lodge a notice thereof with the director of the Office of **Federal Register** for publication in the **Federal Register**.

(b) The Postal Service shall clearly identify all parties to the Negotiated Service Agreement. Identification by the Postal Service shall serve as Notice of Intervention for such parties. Parties to the Negotiated Service Agreement are to be considered co-proponents, procedurally and substantively, during the Commission's review of the proposed Negotiated Service Agreement.

§ 3001.192 Filing of prepared direct evidence.

(a) Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service and its co-proponents shall file all of the prepared direct evidence upon which they propose to rely in the proceeding on the record before the Commission to establish that the proposed Negotiated Service Agreement is in the public interest and is in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits, which shall be filed in accordance with § 3001.31.

(b) Direct evidence may be filed in support of the Negotiated Service Agreement prepared by, or for, any party to the Negotiated Service Agreement. Direct evidence in support of the Negotiated Service Agreement prepared by, or for, any party to the Negotiated Service Agreement shall not be accepted without prior Postal Service review. The Postal Service shall affirm that the Postal Service has reviewed such testimony and that such testimony may be relied upon in presentation of the Postal Service's direct case.

§ 3001.193 Contents of formal requests.

(a) *General requirements.* (1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed changes or adjustments in rates, fees, and/or the mail classification schedule associated with the Negotiated Service Agreement, and to show that the changes or adjustments are in the public interest and in accordance with the policies and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (k) of this section. If the required information is set forth in the Postal Service's prepared direct evidence, it shall be deemed to be part of the formal request without restatement.

(2) If any information required by paragraphs (b) through (k) of this section is not available and cannot be made available without undue burden, the request shall include a request for waiver of that requirement supported by a statement explaining with particularity:

(i) The information which is not available or cannot be made available without undue burden;

(ii) The reason or reasons that each such item of information is not available and cannot be made available without undue burden;

(iii) The steps or actions which would be needed to make each such item of information available, together with an estimate of the time and expense required therefor;

(iv) Whether it is contemplated that each such item of information will be supplied in the future and, if so, at what time; and

(v) Whether sufficiently reliable estimates are available to mitigate the need for such information, and if so, the specifics of such estimates.

(3) If the Postal Service believes that any of the data or other information required to be filed under § 3001.193 should not be required in light of the character of the request, it shall move for a waiver of that requirement, stating with particularity the reasons why the character of the request and its circumstances justify a waiver of the requirement.

(4) Grant of a waiver under (a)(2) or (a)(3) will be grounds for excluding from the proceeding a contention that the absence of the information should form a basis for rejection of the request, unless the party desiring to make such contention:

(i) Demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the information and submitted it in accordance with § 3001.193; or

(ii) Demonstrates other compelling and exceptional circumstances requiring that the absence of the information in question be treated as bearing on the merits of the proposal.

(5) The provisions of paragraphs (a)(2) and (a)(3) of this section for the Postal Service to include in its formal request certain alternative information in lieu of that specified by paragraphs (b) through (k) of this section are not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of information at a time following receipt of the formal request.

(6) The Commission may request information in addition to that required by paragraphs (b) through (k) of this section.

(b) *Negotiated Service Agreement.* Every formal request shall include a copy of the Negotiated Service Agreement.

(c) *Rates and standards information.* Every formal request shall include a description of the proposed rates, fees, and/or classification changes, including proposed changes, in legislative format, to the text of the Domestic Mail Classification Schedule and any associated rate schedule.

(d) *Description of agreement.* Every formal request shall include a statement describing and explaining the operative components of the Negotiated Service Agreement. The statement shall include the reasons and bases for including the components in the Negotiated Service Agreement.

(e) *Financial analysis.* Every formal request shall include an analysis of the effects of the Negotiated Service Agreement on Postal Service volumes, costs and revenues. The analysis shall:

(1) Be performed over the duration of the agreement, and for each individual year that the agreement is in effect;

(2) Provide such detail that the analysis of each component of a Negotiated Service Agreement can be independently reviewed;

(3) Be prepared in sufficient detail to allow independent replication, including citation to all referenced material;

(4) Include an analysis, which sets forth the estimated mailer-specific costs, volumes, and revenues of the Postal Service for each year that the Negotiated Service Agreement is to be in effect assuming the then effective postal rates and fees absent the implementation of the Negotiated Service Agreement;

(5) Include an analysis which sets forth actual and estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the Negotiated Service Agreement;

(6) Include a discussion of the effects of the Negotiated Service Agreement on contribution to the Postal Service (including consideration of the effect on contribution from mailers who are not parties to the agreement);

(7) Utilize mailer-specific costs, and provide the basis used to determine such costs, including a discussion of material variances between mailer-specific costs and system-wide average costs; and

(8) Utilize mailer-specific volumes and elasticity factors, and provide the bases used to determine such volumes and elasticity factors. If mailer-specific costs or elasticity factors are not available, the bases of the costs or elasticity factors that are proposed shall be provided, including a discussion of the suitability of the proposed costs or elasticity factors as a proxy for mailer-specific costs or elasticity factors.

(f) *Impact analysis.* Every formal request shall include an estimate of the impact over the duration of the Negotiated Service Agreement on:

(1) Competitors of the parties to the Negotiated Service Agreement other than the Postal Service;

(2) Competitors of the Postal Service; and

(3) Mail users.

The Postal Service shall include a copy of any completed special studies that were used to make such estimates. If special studies have not been performed, the Postal Service shall state this fact and explain the alternate bases of its estimates.

(g) *Data collection plan.* Every formal request shall include a proposal for a data collection plan, which shall include a comparison of the analysis presented in § 3001.193(f)(5) with the actual results ascertained from implementation of the Negotiated Service Agreement. The results shall be reported to the Commission on an annual or more frequent basis.

(h) *Workpapers.*

(1) Whenever the Service files a formal request it shall accompany the request with seven sets of workpapers, five for use by the Commission staff and two which shall be available for use by the public at the Commission's offices.

(2) Workpapers shall contain:

(i) Detailed information underlying the data and submissions for paragraphs (b) through (k) of this section;

(ii) A description of the methods used in collecting, summarizing and expanding the data used in the various submissions;

(iii) Summaries of sample data, allocation factors and other data used for the various submissions;

(iv) The expansion ratios used (where applicable); and

(v) The results of any special studies used to modify, expand, project, or audit routinely collected data.

(3) Workpapers shall be neat and legible and shall indicate how they relate to the data and submissions supplied in response to paragraphs (b) through (k) of this section.

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, *e.g.*, by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. Workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

(i) *Certification by officials.* (1) Every formal request shall include one or more certifications stating that the cost statements and supporting data submitted as a part of the formal request, as well as the accompanying workpapers, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books.

(2) The certificates required by paragraph (j)(1) of this section shall be signed by one or more representatives of the Postal Service authorized to make such certification. The signature of the official signing the document constitutes a representation that the official has read the document and that, to the best of his/ her knowledge, information and belief, every statement contained in the instrument is proper.

(j) *Rejection of requests.* The Commission may reject any request under this subpart that patently fails to substantially comply with any requirements of this subpart.

§ 3001.194 Failure to comply.

If the Postal Service fails to provide any information specified by this subpart, or otherwise required by the presiding officer or the Commission, the Commission, upon its own motion, or upon motion of any participant to the proceeding, may stay the proceeding until satisfactory compliance is achieved. The Commission will stay proceedings only if it finds that failure to supply adequate information interferes with the Commission's ability promptly to consider the request and to conduct its proceedings with expedition in accordance with the Act.

§ 3001.195 Requests to recommend a baseline negotiated service agreement.

(a) This section governs Postal Service requests for a recommended decision in regard to a baseline Negotiated Service Agreement, *e.g.*, a Negotiated Service Agreement that is not predicated on a functionally equivalent Negotiated Service Agreement currently in effect. The purpose of this section is to establish procedures which provide for maximum expedition of review consistent with procedural fairness, and which allows for the recommendation of a baseline Negotiated Service Agreement. The Postal Service request shall include:

(1) A written justification for requesting a Negotiated Service Agreement classification as opposed to a more generally applicable form of classification;

(2) A description of the operational bases of the Negotiated Service Agreement, including activities to be performed and facilities to be used by both the Postal Service and the mailer under the agreement; and

(3) A statement of the parties' expectations regarding performance under the Negotiated Service Agreement, including the possibility of cancellation or re-negotiation of the agreement, and the perceived potential for renewal of the agreement for an additional period.

(b) The Commission will treat requests predicated on a baseline Negotiated Service Agreement as subject to the maximum expedition consistent with procedural fairness. A schedule will be established, in each case, to allow for prompt issuance of a decision.

§ 3001.196 Requests to recommend a negotiated service agreement that is functionally equivalent to a previously recommended negotiated service agreement.

(a) This section governs Postal Service requests for a recommended decision in regard to a Negotiated Service Agreement that is proffered as functionally equivalent to a Negotiated Service Agreement previously recommended by the Commission and currently in effect. The previously recommended Negotiated Service Agreement shall be referred to as the baseline agreement. The purpose of this section is to establish procedures that provide for accelerated review of functionally equivalent Negotiated Service Agreements. The Postal Service request shall include:

(1) A detailed description of how the proposed Negotiated Service Agreement is functionally equivalent to the baseline agreement;

(2) A detailed description of how the proposed Negotiated Service Agreement is different from the baseline agreement;

(3) Identification of the record testimony from the baseline agreement docket, or any other previously concluded docket, on which the Postal Service proposes to rely, including specific citation to the locations of such testimony;

(4) Any available special studies developing information pertinent to the proposed Negotiated Service Agreement;

(5) If applicable, the identification of circumstances unique to the request; and

(6) If applicable, a proposal for limitation of issues in the proceeding, except that the following issues will be relevant to every request predicated on a functionally equivalent Negotiated Service Agreement:

(i) The financial impact of the Negotiated Service Agreement on the Postal Service over the duration of the agreement;

(ii) The fairness and equity of the Negotiated Service Agreement in regard to other users of the mail; and

(iii) The fairness and equity of the Negotiated Service Agreement in regard to the competitors of the parties to the Negotiated Service Agreement.

(b) When the Postal Service submits a request predicated on a functionally equivalent Negotiated Service Agreement, it shall provide written notice of its request, either by hand delivery or by First-Class Mail, to all participants in the Commission docket established to consider the baseline agreement.

(c) The Commission will schedule a prehearing conference for each request. Participants shall be prepared to address whether or not it is appropriate to proceed under § 3001.196 at that time. After consideration of the material presented in support of the request, and the argument presented by the participants, if any, the Commission shall promptly issue a decision on whether or not to proceed under § 3001.196. If the Commission's decision is to not proceed under § 3001.196, the docket will proceed under § 3001.195.

(d) The Commission will treat requests predicated on functionally equivalent Negotiated Service Agreements as subject to accelerated review consistent with procedural fairness. If the Commission determines that it is appropriate to proceed under § 3001.196, a schedule will be established which allows a recommended decision to be issued not more than:

(1) 60 days after the determination is made to proceed under § 3001.196, if no hearing is held; or

(2) 120 days after the determination is made to proceed under § 3001.196, if a hearing is scheduled.

§ 3001.197 Requests to renew previously recommended Negotiated Service Agreements with existing participant(s). [Reserved]

§ 3001.198 Requests to modify previously recommended Negotiated Service Agreements. [Reserved]

[FR Doc. 03–22478 Filed 9–3–03; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 287–0410b; FRL–7548–4]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Kern County Air Pollution Control District (KCAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). The KCAPCD revisions concern the emission of particulate matter (PM–10) from agricultural burning and prescribed burning. The SJVUAPCD revision concerns the emission of oxides of nitrogen (NOX) from lime kilns. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 6, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov*.

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, N.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA

website and may not contain the same version of the rule that was submitted to EPA.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local KCAPCD Rule 417 and SJVUAPCD Rule 4313. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: August 7, 2003.

Debbie Jordan,

Acting Regional Administrator, Region IX.

[FR Doc. 03–22446 Filed 9–3–03; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 68, No. 171
Thursday, September 4, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0011.

Form Number: AID 1010–2.

Title: Application for Assistance—American Schools and Hospitals Abroad.

Type of Submission: Renewal of Information Collection.

Purpose: USAID finances grant assistance to U.S. founders or sponsors who apply for grant assistance from ASHA on behalf of their institutions overseas. ASHA is a competitive grants program. The office of ASHA is charged with judging which applicants may be eligible for consideration and receive what amounts of funding for what purposes. To aid in such determination, the office of ASHA has established guidelines as the basis for deciding upon the eligibility of the applicants and the resolution on annual grant awards. These guidelines are published in the **Federal Register**, Doc. 79–36221.

Annual Reporting Burden:

Respondents: 85.

Total annual responses: 85

Total annual hours requested: 1,020 hours.

Dated: August 18, 2003.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 03–22461 Filed 9–3–03; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Beginning Farmer and Rancher Land Contract Guarantee Pilot Program—Notice of Funds Availability (NOFA)

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This notice announces the availability of funding to implement the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program as required by section 310 F of the Consolidated Farm and Rural Development Act (Act). This section directs the Secretary to establish a pilot program to provide guarantees of loans made by private sellers of a farm or ranch on a contract land sale basis to qualified beginning farmers or ranchers.

This notice describes the eligibility and application requirements for the pilot program and the criteria that the Farm Service Agency (FSA) will consider in evaluating requests for guarantees under the program. The notice also describes actions that FSA will take if a buyer fails to pay on the contract.

DATES: FSA will begin accepting applications on September 4, 2003. Comments on the information collection associated with this notice must be received on or before November 3, 2003, to be given full consideration.

ADDRESSES: General information and the application form may be obtained from the FSA Web site at *http://www.fsa.usda.gov* or the USDA, FSA office listed in your local telephone directory.

FOR FURTHER INFORMATION CONTACT: Kathy Zeidler, Senior Loan Officer, or Galen VanVleet, Senior Loan Officer, USDA, FSA, Farm Loan Programs Loan Making Division, STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522; telephone (202) 720–5199; e-mail: *kathy_zeidler@usda.gov* or *galen.vanvleet@usda.gov*. Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION:

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Environmental Review

The environmental impacts of this notice have been considered in accordance with the provisions of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321, *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR parts 799, and 1940, subpart G. FSA has completed an environmental evaluation and concluded that the notice requires no further environmental review. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement. A copy of the environmental evaluation is available for inspection and review upon request.

Paperwork Reduction Act

A request for emergency clearance of the information collections associated with this notice was submitted to the Office of Management and Budget (OMB) per 5 CFR 1320.13(a)(2)(iii). The Agency's information collection requirements, currently approved under OMB control numbers 0560–0154, 0560–0155, 0560–0166, 0560–0178, and 0575–0147, are not affected by this notice.

In accordance with the Paperwork Reduction Act of 1995, FSA will provide a regular submission of the information collection package to OMB at the end of the comment period announced in this notice:

Title: Beginning Farmer and Rancher Land Contract Guarantee Pilot Program.

OMB Control Number: 0560–NEW.

Type of Request: New Information Collection.

Abstract: The collection of the information required by this notice is necessary to certify that applicants for

guarantees (sellers) are eligible to receive benefits. The information will be collected from applicants and prospective buyers in paper form by Agency loan approval officials. The information will be used and evaluated by the loan approval official to determine if the buyer and the sales transaction meet the criteria established by the Agency. The information may be viewed, used, and monitored by other Agency or USDA officials, and may be released in accordance with the Privacy Act or Freedom of Information Act. The information will be collected on an as needed basis. Failure to collect this information may result in persons receiving benefits other than intended program beneficiaries.

Estimate of Burden: Public reporting for this collection of information is estimated to average .75 hours per response.

Respondents: Farms, individuals, and businesses.

Estimated number of respondents: 480.

Estimated number of responses per respondent: 2.6.

Estimated total annual burden on respondents: 857 hours.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of burden; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden collection on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. These comments should be addressed to Kathy Zeidler, Senior Loan Officer, USDA, FSA, Farm Loan Programs Loan Making Division, STOP 0522, 1400 Independence Avenue, SW., Washington, DC 20250–0522. A comment is best assured of having its full effect if OMB receives it within 60 days of publication of this notice. Comments received after that date will be considered to the extent practicable. All comments received in response to this notice, including names and addresses, will be a matter of public record. Copies of the submission may be obtained from Kathy Zeidler by calling (202) 720–5199.

General Information

During FY 2003–2007 limited funds will be available for the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program. The pilot program will be implemented in the following States: Indiana, North Dakota, Oregon, Pennsylvania, Wisconsin, and Iowa. In each of fiscal years 2003 through 2007, depending on the availability of appropriations, up to five loans made by a private seller of a farm or ranch to a qualified beginning farmer or rancher on a land contract basis will be guaranteed in each of the pilot States. The intent of the pilot program is to determine if land contracts are a viable alternative for facilitating land transfers to beginning farmers and ranchers.

To the extent possible, the underwriting criteria of FSA's guaranteed loan program have been adopted. However, the structure of the loan guarantee under the pilot program is significantly different from FSA's existing guaranteed loan program, which compensates lenders for a percentage of the total loss of principal and interest suffered. Loss claim payments under the existing guaranteed program are made following liquidation of the loan and all collateral. The Beginning Farmer and Rancher Land Contract Guarantee Pilot Program will be structured to provide the seller of the land a "prompt payment" guarantee of the sale to the beginning farmer or rancher (buyer). FSA will provide a 10-year guarantee of two amortized annual installments, or an amount up to the total monetary amount of two amortized annual installments, on a land contract (*e.g.*, if a buyer pays only part of an installment over several years, the Agency's guarantee will cover the remainder of the installments up to an amount equal to two amortized annual installments). The guarantee will also cover the amount of two years' taxes and insurance.

In the event that the buyer does not pay an annual installment due on the contract, or pays only part of an installment on the contract, the seller must take immediate action to enforce the terms of the contract and collect the defaulted amount from the buyer. At a minimum, the seller must make written demand on the buyer for payment of the defaulted amount. In the event that the buyer does not pay the defaulted amount within 30 days of the seller's written demand, the seller will make demand upon the Agency to pay the defaulted amount. The Agency will remit payment to the seller via the escrow agent and pursue collection of the defaulted installment amount from the buyer using all available means, including establishing repayment terms and administrative and Department of Treasury offset.

The guarantee will terminate if (1) the contract is paid in full; (2) the Agency pays two annual installments, or the total monetary amount of two installments; (3) the seller fails to seek payment of a defaulted installment from the buyer or does not otherwise enforce the terms of the contract; or (4) the seller terminates the contract. If none of these events occur, the guarantee will automatically terminate 10 years from the effective date of the guarantee.

I. Definitions

Agency is the Farm Service Agency, its employees, and any successor agency.

Annual installment is the total amortized amount of principal and interest due to the seller on a land contract every 12 months.

Beginning farmer or rancher is an individual or entity who:

(a) Has not operated a farm or ranch or who has operated a farm or ranch for not more than 10 years. This requirement also applies to all entity members;

(b) will materially and substantially participate in the operation of the farm or ranch.

(c) In the case of a loan made to an individual, individually or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(d) In the case of a loan to an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that the members provide some amount of the management, or labor and management, necessary for day-to-day activities, such that if the members did not provide these inputs, operation of the farm or ranch would be seriously impaired;

(e) agrees to participate in any loan assessment and financial management programs required by the Agency;

(f) does not own real farm or ranch property or who, directly or through interests in family farm entities, own real farm or ranch property, the aggregate acreage of which does not exceed 30 percent of the average farm or ranch acreage of the farms or ranches in the county where the property is located. If the farm is located in more than one county, the average farm acreage of the county where the buyer's residence is located will be used in the calculation. If the buyer's residence is not located on the farm, or if the buyer is an entity, the average farm acreage of the county where the major portion of

the farm is located will be used. The average county farm or ranch acreage will be determined from the most recent Census of Agriculture;

(g) demonstrates that the available resources of the buyer and spouse (if any) are not sufficient to enable the buyer to enter or continue farming or ranching on a viable scale;

(h) in the case of an entity, all the members are related by blood or marriage and all of the stockholders in a corporation are qualified beginning farmers or ranchers.

Buyer is an individual or entity who is participating in the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program in order to purchase a farm or ranch on land contract.

Cash flow budget is a projection listing all anticipated cash inflows (including all farm income, nonfarm income and all loan advances) and all cash outflows (including all farm and nonfarm debt service and other expenses) to be incurred by the buyer during the period of the budget. A cash flow budget may be completed either for a 12-month period or a typical production cycle, as appropriate.

Entity is a cooperative, corporation, partnership, joint operation, trust, or limited liability company.

Escrow agent is a bonded commercial lending institution, registered and authorized to provide escrow collection services in the State in which the real estate is located, that handles financial transactions between the buyer and seller, *e.g.*, a bank.

Family farm is a farm which produces agricultural commodities for sale in sufficient quantities so that it is recognized in the community as a farm rather than a rural residence; provides enough agricultural income by itself, including rented land, or together with any other dependable income, to enable the buyer to pay necessary family living and farm operating expenses, maintain essential chattel and real property, and pay debts; is managed by the buyer or the buyer's entity members; has a substantial amount of the labor requirement for the farm provided by the buyer and the buyer's immediate family or the entity members and their immediate families; and may use a reasonable amount of full-time hired labor and seasonal labor during peak load periods.

Feasible plan is a cash flow budget that indicates that there is sufficient cash inflow to pay all cash outflow each year during the term of the contract.

Land contract is an installment contract drawn between a buyer and a seller for the sale of real property, in which complete fee title ownership of the property is not transferred until all payments under the contract have been made.

Participated in the business operations of a farm or ranch means that the buyer has:

(a) Been the owner, manager or operator of a farm business for the year's complete production and marketing cycle as evidenced by tax returns, FSA farm records or similar documentation;

(b) been employed as a farm manager or farm management consultant for the year's complete production and marketing cycle; or

(c) participated in the operation of a farm by virtue of being raised on a farm or worked on a farm with significant responsibility for the day-to-day decisions for the year's complete production and marketing cycle.

Pilot State is any of the six States participating in the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program. Those States are Indiana, Iowa, North Dakota, Oregon, Pennsylvania, and Wisconsin.

Seller is an individual or entity who applies for a guarantee under the Beginning Farmer and Rancher Land Contract Guarantee Pilot Program in order to sell a farm or ranch on land contract in a pilot State.

United States is the United States itself, each of the several States, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

II. Appeals

Buyers and sellers can appeal adverse decisions made by the Agency in accordance with 7 CFR part 11.

III. Application

(a) Sellers who contact FSA with an interest in a guarantee under the pilot program will be sent a letter outlining specific program details and benefits. To formally request a guarantee on their proposed land contract, sellers must sign and date this letter and return it to FSA. The signed and dated letter will be considered the seller's application for guarantee. FSA also may require the seller to submit other information necessary to process the guarantee.

(b) The prospective buyer must submit the following items to FSA:

(1) A completed form FSA–1980–25, "Application for Guarantee."

(2) A brief written description of the buyer's farm training and/or experience.

(3) Income tax or other financial records acceptable to FSA from the past three years.

(4) Three years of production history immediately preceding the year of application, or the number of years available if the applicant has been farming less than three years.

(5) A brief written description of the proposed operation.

(6) Verification of off-farm employment and other non-farm income, if any. This will be required only when the buyer is relying on off-farm income to develop a feasible plan.

(7) Projected production, income and expenses, financial statement, and plan of operation, which may be submitted on Form FSA–431–2, "Farm and Home Plan," or other similar plan of operation acceptable to FSA. The buyer may request Agency assistance in completing the plan.

(8) Applicable items required in 7 CFR part 1940, subpart G or its successor regulation.

(9) A copy of the proposed land contract to be entered into with the seller.

(10) Form FSA–440–32, "Request for Statement of Debts and Collateral," or similar documentation, for all debts in excess of $1000.00.

(11) A credit report fee.

(12) Entity applicants must submit additional information for each entity member. The application must contain each entity member's name, address, Social Security number, percent ownership interest in the entity, and a current balance sheet.

(13) Any other documents required by the Agency and needed to process the application.

(c) If the buyer or seller propose to use a particular escrow agent for the land contract sale, they will provide the agent's name, address, and telephone number to the Agency.

(d) All forms listed are available at any FSA office or on the FSA Web site at *http://www.fsa.usda.gov*. The Agency will not consider an application complete until all required information is received from both the seller and the prospective buyer. The Agency will assist the buyer, when necessary, in completing the required FSA forms.

IV. Eligibility

(a) Buyers must meet the following requirements to be eligible:

(1) The buyer must be a beginning farmer or rancher and must be the owner and operator of a family farm after the contract is completed. See paragraph IV. (b) for owner and operator requirements for entity buyers.

(2) The buyer must have participated in the business operations of a farm or ranch for at least three years.

(3) The buyer and anyone who will execute the Loan Payment Guarantee Agreement and Contract Modification

(Agreement) as the buyer cannot have caused the Agency a loss by receiving debt forgiveness on more than three occasions on or prior to April 4, 1996, or on any occasion after April 4, 1996, on all or a portion of any direct or guaranteed loan made under the authority of the CONACT as amended, by debt write-down or write-off; compromise, adjustment, reduction, or charge-off under the provisions of section 331 of the CONACT; discharge in bankruptcy; or through payment of a guaranteed loss claim.

(4) When the guarantee is issued, the buyer and anyone who will execute the Agreement as the buyer must not be delinquent on any Federal debt, other than a debt under the Internal Revenue Code of 1986, nor be a Federal judgment debtor on a non-tax debt.

(5) The buyer must be a citizen of the United States, United States non-citizen national, or a qualified alien under applicable Federal immigration laws. If the buyer is an entity, the majority of the entity must be owned by members meeting the citizenship test.

(6) The buyer and anyone who will execute the Agreement as the buyer must possess the legal capacity to enter into a legally binding agreement.

(7) The buyer, in past or present dealings with the Agency, must not have provided the Agency with false or misleading documents or statements.

(8) The buyer and anyone who will execute the Agreement as the buyer must not have been convicted of planting, cultivating, growing, producing, harvesting, or storing a controlled substance under Federal or State law within the last five crop years. "Controlled substance" is defined at 21 CFR 1308. Buyers must certify on the application that the buyer has not been convicted of such a crime within the relevant period.

(9) The buyer and anyone who will execute the Agreement as the buyer must have an acceptable credit history demonstrated by satisfactory debt repayment. A history of failures to repay past debts as they came due (including debts to the Internal Revenue Service) when the ability to repay was within their control will demonstrate an unacceptable credit history. Unacceptable credit history will not include isolated instances of late payments (which do not represent a pattern and were clearly beyond their control) or the lack of a credit history.

(10) The buyer must be unable to obtain sufficient credit elsewhere without a guarantee to finance actual needs at reasonable rates and terms.

(b) For entity buyers, the following additional eligibility criteria apply:

(1) The collective ownership interest of all entity members may exceed the family farm definition limits only if all of the entity members are related by blood or marriage, all of the entity members are or will be operators of the farm, and the majority interest holders meet the above requirements relating to citizenship, false or misleading information, credit history, and operation and ownership of the farm or ranch.

(2) Each entity member's ownership interest may not exceed the family farm definition.

(3) The entity must be controlled by farmers or ranchers engaged primarily and directly in farming or ranching in the United States after the guarantee is issued; and

(4) The entity members can not be entities themselves.

(5) The entity must be authorized to own and operate a farm in the State(s) in which the farm is located.

(6) If the entity members holding a majority interest are related by blood or marriage, at least one member of the entity also must operate the family farm and at least one member of the entity must own the family farm.

(7) If the entity members holding a majority interest are not related by blood or marriage, the entity members holding a majority interest must operate the family farm and entity members holding a majority interest or the entity must own the family farm.

V. Financial Feasibility

(a) The proposed operation described on Form FSA–431–2 or similar plan acceptable to FSA must project a feasible plan. The projected income and expenses of the buyer and operation used to determine a feasible plan must be based on the buyer's proven record of production and financial management. For those farmers without a proven history, a combination of any actual history and any other reliable source of information which is agreeable to the buyer and the Agency will be used. The cash flow budget analyzed to determine a feasible plan must represent the projected cash flow of the operating cycle for the farm or ranch operation.

(b) The buyer must use the best sources of information available for estimating production when developing cash flow budgets. Deviations from historical performance may be acceptable, if the deviations are the direct result of specific changes in the operation, are reasonable, adequately justified, and acceptable to the Agency. For existing farmers, actual production for the past three years will be utilized. For those farmers without a proven history, a combination of any actual history and any other reliable source of information that is agreeable to the buyer and the Agency will be used. When the production of a growing commodity can be estimated, it must be considered when projecting yields.

(c) When the buyer's production history has been so severely affected by a declared disaster that an accurate projection cannot be made, the following applies:

(1) County average yields are used for the disaster year if the buyer's disaster year yields are less than the county average yields. If county average yields are not available, State average yields are used. Adjustments can be made, provided there is factual evidence to demonstrate that the yield used in the farm plan is the most probable to be realized.

(2) To calculate a historical yield, the crop year with the lowest actual or county average yield may be excluded, provided the buyer's yields were affected by disasters at least two of the previous five consecutive years.

(d) Buyers must use price forecasts that are reasonable, defensible, and historically supportable. Sources must be documented by the buyer and be acceptable to the Agency. When a feasible plan depends on income from other sources in addition to income from owned land, the income must be dependable and likely to continue throughout the term of the guarantee.

VI. Eligible Purpose

The guarantee may only be used for financing the purchase of a farm or ranch on a land contract basis. The farm or ranch land to be purchased must be located in a pilot State. Guarantees will only be provided on new contracts. Existing contracts are not eligible for a guarantee under the pilot program.

VII. Maximum Purchase Price

(a) The purchase price of the farm or ranch to be acquired cannot exceed the lesser of:

(1) $500,000 and

(2) its current market value as determined by Agency appraisal or estimate.

(b) The buyer must provide a cash downpayment of at least five percent of the purchase price of the farm or ranch being acquired on land contract.

VIII. Maximum Payment and Term of Guarantee

The guarantee will be in effect for 10 years commencing with its stated effective date. The guarantee will cover two amortized annual installments, or an amount up to the total monetary

amount of two amortized annual installments, on the land contract. The guarantee will also cover the amount of two years of taxes and insurance. Under no circumstance will the amount outstanding to the Agency be more than the amount of two amortized annual installments, plus two years of real estate taxes and hazard insurance.

IX. Loan Rates and Terms

The interest rate charged by the seller for the 10-year term of the guarantee must be fixed at a rate not to exceed FSA's direct farm ownership (FO) loan interest rate in effect at the time the guarantee is issued, plus three percentage points (Interest rates are available in any FSA office). The seller and buyer may renegotiate the interest rate for the remaining term of the contract following expiration of the guarantee. The contract payments must be amortized for a minimum of 20 years. Balloon payments are prohibited during the 10-year term of the guarantee, and payments on the contract must be of equal amounts during the term of the guarantee.

X. Appraisal Requirements

The Agency may require an appraisal prior to, or as a condition of, approval of the guarantee. Any such appraisal will be obtained at the Agency's sole option and expense.

XI. Requesting Title Service

The buyer will obtain title clearance as provided in 7 CFR part 1927, subpart B, or its successor regulation prior to contract settlement and issuance of the guarantee.

XII. Environmental Compliance

The environmental and historic preservation requirements contained in 7 CFR part 1940, subpart G or its successor regulation must be met prior to approval of any guarantee request.

XIII. Processing and Approving Applications and Executing the Guarantee

(a) Requests for guarantee will be processed based on the date the Agency receives a complete application as defined above. Each pilot State may approve up to five loan guarantees each fiscal year of the pilot program. Approval is also subject to the availability of guaranteed FO loan funds and the participation of an approved escrow agent.

(b) After a request for guarantee is approved, all parties to the guarantee (buyer, seller, escrow agent, and the Agency) will execute the Loan Payment Guarantee Agreement and Contract Modification. This Agreement will describe the conditions of the guarantee and the process for payment of claims. It will also outline the covenants and agreements of the buyer, seller, escrow agent, and the Agency.

XIV. Escrow Agent Responsibilities

Use of a third party escrow agent approved by the Agency is required. The buyer or seller, as applicable, will provide the Agency a copy of any escrow agreement executed by the parties. The escrow agent will:

(a) handle transactions relating to the land contract between the buyer and seller;

(b) receive contract installments and remit them to the seller;

(c) notify FSA and the seller in the event of default by the buyer;

(d) remit to the seller any defaulted installment amount paid by the Agency under the guarantee;

(e) notify FSA and the seller semi-annually of the outstanding balance on the contract and the status of payment;

(f) send a notice of payment due to the buyer at least 30 days prior to the installment due date; and

(g) perform other duties as required by State law and as agreed to by the buyer and the seller.

XV. Routine Servicing and Contract Modification

(a) At the Agency's request, the buyer will supply the Agency with a current balance sheet, income statement, cash flow budget, and any additional information needed to analyze the buyer's financial condition annually.

(b) With the Agency's prior written approval, the seller and buyer may modify the land contract provided that, in addition to a feasible plan for the upcoming operating cycle, a feasible plan can be reasonably projected throughout the remaining term of the guarantee. If a contract is modified, the seller must provide the Agency and escrow agent with a copy of the revised contract.

XVI. Collection of Defaulted Installment Amounts

If the buyer fails to pay an annual amortized installment on the contract, or a portion of an installment on the contract, the escrow agent will notify the seller and the Agency in writing of the default. The seller must then take immediate action to enforce the terms of the contract and collect the defaulted amount from the buyer. At a minimum, the seller must make written demand on the buyer for payment of the defaulted amount, with a copy of the demand letter to the Agency. In the event that the buyer does not pay the defaulted amount within 30 days of the seller's written demand, the seller will make demand upon the Agency to pay the defaulted amount. The seller must make written demand upon the Agency within 90 days from the date the amount was due.

XVII. Delinquent Servicing

(a) When FSA has made a payment under this guarantee on behalf of the buyer, the amount paid will become immediately due and payable by the buyer. The unpaid balance of the amount paid on behalf of the buyer will bear interest from the date of advance by the Agency at the established Farm Loan Programs Nonprogram Credit Sales Real Property loan rate (available in any FSA office) in effect at that time. The Agency will notify the buyer of the available options for repaying the debt. At the Agency's discretion, a missed or partially missed amortized contract installment, delinquent real estate taxes, or insurance payments may be structured to be repaid consistent with the buyer's repayment ability not to exceed 7 years, or the termination date of the guarantee, whichever occurs first. Before any repayment plan can be approved, the buyer must provide the Agency with the best lien obtainable on all of the buyer's assets, including the buyer's interest in the real estate under contract. When the buyer is an entity, the best lien obtainable will be taken on all of the entity's assets, and all assets owned by the members of the entity, including their interest in the real estate under contract.

(b) Any amounts paid by the Agency on account of liabilities of the buyer will constitute a Federal debt owing to the Agency that is immediately due and payable by the buyer. If the debt is not restructured into a repayment plan or the delinquency otherwise cured, the Agency may use all remedies available to it, including offset under the Debt Collection Improvement Act of 1996, to collect the debt from the buyer.

(c) Buyers with an Agency-approved repayment plan will supply the Agency, upon request, with a current balance sheet, income statement, cash flow budget, complete copy of their Federal income tax returns, and any additional information needed to analyze the buyer's financial condition annually.

(d) If the buyer fails to perform under an Agency-approved repayment plan, the debt will be treated as a non-program loan debt, and servicing will proceed in accordance with 7 CFR 1951 section 1951.468, or its successor regulation. In such case, the Agency may use all remedies available to it,

including offset under the Debt Collection Improvement Act of 1996, to collect the debt from the buyer.

XVIII. Terminating the Guarantee

The guarantee and the Agency's obligations under it will terminate under the following circumstances:

(a) Full payment of the land contract;

(b) payment by the Agency of two annual installments on the contract, or an amount equal to two annual installments, if not repaid in full by the buyer. (An Agency-approved repayment plan will not constitute payment in full until such time as the entire amount due under the Agency-approved repayment plan is paid in full);

(c) the seller fails to seek payment of a delinquent installment from the buyer or otherwise does not enforce the terms of the land contract; or

(d) the seller terminates the land contract.

If none of these events occur, the guarantee will automatically terminate, without notice, 10 years from the effective date of the guarantee.

Signed in Washington, DC, on August 15, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–22519 Filed 9–3–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Special Use Permits for Outfitter and Guide Operations on the Lower Rogue and Lower Illinois Rivers, Siskiyou National Forest, Curry County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of reissuing 63 special use permits for outfitter and guide operations on the lower Rogue River from Lobster Creek to the pool below Blossom Bar Rapids and the lower Illinois River from the confluence with the Rogue River to the mouth of Nancy Creek. The types of special use activities on the Rogue River include: commercial tour boats offering scenic trips and transport of guests to lodges in the Wild Section; fishing guides using both float craft and motorboats; livery services transporting people and freight or offering scenic trips; whitewater motorboat training; half-day float trips from Foster Bar to Agness; and commercial transport of lodge guests from Foster Bar to Paradise Lodge. On the Illinois River, the type of commercial activity is guided fishing. As a connected action, there is also a need to issue or reissue special use permits for the docks of the three commercial lodges in the Wild Section of the Rogue River.

DATES: Comments concerning the scope of this analysis should be received by October 3, 2003.

ADDRESSES: Send written comments to John Borton, District Ranger, Gold Beach Ranger District, Siskiyou National Forest, 29279 Ellensburg, Gold Beach, OR 97444, Fax (541) 247–3617, e-mail: *comments-pacificnorthwest-siskiyou-chetco-goldbeach@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Bill Blackwell, District Recreation, Lands and Minerals Staff, Gold Beach Ranger District, (541) 247–3600.

SUPPLEMENTARY INFORMATION: The Rogue River was designated a Wild and Scenic River by Congress in 1968. For the portion of the river where the outfitters and guides operate, the river is classified as either Recreational or Scenic from Lobster Creek to Watson Creek (approximately 24 river miles), and Wild from Watson Creek to the pool below Blossom Bar Rapids (approximately 10 river miles). The Illinois River was designated Wild and Scenic in 1984 and is classified as Recreational from its confluence with the Rogue River upstream to the mouth of Nancy Creek.

Commercial fishing guides using motorboats and tour boats offering scenic trips started in the late 1920s and early 1930s. The number of guides and trips increased in the post-World War II era. The invention of hydro-jet powered motorboats in 1958 allowed boats to navigate the river during low summer flows. As the population has increased over the years, all types of recreational float craft and motorboat use has also increased. Today, thousands of people visit the Rogue River each year. The Rogue is internationally renowned for its fishing, and commercial fishing guides provide a recreational service to people who visit the area. The scenery of the Rogue is also internationally known, and each year thousands of people enjoy the recreational experience of riding on the tour boats that travel up the river.

In 1959, the Oregon State Marine Board was given responsibility to establish and administer boating regulations in the State of Oregon. In the 1970s, due to the increased amount of boating in the Wild Section of the Rogue River, the Marine Board, in cooperation with the Bureau of Land Management and the Forest Service, introduced a permit system to help limit the amount of use in the Wild Section. In 1974, the Marine Board eliminated motorboat use from the pool below Blossom Bar Rapids upstream to Grave Creek between May 15 and November 15. In 1976, after much public comment, the Marine Board limited commercial motorboats in the Wild Section from Watson Creek to the pool below Blossom Bar Rapids between May 15 and November 15 to current permittees and at the use level that existed as of January 15, 1976.

In 1979, the Forest Service first started requiring permits for commercial motorboat activities in the Wild Section of the Rogue River. In 1981, a Forest Service permit was required for any commercial motorboat or float craft activity from Lobster Creek to Watson Creek as well as in the Wild Section. In 1984, the Marine Board decided to re-evaluate its role in the motorboat permit system and begin to solicit public comment. In 1986, the Gold Beach District Ranger wrote to the Marine Board and stated that the Forest Service would continue to administer the motorboat limits and regulations in the Wild Section as the Marine Board had done, with only minor variations. Later that year, the Marine Board decided to repeal their rules, consolidating the motorboat permit system with the Forest Service. The Forest Service continued to issue permits to the tour boats, fishing guides, livery services, and other uses for the same number of trips that had been issued previously by the Marine Board.

In 1995, the Forest Service limited the number of fishing guides in the Lobster Creek to Watson Creek area to those that were currently under permit. These permits allowed use any time of the year, but they could only be used by the permittees and there could be no employees operating under that permit. Also in 1995, the Forest Service limited the number of trips by the tour boats from Lobster Creek to Watson Creek, based on the season of year: shoulder-season (May 1 to June 15 and the day after Labor Day to October 31), main-season (June 16 to Labor Day), and off-season (November 1 to April 30).

Prior to 1999, some guides who operated under permits issued by Bureau of Land Management and jointly administered by the Bureau of Land Management and the Forest Service would guide fishing trips entirely on the National Forest portion of the river. The language in these special use permits stated the outfitter and guide use was for the Rogue River from the Applegate

River to Lobster Creek, so the National Forest section was included in the permit. In 1999, the Forest Service and Bureau of Land Management agreed that permittees operating entirely on National Forest must do so under permits issued by only the Forest Service. Permittees that could prove historical use (1974 to 1988) were issued permits for the same types of use and for the same number of trips that had been previously made. These permittees were limited to the maximum number of trips they could make, but were allowed to hire employees.

Also in 1999, Paradise Lodge was authorized to transport lodge guests via motorboat from Foster Bar to the lodge in the Wild Section. Terms and conditions of the special use permit for this activity were negotiated with the parties that appealed the decision the Forest Service had made concerning this activity through an informal resolution process.

In 2001, Riverhawks et al. filed a lawsuit in U.S. District Court alleging the U.S. Forest Service had violated the Wild and Scenic Rivers Act, the National Forest Management Act, and the National Environmental Policy Act (NEPA) by issuing special use permits and allowing motorboat use in the Wild Section of the Rogue River. The District Court ruled the Forest Service violated the procedural requirements of NEPA when reissuing the special use permits for outfitters and guides on the Rogue River, while all other claims made by the Plaintiffs were denied.

Purpose and Need for Action

There are a variety of recreational activities that have become established on the lower Rogue and lower Illinois rivers and thousands of people participate in them each year. The commercial operations that provide these recreational activities on the Rogue River include guided fishing trips, scenic tours, half-day float trips, and the transport of guests to the lodges in the Wild Section. On the lower Illinois River, the commercial activity is guided fishing. These commercial operations are required to have special use permits for these activities by Forest Service policy (Forest Service Manual 2700).

The purpose of this proposal is to provide these recreational activities on the lower Rogue and lower Illinois Rivers through outfitter and guide services as outlined by Forest Service policy. There is a need to respond to those permittees that want to continue their commercial operations and reissue their existing special use permits that expire on December 31, 2004 and April 30, 2006. As a connected action, there is also a need to issue or reissue special use permits for the docks of the three commercial lodges in the Wild Section of the Rogue River. These docks are needed for the tour boats, livery service boats, and the boats that transport commercial lodge guests to Paradise Lodge to safely load and unload passengers and their belongings.

This proposal is in accordance with the Rogue National Wild and Scenic River Management Plan (1972) and the management decisions that have been made about limiting use since the Management Plan was issued. These decisions are described in the Supplementary Information section of this document. This proposal is also in accordance with the Illinois Wild and Scenic River Management Plan (1985). These plans were incorporated into the Siskiyou National Forest Land and Resource Management Plan (1989) in their entirety. The Rogue River Management Plan states, "One of the key reasons for including the Rogue River in the National Wild and Scenic Rivers System was to protect and enhance the recreational values which the river possesses. These values are realized in a great variety of activities. They range from an individual pitting only his knowledge and skill against the sometimes hostile forces of nature to recreation uses where the facilities and equipment are so sophisticated that the river can be enjoyed with no special knowledge and skill. Since boating, fishing and sightseeing are the main recreational uses on the river, top priority for recreation development will be given to improving the quality of those activities." The Siskiyou Land and Resource Management Plan states, "Increased emphasis has been placed on the Recreation program, the focus of which will be toward meeting the needs of the recreating public and toward working with four Southern Oregon Counties to assist them in developing their Economic development goals. These goals are based on the development of the Recreation/Tourism industry."

Proposed Action

The proposed action is to reissue 63 special use permits for outfitter and guide operations on the lower Rogue River from Lobster Creek to the pool below Blossom Bar Rapids and the lower Illinois River from the confluence with the Rogue River to the mouth of Nancy Creek with the same terms and conditions as the current permits.

This proposed action does not include and is not addressing the permit system for private recreational motorboat trips in the Wild Section, private recreational motorboat or float use below the wild Section, or motorboat trips for ingress/egress purposes to private property along the Rogue River. These issues will be addressed in the revision of the rogue Comprehensive Wild and Scenic River Management Plan in cooperation with the Bureau of Land Management.

The types of activities on the Rogue River that would be permitted include: Commercial tour boats offering scenic trips and transport of guests to lodges in the Wild Section; fishing guides using both float craft and motorboats; livery services transporting people and freight or offering scenic trips; whitewater motor boat training; half-day float trips from Foster Bar to Agness; and commercial transport of lodge guests from Foster Bar to Paradise Lodge. On the Illinois River, the type of permitted commercial activity is guided fishing. The following details the terms and conditions for each type of permit:

Commercial tour boats. There are three permits for two companies to operate tour boats providing scenic trips from Gold Beach. There are three types of trips and the permitted area is from Lobster Creek to either Snout Creek (Agness), Watson Creek (where the Wild Section begins), or to the pool below Blossom Bar Rapids (approximately 10 miles upriver in the Wild Section). The boat size is limited to 43 feet long and/or 14 feet wide for those boats going to Snout Creek and 31.5 feet long and/or 12 feet wide with a maximum capacity of 42 passengers for those boats going past Snout Creek. The following are the seasons of use and maximum number of trips allowed: (1) *Shoulder Seasons*—May 1 through June 15 and the day following Labor Day through October 31. The maximum number of trips per day is 16. The maximum number of trips upstream of Snout Creek (Agness) per day is 13. The maximum number of trips upstream of Watson Creek (Wild Section) per day is six; (2) *Main Season*—June 16 through Labor Day. The maximum number of trips per day is 28. The maximum number of trips upstream of Snout Creek (Agness) per day is 17. The maximum number of trips upstream of Watson Creek (Wild Section) per day is six; and (3) *Off Season*—November 1 through April 30. The maximum number of trips per day is four with a maximum of eight trips per day.

Fishing guides. There are a total of 59 guides permitted to operate guided fishing trips and other trips on some portion of lower Rogue River and the lower Illinois River. Of the 59, there are 46 guides authorized to conduct guided

fishing trips from Lobster Creek to Watson Creek. There is no limit to the number of days the permit can be used, but the permit is valid only for the permitee and the trips can be by either motorboats or float craft such as drift boats. There can be no employees operating under the permit. Of these 46 guides, nine guides can also operate on the lower Illinois River.

There are get guides currently operating the wild Section who originally authorized by the Oregon State Marine Board in 1976 or who bought a guide business that was authorized by the State. Their current permits autohrize use on the Rogue River from Lobster Creek to the pool below Blossom Bar Rapids with a motorboat or float craft. These guides are limited to the number of trips and user days (number of clients) they are permitted on an annual basis. These permittees can operate year-round with a maximum of 394 trips a year in the Wild Section, cumulatively. Six of the permittees can hire employees, but any trips the employees make are counted towards the total number of trips and user days the permittee is allowed. Two of the permittees operate a livery service (transporting people and freight), scenic trips (maximum 32 trips), whitewater boat training, and guided raft trips from Foster Bar to Agness (maximum 31 trips). Three of the permittees can operate on the lower Illinois River. All of these various trips count towards the total annual number of trips and user days that the permittee is authorized.

Nine fishing guides who originally operated under the jointly managed Bureau of Land Management and Forest Service permits are now operating under Forest Service permits as described in the Supplementary Information section. These guides can use both float craft and motorboats. Of these nine guides, four can guide fishing trips in the Wild Section year-around as described above. Three guides can operate in the Wild Section from November 15 to May 14 with a maximum of 57 trips a year, cumulative. Six guides can operate from Foster Bar to Watson Creek and Foster Bar downstream to Lobster Creek for a cumulative maximum of 197 trips a year and eight guides can operate from Foster Bar to Watson Creek and Foster Bar downstream to Quosatana Creek for a cumulative maximum of 285 trips a year.

Commercial transport of lodge guests. There is one permit to transport lodge guest from Foster Bar to Paradise Lodge which is located approximately 10 miles upstream of Foster Bar. A trip is defined as a round-trip from Foster Bar to the lodge and return. The maximum number of trips is 365 annually. Trips not used in the summer season can be carried over into the winter season, but trips not used in the winter season cannot be carried over into the summer season. The number of trips by season are: (1) *Summer Season*—May 1 to October 31. A maximum of two round trips per day, not to exceed 180 trips for the season, and not to exceed 15 total passengers (commercial and non-commercial combined) upstream in any one day, and not to exceed 15 total passengers (commercial and non-commercial) downstream in any one day; and (2) *Winter Season*—November 1 to April 30. No daily limit of trips, but not to exceed 185 trips for the season. There is no daily limit of passengers, but there is a limit of 18 total passengers and one operator on any one trip.

Preliminary Alternatives

In addition to the Proposed Action, the No Action alternative will be analyzed. With the No Action alternative, the special use permits would not be reissued. The development of any other alternatives will be completed following the public response to initial scoping.

Scoping Proceess

Scoping is an ongoing process throughout the planning process. A scoping letter will be mailed to those people and organizations on the Gold Beach Ranger District's mailing list that have indicated an interest in Rogue River management. A press release announcing the filing of this Notice of Intent will be sent to local newspapers and media. The public will be notified of any meetings regarding this proposal by mailings and press release sent to the local newspapers and media.

Comment Requested

This notice of intent initiates the scoping process under NEPA, which will guide the development of the draft EIS. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public comment by January 2004. The comment period for the draft EIS will be 45 days from the date EPA publishes the Notice of Availability in the **Federal Register**.

At the end of this period, comments submitted to the Forest Service, including names and addresses of those who responded, will be considered part of the public record for this proposal and, as such, will be available for public review. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and if the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.,* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments on the draft EIS will be analyzed, considered, and responded to

by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed in July 2004. The Responsible Official, John Borton, District Ranger, will review the analysis contained in the Environmental Impact Statement (EIS) to determine if the special use permits should be reissued and under what terms and conditions. The responsible official will consider comments, responses, environmental consequences discussed in the final EIS and applicable laws, regulations, and policies in making this decision and will document the decision and rationale in the Record of Decision. The decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: August 26, 2003.

John Borton,

District Ranger.

[FR Doc. 03–22491 Filed 9–3–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Funds Availability (NOFA) Inviting Applications for the Value-Added Agricultural Product Market Development Grant Program (VADG) (Independent Producers)

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS) announces the availability of $27.7 million in competitive grant funds for fiscal year 2003 to help independent agricultural producers enter into value-added activities. RBS hereby requests proposals from eligible independent producers, agricultural producer groups, farmer or rancher cooperatives, and majority-controlled producer-based business ventures interested in a competitively awarded grant to fund one of the following two activities: (1) Developing feasibility studies or business plans (including marketing plans or other planning activities) needed to establish a viable value-added marketing opportunity for an agricultural product; or (2) acquiring working capital to operate a value-added business venture or an alliance that will allow the producers to better compete in domestic and international markets. In order to provide program benefits to as many eligible applicants as possible, applications can only be for one or the other of these two activities, but not both. Value-added products are defined as follows: (1) A change in the physical state or form of the product (such as milling wheat into flour or making strawberries into jam); (2) the production of a product in a manner that enhances its value, as demonstrated through a business plan (such as organically produced products); (3) the physical segregation of an agricultural commodity or product in a manner that results in the enhancement of the value of that commodity or product (such as an identity preserved marketing system). As a result of the change in physical state or the manner in which the agricultural commodity or product is produced or segregated, the customer base for the commodity or product is expanded and a greater portion of revenue derived from the marketing, processing, or physical segregation is made available to the producer of the commodity or product. Value-added also includes using any agricultural product or commodity to produce renewable energy on a farm or ranch.

The maximum award per grant is $500,000. In order to maximize the distribution of program benefits, smaller grant requests under $500,000 will receive priority points. Priority is also being given to projects producing energy from biomass or demonstrating profitable use of innovative technologies.

DATES: Applications must be completed and submitted to the appropriate State USDA Rural Development office as soon as possible, but no later than 4 p.m. on October 20, 2003. Applications received after October 20, 2003, will not be considered. Late applications will not be accepted and will be returned to the applicant. Applicants must ensure that the service they use to deliver their applications can do so by the deadline. Due to recent security concerns, packages sent to the agency by mail have been delayed several days or even weeks.

ADDRESSES: Submit proposals and other required materials to your State USDA Rural Development Office. RBS is strongly encouraging the electronic submission of proposals. If proposals are electronically submitted, signed paper copies of the three required forms, SF–424 "Application for Federal Assistance," SF–424A "Budget Information—Non-Construction Programs," and SF–424B "Assurances—Non-Construction Programs," need to be mailed or faxed to the State office. A list of Rural Development State Offices, addresses, e-mail addresses, and telephone numbers follows.

Note: Telephone numbers listed are not toll free.

U.S. Department of Agriculture Rural Development State Offices

Alabama

Chris Harmon, USDA Rural Development, Sterling Center, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3415, *chris.harmon@al.usda.gov.*

Alaska

Dean Stewart, USDA Rural Development, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7722, *dstewart@rdmail.rural.usda.gov.*

Arizona

Gary Mack, USDA Rural Development, 3003 North Central Avenue, Suite 900, Phoenix, AZ 85012, (602) 280–8717, *gary.mack@az.usda.gov.*

Arkansas

Tim Smith, USDA Rural Development, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200, *tim.smith@ar.usda.gov.*

California

Karen Spatz, USDA Rural Development, 430 G Street, Agency 4169, Davis, CA 95616, (530) 792–5829, *karen.spatz@ca.usda.gov.*

Colorado

Leroy W. Cruz, USDA Rural Development, 655 Parfet Street, Lakewood, CO 80215, (720) 544–2926, *leroy.cruz@co.usda.gov.*

Delaware-Maryland

James E. Waters, USDA Rural Development, 4607 South DuPont Highway, Camden, DE 19934, (302) 697–4324, *jim.waters@de.usda.gov.*

Florida/Virgin Islands

Joe Mueller, USDA Rural Development, 4440 NW. 25th Place, Gainesville, FL 32606, (352) 338–3482, *joe.mueller@fl.usda.gov.*

Georgia

J. Craig Scroggs, USDA Rural Development, 333 Phillips Drive, McDonough, GA 30253, (678) 583–0866, *craig.scroggs@ga.usda.gov.*

Hawaii

Timothy O'Connell, USDA Rural Development, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8313, *tim.oconnell@hi.usda.gov.*

Idaho

Dale Lish, USDA Rural Development, 9173 West Barnes Drive, Suite A1,

Boise, ID 83709, (208) 785–5840, ext. 118, *dale.lish@id.usda.gov*.

Illinois

Cathy McNeal, USDA Rural Development, 2118 West Park Court, Suite a, Champaign, IL 61821, (217) 403–6210, *cathy.mcneal@il.usda.gov*.

Indiana

Jerry Hay, USDA Rural Development, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (812) 346–3411, ext. 4, *jerry.hay@in.usda.gov*.

Iowa

Jeff Jobe, USDA Rural Development, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–5192, *Jeff.jobe@ia.usda.gov*.

Kansas

Larry Carnahan, USDA Rural Development, 115 West Forth Street, Altamont, KS 67330, (620) 784–5431, *lcarnaha@rdasun2.rurdev.usda.gov*.

Kentucky

Jeff Jones, USDA Rural Development, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (859) 224–7300, *jeff.jones@ky.usda.gov*.

Louisiana

Judy Meche, USDA Rural Development, 3727 Government Street, Alexandria, LA 71302, (318) 473–7960, *judy.meche@la.usda.gov*.

Maine

Alan C. Daigle, USDA Rural Development, 967 Illinois Avenue, Suite 4, Bangor, ME 04402, (207) 990–9168, *alan.daigle@me.usda.gov*.

Massachusetts/Rhode Island/ Connecticut

Richard J. Burke, USDA Rural Development, 451 West Street, Suite 2, Amherst, MA 01002, (413) 253–4318, *rburke@rurdev.usda.gov*.

Michigan

Lee Bambusch, USDA Rural Development, 3001 Coolidge Road, Suite 200, East Lansing, MI 48820, (517) 324–5216, *lee.bambusch@mi.usda.gov*.

Minnesota

Robyn J. Holdorf, USDA Rural Development, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853, (651) 602–7812, *robyn.holdorf@mn.usda.gov*.

Mississippi

Charlie Joiner, USDA Rural Development, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269, (601) 965–5457, *charlie.joiner@ms.usda.gov*.

Missouri

Nathan Chitwood, USDA Rural Development, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–9320, *nathan.chitwood@mo.usda.gov*.

Montana

William W. Barr, USDA Rural Development, 900 Technology Blvd., Suite B, Bozeman, MT 59717, (406) 585–2545, *bill.barr@mt.usda.gov*.

Nebraska

Deb Yocum, USDA Rural Development, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508, (402) 223–3125, ext. 4, *debra.yocum@ne.usda.gov*.

Nevada

Dan Johnson, USDA Rural Development, 2002 Idaho Street, Elko, NV 89801, (775) 738–8468, ext. 28, *dan.johnson@nv.usda.gov*.

New Hampshire

Scott D. Johnson, USDA, Rural Development, City Center, 3rd Floor, 80 Main Street, Montpelier, VT 05602, (603) 223–6034, *scott.johnson@nh.usda.gov*.

New Jersey

Michael P. Kelsey, USDA Rural Development, 5th Floor North Tower, Suite 500, 8000 Midlantic Drive, Mount Laurel, NJ 08054, (856) 787–7751, *michael.kelsey@nj.usda.gov*.

New Mexico

Eric Vigil, USDA Rural Development, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4952, *eric.vigil@nm.usda.gov*.

New York

Robert Pestridge, USDA Rural Development, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6426, *robert.pestridge@ny.usda.gov*.

North Carolina

Bruce Pleaseant, USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000, *bruce.pleasant@nc.usda.gov*.

North Dakota

Dennis Rodin, USDA Rural Development, Federal Building, Room 211, 220 East Rosser Avenue, Bismarck, ND 58501, (701) 530–2065, *Dennis.rodin@nd.usda.gov*.

Ohio

Deborah E. Rausch, USDA Rural Development, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215, (614) 255–2425, *deborah.rausch@oh.usda.gov*.

Oklahoma

Sally Vielma, USDA Rural Development, 100 USDA, Suite 108, Stillwater, OK 74074, (405) 742–1000, *sally.vielma@ok.usda.gov*.

Oregon

Robert F. Haase, USDA Rural Development, 625 Salmon Avenue, Suite 5, Redmond, OR 97756, (541) 926–4358, ext. 124, *bob.haase@or.usda.gov*.

Pennsylvania

Linda C. Hager, USDA Rural Development, One Credit Union Place, Suite 330, Harrisburg, PA 17110, (717) 237–2287, *linda.hager@pa.usda.gov*.

Puerto Rico

Mr. Luis Garcia, USDA Rural Development State Office, Munoz Rivera, Number 654, IBM Plaza, Suite 601, San Juan, Puerto Rico 00918, (787) 766–5095, ext. 239, *luis.garcia@pr.usda.gov*.

South Carolina

Ms. Debbie Turberville, USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Suite 1007, Columbia, SC 29201, (843) 354–9613, *debbie.turberville@sc.usda.gov*.

South Dakota

Gary L. Korzan, USDA Rural Development, Federal Building, Room 210, 200 4th Street, SW., Huron, SD 57350, (605) 352–1142, *gary.korzan@sd.usda.gov*.

Tennessee

Dan Beasley, USDA Rural Development, 3322 West End Avenue, Suite 300, Nashville, TN 37203, (615) 783–1341, *dan.beasley@tn.usda.gov*.

Texas

Billy Curb, USDA Rural Development, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700, *billy.curb@tx.usda.gov*.

Utah

Richard Carrig, USDA Rural Development, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4328, *richard.carrig@ut.usda.gov*.

Vermont/New Hampshire

Michael R. Dolce, USDA Rural Development, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 775–7014 ext. 20, *michael.dolce@vt.usda.gov.*

Virginia

Laurette Tucker, USDA Rural Development, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1594, *laurette.tucker@va.usda.gov.*

Washington

John Brugger, USDA Rural Development, 1606 Perry Street, Suite E, Yakima, WA 98908, (509) 924–7350, ext. 114, *john.brugger@wa.usda.gov.*

West Virginia

Mr. John M. Comerci, USDA Rural Development, 481 Ragland Road, Beckley, WV 25801, (304) 252–8644, ext. 165, *john.comerci@wv.usda.gov.*

Wisconsin

Barbara Brewster, USDA Rural Development, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7610, *barbara.brewster@wi.usda.gov.*

Wyoming

Janice Stroud, USDA Rural Development, 100 East B Street, Room 1005, Casper, WY 82601, (307) 261–6318, *janice.stroud@wy.usda.gov.*

FOR FURTHER INFORMATION CONTACT: For further information contact your USDA State Rural Development Office. You may also obtain information from the RBS Web site at: *http://www.rurdev.usda.gov/rbs/coops/vadg.htm.*

SUPPLEMENTARY INFORMATION:

Background

This solicitation is issued pursuant to section 231 of the Agriculture Risk Protection Act of 2000 (Pub. L. 106–224) as amended by section 6401 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) authorizing the establishment of the Value-Added Agricultural Product Market Development grants. The Secretary of Agriculture has delegated the program's administration to USDA's Rural Business-Cooperative Service.

The primary objective of this grant program is to help eligible independent producers of agricultural commodities, agricultural producer groups, farmer and rancher cooperatives, and majority-owned producer-based business ventures develop business plans for viable marketing opportunities and develop strategies to create marketing opportunities. Eligible agricultural producer groups, farmer and rancher cooperatives, and majority-controlled producer-based business ventures must limit their proposals to emerging markets. These grants will facilitate greater participation in emerging markets and new markets for value-added products. Grants will only be awarded if projects or ventures are determined to be economically viable and sustainable.

This grant program has a matching funds requirement. Applicants must provide matching funds at least equal to the grant. Other Federal grants cannot be used as matching funds. Grant funds and matching funds must be spent proportionately during the timeframe stated in the grant application. Grant funds will be disbursed pursuant to applicable provisions of 7 CFR parts 3015 and 3019. Matching funds must be used to support the overall purpose of the VADG program.

Definitions

Agency—The Rural Business-Cooperative Service (RBS) or its successor.

Agricultural Producer Group—Any organization that represents independent producers such as a producer trade association or a state or national commodity group. Agricultural producer groups must propose ventures that are entering into emerging markets.

Agricultural Product—Plant and animal products and their by-products to include fish and seafood products and forestry products.

Emerging Markets—A new or developing market for the applicant. That is, a market the applicant has not traditionally supplied. The venture must be focused on this new or developing market.

Farmer or Rancher Cooperative—A duly recognized farmer or rancher cooperative in good standing under State law. Farmer or rancher owned cooperatives must propose ventures that are entering into emerging markets.

Independent Producer—A producer of agricultural commodities or products including those products from aquaculture, fish harvesting, and wood lot enterprises. This can be an individual producer; or a producer owned corporation, LLC, or LLP solely owned by producers. An independent producer can also be a steering committee composed of independent agricultural producers in the process of organizing an association to operate a value-added venture. The venture must be owned and controlled by the independent producers who are supplying agricultural product to the market. An independent producer cannot produce under contract or joint ownership with any organization other than their own.

Majority-Controlled Producer-Based Business Ventures—A corporation, LLC, LLP, or other type of business structure where producers have more than 50 percent of the ownership and control of the entity. No more than 10 percent of the grant funds will be awarded to these ventures. Majority-controlled producer-based business ventures must propose ventures that are entering into emerging markets.

Matching Funds—Cash or confirmed funding commitments. Matching funds cannot be from another Federal grant. Matching funds must be at least equal to the grant amount. In-kind contributions as defined at 7 CFR part 3015, subpart G can be used as matching funds. Examples of in-kind contributions include volunteer services furnished by professional and technical personnel, donated supplies and equipment, and donated office space.

National Office—The Rural Business-Cooperative Service (RBS) office at USDA headquarters in Washington, DC.

Planning—A defined program of economic activities to determine the viability of a potential value-added venture including feasibility studies, marketing plans, business plans, and legal evaluations.

State Office—USDA Rural Development offices located in most states.

Value-Added—(1) Any agricultural commodity or product that has undergone a change in the physical state or form of the product (such as milling wheat into flour, slaughtering livestock or poultry, or making strawberries into jam). (2) The production of an agricultural commodity or product in a manner that enhances its value, as demonstrated through a business plan (such as organically produced products). (3) The physical segregation of an agricultural commodity or product in a manner that results in the enhancement of the value of that commodity or product (such as an identity preserved marketing system). As a result of the change in physical state or the manner in which the agricultural commodity or product is produced or segregated, the customer base for the commodity or product is expanded and a greater portion of revenue derived from the marketing, processing, or physical segregation is made available to the producer of the commodity or product. Value-added also includes using any agricultural

product or commodity to produce renewable energy on a farm or ranch.

Working Capital—Funds that are used to operate the venture and pay the normal expenses associated with the operation of that venture. Funds cannot be used to purchase or build facilities nor purchase or install processing equipment.

Recipient and Product Eligibility Requirements

Potential recipients of the grant must be an independent producer, agricultural producer group, farmer or rancher cooperative, or majority-controlled producer-based business venture as defined in the "Definitions" section of this NOFA. If the applicant is an agricultural producer group, it must be providing assistance directly to a specifically identified group of independent producers. Grant funds cannot be used to support the organization's general operations. If the applicant is an unincorporated group (steering committee), they must form a legal entity before grant funds can be disbursed.

The project proposed must involve a value-added product as defined in the "Definitions" section of this NOFA.

Applications without sufficient information to determine their eligibility will not be considered.

Proposal Preparation

A proposal must contain the following:

1. *Form SF–424*; "Application for Federal Assistance."

2. *Form SF–424A*, "Budget Information—Non-Construction Programs."

3. *Form SF–424B*, "Assurances—Non-Construction Programs."

4. *Table of Contents*. For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required SF–424 forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

5. *Proposal Summary*. A summary of the Project Proposal, not to exceed one page, must include the following: title of the project, description of the project including goals and tasks to be accomplished, names of the individuals responsible for conducting and completing the tasks, and the expected timeframe for completing all tasks (which should normally not exceed one year.) The applicant must also clearly state whether the application is for a planning grant or a working capital grant. The application cannot be for both.

6. *Eligibility*. A detailed discussion, not to exceed two pages, describing how the applicant meets the definition of an independent producer, agricultural producer group, farmer or rancher cooperative, or majority-controlled producer-based business venture as outlined in the "Recipient Eligibility Requirements" section of this NOFA. If the applicant is an agricultural producer group, it must specifically identify the group of independent producers on whose behalf the work will be done. In addition, the applicant must describe all organizations other than the applicant that are involved in the project. Applicants must state the percentage of the venture that will be owned and controlled by independent producers. No more than 10 percent of program funds can go to ventures that are majority-controlled producer-based business ventures as defined in the "Definitions" section of this NOFA. The applicant must also discuss the value-added product to be produced including the category of value-added as defined in the "Definitions" section of this NOFA.

7. *Proposal Narrative*. The narrative portion of the project proposal, not to exceed 35 pages (Times New Roman, 12 pt.) must include the following:

i. *Project Title*. The title of the proposed project must be brief, not to exceed 75 characters, yet represent the major thrust of the project.

ii. *Information sheet*. A separate one page information sheet which lists each of the evaluation criteria listed in this NOFA under the "Evaluation Criteria" section followed by the page numbers of all relevant material and documentation contained in the proposal which addresses or supports that criteria.

iii. *Goals of the Project*. A clear statement of the ultimate goal of the project must be presented. It must describe the value-added venture to be developed.

iv. *Evaluation Criteria*. Each of the evaluation criteria listed in the "Evaluation Criteria" section of this NOFA must be addressed specifically and individually by category. These criteria should be in narrative form with any specific supporting documentation. Financial statements used to support any evaluation criteria will not count as part of the 35 page limit.

8. *Verification of Matching Funds*. You must furnish a copy of a bank statement if matching funds are in cash or a copy of the confirmed funding commitment from the funding source. If an in-kind match is included, so state and provide verification of all commitments and how those commitments are valued. Matching funds (in-kind and cash) must be included on the SF–424 and SF–424A application forms. Applicants must certify that matching funds will be available at the same time grant funds are anticipated to be spent and that matching funds will be spent at the same rate as grant funds throughout the duration of the project. Other Federal grant funds cannot be used as matching funds.

Grant Amounts

The amount of funds available for VADG grants in FY 2003 is $27.7 million. The actual number of grants funded will depend on the quality of proposals received and the amount of funding requested. The maximum amount of Federal funds awarded for any one proposal will be $500,000. However, priority points will be given to grant requests of less than the maximum.

Number of Awards

No one applicant can receive more than one grant for any one purpose. An applicant cannot receive a grant for planning activities and a grant for working capital.

Eligible Grant and Matching Funds Uses

Grant funds may be used to pay up to 50 percent of the costs for carrying out relevant projects. Grant funds and the applicant's matching funds must be spent at approximately the same rate. The applicant's matching contribution in cash or in-kind must be in accordance with applicable provisions of 7 CFR parts 3015 and 3019.

For planning projects, grant and the recipient's matching funds may be used for, but are not limited to, hiring personnel including lawyers, accountants and other qualified consultants associated with the following purposes:

1. Conducting a feasibility analysis of a proposed value-added venture to help determine the potential success of the venture;

2. Developing a business operations plan that provides comprehensive details on the management, planning, and other operational aspects of a proposed venture;

3. Developing a business marketing plan for the proposed value-added product or products including the identification of a market window, the identification of potential buyers, a description of the distribution system, and possible promotional campaigns; or

4. Obtaining legal advice and assistance related to the proposed venture.

For working capital projects, grant and recipient's matching funds may be used to establish a working capital account to fund operations. Funds from this account can be used for, but are not limited to:

1. Hiring an attorney to provide legal advice and to draft articles of incorporation, bylaws, and other legal documents related to the proposed venture;

2. Hiring a Certified Public Accountant or other qualified individuals to design an accounting system for the proposed venture; or

3. Paying salaries, utilities, and other operating costs; financing inventories; purchasing office equipment, computers, and supplies; and financing other related activities necessary to establish alliances or business ventures that allow producers to better compete in domestic or international markets for value-added products.

Ineligible Grant Uses

Grant and matching funds cannot be used to:

1. Plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility);

2. Purchase, rent, or install fixed equipment including mobile and other processing equipment;

3. Pay for the preparation of the grant application;

4. Pay expenses not directly related to the funded venture;

5. Fund political or lobbying activities;

6. Pay costs incurred prior to receiving this grant;

7. Fund any activities prohibited by 7 CFR parts 3015 and 3019; and

8. Fund architectural or engineering design work for a specific physical facility.

9. Grant and Matching funds cannot be used to pay any expenses related to the production of any commodity or product to which value will be added.

Methods for Evaluating and Ranking Applications

State office personnel will initially review applications for eligibility, completeness, and responsiveness to this NOFA. Incomplete or non-responsive applications will be returned to the applicant and not evaluated further. If the submission deadline has not expired and time permits, ineligible applications will be returned to the applicants for possible revision. The State office will then conduct one review of all complete and eligible applications based on the selection criteria specified in the "Evaluation Criteria" section of this NOFA. The National office will then obtain two additional independent reviews. Points will be assigned based on the evaluation criteria. All scored applications will then be forwarded to the National Office, where the scoring will be reviewed and applications ranked. Applications will be listed in initial rank order and presented, along with funding level recommendations, to the Administrator of RBS, who will award the grants.

Evaluation Criteria

Evaluations of proposals will be based on the following criteria. Failure to address any one of the following criteria will disqualify the application. All proposals must be in compliance with this NOFA and applicable statutes.

Criteria for applications for Planning grants are:

1. *Nature of the Proposed Venture (Maximum 5 points).* Describe in detail the proposed venture. This must include the value-added activity being proposed, the technology to be used and its availability, and examples of similar ventures. Discuss how the number of end-users for the product will be increased and how more revenue derived from the venture will be available to the producer-owners of the venture. Points will be awarded based on the greatest expansion of markets and increased returns to producers.

2. *Qualifications of Those Doing the Studies (Maximum 5 points).* Describe the education and experience in performing the requested types of studies, and the success rate for those individuals. Points will be awarded based on demonstrated skills and a successful track record.

3. *Project Leadership (Maximum 5 points).* Describe the individuals who are the members of the steering committee or the individual who is leading this effort; provide information on education, business experience, financial experience, knowledge of the venture to be undertaken, and other relevant information. Points will be based on demonstrated relevant leadership skills.

4. *Commitment (Maximum 5 points).* Describe the level of producer commitment including the number of independent producers currently involved, the number of potential producers who could become involved, cash contributions and level of production from the producers. Describe the potential commitment of end-users of the value-added product to be produced including possible markets identified and potential buyers contacted. Describe the commitment from local and state development organizations, commodity associations, and local political institutions including technical assistance support and financial support. Higher producer commitment, higher end-user commitment, and higher local support will result in more points.

5. *Work Plan/Budget (Maximum 5 points).* Discuss the specific tasks to be completed using grant and matching funds. Each task must be clearly defined and described in detail. The work plan must present the order the tasks will be undertaken and the estimated time for completing each task. If a group of producers want a feasibility study conducted and a business plan drafted, the details of these two tasks must be presented and discussed. The budget must present a detailed breakdown of estimated costs associated with the project and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget. It is important that reviewers understand what is being proposed. Logical, realistic, and economically efficient plans and budgets will result in higher scores.

6. *Amount Requested.* One half (½) point will be awarded for grant requests between $450,000 and $350,001, one (1) point will be awarded for grant requests between $350,000 and $250,001, one and one half (1½) points will be awarded to grant requests between $250,000 and $150,001, two (2) points will be awarded for grant requests of $150,000 or less.

7. *Project cost per producer that are owners (Maximum 5 points).* Calculated by dividing the Federal requested funds by the total number of producers that are owners of the venture. Points will be based on the largest number of producers that are owners benefited for the least cost.

8. For those applications proposing ventures that focus on the Presidential initiative of biomass production, five percent of the total score of the above seven criteria will be added to calculate the final score. For example, if an application is proposing to do a bio-energy project and scores a total of 30 points on criteria one through seven, 1.5 additional points (30 x .05) will be added making the final score 31.5.

Administrator priority points—Up to five (5) additional points may be awarded by the Administrator of RBS to recognize innovative technologies, insure geographic distribution of grants, or encourage value-added projects in under-served areas.

Criteria for applications for Working Capital are:

1. *Business Viability (Maximum 5 points).* Describe in detail the technical and economic feasibility of the venture. This includes the organizational structure and operational aspects of the venture. Discuss how the venture will operate efficiently and be sustainable. More points will be awarded to those proposals demonstrating the venture will be efficient and sustainable.

2. *Customer Base/Increased Returns (Maximum 5 points).* Describe in detail how the customer base for the product being produced will expand because of the value-added venture. Provide documented estimates of this expansion. Describe in detail how a greater portion of the revenue derived from the venture will be returned to the producers that are owners of the venture. Provide 3 years of pro forma financial statements, including an explanation of all assumptions such as input prices, finished product prices, and other economic factors used to generate the financial statements. The financial statements must include cash flow statements, income statements, and balance sheets. Income statements and cash flow statements must be monthly for the first year, then annual for the next two years. The balance sheet should be annual for all three years. The financial statements will not count as part of the 35 page limit for the narrative section of the proposal. More points will be awarded to those proposals that demonstrate the greatest expansion of the customer base and increased returns to producers.

3. *Commitment (Maximum 5 points).* Describe in detail producer commitment to the venture including the number of independent agricultural producers who will participate in the venture and their total level of production; financial resources invested in the venture; and any contracts used between the producer that are owners and the venture. Discuss the amount of funds raised from the independent producer that are owners and the use of those funds. Also describe who will purchase the output of the venture; the amount of output to be purchased; markets that have been identified and any completed marketing studies; and any letters of intent or contracts from the potential end-users. Describe the commitment from local and state development organizations, commodity associations, and local political institutions including technical assistance support and financial support. Do not submit specific contracts, letters of intent, or other supporting documents at this time. However, be sure to cite their existence when addressing this criterion. Points will be awarded based on the greatest level of documented commitment.

4. *Management Team/Work Force (Maximum 5 points).* Describe in detail the qualifications of the individuals who will manage and operate the venture. Discuss the education and experience of the management team, especially their experience in managing similar ventures. Describe in detail the availability and quality of the labor force needed to operate the value-added venture. Points will be awarded based on the greatest demonstrated level of relevant skills and experience.

5. *Work Plan/Budget (Maximum 5 points).* Discuss the specific tasks to be completed using grant and matching funds. Each task must be clearly defined and described in detail. The work plan must present the order the tasks will be undertaken and the estimated time for completing each task. The budget must present a detailed breakdown of estimated costs associated with the project and allocate these costs to each of the tasks to be undertaken. Matching funds as well as grant funds must be accounted for in the budget. It is important that reviewers understand what is being proposed. Logical, realistic, and economically efficient plans and budgets will result in higher scores.

6. *Amount Requested.* One half (½) point will be awarded for grant requests between $450,000 and $350,001, one (1) point will be awarded for grant requests between $350,000 and $250,001, one and one half (1½) points will be awarded to grant requests between $250,000 and $150,001, two (2) points will be awarded for grant requests of $150,000 or less.

7. *Project cost per producer that are owners (Maximum 5 points).* Calculated by dividing the Federal requested funds by the total number of independent producers that are owners of the venture. Points will be based on the largest number of producers that are owners benefited for the least cost.

8. For those applications proposing ventures that focus on the Presidential initiative of biomass production, five percent of the total score of the above seven criteria will be added to calculate the final score. For example, if an application is proposing to do a bio-energy project and scores a total of 30 points on criteria one through seven, 1.5 additional points (30 x .05) will added making the final score 31.5.

Administrator priority points—Up to five (5) points may be awarded by the Administrator of RBS to recognize innovative technologies, to insure geographic distribution of grants, or to encourage value-added projects in under-served areas.

Copies of the score sheets will be posted on the VADG program's Web site.

What and Where To Submit

The Agency is strongly encouraging the electronic submission of proposals to the appropriate USDA Rural Development State Office. Electronic submissions must be in Microsoft Word, WordPerfect, Rich Text Format (RTF), or Portable Document Format (PDF). If proposals are electronically submitted, signed paper copies of the three required forms, SF–424 "Application for Federal Assistance," SF–424A "Budget Information—Non-Construction Programs," and SF–424B "Assurances—Non-Construction Programs," need to be mailed to the state office. For strictly a paper submission, an original and two copies of the proposal, with all required forms, must be submitted in one package to the appropriate USDA Rural Development State Office. Do not submit any feasibility studies, marketing plans, or business plans at this time. Please refer to the list above for the address and e-mail of your State Office. Applications sent by facsimile will not be accepted.

When To Submit

The deadline for receipt of all applications is [Insert 45 days after publication in the **Federal Register**]. The Agency will not consider any application received after the deadline.

Grantee Requirements

Grantees will be required to do the following:

1. Sign a Value-Added Agricultural Product Market Development Grant Agreement similar to the one published at the end of this NOFA.

2. Sign required Federal grant-making forms including Form AD–1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions;" Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions;" Form AD–1949, "Certification Regarding a Drug-Free Workplace Requirements (Grants);" and Form RD 400–4, "Assurance Agreement (Civil Rights)."

3. If the grant and matching funds are to be used as working capital, submit a feasibility study and business plan demonstrating the new venture is feasible and likely to be economically sustainable. These documents are to be

submitted to the appropriate USDA Rural Development State Office. The plans must include 3 years of pro forma financial statements, including an explanation of assumptions used to generate the financial statements. The financial statements must include cash flow statements, income statements, and balance sheets. Income statements and cash flow statements must be monthly for the first year, then annual for the next two years. The balance sheet should be annual for all three years. These studies are not to be submitted with the application. No funds will be released until these documents have been received and approved.

4. If requested by the USDA Rural Development State Office, submit copies of any contracts, letters of intent, or other documents cited in addressing any of the various "evaluation criteria". If such a request is made, no funds will be released until those documents have been received and approved.

5. Use Standard Form 270, "Request for Advance or Reimbursement" to request advances and reimbursements. Requests are to be submitted on a monthly basis.

6. Submit a Standard Form 269, "Financial Status Report" and list expenditures according to agreed upon budget categories on a semi-annual basis. Reports are due by April 30 and October 30 after the grant is awarded.

7. Submit semi-annual performance reports which compare accomplishments to the objectives; if established objectives are not met, discuss problems, delays, or other problems that may affect completion of the project; establish objectives for the next reporting period; and discuss compliance with any special conditions on the use of awarded funds.

8. Upon completion of each task outlined in the proposal, grant recipients will deliver the results of the study or activity to the appropriate state office, accompanied by all applicable supporting data. These include, but are not limited to, feasibility studies, marketing plans, business plans, articles of incorporation and bylaws, and an accounting of how working capital funds were spent. All items delivered to the state offices will be held in confidence to the extent permitted by law.

9. Maintain a financial management system that is acceptable to the Agency.

10. Collect and maintain data on race, sex, and national origin of Grantee's membership/ownership.

11. Submit a final project performance report.

Other Federal Statutes and Regulations That Apply

Several other Federal statutes and regulations apply to proposals considered for review and to grants awarded. These include but are not limited to:

7 CFR part 15, subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964;

7 CFR part 3015—Uniform Federal Assistance Regulations;

7 CFR part 3017—Government wide Debarment and Suspension (Nonprocurement) and Government wide Requirements for Drug-Free Workplace (Grants);

7 CFR part 3018—New Restrictions on Lobbying;

7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; and

7 CFR part 3052—Audits of States, Local Governments, and Non-Profit Organizations.

Paperwork Reduction Act

The reporting requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under Control Number 0570–0039.

Dated: August 28, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

United States Department of Agriculture
Rural Business-Cooperative Service
Value-Added Agricultural Product Market Development Grant Agreement (VADG)

This Grant Agreement (Agreement) dated _____, between _____ (Grantee), and the United States of America, acting through the Rural Business-Cooperative Service of the Department of Agriculture (Grantor), for $_____ in grant funds under the VADG program, delineates the agreement of the parties.

NOW, THEREFORE, in consideration of the grant;

The parties agree that:

1. All the terms and provisions of the VADG NOFA and application submitted by the Grantee for this VADG grant, including any attachments or amendments, are incorporated and included as part of this Agreement. Any changes to these documents or this agreement must be approved in writing by the Grantor.

2. As a condition of the Agreement, the Grantee certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR 3015.205(b), which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein. The Grantee will comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Executive Order 12250.

3. The provisions of 7 CFR part 3015, "Uniform Federal Assistance Regulations" and part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," as applicable are incorporated herein and made a part hereof by reference.

FURTHER, the Grantee agrees that it will:

1. Not use grant funds or matching funds to plan, repair, rehabilitate, acquire, or construct a building or facility (including a processing facility); or to purchase, rent, or install fixed equipment.

2. Use Grant Funds and matching funds only for the purposes and activities specified in the proposal approved by the Agency including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance of obligation by the Grantor.

3. Submit a feasibility study, business operations plans, and other studies and plans required by the Grantor if any part of the grant will be used to establish a working capital account.

4. Deliver the results of a study or activity to the Grantor upon completion of each task outlined in the proposal. These include, but are not limited to, feasibility studies, marketing plans, business operations plans, articles of incorporation and bylaws, and accounting of how working capital funds were spent. All items delivered to the Grantor will be held in confidence to the extent provided by law.

5. Request any cash advances in the minimum amount needed and timed to the actual, immediate cash requirements for carrying out the grant purpose. Standard Form 270, "Request for Advance or Reimbursement," will be used for this purpose.

6. Submit a Standard Form 269, "Financial Status Report" and list expenditures according to agreed upon budget categories on a semi-annual basis. Reports are due by April 30 and October 30 after the grant is awarded.

7. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a semi-annual basis (due April 30 and October 30). The financial status report must show how grant funds and matching funds have been used to date and project the funds needed and their purposes for the next quarter. A final report may serve as the last semi-annual report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include the following:

a. A comparison of actual accomplishments to the objectives for that period.

b. Reasons why established objectives were not met, if applicable.

c. Reasons for any problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation.

d. Objectives and timetables established for the next reporting period.

e. The final report will also address the following:

(i) What have been the most challenging or unexpected aspects of this program?

(ii) What advice you would give to other organizations planning a similar program. These should include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(iii) If an innovative approach was used successfully, the grantee should describe their program in detail so that other organizations might consider replication in their areas.

8. Collect and maintain data on race, sex, and national origin of Grantee's membership/ownership.

9. Provide Financial Management Systems which will include:

a. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

b. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes.

c. Accounting records supported by source documentation.

d. Grantee tracking of fund usage and records that show matching funds and grant funds are used in equal proportions. The grantee will provide verifiable documentation regarding matching fund usage, *i.e.*, bank statements or copies of funding obligations from the matching source.

10. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least 3 years after grant closing, except that the records shall be retained beyond the 3-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts.

11. Not encumber, transfer or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor.

12. Not duplicate other program purposes for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees to make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds. The funds will be reimbursed or advanced based on submission of Standard Form 270.

IN WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be executed by—

Attest

By _____
(Grantee)
(Title) _____
United States of America
Rural Business-Cooperative Service
By _____
(Grantor) (Name) (Title)

[FR Doc. 03–22506 Filed 9–3–03; 8:45 am]

BILLING CODE 3410–XY–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: September 9, 2003: 1 p.m.–5 p.m.

PLACE: Broadcasting Board of Governors, Room 3321, 330 Independence Avenue, SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. If necessary, the Board will convene the following day to finish any other business. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action (5 U.S.C. 552b.(c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau, (5 U.S.C. 552b.(c)(2) and (6)).

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact either Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: September 2, 2003.

Carol Booker,

Legal Counsel.

[FR Doc. 03–22627 Filed 9–2–03; 8:43 am]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Industry and Security.

Title: BIS Program Evaluation.

Agency Form Number: N/A.

OMB Approval Number: 0694–0125.

Type of Request: Renewal of an existing collection.

Burden: 650 hours.

Average Time Per Response: 10 minutes per response.

Number of Respondents: 3,900 respondents.

Needs and Uses: This survey capability is needed by BIS seminar instructors for seminar programs conducted throughout the year. Seminar participants will be asked to evaluate seminar content and to provide input for future programs. Their responses will provide useful and practical information that BIS can use to determine whether or not it is providing a quality program and gives BIS information useful to making recommended improvements.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, DOC Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20230.

Dated: August 28, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–22522 Filed 9–3–03; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: 2004 Census Test, Group Quarters Validation Test.

Form Number(s): DB–351 (GQV).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 207 hours.

Number of Respondents: 825.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget to conduct the 2004 Census Test Group Quarters Validation (GQV) Operation. The Census Bureau must provide everyone in the United States the opportunity to be counted, including persons who do not live in conventional housing units. As part of its research and development work for the 2010 census, the Census Bureau has scheduled a census test in 2004, which includes a new operation, GQV. The goal of this research and development work is to develop methods to improve the enumeration of the group quarters population in the next decennial census. In order to accomplish this goal, we are developing new procedures to verify and update the existing Census 2000 GQ inventory. In addition, GQV will attempt to properly classify other places with housing units that may be difficult to classify or that require special procedures such as hotels/motels and assisted living facilities.

GQV, in conjunction with the 2004 Census Test Address Canvassing operation, and the Group Quarters Validation Followup (GQVF), is planned to address the following research question:

Can we operationalize appropriate census operations to ultimately distinguish housing units from GQs, assign the correct GQ classifications, collect information about the special place associated with each GQ, improve the assignment of GQs to the correct geography, and reduce duplication between GQs and housing units?

Properly identifying and classifying GQs and other non-traditional living quarters by using improved definitions and methods for distinguishing between GQs and housing units in census operations should improve the data quality of Census 2010 by reducing duplication and improving coverage.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., sections 141 & 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202)482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: August 28, 2003.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–22523 Filed 9–3–03; 8:45 am]

BILLING CODE 3510–07–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Submission for OMB Emergency Review

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, (PRA 95) (44 U.S.C. Chapter 35). The Corporation has requested OMB to review and approve its emergency request by September 9, 2003, for a period of six months. A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Corporation for National and Community Service, Office of Research and Policy Development, Ms. Theresa Hill, (202) 606–5000, Ext. 261, or by e-mail at *THill@cns.gov*.

On August 18, 2003, the Corporation printed a **Federal Register** Notice (*see* 68 FR 49453) in which it requested public comments for a new information collection activity entitled "Next Generation Grant Application Instructions." This Notice provided for a 60-day public comment period to end on October 17, 2003. However, it is essential to the mission of the Corporation to begin the review, selection, and award process sooner than expected in order to award these grants by the beginning of next calendar year. Since the Corporation expects to provide more technical assistance to applicants applying for these funds (than for other competitions) there is a need to begin the process early. Thus, the Corporation hereby withdraws the August 18, 2003, 60-day public comment Notice, and requests that public comments be sent to the Office of Information and Regulatory Affairs, Attn: Ms. Fumie Yokota, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395–3147 no later than September 8, 2003.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the Corporation's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Type of Review: Emergency request.

Agency: Corporation for National and Community Service.

Title: Next Generation Grant Concept Paper and Application Instructions.

OMB Number: None.

Agency Number: None.

Affected Public: Eligible applicants to the Corporation for funding.

Total Respondents: 40.

Frequency: Once per year.

Average Time Per Response: Ten (10) hours.

Estimated Total Burden Hours: 400 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: The purpose of this grant competition is to foster the next generation of national service

organizations by providing seed money to help new and start-up organizations, and established organizations proposing new projects or programs, plan and implement new service programs that have the potential of becoming national in scope. For the reasons stated above, it is essential that the grant process begin this month. Therefore, the Corporation has requested OMB's emergency review and approval by September 9, 2003.

Dated: August 28, 2003.

Amy R. Mack,

Chief of Staff, Office of Chief Executive Officer.

[FR Doc. 03–22520 Filed 9–3–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0114]

Federal Acquisition Regulation; Submission for OMB Review; Right of First Refusal of Employment

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0114).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning right of first refusal of employment. A request for public comments was published in the **Federal Register** at 68 FR 41566 on July 14, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 6, 2003.

ADDRESSES: Submit comments including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), Room 4035 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

SUPPLEMENTARY INFORMATION:

A. Purpose

Right of First Refusal of Employment is a regulation which establishes policy regarding adversely affected or separated Government employees resulting from the conversion from in-house performance to performance by contract. The policy will enable these employees to have an opportunity to work for the contractor who is awarded the contract.

The information gathered will be used by the Government to gain knowledge of which employees, adversely affected or separated as a result of the contract award, have gained employment with the contractor within 90 days after contract performance begins.

B. Annual Reporting Burden

Number of Respondents: 200.

Responses per Respondent: 1.

Total Responses: 200.

Average Burden Hours Per Response: 3.

Total Burden Hours: 600.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0114, Right of First Refusal of Employment, in all correspondence.

Dated: August 28, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–22482 Filed 9–3–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0048]

Federal Acquisition Regulation; Information Collection; Authorized Negotiators

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0048).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning authorized negotiators. The clearance currently expires on October 31, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 3, 2003.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Streets, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Julia Wise, Acquisition Policy Division, GSA (202) 208–1168.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms offering supplies or services to the Government under negotiated

solicitations must provide the names, titles, and telephone numbers of authorized negotiators to assure that discussions are held with authorized individuals. The information collected is referred to before contract negotiations and it becomes part of the official contract file.

B. Annual Reporting Burden

Respondents: *65,660.*
Responses Per Respondent: *8.*
Total Responses: *525,280.*
Hours Per Response: *.017.*
Total Burden Hours: *8,930.*

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0048, Authorized Negotiators, in all correspondence.

Dated: August 29, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–22549 Filed 9–3–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Preparation of an Environmental Impact Statement (EIS) for the Renewal of the Special Use Permit for Military Activities on the De Soto National Forest and the Implementation of the Master Plan at Camp Shelby, Mississippi

AGENCY: Mississippi National Guard (MSNG), National Guard Bureau (NGB), Department of the Army (DA), DoD; National Forests in Mississippi, U.S. Forest Service, U.S. Department of Agriculture.

ACTION: Notice of intent.

SUMMARY: NGB as lead agency, along with the U.S. Forest Service as a cooperating agency, will prepare an EIS for the renewal of the Special Use Permit (SUP) for Military Use of National Forest Lands at Camp Shelby, Mississippi. In addition, the EIS will address the implementation of the Master Plan for Camp Shelby.

ADDRESSES: Written comments may be forwarded to the Mississippi Army National Guard Environmental Office (MSARNG–ENV), ATTN: Brian Neely, Natural and Cultural Resources Manager, P.O. Box 5027, Jackson, MS 39296–5027.

FOR FURTHER INFORMATION CONTACT: Brian Neely, Natural and Cultural Resources Manager, at (601) 313–6128; or Colonel Robert A. Lee, Environmental Program Manager at (601) 313–6228.

SUPPLEMENTARY INFORMATION: The MSNG has historically utilized public lands for military activities under a special use permit administered by the U.S. Forest Service. The current permit is subject to renewal in December 2005. The SUP establishes the levels and types of military activities that may occur on National Forest lands. EISs completed in 1991, 1994, and 1998 evaluated current military activities at Camp Shelby. The proposed EIS will evaluate extending the SUP from 10 to 20 years and will now include an Operations and Maintenance plan with alternatives covering military activities proposed by the proponents (DA and NGB) and update previous analyses as necessary. The EIS will disclose and evaluate the environmental impacts associated with military use of National Forest lands. The U.S. Forest Service and the NGB will utilize the EIS in making decisions concerning military use of National Forest, DoD, and state lands at Camp Shelby. The U.S. Forest Service will make its decision concerning the renewal of the SUP based upon the findings of the EIS.

Significant Issues: Camp Shelby contains approximately 134,000 acres of land some of which serves as habitat for protected flora and fauna. This includes one Federally listed endangered plant species (Louisiana Quillwort), one Federally listed threatened species (Gopher Tortoise) and two Federal candidate species (Camp Shelby Burrowing Crawfish and the Black Pine Snake). Camp Shelby also includes two historic properties listed on the National Register of Historic Places, two prehistoric sites eligible for listing on the National Register of Historic Places and an additional 32 sites have been recommended for protection until phase II testing can assess the significance of these sites for inclusion on the National Register of Historic Places. Camp Shelby also contains over six historic cemeteries that are fenced and protected from any disturbance. These natural and cultural resource issues will be considered in all proposed projects that are identified in the EIS.

Alternatives: Two alternatives for military use of Camp Shelby have been identified for analysis in the EIS. The alternatives are: (1) No action, whereby military activities would be allowed to continue as presently permitted to include construction and maintenance of facilities evaluated and approved in previous environmental documents, and (2) mission requirements, whereby current activities and additional use to support mission requirements on State of Mississippi, DoD, and National Forest lands would be allowed. Future mission requirements include: combined arms area, military operations in military terrain facility, urban assault course, waste water treatment plant with associated pipeline, simulation and exercise center and Army transformation. Other alternatives may be assessed as more specific actions are developed, public concerns are raised, and issues identified.

Public scoping meetings will be held at two locations: one in Hattiesburg and one on the Mississippi Gulf Coast area. Dates, times and exact locations for these meetings will be announced through letters, public notices, display advertisements, and legal advertisements and will be released to newspapers of general circulation a minimum of 15 days prior to the meetings.

Dated: August 27, 2003.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 03–22475 Filed 9–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare a Legislative Environmental Impact Statement (LEIS) for the Withdrawal of Lands at the Limestone Hills Training Area (LHTA), Near Townsend, MT

AGENCY: Department of the Army, DoD.

ACTION: Notice of intent.

SUMMARY: The Department of the Army announces its intent to prepare an LEIS pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by Council on Environmental Quality regulations (40 CFR 1500–1508). The LEIS will analyze both the proposed withdrawal of lands supporting training exercises for the Montana Army National Guard (MTARNG) and the associated Bureau of Land Management (BLM) Headwaters Resource Management Plan Amendment. The BLM is participating as an active cooperation agency in the preparation of the LEIS.

ADDRESSES: Written comments or questions should be forwarded by mail to Ms. Sundi West, Montana Army National Guard Fort Harrison, P.O. Box

4789, Helena, MT 59604–4789; via telephone at (406) 324–3088, or via email at *Sundi.West@mt.ngb.army.mil.*

FOR FURTHER INFORMATION CONTACT: Ms. Susie Williams, U.S. Bureau of Land Management, 106 North Parkmont, Butte, MT 59701, via phone at (406) 533–7638, or via email at *Elizabeth_Williams@blm.gov.*

SUPPLEMENTARY INFORMATION: The objective of the LEIS is to provide the results of comprehensive analysis to the Secretary of Interior and the Department of the Army to develop findings and recommendations to Congress regarding the proposed land withdrawal, and to serve as a public information source. The study area for the environmental analysis will be resource-dependent and is likely to include all of Lewis and Clark County and Broadwater County for socio-economic resources, all MTARNG facilities for military mission, and the LHTA for biological and mineral resources.

The LEIS will analyze potential environmental effects of the proposed action and alternatives including a no action alternative. Under the no action alternative, the current right-of-way grant from the BLM for use of the LHTA by the MTARNG would not be renewed in 2014 for continued military purposes. Other alternatives may consist of alternatives-shared management roles of the LHTA for the MTARNG and the BLM, alternative land use options, and alternative locations. The alternatives will be developed during preparation of the Draft LEIS as a result of public input.

Significant Issues: The LHTA is a 23,100-acre parcel of land with private and state-owned in-holdings totaling approximately 2,640 acres. BLM manages 20,460 acres of the total acreage and allows the MTARNG to conduct military training on its property through a right-of-way agreement that is set to expire in 2014. The public land is also used for gazing, mining, recreation, transportation utility right-of-ways, and wildlife management. A limestone mine is currently operating within the LHTA and every federally-managed acre of the LHTA falls within one of seven grazing allotments. In addition, the MTARNG is currently engaged in clearing unexploded ordnance from a range on the LHTA that is no longer in use.

Significant issues the LEIS will analyze include the following and as well as any additional issues raised during scoping: (1) Continued ability of Graymont Western's Indian Creek Limestone Mine to extract and process ore within the LHTA; (2) allocation and management of grazing allotments; (3) public access to the LHTA; (4) noise and dust generated during training exercises and vehicular traffic; (5) impacts to Broadwater County due to possible termination of payments in lieu of taxes by the BLM if the withdrawal is granted; (6) potential impacts to wildlife in the Elkhorn Management Area; (7) consistency of land management policy and implementation; (8) potential impacts to range management and cleanup activities; (9) owner access to, and use of, inholdings; and (10) impacts to local economies and MTARNG training facilities under the no action alternative.

The Department of the Army, through the MTARNG, is initiating a public scoping process for the purpose of determining public concerns and issues to be analyzed and addressed for this action. A public scoping meeting will be held at the Broadwater School Community Library, 201 North Spruce, Townsend, Montana, and at the Chamber of Commerce of Helena; 225 Cruse Avenue, Helena, Montana. A Public open house will occur at each site from 3:00 p.m. to 5:30 p.m. prior to each scoping meeting. The dates and times of these meetings will be announced in general public media.

A brief presentation will precede a request for public information and comments. MTARNG and BLM representatives will be available at these meetings to receive information and comments from agencies and the public regarding issues of concern. It is important that federal, state and local agencies, and interested individuals take this opportunity to provide information or identify environmental concerns that should be addressed during the analysis and preparation of the LEIS. Forms for written comments will also be available to submit written comments at these meetings.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public scoping meetings. To be most helpful, scoping comments should clearly describe specific information, data, issues or topics which the commenter believes the LEIS should address. To be considered in the LEIS, comments and suggestions should be received no later than 60 days following the public scooping meeting.

Dated: August 27, 2003.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environmental, Safety and Occupational Health), OASA (I&E).

[FR Doc. 03–22474 Filed 9–3–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 3, 2003.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the

Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 28, 2003.

Stephanie Hammes,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Title I State Plan for Vocational Rehabilitation Services and Title VI-Part B Supplement for Supported Employment Services.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 80.

Burden Hours: 1,002,050.

Abstract: The Workforce Investment Act of 1998 (WIA) requires the submittal of a Title I State Plan for Vocational Rehabilitation Services and a Supplement to the Plan for Supported Employment Services on the same date that the State submits its State Plan under WIA. Program Funding is contingent on Department approval of the State Plan and its Supplement.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2340. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–22524 Filed 9–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 6, 2003.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 28, 2003.

Stephanie Hammes,

Acting Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Institute of Education Sciences

Type of Review: Revision.

Title: Fast Response Survey System (FRSS) Survey on Distance Education Courses for Public Elementary and Secondary School Students.

Frequency: One time.

Affected Public: Individuals or households; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 2,200.

Burden Hours: 1,100.

Abstract: The Quick Response Information System consists of two survey system components—Fast Response Survey System for schools, districts, libraries and the Postsecondary Education Quick Information System for postsecondary institutions. This survey will go to 2,200 public school districts to determine whether students are enrolled in distance education, what courses are offered, the levels of enrollment, and the ways the courses are offered. Distance education courses are defined as credit-granting courses offered to elementary and secondary school students in the district in which the teacher and the students are in different locations.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2341. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *Vivan.Reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 03–22525 Filed 9–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Student Financial Assistance Programs—Distance Education Demonstration Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for participation in the Distance Education Demonstration Program.

SUMMARY: The Secretary of Education invites institutions of higher education (institutions), systems of institutions, and consortia of institutions to submit applications to participate in the Distance Education Demonstration Program authorized under section 486 of Title IV of the Higher Education Act of 1965, as amended (HEA). Under the Distance Education Demonstration Program, selected institutions providing distance education programs may receive waivers of specific statutory and regulatory provisions governing the student financial assistance programs authorized under Title IV of HEA.

Instructions for Submitting an Application: Elements to be included in an application are described in this notice. There is no application form for the program. Proposals should be submitted by electronic mail or in hard copy to the addresses below. Applicants are urged to submit applications only by electronic mail, to the e-mail address below. Applications should clearly designate a contact person, and the telephone number and the e-mail and street address of the contact person.

Applications submitted by electronic mail should be submitted in Microsoft Word version 7 or lower or WordPerfect version 7, 8, or 9.

Further information concerning technical assistance may be found at the end of this notice and at the Distance Education Demonstration Program Web site: *http://www.ed.gov/offices/OPE/PPI/DistED/.*

DATES: Applications must be postmarked or submitted electronically on or before October 6, 2003.

ADDRESSES: *Applications submitted electronically.* Institutions must submit applications by e-mail by 5 p.m. Eastern time on October 6, 2003 to the following address: *DistanceDemo@ed.gov.*

Applications submitted by mail: Hard copy applications must be sent to Rose Fletcher, U.S. Department of Education, 1990 K Street NW., Room 80, Washington, DC 20006.

An institution must show proof of mailing these documents by October 6, 2003. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If these documents are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. Institutions should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. You are encouraged to use certified or at least first-class mail.

Applications delivered by hand. Hand-delivered applications must be taken to Rose Fletcher, U.S. Department of Education, 1990 K Street, NW., Room 8031, Washington, DC 20006.

Applications that are hand-delivered will be accepted between 9 a.m. and 5 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays. Applications must be received by 5 p.m. on October 6, 2003.

FOR FURTHER INFORMATION CONTACT: Carney McCullough or David Bergeron via telephone at (202) 502–7575 or via Internet: *DistanceDemo@ed.gov.*

Information concerning the program can also be found on the Distance Education Demonstration Program Web site: *http://www.ed.gov/offices/OPE/PPI/DistEd/.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Background and Purpose of the Distance Education Demonstration Program

There has been rapid growth in the number of institutions providing courses and degree programs in various modes of "distance education." For purposes of the Distance Education Demonstration Program and this notice, "distance education" is defined as an educational process that is characterized by the separation, in time or place, between instructor and student. This process may include courses offered principally through the use of television, audio, or computer transmission, such as open broadcast, closed circuit, cable, microwave, or satellite transmission; audio or computer conferencing; video cassettes or discs; or correspondence.

The growth in distance education has occurred in response to increasing demand from students who have little or no options to enroll in more traditional programs, including working adults, parents, people who live in rural communities, and students with disabilities. Another reason for this growth is the potential for cost control. Distance education is also attractive to institutions that are unable to make large investments in new facilities to meet increased student demand. Additionally, through consortia and other agreements among institutions that provide distance education, many students are able to take advantage of a richer selection of course offerings tailored to their individual needs than are available at the institutions where they are enrolled.

Currently, some statutory provisions defining institutional eligibility for the Title IV, HEA programs limit the circumstances in which Title IV, HEA program funds can be provided to students enrolled in distance education. For example, institutions that offer more than 50 percent of their courses via distance education or enroll more than 50 percent of their students in distance education programs (hereafter referred to as "the 50 percent rules") are not eligible to participate in the Title IV, HEA programs.

Other statutory and regulatory provisions are based on the patterns and structure of on-campus education and traditional academic terms. As such, they can be burdensome and difficult to apply to distance education programs. They may also limit institutions from structuring programs that may best meet the needs of distance education students, institutions, and systems and consortia of such institutions.

Enacted in 1998, as described in section 486(a) of the HEA, the purpose of the Distance Education Demonstration Program is to—

(1) Allow demonstration programs that are strictly monitored by the Department of Education (Department) to test the quality and viability of expanded distance education programs currently restricted under HEA;

(2) Provide for increased student access to higher education through distance education programs; and

(3) Help determine the—

(A) Most effective means of delivering quality education via distance education course offerings;

(B) Specific statutory and regulatory requirements which should be altered to

provide greater access to high quality distance education programs; and

(C) Appropriate level of Federal assistance for students enrolled in distance education programs.

Under the Distance Education Demonstration Program, participants may offer Title IV, HEA program funds to students enrolled in educational programs utilizing distance education delivery methods for all or a portion of their classes without being subject to certain statutory and regulatory provisions, upon granting by the Secretary of an institution's request for waiver of these provisions. The purpose of these waivers is to test new ways of administering the Federal student assistance programs and to consider how the law and regulations might be altered to allow for expansion of aid to distance students and still ensure program integrity.

The legislation creating this program authorized the Secretary to select, from among eligible applicants, up to a total of 15 institutions, systems of institutions, or consortia of institutions to begin participation in the first year of the program. (For these purposes, a system of institutions could be a group of institutions with a common governing board. An example would be a community college system or a group of private institutions owned by the same corporation. A consortium of institutions could be two or more institutions that have agreed to collaborate on a common effort such as sharing distance education courses or a two-year and four-year institution cooperating to offer a bachelor's degree completion program.) The 15 participants for the first year of the program were selected in May of 1999 and began participation on July 1, 1999.

The Secretary is authorized to select, from among eligible applicants, up to a total of 35 additional institutions, systems of institutions, or consortia of institutions to begin participation in the third year of the program. Nine institutions, systems of institutions or consortia of institutions were selected in June 2001 and began participation on July 1, 2001. Additional institutions, systems of institutions, or consortia of institutions will be selected to increase the diversity of the types of institutions in the program. The Secretary anticipates that these additional institutions, systems or consortia selected will continue to participate until June 30, 2005. Participation will be conditioned upon their meeting the requirements of the Distance Education Demonstration Program and continued participation in Title IV, HEA programs. Institutions desiring to withdraw from the Distance Education Demonstration Program may do so without jeopardy to their participation in Title IV, HEA programs but must meet all the eligibility criteria in section 102 of HEA. Also, the scope of the participation, such as the specific distance education programs included and waivers provided, may be modified as agreed upon by the Secretary and the participant, to allow for changes in the programs offered, the modes of delivery used, the size of participants' distance programs, or other changes desired by the Secretary or the participant as experience is gained in the program.

On November 1, 2002, the Department published regulations that modified 34 CFR Sections 668.2, 668.3, and 668.8 that limited institutions in the area of distance learning. These changes were based, in part, on experiences gained from the Distance Education Demonstration Program. Since that time, we have decided that it would be appropriate to accept applications to participate in this program to determine what other barriers continue to exist and to increase the diversity of the types of participants in the Distance Education Demonstration Program. To that end, we are particularly seeking applications from eligible applicants that would increase the diversity of the types of participants in the Distance Education Demonstration Program, particularly in the number of institutions that exclusively provide instruction online.

The Department works closely with accrediting agencies and States to determine how their respective roles contribute to assuring quality and integrity in distance learning. Accrediting agencies play an important role in monitoring the demonstration programs, consistent with their responsibilities. Where State requirements are relevant to distance education programs, the Department works with States to determine how their monitoring role assists in ensuring program integrity.

The participants must agree to provide data and information that will assist the Secretary in evaluating the Distance Education Demonstration Program and in reporting to Congress as required by HEA. The data and information provided by participants will assist the Secretary in determining whether statutory and regulatory changes might be needed to support the growth of quality distance education courses and programs and the appropriate level of Federal assistance for students enrolled in distance education programs, two of the purposes of the program that are specified in the statute. A copy of the form containing the data collection requirements can be found on the program Web site.

The program is also designed to examine ways to assure the integrity of Title IV, HEA programs in the context of distance education. This examination is accomplished principally through the close monitoring of participants' administration of Title IV, HEA programs.

Eligible Applicants

The following institutions are eligible to apply to participate in the Distance Education Demonstration Program:

(1) Institutions located in the United States that participate in the Title IV, HEA programs; and

(2) Institutions located in the United States that provide a two-year program that leads to an associate degree or a four-year program that leads to a baccalaureate or higher degree and would be eligible to participate in the Title IV, HEA programs but for the fact that they do not meet one or both of the 50 percent rules. Such institutions must apply to participate in Title IV, HEA programs at the same time they submit an application to the Distance Education Demonstration Program.

In addition, systems and consortia of these institutions are eligible to participate in this program. As stated earlier, the Secretary is particularly interested in including institutions that exclusively provide instruction on-line.

Statutory and Regulatory Provisions That May Be Waived

The Secretary may waive statutory and regulatory provisions. To obtain a waiver, an institution must request the waiver in its application to participate in the program and must provide reasons for the waiver. Where possible, the applicant should suggest an alternative that is designed to meet the same objectives as those achieved by the waived statutory or regulatory provision. For example, if an applicant seeks to waive the requirement that students must achieve satisfactory academic progress as defined in Department regulations, the applicant should suggest an alternative means to ensure that Federal student aid funds are provided only to students who are making progress towards a degree or certificate. An applicant need not include an alternative approach with regard to a request to waive one or both of the 50 percent rules.

Statutory Provisions

The Secretary may waive the following HEA statutory provisions:

• *Section 102(a)(3)(A).* This section makes an otherwise eligible institution ineligible if more than 50 percent of its courses are offered by correspondence and telecommunication.

• *Section 102(a)(3)(B).* This section makes an otherwise eligible institution ineligible if 50 percent or more of its students are enrolled in correspondence or telecommunications courses.

• *Section 484(l)(1).* This section defines a telecommunications student at an institution as a correspondence student if (1) the student is enrolled in certificate programs of less than one year; (2) the institution provides more certificate than degree programs; or (3) 50 percent or more of the institution's courses are offered by correspondence and telecommunications.

Regulatory Provisions

In addition to the aforementioned statutory provisions, the Secretary may waive the regulatory provisions implementing part G of HEA that inhibit the operation of quality distance education programs. Part G consists of sections 481 through 493B of HEA. These sections contain numerous provisions dealing with the Title IV, HEA programs including those that limit the amount of aid that can be provided for correspondence courses and programs. In general, the regulations implementing these provisions are contained in 34 CFR part 668.

(Under the Distance Education Demonstration Program, the Secretary is authorized to waive any regulations governing part F of Title IV, which deals with need analysis and costs of attendance. However, the Secretary is not authorized to issue regulations implementing part F; therefore, there are no regulations to waive.)

Application Proposal Requirements

Each application proposal to participate in this program shall include—

1. The name, address, and Web site address, if any, of the institution, system, or members of the consortium seeking to participate, and the name, title, mailing and e-mail addresses, and telephone number of a contact person for the institution, system, or consortium;

2. A description of the distance education programs offered or to be offered for which the institution is seeking a waiver or waivers. An institution may request a waiver or waivers for one, several, or all of its distance education courses or programs. The description should include the types of programs, degrees or certificates offered, program goals, and the methods used or proposed to be used to deliver distance education;

3. A description of the applicant's consultation with a recognized accrediting agency or agencies with respect to quality assurances for the distance education programs to be offered;

4. A description of the types of students that the distance education programs are intended to serve, (*e.g.*, adult learners, rural populations, individuals with disabilities);

5. The Title IV, HEA programs under which distance education students will receive funds;

6. The specific statutory and regulatory provisions to be waived, the scope of each waiver, and the reason for each waiver. The applicant should propose an alternative to the provision or explain why no alternative is necessary;

7. An assurance that the institution, system, or a consortium will fully cooperate with the Department's ongoing evaluations of the program; and

8. A statement of the goals of the institution, system, or consortium for participation along with the method the institution will use to evaluate achievement of the goals.

In addition to the information described above, systems and consortia must provide the following additional information—

1. A description of the system or consortium and the relationship among the members of the system or consortium, a copy of any agreement governing the relationship of institutions that are members of the system or consortium, and a list of the institutions which are members;

2. A description of the manner in which the distance education programs are or will be conducted among the system and consortium members particularly as that manner is related to the waiver request; and

3. The manner in which Title IV, HEA program funds will be administered for the students in the distance education programs. (This would include such matters as the disbursement procedures that would be followed, the definition of an academic year that would be used, how attendance would be monitored, and the satisfactory academic progress rules that would be followed.)

Selection of Participants

In selecting applicants to participate in the Distance Education Demonstration Program, the Secretary will take into account the—

1. Number and quality of applications received;

2. Department's capacity to oversee and monitor the applicant's participation;

3. Applicant's financial responsibility, administrative capability, and the program or programs being offered via distance education; and

4. Necessity of including different types of participating institutions vis-à-vis size, mission, and geographic distribution, with an emphasis on institutions that provide education exclusively through on-line instruction.

As part of the selection process, the Department will screen the applications to ensure that applicants are eligible. Then, outside reviewers will recommend the best applications given the statutory criteria. The Secretary will make final selections, based on the recommendations of the outside reviewers and the criteria listed in HEA.

Evaluations

The HEA requires the Secretary to submit reports to Congress evaluating the Distance Education Demonstration Program annually and eighteen months after the initiation of the program. As specified in HEA, the evaluations are to include the following:

1. The extent to which the institution, system or consortium has met the goals set forth in its application to the Secretary, including the measures of program quality assurance.

2. The number and types of students participating in the programs offered, including the progress of participating students toward recognized certificates or degrees and the extent to which participation in such programs increased.

3. Issues related to student financial assistance for distance education.

4. Effective technologies for delivering distance education course offerings.

5. The extent to which statutory or regulatory requirements not waived under the Distance Education Demonstration Program present difficulties for students or institutions.

To assist the Secretary in conducting such evaluations, participants in the Distance Education Demonstration Program will be required to provide information to the Secretary, such as: Course level detail regarding their offerings, the degrees or certificates awarded for successful completion, data on persistence and completion, data regarding student demographics, information regarding tuition and fees charged by the participant, program design and use of technology, information regarding the educational environment and student support, and student satisfaction surveys.

Guidance

The guidance provided below is intended to assist applicants in determining what information they may wish to include in their applications. This guidance is non-binding and does not constitute criteria for selection. Applications which do not include the information suggested in the guidance will be considered on the same basis as applications which include all or part of that information.

1. Applicants should consider describing the ways that they think their proposals will assist the Department in determining new ways of administering Federal student assistance programs that better meet the needs of distance students.

2. It is important that the accrediting and State authorizing agencies of the institution, or institutions that comprise a consortium or system, are willing to collaborate with the Department to determine how their complementary roles can best be structured to assure quality and integrity in institutions' distance education programs. To this end, applicants for this program should provide documentation that their accrediting agencies and States are willing to work with the Department to examine the respective roles of the agencies as they relate to institutions' distance education programs. In that documentation, accrediting agencies should certify that the individual distance programs that the institution includes in its application are within the scope of the institution's accreditation, and that the agency will review the program at an appropriate time. Consortiums and systems should also provide evidence that the agency or agencies which accredit the schools comprising the consortium or system are willing to work with the Department in evaluating issues relating to the quality of distance education offered by the institutions as a result of their membership in the consortium or system.

3. While the Department will evaluate applications using the statutory criteria, to the extent possible, the Department will view those criteria in the context of the delivery of student aid to distance students and the changes that are needed to facilitate that process. Because the delivery of student aid is so critical to improving access to distance education, an application should fully describe the applicant's ability to fully execute its plans for student aid delivery and specify waivers requested and substitutions and address fully the need for the waivers and substitutions.

4. Applicants should consider establishing both quantitative and qualitative objectives for their participation and include in the application a description of how they intend to measure goal attainment, including measures of program quality. The Department notes that quantitative measures are essential for understanding goal attainment.

5. A major concern of the Department is to ensure that Federal funds in the Distance Education Demonstration Program are used appropriately. An application should address how the applicant plans to document student eligibility, including documentation of student attendance.

6. Another major concern of the Department is that an applicant be committed as an institution to the success of its proposed activities. One way for an institution to demonstrate its commitment is to include with its application a letter from its chief executive officer (or comparable official) expressing support for the application and acknowledgement of the responsibilities that the institution would assume if the application were approved. Correspondingly, in the case of a consortium applicant, the submission of such a letter from the chief executive officer (or comparable official) of each of the participating institutions would demonstrate such commitment.

Technical Assistance

Interested parties are invited to consult the Distance Education Demonstration Program Web site for information about applying to participate in the Distance Education Demonstration Program and providing Federal financial aid to students enrolled in distance education programs. The Web site also contains the names and contact information for Department staff with expertise on various issues relating to the Distance Education Demonstration Program who are available to answer questions and provide technical assistance regarding eligibility and administration of Title IV, HEA student financial assistance programs.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

You also may view this document in text or PDF at the following site: *http://www.ed.gov/news.html.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1–888–293–6498 or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1093.

Dated: August 29, 2003.

Sally L. Stroup,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 03–22547 Filed 9–3–03; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Availability of the Bonneville Purchasing Instructions (BPI) and Bonneville Financial Assistance Instructions (BFIA)

AGENCY: Bonneville Power Administration (BPA), DOE

ACTION: Notice of document availability.

SUMMARY: Copies of the Bonneville Purchasing Instructions (BPI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of its purchases of goods and services, including construction, are available in printed form for $30, or without charge at the following Internet address: *http://www.bpa.gov/Corporate/kgp/bpi/bpi.htm.* Copies of the Bonneville Financial Assistance Instructions (BFAI), which contain the policy and establish the procedures that BPA uses in the solicitation, award, and administration of financial assistance instruments (principally grants and cooperative agreements), are available in printed form for $15 each, or available without charge at the following Internet address: *http://www.bpa.gov/corporate/kgp/bfai/bfai.htm.*

ADDRESSES: Unbound copies of the BPI or BFAI may be obtained by sending a check for the proper amount to the Head of the Contracting Activity, Routing CK–1, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621.

FOR FURTHER INFORMATION CONTACT: Manager, Corporate Communications, 1–800–622–4519.

SUPPLEMENTARY INFORMATION: BPA was established in 1937 as a Federal Power Marketing Agency in the Pacific Northwest. BPA operations are financed from power revenues rather than annual appropriations. BPA's purchasing operations are conducted under 16 U.S.C. 832 *et seq.* and related statutes. Pursuant to these special authorities, the BPI is promulgated as a statement of purchasing policy and as a body of interpretative regulations governing the conduct of BPA purchasing activities. It is significantly different from the Federal Acquisition Regulation, and reflects BPA's private sector approach to purchasing the goods and services that it requires. BPA's financial assistance operations are conducted under 16 U.S.C. 832 *et seq.*, and 16 U.S.C. 839 *et seq.* The BFAI express BPA's financial assistance policy. The BFAI also comprise BPA's rules governing implementation of the principles provided in the following OMB circulars:

A–21, Cost Principles for Educational Institutions.

A–87, Cost Principles for State, Local and Indian Tribal Governments.

A–102, Grants and Cooperative Agreements with State and Local Governments.

A–110, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations.

A–122, Cost Principles for Non-Profit Organizations.

A–133, Audits of States, Local Governments and Non-Profit Organizations.

BPA's solicitations and contracts include notice of applicability and availability of the BPI and the BFAI, as appropriate, for the information of offerors on particular purchases or financial assistance transactions.

Issued in Portland, Oregon, on August 27, 2003.

Kenneth R. Berglund,

Manager, Contracts and Property Management.

[FR Doc. 03–22521 Filed 9–3–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EC03–127–000, et al.]

IDACORP Energy L.P., et al.; Electric Rate and Corporate Filings

August 25, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. IDACORP Energy L.P.

Sempra Energy Trading Corp.

[Docket No. EC03–127–000]

Take notice that on August 20, 2003, IDACORP Energy L.P. (IELP) and Sempra Energy Trading Corp. (SET) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act and 18 CFR part 33 for authority to transfer all of the wholesale power sales contracts of IELP to SET. The Applicants request that the Commission act on the application so that the transfer may be consummated before October 1, 2003

Comment Date: September 10, 2003.

2. Citizens Communication Company v. Vermont Electric Power Company, Inc.

[Docket No. EC03–128–000]

Take notice that on August 21, 2003, Citizens Communications Company (Citizens) and Vermont Electric Power Company, Inc. (VELCO) filed with the Federal Energy Regulatory Commission (Commission) a joint application pursuant to Section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities whereby Citizens will sell certain transmission facilities to VELCO.

Comment Date: September 11, 2003.

3. Butler Ridge, LLC

[Docket No.EG03–95–000]

Take notice that on August 21, 2003, Butler Ridge, LLC (the Applicant), with its principal office at c/o Midwest Wind Energy, LLC, 205 W. Monroe Street, 4th Floor, Chicago, IL 60606, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Delaware limited liability company engaged directly and exclusively in the business of developing, owning and operating an approximately 54 MW wind generating facility located in Dodge County, Wisconsin. Applicant further states that electric energy produced by the facility will be sold exclusively at wholesale by Applicant.

Comment Date: September 15, 2003.

4. Southwest Power Pool, Inc.

[Docket No. ER03–896–001]

Take notice that on August 21, 2003, Southwest Power Pool, Inc. (SPP) submitted for filing a response to a deficiency letter issued by the Federal Energy Regulatory Commission on July 22, 2003 in the above-captioned proceeding. The proceeding involves an unexecuted service agreement between SPP and the Kansas Municipal Energy Agency.

SPP states that it served a copy of the filing on all parties on the official service list compiled by the Secretary in this proceeding.

Comment Date: September 11, 2003.

5. Central Hudson Gas & Electric Corporation

[Docket No. ER03–1227–000]

Take notice that on August 20, 2003, Central Hudson Gas & Electric Corporation (Central Hudson) tendered for filing proposed changes in its Rate Schedule FERC No. 202 which sets forth the terms and charges for substation service provided by Central Hudson to Consolidated Edison Company of New York, Inc.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 2003 as agreed to by the parties.

Central Hudson states that a copy of its filing was served on Con Edison and the State of New York Public Service Commission.

Comment Date: September 10, 2003.

6. Avista Corporation

[Docket No. ER03–1228–000]

Take notice that on August 20, 2003, Avista Corporation (AVA) filed with the Federal Energy Regulatory Commission (Commission) a Notice of Termination of Rate Schedule No. 185, a Service Agreement with El Paso Merchant Energy, L.P. previously filed under the Commission's Docket No. ER98–4633–000, effective August 15, 2003.

Comment Date: September 10, 2003.

7. Nevada Power Company

[Docket No. ER03–1230–000]

Take notice that on August 21, 2003, Nevada Power Company (Nevada Power), tendered for filing pursuant to Section 35 of the Federal Power Act, an executed Service Agreement for Network Integration Transmission Service Retail Access Transmission

Service (Transmission Service Agreement) between Nevada Power Company and Coral Power, L.L.C. as Scheduling Coordinator for Rouse Fashion Show Management, LLC., the End-Use Customer and an executed Network Operating Agreement between Nevada Power Company and Coral Power, L.L.C. The Transmission Service Agreement and the Network Operating Agreement are being filed in compliance with Section 29.5 of the Sierra Pacific Resources Operating Companies' Open Access Transmission Tariff.

Nevada Power Company has requested the Commission accept the Transmission Service Agreement and the Network Operating Agreement and permit service in accordance therewith effective October 1, 2003.

Comment Date: September 10, 2003.

8. Nevada Power Company

[Docket No. ER03–1231–000]

Take notice that on August 21, 2003, Nevada Power Company (Nevada Power), tendered for filing pursuant to Section 35 of the Federal Power Act, an executed Service Agreement for Network Integration Transmission Service Retail Access Transmission Service (Transmission Service Agreement) between Nevada Power Company and Coral Power, L.L.C. as Scheduling Coordinator for Rouse Fashion Show Management, LLC., the End-Use Customer and an executed Network Operating Agreement between Nevada Power Company and Coral Power, L.L.C. The Transmission Service Agreement and the Network Operating Agreement are being filed in compliance with Section 29.5 of the Sierra Pacific Resources Operating Companies' Open Access Transmission Tariff.

Nevada Power Company has requested the Commission accept the Transmission Service Agreement and the Network Operating Agreement and permit service in accordance therewith effective October 1, 2003.

Comment Date: September 11, 2003.

9. West Penn Power Company (DBA Allegheny Power)

[Docket No. ER03–1232–000]

Take notice that on August 21, 2003, West Penn Power Company, dba Allegheny Power (Applicant), filed an Addendum to its Electric Service Agreement with PPL Electric Utilities Corporation, formerly Pennsylvania Power & Light Company, to add one new delivery point. An effective date for the new delivery point of September 1, 2003 is requested.

Applicant states that copies of the filing have been provided to the customer, the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission and the West Virginia Public Service Commission.

Comment Date: September 11, 2003.

10. Duke Energy Washoe, LLC

[Docket No. ER03–1233–000]

Take notice that, on August 21, 2003, Duke Energy Washoe, LLC tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, in order to reflect the cancellation of its market-based rate tariff, designated as FERC Electric Tariff, Original Volume No. 1, originally accepted for filing in Docket No. ER01–241–000.

Comment Date: September 11, 2003.

11. Arizona Public Service Company

[Docket No. ER03–1234–000]

Take notice that on August 21, 2003, Arizona Public Service Company (APS) tendered for filing revisions to its Long-Term Power Transactions Agreement with PacifiCorp (PAC) applicable under the APS-FERC Rate Schedule No. 182. APS requests an effective date of November 13, 2000 for the requested changes.

APS states that copies of this filing have been served on PAC, the California Public Utilities Commission, the Public Utility Commission of Oregon, the Utah Public Service Commission, the Washington Utilities and Transportation Commission, the Montana Public Service Commission, the Public Service Commission of Wyoming, the Idaho Public Utilities Commission, and the Arizona Corporation Commission.

Comment Date: September 11, 2003.

12. Citizens Communications Company

[Docket No. ER03–1235–000]

Take notice that on August 21, 2003, pursuant to section 205 of the Federal Power Act, Citizens Communications Company (Citizens) filed with the Federal Energy Regulatory Commission (Commission) proposed changes in its Open Access Transmission Tariff, Block Loading Facilities Transmission Agreement (FERC Rate Schedule No. 28), and FPC No. 10 successor agreements (FERC Rate Schedule Nos. 29, 31 and 32). The changes are proposed in connection with a joint application by Citizens and Vermont Electric Power Company, Inc. (VELCO) pursuant to section 203 of the Federal Power Act for authorization of the sale by Citizens of certain jurisdictional transmission facilities to VELCO. Citizens states that the purpose of the rate changes is to implement a stipulation that was recently entered into between and among Citizens, its major Vermont wholesale transmission customers, and the Vermont Department of Public Service.

Citizens states that copies of the filing were filed upon Citizens' jurisdictional customers, the Vermont Department of Public Service, and the Vermont Public Service Board.

Comment Date: September 11, 2003.

13. Sierra Pacific Power Company Nevada Power Company

[Docket No. ER03–1236–000]

Take notice that on August 21, 2003, Sierra Pacific Power Company and Nevada Power Company (collectively, Applicants) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act and Section 35 of the Commission's Regulations, an amendment to Section 17.7 of Sierra Pacific Resources Operating Companies FERC Electric Tariff, Third Revised Volume No. 1 (the OATT). The Applicants state that this amendment is necessary to address requests for the extension of the commencement of service over Nevada Power's newly constructed Centennial Project. The Applicants request that the amendment be made effective as of May 1, 2003, so that it will apply equally to all Transmission Customers using the Centennial Project.

Comment Date: September 11, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at

FERCOnlineSupport@ferc.gov or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22462 Filed 9–3–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER03–421–005, et al.]

ISO New England Inc., et al.; Electric Rate and Corporate Filings

August 26, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. ISO New England Inc.

[Docket No. ER03–421–005 and ER03–563–014]

Take notice that on August 22, 2003, ISO New England Inc. (ISO) submitted a Compliance Filing in the above-captioned proceeding as directed by the Commission in its August 12, 2003 Order on Cost Information, 104 FERC § 61,199. The ISO states that copies of the filing have been served on all parties to the above-captioned proceeding.

Comment Date: September 12, 2003.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No ER03–869–001]

Take notice that on August 22, 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO the) tendered for filing an amendment to its May 23, 2003 filing in Docket No. ER03–869–000 in compliance with the Commission's deficiency letter request dated July 22, 2003.

The Midwest ISO states it has served copies of its filing on all affected customers. Midwest ISO also states that it has electronically served a copy of this filing, without attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. Midwest states that the filing has been electronically posted on the Midwest ISO's Web site at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: September 12, 2003.

3. Delano Energy Company, Inc.

[Docket No. ER00–891–002]

Take notice that on August 21, 2003, AES Delano, Inc. (Delano), pursuant to the Federal Energy Regulatory Commission's Order in Docket No. ER00–891–000, submitted its triennial market power update. In addition, pursuant to Section 205 of the Federal Power Act, Delano submitted its second revision to FERC Electric Rate Schedule, Original Volume No. 1, and its supplemental code of conduct reflecting changed corporate affiliations.

Comment Date: September 11, 2003.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–1048–001]

Take notice that on August 22, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13, submitted for filing a revised unexecuted Interconnection and Operating Agreement among American Transmission Company LLC and Upper Peninsula Power Company.

Midwest ISO states that a copy of this filing was served on American Transmission Company LLC and Upper Peninsula Power Company.

Comment Date: September 12, 2003.

5. Tosco Power, Inc.

[Docket No. ER03–1205–000]

Take notice that on August 12, 2003, ConocoPhillips Company (ConocoPhillips) tendered for filing a Notice of Cancellation for Tosco Power, Inc. (Tosco), of Tosco's market-based authority approved by the Commission in Docket No. ER96–2635–000 to be effective December 31, 2002. ConocoPhillips states that Tosco is no longer in existence.

Comment Date: September 8, 2003.

6. AES Delano, Inc.

[Docket No. ER03–1207–000]

Take notice that on August 12, 2003, AES Delano, Inc. submitted notification that Delano Energy Company, Inc. has changed its name to AES Delano, Inc.

Comment Date: September 8, 2003.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER03–1238–000]

Take notice that on August 22, 2003, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing an Interconnection Agreement by and between Con Edison and KeySpan-Ravenswood, LLC, dated August 1, 2003. Con Edison states that the agreement provides for the interconnection to Con Edison's transmission system of a 250 MW electric generating facility that KeySpan-Ravenswood is constructing and will operate in the Borough of Queens, New York.

Comment Date: September 12, 2003.

8. PJM Interconnection, L.L.C.

[Docket No. ER03–1239–000]

Take notice that on August 22, 2003, PJM Interconnection, L.L.C. (PJM), submitted for filing an Interconnection Service Agreement (ISA) among PJM, Prince George's County, Maryland, A Body Corporate and Politic, and Potomac Electric Power Company and a notice of cancellation of an Interim ISA that has been superseded.

PJM requests a waiver of the Commission's 60-day notice requirement to permit a July 24, 2003 effective date for the ISA.

PJM states that copies of this filing were served upon the parties to the agreements and the state regulatory commissions within the PJM region.

Comment Date: September 12, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact

FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866)208–3676, or for TTY, contact (202)502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22463 Filed 9–3–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7552–5]

Proposed Administrative Past Cost Settlement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act; In the Matter of Ohio Drum Superfund Site, Cleveland, OH

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Ohio Drum Superfund Site ("the Site") in Cleveland, Ohio, with five parties: DeSantis Paint Manufacturing Co., City Barrel & Drum Company, Elmer Freiberg, David Tvert, and Cuyahoga Chemical Company ("the settling parties"). The settlement requires DeSantis Paint Manufacturing Co. to pay $500.00 to the Hazardous Substance Superfund. City Barrel & Drum Company will pay $5,000.00 to the Hazardous Substance Superfund. Elmer Freiberg will pay $500.00 to the Hazardous Substance Superfund. David Tvert will pay $10,000.00 to the Hazardous Substance Superfund. Cuyahoga Chemical Company will pay $100.00 to the Hazardous Substance Superfund.

Under the terms of the settlement, the settling parties agree to pay their respective settlement amounts. In exchange for their payments, the United States covenants not to sue or take administrative action pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a), to recover costs that the United States paid in connection with the Site through February 1, 2003. In addition, the settling parties are entitled to protection from contribution actions or claims as provided by sections 113(f) and 122(h)(4) of CERCLA, 42 U.S.C. 9613(f) and 9622(h)(4), for response costs incurred by any person at the Site.

For thirty (30) days after the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois 60604, and at the Cleveland Public Library, Cleveland, Ohio.

DATES: Comments must be submitted on or before October 6, 2003.

ADDRESSES: The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Peter Felitti, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–5114. Comments should reference the Ohio Drum Superfund Site, Cleveland, Ohio, and EPA Docket No. V–W–03–C–749, and should be addressed to Peter Felitti, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Peter Felitti, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–5114.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.*

Dated: August 5, 2003.

William E. Muno,

Director, Superfund Division.

[FR Doc. 03–22541 Filed 9–3–03; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for the inclusion in the reports of the Export-Import Bank of the United States to Congress.

TIME AND PLACE: Tuesday, September 23, 2003, at 9:30 a.m. to 12:30 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: Agenda items include reports and discussion on the Advisory Committee's Sub-Committees on services and agriculture, status and implementation plan for 2002 Advisory Committee Recommendations and development of the 2003 Advisory Committee Report.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 17, 2003, Teri Stumpf, Room 1203, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3542 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave. NW., Washington, DC 20571, (202) 565–3502.

Peter Saba,

General Counsel.

[FR Doc. 03–22518 Filed 9–3–03; 8:45 am]

BILLING CODE 6690–01–M

EXPORT-IMPORT BANK

Notice of Open Special Meeting of the Sub-Saharan Africa Advisory Committee (SAAC) of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Sub-Saharan Africa Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Saharan Africa.

TIME AND PLACE: Tuesday, September 16, 9:30 a.m. to 12:30 p.m. The meeting will be held at the Export-Import Bank in

Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: This meeting will focus on identifying the specific recommendations by the Advisory Committee as to the continuing efforts to identify and facilitate US-African trade to be included in the 2003 report to Congress due at the end of this calendar year as well as to update the Advisory Committee on business development since the June committee meeting.

PUBLIC PARTICIPATION: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 16, 2003, Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3525 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Barbara Ransom, Room 1241, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3525.

David Chavern,

Deputy, General Counsel.

[FR Doc. 03–22517 Filed 9–3–03; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act; Notices

DATE AND TIME: Monday, September 8, 2003, at 3:30 P.M.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil action or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 03–22676 Filed 9–2–03; 2:45 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940.

Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011733–009.
Title: Common Ocean Carrier Platform Agreement.
Parties:
A.P. Moller Maersk Sealand,
P&O Nedlloyd Limited
Hamburg-Sud
Mediterranean Shipping Company S.A.
CMA CGM S.A.
Hapag Lloyd Container Linie GmbH
United Arab Shipping Company (SAG), as shareholder parties
Alianca Navegacao e Logistica Ltda.
Safmarine Container Lines N.V.
Nippon Yusen Kaisha
CP Ship Limited
Tasman Orient Line C.V.
Mitsui O.S.K. lines, Ltd., as non-shareholder parties.
Synopsis: The amendment adds Mitsui O.S.K. Lines, Ltd. as a non-shareholder party to the agreement.

Agreement No.: 011742–002.
Title: P&O Nedlloyd-Farrell/Hapag Lloyd/Zim Mediterranean Space Charter Agreement.
Parties:
P&O Nedlloyd Limited
P&O Nedlloyd B.V.
Hapag Lloyd Container Linie GmbH,
Zim Israel Navigation Co., Ltd.
Synopsis: The proposed amendment reflects changes in the structure of the service operated under the agreement and the allocation of slots on that service.

Agreement No.: 011852–001.
Title: Maritime Security Discussion Agreement.
Parties:
American President Lines, Ltd.
APL Co. PTE Ltd.
COSCO Container Lines Company, Ltd.
Evergreen Marine Corporation
Hanjin Shipping Company, Ltd.
Hapag Lloyd Container Linie GmbH
Kawasaki Kisen Kaisha Ltd.
A.P. Moller Maersk Sealand
Mitsui O.S.K. Lines, Ltd.
Nippon Yusen Kaisha
Yang Ming Transport Corp.
Zim Israel Navigation Co., Ltd.
Ceres Terminals, Inc.
Cooper/T. Smith Stevedoring Co., Inc.
Eagle Marine Services Ltd.
Global Terminal & Container Services, Inc.
Howland Hook Container Terminal, Inc.
Husky Terminal & Stevedoring, Inc.
International Shipping Agency
International Transportation Service, Inc.
Long Beach Container Terminal, Inc.
Maersk Pacific Ltd.
Maher Terminals, Inc.
Marine Terminals Corp.
Maryland Port Administration
Metropolitan Stevedore Co.
P&O Ports North American, Inc.
Port of Tacoma
South Carolina State Ports Authority
Stevedoring Services of America, Inc.
Trans Bay Container Terminal, Inc.
TraPac Terminals
Universal Maritime Service Corp.;
Virginia International Terminals.
Synopsis: The amendment makes technical changes relating to meetings under the agreement and adds Howland Hook Container Terminals, International Shipping Agency, and the Port of Tacoma as parties to the agreement.

Agreement No.: 011861.
Title: CMA CGM/CSCL Cross Space Charter, Sailing and Cooperative Working Agreement.
Parties:
CMA CGM S.A.
China Shipping Container Lines Co.; Ltd.
Synopsis: The proposed agreement is a reciprocal vessel-sharing arrangement in the trade between U.S. East Coast ports and ports on the Mediterranean Sea and the Atlantic Coast of the Iberian Peninsula (Lisbon).

Agreement No.: 011862.
Title: CCNI/Frontier Space Charter and Sailing Agreement.
Parties:
Compania Chilena de Navegacion Interoceanica S.A.
Frontier Liner Services, Inc.
Synopsis: The proposed agreement is a reciprocal vessel-sharing arrangement in the trade between U.S. East and Gulf ports and ports in Central America, the Caribbean, and the North Coast of Colombia. The parties request expedited review.

Agreement No.: 011863.
Title: CMA CGM/P&O Nedlloyd-Hapag Lloyd Space Charter Agreement.
Parties:
CMA CGM S.A., P&O Nedlloyd

Limited
P&O Nedlloyd B.V.
Hapag Lloyd Container Linie GmbH

Synopsis: The proposed agreement is a reciprocal vessel-sharing arrangement in the trade between U.S. Atlantic and Gulf ports and ports on the Mediterranean Sea.

By Order of the Federal Maritime Commission.

Dated: August 29, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–22556 Filed 9–3–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 17271F.
Name: A.S.L. Logistics Corp.
Address: 11613 NW 51st Lane, Miami, FL 33178.
Date Revoked: August 15, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4269F.
Name: Cargo Systems Worldwide, Inc.
Address: P.O. Box 2226, San Juan, PR 00902.
Date Revoked: October 22, 2002.
Reason: Surrendered license voluntarily.

License Number: 17126F.
Name: Daily Freight Cargo, Corp.
Address: 8426 NW 70th Street, Miami, FL 33166.
Date Revoked: December 8, 2002.
Reason: Failed to maintain a valid bond.

License Number: 3864N.
Name: Fredonia, Inc. dba Fredonia Cargo Lines.
Address: 478 Pennsylvania Avenue, Suite 301, Glen Ellyn, IL 60137.
Date Revoked: July 21, 2003.
Reason: Failed to maintain a valid bond.

License Number: 4478N.
Name: Marina Ocean Air International, LLC.
Address: 811 Grandview Drive, South San Francisco, CA 94083.
Date Revoked: July 23, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16730F.
Name: New World Import Services, Inc.
Address: 1650 NW 94th Avenue, Miami, FL 33172.
Date Revoked: August 8, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16561F.
Name: Palumbo USA Inc.
Address: 1099 Wall Street West, Suite 395, Lynhurst, NJ 07071.
Date Revoked: May 31, 2002.
Reason: Surrendered license voluntarily.

License Number: 245F.
Name: Pan-American Shipping Company.
Address: 3017 Bradbury Drive, P.O. Box 120, Meraux, LA 70075.
Date Revoked: August 8, 2003.
Reason: Failed to maintain a valid bond.

License Number: 13398N.
Name: Patriot Container Lines, Inc.
Address: 225 Prospect Street, Hartford, CT 06108.
Date Revoked: August 2, 2003.
Reason: Failed to maintain a valid bond.

License Number: 16312N.
Name: Schroff International Transport, Inc.
Address: Bldg. C2NW A.I.O.P., Hook Creek Blvd & 145th Ave, Valley Stream, NY 11581.
Date Revoked: August 10, 2003.
Reason: Failed to maintain a valid bond.

License Number: 17320N and 17320F.
Name: Tiger Distribution Corporation.
Address: 2180 Crescent Avenue, Suite C, Anaheim, CA 92801.
Date Revoked: June 28, 2003 and July 29, 2003.
Reason: Failed to maintain valid bonds.

License Number: 9862N.
Name: United Transport Tankcontainers, Inc.
Address: 1225 North Loop West, Suite 1110, Houston, TX 77008.
Date Revoked: August 6, 2003.
Reason: Failed to maintain a vaid bond.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–22557 Filed 9–3–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

License No.	Name/address	Date reissued
4058NF	Basic Shipping U.S.A., Inc., 39–01 Main Street, Suite 209, Flushing, NY 11354	July 13, 2003.
1995NF	La Rosa Del Monte Express Inc., 1133–35 Tiffany Street, Bronx, NY 10459	July 3, 2003.
16561N	Palumbo USA Inc., 1099 Wall Street, Suite 395, Lyndhurst, NJ 07071	May 31, 2002.
17236N	Simpson's Shipping Enterprise, 248 West Lincoln Avenue, Mt. Vernon, NY 10550	June 15, 2003.
4189F	Terrace Express, Inc., 8151 E. Bailey Way, Anaheim, CA 92808	July 21, 2003.

Sandra L. Kusumoto,

Director, Bureau of Consumer Complaints and Licensing.

[FR Doc. 03–22559 Filed 9–3–03; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants:

United Container Line, Inc., 6142 NW 115 Place, #317, Miami, FL 33178, Officer: Donald L. Smith, III, President, (Qualifying Individual).

American International Shipping Company, 10 Molteg Drive, Parlin, NJ 08859, Officer: Parveen K. Sharma, Captain, (Qualifying Individual).

Aimpacific Services, Inc., 3380 Flair Drive, Suite 236, El Monte, CA 91731, Officer: Gary Kong, Chief Operation Officer, (Qualifying Individual), Ying Xiao, President.

Hua Lian Fa Logistics, Inc., 3380 Flair Drive, Suite 236, El Monte, CA 91731, Officers: Ray Dumandan, Chief Operation Officer, (Qualifying Individual), Tao Xu, Director.

Master Global Logistics, Inc., 3807 Wilshire Blvd., Suite 1000, Los Angeles, CA 90010, Officer: Frank Leung, President, (Qualifying Individual).

Taino Express Cargo Inc., 4406 N.W. 74th Avenue, Miami, FL 33166, Officers: Jose R. Pena Espinosa, Asst. of President, (Qualifying Individual), Ivan L. Montero, President.

Online Shipping Advisers, 6029 Castana Avenue, Lakewood, CA 90712, Officer: Carlos Gonzales, Corporate Officer, (Qualifying Individual).

Concatt Enterprises LLC, 2 Linda Court, Laurence Harbor, NJ 08879, Officers: Xiaqian Zhang, President, (Qualifying Individual), Yongpeng Jin, Treasurer.

SHJ International Express LLC, 223 E. Garvey Ave., #228, Monterey Park, CA 91754, Officers: Gary Tan, Vice President of Sales, (Qualifying Individual), David Loo, President.

Welley Shipping USA, Inc., 17800 Castleton Street, Suite 495, City of Industry, CA 91748, Officers: Ouyang, Chao, Secretary, (Qualifying Individual), Zang, Jing, Vice President.

Tamarind Consolidated and Associates, Inc., dba Tamarind Consolidated, 1442 S.E. 13th Street, Fort Lauderdale, FL 33316, Officers: Fred C. Rogacki, Vice President, (Qualifying Individual), Ralph Nazario, President.

Gunter Shipping Inc., 700 Nostrand Avenue, Brooklyn, NY 11216, Officer: Joseph A. Gunter, President, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant:

Zust Bachmeier International, Inc., dba Z Lines, 6201 Rankin Road, Humble, TX 77396, Officers: George A. Abreu, President, (Qualifying Individual), Davis Martin, Vice President.

Apparel Logistics Inc., 8501 N.W. 17th Street, Suite 101, Miami, FL 33126, Officers: Leopoldo Del Calvo, Vice President, (Qualifying Individual), Manuel A. Lescano, President.

World Wide Relocation, Inc., 2550 Northwest Parkway, Elgin, IL 60123, Officer: Chris Baillie, Managing Director, (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicant:

Sun Ocean Lines, Inc., 15823 S.W. 21st Street, Miramar, FL 33027, Officers: Michael Enriquez, President, (Qualifying Individual), Elena P. Enriquez, Vice President.

Dated: August 29, 2003.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–22558 Filed 9–3–03; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF AGRICULTURE

Announcement of Meeting of 2005 Dietary Guidelines Advisory Committee and Solicitation of Written Comments

AGENCIES: U.S. Department of Health and Human Services, Office of Public Health and Science; and U.S. Department of Agriculture, Food, Nutrition and Consumer Services (FNCS) and Research, Education and Economics (REE).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) and the Department of Agriculture (USDA) (a) provide notice of the first meeting of the Dietary Guidelines Advisory Committee, and (b) solicit written comments pertinent to review of the Dietary Guidelines for Americans.

DATES: (1) The Committee will meet on September 23 and 24, 2003, from 9 a.m.–5 p.m. (2) Written comments on the guidelines received by 5 p.m. E.D.T. on September 16, 2003 will be ensured transmission to the Committee prior to this meeting. Written comments will be accepted throughout the Committee's deliberations.

ADDRESSES: The first meeting will take place at the Hubert Humphrey Building, Room 800, 200 Independence Avenue, SW., Washington, DC. Written comments can be sent to *dietaryguidelines@osophs.dhhs.gov* or mailed to Kathryn McMurry, HHS Office of Disease Prevention and Health Promotion, Room 738–G, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: HHS Co-Executive Secretaries: Kathryn McMurry or Karyl Thomas Rattay (phone 202–690–7102), HHS Office of Disease Prevention and Health Promotion, Room 738–G, 200 Independence Avenue, SW., Washington, DC 20201. USDA Co-Executive Secretaries: Carole Davis (phone 703–305–7600), USDA Center for Nutrition Policy and Promotion, 3101 Park Center Drive, Room 1034, Alexandria, Virginia 22302, or Pamela Pehrsson (phone (301) 504–0716), USDA, Agricultural Research Service, Beltsville Agricultural Research Center-West, Building 005, Room 309A, Beltsville, Maryland 20705. Additional information is available on the Internet at *http://www.health.gov/dietaryguidelines.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: The National Nutrition Monitoring and Related Research Act of 1990 (Pub. L. 101–445, Title III) requires the Secretaries of USDA and HHS to publish the Dietary Guidelines for Americans at least every five years. The Dietary Guidelines Advisory Committee will review the 2000 edition of Nutrition and Your Health: Dietary Guidelines for Americans and advise the Secretaries as to whether, based on current scientific and medical knowledge, revision is warranted. If the Committee decides revision is necessary, it will prepare a report to recommend revisions to the Secretaries for the year 2005 edition.

Announcement of Meeting: The Committee's first meeting will be September 23 and 24, from 9 a.m.–5 p.m. The meeting will be held in Room 800, at the Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC. The building is located 2 blocks from the Federal Center, SW stop on the blue and orange metro lines. Parking is limited, but is available at the corner of 6th and C St. The agenda will include (a) orientation, (b) brief scientific review and discussion related to the guidelines, and (c) formulation of plans for future work of the Committee.

Public Participation: The meeting is open to the public. Due to the need for security screening, pre-registration is required and all visitors must bring a photo I.D. To pre-register, please call

Marianne Augustine at (202) 690–7102 by 5 p.m. E.D.T., September 19, 2003. Space is limited for all sessions. Written comments from the public will be accepted; opportunities to present oral comments may be provided at future meetings. Please call Marianne Augustine by 5 p.m. E.D.T., September 12, 2003, should you require a sign language interpreter. Documents pertaining to Committee deliberations will be available for public inspection and copying in Room 738-G, 200 Independence Avenue, SW., Washington, DC 20201 on the day before the meeting and following the meeting. Please call (202) 690–7102 to schedule an appointment to view the documents.

Written Comment: By this notice, the Committee is soliciting written comments, views, information and data pertinent to review of the Dietary Guidelines for Americans. Written comments are welcome throughout the Committee's deliberations. To be considered for the first meeting, they must be received by 5 p.m. E.D.T. on September 16, 2003. Comments should be sent to *dietaryguidelines@osophs.dhhs.gov* or to Kathryn McMurry, HHS Office of Disease Prevention and Health Promotion, Room 738–G, 200 Independence Avenue, SW., Washington, DC 20201.

Dated: August 26, 2003.

Carter Blakey,

Acting Deputy Assistant Secretary for Health, U.S. Department of Health and Human Services.

Dated: August 27, 2003.

Eric J. Hentges,

Executive Director, Center for Nutrition Policy and Promotion, U.S. Department of Agriculture.

Dated: August 28, 2003.

Edward Knipling,

Acting Administrator, Agricultural Research Service, U.S. Department of Agriculture.

[FR Doc. 03–22480 Filed 9–3–03; 8:45 am]

BILLING CODE 4150–32–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meetings

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces meetings of scientific peer review groups. The subcommittees listed below are part of the Agency's Health Services Research Initial Review Group Committee.

The subcommittee meetings will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C. 552b(c)(6). Grant applications are to be reviewed and discussed at these meetings. These discussions are likely to involve information concerning individuals associated with the applications, including assessments of their personal qualifications to conduct their proposed projects. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training.

Date: September 25–26, 2003 (Open from 8 a.m. to 8:15 a.m. on September 25 and closed for remainder of the meeting).

Place: AHRQ Conference Center, John M. Eisenberg Bldg, Rockville, Maryland 20850.

2. *Name of Subcommittee:* Health Research Dissemination and Implementation.

Date: October 23–24, 2003 (Open from 8 a.m. to 8:15 a.m. on October 23 and closed for remainder of the meeting).

Place: AHRQ Conference Center, John M. Eisenberg Bldg, Rockville, Maryland 20850.

3. *Name of Subcommittee:* Health Care Quality and Effectiveness Research.

Date: October 23–24, 2003 (Open from 8 a.m. to 8:15 a.m. on October 23 and closed for remainder of the meeting).

Place: AHRQ Conference Center, John M. Eisenberg Bldg, Rockville, Maryland 20850.

4. *Name of Subcommittee:* Health Systems Research.

Date: October 27–28, 2003 (Open from 8 a.m. to 8:15 a.m. on October 27 and closed for remainder of the meeting).

Place: AHRQ Conference Center, John M. Eisenberg Bldg, Rockville, Maryland 20850.

5. *Name of Subcommittee:* Health Care Technology and Decision Sciences.

Date: October 30–31, 2003 (Open from 8 a.m. to 8:15 a.m. on October 30 and closed for remainder of the meeting).

Place: AHRQ Conference Center, John M. Eisenberg Bldg, Rockville, Maryland 20850.

Contact Person: Anyone wishing to obtain a roster of members, agenda or minutes of the nonconfidential portions of the meetings should contact Mrs. Bonnie Campbell, Committee Management Officer, Office of Extramural Research Review, Education and Priority Populations, AHRQ, 540 Gaither Road, Rockville, Maryland 20850, Telephone (301) 427–1554.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: August 26, 2003.

Carolyn M. Clancy,

Director.

[FR Doc. 03–22476 Filed 9–3–03; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0376]

Medical Devices: Mammography Quality Standards Act of 1992 and Subsequent Mammography Quality Standards Reauthorization Act and Amendments; Inspection Fees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the new fees the agency will assess for inspections of mammography facilities starting October 1, 2003. The Mammography Quality Standards Act of 1992 (the MQSA) requires FDA to assess and collect fees from mammography facilities to cover the costs of annual inspections required by the MQSA. Because these costs have increased since the last increase on February 13, 1998, FDA is raising the fees accordingly. This document explains which facilities are subject to payment of inspection fees, provides information on the costs included in developing inspection fees, and provides information on the inspection billing and collection processes. This is only the second increase in inspection fees under the MQSA since the initial fee was established in 1995.

DATES: Effective October 1, 2003, for all inspections conducted under section 354(g) of the Public Health Service Act (PHS Act) (42 U.S.C. 263b(g)). Submit written comments by October 1, 2003.

ADDRESSES: Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.* Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: John L. McCrohan, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, FAX: 301–594–3306.

SUPPLEMENTARY INFORMATION:

I. Background

The MQSA requires all mammography facilities, other than facilities of the Department of Veterans Affairs, to be accredited by an approved accreditation body and certified by the

Secretary of Health and Human Services, as meeting quality standards (section 354(b) and (d)(iv) of the PHS Act). The MQSA requires FDA to establish and operate the following: (1) A Federal certification and inspection program for mammography facilities, (2) regulations and standards for accreditation bodies, and (3) standards for equipment, personnel, quality assurance, and recordkeeping and reporting by mammography facilities (section 354(c), (e), (f), and (g) of the PHS Act). The MQSA requires annual facility inspections to determine compliance with the quality standards (section 354(g) of the PHS Act). Section 354(r) of the PHS Act requires FDA to assess and collect fees for inspections of mammography facilities, other than governmental entities as determined by FDA, to cover the costs of inspections.

An updated resource review has demonstrated that the recoverable costs of the MQSA inspection program have increased since 1998. In addition, the annual amount of fees collected under the current fee schedule has been well below the level authorized by Congress. Accordingly, the fees have been recalculated so that the aggregate amount of fees collected will equal the aggregate costs of the inspections conducted, as mandated by the MQSA.

Therefore, FDA is providing notice of the increased fees to be assessed starting on October 1, 2003, and additional information relating to those fees. Although the MQSA does not require FDA to solicit comments on fee assessment and collection, FDA is inviting comments from interested persons in order to have the benefit of additional views and information, as the agency continues to evaluate its fee assessment procedures.

II. Inspections Under the Mammography Quality Standards Act of 1992

Section 354(g)(1) of the PHS Act requires FDA, States as Certifier (SAC) States, or a State or local agency acting on behalf of the FDA, to conduct an annual inspection of each mammography facility. The purpose of the annual inspection is to determine facility compliance with quality standards established under the MQSA. Inspections will be conducted by inspectors who have met Federal training requirements and who are qualified by FDA.

Under ordinary circumstances, inspections will be conducted during the regular business hours of the facility or at a mutually agreed time. FDA normally will provide 5 working days advance notice of each annual inspection. If a significant deficiency is identified during an inspection, FDA will provide information on necessary corrective action and, in appropriate cases, will schedule a followup inspection after the facility has had a reasonable time to correct the deficiency. FDA normally will provide 5 working days advance notice of each followup inspection. FDA may make unannounced inspections or may provide shorter notice if prompt action is necessary to protect the public health (see section 354(g)(4) of the PHS Act).

III. Costs Included in the Fees to Be Assessed Beginning on October 1, 2003

Section 354(r) of the PHS Act requires FDA to assess and collect fees from persons who own or lease mammography facilities, or their agents, to cover the costs of inspections conducted by FDA, SAC States, or a State or local agency acting on behalf of FDA. Section 354(r) limits FDA's discretion in setting inspection fees in three ways: (1) Fees must be set so that, for a given fiscal year (FY), the aggregate amount of fees collected will equal the aggregate costs of inspections conducted; (2) a facility's liability for fees must be reasonably based on the proportion of the inspection costs that relate to the facility; and (3) governmental entities, as determined by FDA, are exempt from payment of fees.

FDA has determined that the following categories of costs are recoverable under section 354(r) of the PHS Act and has included them in the fees to be assessed beginning on October 1, 2003. These categories represent the same costs that have been assessed in fees since the beginning of the inspection program. Facilities are not being assessed for any new costs associated with inspections.

Cost categories are as follows: (1) Personnel costs of annual and followup inspections of mammography facilities, including administration and support; (2) purchase of equipment, calibration of instruments used in the inspections, and modification and maintenance of training facilities and laboratories to support the MQSA operations; (3) design, programming, and maintenance of data systems necessary to schedule and track inspections and to collect data during inspections; (4) training and qualification of inspectors (both FDA and State inspectors); (5) costs of billing facilities for fees due for annual and followup inspections and collecting facility payments; (6) tracking, coordination, and direction of inspections; and (7) overhead and support attributable to facility inspections.

Because most equipment used for inspections is durable and can be used for a period of years, it is not appropriate to recover the full costs of such expenditures in the year of purchase. To do so would result in the MQSA inspection fee varying widely from one year to the next. Instead, FDA recovers these costs over the useful life of the asset.

The recoverable portions of all fixed costs of the inspection program and appropriate variable costs are recovered in the annual inspection fee. This fee will vary depending on how many mammography units are used by a facility. All mammography facilities, except governmental entities, are subject to an inspection fee.

If the annual inspection of a facility identifies a deficiency that necessitates a followup inspection that facility will be assessed an additional fee to recover the costs of that additional inspection (unless it is a governmental entity). Facilities that do not require a followup inspection are not subject to this fee.

IV. Inspection Fees to be Assessed Beginning on October 1, 2003

FDA reviewed the past methodologies for calculating the inspection fee, which accounted for differences in facility size. The same method was adopted for calculating the fees FDA will assess beginning on October 1, 2003. A facility's inspection fee will be based on the number of mammography units used by the facility.

The total recoverable aggregate cost of the MQSA inspection program is estimated to be $14.1 million in FY 2004. This is below the $16.4 million authorized by Congress for collections in FY 2004. To recover the costs of the inspection program, the facility portion of the fee is $1,545 and each unit portion is $204. The cost of each additional unit must be added to the facility portion of the fee to determine the total inspection fee. This new fee of $1,749 for a facility with one unit compares to the current fee of $1,549 for a facility with one unit.

FDA will assess the following fees, beginning on October 1, 2003, for facility inspections, shown in table 1 of this document:

TABLE 1.—ANNUAL INSPECTION FEE BY NUMBER OF UNITS

Number of Units	Fee
1	$1,749
2	$1,953
3	$2,157
4	$2,361
5	$2,565
6	$2,769
7	$2,973
Followup Inspection Fee	$991

FDA will continue to charge separately for annual and followup inspections. FDA believes it is more appropriate and equitable for the costs of followup inspections to be borne entirely by the facilities that require such inspections. FDA has again chosen to adopt a flat fee for followup inspections over an hourly rate that would vary the fee by the length of the inspection. This approach eliminates concerns about variations among inspectors and differential treatment of facilities.The fee schedule is subject to change each year to ensure that the aggregate amount of fees collected during any year equals the aggregate amount of costs for that year's facility inspections. FDA will monitor the adequacy of the fee on an annual basis to account for any major programmatic and budget changes.

FDA continues to use a uniform, national fee structure. The methodology adopted by FDA to determine inspection fees does not pass on the costs of inspecting governmental entities to other facilities. The entire cost of inspecting governmental entities has been and will continue to be borne by appropriated funds.

V. Facilities Subject to Payment of Inspection Fees

Under the MQSA, all certified mammography facilities except governmental entities, as determined by FDA, are subject to payment of inspection fees (see section 354(r) of the PHS Act). FDA will continue to use the definition that was previously developed and applied to determine whether a facility qualifies as a governmental entity for the purpose of determining whether a facility is exempt from payment of inspection fees under section 354(r) of the PHS Act. A facility may qualify as a governmental entity in two ways. First, a facility may qualify if any Federal department, State, district, territory, possession, Federally-recognized Indian tribe, city, county, town, village, municipal corporation, or similar political organization does the following: (1) Operates the facility; (2) pays the entire salary of all onsite personnel for the facility; (3) owns, rents, or leases all of the facility's mammography equipment; and (4) has the ultimate authority to make day-to-day decisions concerning the management and operation of the facility.

Second, a facility may qualify as a governmental entity if the facility provides services under the Breast and Cervical Cancer Mortality Prevention Act of 1990 (*www.cdc.gov/cancer/nbccedp*) (FDA has verified the Web site address, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**) and at least 50 percent of the mammography screening examinations provided during the preceding 12 months were funded under that statute. Facilities providing mammography services using grants under other statutes will not qualify as a government entity. FDA does not recognize, as a governmental entity, a facility providing Medicare/Medicaid services unless that facility qualifies as a governmental entity as described in the previous paragraph.

VI. Billing and Collection Procedures

Within 30 days following inspection, FDA mails a bill and a "Governmental Entity Declaration" form (Form 3422) to the inspected facility. Facilities who believe they meet the governmental entity criteria complete the form and return it in lieu of the inspection fee payment. The bill sets forth the type of inspection conducted (annual or follow-up), the fee to be paid, and the date payment is due (30 days after billing date). Inspection fees are billed to and collected from the party that operates the facility. If the facility is owned or controlled by an entity other than the operator, it is up to the parties to establish, through contract or otherwise, how the costs of facility inspections will be allocated.

If full payment is not received by the due date, a second bill is sent. At that time, interest begins to accrue at the prevailing rate set by the Department of the Treasury, a 6 percent late payment penalty is assessed in accordance with 45 CFR 30.13, and a $20 administrative fee is assessed for each 30-day period that a balance remains due. If payment is not received within 30 days of a third and final bill, FDA may initiate action to collect unpaid balances (with interest and penalties), including the use of collection agencies, the reporting of delinquencies to commercial credit reporting agencies, and forwarding delinquent accounts to the Department of the Treasury, Treasury Offset Program. Any questions or concerns about the billing and collection procedures may be addressed to Billing Inquiries c/o Mammography Quality Assurance Program, P.O. Box 6057, Columbia, MD 21045, 1–800–838–7715.

VII. Request for Comments

Although the MQSA does not require FDA to solicit comments on fee exemption, assessment and collection, FDA is inviting comments from interested persons in order to have the benefit of additional views.

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any

mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 26, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22477 Filed 9–3–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2003–14294]

El Paso Energy Bridge Gulf of Mexico, LLC Deepwater Port License Application

AGENCY: Coast Guard, DHS, and Maritime Administration, DOT.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The U.S. Coast Guard (USCG) and the U.S. Maritime Administration (MARAD) will hold a public hearing to receive information relevant to the issuance or denial of the requisite federal license for the proposed El Paso Energy Bridge Gulf of Mexico, LLC (Energy Bridge GOM) Deepwater Port project. The proposed Energy Bridge GOM Deepwater Port would be located in West Cameron Area, South Addition, Block 603 (WC603) in the Central Area of the Gulf of Mexico, approximately 106 miles due south of the Louisiana coastline. We encourage interested individuals and organizations to attend the public hearing and submit comments. We also seek comments from anyone unable to attend the public hearing. In conjunction with the public hearing, the USCG and MARAD will also hold an informational open house regarding the proposed Energy Bridge GOM Deepwater Port project.

DATES: The public hearing will be held on Friday, October 3, 2003, 3 p.m. to 6 p.m., in New Orleans, Louisiana. The informational open house will be held on Friday, October 3, 2003, 1 p.m. to 3 p.m., in New Orleans, LA. The public hearing may be adjourned as early as 5 p.m. if there is no significant attendance or participation during the first two hours. The public hearing will continue beyond 6 p.m. if necessary to ensure all individuals present at that time who wish to comment have an opportunity to do so.

Comments intended for inclusion in the public docket [USCG–2003–14294] must reach the Docket Management Facility on or before November 17, 2003.

ADDRESSES: The public hearing and informational open house will be held at the following location: New Orleans Marriott, 555 Canal Street, New Orleans, Louisiana 70130, (504) 581–1000.

You may submit comments identified by Coast Guard docket number USCG–2003–14294 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web Site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning this notice, the Energy Bridge GOM Deepwater Port license application, or the public hearing or informational open house, contact Commander Mark Prescott, U.S. Coast Guard at (202) 267–0225 or *mprescott@comdt.uscg.mil.* For questions on viewing or submitting material to the docket, call Ms. Andrea Jenkins, Program Manager, Docket Operations, Department of Transportation, at (202) 366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

Whether or not you attend the public hearing or informational open house, we encourage you to submit written comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number [USCG–2003–14294], indicate your specific concern, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

Viewing comments and documents: To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a simple search using the docket number USCG–2003–14294. You may also visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

Public Hearing/Informational Open House

The Coast Guard and the Maritime Administration will hold a public hearing from 3 p.m. to 6 p.m. on Friday, October 3, 2003, at the New Orleans Marriott, 555 Canal Street, New Orleans, Louisiana. An informational open house will be held prior to the public meeting from 1 p.m. to 3 p.m. at the same location. We invite the public and representatives of interested agencies to attend and provide comments on the proposed license application. If you plan to attend the public hearing or informational open house and need special assistance, such as sign language interpretation or other reasonable accommodations, contact the U.S. Coast Guard as indicated in **FOR FURTHER INFORMATION CONTACT.**

Proposed Deepwater Port Background Information

The proposed Energy Bridge GOM Deepwater Port would deliver natural gas to the United States Gulf Coast using existing gas supply and gathering systems in the Gulf of Mexico and Louisiana. Gas would then be delivered to shippers using the national pipeline grid through interconnections with major interstate and intrastate pipelines.

The project would consist of a Submerged Turret Loading (STL) system that would be comprised of a submerged turret buoy; chains, lines, and anchors; a flexible riser; and a subsea manifold. A 20-inch seabed pipeline would be constructed as part of the project.

Liquified natural gas (LNG) would be transported on an El Paso Energy Bridge Vessel (EPEBV) from various sources worldwide. When the EPEBV, a conventional LNG tanker fitted with regasification equipment on board the vessel, reached the location of the Deepwater Port, it would retrieve and connect to the STL system. The submerged buoy would be raised from its subsurface location, and drawn into an opening in the hull of the vessel. After the buoy was attached to the vessel, the on-board LNG regasification process would commence. The gas would then be discharged through the buoy into the subsea flexible riser, to the manifold, and finally to the pipeline which would enable additional natural gas supplies to enter key domestic markets in the United States.

License Application Background Information

The Energy Bridge GOM Deepwater Port license application was submitted to the Secretary of Transportation on December 20, 2002. The license application calls for construction of the Energy Bridge GOM Deepwater Port in an area situated in the Central Area of the Gulf of Mexico, approximately 106 miles south of the Louisiana coastline, in West Cameron Area, South Addition, Block 603 (WC603). Additional information concerning the contents of the application can be found online at *http://dms.dot.gov* under docket number USCG–2003–14294, or in the notice of application published in the **Federal Register** at 68 FR 3299 (January 23, 2003). This public hearing is being held pursuant to 33 U.S.C. 1504(g) to receive information relevant to the issuance or denial of the requisite federal license for the proposed Energy Bridge GOM Deepwater Port project.

Procedural

Any person who wishes may appear and speak or present evidence at this public hearing. Persons planning to speak at the hearing should contact the U.S. Coast Guard as indicated in **FOR FURTHER INFORMATION CONTACT,** any time prior to the hearing, indicating the approximate amount of time required. Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made a part of the hearing record. Written statements and exhibits may be delivered before or during the hearing, or they may be submitted for up to 45 days following the date of the hearing to the Docket Management Facility listed under **ADDRESSES.**

Joseph J. Angelo,

Director of Standards, Marine Safety, Security, and Environmental Protection, Coast Guard.

Raymond R. Barberisi,

Director, Office of Ports and Domestic Shipping, U.S. Maritime Administration.

[FR Doc. 03–22528 Filed 9–3–03; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2003–16010]

International Convention for the Prevention of Pollution From Ships, Annex IV—International Sewage Pollution Prevention Equivalency Documentation

AGENCY: Coast Guard, DHS.

ACTION: Notice of policy.

SUMMARY: The Coast Guard announces that on September 27, 2003, the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78), (revised) Annex IV will enter into force internationally. The United States is not a Party to MARPOL 73/78, Annex IV, however, U.S. flagged vessels visiting nations that are parties may need to demonstrate compliance with these MARPOL regulations on the prevention of pollution by sewage from ships. The Coast Guard plans to assist qualified U.S. flag vessels in demonstrating compliance with these MARPOL requirements by issuing a document certifying equivalent compliance with the revised Annex IV of MARPOL 73/78. Failure of a United States flagged vessel to have the appropriate certificate or a document stating shipboard equivalency to MARPOL 73/78, Annex IV could result in a port state detention abroad.

DATES: The MARPOL 73/78, Annex IV international requirements come into force September 27, 2003, for new ships built on or after September 27, 2003. For existing vessels, these MARPOL international requirements come into force September 27, 2008.

ADDRESSES: For new vessels, requests for documentation certifying equivalent compliance with the revised Annex IV of MARPOL 73/78 should be sent to the local Officer-in-Charge, Marine Inspection. This notice and documents mentioned in this notice as being available in the docket, are part of docket USCG–2003–16010 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, you may call, fax, or e-mail Lieutenant Commander Brian Downey, Office of Compliance, (G–MOC–1): telephone 202–267–2735, fax 202–267–4394, e-mail *BDowney@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Starting September 27, 2003, certain U.S. flagged vessels visiting nations that are a party to the International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 (MARPOL 73/78), Annex IV (Sewage) ("MARPOL 73/78, Annex IV") may need to demonstrate compliance with MARPOL 73/78, (revised) Annex IV—regulations on the prevention of pollution by sewage from ships.

The Marine Environment Protection Committee (MEPC) has agreed to revisions to Annex IV. MEPC of IMO has asked Annex IV Parties to implement the revised Annex IV immediately on the entry into force of the existing Annex to avoid the creation of a dual treaty regime between the existing and the revised Annex IV.

Applicability

The MARPOL 73/78, (revised) Annex IV applies to all new vessels built on or after September 27, 2003, that are 400 Gross Tons (GT), International Tonnage Convention (ITC), or more and new vessels less than 400 GT ITC that are certified to carry more than 15 passengers. The Annex does not require existing vessels within these tonnage and passenger categories to comply until September 27, 2008. A copy of the text of the MARPOL 73/78, (revised) Annex IV, and a related MEPC circular

are available in the docket for this notice under **ADDRESSES**.

Equivalency Documentation

The U.S. Coast Guard plans to help the United States maritime industry demonstrate equivalent compliance with MARPOL 73/78, (revised) Annex IV to which the United States is not a Party. The United States considers a U.S. Coast Guard certified Marine Sanitation Device (MSD) to offer equivalent sewage pollution prevention to MSDs with an IMO Certificate of Type Test demonstrating compliance with the performance requirements of MARPOL 73/78, (revised) Annex IV. Therefore, any vessel with an installed and operational Coast Guard certified MSD which meets the criteria of 33 Code of Federal Regulations (CFR) part 159 should be eligible to receive documentation certifying equivalent compliance with the revised Annex IV of MARPOL 73/78.

Because the United States is not a party to MARPOL 73/78, Annex IV, the Coast Guard cannot issue official international convention certificates as a Flag State. To facilitate commerce and reduce confusion, however, the Coast Guard plans to issue a Flag State document to demonstrate equivalent compliance with MARPOL 73/78, (revised) Annex IV for eligible vessels.

Dated: August 28, 2003.

L. L. Hereth,

Acting Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 03–22560 Filed 8–29–03; 3:07 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: Report of complaint; Form I–847.

The Department of Homeland Security, Bureau of Customs and Border Protection has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 26, 2003, 68 FR 38084. The notice allowed for a 60-day public comment period. No public comments were received by the BCBP on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 6, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Homeland Security Desk Officer, 725 17th Street, NW., Room 10235, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Complaint.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–847. Bureau of Customs and Border Protection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary; Individual or households. This form is used to establish a record of complaint, and to initiate an investigation of misconduct by an officer of the DHS.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 63 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Regulations and Forms Services Division, U.S. Department of Homeland Security, Room 4034, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Ms. Terry O'Malley, Clearance Officer, United States Department of Homeland Security, 7th & D Streets, NW., Washington, DC 20530, (202) 358–3571.

Dated: August 27, 2003.

Richard A. Sloan,

Department Clearance Officer, Bureau of Immigration and Customs Enforcement, United States Department of Homeland Security.

[FR Doc. 03–22481 Filed 9–3–03; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

MEETING DATE AND TIME: Friday, September 12, 2003, Time 2 p.m. to 4 p.m.

ADDRESS: Lehigh Valley Planning Commission, 961 Marcon Blvd, Suite 310, Allentown, PA 18103.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the

Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton PA 18042, (610) 923–3548.

Dated: August 28, 2003.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 03–22492 Filed 9–3–03; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

[516 DM 1–15]

National Environmental Policy Act Revised Implementing Procedures

AGENCY: Department of the Interior.

ACTION: Notice of proposed revised procedures.

SUMMARY: This notice proposes revised Departmental policies and procedures for compliance with the National Environmental Policy Act (NEPA), as amended, Executive Order 11514, as amended, Executive Order 12114, and the Council on Environmental Quality's Regulations. This action is necessary to update these procedures and to make them available to the public on the Department's Internet site. When adopted, these procedures will be published in Part 516 of the Departmental Manual (DM) and will be added to the Electronic Library of Interior Policies (ELIPS). ELIPS is located at: *http://elips.doi.gov/*. For comparison purposes, the 1980 chapters that are currently in force presently appear at this Web site. These proposed procedures do not change any bureau procedures (*see* **SUPPLEMENTARY INFORMATION** below).

DATES: Submit comments on or before October 6, 2003.

ADDRESSES: Comments may be mailed to: Department of the Interior; NEPA Revised Implementing Procedures; c/o The Content Analysis Team; US Forest Service; P.O. Box 221150; Salt Lake City, UT 84122. Comments may also be faxed to the Content Analysis Team at: 801–517–1015. Finally comments may be e-mailed to the team at: *DOINEPA@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Terence N. Martin, Team Leader, Natural Resources Management; Office of Environmental Policy and Compliance; 1849 C Street, NW., Washington, DC 20240. Telephone: 202–208–5465. e-mail: *terry_martin@ios.doi.gov.*

SUPPLEMENTARY INFORMATION: These procedures address policy as well as procedure in order to assure compliance with the spirit and intent of NEPA. They update our policies and procedures in order to stay current with changing environmental laws and programs of the Federal government. It is the intent of these procedures to continue to set forth one set of broad Departmental directives and instructions to all bureaus and offices of the Department to follow in their NEPA compliance activities. In the current chapters, the Department's bureaus published appendices to Chapter 6 to further describe each bureau's NEPA compliance program. In order to more efficiently handle these appendices in the ELIPS system, it has been decided to rename them as new chapters to this DM part. Therefore, this publication expands the chapter numbering system from 516 DM 8 through 516 DM 15 to contain the old bureau appendices. These chapters have already received public review and are final. They may be viewed and downloaded from ELIPS. Comments are not being requested on these chapters. Chapters 8 through 15 may be revised in the future to further conform to the revised Chapters 1–7. If so, they will each appear for comment in the **Federal Register** at the appropriate time. In accordance with 1507.3 of the CEQ Regulations, this Department is consulting with CEQ and is hereby requesting public review and comment on the proposed procedures.

Background: On August 28, 2000, the Department published these procedures in draft form and invited the public to make comments. Several reviewers requested a time extension, and a time extension was granted through the close of business on November 13, 2000. That publication has never been made final, and all comments received to date on that publication have been read, analyzed, and considered in the revision process. Internal Departmental review and revision has continued throughout 2001 and 2002. In early 2003, the Department held four listening sessions to seek views and comments on this process. Those sessions were held in Washington, DC; Denver, CO; Portland, OR; and Anchorage, AK. Again, those comments have been taken into account in revising these chapters. The procedures have also been recirculated in the Department for further review and clearance by each bureau and assistant secretary.

Procedural Requirements: The following list of procedural requirements has been assembled and addressed to contribute to this open review process. Today's publication is a notice of draft, internal Departmental action and not a rulemaking. However, we have addressed the various procedural requirements that are generally applicable to proposed and final rulemaking to show how they would affect this notice if it were a rulemaking.

Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993) it has been determined that this action is the implementation of policy and procedures applicable only to the Department of the Interior and not a significant regulatory action. These policies and procedures would not impose a compliance burden on the general economy.

Administrative Procedures Act

This document is not subject to prior notice and opportunity to comment because it is a general statement of policy and procedure [(5 U.S.C. 553(b)(A)]. However, notice and opportunity to comment is required by the CEQ Regulations [40 CFR 1507.3(a)].

Regulatory Flexibility Act

This document is not subject to notice and comment under the Administrative Procedures Act, and, therefore, is not subject to the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document provides the Department with policy and procedures under NEPA and does not compel any other party to conduct any action.

Small Business Regulatory Enforcement Fairness Act

These policies and procedures do not comprise a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The document will not have an annual effect on the economy of $100 million or more and is expected to have no significant economic impacts. Further, it will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions and will

impose no additional regulatory restraints in addition to those already in operation. Finally, the document does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States based enterprises to compete with foreign based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this document will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. The document does not require any additional management responsibilities. Further, this document will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a significant regulatory action under the Unfunded Mandates Reform Act. These policies and procedures are not expected to have significant economic impacts nor will they impose any unfunded mandates on other Federal, State, or local government agencies to carry out specific activities.

Federalism

In accordance with Executive Order 13132, this document does not have significant Federalism effects; and, therefore, a Federalism assessment is not required. The policies and procedures will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. No intrusion on State policy or administration is expected, roles or responsibilities of Federal or State governments will not change, and fiscal capacity will not be substantially, directly affected. Therefore, the document does not have significant effects or implications on Federalism.

Paperwork Reduction Act

This document does not require information collection as defined under the Paperwork Reduction Act. Therefore, this document does not constitute a new information collection system requiring Office of Management and Budget (OMB) approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

The Council on Environmental Quality does not direct agencies to prepare a NEPA analysis or document before establishing agency procedures that supplement the CEQ regulations for implementing NEPA. Agency NEPA procedures are internal procedural guidance to assist agencies in the fulfillment of agency responsibilities under NEPA, but are not the agency's final determination of what level of NEPA analysis is required for a particular proposed action.

Essential Fish Habitat

We have analyzed this document in accordance with section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and determined that issuance of this document will not affect the essential fish habitat of Federally managed species; and, therefore, an essential fish habitat consultation on this document is not required.

Consultation and Coordination with Indian Tribal Governments

In accordance with Executive Order 13175 of November 6, 2000, and 512 DM 2, we have assessed this document's impact on tribal trust resources and have determined that it does not directly affect tribal resources since it describes the Department's procedures for its compliance with NEPA.

Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211 of May 18, 2001, requires a Statement of Energy Effects for significant energy actions. Significant energy actions are actions normally published in the **Federal Register** that lead to the promulgation of a final rule or regulation and may have any adverse effects on energy supply, distribution, or use. We have explained above that this document is an internal Departmental Manual part which only affects how the Department conducts its business under the National Environmental Policy Act. This manual part is not a rulemaking; and, therefore, not subject to Executive Order 13211.

Actions to Expedite Energy-Related Projects

Executive Order 13212 of May 18, 2001, requires agencies to expedite energy-related projects by streamlining internal processes while maintaining safety, public health, and environmental protections. Today's publication is in conformance with this requirement as it promotes existing process streamlining requirements and revises the text to emphasize this concept (see Chapter 4, subpart 4.16).

Government Actions and Interference with Constitutionally Protected Property Rights

In accordance with Executive Order 12630 (March 15, 1988) and Part 318 of the Departmental Manual, the Department has reviewed today's notice to determine whether it would interfere with constitutionally protected property rights. Again, we believe that as internal instructions to bureaus on the implementation of the National Environmental Policy Act, this publication would not cause such interference.

Authority: NEPA, the National Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4371 *et seq.*); E.O. 11514, March 5, 1970, as amended by E.O. 11991, May 24, 1977; and CEQ Regulations 40 CFR 1507.3

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

Department of the Interior

Departmental Manual

Effective Date:
Series: Environmental Quality
Part 516: National Environmental Policy Act of 1969
Chapter 1: Protection and Enhancement of Environmental Quality
Originating Office: Office of Environmental Policy and Compliance

516 DM 1

1.1 Purpose

This Chapter establishes the Department's policies for complying with Title I of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321–4347) (NEPA); Section 2 of Executive Order 11514, Protection and Enhancement of Environmental Quality, as amended by Executive Order 11991; Executive Order 12114, Environmental Effects Abroad of Major Federal Actions; and the regulations of the Council on Environmental Quality (CEQ) implementing the procedural provisions of NEPA (40 CFR 1500–1508; identified in this Part 516 as the CEQ Regulations).

1.2 Policy

It is the policy of the Department:

A. To provide leadership in protecting and enhancing those aspects of the quality of the Nation's environment which relate to or may be affected by the Department's policies, goals, programs, plans, or functions in furtherance of national environmental policy;

B. To the fullest practicable extent, to encourage public involvement in the development of Departmental plans and programs through local partnerships at the beginning of the NEPA process, and to provide timely information to the public to better assist in understanding such plans and programs affecting environmental quality and those aspects of the human environment as identified in Section 101 of NEPA;

C. To interpret and administer, to the fullest extent possible, the policies,

regulations, and public laws of the United States administered by the Department in accordance with the requirements of NEPA;

D. To consider and give important weight to environmental factors, along with other societal needs, in developing proposals and making decisions in order to achieve a proper balance between the development and utilization of natural, cultural, and human resources and the protection and enhancement of environmental quality;

E. To consult, coordinate, and cooperate with other Federal agencies and, particularly, State, local, Alaska Native Corporations, and Indian tribal governments in the development and implementation of the Department's plans and programs affecting environmental quality and, in turn, to give consideration to those activities that succeed in best addressing State and local concerns;

F. To be innovative in natural resource protection and to use all practicable means, consistent with other essential considerations of national policy, to improve, coordinate, and direct its policies, plans, functions, programs, and resources in furtherance of national environmental goals;

G. To rigorously integrate systematic, interdisciplinary approaches into the design of all activities and to base decision making on adequate environmental data in order to identify reasonable alternatives to proposed actions that will avoid or minimize adverse environmental impacts;

H. Where necessary, to monitor, evaluate, and control activities to protect and enhance the quality of the environment and to base decision making on monitoring data and evaluation results; and

I. To cooperate with and assist the CEQ.

1.3 General Responsibilities

The following responsibilities reflect the Secretary's decision that the officials responsible for making program decisions are also responsible for taking the requirements of NEPA into account in those decisions and will be held accountable for that responsibility:

A. Assistant Secretary—Policy, Management and Budget (AS/PMB)

(1) Is the Department's focal point on NEPA matters and is responsible for overseeing the Department's implementation of NEPA.

(2) Serves as the Department's principal contact with the CEQ.

(3) Assigns to the Director, Office of Environmental Policy and Compliance (OEPC), the responsibilities outlined for that Office in this Part.

B. Solicitor.

Is responsible for providing legal advice in the Department's compliance with NEPA.

C. Assistant Secretaries

(1) Are responsible for compliance with NEPA, Executive Order 11514, as amended, the CEQ Regulations, and this Part for bureaus and offices under their jurisdiction.

(2) Shall ensure that, to the fullest extent possible, the policies, regulations, and public laws of the United States administered under their jurisdiction are interpreted and administered in accordance with the requirements of NEPA.

D. Heads of Bureaus and Offices

(1) Must comply with the provisions of NEPA, Executive Order 11514, as amended, the CEQ Regulations, and this Part.

(2) Shall interpret and administer, to the fullest extent possible, the policies, regulations, and public laws of the United States administered under their jurisdiction in accordance with the requirements of NEPA.

(3) Shall continue to review their statutory authorities, administrative regulations, policies, programs, and procedures, including those related to loans, grants, contracts, leases, licenses, or permits, in order to identify any deficiencies or inconsistencies therein which prohibit or limit full compliance with the intent, purpose, and provisions of NEPA and, in consultation with the Solicitor and the Office of Congressional and Legislative Affairs, shall take or recommend, as appropriate, corrective actions as may be necessary to bring these authorities and policies into conformance with the intent, purpose, and procedures of NEPA.

(4) Shall monitor, evaluate, and control on a continuing basis their activities as needed to protect and enhance the quality of the environment. Such activities will include both those directed to controlling pollution and enhancing the environment and those designed to accomplish other program objectives which may affect the quality of the environment. They will develop programs and measures to protect and enhance environmental quality. They will assess progress in meeting the specific objectives of such activities as they affect the quality of the environment.

(5) Shall, in furtherance of public participation practices (see 1.2B, above), ensure that consensus-based management [1] and community-based NEPA training [2] are made available and used in all NEPA compliance activities. Will ensure that the Department's collaborative efforts under this part comply with the Federal Advisory Committee Act (FACA), 5 U.S.C., Appendix.[3]

(6) Shall use tiered and transferred analyses to help avoid needless repetition. They will require decision makers to produce NEPA documents that save resources and reduce the public's perception that NEPA documents merely accomplish compliance with a process and do not add to the general knowledge of environmental impacts to natural resources.

(7) Shall use adaptive management (see 516 DM 4.16) to fully comply with 40 CFR 1505.2 which requires a monitoring and enforcement program to be adopted, where applicable, for any mitigation activity.

E. Heads of Regional, Field, or Area Offices

(1) Shall comply fully with NEPA policies and procedures.

(2) Shall use information obtained in the NEPA process, including pertinent information provided by State and local agencies, Indian tribal governments, and interest groups, to identify reasonable alternatives to proposed actions that will avoid or minimize adverse impacts to the human environment while improving overall environmental results.

(3) Shall monitor, evaluate, and control their activities on a continuing basis to further protect and enhance the quality of the environment.

1.4 Consideration of Environmental Values

A. In Departmental Management

(1) In the management of the natural, cultural, and human resources under its jurisdiction, the Department must consider and balance a wide range of economic, environmental, and societal needs at the local, regional, national, and international levels, not all of which are quantifiable in comparable terms. In considering and balancing these objectives, Departmental plans, proposals, and decisions often require recognition of complements and resolution of conflicts among interrelated uses of these natural, cultural, and human resources within technological, budgetary, and legal constraints. Various Departmental conflict resolution mechanisms are available to assist this balancing effort.

(2) Departmental project reports, program proposals, issue papers, and other decision documents must carefully analyze the various objectives, resources, and constraints, and comprehensively and objectively evaluate the advantages and disadvantages of the proposed actions and their reasonable alternatives. Where appropriate, these documents will contain or reference supporting and underlying economic, environmental, technological, and other societal analyses in language that all participants can understand and use.

(3) The underlying environmental analyses will factually, objectively, and comprehensively analyze the environmental effects of proposed actions and their reasonable alternatives. They will systematically analyze the environmental impacts of alternatives, and particularly those alternatives and measures that would reduce, mitigate or prevent adverse environmental impacts or that would enhance environmental quality. However, such an environmental analysis is not, in and of itself, a program proposal or the decision document, is not a justification of a proposal, and will not support or deprecate the overall merits of a proposal or its various alternatives.

(4) Environmental analyses shall strive to provide baseline data where possible and shall provide monitoring and evaluation tools as necessary to ensure that an activity

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[1] Consensus-based management in the NEPA context is the full inclusion of all stakeholders with some assurance for the participants that the results of their work will be given serious consideration by the decision maker in selecting a course of action. It is a logical outgrowth of public participation.

[2] Community-based training in the NEPA context is the training of local participants in the intricacies of the environmental planning and decision making effort as it relates to the local community(ies). It should de-mystify the process and inform participants how to become effectively involved.

[3] To ensure FACA compliance, each bureau and office will verify whether FACA applies, and will ensure that the FACA requirements are followed anytime the Department utilizes (*i.e.* manages and controls) or establishes a group to be consulted or to provide recommendations to a Departmental official.

is implemented as contemplated by the NEPA analysis. Baseline data gathered for these analyses may include pertinent social, economic, and environmental data.

(5) If proposed actions are planned for the same geographic area or are otherwise closely related, environmental analysis should be integrated to ensure adequate consideration of resource use interactions, to reduce resource conflicts, to establish baseline data, to monitor and evaluate changes in such data, to adapt actions or groups of actions accordingly, and to comply with NEPA and the CEQ Regulations. Proposals shall not be segmented in order to reduce the levels of environmental impacts reported in NEPA documents.

(6) When proposed actions involve approval processes of other agencies, the Department shall use its lead role to identify opportunities to consolidate those processes.

B. In Internally Initiated Proposals

Officials responsible for development or conduct of planning and decisionmaking systems within the Department shall incorporate environmental planning as an integral part of these systems in order to ensure that environmental values and impacts are fully considered, facilitate any necessary documentation of those considerations, and identify reasonable alternatives in the design and implementation of activities that minimize adverse environmental impacts. An interdisciplinary approach shall be initiated at the earliest possible time to provide for consultation among all participants for each planning or decision making endeavor. This interdisciplinary approach should, to the extent possible, have the capacity to consider innovative and creative solutions from all participants.

C. In Externally Initiated Proposals

Officials responsible for the development or conduct of loan, grant, contract, lease, license, permit, or other externally initiated activities shall require applicants, to the extent necessary and practicable, to provide environmental information, analyses, and reports as an integral part of their applications. As with internally initiated proposals, officials shall encourage applicants and other interested parties to consult with the Department and provide their comments, recommendations, and suggestions for improvement.

1.5 Consultation, Coordination, and Cooperation with Other Agencies and Organizations

A. Departmental Plans and Programs

(1) Officials responsible for planning or implementing Departmental plans and programs will develop and utilize procedures to consult, coordinate, and cooperate with relevant State, local, and Indian tribal governments; other bureaus and Federal agencies; and public and private organizations and individuals concerning the environmental effects of these plans and programs on their jurisdictions or interests. Such efforts should, in accordance with FACA, include consensus-based management whenever possible. This is a planning process that incorporates direct community involvement into bureau activities from initial scoping to implementation of the bureau or office decision. All bureau NEPA and planning procedures will be made available to the public.

(2) Bureaus and offices will use, to the maximum extent possible, existing notification, coordination, and review mechanisms established by the Office of Management and Budget and CEQ. However, use of these mechanisms must not be a substitute for early consultation, coordination, and cooperation with others, especially State, local, and Indian tribal governments.

(3) Bureaus and offices are encouraged to expand, develop, and use new forms of notification, coordination, and review, particularly by electronic means and the Internet. Bureaus are also encouraged to stay abreast of and use new technologies in environmental data gathering and problem solving.

B. Other Departmental Activities

(1) Technical assistance, advice, data, and information useful in restoring, maintaining, and enhancing the quality of the environment will be made available to other Federal agencies; State, local, and Indian tribal governments; institutions; and other entities as appropriate.

(2) Information regarding existing or potential environmental problems and control methods developed as a part of research, development, demonstration, test, or evaluation activities will be made available to other Federal agencies; State, local, and Indian tribal governments; institutions; and other entities as appropriate.

(3) Recognizing the worldwide and long-range character of environmental problems and consistent with the foreign policy of the United States, appropriate support will be made available (in consultation with States or Tribal governments, if applicable) to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment.

C. Plans and Programs of Other Agencies and Organizations

(1) Officials responsible for protecting, conserving, developing, or managing resources under the Department's jurisdiction shall coordinate and cooperate with State, local, and Indian tribal governments; other bureaus and Federal agencies; and public and private organizations and individuals, and provide them with timely information concerning the environmental effects of these entities' plans and programs.

(2) Bureaus and offices are encouraged to participate early in the planning processes of other agencies and organizations in order to ensure full cooperation with, and understanding of, the Department's programs and interests in natural, cultural, and human resources.

(3) Bureaus and offices will use, to the fullest extent possible, existing Departmental review mechanisms to avoid unnecessary duplication of effort and to avoid confusion by other organizations.

(4) Bureaus and offices will work closely with other Federal agencies to ensure that similar or related proposed actions in the same geographic area are fully evaluated to determine if agency analyses can be integrated so that one NEPA compliance document can be used by all for their individual permitting and licensing needs.

1.6 Public Involvement

A. Bureaus and offices, in consultation with the Office of Communications, will develop and implement procedures to ensure the fullest practicable provision of timely public information and understanding of their plans and programs with environmental impacts including information on the environmental impacts of alternative courses of action. This is to include public involvement in the development of NEPA analyses and documents.

B. These procedures will include, wherever appropriate, provision for public meetings in order to obtain the views of interested parties, newsletters, and status reports of NEPA compliance activities. Public information shall include all necessary policies and procedures concerning plans and programs in a readily accessible, consistent format.

C. Bureaus and offices will also coordinate and collaborate with State and local agencies and Indian tribal governments in developing and using similar procedures for informing the public concerning their activities affecting the quality of the environment. (See also 301 DM 2.)

1.7 Mandate

A. This Part provides Department-wide instructions for complying with NEPA, Executive Orders 11514, as amended by 11991 (Protection and Enhancement of Environmental Quality) and 12114 (Environmental Effects Abroad of Major Federal Actions), and the CEQ Regulations.

B. The Department hereby adopts the CEQ Regulations implementing the procedural provisions of NEPA [Sec. 102(2)(C)] except where compliance would be inconsistent with other statutory requirements. In the case of any apparent discrepancies between these procedures and the NEPA statute; Executive Orders 11514, 11991, and 12114; or the mandatory provisions of the CEQ Regulations, the laws, executive orders, and regulations shall govern.

C. Instructions supplementing the CEQ Regulations are provided in Chapters 2–7 of this Part. Citations in brackets refer to the CEQ Regulations.

D. Instructions specific to each bureau are found in Chapters 8 through 15. This portion of the manual may expand or contract depending on the number of bureaus existing at any particular time. In addition, bureaus may prepare handbooks or other technical guidance for their personnel on how to apply this Part to principal programs. In the case of any apparent discrepancies between these procedures and bureau handbooks or technical guidance, 516 DM 2–7 shall govern.

Department of the Interior

Departmental Manual

Effective Date:

Series: Environmental Quality
Part 516: National Environmental Policy Act of 1969
Chapter 2: Initiating the NEPA Process
Originating Office: Office of Environmental Policy and Compliance

516 DM 2

2.1 Purpose

This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to initiating the NEPA process. The numbers in parentheses signify the appropriate citation in the CEQ Regulations.

2.2 Apply NEPA Early (40 CFR 1501.2)

A. Bureaus shall initiate early consultation and coordination with other bureaus and any Federal agency having jurisdiction by law or special expertise with respect to any environmental issue that should be addressed, and with appropriate Federal, State, local and Indian tribal governments authorized to develop and enforce environmental standards or to manage and protect natural resources.

B. Bureaus shall also initiate the consultation process with interested parties and organizations at the time an application is received, or when the bureau initiates action on an agency plan or project requiring NEPA compliance.

C. Bureaus shall revise or amend program regulations, requirements, and directives to ensure that private or non-Federal applicants are informed of any environmental information required to be included in their applications and of any consultation with other Federal agencies, or State, local, or Indian tribal governments required prior to making the application. A discussion and a list of these regulations, requirements, and directives are found in 516 DM 6.4 and 6.5. The specific regulations, requirements, and directives for each bureau are found in separate chapters of this Part beginning with Chapter 8.

D. It is imperative that bureaus enlist the participation of all stakeholders as early as possible (including any necessary community-based training) in order to reduce costs, prevent delays, and to promote efficiency in the NEPA process. It is the intent of these procedures to achieve early consensus on the scope of NEPA compliance and the methodologies for collecting needed baseline data. Consensus-based management [as described in 516 DM 1.5(A)(1)] should be used to facilitate this process. Further, it is the intent of these procedures to avoid the late introduction of issues and alternatives that should have been identified initially during scoping.

E. Bureaus shall engage in a rigorous interdisciplinary approach at the earliest possible time to ensure adequate identification and consideration of the wide variety of environmental factors and considerations inherent in NEPA compliance activities.

2.3 Whether To Prepare an Environmental Impact Statement (EIS) (40 CFR 1501.4)

A. Categorical Exclusions (CX) (40 CFR 1508.4)

(1) The following criteria will be used to determine actions to be categorically excluded from the NEPA process: (a) The action or group of actions would have no significant individual or cumulative effect on the quality of the human environment [NEPA; Section 102(2)(c)]; and (b) The action or group of actions would not involve unresolved conflicts concerning alternative uses of available resources [NEPA; Section 102(2)(e)].

(2) Based on the above criteria, the classes of actions listed in Appendix 1 to this Chapter are categorically excluded, Department-wide, from the NEPA process. A list of CX specific to bureau programs will be found in the bureau chapters beginning with Chapter 8. Note that 1508.18(a) excludes judicial or administrative civil or criminal enforcement actions.

(3) The CEQ Regulations at 40 CFR 1508.4 require agency procedures to provide for extraordinary circumstances in which a normally excluded action may have a significant environmental effect thus requiring additional analysis and action. The exceptions to categorical exclusions listed in Appendix 2 of this Chapter apply to extraordinary circumstances in which a normally excluded action may have a significant environmental effect. Any action that is normally categorically excluded must be subjected to sufficient environmental review to determine whether it meets any of the extraordinary circumstances, in which case, environmental documents must be prepared for the action. Bureaus are reminded and encouraged to work within existing administrative frameworks, including any existing programmatic agreements, when deciding how to apply any of the Appendix 2 extraordinary circumstances.

B. Environmental Assessment (EA) (40 CFR 1508.9)

See 516 DM 3. Decisions/actions which would normally require the preparation of an EA will be identified in each bureau chapter beginning with Chapter 8.

C. Finding of No Significant Impact (FONSI) (40 CFR 1508.13)

A FONSI will be prepared as a separate covering document based upon a review of an EA. Accordingly, the words *include(d)* in Section 1508.13 should be interpreted *as attach(ed)*4 in reference to the EA.

D. Notice of Intent (NOI) (40 CFR 1508.22.).

An NOI will be prepared as soon as practicable after a decision to prepare an EIS and shall be published in the **Federal Register**, with a copy to the OEPC and made available to the affected public in accordance with Section 1506.6. Publication of an NOI may be delayed if there is proposed to be more than three (3) months between the decision to prepare an EIS and the time preparation is actually initiated. The notice, at a minimum, identifies key personnel, sets forth a schedule, and invites early comment. Scoping requests generally announce a schedule for scoping meetings where the agencies and the public can participate in the formal scoping process. These notices are also usually published in the **Federal Register** and may contain the text of a draft scoping document. The draft scoping document may also be made available upon request to a contact usually named in the notice.

E. Environmental Impact Statement (40 CFR 1508.11)

See 516 DM 4. Decisions/actions which would normally require the preparation of an EIS will be identified in each bureau chapter beginning with Chapter 8.

F. Existing environmental analyses should be used in analyzing impacts of a proposed action to the extent possible and appropriate. CEQ Regulations encourage agencies to make the best use of existing NEPA documents and to avoid redundancy and unneeded paperwork through supplementing, incorporating by reference, or adopting previous environmental analyses. Use of existing documents carries with it a presumption that the bureaus will determine, in a deliberative manner and through agency procedures, that existing environmental analyses still adequately cover current actions.

2.4 Lead Agencies (40 CFR 1501.5)

A. The AS/PMB shall designate lead bureaus within the Department when bureaus under more than one Assistant Secretary are involved and cannot reach agreement on lead bureau status. The AS/PMB shall represent the Department in consultations with CEQ or other Federal agencies in the resolution of lead agency determinations.

B. Bureaus will inform the OEPC of any agreements to assume lead agency status. OEPC will assist in the coordination and documentation of any AS/PMB designations made in 2.4A.

C. To eliminate duplication with State and local procedures, a non-Federal agency (including Indian tribal governments) may be designated as a joint lead agency when it has a duty to comply with State or local requirements that are comparable to the NEPA requirements.

D. In general, 40 CFR 1501.5 describes the selection of lead agencies, the settlement of lead agency disputes, and the concept of joint lead. While the joint lead relationship is not precluded among several Federal agencies, the Department recommends that it be applied sparingly. Instead, the Department recommends that one Federal agency be selected as the lead with the remaining Federal, State, Indian tribal governments, and local agencies assuming the role of cooperating agency. In this manner, the other Federal, State, and local agencies can ensure themselves that the ensuing NEPA document will meet their needs for adoption and application to their related decision, if one exists. If joint lead is dictated by other law, regulation, policy, or practice, then only one Federal agency may be the official filing agency for the EIS.

E. Lead agency designations may be required by law in certain circumstances.

2.5 Cooperating Agencies (40 CFR 1501.6)

A. The OEPC will assist Bureaus in determining cooperating agencies and coordinate requests from non-Interior agencies.

B. Bureaus will inform the OEPC of any agreements to assume cooperating agency status or any declinations pursuant to Section 1501.6(c).

C. Upon the request of the lead agency, any Federal agency with jurisdiction by law shall, and any Federal agency with special expertise may, be a cooperating agency. Any non-Federal agency (State, tribal, or local) may be a cooperating agency by agreement when it has jurisdiction by law (40 CFR 1508.15) or special expertise (40 CFR 1508.26) and meets the requirements of 40 CFR 1501.6. Bureaus will consult with the Solicitor's Office in cases where such non-Federal agencies are also applicants before the Department to determine relative lead/cooperating agency responsibilities.[4]

D. Bureaus and potential cooperating agencies may determine by letter or memorandum their respective roles, assignment of issues, and commitment to keeping the NEPA process on track and within time schedules.

2.6 Scoping (40 CFR 1501.7)

A. The invitation requirement in Section 1501.7(a)(1) may be satisfied by including such an invitation in the NOI.

B. Scoping is a process which continues throughout the planning and early stages of preparation of an EIS. Bureaus are encouraged through scoping to engage the public in the early identification of concerns, potential impacts, and possible alternative actions. Scoping requires interdisciplinary considerations. Scoping is an opportunity to bring agencies and applicants together to lay the groundwork for setting time limits, expediting reviews where possible, integrating other environmental reviews, and identifying any major obstacles that could delay the process.

C. Scoping should encourage the responsible official to integrate analyses required by other environmental laws. Scoping should also be used to integrate other planning activities for separate projects that may have similar or cumulative impacts. Integrated analysis facilitates the resolution of resource conflicts and minimizes redundancy.

D. Through scoping meetings, newsletters, or other communication methods, it should be made clear that the lead agency is ultimately responsible for the scope of an EIS and that suggestions obtained during scoping (see B and C above) are considered to be advisory.

2.7 Time Limits (40 CFR 1501.8)

A. Time limits are an important consideration and, when used diligently, can contribute greatly to a more efficient NEPA process. Bureaus are encouraged to set time limits of their own and to respond favorably to applicant requests for time limits and set them consistent with the requirements of 40 CFR 1501.8. Bureaus should work with cooperating agencies and agencies with which they must consult in setting time limits and encourage their commitment in meeting the time frames established.

B. When time limits are established, they should reflect the availability of personnel and funds. Efficiency of the NEPA process is dependent on the management capabilities of the lead bureau, which is encouraged to assemble a sufficiently well qualified staff to ensure timely completion of NEPA documents.

Chapter 2; Appendix 1

Departmental Categorical Exclusions

The following actions are CXs pursuant to 516 DM 2.3A(2). However, environmental documents will be prepared for individual actions within these CX if any of the extraordinary circumstances listed in 516 DM 2, Appendix 2, apply.

1.1 Personnel actions and investigations and personnel services contracts.

1.2 Internal organizational changes and facility and office reductions and closings.

1.3 Routine financial transactions including such things as salaries and expenses, procurement contracts (in accordance with applicable procedures for sustainable or "green" procurement), guarantees, financial assistance, income transfers, audits, fees, bonds, and royalties.

1.4 Departmental legal activities including, but not limited to, such things as arrests, investigations, patents, claims, and legal opinions. This does not include bringing judicial or administrative civil or criminal enforcement actions which are already excluded in 40 CFR 1508.18(a).

1.5 Nondestructive data collection, inventory (including field, aerial, and satellite surveying and mapping), study, research, and monitoring activities.

1.6 Routine and continuing government business, including such things as supervision, administration, operations, maintenance, renovations, and replacement activities having limited context and intensity (*e.g.*, limited size and magnitude or short-term effects).

1.7 Management, formulation, allocation, transfer, and reprogramming of the Department's budget at all levels. (This does not exclude the preparation of environmental documents for proposals included in the budget when otherwise required.)

1.8 Legislative proposals of an administrative or technical nature (including such things as changes in authorizations for appropriations, minor boundary changes, and land title transactions) or having primarily economic, social, individual, or institutional effects; and comments and reports on referrals of legislative proposals.

1.9 Policies, directives, regulations, and guidelines that are of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.

1.10 Activities which are educational, informational, advisory, or consultative to other agencies, public and private entities, visitors, individuals, or the general public.

1.11 Hazardous fuels reduction activities using prescribed fire not to exceed 4,500 acres, and mechanical methods for crushing, piling, thinning, pruning, cutting, chipping, mulching, and mowing, not to exceed 1,000 acres. Such activities: Shall be limited to areas (1) in wildland-urban interface and (2) Condition Classes 2 or 3 in Fire Regime Groups I, II, or III, outside the wildland-urban interface; Shall be identified through a collaborative framework as described in "A Collaborative Approach for Reducing Wildland Fire Risks to Communities and the Environment 10-Year Comprehensive Strategy Implementation Plan;" Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans; Shall not be conducted in wilderness areas or impair the suitability of wilderness study areas for preservation as wilderness; Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and may include the sale of vegetative material if the primary purpose of the activity is hazardous fuels reduction.[5]

1.12 Post-fire rehabilitation activities not to exceed 4,200 acres (such as tree planting, fence replacement, habitat restoration, heritage site restoration, repair of roads and trails, and repair of damage to minor facilities such as campgrounds) to repair or improve lands unlikely to recover to a management approved condition from wildland fire damage, or to repair or replace minor facilities damaged by fire. Such activities: Shall be conducted consistent with agency and Departmental procedures and applicable land and resource management plans; Shall not include the use of herbicides or pesticides or the construction of new permanent roads or other new permanent infrastructure; and Shall be completed within three years following a wildland fire.[6]

Chapter 2; Appendix 2

Categorical Exclusions: Extraordinary Circumstances

Extraordinary circumstances exist for individual actions within CXs which may:

2.1 Have significant adverse effects on public health or safety.

2.2 Have adverse effects on such natural resources and unique geographic characteristics as historic or cultural

[4] CEQ guidance to agencies dated July 28, 1999, and January 30, 2002, urges agencies to more actively solicit participation of Federal, State, tribal, and local governments as cooperating agencies.

[5] Refer to the Environmental Statement Memoranda Series for additional, required guidance.

[6] Ibid.

resources; park, recreation or refuge lands; wilderness areas; wild or scenic rivers; national natural landmarks; sole or principal drinking water aquifers; prime farmlands; wetlands (Executive Order 11990); floodplains (Executive Order 11988); national monuments; and other ecologically significant or critical areas.

2.3 Have highly controversial environmental effects or involve unresolved conflicts concerning alternative uses of available resources [NEPA Section 102(2)(E)].

2.4 Have highly uncertain and potentially significant environmental effects or involve unique or unknown environmental risks.

2.5 Establish a precedent for future action or represent a decision in principle about future actions with potentially significant environmental effects.

2.6 Be directly related to other actions with individually insignificant but cumulatively significant environmental effects.

2.7 Have adverse effects on properties listed, or eligible for listing, in the National Register of Historic Places.

2.8 Have adverse effects on species listed, or proposed to be listed, on the List of Endangered or Threatened Species, or have adverse effects on designated Critical Habitat for these species.

2.9 Have the potential to violate a Federal law, or a State, local, or tribal law or requirement imposed for the protection of the environment.

2.10 Have the potential for a disproportionately high and adverse effect on low income or minority populations (Executive Order 12898).

2.11 Restrict access to and ceremonial use of Indian sacred sites by Indian religious practitioners or adversely affect the physical integrity of such sacred sites (Executive Order 13007).

2.12 Significantly contribute to the introduction, continued existence, or spread of noxious weeds or non-native invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of such species (Federal Noxious Weed Control Act and Executive Order 13112).

Department of the Interior

Departmental Manual

Effective Date:
Series: Environmental Quality
Part 516: National Environmental Policy Act of 1969
Chapter 3: Environmental Assessments
Originating Office: Office of Environmental Policy and Compliance

516 DM 3

3.1 Purpose

This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to EAs.

3.2 When To Prepare (40 CFR 1501.3)

A. An EA will be prepared for all actions, except those covered by a categorical exclusion, those covered sufficiently by an earlier environmental document, or those actions for which a decision has already been made to prepare an EIS. The purpose of an EA is to allow the responsible official to determine whether to prepare an EIS or a FONSI.

B. In addition, an EA may be prepared on any action at any time in order to assist in planning and decision making, to aid an agency's compliance with NEPA when no EIS is necessary, or to facilitate EIS preparation.

3.3 Public Involvement

A. The public must be provided notice of the availability of EAs (40 CFR 1506.6).

B. Bureaus and offices, when conducting the EA process, shall provide the opportunity for public participation and shall consider the public comments on the pending plan or program.

C. The scoping process may be applied to an EA (40 CFR 1501.7).

3.4 Content

A. At a minimum, an EA will include brief discussions of the proposal, the need for the proposal, alternatives [as required by Section 102(2)(E) of NEPA], the environmental impacts of the proposed action and such alternatives, and a listing of agencies and persons consulted [1508.9(b)].

B. In addition, an EA may describe a broader range of alternatives and proposed mitigation measures to facilitate planning and decision making.

C. The level of detail and depth of impact analysis should normally be limited to that needed to determine whether there would be significant environmental effects.

D. An EA will contain objective analyses that support its environmental impact conclusions. It will not conclude whether an EIS will be prepared. This conclusion will be made upon review of the EA by the responsible bureau official and documented in either a NOI or a FONSI.

E. Previous NEPA analyses should be used in a tiered analysis or transferred and used in a subsequent analysis to enhance the content of an EA whenever possible.

3.5 Format

A. An EA may be prepared in any format useful to facilitate planning, decision making, and appropriate public participation.

B. An EA may be combined with any other planning or decision making document; however, that portion which analyzes the environmental impacts of the proposal and alternatives will be clearly and separately identified and not spread throughout or interwoven into other sections of the document.

3.6 Adoption

A. An EA prepared for a proposal before the Department by another agency, entity, or person, including an applicant, may be adopted if, upon independent evaluation by the responsible official, it is found to comply with this Chapter and relevant provisions of the CEQ Regulations.

B. When appropriate and efficient, a responsible official may augment such an EA when it is essentially, but not entirely, in compliance, in order to make it so.

C. If such an EA or augmented EA is adopted, responsible officials must prepare their own NOI or FONSI that acknowledges the origin of the EA and takes full responsibility for its scope and content.

D. Adoption or augmentation of an EA shall receive the same public participation that the EA would have received if it had originated with the adopting or augmenting bureau or office.

Department of the Interior

Departmental Manual

Effective Date:
Series: Environmental Quality
Part 516: National Environmental Policy Act of 1969
Chapter 4: Environmental Impact Statements
Originating Office: Office of Environmental Policy and Compliance

516 DM 4

4.1 Purpose

This Chapter provides supplementary instructions for implementing those portions of the CEQ regulations pertaining to EIS.

4.2 Statutory Requirements (40 CFR 1502.3)

NEPA requires that an EIS be prepared by the responsible Federal official. This official is normally the lowest-level official who has overall responsibility for formulating, reviewing, or proposing an action or, alternatively, has been delegated the authority or responsibility to develop, approve, or adopt a proposal or action. Preparation at this level will ensure that the NEPA process will be incorporated into the planning process and that the EIS will accompany the proposal through existing review processes.

4.3 Timing (40 CFR 1502.5)

A. For such actions as broad programmatic decisions, rulemakings, or resource management plans, an EIS should be commenced whenever a proposed action has been defined. These types of actions can be inherently vague and difficult to analyze until the proposed action is defined. At that point, concurrent drafting of the proposal and its accompanying EIS should be commenced.

B. The feasibility analysis (go/no-go) stage, at which time an EIS is to be prepared for proposed projects undertaken by DOI, is to be interpreted as the stage prior to the first point of major commitment to the proposal. For example, this would normally be at the authorization stage for proposals requiring Congressional authorization; the location or corridor stage for transportation, transmission, and communication projects; and the notice of sale stage for offshore mineral resources proposals [40 CFR 1502.5(a)].

C. For situations involving applications to DOI or the bureaus, an EIS need not be commenced until an application is essentially complete; *i.e.*, any required environmental information is submitted and any required advance funding is paid by the applicant [40 CFR 1502.5(b)].

4.4 Page Limits (40 CFR 1502.7)

Bureaus will ensure that the length of EISs is no greater than necessary to comply with NEPA, the CEQ regulations, and this Chapter.

4.5 Supplemental Statements (40 CFR 1502.9)

A. Supplements are required if an agency makes substantial changes in the proposed action relevant to environmental concerns or there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

B. A bureau and/or the appropriate program Assistant Secretary will consult with the OEPC and the Office of the Solicitor prior to proposing to CEQ to prepare a supplemental statement using alternative arrangements such as issuing a final supplement without preparing an intervening draft.

C. If, after a decision has been made based on a final EIS, a described proposal is further defined or modified and if its changed effects are not significant and still within the scope of the earlier EIS, an EA, and a FONSI may be prepared for subsequent decisions rather than a supplement.

4.6 Format (40 CFR 1502.10)

A. Proposed departures from the standard format described in the CEQ regulations and this Chapter must be approved by the OEPC.

B. The section listing the preparers of the EIS will also include other sources of information, including a bibliography or list of cited references, when appropriate.

C. The section listing the distribution of the EIS will also fully describe the consultation and public involvement processes used in planning the proposal and in preparing the EIS, if this information is not discussed elsewhere in the document. The section will also describe the level to which the public contributed usable data for the document.

D. If CEQ's standard format is not used or if the EIS is combined with another planning or decision making document, the section which analyzes the environmental consequences of the proposal and its alternatives will be clearly and separately identified and not interwoven into other portions of or spread throughout the document.

4.7 Cover Sheet (40 CFR 1502.11)

The cover sheet will also indicate whether the EIS is intended to serve any other environmental review or consultation requirements pursuant to Section 1502.25.

4.8 Summary (40 CFR 1502.12)

The emphasis in the summary should be on those considerations, controversies, and issues that significantly affect the quality of the human environment.

4.9 Purpose and Need (40 CFR 1502.13)

This section shall present the purpose of and need for the agency action. The purpose and need shall be described in sufficient detail to aid in the development of an appropriate range of alternatives. Care should be taken to ensure an objective presentation and not a justification.

4.10 Alternatives Including the Proposed Action (40 CFR 1502.14)

A. The following terms are commonly used in NEPA compliance activities and are described below for clarification.

(1) *Range of Alternatives*—This term means all reasonable alternatives that will be rigorously explored and objectively evaluated as well as other alternatives that are eliminated from detailed study after providing reasons for their elimination.

(2) *Reasonable Alternatives*—This term means alternatives that are technically and economically practical or feasible and that meet the purpose and need of the proposed action.

(3) *Proposed Action*—This term means the agency activity to be undertaken. It also means a non-Federal entity's planned activity which falls under a Federal agency's authority to issue permits, licenses, grants, rights-of-way, or other common Federal regulatory instruments. The proposed action is generally the earliest known description of the action to be taken. The proposed action is not necessarily, but may become, through the NEPA process, a preferred alternative or an environmentally preferred alternative. The proposed action must be fully and clearly described in order to proceed with NEPA analysis.

(4) *Preferred Alternative*—This term means the alternative which the agency believes would best fulfill its statutory mission and responsibilities, while giving consideration to economic, environmental, technical, and other factors. It may or may not be the same as the agency's or the non-Federal entity's proposed action.

(5) *Environmentally Preferred Alternatives*—This term means alternatives that will promote the national environmental policy as expressed in NEPA's Section 101 and can be characterized as causing the least damage to the biological and physical environment and best protect, preserve, and enhance the nation's historic, cultural, and natural resources.

(6) *No Action Alternative*—This term has two interpretations. First "no action" means "no change" from a current management direction or level of management intensity. Second "no action" means "no project" in cases where a new project is proposed for construction. Regardless of the interpretation, the "no action" alternative is required to be analyzed in an EIS.

B. As a general rule, the following guidance will apply:

(1) For internally initiated proposals, i.e., for those cases where the Department conducts or controls the planning process, both the draft and final EIS shall identify the bureau's proposed action.

(2) For externally initiated proposals, i.e., for those cases where the Department is reacting to an application or similar request,

(a) the draft and final EIS shall identify the applicant's proposed action, and

(b) the draft EIS should also identify the bureau's preferred alternative, if one or more exists, and the final EIS should identify the bureau's preferred alternative unless another law prohibits the expression of a preference.

(3) Proposed departures from this guidance must be approved by the OEPC and the Office of the Solicitor.

C. Certain mitigation measures can be clearly integral to the proposed action and its alternatives and should be incorporated into and analyzed as a part of the proposal and appropriate alternatives. When this is done, these measures are no longer considered independently with other mitigation. Where appropriate, major mitigation measures may be identified and analyzed as separate alternatives where the environmental consequences are distinct and significant enough to warrant separate evaluation.

D. In practicing consensus-based management during the development of an EIS, bureaus should give full consideration to any alternative(s) put forth by participating communities. While there can be no guarantee that a community's proposed alternative will be taken as the agency proposed action, bureaus must be able to show that a community's work is reflected in the evaluation of the proposed action and the final decision. To be considered, the community's alternative must be fully consistent with NEPA, the CEQ Regulations, this Departmental Manual part, and all applicable Departmental and bureau written policies and guidance.

4.11 Appendix (40 CFR 1502.18)

If an EIS is intended to serve other environmental review or consultation requirements pursuant to Section 1502.25, any more detailed information needed to comply with these requirements may be included as an appendix.

4.12 Tiering (40 CFR 1502.20)

A. Tiering is a tool to prevent repetitive discussions and to focus on issues currently before the decision maker. In this process, earlier documents from which later documents are tiered, must be reliable and kept current. Tiered documents must make a finding that conditions described in earlier documents are still in effect or must revise any analyses that are out of date.

B. In some cases, transferring or combining information from previous NEPA documents can be done to reduce repetitive discussions and duplication of effort (see 4.20, below).

C. Bureaus must maintain access to such things as: sources of similar information, examples of tiered and transferred analyses, a set of procedural steps to make the most of tiered and transferred analyses, knowledge of when to use previous material, and how to used tiered and transferred analyses without sacrificing references to original sources.

4.13 Incorporation by Reference (40 CFR 1502.21)

Citations of specific topics will include the pertinent page numbers. All literature references will be listed in the bibliography.

4.14 Incomplete or Unavailable Information (40 CFR 1502.22)

The references to overall costs in this section are not limited to market costs, but include other costs to society such as social costs due to delay.

4.15 Methodology and Scientific Accuracy (40 CFR 1502.24)

Conclusions about environmental effects will be preceded by an analysis that supports

that conclusion unless explicit reference by footnote is made to other supporting documentation that is readily available to the public.

4.16 Adaptive Management

Adaptive management is a system of management practices based on clearly identified outcomes, monitoring to determine if management actions are meeting outcomes, and, if not, facilitating management changes that will best ensure that outcomes are met or to re-evaluate the outcomes. Adaptive management recognizes that knowledge about natural resource systems is sometimes uncertain and is the preferred method of management in these cases. Bureaus are encouraged to build adaptive management practice into their proposed actions and NEPA compliance activities and train personnel in this important environmental concept.

4.17 Environmental Review and Consultation Requirements (40 CFR 1502.25)

A. A list of related environmental review and consultation requirements is available from the OEPC.

B. If the EIS is intended to serve as the vehicle to fully or partially comply with any of these requirements, the associated analyses, studies, or surveys will be identified as such and discussed in the text of the EIS and the cover sheet will so indicate. Any supporting analyses or reports will be referenced or included as an appendix and shall be sent to reviewing agencies as appropriate in accordance with applicable regulations or procedures.

C. The draft EIS should list all Federal permits, licenses, or approvals that must be obtained to implement the proposal. To the fullest extent possible, the environmental analyses for these related permits, licenses, and approvals shall be integrated and performed concurrently. Bureaus shall ensure that they have a process in place to make integrated analyses a standard part of their NEPA compliance efforts.

4.18 Inviting Comments (40 CFR 1503.1)

A. Comments from State agencies will be requested through procedures established by the Governor pursuant to Executive Order 12372, and may be requested from local agencies through these procedures to the extent that they include the affected local jurisdictions.

B. When the proposed action may affect the environment of Indian trust or restricted land or other Indian trust resources, trust assets, or tribal health and safety, comments will be requested from the Indian tribal government unless the Indian tribal government has designated an alternate review process.

C. The comments of other Departmental bureaus and offices must also be requested. In order to do this, the preparing bureau must furnish copies of the environmental document to the other bureaus in quantities sufficient to allow simultaneous review. Bureaus may be removed from this circulation following consultation with, and concurrence of, a bureau.

4.19 Response to Comments (40 CFR 1503.4)

A. Preparation of a final EIS need not be delayed in those cases where a Federal agency, external to DOI and from which comments are required to be obtained [40 CFR 1503.1(a)(1)], does not comment within the prescribed time period. Informal attempts will be made to determine the status of any such comments and every reasonable attempt should be made to include the comments and a response in the final EIS.

B. When other commenters are late, their comments should be included in the final EIS to the extent practicable.

C. For those EISs requiring the approval of the AS/PMB pursuant to 516 DM 6.3, bureaus will consult with the OEPC when they propose to prepare an abbreviated final EIS [40 CFR 1503.4(c)].

4.20 Elimination of Duplication with State and Local Procedures (40 CFR 1506.2)

Bureaus will incorporate in their appropriate program regulations provisions for the preparation of an EIS by a State agency to the extent authorized in Section 102(2)(D) of NEPA. Eligible programs are listed in Appendix 1 to this Chapter.

4.21 Combining Documents (40 CFR 1506.4). See 516 DM 4.6D.

4.22 Departmental Responsibility (40 CFR 1506.5)

A. Bureaus are responsible for preparation of their environmental documents and independent evaluation of environmental documents prepared by others for a bureau.

B. A contractor may be used to prepare any environmental document in accordance with the standards of 40 CFR 1506.5(c).

4.23 Public Involvement (40 CFR 1506.6)

See 516 DM 1.2, 1.3, 1.6, and 301 DM 2.

4.24 Further Guidance (40 CFR 1506.7)

The OEPC may provide further guidance concerning NEPA pursuant to its organizational responsibilities (110 DM 22) and through supplemental directives (381 DM 4.5B). Current guidance is located in the Environmental Memoranda Series periodically updated by OEPC and available on the OEPC Web site.

4.25 Proposals for Legislation (40 CFR 1506.8)

The Office of Congressional and Legislative Affairs, in consultation with the OEPC, shall:

A. Identify in the annual submittal to OMB of the Department's proposed legislative program any requirements for, and the status of, any environmental documents.

B. When required, ensure that a legislative EIS is included as a part of the formal transmittal of a legislative proposal to the Congress.

4.26 Time Periods (40 CFR 1506.10)

A. The minimum review period for a draft EIS will be forty-five (45) days from the date of publication by the Environmental Protection Agency (EPA) of the notice of availability.

B. For those EISs requiring the approval of the AS/PMB pursuant to 516 DM 6.3, the OEPC will be responsible for consulting with the EPA and/or CEQ about any proposed reductions in time periods or any extensions of time periods proposed by the bureaus.

Chapter 4, Appendix 1

Programs of Grants to States and/or Tribes in Which Agencies Having Statewide Jurisdiction May Prepare EISs

1.1 Fish and Wildlife Service

A. Anadromous Fish Conservation (11.405).[7]

B. Fish Restoration (15.605).

C. Wildlife Restoration (15.611).

D. Endangered Species Conservation (15.615).

1.2 National Park Service

A. Historic Preservation Grants-in-Aid (15.904).

B. Outdoor Recreation-Acquisition Development and Planning (15.916).

1.3 Office of Surface Mining

A. Regulation of Surface Coal Mining and Surface Effects of Underground Coal Mining (15.250).

B. Abandoned Mine Land Reclamation Program (15.252).

1.4 Office of Insular Affairs

A. Economic and Political Development of the Territories and the Trust Territory of the Pacific Islands (15.875).

Department of the Interior

Departmental Manual

Effective Date:

Series: Environmental Quality

Part 516: National Environmental Policy Act of 1969

Chapter 5: Relationship to Decision Making

Originating Office: Office of Environmental Policy and Compliance

516 DM 5

5.1 Purpose

This Chapter provides supplementary instructions for implementing those portions of the CEQ Regulations pertaining to decision making.

5.2 Predecision Referrals to CEQ (40 CFR 1504.3)

A. Upon receipt of advice that another Federal agency intends to refer a Departmental matter to CEQ, the lead bureau will immediately meet with that Federal agency to attempt to resolve the issues raised and expeditiously notify its Assistant Secretary and the OEPC.

B. Upon any referral of a Departmental matter to CEQ by another Federal agency, the OEPC will be responsible for coordinating the Department's role with CEQ. The lead bureau will be responsible for developing and presenting the Department's position at CEQ including preparation of briefing papers and visual aids.

[7] Citations in parentheses refer to the Catalog of Federal Domestic Assistance. Citations are current as of 2003. The catalog may be viewed at: *http://cfda.gov/.*

5.3 Decision Making Procedures (40 CFR 1505.1)

A. Procedures for decisions by the Secretary/Deputy Secretary are specified in 301 DM 1. Assistant Secretaries should follow a similar process when an environmental document accompanies a proposal for their decision.

B. Bureaus will incorporate in their decision making procedures and NEPA handbooks provisions for consideration of environmental factors and relevant environmental documents. The major decision points for principal programs likely to have significant environmental effects will be identified in the bureau chapters on "Managing the NEPA Process" beginning with Chapter 8 of this Part.

C. Relevant environmental documents, including supplements, will be included as part of the record in formal rulemaking or adjudicatory proceedings.

D. Relevant environmental documents, comments, and responses will accompany proposals through existing review processes so that Departmental officials use them in making decisions.

E. The decision maker will consider the environmental impacts of the alternatives described in any relevant environmental document and the range of these alternatives must encompass the alternatives considered by the decision maker.

F. To the extent practicable, the decision maker will consider other substantive and legal obligations beyond the immediate context of the proposed action.

5.4 Record of Decision (40 CFR 1505.2)

A. Any decision documents prepared pursuant to 301 DM 1 for proposals involving an EIS shall incorporate all appropriate provisions of Section 1505.2(b) and (c).

B. If a decision document incorporating these provisions is made available to the public following a decision, it will serve the purpose of a record of decision.

5.5. Implementing the Decision (40 CFR 1505.3)

The terms "monitoring" and "conditions" will be interpreted as being related to factors affecting the quality of the natural and human environment.

5.6 Limitations on Actions (40 CFR 1506.1)

A bureau will immediately notify its Assistant Secretary, the Solicitor, and the OEPC of any situations described in Section 1506.1(b).

5.7 Timing of Actions (40 CFR 1506.10)

For those EISs requiring the approval of the AS/PMB pursuant to 516 DM 6.3, the responsible official will consult with the OEPC before making any request for reducing the time period before a decision or action.

5.8 Emergencies (40 CFR 1506.11)

In the event of an emergency situation, a bureau will immediately take any necessary action to prevent or reduce risks to public health or safety or serious resource losses. If the agency action has significant environmental impacts, a bureau will immediately consult with its Assistant Secretary, the Solicitor, OEPC, and (together with OEPC) CEQ about compliance with NEPA. Upon learning of the emergency situation, the OEPC will immediately notify CEQ. During follow-up activities OEPC and the bureau will jointly be responsible for consulting with CEQ. Paragraph 1506.11 applies only to the emergency and not to any related recovery actions after the emergency has passed. If the agency action does not have significant environmental impacts, a bureau will consult with OPEC to consider any appropriate action.

Department of the Interior

Departmental Manual

Effective Date:
Series: Environmental Quality
Part 516: National Environmental Policy Act of 1969
Chapter 6: Managing the NEPA Process
Originating Office: Office of Environmental Policy and Compliance

516 DM 6

6.1 Purpose

This Chapter provides supplementary instructions for implementing those provisions of the CEQ Regulations pertaining to procedures for implementing and managing the NEPA process.

6.2 Organization for Environmental Quality

A. *Office of Environmental Policy and Compliance.* The Director, OEPC, reporting to the AS/PMB, is responsible for providing advice and assistance to the Department on matters pertaining to environmental quality and for overseeing and coordinating the Department's compliance with NEPA. (See also 110 DM 22.)

B. *Bureaus and Offices.* Heads of bureaus and offices will designate organizational elements or individuals, as appropriate, at headquarters and regional levels to be responsible for overseeing matters pertaining to the environmental effects of the bureau's plans and programs. The individuals assigned these responsibilities should have management experience or potential, understand the bureau's planning and decision making processes, and be well trained in environmental matters, including the Department's policies and procedures so that their advice has significance in the bureau's planning and decisions. These organizational elements will be identified in Chapters 8–15, which contain all bureau NEPA requirements.

6.3 Approval of EISs

A. A program Assistant Secretary is authorized to approve an EIS in those cases where the responsibility for the decision for which the EIS has been prepared rests with the Assistant Secretary or below. The Assistant Secretary may further assign the authority to approve the EIS if he or she chooses. The AS/PMB will make certain that each program Assistant Secretary has adequate safeguards to ensure that the EISs comply with NEPA, the CEQ Regulations, and the Departmental Manual.

B. The AS/PMB is authorized to approve an EIS in those cases where the decision for which the EIS has been prepared will occur at a level in the Department above an individual program Assistant Secretary.

6.4 List of Specific Compliance Responsibilities

A. Bureaus and offices shall:
(1) Prepare NEPA handbooks providing guidance on how to implement NEPA in principal program areas.
(2) Prepare program regulations or directives for applicants.
(3) Propose and apply categorical exclusions.
(4) Prepare and approve EAs.
(5) Decide whether to prepare an EIS.
(6) Prepare and publish NOIs and FONSIs.
(7) Prepare and, when assigned, approve EISs.

B. Assistant Secretaries shall:
(1) Approve bureau handbooks.
(2) Approve regulations or directives for applicants.
(3) Approve proposed categorical exclusions.
(4) Approve EISs pursuant to 516 DM 6.3.

C. The AS/PMB shall:
(1) Concur with regulations or directives for applicants.
(2) Concur with proposed categorical exclusions.
(3) Approve EISs pursuant to 516 DM 6.3.

6.5 Bureau Requirements

A. Requirements specific to bureaus appear as separate chapters beginning with Chapter 8 of this Part and include the following:
(1) Identification of officials and organizational elements responsible for NEPA compliance.
(2) List of program regulations or directives which provide information to applicants.
(3) Identification of major decision points in principal programs for which an EIS is normally prepared.
(4) List of categorical exclusions.

B. Bureau requirements are found in the following chapters for the current bureaus:
(1) Fish and Wildlife Service (Chapter 8; formerly Appendix 1).
(2) Geological Survey (Chapter 9; formerly Appendix 2).
(3) Bureau of Indian Affairs (Chapter 10; formerly Appendix 4).
(4) Bureau of Land Management (Chapter 11; formerly Appendix 5).
(5) National Park Service (Chapter 12; formerly Appendix 7).
(6) Office of Surface Mining (Chapter 13; formerly Appendix 8).
(7) Bureau of Reclamation (Chapter 14; formerly Appendix 9).
(8) Minerals Management Service (Chapter 15; formerly Appendix 10).

C. The Office of the Secretary and other Departmental Offices do not have separate chapters but must comply with this Part and will consult with the OEPC about compliance activities.

6.6 Information About the NEPA Process

The OEPC will periodically publish a Departmental list of bureau contacts where information about the NEPA process and the status of EISs may be obtained. This list will be available on OEPC's Web site.

Department of the Interior

Departmental Manual

Effective Date:
Series: Environmental Quality.
Part 516: National Environmental Policy Act of 1969.
Chapter 7: Review of Environmental Impact Statements and Project Proposals Prepared by Other Federal Agencies.
Originating Office: Office of Environmental Policy and Compliance.

516 DM 7

7.1 Purpose

A. These procedures implement the policy and directives of Section 102(2)(C) of the National Environmental Policy Act of 1969 (PL 91–190, 83 Stat. 852, January 1, 1970, NEPA); Section 2(f) of Executive Order No. 11514 (March 5, 1970); the CEQ Regulations (43 FR 55990, November 28, 1978; CEQ); Bulletin No. 72–6 of the Office of Management and Budget (September 14, 1971); and provide guidance to bureaus and offices of the Department in the review of EISs prepared by and for other Federal agencies.

B. In accordance with 112 DM 4.2F, these procedures further govern the Department's environmental review of non-Interior proposals such as regulations, applications, plans, reports, and other environmental documents which affect the interests of the Department. Such proposals are prepared, circulated, and reviewed under a wide variety of statutes and regulations. These procedures ensure that the Department responds to these review requests with coordinated comments and recommendations under Interior's various authorities.

7.2 Policy

The Department considers it a priority to provide competent and timely review comments on EISs and other environmental or project review documents prepared by other Federal agencies for their major actions which significantly affect the quality of the human environment. All such documents are hereinafter referred to as "environmental review documents." The term "environmental review document" as used in this chapter is separate from and broader than the term "environmental document" found in 40 CFR 1508.10 of the CEQ Regulations. These reviews are predicated on the Department's jurisdiction by law or special expertise with respect to the environmental impact involved and shall provide constructive comments to other Federal agencies to assist them in meeting their environmental responsibilities.

7.3 Responsibilities

A. The AS/PMB

Shall be the Department's contact point for the receipt of requests for reviews of environmental review documents prepared by or for other Federal agencies. This authority shall be carried out through the Director, OEPC.

B. The Director, Office of Environmental Policy and Compliance

(1) Shall determine whether such review requests are to be answered by a Secretarial Officer, the Director, OEPC, or by a Regional Environmental Officer, and determine which bureaus and/or offices shall perform such reviews;

(2) Shall prepare, or where appropriate, shall designate a lead bureau responsible for preparing the Department's review comments. The lead bureau may be a bureau, Secretarial office, other Departmental office, or task force and shall be that organizational entity with the most significant jurisdiction or environmental expertise in regard to the requested review;

(3) Shall establish review schedules and target dates for responding to review requests and monitor their compliance;

(4) Shall review, sign, and transmit the Department's review comments to the requesting agency;

(5) Shall consult with the requesting agency on the Department's review comments on an "as needed" basis to ensure resolution of the Department's concerns; and

(6) Shall consult with the Office of Congressional and Legislative Affairs and the Solicitor when environmental reviews pertain to legislative or legal matters, respectively.

C. The Office of Congressional and Legislative Affairs

Shall ensure that requests for reviews of environmental review documents prepared by other Federal agencies that accompany or pertain to legislative proposals are immediately referred to the AS/PMB.

D. Regional Environmental Officers

When designated by the Director, OEPC, shall review, sign, and transmit the Department's review comments to the requesting agency.

E. Assistant Secretaries and Heads of Bureaus and Offices

(1) Shall designate officials and organizational elements responsible for the coordination and conduct of environmental reviews and report this information to the Director, OEPC;

(2) Shall provide the Director, OEPC, with appropriate information and material concerning their delegated jurisdiction and special expertise in order to assist in assigning review responsibilities;

(3) Shall conduct reviews based upon their areas of jurisdiction or special expertise and provide comments to the designated lead bureau or office assigned responsibilities for preparing Departmental comments;

(4) When designated lead bureau by the Director, OEPC, shall prepare and forward the Department's review comments as instructed;

(5) Shall ensure that review schedules for discharging assigned responsibilities are met and promptly inform other concerned offices if established target dates cannot be met and when they will be met;

(6) Shall provide a single, unified bureau response to the lead bureau, as directed;

(7) Shall ensure that the policies of 516 DM 7.2 regarding competency and timeliness are carried out; and

(8) Shall provide the necessary authority to those designated in E.1 above to carry out all the requirements of 516 DM 7.

7.4 Types of Reviews

A. Descriptions of Proposed Actions

(1) Federal agencies and applicants for Federal assistance may circulate descriptions of proposed actions for the purpose of soliciting information concerning environmental impacts in order to determine whether to prepare EISs. Such descriptions of proposed actions are not substitutes for EISs.

(2) Requests for reviews of descriptions of proposed actions are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

B. Environmental Assessments or Reports

(1) EAs or reports are not substitutes for EISs. These assessments or reports may be prepared by Federal agencies, their consultants, or applicants for Federal assistance. They are prepared either to provide information in order to determine whether an EIS should be prepared, or to provide input into an EIS. If they are separately circulated, it is generally for the purpose of soliciting additional information concerning environmental impacts.

(2) Requests for reviews of EAs or reports are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. If a bureau requests and OEPC agrees, a control number may be assigned with appropriate instructions. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

C. Findings of No Significant Impact

(1) Findings of No Significant Impact are prepared by Federal agencies to document that there is no need to prepare an EIS. A FONSI is a statement for the record by the proponent Federal agency that it has reviewed the environmental impact of its proposed action (in an EA), that it determines that the action will not significantly affect the quality of the human environment, and that an EIS is not required. Such findings are not normally circulated.

(2) Findings of No Significant Impact are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices, with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues.

D. Notices of Intent and Scoping Requests

(1) Notices of intent and scoping requests mark the beginning of the formal review process. Notices of intent are published in the **Federal Register** and announce that an agency plans to prepare an environmental review document under NEPA. Often the NOI and notice of scoping meetings and/or

requests are combined into one **Federal Register** notice.

(2) Reviews of notices of intent and scoping requests are processed through the OEPC with instructions to bureaus to comment directly to the requesting agency. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

E. Preliminary, Proposed, or Working Draft Environmental Impact Statements

(1) Preliminary, proposed, or working draft EISs are sometimes prepared and circulated by Federal agencies and applicants for Federal assistance for consultative purposes.

(2) Requests for reviews of these types of draft EISs are not required to be processed through the OEPC. Review comments may be handled independently by bureaus and offices with the Regional Environmental Officer or Director, OEPC, being advised of significant or highly controversial issues. Review comments are for the purpose of providing informal technical assistance to the requesting agency and should state that they do not represent the views and comments of the Department.

F. Draft Environmental Impact Statements

(1) Draft EISs are prepared by Federal agencies under the provisions of Section 102(2)(C) of NEPA and provisions of the CEQ Regulations. They are filed with the EPA and officially circulated to other Federal, State, and local agencies [see 40 CFR 1503.1(a)] for review based upon their jurisdiction by law or special environmental expertise.

(2) All requests from other Federal agencies for review of draft EISs shall be made through the Director, OEPC. Review comments shall be handled in accordance with the provisions of this chapter and guidance memoranda may be issued and updated by the OEPC.

G. Final Environmental Impact Statements

(1) Final EISs are prepared by Federal agencies following receipt and consideration of review comments. They are filed with the EPA and are circulated to the public for an administrative waiting period of thirty days and sometimes for comment.

(2) The Director, OEPC, shall review final EISs to determine whether they reflect adequate consideration of the Department's comments. Bureaus and offices shall not comment independently on final EISs, but shall inform the Director, OEPC, of their views. Any review comments shall be handled in accordance with the instructions of the OEPC.

H. License and Permit Applications

(1) The Department receives draft and final environmental review documents associated with applications for other Federal licenses and permits. This activity largely involves the regulatory program of the Corps of Engineers and the hydroelectric and natural gas pipeline licensing programs of the Federal Energy Regulatory Commission.

(2) Environmental review of applications is generally handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should consult with the OEPC for the most current review guidance.

(3) While review of NEPA compliance documents associated with Corps of Engineers permit applications is managed in accordance with this Chapter, review of Corps of Engineers permit applications is managed in accordance with 503 DM 1. Reviewers are referred to that Manual Part and to 7.5C.(3) below for the processing of concurrent reviews.

I. Project Plans and Reports Without Associated Environmental Review Documents

(1) The Department receives draft and final project plans and reports under various authorities which do not have environmental review documents circulated with them. This may be because NEPA compliance has been completed, will be completed on a slightly different schedule, NEPA does not apply, or other reasons.

(2) Environmental review of these documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should consult with the OEPC for the most current review guidance.

J. Federal Regulations

(1) The Department circulates and controls the review of advance notices of proposed rulemaking, proposed rulemaking, and final rulemaking which are environmental in nature and may impact the Department's natural resources and programs.

(2) Environmental review of these documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should consult with the OEPC for the most current review guidance.

K. Documents Prepared Pursuant to Other Environmental Statutes

(1) The Department receives draft and final project plans prepared pursuant to other environmental statutes [*e.g.*, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); Resource Conservation and Recovery Act (RCRA), and the Oil Pollution Act (OPA)], which may not have environmental review documents circulated with them.

(2) Environmental review of these documents is handled consistently with the policies and provisions of this part, and in accordance with further guidance from the Director, OEPC. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should consult with the OEPC for the most current review guidance.

L. Section 4(f) Documents

(1) Under Section 4(f) of the Department of Transportation Act, the Secretary of Transportation may approve a transportation program or project requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of national, State or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) only if there is no prudent and feasible alternative to using that land and the program or project includes all possible planning to minimize harm to the park, recreation area, wildlife and waterfowl refuge, or historic site resulting from the use.

(2) Environmental review of Section 4(f) documents is handled in the same manner as for draft and final EISs. Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should consult with the OEPC for the most current review guidance.

7.5 Content of Comments on Environmental Review Documents

A. *Departmental Comments*

(1) Departmental comments on environmental review documents prepared by other Federal agencies shall be based upon the Department's jurisdiction by law or special expertise with respect to the environmental impact of the proposed action or alternatives to the action. The adequacy of the document in regard to applicable statutes is the responsibility of the agency that prepared the document and any comments on its adequacy shall be limited to the Department's jurisdiction or environmental expertise.

(2) Reviews shall be conducted in sufficient detail to ensure that both potentially beneficial and adverse environmental effects of the proposed action and alternatives, including cumulative and secondary effects, are adequately identified. Wherever possible, and within the Department's competence and resources, other agencies will be advised on ways to avoid or minimize adverse impacts of the proposed action and alternatives, and on alternatives to the proposed action that may have been overlooked or inadequately treated.

(3) Review comments should not capsulate or restate the environmental review document, but should provide clear, concise, substantive, fully justified, and complete comments on the stated or unstated environmental impacts of the proposed action and, if appropriate, on alternatives to the action. Comments, either positive or negative, shall be objective and constructive.

(4) Departmental review comments shall be organized as follows:

(a) *Control Number*—

The Departmental review control number shall be typed in the upper left hand corner below the Departmental seal on the letterhead page of the comments.

(b) *Introduction*—

The introductory paragraph shall reference the other Federal agency's review request, including the date, the type of review requested, the subject of the review; and, where appropriate, the geographic location of the subject and the other agency's control number.

(c) *General Comments, if any*—

This section will include those comments of a general nature and those which occur throughout the review which ought to be consolidated in order to avoid needless repetition.

(d) *Detailed Comments—*

The format of this section shall follow the organization of the other agency's environmental review document. These comments shall not approve, disapprove, support, or object to proposed actions of other Federal agencies, but shall constructively and objectively comment on the environmental impact of the proposed action, and on the adequacy of the statement in describing the environmental impacts of the action, the alternatives (if appropriate), and the impacts of the alternatives. Comments shall specify any corrections, additions, or other changes required to make the statement adequate.

(e) *Summary Comments, if any—*

In general, the Department will not take a position on the proposed action of another Federal agency, but will limit its comments to those above. However, in those cases where the Department has jurisdiction by statute, executive order, memorandum of agreement, or other authority, the Department may comment on the proposed action. These comments shall be provided in this section and may take the form of support for, concurrence with, concern over, or objection to the proposed action and/or the alternatives.

B. Bureau and Office Comments

Bureau and office reviews of EISs prepared by other Federal agencies are considered informal inputs to the Department's comments and their content will generally conform to paragraph 7.5A of this chapter with the substitution of the bureau's or office's delegated jurisdiction or special environmental expertise for that of the Department.

C. Relationship to Other Concurrent Reviews

(1) Where the Department, because of other authority or agreement, is concurrently requested to review a proposal as well as its EIS, the Department's comments on the proposal shall be separately identified and placed in front of the comments on the EIS. A summary of the Department's position, if any, on the proposal and its environmental impact shall be separately identified and follow the review comments on the EIS.

(2) Where another Federal agency elects to combine other related reviews into the review of the EIS by including additional or more specific information into the statement, the introduction to the Department's review comments will acknowledge the additional review request and the review comments will be incorporated into appropriate parts of the combined statement review. A summary of the Department's position, if any, on the environmental impacts of the proposal and any alternatives shall be separately identified and follow the detailed review comments on the combined statement.

(3) In some cases, the concurrent review is not an integral part of the environmental compliance review but is being processed within the same general time period as the environmental review. If there is also an environmental review being processed by the OEPC, there is potential for two sets of conflicting comments to reach the requesting agency. Bureaus must recognize that this possibility exists and must check with the Regional Environmental Officer to determine the status of any environmental review prior to forwarding the concurrent review comments to the requesting agency. Any conflicts must be resolved before the separate comments may be filed. One review may be held up pending completion of the concurrent review and consideration of filing a single comment letter. A time extension may be necessary and must be obtained if a review is to be held up pending completion of a concurrent review.

(4) The Department's intervention in another agency's adjudicatory process is also a concurrent review. Such reviews are governed by 452 DM 2 which must be consulted in applicable cases. The most common cases involve the Department's review of hydroelectric and natural gas applications of the Federal Energy Regulatory Commission. In these cases, it is recommended that bureaus consult frequently with the appropriate attorney of record in the Office of the Solicitor.

7.6 Availability of Review Comments

A. Prior to the public availability of another Federal agency's final EIS, the Department shall not independently release to the public its comments on that agency's draft EIS. In accordance with Section 1506.6(f) of the CEQ Regulations, the agency that prepared the statement is responsible for making the comments available to the public, and requests for copies of the Department's comments shall be referred to that agency. Exceptions to this procedure shall be made by the OEPC and the Office of the Solicitor.

B. The availability of various internal Departmental memoranda, such as the review comments of bureaus, offices, task forces, and individuals, which are used as inputs to the Department's review comments is governed by the Freedom of Information Act (5 U.S.C. Section 552) and the Departmental procedures established by 43 CFR 2. Upon receipt of such requests and in addition to following the procedures above in A., the responsible bureau or office shall notify and consult their bureau Freedom of Information Act Officer and the OEPC to coordinate any responses.

7.7 Procedures for Processing Environmental Reviews

A. General Procedures

(1) All requests for reviews of environmental review documents prepared by or for other Federal agencies shall be received and controlled by the Director, OEPC.

(2) If a bureau or office, whether at headquarters or field level, receives an environmental review document for review directly from outside of the Department, it should ascertain whether the document is a preliminary, proposed, or working draft circulated for technical assistance or input in order to prepare a draft document or whether the document is in fact a draft environmental review document being circulated for official review.

(a) If the document is a preliminary, proposed, or working draft, the bureau or office should handle independently and provide whatever technical assistance possible, within the limits of their resources, to the requesting agency. The response should clearly indicate the type of assistance being provided and state that it does not represent the Department's review of the document. Each bureau or office should provide the Regional Environmental Officer and the Director, OEPC, copies of any comments involving significant or controversial issues.

(b) If the document is a draft or final environmental review document circulated for official review, the bureau or office should inform the requesting agency of the Department's procedures in subparagraph (1) above and promptly refer the request and the document to the Director, OEPC, for processing.

(3) All bureaus and offices processing and reviewing environmental review documents of other Federal agencies will do so within the time limits specified by the Director, OEPC. From thirty (30) to forty-five (45) days are normally available for responding to other Federal agency review requests. Whenever possible the Director, OEPC, shall seek a forty-five (45) day review period. Further extensions shall be handled in accordance with paragraph 7.7B (3) of this chapter.

(4) The Department's review comments on other Federal agencies' environmental review documents shall reflect the full and balanced interests of the Department in the protection and enhancement of the environment. Lead bureaus shall be responsible for resolving any intra-Departmental differences in bureau or office review comments submitted to them. The OEPC is available for guidance and assistance in this regard. In cases where agreement cannot be reached, the matter shall be referred through channels to the AS/PMB with attempts to resolve the disagreement at each intervening management level. The OEPC will assist in facilitating this process.

B. Processing Environmental Reviews

(1) The OEPC shall secure and distribute sufficient copies of environmental review documents for Departmental review. Bureaus and offices should keep the OEPC informed as to their needs for review copies, which shall be kept to a minimum, and shall develop internal procedures to efficiently and expeditiously distribute environmental review documents to reviewing offices.

(2) Reviewing bureaus and offices which cannot meet the review schedule shall so inform the lead bureau and shall provide the date that the review will be delivered. The lead bureau shall inform the OEPC in cases of headquarters-level response, or the Regional Environmental Officer in cases of field-level response, if it cannot meet the schedule, why it cannot, and when it will. The OEPC or the Regional Environmental Officer shall be responsible for informing the other Federal agency of any changes in the review schedule.

(3) Reviewing offices shall route their review comments through channels to the lead bureau, with a copy to the OEPC. When, in cases, of headquarters-level response, review comments cannot reach the lead bureau within the established review schedule, reviewing bureaus and offices shall

send a copy marked "Advance Copy" directly to the lead bureau. Review comments shall also be sent to the lead bureau by electronic means to facilitate meeting the requesting agency's deadline.

(4) In cases of headquarters-level response:

(a) The lead bureau shall route the completed comments through channels to the OEPC in both paper copy and electronic word processor format. Copies shall be prepared and attached for all bureaus and offices from whom review comments were requested, for the OEPC, and for the Regional Environmental Officer when the review pertains to a project within a regional jurisdiction. In addition, original copies of all review comments received or documentation that none were provided shall accompany the Department's comments through the clearance process and shall be retained by the OEPC.

(b) The OEPC shall review, secure any necessary additional surnames, surname, and either sign the Department's comments or transmit the Department's comments to another appropriate Secretarial Officer for signature. Upon signature, the OEPC shall transmit the comments to the requesting agency.

(5) In cases of field-level response:

(a) The lead bureau shall provide the completed comments to the appropriate Regional Environmental Officer in both paper-copy and electronic word processor format. In addition, original copies of all review comments received or documentation that none were provided shall be attached to the paper copy.

(b) The Regional Environmental Officer shall review, sign, and transmit the Department's comments to the agency requesting the review. In addition they shall reproduce and send the Department's comments to the regional bureau reviewers. The entire completed package including the bureau review comments shall be sent to the OEPC for recording and filing.

(c) If the Regional Environmental Officer determines that the review involves policy matters of Secretarial significance, they shall not sign and transmit the comments as provided in subparagraph (b) above, but shall forward the review to the OEPC in headquarters for final disposition.

C. Referrals of Environmentally Unsatisfactory Proposals to the Council on Environmental Quality

(1) Referral to CEQ is a formal process provided for in the CEQ Regulations (40 CFR 1504). It is used sparingly and only when all other administrative processes have been exhausted in attempting to resolve issues between the project proponent and one or more other Federal agencies. These issues must meet certain criteria (40 CFR 1504.2), and practice has shown that these issues generally involve resource concerns of national importance to the Department.

(2) A bureau or office intending to recommend referral of a proposal to CEQ must, at the earliest possible time; advise the proponent Federal agency that it considers the proposal to be a possible candidate for referral. If not expressed at an earlier time, this advice must be outlined in the Department's comments on the draft EIS.

(3) CEQ referral is a high level activity that must be conducted in an extremely short time frame. A referring bureau or office has 25 days after the final EIS has been made available to the EPA, commenting agencies, and the public in which to file the referral unless an extension is granted per 40 CFR 1504.3(b). The referral documents must be signed by the Secretary of the Interior.

(4) Additional review guidance may be made available as necessary to efficiently manage this activity. Bureau reviewers should consult with the OEPC for the most current review guidance.

[FR Doc. 03–22489 Filed 9–3–03; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by October 6, 2003.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: Howard N. Kem, Deer Island, OR,

PRT–076153

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of survival of the species.

Applicant: Idaho Department of Fish and Game, Couerd'Alene, ID,

PRT–075486

The applicant requests a permit to export preserved larval white sturgeon (*Acipenser transmontanus*) to the University of New Brunswick, NB, Canada for the purpose of scientific research.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The application(s) was/were submitted to satisfy requirements of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and/or marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Georgia Southern University, Statesboro, GA,

PRT–066878

The applicant request a permit to collect biological samples and conduct behavioral observations, *e.g.*, feeding, and stimuli responses on manatees, (*Trichechus manatus latirostris*) for the purpose of scientific research to better understand species dynamics. The applicant requests authority to conduct these activities on variable numbers of captive held and free ranging animals. This notification covers activities to be conducted by the applicant over a five-year period.

Applicant: University of Florida/College of Veterinary Medicine, Gainsville, FL,

PRT–067116

The applicant request a permit to collect biological samples from manatees, (*Trichechus manatus latirostris*) for the purpose of scientific research to develop veterinary medical understandings and base-line information for diagnostic purposes. The applicant requests authority to conduct these activities on variable numbers of live and dead free ranging and captive held animals. This notification covers activities to be conducted by the applicant over a five-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Steven K. Raquet, Russiaville, IN,

PRT–075607

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Applicant: Jesus Mourra, San Antonio, TX,

PRT–076061

The applicant requests a permit to import two polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada for personal use.

Dated: August 22, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–22499 Filed 9–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits for marine mammals and/or endangered species.

SUMMARY: The following permits were issued.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973, as amended.

ENDANGERED SPECIES

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
073242	Gary M. Story	68 FR 39960; July 3, 2003	August 14, 2003.
073523	Mance Michael Park	68 FR 39960; July 3, 2003	August 14, 2003.
073579	Ronald D. Stoller	68 FR 41167; July 10, 2003	August 14, 2003.
073581	Darrel D. Stoller	68 FR 41167; July 10, 2003	August 14, 2003.

MARINE MAMMALS

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
072921	Marlowe Kottke	68 FR 40291; July 7, 2003	August 20, 2003.

Dated: August 22, 2003.

Charles S. Hamilton,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 03–22500 Filed 9–3–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish And Wildlife Service

Notice of Availability of Documents associated With Proceedings Pursuant To Remand Involving the Incidental Take Permit Issued to Waterman's Realty Co./Winchester Creek Limited Partnership for the Home Port on Winchester Creek Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: Waterman's Realty Company/ Winchester Creek Limited Partnership was issued an Incidental Take Permit (ITP), permit number TE006310, on May 13, 1999, for incidental take of the Delmarva fox squirrel. The U.S. Fish and Wildlife Service (Service) announces that it has completed the process required to implement the remand ordered by the United States Court of Appeals for the District of Columbia Circuit and that a final decision document is available. The Service has determined that no changes to the Home Port incidental take permit are required as a result of the updated analysis presented in the decision document.

ADDRESSES: Persons wishing to review the Service's final decision document may obtain a copy at *http://*

www.fws.gov/r5cbfo or by written or telephone request to John Wolflin, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401, 410–573–4573.

FOR FURTHER INFORMATION CONTACT: John Wolflin at the above Service Office, Annapolis, Maryland.

SUPPLEMENTARY INFORMATION: On May 13, 1999, the Service issued an ITP for incidental "take" of the Delmarva fox squirrel. The ITP was issued pursuant to Section 10 of the Endangered Species Act (ESA), § 10(a)(2)(B), 16 U.S.C. 1539(a)(2)(B), and its implementing regulations at 50 CFR 17.22(b)(1).

On September 7, 1999, a neighbor to the proposed development (Gerber) and Defenders of Wildlife filed suit in Federal district court alleging violations of the National Environmental Policy Act, the ESA and the Administrative Procedure Act related to issuance of the ITP for the Home Port on Winchester Creek Habitat Conservation Plan.

The District Court for the District of Columbia granted summary judgment on all counts in favor of the Service on May 15, 2001. *See Gerber* v. *Babbitt*, 146 F.Supp.2d 1 (D. D.C. 2001). On appeal, the U.S. Court of Appeals for the D.C. Circuit remanded the matter to the District Court with instructions to remand to the agency to address two issues. *See id.* at 184. Specifically, the Court of Appeals held that the Service should have made a map of the mitigation area available during the public comment period and should have made an independent finding as to whether a possible project change identified in the record (the "Reduced Take Alternative") was practicable.

Pursuant to the remand, the Service conducted an independent analysis which was reflected in the draft document entitled "Draft—Assessment of Practicability of the Reduced Take Alternative on Remand." That document, in addition to the map, were made available for a 60-day public comment period starting May 9, 2003, (see 68 Fed. Reg. 25058). The Service received two comment letters, one from Mr. Gerber and one from Defenders of Wildlife. The Service has reviewed and considered those comments and has prepared a final decision document entitled "U.S. Fish and Wildlife Service's Decision Regarding the Incidental Take Permit (TE006310) to Maureen D. Waterman Following Remand" which includes the Service's responses to the comments received and is now available for public review at the address listed above.

Author

The primary author of this notice is Glenn Smith, Assistant Coordinator, Division of Endangered Species, Northeast Region, U.S. Fish and Wildlife Service.

Authority: The authority for this action is Section 10 of the Endangered Species Act (ESA), § 10(a)(2)(B), 16 U.S.C. 1539(a)(2)(B), and its implementing regulations at 50 CFR 17.22(b)(1).

Dated: August 28, 2003.

Richard O. Bennett,

Acting Regional Director, Region 5, Fish and Wildlife Service.

[FR Doc. 03–22608 Filed 9–2–03; 10:53 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Privacy Act of 1974, As Amended; Revision of a System of Records

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: The Department of the Interior (DOI) is issuing public notice of its intent to revise a system of records in its current inventory, Permits System—Interior, FWS–21, subject to the Privacy Act of 1974. This action is necessary to meet the requirements of the Privacy Act to publish a notice in the **Federal Register** of amended systems of records. A notice on this system of records was previously published in the **Federal Register** on December 6, 1983, (48 FR 54719). The agency is updating information on the system and adding new information on categories of records, purposes, routine uses, and procedures.

DATES: Comments on this revised system of records must be received on or before October 14, 2003.

ADDRESSES: Address all comments on this revised system of records to U.S. Fish and Wildlife Service, Privacy Act Officer, Mail Stop 222, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203, or by email at *Johnny_Hunt@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Johnny R. Hunt, Service Privacy Act Officer, U.S. Fish and Wildlife Service, telephone: (703) 358–1730, or fax: (703) 358–2269.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service's (FWS) permit programs collect information to establish and verify an applicant's eligibility for a permit to conduct certain activities with wildlife and plants under various Federal wildlife laws and treaties. These include the Bald and Golden Eagle Protection Act, Convention on International Trade in Endangered Species of Wild Fauna and Flora, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, Lacey Act, and Wild Bird Conservation Act. Information includes name, address, date of birth, Social Security Number, occupation, home and work phone numbers, facsimile number, and email address. The system no longer includes height, weight, or color of hair and eyes of applicants for applications received after 1997. The system also contains information on locations, types, and purposes of the proposed activity, qualifications of the applicant (such as education and experience), and tribal affiliation for eagle permits for Native American religious purposes. Other documents reflect the general administrative processing and review of an application, and the monitoring of activities under the issued permit. We propose to add new information on locations of records, categories of records, authority under the Wild Bird Conservation Act, purposes, procedures, current system managers, and record source categories, and we clarify when records would be released to the Department of Justice. We also propose to modify routine uses to include subject matter experts that provide advice on the issuance of permits; Federal, State, local or foreign wildlife and plant agencies for the exchange of permitting information; registrants involved in the breeding of endangered or threatened species under Captive-bred Wildlife registrations; appropriate authorities and others who need to know who is permitted to receive and rehabilitate sick, orphaned, and injured migratory birds; appropriate agencies when we need to monitor activities conducted under a permit or evaluate regulated trade and use; a congressional office in response to an inquiry an individual has made; the General Accounting Office or Congress when the information is required for the evaluation of the permit programs; and contractors, experts or consultations to accomplish a FWS function related to this system. The expanded routine uses do not require new information to be collected.

The Privacy Act (5 U.S.C. 552a(e)(11)) requires that the public be provided a 30-day period in which to comment on the intended use of the information in the system of records. The Office of Management and Budget (OMB), in Circular A–130, requires an additional

10-day period (for a total of 40 days) in which to make these comments. Any persons interested in commenting on this proposed system notice may do so by submitting comments in writing as indicated under **ADDRESSES.** Comments received within 40 days of publication will be considered. The system will be effective as proposed at the end of the comment period, unless comments are received that would require a contrary determination. We will publish a revised notice if we make changes based on our review of comments received.

Dated: August 29, 2003.

John D. Kraus,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

INTERIOR/FWS–21

SYSTEM NAME:

Permits System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

The records are stored at the following offices of the U.S. Fish and Wildlife Service (FWS):

(1) For the Endangered Species Program:

(a) Regional Endangered Species Offices (*see* 50 CFR 2.2 for addresses) and

(b) Division of Consultation, HCPs, Recovery and State Grants and the Division of Conservation and Classification, Endangered Species Program, U.S. Fish and Wildlife Service, Mail Stop 420 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

(2) Division of Management Authority, U.S. Fish and Wildlife Service, Mail Stop 700 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

(3) Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Mail Stop MBSP–4107 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203, and Regional Migratory Bird Offices (*see* 50 CFR 2.2 for addresses).

(4) Office of Law Enforcement, U.S. Fish and Wildlife Service, Mail Stop LE–3000 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203; Regional Law Enforcement Offices (*see* 50 CFR 10.22 for addresses); designated ports of entry (*see* 50 CFR 14.12 for locations); and some border or special port offices (*see* 50 CFR 14.16 and 14.19 for locations).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on applicants who seek permits to conduct certain activities that affect wildlife and plants protected and/or regulated under the following Federal laws or treaties: Bald and Golden Eagle Protection Act, Convention on International Trade in Endangered Species of Wild Fauna and Flora, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, Lacey Act, and Wild Bird Conservation Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain the name, address, date of birth, Social Security Number, occupation, home and work phone numbers, facsimile number, and email address of someone who applies for a permit. For eagle permits for Native American religious purposes, the records contain tribal affiliation and, at the applicant's discretion, religious ceremony. The records also contain the qualifications of the applicant (such as, education and experience), the locations, types, and purposes of the proposed activity, and reports of activities conducted under an issued permit. They include documents that reflect the general administrative processing of the application and permit; public review required by certain laws, including comments received; our consultation with subject matter experts, including but not limited to experts within the FWS and in State, Federal, local, and foreign agencies, for the purpose of obtaining scientific, management, and legal advice; and our evaluation of information to make a decision on an application for a permit, and to monitor activities that occur under a permit. Although the system contains records on corporations and other business entities including Tax Identification Number, only records containing personal information on individuals are subject to the Privacy Act.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Bald and Golden Eagle Protection Act (16 U.S.C. 668–668d); Migratory Bird Treaty Act (16 U.S.C. 703–712); Marine Mammal Protection Act (16 U.S.C. 1361–1407); Endangered Species Act (16 U.S.C. 1531–1544); Wild Bird Conservation Act (16 U.S.C. 4901–4916); and Lacey Act (18 U.S.C. 42), and Title 50, parts 10, 13, 14, 15, 16, 17, 18, 21, 22, and 23 of the Code of Federal Regulations.

PURPOSE(S):

The purposes are to establish and verify an applicant's eligibility for a permit to conduct activities which affect wildlife and plants protected under a number of Federal wildlife laws and treaties; produce reports to monitor the use and trade in protected wildlife and plants; and assess the impact of permitted activities on the conservation and management of species and their habitats.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The FWS is the primary user of the system, and the primary uses of the records will be:

(1) To establish and verify an applicant's eligibility for a permit to conduct activities with protected wildlife and plants under a number of conservation laws and treaties.

(2) To provide the public and permittees with permit-related information.

(3) To monitor activities conducted under a permit.

(4) To analyze data and produce reports to monitor the use and trade in protected wildlife and plants.

(5) To assess the impact of permitted activities on the conservation and management of protected species and their habitats.

(6) To evaluate the effectiveness of the permit programs.

(7) To meet reporting requirements of the Department of the Interior (DOI) and FWS.

(8) To generate budget estimates and track performance.

Disclosures outside the DOI may be made under the routine uses listed below without the consent of the individual if the disclosure is compatible with the purposes for which the record was collected.

(1) To subject matter experts, including but not limited to experts in State, Federal, local, and foreign agencies, for the purpose of obtaining scientific, management, and legal advice relevant to making a decision on an application for a permit.

(2) To the public as a result of publishing **Federal Register** notices announcing the receipt of permit applications for public comment or notice of the decision on a permit application.

(3) To Federal, State, local, or foreign wildlife and plant agencies for the exchange of information on permits granted or denied to assure compliance with all applicable permitting requirements.

(4) To Captive-bred Wildlife registrants under the Endangered Species Act for the exchange of captive-born, non-native endangered and

threatened species, and to share information on new developments and techniques of captive breeding of these protected species.

(5) To Federal, State, and local authorities who need to know who is permitted to receive and rehabilitate sick, orphaned, and injured birds under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act; federally permitted rehabilitators; individuals seeking a permitted rehabilitator with whom to place a sick, injured, or orphaned bird in need of care; and licensed veterinarians who receive, treat, or diagnose sick, orphaned, and injured birds;

(6) To the Department of Justice (DOJ), or a court, adjudicative, or other administrative body or to a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(i) The DOI or any component of the DOI;

(ii) Any DOI employee acting in his or her official capacity;

(iii) Any DOI employee acting in his or her individual capacity where the DOI or DOJ has agreed to represent the employee; or

(iv) The United States, when DOI determines that DOI is likely to be affected by the proceeding; and

(b) The DOI deems the disclosure to be:

(i) Relevant and necessary to the proceedings; and

(ii) Compatible with the purpose for which we compiled the information.

(7) To the appropriate Federal, State, tribal, local, or foreign governmental agency that is responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, order, or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order, or license, or when we need to monitor activities conducted under a permit or evaluate regulated wildlife and plant trade and use.

(8) To a congressional office in response to an inquiry to the office by the individual to whom the record pertains.

(9) To the General Accounting Office or Congress when the information is required for the evaluation of the permit programs.

(10) To a contractor, expert, or consultant employed by the FWS when necessary to accomplish a FWS function related to this system of records.

(11) To provide addresses obtained from the Internal Revenue Service to debt collection agencies for purposes of locating a debtor to collect or compromise a Federal claim against the debtor, or to consumer reporting agencies to prepare a commercial credit report for use by the DOI.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Pursuant to 5 U.S.C. 552a(b)12, disclosures may be made from this system to consumer reporting agencies as they are defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in file folders, on microfiche, in electronic form in computer systems, and in reports and computer printouts. Paper records are stored in file cabinets, rooms, and offices. Electronic records are stored on a computer server and disks or tapes.

RETRIEVABILITY:

Paper and microfiche records are retrieved by name of applicant or by permit file number. Electronic records may be searched on or reported by any data field. Retrieval is dependent upon the report or purpose of usage and whether a need to know exists. Records are retrieved for several purposes, such as processing a permit application, verifying an individual has a permit to conduct an activity with a protected species, and tracking whether permit reports have been submitted.

SAFEGUARDS:

Access to records in the system is limited to authorized personnel whose official duties require such access, under requirements found in the Code of Federal Regulations (43 CFR 2.51). Paper and microfiche records are maintained in locked metal file cabinets and/or in secured rooms. Electronic records are password-protected, backed up daily, and maintained with safeguards meeting the security requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are maintained in accordance with the FWS record schedule.

SYSTEM MANAGER(S) AND ADDRESS(ES):

(1) Chief, Division of Consultation, HCPs, Recovery and State Grants, and Chief, Division of Conservation and Classification, Endangered Species Program, U.S. Fish and Wildlife Service, Mail Stop 420 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

(2) Chief, Division of Management Authority, U.S. Fish and Wildlife Service, Mail Stop 700 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

(3) Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, Mail Stop 4107 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

(4) Chief, Office of Law Enforcement, U.S. Fish and Wildlife Service, Mail Stop LE–3000 Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia 22203.

NOTIFICATION PROCEDURES:

Any individual may request information regarding this system of records, or information as to whether the system contains records pertaining to them, from the appropriate System Manager identified above. We require the request be in writing, be signed by the requester, and include the requester's full name and address, Social Security Number, and permit file number, if applicable. (*See* 40 CFR 2.60 for procedures on making inquiries.)

RECORD ACCESS PROCEDURES:

For copies of your records, write to the pertinent System Manager at the location above. The request envelope and letter should be clearly marked "PRIVACY ACT REQUEST FOR ACCESS." A request for access must meet the content requirements of 43 CFR 2.63(b)(4)).

CONTESTING RECORD PROCEDURES:

Use the same procedures as "Records Access Procedures" section above. (*See* 43 CFR 2.71.)

RECORD SOURCE CATEGORIES:

Records come from individuals who apply for permits to conduct certain activities with protected wildlife and plants.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

The Privacy Act at 5 U.S.C. 552a(j)(2) provides general exemption authority for some systems or records. Under that authority, the FWS adopted a regulation [43 CFR 2.79(b)]. Under that regulation, the system is exempt from the following subsections of the Privacy Act (as found in 5 U.S.C. 552a): subsections (d)(1) and (g)(1)(B). For more information, see **Federal Register** publication 40 FR 37217 published on August 26, 1975.

[FR Doc. 03–22535 Filed 9–3–03; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–ET; AA–26417]

Public Land Order No. 7581; Extension of Public Land Order No. 6458; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order extends the withdrawal created by Public Land Order No. 6458 for an additional 20-year period. This extension is necessary to continue the protection of the Sitka Magnetic Observatory Site.

EFFECTIVE DATE: September 6, 2003.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5477.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. The withdrawal created by Paragraph 4 of Public Land Order No. 6458 (48 FR 40232, September 6, 1983), which withdrew 117.13 acres of public land from surface entry and mining to protect the Sitka Magnetic Observatory Site, is hereby extended for an additional 20-year period.

2. This withdrawal will expire on September 5, 2023, unless as a result of a review conducted prior to the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f)(1994), the Secretary determines that the withdrawal shall be extended.

Dated: August 14, 2003.

Rebecca W. Watson,

Assistant Secretary—Land and Minerals Management.

[FR Doc. 03–22505 Filed 9–3–03; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES 03–50]

Transfer of Title to Facilities, Works, and Lands of the Gila Project, Wellton-Mohawk Division to the Wellton-Mohawk Irrigation and Drainage District, Yuma County, AR (Wellton-Mohawk Title Transfer)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability, Draft Environmental Impact Statement, Wellton-Mohawk title transfer.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) has prepared a Draft Environmental Impact Statement (DEIS) to evaluate the potential effects of the proposed Wellton-Mohawk Title Transfer. The title transfer will transfer ownership and divest Reclamation of the responsibility for the operation, maintenance, management, regulation of, and liability for the project facilities and appurtenant lands to the entity that has demonstrated its ability to manage the project, the Wellton-Mohawk Irrigation and Drainage District (District). This title transfer will consolidate management responsibility with the District, thereby allowing the District to have greater authority in the management of growth and land based issues in the Wellton-Mohawk Valley, protect against encroachment on agriculture, and consolidate ownership of lands, facilities, and the Gila River Flood Channel.

DATES: The public review period shall close on October 29, 2003. Written comments on the DEIS must be received at the address listed under the **ADDRESSES** section.

Public hearings will also be held to accept oral and written comments on the DEIS at:

- Wellton, Arizona, on Wednesday, October 1, 2003, from 7 to 9 p.m.
- Yuma, Arizona, on Thursday, October 2, 2003, from 7 to 9 p.m.

The public hearing facilities are accessible to those who are physically-challenged. Please contact Ms. Nancy Blake by telephone at (602) 258–0234 or by facsimile at (602) 258–2352 for accessibility accommodations, including sign language interpreters or other auxiliary aids. Requests should be made by September 17, 2003, to allow sufficient time to arrange for accommodation.

ADDRESSES: Written comments on the DEIS should be submitted to Ms. Margot Selig, Lower Colorado Regional Office, Bureau of Reclamation, PO Box 61470, BCOO–4451, Boulder City, NV 89006–1470, or via facsimile to (702) 293–8042.

The public hearings will be held at:

- Antelope Union High School, 9168 South Avenue 36E, Wellton, Arizona
- Ramada Inn Chilton and Conference Center—Inca Room, 300 East 32nd Street, Yuma, Arizona

See the **SUPPLEMENTARY INFORMATION** section below for locations where copies of the DEIS are available for public review and inspection.

FOR FURTHER INFORMATION CONTACT: Ms. Margot Selig, Lower Colorado Regional Title Transfer Coordinator, Bureau of Reclamation, (702) 293–8192. Those wishing to obtain a copy of the DEIS in the form of a printed document or on compact disk (CD–ROM with Adobe Acrobat Reader included), or a summary of the DEIS may contact Ms. Selig.

SUPPLEMENTARY INFORMATION:

Public Disclosure

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There may be other circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Hearing Process Information

Requests to make oral comments at the public hearings may be made at each hearing. Comments will be recorded by a court reporter. Speakers will be called in the order of their requests. In the interest of available time, each speaker will be asked to limit oral comments to 5 minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the public hearing or identified as hearing comments and mailed to be received by Ms. Selig no later than September 29, 2003.

Background

The DEIS will be used in the decision-making process pursuant to the Wellton-Mohawk Transfer Act of June 2000 (Pub. L. 106–221), whereby the Secretary of the Interior was authorized to transfer title to the Wellton-Mohawk Division of the Gila Project works, facilities and certain federally-owned lands from the United States to the District. The District is a political subdivision of the State of Arizona constituted to own lands and facilities and to contract with Reclamation for diversion of Colorado River water for delivery to its landowners. Reclamation and the District signed a Memorandum of Agreement (MOA) in July 1998,

amended May 11, 2001, which defines the methods and principles of this title transfer process.

Two alternatives are evaluated in the DEIS: (1) the No Action Alternative, under which facilities of the Wellton-Mohawk Division of the Gila Project and lands within or adjacent to the Gila Project would remain in Federal ownership, and (2) the Proposed Action/Preferred Alternative under which Reclamation would transfer title to the facilities of the Wellton-Mohawk Division of the Gila Project and lands within or adjacent to the Gila Project to the District.

Review and Inspection of the DEIS

Copies of the DEIS are available for public review at the following locations:

- Wellton-Mohawk Irrigation and Drainage District, 30570 Wellton-Mohawk Drive, Wellton, AZ, telephone: (928) 785–3351
- Dateland School Branch Library, Avenue 64 East, Dateland, AZ, telephone: (928) 454–2243
- Foothills Branch Library, 11279 South Glenwood Avenue, Yuma, AZ, telephone: (928) 342–1640
- Roll Branch Library, 5151 South Avenue 39 East, Roll, AZ, telephone: (928) 785–3701
- Wellton Branch Library, 10425 Williams Street, Wellton, AZ, telephone: (928) 785–9575
- Yuma County Main Library, 350 South 3rd Avenue, Yuma, AZ, telephone: (928) 782–1871

Internet

The DEIS is also available on the Internet at *http://www.usbr.gov/lc/yuma/* and *http://www.bookmanedmonston.com*.

Dated: August 12, 2003.

Lorri Gray,

Assistant Regional Director, Lower Colorado Region.

[FR Doc. 03–22510 Filed 9–3–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–753–756 (Review)]

Cut-to-Length Carbon Steel Plate From China, Russia, South Africa, and Ukraine

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that termination of the suspended investigations on cut-to-length carbon steel plate from China, Russia, and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. The Commission further determines that termination of the suspended investigation on the subject product from South Africa would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted these reviews on September 3, 2002 (67 FR 56311) and determined on December 9, 2002 that it would conduct full reviews (67 FR 77803, December 19, 2002). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on March 21, 2003 (68 FR 13950). The hearing was held in Washington, DC, on July 8, 2003, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission will transmit its determinations in these reviews to the Secretary of Commerce on August 29, 2003. The views of the Commission are contained in USITC Publication 3626 (September 2003), entitled Cut-to-length Carbon Steel Plate from China, Russia, South Africa, and Ukraine: Investigations Nos. 731–TA–753–756 (Review).

Issued: August 29, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 03–22538 Filed 9–3–03; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Stephen Koplan dissenting. Commissioner Charlotte Lane did not participate in these reviews.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–432 (Final) and 731–TA–1024–1028 (Final)]

Prestressed Concrete Steel Wire Strand From Brazil, India, Korea, Mexico, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation No. 701–TA–432 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigations Nos. 731–TA–1024–1028 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from India of prestressed concrete steel wire strand (PC strand) and less-than-fair-value imports from Brazil, India, Korea, Mexico, and Thailand of PC strand, provided for in subheading 7312.10.30 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: July 16, 2003.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as follows: "PC strand is steel strand produced from wire of non-stainless, non-galvanized steel, which is suitable for use in prestressed concrete (both pretensioned and post-tensioned) applications. The product definition encompasses covered and uncovered strand and all types, grades, and diameters of PC strand. The merchandise under investigation is currently classifiable under subheadings 7312.10.3010 and 7312.10.3012 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive."

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in India of PC strand, and that imports of PC strand from Brazil, India, Korea, Mexico, and Thailand are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on January 31, 2003, by American Spring Wire Corp., Bedford Heights, OH; Insteel Wire Products Co., Mt. Airy, NC; and Sumiden Wire Products Corp., Stockton, CA.

Participation in the investigations and public service list—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on November 17, 2003, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on December 2, 2003, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 24, 2003. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 26, 2003, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is November 24, 2003. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 9, 2003; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 9, 2003. On December 26, 2003, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 30, 2003, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: August 28, 2003.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–22504 Filed 9–3–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act

Under 28 CFR 50.7 notice is hereby given that on August 11, 2003, a proposed consent decree in *United States* v. *Groendyke Transport, Inc.*, Civil Action No. 01–M–1821 (CBS) was lodged with the United States District Court for the District of Colorado.

In this action the United States sought civil penalties for alleged violations of Section 311(b)(3) of the Federal Water Pollution Control Act, also known as the Clean Water Act (the Act), 33 U.S.C. 1321(b)(3), as amended by the Oil Pollution Act of 1990 ("OPA"), resulting from discharges of gasoline and asphalt into waters of the United States. The first spill occurred on December 5, 1998,

and resulted in the discharge of approximately 8,700 gallons of gasoline into the South Platte River in Denver, Colorado. The second spill occurred on March 31, 2000, and resulted in the discharge of approximately 5,000 gallons of asphalt into Clear Creek, near Golden, Colorado.

Pursuant to the consent decree, Groendyke Transport Inc., ("Groendyke") will pay the sum of $48,475 to the Oil Spill Liability Trust Fund and spend $90,025 in the performance of a Supplemental Environmental Project (SEP). The SEP involves Groendyke's purchase of equipment and the funding of training for the South Adams County Fire District so that it will be able to respond more effectively to future spills of petroleum and other hazardous substances. The area served by the South Adams County Fire District includes portions of the South Platte River watershed, the area impacted by the gasoline spill.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Groendyke Transport, Inc.*, Civil Action No. 01–M–1821 (CBS) (D. Colo.), D.J. Ref. 90–5–1–1–07293.

The consent decree may be examined at U.S. EPA Region 8, 999 18th Street, Suite 500, Denver, Colorado, 80202. During the public comment period, the consent decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Bruce Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–22536 Filed 9–3–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on August 9, 2003, a proposed Consent Decree in *United States* v. *Haskell Chemical Company, Inc. et al.*, Civil Action No. 3:03CV642 was lodged with the United States District Court for the Eastern District of Virginia.

In this action the United States sought to recover costs incurred in responding to the release or threatened release of hazardous substances into the environment from the HH Burn Pit Superfund Site, located in Hanover County, Virginia, near the community of Farrington. The Consent Decree will recover past response costs from Haskell Chemical Company, Inc. and HH, Inc., a dissolved Virginia corporation. On behalf of HH, Inc., the trustees of the Liquidating for Assets and Liabilities of HH, Inc. will cause to be paid to the United States the sum of two hundred thirty-five thousand dollars ($235,000). Upon entry of this Consent Decree, Haskell Chemical Company, Inc. will pay to the United States the sum of one hundred thousand dollars ($100,000). Haskell Chemical Company, Inc. will also pay the additional sum of two hundred thousand dollars ($200,000), plus interest, to be paid to the United States in two annual installments, the first to occur one year after entry of the Consent Decree. In exchange for these payments, Haskell Chemical Company, Inc. and HH. Inc. will each receive a release from liability for past and future response costs incurred by the United States in connection with the Site, subject to certain limitations and conditions. In addition, Haskell Chemical Company, Inc. and HH. Inc. will each receive complete protection from contribution actions brought to recover costs incurred by any other party in connection with the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Haskell Chemical Company, Inc., et al.*, D.J. Ref. 90–11–3–1408/2.

The Consent Decree may be examined at the Office of the United States Attorney, 600 East Main Street, Suite 1800, Richmond, Virginia, and at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html*. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, PO Box 7611, U.S. Department of Justice, Washington, DC. 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy, please enclose a check in the amount of $9.75 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Bruce Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 03–22537 Filed 9–3–03; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 8:30 a.m. to 5 p.m. on Monday, October 20, 2003. 8:30 a.m. to 5 p.m. on Tuesday, October 21, 2003.

Place: Homewood by Hilton, 1475 Massachusetts Avenue, NW., Washington, DC 20005.

Status: Open.

Matters to be Considered: Leadership/Management Workgroup Update; Strategic Planning; Division Reports; Interstate Compact activities; and Quarterly Report by Office of Justice Programs and Reentry report from Office of Justice Program and NIC.

Contact Person for More Information: Larry Solomon, Deputy Director, 202–307–3106, ext. 44254.

Morris L. Thigpen,

Director.

[FR Doc. 03–22490 Filed 9–3–03; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Office of Disability Employment Policy

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public

and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Disability Employment Policy is soliciting comments concerning the proposed collection of needs assessment data through the National Survey of Sub-minimum Wage (14 c) Certificate Recipients. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 3, 2003.

ADDRESSES: Faith S. Kirk, U.S. Department of Labor, Office of Disability Employment Policy, 200 Constitution Avenue, NW., Suite S–1303, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

I. Background

This project is a research activity of the Training and Technical Assistance for Providers (T–TAP) project. Funded by the Office of Disability and Employment Policy (ODEP) at the U.S. Department of Labor, T–TAP is a joint project of the Institute for Community Inclusion at the University of Massachusetts at Boston and Virginia Commonwealth University. The project provides a program of technical assistance and training that will be delivered and disseminated nationally to community-based providers including community rehabilitation providers and other public agencies who use the Fair Labor Standards Act (FLSA) section 14 (c) special minimum wage certificates. The overall goal of the T–TAP project is to assist community providers to increase access to regular wage employment in the competitive labor market. Collection of needs assessment data is necessary to identify barriers for organizations serving individuals with disabilities in finding integrated employment at a competitive rate.

The Cooperative Agreement's data collection component is authorized pursuant to Public Law 106–554, the Consolidated Appropriations Act of 2001, which established ODEP within the Department of Labor to bring a heightened and permanent focus for increasing the employment of persons with disabilities and to develop initiatives to "further the objective of eliminating employment barriers to the training and employment of people with disabilities." The Consolidated Appropriations Act of 2002, pursuant to Public Law 107–116, has reauthorized this authority.

The data collected from this survey will provide descriptive information on the current use of 14 (c) Special Wage Certificates by Community Rehabilitation Programs in the United States. Specifically, the survey will look at perceived organizational barriers to achieving competitive employment outcomes for individuals with significant disabilities. This will include organizations' perceived training and resource needs related to moving their programs from 14 (c) to integrated employment outcomes. The information generated by the survey will be used by ODEP for policy analysis and subsequent policy development and recommendations. In addition, T–TAP [VCU and ICI] will use the information to design and disseminate resources and training materials as well as provide technical assistance to Community Rehabilitation Programs (CRP). Part of disseminating this information will include writing journal articles, fact sheets, online seminars and web postings, conference presentations, or other literature that can be used by ODEP, T–TAP, CRPs, organizations, and others interested in facilitating competitive employment for individuals with disabilities.

II. Review Focus

The Department of Labor is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the execution of the project's mission, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses to the extent reasonable.

III. Current Actions

This is a notice to seek OMB approval of new survey instrument for the Office of Disability Employment Policy, U.S. Department of Labor.

Type of Review: New.

Agency: Office of Disability Employment Policy.

Title: National Survey of Sub-minimum Wage (14 c) Certificate Recipients.

OMB Number: 1230–NEW.

Affected Public: Non-Profit Institutions.

Purpose of Information Collection: Research and Program Planning.

Estimated Number of Respondents: 341.

Total Annual Responses: 341.

Percentages of electronic collection: 25%.

Total Annual Hours Requested: 170.5.

Costs: [in thousands of dollars].

Total Annualized Capital/Start-up $: $0.

Total Annual Costs (O&M): $0.

Frequency of Reporting: One Time.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; comments will also become a matter of public record.

Dated: August 28, 2003.

John R. Davey,

Director, Office of Operations, Office of Disability Employment Policy.

[FR Doc. 03–22502 Filed 9–3–03; 8:45 am]

BILLING CODE 4510–CX–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of

1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Employee Benefits Security Administration is soliciting comments concerning the information collection entitled Annual Report for Multiple Employer Welfare Arrangements (Form M–1) contained in the Department's regulation at 29 CFR 2520.101–2, Multiple Employer Welfare Arrangements and Certain Other Entities that Offer or Provide Medical Care to the Employees of Two or More Employers. A copy of the ICR may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the **ADDRESSES** section below on or before November 3, 2003.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC 20210. Telephone: (202) 693–8410; Fax: (202) 219–5333. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), codified as part 7 of Title I of the Employee Retirement Security Act of 1974 (ERISA), was enacted to improve the portability and continuity of health care coverage for participants and beneficiaries of group health plans. In the interest of assuring compliance with part 7, HIPAA also added section 101(g) to ERISA permitting the Secretary of Labor (the Secretary) to require multiple employer welfare arrangements (MEWA) as defined in section 3(40) of ERISA to report to the Secretary in such form and manner as the Secretary might determine. To assist MEWAs and other entities with reporting, the Department published a final rule providing guidance for determining compliance and a form to be used for the annual report. Form M–1, the information collection provision of the regulation, is required to be filed by MEWAs and by other entities described in the regulation. The purpose of the information collection is to provide the Secretary with information to determine the extent to which the requirements of part 7 of ERISA are being carried out in connection with the provision of benefits consisting of medical care.

II. Desired Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

III. Current Action

This notice requests comments on the extension of the information collection request (ICR) included in the regulation, Form M–1. The Department is not proposing or implementing changes to the existing ICR at this time.

Type of Review: Extension of a currently approved collection of information.

Agency: Employee Benefits Security Administration, Department of Labor.

Titles: Annual Report for Multiple Employer Welfare Arrangements and Certain Entities Claiming Exception (Form M–1).

OMB Number: 1210–0116.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Respondents: 741.

Frequency of Response: Annually.

Responses: 3,718.

Estimated Total Burden Hours: 2,336.

Total Burden Cost (Operating and Maintenance): $143,650.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Dated: August 28, 2003.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 03–22501 Filed 9–3–03; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts Teleconference—Agenda Change

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the agenda for the teleconference of the National Council on the Arts, to be on September 12, 2003 from 2 p.m.–3 p.m. may include general discussion in addition to discussion of the American Jazz Masters award.

Any interested persons may participate, as observers, in Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this teleconference meeting can be obtained from the Council Operations office, National Endowment for the Arts, Washington, DC 20506, at 202/682–5433.

Dated: August 28, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. 03–22486 Filed 9–3–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Fellowships Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Fellowships Advisory Panel, Literature section (Prose) to the National Council on the Arts will be held on September 22–24, 2003 in Room 415 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting, from 11:30 a.m. to 1 p.m. on September 24th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 7:30 p.m. on September 22nd, from 9 a.m. to 6:30 p.m. on September 23rd, and from 9 a.m. to 11:30 a.m. and 1 p.m. to 3 p.m. on September 24th, will be closed.

The closed portions of these meetings are for the purpose of panel review, discussion, evaluation, and

recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: August 28, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–22484 Filed 9–3–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel—Notice of Change

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a teleconference of the Leadership Initiatives Advisory Panel, AccessAbility section, previously scheduled for August 29, 2003, will be held by teleconference from 2 p.m.–3:30 p.m. on Wednesday, September 24, 2003 from Room 724 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of April 30, 2003, these sessions will be closed to the public pursuant to (c)(6) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: August 28, 2003.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 03–22485 Filed 9–3–03; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (P.L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 6, 2003. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

The applications received are as follows:

1. Permit Application No. 2004–013.

Applicant: Gary D. Miller, Biology Department, University of New Mexico, Albuquerque, NM 87131–0001.

Activity for Which Permit is Requested: Take and Import into the United States. The applicant proposes to continue investigations of the diseases of penguins and skuas around the Australian station, Davis, in east Antarctica. He proposes to collect blood and or tissue samples from penguins, skuas, and other seabirds to address the impact diseases may have on the reproductive success of skuas. Previous studies have confirmed the presence of bacterial, viral, and parasitic agents in Antarctic populations. Human activity at scientific stations and/or from tourism is one potential source of disease introduction, however, it is thought that migratory birds such as South Polar Skuas, Kelp Gulls and Sheathbills act as natural vectors to introduce diseases to Antarctica. In addition to collecting blood and tissues samples the applicant plans to monitor the nesting success of skuas, and track adult skuas using small VHF transmitters.

In addition, the applicant will continue analysis of the phylogenetic relationships and population genetics of two major genera of penguins. Blood and tissue samples will be collected from Magellanic, Adelie, Chinstrap, Gentoo, Macaroni, and Emperor penguins throughout their distribution. The applicant will serve as a lecturer onboard a tourist vessel that will give him access to various areas in the Antarctic. All samples will be returned to Dr. Shellum's lab in Perth, Australia or the laboratory at the University of New Mexico for processing. All other remains will be archived.

Location: Davis Station, East Antarctica, and various coastal areas accessible via tourist vessels.

Dates: November 1, 2003, to April 1, 2005.

2. Permit Application No. 2004–014.

Applicant: Scott Borg, Head, Antarctic Sciences Section, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Activity for Which Permit is Requested: Enter Antarctic Specially Protected Area. Annex V of the Environmental Protocol was adopted at the XXVI Antarctic Treaty Consultative Meeting in Madrid, Spain in June 2003, and requires permits for access to any of

the Antarctic Specially Protected Areas. The applicant and his agents propose to enter the Arrival Heights ASPA 122 to continue scientific projects already in place. Principal investigators and their teams will work on projects that include, but are not limited to operation of an ELF/VLF receiver, riometer and magnetometer or studies of the earth's magnetic field and ionosphere, high latitude neutral mesospheric and thermospheric dynamics and thermodynamics, UV monitoring, aerosols investigations, and pollution surveys. Crary Lab science technicians also need to access the site daily for equipment monitoring, data acquisition, calibrations, and repairs. In addition, technical personnel will need to enter the site to monitor, maintain, or repair weather equipment. Lastly, personnel from the Facilities Engineering and Maintenance Center may be called upon to perform maintenance or repair functions at facilities within the site. This activity will be coordinated through the Crary Lab.

Location: ASPA 122—Arrival Heights, Hut Point Peninsula, Ross Island.

Dates: October 1, 2003, to September 30, 2004.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. 03–22555 Filed 9–3–03; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission (new, revision, or extension):* Extension.

2. *The title of the information collection:* NRC Form 398, "Personal Qualification Statement—Licensee".

3. *The form number if applicable:* NRC Form 398.

4. *How often the collection is required:* On occasion and every 6 years (at renewal).

5. *Who will be required or asked to report:* Individuals requiring a license to operate the controls at a nuclear reactor.

6. *An estimate of the number of annual responses:* 1,155 (one per respondent).

7. *The estimated number of annual respondents:* 1,155.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,465 or approximately 1.3 hours per response (1,465 hours ÷ 1,155 applications (new, re-applications, renewals and waivers) = 1.3 hours per response).

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* NRC Form 398 requests detailed information that should be submitted by a license applicant and facility licensee when applying for a new or renewal license to operate the controls at a nuclear reactor facility. This information, once collected, would be used for licensing actions and for generating reports on the Operator Licensing Program.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC Home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by October 6, 2003. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. OMB Desk Officer, Office of Information and Regulatory Affairs (3150–0021), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 27th day of August, 2003.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 03–22511 Filed 9–3–03; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

Summary: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

(1) *Collection title:* Application for Employee Annuity Under the Railroad Retirement Act.

(2) *Form(s) submitted:* AA–1, AA–1cert, AA–1d, G–204.

(3) *OMB Number:* 3220–0002.

(4) *Expiration date of current OMB clearance:* 10/31/2003.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Individuals or household.

(7) *Estimated annual number of respondents:* 13,400.

(8) *Total annual responses:* 19,100.

(9) *Total annual reporting hours:* 10,083.

(10) *Collection description:* The Railroad Retirement Act provides for payment of age, disability, and supplemental annuities to qualified employees. The application and related forms obtain information about the applicant's family work history, military service, disability benefits from other government agencies and public or private pensions. The information is used to determine entitlement to and the amount of the annuity applied for.

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363).

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 03–22479 Filed 9–3–03; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Vestaur Securities, Inc. to Withdraw Its Common Stock, $.01 Par Value, From Listing and Registration on the New York Stock Exchange, Inc. File No. 1–02320

August 29, 2003.

Vestaur Securities, a State of Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock ("Security"), from listing and registration on the New York Stock Exchange, Inc. ("NYSE" or "Exchange").

The Issuer's Board of Directors ("Board") approved resolutions on May 14, 2003 to withdraw the Issuer's Security from listing on the NYSE and approved the listing on the American Stock Exchange ("AMEX"). In making its decision to withdraw the Security from the Exchange, the Board determined that it was in the best interest of the Issuer to delist from the NYSE and list on the AMEX due to considerations of expense and the resulting benefits to the Issuer's shareholders.

The Issuer stated in its application that it has complied with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer's application relates solely to the Security's withdrawal from listing on the NYSE and from registration under section 12(b) of the Act[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before September 18, 2003, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 03–22514 Filed 9–3–03; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78l(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78l(b).

[4] 15 U.S.C. 78l(g).

[5] 17 CFR 200.30–3(a)(1).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before October 6, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *OMB Reviewer,* Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Pre-Disaster Mitigation Small Business Loan Application.

No: 5M.

Frequency: On Occasion.

Description of Respondents: Business Application for the Pre-Disaster mitigation loan program.

Responses: 2,500.

Annual Burden: 5,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–22497 Filed 9–3–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of reporting requirements submitted for OMB review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before October 6, 2003. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and *David_Rostker@omb.eop.gov,* fax number 202–395–7285 Office of Information and Regulatory Affairs, Office of Management and Budget.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: Count Me In Survey of Women Business Owners.

No.: N/A.

Frequency: On Occasion.

Description of Respondents: Women who have completed loan applications with Count Me In, an on-line micro-lender.

Responses: 500.

Annual Burden: 79.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 03–22498 Filed 9–3–03; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3538]

State of Florida

Citrus, Manatee, and Pasco counties and the contiguous counties of De Soto, Hardee, Hernando, Hillsborough, Levy, Marion, Pinellas, Polk, Sarasota, and Sumter in the State of Florida constitute a disaster area due to damages caused by heavy rains and flooding beginning June 19 and continuing through August 21, 2003. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 27, 2003, and for economic injury until the close of business on May 28, 2004, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.625
Homeowners Without Credit Available Elsewhere	2.812
Businesses With Credit Available Elsewhere	5.906
Businesses and Non-profit Organizations Without Credit Available Elsewhere	2.953
Others (Including Non-profit Organizations) With Credit Available Elsewhere	5.500
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.953

The number assigned to this disaster for physical damage is 353806 and the number for economic injury is 9W7800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 28, 2003.

Hector V. Barreto,

Administrator.

[FR Doc. 03–22529 Filed 9–3–03; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Public Comment on Review of Employment Impact of United States-Bahrain Free Trade Agreement

AGENCIES: Office of the United States Trade Representative; Department of Labor.

ACTION: Request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of the proposed U.S.-Bahrain Free Trade Agreement (FTA) on United States employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

DATES: USTR and Labor will accept any comments received during the course of the negotiations of the FTA. However, comments should be received by noon, October 1, 2003, to be assured of timely consideration in the preparation of the report.

ADDRESSES: Submissions by electronic mail: *FR0095@ustr.gov*. Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning the employment impact review should be addressed to Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 693–4883; or William Clatanoff, Assistant U.S. Trade Representative for Labor, telephone (202) 395–6120.

SUPPLEMENTARY INFORMATION:

1. Background Information

On August 4, 2003, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative notified the Congress of the President's intent to initiate a free trade agreement with Bahrain. The notification letters to the Congress can be found on the USTR Web site at *http://www.ustr.gov/new/fta/Bahrain/2003-08-04-notification-house.pdf* and *http://www.ustr.gov/new/fta/Bahrain/2003-08-04-notification-senate.pdf* respectively. On August 13, 2003 the USTR requested the ITC provide advice on the probable economic effects. The ITC intends to provide this advice within four months of receipt of the request. We intend to launch negotiations in January 2004.

The FTA will build on the Middle East Free Trade Area, which includes the Jordan and Morocco FTAs. By moving from unilateral trade preferences to a reciprocal trade agreement, the FTA will seek to eliminate duties and unjustified barriers to trade in both U.S.- and Bahrain-origin goods and also address trade in services, trade in agricultural products, investment, trade-related aspects of intellectual property rights, government procurement, trade-related environmental and labor matters, and other issues. The FTA is expected to contribute to stronger economies, the rule of law, sustainable development, and more accountable institutions of governance, complementing ongoing domestic, bilateral, and multilateral efforts in the region. Finally, the FTA will lend momentum to building a Middle East Free Trade Area.

2. Employment Impact Review

Section 2102(c)(5) of the Bipartisan Trade Promotion Authority Act of 2002, 19 U.S.C. 3802(c)(5), directs the President to "review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public." USTR and the Department of Labor will conduct the employment reviews through the TPSC.

The employment impact review will be based on the following elements, which are modeled to the extent appropriate after those in EO 13141. The review will be: (1) Written; (2) initiated through a **Federal Register** notice soliciting public comment and information on the employment impact of the FTA in the United States; (3) made available to the public in draft form for public comment, to the extent practicable; and (4) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

3. Requirements for Submissions

To ensure prompt and full consideration of responses, the TPSC strongly recommends that interested persons submit comments by electronic mail to the following e-mail address:

FR0095@ustr.gov. Persons making submissions by e-mail should use the following subject line: Bahrain Employment Review. Documents should be submitted in WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the character "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m–12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–22527 Filed 9–3–03; 8:45 am]

BILLING CODE 3190–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Request for Public Comment on Review of Employment Impact of United States-Dominican Republic Free Trade Negotiations

AGENCIES: Office of the United States Trade Representative; Department of Labor.

ACTION: Request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) gives notice that the Office of the United States Trade Representative (USTR) and the Department of Labor (Labor) are initiating a review of the impact of the proposed U.S.-Dominican Republic free trade negotiations on United States employment, including labor markets. This notice seeks written public comment on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA.

DATES: USTR and Labor will accept any comments received during the course of the negotiations of the FTA. However, comments should be received by noon, October 1, 2003, to be assured of timely consideration in the preparation of the report.

ADDRESSES: Submissions by electronic mail: *FR096@ustr.gov*. Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Substantive questions concerning the employment impact review should be addressed to Jorge Perez-Lopez, Director, Office of International Economic Affairs, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, telephone (202) 693–4883; or William Clatanoff, Assistant U.S. Trade Representative for Labor, telephone (202) 395–6120.

SUPPLEMENTARY INFORMATION:

1. Background Information

On August 4, 2003, in accordance with section 2104(a)(1) of the Trade Act of 2002, the United States Trade Representative notified the Congress of the President's intent to enter into free trade negotiations with the Dominican Republic. The notification letters to the Congress can be found on the USTR Web site at *http://www.ustr.gov/new/fta/Dr/2003–08–04-notification-house.pdf* and *http://www.ustr.gov/new/fta/Dr/2003–08–04-notification-senate.pdf* respectively. We intend to launch negotiations in January 2004.

Through these negotiations we expect to provide for essentially the same disciplines as those in the Free Trade Agreement we are currently negotiating with the five members of the Central American Economic Integration System (Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua) (CAFTA), and to negotiate specific market access commitments with the Dominican Republic. On August 6, 2003 the USTR requested the ITC provide advice on probable economic effects. The ITC intends to provide this advice within four months of its receipt of the request.

2. Employment Impact Review

Section 2102(c)(5) of the Bipartisan Trade Promotion Authority Act of 2002, 19 U.S.C. 3802(c)(5), directs the President to "review the impact of future trade agreements on United States employment, including labor markets, modeled after Executive Order 13141 to the extent appropriate in establishing procedures and criteria, report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on such review, and make that report available to the public." USTR and the Department of Labor will conduct the employment reviews through the TPSC.

The employment impact review will be based on the following elements, which are modeled to the extent appropriate after those in EO 13141. The review will be: (1) Written; (2) initiated through a **Federal Register** notice soliciting public comment and information on the employment impact of the FTA in the United States; (3) made available to the public in draft form for public comment, to the extent practicable; and (4) made available to the public in final form.

Comments may be submitted on potentially significant sectoral or regional employment impacts (both positive and negative) in the United States as well as other likely labor market impacts of the FTA. Persons submitting comments should provide as much detail as possible in support of their submissions.

3. Requirements for Submissions

To ensure prompt and full consideration of responses, the TPSC strongly recommends that interested persons submit comments by electronic

mail to the following e-mail address: *FR096@ustr.gov*. Persons making submissions by e-mail should use the following subject line: "Dominican Republic Employment Review." Documents should be submitted in WordPerfect, MSWord, or text (.TXT) files. Supporting documentation submitted as spreadsheets is acceptable in Quattro Pro or Excel format. For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters "BC-", and the file name of the public version should begin with the character "P-". The "P-" or "BC-" should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except confidential business information exempt from public inspection in accordance with 15 CFR 2003.6. Confidential business information submitted in accordance with 15 CFR 2003.6 must be clearly marked "BUSINESS CONFIDENTIAL" at the top of each page, including any cover letter or cover page, and must be accompanied by a non-confidential summary of the confidential information. All public documents and non-confidential summaries shall be available for public inspection in the USTR Reading Room in Room 3 of the Annex of the Office of the USTR, 1724 F Street, NW., Washington, DC 20508. An appointment to review the file may be made by calling (202) 395–6186. The USTR Reading Room is generally open to the public from 10 a.m–12 noon and 1–4 p.m. Monday through Friday. Appointments must be scheduled at least 48 hours in advance.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 03–22526 Filed 9–3–03; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. A **Federal Register** notice with a 60-day comment period soliciting comments on the following collection of information was published on June 12, 2002, page 40373, and a notice with a 30-day comment period for the December submission for this collection report was published on December 27, 2002, page 79236.

DATES: Comments must be submitted on or before October 6, 2003. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Application for Employment with the Federal Aviation Administration.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0597.

Forms(s): FAA Form 27152.

Affected Public: A total of 50,000 individual applicants for employment with the FAA.

Abstract: This collection of information is necessary for gathering data concerning potential new hires for the FAA. The information will be used to evaluate the qualifications of applicants for a variety of positions. Without this information there would be no reliable means to accurately evaluate applicants' skills, knowledge, and abilities to perform the duties of these positions.

Estimated Annual Burden Hours: An estimated 75,000 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 25, 2003.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 03–22467 Filed 9–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2003–53]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR, dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 15, 2003.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number FAA–200X-XXXXX] by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting

comments on the DOT electronic docket site.

- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Tim Adams (202) 267–8033, Sandy Buchanan-Sumter (202) 267–7271, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on August 27, 2003.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2003–15925.
Petitioner: AirTran Airways, Inc.
Section of 14 CFR Affected: 14 CFR 93.123.
Description of Relief Sought: To permit AirTran Airways, Inc., to conduct 10 operations at LaGuardia Airport without the necessary slots as required under 14 CFR 93.123.

Docket No.: FAA–2003–15792.
Petitioner: Northwest Airlines, Inc.
Section of 14 CFR Affected: 14 CFR 121.505(b).
Description of Relief Sought: To permit pilots operating a single Northwest Airline airplane to be on duty for more than 16 hours during 24 consecutive hours. The proposed exemption will be used in a one-time operation to conduct a part 121 supplemental operation in an attempt to set an around the poles world speed record flight in conjunction with the 100th anniversary of the Wright Brothers first flight at Kitty Hawk.

[FR Doc. 03–22465 Filed 9–3–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Brunswick Golden Isles Airport, Brunswick, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Brunswick Golden Isles Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 6, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Federal Aviation Administration, DOT, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Steve V. Brian, Executive Director of the Glynn County Airport Commission at the following address: 500 Connole Street, Brunswick, Georgia 31525.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Glynn County Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Philip Cannon, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, (404) 305–7152.

The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Brunswick Golden Isles Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 19, 2003, the FAA determined that the application to the revenue from a PFC submitted by Glynn County Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 28, 2003.

The following is a brief overview of the application.

PFC Application No.: 03–02–U–00–BQK.

Level of the proposed PFC: $4.50.

Proposed charge effective date: November 1, 2003.

Proposed charge expiration date: September 1, 2011.

Total estimated PFC revenue: $572,623.

Brief description of proposed project(s): 1. Airport Terminal Renovations.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Part 135 Air Taxi/Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Glynn County Airport Commission.

Issued in College Park, Georgia, on August 25, 2003.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 03–22468 Filed 9–3–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Chehalis-Centralia Railroad Association (Docket Number FRA–2003–15753)

The Chehalis-Centralia Railroad Association has petitioned for a temporary waiver of compliance from the requirements of the *Control of*

Alcohol and Drug Use, 49 CFR part 219, which is FRA's alcohol and drug regulation that governs prohibitions, post-accident testing, testing for cause, identification of troubled employees, pre-employment testing, and random testing. The petitioner states that the railroad is a small non-profit membership based tourist operation with nine miles of track, 11 hours of service employees, and infrequent joint operations with the Puget Sound and Pacific Railroad, and Tacoma Rail.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–2003–15753) and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov.*

Issued in Washington, DC, on August 27, 2003.

Michael Logue,

Deputy Associate Administrator for Compliance and Program Implementation.

[FR Doc. 03–22469 Filed 9–3–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Sumpter Valley Railroad Restoration, Inc.

[Docket Number FRA–2003–15641]

The Sumpter Valley Railroad seeks a waiver of compliance from the Inspection and Maintenance Standards for Steam Locomotives, 49 CFR part 230, published November 17, 1999. Section 230.3(c)(1) of the standards requires steam locomotives having flue tubes replaced after September 25, 1995 to request Special Consideration to come under the new requirements by January 18, 2001 or undergo a one thousand four hundred seventy-two service day inspection (49 CFR 230.17) prior to being allowed to operate under the requirements. The Sumpter Valley Railroad Restoration, Inc. (SVRY) seeks an extension of time beyond January 18, 2001 to file for Special Consideration for SVRY steam locomotive number 19 which had the flue tubes replaced and was returned to service in May of 1996.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2003–15641) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or at *http://dms.dot.gov.*

Issued in Washington, DC on August 27, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–22471 Filed 9–3–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Safety Advisory

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of FRA Safety Advisory 2003–02.

SUMMARY: FRA is issuing Safety Advisory 2003–02 advising all persons involved in loading and unloading products from railroad tank cars that they cannot rely on internal excess flow valves to stop the flow of product except under the limited conditions for which these valves were designed and installed.

FOR FURTHER INFORMATION CONTACT: Thomas A. Phemister, Hazardous Materials Specialist, Office of Safety, RRS–12, Mail Stop 25, Federal Railroad Administration, Department of Transportation, 1120 Vermont Avenue, NW., Washington, DC 20590 (telephone 202–493–6050).

SUPPLEMENTARY INFORMATION:

Factual Background

On July 14, 2001; at the Atofina Chemicals, Inc., plant in Riverview, Michigan, a pipe attached to an unloading fitting on a railroad tank car fractured and separated, causing the release of methyl mercaptan, a poisonous, flammable gas. The ensuing fire led to the rupture of hoses on an adjacent tank car containing chlorine, a poisonous, corrosive gas. Before the fire

was extinguished about six hours later, three employees in the plant had been killed, and several other employees required treatment for exposure to the chemicals. About 2,000 residents of the area surrounding the plant were evacuated for about 10 hours.

In the course of its investigation, the National Transportation Safety Board (NTSB or the Board) determined that a contributing cause of the accident and its severity was the plant's reliance on the tank car excess flow valves [1] to activate and stop product flow if a hose or unloading pipe broke.

Also as part of the NTSB investigation, it was determined that both the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) had required Atofina to develop safety plans for the Riverview facility. As a mandatory part of the plans, the company had to consider safeguards to reduce both the risk and the consequences of a catastrophic release of the hazardous materials present at the plant. Both the risk management plan required by EPA and the process safety management plan required by OSHA dealt specifically with the potential for the failure of a flexible hose used in the tank car unloading process that delivered methyl mercaptan into the plant's industrial process. Under both plans, Atofina stated that the release of methyl mercaptan would be stopped by the automatic closure of the tank car's excess flow valves, specifically noting that this would occur even if a pipeline or unloading hose ruptured.[2]

Following its investigation into the accident at the Atofina facility in Riverview, Michigan, the Board issued several recommendations. One of them recommended that FRA:

> Issue a hazardous materials bulletin to warn companies involved in tank car loading and unloading operations that tank car excess flow valves cannot be relied upon to stop leaks that occur during those operations.[3]

FRA completely agrees with the safety concerns of the Board in this matter.

The NTSB has previously investigated accidents involving the release of dangerous chemicals during industrial accidents and, in response to an accident in Baton Rouge, Louisiana, on July 30, 1983, the Board issued a report stating that excess flow valves were not designed to act as emergency shutoff devices during cargo transfer.[4]

Excess Flow Valves in the Railroad Hazardous Materials Regulatory Environment

As a general rule, the specifications for tank cars, at 49 CFR Part 179, include excess flow valves as a permissive feature on what the regulations refer to as "pressure" tank cars and do not mention the devices in the specification for "non-pressure" tank cars. The regulations state:

> The interior pipes of the loading and unloading valves shall be anchored and, except as prescribed in § 179.102 or § 179.103, *may* be equipped with excess flow valves of approved design. (Emphasis supplied.)[5]

The packaging requirements in § 173.314 require excess flow valves for the interior pipes of loading/unloading valves, sampling devices, and gauging devices on tank cars transporting materials with a primary or secondary hazard of 2.1 (flammable gas); excess flow valves are also required on the interior pipes of liquid discharge valves on tank cars transporting chlorine.[6] FRA believes that most cars built to the pressure car standards have excess flow valves, but the same cannot be said for non-pressure cars, many of which, in fact, transport commodities at pressures greater than the ambient atmosphere.

An excess flow valve is, typically, a metallic device inserted into the interior piping of a tank car, just below the valve(s) used to load and unload the car. In the event that the valves are sheared off in a railroad accident, there will be a sudden rush of product out the opening thus created. With nothing to impede the flow of fluid product, the excess flow valve will move toward the opening and seat, thus sealing off the opening.

In response to concerns that the then-current regulatory provision for excess flow valves might be ambiguous, in 1985 the DOT published a notice of proposed rulemaking to amend the tank car specifications by adopting what is now the contemporary standard. Proponents of the clarification stated that tank-mounted excess flow valves are not intended to substitute for adequate excess flow equipment in plant loading systems. "The only use of such valves is for protection against loss of lading due to shearing of external closure during transit." [7]

The hazardous materials regulations (HMR) are quite clear that excess flow valves are limited in purpose and scope:

> An excess flow valve as referred to in this specification, is a device which closes automatically against the outward flow of the contents of the tank in case the external closure valve is broken off or removed during transit * * *[8]

Excess flow valves, by their nature, must encounter a high-volume, surging flow of product to be activated. If that were not the case, they might function in unintended situations, such as when a tank car is being unloaded with the aid of a strong pump. As designed, essentially any apparatus attached to the outside of the external closure valve will create sufficient internal friction (whether hose or pipe) that the flow of product will not be sufficient to activate the excess flow valve.

Safety Warning

Excess flow valves, by both design and regulation, are intended to function only when the external closure valve is sheared, broken off, or otherwise removed during transit. These devices may also function as a back-up flow control device during tank car loading or unloading activities. While FRA neither regulates nor enforces the risk management plans required by EPA or the process safety management plan required by OSHA, it does have considerable expertise in the design, construction, and use of railroad tank cars and the safety features designed into them. FRA cannot urge strongly enough that the excess flow valve feature commonly included in pressure-type tank cars is not to be relied upon to stop leaks that may occur during loading or unloading operations.

Issued at Washington, DC, on August 28, 2003.

George Gavalla,

Associate Administrator for Safety, Federal Railroad Administration.

[FR Doc. 03–22473 Filed 9–3–03; 8:45 am]

BILLING CODE 4910–06–U

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[1] Excess flow valves appear in the hazardous materials regulations, inter alia, at 49 CFR 179.100–13(c) and (d). The Tank Car Manual, (Specifications for Tank Cars, Manual of Standards and Recommended Practices, Section C–III, Association of American Railroads, Washington, DC, © 2000, Appendix A, Table A1) uses the term "check valve."

[2] Correspondence dated July 16, 2002, from Marion C. Blakely, Chairman, NTSB, to Allan Rutter, Administrator, FRA, summarizing the Board's investigation, including a public hearing, of this incident.

[3] NTSB Safety Recommendation R–02–16.

[4] NTSB, Vinyl Chloride Monomer Release From a Railroad Tank Car and Fire, Formosa Plastics Corporation Plant, Baton Rouge, Louisiana, July 30, 1983, Hazardous Materials Accident Report NTSB/HZM–85/08 (Washington, DC: NTSB, 1985).

[5] 49 CFR 179.100–13(b) Venting, loading and unloading valves, measuring and sampling devices.

[6] 49 CFR 173.314 (j) and (k), respectively.

[7] Docket HM–166W, NPRM at 53 FR at 36418, September 19, 1988; Final Rule adopting the amendment as proposed, 54 FR 38790, September 20, 1989.

[8] 49 CFR 179.100–13(d).

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket Number FRA–2003–15755]

Applicant: Kansas City Southern Railway, Mr. Calvin R. Jones, Manager of Engineering Projects, Signal Department, 4601 Shreveport-Blanchard Highway, Shreveport, Louisiana 71107–5799.

Kansas City Southern Railway seeks approval of the proposed modification of the traffic control system, on the main track and controlled siding near milepost 604.5, on the Transcontinental Division, Beaumont Subdivision, in Benson, Louisiana. The proposed changes consist of the following:

1. Removal of the North and South Benson control points and the associated power-operated switch machines and controlled signals;

2. Installation of an electrically locked, hand-operated switch and repeater cut section at North Benson; and

3. Installation of an electrically locked, hand-operated switch and back to back, intermediate signals at South Benson.

The reason given for the proposed changes is that Benson Business Track is approximately 4,600 feet and is used primarily to store cars and seldom used to meet trains, and the removed equipment could be better utilized at another location.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on August 27, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–22470 Filed 9–3–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

[Docket No. FRA–2003–15754]

Applicant: Reading Blue Mountain and Northern Railroad, Mr. J.A. Seidel, Manager of C&S, P.O. Box 218, Port Clinton, Pennsylvania 19549.

The Reading Blue Mountain and Northern Railroad seeks approval to extend the temporary discontinuance of the signal system until October 30, 2004, on their Track No. 1 on the Lehigh Line between milepost 119.3 and milepost 130.6, in order to complete repairs to the signal system which was damaged by a winter storm on December 26, 2002.

The reason given for the proposed changes is that Track No. 1 is a seldom-used track running parallel to the Norfolk Southern Corporation's Track No. 2, and there is a substantive dispute between the parties concerning the responsibility for repair of Track No. 1.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.-5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on August 27, 2003.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 03–22472 Filed 9–3–03; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of the General Counsel

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, Gary B. Wilcox, Deputy Chief Counsel (Technical).
2. Deborah A. Butler, Associate Chief Counsel (Procurement and Administration).
3. Mark Kaizen, Associate Chief Counsel (General Legal Services).
4. Nancy J. Marks, Deputy Associate Chief Counsel (Tax Exempt Government Entities).
5. Cynthia J. Mattson, Division Counsel (Large and Mid-Size Business).
6. Gary A. Benford, Area Counsel (Small Business/Self-Employed), Area 6—Dallas.

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: August 29, 2003.

Richard Mihelcic,

Associate Chief Counsel (Finance and Management).

[FR Doc. 03–22516 Filed 9–3–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974: Computer Matching Program

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of Matching Program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of an internal computer matching program to be conducted by the Internal Revenue Service pertaining to the matching of systems of records Treasury/IRS36.003 General Personnel and Payroll and Treasury .010 Telephone Call Detail Records.

EFFECTIVE DATE: This notice will be effective October 6, 2003.

ADDRESSES: Inquiries may be mailed to Director, End User and Equipment Services; Modernization, Information Technology and Support Services, M:I:EU, Internal Revenue Service, 5000 Ellin Rd., Lanham, MD.

FOR FURTHER INFORMATION CONTACT: Ed D. Rieser, Project Manager, Telecommunications Asset Tool (TAT), M:I:EU:AD:SE, Internal Revenue Service, (972) 308–1687.

SUPPLEMENTARY INFORMATION: The Matching Process is needed for the Internal Revenue Service (IRS), Telecommunications Division Waste, Fraud, and Abuse initiative to automatically match long distance telephone and calling card call detail records/data to employee making the call(s) and match to the manager of that respective employee by using the Telecommunications Asset Tool (TAT), Corporate Authoritative Directory Services (CADS), and the Calling Card Ordering System (CCOS). Members of the public desiring specific information concerning an ongoing matching activity may request a copy of the applicable computer matching agreement at the address provided above.

Name of source agency: Internal Revenue Service.

Name of recipient agency: Internal Revenue Service.

Beginning and completion dates: The matches are conducted on an ongoing basis in accordance with the terms of the computer matching agreement in effect between the parties as approved by the Treasury Data Integrity Board. The term of this agreement is expected to cover the 18-month period beginning September 1, 2003 and ending February 28, 2005.

Purpose: The purpose of this program is to prevent or reduce waste, fraud, and abuse while protecting the privacy interest of the subjects of the match.

In the past several years the Service has been increasingly challenged to ensure that all resources are used as efficiently as possible. Telecommunications expenditures, one of the largest items in the Service's budget, continue to be an area warranting increased scrutiny due to the steady and dramatic rise in telecommunications usage and cost. On September 25, 2001, in partnership with the National Treasury Employees Union (NTEU), the Service entered into an agreement to implement a new system for reviewing telecommunications usage.

The Telecommunications Asset Tool (TAT), will be used to review employee use of office telephones and calling card records. TAT replaces the Billing Analysis Reporting Tool (BART) that has been used to review personal use of office telephones and calling cards to prevent waste, fraud, and abuse of government telephone services since the early 1990s.

A major purpose of the TAT is to provide a system of checks and balances that directly address the integrity of the data. The call detail data has been derived from Sprint Billing Data received monthly and used to build the call detail database. The new agency-wide TAT review process will concentrate on two areas: (1) potential waste, fraud, and abuse of telecommunications resources; and (2) lost personnel productivity based on excessive time devoted to personal telephone calls. TAT provides data on 100% of call detail records, including long distance telephone calls and phone card calls. TAT is the tool for managing telecommunications expenditures and for identifying waste, fraud, and abuse. Additionally, managers can request ad hoc reports detailing calls from office telephones or calling cards if the manager suspects potential problems related to these services.

Authority: 5 CFR 2635-Standards of Ethical Conduct for Employees of the Executive Branch; 5 CFR 3101-Supplemental Standards of Ethical Conduct for Employees of the Treasury Department, Treasury Supplemental Standards (3101.101–3191, 107, the Treasury Employee Rules of Conduct).

Categories of individuals covered: Employees who have been issued an IRS telephone calling card.

Categories of records covered in the match: Personnel/Payroll and Telephone Call Detail records from the following Privacy Act systems of records.

Treasury/IRS36.003 General Personnel and Payroll Data

CADS data to be used in the matching program:

Standard Employee Identifier (SEID),
Employee Name, Manager Name,
Organizational symbols,
Building/Room Number,
Business office Address,
Employee telephone number.

Treasury/IRS36.003 General Personnel and Payroll Data

CCOS data to be used in the matching program:

Standard Employee Identifier (SEID),
Employee Name, Manager Name,
Organizational symbols,
Building/Room Number,
Business office Address,
Calling card number.

Treasury .010 Telephone Call Detail Records

TAT data to be used in the matching program:

Date,
Time,
Originating telephone number,
Originating Access,
Terminating telephone number,
Terminating City/State,
Terminating Access,
Minutes,
Conference call cancellation charge,
Calling card number,
Tax and Total Cost.

The telephone number or calling card data from the TAT process will be matched with CADS or CCOS database to identify the employee assigned to the respective telephone number/calling card and identify the manager to whom the employee is assigned.

Once the manager is identified, the respective/applicable call detail report(s) are generated.

Ninety days prior to expiration of the agreement, the parties to the agreement may request a 12-month extension in accordance with 5 U.S.C. 552a(o).

Dated: August 27, 2003.

W. Earl Wright, Jr.,

Acting Chief Management and Administrative Programs Officer.

[FR Doc. 03–22515 Filed 9–3–03; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Thursday,
September 4, 2003

Part II

Department of Health and Human Services

Health Resources and Services Administration

Availability of Funds Announced in the HRSA Preview; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Availability of Funds Announced in the HRSA Preview

AGENCY: Health Resources and Services Administration.

ACTION: General notice.

SUMMARY: Health Resources and Services Administration (HRSA) announces the availability of funds in the HRSA Preview for Summer 2003. This edition of the HRSA Preview is a comprehensive review of HRSA's Fiscal Year 2004 competitive grant programs.

The purpose of the HRSA Preview is to provide the general public with a single source of program and application information related to the Agency's competitive grant offerings. The HRSA Preview is designed to replace the multiple **Federal Register** notices that traditionally advertised the availability of HRSA's discretionary funds for its various programs. It should be noted that additional program initiatives responsive to new or emerging issues in the health care area and unanticipated at the time of publication of the HRSA Preview may be announced through the **Federal Register** and the HRSA Web site, *http://www.hrsa.gov/grants*. This notice does not change requirements appearing elsewhere in the **Federal Register**.

This notice contains nearly all of the content of the HRSA Preview. The HRSA Preview contains a description of competitive and other grant programs scheduled for awards in Fiscal Year 2004, and includes instructions on how to contact the Agency for information and receive application kits for all programs. Specifically, the following information is included in the HRSA Preview: (1) Program announcement number (2) program announcement title; (3) program announcement code; (4) legislative authority; (5) Catalog of Federal Domestic Assistance (CFDA) identification number; (6) purpose; (7) eligibility; (8) funding priorities and/or preferences; (9) estimated dollar amount of competition; (10) estimated number of awards; (11) estimated project period; (12) application availability date; (13) letter of intent deadline (if any); (14) application deadline; (15) projected award date; and (16) programmatic contact, with telephone and e-mail addresses. Certain other information, including how to obtain and use the HRSA Preview and grant terminology, can also be found in the HRSA Preview.

Dated: August 27, 2003.

Elizabeth M. Duke,

Administrator.

This notice describes funding for the following HRSA discretionary authorities and programs (receipt deadlines are also provided):

Health Professions Programs:	
HRSA–04–004 Centers Of Excellence (COES)	01/26/2004
HRSA–04–009 Health Careers Opportunity Program (HCOP)	02/20/2004
HRSA–04–010 Advanced Education Nursing Grants (AENP)	11/25/2003
HRSA–04–011 Nursing Workforce Diversity Grants (NWD)	12/05/2003
HRSA–04–012 Advanced Education Nursing Traineeships (AENT)	11/14/2003
HRSA–04–013 Nurse Anesthetist Traineeships (NATR)	11/14/2003
HRSA–04–014 Nursing Education, Practice and Retention Grants (NEPR)	12/15/2003
HRSA–04–015 Training In Primary Care Medicine And Dentistry (DRPC)	11/06/2003
HRSA–04–016 Podiatric Residency Training In Primary Care (PODPC)	10/20/2003
HRSA–04–017 Graduate Psychology Education Program (GPEP)	12/12/2003
HRSA–04–018 Basic/Core Area Health Education Centers (BAHEC)	02/03/2004
HRSA–04–019 Model State-Supported Area Health Education Centers (MAHEC)	02/03/2004
HRSA–04–020 Grants To States For Loan Repayment Programs (SLRP)	04/01/2004
HRSA–04–021 Bioterrorism Training And Curriculum Development Program (BTCDP)	03/05/2004
HRSA–04–022 Preventive Medicine Residency Program (PMRP)	10/16/2003
HRSA–04–023 Geriatric Education Centers Program (GECS)	01/13/2004
HRSA–04–024 Geriatric Academic Career Awards (GACA)	02/02/2004
HRSA–04–025 Geriatric Training For Physicians, Dentists, And Behavioral And Mental Health Professionals (GTPD)	12/15/2003
HRSA–04–026 Quentin N. Burdick Program For Rural Interdisciplinary Training (QBRH)	01/13/2004
HRSA–04–027 Allied Health Projects (AHPQ)	01/13/2004
Special Programs—Loan Repayments and Scholarships:	
See individual announcements for Web sites and application materials.	
National Health Service Corps Loan Repayment Program (NHSCL)	03/26/2004
National Health Service Corps Scholarship Program (NHSC)	03/26/2004
Nursing Scholarship Program (NSP)	05/31/2004
Nursing Education Loan Repayment Program (NELRP)	02/18/2004
Scholarships For Disadvantaged Students Program (SDS)	12/17/2003
Faculty Loan Repayment Program (FLRP)	05/28/2004
Primary Health Care Programs:	
HRSA–04–028 Radiation Exposure Screening And Education Program (RESEP)	04/05/2004
HRSA–04–029 Integrated Services Development Initiative (ISDI)	04/05/2004
HRSA–04–030 Community And Migrant Health Centers (CMHS)	12/01/2003 05/03/2004
HRSA–04–031 Health Care For The Homeless (HCH)	12/01/2003 05/03/2004
HRSA–04–032 Public Housing Primary Care (PHPC)	12/01/2003 05/03/2004
HRSA–04–033 School Based Health Centers (SBHC)	12/01/2003 05/03/2004
HRSA–04–034 New Delivery Sites And New Starts In Programs Funded Under The Health Centers Consolidation Act (NDSNS)	12/01/2003 05/17/2004
HRSA–04–035 Increase In Medical Capacity In Programs Funded Under The Health Centers Consolidation Act Of 1996 (IMCHC)	02/02/2004
HRSA–04–036 National Health Center Technical Assistance Cooperative Agreements (NAT)	04/05/2004

HRSA–04–037 Increase In Mental Health And Substance Abuse, Oral Health, And Care Management, In Programs Funded Under The Health Centers Consolidation Act Of 1996 (IMHSA)	01/05/2004
HRSA–04–038 Healthy Communities Access Program (HCAP)	04/05/2004
HRSA–04–039 Black Lung Clinics Program (BLCP)	03/01/2004
HRSA–04–040 State Primary Care Associations Supplemental Funding For Managing Health Center Growth And Quality (PCA)	01/05/2004
HRSA–04–041 Operational Health Center Networks (OHCN)	03/08/2004
HIV/AIDS Programs:	
HRSA–04–042 Special Projects Of National Significance (SPNS)	03/22/2004
HRSA–04–043 Title III: Early Intervention Services Capacity Development Grants (EISCDG)	03/05/2004
HRSA–04–044 National HIV Training And Technical Assistance Cooperative Agreements (NHIV)	12/19/2003
HRSA–04–046 Telehealth Resource Centers Cooperative Agreement Program (TRCCP)	03/22/2004
HRSA–04–047 Title IV: Grants For Coordinated HIV Services And Access To Research For Women, Infants, Children, And Youth (CSWICY)	01/05/2004
HRSA–04–048 Title IV: Grants For Coordinated HIV Services And Access To Research For Women, Infants, Children, And Youth: Youth Services Initiative (CSWICY: YSI)	04/01/2004
HRSA–04–005 Title III: Categorical Grant Program To Provide Outpatient Early Intervention Services With Respect To HIV Disease (EISEGA)	12/22/2003 10/15/2004
HRSA–04–049 Title III: Early Intervention Services Planning Grants (EISPG)	03/05/2004
HRSA–04–050 HIV Emergency Relief Grant Program For Eligible Metropolitan Areas (EMAS)	10/01/2003
HRSA–04–008 AETC National Evaluation Center (NECCA)	10/06/2003
Maternal and Child Health Programs:	
HRSA–04–051 Maternal And Child Health Research Program (MCHR)	03/01/2004 08/15/2004
HRSA–04–052 Maternal And Child Health Minority Research Infrastructure Support Program (RMIN)	03/26/2004
HRSA–04–053 Long Term MCH Training (MCHLT)	11/20/2003
HRSA–04–054 Continuing Education And Development (CED)	01/15/2004
HRSA–04–055 Genetic Services Projects (GSP)	01/09/2004
HRSA–04–056 Medical Home For Children With Special Health Care Needs	01/15/2004
HRSA–04–057 Adolescent Health Resource (AHR) Cooperative Agreements	01/05/2004
HRSA–04–058 National Center On School-Based Health Care (NSBHC)	01/05/2004
HRSA–04–059 Integrated Health And Behavioral Health Care For Children, Adolescents And Their Families (IHBHP)	02/02/2004
HRSA–04–060 Breastfeeding Promotion In Physician's Office Practices (BPPOP)	04/01/2004
HRSA–04–061 Partnership For Information And Communication (PIC) Cooperative Agreement Program	11/17/2003
HRSA–04–062 Healthy Tomorrows Partnership For Children Program (HTPC)	10/29/2003
HRSA–04–063 Women's Health	02/02/2004
HRSA–05–001 Maternal And Child Health (MCH) Library Services	07/19/2004
HRSA–04–006 Emergency Medical Services For Children (EMSC) Demonstration Grant Program	10/31/2003
HRSA–04–064 Traumatic Brain Injury (TBI) Program—State Grants	11/17/2003
HRSA–04–065 Poison Control Centers Stabilization And Enhancement Grant Program, Financial Stabilization Grants (PCCFS)	03/01/2004
HRSA–04–066 Healthy Start Program: Eliminating Disparities In Perinatal Health	12/01/2003
Rural Health Policy Programs:	
HRSA–04–001 Rural Health Care Services Outreach Grant Program (RHOGP)	09/12/2003 09/13/2004
HRSA–04–002 Rural Health Network Development Grant Program (RHNGP)	09/26/2003 09/20/2004
HRSA–04–003 Rural Health Network Development Planning Grant Program (RHNPGP)	09/10/2003 09/08/2004
HRSA–04–067 Delta State Rural Development Network Grant Program (DELTA)	05/01/2004
HRSA–04–068 Small Rural Hospital Improvement Program (SHIP)	04/28/2004
HRSA–04–069 Grants For Policy-Oriented Rural Health Services Research (GPOR)	05/03/2004
HRSA–04–070 Rural Health Research Grant Program—Cooperative Agreement (CARHR)	03/15/2004
Special Programs—Grants:	
HRSA–04–071 Regional Collaborative For The Pacific Basin (RCPB)	07/15/2004
HRSA–04–072 Social And Behavioral Interventions To Increase Organ And Tissue Donation (SBITD)	03/05/2004
HRSA–04–073 Clinical Interventions To Increase Organ Procurement (CIOP)	03/05/2004
HRSA–04–074 Best Practices To Increase Organ Donation (HIP)	04/01/2004

How To Use and Obtain Copies of the HRSA Preview

It is recommended that you read the introductory materials, terminology section, and individual program category descriptions before contacting the toll-free number: 1–877–HRSA–123 (1–877–477–2123), M–F 8:30 a.m. to 5 p.m. EST. Likewise, we urge applicants to fully assess their eligibility for grants before beginning to apply for a grant on-line or requesting a grant application kit. As a general rule, no more than one kit per category will be mailed to applicants.

To Obtain a Copy of the HRSA Preview

This HRSA Preview will be available in booklet form in the near future. To have your name and address added to or deleted from the HRSA Preview mailing list, call the toll free number above or send a message by e-mail to *hrsagac@hrsa.gov*.

To Obtain Application Materials

You may apply for HRSA grants on-line or on paper. HRSA encourages you to apply on-line. HRSA's on-line application system is designed to maximize data accuracy and speed processing. Multiple individuals may register and collaborate on applications, and institutional data is stored for you to re-use on future applications.

To apply on-line, go to *http://www.hrsa.gov/grants*. On that Web page, you will find basic instructions and

links to the HRSA on-line application system, where you will be able to register, download application guidance for specific programs and submit your grant application.

Please submit your application early. Applications submitted after program's deadline will not be accepted.

To obtain paper application materials, determine which kit(s) you wish to receive and call 1–877–477–2123 to be placed on the mailing list. Be sure to provide the information specialist with the Program Announcement Number, Program Announcement Code and the title of the grant program. You may also request application kits using the e-mail address above. Application kits are generally available 60 days prior to application deadline. If kits are available earlier, they will be mailed immediately. The guidance contained in the various kits contains detailed instructions, background on the grant program, and other essential information, such as the applicability of Executive Order 12372 and 45 CFR Part 100, and additional information pertinent to the intergovernmental review process, as appropriate.

Grant Terminology

Application Deadlines

Applications will be considered on time if they are received on or before the established deadline. Applicants should check the application guidance material or the HRSA-GRANTS homepage for deadline changes. Applications sent to any address other than that specified in the application guidance are subject to being returned.

Authorization

The citation of the law authorizing the various grant programs is provided immediately following the title of the programs.

CFDA Number

The Catalog of Federal Domestic Assistance (CFDA) is a Government-wide compendium of Federal programs, projects, services, and activities that provide assistance. Programs listed therein are given a CFDA Number.

Cooperative Agreement

A financial assistance mechanism (grant) used when substantial Federal programmatic involvement with the recipient is anticipated by the funding agency during performance of the project. The nature of that involvement will always be specified in the offering or application guidance materials.

DUNS Number—New Requirement

Beginning October 1, 2003, applicants will be required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

Although obtaining a DUNS number is not required for applications submitted in response to announcements with deadlines on or before September 30, 2003, regardless of when the award is made, or for other types of applications submitted before September 30 (*e.g.*, unsolicited applications), applicants are encouraged to obtain a DUNS number now if you believe you will be submitting an application(s) to any Federal agency on or after October 1, 2003. Proactively obtaining a DUNS number at the current time will facilitate the receipt and acceptance of applications after September 2003.

To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

Eligibility

The status an entity must possess to be considered for a grant. Authorizing legislation and programmatic regulations specify eligibility for individual grant programs, and eligibility may be further restricted for programmatic reasons. In general, assistance is provided to nonprofit organizations and institutions, including faith-based and community-based entities, State and local governments, their agencies, including an Indian Tribe or tribal organization, and occasionally to individuals. For-profit organizations are eligible to receive awards under financial assistance programs unless specifically excluded by legislation.

Estimated Amount of Competition

The funding level listed is provided only as an estimate, and is subject to the availability of funds, Congressional action, and changing program priorities.

Funding Priorities and/or Preferences

Funding preferences, priorities, and special considerations may come from legislation, regulations, or HRSA program leadership decisions. They are not the same as review criteria. Funding preferences are any objective factors that would be used to place a grant application ahead of others without the preference on a list of applicants recommended for funding by a review committee. Some programs give preference to organizations that have specific capabilities such as telemedicine networking, or have established relationships with managed care organizations. Funding priorities are factors that cause a grant application to receive a fixed amount of extra rating points—which may similarly affect the order of applicants on a funding list. Special considerations are other factors considered in making funding decisions that are neither review criteria, preferences, nor priorities, *e.g.*, ensuring that there is an equitable geographic distribution of grant recipients, or meeting requirements for urban and rural proportions.

Letter of Intent

To help in planning the application review process, many HRSA programs request a letter of intent from the applicant in advance of the application deadline. Letters of intent are neither binding nor mandatory. Details on where to send letters can be found in the guidance materials contained in the application kit.

Matching Requirements

Several HRSA programs require a matching amount, or percentage of the total project support, to come from sources other than Federal funds. Matching requirements are generally mandated in the authorizing legislation for specific categories. Also, matching or other cost-sharing requirements may be administratively required by the awarding office. Such requirements are set forth in the application kit.

Program Announcement Code

The program announcement code is a unique identifier for each program funded by HRSA. The three-five character acronyms are located in parentheses immediately at the end of each program title and must be used to request application materials either from the HRSA Grants Application Center or online at *hrsagac@hrsa.gov*.

Be sure to use the program announcement number, program announcement code and the title of the grant program when requesting an application kit.

Program Announcement Number

A unique program announcement (HRSA) number is located at the beginning of each program announcement in the HRSA Preview and **Federal Register** notices and includes the Fiscal Year and sequence number for announcement; for example, HRSA 04–001. This number is used with the program title and program

announcement code to order application materials.

Project Period

The project period is the total time for which support of a discretionary project has been programmatically approved. The project period usually consists of a series of budget periods of one-year duration. Once approved through initial review, continuation of each successive budget period is subject to satisfactory performance, availability of funds, and program priorities.

Review Criteria

The following are generic review criteria applicable to HRSA programs:

(1) *Need*—The extent to which the application describes the problem and associated contributing factors to the problem.

(2) *Response*—The extent to which the proposed project responds to the "Purpose" included in the program description. The clarity of the proposed goals and objectives and their relationship to the identified project. The extent to which the activities (scientific or other) described in the application are capable of addressing the problem and attaining the project objectives.

(3) *Evaluative Measures*—The effectiveness of the method proposed to monitor and evaluate the project results. Evaluative measures must be able to assess (1) to what extent the program objectives have been met and (2) to what extent these can be attributed to the project.

(4) *Impact*—The extent and effectiveness of plans for dissemination of project results, and/or the extent to which project results may be national in scope and/or the degree to which a community is impacted by delivery of health services, and/or the degree to which the project activities are replicable, and/or the sustainability of the program beyond Federal funding.

(5) *Resources/Capabilities*—The extent to which project personnel are qualified by training and/or experience to implement and carry out the project. The capabilities of the applicant organization, and quality and availability of facilities and personnel to fulfill the needs and requirements of the proposed project. For competing continuations, past performance will also be considered.

(6) *Support Requested*—The reasonableness of the proposed budget in relation to the objectives, the complexity of the activities, and the anticipated results.

(7) *Specific Program Criteria*—Additional specific program criteria, if any, are included in the program description and in the individual guidance material provided with the application kit. The specific review criteria used to review and rank applications are included in the individual guidance material provided with the application kits. Applicants should pay strict attention to addressing these criteria, as they are the basis upon which the reviewers will judge their applications.

Technical Assistance

A contact person is listed for each program and his/her e-mail address and telephone number provided. Some programs have scheduled workshops and conference calls. If you have questions concerning individual programs or the availability of technical assistance, please contact the person listed. Also check your application materials and the HRSA Web site at *http://www.hrsa.gov/* for the latest technical assistance information.

Frequently Asked Questions

1. Where do I submit grant applications?

The address for submitting your grant application will be shown in the guidance document included in the application kit.

2. How do I learn more about a particular grant program?

If you want to know more about a program before you request an application kit, an e-mail/telephone contact is listed. This contact person can provide information concerning the specific program's purpose, scope and goals, and eligibility criteria. Usually, you will be encouraged to request the application kit so that you will have clear, comprehensive, and accurate information available to you. When requesting application materials, you must state the program announcement number, the program code and title of the program. The application kit lists telephone numbers for a program expert and a grants management specialist who will provide information about your program of interest if you are unable to find the information within the written materials provided.

In general, the program contact person provides information about the specific grant offering and its purpose, and the grants management specialist provides information about the grant mechanism and business matters, though their responsibilities often overlap.

Information specialists at the toll-free number provide only basic information and administer mailings.

3. The dates listed in the HRSA Preview and the dates in the application kit do not agree. How do I know which is correct?

HRSA Preview dates for application kit availability and application receipt deadlines are based upon the best known information at the time of publication, often nine months in advance of the competitive cycle. Occasionally, the grant cycle does not begin as projected and dates must be adjusted. The deadline date stated in your application kit is generally correct. If the application kit has been made available and subsequently the date changes, notification of the change will be mailed to known recipients of the application kit, and also posted on the HRSA home page.

4. Are programs announced in the HRSA Preview ever cancelled?

Infrequently, announced programs may be withdrawn from competition. If this occurs, a cancellation notice will be provided through the HRSA Preview at the HRSA homepage at *http://www.hrsa.dhhs.gov*. If practicable, an attempt will be made to notify those who have requested a kit for the cancelled program by mail.

HRSA Progam Competitions

Health Professions Programs

Note: Programs listed with an asterisk (*) are not included in the President's budget for FY 2004. They are included for planning purposes only. Potential applicants should consider these announcements provisional until final Congressional action on appropriations is taken.

HRSA–04–004 Centers of Excellence (COES) *

CFDA: 93.157.

Legislative Authority: Public Health Service Act, Title VII, Section 736, 42 U.S.C. 293.

Purpose: The goal of the Centers of Excellence (COE) is to assist eligible schools in supporting programs of excellence in health professions education for underrepresented minority individuals. The grantee is required to use the funds awarded: (1) To establish, strengthen, or expand programs to enhance the academic performance of the underrepresented minority students attending the school; (2) to improve the capacity of such schools to train, recruit, and retain underrepresented minority faculty including the payment of stipends and fellowships; (3) to carry out activities to improve the information resources, clinical education, curricula, and cultural competence of the graduates of the schools as it relates to minority health issues; (4) to facilitate faculty and student research on health issues,

particularly affecting underrepresented minority groups; including research on issues relating to the delivery of health care; (5) to carry out a program to train students of the school in providing health services to a significant number of underrepresented minority individuals through training provided to such students at community based health facilities that provide such health services and are located at a site remote from the main site of the teaching facilities of the school; (6) to provide stipends as appropriate; and (7) to develop a large competitive applicant pool through linkages with institutions of higher education, local school districts, and other community based entities and establish an educational pipeline for health professions careers.

* This program is not included in the President's budget for 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action is taken. Updated information will be available on the HRSA Web site.

Eligibility: Eligible applicants are accredited schools of allopathic medicine, osteopathic medicine, dentistry, pharmacy, graduate programs in behavioral or mental health, or other public and non profit health or educational entities, including faith based organizations, and community based organizations, that meet the requirements of section 736(c) of the Public Health Service Act. Historically Black Colleges and Universities, as described in section 736(c)(2)(A) of the Public Health Service Act and which received contracts under former section 788B of the Public Health Service Act (Advanced Financial Distress Assistance) for fiscal year 1987 may apply for Centers of Excellence (COE) grants under section 736(c)(2) of the Public Health Service Act.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $6,118,398.

Estimated Number of Awards: 10.

Estimated Project Period: 3 years.

HRSA–04–004 Centers of Excellence (COE) *

Application Availability Date: September 12, 2003.

Application Deadline: January 26, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Daniel Reed.

Program Contact Phone: (301) 443–2982.

Program Contact E-mail: *dreed1@hrsa.gov.*

HRSA–04–009 Health Careers Opportunity Program (HCOP) *

CFDA: 93.822.

Legislative Authority: Public Health Service Act, Title VII, Section 739, 42 U.S.C. 293c.

Purpose: The goal of the Health Careers Opportunity Program (HCOP) is to assist individuals from disadvantaged backgrounds to undertake education to enter a health profession. The HCOP program works to build diversity in the health fields by providing students from disadvantaged backgrounds an opportunity to develop the skills needed to successfully compete, enter, and graduate from health professions schools. HCOP funds may be used for: (1) Identifying, recruiting, and selecting individuals from disadvantaged backgrounds for education and training in a health profession; (2) facilitating the entry of such individuals into such a school; (3) providing counseling, mentoring, or other services designed to assist such individuals to complete successfully their education at such a school; (4) providing, for a period prior to the entry of such individuals into the regular course of education of such a school, preliminary education and health research training designed to assist them to complete successfully such regular course of education at such a school, or referring such individuals to institutions providing such preliminary education; (5) publicizing existing sources of financial aid available to students in the education program of such a school or who are undertaking training necessary to qualify them to enroll in such a program; (6) paying scholarships, as the Secretary may determine, for such individuals for any period of health professions education at a health professions school; (7) paying such stipends for such individuals for any period of education in student-enhancement programs (other than regular courses), except that such a stipend may not be provided to an individual for more than 12 months; (8) carrying out programs under which such individuals gain experience regarding a career in a field of primary health care through working at facilities of public or private nonprofit community-based providers of primary health services; (9) conducting activities to develop a larger and more competitive applicant pool through partnerships with institutions of higher education, school districts, and other community-based entities.

* This program is not included in the President's budget for FY 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Eligible applicants include schools of medicine, osteopathic medicine, public health, dentistry, veterinary medicine, optometry, pharmacy, allied health, chiropractic, podiatric medicine, public or non-profit private schools that offer graduate programs in behavioral and mental health, programs for the training of physician assistants, and other public or private nonprofit health or educational entities, including faith-based and community-based organizations.

Review Ccriteria: Final review criteria are included in the application kit.

Funding Preferences: Section 739(b) of the Public Health Service Act provides a funding preference for programs that involve a comprehensive approach by several public or nonprofit private health or educational entities to establish, enhance and expand educational programs that will result in the development of a competitive applicant pool of individuals from disadvantaged backgrounds who desire to pursue health professions careers.

Estimated Amount of This Competition: $14,152,621.

Estimated Number of Awards: 35.

Estimated Project Period: 3 years.

HRSA–04–009 Health Careers Opportunity Program (HCOP) *

Application Availability Date: September 12, 2003.

Application Deadline: February 20, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Karen L. Smith.

Program Contact Phone: (301) 443–1348.

Program Contact E-mail: *Ksmith1@hrsa.gov.*

HRSA–04–010 Advanced Education Nursing Program (AENP)

CFDA: 93.247.

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose: Grants are awarded to eligible institutions for projects that support the enhancement of advanced nursing education and practice. For the purpose of this section, advanced education nurses means individuals trained in advanced degree programs including individuals in combined RN to Master's degree programs, post-nursing Master's certificate programs, or in the case of nurse-midwives, in

certificate programs in existence on November 12, 1998, to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators or public health nurses.

Eligibility: Eligible applicants are schools of nursing, academic health centers, other appropriate public or private nonprofit entities, and for-profit entities capable of carrying out the legislative purpose.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: As provided by section 805 of the Public Health Service Act, preference will be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in state or local health departments.

Estimated Amount of This Competition: $2,091,892.

Estimated Number of Awards: 8.

Estimated Project Period: 3 years.

HRSA–04–010 Advanced Education Nursing Program (AENP)

Application Availability Date: September 15, 2003.

Application Deadline: November 25, 2003.

Projected Award Date: July 1, 2004.

Program Contact Person: Irene Sandvold.

Program Contact Phone: (301) 443–2295.

Program Contact E-mail: *isandvold@hrsa.gov.*

HRSA–04–011 Nursing Workforce Diversity Grants (NWD)

CFDA: 93.178.

Legislative Authority: Public Health Service Act, Title VIII, Section 821, 42 U.S.C. 296m.

Purpose: Grants are awarded to increase nursing education opportunities for individuals from disadvantaged backgrounds (including racial and ethnic minorities underrepresented among registered nurses) by providing student scholarships or stipends, pre-entry preparation, and retention activities.

Eligibility: Eligible applicants are schools of nursing, nursing centers, academic health centers, State or local governments, an Indian Tribe or Tribal organization, other public or private nonprofit entities, including faith-based organizations and community-based organizations, and for-profit entities capable of carrying out the legislative purpose.

Review Criteria: Final review criteria are included in the application kit.

Funding preferences: As provided in section 805 of the Public Health Service Act, as amended, preference will be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in State or local health departments.

Estimated Amount of This Competition: $11,396,000.

Estimated Number of Awards: 39.

Estimated Project Period: 3 years.

HRSA–04–011 Nursing Workforce Diversity Grants (NWD)

Application Availability Date: September 15, 2003.

Application Deadline: December 5, 2003.

Projected Award Date: July 1, 2004.

Program Contact Person: Ernell Spratley.

Program Contact Phone: 301–443–1915.

Program Contact E-mail: *espratley@hrsa.gov.*

HRSA–04–012 Advanced Education Nursing Traineeships (AENT)

CFDA: 93.358.

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose: Grants are awarded to eligible institutions to meet the cost of traineeships for individuals in advanced nursing education programs. Traineeships are awarded to individuals by participating educational institutions offering Master's and doctoral degree programs, combined RN to Master's degree programs, post-nursing Master's certificate programs, or in the case of nurse midwives, certificate programs in existence on November 12, 1998 to serve as nurse practitioners, clinical nurse specialists, nurse midwives, nurse anesthetists, nurse educators, nurse administrators or public health nurses. The traineeship program is a formula program and all eligible schools will receive awards.

Eligibility: Eligible applicants are schools of nursing, academic health centers, other appropriate public or private nonprofit entities, and for-profit entities capable of carrying out the legislative purpose.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: As provided in section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations or help meet public health nursing needs in State or local health departments.

Special Consideration: A statutory special consideration, as provided for in section 811(f)(3) of the PHS Act, will be given to an eligible entity that agrees to expend the award to train advanced education nurses who will practice in health professional shortage areas designated under section 332 of the PHS Act.

Estimated Amount of This Competition: $4,800,000.

Estimated Number of Awards: 335.

Estimated Project Period: 1 year.

HRSA–04–012 Advanced Education Nursing Traineeships (AENT)

Application Availability Date: September 12, 2003.

Application Deadline: November 14, 2003.

Projected Award Date: July 1, 2004.

Program Contact Person: Karen D. Breeden.

Program Contact Phone: (301) 443–5787.

Program Contact E-mail: *kbreeden@hrsa.gov.*

HRSA–04–013 Nurse Anesthetist Traineeships (NATR)

CFDA: 93.124.

Legislative Authority: Public Health Service Act, Title VIII, Section 811, 42 U.S.C. 296j.

Purpose: Grants are awarded to eligible institutions for projects that support traineeships for licensed registered nurses enrolled as full-time students beyond the twelfth month of study in a Master's nurse anesthesia program. The traineeship program is a formula program and all eligible entities will receive awards.

Eligibility: Eligible applicants are schools of nursing, academic health centers, other public and private nonprofit institutions, and for-profit entities capable of carrying out the legislative purpose which provide registered nurses with full-time nurse anesthetist education programs that have pre-accreditation or accreditation status from the American Association of Nurse Anesthetists (AANA) Council on Accreditation of Nurse Anesthesia Educational Programs.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: As provided in section 805 of the Public Health Service Act, preference shall be given to applicants with projects that will substantially benefit rural or underserved populations or help meet public health nursing needs in State or local health departments.

Special Consideration: A statutory special consideration, as provided for in section 811(f)(3) of the PHS Act, will be given to an eligible entity that agrees to expend the award to train advanced education nurses who will practice in

health professional shortage areas designated under section 332 of the PHS Act.

Estimated Amount of This Competition: $500,000.

Estimated Number of Awards: 69.

Estimated Project Period: 1 year.

HRSA–04–013 Nurse Anesthetist Traineeships (NATR)

Application Availability Date: September 12, 2003.

Application Deadline: November 14, 2003.

Projected Award Date: July 1, 2004.

Program Contact Person: Karen D. Breeden.

Program Contact Phone: (301) 443–5787.

Program Contact E-mail: *kbreeden@hrsa.gov.*

HRSA–04–014 Nursing Education, Practice and Retention Grants (NEPR)

CFDA: 93.359.

Legislative Authority: Public Health Service Act, Title VIII, Section 831, 42 U.S.C. 296p.

Purpose: Grants are awarded to eligible institutions for projects to strengthen and enhance the capacity for nurse education, practice and retention to address the nursing shortage. Education priority areas are: (1) Expanding enrollment in baccalaureate nursing programs; (2) developing and implementing internship and residency programs to encourage mentoring and the development of specialties; (3) providing education in new technologies, including distance learning methodologies. Practice priority areas are: (1) Establishing or expanding nursing proactive arrangements in non-institutional settings to demonstrate methods to improve access to primary health care in medically underserved communities; (2) providing care for underserved populations and other high-risk groups such as the elderly, individuals with HIV/AIDS, substance abusers, the homeless, and victims of domestic violence; (3) providing managed care, quality improvement, and other skills needed to practice in existing and emerging organized health care systems; (4) developing cultural competencies among nurses. Retention priority areas are: (1) Career ladder programs which: (A) Promote career advancement for nursing personnel in a variety of training settings, cross training or specialty training among diverse population groups, and the advancement of individuals to become professional nurses, advanced education nurses, licensed practical nurses, certified nurse assistants, and home health aides; and (B) assist individuals in obtaining education and training required to enter the nursing profession and advance within such profession, such as by providing career counseling and mentoring; or (2) enhancing patient care delivery systems through improving the retention of nurses and enhancing patient care that is directly related to nursing activities by enhancing collaboration and communication among nurses and other health care professionals, and by promoting nurse involvement in the organizational and clinical decision making processes of a health care facility.

Eligibility: Eligible applicants for the purpose to expand enrollment in baccalaureate nursing programs are collegiate schools of nursing. Eligible entities for all other purposes are: Schools of nursing, health care facilities, or a partnership of such a school and facility, nursing centers, academic health centers, State or local governments, an Indian Tribe or Tribal organization, other public or private non-profit entities including faith-based organizations and community-based organizations, and for-profit entities capable of carrying out the legislative purpose.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: As provided in Section 805 of the Public Health Service Act, as amended, preference will be given to applicants with projects that will substantially benefit rural or underserved populations, or help meet public health nursing needs in state or local health departments. For purposes of any amount of funds appropriated to carry out Section 831 for fiscal year 2003, 2004, or 2005 that is in excess of the amount of funds appropriated to carry out this section for fiscal year 2002, preference will be given to awarding grants under subsections (a)(2) Developing and implementing internship and residency programs to encourage mentoring and development of specialties, and (c) Retention Priority grants for Career Ladder Programs and for Enhancing Patient Care Delivery Systems.

Estimated Amount of This Competition: $3,058,400.

Estimated Number of Awards: 11.

Estimated Project Period: 2 to 5 years.

HRSA–04–014 Nursing Education, Practice and Retention Grants (NEPR)

Application Availability Date: September 15, 2003.

Application Deadline: December 15, 2003.

Projected Award Date: July 1, 2004.

Program Contact Person: Madeline Turkeltaub.

Program Contact Phone: 301–443–6193.

Program Contact E-mail: *mturkeltaub@hrsa.gov.*

HRSA–04–015 Training in Primary Care Medicine and Dentistry (DRPC) *

CFDA: 93.884.

Legislative Authority: Public Health Service Act, Title VII, Section 747, 42 U.S.C. 293k.

Purpose: Grants are awarded for any single purpose or combination of the following purposes: (1) Residency Training in Primary Care—to plan, develop, and operate or participate (including provision of financial assistance) in approved residency programs in family medicine, general internal medicine and/or general pediatrics; (2) Faculty Development in Primary Care—to plan, develop, and operate (including provision of financial assistance) programs for the training of physicians who plan to teach in family medicine (including geriatrics), general internal medicine and/or general pediatrics training programs; (3) Predoctoral Training in Primary Care—to plan, develop, and operate or participate (including provision of financial assistance) in predoctoral programs in family medicine, general internal medicine and/or general pediatrics; (4) Academic Administrative Units—to meet the costs of projects to establish, maintain or improve academic administrative units to provide clinical instruction in family medicine, general internal medicine and/or general pediatrics; (5) Physician Assistant Training—to meet the costs of projects to plan, develop and operate or maintain approved programs, as defined in section 799B, for the training of physician assistants, and for the training of individuals who will teach in programs to provide such training; (6) General and Pediatric Dentistry—to meet the costs of planning, developing, or operating approved residency programs of general or pediatric dentistry, including providing financial assistance to the trainees in these programs.

* This program is not included in the President's budget for FY 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: For program purposes (1), (2), and (5) public or nonprofit private hospitals, accredited schools of

medicine or osteopathic medicine, or public or private nonprofit entities are eligible to apply.

For program purposes (3) and (4) public or nonprofit private accredited schools of allopathic or osteopathic medicine are eligible to apply.

For program purpose (6) entities that have programs in accredited dental schools, approved residency programs in the pediatric or general practice of dentistry, approved advanced education programs in the pediatric or general practice of dentistry, or approved residency programs in pediatric dentistry are eligible to apply.

For all grant program purposes (1) through (6), nonprofit entities, including faith-based organizations and community-based organizations, that meet other eligibility requirements are eligible to apply.

Review Criteria: Final review criteria are included in the application kit.

Funding Priorities: In accordance with Section 747(c)(1) of the Public Health Service Act, for program purposes (1) through (6), a funding priority will be given to approved applicants that have a record of training the greatest percentage of providers or that have demonstrated significant improvements in the percentage of providers who enter and remain in primary care practice or general or pediatric dentistry.

In accordance with Section 747(c)(2) of the Public Health Service Act, for program purposes (1) through (6), a funding priority will be given to approved applicants that have a record of training individuals who are from disadvantaged backgrounds (including racial and ethnic minorities underrepresented among primary care practice or general or pediatric dentistry).

In accordance with Section 747(b)(3) of the Public Health Service Act, for program purpose (4), a funding priority will be given to approved applicants that propose a collaborative project between departments of primary care medicines.

Funding Preferences: As provided in section 791(a) of the Public Health Service Act, for purposes (1) through (6), preference will be given to any approved applicant that: (A) has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will be applied to only those applications that rank above the 20th percentile of the applications recommended for approval by the peer review group. So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act concerning underserved communities and populations.

Special Considerations: In accordance with Section 747(c)(3) of the Public Health Service Act, for grant program purposes (1) through (6), special consideration will be given to approved applicants proposing projects to prepare practitioners to care for underserved populations and other high risk groups such as the elderly, individuals with HIV–AIDS, substance abusers, homeless and victims of domestic violence.

Estimated Amount of This Competition: $31,000,000.

Estimated Number of Awards: 160.

Estimated Project Period: 3 years.

HRSA–04–015 Training in Primary Care Medicine and Dentistry (DRPC) *

Application Availability Date: September 2, 2003.

Letter of Intent Deadline: September 12, 2003.

Application Deadline: November 6, 2003.

Projected Award Date: July 1, 2004.

Regional Contact Information for Training in Primary Care Medicine and Dentistry (DRPC) Grant Program

Program Contact Person:

Region 1 (CT, ME, MA, NH, RI, VT)—Shane Rogers
Region 2 (NY, NJ, PR, Virgin Islands)—Brenda Williamson
Region 3 (DE, MD, PA, VA, WV, DC)—Elsie Quinones
Region 4 (AL, FL, GA, KY, MS, NC, SC, TN)—Marcia Britt
Region 5 (IL, IN, MI, OH, WI, MN)—Martha Evans
Region 6 (AR, NM, OK, TX, LA)—Ellie Grant
Region 7 (IA, KS, MO, NE)—Shelby Biedenkapp
Region 8 (CO, MT, UT, ND, SD, WY)—Shelby Biedenkapp
Region 9 (AZ, CA, HI, NV, Pacific Basin)—Shane Rogers
Region 10 (AK, ID, OR, WA)—Shelby Biedenkapp
Phone Number: (301)–443–1467.

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Shane Rogers—*srogers@hrsa.gov*
Brenda Williamson—*bwilliamson@hrsa.gov*

HRSA–04–016 Podiatric Residency Training in Primary Care (PODPC) *

CFDA: 93.181.

Legislative Authority: Public Health Service Act, Title VII, Part D, Section 755(b)(2), 42 U.S.C. 294.

Purpose: Grants are awarded to plan and implement projects in preventive and primary care training for podiatric physicians in approved or provisionally approved residency programs that shall provide financial assistance in the form of traineeships to residents who participate in such projects and who plan to specialize in primary care.

* This program is not included in the President's budget for FY 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Eligible entities are health professions schools, academic health centers, State or local governments, an Indian Tribe or Tribal organization, or other appropriate public or private nonprofit entities. To be eligible, the applicant shall propose a project which is collaborative among two or more disciplines. Nonprofit entities, including faith-based organizations and community-based organizations, that meet other eligibility requirements are eligible to apply.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: As provided in section 791(a) of the Public Health Service Act, preference will be given to any approved applicant that: (A) has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will be applied to only those applications that rank above the 20th percentile of the applications recommended for approval by the peer review group. So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act concerning underserved communities and populations.

Estimated Amount of This Competition: $760,000.
Estimated Number of Awards: 4.
Estimated Project Period: 3 years.

HRSA–04–016 Podiatric Residency Training in Primary Care (PODPC) *

Application Availability Date: September 2, 2003.
Application Deadline: October 20, 2003.
Projected Award Date: July 1, 2004.
Program Contact Person: Rebecca Bunnell.
Program Contact Phone: 301–443–6326.
Program Contact E-mail: *rbunnell@hrsa.gov*.

HRSA–04–017 Graduate Psychology Education Program (GPEP) *

CFDA: 93.191.
Legislative Authority: Public Health Service Act, Title VII, Section 755(b)(1)(J), 42 U.S.C. 294e.
Purpose: The Graduate Psychology Education Program addresses the interrelatedness of behavior and health and the critical need for integrated health care services.

Grants will be awarded to assist eligible entities in meeting the costs to plan, develop, operate, or maintain graduate psychology doctoral, doctoral internship, and doctoral residency programs, accredited by the American Psychological Association (APA). These programs must foster an integrated approach to health care services and address access for underserved populations by training psychologists to work:

- With underserved populations including children, the elderly, victims of abuse, the chronically ill or disabled; and
- In areas of emerging needs.

* This program is not included in the President's budget for FY 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Eligible entities are accredited health profession schools, universities, and other public or private nonprofit entities. As provided in section 750 of the Public Health Service Act, to be eligible to receive assistance, the applicant must propose to use the grant funds in collaboration with two or more disciplines.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: As provided in section 791(a) of the Public Health Service Act, preference will be given to any approved applicant that: (A) has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will be applied to only those applications that rank above the 20th percentile of the applications recommended for approval by the peer review group. So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act concerning underserved communities and populations.

Estimated Amount of This Competition: $3,000,000.
Estimated Number of Awards: 20.
Estimated Project Period: 3 years.

HRSA–04–017 Graduate Psychology Education Program (GPEP) *

Application Availability Date: October 1, 2003.
Application Deadline: December 12, 2003.
Projected Award Date: May 1, 2004.
Program Contact Person: Roger Straw.
Program Contact Phone: 301–443–6326.
Program Contact E-mail: *rstraw@hrsa.gov*.

HRSA–04–018 Basic/Core Area Health Education Centers (BAHEC) *

CFDA: 93.824.
Legislative Authority: Public Health Service Act, Title VII, Section 751(a)(1), 42 U.S.C. 294a.
Purpose: To improve the distribution, diversity, and quality of health personnel in the health services delivery system by encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers, and health careers programs for K–12 students. The Area Health Education Centers (AHEC) program assists schools in the planning, development and operation of AHEC centers to initiate education systems incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health science center with local planning, educational and clinical resources, the AHEC programs and AHEC centers establish a network of community-based training sites to provide educational services to students, faculty and practitioners in underserved areas, and ultimately to improve the delivery of health care in the service area.

- This program is not included in the President's budget for FY 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Cost Sharing: Awardees must pay not less than 50 percent of the operating costs of the AHEC Program from non-Federal contributions in cash (directly through contributions from State, county or municipal government, an Indian Tribe or Tribal organization or the private sector). These funds must be for the express use of the AHEC Programs and Centers to address AHEC project goals and objectives and not funds designated for other categorical or specific purposes. However, the Secretary may grant a waiver for up to 75 percent of the amount required in the first 3 years in which an awardee receives funds for this program. It is expected that the non-Federal contributions in cash should be equal to the Federal request—that is, a one-to-one match.

Eligibility: Public or private non-profit, accredited schools of medicine and osteopathic medicine and incorporated consortia made up of such schools or the parent institutions of such schools. In States where no AHEC program is in operation (Iowa, Kansas, North Dakota, South Dakota, Rhode Island and Puerto Rico) accredited schools of nursing are eligible.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: All applicants have the option to request the general statutory funding preference found in Section 791(a) of the Public Health Service Act. Only data from the applicant/awardee school may be submitted. To be considered for this funding preference, an applicant must request it by either completing the appropriate table, or in the case of a new program, request and submit the appropriate narrative to support the request. For more information on funding preferences, see the Basic/Core AHEC Program Application Kit under General Statutory Funding Preference.

Special Considerations: In accordance with Section 751(a)(1)(A)(iii) of the Public Health Service Act, special consideration will be given to approved applicants who support the Kids Into Health Careers initiative by establishing

linkages with one or more elementary, middle, or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. For more information, *see: http://www.bhpr.hrsa.gov.*

In accordance with Section 751(a)(1)(A)(vii) of the Public Health Service Act, special consideration will also be given to approved applicants who (a) develop new and innovative approaches to education and training using distance learning methodologies/telehealth, or (b) enhance or expand existing distance learning educational programs to prepare health professionals and health professional students to deliver quality health care in medically underserved communities.

Estimated Amount of This Competition: $8,000,000.

Estimated Number of Awards: 10.

Estimated Project Period: 3 years.

HRSA–04–018 Basic/Core Area Health Education Centers (BAHEC) *

Application Availability Date: September 19, 2003.

Application Deadline: February 3, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Louis D. Coccodrilli.

Marion Aldrich: CT, DC, FL, ME, RI, VA
Jan Clear: CA, CO, HI, IN, KS, MD, MN, NV, OK, OR, WI
Susan Goodman: AZ, KY, MA, MO, NJ, NY, NC, PR, TN, UT
David Hanny: AL, DE, GA, MS, OH, PA, SD, TX
Armando Pollack: AR, IL, NH, ND, VT, WV
Barry Stern: AK, ID, IA, LA, MI, MT, NE, NM, SC, WA, WY

Program Contact Phone: 301–443–6950.

Program Contact E-mail:
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HRSA–04–019 Model State-Supported Area Health Education Centers (MAHEC) *

CFDA: 93.107.

Legislative Authority: Public Health Service Act, Title VII, Section 751(a)(2), U.S.C. 294a.

Purpose: To improve the distribution, diversity, and quality of health personnel in the health services delivery system by encouraging the regionalization of health professions schools. Emphasis is placed on community-based training of primary care oriented students, residents, and providers, and health careers programs for K–12 students. The Area Health Education Centers (AHEC) program assists schools in the planning, development and operation of AHEC centers to initiate education systems incentives to attract and retain health care personnel in scarcity areas. By linking the academic resources of the university health science center with local planning, educational and clinical resources, the AHEC programs and AHEC centers establish a network of community-based training sites to provide educational services to students, faculty and practitioners in underserved areas, and ultimately to improve the delivery of health care in the service area.

* This program is not included in the President's budget for FY 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Cost Sharing: To be eligible to apply for funding under this authority, an entity must make available (directly through contributions from State, county or municipal government, an Indian Tribe or Tribal organization, or the private sector) recurring non-Federal contributions in cash toward the costs of operating the model AHEC program in an amount not less than 50 percent of this cost. It is expected that the non-Federal contributions in cash should be equal to the Federal request—that is, a one-to-one match. These funds shall be for the express use of the AHEC Programs and Centers to address AHEC project goals and objectives, and not funds designated for other categorical or specific purposes.

Eligibility: An entity that:

- Has previously received funding under Title VII of the Public Health Service Act for a Basic AHEC program;
- Is currently operating an AHEC program; and
- Is no longer receiving funds under the Title VII Basic AHEC authority.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: All applicants have the option to request the general statutory funding preference found in Section 791(a) of the Public Health Service Act. Only data from the applicant/awardee school may be submitted. To be considered for this funding preference, an applicant must request it by either completing the appropriate table, or in the case of a new program, request and submit the appropriate narrative to support the request. For more information on the funding preferences, see the Model State Supported AHEC Program Application Kit under General Statutory Funding Preference.

Special Considerations: In accordance with Section 751(a)(1)(A)(iii) of the Public Health Service Act, special consideration will be given to approved applicants who support the Kids Into Health Careers initiative by establishing linkages with one or more elementary, middle, or high schools with a high percentage of minority and disadvantaged students to: (1) Inform students and parents about health careers and financial aid to encourage interest in health careers; (2) promote rigorous academic course work to prepare for health professions training; or (3) provide support services such as mentoring, tutoring, counseling, after school programs, summer enrichment, and college visits. For more information, *see: http://www.bhpr.hrsa.gov.*

In accordance with Section 751(a)(1)(A)(vii) of the Public Health Service Act, special consideration will also be given to approved applicants who (a) develop new and innovative approaches to education and training using distance learning methodologies/telehealth, or (b) enhance or expand existing distance learning educational programs to prepare health professionals and health professional students to deliver quality health care in medically underserved communities.

Estimated Amount of This Competition: $8,000,000.

Estimated Number of Awards: 15.

Estimated Project Period: 3 years.

HRSA–04–019 Model State-Supported Area Health Education Centers (MAHEC) *

Application Availability Date: September 19, 2003.

Application Deadline: February 3, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Louis D. Coccodrilli.

Marion Aldrich: CT, DC, FL, ME, RI, VA
Jan Clear: CA, CO, HI, IN, KS, MD, MN, NV, OK, OR, WI

Susan Goodman: AZ, KY, MA, MO, NJ, NY, NC, PR, TN, UT
David Hanny: AL, DE, GA, MS, OH, PA, SD, TX
Armando Pollack: AR, IL, NH, ND, VT, WV
Barry Stern: AK, ID, IA, LA, MI, MT, NE, NM, SC, WA, WY

Program Contact Phone: 301–443–6950.

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dhanny@hrsa.gov
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HRSA–04–020 Grants to States for Loan Repayment Programs (SLRP)

CFDA: 93.165.

Legislative Authority: Public Health Service Act, Title III, Section 338I, 42 U.S.C. 254q–1.

Purpose: The Program's purpose is to assist States in operating programs for the repayment of health professionals' educational loans in return for their practice in federally-designated health professional shortage areas. This Program strives to increase the availability of primary health services in underserved areas. Of the estimated 16 awards, 13 are project period renewals and 3 are new awards.

States seeking support must provide assurances that, with respect to costs of making loan repayments under contracts with health professionals, the State will make available (directly or through donations from public or private entities) non-Federal contributions in cash in an amount equal to not less than $1 for every $1 of Federal funds provided in grants. In determining the amount of non-Federal contributions in cash that a State has to provide, no Federal funds may be used in the State's match. Further information about this Program is available in the application guidance and can be obtained from the contact person.

Cost Sharing: Yes.

Eligibility: All 50 States are eligible to apply for funding. The Program operated with the grant must be administered by a State agency.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $3,100,000.

Estimated Number of Awards: 16 (13 renewals, 3 new).

Estimated Project Period: 3 years.

HRSA–04–020 Grants to States for Loan Repayment Programs (SLRP)

Application Availability Date: March 2, 2004.

Application Deadline: April 1, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Mildred Brooks-McDow.

Program Contact Phone: 301–443–1648.

Program Contact E-mail: mbrooks-mcdow@hrsa.gov.

HRSA–04–021 Bioterrorism Training and Curriculum Development Program (BTCDP)

CFDA: 93.996.

Legislative Authority: Public Health Service Act, Title III, Section 319F(g), 42 U.S.C. 247d–6.

Purpose: The goal of this program is the development of a health care workforce with the knowledge, skills and ability to: (1) Recognize indications of a terrorist event; (2) meet the acute care needs of patients, including pediatric and other vulnerable populations, in a safe and appropriate manner; (3) participate in a coordinated, multidisciplinary response to terrorist events and other public health emergencies; and (4) rapidly and effectively alert the public health system of such an event at the community, State, and national level. Cooperative agreements will be awarded to assist entities to prepare a workforce of healthcare professionals to address the medical consequences of bio-terrorism and other public health emergency preparedness and response issues, including other forms of terrorism (such as use of chemical, explosive, incendiary, or nuclear agents against the civilian population) natural disasters and catastrophic accidents. Applicants may apply for funding to: (1) Provide continuing education for practicing providers; and/or (2) Enhance curricula in health professions schools. Each area requires a separate application for funds. To apply for funding in both areas, submit two separate applications.

Federal Involvement: The scope of the Federal involvement is included in the application kit.

Eligibility:

Eligible Applicants for Continuing Education: The entities eligible to apply for this program are academic health centers; other public or private nonprofit accredited or licensed health professions schools; other educational entities such as professional organizations and societies; private accrediting organizations; other nonprofit institutions or entities including faith-based organizations and community-based organizations; and multi-state or multi-institutional consortia of various combinations of these eligible entities. In selecting from among the most highly ranked applications, efforts will be made to balance awards to achieve broad professional and geographical distribution.

Eligible Applicants for Curricular Enhancement: The entities eligible to apply for this program are public or private nonprofit accredited or licensed health professions schools; other educational entities such as professional organizations and societies; and other nonprofit institutions or entities including faith-based organizations and community-based organizations.

To apply for funding for curricular enhancement, an entity that is not a health professions school must provide a written agreement with a health professions school to participate in carrying out the project.

In funding approved applications, consideration will be given to balance the distribution of awards across the following types of health professions schools: Medicine, Nursing, Mental Health, Allied Health, and others.

Review Criteria: Final review criteria are included in the application kit.

Special Considerations: Under Section 319(g)(1)(D) of the Public Health Service Act, special consideration will be given to applicants who (a) develop new and innovative approaches to education and training using distance learning methodologies/telehealth, or (b) enhance or expand existing distance learning educational programs to prepare health professionals and health professional students to deliver quality health care in medically underserved communities.

Estimated Amount of This Competition: $30,000,000.

Estimated Number of Awards: 40.

Estimated Project Period: 2 years.

HRSA–04–021 Bio-Terrorism Training and Curriculum Development Program (BTTCD)

Application Availability Date: December 8, 2004.

Application Deadline: March 5, 2004.

Projected Award Date: September 1, 2004.

Program Contact Persons:
Lynn Rothberg Wegman
Lou Coccodrilli
Marion Aldrich
Susan Goodman
Armando Pollack
Barry Stern

Program Contact Phone: 301–443–1648.

Program Contact E-mail:
Lynn Rothberg Wegman—*lwegman@hrsa.gov*
Lou Coccodrilli—*lcoccodrilli@hrsa.gov*
Marion Aldrich—*maldrich@hrsa.gov*
Susan Goodman—*sgoodman@hrsa.gov*
Armando Pollack—*apollack@hrsa.gov*
Barry Stern—*bstern@hrsa.gov*

HRSA–04–022 Preventive Medicine Residency Program (PMRP) *

CFDA: 93.117.

Legislative Authority: Public Health Service Act, Title VII, Section 768, 42 U.S.C.295c.

Purpose: The Preventive Medicine Residency Grant Program is designed to promote postgraduate medical education in the field of preventive medicine and public health. Grants assist eligible entities to: plan and develop new residency training programs, maintain and improve existing residency training programs and provide financial support to residency trainees in these programs.

* This program is not included in the President's budget for FY 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Eligible applicants are schools of medicine, osteopathic medicine and public health (support for dental residencies will be offered through a separate announcement). An applicant must demonstrate that it has or will have available full-time faculty members trained in preventive medicine or dental public health and support from other faculty members trained in public health and other relevant specialties and disciplines.

Preferences: Under Section 765(c) of the Public Health Service Act, a preference will be given to approved applicants: (1) Who demonstrate that at least 40 percent of the program enrollees meet the definition of disadvantaged and/or underrepresented minorities, and (2) who demonstrate that at least 40 percent of their graduates have subsequently practiced in disadvantaged and/or underserved communities. An established program (one having graduated three or more classes), must submit supporting documentation to receive this preference. A new program (one having graduated three or fewer classes) must submit documentation evidencing that it meets at least four of the following criteria to qualify for the funding preference: (A) A specific purpose of the program is the preparation of health professionals to serve underserved populations; (B) The curriculum of the program includes content to prepare practitioners to serve underserved populations; (C) The program requires substantial clinical training experience in medically underserved communities; (D) A minimum of 20 percent of the clinical faculty of the program spends at least 50 percent of its time providing or supervising care in medically underserved communities; (E) The entire program or a substantial portion of the program is physically located in a medically underserved community; (F) Student assistance that is linked to service in medically underserved communities following graduation is available to the students in the program; (G) The program has a graduate placement program to find employment for graduates in medically underserved communities.

Estimated Amount of This Competition: $1,800,000.

Estimated Number of Awards: 12.

Estimated Project Period: 3 years.

HRSA–04–022 Preventive Medicine Residency Program (PMRP) *

Application Availability: September 2, 2003.

Application Deadline: October 16, 2003.

Estimated Project Award Date: July 1, 2004.

Program Contact Name: Rochelle L. Rollins.

Program Contact Phone: 301–443–5244.

Program Contact E-Mail: *rrollins@hrsa.gov.*

HRSA–04–023 Geriatric Education Centers Program (GECS) *

CFDA: 93.969.

Legislative Authority: Public Health Service Act, Title VII, Section 753(a), 42 U.S.C. 294c.

Purpose: Grants are available to support the development of Geriatric Education Centers (GECs)—collaborative arrangements involving several health professions schools and health care facilities—to train health professional faculty, students, and practitioners in the diagnosis, treatment, prevention of disease, disability, and other health problems of the aged.

Applicants must propose to carry out all of the following statutory purposes: (1) Improve the training of health professionals in geriatrics, including geriatric residencies, traineeships or fellowships; (2) develop and disseminate curricula relating to the treatment of the health problems of elderly individuals; (3) support the training and retraining of faculty to provide instruction in geriatrics; (4) support continuing education of health professionals who provide geriatric care; and (5) provide students with clinical training in geriatrics in nursing homes, chronic and acute disease hospitals, ambulatory care centers, and senior centers.

This training must involve four or more health profession disciplines, one of which must be allopathic or osteopathic medicine. Other health professions may include allopathic physicians, osteopathic physicians, dentists, optometrists, podiatrists, pharmacists, nurses, nurse practitioners, physician assistants, chiropractors, clinical psychologists, health administrators, and allied health professionals including professional counselors and social workers.

* This program is not included in the President's budget for FY 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Grants may be made to entities as defined by sections 799B(1), (3) and (4) and section 801(2) of The Public Health Service Act. These include, among others: schools of medicine; schools of dentistry; schools of osteopathic medicine; schools of pharmacy; schools of optometry; schools of podiatric medicine; schools of veterinary medicine; schools of public health; schools of chiropractic; graduate programs in clinical psychology, clinical social work, health administration, and behavioral health and mental health practice; programs for the training of physician assistants; schools of allied health; and schools of nursing. Applicants must be located in the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Republic of Palau, the Republic of the Marshall Islands, or the Federated States of Micronesia. In selecting from among the most highly ranked applications, efforts will be made to balance awards to achieve broad geographical distribution.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: As provided in section 791(a) of the Public Health Service Act, as amended, preference will be given to any approved applicant that: (A) Has a high rate for placing graduates in practice settings having the focus of serving residents of medically

underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will be applied to only those applications that rank above the 20th percentile of the applications recommended for approval by the peer review group. So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act concerning medically underserved communities and populations.

Estimated Amount of This Competition: $3,600,000.

Estimated Number of Awards: 9.

Estimated Project Period: 5 years.

HRSA–04–023 Geriatric Education Centers Program (GECS) *

Application Availability Date: October 3, 2003.

Application Deadline: January 13, 2004.

Projected Award Date: July 1, 2004.

Program Contact Person: Barbara Broome.

Program Contact Phone: 301–443–6866.

Program Contact E-Mail: *bbroome@hrsa.gov.*

HRSA–04–024 Geriatric Academic Career Awards (GACA) *

CFDA: 93.250.

Legislative Authority: Public Health Service Act, Title VII, Section 753(c), 42 U.S.C. 294c.

Purpose: The purpose of this program is to increase the number of junior faculty in geriatrics at accredited schools of medicine and osteopathic medicine and to promote their careers as academic geriatricians. Award recipients must serve as members of the faculties of accredited schools of allopathic or osteopathic medicine providing teaching services, according to the service requirements under this award, for up to 5 years. Prior to submitting an application for the Geriatric Academic Career Award, individuals must have an agreement with an eligible school setting forth the terms and conditions of the award. The agreement with the school must permit the individual to serve as a full-time (as determined by the school) member of the faculty, for not less than the period of the award. As provided in Section 753(c)(5) of the Public Health Service Act, as amended, an individual who receives an award shall provide training in clinical geriatrics, including the training of interdisciplinary teams of health care professionals. The provision of such training shall constitute at least 75 percent of the obligations of the individual under this award. Geriatric Academic Career Awards are made directly to individuals, not institutions.

* This program is not included in the President's budget for FY 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Geriatric Academic Career Awards are provided for individuals who meet the following criteria: (1) Are board certified or board eligible in internal medicine, family practice, or psychiatry; (2) have completed an approved fellowship program in geriatrics; and (3) have a junior faculty appointment at an accredited school of medicine (allopathic or osteopathic).

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $1,000,000.

Estimated Number of Awards: 20.

Estimated Project Period: 5 years.

HRSA–04–024 Geriatric Academic Career Awards (GACA) *

Application Availability Date: October 10, 2003.

Application Deadline: February 2, 2004.

Projected Award Date: July 1, 2004.

Program Contact Person: Kathleen Bond.

Program Contact Phone: 301–443–8681.

Program Contact E-Mail: *kbond@hrsa.gov.*

HRSA–04–025 Geriatric Training for Physicians, Dentists, and Behavioral and Mental Health Professionals (GTPD) *

CFDA: 93.156.

Legislative Authority: Public Health Service Act, Title VII, Section 753(b), 42 U.S.C. 294c.

Purpose: This program provides two-year fellowship programs and/or one-year retraining programs for physicians, dentists, and behavioral and mental health professionals who teach or plan to teach geriatric medicine, geriatric dentistry, or geriatric behavioral and mental health. Learning components for two-year fellows include clinical, research, administration, and teaching. A minimum of three fellows—one from each discipline—is required each year of the award.

Funded projects will provide training in the physical and mental disabilities of elderly individuals through rotations such as geriatric consultation services, acute care services, dental services, geriatric behavioral and/or mental health units, day and home care programs, rehabilitation services, extended care facilities, geriatric ambulatory care and comprehensive evaluation units, and community care programs for elderly mentally retarded individuals. Programs emphasize the principles of primary care as demonstrated through continuity, ambulatory, preventive, and psychosocial aspects of the practice of geriatric medicine, geriatric dentistry, and geriatric behavioral and mental health.

* This program is not included in the President's budget for FY 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Schools of medicine, schools of osteopathic medicine, teaching hospitals, and graduate medical education programs.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: As provided in section 791(a) of the Public Health Service Act, as amended, preference will be given to any approved applicant that: (A) Has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities or (B) during the two-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will be applied to only those applications that rank above the 20th percentile of the applications recommended for approval by the peer review group.

So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act, as amended, concerning medically underserved communities and populations.

Estimated Amount of This Competition: $2,000,000.

Estimated Number of Awards: 5.

Estimated Project Period: 5 years.

HRSA–04–025 Geriatric Training for Physicians, Dentists, and Behavioral and Mental Health Professionals (GTPD) *

Application Availability Date: September 2, 2003.

Application Deadline: December 15, 2003.

Projected Award Date: July 1, 2004.

Program Contact Person: Kathleen Bond.

Program Contact Phone: 301–443–8681.

Program Contact E-Mail: kbond@hrsa.gov.

HRSA–04–026 Quentin N. Burdick Program for Rural Interdisciplinary Training (QBRH) *

CFDA: 93.192.

Legislative Authority: Public Health Service Act, Title VII, Section 754, U.S.C. 294d, Section 750(a), 42 U.S.C. 294.

Purpose: These grants support the education and training of health professions students in rural underserved communities and improve access to health care in rural areas. To address needs of the rural health professions workforce, this program funds student stipends and interdisciplinary training projects that: (1) Use new and innovative methods to train health care practitioners to provide services in rural areas; (2) demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care; (3) deliver health care services to individuals residing in rural areas; (4) enhance the amount of relevant research conducted concerning health care issues in rural areas; and (5) increase the recruitment and retention of health care practitioners in rural areas and make rural practice a more attractive career choice for health care practitioners.

* This program is not included in the President's budget for FY 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Eligible applicants include: health professions schools, academic health centers, State or local governments, an Indian Tribe or Tribal organization, or other appropriate public or private nonprofit entities, including faith-based organizations and community-based organizations. Applications must be jointly submitted by at least two eligible applicants with the express purpose of assisting individuals in academic institutions in establishing long-term collaborative relationships with health care providers in rural areas. Applicants must designate a rural health care agency or agencies for clinical treatment or training including hospitals, community health centers, migrant health centers, rural health clinics, community behavioral and mental health centers, long-term care facilities, Native Hawaiian health centers or facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination Act.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: As provided in Section 791(a) of the Public Health Service Act, as amended, preference will be given to any approved applicant that: (A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group.

So that new applicants may compete equitably, a preference will be given to those new programs that meet at least four of the criteria described in Section 791(c)(3) of the Public Health Service Act, as amended, concerning medically underserved communities and populations.

Estimated Amount of This Competition: $1,500,000.

Estimated Number of Awards: 6.

Estimated Project Period: 3 years.

HRSA–04–026 Quentin N. Burdick Program for Rural Interdisciplinary Training (QBRH) *

Application Availability Date: September 29, 2003.

Application Deadline: January 13, 2004.

Projected Award Date: July 1, 2004.

Program Contact Person: Marcia Starbecker, Public Health Analyst.

Program Contact Phone: 301–443–6867.

Program Contact E-mail: mstarbecker@hrsa.gov.

HRSA–04–027 Allied Health Projects (AHPG) *

CFDA: 93.191.

Legislative Authority: Public Health Service Act, Title VII, Section 755, 42 U.S.C. 294e.

Purpose: Grants are awarded to assist eligible entities in meeting the associated costs of expanding or establishing programs to increase the number of individuals trained in allied health professions. Projects include the following activities: (1) Expanding enrollment in allied health disciplines that are in short supply or whose services are most needed by the elderly; (2) providing rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences; (3) establishing community-based training programs that link academic centers to rural clinical settings; (4) providing career advancement training for practicing allied health professionals; (5) expanding or establishing clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained; (6) developing curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics; (7) expanding or establishing interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly; (8) expanding or establishing demonstration centers to emphasize innovative models to link allied health, clinical practice, education, and research; and (9) meeting the costs of projects to plan, develop, and operate or maintain graduate programs in behavioral and mental health practice.

* This program is not included in the President's budget for FY 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Eligible entities are health professions schools, academic health centers, State or local governments, an Indian Tribe or Tribal organization, or other public or private nonprofit entities, including faith-based organizations and community-based organizations. Eligible academic institutions must use funds in collaboration with two or more disciplines.

Review Criteria: Final review criteria are included in the application kit.

Funding priorities: Based on President's Executive Orders 12876,

12900, 13021, and 13125, a funding priority will be given to approved applicants who devote significant resources to provide community-based training experiences designed to improve access to health care services in underserved areas; these applicants include Asian-American and Pacific Islander Serving Institutions, Hispanic Serving Institutions, Historically Black Colleges and Universities, Tribal Colleges, and Universities serving American Indians and Alaska Natives, or an institution that collaborates with one or more of the above listed institutions.

Based on House Report 107–229 and Senate Report 107–084, a funding priority will be given to approved applicants who educate and train allied health professionals experiencing shortage in the areas of medical technology, cytotechnology, genetic counseling and/or emergency preparedness.

Funding Preferences: As provided in section 791(a) of the Public Health Service Act, preference will be given to any approved applicant that: (1) Has a high rate for placing graduates in practice settings having the focus of serving residents of medically underserved communities; or (2) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This statutory general preference will only be applied to applications that rank above the 20th percentile of applications recommended for approval by the peer review group. A preference will be given to those new programs that meet at least four of the criteria described in section 791(c)(3) of the Public Health Service Act concerning medically underserved communities and populations so that new applicants may also compete equitably.

Estimated Amount of This Competition: $1,500,000.

Estimated Number of Awards: 13.

Estimated Project Period: 3 years.

HRSA–04–027 Allied Health Projects (AHPG) *

Application Availability Date: September 29, 2003.

Application Deadline: January 13, 2004.

Projected Award Date: July 1; 2004.

Program Contact Person: Young Song.

Program Contact Phone: 301–443–3353.

Program Contact E-mail: *ysong@hrsa.gov.*

Special Programs—Loan Repayments and Scholarships

National Health Service Corps Loan Repayment Program (NHSCL)

CFDA: 93.162.

Legislative Authority: Public Health Service Act, Title III, Sections 338B–E, 42 U.S.C. 254l–1–254o.

Purpose: The purpose of the National Health Service Corps (NHSC) Loan Repayment Program (LRP) is to ensure an adequate supply of health professionals to provide primary health services (through a culturally competent, interdisciplinary team of clinicians) to populations located in health professional shortage areas (HPSAs) identified by the Secretary of the Department of Health and Human Services. HPSAs can be found in rural and urban communities across the Nation. The NHSC LRP recruits health professionals who agree to provide primary health services in approved NHSC community sites. In return, the NHSC LRP assists clinicians in their repayment of qualifying educational loans. The NHSC is seeking clinicians who demonstrate interest in serving the Nation's medically underserved populations and remaining in HPSAs beyond their service commitment. Additional information on the NHSC may be found at *http://nhsc.bhpr.hrsa/gov.htm.*

Eligibility: An applicant for the NHSC LRP must be a citizen or national of the United States and must: (1)(A) have a degree in medicine, osteopathic medicine, dentistry, or other health profession, an appropriate degree from a graduate program in behavioral or mental health, or be certified as a nurse midwife, nurse practitioner, or physician assistant; (B) be enrolled in an approved graduate training program in medicine, osteopathic medicine, dentistry, behavioral and mental health, or other health profession; or (C) be enrolled as a full-time student in an accredited educational institution in a State, and in the final year of a course of study or program, offered by such institution and approved by the Secretary, leading to a degree in medicine, osteopathic medicine, dentistry, or other health profession; (2) be eligible for, or hold, an appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or be eligible for selection for civilian service in the NHSC; and (3) submit to the Secretary an application for a contract relating to the payment by the Secretary of the educational loans of the individual in consideration of the individual serving for an obligated period of time. Applicants should be in final negotiations or have secured employment at an eligible community site, and must not have any other service obligations, and must meet the other eligibility criteria set forth in the application kit.

Review Criteria: Final review criteria are included in the application kit.

Funding Priorities: In accordance with Section 338B(d) of the Public Health Service Act, priority will be given to (A) applicants whose health professions training is needed by the NHSC (needed disciplines will be identified in the application kit), (B) applicants who have characteristics that increase the probability of their continuing to practice in HPSAs after they have completed service, and (C) subject to paragraph (B), applicants from disadvantaged backgrounds.

Administrative Funding Preference: An administrative funding preference will be given to applicants serving HPSAs of greatest need.

Estimated Amount of This Competition: $111,500,000.

Estimated Number of Awards: 1643.

Estimated Project Period: 2 years.

National Health Service Corps Loan Repayment Program (NHSCL)

Application Availability Date: November 1, 2003.

Application Deadline: March 26, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Kay Cook.

Program Contact Phone: (301) 594–4403.

Program Contact E-Mail: *kcook@hrsa.gov.*

National Health Service Corps Scholarship Program (NHSC)

CFDA: 93.288.

Legislative Authority: Public Health Service Act, Title III, Section 338A, C–H, 42 U.S.C. 254l, m-q.

Purpose: The purpose of the National Health Service Corps (NHSC) Scholarship Program (SP) is to ensure an adequate supply of health professionals to provide primary health services (through a culturally competent, interdisciplinary team of clinicians) to populations located in health professional shortage areas (HPSAs) identified by the Secretary of the Department of Health and Human Services. HPSAs can be found in rural and urban communities across the Nation. The NHSC provides scholarships to full-time students of allopathic (MD) and osteopathic (DO) medicine, dentistry, family nurse practitioner, nurse midwifery, and physician assistant education. The

scholarship covers the payment of tuition and required fees to the school (on behalf of the student), the payment of a monthly stipend for living expenses, and an annual payment for books, equipment, and supplies. In return, for each year of support received, students commit to providing primary health care services in a federally designated underserved community in the U.S. The minimum service commitment is two years; the maximum is four. Additional information on the NHSC may be found at *http://nhsc.bhpr.hrsa/gov.htm.* Application kits may be obtained by calling 1–800–221–9393.

Eligibility: Applicants must: Be accepted for enrollment or enrolled full-time in an accredited school in the U.S.; be pursuing one of the health professions programs set forth above; be a U.S. citizen or national; be eligible to hold an appointment as a commissioned officer in the Regular or Reserve Corps of the Public Health Service or eligible for a Federal civil service appointment; be free of Federal judgment liens; have no delinquent Federal debt; have no conflicting service obligation; and submit an application, a signed scholarship contract and an authorization to release school enrollment information.

Review Criteria: Final review criteria are included in the application kit.

Funding Priorities: In accordance with Section 338A(d) of the Public Health Service Act, priority will be given (A) first, to applicants who are former recipients of NHSC scholarship support and to former recipients of the Federal Scholarship Program for Students of Exceptional Financial Need; (B) second, to applicants who have characteristics that increase the probability of their continuing to practice in HPSAs after they have completed service; and (C) third, subject to subparagraph (B), to applicants from disadvantaged backgrounds.

Estimated Amount of This Competition: $32,600,000.

Estimated Number of Awards: 345.

Estimated Project Period: 2 to 4 years.

National Health Service Corps Scholarship Program (NHSC)

Application Availability Date: November 30, 2003.

Application Deadline: March 26, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Ellen Volpe.

Program Contact Phone: 301–594–4376.

Program Contact E-Mail: *evolpe@hrsa.gov.*

Nursing Scholarship Program (NSP)

CFDA: 93.908.

Legislative Authority: Public Health Service Act, Title VIII, Section 846(d), 42 U.S.C. 297n(d).

Purpose: The Nursing Scholarship Program authorizes scholarships to individuals for attendance at schools of nursing in exchange for service for a period of not less than two years at a health care facility with a critical shortage of nurses. Additional information may be found at: *http://bhpr.hrsa.gov/nursing/scholarship.htm.*

Eligibility: An "eligible individual" is a U.S. citizen or national who is enrolled or accepted for enrollment in a professional program as a full-time or part-time student in an accredited school of nursing. A "school of nursing" is a collegiate, associate degree, or diploma school of nursing in a State. Other eligibility criteria are outlined in the application kit.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: Section 846(e) of the Public Health Service Act provides that a funding preference shall be given to qualified applicants with the greatest financial need. To evaluate financial need, the HRSA will use the Department of Education's Expected Family Contribution (EFC) determination. The EFC measures a student's family's financial strength and is used to determine eligibility for federal student aid. First funding preference will be given to qualified applicants who have a zero EFC, have agreed to complete their nursing program as a full-time student, and are enrolled or accepted for enrollment in an undergraduate nursing program.

Second funding preference will be given to the remaining qualified applicants who have a zero EFC. Third, qualified applicants who have an EFC that exceeds zero will be grouped according to their EFC in increments of $500 from highest to lowest need (*i.e.*, applicants with EFC of $1–$500, applicants with EFC of $501–$1,000, etc.), and these groups will be funded, to the extent monies remain available, in order of decreasing need. Within each group, applicants who have agreed to complete their nursing program as a full-time student and are enrolled or accepted for enrollment in an undergraduate nursing program will be funded first, and then the remaining qualified applicants within that group will be funded. If there are insufficient funds to award a contract to all qualified applicants who meet a given funding preference, applicants will be randomly selected within that preference level until all funds are expended.

Estimated Amount of This Competition: $6,000,000.

Estimated Number of Awards: 120.

Estimated Project Period: 1 to 4 years.

Nursing Scholarship Program (NSP)

Application Availability Date: April 16, 2004.

Application Deadline: May 31, 2004.

Projected Award Date: July 30, 2004.

Program Contact Person: Bruce Baggett.

Program Contact Phone: 301–443–5395.

Program Contact E-Mail: *bbaggett@hrsa.gov.*

Nursing Education Loan Repayment Program (NELRP)

CFDA: 93.908.

Legislative Authority: Public Health Service Act, Title VIII, Section 846, 42 U.S.C. 297n.

Purpose: Under the Nursing Education Loan Repayment Program (NELRP), registered nurses are offered the opportunity to enter into a contractual agreement with the Secretary to receive loan repayment for up to 85 percent of their qualifying loan balance as follows—30 percent each year for the first two years and 25 percent for the third year. In exchange, nurses agree to serve for a minimum of two years in a critical shortage facility (CSF). Application kits may be obtained by calling 1–866–813–3753.

Eligibility: An individual is eligible to apply for NELRP if the individual: (1) Has received a baccalaureate or associate degree in nursing, a diploma in nursing, or a graduate degree in nursing; (2) has obtained one or more nursing student loans authorized under section 835(a) of the PHS Act, as amended, or any other educational loan for nurse training costs; (3) enters into an agreement to serve as a full-time registered nurse for a period of not less than two years in a CSF, which is defined as (a) an Indian Health Service health center, (b) a Native Hawaiian health center, (c) a hospital, (d) a federally-qualified community health center or look-alike, migrant health center or look-alike, health care for the homeless center or look-alike, (e) a rural health clinic, (f) a nursing home, (g) a home health agency, (h) a hospice program, (i) a State or local public health department including a public health clinic within the department, (j) a skilled nursing facility, and (k) an ambulatory surgical center; and (4) is a U.S. citizen, U.S. national, or a permanent legal resident of the United States.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: As provided in section 846(e) of the PHS Act, as amended, a funding preference will be given to eligible applicants with the greatest financial need. Applicants whose total qualifying loans are 40% or greater than their annualized salary, will meet the greatest financial funding preference. Applicants are ranked based on their debt to salary ratio. Awards are made to applicants within each preference described below by decreasing debt to salary ratio until funds are expended.

Among qualified applicants, contracts will be awarded according to the following preferences:

First preference for funding will be given to NELRP applicants with greatest financial need working in a Disproportionate Share Hospital (DSH) for Medicare and Medicaid, nursing home, or State or local public health department including a public health clinic within these departments.

Second preference for funding will be given to applicants with greatest financial need working in a community health center; migrant health center; health care for the homeless health center, rural health clinic, Indian Health Service health center, Native Hawaiian health center, or non-Federal non-DSH for Medicare and Medicaid. Second preference will also be given to qualified applicants with greatest financial need working in the following types of CSFs located in geographic areas identified as Nursing Shortage Counties: ambulatory surgical center, home health agency, hospice program, skilled nursing facility or Federal hospital.

Third preference for funding will be given to applicants with greatest financial need working in the following types of CSFs regardless of geographic location: ambulatory surgical center, home health agency, hospice program, skilled nursing facility, federally qualified health center look-alike, or Federal hospital.

Fourth preference for funding will be given to applicants without greatest financial need working in a DSH for Medicare and Medicaid, nursing home, or State or local public health department including a public health clinic within the department.

Fifth preference for funding will be given to applicants without greatest financial need working a community health center, migrant health center, health care for the homeless health center, rural health clinic, Indian Health Service health center, Native Hawaiian health center, or non-Federal non-DSH for Medicare and Medicaid. Fifth preference will also be given to qualified applicants without greatest financial need working in the following types of CSFs located in geographic areas identified as Nursing Shortage Counties: ambulatory surgical center, home health agency, hospice program, skilled nursing facility, or Federal hospital.

Sixth preference for funding will be given to applicants without greatest financial need working in the following types of CSFs regardless of geographic location: ambulatory surgical center, home health agency, hospice program, skilled nursing facility, federally qualified health center look-alike; or Federal hospital.

Estimated Amount of This Competition: $15,460,000.

Estimated Number of Awards: 900.

Estimated Project Period: 2 years.

Nursing Education Loan Repayment Program (NELRP)

Application Availability Date: December 1, 2003.

Application Deadline: February 18, 2004.

Projected Award Date: September 15, 2004.

Program Contact Person: Jacqueline Brown.

Program Contact Phone: 301–443–3232.

Program Contact E-Mail: *jbrown1@hrsa.gov.*

Scholarships for Disadvantaged Students Program (SDS)

CFDA: 93.925.

Legislative Authority: Public Health Service Act, Title VII, Section 737, U.S.C. 293a.

Purpose: The Scholarships for Disadvantaged Students (SDS) program promotes diversity among health professions students and practitioners by providing scholarships for students from disadvantaged backgrounds. Eligible health professions and nursing schools apply for grants to make scholarships to students from disadvantaged backgrounds who have financial need for scholarships and are enrolled, or accepted for enrollment, as full-time students at the schools.

Eligibility: Eligible entities must have a program for recruiting and retaining students from disadvantaged backgrounds and be a school of allopathic medicine, osteopathic medicine, dentistry, optometry, pharmacy, podiatric medicine, veterinary medicine, public health, nursing, chiropractic, or allied health, graduate program in behavioral and mental health practice, or an entity providing programs for the training of physician assistants.

Review Criteria: Final review criteria are included in the application kit.

Funding Priorities: In accordance with section 737(c) of the Public Health Service Act, health professions and nursing schools are eligible to receive a funding priority based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities.

Estimated Amount of This Competition: $9,900,000.

Estimated Number of Awards: 411.

Estimated Project Period: 1 year.

Scholarships for Disadvantaged Students Program (SDS)

Application Availability Date: November 1, 2003.

Application Deadline: December 17, 2003.

Projected Award Date: March 31, 2004.

Program Contact Person: Andrea Castle.

Program Contact Phone: 301–443–1701.

Program Contact e-mail: dpolicy@hrsa.gov.

*Faculty Loan Repayment Program (FLRP) **

CFDA: 93.923.

Legislative Authority: Public Health Service Act, Title VII, section 738a, 42 U.S.C. 293b.

Purpose: The Faculty Loan Repayment Program (FLRP) is a loan repayment program for individuals from disadvantaged backgrounds who serve as faculty at eligible health professions schools for a minimum of two years. In return, the Federal Government agrees to pay up to $20,000 of the outstanding principal and interest on the individual's education loans for each year of service.

This program is designed to increase the number of faculty from disadvantaged backgrounds who act as role models and mentors for students from similar backgrounds. Hence, faculty, as used in this section, means a position that is primarily teach, rather than administrative or research. The employing school must also make payments of principal and interest to the faculty member in an amount equal to the amount of such quarterly payments made by the HHS Secretary for each year in which the recipient serves as a faculty member under contract with HHS. In addition, the school must pay the usual salary to the faculty member. The Secretary may

waive the school's matching requirement if the Secretary determines it will impose an undue financial hardship on the school.

* This program is not included in the President's budget for FY 2004. Potential applicants for funds should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: An individual is eligible to apply for loan repayment under FLRP if the individual is from a disadvantaged background and:

- Has a degree in allopathic or osteopathic medicine, dentistry, nursing, or in another health profession;
- Is enrolled in an approved health professions graduate program; or
- Is enrolled as a full-time student in the final year of health professions training that leads to a degree in one of the following health professions: allopathic medicine, osteopathic medicine, podiatric medicine, veterinary medicine, dentistry, pharmacy, optometry, nursing, public health, dental hygiene, medical laboratory technology, occupational therapy, physical therapy, radiologic technology, speech pathology, audiology, medical nutrition therapy and graduate programs in behavioral health and mental health practice, clinical psychology, clinical social work, and marriage and family therapy.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $1,000,000.

Estimated Number of Awards: 30.

Estimated Project Period: 2 years.

*Faculty Loan Repayment Program (FLRP) **

Application Availability Date: March 1, 2004.

Application Deadline: May 28, 2004.

Projected Award Date: August 28, 2004.

Program Contact Person: Lorraine Evans.

Program Contact Phone: 301–443–0785.

Program Contact E-mail: *flrpinfo@hrsa.gov.*

Primary Health Care Programs

HRSA–04–028 Radiation Exposure Screening and Education Program (RESEP)

CFDA: 93.257.

Legislative authority: Public Health Service Act, section 417C, 42 U.S.C. 285a–9.

Purpose: The mission of the Radiation Exposure Screening and Education Program (RESEP) is to aid the thousands of individuals adversely affected by the mining, transport and processing of uranium and the testing of nuclear weapons for the Nation's weapons arsenal. This will be accomplished by carrying out programs designed for public education and information; screening eligible individuals for cancer and other related diseases; providing appropriate referrals for medical treatment; and facilitating documentation of claims under the Radiation Exposure Compensation Act.

Eligibility: The following entities are eligible to apply for funding: National Cancer Institute-designated cancer centers; Department of Veterans Affairs hospitals or medical centers; Federally Qualified Health Centers (FQHC), FQHC Look-A-Likes, Community Health Centers, hospitals, agencies of any State or local government that currently provide direct health care services; Indian Health Service (IHS) health care facilities; including programs provided through tribal contracts, compacts, grants, or cooperative agreements with the IHS which are determined appropriate to raising the health status of Indians; and nonprofit organizations. Among the nonprofit organizations eligible to apply are faith-based organizations and community-based organizations.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $2,000,000.

Estimated Number of Awards To Be Made: 6.

Estimated Project Period: 1–5 years.

HRSA–04–028 Radiation Exposure Screening and Education Program (RESEP)

Application Availability Date: February 1, 2004.

Application Deadline: April 5, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Barbara Bailey.

Program Contact Phone: 301–594–4420.

Program Contact E-mail: *bbailey@hrsa.gov.*

HRSA–04–029 Integrated Services Development Initiative (ISDI)

CFDA: 93.224.

Legislative Authority: Public Health Service Act, section 330 42 U.S.C, 254b.

Purpose: The purpose of the ISDI is to support the creation and further development of health center controlled networks to ensure access to health care for the medically underserved, including the uninsured and underinsured. Applications will be accepted for the following:

1. Planning activities that will result in the establishment of a network to enhance the operations of collaborating health centers;

2. Development of health center controlled networks to ensure access to health care for the underserved, including the uninsured and underinsured through enhancing the operations of the enhancement of the collaborating health centers through the integration of functions within a core area, *e.g.*, administrative, clinical, managed care, etc. across business and clinical functions among network members;

3. Development of shared integrated management systems (SIMIS) which will provide health centers across a State an opportunity to collaborate, share, and/or integrate functions or components of the systems to facilitate centralized data integration, *e.g.*, common business rules/practices, data structure, practice management software, etc.;

4. Development of information and communication technology (ICT) infrastructure that supports the health disparities collaborative care model and leads to a seamless health care delivery system that is more effective, efficient, patient-family centered and reduce errors; and

5. Implement comprehensive pharmacy service in networks of health centers by adding pharmacy services that will improve clinical outcomes, increase medication safety and reduce health disparities.

Eligibility: Applications for ISDI Planning and Development of Managed Care Network funds are limited to currently funded health centers (section 330(e)). Applications for Planning and Development of Practice Management Networks are limited to currently funded section 330 health centers. Applications for SIMIS and ICT funds are limited to section 330(e) health centers and section 330(m) primary care associations. Applications for implementing comprehensive pharmacy services are limited to current recipients of section 330 grant funds.

Cost Sharing: A cost share of 5 or 10 percent in cash is required for ISDI Planning and/or Development applications respectively.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: In selecting applications for funding, preference will be given to approvable applications

submitted from sparsely populated areas.

Estimated Amount of This Competition: ISDI Planning $1,000,000; ISDI Development $1,000,000; SIMIS $2,000,000; ICT $3,000,000; Pharmacy $1,500,000

Estimated Number of Awards To Be Made: ISDI Planning up to 6 awards; ISDI Development up to 6 awards; SIMS up to 4 awards; ICT up to 5 awards; Pharmacy up to 8 awards.

Estimated Project Period: 1–5 years.

HRSA–04–029 Integrated Services Development Initiative (ISDI)

Application Availability Date: December 1, 2003.

Application Deadline: April 5, 2004.

Projected Award Date: August 1, 2004.

Program Contact Person: Susan Lumsden.

Program Contact Phone: 301–594–4488.

Program Contact e-mail: SLumsden@hrsa.gov.

HRSA–04–030 Community and Migrant Health Centers (CMHS)

CFDA: 93.224.

Legislative Authority: Public Health Service Act, section 330, 42 U.S.C. 254b.

Purpose: The Community Health Center and Migrant Health Center (C/MHC) programs are designed to promote the development and operation of community-based primary health care service systems in medically underserved areas for medically underserved populations. It is the intent of HRSA to continue to support health services in these areas, given the unmet need inherent in their provision of services to medically underserved populations. It is expected that each application submitted to serve one of these areas will present a clear focus on maintaining access to care and reducing health disparities identified in the target population. In FY 2004, HRSA will be implementing the third year of the President's Initiative to Expand Health Centers to increase access to the Nation's poor and underserved. HRSA will open competition for awards under section 330 of the Public Health Service Act to support health services in the areas served by these grants. One hundred sixty-three C/MHC grantees will reach the end of their project period during FY 2004.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2004 and new organizations proposing to serve the same areas or populations being served by these existing programs. New organizations eligible to compete to serve one of these areas are public and nonprofit private entities, including faith-based organizations and community-based organizations. In the list of service areas that follows, those shown with an asterisk after the area description are currently being served through interim arrangements. The HRSA is interested in establishing a permanent grantee in each of these areas. Organizations interested in these competitive opportunities are encouraged to contact the listed program officials for more information.

COMMUNITY/MIGRANT HEALTH CENTERS

City	State	Expiration date
Contact: Jack Egan, 301–594–4339		
East Boston	MA	11/30/2003
Boston	MA	12/31/2003
Roxbury	MA	1/31/2004
Lynn	MA	1/31/2004
Boston	MA	2/29/2004
Boston	MA	3/31/2004
Dorchester	MA	3/31/2004
Fitchburg	MA	3/31/2004
Augusta	ME	3/31/2004
Lowell	MA	3/31/2004
Peabody	MA	3/31/2004
East Hartford	CT	5/31/2004
Richford	VT	5/31/2004
New Bedford	MA	5/31/2004
Littleton	CH	6/30/2004
Franklin	NH	6/30/2004
New York	NY	11/30/2003
Cortland	NY	11/30/2003
Rochester	NY	12/31/2003
Ossining	NY	12/31/2003
Rio Grande	PR	12/31/2003
Brooklyn	NY	1/31/2004
New York	NY	1/31/2004
Perth Amboy	NJ	2/29/2004
St. Croix	VI	2/29/2004
St. Thomas	VI	2/29/2004
Jersey City	NJ	3/31/2004
Trenton	NJ	3/31/2004
Patillas	PR	3/31/2004
Barceloneta	PR	5/31/2004
Plainfield	NJ	5/31/2004
Loiza	PR	5/31/2004
Monsey	NY	6/30/2004
Jersey City	NJ	6/30/2004
New Brunswick	NJ	6/30/2004
Spring Valley	NY	6/30/2004
Elizabeth	WV	2/29/2004
Hamlin	WV	2/29/2004
Washington	DC	2/29/2004
Dawes	WV	2/29/2004
Scott Depot	WV	2/29/2004
Blacksville	WV	5/31/2004
St. Charles	VA	5/31/2004
Danville	VA	6/30/2004
Contact: Jerri Regan, 301–594–4283		
Eutaw: Service Area 1*	AL	11/30/2003
Service Area 2*	AL	11/30/2003
Service Area 3*	AL	11/30/2003
Service Area 4*	AL	11/30/2003
Service Area 5*	AL	11/30/2003
Fairfax	SC	11/30/2003
Chattanooga	TN	11/30/2003
Manson	NC	11/30/2003
Louisville	KY	11/30/2003
Mantachie	MS	11/30/2003
Savannah	GA	11/30/2003
Stone Mountain	GA	12/31/2003
Savannah	TN	12/31/2003
Wartburg	TN	12/31/2003
Jacksonville	FL	12/31/2003
Miami Springs	FL	1/31/2004
Eutaw	AL	1/31/2004
Wade	NC	1/31/2004
Leakesville	MS	1/31/2004
Lexington	KY	1/31/2004
Tiptonville	TN	1/31/2004
Johns Island	SC	1/31/2004
Gastonia	NC	2/29/2004
Jacksboro	TN	2/29/2004
Immokalee	FL (2)	3/31/2004
Tampa	FL	3/31/2004
Windsor	NC	3/31/2004
Byhalia	MS	3/31/2004
Ashland	MS	3/31/2004
Tuskegee Institute	AL	3/31/2004
Atlanta	GA (2)	5/31/2004
Decatur	GA	5/31/2004
Wadesboro	NC	5/31/2004
McKee	KY	5/31/2004
Ridgeland	SC (2)	5/31/2004
Trenton	FL	5/31/2004
Little River	SC	5/31/2004
Memphis	TN	5/31/2004
Spartanburg	SC	6/30/2004
Waycross	GA	6/30/2004
Wilson	NC	6/30/2004
Contact: Barbara Bailey, 301–594–4317		
Chicago	IL (2)	11/30/2003
Waukegan	IL	11/30/2003
East Chicago	IN	11/30/2003
Cincinnati	OH	12/31/2003
Oquawka	IL	12/31/2003
Minneapolis	MN	12/31/2003
Cincinnati	OH	12/31/2003
Hillman	MI	1/31/2004
Pontiac	MI	2/29/2004
Madison	WI	2/29/2004
Minneapolis	MN	2/29/2004
Aurora	IL	2/29/2004
Flint	MI	3/31/2004
Indianapolis	IN	5/31/2004
Wausau	WI	6/30/2004
Kenosha	WI	6/30/2004
Springfield	IL	6/30/2004
Chicago	IL	6/30/2004
Elgin	IL	6/30/2004
Contact: Theresa Watkins-Bryant, 301–594–4423		
West Memphis	AR	11/30/2003
Dallas	TX	11/30/2003

COMMUNITY/MIGRANT HEALTH CENTERS—Continued

City	State	Expiration date
New Orleans	LA	11/30/2003
Portales	NM	1/31/2004
Alexandria	LA	2/29/2004
Mena	AR	2/29/2004
Tulsa	OK	3/31/2004
Battiest	OK	5/31/2004
Richmond	TX	5/31/2004
Lake Charles	LA	5/31/2004
Espanola	NM	5/31/2004
Bryan	TX	6/30/2004
St. Gabriel	LA	6/30/2004
Mora	NM	6/30/2004
Contact: Jerri Regan, 301–594–4283		
St. Louis	MO	1/31/2004
West Plains	MO	2/29/2004
Wichita	KS	3/31/2004
Springfield	MO	5/31/2004
West Burlington	IA	6/30/2004
Council Bluffs	IA	6/30/2004
Contact: Barbara Bailey, 301–594–4317		
Denver	CO	12/31/2003
St. George	UT	2/29/2004
Glenwood Springs	CO	5/31/2004
Dove Creek	CO	5/31/2004
Ashland	MT	6/30/2004
Helena	MT	6/30/2004
Contact: Theresa Watkins-Bryant, 301–594–4423		
Los Angeles: Service Area 1*.	CA	11/30/2003
Service Area 2*.	CA	11/30/2003
Surprise	AZ (2)	11/30/2003
San Ysidro	CA	12/31/2003
Arcata	CA	12/31/2003
Los Angeles	CA	12/31/2003
Vista	CA	02/29/2004
Arboga	CA	2/29/2004
Guerneville	CA	2/29/2004
Tulare	CA	2/29/2004
San Diego	CA	2/29/2004
Redway	CA	2/29/2004
Healdsburg	CA	2/29/2004
San Bernardino	CA	2/29/2004
Long Beach	CA	5/31/2004
Nogales	AZ	5/31/2004
Los Angeles	CA	5/31/2004
Bieber	CA	5/31/2004
Santa Rosa	CA	5/31/2004
Carson City	NV	5/31/2004
Pago Pago	AS	5/31/2004
Hana	HI	6/30/2004
Hilo	HI	6/30/2004
Honolulu	HI	6/30/2004
Waimanalo	HI	6/30/2004
West Covina	CA	6/30/2004
Borrego Springs	CA	6/30/2004
Campo	CA	6/30/2004
Gualala	CA	6/30/2004
Escondido	CA	6/30/2004
San Pablo	CA	6/30/2004

COMMUNITY/MIGRANT HEALTH CENTERS—Continued

City	State	Expiration date
Contact: Barbara Bailey, 301–594–4317		
Hood River	OR (2)	1/31/2004
Bonners Ferry	ID	2/29/2004
Astoria	OR	2/29/2004
Prineville	OR	5/31/2004
Everett	WA	6/30/2004
Talkeetna	AK	6/30/2004
Roseburg	OR	6/30/2004
Nome	AK	8/31/2004
Anchorage	AK (3)	8/31/2004
Juneau	AK	8/31/2004
Naknek	AK	8/31/2004
Unalaska	AK	8/31/2004
Fairbanks	AK	8/31/2004
Seldovia	AK	8/31/2004
Fort Yukon	AK	8/31/2004
Bethel	AK	8/31/2004
Kotzebue	AK	8/31/2004
Dillingham	AK	8/31/2004

Review Criteria: Final review criteria are included in the application kit.

Special Considerations: Communication with program staff is essential for interested parties in deciding whether to pursue federal funding as a C/MHC. Technical assistance and detailed information about each service area, such as census tracts, can be obtained from the program staff shown for each geographical area.

Estimated Amount of This Competition: $234,000,000.

Estimated Number of Awards To Be Made: 180.

Estimated Project Period: 3 to 5 years.

HRSA–04–030 Community and Migrant Health Centers (CMHS)

Application Availability Date: September 2, 2003.

Application Deadline: Applications for areas with expiring project period end dates of October 31, 2003, November 30, 2003, December 31, 2003, January 31, 2004, February 29, 2004, March 31, 2004, May 31, 2004, or June 30, 2004 are due December 1, 2003. Applications for areas with expiring project period end date of August 31, 2004, are due May 3, 2004.

Projected Award Date: Varies.

Program Contact Person: Preeti Kanodia.

Program Contact Phone: 301–594–4300.

Program Contact E-mail: *pkanodia@hrsa.gov.*

HRSA–04–031 Health Care for the Homeless (HCH)

CFDA: 93.224.

Legislative Authority: Public Health Service Act, Section 330, 42 U.S.C. 254b.

Purpose: The Health Care for the Homeless (HCH) program is designed to increase the access of homeless populations to cost-effective, case managed, and integrated primary care and substance abuse services provided by existing community-based programs/providers. It is expected that each application submitted to serve an identified homeless population will present a clear focus on maintaining access to care and reducing health disparities identified in the target population by proposing a comprehensive health care and social services program. It is the intent of HRSA to continue to support health services to the homeless people in these areas/locations given the continued need for cost-effective, community-based primary care services. Twenty-four HCH grantees will reach the end of their project period during FY 2004.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2004 and new organizations proposing to serve the same areas or populations being served by these existing programs. New organizations eligible to compete to serve one of these areas are public and nonprofit private entities, including faith-based organizations and community-based organizations.

HEALTH CARE FOR THE HOMELESS

City	State	Expiration date
Contact: Jack Egan, 301–594–4339		
New York	NY	10/31/2003
Rochester	NY	10/31/2003
Manhattan	NY	10/31/2003
White Plains	NY	11/30/2003
Trenton	NJ	3/31/2004
Jersey City	NJ	3/31/2004
Contact: Jerri Regan, 301–594–4283		
Orlando	FL	10/31/2003
Hazard	KY	10/31/2003
Ft. Lauderdale	FL	10/31/2003
Clearwater	FL	10/31/2003
Jacksonville	FL	10/31/2003
Nashville	TN	10/31/2003
Lexington	KY	1/31/2004
Tampa	FL	3/31/2004
Little River	SC	5/31/2004
Contact: Barbara Bailey, 301–594–4317		
Dayton	OH	10/31/2003
Cincinnati	OH	12/31/2003
Contact: Theresa Watkins-Bryant, 301–594–4423		
Dallas	TX	10/31/2003
New Orleans	LA	10/31/2003
Tulsa	OK	3/31/2004

HEALTH CARE FOR THE HOMELESS—Continued

City	State	Expiration date
Contact: Jerri Regan, 301–594–4283		
St. Louis	MO	1/31/2004
Wichita	KS	3/31/2004
Contact: Theresa Watkins-Bryant, 301–594–4423		
Carson City	NV	5/31/2004
Contact: Barbara Bailey, 301–594–4317		
Everett	WA	6/30/2004

Review Criteria: Final review criteria are included in the application kit.

Special Considerations: Communication with program staff is essential for interested parties in deciding whether to pursue Federal funding as a HCH. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the program staff shown for each geographical area.

Estimated Amount of This Competition: $12,000,000.

Estimated Number of Awards To Be Made: 24.

Estimated Project Period: 1–5 years.

HRSA–04–031 Health Care for the Homeless (HCH)

Application Availability Date: September 1, 2003.

Application Deadline: Applications for areas with expiring project period end dates of October 31, 2003, November 30, 2003, December 31, 2003, January 31, 2004, February 29, 2004, March 31, 2004, May 31, 2004, or June 30, 2004, are due December 1, 2003. Applications for areas with expiring project period end date of August 31, 2004, are due May 3, 2004.

Projected Award Date: Varies.

Program Contact Person: Preeti Kanodia.

Program Contact Phone: 301–594–4300.

Program Contact E-mail: pkanodia@hrsa.gov.

HRSA–04–032 Public Housing Primary Care (PHPC)

CFDA: 93.224.

Legislative Authority: Public Health Service Act, Section 330, 42 U.S.C. 254b.

Purpose: The mission of the Public Housing Primary Care (PHPC) program is to increase access to comprehensive primary and preventive health care and to improve the physical, mental, and economic well-being of public housing residents. The three priorities for promoting access to primary care and improving the well being of residents of public housing are: resident involvement and participation in program development and implementation; innovative service delivery systems that address the special health needs of public housing residents; and collaboration with other health, education and community-based organizations. It is expected that each application to serve an identified population of residents of public housing will present a clear focus on maintaining access to care and reducing health disparities identified in the target population. It is the intent of HRSA to continue to support health services to public housing residents in these areas/locations given the continued need for cost-effective, community-based primary care services. Six PHPC grantees will reach the end of their project period during FY 2004.

Eligibility: Applicants are limited to currently funded programs whose project periods expire in FY 2004 and new organizations proposing to serve the same areas or populations being served by these existing programs. New organizations eligible to compete to serve one of these areas are public and nonprofit private entities, including faith-based organizations and community-based organizations. In the list of service areas that follows, those shown with an asterisk after the area description are currently being served through interim arrangements. The HRSA is interested in establishing a permanent grantee in each of these areas. Organizations interested in these competitive opportunities are encouraged to contact the listed program officials for more information.

PUBLIC HOUSING PRIMARY CARE

City	State	Expiration date
Contact: Jack Egan, 301–594–4339		
Roxbury	MA	1/31/2004
Pittsburgh	PA	8/31/2004
Contact: Jerri Regan, 301–594–4283		
Savannah	GA	11/30/2003
Marietta	GA	08/31/2004
Contact: Barbara Bailey, 301–594–4317		
Chicago	IL	11/30/2003
Chicago	IL	06/30/2004
Contact: Jerri Regan, 301–594–4283		
St. Louis	MO	01/31/2004

PUBLIC HOUSING PRIMARY CARE—Continued

City	State	Expiration date
Contact: Theresa Watkins-Bryant, 301–594–4423		
Los Angeles*	CA	11/30/2003

Review Criteria: Final review criteria are included in the application kit.

Special Considerations: Communication with program staff is essential for interested parties in deciding whether to pursue Federal funding as a PHPC. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the program staff shown for each geographical area.

Estimated Amount of This Competition: $2,700,000.

Estimated Number of Awards To Be Made: 6.

Estimated Project Period: 1–5 years.

HRSA–04–032 Public Housing Primary Care (PHPC)

Application Availability Date: September 1, 2003.

Application Deadline: Applications for areas with expiring project period end dates of October 31, 2003, November 30, 2003, December 31, 2003, January 31, 2004, February 29, 2004, March 31, 2004, May 31, 2004, or June 30, 2004 are due December 1, 2003. Applications for areas with expiring project period end date August 31, 2004, are due May 3, 2004.

Projected Award Date: Varies.

Program Contact Person: Preeti Kanodia.

Program Contact Phone: 301–594–4300.

Program Contact E-mail: pkanodia@hrsa.gov.

HRSA–04–033 School Based Health Centers (SBHC)

CFDA: 93.224

Legislative Authority: Public Health Service Act, Section 330, 42 U.S.C. 254b.

Purpose: The purpose of the School Based Health Centers (SBHC) is to increase access to comprehensive primary and preventive health care to underserved children, adolescents and families. The SBHC provide comprehensive primary and preventive health care services including mental health, oral health, ancillary, and enabling services in the school or on school grounds on a full-time basis. These services are culturally sensitive, family oriented, and tailored to meet the health care needs of youth, adolescents

and the community. The array of services provided on-site is determined locally by school principals, school boards, parents and providers, and referral arrangements are provided for services not available on-site. No SBHC services are provided without fully informed parental consent. Each SBHC supports educational efforts by making sure that children are ready to learn through an integrated system providing continuity of care, and assuring after hours and year-round coverage. It is expected that each application submitted to serve a school-based population presents a clear focus on maintaining access to care and reducing health disparities identified in the target population. It is the intent of HRSA to continue to support health services for these populations in the areas served by these grantees. Sixteen SBHC grantees will reach the end of their project period during FY 2004.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2004 and new organizations proposing to serve the same areas or populations being served by these existing programs. New organizations eligible to compete to serve one of these areas are public and nonprofit private entities, including faith-based organizations and community-based organizations.

SCHOOL BASED HEALTH CENTERS

City	State	Expiration date
Contact: Jack Egan, 301–594–4339		
Lynn	MA	1/31/2004
Lowell	MA	3/31/2004
St. Croix	VI	2/29/2004
Plainfield	NJ	5/31/2004
Baltimore	MD	6/30/2004
Contact: Jerri Regan, 301–594–4283		
Lexington	KY	1/31/2004
Ridgeland	SC	5/31/2004
Atlanta	GA	6/30/2004
Contact: Barbara Bailey, 301–594–4317		
Chicago	IL	11/30/2003
Indianapolis	IN	6/30/2004
Denver	CO	12/31/2003
Contact: Theresa Watkins-Bryant, 301–594–4423		
Surprise	AZ	11/30/2003
Green Valley	AZ	1/31/2004
Long Beach	CA	5/31/2004
San Bernardino	CA	6/30/2004

SCHOOL BASED HEALTH CENTERS—Continued

City	State	Expiration date
San Jose	CA	6/30/2004

Review Criteria: Final review criteria are included in the application kit.

Special Considerations: Communication with program staff is essential for interested parties in deciding whether to pursue Federal funding as a HSHC. Technical assistance and detailed information about each service area, such as census tracts, can be obtained by contacting the program staff shown for each geographical area.

Estimated Amount of This Competition: $4,000,000.

Estimated Number of Awards To Be Made: 16.

Estimated Project Period: 1–5 years.

HRSA–04–033 School Based Health Centers (SBHC)

Application Availability Date: September 1, 2003.

Application Deadline: Applications for areas with expiring project period end dates of October 31, 2003, November 30, 2003, December 31, 2003, January 31, 2004, February 29, 2004, March 31, 2004, May 31, 2004, or June 30, 2004 are due December 1, 2003. Applications for areas with expiring project period end date of August 31, 2004, are due May 3, 2004.

Projected Award Date: Varies.

Program Contact Person: Preeti Kanodia.

Program Contact Phone: 301–594–4300.

Program Contact E-mail: *pkanodia@hrsa.gov.*

HRSA–04–034 New Delivery Sites and New Starts in Programs Funded Under the Health Centers Consolidation Act (NDSCS)

CFDA: 93.224.

Legislative Authority: Public Health Service Act, Section 330, 42 U.S.C. 254b.

Purpose: The purpose of this activity is to support the establishment of new service delivery sites in each of the Health Center programs funded under Section 330 of the Public Health Service Act. Each application for support to establish a new site must identify a population in need of primary health care services, and propose a specific plan to increase access to care and reduce disparities identified in the population or community to be served. This activity is the lead in fulfilling the President's multi-year Initiative to Expand Health Centers to bring much needed primary health care services to the Nation's neediest communities. In FY 2004, the establishment of new delivery sites under this program will be in the third year of a five-year initiative. The purpose of the Health Center program is to extend comprehensive primary and preventive health services (including mental health, substance abuse and oral health services) and supplemental services to populations currently without access to such services, and to improve their health status. The programs under this activity include: (1) Community Health Centers, section 330(e); (2) Migrant Health Centers, section 330(g); (3) Health Care for the Homeless program, section 330 (h); (4) Public Housing Primary Care, section 330(i); and (5) School Based Health Centers, section 330. The population served by these programs are: (1) Medically underserved populations in urban and rural areas; (2) migratory and seasonal agricultural workers and their families; (3) homeless people, including children and families; (4) residents of publicly subsidized housing; and (5) medically underserved school students (K–12), their families, and medically underserved populations surrounding the school.

Eligibility: Public and nonprofit private entities, including faith-based organizations and community-based organizations, are eligible to apply.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: In selecting applications for funding, preference will be given to approvable applications submitted from sparsely populated areas.

Special Considerations: Communities seeking support are strongly encouraged to promote and seek outside funding and are required to maximize third party revenue to establish and maintain new service delivery areas.

Estimated Amount of This Competition: $56,000,000.

Estimated Number of Awards To Be Made: 94.

Estimated Project Period: 3 years.

HRSA–04–034 New Delivery Sites and New Starts in Programs Funded Under the Health Centers Consolidation Act (NDSCS)

Application Availability Date: October 1, 2003.

Application Deadline: December 1, 2003 and May 17, 2004.

Projected Award Date: Varies.

Program Contact Person: Tonya Bowers.

Program Contact Phone: 301–594–4300.

Program Contact E-Mail: *tbowers@hrsa.gov.*

HRSA–04–035 Increase in Medical Capacity in Programs Funded Under the Health Care Consolidation Act of 1996 (IMCHC)

CFDA: 93.224.

Legislative Authority: Public Health Service Act, Section 330, 42 U.S.C. 254b.

Purpose: FY 2004 marks the third year of the President's multi-year plan to serve more of the Nation's neediest communities through significantly expanded health center access points. The HRSA is committed to improving and expanding access to health care for the underserved and to pledging new funding to strengthen the health care safety net through each of the Health Center programs funded under section 330 of the Public Health Service Act. Health centers extend preventive and primary health care services to populations currently without such services and improve the health status of medically underserved individuals. One way of achieving these goals and reaching new users of health centers is to approve funding increases for existing health center grantees that provide a plan for achieving increased medical capacity within their current service area. The programs included under this activity include: (1) Community Health Centers, section 330(e); (2) Migrant Health Centers, section 330(g); (3) Health Care for the Homeless; section 330(h); (4) Public Housing Primary Care, section 330(i); and (5) School Based Health Centers, section 330. The populations served by these programs are: (1) Medically underserved populations in urban and rural areas; (2) migratory and seasonal agricultural workers and their families; (3) homeless people, including children and families; (4) residents of publicly subsidized housing, and (5) medically underserved students in grades K through 12, their families, and medically underserved populations surrounding the school.

Eligibility: Applicants are limited to currently funded health center programs (*i.e.*, those organizations funded under section 330).

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: In selecting applications for funding, preference will be given to approvable applications submitted from sparsely populated areas.

Estimated Amount of This Competition: $42,000,000.

Estimated Number of Awards To Be Made: 94.

Estimated Project Period: 1–5 years.

HRSA–04–035 Increase in Medical Capacity in Programs Funded Under the Health Care Consolidation Act of 1996 (IMCHC)

Application Availability Date: December 1, 2003.

Application Deadline: February 2, 2004.

Projected Award Date: June 30, 2004.

Program Contact Person: Joe Fitzmaurice.

Program Contact Phone: 301–594–4300.

Program Contact E-Mail: *JFitzmaurice@hrsa.gov.*

HRSA–04–036 National Health Center Technical Assistance Cooperative Agreement (NAT)

CFDA: 93.224.

Legislative Authority: Public Health Service Act, Title III, Section 330(m), 42 U.S.C. 254b(m).

Purpose: The purpose of the funding for National Health Center Technical Assistance Cooperative Agreements is to support and expand Primary Care Association's capacity to address the following three strategies:

1. Strengthening and expanding existing health center grantees;
2. Creating new access points; and
3. Improving health status outcomes of persons served in BPHC-supported programs.

Federal Involvement: The scope of Federal involvement is included in the application kit.

Eligibility: Public and private nonprofit entities, including faith-based organizations and community-based organizations, as well as for-profit entities, are eligible to apply.

Estimated Amount of This Competition: $8,000,000.

Estimated Number of Awards To Be Made: 4.

Estimated Project Period: 3 years.

HRSA–04–036 National Health Center Technical Assistance Cooperative Agreement (NAT)

Application Availability Date: February 1, 2004.

Application Deadline: April 5, 2004.

Projected Award Date: August 1, 2004.

Program Contact Person: Cephas Goldman.

Program Contact Phone: 301–594–4488.

Program Contact E-Mail: *cgoldman@hrsa.gov.*

HRSA–04–037 Increase in Mental Health and Substance Abuse, Oral Health, and Care Management, in Programs Funded Under the Health Centers Consolidation Act of 1996 (IMHSA)

CFDA: 93.224.

Legislative Authority: Public Health Service Act, Section 330, 42 U.S.C. 254b.

Purpose: Access to mental health and substance abuse (MH/SA), and oral health is critical to ensuring the overall health and well being of the populations served by health centers and reducing disparities in health center populations being served. In addition, sustaining and spreading the care and improvement models implemented through the Health Disparities Collaborative is enhanced by expanded care management capacity. As part of the President's multi-year plan to impact 1,200 of the Nation's neediest communities, the HRSA will continue to expand access to essential health care services and to support practice improvement through a targeted approach to care management.

The availability of MH/SA, oral health and care management services will enhance the ability of health centers to provide basic primary care result in an increase in users at existing grantee sites, and continue to improve the health status of persons served. Applicants for this funding opportunity are expected to: (1) Describe the target population and its need for MH/SA, oral health, or care management services; (2) present a service delivery plan that demonstrates responsiveness to the identified needs of the target population; and (3) present a sound business plan that links the goals and objectives from the service delivery plan to the budget. The programs included under this activity include: (1) Community Health Centers, section 330(e); (2) Migrant Health Centers, section 330 (g); (3) Health Care for the Homeless, section 330(h); (4) Public Housing Primary Care, section 330(i); and (5) School Based Health Centers, section 330. The populations served by these programs are: (1) Medically underserved populations in urban and rural areas; (2) migratory and seasonal agricultural workers and their families; (3) homeless people, including children and families; (4) residents of publicly subsidized housing; and (5) medically underserved students in grades K through 12, their families, and medically underserved populations surrounding the school.

Eligibility: Applicants are limited to currently funded health center programs

(*i.e.*, those organizations funded under section 330).

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: In selecting applications for funding, preference will be given to approvable applications submitted from sparsely populated areas. .

Estimated Amount of This Competition: $19,000,000.

Estimated Number of Awards To Be Made: 125.

Estimated Project Period: 1–5 years.

HRSA–04–037 Increase in Mental Health and Substance Abuse, Oral Health, and Care Management, in Programs Funded Under the Health Centers Consolidation Act of 1996 (IMHSA)

Application Availability Date: November 1, 2003.

Application Deadline: January 5, 2004.

Projected Award Date: May 31, 2004.

Program Contact Person: Lisa Dolan-Branton.

Program Contact Phone: 301–594–4300.

Program Contact E-Mail: *LDolan@hrsa.gov.*

*HRSA–04–038 Healthy Communities Access Program (HCAP) **

CFDA: 93.252.

Legislative Authority: Public Health Service Act, Section 340, 42 U.S.C. 256.

Purpose: The purpose of the Healthy Community Access Program (HCAP) is to provide assistance to communities and consortia of health care providers and others to develop or strengthen integrated community health care delivery systems that coordinate health care services for individuals who are uninsured or underinsured, and to develop or strengthen activities related to providing coordinated care for individuals with chronic conditions who are uninsured or underinsured.

* This program is not included in the President's budget for FY 2004. Potential applicants should consider this announcement provisional until final Congressional action on appropriations is taken. Updated information on Congressional action on appropriations will be available on the HRSA Web site.

Eligibility: Indian Tribes or Tribal organizations, faith-based and community-based organizations are encouraged to apply. For an entity to be eligible to receive a new HCAP award, the following requirements must be met:

1. The applicant entity must represent a consortium whose principal purpose is to provide a broad range of coordinated health care services to their defined community's uninsured and underinsured populations.

2. The community-wide consortium represented by the applicant entity must include at least one of each of the following providers that serve the state community, unless such provider does not exist, declines or refuses to participate, or places unreasonable conditions on its participation:

- A Federally qualified health center (as defined in section 186(aa) of the Social Security Act (42 U.S.C. 1395x(aa));
- A hospital with a low-income utilization rate (as defined in section 1923(b)(3) of the Social Security Act (42 U.S.C. 1396r–4(b)(3)), that is greater than 25 percent;
- A public health department; and
- An interested public or private sector health care provider or an organization that has traditionally served the medically uninsured or underserved.

• 3. The applicant is neither a current nor former Community Access Program (CAP) grantee and is proposing to serve a community of uninsured or underinsured individuals that have never been served by a CAP grant.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: In selecting applications for funding, a preference will be given to applicants that demonstrate the extent of unmet need in the community involved for a more coordinated system of care as provided through evidence in their "Community System Needs Assessment".

Estimated Amount of this Competition: $20,000,000.

Estimated Number of Awards to be Made: 35.

Estimated Project Period: Up to 3 years.

*HRSA–04–038 Healthy Communities Access Program (HCAP) **

Application Availability Date: February 1, 2004.

Application Deadline: April 5, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Susan Lumsden.

Program Contact Phone: 301–594–4420.

Program Contact E-Mail: *SLumsden@hrsa.gov.*

HRSA–04–039 Black Lung Clinics Program (BLCP)

CFDA: 93.965.

Legislative Authority: The Black Lung Benefits Reform Act of 1977, Section 427(a), 30 U.S.C. 937(a)

Purpose: The primary purpose of the Black Lung Clinics grant program is to provide treatment and rehabilitation for Black Lung patients and others with occupationally related pulmonary diseases. In addition, individual grantee programs are expected to include case finding and outreach, preventive and health promotion services, education for patients and their families, and testing to determine eligibility for Department of Labor or State benefits. Although the number of active coal miners has decreased substantially because of mechanization, there has been an increase in the number of retired coal miners with the disease and in the number of pulmonary patients from other occupations. A current objective of the program is to expand outreach so that more of the eligible population is made aware of the services offered by the grantee clinics.

Eligibility: Applicants are limited to currently funded programs whose project periods expire during FY 2004 and new organizations proposing to serve the same areas or populations being served by these existing programs.

BLACK LUNG CLINICS PROGRAM

City	State	Expiration Date
Contact: Jack Egan, 301–594–4339		
Altoona	PA	6/30/2004
Washington	PA	6/30/2004
Contact: Barbara Bailey, 301–594–4317		
Denver	CO	6/30/2004

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: In selecting applications for funding, preference will be given to applicants that are State entities who meet the legislative requirements of the Federal Mine and Safety Act of 1977 as amended by the Black Lung Benefits Reform Act of 1977.

Estimated Amount of This Competition: $1,000,000.

Estimated Number of Awards: 3.

Estimated Project Period: 1–5 years.

HRSA–04–039 Black Lung Clinics Program (BLCP)

Application Availability Date: January 1, 2004.

Application Deadline: March 1, 2004.

Projected Award Date: July 1, 2004.

Program Contact Person: Jack Egan.

Program Contact Phone: 301–594–4420.

Program Contact E-Mail: *jegan@hrsa.gov.*

*HRSA–04–040 State Primary Care Associations Supplemental Funding for Managing Health Center Growth and Quality (PCA) **

CFDA: 93.129.

Legislative Authority: Public Health Service Act, Title III, Section 330, 42 U.S.C. 254b.

Purpose: The HRSA announces an opportunity for existing Primary Care Associations (PCAs) to apply for supplemental funding to advance the goals of the President's initiative to expand health centers. The purpose of the funding is to support and expand the PCAs capacity to address the following three strategies: (1) Strengthening and expanding existing health center grantees; (2) creating new access points; and (3) improving health status outcomes and reducing disparities through evidence-based quality care and quality improvement in all HRSA-supported programs. Each proposed activity must be clearly linked to strengthening health centers' ability to contribute to the President's Initiative.

Eligibility: Applicants are limited to currently funded PCAs.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $3,000,000.

Estimated Number of Awards To Be Made: 25.

Estimated Project Period: 1–5 years.

HRSA–04–040 State Primary Care Associations Supplemental Funding for Managing Health Center Growth and Quality (PCA)

Application Availability Date: November 1, 2003.

Application Deadline: January 5, 2004.

Projected Award Date: April 1, 2004.

Program Contact Person: Cephas Goldman.

Program Contact Phone: 301–594–4488.

Program Contact E-Mail: *cgoldman@hrsa.gov.*

*HRSA–04–041 Operational Health Center Networks (OHCN) **

CFDA: 93.224.

Legislative Authority: Public Health Service Act, Section 330(e)(1)(C).

Purpose: Operational Health Center Networks (OHCN) support health centers that receive assistance under section 330, or at the request of the health centers, directly to a managed care or practice management network or plan that is at least majority controlled and, as applicable, at least majority owned by such health centers receiving assistance under section 330 for the costs associated with the operation of such network or plan, including the purchase or lease of equipment (including the costs of amortizing the principal of, and paying the interest on, loans for equipment). Operational networks are defined as a group of three or more health centers that can demonstrate that an essential, mission-critical function is performed at the network level for the network members, enabling the member centers to perform their business and clinical operations more efficiently and effectively.

Eligibility: The following entities are eligible to apply for funding under this announcement:

(1) A health center, as defined and funded under section 330 of the Public Health Service Act, acting on behalf of the member health centers and the network;

(a) A health center applying on behalf of a managed care network or plan must have received Federal grants under subsection (e)(1)(A) of section 330 for at least two consecutive preceding years;

(b) A health center (Community Health Center, Migrant Health Center, Health Care for the Homeless, Public Housing Primary Care and School Based Health Centers) applying on behalf of a practice management network must have received Federal grants under section 330 for at least two consecutive years;

(c) Eligibility is limited to public and non-profit organizations; or

(2) Operational networks, controlled by and acting on behalf of the health center(s) as defined and funded under section 330 of the Public Health Service Act. At the request of all the member health centers, a network may apply for direct funds if it is at least majority controlled and, as applicable, at least majority owned, by such health centers.

Matching or Cost Sharing Requirement: Grantees must provide at least 60 percent of the total approved cost of the project. The total approved cost of the project is the sum of the HRSA share and the non-Federal share. Applicants must demonstrate that at least 30 percent of the cost-sharing requirement is met through cash contributions. The remaining non-Federal share may be met by cash or in kind contributions.

Review Criteria: Final review criteria are included in the Application kit.

Funding Preference: A funding preference will be given to applicants proposing to serve sparsely populated rural or frontier areas.

Estimated Amount of This Competition: $2,100,000.

Estimated Number of Awards To Be Made: 5–7 Awards.

Estimated Project Period: 3 years.

HRSA–04–041 Operational Health Center Networks (OHCN)

Application Availability Date: November 1, 2003.

Application Deadline: March 8, 2004.

Projected Award Date: August 1, 2004.

Program Contact Person: Susan Lumsden.

Program Contact Phone: 301–594–4472.

Program Contact E-Mail: *Slumsden@hrsa.gov.*

HIV/AIDS Programs

HRSA–04–042 Special Projects of National Significance (SPNS)

CFDA: 93.928.

Legislative Authority: Public Health Service Act, Section 2691; 42U.S.C. 300ff–101.

Purpose: The purpose of this program is to fund Demonstration Models of Outreach, Care, and Prevention Engaging Young HIV Seropositive Men of Color. In the United States, the predominant mode of transmission of HIV remains men who have sex with men (MSM). Over half of new AIDS cases reported among men who have sex with men occur in young men of color.

This funding initiative will support 4–5 projects targeting young (ages 13–24), HIV seropositive MSM of color. The funding start date and duration of this initiative will be the same for both the Evaluation Center and the demonstration projects.

The purpose of this initiative is to support the development and evaluation of innovative service models designed to reach young, HIV seropositive MSM of color not engaged in clinical care and link them to appropriate clinical, supportive, and preventive services. The specific objectives of this initiative are to: (1) Conduct outreach, (2) conduct HIV counseling and testing, (3) link HIV-infected persons with primary care services, and (4) prevent transmission of HIV infection from HIV positive men to others, among young MSM of color. The Evaluation Center will evaluate model effectiveness in reaching and engaging HIV seropositive young MSM in clinical, supportive, and preventive services. The Center will also support the replication of effective models.

Eligibility: Eligible applicants are public and private nonprofit entities, including faith-based and community-based organizations. Existing HIV clinical entities that collaborate with faith-based and community-based organizations are also eligible to apply.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: In awarding these grants, preference will be given to applicants whose primary mission includes serving the target population for this initiative.

Estimated Amount of This Competition: $2,000,000.

Estimated Number of Awards: 5.

Estimated Project Period: 5 years.

HRSA–04–042 Special Projects of National Significance (SPNS)

Application Availability Date: January 16, 2004.

Letter of Intent Deadline: February 13, 2004.

Application Deadline: March 22, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Pamela Belton.

Program Contact Phone: 301–443–9976.

Program Contact E-Mail: *pbelton@hrsa.gov.*

HRSA–04–043 Title III: Early Intervention Services Capacity Development Grants (EISCDG)

CFDA: 93.918.

Legislative Authority: Public Health Service Act, Section 2654(c), 42 U.S.C. 300ff–54(c).

Purpose: The purpose of this grant program is to support eligible entities in their planning efforts to strengthen their organizational infrastructure and enhance their capacity to develop, enhance or expand high quality HIV primary health care services in (1) Rural or (2) urban underserved areas and (3) communities of color. The applicant must propose capacity building activities that develop, enhance, or expand a comprehensive continuum of outpatient HIV primary care services in their community through the applicant agency. Capacity building grant funds are intended for a fixed period of time (one to three years) and not for long-term activities. Grants will not exceed $150,000 per successful applicant.

Eligibility: Eligible applicants must be public or private non-profit agencies. Faith-based and community-based organizations are eligible to apply.

Review Criteria: Final review criteria are included in the Application kit.

Funding Preferences: Congress has directed HRSA, in appropriating Minority AIDS Initiative funds, to provide Services to communities of color. Consequently, in Awarding these Grants, preference will be given to applicants seeking funds that are located in or near the community(ies) of color they are intending to serve.

Estimated Amount of this Competition: $1,700,000.

Estimated Number of Awards: 12.

Estimated Project Period: Up to 3 years.

HRSA–04–043 Title III: Early Intervention Services Capacity Development Grants (EISCDG)

Application Availability Date: January 5, 2003.

Application Deadline: March 5, 2004.

Projected Award Date: August 1, 2004.

Program Contact Person: Wayne Sauseda.

Program Contact Phone: 301–443–0493.

Program Contact E-Mail: *wsauseda@hrsa.gov.*

HRSA–04–044 National HIV Training and Technical Assistance Cooperative Agreements (NHIV)

CFDA: 93.145.

Legislative Authority: Public Health Service Act, Section 2692 of the [Title 42, U.S.C. 300ff–III] as amended by Pub. L. 106–345 of the Ryan White CARE Act Amendments of 2000.

Purpose: The goal of this Cooperative Agreement is to assist people working with Ryan White CARE Act funded programs, and other programs with an interest in HIV/AIDS, to understand and put into action the requirements of the CARE Act and research based best practices for high quality, comprehensive HIV primary care and support service delivery to people living with HIV/AIDS. The Cooperative Agreement will transfer knowledge and provide practical help to a diverse group of organizations and individuals, including administrative and direct service staff of State/local AIDS programs, State/local health departments, CARE Act grantees and their subcontractors, other AIDS service organizations, community based organizations and faith-based organizations; members of CARE Act planning bodies; and consumers. Cooperative Agreement recipients will build upon the lessons learned from other training, technical assistance and capacity building efforts sponsored by the HIV/AIDS Bureau and work to address needs not fulfilled by existing efforts.

Federal Involvement: The scope of the federal involvement is included in the application kit.

Eligibility: National, regional and local non-profit organizations involved in addressing HIV/AIDS related issues. Applicants must have a history of developing and disseminating informational materials and providing training and technical assistance, to HIV/AIDS related organizations within the past three years. Community-based and faith-based organizations are eligible to apply.

Review Criteria: Review criteria include evaluating applicants whose staff assigned to the project have the following characteristics:—Experience managing large technical assistance programs;—Experience working with organizations providing HIV/AIDS primary care, treatment and support services and people living with HIV/AIDS;—Knowledge of the challenges faced by organizations providing care, treatment and support services to people living with HIV/AIDS; —Knowledge of regulatory, financing, managerial and clinical aspects of the HIV service delivery system and the larger health care delivery system; and —An organizational mission that includes a commitment to addressing the needs of community based organizations providing HIV-related services in communities severely impacted by HIV. Final review criteria are included in the application kit.

Funding Priorities: Priority will be given to applicants who demonstrate significant experience working with populations targeted by this initiative.

Estimated Amount of this Competition: $1,350,000.

Estimated Number of Awards: 5.

Estimated Project Period: 3 years.

HRSA–04–044 National HIV Training and Technical Assistance Cooperative Agreements (NHIV)

Application Availability Date: October 17, 2003.

Letter of Intent Deadline: November 15, 2003.

Application Deadline: December 19, 2003.

projected Award Date: September 1, 2004.

Program Contact Person: Angela Powell.

Program Contact Phone: 301–443–5761.

Program Contact E-Mail: *apowell@hrsa.gov.*

HRSA–04–046 Telehealth Resource Centers Cooperative Agreement Program (TRCCP)

CFDA: 93.211.

Legislative Authority: The Public Health Services Act, Section 330I. The Health Care Safety Net Amendments of 2002 (Public Law 107–251) amended the Public Health Service Act by adding Section 330I.

Purpose: The purpose of the Telehealth Resource Centers Cooperative Agreements Program is to

establish regional resource centers which will provide services to past and existing office for the Advancement of Telehealth (OAT) grantees and other institutions in need of Technical Assistance in order to refine or create new telehealth programs. Working in close collaboration with OAT, the Resource Centers will develop an array of services. Resource Center services will include: providing Technical assistance, training, and support for health care providers and a range of health care entities that currently provide or seeking to provide telehealth services; disseminating information, research findings and best practices related to the field of telehealth; promoting effective collaboration among telehealth care providers in their region; conducting evaluations to determine the best utilization of telehealth technologies to meet our nation's health care needs; fostering the use of telehealth technologies to provide health care information and education for health care providers and consumers in a more effective manner; and implementing special projects or studies under the direction of the OAT.

Federal Involvement: The scope of Federal involvement is included in the Application kit.

Eligibility: Public or private non-profit agencies. Faith-based and community-based organizations are eligible to apply.

Review Criteria: Final Review Criteria will be included in the application kit.

Funding Preferences: As stated in the Legislative Authority, preference will be given to an eligible entity that meets at least 1 of the following requirements:

A. Provision of services—The eligible entity has a record of success in the provision of telehealth services to medically underserved areas or medically underserved populations; B. Collaboration and sharing of expertise—The eligible entity has a demonstrated record of collaborating and sharing expertise with providers of telehealth services at the national, regional, State, and local levels; C. Broad range of telehealth services—The eligible entity has a record of providing a broad range of telehealth services, which may include—(i) A variety of clinical specialty services; (ii) patient or family education; (iii) health care professional education; (iv) rural residency support programs; and (v) informatics. In addition to providing technical assistance in their region, each grant will serve as a national resource that brings together the lessons learned from throughout the nation in at least two of the following areas: (i) Telehealth program evaluation; (ii) technology assessment; (iii) training, marketing, and information dissemination; (iv) telehealth program operations.

Estimated Amount of This Competition: $500,000.

Estimated Number of Awards: 2.

Estimated Project Period: up to three (3) years.

HRSA–04–046 Telehealth Resource Centers Cooperative Agreement Program (TRCCP)

Application Availability Date: December 15, 2003.

Application Deadline: March 22, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Luigi S. Procopio.

Program Contact Phone: (301) 443–0262.

Program Contact E-Mail: Lprocopio@hrsa.gov.

HRSA–04–047 Title IV: Grants for Coordinated HIV Services and Access to Research for Women, Infants, Children, and Youth (CSWICY)

CFDA: 93.153.

Legislative Authority: Public Health Service Act, Section 2671, 42 U.S.C. 300ff–71.

Purpose: The Purpose of the Title IV funding is to improve access to primary medical care, research, and support Services for HIV-infected women, infants, children and youth, and to provide support services for their affected family members. Funded projects will link clinical and other research with comprehensive care systems, and improve and expand the coordination of a system of comprehensive care for women, infants, children and youth who are HIV-infected. Funds will be used to support programs that: (1) Link established systems of care to coordinate service delivery, HIV prevention efforts, and clinical research and other research activities, and (2) address the intensity of service needs, high costs, and other complex barriers to comprehensive care and research experienced by medically underserved and hard-to-reach populations. Activities under these grants should address the goals of enrolling and maintaining clients in HIV primary care; increasing client access to research by linking development and support of comprehensive, community-based and family-centered care infrastructures; and emphasizing prevention within the care system, particularly the prevention of perinatal HIV transmission.

Eligibility: Eligible organizations are public or private nonprofit entities that provide or arrange for primary care. Current grantees and new organizations proposing to serve the same patients and populations currently being serviced by these existing Projects are eligible to apply. Faith-based and community-based organizations are eligible to apply.

Limited Competition

Applications are limited to the areas where Project Periods expire in FY 2004. These areas are:

AL—Baldwin; Mobile
AR—Clay; Cleburne; Craighead; Fulton; Greene; Independence; Izard; Jackson; Lawrence; Marion; Poinsett; Randolph; Searcy; Sharp; White
AZ—Maricopa
CA—Los Angeles; Alameda; Contra Costa; San Francisco; Sonoma
CO—Adams; Arapahoe; Boulder; Denver; Douglas; El Paso; Jefferson
FL—Hillsborough; Pinellas; Pasco; Manatee; Sarasota; Duval; St. Johns; Clay; Nassau; Baker; Flagler; Volusia;
GA—South East; Clayton; Dekalb; Cobb; Fulton; Gwinnett Appling; Atkinson; Bacon; Brantley; Bulloch; Candler; Charlton; Clinch; Coffee; Evans; Jeff Davis; Pierce; Tattnall; toombs; Ware; Wayne
IL—Cook
KY—Jefferson
MA—Barnstable; Berkshire; Bristol; Dukes; Essex; Franklin; Hampden; Hampshire; Middlesex; Nantucket; Norfolk; Plymouth; Worcester
MO—St. Louis City; St. Louis; St. Clair; Madison
NC—Gates; Perquimans; Pasquotank; Chowan; Bertie; Martin; Pitt; Beaufort; Greene; Pamlico; Hyde; Washington; Tyrrell Alamance; Caswell; Guilford; Randolph; Rockingham
NM—Bernalillo; Torrance; Valencia
NV—State wide except Clark, Lincoln
NY—Bronx; New York; Kings; Richmond; Queens; Albany; Clinton; Columbia; Delaware; Dutchess; Essex; Franklin; Fulton; Greene; Hamilton; Herkimer; Montgomery; Oneida; Otsego; Rensselaer; Saratoga; Schenectady; Schoharie; Sullivan; Ulster; Warren; Washington
OK—State wide coverage
PA—Butler; Armstrong; Beaver; Allegheny; Westmoreland; Washington; Somerset; Cambria; Fayette; Greene
TN—Shelby; Fayette; Tipton; MS Desoto; AR Crittenden
TX—Dallas; Tarrant; Denton; Ellis; Kaufman; Smith; Gregg; Anderson; Navarro; Collin; Parker; Johnson; Hood; Navarro; Somervell; Erath; Palo Pinto; Wise
VA—Halifax; Charlotte; Prince Edward; Buckingham; Amelia; Powhatan;

Nottoway; Chesterfield; Dinwiddie; Sussex; Charles City; New Kent; Hanover
VI—St. Thomas; St. Croix; St. John
WI—State wide coverage

Review Criteria: Final Review Criteria are included in the Application kit.

Funding Preferences: Preference for Funding will be given to Projects that support a comprehensive, Coordinated system of HIV care serving HIV-infected Women, Infants, Children and Youth, and their families, and are linked with or have initiated activities to link with clinical trials or other Research

Estimated Amount of this Competition: $22,276,300.

Estimated Number of Awards: 32.

Estimated Project Period: 3 years.

HRSA–04–047 Title IV: Grants for Coordinated HIV Services and Access to Research for Women, Infants, Children, and Youth (CSWICY)

Application Availability Date: November 5, 2003.

Application Deadline: January 5, 2004.

Projected Award Date: August 1, 2004.

Program Contact Person: Wayne Sauseda.

Program Contact Phone: 301–443–0493.

Program Contact E-Mail: *wsauseda@hrsa.gov.*

HRSA–04–048 Title IV: Grants for Coordinated HIV Services and Access to Research for Women, Infants, Children, and Youth: Youth Services Initiative (CSWICY: YSI)

CFDA: 93.153.

Legislative Authority: Public Health Service Act, Section 2671, 42 U.S.C. 300ff–71.

Purpose: The purpose of this initiative is to foster and expand systems of health care and social support services for youth (age 13–24) at risk for or infected with HIV in order to identify infected youth and enroll them in HIV primary care. Grantees will identify additional HIV infected youth and develop, coordinate and provide support services to enroll and maintain them in primary medical care. Adolescent clients should be enrolled into care early in the spectrum of disease and managed throughout the infection. In partnership with other Ryan White funded programs or other agencies, applicants will integrate youth services into existing systems of care to provide access to comprehensive, coordinated primary care, research and social support services.

Eligibility: Eligible organizations are public or private nonprofit entities that provide or arrange for primary care. Current grantees and new organizations proposing to serve the same patients and populations currently being serviced by these existing projects are eligible to apply. Faith-based and community-based organizations are eligible to apply.

Limited Competition

Applications are limited to the areas where project periods expire in FY 2004. These areas are:

CA—Alameda; San Francisco; Los Angeles
DC—District of Columbia
FL—Hillsborough; Pinellas
IL—Cook; Dupage; Douglas; Lake
MA—Norfolk; Suffolk; Middlesex
MD—State Wide Coverage
NY—New York; Manhattan
PR—Island Wide
TN—Shelby; Tipton; Fayette; AR Crittenden
TX—Willacy; Cameron; Hidalgo; Dallas; Houston; Harrison

Review Criteria: Final review criteria are included in the application kit.

Funding Priorities: Priority will be given to applicants with a history of working with youth, especially youth infected with HIV. Priority will be given to projects proposed in geographic areas where epidemiologic data demonstrate high numbers of infected youth. This funding priority is consistent with Congressional direction to bridge targeted prevention and medical care and treatment services to youth and young adults.

Funding Preferences: Preference will be given to currently funded adolescent programs that have enrolled significant numbers of HIV infected youth into a primary care system during the previous project period.

Estimated Amount of This Competition: 5,928,779.

Estimated Number of Awards: 16.

Estimated Project Period: 3 years.

HRSA–04–048 Title IV: Grants for Coordinated HIV Services and Access to Research for Women, Infants, Children, and Youth: Youth Services Initiative (CSWICY: YSI)

Application Availability Date: February 1, 2004.

Application Deadline: April 1, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Wayne Sauseda.

Program Contact Phone: 301–443–0493.

Program Contact E-Mail: *wsauseda@hrsa.gov.*

HRSA–04–005 Title III: Categorical Grant Program To Provide Outpatient Early Intervention Services With Respect to HIV Disease (EISEGA)

CFDA: 93.918.

Legislative Authority: Public Health Service Act, Section 2651, 42 U.S.C. 300ff–51.

Purpose: The purpose of this funding is to provide, on an ongoing outpatient basis, high quality early intervention services/primary care to individuals with HIV infection. This is accomplished by increasing the present capacity and capability of eligible ambulatory health service entities. These expanded services become part of a continuum of HIV prevention and care for individuals who are at risk for HIV infections or are HIV infected. All early intervention services (EIS) programs must provide: HIV counseling and testing; counseling and education on living with HIV; appropriate medical evaluation and clinical care; and other essential services such as oral health care, outpatient mental health services, outpatient substance abuse services and nutritional services, and appropriate referrals for specialty services.

For the EIS Grants, a major focus is on increasing access to HIV primary care and support services for communities of color. Funding available through the Minority AIDS Initiative has improved our ability to fund indigenous organizations and those serving communities of color to deliver and implement culturally/linguistically proficient primary care HIV services. Funding preferences have been established for organizations serving communities of color that are highly affected by HIV/AIDS in an effort to improve care, and reduce disparities in health outcomes. These preferences are consistent with Congressional direction to maximize the participation of minority community-based organizations in delivering Early Intervention Services.

Eligibility: Applicants are limited to public or private nonprofit entities that are currently funded Title III programs whose project periods expire in FY 2004 or FY 2005 and new organizations proposing to serve the same patients and populations currently being serviced by these existing projects. Grantees must be public or private non-profit agencies. These may include but are not limited to: Consolidated Health Center Programs (Community Health Centers, Migrant Health Centers, Health Care for the Homeless, Public Housing Primary Care and Healthy Schools, Healthy Communities) receiving support under Section 330 of the PHS

Act; Family planning agencies under Section 1001 of the PHS Act, other than States; Comprehensive Hemophilia Diagnostic and Treatment Centers; Federally qualified health centers as described in Title XIX, Section 1905 of the Social Security Act; Nonprofit private entities that currently provide comprehensive primary care services to populations at risk of HIV disease; Local health departments; University/Medical Center affiliated clinics.

Faith-based and community-based organizations are eligible to apply.

State and Service Area of Project Periods ending 6/30/04:

AK—Municipality of Anchorage
AR—Arkansas; Ashley; Chicot; Desha; Drew; Jefferson; Lincoln; Pulaski; Lonoke; Prairie; Francis; Woodruff Crittenden; Cross; Lee; Mississippi; Monroe; St.
CA—Kern; Los Angeles
CT—Fairfield; New Haven
FL—Broward; St. Lucie; Martin; Ft. Pierce; Indiantown; Collier
IA—Dallas; Polk; Warren; Appanoose; Cedar; Clinton; Davis; Des Moines; Henry; Jackson; Jefferson; Johnson; Keokuk; Lee; Louisa; Mahaska; Monroe; Muscatine; Poweshiek; Scott; Van Buren; Wapello; Washington; Hancock; Henderson; Knox; McDonough; Mercer; Rock Is
ID—Ada; Boise; Elmore; Valley; Owyhee; Canyon; Gem; Payette; Washington; Adams; Butte; Bingham; Power; Bannock; Caribou; Oneida; Franklin; Bear Lake
KY—Pike
MA—Barnstable; Plymouth; Suffolk; Worcester; Norfolk
MI—Wayne
MS—Bolivar; Sunflower; Washington
MT—Beaverhead; Big Horn; Blaine; Broadwater; Carbon; Carter; Cascade; Chouteau; Custer; Daniels; Dawson; Deer Lodge; Fallon; Fergus; Flathead; Gallatin; Garfield; Glacier; Golden Valley; Granite; Hill; Judith Basin; Lake; Lewis and Clark; Liberty; Lincoln
NC—Durham; Wake; Orange; Granville; Vance
NJ—Union; Monmouth; Mercer; Middlesex; Somerset; Hunterdon
NY—Westchester; Putnam; Dutchess; Columbia; Orange; Ulster
NY—Bronx; Albany; Rensselaer
PA—Philadelphia; York
PR—Lares; Barranquitas; Camuy; Ciales; Cidra; Comerio; Corozal; Florida; Naranjito; Hatillo; Patillas; Orocovis Mayaguez; San Sebastian; Western Puerto Rico Gurabo; Caguas; San Lorenzo; Cidra; Cayey
SC—Beaufort; Hampton; Jasper
TX—Bexar
VA Covington City; Clifton Forge City; Alleghany; Botetourt; Craig; Roanoke City; Salem City; Roanoke; Amherst; Appomattox; Bedford; Bedford City; Campbell; Lynchburg City; Buchanan; Dickenson; Russell; Tazewell; Danville City; Pittsylvania; Franklin; Henry
VT—Addison; Bennington; Caledonia; Chittenden; Essex; Franklin; Grand Isle; Lamoille; Orange; Orleans; Rutland; Washington; Windham; Windsor
WI—Dane; Adams; Buffalo; Crawford; Columbia; Dodge; Green; Fond Du Lac; Calumet; Pepin; Trempealeau; Jackson; La Crosse; Monroe; Vernon; Grant; Lafayette; Iowa; Jefferson; Sauk; Richland; Juneau; Marquette; Waushara; Waupaca; Winnebago; Sheboygan; Rock; Gree

State and Service Area of Project Periods ending 3/31/05:

AK—Anchorage Borough; Fairbanks North Star Borough; Juneau Borough
AR—Baxter; Clay; Cleburne; Craighead; Fulton; Greene; Independence; Izard; Jackson; Lawrence; Marion; Poinsett; Randolph; Searcy; Sharp; Stone; Van Buren; White
CA—Los Angeles; Sacramento; Fresno; San Diego
CT—Middlesex; New London; New Haven; Hartford
DC—District of Columbia
FL—Franklin; Gadsden; Jefferson; Leon; Liberty; Madison; Taylor; Wakulla; Dade; Miami Beach; Miami Lake; Osceola; Orange; Brevard; Volusia; Polk; Seminole
GA—Clarke; Elbert; Greene; Jackson; Madison; Morgan; Oconee; Oglethorpe; Walton; DeKalb
IL—Cook
IN—Lake
KY—Anderson; Bourbon; Boyle; Bath; Boyd; Bracken; Clark; Estill; Fayette; Franklin; Garrard; Jessamine; Lincoln; Madison; Mercer; Nicholas; Powell; Scott; Woodford; Fleming; Lewis; Mason; Robertson; Menifee; Montgomery; Morgan; Rowan; Carter; Elliott; Greenu; Henderson; Daviess; Union; Webster
LA—Allen; Avoyelles; Catahoula; Concordia; Grant; La Salle; Rapides; Vernon; Winn, Orleans
LA—Caldwell; Franklin; Jackson; Lincoln; Morehouse; Ouachita; Union; West Carroll; Bossier; Caddo
MA—Nantucket; Dukes; Barnstable; Worcester; Essex Middlesex; Norfolk; Suffolk; Plymouth
ME—Washington; Hancock; Penobscot; Piscataquis; Aroostook
MN—Beltrami; Clearwater; Pine; Sherburne; Anoka; Benton; Mille Lacs; Goodhue; Wabasha; Olmsted; Dodge; Mower; Lincoln; Lyon; Yellow Medicine; Renville; Lac Qui Parle; Chippewa; Redwood
MO—Andrew; Atchison; Buchanan; Caldwell; Carroll; Clinton; Daviess; DeKalb; Gentry; Grundy; Harrison; Holt; Livingston; Mercer; Nodaway; Worth
MS—Yazoo; Madison; Sharkey; Warren; Claiborne; Hinds; Copiah; Simpson; Rankin; Issaquena
NY—Warren; Washington; Hamilton; Essex; Saratoga; Bronx Kings; New York; Queens; Bronx; Staten Island
OH—Medina; Summit; Portage; Stark; Carroll; Holmes; Wayne; Tuscarawas; Williams; Wood; Fulton; Lucas; Ottawa; Defiance; Henry; Sandusky
PA—Philadelphia; Dauphin; Erie; Northampton
PA—Cameron; Clarion; Clearfield; Crawford; Elk; Erie; Forest; Jefferson; Lawrence; McKean; Mercer; Venango; Warren
RI—Providence
SC—Chester; Lancaster; Chesterfield; Darlington; Marlboro
SD—Union; Clay; Yankton; Bon Homme; Charles Mix; Lincoln; Turner; Hutchinson; Douglas; Minnehaha; McCook; Hanson; Davison; Aurora; Brule; Moody Lake; Miner; Sanborn; Buffalo; Brookings; Kingsbury; Beadle; Hand; Hyde; Hughes; Sully; Deuel; Hamlin; Codington
TN—Shelby
VA—Roanoke; Norton City; Wise; Dickenson; Russell; Scott; Washington; Tazewell; Smyth; Grayson; Carroll; Bland; Wythe; Galax City; Giles; Montgomery; Floyd; Patrick; Franklin; Henry; Craig; Alleghany; Covington City; Clifton Forge City; Botetourt; Bedford
WA—Spokane; Whitman; Garfield; Asotin; Adams; Lincoln; Ferry; Okanogan; Stevens; Pend Oreille; Whatcom; Skagit
WI—Milwaukee
WV—Boone; Putnam; Clay; Kanawha; Raleigh; Summers; Monroe; Wyoming; McDowell; Mercer; Braxton; Webster; Nicholas; Fayette; Greenbrier; Pocahontas

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: Preference will be given to applicants in an area experiencing an increase in the burden of providing services regarding HIV disease, as described by AIDS cases, sexually transmitted diseases, tuberculosis, drug abuse, lack of availability of early intervention services, lack of primary health providers other than the applicant, and the distance patients have to travel for

care. Preference will be given to applicants that provide services in rural (outside urbanized areas and urban clusters as described by the U.S. Census Bureau) or underserved communities where the HIV epidemic is increasing and in areas that receive limited or no Ryan White CARE Act monies. Preference will be given to organizations serving communities of color that are highly impacted by HIV/AIDS, and are supported by the communities of color proposed to be served. This preference is consistent with Congressional direction to maximize the participation of minority community based organizations that have a history of serving communities of color.

Estimated Amount of This Competition: $94,116,800.

Estimated Number of Awards: 177.

Estimated Project Period: 3 years.

HRSA–04–005 Title III: Categorical Grant Program To Provide Outpatient Early Intervention Services With Respect to HIV Disease (EISEGA)

Application Availability Date: October 22, 2003; August 15, 2004.

Application Deadline: December 22, 2003; October 15, 2004.

Projected Award Date: July 1, 2004; April 1, 2005.

Program Contact Person: Wayne Sauseda.

Program Contact Phone: 301–443–0493.

Program Contact E-Mail: *wsauseda@hrsa.gov.*

Explanation: Application Availability Date is October 22, 2003 for project period ending June 30, 2004. Application Availability Date is August 15, 2004 for project periods ending March 31, 2005. Application Deadline is December 22, 2003 for project period ending June 30, 2004. Application Deadline is October 15, 2004 for project period ending March 31, 2005. Competition for programs with project periods ending December 31, 2003 and March 30,2004 were announced in a previously published **Federal Register** Notice. Contact Wayne Sauseda for further information.

HRSA–04–049 Title III: Early Intervention Services Planning Grants (EISPG)

CFDA: 93.918.

Legislative Authority: Public Health Service Act, Section 2654(c), 42 U.S.C. 300ff–54(c).

Purpose: The purpose of this grant program is to support eligible entities in their efforts to plan for the provision of high quality comprehensive HIV primary health care services in rural or urban underserved areas and communities of color. Planning grants support the planning process and do not fund any service delivery or patient care.

Eligibility: Eligible applicants must be public or private nonprofit agencies. Faith-based and community-based organizations are eligible to apply.

Review Criteria: Final review criteria are included in the application kit.

Funding References: In awarding grants, preference will be given to applicants seeking funds that are located in or near the community(ies) of color they are intending to serve. This preference is consistent with Congressional direction to maximize participation of minority community-based organizations that have a history of serving communities of color.

Estimated Amount of This Competition: $500,000.

Estimated Number of Awards: 10.

Estimated Project Period: 1 year.

HRSA–04–049 Title III: Early Intervention Services Planning Grants (EISPG)

Application Availability Date: January 5, 2003.

Application Deadline: March 5, 2004.

Projected Award Date: August 1, 2004.

Program Contact Person: Wayne Sauseda.

Program Contact Phone: 301–443–0493.

Program Contact E-Mail: *wsauseda@hrsa.gov.*

HRSA–04–050 HIV Emergency Relief Grant Program for Eligible Metropolitan Areas (EMAS)

CFDA: 93.914.

Legislative Authority: Public Health Service Act, Title XXVI, Pub. L. 106–345, 42 U.S.C. 300ff–11 *et seq.*

Purpose: Part A (Title I) of the Ryan White CARE Act authorizes grants for outpatient and ambulatory health and support services to Eligible Metropolitan Areas (EMAs). These grants fund systems of community-based care composed of approximately 25 categories of medical and other health and social support services for individuals with HIV/AIDS in EMAs. These services are intended primarily for low income/under insured people living with HIV/AIDS. Fifty percent of the funds available are awarded according to a formula based on the estimated number of living cases of AIDS in the EMAs. The remaining funds, less any hold harmless amounts and amounts appropriated for the Minority AIDS Initiative (MAI), are awarded as discretionary supplemental grants based on the demonstration of additional need by the EMA.

Eligibility: Limited to 51 Eligible Metropolitan Areas (EMAs).

Estimated Amount of This Competition: $247.2 million (amount excludes MAI award amounts).

Estimated Number of Awards: 51.

Estimated Project Period: March 1, 2004 through February 28, 2005.

HRSA–04–050 HIV Emergency Relief Grant Program for Eligible Metropolitan Areas (EMAS)

Application Availability Date: July 15, 2003.

Application Deadline: October 1, 2003.

Projected Award Date: No later than 60 days post final FY 2004 Appropriation.

Program Contact Person: Douglas H. Morgan.

Program Contact Number: (301) 443–6745.

Program Contact E-Mail: *dmorgan@hrsa.gov.*

HRSA–04–008 AETC National Evaluation Center (NECCA)

CFDA: 93.15.

Legislative Authority: Public Health Service Act, as amended, 42 U.S.C. 300ff–111(a).

Purpose: This cooperative agreement will be awarded to an eligible 0entity to develop, test, and disseminate methods and models for evaluating the impact of clinical education and training on provider behavior and clinical practice, with respect to changes in knowledge and skills, clinical practice behavior, and clinical outcomes.

Federal Involvement: The scope of Federal involvement is included in the application kit.

Eligibility: Funding will be directed to activities designed for documentation and data collection, outcome evaluation, technical assistance, writing and dissemination. Eligible entities include public or private non-profit entities, including schools and academic health sciences centers. Faith-based and community-based organizations are eligible to apply.

Review Criteria: Applications will be reviewed by an objective review committee using the following criteria: Understanding of the Problem, Professional Qualifications and Expertise of Applicant, Organizational Capacity, Methods and Program Plan, and Appropriateness and Justification of the Budget.

Estimated Amount for This Competition: $450,000.

Estimated Number of Awards: 1.

Estimated Project Year: 3 years.

HRSA–04–008 AETC National Evaluation Center (NECCA)

Application Availability Date: August 15, 2003.

Application Deadline: October 6, 2003.

Projected Award Date: December 1, 2003.

Program Contact Person: Marisol M. Rodriguez.

Program Contact Phone: (301) 443–4082.

Program Contact E-Mail: *mrodriguez@hrsa.gov.*

Maternal and Child Health Programs

HRSA–04–051 Maternal and Child Health Research Program (MCHR)

CFDA: 93.110.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701(a)(2).

Purpose: The Maternal and Child Health Research Program will award grants for the following purposes: (1) Extramural MCH Research Program to support applied research relating to maternal and child health services, which show promise of substantial contribution to the advancement of the current knowledge pool, and when used in States and communities should result in health and health services improvements; and (2) Pediatric Research Network Program to support a pediatric applied research network that promotes coordinated multi-centered research activities, focused on translating research to practice and that should result in health and health service improvements when applied directly into pediatric primary care and/or service settings.

Eligibility: For program purpose, only public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or in programs relating to maternal and child health and/or services for children with special health care needs may apply for grants for research in maternal and child health services or in services for children with special health care needs, as cited in 42 CFR Part 51a.3 (b).

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition:

For program purpose—
(1) Extramural MCH Research Program: $2,800,000.
(2) Pediatric Research Network Program: $400,000.

Estimated Number of Awards:

For program purpose—
(1) Extramural MCH Research Program: 10 awards.
(2) Pediatric Research Network Program: 1 award.

Estimated Project Period:

For program purpose—
(1) Extramural MCH Research Program: Up to 4 years.
(2) Pediatric Research Network Program: 5 years.

HRSA–04–051 Maternal and Child Health Research Program (MCHR)

Application Availability Date:

For program purpose—
(1) Extramural MCH Research Program: Continuously.
(2) Pediatric Research Network Program: December 15, 2003.

Application Deadline:

(1) Extramural MCH Research Program: March 1, 2004; and August 15, 2004.
(2) Pediatric Research Network Program: March 1, 2004.

Projected Award Date:

(1) Extramural MCH Research Program: September 1, 2004, January 1, 2005.
(2) Pediatric Research Network: September 1, 2004.

Program Contact Person:

(1) Extramural MCH Research Program: Rita Haggerty (e-mail: *rhaggerty@hrsa.gov*) or Hae Young Park (e-mail: *hpark@hrsa.gov*).
(2) Pediatric Research Network Program: Rita Haggerty.

Program Contact Phone: 301–443–2207.

HRSA–04–052 Maternal and Child Health Minority Research Infrastructure Support Program (RMIN)

CFDA: 93.110.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701(a)(2).

Purpose: The purpose of this program is to increase the capacity of institutions and their faculty to conduct rigorous maternal and child health (MCH) applied research addressing issues relating to health disparities. The intent of the research infrastructure program is to strengthen the research environments of institutions through grant support to develop and/or expand existing capacities for conducting research in all areas of MCH care and services, which shows promise of substantial contribution to the advancement of current knowledge pool, and when used in States and communities should result in health and health services improvements.

Eligibility: As cited in 42 CFR Part 51a.3(b), only public or nonprofit institutions of higher learning and public or private nonprofit agencies engaged in research or in programs relating to maternal and child health and/or services for children with special health care needs may apply for grants for research in maternal and child health services or in services for children with special health care needs.

Funding Preferences: All eligible applications will be considered. However, the Surgeon General's Healthy People 2010 Objectives, the Institute of Medicine's report Unequal Treatment: Confronting Racial and Ethnic Disparities in Health Care, and the HHS Secretary's initiative to eliminate racial and ethnic disparities in health all evidence a continuing—if not growing—trend of inequities in the health status of racial, ethnic and low income groups. In order to enhance research outcomes on health disparities in areas of MCH care and services (*e.g.*, prenatal care, low birth weight, immunizations, maternal and infant morality), the program is seeking applicants who demonstrate: geographic proximity, a history of established relationships and commitment to the well being of the proposed study population, trust of the community, availability of researchers with cultural and linguistic competence relative to the research population, and evidence of research experience in the area to be studied with resultant professional presentations and/or publications.

Review Criteria: Final review criteria are included in the application guidance material.

Estimated Amount of This Competition: $250,000.

Estimated Number of Awards: 2.

Estimated or Average Size of Each Award: $125,000.

Estimated Project Period: 5 years.

HRSA–04–052 Maternal and Child Health Minority Research Infrastructure Support Program (RMIN)

Application Availability Date: December 1, 2003.

Application Deadline: March 26, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Hae Young Park and/or Roscoe G. Dandy.

Phone Number: (301) 443–2207 for Ms. Park or (301) 443–2964 for Dr. Dandy.

E-Mail: hpark@hrsa.gov and *rdandy@hrsa.gov.*

HRSA–04–053 Long Term MCH Training (MCHLT)

CFDA: 93.110.

Legislative Authority: Social Security Act, Title V, Section 501(a)(2), 42 U.S.C. 702(b)(2).

Purpose:

(1) Long Term Training in Leadership Education in Neurodevelopmental and Related Disabilities (LEND) (T73)

The purpose of the Maternal and Child Health Interdisciplinary Leadership Education in Neurodevelopmental and Related Disabilities (LEND) program is to improve the health status of infants, children, and adolescents with, or at risk for, neurodevelopmental and related disabilities, including mental retardation, neurodegenerative and acquired neurological disorders, and multiple handicaps. The educational curricula emphasize the integration of services supported by State, local agencies, organizations, private providers and communities. The LEND programs will prepare health professionals to assist children and their families to achieve their developmental potentials by forging a community-based partnership of health resources and community leadership.

(2) Leadership Education Certificate in Public Health (T04)

The purpose of this program is to strengthen the Nation's Maternal and Child Health Public Health system by broadening the leadership base of the current and future MCH workforce. Emphasis will be placed on developing the public health workforce through innovative strategies that address the special education needs of health professionals who: live in isolated geographic communities; need to enhance or advance their skills while continuing to meet their daily on site work and family responsibilities; and/or are from underserved or underrepresented populations. These training programs could lead to a graduate degree (*i.e.*, Masters in Public Health) and/or in-depth training which is tailored to the specific needs of public health students in improving their skills (*i.e.*, certificate program). Institutions are encouraged to develop the certificate and degree programs for students who desire to build upon previous course work to continue their formal education.

Eligibility: As cited in 42 CFR Part 51a.3(b), only public or private nonprofit institutions of higher learning may apply for training grants.

Review Criteria: Final review criteria are included in the application kit.

Special Considerations:

(1) In the interest of equitable geographic distribution, special consideration for funding may be given to projects from States or jurisdictions without a currently funded project in this category.

Estimated Amount of This Competition:

(1) LEND $8,219,000.

(2) Leadership Educ. Certificate in Public Health, $720,000.

Estimated Number of Awards:

(1) LEND, 17.

(2) Leadership Educ. Certificate in Public Health, 4.

Estimated Project Period: 5 years.

HRSA–04–053 Long Term MCH Training (MCHLT)

Application Availability Date: September 12, 2003.

Letter of Intent Deadline: October 1, 2003.

Application Deadline: November 20, 2003.

Projected Award Date:

(1) LEND, July 1, 2004.

(2) Leadership Education in Public Health, June 1, 2004.

Program Contact Person:

(1) LEND, Denise Sofka.

(2) Leadership Education in Public Health, Nanette H. Pepper.

Program Contact Phone:

(1) LEND, (301) 443–0344.

(2) Leadership Education in Public Health, (301) 443–6445.

Program Contact E-Mail:

(1) LEND, *dsofka@hrsa.gov.*

(2) Leadership Education in Public Health, *npepper@hrsa.gov.*

HRSA–04–054 Continuing Education and Development (CED)

CFDA: 93.110.

Legislative Authority: Social Security Act, Title V, Section 501(a)(2), 42 U.S.C. 701(a)(2).

Purpose:

(1) Continuing Education and Development (General) (T02)

Continuing Education and Development (CED) focuses on increasing the leadership skills of MCH professionals by facilitating the timely transfer of new information, research findings, and technology related to MCH; and updating and improving the knowledge and skills of health and related professionals in programs serving mothers and children. CED programs support the conduct of short-term, non-degree related courses, workshops, conferences, symposia, institutes and distance learning strategies and/or development of curricula, guidelines, standards of practice, and educational tools/strategies intended to assure quality health care for the MCH population.

Programs must address a critical MCH training need, such as, but not limited to, oral health, behavioral health, cultural competency, core public health functions, asthma, early identification/detection of children with special health care needs, suicide prevention, health education, nutrition, nursing, or inter-professional education.

(2) Continuing Education/Distance Learning (T21)

Alternative education methodologies provide effective and efficient means by which maternal and child health (MCH) professionals can enhance and advance their analytical, managerial, administrative and clinical skills while continuing to meet their daily on-site responsibilities. These functions include assessing need; utilizing data; developing policies and programs; addressing and resolving problems; monitoring progress and evaluating performance. This grant program supports the development, implementation, creative utilization, application and evaluation of distance education opportunities for maternal and child health (MCH) professionals. Projects will work collaboratively with each other and the MCH Bureau to provide technical assistance in distance education and technology to the MCH community.

Eligibility: As cited in 42 CFR Part 51a.3(b), only public or private institutions of higher learning may apply for training grants.

Review Criteria: Final review criteria are included in the application kit.

Special Considerations:

(1) Special consideration will be given to applicants serving underrepresented minority students.

Estimated Amount of this Competition:

(1) Continuing Education and Development, $300,000;

(2) CED/Distance Learning, $525,000

Estimated Number of Awards:

(1) Continuing Education and Development, 10

(2) CED/Distance Learning, 4

Estimated Project Period:

(1) Continuing Education and Development, 1–3 years

(2) CED/Distance Learning, 3 years

HRSA–04–054 Continuing Education and Development (CED)

Application Availability Date: November 14, 2003.

Letter of Intent Deadline: December 15, 2003.

Application Deadline: January 15, 2004.

Projected Award Date: June 1, 2004.

Program Contact Person:

(1) Continuing Education and Development, Diana L. Rule

(2) CED/Distance Learning, Aaron Favors

Program Contact Phone:

(1) Continuing Education and Development, (301) 443–0283

(2) CED/Distance Learning, (301) 443–0392

Program Contact E-Mail:

(1) Continuing Education and Development, *drule@hrsa.gov*

(2) CED/Distance Learning, *afavors@hrsa.gov*

HRSA–04–055 Genetic Services Projects: Delivery of Genetic Services (GSGE) and Regional Newborn Screening and Genetics Collaboratives (GSRC)

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

CFDA: 93.110.

Purpose: The purpose of this grant activity is to fund two separate initiatives to establish demonstration projects to address issues confronting State newborn screening and State Title V genetics programs. These initiatives will provide models, best practices, and dissemination strategies for ensuring optimal follow-up and management for children identified with heritable conditions by helping to translate genetic technological advances into practice.

Initiative 1—Regional Newborn Screening and Genetics Collaboratives

The purpose of this grant activity is to establish demonstration projects that enhance and support the newborn screening and genetics service capacity of State Title V programs. The projects will reflect partnerships among State programs, medical homes, families, and tertiary care centers. The projects will focus on ensuring optimal follow-up and management for children identified with heritable conditions by helping to translate genetic technological advances into practice. They will also undertake a regional approach toward addressing the maldistribution of genetic resources. The initiative will establish Collaboratives to: Serve as regional focus of genetics expertise for the sub-specialty care and treatment and management of children identified with heritable disorders by newborn screening; Demonstrate partnerships with multiple state newborn screening and Title V programs within a region, modeling a regional approach toward facilitating access to the genetics expertise that providers and families need to diagnose and manage children identified with heritable disorders; Provide information, educational resources, technical assistance, and support to the medical homes within the region in the treatment and management of children identified with heritable disorders by newborn screening, as well as to the families of the children identified with heritable disorders in the region. This will be done by: Utilizing innovations in communication and telehealth medicine; Demonstrating partnerships with existing comprehensive care programs to provide genetics expertise; Demonstrating the ability to offer technical assistance to State newborn screening and Title V programs served by the region; Assessing the long term health outcomes of children identified by newborn screening in this region and the clinical validity and utility of this regional approach; and Addressing issues related to the incidence of heritable conditions identified by newborn screening in the region. Funds available: $2,000,000 for 4 cooperative agreements. The cooperative agreements will be funded for five years, subject to the availability of funding for years 2 through 5 and satisfactory grantee performance.

Initiative 2—Delivery of Genetic Services

The purpose of this grant activity is to establish 5 separate demonstration projects to examine genetic service issues such as service delivery and capacity, developing communities of practice for systems integration, quality of services, genetic literacy, education and awareness and the multiple social and ethical issues that have emerged from the use of new and evolving genetic technologies within these programs. All projects must consider the complexity of the public health and health care delivery systems. Applications may address Projects 1–5. Funds available: $1,000,000 for 5 cooperative agreements. The cooperative agreements will be funded for two years, subject to the availability of funding for the second year and satisfactory grantee performance.

- One project will identify strategies and develop materials and a model that identifies and measures quantifiable performance criteria for newborn genetic screening programs. Issues such as expanded newborn screening, missed infants, false positive results, and delayed diagnosis will be addressed—Project 1.
- One project will identify strategies and develop materials and a model that utilizes a consumer-based family history tool to increase awareness about genetics—Project 2.
- One project will identify strategies and develop materials and a model to evaluate existing data and recommend and weight priorities on health and economic value of genetic services, including genetic testing, education and counseling to provide important cost, health outcomes, and quality of care data—Project 3.
- One project will identify strategies and develop materials for addressing the ethical social issues surrounding the use of new and emerging technologies, the current models for delivering genetic tests and other genetic services—Project 4.
- One project will establish a resource center for developing a community of practice model for Genetic Service Branch's Best Practices in the Integration of Newborn Metabolic Screening Programs with Other Public Health Programs. The purpose of this resource center is to develop and implement policy initiatives related to achieving policy that supports integrating newborn metabolic screening programs with other public health programs and the health care delivery system. Components of the policy include definitions of integration, core function specification, standards of practice, and indicators to monitor and measure progress and outcomes. Direct involvement from a variety of public health programs and support functions, health care providers, community members, and families will be necessary for success because of the multiple, critical roles they play in the health of a newborn—Project 5.

Federal Involvement: The scope of federal involvement with respect to all of the cooperative agreements is included in the application kit.

Eligibility: As cited in 42CFR Part 51 a.3(a) any public or private entity, including an Indian Tribe or Tribal organization (as those terms are defined in 25 U.S.C. 450(b)) is eligible to apply for Federal Funding.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of this Competition: $3,200,000.

Estimated Number of Awards: 9.

Estimated Project Period: 5 years for Priority 1 projects (Regional Newborn Screening and Genetics Collaboratives-GSRC) and 2 years for Priority 2 projects (Delivery of Genetic Services-GSGE).

HRSA–04–055 Genetic Services Projects: Delivery of Genetic Services (GSGE) and Regional Newborn Screening and Genetics Collaboratives (GSRC)

Application Availability: October 15, 2003.

Letter of Intent Deadline: December 1, 2003.

Application Deadline: January 9, 2004.

Estimated Project Start Date: July 1, 2004.

Program Contact Name: Michele A. Lloyd-Puryear.

Program Contact E-Mail: *mpuryear@hrsa.gov.*

Program Contact Telephone: 301–443–1080.

HRSA–04–056 Medical Home for Children With Special Health Care Needs (MHCSH)

CFDA: 93.110.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: In February 2001, President Bush released the New Freedom Initiative, a comprehensive plan to tear down barriers facing people with disabilities and preventing them from participating fully in community life. This broad interagency initiative calls upon the Federal government to assist States and localities to implement the decision of the Supreme Court in Olmstead v L.C., which requires States to place qualified individuals with mental disabilities in community settings in certain circumstances. As part of this initiative, HRSA was charged with "developing and implementing a plan to achieve appropriate community-based service systems for children and youth with special health care needs (CYSHCN) and their families." A core component of community systems is that every child with a special health care need must have access to a regular ongoing source of health care in the community, *i.e.*, a medical home. The medical home is articulated through the Healthy People 2010 Objectives and is a core performance measure for Title V Maternal and Child Health Programs. This initiative supports the medical home component of the President's New Freedom Initiative through: (1) A national resource center; (2) state implementation grants; (3) targeted support to pediatric practices for service models; (4) grants to assure access to specialty services; and (5) a cooperative agreement using autism as a case example to improve early identification and clinical management and referrals. These priorities will provide models, best practices, and dissemination strategies for ensuring that all children and youth with special health care needs have the services and support necessary for full community inclusion.

Priority 1

National Resource Center on Medical Home Implementation. One cooperative agreement to: (1) Develop and implement policy initiatives related to achieving medical homes for children and youth with special health care needs; (2) establish and implement strategies for enhancing timely interactive communication, including telecommunication, among pediatricians, health care providers, community leaders, and policy-makers concerned with access, appropriateness, and coordination of primary care with specialty care and the array of other services required for this population of children and families; (3) promote activities that establish medical home as the standard of care for all community-based primary care physicians caring for children with special needs; (4) expand and enhance the capacity to collect, analyze, and use quantitative and qualitative data to promote medical homes for children with special health care needs; (5) facilitate the development of resources that increase access and awareness of the medical home for families and children with special health care needs; (6) assist states in implementation, assessment, and evaluation of strategies to promote Healthy People 2010 Goals and the President's New Freedom Initiative around community based systems of care for children with special health care needs; and (7) build upon the operational definition of a medical home, utilizing tools that have been developed, such as the medical home index and continuous quality improvement measures. Funds available: $700,000 for one cooperative agreement. The scope of Federal involvement with respect to all cooperative agreements is included in the Application Kit. The cooperative agreement has a 5 year project period. Funding for the 2–5 years is contingent upon the availability of funds and satisfactory performance of the grantee.

Priority 2

Integrating and Sustaining Medical Home through Statewide Implementation. Grants to States to improve and ensure the sustainability of statewide implementation of the medical home for CSHCN. Applicants must: (1) Conduct a medical home needs assessment based on the State-specific findings of the National Survey of CSHCN and incorporate those findings into the Block Grant Application; (2) incorporate medical home into the ongoing budget for the State Title V program; (3) implement/expand a plan for achieving statewide implementation of medical home; (4) participate in a continuous quality improvement strategy with primary care practices in the state; (5) develop and implement a structured plan for fiscal and programmatic sustainability; and (6) implement formative and summative evaluation activities. Funds available: $1,200,000 for 6–8 grants. Grants are for four years.

Priority 3

Medical Home Implementation through Community-Based, Primary Care Practices. Grants to primary care practices/networks to improve the ability of community primary care practices to become medical homes and to promote and support community inclusion for children and youth with special health care needs by better linking medical homes with early intervention, child care, Head Start, schools, and other community programs. Eligible applicants are: (a) networks of medical home providers including but not limited to State primary care professional organizations and other existing networks of primary care practices: and (b) individual primary care practices. Funds available: $800,000 for grants up to $50,000 for individual practices, or up to $250,000 for Network applications supporting at least five pediatric primary care practices. Grants are for four years.

Priority 4

Subspecialty Capacity-Building. Grants to develop strategies for partnership between State Title V agencies, subspecialty networks, and the medical home to improve access and availability of health/medical services to support children and youth in their community. Funds will support: (a) Comprehensive Statewide, contiguous State, or national needs assessments of workforce capacity for specialists and sub-specialists serving CSHCN; (b) development and implementation of a plan to improve workforce capacity; and (c) strengthen subspecialty relationships with the medical home. The plan must define and articulate the role of subspecialty networks, the medical home, and Title V in improving access to and availability of appropriate health and related services to support inclusion of children and youth in their community. Funds available: $400,000 for 2 grants up to $200,000. Grants are for four years.

Priority 5

Early Identification and Intervention for Children with Autism. A cooperative agreement to improve the capacity of the medical home and the early intervention community to identify, appropriately serve, and integrate children with autism into their communities. The cooperative agreement will: (a) Work with MCHB, family leaders, and pediatric primary care providers to improve medical home capacity for early identification of

young children with autism; (b) support the work of HRSA on the Interagency Autism Coordinating Council; (c) collaborate with CDC's national awareness campaign to ensure that medical homes are well-prepared to support identified children; and (d) implement community-based strategies to link the medical home with early intervention programs for children identified as having autism. Funds available: $300,000 for one cooperative agreement. The scope of Federal involvement with respect to all cooperative agreements is included in the Application Kit. The cooperative agreement is for four years.

Eligibility: As cited in 42 CFR Part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization, faith based and community based organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of this Competition: $3,400,000.

Estimated Number of Awards: 18.

Estimated Project Period: See purpose.

HRSA–04–056 Medical Home for Children With Special Health Care Needs (MHCSH)

Application Availability Date: October 15, 2003.

Letter of Intent Deadline: November 17, 2003.

Application Deadline: January 15, 2004.

Projected Award Date: July 1, 2004.

Program Contact Person: Monique Fountain.

Program Contact Phone: 301 443–2370.

Program Contact E-mail: *mfountain@hrsa.gov.*

HRSA–04–057 Adolescent Health Resource Cooperative Agreements (AHR)

CFDA: 93.110.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The overall purpose of the Adolescent Health Resource (AHR) program is to promote the health, development, safety, and social and emotional well-being of all school-aged children, adolescents, and young adults in the United States, and their families. It includes efforts that address the needs of decision-makers and professionals at national, State and community levels. The AHR program is founded on two frameworks: Healthy People 2010 and the principles of healthy youth development. Three categories of AHR cooperative agreement funding opportunities are offered for FY 2004: the State Adolescent Health Resource Center for Maternal and Child Health Personnel (SAMCH); the National Adolescent Health Information Center (NAHIC); and, the Public Policy Analysis and Education Center for Middle Childhood, Adolescent and Young Adult Health (PAE/CAYAH).

I. (SAMCH)—The specific purpose of this national technical assistance and resource center is to assist State Title V Maternal and Child Health Programs to promote core capacity in adolescent health and to improve measurable adolescent health status in such arenas as unintentional injury, interpersonal violence, mental health, substance use, reproductive health, nutrition and physical activity, and oral health. II. (NAHIC)—The specific purpose of the National Adolescent Health Information Center is to collect, synthesize, coordinate and disseminate information regarding the health, safety and well-being of school-aged children, adolescents, young adults, and their families. As part of this effort, this Center provides technical assistance, consultation and continuing education to States, communities, and groups of health professionals and decision-makers. III. (PAE/CAYAH)—The specific purpose of this Center is to analyze the effects of public policies, regulations and practices at the community, State and Federal levels on the health, safety and well-being of school-aged children, adolescents, young adults, and their families. The intent is to enhance the knowledge of, and to inform, policy and decision-makers as well as health professionals regarding the short- and long-term consequences of public policies on these population groups.

Federal Involvement: The scope of Federal involvement is included in the application kit.

Eligibility: As cited in 42 CFR Part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of this Competition: $695,000.

Estimated Number of Awards: 3.

Estimated Project Period: 5 years.

HRSA–04–057 Adolescent Health Resource Cooperative Agreements (AHR)

Application Availability Date: October 29, 2003.

Letter of Intent Deadline: December 17, 2003.

Application Deadline: January 5, 2004.

Projected Award Date: July 1, 2004.

Program Contact Person: Trina Menden Anglin.

Program Contact Phone: 301–443–4291.

Program Contact E-mail: *tanglin@hrsa.gov.*

HRSA–04–058 National Center on School-Based Health Care (NSBHC)

CFDA: 93.110.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this national resource center is to provide current, evidence-based information and other resources to school-based and school-linked health centers in order to improve and enhance their service capabilities and quality of care. As part of this effort, the Center will develop models of interagency and interdisciplinary collaboration for delivering health and mental health services in schools that involve school staff, school-based/linked health centers, and community agencies. The intent of Center activities will be to promote development of the school health infrastructure; foster the delivery of high quality services to students that integrate primary care, mental health, and substance abuse treatment services; contribute to positive health, social and educational outcomes; enhance collaboration between school-based/linked health care services and other school health programs; encourage parental involvement in the health care of their children and adolescents as well as engage parents in programs that promote health and prevent health risk behaviors; and address issues of practice management, such as quality improvement and financing of school-based/linked health care. Because this Center is national in scope, the applicant should be prepared to interact with the approximately 1500 school-based/linked health centers in our Nation, as well as with communities interested in developing this model of health care. The Center will be expected to interact collaboratively with other HRSA/MCHB programs that promote school health and adolescent health.

Federal Involvement: The scope of Federal involvement is included in the application kit.

Eligibility: As cited in 42 CFR Part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $200,000.

Estimated Number of Awards: 1.

Estimated Project Period: 5 years.

HRSA–04–058 National Center on School-Based Health Care (NSBHC)

Application Availability Date: October 29, 2003.

Letter of Intent Deadline: December 17, 2003.

Application Deadline: January 5, 2004.

Projected Award Date: July 1, 2004.

Program Contact Person: Isadora R. Hare.

Program Contact Phone: 301–443–6392.

Program Contact E-mail: *ihare@hrsa.gov.*

HRSA–04–059 Integrated Health and Behavioral Health Care for Children, Adolescents and Their Families (IHBHP)

CFDA: 93.110.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this set of planning grants is to assist community health care organizations to develop and formalize working relationships for planning a program of health service delivery for children, adolescents and their families that integrates physical and psychosocial primary care, comprehensive mental health services, and substance abuse prevention and treatment services. Plans for integration of services that are developed as part of grant activities need to address such issues as organizational structure, governance and executive leadership, staffing, education and training of personnel, facilities, information systems and protection of confidentiality, regulatory requirements, functioning in a managed care environment, fiscal arrangements, quality improvement and accountability, and involvement with the larger community. The ultimate goal of this initiative is to develop a set of integrated services models that meet the unique needs of different communities. This funding opportunity represents a third cycle for this initiative.

Eligibility: As cited in 42 CFR Part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization, faith based and community based organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding. Organizations that have previously received funding under this initiative are not eligible to apply.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $400,000.

Estimated Number of Awards: 8.

Estimated Project Period: 2 years.

HRSA–04–059 Integrated Health and Behavioral Health Care for Children, Adolescents and Their Families (IHBHP)

Application Availability Date: October 29, 2003.

Letter of Intent Deadline: December 17, 2003.

Application Deadline: February 2, 2004.

Projected Award Date: July 1, 2004.

Program Contact Person: Sharon Adamo.

Program Contact Phone: 301–443–3972.

Program Contact E-mail: *sadamo@hrsa.gov.*

HRSA–04–060 Breastfeeding Promotion in Physician's Office Practices (BPPOP)

CFDA: 93.110.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: This grant program is designed to: (1) Facilitate preparation of providers of obstetrical, family practice, pediatric health care and other health disciplines in office settings to effectively promote and manage breastfeeding with the goal to move breastfeeding initiation and duration rates toward the Healthy People 2010 national health objectives; (2) implement strategies to enroll health care providers working with underserved population in breastfeeding promotion, support, and technical assistance programs; and (3) encourage collaborations between obstetrical, pediatric, family health care, and other health providers at the local, state, and regional levels. Because this grant is national in scope, the applicant should be prepared to clearly demonstrate a national expertise and capacity for addressing breastfeeding promotion, support, and technical assistance issues related to providers of obstetrical, family practice and pediatric medical and health care to consumers and their families; and applicants building upon current breastfeeding promotion and support partnerships with professional organizations and federal agencies.

Eligibility: As cited in 42 CFR Part 51a.3(a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $200,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

HRSA–04–060 Breastfeeding Promotion in Physician's Office Practices (BPPOP)

Application Availability Date: January 27, 2004.

Letter of Intent Deadline: March 17, 2004.

Application Deadline: April 1, 2004.

Projected Award Date: September 30, 2004.

Program Contact Person: Denise Sofka.

Program Contact Phone: 301–443–0344.

Program Contact E-Mail: *dsofka@hrsa.gov.*

HRSA–04–061 Partnership for Information and Communication Cooperative Agreement Program (PICA)

CFDA: 93.110.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The general purpose of the Partnership for Information and Communication program is to collaborate with governmental, professional and private membership organizations representing community, state and private sector leaders to identify issues impacting maternal and child health, to share information about approaches to improving maternal and child health issues, and to clarify the particular perspectives of stakeholders in maternal and child health care. For FY 2004, two categories of PIC funding opportunities are offered:

I. Family Partnerships in Maternal and Child Health (FPPIC): The specific purpose of this category is to assist organizations representing the interests of culturally diverse families to: (a) Identify the particular concerns of those families regarding health, mental health and welfare; (b) collaborate with the MCHB to increase the involvement of culturally diverse families in MCH and Children with Special Health Care Needs (CSHCN) issues; (c) communicate to families, in a culturally competent manner, important issues identified by the MCHB; (d) assist state and local MCH/CSHCN programs in obtaining family perspectives from culturally diverse populations; and, (e) work collaboratively with other family organizations to promote the concerns of all families and to address health, mental health and social issues impacting families. Organizations will be selected in a manner to assure family representation from the variety of racial, ethnic and culturally diverse groups that make up the MCH/CSHCN population as well as family/parent

organizations having a particular issue of concern (e.g., mental health, education, safety). The program will consider both well-established family organizations and family organizations which are not so well-established but demonstrate promise in supporting and representing families of currently under represented groups.

II. MCH and Mental Health (MHPIC): The specific purpose of this category is to support national organizations representing family/child health programs and mental health services programs in States to develop new ways for their State constituents to better understand each others' roles and responsibilities, to identify areas of common concern, and to support new ways of facilitating State agencies to work together on behalf of the mental heath and well-being of women, children and families. The outcome of this effort will be the creation of a coherent system to promote the mentally healthy development of children and adolescents, support the emotional health of families, improve the ability of the health care system to identify mental health issues at the earliest possible stage, and improve the mental health system's ability to intervene appropriately with the full range of emotional problems.

Federal Involvement: The scope of Federal involvement is included in the application kit.

Eligibility: As cited in 42 CFR Part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization, faith-based and community-based organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: For the FPPIC category, national membership organizations representing parents will be considered for funding; for the MHPIC category, national membership organizations representing State health and mental health programs will be considered for funding.

Estimated Amount of This Competition: $700,000.

Estimated Number of Awards: 4—Funding is available to make 2 awards under the FPPIC category and 2 awards under the MHPIC category.

Estimated Project Period: 3 years.

HRSA–04–061 Partnership for Information and Communication Cooperative Agreement Program (PICA)

Application Availability Date: August 29, 2003.

Letter of Intent Deadline: September 18, 2003.

Application Deadline: November 17, 2003.

Projected Award Date: April 1, 2004.

Program Contact Person: Isadora Hare.

Program Contact Phone: 301–443–6392.

Program Contact E-Mail: *IHare@hrsa.gov.*

HRSA–04–062 Healthy Tomorrows Partnership for Children Program (HTPC)

CFDA: 93.110.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of this program is to stimulate innovative community-based programs that employ prevention strategies to promote access to health care for mothers and children nationwide. This year, the HTPC will fund 2 separate initiatives, HTPC-General and HTPC-Targeted. It is anticipated that HTPC-General grants will be awarded to approximately 9 recipients The intent of HTPC-General grants are: (1) To support the development of family-centered, community-based initiatives that plan and implement innovative and cost-effective approaches for focusing resources to promote community defined preventive child health and developmental objectives for vulnerable children and their families, especially those with limited access to quality health services; (2) foster/promote collaboration among community organizations, individuals, agencies, businesses, and families; (3) involve pediatricians and other pediatric health professionals in community-based service programs; and (4) build community and statewide partnerships among professionals in health, education, social services, government, and business to achieve self-sustaining programs to assure healthy children and families.

The HTPC-Targeted grants will focus on the following targeted areas: increased access to pediatric oral health services; enhancement of behavioral and/or psychosocial aspects of pediatric care; and developing and delivering clinical pediatric telemedicine services that enhance access to community-based health care services for medically underserved areas, or for medically underserved populations. It is anticipated that approximately 10 grants will be awarded to organizations who address a community need in these critical targeted areas.

Cost Sharing Flag: Yes.

Eligibility: As cited in 42 CFR Part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b) is eligible to apply for Federal funding. Community-based organizations, including faith-based organizations, are eligible to apply.

Review Criteria: Final review criteria are included in the application kit.

Special Considerations: In the interest of equitable geographic distribution, special consideration for funding may be given to projects from States without a currently funded project in this category. These States are: Alabama, Alaska, Delaware, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, West Virginia, Wisconsin, Wyoming, American Samoa, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Guam, Puerto Rico, Republic of Palau, Republic of the Marshall Islands, and the Virgin Islands.

Estimated Amount of This Competition: $950,000.

Estimated Number of Awards: 19.

Estimated or Average Size of Each Award: $50,000.

EStimated Project Period: 5 years.

HRSA–04–064 Healthy Tomorrows Partnership for Children Program (HTPC)

Application Availability Date: September 2, 2003.

Letter of Intent Deadline: September 29, 2003.

Application Deadline: October 29, 2003.

Projected Award Date: March 1, 2004.

Program Contact Person: Jose H. Belardo.

Program Contact Phone: 301–443–0757.

Program Contact E-Mail: *jbelardo@hrsa.gov.*

HRSA–04–063 Women's Health (MCH–WH)

CFDA: 93.110.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: Under this program, grants will be awarded in three areas each addressing significant issues in women's health: (1) Integrated Comprehensive Women's Health Services In State MCH Programs (ICWHS) will focus on expanding capacity in State MCH programs to improve women's health by providing a focal point for women's health to

establish linkages and build partnerships with state and other organizations; this focal point will also identify gaps and facilitate the establishment of an infrastructure for comprehensive women's health services; (2) Women's Behavioral Health Systems Building: Innovative Ideas For Local And State Collaboration (WBHS–LSC) will fund creative partnerships in the area of women's health, specifically women of childbearing age, to develop horizontal networks of behavioral and health care service providers, policymakers and consumer and family groups; these networks will also foster systems coordination, policy development and coalition building among consumer and professional organizations and local and state agencies with local and state agencies with the ultimate goal of integrating and improving behavioral health services to women of childbearing age; and (3) Innovative Approaches To Promoting A Healthy Weight In Women (IPHWW) will fund projects to develop creative, innovative approaches that are effective in reducing the prevalence of overweight/obesity in women by increasing the number of women who adopt positive health lifestyles. The interventions must be substantive in nature and positively impact the woman's knowledge, attitudes, and behaviors. These approaches should target women in communities who have limited access to preventive health services and be linked with Title V, Community Centers of Excellence in Women's Health, Centers of Excellence in Women's Health, and/or other relevant resources. Proposals must target: (1) Women who are members of racial and ethnic minority populations who are disproportionately affected by overweight/obesity; and, (2) women before (preconception) and after (post-partum) pregnancy.

Eligibility: Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b), and faith and community-based organizations are eligible to apply.

Review Criteria: Final review criteria are included in the application kit.

Special Considerations: For purpose (1) to (3), only 1 applicant per state will be funded. For the purposes of the Integrated Comprehensive Women's Health Services in State MCH Programs (H74) only, in the interest of equitable geographic distribution, special consideration for funding may also be given to States or jurisdictions who have never received funding for this program

Estimated Amount of This Competition: For program purposes (1) $600,000; (2) $450,000; and (3) $600,000.

Estimated Number of Awards: For program purposes (1) 6 awards, (2) 3 awards; and (3) 4 awards.

Estimated Project Period: 3 years.

HRSA–04–063 Women's Health (MCH–WH)

Application Availability Date: November 18, 2003.

Letter of Intent Deadline: December 16, 2003.

Application Deadline: February 2, 2004.

Projected Award Date: For program purpose (1) July 1, 2004, (2) May 1, 2004; and (3) June 1, 2004.

Program Contact Person: For program purposes (1) and (3) Lisa King. For program purpose (2) Juliann De Stefano.

Program Contact Phone: Lisa King 301–443–5720; Juliann De Stefano 301–443–8783.

Program Contact E-Mail: Lisa King *lking@hrsa.gov;* Juliann De Stefano *jdestefano@hrsa.gov.*

HRSA–05–001 Maternal and Child Health Library Services (MCHLS)

CFDA: 93.110.

Legislative Authority: Social Security Act, Title V, 42 U.S.C. 701.

Purpose: The purpose of the MCH Library Services cooperative agreement is to support a national information and education resource library which provides the information needed by the MCH community to plan and carry out program and policy development and to improve service delivery. The overall goal is to use information sciences and information technology to identify, collect, and organize information from the MCH field that is not readily available from other information sources, such as Healthy Start, infant mortality, oral health, nutrition, mental health, health promotion, women's health, MCH organizations, Medicaid, research, etc. The MCH Library is expected to conduct activities in the following areas: Collection and management of MCH information, and outreach for awareness and utilization of MCH information, including maintenance of databases, bibliographies, and other information resources on a website which provides national access to key MCH-related data and information.

Federal Involvement: The scope of Federal involvement is included in the application kit.

Eligibility: As cited in 42 CFR part 51a.3 (a), any public or private entity, including an Indian tribe or tribal organization (as those terms are defined at 25 U.S.C. 450b), is eligible to apply for this Federal funding.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $550,000.

Estimated Number of Awards: 1.

Estimated Project Period: 5 years.

HRSA–05–001 Maternal and Child Health Library Services (MCHLS)

Application Availability Date: April 20, 2004.

Letter of Intent Deadline: June 18, 2004.

Application Deadline: July 19, 2004.

Projected Award Date: January 1, 2005.

Program Contact Person: James A. Resnick.

Program Contact Phone: 301–443–2778.

Program Contact E-Mail: JResnick@hrsa.gov.

HRSA–04–006 Emergency Medical Services for Children Demonstration Grant Program (EMSC)

CFDA: 93.127.

Legislative Authority: Public Health Service Act, Section 1910, 42 U.S.C. 300w–9.

Purpose: The goal of the EMSC program is the reduction of child and youth mortality and morbidity sustained as a result of severe illness or trauma. The EMSC program does not intend to promote the development of a separate EMS system for children, but rather to enhance the pediatric capability of EMS systems originally designed primarily for adults. The EMSC grants support activities in the following areas: Injury prevention, database studies, outcome measures, patient assessments, facility and equipment standards, procedure standards, protocols for treatment, triage, and transfer, model agreements, training courses, videotapes and books, and community programs for special populations. EMSC projects demonstrate how the outcomes of pediatric emergencies can be improved by strengthening or expanding the pediatric capabilities of an existing EMS system.

For FY 2004, three categories of EMSC Demonstration Grant funding opportunities are offered: I. Funding is available for up to 9 EMSC State Partnership (EMSCP) demonstration grants to support activities that represent the steps to take in order to institutionalize EMSC within Emergency Medical Services (EMS) and to continue to improve and refine EMSC. Proposed activities should be consistent with documented needs in the State and should reflect a logical progression in enhancing pediatric capabilities. For example, funding might

be used to: (a) Address problems identified in the course of a previous EMSC grant; (b) increase the involvement of families in EMSC; (c) improve linkages between local, regional, or State agencies; (d) promulgate standards developed for one region of the State under previous funding to include the entire State; or (e) assure effective triage of the child in physical or emotional crisis to appropriate facilities and/or other resources. II. To provide supplemental funds to approximately existing 8 EMSC State Partnership Demonstration grantees for Regional Symposium (EMSCS) round-table meetings that are convened for the explicit purpose of knowledge synthesis and dissemination. The primary goal of the EMSC program's knowledge synthesis and dissemination activities is to improve the quality of care to children. In collaboration with schools of medicine, regional consortia of State EMS programs will meet annually to develop and evaluate improved procedures and protocols for children. Meetings will involve coordinating, exchanging, and demonstrating innovative activities of common interest to participating States, while facilitating a forum for knowledge transfer on EMSC related issues between individual care providers and care providing organizations.

III. Funding is available for approximately 7 EMSC Targeted Issue Demonstration Grants (EMSCT) that are intended to address specific, focused issues related to the development of EMSC knowledge and capacity, with the intent of advancing the state-of-the-art tools, and creating tools or knowledge that will be helpful to the field. Proposals must have well-conceived methodology for analysis and evaluation.

Eligibility: For State Partnerships and Regional Symposiums, the eligible applicant is the State EMS Agency, unless the State specifically requests and designates another State entity or an accredited school of medicine. For targeted Issues, the eligible applicants are State governments, and accredited schools of medicine (Targeted Issue applicants from accredited schools of medicine do not need to be endorsed by the State EMS Office.)

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $2,755,000.

Estimated Number of Awards: 24.

Estimated Project Period: 1 or 3 years.

HRSA–04–006 Emergency Medical Services for Children Demonstration Grant Program (EMSC)

Application Availability Date: September 2, 2003.

Letter of Intent Deadline: October 3, 2003.

Application Deadline: October 31, 2003.

Projected Award Date: March 1, 2004.

Program Contact Person: Dan Kavanaugh.

Program Contact Phone: 301–443–1321.

Program Contact E-mail: *dkavanaugh@hrsa.gov.*

HRSA–04–064 Traumatic Brain Injury (TBI) Program—State Grants

CFDA: 93.234.

Legislative Authority: Public Health Service Act, Title XII, Section 1252, 42 U.S.C. 300d–52.

Purpose: The purpose of the Traumatic Brain Injury (TBI) program is to improve access, availability, appropriateness and acceptability of health and other services for individuals with traumatic brain injury (TBI) and their families. State TBI systems should be culturally competent and services should be person and family directed. States applying under this announcement must address the four Core Capacity Components of a TBI service system: a lead Designated State Agency and State staff person responsible for State TBI activities, a Statewide TBI Advisory Board, a Statewide Resource/Needs Assessment, and a Statewide Action Plan that is a comprehensive, community-based system of cure that addresses the need of individuals with TBI and their families. For FY 2004, three categories of State TBI funding opportunities are offered: I. Funding for up to 7 State TBI Planning (TBIP) Grant awards is available to assist States and Territories to develop the infrastructure needed to implement a TBI program. States applying under this category MUST submit a plan for developing the Four Core Capacity Components. These components DO NOT have to be in place at the time of application. II. Funding for approximately 7 State TBI Implementation (TBII) Grants is available to help States move toward a Statewide system that will assure access to comprehensive and coordinated services for individuals with TBI and their families. III. Funding for approximately 2 State TBI Post Demonstration (TBIPD) Grants to address issues that will encompass specific State capacity building initiatives to contribute to sustainable change in the system of community services and supports that reflect the best practices in the field of TBI.

Cost Sharing: Secretary may make a grant under such subsection only if the State agrees to make available non-Federal contributions toward such costs in an amount that is not less than $1 for each $2 of Federal funds provided under the grant.

Eligibility: For all TBI State grants, State governments are the only eligible applicants for funding under the Federal TBI Program. Applicants for State TBI Post-Demonstration Grants may only come from the State agency designated as the Lead Agency for TBI services within the State.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $2,125,000.

Estimated Number of Awards: 16.

Estimated Project Period: 1, 2, or 3 years.

HRSA–04–064 Traumatic Brain Injury (TBI) State Grant Program

Application Availability Date: September 8, 2003.

Letter of Intent Deadline: September 18, 2003.

Application Deadline: November 17, 2003.

Projected Award Date: April 1, 2004.

Program Contact Person: Betty Hastings.

Program Contact Phone: 301–443–5599.

Program Contact E-mail: *bhastings@hrsa.gov.*

HRSA–04–065 Poison Control Centers Stabilization and Enhancement Grant Program, Financial Stabilization Grants (PCCFS)

CFDA: 93.253.

Legislative Authority: The Poison Control Center Enhancement and Awareness Act, Section 6(a) of Public Law 106–174.

Purpose: The purpose of the Poison Control Program is to stabilize and improve poison control centers (PCCs) and promote a comprehensive system for the delivery of high quality poison control services nationwide.

For FY 2004, two categories of PCC stabilization and enhancement grant opportunities are offered:

I. Funds are available to be awarded to existing, certified PCCs or poison control systems, and

II. Funds are available to be awarded to non-certified or newly established PCCs to obtain certification from the American Association of Poison Control Centers or a State with equivalent standards, as determined by the Secretary.

Eligibility: Eligibility for funding under Category I is limited to certified PCCs. Centers must be certified by the American Association of Poison Control Centers or a State with equivalent standards, as determined by the Secretary. Eligibility for Category II awards is limited to non-certified PCCs.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: I. $14,100,000; II. $2,100,000.

Estimated Number of Awards: 50 and 10.

Estimated Project Period: 3 years and 2 years.

HRSA–04–065 Poison Control Centers Stabilization and Enhancement Grant Program, Financial Stabilization Grants (PCCFS)

Application Availability Date: December 30, 2003.

Application Deadline: March 1, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: I. Maxine Jones; II. Carol Delany.

Program Contact Phone: 301–443–6192; 301–443–5848.

Program Contact E-Mail: mjones@hrsa.gov, cdelany@hrsa.gov.

HRSA–04–066 Healthy Start Program: Eliminating Disparities in Perinatal Health (HSED)

CFDA: 93.926.

Legislative Authority: Public Health Service Act, Title III, Section 330 H.

Purpose: Under this program, grants will be awarded in two areas to address significant disparities in perinatal health indicators: (1) Eliminating Disparities In Perinatal Health focuses on disparities among Hispanics, Americans Indians, African Americans, Alaska Natives, Asian/Pacific Islanders, Immigrant Populations, or differences occurring by education, income, disability, or living in rural/isolated areas by enhancing a community's service system; and (2) Eliminating Disparities In Perinatal Border Health focusing on enhancing a border community's perinatal service system to address significant disparities and deficiencies in these communities. Under both grants, communities must provide a scope of project services that will cover pregnancy and interconceptional phases for women and infants residing in the proposed project area. Services are to be given to both mother and infant for two years following delivery to promote longer interconceptional periods and prevent relapses of unhealthy risk behaviors.

Eligibility: For program purposes (1) and (2) Any public or private entity, including an Indian tribe or tribal organization (as defined at 25 U.S.C. 450b) is eligible to apply. Funding would be made available to community-based (and faith-based) projects which have: (1) Significant disparities in perinatal indicators which contribute to high infant mortality rates, among one or more subpopulations; (2) an existing active consortia of stakeholders which have underway a perinatal disparity reduction initiative for at least one year; and, (3) a feasible plan to reduce barriers, improve the local perinatal system of care, and work towards eliminating existing disparities in perinatal health. These sites must have or plan to implement/adapt Healthy Start strategies of consortium, case management, and outreach services in a culturally and linguistically sensitive manner. In addition, they must demonstrate existing/planned collaborations with key State and local services and resources systems. Such key State and local resources include Title V, Title X, Title XIX, Title XXI, WIC, Enterprise Communities/ Empowerment Zones, federally funded Community and Migrant Health Centers, federally funded Health Care for the Homeless projects, and Indian/Tribal Health Services. For program purpose (2) To apply programs must target a community/geographic area(s) with disparate perinatal indicators (such as inadequate prenatal care, anemia) that can contribute to infant mortality The selected communities must be within 62 miles of the U.S.-Mexican border, or be in Alaska or Hawaii

Review Criteria: Final review criteria are included in the application kit.

Funding Priorities: In recognition of current efforts in high risk communities, a priority consideration will occur at the time of award.

Special Considerations: For purpose (1) and (2), only 1 applicant per community/project area will be funded.

Estimated Amount of This Competition: $6,100,000.

Estimated Number of Awards: 7.

Estimated Project Period: 4 years.

HRSA–04–066 Healthy Start Program: Eliminating Disparities in Perinatal Health (HSED)

Application Availability Date: September 18, 2003.

Letter of Intent Deadline: October 15, 2003.

Application Deadline: December 1, 2003.

Projected Award Date: June 1, 2004 .

Program Contact person: Beverly Wright.

Program Contact Phone: (301) 443–8427.

Program Contact E-Mail: BWright@HRSA.gov.

Rural Health Policy Programs

HRSA–04–001 Rural Health Care Services Outreach Grant Program (RHOGP)

CFDA: 93.912.

Legislative Authority: Public Health Service Act, Section 330A, 42 U.S.C. 254c.

Purpose: The Rural Health Care Services Outreach Grant Program supports projects that demonstrate creative or effective models of outreach and service delivery in rural communities. Applicants may propose projects to address the health care needs of a wide range of population groups and to deliver many different types of health care and health care related services in rural communities.

Eligibility:

(1) The applicant organization must be a public or nonprofit private entity located in a rural area or in a rural ZIP Code of an urban county (list included in application materials) and all services must be provided in a rural county or ZIP Code; or (2) The applicant organization exists exclusively to provide services to migrant and seasonal farm workers in rural areas and is supported under Section 330g of the Public Health Service Act or (3) The applicant is a federally recognized Native American Tribal or quasi-Tribal entity that will deliver services on Reservation or Federally recognized Tribal lands (documentation of status must be included). The entity must represent a consortium composed of members that include three or more health care providers and that may be nonprofit or for-profit entities.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: The authorizing legislation for Rural Health Care Services Outreach Grants provides a funding preference for some applicants. Applicants receiving a preference will be placed in a more competitive position among the applications that can be funded. A funding preference will be given to any qualified applicant that can demonstrate one of the following three criteria:

(1) At least one of the consortium members is located in officially designated health professional shortage areas (HPSAs) OR medically underserved communities (MUCs) OR serve medically underserved populations (MUPs). To ascertain HPSA and MUP designation status, please refer to the following Web site: *http://bhpr.hrsa.gov/shortage/index.htm*. To

qualify as a Medically Underserved Community (MUC) the project must include facilities that are federally designated as any of the following:

Community Health Centers, Migrant Health Centers, Health Care for the Homeless Grantees, Public Housing Primary Care Grantees, Rural Health Clinics, National Health Service Corps sites, Indian Health Services Sites, Federally Qualified Health Centers, Primary Medical Care Health Professional Shortage Areas, Dental Health Professional Shortage Areas, Nurse Shortage Areas, State or Local Health Departments, and Ambulatory practice sites designated by State Governors as serving medically underserved communities.

(2) Ambulatory practice sites designated by State Governors as serving medically underserved communities; OR

(3) Propose to develop project with a focus on primary care and prevention and wellness.

The applicant must request and identify the particular preference they are eligible for to receive a funding preference.

Special Considerations: The Office of Rural Health Policy seeks to expand the outreach program into geographic areas not currently served by the program. Consequently, HRSA will consider geographic location when deciding which approved applications to fund.

Estimated Amount of This Competition: $3,500,000.

Estimated Number of awards: 20.

Estimated Project Period: 3 years.

HRSA–04–001 Rural Health Care Services Outreach Grant Program (RHOGP)

Application Availability Date: June 16, 2003/June 15, 2004.

Application Deadline: September 12, 2003/September 13, 2004.

Projected Award Date: May 1, 2004/ May 1, 2005.

Program Contact Person: Lilly Smetana.

Program Contact Phone: 301–443–6884.

Program Contact E-Mail: *lsmetana@hrsa.gov.*

HRSA–04–002 Health Network Development Grant Program (RHNGP)

CFDA: 93.912.

Legislative Authority: Public Health Service Act, Section, 330A, 116 STAT. 1621, Public Law 107–251, 42 U.S.C. 254c.

Purpose: The Rural Health Network Development Grant Program 330A(f) supports development of rural health networks. Grant funds are used to support activities that strengthen the organizational capabilities of these networks whose purpose is to overcome the fragmentation and vulnerability of providers in rural areas. This program is designed for organizations that wish to further ongoing collaborative relationships to integrate systems of care administratively, clinically, financially, and/or technologically. The goal of the Rural Health Network Development Program is to achieve efficiencies; expand access to, coordinate, and improve the quality of essential health care services; and strengthen the rural health care system as a whole.

Cost Sharing Flag: Yes.

Eligibility: The applicant must be a public or nonprofit entity that represents a network that includes at least three or more health care providers. In addition, the grantee must meet at least one of three following requirements:

(1) The applicant organization must be located in a rural area or in a rural ZIP code of an urban county (list included in application materials and on program Web site) and all grant-funded activities must support rural areas; or (2) The applicant organization exists exclusively to provide services to migrant and seasonal farm workers in rural areas and is supported under Section 330(g) of the Public Health Service Act or (3) The applicant is a federally recognized Native American Tribal or quasi-Tribal entity that will deliver services on Reservation or Federally recognized Tribal lands (documentation status must be included.)

Funding Preferences: The authorizing legislation for Network Development Grants provides a funding preference for some applicants. Applicants receiving the preference will be placed in a more competitive position among the applications that can be funded. A funding preference will be given to any qualified applicant that can demonstrate either of the following two criteria:

A. Those applicants for which at least 50% of the proposed rural health network's service area is located in officially designated health professional shortage areas (HPSAs) OR medically underserved communities (MUCs) OR serve medically underserved populations (MUPs).

To ascertain HPSA and MUP designation status, please refer to the following Web site: *http://bhpr.hrsa.gov/shortage/.*

To qualify as a Medically Underserved Community (MUC), at least 50% of the network's participation must include facilities that are federally designated as any of the following:

(a) Community Health Centers
(b) Migrant Health Centers
(c) Health Care for the Homeless Grantees
(d) Public Housing Primary Care Grantees
(e) Rural Health Clinics
(f) National Health Service Corps sites
(g) Indian Health Service sites
(h) Federally Qualified Health Centers
(i) Primary Medical Care Health Professional Shortage Areas
(j) Dental Health Professional Shortage Areas
(k) Nurse Shortage Areas
(l) State or Local Health Departments
(m) Ambulatory practice sites designated by State Governors as serving medically underserved communities; or

B. Those applicants whose projects focus on primary care, and wellness and prevention strategies.

Review Criteria: Final review criteria are included in the application kit.

Special Considerations: The Office of Rural Health Policy seeks to expand the Network Development grant program into geographic areas not currently supported by the program. Consequently, the Office will consider geographic location when deciding which approved applications to fund.

Estimated Amount of This Competition: $2,000,000.

Estimated Number of Awards: 10–15.

Estimated Project Period: 3 years.

HRSA–04–002 Rural Health Network Development Grant Program (RHNGP)

Application Availability Date: June 2, 2003/June 11, 2004.

Application Deadline: September 26, 2003/September 20, 2004.

Projected Award Date: May 1, 2004/ May 1, 2005.

Program Contact Person: Katherine Bolus.

Program Contact Phone: 301–443–7444 or 301–443–7320.

Program Contact E-mail: *kbolus@hrsa.gov, mpray@hrsa.gov.*

HRSA–04–003 Rural Health Network Development Planning Grant Program (RHNPGP)

CFDA: 93.912.

Legislative Authority: Public Health Service Act, Section 330A(f), 42 U.S.C. 254c.

Purpose: The Rural Health Network Development Planning Grant Program supports one year of planning activities to develop integrated health care networks in rural areas. The Planning Grant Program provides support to rural entities that seek to develop a formal health care network and that do not have a significant history of

collaboration. Formative networks are those that are not sufficiently evolved to apply for a 3-year planning implementation grant and do not yet have a formalized structure.

The program is designed to support organizations that wish to develop formal collaborative relationships among health care providers to integrate systems of care administratively, clinically, financially, and/or technologically. The goal of the Rural Health Network Development Program is to achieve efficiencies; expand access to, coordinate, and improve the quality of essential health care services; and strengthen the rural health care system as a whole. The Planning Grant Program supports this overall program goal by providing support to entities in the formative stages of planning and organizing a rural health network.

Eligibility: The applicant must be a public or nonprofit entity that represents a network that includes at least three or more health care providers. In addition, the grantee must meet at least one of three following requirements:

The applicant organization must be located in a rural area or in a rural ZIP code of an urban county (list included in application materials and on program Web site) and all grant-funded activities must support rural areas; OR the applicant organization exists exclusively to provide services to migrant and seasonal farm workers in rural areas and is supported under Section 330(g) of the Public Health Service Act; OR the applicant is a federally recognized Native American Tribal or quasi-Tribal entity that will deliver services on Reservation or Federally recognized Tribal lands (documentation status must be included.)

Existing networks that seek to expand services or expand their service area are not eligible to apply to this program.

Review Criteria: Final review criteria are included in the application kit.

Funding Preferences: The authorizing legislation for Network Development Planning Grants provides a funding preference for some applicants. Applicants receiving the preference will be placed in a more competitive position among the applications that can be funded. A funding preference will be given to any qualified applicant that can demonstrate either of the following two criteria:

A. Those applicants for which at least 50% of the proposed rural health network's service area is located in officially designated health professional shortage areas (HPSAs) OR medically underserved communities (MUCs) OR serve medically underserved populations (MUPs).

To ascertain HPSA and MUP designation status, please refer to the following Web site: *http://bhpr.hrsa.gov/shortage/.*

To qualify as a Medically Underserved Community (MUC), at least 50% of the network's participation must include facilities that are federally designated as any of the following:

(a) Community Health Centers
(b) Migrant Health Centers
(c) Health Care for the Homeless Grantees
(d) Public Housing Primary Care Grantees
(e) Rural Health Clinics
(f) National Health Service Corps sites
(g) Indian Health Service sites
(h) Federally Qualified Health Centers
(i) Primary Medical Care Health Professional Shortage Areas
(j) Dental Health Professional Shortage Areas
(k) Nurse Shortage Areas
(l) State or Local Health Departments
(m) Ambulatory practice sites designated by State Governors as serving medically underserved communities; OR

B. Those applicants whose projects focus on primary care, and wellness and prevention strategies.

Special Considerations: The Office will consider geographic location when deciding which approved applications to fund to ensure balanced distribution of grant funds to rural areas across the U.S.

Estimated Amount of This Competition: $1,000,000.

Estimated Number of Awards: 10–15.

Estimated Project Period: 1 year.

HRSA–04–003 Rural Health Network Development Planning Grant Program (RHNPGP)

Application Availability Date: June 16, 2003/June 11, 2004.

Application Deadline: September 10, 2003/September 8, 2004.

Projected Award Date: December 1, 2003/December 1, 2004.

Program Contact Person: Michele Pray-Gibson.

Program Contact Phone: 301–443–7320.

Program Contact E-Mail: *mpray@hrsa.gov.*

HRSA–04–067 Delta State Rural Development Network Grant Program (DELTA)

CFDA: 93.912.

Legislative Authority: Public Law 104–299, enacted in 1996, authorizes the Rural Health Outreach, Network Development, and Telemedicine Grant programs. The Consolidated Appropriations Act, 2001, Public Law 106–554, includes in the Rural Health Outreach appropriation line, the section on Miscellaneous Appropriations, Division B, Title V, subtitle F the Delta Regional Authority and in Division B Title I Sec. 153 defined the States and counties considered as part of the Mississippi River Delta region.

Purpose: The purpose of these grants is to provide support to the rural Mississippi Delta region to strengthen community-based organizations' abilities to target the under- and uninsured. Specifically, the grants are used to fund statewide organizations having the capability to support development of community-based networks. The primary responsibility of the statewide networks is to help local Delta rural counties in their respective States identify greatest local health needs, identify potential funding for these projects, and develop and implement fundable health intervention projects to address local needs.

Eligibility: Eligible applicants are limited to the eight designated Delta Region States: Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, Tennessee.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $5,500,000.

Estimated Number of Awards: 8.

Estimated Project Period: 3 years.

HRSA–04–067 Delta State Rural Development Network Grant Program (DELTA)

Application Availalbility Date: February 1, 2004 .

Application Deadline: May 1, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Michele Pray-Gibson.

Program Contact Phone: 301–443–7320.

Program Contact E-Mail: *mpray@hrsa.gov.*

HRSA–04–068 Small Rural Hospital Improvement Program (SHIP)

CFDA: 93.301.

Legislative Authority: Social Security Act, Section 1820(g)(3).

Purpose: The Small Rural Hospital Improvement Program (SHIP) provides grants to small rural hospitals to help them do any or all of the following: (1) Pay for costs related to the implementation of PPS, (2) comply with provisions of HIPAA, and (3) reduce medical errors and support quality improvement.

Hospitals need to apply for these grants through their State's Office of Rural Health.

Eligibility: All small rural hospitals located in the fifty States and territories are eligible to apply for the SHIP Grant Program. Hospitals need to apply for these grants through their State's Office of Rural Health. For the purpose of this program, (1) small is defined as 49 available beds or less, (2) rural is defined as located outside a Metropolitan Statistical Area (MSA); or located in a rural census tract of a MSA as determined under the Goldsmith Modification or the Rural Urban Commuting Areas, and (3) hospital is defined as a non-federal, short-term, general acute care facility.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $15,000,000.

Estimated Number of Awards: 1,500.

Estimated Project Period: 3 years.

HRSA–04–068 Small Rural Hospital Improvement Program (SHIP)

Application Availability Date: February 3, 2004.

Application Deadline: Hospital application due to their State's Office of Rural Health (SORH) by COB March 17, 2004, State application due to HRSA by COB April 28, 2004.

Projected Award Date: September 1, 2004 .

Program Contact Person: Jerry Coopey.

Program Contact Phone: 301–443–0835.

Program Contact E-Mail: *jcoopey@hrsa.gov.*

HRSA–04–069 Grants for Policy-Oriented Rural Health Services Research (GPOR)

CFDA: 93.155.

Legislative Authority: Public Health Service Act, Section 301, 42 U.S.C. 241.

Purpose: Awards are available for competitive grants for policy-oriented rural health services research. Individual research projects that address rural health services will be funded under this announcement. Policy-oriented rural health services research is useful because it informs policy-makers concerned with rural health issues and it enhances knowledge about rural health and rural health services. These grants are designed to provide support both for entities established in the rural health services research field as well as those entering this field. These grants are also intended to advance specific areas of rural health services research in which a limited amount of research exists.

Eligibility: Eligibility is open to public, private, and non-profit—including faith-based and community-based organizations. Institutions that received a Rural Health Research Center Award in 2004 and those with Fiscal Year 2000–2004 ORHP awards under special congressional initiatives are ineligible for this grant program. Although multiple applications may be submitted, only one award will be made to the same entity.

In addition to the above criteria, applicants must be capable of receiving the grant funds directly and must have the capability to manage the project. Applicants must be able to exercise administrative and program direction over the grant project; must have the administrative and accounting capabilities to manage the grant funds; and must have some permanent research staff at the time the application is submitted.

Review Criteria: Final review criteria are included in the application kit.

Special Considerations: Research Areas: HRSA wants to fund a variety of research areas in making new awards under this announcement. Therefore, HRSA will consider the variety of research areas when selecting which applications recommended for approval to fund. See the list below. The research areas are: Mental Health; Substance Abuse; Oral Health, American Indian/Alaska Native/Native Hawaiian Health Issues; Integration of Native and Non-Native Health Care; Special Populations—Children, Women, Homeless, Elderly; Chronic Disease (*e.g.*, Asthma and Diabetes); Bio-terrorism Preparedness; Frontier Issues; Medicaid; S-CHIP; End of Life Care; Continuum of Care; Public Health Issues; Quality of Life; Uninsured; Disabled/Disability; Low Income Populations; Quality of Care; EMS (for all populations, with a special interest in children); Dual Eligible.

Geographic Coverage: Applications are sought for research that is national in scope. Research covering a single community, multiple communities, or a single state are not acceptable and will not be reviewed. HRSA wants to achieve a geographic balance among awardees in making new awards under this announcement. Therefore, HRSA will consider geographic distribution when selecting which applications recommended for approval to fund.

Estimated Amount of This Competition: $900,000.

Estimated Number of Awards: 6.

Estimated Project Period: 1 year.

HRSA–04–069 Grants for Policy-Oriented Rural Health Services Research (GPOR)

Application Availability Date: March 30, 2004.

Letter of Intent Deadline: April 30, 2004.

Application Deadline: May 3, 2004.

Projected Award Date: August 15, 2004.

Program Contact Person: Emily Costich.

Program Contact Phone: (301) 443–0502.

Program Contact E-Mail: *ecostich@hrsa.gov.*

HRSA–04–070 Rural Health Research Grant Program—Cooperative Agreement (CARHR)

CFDA: 93.155.

Legislative Authority: Public Health Service Act, Section 301, 42 U.S.C. 241.

Purpose: Awards are available from the Office of Rural Health Policy for competitive cooperative agreements for Rural Health Research Centers. The Rural Health Research Centers are funded to conduct policy-oriented rural health services research with a specific area of concentration (*e.g.*, Medicare, Medicaid, health disparities, health workforce.) The awards are for four years and 4–5 individual research projects are conducted per year, including several projects in the specific area of concentration. Policy-oriented rural health services research is useful because it informs policy-makers concerned with rural health issues and it enhances knowledge about rural health and rural health services. This program is designed to provide support for establishment of a Rural Health Research Center as an identifiable entity with a specific area of research concentration and an infrastructure to develop health services researchers entering the field into experts in the research complexities of rural health issues.

Federal Involvement: The scope of the Federal Involvement is included in the application kit.

Eligibility: Eligibility is open to public, private, and non-profit—including faith-based and community-based organizations. Although multiple applications may be submitted, only one award will be made to the same entity.

Review Criteria: Final review criteria are included in the application kit.

Special Considerations: Research Areas: HRSA wants to fund a variety of areas of research concentration among research centers in making new awards under this announcement. Therefore, HRSA will consider the variety of areas

of concentration when selecting which applications recommended for approval to fund.

Geographic Coverage: Applications are sought for research projects that are national in scope. Applications containing any research projects covering a single community, multiple communities, or a single state are not acceptable and will not be reviewed.

HRSA wants to achieve a geographic balance among awardees in making new awards under this announcement. Therefore, HRSA will consider geographic distribution when selecting which applications recommended for approval to fund.

Estimated Amount of This Competition: $4,000,000.

Estimated Number of Awards: 8.

Estimated Project Period: 4 years.

HRSA–04–070 Rural Health Research Grant Program—Cooperative Agreement (CARHR)

Application Availability Date: January 15, 2004.

Letter of Intent Deadline: February 5, 2004.

Application Deadline: March 15, 2004.

Projected Award Date: August 15, 2004.

Program Contact Person: Joan F. Van Nostrand.

Program Contact Phone: (301) 443–0613.

Program Contact E-Mail: *jvan_nostrand@hrsa.gov.*

Special Programs—Grants

HRSA–04–071 Regional Collaborative for the Pacific Basin (RCPB)

CFDA: 93.110.

Legislative Authority: Public Health Service Act , Sections 301, 330(A), 330(k), 761(b), 767, as amended, and the Social Security Act, Sections 509 and 711 as amended.

Purpose: The Health Resources and Services Administration (HRSA) announces the availability of fiscal year 2004 funds for a grant program for a Regional Collaborative for the Pacific Basin to serve as a regional health policy body for the six Pacific Basin jurisdictions (American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Federated States of Micronesia, Republic of the Marshall Islands, and Republic of Palau). The Regional Collaborative is intended to serve as a formal mechanism to discuss common health interests, problems and concerns; to promote and enhance a regional approach for cost-effective sharing of resources, information, and human expertise to advance health care improvements in the Pacific Basin; and to provide technical assistance to the Pacific Basin jurisdictions. This project is intended to provide support to conduct activities to further the IOM strategic goals, such as addressing the needs of health care providers who serve vulnerable populations, strengthening the primary care delivery systems in the jurisdictions, supporting the efforts in the jurisdictions to develop and enhance their telehealth and distance education capacities, convening regional and jurisdictional policy meetings to address the health care needs of the underserved and vulnerable populations in the Pacific Basin.

Eligibility: Eligible applicants are public or non-profit private entities, including faith-based and community-based organizations, that are part of a network of the Pacific Basin jurisdictions (U.S. flag territories of American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands, and the three U.S.-associated jurisdictions of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau) which support, or provide for, the delivery of health care services and will work together to complete the proposed project.

Review Criteria: Final criteria are included in the application kit.

Preference: Preference will be give to those projects which provide an implementation of recommendations in the 1998 Institute of Medicine (IOM) study of the Pacific Basin health care delivery system, Pacific Partnerships for Health: Charting a Course for the 21st Century.

Estimated Amount of This Competition: $125,000.

Estimated Number of Awards: 1.

Estimated Project Period: 3 years.

HRSA–04–071 Regional Collaborative for the Pacific Basin (RCPB)

Application Avaialbility Date: June 1, 2004.

Letter of Intent Deadline: June 30, 2004.

Application Deadline: July 15, 2004.

Projected Award Date: September 1, 2004.

Program Contact Person: Lynnette S. Araki.

Program Contact Phone Number: 301–443–6204.

Program Contact E-Mail: *LAraki@hrsa.gov.*

HRSA–04–072 Social and Behavioral Interventions To Increase Organ and Tissue Donation (SBITD)

CFDA: 93.134.

Legislative Authority: Public Health Service Act, Section 371(a)(3) as amended, U.S.C. 273(a)(3).

Purpose: The goal of this grant program is to assist eligible entities in the evaluation of, or the implementation and evaluation of, highly promising strategies and approaches that can serve as model interventions for increasing organ and tissue donation. All projects must have rigorous methodology and evaluation components capable of ascertaining the effectiveness of the intervention(s). Applications may focus on pilot projects or replications of interventions already shown to be effective in a pilot study. Projects involving the use of information and communication technology to increase donation are also of interest.

Eligibility: Applications must be submitted by a consortium of at least two types of organizations, a transplant-related organization and a research-related organization. As specified in Section 371(a)(3) of the Public Health Service Act, the applicant organization must be a Federally designated organ procurement organization or another private not-for-profit entity. However, public and for-profit organizations may participate as consortium members or in other capacities, but may not serve as the applicant institution.

Special Considerations: HRSA reserves the option to achieve a balance among funded projects with respect to various parameters, *e.g.,* target populations, geography, and intervention diversity.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $1,250,000.

Estimated Number of Awards: 7.

Estimated Project Period: 3 years.

HRSA–04–072 Social and Behavioral Interventions To Increase Organ and Tissue Donation (SBITD)

Application Availability: October 24, 2003.

Letter of Intent Deadline: January 5, 2004.

Application Deadline: March 5, 2004.

Project Award Date: July 30, 2004.

Program Contact Person: Nancy B. Carothers.

Program Contact Phone Number: 301–443–3622.

Program Contact E-Mail: *ncarothers@hrsa.gov.*

HRSA–04–073 Clinical Interventions To Increase Organ Procurement (CIOP)

CFDA: 93.134.

Legislative Authority: Public Health Service Act, Section 371(a)(3) as amended, U.S.C. 273(a)(3).

Purpose: The goal of this grant program is to assist eligible entities in the implementation, evaluation, and dissemination of model interventions with the greatest potential for increasing the number of heart-beating and non-heart-beating deceased donors and/or the number of organs that are recovered from such donors. All projects must have rigorous methodology and evaluation components capable of ascertaining the effectiveness of the intervention(s). Projects can employ qualitative studies, quantative research, or empiric work. Eligible interventions could focus on new and/or improved methods to optimize hemodynamic stability after brain death; improve donor organ evaluation practices; investigate time-efficient technologies to match donor organs with compatible recipients; and identify appropriate non-heart-beating donation candidates. Interventions focusing on the use of information and communication technology to disseminate donor related information or to increase the efficiency of organ placements are encouraged.

Eligibility: As specified in Section 371(a)(3) of the Public Health Service Act, the applicant organization must be a Federally designated organ procurement organization or another private not-for-profit entity. However, public and for-profit organizations may participate in the project but may not serve as the applicant institution.

Special Considerations: HRSA reserves the option to achieve a balance among funded projects with respect to various parameters, *e.g.*, target populations, geography, and intervention diversity.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $2,250,000.

Estimated Number of Awards: 12.

Estimated Project Period: 3 years.

HRSA–04–073 Clinical Interventions to Increase Organ Procurement (CIOP)

Application Availability: October 24, 2003.

Letter of Intent Deadline: January 5, 2004.

Application Deadline: March 5, 2004.

Project Award Date: July 30, 2004.

Program Contact Person: Jade K. Perdue.

Program Contact Phone Number: 301–443–3124.

Program Contact E-Mail: *jperdue@hrsa.gov.*

HRSA–04–074 Best Practices to Increase Organ Donation (HIP)

CFDA: 93.134.

Legislative Authority: Public Health Service Act, Section 371(a)(3) as amended, U.S.C. 273(a)(3).

Purpose: The purpose of this demonstration grant program is to provide support for organ procurement organizations and high donor potential hospitals to implement high impact practices for increasing organ donation rates in hospitals as identified through the HRSA's Division of Transplantation Best Practices Initiative: Breakthrough Organ Donation Collaborative or its research grant program: Social and Behavioral Interventions to Increase Organ and Tissue Donation.

Eligibility: Eligible organizations for this program are Federally designated organ procurement organizations and hospitals with high organ donor potential. As specified in Section 371(a)(3) of the Public Health Service Act, the applicant organization must be a Federally designated organ procurement organization or another private non-profit organization. However, public and for-profit hospitals may participate as consortium members or in other capacities. Each application must be submitted by a consortium of at least one organ procurement organization and one hospital with high organ potential in the OPO's service area.

Special Considerations: HRSA reserves the option to achieve a balance among funded projects with respect to various parameters, *e.g.*, target populations, geography, and intervention diversity.

Review Criteria: Final review criteria are included in the application kit.

Estimated Amount of This Competition: $1,250,000.

Estimated Number of Awards: 10.

Estimated Project Period: 2 years.

HRSA–04–074 Best Practices to Increase Organ Donation (HIP)

Application Availability: January 7, 2004.

Letter of Intent Deadline: February 16, 2004.

Application Deadline: April 1, 2004.

Project Award Date: July 30, 2004.

Program Contact Person: Mary Ganikos.

Program Contact Phone Number: 301–443–8665.

Program Contact E-mail: *mganikos@hrsa.gov.*

HRSA News—Additional Information

Guidance and Policy Statement of Religious Nondiscrimination in Grant Eligibility and Service Delivery

The Federal government does not discriminate against non-governmental organizations on the basis that such organizations have a religious character. Faith-based organizations are eligible to compete for grant funds on the same basis as all other non-governmental organizations. Decisions about grant applications and awards will be made based solely on the competence, capacity, and actions of the provider, not whether it is a secular or faith-based provider.

To the extent permitted by law, faith-based organizations that receive federal financial assistance may—just as secular non-governmental organizations—use their facilities to provide federally funded services without removing or altering art, icons, literature, or other distinctive symbols from these facilities. In addition, faith-based organizations that apply for or participate in programs supported with federal financial assistance may retain their organizational identity including, but not limited to name, internal governance, and mission statements.

No grantee may discriminate in its delivery of a federally-funded program against a client or potential client on the basis of religion or religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice. Any specifically religious activity or service made available to clients by the grantee must be voluntary as well as separate in time and location from government funded activities and services.

Key Facts About the Grants.gov Program Spring 2003

www.grants.gov Find. Apply. Succeed.

Overview

Grants.gov will simplify the grants management process, and create a centralized, online process to find and apply for over 600 grant programs from the 26 Federal grant-making agencies. Grants.gov will streamline the process of awarding $360+ billion annually to state and local governments, academia, not-for-profits and other organizations. This program is one of the 24 Federal cross-agency E-Government initiatives focused on improving access to services via the Internet. The vision for Grants.gov is to produce a simple, unified source to electronically find, apply, and manage grant opportunities. Additionally, the Grants.gov initiative will facilitate efficient operations for Federal grant agencies and the grant community.

Agencies will allow applicants for Federal grants to apply for and ultimately manage grant funds online through a common Web site, simplifying grants management and eliminating redundancies * * *"

(The President's FY 2002 Management Agenda)

Standardizing Federal grant management activities is a priority for the Administration and Congress, as evidenced by Public Law 106–107, legislation that mandates streamlining and improved accountability for Federal grants, and related references in the President's Management Agenda.

Benefits

Grants.gov will serve as the common face for Federal grant program information and applications. Key benefits include:

• A single source for finding grant opportunities, helping applicants locate and learn more about funding opportunities in a standardized manner

• A single, secure and reliable source for applying for Federal Grants online, simplifying the grant application process and reducing paperwork Grants.gov will provide a unified interface for all agencies to announce their grant opportunities, and for all potential grantees to find and apply for grants. Grants.gov simplifies the entire application process, while also creating avenues for consolidation and best practices within each grant-making agency.

Progress and Next Steps

The first stage of Grants.gov was a successful pilot that enabled participating grantors to post and grant seekers to search for grant opportunities. Each Federal grant-making agency will be posting all of their competitive grant opportunities to Grants.gov by October 1, 2003. Also in October, the Grants.gov team will deploy a simple, unified application to enable applicants to apply for these grants online. Here's how it works: a grant seeker from an organization, for instance, visits the Grants.gov Web site to search for grant opportunities. Once a match is found, the organization downloads an electronic application to apply for the grant. The organization would complete the application and then submit it through the Grants.gov site. The application is time stamped and the appropriate Federal agency has immediate access to it. The agency will receive the application, sending confirmation back to the applicant through Grants.gov. Processing will be accelerated by avoiding the handling of paper applications.

In 2004, the focus will shift to rolling out the management and reporting functions of the Grants.gov system. Additional tools will be available to assist the grant community in moving through the grants life cycle, and will streamline and improve the grants application process.

Participants

All grant-making agencies will participate in Grants.gov over time. The Department of Health and Human Services, managing partner for the Grants.gov program, is supported by 10 additional "partner" agencies. A list of these agencies can be found on the Grants.gov Web site, at *http://www.grants.gov*.

The Grants.gov team is also working closely with the grant community and organizations that represent them, to facilitate delivery of a system that will meet their needs. We are in close contact with the Council of State Governments, the National Council for Nonprofit Associations, and the Federal Demonstration Partnership, to name just a few.

Questions?

Visit *http://www.grants.gov* to access past and current materials on the Grants.gov program or e-mail your questions to *info@grants.gov*.

New Office of Management & Budget Requirement—DUNS Number for all Federal Applicants

In order to improve the statistical reporting of federal grants and cooperative agreements, the Office of Management and Budget has directed federal agencies to require all applicants to provide a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper or an electronic application, and whether an applicant is applying for a new award or renewal of a current award. While the current directive does not cover non-competing continuations, Phase II of the project, which begins in FY 2004, will cover these continuations. Therefore, we encourage all grantees to obtain a DUNS number.

Use of the DUNS number government-wide will provide a cost-effective means to identify entities receiving those awards and their business relationships. The identifier will be used for tracking purposes, and to validate address and point of contact information. The DUNS number already is in use by the federal government to identify entities receiving federal contracts, and by some agencies in their grant and cooperative agreement processes.

Organizations should verify that they have a DUNS number or take the steps needed to obtain one as soon as possible if there is a possibility that they will be applying for Federal grants or cooperative agreements on or after October 1, 2003. Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS Number request line at 1–866–705–5711. Individuals who would personally receive a grant or cooperative agreement award from the federal government apart from any business or non-profit organization they may operate, and foreign entities are exempt from this requirement.

If your organization does not have a DUNS number, and you anticipate that your organization will apply for a grant or cooperative agreement on or after October 1, 2003, you should take steps to obtain a DUNS number in advance of the application deadline. If your organization does not have a DUNS number, you may not be able to apply for Federal grants or cooperative agreements after that time. Future potential applicants should also consider requesting a DUNS number now if there is any intention of applying for a federal grant in the future.

Further information can be found in the **Federal Register**, located at: *http://a257.gakamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/pdf/03–16356.pdf*

Register in the Central Contract Registry (CCR)

In order to help centralize information about grant recipients and provide a central location for grant recipients to change organizational information, the government will be using the Central Contractor Registry (CCR) for grant applicants and recipients. Use of the CCR is to provide one location for applicants and recipients to change information about their organization and enter information on where government payments should be made. The registry will enable recipients to make a change in one place and one time for all Federal agencies to use.

General Information

Organizations should register on how they want to do business.

A separate registration in the CCR may be required if an organization wants to have a single unit conduct business and it has a direct payment flow to that organization, it would require a separate DUNS number specified for that unit (if a different address from the parent organization). If the same address, the organization could use the DUNS + 4 found in the CCR. For example, a university that wants to have its payment information

flow through one central point for grants should register as the entity doing business with the government. This registration would require a specific DUNS number for that business.

Instructions for Registering

Information for registering in the CCR and online documents can be found at *http://www.ccr.gov*. Before registering applicants and recipients should review the Central Contractor Registration Handbook (March 2003). In the handbook is a Registration Worksheet. It is recommended that registrants print this worksheet and gather the needed information prior to starting the online registration process. The fastest and easiest method to register is by computer. To register via the computer, click on "Start New Registration." Registering in the CCR should be the first preparation step in the submission for a grant. Allow a minimum of 5 days to complete the CCR registration. Organizations can register independently of submitting a grant application.

Registration Worksheet for Grant Applicants/Recipients

General Information: Enter all information that has an M placed next to the line meaning Mandatory or Required.

Prior to registering in the CCR, an applicant organization must receive a DUNS number. This can be done by telephone and the numbers are on the bottom of the worksheet. Many of the items are self-explanatory. Identified below are some items that may not be familiar to grant applicants and recipients.

Cage Code: For U.S. applicants, do not enter a Cage Code, one will be assigned. For foreign applicants, follow the instructions in the CCR.

Legal Business Name: Enter the name of the business or entity as it appears on legal documents.

Business Name: Enter the name of the organization/entity under which it is applying for a grant.

Annual Revenue: For some organizations/entities this can be an annual budget.

Type of Organization: In this section, indicate whether the organization/entity is Tax Exempt or Not. Indicate what type or how the organization is recognized. Use "Other" if the organization does not fit in the designated categories.

Owner Information: Fill-in if a sole proprietorship.

Business Types: As indicated, check all that apply. Check the ones that are the closest description to your organization. Most grant applicants can use "Nonprofit Institution" plus any other type that may fit the description. (The listing is being revised to include grant applicants business types.)

Party Performing Certification: Enter information only if the organization has a certification from SBA. Most grant recipients and applicants do not fall into this category.

Goods and Services: This section is required. It will require the grant applicant/recipient to look up a code and enter the ones that best fit the type of services the organization provides. It is not required to fill-in all the spaces provided for the codes.

NAICS Code: Is required. Follow the instructions.

SIC Code: Is required. Follow the instructions.

Financial Information: Follow the instructions found in the CCR Handbook on page 14.

Registration Acknowledgement and Point of Contact Information

This section is very important and needs to have names and telephone numbers put in for specific purposes. For grant applicants and recipients the M fields are required.

CCR Point of Contact: Mandatory. Enter the name of the person that knows and acknowledges that the information in the CCR is current, accurate and complete. The person named here will be the only person within the registering organization to receive the Trading Partner Identification Number (TPIN) via e-mail or U.S. mail services. The registrant and the alternate are the only people authorized to share the information with the CCR Assistance Center personnel. An e-mail address is required. An alternate is also required for registration.

Government Business Point of Contact: Not mandatory; review CCR Handbook.

Electronic Business Point of Contact: Mandatory. Grant applicants/recipients must provide a name of an individual who will be responsible for approving the Role Manager for the organization. The Role Manager will be required to approve individuals who are authorized to submit grant applications on behalf of the organization. E-mail and telephone number are required. An alternate is required.

Past Performance Point of Contact: Not required.

Marketing Partner ID (MPIN): Mandatory for Grants.gov submission. This is a self-defined access code that will be shared with authorized electronic partner applications. The MPIN will act as your password in other systems. The MPIN must be nine positions and contain at least one alpha character, one number and no spaces or special characters.

Registration Notification: Once the registration is completed, a TPIN will be e-mailed or sent via the U.S. Postal Service to the organization's point of contact. If registration is done electronically, notification will be sent via e-mail within five days of registration.

[FR Doc. 03–22427 Filed 9–3–03; 8:45 am]
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Federal Register

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Friday, September 5, 2003

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Title 3—

The President

Presidential Determination No. 2003–33 of August 27, 2003

Determination on Export-Import Bank Support for U.S. Exports to Iraq

Memorandum for the Secretary of State

Consistent with section 2(b)(4) of the Export-Import Bank Act of 1945, as amended, I hereby determine and certify to the Congress that it is in the national interest for the Export-Import Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to Iraq.

You are directed to report this determination to the Congress and to provide copies of the justification explaining the basis for this determination. You are further directed to publish this determination in the **Federal Register**.

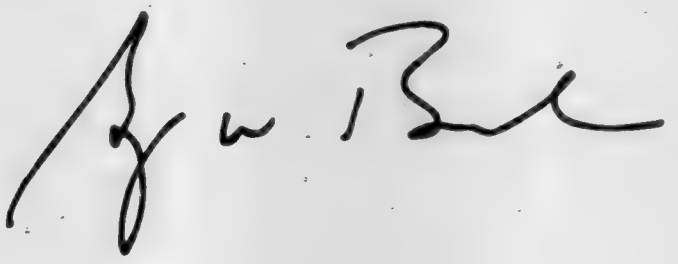

THE WHITE HOUSE,
Washington, August 27, 2003.

[FR Doc. 03–22775
Filed 9–4–03; 8:45 am]
Billing code 4710–10–P

Rules and Regulations

Federal Register
Vol. 68, No. 172
Friday, September 5, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

5 CFR Part 6501

RINs 3136–AA20, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the National Endowment for the Arts

AGENCY: National Endowment for the Arts (NEA).

ACTION: Interim final rule, with request for comments.

SUMMARY: The National Endowment for the Arts, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for officers and employees of the NEA that supplement the Standards of Ethical Conduct for Employees of the Executive Branch issued by OGE. The supplemental regulations require NEA employees, other than special Government employees, to obtain prior written approval to engage in certain outside employment or related activities.

DATES: These regulations take effect on September 5, 2003. Comments are invited and must be received on or before October 6, 2003.

ADDRESSES: Send comments to Karen Elias, Deputy General Counsel, National Endowment for the Arts, Room 518, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Karen Elias, Deputy General Counsel, National Endowment for the Arts, Room 518, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone (202) 682–5418. Individuals who use a telecommunications device for the deaf (TDD) may contact the NEA's TDD terminal at (202) 682–5496 Voice/T.T.

SUPPLEMENTARY INFORMATION:

1. Background

On August 7, 1992, OGE published in the **Federal Register** new Standards of Ethical Conduct for Employees of the Executive Branch (the "Standards"), 57 FR 35006–35067. The Standards, as corrected and amended, are codified at 5 CFR part 2635 and generally became effective February 3, 1993. Those regulations established uniform standards of ethical conduct that apply to all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. With OGE's concurrence, the NEA has determined that the following supplemental regulations contained in a new chapter LV, consisting of part 6501, of 5 CFR as set forth in this interim rule are necessary to implement the NEA's ethics program successfully, in light of the NEA's unique programs and operations.

The Foundation's old standards of conduct regulations at 45 CFR part 1105 were applicable to employees of both the NEA and the National Endowment for the Humanities (NEH) until they were superseded by the executive branchwide Standards at 5 CFR part 2635, and by OGE's executive branchwide financial disclosure regulations at 5 CFR part 2634. In a separate rulemaking document being published in the **Federal Register** today, the Foundation's superseded old conduct regulations and certain redundant provisions thereof are being removed and 45 CFR part 1105 is being revised to contain a cross-reference section referring to the NEA's and the NEH's new supplemental regulations (also being published in the **Federal Register** today), to 5 CFR parts 2634 and 2635, to 5 CFR part 2640, OGE's executive branch financial interest regulations, and to the executive branchwide employee responsibilities and conduct regulations issued by the Office of Personnel Management, as codified at 5 CFR part 735.

II. Analysis of the Regulations

Section 6501.101 General

Section 6501.101 explains that the regulations contained in this interim rule will apply to NEA employees and are supplemental to the executive branchwide standards. Employees of the NEA are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the executive branch financial disclosure and financial interests regulations at 5 CFR parts 2634 and 2640, and the executive branch employees responsibilities and conduct regulations at 5 CFR part 735.

Section 6501.102 Prior Approval for Outside Employment

Under 5 CFR 2635.803, an agency that determines it is necessary or desirable for the purposes of administering its ethics program may, by supplemental regulation with OGE's concurrence and co-signature, require its employees to obtain written approval before engaging in outside employment. The Foundation's superseded regulation at 45 CFR part 1105 required NEA employees to obtain advance approval for certain outside employment (that advance approval requirement remained in effect until February 3, 1994 by operation of the prior note following 5 CFR 2635.803 of the Standards (see the January 1, 1997 edition of 5 CFR)). The NEA has determined that it is necessary to the administration of its ethics program to reinstitute the requirement that employees, other than special Government employees, obtain prior approval before engaging in certain types of outside employment that pose the most potential for employees to engage in conduct that might violate applicable conflicts laws and regulations.

Therefore, § 6501.102(a) requires prior approval of outside employment when the outside employment involves a prohibited source. In identifying a "prohibited source" for purposes of this prior approval requirement, the NEA will apply the definition of that term found in the Standards at 5 CFR 2635.203(d). Thus, an employee will have to obtain approval before engaging in outside employment with any person (including an organization more than half of whose members are persons) seeking official action by the NEA; doing business or seeking to do business with the NEA; conducting activities regulated by the NEA; or having interests that may be substantially affected by the performance or

nonperformance of the employee's official duties. Section 6501.102(a) also requires written requests for approval to be submitted to the employee's immediate supervisor and his or her Designated Agency Ethics Official and specifies the information to be included in the employee's request. Section 6501.102(b) states the standard to be used in approving or denying requests for approval of outside employment. The basis for denial, if any, must be found in applicable statutes or Federal regulations, including the executive branchwide Standards.

Section 6501.102(c) defines outside employment as including any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes writing done under arrangement with another person for production or publication of the written product.

III. Matters of Regulatory Procedure

Waiver of Proposed Rulemaking

As Deputy General Counsel of the NEA, I have found good cause pursuant to 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking, the opportunity for advance public comments, and the 30-day delay in effectiveness as to this interim rule. The reason for this determination is that this rulemaking is related to the NEA's organization, procedure and practice. Nonetheless, this is an interim rulemaking, with provision for a 30-day public comment period. The NEA will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting these rules as final, with the concurrence and co-signature of the Office of Government Ethics.

Regulatory Flexibility Act

As Deputy General Counsel of the NEA, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects NEA employees.

Paperwork Reduction Act

As Deputy General Counsel of the NEA, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

List of Subjects in 5 CFR Part 6501

Conflict of interests, Government employees, Standards of conduct.

Dated: August 13, 2003.

Karen Elias,

Deputy General Counsel, National Endowment for the Arts.

Approved: August 26, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

■ For the reasons set forth in the preamble, the National Endowment for the Arts with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter LV, consisting of part 6501, to read as follows:

CHAPTER LV—NATIONAL ENDOWMENT FOR THE ARTS

PART 6501—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL ENDOWMENT FOR THE ARTS

Sec.

6501.101 General.
6501.102 Prior approval for outside employment.

Authority: 5 U.S.C. 7301, 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

§ 6501.101 General.

In accordance with 5 CFR 2635.105, the regulations of this part apply to employees of the National Endowment for the Arts (NEA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, employees of the NEA are subject to the executive branch employee responsibilities and conduct regulations at 5 CFR part 735, the executive branch financial disclosure regulations at 5 CFR part 2634, and the executive branch financial interests regulations at 5 CFR part 2640.

§ 6501.102 Prior approval for outside employment.

(a) Before engaging in any outside employment with a prohibited source within the meaning of 5 CFR 2635.203(d), whether or not for compensation, an employee other than a special Government employee must obtain written approval from his or her immediate supervisor and the Designated Agency Ethics Official. The request for approval shall include the following:

(1) The name of the person, group or other organization for whom the work is to be performed, the type of work to be performed, and the proposed hours of work and approximate dates of employment; and

(2) A description of the employee's NEA responsibilities and the employee's certification that the outside employment will not depend on nonpublic information obtained as a result of the employee's official Government position and that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment.

(b) Approval shall be granted only upon determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) *Outside employment* means any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to personal services such as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing when done under an arrangement with another person for production or publication of the written product.

[FR Doc. 03–22653 Filed 9–4–03; 8:45 am]
BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

5 CFR Part 6601

RINs 3136–AA21, 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the National Endowment for the Humanities

AGENCY: National Endowment for the Humanities (NEH).

ACTION: Interim final rule, with request for comments.

SUMMARY: The National Endowment for the Humanities, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for officers and employees of the NEH that supplement the Standards of Ethics Conduct for Employees of the Executive Branch issued by OGE. The supplemental regulations require NEH employees, other than special Government employees, to obtain prior written approval to engage in certain outside employment or related activities.

DATES: These regulations take effect on September 5, 2003. Comments are invited and must be received on or before October 6, 2003.

ADDRESSES: Send comments to Heather Gottry, Assistant General Counsel, National Endowment for the Humanities, Room 529, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Assistant General Counsel, National Endowment for the Humanities, Room 529, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone (202) 606–8322. Individuals who use a telecommunications device for the deaf (TDD) may contact the NEH's TDD terminal at (202) 606–8282 Voice/T.T or (866) 372–2930.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published in the **Federal Register** new Standards of Ethical Conduct for Employees of the Executive branch (the "Standards") (57 FR 35006–35067). The Standards, as corrected and amended, are codified at 5 CFR part 2635 and generally became effective February 3, 1993. Those regulations established uniform standards of ethical conduct that apply to all executive branch personnel.

With the concurrence of OGE, 5 CFR part 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations necessary to implement their respective ethics programs. With OGE's concurrence, the NEH has determined that the following supplemental regulations contained in a new chapter LVI, consisting of part 6601, of 5 CFR as set forth in this interim rule, are necessary to implement the NEH's ethics program successfully, in light of the NEH's unique programs and operations.

The Foundation's old standard of conduct regulations at 45 CFR were applicable to employees of both the NEH and the National Endowment for the Arts (NEA) until they were superseded by the executive branchwide Standards at 5 CFR part 2635, and by OGE's executive branchwide financial disclosure regulations at 5 CFR part 2634. In a separate rulemaking document being published in the **Federal Register** today, the Foundation's superseded old conduct regulations and certain redundant provisions thereof are being removed and 45 CFR part 1105 is being revised to contain a cross-reference section to the NEH's and the NEA's new supplemental regulations (also being published in the **Federal Register** today); to 5 CFR parts 2634 and 2635, to 5 CFR part 2640, OGE's executive branch financial interest regulations, and to the executive branchwide employee responsibilities and conduct regulations issued by the Office of Personnel Management, as codified at 5 CFR part 735.

II. Analysis of the Regulations

Section 6601.101 General

Section 6601.101 explains that the regulations contained in this interim rule will apply to NEH employees and are supplemental to the executive branchwide standards. Employees of the NEH are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the executive branch financial disclosure and financial interests regulations at 5 CFR parts 2634 and 2640, and the executive branch employees responsibilities and conduct regulations at 5 CFR part 735.

Section 6601.102 Prior Approval for Outside Employment

Under 5 CFR 2635.803, an agency that determines it is necessary or desirable for the purposes of administering its ethics program may, by supplemental regulation with OGE's concurrence and co-signature, require its employees to obtain written approval before engaging in outside employment. The Foundation's superseded regulation at 45 CFR part 1105 required NEH employees to obtain advance approval for certain outside employment. That NEH advance approval requirement remained in effect until February 3, 1995 by operation of the prior note following 5 CFR part 2635.803 of the Standards and prior appendix A to 5 CFR part 2635 (see the January 1, 1997 edition of 5 CFR and 59 FR 4779–4780 (February 2, 1994)). The NEH has determined that it is necessary to the administration of its ethics program to reinstitute the requirement that employees, other than special Government employees, obtain prior approval before engaging in certain types of outside employment that may pose the most potential for employees to violate applicable conflicts laws and regulations.

Therefore, § 6601.102(a) requires prior approval of outside employment when the outside employment involves a prohibited source. In identifying a "prohibited source" for purposes of this prior approval requirement, the NEH will apply the definition of that term found in the Standards at 5 CFR part 2635.203(d). Thus, an employee would have to obtain approval before engaging in outside employment with any person (including an organization more than half of whose members are persons) seeking official action by the NEH; doing business or seeking to do business with the NEH; conducting activities regulated by the NEH; or having interests that may be substantially affected by the performance or nonperformance of the employee's official duties. Section 6601.102(a) also requires written requests for approval to be submitted to the employee's immediate supervisor and his or her Designated Agency Ethics Official and specifies the information to be included in the employee's request. Section 6601.102(b) states the standard to be used in approving or denying requests for approval of outside employment. The basis for denial, if any, must be found in applicable statutes or Federal regulations, including the executive branchwide Standards.

Section 6601.102(c) defines outside employment as including any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes writing done under arrangement with another person for production or publication of the written product.

III. Matters of Regulatory Procedure

Waiver of Proposed Rulemaking

As Deputy General Counsel of the NEH, I have found good cause pursuant to 5 U.S.C. 553(b) and (d)(3) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking, the opportunity for advance public comment, and the 30-day delay in effectiveness as to this interim rule. The reason for this determination is that this rulemaking is related to the NEH's organization, procedure and practice. Nonetheless, this is an interim rulemaking with provision for a 30-day public comment period. The NEH will review all comments received during the comment

period and will consider any modifications that appear appropriate in adopting these rules as final with the concurrence and co-signature of the Office of Government Ethics.

Regulatory Flexibility Act

As Deputy General Counsel of the NEH, I have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects NEH employees.

Paperwork Reduction Act

As Deputy General Counsel of the NEH, I have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

List of Subjects in 5 CFR Part 6601

Conflict of interests, Government employees, Standards of conduct.

Dated: August 13, 2003.

Michael McDonald,

Deputy General Counsel and Acting Designated Agency Ethics Officer, National Endowment for the Humanities.

Approved: August 27, 2003.

Amy L. Comstock,

Director, Office of Government Ethics.

■ For the reasons set forth in the preamble, the National Endowment for the Humanities, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter LVI, consisting of part 6601, to read as follows:

CHAPTER LVI—NATIONAL ENDOWMENT FOR THE HUMANITIES

PART 6601—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES

Sec.
6601.101 General.
6601.102 Prior approval for outside employment.

Authority: 5 U.S.C. 7301, 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.803.

§ 6601.101 General.

In accordance with 5 CFR part 2635.105, the regulations of this part apply to employees of the National Endowment for the Humanities (NEH) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635. In addition to the regulations in 5 CFR part 2635 and this part, employees of the NEH are subject to the executive branch employee responsibilities and conduct regulations at 5 CFR part 735, the executive branch financial disclosure regulations at 5 CFR part 2634, and the executive branch financial interests regulations at 5 CFR part 2640.

§ 6601.102 Prior approval for outside employment.

(a) Before engaging in any outside employment with a prohibited source within the meaning of 5 CFR 2635.203(d), whether or not for compensation, an employee other than a special Government employee must obtain written approval from his or her immediate supervisor and the Designated Agency Ethics Official. The request for approval shall include the following:

(1) A brief description of the employee's official duties, a brief description of the proposed outside employment (including the name of the person, group or other organization for whom the work is to be performed), and a brief description of the employee's discipline or inherent area of expertise based on experience or educational background; and

(2) Responses to the following questions:

(i) Whether the proposed outside employment will draw on non-public information or pertain to a matter to which the employee is presently assigned or has been assigned within the last year;

(ii) Whether the proposed outside employment pertains to an ongoing or announced agency policy or program;

(iii) Whether the proposed outside employment will involve teaching a course which is part of the established curriculum of an accredited institution of higher education, secondary school, elementary school, or an education or training program sponsored by a Federal, State or local government entity;

(iv) Whether the sponsor of the proposed outside employment has any interests before the NEH that may be substantially affected by the performance or nonperformance of the employee's duties;

(v) Whether the employee intends to refer to his or her official NEH position during the proposed outside employment, and, if so, the text of any disclaimers that he or she will use; and

(vi) Whether the employee will receive any payment or compensation for the proposed activity, and, if so, how much.

(b) Approval shall be granted only upon determination that the outside employment is not expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635.

(c) Outside employment means any form of compensated or uncompensated non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services such as acting as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher or speaker. It includes writing done under arrangement with another person for production or publication of any written product.

[FR Doc. 03–22654 Filed 9–4–03; 8:45 am]

BILLING CODE 7536–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM248; Special Conditions No. 25–241–SC]

Special Conditions: Embraer Model ERJ–170 series airplanes; Electronic Flight Control Systems; Automatic Takeoff Thrust Control System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Embraer Model ERJ–170 series airplanes. These airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These design features are associated with (1) Electronic Flight Control Systems and (2) Automatic Takeoff Thrust Control System (ATTCS). The applicable airworthiness regulations do not contain adequate or appropriate safety standards

for these design features. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions will be issued for other novel or unusual design features of Embraer Model 170 series airplanes.

EFFECTIVE DATE: August 15, 2003.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149; email *tom.groves@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 20, 1999, Embraer applied for a type certificate for its new Model ERJ–170 airplane. Two basic versions of the Model ERJ–170 are included in the application. The ERJ–170–100 airplane is a 69–78 passenger, twin-engine regional jet with a maximum takeoff weight of 81,240 pounds. The ERJ–170–200 is a derivative with a lengthened fuselage. Passenger capacity for the ERJ–170–200 is increased to 86, and maximum takeoff weight is increased to 85,960 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Embraer must show that the Model ERJ–170 series airplanes meet the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–98.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for Embraer Model ERJ–170 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, Embraer Model ERJ–170 series airplanes must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 93–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2), Amendment 21–69, effective September 16, 1991.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporate the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design features, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Novel or Unusual Design Features

The Embraer Model ERJ–170 series airplanes will incorporate the following novel or unusual design features:

I. Electronic Flight Control System

In airplanes with electronic flight control systems, there may not always be a direct correlation between pilot control position and the associated airplane control surface position. Under certain circumstances, a commanded maneuver that does not require a large control input may require a large control surface movement, possibly encroaching on a control surface or actuation system limit without the flightcrew's knowledge. This situation can arise in either manually piloted or autopilot flight and may be further exacerbated on airplanes where the pilot controls are not back-driven during autopilot system operation. Unless the flightcrew is made aware of excessive deflection or impending control surface limiting, control of the airplane by the pilot or autoflight system may be inadvertently continued so as to cause loss of control of the airplane or other unsafe characteristics of stability or performance.

Given these possibilities, a special condition for Embraer Model ERJ–170 series airplanes addresses control surface position awareness. This special condition requires that suitable display or annunciation of flight control position be provided to the flightcrew when near full surface authority (not crew-commanded) is being used, unless other existing indications are found adequate or sufficient to prompt any required crew actions. Suitability of such a display or annunciation must take into account that some piloted maneuvers may demand the airplane's maximum performance capability, possibly associated with a full control surface deflection. Therefore, simple display systems—that would function in both intended and unexpected control-limiting situations—must be properly balanced to provide needed crew awareness and minimize nuisance alerts. A monitoring system that compares airplane motion, surface deflection, and pilot demand could be useful in eliminating nuisance alerting.

II. Automatic Takeoff Thrust Control System (ATTCS)

The Embraer Model ERJ–170 series airplane will incorporate an Automatic Takeoff Thrust Control System (ATTCS) in the engine's Full Authority Digital Electronic Control (FADEC) system architecture. The manufacturer requested that the FAA issue special conditions to allow performance credit to be taken for use of this function during go-around to show compliance with the requirement of § 25.121(d) regarding the approach climb gradient.

Section 25.904 and Appendix I refer to operation of ATTCS only during takeoff. Model ERJ–170 series airplanes have this feature for go-around also. The ATTCS will automatically increase thrust to the maximum go-around thrust available under the ambient conditions in the following circumstances:

- If an engine failure occurs during an all-engines-operating go-around, or
- If an engine has failed or been shut down earlier in the flight.

This maximum go-around thrust is the same as that used to show compliance with the approach-climb-gradient requirement of § 25.121(d). If the ATTCS is not operating, selection of go-around thrust will result in a lower thrust level.

The part 25 standards for ATTCS, contained in § 25.904 [Automatic takeoff thrust control system (ATTCS) and Appendix I], specifically restrict performance credit for ATTCS to takeoff. Expanding the scope of the standards to include other phases of flight, such as go-around, was considered when the standards were issued but was not accepted because of the effect on the flightcrew's workload. As stated in the preamble to amendment 25–62:

> In regard to ATTCS credit for approach climb and go-around maneuvers, current regulations preclude a higher thrust for the approach climb [§ 25.121(d)] than for the landing climb [§ 25.119]. The workload required for the flightcrew to monitor and select from multiple in-flight thrust settings in the event of an engine failure during a critical point in the approach, landing, or go-around operations is excessive. Therefore, the FAA does not agree that the scope of the amendment should be changed to include the use of ATTCS for anything except the takeoff phase." (Refer to 52 FR 43153, November 9, 1987.)

The ATTCS incorporated on Embraer Model ERJ–170 series airplanes allows the pilot to use the same power setting procedure during a go-around, regardless of whether or not an engine fails. In either case, the pilot obtains go-around power by moving the throttles into the forward (takeoff/go-around) throttle detent. Since the ATTCS is permanently armed for the go-around phase, it will function automatically following an engine failure and advance the remaining engine to the ATTCS thrust level. This design adequately addresses the concerns about pilot workload which were discussed in the preamble to Amendment 25–62.

The system design allows the pilot to enable or disable the ATTCS function for takeoff. If the pilot enables ATTCS, a white "ATTCS" icon will be displayed on the Engine Indication and Crew Alerting System (EICAS) beneath the thrust mode indication on the display. This white icon indicates to the pilot that the ATTCS function is enabled. When the throttle lever is put in the TO/GA (takeoff/go-around) detent position, the white icon turns green, indicating to the pilot that the ATTCS is armed. If the pilot disables the ATTCS function for takeoff, no indication appears on the EICAS.

Regardless of whether the ATTCS is enabled for takeoff, it is automatically enabled when the airplane reaches the end of the take-off phase (that is, the thrust lever is below the TO/GA position and the altitude is greater than 1,700 feet above the ground, 5 minutes have elapsed since lift-off, or the airplane speed is greater than 140 knots).

During climb, cruise and descent, when the throttle is not in the TO/GA position, the ATTCS indication is inhibited. During descent and approach to land, until the thrust management system go-around mode is enabled—either by crew action or automatically when the landing gear are down and locked and flaps are extended—the ATTCS indication remains inhibited.

When the go-around thrust mode is enabled, unless the ATTCS system has failed, the white "ATTCS" icon will again be shown on the EICAS, indicating to the pilot that the system is enabled and in an operative condition in the event a go-around is necessary. If the thrust lever is subsequently placed in the TO/GA position, the ATTCS icon turns green, indicating that the system is armed and ready to operate.

If an engine fails during the go-around or during a one-engine-inoperative go-around in which an engine had been shut down or otherwise made inoperative earlier in the flight, the EICAS indication will be GA RSV (go-around reserve) when the thrust levers are placed in the TO/GA position. The GA RSV indication means that the maximum go-around thrust under the ambient conditions has been commanded.

The propulsive thrust used to determine compliance with the approach climb requirements of § 25.121(d) is limited to the lesser of (i) the thrust provided by the ATTCS system, or (ii) 111 percent of the thrust resulting from the initial thrust setting with the ATTCS system failing to perform its uptrim function and without action by the crew to reset thrust. This requirement limits the adverse performance effects of a failure of the ATTCS and ensures adequate all-engines-operating go-around performance.

These special conditions require a showing of compliance with the provisions of § 25.904 and Appendix I applicable to the approach climb and go-around maneuvers.

The definition of a critical time interval for the approach climb case is of primary importance. During this time it must be extremely improbable to violate a flight path derived from the gradient requirement of § 25.121(d). That gradient requirement implies a minimum one-engine-inoperative flight path with the airplane in the approach configuration. The engine may have been inoperative before initiating the go-around, or it may become inoperative during the go-around. The definition of the critical time interval must consider both possibilities.

Discussion of Comments

Notice of proposed special conditions No. 25–03–03–SC for the Embraer Model ERJ–170 series airplane was published in the **Federal Register** on April 23, 2003 (68 FR 19958) and a Supplemental notice of proposed special conditions was published on June 5, 2003 (68 FR 33659). No comments were received after publication of the initial notice or the supplemental notice, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions are applicable to the Embraer Model ERJ–170 series airplanes. Should Embraer apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1), Amendment 21–69, effective September 16, 1991.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the certification date for the Embraer Model ERJ–170 series airplane is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

Conclusion

This action affects only certain novel or unusual design features on the Embraer Model ERJ–170 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, the Federal Aviation Administration (FAA) issues the following special conditions as part of the type certification basis for Embraer Model ERJ–170 series airplanes.

I. Electronic Flight Control System

In addition to compliance with §§ 25.143, 25.671 and 25.672, when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelope and (or) continuation of safe flight requires a specific crew action, a suitable flight control position annunciation shall be provided to the crew, unless other existing indications are found adequate or sufficient to prompt that action.

Note: The term suitable also indicates an appropriate balance between nuisance and necessary operation.

II. Automatic Takeoff Thrust Control System (ATTCS)

To use the thrust provided by the ATTCS to determine the approach climb performance limitations, the Embraer Model ERJ–170 series airplane must comply with the requirements of § 25.904 and Appendix I, including the following requirements pertaining to the go-around phase of flight:

1. Definitions

(a) *TOGA—(Take Off/Go-Around).* Throttle lever in takeoff or go-around position.

(b) *Automatic Takeoff Thrust Control System—(ATTCS).* The Embraer Model ERJ–170 series ATTCS is defined as the entire automatic system available in takeoff when selected by the pilot and always in go-around mode; including all devices, both mechanical and electrical, that sense engine failure, transmit signals, and actuate fuel controls or power levers or increase engine power by other means on operating engines to achieve scheduled thrust or power increases and to furnish cockpit information on system operation.

(c) *Critical Time Interval.* The definition of the Critical Time Interval in appendix I, § I25.2(b) shall be expanded to include the following:

(1) When conducting an approach for landing using ATTCS, the critical time interval is defined as 120 seconds. A shorter time interval may be used if justified by a rational analysis. An accepted analysis that has been used on past aircraft certification programs is as follows:

(i) The critical time interval begins at a point on a 2.5 degree approach glide path from which, assuming a simultaneous engine and ATTCS failure, the resulting approach climb flight path intersects a flight path originating at a later point on the same approach path corresponding to the part 25 one-engine-inoperative approach climb gradient. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for takeoff, beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(ii) The critical time interval ends at the point on a minimum performance, all-engines-operating go-around flight path from which, assuming a simultaneous engine and ATTCS failure, the resulting minimum approach climb flight path intersects a flight path corresponding to the part 25 minimum one-engine-inoperative approach-climb-gradient. The all-engines-operating go-around flight path and the part 25 one-engine-inoperative, approach-climb-gradient flight path, originate from a common point on a 2.5 degree approach path. The period of time from the point of simultaneous engine and ATTCS failure to the intersection of these flight paths must be no shorter than the time interval used in evaluating the critical time interval for the takeoff beginning from the point of simultaneous engine and ATTCS failure and ending upon reaching a height of 400 feet.

(2) The critical time interval must be determined at the altitude resulting in the longest critical time interval for which one-engine-inoperative approach climb performance data are presented in the Airplane Flight Manual (AFM).

(3) The critical time interval is illustrated in the following figure:

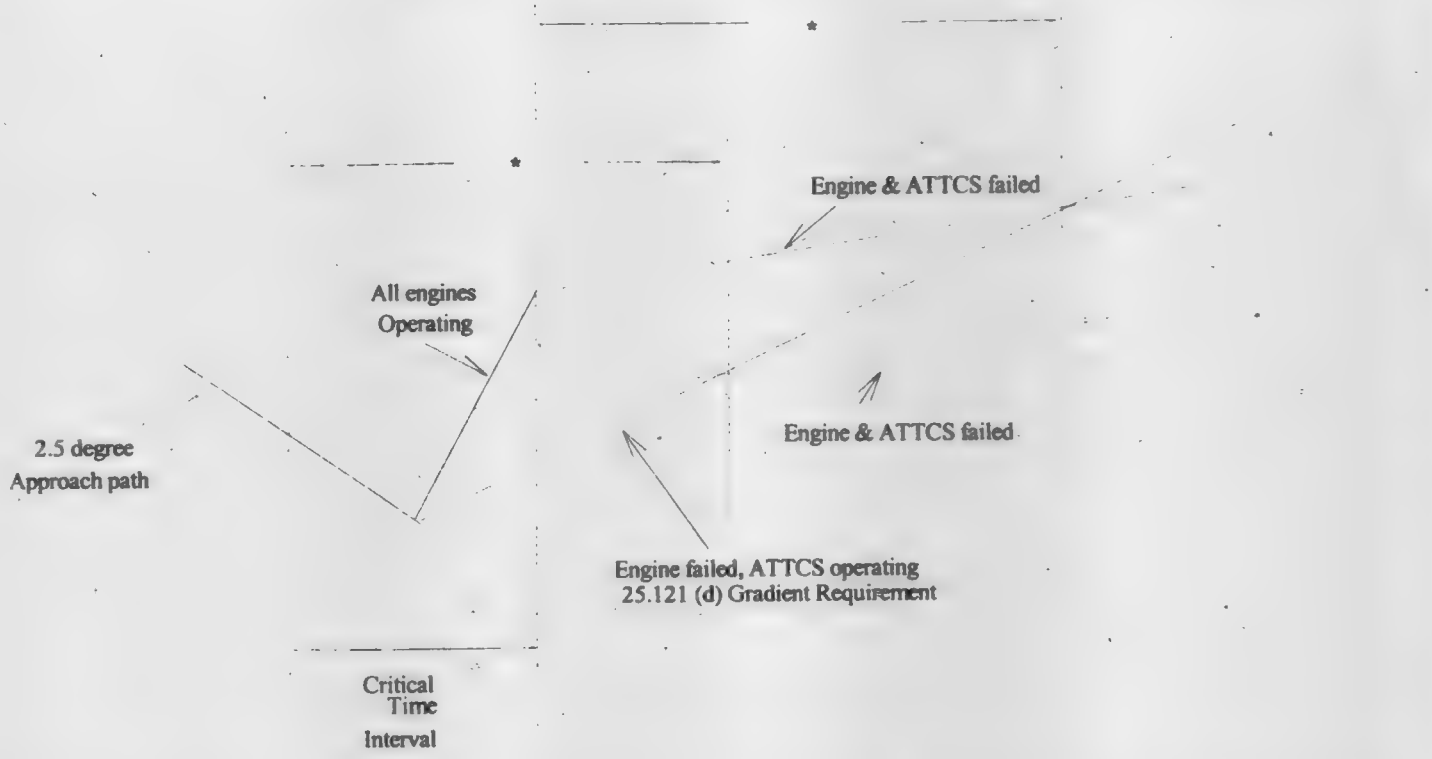

The engine and ATTCS failed time interval must be no shorter than the time interval from the point of simultaneous engine and ATTCS failure to a height of 400 feet used to comply with I25.2(b) for ATTCS use during takeoff.

2. Performance and System Reliability Requirements.

The applicant must comply with the following performance and ATTCS reliability requirements:

(a) An ATTCS failure or combination of failures in the ATTCS during the critical time interval:

(1) Shall not prevent the insertion of the maximum approved go-around thrust or power or must be shown to be an improbable event.

(2) Shall not result in a significant loss or reduction in thrust or power or must be shown to be an extremely improbable event.

(b) The concurrent existence of an ATTCS failure and an engine failure during the critical time interval must be shown to be extremely improbable.

(c) All applicable performance requirements of part 25 must be met with an engine failure occurring at the most critical point during go-around with the ATTCS system functioning.

(d) The probability analysis must include consideration of ATTCS failure occurring after the time at which the flightcrew last verifies that the ATTCS is in a condition to operate until the beginning of the critical time interval.

(e) The propulsive thrust obtained from the operating engine after failure of the critical engine during a go-around used to show compliance with the one-engine-inoperative climb requirements of § 25.121(d) may not be greater than the lesser of:

(i) The actual propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS functioning; or

(ii) 111 percent of the propulsive thrust resulting from the initial setting of power or thrust controls with the ATTCS failing to reset thrust or power and without any action by the crew to reset thrust or power.

3. Thrust Setting.

(a) The initial go-around thrust setting on each engine at the beginning of the go-around phase may not be less than any of the following:

(1) That required to permit normal operation of all safety-related systems and equipment dependent upon engine thrust or power lever position; or

(2) That shown to be free of hazardous engine response characteristics when thrust or power is advanced from the initial go-around position to the maximum approved power setting.

(b) For approval of an ATTCS for go-around, the thrust setting procedure must be the same for go-arounds initiated with all engines operating as for go-arounds initiated with one engine inoperative.

4. Powerplant Controls.

(a) In addition to the requirements of § 25.1141, no single failure or malfunction, or probable combination thereof, of the ATTCS, including associated systems, may cause the failure of any powerplant function necessary for safety.

(b) The ATTCS must be designed to accomplish the following:

(1) Following any single engine failure during go around: Apply thrust or power on the operating engine(s) to achieve the maximum approved go-around thrust without exceeding engine operating limits;

(2) Permit manual decrease or increase in thrust or power up to the maximum go-around thrust approved for the airplane under existing conditions through the use of the power lever. For airplanes equipped with limiters that automatically prevent engine operating limits from being exceeded under existing ambient conditions, other means may be used to increase the thrust in the event of an ATTCS failure. Any such means must be located on or forward of the power levers; be easily identified and operated under all operating conditions by a single action of either pilot with the hand that is normally used to actuate the power levers, and meet the requirements of § 25.777 (a), (b), and (c);

(3) Provide a means to verify to the flightcrew before beginning an approach for landing that the ATTCS is in a condition to operate (unless it can be demonstrated that an ATTCS failure combined with an engine failure during an entire flight is extremely improbable); and

(4) Provide a means for the flightcrew to deactivate the automatic function. This means must be designed to prevent inadvertent deactivation.

5. In addition to the requirements of § 25.1305, the following requirements pertaining to powerplant instruments must be met:

(a) A means must be provided to indicate when the ATTCS is in the armed or ready condition; and

(b) If the inherent flight characteristics of the airplane do not provide adequate warning that an engine has failed, a warning system that is independent of the ATTCS must be provided to give the pilot a clear warning of any engine failure during go-around.

Issued in Renton, Washington, on August 15, 2003.

Kyle Olsen,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22565 Filed 9–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–187–AD; Amendment 39–13293; AD 2003–18–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that requires, among other actions, a detailed inspection of the rudder travel limitation unit for proper adjustment, measurement of the desynchronization of rudder servo-controls, installation of rigging placards for rudder servo-controls, and follow-on and corrective actions if necessary. This action is necessary to prevent desynchronization of the rudder servo-controls, which could result in high load factors on the rudder servo-controls, and consequent reduced structural integrity of the attachment fittings for the rudder servo-controls. This action is intended to address the identified unsafe condition.

DATES: Effective October 10, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 10, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes was published in the **Federal Register** on May 29, 2003 (68 FR 31991). That action proposed to require, among other actions, a detailed inspection of the rudder travel limitation unit for proper adjustment, measurement of the desynchronization of rudder servo-controls, installation of rigging placards for rudder servo-controls, and follow-on and corrective actions if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Extend Compliance Time

Two commenters request that the compliance time of the proposed AD be extended from 16 months to 18 months. One of the commenters is the operator of the nine U.S.-registered Airbus Model A330 airplanes affected by the proposed AD. Extension of the compliance time to 18 months would match the Airbus C-check interval. The second commenter supports the comments of the first commenter and offers no additional comment.

The FAA does not agree with the commenters' request to extend the

compliance time. The operator has completed the required inspection on five of its nine airplanes. The operator plans to inspect the remaining four airplanes in its fleet at the next C-check, scheduled to begin in late 2003. Of the five airplanes already inspected, the operator indicates that it has found two airplanes with desynchronized servo-controls. Based upon those inspection results the FAA finds that it may be possible for the remaining airplanes to also have desynchronized servo-controls. Such desynchronized servo-controls could cause cracks on the rudder servo-control bearing and attachment, leading to reduced structural integrity of the rudder servo-control attachment fitting. Therefore, we do not consider that an extension is appropriate. Operators always have the option to request approval of an alternative method of compliance if it provides an equivalent level of safety. No change to the final rule is necessary regarding this issue.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 9 Airbus Model A330 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required inspection and measurement, and 1 work hour per airplane to accomplish the required installation of the rigging placards, and that the average labor rate is $65 per work hour. Required rigging placards will be provided to the operators at no cost. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $4,095, or $455 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Currently, there are no Airbus Model A340 series airplanes on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require 6 work hours per airplane to accomplish the required inspection and measurement, and 1 work hour per airplane to accomplish the required installation of the rigging placards, at an average labor rate of $65 per work hour. Required placards would be provided to the operators at no cost. Based on these figures, the cost impact of the AD for Model A340 operators would be $455 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding the following new airworthiness directive:

2003–18–02 Airbus: Amendment 39–13293. Docket 2001–NM–187–AD.

Applicability: Model A330 and A340 series airplanes, certificated in any category; except those airplanes modified in production in accordance with Airbus Modification 48110.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent desynchronization of the rudder servo-controls, which could result in high load factors on the rudder servo-controls, and consequent reduced structural integrity of the attachment fittings for the rudder servo-controls, accomplish the following:

Inspection of Rudder Travel Limitation Unit

(a) Within 16 months after the effective date of this AD: Perform a one-time detailed inspection of the rudder travel limitation unit (RTLU) (including installing rigging pins on the bellcrank and the right and left input levers) for proper adjustment, per the Accomplishment Instructions specified in Airbus Service Bulletin A330–27–3084 (for Model A330 series airplanes); or Airbus Service Bulletin A340–27–4088 (for Model A340 series airplanes); both dated March 28, 2001; as applicable. Although the service bulletins reference a reporting requirement, such reporting is not required by this AD.

(1) If it is possible to install rigging pins on both input levers, the RTLU is properly

adjusted and no further action is required by this paragraph.

(2) If it is not possible to install the rigging pins on either input lever, before further flight, adjust the length of the appropriate adjustable rod, per the Accomplishment Instructions specified in the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Measurement of Rudder Servo-Controls Desynchronization and Corrective Action if Necessary

(b) Within 16 months after the effective date of this AD: Measure the desynchronization value (value D) of the rudder servo-controls and, depending on the measurement, before further flight, perform the applicable corrective actions (*e.g.*, replacement and/or adjustment of the spring rod and/or the rudder servo-controls); per the Accomplishment Instructions specified in Airbus Service Bulletin A330–27–3084 (for Model A330 series airplanes); or Airbus Service Bulletin A340–27–4088 (for Model A340 series airplanes); both dated March 28, 2001; as applicable. Operators should note that although these service bulletins request that desynchronized rudder servo-controls with the highest load factors be returned to the manufacturer, that action is not required by this AD.

(c) If any rudder servo-control was replaced per the requirements of paragraph (b) of this AD, do paragraphs (c)(1) and (c)(2) of this AD.

(1) Before further flight, perform either a detailed inspection or a high frequency eddy current (HFEC) inspection for cracks in the attachment fittings of the desynchronized rudder servo-controls, and perform the applicable follow-on and corrective actions (*e.g.*, cold expansion of affected fastener holes, drilling/reaming of affected holes, and rotating probe inspections), per the Accomplishment Instructions specified in Airbus Service Bulletin A330–55–3028 (for Model A330 series airplanes); or Airbus Service Bulletin A340–55–4026 (for Model A340 series airplanes); both excluding Appendix 01; both dated May 28, 2001; as applicable; except where the service bulletin specifies to contact the manufacturer for repair instructions, repair per a method approved by the Manager, International Branch, ANM–116, FAA.

(2) Repeat the inspection required by paragraph (c)(1) of this AD at the following intervals:

(i) If the immediately preceding inspection was conducted using detailed inspection techniques, conduct the next inspection within 300 flight cycles; or

(ii) If the immediately preceding inspection was conducted using HFEC techniques, conduct the next inspection within 6,000 flight cycles.

Concurrent Requirements

(d) Concurrently with the requirements of paragraphs (a) and (b) of this AD, install appropriate rigging placards for the rudder servo-controls, per Airbus Service Bulletin A330–27–3082 (for Model A330 series airplanes); or Airbus Service Bulletin A340–27–4086 (for Model A340 series airplanes); both dated March 28, 2001; as applicable.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permit

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The actions shall be done in accordance with Airbus Service Bulletin A330–27–3082, dated March 28, 2001; Airbus Service Bulletin A330–27–3084, dated March 28, 2001; Airbus Service Bulletin A330–55–3028, excluding Appendix 01, dated May 28, 2001; Airbus Service Bulletin A340–27–4086, dated March 28, 2001; Airbus Service Bulletin A340–27–4088, dated March 28, 2001; and Airbus Service Bulletin A340–55–4026, excluding Appendix 01, dated May 28, 2001; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directives 2001–156(B) and 2001–157(B), both dated May 2, 2001.

Effective Date

(h) This amendment becomes effective on October 10, 2003.

Issued in Renton, Washington, on August 27, 2003.

Neil D. Schalekamp,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22495 Filed 9–4–03; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1512

Requirements for Bicycles—Tests and Test Procedures; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule; correction.

SUMMARY: It has come to the attention of the Consumer Product Safety Commission (CPSC or Commission) recently that the equation defining the criteria for the reflective tire and rim test that appears in the current CPSC bicycle regulations has several typographical errors. Therefore, the Commission is issuing this immediately effective revision to the pertinent portion of the those regulations to correct the errors.

DATES: This rule is effective September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Vincent Amodeo, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7570; e-mail *vamodeo@cpsc.gov*

SUPPLEMENTARY INFORMATION:

A. The Correction

The Commission's bicycle regulations issued under authority of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261–1278, appear at 16 CFR part 1512. The current version of the portion of those regulations establishing the criteria for testing reflective tires and rims contains several typographical errors. In particular, in § 1512.18(o)(2)(iv), in the Ratio equation, the symbol "θ" for the entrance angle is missing and the symbol "Φ" for the observation angle is incorrectly shown as a lower case "o". The correct equation reads as follows:

$$A = 4\mathrm{Cos}^2\theta/[1+(\Phi/0.225)^{3/2}]$$

The symbols θ and Φ are also omitted in the sentence following the Ratio equation. Accordingly, the Commission is issuing this immediately effective amendment to § 1512.18(o)(2)(iv) to correct these errors.

B. The Administrative Procedure Act (APA)

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) authorizes an agency to dispense with certain notice procedures for a rule when it finds "good cause" to do so. 5 U.S.C. 553(b)(3)(B). Specifically, under section 553(b)(3)(B), the requirement for notice and an opportunity to comment does not apply when the agency, for good cause, finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." This amendment corrects obvious typographical errors in the current versions of § 1512.18(o)(2)(iv) and does not change the criteria set forth therein. Accordingly, the Commission hereby finds that notice of, and public comment on, this technical correction are unnecessary.

Section 553(d)(3) of the APA authorizes an agency, "for good cause found and published with the rule," to dispense with the otherwise applicable requirement that a rule be published in the **Federal Register** at least 30 days before its effective date. The Commission hereby finds that a 30 day delay in the effective date is unnecessary because this technical amendment merely corrects obvious typographical errors in the current version of § 1512.18(o)(2)(iv).

C. Other Rulemaking Requirements

Because this technical correction is being issued as a final rule not subject to notice and comment, it is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*

The Commission's regulations at 16 CFR 1021.5(c)(1) state that rules or safety standards to provide design or performance requirements for products normally have little or no potential for affecting the human environment. Because this amendment is a technical correction that makes no change to the substantive requirements of the portion of the regulations being amended, the Commission concludes that no environmental assessment or environmental impact statement is required.

As provided for in Executive Order 12988 (February 5, 1996), the CPSC states the preemptive effect of this technical correction amendment as follows. The FHSA provides that, generally, if the Commission issues a banning rule under section 2(q) of the FHSA to protect against a risk of illness or injury associated with a hazardous substance, "no State or political subdivision of a State may establish or continue in effect a requirement applicable to such substance and designed to protect against the same risk of illness or injury unless such requirement is identical to the requirement established under such regulations." 15 U.S.C. 1261n(b)(1)(B). Upon application to the Commission, a State or local standard may be excepted from this preemptive effect if the State or local standard (1) provides a higher degree of protection from the risk of injury or illness than the FHSA standard and (2) does not unduly burden interstate commerce. In addition, the Federal government, or a State or local government, may establish and continue in effect a non-identical requirement that provides a higher degree of protection than the FHSA requirement for the hazardous substance for the Federal, State or local government's own use. 15 U.S.C. 1261n(b)(2). Thus, this technical correction amendment preempts non-identical state or local requirements designed to protect against the same risk of injury.

■ For the reasons stated in the preamble, the Commission amends part 1512 of Title 16 of the Code of Federal Regulations to read as follows:

PART 1512—REQUIREMENTS FOR BICYCLES

■ 1. The authority for Part 1512 continues to read as follows:

Authority: Secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), 74 Stat. 372, 374, 375, as amended, 80 Stat. 1304–05, 83 Stat. 187–89 (15 U.S.C. 1261, 1262); Pub. L. 107–319, 116 Stat. 2776.

■ 2. In §1512.18, revise the heading and first sentence of paragraph (o)(2)(iv) to read as follows:

§ 1512.18 Tests and test procedures.

* * * * *

(o) * * *

(2) * * *

(iv) *Criteria.* The ratio A as defined in § 1512.18(o)(2)(iii) shall not be less than:

$$A = 4\mathrm{Cos}^2\theta/[1+(\Phi/0.225)^{3/2}]$$

where A is ratio in meters, θ is the entrance angle in degrees, and Φ is the observation angle in degrees. * * *

* * * * * *

Dated: August 28, 2003.

Todd A. Stevenson, Secretary,

Consumer Product Safety Commission.

[FR Doc. 03–22587 Filed 9–4–03; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[NE 190–1190a; FRL–7552–9]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing approval of revisions to the Nebraska State Implementation Plan (SIP) and Operating Permits Program. On September 5, 2002, the state updated its air program construction and operating permitting rules, its definitions rule, and emission inventory reporting rule. Approval of these revised rules will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's revised air program rules.

DATES: This direct final rule will be effective November 4, 2003, unless EPA receives adverse comments by October 6, 2003. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be submitted to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to Wayne Kaiser at *kaiser.wayne@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in "What action is EPA taking" in the **SUPPLEMENTARY INFORMATION** section.

Copies of documents relative to this action are available for public inspection during normal business hours at the above-listed Region 7 location. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603 or by E-mail at *kaiser.wayne@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This section provides additional

information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is the part 70 Operating Permits Program?
What is the Federal approval process for an operating permits program?
What does Federal approval of a state operating permits program mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision and part 70 program revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by us. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by us under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgations of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is the Part 70 Operating Permits Program?

The CAA Amendments of 1990 require all states to develop operating permits programs that meet certain Federal criteria. In implementing this program, the states are to require certain sources of air pollution to obtain permits that contain all applicable requirements under the CAA. One purpose of the part 70 operating permits program is to improve enforcement by issuing each source a single permit that consolidates all of the applicable CAA requirements into a Federally-enforceable document. By consolidating all of the applicable requirements for a facility into one document, the source, the public, and the permitting authorities can more easily determine what CAA requirements apply and how compliance with those requirements is determined.

Sources required to obtain an operating permit under this program include "major" sources of air pollution and certain other sources specified in the CAA or in our implementing regulations. For example, all sources regulated under the acid rain program, regardless of size, must obtain permits. Examples of major sources include those that emit 100 tons per year or more of volatile organic compounds, carbon monoxide, lead, sulfur dioxide, nitrogen dioxide, or PM_{10}; those that emit 10 tons per year of any single hazardous air pollutant (HAP) (specifically listed under the CAA); or those that emit 25 tons per year or more of a combination of HAPs.

What Is the Federal Approval Process for an Operating Permits Program?

In order for state regulations to be incorporated into the Federally-enforceable Title V operating permits program, states must formally adopt regulations consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the approved operating permits program. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 502 of the CAA are incorporated into the Federally-approved operating permits program. Records of such actions are maintained in the CFR at Title 40, part 70, appendix A, entitled "Approval Status of State and Local Operating Permits Programs."

What Does Federal Approval of a State Operating Permits Program Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved operating permits program is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

The state of Nebraska has requested that we approve as a revision to the Nebraska SIP, part 70 Operating Permits Program, and section 112(l) air toxics program rule revisions adopted by the Nebraska Environmental Quality Council on September 5, 2002. In its submission, the state also requested that we not take action, at this time, on certain revisions, as discussed below, relating to the state's "permit by rule." The revisions to Title 129—Nebraska Air Quality Regulations which we are approving in today's rule are:

Chapter 1—Definitions, was revised to add new definitions for: Air Quality Control Region, AP–42, Insignificant activities, Low emitter, Method 9, Method 22, Mobile source, Speciation,

Synthetic minor, and UTM coordinates. Additionally, the existing definition for Interstate air pollution control agency was revised. These changes will help clarify and define other related requirements of the state's rules.

Chapter 5—Operating Permits—When Required. Clarifying terms were added to the terms Class I and Class II permits. Class I also means major source, and Class II means minor source.

Chapter 6—Emissions Reporting: When Required. The emissions reporting requirements were clarified to distinguish between non-hazardous and hazardous pollutants, and a reference to Appendix III was added. This appendix, otherwise called the Insignificant Activities List, specifies the hazardous air pollutants and quantities required to be reported on the emission inventory form.

Chapter 30—Open Fires, Prohibited; Exceptions. This revision broadens the range of groups that may be issued open burning permits for the purpose of plant and wildlife parks management when approved by the Director.

Appendix III—Reporting Levels of Hazardous Air Pollutants for Emissions Inventory. This table (the Insignificant Activities List) has been used by the Department for some time, but now has been codified into Title 129 of the state rules.

The state has also adopted a permit-by-rule provision in chapter 42 of Title 129 of the state rules. Because the state is in the process of revising chapter 42, and we are working with the state to make appropriate revisions, Nebraska has requested that we not consider chapter 42 as part of its official submission at this time. In keeping with that request, we are also not acting on portions of the submission which reference chapter 42 identified below. This will avoid confusion by ensuring that the Federally-approved requirements do not cross-reference other requirements which are not Federally approved at this time. We will be acting on these provisions when the state submits its revised chapter 42 for approval.

The specific portions of the September 5, 2002, revisions which are not approved are as follows:

—The revision to chapter 5, rule 001.02;
—The revision to chapter 9, rule 011; and
—The revision to chapter 17, rule 001.

These provisions provide exemptions from certain construction and operating permit program requirements for sources operating under chapter 42. The result of our action is that these exemptions will not be recognized under the Federally-approved permitting programs until such time as we approve the state's chapter 42 permit-by-rule program.

Have the Requirements for Approval of a SIP Revision and Part 70 Program Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revisions approved today meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations. Finally, the approved revisions meet the substantive requirements of Title V of the 1990 CAA Amendments and 40 CFR part 70.

What Action Is EPA Taking?

We are approving as an amendment to the Nebraska SIP revisions to Title 129, chapters 1, 5, 6, and 30 as described in this rule. We are also approving as a program revision to the state's part 70 Operating Permits Program revisions to Title 129, chapters 1, 5, 6, and appendix III. Finally, we are approving pursuant to section 112(l) revisions to chapter 5. These revisions to the state rules became effective November 20, 2002.

EPA is processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

You may submit comments either electronically or by mail. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number, NE 190–1190a, in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

a. *Electronic mail.* Comments may be sent by e-mail to Wayne Kaiser at *kaiser.wayne@epa.gov*. Please include identification number NE 190–1190a in the subject line. EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket.

b. *Regulations.gov.* Your use of Regulations.gov is an alternative method of submitting electronic comments to EPA. Go directly to *http://www.regulations.gov*, click on "To Search for Regulations," then select Environmental Protection Agency and use the "go" button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

2. *By Mail.* Written comments should be sent to the name and address listed in the **ADDRESSES** section of this document.

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility

Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 *note*) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 4, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: August 22, 2003.

Cecilia Tapia,

Acting Regional Administrator, Region 7.

■ Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart CC—Nebraska

■ 2. In § 52.1420 the table in paragraph (c) is amended by:

■ a. Adding a heading for Title 129.

■ b. Revising the entries for 129–1, 129–5, 129–6, and 129–30.

The addition and revisions read as follows:

§ 52.1420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED NEBRASKA REGULATIONS

Nebraska citation	Title	State effective date	EPA approval date	Comments
STATE OF NEBRASKA Department of Environmental Quality				
Title 129—Nebraska Air Quality Regulations				
129–1	Definitions	11/20/02	9/5/03 and FR page citation.	
* * * * * * *				
129–5	Operating Permit	11/20/02	9/5/03 and FR page citation ..	Section 001.02 is not SIP approved.
129–6	Emissions Reporting	11/20/02	9/5/03 and FR page citation.	

EPA-APPROVED NEBRASKA REGULATIONS—Continued

Nebraska citation	Title	State effective date	EPA approval date	Comments
* * *	*	*	*	*
129–30	Open Fires, Prohibited; Exceptions.	11/20/02	9/5/03 and FR page citation.	
* * *	*	*	*	*

* * * * *

PART 70—[AMENDED]

■ 1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Appendix A—[Amended]

■ 2. Appendix A to part 70 is amended by adding paragraph (g) under Nebraska; City of Omaha; Lincoln-Lancaster County Health Department to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Nebraska; City of Omaha; Lincoln-Lancaster County Health Department.

* * * * *

(g) The Nebraska Department of Environmental Quality approved revisions to NDEQ Title 129, chapters 1, 5, 6, and appendix III (which codifies its prior Federally approved Insignificant Activities List) on September 5, 2002, which became effective on November 20, 2002. These revisions were submitted on May 1, 2003. We are approving these program revisions effective November 4, 2003.

* * * * *

[FR Doc. 03–22539 Filed 9–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2003–0284; FRL–7323–7]

Propylene Carbonate; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of propylene carbonate when used as an inert ingredient in pesticide formulations applied pre- and post-harvest to agricultural commodities. Huntsman Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of propylene carbonate.

DATES: This regulation is effective September 5, 2003. Objections and requests for hearings, identified by docket ID number OPP–2003–0284, must be received on or before November 4, 2003.

ADDRESSES: Written objections and hearing requests submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Kathryn Boyle, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6304; e-mail address:*boyle.kathryn@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected entities may include, but are not limited to:

- Crop production (NAICS 111)
- Animal production (NAICS 112)
- Food manufacturing (NAICS 311)
- Pesticide manufacturing (NAICS 32532)

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket identification (ID) number OPP–2003–0284. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at*http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at *http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html*, a beta site currently under development.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still

access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

II. Background and Statutory Findings

In the **Federal Register** of December 30, 1998 (63 FR 71920) (FRL–6050–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170), announcing the filing of a pesticide tolerance petition (PP 8E4992) by Huntsman Corporation, Houston, Texas. This notice included a summary of the petition prepared by the petitioner Huntsman. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(c) be amended by establishing an exemption from the requirement of a tolerance for residues of propylene carbonate, also known as 1,3-Dioxolan-2-one, 4-methyl- (CAS Reg. No. 108–32–7).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Human Health Assessment

A. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by propylene carbonate are discussed in this unit. The Agency has reviewed 12 toxicity studies using propylene carbonate as the test substance. The results of those reviews are listed in the following Table 1:

TABLE 1.—TOXICITY STUDIES USING PROPYLENE CARBONATE

Study Type	Results
Acute oral (rat)	LD_{50} > 5,000 mg/kg (Toxicity Category IV)
Acute dermal (rabbit)	LD_{50} > 2,000 mg/kg (Toxicity Category III)
Primary eye irritation (rabbit)	Not a significant ocular irritant (Toxicity Category III)
Primary dermal irritation	(Toxicity Category IV)
Developmental (rat)	Maternal NOAEL = 1,000 mg/kg/day Maternal LOAEL = 3,000 mg/kg/day based on mortality, clinical signs and decreased food consumption Developmental NOAEL = 3,000 mg/kg/day Developmental LOAEL = 5,000 mg/kg/day based on increase in skeletal variations
113–week feeding (rat)	NOAEL = equal to or greater than 5,000 mg/kg/day (HTD - highest dose tested) LOAEL = would be greater than 5,000 mg/kg/day
113–week inhalation (rat) with neurotox	NOAEL = 0.5 mg/L/day LOAEL = 1.0 mg/L/daybased on clinical signs in both sexes No evidence of neurotoxicpotentiil
Cancer dermal (skin-painting) (mouse)	Negative, but dosing was considered inadequate
9–day inhalation (rat)	NOAEL = not determined - effects seen at lowest dose tested LOAEL = 1 mg/L/day based on clinical signs of toxicity,ocular irritation
Mouse micronucleus	Not mutagenic
UDS	Negative
Gene mutation(*S. typhimurium*)	Negative

B. Structure Activity Relationship Assessment

For propylene carbonate, toxicity was assessed, in part, by a process called structure-activity-relationship (SAR). In this process, the chemical's structural similarity to other chemicals (for which data are available) is used to determine toxicity. For human health, this process, can be used to assess absorption and metabolism, mutagenicity, carcinogenicity, developmental and reproductive effects, neurotoxicity, systemic effects, immunotoxicity, and sensitization and irritation. This is a qualitative assessment using terms such as good, not likely, poor, moderate, or high.

For propylene carbonate the SAR assessment determined that the chemical was not structurally related to any known carcinogens. The following human exposures were examined as part of the analysis: Inhalation, dermal, exposures to the eyes, and drinking water. Absorption of propylene carbonate is expected to be good (well-absorbed) via all routes (oral, dermal and inhalation) based on physical/chemical properties. There are concerns for effects on the liver and kidneys, solvent-type neurotoxicity and developmental toxicity at high dose levels, and irritation to mucous

membranes. The overall SAR rating for human health is low/moderate concern.

The SAR did note a concern for solvent neurotoxicity, i.e., neurotoxic effects that can occur due to "high" and/or "prolonged" dermal and inhalation exposures to organic solvents. It should be noted that the inclusion of the phrase "solvent-type neurotoxicity" in the SAR assessment does not necessarily indicate chemical-specific concerns. By including this statement those performing the SAR assessment are acknowledging that the chemical is a member of a class of chemicals that can exhibit solvent neurotoxicity.

C. Conclusions

The Agency used two sources of information to determine the toxicity of propylene carbonate: The 12 toxicity studies submitted by the petitioner and reviewed by the Agency, and a SAR assessment. The two sources of data support each other. However, results of the SAR Assessment are a type of predicted data based in part on surrogate data. There is actual data generated using propylene carbonate as the test substance, and actual data has precedence over predicted data.

The Agency reviewed a propylene carbonate developmental toxicity study in the rat with a maternal no observed adverse effect level (NOAEL) of 1,000 milligrams/kilogram/day (mg/kg/day) and a maternal lowest observed adverse effect level (LOAEL) of 3,000 mg/kg/day based on mortality, clinical signs and decreased food consumption. In the same study, the developmental NOAEL is 3,000 mg/kg/day and the developmental LOAEL is 5,000 mg/kg/day based on an increase in skeletal variations. In a propylene carbonate 13–week rat feeding study the NOAEL is equal to or greater than 5,000 mg/kg/day, the highest dose tested. A LOAEL was not identified in that study, but it would be even greater than 5,000 mg/kg/day. It is noted that each of these NOAELs is equal to or greater than 1,000 mg/kg/day. As a matter of practice, for both the developmental and the 13–week toxicity study, the Agency does not encourage testing above 1,000 mg/kg/day. The lack of effects at 1,000 mg/kg/day is considered adequate to define the toxicity, without pushing the dose levels higher until effects are apparent.

The SAR assessment judged propylene carbonate to be of low/moderate concern. It did not identify any carcinogenic concerns. One identified concern was for possible irritation to mucous membranes. This concern would involve the dermal and inhalation exposure routes and would be addressed through the use of protective equipment such as gloves and respirators, not through establishment of tolerance exemptions.

A concern predicted by the SAR, based on its structural chemistry and chemical class, is for possible solvent neurotoxicity from exposure to propylene carbonate. As previously explained, this statement acknowledges that propylene carbonate is a member of a class of chemicals that can exhibit solvent neurotoxicity. However, the propylene carbonate data base includes a 13–week inhalation toxicity study in the rat with a neurotoxicity evaluation. Based on its review and evaluation of this inhalation toxicity study, the Agency determined that there was no evidence of neurotoxicity potential.

The SAR also indicated a concern for developmental toxicity at high dose levels. However, the Agency reviewed a propylene carbonate developmental toxicity study in the rat with a maternal NOAEL of 1,000 mg/kg/day and a maternal LOAEL of 3,000 mg/kg/day based on mortality, clinical signs and decreased food consumption. In the same study, the developmental NOAEL is 3,000 mg/kg/day and the developmental LOAEL is 5,000 mg/kg/day based on increase in skeletal variations.

Considering the NOAELs of greater than 1,000 mg/kg/day for the propylene carbonate toxicity studies and the overall judgement of low/moderate concern from the SAR assessment, propylene carbonate is of low toxicological concern.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

Over 1 million pounds of propylene carbonate are either produced or imported per year. Some of this propylene carbonate production is used as a chemical intermediate, in the production of other chemicals. Propylene carbonate has been approved by the Food and Drug Administration for use as an indirect food additive as a component of adhesives. According to 21 CFR 175.105, propylene carbonate can be a component of an adhesive used as part of "articles intended for use in packaging, transporting, or holding food." Propylene carbonate is also used in cosmetics. Information on the internet (Huntsman website) indicates that propylene carbonate is used in tub and tile cleaners, hard surface and floor cleaners that could be used in and around the home.

The Agency has used various screening-level models to estimate some of the existing levels of exposure, and those that could occur as a result of establishing this tolerance exemption. To assure protectiveness, these estimates are deliberately intended to over-estimate exposure as shown in the following Table 2:

TABLE 2.—SCREENING-LEVELS OF EXPOSURE USING PROPYLENE CARBONATE

Type of Exposure	Exposure Level
Dietary - Food (as a result of application to crops)	Acute exposure: Less than 1 mg/kg/day at 95th percentile chronic exposure: Less than 1 mg/kg/day
Dietary - Drinking Water	Acute exposure: Much less than 1 mg/kg/day Chronic exposure: Much less than 1 mg/kg/day
Residential (as a result of using a cleaning product)	Approximately 6 mg/kg/day
Residential (as a result of using a laundry detergent)	Approximately 1 mg/kg/day
Residential (as a result of application to a lawn)	Less than 1 mg/kg/day

With one exception all of the screening-level exposure estimates are in the range of or less than 1 mg/kg/day. The existing studies for propylene carbonate yielded NOAELs that were equal to or greater than 1,000 mg/kg/day. The screening-level exposure estimates are orders of magnitude lower than these NOAELs. Even considering the reported uses, the use of propylene carbonate as an inert ingredient should result in human exposure far below any dose level that could possibly produce an adverse effect.

V. Cumulative Effects from Substances with a Common Mechanism of Toxicity

Section 408(b)(2)(D)(v) of the FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency

consider"available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether propylene carbonate has a common mechanism of toxicity with other substances. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to propylene carbonate and any other substances and propylene carbonate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that propylene carbonate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at*http://www.epa.gov/pesticides/cumulative/.*

VI. Determination of Safety for U.S. Population, Infants and Children

Based on the available data, the SAR assessment indicating low/moderate concern and the data submitted by the petitioner, Huntsman Corporation, which indicate that the chemical is of low toxicological concern, EPA concludes that propylene carbonate does not pose a dietary risk under reasonably foreseeable circumstances. Accordingly, EPA finds that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to propylene carbonate. Due to the expected low oral toxicity, a safety factor analysis has not been used to assess the risk. For the same reasons and especially considering the developmental toxicity NOAEL, the additional tenfold safety factor for the protection of infants and children is unnecessary.

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of 1,3-Dioxolan-2-one, 4-methyl- (propylene carbonate). Accordingly, EPA finds that exempting 1,3-Dioxolan-2-one, 4-methyl-(propylene carbonate) (CAS Reg. No. 108–32–7) from the requirement of a tolerance will be safe.

VII. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including all pesticide chemicals (both inert and active ingredients), "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect. . ." EPA has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing propylene carbonate for endocrine effects may be required.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Tolerances

There are no existing tolerances or tolerance exemptions for propylene carbonate.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for propylene carbonate nor have any CODEX Maximum Residue Levels been established for any food crops at this time.

E. List 4A (Minimal Risk) Classification

The Agency established 40 CFR 180.950 (see the rationale in the proposed rule published January 15, 2002 (67 FR 1925) (FRL–6807–8)) to collect the tolerance exemptions for those substances classified as List 4A, i.e., minimal risk substances. As part of evaluating an inert ingredient and establishing the tolerance exemption, the Agency determines the chemical's list classification.

The available data and the SAR assessment indicated propylene carbonate is of lower toxicity. Given the NOAELs of greater than 1,000 mg/kg/day and the acute toxicity studies that were category III and IV, it has been determined that propylene carbonate, also known as 1,3-Dioxolan-2-one, 4-methyl- (CAS Reg. No. 108–32–7) is to be classified as a List 4A inert ingredient. Thus, the tolerance exemption will be established in 40 CFR 180.950 instead of 40 CFR 180.1001(c) as requested by the petitioner, Huntsman.

VIII. Conclusions

Based on the information in the record, summarized in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of propylene carbonate (CAS Reg. No. 108–32–7). Accordingly, EPA finds that exempting propylene carbonate from the requirement of a tolerance will be safe.

IX. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID numberOPP–2003–0284 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 4, 2003.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in

40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm. 104, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov*, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit IX.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.1. Mail your copies, identified by docket ID number OPP–2003–0284, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.1. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

X. Statutory and Executive Order Reviews

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on

one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XI. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 22, 2003.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

■ 2. Section 180.950 is amended by adding alphabetically the following ingredient to the table in paragraph (e) to read as follows.

§ 180.950 Tolerance exemptions for minimal risk active and inert ingredients.

* * * * *

(e) * * *

Chemical	CAS No.
* * * * *	
1,3-Dioxolan-2-one, 4-methyl-(propylene carbonate)	108–32–7
* * * * *	

[FR Doc. 03–22546 Filed 9–4–03; 8:45am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 62

RIN 1660–AA29

National Flood Insurance Program (NFIP); Assistance to Private Sector Property Insurers; Extension of Term of Arrangement

AGENCY: Federal Emergency Management Agency (FEMA). Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Interim final rule.

SUMMARY: FEMA is changing the current Financial Assistance/Subsidy Arrangement (the Arrangement) to extend its term of October 1, 2002, through September 30, 2003, to a term of October 1, 2002, through December 31, 2003. The Arrangement defines the duties and responsibilities of insurers that sell and service insurance under the Write Your Own (WYO) program. It also identifies the responsibilities of the Government to provide financial and technical assistance to these insurers.

DATES: Effective October 1, 2003. Comments on this interim final rule, should be received on or before October 6, 2003.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., Room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (e-mail) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Edward L. Connor, FEMA, 500 C Street, SW., Washington, DC 20472, 202–646–3429 (Phone), 202-646–3445 (facsimile), or *Edward.Connor@dhs.gov* (e-mail).

SUPPLEMENTARY INFORMATION: On August 9, 2002, FEMA published in the **Federal Register**, 67 FR 51768, a final rule to revise the effective date of the Arrangement to agree with the new Arrangement year beginning October 1, 2002, and ending September 30, 2003.

FEMA had planned to make significant changes in the Arrangement regarding litigation issues effective October 1, 2003. However, as the proposed rule for these changes has not yet been published in the **Federal Register**, it is not feasible to complete the rulemaking for an effective date of October 1, 2003. WYO insurers need to receive an offer to enter into the Arrangement each year well in advance of the beginning of the Arrangement year. By extending the current Arrangement for an additional 3 months, the revised Arrangement with the litigation changes can be effective January 1, 2004, instead of postponing these changes to October 1, 2004. WYO insurers can always elect to cease participation in the WYO program at any time, so any insurer not desiring to participate for the additional 3 months of this extension may cease participation as of October 1, 2003.

Under this extension of the current Arrangement, the expense allowance provided for in Article III, Section B of APPENDIX A TO PART 62—FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, FINANCIAL ASSISTANCE/SUBSIDY ARRANGEMENT will remain the same for the additional 3 months as it is now, except there will be no additional expense allowance of up to two percentage points for meeting marketing goals for the three-month extension. This additional expense allowance will be based on the period October 1, 2002, through September 30, 2003.

National Environmental Policy Act

This interim final rule falls within the exclusion category 44 CFR part 10.8(d)(2)(ii), which addresses the preparation, revision, and adoption of regulations, directives, and other guidance documents related to actions that qualify for categorical exclusions. Qualifying for this exclusion and because no other extraordinary circumstances have been identified, this interim final rule will not require the preparation of either an environmental assessment or environmental impact statement as defined by the National Environmental Policy Act.

Executive Order 12866, Regulatory Planning and Review

We have prepared and reviewed this rule under the provisions of E.O. 12866, Regulatory Planning and Review. Under Executive Order 12866, 58 FR 51735, October 4, 1993, a significant regulatory action is subject to an Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

For the reasons that follow we have concluded that this interim final rule is neither an economically significant nor a significant regulatory action under the Executive Order. The interim final rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, the insurance sector, competition, or other sectors of the economy. It will create no serious inconsistency or otherwise interfere with an action taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof. Nor does it raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has not reviewed this rule under the principles of Executive Order 12866.

Paperwork Reduction Act

This interim final rule does not contain a collection of information and it is therefore not subject to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Executive Order 13132, Federalism

Executive Order 13132, Federalism, dated August 4, 1999, sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have substantial direct effects on the States, or on the distribution of power and responsibilities among the various levels of government. Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

We have reviewed this rule under E.O. 13132 and have concluded that the rule does not have federalism implications as defined by the Executive Order. We have determined that the rule does not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law nor does it limit State policymaking discretion.

Executive Order 12778, Civil Justice Reform

This interim final rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

Administrative Procedure Act Statement

In general, FEMA publishes a rule for public comment before issuing a final rule, under the Administrative Procedure Act, 5 U.S.C. 533 and 44 CFR 1.12. The Administrative Procedure Act, however, provides an exception from that general rule where the agency for good cause finds the procedures for comment and response contrary to the public interest. The public benefit of this rule is the continuation of the WYO arrangement without interruption. Therefore, we believe it is contrary to the public interest to delay the benefits of this rule. In accordance with the Administrative Procedure Act, 5 U.S.C. 553(d)(3), we find that there is good cause for the interim final rule to be published without prior public comment and without a full 30-day delayed effective date.

List of Subjects in 44 CFR Part 62

Flood insurance.

■ Accordingly, we amend 44 CFR Part 62 as follows:

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

■ 2. In Appendix A to part 62, revise the first sentence of Article V, Section A to read as follows:

Appendix A to part 62—Federal Emergency Management Agency, Federal Insurance Administration, Financial Assistance/Subsidy Arrangement.

Article V * * *

A. This Arrangement shall be effective for the period October 1, 2002 through December 31, 2003. * * *

* * * * *

Dated: August 29, 2003.

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22659 Filed 9–4–03; 8:45 am]

BILLING CODE 6718–03–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1105

RIN 3136–AA22

Repeal of Superseded and Redundant Regulations and Addition of Residual Cross-Reference Provision

AGENCIES: National Endowment for the Arts (NEA) and National Endowment for the Humanities (NEH).

ACTION: Interim rule, with request for comments.

SUMMARY: The NEA and the NEH, acting together as the National Foundation on the Arts and the Humanities (the "Foundation"), are amending regulations to repeal the Foundation's superseded and redundant old standards of conduct regulations and adding a residual cross-reference provision.

DATES: This interim rule takes effect on September 5, 2003. Comments are

invited and must be received by October 6, 2003.

ADDRESSES: Send comments to Karen Elias, Deputy General Counsel, National Endowment for the Arts, Room 518, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 or Michael McDonald, Deputy General Counsel, National Endowment for the Humanities, Room 529, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Karen Elias, Deputy General Counsel, National Endowment for the Arts, Room 518, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone (202) 682–5418. Individuals who use a telecommunications device for the deaf (TDD) may contact the NEA's TDD terminal at (202) 682–5496 Voice/T.T. Michael McDonald, Deputy General Counsel, National Endowment for the Humanities, Room 529, 1100 Pennsylvania Avenue, NW., Washington, DC 20506. Telephone (202) 606–8322; TDD (202) 606–8282 or (866) 372–2930.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the U.S. Office of Government Ethics (OGE) published in the **Federal Register** new Standards of Conduct for Employees of the Executive Branch ("Standards"). The Standards, as corrected and amended, are codified at 5 CFR part 2635 and generally became effective February 3, 1993. Those regulations established uniform standards of ethical conduct that apply to all executive branch personnel.

The Foundation's old standards of conduct at 45 CFR part 1105 were applicable to employees at both the NEA and the NEH until they were superseded by the executive branchwide Standards at 5 CFR part 2635, and OGE's revised executive branch financial disclosure regulations at 5 CFR part 2634, which became effective in 1992. The Foundation's superseded old conduct regulations and certain redundant provisions thereof are being removed and 45 CFR part 1105 is being revised to contain a cross-reference section to the NEA's new supplemental standards regulations and the NEH's new supplemental standards regulations, which are both being published in the **Federal Register** today in separate rulemaking documents, as well as to 5 CFR parts 2634 and 2635, to 5 CFR part 2640, OGE's financial interest regulations, and to the employee responsibilities and conduct regulations at 5 CFR part 735.

II. Repeal of the Foundation's Superseded and Redundant Employee Responsibilities and Conduct Regulations and Addition of a Residual Cross-Reference Provision

The interim rule removes those provisions in the regulations at 45 CFR part 1105 governing NEA and NEH employees' responsibilities and conduct that were superseded by the OGE Standards and by OGE's executive branch financial disclosure regulations at 5 CFR part 2634. While the Standards became effective on February 3, 1993, by operation of the prior note following 5 CFR 2635.803 of the regulations and prior appendix A to 5 CFR part 2635 (see January 1, 1997 edition of 5 CFR), the Foundation's regulation concerning prior approval of outside employment remained in effect until February 3, 1994, plus one year longer with respect to the NEH. See 59 FR 4779–4780 (February 2, 1994).

The Foundation is also removing from 45 CFR part 1105 various sections that are unnecessary or redundant, in light of other regulations. Additionally, the Foundation has determined that the NEA and the NEH each are best suited to administer their own respective conduct-related regulations and to develop with OGE's concurrence any supplemental conduct regulations at their respective agencies.

A residual provision is being added to 45 CFR part 1105 to cross-reference the executive branchwide Standards at 5 CFR part 2635, the NEA's new supplemental standards of ethical conduct, the NEH's new supplemental standards of conduct, the executive branchwide regulations on financial disclosure and financial interests at 5 CFR parts 2634 and 2640 and the branchwide employee responsibilities and conduct regulations at 5 CFR part 735.

III. Matters of Regulatory Procedure

Waiver of Proposed Rulemaking

As Deputy General Counsel of the NEA and the Deputy General Counsel of NEH, acting together as the Foundation, we have found good cause pursuant to 5 U.S.C. 553(b) and (d)(3) for waiving, as necessary and contrary to public interest, the general notice of proposed rulemaking, the opportunity for advance public comment, and the 30-day delay in effectiveness as to this interim rule. The reason for this determination is that this rulemaking is related to the Foundation's, the NEA's and the NEH's organization, procedure and practice. Nonetheless, this is an interim rulemaking, with provision for a 30-day public comment period. The NEA and the NEH, acting together as the Foundation, will review all comments received during the comment period and will consider any modifications that appear appropriate in adopting this rule as final.

Regulatory Flexibility Act

As Deputy General Counsel of the NEA and as the Deputy General Counsel of the NEH, acting together as the Foundation, we have determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it only affects NEA and NEH employees.

Paperwork Reduction Act

As Deputy General Counsel of the NEA and as the Deputy General Counsel of the NEH, acting together as the Foundation, we have determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because these regulations do not contain any information collection requirements that require approval by the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more (as adjusted for inflation) in any one year.

List of Subjects in 45 CFR Part 1105

Conflict of interests, Government employees.

Dated: August 13, 2003.

Karen Elias,

Deputy General Counsel, National Endowment for the Arts.

Dated: August 13, 2003.

Michael McDonald,

Deputy General Counsel, National Endowment for the Humanities.

■ For the reasons set forth in the preamble, the National Foundation on the Arts and the Humanities, the National Endowment for the Arts and the National Endowment for the Humanities are revising 45 CFR part 1105 to read as follows:

PART 1105—STANDARDS OF CONDUCT FOR EMPLOYEES

Authority: 5 U.S.C. 7301.

§ 1105.1 Cross-reference to employee ethical conduct standards and financial disclosure and financial interests regulations.

■ Employees of the National Endowment for the Arts and the National Endowment for the Humanities are subject to the executive branchwide standards of ethical conduct at 5 CFR part 2635; the executive branch employees responsibilities and conduct regulations at 5 CFR part 735; the executive branch financial disclosure regulations at 5 CFR part 2634, and the executive branch financial interests regulations at 5 CFR part 2640. Employees of the National Endowment for the Arts are also subject to that Agency's regulations at 5 CFR part 6501, which supplement the executive branchwide standards of conduct at 5 CFR part 2635. Employees of the National Endowment for the Humanities are also subject to that Agency's regulations at 5 CFR part 6601, which supplement the executive branchwide standards of conduct at 5 CFR part 2635.

[FR Doc. 03–22655 Filed 9–4–03; 8:45 am]

BILLING CODE 7536–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030828215–3215–01; I.D. 082103A]

RIN 0648–AR47

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Corrections

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final emergency rule.

SUMMARY: NMFS announces changes to the closed areas affecting the limited entry fixed gear fleet, the open access non-trawl gear fleet and the recreational fishery in southern California. For the limited entry fixed gear and open access non-trawl gear fleets, south of 34°27′ N. lat. to the U.S./Mexico border, the eastern, inshore boundary of the non-trawl rockfish conservation area (non-trawl RCA), an area closed to fishing by those fisheries, will be a boundary line approximating the 30–fm (55–m) depth contour, except in the Cowcod Conservation Areas (CCA) where the inshore boundary will remain at 20–fm (37–m) [Note: The CCA is a distinct closed area separate from the non-trawl RCA]. The western, seaward boundary of the non-trawl RCA will remain at a line approximating 150–fm (274–m). For the recreational fishery, south of 34°27′ N. lat. to the U.S./Mexico border, the seaward boundary of the open area will be marked by a boundary line approximating the 30–fm (55 m) depth contour, except in the CCA where the boundary will remain at 20–fm (37–m). [Note: The CCA is a distinct closed area separate from the non-trawl RCA.] These actions, which are authorized by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), will allow fishermen access to more abundant groundfish stocks while protecting overfished and depleted stocks. NMFS also announces several corrections to the existing RCA boundaries.

DATES: Changes to management measures are effective 0001 hours (local time) September 2, 2003, until the 2004 annual specifications and management measures are effective, unless modified, superseded, or rescinded through a publication in the **Federal Register**. Comments on this rule will be accepted through October 2, 2003.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213. Information relevant to this emergency rule, which includes an Environmental Assessment/Regulatory Impact Review (EA/RIR), is available for public review during business hours at the offices of the NMFS Northwest Regional Administrator.

FOR FURTHER INFORMATION CONTACT: Jamie Goen or Carrie Nordeen (Northwest Region, NMFS), phone: 206–526–6140; fax: 206–526–6736; and e-mail: *jamie.goen@noaa.gov* or *carrie.nordeen@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is available on the Government Printing Office's website at:*http: // www.access.gpo.gov/su docs/ca/docs/ aces/aces140.html*.Background information and documents are available at the NMFS Northwest Region website at:*http: //www.nwr.noaa.gov/ lsustfsh/gdfsh01.htm* and at the Pacific Fishery Management Council's website at: *http://www.pcouncil.org*.

Background

The Pacific Coast Groundfish Fishery Management Plan (Groundfish FMP) and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Annual groundfish specifications and management measures are initially developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The groundfish specifications include optimum yields (OYs) for groundfish species and species groups. These OYs are the annual harvest targets. Management measures are implemented at the start of the season, and adjusted inseason, to allow the fishery to achieve, but not exceed, the OYs for groundfish. The specifications and management measures for the 2003 fishing year (January 1–December 31, 2003) were initially published in the **Federal Register** as an emergency rule for January 1–February 28, 2003 (68 FR 908, January 7, 2003) and as a proposed rule for March 1–December 31, 2003 (68 FR 936, January 7, 2003). The emergency rule was amended at 68 FR 4719, January 30, 2003, and the final rule for March 1–December 31, 2003 was published in the **Federal Register** on March 7, 2003 (68 FR 11182). The final rule has been subsequently amended at 68 FR 18166 (April 15, 2003), at 68 FR 23901 (May 6, 2003), at 68 FR 23924 (May 6, 2003), at 68 FR 32680 (June 2, 2003), at 68 FR 35575 (June 16, 2003), at 68 FR 40187 (July 7, 2003) and at 68 FR 43473 (July 23, 2003).

At their June 16–20, 2003 meeting in Foster City, CA, the Pacific Council, in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California, recommended changes to current groundfish management measures. Most changes were implemented on July 1, 2003 (68 FR 40187, July 7, 2003), but this change was delayed because of the need for additional analysis prior to implementation. The recommended change being implemented in this document is to move the conservation area boundary line affecting the commercial non-trawl fisheries (limited entry fixed gear and open access non-trawl) and the recreational fishery from 20–fm (37–m) to 30–fm (55–m) south of 34°27′ N. lat, except in the CCA where the boundary will remain at 20–fm (37–m). [Note: The CCA is a distinct closed area separate from the non-trawl RCA.] This increases the area in which the fishery can take place, and decreases the

closed area that was implemented to protect overfished groundfish species.

When the 2003 specifications and management measures were developed for the Pacific Coast groundfish fishery in the fall of 2002, the Pacific Council's Groundfish Management Team (GMT) developed a bycatch scorecard to project and track estimated mortality of overfished groundfish species during 2003. The bycatch scorecard represents the best estimates of total catch and is an aid for making management decisions. The scorecard estimates which sectors are taking which overfished species and roughly how much of those species. This scorecard is updated throughout the year as catch data become available and was also updated using observer data. At the Pacific Council's June meeting, the scorecard was updated for inseason adjustments to be effective July 1. The proposed inseason adjustments presented at the June Council meeting remained below the OYs for all overfished species. Because estimated total mortality of all overfished species remained below their OYs for 2003, the California Department of Fish and Game (CDFG) proposed an additional inseason management measure to change the commercial non-trawl and recreational boundary line south of 34°27′ N. lat. from 20–fm (37–m) to 30–fm (55–m) to provide some additional fishing area to these sectors. The GMT and Pacific Council then reviewed analysis presented by CDFG on estimates of total mortality based on this change in the boundary line. With estimated total mortality as a result of these changes incorporated into the bycatch scorecard, estimated take of all overfished species remained below the OY for those species, except for bocaccio. Total estimated take of bocaccio, coastwide in all sectors, is predicted to be 21.72 mt in relation to a ≤20 mt OY for 2003 (1.72 mt over the OY). The Pacific Council and NMFS normally implement management measures that are projected to keep the fishery within the OYs for all species, especially overfished species. However, new information on the status of bocaccio that was presented at the June Council meeting indicates that bocaccio is healthier than had been thought at the beginning of 2003. Therefore, as explained below, taking into account this information and the severe adverse economic impacts from the 2003 management measures on the commercial and recreational non-trawl fisheries in southern California, the Pacific Council recommended the change to the boundary line off southern California.

A new stock assessment conducted in 2003 by NMFS, Southwest Fisheries Science Center shows notably increased biomass and productivity for the southern stock of bocaccio compared to the estimated biomass on the 2002 stock assessment and rebuilding analysis. Harvest specifications and management measures for 2003 were shaped by stock assessments for bocaccio, canary rockfish, and yelloweye rockfish, as well as sablefish and whiting. Based on consideration of a 2002 bocaccio stock assessment, rebuilding analysis, and a sustainability analysis, the Pacific Council recommended and NMFS approved an OY for bocaccio of ≤20 mt in 2003.

In May 2003, a new stock assessment and rebuilding analysis for bocaccio were released by the Southwest Fisheries Science Center. The new assessment is different from the bocaccio assessment in 2002, which had indicated that the 1999 year class for bocaccio was weaker than previously thought. The 2002 assessment results were driven by the 2001 Triennial Survey which showed very low abundance of bocaccio and no sign of the 1999 year class. For the new assessment, additional information on larval abundance from the California Cooperative Oceanic Fisheries Investigation, and both length and catch per unit effort (CPUE) data from recreational fisheries were used. The new data, which also assumed a new rate of natural mortality (0.15 as opposed to 0.20 in the 2002 assessment), indicate a much stronger 1999 year class and a sharp increase in abundance. The assessment and rebuilding analysis were reviewed by the Pacific Council's Stock Assessment Review Panel (STAR Panel) and presented to the Pacific Council at the Pacific Council's June 2003 meeting. To bracket uncertainty from the apparently conflicting signals in the different data sources, the STAR Panel recommended two models, STAR B1 and STAR B2. STAR B1 omits data from the Triennial Surveys and holds the estimated recruitment constant to 1959, whereas STAR B2 omits the recreational CPUE data and holds estimated recruitment constant to 1969. Each of these models de-emphasizes the other data source. The Stock Assessment Team (STAT Team) considered a third model, STAT C, that considered both data sources to be important and thus, included both data from the survey and recreational CPUE, and holds estimated recruitment constant to 1959, and places a low emphasis on the stock-recruitment relationship to stabilize estimates of post–1999 recruitment. The results of the STAT C model were not complete during the STAR Panel review. The STAR Panel did briefly discuss the STAT C model and rejected the approach of the STAT C model because the two sources of data used in the model were contradictory. The results from the STAR Panel review and the third model produced by the STAT Team were then reviewed by the Pacific Council's Scientific and Statistical Committee (SSC) at the June Council meeting. The SSC and other advisory bodies to the Pacific Council (Groundfish Advisory Panel (GAP) and GMT) made recommendations to the Pacific Council based on the new stock assessment and rebuilding analysis, which are considered to be the best available science. The SSC felt the STAT C model was a reasonable way to integrate the survey and CPUE data and, therefore, recommended use of the STAT C model for bocaccio.

Based on the new stock assessment and rebuilding analysis discussed above, the Pacific Council adopted a preliminary range of OYs for bocaccio for 2004. The range of OYs contemplated for 2004 (199–526 mt) is an order of magnitude higher than the ≤20 mt OY implemented for management in 2003. Based on the new bocaccio stock assessment and rebuilding analysis, the Pacific Council also decided it could provide some relief in 2003 to the severely constrained commercial and recreational fishers in southern California without risk to the status of the bocaccio stock.

Generally, stock assessments that are released in 2003 would only be used for management in 2004 and beyond. In this case, however, the new assessment and rebuilding analysis forecast are being considered in implementing this emergency rule to allow for a change in the management measures which is projected to cause the OY for bocaccio to be exceeded. Because of the new science for bocaccio that indicates a modest increase in bocaccio harvest in 2003 should not interfere with stock rebuilding and because of the severe restrictions commercial non-trawl and recreational fisheries in southern California are experiencing, the Pacific Council recommended to NMFS to use the knowledge of the improved bocaccio forecast as a means to relieve restrictions on southern California fisheries without additional risk to the status of the stock.

Non-Trawl RCA and Recreational Fisheries South of 34°27′ N. Lat.

Beginning in 2003, the limited entry fixed gear and open access non-trawl fleet in California has been severely constrained by low trip limits and limited nearshore fishing opportunities, with the non-trawl RCA (the area closed to most fishing with non-trawl gear) extending from the 20–fm (37–m)depth contour to latitude and longitude coordinates approximating the 150–fm (274–m) depth contour. These management measures were designed to limit the incidental take of bocaccio rockfish and keep the catch of bocaccio within its 2003 OY of no more than 20 mt. The recreational fishing fleet in California has also been similarly constrained, by a reduced season length (July - December) and has generally been restricted to fishing inshore of the 20–fm (37–m) depth contour, to minimize the incidental take of bocaccio. Prior to 2000, the recreational fishery has been year round. Since 2000, the recreational fishery has been closed for part of the year. Between 2000 and 2002, the California recreational fishery seasons have been from 8 to 10 months long. Beginning in 2001, some area restrictions were implemented. In 2003, the recreational fishery has been restricted to a 6 month season and it has only been allowed mainly inside of the 20–fm (37–m) depth contour.

Taking into account the most recent bocaccio stock assessment information discussed above and the economic hardship resulting from restrictive management measures necessary to keep the incidental catch of bocaccio within its 2003 OY, the CDFG proposed to the Pacific Council that the 2003 bocaccio OY be flexible enough to allow for a modest increase in nearshore fishing opportunity. Specifically, CDFG proposed that during the months of September-December the eastern boundary for the non-trawl RCA and recreational fisheries closed area between 34°27′ N. lat. and the U.S. border with Mexico be moved from the 20–fm (37–m) depth contour out to the 30–fm (55–m) depth contour, except in the CCA where the inshore boundary will remain at 20 fm (37 m). [Note: The CCA is a distinct closed area separate from the non-trawl RCA.] This boundary change was recommended by the Pacific Council because it would provide much needed harvest opportunity and economic relief for commercial non-trawl fishermen (limited entry fixed gear and open access non-trawl gear) and recreational fishers with an expected incidental take of an additional 2.22 mt of bocaccio. This proposal would allow commercial non-trawl and recreational fishermen some access to harvest species of groundfish that occur mainly on the continental shelf (in waters deeper than 20–fm (37–m)) and have OYs that remain largely unharvested in 2003, such as vermillion rockfish.

Development of Coordinates Approximating the 30–fm (55–m) Depth Contour

Unlike the 20–fm (37–m) depth contour which does not have latitude and longitude coordinates approximating the line, CDFG has developed a series of coordinates approximating the 30–fm (55–m) depth contour. All other depth-based boundaries for the groundfish fishery, except the 20–fm (37–m) depth contour, are defined by lines connecting specific latitude and longitude coordinates. The 20–fm (37–m) depth contour does not have a series of coordinates approximating the boundary line because it existed in management before depth-based management was implemented in the fall of 2002 and because it is primarily within State waters. Managers and enforcement officers from CDFG, along with a commercial fixed gear fisherman, met on July 2, 2003, at the GIS Lab in Monterey, CA to develop the coordinates for the 30–fm (55–m) boundary. With this emergency rule, recreational fisheries in southern California will be subject to closed areas defined by a line connecting latitude and longitude coordinates approximating a fathom contour similar to how commercial groundfish fishery participants have been managed since January 1, 2003.

The State of California has, under state law implemented on April 9, 2003, established some Marine Protected Areas (MPAs) in State waters in some areas around the Channel Islands off California. These MPAs are described as Richardson Rock, Harris Point, and Judith Rock off San Miguel, Carrington Point, and South Point off Santa Rosa Island, Painted Cave, Gulf Island, and Scorpion off Santa Cruz Island, and Anacapa Island off Anacapa Island. Fishing is prohibited in these MPAs under California law. NMFS believes it would be too confusing to the public to draw the 30–fm (55–m) area boundary through areas in State waters that will remain closed under State law. Therefore, where the 30–fm (55–m) boundary line would go through the State water area that is closed under State law, the entire area will remain closed and this is so indicated by the coordinates in this rule.

Because the effects of this new boundary line were not previously analyzed, it is not considered a routine management measure under the Groundfish FMP that can be changed through inseason action. Therefore, NMFS has analyzed this management measures in an EA. Because this is not a routine management measure, the Pacific Council recommends and NMFS is implementing an emergency rule to move the boundary line from 20–fm (37–m) to 30–fm (55–m) south of 34°27′ N. lat. (except in the CCA where the inshore boundary will remain at 20–fm (37–m) for the commercial non-trawl and recreational fleets. This action is projected to cause the 2003 OY for bocaccio to be exceeded by approximately 1.72 mt. The purpose is to relieve some of the economic pressure on the fishing industry in southern California without risk to the status of the southern stock of bocaccio.

Corrections

In addition to creating new 30–fm (55–m) RCA boundaries along the mainland coast, around the Channel Islands, and around seamounts off the State of California, this emergency rule also contains corrections to existing RCA boundaries. The first correction pertains to the 200–fm (366–m) coastwide RCA boundary. In an areas off the State of California, the 200–fm (366–m) RCA boundary was found to extend into waters as deep as 300–fm (549–m). This resulted in the groundfish trawl fleet being prohibited from fishing in areas where fishing with trawl gear should be permitted. Therefore, to better align the 200–fm (366–m) RCA boundary with the 200–fm (366–m) depth contour and allow the groundfish trawl fleet access to areas where fishing with trawl gear should be permitted, several of the coordinates for the 200-fm (366–m) RCA boundary were corrected. Throughout 2003, NMFS has clearly specified trawl RCA boundaries around islands and seamounts off California, however, we have not clearly specified the non-trawl RCA boundaries around those same islands and seamounts. This emergency rule corrects that oversight by clearly specifying the non-trawl RCA boundaries around islands and seamounts off California.

With the creation of the new 30–fm (55–m) RCA boundaries off California, coordinates were generated for additional islands (i.e., the northern Channel Islands) off California as well as the southern California islands that previously had trawl RCA boundaries. Through the process of reviewing maps of and bathymetry data for these islands,

the State of California requested two name changes. This emergency rules addresses the name change by more appropriately referring to the Orange County Seamount as Lasuen Knoll and referring to Mira's San Diego Rise as San Diego Rise. Additionally, RCA boundaries have been unnecessarily generated for two of the southern Channel Islands, specifically Santa Barbara Island and San Nicholas Island. After closely reviewing maps of these islands, the State of California realized that these islands fall completely within the CCA; therefore, groundfish fishing is already prohibited around those islands seaward of the 20–fm (37–m) depth contour. [Note: The CCA is a distinct closed area separate from the non-trawl RCA.] To help minimize the number of RCA boundary coordinates, California requested that the RCA boundaries around Santa Barbara Island and San Nicholas island be removed. In light of these corrections and in an effort to be clear about which islands belong to which island groupings, this emergency rule specifies that the northern Channel Islands include San Miguel, Santa Rosa, Santa Cruz, and Anacapa; that the southern Channel Islands include Santa Catalina Island and San Clemente Island; and that the seamounts include Lasuen Knoll and San Diego Rise.

NMFS Actions

For the reasons stated herein, NMFS concurs with the Pacific Council's recommendations and hereby announces the following changes to the 2003 management measures (68 FR 11182 (March 7, 2003), as amended at 68 FR 18166 (April 15, 2003), at 68 FR 23901 (May 6, 2003), at 68 FR 23924 (May 6, 2003), at 68 FR 32680 (June 2, 2003), at 68 FR 35575 (June 16, 2003), at 68 FR 40187 (July 7, 2003) and at 68 FR 43473 (July 23, 2003)) to read as follows:

1. On page 11214, in the **Federal Register** document published on March 7, 2003, section IV., under A. General Definitions and Provisions, paragraph (19)(e), section (x) is revised to read as follows:

* * * * *

(x) The 150–fm (274–m) depth contour used around the southern Channel Islands and seamounts off the State of California is defined by straight lines around each island/seamount connecting all of the following points in the order stated:

(A) Santa Catalina Island

(1) 33°19.00′ N. lat., 118°15.00′ W. long.;

(2) 33°26.00′ N. lat., 118°22.00′ W. long.;

(3) 33°28.00′ N. lat., 118°28.00′ W. long.;

(4) 33°30.00′ N. lat., 118°31.00′ W. long.;

(5) 33°31.00′ N. lat., 118°37.00′ W. long.;

(6) 33°29.00′ N. lat., 118°41.00′ W. long.;

(7) 33°23.00′ N. lat., 118°31.00′ W. long.;

(8) 33°21.00′ N. lat., 118°33.00′ W. long.;

(9) 33°18.00′ N. lat., 118°28.00′ W. long.;

(10) 33°16.00′ N. lat., 118°13.00′ W. long.; and

(11) 33°19.00′ N. lat., 118°15.00′ W. long.

(B) San Clemente Island

(1) 32°48.50′ N. lat., 118°18.34′ W. long.;

(2) 32°56.00′ N. lat., 118°29.00′ W. long.;

(3) 33°03.00′ N. lat., 118°34.00′ W. long.;

(4) 33°05.00′ N. lat., 118°38.00′ W. long.;

(5) 33°03.00′ N. lat., 118°40.00′ W. long.;

(6) 32°48.00′ N. lat., 118°31.00′ W. long.;

(7) 32°43.00′ N. lat., 118°24.00′ W. long.; and

(8) 32°48.50′ N. lat., 118°18.34′ W. long.

(C) Lasuen Knoll

(1) 33°25.00′ N. lat., 118°01.00′ W. long.;

(2) 33°25.00′ N. lat., 117°58.00′ W. long.;

(3) 33°23.00′ N. lat., 117°58.00′ W. long.;

(4) 33°23.00′ N. lat., 118°01.00′ W. long.; and

(5) 33°25.00′ N. lat., 118°01.00′ W. long.

* * * * *

2. On page 32683, in the **Federal Register** document published on June 2, 2003, section IV., under A. General Definitions and Provisions, paragraph (19)(e), section (xiii) is revised to read as follows:

* * * * *

(xiii) The 200–fm (366–m) depth contour used between the U.S. border with Canada and the U.S. border with Mexico as a western boundary for the trawl RCA is defined by straight lines connecting all of the following points in the order stated:

* * * * *

(132) 40°37.11′ N. lat., 124°38.03′ W. long.;

(133) 40°34.22′ N. lat., 124°41.13′ W. long.;

(134) 40°32.90′ N. lat., 124°41.83i W. long.;

(135) 40°31.30′ N. lat., 124°40.97′ W. long.;

(136) 40°29.63′ N. lat., 124°38.04′ W. long.;

(137) 40°24.99′ N. lat., 124°36.37′ W. long.;

(138) 40°22.23′ N. lat., 124°31.78′ W. long.;

(139) 40°16.95′ N. lat., 124°31.93′ W. long.;

(140) 40°17.59′ N. lat., 124°45.23′ W. long.;

(141) 40°13.25′ N. lat., 124°32.36′ W. long.;

(142) 40°10.16′ N. lat., 124°24.57′ W. long.;

(143) 40°6.43′ N. lat., 124°19.19′ W. long.;

(144) 40°7.07′ N. lat., 124°17.75′ W. long.;

(145) 40°5.53′ N. lat., 124°18.02′ W. long.;

(146) 40°4.71′ N. lat., 124°18.10′ W. long.;

(147) 40°2.35′ N. lat., 124°16.57′ W. long.;

(148) 40°1.53′ N. lat., 124°9.82′ W. long.;

(149) 39°58.28′ N. lat., 124°13.51′ W. long.;

(150) 39°56.60′ N. lat., 124°12.02′ W. long.;

(151) 39°55.20′ N. lat., 124°07.96′ W. long.;

(152) 39°52.55′ N. lat., 124°09.40′ W. long.;

(153) 39°42.68′ N. lat., 124°02.52′ W. long.;

(154) 39°35.96′ N. lat., 123°59.49′ W. long.;

(155) 39°34.62′ N. lat., 123°59.59′ W. long.;

(156) 39°33.78′ N. lat., 123°56.82′ W. long.;

(157) 39°33.02′ N. lat., 123°57.07′ W. long.;

(158) 39°32.21′ N. lat., 123°59.13′ W. long.;

(159) 39°7.85′ N. lat., 123°59.07′ W. long.;

(160) 39°00.90′ N. lat., 123°57.88′ W. long.;

(161) 38°59.95′ N. lat., 123°56.99′ W. long.;

(162) 38°56.82′ N. lat., 123°57.74′ W. long.;

(163) 38°56.40′ N. lat., 123°59.41′ W. long.;

(164) 38°50.23′ N. lat., 123°55.48′ W. long.;

(165) 38°46.77′ N. lat., 123°51.49′ W. long.;

(166) 38°45.28′ N. lat., 123°51.56′ W. long.;

(167) 38°42.76′ N. lat., 123°49.76′ W. long.;

(168) 38°41.54′ N. lat., 123°47.76′ W. long.;

(169) 38°40.98′ N. lat., 123°48.07′ W. long.;

(170) 38°38.03′ N. lat., 123°45.78′ W. long.;
(171) 38°37.20′ N. lat., 123°44.01′ W. long.;
(172) 38°33.44′ N. lat., 123°41.75′ W. long.;
(173) 38°29.45′ N. lat., 123°38.42′ W. long.;
(174) 38°27.89′ N. lat., 123°38.38′ W. long.;
(175) 38°23.68′ N. lat., 123°35.40′ W. long.;
(176) 38°19.63′ N. lat., 123°33.98′ W. long.;
(177) 38°16.23′ N. lat., 123°31.83′ W. long.;
(178) 38°14.79′ N. lat., 123°29.91′ W. long.;
(179) 38°14.12′ N. lat., 123°26.29′ W. long.;
(180) 38°10.85′ N. lat., 123°25.77′ W. long.;
(181) 38°13.15′ N. lat., 123°28.18′ W. long.;
(182) 38°12.28′ N. lat., 123°29.81′ W. long.;
(183) 38°10.19′ N. lat., 123°29.04′ W. long.;
(184) 38°07.94′ N. lat., 123°28.45′ W. long.;
(185) 38°06.51′ N. lat., 123°30.89′ W. long.;
(186) 38°04.21′ N. lat., 123°31.96′ W. long.;
(187) 38°02.07′ N. lat., 123°31.3′ W. long.;
(188) 38°00.00′ N. lat., 123°29.55′ W. long.;
(189) 37°58.13′ N. lat., 123°27.21′ W. long.;
(190) 37°55.01′ N. lat., 123°27.46′ W. long.;
(191) 37°51.40′ N. lat., 123°25.18′ W. long.;
(192) 37°43.97′ N. lat., 123°11.49′ W. long.;
(193) 37°36.00′ N. lat., 123°02.25′ W. long.;
(194) 37°13.65′ N. lat., 122°54.18′ W. long.;
(195) 37°00.66′ N. lat., 122°37.84′ W. long.;
(196) 36°57.40′ N. lat., 122°28.25′ W. long.;
(197) 36°59.25′ N. lat., 122°25.54′ W. long.;
(198) 36°56.88′ N. lat., 122°25.42′ W. long.;
(199) 36°57.40′ N. lat., 122°22.62′ W. long.;
(200) 36°55.43′ N. lat., 122°22.43′ W. long.;
(201) 36°52.29′ N. lat., 122°13.18′ W. long.;
(202) 36°47.12′ N. lat., 122°07.56′ W. long.;
(203) 36°47.10′ N. lat., 122°02.11′ W. long.;
(204) 36°43.76′ N. lat., 121°59.11′ W. long.;
(205) 36°38.85′ N. lat., 122°02.20′ W. long.;
(206) 36°23.41′ N. lat., 122°00.11′ W. long.;
(207) 36°19.68′ N. lat., 122°06.93′ W. long.;
(208) 36°14.75′ N. lat., 122°01.51′ W. long.;
(210) 36°06.67′ N. lat., 121°41.06′ W. long.;
(211) 35°57.07′ N. lat., 121°34.32′ W. long.;
(212) 35°52.31′ N. lat., 121°32.45′ W. long.;
(213) 35°51.21′ N. lat., 121°30.91′ W. long.;
(214) 35°46.32′ N. lat., 121°30.30′ W. long.;
(215) 35°33.74′ N. lat., 121°20.10′ W. long.;
(216) 35°31.37′ N. lat., 121°15.23′ W. long.;
(217) 35°23.32′ N. lat., 121°11.44′ W. long.;
(218) 35°15.28′ N. lat., 121°04.45′ W. long.;
(219) 35°07.08′ N. lat., 121°00.3′ W. long.;
(220) 34°57.46′ N. lat., 120°58.23′ W. long.;
(221) 34°44.25′ N. lat., 120°58.29′ W. long.;
(222) 34°32.30′ N. lat., 120°50.22′ W. long.;
(223) 34°19.08′ N. lat., 120°31.21′ W. long.;
(224) 34°17.72′ N. lat., 120°19.26′ W. long.;
(225) 34°22.45′ N. lat., 120°12.81′ W. long.;
(226) 34°21.36′ N. lat., 119°54.88′ W. long.;
(227) 34°09.95′ N. lat., 119°46.18′ W. long.;
(228) 34°09.08′ N. lat., 119°57.53′ W. long.;
(229) 34°07.53′ N. lat., 120°06.35′ W. long.;
(230) 34°10.54′ N. lat., 120°19.07′ W. long.;
(231) 34°14.68′ N. lat., 120°29.48′ W. long.;
(232) 34°09.51′ N. lat., 120°38.32′ W. long.;
(233) 34°03.06′ N. lat., 120°35.54′ W. long.;
(234) 33°56.39′ N. lat., 120°28.47′ W. long.;
(235) 33°50.25′ N. lat., 120°09.43′ W. long.;
(236) 33°37.96′ N. lat., 120°00.08′ W. long.;
(237) 33°34.52′ N. lat., 119°51.84′ W. long.;
(238) 33°35.51′ N. lat., 119°48.49′ W. long.;
(239) 33°42.76′ N. lat., 119°47.77′ W. long.;
(240) 33°53.62′ N. lat., 119°53.28′ W. long.;
(241) 33°57.61′ N. lat., 119°31.26′ W. long.;
(242) 33°56.34′ N. lat., 119°26.4′ W. long.;
(243) 33°57.79′ N. lat., 119°26.85′ W. long.;
(244) 33°58.88′ N. lat., 119°20.06′ W. long.;
(245) 34°02.65′ N. lat., 119°15.11′ W. long.;
(246) 33°59.02′ N. lat., 119°02.99′ W. long.;
(247) 33°57.61′ N. lat., 118°42.07′ W. long.;
(248) 33°50.76′ N. lat., 118°37.98′ W. long.;
(249) 33°38.41′ N. lat., 118°17.03′ W. long.;
(250) 33°37.14′ N. lat., 118°18.39′ W. long.;
(251) 33°35.51′ N. lat., 118°18.03′ W. long.;
(252) 33°30.68′ N. lat., 118°10.35′ W. long.;
(253) 33°32.49′ N. lat., 117°51.85′ W. long.;
(254) 32°58.87′ N. lat., 117°20.36′ W. long.; and
(255) 32°35.53′ N. lat., 117°29.67′ W. long.

* * * * *

3. On page 32685 in the **Federal Register** document published on June 2, 2003, section IV., under A. General Definitions and Provisions, paragraph (19)(e), section (xiv) is revised to read as follows:

* * * * *

(xiv) The 200–fm (366–m) depth contour used around the southern Channel Islands and seamounts off the State of California is defined by straight lines around each island/seamount connecting all of the following points in the order stated:

(A) Santa Catalina Island
(1) 33°32.06′ N. lat., 118°44.52′ W. long.;
(2) 33°31.36′ N. lat., 118°35.28′ W. long.;
(3) 33°30.10′ N. lat., 118°30.82′ W. long.;
(4) 33°27.91′ N. lat., 118°26.83′ W. long.;
(5) 33°26.27′ N. lat., 118°21.35′ W. long.;
(6) 33°21.34′ N. lat., 118°15.24′ W. long.;
(7) 33°13.66′ N. lat., 118°08.98′ W. long.;
(8) 33°17.15′ N. lat., 118°28.35′ W. long.;
(9) 33°20.94′ N. lat., 118°34.34′ W. long.;
(10) 33°23.32′ N. lat., 118°32.60′ W. long.;
(11) 33°28.68′ N. lat., 118°44.93′ W. long.; and

(12) 33°32.06′ N. lat., 118°44.52′ W. long.

(B) San Clemente Island

(1) 33°05.89′ N. lat., 118°39.45′ W. long.;

(2) 33°02.68′ N. lat., 118°33.14′ W. long.;

(3) 32°57.32′ N. lat., 118°29.12′ W. long.;

(4) 32°47.51′ N. lat., 118°17.88′ W. long.;

(5) 32°41.22′ N. lat., 118°23.78′ W. long.;

(6) 32°46.83′ N. lat., 118°32.10′ W. long.;

(7) 33°01.61′ N. lat., 118°40.64′ W. long.; and

(8) 33°5.89′ N. lat., 118°39.45′ W. long.

(C) Lasuen Knoll

(1) 33°25.91′ N. lat., 117°59.44′ W. long.;

(2) 33°23.37″ N. lat., 117°56.97′ W. long.;

(3) 33°22.82′ N. lat., 117°59.50′ W. long.;

(4) 33°25.24′ N. lat., 118°01.68′ W. long.; and

(5) 33°25.91′ N. lat., 117°59.44′ W. long.

(D) San Diego Rise

(1) 32°50.30′ N. lat., 117°50.18′ W. long.;

(2) 32°44.01′ N. lat., 117°44.46′ W. long.;

(3) 32°41.34′ N. lat., 117°45.86′ W. long.;

(4) 32°45.45′ N. lat., 117°50.09′ W. long.;

(5) 32°50.10i N. lat., 117°50.76′ W. long.; and

(6) 32°50.30′ N. lat., 117°50.18′ W. long.

* * * * *

4. In section IV., under A. General Definitions and Provisions, paragraph (19)(e), sections (xv),(xvi), and (xviii) are added to read as follows:

* * * * *

(xv) The 30–fm (55–m) depth-contour between 34°27′ N. lat. and the U.S. border with Mexico is defined by straight lines connecting all of the following points in the order stated:

(1) 34°27.00′ N. lat., 120°30.31′ W. long.;

(2) 34°25.84′ N. lat., 120°27.04′ W. long.;

(3) 34°25.16′ N. lat., 120°20.18′ W. long.;

(4) 34°25.88′ N. lat., 120°18.24′ W. long.;

(5) 34°27.26′ N. lat., 120°12.47′ W. long.;

(6) 34°26.27′ N. lat., 120°02.22′ W. long.;

(7) 34°23.41′ N. lat., 119°53.04′ W. long.;

(8) 34°23.33′ N. lat., 119°48.74′ W. long.;

(9) 34°22.31′ N. lat., 119°41.36′ W. long.;

(10) 34°21.72′ N. lat., 119°40.14′ W. long.;

(11) 34°21.25′ N. lat., 119°41.18′ W. long.;

(12) 34°20.25′ N. lat., 119°39.03′ W. long.;

(13) 34°19.87′ N. lat., 119°33.65′ W. long.;

(14) 34°18.67′ N. lat., 119°30.16′ W. long.;

(15) 34°16.95′ N. lat., 119°27.09′ W. long.;

(16) 34°13.02′ N. lat., 119°26.99′ W. long.;

(17) 34°08.62′ N. lat., 119°20.89′ W. long.;

(18) 34°06.95′ N. lat., 119°17.68′ W. long.;

(19) 34°05.93′ N. lat., 119°15.17′ W. long.;

(20) 34°08.42′ N. lat., 119°13.11′ W. long.;

(21) 34°05.23′ N. lat., 119°13.34′ W. long.;

(22) 34°04.98′ N. lat., 119°11.39′ W. long.;

(23) 34°04.55′ N. lat., 119°11.09′ W. long.;

(24) 34°04.15′ N. lat., 119°09.35′ W. long.;

(25) 34°04.89′ N. lat., 119°07.86′ W. long.;

(26) 34°04.08′ N. lat., 119°07.33′ W. long.;

(27) 34°04.01′ N. lat., 119°06.89′ W. long.;

(28) 34°05.08′ N. lat., 119°07.02′ W. long.;

(29) 34°05.27′ N. lat., 119°04.95′ W. long.;

(30) 34°04.51′ N. lat., 119°04.07′ W. long.;

(31) 34°02.26′ N. lat., 118°59.88′ W. long.;

(32) 34°01.08′ N. lat., 118°59.77′ W. long.;

(33) 34°00.94′ N. lat., 118°51.65′ W. long.;

(34) 33°59.77′ N. lat., 118°49.26′ W. long.;

(35) 34°00.04′ N. lat., 118°48.92′ W. long.;

(36) 33°59.65′ N. lat., 118°48.43′ W. long.;

(37) 33°59.46′ N. lat., 118°47.25′ W. long.;

(38) 33°59.08′ N. lat., 118°45.89′ W. long.;

(39) 34°00.21′ N. lat., 118°37.64′ W. long.;

(40) 33°59.26′ N. lat., 118°34.58′ W. long.;

(41) 33°58.07′ N. lat., 118°33.36′ W. long.;

(42) 33°53.76′ N. lat., 118°30.14′ W. long.;

(43) 33°51.00′ N. lat., 118°25.19′ W. long.;

(44) 33°50.07′ N. lat., 118°24.07′ W. long.;

(45) 33°50.16′ N. lat., 118°23.77′ W. long.;

(46) 33°48.08′ N. lat., 118°25.31′ W. long.;

(47) 33°47.07′ N. lat., 118°27.07′ W. long.;

(48) 33°46.12′ N. lat., 118°26.87′ W. long.;

(49) 33°44.15′ N. lat., 118°25.15′ W. long.;

(50) 33°43.54′ N. lat., 118°23.02′ W. long.;

(51) 33°41.35′ N. lat., 118°18.86′ W. long.;

(52) 33°39.96′ N. lat., 118°17.37′ W. long.;

(53) 33°40.12′ N. lat., 118°16.33′ W. long.;

(54) 33°39.28′ N. lat., 118°16.21′ W. long.;

(55) 33°38.04′ N. lat., 118°14.86′ W. long.;

(56) 33°36.57′ N. lat., 118°14.67′ W. long.;

(57) 33°34.93′ N. lat., 118°10.94′ W. long.;

(58) 33°35.14′ N. lat., 118°08.61′ W. long.;

(59) 33°35.69′ N. lat., 118°07.68′ W. long.;

(60) 33°36.21′ N. lat., 118°07.53′ W. long.;

(61) 33°36.43′ N. lat., 118°06.73′ W. long.;

(62) 33°36.05′ N. lat., 118°06.15′ W. long.;

(63) 33°36.32′ N. lat., 118°03.91′ W. long.;

(64) 33°35.69′ N. lat., 118°03.64′ W. long.;

(65) 33°34.62′ N. lat., 118°00.04′ W. long.;

(66) 33°34.08′ N. lat., 117°57.73′ W. long.;

(67) 33°35.57′ N. lat., 117°56.62′ W. long.;

(68) 33°35.46′ N. lat., 117°55.99′ W. long.;

(69) 33°35.98′ N. lat., 117°55.99′ W. long.;

(70) 33°35.46′ N. lat., 117°55.38′ W. long.;

(71) 33°35.21′ N. lat., 117°53.46′ W. long.;

(72) 33°33.61′ N. lat., 117°50.45′ W. long.;

(73) 33°31.41′ N. lat., 117°47.28′ W. long.;

(74) 33°27.54′ N. lat., 117°44.36′ W. long.;

(75) 33°26.63′ N. lat., 117°43.17′ W. long.;

(76) 33°25.21′ N. lat., 117°40.09′ W. long.;

(77) 33°20.33′ N. lat., 117°35.99′ W. long.;

(78) 33°16.35′ N. lat., 117°31.51′ W. long.;
(79) 33°11.53′ N. lat., 117°26.81′ W. long.;
(80) 33°07.59′ N. lat., 117°21.13′ W. long.;
(81) 33°02.21′ N. lat., 117°19.05′ W. long.;
(82) 32°56.55′ N. lat., 117°17.07′ W. long.;
(83) 32°54.61′ N. lat., 117°16.06′ W. long.;
(84) 32°52.32′ N. lat., 117°15.97′ W. long.;
(85) 32°51.48′ N. lat., 117°16.15′ W. long.;
(86) 32°51.85′ N. lat., 117°17.26′ W. long.;
(87) 32°51.55′ N. lat., 117°19.01′ W. long.;
(88) 32°49.55′ N. lat., 117°19.63′ W. long.;
(89) 32°46.71′ N. lat., 117°18.32′ W. long.;
(90) 32°36.35′ N. lat., 117°15.68′ W. long.; and
(91) 32°32.85′ N. lat., 117°15.44′ W. long.

* * * * *

5. In section IV., under A. General Definitions and Provisions, paragraph (19)(e), section (xvi) is added to read as follows:

* * * * *

(xvi) The 30–fm (55–m) depth contour around the northern Channel Islands off the State of California is defined by straight lines connecting all of the following points in the order stated:
(1) 34°01.41′ N. lat., 119°20.61′ W. long.;
(2) 34°00.98′ N. lat., 119°20.46′ W. long.;
(3) 34°00.53′ N. lat., 119°20.98′ W. long.;
(4) 34°00.17′ N. lat., 119°21.83′ W. long.;
(5) 33°59.65′ N. lat., 119°24.45′ W. long.;
(6) 33°59.68′ N. lat., 119°25.20′ W. long.;
(7) 33°59.95′ N. lat., 119°26.25′ W. long.;
(8) 33°59.87′ N. lat., 119°27.27′ W. long.;
(9) 33°59.55′ N. lat., 119°28.02′ W. long.;
(10) 33°58.63′ N. lat., 119°36.48′ W. long.;
(11) 33°57.62′ N. lat., 119°41.13′ W. long.;
(12) 33°57.00′ N. lat., 119°42.20′ W. long.;
(13) 33°56.93′ N. lat., 119°48.00′ W. long.;
(14) 33°57.70′ N. lat., 119°48.00′ W. long.;
(between coordinates (14) and (15), the boundary follows the shoreline)
(15) 33°58.00′ N. lat., 119°51.00′ W. long.;
(16) 33°58.00′ N. lat., 119°52.00′ W. long.;
(17) 33°58.54′ N. lat., 119°52.80′ W. long.;
(18) 33°59.74′ N. lat., 119°54.19′ W. long.;
(19) 33°59.97′ N. lat., 119°54.66′ W. long.;
(20) 33°59.83′ N. lat., 119°56.00′ W. long.;
(21) 33°59.18′ N. lat., 119°57.17′ W. long.;
(22) 33°57.83′ N. lat., 119°56.74′ W. long.;
(23) 33°55.71′ N. lat., 119°56.89′ W. long.;
(24) 33°53.89′ N. lat., 119°57.68′ W. long.;
(25) 33°52.93′ N. lat., 119°59.80′ W. long.;
(26) 33°52.79′ N. lat., 120°1.81′ W. long.;
(27) 33°52.51′ N. lat., 120°03.08′ W. long.;
(28) 33°53.12′ N. lat., 120°04.88′ W. long.;
(29) 33°53.12′ N. lat., 120°05.80′ W. long.;
(30) 33°52.94′ N. lat., 120°06.50′ W. long.;
(31) 33°53.80′ N. lat., 120°06.50′ W. long.;
(between coordinates (31) and (32), the boundary follows the shoreline)
(32) 33°55.00′ N. lat., 120°10.00′ W. long.;
(33) 33°54.03′ N. lat., 120°10.00′ W. long.;
(34) 33°54.58′ N. lat., 120°11.82′ W. long.;
(35) 33°57.08′ N. lat., 120°14.58′ W. long.;
(36) 33°59.50′ N. lat., 120°16.72′ W. long.;
(37) 33°59.63′ N. lat., 120°17.88′ W. long.;
(38) 34°00.30′ N. lat., 120°19.14′ W. long.;
(39) 34°00.02′ N. lat., 120°19.68′ W. long.;
(40) 34°00.08′ N. lat., 120°21.73′ W. long.;
(41) 34°00.94′ N. lat., 120°24.82′ W. long.;
(42) 34°00.97′ N. lat., 120°25.30′ W. long.;
(43) 34°01.50′ N. lat., 120°25.30′ W. long.;
(between coordinates (43) and (44), the boundary follows the shoreline)
(44) 34°01.80′ N. lat., 120°26.60′ W. long.;
(45) 34°01.05′ N. lat., 120°26.60′ W. long.;
(46) 34°01.11′ N. lat., 120°27.43′ W. long.;
(47) 34°00.96′ N. lat., 120°28.09′ W. long.;
(48) 34°01.56′ N. lat., 120°28.71′ W. long.;
(49) 34°01.80′ N. lat., 120°28.31′ W. long.;
(50) 34°03.60′ N. lat., 120°28.87′ W. long.;
(51) 34°03.60′ N. lat., 120°28.20′ W. long.;
(52) 34°05.35′ N. lat., 120°28.20′ W. long.;
(53) 34°05.30′ N. lat., 120°27.33′ W. long.;
(54) 34°05.65′ N. lat., 120°26.79′ W. long.;
(55) 34°05.69′ N. lat., 120°25.82′ W. long.;
(56) 34°07.24′ N. lat., 120°24.98′ W. long.;
(57) 34°06.00′ N. lat., 120°23.30′ W. long.;
(58) 34°03.10′ N. lat., 120°23.30′ W. long.;
(between coordinates (58) and (59), the boundary follows the shoreline)
(59) 34°03.50′ N. lat., 120°21.30′ W. long.;
(60) 34°02.90′ N. lat., 120°20.20′ W. long.;
(between coordinates (60) and (61), the boundary follows the shoreline)
(61) 34°01.80′ N. lat., 120°18.40′ W. long.;
(62) 34°03.61′ N. lat., 120°18.40′ W. long.;
(63) 34°03.25′ N. lat., 120°16.64′ W. long.;
(64) 34°04.33′ N. lat., 120°14.22′ W. long.;
(65) 34°04.11′ N. lat., 120°11.17′ W. long.;
(66) 34°03.72′ N. lat., 120°09.93′ W. long.;
(67) 34°03.81′ N. lat., 120°08.96′ W. long.;
(68) 34°03.36′ N. lat., 120°06.52′ W. long.;
(69) 34°04.80′ N. lat., 120°04.00′ W. long.;
(70) 34°04.00′ N. lat., 120°04.00′ W. long.;
(71) 34°04.00′ N. lat., 120°05.20′ W. long.;
(72) 34°01.30′ N. lat., 120°05.20′ W. long.;
(between coordinates (72) and (73), the boundary follows the shoreline)
(73) 34°00.50′ N. lat., 120°02.80′ W. long.;
(74) 34°00.49′ N. lat., 120°01.01′ W. long.;
(75) 34°04.00′ N. lat., 120°01.00′ W. long.;
(76) 34°03.99′ N. lat., 120°00.15′ W. long.;
(77) 34°03.51′ N. lat., 119°59.42′ W. long.;
(78) 34°03.79′ N. lat., 119°58.15′ W. long.;
(79) 34°04.72′ N. lat., 119°57.61′ W. long.;

(80) 34°05.14′ N. lat., 119°55.17′ W. long.;
(81) 34°04.85′ N. lat., 119°53.00′ W. long.;
(82) 34°04.50′ N. lat., 119°53.00′ W. long.;
(between coordinates (82) and (83), the boundary follows the shoreline)
(83) 34°04.00′ N. lat., 119°51.00′ W. long.;
(84) 34°04.49′ N. lat., 119°51.01′ W. long.;
(85) 34°03.79′ N. lat., 119°48.86′ W. long.;
(86) 34°03.79′ N. lat., 119°45.46′ W. long.;
(87) 34°03.27′ N. lat., 119°44.17′ W. long.;
(88) 34°03.29′ N. lat., 119°43.30′ W. long.;
(89) 34°01.71′ N. lat., 119°40.83′ W. long.;
(90) 34°01.74′ N. lat., 119°37.92′ W. long.;
(91) 34°02.07′ N. lat., 119°37.17′ W. long.;
(92) 34°02.93′ N. lat., 119°36.52′ W. long.;
(93) 34°3.48′ N. lat., 119°35.50′ W. long.;
(94) 34°02.94′ N. lat., 119°35.50′ W. long.;
(between coordinates (94) and (95), the boundary follows the shoreline)
(95) 34°02.80′ N. lat., 119°32.80′ W. long.;
(96) 34°03.56′ N. lat., 119°32.80′ W. long.;
(97) 34°02.72′ N. lat., 119°31.84′ W. long.;
(98) 34°02.20′ N. lat., 119°30.53′ W. long.;
(99) 34°01.49′ N. lat., 119°30.20′ W. long.;
(100) 34°00.66′ N. lat., 119°28.62′ W. long.;
(101) 34°00.66′ N. lat., 119°27.57′ W. long.;
(102) 34°01.40′ N. lat., 119°26.94′ W. long.;
(103) 34°01.35′ N. lat., 119°26.70′ W. long.;
(104) 34°00.80′ N. lat., 119°26.70′ W. long.;
(between coordinates (104) and (105), the boundary follows the shoreline)
(105) 34°00.40′ N. lat., 119°24.60′ W. long.;
(between coordinates (105) and (106), the boundary follows the shoreline)
(106) 34°01.00′ N. lat., 119°21.40′ W. long.;
(107) 34°01.49′ N. lat., 119°21.40′ W. long.; and
(108) 34°01.41′ N. lat., 119°20.61′ W. long.

(xvii) The 30–fm (55–m) depth contour used around southern Channel Islands off the State of California is defined by straight lines around each island/seamount connecting all of the following points in the order stated:

(A) Santa Catalina Island
(1) 33°19.13′ N. lat., 118°18.04′ W. long.;
(2) 33°18.32′ N. lat., 118°18.20′ W. long.;
(3) 33°17.82′ N. lat., 118°18.73′ W. long.;
(4) 33°17.54′ N. lat., 118°19.52′ W. long.;
(5) 33°17.99′ N. lat., 118°21.71′ W. long.;
(6) 33°18.48′ N. lat., 118°22.82′ W. long.;
(7) 33°18.77′ N. lat., 118°26.95′ W. long.;
(8) 33°19.69′ N. lat., 118°28.87′ W. long.;
(9) 33°20.53′ N. lat., 118°30.52′ W. long.;
(10) 33°20.46′ N. lat., 118°31.47′ W. long.;
(11) 33°20.98′ N. lat., 118°31.39′ W. long.;
(12) 33°20.81′ N. lat., 118°30.49′ W. long.;
(13) 33°21.38′ N. lat., 118°30.07′ W. long.;
(14) 33°23.12′ N. lat., 118°29.31′ W. long.;
(15) 33°24.95′ N. lat., 118°29.70′ W. long.;
(16) 33°25.39′ N. lat., 118°30.50′ W. long.;
(17) 33°25.21′ N. lat., 118°30.79′ W. long.;
(18) 33°25.65′ N. lat., 118°31.60′ W. long.;
(19) 33°25.65′ N. lat., 118°32.04′ W. long.;
(20) 33°25.94′ N. lat., 118°32.96′ W. long.;
(21) 33°25.86′ N. lat., 118°33.49′ W. long.;
(22) 33°26.06′ N. lat., 118°34.12′ W. long.;
(23) 33°28.28′ N. lat., 118°36.60′ W. long.;
(24) 33°28.83′ N. lat., 118°36.42′ W. long.;
(25) 33°28.72′ N. lat., 118°34.93′ W. long.;
(26) 33°28.71′ N. lat., 118°33.61′ W. long.;
(27) 33°28.81′ N. lat., 118°32.95′ W. long.;
(28) 33°28.73′ N. lat., 118°32.07′ W. long.;
(29) 33°27.55′ N. lat., 118°30.14′ W. long.;
(30) 33°27.86′ N. lat., 118°29.41′ W. long.;
(31) 33°26.98′ N. lat., 118°29.06′ W. long.;
(32) 33°26.96′N. lat., 118°28.58′ W. long.;
(33) 33°26.76′ N. lat., 118°28.40′ W. long.;
(34) 33°26.52′ N. lat., 118°27.66′ W. long.;
(35) 33°26.31′ N. lat., 118°27.41′ W. long.;
(36) 33°25.09′ N. lat., 118°23.13′ W. long.;
(37) 33°24.80′ N. lat., 118°22.86′ W. long.;
(38) 33°24.60′ N. lat., 118°22.02′ W. long.;
(39) 33°22.82′ N. lat., 118°21.04′ W. long.;
(40) 33°20.23′ N. lat., 118°18.45′ W. long.; and
(41) 33°19.13′N., lat., 118°18.04′ W. long.

(B) San Clemente Island
(1) 33°03.37′N. lat., 118°37.76′ W. long.;
(2) 33°02.72′N. lat., 118°38.12′ W. long.;
(3) 33°02.18′N. lat., 118°37.46′ W. long.;
(4) 33°00.66′N. lat., 118°37.36′ W. long.;
(5) 33°00.08′N. lat., 118°36.94′ W. long.;
(6) 33°00.11′N. lat., 118°36.00′ W. long.;
(7) 32°58.02′N. lat., 118°35.41′ W. long.;
(8) 32°56.00′N. lat., 118°33.59′ W. long.;
(9) 32°54.76′N. lat., 118°33.58′ W. long.;
(10) 32°53.97′N. lat., 118°32.45′ W. long.;
(11) 32°51.18′N. lat., 118°30.83′ W. long.;
(12) 32°50.00′N. lat., 118°29.68′ W. long.;
(13) 32°49.72′N. lat., 118°28.33′ W. long.;
(14) 32°47.88′N. lat., 118°26.09′ W. long.;
(15) 32°47.03′N. lat., 118°25.73′ W. long.;
(16) 32°47.28′N. lat., 118°24.83′ W. long.;
(17) 32°48.12′N. lat., 118°24.33′ W. long.;
(18) 32°48.74′N. lat., 118°23.39′ W. long.;
(19) 32°48.69′N. lat., 118°21.75′ W. long.;
(20) 32°49.06′N. lat., 118°20.53′ W. long.;
(21) 32°50.28′N. lat., 118°21.09′ W. long.;
(22) 32°51.73′N. lat., 118°23.86′ W. long.;
(23) 32°52.79′N. lat., 118°25.08′ W. long.;
(24) 32°54.03′N. lat., 118°26.83′ W. long.;
(25) 32°54.07′N. lat., 118°27.55′ W. long.;
(26) 32°55.49′N. lat., 118°29.04′ W. long.;

(27) 32°59.58′N. lat., 118°32.51′ W. long.;
(28) 32°59.89′N. lat., 118°32.52′ W. long.;
(29) 33°00.29′N. lat., 118°32.73′ W. long.;
(30) 33°00.85′N. lat., 118°33.05′ W. long.;
(31) 33°01.07′N. lat., 118°33.64′ W. long.;
(32) 33°02.09′N. lat., 118°35.35′ W. long.;
(33) 33°02.61′N. lat., 118°36.96′ W. long.; and
(34) 33°03:37′N. lat., 118°37.76′ W. long.

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6. On page 11221, in section IV., under B. Limited Entry Fishery, Table 4 (South) is revised to read as follows:

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Table 4 (South). Trip Limits for Limited Entry Fixed Gear South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and B.
NMFS Actions before using this table effective 9/1/03

		JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[7/] (RCA):				
	40°10' - 34°27' N. lat.	20 fm - 150 fm		
	South of 34°27' N. lat.	20 fm - 150 fm (also applies around islands) (See footnote 8 for description of Pt. Fermin/Newport South Jetty open area)	30 fm - 150 fm (also applies around islands)	
1	**Minor slope rockfish[4/]**			
2	40°10' - 38° N. lat.	No more than 25% of weight of sablefish landed/ trip		1,800 lb/ 2 months
3	South of 38° N. lat.	30,000 lb/ 2 months		
4	**Splitnose**			
5	40°10' - 38° N. lat.	1,800 lb/ 2 months		
6	South of 38° N. lat.	20,000 lb/ 2 months		
7	**Sablefish**			
8	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		
9	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		
10	**Longspine thornyhead**	9,000 lb/ 2 months		
11	**Shortspine thornyhead**	2,000 lb/ 2 months		
12	**Dover sole**	5,000 lb/ month When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb (0.45 kg) of weight per line are not subject to the RCAs.		
13	**Arrowtooth flounder**			
14	**Petrale sole**			
15	**Rex sole**			
16	**All other flatfish[2/]**			
17	**Whiting[3/]**	10,000 lb/ trip		
18	**Minor shelf rockfish, widow, and yellowtail rockfish[4/]**	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
19	**Canary rockfish**	CLOSED[5/]		
20	**Yelloweye rockfish**	CLOSED[5/]		
21	**Cowcod**	CLOSED[5/]		
22	**Bocaccio**	CLOSED[5/]		
23	**Minor nearshore rockfish**			
24	Shallow nearshore	400 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
25	Deeper nearshore	500 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
26	California scorpionfish	800 lb/ 2 months	CLOSED[5/]	
27	**Lingcod[6/]**	400 lb/ month, when nearshore open		CLOSED[5/]
28	**Other fish[8/]**	Not limited		

Table 4 (South) continued

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.

3/ The whiting "per trip" limit in the Eureka area shoreward of 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies. See IV. B.(3).

4/ Chilipepper rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ The minimum size limit for lingcod is 24 inches (61 cm) total length.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours but specifically defined by lat/long coordinates set out at IV. A.(19)(e) that may vary seasonally.

8/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

9/ During July-August, between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing for all federal groundfish species, except lingcod and all rockfish other than California scorpionfish, with hook&line and/or trap (or pot) gear may operate from shore to a seaward boundary line which approximates 50 fm.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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7. On page 11225, in section IV., under C. Trip Limits in the Open Access Fishery, Table 5 (South) is revised to read as follows:

Table 5 (South). 2003 Trip Limits for Open Access Gears South of 40°10' N. Latitude[1/]

Other Limits and Requirements Apply -- Read Sections IV. A. and C. NMFS Actions before using this table

effective 9/1/03

		JUL-AUG	SEP-OCT	NOV-DEC
Rockfish Conservation Area[7/] (RCA):				
	40°10' - 34°27' N. lat.	20 fm - 150 fm		
	South of 34°27' N. lat.	20 fm - 150 fm (also applies around islands) (See footnote 8 for description of Pt. Fermin/Newport South Jetty open area)	30 fm - 150 fm (also applies around islands)	
1	**Minor slope rockfish[2/]**			
2	40°10' - 38° N. lat.	Per trip, no more than 25% of weight of the sablefish landed		
3	South of 38° N. lat.	10,000 lb/ 2 months		
4	**Splitnose**	200 lb/ month		
5	**Sablefish**			
6	40°10' - 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 3,200 lb/ 2 months		
7	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		
8	**Thornyheads**			
9	40°10' - 34°27' N. lat.	CLOSED[5/]		
10	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months		
11	**Dover sole**	3,000 lb/month, no more than 300 lb of which may be species other than Pacific sanddabs. When fishing for Pacific sanddabs, vessels using hook-and-line gear with no more than 12 hooks per line, using hooks no larger than "Number 2" hooks, which measure 11 mm (0.44 inches) point to shank, and up to 1 lb of weight per line are not subject to the RCAs.		
12	**Arrowtooth flounder**			
13	**Petrale sole**			
14	**Rex sole**			
15	**All other flatfish[3/]**			
16	**Whiting**	300 lb/ month		
17	**Minor shelf rockfish, widow and chilipepper rockfish[2/]**	250 lb/ 2 months	200 lb/ 2 months	100 lb/ 2 months
18	**Canary rockfish**	CLOSED[5/]		
19	**Yelloweye rockfish**	CLOSED[5/]		
20	**Cowcod**	CLOSED[5/]		
21	**Bocaccio**	CLOSED[5/]		

Table 5 (South) contined

22	**Minor nearshore rockfish**			
23.	Shallow nearshore	400 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
24	Deeper nearshore	500 lb/ 2 months	300 lb/ 2 months	200 lb/ 2 months
25	California scorpionfish	800 lb/ 2 months	CLOSED[5/]	
26	**Lingcod**[4/]	300 lb/ month, when nearshore open		CLOSED[5/]
27	**Other Fish**[6/]	Not limited		
28	**PINK SHRIMP EXEMPTED TRAWL GEAR** *(not subject to RCAs)*			
29	South	**Effective April 1 - October 31, 2003:** Groundfish 500 lb/day, multiplied by the number of days of the trip, not to exceed 1,500 lb/trip. The following sublimits also apply and are counted toward the overall 500 lb/day and 1,500 lb/trip groundfish limits: lingcod 300 lb/ month (minimum 24 inch size limit); sablefish 2,000 lb/ month; canary, thornyheads and yelloweye rockfish are PROHIBITED. All other groundfish species taken are managed under the overall 500 lb/day and 1,500 lb/trip groundfish limits. Landings of these species count toward the per day and per trip groundfish limits and do not have species-specific limits. The amount of groundfish landed may not exceed the amount of pink shrimp landed.		
30	**PRAWN AND, SOUTH OF 38°57'30" N. LAT., CALIFORNIA HALIBUT AND SEA CUCUMBER EXEMPTED TRAWL**			
31	**EXEMPTED TRAWL Rockfish Conservation Area**[7/] **(RCA):**			
32	40°10' - 38° N. lat.	60 fm - 200 fm		
33	38° - 34°27' N. lat.	60 fm - 200 fm		
34	South of 34°27' N. lat.	100 fm - 200 fm along the mainland coast; shoreline - 200 fm around islands		
35		Groundfish 300 lb/trip. Trip limits in this table also apply and are counted toward the 300 lb groundfish per trip limit. The amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb/trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception and the overall groundfish "per trip" limit may not be multiplied by the number of days of the trip. Vessels participating in the California halibut fishery south of 38°57'30" N. lat. are allowed to (1) land up to 100 lb/day of groundfish without the ratio requirement, provided that at least one California halibut is landed and (2) land up to 3,000 lb/month of flatfish, no more than 300 lb of which may be species other than Pacific sanddabs, sand sole, starry flounder, rock sole, curlfin sole, or California scorpionfish (California scorpionfish is also subject to the trip limits and closures in line 25.)		

Table 5 (South) contined

1/ "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.

2/ Yellowtail rockfish is included in the trip limits for minor shelf rockfish and POP is included in the trip limits for minor slope rockfish.

3/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

4/ The size limit for lingcod is 24 inches (61 cm) total length.

5/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV. A.(7).

6/ Other fish are defined at 50 CFR 660.302, as those groundfish species or species groups for which there is no trip limit, size limit, quota, or harvest guideline.

7/ The "Rockfish Conservation Area" is a gear and/or sector specific closed area generally described by depth contours, but specifically defined by lat./long. coordinates set out at IV. A.(19)(e), that may vary seasonally.

8/ During July-August, between a line drawn due south from Point Fermin (33° 42' 30" N. lat.; 118° 17' 30" W. long.) and a line drawn due west from the Newport South Jetty (33° 35' 37" N .lat.; 117° 52' 50" W. long.,) vessels fishing for all federal groundfish species, except lingcod and all rockfish other than California scorpionfish, with hook&line and/or trap (or pot) gear may operate from shore to a seaward boundary line which approximates 50 fm.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

BILLING CODE 3510–22–C

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8. On page 11227, in section IV., under D. Recreational Fishery, paragraph (3)(b)(i)(B) is revised and paragraph (3)(b)(i)(C) is added to read as follows:

* * * * *

(3) * * *

(b) * * *

(i) *Closed Areas.*–* * *

(B) *Between 40°10′ N. lat. and 34°27′ N. lat.*, recreational fishing for all groundfish, including lingcod, is prohibited seaward of the 20–fm (37–m) depth contour, except that recreational fishing for sanddabs is permitted seaward of the 20- fm (37–m) depth contour subject to the provisions in paragraph IV.D.(3)(iv).

(C) *South of 34°27′ N. lat.*, recreational fishing for all groundfish, including lingcod, is prohibited seaward of a boundary line approximating the 30–fm (55–m) depth contour along the mainland coast and along islands and offshore seamounts (except in the CCA where fishing is prohibited seaward of the 20- fm (37–m) depth contour in paragraph (A) of this section), except that recreational fishing for sanddabs is permitted seaward of the 30–fm (55–m) depth contour subject to the provisions in paragraph IV.D.(3)(iv). Coordinates for the boundary line approximating the 30–fm (55–m) depth contour are listed in sections IV.A.(19)(e)(xv) through (xvii).

* * * * *

9. On page 11227, in section IV., under D. Recreational Fishery, paragraph (3)(b)(ii)(A) is revised and the second paragraph (3)(b)(ii)(B) is corrected to read (3)(b)(ii)(D) as follows:

* * * * *

(3) * * *

(b) * * *

(ii) *RCG Complex.* * * *

(A) *Seasons.* South of 40°10′ N. lat., recreational fishing for the RCG Complex is open from July 1 through December 31 (i.e., it's closed from January 1 through June 30). When recreational fishing for the RCG Complex is open, it is permitted only inside the 20–fm (37–m) depth contour between 40°10′ N. lat. and 34°27′ N. lat. and inside a boundary line approximating the 30–fm (55–m) depth contour south of 34°27′ N. lat., subject to the bag limits in paragraph (B) of this section. Coordinates for the boundary line approximating the 30–fm (55–m) depth contour are listed in sections IV.A.(19)(e)(xv) through (xvii).

* * * * *

10. On page 11227, in section IV., under D. Recreational Fishery, paragraphs (3)(b)(iii)(A) and (3)(b)(iv)(A) are revised and the second paragraph (3)(b)(iv) is corrected to read (3)(b)(v) and is revised as follows:

* * * * *

(3) * * *

(b) * * *

(iii) *California scorpionfish.* * * *

(A) *Seasons.* South of 40°10′ N. lat., recreational fishing for California scorpionfish is closed from March 1 through June 30 (i.e., the California scorpionfish season is open during January-February and during July-December). When recreational fishing for California scorpionfish is open, it is permitted only inside the 20–fm (37–m) depth contour between 40°10′ N. lat. and 34°27′ N. lat., subject to the bag limits in paragraph (B) of this section. South of 34°27′ N. lat., when recreational fishing for California scorpionfish is open, it is permitted only inside a boundary line approximating the 30–fm (55–m) depth contour (except at Huntington Flats between a line drawn due south from Point Fermin (33°42′30" N. lat.; 118°17′30" W. long.) and a line drawn due west from the Newport South Jetty (33°35′37" N. lat.; 117°52′50" W. long.,) recreational fishing for California scorpionfish may occur from shore to a boundary line approximating 50–fm (91–m) during July-August), subject to the bag limits in paragraph (B) of this section. Coordinates for the boundary line approximating the 30–fm (55–m) depth contour are listed in sections IV.A.(19)(e)(xv) through (xvii).

* * * * *

(iv) *Linqcod*–(A) *Seasons.* South of 40°10′ N. lat., recreational fishing for lingcod is open July 1 through December 31. When recreational fishing for lingcod is open in the south, it is permitted only inside the 20–fm (37–m) depth contour between 40°10′ N. lat. and 34°27′ N. lat. and inside a boundary line approximating the 30–fm (55–m) depth contour south of 34°27′ N. lat., subject to the bag limits in paragraph (B) of this section. Coordinates for the boundary line approximating the 30–fm (55–m) depth contour are listed in sections IV.A.(19)(e)(xv) through (xvii).

* * * * *

(v) *Sanddabs.* South of 40°10′ N. lat., recreational fishing for sanddabs is permitted both inshore of and within the closed areas, (i.e., recreational fishing for sanddabs is permitted in all areas south of 40°10′ N. lat.). Recreational fishing for sanddabs is permitted seaward of the 20–fm (37–m) depth contour between 40°10′ N. lat. and 34°27′ N. lat. and seaward of a boundary line approximating the 30–fm (55–m) depth contour south of 34°27′ N. lat., subject to a limit of up to 12–hooks, "Number 2" or smaller, which measure 11 mm (0.44 inches) point to shank, and up to 2 lb (0.91 kg) of weight per line. There is no bag limit, season, or size limit for sanddabs, however, it is prohibited to fillet sanddabs at sea.

* * * * *

Classification

These actions are authorized by the Magnuson-Stevens Act, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS, (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries (AA), NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(3)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the next cumulative trip limit period for the Pacific Coast groundfish fishery begins September 1, 2003, and affording prior notice and opportunity for public comment would delay implementation of this action to after the start of the cumulative limit period. The Pacific Coast groundfish commercial fishery is managed by trip limits and area closures, most of which are based on a 2–month cumulative period (January-February, March-April, May-June, July-August, September-October, November-December). If this action is not implemented by the beginning of the next cumulative trip limit period (September 1, 2003), fishers would be unnecessarily restricted from accessing the increased area available to fishing in southern California. In addition, data for management in both the commercial and recreational fisheries lines up with these 2 month cumulative periods. If management actions are changed during a cumulative limit period, it may complicate analysis of the data by making it more difficult to determine how management measures influence data results.

There was not adequate time between when new scientific information became available for decision-making and when drafting and reviewing the regulatory package, including the environmental analysis, was complete for prior notice and opportunity for public comment. The new stock assessment for bocaccio, showing an increased biomass and higher recruitment than previously predicted, was released in May 2003. This new scientific information was then presented to the Pacific Council as a tool for decision-making at their June 16–20, 2003 meeting in Foster City, CA. While new stock assessments are generally reserved for setting the harvest levels for the following annual management cycle, 2004 in this case, the Pacific Council recommended the new information on the status of bocaccio be used for inseason management of the fishery in 2003. In 2003, groundfish fisheries coastwide have been severely restricted by large areas closed to fishing. The Pacific Council, at its June meeting, decided to use the new information on bocaccio to provide some relief to the commercial non-trawl and recreational fisheries in southern California by moving the boundary line from 20–fm (37–m) to 30–fm (55–m) south of 34°27′ N. lat. to the U.S./Mexico border. Moving the boundary line in this area made additional area in the ocean available for fishing. Because this new management measure recommended by the Pacific Council had not been previously analyzed in an environmental assessment, as required under the National Environmental Policy Act to determine potential impacts to the environment, an EA/RIR was prepared for this action following the June Council meeting. In addition to developing further data for analysis for the EA/RIR after the June Council meeting, CDFG had to develop coordinates approximating the 30–fm (55–m)depth contour. Between the approximately 2 months from the Pacific Council meeting decision to implementation of the recommendation, there was a tight time schedule to gather further information and complete the EA/RIR and regulatory package that did not allow for adequate time for prior notice and opportunity for comment.

Moving the boundary line will relieve restrictions by opening an area that was previously closed, thereby providing greater harvest opportunities than were previously scheduled for the remainder of the year. Thus, they are not subject to a 30–day delay in effectiveness under 5 U.S.C. 553(d)(1).

The AA also finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this correction[1] pursuant to 5 U.S.C. 553(b)(3)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the next cumulative trip limit period for the Pacific Coast groundfish fishery begins on September 1, 2003, and affording prior notice and opportunity for public comment would result in revisions to an RCA boundary in the middle of a cumulative limit period. Revising an RCA boundary in the middle of a cumulative limit period makes that boundary more difficult to understand for the public and for enforcement agents, ultimately impeding the agency's function of managing fisheries to approach without exceeding the OYs for federally managed species. Because the Pacific Coast groundfish fishery is managed by trip limits and area closures, most of which are based on a 2–month cumulative period(January-February, March-April, May-June, July-August, September-October, November-December), this correction should be implemented by the beginning of the next cumulative trip limit period (September 1, 2003) to prevent confusion amidst the public. The corrections in this rule will allow the groundfish trawl fleet to fish in areas that would otherwise be closed. Accordingly, the corrections relieve a restriction, and therefore, pursuant to 5 U.S.C. 553(d)(1), this rule is not subject to a 30 day delay in effectiveness. These actions are taken under the authority of 50 CFR 660.323(b)(1).

This emergency rule has been determined to be not significant for purposes of Executive Order 12866.

This emergency rule is exempt from the procedures of the Regulatory Flexibility Act because this rule is

[1] In addition to the changes described earlier for the emergency rule, this action would correct the 200-fm (366-m) depth contour coastwide RCA boundary to ensure that the series of coordinates describing that contour are better aligned to the actual 200-fm depth contour. This action would also clarify in the trip limit tables that RCA boundaries apply to fishing occurring in waters surrounding islands off California, and it would clarify which islands and seamounts belong to what island groups referenced in the regulations. At present, portions of the 200-fm (366-m) depth contour coordinates are more closely aligned with the 300-fm (549-m) depth contour, placing an unnecessary restriction on fishery participants. The trip limit table clarification is needed to ensure that the regulations are better understood by the public, and to better protect overfished species as soon as possible. The clarification of which islands and seamounts belong to what island groups referenced in the regulations is a minor correction to existing regulations (essentially a housekeeping change) and has no effect on the fisheries.

issued without opportunity for prior public notice and comment.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 29, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 03–22669 Filed 9–2–03; 4:58 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 082803D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 30, 2003, through 1200 hrs, A.l.t., September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the pollock TAC in Statistical Area 610 of the GOA is 5,500 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003). In accordance with § 679.20(a)(5)(iii)(B), the Administrator, Alaska Region, NMFS, (Regional Administrator) hereby increases the C season pollock TAC by 6 mt, the amount of the A and B season pollock allowance in Statistical Area 610 that was not previously taken in the A and B seasons and split equally between the C and D seasons. The revised C season allowance of pollock TAC in Statistical Area 610 is therefore 5,506 mt (5,500 mt plus 6 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the revised C season allowance of the pollock TAC in Statistical Area 610 has been reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 5,456 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the C season TAC in Statistical Area 610, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 , and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 28, 2003.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22562 Filed 8–29–03; 3:25 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021122286–3036–02; I.D. 082803B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the pollock total allowable catch (TAC) for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 30, 2003, through 1200 hrs, A.l.t., September 15, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fisher Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the pollock TAC in Statistical Area 620 of the GOA is 2,686 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003). In accordance with § 679.20(a)(5)(iii)(B), the Administrator, Alaska Region, NMFS, (Regional Administrator) hereby reduces the C season pollock TAC by 820 mt, the amount of harvest previously taken in excess of the A and B season pollock allowances in Statistical Area 620 and split equally between the C and D seasons. The revised C season allowance of pollock TAC in Statistical Area 620 is therefore 1,866 mt (2,686 mt minus 820 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the revised C season allowance of the pollock TAC in Statistical Area 620 has been reached. Therefore, the Regional Administrator is

establishing a directed fishing allowance of 1,816 mt, and is setting aside the remaining 50 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

Maximum retainable amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the C season allowance of the pollock TAC in Statistical Area 620, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 28, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22561 Filed 8–29–03; 3:25 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 68, No. 172
Friday, September 5, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–34–AD]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, and –20J Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, and –20J turbofan engines. This proposed AD would clarify a life limit for certain part numbers of 6th stage low pressure turbine (LPT) air seals, and require their removal from service before accumulating 15,000 cycles-since-new (CSN). This proposed AD is prompted by reports of certain 6th stage LPT air seals possibly not being life tracked due to confusion from updates to the engine manuals. We are proposing this AD to prevent failure of the 6th stage LPT air seal, which could cause LPT damage resulting in an uncontained engine failure.

DATES: We must receive any comments on this proposed AD by November 4, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- By mail: Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003-NE–34–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*.

You can get the service information identified in this proposed AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Keith Lardie, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7189; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003-NE–34-AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Discussion

The FAA has recently been made aware that the life limit for 6th stage LPT air seals, part numbers (P/Ns) 808846, 809171, 811260 and 811261, may not be clearly stated in Chapter 5 of the engine manuals. Proper life tracking of these parts is required to ensure safe operation of engines, but because of changes to the engine manuals some operators may have believed that some 6th stage LPT air seals may not require life tracking. This condition, if not corrected, could result in failure of the 6th stage LPT air seal, which could cause LPT damage resulting in an uncontained engine failure.

Relevant Service Information

We have reviewed and approved the technical contents of PW Service Bulletin No. JT9D 6448, dated June 10, 2003, that describes procedures for calculating 6th stage LPT air seal part life for air seals that have not been previously life tracked.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would clarify the life limit for 6th stage LPT air seals, P/Ns 808846, 809171, 811260, and 811261, and require their removal from service before accumulating 15,000 CSN. The proposed AD would require you to use the service information described previously for calculating 6th stage LPT air seal part life for parts that have not been previously life tracked.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are about 1,024 engines of the affected design in the worldwide fleet. We estimate that 367 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also

estimate that it would take approximately 0.5 work hour per engine to calculate the 6th stage LPT air seal part life, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $11,928.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–34–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new airworthiness directive:

Pratt & Whitney: Docket No. 2003-NE–34-AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by November 4, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, and –20J turbofan engines. These engines are installed on, but not limited to, Boeing 747–100, 747–200, 747SR, 747SP, and DC10–40 series airplanes.

Unsafe Condition

(d) This proposed AD is prompted by reports of certain 6th stage low pressure turbine (LPT) air seals possibly not being life tracked due to confusion from updates to the engine manuals. Chapter 5 of Engine Manuals part numbers (P/Ns) 646028, 770407, and 770408 will be revised to show a life limit of 15,000 cycles-since-new (CSN) for 6th stage air seal P/N's 808846, 809171, 811260 and 811261. We are issuing this AD to prevent failure of the 6th stage LPT air seal which could cause LPT damage, resulting in an uncontained engine failure.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

Determine Service Life

(f) For 6th stage LPT air seals, P/Ns 808846, 809171, 811260, and 811261, with an unknown number of cycles since installed, calculate the service life within 60 days after the effective date of this AD.

(1) Use Method 1 of the Accomplishment Instructions of PW Service Bulletin (SB) No. JT9D 6448, dated June 10, 2003, for when all service records are available for the specific air seal, to calculate the service life.

(2) Use Method 2 of the Accomplishment Instructions of PW SB No. JT9D 6448, dated June 10, 2003, for when any or all service records are not available for a specific air seal, to calculate the service life. If the worst-case daily utilization rate is unknown, use the fleet worst-case daily utilization rate of 2.9 cycles/day.

Removal From Service

(g) Remove 6th stage LPT air seals, P/Ns 808846, 809171, 811260, and 811261, from service at or before accumulating the CSN in the following Table 1.

TABLE 1.—PART NUMBER AND ENGINE APPLICABILITY

Part No.	Engine applicability	Life limit CSN
808846 (old)	JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, –20J	15,000
811260 (new)	JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, –20J	15,000
809171 (old)	JT9D–3A, –7, –7A, –7AH, –7H, –7F, –20	15,000
811261 (new)	JT9D–3A, –7, –7A, –7AH, –7H, –7F, –20	15,000

(h) If the service life cannot be determined as specified in paragraph (f) of this AD, remove the 6th stage LPT air seal before accumulating 2,500 cycles-in-service after the effective date of this AD.

(i) After the effective date of this AD, do not install any 6th stage LPT air seal, P/N 808846, 809171, 811260, or 811261, that exceeds 15,000 CSN, or that was removed to comply with paragraph (h) of this AD because its service life could not be determined.

Alternative Methods of Compliance

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(k) You must use Pratt & Whitney Service Bulletin No. JT9D 6448, dated June 10, 2003, to perform the service life calculations required by this AD. Approval of incorporation by reference from the Office of the Federal Register is pending.

Related Information

(l) None.

Issued in Burlington, Massachusetts, on August 28, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–22621 Filed 9–4–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

RIN 0720–AA86

Coordination of Benefits Between TRICARE and the Department of Veterans Affairs

AGENCY: Department of Defense.

ACTION: Withdrawal; correction.

SUMMARY: The Department of Defense published a withdrawal of a final rule (68 FR 51705, August 28, 2003) on Coordination of Benefits Between TRICARE and the Department of Veterans Affairs (68 FR 49732, August 19, 2003). This document is published to correct the status of that rule as a "proposed" rule. All other information remains unchanged.

DATES: The correction effective September 5, 2003.

FOR FURTHER INFORMATION CONTACT: L.M. Bynum, 703–601–4722 ext. 109.

Dated: August 21, 2003.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 03–22588 Filed 9–4–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD13–03–027]

RIN 1625–AA09

Drawbridge Operation Regulations; Columbia River, OR

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the operating regulations of the dual vertical lift bridges on Interstate Highway 5 across the Columbia River, mile 106.5, between Portland, OR and Vancouver, WA to accommodate a major rehabilitation of the mechanical and electrical systems of the bridges. From July 15, 2004, to August 6, 2004, the lift spans would be closed and from August 6, 2004, to October 15, 2004, the draws would open for the passage of vessels once every two weeks according to an established schedule. The affected period approximates the annual season of low water on the Columbia when the maximum vertical clearance will be available.

DATES: Comments and related material must reach the Coast Guard on or before October 20, 2003.

ADDRESSES: You may mail comments and related material to Commander (oan), 13th Coast Guard District, 915 Second Avenue, Seattle, WA 98174–1067 where the public docket for this rulemaking is maintained. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Aids to Navigation and Waterways Management Branch between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief Bridge Section, (206) 220–7282.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD13–03–027], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

An abbreviated comment period is in effect for this proposal in order to expedite processing. This will allow the bridge owner to advertise the project for bidding with adequate lead-time and as described by the limits to the project set by the temporary rule promulgated in the light of comments received.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Aids to Navigation and Waterways Management Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed temporary rule would enable the bridge owners to conduct a major rehabilitation project during the part of the year when water levels are typically low enough that most vessels do not need the drawspans to open for their passage. The seven million dollar project would completely replace the existing 1959 electrical system in both bridges and the 1916 gears in the northbound drawbridge. In addition, the operating control center would be rebuilt with improved visibility and new television cameras. During the first three weeks of the period, the dual lifts would remain in the down position to facilitate gear replacement. Thereafter, openings would be provided once every two weeks, if needed, until the end of the temporary period. Historically, water levels on the Columbia River fluctuate significantly over the course of an annual cycle. Essentially, water levels are dependent on the accumulation of snow in the winter and its melting in the spring and early summer. The annual dry season in the Pacific Northwest is typically from approximately July 15 to October 15. Usually rainfall begins to raise water levels again after October 15.

A river elevation of 6.0 feet Columbia River Datum (CRD) is the critical point for towboats on the Columbia River at and upstream of the bridges. Cargo towing is the main commercial use of the Columbia above the bridges. Large oceangoing vessels do not generally pass above these bridges. The towboats that ply that portion of the Columbia require 52 feet of vertical clearance. Most towing vessels and passenger tour vessels are able to pass through the highest fixed spans near midstream without requiring the vertical lift spans near the north shore to open when the river level is six feet or less.

The exceptions are the tallest sailboats, some construction derricks, and large structures that have been built upstream of the bridges at shore facilities. With the exception of the first three weeks of the affected period when the draws need not open, an opening will be provided every two weeks. During summer months the openings average less than one per day, mostly for sailboats, some of which could pass the higher fixed spans if antennas were lowered.

Discussion of Proposed Rule

The established operating regulation for the Interstate 5 bridges requires that the draws open on signal except that they need not open from 6:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m.

Monday through Friday except federal holidays. Certain exceptions are made for commercial vessels depending upon the river gauge.

The proposed temporary rule would authorize a continuous closure of the draws from 6:30 a.m. July 15 to 9 p.m. August 6, 2004. On August 6 and 20, September 3 and 17 and October 1, 2004, openings will be provided on signal at 9 p.m. Openings need not be provided at times other than these from August 6 until 9 p.m. October 15. In the event that the river runs at 6 feet Columbia River datum or higher between 9 p.m. on August 6 and 9 p.m. October 15, 2004, or the date the drawbridges are restored to normal operation, the bridge owners would provide an assist tug to commercial tows when requested by the towing vessel master for safe passage through the bridges. For downbound tows, this assist boat may be retained until a tow has safely passed the Burlington Northern Santa Fe swing span 0.8 mile downstream of the dual highway bridges. The master of the vessel would inform the draw tender prior to arrival at the I–5 bridges whenever an assist boat is to be used.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

We do expect recreational sailboats to be affected by this temporary rule. This class of vessel most commonly requires openings of the subject drawbridges during the summer months. Some of these vessels will either have to find alternate moorage or otherwise be limited in their operating areas during the project. Others will be able to modify their top hamper by lowering antennas, instruments, masts, etc., in order to pass the bridge if the biweekly scheduled openings do not serve their needs. These vessel operators will receive notice of several months duration to plan their activities for summer 2004.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. We expect that some recreational sailboat owners will be affected by this proposal. Most other vessels will either not require openings of the draws during low water season or will be accommodated by the biweekly scheduled openings. Some sail boaters will have to change their moorage and itineraries or modify their vessels to avoid delays.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Austin Pratt, Chief, Bridge Section at (206) 220–7282.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the

Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. There are no expected environmental consequences of the proposed action that would require further analysis and documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub.L. 102–587, 106 Stat. 5039.

2. From 6:30 a.m. on July 15, 2004, until 9 p.m. on October 15, 2004, in § 117.869, suspend paragraph (a) and add a new paragraph (d) to read as follows:

§ 117.869 Columbia River.

* * * * *

(d) The draws of the Interstate 5 Bridges, mile 106.5, between Portland, OR, and Vancouver, WA, need not open for the passage of vessels from 6:30 a.m. on July 15, 2004, to 9 p.m. on August 6, 2004, and at no other time until 9 p.m. on October 15 except for scheduled openings on signal at 9 p.m. on August 6 and 20 and September 3 and 17 and October 1, 2004.

Dated: August 21, 2003.

Jeffrey M. Garrett,

Rear Admiral, Coast Guard Commander, Thirteenth Coast Guard District.

[FR Doc. 03–22564 Filed 9–4–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[NE 190–1190; FRL–7553–1]

Approval and Promulgation of Implementation Plans and Operating Permits Program; State of Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the Nebraska State Implementation Plan (SIP) and Operating Permits Program. On September 5, 2002, the state updated its air program construction and operating permitting rules, its definitions rule, and emission inventory reporting rule. Approval of these revisions will ensure consistency between the state and Federally-approved rules, and ensure Federal enforceability of the state's revised air program rules.

DATES: Comments on this proposed action must be received in writing by October 6, 2003.

ADDRESSES: Comments may be submitted either by mail or electronically. Written comments should be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Electronic comments should be sent either to Wayne Kaiser at *kaiser.wayne@epa.gov* or to *http://www.regulations.gov*, which is an alternative method for submitting electronic comments to EPA. To submit comments, please follow the detailed instructions described in "What action is EPA taking" in the **SUPPLEMENTARY INFORMATION** section of the direct final rule which is located in the rules section of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603 or by e-mail at *kaiser.wayne@epa.gov*.

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: August 22, 2003.

Cecilia Tapia,

Acting Regional Administrator, Region 7.

[FR Doc. 03–22540 Filed 9–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–7553–2]

Central Characterization Project Waste Characterization Program Documents Applicable to Transuranic Radioactive Waste From the Hanford Site Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA, or "we") is announcing an inspection for the week of September 8, 2003, at the Hanford Site in Washington. With this action, we also announce availability of Department of Energy (DOE) documents in the EPA Docket, and solicit public comments on the documents available in the docket for a period of 30 days. The following DOE documents, entitled "CCP–PO–001—Revision 6, 6/11/03—CCP Transuranic Waste Characterization Quality Assurance Project Plan" and "CCP–PO–002—Revision 6, 6/11/03—CCP Transuranic Waste Certification Plan," are available for review in the public dockets listed in **ADDRESSES.** We will consider public comments received on or before the due date mentioned in **DATES.** In accordance with EPA's WIPP Compliance Criteria, we will conduct an inspection of the Central Characterization Project (CCP) at Hanford to verify that, using the systems and processes developed as part of the DOE Carlsbad Office's CCP, DOE can

characterize TRU waste consistent with the Compliance Criteria.

DATES: EPA is requesting public comment on the documents. Comments must be received by EPA's official Air Docket on or before October 6, 2003.

ADDRESSES: Comments may be submitted by mail to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2003–0144. Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I.B of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Ed Feltcorn, Office of Radiation and Indoor Air, (202) 564–9422. You can also call EPA's toll-free WIPP Information Line, 1–800–331–WIPP or visit our website at *http://www.epa/gov/radiation/wipp.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. How Can I Get Copies of This Document and Other Related Information ?

1. Docket. EPA has established an official public docket for this action under Docket ID No. OAR–2003–0144. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742. These documents are also available for review in paper form at the official EPA Air Docket in Washington, DC, Docket No. A–98–49, Category II–A2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday–Thursday, 10 a.m.–9 p.m., Friday–Saturday, 10 a.m.–6 p.m., and Sunday 1 p.m.–5 p.m.; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: vary by semester; and in Santa Fe at the New Mexico State Library, Hours: Monday–Friday, 9 a.m.–5 p.m. As provided in EPA's regulations at 40 CFR part 2, and in accordance with normal EPA docket procedures, if copies of any docket materials are requested, a reasonable fee may be charged for photocopying.

2. Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

For additional information about EPA's electronic public docket visit EPA Dockets online or see 67 FR 38102, May 31, 2002.

B. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, by facsimile, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. However, late comments may be considered if time permits.

1. Electronically. If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your

comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. EPA Dockets. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. To access EPA's electronic public docket from the EPA Internet Home Page, select "Information Sources," "Dockets," and "EPA Dockets." Once in the system, select "search," and then key in Docket ID No. OAR–2003–0144. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. E-mail. Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epa.gov*, Attention Docket ID No. OAR–2003–0144. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

2. By Mail. Send your comments to: EPA Docket Center (EPA/DC), Air and Radiation Docket, Environmental Protection Agency, EPA West, Mail Code 6102T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Attention Docket ID No. OAR–2003–0144.

3. By Hand Delivery or Courier. Deliver your comments to: Air and Radiation Docket, EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. OAR–2003–0144. Such deliveries are only accepted during the Docket's normal hours of operation as identified in Unit I.A.1.

4. By Facsimile. Fax your comments to: (202) 566–1741, Attention Docket ID. No. OAR–2003–0144.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Background

DOE is operating the WIPP near Carlsbad in southeastern New Mexico as a deep geologic repository for disposal of TRU radioactive waste. As defined by the WIPP Land Withdrawal Act (LWA) of 1992 (Pub. L. 102–579), as amended (Pub. L. 104–201), transuranic (TRU) waste consists of materials containing elements having atomic numbers greater than 92 (with half-lives greater than twenty years), in concentrations greater than 100 nanocuries of alpha-emitting TRU isotopes per gram of waste. Much of the existing TRU waste consists of items contaminated during the production of nuclear weapons, such as rags, equipment, tools, and sludges.

On May 13, 1998, EPA announced its final compliance certification decision to the Secretary of Energy (published May 18, 1998, 63 FR 27354). This decision stated that the WIPP will comply with EPA's radioactive waste disposal regulations at 40 CFR part 191, subparts B and C.

The final WIPP certification decision includes conditions that (1) Prohibit shipment of TRU waste for disposal at WIPP from any site other than the Los Alamos National Laboratory (LANL) until the EPA determines that the site has established and executed a quality assurance program, in accordance with §§ 194.22(a)(2)(i), 194.24(c)(3), and 194.24(c)(5) for waste characterization activities and assumptions (Condition 2 of appendix A to 40 CFR part 194); and (2) prohibit shipment of TRU waste for disposal at WIPP from any site other than LANL until the EPA has approved the procedures developed to comply with the waste characterization requirements of § 194.22(c)(4) (Condition 3 of appendix A to 40 CFR part 194). The EPA's approval process for waste generator sites is described in § 194.8. As part of EPA's decision-making process, the DOE is required to submit to EPA appropriate documentation of quality assurance and waste characterization programs at each DOE waste generator site seeking approval for shipment of TRU radioactive waste to WIPP. In accordance with § 194.8, EPA will place such documentation in the official Air Docket in Washington, D.C., and informational dockets in the State of New Mexico for public review and comment.

EPA will perform an inspection of the TRU waste characterization activities performed by the DOE's Central Characterization Project (CCP) staff at the Hanford Site in accordance with Condition 3 of the WIPP certification. The CCP is a mobile characterization facility that DOE is developing to assist small TRU waste generator sites with complex waste characterization activities. We will evaluate the adequacy, implementation, and effectiveness of the CCP technical activities contracted by Hanford for characterization of the disposal of retrievably-stored debris waste at the WIPP. The overall program adequacy and effectiveness of CCP/Hanford documents will be based on the following DOE-provided documents: (1) CCP–PO–001—Revision 6, 6/11/03—CCP Transuranic Waste Characterization Quality Assurance Project Plan and (2) CCP–PO–002—Revision 6, 6/11/03—CCP Transuranic Waste Certification Plan. EPA has placed these DOE-provided documents pertinent to the Hanford inspection in the public docket described in **ADDRESSES.** They can be found online in EDOCKET ID No. OAR–2003–0144 and also in hard copy form as item II–A2–47 in Docket A–98–49. In accordance with 40 CFR 194.8, EPA is providing the public 30 days to comment on these documents. The inspection is scheduled to take place the week of September 8, 2003.

EPA will inspect the following technical elements for characterizing retrievably-stored TRU debris and solid waste: data validation and verification, acceptable knowledge (AK), nondestructive assay (NDA–WIT and APNEA), Digital Radiography/Computed Tomography, visual examination (VE), and data tracking and reporting via the WIPP Waste Information System (WWIS).

If EPA determines as a result of the inspection that the proposed CCP waste characterization processes and programs used at Hanford adequately control the characterization of transuranic waste, we will notify DOE by letter and place the letter in the official Air Docket in

Washington, DC, as well as in the informational docket locations in New Mexico. A letter of approval will allow DOE to ship transuranic waste from Hanford to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the certification decision is filed in the official EPA Air Docket, Docket No. A–93–02 and is available for review in Washington, DC, and at three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, DC, plus those documents added to the official Air Docket since the October 1992 enactment of the WIPP LWA.

Dated: August 28, 2003.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 03–22638 Filed 9–4–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 13 and 21

RIN 1018–AI64

Migratory Bird Permits; Elderdown From Iceland

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (we or us) proposes changes in the regulations governing the import into the United States of parts of protected migratory birds. We propose to specify the requirements for importing down of nesting common eiders that breed in Iceland and list the procedures required to harvest, import, possess, and manufacture finished eiderdown products. We are requesting comments on information collection associated with the proposed rule.

DATES: Comments on this proposed rule will be accepted through December 4, 2003 to the address below.

Comments on the information collection aspects of this proposed rule will be considered if received by November 4, 2003. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove information collection but may respond after 30 days. Therefore, to ensure maximum consideration, your comments should be received by OMB by October 6, 2003.

ADDRESSES: You may mail or deliver written comments on this proposal to: RIN 1018-AI64, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, MS MBSP 4107, Arlington, Virginia 22203–1610. Alternatively, you may submit your comments via the Internet: *eiderdown@fws.gov*.

You may submit comments on the information collection aspects of the proposed rule to the Desk Officer for the Department of Interior at the Office of Management and Budget, Office of Information and Regulatory Affairs, via facsimile or e-mail using the following fax number and e-mail address: 202/395–6566 (fax); *OIRA_DOCKET@omb.eop.gov* (e-mail). Please provide a copy of your comments to the Fish and Wildlife Service's Information Collection Clearance Officer, 4401 North Fairfax Drive, MS 222 ARLSQ, Arlington, Virginia 22203; 703/358–2269 (fax); or *Anissa_Craghead@fws.gov* (e-mail).

In your written comments to the Division of Migratory Bird Management, please reference "RIN 1018–AI64" at the top of your letter. Include your name and return address. Anonymous comments will not be accepted. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Include your name and return address in your e-mail message. If you do not receive a confirmation that we have received your message, contact us directly at 703/358–1714.

The complete file for this proposed rule, including electronic and written comments received, will be available for public inspection by appointment, during normal business hours at the Division of Migratory Bird Management address listed above. You may call 703/358–1714 to make an appointment to view the files.

FOR FURTHER INFORMATION CONTACT: Brian Millsap, Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703/358–1714.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service is the Federal agency with the primary responsibility for managing migratory birds. We propose changes in the regulations governing the import into the United States of parts of protected migratory birds. We propose to specify the requirements for importing down of nesting common eiders that breed in Iceland and list the procedures required to harvest, import, possess, and manufacture finished eiderdown products. Our authority is based on the Migratory Bird Treaty Act of 1918 (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), the United Mexican States (=Mexico), Japan, and the Soviet Union (=Russia). Sea ducks including the common eider are afforded Federal protection by the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States—Mexico; the Convention Between the United States of America and the Union of Soviet Socialist Republics [=Russia] Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976; and the Protocol Amending the 1916 Convention for the Protection of Migratory Birds, August 2, 1996.

The MBTA requires that any regulations authorizing activities otherwise prohibited by 16 U.S.C. 703 are "[s]ubject to the provisions and in order to carry out the purposes of the conventions." 16 U.S.C. 704. This rule is consistent with each of the applicable treaties. Most importantly, this rule is consistent with the conservation intent of the treaties, as it builds in sufficient safeguards to ensure that the activities it allows will not have a negative impact on the conservation of common eiders or other birds protected by the conventions. It is also consistent with the expressed intent of the parties that migratory birds be conserved, in part, to allow their economic utilization. *See* Canada treaty, Article II ("migratory bird populations shall be managed * * * [t]o ensure a variety of sustainable uses."); Mexico treaty, Article I (migratory birds shall be protected so as to "permit, in so far as the * * * parties may see fit, the utilization of such birds rationally for purposes of sport, food, commerce, and industry"); Japan treaty ("Considering that birds constitute a natural resource of great value for * * * economic purposes, and that this value can be increased with proper management"); Russia treaty ("Considering that migratory birds are a natural resource of great * * * economic * * * value and that this value can be increased under proper management"). This rule is likewise consistent with the particular operative language of each of the conventions.

First, the treaty with Canada (as amended by the 1995 Protocol) prohibits, with some exceptions not relevant here, the sale of "migratory birds, their nests, or eggs." Article II, para. 2. However, this prohibition does

not apply to parts of migratory birds, such as down. The only requirement under the treaty with Canada applicable to parts is the marking requirement of Article VI. *See also* Article II, para. 4(a)(i) (indicating down may be sold without restriction, in contrast to birds and eggs taken by Aboriginal peoples of Canada, which may be sold only within and between Aboriginal communities). Moreover, the only prohibition in the treaty with Canada that relates to import is the prohibition on unlawfully taken birds and eggs, not applicable here. *See* Article VI.

Second, the treaty with Mexico (as amended by the 1997 Protocol) prohibits the sale of products or parts of migratory birds during the close[d] season, and mandates a particular close[d] season for wild ducks (which include common eiders). Article II, paras. A and D. However, exceptions to this prohibition include "when proceeding, with appropriate authorization, from private game farms." The Icelandic eider farms are "private game farms" within the meaning of this provision. There are no applicable restrictions on import of the eider down, as long as it does not enter the United States via Mexico. *See* Article III.

Third, the treaty with Russia prohibits the sale or importation of the parts or products of protected birds, but allows exceptions to these prohibitions by law or regulation for any "specific purposes not inconsistent with the principles of this Convention." Article II, para. 1(a). As discussed above, this rule is consistent with the principles of all the treaties, and therefore falls within this broad exception.

Finally, the treaty with Japan, unlike the other three treaties, does not apply to the common eider. *See* Annex to the treaty.

Federal regulations prohibit the commercial use of feathers from migratory birds to prevent the large-scale take of protected birds for profit and to insure the future viability of those species. Under the Act's implementing regulations found in Title 50, Code of Federal Regulations, migratory birds or their parts, nests, or eggs may not be imported or sold except as permitted under the terms of a valid permit issued pursuant to the provisions of Parts 13, 17, 20, and 21. Current regulations, specifically Sections 20.61 (importation limits), 20.91 (commercial use of feathers), 21.21 (import and export permits), and 21.25 (waterfowl sale and disposal permits) of 50 CFR do not allow the importation of eiderdown. The only migratory bird feathers that can be sold are those taken from waterfowl that have been legally hunted (Section 20.91) or are captive bred (Section 21.25). The feathers from legally hunted birds can only be fashioned into fishing flies, bed pillows, and mattresses or used for similar commercial items. Feathers may not be used for millinery or ornamental purposes. Captive-bred waterfowl that are properly marked may be sold, but because the feathers of wild-reared common eiders in Iceland cannot meet this marking requirement, individual feathers cannot be sold under current regulations.

The wild, breeding common eider in Iceland is unique among the hundreds of MBTA-protected migratory birds. The hen of the common eider produces a breast down that has exceptional insulating qualities and is naturally shed during nesting to insulate the eggs and hatchlings. While other down from geese (*Anser* and other genera) and ducks (*Anas* genus) may be sold as "eiderdown," only the down from the common eider is true eiderdown. Common eiders in Iceland have been afforded special protection since 1847 when hunting of this species in Iceland was banned. Icelanders have used eiderdown for over 11 centuries and have exported it since the 14th century. From May to July, Icelanders most frequently collect down twice, initially during the midpoint of incubation when birds are still on the nest, and following hatching after nestlings have left. Some farmers will only make one late-season acquisition, while others make multiple collections. Collectors take great care to avoid disturbing brooding hens, replacing down removed from the nest (15–20 g/nest) with dry grass or hay. Recent studies conducted by the Icelandic Museum of Natural History show no evidence that down collection has a negative impact on the eiders or on their ability to reproduce successfully. Iceland eider farmers actively control resident MBTA-protected birds, including native predatory birds (*e.g.*, black-backed gulls and ravens), native non-predatory birds (*e.g.*, common puffins), and nonresident mammalian predators (*e.g.*, Arctic foxes and mink) by lethal and nonlethal means during the nesting season.

Before raw down is exported from Iceland, it is cleaned to remove extraneous materials such as moss, grass, and soil. The raw down is then heated (processed) for at least 8 hours at minimum sustained temperatures of 100 °C to kill any ectoparasites and diseases that may be carried by the feathers.

Two other species of eider in the genus *Somateria* are the king eider (*S. spectabilis*) and the spectacled eider (*S. fischeri*). The status of the king eider is essentially unknown, although periodic and limited spring migration counts suggest declines in bird numbers since 1976. Spectacled eiders are in severe decline and are listed as threatened under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), as are the more distantly related Steller's eiders (*Polysticta stelleri*). The common eider is the only eider species known to occur in Iceland. Of the four eider species in the Northern Hemisphere, only the common eider in Iceland has experienced a long-term population increase likely due in part to a ban on hunting, improvements in eider nesting habitat, and predator control. Populations of common eider are variable throughout their range, which includes Northern Europe, Northern Russia, Alaska, Northern Canada, Greenland, and Iceland, but have declined in areas where hunting is allowed (*e.g.*, Spitsbergen and Siberia). The Circumpolar Eider Conservation Strategy and Action Plan, adopted by the Arctic Council in 1997, recognizes that an international approach is needed to manage eiders and endorses development of down harvesting as a sustainable use of eiders.

Icelanders have practiced "eider farming" for centuries. Although birds are not captive, they have developed a mutualistic association with humans. All nesting colonies are located on private lands. Some 650 colonies are currently registered with the Icelandic Ministry of the Environment. Landowners maintain legal rights to collect down from eider nests. Icelandic law allows landowners to have their eider nesting grounds declared "legally protected" during the breeding season from April 15 to July 14, which gives farmers the right to deny public access to nest sites and prohibit any shooting within 1.6 miles of nesting colony boundaries or prohibit any net fishing within 0.16 miles of the colony.

True eiderdown from the common eider is a scarce luxury item, with annual worldwide production averaging less than 3 metric tons, at a total annual average price of less than $2.2 million (U.S.). Iceland currently exports eiderdown primarily to Denmark, Germany, and Japan where it may be re-exported elsewhere. The high cost and limited quantity of true eiderdown may be an incentive for false labeling of eiderdown which may actually have been acquired from another waterfowl species. The eiderdown may also have been obtained using unsustainable methods outside of Iceland. Large populations of common eider are found

in Russia, where they are not farmed, but declines have been documented in Siberia due to over-hunting.

Eiderdown Import Permit Fee

The general statutory authority to charge fees for applications for permits and certificates is found in 31 U.S.C. 9701, which states that services provided by Federal agencies are to be "self-sustaining to the extent possible." Federal user fee policy, as stated in Office of Management and Budget Circular No. A–25, requires Federal agencies to recoup the costs of "special services" that provide benefits to identifiable recipients. Permits are special services, authorizing identifiable recipients to engage in activities not otherwise authorized for the general public.

We propose to amend 50 CFR 13.11(d), the nonstandard fee schedule, to charge a $100 application processing fee (user fee) for an eiderdown import permit. For migratory bird permits, these fees are reallocated to the seven Service Regional Offices where all the permit processing work is done to offset the cost of processing applications.

In addition to workload-related cost, the Service considered several other factors in developing the new permit application fee schedule for import of eiderdown in accordance with 31 U.S.C. 9701, which states that changes for services provided by the Government shall be based on (1) the costs to the Government; (2) the value of the service or thing to the recipient; (3) public policy or interest served; and (4) other relevant factors. Thus, the Service took into consideration such factors as whether the permit serves the public interest, and whether the type of permit to be issued typically provides a commercial benefit, either directly or indirectly, to the recipient. Eiderdown is generally used for commercial purposes. The Service therefore feels this fee is appropriate for a commercial use. While the Service's proposed $100 fee will more closely conform to the Federal user fee policy by recovering a greater proportion of the direct and indirect costs of providing special services than is currently being required, this proposed permit fee allowing importation of eiderdown from Iceland is not great enough to recover the full cost of administering this permit. Administration costs include research and analysis, policy development, consultation, outreach, publication of notices in the **Federal Register**, and overall management of this permit. Remaining costs not captured through permit application fees must be met with money appropriated for base funding of Service programs.

Additions to the Regulations Governing Import and Export

We have written the new regulation in plain language. We seek comment on this proposed regulation, particularly the following issues:

1. Appropriate down collection procedures, verification standards, and enforcement procedures;
2. Measures to ensure that exportation of down from Iceland does not encourage illegal importation of any other waterfowl species into the United States;
3. Record-keeping and annual reporting requirements;
4. Avian control of MBTA-protected species;
5. Reasonableness of the permit conditions; and
6. Reasonableness of the permit application fee.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. Under limited circumstances, as allowable by law, we can withhold from the rulemaking record a respondent's identity. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from individuals and organizations or businesses, and from individuals identifying themselves as representing an organization or business, available for public inspection in their entirety.

Endangered Species Act Considerations

Section 7(a)(2) of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531, *et seq.*), requires all Federal agencies to "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat." The Division of Endangered Species concurs that this proposed rule will have "no effect" on endangered species pursuant to section 7 of the ESA.

Required Determinations

Regulatory Planning and Review. In accordance with the criteria in Executive Order 12866, this rule is not a significant regulatory action.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis are not required. Currently less than 3 metric tons of Icelandic eiderdown are exported annually, primarily to Denmark, Germany, and Japan, for a total annual sale that does not exceed $2.2 million (U.S.) on average. If a U.S. market is opened, very little eiderdown will likely be imported resulting in virtually no effect on the economy, productivity, jobs, the environment, or government.

b. This rule will not create inconsistencies with other agencies' actions. The rule deals solely with importation of Icelandic eiderdown into the United States. No other Federal agency has any role in regulating bird feather importation.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. There are no entitlements, grants, user fees, or loan programs associated with the regulation of eiderdown importation.

d. This rule will not raise novel legal or policy issues. This rule is primarily an amendment to and plain language rewrite of the existing regulations. Provisions to import Icelandic eiderdown proposed in the rule are in compliance with other laws, policies, and regulations.

Regulatory Flexibility Act. This rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Currently less than 3 metric tons of Icelandic eiderdown are exported annually, primarily to Denmark, Germany, and Japan, for a total annual sale that does not exceed $2.2 million (U.S.) on average. If a U.S. market is opened, very little eiderdown will likely be imported resulting in virtually no effect on the economy, productivity, jobs, the environment, or government. An initial Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. There is a very limited supply of Icelandic eiderdown available each year. We anticipate that very few individuals and/or entities will request import permits to acquire some of this down.

Small Business Regulatory Enforcement Fairness Act. This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Enforcement of the MBTA is solely the responsibility of the Federal Government.

b. This rule is not a "significant regulatory action" under the Unfunded Mandates Reform Act. It will not produce a Federal mandate of $100 million or greater in any year.

Takings. This rule has no potential takings implications for private property as defined in Executive Order 12630. This rule will not significantly affect private property.

Federalism. In accordance with Executive Order 13132, the rule does not have sufficient Federalism effects to warrant preparation of a Federalism assessment. This rule will not interfere with the States' ability to manage themselves or their funds.

Civil Justice Reform. In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act and Information Collection. This proposed rule includes many new information collection requirements, including a completed eiderdown import permit application, written preconditions, certification of inspection, labeling requirements, recordkeeping requirements, and reporting.

Simultaneous with the publication of this proposed rule, we have submitted an application for information collection approval to OMB. Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), information collections must be approved by OMB. Agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This proposed rule would institute new information collection burden hours, as described below. We will notify the public of OMB's response to our application in the final rule for this regulation.

We intend to collect information associated with the importation of Icelandic eiderdown from those U.S. citizens and U.S. companies that are granted an Icelandic eiderdown import permit, from representatives of the Government of Iceland (GOI), and from representatives of the Icelandic Eider Farmers' Association.

Because it is difficult to identify the species of eider from which down is collected, and because it is difficult if not impossible to identify the source and type of down used in finished products, the requirements for information collection are key to monitoring common eider population stability, eiderdown harvest, down availability, down export from Iceland, government-certified collection procedures, possible down laundering, and possible false labeling. With less than 3 metric tons on average of eiderdown annually harvested from common eiders in Iceland, information collection will help track continuing harvests, alerting the U.S. Fish and Wildlife Service's (Service) Office of Law Enforcement and the Service's Division of Migratory Bird Management to possible problems including alleged violations of the Migratory Bird Treaty Act. Without this information collection, it would not be possible to assess population stability and down harvest sustainability.

Information collections associated with this proposed rule are found in sections 21.33 (a) and (c) (completing an eiderdown import permit application), 21.33(b) (preconditions required of the GOI), 21.33(e)(2) (certification of inspection by a GOI inspector), 21.33(e)(3) (labeling requirements), and 21.33(e)(5) and (6) (recordkeeping requirements).

The breakdown of the information collection burden for U.S. citizens is as follows: We estimate that 21.33(a) and (c) will have 25 annual respondents with 25 total annual burden hours valued at $750; we estimate that 21.33(e)(5) and (6) will have 25 annual respondents with 25 total burden hours valued at $750. Overall, we estimate that a total of 25 U.S. respondents will annually submit a total of 50 responses to the recordkeeping and reporting requirements associated with the importation of Icelandic eiderdown. We estimate that the average wage of U.S. citizens and representatives of U.S. companies importing eiderdown is $30 per hour, and we estimate that each response will require an average of 1 hour to complete, for a total 50 hours per year valued at $1,500 for all of the information collection and recordkeeping requirements in this proposed rule for U.S. citizens and U.S. companies.

For GOI and members of the Icelandic Eider Farmers' Association, many of the information collection requirements in this proposed rule are already standard business practice for exporting eiderdown from Iceland to countries other than the United States. Certain additional burden hours for these entities would be newly required by the proposed rule, however, and they are described below.

We estimate that 21.33(b)(3) will require the following information collection burden for GOI: The GOI will need an average of 25 hours per year to locate, photocopy, maintain records, and mail copies of all the veterinary certificates related to export of eiderdown to the United States; 25 hours to locate, photocopy, maintain records, and mail copies of all labeling certificates related to eiderdown export to the United States; 100 hours to visit randomly selected eider colonies to verify that preconditions are being met; 1 hour to locate, photocopy, maintain records, and mail information regarding preconditions to exporting eiderdown; and 1 hour to locate, photocopy, maintain records, and mail information for annual reporting, including information on the amounts of eiderdown exported to countries other than the United States. This amounts to a total of 152 hours per year for GOI to comply with the information collection requirements associated with the export of eiderdown to the United States and to other countries. We estimate that the average wage of GOI officials collecting the information is $30 per hour (U.S.), and thus, the dollar value of the total annual hour burden is $4,560.

We estimate that 21.33(b)(3)(v) and (e)(3) will require the following information collection burden for representatives of the Icelandic Eider Farmers' Association: 50 representatives of the Eider Farmers' Association will each need 1 hour to photocopy and mail records regarding the processing and export of eiderdown to GOI. This amounts to a total of 50 hours per year for Icelandic eider farmers to comply with the information collection requirements associated with the export of eiderdown to the United States. We estimate that the average wage of eider farmers collecting the information is $30 per hour (U.S.), and thus, the dollar value of the total annual hour burden is $1,500.

OMB regulations at 5 CFR part 1320 require that interested members of the public and affected agencies have an

opportunity to comment on information collection and recordkeeping activities. Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden of the information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; (4) ways to minimize the burden of the information collection on respondents; and (5) the appropriateness of the application fee. See the **DATES** and **ADDRESSES** sections of this document for information on submitting your comments on this information collection.

National Environmental Policy Act. We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 516 DM. This rule does not constitute a major Federal action significantly affecting the quality of the human environment, and does not require an environmental assessment.

Government-to-Government Relationship with Tribes. In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM, we have evaluated potential effects on Federally recognized Indian tribes and have determined that there are no potential effects.

Energy Supply, Distribution or Use (Executive Order 13211). On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not expected to significantly affect energy supplies, distribution, and use. Therefore, this action is not a significant energy action and No Statement of Energy Effects is required.

Clarity of Regulations. Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements of the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any written comments about how we could make this rule easier to understand to: Office of Executive Secretariat and Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW., Washington, DC 20240. You may also e-mail comments to this address: *Exsec@ios.doi.gov.*

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons stated in the preamble, we propose to amend parts 13 and 21, chapter I, title 50 of the Code of Federal Regulations, as follows.

PART 13—[AMENDED]

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 668a, 704, 712, 742j–l, 1382, 1538(d), 1539, 1540(f), 3374, 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 15683; 31 U.S.C. 9701.

2. Amend § 13.11(d)(4) by adding the following entry to the end of the table, to read as follows:

§ 13.11 Application procedures.

* * * * *

(d) * * *

(4) *Nonstandard fees.*

Type of permit	Fee
* * * * *	
Import permit for eiderdown from Iceland (§21.33)	$100
* * * * *	

3. Amend § 13.12(b) by adding to the table the following entry in numerical order under "Migratory bird permits" to read as follows:

§ 13.12 General information requirements on applications for permits.

* * * * *

(b) * * *

Type of permit	Section
* * * * *	
Migratory bird permits:	
* * * * *	
Importing eiderdown from Iceland	21.33
* * * * *	

PART 21—[AMENDED]

4. The authority citation for part 21 continues to read as follows:

Authority: Pub. L. 95–616; 92 Stat. 3112 (16 U.S.C. 712(2)); Pub. L. 106–108.

5. Add § 21.33 to subpart C to read as follows:

§ 21.33 Import and sale of Icelandic eiderdown.

(a) *What must I do to import processed Icelandic eiderdown into the United States?* To import processed Icelandic eiderdown into the United States, you must have an eiderdown import permit issued pursuant to this part. We will issue permits for the importation of Icelandic eiderdown lawfully collected, processed, and exported by members of the Icelandic Eider Farmers' Association (most Icelandic farmers who harvest down are members of this cooperative) or their assigns, from the common eider sea duck (*Somateria mollissima borealis*) nesting in Iceland, in accordance with the provisions of this part. Because it is difficult if not impossible to identify the source and type of down used in finished products, such products are prohibited from importation.

(b) *What are the preconditions for an import permit?* The Director may permit the import of Icelandic eiderdown provided the Government of Iceland (GOI) documents, in writing and in English, satisfaction of the following preconditions:

(1) That Icelandic eiderdown is collected by sustainable means. This includes collection procedures and periods, the collection process, the quantity of down to be taken from each nest, and verification standards.

(2) That only sustainably harvested down from Iceland is being exported to the United States.

(3) At the end of each calendar year, that:

(i) The common eider population continues to be stable (If we cannot verify population sustainability, then we will not issue permits for the import of Icelandic eiderdown);

(ii) No measures are being taken to kill or injure Migratory Bird Treaty Act-protected (MBTA) species (*e.g.*, ravens, black-backed gulls, and common puffins);

(iii) Down is not being treated with DDT or other similar compounds banned in the United States;

(iv) Hunting of common eiders continues to be banned nationwide; and

(v) The complete annual export records contain the exact weight, shipment dates, and Icelandic shipment and permit numbers of all eiderdown.

(c) *How do I apply for a permit?* Anyone wishing to import processed Icelandic eiderdown collected and prepared under the laws and regulations

of the GOI may apply for an import permit. Upon satisfaction of the Director that the preconditions of paragraph (b) of this section have been met, we will accept an application for import of Icelandic eiderdown. You must submit your completed application to the Regional Director—Attention Migratory Bird Permit Office in the Region where your business is headquartered, or, for private individuals, where you live (*see* § 2.2 of this chapter for the Regional boundaries and addresses).

(1) Each application must contain the information required under § 13.12(a) of this subchapter.

(2) Each applicant must sign the following certification statement: "I hereby certify that, to the best of my knowledge, the eiderdown I import under the authorization of this permit was collected and exported according to the conditions for the importation of Icelandic eiderdown as set forth in 50 CFR 21.33(b)." We will not issue a permit under this section without this signed certification statement.

(3) You must submit a check or money order made payable to the "U.S. Fish and Wildlife Service" in the amount of the application fee for permits issued under this section listed in § 13.11(d) of this subchapter.

(d) *What are the permit provisions?* A permit issued under this section authorizes the holder to import, possess, transport, sell, or dispose of processed Icelandic eiderdown collected from the common eider sea duck (*Somateria mollissima borealis*) for commercial or personal purposes.

(1) We will not issue a permit for these purposes unless the applicant certifies that the feathers were gathered according to the protocol detailed in paragraph (b) of this section by signing the certification provided in paragraph (c)(2) of this section. In addition, each shipment of eiderdown to a U.S. company or individual must include an Icelandic eiderdown export permit and an import permit issued by the Service.

(2) To acquire a permit application, contact the Migratory Bird Permit Office in the Region where your business is headquartered, or, for private individuals, where you live (see § 2.2 of this chapter for Regional boundaries and addresses, or go to the Internet at *http://permits.fws.gov/mbpermits/birdbasics.html*, then click on Regional Bird Permit Offices, for the address).

(3) You may, without a permit, sell in interstate commerce lawfully imported processed eiderdown in either raw processed form or that has been fashioned into finished products produced from down.

(e) *What are the permit conditions and importation regulations?*

(1) *Collection.* All eiderdown imported under this permit must be collected and exported from Iceland according to the "sustainable harvest" conditions set forth in paragraph (b) of this section.

(2) *Certification.* Eiderdown imported under this section must be accompanied by a certification of inspection and weight by legally appointed Icelandic down inspectors as specified by *Instructions for Eiderdown Inspectors* (Icelandic Ministry of Agriculture, 10 March 1972) and by *Iceland's Law on Quality Inspection of Eiderdown* (NR 39, p. 310, 11 May 1970).

(3) *Shipping and labeling.* All eiderdown imported from Iceland must be packaged in transparent shipping bags. Every bag must be sealed and labeled with the guarantee, "Grade One Icelandic Common Eiderdown," and in addition must include the package weight of each down-filled bag. That weight must be marked on the label as specified on the "Inspector's Weighing and Quality Certificate" currently utilized by the GOI. A signed, original "Veterinary Certificate," which certifies that the down is disease free, must be attached to each packing bag. Each shipment of imported eiderdown must include an Icelandic eiderdown export permit and a copy of your import permit issued by a USFWS Regional Migratory Bird Permit Office. Import permits may be used for multiple shipments of eiderdown and are issued on a calendar year-to-year basis.

(4) *Commercial export prohibition.* You may not export from the United States for commercial purposes any raw eiderdown imported under this permit. You may not export from the United States for commercial purposes any finished product containing the eiderdown.

(5) *Recordkeeping.* You must maintain complete and accurate records of all eiderdown that you import, including the date received, disposition, date of disposition, and copies of the permits and certificates included with each shipment from the GOI. You must retain these records for 5 years following the end of the calendar year covered by the records.

(6) *Annual report.* You must submit a completed Form 3–202-xx by January 31 of each year for the preceding year to your issuing Migratory Bird Permit Program Office.

(7) *Term of permit.* We will issue permits under this section on a calendar year-to-year basis.

(f) *Does this rule contain information collection requirements?*

Yes. The OMB control number for the information collection associated with these regulations (50 CFR Parts 13 and 21) is 1018–XXXX. A federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: August 21, 2003.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 03–22298 Filed 9–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 030821210–3210–01; I.D.081103A]

RIN 0648–AR36

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Amendment 16–1

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 16–1 to the Pacific Coast Groundfish Fishery Management Plan (FMP). Amendment 16–1 would set a process for and standards by which the Council will specify rebuilding plans for groundfish stocks declared overfished by the Secretary of Commerce. Amendment 16–1 is intended to ensure that Pacific Coast groundfish overfished species rebuilding plans meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), in particular National Standard 1 on overfishing and § 304(e), which addresses rebuilding overfished fisheries. Amendment 16–1 is also intended to partially respond to a court order in which NMFS was ordered to provide Pacific Coast groundfish rebuilding plans as FMPs, FMP amendments, or regulations, per the Magnuson-Stevens Act.

DATES: Comments must be submitted in writing by October 6, 2003.

ADDRESSES: Comments on Amendment 16–1 or supporting documents should be sent to D. Robert Lohn, Administrator, Northwest Region,

NMFS, Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070.

Copies of Amendment 16–1 and the environmental assessment/ regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA)) are available from Donald McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Portland, OR 97220, phone: 503–820–2280.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier (Northwest Region, NMFS), phone: 206–526–6150; fax: 206–526–6736 and; e-mail: *yvonne.dereynier@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Electronic Access

This **Federal Register** document is also accessible via the Internet at the Office of the **Federal Register**'s website at: *http://www/access/gpo.gov/su_docs/aces140.html*.

NMFS is proposing this rule to implement Amendment 16–1 to the FMP. Amendment 16–1 mainly revises the FMP and not Federal regulations. However, the specific standards that govern the harvest levels for overfished species rebuilding plans would be codified in the Code of Federal Regulations (CFR). Thus, this proposed rule would establish a new section in the Federal groundfish regulations at 50 CFR 660.370 for overfished species rebuilding plans. This proposed rule to implement Amendment 16–1 will be shortly followed by a proposed rule to implement Amendment 16–2, which was adopted by the Council in June 2003. If approved, Amendment 16–2 would place rebuilding plans for canary rockfish, darkblotched rockfish, lingcod, and Pacific ocean perch in the FMP and in Federal regulations. NMFS expects to publish a Notice of Availability for Amendment 16–2 in autumn 2003. This proposed rule is based on recommendations of the Council, under the authority of the Pacific Coast Groundfish FMP and the Magnuson-Stevens Act. The background and rationale for the Council's recommendations are summarized below. Further detail appears in the EA/RIR/IRFA prepared by the Council for Amendment 16–1.

Background

Amendment 12 to the FMP was intended to provide a process for developing overfished species rebuilding plans. Under Amendment 12, rebuilding plans were to be stand-alone documents that described an overfished stock's status and articulated rebuilding goals and strategies for achieving those goals. Amendment 12 was challenged, and the court ordered NMFS to develop rebuilding plans as fishery management plans, plan amendments, or regulations. Amendment 16–1 is intended to partially respond to this Court order (*Natural Resources Defense Council, Inc.* v. *Evans*, 168 F. Supp. 2d 1149 (N.D. Cal 2001).)

Amendment 16–1 would require that Pacific Coast groundfish overfished species rebuilding plans be added into the FMP via FMP amendment, and then implemented through Federal regulations. For each approved overfished species rebuilding plan, the following parameters would be specified in the FMP: estimates of unfished biomass (B_0) and target biomass (B_{MSY}), the year the stock would be rebuilt in the absence of fishing (T_{MIN}), the year the stock would be rebuilt if the maximum time period permissible under National Standard Guidelines were applied (T_{MAX}) and the year in which the stock would be rebuilt based on the application of stock rebuilding measures (T_{Target}). These estimated values will serve as management benchmarks in the FMP. The FMP would not be amended if, as is likely to happen, the values for these parameters change after new stock assessments. Other relevant information listed in Amendment 16–1 will also be included in the FMP.

The two rebuilding parameters that control the establishment of the annual or biennial optimum yield of each overfished species will be codified in the CFR: the target year for rebuilding and the harvest control rule to be used to rebuild the stock. If, after a new stock assessment, the Council and NMFS conclude that these should be revised, the revision will be done through a rulemaking, and the updated values codified in the CFR.

Amendment 16–1 additionally sets schedules and standards for reviewing rebuilding plans. The current FMP sets five goals for evaluating rebuilding plans: (1) Achieve the population size and structure that will support the maximum sustainable yield (MSY) within the specified time period; (2) minimize, to the extent practicable, the social and economic impacts associated with rebuilding, including adverse impacts on fishing communities; (3) fairly and equitably distribute both the conservation burdens (overfishing restrictions) and recovery benefits among commercial, recreational, and charter fishing sectors; (4) protect the quantity and quality of habitat necessary to support the stock at healthy levels in the future, and; (5) promote widespread public awareness, understanding, and support for the rebuilding program. Amendment 16–1 would require that the Council review rebuilding plan goals 2–5 every two years, but goal 1 only with new stock assessments, since new stock assessment data would be needed to determine whether rebuilding trajectories were being met. Stock assessments are generally updated every 2–4 years, with overfished species having higher priority in assessment scheduling.

As stated above, the first goal of rebuilding plans is to: "Achieve the population size and structure that will support the maximum sustainable yield (MSY) within the specified time period." Amendment 16–1 specifies that the rebuilding plan for each species will set a species-specific standard for determining the adequacy of rebuilding progress for the particular species toward that goal. The Council had considered whether to set a single standard that would apply to all species, but decided that the variations in life histories, productivity, and abundances of the different overfished species warranted a species-specific rebuilding standard in each rebuilding plan.

Amendment 16–1 also considered how rebuilding plans would operate if an overfished species were to become listed as either threatened or endangered under the Endangered Species Act (ESA). Under Amendment 16–1, ESA jeopardy standards and/or recovery plans would take precedence over rebuilding plans if they establish higher recovery standards than those already set in the rebuilding plans. If a species is listed as threatened or endangered under the ESA and is subsequently de-listed, but still not rebuilt to BMSY under the Magnuson-Stevens Act, then the rebuilding plan would continue to provide standards for the management and rebuilding of that species.

Finally, Amendment 16–1 included several minor changes to the FMP text. These changes include: (1) revising the list of species managed under the FMP to correct mis-spellings and to specify certain rockfish species already managed under the FMP as part of the FMP's generic inclusion of all species of the family *Scorpaenidae*; (2) revising the FMP definitions of "Maximum Fishing Mortality Threshold" or "MFMT" and of "Minimum Stock Size Threshold" or "MSST" to ensure that they match the definition of these terms in the National Standard Guidelines; (3) revising the requirements for items to be included in the annual Stock Assessment and Fishery Evaluation (SAFE) report and the schedule for delivery of different sections of that

report; (4) requiring the federal groundfish observer program in the FMP, matching existing Federal regulations at 50 CFR 660.360, and; (5) reorganizing sections of Chapters 4 and 5 of the FMP for a more logical progression of information, without a revision to the requirements or effects of the FMP.

Federal Regulations under Amendment 16–1

Regulations to implement Amendment 16–1 would establish a new section of the Federal groundfish regulations at 50 CFR 660.370, "Overfished Species Rebuilding Plans." Because Amendment 16–1 provides a framework for future rebuilding plans, the regulations implemented through this proposed rule would similarly provide a framework within federal groundfish regulations for future species-specific rebuilding plans. Amendment 16–2, which NMFS plans to make available for public review in autumn 2003, would propose implementation of the first four overfished species rebuilding plans (canary rockfish, darkblotched rockfish, lingcod, Pacific ocean perch) within 50 CFR 660.370. In the future, overfished species rebuilding plans would be reviewed under the schedule set by Amendment 16–1 and Federal regulations implementing species-specific rebuilding plans would be amended through a public notice-and-comment rulemaking.

Classification

At this time, NMFS has not determined whether Amendment 16–1, which this proposed rule would implement, is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Council has prepared an IRFA that describes the economic impact this proposed rule, if adopted, would have on small entities. The IRFA is available from the Council (see **ADDRESSES**). A summary of the IRFA follows:

A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** and BACKGROUND at the beginning of this proposed rule. There are no recordkeeping, reporting, or other compliance issues forthcoming from this proposed rule. This proposed rule does not duplicate, overlap, or conflict with other Federal rules.

A fish-harvesting business is considered a "small" business by the Small Business Administration (SBA) if it has annual receipts not in excess of $3.5 million. Approximately 2,000 vessels participate in the West Coast groundfish fisheries. Of those, about 500 vessels are registered to limited entry permits issued for either trawl, longline, or pot gear. About 1,500 vessels land groundfish against open access limits while either directly targeting groundfish or taking groundfish incidentally in fisheries directed at non-groundfish species. All but 10–20 of those vessels are considered small businesses by the SBA. This proposed rule is not expected to yield disproportionate economic impacts between those small and large entities. In the 2001 recreational fisheries, there were 106 Washington charter vessels engaged in salt water fishing outside of Puget Sound, 232 charter vessels active on the Oregon coast and 415 charter vessels active on the California coast.

The proposed action in this amendment affects only the administrative process by which individual species rebuilding plans are formulated, and so does not have significant adverse economic effects on consumers, producers or processors of groundfish. The EA/RIR/IRFA defines four issues for which alternatives were identified and selected by the Council. Of these four issues, only the alternatives identified under Issue 1 have regulatory implications. Under Issue 1, the Council considered the form (FMP amendments, regulations, a combination thereof) and required elements of a rebuilding plan. The remaining issues are concerned with setting internal Council standards for periodic review and modification of rebuilding plans (Issues 2 and 3), and defining the interaction of a rebuilding plan with recovery plans for a rebuilding species that is subsequently listed under the ESA (Issue 4).

The Council considered 4 alternatives under Issue 1, including a status quo alternative. All alternatives, with the exception of the status quo, would implement overfished species rebuilding plans as either FMP amendments or Federal regulations. One alternative (Issue 1, Alternative b) would have implemented rebuilding plans as FMP amendments, with rebuilding parameters specified in the FMP. Another alternative (Issue 1, Alternative c) would have implemented rebuilding plans as Federal regulations, with TTARGET and a harvest control rule for each overfished species specified in regulations. The final and preferred alternative (Issue 1, Alternative d) would specify T_{TARGET} and the harvest control for each overfished species in regulations, and would require the Council to describe the formulas and methodology for determining other rebuilding parameters in the FMP. This was the preferred alternative because it ensures that basic rebuilding plan information is provided in the FMP for each overfished species, while still allowing updates to some rebuilding parameters through notice and comment rulemaking. In this fashion, Amendment 16–1 complies with the Magnuson-Stevens Act requirement at Section 304(e)(3) that overfished species rebuilding plans take the form of "a fishery management plan, plan amendment, or proposed regulations."

While there will be no direct impact on small entities as a result of adopting any particular process for formulating rebuilding plans, the implementation of specific rebuilding plans for overfished species may entail substantial economic impacts for groundfish processors, commercial harvesters and recreational charter vessels. These type of impacts are specific to particular stocks or species and so will be addressed in the individual rebuilding plans themselves. While there may be slight differences between the alternatives in the amount of administrative capacity required to formulate and implement individual species rebuilding strategies, these differences are not quantifiable and will depend more on the variability of periodic stock assessments once a particular rebuilding plan is adopted than on the effects of these proposed actions or the subsequent adoption of individual rebuilding plans.

Based on the analysis within the IRFA, the agency does not believe the rule has a significant impact on a substantial number of small entities and has so advised the SBA. However, NMFS welcomes comments on this issue (see **ADDRESSES**) and will notify the public of its final determination in the final rule for this action.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 29, 2003.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section § 660.370, "Overfished Species Rebuilding Plans" is added to read as follows:

§ 660.370 Overfished Species Rebuilding Plans.

For each overfished groundfish stock with an approved rebuilding plan, this section contains the standards to be used to establish annual or biennial OYs, specifically the target date for rebuilding the stock to its MSY level and the harvest control rule to be used to rebuild the stock.

[FR Doc. 03–22571 Filed 9–4–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 172
Friday, September 5, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 03–075–1]

Public Meeting; Plant Protection and Quarantine Stakeholders

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of public meeting and request for suggested agenda topics.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service will hold a public meeting for the purpose of exchanging information on our Plant Protection and Quarantine (PPQ) program. We are planning the meeting agenda and are requesting suggestions for topics of general interest to PPQ stakeholders.

DATES: The meeting will be held December 9 and 10, 2003. Suggestion for agenda topics should be submitted by October 6, 2003.

ADDRESSES: The meeting will be held at the Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Henstridge, Special Assistant to the Deputy Administrator, Plant Protection and Quarantine, Room 302-E Whitten Building, 14th Street and Independence Avenue, SW., Washington, DC 20250; (202) 720–1737; e-mail *paula.henstridge@aphis.usda.gov*.

SUPPLEMENTARY INFORMATION: The Animal and Plant Health Inspection Service's Plant Protection and Quarantine (PPQ) program protects and safeguards the Nation's plant resources through programs and activities to prevent the introduction and spread of plant pests and noxious weeds. PPQ is planning a public meeting to present information about topics of interest to persons who are affected by PPQ programs, as well as to receive feedback on the PPQ mission, the way the mission is carried out, and the issues PPQ must be prepared to address in the future to continue to be a relevant and credible plant health organization. We believe that such an information exchange is particularly timely as PPQ moves forward from the operation of certain agricultural quarantine and inspection activities to the transfer of these activities to the newly established Customs and Border Protection function of the Department of Homeland Security (DHS).

The agenda for the meeting is not yet complete. Topics will include, but are not limited to: Future priorities, budget update and outlook, update on the DHS transition, pest detection and emergency programs, and issues related to trade and risk assessments. Five interactive panel discussions and workshops are planned on the following topics: Pest risk assessments; permit systems; the stakeholder role in DHS; developing strategic approaches to export enhancement; and Federal, State, and industry roles in implementing incident command in response to pest threats. We are inviting key personnel from DHS, congressional committees, States, and certain stakeholder groups to serve on the panels. Before finalizing the agenda, we are seeking suggestions for additional meeting topics from the public.

Please submit suggested meeting topics to the person listed under **FOR FURTHER INFORMATION CONTACT** by October 6, 2003. After the agenda is finalized, APHIS will announce the agenda topics in the **Federal Register**.

We request that all persons wishing to attend the meeting preregister on the PPQ Web site, *http://www.aphis.usda.gov/ppq/stakeholders/meeting/index.html*. There is no registration fee. Attendance will be guaranteed to the first 100 persons who preregister by November 30, 2003. Persons who preregister should indicate which one of the five concurrent workshops they would like to attend. If you do not have access to the Internet, you may preregister by contacting Ms. Linda Toran at (301) 734–5307.

The Melrose Hotel is setting aside a number of rooms at the conference rate. When reserving a room, please specify that you would like the USDA/APHIS rate. The telephone number for the hotel is (202) 955–6400 or toll free (800) 635–7673. The hotel's Web site is *http://www.melrosehotelwashingtondc.com*.

Done in Washington, DC, this 2nd day of September 2003.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 03–22652 Filed 9–4–03; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Buckhorn Mountain Project, a Supplement to the Final Environmental Impact Statement for Crown Jewel Mine, Okanogan and Wenatchee National Forests, Okanogan County, WA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a Supplemental Environmental Impact Statement.

SUMMARY: Notice is hereby given that the USDA, Forest Service and the Washington State Department of Ecology will jointly prepare a Supplemental Environmental Impact Statement (SEIS) for a proposal by Crown Resources Corporation (Crown) to develop a mine and mill for precious mineral extraction in the vicinity of Chesaw, Washington. The Buckhorn Mountain Project will supplement the Final environmental impact statement (FEIS) for Crown Jewel Mine, which was released February 7, 1997. The Buckhorn Mountain Project is located approximately 21 miles east of Oreville, Washington and 3½ miles south of the Canadian border. Crown proposes to develop an underground gold mine on Buckhorn Mountain approximately 3.5 air miles east of Chesaw, Washington in sections 24 and 25, T. 40 N., R. 30 E., W.M. with a satellite milling facility 2 miles south of Chesaw in Section 4, T. 39 N., R. 30 E., W.M. The purpose of the SEIS will be to evaluate an underground mining and milling configuration that is different from the underground mining operation proposed in the Crown Jewel Mine FEIS. The proposed project will comply with the direction in the December 1989 Okanogan National Forest Land and Resource Management Plan (Forest Plan), as amended. The Forest Plan provides the overall

guidance for management of NFS lands included in this proposal. The agencies invite written comments on the scope of this project. In addition, the agencies give notice of this analysis so that interested and affected individuals are aware of how they may participate and contribute to the final decision.

DATES: Comments concerning the scope of this analysis must be received by October 20, 2003. Public information and scoping meetings are proposed to be held in September to provide information about the project to the public and to allow people to comment on the project. The Draft SEIS is expected to be filed in October 2004. The Final SEIS is expected to be filed in April 2005.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Phil Christy, Project Coordinator, Tonasket Ranger District, 1 West Winesap, Tonasket, Washington 98855 [Phone: (509) 486–5137].

FOR FURTHER INFORMATION: Direct questions about the proposed action and SEIS to Phil Christy, Project Coordinator, Tonasket Ranger District, 1 West Winesap, Tonasket, Washington 98855 [Phone: (509) 486–5137].

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose and need for this action is to respond to the plan of operations and other permit applications submitted by Crown Resources Corporation to construct and operate a mine of the specific body of ore on Buckhorn Mountain, along with processing facilities, while protecting surface resources.

Proposed Action

The Project would consist of an underground mine on NFS land and private land with an off-site mill and tailings facility on private land. The mineral deposit itself lies under both private and NFS lands. The ore would be transported from the mine to the mill site by road in highway-legal trucks. The majority of underground mine openings would be backfilled upon completion of mining. The backfill would consist of development rock from the mine and gravel excavated during development of the mill/tailings facility. A cement binder would be added to some of the backfill. Haul trucks would transport the backfill gravel to the mine site. Water used in the milling facility would be obtained using existing surface and ground water rights controlled by Crown. Water would be conveyed in a buried pipe from the location of the water rights to the mill for process use. The mine site would consist of approximately 27 acres of fenced surface facilities located above the ore deposit. Approximately 23 acres of NFS lands would be disturbed. The mill and tailings disposal facility would occupy approximately 90 acres of private land. The transportation route from the mine to the mill is along a road alignment approximately 7 miles in length.

Approximately 8 months of underground development work is required prior to initial ore production. The 88,000 tons of development rock generated during this initial period would be temporarily staged on the surface until returned underground as backfill. Construction of the mill, administrative office, and the tailings disposal facility would occur concurrently. Full-scale production of fifteen hundred tons of ore per day is likely to begin twelve months after project initiation. Commercial production is projected to continue for approximately 90 months (7.4 years). Active physical decommissioning of site facilities would continue for approximately 2 additional years upon mining cessation, followed by a minimum of three additional years of reclamation monitoring and final closure. The estimated number of employees is 90 at the peak of construction activities and 150 during operations, including full time contract trucking employees. The SEIS will include analysis and development of mitigation measures and monitoring requirements for reclamation, environmental education of employees, spill prevention/emergency response planning, water quality monitoring, erosion and sediment control, air quality, wildlife impacts and protection, and public safety. Mill tailings, composed of dilute cyanide process solution and ground ore, is proposed to be detoxified using a closed circuit destruction process and piped to an engineered disposal facility on private land.

Possible Alternatives

The Crown Jewel Mine FEIS analyzed a reasonable range of alternatives. The new underground mine proposal differs from the underground mine presented in the Crown Jewel Mine Final EIS, although some components remain the same. Because a reasonable range was established in the preceding FEIS, possible alternatives will be limited to alternative components to the underground mining/milling operation and will be based on the response to scoping.

Lead and Cooperating Agencies

The Forest Service and the Washington State Department of Ecology will be joint lead agencies in accordance with 40 CFR 1501.5(b), and are responsible for preparation of the SEIS. The Washington State Department of Natural Resources will be a cooperating agency in accordance with 40 CFR 1501.6. Scoping will determine if additional cooperating agencies are needed.

Nature of the Decision To Be Made

The Forest Supervisor for the Okanogan and Wenatchee National Forests will decide whether or not to permit a mining operation on Buckhorn Mountain, and if it is permitted, what mitigation measures and monitoring will be required. The Forest Supervisor will only be making a decision regarding operations on NFS lands.

Scoping Process

Public participation will be especially important at several points during the analysis. The participating agencies will be seeking information, comments, and assistance from Federal, State, local agencies, Native American Tribe and other individuals and organizations who may be interested in or affected by the proposed project. This input will be used in preparation of the Draft SEIS. The scoping process includes:

- Identifying potential issues not addressed in the Crown Jewel Mine EIS.
- Identifying major issues to be analyzed in depth.
- Identifying issues, which have been addressed by a relevant previous environmental analysis include the Crown Jewel Mine EIS.
- Exploring additional potential components of an underground mine/mill alternative, which will be derived from issues recognized during scoping activities.
- Identifying potential environmental effects of this project.
- Determining potential cooperating agencies and task assignments.
- Notifying interested members of the public of opportunities to participate through meetings, personal contacts, or written comment. Keeping the public informed through the media and/or written material (*e.g.* newsletters, correspondence, *etc.*)

Preliminary Issues

A number of issues were identified in the Crown Jewel Mine EIS. The major issues identified concerned water quality and quantity, wildlife habitat impacts, increased traffic, the use of toxic materials for processing the ore, extraction impacts, potential spills, the

effects on the visual quality of the area, and social/economic impacts. Because of the very limited impacts to NFS lands, the current proposal minimizes the issues of wildlife habitat, extraction impacts and visual quality, and eliminates the issue of the use of toxic materials on NFS lands. Because of the change in the transportation route, the issue of potential spills on NFS lands is also minimized.

Permits or Licenses Required

Numerous permits and licenses are required for this project. A list of these can be requested at the contact address above.

Comment Requested

This notice of intent initiates the scoping process, which guides development of the SEIS. The Forest Service is seeking public and agency comment on the proposed action to determine if any additional issues arise which were not already addressed in the Crown Jewel Mine EIS. Additional issues may lead either to other alternatives, or additional mitigation measures and monitoring requirements.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A Draft SEIS will be prepared for comment. Copies will be distributed to interested and affected agencies, organizations, and members of the public for their review and comment. The comment period on the Draft SEIS will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a Draft SEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft SEIS stage but that are not raised until after the completion of the Final SEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the participating agencies at a time when it can meaningfully consider them and respond to them in the Final SEIS.

To assist the participating agencies in identifying and considering issues and concerns on the proposed action, comments on the Draft SEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft SEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the Final SEIS, the participating agencies are required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the Draft SEIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Comments received including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

The Forest Supervisor for the Okanogan and Wenatchee National Forest will be the responsible official for this SEIS and its Record of Decision. As the responsible official, the Forest Supervisor will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations (36 CFR part 215).

Dated: August 28, 2003.

Richard Emmick,

Engineering, Lands and Minerals Group Leader.

[FR Doc. 03–22614 Filed 9–4–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee will meet in Yreka, California, September 15, 2003. The meeting will include routine business and discussion, review, and recommendation of submitted project proposals.

DATES: The meeting will be held September 15, 2003, from 4 PM until 8 PM.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (503) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: August 28, 2003.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 03–22613 Filed 9–4–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource Advisory Committee Meeting

AGENCY: Lassen Resource Advisory Committee, Susanville, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Lassen National Forest's Lassen County Resource Advisory Committee will meet Thursday, September 11, 2003, in Susanville, California for a field trip and field business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The field trip departs the Lassen National Forest Headquarters Office, 2550 Riverside Drive, Susanville, CA 96130 at 8:15 a.m. and the field business meeting starts at 1 p.m at Willow Creek Campground on the Modoc National Forest off Highway 139 on September 11, 2003. Agenda topics will include: Review previous meeting minutes and approve, RAC member/sub-committee reports, Additional funds remaining from projects, Timeframes to complete projects and set limits, Review November RAC Meeting Proposal and finalize, Review Monitoring Reports, Report on Chico Flat Field Trip, Proposed agenda for next meeting, and Depart for home. Time will also be set

aside for public comments at the end of the meeting.

FOR FURTHER INFORMATION CONTACT: Contact Robert Andrews, Eagle Lake District Ranger and Designated Federal Office, at (530) 257–4188; or RAC Coordinator, Heidi Perry, at (520) 252–6604.

Edward C. Cole,

Forest Supervisor.

[FR Doc. 03–22616 Filed 9–4–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Inventory and Analysis Data Management

AGENCY: Forest Service, USDA.

ACTION: Notice of issuance of agency interim directive.

SUMMARY: The Forest Service Forest is issuing an interim directive (ID) to Forest Service Handbook (FSH) 4809.11, chapter 10, to guide Forest Inventory and Analysis employees in managing information in the Forest Inventory and Analysis Database (FIADB) in a manner consistent with the data privacy provisions of Section 1770 of the Food Security Act of 1985 (7 U.S.C. 2276). The FIADB contains detailed plot and tree level data with approximate plot coordinates that allow flexible spatial data analysis. The direction adopted in the ID allows for increased location accuracy of the data from within 1.0 mile to 0.5 for each Forest Inventory plot, while requiring data masking procedures to ensure data privacy as required by Section 1770 of the Food Security Act. This interim directive is issued as ID 4809.11–2003–1 to FSH 4809.11, chapter 10.

DATES: This interim directive is effective September 5, 2003.

ADDRESSES: This interim directive (ID 4809.11–2003–1) is available electronically from the Forest Service via the World Wide Web/Internet at *http://www.fs.fed.us/im/directives.* Additional information regarding data access guidelines may be directed to Richard Guldin, Science Policy, Planning, Information, and Inventory Staff—Forest Service, Mail Stop 1119, Washington, DC 20090–6090; by electronic mail to *SPPII@fs.fed.us;* or by fax to (703) 605–5131. Documents are also available for inspection in the office of Science Policy, Planning, Inventory and Information Staff at 1601 North Kent Street, Arlington, VA, Suite 4110, between regular business hours of 8:30 a.m. and 4:30 p.m. Monday through Friday. To facilitate entrance into the building, visitors are encouraged to call ahead (703–605–4177).

FOR FURTHER INFORMATION CONTACT: W. Brad Smith, Science Policy, Planning, Information and Inventory Staff by phone at (703) 605–4177 or by e-mail to *bsmith2@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Through its research organization, the Forest Service conducts continuous State-wide inventories of the Nation's forest resources to ascertain trends in the extent, condition, ownership, quantity, and quality of the forest resources as required by the Forest and Rangeland Renewable Resources Research Act of 1978 (16 U.S.C. 1600, 1641–1648). This information is collected in the Forest Inventory and Analysis Database. Forest statistics and subsequent analyses are released as State, Regional, and National reports and are based on data collected at sample locations on all land ownerships across the United States. Access to Forest Inventory and Analysis (FIA) data is generally available to the public through direct electronic links within 6 months for standard plots and within 12 months for forest health plots after completion of the annual field data collection season for each State.

The direction adopted in the interim directive (ID) provides for increased accuracy of publicly available plot locations from plus or minus 1 mile, to plus or minus one-half mile. Due to the increased spatial precision of data locations, additional masking measures are now necessary to ensure data privacy required by the Food Security Act. In addition, the ID provides further guidance concerning agency objectives and policy for the FIA program; direction for the use of authorized agents; and procedures to follow when releasing FIA data and information.

Dated: August 29, 2003.

Robert Lewis, Jr.,

Deputy Chief, Research and Development.

[FR Doc. 03–22667 Filed 9–4–03; 8:45 am]

BILLING CODE 3410–11–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: October 5, 2003.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments of the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Product/NSN: C Shell CD Cases
7045–00–NIB–0181

7045–00–NIB–0189
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, Wisconsin
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Envelope, Inter-Departmental, Colored
7530–01–498–1086—Blue Kraft
7530–01–498–1088—Red Kraft
7530–01–498–1089—Yellow Kraft
NPA: Gateway Community Industries, Inc., Kingston, New York
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York
Product/NSN: Maritime Load Carriage System Kit (MLCS)
8415–00–NSH–0658
NPA: Chautauqua County Chapter, NYSARC, Jamestown, New York
Contract Activity: U.S. Army Robert Morris Acquisition Center, Natick, Massachusetts

Services

Service Type/Location: Custodial Services, VA Outpatient Clinic, Daytona Beach, Florida
NPA: ACT CORP., Daytona Beach, Florida
Contract Activity: North Florida/South Georgia Veterans Health System, Gainesville, Florida
Service Type/Location: Duplication and Copy Machine Operation
GSA 10 Causeway Street, 9th Floor, Boston, Massachusetts
NPA: Morgan Memorial Goodwill Industries, Boston, Massachusetts
Contract Activity: GSA Region 1, Boston, Massachusetts
Service Type/Location: Janitorial/Custodial
Leetown Science Center, Kearneysville, West Virginia
NPA: Job Squad, Inc., Clarksburg, West Virginia
Contract Activity: U.S. Geological Survey, Reston, Virginia
Service Type/Location: Janitorial/Custodial
Minton-Capehart Federal Building, Indianapolis, Indiana
NPA: GW Commercial Services, Inc., Indianapolis, Indiana
Contract Activity: GSA, Public Buildings Service (5P), Chicago, Illinois
Service Type/Location: Storage, Handling & Distribution of Consumer Labeling Initiative, Read the Label First! Promotional Items
Environmental Protection Agency, Washington, DC
NPA: Virginia Industries for the Blind, Charlottesville, Virginia
Contract Activity: Environmental Protection Agency, Washington, DC
Service Type/Location: Telephone Switchboard Operations
VA Medical Center, Kansas City, Missouri
NPA: Alphapointe Association for the Blind, Kansas City, Missouri
Contract Activity: VA Heartland Network 15, Leavenworth, Kansas

Sheryl D. Kennerly,
Director, Information Management.
[FR Doc. 03–22674 Filed 9–4–03; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.
ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.
EFFECTIVE DATE: October 5, 2003.
ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.
FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.
SUPPLEMENTARY INFORMATION: On June 27, July 3, and July 11, 2003, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (68 FR 38288, 39894, and 41297/41298) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.
2. The action will result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Belt, General Officers, Leather, Black
8440–00–205–2509—Size 44
8440–00–205–2510—Size 28
8440–00–205–2511—Size 29
8440–00–205–2512—Size 30
8440–00–205–2513—Size 31
8440–00–205–2514—Size 32
8440–00–205–2515—Size 33
8440–00–205–2516—Size 34
8440–00–205–2517—Size 35
8440–00–205–2518—Size 36
8440–00–205–2519—Size 37
8440–00–205–2520—Size 38
8440–00–205–2521—Size 39
8440–00–205–2522—Size 40
8440–00–205–2523—Size 41
8440–00–205–2524—Size 42
8440–00–205–2525—Size 43
NPA: Stone Belt ARC, Inc., Bloomington, Indiana.
Contract Activity: Defense Supply Center Philadelphia, Philadelphia, Pennsylvania.
Product/NSN: Folder, Classification, Pressboard
7530–00–NIB–0672 (Legal Size—1 Divider/4 Part—Light Blue)
7530–00–NIB–0673 (Legal Size—1 Divider/4 Part—Red)
7530–00–NIB–0674 (Legal Size—1 Divider/4 Part—Dark Blue)
7530–00–NIB–0675 (Legal Size—1 Divider/4 Part—Green)
7530–00–NIB–0676 (Legal Size—1 Divider/4 Part—Yellow)
7530–00–NIB–0679 (Letter Size—2 Divider/6 Part—Gray/Green)
NPA: Georgia Industries for the Blind, Bainbridge, Georgia.
Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Grounds Maintenance/Vegetation Control
Housing and Station Areas, Fallon Naval Air Station, Fallon, Nevada
NPA: High Sierra Industries, Inc., Reno, Nevada
Contract Activity: Engineering Field Activity NW, Fallon Field Office, Fallon, Nevada
Service Type/Location: Janitorial/Custodial
Basewide, Fort McCoy, Wisconsin
NPA: Challenge Unlimited, Inc., Alton, Illinois
Contract Activity: Department of the Army, Fort McCoy, Wisconsin

This action does not affect current contracts awarded prior to the effective

date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 03–22675 Filed 9–4–03; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act; Notice of Meeting

AGENCY: Commission on Civil Rights.

DATE AND TIME: Friday, September 12, 2003, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda.
II. Approval of Minutes of July 18, 2003 Meeting.
III. Announcements.
IV. Staff Director's Report.
V. State Advisory Committee Interim Appointment for Illinois.
VI. FY–2005 Budget Estimate to OMB.
VII. "Not in My Backyard: Executive Order 12898 and Title VI as Tools for Achieving Environmental Justice" Report.

11 a.m. Presentation on Native Americans and the South Dakota Criminal Justice System.

FOR FURTHER INFORMATION CONTACT: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 03–22812 Filed 9–3–03; 3:26 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Alaska Region Permit Family of Forms.

Form Number(s): None.

OMB Approval Number: 0648-0206.

Type of Request: Regular submission.

Burden Hours: 483.

Number of Respondents: 889.

Average Hours Per Response: 21 minutes for a vessel or processor permit; 30 minutes for a salmon permit; 20 hours for an exempted fishing permit; 5 hours for an exempted fishing permit progress report; and 10 hours for an exempted fishing permit final report.

Needs and Uses: This collection of information is used to monitor and manage participation in groundfish fisheries by the National Marine Fisheries Service, Alaska Region and consists of the following permits: Federal fisheries permit, Federal processor permit, High seas power troller salmon permit, and exempted fishing permit. The permit affords identification of participants, harvest gear types, descriptions of vessels or shoreside facilities, and expected activity levels. Identification of the participants and expected activity levels is needed to measure the consequences of management controls, and is an effective tool in the enforcement of other fishery regulations.

Affected Public: Business or other for-profit organizations, individuals or households.

Frequency: On occasion, triennial, and variable.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, e-mail address *David_Rostker@omb.eop.gov* or fax to (202) 395-7285.

Dated: August 28, 2003.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 03–22573 Filed 9–4–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–845, A–122–847]

Notice of Final Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Determinations of Antidumping Duty Investigations.

SUMMARY: On May 8, 2003, the Department of Commerce published the preliminary determinations in the antidumping duty investigations of durum wheat and hard red spring wheat from Canada. We gave interested parties an opportunity to comment on the preliminary determinations. Based upon the results of verification and our analysis of the comments received, we have made certain changes to the margin calculations presented in the final determinations of these investigations. We continue to find that durum wheat and hard red spring wheat from Canada were sold in the United States below normal value during the period of investigation. The final weighted-average dumping margins are listed below in the section entitled "Continuation of Suspension of Liquidation."

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Julie Santoboni or Cole Kyle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–4194 or (202) 482–1503, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 8, 2003, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary determinations in its investigations of durum wheat and hard red spring wheat from Canada (*Notice of Preliminary Determinations of Sales at Less Than Fair Value: Certain Durum Wheat and Hard Red Spring Wheat From Canada*, 68 FR 24707 (May 8, 2003) ("*Preliminary Determinations*")).

Since the Preliminary Determinations, the following events have occurred:

In May and June 2003, we conducted verifications of the sales and cost of production ("COP") questionnaire responses submitted by the Canadian Wheat Board ("CWB") and Canadian

hard red spring ("HRS") wheat farmers at the CWB's headquarters, at the offices Meyers Norris Penny LLP and at certain farm locations. We issued verification reports in July 2003. We received case briefs from the petitioners[1] and the CWB on July 30, 2003. We received rebuttal briefs from the petitioners and the CWB on August 5, 2003.

Scope of Investigations

For purposes of these investigations, the products covered are (1) durum wheat and (2) hard red spring wheat.

1. Durum Wheat

Imports covered by this investigation are all varieties of durum wheat from Canada. This includes, but is not limited to, a variety commonly referred to as Canada Western Amber Durum. The merchandise subject to this investigation is currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 1001.10.00.10, 1001.10.00.91, 1001.10.00.92, 1001.10.00.95, 1001.10.00.96, and 1001.10.00.99. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

2. Hard Red Spring Wheat

Imports covered by this investigation are all varieties of hard red spring wheat from Canada. This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this investigation is currently classifiable under the following HTSUS subheadings: 1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96. This investigation does not cover imports of wheat that enter under the subheadings 1001.90.10.00 and 1001.90.20.96 that are not classifiable as hard red spring wheat. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

[1] The petitioners are the North Dakota Wheat Commission ("NDWC") (hard red spring wheat), the Durum Growers Trade Action Committee (durum wheat), and the U.S. Durum Growers Association (durum wheat).

Scope Comments

We have received several requests for exclusions from and clarifications of the scope of these investigations. On April 24, 2003, Montana Flour & Grains and Kamut International requested that the Department exclude Khorasan wheat from the scope of these investigations. The Government of Canada ("GOC") made the same request on July 31, 2003. On June 27, 2003, the Organic Trade Association requested that the Department exclude organically produced wheat from the scope of these investigations. On July 29, 2003, Cargill, Incorporated ("Cargill") requested that the Department clarify the scope of these investigations and specifically exclude from the scope Canadian Eastern Soft Red Winter Wheat and Canadian Eastern Hard Red Winter Wheat. On July 30, 2003, the petitioners submitted comments on all but the Cargill submission and also raised an additional issue concerning Canadian feed wheat. We have considered these requests and the comments from interested parties. We have determined that organically grown wheat is covered by the scope of these investigations and that the scope of the hard red spring investigation should be clarified by adding the following language to the scope: "This investigation does not cover imports of wheat that enter under the subheadings 1001.90.10.00 and 1001.90.20.96 that are not classifiable as hard red spring wheat." For a complete discussion of these scope issues, *see* the August 28, 2003, *Scope Exclusion and Clarification Requests: Khorasan Wheat, Organic Wheat, Canadian Eastern Soft Red Winter Wheat, Canadian Eastern Hard Red Winter Wheat, and Canadian Feed Wheat* memorandum, which is on file in the Central Records Unit, Room B–099 of the Department ("CRU").

Period of Investigation

The period of investigation ("POI") is July 1, 2001, through June 30, 2002.

Use of Facts Available

As explained in the *Preliminary Determinations*, we based the COP in part on the use of facts otherwise available, in accordance with section 776 of the Tariff Act of 1930, as amended effective January 1, 1995 ("the Act"), by the Uruguay Round Agreements Act ("URAA").

Of the twenty-seven producers selected, one producer (*i.e.*, cost respondent 2)[2] chose not to respond to the Department's questionnaire, and two other producers (*i.e.*, cost respondents 10 and 27) did not respond based on extenuating circumstances discussed below. Therefore, as described in detail below, because these producers have not provided the necessary information on the record to calculate the simple-average COP within their respective stratum, the use of facts otherwise available is warranted.

Section 776(a)(2) of the Act provides that, if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.[3] Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

With respect to cost respondent 2, this producer chose not to respond to the Department's questionnaire. As a result, use of facts available is appropriate pursuant to section 776(a)(2)(A) of the Act. In accordance with section 776(b) of the Act, if the Department finds that "an interested party failed to cooperate

[2] Due to the proprietary nature of the name of each producer, we have assigned a number to each farmer ("cost respondent") that will be used throughout this notice when referring to that specific farmer. A list or code key identifying the name associated with each cost respondent number can be found in the *Cost of Production and Constructed Value Adjustments for the Preliminary Determination* dated May 1, 2003 at Attachment 1, which is on file in the CRU.

[3] Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulties.

by not acting to the best of its ability to comply with a request for information," an adverse inference may be used in determining the facts otherwise available. In the instant case, cost respondent 2 did not cooperate to the best of its ability by failing to provide any of the information requested in the section D cost questionnaire with no rationale for why it could not provide such information when other producers could. Therefore, as adverse facts available for the final determination on HRS wheat for this cost respondent, we have continued to use the higher of the COP from the petition for the same province and soil type or the highest reported cost of other cost respondents within the same stratum. Based on our comparison of the amounts, we found that the reported cost of one of the other cost respondents within the same stratum was higher. As a result, we used the other respondent's COP within the same stratum as the surrogate cost for cost respondent 2.

Both cost respondents 10 and 27 did not respond to the Department's cost questionnaire based on extenuating circumstances. With respect to cost respondent 10, the CWB explained that this farmer had deliveries of HRS wheat to the CWB during the POI, but did not produce HRS wheat during the 2001 growing season. However, cost respondent 10 did have an affiliated party that produced HRS wheat during the cost reporting period. Therefore, as a surrogate, cost respondent 10 reported its affiliate's COP for the cost reporting period. We note that this affiliate was not considered a cost respondent in the sample selection and, as such, we determined it would not be appropriate to include the affiliate's COP in our overall calculation of COP.

Similar to cost respondent 10, cost respondent 27 did not provide cost data for the 2001 growing season because the information was not available. Specifically, cost respondent 27 sold its farming operations and ceased farming. Because neither cost respondent 10 nor 27 had information available that would enable them to respond to the Department's cost questionnaire and in the case of cost respondent 10 they attempted to provide some cost information, we applied neutral facts available for the HRS wheat preliminary determination pursuant to sections 776(a)(2)(A) and (B) of the Act. As neutral facts available, we have relied on the cost data submitted by the other cost respondents within the same stratum. Therefore, we have not included an amount for these cost respondents in the simple average calculation within their respective stratums.

Fair Value Comparisons

We calculated export price and normal value based on the same methodology used in the Preliminary Determinations with the following exceptions:

- We based our calculations on the CWB's updated and verified sales data. We used the revised sales data submitted by the CWB on June 20, 2003, and the revisions stated in the CWB's July 9, 2003, submission.
- We revised the level of trade ("LOT") classification to include only producer direct sales in LOTH/U2.
- We corrected a clerical error in the calculation of the LOT adjustment.
- We revised the cost of production calculation for HRS wheat to include certain changes noted in the August 28, 2003 *Cost of Production and Constructed Value Adjustments for the Final Determinations Canadian Wheat Board Cost Respondents Memorandum* ("*Final Determination Cost Calculation Memorandum*")

For a complete discussion of these changes, *see* the August 28, 2003, *Issues and Decision Memorandum for the Final Determinations of the Antidumping Duty Investigations of Certain Durum Wheat and Hard Red Spring Wheat from Canada* ("*Decision Memorandum*"), *Durum Wheat Final Determination Calculation Memorandum for the Canadian Wheat Board, Hard Red Spring Wheat Final Determination Calculation Memorandum for the Canadian Wheat Board, and the Final Determination Cost Calculation Memorandum.*

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the preliminary determinations.

Verifications

As provided in section 782(i)(1) of the Act, we verified the information submitted by the CWB and selected farmers during May and June 2003. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the CWB and certain individual cost respondents (*i.e.*, farmers).

Analysis of Comments Received

All issues raised in the petitioners' and the CWB's case briefs are addressed in the *Decision Memorandum* which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which the petitioners and the CWB have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in these investigations and the corresponding recommendations in this public memorandum which is on file in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at http://ia.ita.doc.gov/frn/summary/list.htm. The paper copy and electronic version of the Decision Memorandum are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the U.S. Bureau of Customs and Border Protection ("BCBP") to continue to suspend liquidation of all imports of subject merchandise from Canada that are entered, or withdrawn from warehouse, for consumption on or after May 8, 2003, the date of publication of the *Preliminary Determinations* in the **Federal Register**. The BCBP shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

DURUM WHEAT

Exporter/Manufacturer	Weighted-Average Margin Percentage
Canadian Wheat Board	8.26
All Others	8.26

HARD RED SPRING WHEAT

Exporter/Manufacturer	Weighted-Average Margin Percentage
Canadian Wheat Board	8.87
All Others	8.87

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determinations. As our final determinations are affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue antidumping duty orders.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These determinations are issued and published in accordance with ections 735(d) and 777(i)(1) of the Act.

Dated: August 28, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

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[FR Doc. 03–22661 Filed 9–4–03; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A-570–848

Freshwater Crawfish Tail Meat from the People's Republic of China: Preliminary Notice of Intent to Rescind New Shipper Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC) in response to a request from Zhoushan Huading Seafood Co., Ltd. ("Zhoushan Huading"). The period of review (POR) is September 1, 2001, through August 31, 2002. We have preliminarily determined that the new shipper review of Zhoushan Huading should be rescinded because the sale was not *bona fide*. Much of the information upon which we relied to analyze the bona fides is business proprietary, therefore our full analysis is set forth in the *Memorandum to Barbara E. Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III: Freshwater Crawfish Tail Meat from the People's Republic of China: Analysis of Zhoushan Huading's New Shipper Transaction*, dated August 28, 2003 (*Zhoushan Huading Memo*), which is on file in the Central Records Unit, room B-099 of the main Commerce Building. Interested parties are invited to comment on this preliminary rescission determination.

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Thomas Gilgunn, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3782 or (202) 482–4236, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 2002, the Department received a properly filed request for a new shipper review, in accordance with section 751(a)(2)(B) of the Act and section 351.214(b),(c) of the Department's regulations, from Zhoushan Huading under the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China. On October 18, 2002, the Department sought clarification in regard to the identification of Zhoushan Huading's reported buyer for the shipment of crawfish tail meat under review, since the reported buyer identified on Zhoushan Huading's commercial invoice and bill of lading was different from the importer of record identified on the Customs entry summary submitted with the request. On October 23, 2002, Zhoushan Huading explained that its shipment of crawfish tail meat was sold initially to the reported buyer, and the reported buyer then took title of the shipment of crawfish tail meat from Zhoushan Huading and transferred ownership of the shipment of crawfish tail meat and the associated bill of lading to the importer of record.

The Department determined that the request met the requirements stipulated in section 351.214 of the regulations. On November 7, 2002, the Department published its initiation of this new shipper review for the period September 1, 2001, through August 31, 2002. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Reviews*, 67 FR 67822 (November 7, 2002).

On January 6, 2003, the Department received Zhoushan Huading's section A, C and D questionnaire responses. On March 6, 2003, the Department issued its first supplemental questionnaire to Zhoushan Huading. On March 31, 2003, Zhoushan Huading submitted its response to the first supplemental questionnaire. On April 2, 2003, the Department issued an importer questionnaire to the reported buyer. On May 19, 2003, the Department received a response to the importer questionnaire from the importer of record. On May 6, 2003, the Department issued its second supplemental questionnaire to Zhoushan Huading. On May 20, 2003, Zhoushan Huading submitted its response to the second supplemental questionnaire. On May 28, 2003, the Department issued supplemental questionnaires to both the reported buyer and the importer of record. On June 9, 2003, the reported buyer and the importer of record requested a one week extension to respond to the supplemental questionnaires. The Department extended the deadline to June 16, 2003. Neither the reported buyer or the importer of record has yet submitted a response to the importer supplemental questionnaire. On July 23, 2003, the Department issued a third supplemental questionnaire to Zhoushan Huading. On August 6, 2003, Zhoushan Huading submitted its response to the third supplemental questionnaire.

On April 14, 2003, the Department extended the due date for the preliminary results of this new shipper review by 120 days until August 28, 2003. *See Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Extension of Time Limit of Preliminary Results of New Shipper Review*, 68 FR 18946 (April 14, 2003).

Scope of the Antidumping Duty Order

The product covered by this order is freshwater crawfish tail meat, in all its forms (whether washed or with fat on, whether purged or unpurged), grades, and sizes; whether frozen, fresh, or chilled; and regardless of how it is packed, preserved, or prepared. Excluded from the scope of the order are live crawfish and other whole crawfish, whether boiled, frozen, fresh, or chilled. Also excluded are saltwater crawfish of any type, and parts thereof. Freshwater crawfish tail meat is currently classifiable in the Harmonized Tariff Schedule of the United States (HTS) under item numbers 1605.40.10.10 and 1605.40.10.90, which are the new HTS numbers for prepared foodstuffs, indicating peeled crawfish tail meat and other, as introduced by the U.S. Customs Service in 2000, and HTS items 0306.19.00.10 and 0306.29.00, which are reserved for fish and crustaceans in general. The HTS subheadings are provided for convenience and Customs purposes only. The written description of the scope of this order is dispositive.

Preliminary Intent to Rescind

Concurrent with this notice, we are issuing our memorandum detailing our analysis of the *bona fides* of Zhoushan Huading's U.S. sale and our preliminary decision to rescind based on the totality of the circumstances of the sale. Although much of the information relied upon by the Department to analyze the issues is business proprietary, the Department based its determination that the new shipper sale made by Zhoushan Huading was not *bona fide* on the following: 1) the price and quantity for Zhoushan Huading's sale of crawfish tail meat were atypical vis-a-vis other exports from the PRC of the subject merchandise into the United States during the period of review, 2)

there are conflicting accounts as to who purchased the crawfish tail meat and who paid Zhoushan Huading for the shipment, 3) there remains uncertainty in regard to the commercial reasonableness of the sale, 4) there are inconsistencies in the terms of sale, and 5) the Department has been unable to establish that the importing parties are actual commercial entities.

Schedule for Final Results of Review

Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party must limit its presentation only to arguments raised in its briefs. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

The Department will issue the final results of this new shipper review, which will include the results of its analysis of issues raised in the briefs, within 90 days from the date of the preliminary results, unless the time limit is extended.

Notification

At the completion of this new shipper review, either with a final rescission or a notice of final results, the Department will notify the U.S. Bureau of Customs and Border Protection ("BCBP") that bonding is no longer permitted to fulfill security requirements for shipments by the exporter/producter combination Zhoushan Huading of freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of the final rescission or results notice in the **Federal Register**. After the publication of the final rescission notice, a cash deposit of 223.01 percent *ad valorem* shall be collected for any entries exported/produced by Zhoushan Huading. Should the Department reach a final result other than a rescission, an appropriate antidumping duty rate will be calculated for both assessment and cash deposit purposes.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

This new shipper review and this notice are published in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: August 28, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22663 Filed 9–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Rescission of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 7, 2002 the Department published the initiation of new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China covering the period September 1, 2001, through August 31, 2002. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping New Shipper Reviews* (67 FR 67822) ("*New Shipper Initiation*"). These new shipper reviews covered four exporters: Zhoushan Huading Seafood Co., Ltd. (Zhoushan Huading); Hubei Qianjiang Houhu Frozen & Processing Factory (Hubei Houhu); Qingdao Jin Yong Xiang Aquatic Foods Co., Ltd. (Qingdao JYX); and Siyang Foreign Trading Corporation (Siyang). For the reasons discussed below, we are rescinding the new shipper reviews of Hubei Houhu and Qingdao JYX.

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Thomas Gilgunn at (202) 482–0780 and (202) 482–4236, respectively; AD/CVD Enforcement, Office 7, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On November 7, 2002, the Department published the initiation of antidumping new shipper reviews of Qingdao JYX, Hubei Houhu, Zhoushan Huading, and Siyang, covering the period September 1, 2001, through August 31, 2002. *See New Shipper Initiation*. On April 14, 2003, the Department extended the time limit for the preliminary results of these new shipper reviews. *See Notice of Extension of Time Limit of Preliminary Results of New Shipper Reviews: Freshwater Crawfish Tail Meat From the People's Republic of China*, 68 FR 18946 (April 14, 2003).

On January 6, 2003, the Department received Hubei Houhu's questionnaire responses regarding its corporate structure, sales information, and factors of production. A supplemental questionnaire was issued by the Department requesting additional sales information; Hubei Houhu responded on March 31, 2003. The Department also issued a questionnaire to Hubei Houhu's importer. Hubei Houhu's importer submitted their response on March 14, 2003.

On January 7, 2003, the Department received Qingdao JYX's questionnaire responses regarding its corporate structure, sales information, and factors of production. Three supplemental questionnaires and one importer questionnaire were issued by the Department requesting additional sales information; Qingdao JYX responded to these on March 31, 2003, June 12, 2003, July 2, 2003, and July 28, 2003.

On June 23, 2003 the Department rescinded the review on Siyang. *See*

Freshwater Crawfish Tail Meat From the People's Republic of China: Rescission of Antidumping Duty New Shipper Review, 68 FR 37115 (June 28, 2003). With respect to Zhoushan Huading, a preliminary notice of intent to rescind is being issued concurrently with this final rescission notice on Qingdao JYX and Hubei Houhu. *See Freshwater Crawfish Tail Meat From the People's Republic of China: Preliminary Notice of Intent to Rescind New Shipper Administrative Review*, signed August 28, 2003.

Analysis of New Shipper Reviews

On August 15, 2003, the Department issued a memorandum detailing our analysis of the bona fides of Hubei Houhu's U.S. sale and our intent to rescind because we preliminarily determined that Hubei Houhu's U.S. sales were not bona fide based on the totality of the circumstances of the sale. *See Memorandum from Scott Lindsay through Barbara E. Tillman to Joseph A. Spetrini; Freshwater Crawfish Tail Meat from The People's Republic of China: Whether the Sale in the New Shipper Review of Hubei Houhu is Bona Fide*, dated August 15, 2003 ("*Hubei Houhu Rescission Memo*"). In the memorandum, the Department preliminarily determined that the new shipper sale made by Hubei Houhu was not bona fide because (1) the pricing of Hubei Houhu's single sale is artificially high, and otherwise not commercially reasonable; (2) the extremely small quantity of the sale is atypical of normal business practices, and otherwise commercially unreasonable; and (3) the importer cannot resell the subject merchandise for a profit, and has otherwise not acted in a commercially reasonable manner. *Id.* at 3.

On August 15, 2003, the Department issued a memorandum detailing our analysis of the bona fides of Qingdao JYX's U.S. sale and our intent to rescind because we concluded that Qingdao JYX's U.S. sale was not bona fide based on the totality of the circumstances of the sale. *See Memorandum from Barbara E. Tillman to Joseph A. Spetrini; Freshwater Crawfish Tail Meat from The People's Republic of China: Intent to Rescind the New Shipper Review of Qingdao Jin Yong Xiang*, dated August 15, 2003 ("*Qingdao JYX Rescission Memo*"). In the memorandum, the Department preliminarily determined that the new shipper sale made by Qingdao JYX was not bona fide because (1) the price and quantity of Qingdao JYX's sale is atypical of normal business practices, and otherwise commercially unreasonable; (2) an unusual sales process governed this sale, specifically the importer's intent to give this tail meat away as samples rather than resell it for profit; and (3) the shipment was found by the Food and Drug Administration (FDA) to be poisonous, and was destroyed under instructions from the FDA. *Id.* at 3.

Our analysis of the sales under review, and our full reasoning for determining the sales are not bona fide, are presented in the *Hubei Houhu Rescission Memo*, the *Qingdao JYX Rescission Memo*, and the *Memorandum to Barbara E. Tillman: Freshwater Crawfish Tail Meat from The People's Republic of China: the Bona Fide Issue in the New Shipper Review of Qingdao Jin Yong Xiang Aquatic Foods Co., Ltd.* ("*Rescission Comments Memo*").

Comments

We gave the parties an opportunity to comment on both memoranda. No comments were submitted regarding our intent to rescind the new shipper review of Hubei Houhu. Qingdao JYX submitted comments on August 20, 2003. Petitioners submitted rebuttal comments on August 22, 2003. We have fully addressed the parties' comments in the *Rescission Comments Memo*.

Rescission of New Shipper Reviews

We received no comments on our intent to rescind the new shipper review of Hubei Houhu, therefore we are rescinding this new shipper review. We received comments on our intent to rescind the new shipper review of Qingdao JYX. However, our analysis of the comments has not led us to change our decision to rescind the review. *See Rescission Comments Memo*. Therefore, we are also rescinding the new shipper review with respect to Qingdao JYX.

Notification

The Department will notify the U.S. Bureau of Customs and Border Protection (Customs) that bonding is no longer permitted to fulfill security requirements for shipments for Hubei Houhu's or Qingdao JYX's freshwater crawfish tail meat from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the **Federal Register**, and that a cash deposit of 223.01 percent ad valorem should be collected for any entries exported by Hubei Houhu or Qingdao JYX. The Department will also instruct Customs to assess antidumping duties on the entries subject to this new shipper review at the antidumping duty rate in effect on the date of entry.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(2)(B) and 777(i) of the Act.

Dated: August 28, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22664 Filed 9–4–03; 8:45 am]

BILLING CODE 3510–05–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–846]

[C–122–848]

Final Affirmative Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Affirmative Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada.

SUMMARY: The Department of Commerce has made final determinations that countervailable subsidies are being provided to certain producers and exporters of certain durum wheat and hard red spring wheat from Canada. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section, below.

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Audrey Twyman, Stephen Cho, or Daniel Alexy, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3534, (202) 482–3798 and (202) 482–1540, respectively.

SUPPLEMENTARY INFORMATION:

Petitioners

The petitioners in these investigations are the North Dakota Wheat Commission (hard red spring wheat), United States Durum Growers Association (durum wheat), and the Durum Growers Trade Action Committee (durum wheat) (collectively, the "petitioners").

Period of Investigations

The period for which we are measuring subsidies is August 1, 2001 to July 31, 2002, which coincides with the fiscal year of the Canadian Wheat

Board ("CWB"), the sole responding exporter. *See* 19 CFR § 351.204(b)(2).

Case History

The following events have occurred since the publication of the preliminary determinations in the **Federal Register** on March 10, 2003. *See Preliminary Affirmative Countervailing Duty Determinations and Alignment of Final Countervailing Duty Determinations with Final Antidumping Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, (68 FR 11374) ("Preliminary Determinations").

On March 17, 2003, the petitioners submitted ministerial error allegations relating to the *Preliminary Determinations*. The Department of Commerce ('the Department") addressed these ministerial allegations in the April 1, 2003, memorandum to Susan Kuhbach entitled "Ministerial Error Allegations for Preliminary Determination," which is on file in the Department's Central Records Unit in Room B–099 of the main Department building ("CRU"). The Department sent out supplemental questionnaires to the Government of Canada ("GOC") and the CWB on March 18, 2003 and received responses to these supplemental questionnaires between March 27 and April 14, 2003. On May 5, 2003, the Department issued a memorandum entitled "Preliminary Determination for the Initial Payment Guarantee Program" in which the Department preliminarily determined that the GOC's guarantee of the CWB's initial payment to producers does not confer a measurable subsidy on hard red spring or durum wheat. *See* May 5, 2003, memorandum to Acting Assistant Secretary Joseph A. Spetrini from Deputy Assistant Secretary Jeffrey May which is on file in the CRU. The Department's *Preliminary Determinations* had not addressed this new subsidy allegation raised by the petitioners.

On May 16, 2003, the CWB requested an extension of the final determinations for the dumping and countervailing duty investigations, therefore the Department published a *Notice of Postponement of Final Antidumping Determinations and Extension of Provisional Measures and Postponement of Final Countervailing Duty Determinations: Certain Durum Wheat and Hard Red Spring Wheat from Canada*, (68 FR 35381) on June 13, 2003.

The Department conducted verifications of the questionnaire responses submitted by the GOC, the provincial governments (*e.g.*, the Government of Alberta ("GOA") and the Government of Saskatchewan ("GOS")), and the CWB from May 5 through May 14, 2003 in Canada. We received case briefs from the GOC, GOA, GOS, CWB and the petitioners between June 20 to 23, 2003. These same parties submitted rebuttal briefs between June 27 to June 30, 2003. We held a hearing in these investigations on July 8, 2003.

Scope of Investigations

For purposes of these investigations, the products covered are (1) durum wheat and (2) hard red spring wheat.

1. Durum Wheat

Imports covered by this investigation are all varieties of durum wheat from Canada. This includes, but is not limited to, a variety commonly referred to as Canada Western Amber Durum. The merchandise subject to this investigation is currently classifiable under the following Harmonized Tariff Schedule of the United States ("HTSUS") subheadings: 1001.10.00.10, 1001.10.00.91, 1001.10.00.92, 1001.10.00.95, 1001.10.00.96, and 1001.10.00.99. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

2. Hard Red Spring Wheat

Imports covered by this investigation are all varieties of hard red spring wheat from Canada. This includes, but is not limited to, varieties commonly referred to as Canada Western Red Spring, Canada Western Extra Strong, and Canada Prairie Spring Red. The merchandise subject to this investigation is currently classifiable under the following HTSUS subheadings: 1001.90.10.00, 1001.90.20.05, 1001.90.20.11, 1001.90.20.12, 1001.90.20.13, 1001.90.20.14, 1001.90.20.16, 1001.90.20.19, 1001.90.20.21, 1001.90.20.22, 1001.90.20.23, 1001.90.20.24, 1001.90.20.26, 1001.90.20.29, 1001.90.20.35, and 1001.90.20.96. This investigation does not cover imports of wheat that enter under the subheadings 1001.90.10.00 and 1001.90.20.96 that are not classifiable as hard red spring wheat. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Scope Comments

Since the Department's *Preliminary Determinations*, we have received several requests for exclusions from and clarifications of the scope of these investigations. On April 24, 2003, Montana Flour & Grains and Kamut International requested that the Department exclude Khorasan wheat from the scope of these investigations. The GOC made the same request on July 31, 2003. On June 27, 2003, the Organic Trade Association requested that the Department exclude organically produced wheat from the scope of these investigations. On July 29, 2003, Cargill, Incorporated ("Cargill") requested that the Department clarify the scope of these investigations and specifically exclude from the scope Canadian Eastern Soft Red Winter Wheat and Canadian Eastern Hard Red Winter Wheat. On July 30, 2003, the petitioners submitted comments on all but the Cargill submission, and also raised an additional issue concerning Canadian feed wheat. We have considered these requests and the comments from interested parties. We have determined that organically grown wheat is covered by the scope of these investigations and that the scope of the hard red spring investigation should be clarified by adding the following language to the scope: "This investigation does not cover imports of wheat that enter under the subheadings 1001.90.10.00 and 1001.90.20.96 that are not classifiable as hard red spring wheat." For a complete discussion of these scope issues, *see* the August 28, 2003, *Scope Exclusion and Clarification Requests: Khorasan Wheat, Organic Wheat, Canadian Eastern Soft Red Winter Wheat, Canadian Eastern Hard Red Winter Wheat*, and Canadian Feed Wheat memorandum, which is on file in the CRU.

Injury Test

Because Canada is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Tariff Act of 1930, as amended ("the Act"), the International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. On November 25, 2002, the ITC transmitted to the Department its preliminary determinations finding that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from Canada of durum and hard red spring wheat. *See Durum and Hard Red Spring Wheat from Canada*, 67 FR 71589 (December 2, 2002).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to these investigations are addressed in the "Issues and Decision Memorandum for the Final Countervailing Duty

Determinations of the Investigations of Certain Durum Wheat and Hard Red Spring Wheat from Canada" from Jeffrey May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated August 28, 2003, ("*Decision Memorandum*"), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues which parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find a complete discussion of all issues raised in these investigations and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at http://www.ia.ita.doc.gov/frn/summary/list.htm under the heading "Canada." The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i) of the Act, we have calculated an individual net subsidy rate for each manufacturer of the subject merchandise. In accordance with sections 777A(e)(2)(B) and 705(c)(5)(A) of the Act, we have set the "all others" rate as CWB's rate, because it is the only exporter/manufacturer investigated. We determine the total estimated net subsidy rate for the CWB and "all others" to be:

Exporter/Manufacturer	Net Subsidy Rate (Hard Red Spring Wheat)	Net Subsidy Rate (Durum Wheat)
Canadian Wheat Board	5.29 percent	5.29 percent
All Others	5.29 percent	5.29 percent

As a result of our *Preliminary Determinations* and pursuant to section 705(c)(1)(B)(ii) of the Act, we instructed the U.S. Bureau of Customs and Border Protection ("BCBP") to suspend liquidation of all entries of durum wheat and hard red spring wheat from Canada which were entered or withdrawn from warehouse, for consumption on or after March 10, 2003, the date of the publication of the *Preliminary Determinations* in the **Federal Register**. In accordance with section 703(d) of the Act, we instructed the BCBP to discontinue the suspension of liquidation for subject merchandise for countervailing duty purposes entered on or after July 8, 2003, but to continue the suspension of liquidation of entries made from March 10, 2003, through July 7, 2003.

We will issue countervailing duty orders and reinstate the suspension of liquidation under section 706(a) of the Act if ITC issues final affirmative injury determinations, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, these proceedings will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we have notified the ITC of our determinations. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to these investigations. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order ("APO"), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

These determinations are published pursuant to sections 703(f) and 777(i) of the Act.

Dated: August 28, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: The Department Should Treat the Government-Leased Railcars Differently from the Government-Owned Railcars.

Comment 2: The Provision of Government-Owned and Leased Railcars is Tied to Non-U.S. Markets.

Comment 3: The Provision of Rail Cars Does Not Result in an Indirect Subsidy to the CWB.

Comment 4: Countervailablility of Subsidies Given to Third Party Service Providers.

Comment 5: The Governments' Entrustment or Direction of the Railways to Provide Rail Service.

Comment 6: The Provision of Government-Owned and Leased Railcar Confers No Benefit.

Comment 7: Measurement of Benefit from the Government-Provided Railcars.

Comment 8: The Revenue Cap Does Confer a Benefit.

Comment 9: The Rail Freight Revenue Cap Does Not Provide a Financial Contribution.

Comment 10: The Department Should Determine That the Revenue Cap Does Not Provide a Financial Contribution Because It is Consistent With Market Principles.

Comment 11: The Benefit of the Revenue Cap Extends to All CWB Shipments, Including Shipments to the United States.

Comment 12: The Closure Fee for Grain Dependent Branch Lines Confers a Financial Contribution.

Comment 13: Impact of the Lending and Initial Payment Guarantees on the CWB's Cost of Borrowing.

Comment 14: The Benchmark.

Comment 15: The Borrowing Guarantee is Tied to Non-U.S. Markets.

Comment 16: The Department's Analysis of the Initial Payment Guarantee is Based on Incomplete and Inaccurate Data.

[FR Doc. 03–22662 Filed 9–4–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Deposit of Biological Materials

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), as part of its continuing effort to reduce paperwork and respondent burden, invites the

general public and other Federal agencies to take this opportunity to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 4, 2003.

ADDRESSES: Direct all written comments to Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313, Attn: CPK 3 Suite 310; by e-mail at *susan.brown@uspto.gov;* or by facsimile at 703–308–7407.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Robert J. Spar, Director, Office of Patent Legal Administration, United States Patent and Trademark Office (USPTO), P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at 703–308–5107; or by e-mail at *bob.spar@uspto.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The deposit of biological materials as part of a patent application is required by 35 U.S.C. 2(b)(2) and outlined in 37 CFR chapter 1, subpart G, 1.801–809. Every patent must contain a description of the invention sufficient to enable a person (knowledgeable in the relevant science) to make and use the invention as specified by 35 U.S.C. 112. The term biological includes material that is capable of self-replication either directly or indirectly. When the invention involves a biological material, sometimes words alone cannot sufficiently describe how to make and use the invention in a reproducible or repeatable manner. In such cases, the required biological material must either be known and readily (and continually) available, or be deposited in a suitable depository to meet the enablement and written description requirements of 35 U.S.C. 112.

In cases where a novel microorganism is involved, the USPTO traditionally requires the deposit of a sample with a recognized patent depository in order to meet the above disclosure requirements. When a deposit is necessary, the USPTO collects information to determine whether the depositor is in compliance with the patent statute. This includes a statement proving notification to the interested public on where to obtain samples of the deposits. A viability statement showing that the biological material was tested by the depository, and is a viable or acceptable deposit, must also be submitted to the USPTO.

In order to meet and satisfy requirements for international patenting, all countries signing the Budapest Treaty must recognize the deposit of biological material with any International Depository Authority (IDA).

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO when the applicant or agent files a patent application with the USPTO or submits subsequent papers during the prosecution of the application to the USPTO.

III. Data

OMB Number: 0651–0022.

Form Number(s): None.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; and the Federal Government.

Estimated Number of Respondents: 3,500 responses per year for deposited materials and 0.25 per year for depository approval.

Estimated Time Per Response: The USPTO estimates that it will take approximately 1 hour per application for deposited materials and 5 hours per application for depository approval.

Estimated Total Annual Respondent Burden Hours: 3,501 hours per year.

Estimated Total Annual Respondent Cost Burden: $105,315 per year to submit the information to the USPTO. Using the professional hourly rate of $30 for a senior administrative assistant, the USPTO estimates $105,000 per year for salary costs associated with collecting and submitting the necessary deposit information. Using the professional hourly rate of $252 for associate attorneys in private firms, the USPTO estimates $315 per year for salary costs associated with the average depository seeking approval to store biological material.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Deposited Materials	1 hour	3,500	3,500
Depository Approval	5 hours	0.25	1.25
Total		3,500	3,501

Estimated Total Annual Non-hour Respondent Cost Burden: $979,010. There are no maintenance costs or filing fees associated with this information collection. There are, however, capital start-up and postage costs.

Depositories charge fees to depositors; all depositories charge about the same rates for their services. For example, the American Type Culture Collection (ATCC), one of the world's leading biological supply houses and recognized patent depositories, charges a one-time fee of $1,150 per deposit for basic storage and informing, and a minimum of $160 per deposit for viability testing, depending upon the type of deposit being tested. Most deposits received from outside the United States require an import permit from the U.S. Department of Agriculture (USDA). Also required is a public Health Service (PHS) permit, available from the Centers for Disease Control and Prevention (CDC), for importation of agents infectious to humans. This permit application processing fee is $150. The USPTO estimates that the total non-hour respondent cost burden in the form of capital start-up costs amounts to $1,460.

In addition, this collection does have postage costs. Biological deposits are generally shipped to the depository Domestic Overnight by Federal Express (FedEx) and, since depositors are urged to supply frozen or freeze dried material, it must be packed in dry ice, according to a representative from the Patent Department at ATCC. Dry ice itself is considered dangerous goods and requires special packaging. Additional FedEx special handling charges of $60 per shipment apply for temperature-sensitive biological material and also for the dry ice. An average cost for shipping by FedEx Domestic Overnight is estimated to be $75. If the shipment requires pick-up by FedEx, there is an

additional charge of $2.50. Special packaging is also required for these shipments. According to DG Supplies Inc., a supplier of infectious and diagnostic goods packaging, frozen infectious shippers are estimated to cost $141.80 per package for specimen shipments requiring refrigeration or dry ice. Therefore, postage costs average $279.30 per shipment, for a total cost to all the respondents of $977,550. The postage cost for a depository seeking recognition is estimated to be $3.85, sent to the USPTO by priority mail through the United States Postal Service. Therefore, the USPTO estimates that the total non-hour respondent cost burden in the form of postage costs amounts to $977,551.

Item	Responses (a)	Postage costs ($) (b)	Total non-hour cost burden (a) × (b)
Deposited Materials	3,500	$279.30	$977,550.00
Depository Approval	0.25	3.85	1.00
Total	3,501		977,551.00

The USPTO estimates that the total non-hour respondent cost burden for this collection in the form of capital start-up costs ($1,460) and postage costs ($977,551) amounts to $979,011.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: August 29, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22612 Filed 9–4–03; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Malaysia

August 29, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 63896, published on October 16 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 29, 2003.

Commissioner,
Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 9, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in Malaysia and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on September 5, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Other specific limits	
333/334/335	506,699 dozen of which not more than 263,719 dozen shall be in Category 333.
342/642	762,634 dozen.
345	296,802 dozen.
634/635	1,451,092 dozen.
645/646	513,885 dozen.
647/648	3,039,496 dozen of which not more than 2,212,459 dozen shall be in Category 647–K [2] and not more than 2,212,459 dozen shall be in Category 648–K [3]

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

[2] Category 647–K: only HTS numbers 6103.23.0040, 6103.23.0045, 6103.29.1020, 6103.29.1030, 6103.43.1520, 6103.43.1540, 6103.43.1550, 6103.43.1570, 6103.49.1020, 6103.49.1060, 6103.49.8014, 6112.12.0050, 6112.19.1050, 6112.20.1060 and 6113.00.9044.

[3] Category 648–K: only HTS numbers 6104.23.0032, 6104.23.0034, 6104.29.1030, 6104.29.1040, 6104.29.2038, 6104.63.2006, 6104.63.2011, 6104.63.2026, 6104.63.2028, 6104.63.2030, 6104.63.2060, 6104.69.2030, 6104.69.2060, 6104.69.8026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.9052 and 6117.90.9070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–22603 Filed 9–4–03; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Pakistan

August 29, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 68572, published on November 12, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 29, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 1, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on September 5, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
338	9,407,951 dozen.
347/348	1,831,737 dozen.
360	10,090,318 numbers.
361	10,800,787 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–22604 Filed 9–4–03 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Romania

August 29, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 57409, published on September 10, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 29, 2003.

Commissioner,

Bureau of Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 3, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textiles and textile products in the following categories, produced or manufactured in Romania and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on September 5, 2003, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
315	4,834,776 square meters.

Category	Adjusted twelve-month limit [1]
604	2,113,956 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–22605 Filed 9–4–03; 8:45 am]

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Performance Standards for a System To Reduce or Prevent Injuries From Contact With the Blade of a Table Saw (Petition No. CP 03–2); Extension of Comment Period

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of extension of comment period.

SUMMARY: By notice in the **Federal Register** of July 9, 2003, 68 FR 40912, the Consumer Product Safety Commission (CPSC or Commission) invited comment on Petition No. CP 03–2, Petition Requesting Performance Standards for a System to Reduce or Prevent Injuries from Contact with the Blade of a Table Saw. In response to a request by the Power Tool Institute, Inc. to extend the comment period on the petition by 60 days, the Commission is extending it through Friday, November 7, 2003.

DATES: The Office of the Secretary must receive any comments on the petition not later than November 7, 2003.

ADDRESSES: Comments should be mailed, preferably in five copies, to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. Comments also may be filed by facsimile to (301) 504–0127 or by e-mail to *cpsc-os@cpsc.gov*. Comments should be captioned "Petition CP 03–2, Petition for Performance Standards for Table Saws."

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–6833, e-mail *rhammond@cpsc.gov*.

SUPPLEMENTARY INFORMATION: Copies of the petition may be obtained from the Office of the Secretary. A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland. The petition is also available on the CPSC World Wide Web site at: *http://www.cpsc.gov/library/foia/foia03/petition/peti.html*.

Comments on the petition must be received by the Office of the Secretary not later than Friday, November 7, 2003.

Dated: August 28, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 03–22586 Filed 9–4–03; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Announcement of Anticipated Availability of Funds for Grants to Support the Martin Luther King, Jr. Service Day Initiative

AGENCY: Corporation for National and Community Service.

ACTION: Notice of funding opportunity.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation") announces the anticipated availability of funds for Fiscal Year (FY) 2004 to award up to $500,000 in grant funds to pay for the Federal share of the cost of planning and carrying out service opportunities in conjunction with the federal legal holiday honoring the birthday of Martin Luther King, Jr. on January 19, 2004. The Corporation invites applications for these grants. By law, any entity otherwise eligible for assistance under the national service laws is eligible to receive a grant under this announcement. The applicable laws include the National and Community Service Act of 1990, as amended, and the Domestic Volunteer Service Act of 1973, as amended. The federal grants we provide for this project, together with all other federal funds you use to plan or carry out the service opportunity, may not exceed 30 percent of the total cost.

The purpose of the grants is to mobilize more Americans to observe the Martin Luther King, Jr. federal holiday as a day of service in communities and to bring people together around the common focus of service to others. To achieve this, depending upon appropriations provided by the Congress for the Corporation, and based upon previous allocations of funding for this activity, we intend to disburse up to $500,000 in grant funds to support approved service opportunities. Eligible organizations may apply for a grant to support national service and community volunteering projects. Grant awards may range from $2,500 to $7,500. We seek proposals that are cost effective, based on the number of people serving and being served, and the service performed.

This program announcement is subject to the appropriation of funds and is a contingency action taken to ensure that, should funds become available for this purpose, applications can be processed in an orderly manner, and funds can be awarded in a timely fashion.

Note: This notice is not a complete description of the activities to be funded or of the application requirements. For supplementary information and application guidelines, including the Corporation state office contact information, go to the Corporation's Web site at *http://www.cns.gov/whatshot/notices.html*.

DATES: The Corporation generally requires applicants to apply through eGrants, our on-line grants management system. The deadline for eGrants applications is 5 p.m. Eastern Time on October 2, 2003. If for some legitimate reason it is necessary for you to submit a paper application, please notify ahead of time the appropriate Corporation for National and Community Service office that serves your state (*see* **SUPPLEMENTARY INFORMATION**). All the applications must be received by 5 p.m. Eastern Time on October 2, 2003, at the Corporation for National and Community Service in Washington, DC. We anticipate announcing selections under this Notice no later than November 14, 2003.

ADDRESSES: You may access eGrants through our Web site at *http://www.nationalservice.org/egrants/*. Please allow adequate time to access and submit an application through eGrants. Technical assistance is available Monday through Friday from 8 a.m.–6 p.m. Eastern Time. If you cannot submit an application electronically, please notify ahead of time the appropriate Corporation office that is in your state or that provides service to your state. Submit paper application to the following address: Martin Luther King, Jr. Day of Service, Corporation for National and Community Service, 1201 New York Avenue NW., Room 8416–D, Washington DC 20525.

Due to delays in delivery of regular mail to government offices, there is no

guarantee that a paper application sent by regular mail will arrive in time to be considered. We therefore suggest that, if submitting a paper application, you use U.S.P.S. priority mail or a commercial overnight delivery service to make sure that you meet the deadline. We will not accept an application that is submitted via facsimile or email.

FOR FURTHER INFORMATION CONTACT: For further information, contact the person listed for the Corporation office in your state (*see* Note above). You may request this notice in an alternative format for the visually impaired by calling (202) 606–5000, ext. 278. The Corporation's T.D.D. number is (202) 565–2799 and is operational between the hours of 9 a.m. and 5 p.m. Eastern Time.

Program Authority: 42 U.S.C. 12653(s).

Dated: September 2, 2003.

James F. Manning,

Acting Chief Executive Officer.

[FR Doc. 03–22660 Filed 9–4–03; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0007]

Federal Acquisition Regulation; Submission for OMB Review; Summary Subcontract Report

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension of an existing OMB clearance (9000–0007).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning summary subcontract report. A request for public comments was published in the **Federal Register** at 68 FR 37468 on June 24, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before October 6, 2003.

ADDRESSES: Submit comments including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), Room 4035 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Acquisition Policy Division, GSA (202) 501–0044.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1 million for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR 19.7.

B. Annual Reporting Burden

Number of Respondents: 4,253.
Responses Per Respondent: 1.66.
Total Responses: 7,098.
Average Burden Hours Per Response: 15.9.
Total Burden Hours: 112,864.
Obtaining Copies of Justifications: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0007, Summary Subcontract Report, in all correspondence.

Dated: August 21, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–22591 Filed 9–4–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0133]

Federal Acquisition Regulations; Information Collection; Defense Production Act Amendments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0133).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning defense production act amendments. This OMB clearance expires on November 30, 2003.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 4, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Gerald Zaffos, Acquisition Policy Division, GSA (202) 208–6091.

SUPPLEMENTARY INFORMATION:

A. Purpose

Title III of the Defense Production Act (DPA) of 1950 authorizes various forms of Government assistance to encourage expansion of production capacity and

supply of industrial resources essential to national defense. The DPA Amendments of 1992 provide for the testing, qualification, and use of industrial resources manufactured or developed with assistance provided under Title III of the DPA.

FAR 34.1 and 52.234–1 require contractors, upon the direction of the contracting officer, to test Title III industrial resources for qualification, and provide the test results to the Defense Production Act Office. The FAR coverage also expresses Government policy to pay for such testing and provides definitions, procedures, and a contract clause to implement the policy. This information is used by the Defense Production Act Office, Title III Program, to determine whether the Title III industrial resource has been provided an impartial opportunity to qualify.

B. Annual Reporting Burden

Respondents: 6.
Responses Per Respondent: 3.
Total Annual Responses: 18.
Hours Per Response: 100.
Total Burden Hours: 1,800.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0133, Defense Production Act Amendments in all correspondence.

Dated: August 26, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–22592 Filed 9–4–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0075]

Federal Acquisition Regulation; Submission for OMB Review; Government Property

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0075).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Government Property. A request for public comments was published in the **Federal Register** at 68 FR 37467 on June 24, 2003. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 6, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Acquisition Policy Division, GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

"Property," as used in Part 45, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property. Government property includes both Government-furnished property and contractor-acquired property.

Contractors are required to establish and maintain a property system that will control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract including property located with subcontractors.

The contractor's property control records shall constitute the Government's official property records and shall be used to—

(a) Provide financial accounts for Government-owned property in the contractor's possession or control;

(b) Identify all Government property (to include a complete, current, auditable record of all transactions);

(c) Locate any item of Government property within a reasonable period of time.

This clearance covers the following requirements:

(a) FAR 45.307–2(b) requires a contractor to notify the contracting officer if it intends to acquire or fabricate special test equipment.

(b) FAR 45.502–1 requires a contractor to furnish written receipts for Government property.

(c) FAR 45.502–2 requires a contractor to submit a discrepancy report upon receipt of Government property when overages, shortages, or damages are discovered.

(d) FAR 45.504 requires a contractor to investigate and report all instances of loss, damage, or destruction of Government property.

(e) FAR 45.505–1 requires that basic information be placed on the contractor's property control records.

(f) FAR 45.505–3 requires a contractor to maintain records for Government material.

(g) FAR 45.505–4 requires a contractor to maintain records of special tooling and special test equipment.

(h) FAR 45.505–5 requires a contractor to maintain records of plant equipment.

(i) FAR 45.505–7 requires a contractor to maintain records of real property.

(j) FAR 45.505–8 requires a contractor to maintain scrap and salvage records.

(k) FAR 45.505–9 requires a contractor to maintain records of related data and information.

(l) FAR 45.505–10 requires a contractor to maintain records for completed products.

(m) FAR 45.505–11 requires a contractor to maintain records of transportation and installation costs of plant equipment.

(n) FAR 45.505–12 requires a contractor to maintain records of misdirected shipments.

(o) FAR 45.505–13 requires a contractor to maintain records of property returned for rework.

(p) FAR 45.505–14 requires a contractor to submit an annual report of Government property accountable to each agency contract.

(q) FAR 45.508–2 requires a contractor to report the results of physical inventories.

(r) FAR 45.509–1(a)(3) requires a contractor to record work accomplished in maintaining Government property.

(s) FAR 45.509–1(c) requires a contractor to report the need for major repair, replacement and other rehabilitation work.

(t) FAR 45.509–2(b)(2) requires a contractor to maintain utilization records.

(u) FAR 45.606–1 requires a contractor to submit inventory schedules.

(v) FAR 45.606–3(a) requires a contractor to correct and resubmit inventory schedules as necessary.

(w) FAR 52.245–2(a)(3) requires a contractor to notify the contracting officer when Government-furnished property is received and is not suitable for use.

(x) FAR 52.245–2(a)(4) requires a contractor to notify the contracting officer when government-furnished property is not timely delivered and the contracting officer will make a determination of the delay, if any, caused the contractor.

(y) FAR 52.245–2(b) requires a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(z) FAR 52.245–4 requires a contractor to submit a timely written request for an equitable adjustment when Government-furnished property is not furnished in a timely manner.

(aa) FAR 52.245–5(a)(4) requires a contractor to notify the contracting officer when Government-furnished property is received that is not suitable for use.

(bb) FAR 52.245–5(a)(5) requires a contractor to notify the contracting officer when Government-furnished property is not received in a timely manner.

(cc) FAR 52.245–5(b)(2) requests a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(dd) FAR 52.245–7(f) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ee) FAR 52.245–7(l)(2) requires a contractor to alert the contracting officer within 30 days of receiving facilities that are not suitable for use.

(ff) FAR 52.245–9(f) requires a contractor to submit a facilities use statement to the contracting officer within 90 days after the close of each rental period.

(gg) FAR 52.245–10(h)(2) requires a contractor to notify the contracting officer if facilities are received that are not suitable for the intended use.

(hh) FAR 52.245–11(e) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ii) FAR 52.245–11(j)(2) requires a contractor to notify the contracting officer within 30 days of receiving facilities not suitable for intended use.

(jj) FAR 52.245–17 requires a contractor to maintain special tooling records.

(kk) FAR 52.245–18(b) requires a contractor to notify the contracting officer 30 days in advance of the contractor's intention to acquire or fabricate special test equipment (STE).

(ll) FAR 52.245–18(d) & (e) requires a contractor to furnish the names of subcontractors who acquire or fabricate special test equipment (STE) or components and comply with paragraph (d) of this clause, and contractors must comply with the (b) paragraph of this clause if an engineering change requires acquisition or modification of STE. In so complying, the contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

(mm) FAR 52.245–19 requires a contractor to notify the contracting officer if there is any change in the condition of property furnished "as is" from the time of inspection until time of receipt.

(nn) FAR 49.602–2(a) through (e) refers to the inventory schedule forms, SF's 1426 through 1434.

This information is used to facilitate the management of Government property in the possession of the contractor.

B. Annual Reporting Burden

Number of Respondents: 27,884.

Responses per Respondent: 488.6.

Total Responses: 13,624,122.

Average Burden Hours Per Response: .4826.

Total Burden Hours: 6,575,805.

The total burden hours have changed under this OMB clearance 9000–0075 to reflect the incorporation of hours currently associated with OMB clearance 9000–0151 (FAR Case 1995–013) which expired as of June 2000 and was not renewed. The OMB collection burden associated with Government property nonetheless remains unchanged.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0075, Government Property, in all correspondence.

Dated: August 20, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–22593 Filed 9–4–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Board of Visitors, United States Military Academy (USMA).

Date: Friday, September 26, 2003.

Place of Meeting: Taylor Hall, Building 600, Superintendent's Conference Room, West Point, NY 10996.

Start Time of Meeting: Approximately 3 p.m.

Proposed Agenda: Annual Visit and Fall Meeting of the Board of Visitors. Review of the Academic, Military and Physical Programs at the USMA.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel Edward C. Clarke, United States Military Academy, West Point, NY 10996–5000, (845) 938–4200.

SUPPLEMENTARY INFORMATION: All proceedings are open.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–22631 Filed 9–4–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Defense Transportation Regulation, Part IV, Personal Property; Change 1

AGENCY: Department of the Army, DOD.

ACTION: Notice; final policy.

SUMMARY: Change 1 of DOD 4500.9–R, the Defense Transportation Regulation, Part IV, Personal Property has been published and released as of August 2003. The revised DOD Regulation 4500.9–R, Part IV, supercedes DOD Regulation 4500.9–R, Part IV, dated August 1999 and replaces DOD Regulation 4500.34R. *Personal Property*

Traffic Management Regulation (PPTMR). A notice regarding the change to this part of the Defense Transportation Regulation was published in the **Federal Register,** April 11, 2002 (67 FR 17679). The carrier associations and individual carriers and agents responded to the **Federal Register** notice with approximately 200 individual comments. Those comments were carefully reviewed and considered prior to finalizing the publication. The disposition of those comments has been coordinated through the Military Traffic Management Command (MTMC), the military Services, and the United States Transportation Command. A document explaining the disposition of those comments will be available for review via the Internet on the MTMC's Home page at *http://www.mtmc.army.mil.*

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Debora Barnard, U.S. Transportation Command, TCJ5–PT, 508 Scott Drive, Scott AFB, IL, 62225, (618) 229–1985. HQ MTMC CONTACT: Robert Dawson or Alex Moreno, HQ Military Traffic Management Command MTPP–PP, 200 Stovall Street, Hoffman II, Room 10N67–72, Alexandria, VA, 22332–5000, (703) 428–3495.

SUPPLEMENTARY INFORMATION: This publication applies to the Office of the Secretary of Defense, Military Departments, Chairman and Joint Chiefs of Staff, Unified Commands, and the Defense Agencies. The public may obtain copies of the new DTR Part IV for a fee from the U.S. Department of Commerce, National Technical Information Services, 5285 Port Royal, Springfield, VA 22161.

Regulatory Flexibility Act: This action is not considered rule-making within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

Paperwork Reduction Act: The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.*, does not apply because no information collection or record-keeping requirements are imposed on contractors, offerors, or members of the public.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–22630 Filed 9–4–03; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent to Prepare an Environmental Impact Statement for the Pike County, KY (Levisa Fork Basin), Section 202 Project

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD

ACTION: Notice of intent.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers, DOD, Huntington District will prepare an Environmental Impact Statement (EIS). The EIS will evaluate potential impacts to the natural, physical, and human environment as a result of the proposed flood damage reduction measure for the Levisa Fork and Russell Fork basins in Pike County, Kentucky.

The Corps of Engineers will conduct a public scoping meeting to gain input from interested agencies, organizations, and the general public concerning the content of the EIS, issues and impacts to be addressed in the EIS, and alternatives that should be analyzed. The meeting is scheduled for:

Date: Sept. 25, 2003.

Time: 7:00–10:00 PM.

Place: Pikeville High School, 120 Championship Drive, Pikeville, KY 41501.

ADDRESSES: Send written comments and suggestions concerning this proposed project to S. Michael Worley PM–PD, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, WV 25701–2070. Telephone: (304) 529–5712. Electronic mail: *Stephen.M.Worley@Lrh01.usace.army.mil.* requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: Mr. Mark D. Kessinger PM–P, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, WV, 25701–2070. Telephone: (304) 529–5083. Electronic mail: *Mark.d.kessinger@usace.army.mil.*

SUPPLEMENTARY INFORMATION: 1. *Authority:* The proposed project is authorized under section 202 of the Water Resources Development Act (WRDA) of 1996, which provides the Corps authority to "* * * design and construct flood control measures relating to the Levisa and Tug Fork of the Big Sandy River and Cumberland River, West Virginia, Kentucky and Virginia."

2. *Background:* Since the earliest Levisa Fork Basin settlements, the residents faced the problem of frequent and severe flooding. Many Pike County communities within the floodplain of the Levisa and Russell Fork and tributaries were devastated by the April 1977 flood, which was the flood of record for much of the region. A significant flood again inundated the Levisa Fork communities in May of 1984. Congressional reaction to these flood events resulted in the inclusion of funds and language in various legislative directives that mandated expeditious implementation of flood damage reduction measures within the study area covered by the Huntington District's section 202 General Plan.

The study area, primarily residential in nature, includes the incorporated areas of Pikeville, Coal Run, Elkhorn City, and unincorporated areas in the county subject to flood damage from the potential of a reoccurrence of the April 1977 flood. The project requires providing flood protection measures to approximately 2,000 structures, 75 percent of which are residential.

Alternatives being initially considered include floodwall/levee systems protecting Pikeville and Coal Run, non-structural flood-proofing and several ring walls protecting individual structures. Alternatives to be evaluated in detail in the Draft EIS will be selected from those described above.

3. *Public Participation:* The Corps invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in the Levisa Fork Basin flooding problems as they affect Pike County and the environment are urged to participate in this NEPA environmental analysis process. Assistance will be provided upon request to anyone having difficulty with learning how to participate.

Public comments are welcomed anytime throughout the NEPA process. Formal opportunities for public participation include: (1) A public meeting will be held in the community of Pikeville, KY; (2) anytime during the NEPA process via mail, telephone or e-mail; (3) during Review and Comment on the Draft EIS—approximately January of 2004; and, (4) review of the Final EIS—Spring 2004. Schedules and locations will be announced in local news media. Interested parties should submit contact information to be included on the mailing list of public

distribution of meeting announcements and documents (See **ADDRESSES**).

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–22633 Filed 9–4–03; 8:45 am]

BILLING CODE 3710–GM–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council; Open Meeting

AGENCY: Department of the Army, Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 105(h) of the Estuary Restoration Act of 2000, (Title I, Pub. L. 106–457), announcement is made of the forthcoming meeting of the Estuary Habitat Restoration Council. The meeting is open to the public.

DATES: The meeting will be held from 10 a.m. to 12 p.m. on Thursday, September 25, 2003.

ADDRESSES: The meeting will be in room 3M60/70, 441 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC, (703) 695–6791.

SUPPLEMENTARY INFORMATION: The Estuary Habitat Restoration Council consists of representatives of five agencies. These are the National Oceanic and Atmospheric Administration, Environmental Protection Agency, U.S. fish and Wildlife Service, Department of Agriculture, and Army. Among the duties of the Council is development of a national estuary restoration strategy designed in part to meet the goal of restoring one million acres by 2010.

The primary agenda topic will be the Council's approval of a list of projects, in priority order, to be submitted to the Secretary of the Army for consideration for implementation funding.

Current security measures require that persons interested in attending the meeting must pre-register with us before 2 p.m., September 23, 2003. Please contact Ellen Cummings at (202) 761–4558 to pre-register. When leaving a voice mail message please provide the name of the individual attending, the company or agency represented, and a telephone number, in case there are any questions. The public should enter on the "G" Street side of the GAO building. All attendees are required to show photo identification and must be escorted to the meeting room by Corps personnel. Attendee's bags and other possessions are subject to being searched. All attendees arriving between one-half hour before and one-half hour after 10 a.m. will be escorted to the hearing. Those who are not pre-registered and/or arriving later than the allotted time will be unable to attend the public meeting.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–22629 Filed 9–4–03; 8:45 am]

BILLING CODE 3710–02–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Inland Waterways Users Board

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In Accordance with 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the forthcoming meeting.

Name of Committee: Inland Waterways Users Board (Board).

Date: September 24, 2003.

Location: Doubletree Hotel Houston-Post Oak, 2001 Post Oak Boulevard, Houston, TX 77056 (1–713–961–9300).

Time: Registration will begin at 8:30 a.m. and the meeting is scheduled to adjourn at 12 p.m.

Agenda: The Board will hear briefings on the status of both the funding for inland navigation projects and studies, and the Inland Waterways Trust Fund. The Board will also receive the status of various inland waterway activities.

FOR FURTHER INFORMATION CONTACT: Mr. Norman T. Edwards, Headquarters, U.S. Army Corps of Engineers, CECW–PD, 441 G Street, NW., Washington, DC 20314–1000; Ph: 202–761–4559.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 03–22632 Filed 9–4–03; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent No. 6,105,382 entitled "Chest Mounted Armored Microclimate Conditioned Air Device", Navy Case No. 79727, Inventor Reason, Issue Date 22 August, 2000.//U.S. Patent No. 6,240,742 entitled "Modular Portable Air-Conditioning System", Navy Case No. 79780, Inventors Kaufman *et al.*, Issue Date 5 June, 2001.//U.S. Patent No. 6,249,241 entitled "Marine Vessel Traffic System", Navy Case No. 76518, Inventors Jordan *et al.*, Issue Date 19 June, 2001.//U.S. Patent No. 5,982,420 entitled "Autotracking Device Designating a Target", Navy Case No. 77657, Inventor Ratz, Issue Date 9 November, 1999.//U.S. Patent No. 6,005,399 entitled "Solder Paste and Residue Measurement System", Navy Case No. 78137, Inventors Frederickson *et al.*, Issue Date 21 December, 1999.

ADDRESSES: Request for data and inventor interviews should be directed to Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Bldg 304, Rm 107, 22541 Millstone Rd, Patuxent River, MD 20670, (301) 342–5586 or E-Mail: *Fritzpm@navair.navy.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Bldg 304, Rm 107, 22541 Millstone Rd, Patuxent River, MD 20670, (301) 342–5586 or E-Mail: *Fritzpm@navair.navy.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Navy intends to move expeditiously to license these patents. All licensing application packages and commercialization plans must be returned to Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Bldg 304, Rm 107, 22541 Millstone Rd, Patuxent River, MD 20670.

The Navy, in its decision concerning the granting of licenses, will give special consideration to small business firms,

and consortia involving small business firms.

The Navy intends to insure that its licensed inventions are broadly commercialized throughout the United States.

Any license of Navy technology will require that materials which embody the inventions licensed that are to be sold in the United States of America, will be manufactured substantially in the United States.

(Authority: 35 U.S.C. 207, 37 CFR part 404).

Dated: August 26, 2003.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 03–22596 Filed 9–4–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Secretary of the Navy's Advisory Subcommittee on Naval History

AGENCY: Department of the Navy, DOD.

ACTION: Notice of open meeting.

SUMMARY: The Secretary of the Navy's Advisory Subcommittee on Naval History, a subcommittee of the Department of Defense Historical Advisory Committee will meet to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History, which was conducted on September 19, and September 20, 2002, and to make comments and recommendations on these activities to the Secretary of the Navy. The meetings will be open to the public.

DATES: The meetings will be held on Thursday, September 18, 2003, from 8 a.m. to 4 p.m. and Friday, September 19, 2003, from 8 a.m. to 4 p.m.

ADDRESSES: The meetings will be held at the Navy Museum of The Naval Historical Center, 805 Kidder Breese Street, SE., Building 76, Washington Navy Yard, DC 20374–5060.

FOR FURTHER INFORMATION CONTACT: Dr. William S. Dudley, Director of Naval History, 805 Kidder Breese Street, SE., Bldg. 57, Washington Navy Yard, DC 20374–5060, telephone (202) 433–2210.

SUPPLEMENTARY INFORMATION: This notice of open meeting is provided in accordance with the Federal Advisory Committee Act (5 U.S.C. App. 2). The purpose of these meetings is to review naval historical activities since the last meeting of the Advisory Subcommittee on Naval History and to make comments and recommendations on these activities to the Secretary of the Navy.

Dated: August 26, 2003.

S. K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 03–22597 Filed 9–4–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

President's Board of Advisers on Historically Black Colleges and Universities

AGENCY: President's Board of Advisers on Historically Black Colleges and Universities, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming meeting of the President's Board of Advisers on Historically Black Colleges and Universities (Board). The notice also describes the functions of the Board. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Thursday, September 18, 2003. *Time:* 8 a.m.–3 p.m.

ADDRESSES: The Board will meet in Arlington, VA at the Marriott Crystal Gateway Hotel, 1700 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Dr. Leonard Dawson, Deputy Director to the Counselor to the Secretary for the White House Initiative on Historically Black Colleges and Universities, 1990 K Street, NW., Washington, DC 20202; telephone: (202) 502–7889.

SUPPLEMENTARY INFORMATION. The President's Board of Advisers on Historically Black Colleges and Universities is established under Executive Order 13256, dated February 12, 2003. The Board is established (a) to report to the President annually on the results of the participation of historically black colleges and universities (HBCUs) in Federal programs, including recommendations on how to increase the private sector role, including the role of private foundations, in strengthening these institutions, with particular emphasis on enhancing institutional planning and development, strengthening fiscal stability and financial management, and improving institutional infrastructure, including the use of technology, to ensure the long-term viability and enhancement of these institutions; (b) to advise the President and the Secretary of Education (Secretary) on the needs of HBCUs in the areas of infrastructure, academic programs, and faculty and institutional development; (c) to advise the Secretary in the preparation of an annual Federal plan for assistance to HBCUs in increasing their capacity to participate in Federal programs; (d) to provide the President with an annual progress report on enhancing the capacity of HBCUs to serve their students; and (e) to develop, in consultation with the Department of Education and other Federal agencies, a private sector strategy to assist HBCUs.

The purpose of the meeting is to report on the status of recommendations made by the Board at the May 28, 2003 meeting; to discuss reauthorization of the Higher Education Act, plans and reports from the Private Sector Initiative, and preparation for the Annual Report to the President; and to address critical issues facing HBCUs.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or material in alternative format) should notify Barbara Lindler at (202) 502–7894 no later than September 8, 2003. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

An opportunity for public comment is available on September 18, 2003, between 2 p.m. and 3 p.m. Those members of the public interested in submitting written comments may do so at the address indicated above by Friday, September 12, 2003.

Records are kept of all Board proceedings and are available for public inspection at the office of the White House Initiative on Historically Black Colleges and Universities from the hours of 9 a.m. to 5 p.m.

Rod Paige,

Secretary, Department of Education.

[FR Doc. 03–22607 Filed 9–4–03; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Reliant Energy Desert Basin, LLC, et al.; Electric Rate and Corporate Filings

August 27, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Reliant Energy Desert Basin, LLC

[Docket No. EC03–129–000]

Take notice that on August 22, 2003, Reliant Energy Desert Basin, LLC (Reliant Desert Basin) filed an Application for Authorization Under section 203 of the Federal Power Act and Request for Expedited Action and Shortened Public Notice Period. Reliant Desert Basin requests that the Commission grant all necessary authorizations to transfer certain jurisdictional facilities to Salt River Project Agricultural Improvement and Power District.

Comment Date: September 12, 2003.

2. Black Hills Corporation

[Docket No. EC03–130–000]

Take notice that on August 22, 2003, Black Hills Corporation filed an application with FERC requesting authorization under section 203 of the Federal Power Act to implement a plan of internal corporate restructuring.

Comment Date: September 12, 2003.

3. Oklahoma Gas and Electric Company and NRG McClain LLC

[Docket No. EC03–131–000]

Take notice that on August 26, 2003, Oklahoma Gas and Electric Company (OG&E) and NRG McClain LLC (NRG McClain) filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to section 203 of the Federal Power Act for authorization for NRG McClain to sell, and OG&E to acquire, NRG McClain's 77 percent interest in the 520 megawatt McClain Energy Generating Facility and associated transmission equipment located near Oklahoma City, Oklahoma.

Comment Date: September 16, 2003.

4. Texas Genco, LP

[Docket No. EG03–96–000]

Take notice that on August 25, 2003, Texas Genco, LP (Texas Genco) tendered for filing an application for a determination of exempt wholesale generator status, pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended, (PUHCA), 15 U.S.C. 79z–5a(a)(1) (2000), and subchapter T, part 365 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 365. Texas Genco states that it is a limited partnership organized and existing under the laws of the State of Texas that owns and operates twelve electric generating facilities, with an aggregate maximum capacity of approximately 14,000 megawatts, located in Texas. Texas Genco further states that it will be engaged directly, or indirectly through one or more affiliates as defined in section 2(a)(11)(B) of PUHCA, and exclusively in the business of owning eligible facilities, and selling electric energy at wholesale.

Comment Date: September 17, 2003.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. EL02–111–005]

Take notice that on August 22, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted proposed revisions Schedules 7, 8 and 14 of the Midwest ISO Open Access Transmission Tariff (Tariff), FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's July 23, 2003 Order on Initial Decision, 104 FERC 61,105 (2003), in which the Commission directed the Midwest ISO and PJM Interconnection, Inc. (PJM) to eliminate the Regional Through and Out Rates under their Tariffs for transactions that sink in the Midwest ISO/PJM footprint, effective November 1, 2003.

The Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. The Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. Midwest ISO also states that in addition, the filing has been electronically posted on the Midwest ISO's Web site at *http://www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter and that it will provide hard copies to any interested parties upon request.

Comment Date: September 29, 2003.

6. California Power Exchange Corporation

[Docket No. EL03–223–000]

Take notice that on August 21, 2003, the California Power Exchange Corporation (CalPX) filed with the Federal Energy Regulatory Commission, a Petition for Declaratory Order. The Petition requests Commission approval for CalPX to enter into a settlement with American House Assurance Company on a performance bond covering defaults in its Core Market. CalPX states that the proposed settlement provides for the payment of $7.5 million into CalPX's Settlement Clearing Account.

Comment Date: September 22, 2003.

7. California Independent System Operator Corporation

[Docket No. ER03–407–004]

Take notice that on August 25, 2003, the California Independent System Operator Corporation (ISO), submitted a filing in compliance with the Commission's July 25, 2003 Order in Docket Nos. ER03–407–002 and 003, 104 FERC 61,128.

The ISO states that this filing has been served upon all parties in the above referenced proceeding, and has been posted on the ISO Home Page.

Comment Date: September 15, 2003.

8. Devon Power Company

[Docket No.ER03–563–017]

Take notice that on August 25, 2003, ISO New England Inc. (ISO) submitted a Compliance Filing as directed by the Commission in its July 24, 2003 Order on Rehearing and Compliance, 104 FERC 61,123. The ISO states that copies of the filing have been served on all parties in this proceeding.

Comment Date: September 15, 2003.

9. ISO New England Inc.

[Docket No. ER03–854–002]

Take notice that on August 25, 2003, ISO New England Inc. (ISO) submitted a Compliance Filing as directed by the Commission in its July 25, 2003 Order Accepting Scarcity Pricing Proposal, 104 FERC 61,130. The ISO states that copies of the filing have been served on all parties on the Service List for Docket No. ER03–854.

Comment Date: September 15, 2003.

10. Direct Commodities Trading (DCT) Inc.

[Docket No. ER03–1162–001]

Take notice that on August 25, 2003, Direct Commodities Trading (DCT) Inc. (DCT) filed a supplement to its application filed August 5, 2003 for market-based rates as a power marketer. DCT states that the supplemental information pertains to formatting and presentation of Rate Schedule FERC No. 1.

Comment Date: September 8, 2003.

11. California Independent System Operator Corporation

[Docket No. ER03–1222–001]

Take notice that on August 20, 2003, the California Independent System Operator Corporation (ISO), tendered for filing an errata concerning Amendment No. 57 to the ISO Tariff, which the ISO filed for acceptance by the Commission on August 18, 2003, in Docket No. ER03–1222–000.

The ISO states that this filing has been served on the Public Utilities

Commission of California, the California Energy Commission, the California Electricity Oversight Board, the Participating TOs, Trans-Elect, and all parties with effective Scheduling Coordinator Agreements under the ISO Tariff.

Comment Date: September 10, 2003.

12. Wisconsin Electric Power Company

[Docket No. ER03–1240–000]

Take notice that on August 22, 2003, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a revised Power Service Agreement (PSA) between Wisconsin Electric and the City of Crystal Falls, Michigan (City) modifying the price for energy Wisconsin Electric charges the City. Wisconsin Electric states that the revision to the energy price is being made pursuant to section 2.05 of the PSA. Wisconsin Electric and the City request that the Commission approve the revised PSA to become effective on August 25, 2003.

Comment Date: September 12, 2003.

13. Tampa Electric Company

[Docket No. ER03–1242–000]

Take notice that on August 22, 2003, Tampa Electric Company (Tampa Electric) tendered for filing a Notice of Cancellation of a transaction-specific service agreement with the Reedy Creek Improvement District under Tampa Electric's market-based sales tariff. Tampa Electric proposes that the cancellation be made effective on August 22, 2003.

Tampa Electric states that copies of the filing have been served on RCID and the Florida Public Service Commission.

Comment Date: September 12, 2003.

14. Southern California Edison Company

[Docket No. ER03–1243–000]

Take notice that on August 25, 2003, Southern California Edison Company (SCE) tendered for filing an Amended and Restated Interconnection Facilities Agreement (A&RIFA) between High Desert Power Project, LLC (HDPP) and SCE. SCE states that the A&RIFA specifies the final terms and conditions pursuant to which SCE will interconnect 850 MW of generation to the California Independent System Operator Controlled Grid pursuant to SCE's Transmission Owner Tariff, FERC Electric Tariff, Second Revised Original Volume No. 6. SCE also states that the A&RIFA will replace, in its entirety, the Interconnection Facilities Agreement between SCE and High Desert Power Trust accepted as Service Agreement No. 11 under SCE's Transmission Owner Tariff in Docket No. ER02–1073–000. SCE states that because of disputes over certain issues between SCE and HDPP, HDPP has requested that SCE file the A&RIFA unexecuted. SCE requests that the A&RIFA become effective one day after filing.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and HDPP.

Comment Date: September 15, 2003.

15. Virginia Electric and Power Company

[Docket No. ER03–1244–000]

Take notice that on August 25, 2003, Virginia Electric and Power Company, doing business as Dominion Virginia Power (the Company), tendered for filing copies of a letter agreement between Virginia Electric and Power Company, doing business as Dominion Virginia Power (the Company), and Virginia Municipal Electric Association No. 1 (VMEA). The Company states that the letter agreement, dated June 16, 2003, adds a new point of delivery to the Agreement for the Purchase of Electricity for Resale between VMEA and the Company, First Revised Rate Schedule FERC No. 109.

The Company requests waiver of the Commission's notice of filing requirements to allow the letter agreement to become effective on October 15, 2003, the earliest date upon which all of the facilities necessary to provide service under the letter agreement will be completed. The Company states that copies of the filing were served upon VMEA, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment Date: September 15, 2003.

16. California Independent System Operator Corporation

[Docket No. ER03–1245–000]

Take notice that on August 25, 2003, the California Independent System Operator Corporation (ISO), tendered for filing Amendment No. 1 to the Participating Generator Agreement between the ISO and Energia Azteca X, S. de R.L. de C.V (EAX) for acceptance by the Commission.

The ISO states that this filing has been served on EAX and the California Public Utilities Commission. The ISO is requesting waiver of the 60-day notice requirement to allow Amendment No. 1 to the Participating Generator Agreement to be made effective July 15, 2003.

Comment Date: September 15, 2003.

17. Southwestern Electric Power Company

[Docket No. ER03–1246–000]

Take notice that on August 25, 2003, Southwestern Electric Power Company (SWEPCO) filed a Restated and Amended Power Supply Agreement (Restated Agreement) between SWEPCO and Tex-La Electric Cooperative of Texas, Inc. (Tex-La). SWEPCO states that the Restated Agreement supersedes in its entirety the Power Supply Agreement, dated July 31, 1997, as amended, between SWEPCO and Tex-La.

SWEPCO seeks an effective date of June 15, 2000 and, accordingly, seeks waiver of the Commission's notice requirements. SWEPCO states that copies of the filing have been served on Tex-La and on the Public Utility Commission of Texas.

Comment Date: September 15, 2003.

18. Florida Power Corporation Progress Energy Florida, Inc.

[Docket No. SC03–1–000]

Take notice that on August 13, 2003, Florida Power Corporation (FPC) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Withdrawal of its April 2, 2003 application to recover stranded costs from the City of Casselberry, Florida .

Comment Date: September 10, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18

CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22625 Filed 9–4–03; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0009; FRL–7553–4]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Pretreatment Program, EPA ICR Number 0002.11, OMB Control Number 2040–0009

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on September 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 6, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0009, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Office of Water, Mail code: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tracy Hudak, Office of Water, Mail code: 4203M, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–0651; fax number: (202) 564–6431; e-mail address: *Hudak.Tracy@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 3, 2003 (68 FR 16282), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0009, which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: National Pretreatment Program.

Abstract: This Information Collection Request (ICR) calculates the burden and costs associated with managing the National Pretreatment Program, mandated by sections 402(a) and (b) and 307(b) of the Clean Water Act.

EPA's Office of Wastewater Management (OWM) in the Office of Water (OW) is responsible for the management of the pretreatment program. The Clean Water Act requires EPA to develop national pretreatment standards to control discharges from Industrial Users (IUs) into Publicly Owned Treatment Works (POTWs). These standards limit the level of certain pollutants allowed in non-domestic wastewater that is discharged to a POTW. EPA administers the pretreatment program through the National Pollutant Discharge Elimination System (NPDES) permit program. Under the NPDES permit program, EPA may approve State or individual POTW implementation of the pretreatment standards at their respective levels. Data collected from IUs during implementation of the pretreatment program include the mass, frequency, and content of IU discharges and IU schedules for installing pretreatment equipment. Data also include actual or anticipated IU discharges of wastes that violate pretreatment standards, have the potential to cause problems at the POTW, or are considered hazardous under the Resource Conservation and Recovery Act (RCRA). OWM uses the data collected under the pretreatment program to monitor and enforce compliance with the pretreatment regulations, as well as to authorize program administration at the State or local (POTW) level. States and POTWs applying for approval of their pretreatment programs submit data concerning their legal, procedural, and administrative bases for establishing such programs. This information may include surveys of IUs, local limits for pollutant concentrations, and schedules for completion of major project requirements. IUs and POTWs submit written reports to the approved state or EPA. These data may then be entered into the NPDES databases by the approved state or by EPA.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 10

hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Various industrial categories, local, State and Federal governments.

Estimated Number of Respondents: 28,285.

Frequency of Response: On occasion, semi-annually, annually, and as needed.

Estimated Total Annual Hour Burden: 2,161,679.

Estimated Total Annual Cost: $85,949,203, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 685,488 hours in the total estimated burden currently identified in the OMB Inventory of approved ICR burdens. This decrease is due mainly to an adjustment in the estimate of the number of Industrial Users and a change in the number of effluent guidelines for which the pretreatment program assumes reporting and recordkeeping burden.

Dated: August 25, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–22640 Filed 9–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OW–2003–0026–; FRL–7553–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Water Quality Inventory Reports (Clean Water Act Sections 305(b), 303(d), 314(a), and 106(e)), EPA ICR Number 1560.07, OMB Control Number 2040–0071

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 6, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OW–2003–0026, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *OW–Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, 4101T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: John Wilson, Assessment and Watershed Protection Division, Office of Water, Mail Code 4503T, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 202–566–1158; fax number: 202–566–1331; e-mail address: *wilson.john@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 21, 2003 (68 FR 27793), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OW–2003–0026 , which is available for public viewing at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: National Water Quality Inventory Reports (Clean Water Act Sections 305(b), 303(d), 314(a), and 106(e)).

Abstract: Section 303(d) of the Clean Water Act requires States to identify and rank waters which cannot meet water quality standards (WQS) following the implementation of technology-based controls. Under section 303(d), States are also required to establish total maximum daily loads (TMDLs) for listed waters not meeting standards as a result of pollutant discharges. In developing the section 303(d) lists, States are required to consider various sources of water quality related data and information, including the section 305(b) State water quality reports. The section 305(b) reports contain information on the extent of water quality degradation, the pollutants and sources affecting water quality, and State progress in controlling water pollution. EPA's Assessment and Watershed Protection Division (AWPD) works with its Regional counterparts to review and approve or disapprove State section 303(d) lists and TMDLs.

This announcement includes the reapproval of current, ongoing activities related to sections 305(b) and 303(d) reporting and TMDL development for

the period of August 1, 2003 through July 31, 2006. During the period covered by this ICR renewal, respondents will: Complete their 2004 section 305(b) reports and 2004 section 303(d) lists; complete their 2006 section 305(b) reports and 2006 section 303(d) lists; transmit annual electronic updates of their section 305(b) databases in 2003 through 2006; and continue to develop TMDLs according to their established schedules. EPA will prepare two biennial Reports to Congress: one in 2003, one in 2005, and EPA will review TMDL submissions from respondents.

The respondent community for section 305(b) reporting consists of 50 States, the District of Columbia, 5 Territories (Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands), and 3 River Basin Commissions. The Ohio River Valley Sanitation Commission, the Delaware River Basin Commission, and the Interstate Sanitation Commission have jurisdiction over basins that lie in multiple States. Indian Tribes are exempt from the section 305(b) reporting requirement, but some Tribes choose to participate as a way of presenting assessments and water quality issues to the public and Congress. One Tribe or Tribal Group prepared section 305(b) reports in 1996 and 1997. However, since Tribal section 305(b) reporting is a voluntary effort, it is not included in the burden estimates for this ICR.

The respondent community for section 303(d) activities consists of 50 States, the District of Columbia, and 5 Territories (Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands). Although Indian Tribes can be authorized to meet section 303(d) requirements, none are currently authorized nor have applied for authorization. Further, very few Tribes have established water quality standards, and EPA is currently in the process of preparing standards where they are needed. Therefore, we assume that there would be no burden to Indian Tribes over the period covered by this ICR for section 303(d) activities.

The burden of specific activities that States undertake as part of their sections 305(b) and 303(d) programs are derived from an ongoing project among EPA, States and other interested stakeholders to develop a tool for estimating the States' resource needs for State water quality management programs. This project has developed the State Water Quality Management Workload Model (SWQMWM), which estimates and sums the workload involved in more than one hundred activities or tasks comprising a State water quality management program. Over twenty States have contributed information about their activities that became the basis for the model. According to the SWQMWM, the States will carry out the following activities or tasks to meet the sections 305(b) and 303(d) reporting requirements: Watershed characterization; modeling and analysis; development of a TMDL document for public review; public outreach; formal public participation; tracking; planning; legal support; *etc.* In general, respondents have conducted each of these reporting and record keeping activities for past sections 305(b) and 303(d) reporting cycles and thus have staff and procedures in place to continue their sections 305(b) and 303(d) reporting programs. The burden associated with these tasks is estimated in this ICR to include the total number of TMDLs that may be submitted during the period covered by this ICR.

The biennial frequency of the collection is mandated by section 305(b)(1) of the CWA. Section 305(b) originally required respondents to submit water quality reports on an annual basis. In 1977, the annual requirement was amended to a biennial requirement in the CWA. EPA has determined that abbreviated reporting for hard-copy section 305(b) reports, combined with annual electronic reporting using respondent databases, will meet the CWA reporting requirements while reducing burden to respondents. The biennial period with annual electronic reporting ensures that information needed for analysis and water program decisions is reasonably current, yet abbreviated reporting requirements provides respondents with sufficient time to prepare the reports.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: For the 3 respondents that have section 305(b) responsibility only the annual public reporting and recordkeeping burden for this collection of information is estimated to average 3,659 hours. For the 56 other respondents with both sections 305(b) and 303(d) responsibilities the annual public reporting and recordkeeping burden for this collection of information is estimated to average 66,590 hours. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States, District of Columbia, Territories, River Basin commissions, and Indian Tribes.

Estimated Number of Respondents: 59.

Frequency of Response: Biannually.

Estimated Total Annual Hour Burden: 3,740,017.

Estimated Total Annual Cost: $155,322,906, includes $0 annualized capital or O&M costs.

Changes in the Estimates: There is a decrease of 749,130 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is due to: Adjustment Changes in Burden for sections 305(b) and 303(d) reporting. The total annual respondent burden for sections 305(b) and 303(d) reporting has increased from ICR 1560.05 and 1560.06 due to improved estimates of respondent activity.

Dated: August 27, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–22641 Filed 9–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2002–0024; FRL–7553–7]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; The 2003 Hazardous Waste Report, EPA ICR Number 0976.11, OMB Control Number 2050–0024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request

(ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for a renewal of an existing approved collection. This ICR is scheduled to expire on June 30, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 6, 2003.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2002–0024, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *RCRA-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, RCRA Docket, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dave Levy, Office of Solid Waste, Mail Code 5303W, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–8479; fax number: 703–308–8433; e-mail address: *levy.dave@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On March 18, 2003 (68 FR 12902), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. RCRA–2002–0024, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*.

Please use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: The 2003 Hazardous Waste Report.

Abstract: This ICR renews an ongoing information collection from hazardous waste generators and hazardous waste treatment, storage, or disposal facilities. This collection is done on a two-year cycle as required by sections 3002 and 3004 of the Resource Conservation and Recovery Act (RCRA). The information is collected via a mechanism known as the Hazardous Waste Report for the required reporting year (EPA Form 8700–13 A/B)(also known as the Biennial Report). Both RCRA sections 3002 and 3004 require EPA to establish standards for recordkeeping and reporting of hazardous waste. Section 3002 applies to hazardous waste generators and section 3004 applies to hazardous waste treatment, storage, and disposal facilities. The implementing regulations are found at 40 CFR 262.40(b) and (d); 262.41(a)(1)–(5), (a)(8), and (b); 264.75(a)–(e) and (j); 265.75(a)–(e) and (j); and 270.30(l)(9). This is mandatory reporting by the respondents.

The respondents' submissions (reports) describe each generated hazardous waste, the activity by which they generated the waste, and the waste quantity; the reports also list the management method by which each waste is treated, recycled, or disposed and the quantity managed. There are a number of uses of Biennial Report data. EPA uses Biennial Report data for planning and developing regulations, compliance monitoring, and enforcement. Also, Biennial Report data allows the Agency to determine whether its regulations are having the desired effect on the generation and management of hazardous waste. For example, Biennial Report data provides information on whether waste management has shifted from one method of disposal to another. Some State uses of Report data include support of planning, fee assessment, compliance monitoring, and enforcement.

Some businesses consider some of their hazardous waste information to be Confidential Business Information (CBI). A business may, if it desires, protect its Biennial Report information from public disclosure by asserting a claim of confidentiality covering all or part of its information. When a claim is made EPA will treat the information in accordance with the confidentiality regulations in 40 CFR part 2, subpart B. EPA also ensures that the information collection procedures comply with the Privacy Act of 1974 and OMB Circular 108.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average about 19 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Those facilities which generate, treat, store, recycle, or dispose of hazardous waste.

Estimated Number of Respondents: 10,178.

Frequency of Response: Biennially.

Estimated Total Annual Hour Burden: 196,976.

Estimated Total Annual Cost: $10,311,438, includes $0 annualized capital and $25,336 O&M costs.

Changes in the Estimates: There is an increase of 8,352 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to several reasons. Based on reported data for the 2001 Hazardous Waste Report, EPA estimates a slight increase in the number of respondents, an additional 42; we estimate the increase in the number of submitted forms to be 15,218. The completion of the RCRA Subtitle C Site Identification Form will require an estimated additional 20 minutes. This has resulted in a minor increase for those manually filling out the forms (resulting in an approximately one percent annual burden reduction to the regulated community overall).

Dated: August 12, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–22642 Filed 9–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OEI–2003–0003; FRL–7553–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Confidentiality Rules, EPA ICR Number 1665.06, OMB Control Number 2020–0003

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The current ICR is scheduled to expire on September 30, 2003. Under OMB regulations, EPA may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This renewal notice describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 6, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OEI–2003–0003, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *oei.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, OEI Docket, (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jeffrey Kohn, Collection Strategies Division, Office of Information Collection (2822T), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–1407; fax number: (202) 566–1639; e-mail address: *kohn.jeffrey@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted this renewal ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On April 10, 2003 (68 FR 17631), EPA sought comments on this renewal ICR pursuant to 5 CFR 1320.8(d). EPA has received and addressed comments from one organization.

EPA has established a public docket for this renewal ICR under Docket ID No. OEI–2003–0003, which is available for public viewing at the OEI Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone and fax numbers for the OEI Docket are (202) 566–1752 and (202) 566–1753, respectively. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this renewal ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Title: Confidentiality Rules (OMB Control No. 2020–0003; EPA ICR No. 1665.06), expiring September 30, 2003.

Abstract: EPA administers a number of environmental protection statutes (*e.g.*, the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Resource Conservation and Recovery Act; and the Comprehensive Environmental Response, Compensation, and Liability Act), under which the Agency collects information from thousands of facilities in many economic sectors. In addition, businesses submit information to EPA without the Agency requesting it. The information addresses topics such as toxic chemicals, industrial processes, waste streams, and regulatory compliance. In many cases, businesses that submit information claim it to be confidential business information (CBI).

EPA established the procedures described in 40 CFR part 2, subparts A and B to protect the confidentiality of information as well as the rights of the public to obtain access to the information under the Freedom of Information Act (FOIA). In accordance with these regulations, when EPA finds it necessary to make a final confidentiality determination (*e.g.*, in response to a FOIA request or in the course of rulemaking or litigation), or an advance confidentiality determination, it notifies the affected business by sending a letter requesting substantiation of the confidentiality claim. This letter provides the affected business with an opportunity to submit

comments (*i.e.*, a substantiation). EPA then considers the business's comments in determining whether the previously submitted information should be protected as CBI. This renewal ICR relates to the collection of information that will assist EPA in determining whether previously submitted information is entitled to confidential treatment.

EPA is proposing to use an updated Request for Substantiation letter ("proposed letter"). The proposed letter is made up of two separate sample letters that address different factual situations: Sample Letter A, which requests a substantiation in response to a FOIA request, and Sample Letter B, which requests a substantiation in support of Agency rulemaking or litigation, in the case of an advance confidentiality determination, or for any other Agency purpose. The use of two letters is a clarification of existing EPA procedures. Some of the information requested differs slightly from the current Request for Substantiation letter, concerning the possible voluntary nature of the submission and the issue of substantial competitive harm, and takes into account the vast amount of information now available electronically. Nevertheless, EPA estimates that the overall burden to respond to inquiries contained in the proposed letter is the same as the burden to respond to inquiries contained in the current Request for Substantiation letter.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The total annual hour and cost burden for all substantiations is as follows:

Respondents/Affected Entities: Business and other for profit organizations.

Estimated Number of Respondents: 1101.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 6,521 hours.

Estimated Total Annual Capital and Operations and Maintenance Cost: $0.

Changes in the Estimates: These estimates show an increase of approximately 89 hours and $27,973 in the total estimated burden from the figures currently identified in the OMB Inventory of Approved ICR Burdens. The increase in the burden hour estimate results from an adjustment to incorporate 0.20 hours per substantiation request for an attorney to review the request. The increase in cost burden results from this small increase in the hour estimate and from updated hourly wages for private industry and Agency employees.

Dated: August 12, 2003.

Andrew Battin,

Director, Collection Services Division.

[FR Doc. 03–22643 Filed 9–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0181; FRL–7553–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Information Requirements for Importation of Nonconforming Vehicles, EPA ICR Number 0010.10, OMB Control Number 2060–0095

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 6, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0181, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mrs. Chestine Payton, Certification and Compliance Division, Outreach and Planning Group, Mail Code 6405J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–9328; fax number: (202) 565–2057; e-mail address: *payton.chestine@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 8, 2003 (68 FR 24736), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0181, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.* Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing

copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's Federal Register notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket.*

Title: Information Requirements for Importation of Nonconforming Vehicles.

Abstract: Individuals and businesses importing motor vehicles and motor vehicle engines, and nonroad compression ignition engines greater than 50 horsepower (large CI nonroad engines), which are predominantly used in construction equipment and farm tractors, report and keep records of vehicle importations, or request final admission for vehicles conditionally imported into the U.S. The collection of this information is mandatory in order to ensure compliance of nonconforming vehicles with Federal emissions requirements. Joint EPA and Customs regulations at 40 CFR 85.1501 *et seq.*, 89.601 *et seq.*, 90.601 *et seq.*, and 19 CFR 12.73 and 12.74 promulgated under the authority of Clean Air Act sections 203 and 208 give authority for the collection of information. This authority was extended to nonroad engines under section 213(d). The information is used by program personnel to ensure that all Federal emission requirements concerning imported nonconforming motor vehicles and nonroad engines are met. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see CFR 2), and the public is not permitted access to information containing personal or organizational identifiers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.7 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Individuals and businesses importing motor vehicles and motor vehicle engines.

Estimated Number of Respondents: 13,000.

Frequency of Response: Other—upon importation.

Estimated Total Annual Hour Burden: 15,800.

Estimated Total Annual Cost: $1,664,000, which includes $0 annualized capital and $1,266,000 O&M costs.

Changes in the Estimates: There is an increase of 1,400 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase in the number of engines tested and the associated cost.

Dated: August 22, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–22644 Filed 9–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OAR–2003–0042; FRL–7554–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping Requirements for Importation of Nonconforming Nonroad Compression Ignition (CI) and Small Spark Ignition (SI) Engines, EPA ICR Number 1673.04, OMB Control Number 2060–0294

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on August 31, 2003. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before October 6, 2003.

ADDRESSES: Submit your comments, referencing docket ID number OAR–2003–0042, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *a-and-r-Docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Air and Radiation Docket and Information Center, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mrs. Chestine Payton, Certification and Compliance Division, Outreach and Planning Group, Mail Code 6405J, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–9328; fax number: (202) 565–2057; e-mail address: *payton.chestine@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 8, 2003 (68 FR 24736), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0042, which is available for public viewing at the Air and Radiation Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket and Information

Center is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *www.epa.gov/edocket*.

Title: Reporting and Recordkeeping Requirements for Importation of Nonconforming Nonroad Compression Ignition (CI) and Small Spark Ignition (SI) Engines.

Abstract: Individuals and businesses importing on and off-road motor vehicles, motor vehicle engines, or nonroad engines, including nonroad engines incorporated into nonroad equipment or nonroad vehicles, report and keep records of vehicle importations, request prior approval for vehicle importations, or request final admission for vehicles conditionally imported into the U.S. The collection of this information is mandatory in order to ensure compliance of nonconforming vehicles with Federal emissions requirements. Joint EPA and Customs regulations at 40 CFR 85.1501 *et seq.*, 89.601 *et seq.*, 90.601 *et seq.*, and 19 CFR 12.73 and 12.74 promulgated under the authority of Clean Air Act sections 203 and 208 give authority for the collection of information. This authority was extended to nonroad engines under section 213(d). The information is used by program personnel to ensure that all Federal emission requirements concerning imported nonconforming motor vehicles and nonroad engines are met.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Individuals and businesses importing compression-ignition nonroad engines and small spark-ignition nonroad engines, including those incorporated into nonroad equipment or vehicles.

Estimated Number of Respondents: 1,500.

Frequency of Response: Other—upon importation.

Estimated Total Annual Hour Burden: 77,386.

Estimated Total Annual Cost: $5,219,175, which includes $0 annualized capital and O&M costs.

Changes in the Estimates: There is an increase of 1,993 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase in the number of engines tested and the associated cost.

Dated: August 28, 2003.

Doreen Sterling,

Acting Director, Collection Strategies Division.

[FR Doc. 03–22649 Filed 9–4–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*. weekly receipt of Environmental Impact Statements Filed August 25, 2003 Through August 29, 2003 Pursuant to 40 CFR 1506.9.

EIS No. 030398, Draft EIS, FRA, FL, Florida High Speed Rail from Tampa to Orlando, Transportation Improvement, NPDES Permit and U.S. Army COE Section 404 Permit, Hillsborough, Orange, Osceola and Polk Counties, FL, Comment Period Ends: October 20, 2003, Contact: David Valenstein (202) 493–6368.

EIS No. 030399, Draft EIS, EPA, SC, Port Royal Ocean Dredged Material Disposal Site (ODMDS), Designation, SC, Comment Period Ends: October 20, 2003, Contact: Wesley B. Crum (404) 562–9352.

EIS No. 030400, Draft EIS, FHW, LA, Kansas Lane Connector Project, Construction between US Highway 80 (Desiard Street) and U.S. Highway 165 and the Forsythe Avenue Extension, U.S. Army COE Section 10 and 404 Permits, City of Monroe, Quachita Parish, LA, Comment Period Ends: October 31, 2003, Contact: Wayne Nguyen (225) 248–4193.

EIS No. 030401, Draft EIS, FRC, OR, Pelton Round Butte Hydroelectric Project, (FERC No. 2030–036), Application for a New License for Existing 366.82-megawatt Project, Deschutes River, OR, Comment Period Ends: October 20, 2003, Contact: Nicholas Jayjack (202) 502–6073. This document is available on the Internet at: *http://www.ferc.gov*.

EIS No. 030402, Draft EIS, IBR, AZ, Wellton-Mohawk Title Transfer Project, Transfer of the Facilities, Works, and Lands, Wellton-Mohawk Division of the Gila Project, Wellton-Mohawk Irrigation and Drainage District, Yuma County, AZ, Comment Period Ends: November 04, 2003, Contact: Margot Selig (702) 293–8192.

EIS No. 030403, Draft EIS, AFS, OR, North Fork Burnt River Mining Project, Proposal for Mineral Plans of Operation, Implementation, Wallowa-Whitman National Forest, Unity Ranger District, Whitman Unit, Blue Mountains, Town of Unity, Baker County, OR, Comment Period Ends: October 20, 2003, Contact: Wayne Frye (541) 523–1945.

EIS No. 030404, Draft EIS, AFS, WA, Crupina Integrated Weed Management

Project, Control and Eradication of Crupina, Implementation, Okanogan and Wenatchee National Forests, Chelan Ranger District, Chelan County, WA, Comment Period Ends: October 20, 2003, Contact: Mallory Lenz (509) 682–2576.

EIS No. 030405, Final EIS, FHW, MT, U.S. 89 from Fairfield to Dupuyer Corridors Study, Reconstruction, Widening, Realignment and Route Connection between Yellowstone National Park to the South with Glacier National Park to the North, Teton and Pondera Counties, MT, Wait Period Ends: October 06, 2003, Contact: Darrin Grenfell (406) 449–5302.

Amended Notices

EIS No. 030266, Draft EIS, EPA, KY, VA, TN, WV, Programmatic—Mountaintop Mining and Valley Fills Program Guidance, Policies or Regulations to Minimize Adverse Environmental Effects to Waters of the U.S. and Fish and Wildlife Resources, Implementation, Appalachia, Appalachian Study Area, WV, KY, VA and TN, Comment Period Ends: January 6, 2004, Contact: John Forren (EPA) (215) 814–2705. Revision of FR Notice Published on 8/22/2003: CEQ Comment Period Ending 9/6/2004 has been Corrected to 1/6/2004.

EIS No. 230392, Draft Supplement, NOA, AK, Programmatic EIS—Alaska Groundfish Fisheries, New Information concerning the Ecosystem and a Preferred Alternative, Fishery Management Plans for the Groundfish Fishery of the Gulf of Alaska and the Groundfish of the Bering Sea and Aleutian Islands Area, North Pacific Fishery Management Council, AK, Comment Period Ends: October 15, 2003, Contact: James W. Balsiger (907) 586–7221. Revision of FR Notice Published on 8/29/2003: Correction of Document Status from Revised Draft to Draft Supplement.

Dated: September 2, 2003.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 03–22634 Filed 9–4–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10 a.m. on Friday, September 5, 2003, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Interim Final Capital Rule for Consolidated Asset-Backed Commercial Paper Program Assets.

Memorandum and resolution re: Notice of Proposed Rulemaking on Capital Requirements for Asset-Backed Commercial Paper Programs and Early Amortization Provisions.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Ms. Valerie J. Best, Assistant Executive Secretary of the Corporation, at (202) 898–3742.

Dated: August 29, 2003.

Federal Deposit Insurance Corporation.

Valerie J. Best,

Assistant Executive Secretary.

[FR Doc. 03–22774 Filed 9–3–03; 1:10 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act; Notice of Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: 10 a.m.—September 11, 2003.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Fact Finding Investigation No. 25—Practices of Transpacific Stabilization Agreement Members Covering the 2002–2003 Service Contract Season.

2. Practices of the Puerto Rico Ports Authority, *et al.*

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–22843 Filed 9–3–03; 3:58 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 29, 2003.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Evergreen Holdings, LLC, New York, New York; to become a bank holding company by acquiring 65.88 percent of the voting shares of Eastbank Corporation, New York, New York and Eastbank, National Association, New York, New York.

2. Shinhan Financial Group, Company, Ltd., Seoul, Korea; to become

a bank holding company by acquiring 80.04 percent of the voting shares of Chohung Bank, Seoul, Korea, and CHB America Bank, New York, New York.

B. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. BancTrust Financial Group, Inc., Mobile, Alabama; to merge with CommerceSouth, Inc., Eufaula, Alabama, and thereby indirectly acquire CommerceSouth Bank, Eufaula, Alabama.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Mercantile Bancorp, Inc., Quincy, Illinois; to acquire up to 13.96 percent of the voting shares of NorthStar Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire voting shares of NorthStar Bank, National Association, Kansas City, Missouri.

Board of Governors of the Federal Reserve System, August 29, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–22602 Filed 9–4–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 18, 2003.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30303:

1. Capitol City Bancshares, Inc., Atlanta, Georgia; to engage *de novo* through its subsidiary, Capitol City Home Loans, Inc., Atlanta, Georgia, in making, acquiring, brokering, or servicing loans or other extensions of credit, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 29, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–22601 Filed 9–4–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–113]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Issues Related to the Use of Mass Media in African-American Women: Phase I—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background

Women's health programs, including the National Breast and Cervical Cancer Early Detection Program (NBCCEDP), offer low-cost or free breast cancer screening to uninsured, low-income women. In 1991, CDC established the NBCCEDP to increase breast and cervical cancer screening among uninsured, underserved, low-income women. To date, over 1.5 million women have received services from NBCCEDP-sponsored programs. Yet NBCCEDP-sponsored programs are estimated to reach only 18% of women 50 years old and older who are eligible for screening services. A research priority for the NBCCEDP is to identify effective strategies to increase enrollment among eligible women who have never received breast or cervical cancer screening. Why women do not participate in this screening is not well understood.

The purpose of this task is to conduct formative research to better understand how low-income African-American women might use TV/radio as sources of health information and identify the particular formats, programs, stations, and hours the targeted woman listen. This task will examine how African-American women get information on community issues, services, and events and determine if these can be used as viable means to disseminate information on health services. The only cost to respondent is their time.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/ response (in hours)	Total burden (in hours)
Black women ages 40–64 (Georgia Residence)	180	1	1.5	270
Total				270

Dated: August 28, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–22615 Filed 9–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–03–115]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer at (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Severe Acute Respiratory Syndrome (SARS) Outbreak Investigation (0920–0956)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC). The purpose of this project is to prepare for a response to another possible outbreak of Severe Acute Respiratory Syndrome (SARS) in the United States and abroad. In late February 2003, CDC began supporting the World Health Organization (WHO) in the investigation of a multi-country outbreak of atypical pneumonia of unknown etiology. The illness was subsequently named SARS. By March 2003, cases of SARS were reported in the U.S. among travelers with a travel history to one or more of the three provinces in Asia where the SARS outbreak was first reported.

In order to prepare for another potential outbreak of SARS in the U.S. in the upcoming respiratory season, several collections of information may be required. Currently, CDC is collecting this information under a six month emergency clearance. To preserve continuity in the surveillance information collected by public health investigators, CDC is requesting a 3 year extension on the current surveillance forms. The information collected includes contact information for travelers on a flight with a person or persons suspected of having SARS, health care work exposures, and case report forms. There is no cost to the respondent.

Form	Respondent	No. of respondents	No. of responses/ respondent	Avg. burden per response (in hours)	Total burden (in hours)
International SARS Case reports	Caseworker	500	1	30/60	250
SARS contact information	Airline passengers	3,000	1	5/60	250
SARS retrospective exposure form	Quarantine inspector	1,000	1	5/60	83
SARS Screening form	Health care workers	330	1	10/60	55
Health Care Worker exposure form	Health care workers	500	1	20/60	167
Unprotected HCW form	Health care workers	500	1	20/60	167
SARS Case Report Intake form	Health care workers/epidemiologists.	750	1	1	45,000
Total					45,972

Dated: August 28, 2003.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 03–22618 Filed 9–4–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Docket No. 2003N–0361]

Anti-Counterfeit Drug Initiative; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting on the agency's effort to combat counterfeit drugs. The purpose of the meeting is to enable interested individuals, organizations, and other stakeholders to present information on all aspects of the agency's initiative against counterfeit drugs. FDA is particularly interested in hearing about information related to technology, public education, regulatory and legislative issues, and industry and health professional issues. The agency is also inviting vendors of anti-counterfeit technologies relevant to the pharmaceutical industry to display their

products for the educational benefit of FDA and attendees. The objective of the meeting is for FDA to gather information to assist FDA's counterfeit drug task force in finalizing its report, which will include recommendations on steps that FDA, other government agencies, and the private sector can take to minimize the risks to the public from counterfeit drugs entering the supply chain.

DATES AND TIME: The public meeting and vendor display will be held on October 15, 2003, from 9 a.m. to 5 p.m. Attendees should send notice of intent to attend the meeting by October 9, 2003. Speakers must register and submit a short summary of the presentation by September 24, 2003. Presenters must send final electronic presentations in Microsoft PowerPoint, Microsoft Word, or Adobe Portable Document Format (PDF) to FDA by close of business on October 3, 2003.

However, written and electronic comments will be accepted for consideration until November 3, 2003. Vendors must register and submit a brief summary of the product(s) they plan to display by close of business September 24, 2003.

ADDRESSES: The public meeting and vendor display will be held at the Four Points Sheraton Bethesda, 8400 Wisconsin Ave., Bethesda, MD 20814, 301–654–1000. The hotel may be reached by Metro using the Medical Center Station on the red line, which is 2 1/2 blocks from the hotel; or you may call the hotel for shuttle bus service. Notice of intent to attend the meeting and requests to present at the meeting should be sent to Elizabeth French, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360, FAX 301–594–6777, e-mail: *efrench@oc.fda.gov*. Requests for vendor display at the meeting should be sent to Karen Strambler, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3360, FAX 301–594–6777, e-mail: *kstrambler@oc.fda.gov*.

Registration and Requests for Presentation: If you wish to attend the meeting, please notify Elizabeth French (see **ADDRESSES**). If you wish to present at the public meeting, please submit your request and a summary of your presentation to Elizabeth French at FDA (see **ADDRESSES**). Requests should be identified with the docket number listed in the heading of this document.

Requests to present should contain the following items:

- Presenter's name;
- Address;
- Telephone number;
- E-mail address;
- Affiliation, if any;
- Summary of the presentation; and
- Approximate amount of time requested for the presentation.

FDA encourages persons and groups having similar interests to consolidate their information and present it through a single representative, if possible, to enable a broad range of views to be presented. After reviewing the requests to present, the agency intends to schedule each appearance and notify each participant by e-mail or telephone of the time allotted to the person and the approximate time the person's presentation is scheduled to begin.

Presenters must send final electronic presentations in Microsoft PowerPoint, Microsoft Word, or PDF to FDA by close of business on October 3, 2003.

Registration and Request for Vendors Displays:

In addition, there will be an opportunity for vendors of authentication and track and trace anti-counterfeiting technologies to display their products in a room adjacent to the public meeting. The purpose of these displays is to educate FDA and other attendees of the types of anti-counterfeit technologies that are currently available. FDA is particularly interested in vendors displaying products that have the following features:

- Product is currently in commercial use or production;
- Product (or closely similar product) is currently being used in the pharmaceutical distribution system or that has clear applicability to authenticating or tracking pharmaceuticals (e.g., are easily incorporated into the manufacturing process, packaging, and/or labeling of drugs and biologics);
- Track/trace products that have the ability to locate the product throughout the distribution chain from the time of manufacture to the time sale to a consumer;
- Track/trace products that have the ability to be read and used by each entity (or individual) having physical contact with the pharmaceutical;
- Covert authentication technologies that are identifiable by one or more points in the distribution chain (i.e. by wholesalers, repackers, retailers, and health care entities); and
- Covert forensic technologies that are identifiable by a sophisticated analytical laboratory and the manufacturer.

FDA is not interested in having technologies displayed that are not in production or current commercial use, and that are not applicable to pharmaceuticals. For example, technologies that are not easily incorporated into the manufacture, packaging, and/or labeling of pharmaceuticals may not be appropriate for display. Vendors should take these factors into account prior to determining which products to display.

Because of limited space availability, all vendor requests may not be accommodated. If you wish to have a display at the public meeting, please submit your request and the following information to Karen Strambler (see **ADDRESSES**). Requests should be identified with the docket number listed in the heading of this document. Space available for display will be determined based on the number of registrants and total space available; however, the agency anticipates that of those that can be accommodated, vendors will each be provided with, at a minimum, a 4- by 3-foot table for table top display.

Requests to display should contain the following items:

- Presenter's name,
- Address,
- Telephone number,
- Affiliation,
- Product(s) for display, and
- Brief summary of how the anti-counterfeit technology meets the criteria listed in the previous list items.

After reviewing the requests to display, FDA intends to notify each vendor by e-mail or telephone whether there is space available for display.

For Information Regarding This Notice: Poppy Kendall, Office of Policy (HF–11), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–9278, FAX 301–594–6777, e-mail: *poppy.kendall@fda.gov*.

If you need special accommodations due to disability, please inform Elizabeth French (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

I. Background

Counterfeit drugs pose potentially serious public health and safety concerns. They may contain only inactive ingredients, incorrect ingredients, improper dosages, dangerous subpotent or superpotent ingredients, or even adventitious agents or contaminants such as harmful bacteria. In the United States, drug counterfeiting is a relatively rare event. Although FDA believes domestic counterfeiting is not widespread, the agency has recently seen an increase in counterfeiting activities as well as a more sophisticated ability to introduce finished dosage counterfeits into the otherwise legitimate drug distribution channels. During the late 1990's, FDA counterfeit drug investigations averaged about five per year. Since 2000,

however, FDA counterfeit drug investigations have increased to an average of over 20 per year.

On July 16, 2003, FDA announced an initiative to more aggressively protect American consumers from the risks associated with counterfeit drugs and reduce the possibility of potentially unsafe counterfeit drugs reaching consumers. As part of this effort, FDA established an internal task force that will develop recommendations for steps that FDA, other government agencies, and the private sector can take to minimize the risks to the public from counterfeit drugs getting into the supply chain. Some of the areas that FDA's task force is exploring are included in the following topics:

- *Technology*: Assess the extent to which currently available and potential technologies can help assure the authenticity of drugs;
- *Regulatory/Legislative Issues*: Evaluate potential State and Federal regulatory and legislative changes that could be made to strengthen the nation's protections against counterfeiting;
- *Public Education*: Evaluate ways to educate consumers and health providers on steps they can take to minimize risks associated with counterfeit drugs as well as what to look for and do if they suspect they have received a counterfeit drug;
- *Industry and Health Professional Issues*: Identify actions industry and health professionals can take to prevent, detect, and respond to counterfeit drugs.

The task force anticipates the following deliverables:

- Interim task force report to be released in September 2003. We intend to include preliminary findings on which all interested parties may comment;
- Final task force report to be released in January 2004. We intend to provide recommendations for public and private sector actions to address the problem of counterfeit drugs.

II. Scope of Discussion

FDA is planning this public meeting in order to hear public comments on ways to combat counterfeit drugs. The objective of the meeting is for FDA to gather information to assist FDA's counterfeit drug task force in finalizing its report, which will include recommendations on steps that FDA, other government agencies, and the private sector can take to minimize the risks to the public from counterfeit drugs entering the supply chain. We anticipate that discussions at this meeting will include presentations from members of the public.

FDA plans to include with the task force interim report a series of questions specifically addressing the preliminary findings. The questions will be posted on FDA's Web site at *www.fda.gov*. We request that presenters address these questions at the public meeting as well as the topics of interest listed in the following paragraphs. Specific topics of interest include, but are not limited to the following topics:

A. Technology

1. What anti-counterfeit technologies currently are available for use as anti-counterfeit measures for pharmaceuticals (e.g., track/trace, authentication)? What are the costs associated with these technologies?
2. What is the current status of, and barriers to, adopting an industry standard for use of anti-counterfeiting technology?
3. What role should FDA play in facilitating the use of anti-counterfeit technologies and in the creation of an industry standard for use of anti-counterfeiting measures?
4. Should anti-counterfeiting measures be used for all drugs and biologics or just for drugs at high risk for counterfeiting? Is there a way to identify drugs at high risk for counterfeiting?

B. Regulatory and Legislative Issues

1. In 2001, FDA submitted a report to Congress (*http://www.fda.gov/oc/pdma/report2001/default.htm*) on the status of the implementation and enforcement of the Prescription Drug Marketing Act (PDMA). As explained in this report, we raised concerns regarding implementation of the wholesale distribution provisions at 21 CFR 203.50, and these provisions have been stayed until April 2004. Have circumstances changed since the issuance of the report to Congress that could affect FDA's decision to continue the stay or implement these provisions?
2. How could PDMA be strengthened or augmented to reduce the risk of counterfeit drugs and biologicals from reaching consumers?
3. If PDMA were amended by Congress to require wholesale distributors to prepare and pass on a pedigree to all customers ("universal pedigree"), including to retail pharmacies, would the risk of distribution of counterfeit, expired, or otherwise unsuitable drugs to consumers be decreased?
4. How could state pharmacy practice acts be augmented or strengthened to minimize the introduction of counterfeit drugs into the drug distribution chain? Please give specific suggestions.

C. Public Education

1. What are the information needs of consumers, trade groups, the media, state governments, manufacturers, wholesalers, pharmacists, and other health care professionals to help identify and report suspected counterfeit drugs?
2. What is the most effective and efficient way for FDA to notify the public and health professionals that a counterfeit product has been identified? What are the emergency messages that FDA should deliver to its various audiences when a report of a suspected counterfeit drug is received by the agency?
3. What types of communication tools are already in existence and/or should be developed to assist FDA in delivering its messages about counterfeiting?
4. How can FDA, other governmental agencies, and private stakeholders work together to create and disseminate education messages to various audiences (e. g. consumers, wholesalers, pharmacies) that are consistent while delivering the information that each stakeholder needs?

D. Industry and Health Professional Issues

1. What is the role of manufacturers, wholesalers, retailers, repackagers, and pharmacists in the following areas: (1) Identifying counterfeits, (2) preventing the introduction of counterfeits into the distribution chain, and (3) educating consumers. Should these stakeholders create in-house committees to develop and implement security and anti-counterfeit measures? Should stakeholders develop compliance programs?
2. Should a counterfeit drug alert network be developed? If so, should it be adapted from existing systems or should a new system be created? What would be the associated costs of adapting or creating a network?

We invite public comment on the overall FDA anti-counterfeit drug initiative, with a focus on the questions listed previously in this document.

III. Comments

Interested persons may submit to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, written or electronic comments by November 3, 2003. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Groups should submit two copies. Individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the

heading of this document. You should annotate and organize your comments to identify the specific questions to which they refer. To ensure timely handling, the outer envelope should be clearly marked with the docket number listed in the heading of this document along with the statement "Counterfeit Drug Meeting." Comments to the docket can be reviewed in the Division of Dockets Management Monday through Friday between 9 a.m. and 4 p.m.

IV. Transcripts

You may request a copy of the transcript of the meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 14 working days after the meeting at a cost of 10 cents per page or on compact disc at a cost of $14.25 each. You can also examine the transcript Monday through Friday between 9 a.m. and 4 p.m. in the Division of Dockets Management.

V. Electronic Access

Persons with access to the Internet may obtain additional information on the public meeting at *http://www.fda.gov/oc/initiatives/counterfeit/*.

Dated: September 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22789 Filed 9–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Biotechnology Subcommittee of the Food Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Food Biotechnology Subcommittee of the Food Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 24, 2003, from 8:30 a.m. to 4:30 p.m.

Location: JW Marriott Hotel, 1331 Pennsylvania Ave., Washington, DC, 202–314–4714.

Contact Person: Michael Watson, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3122, or FDA Advisory Committee Information Line, 1–800–741–8138 301–443–0572 in the Washington, DC area), code 10564. Please call the Information Line for up-to-date information on this meeting.

Agenda: The purpose of the meeting is to discuss the science-based approaches to the molecular characterization of bioengineered foods as part of FDA's safety assessment.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 10, 2003. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 10, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Michael Watson at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 28, 2003.

Peter J. Pitts,

Asssociate Commissioner for External Affairs.

[FR Doc. 03–22581 Filed 9–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: General and Plastic Surgery Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 14, 2003, from 8 a.m. to 10 p.m., and October 15, 2003, from 7:30 a.m. to 5 p.m.

Location: Gaithersburg Marriott, Grand Ballroom, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: David Krause, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–3090, ext. 141, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12519. Please call the Information Line or access the Internet at *http://www.fda.gov/cdrh/panelmtg.html* for up-to-date information on this meeting.

Agenda: On October 14 and 15, 2003, the committee will discuss, make recommendations, and vote on a premarket approval application for Silicone Gel-Filled Breast Prostheses. Background information, including the agenda and questions for the committee, will be available to the public on October 10, 2003, on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 30, 2003. Oral presentations from the public will be scheduled on October 14, 2003, between approximately 8 a.m. and 12 noon, and on October 15, 2003, between approximately 7:30 a.m. and 11:30 a.m. Time allotted for each presentation is limited. Those desiring to make formal

oral presentations should notify the contact person before September 30, 2003, and submit a brief statement of the general nature of the comments they wish to present, and the names and addresses of proposed participants.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 29, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–22580 Filed 9–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science. This meeting was announced in the **Federal Register** of August 14, 2003 (68 FR 48614). The amendment is being made to reflect a change in the date and time, agenda, and procedure portions of the meeting. Due to administrative complications, all topics previously announced will be discussed on September 17, 2003. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Hilda Scharen, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 14, 2003, FDA announced that a meeting of the Manufacturing Subcommittee of the Advisory Committee for Pharmaceutical Science would be held on September 17 and 18, 2003. On page 48614, in the second column, the agenda portion of the meeting is amended to read as follows:

Date and Time: The meeting will be held on September 17, 2003, from 8:30 a.m. to 5 p.m.

Agenda: On September 17, 2003, the subcommittee will discuss the following topics: (1) Quality by design and how it is distinct from approaches that attempt to test in quality; and (2) define principles by which risk management is integrated into decisionmaking.

Procedures: Oral presentations from the public will be scheduled between approximately 11:30 a.m. and 12:30 p.m.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 29, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–22628 Filed 9–4–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0385]

Draft "Guidance for Industry: Comparability Protocols—Protein Drug Products and Biological Products—Chemistry, Manufacturing, and Controls Information;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Industry: Comparability Protocols—Protein Drug Products and Biological Products—Chemistry, Manufacturing, and Controls Information" dated September 2003. The draft guidance document provides recommendations to applicants on preparing and using comparability protocols for changes in chemistry, manufacturing, and controls of products in approved marketing applications. The guidance applies to comparability protocols that applicants would submit in biologics license applications (BLAs) or supplements to these applications for therapeutic recombinant deoxyribonucleic acid (DNA) derived protein products, naturally derived protein products, plasma derivatives, vaccines, allergenics and therapeutic DNA plasmids. The guidance also applies to new drug applications (NDAs), abbreviated new drug applications (ANDAs), new animal drug applications (NADAs), abbreviated new animal drug applications (ANADAs), or supplements to these applications for protein drug products, and certain peptides that are not sufficiently characterizable (i.e., complex mixture of small peptides).

DATES: Submit written or electronic comments on the draft guidance by December 4, 2003, to ensure their adequate consideration in preparation of the final guidance. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448; or to the Office of Training and Communications, Division of Communications Management, Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, 5600 Fishers Lane, Rockville, MD 20857; or to the Communications Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210; or Stephen K.

Moore, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6430; or Dennis Bensley, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6956.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft document entitled "Guidance for Industry: Comparability Protocols—Protein Drug Products and Biological Products—Chemistry, Manufacturing, and Controls Information" dated September 2003. The draft document applies to comparability protocols that would be submitted in BLAs, or supplements to these applications, for therapeutic recombinant DNA derived protein products, naturally derived protein products, plasma derivatives, vaccines and allergenics, therapeutic DNA plasmids and NDAs, ANDAs and investigational new drugs (INDs) for protein drug products, and not sufficiently characterizable peptide products (e.g., complex mixture of small peptides).

The draft guidance does not pertain to comparability protocols for human blood and blood components intended for transfusion and for further manufacture, somatic cell therapy, and gene therapy vectors (except therapeutic DNA plasmids). It also does not pertain to vaccines for veterinary use because these are regulated by the U.S. Department of Agriculture.

The draft guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collection of information in the guidance was approved under OMB control numbers 0910–0001, 0910–0032, and 0910–0338.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit written or electronic comments to ensure adequate consideration in preparation of the final guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.fda.gov/cber/guidelines.htm*, *http://www.fda.gov/ohrms/dockets/default.htm*, *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cvm/guidance/published.htm*.

Dated: August 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22577 Filed 9–3–03; 10:00 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0386]

Draft Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical Current Good Manufacturing Practice; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP." In the draft guidance, the agency describes a formal, two-tiered dispute resolution process intended to resolve disputes of scientific and technical issues relating to current good manufacturing practice (CGMP) that arise during FDA inspections of pharmaceutical manufacturers.

DATES: Submit written or electronic comments on the draft guidance by March 3, 2004. General comments on agency guidance documents are welcome at any time. Submit written or electronic comments on the collection of information by November 4, 2003.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857; the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852–1448; or Communications Staff (HFV–12), Center for Veterinary Medicine, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance and on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the draft guidance and the collection of information to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Mary Jane Mathews, Center for Drug Evaluation and Research (HFD–3), Food and Drug Administration, 1451 Rockville Pike, Rockville, MD 20852, 301–594–2847.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled "Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP." The guidance was drafted as part of the FDA initiative "Pharmaceutical CGMPs for the 21st Century: A Risk-Based Approach," which was announced in August 2002. The initiative focuses on FDA's current CGMP program and covers the manufacture of veterinary and human drugs, including human biological drug products.

The agency formed the Dispute Resolution Working Group comprising representatives from the Office of Regulatory Affairs (ORA), the Center for Drug Evaluation and Research (CDER), the Center for Biologics Evaluation and Research (CBER), and the Center for Veterinary Medicine (CVM). The working group met weekly on issues related to the dispute resolution process and met with stakeholders in December 2002 to seek their input.

The draft guidance was initiated in response to industry's request for a formal dispute resolution process to resolve differences related to scientific and technical issues that arise between investigators and pharmaceutical manufacturers during FDA inspections of foreign and domestic manufacturers. In addition to encouraging manufacturers to use currently available dispute resolution processes, the draft guidance describes a formal two-tiered dispute resolution process that provides a formal mechanism for requesting review and decision on issues that arise during inspections.

- Tier-one of the dispute resolution process provides a mechanism to raise scientific or technical issues to the ORA and center levels.
- Tier-two of the dispute resolution process provides a mechanism to raise scientific or technical issues to the agency's Dispute Resolution Panel for Scientific and Technical Issues Related to Pharmaceutical CGMP (DR Panel).

The draft guidance also covers the following topics:

- The suitability of certain issues for the formal dispute resolution process, including examples of some issues with a discussion of their appropriateness for the dispute resolution process.
- Instructions on how to submit requests for formal dispute resolution and a list of the supporting information that should accompany these requests.
- Public availability of decisions reached during the dispute resolution process to promote consistent application and interpretation of drug quality-related regulations.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on "Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Two copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (the PRA), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on the following topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Formal Dispute Resolution: Scientific and Technical Issues Related to Pharmaceutical CGMP.

Description: The draft guidance is intended to provide information to manufacturers of veterinary and human drugs, including human biological drug products, on how to resolve disputes of scientific and technical issues relating to CGMP. Disputes related to scientific and technical issues may arise during FDA inspections of pharmaceutical manufacturers to determine compliance with CGMP requirements, or during FDA's assessment of corrective actions undertaken as a result of such inspections. The draft guidance provides procedures that will encourage open and prompt discussion of disputes and lead to their resolution. The draft guidance describes procedures for raising such disputes to the ORA and center levels and for requesting review by the DR Panel.

When a scientific or technical issue arises during an FDA inspection, the manufacturer should initially attempt to reach agreement on the issue informally with the investigator. Certain scientific or technical issues may be too complex or time-consuming to resolve during the inspection. If resolution of a scientific or technical issue is not accomplished through informal mechanisms prior to the issuance of the Form FDA 483, the manufacturer can formally request dispute resolution and can use the formal two-tiered dispute resolution process described in the draft guidance.

Tier-one of the formal dispute resolution process involves scientific or technical issues raised by a manufacturer to the ORA and center levels. If a manufacturer disagrees with the tier-one decision, tier-two of the formal dispute resolution process would then be available for appealing that decision to the DR Panel.

If a manufacturer disagrees with the scientific or technical basis for an observation listed by an investigator on a Form FDA 483, the manufacturer can file a written request for formal dispute resolution with the appropriate ORA unit as described in the draft guidance. The request for formal dispute resolution should be made within 10 days of the completion of an inspection, and should include all supporting documentation and arguments for review, as described. If a manufacturer disagrees with the tier-one decision in the formal dispute resolution process, the manufacturer can file a written request for formal dispute resolution by the DR Panel. The manufacturer should provide the written request for formal dispute resolution and all supporting documentation and arguments, as described in the following paragraphs, to the DR Panel within 60 days of receipt of the tier-one decision.

All requests for formal dispute resolution should be in writing and include adequate information to explain the nature of the dispute and to allow FDA to act quickly and efficiently. Each request should be sent to the appropriate address listed in the draft guidance and include the following:

- Cover sheet that clearly identifies the submission as either a request for tier-one dispute resolution or a request for tier-two dispute resolution;
- Name and address of manufacturer inspected (as listed on the Form FDA 483);
- Date of inspection (as listed on the Form FDA 483);

- Date the Form FDA 483 issued (from the Form FDA 483);
- Firm establishment inventory (FEI) number, if available (from the Form FDA 483);
- Names and titles of FDA employees who conducted inspection (from the Form FDA 483);
- Office responsible for the inspection, e.g., district office, as listed on the Form FDA 483;
- Application number if the inspection was a preapproval inspection;
- Comprehensive statement of each issue to be resolved:
  - Identify the observation in dispute.
  - Clearly present the manufacturer's scientific position or rationale concerning the issue under dispute with any supporting data.
  - State the steps that have been taken to resolve the dispute, including any informal dispute resolution that may have occurred before the issuance of the Form FDA 483.
  - Identify possible solutions.
  - State expected outcome.
- Name, title, telephone and fax number, and e-mail address (as available) of manufacturer contact.

Description of Respondents: Pharmaceutical manufacturers of veterinary and human drug products and human biological drug products.

Burden Estimate: FDA has reviewed the total number of informal disputes that currently arise between manufacturers and investigators (and FDA district offices) when a manufacturer disagrees with the scientific or technical basis for an observation listed on a Form FDA 483. FDA estimates that approximately 12 such disputes occur annually. FDA believes that the number of requests for formal dispute resolution under the draft guidance would be higher because manufacturers have expressed reluctance to dispute with the agency scientific or technical issues raised in an investigation in the absence of a formal mechanism to resolve the dispute. In addition, manufacturers have requested the formal mechanisms in the draft guidance to facilitate the review of such disagreements. Therefore, FDA estimates that approximately 25 manufacturers will submit approximately 25 requests annually for a tier-one dispute resolution. FDA also estimates that approximately five manufacturers will appeal approximately five of these requests to the DR Panel (request for tier-two dispute resolution).

Based on the time it currently takes manufacturers to prepare responses to FDA concerning issues raised in a Form FDA 483, FDA estimates that it will take manufacturers approximately 30 hours to prepare and submit each request for a tier-one dispute resolution and approximately 8 hours to prepare and submit each request for a tier-two dispute resolution.

Based on the methodology and assumptions in the previous paragraphs, table 1 of this document provides an estimate of the annual reporting burden for requests for a tier-one dispute resolution and requests for a tier-two dispute resolution under the draft guidance. FDA requests comments on this analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Requests for Tier-One Dispute Resolution	25	1	25	30	750
Requests for Tier-Two Dispute Resolution	5	1	5	8	40
Total					790

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

IV. Electronic Access

Persons with access to the Internet may obtain the draft guidance document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm* or*http://www.fda.gov/cber/guidelines.htm*

Dated: August 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22575 Filed 9–3–03; 10:00 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2003D–0060]

Guidance for Industry on "Part 11, Electronic Records; Electronic Signatures—Scope and Application;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Part 11, Electronic Records; Electronic Signatures—Scope and Application." The guidance explains FDA's current thinking regarding the requirements and application of part 11 (21 CFR part 11). FDA has begun to re-examine part 11 as it applies to all FDA regulated products. This guidance explains that we will narrowly interpret the scope of part 11. While the re-examination of part 11 is under way, we intend to exercise enforcement discretion with respect to certain part 11 requirements. With respect to systems that were operational before August 20, 1997, the effective date of the final rule establishing part 11, we intend to exercise enforcement discretion with respect to all part 11 requirements under certain circumstances.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and

Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Joseph C. Famulare, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 11919 Rockville Pike, Rockville, MD 20852, 301–827–8940, or *part11@cder.fda.gov*; or David Doleski, Center for Biologics Evaluation and Research (HFM–676), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3031, *doleski@cber.fda.gov*; or John Murray, Center for Devices and Radiological Health (HFZ–340), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–4659, *jfm@cdrh.fda.gov*; or Vernon D. Toelle, Center for Veterinary Medicine (HFV–234), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0312, *vtoelle@cvm.fda.gov*; or JoAnn Ziyad, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3116, *jziyad@cfsan.fda.gov*; or Scott MacIntire, Office of Regulatory Affairs (HFC–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857–1706, 301–827–0386, *smacinti@ora.fda.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Part 11, Electronic Records; Electronic Signatures—Scope and Application." The guidance explains FDA's current thinking regarding the requirements and application of part 11.

In March 1997, FDA issued final part 11 regulations that provided criteria for acceptance by FDA, under certain circumstances, of electronic records, electronic signatures, and handwritten signatures executed to electronic records as equivalent to paper records, and handwritten signatures executed on paper (62 FR 13430, March 20, 1997). These regulations, which apply to all FDA program areas, were intended to permit the widest possible use of electronic technology, consistent with FDA's responsibility to protect the public health.

After part 11 became effective in August 1997, significant discussions ensued among industry, contractors, and the agency concerning the scope, interpretation, and implementation of the regulations. Concerns have been raised that some interpretations of the part 11 requirements would have the following effects: (1) Unnecessarily restrict the use of electronic technology in a manner that is inconsistent with FDA's stated intent in issuing the rule, (2) significantly increase the costs of compliance to an extent that was not contemplated at the time the rule was drafted, and (3) discourage innovation and technological advances without providing a significant public health benefit. These concerns have been raised particularly in the areas of part 11 requirements for validation, audit trails, record retention, record copying, and legacy systems.

As an outgrowth of its current good manufacturing practice (CGMP) initiative for human and animal drugs and biologics, FDA has begun to re-examine part 11 as it applies to all FDA regulated products. We may revise provisions of part 11 as a result of that examination. This guidance explains that we will narrowly interpret the scope of part 11. While the re-examination of part 11 is under way, we intend to exercise enforcement discretion with respect to certain part 11 requirements. However, with respect to legacy systems we intend to exercise enforcement discretion with respect to all part 11 requirements under certain circumstances. As announced on February 25, 2003, in the **Federal Register** document announcing the availability of the draft version of this guidance (68 FR 8775), we have withdrawn Compliance Policy Guide 7153.17 and previously published part 11 draft guidance documents on validation, glossary of terms, time stamps, and maintenance of electronic records. Also, in the **Federal Register** of February 4, 2003 (68 FR 5645), we announced the withdrawal of the previously published part 11 draft guidance on electronic copies of electronic records.

FDA received a number of comments when it issued the February 2003 draft version of this guidance. We have considered the comments on the draft carefully and have made some changes to address those comments. Among other things, we have revised the guidance by making the following changes:

1. Emphasize that part 11 remains in effect and that enforcement discretion applies only to certain requirements or circumstances as identified in the guidance;
2. Clarify the term 'enforcement discretion';
3. Explain that time stamps should be clearly referenced;
4. Remove the National Institute of Standards and Technology risk management guide as a reference and add the ISO 14971 risk management guide as a reference;
5. State that the FDA currently has no plans to re-issue the withdrawn part 11 draft guidance documents; and
6. Clarify the meaning of 'part 11 legacy system.'

This guidance provides recommendations to persons who, in fulfillment of a requirement in a statute or another part of FDA's regulations to maintain records or submit information to FDA, have chosen to maintain the records or submit designated information electronically and, as a result, have become subject to part 11.

This guidance announces that we intend to exercise enforcement discretion with respect to the validation, audit trail, record retention, and record copying requirements of part 11. We also intend to exercise enforcement discretion and do not intend to recommend or take enforcement action to enforce any part 11 requirements with regard to systems that were operational before August 20, 1997, the effective date of part 11 (commonly known as existing or legacy systems) while we are re-examining part 11. However, records must still be maintained or submitted in accordance with the underlying predicate rules.

It is important to note that FDA's exercise of enforcement discretion as described in this guidance is limited to specified part 11 requirements (setting aside legacy systems, as to which the extent of enforcement discretion, under certain circumstances, will be more broad). We intend to enforce all other provisions of part 11 including, but not limited to, certain controls for closed systems in § 11.10, the corresponding controls for open systems (§ 11.30), and requirements related to electronic signatures (e.g., §§ 11.50, 11.70, 11.100, 11.200, and 11.300). We expect continued compliance with these provisions, and we will continue to enforce them. Where the interpretation of part 11 in this guidance differs from the interpretation in the preamble to part 11, the interpretation in this guidance will apply.

This level 1 guidance is being issued consistent with FDA's good guidance

practices regulation (21 CFR 10.115). The guidance represents the agency's current thinking on "Part 11, Electronic Records; Electronic Signatures—Scope and Application." It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance at any time. Two paper copies of mailed comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: August 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22574 Filed 9–03–03; 10:00 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0380]

Draft Guidance for Industry: Process Analytical Technology — A Framework for Innovative Pharmaceutical Manufacturing and Quality Assurance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Guidance for Industry: PAT — A Framework for Innovative Pharmaceutical Manufacturing and Quality Assurance." The draft guidance explains a science-based, risk-based framework, "Process Analytical Technology, or PAT," for developing and implementing innovative manufacturing technology. The guidance is intended to encourage innovative pharmaceutical manufacturing and quality assurance. Working with existing regulations, this guidance also describes a regulatory approach that will enable the agency and the pharmaceutical industry to address technical and regulatory issues and questions anticipated during introduction of new manufacturing and quality assurance technologies.

DATES: Submit written or electronic comments on this draft guidance on paper or electronically, by November 4, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Divison of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Rajendra Uppoor, Center For Drug Evaluation and Research (HFD–003), 5600 Fishers Lane, Rockville, MD 20857, 301–594–5615, or

Dennis Bensley, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6956, or

Robert Coleman, Office of Regulatory Affairs, Food and Drug Administration, 60 8th Street North East, Atlanta, GA 30309, 404–253–1200, ext. 1295.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance entitled "Guidance for Industry: PAT — A Framework for Innovative Pharmaceutical Manufacturing and Quality Assurance." The draft guidance explains a science-based, risk-based framework, "Process Analytical Technology, or PAT," for developing and implementing innovative manufacturing technology. The guidance is intended to encourage innovative pharmaceutical manufacturing and quality assurance.

I. Background

Conventional pharmaceutical manufacturing is generally accomplished using batch processing with testing conducted on collected samples to ensure quality. This conventional approach has been successful in providing quality pharmaceuticals to the public. However, significant opportunities now exist for improving the efficiency of pharmaceutical manufacturing and quality assurance through the innovative application of modern process development and control technologies, including modern PAT. Unfortunately, the pharmaceutical industry generally has been hesitant to introduce new technologies and innovative systems into the manufacturing sector for a number of reasons. For example, one reason often cited is regulatory uncertainty, which may result from the perception that our existing regulatory system is unfavorable to the introduction of new technologies.

In August 2002, recognizing the need to free industry from its hesitant perspective, FDA launched a new initiative entitled "Pharmaceutical CGMPs for the 21st Century: A Risk-Based Approach."

Pharmaceutical development and manufacturing is evolving with increased emphasis on science and engineering principles. Effective use of pharmaceutical science and engineering principles and knowledge, throughout the life cycle of a product, can improve the efficiencies of both manufacturing and regulatory processes. FDA's initiative is designed to do just that using an integrated systems approach to regulating pharmaceutical product quality. This approach is based on science and engineering principles for assessing and mitigating risks related to poor product and process quality. The desired future state of pharmaceutical manufacturing may be characterized as: (1) Product quality and performance achieved and ensured through the design of effective and efficient manufacturing processes, (2) product and process specifications based on a mechanistic understanding of how formulation and process factors affect product performance, (3) continuous real time quality assurance, (4) regulatory policies and procedures tailored to recognize the level of scientific knowledge supporting products and processes, (5) risk-based regulatory approaches that recognize the

level of scientific understanding of how formulation and manufacturing process factors affect product quality and performance and the capability of process control strategies to prevent or mitigate the risk of producing a poor quality product. This draft guidance is part of this initiative and is intended to facilitate progress to this desired state.

The draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. You can use an alternative approach if the approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

The draft guidance is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding the draft guidance. Submit written or electronic comments to ensure adequate consideration in preparation of the final guidance. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: August 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22578 Filed 9–3–03; 10:00 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0382]

Draft Guidance for Industry on "Sterile Drug Products Produced by Aseptic Processing"

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Sterile Drug Products Produced by Aseptic Processing." FDA expects that enhanced compliance in the area of sterile drug manufacture will lead to a higher assurance of process consistency and minimize supply problems with therapeutically necessary drugs.

DATES: Submit written or electronic comments on the draft guidance by November 4, 2003. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT:

Richard Friedman, Center for Drug Evaluation and Research (HFD–320), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–9041; or

Robert Sausville, Center for Biologics Evaluations and Research (HFM–624), Food and Drug Administration,1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6201; or

Bob Coleman, Office of Regulatory Affairs (HFC–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 404–253–4295.

SUPPLEMENTARY INFORMATION:

I. Background

On September 27, 2002, FDA released a "concept paper" regarding aseptic processing (*www.fda.gov/cder/dmpq*) to solicit early input prior to formal issuance of a draft guidance for public comment. We are now issuing the draft guidance, which when finalized will revise the 1987 industry guidance "Sterile Drug Products Produced by Aseptic Processing." FDA's objective in revising the 1987 guidance is to issue a document that meets the following goals: (1) Provides greater clarity by including updated information regarding current good manufacturing practice (CGMP) expectations for aseptic processing facilities, and (2) reflects the latest scientific developments in this area of sterile drug quality. The 1987 guidance is being revised as part of the agency's broad effort "Pharmaceutical CGMPs for the 21st Century: A Risk-Based Approach," announced in August 2002.

In preparation for issuing this draft guidance, we presented our CGMP concept for aseptic processing at the Advisory Committee for Pharmaceutical Science on October 22, 2002. At this meeting, the concept paper was discussed in a public forum and critiqued by the advisory committee's members as well as a panel of invited aseptic processing experts. The advisory committee meeting yielded a number of issues that provided impetus for further discussion. In December 2002, a working group under the Product Quality Research Institute (PQRI) was formed to address these issues. The PQRI working group, comprising 41 aseptic processing experts from industry, academia, and FDA, recommended 8 specific text clarifications on the concept paper and 10 detailed recommendations on various issues of aseptic processing. The PQRI Steering Committee forwarded the working group's final report to FDA on March 19, 2003, and it was subsequently posted on PQRI's Web site *www.pqri.org*. (FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.) We have taken comments from the Advisory Committee and PQRI Working Group into consideration in converting the Concept Paper into this draft guidance.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on the manufacturing of sterile drugs produced by aseptic processing. It does

not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the draft guidance. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments* or two copies of any mailed comments, except that individuals may submit one copy. The draft guidance and the comments submitted to the docket may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance at *http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: August 27, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22576 Filed 9–3–03; 10:00 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Solicitation of Information and Recommendations for Developing Compliance Program Guidance for Recipients of NIH Research Grants

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice seeks the input and recommendations of interested parties as the OIG develops compliance program guidance (CPG) for recipients of extramural research grant and cooperative agreement (grant) awards from the National Institutes of Health (NIH). The OIG is soliciting comments, recommendations and other suggestions from interested parties and organizations on the value and fundamental principles of compliance programs for colleges, universities, and other recipients of NIH grants, along with the specific elements that these grant recipients should consider when developing and implementing an effective compliance program.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on November 4, 2003.

ADDRESSES: Please mail or deliver your written comments, recommendations and suggestions to the following address: Department of Health and Human Services, Office of Inspector General, Attention: OIG–13–CPG, Room 5527, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to the file code OIG–13–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5527 of the Cohen Building at 330 Independence Avenue, SW., Washington, DC 20201 on Monday through Friday of each week from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Richard Stern, Office of Counsel to the Inspector General, (202) 619–0335; or Joel Schaer, Office of Counsel to the Inspector General, (202) 619–0089.

SUPPLEMENTARY INFORMATION:

1. Past CPGs

The development of compliance program guidances is a major initiative of the OIG in its effort to assist participants in Department programs in preventing and reducing fraud and abuse and in complying with Federal program requirements. Over the past several years, the OIG has developed and issued 11 compliance program guidances. The suggestions contained in the guidances are not mandatory, nor do they represent an exclusive discussion of the advisable elements of a compliance program.

2. Developing Draft CPG for NIH Research Grant Recipients

Through this **Federal Register** notice, the OIG is seeking input from interested parties as the OIG considers the development of a CPG for recipients of extramural research grant awards from NIH. Under its governing statute, the OIG's oversight responsibility extends to all programs and operations of the Department, and the OIG promotes compliance efforts by all recipients of Department funds. One community of paramount importance to the Government's public health efforts is the colleges, universities, and other recipients of public funds committed to furthering biomedical research. These organizations are largely non-profit and educational, with over 50 percent of recipients of NIH research grant awards in the last several years being medical schools. Many of these organizations have instituted health care compliance programs in their hospitals, and an increasing number have begun developing compliance programs for sponsored research.

As with OIG's earlier CPGs, the purpose of this guidance will be to assist organizations in preventing fraud and abuse and in better complying with Federal requirements. We anticipate that the guidance for recipients of NIH research grants will contain seven elements that we consider necessary for a comprehensive compliance program. These seven elements include:

- Implementing written policies and procedures that foster an institutional commitment to stewardship and compliance;
- Designating a compliance officer and compliance committee;
- Conducting effective training and education;
- Developing effective lines of communication;
- Conducting internal monitoring and auditing;
- Enforcing standards through well-publicized disciplinary guidelines; and
- Responding promptly to detected problems, undertaking corrective action, and reporting to the appropriate Federal agency.

We are also considering an eighth element, "Defining roles and responsibilities and assigning oversight responsibility," that would include a discussion of the importance of effectively delegating oversight authority.

We would appreciate specific comments, recommendations and suggestions on aspects of these elements.

We are also interested in comments on (a) the scope of the guidance, and particularly the types of activities, such as grant administration, that should be subject to the CPG; and (b) the risk areas for recipients of NIH research grants. Based on our fraud investigations at research institutions, we have identified internal control deficiencies that may warrant attention in a CPG. OIG would also appreciate suggestions from the public on risk areas. Risk areas we have tentatively identified include: (i) The proper allocation of charges to grant projects; (ii) "time and effort" reporting, including an accurate reporting of the commitment of effort by researchers; and (iii) use of program income. We would also be interested in comments on each of these areas.

We will consider all comments, recommendations and suggestions received within the time frame

indicated above. Detailed justifications and empirical data supporting any suggestions would be appreciated. We also request that any comments, recommendations or suggestions be submitted in a format that addresses the topics outlined above in a concise manner, rather than in the form of comprehensive draft guidance that mirrors previous CPGs.

Dated: August 13, 2003.

Dara Corrigan,

Acting Principal Deputy Inspector General.

[FR Doc. 03–22626 Filed 9–4–03; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Aviation Security Advisory Committee Meeting

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aviation Security Advisory Committee (ASAC).

DATE: The meeting will take place on October 1, 2003, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Crowne Plaza Washington National Hotel, 1489 Jefferson Davis Highway, Arlington, VA 22202. Telephone: (703) 416–1600.

FOR FURTHER INFORMATION CONTACT: Joseph Corrao, Office of Transportation Security Policy, TSA Headquarters (Room 1146N), 701 S. 12th Street, Arlington, VA, 22202; telephone 571–227–2980, e-mail *joseph.corrao@dhs.gov*.

SUPPLEMENTARY INFORMATION: This meeting is announced pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.). The agenda for the meeting will include the report of the air cargo transportation security working groups, and the report of the general aviation airport security guidelines working group. This meeting, from 9 a.m. to 1 p.m., is open to the public but attendance is limited to space available.

Members of the public must make advance arrangements to present oral statements at the open ASAC meeting. Written statements may be presented to the committee by providing copies of them to the Chair prior to or at the meeting. Anyone in need of assistance or a reasonable accommodation for the meeting, should contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** In addition, sign and oral interpretation, as well as a listening device, can be made available at the meeting if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Arlington, Virginia, on September 2, 2003.

Tom Blank,

Assistant Administrator for Transportation Security Policy.

[FR Doc. 03–22666 Filed 9–4–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4809–N–36]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: September 5, 2003.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 28, 2003.

Mark R. Johnston,

Deputy Director, Office of Special Needs Assistance Programs.

[FR Doc. 03–22460 Filed 9–4–03; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; 90-Day Finding on Petition To Delist *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service, make a 90-day finding for a petition to remove *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch) from the Federal List of Threatened and Endangered Wildlife and Plants pursuant to the Endangered Species Act (ESA) (16 U.S.C. 1531 *et seq.*). We find that the petition presents substantial information indicating that delisting this plant may be warranted. We are initiating a status review to determine if delisting this species is warranted.

DATES: This finding was made on August 29, 2003. To be considered in the 12-month finding on this petition, comments and information should be submitted to us by November 4, 2003.

ADDRESSES: Comments, material, information, or questions concerning this petition and finding should be sent to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92009. The petition and supporting information are available for public inspection by appointment during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, at the above address (telephone: 760–431–9440).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531 *et seq.*) requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find substantial information present, we are required to promptly commence a review of the status of the species (50 CFR 424.14). "Substantial information" is defined in 50 CFR 424.14(b) as "that amount of

information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted." Petitioners need not prove that the petitioned action is warranted to support a "substantial" finding; instead, the key consideration in evaluating a petition for substantiality involves demonstration of the reliability and adequacy of the information supporting the action advocated by the petition.

On October 25, 2001, we received a petition to delist *Astragalus magdalenae* var. *peirsonii* (Peirson's milk-vetch) dated October 24, 2001, from David P. Hubbard, Ted J. Griswold, and Philip J. Giacinti, Jr. of Procopio, Cory, Hargreaves & Savitch, LLP, that was prepared for the American Sand Association (ASA), the San Diego Off-Road Coalition, and the Off-Road Business Association (ASA *et al.* 2001). Various supporting documents were submitted with the petition. The petition (ASA *et al.* 2001) asserts that the original decision to list *A. magdalenae* var. *peirsonii* was in error, and claims that: (1) The original listing decision was made without an actual plant count; (2) the original listing relied on data developed prior to the implementation of the California Desert Protection Act (CDPA); (3) the original listing decision relied on field studies that the Bureau of Land Management (BLM) has since determined were biased and scientifically unsound; (4) monitoring studies indicate that *A. magdalenae* var. *peirsonii* is abundant and thriving; and (5) plant counts confirm that the Imperial Sand Dunes support more than 100,000 *A. magdalenae* var. *peirsonii* individuals and a healthy seed bank.

On November 6, 2002 we received a 60-day notice of intent to sue from David P. Hubbard *et al.*, representing the ASA *et al*, citing our alleged failure to make the findings on this petition as required by the ESA. A complaint was executed in the United States District Court for the Southern District of California on February 25, 2003. The plaintiffs (ASA *et al.*) challenge the Service's failure to make both the 90-day finding and 12-month finding on petition to delist the Peirsons's milk-vetch. In August 2003, the Department of Justice entered into a settlement agreement with ASA *et al.*, requiring us to make a 90-day finding on this petition by August 29, 2003, and, if the 90-day finding is that the petition contains substantial information that delisting *Astragalus magdalenae* var. *peirsonii* may be warranted, a 12-month finding by May 31, 2004. As part of this settlement agreement, the petitioners asked that we also accept and consider the information provided in Phillips and Kennedy (2002) when making our findings.

The factors for listing, delisting, or reclassifying species are described at 50 CFR 424.11. We may delist a species only if the best scientific and commercial data available substantiate that it is neither endangered nor threatened. Delisting may be warranted as a result of: (1) Extinction, (2) recovery, or (3) a determination that the original data used for classification of the species as endangered or threatened were in error.

Biology and Distribution

Astragalus magdalenae var. *peirsonii* occurs essentially as one population of scattered colonies within the Algodones Dunes in the Sonoran Desert of Imperial County, California. The Algodones Dunes are often called the Imperial Sand Dunes, a designation derived from a land use area called the Imperial Sand Dunes Recreation Area established by BLM. The habitat for *A. magdalenae* var. *peirsonii* is slopes and hollows of wind-blown desert dunes, chiefly along a northwest-to-southeast orientation on the BLM-managed land. The distribution and relative abundance of the plant varies from place to place and year to year (WESTEC Services, Inc. (WESTEC) 1977; Willoughby 2000, 2001; Thomas Olsen Associates, Inc. (TOA) 2001; Phillips and Kennedy 2002). The tendency of plants to be found in patches is likely due to the localized dispersal of the fruits and seeds, as well as dune morphology and differences in local rainfall patterns.

Astragalus magdalenae var. *peirsonii* (Peirson's milk-vetch) is an erect to spreading, short-lived perennial in the Fabaceae (Pea family) (Barneby 1959, 1964). Plants may reach 20 to 70 centimeters (cm) (8 to 27 inches (in)) in height and develop taproots (Barneby 1964) that penetrate to the deeper, more moist sand. The stems and leaves are covered with fine, silky appressed (flat on surface) hairs. The small, narrow, widely spaced leaflets may fall off in response to drought. The purple flowers are arranged in 10-to 17-flowered axillary racemes. Individuals are reportedly able to flower in their first growing season (Barneby 1964; Romspert and Burk 1979). Romspert and Burk (1979) found inflorescences present from December through at least April. The fruits are 2 to 3.5 cm (0.8 to 1.4 in) long and inflated. Phillips and Kennedy (2002) determined that the mean number of fruits per older plant was 171.5 compared with an estimated 5 fruits per plant for plants said to be in their first year. The seeds, among the largest known for any species of *Astragalus* (Bowers 1996), average 15 milligrams (mg) (less than 0.1 ounces (oz)) each in weight and are up to 4.7 millimeters (mm) (0.2 in) in length. There are 11 to 16 seeds per fruit (Barneby 1964). *Astragalus lentiginosus* var. *borreganus*, easily distinguished by its conspicuously broad leaflets, is the only similar taxon in the area.

Seeds are dispersed by three basic mechanisms: (1) Falling from partially open fruits that remain on the plant; (2) falling from fruits that are blown across the sand; or (3) falling to the ground within the fruit (Barneby 1964; Bowers 1986; Phillips and Kennedy 2002). Wind dispersal of fruits across the surface of the dunes is likely the primary long-distance dispersal method for this plant. The fruits and seeds tend to accumulate on the leeward side of the dunes. These seeds may be found scattered on the sand surface at times.

The number and location of standing plants may vary considerably from year to year due to a number of factors, including the amount, timing, and location of rainfall; temperature; soil conditions; and the extent and nature of the seed bank. For example, along the BLM transects, Willoughby (2001) reported that 942 plants were found in 1999 and only 86 plants in 2000, both low rainfall years compared to the wetter year 1998, when 5,064 plants were found. In 2001, 71,926 plants were reported (TOA 2001), but this single census does not provide any information on population trend. Plant mortality over the short term may also be considerable (Phillips and Kennedy 2002).

In 1979, *Astragalus magdalenae* var. *peirsonii* was listed by the State of California as an endangered species under the California Endangered Species Act (CESA). On October 6, 1998, we listed *A. magdalenae* var. *peirsonii* as threatened (63 FR 53596). We made this determination based upon the best scientific and commercial information available at the time. As stated and documented in the final listing rule, this action was taken, in part, because of threats of increasing habitat loss from off-highway vehicle (OHV) use, associated recreational development, destruction of plants, and lack of protections afforded the plant on Federal lands. We did not designate critical habitat for *A. magdalenae* var. *peirsonii* at the time of listing because such action was not considered prudent at that time.

Finding

We have reviewed the petition and literature cited in and provided with the petition and considered it with other information in our files. We have found that the petition presents substantial information indicating that delisting *Astragalus magdalenae* var. *peirsonii* may be warranted. The petitioners have suggested that *A. magdalenae* var. *peirsonii* is a species that exists, in many years, largely as a seed bank, with relatively few standing individuals above ground. At the time we listed *A. magdalenae* var. *peirsonii* as a threatened species (63 FR 53596), we did not have—and so could not consider—information about the extent of the seed bank of this species. Petitioners have provided information suggesting the species may have a healthy seed bank (Phillips and Kennedy 2002), even though standing plants are frequently rare. Surveys conducted since we listed this species in 1998 indicate that, in some years, probably in response to increased precipitation, the number of standing plants considerably increases (TOA 2001; Willoughby 2000, 2001). While significant questions remain about the extent and viability of the seed bank, and the contribution of the increased numbers of standing plants in 1998 (Willoughby 2000) and 2001 (TOA 2001) to the seed bank and the persistence of this species into the future, we consider these to be issues relevant to the listing determination and warranting further investigation. Accordingly, we believe it is appropriate to consider this information, and any other new information available about this species and the threats it may face, in a status review.

Public Information Solicited

When we make a finding that substantial information exists to indicate that listing or delisting a species may be warranted, we are required to promptly commence a review of the status of the species. To ensure that the status review is complete and based on the best available scientific and commercial information, we are soliciting information on *Astragalus magdalenae* var. *peirsonii*. This includes information regarding historical and current distribution, biology and ecology, ongoing conservation measures for the species and its habitat, and threats to the species and its habitat. We also request information regarding the adequacy of existing regulatory mechanisms. We request any additional information, comments, and suggestions from the public, other concerned governmental agencies, Tribes, the scientific community, industry or environmental entities, or any other interested parties concerning the status of *A. magdalenae* var. *peirsonii*.

If you wish to comment, you may submit your comments and materials concerning this finding to the Field Supervisor, Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Respondents may request that we withhold a respondent's identity, as allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

References Cited

A complete list of all references cited in this finding is available, upon request, from the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

Authority

The authority for this action is section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: August 29, 2003.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 03–22600 Filed 9–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Meeting of the Klamath Fishery Management Council

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The Klamath Fishery Management Council makes recommendations to agencies that regulate harvest of anadromous fish in the Klamath River Basin. The objectives of this meeting are to hear technical reports, review the 2003 fisheries, and discuss fall Chinook salmon management and allocation issues related to the 2004 season. The meeting is open to the public.

DATES: The Klamath Fishery Management Council will meet from 9 a.m. to 5 p.m. on Wednesday, October 15, 2003, and from 8 a.m. to 5 p.m. on Thursday, October 16, 2003.

Place: The meeting will be held at the U.S. Fish and Wildlife Service, Yreka Fish and Wildlife Office, 1829 South Oregon Street, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Phil Detrich, Field Supervisor, U.S. Fish and Wildlife Service; 1829 South Oregon Street; Yreka, California 96097; telephone (530) 842–5763.

For background information on the Klamath Council, please refer to the notice of their initial meeting that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Dated: August 28, 2003.

John Engbring,

Acting Manager, California/Nevada Office.

[FR Doc. 03–22611 Filed 9–4–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: report of multiple sale or other disposition of pistols and revolvers.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 106, on page 33182 on June 3, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 6, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Multiple Sale or Other Disposition of Pistols and Revolvers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 3310.4, Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Federal Government, State, Local, or Tribal Government. Abstract: The form is used by ATF to develop investigative leads of criminal activity. It identifies possible handgun traffickers in the illegal market. Its use along the border identifies possible international traffickers.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 10,000 respondents, who will complete the form within approximately 12 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* The estimated total burden hours associated with this collection are 8,000.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: August 28, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–22583 Filed 9–4–03; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: application for restoration of explosive privileges.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 104, page 32546 on May 30, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 6, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection:

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Application For Restoration of Explosives Privileges.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: ATF F 5400.29. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: Business or other for-profit. ATF F 5400.29 is required in order to determine whether or not explosive privileges may be restored. It is used to conduct an investigation to establish if it is likely that the applicant will act in a manner dangerous to public safety or contrary to public interest.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 250

annual total burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: August 28, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–22584 Filed 9–4–03; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Collection of laboratory analysis data on drug samples tested by non-Federal (State and local) crime laboratories.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 123, on page 38098 on June 26, 2003, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 6, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practiced utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Collection of Laboratory Analysis Data on Drug Samples Tested by Non-Federal (State and Local) Crime Laboratories.

(3) *Agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: None. Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice. Office of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local or Tribal Governments. Other: None. Abstract: Information is needed from state and local laboratories to provide DEA with additional analyzed drug information for the National Forensic Laboratory Information System.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 150 respondents participate in this voluntary collection. Respondents respond monthly. Each response, which is provided electronically, takes ten minutes.

(6) *An estimate of the total public burden (in hours) associated with this collection:* This collection is estimated to take 300 hours.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: August 27, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–22582 Filed 9–4–03; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: Project Safe Neighborhoods Semi-Annual Researcher Reporting Form.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 68, page 68 on April 9, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 6, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of a Currently Approved Collection.

(2) *The title of the form/collection:* Project Safe Neighborhoods Semi-Annual Researcher Reporting Form.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form number: none. Office of Justice Programs, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. Other: Business or other for-profit; not-for-profit institutions; Federal Governments; and state, local, or tribal government. The data, which will be submitted via the Semi-Annual Researcher Reporting Form in a timely fashion by the research for each of the 94 judicial districts, is essential to understanding gun violence at a national level. By collecting both outcome and intervention measures, the Department can identify programs that demonstrate success in reducing targeted gun crime. This information is essential to evaluating the program and providing feedback at the national level that can inform management decisions. Additionally, this data will assist the Department in discharging its obligations under the Government Performance and Results Act (GPRA).

(5) *An estimate of the number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 93 respondents will complete the form in approximately one hour twice a year.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated total public burden associated with this application is 186 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: August 29, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, Department of Justice.

[FR Doc. 03–22606 Filed 9–4–03; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Prohibited Transaction Exemption 2003–27; Exemption Application No. D–10992 et al.]

Grant of Individual Exemptions; Local 705 International Brotherhood of Teamsters Pension Plan (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

A notice was published in the **Federal Register** of the pendency before the Department of a proposal to grant such exemption. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, DC. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicant has represented that it has complied with the requirements of the notification to interested persons. No requests for a hearing were received by the Department. Public comments were received by the Department as described in the granted exemption.

The notice of proposed exemption was issued and the exemption is being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemption is administratively feasible;

(b) The exemption is in the interests of the plan and its participants and beneficiaries; and

(c) The exemption is protective of the rights of the participants and beneficiaries of the plan.

Local 705 International Brotherhood of Teamsters Pension Plan (the Plan) Located in Chicago, Illinois

[Prohibited Transaction Exemption No. 2003–27; Application No. D–10992]

Exemption

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed purchase of a 10 ft. x 52.6 ft. parcel of real property (the Property) by the West Side Realty Corporation, a wholly owned affiliate of the Plan from Local 705 Building Corporation (the Building Corporation), a party in interest with respect to the Plan. This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) The purchase of the Property by the Plan is a one-time transaction for cash;

(b) The Plan pays no more than the lesser of: (i) $147,000; or (ii) the fair market value of the Property as determined at the time of the transaction;

(c) The fair market value of the Property is established by an independent, qualified, real estate appraiser that is unrelated to the Building Corporation or any other party in interest with respect to the Plan;

(d) The Plan will not pay any commissions or other expenses with respect to the transaction; and

(e) The Townsend Group, Institutional Real Estate Consultants, acting as an independent, qualified, fiduciary for the Plan, determines that the proposed transaction is in the best interest of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this

exemption, refer to the Notice of Proposed Exemption published on May 5, 2003 at 68 FR 23766.

FOR FURTHER INFORMATION CONTACT: Mr. Khalif I. Ford of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

Raleigh Pathology Laboratory Associates, P.A. Profit Sharing Plan (the Plan) Located in Raleigh, NC

[Prohibited Transaction Exemption 2003–28; Exemption Application No. D–11171]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code,[1] shall not apply to the exchange of an unimproved waterfront lot (the Pine Knoll Shores Lot) owned by the Plan and allocated to the individually-directed account (the Account) in the Plan of James R. Edwards, M.D., for one unimproved tract of land (Parcel One) owned personally by Dr. Edwards and his spouse, Mrs. Delores Edwards.

This exemption is subject to the following conditions: (a) The exchange of the Pine Knoll Shores Lot between the Account and Dr. and Mrs. Edwards for Parcel One is a one-time transaction.

(b) The fair market value of the Pine Knoll Shores Lot and Parcel One is determined by qualified, independent appraisers, who will update their appraisal reports at the time the exchange is consummated.

(c) For purposes of the exchange, Parcel One has a fair market value that is no less than the fair market value of the Pine Knoll Shores Lot at the time the transaction is consummated.

(d) The terms and conditions of the exchange are at least as favorable to the Account as those obtainable in an arm's-length transaction with an unrelated party.

(e) The exchange does not involve more than 25 percent of the Account's assets.

(f) The exchange allows the Account to divest itself of property that is susceptible to hurricane damage and high maintenance costs, and it permits the Account to acquire virtually maintenance-proof property having increased liquidity.

(g) Dr. Edwards is the only participant in the Plan whose Account is affected by the transaction and he desires that such transaction be consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 24, 2003 at 68 FR 37545.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed Chuksorji, telephone (202) 693–8567. (This is not a toll-free number.)

Valley OB–GYN Clinic P.C. Employees Pension Plan (the Plan) Located in Saginaw, Michigan

[Prohibited Transaction Exemption 2003–29; Application No. D–11172]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan of $550,000 (the Loan) by the Plan to Valley OB-GYN Realty Company (the Company), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

a. The Loan does not exceed 25% of the total assets of the Plan at any time;

b. The terms of the Loan are at least as favorable to the Plan as those terms which would exist in an arm's-length transaction with an unrelated party;

c. The Loan is secured by a building which has a fair market value, as determined by an independent, qualified appraiser, of at least 150% of the outstanding principal balance of the Loan (plus accrued but unpaid interest) throughout its duration (unless other property is pledged as collateral, as noted below in condition f.);

d. An independent, qualified fiduciary (the Independent Fiduciary) reviews the proposed terms and conditions of the Loan, and determines that the Loan is in the best interest and protective of the Plan and its participants and beneficiaries;

e. The Independent Fiduciary monitors the Loan throughout its duration and takes whatever actions are necessary to safeguard the interests of the Plan and its participants and beneficiaries; and

f. The Plan has the right, under the terms of the Loan and mortgage note related thereto, to require the Company to pledge additional property as collateral for the Loan, in the event such property is needed to maintain full collateralization at the amount specified herein.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 24, 2003 at 68 FR 37546.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption is supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of this exemption is subject to the express condition that the material facts and representations contained in the application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of September, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–22623 Filed 9–4–03; 8:45 am]

BILLING CODE 4510–29–P

[1] For purposes of this exemption, references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application No. D–11067, et al.]

Proposed Exemptions; Sorenson Broadcasting Employee Stock Ownership Plan and Trust (the Plan)

AGENCY: Employee Benefits Security Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. ___, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or Fax. Any such comments or requests should be sent either by e-mail to: *"moffitt.betty@dol.gov"*, or by Fax to (202) 219–0204 by the end of the scheduled comment period. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Sorenson Broadcasting Employee Stock Ownership Plan and Trust (the Plan) Located in Sioux Falls, SD

[Application No. D–11067]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1] If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the sale (the Sale) by the Plan to Sorenson Broadcasting Corporation (the Employer), a party in interest with respect to the Plan, of 930 shares of common stock (the Common Stock) of the Employer; and (2) the extension of credit by the Plan to the Employer under the terms of a subsequent adjustment to the Sale price (the True-up) in connection with the Sale.

This proposed exemption is subject to the following conditions:

(a) The Sale occurs in the following manner:

(1) The Employer pays the Plan the fair market value of the Common Stock as of December 31, 2002, as determined by a qualified, independent appraiser, plus certain positive adjustments indicated in an addendum (the First Addendum) to a purchase agreement dated May 26, 2000 (the Purchase Agreement);

(2) The fair market value of the Common Stock as of the transaction date (the Closing Value) is determined no later than two months after the transaction date;

(3) As additional consideration, the Plan receives the difference between the Closing Value and the amount paid for the Common Stock on the transaction date (*i.e.*, the True-up), plus interest based on the New York prime market rate, effective on the transaction date until the date of the True Up; and

(4) As collateral for the True-up, Mr. Dean Sorenson, the principal shareholder of the Employer, deposits $100,000 in cash in an escrow account for the benefit of the Plan to ensure that the Employer honors its obligation under the True-up.

(b) The Plan does not pay any commissions or other expenses with respect to the Sale.

(c) The transactions are approved by an independent fiduciary, who will monitor such transactions on behalf of the Plan.

(d) The Plan's trustees (the Trustees) determine that the Sale and True-up are appropriate transactions for the Plan and in the best interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. The Employer is a South Dakota corporation maintaining its principal place of business in Sioux Falls, South Dakota. Prior to January 1, 2000, the Employer operated 17 radio stations which broadcasted on various frequencies to the Upper Midwestern States of the United States. As of January 1, 2000, the broadcasting stations have been operated by Waitt Radio Inc. (Waitt) of Dakota Dunes, South Dakota, an unrelated entity, under an interim programming agreement (the Interim Programming Agreement), the terms of which are

[1] For purposes of this proposed exemption, references to provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

discussed below, between the Employer, as the Licensor, and Waitt, as the Programmer. Waitt is engaged in the radio broadcasting business in the Central and Upper Midwest. Waitt leases the buildings in which the Employer's radio stations are located from Mr. Dean Sorenson, the owner of the buildings.

Mr. Sorenson is President of the Employer and he owns 70 percent of the shares of outstanding Common Stock of the Employer. The Plan owns the remaining 30 percent of the shares of outstanding Common Stock of the Employer. Since January 1, 2000, the Employer has been operating as a sub-chapter "S" corporation.

2. The Plan is an employee stock ownership plan that is sponsored by the Employer. The Plan was established by the Employer on December 31, 1995. As of May 30, 2003, the Plan had 157 participants. As of December 31, 2002, which is the most recent date financial information is available, the Plan had total assets of approximately $3,148,522. Also, as of the same date, the Plan held 930 shares of Common Stock, valued at $3,148,230, and representing approximately 99% of the fair market value of the assets of the Plan.

Sharon Otten, Fred Smith, Scott Kooistra, Bruce Erlandson, Trent Schmotzer, Bill Grady, Holly Gill, and Tony Sieler, serve as the Trustees for the Plan, and have discretionary control over the Plan's assets involved in the transaction. These individuals were all employees of Sorenson at the time the Interim Programming Agreement went into effect, although since that time, some of the Sorenson employees have become Waitt employees.

3. The Plan originally acquired 930 shares of non-treasury Common Stock from Mr. Sorenson in a single transaction on December 31, 1996.[2] The Common Stock was valued by Mr. Gerald C. Johnson, Jr., the President and sole owner of Johnson Communications Properties, Inc. of Minneapolis, Minnesota. Mr. Johnson is a qualified, independent broker and appraiser of broadcasting properties, with extensive experience in valuing radio stations in the upper Midwest. Although Mr. Johnson's original valuation (the Original Valuation) placed the total value of such Common Stock on the date of the purchase at $3,415,300, the actual purchase price paid by the Plan to Mr. Sorenson was negotiated down to $3,331,577.[3]

4. The Plan derived the funds to purchase the Common Stock from Mr. Sorenson and from First Dakota National Bank (the Bank), an unrelated entity with respect to the Plan. Mr. Sorenson made one loan (the Sorenson Loan) to the Plan in the amount of $2,898,718 and the Bank made another loan (the Bank Loan; together, the Loans) to the Plan in the amount of $432,859.

The Sorenson Loan was evidenced by a promissory note (the Sorenson Promissory Note) dated December 31, 1996 between the Plan and Mr. Sorenson. The Sorenson Promissory Note was executed simultaneously with the Sorenson Loan and provided that the Plan repay the principal sum of the Sorenson Loan plus interest thereon at an annual interest rate of 8.5 percent. Such note required the Plan to make annual payments of both principal and interest totaling $502,226.45, commencing on September 15, 1997. There were no prepayment penalties.

The Sorenson Promissory Note was made subject to the provisions of a pledge agreement (the Sorenson Pledge Agreement), also dated December 31, 1996, between the Plan and Mr. Sorenson. The Sorenson Pledge Agreement secured Mr. Sorenson's first lien interest in the 930 shares of Common Stock purchased by the Plan. An amortization schedule indicated that under normal amortization, the Sorenson Loan would be paid off by September 15, 2004.

5. The Bank Loan was also evidenced by a promissory note (the Bank Promissory Note), dated December 31, 1996, that was executed between the Plan and the Bank. The Bank Promissory Note required the Plan to repay the principal sum of the Bank Loan plus interest thereon at an annual interest rate of 8.5 percent until September 15, 2000. The Bank Promissory Note also provided that the Plan make three regular annual payments of $75,316.98 and one irregular last payment, estimated at $321,370.83. There were no prepayment penalties. The Bank Promissory Note was secured by both the Employer's and Mr. Sorenson's personal guarantees of the entire $432,859 principal amount of the Bank Loan.[4]

6. Also on December 31, 1996, Mr. Sorenson, in his capacity as President of the Employer, sent the Bank a letter agreement. The agreement stated, in pertinent part, that in consideration of the Bank Loan and all other financial accommodations provided by the Bank to the Plan, the Employer would not, without the Bank's prior written consent, amend any provision of the Plan requiring the Employer to make contributions necessary to enable the Plan to discharge its obligations under the Bank Loan and the Bank Promissory Note.

7. Cash that the Plan received from the Loans was converted into Common Stock. The Common Stock is being maintained by the Plan in a "suspense" account (the Suspense Account), separate from the participants' individual accounts. Initially, 317.752 shares of Common Stock were allocated to participants from the Suspense Account as payments were made by the Plan under the Loans. Because it was determined that there was insufficient compensation to permit deductible contributions, and that payments of the amounts due would violate the annual addition limits of section 415 of the Code, a freeze was placed on the Plan assets in 1999 in order to prevent any new participation in the Plan. Therefore, no further allocations of Common Stock were made to participants from the Suspense Account. At present, 612.248 shares of such stock continue to be held in the Suspense Account.

8. At the time of the freeze, there was $105,000 available in Plan assets to make payments on the Loans. Both Mr. Sorenson and the Bank agreed to receive interest only payments on the Sorenson Loan until a sale of the Common Stock held by the Plan could be made, at which point they would be paid the principal amount of their respective Loans. Interest only payments were made on the Loans throughout 2000 and briefly during 2001, until the money ran out. The last interest only payment was made by the Plan to Mr. Sorenson on October 16, 2000 and to the Bank on

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[2] The applicant represents that the acquisition and holding, by the Plan, of common stock of the Employer is covered under section 408(e) of the Act. However, the Department expresses no opinion as to the applicability of the statutory exemption provided by section 408(e) of the Act to the original transaction. Further, the Department, herein, is offering no relief for transactions other than the transactions described in this exemption.

[3] The applicant represents that the difference between the negotiated price of the original 930 shares of Common Stock the Plan bought and the price listed in the Original Valuation does not constitute an excess contribution to the Plan in violation of sections 401(a)(4), 404 and 415 of the Code.

[4] The applicant represents that the Sorenson Loan and the Bank Loan comply with section 408(b)(3) of the Act and the regulations promulgated thereunder. In this regard, the Department is expressing no opinion on whether the Loans initially satisfied, or continue to satisfy, the requirements necessary for exemptive relief under section 408(b)(3) of the Act, nor is any relief provided for those Loans under this proposed exemption. The relief provided by this exemption is limited solely to the sale of the Common Stock to the Employer, a party in interest with respect to the Plan.

June 29, 2001. To date, no further payments have been made by the Plan. At present, the outstanding principal balances of the Sorenson Loan and the Bank Loan are $1,979,095 and $295,808, respectively.

9. Although the Plan defaulted on the Loans, the default provisions therein gave both Mr. Sorenson and the Bank the discretion to waive foreclosure on the Loans if the circumstances warranted. Therefore, both Mr. Sorenson and the Bank agreed that the enforcement of their rights to the collateral for the Loans was not in their best interests, as it would not be helpful to completing an eventual sale of the Employer to Waitt. On December 28, 2001, Mr. Sorenson and the Bank signed an agreement to extend the maturity date of the Loans from December 15, 2001 until June 15, 2002 in order that neither Loan could be foreclosed upon. Since then, in an agreement signed by both parties on December 27, 2002, the maturity date of the Loans was further extended until June 15, 2003. Such agreement has been re-extended pending the outcome of this exemption request.[5]

10. Mr. Sorenson wishes to retire from the day-to-day management of the individual stations. While he had hoped that a group of key employees would emerge to acquire a small ownership stake outside of the Plan and assume the role of group-wide management, this has not happened. Mr. Sorenson also believes that a decrease in the fair market value of the radio stations is likely to occur over the next several years. Therefore, he has researched the marketplace to determine a prospective sale price should there be a willing buyer. Based on his research, Mr. Sorenson and his advisors consider a multiple of cash flows (a key factor used in calculating the purchase or selling price of radio stations) within the range of 8.0 and 9.0 to be a realistic target.

11. Mr. Sorenson has been approached by Waitt, a willing buyer, and the multiple of cash flows offered and agreed upon by Waitt and the Employer is 8.75. The Employer has also negotiated with Waitt an arrangement to transfer ownership of the broadcasting stations to Waitt. The preferred method is for the parties to enter into a long-term programming agreement (the Programming Agreement) with a purchase option (the Option Agreement) at its conclusion.

12. The Interim Programming Agreement with Waitt, dated January 1, 2000, was signed by Mr. Sorenson in his capacity as President of the Employer, and was approved by the Trustees on behalf of the participants. As initially executed, the Interim Programming Agreement stipulates that, not later than September 1, 2000, the Employer and Waitt would enter into either: (a) The Programming Agreement concurrently with the Option Agreement or (b) a stock purchase agreement (the Stock Purchase Agreement). However, because the applicant did not obtain the requested exemption as of the September 1, 2000 termination date, neither option was selected. Therefore, the Interim Programming Agreement still remains in effect and it has been extended by the Employer and Waitt every six months.

13. As consideration, under the Interim Programming Agreement, Waitt is required to pay the Employer $114,516, which amount is to be increased (or decreased) each month by an amount equal to $13,500 for every one percent increase (or decrease) in the New York prime rate, as published in the Wall Street Journal, on the 15th day of the preceding month. In addition, Waitt is required to reimburse the Employer for expenses incurred in the operation of the station and to deposit $1,374,000 in an escrow account. Also, pursuant to the Interim Programming Agreement, the broadcasting stations are being operated by Waitt, who supplies the stations with programming, while the Employer maintains ultimate control over the stations' finances, personnel matters and programming content. Further, the Interim Programming Agreement requires the Employer to continue to employ 15 management employees of the stations. All other employees became Waitt employees effective April 1, 2000, at the start of the Interim Programming Agreement.

14. The Interim Programming Agreement provides that upon its termination date, Waitt may exercise either of two options. First, Waitt can extend the Interim Programming Agreement into the ten year Programming Agreement that will end on December 31, 2009. At this time, Waitt may purchase the assets of the Employer for $12,967,023, under the terms of the Option Agreement, provided Waitt pays the Employer $3,200,000 as the option amount. Second, Waitt may immediately purchase, for $16,167,023 (subject to certain adjustments), all of the Employer's Common Stock held by the Employer and the Plan, pursuant to the provisions of the Stock Purchase Agreement. The Interim Programming Agreement will terminate on the earliest of (a) the effective date of the Programming Agreement and the execution of the Option Agreement, (b) the closing date of the Stock Purchase Agreement, or (c) a date mutually agreed to by the parties with at least thirty (30) days prior written notice.[6]

15. The Trustees have concluded that a sale of the Common Stock and the retirement of the Loans with the Sale proceeds would be in the best interests of the Plan participants. Moreover, the Trustees believe that allowing the debt to go into default would only disrupt this process and could damage the interests of the Plan participants. Therefore, as noted above, both Mr. Sorenson and the Bank offered, and the Trustees accepted, the waiver of default and deferral of payments pending the resolution of the proposed Sale and True-Up transactions described herein.[7]

16. To facilitate the termination of the Plan and allow the participants (most of whom are now Waitt employees) to diversify their portfolios into other investments with better future returns, the Trustees propose that the Common Stock held by the Plan be sold. The Employer is willing to purchase the Common Stock (and the Trustees are willing to sell such stock) under a deferred payment arrangement, in accordance with a "True-up" or adjustment to the purchase price. The Plan will not be required to pay any fees or expenses in connection with the Sale. Then, the Employer proposes to distribute the Sale proceeds to the participant accounts in the Plan.

Because the Employer is a subchapter S corporation, section 408(d)(2)(A) of the Act provides that the statutory relief under section 408(e) of the Act is unavailable with respect to the proposed Sale transaction since more than 50 percent of the Common Stock is owned by Mr. Sorenson, a shareholder-employee. Also, section 408(e) of the Act does not exempt extensions of credit in connection with adjustments to

[5] In regard to the deferral of payments, the Employer also agreed to waive its right to recoup interest payments made on behalf of the Plan under its guaranty agreement to the Bank with respect to the Bank Loan (see Representation 5) in order that the Plan could retain a greater amount of the final Sale proceeds. It is represented that the interest paid by the Employer through February 28, 2003 is $52,670.96.

[6] To date, neither the Programming Agreement nor the Stock Purchase Agreement have gone into effect. From correspondence in the exemption application file, it appears that the parties are inclined to enter into the Programming Agreement, which will be dated contemporaneously with the date of the Sale transaction described herein.

[7] Although the Trustees represent that such waiver should not cause the Loans to lose their status as exempt loans under section 408(b)(3) of this Act, the Department again expresses no opinion in this proposed exemption on whether the provisions of section 408(b)(3) of the Act have been violated while the Loans are outstanding.

the Sale price, such as those contemplated under the True-up. Accordingly, an administrative exemption is requested from the Department.

17. On May 26, 2000, the Plan and the Employer entered into a purchase agreement (the Purchase Agreement) to acquire the Common Stock held by the Plan. The purchase price was to be based on the amount which would have been due the Plan from Waitt for shares of Common Stock under the Stock Purchase Agreement. According to the Stock Purchase Agreement, Waitt promised to pay the Employer and the Plan a total of $16,167,023 for such Common Stock. The purchase price was, however, subject to various adjustments. For example, not later than five days prior to the transaction closing date, the sellers would be required to submit a *pro forma* balance sheet to Waitt that had been prepared in accordance with generally-accepted accounting principles, along with a schedule setting forth the value of the Employer's Common Stock (the Computation of Stock Value, as calculated by Mr. Johnson, the independent appraiser who prepared the Original Valuation of the Common Stock). The purchase price would then be adjusted to an amount equal to the total value of the Employer's Common Stock, as set forth on such schedule. In addition, the parties agreed that the purchase price would be further adjusted to reflect the loss of the depreciation on the underlying broadcast assets. However, for purposes of the Purchase Agreement, it was determined that the Plan's price per share for the Common Stock would be valued without the loss of the depreciation adjustment.

18. On January 8, 2002, an addendum (the First Addendum) was made to the Purchase Agreement. In this regard, the Plan's price per share to be paid by the Employer for the Common Stock would be calculated to include additional value due to state and Federal taxes, amounts due to certain employees under an Individual Employment and Incentive Compensation Agreement, and accrued sales commissions.

19. According to a second addendum to the Purchase Agreement (the Second Addendum), effective November 13, 2002, the Purchase Agreement was again amended. In this regard, the Programming Agreement and proposed Sale by the Plan of its Common Stock to the Employer will occur on the first month following the publication, in the **Federal Register**, of the notice granting the final exemption (the Closing Date). The Employer will pay the Plan the fair market value of the Common Stock as of December 31, 2002, as determined by an independent appraisal, plus the adjustments indicated in the First Addendum (*e.g.*, Federal and state taxes, sales commissions, *etc.*). The fair market value of the Common Stock as of the Closing Date (the Closing Value) will be determined no later than two months after the Closing Date by an independent appraisal.

The Second Addendum also provides that the True-up, which is the difference between the Closing Value and the amount which has already been deposited on the Closing Date, will be paid to the Plan, plus interest based on the New York prime market rate, effective on the Closing Date until the date of the True-up. As collateral for the True-up, Mr. Sorenson has agreed to deposit $100,000 cash in an escrow account for the benefit of the Plan.

20. In an independent appraisal report dated February 27, 2003, Mr. Johnson again valued the Common Stock held by the Plan and Mr. Sorenson, as of December 31, 2002 (the 2002 Appraisal). Mr. Johnson noted that the established value of all of the radio stations owned by the Employer was $16,167,023 as opposed to the value of the Common Stock. He explained that the valuation of the Employer's assets was based upon a multiple of 8.75 times the adjusted cash flow of the Employer's radio affiliates for the year ending December 31, 1998, including a provision for the costs incurred in constructing a radio station located in South Dakota, which was not completed until mid-1999. Mr. Johnson further noted that the $16,167,023 aggregate value of the Employer's assets had been reduced by $3,500,000 to compensate Waitt for the fact that it would be acquiring Employer Common Stock as opposed to the Employer's underlying assets. He indicated that he believed the 8.75 multiple for the Employer's radio stations was entirely appropriate and that the $16,167,023 selling price was realistic for such stations. Although Mr. Johnson did not express an opinion regarding the $3,500,000 downward adjustment to the selling price, he acknowledged that such a price reduction was common in the industry.

As stated above, it was Mr. Johnson's opinion that $16,167,023 represented the total fair market value of the various broadcast properties that were owned by the Employer as of December 31, 2002 rather than the value of the Common Stock. For the year ending December 31, 2002, he noted that the Computation of Stock Value equaled $10,494,101. Because the Plan holds a 30 percent interest in all of the Employer's assets, Mr. Johnson placed the fair market value of the Common Stock held by the Plan at $3,148,230 ($10,494,101 × 30%) as of December 31, 2002.

21. Thus, on the basis of the 2002 Appraisal, the Plan will receive 30% of $15,794,416 from the Employer prior to time of the True-up. This gross amount reflects the $10,494,101 value attributed to the Common Stock, plus the following positive adjustments: (a) State and Federal income taxes totaling $3,500,000, (b) a $1,692,315 aggregate amount due to certain employees under an "Individual Employment and Incentive Agreement," and (c) accrued sales commissions of $108,000 that the Employer would be obligated to pay. Therefore, the net amount owed by the Employer to the Plan will be $4,738,325, without the inclusion of the True-Up.

22. Upon conclusion of the Sale, proceeds from the Sale will effectively be split into two pools: (a) The proceeds related to the allocated shares (the Allocated Share Proceeds) and (b) the proceeds related to the unallocated shares (the Unallocated Share Proceeds). The Allocated Share Proceeds will be allocated to each Plan participant based on the shares held in their account. The Unallocated Share Proceeds will be used to pay off the Loans to the Bank and Mr. Sorenson. It is anticipated that the share proceeds will exceed the Loans by approximately $290,000 and that such gain will be allocated to the participants.

23. Mr. John F. Archer, an attorney with the law firm of Hagen Wilka & Archer, P.C., of Sioux Falls, South Dakota, was designated by the Trustees to serve on behalf of the Plan as the independent fiduciary. In such capacity, Mr. Archer is representing the interests of the Plan and the Plan participants in connection with the Sale and the True-up. Mr. Archer asserts that he is qualified to act as an independent fiduciary for the Plan because of his background as it relates to reviewing business valuations. Such experience includes his position as the South Dakota Division of Securities Director from 1978 until 1983, in which he was chairman of the North American Securities Administrators Association Franchise Committee, and his private practice, which covers securities law, mergers and acquisitions, real estate law, franchise law, corporate law and title insurance law. In addition, Mr. Archer represents that he has been a speaker discussing securities and franchise law at various Continuing Legal Education seminars and has served on the South Dakota State Bar Committee on Corporations. Mr. Archer represents that he has had a professional

relationship with Mr. Sorenson at various times between 1989 and 1994 and has assisted Mr. Sorenson in the purchase of his personal residence as well as the sale or purchase of Mr. Sorenson's commercial enterprises. However, Mr. Archer does not believe that these matters carry any conflict of interest with respect to the proposed transactions.

Mr. Archer states that he has no current ongoing relationship with Mr. Sorenson or the Employer, and he confirms that his firm will derive less than one percent of its gross annual income from the Employer. Mr. Archer has agreed to represent the interests of the Plan and its participants and he has executed a representation agreement (the Representation Agreement) with the Trustees containing the duties and capacities that such representation includes.

24. As independent fiduciary, Mr. Archer certifies that he has reviewed and analyzed the proposed transactions and related documents, as well as their potential effects, both direct and collateral, to the Plan participants. In addition, Mr. Archer states that he has evaluated the overall fairness of the subject transactions, specifically as to the other parties involved, and the validity of the proposed valuation. Based on such review and evaluation, Mr. Archer states that he is of the opinion that the 2002 Appraisal reflects a fair valuation of the Employer. He also explains that the sale of the shares owned by the Plan to the Employer based on the price set forth in the Purchase Agreement, treats the Plan participants fairly and justly in comparison to the other parties involved in such transaction. Further, after reviewing the 2002 Appraisal, Mr. Archer states that he concurs with the appraisal amount and he is of the opinion that the Sale is in the best interests of the Plan.

In addition, Mr. Archer states that the subject transactions are in the best interests of the Plan and its participants because the price being paid to the Plan is based on the sale of the Employer's Common Stock to a third party and it was determined on an arm's length basis between the Employer and Waitt. In reviewing other similar sales, Mr. Archer states that the Sale price in this case is consistent with other transactions dealing with radio stations and that the Plan's price per share will be higher than that paid to Mr. Sorenson because the Plan's interest in the Employer's Common Stock will be valued to include certain special adjustments (*i.e.*, Federal and state income taxes, amounts due to employees under Individual Employment and Incentive Compensation Agreements and accrued sales commissions). Mr. Archer states that his role as representative and adviser to the Plan will continue until such time as the transactions are completed or abandoned. Mr. Archer explains that the transactions will be deemed complete for purposes of his representation upon receipt of the final valuation to be used in the distribution of funds to Plan participants or will be deemed abandoned upon receipt of notice from the trustee of the Plan, the Employer, or Mr. Sorenson that the transactions will not be completed.

25. Mr. Archer notes that while the Employer is receiving a programming fee of $13,500 per month under the Interim Programming Agreement from Waitt, it would appear that this fee is normal and customary in today's marketplace and that it is not uncommon that when a transaction of this sort is made that this type of fee is paid to a licensor such as the Employer. Mr. Archer states that he has reviewed this matter with other owners of radio stations and has found this practice to be consistent. Consequently, he believes that the payment of this programming fee by Waitt to the Employer does not make the Sale unfair to the Plan participants. Mr. Archer also notes that Mr. Sorenson is receiving lease payments from Waitt for the rental of the buildings that are owned by Mr. Sorenson in which the Employer's radio stations are located. Assuming that the lease payments are fair market value, Mr. Archer does not believe these rental payments would make the proposed Sale transaction unfair to the Plan participants.

Further, Mr. Archer opines that the subject transactions are protective of the Plan, participants and beneficiaries because they comply with the organization and governing documents of the Plan and the Trustees have been given all information necessary to determine their fairness.

Finally, Mr. Archer confirms that his duties with respect to the transactions are to ensure that there is a final valuation of the Common Stock as of the Sale date, to supervise the payment of the True-up and disbursement of the funds to Plan participants, and the filing of tax notices and final Form 5500, among other things. Mr. Archer also confirms that he will take all actions that are necessary and proper to enforce and protect the rights of the Plan participants and beneficiaries.

26. In summary, it is represented that the transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Sale will occur in the following manner:

(1) The Employer will pay the Plan the fair market value of the Common Stock as of December 31, 2002, as determined by a qualified, independent appraiser, plus certain adjustments indicated in the Second Addendum to the Purchase Agreement;

(2) The Closing Value of the Common Stock will be determined no later than two months after the transaction date;

(3) As additional consideration, the Plan will receive the difference between the Closing Value and the amount paid for the Common Stock on the transaction date (*i.e.*, the True-up), plus interest based on the New York prime market rate, effective on the transaction date until the date of the True-up; and

(4) As collateral for the True-up, Mr. Dean Sorenson will deposit $100,000 in cash in an escrow account for the benefit of the Plan to ensure that the Employer honors its obligation under the True-up.

(b) The Plan will not pay any commissions or other expenses with respect to the Sale.

(c) The transactions have been approved by an independent fiduciary who will monitor such transactions on behalf of the Plan.

(d) The Trustees have determined that the Sale and True-up will be appropriate transactions for the Plan and in the best interests of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Anna M.N. Mpras of the Department, telephone (202) 693–8565. (This is not a toll-free number.)

Hayden O. Grona IRA (the IRA) Located in San Antonio, Texas

[Application No. D–11192]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain unimproved land (the Property) by the IRA to Mr. Grona's children (the Children), disqualified persons with

respect to the IRA;[8] provided that the following conditions are met:

(a) The sale is a one-time cash transaction;

(b) The IRA receives the current fair market value for the Property, as established at the time of the sale by an independent, qualified appraiser; and

(c) the IRA pays no commissions or other expenses associated with the sale.

Summary of Facts and Representations

1. The IRA is an individual retirement account, as described in section 408(a) of the Code, which was established by Hayden O. Grona (Mr. Grona) in 1989. As of March 19, 2003, the IRA had approximately $6,701,128 in total assets. The Trust Company, N.A., located at 711 Navarro, Suite 750, in San Antonio, Texas, is the custodian of the IRA (the Custodian). Mr. Grona is the trustee for the IRA (the Trustee). The Children are identified as Mr. Nelson Grona, Ms. Suzanne Grona White, and Mr. James Grona.

2. On February 8, 2001, the IRA purchased the Property from Leigh Stelmach, an unrelated third party, for $1,791,403. The IRA paid the entire amount of the purchase price in cash at closing. At the time of purchase, the Property represented approximately 21% of the IRA's total assets. The applicant represents that the Property is not adjacent to any other property owned individually, or jointly, by Mr. Grona and/or the Children. It is represented that Mr. Grona, as the Trustee, made the decision to purchase the Property for the IRA as a investment, to be developed by the IRA into an income-producing asset. However, it is represented, that shortly after acquisition, Mr. Grona realized that the Property was not a suitable investment for the IRA. The IRA has paid approximately $5,484 in real estate taxes due to its ownership of the Property. There have been no additional expenses incurred by the IRA as a result of its ownership of the Property.

3. The Property is an approximately 1,515 acre tract of unimproved land, located in Medina and Bandera Counties, Texas. The applicant represents that since the acquisition of the Property by the IRA, the Property has not been leased to or used by any disqualified persons, as defined under section 4975(e)(2) of the Code. In addition, the Property has not generated any income for the IRA since its acquisition.

4. The Property was appraised on February 27, 2003 (the Appraisal). The Appraisal was prepared by Grady Hoermann, MSA (Mr. H), who is an independent, Texas state certified, general real estate appraiser. Mr. H is with Grady Hoermann Appraisal Service, which is located in San Antonio, Texas. Mr. H relied primarily on the sales comparison approach, with an analysis of recent sales of similar properties in the local geographic area. After examining available sales data, Mr. H determined that the Property's fair market value would be approximately $900 per acre.

Accordingly, Mr. H represents that the Property had a fair market value of approximately $ 1,363,000, as of February 27, 2003.

5. The applicant proposes that the Children purchase the Property from the IRA in a one-time cash transaction. The applicant represents that the proposed transaction would be in the best interest and protective of the IRA. The IRA will be able to dispose of the Property, which has depreciated in value since it was originally acquired, at its fair market value and will not pay any commissions or expenses associated with the sale. The Appraisal will be updated at the time the transaction is consummated. It is represented that Mr. Grona is currently age 68. He will be required to begin receiving distributions from the IRA when he attains age 70½. The applicant states that the sale of the Property will increase the IRA's liquidity, therefore putting the IRA into a better position to make distributions to Mr. Grona once he reaches the age of 70½. In this regard, the Children will pay the IRA an amount in cash equal to the current fair market value of the Property at the time of the transaction, based on an update of the Appraisal. Thus, the applicant maintains that the sale of the Property by the IRA to the Children will: (i) Increase the liquidity of the IRA's portfolio; (ii) enable the Trustee to diversify the assets of the IRA; (iii) enable the IRA to sell an illiquid non-income producing asset; and (iv) facilitate future distributions of assets to Mr. Grona.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) The sale will be a one-time cash transaction;

(b) The IRA will receive the current fair market value for the Property, as established at the time of the sale by an independent, qualified appraiser;

(c) The IRA will pay no commissions or other expenses associated with the sale; and

(d) The sale will:

(i) Provide the IRA with more liquidity and facilitate future distributions to Mr. Grona;

(ii) Enable the IRA to diversify its assets;

(iii) Allow the IRA to divest itself of a non-income producing asset that has depreciated in value; and

(iv) Allow the IRA to reinvest the proceeds of the sale in other investments that potentially could yield greater returns.

Notice to Interested Persons

Because Mr. Grona is the sole participant of the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons (other than the Custodian). Comments and requests for a hearing are due thirty (30) days from the date of publication of this notice in the **Federal Register**.

For Further Information Contact: Ekaterina A. Uzlyan of the Department at (202) 693–8540. (This is not a toll-free number.)

Newspaper Agency Corporation Pension Trust (the Plan) Located in Salt Lake City, Utah

[Application No. D–11194]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[9]

I. Transactions

If the exemption is granted, the restrictions of sections 406(a)(1)(A)–(D), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The leasing of certain improved real property (the Property) by the Plan to the Newspaper Agency Corporation (the Employer), a party in interest with respect to the Plan, pursuant to the terms of a lease (the New Lease), effective August 1, 2003; and (2) the guarantee by MediaNews Group, Inc. (MediaNews) and Deseret News Publishing Corporation (Deseret) (collectively, the Owners of the Employer) of the obligations of the Employer under the terms of the New Lease.

[8] Pursuant to CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act, pursuant to section 4975 of the Code.

[9] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer to the corresponding provisions of the Code.

II. Conditions

This exemption is conditioned upon the adherence to the material facts and representations described herein and upon the satisfaction of the following requirements:

(a) An independent, qualified fiduciary (the I/F), acting on behalf of the Plan, determines that each of the proposed transactions is feasible, in the interest of, and protective of the Plan and the participants and beneficiaries of such Plan;

(b) The I/F manages the Property on an on-going basis and is empowered to take whatever action it deems appropriate to serve the best interest of the Plan and its participants and beneficiaries, including but not limited to the retention, leasing, or sale of the Property;

(c) The fair market value of the Property does not now and will at no time exceed twenty-five percent (25%) of the fair market value of the total assets of the Plan;

(d) The I/F negotiates, reviews, and approves the terms of the subject transactions;

(e) The terms and conditions of the subject transactions are, and will at all times be, no less favorable to the Plan than terms obtainable by the Plan under similar circumstances when negotiated at arm's length with an unrelated third party;

(f) An independent, qualified appraiser determines the fair market value of the rental of the Property, as of August 1, 2003, and annually thereafter;

(g) The I/F monitors compliance with the terms of the New Lease throughout the duration of such lease and is responsible for legally enforcing the payment of the rent and the proper performance by the Employer and/or the Owners of the Employer of all other obligations of the Employer under the terms of such lease;

(h) The Plan incurs no fees, costs, commissions, or other charges or expenses as a result of its participation in the transactions which are the subject of this exemption, other than the fee payable to the I/F for services rendered to the Plan and the fee payable to the independent, qualified appraiser for the annual appraisal of the fair market value of the Property;

(i) The I/F ensures that the terms and conditions described herein are at all time satisfied;

(j) The I/F will place the Property on the market for sale or lease to unrelated third parties, within fifteen (15) calendar days of the date of the publication of the grant of this proposed exemption in the **Federal Register**, and subject to the termination of the New Lease, as provided in section II(k), below, of this exemption, will proceed to sell or lease such Property to any such unrelated third party who presents a *bona fide* sale or lease offer which the I/F determines to be prudent and in the best interest of the Plan and its participants and beneficiaries; and

(k) Notwithstanding anything to the contrary in the New Lease, the Plan may at any time upon six (6) month prior written notice to the Employer terminate the New Lease and the Employer's occupancy of the Property, effective as of the date specified in such notice, which date shall be at least six (6) months after the date such written notice is given to the Employer (but in no event extending the New Lease beyond the then current lease term.

Effective Date: If the proposed exemption is granted, the exemption will be effective August 1, 2003.

Summary of Facts and Representations

1. The Plan is a tax-qualified defined benefit pension plan covering 860 participants and beneficiaries, as of June 20, 2003. The total fair market value of the Plan's assets, as reflected in the FORM 5500 annual report for 2001 was $37,143,730.

2. The current trustee of the Plan is Wells Fargo Bank, N.A. (Wells Fargo), which is solely responsible for the investment of Plan assets. In addition, Wells Fargo has acknowledged and represented that it has accepted the appointment to serve as the I/F, acting on behalf of the Plan for purposes of the subject exemption. It is represented that the Plan is responsible for the payment of Wells Fargo's fees.

It is represented that on April 1, 1996, Wells Fargo acquired First Interstate Bank, the former trustee of the Plan and the I/F under terms of a prior exemption,[10] and concurrently assumed the responsibilities and obligations of First Interstate Bank. In this regard, it is represented that there was no period of time when the Plan did not have a bank, acting as trustee and an I/F on its behalf.

It is represented that Wells Fargo is independent in that there are no common officers or directors with the Employer or the Owners of the Employer. Substantially less than one percent (1%) of Wells Fargo's total deposits and substantially less than 1% of its outstanding loans (both in dollar amounts) are attributable, respectively, to deposits and loans of the Employer and its affiliates.

[10] Prohibited Transaction Exemption 85–37 (PTE 85–37) was published at 50 FR 7008 (February 19, 1985). The proposed exemption (D–5540) was published at 49 FR 47452 (December 4, 1984).

It is represented that Wells Fargo is qualified to serve as the I/F on behalf of the Plan in that Wells Fargo is knowledgeable as to its duties and responsibilities as a fiduciary under the Act and is knowledgeable as to the subject transactions. In addition, Wells Fargo represents that it has many years experience managing assets and is currently responsible for managing approximately $183,000,000,000 in assets of its customers.

3. The Property consists of a parcel of real estate (1.208 acres) improved by a one-story masonry warehouse building, constructed in 1968, and estimated to contain 52,635 square feet of space. The Property is located south of the downtown central business district of Salt Lake City, Utah. This neighborhood is primarily a general business area with some commercial and light industrial uses.

The Property is situated on a railroad spur. However, it is represented that the Salt Lake City Mayor's office has verbally expressed possible plans which may lead to the elimination of such railroad spur.

The Plan owns the Property, unencumbered by any outstanding mortgage or any other indebtedness. As of December 31, 2001, the fair market value of the Property constituted 4.361% of the total assets of the Plan.

The Plan purchased the Property in July of 1971, from Wycoff Warehouse, Inc., an unrelated third party, for a purchase price of $259,000. The Plan began leasing the Property to the Employer, pursuant to the terms of a lease (the Original Lease) entered into on July 21, 1971. The applicant represents that the Original Lease satisfied the conditions provided by section 414(c) of the Act, because: (1) The Original Lease was entered into before July 1, 1974, when such a lease was not a prohibited transaction within the meaning of section 503(b) of the Code; and (2) the terms of the Original Lease were as favorable to the Plan as those of an arm's length transaction with an unrelated party.[11]

On August 1, 1983, the Plan and the Employer entered into another lease (the Old Lease) which superseded the Original Lease. With regard to the Old Lease between the Plan and the Employer, the Department issued, in 1985, a retroactive prohibited

[11] Section 414(c)(2) of the Act provided a statutory exemption for a transitional period ending June 30, 1984, for certain leases meeting specified conditions. The Department expresses no opinion, herein, as to the applicability of section 414(c)(2) of the Act to the past leasing of the Property by the Plan to the Employer under the terms of the Original Lease.

transaction exemption, PTE 85–37, effective, as of July 1, 1984. The Old Lease provided for an initial ten (10) year rental term with two (2) additions renewal period of ten (10) years each, exercisable at the discretion of the Employer. In July 1993, the Employer opted to renew the Old Lease. On July 31, 2003, rather than extend the Old Lease for an addition term of ten (10) years, the Employer elected to terminate the Old Lease. On August 1, 2003, the Employer and the Plan entered into the New Lease.

4. The New Lease provides for an initial term of three (3) years with up to (4) four additional one (1) year extension options exercisable by the Employer, subject to the approval of the I/F. Notwithstanding anything to the contrary in the New Lease, the Plan may at any time upon six (6) month prior written notice to the Employer terminate the New Lease and the Employer's occupancy of the Property, effective as of the date specified in such notice. Such date shall be at least six (6) months after the date such written notice is given to the Employer, but in no event extending the New Lease beyond the then current lease term.

The initial rental amount under the provisions of the New Lease will be $16,448.42 a month ($197,381 annually). In this regard, for the purpose of portfolio management and lease negotiation, Mr. Howard J. Layton (Mr. Layton), MAI, CCIM, CRE, (dba The Appraisal Source, L.L.C.) prepared an appraisal report estimating the "as is" market value of the Property, as of November 26, 2002, the date the Property was inspected. In the opinion of Mr. Layton, as of November 26, 2002, the fee simple "as is" market value of the Property was $1,700,000. Based on the terms of the Old Lease, Mr. Layton further concluded that, as of November 26, 2002, the annual rental rate for the Property would be $197,381 ($3.75/SF × 52,635 SF in the Property) rounded to approximately $16,448 a month. After examining a copy of the New Lease, Mr. Layton, represented in a letter dated July 28, 2003, that there is no value impact to the subject Property, as a result of the terms of the New Lease.

Mr. Layton is qualified to serve as an appraiser of real property in that he is a designated MAI member of the Appraisal Institute, a CCIM member of the Commercial Investment Real Estate Institute, a CRE member of the Counselors of Real Estate, and a certified general appraiser for the state of Utah. In addition, Mr. Layton has been engaged as a real estate appraiser since 1983.

Mr. Layton represents that he is independent in that he is not related to the Employer, the Owners of the Employer, or their principals. Further, Mr. Layton has no present or prospective interest in the Property and has no personal interest or bias with respect to the parties involved. Mr. Layton's compensation was not contingent on reporting a predetermined value or a requested minimum valuation.

The New Lease also provides for a periodic adjustment annually to the rental amount, so that the rent will be no less than the fair market rental value of the Property at the time of each adjustment. Such adjustments will be made by retaining a qualified, independent appraiser, selected by Wells Fargo. The cost of each such appraisal will be paid for by the Plan. It is represented that in no event shall the rental amount paid by the Employer be reduced below $16,448 a month during the term of the New Lease.

The New Lease is a triple-net lease, such that the Employer is obligated to pay all taxes levied against the Property, all utility charges, the cost of installing any fixtures and equipment, all maintenance and repair costs, and premiums for both liability and casualty insurance for the benefit of the Plan as an additional named insured. All trade fixtures and equipment installed by the Employer remain the property of the Employer and may be removed by the Employer, who must repair any damage caused by such removal. In addition, the Employer has agreed to indemnify the Plan from all liabilities for personal injury or property damage occurring on the Property and not caused by the negligence of the Plan.

5. The Employer and sponsor of the Plan is engaged in the business of producing two (2) daily newspapers seven (7) days a week. It is represented that the Employer uses the Property to receive (via the railroad spur on the Property and by truck) newsprint and other supply items for printing newspapers and related functions and to store such supplies. It is represented that the Employer has consistently complied with the terms of both the Original Lease and the Old Lease in a timely manner.

6. The Owners of the Employer are each engaged in the newspaper publishing business. MediaNews owns 100 percent (100%) of Kearns-Tribune, LLC (Kearns-Tribune), which owns 50 percent (50%) of the stock of the Employer. MediaNews purchased its ownership in Kearns-Tribune MediaNews from AT&T Corporation. The remaining 50 percent (50%) of the stock of the Employer is owned by Deseret. The Owners of the Employer have guaranteed performance of all conditions of the New Lease, including the payment of rent, by the Employer and have agreed to perform such conditions themselves, if the Employer is unable to do so. Wells Fargo has reviewed various information and financial data on MediaNews and Deseret and believes that each is creditworthy.

7. The Employer is a party in interest with respect to the Plan, pursuant to section 3(14)(C) of the Act. The Owners of the Employer are parties in interest with respect to the Plan, pursuant to section 3(14)(E) of the Act. The Plan and the Employer entered into the New Lease, effective August 1, 2003, on the condition that the proposed exemption is granted. In addition the Owners of the Employer have guaranteed the obligations of the Employer under such New Lease. Accordingly, the applicant has requested relief from section 406(a)(1)(A) through (D), 406(b)(1) and 406(b)(2) of the Act and 4975 of the Code by reason of 4975(c)(A)(A) through (E) for both transactions, the leasing of the Property by the Employer and the guarantee by the Owners of the Employer.

8. It is represented that the proposed transactions are administratively feasible in that the Property has been previously leased by the Employer from the Plan for an extended period of time, pursuant to PTE 85–37. Further, no modification of the Property would be required to accommodate the Employer who is the current tenant. In addition, the appraisal of the Property, the drafting of the New Lease, and the other administrative requirements necessary to continue the leasing of the Property to the Employer by the Plan have already been accomplished.

9. It is represented that there are sufficient safeguards in the proposed exemption for the protection of the Plan and its participants and beneficiaries. Wells Fargo has reviewed the terms of the New Lease and compared such terms with similar leases between unrelated parties. Further, Wells Fargo has agreed to monitor the New Lease and the conditions of the exemption on behalf of the Plan throughout the term of the New Lease and has authority to take all appropriate actions to safeguard the interests of the Plan.

It is represented that Wells Fargo has examined the Plan's overall investment portfolio, considered the Plan's liquidity and diversification requirements in light of the proposed leasing, and has determined that the proposed leasing complies with the Plan's investment

objectives and policies. In this regard, of the total assets of the Plan an estimated 4.361 percent (4.361%) will be involved in the leasing of the Property between the Plan and the Employer. By diversifying a small percentage of the total Plan assets into real estate, Wells Fargo asserts that it is taking steps to protect the Plan and its participants and beneficiaries from fluctuations in the stock and bond markets.

10. The exemption contains additional protections for the Plan and its participants and beneficiaries. In this regard, the exemption contains a condition that the Plan may at any time upon six (6) months prior written notice to the Employer terminate the New Lease and the Employer's occupancy of the Property. Further, the exemption contains a requirement that Wells Fargo, acting as the I/F on behalf of the Plan, place the Property on the market for sale or lease to an unrelated third party, within fifteen (15) calendar days of the date of the publication of the grant of this proposed exemption in the **Federal Register**, and proceed to sell or lease such Property to any such unrelated third party who presents a *bona fide* sale or lease offer which Wells Fargo determines to be prudent and in the best interest of the Plan and its participants and beneficiaries. It is represented that the Employer may build a new facility within the next two (2) years, and at the conclusion of the initial term of the New Lease, may not exercise an option to renew the lease on the Property. Accordingly, the conditions and requirements of the exemption assure that the Plan will have sufficient time to search for a replacement tenant or a purchaser, and will have the ability to terminate the New Lease within a reasonable period.

11. Wells Fargo has stated that it believes the proposed leasing is in the best interest of the Plan and its participants and beneficiaries. In this regard, according to Wells Fargo, the estimated average annual total rate of return to the Plan from the Property over the past seven (7) years, based on both unrealized gain and income has been 13.31 percent (13.31%). Wells Fargo believes that rental payments to the Plan will be maximized by continuing to lease the Property to the Employer at a fair market rental amount (adjusted annually). In this regard, Wells Fargo estimates an annual rate of return for the Property in the coming year of approximately 11.61 percent (11.61%), even assuming that there is no increase in the fair market value of the Property. Accordingly, Wells Fargo has concluded that by leasing the Property to the Employer, the Plan will gain uninterrupted occupancy of the Property for an extended period of time and continued maintenance of the Property by a responsible and financially viable tenant. Further, the Plan will avoid additional expenses for modifications to the Property, and will avoid lost profits.

12. In summary, the applicant represents that the proposed transactions satisfy the criteria for exemption, as set forth in section 408(a) of the Act, because: (a) The Employer will pay the fair market rental rate, as determined by a independent, qualified appraiser; (b) the rental rate under the terms of the New Lease will be adjusted every year to reflect the fair rental value of the Property at the beginning of each such period, as determined by an independent, qualified appraiser, but will never be less than $16,448 a month; (c) the New Lease does not require the Plan to pay any costs relating to the Property and requires the Employer to indemnify the Plan for certain liabilities relating to the Property; (d) the Employer will maintain both liability and casualty insurance, naming the Plan as an additional insured, with respect to the Property; (e) Wells Fargo, acting as the trustee and I/F with respect to the Plan, represents that the proposed transactions are in the best interests of the Plan and its participants and beneficiaries; (f) Wells Fargo will monitor the New Lease throughout its duration on behalf of the Plan, taking any appropriate actions to safeguard the interests of the Plan; (g) Wells Fargo will place the Property on the market for sale or lease to unrelated third parties, within fifteen (15) calendar days of the date of the publication of the grant of this proposed exemption in the **Federal Register**, and, subject to six (6) months prior written notice to the Employer, will proceed to sell or lease such Property to any such unrelated third party who presents a *bona fide* sale or lease offer which Wells Fargo determines to be prudent and in the best interest of the Plan and its participants and beneficiaries; and (h) the Plan may at any time upon six (6) months prior written notice to the Employer terminate the New Lease and the Employer's occupancy of the Property.

FOR FURTHER INFORMATION CONTACT: Angelena C. Le Blanc, of the Department, telephone (202) 693–8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of September, 2003.

Ivan Strasfeld,

Director of Exemption Determinations, Employee Benefits Security Administration, Department of Labor.

[FR Doc. 03–22622 Filed 9–4–04; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain on expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determination Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

None

Volume V

None

Volume VI

None

Volume VII

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *http://www.access.gpo.gov/davisbacon*. They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive help desk support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 28th day of August, 2003.

Carl Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 03–22503 Filed 9–4–03; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–390]

License No. NPF–90, Tennessee Valley Authority Withdrawal of Request for Action Under 10 CFR 2.206

Notice is hereby given that by letter dated August 5, 2003, Mr. David Lochbaum (petitioner), on behalf of the Union of Concerned Scientists (UCS), has withdrawn his May 30, 2003, request that the NRC take action with regard to Watts Bar Nuclear Plant. The

petitioner had requested that the Tennessee Valley Authority (TVA), the licensee for Watts Bar, be required to provide specific information relating to possible corrosion of the reactor coolant pressure boundary at Watts Bar due to defects in the stainless steel cladding applied to the interior surface of the carbon steel reactor pressure vessel to provide corrosion resistance against the borated water used as reactor coolant. The petitioner had also requested that the NRC (a) provide UCS with copies of all correspondence sent to TVA regarding this petition and the subject cladding defects at Watts Bar, (b) provide UCS with advance notice of all NRC public meetings with TVA regarding this petition and the subject cladding defects, (c) provide UCS with an opportunity to participate in all relevant phone calls between NRC staff and TVA regarding this petition and the subject cladding defects at Watts Bar, and (d) provide UCS with copies of all correspondence sent to Members of Congress and/or industry organizations (*e.g.*, the Nuclear Energy Institute, the Electric Power Research Institute, the Institute for Nuclear Power Operations).

As the basis for this withdrawal, the petitioner states that the UCS has reviewed the response provided by the licensee and finds it fully responsive so that the Demand for Information is no longer necessary.

Notice of the receipt of the request for action was published in the **Federal Register** on July 9, 2003 (68 FR 41022). Copies of the licensee's response and the withdrawal letter are available for inspection at the Commission's Public Document Room (PDR) at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 28th day of August 2003.

For the Nuclear Regulatory Commission.

R. William Borchardt,

Office of Nuclear Reactor Regulation.

[FR Doc. 03–22610 Filed 9–4–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District, Fort Calhoun Station, Unit 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR) part 20, section 20.1003 for Facility Operating License No. DPR–40, issued to Omaha Public Power District (OPPD/the licensee), for operation of the Fort Calhoun Station, Unit No. 1 (FCS), located in Washington County, Nebraska. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would provide an exemption from the 10 CFR 20.1003 definition of total effective dose equivalent (TEDE), which is the sum of the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures). The proposed exemption would change the definition of TEDE to mean the sum of the effective dose equivalent or the deep-dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures). The staff has determined that the new method for calculating TEDE, under certain conditions, is a more accurate means of estimating worker radiation exposure.

The proposed action is in accordance with the licensee's application dated January 8, 2003.

The Need for the Proposed Action

The proposed action is needed because the current method of calculating TEDE, under certain conditions, can significantly overestimate the dose received.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that revising the methodology for calculating the dose received by individuals will not have any significant environmental impacts.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resource than those previously considered in the Final Environmental Statement for the FCS dated August 1972.

Agencies and Persons Consulted

On August 8, 2003, the staff consulted with the Nebraska State official, Julia Schmitt of the Nebraska Consumer Health Services Agency, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 8, 2003. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area 01 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public

Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 28th day of August, 2003.

For the Nuclear Regulatory Commission.

Stephen Dembek,

Chief, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 03–22609 Filed 9–4–03; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Briefing on Data System Changes

AGENCY: Postal Rate Commission.

ACTION: Notice of public briefing.

SUMMARY: The United States Postal Service will present a briefing on September 17, 2003 at 10 a.m. in the Postal Rate Commission's hearing room on the proposed merger of two major data reporting systems. The systems affected by the merger are the Revenue, Pieces and Weight (RPW) system and the Origin Destination Information System (ODIS). The briefing is open to the public.

DATES: September 17, 2003, at 10 a.m.

ADDRESSES: Postal Rate Commission (hearing room), 1333 H Street NW.,. Washington, DC 20268–0001, Suite 300.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

Steven W. Williams,

Secretary.

[FR Doc. 03–22668 Filed 9–4–03; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26171]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

August 29, 2003.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August, 2003. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 23, 2003, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0504.

Credit Suisse Strategic Value Fund, Inc.

File No. 811–7515]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 6, 2003, applicant transferred its assets to Credit Suisse Large Cap Value Fund, a series of Credit Suisse Capital Funds, based on net asset value. Expenses of $135,000 incurred in connection with the reorganization were paid by Credit Suisse Asset Management, LLC, applicant's investment adviser and/or its affiliates.

Filing Date: The application was filed on August 1, 2003.

Applicant's Address: 466 Lexington Ave., New York, NY 10017.

PIC Balanced Portfolio

[File No. 811–6497]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 29, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on July 25, 2003.

Applicant's Address: 300 N. Lake Ave., Pasadena, CA 91101.

MW Capital Management Funds

[File No. 811–10535]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 30, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Applicant incurred no expenses in connection with the liquidation.

Filing Date: The application was filed on July 23, 2003.

Applicant's Address: 610 Newport Center Dr., Suite 1000, Newport Beach, CA 92660.

DEVCAP Shared Return Fund

[File No. 811–9070]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 30, 2003, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of $35,870 incurred in connection with the liquidation were paid by applicant.

Filing Date: The application was filed on July 25, 2003.

Applicant's Address: 209 West Fayette St., Baltimore, MD 21201.

Mercury Large Cap Series Funds, Inc.

[File No. 811–9697]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 28, 2003, applicant's three series transferred their assets to corresponding series of Merrill Lynch Large Cap Series Funds, Inc., based on net asset value. Expenses of approximately $615,151 incurred in connection with the reorganization were paid by Fund Asset Management, Inc., applicant's investment adviser.

Filing Date: The application was filed on July 23, 2003.

Applicant's Address: 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Khan Funds

[File No. 811–7829]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By June 15, 2003, all shareholders of applicant had redeemed their shares at net asset value. Expenses of $580 incurred in connection with the liquidation were paid by Khan Investment Inc., applicant's investment adviser.

Filing Dates: The application was filed on June 11, 2003, and amended on July 14, 2003 and August 20, 2003.

Applicant's Address: 714 FM 1960 West #201, Houston, TX 77090.

United Services Insurance Funds

[File No. 811–8766]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its

securities and does not propose to make a public offering or engage in business of any kind.

Filing Dates: The application was filed on June 9, 2003, and amended on July 24, 2003.

Applicant's Address: 7900 Callaghan Rd., San Antonio, TX 78229.

AFAC Equity, L.P. (formerly 52nd Street Associates, L.P.)

[File No. 811–10277]

Summary: Applicant, a closed-end investment company, seeks an order declaring that it has ceased to be an investment company. Applicant has never made a public offering of its securities and does not propose to make a public offering. Applicant has one limited partner and will continue to operate in reliance on section 3(c)(1).

Filing Dates: The application was filed on June 30, 2003, and amended on August 8, 2003.

Applicant's Address: c/o MIO Partners, Inc. (f/k/a Paul Harris Management, Inc.), 55 East 52nd St., New York, NY 10022.

CMG Investors Trust

[File No. 811–10615]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 19, 2003, applicant made a liquidating distribution to its sole shareholder, based on net asset value. Expenses of approximately $1,400 incurred in connection with the liquidation were paid by applicant, Capital Management Group Advisors, LLC, applicant's investment adviser, and Cadre Financial Services, Inc., applicant's sub-administrator.

Filing Dates: The application was filed on July 2, 2003, and amended on August 11, 2003.

Applicant's Address: Cadre Financial Services, Inc., 905 Marconi Ave., Ronkonkoma, NY 11779.

Berger Institutional Products Trust

[File No. 811–7367]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. Applicant's board of directors approved the merger of three of Applicant's series and the liquidation of its remaining series on November 26, 2002. Shareholders of the merged series approved the mergers into the Janus Aspen Series on March 7, 2003, and the mergers took place on March 24, 2003. The liquidation and distribution of the assets of the remaining series occurred on March 31, 2003. Janus Capital Management LLC and Berger Financial Group LLC paid for the expenses of the mergers and liquidation. Applicant has no remaining assets and no outstanding debts or liabilities.

Filing Dates: The application was filed on May 28, 2003, and amended on July 31, 2003.

Applicant's Address: 210 University Blvd., Suite 800, Denver, CO 80206.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22598 Filed 9–4–03; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Goverment in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of September 8, 2003:

Closed Meetings will be held on Tuesday, September 9, 2003, at 2 p.m. and Wednesday, September 10, 2003, at 11 a.m., and Open Meetings will be held on Wednesday, September 10, 2003, at 10 a.m. and Thursday, September 11, 2003, at 10 a.m.

Commissioner Atkins, as duty officer, determined that no earlier notice thereof was possible.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings

The subject matter of the Closed Meeting scheduled for Tuesday, September 9, 2003, will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Formal orders of investigation; and

Adjudicatory matter.

The subject matter for the Open Meeting scheduled for Wednesday, September 10, 2003 will be:

1. The Commission will hear oral argument on an appeal by the Barr Financial Group, Inc. ("BFG"), an investment adviser, and Alfred E. Barr ("Barr"), BFG's president, from the decision of an administrative law judge.

The law judge found that:

a. Respondents violated section 207 of the Investment Advisers Act of 1940 ("Advisers Act") by making untrue statements of material fact in Forms ADV and ADV amendments filed by BFG during 1997 and 1998. Respondents' statements concerned the amount of assets BFG had under management and Barr's academic credentials;

b. Respondents were permanently enjoined in 1999 from violating Advisers Act section 204 and "regulations thereunder governing the conduct of investment advisers under Rule 204–2 of the Advisers Act."

The law judge ordered both respondents to cease and desist from committing or causing any violations or future violations of Advisers Act sections 204 and 207, barred Barr from associating with any investment adviser, and revoked BFG's registration as an investment adviser.

Among the issues likely to be argued are:

a. Whether the evidence supports the allegations;

b. Whether and to what extent sanctions should be imposed in the public interest.

For further information, please contact the Office of the Secretary at (202) 942–7070.

2. The Commission will hear oral argument on an appeal by the Division of Enforcement from the decision of an administrative law judge.

The law judge found that the Division of Enforcement failed to prove that Jeffrey M. Steinberg and John Geron, ("the Respondents"), certified public accountants and former partners of accounting firm Arthur Andersen & Co., L.L.P., caused violations by Spectrum Information Technologies, Inc. ("Spectrum") of section 13(a) of the Securities Exchange Act of 1934 and Rules 13a–13 and 12b–20 thereunder ("the reporting provisions"), and the law judge dismissed the proceedings against the Respondents. The law judge concluded that the Respondents' accounting advice to Spectrum was consistent with generally accepted accounting principles ("GAAP"). The law judge determined also that Spectrum's quarterly reports filed with the Commission on Forms 10–Q for the periods ended June 30, 1993, and September 30, 1993, the reports at issue,

adequately disclosed certain licensing transactions.

The Division has requested that the Commission reverse the law judge's findings of fact and conclusions of law and his dismissal of all charges, and issue cease-and-desist orders against the Respondents.

Among the issues likely to be argued are:

a. Whether Spectrum's accounting treatment was consistent with GAAP;

b. Whether the Respondents acted negligently;

c. Whether the Respondents were "a cause" of Spectrum's violations of the reporting provisions within the meaning of Exchange Act section 21C; and

d. Whether issuance of cease-and-desist orders against the Respondents is in the public interest.

For further information, please contact the Office of the Secretary at (202) 942–7070.

The subject matter for the Closed Meeting scheduled for Wednesday, September 10, 2003 will be: Post argument discussion.

The subject matter for the Open Meeting scheduled for Thursday, September 11, 2003, will be:

1. The Commission will consider whether to adopt amendments to rule 206(4)–2, the custody rule under the Investment Advisers Act of 1940, to enhance the protections afforded to advisory clients' assets, harmonize the rule with current custodial practices, and clarify circumstances under which advisers have custody of client assets.

For further information, please contact Vivien Liu at (202) 942–0664.

2. The Commission will consider whether to propose a rule to exempt qualified foreign banks from the insider lending prohibition of the Securities Exchange Act of 1934 section 13(k), as added by section 402 of the Sarbanes-Oxley Act. The proposed rule would exempt foreign banks that meet specified criteria similar to those that qualify domestic banks for the exemption under section 13(k). The Commission will also consider whether to propose an amendment to Form 20–F that would require a foreign bank issuer to provide the same disclosure regarding problematic loans to insiders as that required for domestic banks under Regulation S–K.

For further information contact Elliot Staffin at (202) 942–2990.

3. The Commission will also consider whether to propose an amendment to For F–6 that would add an eligibility requirement making the form unavailable to register under the Securities Act of 1933 depositary shares evidenced by American depositary receipts if the foreign issuer has separately listed the deposited securities on a registered national securities exchange or automated inter-dealer quotation system of a national securities association.

For further information please contact Michael Coco at (202) 942–2990.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: September 3, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–22771 Filed 9–3–03; 12:52 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48416; File No. SR–CBOE–2003–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Options on a Reduced Value NYSE Composite Index

August 27, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2003, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, the Exchange has prepared. On August 6, 2003, the CBOE filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to trade options on the reduced-value, revised NYSE Composite Index ("Reduced Value NYSE Composite Index" or "Reduced Value Index") based on levels imposed by the New York Stock Exchange ("NYSE") itself. Options traded on the "old" NYSE Composite Index will no longer trade on the CBOE. The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Index Design

Currently, the CBOE lists and trades European-style, cash-settled options on the NYSE Composite Index. The NYSE Composite Index, prior to January 9, 2003, was a full-market capitalization-weighted index comprised of all of the securities that are listed on the NYSE.[4] Recently, the NYSE announced that, as of January 9, 2003, it would replace the NYSE Composite Index ("Old Index") with a new version that features a revised methodology and composition. The revised index contains 700 fewer components and will carry a new value around 5,000, as opposed to the year-end closing level of around 500, as of December 31, 2002.

The revised index will continue to measure the performance of all NYSE-listed common stock, American Depositary Receipts ("ADR"), tracking stocks, and real estate investment trusts ("REIT"), but will exclude closed-end investment companies, exchange traded funds ("ETF"), and derivatives. Additionally, the revised NYSE Composite Index ("Revised Index") will use a float-adjusted market capitalization weighting method instead of the previous full-market capitalization weighting.[5] Float-adjusted

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Jim Flynn, Attorney II, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission dated August 5, 2003 ("Amendment No. 1").

[4] Excluding preferred stock issues.

[5] CBOE has indicated that according to the NYSE, these revisions will create an index that is more representative of the investable equity securities and those securities that are better suited to track future changes in the U.S. stock market.

market capitalization, as opposed to full market capitalization, is used to reflect only the number of shares that are actually available to investors.

In calculating the market capitalization of each underlying issuer, the Float-adjusted market capitalization methodology reduces each underlying issuer's market share by the market capitalization value represented by those shares held through block ownership. The following are considered block ownership for the purposes of float-adjusted market capitalization: (1) Cross ownership—shares that are owned by other companies; (2) government ownership—shares that are owned by governments or their agencies; (3) private ownership—shares that closely held by individuals, families or charitable trusts and foundations; and, (4) restricted shares—shares that are not allowed to be traded during a certain period of time.

The following chart illustrates the pertinent differences between the old index methodology and the Revised Index methodology.

Security class eligible for inclusion	Old methodology	New methodology
Common Stocks	Yes	Yes.
ADRs	Yes	Yes.
Tracking Stocks	Yes	Yes.
REITs	Yes	Yes.
Closed-end funds	Yes	No.
ETFs	Yes	No.
Preferred stocks	No	No.
Derivatives	Yes	No.
Shares of beneficial interest	Yes	No.
Trust units	Yes	No.
Limited partnerships	Yes	No.
Weighting	Full market capitalization	Float-adjusted market cap.
Base Date	December 31, 1965	December 31, 2002.
Base Value	50	5,000.
Maintained/Calculated by	Securities Industry Automation Corp. (SIAC)	Dow Jones Indexes.
Reconstitution/Rebalancing	Ongoing	Ongoing.
Share Updates (<10%)	Daily	Quarterly.
Available Indexes	Price return index	Price and total return indexes.

Index Calculation

The NYSE has calculated the Revised Index to a base value of 5,000 as of December 31, 2002. Due to the extremely large contract size ($500,000) that would result from pairing the standard contract multiplier ($100) with such a high underlying index level, the CBOE proposes to list and trade options based on one-tenth (1/10th) of the value of the Revised Index. Options on the Reduced Value NYSE Composite will provide investors with product offerings consistent with those available for the Old Index.

All option series on the old NYSE Composite Index have expired and no new series in old NYSE Composite Index options have been added or will be added. Options on the Reduced Value Index will trade under a new root ticker symbol.

In order to avoid confusion, the CBOE will notify market participants of both the Revised Index and the details of the new options series that the CBOE will list on the Reduced-Value Index. In its notification, the CBOE will include a discussion of the float adjusted market capitalization method. The Reduced-Value Index levels will be disseminated throughout the trading day at 15-second intervals through OPRA.

Index Option Trading

The Exchange believes that listing options on the Reduced Value Index will attract a greater source of customer business than if options were based on the full value of the Revised Index. The Exchange also believes that options on the Reduced Value Index will provide an opportunity for investors to hedge, or speculate on, the market risk associated with the stocks comprising this broad-based Index. Further, by reducing the value of the Revised Index, such investors will be able to utilize this trading vehicle, while extending a smaller outlay of capital. The CBOE believes that this should attract additional investors, and, in turn, create a more active and liquid trading environment.

In addition to regular index options, the Exchange has the authority to list long-term index option series ("LEAPS®"), as well as reduced-value LEAPS,[6] in accordance with CBOE Rule 24.9(b)(1). The CBOE's rules specifically permitted the listing of reduced-value LEAPS on the "old" NYSE Composite Index.[7] The Exchange similarly intends to allow for the listing of LEAPS or reduced-value LEAPS on the Reduced Value Index in order to provide investors with product offerings consistent with those that were available for the "old" NYSE Composite index. The Exchange will make a timely determination, based on contemporaneous market factors, as to when and if either LEAPS or reduced-value LEAPS shall be listed. In deciding whether to list LEAPS or reduced-value LEAPS, the Exchange will consider which type of series provides the most appropriate vehicle for customers to use as a long-term hedge.

The option settlement value on the Reduced Value Index will be based on the opening prices of the component securities as reported by the NYSE. For options on the Reduced Value Index, strike prices will be set to bracket the Reduced Value Index in 2.5-point increments for strikes below $200 and 5-point increments above $200, as will be reflected in CBOE Rule 24.9. The trading hours for options on the Reduced Value Index will be from 8:30 a.m. to 3:15 p.m. Chicago time.

Options shall be European-style exercise and A.M.-settled, as currently reflected in CBOE Rule 24.9(a)(3), and position limits will remain the same for options traded on the Reduced Value Index as those established on the old Index; 45,000 contracts on either side of

[6] CBOE Rule 24.1(g) provides that the current index value for a reduced-value LEAP is one-tenth (1/10th) of the current index value of the related index option. The "closing index value" shall be the last index value reported on a business day.

[7] *See* CBOE Rule 24.9(b)(2) (Reduced-Value LEAPS).

the market. This is consistent with CBOE Rule 24.4.

For purposes of calculating customer margin requirements, the Revised Index, just like the Old Index, is considered a broad-based index for purposes of calculating customer margin requirements.

Surveillance

The Exchange represents that its surveillance procedures are adequate to monitor the trading in options and LEAPS on the Reduced Value Index. The CBOE does not believe that there are any material differences in the manner in which options on the Reduced Value Index will trade. The Exchange also believes that reducing the value of the Revised Index, as well as the other changes to the index's design and calculation, does not raise any new concerns about manipulation or adverse market impact. As a result, the Exchange believes that the existing surveillance procedures as they applied to the Old Index options should be adequate to detect or deter manipulation.[8] The CBOE also shall provide to members a formal notice which will describe the Revised Index, the Reduced Value Index, the new options root ticker symbol, and the options series to be listed on the Reduced Value Index.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act,[9] in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve such proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CBOE–2003–14 and should be submitted by September 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22599 Filed 9–4–03; 8:45 am]

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[8] Telephone conversation between Jim Flynn, Attorney II, CBOE, and Ian K. Patel, Attorney, Division of Market Regulation, Commission on August 26, 2003.

[9] 15 U.S.C. 78f(b)(5).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48242; File No. SR–NASD–2003–92]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval To a Proposed Rule Change To Adopt NASD Rule 2370 To Govern Certain Lending Arrangements Between Registered Persons and Customers

August 29, 2003.

I. Introduction

On June 11, 2003, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt NASD Rule 2370 which would prohibit registered persons from borrowing money from or lending money to a customer unless the member has written procedures allowing such lending arrangements consistent with the rule, the loan falls within one of five prescribed permissible types of lending arrangements, and the member pre-approves the loan in writing. The proposed rule change was published for comment in the **Federal Register** on July 2, 2003.[3] The Commission received two comment letters on the proposal.[4] In addition, NASD submitted a response to comments.[5] This order approves the proposed rule change.

II. Description of the Proposed Rule Change

Under the proposal, registered persons would be prohibited from borrowing money from or lending money to a customer unless the member has written procedures allowing such lending arrangements consistent with the proposal, the loan falls within one of five permissible types of lending arrangements, and the member pre-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48093 (June 26, 2003), 68 FR 39608.

[4] *See* letters to Jonathan G. Katz, Secretary, Commission, from Christine A. Bruenn, President, Maine Securities Administrator, North American Securities Administrators Association, Inc. ("NASAA"), dated July 23, 2003, ("NASAA Letter"); and Michael C. Herndon, Director, Public and Governmental Affairs, Certified Financial Planner Board of Standards, Inc. ("CFP"), dated July 23, 2003 ("CFP Letter").

[5] *See* letter to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, from Shirley H. Weiss, Assbciate General Counsel, NASD, dated July 29, 2003 ("NASD Letter")

approves the loan in writing. The five types of permissible lending arrangements are: (1) The customer is a member of the registered person's immediate family (as defined in the proposed rule); (2) the customer is in the business of lending money; (3) the customer and the registered person are both registered persons of the same firm; (4) the lending arrangements is based on a personal relationship outside of the broker-customer relationship; or (5) the lending arrangement is based on a business relationship outside of the broker-customer relationship.

III. Summary of Comments

As noted above, the Commission received two comment letters on the proposed rule change.[6] CFP supported the proposal because it would more closely regulate lending arrangements between registered persons and customers.[7] NASAA did not explicitly support or oppose the proposed rule change. However, NASAA endorsed further restrictions on loans between registered persons and customers.[8] According to NASAA, lending arrangements that occur outside standard commercial channels can be problematic. Further, the potential for conflict is particularly great when business associates enter into loan arrangements outside the normal business relationship. NASAA referred to its Statement of Policy that prohibits "the practice of lending or borrowing money or securities from a customer."[9]

In its response letter, NASD stated that proposed NASD Rule 2370 would give its members the ability to prohibit all lending arrangements between their registered persons and customers.[10] However, if permitted, proposed NASD Rule 2370 would establish strict conditions under which such lending arrangements could take place. Firms would be required to have written procedures in place evidencing their customer loan policy and loans would be limited to five permissible types of arrangements, which NASD staff identified as arrangements that might not be problematic because of the relationship between the registered person and the customer. In addition, according to NASD, proposed NASD Rule 2370 provides additional safeguards by establishing a notice and approval requirement. Thus, under proposed NASD Rule 2370, registered persons would be required to give their firms prior notice of a loan, and firms would be required to pre-approve each loan in writing. These requirements would enable a member, to the extent it permitted these loan arrangements, to assess the nature of each proposed arrangement and decide whether to approve it. They also would enhance NASD's ability to review these arrangements during the examination process.

IV. Discussion

After careful consideration of the proposed rule change, the comment letters, and NASD's response, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[11] and, in particular, the requirements of Section 15A of the Act[12] and the rules and regulations thereunder. Specifically, the Commission believes that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[13] which, among other things, requires that NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

While the Commission appreciates the concern raised by NASAA, the Commission believes that NASD has proposed sufficient safeguards that would enable members to proscribe customer-broker loans and to monitor and control lending arrangements, if permitted, through the notice and approval process. To the extent that a member decides to permit lending arrangements with customers in the limited circumstances allowed by the proposed rule, the rule would also require members to have written procedures to monitor such arrangements. As a result, the Commission also believes that the proposed rule change should enhance NASD's ability to monitor loans, when permitted, between registered persons and their customers.

The Commission notes that the safeguards provided under the rule, including bringing disciplinary actions for violations of the rule, are in addition to the general powers that NASD has to bring a disciplinary action against a registered person who has entered into an unethical lending arrangement with a customer under NASD Rule 2110. For example, the notice requirement would place an affirmative obligation on registered persons that could be separately charged in a disciplinary action if not followed. Lastly, the Commission notes that this proposal has no affect on the application of Regulation T to such lending arrangements.[14]

V. Conclusion

For the foregoing reasons, the Commission finds that the proposal is consistent with the requirements of the Act and rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (File No. SR–NASD–2003–92) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 03–22656 Filed 9–4–03; 8:45 am]

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[6] *See supra* note 4.

[7] *See* CFP Letter.

[8] *See* NASAA Letter.

[9] *Id.*

[10] *See* NASD Letter.

[11] In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78*o*–3

[13] 15 U.S.C. 78*o*–3(b)(6).

[14] *See* 12 CFR 220.

[15] 15 U.S.C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12)

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. The information collection packages that may be included in this notice are for new information collections, revisions to OMB-approved information collections and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed

and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB) Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503, Fax: 202–395–6974;

(SSA)

Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1338 Annex, 6401 Security Blvd., Baltimore, MD 21235, Fax: 410–965–6400.

I. The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

1. *Application for Lump Sum Death Payment—0960–0013—20 CFR 404.390–404.392—960–0013.* The information collected on form SSA–8 by the Social Security Administration is required to authorize payment of a lump-sum death benefit to a widow, widower, or children as defined in Section 202(i) of the Social Security Act. The respondents are widows, widowers or children who apply for a lump-sum death payment.

Type of Request: Extension of an OMB-approved information collection.

Number of respondents: 43,850.

Frequency of response: 1.

Average burden per response: 10 minutes.

Estimated annual burden: 7,308 hrs.

2. *Student Statement Regarding School Attendance—20 CFR 404.351–.352, 404.367–.368—0960–0105.* The information collected on Form SSA–1372 is needed to determine whether children of an insured worker are eligible for benefits as a student. The respondents are student claimants for Social Security benefits and their respective schools.

Type of Request: Extension of an OMB-approved information collection.

Number of respondents: 200,000.

Number of Response: 1.

Average burden per response: 10 minutes.

Estimated Annual Burden: 33,333 hours.

3. *Annual Earning Test—Direct Mail Follow-up Program Notices—20 CFR 404.452–.455–0960–0369.* Social Security beneficiaries who are under full retirement age (FRA) are required to report their current year earnings estimate and the following year earnings estimate to ensure correct payment of Social Security benefits. Beneficiaries use one of the midyear mailer forms (SSA–L9778, L9779, and L9781) for this report. Beneficiaries who attain FRA are not subject to the annual earnings test. In the year of FRA, beneficiaries approaching retirement complete forms SSA–L9784 and L9785 which request earnings estimates for the period prior to the month of FRA. Respondents are beneficiaries who must update their current year estimate of earnings, give SSA an estimate of earnings for the following year, and an earnings estimate (in the year of FRA) for the period prior to the month of FRA.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 225,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 37,500 hours.

4. *Employment Relationship Questionnaire—20 CFR 404.1007—0960–0040.* SSA uses the information collected on Form SSA–7160 to determine whether the Social Security number-holder is self-employed or an employee. The respondents are applicants for Social Security Benefits and/or employers.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 47,500.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 19,792 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer at 410–965–0454, or by writing to the address listed above.

1. *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations—20 CFR 435—0960–0616.* These rules cover the basic administrative reporting and recordkeeping requirements for applicable recipients of grants and agreements. Because very specific requirements must be met, it is necessary that SSA collect significant information from the applicants and grantees to determine if they meet, or continue to meet, the conditions specified. The respondents are institutions of higher education, hospitals, and other non-profit organizations.

Type of Request: Extension of an OMB-approved information collection. SSA currently has a total of 17 grant recipients that are subject to the requirements of the proposed rule. The hourly burden as estimated for each of the reporting (Rpt) and recordkeeping (Rec-kp) requirements is explained below and reflected in the following table:

CFR section No.	Type	Number of respondents	Frequency of response	Average burden hours per response	Estimated annual burden hours
435.21	Rec-kp	1	N/A	40	40
435.23	Rec-kp	94	Quarterly (4)	1	376
435.25	Rpt	14	Biannually (2)	4	112
435.33	Rpt	1	Annually (1)	1	1
435.44	Rpt	1	Annually (1)	2	2
435.51	Rpt	150	Quarterly (4)	12	7200
435.53	Rec-kp	150	Annually (1)	8	1200
435.81	Rpt	1	Annually (1)	16	16
435.82	Rpt	1	Annually (1)	8	8

Total estimated annual burden: 8,955 hours.

1. *Collection of SSI Overpayments from Special Benefits for Certain WWII Veterans; 20 CFR, Subpart E, 416.570 & .572—0960–0653.* The information

collection requirement in 20 CFR 416.570 allows for an individual to request to withhold a title XVI overpayment from Title II/VIII benefits. The information collection requirement in 20 CFR 416.572 allows for an individual to elect a higher or lower rate of withholding for recovery of an SSI overpayment. The information collected will be used to determine the proper rate of withholding of benefits to recover program overpayments. The respondents are Title II or Title VIII beneficiaries who were overpaid title XVI benefits and who request a higher rate of recovery than specified in 20 CFR 416.571.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 2,500.

Frequency of Response: 1.

Average Burden Per Response: 1 hour.

Estimated Annual Burden: 2,500 hours.

2. *Medical or Psychological Consultant's Review of Childhood Disability Evaluation Form—20 CFR, Subpart J, 416.1040, .1043, .1045—0960–NEW.* Form SSA–536 is used by SSA medical or psychological consultants to document their review and assessment of the Childhood Disability Evaluation Form, SSA–538, prepared by State DDS employees. A childhood disability evaluation is required in each SSI childhood disability case. Therefore, the consultants must prepare an assessment form SSA–536 for each childhood disability case that is reviewed. The respondents are 256 SSA medical and psychological consultants.

Type of Request: Approval of an existing information collection.

Number of Responses: 17,000.

Frequency of Response: 1.

Average Burden Per Response: 12 minutes.

Estimated Annual Burden: 3,400 hours.

3. *Requests for Self-Employment Information, Employee Information, Employer Information—20 CFR, Subpart A, 422.120—0960–0508.* SSA uses Forms SSA–L2765, SSA–L3365 and SSA–L4002 to request correct information when an employer, employee or self-employed person reports an individual's earnings without a Social Security Number (SSN) or with an incorrect name or SSN. The respondents are employers, employees or self-employed individuals who are requested to furnish additional identifying information.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 3,000,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 500,000 hours.

4. *Function Report—Adult—20 CFR 404.1512 and 416.912—0960–NEW.* Form SSA–3373 records information about the disability applicant's impairment-related limitations and ability to function. It documents the types of information specified in SSA regulations and provides disability interviewers with a convenient means to record information about how the claimant's condition affects his or her ability to function. This information, together with medical evidence, forms the evidentiary basis upon which the initial disability process is founded. The respondents are title II and XVI benefits applicants.

Type of Request: New information collection.

Number of Respondents: 4,005,367.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 2,002,684.

5. *Application for Search of Census Records for Proof of Age—20 CFR 404.716—0960–0097.* The information collected on Form SSA–1535–U3 is required to provide the Census Bureau with sufficient identification information, which will allow an accurate search of census records to establish proof of age for an individual applying for Social Security benefits. It is used for individuals who must establish age as a factor for entitlement. The respondents are individuals applying for Social Security benefits who need to document their date of birth.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 18,000.

Number of Response: 1.

Average Burden per Response: 12 minutes.

Estimated Average Burden: 3,600.

6. *Representative Payee Report—Special Veterans Benefits Form—0960–0621.* SSA needs the information collected on form SSA–2001 to determine whether payments certified to the representative payee have been used properly and whether the representative payee demonstrates concern for the beneficiary's best interest. The form will be completed annually by representative payees receiving Special Veterans Benefit payments on behalf of beneficiaries who are outside of the United States. It will also be required when SSA has reason to believe a representative payee could be misusing the payments. The respondents are representative payees for beneficiaries who are receiving Special Veterans Benefits.

Type of Request: Extension of an OMB-approved information collection.

Number of Respondents: 100.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 17 hours.

Dated: August 28, 2003.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 03–22579 Filed 9–4–03; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4470]

Culturally Significant Objects Imported for Exhibition Determinations: "JFK and Art"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition "JFK and Art," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit object at the Bruce Museum of Arts and Science, Greenwich, CT from on or about September 20, 2003 to on or about January 7, 2004 and the Norton Museum of Art, West Palm Beach, FL from on or about February 7, 2004 to on or about May 2, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: (202) 619–6981). The address is Department of State, SA–44,

301 4th Street, S.W., Room 700, Washington, DC 20547–0001.

Dated: August 26, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–22637 Filed 9–4–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4468]

Culturally Significant Objects Imported for Exhibition Determinations: "Prokofiev and his Contemporaries: The Impact of Soviet Culture"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "Prokofiev and his Contemporaries: The Impact of Soviet Culture," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the New York Public Library for the Performing Arts, New York, NY from on or about October 15, 2003 until on or about January 10, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact the Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 29, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–22635 Filed 9–4–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4469]

Culturally Significant Objects Imported for Exhibition Determinations: "The Age of Watteau, Chardin, and Fragonard: Masterpieces of French Genre Painting"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition "The Age of Watteau, Chardin, and Fragonard: Masterpieces of French Genre Painting," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC, from on or about October 12, 2003, to on or about January 11, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julianne Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6529). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: August 29, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–22636 Filed 9–4–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending August 22, 2003

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2003–16011.
Date Filed: August 22, 2003.
Parties: Members of the International Air Transport Association.
Subject:
CTC COMP 0453 dated 22 August 2003
Resolution 010aa–TC2/12/23 Special Cargo
Amending Resolution,
Establishing Cargo Rates and Charges from Albania, Bosnia, and Herzegovina, Bulgaria, Croatia, Macedonia (FYROM), Romania Serbia and Montenegro, Slovenia in euro (EUR)
Intended effective dates: 1 October 2003, 1 November 2003, 1 January 2004.

Andrea M. Jenkins,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 03–22563 Filed 9–4–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Type Validation and Post-Type Validation Procedures

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and requests for public comment.

SUMMARY: This notice announces the availability of and requests comments on a proposed order. The proposed order establishes the type certification principles and responsibilities pertaining to imported and exported aircraft, aircraft engines and propellers.

DATES: Comments must identify the Order and arrive by October 3, 2003.

ADDRESSES: Send all comments on the proposed order to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. ATTN: Gregory A. Edwards, AIR–110. Or, deliver comments to: Federal Aviation Administration, Room 815, 800

Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Gregory A. Edwards, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Certification Procedures Branch, AIR–110, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–9287, FAX (202) 267–5340. E-mail: *greg.edwards@faa.gov.*

SUPPLEMENTAL INFORMATION:

Comments Invited

You may comment on the proposed order listed in this notice by sending written data, views, or arguments to the above listed address. You may also examine comments received on the proposed order, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received by the closing date before issuing the final order.

Background

This order addresses several type certification issues. It defines the principles guiding FAA certification personnel who certificate imported and exported aircraft, aircraft engines, and propellers. It also explains how to ensure the continued airworthiness of imported and exported products, and lists the duties of the importing authority, the exporting authority, and the applicant.

How To Get Copies

You may get a copy of the proposed order via the Internet at *http://www.faa.gov/certification/aircraft/8110–TVP.htm,* or by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on August 28, 2003.

Susan J. M. Cabler,

Deputy Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 03–22566 Filed 9–4–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–15892]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemption from the vision standard; request for comments.

SUMMARY: This notice publishes the FMCSA's receipt of applications from 30 individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

DATES: Comments must be received on or before October 6, 2003.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–2003–15268 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room Pl–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Public Participation: The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the "help" section of the DMS Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

Background

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may grant an exemption for a 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." The statute also allows the agency to renew exemptions at the end of the 2-year period. The 30 individuals listed in this notice have recently requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety.

Qualifications of Applicants

1. Lauren C. Allen

Mr. Allen, age 58, has amblyopia in his right eye. His visual acuity in the right eye is 20/150 and in the left, 20/

30. Following an examination in 2003, his optometrist certified, "In my professional opinion, this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle under any conditions." Mr. Allen reported that he has driven tractor-trailer combinations for 32 years, accumulating 1.6 million miles. He holds a Class A commercial driver's license (CDL) from New York. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

2. Tracey A. Ammons

Mr. Ammons, 46, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/100. Following an examination in 2003, his optometrist certified, "His vision is sufficient to operate a commercial vehicle." Mr. Ammons reported that he has driven tractor-trailer combinations for 13 years, accumulating 955,000 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows one accident and no convictions for moving violations in a CMV. According to the police report, another driver slid through a stop sign due to icy road conditions and struck Mr. Ammons' vehicle. Neither driver was cited.

3. Randy B. Combs

Mr. Combs, 58, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/15 and in the left, 20/100. His optometrist examined him in 2003 and stated, "In my opinion, Mr. Combs has more than adequate vision for safely operating a commercial vehicle." Mr. Combs submitted that he has driven tractor-trailer combinations for 19 years, accumulating 1.4 million miles. He holds a Class DA CDL from Kentucky. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

4. William J. Corder

Mr. Corder, 38, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/400 and in the left, 20/20. Following an examination in 2002, his ophthalmologist certified, "Visual fields overall and vision in the left eye in my opinion are sufficient to operate a commercial vehicle." Mr. Corder reported that he has driven straight trucks for 4 years, accumulating 320,000 miles, and tractor-trailer combinations for 10 years, accumulating 1.0 million miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows one accident and no convictions for moving violations in a CMV. According to the police report, the accident occurred when Mr. Corder's vehicle struck a deer. He was not cited.

5. Robert L. Cross, Jr.

Mr. Cross, 41, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/300 and in the left, 20/20. Following an examination in 2003, his optometrist certified, "In my opinion, he should have no problems operating a commercial vehicle taking into consideration his current visual condition." Mr. Cross reported that he has driven straight trucks for 15 years, accumulating 67,000 miles. He holds a Class F driver's license from Missouri. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

6. William P. Davis

Mr. Davis, 56, has a retinal scar in his left eye due to a childhood infection. His best-corrected visual acuity in the right eye is 20/20, and in the left, hand motions. His optometrist examined him in 2002 and stated, "Paul's vision is more than adequate for any driving challenge that he may have, private or commercial." Mr. Davis submitted that he has driven straight trucks for 38 years, accumulating 2.8 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—speeding—in a CMV. He exceeded the speed limit by 9 mph.

7. Dennie R. Ferguson

Mr. Ferguson, 48, lost his right eye due to an injury at age 13. His best-corrected visual acuity in the left eye is 20/20. Following an examination in 2003, his optometrist certified, "I feel that Mr. Ferguson's vision is sufficient to perform the driving tasks required to operate a commercial vehicle." Mr. Ferguson reported that he has driven tractor-trailer combinations for 17 years, accumulating 1.5 million miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

8. Edward J. Genovese

Mr. Genovese, 38, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/60 and in the left, 20/20. Following an examination in 2003, his optometrist certified, "I believe that with his prior driving experience and his current visual acuity, he is capable of performing duties required to operate a commercial vehicle." Mr. Genovese reported that he has driven straight trucks for 19 years, accumulating 665,000 miles, and tractor-trailer combinations for 16 years, accumulating 560,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—"disregarding an official traffic device"—in a CMV.

9. Dewayne E. Harms

Mr. Harms, 62, lost his left eye due to an injury at age 3. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2002, his ophthalmologist certified, "Finally it is my medical opinion that Mr. Harms has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Harms reported that he has driven tractor-trailer combinations for 28 years, accumulating 280,000 miles. He holds a Class A CDL from Illinois. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

10. Mark D. Kraft

Mr. Kraft, 49, sustained an injury to his right eye at age 13. His best-corrected visual acuity in the right eye is light perception and in the left, 20/20. Following an examination in 2003, his optometrist certified, "Considering the longstanding duration and stability of vision loss of the left eye associated with Mr. Mark Kraft and his unremarkable driving record, I feel Mr. Kraft has sufficient vision to perform the driving tasks required to operate commercial vehicles." Mr. Kraft reported that he has driven straight trucks for 27 years, accumulating 885,000 miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

11. David F. LeClerc

Mr. LeClerc, 44, lost his right eye due to a childhood injury. The visual acuity in his left eye is 20/20. Following an examination in 2003 his optometrist stated, "It is my medical opinion that Mr. LeClerc has no visual limitations that would inhibit his ability to operate a commercial vehicle." Mr. LeClerc submitted that he has driven tractor-trailer combinations for 25 years, accumulating 3.1 million miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—speeding—in a

CMV. He exceeded the speed limit by 11 mph.

12. Roger J. Mason

Mr. Mason, 60, has had a torn iris in his right eye for 54 years. His best-corrected visual acuity in the right eye is 20/80 and in the left, 20/20. His optometrist examined him in 2003 and stated, "In my optometric opinion, Mr. Roger J. Mason has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Mason reported that he has driven straight trucks for 3 years, accumulating 210,000 miles, and tractor-trailer combinations for 37 years, accumulating 3.1 million miles. He holds a Class A CDL from Maryland. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

13. David L. Menken

Mr. Menken, 47, lost his right eye in 1999 due to an injury. His visual acuity in the left eye is 20/20. Following an examination in 2003, his ophthalmologist certified, "In my opinion, he is medically and visually stable to perform the driving tasks necessary to operate a commercial vehicle." Mr. Menken reported that he has driven tractor-trailer combinations for 20 years, accumulating 2.4 million miles. He holds a class AM CDL from New York. His driving record for the last 3 years shows no accidents and two convictions for moving violations—"disregarding a traffic control device" and "obstructing an intersection"—in a CMV.

14. Richard L. Messinger

Mr. Messinger, 74, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is 20/200 and in the left, 20/25. Following an examination in 2003, his ophthalmologist certified, "I feel he has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Messinger reported that he has driven straight trucks for 35 years, accumulating 2.9 million miles. He holds a Class CM driver's license from Pennsylvania. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

15. James M. Nelson

Mr. Nelson, 58, lost his right eye due to trauma 30 years ago. His best-corrected visual acuity in the left eye is 20/25. Following an examination in 2003, his optometrist certified, "He has had an artificial eye for 30 years, and in my medical opinion he has sufficient vision to perform the driving tasks required to operate a commercial vehicle since he has done such for several years." Mr. Nelson reported that he has driven straight trucks for 3 years, accumulating 120,000 miles, and tractor-trailer combinations for 34 years, accumulating 3.8 million miles. He holds a Class A CDL from Tennessee. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

16. Edward J. Perfetto

Mr. Perfetto, 63, has only light perception in the right eye due to a congenital defect. His best-corrected visual acuity in the left eye is 20/20. Following an examination in 2003, his ophthalmologist certified, "I believe that he has sufficient vision in his eyes to perform the driving tasks required to operate a commercial vehicle." Mr. Perfetto reported that he has driven straight trucks for 30 years, accumulating 750,000 miles. He holds a Class B CDL from New Jersey. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—"truck off truck route"—in a CMV.

17. Keith G. Reichel

Mr. Reichel, 39, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/60. Following an examination in 2003, his optometrist certified, "In my opinion Mr. Reichel has adequate vision to operate a commercial vehicle." Mr. Reichel reported that he has driven straight trucks for 17 years, accumulating 340,000 miles. He holds a Class AM CDL from Georgia. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

18. Carson E. Rohrbaugh

Mr. Rohrbaugh, 47, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/60. His optometrist examined him in 2003 and stated, "With normal visual fields and 20/20 vision in the right eye, Mr. Rohrbaugh's slightly decreased acuity would not hinder his ability to safely operate a commercial vehicle." Mr. Rohrbaugh submitted that he has driven tractor-trailer combinations for 25 years, accumulating 557,000 miles. He holds a Class A CDL from Pennsylvania. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

19. Ronald L. Roy

Mr. Roy, 39, is blind in his left eye due to an injury in 1992. His visual acuity in the right eye is 20/20. Following an examination in 2003, his ophthalmologist certified, "In my opinion, he has sufficient vision to perform the driving tasks needed to safely operate a commercial vehicle." Mr. Roy reported that he has driven straight trucks and tractor-trailer combinations for 21 years, accumulating 525,000 miles in the former and 735,000 miles in the latter. He holds a Class AL CDL from Illinois. His driving record for the last 3 years shows no accidents and one conviction for a moving violation—exceeding the speed limit by 13 mph—in a CMV.

20. Robert E. Sanders

Mr. Sanders, 55, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/400. Following an examination in 2003, his ophthalmologist stated, "His vision is sufficient and stable to perform the driving tasks required to operate a commercial vehicle." Mr. Sanders reported that he has driven straight trucks for 30 years, accumulating 750,000 miles, and tractor-trailer combinations for 5 years, accumulating 375,000 miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

21. Earl W. Sheets

Mr. Sheets, 38, has amblyopia in his right eye. His best-corrected visual acuity in the right eye is count fingers and in the left, 20/25. His ophthalmologist examined him in 2003 and stated, "I certify that it is my medical opinion that he has sufficient vision to perform his driving tasks while operating a commercial vehicle." Mr. Sheets submitted that he has driven straight trucks for 2 years, accumulating 120,000 miles, and tractor-trailer combinations for 20 years, accumulating 2.2 million miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

22. James T. Simmons

Mr. Simmons, 62, has had macular degeneration in his left eye since 1998. His best-corrected visual acuity in the right eye is 20/10 and in the left, 20/200. His ophthalmologist examined him in 2003 and certified, "This patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Simmons submitted that

he has driven tractor-trailer combinations for 35 years, accumulating 4.2 million miles. He holds a Class A CDL from North Carolina. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

23. Donald J. Snider

Mr. Snider, 54, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. His ophthalmologist examined him in 2003 and certified, "His situation is stable and I feel he has sufficient vision to continue operating a commercial vehicle." Mr. Snider reported that he has driven straight trucks for 3 years, accumulating 22,000 miles. He holds a chauffeur's license from Indiana. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

24. Ralphis L. Tisdale

Mr. Tisdale, 61, lost his right eye due to an injury at age 13. The visual acuity in his left eye is 20/15. Following an examination in 2002 his optometrist stated, "I believe Mr. Tisdale has sufficient vision to perform any driving tasks required of him to operate a commercial vehicle." Mr. Tisdale reported that he has driven straight trucks for 25 years, accumulating 1.3 million miles, and tractor-trailer combinations for 7 years, accumulating 385,000 miles. He holds a Class A CDL from Arkansas. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

25. Jesse L. Townsend

Mr. Townsend, 60, has amblyopia in his left eye. His best-corrected visual acuity in the right eye is 20/20 and in the left, 20/200. Following an examination in 2002, his ophthalmologist certified, "In my opinion this patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Townsend reported that he has driven straight trucks for 42 years, accumulating 2.9 million miles, tractor-trailer combinations for 30 years, accumulating 2.1 million miles, and buses for 5 years, accumulating 50,000 miles. He holds a Class D chauffeur's license from Louisiana. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

26. Thomas A. Valik, Jr.

Mr. Valik, 38, had a tumor removed from his left eye in 1985. His visual acuity in the right eye is 20/20 and in the left, no light perception. Following an examination in 2003, his optometrist certified, "There is no visual or ocular reason why he would be unable to safely operate a commercial vehicle." Mr. Valik submitted that he has driven straight trucks and tractor-trailer combinations for 15 years, accumulating 375,000 miles in each. He holds a Class A CDL from Michigan. His driving record shows no accidents or convictions for moving violations in a CMV during the last 3 years.

27. Thomas D. Walden

Mr. Walden, 50, has been blind in his left eye due to corneal scarring since age 9. His visual acuity in the right eye is 20/15 with correction. Following an examination in 2003, his ophthalmologist certified, "I believe that if Mr. Walden is accustomed to driving a commercial vehicle that he should meet the criteria for continuing to drive with his current ocular status." Mr. Walden reported that he has driven straight trucks for 23 years, accumulating 1.1 million miles, and tractor-trailer combinations for 10 years, accumulating 500,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

28. James A. Welch

Mr. Welch, 41, has amblyopia in his left eye. The visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2002, his optometrist certified, "Mr. Welch shows a good driving history for many years and has sufficient vision to operate a commercial vehicle." Mr. Welch reported that he has driven straight trucks for 21 years, accumulating 1.1 million miles, and tractor-trailer combinations for 2 years, accumulating 52,000 miles. He holds a Class A CDL from New Hampshire. His driving record for the last 3 years shows one accident and no convictions for moving violations in a CMV. According to the police report, Mr. Welch's truck was struck in the rear while he was waiting to merge into traffic. Mr. Welch was not cited.

29. John M. Whetham

Mr. Whetham, 58, was born with no vision in his right eye. The best-corrected visual acuity in his left eye is 20/20. Following an examination in 2003, his optometrist certified, "In my opinion, from my examination and the visual fields, Mr. Whetham has sufficient vision to perform the driving tasks required for his commercial license." Mr. Whetham reported that he has driven straight trucks and tractor-trailer combinations for 32 years, accumulating 256,000 miles in the former and 1.2 million miles in the latter. He holds a Class A CDL from Montana. His driving record for the last 3 years shows no accidents or convictions for moving violations in a CMV.

30. Michael E. Yount

Mr. Yount, 46, lost his left eye due to an injury at age 17. His best-corrected visual acuity in the right eye is 20/20. Following an examination in 2003, his optometrist certified, "It is my professional opinion that Mr. Yount is able to visually meet the demands of driving a commercial vehicle." Mr. Yount reported that he has driven straight trucks for 3 years, accumulating 75,000 miles, and tractor-trailer combinations for 20 years, accumulating 1.0 million miles. He holds a Class A CDL from Idaho. His driving record for the last 3 years shows no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments received before the close of business on the closing date indicated earlier in the notice.

Issued on: August 28, 2003.

Pamela M. Pelcovits,

Acting Associate Administrator, Policy and Program Development.

[FR Doc. 03–22567 Filed 9–4–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2003–15024]

Notice of Request for Renewal of a Currently Approved Information Collection: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: The FMCSA announces that the Information Collection Request (ICR) described in this notice is being sent to the Office of Management and Budget (OMB) for review and approval pursuant to the Paperwork Reduction Act of 1995. On May 30, 2003, the

FMCSA published a "Notice of Request for Renewal of a Currently Approved Information Collection: Financial Responsibility for Motor Carriers of Passengers and Motor Carriers of Property" in the **Federal Register**. Comments on the proposed information collection burden were solicited. No comments regarding the ICR were received.

DATES: Comments must be submitted on or before October 6, 2003.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, *Attention:* DOT Desk Officer. We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet its goals of reducing truck crashes, including whether the information is useful to this goal; the accuracy of the estimate of the burden of the information collection; ways to enhance the quality, utility and clarity of the information collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms on information technology.

FOR FURTHER INFORMATION CONTACT: Ms. Marian Lee, (202) 385–2423, Insurance Compliance Division (MC–ECI), Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., *e.t.*, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Financial Responsibility for Motor Carrier of Passengers and Motor Carriers of Property.

OMB Control Number: 2126–0008.

Background: The Secretary of Transportation is responsible for implementing regulations which establish minimal levels of financial responsibility for: (1) Motor carriers of property to cover public liability, property damage, and environmental restoration, and (2) for-hire motor carriers of passengers to cover public liability and property damage. The Endorsement for Motor Carrier Policies of Insurance for Public Liability (Form MCS–90/90B) and the Motor Carrier Public Liability Surety Bond (Form MCS–82/82B) contain the minimum amount of information necessary to document that a motor carrier has obtained, and has in effect, the minimum levels of financial responsibility as set forth in applicable regulations (motor carriers of property—49 CFR 387.9; and motor carrier of passengers—49 CFR 387.33). FMCSA and the public can verify that a motor carrier of property or passengers has obtained, and has in effect, the required minimum levels of financial responsibility, by use of the information embraced within these documents.

Respondents: Insurance and surety companies of motor carriers of property (Form MCS–90 and Form MCS–82) and motor carriers of passengers (Form MCS–90B and Form MCS–82B).

Average Burden Per Response: Two minutes to complete the Endorsement for Motor Carrier Policies of Insurances for Public Liability or the Motor Carrier Public Liability Surety Bond; one minute to file the Motor Carrier Public Liability Surety Bond; one minute to have either document on board the vehicle (foreign-domiciled motor carriers only). These endorsements are maintained at the motor carrier's principal place of business (49 CFR 387.7(iii)(d)).

Estimated Total Annual Burden: 5,285 hours.

Frequency: Upon creation, change, or replacement of an insurance policy or surety bond.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.73.

Issued on: August 8, 2003.

Warren E. Hoemann,

Deputy Administrator.

[FR Doc. 03–22568 Filed 9–4–03; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Sussex County, DE

AGENCIES: Federal Highway Administration (FHWA) and the Delaware Department of Transportation (DelDOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway improvement project in northern Sussex County, Delaware.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Kleinburd, Realty and Environmental Program Manager, Federal Highway Administration, Delaware Division, J. Allen Frear Federal Building, 300 South New Street, Room 2101, Dover, DE 19904; Telephone: (302) 734–2966; or Mr. Monroe C. Hite, III, P.E., Project Manager, Delaware Department of Transportation, 800 Bay Road, P.O. Box 778, Dover, DE 19903; Telephone: (302) 760–2120. DelDOT Public Relations office (800) 652–5600 (in DE only).

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA), in cooperation with the Delaware Department of Transportation (DelDOT), will prepare an Environmental Impact Statement (EIS) to consider the construction of a potential new alignment in northern Sussex County, Delaware. The proposed limited access facility could connect two existing highways (U.S. Route 113 and Delaware Route 1), which pass through a rapidly developing commercial area in the City of Milford, Delaware.

DelDOT is currently undertaking a planning study (US 113 North/South Study) to consider improvements for the U.S. Route 113 corridor from the vicinity of Delaware Route 1 north of the City of Milford south to the Delaware/Maryland State Line. The US 113 North/South Study is the next step in the overall planning process for this corridor. This effort will be a follow-up to a previously completed feasibility study (Sussex County North-South Transportation Feasibility Study) in July 2001. The data and findings from the feasibility study indicate that a new alignment bypassing the existing U.S. Route 113 may be considered in the Milford Area.

The US 113 North/South Study recommends that the Milford Area (area in and around the City of Milford located in northern Sussex County, Delaware) should be studied separately from the remaining U.S. Route 113 corridor, south to the Maryland State Line. Because of the potential for a new alignment alternative and the resulting potential for significant impacts on the human environment, the FHWA has determined that an EIS is the appropriate documentation for the Milford Area study.

A program of public involvement and coordination with Federal, State, and local agencies has been initiated. Both agency and public involvement will continue throughout project development. Comments are being solicited from appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public scoping meetings will be held. Additional informational meetings will be scheduled during the course of the study. In addition, a formal public hearing will be held after the draft EIS

has been prepared. Public notice will be given of the time and place of the scoping meetings, and the formal public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing on the draft EIS.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA or DelDOT at the addressed provided above:

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued by: August 18, 2003.

Thomas D. Myers,

Division Administrator, Federal Highway Administration, Dover, Delaware.

[FR Doc. 03–22657 Filed 9–4–03; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Pipeline Industry Implementation of Effective Public Awareness Programs

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: RSPA's Office of Pipeline Safety (OPS) is issuing this advisory bulletin to owners and operators of hazardous liquid pipelines, gas transmission pipelines, gas distribution pipelines, and crude oil and gas gathering pipeline systems regulated under 49 CFR parts 192 and 195. The Pipeline Safety Improvement Act of 2002 (PSIA) requires that each owner or operator of a gas or hazardous liquid pipeline facility implement a continuing public education program. By December 17, 2003, each owner or operator must review its existing public education program for effectiveness and modify the program as necessary. RSPA/OPS is asking that each operator complete a self-assessment of its public education program against the guidelines established in the recently-issued consensus standard, American Petroleum Institute's API RP 1162, "Public Awareness Programs for Pipeline Operators," before December 17, 2003, to demonstrate compliance with the PSIA.

FOR FURTHER INFORMATION CONTACT: Jeff Wiese, (202)366–2036; or by e-mail, *jeff.wiese@rspa.dot.gov*. This document can be viewed at the OPS home page at *http://ops.dot.gov*. General information about the RSPA/OPS programs may be obtained by accessing RSPA's home page at *http://RSPA.dot.gov*.

I. Advisory Bulletin (ADB–03–04)

To: Owners and Operators of Hazardous Liquid Pipelines, Gas Transmission Pipelines, Gas Distribution Pipeline Systems, and Crude Oil and Gas Gathering Pipeline Systems.

Subject: Pipeline Industry Implementation of Effective Public Awareness Programs.

Purpose: To advise owners and operators of hazardous liquid, gas transmission, gas distribution, and crude oil and gas gathering pipeline systems of the statutory requirement to review and maintain effective public education programs and to evaluate programs for effectiveness.

Advisory: The (PSIA) requires that each owner or operator of a gas or hazardous liquid pipeline facility must carry out a continuing public education program. By December 17, 2003, each owner or operator must review its existing public education program for effectiveness and modify the program as necessary. RSPA/OPS is asking each operator to complete a self-assessment of its public education program against the guidelines established in the recently-issued, industry consensus standard, API RP 1162, "Public Awareness Programs for Pipeline Operators." To assist in this process, RSPA/OPS is developing a self-assessment system that operators can access and complete over the Internet. The self-assessment will help operators identify gaps in their public education programs and improvements needed to align their programs with the requirements of API RP 1162. In September 2003, RSPA/OPS, the National Association of Pipeline Safety Representatives, and the pipeline industry are cosponsoring two public workshops to help operators understand the requirements of the law and the use of the self-assessment system. Operators should submit their self-assessments to RSPA/OPS no later than December 17, 2003.

SUPPLEMENTARY INFORMATION:

II. Background

The Federal pipeline safety regulations at 49 CFR parts 192 and 195 require operators of gas and hazardous liquid pipelines to establish continuing educational programs to enable customers, the public, government organizations, and persons engaged in excavation-related activities to recognize a pipeline emergency for the purpose of reporting it to the operator or the appropriate public officials. The regulations also require that operators implement written programs to prevent pipeline damage from excavation activities and establish public awareness liaison with emergency officials. Accordingly, pipeline operators have previously conducted public awareness programs with the affected public, emergency responders, and excavators along their routes.

The PSIA requires that each owner or operator of a gas or hazardous liquid pipeline facility must carry out a continuing program to educate the public on the use of a one-call notification system prior to excavation and other damage prevention activities, the possible hazards associated with unintended releases from the pipeline facility, the physical indications that such a release may have occurred, what steps should be taken for public safety in the event of a pipeline release, and how to report such an event.

The PSIA requires that by December 17, 2003 (not later than 12 months after the date of its enactment), each owner or operator of a gas or hazardous liquid pipeline facility must review its existing public education program for effectiveness and modify the program as necessary. The completed program must include activities to advise affected municipalities, school districts, businesses, and residents of pipeline facility locations. The completed program must be submitted to the Secretary of Transportation or, in the case of an intrastate pipeline facility operator, the appropriate State agency, and shall be periodically reviewed by the Secretary or, in the case of an intrastate pipeline facility operator, the appropriate State agency.

The PSIA also provides that the Secretary of Transportation may issue standards prescribing the elements of an effective public education program. The Secretary may also develop material for use in the program.

In recognition of the importance of effective public awareness programs, outstanding recommendations from the National Transportation Safety Board and anticipated legislative action in this regard, an industry task force developed

a consensus standard establishing guidelines for pipeline operators on development, implementation, and evaluation of public awareness programs for operating pipeline systems, API Recommended Practice (RP) 1162, "Public Awareness Programs for Pipeline Operators". The task force included representatives from gas and liquid petroleum transmission companies, local distribution companies, crude oil and gas gathering systems, and industry trade associations. Comments were also solicited from local public officials, the public and interested parties was solicited. Representatives from RSPA/OPS and the National Association of Pipeline Safety Representatives observed and provided input into the development of the standard.

API RP 1162 is currently in the final stages of the balloting process, following the guidelines of both API and the American National Standards Institute. After appropriate revisions to address comments, it is expected to be published as a national consensus standard in the fall of 2003.

RSPA/OPS considers that "public education programs," as used in the PSIA, and "public awareness programs," as used in API RP 1162, are the same. The level of public education and awareness regarding operating pipelines and pipeline safety can only be increased through education and communication programs that are demonstrated to be effective. Therefore, RSPA/OPS is considering incorporating all or portions of API RP 1162 into the pipeline safety regulations. Of particular interest to RSPA/OPS is the operator's evaluation of its program implementation and program effectiveness.

RSPA/OPS has evaluated the PSIA requirements that operators review and modify their public education programs and submit their completed programs to Secretary of Transportation. We have determined that the intent of the requirements can be met and pipeline safety be best served in the short-term by having pipeline operators complete a formal self-assessment of their public education programs against the guidelines provided in API RP 1162.

RSPA/OPS is developing an Internet-based self-assessment that operators can complete electronically. These self-assessments will help operators identify gaps in their public education programs and improvements needed to align their programs with the requirements of API RP 1162. We ask all operators to submit self-assessments of their public education programs to RSPA/OPS no later than December 17, 2003, to meet the deadline established in the PSIA. This will ensure that operators have complied with the PSIA and will be used in targeting technical assistance workshops to ensure development of effective public education programs.

In 2004, operators will be required to submit their public education program plans to the RSPA/OPS for review. Time frames for submission will be determined by RSPA/OPS and operators will be notified. These plans will need to identify how the operators will address gaps and make improvements in their public education programs. RSPA/OPS will inspect these public education programs as an ongoing part of the pipeline operator inspection program.

RSPA/OPS is co-sponsoring with NAPSR and the pipeline industry trade associations (API, INGAA, AOPL, AGA, APGA) two workshops to facilitate these operator self-assessments. The first workshop will be held on September 4–5, 2003, in Houston, TX. The second workshop will be held on September 16–17, 2003, in Baltimore, MD. On August 14, 2003, RSPA/OPS issued a notice providing specific locations and times for the public education workshops (68 FR 48659). Operators of hazardous liquid and gas transmission pipelines, gas local distribution systems and crude oil and gas gathering systems are urged to attend. Each workshop will provide an industry-facilitated review of API RP 1162 and a panel discussion of successful public education practices. RSPA/OPS will describe the self-assessment process and will facilitate sessions on techniques of effective program evaluation.

RSPA/OPS will conduct breakout sessions during these workshops for the hazardous liquid and gas transmission pipeline operators. The breakout sessions will provide a more in-depth overview of the self-assessment process and attempt to gauge the current status of public education programs for the transmission pipeline operators by completion of informal self-assessments in advance of the formal self-assessment requested by December 17, 2003.

Issued in Washington, DC on August 29, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–22665 Filed 9–4–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–55 (Sub–No. 639X) and AB–565 (Sub–No. 15X)]

CSX Transportation, Inc.—Discontinuance Exemption—In Henry County, IN and New York Central Lines, LLC—Discontinuance Exemption—In Henry County, IN

On August 18, 2003, New York Central Lines, LLC and CSX Transportation, Inc. (CSXT) (together petitioners), jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to discontinue service over a 1.64-mile line of railroad in CSXT's Western Region, Great Lakes Division, Indianapolis Line Subdivision, extending from milepost QIN 95.34 to milepost QIN 96.98, in New Castle, Henry County, IN. The line traverses U.S. Postal Service Zip Code 47632, and includes no stations.

The line does not contain Federally granted rights-of-way. Any documentation in the petitioners' possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by December 5, 2003.

Any offer of financial assistance to subsidize continued rail service under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each offer must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

This proceeding is exempt from environmental reporting requirements under 49 CFR 1105.6(c) and from historic reporting requirements under section 1105.8(b).[1]

All filings in response to this notice must refer to STB Docket Nos. AB–55 (Sub-No. 639X) and AB–565 (Sub-No. 15X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Natalie S. Rosenberg, 500 Water Street, J150, Jacksonville, FL 32202.

[1] In addition, because these are discontinuance proceedings and an abandonment is not proposed, trail use/rail banking and public use conditions are not appropriate.

Replies to the petition are due on or before September 25, 2003.

Persons seeking further information concerning discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *"www.stb.dot.gov."*

Decided: August 28, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–22512 Filed 9–4–03; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Senior Executive Service; Departmental Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

Composition of Departmental PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Teresa Mullet Ressel, Assistant Secretary for Management and Chief Financial Officer
Timothy D. Adams, Chief of Staff
Donald V. Hammond, Fiscal Assistant Secretary
Jeffrey F. Kupfer, Executive Secretary
Brian C. Roseboro, Assistant Secretary (Financial Markets)
W. Earl Wright, Jr., Deputy Assistant Secretary for Workforce Management
Juan C. Zarate, Deputy Assistant Secretary (Executive Office of Terrorist Financing and Financial Crimes)
Tony T. Brown, Director, CDFI Fund (Domestic Finance)
Rebecca A. Contreras, Deputy Assistant Secretary and Chief Human Capital Officer
John M. Duncan, Assistant Secretary (Legislative Affairs)
Reese H. Fuller, Advanced Counterfeit Deterrence Program Director (Domestic Finance)
Geraldine A. Gerardi, Director for Business Taxation
Pamela F. Olson, Assistant Secretary (Tax Policy)
Randal K. Quarles, Assistant Secretary (International Affairs)
Mary Beth Shaw, Director, Office of DC Pensions
Marla A. Freedman, Assistant Inspector General for Audit
William H. Pugh III, Deputy Assistant Inspector General for Audit (Financial Management)
Arthur J. Libertucci, Administrator, Tax and Trade Bureau
John J. Manfreda, Deputy Administrator, Tax and Trade Bureau
Henrietta H. Fore, Director, United States Mint
David A. Lebryk, Deputy Director, United States Mint
Jay M. Weinstein, Associate Director (Policy and Management)/Chief Financial Officer, United States Mint
Richard L. Gregg, Commissioner, Financial Management Service
Kenneth R. Papaj, Deputy Commissioner, Financial Management Service
Nancy Coto Fleetwood, Assistant Commissioner, Information Resources, Financial Management Service
Scott Johnson, Assistant Commissioner, Management (Chief Financial Officer), Financial Management Service
Kerry Lanham, Assistant Commissioner, Agency Services, Financial Management Service
Thomas A. Ferguson, Director, Bureau of Engraving and Printing
Carla F. Kidwell, Associate Director (Technology), Bureau of Engraving and Printing
William W. Wills, Associate Director (Chief Operating Officer), Bureau of Engraving and Printing
John M. Dalrymple, Deputy Commissioner for Operations Support, Internal Revenue Service
Deborah M. Nolan, Commissioner, Large and Mid-Sized Business Division, Internal Revenue Service
Evelyn A. Petschek, Commissioner, Tax Exempt and Government Entities Division, Internal Revenue Service
Toni L. Zimmerman, Chief, Information Technology Services, Modernization and Information Technology Services, Internal Revenue Service
Henry O. Lamar, Commissioner, Wage and Investment Division, Internal Revenue Service
Helen Bolton, Director, Management Services, Modernization and Information Technology Services, Internal Revenue Service
Cecil T. Hua, Director, Systems Engineering and Integration, Business Systems Modernization Office, Internal Revenue Service
Barbara A. Jenkins, Director, Data Management Modernization, Modernization and Information Technology Services, Internal Revenue Service
Frank Y. Ng, Director, Pre-Filing and Technical Guidance, Large and Mid-Sized Business Division, Internal Revenue Service
Kathy K. Petronchak, Deputy Director, Pre-Filing and Technical Guidance, Large and Mid-Sized Business Division, Internal Revenue Service
Renee Shaw, Deputy Director, Business Systems Development Division, Modernization and Information Technology Services, Internal Revenue Service
Estelle R. Tunley, Deputy Director, Submission Processing, Wage and Investment Division, Internal Revenue Service
Frederick Van Zeck, Commissioner, Bureau of the Public Debt
Anne M. Meister, Deputy Commissioner, Bureau of the Public Debt
George B. Wolfe, Deputy General Counsel
Roberta K. McInerney, Assistant General Counsel (Banking & Finance)
Kenneth R. Schmalzbach, Assistant General Counsel (General Law & Ethics)
Carol A. Campbell, Special Counsel to the National Taxpayer Advocate
Edward L. Patton, Supervisory General Attorney (Tax)
James F. Sloan, Director, Financial Crimes Enforcement Network
William F. Baity, Deputy Director, Financial Crimes Enforcement Network

DATES: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Roena B. Markley, Department of the

Treasury, Acting Director, Workforce Solutions Division, 1750 Pennsylvania Avenue, NW., Suite 1200, Washington, DC 20220, Telephone: (202) 622–2962.

This notice does not meet the Department's criteria for significant regulations.

Dated: August 26, 2003.

Roena B. Markley,

Acting Director, Workforce Solutions Division.

[FR Doc. 03–22617 Filed 9–4–03; 8:45 am]

BILLING CODE 4811–16–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The OCC is soliciting comment concerning its information collection titled, "Leasing—12 CFR 23." The OCC also gives notice that it has sent the information collection to OMB for review and approval.

DATES: You should submit your comments to the OCC and the OMB Desk Officer by October 6, 2003.

ADDRESSES: You should direct comments to:

Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0206–2, 250 E Street, SW., Washington, DC 20219. Due to delays in paper mail delivery in the Washington area, commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov*. You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

Joseph F. Lackey, Jr., OMB Desk Officer for the OCC, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from Jessie Dunaway, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval, without change, of the following information collection:

Title: Leasing—12 CFR 23.

OMB Number: 1557–0206.

Description: This submission covers an existing regulation and involves no change to the regulation or to the information collection requirements. The OCC requests only that OMB extend its approval of the information collection.

The information collection requirements in 12 CFR part 23 are as follows:

12 CFR 23.4(c)—Reporting requirement: National banks must liquidate or re-lease personal property that is no longer subject to lease (off-lease property) within five years from the lease expiration. A bank wishing to extend that five-year holding period for up to an additional five years must obtain OCC approval. To ensure that a bank is not holding property for speculative reasons, the OCC requires the bank to provide a clearly convincing demonstration as to why an additional holding period is necessary. This requirement confers a benefit on national banks and may result in cost savings. This requirement provides flexibility for a bank when it faces unusual and unforeseen conditions under which it would be imprudent to dispose of the off-lease property.

12 CFR 23.4(c)—Recordkeeping requirement: A bank must value off-lease property at the lower of current fair market value or book value promptly after the property comes off-lease.

12 CFR 23.5—Recordkeeping requirement: If a national bank enters into both CEBA leases (a personal property lease authorized under 12 U.S.C. 24(Tenth)) and Section 24(Seventh) leases (a personal property lease authorized under 12 U.S.C. 24(Seventh)), the bank's records must distinguish between the two types of leases. This information is required to evidence compliance with the statutory limitation on the aggregate amount a national bank may invest in leases pursuant to 12 U.S.C. 24(Tenth).

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 370.

Estimated Total Annual Responses: 370.

Estimated Total Annual Burden: 685 hours.

Frequency of Response: On occasion.

Dated: August 28, 2003.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division.

[FR Doc. 03–22589 Filed 9–4–03; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13460

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13460, Employer/Payer Information.

DATES: Written comments should be received on or before November 4, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Employer/Payer Information.

OMB Number: 1545–1849.

Form Number: 13460.

Abstract: Form 13460 is used to assist filer's who have underreporter or correction issues. Also, this form expedites research of filer's problems.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions, farms, Federal, State, local or tribal government.

Estimated Number of Respondents: 200.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 50.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 29, 2003.

Carol Savage,

Management and Program Analyst.

[FR Doc. 03–22672 Filed 9–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 13469

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 13469, Electronic Options for Tax Professionals.

DATES: Written comments should be received on or before November 4, 2003, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the brochure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Electronic Options for Tax Professionals.

OMB Number: 1545–1854.

Form Number: 13469.

Abstract: This brochure (Publication 4028, which includes Form 13469) will be sent to tax preparers that submitted a mixture of paper and electronic returns for their clients. The brochure provides these professionals the dates and times of electronic seminars being held in the state of Tennessee. These seminars are being conducted to encourage tax professionals to electronically file so the IRS can work toward meeting the goal of 80% electronically filed returns by 2007.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 1,400.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 70.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 29, 2003.

Carol Savage,

Management and Program Analyst.

[FR Doc. 03–22673 Filed 9–4–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Advisory Committee on Minority Veterans will be held from Tuesday, September 23, 2003, through Thursday, September 25, 2003, in Seattle, Washington. On September 23, the meeting will be from 10 a.m. until 4:30 p.m. at the VA Puget Sound Health Care System, 1660 S. Columbian Way, Room BB108, Seattle, Washington.

On September 24, the meeting will be from 2:30 p.m. until 8 p.m. at the Yakama Nation Tribal Headquarters, Yakama Nation Eagle Seelatsee Auditorium. On September 25, the meeting will be from 1:30 p.m. until 3:30 p.m. at the VA Regional Office, 915 Second Ave, Room 1010A, Seattle, Washington, and from 5 p.m. until 7 p.m. at the VA Puget Sound Health Care System in Room BB108.

The purpose of the Committee is to advise the Secretary on the administration of VA benefits and services to minority veterans, to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

On September 23, the Committee will hold panel discussions with key staff members from VA Northwest Veterans Integrated Services Network (20), VA Puget Sound Health Care System and Portland Regional Office on services and benefits delivery challenges and concerns for the Seattle-Tacoma area veterans.

On September 24, the Committee will receive a briefing on Camp Chaparral and hold a veteran town hall meeting beginning at 6 p.m.

On September 25, the Committee will hold panel discussions with various veteran service organizations, several congressional staff and other stakeholders on their concerns and observations of Seattle-Tacoma veterans' needs. The Committee will hold a veteran town hall meeting beginning at 5 p.m.

These sessions will be open to the public. The Committee will accept written comments from interested parties on issues outlined in the meeting agenda, as well as other issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

For additional information about the meeting, please contact Ms. Elizabeth Olmo at (202) 273–6708.

Dated: August 28, 2003.

By direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 03–22595 Filed 9–4–03; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
September 5, 2003

Part II

The President

Proclamation 7698—National Alcohol and Drug Addiction Recovery Month, 2003
Proclamation 7699—National Ovarian Cancer Awareness Month, 2003
Proclamation 7700—National Prostate Cancer Awareness Month, 2003

Federal Register
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Friday, September 5, 2003

Presidential Documents

Title 3—

The President

Proclamation 7698 of September 1, 2003

National Alcohol and Drug Addiction Recovery Month, 2003

By the President of the United States of America

A Proclamation

Alcohol addiction and drug addiction continue to challenge our Nation. Addiction to alcohol or drugs destroys family ties, friendship, ambition, and moral conviction, and reduces the richness of life to a single destructive desire. During National Alcohol and Drug Addiction Recovery Month, we seek to remind all Americans, particularly those who struggle with alcohol or drug addiction, that recovery is possible. This year's theme, "Join the Voices of Recovery: Celebrating Health," salutes the thousands of Americans currently striving to address their alcohol or drug addiction, and the many professionals, volunteers, clergy, community groups, friends, and family members who support others in overcoming addiction.

For the addicted, the fight is an ongoing struggle for their own lives. The process of treatment and recovery is personal, and each individual's treatment needs are different. And as a result, treatment programs must address a wide range of physical, mental, emotional, and spiritual needs. When properly tailored, alcohol and drug addiction treatment can be very effective.

Last year, approximately 100,000 individuals who sought treatment for alcohol and drug addiction were unable to receive the help they needed. To address this problem, I have proposed a new initiative, Access to Recovery, that will increase the availability and effectiveness of treatment programs. With $600 million, an additional 300,000 Americans will gain access to needed treatment over the next 3 years.

Access to Recovery will build on existing alcohol and drug treatment services by offering greater choices to those seeking treatment. Our Nation is blessed with many recovery programs that do exceptional work, and we must make these programs available to more people. By providing vouchers that enable those struggling with addiction to get help from a wide range of sources that work, including faith-based and community organizations, we will expand treatment options and accountability. This flexibility will strengthen our system and offer more hope to those in need.

My Administration has taken important steps to cut off illegal drug supplies and reduce demand through anti-drug education. For those who become addicted to drugs or to alcohol, my Administration is committed to tearing down the stigma attached to recovery so that more people will seek the help they need. Alcohol addiction and drug addiction are diseases that touch all Americans—young and old, rich and poor, male and female. As a Nation, we must continue our efforts to offer the best possible opportunities, settings, and approaches to prevent and treat alcohol and drug addiction. By caring for those who need treatment, we are building a more welcoming and compassionate culture that values every life.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 2003 as National Alcohol and Drug Addiction Recovery Month. I call upon all the people of the United States to observe this month with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of September, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

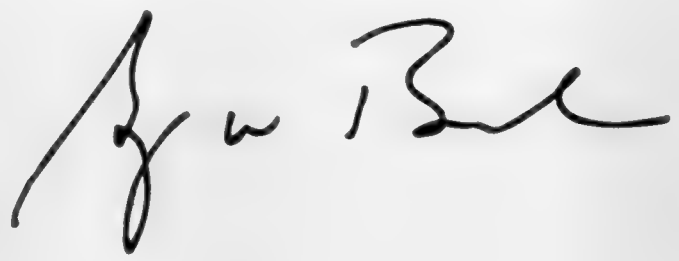

[FR Doc. 03–22809
Filed 9–4–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7699 of September 1, 2003

National Ovarian Cancer Awareness Month, 2003

By the President of the United States of America

A Proclamation

It is estimated that more than 25,000 American women will be diagnosed with ovarian cancer this year and that more than 14,000 will die from this disease. During National Ovarian Cancer Awareness Month, we seek to increase understanding of ovarian cancer and the importance of early detection, and to recognize the advances made to eliminate this disease.

Early detection and education are critical to treating ovarian cancer. Today, only half of the women diagnosed with this disease are expected to survive 5 years or more. However, the 5-year survival rate for those whose cancer is detected early is more than 90 percent. When the disease is discovered in its early stages, doctors are able to treat it with standard methods, such as surgery, chemotherapy, and radiation therapy.

Researchers have made significant progress in developing screening tests that can accurately diagnose ovarian cancer. Much work remains, however, before we can reliably detect the disease in its earliest stages when treatment is most effective. I urge all women to talk to their doctors about ovarian cancer and the best course of action to detect and treat this deadly disease. Doing so is particularly important for women aged 40 or older, those with a family history of ovarian cancer, and those with a personal history of breast, endometrial, or colon cancer. And I urge individuals across the country to learn more about this disease and what can be done to reduce the number of individuals who suffer from it.

In addition to encouraging early detection and increasing awareness about ovarian cancer, we must continue to advance our knowledge through research. Scientists at the Centers for Disease Control and Prevention, the National Cancer Institute, the Department of Defense, the Food and Drug Administration, other Federal agencies, and private companies are working hard to discover the causes of ovarian cancer and to design more effective screening and treatment options. Through their research, we hope to learn how to reduce the chances of developing this disease, how to recognize it in its earliest stages, and how to successfully treat women in every stage of ovarian cancer. The vision and determination of these professionals, along with the courage of the women who participate in clinical trials, are helping to turn today's research advances into tomorrow's success stories.

My Administration remains committed to supporting research efforts to help find a cure for ovarian cancer. My fiscal year 2004 budget proposal includes more than $5.6 billion for cancer research at the National Institutes of Health. This investment will lead to a better understanding of ovarian cancer and greater hope for women who suffer from this disease. Through education and continued research, we can win the fight against ovarian cancer and save the lives of thousands of American women.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 2003 as National Ovarian Cancer Awareness Month. I call upon the people of the United States to observe this month with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of September, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

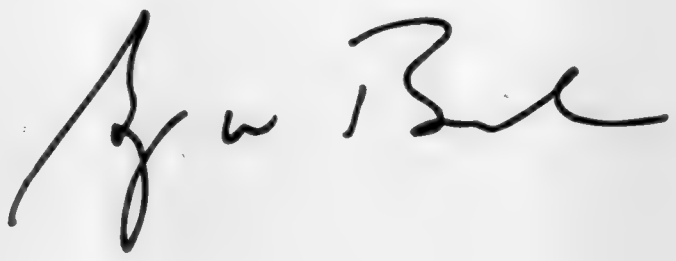

[FR Doc. 03–22810
Filed 9–4–03; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7700 of September 1, 2003

National Prostate Cancer Awareness Month, 2003

By the President of the United States of America

A Proclamation

Prostate cancer is the second most common form of cancer among men in the United States. This year alone, it is estimated that more than 220,000 new cases of prostate cancer will be diagnosed and that nearly 29,000 men will die from this disease. During National Prostate Cancer Awareness Month, we seek to increase understanding about the risk factors of prostate cancer, the importance of a healthy lifestyle, and the benefits of detecting the disease in its earliest stages, when it is most treatable.

Although the exact cause of prostate cancer is unknown, several factors have been found to increase the risk of developing this disease. Men aged 65 years or older make up about 70 percent of all diagnosed prostate cancer cases. In addition, a man's risk of developing prostate cancer doubles if a father or brother has been diagnosed with the disease.

Making healthy choices is critical to prevent prostate cancer and many other diseases. Research suggests that some men may be able to reduce their risk of prostate cancer by eating healthy foods and exercising on a regular basis.

Early detection is important in successfully treating prostate cancer. Preventative screenings can reveal a man's current health status and identify whether he needs to adjust his diet or behavior. I urge men, particularly those over 50, to learn more about the disease and to talk to their doctors about when to start preventative screening. Healthcare providers can advise men as to which tests are most appropriate. Through early detection and treatment, we can reduce the number of deaths caused by prostate cancer.

Today, our Nation is on the leading edge of new discoveries. As we continue to make advancements in medicine, my Administration remains committed to learning the causes of prostate cancer and finding a cure. My fiscal year 2004 budget proposal includes more than $13 million for the Centers for Disease Control and Prevention to conduct, support, and promote efforts that increase awareness of screening and early detection, and more than $5.6 billion for cancer research at the National Institutes of Health. Through my HealthierUS Initiative, my Administration is also encouraging all citizens to lead healthier lives by eating right, exercising, and taking advantage of preventative screening. By working together, we will improve our ability to prevent, treat, and cure prostate cancer.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 2003 as National Prostate Cancer Awareness Month. I call upon government officials, businesses, communities, healthcare professionals, educators, volunteers, and all people of the United States to reaffirm our Nation's strong and continuing commitment to prevent, treat, and cure prostate cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of September, in the year of our Lord two thousand three, and of the Independence of the United States of America the two hundred and twenty-eighth.

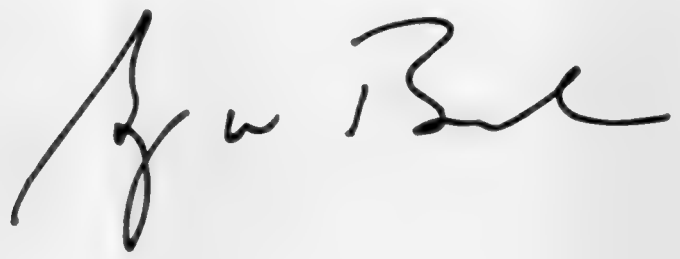

[FR Doc. 03–22811
Filed 9–4–03; 8:45 am]
Billing code 3195–01–P

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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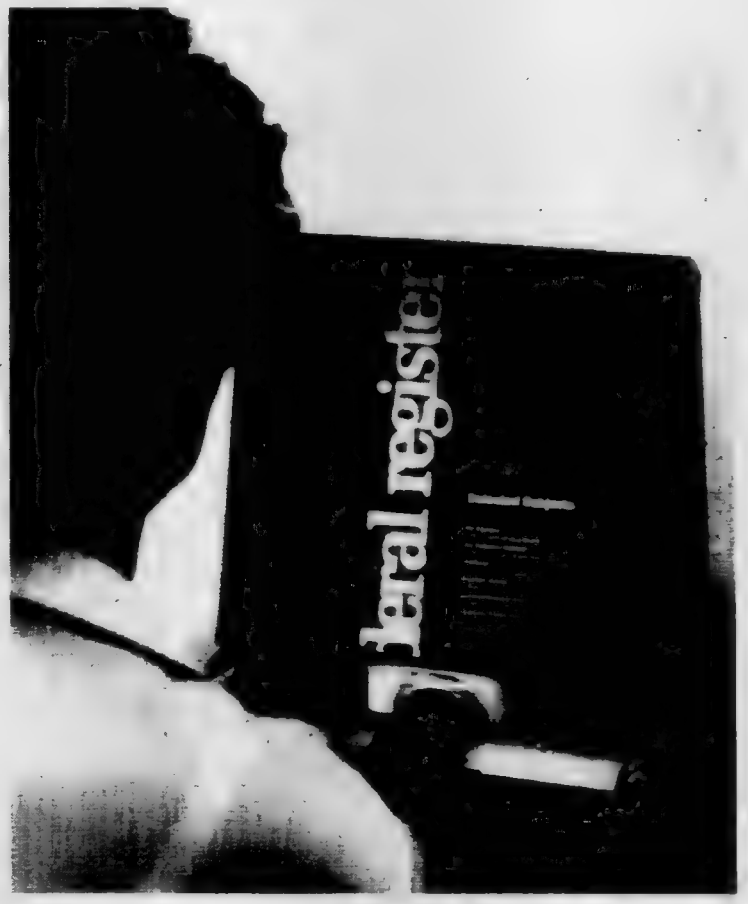

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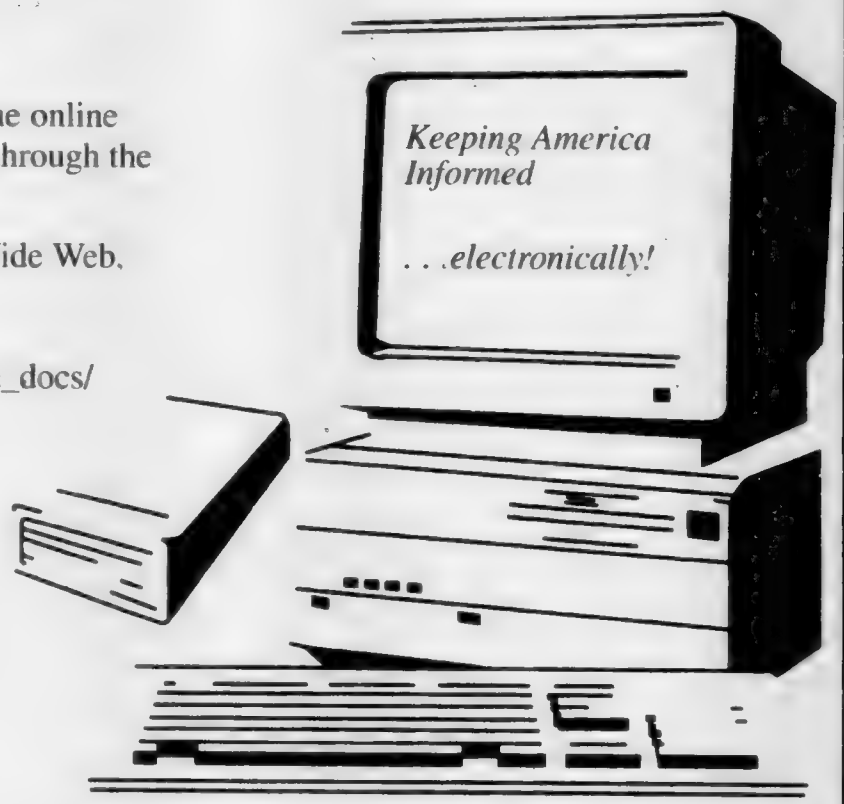

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SEP 8

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Federal Register

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9-8-03
Vol. 68 No. 173

Monday
Sept. 8, 2003

Pages 52831–53010

Federal Register

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Rules and Regulations

Federal Register
Vol. 68, No. 173
Monday, September 8, 2003

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 562

[No. 2003–45]

RIN 1550–AB54

Regulatory Reporting Standards: Qualifications for Independent Public Accountants Performing Audit Services for Voluntary Audit Filers

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is adopting as final an interim final rule that amended its annual independent audit requirements for small, non-public, highly rated savings associations that voluntarily obtain independent audits. This change made OTS's requirements more consistent with those of the other federal banking agencies and avoided the potential regulatory burden from imposing unnecessary additional restrictions.

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Christine Smith, Project Manager, (202) 906–5740, Examination Policy Division, or Teresa A. Scott, Counsel (Banking & Finance), (202) 906–6478, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

Savings associations that are publicly traded,[1] have assets of $500 million or more[2], or have a 3, 4, or 5 CAMEL rating[3] must obtain and file an annual independent audit. Small, non-public, 1- or 2-rated savings associations are not required to obtain an independent audit. OTS regulations had required that public accountants conducting these independent audits (whether required or voluntary) follow the SEC independence rules, including those governing outsourcing of non-audit services. 12 CFR 562.4 (d) and (e) (2002).

On July 30, 2002, Congress passed the Sarbanes-Oxley Act of 2002.[4] Title II of that act sets forth standards for auditor independence. The standards include section 201(g)(5), which prohibits a registered public accountant from performing an audit for a public company contemporaneously with providing that company with delineated non-audit services, including internal audit outsourcing services. This congressional mandate affected a change in the SEC independence rules.

As reflected in the interim final rule, OTS believed that if its rules remained unchanged, a savings association obtaining a voluntary audit may not use its external auditors to perform non-auditing services.[5] Although OTS encourages non-publicly held savings associations that voluntarily file audits with the agency to follow the prohibition from Sarbanes-Oxley, OTS was concerned that an absolute prohibition in this manner may be unnecessarily detrimental to some voluntary filers. Specifically, OTS believed that small institutions with less complex operations and limited staff, may, in some instances, use their independent public accountant to perform both an external audit and some or all of an audit client's non-audit activities consistent with the OTS's safety and soundness objectives. Some of these institutions may not have access to a full range of qualified public accountants such that they could engage both an external auditor and a different outside firm to perform non-audit functions. Other institutions may reasonably have determined that the costs of having a full time in-house staff to perform those services exceed the benefits.

Since OTS issued the interim rule, the SEC, based on provisions from the Sarbanes-Oxley Act, added new provisions to its independence rules, including ones governing prohibited non-audit services (such as the prohibition on internal audit outsourcing), pre-approval requirements, auditor partner rotation, auditor reports to the audit committee, and conflict of interest. Without the OTS rule change, voluntary filers would also be subject to these SEC provisions on independence. The OTS is equally concerned that these additional SEC independence rules may unnecessarily burden voluntary filers.

Moreover, none of the other banking agencies require that institutions that file voluntary audits follow the SEC independence rules. OTS believed that requiring savings associations to do so might place these savings associations at an unnecessary competitive disadvantage as these requirements became more restrictive.

For all of these reasons, OTS is finalizing its interim rule that amended its regulation to eliminate the requirement that institutions voluntarily filing audits comply with the SEC independence rules while retaining the requirement that institutions filing voluntary audits comply with the AICPA Professional Conduct Code, including those sections that address independence.[6]

Discussion of Comments

OTS received two public comments, both from trade associations. Both trade associations strongly supported the interim rule, noting that the rule change encourages voluntary filers to continue to file audits with the OTS. Moreover, the commenters heralded the fact that the same rule that applies to smaller banks by other federal banking regulators would now apply to smaller savings associations.

[1] 17 U.S.C. 78m (West 2002). Generally, federally-chartered publicly traded savings associations file annual audits with OTS, while generally publicly traded federally-chartered thrift holding companies file audits with the Securities and Exchange Commission (SEC).

[2] 12 CFR 363.2 (2002). These institutions file annual audits with the Federal Deposit Insurance Corporation and OTS.

[3] 12 CFR 562.4(b). These savings associations file annual audits with OTS.

[4] Sarbanes-Oxley Act of 2002, Pub. L. 107–204, section 201, 116 Stat. 745 (2002).

[5] These services include bookkeeping, financial information systems design, appraisal, valuation, and actuarial services, and internal audit outsourcing services. For a complete list of prohibited activities, *see id.* at section 201.

[6] OTS understands that passage of the Sarbanes-Oxley Act may place increased responsibilities on small publicly held savings associations, including the prohibitions against outsourcing internal non-audit services to the association's external auditor. Nothing in this rule affects those requirements.

Findings and Certifications

A. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a significant regulatory action for the purposes of Executive Order 12866.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, OTS must either provide an Initial Regulatory Flexibility Analysis (IRFA) with this final rule, or certify that the rule would not have a significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. It removes a requirement that could, if left unchecked, inadvertently lead to potential additional regulatory burden. The final rule, which is written in plain language, reduces regulatory burden.

C. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. OTS has determined that the effect of this rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Rather, the rule imposes no new requirements and makes only burden reducing amendments to current OTS regulations. Accordingly, OTS has not prepared a budgetary impact statement for this rule or specifically addressed the regulatory alternatives considered.

D. Effective Date

For the reasons stated in the interim rule, published on November 25, 2002 (67 FR 70529), OTS is making this final rule effective immediately.

E. Paperwork Reduction Act

The OTS has determined that this interim final rule does not involve a change to collections of information previously approved under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 12 CFR Part 562

Accounting, Reporting and recordkeeping requirements, Savings associations.

PART 562—REGULATORY REPORTING STANDARDS

■ Accordingly, the Office of Thrift Supervision adopts as final, without change, the interim rule published on November 25, 2002 at 67 FR 70529 amending part 562 in Title 12, Chapter V, Code of Federal Regulations.

Dated: *September* 2, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–22779 Filed 9–5–03; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–SW–53–AD; Amendment 39–13294; AD 2003–18–03]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters that requires inspecting the hydraulic brake hose (hose) for crazing, pinching, distortion, or leaks at the torque link hinge and replacing the hose, if necessary. This amendment also requires inspecting the hose and the emergency flotation gear pipe to ensure adequate clearance, and adjusting the landing gear leg, if necessary. This amendment is prompted by a report of a hose compression due to interference with a clamp that attaches the emergency flotation gear pipe. The actions specified by this AD are intended to prevent failure of the hose, resulting in failure of hydraulic pressure to the brakes on the affected landing gear wheel, and subsequent loss of control of the helicopter during a run-on landing.

DATES: Effective October 14, 2003.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 14, 2003.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Uday Garadi, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0110, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for Eurocopter Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3 helicopters was published in the **Federal Register** on April 7, 2003 (68 FR 16735). That action proposed to require, within the next 10 hours time-in-service (TIS), inspecting the hose for crazing, pinching, distortion, or leaks at the torque link hinge and replacing the hose before further flight, if necessary. It also proposed to require, at the next 100-hour TIS inspection, inspecting the hose and the emergency flotation gear pipe to ensure adequate clearance, and adjusting the landing gear leg, if necessary.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3. The DGAC advises of receiving a report of a hose compression due to interference with a clamp that attaches the emergency flotation gear pipe.

Eurocopter has issued Alert Telex No. 32.00.09, for Model AS 365N, N1, N2, and N3 helicopters, and Alert Telex No. 32A004, for Model EC 155B helicopters, both dated July 31, 2002. These alert telexes specify checks of the condition of the hose, as well as ensuring that there is no interference between the hose and the emergency flotation gear pipe when the landing gear is retracted. The DGAC classified these alert telexes as mandatory and issued AD No. 2002–475–007(A) for Model EC 155 B helicopters, and AD No. 2002–474–058(A), for Model AS 365 N, N1, N2, and N3 helicopters, both dated September 18, 2002, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the

proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

The FAA estimates that 44 helicopters of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per helicopter to accomplish the inspection and 5 work hours to replace any parts, as necessary, and that the average labor rate is $60 per work hour. Required parts will cost approximately $459 for the hose. If replacing the hose on two sides is required, the cost will be approximately $918. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,518 per helicopter, or $50,094 for the entire fleet, assuming 75 percent of the fleet (33 helicopters) is equipped with emergency flotation gear and the hoses are replaced on all 33 helicopters.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2003–18–03 Eurocopter France: Amendment 39–13294. Docket No. 2002–SW–53–AD.

Applicability: Model EC 155B, SA–365N and N1, AS–365N2, and AS 365 N3 helicopters, with emergency flotation gear installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the hose, resulting in failure of hydraulic pressure to the brakes on the affected landing gear wheel and subsequent loss of control of the helicopter during a run-on landing, accomplish the following:

(a) Within 10 hours time-in-service (TIS), inspect the hose for crazing, pinching, distortion, or leaks as illustrated in Area A of Figure 1 of Eurocopter Alert Telex No. 32.00.09, for Model SA–365N and N1, AS–365N2, and AS 365 N3 helicopters, and Alert Telex No. 32A004, for Model EC 155B helicopters, both dated July 31, 2002 (Alert Telexes).

(b) If crazing, pinching, distortion, or leaks exist, replace the hose with an airworthy hose before further flight.

(c) At the next 100-hour TIS inspection, inspect the hose and the emergency flotation gear pipe to ensure adequate clearance and adjust the landing gear leg, if necessary, in accordance with the Operational Procedure, paragraph 2.B.2., of the applicable Alert Telexes.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Safety Management Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Safety Management Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Safety Management Group.

(e) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspections and adjustments, if necessary, shall be done in accordance with Eurocopter Alert Telex No. 32.00.09, for Model SA–365N and N1, AS–365N2, and AS 365 N3 helicopters, and Alert Telex No. 32A004, for Model EC 155B helicopters, both dated July 31, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 14, 2003.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 2002–475–007(A) and AD No. 2002–474–058(A), both dated September 18, 2002.

Issued in Fort Worth, Texas on August 26, 2003.

Scott A. Horn,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 03–22619 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–30–AD; Amendment 39–13295; AD 2003–18–04]

RIN 2120–AA64

Airworthiness Directives; Wytwornia Sprzetu Komunikacyjnego (WSK) PZL–10W Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Wytwornia Sprzetu Komunikacyjnego

(WSK) PZL–10W turboshaft engines. This AD requires a one-time inspection of the four engine-to-gearbox pin retaining joints for loose or improperly crimped retaining nuts and damaged bolts on certain serial number engines. This AD is prompted by reports of loose or improperly crimped engine-to-gearbox pin joint retaining nuts found during overhaul. We are issuing this AD to prevent loss of nut torque and loosening of engine-to-gearbox pin joint retaining nuts, which could result in misalignment of the engine to the gearbox, causing loss of drive to the gearbox, power turbine overspeed, and uncontained power turbine disc failure.

DATES: Effective September 23, 2003. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of September 23, 2003.

We must receive any comments on this AD by November 7, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–30–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov*

You can get the service information referenced in this AD from Wytwornia Sprzetu Komunikacyjnego "PZL—Rzeszow" S. A., ul. Hetmanska 120, 35–078 Rzeszow, P.O. Box 340, Poland, telephone 011–48–17–85–46–100; fax 011–48–17–620–750.

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park; Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Polish General Inspectorate of Civil Aviation, which is the airworthiness authority for Poland, recently notified the FAA that an unsafe condition may exist on Wytwornia Sprzetu Komunikacyjnego (WSK) PZL–10W turboshaft engines. The Polish General Inspectorate of Civil Aviation advises that reports have been received of loose or improperly crimped engine-to-gearbox pin joint retaining nuts and damaged bolts found during overhaul.

Relevant Service Information

We have reviewed and approved the technical contents of Wytwornia Sprzetu Komunikacyjnego Obligatory Service Bulletin (OSB) No. E–19W096/2000, (original issue—2000), that describes procedures for performing a one-time inspection of the four engine-to-gearbox pin retaining joints for loose or improperly crimped retaining nuts and damaged bolts on the serial number PZL–10W engines listed in the OSB. The Polish General Inspectorate of Civil Aviation classified this OSB as mandatory and issued AD No. SP–0008–2001–B, dated October 2, 2001.

Bilateral Airworthiness Agreement

This engine model is manufactured in Poland and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the Polish General Inspectorate of Civil Aviation has kept the FAA informed of the situation described above. We have examined the findings of the Polish General Inspectorate of Civil Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of This AD

Although no helicopters that are registered in the United States use these PZL–10W turboshaft engines, the possibility exists that the PZL–10W turboshaft engines could be used on helicopters that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other WSK PZL–10W turboshaft engines of the same type design. We are issuing this AD to prevent loss of nut torque and loosening of engine-to-gearbox pin joint retaining nuts, which could result in misalignment of the engine to the gearbox, causing loss of drive to the gearbox, power turbine overspeed, and uncontained power turbine disc failure. This AD requires performing a one-time inspection of the four engine-to-gearbox pin retaining joints for loose or improperly crimped retaining nuts and damaged bolts on the serial number PZL–10W engines listed in OSB No. E–19W096/2000, (original issue—2000). You must use the service information described previously to perform the actions required by this AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–30–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. See **ADDRESSES** for the location.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–30–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–18–04—Wytwornia Sprzetu Komunikacyjnego: Amendment 39–13295. Docket No. 2003–NE–30–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 23, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Wytwornia Sprzetu Komunikacyjnego (WSK) PZL–10W turboshaft engines listed by serial number in Wytwornia Sprzetu Komunikacyjnego Obligatory Service Bulletin (OSB) No. E–19W096/2000, (original issue—2000). These PZL–10W turboshaft engines are installed on, but not limited to PZL–SOKOL helicopters.

Unsafe Condition

(d) This AD was prompted by reports of loose or improperly crimped engine-to-gearbox pin joint retaining nuts and damaged bolts found during overhaul. We are issuing this AD to prevent loss of nut torque and loosening of engine-to-gearbox pin joint retaining nuts, which could result in misalignment of the engine to the gearbox, causing loss of drive to the gearbox, power turbine overspeed, and uncontained power turbine disc failure.

Compliance

(e) You are responsible for having the actions required by this AD performed before further flight after the effective date of this AD, unless the actions have already been done.

Inspection

(f) Inspect the four engine-to-gearbox pin retaining joints for loose or improperly crimped retaining nuts and damaged bolts on the serial number engines listed in WSK Obligatory Service Bulletin (OSB) No. E–19W096/2000, (original issue—2000), and replace loosened or improperly crimped nuts, damaged bolts and washers. Use Chapter II of Accomplishment Instructions of OSB No. E–19W096/2000, (original issue—2000) to do these actions.

Alternative Methods of Compliance

(g) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(h) Special flight permits are prohibited.

Material Incorporated by Reference

(i) You must use Wytwornia Sprzetu Komunikacyjnego Obligatory Service Bulletin No. E–19W096/2000, (original issue—2000) to perform the inspection required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Wytwornia Sprzetu Komunikacyjnego "PZL—Rzeszow" S. A., ul. Hetmanska 120, 35–078 Rzeszow, P.O. Box 340, Poland, telephone 011–48–17–85–46–100; fax 011–48–17–620–750. You may review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Related Information

(j) Polish General Inspectorate of Civil Aviation AD No. SP–0008–2001–B, dated October 2, 2001, also addresses the subject of this AD.

Issued in Burlington, Massachusetts, on August 28, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–22620 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 250

[Docket No. OST–96–1255]

RIN 2105–AC45

Oversales Signs

AGENCY: Office of the Secretary (OST), (DOT).

ACTION: Final rule.

SUMMARY: This document amends the regulation on oversales by changing the reference to an outdated legal authority and other language because of several new statutory provisions. This action also makes certain other editorial changes.

EFFECTIVE DATE: October 8, 2003.

ADDRESSES: You may obtain a copy of this notice from the DOT public docket through the Internet at *http://dms.dot.gov,* docket number OST–96–1255.

You may also review the public docket in person in the Docket office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket office is on the plaza level of the Department of Transportation. Additionally, you may obtain a copy of this document from the **Federal Register** Web site at *http://www.gpoaccess.gov/fr/index.html.*

FOR FURTHER INFORMATION CONTACT: Tim Kelly, Aviation Consumer Protection Division, Office of Aviation Enforcement and Proceedings, Office of the General Counsel, Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, telephone (202) 366–5952, e-mail *tim.kelly@ost.dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1996, the Department of Transportation published a Notice of Proposed Rulemaking (61 FR 27818) that proposed to eliminate the

Department's requirement (pursuant to 14 CFR part 250) that a consumer notice about airline oversales appear on signs at airports, city ticket offices, and travel agencies. The basis for the NPRM was that the information would continue to be available through other means. This NPRM also proposed certain updates to the Department's oversales rule to reflect the recodification of statutory provisions and the Department's acquisition of responsibility for this rule from the Civil Aeronautics Board.

The Department received two comments in response to the NPRM. Southwest Airlines supported the proposal to eliminate the oversales sign. Southwest also concurred in one particular element of the proposal which would require "ticketless" carriers (*i.e.*, airlines that use electronic ticketing as opposed to conventional paper tickets) to continue to post the oversales sign if the carrier does not distribute the oversales notice in writing to every passenger as is required for passengers with paper tickets. The American Society of Travel Agents opposed the Department's proposal; it stated that signs are a more efficient method of communicating the oversales information than individual notices. ASTA asserted that the Department should keep the sign requirement and eliminate the requirement for individual ticket notices.

A major basis for the Department's proposal was the fact that the oversales rule requires that oversales information to assist consumers must appear both on signs and on a notice that is to accompany every ticket. Due to the significant growth of electronic ticketing in the period since this proposal was issued, the Department cannot rely to the same extent on advance distribution of the oversales ticket notice. Indeed, in 1997 (62 FR 19473) the Department issued a Statement of Compliance Policy in which it afforded additional flexibility to carriers in distributing ticket notices to electronically ticketed passengers.

Therefore, based on the above discussion, we have decided not to eliminate the requirement for an oversales airport sign at this time. Additionally, it is our decision that ASTA's proposal to eliminate ticket notices is beyond the scope of this proceeding. However, in this final rule, we will finalize the administrative updates of Part 250 that were proposed in the NPRM (*e.g.*, statutory references) by amending certain terms to more accurately reflect current law.

Regulatory Analyses and Notices

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, it was not reviewed by the Office of Management and Budget. This rule is not considered significant under the Department's regulatory policies and procedures. This rule only makes editorial changes, and updates reference to a legal authority and other language because of several statutory changes.

The Department also has determined that the economic impact of the rule is so minimal that no further analysis is necessary. This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Executive Order 13132

The Department has analyzed this rule under the principles and criteria contained in Executive Order 13132 ("Federalism") and has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995.

Regulatory Flexibility Act

The Department has evaluated the effects of this rule on small entities. I certify this rule will not have a significant economic impact on a substantial number of small entities, because we are merely making editorial changes and updating references to a legal authority and other language because of several statutory changes.

List of Subjects in 14 CFR Part 250

Air carriers, Consumer protection, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Department amends 14 CFR part 250 as follows:

PART 250—OVERSALES

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 49 U.S.C. 401, 411, 413, and 417.

■ 2. In 14 CFR 250.1, the definition of "Carrier" is revised to read as follows:

§ 250.1 Definitions.

* * * * *

Carrier means: (1) A direct air carrier, except a helicopter operator, holding a certificate issued by the Department of Transportation pursuant to 49 U.S.C. 41102 (formerly sections 401(d)(1), 401(d)(2), 401(d)(5) and 401(d)(8) of the Federal Aviation Act of 1958), or an exemption from 49 U.S.C. 41101 (formerly section 401(a) of the Act), authorizing the transportation of persons, or

(2) A foreign route air carrier holding a permit issued by the Department pursuant to 49 U.S.C. 41301 through 41306 (formerly section 402 of the Act), or an exemption from the appropriate provision of 49 U.S.C. 41301 through 41306, authorizing the scheduled foreign air transportation of persons.

* * * * *

■ 3. In § 250.2, the words "or overseas" are removed.

■ 4. In § 250.2b(b), in the last sentence, the word "Board" is removed and the term "DOT" is added in its place.

■ 5. In § 250.5(a), in the last sentence, the words "and overseas" are removed.

■ 6. In § 250.9(b), in the subsection entitled Compensation for Denied Boarding, in the second sentence, the phrase "Civil Aeronautics Board" is removed and the phrase "Department of Transportation" is added in its place, and in the subsection entitled Amount of Denied Boarding Compensation, in the second paragraph, the phrase "the CAB" is removed and the term "DOT" is added in its place.

Issued this 19th day of August, 2003 at Washington DC.

Norman Y. Mineta,

Secretary of Transportation.

[FR Doc. 03–22093 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–62–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AB97

Additional Registration and Other Regulatory Relief for Commodity Pool Operators and Commodity Trading Advisors; Past Performance Issues; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules; correction.

SUMMARY: The Commodity Futures Trading Commission (Commission) published in the **Federal Register** of August 8, 2003, a document providing additional relief for certain persons excluded from the commodity pool operator (CPO) definition, providing

exemptions from registration as a CPO or commodity trading advisor (CTA), and facilitating communications by CPOs and CTAs (Final Rules). This document contains corrections to the final rules.

DATES: Effective September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, or Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, telephone numbers: (202) 418–5450 or (202) 418–5445, respectively; facsimile number: (202) 418–5528; and electronic mail: *bgold@cftc.gov* or *ccummings@cftc.gov*, respectively.

SUPPLEMENTARY INFORMATION: The Commission published the Final Rules in the **Federal Register** of August 8, 2003 (68 FR 47221). The Final Rules affect CPOs and CTAs and persons excluded or exempted from registering as such. As published, however, the Final Rules contain errors that may be misleading and need clarification. In addition to correcting typographical errors and clarifying certain rules referenced in Appendix A, as is discussed below, the Commission is clarifying the right of redemption of a pool participant and the right of termination of a CTA client.

Rules 4.13(b)(2) and 4.14(a)(8)(iii)(B), respectively, address the situation where a CPO qualifies for exemption from registration in connection with all of the pools it operates or a CTA qualifies for exemption from registration in connection with providing advice to all of its clients. In such a situation, these rules provide that where a registered CPO or CTA intends to claim the exemption and to withdraw from registration, the CPO or CTA must, among other things, provide pool participants or advisory clients with a right of redemption or right of termination, as the case may be.

Rules 4.13(e)(2) and 4.14(c)(2), respectively, address the situation where a registered CPO qualifies for exemption from registration in connection with some of the pools it operates or a registered CTA qualifies for exemption from registration in connection with providing advice to some of the clients it advises. In such a situation, these rules provide that the CPO or CTA may treat the pools or clients for which it would otherwise qualify for exemption from registration as if it were in fact exempt from registration.

The Commission is clarifying that where a CPO or CTA seeks relief, all pool participants and clients have the same right to redemption or termination regardless of whether their CPO or CTA (1) intends to withdraw from registration (the first situation discussed above), or (2) remains registered and treats them as if the CPO or CTA had in fact withdrawn from registration (the second situation discussed above). Thus, the Commission is clarifying that, regardless of registration status, the obligations of the CPO or CTA to pool participants or clients are the same in this context.

■ In rule FR Doc. 03–20094 published on August 8, 2003, 68 FR 47221, make the following corrections:

■ 1. On page 47233, in the first column, in § 4.13(e)(2)(i)(B), in the third line, delete the word "and" and in paragraph (e)(2)(ii), in the second line, delete "." and insert "; and" and add new paragraph (e)(2)(iii) to read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

* * * * *

(e) * * *

(2) * * *

(iii) Provides to each existing participant in a pool that the person elects to operate as described in paragraph (a)(3) or (a)(4) of this section a right to redeem the participant's interest in the pool, and informs each such participant of that right no later than the time the person commences to operate the pool as described in paragraph (a)(3) or (a)(4) of this section.

* * * * *

§ 4.14 [Corrected]

■ 2. On the same page, in the third column, in § 4.14(a)(8)(iii)(A)(*2*), in the third and fourth lines, "(*i.e.*, § 4.14(a)(8)(i) or (a)(8)(ii), or both (a)(8)(i) and (a)(8)(ii))" is corrected to read "(*i.e.*, under § 4.14(a)(8)(i))".

■ 3. On page 47234, in the third column in paragraph (c)(2), in the eleventh line, before the period, insert the following text: "; *Provided Further*, That the person provides to each existing client described in paragraph (a) of this section a right to terminate its advisory agreement, and informs such client of that right no later than the time the person commences to provide commodity interest trading advice to the client as if the person was exempt from registration".

§ 4.22 [Corrected]

■ 4. On page 47235, in the first column, in § 4.22(c), in the ninth line, the word "on" is corrected to read "of".

■ 5. On the same page, in the second column, paragraph (j) introductory text is redesignated as (j)(1), paragraphs (j)(A) and (B) are redesignated as (j)(1)(i) and (ii) respectively, and paragraph (j)(ii) is redesignated as paragraph (j)(2).

Appendix A to Part 4—[Corrected]

■ 6. On page 47236, in the second column, in the first paragraph "*Application*," in the last line, "Rule 4.13(a)(3)" is corrected to read "Rule 4.13(a)(3)(ii)(A)."

■ 7. On the same page, in the second column, in paragraph "3. *Situation*," in the seventh line, and in the next paragraph "*Application*," in the last line, "Rule 4.13(a)(3)(i)(A)" is corrected to read "Rule 4.13(a)(3)(ii)(A)" in each instance.

■ 8. On the same page, in the third column, in the paragraph "*Application*," in the fifth line and in the seventh line, "Rule 4.13(a)(3)(i)" is corrected to read "Rule 4.13(a)(3)(ii)" in each instance.

Issued in Washington, DC, on September 2, 2003 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 03–22755 Filed 9–5–03; 8:45 am]

BILLING CODE 6351–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–7554–1]

Prevention of Significant Deterioration; Notice of Partial Delegation of Authority; Nevada Division of Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Partial Delegation of PSD permitting authority.

SUMMARY: This document is to inform interested parties that, by a Delegation Agreement dated June 3, 2003, the Air Division Director of EPA, Region 9, is implementing a partial delegation of authority to issue Federal Prevention of Significant Deterioration (PSD) permits to the Nevada Division of Environmental Protection (NDEP).

DATES: The Delegation Agreement with NDEP is effective on June 3, 2003.

ADDRESSES: You can inspect a copy of the partial PSD Delegation Agreement at our Region IX office during normal business hours. Due to security procedures, please call Roger Kohn at 415–972–3973 at least one day in advance of inspecting this document at our office: Permits Office (AIR–3), Air Division, U.S. Environmental Protection

Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You may also see copies of the partial Delegation Agreement at the following location: Nevada Division of Environmental Protection, Bureau of Air Pollution Control, 333 West Nye Lane, Carson City, NV 89706.

FOR FURTHER INFORMATION CONTACT: Gerardo Rios, EPA Region IX, (415) 972–3974, or send email to *rios.gerardo@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

I. Background

In 1978, EPA published final regulations at 40 CFR 52.21, implementing the PSD program required under part C of the Clean Air Act, 42 U.S.C. 7475–7479. *See* 43 FR 26403 (June 19, 1978). The PSD regulations provide authority to EPA to delegate the responsibility for conducting PSD source review to a State or local air pollution control agency. 40 CFR 52.21(u). In general, delegations are implemented through agreements between EPA Regions and State or local air pollution control agencies. These agreements between the Agency and permitting agencies set out the responsibilities of each in carrying out the federal PSD program for that jurisdiction. The specific elements of delegation agreements vary to take into consideration particular circumstances, such as legal restrictions that may apply in a specific jurisdiction.

Pursuant to its authority under § 52.21(u), Region 9 entered into a PSD delegation agreement with the Nevada Division of Environmental Protection (NDEP) on May 27, 1983. Region 9 published a notice of the delegation agreement in the **Federal Register**, (*see* 48 FR 28269, June 21, 1983).

On December 31, 2002, EPA published its Final Rule significantly revising 40 CFR 52.21. 67 FR 80186 (December 31, 2002). The revised rules were effective on March 3, 2003.

Since publication of the revised PSD rules, Region 9 has consulted with NDEP, who indicated that changes to Nevada law would be necessary for them to fully implement the revisions to 40 CFR 52.21.

As NDEP did not believe that current law would allow it to fully implement revised 40 CFR 52.21, Region 9 withdrew the 1983 delegation agreement for issuing Federal PSD permits on March 3, 2003.

NDEP has advised EPA that it is on schedule to adopt State regulations consistent with the revised Federal PSD regulations and intends to submit those to EPA for approval into the Nevada State Implementation Plan (SIP) as a SIP revision. NDEP expects to have adopted such State regulations by January 2004.

NDEP and EPA desire to continue to have NDEP implement and enforce the Federal PSD regulations to the extent possible while NDEP proceeds with adopting State regulations to fully implement the revised PSD regulations. Accordingly, on June 3, 2003, the EPA and NDEP entered into the partial Delegation Agreement to issue Federal Prevention of Significant Deterioration (PSD) permits. A copy of the agreement delegating partial PSD permitting authority is available for inspection and copying at the addresses provided above.

As part of the transition process for implementing the new provisions, NDEP and EPA intend to allow permit applicants the opportunity to re-evaluate their projects in light of the new Federal PSD requirements if they so choose.

II. EPA Action

Pursuant to 40 CFR 52.21(u), EPA delegates to NDEP responsibility for implementing and enforcing part of the Federal PSD regulations for all sources located in the State of Nevada under NDEP jurisdiction. NDEP is delegated to implement and enforce the Federal PSD regulations for any new major stationary source and for any modification of a major source that is a major modification. Region 9 has retained the authority to make applicability determinations under the revised PSD provisions effective March 3, 2003. Both EPA and NDEP acknowledge that under certain circumstances the State PSD regulations and Federal PSD regulations have different applicability criteria and that obtaining an exemption under one set of PSD regulations does not relieve a facility from compliance with the other PSD regulations.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Reporting and recordkeeping requirements.

Dated: August 21, 2003.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 03–22648 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV 045–0070a; FRL–7547–9]

Revisions to the Nevada State Implementation Plan, Clark County Air Quality Management Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Clark County Air Quality Management Board (CCAQMB) portion of the Nevada State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM–10) from residential wood combustion. We are approving the local rules (building code provisions) that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on November 7, 2003 without further notice, unless EPA receives adverse comments by October 8, 2003. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail or e-mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov*.

You can inspect a copy of the submitted rules (building code provisions) and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted rules (building code provisions) and TSD at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC 20460.

Nevada Division of Environmental Protection, 333 West Nye Lane, Room 138, Carson City, NV 89706.

Clark County Air Quality Management Board, 500 South Grand Central Parkway, Las Vegas, NV 89155.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the date they were revised by the local air agencies and submitted by the Nevada Division of Environmental Protection (NDEP).

TABLE 1.—SUBMITTED RULES

Local agency	Rule (building code section #)	Rule (building code provision) title	Adopted	Submitted
Clark County	(3708)	Fireplaces in New Construction and New Fireplaces in Existing Construction (Ordinance No. 1249).	11/20/90	11/19/02
City of Las Vegas	(3708)	Fireplaces in New Vegas Construction and New Fireplaces in Existing Construction (Ordinance No. 3538).	11/21/90	11/19/02
City of North Las Vegas	(13.16.150)	Fireplaces in New Construction and New Fireplaces in Existing Construction (Ordinance No. 1020).	09/18/91	11/19/02
City of Henderson	(15.40.010)	Fireplaces in New Construction and New Fireplaces in Existing Construction (Ordinance No. 1697).	10/15/96	11/19/02

On May 18, 2003, this submittal was deemed complete by operation of law in accordance with 40 CFR part 51, appendix V.

B. Are There Other Versions of These Rules?

There are no previous versions of these rules (building code provisions) approved into the SIP.

C. What Is the Purpose of the Submitted Rule Revisions?

The purpose of the building code provisions is to require that fireplaces being constructed in new or existing dwelling units be fuelled with natural gas, conform to EPA emission requirements, contain an insert that meets EPA emission requirements, or their equivalent, or be decorative electrical appliances.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the CAA) and must not relax existing requirements (*see* sections 110(l) and 193). Section 189(b) of the CAA requires serious PM–10 nonattainment areas with significant or major PM–10 sources to adopt best available control measures (BACM), including best available control technology (BACT). Clark County is a serious PM–10 nonattainment area. *See* 40 CFR 81.330.

EPA's guidance for serious PM–10 nonattainment areas provides that BACM/BACT is required to be implemented for all source categories unless the State demonstrates that a particular source category does not contribute significantly to PM–10 levels in excess of the NAAQS. *See* 57 FR 13498, 13540 (April 16, 1992) ("General Preamble") and 59 FR 41998 (August 16, 1994) ("Addendum"). The activities regulated by the above rules (building code provisions) contribute an insignificant (*de minimis*) 0.02% of the total PM–10 emissions in Clark County according to the *PM–10 State Implementation Plan for Clark County for the Las Vegas Valley Nonattainment Area,* Nevada Division of Environmental Protection (June 19, 2001). Therefore, the rules (building code provisions) need not fulfill the requirements of BACM/BACT. We are evaluating these rules (building code provisions) only to ensure that they do not relax the SIP in violation of CAA sections 110(l) and 193, and that they meet enforceability and other general SIP requirements of section 110.

The following guidance documents were used for reference:

- *Requirements for Preparation, Adoption, and Submittal of Implementation Plans,* U.S. EPA, 40 CFR part 51.
- *PM–10 Guideline Document,* EPA–452/R–93–008.
- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 57 FR 13498, 13540 (April 16, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,* 59 FR 41998, 42011 (August 16, 1994).
- *PM–10 State Implementation Plan for Clark County for the Las Vegas Valley Nonattainment Area,* Nevada Division of Environmental Protection (June 19, 2001).

B. Do the Rules Meet the Evaluation Criteria?

The submitted rules (building code provisions) are consistent with the relevant policy and guidance regarding enforceability and stringency and should be approved. The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) and 110(k)(6) of the CAA, EPA is fully approving the submitted rules (building code provisions) because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules (building code provisions). If we receive adverse comments by October 8, 2003, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on November 7, 2003. This will incorporate these rules (building code provisions) into the federally-enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this direct final rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Background Information

Why Were These Rules Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA

requires States to submit regulations that control PM–10 emissions. Table 2 lists some of the national milestones leading to the submittal of local agency PM–10 rules.

TABLE 2.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the Clean Air Act, as amended in 1977. 43 FR 8964; 40 CFR 81.305.
July 1, 1987	EPA replaced the TSP standards with new PM standards applying only up to 10 microns in diameter (PM–10). 52 FR 24672.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
November 15, 1990	PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated nonattainment by operation of law and classified as moderate pursuant to section 188(a). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c).

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 2003. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: July 29, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraph (c)(41) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(41) Regulations for the following agencies were submitted on November 19, 2002 by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Air Quality Management Board.

(1) Clark County Building Code, section 3708, adopted on November 20, 1990.

(2) City of Las Vegas Building Code, section 3708, adopted on November 21, 1990.

(3) City of North Las Vegas Building Code, section 13.16.150, adopted on September 18, 1991.

(4) City of Henderson Building Code, section 15.40.010, adopted on October 15, 1996.

[FR Doc. 03–22647 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–7553–3]

RIN 2060–AJ27

Protection of Stratospheric Ozone: Phaseout of Chlorobromomethane Production and Consumption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of July 18, 2003, a document that adds chlorobromomethane (CBM) to the list of substances subject to production and consumption controls under the Clean Air Act (CAA) and EPA's implementing regulations. This document corrects the numbering for a provision added in that document.

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Jabeen Akhtar, 202–564–3514; E-mail: *akhtar.jabeen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Does This Correction Do?

The EPA published a document in the Federal Register of July 18, 2003 (68 FR 42883), which added a paragraph of trade restrictions of CBM to 40 CFR 82.4. This paragraph is incorrectly numbered as 40 CFR 82.4(l)(5). This correction amends the paragraph numbering from 40 CFR 82.4(l)(5) to 40 CFR 82.4(l)(6).

II. Does This Action Apply to Me?

Categories and entities potentially regulated by this action include:

Category	SIC	NAICS	Examples of potentially regulated entities
1. Industrial organic chemicals, NEC	2869	325199	Producers, importers, or exporters of CBM.
2. Pharmaceutical preparations	2834	325412	Transformers of CBM.
3. Pesticides and agricultural chemicals, NEC	2879	32532	Transformers of CBM.
4. Chemicals and allied products, NEC	5169	42269	Lab suppliers of CBM.
5. Testing laboratories, except veterinary	8734	54138	Lab users of CBM.
6. Medical and diagnostic laboratories	8071	6215	Lab users of CBM.
7. Research and development in the physical, engineering and life sciences	8731, 8733	54171	Lab users of CBM.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, etc., could be regulated by this action, you should carefully examine the applicability criteria in § 82.1(b) of Title 40 of the Code of Federal Regulations (CFR). If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

III. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* Materials relevant to this action are contained in Docket No. A–92–13, Section XII. The EDOCKET number is OAR–2003–0077, with the legacy identifier noted as A–2000–49. The docket is located at U.S. Environmental Protection Agency, EPA West (Air Docket), 1301 Constitution Avenue, NW., Room: B108, Mail Code 6102T, Washington, DC 20004. The materials may be inspected from 8 am until 5:30 pm, Monday through Friday. The telephone number is (202) 566–1742. The fax number is (202) 566–1741. The docket may charge a reasonable fee for copying docket materials. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedregstr.* An electronic version of the public docket is also available through EPA's new electronic public docket, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/rpas/* to access the index listing of the contents of the official public docket for this action, as well as access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket identification number that EPA has established for this action. Certain types of information will not be placed in the EPA Docket. Information claimed as CBI, and other information whose disclosure is restricted by statute which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket, either. The EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper from in the official public docket. To the extent feasible, publicly available supporting materials for this action will be made available in EPA's electronic public docket. When a document is selected from the index list in the EPA Docket, the system will identify whether the document is available for viewing the EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the Docket Center identified in this notice. The EPA intends to work toward providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

IV. Why Is This Correction Issued as a Final Rule?

Section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's action final without prior proposal and opportunity for comment because the changes to the rule are minor technical corrections and do not change the requirements of the rule. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B) (*see* also the final sentence of section 307(d)(1) of the Clean Air Act, 42 U.S.C. 7607(d)(1), indicating that the good cause provisions of the APA continue to apply to this type of rulemaking under the Clean Air Act).

Section 553(d)(3) allows an agency, upon a finding of good cause, to make a rule effective immediately. Because today's changes do not change the requirements of the rule, we find good cause to make these technical corrections effective immediately.

V. Do Any of the Executive Order and Statutory Reviews Apply to This Correction?

This final rule implements a technical correction to the Code of Federal Regulations, and it does not otherwise impose or amend any requirements.

1. *Executive Order 12630.* The EPA has complied with Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings) (53 FR 8859, March 15, 1988) by examining the takings implications of this technical correction in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

2. *Executive Order 12866.* Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this technical correction is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget (OMB). This action is not a "major rule" as defined by 5 U.S.C. 804(2).

3. *Executive Order 12898.* This technical correction does not involve special consideration of environmental justice-related issues as required by Executive Order 12898, Federal Actions to Address Environment Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994).

4. *Executive Order 12988.* In issuing this technical correction, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, Civil Justice Reform (61 FR 4729, February 7, 1996).

5. *Executive Order 13045.* This technical correction is not subject to Executive Order 13045, Protection of Children from Environmental Health and Safety Risks (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

6. *Executive Order 13132.* This technical correction does not have substantial direct effects on the States, or on the relationship between the national government and the States, as specified in Executive Order 13132, Federalism (64 FR 43255, August 10, 1999).

7. *Executive Order 13175.* This technical correction does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 6, 2000).

8. *Executive Order 13211.* This technical correction is not subject to Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

9. *Paperwork Reduction Act.* This technical correction does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S,C. 3501 *et seq.*).

10. *National Technology Transfer and Advancement Act.* This technical correction action does not involve changes to technical standards. Thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

11. *Regulatory Flexibility Act.* Because EPA has made a "good cause" finding that this action is not subject to notice and comment requirements under the APA or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

12. *Unfunded Mandates Reform Act.* This technical correction contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), (Public Law 104–4), for State, local, or tribal governments or the private sector because the correction imposes no enforceable duty on any State, local or tribal governments or the private sector. Thus the correction is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of the UMRA.

13. *Congressional Review Act.* The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement (5 U.S.C. 808(2)). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 8, 2003. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**.

The EPA's compliance with these Executive Orders and statutes of the underlying rule is discussed in the July 18, 2003, **Federal Register** document containing the Phaseout of Chlorobromomethane Production and Consumption final rule (68 FR 42884).

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Government procurement, Imports, Labeling, Reporting and recordkeeping requirements.

Dated: August 28, 2003.

Jeffrey R. Holmstead,

Assistant Administrator for the Office of Air and Radiation.

■ For the reasons stated in the preamble, 40 CFR part 82 is amended as follows:

PART 82—PROTECTION OF STRATOSPHERIC ZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

Subpart A—Production and Consumption Controls

■ 2. In the **Federal Register** of July 18, 2003, page 42891, third column, amendatory instruction 3.c. is corrected to read "Adding and reserving paragraph (l)(5) and adding paragraph (l)(6)" and paragraph (l)(5) in the third column at the end of amendatory instruction 3. is redesignated as (l)(6).

[FR Doc. 03–22639 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 74 and 92

Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations; and Certain Grants and Agreements with States, Local Governments and Indian Tribal Governments and Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services (HHS) is revising its grants management regulations in order to bring the entitlement grant programs it administers under the same regulations that already apply to non-entitlement programs for grants and cooperative agreements to State, local, and tribal governments.

DATES: This rule is effective September 8, 2003. Implementation shall be phased in by incorporating the provisions into awards made after the start of the next Federal entitlement program year.

FOR FURTHER INFORMATION CONTACT: Marc R. Weisman, Acting Deputy Assistant Secretary for Grants and Acquisition Management, HHS, Room 336–E, 200 Independence Avenue, SW., Washington, DC 20201; FAX (202) 690–6902; Telephone (202) 690–8554. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background and Purpose

On March 11, 1988, HHS joined other Federal agencies in publishing a final grants management "common rule" which provides a uniform system for the administration of grants and cooperative agreements, and by subawards thereunder, to State, local, and tribal governments. Prior to that date, administrative requirements for awards and subawards under all HHS programs were codified under 45 CFR part 74. HHS implemented the Common Rule at 45 CFR part 92. At the time, entitlement grant programs of the Social Security Act (the Act) administered by HHS and the Department of Agriculture were excepted from the common rule, because it was believed that the States operated entitlement programs differently than non-entitlement programs. Therefore, subpart E was reserved in the rule to subsequently address provisions specific to entitlement programs. Pending the publication of subpart E to part 92, the HHS entitlement programs have remained under part 74. As cited in 45 CFR 92.4, these programs included:

(1) Aid to Needy Families with Dependent Children (Title IV-A of the Act, not including the Work Incentive Program (WIN) authorized by section 402(a)19(G));

(2) Child Support Enforcement and Establishment of Paternity (Title IV-D of the Act);

(3) Foster Care and Adoption Assistance (Title IV-E of the Act);

(4) Aid to the Aged, Blind, and Disabled (Titles I, X, XIV, and XVI-AABD of the Act);

(5) Medical Assistance (Medicaid) (Title XIX of the Act) not including the State Medicaid Fraud Control program authorized by section 1903(a)(6)(B);

(6) State Children's Health Insurance Program (Title XXI of the Act); and

(7) Certain grant funds awarded under subsection 412(e) of the Immigration and Nationality Act and subsection 501(a) of the Refugee Education Assistance Act of 1980.

Experimental, pilot, or demonstrations involving the above programs also remained under Part 74.

This rule will expand the scope of 45 CFR part 92 to include the entitlement grant programs cited above and remove such programs from the scope of part 74. Therefore, both entitlement and non-entitlement awards to State, local, and tribal governments will be under the same administrative rules. This will enable State, local, and tribal grantees and other affected parties, such as auditors, to use the same administrative rules for the vast majority of their Federal programs. This action will also reduce unnecessary confusion and inefficiency in program administration.

On November 15, 2000, HHS published a Notice of Proposed Rulemaking (Proposed Rule) (65 FR 68969) as the first step in developing a single set of grant and subgrant administrative rules for all types of organizations operating HHS entitlement programs. HHS received no comments on the proposed rule.

Technical Amendments

Section 92.4(a)

HHS is making a technical change in § 92.4(a) to recognize the revisions made to the USDA grants management regulations at 7 CFR part 3016 bringing USDA administered entitlement grant programs under the common rule

Regulatory Impact Analysis

Executive Order 12866

In accordance with the provisions of Executive Order 12866, the Office of Management and Budget did not review this rule because it is not a significant regulatory action as defined in Executive Order 12866.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Secretary has reviewed this rule before publication and, by approving it, certifies that it will not have a significant impact on a substantial number of small entities. This rule does not affect the amount of funds provided in the covered programs but, instead, modifies and updates the administrative and procedural requirements.

Unfunded Mandates Reform Act

The Department has determined that this rule is not a significant regulatory action within the meaning of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501, *et seq.*, because it will not result in State, local, or tribal government expenditures of $100 million or more.

Paperwork Reduction Act of 1995

The reporting and recordkeeping requirements of this rule are the same as those required by OMB Circulars A–102 and A–110 and have already been cleared by OMB. Therefore, HHS believes this rule will not impose additional information collection

requirements on grantees and subgrantees.

List of Subjects

45 CFR Part 74

Accounting, Administrative practice and procedure, Colleges and universities, Grant programs, Hospitals, Indians, Intergovernmental relations, Nonprofit organizations, and Reporting and recordkeeping requirements.

45 CFR Part 92

Accounting, Grant programs, Indians, Intergovernmental relations, Reporting and record keeping requirements.

(Catalog of Federal Domestic Assistance number does not apply.)

Dated: July 29, 2003.

Tommy G. Thompson,

Secretary.

■ For the reasons discussed in the preamble, the Department amends title 45 of the Code of Federal Regulations as follows:

PART 74—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR AWARDS AND SUBAWARDS TO INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS

■ 1. The authority citation for part 74 is revised to read as follows:

Authority: 5 U.S.C. 301.

■ 2. Revise the heading for part 74 to read as shown above.

■ 3. In § 74.1 remove paragraph (a)(3).

PART 92—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE, LOCAL, AND TRIBAL GOVERNMENTS

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 5 U.S.C. 301.

■ 2. Revise the heading for part 92 to read as shown above.

■ 3. In § 92.4:

■ a. Paragraphs (a)(3) through (8) are removed and paragraphs (a)(9) and (10) are redesignated as (a)(3) and (4).

■ b. Paragraph (b) is removed and reserved.

■ 4. Remove Subpart E, Entitlement.

[FR Doc. 03–22513 Filed 9–5–03; 8:45 am]

BILLING CODE 4151–17–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 105, 107 and 171

[Docket No. RSPA–03–15372 (RSP–5)]

RIN 2137–AD71

Hazardous Materials Regulations: Penalty Guidelines and Other Procedural Regulations

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, we (RSPA) are increasing to $32,500 and $275, respectively, the maximum and minimum civil penalties for a knowing violation of Federal hazardous materials transportation law or a regulation issued under that law. We are publishing revised baseline assessments for frequently cited violations to provide the regulated community and the general public with more current information on RSPA's hazardous material penalty assessment process. The revisions to RSPA's baseline penalty assessments consider the increase in the maximum civil penalty to $32,500. We are also advising the public that, in proposing or assessing a civil penalty, we will not normally consider a prior violation in a case that was initiated in a calendar year more than six years prior to the year in which the current proceeding is initiated.

In addition, we are updating the address to which civil penalty payments must be sent, and we are making editorial changes to our procedural regulations for issuing an administrative determination of preemption.

EFFECTIVE DATE: This rule is effective on September 30, 2003.

FOR FURTHER INFORMATION CONTACT: John J. O'Connell, Jr., Office of Hazardous Materials Enforcement, (202) 366–4700; or Frazer C. Hilder, Office of the Chief Counsel, (202) 366–4400, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Increase in Maximum and Minimum Civil Penalties

The Federal Civil Penalties Inflation Adjustment Act of 1990 (the Act) as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104–134) requires each Federal agency to periodically adjust civil penalties it administers to consider the effects of inflation. (The Act is set forth in the note to 28 U.S.C. 2461.) According to Section 5 of the Act, a maximum civil penalty (or the range of minimum and maximum civil penalties) must be increased based on a "cost-of-living adjustment" determined by the increase in the Consumer Price Index (CPI–U) for the month of June of the calendar year preceding the adjustment as compared to the CPI–U for the month of June of the calendar year in which the last adjustment was made. The Act also specifies that the amount of the adjustment must be rounded to the nearest multiple of $5,000, for a penalty between $10,000 and $100,000, and that the first adjustment to a civil penalty is limited to 10%. Any increased civil penalty amount applies only to violations that occur after the date the increase takes effect.

In a final rule published in the **Federal Register** on January 21, 1997, RSPA increased the maximum civil penalty from $25,000 to $27,500 for a knowing violation of the Federal hazardous material transportation law, 49 U.S.C. 5101 *et seq.*, or RSPA's regulations in subchapters A and C of 49 CFR, Chapter I. 62 FR 2970. Accordingly, we are now increasing the maximum civil penalty by $5,000, to $32,500, based on the increase in the CPI–U from June 1997 (160.3) to June 2002 (179.9), or 12.2%, times $27,500 equals $3,355, which must be rounded to $5,000. We have not previously adjusted the $250 minimum penalty amount specified in 49 U.S.C. 5123(a)(1), so we are increasing the minimum civil penalty by $25, to $275, because of the 10% limitation for the first adjustment.

To implement these adjustments, we are amending 49 CFR 107.329 and 171.1(c) to specify that the higher maximum and minimum civil penalties will apply to a violation of the Federal hazardous materials transportation law, a regulation or order issued under that law, or an exemption issued under subpart B of 49 CFR Part 107 that occurs after September 30, 2003. We are also making a similar change to the reference to the maximum penalty in Section IV.C. of Appendix A to Part 107, subpart D.

II. Revisions to Civil Penalty Guidelines

RSPA's hazardous material transportation enforcement civil penalty guidelines are published in Appendix A to 49 CFR Part 107, subpart D. These guidelines were first published in the **Federal Register** on March 6, 1995, in response to a request contained in Senate Report 03–150 that accompanied the Department of Transportation and

Related Agencies Appropriations Act of 1994. *See* the final rule in Docket No. HM–207D, 60 FR 12139. Revisions to these guidelines have been published on January 21, 1997, and August 28, 2001, in the final rules in Docket Nos. HM–207F, 62 FR 2970, and HM–189S, 66 FR 45177, respectively. Publication of these guidelines provides the regulated community and the general public with information concerning the manner in which RSPA generally begins its hazmat penalty assessment process and the information that respondents in enforcement cases should provide to justify reduction of proposed penalties.

These guidelines, which are periodically updated, are used by RSPA's enforcement personnel and attorneys as a means of determining a proposed civil penalty for violations of Federal hazardous material transportation law and the regulations issued under that law. As a general statement of agency policy and practice, these guidelines are not finally determinative of any issues or rights, and do not have the force of law. They are informational, impose no requirements, and constitute a statement of agency policy for which no notice of proposed rulemaking is necessary. *See also* the discussion of the nature and RSPA's use of these penalty guidelines in the preamble to the final rules published on March 6, 1995, 60 FR 12139–40, and January 21, 1997, 62 FR 2970–71.

These penalty guidelines remain subject to revision, and, in any particular case, RSPA's Office of Hazardous Materials Enforcement (OHME) and Office of the Chief Counsel will use the version of the guidelines in effect at the time a matter is referred by OHME for possible issuance of a notice of probable violation. Questions concerning RSPA's penalty guidelines and any comments or suggested revisions may be addressed to the persons identified above, in **FOR FURTHER INFORMATION CONTACT**.

A. Baseline Penalty Amounts

This final rule publishes the latest revisions that RSPA has made to the List of Frequently Cited Violations and their baseline assessments. These revisions to Part II of the guidelines are the result of revisions to the requirements in RSPA's regulations and our overall review of the penalty guidelines during the past two years. These revisions consider the increase in the maximum civil penalty to $32,500, in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, as discussed above.

In the List of Frequently Cited Violations, we list the section number(s) of 49 CFR for each violation, except the word "Various" is used when a generally stated violation may be covered by more than one section of the regulations (*e.g.*, the testing requirements applicable to the manufacture of each different DOT specification cylinder are contained in different sections of 49 CFR Part 178). In those instances where the baseline assessment is stated as a range (*e.g.*, $5,000 to $10,000), the factors generally considered in determining an amount within that range are indicated within the description of the violation (*e.g.*, the length of time that a continuing violation has lasted). Otherwise, we generally apply the top, middle, or bottom of the range depending on the Packing Group of the hazardous material involved in a violation, or we use the middle of the range for the "normal" type of violation.

RSPA created and uses these penalty guidelines to promote consistency and provide a standard for imposing similar penalties in similar cases. When a violation not described in the guidelines is encountered, RSPA often determines a baseline assessment by analogy to a similar violation in the guidelines. However, as emphasized in Parts III and IV of the guidelines, the baseline assessments are only the starting point for assessing a penalty for a violation. Because no two cases are identical, rigid use of the guidelines would produce arbitrary results and, most significantly, would ignore the statutory mandate to consider several specific assessment criteria set forth in 49 U.S.C. 5123 and 49 CFR 107.331. Therefore, regardless of whether or not the guidelines are used to determine a baseline amount for a violation, RSPA enforcement and legal personnel must apply the statutory assessment criteria to all relevant information in the record concerning any alleged violation and the apparent violator. Consideration of these criteria often warrants a final penalty that is lower or higher than the initial baseline assessment.

B. Increasing Penalties for Prior Violations

Section 5123(c) of 49 U.S.C. provides that "any history of prior violations" must be considered in determining the amount of a civil penalty for a violation of Federal hazardous material transportation law or a regulation or order issued under that law. As set forth in Section IV.E of the penalty guidelines, our general standard is to increase the baseline penalty for a violation by 25% for each prior case, up to a maximum increase of 100%. We are revising this section of the guidelines to clarify that we apply an increase of 10% for each prior ticket against the same company or individual.

Until this year, RSPA has generally limited to five years the time that it will "look back" for prior violations, although we recognize that there may be circumstances in which it would be appropriate to "look back" for a longer period of time. We have measured the five year period according to the calendar years in which the prior case and the new case are initiated. For example, the violations in a prior case initiated any time during 1997 or later were generally considered as an aggravating factor in a new case in which a Notice of Probable Violation was issued at any time during 2002.

We are revising Section IV.E. of the penalty guidelines to advise the public that, starting in 2003, RSPA will "look back" six years (rather than five) for prior violations from the calendar year in which the new case is initiated. Thus, as a general rule, we will disregard prior violations in any civil or criminal hazardous materials enforcement case (or ticket) that was initiated in a calendar year more than six years before the year in which the case is initiated. For example, in any case in which RSPA issues a Notice of Probable Violation during 2003, we will normally consider prior violations in cases and tickets with a number beginning in "97" or later in proposing and assessing a civil penalty for the new violations; in the absence of unusual circumstances, we would not consider prior violations in cases initiated in 1996 or earlier in proposing and assessing a civil penalty for violations in a case initiated during 2003.

III. Editorial Revisions

A. Preemption

In the Homeland Security Act of 2002 (the Act) (Pub. L. 107–296), Congress has made it clear that security is a part of the safe transportation of hazardous materials in commerce. Section 1711 of the Act amended the preemption provisions in 49 U.S.C. 5125(a) and (b) to specify that the Federal hazardous material transportation law preempts non-Federal requirements that conflict with Federal hazardous material transportation law, a regulation issued under that law, "or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security." RSPA is revising its procedural regulations in subpart C of 49 CFR Part 107 accordingly. In other sections, RSPA is removing references

to a non-Federal requirement being preempted "under * * * regulations issued" under the Federal hazardous material transportation law to clarify that, while a non-Federal requirement that conflicts with RSPA's regulations is preempted under the preemption criteria in 49 U.S.C. 5125, it is preempted by that Federal law and not by the regulations issued pursuant to that law.

RSPA is also revising the definition of "Regulations issued under Federal hazardous material transportation law" in 49 CFR 105.5 (and removing and reserving § 107.201(c)) to explain that, in addition to Subchapters A and C of Title 49, regulations issued by the Federal Motor Carrier Safety Administration and the Transportation Security Administration in Title 49 and regulations issued by the United States Coast Guard in Title 46 are also issued under Federal hazardous material transportation law. In addition, RSPA is providing a facsimile number and an email address (in addition to a mail address) for submission of an application for a preemption determination or for a waiver of preemption).

B. Enforcement

Section 107.315 of 49 CFR contains the address of the Financial Operations Division of the Federal Aviation Administration (FAA) which processes the payment of civil penalties in RSPA's enforcement cases. This rule updates the FAA office code and Post Office box number listed in paragraphs (b) and (c) of that section.

Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). The economic impact of this final rule is minimal to the extent that preparation of a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). Because this final rule carries out a statutory mandate without interpretation, revises an informational appendix without imposing any requirements, and makes editorial changes, preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to shippers and carriers of hazardous materials, some of which are small entities; however, there is no economic impact on any person who complies with Federal hazardous materials law and the regulations and orders issued under that law.

D. Paperwork Reduction Act

There are no new information requirements in this final rule.

E. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Act of 1995. It does not result in annual costs of $100 million or more, in the aggregate, to any of the following: State, local, or Indian tribal governments, or the private sector, and is the least burdensome alternative to achieve the objective of the rule.

F. Environmental Assessment

There are no significant environmental impacts associated with this final rule.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 105

Administrative practice and procedure, Hazardous materials transportation.

49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous Waste, Imports, Penalties, Reporting and recordkeeping requirements.

■ In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 105—HAZARDOUS MATERIALS PROGRAM DEFINITIONS AND GENERAL PROCEDURES

■ 1. The authority citation for part 105 continues to read:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

■ 2. In § 105.5(b), revise the definition of "*Regulations issued under Federal hazardous materials transportation law*" to read as follows:

§ 105.5 Definitions.

* * * * *

(b) * * *

Regulations issued under Federal hazardous material transportation law include this subchapter A (parts 105–110) and subchapter C (parts 171–180) of this chapter, certain regulations in chapter I (United States Coast Guard) of title 46, Code of Federal Regulations, and in chapters III (Federal Motor Carrier Safety Administration) and XII (Transportation Security Administration) of subtitle B of this title, as indicated by the authority citations therein.

* * * * *

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

■ 3. The authority citation for part 107 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–121 sections 212–213; Pub. L. 104–134 section 31001; 49 CFR 1.45, 1.53.

■ 4. In § 107.201, revise paragraphs (a)(1) and (a)(2), and remove and reserve paragraph (c) to read as follows:

§ 107.201 Purpose and scope.

(a) * * *

(1) Any person, including a State, political subdivision, or Indian tribe, directly affected by a requirement of a State, political subdivision, or Indian tribe, may apply for a determination as to whether that requirement is preempted under 49 U.S.C. 5125.

(2) A State, political subdivision, or Indian tribe may apply for a waiver of preemption with respect to any requirement that the State, political subdivision, or Indian tribe acknowledges to be preempted by 49 U.S.C. 5125, or that has been determined by a court of competent jurisdiction to be so preempted.

* * * * *

(c) [Reserved]

* * * * *

■ 5. In § 107.202, revise paragraphs (a) introductory text, (b)(1), and (b)(2) to read as follows:

§ 107.202 Standards for determining preemption.

(a) Except as provided in § 107.221 and unless otherwise authorized by Federal law, any requirement of a State or political subdivision thereof or an Indian tribe that concerns one of the following subjects and that is not substantively the same as any provision of the Federal hazardous materials transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security that concerns that subject, is preempted:

* * * * *

(b) * * *

(1) It is not possible to comply with a requirement of the State, political subdivision, or Indian tribe and a requirement under the Federal hazardous material transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security;

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to accomplishing and carrying out the Federal hazardous material transportation law, a regulation issued under the Federal hazardous material transportation law, or a hazardous material transportation security regulation or directive issued by the Secretary of Homeland Security.

* * * * *

■ 6. In § 107.203, revise paragraphs (b)(1), (b)(3), and (c) to read as follows:

§ 107.203 Application.

* * * * *

(b) * * *

(1) Be submitted to the Associate Administrator:

(i) By mail addressed to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001;

(ii) By fax to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at 202–366–5713; or

(iii) Electronically to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at *aahms-preemption@rspa.dot.gov.*

* * * * *

(3) Specify each requirement of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security with which the applicant seeks the State or political subdivision or Indian tribe requirement to be compared;

* * * * *

(c) The filing of an application for a determination under this section does not constitute grounds for noncompliance with any requirement of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security.

* * * * *

■ 7. In § 107.209, revise paragraph (d) to read as follows:

§ 107.209 Determination.

* * * * *

(d) A determination issued under this section constitutes an administrative determination as to whether a particular requirement of a State or political subdivision or Indian tribe is preempted under the Federal hazardous materials transportation law. The fact that a determination has not been issued under this section with respect to a particular requirement of a State or political subdivision or Indian tribe carries no implication as to whether the requirement is preempted under the Federal hazardous materials transportation law.

■ 8. In § 107.215, revise the first sentence in paragraph (a), and paragraphs (b)(1), (b)(4), and (b)(5) to read as follows:

§ 107.215 Application.

(a) With the exception of requirements preempted under 49 U.S.C. 5125(c), any State or political subdivision thereof, or Indian tribe may apply to the Associate Administrator for a waiver of preemption with respect to any requirement that the State or political subdivision thereof or an Indian tribe acknowledges to be preempted under the Federal hazardous materials transportation law, or that has been determined by a court of competent jurisdiction to be so preempted. * * *

* * * * *

(b) * * *

(1) Be submitted to the Associate Administrator:

(i) By mail addressed to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001;

(ii) By fax to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at 202–366–5713; or

(iii) Electronically to the Associate Administrator for Hazardous Materials Safety (Attn: Hazardous Materials Preemption Docket), at *aahms-preemption@rspa.dot.gov.*

* * * * *

(4) Contain an express acknowledgment by the applicant that the State, political subdivision, or Indian tribe requirement is preempted under Federal hazardous materials transportation law, unless it has been so determined by a court of competent jurisdiction or in a determination issued under § 107.209;

(5) Specify each requirement of the Federal hazardous materials transportation law that preempts the State, political subdivision, or Indian tribe requirement;

* * * * *

■ 9. In § 107.219, revise paragraphs (c)(1) and (c)(2) to read as follows:

§ 107.219 Processing.

* * * * *

(c) * * *

(1) The applicant State or political subdivision thereof or Indian tribe expressly acknowledges in its application that the State or political subdivision or Indian tribe requirement for which the determination is sought is inconsistent with the requirements of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security regulations or directives issued by the Secretary of Homeland Security.

(2) The State or political subdivision thereof or Indian tribe requirement has been determined by a court of competent jurisdiction or in a ruling issued under § 107.209 to be inconsistent with the requirements of the Federal hazardous materials transportation law, regulations issued under the Federal hazardous material transportation law, or hazardous material transportation security

regulations or directives issued by the Secretary of Homeland Security.

* * * * *

■ 10. In § 107.221, revise paragraph (e) to read as follows:

§ 107.221 Determination.

* * * * *

(e) A determination under this section constitutes an administrative finding of whether a particular requirement of a State or political subdivision thereof or Indian tribe is preempted under the Federal hazardous materials transportation law, or whether preemption is waived.

§ 107.315 [Amended]

■ 11. In § 107.315, in paragraphs (c) and (d), the words "Financial Operations Division (AMZ–320), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25880, Oklahoma City, OK 73125" are revised to read: "Financial Operations Division (AMZ–120), Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125".

§ 107.329 [Amended]

■ 12. In § 107.329, in paragraphs (a) and (b), the words "$25,000 ($27,500 for a violation occurring after January 21, 1997) and not less than $250 for each violation." are revised to read: "$32,500 and not less than $275 for each violation. (For a violation that occurred after January 21, 1997, and before October 1, 2003, the maximum and minimum civil penalties are $27,500 and $250, respectively.)"

Subpart D, Appendix A [Amended]

■ 13. In part I of appendix A to subpart D of part 107, the parenthetical phrase "(as of January 18, 1997)" is revised to read: "(as of October 1, 2003)".

■ 14. Appendix A to subpart D of part 107 is amended by revising the List of Frequently Cited Violations (Part II) to read as follows:

II.—LIST OF FREQUENTLY CITED VIOLATIONS

Violation description	Section or cite	Baseline assessment
General Requirements		
A. Registration requirements:		
Failure to register as an offeror or carrier of hazardous material and pay registration fee.	107.608, 107.612	$1,000 + $500 each additional year.
B. Training requirements:		
1. Failure to provide initial training to hazmat employees (general awareness, function-specific, safety, and security awareness training):.	172.702.	
a. more than 10 hazmat employees		$700 and up each area.
b. 10 hazmat employees or fewer		$400 and up each area.
2. Failure to provide recurrent training to hazmat employees (general awareness, function-specific, safety, and security awareness training).	172.702.	
a. more than 10 hazmat employees		$400 and up each area.
b. 10 hazmat employees or fewer		$250 and up each area.
3. Failure to provide in depth security training (when a security plan is required).	172.702.	
a. no security plan developed		included in penalty for no security plan $2,500.
b. security plan developed but employee not trained.		
4. Failure to create and maintain training records	172.704.	
a. more than 10 hazmat employees		$800 and up.
b. 10 hazmat employees or fewer		$500 and up.
C. Security plans:		
1. Failure to develop a security plan; failure to adhere to security plan.	172.800..	
a. No security plan at all; no adherence		$6,000 and up.
b. Incomplete security plan or incomplete adherence (one or more of three required elements missing).		$2,000 and up for each element.
2. Failure to update a security plan to reflect changing circumstances.	172.802(b)	$2,000 and up.
3. Failure to put security plan in writing; failure to make all copies identical.	172.800(b)	$2,000 and up.
D. Notification to a foreign shipper:		
Failure to provide information of HMR requirements applicable to a shipment of hazardous materials within the United States, to a foreign offeror or forwarding agent at the place of entry into the U.S.	171.12(a)	$1,500 to $7,500 (corresponding to violations by foreign offeror or forwarding agent).
E. Expired Exemption:		
Offering or transporting a hazardous material, or otherwise performing a function covered by an exemption, after expiration of the exemption.	171.2(a), (b), (c), Various	$1,000 + $500 each additional year.
Offeror Requirements—All hazardous materials		
A. Undeclared Shipment:		
Offering for transportation a hazardous material without shipping papers, package markings, labels, or placards.	172.200, 172.300, 172.400, 172.500	$15,000 and up.
B. Shipping Papers:		

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
1. Failure to provide a shipping paper for a shipment of hazardous materials.	172.201	$3,000 to $6,000.
2. Failure to follow one or more of the three approved formats for listing hazardous materials on a shipping paper.	172.201(a)(1)	$1,200.
3. Failure to retain shipping papers for 375 days after a hazardous material (or 3 years for a hazardous waste) is accepted by the initial carrier.	172.201(e)	$1,000.
4. Failure to include a proper shipping name in the shipping description or using an incorrect proper shipping name.	172.202	$800 to $1,600.
5. Failure to include a hazard class/division number in the shipping description.	172.202	$1,000 to $2,000.
6. Failure to include an identification number in the shipping description.	172.202	$1,000 to $2,000.
7. Using an incorrect hazard class/identification number:	172.202.	
a. that does not affect compatibility requirements		$800.
b. that affects compatibility requirements		$3,000 to $6,000.
8. Using an incorrect identification number:	172.202..	
a. that does not change the response information		$800.
b. that changes the response information		$3,000 to $6,000.
9. Failure to include the Packing Group, or using an incorrect Packing Group.	172.202	$1,200.
10. Using a shipping description that includes additional unauthorized information (extra or incorrect words).	172.202	$800.
11. Using a shipping description not in required sequence.	172.202	$500.
12. Using a shipping description with two or more required elements missing or incorrect:.	172.202.	
a. such that the material is misdescribed		$3,000.
b. such that the material is misclassified		$6,000.
13. Failure to include the total quantity of hazardous material covered by a shipping description.	172.202(c)	$500.
14. Failure to list an exemption number in association with the shipping description.	172.203(a)	$800.
15. Failure to indicate "Limited Quantity" or "Ltd Qty" following the basic shipping description of a material offered for transportation as a limited quantity.	172.203(b)	$500.
16. Failure to include "RQ" in the shipping description to identify a material that is a hazardous substance.	172.203(c)(2)	$500.
17. Failure to include a required technical name in parenthesis for a listed generic or "n.o.s." material.	172.203(k)	$1,000.
18. Failure to include the required shipper's certification on a shipping paper.	172.204	$1,000.
19. Failure to sign the required shipper's certification on a shipping paper.	172.204	$800.
C. Emergency Response Information Requirements:		
1. Providing or listing incorrect emergency response information with or on a shipping paper.	172.602.	
a. No significant difference in response		$800.
b. Significant difference in response		$3,000 to $6,000.
2. Failure to include an emergency response telephone number on a shipping paper.	172.604	$2,600.
3. Failure to have the emergency response telephone number monitored while a hazardous material is in transportation or listing multiple telephone numbers (without specifying the times for each) that are not monitored 24 hours a day.	172.604	$1,300.
4. Listing an unauthorized emergency response telephone number on a shipping paper.	172.604	$2,600 to $4,200.
5. Listing an incorrect or non-working emergency response telephone number on a shipping paper.	172.604	$1,300.
6. Failure to provide required technical information when the listed emergency response telephone number is contacted.	172.604	$1,300.
D. Package Marking Requirements:		
1. Failure to mark the proper shipping name on a package or marking an incorrect shipping name on a package.	172.301(a)	$800 to $1,600.
2. Failure to mark the identification number on a package.	172.301(a)	$1,000 to $2,000.

II.—List of Frequently Cited Violations—Continued

Violation description	Section or cite	Baseline assessment
3. Marking a package with an incorrect identification number.	172.301(a).	
a. that does not change the response information ...	.....	$800.
b. that changes the response information	.....	$3,000 to $6,000.
4. Failure to mark the proper shipping name and identification number on a package.	172.301(a)	$3,000 to $6,000.
5. Marking a package with an incorrect shipping name and identification number.	172.301(a).	
a. that does not change the response information ...	.....	$1,500 to $3,000.
b. that changes the response information	.....	$3,000 to $6,000.
6. Failure to include the required technical name(s) in parenthesis for a listed generic or "n.o.s." entry.	172.301(c)	$1,000.
7. Marking a package as containing hazardous material when it contains no hazardous material.	172.303(a)	$800.
8. Failure to locate required markings away from other markings that could reduce their effectiveness.	172.303(a)(4)	$800.
9. Failure to mark a package containing liquid hazardous materials with required orientation marking.	172.312	$2,500 to $3,500.
10. Failure to mark "RQ" on a non-bulk package containing a hazardous substance.	172.324(b)	$500.
E. Package Labeling Requirements:		
1. Failure to label a package	172.400	$5,000.
2. Placing a label that represents a hazard other than the hazard presented by the hazardous material in the package.	172.400	$5,000.
3. Placing a label on a package that does not contain a hazardous material.	172.401(a)	$800.
4. Failure to place a required subsidiary label on a package.	172.402	$500 to $2,500.
5. Placing a label on a different surface of the package than, or away from, the proper shipping name.	172.406(a)	$800.
6. Placing an improper size label on a package	172.407(c)	$800.
7. Placing a label on a package that does not meet color specification requirements (depending on the variance).	172.407(d)	$600 to $2,500.
8. Failure to provide an appropriate class or division number on a label.	172.411	$2,500.
F. Placarding Requirements:		
Failure to properly placard a freight container or vehicle containing hazardous materials:.	172.504.	
a. when Table 1 is applicable	.....	$1,000 to $9,000.
b. when Table 2 is applicable	.....	$800 to $7,200.
G. Packaging Requirements:		
1. Offering a hazardous material for transportation in an unauthorized non-UN standard or nonspecification packaging (includes failure to comply with the terms of an exemption authorizing use of a nonstandard or nonspecification packaging).	Various.	
a. Packing Group I (and §172.504 Table I materials).	.....	$9,000.
b. Packing Group II	.....	$7,000.
c. Packing Group III	.....	$5,000.
2. Offering a hazardous material for transportation in a self-certified packaging that has not been subjected to design qualification testing:.	178.601 & Various.	
a. Packing Group I (and §172.504 Table I materials).	.....	$10,800.
b. Packing Group II	.....	$8,400.
c. Packing Group III	.....	$6,000.
3. Offering a hazardous material for transportation in a packaging that has been successfully tested to an applicable UN standard but is not marked with the required UN marking.	178.503(a)	$3,600.
4. Failure to close a UN standard packaging in accordance with the closure instructions.	173.22(a)(4)	$2,500.
5. Offering a hazardous material for transportation in a packaging that leaks during conditions normally incident to transportation:	173.24(b).	
a. Packing Group I (and §172.504 Table I materials).	.....	$12,000.
b. Packing Group II	.....	$9,000.
c. Packing Group III	.....	$6,000.

II.—List of Frequently Cited Violations—Continued

Violation description	Section or cite	Baseline assessment
6. Overfilling or underfilling a package so that the effectiveness is substantially reduced:	173.24(b).	
a. Packing Group I (and §172.504 Table I materials).		$9,000.
b. Packing Group II		$6,000.
c. Packing Group III		$3,000.
7. Offering a hazardous material for transportation after October 1, 1996, in a unauthorized non-UN standard packaging marked as manufactured to a DOT specification:	171.14.	
a. packaging meets DOT specification		$3,000.
b. packaging does not meet DOT specification		$5,000 to $9,000.
8. Failure to mark an overpack with a statement that the inside packages comply with prescribed specifications or standards when specification or standard packaging is required.	173.25(a)(4)	$3,000.
9. Filling an IBC or a portable tank (DOT, UN, or IM) that is out of test and offering hazardous materials for transportation in that IBC or portable tank.	173.32(a), 180.352, 180.605.	
a. All testing overdue		$3,500 to $7,000.
b. Only periodic (5 year) test overdue		$3,500.
c. Only intermediate periodic (2.5 year) tests overdue.		$3,500.
10. Failure to provide the required outage in a portable tank that results in a release of hazardous materials.	173.32(f)(6)	$6,000 to $12,000.
Offeror Requirements—Specific hazardous materials		
A. Cigarette Lighters:		
Offering for transportation an unapproved cigarette lighter, lighter refill, or similar device, equipped with an ignition element and containing fuel.	173.21(i)	$7,500.
B. Class 1—Explosives:		
1. Failure to mark the package with the EX number for each substance contained in the package or, alternatively, indicate the EX number for each substance in association with the description on the shipping description.	172.320	$1,200.
2. Offering an unapproved explosive for transportation:		173.54,
a. Div. 1.3 and 1.4 fireworks meeting the chemistry requirements (quantity and type) of APA Standard 87–1.	173.56(b)	$5,000 to $10,000.
b. All other explosives (including forbidden)		$10,000 and up.
3. Offering a leaking or damaged package of explosives for transportation.	173.54(c)	$10,000 and up.
4. Packaging explosives in the same outer packaging with other materials.	173.61	$2,500 to $5,000.
C. Class 7—Radioactive Materials:		
1. Failure to include required additional entries, or providing incorrect information for these additional entries.	172.203(d)	$1,000 to $3,000.
2. Failure to mark the gross mass on the outside of a package of Class 7 material that exceeds 110 pounds.	172.310(a)	$800.
3. Failure to mark each package in letters at least 13 mm (½inch) high with the words "Type A" or "Type B" as appropriate.	172.310(b)	$800.
4. Placing a label on Class 7 material that understates the proper label category.	172.403	$5,000.
5. Placing a label on Class 7 material that fails to contain (or has erroneous) entries for the name of the radionuclide(s), activity, and transport index.	172.403(g)	$2,000 to $4,000.
6. Failure to meet one or more of the general design requirements for a package used to ship a Class 7 material.	173.410	$5,000.
7. Failure to comply with the industrial packaging (IP) requirements when offering a Class 7 material for transportation.	173.411	$5,000.
8. Failure to provide a tamper-indicating device on a Type A package used to ship a Class 7 material.	173.412(a)	$2,000.
9. Failure to meet the additional design requirements of a Type A package used to ship a Class 7 material.	173.412(b)–(i)	$5,000.

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
10. Failure to meet the performance requirements for a Type A package used to ship a Class 7 material..	173.412(j)–(l)	$8,400.
11. Offering a DOT specification 7A packaging without maintaining complete documentation of tests and an engineering evaluation or comparative data:	173.415(a), 173.461	
a. Tests and evaluation not performed		$8,400.
b. Complete records not maintained		$2,000 to $5,000.
12. Offering any Type B, Type B(U), Type B(M) packaging that failed to meet the approved DOT, NRC or DOE design, as applicable.	173.416	$9,000.
13. Offering a Type B packaging without holding a valid NRC approval certificate:	173.471(a).	
a. Never having obtained one		$3,000.
b. Holding an expired certificate		$1,000.
14. Failure to meet one or more of the special requirements for a package used to ship uranium hexafluoride.	173.420	$10,800.
15. Offering Class 7 material for transportation as a limited quantity without meeting the requirements for limited quantity.	173.421(a)	$4,000.
16. Offering a multiple-hazard limited quantity Class 7 material without addressing the additional hazard.	173.423(a)	$500 to $2,500.
17. Offering Class 7 low specific activity (LSA) materials or surface contaminated objects (SCO) with an external dose rate that exceeds an external radiation level of 1 rem/hr at 3 meters from the unshielded material.	173.427(a)(1)	$6,000.
18. Offering Class 7 LSA materials or SCO as exclusive use without providing specific instructions to the carrier for maintenance of exclusive use shipment controls.	173.427(a)(6)	$1,000.
19. Offering in excess of Type A quantity of a Class 7 material in a Type A packaging.	173.431	$12,000.
20. Offering a package that exceeds the permitted limits for surface radiation or transport index.	173.441	$10,000 and up.
21. Offering a package without determining the level of removable external contamination, or that exceeds the limit for removable external contamination.	173.443	$5,000 and up.
22. Storing packages of radioactive material in a group with a total transport index more than 50.	173.447(a)	$5,000 and up.
23. Offering for transportation or transporting aboard a passenger aircraft any single package or overpack of Class 7 material with a transport index greater than 3.0.	173.448(e)	$5,000 and up.
24. Exporting a Type B, Type B(U), Type B(M), or fissile package without obtaining a U.S. Competent Authority Certificate or, after obtaining a U.S. Competent Authority Certificate, failing to submit a copy to the national competent authority of each country into or through which the package is transported.	173.471(d)	$3,000.
25. Offering special form radioactive materials without maintaining a complete safety analysis or Certificate of Competent Authority.	173.476(a), (b)	$2,500.
D. Class 2—Compressed Gases in Cylinders:		
1. Filling and offering a cylinder with compressed gas when the cylinder is out of test.	173.301(a)(6)	$4,200 to $10,400.
2. Failure to check each day the pressure of a cylinder charged with acetylene that is representative of that day's compression, after the cylinder has cooled to a settled temperature, or failure to keep a record of this test for 30 days.	173.303(d)	$5,000.
3. Offering a limited quantity of a compressed gas in a metal container for the purpose of propelling a nonpoisonous material and failure to heat the cylinder until the pressure is equivalent to the equilibrium pressure at 130°F, without evidence of leakage, distortion, or other defect.	173.306(a)(3), (h)	$1,500 to $6,000.
Manufacturing, Reconditioning, Retesting Requirements		
A. Third-Party Packaging Certifiers (General):		

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
Issuing a certification that directs the packaging manufacturer to improperly mark a packaging (e.g., steel drum to be marked UN 4G).	171.2(e), 178.2(b), 178.3(a), 178.503(a).	$500 per item.
B. Packaging Manufacturers (General):		
1. Failure of a manufacturer or distributor to notify each person to whom the packaging is transferred of all the requirements not met at the time of transfer, including closure instructions.	178.2(c)	$2,500.
2. Failure to insure a packaging certified as meeting the UN standard is capable of passing the required performance testing.	178.601(b).	
a. Packing Group I (and § 172.504 Table 1 materials).		$10,800.
b. Packing Group II		$8,400.
c. Packing Group III		$6,000.
3. Certifying a packaging as meeting a UN standard when design qualification testing was not performed.	178.601(d).	
a. Packing Group I (and § 172.504 table 1 materials).		$10,800.
b. Packing Group II		$8,400.
c. Packing Group III		$6,000.
4. Failure to conduct periodic retesting on UN standard packaging (depending on length of time and Packing Group).	178.601(e)	$2,000 to $10,800.
5. Failure to properly conduct testing for UN standard packaging (*e.g.*, testing with less weight than marked on packaging; drop testing from lesser height than required; failing to condition fiberboard boxes before design test):		
a. Design qualification testing	178.601(d)	$2,000 to $10,800.
b. Periodic retesting	178.601(e)	$500 to $10,800.
6. Marking, or causing the marking of, a packaging with the symbol of a manufacturer or packaging certifier other than the company that actually manufactured or certified the packaging.	178.2(b), 178.3(a), 178.503(a)(8)	$7,200.
7. Failure to maintain testing records	178.601(l).	
a. Design qualification testing		$1,000 to $5,000.
b. Periodic retesting		$500 to $2,000.
8. Improper marking of UN certification	178.503	$500 per item.
9. Manufacturing DOT specification packaging after October 1, 1994 that is not marked as meeting a UN performance standard.	171.14.	
a. If packaging does meet DOT specification		$3,000.
b. If packaging does not meet DOT specification		$6,000 to $10,800.
C. Drum Manufacturers & Reconditioners:		
1. Failure to properly conduct production leakproofness test on a new or reconditioned drum.	178.604(b), (d), 173.28(b)(2)(i).	
a. Improper testing		$2,000.
b. No testing performed		$3,000 to $5,000.
2. Marking an incorrect registration number on a reconditioned drum.	173.28(b)(2)(ii).	
a. Incorrect number		$800.
b. Unauthorized use of another reconditioner's number.		$7,200.
3. Representing, marking, or certifying a drum as a reconditioned UN standard packaging when the drum does not meet a UN standard.	173.28(c), (d)	$6,000 to $10,800.
4. Representing, marking, or certifying a drum as altered from one UN standard to another, when the drum has not actually been altered.	173.28(d)	$500.
D. IBC and Portable Tank Requalification:		
1. Failure to properly mark an IBC or portable tank with the most current retest and/or inspection information.	180.352(e), 178.703(b), 180.605(k)	$500 per item.
2. Failure to keep complete and accurate records of IBC or portable tank retest and reinspection.	180.352(f), 180.605(l).	
a. No records kept		$4,000.
b. Incomplete or inaccurate records		$1,000 to $3,000.
3. Failure to make reinspection and retest records available to a DOT representative upon request.	180.352(f), 49 U.S.C. 5121(b)(2)	$1,000.
E. Cylinder Manufacturers & Rebuilders:		

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
1. Manufacturing, representing, marking, certifying, or selling a DOT high-pressure cylinder that was not inspected and verified by an approved independent inspection agency.	Various	$7,500 to $15,000.
2. Failure to have a registration number or failure to mark the registration number on the cylinder.	Various	$800.
3. Marking another company's number on a cylinder	Various	$7,200.
4. Failure to mark the date of manufacture or lot number on a DOT–39 cylinder.	178.65(i)	$3,000.
5. Failure to have a chemical analysis performed in the U.S. for a material manufactured outside the U.S./failure to obtain a chemical analysis from the foreign manufacturer.	Various	$5,000.
6. Failure to meet wall thickness requirements	Various	$7,500 to $15,000.
7. Failure to heat treat cylinders prior to testing	Various	$5,000 to $15,000.
8. Failure to conduct a complete visual internal examination.	Various	$2,500 to $6,200.
9. Failure to conduct a hydrostatic test, or conducting a hydrostatic test with inaccurate test equipment.	Various	$2,500 to $6,200.
10. Failure to conduct a flattening test	Various	$7,500 to $15,000.
11. Failure to conduct a burst test on a DOT–39 cylinder	178.65(f)(2)	$5,000 to $15,000.
12. Failure to have inspections and verifications performed by an inspector.	Various	$7,500 to $15,000.
13. Failure to maintain required inspector's reports	Various.	
a. No reports at all		$5,000.
b. Incomplete or inaccurate reports		$1,000 to $4,000.
14. Representing a DOT–4 series cylinder as repaired or rebuilt to the requirements of the HMR without being authorized by the Associate Administrator.	180.211(a)	$6,000 to $10,800.
F. Cylinder Requalification:		
1. Failure to remark as DOT 3AL an aluminum cylinder manufactured under a former exemption.	173.23(c)	$800.
2. Certifying or marking as retested a nonspecification cylinder.	180.205(a)	$800.
3. Failure to have retester's identification number (RIN)	180.205(b)	$4,000.
4. Failure to have current authority due to failure to renew a retester's identification number (RIN).	180.205(b)	$2,000.
5. Failure to have a retester's identification number and marking another RIN on a cylinder.	180.205(b)	$7,200.
6. Marking a RIN before successfully completing a hydrostatic retest.	180.205(b)	$800.
7. Representing, marking, or certifying a cylinder as meeting the requirements of an exemption when the cylinder was not maintained or retested in accordance with the exemption.	171.2(c), (e), 178.205(c), Applicable Exemption.	$2,000 to $6,000.
8. Failure to conduct a complete visual external and internal examination.	180.205(f)	$2,100 to $5,200.
9. Failure to conduct visual inspection or hydrostatic retest.	180.205(f) & (g)	$4,200 to $10,400.
10. Performing hydrostatic retesting without confirming the accuracy of the test equipment.	180.205(g)(3)	$2,100 to $5,200.
11. Failure to hold hydrostatic test pressure for 30 seconds or sufficiently longer to allow for complete expansion.	180.205(g)(5)	$3,100.
12. Failure to perform a second retest, after equipment failure, at a pressure increased by the greater of 10% or 100 psi (includes exceeding 90% of test pressure prior to conducting a retest).	180.205(g)(5)	$3,100.
13. Failure to condemn a cylinder when required (*e.g.*, permanent expansion of 10% [5% for certain exemption cylinders], internal or external corrosion, denting, bulging, evidence of rough usage).	180.205(i)	$6,000 to $10,800.
14. Failure to properly mark a condemned cylinder or render it incapable of holding pressure.	180.205(i)(2)	$800.
15. Failure to notify the cylinder owner in writing when a cylinder has been condemned.	180.205(i)(2)	$1,000.
16. Failure to perform hydrostatic retesting at the minimum specified test pressure.	180.209(a)(1)	$2,100 to $5,200.
17. Marking a star on a cylinder that does not qualify for that mark.	180.209(b)	$2,000 to $4,000.

II.—LIST OF FREQUENTLY CITED VIOLATIONS—Continued

Violation description	Section or cite	Baseline assessment
18. Marking a "+" sign on a cylinder without determining the average or minimum wall stress by calculation or reference to CGA Pamphlet C–5.	173.302a(b)	$2,000 to $4,000.
19. Marking a cylinder in or on the sidewall when not permitted by the applicable specification.	180.213(b)	$6,000 to $10,800.
20. Failure to maintain legible markings on a cylinder	180.213(b)(1)	$800.
21. Marking a DOT 3HT cylinder with a steel stamp other than a low-stress steel stamp.	180.213(c)(2)	$6,000 to $10,800.
22. Improper marking of the RIN or retest date on a cylinder.	180.213(d)	$800.
23. Marking an FRP cylinder with steel stamps in the FRP area of the cylinder such that the integrity of the cylinder is compromised.	Applicable Exemption	$6,000 to $10,800.
24. Failure to maintain current copies of 49 CFR, DOT exemptions, and CGA Pamphlets applicable to inspection, retesting, and marking activities.	180.215(a)	$600 to $1,200.
25. Failure to keep complete and accurate records of cylinder reinspection and retest.	180.215(b).	
a. No records kept		$4,000.
b. Incomplete or inaccurate records		$1,000 to $3,000.
26. Failure to report in writing a change in name, address, ownership, test equipment, management, or retester personnel.	171.2(c) & (e), Approval Letter	$600 to $1,200.
Carrier Requirements		
A. Incident Notification:		
1. Failure to give immediate notification of a reportable hazardous materials incident.	171.15	$3,000.
2. Failure to file a written hazardous material incident report within 30 days following an unintentional release of hazardous materials in transportation (or other reportable incident).	171.16	$500 to $2,500.
B. Shipping Papers:		
Failure to retain shipping papers for 375 days after a hazardous material (or 3 years for a hazardous waste) is accepted by the initial carrier.	174.24(b), 175.30(a)(2), 176.24(b), 177.817(f).	$1,000.
C. Stowage/transportation Requirements:		
1. Transporting packages of hazardous material that have not been secured against movement.	Various	$3,000.
2. Failure to properly segregate hazardous materials	Various	$7,500 and up.
3. Transporting explosives in a motor vehicle containing metal or other articles or materials likely to damage the explosives or any package in which they are contained, without segregating in different parts of the load or securing them in place in or on the motor vehicle and separated by bulkheads or other suitable means to prevent damage.	177.835(i)	$5,200.
4. Transporting railway track torpedoes outside of flagging kits, in violation of DOT–E 7991.	171.2(b) & (e)	$7,000.
5. Transporting Class 7 (radioactive) material having a total transport index greater than 50.	177.842(a)	$5,000 and up.
6. Transporting Class 7 (radioactive) material without maintaining the required separation distance.	177.842(b)	$5,000 and up.
7. Failure to comply with requirements of an exemption authorizing the transportation of Class 7 (radioactive) material having a total transportation index of 50.	171.2(b) & (e).	
a. Failure to have the required radiation survey record.		$5,000.
b. Failure to have other required documents		$500 each.
c. Other violations		$5,000 and up.

■ 15. In part IV of appendix A to subpart D of part 107, under Section IV.C. ("Penalty Increases for Multiple Counts"), the words in the first sentence "up to $25,000 ($27,500 for a violation occurring after January 21, 1997)" are revised to read: "up to $32,500 ($27,500 for a violation occurring after January 21, 1997, and before October 1, 2003)."

■ 16. In part IV of appendix A to subpart D of part 107, the text to Section IV.E. entitled "Penalty Increases for Prior Violations" is revised to read as follows:

The baseline penalty presumes an absence of prior violations. If prior violations exist, generally they will serve to increase a proposed penalty.

The general standards for increasing a baseline proposed penalty on the basis of prior violations are as follows:

1. For each prior civil or criminal enforcement case—25% increase over the pre-mitigation recommended penalty.

2. For each prior ticket—10% increase over the pre-mitigation recommended penalty.

3. A baseline proposed penalty will not be increased more than 100% on the basis of prior violations.

4. A case or ticket of prior violations initiated in a calendar year more than six years before the calendar year in which the current case is initiated normally will not be considered in determining a proposed penalty for the current violation(s).

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

■ 17. The authority citation for part 171 is revised to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

§ 171.1 [Amended]

■ 18. In § 171.1, in paragraph (c), the words "$25,000 ($27,500 for a violation that occurs after January 21, 1997) and not less than $250 for each violation." in the first sentence are revised to read: "$32,500 and not less than $275 for each violation. (For a violation that occurred after January 21, 1997, and before October 1, 2003, the maximum and minimum civil penalties are $27,500 and $250, respectively.)"

* * * * *

Issued in Washington, DC on August 25, 2003, under authority delegated in 49 CFR part 1.

Samuel G. Bonasso,

Acting Administrator.

[FR Doc. 03–22569 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 021212306–2306–01; I.D. 090203A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the 2003 total allowable catch (TAC) of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 3, 2003, through 2400 hrs, A.l.t., December 31, 2003.

FOR FURTHER INFORMATION CONTACT: Josh Keaton, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA is 20,421 metric tons (mt) as established by the final 2003 harvest specifications for groundfish of the GOA (68 FR 9924, March 3, 2003)

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 2003 TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component of the Central Regulatory Area of the GOA will be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 19,400 mt, and is setting aside the remaining 1,021 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to exceeding the TAC of Pacific cod apportioned to vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA, and therefore reduce the public's ability to use and enjoy the fishery resource.

The AA also finds good cause to waive the 30–day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 2003.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22781 Filed 9–3–03; 3:25 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 173
Monday, September 8, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–03–301]

RIN 0581–AB63

Revision of Fees for the Fresh Fruit and Vegetable Terminal Market Inspection Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing the inspection and certification for fresh fruits, vegetables and other products by increasing by approximately 15 percent certain fees charged for the inspection of these products at destination markets. The fees for inspecting multiple lots of the same product during inspections will be increased from $14.00 to $45.00, and the per package fees for dock-side inspections will be changed from a three interval schedule, based on weight, to a two interval schedule based on different weight thresholds. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services at destination markets under the Agricultural Marketing Act of 1946 (AMA of 1946). The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937 and for imported peanuts under section 1308 of the Farm Security and Rural Investigation Act of 2002.

DATES: Comments must be postmarked, courier dated, or sent via the internet on or before October 8, 2003.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments are to be sent to the U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Programs, Fresh Products Branch, 1400 Independence Ave., SW., Room 2049–S, Washington, DC 20250–0240, faxed to (202) 720–5136, or sent via email to *FPB.DocketClerk@usda.gov*. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rita Bibbs-Booth, USDA, 1400 Independence Ave., SW., Room 2049–S, Washington, DC 20250–0240, or call (202) 720–0391.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be "non-significant" for the purposes of Executive Order 12866, and has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The proposed action described herein is being taken for several reasons, including that additional user fee revenues are needed to cover the costs of: (1) Providing current program operations and services; (2) improving the timeliness with which inspection services are provided; and (3) improving the work environment.

AMS regularly reviews its user-fee financed programs to determine if the fees are adequate. The Fresh Products Branch (FPB) has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce its costs. Such actions can provide alternatives to fee increases. However, even with these efforts, FPB's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining the Agency mandated reserve balance. Current revenue projections for FPB's destination market inspection work during FY–03 are $12.0 million with costs projected at $18.3 million and an end-of-year reserve of $14.8 million. However, this reserve balance is due to appropriated funding received in October 2001, for infrastructure, workplace, and technological improvements. FPB's costs of operating the destination market program are expected to increase to approximately $18.9 million during FY–04 and to approximately $19.4 million during FY–05. The current fee structure with the infusion of the appropriated funding is expected to fund the terminal market inspection services until FY–2006, when FPB will fall below the Agency's mandated four-month reserve level.

This proposed fee increase should result in an estimated $1.8 million in additional revenues per year (effective in FY 04, if the fees are implemented by October 1, 2003). This will not cover all of FPB's costs. FPB will need to continue to increase fees bi-yearly in order to cover the program's operating cost and maintain the required reserve balance. FPB believes that increasing fees incrementally is appropriate at this time. Additional fee increases beyond FY–2004 will be needed to sustain the program in the future.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 4.02 to 4.87 percent depending on locality, effective January 2003, has significantly increased program costs. This salary adjustment will increase FPB's costs by over $700,000 per year. Increases in health and life insurance premiums, along with workers compensation will also increase program costs. Since FPB's last fee increase, many employees have converted to or were hired under the Federal Employees Retirement System (FERS), which has also contributed to the increase in program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by over $600,000 per year.

Additional funds of approximately $155,000 are necessary in order for FPB to continue to cover the costs associated with additional staff and to maintain office space and equipment. Additional revenues are also necessary to improve the work environment by providing training and purchasing needed equipment. In addition, FPB began in 2001, developing (with appropriated funds) an automated system recently named the Fresh Electronic Inspection Reporting/Resource System (FEIRS) to replace its manual paper and pen

inspection reporting process. Approximately $200,000 in additional funds are needed to complete the development and deployment of FEIRS, and it will take approximately $10,000 per month to maintain the system. This system has been put in place to enhance FPB's fruit and vegetable inspection processes.

This proposed rule should increase user fee revenue generated under the destination market program by approximately $1.8 million or 15 percent. While most of the fees will increase by approximately 15 percent, the fee for inspections of multiple lots of the same product during inspections, commonly referred to as "sublots," would be increased from $14 to $45 because FPB's current fee does not nearly cover the costs of performing these inspections (between 30 to 35 percent of the destination market inspections conducted by FPB involve sublots). In addition, the per package rates for dock-side inspections would be increased and changed from a three interval schedule (based on package weight) to a two interval schedule (based on different weight thresholds). The two interval schedule would be simpler to administer and more appropriate given current packaging trends. This action is authorized under the Agricultural Marketing Act of 1946 (AMA of 1946) (See 7 U.S.C. 1622(h)), which provides that the Secretary of Agriculture may assess and collect "such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *" There are more than 2,000 users of FPB's destination market grading services (including applicants who must meet import requirements [1]—inspections which amount to under 2.5 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.201). There would be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this proposed rule. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements in Part 51 have been approved previously by OMB and assigned OMB No. 0581–0125. FPB has not identified any other Federal rules which may duplicate, overlap or conflict with this proposed rule.

The destination market grading services are voluntary (except when required for imported commodities) and the fees charged to users of these services vary with usage. However, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is not excessive and should not significantly affect these entities. Finally, except for those persons who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and, therefore, any decision on their part to discontinue the use of the services should not prevent them from marketing their products.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Proposed Action

The AMA of 1946 authorizes official inspection, grading, and certification, on a user-fee basis, of fresh fruits, vegetables and other products such as raw nuts, Christmas trees and flowers. The AMA of 1946 provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This proposed rule would amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs necessary to operate the program.

The Agricultural Marketing Service (AMS) regularly reviews its user-fee programs to determine if the fees are adequate. While the Fresh Products Branch (FPB) of the Fruit and Vegetable Programs, AMS, continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining the Agency mandated reserve balance. Current revenue projections for destination market inspection work during FY–03 are $12.0 million with costs projected at $18.3 million and an end-of-year reserve of $14.8 million. However, this reserve balance is due to appropriated funding received from Congress in October of 2001. These funds were established to build up the terminal market inspection reserve fund and for infrastructure improvements including development and maintenance of the inspector training center, workplace and technological improvements, including digital imaging and automation of the inspection process. However, by FY–07, without increasing fees, FPB's trust fund balance for this program will be below the agency mandated four-months of operating reserve (approximately $4.6 million) deemed necessary to provide an adequate reserve balance in light of increasing program costs. Further, FPB's costs of operating the destination market program are expected to increase to approximately $18.9 million during FY–04 and to approximately $19.4 million during FY 05. These cost increases (which are outlined below) will result from inflationary increases with regard to current FPB operations and services (primarily salaries and benefits), increased inspection demands, and the acquisition and maintenance of computer technology (*i.e.*, FEIRS).

This proposed rule should increase user fee revenue generated under the destination market program by approximately $1.8 million or 15 percent per year. While most of the fees will increase by approximately 15 percent, the fee for inspections of multiple lots of the same product during inspections, commonly referred to as "sublots," would be increased from $14 to $45 because FPB's current fee does not nearly cover the costs of performing these inspections (between 30 to 35 percent of the destination market inspections conducted by FPB involve sublots). In addition, the per package rates for dock-side inspections would be increased and changed from a three interval schedule (based on package weight) to a two interval schedule (based on different weight thresholds). The two interval schedule would be simpler to administer and more appropriate given current packaging trends.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees,

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply during those periods when domestic marketing order regulations are in effect. Section 1308 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), 7 U.S.C. 7958, required USDA among other things to develop new peanut quality and handling standards for imported peanuts marketed in the United States.

Currently, there are 14 commodities subject to 8e import regulations: avocados, dates (other than dates for processing), filberts, grapefruit, kiwifruit, olives (other than Spanish-style green olives), onions, oranges, potatoes, prunes, raisins, table grapes, tomatoes and walnuts. A current listing of the regulated commodities can be found under 7 CFR Parts 944, 980, 996, and 999.

ranging from 4.02 to 4.87 percent depending on locality, effective January 2003, has significantly increased program costs. This salary adjustment will increase FPB's costs by over $700,000 per year. Increases in health and life insurance premiums, along with workers compensation will also increase program costs. Since FPB's last fee increase, many employees have converted to or were hired under the Federal Employees Retirement System (FERS), which has also contributed to the increase in program costs. In addition, inflation also impacts FPB's non-salary costs. These factors have increased FPB's costs of operating this program by over $600,000 per year.

Additional revenues (approximately $155,000) are necessary in order for FPB to continue to cover the costs associated with additional staff and to maintain office space and equipment. Additional revenues are also necessary to continue to improve the work environment by providing training and purchasing needed equipment. In addition, FPB began in 2001, developing (with appropriated funds) an automated system recently named the Fresh Electronic Inspection Reporting/ Resource System (FEIRS) to replace its manual paper and pen inspection reporting process. Approximately $200,000 in additional revenue is needed to complete the development and deployment of FEIRS, and it will take approximately $10,000 per month to maintain the system. This system has been put in place to enhance FPB's fruit and vegetable inspection processes.

Based on the aforementioned analysis of this program's increasing costs, AMS proposes to increase the fees for destination market inspection services. The following table compares current fees and charges with the proposed fees and charges for fresh fruit and vegetable inspection as found in 7 CFR 51.38. This table also reflects the change to the per package fees for dock-side inspections that are currently on a three interval schedule based on weight, to a two interval schedule based on different weight thresholds. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 51.38 are:

Service	Current	Proposed
Quality and condition inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$86.00	$99.00
—Half carlot equivalent or less of each product	$72.00	$83.00
—For each additional lot of the same product*	$14.00	$45.00
Condition only inspections of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
—Over a half carlot equivalent of each product	$72.00	$83.00
—Half carlot equivalent or less of each product	$66.00	$76.00
—For each additional lot of the same product*	$14.00	$45.00
Quality and condition and condition only inspections of products each in quantities of 50 or less packages unloaded from the same land or air conveyance:		
—For each product	$43.00	$45.00
—For each additional lot of any of the same product*	$14.00	$45.00
—Lots in excess of carlot equivalents will be charged proportionally by the quarter carlot.		
Dock side inspections of an individual product unloaded directly from the same ship:		
—For each package weighing less than 15 pounds	1.1 cent	N/A
—For each package weighing less than 30 pounds (previously 15–29 pounds)	2.2 cents	2.5 cents
—For each package weighing 30 or more pounds	3.3 cents	3.8 cents
—Minimum charge per individual product	$86.00	$99.00
—Minimum charge for each additional lot of the same product	$14.00	$45.00
Hourly rate for inspections performed for other purposes during the grader's regularly scheduled work week	$43.00	$49.00
—Hourly rate for other work performed during the graders regular scheduled work week will be charged at a reasonable rate.		
Overtime or holiday premium rate (per hour additional) for all inspections performed outside the grader's regularly scheduled work week.	$21.50	$25.00
Hourly rate for inspections performed under 40 hour contracts during the grader's regularly scheduled work week*.	$40.00	$49.00
Rate for billable mileage	$1.00	$1.00

A thirty day comment period is provided for interested persons to comment on this proposed action. Thirty days is deemed appropriate because it is preferable to have any fee increase, if adopted, to be in place as close as possible to the beginning of the fiscal year, October, 1, 2003.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 51.38 is revised to read as follows:

§ 51.38 Basis for fees and rates.

(a) When performing inspections of product unloaded directly from land or air transportation, the charges shall be determined on the following basis:

(1) Quality and condition inspections of products in quantities of 51 or more packages and unloaded from the same land or air conveyance:

(i) $99 for over a half carlot equivalent of an individual product;

(ii) $83 for a half carlot equivalent or less of an individual product;

(iii) $45 for each additional lot of the same product.

(2) Condition only inspection of products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:

(i) $83 for over a half carlot equivalent of an individual product;

(ii) $76 for a half carlot equivalent or less of an individual product;

(iii) $45 for each additional lot of the same product.

(3) For quality and condition inspection and condition only inspection of products in quantities of 50 or less packages unloaded from the same conveyance:

(i) $45 for each individual product;

(ii) $45 for each additional lot of any of the same product. Lots in excess of carlot equivalents will be charged proportionally by the quarter carlot

(b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:

(1) Dock side inspections of an individual product unloaded directly from the same ship:

(i) 2.5 cents per package weighing less than 30 pounds;

(ii) 3.8 cents per package weighing 30 or more pounds;

(iii) Minimum charge of $99 per individual product;

(iv) Minimum charge of $45 for each additional lot of the same product.

(2) [Reserved]

(c) When performing inspections of products from sea containers unloaded directly from sea transportation or when palletized products unloaded directly from sea transportation are not offered for inspection at dock-side, the carlot fees in paragraph (a) of this section shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in paragraphs (a) through (c) of this section, including weight-only and freezing-only inspections, fees for inspection shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of $49 an hour: *Provided,* That:

(1) Charges for time shall be rounded to the nearest half hour;

(2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections;

(3) When weight certification is provided in addition to quality and/or condition inspection, a one-hour charge shall be added to the carlot fee;

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of $25.00 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: September 2, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22682 Filed 9–5–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 991

[Docket No. AO–F&V–991–A3; FV03–991–01]

Hops Produced in Washington, Oregon, Idaho and California; Notice of Rescheduling of Hearing on Proposed Marketing Agreement and Order No. 991 and Additional Proposal

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of rescheduling of public hearing on proposed marketing agreement and order.

SUMMARY: Notice is hereby given of a rescheduling of a public hearing to consider a proposed marketing agreement and order under the Agricultural Marketing Agreement Act of 1937 to cover hops grown in Washington, Oregon, Idaho and California. The hearing was originally scheduled to begin August 14, 2003, and a notice of hearing was announced in the **Federal Register** on Monday, July 28, 2003, at 68 FR 44244. A notice of postponement of the public hearing was announced in the **Federal Register** on Thursday, August 14, 2003, at 68 FR 48575.

DATES: The hearing will be held on October 15 and 16 in Portland, Oregon, and continue, if necessary, on October 17 in Portland, Oregon. The hearing will resume on October 20 and 21 in Yakima, Washington, and continue, if necessary, on October 22 through 24 in Yakima, Washington. The first day of the hearing will begin at 8:30 a.m. in Portland, Oregon and the first day of the hearing will begin at 8:30 a.m in Yakima, Washington.

ADDRESSES: The hearing locations are: October 15 and 16, 2003 (and October 17, if necessary)—Sheraton Portland Airport Hotel, 8235 NE Airport Way, Portland, Oregon 97220: October 20 and 21 (and October 22, 23, and 24, if necessary)—Doubletree Hotel Yakima Valley, 1507 N. First Street, Yakima, Washington 98901.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Northwest Marketing Field Office, 1220 SW. Third Avenue, suite 385, Portland; Oregon 97204; telephone (503) 326–2724 or Fax (503) 326–7440; or Kathleen M. Finn, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION: The Notice of Hearing was published in the **Federal Register** on July 28, 2003 (68 FR 44244) and the proposals that will be considered at the hearing can be found there. In addition, the following proposal, which was submitted by John F. Annen prior to the deadline, will also be considered at the hearing:

Proposal submitted by John F. Annen, President, Annen Bros., Inc.

Proposal Number 10

Delete §§ 991.50 through 991.58 from the Hop Marketing Order Proponent Committee's proposal.

Authority: 7 U.S.C. 601–674.

Dated: September 3, 2003.

A. J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22754 Filed 9–5–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135

[Docket No. AO–14–A72, et al.; DA–03–08]

Milk in the Northeast and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

7 CFR part	Marketing area	AO Nos.
1001	Northeast	AO–14–A72
1005	Appalachian	AO–388–A13
1006	Florida	AO–356–A36
1007	Southeast	AO–366–A42
1030	Upper Midwest	AO–361–A37
1032	Central	AO–313–A46
1033	Mideast	AO–166–A70
1124	Pacific Northwest	AO–368–A33
1126	Southwest	AO–231–A66
1131	Arizona-Las Vegas	AO–271–A38
1135	Western	AO–380–A20

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; notice of public hearing on proposed rulemaking.

SUMMARY: A hearing is being held to consider proposals to amend all 11 Federal milk marketing orders. The proposals would reclassify evaporated milk in consumer-type packages and sweetened condensed milk in consumer-type packages from Class III products to Class IV products. Another proposal would reclassify bulk ending inventory each month to the lower-priced class of Class III or Class IV. Proponents have requested that the proposals be handled on an emergency basis.

DATES: The hearing will convene at 8:30 a.m. on October 21, 2003.

ADDRESSES: The hearing will be held at the Holiday Inn and Suites Alexandria (Historic District), 625 First Street, Alexandria, Virginia 22314. Telephone Number: (703) 548–6300 or 1–877–732–3818.

FOR FURTHER INFORMATION CONTACT: Antoinette M. Carter, Marketing Specialist, Order Formulation and Enforcement, USDA/AMS/Dairy Programs, Room 2971-Stop 0231, 1400 Independence Avenue, SW., Washington, DC 20250–0231, (202) 690–3465, e-mail address: *Antoinette.Carter@usda.gov.*

Persons requiring a sign language interpreter or other special accommodations should contact Erik F. Rasmussen, Market Administrator, at (617) 737–7199; e-mail *maboston@fedmilk1.com* before the hearing begins.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Holiday Inn and Suites, Alexandria Historic District, beginning at 8:30 a.m., on Tuesday, October 21, 2003, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Northeast and other marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Evidence also will be taken to determine whether emergency marketing conditions exist that would warrant omission of a recommended decision under the rules of practice and procedure (7 CFR 900.12(d)) with respect to the proposals.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with (6) copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects

7 CFR Part 1000

Milk marketing orders; Reporting and recordkeeping requirements.

7 CFR Parts 1001 Through 1135

Milk marketing orders.

The authority citation for 7 CFR parts 1001 through 1135 continues to read as follows:

Authority: 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by O–AT–KA Milk Products Cooperative, Inc.:

Proposal No. 1

In § 1000.40, revise paragraph (c)(1)(iii) and paragraph (d)(1)(i), redesignate paragraph (d)(1)(ii) as paragraph (d)(1)(iii), and add new paragraph (d)(1)(ii) to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Sweetened condensed milk in a consumer-type package; and

* * * * *

(d) * * *

(1) * * *

(i) Butter, plastic cream, anhydrous milkfat, and butteroil;

(ii) Evaporated milk in a consumer-type package; and

(iii) Any milk product in dried form;

* * * * *

Proposed by Diehl, Inc., and Milnot Holding Corporation:

Proposal No. 2

In § 1000.40, remove paragraph (c)(1)(iii), revise paragraph (d)(1)(i), redesignate paragraph (d)(1)(ii) as paragraph (d)(1)(iii), and add new paragraph (d)(1)(ii) to read as follows:

§ 1000.40 Classes of Utilization.

* * * * *

(d) * * *

(1) * * *

(i) Butter, plastic cream, anhydrous milkfat, and butteroil;

(ii) Evaporated or sweetened condensed milk in a consumer-type package; and

(iii) Any milk product in dried form;

* * * * *

Proposed by New York State Dairy Foods, Inc.:

Proposal No. 3

In § 1000.40, paragraph (d)(2) is removed, paragraphs (d)(3) and (d)(4) are redesignated as paragraphs (d)(2) and (d)(3), and paragraph (e) is revised to read as follows:

§ 1000.40 Classes of utilization.

* * * * *

(e) Other uses shall include all skim milk and butterfat:

(1) In inventory at the end of the month of fluid milk products and fluid cream products in bulk form. Such uses of skim milk and butterfat shall be assigned to the lowest priced class for the month.

(2) Used in any product described in this section that is dumped, used for animal feed, destroyed, or lost by a handler in a vehicular accident, flood, fire, or similar occurrence beyond the handler's control. Such uses of skim milk and butterfat shall be assigned to the lowest priced class for the month to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator.

Proposed by Dairy Programs, Agricultural Marketing Service:

Proposal No. 4

For all Federal Milk Marketing Orders, make such changes as may be necessary to make the entire marketing agreements and the orders conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, Room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to puA-90dvrchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture;

Office of the Administrator, Agricultural Marketing Service;

Office of the General Counsel;

Dairy Programs, Agricultural Marketing Service (Washington office) and the Offices of all Market Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: September 2, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22683 Filed 9–5–03; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–119–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600 Series Airplanes, Model A300 B4–600R Series Airplanes, Model A300 C4–605R Variant F Airplanes, and Model A300 F4–605R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 B4–600 Series Airplanes, Model A300 B4–600R Series Airplanes, Model A300 C4–605R Variant F Airplanes, and Model A300 F4–605R Airplanes. This proposal would require modification of certain components of the 115 Volts Alternating Current (VAC) supply wiring and of the fuel gauging system. This action is necessary to prevent short-circuits between 115 VAC wiring and certain fuel system electrical wire runs with subsequent overheating of the cadensicon sensor thermistor or fuel level sensor, which could be great enough to ignite fuel vapors in the fuel tank and cause an explosion. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 8, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–119–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–119–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice

Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

• Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.

• For each issue, state what specific change to the proposed AD is being requested.

• Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–119–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–119–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 B4–600 Series Airplanes, Model A300 B4–600R Series Airplanes, Model A300 C4–605R Variant F Airplanes, and Model A300 F4–605R Airplanes. The DGAC advises that review of the 115 Volts Alternating Current (VAC) supply wiring has shown unsatisfactory separation between power supply routes S and M. The DGAC also advises of the possibility of a short circuit between the 115 VAC electrical lines and the cadensicon electrical sensor circuits. If a short circuit occurs in these areas, significant overheating of the cadensicon sensor thermistor or of a fuel level sensor is possible. This condition, if not corrected, could result in ignition of fuel vapors in the fuel tank and an explosion.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–28–6066, dated November 8, 2000, which describes procedures to separate, by installing spacers and supports, electrical cable routes 2S and 2M where these cable are routed together on the leading edge of the right-hand wing at zone 623; and in the areas of track 4 and track 5, screwjack 3, rib 220, and rib 69. Airbus has also issued Airbus Service Bulletin A300–28–6070, Revision 1, dated March 22, 2002, which describes procedures for installing sleeves to separate electrical cable routes 2S and 2M in various places, *i.e.*, in the right-hand electronics rack 90VU, in the forward cargo compartment, between FR38.2 and FR39, under the cabin floor, between FR51 and FR52, in the main landing gear well and hydraulics compartment, and in the shroud box. Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified both service bulletins as mandatory and issued French airworthiness directives 2002–172(B), dated April 3, 2002, and 2002–171(B), dated April 3, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 70 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 29 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $65 per work hour. Required parts would cost approximately $8,938 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $757,610, or $10,823 per airplane.

The cost impact figure discussed above is based on assumptions that no

operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus: Docket 2002–NM–119–AD.

Applicability: Model A300 B4–600 series airplanes, Model A300 B4–600R series airplanes, Model A300 C4–605R Variant F airplanes, and Model A300 F4–605R airplanes; as listed in Airbus Service Bulletin A300–28–6066, dated November 8, 2000; and Airbus Service Bulletin A300–28–6070, Revision 1, dated March 22, 2002; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent short circuits between 115 Volts Alternating Current (VAC) wiring and certain fuel system electrical wire runs with subsequent overheating of the cadensicon sensor thermistor or fuel level sensor, which could be great enough to ignite fuel vapors in the fuel tank and cause an explosion, accomplish the following:

Modification

(a) Within 4,000 flight hours after the effective date of this AD, modify elements of the electrical wiring to separate the cadensicon wiring from the 115 VAC wiring, in accordance with Airbus Service Bulletin A300–28–6066, dated November 8, 2000.

(b) Within 4,000 flight hours after the effective date of this AD, modify elements of the electrical wiring to separate the 115 VAC supply wiring of the fuel gauging system, in accordance with Airbus Service Bulletin A300–28–6070, Revision 1, dated March 22, 2002.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

Note: The subject of this AD is addressed in French airworthiness directives 2002–172(B) and 2002–171(B), both dated April 3, 2002.

Issued in Renton, Washington, on August 29, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22704 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–192–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes. That action would have required an inspection to detect arcing damage of the electrical cables leading to the terminal strips and surrounding structure in the wing areas inboard of the pylons 1 and 3 and the No. 2 engine; and corrective actions, if necessary. That action also would have required revising the cable connection stackup of the terminal strips on the wings and No. 2 engine. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data indicating that the identified unsafe condition specified in NPRM does not exist on the affected airplanes. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on February 20, 2001 (66 FR 10844). The proposed rule would have required an inspection to detect arcing damage of the electrical cables leading to the terminal strips and surrounding structure in the wing areas inboard of the pylons 1 and 3 and the No. 2 engine; and corrective actions, if necessary. The proposed rule also would have required revising the cable connection stackup of the terminal strips on the wings and No. 2 engine. That action was prompted by an incident in which arcing occurred between the power feeder cables and support bracket of the terminal strips on a McDonnell Douglas Model MD–11 series airplane. The proposed actions were intended to prevent arcing damage to the terminal strips and damage to the adjacent structure in the wing areas inboard of the pylons 1 and 3 and the No. 2 engine, which could result in a fire inboard of the pylons 1 and 3 or the No. 2 engine.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the results of an FAA analysis have revealed that there is a lack of materials and fuels in the vicinity of the terminal strips and

surrounding structure in the wing areas inboard of the pylons 1 and 3 and the No. 2 engine, and that a fire in that area is highly unlikely. The probable result is that a power feed arc in the pylon area would typically damage and pit the feeder line and, perhaps, damage and pit the terminal bracket at the chafing location. As the arc current level increases, the electrical power system differential fault protection would detect this condition and disconnect electrical loads supplied to that particular feeder. In addition, the flightcrew would be alerted to this condition, allowing the operator/owner to correct the problem at the next maintenance interval. On the basis of this analysis, we have determined that the potential arcing on the terminal strips in the wing areas inboard of the pylons 1 and 3 and the No. 2 engine does not constitute an unsafe condition.

FAA's Conclusions

Upon further consideration, we have determined that the identified unsafe condition does not exists on the affected airplanes. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2000–NM–192–AD, published in the **Federal Register** on February 20, 2001 (66 FR 10844), is withdrawn.

Issued in Renton, Washington, on August 29, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22707 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–336–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, that would have required operators to inspect the pitot-true air temperature (TAT) relays and the full authority digital engine control (FADEC) electronic interface resistor modules to detect contamination; perform corrective action if necessary; clean the relay/connector pins and sockets; modify the seal between the cockpit console panels and the storm window; and/or install a new protective frame (protective sheets) at the cockpit relay supports. This new action revises the applicability of the proposed rule to add airplanes. The actions specified by this new proposed AD are intended to detect and correct oxidation of the pitot-TAT relay, which could result in increased resistance and overheating of the relay and consequent smoke in the cockpit; and to detect and correct oxidation of the FADEC electronic interface resistor modules, which could result in in-flight uncommanded engine power roll back to idle. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 3, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–336–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–336–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket Number 2002–NM–336–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–336–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 28, 2003 (68 FR 9607). That NPRM (the "original NPRM") would have required operators to inspect the pitot-true air temperature (TAT) relays and the full authority digital engine control (FADEC) electronic interface resistor modules to detect contamination; perform corrective action if necessary; clean the relay/connector pins and sockets; modify the seal between the cockpit console panels and the storm window; and/or install a new protective frame (protective sheets) at the cockpit relay supports. The original NPRM was prompted by reports of several occurrences of smoke in the cockpit during flight, due to oxidation in the pitot-true air temperature (TAT) #2 relay caused by water leakage from the storm window located above the relay console. That condition, if not corrected, could result in increased resistance and overheating of the relay and consequent smoke in the cockpit.

Comments

Due consideration has been given to the comments received in response to the original NPRM.

Support for the Original NPRM

The commenters generally support the intent of the original NPRM.

Request to Cite New Service Information

One commenter, the manufacturer, advises that it has revised one of the service bulletins cited in the original NPRM (EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001). Change 03, dated January 27, 2003, was issued to add airplanes to the effectivity. The commenter requests that the original NPRM be revised to cite Change 03 as the appropriate source of service information for the inspection, modification, and installation of pitot TAT relays.

The FAA agrees with the request. The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, classified Change 03 as mandatory and issued Brazilian airworthiness directive 2001–05–01R2, dated April 22, 2003, to ensure the airworthiness of these airplanes in Brazil. The FAA notes that the only difference between Change 02 and Change 03 is the effectivity; the procedures are the same in both versions of the service bulletin. The applicability and paragraphs (a), (c), and (d) have been revised in this supplemental NPRM to refer to Change 03 of the service bulletin and provide credit for actions done in accordance with Change 02.

Request To Revise Proposed Applicability

As a result of the revised effectivity in Service Bulletin 145–30–0032, Service Bulletins 145–30–0032 and 145–76–0003 have different effectivity listings. This same commenter requests that the applicability of the original NPRM be revised.

The FAA agrees. To adequately address the identified unsafe condition for the affected fleet, the applicability has been revised in this supplemental NPRM to include airplanes identified in EMBRAER Service Bulletin 145–30–0032, Change 03.

Request To Revise Airplanes Affected by Paragraph (b)

This same commenter requests that the airplanes identified in paragraph (b) of the original NPRM be reidentified to cite airplanes listed in EMBRAER Service Bulletin 145–76–0003, dated April 22, 2002.

The FAA agrees. This change will accurately identify the airplanes subject to the proposed module inspection requirement. Paragraph (b) has been revised accordingly in this supplemental NPRM.

Request To Follow Different Service Information

One commenter requests that paragraph (d) of the original NPRM be revised to also consider installation of new protective sheets to the relay supports as acceptable for compliance with that requirement if done in accordance with Part I of EMBRAER Service Bulletin 145–25–0211, Change 06, dated December 26, 2002.

The FAA agrees, finding that the procedures are the same in both references. Paragraph (d) has been revised accordingly in this supplemental NPRM.

Conclusion

Since certain changes described above expand the scope of the original NPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Changes to 14 CFR Part 39/Effect on the Supplemental NPRM

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. Because we have now included this material in part 39, we no longer need to include it in each individual AD. In this supplemental NPRM, Note 1 and paragraph (f) of the original NPRM have been removed, and paragraph (e) of the original NPRM has been revised to only identify the office authorized to approve AMOCs.

Revised Labor Rate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

The FAA estimates that 365 airplanes of U.S. registry would be affected by this supplemental NPRM. The FAA provides the following cost estimates to accomplish the proposed actions:

Action	Work hours per airplane	Average hourly labor rate	Parts cost per airplane	Cost per airplane
Inspect the pitot-TAT relay	1	$65		$65

Action	Work hours per airplane	Average hourly labor rate	Parts cost per airplane	Cost per airplane
Inspect the FADEC resistor modules	2	65		130
Seal the lateral console panels and install protective sheets	3	65	660	855

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2002–NM–336–AD.

Applicability: Model EMB–135 and EMB–145 series airplanes, certificated in any category; as listed in EMBRAER Service Bulletin 145–30–0032, Change 03, dated January 27, 2003.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct oxidation of the pitot-true air temperature (TAT) relay, which could result in increased resistance and overheating of the relay and consequent smoke in the cockpit; and to detect and correct oxidation of the full authority digital engine control (FADEC) electronic interface resistor modules, which could result in in-flight uncommanded engine power roll back to idle; accomplish the following:

Inspection and Cleaning of Pitot-TAT Relays

(a) For airplanes identified in paragraph 1.A.(1) ("PART I") of EMBRAER Service Bulletin 145–30–0032, Change 03, dated January 27, 2003: Within 400 flight hours after the effective date of this AD, perform a detailed inspection to detect contamination of the pitot-TAT relays and clean the relay/connector pins and sockets, in accordance with the Accomplishment Instructions ("PART I") of the service bulletin. If any contamination remains after cleaning: Prior to further flight, replace each contaminated relay, relay socket, and relay socket contact with a new part, in accordance with the service bulletin. Accomplishment of an inspection and applicable corrective actions is acceptable for compliance with the requirements of this paragraph if done before the effective date of this AD in accordance with EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Inspection of FADEC Interface Resistor Modules

(b) For airplanes identified in EMBRAER Service Bulletin 145–76–0003, dated April 22, 2002: Within 400 flight hours after the effective date of this AD, perform a detailed inspection to detect contamination (including moisture and corrosion) of the left- and right-hand FADEC electronic interface resistor modules, in accordance with the Accomplishment Instructions of the service bulletin. Then do the applicable corrective actions specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) If any contamination is found during the inspection: Before further flight, clean the resistor modules and/or their respective electrical connector pins, in accordance with the service bulletin.

(2) If any contamination remains after cleaning the modules and pins as specified in paragraph (b)(1) of this AD: Before further flight, replace the modules and connectors with new parts, as applicable, in accordance with the service bulletin.

(3) Following accomplishment of any corrective action specified in paragraph (b)(1) or (b)(2) of this AD: Before further flight, perform the ohmic resistance test of the left- and right-hand FADEC electronic interface resistor modules, and accomplish applicable troubleshooting procedures, in accordance with the service bulletin.

Console Panel Sealing

(c) For airplanes identified in paragraph 1.A.(2) ("PART II") of EMBRAER Service Bulletin 145–30–0032, Change 03, dated January 27, 2003: Before further flight following accomplishment of the requirements of paragraph (a) of this AD, modify the seal between the cockpit console panels and the storm window by applying PVC foam adhesive tape and sealant, in accordance with the Accomplishment Instructions ("PART II") of the service bulletin. Accomplishment of the modification before the effective date of this AD is acceptable for compliance with the requirements of this paragraph if done in accordance with EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001.

Protective Sheet Installation

(d) For airplanes identified in paragraph 1.A.(3) ("PART III") of EMBRAER Service Bulletin 145–30–0032, Change 03, dated January 27, 2003: Before further flight following accomplishment of the requirements of paragraph (b) of this AD, install new protective sheets at the relay supports in accordance with the Accomplishment Instructions ("PART III") of the service bulletin. Installation of protective sheets before the effective date of this AD is acceptable for compliance with the requirements of this paragraph if done in

accordance with Part I of EMBRAER Service Bulletin 145–25–0211, Change 06, dated December 26, 2002, or PART III of EMBRAER Service Bulletin 145–30–0032, Change 02, dated December 3, 2001.

Alternative Methods of Compliance

(e) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

Note 2: The subject of this AD is addressed in Brazilian airworthiness directives 2001–05–01R2, dated April 22, 2003; and 2002–10–03, dated October 24, 2002.

Issued in Renton, Washington, on August 29, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22706 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–48–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Aircraft Engines CT7 Series Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain General Electric Aircraft Engines (GEAE) CT7 series turboprop engines. That AD currently requires propeller gearbox (PGB) oil filter impending bypass button (IBB) inspections, oil filter inspections, replacement of left-hand and right-hand idler gears at time of PGB overhaul, and replacement of certain SN PGBs before accumulating 2,000 flight hours. This proposed AD would require the same actions, and adds additional SNs of affected PGBs. This proposed AD is prompted by reports of PGBs equipped with certain gears that do not meet design specifications, resulting in the same failure addressed in the existing AD. We are proposing this AD to prevent separation of PGB left-hand and right-hand idler gears, which could result in uncontained PGB failure and internal bulkhead damage, possibly prohibiting the auxiliary feathering system from fully feathering the propeller on certain PGBs.

DATES: We must receive any comments on this proposed AD by November 7, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

- *By mail:* Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–48–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- *By fax:* (781) 238–7055.
- *By e-mail: 9-ane-adcomment@faa.gov.*

You can get the service information identified in this proposed AD from General Electric Aircraft Engines, CT7 Series Turboprop Engines, 1000 Western Ave, Lynn, MA 01910; telephone (781) 594–3140, fax (781) 594–4805.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Eugene Triozzi, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7148; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include "AD Docket No. 99–NE–48–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. If a person contacts us verbally, and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications that affect you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Discussion

On March 12, 2003, the FAA issued AD 2003–06–03 (Amendment 39–13090, 68 FR 13618, March 20, 2003). That AD requires initial and repetitive inspections of the PGB oil filter IBB for extension (popping), and follow-on inspections, maintenance, and replacement actions if the PGB oil filter IBB is popped, and if necessary, replacement of the PGB with a serviceable PGB. In addition, that amendment requires replacement of certain left-hand and right-hand idler gears at time of overhaul of PGBs, and the replacement of certain SN PGBs before accumulating 2,000 flight hours. That AD was prompted by an on-going investigation that concluded that low-time PGB removals are due to accelerated wear of the PGB idler gears, rather than improperly hardened PGB input pinions. That condition, if not corrected, could result in uncontained PGB failure and internal bulkhead damage, possibly prohibiting the auxiliary feathering system from fully feathering the propeller on certain PGBs.

Actions Since AD 2003–06–03 was Issued

Since that AD was issued, the FAA has learned that a certain population of PGBs have been discovered equipped with certain gears that do no meet design specifications. This can result in the same PGB failure described in AD 2003–06–03.

Relevant Service Information

For AD 2003–06–03, the FAA previously reviewed and approved the technical contents of:

- GEAE CT7 Turboprop Service Bulletin (SB) CT7–TP S/B 72–0453, dated July 27, 2001, that describes procedures for inspections of the PGB oil filter IBB for extension, and if the oil filter IBB is extended, follow-on inspections, maintenance, and replacement actions. This SB also identifies PGBs by SN that require inspection; and
- GEAE CT7 Turboprop SB CT7–TP S/B 72–0452, dated July 27, 2001, that requires replacement of certain SNs of left-hand and right-hand idler gears

with serviceable gears. This SB also identifies affected PGBs by SN.

• For this proposal, the FAA has reviewed and approved the technical contents of GEAE CT7 Turboprop Alert Service Bulletin CT7–TP S/B 72–A0466, dated April 17, 2003, that lists the population of SNs of PGBs susceptible to gears not meeting design specifications.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. Therefore, we are proposing this AD, which would require:

• Initial and repetitive inspections of the propeller gearbox (PGB) oil filter IBB for extension (popping).

• Follow-on inspections, maintenance, and replacement actions if the PGB oil filter IBB is popped, and if necessary, replacement of the PGB with a serviceable PGB.

• Replacement of certain left-hand and right-hand idler gears at time of overhaul of PGBs, and the replacement of certain SN PGBs before accumulating 2,000 flight hours after April 24, 2003, the effective date of AD 2003–06–03.

The proposed AD would require that you do these actions using the service information described previously.

Changes to 14 CFR Part 39—Effect on the Proposed AD

On July 10, 2002, we published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. This regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Costs of Compliance

There are about 667 GEAE CT7 series turboprop engines of the affected design in the worldwide fleet. We estimate that 400 engines installed on airplanes of U.S. registry would be affected by this proposed AD. We also estimate that each IBB inspection would take approximately 0.25 work hours per engine, and the average labor rate is $65 per work hour. Inspection and replacement of idler gears would take approximately four work hours per engine at time of PGB overhaul. Replacement cost for idler gears per PGB is estimated to be $140,670. Therefore, the total cost on U.S. operators would be approximately $56,378,500.

Regulatory Findings

We have determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposal and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include "AD Docket No. 99–NE–48–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 13090, 68 FR 13618, March 20, 2003, and by adding a new airworthiness directive, Amendment 39–XXXXX, to read as follows:

General Electric Aircraft Engines: Docket No. 99–NE–48–AD. Supersedes AD 2003–06–03, Amendment 39–13090.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by November 7, 2003.

Affected ADs

(b) This AD supersedes AD 2003–06–03, Amendment 39–13090.

Applicability

(c) This AD applies to General Electric Aircraft Engines (GEAE) CT7 series turboprop engines, with propeller gearboxes (PGBs) identified by serial number (SN) in Table 1 of GEAE CT7 Turboprop Service Bulletin (SB) CT7–TP S/B 72–0452, dated July 27, 2001, and Table 1 of GEAE CT7 Turboprop Alert Service Bulletin (ASB) CT7–TP S/B 72–A0466, dated April 17, 2003. These engines are installed on but not limited to SAAB 340 series airplanes.

Unsafe Condition

(d) This AD is prompted by reports of additional PGBs equipped with certain gears that do not meet design specifications, resulting in the same failure addressed in the AD being superseded. We are issuing this AD to prevent separation of PGB left-hand and right-hand idler gears, which could result in uncontained PGB failure and internal bulkhead damage, possibly prohibiting the auxiliary feathering system from fully feathering the propeller on certain PGBs.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified unless the actions have already been done.

(f) Inspect the PGB oil filter impending bypass button (IBB) for extension using the following schedule:

(1) Initially inspect within 50 hours time-in-service (TIS) after the effective date of this AD.

(2) Thereafter, inspect each operational day.

(g) If the PGB oil filter IBB is extended, replace the oil filter and perform follow-on inspections, using paragraph 3.A of the Accomplishment Instructions of GEAE CT7 Turboprop SB CT7–TP S/B 72–0453, dated July 27, 2001.

(h) At the next return of the PGB to a CT7 turboprop overhaul facility after the effective date of this AD, replace left-hand and right-hand idler gears. Use the Accomplishment Instructions of GEAE CT7 Turboprop SB CT7–TP S/B 72–0452, dated July 27, 2001 to replace the gears.

(i) If the PGB is mated to a Hamilton Standard propeller and the left-hand and right-hand idler gears have not been replaced in accordance with the Accomplishment Instructions of GEAE CT7 Turboprop SB CT7–TP S/B 72–0452, dated July 27, 2001, replace the PGB before accumulating an additional 2,000 engine flight hours after April 24, 2003, the effective date of AD 2003–06–03.

Terminating Action

(j) Replacement of left-hand and right-hand idler gears in accordance with paragraph (h) of this AD, or replacement of the PGB in accordance with paragraph (i) of this AD constitutes terminating action to the repetitive inspections required by paragraph (f) of this AD.

Alternative Methods of Compliance

(k) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Special Flight Permits

(l) Special flight permits may be issued only for an airplane that does not have more than one engine with a PGB oil filter IBB extended, to operate the airplane to allocation where the requirements of this AD can be done.

Material Incorporated by Reference

(m) You must use the service information specified in Table 1 to perform the inspections and replacements required by this AD. Approval of incorporation by reference from the Office of the Federal Register is pending for GEAE CT7 Turboprop ASB CT7–TP S/B 72–A0466, dated April 17, 2003. Table 1 follows:

TABLE 1.—INCORPORATION BY REFERENCE

Service bulletin no.	Page	Revision	Date
SB CT7–TP S/B 72–0452 ..... Total Pages: 12	ALL	Original	July 27, 2001.
SB CT7–TP S/B 72–0453 ..... Total Pages: 5	ALL	Original	July 27, 2001.
ASB CT7–TP S/B 72–A0466 ..... Total Pages: 8	ALL	Original	April 17, 2003.

Related Information

(n) None.

Issued in Burlington, Massachusetts, on September 2, 2003.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–22713 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–08–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplanes listed above. This proposal would require a one-time inspection for damage of the power feeder cables and surrounding structure, and repair if necessary. For certain airplanes, this proposal would require fabricating and installing a power feeder support bracket assembly and clamps at station Y=595.000, left side. For certain other airplanes, this proposal would require installing two power feeder support brackets and clamps at station Y=606.000, left side. This action is necessary to prevent chafing of the external ground power feeder cables against the adjacent structure, which could result in arcing and fire. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 23, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–08–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–08–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–08–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–08–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of arcing and a fire on a McDonnell Douglas Model DC–10 airplane in the area of the external ground power feeder cables and the adjacent structure at station Y=595.000, left side, at longerons 40 and 41. Chafing of the cables against the structure was discovered during maintenance. Investigation has revealed that, lacking any clamping in the area, the power feeder cables had been pulled taut against the adjacent structure, resulting in the chafing. This condition, if not corrected, could result in arcing and fire at this location.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin DC10–24A171, Revision 02, dated March 7, 2003. The service bulletin describes procedures for a visual inspection of the power feeder cables and surrounding structure for damage, and repair if necessary. In addition, for Group 1 and Group 3 airplanes, which have a floor beam at station Y=595.000, the service bulletin describes procedures for fabricating and installing a power feeder support bracket assembly and clamps at station Y=595.000, left side. For Group 2 airplanes, which have a floor beam at station Y=606.000, the service bulletin describes procedures for installing two power feeder support brackets and clamps at station Y=606.000, left side. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

Changes to 14 CFR part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). This proposed AD identifies the office authorized to approve AMOCs in paragraph (c).

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 59 airplanes of the affected design in the worldwide fleet. The FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 to 3 work hours per airplane to accomplish the proposed actions, at an average labor rate of $65 per work hour. Required parts would cost approximately $385 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $22,660 to $25,520, or $515 to $580 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2002–NM–08–AD.

Applicability: Model DC–10–10, DC–10–10F, DC–10–15, DC–10–30, DC–10–30F, DC–10–30F (KC–10A and KDC–10), DC–10–40, and DC–10–40F airplanes; certificated in any category; as listed in Boeing Alert Service Bulletin DC10–24A171, Revision 02, dated March 7, 2003.

Compliance: Required as indicated, unless accomplished previously.

To prevent chafing of the external ground power feeder cables against the adjacent structure, which could result in arcing and fire, accomplish the following:

Inspection

(a) Within 6 months after the effective date of this AD: Perform a general visual inspection for damage of the power feeder cables and surrounding structure, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–24A171, Revision 02, dated March 7, 2003. If any damage is found, repair it before further flight in accordance with the service bulletin. Inspections and repairs done before

the effective date of this AD in accordance with Revision 01 of the service bulletin, dated November 6, 2002, are also acceptable for compliance with the requirements of this paragraph.

Note: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Bracket Installation

(b) Within 6 months after the effective date of this AD: Perform the actions specified in paragraphs (b)(1) and (b)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–24A171, Revision 02, dated March 7, 2003. Accomplishment of the actions before the effective date of this AD in accordance with Revision 01 of the service bulletin, dated November 6, 2002 is also acceptable for compliance with the requirements of this paragraph.

(1) For Group 1 and Group 3 airplanes: Fabricate and install a new power feeder support bracket assembly and clamps at station Y=595.000, left side. Bracket fabrication and installation done before the effective date of this AD in accordance with the original issue of the service bulletin, dated October 18, 2001, is also acceptable for compliance with the requirements of paragraph (b)(1) of this AD.

(2) For Group 2 airplanes: Install 2 power feeder support brackets and clamps at station Y=606.000, left side.

Alternative Methods of Compliance

(c) In accordance with 14 CFR 39.19, the Manager, Los Angeles Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on August 29, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22709 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–247P]

Schedules of Controlled Substances: Placement of 2,5-Dimethoxy-4-(n)-propylthiophenethylamine, N-Benzylpiperazine and 1-(3-Trifluoromethylphenyl)piperazine Into Schedule I of the Controlled Substances Act

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Administrator of the Drug Enforcement Administration (DEA) is issuing this notice of proposed rulemaking to place 2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), N-Benzylpiperazine (BZP), and 1-(3-trifluoromethylphenyl)piperazine (TFMPP) into Schedule I of the Controlled Substances Act (CSA). This proposed action is based on data gathered and reviewed by the DEA. If finalized, this proposed action would continue to impose the criminal sanctions and regulatory controls of Schedule I substances under the CSA on the manufacture, distribution, and possession of 2C-T-7, BZP, and TFMPP.

DATES: Comments must be received on or before October 8, 2003.

ADDRESSES: Comments and objections should be submitted to the Administrator, Drug Enforcement Administration, Washington DC 20537, Attention: DEA **Federal Register** Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: On September 20, 2002, the Deputy Administrator of the DEA published two final rules in the **Federal Register** amending § 1308.11(g) of Title 21 of the Code of Federal Regulations to temporarily place 2C-T-7 (67 FR 59163), and BZP and TFMPP (67 FR 59161) into Schedule I of the CSA pursuant to the temporary scheduling provisions of 21 U.S.C. 811(h). These final rules, which became effective on the date of publication, were based on findings by the Deputy Administrator that the temporary scheduling of 2C-T-7, BZP, and TFMPP was necessary to avoid an imminent hazard to the public safety. The CSA (21 U.S.C. 811(h)(2)) requires that the temporary scheduling of a substance expire at the end of one year from the date of issuance of the order. However, if proceedings to schedule a substance pursuant to 21 U.S.C. 811(a)(1) have been initiated and are pending, the temporary scheduling of a substance may be extended for up to six months. Under this provision, the temporary scheduling of 2C-T-7, BZP, and TFMPP, which would expire on September 19, 2003, may be extended to March 19, 2004. This extension is being ordered by the DEA Administrator in a separate action.

In accordance with 21 U.S.C. 811(b) of the CSA, DEA has gathered and reviewed the available information regarding the pharmacology, chemistry, trafficking, actual abuse, pattern of abuse, and the relative potential for abuse of 2C-T-7, BZP, and TFMPP. The Administrator has submitted these data to the Acting Assistant Secretary for Health, Department of Health and Human Services. In accordance with 21 U.S.C. 811(b), the Administrator also requested a scientific and medical evaluation and a scheduling recommendation for 2C-T-7, BZP, and TFMPP from the Acting Assistant Secretary for Health. The Food and Drug Administration (FDA) has notified the DEA that there are no exemptions or approvals in effect under 21 U.S.C. 355 of the Food, Drug and Cosmetic Act for 2C-T-7, BZP, or TFMPP. A search of the scientific and medical literature revealed no indications of current medical use of 2C-T-7, BZP, or TFMPP in the United States.

2,5-Dimethoxy-4-(n)-propylthiophenethylamine

What is 2,5-dimethoxy-4-(n)-propylthiophenethylamine?

2,5-dimethoxy-4-(n)-propylthiophenethylamine (2C-T-7), a phenethylamine hallucinogen, is structurally related to the Schedule I phenethylamine 4-bromo-2,5-dimethoxyphenethylamine (2CB), and other hallucinogens (*e.g.*, 2,5-dimethoxy-4-methylamphetamine (DOM), and 1-(4-bromo-2,5-dimethoxyphenyl)-2-aminopropane (DOB)) in Schedule I of the CSA. 2C-T-7 is a sulfur analogue of 2CB. Both substances have the structural features necessary for stimulant and/or hallucinogenic activity. Based on its structural similarity to 2CB, one would expect 2C-T-7's pharmacological profile to be qualitatively similar to 2CB if evaluated in preclinical and clinical studies.

2C-T-7 is being abused for its action on the central nervous system (CNS),

and for its ability to produce euphoria with 2CB-like hallucinations. 2C-T-7 has not been approved for medical use in the United States by the FDA. The safety of this substance for use in humans has never been demonstrated.

Drug discrimination studies in animals have indicated that 2C-T-7 is a psychoactive substance capable of producing hallucinogenic-like discriminative stimulus effects (*i.e.*, subjective effects). 2C-T-7's subjective effects were shown to share some commonality with LSD; it partially substituted for LSD up to doses that severely disrupted performance in rats trained to discriminate LSD (Committee on Problems on Drug Dependence, Drug Evaluation Committee, Personal Communication). Like 2CB, DOM, and DOB, 2C-T-7 displays affinity for central serotonin receptors. Radioligand binding assays showed that 2C-T-7 affinity for the 5-HT receptor system was selective. Self-reports indicate that the hallucinogenic effects of 2C-T-7 are comparable to those of 2CB and mescaline.

Why is 2C-T-7 Being Controlled?

The abuse of stimulant/hallucinogenic substances in popular all night dance parties (raves) and in other venues has been a major problem in Europe since the 1990s. In the past several years, this activity has spread to the United States. The Schedule I controlled substance MDMA and its analogues, collectively known as Ecstasy, are the most popular drugs abused at these raves. Their abuse has been associated with both acute and long-term public health and safety problems. These raves have also become venues for the trafficking and abuse of other controlled substances. 2C-T-7 made its appearance in the "rave" scene in Wisconsin, Oakland, California, and the Atlanta, Georgia areas.

The abuse of 2C-T-7 by young adults in the United States began to spread in the year 2000. Since that time, 2C-T-7 has been encountered by law enforcement agencies in Northern Wisconsin, Texas, Tennessee, Washington, Oklahoma, Atlanta, Georgia, and the San Francisco, California areas. DEA information shows that 2C-T-7 has been observed at local "rave" parties in California and part of the Southeastern United States.

Information gathered by DEA also indicates that 2C-T-7 has been purchased in powder form over the Internet and distributed as such. In the United States, capsules containing 2C-T-7 powder also have been encountered.

An Internet company was identified as a source of 2C-T-7 being sold in the United States. The business was operated from the owner's residence. Law enforcement authorities in Tennessee made a controlled purchase of 2C-T-7 from this Internet company; 250 mg of 2C-T-7 was purchased for $150.00. The owner has been charged with the distribution of 2C-T-7 and other products. 2C-T-7 has been clandestinely produced in the United States. A clandestine laboratory, identified as the supplier of 2C-T-7 to this Internet company, was seized in 2002 by DEA in Las Vegas, Nevada. 2C-T-7 has been sold as "Tweety-Bird Mescaline." It has also been found in combination with N,N-dipropyltryptamine (DPT).

Sensory distortion and impaired judgment can lead to serious consequences for both the user and the general public. 2C-T-7 can have lethal effects when abused alone or in combination with other illicit drugs. To date, three deaths have been associated with the abuse of 2C-T-7. The first death occurred in Oklahoma during April of 2000; a young healthy male overdosed on 2C-T-7 following intranasal administration. The co-abuse of 2C-T-7 with MDMA will pose a significant health risk if 2C-T-7's popularity increases in the same venues as with MDMA. The co-abuse of 2C-T-7 with MDMA has resulted in lethal effects. The other two 2C-T-7 related deaths occurred in April 2001 and resulted from the co-abuse of 2C-T-7 with MDMA. One young man died in Tennessee while another man died in the state of Washington.

N-Benzylpiperazine and 1-(3-trifluoromethylphenyl)piperazine

What are N-Benzylpiperazine and 1-(3-trifluoromethylphenyl)piperazine?

N-Benzylpiperazine (BZP) and 1-(3-trifluoromethylphenyl)piperazine (TFMPP) are piperazine derivatives. BZP was first synthesized as a potential antiparasitic agent. It was subsequently shown to possess amphetamine-like and some antidepressant activity, but was not developed for marketing. TFMPP is an industrial chemical and shares some pharmacological similarities with 3,4-methylenedioxymethamphetamine (MDMA or Ecstasy). Both BZP and TFMPP are primarily used as chemical intermediates and have no accepted medical use in the United States. The safety of these piperazines for use in humans has never been demonstrated.

The available evidence suggests that the pharmacological effects of BZP and TFMPP are substantially similar to amphetamine and MDMA, respectively. The abuse liability studies conducted by the Drug Evaluation Committee of the College on Problems of Drug Dependence indicate that rhesus monkeys consistently self-administer BZP and exhibit stimulant-like behavioral effects following BZP self-administration sessions. BZP fully generalizes to amphetamine's discriminative stimulus in monkeys. TFMPP generalizes to MDMA's discriminative stimulus effects and serves as discriminative stimulus in rats. Serotonergic mechanisms mainly underlie the discriminative stimulus effects of TFMPP.

Consistent with the above-mentioned animal studies, it has been shown that BZP is about 20 times more potent than amphetamine in producing stimulant-like subjective and cardiovascular effects in humans (Bye C, *et al.*, Eur. J. Clin. Pharmacol. 6: 163–169, 1973). Similarly, Campbell and colleagues (Eur. J. Clin. Pharmacol. 6: 170–176, 1973), using a double-blind clinical study involving 18 subjects with a history of amphetamine dependence, reported that the nature and the time-course of behavioral, autonomic and subjective effects following BZP administration are similar to those of amphetamine. BZP was found to be about 10 times more potent than amphetamine in this study.

Self-reports suggest that the subjective effects of BZP are stimulant-like and TFMPP is an active hallucinogen. These reports collectively suggest that BZP has amphetamine-like subjective and reinforcing effects, while TFMPP might have MDMA-like subjective effects in humans. Similar to other classical hallucinogens, TFMPP also binds to serotonin receptors. TFMPP, similar to MDMA, has been shown to release 5-HT from central serotonergic neurons through uptake carrier-dependent mechanism (Pettibone D and Williams M, Biochem. Pharmacol. 33: 1531–1535, 1984; Auerbach SB, *et al.*, Neuropharmacol. 30: 307–311, 1991).

Why are BZP and TFMPP Being Controlled?

The initial indication of the abuse of BZP and TFMPP appeared in late 1996. An individual in Santa Barbara, California, promoted the use and sale of these and other ring-substituted phenylpiperazines homologs (*i.e.*, 3-chlorophenyl-piperazine and 4-methoxyphenylpiperazine) through the Internet.

The abuse of BZP/TFMPP has been growing as evidenced by the increasing encounters by law enforcement agencies since the late 1990's. BZP powder, or tablets containing BZP alone or in combination with TFMPP, have been

seized by federal and state/local law enforcement agencies in 21 states and Washington DC. Since 2000, there have been 77 cases involving seizures of BZP/TFMPP with total of over 33,000 tablets/capsules and 752,000 grams of powder. Although both BZP and TFMPP have legitimate uses as chemical intermediates, they are being purchased illegally from Internet chemical supply houses. They are sold in powder or liquid form or formulated into tablets and sold on the Internet for human consumption. These substances are being promoted as legal alternatives to MDMA and sold as "Ecstasy" or as "BZP", "A2", "legal E", or "legal X". Law enforcement data indicate that these piperazines are mainly encountered as tablets, with imprints of logos commonly seen on MDMA tablets.

The available scientific evidence as discussed above suggests that BZP and TFMPP share substantial pharmacological similarities with the Schedule II controlled substance amphetamine and the Schedule I controlled substance MDMA, respectively. The risks to the public health associated with amphetamine and MDMA, both substances with high potential for abuse, are well known and documented. BZP is about 10 to 20 times more potent than amphetamine in producing stimulant-like subjective, euphoric and cardiovascular effects in humans. TFMPP, similar to MDMA, produces hallucinogenic effects. BZP and TFMPP can alter sensory and judgment processes and thus can cause serious adverse health consequences for both the user and the general public. DEA is aware of several instances where BZP and TFMPP have been used in combination and sold as counterfeit MDMA, a Schedule I controlled substance. In 2001, a report from a university in Zurich, Switzerland details the death of a young female which was attributed to the combined use of BZP and MDMA. The above data show that the continued, uncontrolled tablet production, distribution and abuse of BZP and TFMPP pose an imminent hazard to the public safety. There are no recognized therapeutic uses of these substances in the United States.

The Administrator, based on the information gathered and reviewed by her staff and after consideration of the factors in 21 U.S.C. 811(c), believes that sufficient data exist to support the placement of 2C-T-7, BZP, and TFMPP into Schedule I of the CSA pursuant to 21 U.S.C. 811(a). The specific findings required pursuant to 21 U.S.C. 811 and 812 for a substance to be placed into Schedule I are as follows:

(1) The drug or other substance has a high potential for abuse.

(2) The drug or other substance has no currently accepted medical use in treatment in the United States.

(3) There is a lack of accepted safety for use of the drug or other substance under medical supervision.

Before issuing a final rule in this matter, the DEA Administrator will take into consideration the scientific and medical evaluation and scheduling recommendation of the Department of Health and Human Services in accordance with 21 U.S.C. 811(b). The Administrator will also consider relevant comments from other concerned parties.

Interested persons are invited to submit their comments, objections, or requests for a hearing in writing, with regard to this proposal. Requests for a hearing should state with particularity the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Administrator, Drug Enforcement Administration, Washington, DC 20537. In the event that comments, objections or requests for a hearing raise one or more questions that the Administrator finds warrants a hearing, the Administrator shall publish a notice in the **Federal Register** summarizing the issues to be heard and setting the time for the hearing.

What Is the Effect of This Proposed Rule?

This proposed rule, if finalized, would continue to subject those who handle 2C-T-7, BZP, and TFMPP to the regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule I controlled substance.

Regulatory Certification

Regulatory Flexibility Act

The Administrator hereby certifies that this proposed rulemaking has been drafted in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation, and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This action permanently places 2C-T-7, BZP, and TFMPP into Schedule I of the Controlled Substances Act.

Executive Order 12988

This regulation meets the applicable standards set forth in Sections 3(a) and 3(b)(2) of Executive Order 12988 Civil Justice Reform.

Executive Order 13132 Federalism

This proposed rulemaking will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rulemaking will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This proposed rulemaking will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rulemaking is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

For the reasons set out above, 21 CFR part 1308 is proposed to be amended as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.11 is proposed to be amended by:

a. Redesignating existing paragraphs (d)(6) through (d)(27) as paragraphs (d)(7) through (d)(28),

b. Adding a new paragraph (d)(6),

c. Redesignating existing paragraphs (d)(28) through (d)(31) as paragraphs (d)(30) through (d)(33),

d. Adding a new paragraph (d)(29),

e. Redesignating existing paragraphs (f)(2) through (f)(7) as paragraphs (f)(3) through (f)(8),

f. And adding a new paragraph (f)(2) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(d) * * *

(6) 2,5-dimethoxy-4-(n)-propylthiophenethylamine (other name: 2C-T-7)—7348.

* * *

(29) 1-(3-trifluoromethylphenyl)piperazine (other name: TFMPP)—7494.

* * * * *

(f) * * *

(2) N-Benzylpiperazine (some other names: BZP, 1-benzylpiperazine)—7493.

* * * * *

Dated: September 2, 2003.

Karen P. Tandy,

Administrator.

[FR Doc. 03–22684 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 15]

RIN 1513—AA41

Proposed Eola Hills Viticultural Area (2002R–216P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish Eola Hills as a viticultural area in Oregon. The proposed viticultural area is entirely within the existing Willamette Valley viticultural area and encompasses roughly 37,900 acres within Polk and Yamhill Counties. We designate viticultural areas to allow bottlers to better describe the origin of wines and allow consumers to better identify the wines they may purchase. We invite comments on this proposed addition to our regulations, particularly from bottlers who use brand names similar to that of the proposed area.

DATES: We must receive written comments on or before November 7, 2003.

ADDRESSES: You may send comments to any of the following addresses—

• Chief, Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 15);

• 202–927–8525 (facsimile);

• *nprm@ttb.gov* (e-mail); or

• *http://www.ttb.gov/alcohol/rules/index.htm*. An online comment form is posted with this notice on our Web site.

You may view copies of the petition, this notice, the appropriate maps, and any comments we receive about this notice by appointment at the ATF Reference Library, 650 Massachusetts Avenue, NW., Washington, DC 20226; phone 202–927–7890. You may also access copies of the notice and comments on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm*.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments and for information on how to request a public hearing.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Alcohol and Tobacco Tax and Trade Bureau, Regulations and Procedures Division, P.O. Box 18152, Roanoke, Virginia 24014; telephone 540–344–9333.

SUPPLEMENTARY INFORMATION:

TTB Background

Has Passage of the Homeland Security Act Affected Department of Treasury Rulemaking?

Effective January 24, 2003, the Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms into two agencies, the Alcohol and Tobacco Tax and Trade Bureau in the Department of the Treasury and the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice. Regulation of wine labeling, including viticultural area designations, is the responsibility of the new TTB. References to ATF in this document relate to events that occurred prior to January 24, 2003, or to functions that the Bureau of Alcohol, Tobacco, Firearms and Explosives continues to perform.

Background on Viticultural Areas

What Is TTB's Authority To Establish a Viticultural Area?

The Federal Alcohol Administration Act (FAA Act) at 27 U.S.C. 205(e) requires that alcohol beverage labels provide the consumer with adequate information regarding a product's identity, while prohibiting the use of misleading information on such labels. The FAA Act also authorizes the Secretary of the Treasury to issue regulations to carry out its provisions, and the Secretary has delegated this authority to the Alcohol and Tobacco Tax and Trade Bureau.

Regulations in 27 CFR Part 4, Labeling and Advertising of Wine, allow the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Title 27 CFR part 9, American Viticultural Areas, contains the list of approved viticultural areas.

What Is the Definition of a Viticultural Area?

Title 27 CFR 4.25a(e)(1) defines an American viticultural area as a delimited grape-growing region distinguishable by geographic features whose boundaries have been delineated in subpart C of part 9. These designations allow consumers and vintners to attribute a given quality, reputation, or other characteristic of wine made from grapes grown in an area to its geographic origin.

What Is Required To Establish a Viticultural Area?

Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Anyone interested may petition TTB to establish a grape-growing region as a viticultural area. The petition must include—

• Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;

• Historical or current evidence that the boundaries of the proposed viticultural area are as specified in the petition;

• Evidence of growing conditions, such as climate, soils, elevation, physical features, etc., that distinguish the proposed area from surrounding areas;

• A description of the specific boundaries of the proposed viticultural area, based on features shown on United States Geological Survey-approved (USGS) maps; and

• Copies of the appropriate USGS-approved map(s) with the boundaries prominently marked.

What Impact May This Notice Have on Current Wine Labels?

As appellations of origin, viticultural area names have geographic significance. Our 27 CFR part 4 label regulations prohibit the use of a brand name with geographic significance on a wine unless the wine meets the appellation of origin requirements for the named area. Our regulations also prohibit any other label references that suggest an origin other than the true place of origin of the wine.

If we establish this proposed viticultural area, bottlers who use brand names, including trademarks, like Eola Hills must ensure that their existing products are eligible to use the viticultural area's name as an appellation of origin. For a wine to be eligible, at least 85 percent of the grapes in the wine must have been grown within the viticultural area, and the wine must meet the other requirements of 27 CFR 4.25a(e)(3).

If a wine is not eligible for the appellation, the bottler must change the brand name or other label reference and obtain approval of a new label. Different rules apply if a wine in this category has a brand name used on a label approved prior to July 7, 1986. See 27 CFR 4.39(i) for details.

Eola Hills Petition

Mr. Russell Raney of Evesham Wood Vineyard, Salem, Oregon, petitioned ATF for the establishment of a viticultural area to be called "Eola Hills." The proposed viticultural area is within the State of Oregon and entirely within the existing Willamette Valley viticultural area described in 27 CFR 9.90. The petitioner estimates that the proposed area encompasses 37,900 acres, with about 1,244 acres planted to vines. Currently 12 wineries operate within the proposed area.

What Name Evidence Has Been Provided?

As historical evidence of the use of the name "Eola Hills," the petitioner submitted an excerpt from "Oregon Geographic Names" (published by the Oregon Historical Society, 5th Edition, 1982, pp. 294–295). This source states that the Eola Hills were named for the village of Eola, which is situated at the southern end of the ridge. On January 17, 1856, the Oregon territorial legislature incorporated the village as "Eola," a name derived from Aeolus, the Greek god of winds. The book further states that the Eola Hills "constitute one of the important groups of isolated hills in the Willamette Valley." It goes on to explain that the hills have been known by other names, but the name "Eola Hills seems firmly established."

For additional name evidence, the petitioner also submitted several maps that identify the proposed area as "Eola Hills." Four of the United States Geological Survey maps used to show the proposed boundaries (Rickreall, Salem West, Mission Bottom, and Amity) identify the area as Eola Hills. The petitioner also submitted two geologic maps of the area that are issued by the State of Oregon's Department of Geology and Mineral Industries. Both prominently label the area "Eola Hills."

According to the petitioner, Eola Hills has name recognition and a reputation for quality among wine consumers both in and out of Oregon. For this reason, vineyards and wineries within the proposed area utilize the name frequently in their promotional literature. The petitioner submitted two promotional maps demonstrating this. One map, entitled "The Wine Appellations of Oregon," issued by the Oregon Wine Marketing Coalition, portrays the Eola Hills area as a subregion within the Willamette Valley. The other map, entitled "Eola Hills Winegrowing Region, Willamette Valley Oregon," shows the location of all vineyards and wineries in the proposed area.

The petitioner notes that a small portion of the proposed area is sometimes referred to as "Amity Hills." "Oregon Geographic Names" describes Amity Hills as a northern extension of the Eola Hills that is separated from the main ridge by a pass east of the town of Amity. USGS maps for McMinnville and Amity, Oregon, identify this area as Amity Hills. However, the geologic maps issued by Oregon's Department of Geology and Mineral Industries identify it as part of the Eola Hills. The petitioner argues that, for the purpose of wine designation, consumers in Oregon have come to recognize the entire area as a single unit known as "Eola Hills." He also states that vintners in the Amity Hills portion of the proposed area support the designation of Eola Hills for the entire area.

What Boundary Evidence Has Been Provided?

As evidence of the boundaries, the petitioner submitted with the petition six USGS topographic maps on which the Eola Hills are dominant features. The main ridge of the Eola Hills runs north to south, starting approximately 5¾ miles northeast of the town of Amity and extending south for 16 miles to Oregon highway 22, just north of the Willamette River at West Salem. At their widest point, toward the southern end, the Eola Hills are about 6½ miles across, from Wallace Road in the east to U.S. highway 99 in the west.

The petitioner uses the 200-foot contour line as the predominant boundary marker. He notes that he occasionally diverges to use roads or highways where they form a more convenient boundary and to exclude land not deemed suitable for grape cultivation due to soil type, elevation, or urban development.

What Evidence of Distinctive Growing Conditions Has Been Provided?

Soil and Geology

The petitioner states that the soils and geology of the Eola Hills are distinctive from those of the surrounding areas in two regards:

- The prevailing basalt-derived soils are clearly shallower than the soils of other hills of the North Willamette Valley, and
- The well-drained basalt soils are very different from the alluvial soils of the surrounding valley floor.

As evidence of this, Mr. Raney submitted two geologic maps issued by the State of Oregon's Department of Geology and Mineral Industries. One is entitled "Geologic Map of the Rickreall and Salem Quadrangles, Oregon"; the other is entitled "Preliminary Geologic Map of the Amity and Mission Bottom Quadrangles, Oregon." According to these documents, volcanic basalt rock from the lava flows of the Miocene era underlies the Eola Hills, with areas of marine sedimentary rock from the Oligocene era at the lower elevations of the ridge. The soils in the middle and higher elevations of the Eola Hills are largely well-drained, silty-clay loams weathered from basalt, while on the lower slopes, silt loams weathered from sedimentary rock predominate, particularly on the west-facing slopes.

According to soil survey maps published by the Soil Conservation Service of the U.S. Department of Agriculture, the dominant basalt-derived soils in the Eola Hills are Nekia (recently reclassified as "Gelderman" series), Ritner, and Jory series soils. The preponderance of the shallower Nekia-Gelderman soils in the Eola Hills differentiates them from the Red Hills farther north, where the Jory soil series predominates. The Nekia-Gelderman soils have a much lower water capacity than the Jory soil series. The most frequently occurring sedimentary soils in the Eola Hills are the Steiwer, Chehulpum, and Helmick series, especially on the west side of the ridge. The third major soil group in the Eola Hills is comprised of those soils formed from alluvial deposits, the most common of which is the Woodburn silt loam series. Such alluvial soils generally occur only on the lowest elevations of the proposed viticultural area (below 300 feet). Like the above-mentioned soils, this third group, too, can provide suitable conditions for wine grapes if sufficient slope exists for good water drainage.

Finally, the Eola Hills are surrounded on almost all sides by, and are easily distinguished from, Willamette Valley

terrace land. With few exceptions, this terrace land lies below the 200-foot elevation line and is characterized by less well-drained alluvial soils. According to the petitioner, this type of soil is generally not suitable for the cultivation of premium wine grapes. Therefore, land below 200 feet is not included in the proposed Eola Hills boundaries.

Topography

The main ridge of the Eola Hills runs north-south and has numerous lateral ridges that run east-west on both sides. Slopes on the west side of the ridge tend to be somewhat steeper and pocketed, and they fall away below 200 feet more abruptly than those slopes on the east side, which tend to be gentler and more extensive. Both sides, however, provide vineyards sites with very similar soils and growing conditions. The highest point in the south end of the hills is 1,093 feet. In the central area, near the Polk-Yamhill County line, the ridge peaks at around 1,160 feet; in the north, it peaks at 863 feet. The majority of Eola Hills vineyard sites are found in the elevation range of 250–700 feet, although suitable sites exist above this elevation, given proper sun exposure and microclimate. The most common orientation of vineyards here is south, southwestern, and southeastern. However, in gently sloping terrain, due east- and due west-facing sites are also capable of producing high quality wine grapes.

Climate

According to the petitioner, the Eola Hills are blessed with a temperate climate. Summers are warm, but seldom excessively hot, while winters are mild, with temperatures usually above freezing. Annual rainfall ranges from under 40 inches on the southeastern edge of the Eola Hills to more than 45 inches in the higher elevations. More important, only about 15 percent of the total annual rainfall in the mid-Willamette Valley occurs from April through September. Thus, rainfall averages during the growing season are uniform throughout the Eola Hills.

The petitioner states that the Eola Hills are influenced more by their position due east of the Van Duzer Corridor than by their location in the rain-shadow of the Coast Range. Ocean winds vented through this Corridor often cause late-afternoon, summer temperatures to drop dramatically, which further distinguishes the area from the hills further north. During the growing season, average maximum temperatures at the middle elevations range from 62° F in April to 83° F in July. This contributes to the ideal conditions for the "cool-climate" grape varieties which dominate in Eola Hills vineyards, such as Pinot Noir, Pinot Gris, and Chardonnay.

The petitioner notes that Eola Hills slopes experience greater heat accumulation during the growing season than does the surrounding Willamette Valley floor, due to the effects of thermal inversion. Cool air drains toward the valley floor during the night, which layers warmer air on the lower slopes. To demonstrate the differences between sites in the Eola Hills and the valley floor, the petitioner submitted monthly heat accumulation data that compares a valley floor site, the site of the Salem, Oregon, airport, and an Eola Hills vineyard site, Seven Springs Vineyard, for the years 1992–95. This data showed that the Seven Springs Vineyard site had consistently higher seasonal heat accumulation for the years in question. According to data gathered from the Salem WSO Airport, a typical vineyard site in the Eola Hills has a growing season (April 1 to October 31) heat accumulation range of 2,300–2,500 degree-days, with a base of 60° F. Based on standards for determining climatic regions using temperature summation, this places it high in the Region 1 category (2,500 degree-days or less).

What Boundary Descriptions Have Been Provided?

The proposed Eola Hills viticultural area is located in the northern half of the existing Willamette Valley viticultural area in Oregon. Two-thirds of the area lies within Polk County, while the northern one-third extends into Yamhill County. A detailed description of the proposed boundaries can be found in the proposed regulations below in this notice.

What Maps Were Provided?

The petitioner provided the required maps, and we list them in the proposed regulation.

Public Participation

We request comments from anyone interested. Please support your comments with specific information about the proposed area's name, growing conditions, or boundaries.

Because of the potential impact of an Eola Hills viticultural area on current brand names that include "Eola," we are particularly interested in comments regarding the proposed area's name. Are there other names for this area that would not conflict with current brand names? We are also interested in suggestions for preventing conflicts between viticultural area names and brand names of geographic significance, as discussed above under "What impact may this notice have on current wine labels?"

All comments must include your name and mailing address, reference this notice number, and be legible and written in language acceptable for public disclosure.

Although we do not acknowledge receipt, we will consider your comments if we receive them on or before the closing date. We will consider comments received after the closing date if we can. We regard all comments as originals.

Will TTB Keep My Comments Confidential?

We do not recognize any submitted material as confidential. All comments are part of the public record and subject to disclosure. Do not enclose in your comments any material you consider confidential or inappropriate for disclosure.

How May I Submit Comments?

You may submit comments in any of four ways.

- *By mail:* You may send written comments to TTB at the address listed in the **ADDRESSES** section.
- *By facsimile:* You may submit comments by facsimile transmission to 202–927–8525. Faxed comments must—

(1) Be on 8.5- by 11-inch paper;

(2) Contain a legible, written signature; and

(3) Be five or less pages long. This limitation assures electronic access to our equipment. We will not accept faxed comments that exceed five pages.

- *By e-mail:* You may e-mail comments to *nprm@ttb.gov*. Comments transmitted by electronic mail must—

(1) Contain your e-mail address;

(2) Reference this notice number on the subject line; and

(3) Be legible when printed on 8.5- by 11-inch paper

- *By online form:* We provide a comment form with the online copy of this notice on our Web site at *http://www.ttb.gov/alcohol/rules/index.htm*. Select the "Send comments via email" link under this notice number.

You may also write to the Administrator to ask for a public hearing. The Administrator reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

What Information Will TTB Disclose?

You may view copies of this notice, the petition, the appropriate maps, and any comments received by appointment at the ATF Reference Library in room

6480 at 650 Massachusetts Avenue, NW., Washington, DC 20226. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact the ATF Librarian at the above address or telephone 202–927–7890 to schedule an appointment or to request copies of comments.

For your convenience, we will post this notice and the comments received on the TTB Web site. All posted comments will show the names of commenters, but not street addresses, telephone numbers, or e-mail addresses. We may also omit voluminous attachments or material that we consider unsuitable for posting. In all cases, the full comment will be available in the ATF Reference Library. To access the online copy of this notice, visit at *http://www.ttb.gov/alcohol/rules/index.htm*. Select the "View Comments" link under this notice number to view the posted comments.

Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

We propose no requirement to collect information. Therefore, the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, and its implementing regulations, 5 CFR part 1320, do not apply.

Does The Regulatory Flexibility Act Apply to This Proposed Rule?

We certify that this regulation, if adopted, will not have a significant economic impact on a substantial number of small entities, including small businesses. The proposal imposes no new reporting, recordkeeping, or other administrative requirements.

The establishment of viticultural areas represents neither our endorsement nor approval of the quality of wine made from grapes grown in the designated areas. Rather, the system allows us to identify areas distinct from one another. In turn, identifying viticultural areas lets wineries describe more accurately the origin of their wines to consumers and helps consumers identify the wines they purchase. Thus, any benefit derived from using a viticultural area name results from a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Does Executive Order 12866 Define This NPRM as a Significant Regulatory Action?

This proposed rule is not a "significant regulatory action" as defined by Executive Order 12866. Therefore, no regulatory assessment is required.

Drafting Information

Jennifer Berry of the Regulations and Procedures Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Authority and Issuance

For the reasons discussed in the preamble, we propose to amend Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas as follows:

PART 9—AMERICAN VITICULTURAL AREAS

1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

2. Subpart C is amended by adding § 9.____ to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.____ Eola Hills.

(a) *Name.* The name of the viticultural area described in this section is "Eola Hills".

(b) *Approved Maps.* The six USGS, 1:24,000 scale, topographic maps used to determine the boundaries of the Eola Hills viticultural area are titled—

(1) Rickreall, Oregon, 1969, photorevised 1976;

(2) Salem West, Oregon, 1969, photorevised 1986;

(3) Mission Bottom, Oregon, 1957, revised 1993;

(4) Dayton, Oregon, 1957, revised 1992;

(5) McMinnville, Oregon, 1957, revised 1992; and

(6) Amity, Oregon, 1957, revised 1993.

(c) *Boundary.* The Eola Hills viticultural area is located in the State of Oregon, within Polk and Yamhill Counties, and entirely within the Willamette Valley viticultural area. The area's boundary is defined as follows—

(1) Begin on the Rickreall, Oregon, map, at the intersection of State Highways 22 and 223; then

(2) Proceed east on highway 22 to its intersection with Doaks Ferry Road on the Salem West, Oregon, map; then

(3) Proceed northeast on Doaks Ferry Road to its intersection with the 200-foot contour line southeast of Gibson Gulch, in section 65; then

(4) Follow the 200-foot contour line in a westerly loop until it rejoins Doaks Ferry Road; then

(5) Continue north on Doaks Ferry Road to its intersection with highway 221; then

(6) Continue north on State Highway 221 to its intersection with the 200-foot contour line at the point where the contour line departs from highway 221 and runs southwest along the southern edge of Spring Valley (section 53 on the Mission Bottom, Oregon, map); then

(7) Follow the 200-foot contour line first south onto the Salem West, Oregon, map, then northwest around the southern and western edge of Spring Valley and back on to the Mission Bottom, Oregon, map; then

(8) Continue to follow the 200-foot contour line generally north on the Mission Bottom, Oregon, map, crossing onto and back from the Amity, Oregon, map and continue past the Yamhill County line and onto the Dayton, Oregon, map; then

(9) Follow the 200-foot contour line from the Dayton, Oregon, map onto the McMinnville, Oregon, map and back to the Dayton, Oregon, map and continue around the northeast edge of the Amity Hills spur of the Eola Hills; then

(10) Follow the 200-foot contour line onto the McMinnville, Oregon, map as it continues around the northern and western periphery of the Amity Hills spur; then

(11) Follow the 200-foot contour line onto the Amity, Oregon, map as it heads first south, then generally southeast, then generally south, along the western edge of the Eola Hills until it intersects Old Bethel Road at a point just north of the Polk County line; then

(12) Follow Old Bethel Road, which becomes Oak Grove Road, south until it intersects with the 200-foot contour line just northwest of the township of Bethel; then

(13) Follow the 200-foot contour line around in a southeasterly loop until it again intersects Oak Grove Road where Oak Grove and Zena Roads intersect; then

(14) Follow Oak Grove Road south until it intersects with Frizzell Road; then

(15) Follow Frizzell Road west for three-tenths mile until it intersects with the 200-foot contour line; then

(16) Follow the 200-foot contour line generally south until it intersects with the starting point on the Rickreall, Oregon, map.

Signed: August 6, 2003.

Arthur J. Libertucci,

Administrator.

[FR Doc. 03–22762 Filed 9–5–03; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV 045–0070b; FRL–7548–1]

Revisions to the Nevada State Implementation Plan, Clark County Air Quality Management Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Clark County Air Quality Management Board (CCAQMB) portion of the Nevada State Implementation Plan (SIP). The revisions concern the emission of particulate matter (PM–10) from residential wood combustion. We are proposing to approve the local rules (building code provisions) that regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 8, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov*.

You can inspect a copy of the submitted rule (building code provisions) revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see a copy of the submitted provisions and TSD at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, NW., Washington, DC. 20460.

Nevada Division of Environmental Protection, 333 West Nye Lane, Room 138, Carson City, NV 89706.

Clark County Air Quality Management Board, 500 South Grand Central Parkway, Las Vegas, NV 89155.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX; (415) 947–4118.

SUPPLEMENTARY INFORMATION: This proposal addresses the approval of local Clark County Building Code, section 3708; City of Las Vegas Building Code, section 3708; City of North Las Vegas Building Code, section 13.16.150; City of Henderson Building Code section 15.40.010. In the Rules section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: July 29, 2003.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 03–22646 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2 and 95

[ET Docket No. 03–137; FCC 03–132]

Exposure to Radiofrequency Electromagnetic Fields

AGENCY: Federal Communications Commission

ACTION: Proposed rule.

SUMMARY: This document seeks comment on proposed amendments to the FCC's rules and regulations relating to compliance of transmitters and facilities with guidelines for human exposure to radiofrequency (RF) energy. These proposals are intended to ensure protection of the public from potentially adverse health effects from RF exposure, while avoiding any unnecessary burden in evaluating compliance with FCC requirements. Several proposals are made regarding the Commission's rules and regulations including proposals related to categorical exclusion from routine evaluation for RF exposure, requirements for evaluation of Specific Absorption Rate (SAR) for certain RF devices, RF evaluation requirements for modular transmitters, labeling requirements for consumer devices, clarifications of responsibilities for evaluating compliance, special considerations regarding occupational exposure to RF fields, procedures for measuring RF fields for evaluating compliance, and other miscellaneous items related to clarification of the FCC's rules for RF exposure.

DATES: Written comments are due December 8, 2003, and reply comments are due January 6, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Cleveland, Office of Engineering and Technology; (202) 418–2422, email: *robert.cleveland@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)*, ET Docket No. 03–137, FCC 03–132, adopted June 12, 2003, and released June 26, 2003. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov*. Alternate formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before December 8, 2003, and reply comments on or before January 6, 2004. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121, May 1, 1998. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

All filings must be addressed to the Commission's Secretary, Office of the

Secretary, Federal Communications Commission. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

Summary of the Notice of Proposed Rule Making

Proposed Changes in the Commission's Rules Regarding Human Exposure to Radiofrequency Electromagnetic Fields

1. The National Environmental Policy Act of 1969 (NEPA) requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment. To meet its responsibilities under NEPA, the Commission has adopted requirements for evaluating the potential environmental impact of its actions. One of several environmental factors that must be considered is human exposure to radiofrequency (RF) energy emitted by FCC-regulated transmitters and facilities.

2. In 1996 and 1997, the Commission established its most recent comprehensive guidelines for evaluating the environmental impact of RF energy. These guidelines include limits for Maximum Permissible Exposure (MPE), including limits for both whole-body and partial-body exposures. The Commission's guidelines were based on recommendations from expert scientific bodies as well as on guidance received from Federal agencies with responsibility for protecting the public health and for worker safety.

3. Since adoption and implementation of its guidelines, the Commission has determined that certain revisions and changes may be needed in the procedures and regulations used in ensuring compliance with the RF exposure guidelines. For example, additional transmitters and devices under FCC jurisdiction may be eligible for categorical exclusion from routine evaluation while others may have been inappropriately excluded. Also, certain criteria used for categorical exclusion should be harmonized to govern similar facilities in different services. In addition, it appears that certain aspects of the Commission's RF exposure rules may require revision to clarify the responsibilities of licensees and grantees and to ensure compliance in a more practical, consistent and efficient manner.

4. This *NPRM* makes several proposals to accomplish these goals, and Commission is requesting comment on all of the proposals. These proposals are related only to the Commission's implementation of procedures for compliance with the adopted limits for human exposure from fixed, mobile and portable transmitters regulated by the FCC. This *NPRM* does not invite comment regarding the exposure limits themselves, which have been developed in conjunction with other organizations and agencies that have primary expertise in health and safety.

Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making (NPRM).* Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in this *NPRM.* The Commission will send a copy of this *NPRM,* including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).[2]

A. Need for, and Objectives of, the Proposed Rules

6. The National Environmental Policy Act of 1969 (NEPA) requires agencies of the Federal Government to evaluate the effects of their actions on the quality of the human environment.[3] To meet its responsibilities under NEPA, the Commission has adopted requirements for evaluating the environmental impact of its actions. One of several environmental factors addressed by these requirements is human exposure to radiofrequency (RF) energy emitted by FCC-regulated transmitters, facilities and devices.[4]

7. The *NPRM* proposes to amend parts 1 and 2 of our rules relating to the compliance of FCC regulated transmitters, facilities, and devices with the guidelines for human exposure to radiofrequency (RF) energy adopted by the Commission in 1996 and 1997. Specifically we are proposing to make certain revisions in our rules that we believe will result in more efficient, practical and consistent application of compliance procedures.

B. Legal Basis

8. The proposed action is authorized under sections 4(i), 301, 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 303(f) and 303(r).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

9. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[5] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[6] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities.[7] A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration ("SBA").[8]

Experimental Radio Service (Other Than Broadcast)

10. The Commission has not developed a definition of small entities

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 603(a).

[3] National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321–4335.

[4] *See* 47 CFR 1.1307(b).

[5] 5 U.S.C. 603(b)(3).

[6] 5 U.S.C. 601(6).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[8] 15 U.S.C. 632.

applicable to experimental licensees. Therefore, the applicable definition of small entity is the definition under the Small Business Administration (SBA) rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing fewer than 1,500 persons. The Commission is unable at this time to make a precise estimate of the number of Experimental Radio Services which are small businesses.

11. The majority of experimental licenses are issued to companies such as Motorola and Department of Defense contractors such as Northrop, Lockheed and Martin Marietta. Businesses such as these may have as many as 200 licenses at one time. The majority of these applications are from entities such as these. Given this fact, the remaining 30 percent of applications, we assume, for purposes of our evaluations and conclusions in this FRFA, will be awarded to small entities, as that term is defined by the SBA.

12. The Commission processes approximately 1,000 applications a year for experimental radio operations. About half or 500 of these are renewals and the other half are for new licenses. We do not have adequate information to predict precisely how many of these applications will be impacted by our proposed rule revisions. However, based on the above figures we estimate that as many as 300 of these applications could be from small entities and potentially could be impacted.

Mass Media Services

13. Experimental Broadcast Stations; Low Power TV, TV Translator and TV Booster Stations; Instructional Television Fixed Service; FM Broadcast Translator Stations and FM Booster Stations. These services involve a variety of transmitters, generally used to relay broadcast programming to the public (through translator and booster stations) or within the program distribution chain (*e.g.*, from a remote news gathering unit back to the station), although the latter service is not affected by this proceeding. The applicable definitions of small entities are those, noted previously, under the SBA rules and are applicable to radio broadcasting stations and television broadcasting stations.[9]

14. The Commission estimates that there are approximately 2,700 translators and boosters. The Commission does not collect financial information on any broadcast facility, and the Department of Commerce does not collect financial information on these broadcast facilities. We recognize that most commercial translators and boosters are owned by a parent station which, in some cases, would be covered by the revenue definition of small business entity discussed above. These stations would likely have annual revenues that exceed the SBA maximum to be designated as a small business (either $5 million for a radio station or $10.5 million for a TV station). Furthermore, they do not meet the Small Business Act's definition of a "small business concern" because they are not independently owned and operated.[10]

15. There are presently 2032 ITFS licensees. All but 100 of these licensees are held by educational institutions. Educational institutions are included in the definition of a small business. We do not, however, collect annual revenue data for ITFS licensees and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Therefore, we conclude that at least 1932 ITFS licensees are small businesses. All of these licensees could be impacted by the rule revisions proposed with respect to categorical exclusion and labeling requirements for subscriber transceivers.

16. Multipoint Distribution Service (MDS). This service has historically provided primarily point-to-multipoint, one-way video services to subscribers.[11] The Commission recently amended its rules to allow MDS licensees to provide a wide range of high-speed, two-way services to a variety of users.[12] In connection with the 1996 MDS auction, the Commission defined small businesses as entities that had annual average gross revenues for the three preceding years not in excess of $40 million.[13] The Commission established this small business definition in the context of this particular service and with the approval of the SBA.[14] The MDS auction resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs).[15] Of the 67 auction winners, 61 met the definition of a small business. At this time, we estimate that of the 61 small business MDS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent MDS licensees that are considered small entities.[16] After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 MDS licensees that are defined as small businesses under either the SBA or the Commission's rules. These small business licensees may be affected by the proposals in this NPRM pertaining to categorical exclusion and labeling.

Maritime Services

17. The proposed rules would not change the current rules that affect licensees using ship earth stations in the Maritime Services. The Commission has not developed a definition of small entities applicable to licensees of ship earth stations. Therefore, the Commission is unable at this time to make a precise estimate of the number of licensees of ship earth stations which are small businesses.

International Services

18. The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is generally the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC).[17] This definition provides that a small entity is expressed as one with $11.0 million or less in annual receipts.[18] According to the Census Bureau, there were a total of 848 communications services providers,

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[9] 13 CFR 121.201, NAICS codes 513111 and 513112.

[10] 15 U.S.C. 632.

[11] For purposes of this item, MDS includes both the single channel Multipoint Distribution Service (MDS) includes Local Multipoint Distribution Service (LMDS), and the Multichannel Multipoint Distribution Service (MMDS).

[12] *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, 13 FCC Rcd 19112 (1998), *recon.*, 14 FCC Rcd 12764 (1999), *further recon.*, 15 FCC Rcd 14566 (2000).

[13] 47 CFR 21.961 and 1.2110.

[14] *Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding*, 10 FCC Rcd 9589, 9670 (1995), 60 FR 36524 (July 17, 1995).

[15] Basic Trading Areas (BTAs) were designed by Rand McNally and are the geographic areas by which MDS was auctioned and authorized. *See id.* At 9608.

[16] 47 U.S.C. 309(j). (Hundreds of stations were licensed to incumbent MDS licensees prior to implementation of section 309(j) of the Communications Act of 1934, 47 U.S.C. 309(j). For these pre-auction licenses, the applicable standard is SBA's small business size standard for "other telecommunications" (annual receipts of $11 million or less). *See* 13 CFR 121.201.

[17] An exception is the Direct Broadcast Satellite (DBS) Service, *infra*.

[18] 13 CFR 121.201, NAICS codes 48531, 513322, 51334, and 51339.

NEC, in operation in 1992, and a total of 775 had annual receipts of less than $10.0 million.[19] The Census report does not provide more precise data.

International Broadcast Stations. Commission records show that there are 17 international high frequency broadcast station authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of international high frequency broadcast stations that would constitute a small business under the SBA definition. Since all international broadcast stations operate using relatively high power levels, it is likely that they could all be impacted by our rule revisions.

Fixed Satellite Transmit/Receive Earth Stations. There are approximately 2,784 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition. However, the majority of these stations could be impacted by our revised rules.

Fixed Satellite Small Transmit/Receive Earth Stations. There are approximately 2,784 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations. We do not request nor collect annual revenue information, and are unable to estimate the number of fixed small satellite transmit/receive earth stations that would constitute a small business under the SBA definition. However, the majority of these stations could be impacted by our revised rules.

Fixed Satellite Very Small Aperture Terminal (VSAT) Systems. These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. There are 492 current VSAT System authorizations. We do not request nor collect annual revenue information, and are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition. However, it is expected that many of these stations could be impacted by our revised rules.

Mobile Satellite Earth Stations. There are 15 licensees. We do not request nor collect annual revenue information, and are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition. However, it is expected that many of these stations could be impacted by our revised rules.

Wireless and Commercial Mobile Services

19. Cellular Licensees. Neither the Commission nor the SBA has developed a definition of small entities specific to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This provides that a small entity is a radiotelephone (wireless) company employing no more than 1,500 persons.[20] According to the Census Bureau, only twelve radiotelephone (wireless) firms from a total of 1,178 such firms which operated during 1992 had 1,000 or more employees.[21] Even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. In addition, we note that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. According to the most recent *Telecommunications Reporting Worksheets* data, 806 wireless telephony providers reported that they were engaged in the provision of either cellular service, Personal Communications Service (PCS) services, and SMR telephony carriers, which are placed together in the data.[22] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under the SBA's definition. We estimate that there are fewer than 806 small wireless service providers that may be affected by these revised rules. All may be impacted by these proposed rule revisions.

Private and Common Carrier Paging. In the Paging *Third Report and Order*, we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[23] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years.[24] The SBA has approved these definitions.[25] An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000.[26] Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. At present, there are approximately 24,000 Private-Paging site-specific licenses and 74,000 Common Carrier Paging licenses. According to the most recent *Telecommunications Industry Revenue* data, 172 carriers reported that they were engaged in the provision of either paging or "other mobile" services, which are placed together in the data.[27] We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and therefore are unable at this time to estimate with greater precision the number of paging carriers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are fewer than 172 small paging carriers that may be affected by these revised rules. We estimate that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition. All may be impacted by these proposed rule revisions.

Specialized Mobile Radio (SMR). Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small business" for purposes of auctioning 900 MHz SMR licenses, 800 MHz SMR licenses for the upper 200 channels, and 800 MHz SMR licenses for the lower 230 channels on the 800 MHz band, as a firm that has had average annual gross revenues of $15 million or less in the

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[19] *1992 Economic Census Industry and Enterprise Receipts Size Report*, Table 2D, NAICS codes 48531, 513322, 51334, and 513391 (U.S. Bureau of the Census data under contract to the Office of Advocacy of the U.S. Small Business Administration).

[20] 13 CFR 121.201, NAICS code 513322.

[21] *1992 Census, Series UC92-S-1*, at Table 5, NAICS code 513322.

[22] *Trends in Telephone Service*, Table 16.3 (December 2000).

[23] *220 MHz Third Report and Order*, 62 FR 16004 (April 3, 1997), at paragraphs 291–295.

[24] 700 MHz Guard Band Auction Closes," Public Notice, 15 FCC Rcd 18026 (2000).

[25] "Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems," Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98–107 (1999).

[26] "Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems," Memorandum Opinion and Order on Reconsideration and Third Report and Order, 14 FCC Rcd 10030, at paragraph 98 (1999).

[27] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

three preceding calendar years.[28] The SBA has approved this small business size standard for the 800 MHz and 900 MHz auctions.[29] Sixty winning bidders for geographic area licenses in the 900 MHz SMR band qualified as small business under the $15 million size standard. The auction of the 525 800 MHz SMR geographic area licenses for the upper 200 channels began on October 28, 1997, and was completed on December 8, 1997.[30] Ten winning bidders for geographic area licenses for the upper 200 channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard.[31] An auction of 800 MHz SMR geographic area licenses for the General Category channels began on August 16, 2000 and was completed on September 1, 2000. Of the 1,050 licenses offered in that auction, 1,030 licenses were sold. Eleven winning bidders for licenses for the General Category channels in the 800 MHz SMR band qualified as small business under the $15 million size standard. In an auction completed on December 5, 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were sold. Of the 22 winning bidders, 19 claimed small business status. Thus, 40 winning bidders for geographic licenses in the 800 MHz SMR band qualified as small businesses. In addition, there are numerous incumbent site-by-site SMR licenses on the 800 and 900 MHz band. All may be impacted by these proposed rule revisions.

Private Land Mobile Radio (PLMR). PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. Therefore, the Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules.

Fixed Microwave Services. Microwave services include common carrier,[32] private-operational fixed,[33] and broadcast auxiliary radio services.[34] At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this FRFA, we will use the SBA's definition applicable to radiotelephone (wireless) companies—*i.e,* an entity with no more than 1,500 persons.[35] We estimate that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone (wireless) companies. Some of these services could be impacted by the proposed revisions of our rules, particularly those which utilize consumer subscriber transceivers that may be subject to labeling requirements.

Personal Radio Services. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. The services include the citizen's band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS).[36] Since the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. We are unable at this time to estimate the number of other licensees that would qualify as small under the SBA's definition. However, in general, there should be little impact of these proposed rule revisions on these services.

Wireless Communications Services. This service can be used for fixed, mobile, radiolocation and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions.[37] The FCC auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees which could be impacted includes these eight entities.

Local Multipoint Distribution Service. The Commission defined "small entity" for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[38] An additional classification for "very small business" was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[39] These regulations defining "small entity" in the context of LMDS auctions have been approved by the SBA.[40] There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses will include the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers as defined by the SBA and the Commission's auction rules. The LMDS service could be impacted by the proposed revisions of our rules, particularly with respect to consumer subscriber transceivers that may be subject to labeling requirements.

[28] 47 CFR 90.814(b)(1).

[29] *See* Letter to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (August 10, 1999).

[30] *See* Letter to Daniel B. Phython, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (October 27, 1997).

[31] *Id.*

[32] 47 CFR 101 *et seq.* (formerly, part 21 of the Commission's rules).

[33] Persons eligible under parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[34] Auxiliary Microwave Service is governed by part 74 of Title 47 of the Commission's rules. *See* 47 CFR 74 *et seq.* As discussed earlier, there should be no impact on this class of transmitters.

[35] 13 CFR 121.201, NAICS codes 513321, 513322, 51333.

[36] Licensees in the Citizens Band (CB) Radio Service, General Mobile Radio Service (GMRS), Radio Control (R/C) Radio Service and Family Radio Service (FRS) are governed by subpart D, subpart A, subpart C, and subpart B, respectively, of part 95 of the Commission's rules. 47 CFR 95.401 through 95.428; 95.1 through 95.181; 95.201 through 95.225; 47 CFR 95.191 through 95.194.

[37] *See* Letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division from A. Alvarez, Administrator, SBA (December 2, 1998).

[38] *See* Local Multipoint Distribution Service, *Second Report and Order*, 12 FCC Rcd 12545 (1997).

[39] *Id.*

[40] *See* Letter to Daniel Phythyon, Chief, Wireless Telecommunications Bureau (FCC) from A. Alvarez, Administrator, SBA (January 6, 1998).

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

20. The proposals being made in this item may require additional reporting regarding compliance with our RF exposure limits for certain facilities, operations and transmitters, such as some wireless base stations and some antennas at multiple transmitter sites. In other cases, current reporting requirements are being relaxed. Also, we are proposing to require that in order for the occupational/controlled SAR or MPE limits to be used in evaluating compliance for a portable or mobile device, certain conditions must be met, that may include placing a label on a device that provides a user with specific information on RF exposure. We are also proposing that a sample of the label and instructional material be filed with the Commission along with the application for equipment authorization.

21. We are also proposing to adopt a general labeling requirement for certain high-gain subscriber across all services that will be consistent and ensure compliance of consumer products with our RF safety guidelines. When equipment authorization is required, we are proposing that a sample of the label and illustrations showing its location should be filed with the Commission along with the application for a grant of equipment authorization.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

22. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[41] In this proceeding, our proposals are consistent with (2), in that our goal is making our RF rules more consistent and clarifying certain areas that have created confusion in the past. In addition, due to our revisions in our policy on categorical exclusions, we are providing exemptions from routine RF evaluation for many small entities that should reduce the overall impact on small entities (see number 4 of this paragraph).

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

23. None.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Environmental impact statements.

47 CFR Parts 2 and 95

Communications equipment, Reporting and recordkeeping requirements.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rules

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR parts 1, 2 and 95 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154, 303, and 309(j) unless otherwise noted.

2. Section 1.1307 is amended by revising paragraph (b)(1) and the table that immediately follows it, and by revising paragraph (b)(2) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(1) The appropriate exposure limits in §§ 1.1310 and 2.1093 of this chapter are generally applicable to all facilities, operations and transmitters regulated by the Commission. However, a determination of compliance with the exposure limits in § 1.1310 or § 2.1093 of this chapter (routine environmental evaluation), and preparation of an EA if the limits are exceeded, is necessary only for the facilities, operations and transmitters indicated in table l; or those specified in paragraph (b)(2) of this section. All other facilities, operations and transmitters are categorically excluded from making such studies or preparing an EA, except as indicated in paragraphs (b)(1)(ii), (c) and (d) of this section. The term *power* in column 2 of table 1 refers to total operating power of the transmitting operation in question in terms of effective radiated power (ERP), effective isotropically radiated power (EIRP), or peak envelope power (PEP), as defined in § 2.1 of this chapter.

The phrase *total transmit power of all channels* when used in column 2 of table 1 means the sum of the ERP or EIRP of all co-located simultaneously operating transmitters owned and operated by a single licensee. When applying criteria of table 1, radiation in all directions should be considered. For the case of transmitting facilities using sectorized transmitting antennas, the criteria are to be applied to all transmitting channels in a given sector, noting that for a highly directional antenna there is relatively little contribution to ERP or EIRP summation for other directions. See § 1.1310 for general information on compliance with the FCC's limits for RF exposure.

(i) Table 1 applies to "fixed" transmitters. For purposes of applying these rules, a fixed transmitter is defined as one that is physically secured at one location and is not able to be easily moved to another location. This definition includes transmitters that are physically secured at one location on a temporary basis. An example of this latter case would be a wireless base station installed temporarily to accommodate increased call volume at a special event.

(ii) Fixed transmitters in any service are not required to undergo routine environmental evaluation for RF exposure, and the provisions of table 1 do not apply, if the transmitter is mounted such that persons cannot be closer than 20 cm from any part of the radiating structure and if the operating power of the transmitter is less than 1.5 W effective radiated power (ERP), for transmitters operating at frequencies at or below 1.5 GHz, or less than 3 W ERP for operating frequencies above 1.5 GHz. Compliance with exposure guidelines for fixed transmitters can be accomplished by the use of labels specifying minimum separation distance and/or proper antenna installation.

(iii) *Labeling requirements*: With the exception of paragraph (b)(1)(iv) of this section, licensees in service categories with labeling requirements are required to attach a label to a fixed subscriber transceiver antenna if:

(A) The transceiver is mounted such that persons cannot be closer than 20 cm from any part of the radiating structure and the operating power of the transmitter is greater than 1.5 W ERP, for transmitters operating at frequencies at or below 1.5 GHz, or greater than 3

[41] 5 U.S.C. 603(c).

W ERP for operating frequencies above 1.5 GHz; or,

(B) The transceiver is designed with the potential to be mounted closer than 20 cm from the body or from nearby persons and the operating power is greater than 100 mW conducted or radiated peak power. The label must provide adequate notice regarding potential radiofrequency safety hazards, *e.g.*, information regarding the safe minimum distance required between users and antennas; and reference the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310. Such labels must be clearly visible and legible to nearby persons.

(iv) Labels are not required on any fixed subscriber transceiver antennas if it can be demonstrated that the appropriate partial body SAR limits specified in § 2.1093 of this chapter cannot be exceeded by persons immediately adjacent to the antenna. Also, labels are not required on any fixed subscriber transceiver antenna if the transmitter is mounted such that persons can never be closer than 20 cm from any part of the radiating structure and the device can be shown to comply with the MPE limits for field strength and/or power density at a distance of 20 cm or more.

TABLE 1.—FIXED TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if:
Experimental Radio Services (part 5)	(1) Transmit power is 100 W ERP (164 W EIRP) or more or (2) Separation distance is less than 3 m.
Multipoint Distribution Service (subpart K of part 21).	(1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m. *Labeling:* In addition, MDS licensees are required to comply with the labeling requirements set forth in §§ 1.1307(b)(1)(iii) and (iv).
Paging and Radiotelephone Service (subpart E of part 22).	(1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) for VHF, UHF, and 900 MHz channels, or greater than 200 W ERP (328 W EIRP) for 2.1 GHz channels or (2) Separation distance is less than 3 m.
Cellular Radiotelephone Service (subpart H of part 22).	(1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m.
Personal Communications Services (part 24)	*Narrowband PCS (subpart D):* (1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m. *Broadband PCS (subpart E):* (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP). (2) Separation distance is less than 3 m.
Satellite Communications (part 25)	All Included. *For DARS terrestrial repeater stations only:* (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m. *Labeling:* In addition, for NGSO subscriber equipment, licensees are required to comply with the labeling requirements set forth in §§ 1.1307(b)(1)(iii) and (iv).
Wireless Communications Service (part 27)	*700 MHz service:* (1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m. *2.3 GHz service:* (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m.
Radio Broadcast Services (part 73)	All included, except subpart G. *For subpart G only:* Separation distance less than 3 m (assuming ERP 100 W or less).
Experimental, auxiliary, and Broadcast and other program Distributional services (part 74).	*Subparts A, G, L:* (1) Transmit power is greater than 100 W ERP (164 W special EIRP) or (2) Separation distance is less than 3 m. *Subpart I:* (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m.

TABLE 1.—FIXED TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION—Continued

Service (title 47 CFR rule part)	Evaluation required if:
	Labeling: In addition, ITFS licensees are required to comply with the labeling requirements set forth in §§ 1.1307(b)(1)(iii) and (iv).
Stations in the Maritime Services (part 80)	Ship earth stations only.
Private Land Mobile Radio Services Paging Operations & Specialized Mobile Radio (part 90).	(1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m.
Amateur Radio Service (part 97)	Transmitter output power levels specified in § 97.13(c)(1) of this chapter.
Fixed Microwave Service (part 101)	*For frequencies at or below 1500 MHz:* (1) Separation distance is less than 10 m and transmit power is greater than 100 W ERP (164 W EIRP) or (2) Separation distance is less than 3 m. *For frequencies above1500 MHz:* (1) Separation distance is less than 10 m and transmit power is greater than 200 W ERP (328 W EIRP) or (2) Separation distance is less than 3 m. *Labeling:* In addition, licensees in the LMDS, 24 GHz and DEMS, and 39 GHz Service are required to comply with the labeling requirements set forth in §§ 1.1307(b)(1)(iii) and (iv).

Note to Table 1: The term "separation distance" in Table 1 is defined to mean the minimum distance from any part of the radiating structure of a transmitting antenna in any direction to any area that may be entered by a member of the general public. Workers meeting the criteria for occupational/controlled exposures may access such areas consistent with appropriate engineering and/or administrative controls that result in compliance with FCC occupational/controlled limits without triggering the need for routine evaluation.

(2) Except as provided under §§ 2.1091 and 2.1093, mobile and portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Services (PCS), the Satellite Communications Services, the Wireless Communications Service, the Maritime Services (ship earth stations only), and the Specialized Mobile Radio Service authorized under subpart H of parts 22, 24, 25, 27, 80, and 90, respectively, of this chapter, are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter. Cordless telephones and portable transmitters, millimeter devices, unlicensed PCS and unlicensed NII devices authorized under §§ 15.247, 15.253, 15.255, 15.319 and 15.407 of this chapter are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. However, routine evaluation for portable devices authorized under § 15.247 of this chapter is required only if the maximum peak output power of the device exceeds 100 milliwatts (100 mW). Portable transmitting equipment for use in the Wireless Medical Telemetry Service (WMTS) authorized under part 95 of this chapter is subject to routine environmental evaluation as specified in §§ 2.1093 and 95.1125 of this chapter. Equipment authorized for use in the Medical Implant Communications Service (MICS) as a medical implant transmitter (as defined in Appendix 1 to subpart E of part 95 of this chapter) is subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in § 2.1093 of this chapter. All other mobile, portable and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure under §§ 2.1091 and 2.1093 of this chapter prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d).

* * * * *

3. Section 1.1310 is amended by revising the introductory text, by removing notes 1 and 2 to table 1, and by adding paragraphs (a), (b), (c), and (d) to read as follows:

§ 1.1310 Radiofrequency radiation exposure limits.

The limits for Maximum Permissible Exposure (MPE) specified below and in table 1 shall be used to evaluate the environmental impact of human exposure to radiofrequency (RF) radiation as specified in § 1.1307(b). In the case of portable devices, as defined in § 2.1093 of this chapter, and fixed transmitters that are mounted so that persons may normally be within 20 cm of any part of the radiating structure, the MPE values listed in table 1 are not appropriate for evaluation of exposure and such evaluations must be performed according to the provisions of § 2.1093 of this chapter. The MPE values in table 1 are derived from a Specific Absorption Rate (SAR) limit for occupational/controlled exposure of 0.4 W/kg, as averaged over the whole body, and an SAR limit for general population/uncontrolled exposure of 0.08 W/kg, as averaged over the whole body. In addition, the Commission has adopted exposure limits for spatial peak SAR. In general, and in lieu of compliance with the MPE values in table 1, compliance can also generally be demonstrated with respect to the allowed limits for SAR. The SAR limits for occupational/controlled exposure are 0.4 W/kg, as averaged over the whole body, and a spatial peak SAR of 8 W/kg, averaged over any 1 gram of tissue (defined as a tissue volume in the shape of a cube); exceptions are the hands, wrists, feet and ankles where the spatial peak SAR limit is 20 W/kg, as averaged over any 10 grams of tissue (defined as a tissue volume in the shape of a cube). The SAR limits for general population/uncontrolled exposure are 0.08 W/kg, as averaged over the whole body, and a spatial peak SAR of 1.6 W/kg, averaged over any 1 gram of tissue (defined as a tissue volume in the shape of a cube); exceptions are the hands, wrists, feet and ankles where the spatial peak SAR limit is 4 W/kg, as averaged over any 10 grams of tissue (defined as a tissue volume in the shape of a cube). Detailed information on evaluating compliance with these exposure limits can be found in the FCC's OET Bulletin Number 65, "Evaluating Compliance with FCC-Specified Guidelines for Human Exposure to Radiofrequency Electromagnetic Fields," and in the

supplements to Bulletin 65, all available at the FCC's Internet Web site: *www.fcc.gov/oet/rfsafety.*

Note to Introductory Paragraph: These limits are generally based on recommended exposure guidelines published by the National Council on Radiation Protection and Measurements (NCRP) in "Biological Effects and Exposure Criteria for Radiofrequency Electromagnetic Fields," NCRP Report No. 86, Sections 17.4.1, 17.4.1.1, 17.4.2 and 17.4.3. Copyright NCRP, 1986, Bethesda, Maryland 20814. In the frequency range from 100 MHz to 1500 MHz, exposure limits for field strength and power density are also generally based on guidelines recommended by the American National Standards Institute (ANSI) in Section 4.1 of "IEEE Standard for Safety Levels with Respect to Human Exposure to Radio Frequency Electromagnetic Fields, 3 kHz to 300 GHz," ANSI/IEEE C95.1–1992. Copyright 1992 by the Institute of Electrical and Electronics Engineers, Inc., New York, New York 10017. Limits for whole body SAR and spatial peak SAR are based on recommendations made in both of these documents.

* * * * *

(a) Occupational/controlled exposure limits apply in situations in which persons are exposed as a consequence of their employment provided those persons are fully aware of the potential for exposure and can exercise control over their exposure. Limits for occupational/controlled exposure also apply in situations when an individual is transient through a location where occupational/controlled limits apply provided he or she is made aware of the potential for exposure. The phrase *fully aware* in the context of applying these exposure limits means that an exposed individual has received written and verbal information fully explaining the potential for RF exposure resulting from his or her employment. With the exception of *transient* individuals, this phrase also means that an exposed individual has received comprehensive training regarding appropriate work practices relating to controlling or mitigating his or her exposure. Such training is not required for *transient* individuals, but they must receive written or verbal information and notification (for example, warning signs) concerning their exposure potential and appropriate means available to mitigate their exposure. The phrase *exercise control* means that an exposed individual is allowed to reduce or avoid exposure by administrative or engineering work practices, such as use of personal protective equipment or time-averaging of exposure.

(b) General population/uncontrolled exposure limits apply in situations in which the general public may be exposed, or in which persons that are exposed as a consequence of their employment may not be fully aware of the potential for exposure or cannot exercise control over their exposure.

(c) Licensees and applicants are generally responsible for compliance with both the occupational/controlled exposure limits and the general population/uncontrolled exposure limits as they apply to transmitters under their jurisdiction. Licensees and applicants should be aware that the occupational/controlled exposure limits apply especially in situations where workers may have access to areas in very close proximity to antennas where access to the general public may be restricted.

(d) Amateur radio station licensees must also take steps to ensure that their stations comply with the exposure limits, as noted in § 1.1307(b), table 1, of this section and in § 97.13(c) of that chapter. For example, for a typical amateur station located at a residence the station licensee and members of his or her immediate household may be evaluated with respect to the occupational/controlled exposure limits, provided the appropriate conditions specified in paragraph (a) of this section. Other nearby persons, such as neighbors, who are not members of the amateur licensee's household must be evaluated with respect to the general population/uncontrolled exposure limits. Similar considerations apply to amateur stations located at places other than a residence.

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

4. The authority citation for Part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

5. Section 2.1091 is amended by revising paragraphs (c), (d) introductory text and (d)(3) to read as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile devices.

* * * * *

(c) Mobile devices that operate in the Cellular Radiotelephone Service, the Personal Communications Service (PCS), the Satellite Communications Services, the Wireless Communications Service, the Maritime Services, the Specialized Mobile Radio Service, authorized under subpart H of part 22, parts 24, 25, 27, 80 (ship earth station devices only), and 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if they operate at frequencies of 1.5 GHz or below and their effective radiated power (ERP) is 1.5 watts or more, or if they operate at frequencies above 1.5 GHz and their ERP is 3 watts or more. Unlicensed personal communications service devices, unlicensed millimeter wave devices and unlicensed NII devices authorized under § 15.253, § 15.255, and subparts D and E of part 15 of this chapter are also subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if their ERP is 3 watts or more or if they meet the definition of a portable device as specified in § 2.1093(b) requiring evaluation under the provisions of that section. All other mobile and unlicensed transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307(c) and 1.1307(d) of this chapter. Applications for equipment authorization of portable transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(1) When antennas for part 15 modular transmitters ("transmitter modules") that operate at power levels of 200 mW or less (peak EIRP or peak conducted output power) are designed to be incorporated into a laptop ("notebook") computer such that they will be located at a distance of at least 20 cm from the body of a user (the configuration necessary to be classified as a mobile device) evaluation of the modular transmitter for compliance with the Commission's RF exposure limits is not required. Evaluation for compliance with the Commission's RF exposure limits is required for modular transmitters operating in excess of 200 mW (peak EIRP or peak conducted output power).

(2) In general, the maximum RF exposure of a combination device (host device plus modules) can be determined by adding the frequency-dependent RF exposure levels of all antennas incorporated within a single combination device that could functionally transmit at the same time. Such antennas can be considered to be

"mobile" transmitting devices for purposes of evaluating compliance as long as the 20 cm separation criterion defined in paragraph (b) of this section is met.

(d) The limits to be used for evaluation of mobile devices are the limits for Maximum Permissible Exposure (MPE) specified in § 1.1310 of this chapter. Appropriate methodologies for evaluating exposure from mobile devices are described in the most current edition of *OET Bulletin 65*. All unlicensed personal communications service (PCS) devices and unlicensed NII devices shall be subject to the limits for general population/uncontrolled exposure.

* * * * *

(3) If appropriate, compliance with exposure guidelines for devices in this section can be accomplished by the use of labels and by providing users with information concerning minimum separation distances from transmitting structures and proper installation of antennas. Labels should be legible and clearly visible to the user of the device. Labels used on devices that are subject to occupational/controlled exposure limits must indicate that the device is for occupational use only, must refer the user to specific information on RF exposure, such as that provided in a user manual, and must note that the label and its information is required for FCC RF exposure compliance. Such instructional material must provide the user with information on how to use the device in order to ensure compliance with the occupational/controlled exposure limits. A sample of the label, illustrating its location on the device, and any instructional material intended to accompany the device when marketed, shall be filed with the Commission along with the application for equipment authorization. For occupational devices, details of any special training requirements pertinent to limiting RF exposure should also be submitted. Holders of grants for mobile devices to be used in occupational settings are encouraged, but not required, to coordinate with end-user organizations to ensure appropriate RF safety training.

* * * * *

6. Section 2.1093 is amended by revising paragraphs (c) and (d)(3) and by adding paragraph (d)(6) to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

* * * * *

(c) Portable devices that operate in the Cellular Radiotelephone Service, the Personal Communications Service (PCS), the Satellite Communications Services, the Wireless Communications Service, the Maritime Services, the Specialized Mobile Radio Service, the Wireless Medical Telemetry Service (WMTS) and the Medical Implant Communications Service (MICS), authorized under subpart H of part 22, parts 24, 25, 27, 80 (ship earth station devices only), and 90, subparts H and I of part 95, and unlicensed personal communication service devices, unlicensed NII devices and millimeter wave devices authorized under subparts D and E, §§ 15.253 and 15.255 of part 15 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. Portable devices authorized under § 15.247 of part 15 of this chapter are subject to routine evaluation for RF exposure prior to equipment authorization or use if the maximum peak output power of the device exceeds 100 milliwatts (100 mW). Evaluation of MICS transmitters may be demonstrated by use of computational modeling or laboratory measurement techniques. Unless otherwise specified in this chapter, other portable transmitting devices are categorically excluded from routine environmental evaluation for RF exposure prior to equipment authorization or use, except as specified in §§ 1.1307 (c) and (d) of this chapter. Applications for equipment authorization of portable transmitting devices subject to routine environmental evaluation must contain a statement confirming compliance with the limits specified in paragraph (d) of this section as part of their application. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(1) Unlicensed transmitters authorized under § 15.247 may be authorized as "transmitter modules" for use in various host devices provided that the configurations and exposure conditions of host products are identified and provided the maximum peak conducted output power is 100 milliwatts (100 mW) or less. Such transmitters may be authorized as modules when they have been shown to comply with our RF exposure guidelines and when it can be demonstrated that the use of the module in additional host devices would not result in non-compliance.

(2) When a modular transmitter ("transmitter module") is designed to be used in a hand-held wireless portable telephone or in a portable digital assistant ("PDA") that can be used in contact with the head or body, and the operating power level of the module is 2 mW or less (peak EIRP or peak conducted output power), if the phone or PDA ("host" device) has been previously shown to be compliant with the Commission's limits for SAR, no additional SAR evaluation of the combined device (host plus module) is required. When a modular transmitter is designed to be used in a hand-held wireless portable telephone or in a PDA that can be used in contact with the head or body, and the operating power level of the module is greater than 2 mW (peak EIRP or peak conducted output power), the combined device (host plus module) must be evaluated for SAR in the normal operating configuration. If the combined device is demonstrated to be in compliance with the Commission's SAR limits, this demonstration of compliance can be applied to such modules designed to be used in similar host devices that have been tested and certified for similar configurations.

(3) When modular transmitters ("transmitter modules") operating at power levels of 10 mW or less (peak EIRP or peak conducted output power) are designed to be used in the keyboard portion of a laptop ("notebook") computer evaluation for compliance with the Commission's limits for SAR is not required.

(4) When modular transmitters ("transmitter modules") operating at power levels of 25 mW or less (peak EIRP or peak conducted output power) are designed to be used in a PDA, designed only to be held in the hand, evaluation for compliance with the Commission's limits for SAR is not required.

(5) When a modular transmitter is designed to be used in a PDA (the "host device") that is only used when held in the hand, and the operating power level of the module is greater than 25 mW (peak EIRP or peak conducted output power), the combined device (host plus module) must be evaluated for SAR in the normal operating configuration. If the combined device is demonstrated to be in compliance with the Commission's SAR limits, this demonstration of compliance can be applied to such modules designed to be used in similar host devices that have been tested and certified for similar configurations.

(6) For a combination device that incorporates at least one modular transmitter in addition to the host transmitter, when the relevant exclusion thresholds described in this section are not applicable, evaluation of SAR of the combination device can be determined by adding the maximum RF exposure

levels of all antennas incorporated within a single combination device that could functionally transmit at the same time.

(d) * * *

(3) Compliance with SAR limits can be demonstrated by either laboratory measurement techniques or by computational modeling. The latter must be supported by adequate documentation. The methodologies that shall be used for evaluating SAR for wireless handsets and similar devices are described in the most current edition of *Supplement C to OET Bulletin 65*, issued by the Commission's Office of Engineering and Technology.

* * * * *

(6) Labels placed directly on portable devices designed only for occupational use can be used as part of an applicant's evidence of compliance with occupational/controlled exposure limits. Such labels should be legible and clearly visible to the user of the device. They must indicate that the device is for occupational use only, refer the user to specific information on RF exposure, such as that provided in a user manual and note that the label and its information is required for FCC RF exposure compliance. Such instructional material must provide the user with information on how to use the device in order to ensure compliance with the occupational/controlled exposure limits. A sample of the label, illustrating its location on the device, and any instructional material intended to accompany the device when marketed, shall be filed with the Commission along with the application for equipment authorization. Details of any special training requirements pertinent to limiting RF exposure should also be submitted. Holders of grants for portable devices to be used in occupational settings are encouraged, but not required, to coordinate with end-user organizations to ensure appropriate RF safety training.

7. Section 95.603 is amended by revising paragraph (f) to read as follows:

§ 95.603 Certification required.

* * * * *

(f) Each Medical Implant Communications Service transmitter (a transmitter that operates or is intended to operate in the MICS) must be certificated except for medical implant transmitters that are not marketed for use in the United States, but which otherwise comply with the MICS technical requirements and are operated in the United States by individuals who have traveled to the United States from abroad. Medical implant transmitters (as defined in appendix 1 to subpart E of part 95 of this chapter) are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307 and 2.1093 of this chapter, as appropriate. Applications for equipment authorization of devices operating under this section must demonstrate compliance with these requirements using either finite difference time domain computational modeling or by laboratory measurement techniques. Where a showing is based on computational modeling, the Commission retains the discretion to request that specific absorption rate (SAR) data also be submitted.

* * * * *

[FR Doc. 03–22624 Filed 9–5–03; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 68, No. 173
Monday, September 8, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Frank Church—River Of No Return Wilderness Noxious Weed Treatments Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare a Supplemental Environmental Impact Statement to the Frank Church—River Of No Return Wilderness (FC–RONR) Wilderness Noxious Weed Treatments Environmental Impact Statement (EIS).

SUMMARY: The Salmon-Challis national Forest, will prepare a Supplemental Environmental Impact Statement (SEIS) to evaluate changed conditions since issuing the August 1999 FC–RONR Wilderness Noxious Weed Treatments EIS and Record of Decision (ROD). The inventoried number of sites and acreages to be treated within the FC–RONR Wilderness will be updated and analyzed. The EIS will also address a long-term integrated weed prevention strategy and use of an additional herbicide (Plateau).

DATES: The Forest Service expects to submit a draft Supplemental EIS by October 2003. The comment period on the Draft SEIS will be 45 days from the date the Notice of Availability is published in the **Federal Register**.

ADDRESSES: Submit written comments concerning this notice to Ken Wotring, Project Coordinator, Salmon-Challis National Forest, 50 Hwy 93 South, Salmon, Idaho, 83467.

FOR FURTHER INFORMATION CONTACT: Ken Wotring at (208) 756–5131 or Howard Lyman at (208) 839–2211.

SUPPLEMENTARY INFORMATION:

Background

The Bitterroot, Nez Perce, Payette and Salmon Challis National Forests administer the Frank Church—River of No Return Wilderness. These National Forests chose to address several issues relative to consistent management of the FC–RONR Wilderness. Most of the issues addressed were recreational in nature. The need for consistent management of noxious weeds within the Wilderness was also addressed. A Draft EIS was released in January 1998. Public comment was extremely polarized regarding the recreational issues. Many individuals and interests were concerned that the Alternatives displayed in the DEIS would institute excessively harsh measures to address management of recreational use. On the other hand, public support for an aggressive noxious weeds program was evident in the comments received on this issue.

The Forest Supervisors decided upon a two-prong approach in response to those public comments. (1) They would issue a Supplemental Draft to evaluate additional management actions to respond to public concerns prior to development of a FEIS for revision of the FC-RONRW Management Plan. (2) They would issue a Final Weeds EIS and ROD responsive to public support for a consistent noxious weeds program.

August 1999 FC–RONR Wilderness Noxious Weed Treatment Final Environmental Impact Statement (Weeds FEIS) and Record of Decision

The Weeds FEIS proposed action was to treat 300 sites encompassing 1,775 acres beginning in 1999 and up until the FEIS for revising the FC–RONRW Management Plan was completed. The Record of Decision (ROD) for the Weeds FEIS deferred addressing non-treatment practices, including coordination, education, prevention and inventory in the Management Plan Revision FEIS.

The Weeds ROD selected Alternative 2, which consisted of an Aggressive Integrated Weed Treatment Wilderness-wide. Specific actions included:

- Controlling weed populations through a combination of manual, chemical and biological methods;
- Implementing restoration following control methods; and
- Monitoring.

This decision was appealed, and while the Regional Forester upheld the Forests, direction to the Forests reaffirmed the earlier commitment to complete a Noxious Weeds Prevention Strategy as part of the non-treatment practices to be addressed in the revision of the Management Plan FEIS.

The Forests implemented an integrated weed management strategy and committed to readdress non-treatment practices, specifically the Prevention Strategy in the Management Plan FEIS.

Changed Conditions and a New Approach

The 1999 Weed FEIS analysis was based on nearly 300 inventoried sites encompassing 1,775 acres. The Weed FEIS evaluated, and the ROD adopted, an Adaptive Strategy for future treatment of new weed invasions and expansion of existing infestations. Extensive wildfires burned over ½ million acres in and adjacent to the FC–RONR Wilderness during the summer of 2000 and accelerated expansion of noxious weeds into those fire distrubed areas. Recent inventories document sites encompassing 5,204 acres. Therefore, a Supplemental analysis to the Noxious Weeds EIS will be prepared to address the changed conditions. The SEIS will also address an additional herbicide for use in Noxious Weed control (Plateau). Finally, the SEIS will address a Noxious Weed Prevention Strategy for the FC–RONR Wilderness.

Timelines

The Draft SEIS is expected to be available for public review in October 2003. The comment period on the Draft SEIS will be 45 days from the Notice of Availability in the **Federal Register**. It is very important that those interested in this analysis participate at that time. To be most helpful, comments on the DSEIS should be as specific as possible. The Final SEIS is scheduled for completion in January 2004. At that time, we will release the Final SEIS along with the Record of Decision (ROD). A 45-day appeal period will follow as required pursuant to 36 CFR 215. Implementation of the decision can occur 5 days following release of the ROD if not appealed or after a favorable appeal decision.

Submitting Comments

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National

Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Authority

The Salmon-Challis National Forest Supervisor has determined that preparation of a Supplemental EIS (Draft and Final) is required in order to address changed conditions and prior agency commitments, under CEQ regulations implementing the National Environmental Policy Act (40 CFR 1501–1508). The Supplemental EIS will address a proposal by the Salmon-Challis, Bitterroot, Payette and Nez Perce National Forests to address weeds management as described above. That portion of the Boise National Forest that falls within the FC–RONRW is proposed and will be administered by the Salmon-Challis National Forest.

Responsible Official

I am the responsible official for release of the Notice of Intent to prepare this Draft Supplemental Environmental Impact Statement. My address is Salmon-Challis National Forest, 50 Hwy 93 South, Salmon, Idaho 83467. In addition to myself, Deciding Officials will include: Mark Madrid, Forest Supervisor Payette National Forest; Bruce Bernhardt, Forest Supervisor Nez Perce National Forest and Dave Bull, Forest Supervisor Bitterroot National Forest.

Dated: August 29, 2003.

Lesley W. Thompson,

Acting Forest Supervisor, Salmon-Challis National Forest.

[FR Doc. 03–22677 Filed 9–5–03; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by November 7, 2003.

FOR FURTHER INFORMATION CONTACT: Richard Annan, Acting Director, Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 5168 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0737. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION: *Title:* Seismic Safety of New Building Construction.

OMB Control Number: 0572–0099.

Type of Request: Extension of a currently approved information collection.

Abstract: The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*) was enacted to reduce risks to life and property through the National Earthquake Hazards Reduction Program (NEHRP). The Federal Emergency Management Agency (FEMA) is designated as the agency with the primary responsibility to plan and coordinate the NEHRP. This program includes the development and implementation of feasible design and construction methods to make structures earthquake resistant. Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, requires that measures to assure seismic safety be imposed on federally assisted new building construction.

Title 7 Part 1792, Subpart C, Seismic Safety of Federally assisted New Building Construction, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by RUS or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB. This subpart implements and explains the provisions of the loan contract utilized by the RUS for both electric and telecommunications borrowers and by the RTB for its telecommunications borrowers requiring construction certifications affirming compliance with the standards.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 hours per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 1.2.

Estimated Total Annual Burden on Respondents: 800.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Development and Regulatory Analysis, at (202) 720–0812.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to Richard Annan, Acting Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 5168 South Building, Washington, DC 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Hilda Gay Legg,

Administrator, Rural Utilities Service.

[FR Doc. 03–22753 Filed 9–5–03; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Business Development Mission to Brazil

AGENCY: Department of Commerce.

ACTION: Notice to Announce Business Development Mission to Brazil, November 9–13, 2003.

SUMMARY: Deputy Secretary of Commerce Samuel W. Bodman, and Assistant Secretary of Commerce for Market Access and Compliance William Lash, will lead a senior-level business development mission to Sao Paulo, Brasilia and Recife, Brazil from November 9–13, 2003. The focus of the mission will be to help U.S. companies explore trade and investment opportunities in Brazil. The delegation will include approximately 10–15 U.S.-based senior executives of small, medium and large U.S. firms representing, but not limited to, technology, equipment, and services in the following key growth sectors: infrastructure (port, rail, construction), information technology, security, agribusiness and biotechnology.

DATES: Applications should be submitted to the Office of Business Liaison by October 3, 2003. Applications received after that date

will be considered only if space and scheduling constraints permit.

FOR FURTHER INFORMATION CONTACT: Office of Business Liaison; Room 5062; Department of Commerce; Washington, DC 20230; Tel: (202) 482–1360; Fax: (202) 482–4054.

SUPPLEMENTARY INFORMATION:

Business Development Mission to Brazil

November 9–13, 2003

I. Description of the Mission

Deputy Secretary of Commerce Samuel W. Bodman, and Assistant Secretary of Commerce for Market Access and Compliance William Lash, will lead a senior-level business development mission to Sao Paulo, Brasilia and Recife, Brazil from November 9–13, 2003. The focus of the mission will be to help U.S. companies explore trade and investment opportunities in Brazil. The delegation will include approximately 10–15 U.S.-based senior executives of small, medium and large U.S. firms representing, but not limited to, technology, equipment, and services in the following key growth sectors: infrastructure (port, rail, construction), information technology, security, agribusiness and biotechnology.

II. Commercial Setting for the Mission

Brazil is the largest market in the Western Hemisphere after the United States, with 180 million people and a GDP of over $450 billion. Total trade between the United States and Brazil has held steady at about $30 billion per year. In 2002, Brazil had a $13 billion surplus with the world ($3.4 billion with the U.S.) as a result of an aggressive export strategy, relatively favorable exchange rate regime, and strong agricultural exports.

Brazil offers substantial opportunities for U.S. firms due to the sheer size and sophistication of its internal market. Developing Brazil's infrastructure is a priority for the Lula Administration, and is key to modernizing the underdeveloped Northeast region of the country, as well as furthering efficiency in the Brazil's industrial zones. The Brazilian federal government and many individual states are moving forward on a variety of infrastructure development projects backed by multilateral lending institutions, focusing on transportation and construction. Development of Brazil's technology sector—both information technology and biotechnology—is another priority for the Lula government. Strong links between the research and industry communities offer a wealth of business opportunities across the country. Brazil also has advanced genetic and biotechnology research sectors with a focus on agriculture and agribusiness.

The financial situation in Brazil has greatly improved since last year's Presidential elections. The new administration immediately set out to calm the markets by vowing to maintain strict fiscal policies, fulfill Brazil's debt obligations, promote economic growth, and install pro-business officials in his cabinet. Although high interest rates have dampened internal investment, the Lula Administration has created a solid economic climate by holding inflation in check, reforming part of the tax code, and working to reduce bureaucracy in international trade.

III. Goals for the Mission

The mission will further U.S. commercial policy objectives, and advance specific U.S. business interests. It is intended to:

- Assist individual U.S. companies to pursue export and other new business opportunities in Brazil by introducing them to key government decision-making officials and potential business partners;
- Evaluate the market potential for the company's products and assist firms in gaining an understanding of how to operate successfully in Brazil's commercial environment;
- Enhance the dialogue between government and industry on issues affecting U.S.-Brazil commercial relations, and build upon the pro-growth agenda launched during the Summit between President Bush and Brazilian President Lula; and
- Promote the benefits of economic growth through liberalized trade and investment policies, especially in the underdeveloped Northeast region of Brazil.

IV. Scenario for the Mission

The Business Development Mission will provide participants with exposure to high-level business and government contacts and an understanding of market trends and the commercial environment. American Embassy officials will provide a detailed briefing on the economic, commercial and political climate, and participants will receive individual counseling on their specific interests from the in-country U.S. Commercial Service industry specialists. Meetings will be arranged as appropriate with senior government officials and potential business partners. Representational events also will be organized to provide mission participants with opportunities to meet Brazil's business and government representatives, as well as U.S. business people living and working in Brazil.

The tentative trip itinerary will be as follows:

November 9—Arrive Brasilia; Mission Begins
November 10—Meetings with the Brazilian Government
November 11—Travel to Recife for Business Meetings
November 12—Travel to Sao Paulo for Business Meetings
November 13—Business Meetings in Sao Paulo; Mission Concludes

V. Criteria for Participation of Companies

The recruitment and selection of private sector participants for this mission will be conducted according to the "Statement of Policy Governing Department of Commerce-Overseas Trade Missions" established in March 1997. Approximately 10–15 companies will be selected for the mission. Companies will be selected according to the criteria set out below.

Eligibility

Applicants must be: (1) incorporated in the United States; and (2) the products and/or services that it will promote (a) must be manufactured or produced in the United States; or (b) if manufactured or produced outside the United States, must be marketed under the name of a U.S. firm and have U.S. content representing at least 51 percent of the value of the finished good or service.

Selection Criteria

Companies will be selected for participation in the mission on the basis of:

- Consistency of company's goals with the scope and desired outcome of the mission as described herein;
- Relevance of a company's business and product line to market opportunities in Brazil;
- Rank of the designated company representative;
- Past, present, or prospective international business activity;
- Diversity of company size, type, location, demographics, and tradifional under-representation in business;
- Degree of company's commitment to good corporate citizenship; and
- Timely receipt of signed mission application, participation agreement, and participation fee.

Recruitment will begin immediately and will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade missions

calendar—*http://www.ita.doc.gov/doctm/tmcal.html*—and other Internet websites, press releases to the general and trade media. Promotion of the mission will also take place through the involvement of U.S. Export Assistance Centers and relevant trade associations.

An applicant's partisan political activities (including political contributions) are irrelevant to the selection process.

VI. Time Frame for Applications

Applications for the trade mission to Brazil will be made available on or about September 4, 2003. The fee to participate in the mission has not yet been determined, but will be approximately $5,000 to $8,000. The participation fee will not cover travel to and from Brazil or lodging expenses; these will be the responsibility of each mission participant. For additional information on the trade mission or to obtain an application, contact the Office of Business Liaison at (202) 482–1360. Applications should be submitted by October 3, 2003, in order to ensure sufficient time to obtain in-country appointments for applicants selected to participate in the mission. Applications received after that date will be considered only if space and scheduling constraints permit. A mission website will be posted at *http://www.commerce.gov/brazilmission2003* to share information as it becomes available. Contact: Office of Business Liaison, Room 5062, Department of Commerce, Washington, DC 20230, Tel: (202) 482–1360 Fax: (202) 482–4054, e-mail: obl@doc.gov, *http://www.commerce.gov/brazilmission2003*.

Dated: September 2, 2003.

Dan McCardell,

Director, Office of Business Liaison, Room 5062, Department of Commerce.

[FR Doc. 03–22716 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–D–R–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570–867]

Certain Automotive Replacement Glass Windshields From The People's Republic of China: Notice of Partial Rescission of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of partial rescission of administrative review.

SUMMARY: On May 21, 2003, in response to timely requests from respondents subject to the order on certain automotive replacement glass ("ARG") windshields from the People's Republic of China ("PRC"), in accordance with section 751(a) of the Act, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by respondents, including Changchun Pilkington Safety Glass Company, Ltd., Dongguan Kongwan Automobile Glass, Ltd., Fuyao Glass Industry Group Company, Ltd., Guilin Pilkington Safety Glass Company, Ltd., Peaceful City, Ltd., Shanghai Yaohua Pilkington Autoglass Company, Ltd., Shenzen CSG Automotive Glass Co., Ltd., (formerly Shenzhen Benxum Auto Glass Co., Ltd.) ("Benxum"), TCG International, Inc.("TCGI"), Wuhan Yaohua Pilkington Safety Glass Company, Ltd., and Xinyi Automotive Glass (Shenzhen) Co., Ltd. ("Xinyi") of ARG from China for the period September 19, 2001 through March 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 27781 (May 21, 2003) ("Initiation Notice"). The petitioners in the original investigation did not request an administrative review. Because Benxum, TCGI, and Xinyi have withdrawn their requests for administrative review and the petitioners did not request an administrative review, the Department is rescinding this review of sales by Benxum, TCGI, and Xinyi, in accordance with 19 C.F.R. 351.213(d)(1). The Department is now publishing its determination to rescind the review of sales of subject merchandise by Benxum, TCGI, and Xinyi for the periods referenced below.

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Jon Freed, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230; telephone: (202) 482–1102; (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 4, 2002, the Department published in the **Federal Register** the antidumping duty order on ARG Windshields from the People's Republic of China ("PRC"). *See Antidumping Duty Order: Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 16087 (April 4, 2002). On April 7, 2003, the Department of Commerce ("Department") published a notice of opportunity to request an administrative review of the antidumping duty order on ARG windshields from the PRC for the period September 19, 2001, through March 31, 2003. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 68 FR 16761 (April 7, 2003). On May 21, 2003, in response to timely requests from respondents subject to the order on ARG windshields from the PRC, the Department published in the **Federal Register** a notice of initiation of this antidumping duty administrative review of sales by respondents, including Changchun Pilkington Safety Glass Company, Ltd., Dongguan Kongwan Automobile Glass, Ltd., Fuyao Glass Industry Group Company, Ltd., Guilin Pilkington Safety Glass Company, Ltd., Peaceful City, Ltd., Shanghai Yaohua Pilkington Autoglass Company, Ltd., Benxum, TCGI, Wuhan Yaohua Pilkington Safety Glass Company, Ltd., and Xinyi of ARG windshields from the PRC for the period September 19, 2001 through March 31, 2003. *See Initiation Notice*, 68 FR 27781 (May 21, 2003).

On June 3, 2003, the Department issued antidumping duty questionnaires to the respondents, including Benxum, TCGI, and Xinyi. On July 8, 2003, Benxum submitted a letter to the Department withdrawing its request for an administrative review of sales and entries of subject merchandise exported by Benxum and covered by the antidumping duty order on ARG windshields from the PRC. On July 31, 2003, TCGI submitted a letter to the Department withdrawing its request for an administrative review of sales and entries of subject merchandise exported by TCGI and covered by the antidumping duty order on ARG windshields from the PRC. On July 31, 2003, Xinyi submitted a letter to the Department withdrawing its request for an administrative review of sales and entries of subject merchandise exported by Xinyi and covered by the antidumping duty order on ARG windshields from the PRC.

Rescission of Review

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review, in whole or in part, if a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of requested review. Benxum, TCGI, and Xinyi withdrew their respective requests for review within the 90 day time limit; accordingly, we are rescinding this administrative

review as to those companies and will issue appropriate assessment instructions to the U.S. Bureau of Customs and Border Protection. For Benxum and TCGI, the period of the administrative review that is hereby rescinded is September 19, 2001 through March 31, 2003. For Xinxi, the period of the administrative review that is hereby rescinded is February 12, 2002 through March 31, 2003.[1]

This notice serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of APO is a sanctionable violation.

This determination is issued in accordance with 19 C.F.R. 351.213(d)(4) and section 777(i)(1) of the Act.

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22785 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201–817]

Oil Country Tubular Goods From Mexico: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: On September 25, 2002, the Department of Commerce (the Department) published in the Federal Register a notice announcing the initiation of an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Mexico. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 60210 (September 25, 2002) (Initiation). The period of review (POR) is August 1, 2001 to July 31, 2002. This review has now been rescinded because there were no entries for consumption of subject merchandise that are subject to review in the United States during the POR.

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall or Abdelali Elouaradia, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482–1398 or (202) 482–1374 respectively.

Scope of Review

Imports covered by this review are oil country tubular goods, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

The Department has determined that couplings, coupling stock and drill pipe are not within the scope of the antidumping order on OCTG from Mexico. *See* Letter to Interested Parties; Final Affirmative Scope Decision, August 27, 1998. *See Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods From Argentina, Italy, Japan, Korea and Mexico, and Partial Revocation of Those Orders From Argentina and Mexico With Respect to Drill Pipe*, 66 FR 38630, July 25, 2001.

Background

On August 30, 2002, United States Steel Corporation (petitioner), requested an administrative review of Tubos de Acero de Mexico S.A. (TAMSA), a Mexican producer and exporter of OCTG, with respect to the antidumping order published in the **Federal Register**. *See Antidumping Duty Order: Oil Country Tubular Goods From Mexico*, 60 FR 41055 (August 11, 1995). Additionally, respondent Hylsa, S.A. de C.V. (Hylsa) requested that the Department conduct an administrative review of Hylsa. On September 11, 2002, Hylsa withdrew its request and requested that the Department terminate the review. Therefore, the Department did not initiate with respect to Hylsa. We initiated the review for TAMSA. *See Initiation.*

SUPPLEMENTARY INFORMATION: On October 11, 2002, the Department issued an antidumping duty questionnaire to TAMSA. On November 1, 2002, TAMSA and Siderca Corporation (TAMSA's U.S. affiliate) claimed that they "did not directly or indirectly, enter for consumption, or sell, export or ship for entry for consumption in the United States subject merchandise during the period of review." Petitioner subsequently claimed on November 12, 2002, that publicly available import data from the Department's IM-145 database showed that 2,187 metric tons of seamless OCTG from Mexico entered the United States during the POR. Petitioner asserted that TAMSA was the only producer of seamless OCTG in Mexico. Petitioner requested that the Department investigate these transactions to determine whether this merchandise is subject to review. On December 10, 2002, the Department forwarded a no-shipment inquiry to Customs for circulation to all Customs ports. Customs did not indicate to the Department that there was any record of

[1] The liquidation of entries of subject merchandise exported by Xinyi was not suspended until the final determination in the original investigation. *See Notice of Preliminary Determination of Sales at Less than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 66 FR 48233, 48242 (September 19, 2001) compare with *Notice of Final Determination of Sales at Less than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482, 6484 (February 12, 2002).

consumption entries during the POR of OCTG from Mexico exported by TAMSA. As part of this investigation, the Department issued supplemental questionnaires on March 28, 2003, and April 14, 2003. On April 4, 2003 and April 23, 2003, TAMSA submitted its responses to the supplemental questionnaires.

The Department has thoroughly investigated proprietary information from U.S. Customs Service (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection) (Customs) for all HTSUS numbers covered by the scope of this review. After reviewing the Customs information and the public data submitted by petitioner, the Department determined that the merchandise entered during the POR was exported from a third country or was exported to a foreign trade zone by TAMSA. The Department notes that the merchandise was entered under the proper country of export (the third country or Mexico) and the merchandise was declared as being of Mexican origin and was entered subject to duty.

Finally, the Department requested additional information from Customs and the respondent regarding certain entries. Both Customs and TAMSA submitted information pertaining to these entries (*see* August 6, 2003 TAMSA submission). The documentation clearly indicates the merchandise was first admitted into a foreign trade zone. After further analysis we found that these entries were subsequently entered for consumption in the U.S. and were subject to antidumping duties. After reviewing the information, the Department determines that TAMSA had no knowledge that these sales were destined for consumption in the United States. Under these circumstances, Petitioners did not object to rescinding this review involving these entries of subject merchandise produced by TAMSA. *See Memorandum to the File From Richard O. Weible dated August 21, 2003.*

Accordingly, we are rescinding this review. The cash deposit rate will continue to be the rate established in the most recently completed segment of this proceeding.

This notice is issued and published in accordance with sections 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22784 Filed 9–05–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–824]

Silicomanganese From Brazil: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on silicomanganese from Brazil. The preliminary results of this review are now due on October 17, 2003.

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Brian Ellman, (202) 482–4852, or Katja Kravetsky, (202) 482–0108, AD/CVD Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230.

Extension of Time Limit for Preliminary Results of Review

On January 22, 2003, in response to a request to conduct an administrative review of the antidumping duty order on silicomanganese from Brazil, the Department of Commerce ("the Department") published a notice of initiation of administrative review covering the period December 1, 2001, through November 30, 2002. See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 68 FR 3009.

Currently, the preliminary results of this administrative review are due no later than September 2, 2003. Due to the complexity of certain cost issues, including the cost investigation and high inflation during the period of review, that have arisen in the course of the review, it is not practicable to complete the preliminary results within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended. Therefore, in accordance with that section, the Department is extending the time limit for completion of the preliminary results until no later than October 17, 2003. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

Dated: August 29, 2003.

Jeffrey May,

Deputy Assistant Secretary for Import Administration, Group I.

[FR Doc. 03–22786 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–810]

Certain Cut-to-Length Carbon Steel Plate From Mexico: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain cut-to-length carbon steel plate (CTL Plate) from Mexico for the period January 1, 2001, through December 31, 2001, the period of review (POR). For information on the net subsidy for the reviewed company as well as for non-reviewed companies, please see the "Preliminary Results of Review" section of this notice. If the final results remain the same as these preliminary results of the administrative review, we will instruct the Bureau of Customs and Border Protection (BCBP) to assess countervailing duties as detailed in the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. (See the "Public Comment" section of this notice).

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong, AD/CVD Enforcement, Office VI, Group II, Import Administration, U.S, Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3601.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** (58 FR 43755) the countervailing duty order on certain cut-to-length carbon steel plate from Mexico. On August 6, 2002, the Department published a notice of "Opportunity to Request an Administrative Review" (67 FR 50856) of this countervailing duty order. On

August 30, 2002, we received a timely request for review from Altos Hornos de Mexico, S.A. (AHMSA), the respondent company in this proceeding. On September 25, 2002, we initiated the review covering the period January 1, 2001, through December 31, 2001 (67 FR 60210). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 67 FR 60210 (September 25, 2002).

On September 27, 2002, we issued initial questionnaires to AHMSA and the Government of Mexico (GOM) covering the programs reviewed in the previous segment of the proceeding. On October 22, 2002, petitioners argued that two GOM programs, asset tax relief provided under the Immediate Deduction Program and the Program for Sectoral Promotion (PROSEC), were either subsumed by or successors to programs previously found to be countervailable in this proceeding and, thus, should be included in any questionnaires issued to AHMSA and the GOM.[1] On December 16, 2002, petitioners submitted new subsidy allegations. These allegations included the Immediate Deduction Program and PROSEC as well as the following programs: Provision of Debt Relief from AHMSA's Creditors by Nacional Financiera (NAFIN) and the Coahuila State Government (CGS), Petroléos Mexicanos (Pemex) Guaranteed Provision of Natural Gas for less than Adequate Remuneration, and Debt Relief on Banco Nacional de Comercio Exterior S.N.C. (Bancomext) Loans. Petitioners also alleged that AHMSA was uncreditworthy during calendar year 2000. On January 21, 2003, petitioners submitted additional factual information regarding their new subsidy allegations.

On March 26, 2003, we extended the period for completion of the preliminary results of review pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended, (the Act). *See Certain Cut-to-Length Carbon Steel Plate From Mexico: Extension of Time Limit for Preliminary Results of Countervailing Duty Administrative Review* (68 FR 14580). On April 29, 2003, we issued our first supplemental questionnaires to AHMSA and the GOM.

On June 3, 2003, we issued a memorandum concerning petitioners' new subsidy allegations. In the memorandum, we agreed with petitioners that asset tax relief provided under the Immediate Deduction Program was related to a program previously found countervailable by the Department and that the program merited an examination in the instant proceeding. Furthermore, we initiated investigations of the following programs: Provision of Debt Relief from AHMSA's Creditors by Nacional Financiera (NAFIN) and the Coahuila State Government (CGS), Petroleos Mexicanos (Pemex) Guaranteed Provision of Natural Gas for less than Adequate Remuneration, and Banco Nacional de Comercio Exterior S.N.C. (Bancomext) Debt Relief. In addition, we initiated an investigation of AHMSA's creditworthiness covering calendar year 2000. We declined to initiate an investigation of PROSEC because we found no record evidence to support petitioners allegation that the PROSEC program was countervailable. For more information, see the June 3, 2003, memorandum from the Team to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, the public version of which is on file in Room B–099 of the Central Records Unit (CRU) in the Main Commerce Building (*New Subsidies Memorandum*). The programs for which we initiated investigations are discussed in further detail in the "Creditworthiness and Calculation of Discount Rate" and "Analysis of Programs" sections of this preliminary results notice.

On June 3, 2003, we issued second supplemental questionnaires to AHMSA and the GOM. On June 30, 2003, we issued a third supplemental questionnaire to AHMSA.

From July 16 through July 24, 2003, we conducted a verification of the questionnaire responses submitted by AHMSA and the GOM. The results of our verification are contained in the September 2, 2003, memoranda from Lyman Armstrong to Eric Greynolds, Program Manager, Office of AD/CVD Enforcement VI (AHMSA Verification Report and GOM Verification Report, respectively), the public versions of which are on file in the CRU.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested, *i.e.*, AHMSA, and 17 programs.

Scope of Review

The products covered by this administrative review are certain cut-to-length carbon steel plates. These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this administrative review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this administrative review is grade X–70 plate. HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Allocation Period

Pursuant to 19 CFR 351.524(d)(2), we will presume the allocation period for non-recurring subsidies to be the average useful life (AUL) of renewable physical assets for the industry concerned, as listed in the Internal Revenue Service's (IRS) 1977 Class Life Asset Depreciation Range System, as updated by the Department of the Treasury. The presumption will apply unless a party claims and establishes that these tables do not reasonably reflect the AUL of the renewable physical assets for the company or industry under investigation or review, and that the difference between the company-specific AUL and the AUL for the industry under investigation is significant.

In this administrative review, the Department is considering both non-recurring subsidies previously allocated in the initial investigation and non-recurring subsidies received since the period of investigation (POI). For non-recurring subsidies previously allocated in the initial investigation, the

[1] Petitioners are Bethlehem Steel Corporation and United States Steel Corporation.

Department is using the original allocation period of 15 years. For non-recurring subsidies received since the original investigation, no party to the proceeding has claimed that the AUL listed in the IRS tables did not reasonably reflect the AUL of the renewable physical assets for the firm or industry under review. Therefore, in accordance with 19 CFR 351.524(d)(2), we have allocated all of AHMSA's non-recurring subsidies received since the original investigation over 15 years, the AUL listed in the IRS tables for the steel industry.

Facts Available

In the course of this proceeding, we have repeatedly sought information from AHMSA concerning its creditworthiness status during calendar year 2000, in connection with the renegotiation of a loan. See questions C.1 through C.7 of the Department's June 3, 2003, supplemental questionnaire. See also question B.1 of the Department's June 30, 2003, supplemental questionnaire. In both instances, AHMSA responded that it was "unable to respond to the Department's questions on creditworthiness at this time."[2]

Section 776(a) of the Act requires the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. As described above, AHMSA has failed to provide information regarding its creditworthiness during calendar year 2000 in the manner explicitly and repeatedly requested by the Department; therefore, we must resort to the facts otherwise available. Lacking a questionnaire response from AHMSA on the issue of its creditworthiness in 2000, we have relied on primary source information from AHMSA that was submitted onto the record of this proceeding prior to the initiation of our creditworthiness investigation. Namely, we have used, as facts available, AHMSA's financial statements for the years 1997 through 2000, as well as information obtained during verification concerning AHMSA's financial standing in 2000. Using this primary source information, we have determined that, for purposes of these preliminary results, AHMSA was uncreditworthy during 2000. For a discussion of our creditworthiness analysis, see the September 2, 2003 memorandum from the team to Melissa G. Skinner, Director, Office of AD/CVD Enforcement VI, a public document which is on file in the CRU (*Creditworthiness Memorandum*) as well as the "Creditworthiness and Calculation of Discount Rate" section of this preliminary results notice.

Change in Ownership

In November 1991, the GOM sold all of its ownership interest in AHMSA. Prior to privatization, AHMSA was almost entirely owned by the GOM. Since November 1991, the GOM has held no stock in AHMSA.

In accordance with the decision of the U.S. Court of Appeals for the Federal Circuit (CAFC) in *Delverde Srl* v. *United States*, 202 F.3d 1360, 1365 (Fed. Cir. 2000), *reh'g en banc denied* (June 20, 2000) (*Delverde III*), the Department addresses this fact pattern by first determining whether the person who received the subsidies is, in fact, distinct from the person that produced the subject merchandise exported to the United States during the POR. If the two are distinct, the original subsidies may not be attributed to the new producer/exporter. On the other hand, if the original subsidy recipient and the current producer/exporter are considered to be the same person, that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, in the latter case, we will determine that a "financial contribution" has been made by a government and a "benefit" has been conferred upon the "person" that is the firm under investigation. Assuming that the original subsidy had not been fully amortized under the Department's normal allocation methodology as of the POR, the Department would continue to countervail the remaining benefits of that subsidy. See *e.g.*, the "Change in Ownership" section of the Decision Memorandum that accompanied the *Final Results of the Administrative Review of the Countervailing Duty Order (CVD) on Certain Cut-to-Length Carbon Steel Plate from Mexico—Calendar Year 1998*, 66 FR 14549 (March 12, 2001) (*1998 Review of CTL Plate*).

In making the "same person" determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale entity to be the same person as the pre-sale entity if, based on the totality of the factors considered, we determine that the entity sold in the change-in-ownership transaction can be considered a continuous business entity because it was operated in substantially the same manner before and after the change-in-ownership. *Id.*

In the previous segment of the proceeding, we found that the privatized AHMSA was essentially the same person as that which existed prior to the privatization as a separately-incorporated, GOM-owned steel producer of the same name. As a result of our analysis, we found the subsidies received by the pre-privatized AHMSA to be countervailable. *See* the "Application of Methodology" section of the Decision Memorandum that accompanied the *1998 Review of CTL Plate*. No new information or evidence of changed circumstances has been submitted requiring us to reconsider our finding in this segment of the proceeding (*i.e.*, calendar year 2001). Therefore, for purposes of these preliminary results, we continue to find that the privatized AHMSA is essentially the same person as that which existed prior to the privatization. We further preliminarily determine that allocable subsidies bestowed prior to AHMSA's privatization continue to benefit AHMSA, to the extent that the benefit stream extends into the POR of this segment of the proceeding.[3]

Inflation Methodology

In the underlying investigation, we determined, based on information from the GOM, that Mexico experienced significant inflation from 1983 through 1988. *See Final Affirmative Countervailing Duty Determination: Certain Steel Products from Mexico*, 58 FR 37352 at 37355 (July 9, 1993) (*CTL Plate Investigation*). In accordance with past practice, because we found significant inflation in Mexico and because AHMSA adjusted for inflation in its financial statements, we made adjustments, where necessary, to

[2] We note that, at AHMSA's request, we extended the due date of the June 3, 2003, questionnaire by 10 days. *See* the Department's June 10, 2003, letter to AHMSA on, "Extension Request on Behalf of Altos Hornos de Mexico, S.A. de C.V."

[3] On June 23, 2003, the Department published a notice that our practice regarding the "same person test" would be modified. *See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act*, 68 FR 37125. In that notice, we announced the prospective application of a new privatization methodology that would supercede the "same person test." We further stated that the new methodology would only apply to segments of proceedings initiated on or after June 30, 2003.

account for inflation in the benefit calculations.

Because Mexico experienced significant inflation during only a portion of the 15-year allocation period, indexing for the entire period or converting the non-recurring benefits into U.S. dollars at the time of receipt (*i.e.*, dollarization) for use in our calculations would have inflated certain allocable benefits by adjusting for inflationary as well as non-inflationary periods. Thus, in the underlying investigation, we used a loan-based methodology to reflect the effects of intermittent high inflation. *See CTL Plate Investigation*, 58 FR at 37355. The methodology we used in the underlying investigation assumed that, in the absence of a government equity infusion/grant, a company would have needed a 15-year loan that would be rolled over each year at the prevailing nominal interest rates, which for purposes of our calculations are the interest rates based on Costo Porcentual Promedio (CPP) discussed in the "Calculation of Discount Rate and Creditworthiness" section of this notice. The benefit in each year of the 15-year period would be equal to the principal plus the interest payments associated with the loan at the nominal interest rate prevailing in that year.

Because we assumed that an infusion/grant given was equivalent to a 15-year loan at the current rate in the first year, a 14-year loan at current rates in the second year and so on, the benefit after the 15-year period would be zero, as it would be under the Department's grant amortization methodology. Because nominal interest rates were used, the effects of inflation were already incorporated into the benefit. This methodology was upheld in *British Steel plc* v. *United States*, 127 F.3d 1471 (Fed. Cir. 1997) (*British Steel III*).

In *Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Countervailing Duty Administrative Review*, 65 FR 13368 (March 13, 2000) (*1997 Review of CTL Plate*), we analyzed information provided by the GOM and found that Mexico, again, experienced significant, intermittent inflation during the period 1991 through 1997. *See* the "Inflation Methodology" section of the Decision Memorandum for the *1997 Review of CTL Plate*. In addition, during the 1997 review of CTL Plate, we learned at verification that AHMSA had continued its practice of accounting for inflation in its financial statements. *Id.* Thus, in the *1997 Review of CTL Plate*, we used the benefit calculation methodology from the *CTL Plate Investigation*, described above, for all non-recurring, peso-denominated grants received since the POI. *Id.*

No new information or evidence of changed circumstances has been presented thus far in this review to warrant reconsideration of these findings. Thus, for the purposes of these preliminary results, we have continued to use the benefit calculation methodology from the *CTL Plate Investigation* for all non-recurring, peso-denominated grants received through 1997.[4]

Calculation of Discount Rate and Creditworthiness

In these preliminary results, for those years in which AHMSA received non-recurring grants and equity infusions, we used as our long-term benchmark discount rate the CPP, which is the average cost of funds for banks in Mexico.[5] We note that we converted the CPP rate into a discount rate using the formula that has been used in past Mexican cases.[6] We further note that, for those years in which there were grants and equity infusions and for which the Department had calculated a benchmark interest rate in a prior case, we used the rates calculated in those cases.

As discussed in the "Background" section of this preliminary results notice, we initiated an investigation to determine whether AHMSA was creditworthy during calendar year 2000. As discussed in the "Facts Available" section of this notice, we have made our determination of AHMSA's uncreditworthiness using primary source information from AHMSA that was submitted onto the record of this review prior to our initiation of this inquiry. Upon review of the financial information for AHMSA that is available on the record of this review, we preliminarily find that AHMSA was uncreditworthy during calendar year 2000. For further discussion, see the *Creditworthiness Memorandum*. Thus, for year 2000, we constructed a discount rate for uncreditworthy companies using the methodology described in 19 CFR 351.505(a)(3)(iii).

[4] We note that AHMSA has received no non-recurring, peso-denominated grants since 1997.

[5] This is the same discount rate that was used in the previous segment of this proceeding. *See, e.g.*, the Calculation Memorandum for the *Final Results of Administrative Review of the Countervailing Duty Order on Certain Cut-to-Length Carbon Steel Plate from Mexico*, which was included as Exhibit 11 of AHMSA's November 25, 2002, questionnaire response.

[6] *Id.*

Analysis of Programs

I. Programs Preliminarily Determined To Confer Subsidies

A. GOM Equity Infusions

In the underlying investigation, we determined that the GOM made equity infusions into AHMSA during the years 1987, 1990 and 1991.[7] See *CTL Plate Investigation*, 58 FR at 37356. Shares of common stock were issued for all of these infusions. The GOM made these equity infusions annually as part of its budgetary process, in accordance with the Federal Law on State Companies. At the time of these infusions, AHMSA was almost entirely a government-owned company.

In the underlying investigation, we found AHMSA to be unequityworthy during the years 1987, and in 1990 and 1991. *See CTL Plate Investigation* 58 FR at 37356. Accordingly, we determined that the equity infusions by the GOM into AHMSA in these years were countervailable. In the 1998 review of CTL Plate, we continued to find this program countervailable. *See* the "Programs Conferring Subsidies" section of the Decision Memorandum that accompanied the *1998 Review of CTL Plate*. No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of these findings. As a result, for purposes of these preliminary results, we continue to find that these equity infusions conferred a benefit and constituted a government financial contribution under sections 771(5)(E)(i) and 771(5)(D)(i) of the Act, respectively. In addition, we continue to find that the equity infusions were specific to a single enterprise within the meaning of section 771(5A)(D)(iii)(I) of the Act.

To calculate the countervailable benefit in the POR, we used the grant allocation methodology for intermittent, significant inflation described above. We then divided the benefit attributable to the POR by the total consolidated sales of AHMSA during the POR. On this basis, we preliminarily determine the net subsidy for this program to be 0.96 percent *ad valorem* for AHMSA.

B. IMIS Research and Development Grants

The Instituto Mexicano de Investigaciones Siderurgicas (IMIS), or the Mexican Institute of Steel Research, was a government-owned research and development organization that performed independent and joint

[7] AHMSA received counteravailable equity infusions in previous years. However, these equity infusions were fully allocated prior to the 2001 POR.

venture research with the iron and steel industry.

In the underlying investigation, the Department found that IMIS's activities with AHMSA fell into two categories: joint venture activities and non-joint venture activities. *See CTL Plate Investigation*, 58 FR at 37359. We determined that IMIS's non-joint venture activities with AHMSA were not countervailable. However, the Department determined that joint venture activities were countervailable, and we treated IMIS's contributions to joint venture activities as non-recurring grants. *Id.* We used the same approach in the 1998 review of CTL Plate. AHMSA received grants under this program during the years 1987 through 1991.[8] No new information or evidence of changed circumstances has been presented thus far in this review to warrant reconsideration of these findings. As a result, for purposes of these preliminary results, we continue to find that the IMIS grants conferred a benefit and constituted a government financial contribution under sections 771(5)(E) and 771(5)(D)(i) of the Act, respectively. In addition, we continue to find that the IMIS grants were specific to the steel industry under section 771(5A)(D)(i) of the Act.

To calculate the countervailable benefit in the POR, we used the grant allocation methodology for intermittent, significant inflation described above. We then divided the benefit attributable to the POR by the total consolidated sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 0.04 percent *ad valorem* for AHMSA.

C. Lay-Off Financing From the GOM

During the verification of the underlying investigation, the Department discovered that the GOM had loaned AHMSA money to cover the cost of personnel lay-offs which the GOM felt were necessary to make AHMSA more attractive to potential purchasers. This loan was made prior to AHMSA's privatization in 1991. The Department also learned that this loan did not accrue interest after September 30, 1991. Further, the Department learned that the GOM was allowing the privatized AHMSA to repay this loan with the transfer of AHMSA assets back to the GOM. The assets AHMSA was using to repay the loan were assets which the Grupo Acero del Norte (GAN), the purchaser of AHMSA, had not wished to purchase but which the GOM included in the sale package. *See CTL Plate Investigation*, 58 FR at 37360. These assets were characterized as "unnecessary assets" or assets not necessary to the production of steel.

Because the information about this financing and its repayment came to light only at verification of the questionnaire responses submitted during the investigation, we were unable to determine whether this loan relieved AHMSA of an obligation it would otherwise have borne with respect to the laid-off workers. Thus, in the underlying investigation, we calculated the benefit by treating the financing as an interest-free loan. *See CTL Plate Investigation*, 58 FR at 37361.

In the review covering calendar year 1997, AHMSA claimed that it had extinguished its lay-off financing debt with the transfer of the "unnecessary assets." *See 1997 Review of CTL Plate. See also, Certain Cut-to-Length Carbon Steel Plate from Mexico: Preliminary Results of Countervailing Duty Administrative Review*, 64 FR 48796, 48801 (September 8, 1999) (*Preliminary Results of 1997 Review of CTL Plate*). In that review, we noted that the record of the investigation indicated that these assets were included by the GOM in the sale of AHMSA despite the fact that GAN, the purchaser of AHMSA, indicated that it did not wish to purchase those assets, and GAN's bid for AHMSA did not include any funds for those assets. *See Preliminary Results of 1997 Review of CTL Plate*, 64 FR at 48799. In the 1997 review of CTL Plate, we further noted that the record from the investigation indicated that the value of those assets was frozen in November 1991, and that, as of that date, the assets were neither depreciated nor revalued for inflation, both of which are standard accounting practices in Mexico. *See id.* 64 FR at 48801.

Although, in the 1997 review of CTL Plate, we noted that a loan that provides countervailable benefits normally ceases to do so once it has been fully repaid, we determined that the benefit to AHMSA with respect to the lay-off financing was essentially in the form of a grant. Specifically, in that review, we determined that AHMSA had repaid the loan with the transfer of assets which AHMSA's purchasers did not wish to purchase and for which they did not pay. *See Preliminary Results of 1997 Review of CTL Plate*, 64 FR 48801. Thus, in the review covering calendar year 1997, we determined that the GOM's acceptance of these "unnecessary assets" to repay this loan, assets which were effectively given to AHMSA free of charge, constituted debt forgiveness of this loan. Accordingly, we determined that the entire amount of the pre-privatization lay-off financing was a non-recurring grant within the meaning of section 771(5)(E) of the Act that was received in 1994, the time at which the pre-privatization loan was forgiven. We further found that this program constituted a government financial contribution and was specific to a single enterprise within the meaning of sections 771(5)(D)(ii) and 771(5A)((D)(iii)(I) of the Act, respectively. We continued to apply this approach in the 1998 review of CTL Plate. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings. Thus, for the purposes of these preliminary results, we continue to find that the entire amount of the pre-privatization lay-off financing constituted a non-recurring grant received in 1994, the point at which the loan was forgiven.

To calculate the countervailable benefit in this review, we used the grant allocation methodology for intermittent, significant inflation described above. We then divided the benefit from the pre-privatization lay-off financing attributable to the POR by the total consolidated sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 0.52 percent *ad valorem* for AHMSA.

D. GAN's Committed Investment Into AHMSA

As noted above in the "Change-in-Ownership" section, the GOM sold AHMSA to GAN in 1991. To sell the company, the GOM established a bid structure in which bids could be divided into two parts: A cash component and a committed investment component. Under these bidding rules, a potential purchaser of AHMSA could, in lieu of a cash payment to the GOM, agree to make future investments into AHMSA. GAN, the eventual purchaser of AHMSA, made a bid for the company which consisted of a cash payment to the GOM as well as a promise to invest a certain amount into AHMSA in the future. Another bid by a third party, which had a higher cash component, was rejected by the GOM in favor of GAN's bid.

In the 1998 review of CTL Plate, we found that, because the transaction in question involved only the sale of AHMSA, the actions of the GOM were specific to a single enterprise within the meaning of section 771(5A)(D)(iii)(I) of the Act. *See* the "Committed Investment" section of the Decision Memorandum that accompanied the

[8] AHMSA also received a grant under this program 1986. However, this grant was fully expensed prior to the 2001 POR.

1998 Review of CTL Plate. We further found that the record reflected that the GOM, in accepting GAN's bid, considered one-half of GAN's committed investment to be equivalent to the payment of cash. Therefore, we used this amount as a proxy for the amount of revenue foregone by the GOM in its sale of AHMSA, within the meaning of section 771(5)(D)(ii) of the Act. *Id.* No new information or evidence of changed circumstances has been presented thus far in this review to warrant any reconsideration of these findings. Therefore, for purposes of these preliminary results, we continue to find that GAN's committed investment into AHMSA was specific and constituted a government financial contribution within the meaning of the Act. Furthermore, we continue to find that this program conferred a benefit under section 771(5)(E) of the Act.

Accordingly, we have treated this benefit as a non-recurring grant in the amount of the revenue foregone and allocated it over time using our standard grant formula.[9] We then converted the benefit attributable to the POR into pesos using the average annual peso/U.S. dollar exchange rate for the POR. Finally, we divided the resulting peso-denominated benefit amount by AHMSA's total consolidated sales during the POR. On this basis, we determine the net countervailable subsidy to be 2.21 percent *ad valorem*.

E. 1988 and 1990 Debt Restructuring of AHMSA Debt and the Resulting Discounted Prepayment in 1996 of AHMSA's Restructured Debt Owed to the GOM

In 1987, the GOM negotiated agreements with foreign creditors to restructure the debt of AHMSA. The GOM again negotiated on behalf of AHMSA debt restructuring agreements in 1988 and 1990. Under these agreements, the GOM purchased AHMSA's debts, which were denominated in several foreign currencies, from AHMSA's foreign creditors in exchange for GOM debt. The GOM thereby became the creditor for loans included in these agreements.

In the underlying investigation, the GOM claimed that AHMSA's principal repayment obligations remained the same after the debt restructuring. However, in that investigation, we could not confirm during verification that AHMSA's principal obligations on its debt had not been forgiven in the 1988 and 1990 debt restructuring agreements. Thus, based upon the facts available to the Department at the time of the investigation, we assumed that the principal had been forgiven and that this had been reflected in the amount of the discount the GOM had received when purchasing the debt from AHMSA's foreign creditors. Accordingly, we treated the forgiven principal as a non-recurring grant.

In the 1997 review of CTL Plate, AHMSA claimed that, in June 1996, it had repaid its restructured debt in the form of a discounted prepayment to the GOM, thereby extinguishing its financial obligations to the GOM. During verification of the questionnaire response submitted during that administrative review, we learned that, in order to determine the amount of the discounted prepayment that AHMSA was to make in June of 1996, the company and the GOM had created amortization tables for each of the foreign currency loans. Next, they had converted these payment streams into U.S. dollars and calculated the net present value for each payment stream. They had then summed the U.S. dollar denominated net present values to derive the amount of the discounted prepayment to be made in U.S. dollars.

In the 1997 review of CTL Plate, we determined that AHMSA's discounted prepayment of its 1988 and 1990 restructured debts constituted a countervailable benefit, in the form of debt forgiveness, because AHMSA's discounted prepayment had resulted in a reduction of the amount of principal owed by AHMSA on this debt. *See Preliminary Results of 1997 Review of CTL Plate*, 64 FR at 48799. On this basis, we determined in the 1997 review of CTL Plate that the difference between the principal outstanding on AHMSA's restructured debt and the amount of its discounted prepayment constituted debt forgiveness on the part of the GOM and, therefore, conferred a benefit and constituted a government financial contribution within the meaning of sections 771(5)(E) and 771(5)(D)(ii) of the Act, respectively. In addition, we determined that the benefit was conferred in 1996, the year in which the debt forgiveness took place. *See id.* Because the debt forgiveness was made to a single enterprise, we determined in the 1997 review of CTL Plate that it was specific within the meaning of section 771(5A)(D)(iii)(I) of the Act. We continued this approach in the 1998 review of CTL Plate. No new information or evidence of changed circumstances has been presented thus far in this review to warrant any reconsideration of these findings. Thus, for purposes of these preliminary results, we continue to find that the debt forgiveness under this program is a countervailable, non-recurring grant.

Because the principal forgiven was denominated in U.S. dollars and, thus, was unaffected by Mexico's intermittent significant inflation, we used the Department's standard non-recurring grant methodology to allocate the benefit to the POR. See 19 CFR 351.509. We used as our discount rate the weighted-average of AHMSA's fixed-rate, U.S. dollar loans that were received during the year of receipt when the debt forgiveness took place. We then converted the U.S. dollar denominated benefit into pesos using the average annual peso/U.S. dollar exchange rate for the POR. Finally, we divided the benefit attributable to the POR by AHMSA's total consolidated sales during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 0.52 percent *ad valorem* for AHMSA.

F. Immediate Deduction Program

Under Article 51 of Mexico's tax law, companies may opt to take an immediate deduction on fixed assets purchased during the tax year, as opposed to taking regular straight line depreciation. The rates of depreciation under the immediate deduction vary according to industry. The Immediate Deduction program was established in 1987 and was subject to ongoing reforms until it was repealed in 1998. The program was subsequently reinstated in 2002. *See* the "Immediate Deduction" section of the GOM Verification Report. Tax credits earned under the Immediate Deduction program can be carried-forward for a period of 10 years. *Id.* Pursuant to this carry forward provision, AHMSA was able to apply tax credits, earned prior to and during 1998, to tax year 2000 even though the program was not active during the POR.

The immediate deduction mechanism was available only for certain fixed assets that had not been previously used in Mexico. The immediate deduction was not available for pre-operation expenses or for deferred expenses and costs. The GOM's stated purpose for the immediate deduction program was to promote investment by allowing companies to take an accelerated or immediate deduction set to an industry-specific rate, rather than using the standard straight-line depreciation method. GOM officials confirmed during verification that the immediate deduction option only applied to property used permanently within Mexico but outside the metropolitan areas of Mexico City, Guadalajara, and

[9] The benefit amount under this program was denominated in U.S. dollars. Therefore, it was not necessary to use the intermittent inflation methodology discussed above.

Monterrey. *See* the "Immediate Deduction" section of the GOM Verification Report. With respect to small firms (*i.e.*, firms with a gross income of 7 million pesos or less), the location restriction did not apply.[10] An immediate deduction could be taken, at the election of the taxpayer, in the tax year in which the investments in qualifying fixed assets were made, in the year in which these assets were first used, or in the following year. No prior approval by the GOM was required to use the immediate deduction option.

In past reviews, our examination of this program was limited to whether AHMSA used tax credits earned under the Immediate Deduction program to reduce its income tax liability. *See, e.g.*, the "Immediate Deduction" section of the Decision Memorandum that accompanied the *1998 Review of CTL Plate*. However, based on record evidence collected during this segment of the proceeding, we are preliminary revising this approach. Under Article 23 of the Mexican tax law, the GOM imposes an alternative minimum tax. Pursuant to this provision, companies are required to pay the lesser of either the income tax or the asset tax. The asset tax is equal to 1.8 percent of the value of a company's assets. During the POR, AHMSA was in a tax loss position. Therefore, it did not have any taxable income. However, pursuant to Article 23 of the Mexican tax law, it was liable for an asset tax equal to 1.8 percent of the value of its assets. Therefore, we are investigating the extent to which AHMSA may have used this program to reduce its asset tax burden.

In previous segments of this proceeding, we have found the Immediate Deduction program specific to a region, pursuant to section 771(5A)(D)(iv) of the Act. We have further found that the program constituted a financial contribution, to the extent that the GOM is not collecting tax revenue that is otherwise due, and that it conferred a benefit under sections 771(5)(D)(ii) and 771(5)(E) of the Act, respectively. *See, e.g.*, the "Immediate Deduction" section of the Decision Memorandum that accompanied the *1998 Review of CTL Plate*. No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of these findings. Thus, for purposes of these preliminary results, we continue to find this program countervailable.

In accordance with 19 CFR 351.509, we have calculated the benefit under this program by determining the amount of asset tax that AHMSA would have paid, absent the program, in the tax return it filed during the POR. We note that the amount of asset tax that AHMSA would have paid absent the program was clearly indicated on the tax return that AHMSA filed during the POR. *See* Exhibit 1 of AHMSA's July 8, 2003, supplemental questionnaire response. We then divided the benefit by AHMSA's total consolidated sales. On this basis, we preliminarily determine the net subsidy to be 2.57 percent *ad valorem* for AHMSA.

[10] We note that the small firm classification does not apply to AHMSA.

G. Bancomext Export Loans

The Banco Nacional de Comercio Exterior, S.N.C. (Bancomext), also known as the National Bank of Foreign Trade, is a state-owned lending institution that offers financing to producers or trading companies engaged in export activities. Specifically, these U.S. dollar-denominated loans provide financing for working capital (pre-export loans), and export sales (export loans).

During the POR, AHMSA made interest payments on a Bancomext loan that it originally received from the Government bank in 1995. However, the terms of the loan were renegotiated in May of 2000 following AHMSA's entrance into an interest payment suspension. AHMSA had no other loans outstanding with Bancomext as of the end of 2001, the POR. As discussed in further detail below, this Bancomext loan was the only loan that was not covered by the interest payment suspension and, thus, was the only loan on which AHMSA paid interest during the POR.

In the underlying investigation, we determined that, because the loans issued by Bancomext are available only to exporters, this program is specific within the meaning of section 771(5A)(B) of the Act. We further found that loans under this program conferred a benefit and constituted a government financial contribution under sections 771(5)(E)(ii) and 771(5)(D)(i) of the Act, respectively, to the extent that they are provided at rates below those prevailing on comparable commercial loans. *See CTL Plate Investigation*, 58 FR at 37357. We used the same approach in the previous segment of this proceeding. *See* the "Bancomext Export Loans" section of the Decision Memorandum that accompanied the *1998 Review of CTL Plate*. No new information or evidence of changed circumstances has been presented in this review to warrant reconsideration of these findings. Therefore, for purposes of these preliminary results, we continue to find that lending under this program constitutes a countervailable export subsidy.

As explained in the *Creditworthiness Memorandum*, on May 25, 1999, AHMSA entered into a court-sanctioned suspension of payments program. Under the suspension of payments program, all payments on AHMSA's commercial debt (*i.e.*, non-government debt) were suspended from May 1999 through 2001, a period which includes the POR. However, during the POR, AHMSA made payments on its outstanding Bancomext loan, pursuant to a May 2, 2000 agreement established between Bancomext and AHMSA. Under this agreement, the terms of AHMSA's Bancomext loan were renegotiated. In particular, the two parties changed the repayment schedule, interest rates, and penalty payment terms. See, *e.g.*, Exhibit 13 of AHMSA's November 25, 2002 questionnaire response.[11]

As stated above, while the Bancomext loan was originally issued in 1995, the terms of the loan were renegotiated in 2000. Thus, in keeping with the Department's practice, we find that, for purposes of these preliminary results, May 2000 was the effective issuance date of the Bancomext loan. *See e.g., Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Wire Rod From Italy*, 63 FR 40474, 40477 (July 29, 1998). As explained in the *Creditworthiness Memorandum*, we have preliminarily determined that AHMSA could not have obtained long-term loans from conventional commercial sources in 2000. Accordingly, in deriving the benchmark interest rate (*e.g.*, a rate that would have been established in 2000 and remained applicable during the POR) we have used the benchmark methodology for uncreditworthy companies outlined in 19 CFR 351.505(a)(3)(iii).

To determine the benefit conferred under the Bancomext export loan program, we compared the interest rate charged on these loans during the POR to the uncreditworthy benchmark interest rate discussed above. As the interest amounts AHMSA paid in the 2001 POR were less than what AHMSA would have paid on a comparable commercial loan, as indicated by our benchmark interest rate, we preliminarily determine that this program conferred a countervailable benefit upon AHMSA in accordance with section 771(5)(E)(ii) of the Act.

[11] Bankcomext officials were able to secure payment from AHMSA, pursuant to the terms of the amended loan agreement. We note that the details of the amended loan agreement are business proprietary, see the "Bancomet" section of the GOM Verification Report.

We note that AHMSA was unable to make timely interest payments on several occasions during the 2001 POR, and, pursuant to the terms of its loan agreement, was forced to make penalty interest payments. During verification, we confirmed that the penalty interest rate established under the terms of the renegotiation was 25 percent lower than that established under the original terms of the Bancomext loans. During verification, we asked Bancomext officials why, in the midst of AHMSA's financial difficulties, they decided to lower the penalty interest rate that they charged AHMSA for late interest payments. Bancomext officials explained that the revised moratorium interest rate was the rate that was agreed to between the two parties during the renegotiation process.

For purposes of these preliminary results, we find that, given that AHMSA defaulted on its commercial debt in 1999, its uncreditworthy status at the time of the 2000 renegotiation process, and its history of failing to adhere to its contractual obligations with Bancomext, the terms of the renegotiated Bancomext loans did not reflect the amount of penalty interest that AHMSA would have paid on a comparable commercial loan.[12]

We attempted to obtain information from AHMSA and the GOM regarding penalty interest rates charged in Mexico during 2000. AHMSA explained that, while it was late on several loans prior to 2000, it did not make any penalty interest payments to commercial institutions immediately prior to or during the 2001 POR. *See* page 11 of AHMSA's May 22, 2003, supplemental questionnaire response. In its supplemental questionnaire response, the GOM stated that it was, "* * * unable to provide such information * * *" on the grounds that, "* * * Mexican bank secrecy laws prohibit the disclosure of company-specific repayment information." *See* page 1 of the GOM's May 21, 2003, questionnaire response. During verification, we attempted to meet with a commercial lending institution in Mexico to discuss, among other things, the typical practices of Mexican banks, as they apply to the establishment of penalty interest payments. However, the officials at the commercial lending institution refused to answer our questions. *See* the September 2, 2003, report entitled, "Meeting with Banking Officials from Banamex," a public document on file in room B–099 of the CRU. Thus, in accordance with section 776(a) of the Act, we are using as facts available the penalty interest rate that was established between Bancomext and AHMSA pursuant to the original terms of the 1995 Bancomext loan agreement. *See* Exhibit 4 of AHMSA's July 8, 2003, supplemental questionnaire response.

To determine the benefit attributable to AHMSA's reduced penalty interest payments, we subtracted the amount of penalty interest AHMSA actually paid during the 2001 POR from the amount of penalty interest the company would have paid during the POR pursuant to its initial 1995 loan agreement with Bancomext.

In their December 16, 2003, submission, petitioners alleged that the GOM forgave principal due on the Bancomext loans when AHMSA and Bancomext renegotiated the terms of the Bancomext loans in 2000. In our *New Subsidy Memorandum*, we determined that an examination of petitioners' allegations was warranted. *See* page 8 of the *New Subsidy Memorandum*. During this review, we have issued multiple supplemental questionnaires to AHMSA and the GOM concerning petitioners' allegation that the government forgave a portion of AHMSA's Bancomext debt. In addition, we thoroughly examined this issue during verification. For example, we reviewed source documents that indicated the balance of principal that AHMSA owed on the Bancomext loans before and after the 2000 loan renegotiation. *See* the "Bancomext Loans" section of the AHMSA Verification Report. Based on the questionnaire responses submitted by the GOM and AHMSA and on the source documents reviewed during verification, we preliminarily find that no debt was forgiven on AHMSA's Bancomext loans.

Because eligibility under this program is contingent upon exports, we divided the benefit (*i.e.*, the difference between the benchmark interest/penalty payments and AHMSA's actual interest/penalty payments) by AHMSA's total export sales. We note that we have used an unconsolidated export sales figure because the program was contingent on AHMSA's export sale. Because AHMSA's total export sales were denominated in pesos, we converted the benefit AHMSA received under this program to pesos using the peso/U.S. dollar exchange rate that was outstanding on the date of the interest payments. On this basis, we preliminarily determine the net subsidy for this program to be 6.55 percent *ad valorem* for AHMSA.

II. Programs Preliminarily Determined Not to Confer Subsidies

A. Petroleos Mexicanos (PEMEX) Guaranteed Provision of Natural Gas for Less Than Adequate Remuneration

Based on our *New Subsidies Memorandum*, we initiated an investigation into whether PEMEX sold natural gas to AHMSA for less than adequate remuneration during the POR. In particular, we examined a program under which the state-owned PEMEX agreed to provide a certain fixed quantity of natural gas for the price of US$4 per million British Thermal Units (MMBTU) to AHMSA for a period of three years beginning on February 8, 2001. This contract was applicable from January 1, 2001, to December 31, 2003.

During verification, we met with officials from PEMEX and discussed the manner in which the program operated during the POR. In addition, we identified and examined the distribution of companies and industries that used the program during the POR. *See* the "PEMEX" section of the GOM Verification Report. During verification, we confirmed that, as the GOM had stated in its questionnaire responses, the program was provided to wide variety of industries and that neither AHMSA nor the Mexican steel industry was singled out or disproportionally represented in terms of usage. Thus, based on the questionnaire responses submitted by the GOM and on information collected during verification, we preliminarily determine that this program is not specific within the meaning of section 771(5A) of the Act and, therefore, is not countervailable.

B. PITEX Duty-Free Imports for Companies That Export

In prior segments of this proceeding, we found that the Programa de Importacion Temporal Para Producir Productos Para Exportar (PITEX), also know as the Program for Temporary Importation to Produce Products for Export, provides countervailable export subsidies to the extent that the program offers duty exemptions on products not consumed in the production of the exported product. In its questionnaire responses, the GOM claimed that this aspect of the program was terminated pursuant to Article 303 of the North American Free Trade Agreement (NAFTA). In particular, the GOM asserted that, after 2001, PITEX no longer offered duty-free exemptions on capital goods and machinery. *See, e.g.*, page II–44 of the GOM's November 25, 2002. During verification, we investigated the GOM's claims regarding

[12] Regarding AHMSA's history of failing to adhere to its contractual obligations with bancomext, see the "Bancomext Loan" section of the AHMSA Verification Report.

PITEX. We found no information that contradicted the GOM's claims. *See* the "PITEX" section of the GOM Verification Report.

Because this change was implemented after the POR of this review, we reviewed the relevant source documentation of AHMSA and its affiliate Nacional de Acero, S.A (NASA) to confirm that these companies did not use PITEX during the 2001 POR. *See* the "PITEX (Temporary Import Items)" section of the AHMSA Verification Report. In particular, we reviewed annual reports that both companies submitted to the Ministry of Economy, the authority that administers PITEX. *Id.* These reports listed all temporary imports made by the AHMSA and NASA during the POR.[13] We noted that AHMSA reported no temporary imports during the POR. *Id.* NASA reported temporary imports; however, a review of its source documents indicated that it did not receive any duty exemptions on items that were not consumed in the production of exported products. *Id.*

Based on the questionnaire responses submitted by the GOM and AHMSA, as well as on information examined during verification, we find that PITEX did not confer a benefit on AHMSA or its affiliate, NASA, during the POR. Furthermore, we preliminarily determine that PITEX, as of 2002, is no longer countervailable because it no longer offers duty exemptions on products not consumed in the production of the exported product.

C. GOM Assumption of AHMSA Debt in 1986

In the previous segment of this proceeding we found this program conferred countervailable subsidies. *See* the "1986 Assumption of AHMSA's Debt" section of the Decision Memorandum that accompanied the *1998 Review of CTL Plate* in which we treated the debt forgiveness provided under this program as a non-recurring, allocable grant received in 1986. However, because we have allocated the debt forgiveness under this program using a 15-year AUL, the benefit stream was fully extinguished prior to the POR and, thus, no longer confers countervailable subsidies. Therefore, we preliminarily determine that this program is no longer countervailable.

[13] We note that, in prior segments of this review, usage of PITEX has corresponded to those items that fall under the temporary imports category.

III. Program Preliminarily Determined Not To Exist

A. NAFIN/Coahuila State Government Supplier Relief

In our *New Subsidies Memorandum*, we initiated an investigation into whether the state-run Nacional Financiera (NAFIN) and the Coahuila State Government (CGS) developed a rescue scheme in 1999 to address the lack of payment of AHMSA's debts to local suppliers. During verification, we thoroughly examined AHMSA's accounts payable, as well as other accounting documents related to its suppliers. During our review of these document, we found no evidence that AHMSA received any of the alleged benefits or that this alleged program exists. See the "NAFIN/Coahuila State Government Supplier Relief" section of the AHMSA Verification Report. Further, the GOM claimed that this program does not exist. Therefore, for purposes of these preliminary results, we find that this program does not exist.

IV. Programs Preliminarily Determined To Be Not Used

Based on information reviewed during verification, we preliminarily determine that the following programs were not used during the POR:

1. FONEI Long-Term Financing.
2. Export Financing Restructuring.
3. Bancomext Trade Promotion Services and Technical Support.
4. Empresas de Comercio Exterior or Foreign Trade Companies Program.
5. Article 15 & 94 Loans.
6. NAFIN Long-Term Loans.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(I), we calculated an individual subsidy rate for the producer/exporter subject to this administrative review. For the period January 1, 2001, through December 31, 2001, we preliminarily determine the net subsidy for AHMSA to be 13.37 percent ad valorem. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the BCBP to assess countervailing duties for AHMSA at 13.37 percent ad valorem of the f.o.b. invoice price on all shipments of the subject merchandise from AHMSA, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the Uruguay Round Agreements Act (URAA) replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. A requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the pre-URAA antidumping regulation on automatic assessment, which was identical to 19 CFR 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct the BCBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See* CTL Plate Investigation, 58 FR 37352. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 2001, through December 31, 2001, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties

may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of arguments made in any case or rebuttal briefs.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22787 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Availability of Seats for the Gray's Reef National Marine Sanctuary Advisory Council

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration, Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Gray's Reef National Marine Sanctuary (GRNMS or Sanctuary) is seeking applicants for the following vacant seats on its Sanctuary Advisory Council (Council): Local Conservation, University Education, and Living Resources Research.

Applicants are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the area affected by the Sanctuary. Applicants who are chosen as members should expect to serve three-year terms, pursuant to the Council's Charter.

DATES: Applications are due by September 30, 2003.

ADDRESSES: Application information may be obtained from Becky Shortland, Council Coordinator, Gray's Reef National Marine Sanctuary, 10 Ocean Science Circle, Savannah, GA 31411; telephone 912/598–2345; *becky.shortland@noaa.gov*. Applications should be sent to Reed Bohne, Manager, Gray's Reef National Marine Sanctuary (same address).

FOR FURTHER INFORMATION CONTACT: Contact Becky Shortland, Council Coordinator, 10 Ocean Science Circle, Savannah, GA 31410; telephone 912/598–2345; *becky.shortland@noaa.gov*.

SUPPLEMENTARY INFORMATION: The Sanctuary Advisory Council was established in August 1999 to provide advice and recommendations on management and protection of the Sanctuary. The Council, through its members, also serves as liaison to the community regarding Sanctuary issues and represents community interests, concerns, and management needs to the Sanctuary and NOAA (National Oceanic and Atmospheric Administration, U.S. Department of Commerce). Gray's Reef NMS is one of the largest near shore live-bottom reefs off the Southeastern United States, encompassing approximately 17 square nautical miles. The area earned sanctuary designation in 1981.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 29, 2003.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–22697 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Call for Applications for a Representative to the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve Advisory Council for the Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

AGENCY: National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice and request for applications.

SUMMARY: The Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve is seeking applicants for the following vacant primary seat on its Reserve Advisory Council (Council): (1) Native Hawaiian. Council Representatives are chosen based upon their particular expertise and experience in relation to the seat for which they are applying; community and professional affiliations; philosophy regarding the protection and management of marine resources; and possibly the length of residence in the State of Hawaii. The applicant who is chosen as the Representative should expect to serve the remainder of this seat's term which is due to expire in February 2004. Existing members may re-apply for future vacancies.

DATES: Completed applications must be received no later than September 19, 2003.

ADDRESSES: Applications may be obtained from Moani Pai, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii 96825, (808) 397–2661 or online at *http://hawaiireef.noaa.gov*. Completed applications should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Aulani Wilhelm, 6700 Kalanianaole Highway, Suite 215, Honolulu, Hawaii

96825, (808) 397–2657, *Aulani.Wilhelm@noaa.gov.*

SUPPLEMENTARY INFORMATION: The NWHI Coral Reef Ecosystem Reserve is a new marine protected area designed to conserve and protect the coral reef ecosystem and related natural and cultural resources of the area. The Reserve was established by Executive Order pursuant to the National Marine Sanctuaries Amendments Act of 2000 (Pub. L. 106–513). The NWHI Reserve was established by Executive Order 13178 (12/00), as finalized by Executive Order 13196 (1/01).

The Reserve encompasses an area of the marine waters and submerged lands of the Northwestern Hawaiian Islands, extending approximately 1200 nautical miles long and 100 nautical miles wide. The Reserve is adjacent to and seaward of the seaward boundary of Hawaii State waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the Hawaiian Islands National Wildlife Refuge to the extent that any such refuge waters extends beyond Hawaii State waters and submerged lands. The Reserve is managed by the Secretary of Commerce pursuant to the National Marine Sanctuaries Act and the Executive Orders. The Secretary has also initiated the process to designate the Reserve as a National Marine Sanctuary. The management principles and implementation strategy and requirements for the Reserve are found in the enabling Executive Orders, which are part of the application kit and can be found on the Web site listed above.

In designating the Reserve, the Secretary of Commerce was directed to establish a Coral Reef Ecosystem Reserve Advisory Council, pursuant to section 315 of the National Marine Sanctuaries Act, to provide advice and recommendations on the development of the Reserve Operations Plan and the proposal to designate and manage a Northwestern Hawaiian Islands National Marine Sanctuary by the Secretary.

The National Marine Sanctuary Program (NMSP) has established the Reserve Advisory Council and is now accepting applications from interested individuals for a Council Representative for the following citizen/constituent position on the Council:

1. One (1) representative from the Native Hawaiian community with experience or knowledge regarding Native Hawaiian subsistence, cultural, religious, or other activities in the Northwestern Hawaiian Islands.

Current Reserve Council Representatives and Alternates may apply for this vacant seat.

The Council consists of 25 members, 14 of which are non-government voting members (the State of Hawaii representative is a voting member) and 10 of which are government non-voting members. The voting members are representatives of the following constituencies: Conservation, Citizen-At-Large, Ocean-Related Tourism, Recreational Fishing, Research, Commercial Fishing, Education, State of Hawaii and Native Hawaiian. The government non-voting seats are represented by the following agencies: Department of Defense, Department of the Interior, Department of State, Marine Mammal Commission, NOAA's Hawaiian Islands Humpback Whale National Marine Sanctuary, NOAA's National Marine Fisheries Service, National Science Foundation, U.S. Coast Guard, Western Pacific Regional Fishery Management Council, and NOAA's National Ocean Service.

Authority: 16 U.S.C. Sections 1431, *et seq.*

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: August 29, 2003.

Richard W. Spinrad,

Assistant Administrator, Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 03–22698 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081303B]

Marine Mammals; File Nos. 704–1698 and 1044–1706

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for permits.

SUMMARY: Notice is hereby given that the following applicants have applied in due form for a permit to take marine mammals parts from species of marine mammals under NMFS jurisdiction for purposes of scientific research: The University of Alaska Museum, 907 Yukon Drive, P.O. Box 756960, Fairbanks, AK 99775 (Dr. Gordon Jarrell, Principal Investigator (PI)); and The Alaska Sea Otter and Steller Sea Lion Commission (TASSC), 6239 B Street, Suite 204, Anchorage, AK 99518 (Dr. Dolly Garza, PI).

DATES: Written or telefaxed comments on the new applications must be received on or before October 8, 2003.

ADDRESSES: The applications and related documents are available for review upon written request or by appointment in the following office(s):

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Jennifer Skidmore, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permits are requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Applications for permits:

File No. 704–1698: The University of Alaska Museum proposes to acquire, import and export specimen samples (whole carcasses; hard and soft parts) from all marine mammal species (pinnipeds and cetaceans) under NMFS jurisdiction. An unlimited number of samples would be taken from the following: 1) stranded marine mammal carcasses; 2) marine mammals taken by Alaskan Native subsistence hunters; and 3) specimens from permitted scientists in academic, federal, and state institutions involved in marine mammal research. Importation and exportation are requested in order to provide specimens to the international scientific community and bring legally acquired specimens from other museums and scientific donations. The objective of this application is to obtain authorization to archive specimens for future bona fide research at the University of Alaska and other institutions in the U.S. and world-wide. The applicant has requested a five-year permit.

File No. 1044–1706: TASSC proposes to receive parts and tissues from stranded marine mammals collected by coastal Alaska Native subsistence users and those from legally subsistence hunted Steller sea lions and other

species. Authority to import and export samples is requested. Further, TASSC proposes to standardize Steller sea lion biological sampling techniques among Alaska Native subsistence users through a series of workshops with harvest communities. The objectives of this research are to promote Alaska Native participation in Steller sea lion conservation and management; assess the health and condition of Steller sea lions through biological data and tissue collection; educate and inform the public on the traditional and contemporary relationship between the Steller sea lion and Alaska Natives; and work with regulatory agencies toward the common goal of enhancing and protecting healthy Steller sea lion populations. The applicant has requested a five-year permit.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of these applications to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 29, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–22782 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 061903B]

Marine Mammals; File No. 1045–1713

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Stephen J. Insley, Hubbs-Sea World Research Institute, 2595 Ingraham St., San Diego, California 92109 has been issued a permit to take northern fur seals (*Callorhinus ursinus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907)586–7221; fax (907)586–7249.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Amy Sloan, (301)713–2289.

SUPPLEMENTARY INFORMATION:

On May 12, 2003, notice was published in the **Federal Register** (68 FR 25349) that a request for a scientific research permit to take the species identified above had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

This research project is designed to remotely investigate at-sea interactions between northern fur seals and ships, particularly the impact of commercial fishing vessels on the northern fur seals. Annually, ten lactating female northern fur seals from the Pribilof Islands in Alaska will be captured, measured, outfitted with datalogging instrumentation, and released. The individuals will be tracked and recaptured, the datalogger removed and the animals subsequently released. Additionally, Level B Harrassment of northern fur seals is authorized for 50 pups, 50 breeding females, 25 mature males, and 50 immature males, annually. These activities will be authorized over five years. The results of this research will provide important information for management decisions regarding northern fur seals.

Dated: July 30, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–22783 Filed 9–5–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Consideration will be given to all comments received by October 8, 2003. The Office of Management and Budget has approved this information collection requirement through September 30, 2003.

Title; Form; and OMB Number: Record of Military Processing, Armed Forces of the United States; DD Form 1966; OMB Number 0704–0173.

Type of Request: Extension.

Number of Respondents: 510,000.

Responses Per Respondent: 1.

Annual Responses: 510,000.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 170,000.

Needs and Uses: Title 10 U.S.C., sections 504, 505, 506, 12102, and 520a, Title 14 U.S.C., sections 351 and 632, and Title 50 U.S.C., section 451, require applicants to meet standards for enlistment into the Armed Forces. This information collection is the basis for determining eligibility of applicants for enlistment in the Armed Forces and is needed to verify data given by the applicant and to determine his/her qualification of enlistment. The information collected aids in the determination of qualifications, term of service, and grade in which a person, if eligible, will enter active duty or reserve status.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Required To Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Jacqueline Davis.

Written requests for copies of the information collection proposal should be sent to Ms. Davis, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 29, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22685 Filed 9–5–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 7, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Department of Defense Education Activity 4040 North Fairfax Drive, Arlington, VA 22203, ATTN: Ms. Judith L. Williams.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposal information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 696–4471 ext. 1968.

Title and OMB Control Number: "Department of Defense Education Activity (DoDEA) High School Program Objective Memorandum (POM) Longitudinal Study" and OMB Control Number [to be determined].

Needs and Uses: The Department of Defense Education Activity (DoDEA) operates 224 schools, including 56 high schools, in 21 districts located in 14 foreign countries, seven states, Guam, and Puerto Rico. To evaluate the Quality High School Initiative developed at the DoDEA High School Symposium in October 2001, contact with all DoDEA high school students and their sponsors who have left DoDEA high schools is necessary. All students in grades 9–12 who leave DoDEA high schools for any reason (*i.e.*, Permanent Change of Station (PCS), graduation, *etc.*) and their sponsors will be contacted 3–5 months after their departure by a telephone survey. Four telephone surveys will be used; one for students who leave DoDEA high schools for any reason other than graduation and one for their sponsors; one for DoDEA high school graduates and one for their sponsors. The collected data will be used to determine if quality educational programs are provided to all DoDEA high school students regardless of where the DoDEA high school is located. There is no existing data that is sufficiently comprehensive in terms of meeting the need for this information requirement.

Affected Public: Individuals or households.

Annual Burden Hours: 3,250 hours.

Number of Respondents: 13,000.

Responses Per Respondent: 1.

Average Burden Per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Beginning in fiscal year 2003, funds from a $114.5 million High School Program Objective Memorandum (POM) are available to support the Quality High School Initiative developed at the Department of Defense Education Activity (DoDEA) High School Symposium held in October 2001. This money is made available through the Office of the Secretary of Defense. The High School POM runs from FY 2003–2008. The Quality High School Initiative will be evaluated to determine if quality educational programs are provided to all DoDEA high school students regardless of where the high school is located. The study entails the development of data collection methods and procedures, as well as the analysis of data, to document the use of resources and the impact on student achievement in grades 9–12. The study will use a telephonic interview technique to determine the success of the initiative in helping students prepare for educational experiences after leaving Department of Defense (DoD) schools either through graduation, permanent change of station of the sponsor, or for any other reason. Four surveys have been developed: One for all DoDEA sponsors and one for students who leave DoDEA for any reason other than graduation; one for DoDEA sponsors of graduates and one for students who graduate. These four telephone surveys include questions on transition, curriculum, courses, activities, counselors, teachers, administrators, and summary issues.

Dated: August 29, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22686 Filed 9–5–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0132]

Federal Acquisition Regulation; Submission for OMB Review; Contractors' Purchasing Systems Reviews

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0132).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning contractors' purchasing systems reviews. A request for public comments was published in the **Federal Register** at 68 FR 37467 on June 24, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before October 8, 2003.

ADDRESSES: Submit comments, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeritta Parnell, Acquisition Policy Division, GSA, (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective of a contractor purchasing system review (CPSR), as discussed in part 44 of the FAR, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

B. Annual Reporting Burden

Number of Respondents: 1,580.

Responses Per Respondent: 1.

Total Responses: 1,580.

Average Burden Hours Per Response: 17.

Total Burden Hours: 26,860.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVA), Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence.

Dated: September 3, 2003.

Laura G. Auletta,

Director, Acquisition Policy Division.

[FR Doc. 03–22747 Filed 9–5–03; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

DATES: October 1, 2003, from 1230 to 1630; October 2, 2003, from 0800 to 1515 and October 3, 2003, from 0800 to 1245.

ADDRESSES: SERDP Program Office, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

SUPPLEMENTARY INFORMATION:

Matters to be Considered

Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: August 25, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22687 Filed 9–5–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending one system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

In addition, the Preamble to the Army's Compilation of Privacy Act systems of records notices is being updated to revise two entries, *i.e., For Further Assistance* and *Points of Contact.*

DATES: This proposed action will be effective without further notice on October 8, 2003, unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Act Office, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–7137 / DSN 656–7137.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 29, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

* * * * *

For Further Assistance

Any questions should be addressed to the Department of the Army, Freedom of Information/Privacy Act Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–FP, 7798 Cissna Road, Suite 205, Springfield, VA 22153–3166.

Points of Contact

Mr. Bruno C. Leuyer at (703) 806–5698/DSN 656–5698 or Ms. Janice Thornton at (703) 806–7137/DSN 656–7137.

* * * * *

A0601–222 USMEPCOM

SYSTEM NAME:

Armed Services Military Accession Testing (November 20, 2001, 66 FR 58129).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Individuals who have been administered a version of the Armed Services Vocational Aptitude Battery (ASVAB), to include those who subsequently enlisted and those who did not. This applies to high school, college, National Civilian Community Corps, and vocational students who have participated in the DoD Student Testing Program (STIP), as well as civilian applicants to the military services and active duty Service members."

* * * * *

PURPOSE(S):

Delete entry and replace with "To establish eligibility for enlistment; verify enlistment and placement scores; verify retest eligibility; and provide aptitude test scores as an element of career guidance to participants in the DoD Student Testing Program. The data is also used for research, marketing evaluation, assessment of manpower trends and characteristics; and related statistical studies and reports."

* * * * *

STORAGE:

Delete entry and replace with "Computer magnetic tapes and electronic storage media".

* * * * *

SAFEGUARDS:

Delete entry and replace with "Access to records is restricted to authorized personnel having an official need-to-know. Automated data systems are protected by user identification and manual controls."

* * * * *

A0601–222 USMEPCOM

SYSTEM NAME:

Armed Services Military Accession Testing.

SYSTEM LOCATION:

U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been administered a version of the Armed Services Vocational Aptitude Battery (ASVAB), to include those who subsequently enlisted and those who did not. This applies to high school, college, National Civilian Community Corps, and vocational students who have participated in the DoD Student Testing Program (STIP), as well as civilian applicants to the military services and active duty Service members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, address, telephone number, date of birth, sex, ethnic group identification, educational grade, rank, booklet number of ASVAB test, individual's plans after graduation, and individual item responses to ASVAB subtests.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 601–222, Armed Services Military Personnel Accession Testing Programs; and E.O. 9397 (SSN).

PURPOSE(S):

To establish eligibility for enlistment; verify enlistment and placement scores; verify retest eligibility; and provide aptitude test scores as an element of career guidance to participants in the DoD Student Testing Program. The data is also used for research, marketing evaluation, assessment of manpower trends and characteristics; and related statistical studies and reports.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes and electronic storage media.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Access to records is restricted to authorized personnel having an official need-to-know. Automated data systems are protected by user identification and manual controls.

RETENTION AND DISPOSAL:

Disposition pending (until the National Archives and Records Administration has approved the disposition, treat records as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

Individual should provide his/her full name, Social Security Number, date tested, address at the time of testing, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system should address written inquiries to the Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064–3094.

Individual should provide his/her full name, Social Security Number, date tested, address at the time of testing, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and ASVAB tests.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 03–22690 Filed 9–5–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The Defense Logistics Agency proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on October 8, 2003, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal**

Register and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 27, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 29, 2003.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S900.40

SYSTEM NAME:

Government Telephone Use Records.

SYSTEM LOCATION:

Records are located at Defense Logistics Agency Support Services, Corporate Installations, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and at the telephone control offices of DLA field units. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DLA employees, military members, contractors, and individuals authorized to use government telephone systems, including cellular telephones, pagers, and telecommunications devices for the deaf or speech impaired. The records also cover individuals who have been issued telephone calling cards.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records include individual's name and physical location; duty telephone, cell, and pager numbers; billing account codes; government issued telephone calling card account number; equipment and calling card receipts and turn-in documents; and details of telephone use to include dates and times of telephone calls made or received, numbers called or called from, city and state, duration of calls, and assessed costs.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 40 U.S.C. 762a, Federal Telecommunications System Requirements; 44 U.S.C. 3501 *et seq.*, Federal Information Policy; National Telecommunications and Information Systems Security Directive 900, National Security Telecommunications, April 2000, promulgated pursuant to 47 U.S.C. 901 *et seq.*, National Telecommunications; E.O. 12731, Ethical Conduct; 5 CFR part 2635, Use of Government Property; and DoD Instruction 5335.1, Telecommunications Services.

PURPOSE(S):

Records are maintained to verify that telephones are used for official business or authorized purposes; to identify inappropriate calls and the persons responsible, and to collect the costs of those calls from those responsible. These records may be used as a basis for disciplinary action against offenders.

Records are also maintained to ensure proper certification and payment of bills; to safeguard telecommunications assets; for internal management control; for reporting purposes; and to forecast future telecommunications requirements and costs.

Statistical data, with all personal identifiers removed, may be used by management officials for purposes of conducting studies, evaluations, and assessments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To telecommunications service providers to permit servicing the account.

The DoD 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic formats.

RETRIEVABILITY:

Records are retrieved by individual's name, billing account code, or telephone number.

SAFEGUARDS:

Access to the data is limited to those who require the records in the performance of their official duties. The electronic records employ user identification and password protocols. Physical entry is restricted by the use of locks, guards, and administrative procedures. Employees are periodically briefed on the consequences of improperly accessing restricted databases or records.

RETENTION AND DISPOSAL:

Records are destroyed when 3 years old. Initial telephone use reports may be destroyed earlier if the information needed to identify abuse has been captured in other records.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Defense Logistics Agency Support Services Corporate Installations, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the Heads of DLA field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or to the Privacy Act Officer of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals must supply their full name and the DLA facility or activity where employed at the time the records were created or processed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, or to the Privacy Act Officer of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Individuals must supply their full name and the DLA facility or activity where employed at the time the records were created or processed.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer,

Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Data is supplied by the telephone user, telecommunications service providers, and DLA management.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–22689 Filed 9–5–03; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Inventions; Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the U.S. Government as represented by the Secretary of the Navy and are available for licensing by the Department of the Navy.

U.S. Patent No. 5,978,141 entitled "Optical Mirror Particularly Suited for a Quantum Well Mirror", Navy Case No. 78155, Inventor Karwacki, Issue Date November 2, 1999.//U.S. Patent No. 5,822,047 entitled "Modulator LIDAR system", Navy Case No. 77098, Inventors Contarino, *et al.*, Issue Date October 8, 1998.//U.S. Patent Number 6,486,799 entitled "Computer-based human-centered display system", Inventors Still, *et al.*, Issue Date November 26, 2002.//Navy Case Number 84053 entitled "Deployable Tandem/Multiple Leading Edge Flap", Inventors Ghee, *et al.*//Navy Case Number 85054 entitled "Deployable Serrated Flap—Single Flap, Tandem and Multiple Flap, and Tandem Flap In-Opposition", Inventor Ghee, *et al.*

ADDRESSES: Request for data and inventor interviews should be directed to Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Bldg. 304; Rm. 107, 22541 Millstone Rd., Patuxent River, MD 20670, (301) 342–5586 or E-mail *Fritzpm@navair.navy.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Paul Fritz, Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Bldg. 304; Rm. 107, 22541 Millstone Rd., Patuxent River, MD 20670, (301) 342–5586 or E-mail *Fritzpm@navair.navy.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Navy intends to move expeditiously to license these patents. All licensing application packages and commercialization plans must be returned to Naval Air Warfare Center Aircraft Division, Business Development Office, Office of Research and Technology Applications, Bldg. 304; Rm. 107, 22541 Millstone Rd., Patuxent River, MD 20670.

The Navy, in its decision concerning the granting of licenses, will give special consideration to small business firms, and consortia involving small business firms.The Navy intends to insure that its licensed inventions are broadly commercialized throughout the United States.

Any license of Navy technology will require that material which embody the inventions licensed that are to be sold in the United States of America, will be manufactured substantially in the United States.

(Authority: 35 U.S.C. 207, 37 CFR part 404)

Dated: August 27, 2003.

S.K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.

[FR Doc. 03–22693 Filed 9–5–03; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DOD.

ACTION: Notice to add two systems of records.

SUMMARY: The Department of the Navy proposes to add two systems of records notices to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on October 8, 2003, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B10), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on August 27, 2003, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: August 29, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N06110–1

SYSTEM NAME:

Physical Readiness Information Management System (PRIMS).

SYSTEM LOCATION:

Records are located at the Navy Personnel Command (Pers–6), 5720 Integrity Drive, Millington, TN 38055–6000. Local command fitness leaders and assistant command fitness leaders at Navy installations/bases have access to the information about command personnel assigned to their Unit Identification Code (UIC).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy active duty and reserve personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Physical Readiness Information Management System (PRIMS) consists of command information, authorization information, member personnel data (such as name, Social Security Number, Unit Identification Code, Department, Division, gender, service, rank, date of birth, Navy Enlisted Code/Designator, physical date, date reported to command, medical waivers, body composition assessment (such as weight, height, neck, abdomen, waist, hips, body fat)) and Physical Readiness Test data, Fitness Enhancement Program data, and Ship Shape data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; OPNAVINST 6110.1G, Physical Readiness Program; and E.O. 9397 (SSN).

PURPOSE(S):

To provide a standardized Navy database to monitor and track the

progress of members' Physical Fitness Assessment (PFA) data and to identify, screen, train, educate, counsel, monitor and rehabilitate members who do not meet the Physical Fitness Assessment standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USERS:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To qualified personnel for the purpose of conducting scientific research, management audits or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation or otherwise disclose member identities in any manner.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

STORAGE:

Records are maintained on electronic storage media. Paper records may be printed from the database.

RETRIEVABILITY:

Name of member and Social Security Number.

SAFEGUARDS:

Computer facilities are located in restricted areas accessible only to authorized persons who are properly screened, cleared and trained. Access to records is controlled by the use of need-to-know "roles" in the application. Paper records downloaded from the database are marked "For Official Use Only."

RETENTION AND DISPOSAL:

Records are maintained for a period of five years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Personnel Command (Pers-657), 5720 Integrity Drive, Millington, TN 38055–6000 and/or the local command fitness leader/assistant command fitness leader.

NOTIFICATION PROCEDURE:

All active duty and active Reserve Navy members with internet capabilities who are seeking to determine whether this system of records contains information about themselves can access this record system online at *https://prims.bol.navy.mil* by using their Social Security Number and the BUPERS ONLINE (BOL) password.

Former service members who are seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Personnel Command (Pers-657), 5720 Integrity Drive, Millington, TN 38055–6000 or to the command where they were last assigned.

Requests must be signed and individuals should include their full name, Social Security Number, name or unit identification code of last command assigned, and dates of last assignment.

RECORD ACCESS PROCEDURES:

All active duty and active Reserve Navy members with Internet capabilities seeking access to records about themselves in this system of records may do so at *https://prims.bol.navy.mil* by using their Social Security Number and the BUPERS ONLINE (BOL) password.

Former service members seeking access to records about themselves in this system of records may receive a copy of the records by making written inquiries to the Commander, Navy Personnel Command (Pers-657), 5720 Integrity Drive, Millington, TN 38055–6000 or to the command where they were last assigned.

Requests must be signed and individuals should include their full name, Social Security Number, name or unit identification code of last command assigned and dates of last assignment.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and for contesting contents and appealing initial agency determinations are published in the Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual, command personnel, and/or medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N07200–1

SYSTEM NAME:

Navy Morale, Welfare, and Recreation Debtors List.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who owe money to Navy Morale, Welfare and Recreation (MWR) facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copy of application, dunning notices, DD Form 139s, correspondence from responsible MWR Business Office, Bad Check System (including: Returned Check Ledger; Returned Check Report; copies of returned checks; bank advice relative to the returned check(s); correspondence relative to attempt by Navy MWR to locate the patron and/or obtain payment; a printed report of names of those persons who have not made full restitution promptly, or who have had one or more checks returned through their own fault or negligence); Accounts Receivable Ledger, detailed by patron; and Treasury Offset Program (TOP) accounts.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 31 FR 285.11, Administrative Wage Garnishment; Federal Claims Collection Act of 1966 (Pub. L. 89–508) and Debt Collection Act of 1982 (Pub. L. 97–365); and E.O. 9397 (SSN).

PURPOSE(S):

To maintain an automated tracking and accounting system for individuals indebted to the Department of the Navy's Morale, Welfare and Recreation (MWR) facilities for the purpose of collecting debts.

Records in this system are subject to use in approved computer matching programs authorized under the Privacy Act of 1974, as amended, for debt collection purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To a commercial credit reporting agency for the purpose of either adding to a credit history file or obtaining a credit history file for use in the administration of debt collection.

To a debt collection agency for the purpose of collection services to recover indebtedness owed to the Department of the Navy.

To the Internal Revenue Service (IRS) to obtain the mailing address of a taxpayer for the purpose of locating such taxpayer to collect or to compromise a Federal claim by Navy

against the taxpayer pursuant to 26 U.S.C. 6103(m)(2) and in accordance with 31 U.S.C. 3711, 3217, and 3718.

To any State and local governmental agency that employs the services of others and that pays their wages or salaries, where the employee owes a delinquent non-tax debt to the United States for the purpose of garnishment.

To the Department of the Treasury, Financial Management Service, for the purpose of collecting delinquent debts owed to the U.S. Government via administrative offset.

Note: Redisclosure of a mailing address from the IRS may be made only for the purpose of debt collection, including to a debt collection agency in order to facilitate the collection or compromise of a Federal claim under the Debt Collection Act of 1982, except that a mailing address to a consumer reporting agency is for the limited purpose of obtaining a commercial credit report on the particular taxpayer. Any such address information obtained from the IRS will not be used or shared for any other Navy purpose or disclosed to another Federal, State or local agency which seeks to locate the same individual for its own debt collection purpose.

The DoD "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Mainframe magnetic tapes, disk drives, printed reports, file folders, and PC hard and floppy disks.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Information is stored in locked file cabinets, supervised office space, supervised computer tape library that is accessible only through the data center, entry to which is controlled by a "cardpad" security system, for which only authorized personnel are given the access code. PC entry into the system may only be made through individual passwords.

SYSTEM MANAGER(S) AND ADDRESS:

Policy official: Head, Financial Management Branch, Department of the Navy, Navy Personnel Command (Pers-652), 5720 Integrity Drive, Millington, TN 38055–6520.

Record holder: Local Morale, Welfare, and Recreation Offices/Visitors Quarters/Civilian Fund Business Offices that fall under the Commanding Officer of an installation. Addresses for Commanding Officers appear in the Directory of Department of the Navy Mailing Addresses.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the local Morale, Welfare, and Recreation Office/Visitors Quarters/Civilian Fund Business Office at the installation where they obtained services or to the System Manager. Addresses for commanding officers appears in the Directory of Department of the Navy Mailing Addresses.

In the initial inquiry, the requester must provide full name, Social Security Number, date of transaction, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the local Morale, Welfare, and Recreation Office/Visitors Quarters/Civilian Fund Business Office at the installation where they obtained services or to the System Manager. Addresses for commanding officers appears in the Directory of Department of the Navy Mailing Addresses.

In the initial inquiry, the requester must provide full name, Social Security Number, date of transaction, and the activity where they had their dealings. A list of other offices the requester may visit will be provided after initial contact is made at the office listed above. At the time of a personal visit, requesters must provide proof of identity containing the requester's signature.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual; the bank involved; activity records; Internal Revenue Service; credit bureaus; the Defense Manpower Data Center; and the Department of the Treasury.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 03–22688 Filed 9–5–03; 8:45 am]
BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

[Solicitation Number DE–PS36–03GO93015]

Chemicals and Forest Products Industries of the Future

AGENCY: Golden Field Office, U.S. Department of Energy (DOE).

ACTION: Notice of issuance of solicitation for financial assistance applications.

SUMMARY: DOE is announcing its intention to seek Financial Assistance Applications for research and development (R&D) projects that will reduce energy consumption, enhance economic competitiveness, and reduce environmental impacts of the domestic chemical and forest products industries. DOE intends to provide financial support to assist in the development of such technologies under provisions of the Energy Policy Act of 1992 (EPAct).

DATES: Issuance of the Solicitation is planned for no later than August 21, 2003.

ADDRESSES: To obtain a copy of the Solicitation once it is issued, interested parties should access the DOE Golden Field Office Home Page at *http://www.golden.doe.gov/businessopportunities.html*, click on "Solicitations", and then access the solicitation link. The Golden Home Page will provide direct access to the Solicitation and provide instructions on using the DOE Industry Interactive Procurement System (IIPS) Web site. The Solicitation can also be obtained directly through IIPS at *http://e-*

center.doe.gov by browsing opportunities by Program Office for those solicitations issued by the Golden Field Office. DOE will not issue paper copies of the Solicitation.

FOR FURTHER INFORMATION CONTACT: Beth H. Dwyer, Contracting Officer, at *beth.dwyer@go.doe.gov*. Note, however, that responses to questions concerning the solicitation will ONLY be answered through the Q&A process in the IIPS system, and any Amendments to the Solicitation will be posted on the IIPS Web site ONLY.

SUPPLEMENTARY INFORMATION: The DOE Office of Infrastructure Technologies is soliciting Applications for R&D projects that will focus primarily on technology development in the areas of Catalytic Oxidation, Distillation, Wood/Composites, Fiber Recycling, and New Forest-Based Materials. Other promising technology areas demonstrating energy efficiency in the chemical and forest products industries may be considered in addition to the areas identified above.

Organizations applying under this solicitation are required to develop collaborative project teams involving industry, university and/or national laboratory participants. A minimum of two chemical or forest products organizations must be involved in each application. Awards under this Solicitation will be either Grants or Cooperative Agreements, with a Project Period of three to five years beginning in CY2004. A minimum Cost Share of 30% of Total Project Costs from non-federal sources for applied research projects, and 50% of Total Project Costs from non-federal sources for projects involving commercial demonstration technologies, for each year of the projects, is required in order to be considered for an award.

The possible number of initial awards to be made will depend on the availability of funds in the Fiscal Year 2004 congressional appropriations. Continuation of funding for the full project period will be contingent upon the availability of funds beyond FY 2004. The anticipated level of available DOE funding is specified in the Introduction to and Appendix B of the Solicitation. DOE reserves the right to make no awards under this Solicitation or to reduce the requested DOE funding commitment on any potential award through negotiated reductions in work scope.

Issued in Golden, Colorado, on August 21, 2003.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 03–22749 Filed 9–5–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–70–002]

Algonquin Gas Transmission Company; Notice of Compliance Filing

August 29, 2003.

Take notice that on August 21, 2003, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets proposed to be effective October 1, 2003:

Sub Original Sheet No. 50
Sub Original Sheet No. 51
Sub Original Sheet No. 52
Sub Original Sheet No. 53

Algonquin states that it is making this filing pursuant to an order issued by the Commission in the captioned docket on August 6, 2003. The August 6 Order accepted the tariff sheets listed in the appendix of the order, subject to Algonquin's submission within 15 days, of revised tariff sheets reflecting the length of the negotiated rate agreements detailed in the tariff sheets.

Algonquin states that copies of its filing have been mailed to all affected customers of Algonquin and interested state commissions, and to all parties on the Commission's official service list in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Protest Date: September 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22724 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–301–082]

ANR Pipeline Company; Notice of Negotiated Rate Filing

August 29, 2003.

Take notice that on August 27, 2003, ANR Pipeline Company (ANR), tendered for filing and approval one (1) new negotiated rate service agreement between ANR and CoEnergy Trading Company. ANR requests that the Commission accept and approve the new agreement to be effective June 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eLibrary" link.

Comment Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22735 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–579–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 29, 2003.

Take notice that on August 26, 2003, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, following tariff sheets, bearing a proposed effective date of September 25, 2003:

Second Revised Sheet No. 100
Second Revised Sheet No. 105
Fourth Revised Sheet No. 116
Second Revised Sheet No. 130
Third Revised Sheet No. 166
Sixth Revised Sheet No. 501
First Revised Sheet No. 501A
Third Revised Sheet No. 502A
Sixth Revised Sheet No. 503
First Revised Sheet No. 503.01
Fifth Revised Sheet No. 511

Columbia states it is making the filing to allow it to mutually agree with shippers, on a not unduly discriminatory basis, to combine multiple service agreements under the same rate schedule with varying terms of service for different contract demand quantities into a single service agreement for purposes of increased administrative ease in nominating daily service requirements on the pipeline. Columbia states its proposed revisions are entirely voluntary on the shipper's part and will not expand or restrict any other shipper's existing firm service rights or obligations under any other provisions of Columbia's Tariff.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eLibrary" link.

Comment Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22732 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–564–001]

Dominion Cove Point LNG, LP; Notice of Tariff Filing

August 29, 2003.

Take notice that on August 27, 2003, Dominion Cove Point LNG, LP (Cove Point) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with an effective date of September 10, 2003:

First Revised Sheet No. 213
Substitute First Revised Sheet No. 283

Cove Point states that the purpose of this filing is to supplement its August 11, 2003 filing, which would allow Cove Point the opportunity to charge Negotiated Rates for its transportation, peaking and LNG tanker discharging services. In this supplemental filing, Cove Point has clarified that for purposes of bidding for available firm service and capacity allocation it will treat customers paying for service at a negotiated rate higher than the maximum rate as if they have paid the maximum rate. Also, Cove Point clarified that its NPV calculation will only include revenues generated by the reservation charge or other form of revenue guarantee.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Protest Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22727 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–433–002]

Energy West Development, Inc.; Notice of Compliance Filing

August 29, 2003.

Take notice that on August 25, 2003, Energy West Development, Inc. (Energy West), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to correct the page numbering for the tariff sheets filed on July 22, 2003, in this proceeding:

First Revised Sheet No. 23
First Revised Sheet No. 24
First Revised Sheet No. 29
First Revised Sheet No. 33
First Revised Sheet No. 42
First Revised Sheet No. 60

Energy West states that copies of the filing have been mailed to each of its customers and interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Protest Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22726 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–575–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 29, 2003.

Take notice that on August 22, 2003, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective date of September 1, 2003:

Sixtieth Revised Sheet No. 8A
Fifty-Second Revised Sheet No. 8A.01
Fifty-Second Revised Sheet No. 8A.02
Tenth Revised Sheet No. 8A.04
Fifty-Fifth Revised Sheet No. 8B
Forty-Eighth Revised Sheet No. 8B.01
Fifth Revised Sheet No. 8B.02

FGT states that in Docket No. RP03–268–000 filed on February 28, 2003, FGT filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 3.49% to become effective for the six-month Summer Period beginning April 1, 2003.

FGT states that in Docket No. RP03–310–000 filed on March 21, 2003, FGT filed a flex adjustment of (0.24%) resulting in an Effective Fuel Reimbursement Charge Percentage (Effective FRCP) of 3.25% to become effective April 1, 2003.

FGT further states that the filing is necessary because it is currently experiencing lower fuel usage than it is being recovered by the current Effective FRCP of 3.25%. Decreasing the FRCP will reduce FGT's over recovery of fuel and reduce the Unit Fuel Surcharge in the next Summer Period.

FGT states that copies of the filing are being mailed to all customers served under the rate schedules affected by the filing and the interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" (FERRIS). Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eLibrary" link.

Comment Date: September 3, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22728 Filed 9–4–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–340–010]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

August 29, 2003.

Take notice that on August 25, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Sec. Sub. First Revised Sheet No. 1416, to become effective December 1, 2003.

Gulf South states that it the filing was directed by the Commission in its July 29, 2003 Order regarding Gulf South's compliance with segmentation and Order No. 637.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eLibrary (e-Filing) link.

Protest Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22725 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–061]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

August 29, 2003.

Take notice that on August 27, 2003, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective September 29, 2003.

Fifth Revised Sheet No. 604
Third Revised Sheet No. 605
First Revised Sheet No. 606
Second Revised Sheet No. 607

On July 28, 2003 the Commission issued an Order addressing Gulf South's March 29, 2001 compliance filing in this docket. Gulf South states that this filing

brings Gulf South's PAL service into compliance with the Order, and provides additional flexibility for Gulf South's PAL Customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Protest Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22734 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–578–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 29, 2003.

Take notice that on August 26, 2003, Midwestern Gas Transmission Company (Midwestern) tendered for filing to become part of Midwestern's FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective October 1, 2003:

Third Revised Sheet No. 200
Fourth Revised Sheet No. 264
Fifth Revised Sheet No. 201
Fourth Revised Sheet No. 203
First Revised Sheet No. 264A
Sixth Revised Sheet No. 204
Sixth Revised Sheet No. 206
Third Revised Sheet No. 266
Third Revised Sheet No. 230B
Fourth Revised Sheet No. 246
Original Sheet No. 266.01
Original Sheet No. 246.01
Fifth Revised Sheet No. 262
Second Revised Sheet No. 266A
Third Revised Sheet No. 262.01
Second Revised Sheet No. 266B
Third Revised Sheet No. 263
Original Sheet No. 266C
Original Sheet No. 270A
Eighth Revised Sheet No. 273
Original Sheet No. 274
Sheet Nos. 275–399

Midwestern states that the purpose of this filing is to update Midwestern's currently effective tariff sheets to reflect the changes that have been accepted by the Commission in Midwestern's Order No. 637 compliance proceeding in Docket Nos. RP00–467–002 and 003 in an Order dated June 5, 2003 (103 FERC ¶ 61,294). Midwestern states that this instant filing is a housekeeping tariff filing prompted by the fact that Midwestern explains that, during the interval of time between Midwestern's compliance filing and the Commission's Order in Midwestern's Order No. 637 compliance proceeding, Midwestern filed and the Commission accepted other Midwestern tariff filings that did not contain Midwestern's Order No. 637 compliance proceeding tariff changes because they had not been accepted at the time the other proceedings were filed.

Midwestern states that copies of this filing have been sent to all of Midwestern's shippers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-library link.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22731 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–577–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 29, 2003.

Take notice that on August 26, 2003, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to be effective October 1, 2003:

Third Revised Volume No. 1
Twentieth Revised Sheet No. 14
Original Volume No. 2
Thirty-Fifth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to propose a decrease from 2.11% to 1.58% in the fuel reimbursement factor (Factor) applicable to Northwest's transportation service Rate Schedules. Northwest states that the Factor allows Northwest to be reimbursed in-kind for the fuel used during the transmission of gas and for the volumes of gas lost and unaccounted-for that occur as a normal part of operating the transmission system.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the

last three digits in the docket number field to access the document. For Assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eLibrary" link.

Comment Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22730 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–580–000]

OkTex Pipeline Company; Notice of Annual Charge Adjustment

August 29, 2003.

Take notice that on August 27, 2003, OkTex Pipeline Company (OkTex) tendered for filing Tariff Sheets Nos. 5A and 5B to revise the Annual Charge Adjustment (ACA).

OkTex states that the purpose of the filing is to reflect the correct ACA surcharge of $0.0021 to OkTex's tariff rates for the period October 1, 2003 through September 30, 2004. OkTex explains that, during the previous 12 months, the ACA surcharge billed was $0.0021 per Dth, but due to a typographical error, the tariff sheets on file with the Commission reflected an inaccurate ACA surcharge of $0.022. This filing corrects the ACA rates inadvertently displayed on Tariff sheets 5A and 5B from .$0.0022 to $0.0021.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before the intervention and protest date as indicated below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: September 9, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22733 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RT01–2–010]

PJM Interconnection, L.L.C.; Notice of Filing

August 29, 2003.

Take notice that on August 25, 2003, PJM Interconnection, L.L.C. (PJM) tendered for filing proposed changes to portions of the PJM Tariff and to Schedule 6 of the PJM Operating Agreement, PJM's Regional Transmission Expansion Planning Protocol. PJM states that the proposed amendments are submitted to comply with the Commission's Order in this proceeding dated July 24, 2003.

PJM states that copies of this filing have been served on all parties, as well as on all PJM Members and the state electric utility regulatory commissions in the PJM region.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 24, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22736 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–576–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

August 29, 2003.

Take notice that on August 25, 2003, Southern Natural Gas Company (Southern), tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following revised tariff sheets to become effective October 1, 2003:

Third Revised Sheet No. 101A
Second Revised Sheet No. 101B
Fifth Revised Sheet No. 116
Sixth Revised Sheet No. 117

Southern states that the tariff sheets filed by Southern set forth the terms and conditions under which Southern proposes to replace its first-come, first-served method of awarding primary firm receipt point capacity with a net present value (NPV) method. The NPV method is the same method that Southern uses for awarding available primary firm delivery point and pipeline capacity.

Southern states that it will be more equitable to award all available capacity under the same method. In addition, Southern is shortening the time period for an open season for requests for receipt point or delivery point amendments to be a minimum of 3 business days. Southern's existing open season time tables shall apply to open seasons for generally available capacity or requests for available capacity. Southern also clarifies that for purposes of determining whether a bid has met

the reserve price, bids entailing only amendments of points will be granted a value of zero.

Southern also proposes to change its Tariff to allow shippers to amend their primary Receipt Points for a limited consecutive term even when capacity at the Receipt Point is not available for the remainder of the primary term. In the event a Shipper amends its Receipt Point for a limited term, the previous Receipt Point will not revert back unless it was in the path of the amended point. Southern has requested to place the new capacity award methodology into effect on October 1, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eLibrary" link.

Comment Date: September 8, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22729 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–111.006, et al.]

Midwest Independent Transmission System Operator, Inc., et al.; Electric Rate and Corporate Filings

August 28, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C., et al.

[Docket No. EL02–111–006]

Take notice that on August 22, 2003, in compliance with the Commission's July 23, 2003 Order in this proceeding, 104 FERC ¶ 61,105 (2003), PJM Interconnection, L.L.C. (PJM) filed revisions to the PJM Open Access Transmission Tariff, to eliminate PJM's through-and-out rate for transactions sinking within the proposed PJM/Midwest ISO footprint.

PJM states that the compliance tariff sheets have an effective date of November 1, 2003, as established by the July 23 Order.

PJM states that copies of this filing have been served on all PJM members and utility regulatory commissions in the PJM Region and on all parties listed on the official service list compiled by the Secretary in this proceeding.

Comment Date: September 29, 2003.

2. Westar Energy, Inc.

[Docket No. ER03–1183–001]

Take notice that on August 22, 2003, Westar Energy, Inc. (Westar) submitted for filing corrections to Sheet No. 7, Second Revised Rate Schedule FERC No. 264, Electric Transmission and Service Contract between Westar and Kansas Electric Power Cooperative, Inc. (KEPCo) and Sheet No. 7, Original Rate Schedule FERC No. 183, Electric Power Transmission and Service Contract between Westar's wholly owned subsidiary, Kansas Gas and Electric Company, Inc. and KEPCo. Westar states that the revised sheets lists the date of May 19, 2003 for the Stipulation and Agreement among Westar, KEPCo and Midwest Energy, Inc. to replace the incorrect date of March 19, 2003 listed in their August 8, 2003 filing.

Westar states that a copy of this filing was served upon the Kansas Corporation Commission and KEPCo.

Comment Date: September 12, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22702 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2181–014]

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protest

August 29, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License for a Major Water Power Project.

b. *Project No.:* P–2181–014.

c. *Date Filed:* February 10, 2003.

d. *Applicant:* Northern States Power Company (d/b/a Xcel Energy).

e. *Name of Project:* Menomonie Hydroelectric Project.

f. *Location:* On the Red Cedar River, City of Menomonie, Dunn County,

Wisconsin. This project would not use Federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William Zawacki, Director, Hydro Plants, or Ms. Kristina Bourget, Esq., Northern States Power Company (d/b/a Xcel Energy), 1414 West Hamilton Avenue, PO Box 8, Eau Claire, Wisconsin 54702–0008, 715–836–1136 or 715–839–1305, respectively.

i. *FERC Contact:* John Ramer, (202) 502–8969.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* CFR 385.200 (a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The Menomonie Project consists of the following existing facilities: (1) A 624-foot-long by about 40-foot-high dam, topped with five, 40-foot-wide by 19-foot-high and one, 9-foot-high by 25-foot-wide, steel Tainter gates, with a total dam discharge capacity of 62,000 cubic feet per second (cfs); (2) a 1,405-acre reservoir (Lake Menomin) with a gross storage capacity of about 15,000-acre feet; (3) a 72-foot-long by about 50-foot-wide by 40-foot-high powerhouse containing two vertical-shaft Kaplan turbine-generators with a combined total maximum hydraulic capacity of 2,700 cfs and a total installed generating capacity of about 5.4 megawatts (MW), producing a total of 23,358,292 kilowatt-hours (kWh) annually; (4) a 4,160-volt bus with three bundles of underground cables, approximately 50-feet-long, leading to a substation containing a 69-kilovolt (kV) bus from which power flows to serve the applicant's interconnected electrical system, or to a 12.5-kV local distribution system; and (5) appurtenant facilities. The dam and existing project facilities are owned by Northern States Power Company (d/b/a Xcel Energy).

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22722 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protest

August 29, 2003.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New License for a Major Water Power Project.

b. *Project No.:* P–2697–014.

c. *Date Filed:* February 10, 2003.

d. *Applicant:* Northern States Power Company (d/b/a Xcel Energy).

e. *Name of Project:* Cedar Falls Hydroelectric Project.

f. *Location:* On the Red Cedar River, Towns of Tainter, Red Cedar, and Sherman, Dunn County, Wisconsin. This project would not use Federal lands. g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William Zawacki, Director, Hydro Plants, or Ms. Kristina Bourget, Esq., Northern States Power Company (d/b/a Xcel Energy), 1414 West Hamilton Avenue, P.O. Box 8, Eau Claire, Wisconsin 54702–0008, 715–836–1136 or 715–839–1305, respectively.

i. *FERC Contact:* John Ramer, (202) 502–8969.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing Docket No. P–2697–014 documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests and requests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* CFR 385.200 (a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The Cedar Falls Project consists of the following existing facilities: (1) A 510-foot-long by about 50-foot-high dam, topped with two, 23-foot-wide by 5-foot-high, steel Tainter gates, with a total dam discharge capacity of 57,000 cfs; (2) a 1,752-acre reservoir (Tainter Lake) with a gross storage capacity of about 23,000-acre feet; (3) a 140-foot-long by 150-foot-wide by 42-foot-high powerhouse containing three 2,000-kilowatt (kW) horizontal generators with Francis turbines, with a total maximum hydraulic capacity of 2,500 cfs and a total installed generating capacity of 7.1 MW, producing a total of 33,678,351 kWh annually; (4) a substation containing a 69-kV bus from which power flows to four 69-kV transmission lines that serve the applicant's interconnected electrical system, or to a 10,500-kva transformer that serves a local distribution load (no transmission lines are part of this project); and (5) appurtenant facilities. The dam and existing project facilities are owned by Northern States Power Company (d/b/a Xcel Energy).

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h. above.

You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22723 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2161–006]

Rhinelander Paper Company, Wisconsin; Errata Notice

August 27, 2003.

On August 20, 2003, the Commission issued an "Order Issuing New License", 104 FERC ¶ 62,134 (2003), to operate and maintain the Rhinelander Hydroelectric Project located on River, County, Wisconsin. This notice corrects the license ordering paragraphs.

Ordering Paragraph (B)(1) is changed to read:

(1) All lands, to the extent of the licensee's interests in those lands, enclosed by the project boundary approved in the previous license order for this project,[28] remain in affect.

Ordering Paragraph (E), Article 202 is changed to read:

Article 202. Within 45 days of the date of issuance of the license, the licensee shall file three sets of aperture cards of the approved exhibit drawings. The sets must be reproduced on silver or gelatin 35mm microfilm.

Prior to microfilming, the FERC Drawing Number (2161–1001 through 2161–1007) shall be shown in the margin below the title block of the approved drawing. After mounting, the FERC Drawing Number shall be typed on the upper right corner of each aperture card. Additionally, the Project Number, FERC Exhibit (*e.g.*, F–1, G–1, *etc.*), Drawing Title, and date of this license shall be typed on the upper left corner of each aperture card.

Two of the sets shall be filed with the Secretary of the Commission, ATTN: OEP/DHAC. The third set shall be filed with the Commission's Chicago Regional Office.

[28] 14 FERC ¶ 62,064 (1981).

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22721 Filed 9–5–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD03–13–000]

Application of the Primary Function Test for Gathering on the Outer Continental Shelf; Notice for Extension of Time to File Comments

August 27, 2003.

On August 14, 2003, a notice was issued stating that on September 23, 2003, the Commission would convene a public conference to explore criteria for distinguishing gathering facilities from transmission facilities in shallow waters of the Outer Continental Shelf. The notice requested that comments in response to the notice be submitted to the Commission by September 3, 2003. On August 22, 2003, the Williams Companies, Inc. (Williams), submitted a request—supported by the Interstate Natural Gas Association of America, the Natural Gas Supply Association, Duke Energy Field Services, the KeySpan Delivery Companies, and BP Energy Company—for an extension of time to file comments in response to the notice of the conference.

Williams requests additional time because the period to prepare comments coincides with holidays. In view of the support favoring Williams' request, the time to submit comments will be extended by a week, from September 3 to September 10, 2003.

Although the date for comments is changed, the date for notifying the Commission of an intention to participate in the conference remains the same. Therefore, persons interested in speaking or making a presentation at the conference must indicate their interest no later than September 3, 2003; comments addressing the questions specified in the August 14 notice must be filed by September 10, 2003. There is no need to provide advance notice to the Commission simply to attend the conference.

A subsequent notice will provide further details on the conference, including the agenda and a list of participants, as plans evolve. For additional information, please contact Gordon Wagner, Office of General

Counsel, phone 202–502–8947, e-mail: *gordon.wagner@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 03–22720 Filed 9–5–03; 8:45 am]

BILLING CODE 5717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7555–1]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed Consent Decree; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended ("Act"), 42 U.S.C. 7413(g), notice is hereby given of a proposed Consent Decree. On August 15, 2003, Environmental Defense filed a complaint pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), alleging that the Environmental Protection Agency had failed to meet its mandatory duty to promulgate guidelines and requirements for Best Available Retrofit Technology ("BART") for certain major stationary sources. *Environmental Defense* v. *Marianne Lamont Horinko,* No. 1:03CV01737 RMU (D.D.C.). On August 19, 2003, the United States Environmental Protection Agency lodged the proposed Consent Decree with the United States District Court for the District of Columbia Circuit. The proposed Consent Decree establishes a time frame for EPA to promulgate the BART regulations and guidelines.

DATES: Written comments on the Proposed Consent decree must be received by October 8, 2003.

ADDRESSES: Written comments should be sent to M. Lea Anderson, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Copies of the proposed Consent Decree are available from Phyllis J. Cochran, (202) 564–5566.

SUPPLEMENTARY INFORMATION: Environmental Defense alleges that EPA failed to promulgate BART regulations and guidelines by the Congressionally-enacted deadline.

Pursuant to sections 169A and 169B of the Clean Air Act, EPA promulgated regulations on July 1, 1999 to protect visibility in Federal Class I areas. 64 FR 35714 ("regional haze rule"). In addition, pursuant to section 169A(b), EPA proposed to promulgate guidelines for the implementation of the BART requirements of the regional haze rule on July 20, 2001, 66 FR 38108, but has not published final guidelines. The regional haze rule was challenged, and on May 24, 2002, the United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") vacated and remanded to EPA the BART provisions of the regional haze rule. *American Corn Growers Assoc.* v. *EPA,* 291 F.3d 1 (D.C. Cir. 2002).

Section 169B(e) of the CAA provides that EPA must carry out its regulatory responsibilities under section 169A of the Act to promulgate regulations to protect visibility by December 10, 1997.[1] These regulations must require each applicable implementation plan to contain measures to assure reasonable progress toward the national visibility goal, including requirements that certain major stationary sources procure, install, and operate BART. CAA section 169A(b)(2). The CAA also requires EPA to provide guidelines to the States on the implementation of the visibility program, including guidelines for the determination of BART emission limits for fossil-fuel fired generating plants with a total generating capacity in excess of 750 megawatts. CAA section 169A(b).

The Consent Decree provides that EPA will sign a notice of proposed rulemaking setting forth its proposed BART regulations and guidelines no later than April 15, 2004. It further provides that EPA will submit the notice of proposed rulemaking to the Office of Federal Register no later than five days following signature. The Decree also provides that EPA shall sign a final notice of rulemaking setting forth its BART regulations and guidelines no later than April 15, 2005, and that EPA will submit the notice of final rulemaking to the Office of Federal Register no later than five days following signature.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Consent Decree from persons who were not named as parties or interveners to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed Consent Decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determine, following the comment period, that consent is inappropriate, the Consent Decree will be final.

[1] Section 169B(e)(1) of the CAA requires EPA to issue regional haze rules within 18 months of the receipt of the final report of the Grand Canyon Visibility Transport Commission. This report was received by EPA on June 10, 1996.

Dated: August 22, 2003.

Lisa K. Friedman,

Associate General Counsel.

[FR Doc. 03–22769 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7554–7]

Control of Emissions From New Highway Vehicles and Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of denial of petition for rulemaking.

SUMMARY: A group of organizations petitioned EPA to regulate emissions of carbon dioxide and other greenhouse gases from motor vehicles under the Clean Air Act. For the reasons set forth in this notice, EPA is denying the petition.

EFFECTIVE DATE: September 8, 2003.

ADDRESSES: Information relevant to this action is contained in Docket No. A–2000–04 at the EPA Docket Center, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC. Dockets may be inspected at this location from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on Government holidays. You can reach the Air Docket by telephone at (202) 566–1742 and by facsimile at (202) 566–1741. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Chitra Kumar, Office of Air and Radiation, (202) 564–1389.

SUPPLEMENTARY INFORMATION:

I. Background

On October 20, 1999, the International Center for Technology Assessment (ICTA) and a number of other organizations [1] petitioned EPA to

[1] Alliance for Sustainable Communities, Applied Power Technologies, Bio Fuels America, California Solar Energy Industries Association, Clements Environmental Corporation, Environmental Advocates, Environmental and Energy Study Institute, Friends of the Earth, Full Circle Energy Project, Green Party of Rhode Island, Greenpeace USA, Network for Environmental and Economic Responsibility of the United Church of Christ, New Jersey Environmental Watch, New Mexico Solar

regulate certain greenhouse gas (GHG) emissions from new motor vehicles and engines under section 202(a)(1) of the Clean Air Act (CAA). Specifically, petitioners seek EPA regulation of carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), and hydrofluorocarbon (HFCs) emissions from new motor vehicles and engines. Petitioners claim these emissions are significantly contributing to global climate change.

EPA is authorized to regulate air pollutants from motor vehicles under title II of the CAA. In particular, section 202(a)(1) provides that "the Administrator [of EPA] shall by regulation prescribe * * * in accordance with the provisions of [section 202], standards applicable to the emission of any air pollutant from any class or classes of new motor vehicle * * *, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare."

II. Summary of the Petition

Petitioners contend the test for regulating motor vehicle emissions under CAA section 202(a)(1) has been met for CO_2, CH_4, N_2O and HFCs. They claim statements made on EPA's Web site and in other documents constitute an Agency finding that the four GHGs may reasonably be anticipated to endanger public health or welfare. They also assert that motor vehicle emissions of the GHGs could be significantly reduced by increasing the fuel economy of vehicles, eliminating tailpipe emissions altogether, or using other current and developing technologies. Based on their analysis, they argue that EPA has a mandatory duty under section 202(a)(1) to regulate emissions of GHGs from motor vehicles.

Petitioners present their case for why EPA should, and even must, regulate motor vehicle GHG emissions under section 202(a)(1) in four parts. First, they assert that anthropogenic emissions of CO_2, CH_4, N_2O, and HFCs meet the CAA section 302(g) definition of "air pollutant," which is "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive * * * substance or matter which is emitted into or otherwise enters ambient air. Such term includes any precursors to the formation of any air pollutant * * *." Citing international and national reports, petitioners contend that anthropogenic emissions of CO_2, CH_4, N_2O, and HFCs are accelerating global warming, and that motor vehicle emissions of these GHGs, particularly CO_2, significantly contribute to the U.S. GHG inventory. Petitioners argue that the contribution of motor vehicle GHG emissions to global climate change qualify them as "air pollutants" under the CAA.

Petitioners also claim that EPA has already determined CO_2 to be an air pollutant. They cite an April 10, 1998, memorandum from Jonathan Z. Cannon, then General Counsel of EPA, to Carol Browner, then Administrator of EPA, entitled "EPA's Authority to Regulate Pollutants Emitted by Electric Power Generation Sources" (hereinafter "Cannon Memorandum"). The memorandum states that sulfur dioxide, nitrogen oxides, mercury, and CO_2 emitted from electric power generating units fall within the definition of "air pollutant" under CAA section 302(g). According to petitioners, it follows from the memorandum that the other three GHGs meet the CAA definition of "air pollutant," too.

Second, petitioners argue that GHG emissions contribute to pollution that "may reasonably be anticipated to endanger public health or welfare," a key criterion for regulation under section 202(a)(1). Petitioners state that the CAA does not require proof of actual harm, but allows the Administrator to make a precautionary decision to regulate an air pollutant if it "may reasonably be anticipated" to endanger public health or welfare. The petitioners point to statements made by the United Nations Intergovernmental Panel on Climate Change (IPCC), EPA and others about the potential effects of global climate change on public health and welfare as establishing that global climate change "may reasonably be anticipated to endanger public health and welfare." Based on these statements, the petitioners allege numerous threats to public health and welfare.

Third, petitioners argue that it is technically feasible to reduce GHG emissions from new motor vehicles and engines. In particular, they note that CO_2 emissions can be reduced by increasing the fuel economy of passenger cars and light trucks, and that a number of currently available gasoline-powered cars get significantly better fuel economy than the 27.5 mpg corporate average fuel economy (CAFE) standard currently applicable to cars under Federal law. They also point to a congressional report identifying other technologies for further improving the fuel economy of gasoline-powered cars that have yet to be fully employed. In addition, petitioners note that several foreign and domestic car manufacturers are already marketing or developing hybrid-electric vehicles that get significantly better fuel mileage than the most fuel-efficient gasoline-powered car. Looking ahead to the next generation of vehicle technology, petitioners describe the potential for electric and hydrogen-celled vehicles to eliminate tailpipe emissions altogether. Petitioners recommend that EPA set a "corporate average fuel-economy based standard" under CAA section 202 that would result in the rapid market introduction of more fuel-efficient and zero-emission vehicles.

Petitioners suggest other potential ways of reducing CO_2 emissions such as setting a declining fleet average NO_X emission standard that would require manufacturers to add zero-emission vehicles to their fleets. They also note the availability of tire efficiency standards. Petitioners do not, however, address the potential for reducing motor vehicle emissions of the other three GHGs.

Finally, petitioners maintain that the Administrator has a mandatory duty to regulate motor vehicle GHG emissions under CAA section 202(a)(1). They contend that EPA has "already made formal findings" that motor vehicle GHG emissions "pose[] actual or potential harmful effects [on] the public health and welfare." Noting that section 202(a)(1) provides the Administrator "shall" prescribe motor vehicle standards, petitioners argue that the use of "shall" creates a mandatory duty to promulgate standards when the requisite findings are made. They accordingly claim that the Administrator must establish motor vehicle standards for the four GHGs.

Petitioners further argue that "the precautionary purpose of the CAA supports" regulating these gases even if the Agency believes there is some scientific uncertainty regarding the actual impacts of global climate change. Petitioners cite several court cases recognizing the Administrator's authority to err on the side of caution in making decisions in areas of scientific uncertainty. They also assert that scientific uncertainty does not excuse a mandatory duty to regulate.

III. Request for Comment

On January 23, 2001, EPA requested public comment on the petition (*see* 66 FR 7486). The public comment period ended May 23, 2001.

EPA requested comment on all the issues raised in ICTA's petition. In particular, EPA requested comment on any scientific, technical, legal, economic or other aspect of these issues that may

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Energy Association, Oregon Environmental Council, Public Citizen, Solar Energy Industries Association, SUNDAY Campaign.

be relevant to EPA's consideration of the petition.

IV. Summary of Public Comments

EPA received almost 50,000 comments on the petition. Most comments were relatively brief expressions of support for the petition sent by electronic mail; many were virtually identical. EPA also heard from a number of business and environmental groups. Most of the comments focused exclusively on CO_2. This section describes the significant points and arguments made in the public comments.

Several commenters addressed the issue of whether the four GHGs—CO_2, CH4, N20 and HFCs—are "air pollutants" under the CAA and thus potentially subject to regulation under the Act. Some of the commenters agreed with the petitioners that GHGs are air pollutants under the CAA. Like the petitioners, they noted that the definition of "air pollutant" in CAA section 302(g) is very broad and that the CAA itself refers to CO_2 as an "air pollutant" (*see* CAA section 103(g)). These commenters also cited to and agreed with the Cannon Memorandum and statements by Gary Guzy, EPA's General Counsel following Mr. Cannon, that CO_2 falls within the CAA definition of air pollutant.

Other commenters argued that EPA has never formally determined that any GHGs are air pollutants and that the Cannon Memorandum is not such a finding. Some commenters also argued that CO_2 is not an air pollutant because it is a naturally-occurring substance in Earth's atmosphere and is critical to sustaining life. Other commenters pointed out that EPA already regulates as air pollutants substances that have natural as well as anthropogenic sources where human activities have increased the quantities present in the air to levels harmful to public health, welfare or the environment (*e.g.*, sulfur dioxide, volatile organic compounds, particulate matter).

Another issue of concern to commenters was whether EPA has authority to regulate motor vehicle emissions of GHGs even if they meet the CAA definition of "air pollutant." Commenters supportive of the petition noted the broad authority conferred by section 202(a)(1) to regulate motor vehicle emissions that cause or contribute to air pollution that may reasonably be anticipated to endanger public health and welfare. These commenters also noted that CAA section 302(h) defines "welfare" to include effects on weather and climate, as well as other aspects of the environment that may be affected by global climate change (*e.g.*, soils, water, crops, vegetation, animals, visibility).

Other commenters argued that the CAA does not authorize regulations to address global climate change, including motor vehicle GHG emission standards. They noted that no CAA provision specifically authorizes global climate change regulations, a Senate committee's proposal for mandatory CO_2 standards for motor vehicles did not survive Senate consideration, and other contemporaneous legislative proposals for mandatory GHG emission reductions failed to pass. They also pointed out that the only CAA provision that specifically mentions CO_2 authorizes only "nonregulatory" measures and expressly precludes its use as authority for imposing mandatory controls. They cited another CAA provision that calls on EPA to determine the "global warming potential" of certain pollutants but expressly precludes regulation on that basis as further indication that Congress did not intend EPA to regulate GHGs under the CAA.

Looking at the CAA more broadly, several commenters argued that the key statutory mechanism for controlling pervasive "air pollutants"—establishing and implementing national ambient air quality standards under sections 108, 109 and 110—is unworkable for addressing an issue whose causes and effects are global in nature. Several commenters also pointed out that Congress addressed another global atmospheric issue, depletion of stratospheric ozone by man-made substances, explicitly and in discrete portions of the Act, specifically part B of title 1 prior to the CAA Amendments of 1990 and title VI following the 1990 amendments. Moreover, both incarnations of CAA stratospheric ozone authority included recognition of the international nature of the problem and provisions to facilitate and augment international cooperation in achieving a solution. These commenters argued that if Congress had intended EPA to address global climate change under the CAA, it would have made that clear by including analogous provisions.

Placing the CAA in a larger context, the commenters noted several other Federal statutes that specifically address global climate change and authorize only research and policy development, not regulation. Commenters also pointed out that Congress has expressed dissatisfaction with the Kyoto Protocol, negotiated under the auspices of the United Nations Framework Convention on Climate Change and requiring parties to the Protocol to reduce their GHG emissions by a specific amount. They further cited congressional actions taken since the 1990 CAA amendments to prevent EPA from implementing the Kyoto Protocol (the so-called Knollenberg amendments to the FY 1999 and 2000 VA–HUD and Independent Agency Appropriations Acts). Finally, they noted that Congress had rejected numerous legislative proposals mandating GHG reductions (*see, e.g.*, S. 1224, 101st Cong. (1989); H.R. 5966, 101st Cong. (1990)) . According to the commenters, these actions clearly signal that Congress awaits further scientific information and other technological and international developments before authorizing any regulation to address global climate change.

Finally, several commenters pointed to the Supreme Court's decision in *Food and Drug Administration* v. *Brown & Williamson Tobacco Corp.*, 120 S.Ct. 1291 (2000), finding that the FDA lacks authority to regulate tobacco products despite a facially broad grant of authority. These commenters warned that a reviewing court would closely scrutinize and likely strike down an EPA assertion of CAA authority to regulate for global climate change purposes when Congress specifically addressed the issue of global climate change, not in the CAA, but in other Federal statutes that do not authorize regulation.

On the other hand, several commenters pointed to, and agreed with, a letter from then EPA General Counsel Guzy to a congressional committee explaining that explicit mention of a pollutant is not a necessary prerequisite to regulation under a statutory provision granting broad authority to regulate pollutants, provided that the statutory criteria for regulation are met. These commenters also echoed Mr. Guzy's view that a congressional decision not to require standards does not affect pre-existing discretionary authority to set standards where the applicable criteria are met.

Many commenters considered the issue of whether anthropogenic GHG emissions contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Several commenters pointed out, as petitioners did, that EPA's climate website and other national and international reports describe hazards to human health and welfare that may result from global climate change. Other commenters claimed that there is no basis at this time for EPA to conclude that GHG emissions from U.S. motor vehicles endanger public health or welfare. Some commenters questioned

whether global warming was occurring or whether humans' impact on any global warming was significant. These commenters also suggested that global warming, if real, would have beneficial impacts (*e.g.*, helping prevent another ice age, increasing agricultural production) that could outweigh any adverse effects. Several commenters argued that since the causes and effects of global climate change occur on a worldwide basis, regulation of only U.S. motor vehicles would be neither effective nor fair.

Commenters also addressed whether it is technologically feasible to reduce GHG emissions from new motor vehicles. Some commenters described categories of technologies that can substantially reduce CO_2 emissions from gasoline-powered passenger cars and light trucks, including vehicle load reduction, engine improvements, improved transmissions, integrated starter generators, and hybrid-electric drive trains. Vehicle load reduction strategies include reduced vehicle mass, reduced aerodynamic drag, reduced tire rolling resistance, and reduced accessory loads. Engine improvement strategies include improved specific power and gasoline direct injection. Improved transmission strategies include 5- and 6-speed automatic transmissions, 5-speed motorized manual gearshifts, and continuously variable transmissions. Other commenters asserted that EPA may not regulate motor vehicle GHG emissions by setting fuel economy standards inasmuch as Congress entrusted fuel economy standard-setting to the Department of Transportation (DOT) under the Energy Policy and Conservation Act (EPCA).

Finally, commenters considered whether EPA has a mandatory duty to regulate motor vehicle GHG emissions. Some commenters agreed with petitioners that the Cannon Memorandum and EPA's website statements triggered an obligation under CAA section 202(a)(1) to set CO_2 standards. Other commenters countered that the Cannon Memorandum and EPA website statements are not formal EPA findings for the purposes of exercising statutory authority. They asserted that for findings to provide a sufficient legal basis for regulating under section 202(a)(1), they must be established through a public notice-and-comment process.

V. EPA Response

After careful consideration of petitioners' arguments and the public comments, EPA concludes that it cannot and should not regulate GHG emissions from U.S. motor vehicles under the CAA. Based on a thorough review of the CAA, its legislative history, other congressional action and Supreme Court precedent, EPA believes that the CAA does not authorize regulation [2] to address global climate change. Moreover, even if CO_2 were an air pollutant generally subject to regulation under the CAA, Congress has not authorized the Agency to regulate CO_2 emissions from motor vehicles to the extent such standards would effectively regulate car and light truck fuel economy, which is governed by a comprehensive statute administered by DOT.

In any event, EPA believes that setting GHG emission standards for motor vehicles is not appropriate at this time. President Bush has established a comprehensive global climate change policy designed to (1) answer questions about the causes, extent, timing and effects of global climate change that are critical to the formulation of an effective, efficient long-term policy, (2) encourage the development of advanced technologies that will enable dramatic reductions in GHG emissions, if needed, in the future, and (3) take sensible steps in the interim to reduce the risk of global climate change. The international nature of global climate change also has implications for foreign policy, which the President directs. In view of EPA's lack of CAA regulatory authority to address global climate change, DOT's authority to regulate fuel economy, the President's policy, and the potential foreign policy implications, EPA declines the petitioners' request to regulate GHG emissions from motor vehicles.

A. EPA's Legal Authority Under the CAA

As summarized above, many commenters on the petition raised important legal issues regarding EPA's authority to issue global climate change regulations under the CAA. Two EPA General Counsels previously addressed the issue of EPA's authority to impose CO_2 emission control requirements. Both found that CO_2 meets the CAA definition of "air pollutant" and could therefore be subject to regulation under one or more of the CAA's regulatory provisions if the applicable statutory criteria for regulation were met. Both also noted, however, that the Agency had not made the requisite findings under any CAA provision for regulation of CO_2 emissions. Significantly, the past general counsels reached their conclusions prior to the Supreme Court's decision in *Brown & Williamson*, which cautions agencies against using broadly worded statutory authority to regulate in areas raising unusually significant economic and political issues when Congress has specifically addressed those areas in other statutes.

Because the petition seeks CAA regulation of GHG emissions from motor vehicles to reduce the risk of global climate change, EPA has examined the fundamental issue of whether the CAA authorizes the imposition of control requirements for that purpose. As part of that examination, EPA's General Counsel, Robert E. Fabricant, reviewed his predecessors' memorandum and statements, as well as the public comments raising legal authority issues. The General Counsel considered the text and history of the CAA in the context of other congressional actions specifically addressing global climate change and in light of the Supreme Court's admonition in *Brown & Williamson* to "be guided to a degree by common sense as to the manner in which Congress is likely to delegate a policy decision of such * * * magnitude to an administrative agency." In a memorandum to the Acting Administrator dated August 29, 2003, the General Counsel concluded that the CAA does not authorize EPA to regulate for global climate change purposes, and accordingly that CO_2 and other GHGs cannot be considered "air pollutants" subject to the CAA's regulatory provisions for any contribution they may make to global climate change. Accordingly, he withdrew the Cannon memorandum and statements by Mr. Guzy as no longer expressing the views of EPA's General Counsel. The General Counsel's opinion is adopted as the position of the Agency for purposes of deciding this petition and for all other relevant purposes under the CAA.

As summarized above, commenters supporting the petition claim that section 202 of the CAA provides EPA with broad authority to set standards for motor vehicle emissions of CO_2 and other GHGs to the extent those emissions cause or contribute to global climate change. At the same time, other commenters correctly note that (1) no CAA provision specifically authorizes global climate change regulation, (2) the only CAA provision specifically mentioning CO_2 authorizes only "nonregulatory" measures, (3) the codified CAA provisions related to global climate change expressly

[2] "Regulation" as used in this section of the notice refers to legally binding requirements promulgated by an agency under statutory authority. It does not include voluntary measures that emission sources may or may not undertake at their discretion.

preclude the use of those provisions to authorize regulation, (4) a Senate committee proposal to include motor vehicle CO_2 standards in the 1990 CAA amendments failed, (5) Federal statutes expressly addressing global climate change do not authorize regulation, and (6) numerous congressional actions suggest that Congress has yet to decide that such regulation is warranted. These indicia of congressional intent raise the issue of whether the CAA is properly interpreted to authorize regulation to address global climate change.

Congress was well aware of the global climate change issue when it last comprehensively amended the CAA in 1990. During the 1980s, scientific discussions about the possibility of global climate change led to public concern both in the U.S. and abroad. In response, the U.S. and other nations developed the United Nations Framework Convention on Climate Change (UNFCCC). President George H. W. Bush signed, and the U.S. Senate approved, the UNFCCC in 1992, and the UNFCCC took effect in 1994.

The UNFCCC established the "ultimate objective" of "stabiliz[ing] greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system" (Article 2 of the UNFCCC). All parties to the UNFCCC agreed on the need for further research to determine the level at which GHG concentrations should be stabilized, acknowledging that "there are many uncertainties in predictions of climate change, particularly with regard to the timing, magnitude and regional patterns thereof" (findings section of UNFCCC).

Shortly before the UNFCCC was adopted in May 1992, Congress developed the 1990 CAA amendments. A central issue for the UNFCCC—whether binding emission limitations should be set—was also considered in the context of the CAA amendments. As several commenters noted, a Senate committee included in its bill to amend the CAA a provision requiring EPA to set CO_2 emission standards for motor vehicles. However, that provision was removed from the bill on which the full Senate voted, and the bill eventually enacted was silent with regard to motor vehicle CO_2 emission standards. During this same time period, other legislative proposals were made to control GHG emissions, some in the context of national energy policy, but none were passed (*see, e.g.*, S. 324, 101st Cong. (1989); S. 1224, 101st Cong. (1989); H.R. 5966, 101st Cong. (1990)).

In the CAA Amendments of 1990 as enacted, Congress called on EPA to develop information concerning global climate change and "nonregulatory" strategies for reducing CO_2 emissions. Specifically, uncodified section 821 of the CAA Amendments requires measurement of CO_2 emissions from utilities subject to permitting under title V of the CAA. New section 602 of the CAA directs EPA to determine the "global warming potential" of substances that deplete stratospheric ozone. And new section 103(g) calls on EPA to develop "nonregulatory" measures for the prevention of multiple air pollutants and lists several air pollutants and CO_2 for that purpose.

Notably, none of these provisions authorizes the imposition of mandatory requirements, and two of them expressly preclude their use for regulatory purposes (sections 103(g) and 602). Only the research and development provision of the CAA—section 103—specifically mentions CO_2, and the legislative history of that section indicates that Congress was focused on seeking a sound scientific basis on which to make future decisions on global climate change, not regulation under the CAA as it was being amended. Representatives Roe and Smith, two of the principal authors of section 103 as amended, explained that EPA's "science mandate" needed updating to deal with new, more complex issues, including "global warming" (A Legislative History of the Clean Air Act Amendments of 1990, 103 Cong., 1st Sess., S. Prt. 103–38, Vol. 2, pp. 2776 and 2778). They expressed concern that EPA's research budget had been too heavily focused on supporting existing regulatory actions when the Agency also needed to conduct long-term research to "enhance EPA's ability to predict the need for future action" (*id.* at 2777).

In providing EPA with expanded research and development authority, however, Congress did not provide commensurate regulatory authority. In section 103(g), Congress directed EPA to establish a "basic engineering research and technology program to develop, evaluate and demonstrate" strategies and technologies for air pollution prevention and specifically called for improvements in such measures for preventing CO_2 as well as several specified air pollutants. But it expressly provided that nothing in the subsection "shall be construed to authorize the imposition on any person of air pollution control requirements." As if to drive home the point, section 103(g) was revised in conference to include the term "nonregulatory" to describe the "strategies and technologies" the subsection was intended to promote. In its treatment of the global climate change issue in the CAA amendments, Congress made clear that it awaited further information before making decisions on the need for regulation.

Beyond Congress' specific CAA references to CO_2 and global warming, another aspect of the Act cautions against construing its provisions to authorize regulation of emissions that may contribute to global climate change. The CAA provisions addressing stratospheric ozone depletion demonstrate that Congress has understood the need for specially tailored solutions to global atmospheric issues, and has expressly granted regulatory authority when it has concluded that controls may be needed as part of those solutions. Like global climate change, the causes and effects of stratospheric ozone depletion are global in nature. Anthropogenic substances that deplete stratospheric ozone are emitted around the world and are very long-lived; their depleting effects and the consequences of those effects occur on a global scale. In the CAA prior to its amendment in 1990, Congress specifically addressed the problem in a separate portion of the statute (part B of title I) that recognized the global nature of the problem and called for negotiation of international agreements to ensure world-wide participation in research and any control of stratospheric ozone-depleting substances. In the 1990 CAA amendments, Congress again addressed the issue in a discrete portion of the statute (title VI) that similarly provides for coordination with the international community. Moreover, both incarnations of the CAA's stratospheric ozone provisions contain express authorization for EPA to regulate as scientific information warrants. In light of this CAA treatment of stratospheric ozone depletion, it would be anomalous to conclude that Congress intended EPA to address global climate change under the CAA's general regulatory provisions, with no provision recognizing the international dimension of the issue and any solution, and no express authorization to regulate.

EPA's prior use of the CAA's general regulatory provisions provides an important context. Since the inception of the Act, EPA has used these provisions to address air pollution problems that occur primarily at ground level or near the surface of the earth. For example, national ambient air quality standards (NAAQS) established under CAA section 109 address concentrations of substances in the ambient air and the related public health and welfare problems. This has meant setting

NAAQS for concentrations of ozone, carbon monoxide, particulate matter and other substances in the air near the surface of the earth, not higher in the atmosphere. Concentrations of these substances generally vary from place to place as a result of differences in local or regional emissions and other factors (*e.g.*, topography), although long range transport may also contribute to local concentrations in some cases. CO_2, by contrast, is fairly consistent in concentration throughout the *world's* atmosphere up to approximately the lower stratosphere. Problems associated with atmospheric concentrations of CO_2 are much more like the kind of global problem Congress addressed through adoption of the specific provisions of Title VI.

In assessing the availability of CAA authority to address global climate change, it is also useful to consider whether the NAAQS system—a key CAA regulatory mechanism—could be used to effectively address the issue. Unique and basic aspects of the presence of key GHGs in the atmosphere make the NAAQS system fundamentally ill-suited to addressing these gases in relation to global climate change. Many GHGs reside in the earth's atmosphere for very long periods of time. CO_2, by far the most pervasive of anthropogenic GHGs, has a residence time of roughly 50–200 years. This long lifetime along with atmospheric dynamics means that CO_2 is well mixed throughout the atmosphere, up to approximately the lower stratosphere. The result is a vast global atmospheric pool of CO_2 that is fairly consistent in concentration, everywhere along the surface of the earth and vertically throughout this area of mixing.

While atmospheric concentrations of CO_2 are fairly consistent globally, the potential for either adverse or beneficial effects in the U.S. from these concentrations depends on complicated interactions of many variables on the land, in the oceans, and in the atmosphere, occurring around the world and over long periods of time. Characterization and assessment of such effects and the relation of such effects to atmospheric concentration of CO_2 in the U.S. would present scientific issues of unprecedented complexity in the NAAQS context. The long-lived nature of the CO_2 global pool would also make it extremely difficult to evaluate the extent over time to which effects in the U.S. would be related to anthropogenic emissions in the U.S. Finally, the nature of the global pool would mean that any CO_2 standard that might be established would in effect be a worldwide ambient air quality standard, not a national standard—the entire world would be either in compliance or out of compliance.

Such a situation would be inconsistent with a basic underlying premise of the CAA regime for implementation of a NAAQS—that actions taken by individual states and by EPA can generally bring all areas of the U.S. into attainment of a NAAQS. The statutory NAAQS implementation regime is fundamentally inadequate when it comes to a substance like CO_2, which is emitted globally and has relatively homogenous concentrations around the world. A NAAQS for CO_2, unlike any pollutant for which a NAAQS has been established, could not be attained by any area of the U.S. until such a standard were attained by the entire world as a result of emission controls implemented in countries around the world. The limited flexibility provided in the Act to address the impacts of foreign pollution transported to the U.S. was not designed to address the challenges presented by long-lived global atmospheric pools such as exists for CO_2. The globally-pervasive nature of CO_2 emissions and atmospheric concentrations presents a unique problem that fundamentally differs from the kind of environmental problem that the NAAQS system was intended to address and is capable of solving.

Other congressional actions confirm that Congress did not authorize regulation under the CAA to address global climate change. Starting in 1978, Congress passed several pieces of legislation specifically addressing global climate change. With the National Climate Program Act of 1978, 15 U.S.C. 2901 *et seq.*, Congress established a "national climate program" to improve understanding of "climate processes, natural and man induced, and the social, economic, and political implications of global climate change" through research, data collection, assessments, information dissemination, and international cooperation. In the Global Climate Protection Act of 1987, 22 U.S.C. 2651 note, Congress directed the Secretary of State to coordinate U.S. negotiations concerning global climate change, and EPA to develop and propose to Congress a coordinated national policy on the issue. Three years later, Congress passed the Global Change Research Act of 1990, 15 U.S.C. 2931 *et seq.*, establishing a Committee on Earth and Environmental Sciences to coordinate a 10-year research program. That statute was enacted one day after the CAA Amendments of 1990 was signed into law. Also in 1990, Congress passed Title XXIV of the Food and Agriculture Act, creating a Global Climate Change Program to research global climate agricultural issues (section 2401 of Pub. L. 101–624).

With these statutes, Congress sought to develop a foundation for considering whether future legislative action on global climate change was warranted and, if so, what that action should be. From Federal agencies, it sought recommendations for national policy and further advances in scientific understanding and possible technological responses. It did not authorize any Federal agency to take any regulatory action in response to those recommendations and advances. In fact, Congress declined to adopt other legislative proposals, contemporaneous with the bills to amend the CAA in 1989 and 1990, to require GHG emissions reductions from stationary and mobile sources (see, *e.g.*, S. 1224, 101st Cong. (1989); H.R. 5966, 101st Cong. (1990)). While Congress did not expressly preclude agencies from taking regulatory action under other statutes, its actions strongly indicate that when Congress was amending the CAA in 1990, it was awaiting further information before deciding *itself* whether regulation to address global climate change is warranted and, if so, what form it should take.

Since 1990, Congress has taken other actions consistent with the view that Congress did not authorize CAA regulation for global climate change purposes. In the 1992 Energy Policy Act, Congress called on the Secretary of Energy to assess various GHG control options and report back to Congress, and to establish a registry for reporting *voluntary* GHG emissions. Following ratification of the UNFCCC, nations party to the Convention negotiated the Kyoto Protocol calling for mandatory reductions in developed nations' GHG emissions. While the Kyoto Protocol was being negotiated, the Senate in 1997 adopted by a 95–0 vote the Byrd-Hagel Resolution, which stated that the U.S. should not be a signatory to any protocol that would result in serious harm to the economy of the U.S. or that would mandate new commitments to limit or reduce U.S. GHG emissions unless the Protocol also mandated new, specific, scheduled commitments to limit or reduce GHG emissions for developing countries within the same compliance period. Although the Clinton Administration signed the Kyoto Protocol, it did not submit it to the Senate for ratification out of concern that the Senate would reject the treaty. Congress also attached language to appropriations bills that barred EPA from implementing the Kyoto Protocol

without Senate ratification (*see, e.g.*, Knollenberg amendments to the FY 1999 and 2000 VA-HUD and Independent Agencies Appropriations Acts). Since enactment of the 1990 CAA amendments, numerous bills to control GHG emissions from mobile and stationary sources have failed to win passage (see, *e.g.*, H.R. 2993, 102d Cong., 1st Sess. 137 *Cong. Rec.* H4611 (daily ed. 1991)).

Against this backdrop of consistent congressional action to learn more about the global climate change issue before specifically authorizing regulation to address it, the CAA cannot be interpreted to authorize such regulation in the absence of any direct or even indirect indication of congressional intent to provide such authority. EPA is urged on in this view by the Supreme Court's decision in *Brown & Williamson*, which struck down FDA's assertion of authority to regulate tobacco products under the Food, Drug and Cosmetic Act (FDCA). That statute contains a broadly worded grant of authority for FDA to regulate "drugs" and "devices," terms which the statute also broadly defines. However, the FDCA does not specifically address tobacco products while other Federal laws expressly govern the marketing of those products.

Notwithstanding the FDCA's facially broad grant of authority, the Supreme Court explained that "[i]n extraordinary cases, * * * there may be reason to hesitate before concluding that Congress has intended such an implicit delegation." The Court noted that FDA was "assert[ing] jurisdiction to regulate an industry constituting a significant portion of the American economy," despite the fact that "tobacco has its own unique political history" that had led Congress to create a distinct regulatory scheme for tobacco products. The Court concluded that FDA's assertion of authority to regulate tobacco was "hardly an ordinary case." The Court analyzed FDA's authority in light of the language, structure and history of the FDCA and other federal legislation and congressional action specifically addressing tobacco regulation, including failed legislative attempts to confer authority of the type FDA was asserting. Based on that analysis, it determined that Congress did not "intend[] to delegate a decision of such economic and political significance * * * in so cryptic a fashion."

It is hard to imagine any issue in the environmental area having greater "economic and political significance" than regulation of activities that might lead to global climate change. Virtually every sector of the U.S. economy is either directly or indirectly a source of GHG emissions, and the countries of the world are involved in scientific, technical, and political-level discussions about climate change. We believe, in fact, that an effort to impose controls on U.S. GHG emissions would have far greater economic and political implications than FDA's attempt to regulate tobacco.

The most abundant anthropogenic GHG, CO_2, is emitted whenever fossil fuels such as coal, oil, and natural gas are used to produce energy. The production and use of fossil fuel-based energy undergirds almost every aspect of the U.S. economy. For example, approximately 70 percent of the electric energy used in this country is generated from fossil fuel, and the U.S. transportation sector is almost entirely dependent on oil.

Proposals to reduce CO_2 emissions from these sectors have focused on four major approaches: (1) Improve fuel efficiency; (2) capture and sequester CO_2; (3) switch to alternative non-fossil fuel sources; and (4) reduce vehicle usage by switching to alternative forms of transportation. Congress has already addressed the first approach in other statutes—not the CAA—by giving other Departments and agencies—not EPA—regulatory authority to deal with fuel and energy efficiency. For example, Congress has authorized DOT to set fuel economy standards for motor vehicles and the Department of Energy to set efficiency standards for products such as air conditioners and appliances that consume electricity.

The other approaches for reducing CO_2 emissions all have substantial economic implications. While it may eventually be possible to achieve widespread capture and sequester CO_2 emissions from power plants, such an approach would require a new generation of power plants and would be very costly, even if implemented over many years. As for the use of alternative fuels, governments and private companies around the world are investing billions of dollars to explore the possibility of using non-fossil fuels for power generation and transportation. Any widespread effort to switch away from fossil fuels in either sector would likewise require a wholesale transformation of our methods for producing power and transporting goods and people. As for alternative modes of transportation, Congress and many states have already adopted measures to encourage public transportation, car pooling, bike usage, and land-use planning designed to minimize commuting distances. EPA supports these measures and believes that they provide many environmental benefits. However, widespread substitution of alternative forms of transportation for transportation based on fossil fuel energy would also require a wholesale remaking of this sector. It is hard to overstate the economic significance of making these kinds of fundamental and widespread changes in basic methods of producing and using energy.

The issue of global climate change also has enormous political significance. It has been discussed extensively during the last three Presidential campaigns; it is the subject of debate and negotiation in several international bodies; and numerous bills have been introduced in Congress over the last 15 years to address the issue.

In light of Congress' attention to the issue of global climate change, and the absence of any direct or even indirect indication that Congress intended to authorize regulation under the CAA to address global climate change, it is unreasonable to conclude that the CAA provides the Agency with such authority. An administrative agency properly awaits congressional direction before addressing a fundamental policy issue such as global climate change, instead of searching for authority in an existing statute that was not designed or enacted to deal with the issue. We thus conclude that the CAA does not authorize regulation to address concerns about global climate change.

It follows from this conclusion, that GHGs, as such, are not air pollutants under the CAA's regulatory provisions, including sections 108, 109, 111, 112 and 202. CAA authorization to regulate is generally based on a finding that an air pollutant causes or contributes to air pollution that may reasonably be anticipated to endanger public health or welfare. CAA section 302(g) defines "air pollutant" as "any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive * * * substance or matter which is emitted into or otherwise enters the ambient air. Such term includes any precursors to the formation of any air pollutant[.]" The root of the definition indicates that for a substance to be an "air pollutant," it must be an "agent" of "air pollution." Because EPA lacks CAA regulatory authority to address global climate change, the term "air pollution" as used in the regulatory provisions cannot be interpreted to encompass global climate change. Thus, CO_2 and other GHGs are not "agents" of air pollution and do not satisfy the CAA section 302(g) definition of "air pollutant" for purposes of those provisions. We reserve judgment on

whether GHGs would meet the CAA definition of "air pollutant" for regulatory purposes were they subject to regulation under the CAA for global climate change purposes.[3]

B. Interference With Fuel Economy Standards

Even if GHGs were air pollutants generally subject to regulation under the CAA, Congress has not authorized the Agency to regulate CO_2 emissions from motor vehicles to the extent such standards would effectively regulate the fuel economy of passenger cars and light duty trucks. No technology currently exists or is under development that can capture and destroy or reduce emissions of CO_2, unlike other emissions from motor vehicle tailpipes. At present, the only practical way to reduce tailpipe emissions of CO_2 is to improve fuel economy. Congress has already created a detailed set of mandatory standards governing the fuel economy of cars and light duty trucks, and has authorized DOT—not EPA—to implement those standards. The only way for EPA to proceed with CO_2 emissions standards without upsetting this statutory scheme would be to set a standard less stringent than CAFE for cars and light duty trucks. But such an approach would be meaningless in terms of reducing GHG emissions from the U.S. motor vehicle fleet.[4]

Congress' care in designing the CAFE program makes clear that EPCA is the only statutory vehicle for regulating the fuel economy of cars and light duty trucks. Under EPCA, DOT may set only "corporate average" standards that automakers meet on a fleetwide basis. Automakers thus have flexibility to design different vehicle models having different fuel economy so long as the average of the vehicles sold by the automaker in a given model year and class meets the CAFE standard for that year. In fact, EPCA offers automakers additional flexibility by allowing them to meet the CAFE standard for a given model year by "carrying back" or "carrying forward" the excess fuel economy performance of their fleets for the three years before or after the applicable model year.

EPCA also builds in an opportunity for congressional oversight of CAFE standard-setting that reinforces the notion that Congress intended fuel economy to be governed by EPCA alone. The statute specifies a CAFE standard of 27.5 miles per gallon for passenger cars in model years 1984 and beyond (49 U.S.C. 32902(b)), but authorizes DOT to amend the standard to the "maximum feasible average fuel economy level" for the relevant model year. However, to the extent DOT raises or lowers the standards beyond specified levels, EPCA provides an automatic opportunity for Congress to disapprove and effectively void the amended standard (49 U.S.C. 32902(c)). Given that the only practical way of reducing tailpipe CO_2 emissions is by improving fuel economy, any EPA effort to set CO_2 tailpipe standards under the CAA would either abrogate EPCA's regime (if the standards were effectively more stringent than the applicable CAFE standard) or be meaningless (if they were effectively less stringent).

C. No Mandatory Duty

As explained above, in light of the language, history, structure and context of the CAA and Congress' decision to give DOT authority to regulate fuel economy under EPCA, it is clear that EPA does not have authority to regulate motor vehicle emissions of CO_2 and other GHGs under the CAA. In any event, the CAA provision authorizing regulation of motor vehicle emissions does not impose a mandatory duty on the Administrator to exercise her judgment. Instead, section 202(a)(1) provides the Administrator with discretionary authority to address emissions in addition to those addressed by other section 202 provisions (*see, e.g.*, sections 202(a)(3) and (b)). While section 202(a)(1) uses the word "shall," it does not require the Administrator to act by a specified deadline and it conditions authority to act on a discretionary exercise of the Administrator's judgment regarding whether motor vehicle emissions cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare.

The Web site statements, legal memorandum and other documents cited by petitioners and commenters in support of the petition are not sufficient to satisfy the criteria for setting standards under section 202(a)(1). Exercise of section 202(a)(1) authority turns on the judgment made by the *Administrator*, and CAA section 301 does not permit the Administrator to delegate her standard-setting authority under section 202(a)(1). None of the statements petitioners claim constitute the requisite endangerment finding for GHGs under section 202(a)(1) were made, or subsequently adopted, by the Administrator. As the Cannon memorandum stated in 1998, no Administrator had made a finding under any of the CAA's regulatory provisions that CO_2 meets the applicable statutory criteria for regulation. (Notably, the Web site statements on which the petitioners partly rely were in existence at the time Mr. Cannon issued his memorandum.) That statement remains true today—no Administrator has made any finding that satisfies the criteria for setting CO_2 standards for motor vehicles or any other emission source. In any event, for such findings to suffice for standard-setting purposes, they must be established through a notice-and-comment process.

EPA also disagrees with the premise of the petitioners' claim—that if the Administrator were to find that GHGs, in general, may reasonably be anticipated to endanger public health or welfare, she must necessarily regulate GHG emissions from motor vehicles. Depending on the particular problem, motor vehicles may contribute more or less or not at all. An important issue before the Administrator is whether, given motor vehicles' relative contribution to a problem, it makes sense to regulate them. In the case of some types of air pollution, motor vehicles may be one of many contributors, and it may make sense to control other contributors instead of, or in tandem with, motor vehicles. The discretionary nature of the Administrator's section 202(a)(1) authority allows her to consider these important policy issues and decide to regulate motor vehicle emissions as appropriate to the air pollution problem being addressed. Accordingly, even were the Administrator to make a formal finding regarding the potential health and welfare effects of GHGs in general, section 202(a)(1) would not require her to regulate GHG emissions from motor vehicles.

D. Different Policy Approach

Beyond issues of authority and interference with fuel economy standards, EPA disagrees with the regulatory approach urged by petitioners. We agree with the President that "we must address the issue of global climate change" (February 14, 2002). We do not believe, however, that

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[3] As General Counsel Fabricant notes in his memorandum, a substance does not meet the CAA definition of "air pollutant" simply because it is a "physical, chemical, biological, radioactive * * * substance or matter which is emitted into or otherwise enters the ambient air." It must also be an "air pollution agent."

[4] Although the ICTA petition focuses on passenger cars and light duty trucks, it seeks regulation of GHG emissions generally from motor vehicles and engines, which include heavy duty engines and trucks. Passenger cars and light duty trucks are subject to CAFE standards; heavy duty trucks are not. The contribution of heavy duty trucks to the U.S. motor vehicle GHG inventory is relatively small, about 16 percent. EPA believes it would be ineffective, inefficient, and unreasonable to set CO_2 and other GHG reductions from the many types of sources of these emissions.

it would be either effective or appropriate for EPA to establish GHG standards for motor vehicles at this time. As described in detail below, the President has laid out a comprehensive approach to climate change that calls for near-term voluntary actions and incentives along with programs aimed at reducing scientific uncertainties and encouraging technological development so that the government may effectively and efficiently address the climate change issue over the long term.

Petitioners cited numerous studies and other sources of information in contending that anthropogenic emissions of CO_2, CH_4, N_2O, and HFCs are accelerating global climate change and that emission of these compounds from motor vehicles contribute to the problem. Numerous commenters agreed with petitioners and a few cited additional information or studies as further support. *See* "Summary of Climate Petition Comments on Science" in the docket for this action. Other commenters disagreed with petitioners' contentions, citing different data and studies or in some cases interpreting the same data and studies differently or emphasizing different aspects of the information provided. *Id.* We reviewed the information submitted by petitioners and commenters and concluded that all of the information was widely available and in the public domain at the time we solicited comments on the petition. The information submitted does not add significantly to the body of information available to the National Research Council (NRC) when it prepared its 2001 report, *Climate Change Science: An Analysis of Some Key Questions.* We rely in this decision on NRC's objective and independent assessment of the relevant science. The comments submitted to the record do not include information that causes us to question the validity of the NRC's conclusions.

As the NRC noted in its report, concentrations of GHGs are increasing in the atmosphere as a result of human activities (pp. 9–12). It also noted that "[a] diverse array of evidence points to a warming of global surface air temperatures" (p. 16). The report goes on to state, however, that "[b]ecause of the large and still uncertain level of natural variability inherent in the climate record and the uncertainties in the time histories of the various forcing agents (and particularly aerosols), a casual linkage between the buildup of greenhouse gases in the atmosphere and the observed climate changes during the 20th century cannot be unequivocally established. The fact that the magnitude of the observed warming is large in comparison to natural variability as simulated in climate models is suggestive of such a linkage, but it does not constitute proof of one because the model simulations could be deficient in natural variability on the decadal to century time scale" (p. 17).

The NRC also observed that "there is considerable uncertainty in current understanding of how the climate system varies naturally and reacts to emissions of [GHGs] and aerosols" (p. 1). As a result of that uncertainty, the NRC cautioned that "current estimate of the magnitude of future warming should be regarded as tentative and subject to future adjustments (either upward or downward)." *Id.* It further advised that "[r]educing the wide range of uncertainty inherent in current model predictions of global climate change will require major advances in understanding and modeling of both (1) the factors that determine atmospheric concentrations of [GHGs] and aerosols and (2) the so-called 'feedbacks' that determine the sensitivity of the climate system to a prescribed increase in [GHGs]." *Id.*

The science of climate change is extraordinarily complex and still evolving. Although there have been substantial advances in climate change science, there continue to be important uncertainties in our understanding of the factors that may affect future climate change and how it should be addressed. As the NRC explained, predicting future climate change necessarily involves a complex web of economic and physical factors including: Our ability to predict future global anthropogenic emissions of GHGs and aerosols; the fate of these emissions once they enter the atmosphere (*e.g.*, what percentage are absorbed by vegetation or are taken up by the oceans); the impact of those emissions that remain in the atmosphere on the radiative properties of the atmosphere; changes in critically important climate feedbacks (*e.g.*, changes in cloud cover and ocean circulation); changes in temperature characteristics (*e.g.*, average temperatures, shifts in daytime and evening temperatures); changes in other climatic parameters (*e.g.*, shifts in precipitation, storms); and ultimately the impact of such changes on human health and welfare (*e.g.*, increases or decreases in agricultural productivity, human health impacts). The NRC noted, in particular, that "[t]he understanding of the relationships between weather/climate and human health is in its infancy and therefore the health consequences of climate change are poorly understood" (p. 20). Substantial scientific uncertainties limit our ability to assess each of these factors and to separate out those changes resulting from natural variability from those that are directly the result of increases in anthropogenic GHGs.

Reducing the wide range of uncertainty inherent in current model predictions will require major advances in understanding and modeling of the factors that determine atmospheric concentrations of greenhouse gases and aerosols, and the processes that determine the sensitivity of the climate system. Specifically, this will involve reducing uncertainty regarding:

- The future global use of fossil fuels and future global emissions of methane,
- The fraction of fossil fuel carbon that will remain in the atmosphere and contribute to radiative forcing versus exchange with the oceans or with the land biosphere,
- The impacts (either positive or negative) of climate change on regional and local systems,
- The nature and causes of the natural variability of climate and its interactions with human-induced changes, and
- The direct and indirect effects of the changing distribution of aerosols.

Knowledge of the climate system and of projections about the future climate is derived from fundamental physics, chemistry and observations. Data are then incorporated in global circulation models. However, model projections are limited by the paucity of data available to evaluate the ability of coupled models to simulate important aspects of climate. The U.S. and other countries are attempting to overcome these limitations by developing a more comprehensive long-term observation system, by making more extensive regional measurements of greenhouse gases, and by increasing the computing power required to handle these expanded data sets.

A central component of the President's policy is to reduce key uncertainties that exist in our understanding of global climate change. Important efforts are underway to address these uncertainties. In particular, the Federal Government has expanded scientific research efforts through its Climate Change Research Initiative (CCRI). President Bush announced this new initiative in June 2001 and called for it "to study areas of uncertainty and identify priority areas where investments can make a difference." The CCRI recently issued its final "Strategic Plan for the Climate Change Research Program" to ensure that scientific efforts are focused where they are most critical and that the key scientific uncertainties identified are

addressed in a timely and effective manner for decision makers.

The President has also stated, however, that "while scientific uncertainties remain, we can begin now to address the factors that contribute to climate change" (June 11, 2001). Thus, along with stepped-up efforts to reduce scientific uncertainties, the President's policy calls for public-private partnerships to develop break-through technologies that could dramatically reduce the economy's reliance on fossil fuels without slowing its growth. Large-scale shifts away from traditional energy sources, however, will require not only the development of abundant, cost-effective alternative fuels, but potentially wholesale changes in the way industrial processes and consumer products use fuel. Such momentous shifts do not take place quickly. As the President has explained, "[a]ddressing global climate change will require a sustained effort, over many generations' (*www.whitehouse.gov/news/releases/2002/02/climatechange.html*).

By contrast, establishing GHG emission standards for U.S. motor vehicles at this time would require EPA to make scientific and technical judgments without the benefit of the studies being developed to reduce uncertainties and advance technologies. It would also result in an inefficient, piecemeal approach to addressing the climate change issue. The U.S. motor vehicle fleet is one of many sources of GHG emissions both here and abroad, and different GHG emission sources face different technological and financial challenges in reducing emissions. A sensible regulatory scheme would require that all significant sources and sinks of GHG emissions be considered in deciding how best to achieve any needed emission reductions.

Unilateral EPA regulation of motor vehicle GHG emissions could also weaken U.S. efforts to persuade key developing countries to reduce the GHG intensity of their economies. Considering the large populations and growing economies of some developing countries, increases in their GHG emissions could quickly overwhelm the effects of GHG reduction measures in developed countries. Any potential benefit of EPA regulation could be lost to the extent other nations decided to let their emissions significantly increase in view of U.S. emission reductions.[5] Unavoidably, climate change raises important foreign policy issues, and it is the President's prerogative to address them.

In light of the considerations discussed above, EPA would decline the petitioners' request to regulate motor vehicle GHG emissions even if it had authority to promulgate such regulations. Until more is understood about the causes, extent and significance of climate change and the potential options for addressing it, EPA believes it is inappropriate to regulate GHG emissions from motor vehicles.

In any event, the President's policy includes efforts to reduce motor vehicle petroleum consumption through increases in motor vehicle fuel economy. As noted previously, petitioners specifically suggested that EPA set a "corporate average fuel economy-based standard," but only DOT is authorized to set motor vehicle fuel economy standards. DOT considered increasing fuel economy standards and recently promulgated a final rule increasing the CAFE standards for light trucks, including sports utility vehicles, by 1.5 miles per gallon over a three-year period beginning with model year 2005. The new standards are projected to result in savings of approximately 3.6 billion gallons of gasoline over the lifetime of the affected vehicles, with the corresponding avoidance of 31 million metric tons of carbon dioxide emissions. For the longer term, the President has established a new public-private partnership with the nation's automobile manufacturers to promote the development of hydrogen as a primary fuel for cars and trucks, with the goal of building a commercially viable zero-emissions hydrogen-powered vehicle. In the near-term, the President has sought $3 billion in tax credits over 11 years for consumers to purchase fuel cell and hybrid vehicles.

Aside from fuel economy-based standards, petitioners only other suggestions for reducing CO_2 from motor vehicles are tire efficiency standards and a declining fleet-averaged NO_X standard to force the introduction of zero-emitting vehicles. In the case of tire efficiency standards, it is questionable whether such standards would qualify as "standards applicable to the *emission*" of an air pollutant from a motor vehicle under section 202(a)(1), since such standards would presumably apply to the vehicle's tires, not its CO_2 emissions (emphasis added). As for zero emission vehicles, further technological developments are needed before they could be a practical choice for most consumers.

With respect to the other GHGs—CH4, N20, and HFCs—petitioners make no suggestion as to how those emissions might be reduced from motor vehicles. GHG emissions from motor vehicles primarily consist of CO_2 from fuel combustion. In 1999, N20 represented 4 percent, HFCs 1 percent, and CH4 less than 1 percent of transportation GHG emissions. As byproducts of combustion, there is a direct proportional relationship between CO_2 emissions and fuel economy levels. EPA believes parameters other than fuel economy are more relevant to N2O and HFC formation. HFCs come from mobile air conditioners, while N2O is influenced by catalytic converter design. CH4 is a byproduct of combustion, like CO_2, but can also be affected by catalytic converter design. As noted above, N20, HFCs, and CH4 represent a very small percentage of total U.S. transportation GHG emissions. As such, they would not be an effective or efficient target for regulation in the absence of regulation of CO_2 emissions.

VI. Administration Global Climate Change Policy

Lack of CAA authority to impose GHG control requirements does not leave the Federal Government powerless to take sensible measured steps to address the global climate change issue. As described in this notice, the President has laid out a comprehensive approach to global climate change that calls for near-term voluntary actions and incentives along with programs aimed at reducing scientific uncertainties and encouraging technological development so that the government may effectively and efficiently address the global climate change issue over the long term. The CAA and other Federal statutes provide the Federal Government with ample authority to conduct the research necessary to better understand the nature, extent and effects of any human-induced global climate change and to develop technologies that will help achieve GHG emission reductions to the extent they prove necessary. The CAA and other statutes also authorize, and EPA and other agencies have established, nonregulatory programs that provide effective and appropriate means of addressing global climate change while scientific uncertainties are addressed.

As part of that effort, the President in February 2002 called for voluntary reductions in GHG intensity, including

[5] The U.S. faced a similar dilemma in its efforts to address stratospheric ozone depletion. Early U.S. controls on substances that deplete stratospheric ozone were not matched by many other countries. Over time, U.S. emission reductions were more than offset by emission increases in other countries. The U.S. did not impose additional domestic controls on stratospheric ozone-depleting substances until key developed and developing nations had committed to controlling their own emissions under the Montreal Protocol on Substances that Deplete Stratospheric Ozone.

through fuel economy improvements. GHG intensity is the ratio of GHG emissions to economic output. The President's goal is to lower the U.S. rate of emissions from an estimated 183 metric tons per million dollars of gross domestic product (GDP) in 2002 to 151 metric tons per million dollars of GDP in 2012. Meeting this commitment will prevent GHG emissions of over 500 million metric tons of carbon equivalent (MMTCE) from entering the atmosphere cumulatively over the next ten years, and is equivalent to taking 70 million (or one out of three) cars off the road.

The "Climate VISION" (Voluntary Innovative Sector Initiatives: Opportunities Now) program, a Presidential initiative launched by the Department of Energy (DOE) in February 2003, is a voluntary public-private partnership designed to pursue cost-effective strategies to reduce the growth of GHG emissions, especially by energy-intensive industries. Working with trade associations and other groups, the program assists industry in its efforts to accelerate the transition to energy technologies and manufacturing processes that are cleaner, more efficient, and capable of capturing or sequestering GHGs. Climate VISION links these objectives with technology development and deployment activities primarily at DOE, but also at other participating agencies. Since Climate VISION was launched, 14 industry groups have become program partners with DOE.

EPA is also pursuing a number of nonregulatory approaches to reducing GHG emissions. In February 2002, EPA launched EPA's Climate Leaders program, a new voluntary partnership program between government and industry. Through Climate Leaders, companies will work with EPA to evaluate their GHG emissions, set aggressive reduction goals, and report their progress toward meeting those goals. To date, more than 40 companies from almost all of the most energy-intensive industry sectors have joined Climate Leaders.

EPA's Energy Star program is another example of voluntary actions that have substantially reduced GHG emissions. Energy Star is a voluntary labeling program that provides critical information to businesses and consumers about the energy efficiency of the products they purchase. Over the past decade more than 750 million Energy Star products have been purchased across more than 30 product categories (*e.g.*, computers, microwaves, washing machines). Reductions in GHG emissions from Energy Star purchases were equivalent to removing 10 million cars from the road last year. Businesses and consumers not only reduced their GHG emissions, but also saved $5 billion last year through their use of Energy Star products.

EPA is also working to encourage voluntary GHG emission reductions from the transportation sector. The key elements of this effort are the SmartWay Transport Partnership and the Best Workplaces for Commuters program. The SmartWay Transport Partnership works with the trucking and railroad industry to develop and deploy more fuel-efficient technologies and practices to achieve substantial fuel savings and emission reductions. The goal of Best Workplaces for Commuters is to offer innovative solutions to commuting challenges faced by U.S. employers and employees by promoting outstanding commuter benefits that reduce vehicle trips and miles traveled. EPA estimates that these voluntary programs have the potential to reduce GHG emissions by 9 MMTCE annually by 2010.

EPA has voluntary programs aimed specifically at reducing methane emissions from a variety of sources. For example, the Agency has partnerships with natural gas companies to reduce emissions from leaky pipelines and distribution equipment, solid waste landfill facilities to capture and reuse emissions from landfills, and coal mining companies to capture and reuse methane escaping from mines. Together, these programs are projected to reduce methane emissions to below 1990 levels through 2010.

In addition, EPA has extensive partnerships with industries responsible for emissions of the most potent industrial GHG (*e.g.*, sulfur hexafluoride, per fluorocarbons and HFCs). Through partnerships with EPA, the aluminum sector has exceeded their goal of reducing PFC emissions by 45% from 1990 levels by 2000 and is now in discussions about a new, more aggressive goal. The semiconductor manufacturing sector has agreed to reduce their emissions by 10% below 1995 levels by 2010. This year, a new agreement was reached with the magnesium sector under which they have agreed to completely phase-out their SF6 emissions by 2010.

The Federal Government's voluntary climate programs are already achieving significant emission reductions. In 2000 alone, reductions in GHG emissions totaled 66 MMTCE when compared to emissions in the absence of these programs.

Importantly, the President's initiative will improve our ability to accurately measure and verify GHG emissions through an enhanced national GHG registry system. The U.S. will improve the voluntary registry's accuracy, reliability, and verifiability, taking into account emerging domestic and international approaches. Organizations participating in the new registry will be provided with transferable credits for achieving voluntary emissions reductions. These credits will be available for use under any future incentive-based or mandatory programs. We believe the enhanced standards for the new registry will strengthen the current voluntary trading systems.

The President's 2003 budget also seeks $4.5 billion for global climate change-related programs, a $700 million increase over 2002. This includes $1.7 billion for science research under the Climate Change Research Initiative, and $1.3 billion for climate change technologies under the National Climate Change Technology initiative. This commitment is unmatched in the world. The 2003 budget seeks $555 million in clean energy incentives to spur investments in solar, wind, and biomass energy, co-generation, and landfill gas conversion.

New and expanded international policies will complement our domestic policies, including tripled funding for the "Debt-for-Nature" Tropical Forest Conservation Program, fully funding the Global Environment Facility for its third four-year replenishment, enhanced support for climate observation systems and climate technology assistance in developing countries, and sustained level funding for USAID climate programs, including technology transfer and capacity building in developing countries.

In the transportation sector, the Administration's global climate change plan includes promoting the development of fuel-efficient motor vehicles and trucks, researching options for producing cleaner fuels, and implementing programs to improve energy efficiency. The plan calls for expanding Federal research partnerships with industry, providing market-based incentives, and updating current regulatory programs that advance our progress in this area. This commitment includes expanding fuel cell research, in particular through the "FreedomCAR" initiative.

FreedomCAR is a new public-private partnership with the nation's automobile manufacturers. It seeks to promote the development of hydrogen as a primary fuel for cars and trucks, with the goal of building a commercially viable zero-emissions hydrogen-powered vehicle. FreedomCAR focuses on technologies to enable mass production of affordable hydrogen-

powered fuel cell vehicles and the hydrogen-supply infrastructure to support them.

Developing new technologies to improve the energy efficiency of transportation in the U.S. will be a key element in achieving future reductions in GHG emissions. The President's 2003 budget seeks more than $3 billion in tax credits over 11 years for consumers to purchase fuel cell and hybrid vehicles. The Administration's global climate change plan supports increasing automobile fuel economy and encouraging new technologies that reduce our dependence on imported oil, while protecting passenger safety and jobs.

EPA will play an important role in efforts to develop advanced motor vehicle technologies that improve fuel economy and reduce emissions. The Agency's Clean Automotive Technology (CAT) program is working to develop advanced clean and fuel-efficient automotive technology. Under the program, EPA's goal is to develop technology by the end of the decade that will satisfy stringent emissions requirements and achieve up to a doubling of fuel efficiency in personal vehicles such as SUVs, pickups, and urban delivery vehicles—while simultaneously meeting the more demanding size, performance, durability, and power requirements of these vehicles. EPA will also play a leadership role in advancing fuel cell vehicle and hydrogen fuel technologies and influencing the direction of technological and policy progress in support of U.S. environmental, energy, and national security goals.

To address GHG emissions from the electric utility sector, DOE in February of this year announced FutureGen, a $1 billion government/industry partnership to design, build and operate a nearly emission-free, coal-fired electric and hydrogen production plant. The 275-megawatt prototype plant will serve as a large scale engineering laboratory for testing new clean power, carbon capture, and coal-to-hydrogen technologies. It will be the cleanest fossil fuel-fired power plant in the world. The project is a direct response to the President's Climate Change and Hydrogen Fuels Initiatives.

In all, the President's global climate change policy sets the U.S. on a path to slow the growth of GHG emissions and, as the science justifies, to stop and then reverse that growth. This policy supports vital global climate change research and lays the groundwork for future action by investing in science, technology, and institutions. In addition, the President's policy emphasizes international cooperation and promotes working with other nations to develop an efficient and coordinated response to global climate change. In taking prudent environmental action at home and abroad, the U.S. is advancing a realistic and effective long-term approach to the global climate change issue.

VII. Conclusion

For the reasons discussed above, and after considering the ICTA petition, public comment, EPA's legal authority, and other relevant information, EPA hereby denies the ICTA petition requesting that EPA regulate certain GHG emissions from new motor vehicles and engines under CAA section 202(a)(1).

Dated: August 28, 2003.

Jeffrey R. Holmstead,

Assistant Administrator for Air and Radiation.

[FR Doc. 03–22764 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7555–2]

State and Tribal 8-Hour Ozone Air Quality Designation Recommendations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has posted State and Tribal 8-hour Ozone Air Quality Designation Recommendations on the web as they have been received.

ADDRESSES: State and tribal recommendations are available for public inspection at EPA's Web site at: *http://www.epa.gov/oar/oaqps/glo/designations/* and at the Office of Air and Radiation (OAR) Docket Center, Docket Number OAR 2003–0083, respectively.

FOR FURTHER INFORMATION CONTACT: Ms. Sharon Reinders, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5284 or by e-mail at: *reinders.sharon@epa.gov* or Ms. Annie Nikbakht, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5246 or by e-mail at: *nikbakht.annie@epa.gov*. Mr. Barry Gilbert can be contacted for Air Quality Technical Issues: Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539–02, Research Triangle Park, NC 27711, phone number (919) 541–5238 or by email at: *gilbert.barry@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. How Can I Get Copies of This Document?

1. *Docket.* The EPA has established an official docket for this action under Docket ID Number 2003–0083. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the OAR Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OAR Docket is (202) 566–1742.

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Intranet under the **Federal Register** listings at *http://www.epa.gov/fedrgstrl.*

List of Subjects

Air pollution control, Intergovernmental relations, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Authority: 42 U.S.C. 7408, 42 U.S.C. 7410, 42 U.S.C. 7501–7511f; 42 U.S.C. 7601(a)(1).

Dated: August 22, 2003.

Henry C. Thomas,

Acting Director, Office of Air Quality, Planning and Standards.

[FR Doc. 03–22767 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7554–8]

RIN 2060–AF01

Availability of Additional Documents Relevant to Anticipated Revisions to Guideline on Air Quality Models Addressing a Preferred General Purpose (Flat and Complex Terrain) Dispersion Model and Other Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: We are providing notice that additional information in the form of two documents relevant to revisions of the *Guideline on Air Quality Models*—hereafter, the *Guideline*—have been placed in Docket No. A–99–05. The revisions would enhance the Guideline by incorporating a new, general purpose dispersion model called the AMS/EPA Regulatory MODel (AERMOD) to . replace the existing Industrial Source Complex (ISC3) model in many air quality assessments and incorporate a new downwash algorithm—PRIME. An earlier version of AERMOD was proposed, and we have considered recommendations made both in public comment on that proposal and by beta testers of the model's computer code. The two documents discussed today provide information on the performance of AERMOD when the model is modified in a manner suggested by public comment. We invite comment on these documents.

DATES: Comments must be in writing and either postmarked or received at the address below by October 8, 2003.

ADDRESSES: Copies of both documents have been placed in Docket No. A–99–05. These new documents are available for inspection at the EPA Docket Center, (EPA/DC) EPA West (MC 6102T), 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room (B102) is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Joseph A. Tikvart, Leader, Air Quality Modeling Group (D243–01), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–5562.

SUPPLEMENTARY INFORMATION: We have placed the two documents described below in Docket No. A–99–05:

1. USEPA, "AERMOD: Latest Features and Evaluation Results." Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711; EPA Report No. EPA–454/R–03–003, July 2003.

2. USEPA, "Comparison of Regulatory Design Concentrations: AERMOD vs. ISCST3, CTDMPLUS, ISD–PRIME." Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711; EPA Report No. EPA–454/R–03–002, July 2003.

These reports are also available on our modeling Web site (*http://www.epa.gov/scram001*) and provide technical details on AERMOD revisions since it was proposed in the **Federal Register** (65 FR 21506) on April 21, 2000. On April 15, 2003 (68 FR 18440), we promulgated proposed changes and additions to the *Guideline* (Appendix W to 40 CFR part 51) that were supported by public comments and that we deemed ready to finalize. Components of the proposal that we did not act on include: (1) Adopting AERMOD to replace ISCST3 in many assessments, (2) revising ISCST3 by incorporating a new downwash algorithm (PRIME) and renaming the model ISC–PRIME, and (3) updating the Emissions and Dispersion Modeling System (EDMS 3.1) in appendix A of the *Guideline*.

Nearly every commenter on the April 2000 proposal urged us to integrate the aerodynamic downwash PRIME algorithm into AERMOD (*i.e.*, not to require two models for some analyses), and no comments were received which contradicted these requests. In response to our request that this comment be addressed, AERMIC (the American Meteorological Society (AMS)/EPA Regulatory Model Improvement Committee) successfully revised AERMOD (version 02222), incorporating the PRIME algorithm and making other incidental modifications to respond to public comments and issues identified by beta testers of the code. Documentation of AERMOD (02222) and its computer code has since been available on our Web site (*http://www.epa.gov/scram001/tt26.htm#aermod*).

Also proposed in April 2000 was an EDMS upgrade to version 3.1. Since that proposal, the model developer—Federal Aviation Administration (FAA)—decided to further upgrade EDMS to incorporate AERMOD in a version 4.0. Performance evaluation and adequate documentation was requested in public comments (A–99–05), and in our April 15, 2003, notice we said that this new information would be forthcoming. Recently, however, FAA has decided to withdraw EDMS from the *Guideline's* appendix A. No new information is therefore provided in this action; we support this removal from appendix A and will address the details more fully in a future promulgation of the *Guideline*.

The most significant changes made to AERMOD in response to public comments include the following:

- addition of the PRIME downwash algorithms;
- modifications of the complex terrain algorithms to make AERMOD less sensitive to the selection of the domain of the study area;
- modification of (a) urban dispersion for low-level emission sources, such as area sources, to produce more realistic urban dispersion and (b) minimum mixing layer depths used to calculate the effective dispersion parameters for all dispersion settings;
- addition of plume meander to all stable and unstable conditions; and
- upgrades of AERMOD to include all the newest features that exist in the latest version of ISCST3 such as FORTRAN 90 compliance, allocatable arrays, EVENTS processing, and the TOXICS option.

The effect of these changes is now documented in the two reports cited above.

The performance analysis of model accuracy is summarized in: "AERMOD: Latest Features and Evaluation Results." Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA Report No. EPA–454/R–03–003, July 2003. That analysis provides comparisons of model estimates with measured air quality concentrations for a variety of source types and locations. Based on this analysis, we have concluded that (1) the performance of the revised version of AERMOD (02222) is slightly better than the April 2000 proposal and both versions of AERMOD significantly outperform ISCST3 and (2) AERMOD (02222) with PRIME performs slightly better than ISC–PRIME for aerodynamic downwash cases.

The consequence analysis of effects on design concentrations is summarized in: "Comparison of Regulatory Design Concentrations: AERMOD vs. ISCST3, CTDMPLUS, ISD–PRIME." Office of Air Quality Planning and Standards, Research Triangle Park, NC 27711, EPA Report No. EPA–454/R–03–002, July 2003. That analysis provides comparisons of design concentrations (on which emission control limits might be based) for a wide variety of source configurations and settings. The analysis indicates that:

- for non-downwash settings, the revised version of AERMOD (02222), on average, tends to predict concentrations closer to ISCST3 with somewhat smaller

variations than the April 2000 proposal of AERMOD;

- where downwash is a significant factor in the air dispersion analysis, the revised version of AERMOD predicts maximum concentrations that are very similar to ISC–PRIME;
- for those source scenarios where maximum 1-hour cavity concentrations are calculated, the average AERMOD predicted cavity concentration tends to be about the same as the average ISC–PRIME cavity concentrations; and
- in general, the consequences of using the revised AERMOD, instead of the older model ISCST3, in complex terrain remained essentially unchanged, although they varied in individual circumstances.

Based on evaluations of the revisions described above, it appears that the modified AERMOD is ready to be incorporated into the *Guideline*, and we intend to promulgate the modified AERMOD (02222). This Notice of Data Availability concerning performance studies of the modified model is being provided to inform the public about the model performance and range of impacts which the improved version of AERMOD could have on estimated air quality concentrations. We invite public comment on the new studies (see **DATES**). Comments on the documents noticed today should be sent to the Docket Office (see **ADDRESSES**), and should clearly reference this Notice of Data Availability and Docket No. A–99–05.

Dated: August 26, 2003.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–22766 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2003–0053; FRL–7327–4]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 1, 2003 to August 15, 2003, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

DATES: Comments identified by the docket ID number OPPT–2003–0053 and the specific PMN number or TME number, must be received on or before October 8, 2003.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2003–0053. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether

submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number and specific PMN number or TME number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets.* Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket*, and follow the online instructions for submitting comments. Once in the system, select "search," and then key in docket ID number OPPT–2003–0053. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail.* Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2003–0053 and PMN Number or TME Number. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM.* You may submit comments on a disk or CD ROM that you mail to the mailing address identified in Unit I.C.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By mail.* Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2003–0053 and PMN Number or TME Number. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI To the Agency?

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action and the specific PMN number you are commenting on in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from August 1, 2003 to August 15, 2003, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In Table I of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 20 PREMANUFACTURE NOTICES RECEIVED FROM: 08/01/03 TO 08/15/03

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–03–0753	08/01/03	10/29/03	Bedoukian Research, Inc.	(S) Fragrances uses as per FFDCA; fragrances uses; scented papers, detergents, candles, etc.	(S) 6-nonen-1-ol, acetate, (6z)-*
P–03–0754	08/01/03	10/29/03	CBI	(G) Industrial structural materials	(G) Telechelic polyacrylates
P–03–0755	08/01/03	10/29/03	CBI	(G) Additive for paints and coatings	(G) Cross-linked acrylic copolymer
P–03–0756	08/04/03	11/01/03	BASF Corporation	(G) Component used in the manufacture of polyurethane parts	(G) Polyesterpolyol, reaction product of aliphatic alcohols and dicarboxylic acids
P–03–0757	08/04/03	11/01/03	CBI	(G) An open, non-dispersive use	(G) Polymeric modified vegetable oil
P–03–0758	08/04/03	11/01/03	Dupont Company	(G) Film	(G) Polyetherester
P–03–0759	08/04/03	11/01/03	Great Lakes Chemical Corporation	(G) Lubricant additive	(S) Phosphonic acid, di-C_{12-20}-alkyl esters
P–03–0760	08/04/03	11/01/03	Norquay Technology Inc.	(G) Surfactant	(S) 1-octanesulfonic acid
P–03–0761	08/04/03	11/01/03	Degussa Corporation	(S) Polyurethane monomer	(S) 6-nonyl-1,3,5-triazine-2,4-diamine
P–03–0762	08/06/03	11/03/03	CBI	(G) Hardener	(G) Modified polyisocyanate
P–03–0763	08/06/03	11/03/03	CBI	(G) Hardener	(G) Modified polyisocyanate
P–03–0764	08/08/03	11/05/03	CMP Coatings, Inc.	(S) Binder polymer in paints	(S) 2-propenoic acid, 2-methyl-, methyl ester, polymer with ethyl 2-propenoate, zinc bis(2-methyl-2-propenoate) and zinc di-2-propenoate, 2,2′-azobis[2-methylbutanenitrile]- and 2,2′-azobis[2-methylpropanenitrile]-initated
P–03–0765	08/05/03	11/05/03	Vantico Inc.	(S) Epoxy curing agent	(G) Phenol, 4,4′-(1-methylethylidene)bis, polymer with (chloromethyl)oxirane, reaction products with a cycloaliphatic amine
P–03–0766	08/08/03	11/05/03	CBI	(S) Monomeric intermediate	(G) Alkoxysilyldiesteramine
P–03–0767	08/08/03	11/05/03	BASF Corporation	(G) Components in composite formulations	(G) Aromatic isocyanate methacrylate blocked
P–03–0768	08/11/03	11/08/03	CBI	(S) Reactive dyestuff for the coloration of cellulosic fiber materials	(G) Reactive azo dye
P–03–0769	08/12/03	11/09/03	CBI	(S) Dispersnt for solvent based coating	(G) Polyacrylate
P–03–0770	08/12/03	11/09/03	CBI	(G) Thickening agent	(G) Hydrophobically modified hydroethylcellulose
P–03–0771	08/13/03	11/10/03	CBI	(G) 1. Multi-purpose adhesive, open, non-dispersive use; 2. Laminating adhesive, open, non-dispersive use	(G) Polyurethane prepolymer; Polyurethane adhesive
P–03–0772	08/14/03	11/11/03	CBI	(G) Pigment dispersant	(G) Phosphated polyalkoxylate

In Table II of this unit, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 13 NOTICES OF COMMENCEMENT FROM: 08/01/03 TO 08/15/03

Case No.	Received Date	Commencement/ Import Date	Chemical
P–02–0150	08/05/03	05/21/03	(G) *N*-substituted-2-methyl-2-propenamide, polymer with 2-propenoic acid, sodium salt
P–02–0287	08/01/03	07/07/03	(G) Ethoylated alkyl alcohol
P–03–0093	08/05/03	07/14/03	(G) Polyglycidyl ether of (*p*-hydroxy styrene) novolak
P–03–0306	08/05/03	07/14/03	(G) Polyalkyl-triethoxysilyl-alkyl-substituted heteromonocycle
P–03–0367	08/01/03	07/20/03	(G) Amino ketal
P–03–0370	08/11/03	07/14/03	(G) Polyol ester
P–03–0385	08/15/03	08/01/03	(G) Cyano substituted phenyl sulfonamide
P–03–0394	08/06/03	07/30/03	(S) 1,3,2-dioxaphosphorinane, 2-[2,4-bis(1,1-dimethylethyl)phenoxy]-5-butyl-5-ethyl-
P–03–0424	08/01/03	07/22/03	(G) Amines adduct of epoxy resin
P–03–0470	08/05/03	07/22/03	(G) Acrylic ester, polymer with ethenyl acetate, hydrolyzed, sodium salt
P–03–0521	08/07/03	07/31/03	(G) Salt of a copolymer of acrylic acid and acrylic acid derivatives
P–03–0532	08/13/03	08/07/03	(G) Unsaturated alkyl grignard reagent
P–99–1120	08/05/03	08/03/03	(G) Amide resin

List of Subjects

Environmental protection, Chemicals, Premanufacture notices

Dated: September 2, 2003.

Sandra R. Wilkins,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 03–22765 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7552–8]

Notice of Clarification of the Final National Pollutant Discharge Elimination System (NPDES) General Permit for the Eastern Portion of Outer Continental Shelf (OCS) of the Gulf of Mexico (GMG280000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Regional Administrator (RA) of EPA Region 4 (the "Region") is today issuing a notice of clarification to the final National Pollutant Discharge Elimination System (NPDES) general permit for the Eastern Portion of the Outer Continental Shelf (OCS) of the Gulf of Mexico (General Permit No. GMG280000), to address Notice of Intent (NOI) requirements for discharges covered by the permit after April 30, 2003. This permit was published at 63 FR 55745 on October 16, 1998, modified on March 14, 2001 at 66 FR 14988, and further revised on April 6, 2001 at 66 FR 18253 for discharges in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A). The permit issued by Region 4, authorizes discharges from exploration, development, and production facilities located in and discharging to all Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas.

This notice is applicable to new oil and gas operations (operations), which obtained coverage under the existing general permit coverage after April 30, 2003, and existing operations requesting continued coverage. The purpose of the notice is to clarify the procedure for these operations to request coverage under a continued general permit, since it does not clearly discuss this procedure. The language in the current permit referring to April 30, 2003, as the deadline for existing operations to submit Notices of Intent (NOIs) requesting continued coverage under this permit has been deleted. The clarification applies to both existing and new operations. Also, the word "Subsequent" in the title of Part I.A.6. of the current permit has been replaced with the word "Continued." The change is made because the language in this Section does not provide a procedure to obtain coverage under a subsequently issued (renewed) general permit. Part I.A.6. is clarified as discussed above:

6. Intent to be Covered by a Continued Permit

This permit shall expire on October 31, 2003. However, an expired general permit continues in force and effect until a new general permit is issued. Permittees must submit a new (a second) NOI in order to continue coverage under this general permit after it expires. In lieu of providing the information required by paragraph 4. of the section, the permittee may submit a list of facilities covered by the general permit and their associated permit coverage numbers. Facilities that have not submitted another NOI under the permit by the expiration date cannot become authorized to discharge under any continuation of this NPDES general permit. All NOI's from permittees requesting coverage under a continued permit should be sent by certified mail to: Director, Water Management Division, U.S. EPA, Region 4, Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303–8960.

DATES: This clarification is effective September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Karrie-jo Robinson-Shell, USEPA, Region 4, NPDES and Biosolids Permits Section at (404) 562–9308 or by e-mail at *shell.karrie-jo@epa.gov.*

Gail Mitchell,

Acting Director, Water Management Division.

[FR Doc. 03–22768 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities

AGENCY: Equal Opportunity Commission.

ACTION: Notice of information collection—no change: Local Union Report (EEO–3).

SUMMARY: In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Equal Employment Opportunity Commission (EEOC) announces that it intends to submit to the Office of Management and Budget (OMB) a request for a one-year extension of the existing collection as described below.

DATES: Written comments on this notice must be submitted on or before November 7, 2003.

ADDRESSES: Comments should be sent to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW., Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW., Washington, DC 20507 between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Joachim Neckere, Director, Program Research and Surveys Division, 1801 L Street, NW., Room 9220, Washington, DC 20507; (202) 663–4958 (voice) or (202) 663–7063 (TDD).

SUPPLEMENTARY INFORMATION: The Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

Collection Title: Local Union Report (EEO–3).

OMB Number: 3046–0006.

Frequency of Report: Biennial.

Type of Respondent: Referral local unions with 100 or more members.

Description of Affected Public: Referral local unions and independent or unaffiliated referral unions and similar labor organizations.

Responses: 3,000.

Reporting Hours: 3,000 (4,500 including recordkeeping).

Cost to Respondents: $67,500.

Federal Cost: $50,000 (Annualized).

Number of Forms: 1.

Abstract: Section 709(c) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–8(c), requires employers to make and keep records relevant to a determination of whether unlawful employment practices have been or are being committed and to make reports therefrom as required by the EEOC. Accordingly, the EEOC has issued regulations which set forth the reporting requirements for various kinds of labor organizations—Referral local unions with 100 or more members have been required to submit EEO–3 reports since 1967 (biennially since 1986). The individual reports are confidential.

EEO–3 data are used by the EEOC to investigate charges of discrimination against referral local unions. In addition, the data are used to support EEOC decisions and conciliations, and for research. Pursuant to section 709(d) of Title VII of the Civil Rights Act of 1964, as amended, EEO–3 data are also shared with 86 State and Local Fair Employment Practices Agencies (FEPAs) and other government agencies.

Burden Statement: The respondent burden for this information collection is minimal. The estimated number of respondents included in the biennial EEO–3 survey is 3,000 referral unions. Since each union files one EEO–3 report, the number of responses is 3,000. The biennial reporting is estimated to take 3,000 hours, and total biennial reporting and recordkeeping is 4,500 hours.

Dated: August 29, 2003.

For the Commission.

Cari M. Dominguez,

Chair.

[FR Doc. 03–22719 Filed 9–5–03; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

August 28, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments November 7, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, 445 12th Street, SW., Room 1–C804, Washington, DC 20554 or via the internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith B. Herman at 202–418–0214 or via the internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0441.

Title: Section 90.621(b)(4), Selection and Assignment of Frequencies.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, and state, local, or tribal government.

Number of Respondents: 250.

Estimated Time Per Response: .5 hours for respondents who choose to contract out the requirement; 1.5 hours for respondents who will employ in-house staff.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 188 hours.

Annual Reporting and Recordkeeping Cost Burden: $19,000.

Needs and Uses: This rule section requires Specialized Mobile Radio (SMR) applicants who wish to locate co-channel systems less than 70 miles from an existing system operating on the same channel may do so upon a specific request. If the requested distance falls within the parameters of a table provided in the rules, the applicant must provide certain information about the co-channel stations, but no waiver of the short spacing rule is required. If the request is for distances less than those prescribed in the table, a waiver of the short spacing rule is required. Incumbent licensees seeking to utilize an 18 dBMU signal strength interference contour, and that are unsuccessful in obtaining the consent of affected co-channel incumbents, may submit to any certified frequency coordinator of 800 MHz band channels an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent. The incumbent may then provide to the Commission in their modified applications a statement from a certified frequency coordinator that no harmful interference will occur to a co-channel licensee. The Commission will submit this information collection to the OMB after the requisite 60 day comment period as an extension (no change) to obtain the full three year clearance.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22678 Filed 9–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 22, 2003.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov;* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562, or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0716.

Title: Blanketing Interference.

From Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; Individuals or households; and Not-for-profit institutions.

Number of Respondents: 21,000.

Estimated Time Per Response: 1 to 2 hours.

Frequency of Response: Third party disclosure.

Total Annual Burden: 41,000 hours.

Total Annual Costs: None.

Needs and Uses: Under 47 CFR 72.88 (AM), 73.318 (FM), and 73.685(d) (TV), the licensee is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a licensee is only required to provide technical assistance to determine the cause of the interference. The FCC has an outstanding Notice of Proposed Rulemaking (NPRM) in MM Docket No. 96–62, *In the Matter of Amendment of Part 73 of the Commission's Rules to More Effectively Resolve Broadcast Blanketing Interference, Including Interference to Consumer Electronics and Other Communications Devices.* The NPRM has proposed to provide detailed clarification of the AM, FM, and TV licensee's responsibilities in resolving/eliminating blanketing interference caused by their individual stations. The NPRM has also proposed to consolidate all blanketing interference rules under a new section 47 CFR 73.1630, "Blanketing Interference." This new rule has been designed to facilitate the resolution of broadcast interference problems and set forth all responsibilities of the licensee/permittee of a broadcast station. To date, final rules have not been adopted.

OMB Control Number: 3060–0581.

Title: Section 76.503, National Subscriber Limits.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 10.

Estimated Time Per Response: 1 hour (multiple responses annually).

Frequency of Response: On occasion reporting requirements.

Total annual burden: 20 hours.

Total Annual Costs: None.

Needs and Uses: 47 CFR 76.503 requires that prior to acquiring additional multichannel video-programming providers (MVPD), any cable operator that serves 20 per cent or more of the MPVP subscribers nationwide shall certify to the FCC, concurrent with its application to the FCC for transfer of license at issue in the acquisition, that no violation of the national subscriber limits prescribes in this section will occur as a result of such acquisition. The FCC uses the certification filings to ensure that cable operators do not violate the 30 percent share rule in their acquisitions of additional multi-channel programming providers. The FCC uses 47 CFR 76.503, Note 1, certification filings to verify that limited partners who so certify are not involved in management or operations of the media-related activities of the partnership.

OMB Control Number: 3060–0924.

Title: Report and Order in MM Docket No. 99–25 Creation of Low Power Radio Service.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Not-for-profit entities; and State, local or tribal governments.

Number of Respondents: 1,200 (multiple responses).

Estimated Time Per Response: 0.0025 to 12 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 27,354 hours.

Total Annual Cost: $23,850.

Needs and Uses: The information collection requirements contained in MM Docket No. 99–25, Report and Order, will ensure that the integrity of the FM spectrum is not compromised. It will also ensure that unacceptable interference will not be caused to existing radio services and that the statutory requirements are met. These rules will ensure that the stations are operated in the public interest.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22679 Filed 9–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 25, 2003.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0055.

Title: Application for Cable Television Relay Service Station (CARS) Authorization, FCC Form 327.

Form Number: FCC 327.

Type of Review: Revision of a currently approved collection.

Respondents: Business and other for-profit entities; and Not-for-profit institutions.

Number of Respondents: 973.

Estimated Time per Response: 3.166 hours (avg.).

Frequency of Response: On occasion and/or every five years reporting requirements.

Total Annual Burden: 3,081 hours.

Total Annual Costs: $214,060.

Needs and Uses: On March 13, 2003, the Commission adopted a Report and Order (R&O), *Amendment of the Commission's Rules for Implementation of its Cable Operations and Licensing System (COALS) to Allow for Electronic Filing of Licensing Applications, Forms, Registrations and Notifications in the Multichannel Video and Cable Television Service and the Cable Television Relay Service,* FCC 03–55. This R&O provided for electronic filing and standardized information collections. Under 47 CFR Sections 78.11–78.40 of FCC Rules, an applicant files FCC Form 327 to obtain an initial license or modification, transfer, assignment, or renewal of an existing Cable television Relay Service (CARS) microwave radio license. Franchised cable systems and other eligible services use the 12 GHz and 18 GHz CARS bands for microwave relays pursuant to 47 CFR part 78 of the Commission's Rules. CARS is principally a video transmission service used for intermediate links in a distribution network, *i.e.*, CARS stations relay broadcast television, low power television, AM, FM, and cablecasting video and audio signal transmissions for and supply program material to these various broadcast transmission systems using point-to-point and point-to-multipoint transmissions. The Commission has restructured FCC Form 327 primarily to make it conform to the online filing system.

OMB Control Number: 3060–0647.

Title: Annual Survey of Cable Industry Prices.

Form Number: N/A.

Type of Review: Revision of currently approved collection.

Respondents: Business or other for-profit entities; and State, local, or tribal governments.

Number of Respondents: 720.

Estimated Time per Response: 7 hours.

Frequency of Response: Annual reporting requirements.

Total annual burden: 5,040 hours.

Total Annual Costs: None.

Needs and Uses: Section 623(k) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to publish an annual statistical report on average rates for basic cable service, cable programming and equipment. The report must compare the prices charged by cable systems subject to effective competition and those not subject to effective competition. The annual Price Survey is intended to collect data needed to prepare this report.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22680 Filed 9–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

August 29, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No

person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before October 8, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0105.

Title: Licensee Qualification Report for Multipoint Distribution Service.

Form No: FCC Form 430.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, and not-for-profit institutions.

Number of Respondents: 500.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion and annual reporting requirements.

Total Annual Burden: 1,000 hours.

Total Annual Cost: N/A.

Needs and Uses: FCC Form 430 is filed by new applicants or annually by licensees if substantial changes occur in the organizational structure to provide information concerning corporate structure, alien ownership, and character of applicant or licensee. FCC Form 430 is also filed by applicants soliciting authority for assignment or transfer of control. The information is used by the Commission to determine whether the applicant is legally qualified to become or remain a licensee, as required by the Communications Act of 1934, as amended. Without such information, the Commission would be unable to fulfill its responsibility under the Communications Act to make a finding as to the legal qualifications of an applicant or licensee. The Commission is submitting this information collection to OMB as an extension (no change) to obtain the full year clearance.

OMB Control No.: 3060–0767.

Title: Auction Forms and License Transfer Disclosures—Supplement for the Second Order on Reconsideration of the Third Report and Order and Order on Reconsideration of the Fifth Report and Order in WT Docket No. 97–82.

Form No: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, business or other for-profit, not-for-profit institutions and state, local or tribal government.

Number of Respondents: 22,000.

Estimated Time Per Response: .25–5.25 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, and recordkeeping requirement.

Total Annual Burden: 770,250 hours.

Total Annual Cost: $47,452,000.

Needs and Uses: Commission rules require small business applicants to submit ownership information and gross revenue calculations, and all applicants must submit joint bidding agreements. In the case of default, the Commission retains the discretion to re-auction such licenses. Finally, licensees transferring licenses within three years are required to maintain a file of all documents and contracts pertaining to the transfer. Certification is required for entities dropping out of auction to secure certain ownership interests in participants.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22681 Filed 9–5–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Wednesday, September 10, 2003

September 3, 2003.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, September 10, 2003, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, DC.

Item No.	Bureau	Subject
1	Wireless Tele-Communications	*Title:* Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services (WT Docket No. 02–381); 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services (WT Docket No. 01–14); and Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation. *Summary:* The Commission will consider a Notice of Proposed Rulemaking to examine ways of amending spectrum regulations and policies in order to promote the rapid and efficient deployment of quality spectrum-based services in rural areas.
2	Office of Engineering and Technology	*Title:* Modification of parts 2 and 15 of the Commission's Rules for unlicensed devices and equipment approval. *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning modifications to parts 2 and 15 of the rules to provide flexibility in the design and authorization of unlicensed devices.
3	International	The International Bureau will report on the first in a series of annual reports on the commercial satellite industry.

Item No.	Bureau	Subject
4	Wireless Tele-Communications	The Wireless Telecommunications Bureau and the National Coordination Committee (NCC) Chair will report on the Committee's recommendations for interoperable public safety use of the 700 MHz band.
5	Wireline Competition	*Title:* Section 10(d) Limitation on Forbearance from sections 251(c) and 271. *Summary:* The Commission will consider a Notice of Proposed Rulemaking seeking comment on the conditions under which sections 251(c) and 271 of the Communications Act of 1934, as amended, should be deemed to be "fully implemented" under section 10(d) of the Act.
6	Wireline Competition	*Title:* Review of the Commission's Rules Regarding the Pricing of Unbundled Network Elements and the Resale of Service by Incumbent Local Exchange Carriers. *Summary:* The Commission will consider a Notice of Proposed Rulemaking to review the Commission's cost-based pricing rules for unbundled network elements.
7	Media	*Title:* Implementation of section 304 of the Telecommunications Act of 1996 (CS Docket No. 97–80); Commercial Availability of Navigation Devices; and Compatibility Between Cable Systems and Consumer Electronics Equipment (PP Docket No. 00–67). *Summary:* The Commission will consider a Second Report and Order regarding regulations to facilitate the connection of customer premises equipment purchased from retail outlets to multichannel video programming distibutor systems.

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322.

Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, (703) 834–1470, Ext. 19; Fax (703) 834–0111.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22965 Filed 9–4–03; 3:12 pm]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting Notice; Announcing a Partially Open Meeting of the Board of Directors

TIME AND DATE: The open portion of the meeting of the Board of Directors is scheduled to begin at 1 p.m. on Wednesday, September 10, 2003. The closed portion of the meeting will follow immediately the open portion of the meeting.

PLACE: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

STATUS: The first portion of the meeting will be open to the public. The final portion of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN PORTION OF MEETING:

Proposed Rule Regarding Registration of Federal Home Loan Bank Securities Under the Securities Exchange Act of 1934. Consideration of a proposed rule to require each Bank to register a class of its securities with the Securities and Exchange Commission under the provisions of section 12(g) of the Securities Exchange Act of 1934.

Appointment of the Private Citizen Member of the Office of Finance Board of Directors. Consideration of the nomination of an individual to serve as the private citizen member and chair of the Office of Finance board of directors.

Withdrawal of Proposed Rule Regarding Acquired Member Assets (AMA). Withdrawal of a proposed rule (68 FR 39027 (July 12, 2003)) that would have revised the AMA regulation to create less prescriptive requirements, to provide each Federal Home Loan Bank (Bank) with greater responsibility for managing its AMA program, and to codify a prior Federal Housing Finance Board (Finance Board) decision regarding interests in whole loans.

Federal Housing Finance Board Fiscal Year 2004 Budget.

MATTERS TO BE CONSIDERED AT THE CLOSED PORTION OF MEETING:

Periodic Update of Examination Program Development and Supervisory Findings.

FOR FURTHER INFORMATION CONTACT: Mary Gottlieb, Paralegal Specialist, Office of General Counsel, by telephone at 202/408–2826 or by electronic mail at *gottliebm@fhfb.gov.*

Dated: September 3, 2003.

By the Federal Housing Finance Board.

Arnold Intrater,

General Counsel.

[FR Doc. 03–22950 Filed 9–4–03; 2:55 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 22, 2003.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Frances E. Powers, Defiance, Iowa; to acquire additional voting shares of Union Bancorporation, Defiance, Iowa, and thereby indirectly acquire additional voting shares of Defiance State Bank, Defiance, Iowa.

Board of Governors of the Federal Reserve System, September 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–22744 Filed 9–5–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 2003.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Munchener Ruckversicherungs–Gesellschaft Aktiengesellschaft, Munich, Germany; to acquire 26.2 percent through its subsidiaries, Hypo Real Estate Holding, AG, Munich, Germany, and Hypo Real Estate Capital Corporation, Wilmington, Delaware, in extending credit and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 2, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.03–22743 Filed 9–5–03; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the President's Council on Physical Fitness and Sports

AGENCY: Department of Health and Human Services, Office of the Secretary, Office of Public Health and Science, President's Council on Physical Fitness and Sports.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the President's Council on Physical Fitness and Sports will hold a meeting. This meeting is open to the public. A description of the Council's functions is included with this notice.

DATE AND TIME: September 29, 2003, from 8:30 a.m. to 4 p.m.

ADDRESSES: Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Penelope S. Royall, Acting Executive Director, President's Council on Physical Fitness and Sports, Hubert H. Humphrey Building, Room 738H, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–5187.

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports (PCPFS) was established originally by Executive Order 10673, dated July 16, 1956. PCPFS was established by President Eisenhower after published reports indicated that American boys and girls were unfit compared to the children of Western Europe. Authorization to continue Council operations was given at appropriate intervals by subsequent Executive Orders. The Council has undergone two name changes and several reorganizations. Presently, the PCPFS is a program office located organizationally in the Office of Public Health and Science within the Office of the Secretary in the U.S. Department of Health and Human Services.

On June 6, 2002, President Bush signed Executive Order 13256 to reestablish the PCPFS. Executive Order 13256 was established to expand the focus of the Council. This directive instructed the Secretary to develop and coordinate a national program to enhance physical activity and sports participation. The Council currently operates under the stipulations of the new directive. The primary functions of the Council include: (1) To advise the President, through the Secretary, on the progress made in carrying out the provisions of the enacted directive and recommend actions to accelerate progress; (2) to advise the Secretary on ways and means to enhance opportunities for participation in physical fitness and sports, and, where possible, to promote and assist in the facilitation and/or implementation of such measures; (3) to advise the Secretary regarding opportunities to extend and improve physical activity/fitness and sports programs and services at the national, state and local levels; and (4) to monitor the need for the enhancement of programs and educational and promotional materials sponsored, overseen, or disseminated by the Council and advise the Secretary, as necessary, concerning such needs.

The PCPFS holds at a minimum, one meeting in the calendar year to (1) assess ongoing Council activities and (2) discuss and plan future projects and programs.

Dated: August 29, 2003.

Penelope S. Royall,

CDR, USPHS, Acting Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 03–22745 Filed 9–5–03; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Data Coordinating Center for Autism and Other Developmental Disabilities Surveillance and Epidemiologic Research

Announcement Type: New.

Funding Opportunity Number: PA 04014.

Catalog of Federal Domestic Assistance Number: 93.283.

Key Dates:

Letter of Intent Deadline: October 8, 2003

Application Deadline: November 14, 2003

I. Funding Opportunity Description

Authority: This program is authorized under sections 301, 311, and 317(C) of the

Public Health Service Act, [42 U.S.C. Sections 241, 243, and 247b-4, as amended].

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2004 funds for a cooperative agreement program for a new Data Coordinating Center (DCC) to support surveillance data and research data management related to developmental disabilities, such as Autism Spectrum Disorders (ASD) and other Developmental Disabilities (DD). This program addresses the "Healthy People 2010" focus area of Maternal, Infant, and Child Health.

The purpose of the program is to support a DCC to coordinate and facilitate data management activities across both the Autism and Developmental Disabilities Monitoring Network (ADDM) surveillance grantees, and the Centers of Excellence for Autism and Developmental Disabilities Research and Epidemiology (CADDRE) surveillance and epidemiologic research grantees. The Children's Health Act of 2000 established a national mandate for autism surveillance activities and for research to address etiologic questions and identify effective interventions. The DCC is the third component necessary to provide a coordinated and standardized collection and output of information between and from these two grantee programs. The DCC is necessary to ensure accurate and timely processing and reporting of both surveillance data and research data related to ASD and DD. The data collected from these grantee sites will be stored at the DCC. Data activities related to other birth conditions and developmental disabilities may be added in the future, based on needs.

The ADDM, CADDRE, and DCC cooperative agreements have been developed to assist us with our goal of preventing ASDs and DDs. The first step in preventing these conditions is to understand their scope. Specifically, we need to know how many children are affected, the health outcomes for these children, the costs to the family and to the community, and the risk factors or protective factors for each condition. This information is needed to set priorities, design studies of causes and develop effective interventions in the public setting.

Measurable outcomes of the program will be in alignment with the following performance goals for the National Center on Birth Defects and Developmental Disabilities (NCBDDD): To improve the data on the prevalence of birth defects and developmental disabilities, and find causes and risk factors of birth defects and developmental disabilities in order to develop prevention strategies.

Activities:

Awardee activities for this program are as follows:

a. Support the cooperative activities of the research sites through meetings, telephone conferences, and web support.

b. Develop, after the initial meeting/discussions with research sites, a work plan for all activities proposed for the DCC (See Attachment 1 posted with this announcement on the CDC Web site).

c. Develop the needed documentation, testing requirements, and a relational database application after CDC's approval of the work plan. This application should contain all of the necessary computerized data collection forms for autism and other DD surveillance.

d. Develop a secure Web site for surveillance and research sites to access the individual and pooled data sets for analysis. Note that all data collected and accessible through the secure Web site is confidential and should be maintained in accordance with all federal, state, and local rules, regulations, and laws governing privacy of personal health and health-related data (no personal identifiers will be forwarded to the DCC).

e. Assist the research sites in administering questionnaires to individuals they identify.

f. Develop manuals and plans for training of research-site personnel, and conduct on-site training on the use of the relational database application and transmission of study data to DCC.

g. Prepare written system documentation for the relational database application and secure Web site.

h. Develop a plan to transfer the data and source code to CDC at the end of the funding period.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring. CDC activities for this program are as follows:

a. Assist with protocol development, including reviewing and commenting on each stage of the program before subsequent stages are started.

b. Assist in the analysis and interpretation of findings.

c. Assist in the reporting of findings in scientific literature, other media, and among the public.

d. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially, and on at least an annual basis until the research project is completed.

e. Provide technical guidance as to the development of the relational database application and secure Web site.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year (FY) of Funds: 2004.

Approximate Total Funding: $700,000 per budget period.

Approximate Number of Awards: 1.

Anticipated Award Date: April 1, 2004.

Budget Period Length: 12 months.

Project Period Length: Five years. Throughout the project period, continuation awards will be based on the availability of funds, and evidence of progress as documented in required reports.

III. Eligibility Information

Eligible Applicants: Applications may be submitted by:

- Public nonprofit organizations.
- Private nonprofit organizations.
- For profit organizations.
- Small, minority, women-owned businesses.
- Universities.
- Colleges.
- Technical schools.
- Research institutions.
- Hospitals.
- Community-based organizations.
- Faith-based organizations.
- Federally-recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.
- State and local governments or their bona fide agents (this includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Marianna Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

If you are applying as a bona fide agent of a state or local government, you must provide a letter from the State as documentation of your status. Place this letter behind the face page of your application form.

Other Eligibility Requirements:

To be eligible applicants must:

1. Propose a Principal Investigator who shall expend at least 20 percent annual effort on the award in each year of support. This 20 percent effort may not be in-kind support.

2. Proposed Principal Investigator cannot be the current Autism and

Developmental Disabilities Monitoring (ADDM) or Centers for Autism and Developmental Disabilities Research and Epidemiology (CADDRE) Principal Investigator on an existing funded project. Other individuals from their institutions are eligible applicants.

Applications will be reviewed upon receipt at CDC for the above eligibility requirements. Applications that do not meet each requirement will be found ineligible and will be returned to the applicant without review.

Cost sharing or matching: Matching funds are not required for this program.

Title 2 of the United States Code Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

IV. Application and Submission Information

How to Obtain Application Forms: To apply for this funding opportunity, use application Form PHS–398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction Sheet (For PHS–398 the errata sheet is posted with the application forms on the CDC Web site). Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) at: 770–488–2700. Application forms can be mailed to you.

Beginning October 1, 2003, applicants will be required to have a Dun and Bradstreet (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge.

You are encourage to obtain a DUNS number now if you believe you will be submitting an application to any Federal agency on or after October 1, 2003. Proactively obtaining a DUNS number at the same time will facilitate the receipt and acceptance of applications after September 2003.

To obtain a DUNS number, access the following Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711.

Content and Form of Submission:

Letter of Intent (LOI):

CDC requests that you send a LOI if you intend to apply for this program. Your LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review. Your LOI must be submitted in the following format:

- Maximum number of pages—2.
- Font size—12-point unreduced.
- Paper size—8.5 by 11 inches.
- Page margin size—one-inch margins.
- Printed only on one side of paper.
- Single-spaced.

Your LOI must contain the following information: Name, address, and telephone number of the Principal Investigator; names of other key personnel; participating institutions; number and title of this program announcement.

Applications

You must submit a signed original and two copies of your application forms. The PHS–398 grant application form requires the applicant to enter the project title on page 1 (Form AA, "face page") and the project description (abstract) on page 2 (Form BB).

- Applicants must submit a separate typed abstract of their proposal consisting of no more than two single-spaced pages.
- Applicants should also include a table of contents for the project narrative and related attachments.
- The main body of the application narrative should not exceed 30 single-spaced pages. The narrative must address activities to be conducted over the entire length of the project period. Please note that this maximum number of pages allowed exceeds the maximum number of pages (25 pages) indicated in the PHS–398 grant application form (Form CC, "Research Grant Table of Contents"). The budget justification and biographical sketch sections do not count toward the maximum page limit. Pages must be numbered and printed on only one side of the page.
- All material must be typewritten, with 10 characters per inch type (12 point) on 8½" by 11" white paper with one inch margins, no headers and footers (except for applicant-produced forms such as organizational charts, graphs and tables, etc.). Applications must be held together only by rubber bands or metal clips, and not bound together in any other way. Attachments to the application should be held to a minimum in keeping to those items required or referenced by this announcement.
- If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement.

LOI Deadline Date: October 8, 2003

LOI Submission Address: Submit your LOI by mail, delivery service, or e-mail to: Ms. Joanne Wojcik, Public Health Analyst, Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disabilities, 1600 Clifton Road, Mailstop E–86, Atlanta, Georgia 30333, Email address: *jcw6@cdc.gov,* Telephone: 404–498–3848.

Application Deadline Date: November 14, 2003

Application Submission Address: Submit your application by mail or delivery service to: Technical Information Management-PA #04014, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146.

Applications may not be submitted by fax or other electronic means.

Submission, Date, Time and Address:

Explanation of Deadlines: Applications must be received in the Procurement and Grants Office (PGO) at CDC by 4 p.m. Eastern Time on the deadline date. If you send your application by the United States Postal Service or commercial delivery services, you must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If CDC receives your application after the closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carrier's problem. If the documentation verifies a carrier problem, CDC will consider the application as having been received by the deadline.

If your application does not meet the criteria above, it will not be eligible for competition, and will be discarded. You will be notified of the failure to meet the submission requirements.

CDC Acknowledgement of Application Receipt: A postcard will be mailed by PGO–TIM, notifying you that CDC has received your application.

Intergovernmental Review of Applications: Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html*

V. Application Review Information

Review Criteria: Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Each application will be evaluated individually against the following criteria relevant to the successful establishment and performance of a DCC. It is suggested that applications be organized to be compatible with the evaluation criteria, as that is the process by which the review committee will assess the quality of the applications.

1. *Organizational experience and capabilities, including, but not limited to:* Adequacy of site support; governance support; staff training plans; including onsite training; adequacy of plans to guarantee the quality and integrity of collected data; adequacy of plans to maintain accurate and timely information on the progress of research and site performance; adequacy of plans to facilitate and maintain close communication with CDC and among the other surveillance and research sites; evidence of high-quality past performance in relevant data coordination activities; flexibility of plans to respond to the changing analytic needs of the surveillance and research sites; adequacy of plans and procedures for monitoring DCC expenditures; and demonstrated willingness and ability to adhere to the terms and conditions of the cooperative agreement award.

2. *Staff experience and capabilities, including, but not limited to:* Adequacy of the proposed resources; including staffing; for supporting the surveillance and research sites; demonstration of innovative analytic approaches to organizing and evaluating research data; and adequacy of the qualifications and research experience of the management and analytic team.

3. *Specialized capabilities and experience in large scale network coordination, including, but not limited to:* Adequacy of experience in, and plans for, conducting periodic onsite monitoring of multi-site research; adequacy of previous experience with design; administration; management; and coordination of multi-site research; surveillance sites; and demonstrated willingness and ability to expand resources, personnel, and facilities to serve as the DCC for other CDC initiatives if deemed appropriate to meet future needs.

4. *Protections:* Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects? Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.

5. *Inclusion:* Does the application adequately address the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

6. *Budget:* The reasonableness of the proposed budget and the requested period of support in relation to the proposed research.

Application Review Process: Applications will be reviewed by CDC staff for completeness and responsiveness as outlined in the "Other Eligibility Requirements". Incomplete applications and applications that are non-responsive will be returned to the applicant without further consideration.

Applications, which are complete and responsive, will be subjected to a preliminary evaluation (triage) by a Special Emphasis Panel (SEP) to determine if the application is of sufficient technical and scientific merit to warrant further review by the SEP. Applications that are determined to be non-competitive will not be considered, and the SEP will promptly notify the investigator/program director and the official signing for the applicant organization. A dual review process will evaluate applications then determined to be competitive.

VI. Award Administration Information

Award Notices: If your application is to be funded, you will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Administrative and National Policy Requirements: 45 CFR part 74 or 92.

The following additional requirements apply to this project:

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status
AR–21 Small, Minority, and Women-Owned Businesses
AR–22 Research Integrity
AR–24 HIPAA Requirements

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov.*

Reporting Requirements:

You must provide CDC with original, plus two copies of the following reports:

1. Interim Progress Report for a PHS Grant (PHS–2590), no less than 90 days before the end of the budget period (date to be determined at time of award).

(a) The progress report should represent the accomplishments of the project during the reporting period. You do not need to limit the progress report to two pages as specified in the instructions (page 2, item A).

(b) The report should describe the work, which has been accomplished to date. Please describe accomplishments in terms of the specific aims/timetable.

(c) List each specific aim separately and elaborate on the progress that has been made and where you are in terms of the time schedule.

(d) A detailed budget with justification.

(e) Include a copy of your most current IRB approval.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

VII. Agency Contacts

For general questions about this announcement, contact: Technical Information Management Section, Procurement and Grants Office, Centers

for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For business management and budget assistance, contact: Rick Jaeger, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2727, E-mail address: *ryj4@cdc.gov*.

For program technical assistance, contact: Joanne Wojcik, Public Health Analyst, Centers for Disease Control and Prevention, National Center on Birth Defects and Developmental Disabilities, Division of Birth Defects and Developmental, Disabilities, 1600 Clifton Road, Mail Stop–E86, Atlanta, Georgia 30333, Email address: *jwojcik@cdc.gov*, Telephone: 404–498–3848.

Dated: September 2, 2003.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 03–22715 Filed 9–5–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10005]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (CMS)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection; *Title of Information Collection:* Ticket to Work and Work Incentives: Medicaid Infrastructure Grants; *Form Number:* CMS–10005 (OMB approval #: 0938–0811); *Use:* Section 203 of the Ticket to Work and Work Incentives Act of 1999 provides for the establishment of a grants program for states that build infrastructures designed to support people with disabilities. State agencies have applied for these grants and will be submitting "continuation applications" for these grants; *Frequency:* Annually; *Affected Public:* State, local or tribal govt.; *Number of Respondents:* 40; *Total Annual Responses:* 40; *Total Annual Burden Hours:* 2,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Brenda Aguilar, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: August 28, 2003.

Dawn Willinghan,

Acting, Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–22694 Filed 9–5–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–2744 and CMS–2746]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection;

Title of Information Collection: End Stage Renal Disease Medical Information System ESRD Facility Survey and Supporting Regulations in 42 CFR 405.2133; *Form No.:* CMS–2744 (OMB# 0938–0447); *Use:* The ESRD Facility Survey form (CMS–2744) is completed annually by Medicare-approved providers of dialysis and transplant services. The CMS–2744 is designed to collect information concerning treatment trends, utilization of services and patterns of practice in treating ESRD patients; *Frequency:* Annually; *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 4,360; *Total Annual Responses:* 4,360; *Total Annual Hours:* 34,880.

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* End Stage Renal Disease Death Notification, Pub. L. 95–292; 42 CFR 405.2133; 45 CFR 5, 5b; 20 CFR parts 401, 422E; *Form No.:* CMS–2746 (OMB# 0938–0448); *Use:* The ESRD Death Notification is to be completed upon the death of ESRD patients. Its primary purpose is to collect fact and cause of death. Reports of deaths are used to show cause of death and demographic characteristics of these patients; *Frequency:* Other: One-time (patient death); *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Federal Government; *Number of Respondents:* 4,360; *Total Annual Responses:* 69,760; *Total Annual Hours:* 34,880.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections

referenced above, access CMS's Web site address at *http://cms.hhs.gov/regulations/pra/default.asp*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development and Issuances, Attention: Dawn Willinghan, Room C5–14–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 28, 2003.

Dawn Willinghan,

Acting CMS Reports Clearance Officer, Office of Strategic Operations and Strategic Affairs, Division of Regulations Development and Issuances.

[FR Doc. 03–22695 Filed 9–5–03; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for the opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Implementation of a Feedback Form for MCH Alert Subscribers—NEW

The MCH Alert is a free weekly electronic newsletter that provides timely reference to research findings, policy developments, recently released publications, and new programs and initiatives affecting the maternal and child health (MCH) community. The goal is to make MCH news and policy more accessible to health professionals, policymakers, family advocates, community service professionals, MCH/public health faculty and students, families, and the public. Each Friday, MCH Alert is electronically distributed to over 4,000 subscribers across the country. Visitors to the Web site can review archives of past issues, search for specific topics, link to reports and resources discussed, and find subscription information.

The overall goal of the Feedback Form is to determine whether the MCH Alert topics and format continue to meet subscriber needs. Specifically, the form will provide a means for assessing (1) the usefulness of the information and service and (2) the effectiveness of targeted outreach efforts.

Form	Number of respondents	Responses per respondent	Total responses	Minutes per response	Total burden hours
Electronic customer satisfaction feedback form	1,200	1	1,200	10	200

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–45, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 day of this notice.

Dated: September 2, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–22752 Filed 9–5–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: National Advisory Council on Migrant Health.

Dates and Times: October 22, 2003, 9 a.m. to 5 p.m.; October 23, 2003, 8 a.m. to 12 noon.

Place: Westchester Marriott Hotel, 670 White Plains Road, Tarrytown, New York 10591, Phone: (914) 631–2200; Fax: (914) 631–7819.

Status: The meeting will be open to the public.

Agenda: The agenda includes an overview of general Council business activities. In addition, the Council will hear presentations from experts on farmworker issues, including an update from the 404 Committee (section 404 of Pub. L. 107–251) regarding the progress on the study of the barriers members of America's migrant and seasonal farmworker community face when accessing Medicaid and State Children's Health Insurance Program (SCHIP) benefits.

Finally, the Council will be holding a public hearing at which migrant farmworkers will have the opportunity to testify before the Council regarding matters that affect their health. The hearing is scheduled for Thursday, October 23, from 9 a.m. to 12 noon, at the Westchester Marriott Hotel.

The Council meeting is being held in conjunction with the Annual East Coast Migrant Stream Forum sponsored by the

North Carolina Primary Health Care Association, which is being held in Tarrytown, New York, during the same period of time.

Agenda items are subject to change as priorities indicate.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the Council should contact Gladys Cate, Office of Minority and Special Populations, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594–0367.

Dated: September 2, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 03–22751 Filed 9–5–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974: Revision to Existing System of Records; Correction

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notification of an Altered System of Records; correction.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Health Resources and Services Administration published in the **Federal Register** of August 18, 2003, a document concerning a notice of a proposal to revise an existing system of records, 09–15–0055, Organ Procurement and Transplantation Network (OPTN) Data System. In notice FR Doc. 03–20685 on page 49491, the last line in the first paragraph of the **SUPPLEMENTARY INFORMATION** section states:

The notice is published below in its entirety, as amended.

The system of records notice was inadvertently omitted from the document. This document corrects that mistake. Accordingly, the notice is published below in its entirety, as amended.

FOR FURTHER INFORMATION CONTACT: James Burdick, M.D., Director, Division of Transplantation, Office of Special Programs, Health Resources and Services Administration, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, Maryland 20857.

Dated: September 2, 2003.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

09–15–0055

SYSTEM NAME:

Organ Procurement and Transplantation Network (OPTN)/ Scientific Registry of Transplant Recipients (SRTR) Data System, HHS/ HRSA/OSP/DoT.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Data collected by the OPTN are maintained by the OPTN contractor and shared on a monthly basis with the contractor for the SRTR and the DoT, within HRSA, the Federal entity that oversees the OPTN and SRTR contracts.

OPTN Contractor: United Network for Organ Sharing (UNOS), P.O. Box 2484, 700 North Fourth Street, Richmond, Virginia 23218.

SRTR Contractor: University Renal Research and Education Association (URREA), 315 West Huron, Suite 260, Washtenaw County, Ann Arbor, Michigan, 48103.

Division of Transplantation: Office of Special Programs, HRSA, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, Maryland 20857.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons from whom organs have been obtained for transplantation, persons who are candidates for organ transplantation, and persons who have been recipients of transplanted organs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Donor registration, transplant recipient registration, histocompatibility forms, and transplant recipient follow-up forms. Data items include: name, Social Security number (voluntary), identifiers assigned by OPTN and SRTR contractors, hospital and hospital provider number, State and zip code of residence, citizenship, race/ethnicity, gender, date and time of organ recovery and transplantation, name of transplant center, histocompatibility status, donor cause of death and condition, patient condition before and after transplantation, immunosuppressive medication, cause of death (if appropriate), health care coverage, employment and education level.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 274 requires that the Secretary, by contract, provide for the establishment and operation of an OPTN, and 42 U.S.C. 274a requires that the Secretary, by grant or contract, develop and maintain a Scientific Registry of the recipients of organ transplants. 42 CFR part 121 authorizes collection of the information included in this system by the OPTN.

PURPOSE(S):

To (1) match donor organs with recipients; (2) monitor compliance of member organizations with OPTN requirements; (3) review and report periodically to the public on the status of organ donation and transplantation in the United States; and (4) provide data to researchers and government agencies to study the scientific and clinical status of organ transplantation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

1. Departmental contractors who have been engaged by the Department to assist in accomplishment of a departmental function relating to the purposes for this system of records and who need to have access to the records in order to assist the Department.

2. HRSA, independently and through its contractor(s), may disclose records regarding organ donors, organ transplant candidates, and organ transplant recipients to transplant centers, histocompatibility laboratories, and organ procurement organizations, provided that such disclosure is compatible with the purpose for which the records were collected including: matching donor organs with recipients, monitoring compliance of member organizations with OPTN requirements, reviewing and reporting periodically to the public on the status of organ donation and transplantation in the United States. These records consist of Social Security numbers, other patient identification information and pertinent medical information.

3. In the event of litigation where the defendant is (a) the Department, any component of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to affect directly the operation of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Department of Justice has agreed to represent such employee, for example, in defending a claim against the Public Health Service in connection with such individual, disclosure may be made to the Department of Justice to enable the

Department to present an effective defense.

4. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

5. A record may be disclosed for a research purpose, when the Department, independently or through its contractor(s):

(a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) Has determined that a bona fide research/analysis purpose exists;

(c) Has required the recipient to: (1) Establish strict limitations concerning the receipt and use of patient-identified data; (2) establish reasonable administrative, technical, and physical safeguards to protect the confidentiality of the data and to prevent the unauthorized use or disclosure of the record; (3) remove, destroy, or return the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information; and (4) make no further use or disclosure of the record except as authorized by HRSA or its contractor(s) or when required by law;

(d) has determined that other applicable safeguards or protocols will be followed; and

(e) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders, magnetic tapes, and disc packs.

SAFEGUARDS:

1. *Authorized users:* Access is limited to authorized HRSA and contract personnel responsible for administering the program. Authorized personnel include the System Manager and Project Officer, and the HRSA Automated Information System (AIS) Systems Security Officer; and the program managers/program specialists who have responsibilities for implementing the program. Both HRSA and its contractor(s) shall maintain current lists of authorized users.

2. *Physical safeguards:* Magnetic tapes, disc packs, computer equipment, and hard-copy files are stored in areas where fire and life safety codes are strictly enforced. All automated and nonautomated documents are protected on a 24-hour basis in locked storage areas. Security guards perform random checks on the physical security of the records storage area. The OPTN and SRTR contractors are required to maintain off site a complete copy of the system and all necessary files to run the computer organ donor-recipient match and update software.

3. *Procedural safeguards:* A password is required to access the terminal and a data set name controls the release of data to only authorized users. All users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised office. All authorized users must sign a nondisclosure statement. Access to records is limited to those staff members trained in accordance with the Privacy Act and Automated Data Processing (ADP) security procedures. The contractor(s) is required to assure that the confidentiality safeguards of these records will be employed and that it complies with all provisions of the Privacy Act. All individuals who have access to these records must have the appropriate ADP security clearances. Privacy Act and ADP system security requirements are included in the contracts. The HRSA Project Officer(s) and the System Manager(s) oversee compliance with these requirements: The HRSA authorized users will make visits to the contractors' facilities to assure security and Privacy Act compliance. The contractor(s) is/are required to adhere to a HRSA approved system security plan.

RETENTION AND DISPOSAL:

Each donor, candidate, and recipient record shall be retained for 25 years beyond the known death of the organ recipient.

SYSTEM MANAGER AND ADDRESS:

Chief, Operations and Analysis Branch, Division of Transplantation, HRSA, Parklawn Building, Room 16C–17, 5600 Fishers Lane, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

Requests by mail: To determine if a record about you exists, write to the OPTN contractor (*see* System Location). The request should contain the name and address of the individual; the Social Security number if the individual chooses to provide it; the name of his/her transplant center, a notarized written statement that the requester is the person he/she claims to be and that he/she understands that the request or acquisition of records pertaining to another individual under false pretenses is a criminal offense subject to a $5,000 fine. These procedures are in accordance with the Department's regulations (45 CFR part 5b).

Requests in person: The individual must meet all the requirements stated above for a request by mail, providing the information in written form, or provide at least one piece of tangible identification. The individual should recognize that in order to maintain confidentiality, and thus the accuracy of data released through repeated internal verification, securing the information by request in person will be time consuming. These procedures are in accordance with the Department's regulations (45 CFR part 5b).

Requests by telephone: Since positive identification of the caller cannot be established, telephone requests are not honored.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requestors should also provide a reasonable description of the record being sought. Requestors also may request an accounting of disclosures that have been made of their records, if any. A parent or guardian who requests notification of, or access to, a minor's/incompetent person's medical record shall designate a family physician or other health professional (other than a family member) to whom the record, if any, will be sent. The parent or guardian must verify relationship to the minor/incompetent person as well as his/her own identity. These procedures are in accordance with the Department's regulations (45 CFR part 5b).

CONTESTING RECORDS PROCEDURES:

Contact the official at the address specified under notification procedure above and reasonably identify the record, specify the information being contested, and the corrective action sought, and your reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Organ procurement organizations, histocompatibility laboratories, and organ transplant centers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 03–22750 Filed 9–5–03; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Office of the Assistant Secretary—Policy, Management and Budget; Intent To Reestablish the Joint Fire Science Program Stakeholder Advisory Group Charter and Call for Non-Federal Nominations

AGENCY: Office of the Assistant Secretary for Policy, Management and Budget, Interior.

ACTION: Second call for nominations.

SUMMARY: The Secretary of the Interior and the Secretary of Agriculture intend to reestablish the Charter for the Joint Fire Science Program Stakeholder Advisory Group. This is the second notice soliciting nominations for new members for the Group. Individuals nominated under the previous **Federal Register** published July 16, 2003 (Vol. 68, No. 136) should not resubmit materials. The Group advises the Secretaries through the Governing Board of the Joint Fire Science Program concerning research priorities on wildland fuels issues, post-fire emergency stabilization and rehabilitation practices, restoration of fire-adapted ecosystems, and fire management procedures on lands administered by Interior and Agriculture. The Joint Fire Science Program provides scientific information and tools to support the wildland fire management program.

DATES: Nominations should be submitted to the address listed below September 29, 2003.

ADDRESSES: Submit all nominations to Dr. Bob Clark, Joint Fire Science Program Manager, National Interagency Fire Center, 3833 S. Development Ave., Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Dr. Bob Clark, Joint Fire Science Program Manager, National Interagency Fire Center, 3833 S. Development Ave., Boise, Idaho 83705, (208) 387–5349. Internet: *Bob_Clark@nifc.blm.gov*.

SUPPLEMENTARY INFORMATION: The Joint Fire Science Program was established in 1998 to provide scientific information and tools in support of the wildland fire management program. Since its inauguration the Program has funded 220 research projects. The results of completed projects are made available to field offices to provide guidance for wildland fire management, and fuels treatment and rehabilitation project planning. All program projects require scientist-manager partnerships along with a strong emphasis on technology transfer.

The Stakeholder Advisory Group will consist of not more than 15 members, 5 Federal and 10 nonfederal. This call for nominations will establish the nonfederal membership on the Group. Group membership will be balanced in terms of categories of interest and geographic regions represented. Any individual or organization may nominate one or more persons to serve on the Joint Fire Science Program Stakeholder Advisory Group. Individuals may also nominate themselves for Group membership.

All nomination letters should include the name, address, profession, relevant biographic data, and reference sources for each nominee, and should be sent to the address in the **ADDRESSES** section. Letters of support should be from interests or groups that nominees claim to represent. This material will be used to evaluate nominees' expertise and qualifications for advising the Secretaries on matters pertaining to research into wildland fuels problems, implementation of strategies and solutions for managing increasing fuel loadings, and post fire rehabilitation on federally administered wildlands. Nominations may be made for the following categories of interest:

Wildland fire suppression and operations
Prescribed fire management
Air quality and smoke management
Burned area emergency stabilization and rehabilitation
Fire ecology and ecosystem restoration
Forest and woodland management
Rangeland management
Wildlife Management
Soil and water management
Conservation
Social science and economics
Modeling and remote sensing
Tribal government
State or local agencies
Public at large

Each Stakeholder Advisory Group Member will be appointed to serve a 2-year term. Terms will be staggered to maintain continuity on the Group. Initially, appointment terms for half of the non-federal members will be for three years. At the end of the member' term, the member may continue to serve at the discretion of the Secretary of the Interior and Secretary of Agriculture for an interim period, which will not exceed 120 days, in order to ensure continuity on the Stakeholder Advisory Group.

Members will serve without salary, but non-federal members will be reimbursed for travel and per diem expenses at current rates for Government employees. The Group will meet at least twice annually. Additional meetings may be called in connection with special needs for advice. The Department of the Interior's Director, Office of Wildland Fire Coordination will be the Designated Federal Officer who will call meetings of the Group. This notice is published in accordance with section 9 (a)(2) of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C. App.).

Dated: August 28, 2003.

P. Lynn Scarlett,

Assistant Secretary—Policy, Management and Budget, Department of the Interior.

[FR Doc. 03–22780 Filed 9–5–03; 8:45 am]

BILLING CODE 4310–J4–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Comprehensive Conservation Plan and Environmental Assessment for Illinois River National Wildlife and Fish Refuge (NWFR), Havana, IL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces that the draft Comprehensive Conservation Plan (CCP) and Environmental Assessment (EA) is available for Illinois River NWFR, Havana, Illinois. The CCP was prepared pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended by the National Wildlife Refuge System Improvement Act of 1997, and the National Environmental Policy Act of 1969, and using the preferred alternative, goals and objectives, we describe how the Service intends to manage these refuges over the next 15 years.

DATES: Comments must be received by close of business Monday, October 20, 2003.

ADDRESSES: Copies of the draft CCP and EA are available on compact diskette or hard copy, you may obtain a copy by writing to: Illinois River National Wildlife and Fish Refuge Complex, 19031 East County Road 2105 North, Havana, Illinois 62644. Comments can be addressed to the same address. The draft CCP and EA is also available online at *http://midwest.fws.gov/planning/Ilrivtop.htm* and comments can be submitted through the Web site.

FOR FURTHER INFORMATION CONTACT: Ross Adams, Refuge Manager, Illinois River NWFR at 309/535–2290.

SUPPLEMENTARY INFORMATION: Comprehensive conservation plans guide management decisions over the course of 15 years.

The Illinois River NWFR Complex includes three national wildlife refuges: Chautauqua NWR in Mason County; Meredosia NWR in Cass and Morgan Counties; and Emiquon NWR in Fulton County. The planning process began in 1998.

Three management alternatives were considered. Alternative 3, Refuge Resource Area Focus, is the preferred alternative. This alternative would increase conservation efforts in the Illinois River Focus Areas and enhance, protect and restore fish and wildlife habitat within the boundaries of the Illinois River Refuges. There will be no expansion of existing authorized boundaries.

The CCP will identify wildlife-dependent recreational opportunities available to the public, including hunting, fishing, wildlife observation and photography, and environmental education and interpretation.

Dated: July 30, 2003.

Marvin Moriarity,

Acting Regional Director.

[FR Doc. 03–22712 Filed 9–5–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Deemed Approved Technical Amendment between the State of Wisconsin and the Forest County Potawatomi Community.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, is publishing notice that the Technical Amendment to the Class III gaming compact between the State of Wisconsin and the Forest County Potawatomi Community is considered approved. By the terms of IGRA, the Technical Amendment is considered approved, but only to the extent the compact is consistent with the provisions of IGRA. The Technical Amendment provides the following: application of the arbitration section to the payment section of the Compact; deletion of payment to the University of Wisconsin; provision that state law will apply for any reimbursement payments to the tribe; and waiver of all sovereign immunity with respect to the enforcement of any provision of this Compact.

EFFECTIVE DATE: September 8, 2003.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 26, 2003.

Aurene M. Martin,

Assistant Secretary—Indian Affairs.

[FR Doc. 03–22788 Filed 9–5–03; 8:45 am]

BILLING CODE 4310–4N–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Lower Santa Ynez River Fish Management Plan and Cachuma Project Biological Opinion, for Southern Steelhead Trout, Santa Barbara County, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice to correct the date of availability of the draft environmental impact statement/environmental impact report (EIS/EIR).

SUMMARY: This notice corrects the date of availability of the Draft EIS/EIR for the Lower Santa Ynez River Fish Management Plan and Cachuma Project Biological Opinion, for Southern Steelhead Trout, Santa Barbara County, California. An incorrect date, April 2003, was erroneously reported in the **Federal Register** (68 FR 43748, July 24, 2003). The correct, actual date for the availability of the Draft EIS/EIR is July 24, 2003.

FOR FURTHER INFORMATION CONTACT: Mr. David Young, Bureau of Reclamation, South-Central California Area, 1243 N Street, Fresno, CA 93721, 559–487–5127.

Dated: September 2, 2003.

Frank Michny,

Regional Environmental Officer, Mid-Pacific Region.

[FR Doc. 03–22714 Filed 9–5–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Southern Delivery System Project, Fryingpan-Arkansas Project, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Regional Water Infrastructure Authority (RWIA) is proposing to construct a pipeline and related facilities known as the Southern Delivery System (SDS) that will deliver Fryingpan-Arkansas Project (Fry-Ark) water and non-Fry-Ark water from the Arkansas River near the City of Pueblo to an area east of Colorado Springs. On February 19, 2003, RWIA and its individual participants, the cities of Colorado Springs and Fountain, along with the Security Water District, requested a long-term water conveyance contract from the Bureau of Reclamation (Reclamation). On July 14, 2003, Colorado Springs Utilities (Springs Utilities) made a request for a long-term storage contract for Pueblo Reservoir in association with this project. Because the RWIA proposal involves long-term storage and conveyance contracts from Reclamation, it has been determined that Reclamation should be the lead Federal agency for compliance with National Environmental Policy Act of 1969 (NEPA).

DATES: *See* **SUPPLEMENTARY INFORMATION** section for the dates and times of the scoping meetings.

ADDRESSES: *See* **SUPPLEMENTARY INFORMATION** section for the locations of the scoping meetings.

Please send comments on potentially significant issues or the proposed alternatives to the attention of Pat Mangan, Southern Delivery System EIS, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, CO 80537; or FAX to (303) 445–6328 or (303) 445–2236; or e-mail to *pmangan@do.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: Anyone interested in more information about the EIS or the project may contact Pat Mangan by telephone at (303) 445–2236 or by e-mail at *pmangan@do.usbr.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(c) of NEPA, Reclamation will prepare an environmental impact statement (EIS) to identify and disclose the environmental effects of the proposed project. Cooperating agencies may be identified at a later date.

Reclamation will use the NEPA compliance process to ensure that the public has opportunities to review and comment on the direct and indirect effects of Reclamation's long-term storage and conveyance contract(s), the pipeline and related facilities, and changes to Fry-Ark operations for the SDS project. Reclamation and RWIA will hold five public scoping meetings in which Federal, State, and local government agencies, non-governmental organizations, and the public are invited to participate in an open exchange of information to identify potentially significant issues and to submit comments on the proposed scope of the EIS. Written comments concerning issues and alternatives to be evaluated in the EIS will be accepted and considered during preparation of the EIS. To be most effective, comments should be postmarked or e-mailed no later than 30 days following the final public scoping meeting.

In 2000, Reclamation evaluated a request from the Pueblo Board of Water Works (PBWW) to connect a pipeline to the Pueblo Reservoir Municipal Outlet Works (South Outlet Works), construct a pipeline across Reclamation land, and execute related storage and conveyance contracts. As this request was being considered, Springs Utilities and PBWW agreed to enlarge the upper portion of the pipeline (referred to below as the "Joint Use Manifold and Pipeline") to accommodate potential future use by Springs Utilities. As a part of the environmental compliance process for PBWW's request, Reclamation prepared an environmental assessment (EA) to evaluate the impacts of construction and operation of the Joint Use Manifold and Pipeline. The EA acknowledged additional environmental compliance would be needed when Springs Utilities requested approval to convey their non-Fry-Ark water through the South Outlet Works to the Joint Use Manifold and Pipeline. Springs Utilities has now made that request through the RWIA request for Reclamation's approval of water-related contracts associated with the SDS project.

The proposed SDS Project would be located in the Arkansas River basin extending northward from the Arkansas River at or downstream of Pueblo Reservoir to the City of Colorado Springs. As proposed, the project includes construction and operation of the following components:

- An approximately 43-mile long, 66-inch diameter raw water pipeline and pump stations;
- A water treatment plant to provide potable water for municipal and industrial use;
- Distribution pipelines to convey potable water;
- A terminal raw water storage reservoir; and
- A water exchange reservoir.

The proposed system would be sized to meet water demands from Pueblo Reservoir in the year 2040 that are projected to be 78 million gallons per day (mgd).

The use of Pueblo Reservoir to store water is an important component of the proposed SDS project. Pueblo Reservoir is part of Reclamation's Fry-Ark Project and is a State Water Court-approved exchange reservoir for Colorado Springs' Arkansas River water rights. Reclamation will prepare an EIS prior to making decisions on the proposed Federal actions involved in the SDS project including storing non-Fry-Ark water in Pueblo Reservoir and conveying Fry-Ark and non-Fry-Ark water through Pueblo Reservoir to Colorado Springs. The EIS may also be used by other Federal agencies involved in permitting or approving specific aspects of the proposed project.

Purpose and Need

The purpose of the proposed SDS is to deliver up to 78 mgd of water from the Arkansas River at or downstream of Pueblo Reservoir to the service areas of the City of Colorado Springs, the City of Fountain, and the Security Water District (Project Participants) to meet their projected municipal and industrial water needs through 2040. The Project Participants have existing Arkansas River water rights that can be used to meet their projected water needs. However, their existing infrastructure lacks sufficient capacity to deliver the water and to fully utilize the Project Participants' decreed water rights. The purpose of the proposed SDS project is to meet that need for additional delivery capacity. Delivering this water is necessary to meet projected growth demands within the Project Participant's service areas and to fully utilize their existing Arkansas River water rights. The proposed SDS is also needed to provide redundancy for the Project Participant's existing Arkansas River basin water delivery systems to improve operational reliability, drought resiliency, and to maximize the use of existing water rights.

The Project Participants are currently using water conservation and related programs to reduce consumption. However, the Project Participants have determined that even with these programs, water needs in their service areas will increase in the future beyond their existing infrastructure's ability to supply water.

Proposed Alternatives

Technical, environmental, and economic screening criteria were used to identify potential alternatives capable of meeting the proposed project's purpose and need. The raw water pipeline would draw from one of four possible sources:

1. Directly from Pueblo Reservoir, using a new tap northwest of Pueblo Dam;
2. The Joint Use Manifold east of the South Outlet Works of Pueblo Reservoir, west of the City of Pueblo;
3. The Joint Use Pipeline, east of the Joint Use Manifold; or
4. The Arkansas River, just upstream of its confluence with Fountain Creek.

The pipeline would run north to a site east of Colorado Springs where it is anticipated to terminate at a water treatment plant located near Jimmy Camp Creek. There are several pipeline alignments associated with each possible source water location.

As required by Council on Environmental Quality implementing regulations (40 CFR 1502.2(e)), a full range of reasonable alternatives that meet the purpose and need and a no action alternative will be evaluated in the EIS. The EIS will evaluate potential environmental impacts of each alternative along with engineering and socioeconomic considerations. A preferred alternative has not been identified at this time.

Preliminary Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. This list is preliminary and is intended to facilitate public comment on the scope of this EIS.

- What are the impacts of constructing the pipeline, including:
- Maintenance access roads,
- Substations,
- Construction lay down, staging, and borrow areas?
- Are there growth-inducing impacts?
- Are there environmental justice issues?
- What are the impacts to aquatic resources?
- What would be the impact to streams and wetlands?
- How would wildlife habitat be affected?
- Would new reservoirs provide recreational opportunities?
- Would significant cultural resources be affected?
- How would water quality in the Arkansas River and Fountain Creek be affected?
- How would the proposed project affect operation of the Fry-Ark project

and the existing storage and conveyance contracts?

• How would streamflow in the Arkansas River be affected?

• Would this project affect water levels in Pueblo Reservoir?

• Will this project and other reasonably-foreseeable projects result in significant cumulative effects?

Timing

Reclamation plans to issue the draft EIS in the fall of 2004. Availability of the draft EIS will be publicized. Federal, State, and local government agencies, non-governmental organizations, and the general public will have an opportunity to review and comment on the draft EIS.

Scoping Meetings

Scoping meeting will be held from 6 to 8:30 p.m. on the following dates:

• Wednesday, September 24 , 2003, Buena Vista, Colorado

• Thursday, September 25, 2003, Fountain, Colorado

• Tuesday, October 7, 2003, La Junta, Colorado

• Thursday, October 9, 2003, Pueblo, Colorado

• Wednesday, October 15, 2003, Colorado Springs, Colorado

Meetings will be held at the following locations:

• Buena Vista Community Center, Pinon Room, 715 E. Main, Buena Vista, Colorado

• Fountain-Fort Carson High School Cafeteria, 900 Jimmy Camp Creek Road, Fountain, Colorado

• Koshare Indian Museum, Kiva Room, 115 West 18th, La Junta, Colorado

• Colorado State University—Pueblo, Occhiato Center—West Colorado Ball Room, 2200 Bonforte Blvd., Pueblo, Colorado

• Colorado Springs City Auditorium, 221 E. Kiowa, Colorado Springs, Colorado

Issues raised at the scoping meetings will be documented and summarized in a report that will be distributed to public libraries near the meeting locations, posted on Reclamation's Web site, and mailed upon request. This report will identify those issues that will be evaluated in the EIS.

Public Disclosure Statement

Comments received in response to this notice will become part of the administrative record for this project and are subject to public inspection. Comments, including names and home addresses of respondents, will be available for public review. Individual respondents may request that Reclamation withhold their home address from public disclosure, which will be honored to the extent allowable by law. There also may be circumstances in which Reclamation would withhold a respondent's identity from public disclosure, as allowable by law. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comment. Reclamation will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses available for public disclosure in their entirety.

Dated: August 29, 2003.

Gerald W. Kelso,

Acting Regional Director, Great Plains Region.

[FR Doc. 03–22710 Filed 9–5–03; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Windy Gap Firming Project, Colorado-Big Thompson Project, Colorado

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: On April 14, 2003, the Municipal Subdistrict of the Northern Colorado Water Conservancy District, acting by and through the Windy Gap Firming Project (Firming Project) Water Activity Enterprise (Subdistrict), requested approval from the Bureau of Reclamation (Reclamation) to connect the proposed Firming Project to Reclamation's Colorado-Big Thompson Project (C–BT). If connection to the C–BT is approved, the Subdistrict would construct facilities that would be required to meet the purpose and need of the project. This could include construction of one or more new reservoirs. Because the Subdistrict's proposal involves a physical connection to C–BT facilities, it was determined that Reclamation should be the lead Federal agency for NEPA compliance.

DATES: Written comments on the scope of the issues and alternatives to be evaluated in the EIS will be accepted and should be postmarked or e-mailed by November 7, 2003, to be most effective.

Public scoping meetings, each beginning at 6:30 p.m., will be held on the following dates:

• September 30, 2003—Granby, Colorado

• October 1, 2003—Loveland, Colorado

• Date to be determined—Lyons, Colorado

ADDRESSES: The meeting locations are:

• Granby—Inn at Silver Creek (2 miles south of Granby, east side of highway), 62927 U.S. Highway 40, Granby, CO 80446.

• Loveland—McKee Conference Center, 2000 North Boise Avenue, Loveland, CO 80538.

• Lyons—Location will be announced through mailings, paid advertisements, and news releases to news media in the area.

Please send comments on the alternatives or other issues pertaining to the proposed project to the attention of Will Tully, Windy Gap Firming Project EIS, Bureau of Reclamation, Eastern Colorado Area Office, 11056 W. County Road 18E, Loveland, CO 80537; or FAX to (970) 663–3212 or (970) 962–4216; or e-mail to *wtully@gp.usbr.gov*.

FOR FURTHER INFORMATION CONTACT: Anyone interested in more information about the EIS or the project may contact Will Tully by telephone at (970) 962–4368 or by e-mail at *wtully@gp.usbr.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, Reclamation will prepare an environmental impact statement (EIS) to identify the environmental effects of the proposed project. Cooperating agencies will be identified at a later date.

Reclamation will use the NEPA compliance process to ensure that the public has opportunities to review and comment on the direct and indirect effects of the proposed action. Public comments are invited regarding both the scope of environmental and socioeconomic issues and alternatives that should be evaluated in the EIS.

Reclamation and the Subdistrict will hold at least three public scoping meetings in which Federal, State, local and tribal government agencies, non-governmental organizations, and the public are invited to participate in the open exchange of information and to submit comments on the proposed scope of the EIS. Comments received will be considered in preparation of the EIS.

During the 1960's, six entities (the cities of Boulder, Greeley, Longmont, Loveland, and Fort Collins and the Town of Estes Park) in northeastern Colorado determined that additional water supplies were needed to meet their projected municipal demands. The Municipal Subdistrict of the Northern Colorado Water Conservancy District,

consisting of the incorporated areas of the six entities, was formed in 1970 to develop the Windy Gap Project. Subsequently, the Platte River Power Authority acquired all of the City of Fort Collins allotment contracts, as well as one-half of the City of Loveland and the Town of Estes Park contracts. The Windy Gap Project water was proposed to be stored by and conveyed through the C–BT Project facilities prior to delivery to Windy Gap Project allotees for storage and ultimate use.

In 1981, Reclamation completed an environmental impact statement on the effects of using C–BT project facilities for the "storage, carriage and delivery" of Windy Gap Project water. That EIS addressed the environmental and other effects of annually diverting an average of 56,000 acre-feet of water from the Upper Colorado River Basin through the Windy Gap Project and C–BT Project facilities. The Record of Decision for that EIS allowed Reclamation to negotiate a contract with the Municipal Subdistrict of the Northern Colorado Water Conservancy District for the conveyance, through C–BT Project facilities, of an average of about 56,000 acre-feet of Windy Gap Project water annually from the Colorado River, with maximum diversions limited to 93,300 acre-feet in any 1 year. Average annual deliveries to the allottees of the Windy Gap Project were estimated to be about 48,000 acre-feet, following conveyance and evaporation losses and allocations to the Middle Park Water Conservancy District. Each unit of Windy Gap water is 1/480th of the annual yield of the Windy Gap Project and originally estimated to be 100 acre-feet per unit. Reclamation, the Municipal Subdistrict of the Northern Colorado Water Conservancy District, and the Northern Colorado Water Conservancy Distrct (District) then entered into a contract for the "storage, carriage and delivery" of Windy Gap Project water in C–BT facilities. Construction of the Windy Gap Project reservoir, pipeline, and pumping facility was completed in 1985.

Average annual yield per unit since completion of construction has been approximately 17 acre-feet/unit compared to the original estimated 100 acre-feet/unit. There are several reasons for this low yield. During the early years after construction, not all of the Project allotees needed their full allocation of water from the Project. They had not grown into the full demand for which the Project was developed. Also, the Windy Gap Project cannot divert water every year because more senior water rights upstream and downstream have a higher priority to divert water. Additionally, under the contract between the Municipal Subdistrict of the Northern Colorado Water Conservancy District, the District, and Reclamation, water conveyed and stored for the C–BT Project has priority over water conveyed and stored for the Windy Gap Project. In years when the C–BT system is full, there is no conveyance or storage capacity in the C–BT system for Windy Gap Project water. In years when Windy Gap Project water is stored in the C–BT system, Windy Gap Project water is sometimes spilled from the system to make room for C–BT Project water.

Purpose of and Need for the Federal Action

The purpose of the proposed Firming Project is to maximize the use of existing water rights associated with the Windy Gap Project by improving the delivery and reliability of the existing Windy Gap Project water supply. For some Firming Project participants, the proposed project does not firm all of their Windy Gap Project units and not all of the owners of Windy Gap Project water are seeking to firm their units. Thus, only a portion of the 48,000 acre-feet of Windy Gap Project water would be "firmed" by the proposed action.

The specific purpose of the project is to provide an annual delivery of up to 30,000 acre-feet of water by 2008 depending on the identified needs of the Firming Project participants. Each Firming Project participant owns varying amounts of Windy Gap Project water and each Firming Project participant has determined its firm water supply needs from the Windy Gap Project and the timing of those needs. For some of the Firming Project participants, an increased water supply is needed immediately to meet current demands; other participants' needs are expected to increase over the next several years creating a foreseeable future need for their Windy Gap Project water.

The Firming Project is a non-Federal project. It is proposed to be constructed and operated by the Subdistrict. Federal actions related to the proposed project may include decisions on permitting the connection of Firming Project facilities to C–BT facilities, granting of right-of-way permits and/or easements across Federal lands, and issuance of a Federal Clean Water Act Section 404 permit.

Proposed Alternatives

Over the past several years, the Subdistrict has investigated a wide range of alternative actions with the potential to meet the needs of the Firming Project participants. These investigations concluded with an Alternative Plan Formulation Report that was finalized in 2003.

The primary goals in developing alternatives for the proposed project were:

- To identify a cooperative regional project that could be integrated with existing water delivery systems;
- To allow maximum use of the existing Windy Gap Project diversion, pumping and pipeline facilities, and water rights.

To provide the Firming Project participants a consistent annual yield of up to 30,000 acre-feet, approximately 110,000 acre-feet of new storage is needed specifically for Windy Gap Project water. This is approximately the size of the existing Carter Lake southwest of Loveland, Colorado.

The alternatives study evaluated a variety of project elements including non-structural and operational opportunities; new reservoir sites; enlargement of existing reservoirs; and ground water aquifer storage. Storage on both the East and West Slope of the Continental Divide was evaluated. Technical, environmental, and economic screening criteria were used to identify and compare alternatives capable of meeting the project purpose and need. A combination of alternatives may be necessary to meet the project purpose and need. In addition, refinements in C–BT system operations may be used to enhance the yield of new reservoir storage. These refinements might include options for storage of C–BT Project water in a new Firming Project reservoir or borrowing storage from the C–BT Project. The Firming Project participants' varying needs and timing of those needs could allow the proposed project to be constructed in stages depending on the alternative configuration.

As required by Council on Environmental Quality (CEQ) implementing regulations (40 CFR 1502.2[e]), a full range of reasonable alternatives will be evaluated in the EIS. These alternatives will include No Action and others that will meet the stated purpose and need for the Firming Project. The EIS will evaluate potential environmental impacts of specific alternatives together with engineering and socioeconomic considerations. A preferred alternative has not been identified at this time. Reclamation, with input from Federal, State, and local government agencies and the public, will evaluate the alternatives.

Preliminary Identification of Environmental Issues

The following issues have been tentatively identified for analysis in the EIS. This list is preliminary and is intended to facilitate public comment on the scope of this EIS.

- What are the impacts to aquatic resources including endangered Colorado River fish?
- How would water quality on the west and east slope be affected?
- How would the proposed project affect operation of the C–BT Project and the existing Windy Gap Project?
- How would streamflow in the Colorado River be affected?
- Would this project affect water levels in Lake Granby, Carter Lake, and Horsetooth Reservoir?
- What would be the impact to streams and wetlands?
- How would wildlife habitat be affected?
- Would new reservoirs provide recreational opportunities?
- Would significant cultural resources be affected?

Timing

Issues raised at the scoping meetings will be documented and summarized in a report that will be distributed to public libraries near the meeting locations, posted on Reclamation's web site, and mailed upon request. This report will summarize the comments received and identify those issues that will be evaluated in the EIS.

Reclamation plans to issue the draft EIS in the fall of 2004. Availability of the draft EIS will be publicized and Federal, State, local and tribal government agencies, non-governmental organizations, and the general public will have an opportunity to comment on the draft EIS.

Public Disclosure Statement

Comments received in response to this notice will become part of the administrative record for this project and are subject to public inspection. Comments, including names and home addresses of respondents, will be available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Reclamation will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Dated: September 2, 2003.

Gerald W. Kelso,

Acting Regional Director, Great Plains Region.

[FR Doc. 03–22711 Filed 9–5–03; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–03–029]

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 12, 2003, at 11 a.m.

PLACE: Room 101, 500 E Street,SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none
2. Minutes
3. Ratification List
4. Inv. Nos. 731–TA–1048–1053 (Preliminary) Electrolytic Manganese Dioxide from Australia, China, Greece, Ireland, Japan, and South Africa)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before September 15, 2003; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before September 22, 2003.)
5. Inv. Nos. 731–TA–1014 and 1017 (Final) (Polyvinyl Alcohol from China and Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determination and Commissioners' opinions to the Secretary of Commerce on or before September 24, 2003.)
6. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: September 3, 2003.

By order of the Commission:

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–22893 Filed 9–4–03; 10:58 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

[AAG/A Order No. 018–2003]

Privacy Act of 1974; Notice of the Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Personnel Staff, Justice Management Division (JMD), Department of Justice, is removing a published Privacy Act system of records entitled "Background Investigation Check-off Card, Justice/JMD–001." Justice/JMD–001 was last published in the **Federal Register** on October 13, 1989 (54 FR 42085).

In the past, the Personnel Staff, JMD, had a system of maintaining an index card for each employee of the Offices, Boards, and Divisions for whom the U.S. Office of Personnel Management conducted background investigations. The index card was used to annotate and monitor the progress of the name and fingerprint checks and the full-field character investigations of employees. When a full-field background investigation or National Agency Check was initiated, the background investigation check-off card was forwarded to the JMD Security Staff where it was ultimately merged in the system of records entitled "Security Clearance Information System, Justice/JMD–008."

The Personnel Staff has not used this system for approximately fourteen (14) years. The Personnel Staff eliminated the background investigation check off card and information on the cards was destroyed. In addition, recently, the Privacy Act notice for "Security Clearance Information System, JMD–008", was replaced by notice of a new Departmentwide system of records for background investigation records, entitled "Personnel Investigation and Security Clearance Records for the Department of Justice, DOJ–006", published September 24, 2002 (67 FR 59864).

Therefore, the "Background Investigation Check-off Card, JMD–001", is removed from the Department's compilation of Privacy Act systems of records.

Dated: August 27, 2003.

Paul R. Corts,

Assistant Attorney General for Administration.

[FR Doc. 03–22696 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–CG–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Employee Possessor Questionnaire.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 68, Number 24, page 5924 on February 5, 2003, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 8, 2003. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503, or facsimile (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Revision of a currently approved collection.

(2) *The title of the form/collection:* Employee Possessor Questionnaire.

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: ATF F5400.28 Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. Other: Business. Abstract: Each employee possessor in the explosives business or operations is required to ship, transport, receive, or possess (actual or constructive), explosive materials must submit this form. ATF F5400.28 will determine the eligibility of the employee possessor to possess explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* There are approximately 10,000 respondents who will each require an average of 20 minutes to respondents who will each require an average of 20 minutes to respond.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual public burden hours for this information collection is estimated to be 3,334 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: August 29, 2003.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 03–22585 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–FY–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Long Term Implantable Glucose Monitor

Notice is hereby given that, on August 19, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Animas Corporation has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission on behalf of the Long Term Implantable Glucose Monitor venture disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Innovative Photonic Solutions, Monmouth Junction, NJ has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Animas Corporation intends to file additional written notification disclosing all changes in membership.

On September 27, 2001, Animas Corporation filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 22, 2002 (67 FR 2909–03).

The last notification was filed with the Department on June 3, 2003. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on June 23, 2003 (68 FR 37176).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22761 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Microcontaminant Reduction Venture

Notice is hereby given that, on August 14, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Microcontaminant Reduction Venture has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in the project status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the parties to the Venture,

KMG-Bernuth, Inc., Houston, TX, and Vulcan Materials Company, Birmingham, AL, have extended the term of the Venture from two to three years.

No other changes have been made in either the membership or planned activities of the group research project. Membership in this group research project remains open, and Microcontaminant Reduction Venture intends to file additional written notification disclosing all changes in membership.

On June 13, 2001, Microcontaminant Reduction Venture filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 19, 2001 (66 FR 37709).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22756 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Semiconductor Test Consortium, Inc.

Notice is hereby given that, on August 18, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Semiconductor Test Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Acqiris SA, Geneva, Switzerland; Artest Corporation, Sunnyvale, CA; Inovys Corporation, Pleasanton, CA; Pragmatics Technologies, Inc., San Jose, CA; Racal Instruments, Irvine, CA; Roos Instruments, Inc., Santa Clara, CA, Stargen, Inc., Marlborough, MA; and Wavecrest Corporation, Eden Prairie, MN have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Semiconductor Test Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On May 27, 2003, Semiconductor Test Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 17, 2003 (68 FR 35913).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22759 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute: The Consortium for NASGRO Development and Support

Notice is hereby given that, on August 7, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute: The Consortium for NASGRO Development and Support has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Sikorsky Aircraft Corporation, Stratford, CT has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Southwest Research Institute: The Consortium for NASGRO Development and Support intends to file additional written notification disclosing all changes in membership.

On October 3, 2001, Southwest Research Institute: The Consortium for NASGRO Development and Support filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 22, 2002 (67 FR 2910).

The last notification was filed with the Department on July 26, 2002. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 4, 2002 (67 FR 56591).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22758 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Spoken Dialogue Interfaces for Cars

Notice is hereby given that, on July 14, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Spoken Dialogue Interfaces for Cars has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Robert Bosch Corporation, Research and Technology Center, Palo Alto, CA; and Volkswagen of America Inc., Electronic Research Lab, Pala Alto, CA. The nature and objectives of the venture are to develop and demonstrate a next generation language dialog system for the convenient and safe operation of in-car devices and services.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22757 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Ultrasonic Metal Welding—Enabling the All Aluminum Vehicle

Notice is hereby given that, on August 6, 2003, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Ford Motor Company has filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the Ultrasonic Metal Welding—Enabling the All Aluminum Vehicle research venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Ford Motor Company, Dearborn, MI; Edison Welding Institute (EWI), Columbus, OH; Sonobond Ultrasonic, Inc., West Chester, PA; and American Technology, Inc. (AmTech), Danbury, CT. The nature and objectives of the venture are to conduct research on ultrasonic metal welding—enabling the all-aluminum vehicle. The activities of this joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 03–22760 Filed 9–5–03; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, is conducting a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed. Through this notice, the Employment and Training Administration is soliciting comments concerning a proposed new collection of data on self-services provided by states and local workforce areas under the Workforce Investment Act and the Wagner-Peyser Act.

A copy of the proposed survey can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before November 7, 2003.

ADDRESSES: Daniel Ryan, U.S. Department of Labor, Employment and Training Administration, Office of Policy Development, Evaluation and Research, 200 Constitution Ave, NW., Room N–5637, Washington, DC 20210, (202) 693–3649 *Ryan.Dan@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Daniel Ryan, tel. (202) 693–3649.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor's Employment and Training Administration (ETA) seeks to collect data from employers and other customers of One-Stop self-services, which are made available under the Workforce Investment Act (WIA) and Wagner-Peyser Act (W–P), as well as from a comparison group of job seekers who did not use WIA or W–P services. The data ETA seeks to collect will provide a snapshot of: (a) Employment-related outcomes that users might have achieved since they accessed self-services, (b) the demographic characteristics of users, (c) their patterns of usage and objectives in using these services, (d) their satisfaction with the services, and (e) other competing resources that they may have used.

Collecting this information is important because self-services—including informational and self-help core services authorized by WIA and self-directed labor exchange services provided as part of W–P—have become an important feature of the nation's workforce development system. Over the past decade, substantial amounts of resources have been expended in developing the infrastructure to support self-services, such as by establishing physical facilities in which "Resource Rooms" can be housed, developing an array of tools and resources to meet diverse needs, ensuring that these resources are user-friendly and are accessible from remote locations, and promoting access and use for customers with special needs. Moreover, the pace of investments has dramatically quickened since the enactment of WIA. It is expected that self-services must be an essential feature of every one of the nation's comprehensive One-Stop centers. WIA requires that access to these services must be universally available without eligibility restrictions.

Moreover, self-services are expected to play a critical role in meeting the nation's workforce development needs. The vision at the heart of WIA is that all adults should have easy access to an array of high-quality resources and information tools that they can use to make informed career decisions and that, more generally, will improve the efficiency of the labor market. Given WIA's emphasis on universal access and the limited public funding available to support staff-intensive workforce development systems, self-services become a critical means by which this vision can be realized.

Currently, however, little is known about how frequently customers use self-services and for what purposes, whether they are satisfied with the tools at their disposal, and whether use of these services improves their employment outcomes. This information vacuum occurs partly because users of self-services are not required to become registrants under either WIA or W–P, and these services are thus not covered by the programs' reporting requirements.

To fill the information gap, ETA is embarking on two data collection efforts focused on self-services. One, the Local Area Survey of Self-Directed Labor Exchange Services (OMB number 1205–0438, expiration date January, 31, 2006) was covered in a previous **Federal Register** notice (Vol. 67, No. 89, Wed, May 8, 2002: pp. 30965–30966). It elicits information from the nation's local workforce investment areas about the self-service tools and resources that they make available to customers. A second effort, to which this notice applies, will entail a questionnaire administered to customers of self-services in selected local areas, including both employers and other customers, as well as to a comparison group of job seekers. In addition to providing important information in its own right, the survey results will be combined with administrative data so that a quantitative analysis of the outcomes associated with self-services can be conducted.

II. Review Focus

The Department of Labor is particularly interested in comments that: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the utility, quality and clarity of the information to be collected; and

(d) minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor's Employment and Training Administration will be seeking Office of Management and Budget (OMB) approval to administer the questionnaires to up to 2,000 employer customers, 10,400 other users of self-services, and 2,600 individuals in a job-seeker comparison group. The data will be used to provide a snapshot of customers' usage and satisfaction with One-Stop self-service systems.

Type of Review: New.

Agency: Employment and Training Administration.

Title: Customer Surveys of Self-Directed Labor Exchange Services.

Affected Public: Customers of self-services and other job seekers.

Total Respondents: 2,000 employer customers of self-services, 10,400 other users of self-services, 2,600 other job seekers.

Frequency: Once.

Total Responses: 15,000.

Average Time Per Response: 10 minutes per Employer Survey, 20 minutes per Customer Survey, 10 minutes per Employment-Comparison Survey.

Estimated Total Burden Hours: 3,387.

Total Burden Cost for Capital and Startup: $0.

Total Burden Cost for Operation and Maintenance: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 13th day of August, 2003.

Maria K. Flynn,

Acting Administrator.

[FR Doc. 03–22742 Filed 9–5–03; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[V–02–1]

Oak Park Chimney Corp. and American Boiler & Chimney Co.; Grant of a Permanent Variance

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Notice of a grant of a permanent variance.

SUMMARY: This notice announces the grant of a permanent variance to Oak Park Chimney Corp. and American Boiler & Chimney Co. ("the employers"). The permanent variance addresses the provision that regulates the tackle used for boatswains' chairs (§ 1926.452 (o)(3)), as well as the provisions specified for personnel hoists by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552. Instead of complying with these provisions, the employers must comply with a number of alternative conditions listed in this grant; these alternative conditions regulate rope-guided hoist systems used during inside or outside chimney construction to raise or lower employees in personnel cages, personnel platforms, and boatswains' chairs between the bottom landing of a chimney and an elevated work location. Accordingly, OSHA finds that these alternative conditions protect employees at least as well as the requirements specified by § 1926.452(o)(3)) and § 1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16).

DATES: The effective date of the permanent variance is September 8, 2003.

FOR FURTHER INFORMATION CONTACT: For information about this notice contact Ms. Maryann S. Garrahan, Director, Office of Technical Programs and Coordination Activities, Room N–3655, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2110; fax (202) 693–1644. You may obtain additional copies of this notice from the Office of Publications, Room N–3101, OSHA, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone (202) 693–1888. For electronic copies of this notice, contact the Agency on its Webpage at *http://www.osha.gov* and select "**Federal Register**," "Date of Publication," and then "2003."

Additional information also is available from the following OSHA Regional Offices:

U.S. Department of Labor, OSHA, JFK Federal Building, Room E340, Boston, MA 02203, Telephone: (617) 565–9860, Fax: (617) 565–9827.

U.S. Department of Labor, OSHA 201 Varick St., Room 670, New York, NY 10014, Telephone: (212) 337–2378, Fax: (212) 337–2371.

U.S. Department of Labor, OSHA, The Curtis Center, Suite 740 West 170 South Independence Mall West, Philadelphia, PA 19106–3309, Telephone: (215) 861–4900, Fax: (215) 861–4904.

U.S. Department of Labor, OSHA, Atlanta Federal Center 61 Forsyth St., SW., Room 6T50, Atlanta, GA 30303, Telephone: (404) 562–2300, Fax: (404) 562–2295.

U.S. Department of Labor, OSHA 230 South Dearborn St., Room 3244, Chicago, IL 60604, Telephone: (312) 353–2220, Fax: (312) 353–7774

U.S. Department of Labor, OSHA, City Center Square 1100 Main St., Suite 800, Kansas City, MO 64105, Telephone: (816) 426–5861, Fax: (816) 426–2750.

U.S. Department of Labor, OSHA 525 Griffin St., Room 602, Dallas, TX 75202, Telephone: (214) 767–4731/–4736 (ext. 224), Fax: (214) 767–4693/–4188.

U.S. Department of Labor, OSHA, *Overnight:* 1999 Broadway, Suite 1690, Denver, CO 80202–5716, *Mail:* P.O. Box 46550, Denver, CO 80201–6550, Telephone: (303) 844–1600, Fax: (303) 844–1616.

U.S. Department of Labor, OSHA 71 Stevenson St., Room 420, San Francisco, CA 94105, Telephone: (415) 975–4310, Fax: (415) 744–4319.

U.S. Department of Labor, OSHA 1111 Third Ave., Suite 715, Seattle, WA 98101–3212, Telephone: (206) 553–5930, Fax: (206) 553–6499.

SUPPLEMENTARY INFORMATION:

I. Background

In the 1970s and 1980s, nine chimney-construction companies demonstrated to OSHA that several hoist-tower requirements (*i.e.*, paragraphs (c)(1), (c)(2), (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552), as well as the tackle requirements for boatswains' chairs (*i.e.*, paragraph (o)(3) of § 1926.452), result in access problems that pose a serious danger to their employees. These companies requested permanent variances from these requirements, and proposed an alternative apparatus and procedures to protect employees while

being transported to and from their elevated worksites during chimney construction and repair. The Agency subsequently granted these companies permanent variances based on the proposed alternative (38 FR 8545, 50 FR 40627, and 52 FR 22552).

On June 2, 1999 and January 7, 2000, Oak Park Chimney Corp. and American Boiler & Chimney Co., respectively, applied for a permanent variance from the same hoist-tower and boatswains'-chair requirements as the previous companies, and proposed as an alternative to these requirements the same apparatus and procedures approved by OSHA in the earlier variances. The Agency published their variance application in the **Federal Register** on May 23, 2002 (*see* 67 FR 36263), and subsequently extended the period for submitting comments and hearing requests on July 10, 2002 (*see* 67 FR 45767). OSHA received no hearing requests in response to these **Federal Register** notices; however, several states submitted comments on the proposed alternative (see section IV below for a discussion of these comments).

Oak Park Chimney Corporation and American Boiler & Chimney Co. ("the employers") construct, remodel, repair, maintain, inspect, and demolish tall chimneys made of reinforced concrete, brick, and steel. This work, which occurs throughout the United States, requires the employers to transport employees and construction material to and from elevated work platforms and scaffolds located, respectively, inside and outside tapered chimneys. While tapering contributes to the stability of a chimney, it necessitates frequent relocation of, and adjustments to, the work platforms and scaffolds so that they will fit the decreasing circumference of the chimney as construction progresses upwards.

To transport employees to various heights inside and outside a chimney, the employers proposed in their variance application to use a hoist system that lifts and lowers personnel-transport devices that include personnel cages, personnel platforms, or boatswains' chairs. In this regard, the employers proposed to use personnel cages, personnel platforms, or boatswains' chairs solely to transport employees with the tools and materials necessary to do their work, and not to transport only materials or tools on these devices in the absence of employees. In addition, the employers proposed to attach a hopper or concrete bucket to the hoist system to raise or lower material inside or outside a chimney.

The employers also proposed to use a hoist engine, located and controlled outside the chimney, to power the hoist system. The proposed system consisted of a wire rope that: Spools off the winding drum (also known as the hoist drum or rope drum) into the interior of the chimney; passes to a footblock that redirects the rope from the horizontal to the vertical planes; goes from the footblock through the overhead sheaves above the elevated platform; and finally drops to the bottom landing of the chimney where it connects to a personnel- or material-transport device. The cathead, which is a superstructure at the top of a derrick, supports the overhead sheaves. The overhead sheaves (and the vertical span of the hoist system) move upward with the derrick as chimney construction progresses. Two guide cables, suspended from the cathead, eliminate swaying and rotation of the load. If the hoist rope breaks, safety clamps activate and grip the guide cables to prevent the load from falling. The employers proposed to use a headache ball, located on the hoist rope directly above the load, to counterbalance the rope's weight between the cathead sheaves and the footblock.

Additional conditions that the employers proposed to follow to improve employee safety included:

- Attaching the wire rope to the personnel cage using a keyed-screwpin shackle or positive-locking link;
- Adding limit switches to the hoist system to prevent overtravel by the personnel- or material-transport devices;
- Providing the safety factors and other precautions required for personnel hoists specified by the pertinent provisions of § 1926.552(c), including canopies and shields to protect employees located in a personnel cage from material that may fall during hoisting and other overhead activities;
- Providing falling-object protection for scaffold platforms as specified by §1926.451(h)(1);
- Conducting tests and inspections of the hoist system as required by §§ 1926.20(b)(2) and 1926.552(c)(15);
- Establishing an accident-prevention program that conforms to §1926.20(b)(3);
- Ensuring that employees who use a personnel platform or boatswains' chair wear a full body harness and lanyard; and
- Securing the lifelines (used with a personnel platform or boatswains' chair) to the rigging at the top of the chimney and to a weight at the bottom of the chimney, to provide maximum stability to the lifelines.

II. Proposed Variance from § 1926.452(o)(3)

The employers noted in their variance request that it is necessary, on occasion, to use a boatswains' chair to transport employees to and from a bracket scaffold on the outside of an existing chimney during flue installation or repair work, or to transport them to and from an elevated scaffold located inside a chimney that has a small or tapering diameter. Paragraph (o)(3) of § 1926.452, which regulates the tackle used to rig a boatswains' chair, states that this tackle must "consist of correct size ball bearings or bushed blocks containing safety hooks and properly 'eye-spliced' minimum five-eighth (5/8) inch diameter first-grade manila rope [or equivalent rope]."

The primary purpose of this paragraph is to allow an employee to safely control the ascent, descent, and stopping locations of the boatswains' chair. However, the employers stated in their variance request that, because of space limitations, the required tackle is difficult or impossible to operate on some chimneys that are over 200 feet tall. Therefore, as an alternative to complying with the tackle requirements specified by § 1926.452(o)(3), the employers proposed to use the hoisting system described above in section I of this notice to raise or lower employees in a personnel cage to work locations both inside and outside a chimney. In addition, the employers proposed to use a personnel cage for this purpose to the extent that adequate space is available, and to use a personnel platform if using a personnel cage was infeasible because of limited space. When available space makes using a personnel platform infeasible, the employers proposed to use a boatswains' chair to lift employees to work locations. The proposed variance limited use of the boatswains' chair to elevations above the last work location that the personnel platform can reach; under these conditions, the employers proposed to attach the boatswains' chair directly to the hoisting cable only when the structural arrangement precludes the safe use of the block and tackle required by § 1926.452(o)(3).

III. Proposed Variance From § 1926.552(c)

Paragraph (c) of § 1926.552 specifies the requirements for enclosed hoisting systems used to transport employees from one elevation to another. This paragraph ensures that employers transport employees safely to and from elevated work platforms by mechanical means during the construction,

alteration, repair, maintenance, or demolition of structures such as chimneys. However, this standard does not provide specific safety requirements for hoisting employees to and from elevated work platforms and scaffolds in tapered chimneys; the tapered design requires frequent relocation of, and adjustment to, the work platforms and scaffolds. The space in a small-diameter or tapered chimney is not large enough or configured so that it can accommodate an enclosed hoist tower. Moreover, using an enclosed hoist tower for outside operations exposes employees to additional fall hazards because they need to install extra bridging and bracing to support a walkway between the hoist tower and the tapered chimney.

Paragraph (c)(1) of § 1926.552 requires employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the chimney; these enclosures must extend the full height of the hoist tower. The employers asserted in their proposed variance that it is impractical and hazardous to locate a hoist tower outside tapered chimneys because it becomes increasingly difficult, as a chimney rises, to erect, guy, and brace a hoist tower; under these conditions, access from the hoist tower to the chimney or to the movable scaffolds used in constructing the chimney exposes employees to a serious fall hazard. Additionally, they noted that the requirement to extend the enclosures 10 feet above the outside scaffolds often exposes the employees involved in building these extensions to dangerous wind conditions.

Paragraph (c)(2) of § 1926.552 requires that employers enclose all four sides of a hoist tower even when the tower is located inside a chimney; the enclosure must extend the full height of the tower. In the proposed variance, the employers contended that it is hazardous for employees to erect and brace a hoist tower inside a chimney, especially small-diameter or tapered chimneys or chimneys with sublevels, because these structures have limited space and cannot accommodate hoist towers; space limitations result from chimney design (*e.g.*, tapering), as well as reinforced steel projecting into the chimney from formwork that is near the work location.

As an alternative to complying with the hoist-tower requirements of § 1926.552(c)(1) and (c)(2), the employers proposed to use the rope-guided hoist system discussed in section I of this notice to transport employees to and from work locations inside and outside chimneys. They claimed that this hoist system should make it unnecessary for them to comply with other provisions of § 1926.552(c) that specify requirements for hoist towers, including:

- (c)(3)—Anchoring the hoist tower to a structure;
- (c)(4)—Hoistway doors or gates;
- (c)(8)—Electrically interlocking entrance doors or gates that prevent hoist movement when the doors or gates are open;
- (c)(13)—Emergency stop switch located in the car;
- (c)(14)(i)—Using a minimum of two wire ropes for drum-type hoisting; and
- (c)(16)—Construction specifications for personnel hoists, including materials, assembly, structural integrity, and safety devices.

The employers asserted that the proposed hoisting system protected employees at least as effectively as the hoist-tower requirements of § 1926.552(c). The following section of this preamble provides the comments received on the employers' proposed variance.

IV. Comments on the Proposed Variance

The private sector submitted no comments regarding the proposed variance. However, OSHA did receive comments from 14 of the 26 states and territories that have an autonomous occupational safety and health agency approved under Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667). The Agency received the 14 comments after it sent each of these 26 states and territories a copy of the application and requested that they provide information on whether their standards (the ones that would be affected by the proposed variance) were identical to the corresponding Federal standards, and, if so, did they agree to accept the alternative conditions proposed by the employers.

Of the 14 states and territories that submitted comments, the following nine states reported that they have standards that are identical to the Federal standards, and that they agree to accept the alternative conditions: Alaska, Arizona, Kentucky, Maryland, New Mexico, North Carolina, Oregon, and Tennessee (Exs. 2–1 to 2–8). South Carolina (Ex. 2–9) indicated that it, too, has identical standards, and that it would accept the alternative conditions, but noted that a provision of its state code (Chapter 7, Article 1, Subarticle 2, SC Code of Laws 1976, as amended) requires that "[i]n order that such a variance be honored by the Commissioner, it is and will be incumbent upon the employer to file the final rule or order of the [U.S.] Secretary of Labor with the Commissioner of Labor at his office in Columbia, South Carolina."

Four State-plan states and one territory reported having identical standards, but did not accept the alternative conditions. Connecticut (Ex. 2–10) did not concur with the alternative conditions because its state-plan program regulates only public-sector employees and, therefore, it has "its own statutory and regulatory authority pertaining to the issuance of variances in the public sector." Hawaii (Ex. 2–11) declined to accept the alternative conditions because it did not have "a chance to do a thorough job of researching" them. The Virgin Islands (Ex. 2–12) agreed with Hawaii's position. Washington State (Ex. 2–13) noted that while its standards were the same as the Federal standards, "We anticipate updating the section of our standards with these particular codes and[,] therefore[,] their current numbering and possibly content may change in the next year or two[,] which means that granted variances would need to be updated." The Washington State response continued, "[W]e have no objection to such a variance being issued. However, for the reasons stated * * * above regarding the coding system, it may be easier for the affected companies to directly submit variance requests to our attention so there is a record of which state specific codes have a variance in the event there [are] changes in the future of those codes."

While Iowa (Ex. 2–14) also has standards that are identical to the Federal standards, it stated that "[b]ecause the State of Iowa has a specific statute and regulations for variances, [the employers] would have to submit a request to Iowa for any work to be done here as opposed to accepting a variance granted by Federal OSHA." In addition, Iowa made several substantive comments regarding the proposed variance. First, it commented that "[t]he lack of the safety clamps required under [proposed Condition 9] * * * would seem to indicate the company needs to comply with 1926.451(g)(1)(i) & (ii) for a work platform and boatswains' chair." In response, OSHA notes that paragraphs (c) and (d) of proposed Condition 7 would require, respectively, appropriately designed and constructed safety clamps, as well as clamps that, when used, apply tension to guide ropes without damaging them. Also, under proposed Condition 9, employers would have to attach safety clamps to each personnel cage; additionally, this

proposed condition specifies requirements that regulate the stopping capability and spring-compression force, as well as the operation and maintenance, of the clamps. OSHA has retained these proposed provisions, but has consolidated them under a single condition (Condition 11) in the permanent variance.

The proposed variance also would require employers to comply with paragraphs (g)(1)(i) and (g)(1)(ii) of §1926.451 as a condition of the permanent variance. In this regard, the third paragraph under "General Conditions" in the proposed variance notes that "the applicants acknowledge that they would comply with all other applicable provisions of 29 CFR parts 1910 and 1926 if OSHA grants the variance applications." To clarify this requirement, OSHA is including this requirement as a distinct provision (Condition 1(b)) of the permanent variance; this provision states, "Except for the requirements specified by §1926.452 (o)(3)) and §1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16), the employers must comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926."

Commenting further, Iowa noted that "[a] fall protection system for the cage and a positioning device for the employee to keep him/her in the cage would need to be addressed." OSHA believes that the safety-clamp requirements specified in Conditions 7 and 9 of the proposed variance (Condition 11 of the permanent variance) are sufficient to prevent a personnel cage from falling should a hoist rope separate, while the construction requirements for personnel cages (*e.g.*, steel-frame construction, wire-enclosed sides, safe handholds) provided under Condition 8 of the proposed variance (Condition 10 of the permanent variance) will prevent employees from falling out of the cages.

Iowa also made the following comments:

- "[T]here is no reference to protecting any of the cables or fall protection equipment during welding on the top platform. The application of requirements described in §1926.451(f)(17) should be considered."
- "The problems associated with hazards to employees on the upper deck with the lift mechanism or protection of the lift mechanism from damage [are] not addressed."
- "1910 issues are only mentioned in passing."

These comments suggest that the proposed variance does not address the identified hazards. However, as we noted earlier, the "General Conditions" section of the proposed variance (and Condition 1(b) of the permanent variance) require employers to comply with any other requirements of 29 CFR parts 1910 and 1926 that pertain to hazards in these workplaces. Therefore, regarding the first of these comments, under the permanent variance, employers must still implement the precautions specified in §1926.451(f)(17) to prevent the welding current from arcing through the suspension cables when employees are performing welding operations on suspended scaffolds.

The second of these comments appears to assert that none of the proposed conditions would protect employees if a hoist machine strikes a scaffold (*i.e.*, "hazards to employees on the upper deck with the lift mechanism"), or that none of these conditions would prevent damage to the hoist machine (*i.e.*, "protection of the lift mechanism from damage"). Regarding the first assertion, OSHA believes that proper design, maintenance, inspection, and operation of hoist machines as specified by Conditions 1 and 2 of the proposed variance, as well as proper selection and training of hoist operators as provided by proposed Condition 3, would prevent a hoist machine from endangering employees located on a scaffold. In the unlikely event a hoist machine strikes a scaffold, employees on the scaffold would be protected against falls under §1926.451(g), and would have additional protection under §1926.28 and subpart E ("Personal Protective and Life Saving Equipment") of 29 CFR part 1926.

Iowa's comment does not indicate what would cause damage to the hoist machine. OSHA assumes that such damage could only occur if a heavy object was to fall on or strike the machine. In this case, the Agency finds that the structural requirements listed in paragraphs (h) and (i) ("Frame" and "Stability," respectively) of proposed Condition 2 ("Hoist Machine") would adequately protect the machine from damage. Proposed paragraph 2(h) would require that the frame of the machine be "a self-supporting, rigid, welded steel structure, with holding brackets for anchor lines and legs for anchor bolts being integral components of the frame'; proposed paragraph 2(i) would prevent collapse of the hoist machine when struck by a heavy object by ensuring that the machine is secured "in position to prevent movement, shifting, or dislodgement." The Agency has retained both of these provisions in the permanent variance as paragraphs (h) ("Frame") and (i) ("Stability") of Condition 4 ("Hoist Machine").

As to Iowa's concerns about the coverage of 29 CFR part 1910, OSHA notes that the variance only covers construction provisions specified under 29 CFR part 1926. Condition 1(b) of the permanent variance states that any provisions of 29 CFR part 1910 that apply to the employers' work activities will remain in effect.

V. Multi-State Variance

The variance application stated that the employers perform chimney work in a number of geographic locations in the United States, some of which could include one or more locations in State-plan states and territories. As noted in the previous section of this preamble, OSHA sent a copy of the variance application to all State-plan states and territories for comment. Nine states responded that they had identical provisions and also agreed to accept the alternative conditions. These states are: Alaska, Arizona, Kentucky, Maryland, New Mexico, North Carolina, Oregon, South Carolina, and Tennessee. (South Carolina commented that its state code requires the employers to submit to its State Commissioner of Labor any permanent variance issued by OSHA.) The remaining four states and one territory that submitted comments did not accept the alternative conditions for a variety of reasons. Additionally, the Agency cannot determine the status of the 12 State-plan states and single territory that did not submit comments. Therefore, based on the comments submitted to the record, the permanent Federal variance also will be effective in the following nine states: Alaska, Arizona, Kentucky, Maryland, New Mexico, North Carolina, Oregon, South Carolina (provided the employers first submit a copy of the permanent variance to the State Commissioner of Labor), and Tennessee.

VII. Corrections to the Variance

The Agency has made a number of minor editorial corrections to the proposed variance to improve comprehension of, and compliance with, the specified conditions (*e.g.*, revising the term "applicants" to "employers"). OSHA also made several technical (non-substantive) revisions to the proposed variance. These revisions are described in the following table.

Proposed condition	Revision made to the permanent variance	Rationale for the revision
A. General Conditions. * * * The applicants propose to use the hoist system inside and outside a chimney to raise or lower employees in a personnel cage to work locations..	Moved to Condition 1(a).	To make the provision more noticeable than it was in the proposal.
A. General Conditions. * * * Except for the provisions identified above in this section * * *, the applicants acknowledge that they would comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926.* * *.	Moved to Condition 1(b).	To make the provision more noticeable than it was in the proposal.
A. General Conditions. * * * If available space makes using a personnel cage * * * infeasible, the applicants would use a personnel platform.* * *.	Moved to Condition 2(a).	To make the provision more noticeable than it was in the proposal.
A. General Conditions.* * * If available space makes using a personnel cage * * * infeasible, the applicants would use * * * a boatswains' chair. The applicants would limit use of the boatswains' chair to elevations above the last work location that the personnel cage and personnel platform can reach..	Moved to Condition 2(b). This condition clarifies that a boatswains' chair can be used only at the last location that a personnel platform (vice either a personnel platform or a personnel cage) can reach..	To make the provision more noticeable than it was in the proposal. Limiting use of the boatswains' chair makes this condition consistent with the discussion provided in the proposed variance (*see* 67 FR 36263).
Condition 2(b). Raising or lowering a transport. The applicants would ensure that * * * the hoist machine does not use belt drives..	Revised the provision to read, "No belts are used between the power source and the winding drum," and moved it to Condition 4(b)(ii)(D)..	The language of paragraph 4.2(2) of ANSI A10.22–1990 (R1998) and previous OSHA variances suggest that the prohibition against using belt drives applies to that part of the drive system between the power source and the winding drum, making application to the entire hoist machine too broad. Moving the provision made it an integral part of the provisions that address the drive system.
Condition 2(b). Raising or lowering a transport. * * * Whenever they raise or lower a personnel or material hoist * * * the applicants would: * * * (ii) Interconnect, on a continuous basis, the drive system through a torque converter or mechanical (or equivalent) coupling..	Added the parenthetical statement "(*e.g.*, electronic controllers, fluid clutches, hydraulic drivers)" to the provision to provide examples of equivalent couplings (*see* Condition 4(b)(ii)(B))..	To provide an example of an equivalent coupling.
Condition 2(e). Line-speed indicator. The applicants would equip the hoist machine with a line-speed indicator.* * *.	Inserted the term "operating" before "line-speed indicator". (*see* Condition 4(e)(i))..	To clarify that the line-speed indicator must be functioning.
Condition 2(g). Slack-rope switch. The applicants would equip the hoist machine with a slack-rope switch to prevent rotation of the hoist drum under slack-rope conditions..	Revised the term "hoist drum" to "winding drum" (*see* Condition 4(g))..	To use a single term throughout the variance to describe the drum around which the hoist rope is spooled.
Condition 2(k). Drum and flange diameter. The applicants would provide a winding drum * * * with a flange diameter that is at least one and one-half (1½) times the rope-drum diameter..	Revised the term "rope-drum" to "winding-drum" (*see* Condition 4(k)(ii))..	To use a single term throughout the variance to describe the drum around which the hoist rope is spooled.
Condition 2(l). Spooling of the rope. The applicants would never spool the rope closer than two (2) inches (5.1 cm) from the outer edge of the hoist-drum flange..	Revised the term "hoist-drum to "winding-drum" (*see* Condition 4(l))..	To use a single term throughout the variance to describe the drum around which the hoist rope is spooled.
Condition 3(a). Operator. The applicants would ensure that only trained and experienced employees, who are knowledgeable of hoist-system operations, control the hoist machine..	Retained the proposed requirement as Condition 5(a)(i), but moved from Condition 11(b)(ii) in the proposal to Condition 5(a)(ii) the requirement to train employees who use a personnel cage for transportation on how to operate the hoist system..	To consolidate the training requirements for hoist systems into a single provision.
Condition 4(b). Safety factor. The applicants would maintain a safety factor of at least eight (8) throughout the entire length of hoist rope..	Added the phrase "times the safe workload" between the terms "(8)" and "throughout" (*see* Condition 6(b))..	To clarify that the safety factor must be based on the safe workload.
Condition 4(d). Installation, removal, and replacement.	Replaced the term "installation" with the term "inspection" in Condition 6(d)..	To clarify that this condition specifies inspection, but not installation, requirements for hoist ropes.
Condition 5(c). * * * To ensure this diameter-to-diameter ratio, the applicants would inspect the hoist rope regularly, and immediately discard the rope if they find evidence of any of the conditions specified by § 1926.552(a)(3)..	Moved the diameter-to-diameter inspection requirement to Condition 6(d)(ii), and removed the reference to § 1926.552(a)(3)..	To consolidate the requirements for hoist ropes under a single condition. The reference to § 1926.552(a)(3) is redundant with the reference in Condition 6(d)(iii).

Proposed condition	Revision made to the permanent variance	Rationale for the revision
Condition 6(a). Qualified competent person. The applicants would use a qualified competent person to design and maintain the cathead (*i.e.*, overhead support)..	Moved to Condition 3(b).	To consolidate the requirements for a qualified competent person under a single condition.
Condition 6(d). Sheave safeguards.	Revised the title from "Sheave safeguards" to "Rope guides" (*see* Condition 8(c))..	To clarify that this condition specifies requirements for rope guides.
Condition 6(e). * * * To ensure this diameter-to-diameter ratio, the applicants would inspect the hoist rope regularly, and immediately discard the rope if they find evidence of any of the conditions specified by § 1926.552(a)(3)..	Moved the diameter-to-diameter inspection requirements to Condition 6(d)(ii), and removed the reference to § 1926.552(a)(3)..	To consolidate the requirements for hoist ropes under a single condition. The reference to § 1926.552(a)(3) is redundant with the reference in Condition 6(d)(iii).
Condition 7(a). Number of cables.	Revised the heading to "Number and construction" (*see* Condition 9(a))..	To clarify that this condition also addresses the physical characteristics of guide cables.
Condition 7(d). Application of tension. The applicants would never use safety clamps that damage the ropes..	Moved the requirement to Condition 10(a)(iii).	To consolidate the safety-clamp requirements into a single provision.
Condition 8(a). Construction. The applicants would use a personnel cage that: * * * (v) Has safe handholds (*e.g.*, rope grips—but not rails or hard protrusions—that accommodate each occupant)..	Inserted a footnote at the end of the parenthetical statement that explains the prohibition against rails or hard protrusions (*see* Condition 10(a))..	To clarify the safety hazards associated with rails or hard protrusions in personnel cages.
Condition 10. Overhead Protection. To protect employees located at the base of the chimney (*i.e.*, both inside and outside the chimney) from material and debris that may fall from above, the applicants would install a canopy or shield that is made of steel plate at least three-sixteenth (3/16) of an inch (4.763 mm) thick, or material of equivalent strength and impact resistance, and that slopes to the outside..	Removed the phrase "located at the base of the chimney" from the requirement, and added the phrases "over the top of the personnel cage" (*see* Conditions 12(a) and 12(b), respectively)..	To clarify the location of the canopy or shield consistent with the requirements of § 1926.800(t)(4)(v) (from which the conditions was adapted) and paragraph 10.6 of ANSI A10.22–1990 (R1998).
Condition 11(a). Location. The applicants would provide an emergency-escape device, with operating instructions attached to it, in the personnel cage or at the bottom landing. If the device is: (i) In the personnel cage, the applicants would ensure that it is long enough to reach the bottom landing from the highest possible escape point. (ii) At the bottom-landing, the applicants would provide a means in the personnel cage for the occupants to raise the device to the highest possible escape point..	Moved the requirement regarding the attachment of operating instructions to Condition 13(b)..	To make the provision more noticeable than it was in the proposal.
Condition 11(b). Training. The applicants would instruct each employee who uses a personnel cage: (i) On how to operate the emergency-escape device prior to the employee using the personnel cage for transportation. (ii) Periodically, and as necessary, in the operation of the hoist system and the emergency-escape system..	Moved to Condition 5(a)(ii) the portion of proposed Condition 11(b)(ii) that refers to training employees who use a personnel cage for transportation in the operation of the hoist system..	To consolidate the training requirements for hoist systems into a single provision.
Condition 12(a). Personnel platform. The applicants would: (i) Be permitted to attach the hoisting cable to a personnel platform under the conditions specified above by section III.A ("General conditions") of this application..	Retained the proposed requirement under Condition 14(a), but revised the reference to "section III.A" to "Condition 2(a).".	The requirements proposed under section III.A are now specified under Condition 2(a).
Condition 13(a). [The applicants would c]onduct inspections of the hoist system as required by § 1926.20(b)(2). These inspections would include a daily visual inspection of the systems..	Condition 15(a). The employers must: (i) Conduct inspections of the hoist system as required by § 1926.20(b)(2); (ii) Ensure that a competent person conducts daily visual inspections of the hoist system; and * * *..	To clarify that paragraph (a) consists of two separate requirements, and to emphasize the requirement in § 1926.20(b)(2) that a competent person must conduct the daily visual inspection of the hoist system.

VII. Decision

Oak Park Chimney Corp. and American Boiler & Chimney Co. seek a permanent variance from the provision that regulates the tackle used for boatswains' chairs (§1926.452(o)(3)), as well as the provisions specified for personnel hoists by paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of 1926.552. Paragraph (o)(3) of §1926.452 states that the tackle used for boatswains' chairs must "consist of correct size ball bearings or bushed blocks containing safety hooks and properly "eye-spliced" minimum five-eighth (5/8) inch diameter first-grade manila rope [or equivalent rope]." The primary purpose of this provision is to allow an employee to safely control the ascent, descent, and stopping locations of the boatswains' chair. The proposed alternative to these requirements allows the employer to use a boatswains' chair

to lift employees to work locations inside and outside a chimney when both a personnel cage and a personnel platform are infeasible. The employers proposed to attach the boatswains' chair to the hoisting system described as an alternative for paragraph (c) of §1926.552.

Paragraph (c) of §1926.552 specifies the requirements for enclosed hoisting systems used to transport personnel from one elevation to another. This paragraph ensures that employers transport employees safely to and from elevated work platforms by mechanical means during construction work involving structures such as chimneys. In this regard, paragraph (c)(1) of §1926.552 requires employers to enclose hoist towers located outside a chimney on the side or sides used for entrance to, and exit from, the structure; these enclosures must extend the full height of the hoist tower. Under the requirements of paragraph (c)(2) of §1926.552, employers must enclose all four sides of a hoist tower located inside a chimney; these enclosures must extend the full height of the tower.

As an alternative to complying with the hoist-tower requirements of §1926.552(c)(1) and (c)(2), the employers proposed to use a rope-guided hoist system to transport employees to and from elevated work locations inside and outside chimneys. The proposed hoist system includes a hoist machine, cage, safety cables, and safety measures such as limit switches to prevent overrun of the cage at the top and bottom landings, and safety clamps that grip the safety cables if the main hoist line fails. To transport employees to and from elevated work locations, the employers proposed to attach a personnel cage to the hoist system. However, when they can demonstrate that adequate space is not available for the cage, they can use a personnel platform above the last worksite that the cage can reach. Further, when the employers can show that space limitations make it infeasible to use a work platform for transporting employees, they have proposed to use a boatswains' chair above the last worksite serviced by the personnel platform. Using the proposed hoist system as an alternative to the hoist-tower requirements of §1926.552(c)(1) and (c)(2) eliminates the need to comply with the other provisions of §1926.552(c) that specify requirements for hoist towers. Accordingly, the employers have requested a permanent variance from these and related provisions (*i.e.*, paragraphs (c)(3), (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16)).

After reviewing the variance application, as well as the comments made to the record regarding the application, OSHA has made only minor editorial amendments and technical corrections to the proposed variance. Therefore, under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), and based on the record discussed above, the Agency finds that when the employers comply with the conditions of the following order, their employees will be exposed to working conditions that are at least as safe and healthful as they would be if the employers complied with paragraph (o)(3) of §1926.452, and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of § 1926.552.

VIII. Order

OSHA issues this order authorizing Oak Park Chimney Corp. and American Boiler & Chimney Co. ("the employers") to comply with the following conditions instead of complying with paragraph (o)(3) of §1926.452 and paragraphs (c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16) of §1926.552:

1. Scope of the Permanent Variance

(a) This permanent variance applies only when the employers use a rope-guided hoist system during inside or outside chimney construction to raise or lower their employees between the bottom landing of a chimney and an elevated work location on the inside or outside surface of the chimney.

(b) Except for the requirements specified by §1926.452(o)(3) and §1926.552(c)(1) through (c)(4), (c)(8), (c)(13), (c)(14)(i), and (c)(16), the employers must comply fully with all other applicable provisions of 29 CFR parts 1910 and 1926.

2. Replacing a Personnel Cage With a Personnel Platform or a Boatswains' Chair

(a) *Personnel platform.* When the employers demonstrate that available space makes a personnel cage for transporting employees infeasible, they may replace the personnel cage with a personnel platform when they limit use of the personnel platform to elevations above the last work location that the personnel cage can reach.

(b) *Boatswains' chair.* When the employers demonstrate that available space makes a personnel platform for transporting employees infeasible, they may replace the personnel platform with a boatswains' chair when they limit use of the boatswains' chair to elevations above the last work location that the personnel platform can reach.

3. Qualified Competent Person

(a) The employers must:

(i) Provide a qualified competent person, as specified in paragraphs (f) and (m) of §1926.32, who is responsible for ensuring that the design, maintenance, and inspection of the hoist system comply with the conditions of this grant and with the appropriate requirements of 29 CFR part 1926 ("Safety and Health Regulations for Construction"); and

(ii) Ensure that the qualified competent person is present at ground level to assist in an emergency whenever the hoist system is raising or lowering employees.

(b) The employers must use a qualified competent person to design and maintain the cathead described under Condition 8 ("Cathead and Sheave") below.

4. Hoist Machine

(a) *Type of hoist.* The employers must designate the hoist machine as a portable personnel hoist.

(b) *Raising or lowering a transport.* The employers must ensure that:

(i) The hoist machine includes a base-mounted drum hoist designed to control line speed; and

(ii) Whenever they raise or lower a personnel or material hoist (*e.g.*, a personnel cage, personnel platform, boatswains' chair, hopper, concrete bucket) using the hoist system:

(A) The drive components are engaged continuously when an empty or occupied transport is being lowered (*i.e.*, no "freewheeling");

(B) The drive system is interconnected, on a continuous basis, through a torque converter, mechanical coupling, or an equivalent coupling (*e.g.*, electronic controller, fluid clutches, hydraulic drives).

(C) The braking mechanism is applied automatically when the transmission is in the neutral position and a forward-reverse coupling or shifting transmission is being used; and

(D) No belts are used between the power source and the winding drum.

(c) *Power source.* The employers must power the hoist machine by an air, electric, hydraulic, or internal-combustion drive mechanism.

(d) *Constant pressure control switch.* The employers must:

(i) Equip the hoist machine with a hand-or foot-operated constant-pressure control switch (*i.e.*, a "deadman control switch") that stops the hoist immediately upon release; and

(ii) Protect the control switch to prevent it from activating if the hoist machine is struck by a falling or moving object.

(e) *Line-speed indicator.* The employers must:

(i) Equip the hoist machine with an operating line-speed indicator maintained in good working order; and

(ii) Ensure that the line-speed indicator is in clear view of the hoist operator during hoisting operations.

(f) *Braking systems.* The employers must equip the hoist machine with two (2) independent braking systems (*i.e.*, one automatic and one manual) located on the winding side of the clutch or couplings, with each braking system being capable of stopping and holding 150 percent of the maximum rated load.

(g) *Slack-rope switch.* The employers must equip the hoist machine with a slack-rope switch to prevent rotation of the winding drum under slack-rope conditions.

(h) *Frame.* The employers must ensure that the frame of the hoist machine is a self-supporting, rigid, welded-steel structure, and that holding brackets for anchor lines and legs for anchor bolts are integral components of the frame.

(i) *Stability.* The employers must secure hoist machines in position to prevent movement, shifting, or dislodgement.

(j) *Location.* The employers must:

(i) Locate the hoist machine far enough from the footblock to obtain the correct fleet angle for proper spooling of the cable on the drum; and

(ii) Ensure that the fleet angle remains between one-half degree (½°) and one and one-half degrees (1½°) for smooth drums, and between one-half degree (½°) and two degrees (2°) for grooved drums, with the lead sheave centered on the drum.[1]

(k) *Drum and flange diameter.* The employers must:

(i) Provide a winding drum for the hoist that is at least 30 times the diameter of the rope used for hoisting; and

(ii) Ensure that the winding drum has a flange diameter that is at least one and one-half (1½) times the winding-drum diameter.

(l) *Spooling of the rope.* The employers must *never* spool the rope closer than two (2) inches (5.1 cm) from the outer edge of the winding-drum flange.

(m) *Electrical system.* The employers must ensure that all electrical equipment is weatherproof.

(n) *Limit switches.* The employers must equip the hoist system with limit switches and related equipment that automatically prevent overtravel of a personnel cage, personnel platform, boatswains' chair, or material-transport device at the top of the supporting structure and at the bottom of the hoistway or lowest landing level.

5. Methods of Operation

(a) *Employee qualifications and training.* The employers must:

(i) Ensure that only trained and experienced employees, who are knowledgeable of hoist-system operations, control the hoist machine; and

(ii) Provide instruction, periodically and as necessary, on how to operate the hoist system, to each employee who uses a personnel cage for transportation.

(b) *Speed limitations.* The employers must *not* operate the hoist at a speed in excess of:

(i) Two hundred and fifty (250) feet (76.9 m) per minute when a personnel cage is being used to transport employees;

(ii) One hundred (100) feet (30.5 m) per minute when a personnel platform or boatswains' chair is being used to transport employees; or

(iii) A line speed that is consistent with the design limitations of the system when only material is being hoisted.

(c) *Communication.* The employers must:

(i) Use a voice-mediated intercommunication system to maintain communication between the hoist operator and the employees located in or on a moving personnel cage, personnel platform, or boatswains' chair;

(ii) Stop hoisting if, for any reason, the communication system fails to operate effectively; and

(iii) Resume hoisting only when the site superintendent determines that it is safe to do so.

6. Hoist Rope

(a) *Grade.* The employers must use a wire rope for the hoist system (*i.e.*, "hoist rope") that consists of extra-improved plow steel, an equivalent grade of non-rotating rope, or a regular lay rope with a suitable swivel mechanism.

(b) *Safety factor.* The employers must maintain a safety factor of at least eight (8) times the safe workload throughout the entire length of hoist rope.

(c) *Size.* The employers must use a hoist rope that is at least one-half (1/2) inch (1.3 cm) in diameter.

(d) *Inspection, removal, and replacement.* The employers must:

(i) Thoroughly inspect the hoist rope before the start of each job and on completing a new setup;

(ii) Maintain the proper diameter-to-diameter ratios between the hoist rope and the footblock and the sheave by inspecting the wire rope regularly (*see* Conditions 7(c) and 8(d) below); and

(iii) Remove and replace the wire rope with new wire rope when any of the conditions specified by §1926.552(a)(3) occurs.

(e) *Attachments.* The employers must attach the rope to a personnel cage, personnel platform, or boatswains' chair with a keyed-screwpin shackle or positive-locking link.

(f) *Wire-rope fastenings.* When the employers use clip fastenings (*e.g.*, U-bolt wire-rope clips) with wire ropes, they must:

(i) Use Table H–20 of §1926.251 to determine the number and spacing of clips;

(ii) Use at least three (3) drop-forged clips at each fastening;

(iii) Install the clips with the "U" of the clips on the dead end of the rope; and

(iv) Space the clips so that the distance between them is six (6) times the diameter of the rope.

7. Footblock

(a) *Type of block.* The employers must use a footblock:

(i) Consisting of construction-type blocks of solid single-piece bail with a safety factor that is at least four (4) times the safe workload, or an equivalent block with roller bearings;

(ii) Designed for the applied loading, size, and type of wire rope used for hoisting;

(iii) Designed with a guard that contains the wire rope within the sheave groove;

(iv) Bolted rigidly to the base; and

(v) Designed and installed so that it turns the moving wire rope to and from the horizontal or vertical as required by the direction of rope travel.

(b) *Directional change.* The employers must ensure that the angle of change in the hoist rope from the horizontal to the vertical direction at the footblock is approximately 90°.

(c) *Diameter.* The employers must ensure that the line diameter of the footblock is at least 24 times the diameter of the hoist rope.

8. Cathead and Sheave

(a) *Support.* The employers must use a cathead (*i.e.*, "overhead support") that consists of a wide-flange beam or two (2) steel-channel sections securely bolted back-to-back to prevent spreading.

[1] This variance adopts the definition of, fleet angle from *Cranes and Derricks*, H.I. Shapiro, *et al.* (eds.); New York: McGraw-Hill. Accordingly, the fleet angle is "[t]he angle the rope leading onto a [winding] drum makes with the line perpendicular to the drum rotating axis when the lead rope is making a wrap against the flange."

(b) *Installation.* The employers must ensure that:

(i) All sheaves revolve on shafts that rotate on bearings; and

(ii) The bearings are mounted securely to maintain the proper bearing position at all times.

(c) *Rope guides.* The employers must provide each sheave with appropriate rope guides to prevent the hoist rope from leaving the sheave grooves when the rope vibrates or swings abnormally.

(d) *Diameter.* The employers must use a sheave with a diameter that is at least 24 times the diameter of the hoist rope.

9. Guide Ropes

(a) *Number and construction.* The employers must affix two (2) guide ropes by swivels to the cathead. The guide ropes must:

(i) Consist of steel safety cables not less than one-half (½) inch (1.3 cm) in diameter; and

(ii) Be free of damage or defect at all times.

(b) *Guide rope fastening and alignment tension.* The employers must fasten one end of each guide rope securely to the overhead support, with appropriate tension applied at the foundation.

(c) *Height.* The employers must rig the guide ropes along the entire height of the hoist-machine structure.

10. Personnel Cage

(a) *Construction.* A personnel cage must be of steel-frame construction and capable of supporting a load that is four (4) times its maximum rated load capacity. The employers also must ensure that the personnel cage has:

(i) A top and sides that are permanently enclosed (except for the entrance and exit);

(ii) A floor securely fastened in place;

(iii) Walls that consist of 14-gauge, one-half (½) inch (1.3 cm) expanded metal mesh, or an equivalent material;

(iv) Walls that cover the full height of the personnel cage between the floor and the overhead covering;

(v) A sloped roof constructed of one-eighth (⅛) inch (0.3 cm) aluminum, or an equivalent material; and

(vi) Safe handholds (*e.g.*, rope grips—but not rails or hard protrusions [2]) that accommodate each occupant.

(b) *Overhead weight.* A personnel cage must have an overhead weight (*e.g.*, a headache ball of appropriate weight) to compensate for the weight of the hoist rope between the cathead and footblock. In addition, the employers must:

(i) Ensure that the overhead weight is capable of preventing line run; and

(ii) Use a means to restrain the movement of the overhead weight so that the weight does *not* interfere with safe personnel hoisting.

(c) *Gate.* The personnel cage must have a gate that:

(i) Guards the full height of the entrance opening; and

(ii) Has a functioning mechanical lock that prevents accidental opening.

(d) *Operating procedures.* The employers must post the procedures for operating the personnel cage conspicuously at the hoist operator's station.

(e) *Capacity.* The employers must:

(i) Hoist no more than four (4) occupants in the cage at any one time; and

(ii) Ensure that the rated load capacity of the cage is at least 250 pounds (113.4 kg) for each occupant so hoisted.

(f) *Employee notification.* The employers must post a sign in each personnel cage notifying employees of the following conditions:

(i) The standard rated load, as determined by the initial static drop test specified by Condition 10(g) ("Static drop tests") below; and

(ii) The reduced rated load for the specific job.

(g) *Static drop tests.* The employers must:

(i) Conduct static drop tests of each personnel cage, and these tests must comply with the definition of "static drop test" specified by section 3 ("Definitions") and the static drop-test procedures provided in section 13 ("Inspections and Tests") of American National Standards Institute (ANSI) standard A10.22–1990 (R1998) ("American National Standard for Rope-Guided and Nonguided Worker's Hoists—Safety Requirements");

(ii) Perform the initial static drop test at 125 percent of the maximum rated load of the personnel cage, and subsequent drop tests at no less than 100 percent of its maximum rated load; and

(iii) Use a personnel cage for raising or lowering employees only when no damage occurred to the components of the cage as a result of the static drop tests.

11. Safety Clamps

(a) *Fit to the guide ropes.* The employers must:

(i) Fit appropriately designed and constructed safety clamps to the guide ropes; and

(ii) Ensure that the safety clamps do not damage the guide ropes when in use.

(b) *Attach to the personnel cage.* The employers must attach safety clamps to each personnel cage for gripping the guide ropes.

(c) *Operation.* The safety clamps attached to the personnel cage must:

(i) Operate on the "broken rope principle" defined in section 3 ("Definitions") of ANSI standard A10.22–1990 (R1998);

(ii) Be capable of stopping and holding a personnel cage that is carrying 100 percent of its maximum rated load and traveling at its maximum allowable speed if the hoist rope breaks at the footblock; and

(iii) Use a pre-determined and pre-set clamping force (*i.e.*, the "spring compression force") for each hoist system.

(d) *Maintenance.* The employers must keep the safety-clamp assemblies clean and functional at all times.

12. Overhead Protection

(a) The employers must install a canopy or shield over the top of the personnel cage that is made of steel plate at least three-sixteenth (3/16) of an inch (4.763 mm) thick, or material of equivalent strength and impact resistance, to protect employees (*i.e.*, both inside and outside the chimney) from material and debris that may fall from above.

(b) The employers must ensure that the canopy or shield slopes to the outside of the personnel cage.[3]

13. Emergency-Escape Device

(a) *Location.* The employers must provide an emergency-escape device in at least one of the following locations:

(i) In the personnel cage, provided that the device is long enough to reach the bottom landing from the highest possible escape point; or

(ii) At the bottom landing, provided that a means is available in the personnel cage for the occupants to raise the device to the highest possible escape point.

(b) *Operating instructions.* The employers must ensure that written instructions for operating the emergency-escape device are attached to the device.

(c) *Training.* The employers must instruct each employee who uses a personnel cage for transportation on how to operate the emergency-escape device:

(i) Before the employee uses a personnel cage for transportation; and

(ii) Periodically, and as necessary, thereafter.

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[2] To reduce impact hazards should employees lose their balance because of cage movement.

[3] Paragraphs (a) and (b) were adapted from OSHA's Underground Construction Standard (§ 1926.800(t)(4)(iv)).

14. Personnel Platforms and Boatswains' Chairs

(a) *Personnel platforms.* When the employers elect to replace the personnel cage with a personnel platform in accordance with Condition 2(a) of this variance, they must:

(i) Ensure that an enclosure surrounds the platform, and that this enclosure is at least 42 inches (106.7 cm) above the platform's floor;

(ii) Provide overhead protection when an overhead hazard is, or could be, present; and

(iii) Comply with the applicable scaffolding strength requirements specified by § 1926.451(a)(1).

(b) *Boatswains' chairs.* When the employers elect to replace the personnel platform with a boatswains' chair in accordance with Condition 2(b) ("Boatswains" chair") of this variance, they may attach the boatswains' chair directly to the hoisting cable only when they demonstrate that the spatial arrangement makes it infeasible to safely use the block and tackle required by § 1926.452(o)(3).

(c) *Fall-protection equipment.* Before employees use work platforms or boatswains' chairs, the employers must equip the employees with, and ensure that they use, body harnesses and lifelines as specified by § 1926.104 and the applicable requirements of § 1926.502(d).

15. Inspections, Tests, and Accident Prevention

(a) The employers must:

(i) Conduct inspections of the hoist system as required by § 1926.20(b)(2);

(ii) Ensure that a competent person conducts daily visual inspections of the hoist system; and

(iii) Inspect and test the hoist system as specified by § 1926.552(c)(15).

(b) The employers must comply with the accident-prevention requirements of § 1926.20(b)(3).

16. Welding

(a) The employers must use only qualified welders to weld components of the hoisting system.

(b) The employers must ensure that the qualified welders:

(i) Are familiar with the weld grades, types, and materials specified in the design of the system; and

(ii) Perform the welding tasks in accordance with 29 CFR part 1926, subpart J ("Welding and Cutting").

VII. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC directed the preparation of this notice. This notice is issued under the authority specified by Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Secretary of Labor's Order No. 5–2002 (67 FR 65008), and 29 CFR part 1905.

Signed at Washington, DC on August 26, 2003.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 03–22741 Filed 9–5–03; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection Under OMB Review

[Notice 03–099]

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: Title IX Recipient Request.

OMB Number: 2700– .

Type of review: New collection.

Need and Uses: The information collected will be analyzed and used by NASA to determine NASA grant recipients' compliance with Title IX of the Education Amendments of 1972.

Affected Public: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 917.

Responses Per Respondent: 1.

Annual Responses: 917.

Hours Per Request: Approx. ½ hour.

Annual Burden Hours: 459.

Frequency of Report: Annually; Other (one time).

Patricia L. Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–22691 Filed 9–5–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (03–100)]

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted on or before October 8, 2003.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Office of Management and Budget; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Nancy Kaplan, NASA Reports Officer, (202) 358–1372.

Title: NASA Safety Reporting System.

OMB Number: 2700–0063.

Type of review: Revision.

Need and Uses: This collection provides a means by which NASA employees and contractors can voluntarily and confidentially report any safety concerns or hazards pertaining to NASA programs, projects, or operations.

Affected Public: Federal Government; Business or other for-profit

Number of Respondents: 75.

Responses Per Respondent: 1.

Annual Responses: 75.

Hours Per Request: 15 min.

Annual Burden Hours: 19.

Frequency of Report: As needed.

Patricia Dunnington,

Chief Information Officer, Office of the Administrator.

[FR Doc. 03–22692 Filed 9–5–03; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COMMUNICATIONS SYSTEM

National Security Telecommunications Advisory Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of closed meetings.

SUMMARY: A meeting of the President's National Security Telecommunications Advisory Committee (NSTAC) will be held via conference call on Wednesday, September 17, 2003, from 1 p.m. to 2 p.m. The NSTAC is subject to the Federal Advisory Committee Act (FACA), Pub. L. 92–463, as amended (5 U.S.C. App. II.) The conference call will be closed to the public to allow for oral discussion of:

• Interdependencies of Critical Infrastructures

• Issues regarding security matters due to diversity of ownership, control, and access to U.S. critical telecommunication and information technology infrastructures

Since revealing details of infrastructure interdependencies could reveal predominantly internal agency records that would significantly risk circumvention of agency regulations or statutes intended to protect critical infrastructures, closing this portion of the meeting is consistent with 5 U.S.C. 552b(c)(2). In order to assess security matters raised by diversity of ownership within the telecommunications and information technology infrastructures, it is necessary to close this portion of the meeting to protect proprietary information NSTAC members may need to present on this topic, consistent with 5 U.S.C. 552b(c)(4). Based on the sensitivity of these topics, this conference call will be closed.

FOR FURTHER INFORMATION CONTACT: Call Ms. Kiesha Gebreyes, (703) 607–6134, or write the Manager, National Communications System, 701 South Court House Road, Arlington, Virginia 22204–2198.

Peter M. Fonash,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 03–22700 Filed 9–5–03; 8:45 am]

BILLING CODE 5001–08–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Heather Gottry, Acting Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* September 22, 2003.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Landmarks of American History: Workshops for School Teachers, submitted to the Division of Education Programs at the August 15, 2003 deadline.

2. *Date:* September 23, 2003.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Landmarks of American History: Workshops for School Teachers, submitted to the Division of Education Programs at the August 15, 2003 deadline.

Heather Gottry,

Acting Advisory Committee Management Officer.

[FR Doc. 03–22699 Filed 9–5–03; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–03754]

Notice of Finding of No Significant Impact and Availability of Environmental Assessment for License Amendment of Materials License No. 31–02892–06, VA Medical Center in Brooklyn, NY

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of environmental assessment and finding of no significant impact.

FOR FURTHER INFORMATION CONTACT: John R. Wray, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. Telephone (610) 337–5268; Fax (610) 337–5269; and/or by e-mail: *JRW3@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to the VA Medical Center in Brooklyn for Materials License No. 31–02892–06, to authorize release of its facility at the St. Albans Extended Care Center in Queens, New York, for unrestricted use and has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate.

II. EA Summary

The purpose of the proposed action is to allow for the release of the licensee's St. Albans Extended Care Center facility for unrestricted use. The VA Medical Center in Brooklyn was authorized by NRC on August 20, 1998, to possess radioactive materials for decommissioning purposes at the site. On May 15, 2003, the VA Medical Center in Brooklyn requested that NRC release the facility for unrestricted use. The VA Medical Center in Brooklyn has conducted surveys of the facility and determined that the facility meets the license termination criteria in subpart E of 10 CFR part 20.

III. Finding of No Significant Impact

The NRC staff has evaluated the request from the VA Medical Center in Brooklyn and the results of the surveys and has concluded that the completed action complies with 10 CFR part 20. The staff has prepared the EA

(summarized above) in support of the proposed license amendment to terminate the license and release the facility for unrestricted use. On the basis of the EA, NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession No. ML032380112).

Dated at King of Prussia, Pennsylvania, this 26th day of August, 2003.

For The Nuclear Regulatory Commission.

Ronald R. Bellamy,

Chief, Decommissioning and Laboratory Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 03–22717 Filed 9–5–03; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 145th meeting on September 16–18, 2003, 11545 Rockville Pike, Rockville, MD.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, September 16, 2003

10:30 a.m.–10:40 a.m.: Opening Statement (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate items of interest.

10:40 a.m.–12 Noon.: Commission Presentations (Open)—The Committee will discuss its presentation for the October 23, 2003 public meeting with the NRC Commissioners. Topics proposed for discussion:

- Chairman's Report
- High-Level Waste Risk Insights
- TSPA/TPA Working Group
- Performance Confirmation Working Group
- Status and Pathway to Closure on KTIs

1 p.m.–6 p.m.: Committee Retreat (Open)—The focus of the September 2003 retreat is to identify the suite of topics that the Committee intends to examine over the next 12 to 18 months. The topics to be proposed would be consistent with the priorities defined in Action Plan as well as earlier Committee discussions with the Commission and NMSS management.

Wednesday, September 17, 2003

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–2 p.m.: Committee Retreat (Continued) (Open)—The Committee will identify specific topics and its plans for review of the relevant High-Level Were issues from the present to the submission by DOE of a license application for the Yucca Mountain repository.

2 p.m.–6 p.m.: Proposed ACRS Report (Open)—The Committee will discuss a proposed ACNW report on matters considered during this meeting, as well as proposed ACNW reports on the Performance Confirmation Working Group.

Thursday, September 18, 2003

8:30 a.m.–8:35 a.m.: Opening Statement (Open)—The Chairman will make opening remarks regarding the conduct of today's sessions.

8:35 a.m.–9:30 a.m.: Planning for 147th ACNW Meeting Las Vegas, Nevada (Open)—The Committee will review proposed activities for its November 18, 2003 trip to Yucca Mountain and the Amargosa Valley and its subsequent technical discussion in Las Vegas, NV with DOE representatives and others (including stakeholders and the public) during the 147th ACNW Meeting, November 19–20, 2003.

9:45 a.m.–11:45 p.m.: Preparation of ACNW Report (Open)—The Committee will discuss a proposed ACNW report.

12:45 p.m.–2:45 p.m.: Preparation for Meeting with the NRC Commissioner (Open)—The Committee will finalize its viewgraphs for the proposed October 23, 2003, meeting with the NRC Commissioners.

2:45 p.m.–3 p.m.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 11, 2002 (67 FR 63459). In accordance with these procedures, oral or written statements may be presented by members of the public. Electronic recordings will be permitted only during those portions of the meeting that are open to the public. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 7:30 a.m. and 4 p.m. ET, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting agenda, meeting transcripts, and letter reports are available through the NRC Public Document Room at *pdr@nrc.gov*, or by calling the PDR at 1–800–397–4209, or from the Publicly Available Records System (PARS) component of NRC's document system (ADAMS) which is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html* or *http://www.nrc.gov/reading-rm/doc-collections/* (ACRS & ACNW Mtg schedules/agendas).

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. ET, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the video teleconferencing link. The availability of video teleconferencing services is not guaranteed.

Dated: September 2, 2003.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 03–22718 Filed 9–5–03; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of a Revised Information Collection: RI 38–115

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) a request for review of a revised information collection. RI 38–115, Representative Payee Survey, is used to collect information about how the benefits paid to a representative payee have been used or conserved for the incompetent annuitant.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 4,067 RI 38–115 forms will be completed annually. The form takes approximately 20 minutes to complete. The annual burden is 1,356 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before November 7, 2003.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operation Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–22737 Filed 9–5–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Reclearance of a Revised Information Collection: RI 30–2

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for reclearance of a revised information collection. RI 30–2, Annuitant's Report of Earned Income, is used annually to determine if disability retirees under age 60 have earned income which will result in the termination of their annuity benefits.

We estimate 21,000 RI 30–2 forms are completed annually. The RI 30–2 takes approximately 35 minutes to complete for an estimated annual burden of 12,250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before November 7, 2003.

ADDRESSES: Send or deliver comments to—William C. Jackson, Chief, Retirement Eligibility & Services Group, Retirement Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 2336, Washington, DC 20415, and Allison Eydt, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

For Information Regarding Administrative Coordination Contact: Cyrus S. Benson, Team Leader, Publications Team, RIS Support Group, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–22738 Filed 9–5–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: RI 92–19

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget (OMB) a request for review of an expiring information collection. RI 92–19, Application for Deferred or Postponed Retirement: Federal Employees Retirement System (FERS), is used by separated employees to apply for either a deferred or a postponed FERS annuity benefit.

Comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 1,272 forms are completed annually. The form takes approximately 60 minutes to complete. The annual estimated burden is 1,272 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received on or before November 7, 2003.

ADDRESSES: Send or deliver comments to—Ronald W. Melton, Chief, Operations Support Group, Retirement Services Program, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT:

Cyrus S. Benson, Team Leader, Publications Team, RIS Support Services, (202) 606–0623.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–22740 Filed 9–5–03; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program: Medically Underserved Areas for 2004

AGENCY: Office of Personnel Management.

ACTION: Notice of Medically Underserved Areas for 2004.

SUMMARY: The Office of Personnel Management (OPM) has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for calendar year 2004. This is necessary to comply with a provision of the FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 2004, OPM's calculations show that the following states are Medically Underserved Areas under the FEHB Program: Alabama, Idaho, Kentucky, Louisiana, Maine, Mississippi, Missouri, Montana, New Mexico, North Dakota, South Carolina, South Dakota, Texas, Utah, West Virginia and Wyoming. There is no change from the last year's list.

EFFECTIVE DATE: January 1, 2004.

FOR FURTHER INFORMATION CONTACT: Ingrid Burford, 202–606–0004.

SUPPLEMENTARY INFORMATION: FEHB law (5 U.S.C. 8902(m)(2)) mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. The FEHB law also requires that a State be designated as a Medically Underserved Area if 25 percent or more of the population lives in an area designated by the Department of Health and Human Services (HHS) as a primary medical care manpower shortage area. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires non-HMO FEHB plans to reimburse beneficiaries, subject to their contract terms, for covered services obtained from any licensed provider in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest HHS State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident populations.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 03–22739 Filed 9–5–03; 8:45 am]

BILLING CODE 6325–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD 2003 16076]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel SV NAMASTE.

SUMMARY: As authorized by Public Law 105–383 and Public Law 107–295, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below. The complete application is given in DOT docket 2003–16076 at *http://dms.dot.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR Part 388 (68 FR 23084; April 30, 2003), that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR part 388.

DATES: Submit comments on or before October 8, 2003.

ADDRESSES: Comments should refer to docket number MARAD 2003–16076. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR–830 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel SV NAMASTE is:

Intended Use: "Chartering".

Geographic Region: "East Coast U.S., West Coast U.S. (excluding Southeastern Alaska), Caribbean to Panama".

Dated: September 2, 2003.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 03–22746 Filed 9–5–03; 8:45 am]

BILLING CODE 4910–81–P

Corrections

Federal Register
Vol. 68, No. 173
Monday, September 8, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-NE-32-AD; Amendment 39-13285; AD 2003-17-10]

RIN 2120-AA64

Airworthiness Directives; McCauley Propeller Systems, Inc. Propeller Hub Models B5JFR36C1101, C5JFR36C1102, B5JFR36C1103, and C5JFR36C1104

Correction

In rule document 03–21519 beginning on page 50462 in the issue of Thursday, August 21, 2003, make the following correction:

§39.13 [Corrected]

On page 50464, in §39.13(o), in the table the heading should read TABLE 3—INCORPORATION BY REFERENCE.

[FR Doc. C3–21519 Filed 9–5–03; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9085]

RIN 1545–AY12

Arbitrage and Private Activity Restrictions Applicable to Tax-exempt Bonds Issued by State and Local Governments; Investment-type Property (prepayment); Private Loan (prepayment)

Correction

In rule document 03–19644 beginning on page 45772 in the issue of Monday, August 4, 2003, make the following correction:

§1.141–15 [Corrected]

On page 45775, in the second column, in § 1.141–15, add the following directly below the section heading:

* * * * *

[FR Doc. C3–19644 Filed 9–5–03; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Monday,
September 8, 2003

Part II

Environmental Protection Agency

40 CFR Part 355
Emergency Planning and Community Right-to-Know Act; Extremely Hazardous Substances List; Modification of Threshold Planning Quantity for Isophorone Diisocyanate; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 355

[FRL–7554–9]

RIN 2050–AE43

Emergency Planning and Community Right-to-Know Act; Extremely Hazardous Substances List; Modification of Threshold Planning Quantity for Isophorone Diisocyanate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule amends the list of extremely hazardous substances (EHS) issued under the Emergency Planning and Community Right-to-Know Act (EPCRA) by changing the threshold planning quantity (TPQ) for isophorone diisocyanate (IPDI) from 100 pounds to 500 pounds.

DATES: This rule is effective October 8, 2003.

ADDRESSES: Copies of the documents relevant to this action (Docket No. SFUND–2002–0009) are available for public inspection during normal business hours from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding federal holidays, at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Emergency Planning and Community Right-to-Know Hotline at (800) 424–9346 or (703) 412–9810, TDD (800) 553–7672, *http://www.epa.gov/epaoswer/hotline/*. For questions on the applicability of provisions contained in 40 CFR part 355 or on the contents of this document, contact: Sicy Jacob, Chemical Emergency Preparedness and Prevention Office (5104A), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460, Telephone: 202–564–8019; Fax: 202–564–8233; email: *jacob.sicy@epa.gov*.

SUPPLEMENTARY INFORMATION:

General Information

A. Affected Entities

Entities that may be affected by this action are those facilities subject to 40 CFR part 355, Emergency Planning and Release Notification.

B. How Can I Get Copies of This Document and Other Related Information?

1. Docket. EPA has established an official public docket for this action under Docket ID No. SFUND–2002–0009. You may also refer to Docket ID No. 300–PQ–R2 for any technical documents referenced in the preamble to this document. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. The public docket does not include Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1742, and the telephone number for the Superfund Docket is (202) 566–0276.

2. *Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket identification number.

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I. Introduction and Background

A. Statutory Authority

This final rule is issued under sections 302 and 328 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA).

B. Background

On October 17, 1986, the President signed into law the Superfund Amendments and Reauthorization Act of 1986 ("SARA"). Public Law 99–499 (1986). Title III of SARA established a program designed to require state and local planning and preparedness for spills or releases of hazardous substances and to provide the public and local governments with information concerning potential chemical hazards in their communities. This program is codified as the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11001–11050.

EPCRA required EPA to publish a list of Extremely Hazardous Substances (EHS) and to establish threshold planning quantities for each of these EHSs. Under EPCRA section 302, a facility which has present an EHS in excess of its threshold planning quantity (TPQ) must notify the State emergency response commission and local emergency planning committee as well as participate in local emergency planning activities.

The EHS list was established by EPA to identify chemical substances which could cause serious irreversible health effects from accidental releases (51 FR 13378). The EHS list and its TPQs are intended to help communities focus on the substances and facilities of the most immediate concern for emergency planning and response.

The TPQs are not absolute levels above which the EHS are dangerous and below which they pose no threat at all. The TPQs provide a starting point for identification of facilities to community response planners so that they can determine whether or not these facilities pose a potential problem in the event of an accidental release. EPA encourages communities to go beyond the EHS list when evaluating the hazards of facilities

in their community, in that facilities handling chemicals not on the EHS list could be as hazardous as those handling EHSs.

1. Regulatory Background

The EHS list and their TPQs are codified in 40 CFR part 355, appendices A & B. EPA's explanation for the methodologies used to determine whether to list a substance as an EHS and for deriving the TPQs is found in preambles to the **Federal Register** notices which promulgated these rules and in technical support documents in the rulemaking records. The relevant notices were published in the **Federal Register** on November 17, 1986 (51 FR 41570) and April 22, 1987 (52 FR 13378).

EPA first published the EHS list and TPQs along with the methodology for determining TPQ in the November 17, 1986 interim final rule. In the April 22, 1987 final rule, EPA made a number of revisions. Among other things, the April 1987 rule republished the EHS list, with the addition of four new chemicals and revised the methodology for determining some TPQs. EPA has since received several petitions to amend the EHS list.

2. Summary of October 1994 Proposed Rulemaking

In the October 12, 1994 (59 FR 51816) proposed rulemaking, EPA responded to seven petitions requesting action on substances listed as EHSs. Among these petitions, Hüls America Inc. petitioned EPA to delist isophorone diisocyanate (IPDI) (CAS No. 4098–71–9). EPA denied the petition to delist IPDI because it meets the criteria for an EHSs. However, in considering this petition, EPA noted that the TPQ had been determined based on a mistaken assumption that IPDI is a reactive solid at standard temperature, when in fact it is a liquid and not highly reactive. Accordingly, using the methodology for calculating TPQs for liquids, EPA proposed in 1994 to raise the TPQ for IPDI from 100 to 1,000 pounds, even though Hüls America did not request this change in their petition.

As a result of EPA's action, Hüls America filed a lawsuit in federal court challenging EPA's denial of the delisting petition for IPDI. The Agency's decision not to delist IPDI was upheld by the United States Court of Appeals for the District of Columbia Circuit (DC Cir.) in *Hüls America* v. *Browner*, 83 F.3d 445 (1996). Accordingly, today's rulemaking does not address any issues regarding whether IPDI should be removed from the EHS list under EPCRA, but is limited solely to the appropriateness of the TPQ for IPDI.

II. EPA's Methodology for Establishing TPQs for Liquids

The TPQs developed for EHSs are based on a ranking of the EHSs according to their potential to become airborne and disperse and their toxicological properties, with adjustments based on chemical reactivity and other factors. The Immediately Dangerous to Life and Health (IDLH) level developed by the National Institute of Occupational Safety and Health (NIOSH), or an approximation of the IDLH based on animal toxicity data, is used as an index of toxicity while the physical state and volatility of the substance are used to derive an index of the chemical's potential to become airborne and disperse. These two indices are combined to produce an overall risk score or "ranking factor" defined as IDLH/V, where V is the index of potential to become airborne and disperse. TPQs are then assigned to groups of EHSs according to their relative ranking. The lowest rank (highest concern) is assigned low quantities and the highest rank (lowest concern) is assigned high quantities.

The index of potential to become airborne and disperse (V) is derived using the physical state of the substance and a measure of its volatility. For EHSs that are gases at ambient conditions and powdered solids with a particle size less than 100 micron, V is assumed to have a value of 1, indicating that in an accidental release, the chemical could easily become airborne and disperse. Solids in non-powdered form are assigned the highest TPQ meaning that chemicals in this physical state are not likely to become airborne and disperse.

For liquid EHSs, V is derived from the rate of volatilization expected from a spill of the liquid at its boiling point. The rate of volatilization is driven by the molecular weight of the substance and its boiling point temperature as in the following equation:

$$V = 1.6M^{0.67}/(T + 273)$$

where M is the molecular weight of the substance and T is the boiling temperature (°C). Note that for liquids with low boiling points (volatile liquids), V will approach 1 (more like a gas), while high boiling liquids have a V much less than 1.

The Agency could have evaluated the rate of volatilization from a spill of the liquid at ambient conditions rather than at the liquid's boiling point. Typically, to calculate the rate of volatilization of a liquid at ambient conditions, an ambient temperature must be chosen and the liquid's vapor pressure at that ambient temperature must be known. Chemical reference books often publish the vapor pressure for many common substances at 20 or 25 °C. However, some of the liquids on the EHS list either have a vapor pressure at a different temperature or they have no published vapor pressure. The Agency could have estimated or calculated vapor pressures for these substances but the accuracy of such estimates or calculations could be questioned. A more critical question is the choice of an appropriate ambient temperature. Ambient temperatures vary widely across the United States and an accidental release scenario could involve heat from, for example, a loss of reactor cooling or from a fire. The choice of an appropriate ambient temperature would be influenced by site-specific or release scenario specific factors. Since the Agency needed to apply a methodology uniformly to all liquid EHSs rather than chemical-by-chemical or site-by-site, the Agency therefore chose to evaluate the rate of volatilization using the substance's boiling point. All of the liquids on the EHS list have a published boiling point.

As noted above, once V is determined, the "ranking factor" is calculated from IDLH/V. If an IDLH value is not available, as is the case for most of the EHSs, EPA uses an IDLH equivalent value estimated from acute animal toxicity data. Data such as the lowest lethal airborne concentration (LC_{LO}), lethal airborne concentration for 50% of the test animals (LC_{50}), lowest lethal dose (LD_{LO}), or lethal dose for 50% of the test animals (LD_{50}) are used. NIOSH has indicated that the IDLH is most similar to the LC_{LO}; the other toxicity data needs to be adjusted and converted to an airborne dose comparable to an IDLH as follows: (1) Estimated IDLH = $LC_{50} \times 0.1$; (2) estimated IDLH = $LD_{50} \times 0.01$; and (3) estimated IDLH = $LD_{LO} \times 0.1$.

So, for each liquid, gas, and solid on the EHS list, EPA calculates the ranking factor as described above. Once all the chemicals are ranked, they are grouped by orders of magnitude of ranking factor and threshold quantities are assigned to these groups. The table below shows the ranking factor and the threshold quantities assigned to them. (Source: Threshold Planning Quantities Technical Support Document, April 7, 1987).

Ranking factor	Threshold quantity (lb)
$< 1 \times 10^{-3}$	1
$\geq 10^{-3}$ to $< 10^{-2}$	10
$\geq 10^{-2}$ to $< 10^{-1}$	100
$\geq 10^{-1}$ to < 1	500
≥ 1 to < 10	1,000 a
≥ 10	10,000

Since there was no IDLH value available for IPDI at the time the EHS list was developed (and there still is not one), EPA estimates the IDLH equivalent for IPDI by multiplying its LC_{50} of 0.12 mg/l over a 4-hour exposure period by 0.1. This results in an IDLH value of 0.012 mg/l. To calculate V, EPA uses the boiling point for IPDI of 350 degrees Centigrade and a molecular weight of 222 g/mole in the above equation to obtain 0.096. Then the index value is derived by dividing the level of concern (0.012) by the V factor (0.096) to obtain 0.13. Using the ranking factor value for IPDI, of 0.13, and the table above, the TPQ value should be 500 pounds.

III. Explanation of the Error in the October 1994 Proposed Rule

As part of the Agency's review of the petition to delist IPDI from the EHS list, EPA discovered that IPDI was mistakenly listed as a reactive solid, as opposed to a liquid. As a result, EPA recalculated IPDI's ranking factor using the equation listed in the previous section of this preamble and proposed in October 1994, to raise the TPQ from 100 to 1,000 pounds.

During the process of finalizing the rule, EPA reviewed all documents and memos related to the October 1994 proposed rule. During the review, EPA discovered that an error was made in reading the table of ranking factors and the corresponding threshold quantities. To be certain, EPA again reviewed IPDI's physical/chemical properties and re-calculated the ranking factor. The IDLH, V factor, and ranking factor were calculated correctly in the 1994 proposed rule, however, the Agency incorrectly identified the TPQ for IPDI; the proposal should have stated 500 pounds instead of 1,000 pounds. EPA is now finalizing the TPQ for IPDI to the correct value of 500 pounds.

On February 27, 2002, EPA sent a letter to Degussa Corporation (successor to "Hüls America, Inc.") informing them of the error and provided them an additional opportunity to submit comments. The letter explained the error made in the 1994 proposal and discussed the correct TPQ value. Degussa stated that they do not have any additional comments other than those submitted in response to the 1994 proposal. Accordingly, below, EPA responds to those comments filed by Hüls America in 1994.

IV. Response to Comments on the October 12, 1994 Proposed Rule

EPA received comments only from Hüls America. While Hüls America disagreed with EPA's decision to deny the petition to delete IPDI from the EHS list, the company acknowledged that the issue would be addressed in the litigation. Since the listing of the IPDI has been upheld by the court, this notice will not deal with that issue.

With respect to the TPQ for IPDI, Hüls America argues that the highest TPQ category of 10,000 pounds should be assigned. This is because IPDI is non-volatile and is toxic only at levels well above its saturated vapor concentration. Because EPA has not considered relative vapor pressure in calculating TPQs for such non-volatile compounds, the TPQs bear no relationship to the very low potential for compounds to disperse beyond a facility boundary. Therefore, IPDI, which has a very low vapor pressure is unlikely to present any risk at the fenceline in the event of a release. The commenter also disagreed with EPA's TPQ methodology, particularly with respect to EPA's assumption that dispersion is relatively similar from chemical to chemical. The commenter stated that the aerosol acute toxicity data do not support the need to set the TPQ for IPDI below 10,000 pounds. In fact, Hüls argues that because IPDI's toxicity was determined using an aerosol form of the chemical, the dispersability of IPDI for calculating the TPQ should be based on the aerosol form rather than on liquid volatility. The commenter also stated that IPDI is manufactured and processed in closed vessels which are not under pressure. So, there is less likelihood that accidents may occur.

EPA disagrees with Hüls' assertion that it did not consider relative vapor pressure and that the TPQs for non-volatile compounds such as IPDI bear no relationship to the very low potential for these compounds to disperse beyond a facility boundary as a result of a spill or release. In general, non-volatile liquid chemicals have relatively low vapor pressure and relatively high boiling points. These substances are not as likely as volatile liquids to disperse beyond a facility boundary. As described above, EPA uses the liquid boiling point to calculate a V factor which is used as a relative measure of the ability of the substance to become airborne and disperse downwind. Non-volatile substances with high boiling points will give a small V factor which generates a larger ranking factor than volatile substances with a large V factor. The V factor is likely to be the same using either the substance's boiling point or ambient vapor pressure. The larger the ranking factor, the greater the TPQ. Therefore, a large TPQ would reflect a relative inability of a substance to travel off-site.

EPA believes that boiling point is a reflection of relative vapor pressure since non-volatile liquids have a low vapor pressure and a correspondingly high boiling point while volatile liquids have a high vapor pressure and a correspondingly low boiling point. Of the 183 liquid chemicals on the EHS list, only 18 chemicals have less than or the same vapor pressure as IPDI, and only 17 chemicals have higher or the same boiling point as IPDI. Therefore, when compared to the other chemicals on the EHS list, the ability of IPDI to disperse is relatively the same when considering either vapor pressure (as the petitioner requests) or boiling point (as the methodology now considers). For this reason, changing the methodology from boiling point to vapor pressure will not likely have a significant impact on IPDI's rank in comparison to other chemicals and consequently, its TPQ. While both of these factors demonstrate that IPDI under standard temperatures and pressures is less likely to disperse (relative to the other liquids on the EHS list), its TPQ is based on its boiling point and its acute toxicity (not by boiling point or toxicity alone) like other listed liquids.

EPA also disagrees that its TPQ methodology is improper, particularly with respect to the assumption that dispersion is relatively similar from chemical to chemical. EPA recognizes that once airborne, fine powders, aerosols, mists, or dense or lighter than air vapor clouds or gases may disperse differently from one another, depending on the density and concentration of the substance in the air, the air temperature, humidity, and other chemical- and dispersion-specific factors. A rigorous analysis of the unique dispersion characteristics could be conducted for each listed EHS substance. However, such an analysis is highly influenced by site-specific factors such as meteorology, terrain, and the accidental release scenario. Since the Agency does not have site-specific data for all sites potentially handling the EHS substances and a methodology for determination of the TPQ needs to be uniformly applied, the Agency assumed, that for purposes of a relative ranking, that the airborne dispersion of particles and vapors will likely be similar across the range of

listed gases, liquids and solids that become airborne.

EPA also notes that it does not use only dispersion potential or only toxicity to determine the TPQ. Instead, the method that EPA chose to establish TPQs for substances on the EHS list uses a combination of the toxicity of the chemical and the potential for these compounds to disperse beyond the facility boundary. Further, EPA did not assign TPQs based on any particular accident scenario or any specific handling situation. Instead, EPA chose to rank the chemicals against each other to get a relative idea of the potential accidental release significance or hazard associated with that chemical; a chemical with a "low" rank is more hazardous than one with a "high" rank ("hazard" being a combination of toxicity and dispersion potential). EPA chose not to rank only by toxicity because a highly toxic chemical such as IPDI (a non-volatile substance) would be assigned a very low TPQ while a slightly less toxic but volatile substance would be assigned a greater TPQ.

Hüls also argues that because IPDI's toxicity was determined using an aerosol form of the chemical, the dispersion factor portion of the TPQ should consider the aerosol form rather than liquid volatilization based on boiling point. The Agency disagrees with this comment. Substances were added to the EHS list if dermal, oral, or inhalation toxicity test results meet certain toxicity criteria. While it is likely that toxic gases are listed because of inhalation toxicity, liquids and solids could be listed not only because of inhalation toxicity but also dermal or oral toxicity. In an accidental release scenario, hazardous chemicals could be dispersed in many ways generating human exposure, potentially via all three pathways (*e.g.* via inhalation, oral or dermal exposure). Consequently, for purposes of determining the TPQ, the Agency chose to focus on the substance's physical state to determine the likely route of exposure that might result from an accidental release rather than the state of the substance used for toxicity testing. In other words, gases and liquids would become airborne due to volatilization while solids become airborne due to the force of an event such as an explosion. Certainly, liquids could become airborne as a result of an explosion generating an exposure not only to vapor but to aerosols that would be generated by the force of that explosion. If the Agency had used this approach to determine dispersability, all liquid substances would essentially have the same dispersion potential and would be ranked by their toxicity. In this case, the TPQ for IPDI would end up being very low due to its high acute toxicity level in comparison to other liquids. EPA notes that Hüls' comment does not suggest a way to determine a relative ranking using an aerosol form, but simply argues that there is no basis for a TPQ of anything less than the maximum of 10,000 pounds. In fact, there is no basis for a TPQ of 10,000 pounds while there is ample toxicity data to suggest a much lower TPQ.

EPA acknowledges that releases of IPDI, and any other chemical on the EHS list, will not always result in an off-site consequence. However, since the requirement under EPCRA section 302 is for facilities to be included in the local preparedness efforts, the level of effort necessary for the facility to comply with section 302 is up to local planners. It is not possible for EPA to determine how all of the chemicals on the EHS list will behave during all potential processing and accidental release scenarios (including the chemical being involved in a building fire or explosion). EPA agrees that test data may be obtained by exposing the chemical to extreme conditions, however, these results would demonstrate that IPDI can be toxic under certain circumstances at relatively low concentration levels. TPQs including that for IPDI, are set based on toxicity and ability to disperse, relative to the other chemicals on the EHS list. While EPA takes toxicity and the chemical's ability to be dispersed into account in determining the TPQ, EPA believes the actual threat of off-site consequences posed by the actual processing conditions at the facility is best determined at the local level. If it is extremely unlikely that chemicals at a specific facility could cause off-site impacts, the local community may request little effort from the facility. Site specific factors (including whether the chemical is processed under high pressures and temperatures) can be discussed at this level.

The petitioner has also argued that since IPDI is manufactured and processed in closed vessels which are not under pressure, there is virtually no likelihood that it would disperse beyond the site of release. EPA disagrees. Even if Hüls' America does manufacture or process in closed vessels which are not under pressure, there may be some end users of this chemical that may use it for other manufacturing processes which may be at high pressure or temperature or the closed vessels could be exposed to fire. EPA is not saying that the TPQ that is now being set for IPDI (500 pounds) or any quantity for that matter, will definitely travel off-site and cause major consequences. As EPA stated in the April 1987 final rule and the technical support documents supporting that rule, TPQs are for reporting purposes only, in other words, to provide information to local planning committees to focus their emergency planning and response efforts.

It is important to note that the Agency considered other methods for the development of the threshold planning quantities. After considerable analysis and review of public comments on the proposed rule, the Agency chose to develop the TPQs using a relative ranking method that considers the toxicity and the chemical's ability to become airborne. The other methods had more limitations than this approach. The first method considered involved predicting a specific quantity for each chemical that, if accidentally released, would result in significant acute health effects at a fixed distance from the release site. However, this approach is affected greatly by site-specific factors, such as the potential release scenario, weather and dispersion conditions, and processing conditions. Therefore, the Agency decided not to adopt this approach. Another method that the Agency considered was to assign categories of threshold planning quantities to groups of chemicals ranked by their toxicity. As noted above, those chemicals that are highly toxic (such as IPDI) and relatively non-volatile could be assigned a very low TPQ while a slightly less toxic but volatile substance would be assigned a greater TPQ. Since this does not seem appropriate from an emergency planning and preparedness perspective, the Agency rejected this approach. One last method considered was to assign a default quantity of 2 pounds for each EHS. If the Agency did not take any action to assign a TPQ for an EHS, the statutory threshold of 2 pounds would have been effective. Of these four methods, the Agency believes that the relative ranking method using the toxicity of the chemical, its molecular weight and boiling point to rank and assign a threshold planning quantity, was the most appropriate. For a more detailed explanation of each of these methods, see the November 17, 1986 interim final rule, the April 22, 1987 final rule, and the technical support documents.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency

must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. This action affects only one chemical and in fact, reduces the burden on those facilities that handle IPDI in small quantities.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This final rule will relieve burden for some facilities that handle IPDI in small quantities. Currently, the threshold planning quantity for IPDI is 100 pounds. It is now being raised to 500 pounds. Therefore, we conclude that this action does not impose any new information collection burden, rather, it will relieve some burden.

This rule will not provide a significant amount of burden reduction, however, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR Part 355 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0092, (EPA ICR No. 1395.05). Copies of the ICR document(s) may be obtained from Susan Auby, by mail at U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, by email at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the internet at *http://www.epa.gov/icr*. Include the ICR and /or OMB number in any correspondence.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that is defined by the Small Business Administration by category of business using North American Industrial Classification System (NAICS) and codified at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action will relieve some small entities handling IDPI in small quantities.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. The revised threshold for IDPI, which will raise it from 100 pounds to 500 pounds, may relieve many small entities that handle this chemical in small amounts from the reporting requirement. We have therefore concluded that this rule will relieve regulatory burden for affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must

provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. This rule will provide burden relief, and doesn't impose additional costs to State, local, or tribal governments, or to the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The rule will provide burden relief to regulated entities.

E. Executive Order 13132: Federalism

Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule does not impose a substantial economic burden on state and local governments, nor would it restrict state and local governments from establishing other more stringent, regulations. Thus, Executive Order 13132 does not apply to this rule.

The purpose of this rule is to correct the TPQ for IPDI based on EPA's existing methodology. This rule relieves some burden on the local governments in preparing emergency response plans since fewer facilities may be now subject to reporting this chemical. This action does not prevent any state governments from enforcing more stringent standards for this chemical.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop "an accountable process to ensure meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

The purpose of this rule is to correct the TPQ for IPDI based on EPA's existing methodology. This rule relieves some burden on tribal governments in preparing emergency response plans since fewer facilities may be now subject to reporting this chemical. This action does not prevent tribal governments from enforcing more stringent standards for this chemical.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

The Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children; and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because (a) it is not an economically significant regulatory action as defined by Executive Order 12866 and (b) the environmental health or safety risks addressed by this action do not have a disproportionate effect on children.

EPA is not modifying its methodology for establishing threshold planning quantities. The Agency is correcting the TPQ for IPDI based on its existing methodology. Therefore, this action does not have a disproportionate effect on children. As previously described, the TPQ drives a reporting requirement; such reporting provides chemical hazard information for emergency preparedness and planning. Raising the TPQ for IPDI may result in less overall reporting information for IPDI. However, in the context of all information collected, IPDI information will be properly scaled to other hazards that may be present in a community allowing a community to properly focus its emergency preparedness and planning efforts as needed. Therefore, this action does not have a disproportionate effect on children.

H. Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve technical standards. EPA is establishing the correct TPQ for IPDI using existing methodologies. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. In today's action, the Agency is correcting the TPQ for IPDI based on its existing methodology, thereby providing burden relief to those facilities that handle IPDI in small quantities. EPA is not changing its methodology for establishing threshold planning quantities. Any local effects must be considered on a case-by-case basis at local communities. State and local officials will continue to get information on this chemical from facilities, but can better focus on chemicals that are more hazardous. Therefore, this particular action will not have any impact on any minority or low-income populations.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective October 8, 2003.

List of Subjects in 40 CFR Part 355

Environmental Protection, Air pollution control, Chemicals, Hazardous substances, Reporting and recordkeeping requirements, Superfund.

Dated: September 2, 2003.

Marianne Lamont Horinko,

Acting Administrator.

■ For the reasons set out in the preamble, part 355 of title 40 of the Code of Federal Regulations is amended as follows:

PART 355—EMERGENCY PLANNING AND NOTIFICATION

■ 1. The authority citation for part 355 continues to read as follows:

Authority: 42 U.S.C. 11002, 11004, and 11048.

Appendix A—[Amended]

■ 2. In Appendix A the table is amended by revising the entry for CAS No. "4098–71–9" (chemical name—Isophorone Diisocyanate) to read as follows:

APPENDIX A TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[Alphabetical Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
* * *	* * *		*	*
4098–71–9	Isophorone Diisocyanate.		100	500
* *	* * *		*	*

■ 3. In Appendix B the table is amended by revising the entry for CAS No. "4098—71–9" (chemical name—isophorone diisocyanate) to read as follows:

APPENDIX B TO PART 355—THE LIST OF EXTREMELY HAZARDOUS SUBSTANCES AND THEIR THRESHOLD PLANNING QUANTITIES

[CAS No. Order]

CAS No.	Chemical name	Notes	Reportable quantity* (pounds)	Threshold planning quantity (pounds)
* *	* * *		*	*
4098–71–9	Isophorone Diisocyanate.		100	500
* *	* * *		*	*

[FR Doc. 03–22770 Filed 9–5–03; 8:45 am]

BILLING CODE 6560–50–U

Federal Register

Monday,
September 8, 2003

Part III

Department of the Treasury

Internal Revenue Service

26 CFR Part 1

Special Depreciation Allowance; Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9091]

RIN 1545–BC19

Special Depreciation Allowance

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains regulations relating to the depreciation of property subject to section 168 of the Internal Revenue Code (MACRS property) and the depreciation of computer software subject to section 167. Specifically, these regulations provide guidance regarding the additional first year depreciation allowance provided by sections 168(k) and 1400L(b) for certain MACRS property and computer software. The regulations reflect changes to the law made by the Job Creation and Worker Assistance Act of 2002 and the Jobs and Growth Tax Relief Reconciliation Act of 2003. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Dates:* These regulations are effective September 8, 2003.

Applicability Dates: For dates of applicability, *see* §§ 1.167(a)–14T(e), 1.168(d)–1T(d), 1.168(k)–1T(g), 1.169–3T(g), and 1.1400L(b)–1T(g).

FOR FURTHER INFORMATION CONTACT: Douglas Kim, (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 to provide regulations under sections 168(k) and 1400L(b) of the Internal Revenue Code (Code). Sections 168(k) and 1400L(b) were added to the Code by, respectively, sections 101 and 301(a) of the Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21), and were modified by section 201 of the Jobs and Growth Tax Relief Reconciliation Act of 2003, Public Law 108–27 (117 Stat. 752).

Explanation of Provisions

Background

Section 167 allows as a depreciation deduction a reasonable allowance for the exhaustion, wear, and tear of property used in a trade or business or held for the production of income. The depreciation allowable for tangible, depreciable property placed in service after 1986 generally is determined under section 168 (MACRS property). The depreciation allowable for computer software that is placed in service after August 10, 1993, and is not an amortizable section 197 intangible is determined under section 167(f)(1).

Section 168(k)(1) allows a 30-percent additional first year depreciation deduction for qualified property acquired after September 10, 2001, and, in most cases, placed in service before January 1, 2005. Section 168(k)(4) allows a 50-percent additional first year depreciation deduction for 50-percent bonus depreciation property acquired after May 5, 2003, and, in most cases, placed in service before January 1, 2005. Section 1400L(b) allows a 30-percent additional first year depreciation deduction for qualified New York Liberty Zone property (Liberty Zone property) acquired after September 10, 2001, and placed in service before January 1, 2007 (January 1, 2010, in the case of qualifying nonresidential real property and residential rental property).

Scope

The regulations provide the requirements that must be met for depreciable property to qualify for the additional first year depreciation deduction provided by sections 168(k) and 1400L(b). Further, the regulations instruct taxpayers how to determine the additional first year depreciation deduction and the amount of depreciation otherwise allowable for this property.

Property Eligible for the Additional First Year Depreciation Deduction

The regulations provide that depreciable property must meet four requirements to be qualified property under section 168(k)(2) (property for which the 30-percent additional first year depreciation deduction is allowable) or 50-percent bonus depreciation property under section 168(k)(4) (property for which the 50-percent additional first year depreciation deduction is allowable). These requirements are: (1) The depreciable property must be of a specified type; (2) the original use of the depreciable property must commence with the taxpayer after September 10, 2001, for qualified property or after May 5, 2003, for 50-percent bonus depreciation property; (3) the depreciable property must be acquired by the taxpayer within a specified time period; and (4) the depreciable property must be placed in service by a specified date. These requirements are more fully discussed below.

Property of a Specified Type

The regulations provide that qualified property or 50-percent bonus depreciation property must be one of the following: (1) MACRS property that has a recovery period of 20 years of less; (2) computer software as defined in, and depreciated under, section 167(f)(1); (3) water utility property as defined in section 168(e)(5) and depreciated under section 168; or (4) qualified leasehold improvement property depreciated under section 168. Because the additional first year depreciation deduction applies to MACRS property that is depreciated under the general depreciation system (GDS) or would be depreciated under the GDS but for an alternative depreciation system (ADS) election made by the taxpayer, the regulations provide that for purposes of determining the eligibility of MACRS property as qualified property or 50-percent bonus depreciation property, the recovery period applicable for the MACRS property under section 168(c) of the GDS is used regardless of any election made by the taxpayer to depreciate the class of property under the ADS of section 168(g). Further, with respect to qualified leasehold improvement property, the regulations define those improvements specified in section 168(k)(3)(B) that are not considered as qualified leasehold improvement property.

The regulations also provide that qualified property or 50-percent bonus depreciation property does not include: (1) property excluded from the application of section 168 as a result of section 168(f); (2) property that is required to be depreciated under the ADS; (3) any class of property for which the taxpayer elects not to deduct the 30-percent or 50-percent additional first year depreciation; or (4) qualified New York Liberty Zone leasehold improvement property as defined in section 1400L(c).

Property is required to be depreciated under the ADS if the property is described under section 168(g)(1)(A) through (D) or if other provisions of the Code require depreciation for the property to be determined under the ADS (for example, section 263A(e)(2)(A) or section 280F(b)(1)). Thus, MACRS property for which the taxpayer makes an election under section 168(g)(7) to depreciate the property under the ADS is eligible for the additional first year

depreciation deduction (assuming all other requirements are met).

With respect to the election out of the additional first year depreciation deduction, a taxpayer may elect out of the 30-percent additional first year depreciation deduction for any class of qualified property. For any class of 50-percent bonus depreciation property, a taxpayer may elect either to deduct the 30-percent, instead of the 50-percent, additional first year depreciation deduction or to deduct no additional first year depreciation deduction. The regulations provide the rules for making these elections and also define what is a class of property for purposes of the elections.

Original Use

Pursuant to section 168(k)(2)(A)(ii), the regulations provide that qualified property is property the original use of which commences with the taxpayer after September 10, 2001. Further, pursuant to section 168(k)(4)(B)(i), the regulations provide that 50-percent bonus depreciation property is property the original use of which commences with the taxpayer after May 5, 2003. The regulations provide that the original use generally means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Thus, new property initially used by a taxpayer for personal use and then subsequently converted by the taxpayer for use in its trade or business satisfies the original use requirement. However, new property acquired by a taxpayer for personal use and then subsequently acquired by a different taxpayer for use in its trade or business does not satisfy the original use requirement.

Likewise, additional capital expenditures incurred by a taxpayer to recondition or rebuild property acquired or owned by the taxpayer satisfies the original use requirement. However, the cost of reconditioned or rebuilt property acquired by the taxpayer does not satisfy the original use requirement. The question of whether property is reconditioned or rebuilt property is a question of fact. The regulations provide a safe harbor that property containing used parts will not be treated as reconditioned or rebuilt if the cost of the used parts is not more than 20 percent of the total cost of the property. *See* Rev. Rul. 68–111 (1968–1 C.B. 29).

The regulations also provide special rules for certain sale-leaseback transactions and syndication transactions. If qualified property is originally placed in service after September 10, 2001, or 50-percent bonus depreciation property is originally placed in service after May 5, 2003, by a person and the property is involved in a sale-leaseback transaction described in section 168(k)(2)(D)(ii), the taxpayer-lessor is considered the original user of the property. Likewise, if qualified property is originally placed in service by a lessor after September 10, 2001, or 50-percent bonus depreciation property is originally placed in service by a lessor after May 5, 2003, and is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor, and the user of the property does not change during this three-month period, the purchaser of the property in the last sale is considered the original user of the property.

The regulations also provide that if in the ordinary course of its business a taxpayer sells fractional interests in qualified property or 50-percent bonus depreciation property to unrelated third parties, each first fractional owner of the property is considered as the original user of its proportionate share of the property. Furthermore, if a taxpayer uses the qualified property or the 50-percent bonus depreciation property before all of the fractional interests are sold and the property continues to be held primarily for sale by the taxpayer, the original use of any fractional interest sold to an unrelated third party subsequent to the taxpayer's use begins with the first purchaser of that interest.

Acquisition of Property

Pursuant to section 168(k)(2)(A)(iii), the regulations provide that qualified property is property: (1) Acquired by the taxpayer after September 10, 2001, and before January 1, 2005, but only if no written binding contract for the acquisition of the property was in effect before September 11, 2001; or (2) acquired by the taxpayer pursuant to a written binding contract that was entered into after September 10, 2001, and before January 1, 2005. Further, pursuant to section 168(k)(4)(B)(ii), the regulations provide that 50-percent bonus depreciation property is property acquired by the taxpayer after May 5, 2003, and before January 1, 2005, but only if no written binding contract for the acquisition of the property was in effect before May 6, 2003.

The regulations define a binding contract as any contract that is enforceable under State law against the taxpayer or a predecessor, and does not limit damages to a specified amount. However, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. Further, the fact that there will be little or no damages because the contract price does not significantly differ from the fair market value will not be taken into account in determining whether a contract limits damages.

The regulations also provide that a contract is binding even if the contract is subject to a condition, as long as the condition is not within the control of either one of the parties or a predecessor. Further, an option to either acquire or sell property is not treated as a binding contract.

The regulations also provide that a binding contract does not include a supply agreement or similar agreement, if the amount and design specifications of the property to be purchased have not been specified. In this case, the contract is not treated as a binding contract until both the amount and design specifications are specified.

With respect to self-constructed property, the regulations provide that the property acquisition requirement is met if a taxpayer manufactures, constructs, or produces qualified property or 50-percent bonus depreciation property for its own use and such manufacturing, construction, or production began after, respectively, September 10, 2001, or May 5, 2003, and before January 1, 2005. Further, property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract that is entered into before the manufacture, construction, or production of the property begins is considered to be manufactured, constructed, or produced by the taxpayer.

The regulations also define when construction begins. Construction of qualified property or 50-percent bonus depreciation property begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature has begun depends on the facts and circumstances. The regulations, however, provide a safe harbor that physical work of a significant nature has begun when the taxpayer incurs or pays more than 10 percent of the total cost of the property (excluding the cost of any land and preliminary activities).

The regulations also provide rules for a contract to acquire, or for the manufacture, construction, or production of, a component of the larger self-constructed property. If a binding contract to acquire a component was in

effect, or the manufacture, construction, or production of a component began, before September 11, 2001, for qualified property or before May 6, 2003, for 50-percent bonus depreciation property, the component does not qualify for the additional first year depreciation deduction. Similarly, if a binding contract to acquire a component was in effect, or the manufacture, construction, or production of a component began, before September 11, 2001, for qualified property or before May 6, 2003, for 50-percent bonus depreciation property, but the manufacture, construction, or production of the larger self-constructed property began after September 10, 2001, for qualified property, or after May 5, 2003, for 50-percent bonus depreciation property, and before January 1, 2005, the larger self-constructed property qualifies for the additional first year depreciation deduction (assuming all other requirements are met) but the component does not. Additionally, if the manufacture, construction, or production of the larger self-constructed property began before September 11, 2001, for qualified property or before May 6, 2003, for 50-percent bonus depreciation property, the larger self-constructed property and any acquired or self-constructed component related to the larger self-constructed property do not qualify for the 30-percent or 50-percent additional first year depreciation deduction. However, if the binding contract to acquire the component was entered into, or the manufacture, construction, or production of the component began, after September 10, 2001, for qualified property, or after May 5, 2003, for 50-percent bonus depreciation property, and before January 1, 2005, but the manufacture, construction, or production of the larger self-constructed property begins after December 31, 2004, the component qualifies for the additional first year depreciation deduction (assuming all other requirements are met) but the larger self-constructed property does not.

The regulations provide rules for when certain acquired or self-constructed property will not meet the acquisition date requirement (disqualified transactions). When the user of property as of the date on which the property was originally placed in service, or a related party to the user, acquired, or had a written binding contract in effect for the acquisition of, the property at any time before September 11, 2001, or before May 6, 2003, as applicable, the property does not qualify for the 30-percent or 50-percent additional first year depreciation deduction. Similarly, property manufactured, constructed, or produced for the taxpayer or a related party does not qualify for the 30-percent or 50-percent additional first year depreciation deduction if the manufacture, construction, or production began at any time before September 11, 2001, or before May 6, 2003, as applicable. For this purpose, persons are related if they have a relationship specified in section 267(b) or 707(b).

Placed-in-Service Date

Pursuant to section 168(k)(2)(A)(iv) and 168(k)(4)(B)(iii), the regulations provide that qualified property or 50-percent bonus depreciation property is property that is placed in service by the taxpayer before January 1, 2005. However, the placed in service date of January 1, 2005, is extended for one year to January 1, 2006, for property described in section 168(k)(2)(B).

The regulations also provide special rules for sale-leaseback transactions and syndication transactions. If qualified property is originally placed in service after September 10, 2001, or 50-percent bonus depreciation property is originally placed in service after May 5, 2003, by a person and is involved in a sale-leaseback transaction described in section 168(k)(2)(D)(ii), the property is treated as originally placed in service by the taxpayer-lessor not earlier than the date on which the property is used by the lessee under the sale-leaseback. Likewise, if qualified property is originally placed in service by a lessor after September 10, 2001, or 50-percent bonus depreciation property is originally placed in service by a lessor after May 5, 2003, and is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor, and the user of the property does not change during this three-month period, the property is treated as originally placed in service not earlier than the date of the last sale by the purchaser of the property in the last sale.

Special rules also are provided for certain nonrecognition transactions. In the case of a technical termination of a partnership under section 708(b)(1)(B), qualified property or 50-percent bonus depreciation property placed in service by the terminated partnership during the taxable year of termination is treated as originally placed in service by the new partnership on the date the qualified property or the 50-percent bonus depreciation property is contributed by the terminated partnership to the new partnership. Additionally, qualified property or 50-percent bonus depreciation property transferred in a "step-in-the-shoes" transaction described in section 168(i)(7) in the taxable year the qualified property or the 50-percent bonus depreciation property is placed in service by the transferor is treated as originally placed in service on the date the transferor placed the qualified property or the 50-percent bonus depreciation property in service.

Liberty Zone Property

Generally, the requirements for determining the eligibility of property for the additional first year depreciation deduction for Liberty Zone property provided by section 1400L(b) are similar to the requirements for the 30-percent additional first year depreciation deduction for qualified property provided by section 168(k)(1). There are, however, some differences that are discussed below.

The regulations provide that Liberty Zone property includes the same property that is described as qualified property or 50-percent bonus depreciation property for purposes of section 168(k). In addition, Liberty Zone property includes nonresidential real property or residential rental property to the extent such property rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of the terrorist attacks of September 11, 2001. Property is treated as replacing destroyed or condemned property if, as part of an integrated plan, the property replaces real property that is included in a continuous area that includes real property destroyed or condemned. Real property is considered to have been destroyed or condemned only if an entire building or structure was destroyed or condemned as a result of the terrorist attacks of September 11, 2001.

While Liberty Zone property includes the same property that is described as qualified property or 50-percent bonus depreciation property for purposes of section 168(k), only one additional first year depreciation deduction is allowable for the property. Thus, pursuant to section 1400L(b)(2)(C)(i), the regulations provide that if the 30-percent or 50-percent additional first year depreciation deduction under section 168(k) applies to the property, it is not Liberty Zone property.

Pursuant to section 1400L(b)(2)(A)(ii), property is Liberty Zone property if substantially all of the use of the property is in the Liberty Zone and the property is used in the active conduct of a taxpayer's trade or business in the

Liberty Zone. The regulations provide that the term *substantially all* means 80 percent or more.

In addition to the application of the original use rules for qualified property, the regulations provide that used property will satisfy the original use requirement for Liberty Zone property if the used property has not been previously used within the Liberty Zone.

Pursuant to section 1400L(b)(2)(A)(iv), the regulations provide that Liberty Zone property is property that is acquired by the taxpayer by purchase after September 10, 2001, but only if no written binding contract for the acquisition of the property was in effect before September 10, 2001. The term *by purchase* is defined in section 179(d) and § 1.179–4(c). The regulations also provide that the binding contract rules and the disqualified transactions rules for qualified property apply to Liberty Zone property. The self-construction rules for qualified property also apply to self-constructed Liberty Zone property except that the requirement to begin the manufacture, construction, or production of the qualified property before January 1, 2005, does not apply to Liberty Zone property.

Finally, the regulations provide that Liberty Zone property generally must be acquired by a taxpayer after September 10, 2001, and placed in service by the taxpayer before January 1, 2007. However, qualifying nonresidential real property and residential rental property must be acquired by a taxpayer after September 10, 2001, and placed in service by the taxpayer before January 1, 2010.

Computation of Additional First Year Depreciation Deduction and Otherwise Allowable Depreciation

The allowable additional first year depreciation deduction for qualified property or Liberty Zone property is equal to 30 percent of the unadjusted depreciable basis (as defined in § 1.168(k)-1T(a)(2)(iii)) of the property. The allowable additional first year depreciation deduction for 50-percent bonus depreciation property is equal to 50 percent of the unadjusted depreciable basis (as defined in § 1.168(k)-1T(a)(2)(iii)) of the property. For qualified property or 50-percent bonus depreciation property described in section 168(k)(2)(B) (property having a longer production period), the unadjusted depreciable basis (as defined in § 1.168(k)-1T(a)(2)(iii)) of the property is limited to the property's basis attributable to manufacture, construction, or production of the property before January 1, 2005.

The additional first year depreciation deduction is allowed for both regular tax and alternative minimum tax purposes. However, for alternative minimum tax purposes, the amount of the additional first year depreciation deduction is based on the unadjusted depreciable basis of the property for alternative minimum tax purposes. The amount of the additional first year depreciation deduction is not affected by a taxable year of less than 12 months for either regular or alternative minimum tax purposes.

Before determining the amount of depreciation otherwise allowable for qualified property, 50-percent bonus depreciation property, or Liberty Zone property, the taxpayer must first reduce the unadjusted depreciable basis (as defined in § 1.168(k)-1T(a)(2)(iii)) of the property by the amount of the additional first year depreciation deduction allowed or allowable, whichever is greater (the remaining adjusted depreciable basis). Then, the remaining adjusted depreciable basis is depreciated using the applicable depreciation provisions of the Code for the property (that is, section 168 for MACRS property and section 167(f)(1) for computer software). This amount of depreciation is allowed for both regular tax and alternative minimum tax purposes, and is affected by a taxable year of less than 12 months. However, for alternative minimum tax purposes, the amount of depreciation allowed is determined by calculating the remaining adjusted depreciable basis of the property for alternative minimum tax purposes and using the same depreciation method, recovery period, and convention that applies to the property for regular tax purposes. If a taxpayer uses the optional depreciation tables in Rev. Proc. 87–57 (1987–2 C.B. 687) to compute depreciation for qualified property, 50-percent bonus depreciation property, or Liberty Zone property that is MACRS property, the regulations also provide that the remaining adjusted depreciable basis of the property is the basis to which the annual depreciation rates in those tables apply.

Special Rules

The regulations also provide rules for the following situations: (1) Qualified property, 50-percent bonus depreciation property, or Liberty Zone property placed in service and disposed of in the same taxable year; (2) redetermination of basis of qualified property, 50-percent bonus depreciation property, or Liberty Zone property; (3) recapture of additional first year depreciation for purposes of section 1245 and section 1250; (4) a certified pollution control facility that is qualified property, 50-percent bonus depreciation property, or Liberty Zone property; (5) like-kind exchanges and involuntary conversions of qualified property, 50-percent bonus depreciation property, or Liberty Zone property; (6) a change in use of qualified property, 50-percent bonus depreciation property, or Liberty Zone property; (7) the computation of earnings and profits; (8) the increase in the limitation of the amount of depreciation for passenger automobiles; and (9) the step-up in basis due to a section 754 election.

With respect to qualified property, 50-percent bonus depreciation property, or Liberty Zone property placed in service and disposed of in the same taxable year, the regulations provide that the additional first year depreciation deduction is not allowed. This rule is consistent with the general rule in § 1.168(d)-1(b)(3)(ii) for MACRS property placed in service and disposed of in the same taxable year. However, as previously discussed, the additional first year depreciation deduction is allowable for qualified property, 50-percent bonus depreciation property, or Liberty Zone property placed in service by a terminated partnership in the same taxable year in which a technical termination of the partnership occurs. In this case, the new partnership, and not the terminated partnership, claims the additional first year depreciation deduction. Similarly, the additional first year depreciation deduction is allowable for qualified property, 50-percent bonus depreciation property, or Liberty Zone property placed in service by a transferor in the same taxable year in which the property is transferred in a step-in-the-shoes transaction described in section 168(i)(7). In this case, the additional first year depreciation deduction for the transferor's taxable year in which the property is placed in service is allocated between the transferor and the transferee on a monthly basis. The allocation shall be made in accordance with the rules in § 1.168(d)-1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee.

The regulations also provide rules for a redetermination of basis of qualified property, 50-percent bonus depreciation property, or Liberty Zone property (for example, due to a contingent purchase price or a discharge of indebtedness). If the unadjusted depreciable basis of the property is redetermined by the date on which the property must be last placed in service to meet the placed-in-service date requirement in section 168(k)(2)(A)(iv), 168(k)(4)(B)(iii), or

1400L(b)(2)(A)(v), the additional first year depreciation deduction allowable for the property is redetermined. If the redetermination of basis occurs after that date, the additional first year depreciation deduction is not redetermined. The regulations instruct taxpayers how to determine the depreciation adjustment for an increase or decrease in basis. If there is an increase in basis, the taxpayer claims the additional first year depreciation deduction attributable to the increase in the taxable year in which the increase occurs. If there is a decrease in basis, the taxpayer includes in its income the excess additional first year depreciation deduction attributable to the decrease in the taxable year in which the decrease occurs.

Because the additional first year depreciation deduction is not a ratable method of computing depreciation, the regulations provide that the additional first year depreciation deduction is not a straight line method for purposes of section 1250. Thus, the additional first year depreciation deduction is an accelerated depreciation method for purposes of determining recapture under section 1250. For purposes of section 1245, all depreciation deductions are subject to recapture.

With respect to a certified pollution control facility that is qualified property, 50-percent bonus depreciation property, or Liberty Zone property, the regulations provide that the additional first year depreciation deduction is allowable in the facility's placed in service year even if the taxpayer elects to amortize the basis of the facility under section 169 in the placed-in-service year. The regulations also amend the regulations under section 169 to provide that the amortizable basis under section 169 must be reduced by the additional first year depreciation deduction allowed or allowable, whichever is greater, applicable to the facility.

With respect to MACRS property or computer software acquired in a like-kind exchange under section 1031 or as a result of an involuntary conversion under section 1033, the regulations provide that the carryover basis and the excess basis, if any, of the acquired MACRS property or acquired computer software are eligible for the additional first year depreciation deduction if the acquired MACRS property or acquired computer software is qualified property, 50-percent bonus depreciation property, or Liberty Zone property. However, if qualified property, 50-percent bonus depreciation property, or Liberty Zone property is placed in service and then disposed of in an exchange or involuntary conversion in the same taxable year, the unadjusted depreciable basis of the exchanged or involuntarily converted property is not eligible for the additional first year depreciation deduction.

The regulations also provide rules when the use of qualified property, 50-percent bonus depreciation property, or Liberty Zone property changes in the hands of the same taxpayer during the placed-in-service year or a subsequent taxable year. The regulations provide that no additional first year depreciation deduction is allowed for qualified property, 50-percent bonus depreciation property, or Liberty Zone property converted to personal use in the placed-in-service year. However, property converted to business or income-producing use is eligible for the additional first year depreciation deduction in the taxable year the property is converted to business or income-producing use (assuming all the requirements are met). With respect to a change in the use of depreciable property subsequent to the placed-in-service year, the regulations provide that the change in the use will not affect the determination of whether the property was eligible for the additional first year depreciation deduction in the taxable year the property was originally placed-in-service. Thus, if property is not qualified property in its placed-in-service year and a change in the use in a subsequent taxable year would result in the property being qualified property, no additional first year depreciation deduction is allowed for the property. Likewise, if property is qualified property in its placed-in-service year and a change in the use in a subsequent taxable year would result in the property no longer being qualified property, the additional first year depreciation deduction allowable for the property in its placed-in-service year is not redetermined.

Furthermore, the regulations provide that the additional first year depreciation deduction is not allowable for purposes of computing earnings and profits. Pursuant to section 168(k)(2)(E) and (4)(D), the regulations also provide the increase in the limitation under section 280F(a)(1) of the amount of depreciation for certain passenger automobiles that are qualified property or 50-percent bonus depreciation property. Finally, the regulations provide that any increase in basis of qualified property, 50-percent bonus depreciation property, or Liberty Zone property due to a section 754 election generally is not eligible for the additional first year depreciation deduction because any such increase in basis of property does not satisfy the original use requirement.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Douglas H. Kim, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.167(a)–14 is amended by:

■ 1. Revising paragraphs (b)(1) and (e)(2).

■ 2. Revising paragraph heading (e).

■ 3. Adding paragraph (e)(3).

The additions and revisions read as follows:

§ 1.167(a)–14 Treatment of certain intangible property excluded from section 197.

* * * * *

(b) * * *

(1) *In general.* [Reserved]. For further guidance, see § 1.167(a)–14T(b)(1).

* * * * *

(e) *Effective dates* * * *

(2) *Change in method of accounting.* [Reserved]. For further guidance, see § 1.167(a)–14T(e)(2).

(3) *Qualified property, 50-percent bonus depreciation property, qualified New York Liberty Zone property, or section 179 property.* [Reserved]. For further guidance, see § 1.167(a)–14T(e)(3).

■ **Par. 3.** Section 1.167(a)–14T is added to read as follows:

§ 1.167(a)–14T Treatment of certain intangible property excluded from section 197 (temporary).

(a) For further guidance, see § 1.167(a)–14(a).

(b) *Computer software*—(1) *In general.* The amount of the deduction for computer software described in section 167(f)(1) and § 1.197–2(c)(4) is determined by amortizing the cost or other basis of the computer software using the straight line method described in § 1.167(b)–1 (except that its salvage value is treated as zero) and an amortization period of 36 months beginning on the first day of the month that the computer software is placed in service. Before determining the amortization deduction allowable under this paragraph (b), the cost or other basis of computer software that is section 179 property, as defined in section 179(d)(1)(A)(ii), must be reduced for any portion of the basis the taxpayer properly elects to treat as an expense under section 179. In addition, the cost or other basis of computer software that is qualified property under section 168(k)(2) or § 1.168(k)–1T, 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)–1T, or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)–1T, must be reduced by the amount of the additional first year depreciation deduction allowed or allowable, whichever is greater, under section 168(k) or section 1400L(b) for the computer software. If costs for developing computer software that the taxpayer properly elects to defer under section 174(b) result in the development of property subject to the allowance for depreciation under section 167, the rules of this paragraph (b) will apply to the unrecovered costs. In addition, this paragraph (b) applies to the cost of separately acquired computer software if the cost to acquire the software is separately stated and the cost is required to be capitalized under section 263(a).

(b)(2) through (e)(1) For further guidance, *see* § 1.167(a)–14(b)(2) through (e)(1).

(e)(2) *Change in method of accounting. See* § 1.197–2(l)(4) for rules relating to changes in method of accounting for property to which § 1.167(a)–14T applies. However, see § 1.168(k)–1T(g)(4) or 1.1400L(b)–1T(g)(4) for rules relating to changes in method of accounting for computer software to which the third sentence in § 1.167(a)–14T(b)(1) applies.

(3) *Qualified property, 50-percent bonus depreciation property, qualified New York Liberty Zone property, or section 179 property.* This section also applies to computer software that is qualified property under section 168(k)(2) or qualified New York Liberty Zone property under section 1400L(b) acquired by a taxpayer after September 10, 2001, and to computer software that is 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003. This section also applies to computer software that is section 179 property placed in service by a taxpayer in a taxable year beginning after 2002 and before 2006. This section expires on September 8, 2006.

■ **Par. 4.** Section 1.168(d)–1 is amended by:

■ 1. Revising paragraph (b)(3)(ii).

■ 2. Paragraph heading (d) is revised and the text of paragraph (d) is redesignated as paragraph (d)(1).

■ 3. Adding paragraph (d)(2).

The additions and revisions read as follows:

§ 1.168(d)–1 Applicable conventions—half-year and mid-quarter conventions.

* * * * *

(b) * * *

(3) * * *

(ii) [Reserved]. For further guidance, see § 1.168(d)–1T(b)(3)(ii).

* * * * *

(d) *Effective dates*—(1) *In general.*

* * *

(2) *Qualified property, 50-percent bonus depreciation property, or qualified New York Liberty Zone property.* [Reserved]. For further guidance, *see* § 1.168(d)–1T(d).

■ **Par. 5.** Section 1.168(d)–1T is added to read as follows:

§ 1.168(d)–1T Applicable conventions—half-year and mid-quarter conventions (temporary).

(a) through (b)(3)(i) For further guidance, *see* § 1.168(d)–1(a) through (b)(3)(i).

(b)(3)(ii) The applicable convention, as determined under this section, applies to all depreciable property (except nonresidential real property, residential rental property, and any railroad grading or tunnel bore) placed in service during the taxable year, excluding property placed in service and disposed of in the same taxable year. No depreciation deduction is allowed for property placed in service and disposed of during the same taxable year. However, *see* § 1.168(k)–1T(f)(1) for qualified property or 50-percent bonus depreciation property, and § 1.1400L(b)–1T(f)(1) for qualified New York Liberty Zone property, that is placed in service in the same taxable year in which either a partnership is terminated as a result of a technical termination under section 708(b)(1)(B) or the property is transferred in a transaction described in section 168(i)(7).

(b)(3)(iii) through (d)(1) For further guidance, *see* § 1.168(d)–1(b)(3)(iii) through (d)(1).

(d)(2) *Qualified property, 50-percent bonus depreciation property, or qualified New York Liberty Zone property.* This section also applies to qualified property under section 168(k)(2) or qualified New York Liberty Zone property under section 1400L(b) acquired by a taxpayer after September 10, 2001, and to 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003. This section expires on September 8, 2006.

■ **Par. 6.** Section 1.168(k)–0T is added to read as follows:

§ 1.168(k)–0T Table of contents (temporary).

This section lists the headings that appear in § 1.168(k)–1T.

§ 1.168(k)–1T Additional first year depreciation deduction (temporary).

(a) Scope and definitions.
(1) Scope.
(2) Definitions.
(b) Qualified property or 50-percent bonus depreciation property.
(1) In general.
(2) Description of qualified property or 50-percent bonus depreciation property.
(i) In general.
(ii) Property not eligible for additional first year depreciation deduction.
(A) Property that is not qualified property.
(B) Property that is not 50-percent bonus depreciation property.
(3) Original use.
(i) In general.
(ii) Conversion to business or income-producing use.
(iii) Sale-leaseback and syndication transactions.
(A) Sale-leaseback transaction.
(B) Syndication transaction.
(C) Sale-leaseback transaction followed by a syndication transaction.
(iv) Fractional interests in property.
(v) Examples.
(4) Acquisition of property.
(i) In general.
(A) Qualified property.
(B) 50-percent bonus depreciation property.
(ii) Definition of binding contract.
(A) In general.
(B) Conditions.

(C) Options.
(D) Supply agreements.
(E) Components.
(iii) Self-constructed property.
(A) In general.
(B) When does construction begin.
(C) Components of self-constructed property.
(*1*) Acquired components.
(*2*) Self-constructed components.
(iv) Disqualified transactions.
(A) In general.
(B) Related party defined.
(v) Examples.
(5) Placed-in-service date.
(i) In general.
(ii) Sale-leaseback and syndication transactions.
(A) Sale-leaseback transaction.
(B) Syndication transaction.
(C) Sale-leaseback transaction followed by a syndication transaction.
(iii) Technical termination of a partnership.
(iv) Section 168(i)(7) transactions.
(c) Qualified leasehold improvement property.
(1) In general.
(2) Certain improvements not included.
(3) Definitions.
(d) Computation of depreciation deduction for qualified property or 50-percent bonus depreciation property.
(1) Additional first year depreciation deduction.
(i) In general.
(ii) Property having a longer production period.
(iii) Alternative minimum tax.
(2) Otherwise allowable depreciation deduction.
(i) In general.
(ii) Alternative minimum tax.
(3) Examples.
(e) Election not to deduct additional first year depreciation.
(1) In general.
(i) Qualified property.
(ii) 50-percent bonus depreciation property.
(2) Definition of class of property.
(3) Time and manner for making election.
(i) Time for making election.
(ii) Manner of making election.
(4) Special rules for 2000 or 2001 returns.
(5) Failure to make election.
(f) Special rules.
(1) Property placed in service and disposed of in the same taxable year.
(i) In general.
(ii) Technical termination of a partnership.
(iii) Section 168(i)(7) transactions.
(iv) Examples.
(2) Redetermination of basis.
(i) Increase in basis.
(ii) Decrease in basis.
(iii) Definition.
(iv) Examples.
(3) Section 1245 and 1250 depreciation recapture.
(4) Coordination with section 169.
(5) Like-kind exchanges and involuntary conversions.
(i) Scope.
(ii) Definitions.
(iii) Computation.
(A) In general.
(B) Year of disposition and year of replacement.
(iv) Sale-leasebacks.
(v) Examples.
(6) Change in use.
(i) Change in use of depreciable property.
(ii) Conversion to personal use.
(iii) Conversion to business or income-producing use.
(A) During the same taxable year.
(B) Subsequent to the acquisition year.
(iv) Depreciable property changes use subsequent to the placed-in-service year.
(v) Examples.
(7) Earnings and profits.
(8) Limitation of amount of depreciation for certain passenger automobiles.
(9) Section 754 election.
(g) Effective date.
(1) In general.
(2) Technical termination of a partnership or section 168(i)(7) transactions.
(3) Like-kind exchanges and involuntary conversions.
(4) Change in method of accounting.
(i) Special rules for 2000 or 2001 returns.
(ii) Like-kind exchanges and involuntary conversions.

■ **Par. 7.** Section 1.168(k)–1T is added to read as follows:

§ 1.168(k)–1T Additional first year depreciation deduction (temporary).

(a) *Scope and definitions*—(1) *Scope.* This section provides the rules for determining the 30-percent additional first year depreciation deduction allowable under section 168(k)(1) for qualified property and the 50-percent additional first year depreciation deduction allowable under section 168(k)(4) for 50-percent bonus depreciation property.

(2) *Definitions.* For purposes of section 168(k) and this section, the following definitions apply:

(i) *Depreciable property* is property that is of a character subject to the allowance for depreciation as determined under section 167 and the regulations thereunder.

(ii) *MACRS property* is tangible, depreciable property that is placed in service after December 31, 1986 (or after July 31, 1986, if the taxpayer made an election under section 203(a)(1)(B) of the Tax Reform Act of 1986; 100 Stat. 2143) and subject to section 168, except for property excluded from the application of section 168 as a result of section 168(f) or as a result of a transitional rule.

(iii) *Unadjusted depreciable basis* is the basis of property for purposes of section 1011 without regard to any adjustments described in section 1016(a)(2) and (3). This basis reflects the reduction in basis for the percentage of the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business (or for the production of income), for any portion of the basis the taxpayer properly elects to treat as an expense under section 179, and for any adjustments to basis provided by other provisions of the Internal Revenue Code and the regulations thereunder (other than section 1016(a)(2) and (3)) (for example, a reduction in basis by the amount of the disabled access credit pursuant to section 44(d)(7)). For property subject to a lease, see section 167(c)(2).

(iv) *Adjusted depreciable basis* is the unadjusted depreciable basis of the property, as defined in § 1.168(k)–1T(a)(2)(iii), less the adjustments described in section 1016(a)(2) and (3).

(b) *Qualified property or 50-percent bonus depreciation property*—(1) *In general.* Qualified property or 50-percent bonus depreciation property is depreciable property that—

(i) Meets the requirements in § 1.168(k)–1T(b)(2) (description of property);

(ii) Meets the requirements in § 1.168(k)–1T(b)(3) (original use);

(iii) Meets the requirements in § 1.168(k)–1T(b)(4) (acquisition of property); and

(iv) Meets the requirements in § 1.168(k)–1T(b)(5) (placed-in-service date).

(2) *Description of qualified property or 50-percent bonus depreciation property*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (b)(2) if the property is—

(A) MACRS property (as defined in § 1.168(k)–1T(a)(2)(ii)) that has a recovery period of 20 years or less. For purposes of this paragraph (b)(2)(i)(A) and section 168(k)(2)(B)(i)(II) and 168(k)(4)(C), the recovery period is determined in accordance with section 168(c) regardless of any election made by the taxpayer under section 168(g)(7);

(B) Computer software as defined in, and depreciated under, section 167(f)(1) and the regulations thereunder;

(C) Water utility property as defined in section 168(e)(5) and depreciated under section 168; or

(D) Qualified leasehold improvement property as defined in paragraph (c) of this section and depreciated under section 168.

(ii) *Property not eligible for additional first year depreciation deduction*—(A) *Property that is not qualified property.* For purposes of the 30-percent additional first year depreciation deduction, depreciable property will not meet the requirements of this paragraph (b)(2) if the property is—

(*1*) Described in section 168(f);

(*2*) Required to be depreciated under the alternative depreciation system of section 168(g) pursuant to section

168(g)(1)(A) through (D) or other provisions of the Internal Revenue Code (for example, property described in section 263A(e)(2)(A) or section 280F(b)(1));

(*3*) Included in any class of property for which the taxpayer elects not to deduct the 30-percent additional first year depreciation (for further guidance, see paragraph (e) of this section); or

(*4*) Qualified New York Liberty Zone leasehold improvement property as defined in section 1400L(c)(2).

(B) *Property that is not 50-percent bonus depreciation property.* For purposes of the 50-percent additional first year depreciation deduction, depreciable property will not meet the requirements of this paragraph (b)(2) if the property is—

(*1*) Described in paragraph (b)(2)(ii)(A)(*1*), (*2*), or (*4*) of this section; or

(*2*) Included in any class of property for which the taxpayer elects the 30-percent, instead of the 50-percent, additional first year depreciation deduction or elects not to deduct any additional first year depreciation (for further guidance, see paragraph (e) of this section).

(*3*) *Original use*—(i) *In general.* For purposes of the 30-percent additional first year depreciation deduction, depreciable property will meet the requirements of this paragraph (b)(3) if the original use of the property commences with the taxpayer after September 10, 2001. For purposes of the 50-percent additional first year depreciation deduction, depreciable property will meet the requirements of this paragraph (b)(3) if the original use of the property commences with the taxpayer after May 5, 2003. Except as provided in paragraph (b)(3)(iii) and (iv) of this section, original use means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Thus, additional capital expenditures incurred by a taxpayer to recondition or rebuild property acquired or owned by the taxpayer satisfies the original use requirement. However, the cost of reconditioned or rebuilt property acquired by the taxpayer does not satisfy the original use requirement. The question of whether property is reconditioned or rebuilt property is a question of fact. For purposes of this paragraph (b)(3)(i), property that contains used parts will not be treated as reconditioned or rebuilt if the cost of the used parts is not more than 20 percent of the total cost of the property.

(ii) *Conversion to business or income-producing use.* If a taxpayer initially acquires new property for personal use and subsequently uses the property in the taxpayer's trade or business or for the taxpayer's production of income, the taxpayer is considered as the original user of the property. If a person initially acquires new property for personal use and a taxpayer subsequently acquires the property from the person for use in the taxpayer's trade or business or for the taxpayer's production of income, the taxpayer is not considered the original user of the property.

(iii) *Sale-leaseback and syndication transactions*—(A) *Sale-leaseback transaction.* If new property is originally placed in service by a person after September 10, 2001 (for qualified property), or after May 5, 2003 (for 50-percent bonus depreciation property), and is sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the taxpayer-lessor is considered the original user of the property.

(B) *Syndication transaction.* If new property is originally placed in service by a lessor (including by operation of paragraph (b)(5)(ii)(A) of this section) after September 10, 2001 (for qualified property), or after May 5, 2003 (for 50-percent bonus depreciation property), and is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor, and the user of the property after the last sale during the three-month period remains the same as when the property was originally placed in service by the lessor, the purchaser of the property in the last sale during the three-month period is considered the original user of the property.

(C) *Sale-leaseback transaction followed by a syndication transaction.* If a sale-leaseback transaction that satisfies the requirements in paragraph (b)(3)(iii)(A) of this section is followed by a syndication transaction that satisfies the requirements in paragraph (b)(3)(iii)(B) of this section, the original user of the property is determined in accordance with paragraph (b)(3)(iii)(B) of this section.

(iv) *Fractional interests in property.* If, in the ordinary course of its business, a taxpayer sells fractional interests in property to unrelated third parties, each first fractional owner of the property is considered as the original user of its proportionate share of the property. Furthermore, if the taxpayer uses the property before all of the fractional interests of the property are sold but the property continues to be held primarily for sale by the taxpayer, the original use of any fractional interest sold to an unrelated third party subsequent to the taxpayer's use of the property begins with the first purchaser of that fractional interest. For purposes of this paragraph (b)(3)(iv), persons are not related if they do not have a relationship described in section 267(b) or 707(b) and the regulations thereunder.

(v) *Examples.* The application of this paragraph (b)(3) is illustrated by the following examples:

Example 1. On August 1, 2002, *A* buys from *B* for $20,000 a machine that has been previously used by *B* in *B*'s trade or business. On March 1, 2003, *A* makes a $5,000 capital expenditure to recondition the machine. The $20,000 purchase price does not qualify for the additional first year depreciation deduction because the original use requirement of this paragraph (b)(3) is not met. However, the $5,000 expenditure satisfies the original use requirement of this paragraph (b)(3) and, assuming all other requirements are met, qualifies for the 30-percent additional first year depreciation deduction, regardless of whether the $5,000 is added to the basis of the machine or is capitalized as a separate asset.

Example 2. C, an automobile dealer, uses some of its automobiles as demonstrators in order to show them to prospective customers. The automobiles that are used as demonstrators by *C* are held by *C* primarily for sale to customers in the ordinary course of its business. On September 1, 2002, *D* buys from *C* an automobile that was previously used as a demonstrator by *C*. *D* will use the automobile solely for business purposes. The use of the automobile by *C* as a demonstrator does not constitute a "use" for purposes of the original use requirement and, therefore, *D* will be considered the original user of the automobile for purposes of this paragraph (b)(3). Assuming all other requirements are met, *D*'s purchase price of the automobile qualifies for the 30-percent additional first year depreciation deduction for *D*, subject to any limitation under section 280F.

Example 3. On April 1, 2000, *E* acquires a horse to be used in *E*'s thoroughbred racing business. On October 1, 2003, *F* buys the horse from *E* and will use the horse in *F*'s horse breeding business. The use of the horse by *E* in its racing business prevents the original use of the horse from commencing with *F*. Thus, *F*'s purchase price of the horse does not qualify for the additional first year depreciation deduction.

Example 4. In the ordinary course of its business, *G* sells fractional interests in its aircraft to unrelated parties. *G* holds out for sale eight equal fractional interests in an aircraft. On January 1, 2003, *G* sells five of the eight fractional interests in the aircraft to *H*, an unrelated party, and *H* begins to use its proportionate share of the aircraft immediately upon purchase. On June 1, 2003, *G* sells to *I*, an unrelated party to *G* and *H*, the remaining unsold 3/8 fractional interests in the aircraft. *H* is considered the original user as to its 5/8 fractional interest in the aircraft and *I* is considered the original user as to its 3/8 fractional interest in the aircraft. Thus, assuming all other requirements are met, *H*'s purchase price for

its 5/8 fractional interest in the aircraft qualifies for the 30-percent additional first year depreciation deduction and I's purchase price for its 3/8 fractional interest in the aircraft qualifies for the 50-percent additional first year depreciation deduction.

(4) *Acquisition of property*—(i) *In general*—(A) *Qualified property.* For purposes of the 30-percent additional first year depreciation deduction, depreciable property will meet the requirements of this paragraph (b)(4) if the property is—

(*1*) Acquired by the taxpayer after September 10, 2001, and before January 1, 2005, but only if no written binding contract for the acquisition of the property was in effect before September 11, 2001; or

(*2*) Acquired by the taxpayer pursuant to a written binding contract that was entered into after September 10, 2001, and before January 1, 2005.

(B) *50-percent bonus depreciation property.* For purposes of the 50-percent additional first year depreciation deduction, depreciable property will meet the requirements of this paragraph (b)(4) if the property is acquired by the taxpayer after May 5, 2003, and before January 1, 2005, but only if no written binding contract for the acquisition of the property was in effect before May 6, 2003.

(ii) *Definition of binding contract*—(A) *In general.* A contract is binding only if it is enforceable under State law against the taxpayer or a predecessor, and does not limit damages to a specified amount (for example, by use of a liquidated damages provision). For this purpose, a contractual provision that limits damages to an amount equal to at least 5 percent of the total contract price will not be treated as limiting damages to a specified amount. In determining whether a contract limits damages, the fact that there may be little or no damages because the contract price does not significantly differ from fair market value will not be taken into account. For example, if a taxpayer entered into an irrevocable written contract to purchase an asset for $100 and the contract contained no provision for liquidated damages, the contract is considered binding notwithstanding the fact that the asset had a fair market value of $99 and under local law the seller would only recover the difference in the event the purchaser failed to perform. If the contract provided for a full refund of the purchase price in lieu of any damages allowable by law in the event of breach or cancellation by the seller, the contract is not considered binding.

(B) *Conditions.* A contract is binding even if subject to a condition, as long as the condition is not within the control of either party or a predecessor. A contract will continue to be binding if the parties make insubstantial changes in its terms and conditions or because any term is to be determined by a standard beyond the control of either party. A contract that imposes significant obligations on the taxpayer or a predecessor will be treated as binding notwithstanding the fact that insubstantial terms remain to be negotiated by the parties to the contract.

(C) *Options.* An option to either acquire or sell property is not a binding contract.

(D) *Supply agreements.* A binding contract does not include a supply or similar agreement if the amount and design specifications of the property to be purchased have not been specified. The contract will not be a binding contract for the property to be purchased until both the amount and the design specifications are specified. For example, if the provisions of a supply or similar agreement state the design specifications of, and the pricing for, the property to be purchased, a purchase order under the agreement for a specific number of assets is treated as a binding contract.

(E) *Components.* A binding contract to acquire one or more components of a larger property will not be treated as a binding contract to acquire the larger property. If a binding contract to acquire the component does not satisfy the requirements of this paragraph (b)(4), the component does not qualify for the 30-percent or 50-percent additional first year depreciation deduction, as applicable.

(iii) *Self-constructed property*—(A) *In general.* If a taxpayer manufactures, constructs, or produces property for use by the taxpayer in its trade or business (or for its production of income), the acquisition rules in paragraph (b)(4)(i) of this section are treated as met for qualified property if the taxpayer begins manufacturing, constructing, or producing the property after September 10, 2001, and before January 1, 2005, and for 50-percent bonus depreciation property if the taxpayer begins manufacturing, constructing, or producing the property after May 5, 2003, and before January 1, 2005. Property that is manufactured, constructed, or produced for the taxpayer by another person under a written binding contract (as defined in paragraph (b)(4)(ii) of this section) that is entered into prior to the manufacture, construction, or production of the property for use by the taxpayer in its trade or business (or for its production of income) is considered to be manufactured, constructed, or produced by the taxpayer.

(B) *When does construction begin.* For purposes of paragraph (b)(4)(iii) of this section, construction of property begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances. For purposes of this paragraph (b)(4)(iii)(B), physical work of a significant nature will not be considered to begin before the taxpayer incurs (in the case of an accrual basis taxpayer) or pays (in the case of a cash basis taxpayer) more than 10 percent of the total cost of the property (excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching). For example, if a retail motor fuels outlet is to be constructed on-site, construction begins when physical work of a significant nature commences at the site; that is, when work begins on the excavation for footings, pouring the pads for the outlet, or the driving of foundation pilings into the ground. Preliminary work, such as clearing a site, test drilling to determine soil condition, or excation to change the contour of the land (as distinguished from excavation for footings) does not constitute the beginning of construction. However, if a retail motor fuels outlet is to be assembled on-site from modular units constructed off-site and delivered to the site where the outlet will be used, construction begings when physical work of a significant nature commences at the off-site location.

(C) *Components of self-constructed property*—(1) *Acquired components.* If a binding contract (as defined in paragraph (b)(4)(ii) of this section) to acquire a component does not satisfy the requirements of paragraph (b)(4)(i) of this section, the component does not qualify for the 30-percent or 50-percent additional first year depreciation deduction, as applicable. A binding contract (as defined in paragraph (b)(4)(ii) of this section) to acquire one or more components of a larger self-constructed property will not preclude the larger self-constructed property from satisfying the acquisition rules in paragraph (b)(4)(iii)(A) of this section. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the 30-percent or 50-percent additional first year depreciation deduction, as applicable (assuming all other requirements are met), must not include

the unadjusted depreciable basis of any component that does not satisfy the requirements of paragraph (b)(4)(i) of this section. If the manufacture, construction, or production of the larger self-constructed property begins before September 11, 2001, for qualified property, or before May 6, 2003, for 50-percent bonus depreciation property, the larger self-constructed property and any acquired components related to the larger self-constructed property do not qualify for the 30-percent or 50-percent additional first year depreciation deduction, as applicable. If a binding contract to acquire the component is entered into after September 10, 2001, for qualified property, or after May 5, 2003, for 50-percent bonus depreciation property, and before January 1, 2005, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2005, the component qualifies for the additional first year depreciation deduction (assuming all other requirements are met) but the larger self-constructed property does not.

(2) *Self-constructed components.* If the manufacture, construction, or production of a component does not satisfy the requirements of paragraph (b)(4)(iii)(A) of this section, the component does not qualify for the 30-percent or 50-percent additional first year depreciation deduction, as applicable. However, if the manufacture, construction, or production of a component does not satisfy the requirements of paragraph (b)(4)(iii)(A) of this section, but the manufacture, construction, or production of the larger self-constructed property satisfies the requirements of paragraph (b)(4)(iii)(A) of this section, the larger self-constructed property qualifies for the 30-percent or 50-percent additional first year depreciation deduction, as applicable (assuming all other requirements are met) even though the component does not qualify for the 30-percent or 50-percent additional first year depreciation deduction. Accordingly, the unadjusted depreciable basis of the larger self-constructed property that is eligible for the 30-percent or 50-percent additional first year depreciation deduction, as applicable (assuming all other requirements are met), must not include the unadjusted depreciable basis of any component that does not qualify for the 30-percent or 50-percent additional first year depreciation deduction. If the manufacture, construction, or production of the larger self-constructed property began before September 11, 2001, for qualified property, or before May 6, 2003, for 50-percent bonus depreciation property, the larger self-constructed property and any self-constructed components related to the larger self-constructed property do not qualify for the 30-percent or 50-percent additional first year depreciation deduction, as applicable. If the manufacture, construction, or production of a component begins after September 10, 2001, for qualified property, or after May 5, 2003, for 50-percent bonus depreciation property, and before January 1, 2005, but the manufacture, construction, or production of the larger self-constructed property does not begin before January 1, 2005, the component qualifies for the additional first year depreciation deduction (assuming all other requirements are met) but the larger self-constructed property does not.

(iv) *Disqualified transactions*—(A) *In general.* Property does not satisfy the requirements of this paragraph (b)(4) if the user of the property as of the date on which the property was originally placed in service (including by operation of paragraph (b)(5)(ii), (iii), and (iv) of this section), or a related party to the user, acquired, or had a written binding contract (as defined in paragraph (b)(4)(ii) of this section) in effect for the acquisition of, the property at any time before September 11, 2001 (for qualified property), or before May 6, 2003 (for 50-percent bonus depreciation property). In addition, property manufactured, constructed, or produced for the taxpayer or a related party does not satisfy the requirements of this paragraph (b)(4) if the manufacture, construction, or production of the property for the taxpayer or a related party began at any time before September 11, 2001 (for qualified property), or before May 6, 2003 (for 50-percent bonus depreciation property).

(B) *Related party defined.* For purposes of this paragraph (b)(4)(iv), persons are related if they have a relationship specified in section 267(b) or 707(b) and the regulations thereunder.

(v) *Examples.* The application of this paragraph (b)(4) is illustrated by the following examples:

Example 1. On September 1, 2001, *J*, a corporation, entered into a written agreement with *K*, a manufacturer, to purchase 20 new lamps for $100 each within the next two years. Although the agreement specifies the number of lamps to be purchased, the agreement does not specify the design of the lamps to be purchased. Accordingly, the agreement is not a binding contract pursuant to paragraph (b)(4)(ii)(D) of this section.

Example 2. Same facts as *Example 1*. On December 1, 2001, *J* placed a purchase order with *K* to purchase 20 new model XPC5 lamps for $100 each for a total amount of $2,000. Because the agreement specifies the number of lamps to be purchased and the purchase order specifies the design of the lamps to be purchased, the purchase order placed by *J* with *K* on December 1, 2001, is a binding contract pursuant to paragraph (b)(4)(ii)(D) of this section. Accordingly, the cost of the 20 lamps qualifies for the 30-percent additional first year depreciation deduction.

Example 3. Same facts as *Example 1* except that the written agreement between *J* and *K* is to purchase 100 model XPC5 lamps for $100 each within the next two years. Because this agreement specifies the amount and design of the lamps to be purchased, the agreement is a binding contract pursuant to paragraph (b)(4)(ii)(D) of this section. Accordingly, because the agreement was entered into before September 11, 2001, any lamp acquired by *J* under this contract does not qualify for the additional first year depreciation deduction.

Example 4. On September 1, 2001, *L* began constructing an electric generation power plant for its own use. On November 1, 2002, *L* ceases construction of the power plant prior to its completion. Between September 1, 2001, and November 1, 2002, *L* incurred $3,000,000 for the construction of the power plant. On May 6, 2003, *L* resumed construction of the power plant and completed its construction on August 31, 2003. Between May 6, 2003, and August 31, 2003, *L* incurred another $1,600,000 to complete the construction of the power plant and, on September 1, 2003, *L* placed the power plant in service. None of *L*'s total expenditures of $4,600,000 qualify for the additional first year depreciation deduction because, pursuant to paragraph (b)(4)(iii)(A) of this section, *L* began constructing the power plant before September 11, 2001.

Example 5. Same facts as *Example 4* except that *L* began constructing the electric generation power plant for its own use on October 1, 2001. *L*'s total expenditures of $4,600,000 qualify for the additional first year depreciation deduction because, pursuant to paragraph (b)(4)(iii)(A) of this section, *L* began constructing the power plant after September 10, 2001, and placed the power plant in service before January 1, 2005. Accordingly, the additional first year depreciation deduction for the power plant will be $1,380,000, computed as $4,600,000 multiplied by 30 percent.

Example 6. On August 1, 2001, *M* entered into a written binding contract to acquire a new turbine. The new turbine is a component part of a new electric generation power plant that is being constructed on *M*'s behalf. The construction of the new electric generation power plant commenced in November 2001, and the new electric generation power plant was completed in November 2002. Because *M* entered into a written binding contract to acquire a component part (the new turbine) prior to September 11, 2001, pursuant to paragraph (b)(4)(iii)(C) of this section, the component part does not qualify for the additional first year depreciation deduction. However, pursuant to paragraphs (b)(4)(iii)(A) and (C) of this section, the new

plant constructed for *M* will qualify for the 30-percent additional first year depreciation deduction because construction of the new plant began after September 10, 2001, and before May 6, 2003. Accordingly, the unadjusted depreciable basis of the new plant that is eligible for the 30-percent additional first year depreciation deduction must not include the unadjusted depreciable basis of the new turbine.

Example 7. Same facts as *Example 6* except that *M* entered into the written binding contract to acquire the new turbine on September 30, 2002, and construction of the new plant commenced on August 1, 2001. Because *M* began construction of the new plant prior to September 11, 2001, pursuant to paragraphs (b)(4)(iii)(A) and (C) of this section, neither the new plant constructed for *M* nor the turbine will qualify for the additional first year depreciation deduction because self-construction of the new plant began prior to September 11, 2001.

Example 8. On September 1, 2001, *N* began constructing property for its own use. On October 1, 2001, *N* sold its rights to the property to *O*, a related party under section 267(b). Pursuant to paragraph (b)(4)(iv) of this section, the property is not eligible for the additional first year depreciation deduction because *N* and *O* are related parties and construction of the property by *N* began prior to September 11, 2001.

Example 9. On September 1, 2001, *P* entered into a written binding contract to acquire property. On October 1, 2001, *P* sold its rights to the property to *Q*, a related party under section 267(b). Pursuant to paragraph (b)(4)(iv) of this section, the property is not eligible for the additional first year depreciation deduction because *P* and *Q* are related parties and a written binding contract for the acquisition of the property was in effect prior to September 11, 2001.

Example 10. Prior to September 11, 2001, *R* began constructing an electric generation power plant for its own use. On May 1, 2003, prior to the completion of the power plant, *R* transferred the rights to own and use this power plant to *S*, an unrelated party, for $6,000,000. Between May 6, 2003, and June 30, 2003, *S*, a calendar-year taxpayer, incurred another $1,200,000 to complete the construction of the power plant and, on August 1, 2003, *S* placed the power plant in service. Because *R* and *S* are not related parties, the transaction between *R* and *S* will not be a disqualified transaction pursuant to paragraph (b)(4)(iv) of this section. Accordingly, *S*'s total expenditures of $7,200,000 for the power plant qualify for the additional first year depreciation deduction. *S*'s additional first year depreciation deduction for the power plant will be $2,400,000, computed as $6,000,000 multiplied by 30 percent, plus $1,200,000 multiplied by 50 percent. The $6,000,000 portion of the total $7,200,000 unadjusted depreciable basis qualifies for the 30-percent additional first year depreciation deduction because that portion of the total unadjusted depreciable basis was acquired by *S* after September 10, 2001, and before May 6, 2003. However, because *S* began construction to complete the power plant after May 5, 2003, the $1,200,000 portion of the total $7,200,000 unadjusted depreciable basis qualifies for the 50-percent additional first year depreciation deduction.

Example 11. On September 1, 2001, *T* acquired and placed in service equipment. On October 15, 2001, *T* sells the equipment to *U*, an unrelated party, and leases the property back from *U* in a sale-leaseback transaction. Pursuant to paragraph (b)(4)(iv) of this section, the equipment does not qualify for the additional first year depreciation deduction because *T*, the user of the equipment, acquired the equipment prior to September 11, 2001.

(5) *Placed-in-service date*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (b)(5) if the property is placed in service by the taxpayer before January 1, 2005, or, in the case of property described in section 168(k)(2)(B), is placed in service by the taxpayer before January 1, 2006.

(ii) *Sale-leaseback and syndication transactions*—(A) *Sale-leaseback transaction.* If qualified property is originally placed in service after September 10, 2001, or 50-percent bonus depreciation property is originally placed in service after May 5, 2003, by a person and sold to a taxpayer and leased back to the person by the taxpayer within three months after the date the property was originally placed in service by the person, the property is treated as originally placed in service by the taxpayer-lessor not earlier than the date on which the property is used by the lessee under the leaseback.

(B) *Syndication transaction.* If qualified property is originally placed in service after September 10, 2001, or 50-percent bonus depreciation property is originally placed in service after May 5, 2003, by a lessor (including by operation of paragraph (b)(5)(ii)(A) of this section) and is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor, and the user of the property after the last sale during this three-month period remains the same as when the property was originally placed in service by the lessor, the property is treated as originally placed in service by the purchaser of the property in the last sale during the three-month period but not earlier than the date of the last sale.

(C) *Sale-leaseback transaction followed by a syndication transaction.* If a sale-leaseback transaction that satisfies the requirements in paragraph (b)(5)(ii)(A) of this section is followed by a syndication transaction that satisfies the requirements in paragraph (b)(5)(ii)(B) of this section, the placed-in-service date of the property is determined in accordance with paragraph (b)(5)(ii)(B) of this section.

(iii) *Technical termination of a partnership.* For purposes of this paragraph (b)(5), in the case of a technical termination of a partnership under section 708(b)(1)(B), qualified property or 50-percent bonus depreciation property placed in service by the terminated partnership during the taxable year of termination is treated as originally placed in service by the new partnership on the date the qualified property or the 50-percent bonus depreciation property is contributed by the terminated partnership to the new partnership.

(iv) *Section 168(i)(7) transactions.* For purposes of this paragraph (b)(5), if qualified property or 50-percent bonus depreciation property is transferred in a transaction described in section 168(i)(7) in the same taxable year that the qualified property or the 50-percent bonus depreciation property is placed in service by the transferor, the transferred property is treated as originally placed in service on the date the transferor placed in service the qualified property or the 50-percent bonus depreciation property, as applicable. In the case of multiple transfers of qualified property or 50-percent bonus depreciation property in multiple transactions described in section 168(i)(7) in the same taxable year, the placed in service date of the transferred property is deemed to be the date on which the first transferor placed in service the qualified property or the 50-percent bonus depreciation property, as applicable.

(c) *Qualified leasehold improvement property*—(1) *In general.* For purposes of section 168(k), qualified leasehold improvement property means any improvement, which is section 1250 property, to an interior portion of a building that is nonresidential real property if—

(i) The improvement is made under or pursuant to a lease by the lessee (or any sublessee) of the interior portion, or by the lessor of that interior portion;

(ii) The interior portion of the building is to be occupied exclusively by the lessee (or any sublessee) of that interior portion; and

(iii) The improvement is placed in service more than 3 years after the date the building was first placed in service by any person.

(2) *Certain improvements not included.* Qualified leasehold improvement property does not include any improvement for which the expenditure is attributable to:

(i) The enlargement of the building;

(ii) Any elevator or escalator;

(iii) Any structural component benefiting a common area; or

(iv) The internal structural framework of the building.

(3) *Definitions.* For purposes of this paragraph (c), the following definitions apply:

(i) *Building* has the same meaning as that term is defined in § 1.48–1(e)(1).

(ii) *Common area* means any portion of a building that is equally available to all users of the building on the same basis for uses that are incidental to the primary use of the building. For example, stairways, hallways, lobbies, common seating areas, interior and exterior pedestrian walkways and pedestrian bridges, loading docks and areas, and rest rooms generally are treated as common areas if they are used by different lessees of a building.

(iii) *Elevator* and *escalator* have the same meanings as those terms are defined in § 1.48–1(m)(2).

(iv) *Enlargement* has the same meaning as that term is defined in § 1.48–12(c)(10).

(v) *Internal structural framework* has the same meaning as that term is defined in § 1.48–12(b)(3)(i)(D)(iii).

(vi) *Lease* has the same meaning as that term is defined in section 168(h)(7). In addition, a commitment to enter into a lease is treated as a lease, and the parties to the commitment are treated as lessor and lessee. However, a lease between related persons is not considered a lease. For purposes of the preceding sentence, related persons are—

(A) Members of an affiliated group (as defined in section 1504 and the regulations thereunder); and

(B) Persons having a relationship described in section 267(b) and the regulations thereunder. For purposes of applying section 267(b), the language "80 percent or more" is used instead of "more than 50 percent."

(vii) *Nonresidential real property* has the same meaning as that term is defined in section 168(e)(2)(B).

(viii) *Structural component* has the same meaning as that term is defined in § 1.48–1(e)(2).

(d) *Computation of depreciation deduction for qualified property or 50-percent bonus depreciation property—*(1) *Additional first year depreciation deduction*—(i) *In general.* Except as provided in paragraph (f)(5) of this section, the allowable additional first year depreciation deduction for qualified property is determined by multiplying the unadjusted depreciable basis (as defined in § 1.168(k)–1T(a)(2)(iii)) of the qualified property by 30 percent. Except as provided in paragraph (f)(5) of this section, the allowable additional first year depreciation deduction for 50-percent bonus depreciation property is determined by multiplying the unadjusted depreciable basis (as defined in § 1.168(k)–1T(a)(2)(iii)) of the 50-percent bonus depreciation property by 50 percent. Except as provided in paragraph (f)(1) of this section, the 30-percent or 50-percent additional first year depreciation deduction is not affected by a taxable year of less than 12 months. See paragraph (f)(1) of this section for qualified property or 50-percent bonus depreciation property placed in service and disposed of in the same taxable year. See paragraph (f)(5) of this section for qualified property or 50-percent bonus depreciation property acquired in a like-kind exchange or as a result of an involuntary conversion.

(ii) *Property having a longer production period.* For purposes of paragraph (d)(1)(i) of this section, the unadjusted depreciable basis (as defined in § 1.168(k)–1T(a)(2)(iii)) of qualified property or 50-percent bonus depreciation property described in section 168(k)(2)(B) is limited to the property's unadjusted depreciable basis attributable to the property's manufacture, construction, or production after September 10, 2001 (for qualified property), or May 5, 2003 (for 50-percent bonus depreciation property), and before January 1, 2005.

(iii) *Alternative minimum tax.* The 30-percent or 50-percent additional first year depreciation deduction is allowed for alternative minimum tax purposes for the taxable year in which the qualified property or the 50-percent bonus depreciation property is placed in service by the taxpayer. The 30-percent or 50-percent additional first year depreciation deduction for alternative minimum tax purposes is based on the unadjusted depreciable basis of the property for alternative minimum tax purposes.

(2) *Otherwise allowable depreciation deduction.* (i) *In general.* Before determining the amount otherwise allowable as a depreciation deduction for the qualified property or the 50-percent bonus depreciation property for the placed-in-service year and any subsequent taxable year, the taxpayer must determine the remaining adjusted depreciable basis of the qualified property or the 50-percent bonus depreciation property. This remaining adjusted depreciable basis is equal to the unadjusted depreciable basis of the qualified property or the 50-percent bonus depreciation property reduced by the amount of the additional first year depreciation allowed or allowable, whichever is greater. The remaining adjusted depreciable basis of the qualified property or the 50-percent bonus depreciation property is then depreciated using the applicable depreciation provisions under the Internal Revenue Code for the qualified property or the 50-percent bonus depreciation property. The remaining adjusted depreciable basis of the qualified property or the 50-percent bonus depreciation property that is MACRS property is also the basis to which the annual depreciation rates in the optional depreciation tables apply (for further guidance, see section 8 of Rev. Proc. 87–57 (1987–2 C.B. 687) and § 601.601(d)(2)(ii)(*b*) of this chapter). The depreciation deduction allowable for the remaining adjusted depreciable basis of the qualified property or the 50-percent bonus depreciation property is affected by a taxable year of less than 12 months.

(ii) *Alternative minimum tax.* For alternative minimum tax purposes, the depreciation deduction allowable for the remaining adjusted depreciable basis of the qualified property or the 50-percent bonus depreciation property is based on the remaining adjusted depreciable basis for alternative minimum tax purposes. The remaining adjusted depreciable basis of the qualified property or the 50-percent bonus depreciable property for alternative minimum tax purposes is depreciated using the same depreciation method, recovery period (or useful life in the case of computer software), and convention that apply to the qualified property or the 50-percent bonus depreciation property for regular tax purposes.

(3) *Examples.* This paragraph (d) is illustrated by the following examples:

Example 1. On March 1, 2003, *V*, a calendar-year taxpayer, purchased and placed in service qualified property that costs $1 million and is 5-year property under section 168(e). *V* depreciates its 5-year property placed in service in 2003 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. For 2003, *V* is allowed a 30-percent additional first year depreciation deduction of $300,000 (the unadjusted depreciable basis of $1 million multiplied by .30). Next, *V* must reduce the unadjusted depreciable basis of $1 million by the additional first year depreciation deduction of $300,000 to determine the remaining adjusted depreciable basis of $700,000. Then, *V*'s depreciation deduction allowable in 2003 for the remaining adjusted depreciable basis of $700,000 is $140,000 (the remaining adjusted depreciable basis of $700,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

Example 2. On June 1, 2003, *W*, a calendar-year taxpayer, purchased and placed in service 50-percent bonus depreciation property that costs $126,000. The property qualifies for the expensing election under section 179 and is 5-year property under section 168(e). *W* did not purchase any other section 179 property in 2003. *W* makes the election under section 179 for the property and depreciates its 5-year property placed in service in 2003 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. For 2003, *W* is first allowed a $100,000 deduction under section 179. Next, *W* must reduce the cost of $126,000 by the section 179 deduction of $100,000 to determine the unadjusted depreciable basis of $26,000. Then, for 2003, *W* is allowed a 50-percent additional first year depreciation deduction of $13,000 (the unadjusted depreciable basis of $26,000 multiplied by .50). Next, *W* must reduce the unadjusted depreciable basis of $26,000 by the additional first year depreciation deduction of $13,000 to determine the remaining adjusted depreciable basis of $13,000. Then, *W*'s depreciation deduction allowable in 2003 for the remaining adjusted depreciable basis of $13,000 is $2,600 (the remaining adjusted depreciable basis of $13,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(e) *Election not to deduct additional first year depreciation*—(1) *In general.* If a taxpayer makes an election under this paragraph (e), the election applies to all qualified property or 50-percent bonus depreciation property, as applicable, that is in the same class of property and placed in service in the same taxable year. The rules of this paragraph (e) apply to the following elections provided under section 168(k):

(i) *Qualified property.* A taxpayer may make an election not to deduct the 30-percent additional first year depreciation for any class of property that is qualified property placed in service during the taxable year. If this election is made, no additional first year depreciation deduction is allowable for the property placed in service during the taxable year in the class of property.

(ii) *50-percent bonus depreciation property.* For any class of property that is 50-percent bonus depreciation property placed in service during the taxable year, a taxpayer may make an election—

(A) To deduct the 30-percent, instead of the 50-percent, additional first year depreciation. If this election is made, the allowable additional first year depreciation deduction is determined as though the class of property is qualified property under section 168(k)(2); or

(B) Not to deduct any additional first year depreciation deduction is allowable for the class of property.

(2) *Definition of class of property.* For purposes of this paragraph (e), the term class of property means:

(i) Except for the property described in paragraphs (e)(2)(ii) and (iv) of this section, each class of property described in section 168(e) (for example, 5-year property);

(ii) Water utility property as defined in section 168(e)(5) and depreciated under section 168;

(iii) Computer software as defined in, and depreciated under, section 167(f)(1) and the regulations thereunder; or

(iv) Qualified leasehold improvement property as defined in paragraph (c) of this section and depreciated under section 168.

(3) *Time and manner for making election*—(i) *Time for making election.* Except as provided in paragraph (e)(4) of this section, any election specified in paragraph (e)(1) of this section must be made by the due date (including extensions) of the Federal tax return for the taxable year in which the qualified property or the 50-percent bonus depreciation property, as applicable, is placed in service by the taxpayer.

(ii) *Manner of making election.* Except as provided in paragraph (e)(4) of this section, any election specified in paragraph (e)(1) of this section must be made in the manner prescribed on Form 4562, "Depreciation and Amortization," and its instructions. The election is made separately by each person owning qualified property or 50-percent bonus depreciation property (for example, for each member of a consolidated group by the common parent of the group, by the partnership, or by the S corporation). If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(4) *Special rules for 2000 or 2001 returns.* For the election specified in paragraph (e)(1)(i) of this section for qualified property placed in service by the taxpayer during the taxable year that included September 11, 2001, the taxpayer should refer to the guidance provided by the Internal Revenue Service for the time and manner of making this election on the 2000 or 2001 Federal tax return for the taxable year that included September 11, 2001 (for further guidance, *see* sections 3.03(3) and 4 of Rev. Proc. 2002–33 (2002–1 C.B. 963), Rev. Proc. 2003–50 (2003–29 I.R.B. 119), and § 601.601(d)(2)(ii)(*b*) of this chapter).

(5) *Failure to make election.* If a taxpayer does not make the applicable election specified in paragraph (e)(1) of this section within the time and in the manner prescribed in paragraph (e)(3) or (4) of this section, the amount of depreciation allowable for that property under section 167(f)(1) or under section 168, as applicable, must be determined for the placed-in-service year and for all subsequent taxable years by taking info account the additional first year depreciation deduction. Thus, any election specified in paragraph (e)(1) of this section shall not be made by the taxpayer in any other manner (for example, the election cannot be made through a request under section 446(e) to change the taxpayer's method of accounting).

(f) *Special rules*—(1) *Property placed in service and disposed of in the same taxable year*—(i) *In general.* Except as provided in paragraphs (f)(1)(ii) and (iii) of this section, the additional first year depreciation deduction is not allowed for qualified property or 50-percent bonus depreciation property placed in service and disposed of during the same taxable year.

(ii) *Technical termination of a partnership.* In the case of a technical termination of a partnership under section 708(b)(1)(B), the additional first year depreciation deduction is allowable for any qualified property or 50-percent bonus depreciation property placed in service by the terminated partnership during the taxable year of termination and contributed by the terminated partnership to the new partnership. The allowable additional first year depreciation deduction for the qualified property or the 50-percent bonus depreciation property shall not be claimed by the terminated partnership but instead shall be claimed by the new partnership for the new partnership's taxable year in which the qualified property or the 50-percent bonus depreciation property was contributed by the terminated partnership to the new partnership. However, if qualified property or 50-percent bonus depreciation property is both placed in service and contributed to a new partnership in a transaction described in section 708(b)(1)(B) by the terminated partnership during the taxable year of termination, and if such property is disposed of by the new partnership in the same taxable year the new partnership received such property from the terminated partnership, then no additional first year depreciation deduction is allowable to either partnership.

(iii) *Section 168(i)(7) transactions.* If any qualified property or 50-percent bonus depreciation property is transferred in a transaction described in section 168(i)(7) in the same taxable year that the qualified property or the

50-percent bonus depreciation property is placed in service by the transferor, the additional first year depreciation deduction is allowable for the qualified property or the 50-percent bonus depreciation property. The allowable additional first year depreciation deduction for the qualified property or the 50-percent bonus depreciation property for the transferor's taxable year in which the property is placed in service is allocated between the transferor and the transferee on a monthly basis. This allocation shall be made in accordance with the rules in § 1.168(d)–1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee. However, if qualified property or 50-percent bonus depreciation property is both placed in service and transferred in a transaction described in section 168(i)(7) by the transferor during the same taxable year, and if such property is disposed of by the transferee (other than by a transaction described in section 168(i)(7)) during the same taxable year the transferee received such property from the transferor, then no additional first year depreciation deduction is allowable to either party.

(iv) *Examples.* The application of this paragraph (f)(1) is illustrated by the following examples:

Example 1. X and *Y* are equal partners in *Partnership XY*, a general partnership. On February 1, 2002, *Partnership XY* purchased and placed in service new equipment at a cost of $30,000. On March 1, 2002, *X* sells its entire 50 percent interest to *Z* in a transfer that terminates the partnership under section 708(b)(1)(B). As a result, terminated *Partnership XY* is deemed to have contributed the equipment to new *Partnership XY*. Pursuant to paragraph (f)(1)(ii) of this section, new *Partnership XY*, not terminated *Partnership XY*, is eligible to claim the 30-percent additional first year depreciation deduction allowable for the equipment for the taxable year 2002 (assuming all other requirements are met).

Example 2. On January 5, 2002, *BB* purchased and placed in service new office desks for a total amount of $8,000. On August 20, 2002, *BB* transferred the office desks to *Partnership BC* in a transaction described in section 721. *BB* and *Partnership BC* are calendar-year taxpayers. Because the transaction between *BB* and *Partnership BC* is a transaction described in section 168(i)(7), pursuant to paragraph (f)(1)(iii) of this section the 30-percent additional first year depreciation deduction allowable for the desks is allocated between *BB* and *Partnership BC* in accordance with the rules in § 1.168(d)–1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee. Accordingly, the 30-percent additional first year depreciation deduction allowable for the desks for 2002 of $2,400 (the unadjusted depreciable basis of $8,000 multiplied by .30) is allocated between *BB* and *Partnership BC* based on the number of months that *BB* and *Partnership BC* held the desks in service. Thus, because the desks were held in service by *BB* for 7 of 12 months, which includes the month in which *BB* placed the desks in service but does not include the month in which the desks were transferred, *BB* is allocated $1,400 (7/12 × $2,400 additional first year depreciation deduction). *Partnership BC* is allocated $1,000, the remaining 5/12 of the $2,400 additional first year depreciation deduction allowable for the desks.

(2) *Redetermination of basis.* If the unadjusted depreciable basis (as defined in § 1.168(k)–1T(a)(2)(iii)) of qualified property or 50-percent bonus depreciation property is redetermined (for example, due to contingent purchase price or discharge of indebtedness) by January 1, 2005 (or January 1, 2006, for property described in section 168(k)(2)(B)), the additional first year depreciation deduction allowable for the qualified property or the 50-percent bonus depreciation property is redetermined as follows:

(i) *Increase in basis.* For the taxable year in which an increase in basis of qualified property or 50-percent bonus depreciation property occurs, the taxpayer shall claim an additional first year depreciation deduction for qualified property by multiplying the amount of the increase in basis for this property by 30 percent or, for 50-percent bonus depreciation property, by multiplying the amount of the increase in basis for this property by 50 percent. For purposes of this paragraph (f)(2)(i), the 30-percent additional first year depreciation deduction applies to the increase in basis if the underlying property is qualified property and the 50-percent additional first year depreciation deduction applies to the increase in basis if the underlying property is 50-percent bonus depreciation property. To determine the amount otherwise allowable as a depreciation deduction for the increase in basis of qualified property or 50-percent bonus depreciation property, the amount of the increase in basis of the qualified property or the 50-percent bonus depreciation property must be reduced by the additional first year depreciation deduction allowed or allowable, whichever is greater, for the increase in basis and the remaining increase in basis of—

(A) Qualified property or 50-percent bonus depreciation property (except for computer software described in paragraph (b)(2)(i)(B) of this section) is depreciated over the recovery period of the qualified property or the 50-percent bonus depreciation property, as applicable, remaining as of the beginning of the taxable year in which the increase in basis occurs, and using the same depreciation method and convention applicable to the qualified property or 50-percent bonus depreciation property, as applicable, that applies for the taxable year in which the increase in basis occurs; and

(B) Computer software (as defined in paragraph (b)(2)(i)(B) of this section) that is qualified property or 50-percent bonus depreciation property is depreciated ratably over the remainder of the 36-month period (the useful life under section 167(f)(1)) as of the beginning of the first day of the month in which the increase in basis occurs.

(ii) *Decrease in basis.* For the taxable year in which a decrease in basis of qualified property or 50-percent bonus depreciation property occurs, the taxpayer shall include in the taxpayer's income the excess additional first year depreciation deduction previously claimed for the qualified property or the 50-percent bonus depreciation property. This excess additional first year depreciation deduction for qualified property is determined by multiplying the amount of the decrease in basis for this property by 30 percent. The excess additional first year depreciation deduction for 50-percent bonus depreciation property is determined by multiplying the amount of the decrease in basis for this property by 50 percent. For purposes of this paragraph (f)(2)(ii), the 30-percent additional first year depreciation deduction applies to the decrease in basis if the underlying property is qualified property and the 50-percent additional first year depreciation deduction applies to the decrease in basis if the underlying property is 50-percent bonus depreciation property. Also, if the taxpayer establishes by adequate records or other sufficient evidence that the taxpayer claimed less than the additional first year depreciation deduction allowable for the qualified property or the 50-percent bonus depreciation property before the decrease in basis or if the taxpayer claimed more than the additional first year depreciation deduction allowable for the qualified property or the 50-percent bonus depreciation property before the decrease in basis, the excess additional first year depreciation deduction is determined by multiplying the amount of the decrease in basis by the additional first year depreciation deduction percentage actually claimed by the taxpayer for the qualified property or the 50-percent bonus depreciation property, as applicable, before the decrease in basis. To determine the amount includible in the taxpayer's income for the excess

depreciation previously claimed (other than the additional first year depreciation deduction) resulting from the decrease in basis of the qualified property or the 50-percent bonus depreciation property, the amount of the decrease in basis of the qualified property or the 50-percent bonus depreciation property must be adjusted by the excess additional first year depreciation deduction includible in the taxpayer's income (as determined under this paragraph) and the remaining decrease in basis of—

(A) Qualified property or 50-percent bonus depreciation property (except for computer software described in paragraph (b)(2)(i)(B) of this section) is included in the taxpayer's income over the recovery period of the qualified property or the 50-percent bonus depreciation property, as applicable, remaining as of the beginning of the taxable year in which the decrease in basis occurs, and using the same depreciation method and convention of the qualified property or 50-percent bonus depreciation property, as applicable, that applies in the taxable year in which the decrease in basis occurs; and

(B) Computer software (as defined in paragraph (b)(2)(i)(B) of this section) that is qualified property or 50-percent bonus depreciation property is included in the taxpayer's income ratably over the remainder of the 36-month period (the useful life under section 167(f)(1)) as of the beginning of the first day of the month in which the decrease in basis occurs.

(iii) *Definition.* For purposes of this paragraph (f)(2)—

(A) An increase in basis occurs in the taxable year an amount is taken into account under section 461; and

(B) A decrease in basis occurs in the taxable year an amount would be taken into account under section 451.

(iv) *Examples.* The application of this paragraph (f)(2) is illustrated by the following examples:

Example 1. (i) On May 15, 2002, *CC*, a cash-basis taxpayer, purchased and placed in service qualified property that is 5-year property at a cost of $200,000. In addition to the $200,000, *CC* agrees to pay the seller 25 percent of the gross profits from the operation of the property in 2002. On May 15, 2003, *CC* paid to the seller an additional $10,000. *CC* depreciates the 5-year property placed in service in 2002 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention.

(ii) For 2002, *CC* is allowed a 30-percent additional first year depreciation deduction of $60,000 (the unadjusted depreciable basis of $200,000 multiplied by .30). In addition, *CC*'s depreciation deduction for 2002 for the remaining adjusted depreciable basis of $140,000 (the unadjusted depreciable basis of $200,000 reduced by the additional first year depreciation deduction of $60,000) is $28,000 (the remaining adjusted depreciable basis of $140,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) For 2003, *CC*'s depreciation deduction for the remaining adjusted depreciable basis of $140,000 is $44,800 (the remaining adjusted depreciable basis of $140,000 multiplied by the annual depreciation rate of .32 for recovery year 2). In addition, pursuant to paragraph (f)(2)(i) of this section, *CC* is allowed an additional first year depreciation deduction for 2003 for the $10,000 increase in basis of the qualified property. Consequently, *CC* is allowed an additional first year depreciation deduction of $3,000 (the increase in basis of $10,000 multiplied by .30). Also, *CC* is allowed a depreciation deduction for 2003 attributable to the remaining increase in basis of $7,000 (the increase in basis of $10,000 reduced by the additional first year depreciation deduction of $3,000). The depreciation deduction allowable for 2003 attributable to the remaining increase in basis of $7,000 is $3,111 (the remaining increase in basis of $7,000 multiplied by .4444, which is equal to 1/remaining recovery period of 4.5 years at January 1, 2003, multiplied by 2). Accordingly, for 2003, *CC*'s total depreciation deduction allowable for the qualified property is $50,911.

Example 2. (i) On May 15, 2002, *CC* purchased and placed in service qualified property that is 5-year property at a cost of $400,000. To purchase the property, *DD* borrowed $250,000 from Bank2. On May 15, 2003, Bank2 forgives $50,000 of the indebtedness. *DD* makes the election provided in section 108(b)(5) to apply any portion of the reduction under section 1017 to the basis of the depreciable property of the taxpayer. *DD* depreciates the 5-year property placed in service in 2002 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention.

(ii) For 2002, *DD* is allowed a 30-percent additional first year depreciation deduction of $120,000 (the unadjusted depreciable basis of $400,000 multiplied by .30). In addition, *DD*'s depreciation deduction allowable for 2002 for the remaining adjusted depreciable basis of $280,000 (the unadjusted depreciable basis of $400,000 reduced by the additional first year depreciation deduction of $120,000) is $56,000 (the remaining adjusted depreciable basis of $280,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) For 2003, *DD*'s deduction for the remaining adjusted depreciable basis of $280,000 is $89,600 (the remaining adjusted depreciable basis of $280,000 multiplied by the annual depreciation rate of .32 for recovery year 2). However, pursuant to paragraph (f)(2)(ii) of this section, *DD* must include in its taxable income for 2003 the excess depreciation previously claimed for the $50,000 decrease in basis of the qualified property. Consequently, *DD* must include in its taxable income for 2003 the excess additional first year depreciation of $4,500 (the decrease in basis of $50,000 multiplied by .30). Also, *DD* must include in its taxable income for 2003 the excess depreciation attributable to the remaining decrease in basis of $45,500 (the decrease in basis of $50,000 reduced by the excess additional first year depreciation of $4,500). The amount includible in taxable income for 2003 for the remaining decrease in basis of $45,500 is $20,222 (the remaining decrease in basis of $45,500 multiplied by .4444, which is equal to 1/remaining recovery period of 4.5 years at January 1, 2003, multiplied by 2). Accordingly, for 2003, *DD*'s total depreciation deduction allowable for the qualified property is $64,878 ($89,600 minus $4,500 minus $20,222).

(3) *Section 1245 and 1250 depreciation recapture.* For purposes of section 1245 and the regulations thereunder, the additional first year depreciation deduction is an amount allowed or allowable for depreciation. Further, for purposes of section 1250(b) and the regulations thereunder, the additional first year depreciation deduction is not a straight line method.

(4) *Coordination with section 169.* The additional first year depreciation deduction is allowable in the placed-in-service year of a certified pollution control facility (as defined in § 1.169–2(a)) that is qualified property or 50-percent bonus depreciation property, even if the taxpayer makes the election to amortize the certified pollution control facility under section 169 and the regulations thereunder in the certified pollution control facility's placed-in-service year.

(5) *Like-kind exchanges and involuntary conversions*—(i) *Scope.* The rules of this paragraph (f)(5) apply to acquired MACRS property or acquired computer software that is eligible for the additional first year depreciation deduction under section 168(k) at the time of replacement provided the time of replacement is after September 10, 2001, and before January 1, 2005, or, in the case of acquired MACRS property or acquired computer software that is qualified property, or 50-percent bonus depreciation property, described in section 168(k)(2)(B), the time of replacement is after September 10, 2001, and before January 1, 2006.

(ii) *Definitions.* For purposes of this paragraph (f)(5), the following definitions apply:

(A) *Acquired MACRS property* is MACRS property in the hands of the acquiring taxpayer that is acquired in a transaction described in section 1031(a), (b), or (c) for other MACRS property or that is acquired in connection with an involuntary conversion of other MACRS

property in a transaction to which section 1033 applies.

(B) *Exchanged or involuntarily converted MACRS property* is MACRS property that is transferred by the taxpayer in a transaction described in section 1031(a), (b), or (c), or that is converted as a result of an involuntary conversion to which section 1033 applies.

(C) *Acquired computer software* is computer software (as defined in paragraph (b)(2)(i)(B) of this section) in the hands of the acquiring taxpayer that is acquired in a like-kind exchange under section 1031 or as a result of an involuntary conversion under section 1033.

(D) *Exchanged or involuntarily converted computer software* is computer software (as defined in paragraph (b)(2)(i)(B) of this section) that is transferred by the taxpayer in a like-kind exchange under section 1031 or that is converted as a result of an involuntary conversion under section 1033.

(E) *Time of disposition* is when the disposition of the exchanged or involuntarily converted MACRS property or the exchanged or involuntarily converted computer software, as applicable, takes place.

(F) *Time of replacement* is the later of:

(*1*) When the property received in the exchange or involuntary conversion is placed in service; or

(*2*) The time of disposition of involuntarily converted property.

(G) *Carryover basis* is the lesser of:

(*1*) The basis in the acquired MACRS property or acquired computer software, as applicable and as determined under section 1031(d) or 1033(b) and the regulations thereunder; or

(*2*) The adjusted depreciable basis of the exchanged or involuntarily converted MACRS property or the exchanged or involuntarily converted computer software, as applicable.

(H) *Excess basis* is any excess of the basis in the acquired MACRS property or acquired computer software, as applicable and as determined under section 1031(d) or 1033(b) and the regulations thereunder, over the carryover basis as determined under paragraph (f)(5)(ii)(G) of this section.

(I) *Remaining carryover basis* is the carryover basis as determined under paragraph (f)(5)(ii)(G) of this section reduced by—

(*1*) The percentage of the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business (or for the production of income); and

(*2*) Any adjustments to basis provided by other provisions of the Code and the regulations thereunder (including section 1016(a)(2) and (3)) for periods prior to the disposition of the exchanged or involuntarily converted property.

(J) *Remaining excess basis* is the excess basis as determined under paragraph (f)(5)(ii)(H) of this section reduced by—

(*1*) The percentage of the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business (or for the production of income);

(*2*) Any portion of the basis the taxpayer properly elects to treat as an expense under section 179; and

(*3*) Any adjustments to basis provided by other provisions of the Code and the regulations thereunder.

(iii) *Computation*—(A) *In general.* Assuming all other requirements are met, the remaining carryover basis for the year of replacement and the remaining excess basis, if any, for the year of replacement for the acquired MACRS property or the acquired computer software, as applicable, are eligible for the additional first year depreciation deduction. The 30-percent additional first year depreciation deduction applies to the remaining carryover basis and the remaining excess basis, if any, of the acquired MACRS property or the acquired computer software if the time of replacement is after September 10, 2001, and before May 6, 2003, or if the taxpayer made the election provided in paragraph (e)(1)(ii)(A) of this section. The 50-percent additional first year depreciation deduction applies to the remaining carryover basis and the remaining excess basis, if any, of the acquired MACRS property or the acquired computer software if the time of replacement is after May 5, 2003, and before January 1, 2005, or before January 1, 2006, for 50-percent bonus depreciation property described in section 168(k)(2)(B). The additional first year depreciation deduction is computed separately for the remaining carryover basis and the remaining excess basis. Rules similar to the rules provided in paragraph (d) of this section apply to property described in section 168(k)(2)(B) and for alternative minimum tax purposes.

(B) *Year of disposition and year of replacement.* The additional first year depreciation deduction is allowable for the acquired MACRS property or acquired computer software in the year of replacement. However, the additional first year depreciation deduction is not allowable for the exchanged or involuntarily converted MACRS property or the exchanged or involuntarily converted computer software if the MACRS property or computer software, as applicable, is placed in service and disposed of in an exchange or involuntary conversion in the same taxable year.

(iv) *Sale-leaseback transaction.* For purposes of this paragraph (f)(5), if MACRS property or computer software is sold to a taxpayer and leased back to a person by the taxpayer within three months after the time of disposition of the MACRS property or computer software, as applicable, the time of replacement for this MACRS property or computer software, as applicable, shall not be earlier than the date on which the MACRS property or computer software, as applicable, is used by the lessee under the leaseback.

(v) *Examples.* The application of this paragraph (f)(5) is illustrated by the following examples:

Example 1. (i) In December 2002, *EE*, a calendar-year corporation, acquired for $200,000 and placed in service Canopy V1, a gas station canopy. Canopy V1 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). *EE* depreciated Canopy V1 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. *EE* elected to use the optional depreciation tables to compute the depreciation allowance for Canopy V1. On January 1, 2003, Canopy V1 was destroyed in a fire and was no longer usable in *EE*'s business. On June 1, 2003, in a transaction described in section 1033(a)(2), *EE* acquired and placed in service Canopy W1 with all of the $160,000 of insurance proceeds *EE* received due to the loss of Canopy V1. Canopy W1 is 50-percent bonus depreciation property under section 168(k)(4) and is 5-year property under section 168(e).

(ii) For 2002, *EE* is allowed a 30-percent additional first year depreciation deduction of $60,000 for Canopy V1 (the unadjusted depreciable basis of $200,000 multiplied by .30), and a regular MACRS depreciation deduction of $28,000 for Canopy V1 (the remaining adjusted depreciable basis of $140,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) Pursuant to paragraph (f)(5)(iii)(A) of this section, the additional first year depreciation deduction allowable for Canopy W1 equals $56,000 (.50 of Canopy W1's remaining carryover basis of $112,000 (Canopy V1's remaining adjusted depreciable basis of $140,000 minus 2002 regular MACRS depreciation deduction of $28,000).

Example 2. (i) Same facts as in Example 1, except EE elected not to deduct the additional first year depreciation for 5-year property placed in service in 2002. EE deducted the additional first year depreciation for 5-year property placed in service in 2003.

(ii) For 2002, *EE* is allowed a regular MACRS depreciation deduction of $40,000 for Canopy V1 (the unadjusted depreciable basis of $200,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) Pursuant to paragraph (f)(5)(iii)(A) of this section, the additional first year

depreciation deduction allowable for Canopy W1 equals $80,000 (.50 of Canopy W1's remaining carryover basis of $160,000 (Canopy V1's unadjusted depreciable basis of $200,000 minus 2002 regular MACRS depreciation deduction of $40,000).

Example 3. (i) In December 2001, FF, a calendar year corporation, acquired for $10,000 and placed in service Computer X2. Computer X2 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). FF depreciated Computer X2 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. FF elected to use the optional depreciation tables to compute the depreciation allowance for Computer X2. On January 1, 2002, FF acquired Computer Y2 by exchanging Computer X2 and $1,000 cash in a transaction described in section 1031(a). Computer Y2 is qualified property under section 168(k)(1) and is 5-year property under section 168(e).

(ii) For 2001, FF is allowed a 30-percent additional first year depreciation deduction of $3,000 for Computer X2 (unadjusted basis of $10,000 multiplied by .30), and a regular MACRS depreciation deduction of $1,400 for Computer X2 (the remaining adjusted depreciable basis of $7,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) Pursuant to paragraph (f)(5)(iii)(A) of this section, the 30-percent additional first year depreciation deduction for Computer Y2 is allowable for the remaining carryover basis of $5,600 (Computer X2's unadjusted depreciable basis of $10,000 minus additional first year depreciation deduction allowable of $3,000 minus 2001 regular MACRS depreciation deduction of $1,400) and for the remaining excess basis of $1,000 (cash paid for Computer Y2). Thus, the 30-percent additional first year depreciation deduction for the remaining carryover basis equals $1,680 ($5,600 multiplied by .30) and for the remaining excess basis equals $300 ($1,000 multiplied by .30), which totals $1,980.

Example 4. (i) In September 2002, GG, a June 30 year-end corporation, acquired for $20,000 and placed in service Equipment X3. Equipment X3 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). GG depreciated Equipment X3 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. GG elected to use the optional depreciation tables to compute the depreciation allowance for Equipment X3. In December 2002, GG acquired Equipment Y3 by exchanging Equipment X3 and $5,000 cash in a transaction described in section 1031(a). Equipment Y3 is qualified property under section 168(k)(1) and is 5-year property under section 168(e).

(ii) Pursuant to paragraph (f)(5)(iii)(B) of this section, no additional first year depreciation deduction is allowable for Equipment X3 and, pursuant to § 1.168(d)–1T(b)(3)(ii), no regular depreciation deduction is allowable for Equipment X3.

(iii) Pursuant to paragraph (f)(5)(iii)(A) of this section, the 30-percent additional first year depreciation deduction for Equipment Y3 is allowable for the remaining carryover basis of $20,000 (Equipment X3's unadjusted depreciable basis of $20,000) and for the remaining excess basis of $5,000 (cash paid for Equipment Y3). Thus, the 30-percent additional first year depreciation deduction for the remaining carryover basis equals $6,000 ($20,000 multiplied by .30) and for the remaining excess basis equals $1,500 ($5,000 multiplied by .30), which totals $7,500.

Example 5. (i) Same facts as in Example 4. GG depreciated Equipment Y3 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. GG elected to use the optional depreciation tables to compute the depreciation allowance for Equipment Y3. On July 1, 2003, GG acquired Equipment Z1 by exchanging Equipment Y3 in a transaction described in section 1031(a). Equipment Z1 is 50-percent bonus depreciation property under section 168(k)(4) and is 5-year property under section 168(e).

(ii) For the taxable year ending June 30, 2003, the regular MACRS depreciation deduction allowable for the remaining carryover basis of Equipment Y3 is $2,800 (the remaining carryover basis of $14,000 multiplied by the annual depreciation rate of .20 for recovery year 1) and for the remaining excess basis of Equipment Y3 is $700 (the remaining excess basis of $3,500 multiplied by the annual depreciation rate of .20 for recovery year 1), which totals $3,500.

(iii) For the taxable year ending June 30, 2004, pursuant to paragraph (f)(5)(iii)(A) of this section, the 50-percent additional first year depreciation deduction allowable for Equipment Z1 is $7,000 (.50 of Equipment Z1's remaining carryover basis of $14,000 (Equipment Y3's total unadjusted depreciable basis of $25,000 minus the total additional first year depreciation deduction of $7,500 minus the total regular MACRS depreciation deduction of $3,500).

(6) *Change in use*—(i) *Change in use of depreciable property.* The determination of whether the use of depreciable property changes is made in accordance with section 168(i)(5) and regulations thereunder.

(ii) *Conversion to personal use.* If qualified property or 50-percent bonus depreciation property is converted from business or income-producing use to personal use in the same taxable year in which the property is placed in service by a taxpayer, the additional first year depreciation deduction is not allowable for the property.

(iii) *Conversion to business or income-producing use*—(A) *During the same taxable year.* If, during the same taxable year, property is acquired by a taxpayer for personal use and is converted by the taxpayer from personal use to business or income-producing use, the additional first year depreciation deduction is allowable for the property in the taxable year the property is converted to business or income-producing use (assuming all of the requirements in paragraph (b) of this section are met). See paragraph (b)(3)(ii) of this section relating to the original use rules for a conversion of property to business or income-producing use.

(B) *Subsequent to the acquisition year.* If property is acquired by a taxpayer for personal use and, during a subsequent taxable year, is converted by the taxpayer from personal use to business or income-producing use, the additional first year depreciation deduction is allowable for the property in the taxable year the property is converted to business or income-producing use (assuming all of the requirements in paragraph (b) of this section are met). For purposes of paragraphs (b)(4) and (5) of this section, the property must be acquired by the taxpayer for personal use after September 10, 2001 (for qualified property), or after May 5, 2003 (for 50-percent bonus depreciation property), and converted by the taxpayer from personal use to business or income-producing use by January 1, 2005. See paragraph (b)(3)(ii) of this section relating to the original use rules for a conversion of property to business or income-producing use.

(iv) *Depreciable property changes use subsequent to the placed-in-service year*—(A) If the use of qualified property or 50-percent bonus depreciation property changes in the hands of the same taxpayer subsequent to the taxable year the qualified property or the 50-percent bonus depreciation property, as applicable, is placed in service and, as a result of the change in use, the property is no longer qualified property or 50-percent bonus depreciation property, as applicable, the additional first year depreciation deduction allowable for the qualified property or the 50-percent bonus depreciation property, as applicable, is not redetermined.

(B) If depreciable property is not qualified property or 50-percent bonus depreciation property in the taxable year the property is placed in service by the taxpayer, the additional first year depreciation deduction is not allowable for the property even if a change in the use of the property subsequent to the taxable year the property is placed in service results in the property being qualified property or 50-percent bonus depreciation property in the taxable year of the change in use.

(v) *Examples.* The application of this paragraph (f)(6) is illustrated by the following examples:

Example 1. (i) On January 1, 2002, HH, a calendar year corporation, purchased and placed in service several new computers at a total cost of $100,000. HH used these computers within the United States for 3 months in 2002 and then moved and used the computers outside the United States for the remainder of 2002. On January 1, 2003, HH permanently returns the computers to the United States for use in its business.

(ii) For 2002, the computers are considered as used predominantly outside the United States in 2002 pursuant to § 1.48–1(g)(1)(i). As a result, the computers are required to be depreciated under the alternative depreciation system of section 168(g). Pursuant to paragraph (b)(2)(ii)(A)*2*) of this section, the computers are not qualified property in 2002, the placed-in-service year. Thus, pursuant to (f)(6)(iv)(B) of this section, no additional first year depreciation deduction is allowed for these computers, regardless of the fact that the computers are permanently returned to the United States in 2003.

Example 2. (i) On February 8, 2002, *II*, a calendar year corporation, purchased and placed in service new equipment at a cost of $1,000,000 for use in its California plant. The equipment is 5-year property under section 168(e) and is qualified property under section 168(k). *II* depreciates its 5-year property placed in service in 2002 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention. On June 4, 2003, due to changes in *II*'s business circumstances, *II* permanently moves the equipment to its plant in Mexico.

(ii) For 2002, *II* is allowed a 30-percent additional first year depreciation deduction of $300,000 (the adjusted depreciable basis of $1,000,000 multiplied by .30). In addition, *II*'s depreciation deduction allowable in 2002 for the remaining adjusted depreciable basis of $700,000 (the unadjusted depreciable basis of $1,000,000 reduced by the additional first year depreciation deduction of $300,000) is $140,000 (the remaining adjusted depreciable basis of $700,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) For 2003, the equipment is considered as used predominantly outside the United States pursuant to § 1.48–1(g)(1)(i). As a result of this change in use, the adjusted depreciable basis of $560,000 for the equipment is required to be depreciated under the alternative depreciation system of section 168(g) beginning in 2003. However, the additional first year depreciation deduction of $300,000 allowed for the equipment in 2002 is not redetermined.

(7) *Earnings and profits.* The additional first year depreciation deduction is not allowable for purposes of computing earnings and profits.

(8) *Limitation of amount of depreciation for certain passenger automobiles.* For a passenger automobile as defined in section 280F(d)(5), the limitation under section 280F(a)(1)(A)(i) is increased by—

(i) $4,600 for qualified property acquired by a taxpayer after September 10, 2001, and before May 6, 2003; and

(ii) $7,650 for qualified property or 50-percent bonus depreciation property acquired by a taxpayer after May 5, 2003.

(9) *Section 754 election.* In general, for purposes of section 168(k) any increase in basis of qualified property or 50-percent bonus depreciation property due to a section 754 election is not eligible for the additional first year depreciation deduction. However, if qualified property or 50-percent bonus depreciation property is placed in service by a partnership in the taxable year the partnership terminates under section 708(b)(1)(B), any increase in basis of the qualified property or the 50-percent bonus depreciation property due to a section 754 election is eligible for the additional first year depreciation deduction.

(g) *Effective date*—(1) *In general.* Except as provided in paragraphs (g)(2) and (3) of this section, this section applies to qualified property under section 168(k)(2) acquired by a taxpayer after September 10, 2001, and to 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003. This section expires on September 8, 2006.

(2) *Technical termination of a partnership or section 168(i)(7) transactions.* If qualified property or 50 percent bonus depreciation property is transferred in a technical termination of a partnership under section 708(b)(1)(B) or in a transaction described in section 168(i)(7) for a taxable year ending on or before September 8, 2003, and the additional first year depreciation deduction allowable for the property was not determined in accordance with paragraph (f)(1)(ii) or (iii) of this section, as applicable, the Internal Revenue Service will allow any reasonable method of determining the additional first year depreciation deduction allowable for the property in the year of the transaction that is consistently applied to the property by all parties to the transaction.

(3) *Like-kind exchanges and involuntary conversions.* If a taxpayer did not claim on a federal tax return for a taxable year ending on or before September 8, 2003, the additional first year depreciation deduction for the remaining carryover basis of qualified property or 50-percent bonus depreciation property acquired in a transaction described in section 1031(a), (b), or (c), or in a transaction to which section 1033 applies and the taxpayer did not make an election not to deduct the additional first year depreciation deduction for the class of property applicable to the remaining carryover basis, the Internal Revenue Service will treat the taxpayer's method of not claiming the additional first year depreciation deduction for the remaining carryover basis as a permissible method of accounting and will treat the amount of the additional first year depreciation deduction allowable for the remaining carryover basis as being equal to zero, provided the taxpayer does not claim the additional first year depreciation deduction for the remaining carryover basis in accordance with paragraph (g)(4)(ii) of this section.

(4) *Change in method of accounting*—(i) *Special rules for 2000 or 2001 returns.* If a taxpayer did not claim on the Federal tax return for the taxable year that included September 11, 2001, any additional first year depreciation deduction for a class of property that is qualified property and did not make an election not to deduct the additional first year depreciation deduction for that class of property, the taxpayer should refer to the guidance provided by the Internal Revenue Service for the time and manner of claiming the additional first year depreciation deduction for the class of property (for further guidance, *see* section 4 of Rev. Proc. 2002–33 (2002–1 C.B. 963), Rev. Proc. 2003–50 (2003–29 I.R.B. 119), and § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Like-kind exchanges and involuntary conversions.* If a taxpayer did not claim on a federal tax return for any taxable year ending on or before September 8, 2003, the additional first year depreciation deduction allowable for the remaining carryover basis of qualified property or 50-percent bonus depreciation property acquired in a transaction described in section 1031(a), (b), or (c), or in a transaction to which section 1033 applies and the taxpayer did not make an election not to deduct the additional first year depreciation deduction for the class of property applicable to the remaining carryover basis, the taxpayer may claim the additional first year depreciation deduction allowable for the remaining carryover basis in accordance with paragraph (f)(5) of this section either:

(A) By filing an amended return (or a qualified amended return, if applicable (for further guidance, *see* Rev. Proc. 94–69 (1994–2 C.B. 804) and § 601.601(d)(2)(ii)(*b*) of this chapter)) on or before December 31, 2003, for the year of replacement and any affected subsequent taxable year; or,

(B) By following the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in method of accounting (for further guidance, *see* Rev. Proc. 2002–9 (2002–1 C.B. 327) and § 601.601(d)(2)(ii)(*b*) of this chapter).

■ **Par. 8.** Section 1.169–3 is amended by:

■ 1. Revising paragraphs (a) and (b)(2).

■ 2. Adding paragraph (g).

The additions and revisions read as follows:

§ 1.169–3 Amortizable basis.

(a) [Reserved]. For further guidance, *see* § 1.169–3T(a).

* * * * *

(b) * * *

(2) [Reserved]. For further guidance, *see* § 1.169–3T(b)(2).

* * * * *

(g) *Effective date for qualified property, 50-percent bonus depreciation property, and qualified New York Liberty Zone property.* [Reserved]. For further guidance, *see* § 1.169–3T(g).

■ **Par. 9.** Section 1.169–3T is added to read as follows:

§ 1.169–3T Amortizable basis (temporary).

(a) *In general.* The amortizable basis of a certified pollution control facility for the purpose of computing the amortization deduction under section 169 is the adjusted basis of the facility for purposes of determining gain (*see* part II (section 1011 and following), subchapter O, chapter 1 of the Internal Revenue Code), in conjuction with paragraphs (b), (c), and (d) of this section. The adjusted basis for purposes of determining gain (computed without regard to paragraphs (b), (c), and (d) of this section) of a facility that performs a function in addition to pollution control, or that is used in connection with more than one plant or other property, or both, is determined under § 1.169–2(a)(3). For rules as to additions and improvements to such a facility, see paragraph (f) of this section. Before computing the amortization deduction allowable under section 169, the adjusted basis for purposes of determining gain for a facility that is placed in service by a taxpayer after September 10, 2001, and that is qualified property under section 168(k)(2) or § 1.168(k)-1T, 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)-1T, or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)-1T must be reduced by the amount of the additional first year depreciation deduction allowed or allowable, whichever is greater, under section 168(k) or section 1400L(b), as applicable, for the facility.

(b) *Limitation on post-1968 construction, reconstruction, or erection.* (1) For further guidance, *see* § 1.169–3(b)(1).

(2) If the taxpayer elects to begin the 60-month amortization period with the first month of the taxable year succeeding the taxable year in which the facility is completed or acquired and a depreciation deduction is allowable under section 167 (including an additional first-year depreciation allowance under former section 179; for a facility that is acquired by the taxpayer after September 10, 2001, and that is qualified property under section 168(k)(2) or § 1.168(k)-1T or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)-1T, the additional first year depreciation deduction under section 168(k)(1) or 1400L(b), as applicable; and for a facility that is acquired by the taxpayer after May 5, 2003, and that is 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)-1T, the additional first year depreciation deduction under section 168(k)(4)) with respect to the facility for the taxable year in which it is completed or acquired, the amount determined under paragraph (b)(1) of this section shall be reduced by an amount equal to the amount of the depreciation deduction allowed or allowable, whichever is greater, multiplied by a fraction the numerator of which is the amount determined under paragraph (b)(1) of this section, and the denominator of which is the facility's total cost. The additional first-year allowance for depreciation under former section 179 will be allowable only for the taxable year in which the facility is completed or acquired and only if the taxpayer elects to begin the amortization deduction under section 169 with the taxable year succeeding the taxable year in which such facility is completed or acquired. For a facility that is acquired by a taxpayer after September 10, 2001, and that is qualified property under section 168(k)(2) or § 1.168(k)-1T or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)-1T, *see* § 1.168(k)-1T(f)(4) or § 1.1400L(b)-1T(f)(4), as applicable, with respect to when the additional first year depreciation deduction under section 168(k)(1) or 1400L(b) is allowable. For a facility that is acquired by a taxpayer after May 5, 2003, and that is 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)-1T, see § 1.168(k)-1T(f)(4) with respect to when the additional first year depreciation deduction under section 168(k)(4) is allowable.

(c) through (f) For further guidance, *see* § 1.169–3(c) through (f).

(g) *Effective date for qualified property, 50-percent bonus depreciation property, and qualified New York Liberty Zone property.* This section applies to a certified pollution control facility. This section also applies to a certified pollution control facility that is qualified property under section 168(k)(2) or qualified New York Liberty Zone property under section 1400L(b) acquired by a taxpayer after September 10, 2001, and to a certified pollution control facility that is 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003. This section expires on September 8, 2003.

■ **Par. 10.** Section 1.1400L(b)–1T is added to read as follows:

§ 1.1400L(b)–1T Additional first year depreciation deduction for qualified New York Liberty Zone property (temporary).

(a) *Scope.* This section provides the rules for determining the 30-percent additional first year depreciation deduction allowable under section 1400L(b) for qualified New York Liberty Zone property.

(b) *Definitions.* For purposes of section 1400L(b) and this section, the definitions of the terms in § 1.168(k)–1T(a)(2) apply and the following definitions also apply:

(1) *Building* and *structural components* have the same meanings as those terms are defined in § 1.48–1(e).

(2) *New York Liberty Zone* is the area located on or south of Canal Street, East Broadway (east of its intersection with Canal Street), or Grand Street (east of its intersection with East Broadway) in the Borough of Manhattan in the City of New York, New York.

(3) *Nonresidential real property* and *residential rental property* have the same meanings as those terms are defined in section 168(e)(2).

(4) *Real property* is a building or its structural components, or other tangible real property except property described in section 1245(a)(3)(B) (relating to depreciable property used as an integral part of a specified activity or as a specified facility), section 1245(a)(3)(D) (relating to single purpose agricultural or horticultural structure), or section 1245(a)(3)(E) (relating to a storage facility used in connection with the distribution of petroleum or any primary product of petroleum).

(c) *Qualified New York Liberty Zone property*—(1) *In general.* Qualified New York Liberty Zone property is depreciable property that—

(i) Meets the requirements in § 1.1400L(b)–1T(c)(2) (description of property);

(ii) Meets the requirements in § 1.1400L(b)–1T(c)(3) (substantial use);

(iii) Meets the requirements in § 1.1400L(b)–1T(c)(4) (original use);

(iv) Meets the requirements in § 1.1400L(b)–1T(c)(5) (acquisition of property by purchase); and

(v) Meets the requirements in § 1.1400L(b)–1T(c)(6) (placed-in-service date).

(2) *Description of qualified New York Liberty Zone property*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (c)(2) if the property is—

(A) Described in § 1.168(k)–1T(b)(2)(i); or

(B) Nonresidential real property or residential rental property depreciated under section 168, but only to the extent it rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of the terrorist attacks of September 11, 2001. Property is treated as replacing destroyed or condemned property if, as part of an integrated plan, the property replaces real property that is included in a continuous area that includes real property destroyed or condemned. For purposes of this section, real property is considered as destroyed or condemned only if an entire building or structure was destroyed or condemned as a result of the terrorist attacks of September 11, 2001. Otherwise, the real property is considered damaged real property. For example, if certain structural components (for example, walls, floors, and plumbing fixtures) of a building are damaged or destroyed as a result of the terrorist attacks of September 11, 2001, but the building is not destroyed or condemned, then only costs related to replacing the damaged or destroyed structural components qualify under this paragraph (c)(2)(i)(B).

(ii) *Property not eligible for additional first year depreciation deduction.* Depreciable property will not meet the requirements of this paragraph (c)(2) if—

(A) Section 168(k) or § 1.168(k)–1T applies to the property; or

(B) The property is described in section § 1.168(k)–1T(b)(2)(ii).

(3) *Substantial use.* Depreciable property will meet the requirements of this paragraph (c)(3) if substantially all of the use of the property is in the New York Liberty Zone and is in the active conduct of a trade or business by the taxpayer in New York Liberty Zone. For purposes of this paragraph (c)(3), "substantially all" means 80 percent or more.

(4) *Original use.* Depreciable property will meet the requirements of this paragraph (c)(4) if the original use of the property commences with the taxpayer in the New York Liberty Zone after September 10, 2001. The original use rules in § 1.168(k)–1T(b)(3) apply for purposes of this paragraph (c)(4). In addition, used property will satisfy the original use requirement in this paragraph (c)(4) so long as the property has not been previously used within the New York Liberty Zone.

(5) *Acquisition of property by purchase*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (c)(5) if the property is acquired by the taxpayer by purchase (as defined in section 179(d) and § 1.179–4(c)) after September 10, 2001, but only if no written binding contract for the acquisition of the property was in effect before September 11, 2001. For purposes of this paragraph (c)(5), the rules in § 1.168(k)–1T(b)(4)(ii) (binding contract), the rules in § 1.168(k)–1T(b)(4)(iii) (self-constructed property), and the rules in § 1.168(k)–1T(b)(4)(iv) (disqualified transactions) apply. For purposes of the preceding sentence, the rules in § 1.168(k)–1T(b)(4)(iii) shall be applied without regard to 'and before January 1, 2005.'

(ii) *Exception for certain transactions.* For purposes of this section, the new partnership of a transaction described in § 1.168(k)–1T(f)(1)(ii) (technical termination of a partnership) or the transferee of a transaction described in § 1.168(k)–1T(f)(1)(iii) (section 168(i)(7) transactions) is deemed to acquire the depreciable property by purchase.

(6) *Placed-in-service date.* Depreciable property will meet the requirements of this paragraph (c)(6) if the property is placed in service by the taxpayer on or before December 31, 2006. However, nonresidential real property and residential rental property described in paragraph (c)(2)(i)(B) of this section must be placed in service by the taxpayer on or before December 31, 2009. The rules in § 1.168(k)–1T(b)(5)(ii) (relating to sale-leaseback and syndication transactions), the rules in § 1.168(k)–1T(b)(5)(iii) (relating to a technical termination of a partnership under section 708(b)(1)(B)), and the rules in § 1.168(k)–1T(b)(5)(iv) (relating to section 168(i)(7) transactions) apply for purposes of this paragraph (c)(6).

(d) *Computation of depreciation deduction for qualified New York Liberty Zone property.* The computation of the allowable additional first year depreciation deduction and the otherwise allowable depreciation deduction for qualified New York Liberty Zone property is made in accordance with the rules for qualified property in § 1.168(k)–1T(d)(1)(i) and (2).

(e) *Election not to deduct additional first year depreciation*—(1) *In general.* A taxpayer may make an election not to deduct the 30-percent additional first year depreciation for any class of property that is qualified New York Liberty Zone property placed in service during the taxable year. If a taxpayer makes an election under this paragraph (e), the election applies to all qualified New York Liberty Zone property that is in the same class of property and placed in service in the same taxable year, and no additional first year depreciation deduction is allowable for the class of property.

(2) *Definition of class of property.* For purposes of this paragraph (e), the term class of property means—

(i) Except for the property described in paragraphs (e)(2)(ii), (iv), and (v) of this section, each class of property described in section 168(e) (for example, 5-year property);

(ii) Water utility property as defined in section 168(e)(5) and depreciated under section 168;

(iii) Computer software as defined in, and depreciated under, section 167(f)(1) and the regulations thereunder;

(iv) Nonresidential real property as defined in paragraph (b)(3) of this section and as described in paragraph (c)(2)(B) of this section; or

(v) Residential rental property as defined in paragraph (b)(3) of this section and as described in paragraph (c)(2)(B) of this section

(3) *Time and manner for making election*—(i) *Time for making election.* Except as provided in paragraph (e)(4) of this section, the election specified in paragraph (e)(1) of this section must be made by the due date (including extensions) of the Federal tax return for the taxable year in which the qualified New York Liberty Zone property is placed in service by the taxpayer

(ii) *Manner of making election.* Except as provided in paragraph (e)(4) of this section, the election specified in paragraph (e)(1) of this section must be made in the manner prescribed on Form 4562, "Depreciation and Amortization," and its instructions. The election is made separately by each person owning qualified New York Liberty Zone property (for example, for each member of a consolidated group by the common parent of the group, by the partnership, or by the S corporation). If Form 4562 is revised or renumbered, any reference in this section to that form shall be treated as a reference to the revised or renumbered form.

(4) *Special rules for 2000 or 2001 returns.* For the election specified in paragraph (e)(1) of this section for qualified New York Liberty Zone property placed in service by the taxpayer during the taxable year that included September 11, 2001, the taxpayer should refer to the guidance provided by the Internal Revenue Service for the time and manner of making this election on the 2000 or 2001 Federal tax return for the taxable year that included September 11, 2001 (for further guidance, *see* sections 3.03(3) and 4 of Rev. Proc. 2002–33 (2002–1 C.B. 963), Rev. Proc. 2003–50 (2003–29 I.R.B. 119), and § 601.601(d)(2)(ii)(*b*) of this chapter).

(5) *Failure to make election.* If a taxpayer does not make the election specified in paragraph (e)(1) of this section within the time and in the manner prescribed in paragraph (e)(3) or (e)(4) of this section, the amount of depreciation allowable for that property under section 167(f)(1) or under section 168, as applicable, must be determined for the placed-in-service year and for all subsequent taxable years by taking into account the additional first year depreciation deduction. Thus, the election specified in paragraph (e)(1) of this section shall not be made by the taxpayer in any other manner (for example, the election cannot be made through a request under section 446(e) to change the taxpayer's method of accounting).

(f) *Special rules*—(1) *Property placed in service and disposed of in the same taxable year.* Rules similar to those provided in § 1.168(k)–1T(f)(1) apply for purposes of this paragraph (f)(1).

(2) *Redetermination of basis.* If the unadjusted depreciable basis (as defined in § 1.168(k)–1T(a)(2)(iii)) of qualified New York Liberty Zone property is redetermined (for example, due to contingent purchase price or discharge of indebtedness) on or before December 31, 2006 (or on or before December 31, 2009, for nonresidential real property and residential rental property described in paragraph (c)(2)(i)(B) of this section), the additional first year depreciation deduction allowable for the qualified New York Liberty Zone property is redetermined in accordance with the rules provided in § 1.168(k)–1T(f)(2).

(3) *Section 1245 and 1250 depreciation recapture.* The rules provided in § 1.168(k)–1T(f)(3) apply for purposes of this paragraph (f)(3).

(4) *Coordination with section 169.* Rules similar to those provided in § 1.168(k)–1T(f)(4) apply for purposes of this paragraph (f)(4).

(5) *Like-kind exchanges and involuntary conversions.* This paragraph (f)(5) applies to acquired MACRS property (as defined in § 1.168(k)–1T(f)(5)(ii)(A)) or acquired computer software (as defined in § 1.168(k)–1T(f)(5)(ii)(C)) that is eligible for the additional first year depreciation deduction under section 1400L(b) at the time of replacement provided the time of replacement is after September 10, 2001, and on or before December 31, 2006, or in the case of acquired MACRS property or acquired computer software that is qualified New York Liberty Zone property described in paragraph (c)(2)(i)(B) of this section, the time of replacement is after September 10, 2001, and on or before December 31, 2009. The rules and definitions similar to those provided in § 1.168(k)–1T(f)(5) apply for purposes of this paragraph (f)(5).

(6) *Change in use.* Rules similar to those provided in § 1.168(k)–1T(f)(6) apply for purposes of this paragraph (f)(6).

(7) *Earnings and profits.* The rule provided in § 1.168(k)–1T(f)(7) applies for purposes of this paragraph (f)(7).

(8) *Section 754 election.* Rules similar to those provided in § 1.168(k)–1T(f)(9) apply for purposes of this paragraph (f)(8).

(g) *Effective date*—(1) *In general.* Except as provided in paragraphs (g)(2) and (3) of this section, this section applies to qualified New York Liberty Zone property acquired by a taxpayer after September 10, 2001. This section expires on September 8, 2006.

(2) *Technical termination of a partnership or section 168(i)(7) transactions.* If qualified New York Liberty Zone property is transferred in a technical termination of a partnership under section 708(b)(1)(B) or in a transaction described in section 168(i)(7) for a taxable year ending on or before September 8, 2003, and the additional first year depreciation deduction allowable for the property was not determined in accordance with paragraph (f)(1) of this section, the Internal Revenue Service will allow any reasonable method of determining the additional first year depreciation deduction allowable for the property in the year of the transaction that is consistently applied to the property by all parties to the transaction.

(3) *Like-kind exchanges and involuntary conversions.* If a taxpayer did not claim on a federal tax return for a taxable year ending on or before September 8, 2003, the additional first year depreciation deduction for the remaining carryover basis of qualified New York Liberty Zone property acquired in a transaction described in section 1031(a), (b), or (c), or in a transaction to which section 1033 applies and the taxpayer did not make an election not to deduct the additional first year depreciation deduction for the class of property applicable to the remaining carryover basis, the Internal Revenue Service will treat the taxpayer's method of not claiming the additional first year depreciation deduction for the remaining carryover basis as a permissible method of accounting and will treat the amount of the additional first year depreciation deduction allowable for the remaining carryover basis as being equal to zero, provided the taxpayer does not claim the additional first year depreciation deduction for the remaining carryover basis in accordance with paragraph (g)(4)(ii) of this section.

(4) *Change in method of accounting*—(i) *Special rules for 2000 or 2001 returns.* If a taxpayer did not claim on the federal tax return for the taxable year that included September 11, 2001, any additional first year depreciation deduction for a class of property that is qualified New York Liberty Zone property and did not make an election not to deduct the additional first year depreciation deduction for that class of property, the taxpayer should refer to the guidance provided by the Internal Revenue Service for the time and manner of claiming the additional first year depreciation deduction for the class of property (for further guidance, *see* section 4 of Rev. Proc. 2002–33 (2002–1 C.B. 963), Rev. Proc. 2003–50 (2003–29 I.R.B. 119), and. § 601.601(d)(2)(ii)(*b*) of this chapter).

(ii) *Like-kind exchanges and involuntary conversions.* If a taxpayer did not claim on a federal tax return for any taxable year ending on or before September 8, 2003, the additional first year depreciation deduction allowable for the remaining carryover basis of qualified New York Liberty Zone property acquired in a transaction described in section 1031(a), (b), or (c), or in a transaction to which section 1033 applies and the taxpayer did not make an election not to deduct the additional first year depreciation deduction for the class of property applicable to the remaining carryover basis, the taxpayer may claim the additional first year depreciation deduction allowable for the remaining carryover basis in accordance with paragraph (f)(5) of this section either—

(A) By filing an amended return (or a qualified amended return, if applicable (for further guidance, *see* Rev. Proc. 94–69 (1994–2 C.B. 804) and § 601.601(d)(2)(ii)(*b*) of this chapter)) on

or before December 31, 2003, for the year of replacement and any affected subsequent taxable year; or,

(B) By following the applicable administrative procedures issued under § 1.446–1(e)(3)(ii) for obtaining the Commissioner's automatic consent to a change in method of accounting (for further guidance, *see* Rev. Proc. 2002–9 (2002–1 C.B. 327) and § 601.601(d)(2)(ii)(*b*) of this chapter).

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

Approved: August 29, 2003.

Gregory F. Jenner,

Deputy Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 03–22670 Filed 9–5–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–157164–02]

RIN 1545–BB57

Special Depreciation Allowance

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the depreciation of property subject to section 168 of the Internal Revenue Code (MACRS property) and the depreciation of computer software subject to section 167. Specifically, the temporary regulations provide guidance regarding the additional first year depreciation allowance provided by sections 168(k) and 1400L(b) for certain MACRS property and computer software. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by December 8, 2003. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for December 18, 2003, at 9 am must be received by November 28, 2003.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG–157164–02), room 5226, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Alternatively, submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–157164–02), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave. NW., Washington, DC or sent electronically, via the IRS Internet site at: *http://www.irs.gov/regs*.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Douglas Kim, (202) 622–3110; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Sonya Cruse, (202) 622–4693 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 1 relating to sections 168 and 1400L of the Internal Revenue Code (Code). The temporary regulations contain rules relating to the additional first year depreciation deduction provided by sections 168(k) and 1400L(b).

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed rules and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for December 18, 2003, beginning at 10 am in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 28, 2003. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Douglas H. Kim, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 reads as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.167(a)–14 is amended as follows:

§ 1.167(a)–14 Treatment of certain intangible property excluded from section 197.

*[The text of this amendment is the same as the text of § 1.167(a)–14T published elsewhere in this issue of the **Federal Register**].*

Par. 3. Section 1.168(d)–1 is amended as follows:

§ 1.168(d)–1 Applicable conventions—Half-year and mid-quarter conventions.

*[The text of this amendment is the same as the text of § 1.168(d)–1T published elsewhere in this issue of the **Federal Register**].*

Par. 4. Section 1.168(k)–0 is added to read as follows:

§ 1.168(k)–0 Table of contents.

*[The text of this proposed section is the same as the text of § 1.168(k)–0T published elsewhere in this issue of the **Federal Register**].*

Par. 5. Section 1.168(k)–1 is added to read as follows:

§ 1.168(k)–1 Additional first year depreciation deduction.

*[The text of this proposed section is the same as the text of § 1.168(k)–1T published elsewhere in this issue of the **Federal Register**].*

Par. 6. Section 1.169–3 is amended as follows:

§ 1.169–3 Amortizable basis.

*[The text of this amendment is the same as the text of § 1.169–3T published elsewhere in this issue of the **Federal Register**].*

Par. 7. Section 1.1400L(b)–1 is added to read as follows:

§ 1.1400L(b)–1 Additional first year depreciation deduction for qualified New York Liberty Zone property.

*[The text of this proposed section is the same as the text of § 1.1400L(b)–1T published elsewhere in this issue of the **Federal Register**].*

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03–22671 Filed 9–5–03; 8:45 am]

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2002, through January 1, 2003. The CFR volume issued as of January 1, 2002 should be retained.

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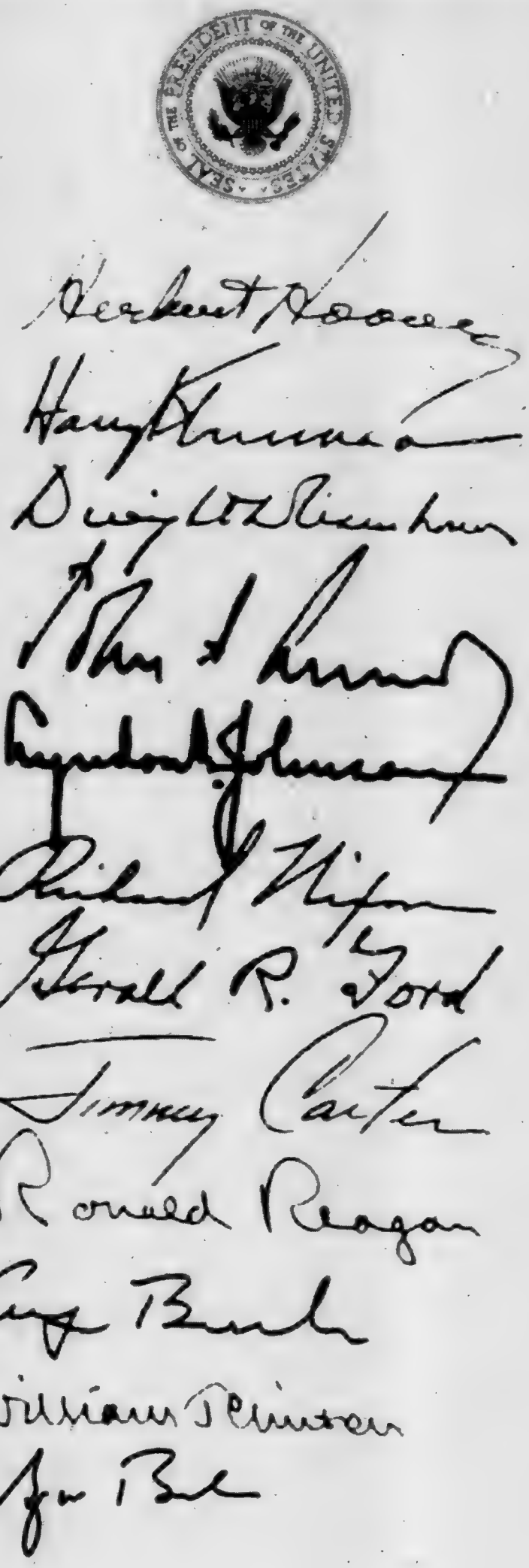

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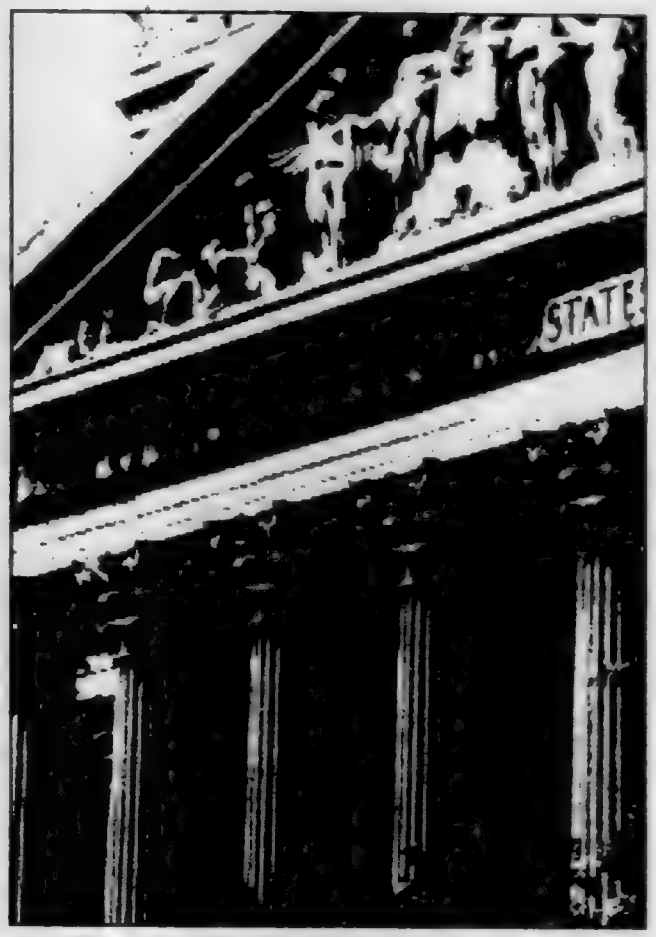

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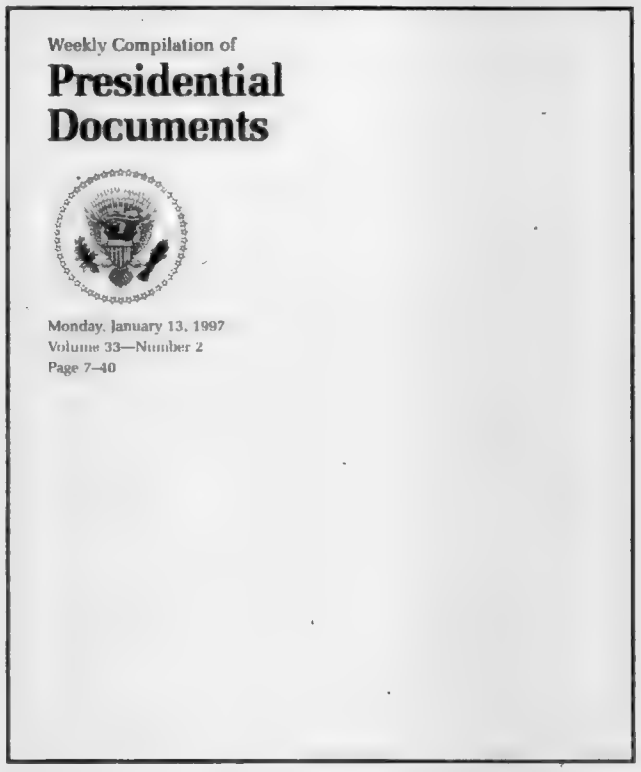

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Federal Register

9–9–03 Tuesday
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(ISSN 0097-6326)

Federal Register

9–9–03 Tuesday
Vol. 68 No. 174 Sept. 9, 2003
Pages 53011–53280

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Presidential Documents

Title 3—

The President

Proclamation 7701 of September 4, 2003

National Days of Prayer and Remembrance, 2003

By the President of the United States of America

A Proclamation

As we approach the second anniversary of September 11, 2001, we remember all that we lost as Americans and recognize all that we have witnessed about the character of America. During these National Days of Prayer and Remembrance, we honor those who were killed and their families, and we ask God for strength and wisdom as we carry out the noble mission that our Nation began that morning.

The passage of time cannot erase the pain and devastation that were inflicted on our people. We will always remember those who were brutally taken from us. And we ask God to comfort the loved ones left behind; their courage and determination have inspired our Nation.

We thank God for the unity and compassion Americans have demonstrated since September 11, 2001. The great strength of America is the heart and soul of the American people. And we will continue to help those who are hurting or are in need.

We pray that God watch over our brave men and women in uniform. We are grateful to them, and to their families, for their service and sacrifice. We pray for peace and ask God for patience and resolve in our war against terror and evil.

This conflict was begun on the timing and terms of others. It will end in a way, and at an hour, of our choosing.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Friday, September 5, through Sunday, September 7, 2003, as National Days of Prayer and Remembrance. I ask that the people of the United States and places of worship mark these National Days of Prayer and Remembrance with memorial services, the ringing of bells, and evening candlelight remembrance vigils. I invite the people of the world to share in these Days of Prayer and Remembrance.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of September, in the year of our Lord two thousand three, and of the

Independence of the United States of America the two hundred and twenty-eighth.

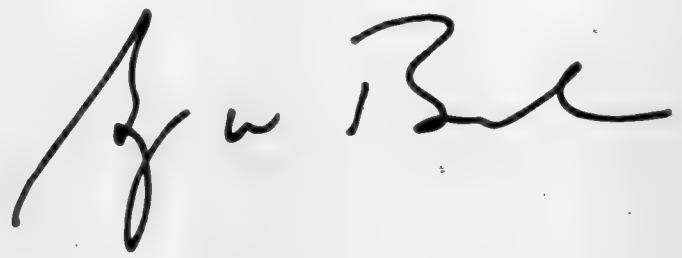

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Proclamation 7702 of September 4, 2003

Patriot Day, 2003

By the President of the United States of America

A Proclamation

Two years ago, more than 3,000 innocent people lost their lives when a calm September morning was shattered by terrorists driven by hatred and destruction.

On that day, and in its aftermath, we saw the greatness of America in the bravery of victims; in the heroism of first responders who laid down their lives to save others; in the compassion of people who stepped forward to help those they had never met; and in the generosity of millions of Americans who enriched our country with acts of service and kindness. Since that day, we have seen the greatness of America further demonstrated in the courage of our brave men and women in uniform who have served and sacrificed in Afghanistan, in Iraq, and around the world to advance freedom and prevent terrorist attacks on America.

As we remember September 11, 2001, we reaffirm the vows made in the earliest hours of our grief and anger. As liberty's home and defender, America will not tire, will not falter, and will not fail in fighting for the safety and security of the American people and a world free from terrorism. We will continue to bring our enemies to justice or bring justice to them. This Patriot Day, we hold steady to this task.

By a joint resolution approved December 18, 2001 (Public Law 107–89), the Congress has designated September 11 of each year as "Patriot Day."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim September 11, 2003, as Patriot Day. I call upon the people of the United States to observe this day with appropriate ceremonies and activities, including remembrance services and candlelight vigils. I also call upon the Governors of the United States and the Commonwealth of Puerto Rico, as well as appropriate officials of all units of government, to direct that the flag be flown at half-staff on Patriot Day. In addition, I call upon all Americans to display the flag at half-staff from their homes on that day and to observe a moment of silence beginning at 8:46 a.m. eastern daylight time to honor the innocent victims who lost their lives as a result of the terrorist attacks of September 11, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of September, in the year of our Lord two thousand three, and of the

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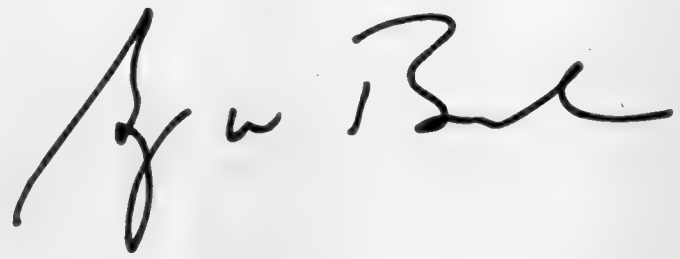

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV03–905–3 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule limits the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida (order). The Citrus Administrative Committee (Committee) administers the order locally and recommended this action. This rule limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2003–04 season by establishing weekly percentages for each of the 22 weeks, beginning September 15, 2003. This action supplies enough small red seedless grapefruit, without saturating all markets with these small sizes. This rule should help stabilize the market and improve grower returns.

DATES: Effective September 10, 2003; comments received by October 9, 2003 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov.* All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884–1671; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule limits the volume of small red seedless grapefruit entering the fresh market. This rule restricts the volume of sizes 48 and 56 fresh red seedless grapefruit shipped during the first 22 weeks of the 2003–04 season by establishing a weekly percentage for each of the 22 weeks, beginning September 15, 2003. This rule supplies enough small red seedless grapefruit, without saturating all markets with these small sizes. This action should help stabilize the market and improve grower returns.

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size a handler may ship during a particular week is established as a percentage of the total shipments of such variety shipped by that handler during a prior period, established by the Committee and approved by USDA.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the Committee may recommend that only a certain percentage of sizes 48 and 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 22 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended

weekly percentage times the average weekly volume of red seedless grapefruit handled by such handler in the previous five seasons, handlers can calculate the total volume of sizes 48 and 56 they may ship in a regulated week.

This rule limits the volume of sizes 48 (3$^{9}/_{16}$ inches minimum diameter) and 56 (3$^{5}/_{16}$ inches minimum diameter) red seedless grapefruit entering the fresh market by instituting weekly percentages for the first 22 weeks of the 2003–04 season. This rule establishes weekly percentages at 45 percent for weeks 1 and 2 (September 15 through September 28, 2003), 35 percent for weeks 3 through 19 (September 29, 2003, through January 25, 2004), and 40 percent for weeks 20, 21, and 22 (January 26 through February 15, 2004). The Committee recommended this action unanimously at a meeting on July 1, 2003. This action is similar to those taken the previous six seasons.

The Committee believes the over shipment of smaller-sized red seedless grapefruit has a detrimental effect on the market. While there is a market for small-sized red seedless grapefruit, the availability of large quantities oversupplies the fresh market with these sizes and negatively impacts the market for all sizes. These smaller sizes, 48 and 56, normally return the lowest prices when compared to the other larger sizes. However, when there is too much volume of the smaller sizes available, the overabundance of small-sized fruit pulls the prices down for all sizes.

For the three seasons prior to the use of percentage size regulation, 1994–95, 1995–96, and 1996–97, returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $6.87 per box (1$^{3}/_{5}$ bushel) during the 1991–92 season, to $3.38 per box during the 1993–94 season, to $1.91 per box during the 1996–97 season.

An economic study done by the University of Florida—Institute of Food and Agricultural Sciences in May 1997, found that on-tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

The Committee believes the over shipment of smaller-sized red seedless grapefruit contributed to these poor returns for growers and to lower prices. Based on available statistical information, Committee members concluded that once shipments of sizes 48 and 56 reached levels above 250,000 cartons per week, prices declined on those and most other sizes of red seedless grapefruit. The Committee believed if shipments of small sizes were maintained at around or below 250,000 cartons a week, prices would stabilize and demand for larger, more profitable sizes would increase. Consequently, in 1996, the Committee recommended changing their rules and regulations to establish the procedures in § 905.153 to limit the volume of small red seedless grapefruit entering the market. The Committee has successfully used the provisions of § 905.153 to address the problems associated with the over shipment of small red seedless grapefruit, recommending percentage of size regulation during the first 11 weeks of the 1997–98, 1998–99, 1999–2000, and 2000–01 seasons, and for the first 22 weeks of the 2001–02 and 2002–03 seasons. Under percentage of size regulation, prices increased and movement stabilized when compared to seasons without regulation.

The Committee believes for the 2003–04 season small sized red seedless grapefruit would again negatively impact the market for all grapefruit if not regulated. By regulating the volume of small sizes entering the fresh market for the first 22 weeks of the season, shipments of sizes 48 and 56 can be maintained near the 250,000-carton level. To address the volume of small-sized red seedless grapefruit available and to prevent the over shipment of small sizes, the Committee voted to utilize the provisions of § 905.153 and establish percentage of size regulation for each of the 22 weeks of the regulatory period for the 2003–04 season.

In making its recommendation, the Committee considered the success of previous percentage of size regulations and their experience from past seasons. At the meeting, the Committee reviewed the results of a study commissioned to determine the merit of percentage of size regulation. The study completed by Robert E. Barber, Jr., Director of Economics, Florida Citrus Mutual, entitled "An Econometric Spatial Equilibrium Analysis of the 48/56 Red Grapefruit Rule," dated July 1, 2003, evaluated the effectiveness of past percentage of size regulation.

One of the Committee's goals in establishing percentage of size regulation was to stabilize prices and increase returns. The Committee believes percentage of size regulation has been effective in this area, and the study shows this to be true. The study estimates that percentage of size regulation has increased total f.o.b. revenues for red grapefruit by a total of 12 percent or $18.9 million over the six-year period from 1997–98 to 2002–03, averaging $3.15 million per season. Each of the six seasons had an increase in f.o.b. revenues ranging from a low of $2.52 million during the 1999–2000 season to a high of $3.73 million for the 2002–03 season. The f.o.b. prices per carton are also estimated to have increased by an average of 17 percent or $1.00 per carton during this six-year period.

In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the six seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.10 per carton in October, $7.06 per carton in December, and remained at around $6.90 in April.

Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.00 for the last six years compared to $5.83 for the three years prior to using percentage of size regulation. The Barber study shows that prices for the past six seasons would have been from around $0.72 to $1.00 lower per carton without regulation.

On-tree prices for fresh red seedless grapefruit have also been higher during seasons with percentage of size regulation than for the three seasons prior to regulation. The average on-tree price for fresh red seedless grapefruit was $4.42 for the seasons 1997–98 through 2001–02 with percentage of size regulation compared to $3.08 for the three years prior to regulation.

The University of Florida, Citrus Research and Education Center published an estimated cost of production for grapefruit for the 2001–2002 season. The cost to produce grapefruit for the fresh market was estimated at $1,008.77 per acre for the Indian River area, the major grapefruit production area in Florida. Indian River grapefruit production has averaged around 417 boxes per acre. Based on the cost of production, and the average boxes per acre, growers need to earn a total on-tree value (fruit going both to the fresh market and to processing) of approximately $2.42 per box in order to break even. For the three seasons prior to percentage of size regulation, the total on-tree value averaged $1.78 per box. Comparatively, for the seasons with

regulation, 1997–98 through 2001–02, the on-tree value has averaged $2.45 per box for Indian River grapefruit.

Small growers have struggled the last eight seasons to receive returns near the cost of production. For many, the higher on-tree returns produced under percentage of size regulation have meant the difference between profit and loss.

Another of the Committee's goals in establishing percentage of size regulation was to help maintain the price differential between the prices for larger sizes and those for smaller sizes. At the start of the season, larger-sized fruit command a premium price. The f.o.b. price can be $4 to $10 more a carton than for the smaller sizes. The last three seasons, the f.o.b. price for a size 27 has averaged around $13.50 per carton in October. This compares to an average f.o.b. price of around $5.80 per carton for a size 56 during the same period. In the three years before the issuance of a percentage size regulation, the f.o.b. price for large sizes dropped to within $1 or $2 of the f.o.b. price for small sizes by the middle of the season due to the oversupply of the smaller sizes.

Percentage of size regulation has helped sustain the price differential, maintaining higher prices for the larger-sized fruit. During the three years before regulation, the average differential between the carton price for a size 27 and a size 56 was $3.47 at the end of October and dropped to $1.68 by mid-December. In the six years with percentage of size regulation, the average differential between the carton price for a size 27 and a size 56 was $5.43 at the end of October, $3.78 in mid-December, and remained at around $3.10 the first week in May.

The Barber study also states that f.o.b. revenues for larger sized red grapefruit benefited substantially from percentage of size regulation. Of the $18.9 million increase in total fresh f.o.b. revenues for red grapefruit the last six seasons, nearly $16.7 million can be attributed to gains made by fruit larger than sizes 48 and 56.

According to the Economic Analysis and Program Planning Branch, USDA, the margins between the prices for the various sizes of red grapefruit have remained fairly constant throughout the seasons covered under percentage of size regulation. However, if the domestic market becomes glutted with too many small-sized grapefruit (48 and 56), these margins would be negatively impacted and total grower returns would be reduced.

The goal of this percentage of size rule is to reduce the volume of the least valuable fruit in the market and strengthen grower prices and revenues. Without this rule, the fresh grapefruit market will become glutted with small-sized fruit, which will have a negative impact on prices for larger-sized fruit and grower returns. Absent this rule, the price margins between sizes (23, 27, 32, 36, 40, 48, and 56) will diminish and ultimately result in lower grower returns. This rule is intended to fully supply all markets for small sizes with fresh red seedless grapefruit size 48 and 56, while avoiding oversupplying these markets to the detriment of grower revenues.

The Committee believes percentage of size regulation has also helped stabilize the volume of small sizes entering the fresh market. During deliberations in past seasons, Committee members concluded once shipments of sizes 48 and 56 reached levels above 250,000 cartons per week, prices declined on those and most other sizes of red seedless grapefruit. The last six seasons during the weeks regulated by a percentage of size regulation, weekly shipment of sizes 48 and 56 red seedless grapefruit remained near or below 250,000 cartons for nearly 90 percent of the regulated weeks. Also, based on the Barber study, while percentage of size regulation has been successful in controlling the volume of small sizes entering the fresh market, it has had only a limited effect on total shipments.

In addition, an economic study by Florida Citrus Mutual (Lakeland, Florida) dated April 1998, also found that the weekly percentage regulation was effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger-sized grapefruit also registering modest improvements. The rule shifted the size distribution toward the higher-priced, larger-sized grapefruit, which helped raise average f.o.b. prices. It further stated that sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in the 1997–98 season, as small sizes were used to supply export customers with preferences for small-sized grapefruit.

In addition to the success of past regulations, there are other circumstances warranting the consideration of establishing percentage of size regulation. For the three seasons, 1999–2000, 2000–01, and 2001–02, the percentage of the remaining crop represented by small sizes in February averaged around 53 percent. This compares to an average of 31 percent for the same month for seasons 1995–96 through 1997–98. These three seasons, 1999–2000 through 2001–02, averaged a greater percentage of smaller sizes across each month, October through February, than over the three seasons 1995–96 through 1997–98. For the seven seasons prior to the 2002–03 season there has been a movement toward an increased volume of small sizes as a percentage of the overall crop. For the 2002–03 season, grapefruit sized larger than in the previous seasons and small sizes were not as dominant a factor. However, while the crop sized well throughout last season, it is unclear how the 2003–04 crop will size. It is possible that the 2003–04 crop may produce the volume of small sizes represented in the majority of past seasons, making an even greater supply of small-sized fruit available for market.

Problems with the European and Asian markets could also impact the volume of small sizes available. These markets have shown a strong demand for the smaller-sized red seedless grapefruit. However, the reduction in shipments to these areas experienced during the last few years is expected to continue during the upcoming season due to their weak economies. This could result in a greater amount of small sizes for remaining markets to absorb.

The market for processed grapefruit is also a consideration. Approximately 48 percent of red seedless grapefruit is used for processing, with the majority being squeezed for juice. However, this outlet offers limited returns and is currently not profitable. Of the last six years, only 1999–2000 produced on-tree returns for processed red seedless grapefruit exceeding $1 per box. When on-tree returns for processed grapefruit drop below a dollar, there is pressure to shift a larger volume of the overall crop to the fresh market to benefit from the higher prices normally paid for fresh fruit. From 1977 through 2000, the differential between fresh prices and processed prices has averaged $3.55 per box. Consequently, growers prefer to ship grapefruit to the fresh market.

Statistics from the Florida Department of Citrus show there is currently a 40-week inventory of red seedless grapefruit juice from last season. By the start of the season, it is projected that over 35 weeks worth of juice will remain in inventory. Due to current inventories, on-tree prices for processed red seedless grapefruit for the 2003–04 season will most likely mirror prices from past seasons and remain below a dollar. A fair percentage of red seedless grapefruit shipped for processing are smaller sizes. With limited returns for processed grapefruit, an additional

volume of small sizes could be shifted toward the fresh market, further aggravating problems with excessive volumes of small sizes.

Further, red seedless grapefruit production continues to exceed demand. This has contributed to the low returns and led to economic abandonment. According to information from the National Agricultural Statistics Service, the seasons of 1995–96, 1996–97, 1997–98, 2000–01, and 2001–02 had an average economic abandonment of two million boxes or more of red seedless grapefruit. Data for the 2002–03 season will not be published until September. However, it is likely some economic abandonment did occur last season.

Economic abandonment and prices falling below the cost of production support the use of percentage of size regulation to control the volume of small sizes. The percentage of size regulation has a positive impact on price and is intended to make the most economically viable fruit available to the fresh market without oversupplying small-sized fruit. The above considerations further support the need to control the volume of sizes 48 and 56 during the season to prevent small sizes from overwhelming all markets.

The Committee believes the volume of small red seedless grapefruit available will have a detrimental effect on the market if it is not controlled. Members believe establishing weekly percentages during the last six seasons has been effective and that problems successfully addressed by percentage of size regulation will return without regulation. Consequently, the Committee believes weekly percentage of size regulation should be established for each of the 22 weeks of the regulatory period for the 2003–04 season. The Committee recommended establishing weekly percentages at 45 percent for the first two weeks, 35 percent for weeks 3 through 19, and 40 percent for weeks 20, 21, and 22.

The Committee considered the percentages set last year as a basis for discussing percentages for the 2003–04 season. They believe the percentages set last year worked well, and decided to make their initial recommendation for each of the 22 weeks at the same levels. Committee members believed setting last season's percentages higher than the most restrictive level allowed of 25 percent had worked well, providing some restriction while affording volume for those markets that prefer small sizes.

Committee members believe if shipments of small sizes are maintained at around or below 250,000 cartons a week, prices stabilize and demand for larger, more profitable sizes increases. The Committee considered the 250,000-carton level when recommending the weekly percentages. The first two weeks are set at 45 percent because it is likely there will only be a limited volume shipped. In the last five seasons, total shipments of red seedless grapefruit have only exceeded 250,000 cartons once in the first two weeks of the season.

Setting weekly percentages at 35 percent for the majority of weeks provides a total allotment of 252,610 cartons (35 percent of the total industry base of 721,743 cartons) per week. While this is slightly more than 250,000 cartons, it is unlikely all available allotment will be used each week, and this allows individual handlers some additional flexibility. The increase to 40 percent for the last three weeks offers a little more allotment providing some transition to the period without regulation and helps to prevent the dumping of small sizes following the end of regulation. The Committee believes these percentages provide some flexibility while holding weekly shipments at sizes 48 and 56 close to the 250,000-carton mark.

More information helpful in determining the appropriate weekly percentages will be available after August. At the time of the July meeting, grapefruit had just begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October. Further, the first reports on how the crop is sizing will not be available until after September. Consequently, the Committee believes it is best to set regulation at these levels, and then relax the percentages later in the season if conditions warrant.

The Committee recognized they could meet again during the regulation period, as needed, and use the most current information to consider adjustments in the weekly percentage rates. This will help the Committee make the most informed decisions as to whether the established percentages are appropriate. Any changes to the weekly percentages set by this rule will require additional rulemaking and the approval of USDA.

Therefore, this rule establishes weekly percentages at 45 percent for the first two weeks, 35 percent for weeks 3 through 19, and at 40 percent for weeks 20 through 22. This rule is intended to fully supply all markets for small sizes with fresh red seedless grapefruit sizes 48 and 56, while avoiding oversupplying these markets to the detriment of grower revenues. The Committee plans to meet as needed during the 22-week period to ensure weekly percentages are at the appropriate levels.

Under § 905.153, the quantity of sizes 48 and 56 red seedless grapefruit a handler may ship during a regulated week is calculated using the set weekly percentage. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments is within the established limits. The Committee staff performs the specified calculations and provides them to each handler. The regulatory period begins the third Monday in September, September 15, 2003. Each regulation week begins Monday at 12 a.m. and ends at 11:59 p.m. the following Sunday.

Section 905.153(d) provides the allowances for overshipments, loans, and transfers of allotment. These tolerances allow handlers the opportunity to supply their markets while limiting the impact of small sizes.

The Committee can also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan is at the discretion of the handlers party to the loan. The Committee will inform each handler of the quantity of sizes 48 and 56 red seedless grapefruit they can handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own

behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, including handlers, are defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida red seedless grapefruit during the 2002–03 season was approximately $7.24 per 4/5 bushel carton, and total fresh shipments for the 2002–03 season are estimated at 22.9 million cartons of red grapefruit. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit shipments. Using the average f.o.b. price, at least 75 percent of the grapefruit handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit handlers may be classified as small entities. The majority of Florida grapefruit producers may also be classified as small entities.

The over shipment of small-sized red seedless grapefruit contributes to poor returns and lower on-tree values. This rule limits the volume of sizes 48 and 56 red seedless grapefruit shipped during the first 22 weeks of the 2003–04 season by establishing weekly percentages for each of the 22 weeks, beginning September 15, 2003. This rule sets the weekly percentages at 45 percent for weeks 1 and 2, 35 percent for week 3 through week 19, and at 40 percent for weeks 20, 21, and 22. The quantity of sizes 48 and 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the percentages set. This action supplies enough small red seedless grapefruit, without saturating all markets with small sizes. This action will help stabilize the market and improve grower returns. This rule uses the provisions of § 905.153. Authority for this action is provided in § 905.52 of the order. The Committee unanimously recommended this action at a meeting on July 1, 2003.

While the establishment of volume regulation may necessitate additional spot picking, which could entail slightly higher harvesting costs, in most cases this is already a standard industry practice. The Barber study indicates spot picking would only fractionally increase harvesting costs on just a small segment of the boxes picked. In addition, with spot picking, the persons harvesting the fruit are more selective and pick only the desired sizes and qualities. This reduces the amount of time and effort needed in sorting fruit, because undersized fruit is not harvested. This may result in a cost savings through reduced processing and packing costs. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. Consequently, this rule is not expected to appreciably increase costs to producers.

If a 25 percent restriction on small sizes had been applied during the 22-week period for the three seasons prior to the 1997–98 season, an average of 3.1 percent of overall shipments during that period would have been constrained by regulation. A large percentage of this volume most likely could have been replaced by larger sizes for which there are no volume restrictions. Under regulation, larger sizes have been substituted for smaller sizes with a nominal effect on overall shipments.

In addition, handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, provided the over shipment is deducted from the following week's shipments. Approximately 227 loans and transfers were utilized last season. Statistics for 2002–03 show that, in only 2 weeks of the regulated period was the total available allotment used. Therefore, with the weekly percentages for the 2003–04 season set at the same levels as last season, the overall impact of this regulation on total shipments should be minimal.

The Committee believes establishing percentage of size regulation during the 2003–04 season will have benefits similar to those realized under past regulations. Handlers and producers have received higher returns under percentage of size regulation. In the three seasons prior to the first percentage of size regulation in 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton in October to a weighted average f.o.b. price of $5.50 per carton in December. In the six seasons utilizing percentage of size regulation, red seedless grapefruit maintained higher prices throughout the season with a weighted average f.o.b. price of $8.10 per carton in October, to an average f.o.b. price of $7.06 per carton in December, and remained at around $6.90 in April. Average prices for the season have also been higher during seasons with percentage of size regulation. The average season price for red seedless grapefruit was $7.00 for the last six years compared to $5.83 for the three prior years.

On-tree earnings per box for fresh red seedless grapefruit have also improved under regulation, providing better returns to growers. The average on-tree price for fresh red seedless grapefruit was $4.42 for the seasons 1997–98 through 2001–02 with percentage of size regulation, compared to $3.08 for the three years prior to regulation. Small growers have struggled the last eight seasons to receive returns near the cost of production. For many, the higher returns provided by percentage of size regulation meant the difference between profit and loss.

Shipments during the 22 weeks covered by this regulation account for nearly 60 percent of the total volume of red seedless grapefruit shipped to the fresh market. Considering this volume and the very limited returns from grapefruit for processing, it is imperative that returns from the fresh market be maximized during this period. Even a small increase in price when coupled with the volume shipped represents a significant increase in the overall return to growers.

The Barber study stated that prices rose anywhere from 12.9 percent or $.72 to 17.5 percent or $1.00 per 4/5 bushel carton during percentage of size regulation. Even if this action were only successful in raising returns by $.10 per carton, this increase in combination with the substantial number of shipments generally made during this 22-week period, would represent an increased return of nearly $1.4 million. Consequently; any increased returns generated by this action should more than offset any additional costs associated with this regulation.

The purpose of this rule is to help stabilize the market and improve grower returns. Percentage of size regulation is intended to reduce the volume of the least valuable fruit in the market, and shift it to those markets that prefer small sizes. This regulation helps the industry address marketing problems by keeping small sizes (sizes 48 and 56) more in balance with market demand without glutting the fresh market with these sizes.

This rule provides a supply of small-sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This action is not expected to decrease the overall consumption of red seedless grapefruit. With supply in excess of demand, this rule is not expected to impact consumer prices or demand. The benefits of this rule are expected to be available to all red

seedless grapefruit growers and handlers regardless of their size of operation. This rule will likely help small under-capitalized growers who need additional weekly revenues to meet operating costs.

The Committee considered several alternatives when discussing this action. One alternative discussed was changing the way loans and transfers are handled. Another alternative discussed was changing the way allotment base is calculated. The Committee agreed both alternatives should first be thoroughly reviewed by the Regulation Subcommittee to consider options to bring before the full Committee.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this rule have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0189. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on limiting the volume of small red seedless grapefruit entering the fresh market during the first 22 weeks of the 2003–04 season. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule needs to be in place when the regulatory period begins September 15, 2003, and handlers need time to consider their allotment and how best to service their customers; (2) the industry has been discussing this issue for some time, and the Committee has kept the industry well informed; (3) this action has been widely discussed at various industry and association meetings, and interested persons have had time to determine and express their positions; (4) this action is similar to those recommended in previous seasons; and (5) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule. A comment period of 30 days is appropriate because it will allow for any needed intra-seasonal changes to be made in a timely manner.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

■ For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 905.350 is revised to read as follows:

§ 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. Handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. The weekly percentages for size 48 (3$^{9}/_{16}$ inches minimum diameter) and size 56 (3$^{5}/_{16}$ inches minimum diameter) red seedless grapefruit grown in Florida, which may be handled during the specified weeks, are as follows:

Week	Weekly percentage
(a) 9/15/03 through 9/21/03	45
(b) 9/22/03 through 9/28/03	45
(c) 9/29/03 through 10/5/03	35
(d) 10/6/03 through 10/12/03	35
(e) 10/13/03 through 10/19/03	35
(f) 10/20/03 through 10/26/03	35
(g) 10/27/03 through 11/2/03	35
(h) 11/3/03 through 11/9/03	35
(i) 11/10/03 through 11/16/03	35
(j) 11/17/03 through 11/23/03	35
(k) 11/24/03 through 11/30/03	35
(l) 12/1/03 through 12/7/03	35
(m) 12/8/03 through 12/14/03	35
(n) 12/15/03 through 12/21/03	35
(o) 12/22/03 through 12/28/03	35
(p) 12/29/03 through 1/4/04	35
(q) 1/5/04 through 1/11/04	35
(r) 1/12/04 through 1/18/04	35
(s) 1/19/04 through 1/25/04	35

Week	Weekly percentage
(t) 1/26/04 through 2/1/04	40
(u) 2/2/04 through 2/8/04	40
(v) 2/9/04 through 2/15/04	40

Dated: September 5, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–23045 Filed 9–5–03; 12:37 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 905 and 944

[Docket No. FV03–905–2 IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida and Imported Grapefruit; Removing All Seeded Grapefruit Regulations, Relaxation of Grade Requirements for Valencia and Other Late Type Oranges, and Removing Quality and Size Regulations on Imported Seeded Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule removes the regulations for seeded grapefruit under the Florida citrus marketing order and for seeded grapefruit imported into the United States. The order regulates the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida (order) and is administered locally by the Citrus Administration Committee (committee). The change in the import regulation is required under section 8e of the Agricultural Marketing Agreement Act of 1937. Production of seeded grapefruit in Florida has declined to the point that removing seeded grapefruit from order requirements will have no significant impact on the grapefruit market. This rule also relaxes minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges the last few weeks of the season. The volume remaining at the end of the season is small and has difficulty meeting grade requirements. This rule will help maximize shipments and returns for fresh Valencia and other late type oranges.

DATES: September 10, 2003; comments received by November 10, 2003 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938, or E-mail: *moab.docketclerk@usda.gov*. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html*.

FOR FURTHER INFORMATION CONTACT: William Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, FL 33884; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule removes the regulations for seeded grapefruit under the order for Florida citrus. Thus, handlers of seeded grapefruit are no longer subject to minimum grade, size, assessment, and reporting requirements under the order. Production has declined to the point that removing seeded grapefruit from order requirements will have no significant impact on the grapefruit market. This rule also relaxes the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges the last few weeks of the season. For the purposes of this interim final rule, the term "domestic shipments" includes shipments between the production area and any point outside thereof in the 48 contiguous States and the District of Columbia of the United States. The volume of fruit remaining at the end of the season is small and has difficultly meeting grade requirements. This rule will help the industry maximize fresh shipments and returns for Valencia and

other late type oranges. These actions were unanimously recommended by the committee at its meeting on July 1, 2003.

Sections 905.51 and 905.52 of the order authorize the committee to recommend minimum grade and size regulation to USDA. The grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers.

Section 905.306 of the order's rules and regulations specifies the minimum grade and size requirements for different varieties of fresh Florida citrus. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). Currently, the minimum grade for domestic seeded grapefruit is a U.S. No. 1 as specified in the U.S. Standard for Grades of Florida Grapefruit (7 CFR 51.750 through 51.784), with a minimum size of 3 12/16 inches in diameter for domestic shipments, and 3 9/16 inches for export shipments. The minimum grade for domestic Valencia and other late type oranges is a U.S. No. 1 as specified in the U.S. Standard for Grades of Florida Oranges and Tangelos (7 CFR 51.1140 through 51.1179), with a minimum size of 2 6/16 inches in diameter for both domestic and export shipments.

Under §§ 905.51 and 905.52 of the order, the committee has authority to recommend to USDA the varieties of citrus to be regulated. This rule modifies § 905.306 by removing seeded grapefruit from the list of entries in Table I of paragraph (a), and in Table II of paragraph (b). The removal of seeded grapefruit from these tables has the effect of removing the grade and size requirements for seeded grapefruit under the order. Also, assessment and reporting requirements would no longer apply to seeded grapefruit. In addition, this rule further amends Table I of § 905.306 by reducing the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges from U.S. No. 1 to U.S. No. 2 external grade from June 15 to July 31, each season.

In making its recommendation, the committee recognized that seeded grapefruit is no longer significant in terms of shipments and market share. During the 2002–03 season, only 150 cartons of seeded grapefruit were shipped to the fresh market. This is down from 4,705 cartons shipped in the 1998–99 season. Currently, shipments of seeded grapefruit represent less than .0005 percent of fresh shipments of Florida grapefruit. Seeded grapefruit production has declined as new seedless varieties have been developed and planted. Consequently, the committee determined that removing seeded grapefruit varieties from the order regulations will not have a negative impact on the grapefruit market.

In addition, this rule also relaxes the minimum grade requirements for domestic shipments of fresh Valencia and other late oranges. The committee recommended reducing the minimum grade requirements for Valencia and other late type oranges from a U.S. No. 1 to a U.S. No. 2 external grade with a U.S. No. 1 internal grade from June 15, 2004, to July 31, 2004, and during the same period of each season thereafter. Valencia and late type oranges have difficulty meeting grade requirements late in the season. This is usually due to regreening, which is considered a defect under the U.S. Standard for Grades of Oranges.

At the end of the season growers still have a limited volume of unharvested Valencia and late type oranges. The volume of fruit remaining after June 15 is small, averaging less than 5 percent of the crop over the last 5 years. The committee believes that permitting the shipment of a U.S. No. 2 external grade during the specified time would help the industry maximize fresh shipments and returns for Valencia and other late type oranges. Consequently, the committee recommended that during the period June 15 to July 31 the grade standard be lowered to U.S. No. 2 external grade with U.S. No. 1 internal grade for Valencia and other late type oranges shipped to domestic markets.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. Since this rule removes the minimum size and grade requirements for seeded grapefruit under the domestic handling regulations, a corresponding change to the import regulations is necessary.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106). The minimum grade and size requirements are specified in a table in paragraph (a) of § 944.106. This rule removes the minimum grade and size requirements for imported seeded grapefruit to reflect the change being made under the order for seeded grapefruit grown in Florida.

Section 8e import requirements for oranges are based on the marketing order for South Texas oranges and as such will not be impacted by this relaxation.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 75 grapefruit and Valencia and other late type orange handlers subject to regulation under the order, approximately 11,000 producers of Florida citrus in the regulated area, and approximately 10 grapefruit importers. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000.

Based on industry and Committee data, the average annual f.o.b. price for fresh Florida grapefruit during the 2002–03 season was approximately $7.24 per 4/5 bushel carton, and total fresh shipments for the 2002–03 season are estimated at 28.3 million cartons of grapefruit. The average annual f.o.b. price for fresh Florida Valencia and other late type oranges during the 2002–03 season was approximately $6.99 per carton, and total fresh shipments are estimated at 3,669,000 cartons. Approximately 25 percent of all handlers handled 75 percent of Florida's grapefruit and Valencia and other late type orange shipments. Using the average f.o.b. prices, at least 75 percent of the grapefruit and Valencia and other late type orange handlers could be considered small businesses under SBA's definition. Therefore, the majority of Florida grapefruit and Valencia and other late type orange handlers may be classified as small entities. In addition, based on information from the Foreign Agricultural Service, USDA, the dollar

value of imported grapefruit ranged from $902,000 in 1998 to $2,018,000 during the 2002 season. Using these numbers, all grapefruit importers may be classified as small entities. The majority of Florida grapefruit and Valencia and other late type orange producers may also be classified as small entities.

This rule removes seeded grapefruit from regulation under the order. Handlers of seeded grapefruit will no longer be required to meet the minimum grade and size requirements and will not be subject to assessments and reporting requirements. Removing these varieties from the minimum grade and size requirements will have no significant impact on the grapefruit market. This rule also reduces the minimum grade requirements for domestic shipments of fresh Valencia and other late type oranges from U.S. No. 1 to U.S. No. 2 external grade from June 15 to July 31 each season. This rule will help maximize shipments and returns for fresh Valencia and other late type oranges.

Sections 905.51 and 905.52 of the order authorize the committee to recommend minimum grade and size regulation to USDA. Section 905.306 of the order's rules and regulation specifies the regulation period and the minimum grade and size requirements for different varieties of fresh Florida citrus. The Committee unanimously recommended this action at a meeting on July 1, 2003.

During the 2002–2003 season, only 150 cartons of seeded grapefruit were shipped out of a total of 28.3 million 4/5 bushel cartons of seedless grapefruit. Production of seeded varieties has declined as newer seedless varieties have been developed and planted. Current market share and shipment levels justify removal of the order requirements for seeded grapefruit.

Valencia and late type oranges have difficulty meeting grade requirements late in the season. At the end of the season, growers still have a limited volume of unharvested Valencia and late type oranges. The volume of fruit remaining after June 15 is small, averaging less than 5 percent of the crop over the last 5 years. The committee believes permitting the shipment of a U.S. No. 2 external grade with a minimum U.S. No. 1 internal grade from June 15 to July 31 for domestic shipments will help the industry maximize fresh shipments and returns for Valencia and other late type oranges.

This rule is expected to have a positive impact on affected entities as it relaxes handling requirements. With this rule removing seeded grapefruit from the varieties regulated, handlers will be able to market these varieties free from order requirements. In addition, the relaxation in grade requirements from June 15 to July 31 each season for Valencia and other late type oranges will allow handlers to make additional supplies available for the fresh domestic market, thus, increasing returns. No additional costs are imposed on growers, handlers, and importers with this rule. The benefits derived from this change are expected to benefit both large and small entities equally.

During the period January 1 through December 31, 2002, imports of grapefruit totaled 23,246 metric tons (approximately 1,100,000 cartons). The Bahamas were the principal source, accounting for nearly 99 percent of the total. Remaining imports were supplied by Israel. Most imported grapefruit enters the United States from October through May.

Section 8e of the Act provides that when certain domestically produced commodities, including grapefruit, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements. Because this rule changes the requirements for domestic seeded grapefruit shipments, this change must also be applicable to imported grapefruit. This rule removes the import requirements for seeded grapefruit. This regulation will benefit importers to the same extent that it benefits Florida grapefruit producers and handlers.

One alternative to this action was to make no changes to the order's handling regulations. However, the committee believes seeded grapefruit varieties have no significant impact on the grapefruit market and that action should be taken to remove them from the handling regulations. In addition, the committee believes making additional supplies of oranges available late in the season may increase returns. Therefore, the alternative of making no changes was rejected.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the July 1, 2003, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the removal of seeded grapefruit from requirements currently prescribed under the marketing order for Florida citrus and the grapefruit import regulation. This rule also invites comments on the relaxation of minimum grade requirements for fresh Valencia and other late type oranges. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers will begin shipments of seeded grapefruit in mid-September 2003 and the removal of regulations should be effective by that time; (2) the committee recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (3) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

■ For the reasons set forth in the preamble, 7 CFR parts 905 and 944 are amended as follows:

■ 1. The authority citation for 7 CFR parts 905 and 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

■ 2. Section 905.306 is amended by:

■ a. In paragraph (a), by removing under the heading "Grapefruit", entries for "Seeded, except red" and "Seeded, red" from Table I and under the heaading "Oranges" revising the entry for "Valencia and other late type";

■ b. In paragraph (b), by removing under the heading "Grapefruit" entries for "Seeded, except red" and "Seeded, red" from Table II.

The revisions to Table I read as follows:

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety	Regulation period	Minimum grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
* * * * * * *			
Valencia and other late type	August 1 June 14	U.S. No. 1, U.S. No. 2, External	2 8/16
	June 15 July 31	U.S. No. 1, Internal	2 8/16
* * * * * * *			

* * * * *

PART 944—FRUITS; IMPORT REGULATIONS

■ 3. In § 944.106(a), the entry for "Seeded" is removed from the table.

Dated: September 4, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–22948 Filed 9–4–03; 3:16 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545 and 550

[No. 2003–44]

RIN 1550–AB80

Federal Savings Associations—Operations, Agency Offices; Fiduciary Powers of Savings Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule amending its regulation governing agency offices of federal savings associations to conform that regulation to recent changes to OTS's fiduciary activities regulations. OTS is also removing an incorrect parenthetical in 12 CFR 550.136, OTS's regulation governing the extent to which state law applies to the fiduciary activities of a federal savings association.

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Timothy P. Leary, Counsel (Banking & Finance), Regulations and Legislation Division, (202) 906–7170, Kevin Corcoran, Special Counsel, Business Transactions Division, (202) 906–6962, Office of the Chief Counsel; or Judith McCormick, Trust Specialist, Examination Policy Division, (202) 906–5636, Office of Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background and Discussion

On December 12, 2002, OTS amended its regulations governing the fiduciary activities of federal savings associations, found at 12 CFR part 550.[1] One of those amendments was to 12 CFR 550.70, which sets out when a federal savings association must obtain OTS approval or file a notice before exercising fiduciary powers. Under that rule, if a federal savings association wants to commence fiduciary activities in a new state that are not materially different from those that OTS has already approved for the association, it need not file a new fiduciary powers application. Rather, the association needs to file, within ten days after commencing the activities in the new state, a written notice that identifies the new state, describes the fiduciary activities the association is conducting in the new state, and provides sufficient information supporting a conclusion that those activities are permissible in the new state. If an association proposes to open an agency office in any state to perform only activities ancillary to its fiduciary business, or to open a new agency office in a state in which the association is already conducting approved fiduciary activities, no fiduciary application or notice is required.

To minimize potential confusion about applicable procedures, OTS today is conforming its agency office regulation, 12 CFR 545.96, to reflect this change in the fiduciary activities regulations. Under subparagraph (a) of § 545.96, a federal savings association may, without OTS's approval, establish and maintain agency offices that only service and originate (but not approve) loans and contracts, or manage or sell real estate owned by the federal savings association. Subparagraph (b) of the regulation states that, except for payment on savings accounts, a federal savings association may conduct activities not listed in subparagraph (a) at an agency office with OTS approval. The regulation does not currently address fiduciary activities, nor does it indicate how it interacts with part 550.

In the preamble to the proposed amendments to § 550.70, OTS explained in detail why a new fiduciary powers application was not necessary when a federal savings association wanted to conduct already approved fiduciary activities in a new state:

[1] 67 FR 76293 (December 12, 2002).

When OTS reviews an initial application for fiduciary powers, it analyzes a number of factors including, among others, the federal savings association's financial and managerial resources, its history of regulatory compliance, and level of fiduciary expertise [citation omitted]. In light of this initial review, OTS believes that a new application is not always necessary to ensure safe and sound fiduciary operations when a federal savings association with existing trust powers expands its operations. * * * Application and notice requirements under the proposed rule would distinguish between new activities that materially differ from previously approved fiduciary activities and other types of activities. * * * [T]he proposed rule would require a federal savings association with previously approved trust powers to submit a complete trust application and obtain prior OTS approval before it may conduct fiduciary activities that are materially different from activities approved in the initial trust application. * * * OTS does not believe that a federal savings association engages in materially different activities when it merely expands the geographic scope of previously approved activities. Accordingly, the proposed rule would not require a new application before the federal savings association commences such activities.

The same reasoning applies even when the association creates a new agency office to conduct previously approved fiduciary activities or activities ancillary to its fiduciary business.

Accordingly, OTS believes that it does not need to approve an agency office that a federal savings association creates to conduct these activities. OTS therefore is amending 12 CFR 545.96 to add fiduciary activities to subparagraph (a). Under the new rule, a federal savings association may, without OTS approval, establish and maintain an agency office that engages only in one or more of the following activities: (1) Servicing or originating (but not approving) loans and contracts; (2) managing or selling real estate owned by the federal savings association; or (3) conducting fiduciary activities or activities ancillary to the association's fiduciary business. Under 12 CFR 550.70, of course, when an association establishes an agency office to conduct fiduciary activities in a new state, the association must file, within ten days after commencing those activities, a written notice containing the information required under 12 CFR 550.125.[2] Moreover, for clarification purposes, we are amending § 545.96 to change all references in the regulation from "agency" and "agencies" to "agency office" and "Agency offices," respectively.

OTS is also amending 12 CFR 550.136 to remove an incorrect reference to state law. Section 550.136 did not appear in the proposed rule, published on June 11, 2002, but was adopted in response to comments on different language that had been proposed. It was published for the first time on December 12, 2002 and became effective January 1, 2003. Since the effective date, it has come to OTS's attention that one of the parenthetical descriptions in that section is incorrect.

Specifically, in the list of state laws that apply to the fiduciary operations of federal savings associations by virtue of 12 U.S.C. 1464(n), OTS included a reference to "State laws regarding * * * investments in state trust companies." Section 1464(n), however, contains no reference to state laws regarding thrift investments in state trust companies. Accordingly, we are amending § 550.136(a) to remove the reference to state laws regarding investments in state trust companies.

II. Need for an Immediately Effective Final Rule

OTS finds that there is good cause to dispense with prior notice and comment on this final rule and with the 30-day delay of effective date mandated by the Administrative Procedure Act.[3] OTS believes that following those procedures in today's rulemaking would be unnecessary and contrary to public interest because the rule achieves regulatory consistency, minimizes potential confusion, and reduces regulatory burden. There is no reason to delay these results. Under the clarified rule, a federal savings association that wants to establish an agency office to conduct previously approved fiduciary activities, or activities ancillary to the association's fiduciary business, must follow only the procedures in 12 CFR part 550. The amendment to § 550.136 merely conforms the regulatory provisions to the parallel statutory provisions. These changes will not detrimentally affect savings associations or others.

Section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 provides that regulations that impose additional reporting, disclosure, or other new requirements may not take effect before the first day of the quarter following publication.[4] This section does not apply because this final rule imposes no additional requirements and results in consistency between existing regulations.

III. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) is required only when an agency must publish a notice of proposed rulemaking.[5] As already noted, OTS has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, OTS has considered the likely impact of the rule on small entities and, pursuant to section 605(b) of the Regulatory Flexibility Act, the OTS Director certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

IV. Executive Order 12866

OTS has determined that this final rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

V. Unfunded Mandates Act

OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 550

Savings associations, Trusts and trustees.

■ Accordingly, OTS amends chapter V, title 12, Code of Federal Regulations as set forth below.

PART 545—[AMENDED]

■ 1. The authority citation for part 545 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1828.

■ 2. Amend § 545.96, including the section heading, as follows:

■ a. Remove the words "agency" and "agencies" and add, in their place, the words "agency office" and "agency offices," respectively.

■ b. Revise paragraph (a) of § 545.96 as follows:

[2] Section 550.125 requires that the notice identify the new state, describe the fiduciary activities that the association will conduct in that state, and provide sufficient information supporting a conclusion that the activities are permissible in that state.

[3] 5 U.S.C. 553.

[4] Pub. L. 103–325, 12 U.S.C. 4802.

[5] 5 U.S.C. 603.

§ 545.96 Agency office.

(a) *General.* A Federal savings association may establish or maintain an agency office that engages only in one or more of the following activities: (1) Servicing or originating (but not approving) loans and contracts; (2) managing or selling real estate owned by the Federal savings association; or (3) conducting fiduciary activities or activities ancillary to the association's fiduciary business in compliance with subpart A of part 550 of this chapter.

* * * * *

PART 550—[AMENDED]

■ 3. Amend § 550.136(a) by revising the third sentence to read as follows:

§ 550.136 To what extent do State laws apply to my fiduciary operations?

* * *Accordingly, Federal savings associations may exercise fiduciary powers as authorized under Federal law, including this part, without regard to State laws that purport to regulate or otherwise affect their fiduciary activities, except to the extent provided in 12 U.S.C. 1464(n) (State laws regarding scope of fiduciary powers, access to examination reports regarding trust activities, deposits of securities, oaths and affidavits, and capital) or in paragraph (c) of this section.

* * * * *

Dated: September 2, 2003.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 03–22778 Filed 9–8–03; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM263, Special Conditions No. 25–245–SC]

Special Conditions: Sabreliner Model NA–265 Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Sabreliner Model NA–265 series airplanes, modified by Sabreliner Corporation. These modified airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the installation of Air Data systems that perform critical functions by providing altitude, airspeed, or other critical data. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 28, 2003. Comments must be received on or before October 9, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM263, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM263.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment are impracticable because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change these special conditions based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 21, 2003, Sabreliner Corporation, Pierre Laclede Center, 7733 Forsyth Boulevard, Suite 1500, St. Louis, Missouri 63105–1821, applied for a supplemental type certificate (STC) to modify Sabreliner Model NA–265 series airplanes. These airplanes are approved under Type Certificate No. A2WE. The Model NA–265 series are small transport category airplanes powered by two aft-mounted Pratt and Whitney Turbo Wasp JT12A engines, with the exception of the Model NA–265–65, which has two Air Research TFE731 turbofan engines, and the Model NA–265–80, which has two GE Model CF700 turbofan engines. These airplanes operate with a 2-pilot crew and can hold from 4 to 10 passengers depending on the model within the series. The NA–265 series have a maximum takeoff weight of 17,450 to 24,000 pounds, depending on the brake installation and model within the series.

The modification incorporates the installation of Air Data systems (combinations of Air Data Display Units, Air Computer, Air Data Sensor, and/or Altimeter) that perform critical functions by providing altitude, airspeed, or other critical data. These systems use electronics to a far greater extent than the original instrument systems, and may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF). The disruption of these signals could result in loss of altitude, or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Sabreliner Corporation must

show that the Model NA–265 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified Sabreliner NA–265 series airplanes includes Civil Air Regulation (CAR) 4b, dated December 31, 1953, as amended by Amendments 4b–1 through 4b–9. In addition, under § 21.101(b)(1), Amendment 25–69, the following sections of 14 CFR part 25 apply to the air data, altimeter, and display systems installed on the Sabreliner NA–265 series airplanes: §§ 25.1309(a), (c), (e), (f), and (g), 25.1321(a), (b), (d), and (e), 25.1331, and 25.1335 as amended by Amendment 25–41; and § 25.1316, as amended by Amendment 25–80. The certification basis also includes other amendments and special conditions, as noted in Type Certificate Data Sheet (TCDS) No. A2WE, that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (that is, CAR 4b, as amended) do not contain adequate or appropriate safety standards for the Sabreliner Model NA–265 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Sabreliner Model NA–265 series airplanes must comply with the fuel vent and exhaust emission requirement of SFAR 27 (now codified as 14 CFR part 34) and the noise certification requirements of 14 CFR part 36.

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Sabreliner Corporation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A2WE to incorporate the same or similar novel or unusual design features, these special conditions would also apply to the other model under the provisions of § 21.101.

Novel or Unusual Design Features

As noted earlier, the Sabreliner Model NA–265 series airplanes modified by Sabreliner Corporation will incorporate the installation of Air Data systems that perform critical functions. Because these advanced systems use electronics to a far greater extent than the original altimetry system, they may be more susceptible to electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be a novel or unusual design feature.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Model NA–265 series airplanes, modified by Sabreliner to include the new Air Data systems. These special conditions require that the Air Data systems, which perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, and the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

Note.—The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Sabreliner Model NA–265 series airplanes modified by Sabreliner. Should Sabreliner Corporation apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A2WE to incorporate the same or similar novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101.

Conclusion

This action affects only certain novel or unusual design features on Sabreliner

Model NA–265 series airplanes modified by Sabreliner Corporation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for Sabreliner Model NA–265 series airplanes modified by Sabreliner Corporation.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on August 28, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22798 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM264, Special Conditions No. 25–246–SC]

Special Conditions: Gulfstream Aerospace LP 1125 Westwind Astra; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Gulfstream Aerospace LP 1125 Westwind Astra airplanes modified by Garrett Aviation Services. These modified airplanes will have novel or unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The modification incorporates the upgrade of one Air Data Computer system and the installation of a second Air Data Computer system, both of which perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity-radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 28, 2003. Comments must be received on or before October 9, 2003.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM264, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM264.

FOR FURTHER INFORMATION CONTACT: Meghan Gordon, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that notice and opportunity for prior public comment is impracticable, because these procedures would significantly delay certification of the airplane and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance; however, the FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive as well as a report summarizing each substantive public contact with FAA personnel concerning these special conditions. The docket is available for public inspection before and after the comment close date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late, if it is possible to do so without incurring expense or delay. We may change these special conditions, based on the comments we receive.

If you want the FAA to acknowledge receipt of your comments on these special conditions, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On July 2, 2003, Garrett Aviation Services, 1200 North Airport Drive, Capital Airport, Springfield, IL 62707, applied for a supplemental type certificate (STC) to modify Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes approved under Type Certificate No. A16NM. The Model 1125 Westwind Astra is a small transport category airplane, powered by two Turbofan Engines; the airplane has a maximum takeoff weight of 24,800 pounds. The Model 1125 Westwind Astra operates with a 2-pilot crew and holds up to 9 passengers. The modification incorporates the upgrade

of the single Rockwell Collins ADS–85 Air Data System and the installation of an Innovative Solutions & Support Air Data Display Unit and a 2-inch Standby Altimeter. These avionics/ electronics and electrical systems have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Garrett Aviation Services must show that the Model 1125 Westwind Astra airplanes, as modified, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the Model 1125 Westwind Astra airplanes includes 14 CFR part 25, dated February 1, 1965, through Amendment 25–54, except for special conditions and exceptions noted in Type Certificate Data Sheet (TCDS) A16NM.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 25, as amended) do not contain adequate or appropriate safety standards for the Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes modified by Garrett Aviation Services because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Gulfstream Aerospace LP 1125 Westwind Astra airplanes modified by Garrett Aviation Services must comply with the fuel vent and exhaust requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as defined in 14 CFR 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to incorporate the same or similar novel or unusual design features, these special conditions would also apply to the other model.

Novel or Unusual Design Features

As noted earlier, the Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes modified by Garrett Aviation Services will incorporate the upgrade of the single Rockwell Collins ADS–85 Air Data System and the installation of an Innovative Solutions & Support Air Data Display Unit and a 2-inch Standby Altimeter that will perform critical functions. These systems may be vulnerable to HIRF external to the airplane. The current airworthiness standards of part 25 do not contain adequate or appropriate safety standards for the protection of this equipment from the adverse effects of HIRF. Accordingly, these systems are considered to be a novel or unusual designs.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive avionics/ electronics and electrical systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes modified by Garrett Aviation Services. These special conditions require that new avionics/electronics and electrical systems that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters and the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical avionics/electronics and electrical systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 or 2 below:

1. A minimum threat of 100 volts rms (root-mean-square) per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the field strengths identified in the table below for the frequency ranges indicated. Both peak and average field strength components from the table are to be demonstrated.

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200

Frequency	Field strength (volts per meter)	
	Peak	Average
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

NOTE.—The field strengths are expressed in terms of peak of the root-mean-square (rms) values over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable to Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes modified by Garrett Aviation Services. Should Garrett Aviation Services apply at a later date for a supplemental type certificate to modify any other model included on the Type Certificate No. A16NM to incorporate the same or similar novel or unusual design features, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes modified by Garrett Aviation Services. It is not a rule of general applicability and affects only the applicant which applied to the FAA for approval of these features on the airplanes.

The substance of these special conditions has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. Because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and record keeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Gulfstream Aerospace LP Model 1125 Westwind Astra airplanes modified by Garrett Aviation Services.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22797 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NE–29–AD; Amendment 39–13300; AD 2003–18–09]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Rolls-Royce plc (RR) Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. This AD requires removal from service of certain part numbers of high pressure (HP) compressor rotor shafts, based on a newly established reduced life limit. This AD is prompted by reports of HP compressor drums with small cracks in blade loading slots found at overhaul inspection. The HP compressor drums are an integral part of the HP compressor rotor shaft. We are issuing this AD to prevent possible uncontained HP compressor drum failure, which could result in damage to the airplane.

DATES: Effective September 24, 2003.

We must receive any comments on this AD by November 10, 2003.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–NE–29–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority, (CAA), which is the airworthiness authority for the U.K., recently notified the FAA that an unsafe condition may exist on Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. The CAA advises that it has received overhaul inspection reports of HP compressor drums with small cracks in blade loading slots. The HP compressor drums are an integral part of the HP compressor rotor shaft. The manufacturer is currently analyzing parts from the field, and has not yet

determined the root cause of the cracking or established a full understanding of the crack propagation rate. Through coordination with the CAA, the manufacturer has reduced the declared lives of the affected HP compressor rotor shafts to 4,200 cycles-since-new (CSN). The FAA has confirmed through the CAA that there are no affected in-service parts close to accumulating 4,200 CSN. The manufacturer may introduce a design change to increase the declared lives of HP compressor rotor shafts in the future.

FAA's Determination and Requirements of This AD

Although none of these affected engine models are used on any airplanes registered in the United States, the possibility exists that the engine models could be used on airplanes that are registered in the United States in the future. Since an unsafe condition has been identified that is likely to exist or develop on other Rolls-Royce plc Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines of the same type design, we are issuing this AD to prevent possible uncontained HP compressor drum failure, which could result in damage to the airplane. The HP compressor drums are an integral part of the HP compressor rotor shaft. This AD requires removal from service of certain part numbers of HP compressor rotor shafts, based on a newly established reduced life limit of 4,200 CSN.

Bilateral Airworthiness Agreement

This engine model is manufactured in the U.K., and is type certificated for operation in the United States under section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. In keeping with this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, we can adopt this regulation immediately.

Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our AD system. This regulation now includes material that relates to special flight permits, alternative methods of compliance, and altered products. This material previously was included in each individual AD. Since this material is included in 14 CFR part 39, we will not include it in future AD actions.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–29–AD" in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You may get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov.*

Examining the AD Docket

You may examine the AD Docket (including any comments), between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States; on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;

2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include "AD Docket No. 2003–NE–29–AD" in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive:

2003–18–09 Rolls-Royce plc: Amendment 39–13300. Docket No. 2003–NE–29–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective September 24, 2003.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) Trent 768–60, Trent 772–60, and Trent 772B–60 turbofan engines. These engines are installed on, but not limited to Airbus A330 series airplanes.

Unsafe Condition

(d) This AD is prompted by reports of high pressure (HP) compressor drums with small cracks in blade loading slots found at overhaul inspection. We are issuing this AD to prevent possible uncontained HP compressor drum failure, which could result in damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within

the compliance cycles specified unless the actions have already been done.

(f) Remove HP compressor rotor shafts, part numbers (P/Ns) FK24031 (pre RR Service Bulletin (SB) RB.211–72–B172), FK22745 (SB RB.211–72–B172), FK23313 (SB RB.211–72–B261 and pre SB RB.211–72–B653), FK25502 (SB RB.211–72–B653), FK26185 (SB RB.211–72–B921), FK32129 (SB RB.211–72–C746), FW20195 (SB RB.211–72–D533), FW20196 (SB RB.211–72–D533), FW20197 (SB RB.211–72–D533), and FW20638 (SB RB.211–72–D533) from service at or before accumulating 4,200 cycles-since-new (CSN).

(g) After the effective date of this AD, do not install any HP compressor rotor shaft, P/Ns FK24031 (pre RR SB RB.211–72–B172), FK22745 (SB RB.211–72–B172), FK23313 (SB RB.211–72–B261 and pre SB RB.211–72–B653), FK25502 (SB RB.211–72–B653), FK26185 (SB RB.211–72–B921), FK32129 (SB RB.211–72–C746), FW20195 (SB RB.211–72–D533), FW20196 (SB RB.211–72–D533), FW20197 (SB RB.211–72–D533), or FW20638 (SB RB.211–72–D533), that exceeds 4,200 CSN.

Alternative Methods of Compliance

(h) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

Material Incorporated by Reference

(i) None.

Related Information

(j) CAA airworthiness directive 003–12–2001, dated February 26, 2002, and Rolls-Royce plc Mandatory Service Bulletin No. RB.211–72–D586, Revision 1, dated February 26, 2002, also address the subject of this AD.

Issued in Burlington, Massachusetts, on September 3, 2003.

Marc J. Bouthillier,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 03–22888 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–88–AD; Amendment 39–13189; AD 2003–12–04]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 and –145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in airworthiness directive (AD) 2003–12–04, which was published in the **Federal Register** on June 12, 2003 (68 FR 35157). The typographical error resulted in an incorrect part number for the replacement supports for the engine bleed air duct. This AD is applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. This AD requires replacing the four GAMAH clamp/sleeve joints on an engine bleed air duct with new threaded coupling assemblies; for certain airplanes, this AD also requires replacing the two supports for the engine bleed air duct with two new supports.

DATES: Effective July 17, 2003.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2003–12–04, amendment 39–13189, applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, was published in the **Federal Register** on June 12, 2003 (68 FR 35157). That AD requires replacing the four GAMAH clamp/sleeve joints on an engine bleed air duct with new threaded coupling assemblies; for certain airplanes, that AD also requires replacing the two supports for the engine bleed air duct with two new supports.

As published, paragraph (a)(2) of the AD cites an incorrect part number (145–35923–007) for the replacement supports for the engine bleed air duct. The correct part number is 145–35923–015.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains July 17, 2003.

§ 39.13 [Corrected]

■ On page 35158, in the second column, paragraph (a)(2) of AD 2003–12–04 is corrected to read as follows:

* * * * *

(2) For airplanes having serial numbers listed in paragraph 3.G. of the Accomplishment Instructions of the service bulletin: Replace the two supports for the engine bleed air duct with two new supports having part number 145–35923–015.

* * * * *

Issued in Renton, Washington, on September 3, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22889 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15409; Airspace Docket No. 03–ASO–8]

Amendment of Class D and E Airspace; Montgomery, AL; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final rule (FAA–2003–15409; 03–ASO–8), which was published in the **Federal Register** on August 20, 2003, (68 FR 50068), amending Class D, E2, and E5 airspace at Montgomery, AL. This action corrects an error in the legal description for the Class E5 airspace at Montgomery, AL.

EFFECTIVE DATE: Effective 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Walter R. Cochran, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, PO Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

SUPPLEMENTARY INFORMATION:

Background

Federal Register Document 03–21323, Docket No. FAA–2003–15409; Airspace Docket 03–ASO–8, published on August 20, 2003, (68 FR 50068), amends Class D, E2 and E5 airspace at Montgomery, AL. An error was discovered in the legal description, describing the Class E5 airspace area. The airspace description contained incorrect geographic position coordinates for Maxwell AFB. This action corrects the error.

Designations for Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9K, dated August 30, 2002, and effective September 16, 2002, which is incorporated by reference in 14 CFR part 71.1 The Class E designation listed in this document will be published subsequently in the Order.

Need for Correction

As published, the final rule contains an error which incorrectly identifies the

geographical position coordinates for Maxwell AFB. Accordingly, pursuant to the authority delegated to me, the legal description for the Class E5 airspace area at Montgomery, AL, incorporated by reference at § 71.1, 14 CFR 71.1, and published in the **Federal Register** on August 20, 2003, (68 FR 50068) is corrected by making the following correcting amendment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

■ In consideration of the foregoing, the Federal Aviation Administration corrects the adopted amendment, 14 CFR Part 71, by making the following correcting amendment:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Corrected]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9K, Airspace Designations and Reporting Points, dated August 30, 2002, and effective September 16, 2002, is amended as follows: Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO AL E5 Montgomery, AL [Corrected]

Montgomery Regional Airport—Dannelly Field, AL
(Lat. 32°18′02″ N., long. 86°23′38″ W.)
Montgomery VORTAC
(Lat. 32°13′20″ N., long. 86°19′11″ W.)
Maxwell AFB
(Lat. 32°22′45″ N., long. 86°21′45″ W.)
Autauga County Airport
(Lat. 32°26′20″ N., long. 86°30′38″ W.)
Wetumpka Municipal Airport
(Lat. 32°31′46″ N., long. 86°19′42″ W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Montgomery Regional Airport-Dannelly Field, and within 4 miles east and 8 miles west of the Montgomery VORTAC 138° radial extending from the 7-mile radius to 16 miles southeast of the Montgomery VORTAC, and within a 7-mile radius of Maxwell AFC and within a 7-mile radius of Autauga County Airport and within a 6.3-mile radius of Wetumpka Municipal Airport.

* * * * *

Issued in College Park, Georgia on August 28, 2003.

Walter R. Cochran,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 03–22799 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15453; Airspace Docket No. 03–ACE–51]

Modification of Class E Airspace; Elkhart, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Elkhart, KS.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 9, 2003 (68 FR 40762). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 21, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–22804 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15456; Airspace Docket No. 03–ACE–54]

Modification of Class E Airspace; Vinton, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Vinton, IA.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 15, 2003 (68 FR 41694). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 21, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–22803 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15454; Airspace Docket No. 03–ACE–52]

Modification of Class E Airspace; Wichita Mid-Continent Airport, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Wichita Mid-Continent Airport, KS.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 15, 2003 (68 FR 41691). The FAA subsequently published a correction to this direct final rule, revising the Wichita McConnell Air Force Base airport reference point, on August 21, 2003 (68 FR 50468). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 21, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–22802 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15455; Airspace Docket No. 03–ACE–53]

Modification of Class E Airspace; Sioux Center, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule which revises Class E airspace at Sioux Center, IA.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 15, 2003 (68 FR 41692). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on October 30, 2003. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on August 21, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–22801 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–15461; Airspace Docket No. 03–ACE–59]

Modification of Class E Airspace; Beatrice, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments; correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Thursday, July 31, 2003, (68 FR 44875) [FR Doc. 03–19408]. It corrects an error in an extension to the Beatrice, NE Class E airspace area and its legal description.

DATES: This direct final rule is effective on 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Municipal Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–19408, published on Thursday, July 31, 2003, (68 FR 44875) modified Class E airspace at Beatrice, NE. The modification was to correct discrepancies in the legal description of the airspace area, to expand and redefine its dimensions in order to provide appropriate protection for aircraft executing Instrument Approach Procedures to Beatrice Municipal Airport and to bring the legal description into compliance with FAA Order 7400.2E, Procedures for Handling Airspace Matters. However, the dimensions of the southern extension of this airspace area were published incorrectly.

■ Accordingly, pursuant to the authority delegated to me, the Beatrice, NE Class E airspace, as published in the **Federal Register** on Thursday, July 31, 2003, (68 FR 44875), [FR Doc. 03–19408] is corrected as follows:

§ 71.1 [Corrected]

■ On page 44876, Column 3, first paragraph headed, last line, change "to 7 miles south of Shaw NDB" to read "to 9.4 miles south of Shaw NDB."

Issued in Kanasa City, MO, on August 21, 2003.

Paul J. Sheridan,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 03–22800 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2003–14855; Airspace Docket No. 03–AAL–04]

Amendment to Class E Airspace; Pilot Point, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airport coordinates in the final rule for the Pilot Point Airport that were published in the **Federal Register** on August 11, 2003 (68 FR 47449), Docket No. FAA–2003–14855; Airspace Docket 03–AAL–04.

EFFECTIVE DATE: 0901 UTC, October 30, 2003.

FOR FURTHER INFORMATION CONTACT: Derril Bergt, Operations Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: *Derril.ctr.Bergt@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 03–20404, Docket No. FAA–2003–14855; Airspace Docket 03–AAL–4, published on August 11, 2003 (68 FR 47449) established new Class E airspace area at Pilot Point, AK. The coordinates for the Airport Reference Point were wrong. This action corrects the Airport Reference Point for the Pilot Point Airport, Pilot Point, AK.

Correction to Final Rule

■ Accordingly, pursuant to the authority delegated to me, the Class E airspace description listed for the Pilot Point Airport as published in the **Federal Register** on August 11, 2003, (68 FR 47449), (**Federal Register** Document 03–20404, page 47449), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK E5 Pilot Point, AK [Corrected]

Pilot Point Airport, AK

(Lat. 57° 34′ 49″ N., long. 157° 34′ 19″ W.)

* * * * *

Issued in Anchorage, AK, on August 29, 2003.

Judith G. Heckl,

Assistant Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 03–22922 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30385; Amdt. No. 3073]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 9, 2003. The compliance date for each SIAP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 9, 2003.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The Flight Inspection Area Office which originated the SIAP; or,

4. The Office of Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: PO Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on August 29, 2003.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective October 30, 2003

Ambler, AK, Ambler, RNAV (GPS) Y RWY 36, Orig
Ambler, AK, Ambler, RNAV (GPS) Z RWY 36, Orig
Ambler, AK, Ambler, RNAV (GPS) RWY 36, Orig, CANCELLED
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 6L, Orig-B
Anchorage, AK, Ted Stevens Anchorage Intl, RNAV (GPS) RWY 6R, Orig-B
Bethel, AK, Bethel, RNAV (GPS) RWY 18, Orig-C
Bethel, AK, Bethel, RNAV (GPS) RWY 36, Orig-C
Fairbanks, AK, Fairbanks Intl, RNAV (GPS) Y RWY 1L, Orig-B
Fairbanks, AK, Fairbanks Intl, RNAV (GPS) Y RWY 19R, Orig-B
Igiugig, AK, Igiugig, RNAV (GPS) RWY 5, Orig
Igiugig, AK, Igiugig, RNAV (GPS) RWY 23, Orig
Iliamna, AK, Iliamna, RNAV (GPS) RWY 7, Amdt 1
Juneau, AK, Juneau Intl, RNAV (GPS) V RWY 8, Orig
Marshall, AK, Marshall Don Hunter Sr, RNAV (GPS)—A, Orig
Marshall, AK, Marshall Don Hunter Sr, RNAV (GPS) RWY 7, Orig
Bakersfield, CA, Meadows Field, ILS OR LOC RWY 30R, Amdt 28
Bakersfield, CA, Meadows Field, NDB RWY 30R, Amdt 7
Bakersfield, CA, Meadows Field, VOR RWY 30R, Amdt 8
Bakersfield, CA, Meadows Field, RNAV (GPS) RWY 30R, Orig
Bakersfield, CA, Meadows Field, GPS RWY 30R, Orig-B, CANCELLED
Napa, CA, Napa County, VOR RWY 6, Amdt 12
Napa, CA, Napa County, RNAV (GPS) RWY 6, Orig
Colorado Springs, CO, City Of Colorado Springs Muni, ILS RWY 17L, Orig
Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (GPS) RWY 17L, Orig
Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (GPS) RWY 17R, Orig
Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (GPS) RWY 30, Orig
Colorado Springs, CO, City Of Colorado Springs Muni, RNAV (GPS) RWY 35R, Orig
Colorado Springs, CO, City Of Colorado Springs Muni, NDB RWY 35L, Amdt 25B
Colorado Springs, CO, City Of Colorado Springs Muni, GPS RWY 17L, Orig, CANCELLED
Colorado Springs, CO, City Of Colorado Springs Muni, GPS RWY 35R, Orig, CANCELLED
Tinian Island, CQ, West Tinian, RNAV (GPS) RWY 8, Orig
Tinian Island, CQ, West Tinian, RNAV (GPS) RWY 26, Orig
Tinian Island, North Mariana Island, CQ, West Tinian, GPS RWY 8, Orig, CANCELLED
Tinian Island, North Mariana Island, CQ, West Tinian, GPS RWY 26, Orig-A, CANCELLED
Marco Island, FL, Marco Island, LOC RWY 17, Orig-A, CANCELLED
Kosrae Island, FM, Kosrae, RNAV (GPS) RWY 5, Orig
Kosrae Island, FM, Kosrae, GPS RWY 23, Amdt 1, CANCELLED
Kosrae Island, FM, Kosrae, GPS RWY 5, Amdt 1, CANCELLED
Kosrae Island, FM, Kosrae, RNAV (GPS) RWY 23, Orig
Pohnpei Island, FM, Pohnpei Intl, RNAV (GPS) RWY 9, Orig
Pohnpei Island, FM, Pohnpei Intl, RNAV (GPS) RWY 27, Orig
Pohnpei Island, FM, Pohnpei Intl, GPS RWY 9, Amdt 1, CANCELLED
Pohnpei Island, FM, Pohnpei Intl, GPS RWY 27, Amdt 1, CANCELLED
Yap Island, FM, Yap Island Intl, RNAV (GPS) RWY 7, Orig
Yap Island, FM, Yap Island Intl, RNAV (GPS) RWY 25, Orig
Yap Island, FM, Yap Island Intl, GPS RWY 7, Amdt 1, CANCELLED
Yap Island, FM, Yap Island Intl, GPS RWY 25, Amdt 1, CANCELLED
Chicago, IL, Merill C. Meigs, VOR/DME–A, Orig, CANCELLED
Chicago, IL, Merill C. Meigs, GPS RWY 36, Amdt 1A, CANCELLED
Eureka, KS, Eureka Muni, RNAV (GPS) RWY 18, Orig
Eureka, KS, Eureka Muni, VOR/DME RWY 18, Amdt 2A
Goodland, KS, Renner Fld/Goodland Muni, ILS OR LOC/DME RWY 30, Orig
Goodland, KS, Renner Fld/Goodland Muni, ILS RWY 30, Amdt 3A, CANCELLED
Goodland, KS, Renner Fld/Goodland Muni, RNAV (GPS) RWY 12, Orig
Goodland, KS, Renner Fld/Goodland Muni, RNAV (GPS) RWY 23, Orig
Goodland, KS, Renner Fld/Goodland Muni, RNAV (GPS) RWY 30, Orig
Goodland, KS, Renner Fld/Goodland Muni, NDB RWY 30, Amdt 7
Goodland, KS, Renner Fld/Goodland Muni, VOR RWY 30, Amdt 8
Goodland, KS, Renner Fld/Goodland Muni, VOR/DME RWY 30, Amdt 7
Wichita, KS, Cessna Aircraft Field, RNAV (GPS)–D, Orig
Wichita, KS, Cessna Aircraft Field, VOR–C, Amdt 1
Augusta, ME, Augusta State, GPS RWY 35, ORIG–A
Majuro Atoll, MH, Marshall Islands Intl, RNAV (GPS) RWY 7, Orig

Majuro Atoll, MH, Marshall Islands Intl, RNAV (GPS) RWY 25, Orig
Majuro Atoll, MH, Marshall Islands Intl, GPS RWY 7, Amdt 1, CANCELLED
Majuro Atoll, MH, Marshall Islands Intl, GPS RWY 25, Amdt 1, CANCELLED
Holland, MI, Tulip City, VOR–A, Amdt 10C
Holland, MI, Tulip City, VOR/DME RNAV RWY 8, Amdt 2B
Holland, MI, Tulip City, ILS OR LOC/DME RWY 26, Orig
Holland, MI, Tulip City, ILS/DME RWY 26, Orig-B, CANCELLED
Holland, MI, Tulip City, RNAV (GPS) RWY 8, Orig
Holland, MI, Tulip City, RNAV (GPS) RWY 26, Amdt 1
Canby, MN, Myers Field, RNAV (GPS) RWY 11, Orig
Menominee, MI, Menominee-Marinette Twin County, RNAV (GPS) RWY 32, Orig
Menominee, MI, Menominee-Marinette Twin County, GPS RWY 32, Orig, CANCELLED
Hatteras, NC, Billy Mitchell, RNAV (GPS) RWY 25, Orig
Hatteras, NC, Billy Mitchell, GPS RWY 25, Amdt 2, CANCELLED
Montgomery, NY, Orange County, ILS RWY 3, Amdt 2
Wooster, OH, Wayne County, NDB RWY 28, Amdt 7C, CANCELLED
Towanda, PA, Bradford County, RNAV (GPS) RWY 23, Orig
Towanda, PA, Bradford County, GPS RWY 23, Orig, CANCELLED
Pierre, SD, Pierre Regional, ILS OR LOC RWY 31, Amdt 11A
Gallatin, TN, Sumner County Regional, RNAV (GPS) RWY 17, Orig
Gallatin, TN, Sumner County Regional, RNAV (GPS) RWY 35, Orig
Gallatin, TN, Sumner County Regional, VOR/DME–A, Amdt 2
Gallatin, TN, Sumner County Regional, GPS RWY 17, Orig, CANCELLED
Gallatin, TN, Sumner County Regional, GPS RWY 35, Orig, CANCELLED
Brownsville, TX, Brownsville/South Padre Island Intl, NDB RWY 13, Amdt 14
Brownsville, TX, Brownsville/South Padre Island Intl, ILS OR LOC RWY 13R, Orig
Brownsville, TX, Brownsville/South Padre Island Intl, ILS RWY 13R, Amdt 11B, CANCELLED
Brownsville, TX, Brownsville/South Padre Island Intl, RNAV (GPS) RWY 13R, Orig
Harlingen, TX, Valley Intl, VOR/DME RWY 17L, Orig
Harlingen, TX, Valley Intl, VOR/DME RWY 17R, Orig
Harlingen, TX, Valley Intl, VOR/DME OR TACAN Y RWY 31, Amdt 1
Harlingen, TX, Valley Intl, VOR/DME Z RWY 31, Orig
Harlingen, TX, Valley Intl, VOR/DME RWY 35L, Orig
Harlingen, TX, Valley Intl, NDB RWY 17L, Amdt 7
Harlingen, TX, Valley Intl, NDB RWY 17R, Amdt 13
Harlingen, TX, Valley Intl, ILS OR LOC RWY 17R, Orig
Harlingen, TX, Valley Intl, ILS RWY 17R, Amdt 12, CANCELLED
Harlingen, TX, Valley Intl, LOC/DME BC RWY 35L, Orig
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 13, Amdt 1
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 17L, Amdt 1
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 17R, Amdt 1
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 31, Amdt 1
Harlingen, TX, Valley Intl, RNAV (GPS) RWY 35L, Amdt 1
Port Isabel, TX, Port Isabel-Cameron County, VOR/DME–B, Amdt 3
Port Isabel, TX, Port Isabel-Cameron County, VOR–A, Amdt 6
Port Isabel, TX, Port Isabel-Cameron County, RNAV (GPS) RWY 13, Orig
Port Isabel, TX, Port Isabel-Cameron County, GPS RWY 13, Orig-A, CANCELLED
Charlottesville, VA, Charlottesville-Albemarle, RNAV (GPS) RWY 21, Orig
Charlottesville, VA, Charlottesville-Albemarle, GPS RWY 21, Orig, CANCELLED
Huntington, UT, Huntington Muni, RNAV (GPS)–C, Orig
Huntington, UT, Huntington Muni, VOR/DME–B, Amdt 1
Chetek, WI, Chetek Muni-Southworth, RNAV (GPS) RWY 17, Orig
Chetek, WI, Chetek Muni-Southworth, RNAV (GPS) RWY 35, Orig
Chetek, WI, Chetek Muni-Southworth, GPS RWY 35, Orig, CANCELLED
Manitowoc, WI, Manitowoc County, VOR RWY 17, Amdt 15
Manitowoc, WI, Manitowoc County, VOR/DME RWY 35, Orig
Manitowoc, WI, Manitowoc County, VOR OR GPS RWY 35, Amdt 14, CANCELLED
Manitowoc, WI, Manitowoc County, RNAV (GPS) RWY 17, Orig
Manitowoc, WI, Manitowoc County, RNAV (GPS) RWY 35, Orig
Afton, WY, Afton Muni, RNAV (GPS) RWY 16, Orig
Afton, WY, Afton Muni, RNAV (GPS) RWY 34, Orig

[FR Doc. 03–22796 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 48 and 75

RIN 1219 AB33

Emergency Evacuations

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Mine Safety and Health Administration (MSHA) is issuing a final rule for underground coal mines in response to dangers to which miners are exposed during mine fire, explosion, and gas or water inundation emergencies. This final rule establishes two new standards concerning *Emergency Evacuations* and *Mine Emergency Evacuation and Firefighting Program of Instruction*. In addition, existing part 48, subpart A, § 48.8 is amended.

On December 12, 2002, MSHA published an emergency temporary standard (ETS) which required operators of underground coal mines to designate for each shift that miners are underground, a responsible person to take charge during mine fire, explosion and gas or water inundation emergencies. In addition, the ETS required the responsible person to conduct an immediate mine evacuation when there is a mine emergency that presents an imminent danger to miners due to fire, explosion or gas or water inundation. The ETS also broadened the existing requirements for a program of instruction for firefighting and evacuation to address fire, explosion, and gas or water inundation emergencies. Finally, the ETS revised the part 48 training requirements to reflect that annual refresher training includes a review of the mine fire, explosion, and gas or water inundation emergency evacuation and firefighting plans in effect at the mine. In accordance with the Federal Mine Safety and Health Act of 1977 (Mine Act), the ETS must be replaced by final standards no later than 9 months after publication of the ETS. This final rule supercedes the ETS.

DATES: This final rule is effective September 9, 2003.

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SUPPLEMENTARY INFORMATION: This rule is issued in accordance with sections 101(b) and 115 (30 U.S.C. 811, 825), of the Federal Mine Safety and Health Act of 1977 (Mine Act). An Emergency Temporary Standard (ETS) was promulgated December 12, 2002 (67 FR 76658). The ETS was effective immediately upon publication. The ETS established two new standards in subpart P; § 75.1501, *Emergency Evacuations*, and § 75.1502, *Mine Emergency Evacuation and Firefighting Program of Instruction*. Subpart P was renamed "Subpart P—Mine Emergencies." In addition, existing part 48, subpart A, § 48.8 was revised.

In accordance with section 101(b)(3) of the Mine Act, the ETS also served as a proposed rule. The preamble to the proposed rule discussed specific provisions and MSHA solicited comments on those provisions. You can view comments filed in response to the

rulemaking at *http://www.msha.gov/currentcomments.htm*.

Section 75.1501 requires an operator to designate a responsible person to take charge when a mine emergency involving a fire, explosion, or gas or water inundation presents an imminent danger to miners. Section 75.1501 also requires that miners receive instruction on the identity of the responsible person designated by the operator for their workshift.

Section 75.1101–23 was redesignated as § 75.1502 and revised to include all mine emergencies resulting from a fire, an explosion, or a gas or water inundation (67 FR 76658, Dec. 12, 2002). This final rule §75.1502 requires that firefighting and evacuation plans address these emergencies; that miners be trained in all elements of the mine emergency evacuation and firefighting plan; and that mine operators instruct miners regarding any revisions to the plan after its submission to MSHA for approval.

Section 48.8, paragraph (b)(4), is amended to include in the annual refresher training of miners, a review of the emergency evacuation and firefighting plans in effect at the mine.

MSHA held four public hearings on the proposed rule in Lexington, Kentucky on February 4, 2003; Grand Junction, Colorado on February 6, 2003; Charleston, West Virginia on February 11, 2003; and Pittsburgh, Pennsylvania on February 13, 2003. The comment period closed on February 28, 2003. This final rule addresses all of the relevant comments received on the proposed rule.

Waiver of Delayed Effective Date

In accordance with the requirements of § 553(d) of the Administrative Procedure Act (5 U.S.C. 553), MSHA publishes a final rule in the **Federal Register** at least 30 days before its effective date. However, § 553(d)(3) of the Administrative Procedure Act permits an agency to dispense with this requirement when the agency has found that there is good cause to do so, and it publishes its finding in the **Federal Register** with the final rule. As explained below, MSHA finds that good cause exists to make this final rule effective upon its publication today in the **Federal Register**.

One of the primary purposes of the delayed effective date requirement is to provide affected persons or industries with adequate time to prepare for compliance with the rule. MSHA's final rule on Emergency Evacuations published in today's **Federal Register** is very similar in all major respects to the ETS, which has been in effect since December 12, 2002, and underground coal mine operators have been complying with the ETS during those eight months. Therefore, MSHA finds that no additional time is necessary for underground coal mine operators to come into compliance with the requirements of this rule because the underground coal mine industry is already familiar with the major provisions of the final rule.

In addition, the agency's ETS on Emergency Evacuations will expire on September 12, 2003. The expiration of the ETS would leave a critical void in miners' safety if the final rule is not effective by that date. For these reasons, MSHA finds good cause to waive the requirement for a delayed effective date, thereby allowing the final rule to be effective today, upon publication in the **Federal Register**.

I. Discussion of the Final Rule

A. Background

During the past three years, at least 14 miners have died in two accidents as a result of faulty mine evacuations. Explosions at the Jim Walter Resources, Inc. No. 5 Mine in Alabama on September 23, 2001, resulted in 13 fatalities. An initial roof fall and explosion occurred at 5:20 p.m. and resulted in injuries to four miners. One of the four miners was severely injured and could not move. Miners from other parts of the mine responded in an ill-coordinated effort. The response was marked by confusion. For example, after the Carbon Monoxide (CO) Room operator (monitoring the CO monitoring system at the mine) was notified of the explosion, he attempted to locate the afternoon shift haulage foreman who he believed was working at the mine. This foreman was not working that shift. There was also some confusion about where the first explosion occurred.

By the time the second explosion occurred at 6:15 p.m., 12 additional miners traveled towards the initial explosion site and these miners entered the affected area without gas detection equipment. Seven additional miners were directed to travel to the emergency area, but the 6:15 p.m. explosion occurred before they arrived in the area of the initial explosion. It is uncertain whether the miner immobilized by the first explosion died as a result of the first or second explosion. It is certain, however, that 12 additional miners died from the second explosion as they were attempting to reach the injured miner.

MSHA's accident investigation team determined that, in addition to not following proper evacuation procedures after the initial explosion, there was never a mine wide evacuation initiated at the mine, even after an explosion damaged critical ventilation controls. MSHA's accident investigation team determined that gas detection equipment was not found on any of the fatally injured miners nor did the accident investigation find such equipment in the affected section where the explosion occurred. Gas detection equipment is essential to determine the composition of the mine atmosphere and to secure the safety of those entering unknown atmospheres, especially when ventilation controls are damaged. MSHA's accident investigation report concluded that the lack of training and the failure to conduct fire and emergency drills relative to proper evacuation procedures "affected the miners' response" to the emergency situation of September 2001.

While one commenter to the proposed rule stated that the Jim Walter accident was an "aberrational situation," MSHA notes that every mine accident is unique and may present different facts and circumstances. MSHA has carefully reviewed this accident, and believes that the final rule is appropriately proactive in developing a systematic procedure for responding to mine emergencies. MSHA has determined that had a responsible person knowledgeable about the mine safety systems taken charge of the evacuation and rescue effort, fewer miners would have been permitted to remain underground or re-enter the affected mine area during the mine emergency.

Under this rule, all miners underground who were not essential to providing a mine emergency response to the explosion would have immediately evacuated the mine. In addition, the responsible person could have assured that the miners attempting a rescue were equipped with gas detection equipment. Moreover, miners would have understood, from mine emergency evacuation and firefighting training, that an evacuation was necessary and that they should not re-enter the emergency areas without instruction and appropriate safety equipment.

On July 31, 2000, four explosions occurred at the Willow Creek mine in Utah. The initial explosion and subsequent fire occurred approximately seven minutes before the later explosions that killed two miners. One commenter to the proposed rule noted that it was inappropriate to use the Willow Creek accident to justify the ETS because the commenter believed the mine responded appropriately and evacuated expeditiously. After careful review of the accident, MSHA has concluded that the fatalities may have

been prevented. Although firefighting activities began almost immediately after the first explosion, section evacuation procedures did not begin immediately and conditions worsened before the fatal explosions occurred. Had the decision to evacuate been made sooner, after it became evident that the fire was not controllable, and had the individuals present at the affected mine section been more aware of the urgent need for evacuation under emergency conditions, the fatalities might not have occurred. Some miners present at the mine were equipped with personal emergency devices (PEDs) which are capable of communicating text messages to underground personnel. Many miners had evacuated the mine and these devices alerted the remaining miners to evacuate the mine. The message to evacuate, however, was not transmitted until after the third of four explosions occurred. Had a responsible person been in attendance at the mine to take charge during the mine emergency, that person could have made a decision to initiate and conduct a mine evacuation sooner.

Mine emergencies that trigger the need to evacuate include inundations. There have been two water inundations and one gas inundation where miners have died. In 1968, Saxsewell No. 8 Mine in Hominy Falls, West Virginia, experienced an inundation of water when a continuous miner cut through into the workings of an abandoned mine. There were 26 men in the mine at the time of the occurrence. One man escaped from the mine unassisted, but the others were trapped in the mine. Fifteen miners were rescued five days later and six others were rescued 10 days after the inundation occurred. Four men were fatally injured. In 1977, in Tower City, Pennsylvania, at Porter Tunnel, an inundation of water entered the mine through a breach in the mine floor at the low side rib in the gangway. The water had accumulated in the unmapped abandoned workings and broke through the floor of the advancing gangway. The inundation caused the death of nine miners, injuries to three and entrapment of one who was eventually rescued. Six miners in the affected section escaped safely through the return air emergency escapeway leading to the surface. The miners in the other sections, 65 in all, traveled both the intake and return air escapeways leading to the surface.

In 1978 at Moss 3 Mine in Duty, Virginia, water inundated some abandoned sections in the mine soon after work began on a 265 foot single-entry drainway to connect an abandoned area of the mine to the surface. On April 4, 1978, four men were working to advance the drainway into an abandoned mined-out area. Although the air in the abandoned area was not tested after a test borehole penetrated the area, the continuous miner was used to penetrate into the abandoned area. Immediately after breaching into the abandoned area, the drainway was inundated with blackdamp (oxygen-deficient air). Two of the four miners who were advancing the drainway successfully retreated to the surface. The other two miners perished. The blackdamp also killed three other miners who went underground without protective equipment to search for the missing men. Similarly unequipped during rescue attempts, two other men were also overcome with blackdamp, but were successfully assisted to the surface.

A commenter asked that MSHA consider certain mine accidents that occurred during the last two years to determine whether there were deficiencies in the mine operator's emergency response. The commenter specifically asked MSHA to consider: the July 24, 2002 water inundation at Quecreek No. 1 Mine in Pennsylvania; the April 17, 2002 fire at the Blue Diamond mine in Kentucky; the September 16, 2002 fire at the Fairfax mine in West Virginia; the January 6, 2003 fire at the Mine 84 in Pennsylvania; the January 22, 2003 explosion at the McElroy mine shaft involving Central Cambria Drilling in West Virginia; and the February 13, 2003 fire at the Loveridge mine in West Virginia. Because there is no final MSHA accident report for Blue Diamond mine, McElroy mine, and Loveridge mine, MSHA has not drawn a conclusion as to the mine operator's emergency response in relation to this final rule. MSHA addresses the Quecreek accident in the section-by-section discussion of § 75.1501(d).

The Fairfax mine fire occurred on September 16, 2002, before promulgation of the ETS. In its August 20, 2003 accident investigation report of the Fairfax mine fire, MSHA concluded in part that, "Discovery of the fire, fire-fighting, and evacuation procedures were delayed because the Fire Detection System was disabled by an electrical short circuit problem, which prevented the system from sounding an audible fire alarm. The fire continued to intensify before it was discovered because the short circuit problem in the Fire Detection System was not rapidly evaluated and because the automatic Fire Suppression System was not properly installed."

MSHA issued a final accident investigation report for the fire at Mine 84 on April 9, 2003. The accident occurred after the ETS was promulgated and the requirements of the ETS were in effect. The following gives a brief description of the Mine 84 accident. On January 6, 2003, a fire occurred in the longwall section conveyor belt entry. At about 8:27 a.m., the carbon monoxide monitoring system gave a warning indicating elevated concentrations of carbon monoxide along the beltline. The warning was investigated and dense smoke was encountered in the belt entry. Underground personnel were eventually evacuated from the mine except for those needed to conduct fire-fighting activities. Eventually mine rescue teams took over fire-fighting activities and then worked continuously until they were able to contain and extinguish the fire by January 27, 2003. MSHA issued a 104(d)(1) order for a violation of 30 CFR 75.1502(a). MSHA determined that the operator's approved program of instruction for firefighting equipment and evacuation procedures was not followed due to management's failure to immediately withdraw the 1–B longwall crew to a safe location outby the sensor activating the alarm.

Several commenters objected to the ETS. They questioned the foundation of the emergency temporary standard, objected that the comment period spanned a traditional holiday, perhaps discouraging commenters from commenting, and recommended that the standard be revoked.

The rationale for issuing the ETS was thoroughly discussed in the December 12, 2002 **Federal Register** notice (67 FR 76658). The Agency continues to believe that the ETS was urgently needed and properly promulgated in accordance with the Mine Act. The fact that mine disasters are somewhat infrequent does not preclude the need to address the serious underlying issue of how to respond to the dangers to which miners are exposed during mine fire, explosion, and gas or water inundation emergencies. It should be noted that the post-hearing comment period was open until February 28, 2003, which MSHA believes was adequate time to submit comments, even considering that the comment period included a holiday. Although the ETS was in effect, it operated by law as a proposed rule, and allowed for comments by all interested parties. No party asked for a stay of the ETS, and the ETS has remained in effect since its publication on December 12, 2002.

One commenter asked that MSHA determine the goal of the rule. The commenter asked whether it was to

ensure the fastest and safest means of evacuation, or rescue of personnel. The goal of the rule is to initiate an appropriate response to a mine emergency, and to cause an immediate evacuation of miners when necessary.

Various comments were received recommending additional standards and requirements that are outside the scope of this rulemaking. These recommendations included the following: redesign self-contained self-rescuers; require new or separate secondary communication systems; require communications on all vehicles; redesign equipment batteries; improve roof control; require additional gas detectors; expand annual retraining to exceed eight hours; deploy atmospheric monitoring systems mine-wide; limit shift length; require dedicated transportation equipment; and provide continuous communications for anyone who might respond to an emergency. These recommendations are not incorporated into the final rule because they are outside the scope of this rulemaking.

One commenter also urged that the rulemaking be expanded to include underground metal and non-metal mines. Because this rulemaking deals with underground coal mine standards, the issue is beyond the scope of the rulemaking.

As a part of the ETS and proposed rule discussion, MSHA solicited comments on whether the rule should be broadened to address outbursts, massive roof falls, or other occurrences. Both affirmative and negative comments were received. Some comments indicated that coverage was already overly broad while others envisioned a wider scope of conditions that should result in evacuation. On balance, based on the rulemaking record, the Agency concludes that the conditions incorporated by the ETS and proposed rule were appropriate and should not be broadened at this time. Comments were considered, as well as the mine accident histories available to MSHA.

B. Section-by-Section Discussion

Subpart P—Mine Emergencies

Section 75.1501 Emergency Evacuations

Section 75.1501 addresses mine emergency evacuations. Like the ETS and the proposed rule, paragraph (a) of the final rule requires that for each shift that miners work underground, there shall be in attendance a responsible person designated by the mine operator to take charge during mine emergencies involving a fire, explosion, or gas or water inundation.

Under the ETS and proposed rule, the responsible person was required to be in attendance at the mine but was not limited to an underground or surface location. The final rule adopts the proposed rule language. A number of commenters suggested that the responsible person should be required to remain on the surface. Another commenter suggested that the responsible person should be located underground. Some commenters suggested that the responsible person should receive continuous output information or data from any mine monitoring system. Another commenter maintained that two responsible persons should be required with one located on the surface and one underground.

Although it is possible that a number of persons at a mine could be qualified for designation as the responsible person, many mines have elected to designate the mine foreman as the responsible person. This is an appropriate designation because the mine foreman is often the person most knowledgeable about the mine and the one who determines where people will be traveling. In such cases, prohibiting the foreman from traveling underground could have a detrimental effect on mine safety, as noted by one commenter. Conversely, requiring the mine foreman to remain underground for the entire shift would prevent performance of essential functions that may be required on the surface. MSHA concludes that it is appropriate to allow the responsible person to be either on the surface or underground.

A number of commenters requested clarification on whether the phrase "for each shift that miners work underground" applies to shifts other than production shifts. The proposed rule required that a responsible person be designated by the mine operator, and be in attendance at the mine. This standard applies whenever there is at least one miner working underground. The final rule adopts this language from the proposed rule. As with the proposed rule, there is no exemption for idle, partially-staffed, maintenance, construction, or other non-producing shifts.

Paragraph (a) of final § 75.1501, like the proposed rule, also requires that the responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications system, any mine monitoring system if used, and the mine emergency evacuation and firefighting program of instruction. This requirement in paragraph (a) is unchanged from the proposed rule. The purpose of this requirement is to ensure that during mine emergencies one responsible person responds by making informed decisions, and that mine evacuations are conducted rapidly, efficiently, and safely. The accidents of the recent past demonstrate the need for a responsible person to take charge during mine emergencies.

In taking charge during an emergency, the responsible person directs resources that may be required during the emergency and assures that all nonessential miners are evacuated safely. In addition, requiring that the responsible person be at the mine site during all shifts when miners are working underground assures that no delays result from off-site telephone calls.

A comment concerned the accessibility of the responsible person and the maximum length of time that the responsible person could be away from communications. Several commenters believed that continuous communication is needed, while another commenter stated that any short delay in communication is unacceptable. The final rule requires that the responsible person be able to initiate and conduct an immediate mine evacuation when necessary. This requirement would be met when the responsible person travels in working sections or within active areas of the mine because communication systems are readily available and could be used by the responsible person to carry out his or her duties. However, the need to travel in remote bleeder systems or worked-out areas where there is no communication could create a problem because the responsible person would be out of contact, unable to take charge during a mine emergency, and unable to initiate and conduct an immediate mine evacuation. In order to meet the requirements of this rule, the mine operator may need to assign another person to travel these areas, or redesignate another person who also meets the requirements of § 75.1501 as the responsible person. Miners must be informed of any such change in the identity of the responsible person.

The final rule, like the proposed rule, requires that the responsible person have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications systems, any mine monitoring system if used, and the mine emergency evacuation and firefighting program of instruction. A

number of comments were received regarding these requirements.

Requiring that the responsible person have current knowledge of the aforementioned elements assures that informed decisions are made during a mine emergency. For example, having knowledge of the work areas and the assigned locations of miners, and their expected movement during the work shift, allows miners working in remote locations (where electronic communication may not be readily available) to be notified of an evacuation as soon as possible. The responsible person will know the mine emergency evacuation and firefighting program procedures specific to the mine so that all miners working underground can be quickly located, warned of imminent danger, and evacuated efficiently and safely. Mine operators should adopt procedures specific to the mine to assure that the responsible person can quickly locate all underground miners by knowing the assigned locations and expected movements of miners underground.

Several commenters noted that it is impossible to track each miner in a large mine where examiners, material haulage persons, maintenance personnel, and belt attendants are moving continually. Other comments indicated that the location of every miner should be known at all times. The final rule maintains the proposed language that recognized it would be virtually impossible to track every miner during the shift. By using the phrase "expected movements of miners," it is recognized that comprehensive tracking is impractical. Requiring miners to call-out their every movement would be a continuous tracking task and would unnecessarily occupy the telephone system that might be needed for safety or emergency purposes. It is reasonable, however, for the responsible person to know the assigned work locations and expected movements of miners. As maintenance personnel and material haulage personnel travel within the mine, they ordinarily will do so along main haulageways where others traveling the same haulageways can readily locate them. Similarly, although the responsible person may not know the precise location of examiners or belt attendants, knowing their assigned locations and expected movements will permit these persons to be located quickly.

Several comments were received recommending that the personal emergency device (PED) become a requirement of the final rule. A PED is a paging device that is part of a communication system that miners can wear. The system generally consists of a transmitter capable of sending communications through the rock strata that can be received by individual miners through their PEDs. This system is currently used at a number of U.S. underground coal mines and has also been deployed at mines in other countries. The PED system was used successfully in the mine evacuation process at the Willow Creek mine during the July 2000 explosion accident and during an accident in November 1998, also at Willow Creek. MSHA has not made the PED system a requirement of the final rule. MSHA believes that the PED system is generally effective and encourages its use. However, since technology is constantly changing, newer systems that may be as, or more, effective than the PED may be developed. One commenter noted that it should not be necessary to track miners equipped with a PED unit since they could be contacted regardless of their location. The Agency agrees that there is less of a burden to locate miners equipped with a PED, recognizing that they can generally be contacted. However, the responsible person must be aware of their assigned work locations and expected movements during the shift as well to assure all miners can be evacuated in an emergency.

In addition, the requirement in the proposed rule that the responsible person must have "current knowledge" about various mining systems in use at the mine resulted in a number of comments. Several commenters indicated that it would be impossible for any miner to have comprehensive knowledge of each ventilation control, precise telephone locations, and other precise details. A few commenters recommended substituting the term "general knowledge" for "current knowledge."

The final rule retains the requirement for "current knowledge." "Current knowledge" is intended to mean that the responsible person have up-to-date information regarding revisions to the escapeway routes, significant ventilation changes such as reversing air directions, adding shafts, and establishing new air splits, and other significant changes that would be important during an emergency. An extraordinary level of knowledge is not intended. A typical mine would have a number of miners able to meet the requirement perhaps including the mine foreman, assistant mine foremen, some examiners, and some section foremen. Others, such as safety department personnel, atmospheric monitoring system operators, or miners who regularly travel throughout the mine and are familiar with the approved plans, may also meet this requirement. However, clerical personnel or property guards ordinarily will not meet the requirement.

One commenter suggested that the responsible person should be required to travel underground on a regular basis in order to have "current knowledge." MSHA has not included a minimal time for required underground travel. However, MSHA expects that some underground travel will normally occur for those miners meeting the requirements for a responsible person. An exception might include an experienced mine foreman who is temporarily working on the surface due to a recent injury and also has requisite knowledge of the current underground mine environment and operations defined under § 75.1501.

Some commenters believed there was an inherent conflict between the responsible person required by proposed § 75.1501 and the responsible persons required by existing standards § 75.310, *Installation of main mine fans*, § 75.311, *Main mine fan operation*, and § 75.1600, *Communications*. The knowledge required by the responsible person to comply with § 75.1501(a) is not analogous to that required by § 75.1600 for a responsible person on the surface to answer telephone calls. Similarly, §§ 75.310 and 75.311 require a responsible person on the surface, with underground communication, to always be within sight or sound of the main mine fan alarm when miners are underground. The responsibility and level of knowledge required of these persons is less than the requirement under final § 75.1501(a). The fact that several distinct functions require responsible persons does not indicate a conflict. The responsible person defined by final paragraph (a) could meet the requirements to be the responsible person under §§ 75.310, 75.311, or 75.1600, if on the surface. However, the reverse is not necessarily true. These functions are separate and the requirements are distinct. There is no conflict.

Some commenters were unsure whether the standard would apply to mine rescue teams and mine rescue and recovery efforts, and how the standard would affect decisions of upper mine management during emergency operations. The standard is intended to facilitate the immediate evacuation of the miners at the onset of fire, explosion, and gas or water inundation mine emergencies which present an imminent danger to miners, and to initiate a response when a response is

appropriate. Once the miners have been evacuated, the standard has no further application during rescue/recovery operations, mine rescue team activities, or emergency operations being orchestrated by upper mine management. The rule would next apply when miners resume work underground, whether that be when the mine returns to normal operation, or when miners are performing underground construction or rehabilitation after the immediate mine emergency has ended.

Paragraph (b) of § 75.1501 of the final rule requires that the responsible person initiate and conduct an immediate mine evacuation when there is a mine emergency that presents an imminent danger to miners due to fire, explosion, or gas or water inundation. The rule also requires that only properly trained and equipped persons essential to respond to the mine emergency may remain underground. This paragraph is unchanged from the proposed rule and ETS.

Several comments were received questioning whether a mine-wide evacuation is always required due to any occurrence of fire, explosion, or water or gas inundation. MSHA's final rule concludes that evacuation is required for mine emergencies that present an imminent danger to miners due to fire, explosion, or gas or water inundation. MSHA has concluded that miners can be exposed to serious danger when they remain underground or improperly re-enter affected mine areas during mine emergencies that present an imminent danger due to fire, explosion, gas or water inundation. However, not every imminent danger results in a mine-wide evacuation under this rule. Some commenters urged that the rule be reworded, believing that any underground imminent danger would trigger a full mine-wide evacuation. MSHA does not agree. An imminent danger that affects a limited area, such as a section, may result in withdrawal from the affected area, but would not necessarily be a mine emergency requiring mine-wide evacuation.

Several commenters suggested that a definition of imminent danger should be included in the rule. Section 3(j) of the Mine Act already defines an imminent danger, making further definitions unnecessary. The concept of imminent danger has existed since 1969 and is well understood by mine operators, miners, and others in the mining community. The term "imminent danger" is defined in the Mine Act, section 3(j), as "the existence of any condition or practice in a coal or other mine which could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated." This definition is well known and provides readily understandable criteria.

MSHA agrees with the commenters who stated that not every mine fire, explosion, or gas or water inundation hazard may result in a mine emergency requiring a mine-wide evacuation. For example, unplanned mine fires not extinguished within 30 minutes of discovery are reportable to MSHA under 30 CFR part 50. Such fires may not present an imminent danger to miners and, therefore, may not constitute a mine emergency under this final rule. It is when fire, explosion, or gas or water inundations present an imminent danger to miners that MSHA expects that an immediate mine evacuation be initiated. For example, a gas or water inundation of unknown potential, or an explosion that raises the question of unknown damage to critical ventilation controls or interrupted ventilation, should result in a mine-wide evacuation. However, a small-scale fire at an electrical connection, while it may be a local emergency, may not immediately be a mine emergency that presents an imminent danger to all miners underground.

One commenter questioned whether accumulations of methane at elevated concentrations would be considered a gas inundation such that a mine-wide evacuation would be required. An accumulation of methane in a working place, such as the face, or the conveyor belt haulageway, is not a gas inundation. In general, an accumulation of methane results from inadequate ventilation or airflow. A gas inundation can occur even when there is adequate ventilation or airflow and is not limited to only methane gas. Current standards, specified in § 75.323, *Actions for excessive methane*, specify actions to be taken when methane above certain levels is found in a working place or return aircourses. Similarly, a commenter questioned whether a small amount of water entering a mine might be considered an inundation. Typically, it would not. In most cases, a broken water pipe spilling into the mine, or normal mine water accumulations, would not be considered an inundation requiring an emergency evacuation. However, if water inflows blocked main aircourses or bleeder systems, a mine emergency requiring evacuation could result.

One commenter questioned whether an evacuation could ever be interrupted once started. In the case where an evacuation has commenced due to a false alarm, or the emergency comes under control very quickly, the responsible person could interrupt the evacuation.

Several commenters believed that the ETS fosters an atmosphere of "every man for himself" and that chaotic unorganized evacuations will result. Other commenters believed that the rule encourages evacuation as the first reaction to a problem. To the contrary, the rule promotes organized evacuations and controlled responses. By requiring a responsible person to take charge and by improving plans and training, MSHA believes that timely and orderly evacuations will result.

Several commenters suggested that the word "conduct" found in proposed § 75.1501(b) should be deleted from the phrase "the responsible person shall initiate and conduct an immediate mine evacuation. * * *" These commenters suggested that the responsible person should only be required to initiate the evacuation. Some commenters believed that the responsible person was required to make all communication contacts and perform all other duties without any assistance. The responsible person can, of course, obtain whatever assistance is needed to contact and evacuate miners safely and quickly. The final rule retains the phrase "initiate and conduct." "Conduct" is used to assure that the responsible person remains in control during the evacuation and remains responsible for assuring that the evacuation actually occurs. "Conduct" is not used to mean or imply that the responsible person is prohibited from obtaining assistance during the emergency. The responsible person should utilize any resources needed for evacuation and should obtain assistance as appropriate.

Other commenters believed that the rule prohibits any involvement of upper mine management and prohibits contact with off-site management. The final rule, like the proposed rule, is constructed to assure that an evacuation order by the responsible person would not be usurped and to clarify that concurrence or approval by off-site management is not necessary, as it could result in a needless delay. This does not, however, prohibit communication with upper management located on or off-site. Neither does the rule prohibit upper management from organizing or deploying a mine rescue team for recovery efforts. As discussed elsewhere in this preamble, the final rule is intended to address evacuation of miners where a mine emergency exists that presents an imminent danger, and an initial response—if a response is warranted. However, the rule does not

address mine rescue team deployment and mine rescue and recovery efforts in the aftermath of an emergency evacuation, as these activities could be more appropriately controlled by other mine officials, and other provisions in the Mine Act. These issues are beyond the scope of this rulemaking.

Numerous comments were received regarding the phrase contained in proposed § 75.1501(b), "properly trained and equipped." This phrase is retained in the final rule. Stated in full, the final paragraph requires that "[o]nly properly trained and equipped persons essential to respond to the mine emergency may remain underground." Some commenters thought the phrase would limit any response to mine rescue teams. Other commenters stated that waiting for mine rescue teams would allow even small fires to propagate, creating larger, unnecessary hazards. The reason for this requirement is derived from the circumstances surrounding the Jim Walter Resources No. 5 mine accident where a party of miners was believed to have entered 4 Section, where the air quality was undetermined, without gas detectors. The requirement is intended to prevent similar occurrences.

The final rule does not limit responses to mine rescue teams and does not prohibit mine emergency responses. The final rule does, however, require that persons responding to mine emergencies be equipped with appropriate equipment and trained in its use. Several commenters requested that a definition for "properly trained and equipped" be included in the rule. MSHA believes that a definition is not necessary, and could hamper flexibility on the part of mine operators to respond to rapidly changing or different emergency situations. While it is impractical to list every possible emergency scenario, the equipment required should be apparent to those directing or engaged in any response, dependent on the nature of the emergency and the particular conditions. As an example, where miners are entering an area where ventilation controls have been destroyed or the air quality is unknown, responders should be equipped with gas detectors and should know how to operate the detectors. Miners responding to fight a fire should have gas detectors as well as firefighting equipment—and should know how to use the equipment. Otherwise, the responders could be unnecessarily exposed to hazards and the equipment could have limited effect.

One commenter suggested that each miner participating in a response should be provided with equipment—such as a gas detector. Other comments suggested a clarification that only one person in a response party, probably the leader, should be required to have the needed equipment. The Agency concludes that, in the gas detector example, sufficient gas detectors should be provided so that the group can adequately monitor the atmosphere to which they are exposed. The size of the group and the extent to which they are close together or dispersed will affect the number of gas detectors needed. In general, the quantity of equipment must be at least sufficient to protect miners from the reasonably anticipated hazards.

Section 75.1501(c) of the final rule requires that the mine operator instruct all miners about the identity of the responsible person designated by the operator for their workshift. The mine operator shall inform miners before the start of their workshift if the identity of the responsible person changes. The ETS also included an implementation date that has been deleted from this final rule since it is no longer necessary. Except for the elimination of the implementation date, this paragraph of the final rule remains unchanged from the ETS and the proposed rule.

A number of comments were submitted in response to proposed paragraph (c). A typical comment was that the responsible person should be identified by title—rather than by name. It is acceptable to develop plans and procedures where the responsible person is identified by title, so long as miners know the identity of the responsible person. A mechanism must be in place to inform the miners of the identity of the responsible person for their workshift. Should an emergency occur, a miner must be able to page a specific person rather than paging for a mine foreman or some other title.

Miners can be informed of the identity of the responsible person for their workshift in a number of ways. A verbal announcement can be made before traveling underground, a prominent chalkboard at the check-in/check-out board could indicate the name of the responsible person, or other systems could be used. One commenter believed that if MSHA asked a miner to name the responsible person, an incorrect response would result in a citation. The comment indicated that the memory of a miner is outside the control of the mine operator. MSHA does not anticipate using such a quiz for citation purposes. When it becomes apparent that several miners are unaware of who is designated the responsible person or how the notification system works, the system and its effectiveness should be reviewed. The rule recognizes that in many cases, after the responsible person is designated and the miners informed, the responsible person's identity might not change for extended periods of time.

Several commenters asked how miners would be informed of any unexpected redesignation of the responsible person during the shift. To meet the requirement and objective of the rule, miners must be informed of any unexpected change in the identity of the responsible person. One way to inform the miners of the change would be to contact the underground supervisors, instructing them to inform their crews. It is understood that every miner cannot be instantly informed and that miners traveling or working in remote locations may not be immediately informed. However, reasonable efforts must be made for supervisors to inform underground miners or their work crews when an unexpected change in the responsible person occurs during the shift.

Paragraph (d) of final § 75.1501 provides that nothing in this section shall be construed to restrict the ability of other persons in the mine, in addition to the responsible person, to warn of an imminent danger that warrants evacuation. This paragraph is unchanged from the ETS and the proposed rule. This provision recognizes that there will be mine emergencies which present an imminent danger to miners due to fire, explosion, or gas or water inundation warranting a warning by someone other than the responsible person under § 75.1501(a). For example, at the Quecreek Mine inundation accident that occurred July 24, 2002, miners from the affected section rapidly warned miners in the other working section of a water inundation, enabling the miners in the other working section to quickly escape the mine unharmed. These actions are consistent with the approach of final paragraph (d) of § 75.1501 that recognizes that any person may warn others of an imminent danger which warrants evacuation. Had any delays occurred at Quecreek in warning the miners, tragic results might have ensued. This paragraph clarifies that obtaining approval or concurrence from the responsible person is not required when circumstances warrant.

A commenter suggested MSHA incorporate the Occupational Safety and Health Administration's (OSHA's) 29 CFR 1920:120 titled *Hazardous waste operations and emergency response* into MSHA's final rule. OSHA's rule provides for defining an Incident Command System, a chain of command,

substance specific control plans, quality control and assessment plans, and other similar structured activities. MSHA has considered this approach and believes that the approach adopted in the final rule is appropriate for the mining industry. Mine emergency and firefighting programs developed under § 75.1502 may include assigned personnel for specific tasks. Mine rescue programs have demonstrated that their use is appropriate in addressing unique mine environments.

Section 75.1502 Mine Emergency Evacuation and Firefighting Program of Instruction

Final § 75.1502, *Mine emergency evacuation and firefighting program of instruction,* was derived from § 75.1101–23, *Program of instruction; location and use of fire fighting equipment; location of escapeways, exits and routes of travel; evacuation procedures; fire drills.* The program of instruction is also referred to as the emergency evacuation plan.

Under the ETS and proposed rule, operators were to immediately revise existing firefighting and evacuation plans, retrain miners, and submit the revised plan to MSHA for review and approval. This process was a departure from the normal plan approval process whereby MSHA approval is required prior to implementation. The ETS implementation dates have passed, and the dates listed in the ETS are deleted from the final rule. Plans previously revised to comply with the ETS should need no further revision to comply with the final rule.

Final paragraph § 75.1502(a) explicitly requires underground coal mine operators to "adopt and follow" an approved mine emergency evacuation and firefighting program of instruction. The addition of the phrase "and follow" is a change from the ETS and the proposed rule, which stated that underground coal mine operators must "adopt" a program of instruction. Despite the lack of the phrase "and follow" in the ETS and the proposed rule, it has been MSHA's intent that mine operators follow their approved plans in the event of a mine emergency. The concurrent promulgation of § 75.1501 and § 75.1502 at the proposed rule stage demonstrates MSHA's intent that the standards function in unison. For example, under § 75.1501, the responsible person is required to initiate and conduct an immediate mine evacuation in the event that a mine emergency due to fire, explosion, or gas or water inundation presents an imminent danger to miners. The mine emergency evacuation and firefighting program of instruction would serve little purpose if the responsible person did not initiate and conduct the mine evacuation in accordance with the program of instruction. There would be little, if any, benefit to miners' safety if the responsible person were to initiate and conduct an uncoordinated, disorganized evacuation. In fact, no program of instruction would be necessary for such an evacuation. Although § 75.1501 and § 75.1502 were always intended to operate in an integrated manner, the agency is aware that the intent is better expressed by use of the phrase "adopt and follow." The explicit requirement that an operator "follow" the approved program of instruction once it is adopted is reflected in final § 75.1502(a). This requirement is consistent with MSHA's practice under existing § 75.370, *Mine ventilation plan; submission and approval,* which requires mine operators to follow their approved ventilation plan once developed.

As with other mine plans, subsequent changes or revisions may not be implemented at the mine until approved by the District Manager of the Coal Mine Safety and Health District in which the mine is located and the affected miners have been instructed in the revised provisions.

Paragraph (a) of § 75.1502 of the final rule adopts the language of the ETS and proposed rule with only minor changes that clarify the rule's intent. Under paragraph (a), MSHA retains the requirement of the ETS and the proposed rule that the existing program of instruction include the proper evacuation procedures in the event of a mine emergency. In addition, final paragraph (a) of § 75.1502 retains the requirements of former § 75.1101–23(a), the ETS, and the proposed rule, that the program of instruction include procedures to be followed regarding the location and use of firefighting equipment, location of escapeways, exits, and routes of travel to the surface.

MSHA expects that the plan must, at a minimum, cover the types of mine emergencies presenting an imminent danger to miners due to fire, explosion, or gas or water inundation. Mine operators may choose to cover in their plan other types of mine emergencies when evacuations would be appropriate as well.

A few commenters stated their belief that the purpose of the rule was to ensure that MSHA could second-guess decisions made during emergencies and issue citations. Typically, these commenters discussed the 2000 Willow Creek explosions (previously discussed in this preamble) and the January 21, 1986 fire at Jim Walter Resources No. 3 mine. At the Jim Walter Resources No. 3 mine, a fire occurred along the No. 1 longwall section face. The fire was apparently started by a cutting torch being used to dismantle the longwall conveyor. Two miners were injured as a result of the fire. Efforts to control the fire were unsuccessful and all miners were withdrawn from the mine. On January 22, 1986, it was decided to partially seal the mine. The seals were completed on February 16, 1986. In both cases, miners remained underground in hazardous conditions in an effort to control mine fires, despite the hazard of a major explosion. MSHA concluded that the § 75.1101–23 plan was not violated at either Willow Creek or Jim Walter No. 3. Similarly, under the final rule, MSHA will assess the overall evacuation response and actions taken to protect the safety of the miners, recognizing that an undesirable outcome is not necessarily a violation of the provisions of the mine emergency and firefighting program of instruction. MSHA continues to believe that increased awareness of responsibility for mine evacuations, improved plans and training will help eliminate fatal and non-fatal injuries during mine emergencies.

Final paragraphs (1) through (4) of paragraph (a), specify general topics to be developed and included in the program of instruction or plan. These include: (1) Mine emergency evacuation for mine emergencies presenting an imminent danger to miners due to fire, explosion, or gas or water inundation; (2) Evacuation of all miners not required for a mine emergency response; (3) Rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency; and, (4) Operation of the fire suppression equipment available in the mine. These paragraphs are unchanged from the existing ETS and proposed rule. MSHA will publish, and make available at its Web site, a model plan as an example. Mine operators should develop plans that are suitable to the particular conditions existing at their mine. For example, a mine not employing an atmospheric monitoring system would not discuss how an AMS would be integrated into the plan. Similarly, a mine that has deployed a Personal Emergency Device (PED) system should include a discussion of how the system is integrated into its procedures for notification and evacuation.

As required under final paragraph (a)(1), the plan requires that all miners on all shifts be acquainted with procedures for mine emergency

evacuation for mine emergencies that present an imminent danger to miners due to fire, explosion, or gas or water inundation. The plan should indicate that other occurrences might also have the potential to result in a mine emergency causing the plan to be implemented. An example would be a massive roof fall near a primary ventilation shaft that short-circuits and interrupts mine ventilation. The plan should emphasize that miners exposed to an imminent danger be safely evacuated while ensuring that only appropriate responses are undertaken.

One commenter recommended that the word "endanger" in proposed paragraph (a)(1) of § 75.1502 be replaced with wording consistent with § 75.1501. MSHA agrees that ambiguity would be reduced by the use of consistent wording, and has replaced the word with the phrase "present an imminent danger to miners" in the final rule.

Paragraph (a)(2) requires that the plan explicitly instruct all miners not required for a mine emergency response to evacuate promptly. This paragraph is unchanged from the ETS and proposed rule. The plan should discuss the specific processes to be used at the mine to notify all miners that an evacuation is necessary. If a single communication system is used, the plan should detail procedures to be followed in the event of a communication system failure. Alternatively, if a secondary communication system is used, the plan should identify the system and state how the system would be used in an emergency evacuation. If the mine has deployed a PED system to all or certain miners, the plan should discuss how information would be distributed to ensure that all miners are notified of the need to evacuate. The plan should specify and discuss assembly areas on sections and other work locations along with preparations and assignments to be performed. For example, the plan could discuss how the section mechanic might be assigned to deenergize power when preparing to evacuate. The plan should discuss how local firefighting efforts integrate into the plan.

Several commenters noted that a timely evacuation would not be possible or practicable at a large mine unless transportation equipment was continuously maintained at working sections while miners were working. The approved mine emergency and firefighting plan should specify how transportation equipment is to be deployed and distributed within the mine. Plans should specify that transportation equipment be maintained on working sections when miners are working, and the conditions under which sufficient transportation equipment will not be maintained at working sections. One commenter stated that requiring transportation to be maintained at the working section could prevent evacuation of a single injured miner in need of medical attention, since the mantrip would be required to remain at the section. The Agency agrees that there could be instances when the transportation vehicle would not be available. If transportation is not available at the working section, contingencies should be described in the mine emergency and firefighting plan. The final rule allows mine operators sufficient flexibility to develop these aspects of the plan according to the needs of each individual mine.

Final paragraph (a)(3) is unchanged from the ETS and proposed rule. It requires that the plan address the rapid assembly and transportation of the necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency. The plan should discuss how persons responding to an emergency will be transported. It should also discuss the availability and location of fire suppression equipment and rescue apparatus that will be needed at the scene of the emergency. MSHA received a comment stating that retreating miners, especially in a track mine, could hinder the responsible person's efforts to direct emergency supplies or transportation to the site of the mine emergency. Also a commenter stated that the rule does not address having some means of transportation to respond to a mine emergency always at hand. These issues must be considered during development of a plan to assure that miners can be efficiently evacuated, even while a response is implemented, if a response is appropriate.

Another commenter wanted clarification on whether equipment assembly must be included during drills and, considering that most mines are covered by off-site mine rescue teams, whether these teams would need to be activated as a part of a training drill. MSHA responds by stating that existing MSHA-approved plans already discussed, in detail, the requirements for use and location of firefighting equipment. MSHA has not issued a detailed policy on the inclusion of equipment assembly or contacting off-site rescue teams in mine emergency evacuation drills. However, during the drills it would be appropriate for mine employees to review procedures for contacting off-site rescue teams and for emergency response personnel to make sure phone numbers are in working order. Locating and simulating equipment assembly would also be appropriate.

Paragraph (a)(4) of the final rule requires a specific plan designed to acquaint miners on all shifts with procedures for operating the fire suppression equipment available in the mine. The plan should indicate how storage areas will be marked and how equipment will be maintained in operational condition. This requirement assumes that outby miners would also be fully acquainted with emergency procedures to be followed and equipment to be used. This paragraph was adopted from previous § 75.1101–23 and remains unchanged from the ETS and proposed rule. It retains the same requirements for procedures for the operation of fire suppression equipment. No comments were received on this paragraph.

Final paragraph § 75.1502(b), including paragraphs (b)(1) through (b)(3), sets forth requirements for each operator of an underground coal mine to ensure that certain specified miners are proficient in the use of, and know the location of, fire suppression equipment. Each of these paragraphs was derived from, and retain the same requirements as, previous § 75.1101–23(b), the ETS, and the proposed rule.

Final paragraph (b)(1) requires the mine operator to ensure that at least two miners in each working section on each production shift are proficient in the use of all fire suppression equipment available on such working section, and know the location of such fire suppression equipment.

One commenter requested that paragraph (b)(1) require every miner to be proficient in the use of fire suppression equipment and know the location of firefighting equipment. MSHA believes that final (b)(1) is appropriate because a working section is a relatively limited area and therefore two miners knowing where to locate the equipment, and being proficient in the use of the equipment, would be sufficient. In addition, the mine emergency evacuation program of instruction will require other miners to be assigned to duties such as de-energizing electrical power to the section, ensuring transportation is available should evacuation be necessary, locating water hoses, gathering fire extinguishers and rock dust, and maintaining telephone contact with surface personnel. This requirement recognizes that there will be a coordinated response among miners performing various tasks, including the two miners proficient in using the fire suppression equipment.

This requirement is unchanged from the proposed rule and ETS.

Final paragraph (b)(2) requires the mine operator to ensure that each operator of attended equipment specified in § 75.1107–1(c)(1), and each miner assigned to perform job duties at the job site in the direct line of sight of attended equipment as described in § 75.1107–1(c)(2), is proficient in the use of fire suppression devices installed on such attended equipment. This requirement recognizes that the class of equipment referenced in this paragraph has been determined to warrant fire suppression devices and attendance. As reflected in final (b)(2), if attended equipment catches fire, all miners operating such equipment and performing job duties in the direct line of sight of such equipment will have the requisite knowledge to suppress or extinguish the fire. This requirement is unchanged from the proposed rule and ETS.

Final paragraph (b)(3) requires that the shift foreman and at least one miner for every five miners working underground on a maintenance shift are proficient in the use of fire suppression equipment available in the mine, and know the location of such fire suppression equipment. The requirement found in paragraph (b)(3) recognizes that a mine emergency due to fire may also occur on a maintenance shift where the locations of the miners may be more dispersed. This situation would differ from a production shift where there is generally a set number of miners near the face area. Therefore, rather than requiring the miners to be proficient within a geographical area of the mine, this provision focuses on ensuring that an adequate number of miners know the location of firefighting equipment and are proficient in using the fire suppression equipment.

One commenter requested that paragraph (b)(3) require every miner to be proficient in the use of fire suppression equipment and know the location of firefighting equipment. MSHA has determined that miners will be adequately protected by the requirement that the shift foreman and at least one miner for every five miners working underground on a maintenance shift be proficient in the use of fire suppression equipment. While the shift foreman will move throughout the mine, requiring at least one miner for every five to be proficient in the use of fire suppression equipment, will approximate the requirement in (b)(1). As in final paragraph (b)(1), MSHA recognizes that the mine emergency evacuation program of instruction will require other miners to be assigned to various other duties necessary to extinguish the fire. This requirement recognizes that there will be a coordinated response among miners performing various tasks, including the shift foreman and one miner for every five proficient in using the fire suppression equipment. This requirement is unchanged from the proposed rule and ETS.

Paragraph (c) requires each operator of an underground coal mine to require all miners to participate in mine emergency evacuation drills, which shall be held at periods of time so as to ensure that all miners participate in such drills at intervals of not more than 90 days. This paragraph was derived from previous § 75.1101–23, and the final rule is unchanged from the ETS and the proposed rule. The final rule differs from previous § 75.1101–23 to the extent that drills conducted in accordance with the final rule will simulate actions required in mine emergency evacuations, whereas previous § 75.1101–23 only required a simulation of actions required in the event of emergencies due to fire. One commenter suggested that a grace period be provided to accommodate for any miners who may have been absent on the day of the drill. This comment was not adopted in the final rule because MSHA believes that the performance of drills every 90 days is essential to maintain miners' readiness to act, and familiarity with measures to be taken in the event of a mine emergency. Mine operators may exercise flexibility in meeting the requirement of this provision. For example, a mine operator may wish to conduct a drill only when he or she is certain that there is 100 per cent section attendance on a given shift, so long as all miners participate at intervals not exceeding 90 days.

Final paragraph (c)(1) requires that the mine operator certify by signature and date that the mine emergency evacuation drills were held in accordance with the requirements of this section. This paragraph is derived from former § 75.1101–23. Certifications shall be kept at the mine for one year and made available on request to an authorized representative of the Secretary and to the representative of the miners. One comment noted that, unlike most other recordkeeping requirements, this paragraph did not expressly provide the miners and the representatives of miners an opportunity to inspect the record. MSHA agrees that the record should be made available to the representatives of the miners. Accordingly, the final rule is revised to include a provision that requires the records be available on request to the representatives of miners. The final rule adds a new requirement to keep the evacuation drill certifications at the mine for one year. This language is consistent with other recordkeeping requirements in the standards and ensures that records are retained for a sufficient amount of time to verify that the mine emergency evacuation drills were properly conducted in accordance with § 75.1501(c).

Paragraph (c)(2) requires that for purposes of paragraph (c), a mine emergency evacuation drill must consist of a simulation of the actions required by the approved mine emergency evacuation and firefighting plan described in paragraph (a)(1) through (4) of this section. The proposed rule contained a printing error that was corrected by the **Federal Register** on December 26, 2002 (67 FR 78713). However, the preamble to the proposed rule correctly noted that paragraph (c) of § 75.1502 "essentially retains the same requirements as existing § 75.1101–23(c). * * *" (67 FR 76662.) The final paragraph (c) of § 75.1502 is unchanged from the ETS and proposed rule.

Several comments were received on proposed paragraph (c)(2). Commenters requested guidance on the content of mine emergency evacuation drills. Requirements for mine emergency evacuation drills defined in § 75.1502(a)(1), as well as paragraphs (a)(2), (a)(3), and (a)(4), are explicitly referenced in this section.

Several commenters asked for clarification of what would constitute a "simulation." A "simulation" means a mock fire or emergency that results in firefighting actions and mine evacuation. Some mine operators currently conduct simulations using artificial smoke to imitate a fire at various locations. Other operators believe that a discussion during safety meetings is sufficient to meet this requirement, noting that the contents of the MSHA Program Policy Manual lists "group discussions" as one type of training for a fire drill. Although group discussions are listed in the manual as one possible element of a drill, discussions during safety meetings alone do not satisfy the requirement to conduct a drill consisting of a simulation of the actions required by the mine emergency evacuation plan. Demonstrations, discussions, and task-oriented training may be included as part of a comprehensive drill.

Several commenters suggested that guidance was needed on the contents of mine emergency evacuation drills. There are two aspects to the drills: firefighting and evacuation. Both should

be simulated at working sections and regular working stations. Operators should simulate fires and other emergencies at various locations and incorporate communication and notification as a part of the drill. The purpose of the drill is to prepare miners for fires, explosions, or gas or water inundations in their work locations or possible emergency responses, and to prepare them for evacuation due to emergencies in other parts of the mine. As suggested by some commenters, to the extent practicable, drills should be unannounced and the responsible person should be involved in the drills. Firefighting simulations should result in miners executing their assignments by retrieving material and equipment, assigned miners should retrieve fire extinguishers, hoses, and rock dust—although fire extinguishers and foam generators need not be expended. Miners assigned to remove section power should execute those assignments. Miners assigned to prepare mantrip vehicles and self-contained self-rescuers should make those preparations. The responsible person should conduct and coordinate mine emergency evacuation drills. Any deficiencies identified in locating or notifying all underground miners should be used to improve the system. Operators may concurrently conduct escapeway drills required under existing § 75.383 with these mine emergency evacuation and firefighting drills.

MSHA agrees with a comment submitted that the outcomes of mine emergency evacuation drills should be reviewed by mine personnel in order to improve the emergency evacuation plan. This is a common sense approach that MSHA believes mine operators will follow and consequently, MSHA has not included it in the rule.

Several commenters believed that drills required by paragraph (c)(2) did not apply to all miners, or to all shifts. This is not the case. All miners on all shifts are to participate in the required drills at not more than 90-day intervals. There is no exemption for idle, partially-staffed, maintenance, construction, or other non-producing shifts. A similar comment questioned whether the evacuation plan and drills applied to contractors. There is no exemption for contractors.

Another commenter believed that an evacuation resulting from a false alarm could not be considered a required drill. Drills can be conducted at any time provided drills occur at intervals of not more than 90 days. Accordingly, an unplanned drill (for example, due to a false alarm) meeting the elements discussed in § 75.1502(a)(1) through (a)(4) above can be accepted as a required drill. One commenter suggested that a drill should be acceptable if performed anytime during established 90-day cycle periods. This approach has not been adopted because under this approach six months could elapse between drills, and this length of time would undermine the goal of maintaining appropriate familiarity with firefighting and evacuation procedures. The final rule requires drills at intervals of not more than 90 days, as did the ETS and the proposed rule.

Some commenters stated that § 75.383, *Escapeway maps and drills,* should be moved from its current location and assimilated into final § 75.1502(c). Sections 75.380 through 75.383 pertain to escapeway requirements, escapeway maps, mechanical escape facilities, and drills. After considering this comment, MSHA has decided not to relocate escapeway drill requirements to this section. Although related, retaining the requirements for escapeway maps and drills in the current location will allow miners and mine operators to easily find and review all requirements related to escapeways in a common place.

Another commenter requested that MSHA reference ANSI Z490.1 Criteria for Accepted Practices in Safety, Health, and Environmental Training. MSHA has not included this reference in the final rule. Training issues are appropriately addressed in the rule in existing part 48 training requirements. Part 48 is the appropriate and clearly understood mechanism for training miners in response to mine emergencies.

Revisions to Part 48 Training and Retraining of Miners

MSHA is revising its existing training regulation in 30 CFR part 48.8, *Annual refresher training of miners; minimum courses of instruction; hours of instruction* to specifically include annual refresher training of miners for mine emergency evacuation and firefighting plans. In doing so, the language in the proposed rule is adopted without change. The training of new and experienced miners under part 48, however, does not need to be revised. Existing § 48.5(b)(5) provides for training new miners regarding emergency evacuation and firefighting plans and existing § 48.6(b)(5) provides for training experienced miners regarding emergency evacuation and firefighting plans.

Subpart A of 30 CFR part 48 prescribes requirements for submitting and obtaining MSHA approval of operator-administered programs for training and retraining underground miners. Each mine must have an approved training program for training new miners and newly-employed experienced miners, as well as training miners for new tasks and providing annual refresher training.

The existing training requirements under § 48.5, *Training of new miners; minimum courses of instruction; hours of instruction,* and under § 48.6, *Experienced miner training,* do not need to be revised because emergency evacuation and firefighting training are provided under those existing sections. Annual refresher training under existing § 48.8, however, does not cover emergency evacuation or firefighting training. Therefore, § 48.8 is revised by this final rule to include a requirement that the annual refresher training include the mine emergency evacuation and firefighting plan. This training will acquaint all underground coal miners with a review of the emergency evacuation and firefighting plans in effect at the mine.

As with the proposed rule, all training required by the final rule will be delivered by an MSHA-approved instructor as required by part 48. The required training covering emergency evacuations falls under part 48. Also, documentation that training has taken place shall be kept at the mine and made available on request to an authorized representative of the Secretary and to the representative of the miners.

This final rule does not reduce the safety protection afforded miners under former § 75.1101–23. In fact, miner safety is enhanced because the final rule: provides for training all miners in mine emergencies which present an imminent danger to miners from explosions and gas or water inundations, not just mine fires; and requires miners to receive annual refresher training. This provision eliminates duplicate provisions and consolidates the training requirements under part 48. This modification of the training requirements under former § 75.1101–23 does not represent a reduction in safety to miners because the training requirements of § 75.1101–23 are incorporated in new § 75.1502 and the revised and existing sections of part 48.

C. Feasibility

We have determined that the requirements of the final rule are both technologically and economically feasible.

1. Technological Feasibility

MSHA believes that the rule would be technologically feasible for the mining industry. An agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *American Iron and Steel Institute* v. *OSHA*, (AISI-II) 939 F.2d 975, 980 (D.C. Cir. 1991); *American Iron and Steel Institute* v. *OSHA*, (AISI-I) 577 F.2d 825 (3d Cir. 1978) at 832–835; and *Industrial Union Dept., AFL–CIO* v. *Hodgson*, 499 F.2d 467, 478 (D.C. Cir. 1974).

This rule addresses revisions of mine emergency evacuation plans and associated training. This rule neither requires underground coal mines to procure any additional equipment nor use any new technology. This is not a technology-forcing standard and does not involve activities on the frontiers of science. We conclude, therefore, that this rule is technologically feasible.

2. Economic Feasibility

Underground coal mines will incur costs of approximately $0.23 million yearly to comply with this rule. That these compliance costs represent well under 1 percent (about 0.003 percent) of annual underground coal mine revenue is sufficient evidence, MSHA believes, to conclude that this rule is economically feasible for underground coal mines.

II. Executive Order 12291 and the Regulatory Flexibility Act

Based on its analysis, MSHA has determined that this rule would not have a significant economic impact on a substantial number of small entities. MSHA has so certified this finding to the Small Business Administration. The factual basis for this certification is discussed in chapter V of the Regulatory Economic Analysis (REA).

III. Paperwork Reduction Act

This final rule has no new or revised collections of information as defined by the Paperwork Reduction Act of 1995 (P.L. 104–13). Section 75.1101–23 was redesignated as § 75.1502. Section 75.1101–23 was approved under OMB control number 1210–0054, with an expiration date of September 30, 2003. The existing paperwork requirements including § 75.1502 are approved under OMB control number 1219–0137, with an expiration date of June 30, 2006.

During the first year the final rule is in effect, and every year thereafter, the rule will impose 354 burden hours, and related burden hour costs of $19,456.

Comments were solicited in the proposed rule for the following issues:

1. Evaluate whether the collection of information is necessary for the proper performance of the functions of MSHA, including whether the information would have practical utility;

2. Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

In response to the solicitation, several commenters requested that documents be made available to the miner's representatives. This issue is addressed in the section by section discussion.

Our paperwork submission summarized above is explained in detail in the REA that accompanies the rule. The REA includes the estimated costs and assumptions for the paperwork requirement related to the rule. A copy of the REA is available on our Web site at *http://www.msha.gov/regsinfo.htm* and can also be obtained in hardcopy from us. This paperwork requirement has been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act of 1995. Respondents are not required to respond to any collection of information unless it displays a current valid OMB control number. The OMB control number for this rule is 1219–0137.

IV. Executive Order 12866

The final rule contains all costs from the effective date. These economic statistics have been revised, as compared with the ETS and proposed rules, to reflect this change. This change excludes costs during the period between the effective date of the ETS and the effective date of this final rule. Also these statistics have been revised to reflect 2001 data and any new assumptions.

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended standards and regulations. We have fulfilled this requirement for this rule and determined that it would not have an annual effect of $100 million or more on the economy. Therefore, we do not consider this rule to be economically significant under section 3(f)(1) of Executive Order 12866.

In the REA, MSHA has developed estimates of the safety benefits of this rule, which ensures that operators and miners have a clear understanding of actions and procedures to be followed in the event of a mine emergency. MSHA has concluded that the two fatalities at the Willow Creek Mine and nine of the 13 fatalities at the Jim Walter No. 5 Mine might have been prevented had this rule been in place. The Agency has reviewed its coal accident investigation database and has not identified any other fatalities during the past 10 years that might have been prevented by this rule. In summary, based on its experience over the past ten years, MSHA believes it is reasonable to estimate that this rule could prevent 11 miners' lives from being lost every ten years, or an average benefit of the rule of 1.1 miners' lives saved every year. The actual number of mine fatalities prevented could be much larger.

V. The Unfunded Mandates Reform Act of 1995 and Other Regulatory Considerations

A. Unfunded Mandates Reform Act

MSHA has determined that, for purposes of section 202 of the Unfunded Mandates Reform Act of 1995, this rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of section 203 of that Act, this rule would not significantly or uniquely affect small governments.

Background

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal Agencies to make this same determination with respect to regulatory actions.

Analysis

Based on the analysis in this REA, compliance with this rule by coal mine operators and contractors covered within this rulemaking would result in a compliance cost of approximately $0.23 million per year. Accordingly, there is no need for further analysis under section 202 of the Unfunded Mandates Reform Act.

We have concluded that small governmental entities would not be significantly or uniquely impacted by this rule. This rule would cover 664 underground coal mining operations.

B. Executive Order 13132: Federalism

We have reviewed this rule in accordance with Executive Order 13132 regarding federalism and have determined that it does not have "federalism implications." This rule does not "have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

C. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, we have evaluated the environmental health and safety effects of this rule on children. The Agency has determined that this rule would have no adverse effect on children.

D. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

We certify that this rule would not impose substantial direct compliance cost on Indian tribal governments.

E. Executive Order 12630: Government Actions and Interference With Constitutionally Protected Property Rights

This rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

F. Executive Order 12988: Civil Justice Reform

We have reviewed Executive Order 12988 and determined that this rule would not unduly burden the Federal court system. We drafted the rule to provide a clear legal standard for affected conduct.

G. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

In accordance with Executive Order 13211, we have reviewed the rule for its energy impacts. The rule would have no effect on the distribution or use of energy. The only impacts of the rule on the supply of energy would be through its effect on the price of coal.

The estimated yearly cost of the rule for the coal mining industry would be about $0.23 million.[1] The annual revenues of the coal mining industry in 2001 were approximately $17.1 billion.[2] The cost of the rule for the coal mining industry would therefore be 0.001% of revenues. Even if we were to suppose that the increased cost caused by the rule would be fully reflected in coal prices, the impact would be negligible.

Accordingly, we have determined that the rule would have no significant adverse effect on the supply, distribution, or use of energy.

H. Executive Order 13272: Proper Consideration of Small Entities in Agency Rulemaking

In accordance with Executive Order 13272, MSHA has thoroughly reviewed the rule to assess and take appropriate account of its potential impact on small businesses, small governmental jurisdictions, and small organizations. As discussed in chapter V of the REA, MSHA has determined that the rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects

30 CFR Part 48

Education, Mine safety and health, Reporting and recordkeeping requirements.

30 CFR Part 75

Coal mines, Underground coal mining, Mine safety and health, Emergency medical services, Fire prevention, and recordkeeping requirements.

Dated: September 2, 2003.

Dave D. Lauriski,

Assistant Secretary of Labor for Mine Safety and Health.

■ Chapter I of title 30, parts 48 and 75, of the Code of Federal Regulations is amended as follows:

PART 48—[AMENDED]

■ 1. The authority citation for part 48 continues to read as follows:

Authority: 30 U.S.C. 811, 825.

■ 2. Section 48.8 is amended by revising paragraph (b)(4) to read as follows:

§48.8 Annual refresher training of miners; minimum courses of instruction; hours of instruction.

* * * * *

(b) * * *

(4) *Roof or ground control, ventilation, emergency evacuation and firefighting plans.* The course shall include a review of roof or ground control plans in effect at the mine and the procedures for maintaining and controlling ventilation. In addition, for underground coal mines the course shall include a review of the emergency evacuation and firefighting plans in effect at the mine.

* * * * *

PART 75—[AMENDED]

■ 3. The authority citation for part 75 continues to read as follows:

Authority: 30 U.S.C. 811.

■ 4. Subpart P is amended by revising the heading and by revising §75.1501 to read as follows:

Subpart P—Mine Emergencies

* * * * *

§75.1501 Emergency evacuations.

(a) For each shift that miners work underground, there shall be in attendance a responsible person designated by the mine operator to take charge during mine emergencies involving a fire, explosion or gas or water inundations. The responsible person shall have current knowledge of the assigned location and expected movements of miners underground, the operation of the mine ventilation system, the location of the mine escapeways, the mine communications system, any mine monitoring system if used, and the mine emergency evacuation and firefighting program of instruction.

(b) The responsible person shall initiate and conduct an immediate mine evacuation when there is a mine emergency which presents an imminent danger to miners due to fire or explosion or gas or water inundation. Only properly trained and equipped persons essential to respond to the mine emergency may remain underground.

(c) The mine operator shall instruct all miners of the identity of the responsible person designated by the operator for their workshift. The mine operator shall instruct miners of any change in the identity of the responsible person before the start of their workshift.

(d) Nothing in this section shall be construed to restrict the ability of other persons in the mine to warn of an imminent danger which warrants evacuation.

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[1] Estimate obtained from Table IV–1 of the REA.

[2] Data for revenues derived from: U.S. Department of Labor, Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, based on 2001 PEIR data and U.S. Department of Energy, Energy Information Administration, Annual Coal Report 2001, March 2003, Table 29, pg. 52.

■ 5. Section 75.1502 (as redesignated from § 75.1101–23, Dec. 12, 2002, 67 FR 76658) is revised to read as follows:

§ 75.1502 Mine emergency evacuation and firefighting program of instruction.

(a) Each operator of an underground coal mine shall adopt and follow a mine emergency evacuation and firefighting program that instructs all miners in the proper evacuation procedures they must follow if a mine emergency occurs, location and use of firefighting equipment, and location of escapeways, exits, and routes of travel to the surface. Such program of instruction shall be approved by the District Manager of the Coal Mine Safety and Health district in which the mine is located. Before implementing any approved revision to the program of instruction, the operator shall instruct persons affected by the revision in any new provisions. The approved program of instruction shall include a specific plan designed to acquaint miners on all shifts with procedures for:

(1) Mine emergency evacuation for mine emergencies that present an imminent danger to miners due to fire, explosion, or gas or water inundation;

(2) Evacuation of all miners not required for a mine emergency response;

(3) Rapid assembly and transportation of necessary miners, fire suppression equipment, and rescue apparatus to the scene of the mine emergency; and,

(4) Operation of the fire suppression equipment available in the mine.

(b) In addition to the approved program of instruction required by paragraph (a) of this section, each operator of an underground coal mine shall ensure that:

(1) At least two miners in each working section on each production shift are proficient in the use of all fire suppression equipment available on such working section, and know the location of such fire suppression equipment;

(2) Each operator of attended equipment specified in § 75.1107–1(c)(1), and each miner assigned to perform job duties at the job site in the direct line of sight of attended equipment as described in § 75.1107–1(c)(2), is proficient in the use of fire suppression devices installed on such attended equipment; and,

(3) The shift foreman and at least one miner for every five miners working underground on a maintenance shift are proficient in the use of fire suppression equipment available in the mine, and know the location of such fire suppression equipment.

(c) Each operator of an underground coal mine shall require all miners to participate in mine emergency evacuation drills, which shall be held at periods of time so as to ensure that all miners participate in such evacuations at intervals of not more than 90 days.

(1) The operator shall certify by signature and date that the mine emergency evacuation drills were held in accordance with the requirements of this section. Certifications shall be kept at the mine for one year and made available on request to an authorized representative of the Secretary, and to the representative of the miners.

(2) For purposes of this paragraph (c), a mine emergency evacuation drill shall consist of a simulation of the actions required by the approved mine emergency evacuation and firefighting plan described in paragraph (a)(1) through (4) of this section.

[FR Doc. 03–22748 Filed 9–8–03; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD13–02–012]

RIN 1625–AA09

Drawbridge Operation Regulations; Lake Washington Ship Canal, WA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations governing the drawspan of the Montlake Bridge across the east end of the Lake Washington Ship Canal by lengthening the hours that the draw need not open for the passage of vessels during the part of the year when vessel traffic is low. The change will relieve vehicular congestion during the peak congested period for road traffic.

DATES: This rule is effective October 9, 2003.

ADDRESSES: Comments and related material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD13–02–012 and are available for inspection or copying at Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067 between 7:45 a.m. and 4:15 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Austin Pratt, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, telephone (206) 220–7282.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 30, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Lake Washington Ship Canal, WA, in the **Federal Register** (67 FR 189). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Washington State Department of Transportation (WSDOT) requested this change in the drawbridge operations schedule to alleviate traffic congestion in the Montlake area by increasing the periods for part of the year in which the drawbridge need not open for the passage of vessels.

The draw of the Montlake Bridge, mile 5.2, Lake Washington Ship Canal at Seattle, Washington, opens on signal except that the draw need not open for the passage of vessels from 7 a.m. to 9 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday, except federal holidays, for any vessel of less than 1000 gross ton, unless the vessel has in tow a vessel of 1000 gross tons or over. The draw need only open on the hour and half-hour from 12:30 p.m. to 3:30 p.m. and from 6 p.m. to 6:30 p.m. Between the hours of 11 p.m. and 5 a.m. the draw opens if one hour notice is provided. This notice requirement has been voluntarily suspended by WSDOT. The bridge is staffed by operators 24 hours a day. This change removes this nighttime notice provision.

The Montlake Bridge provides 48 feet of vertical clearance above the mean regulated lake level of Lake Washington for the central 100 feet of the bascule span. Navigation on the waterway includes tugs, gravel barges, construction barges, sailboats, motor yachts, kayaks, rowing shells, and government vessels.

The Lake Washington Ship Canal bisects Seattle from east to west and is currently crossed by two fixed highway bridges and four vehicular bascules, of which the Montlake is the easternmost. At the western extremity seaward of the Hiram Chittenden Locks at Ballard is a single-leaf railroad bascule.

The Montlake Bridge is critical to north-south road traffic in its area. The closest alternative crossing is about 0.8 mile to the west and cannot be reached easily without traveling other congested streets during peak traffic hours.

This change would alleviate vehicular congestion by lengthening the periods

that the bridge would be allowed to remain closed to marine traffic from the beginning of September to the end of April each year. These months correspond approximately to the foul weather period in Seattle when congestion is heaviest and vessel traffic is lowest.

Discussion of Comments and Changes

No comments were received in response to the notice and no change is being made to the rule as proposed in this rulemaking.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

The impact of this rule is expected to improve traffic flow on Montlake Boulevard without impeding navigation.

This conclusion is based on the fact that the majority of vessels plying the canal will not be hindered by this change. Many of the commercial and recreational vessels can pass the span without an opening. Vessel traffic diminishes significantly during the months that are affected while the annual maximal use period remains unaffected.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. There are no known small entities affected by this rule.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No assistance was requested.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under Section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. There are no known effects of this rule that would warrant further analysis and documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Section 117.1051(e)(2)(i) is revised and paragraph (e)(3) is removed to read as follows:

§ 117.1051 Lake Washington Ship Canal.

* * * * *

(e) * * *

(2) * * *

(i) The draw need not open from 7 a.m. to 9 a.m. and from 3:30 p.m. to 6:30

p.m. from April 30 to September 1 and from 7 a.m. to 10 a.m. and from 3:30 p.m. to 7 p.m. from September 1 to April 30.

* * * * *

Dated: August 26, 2003.

Jeffrey M. Garrett,

Rear Admiral, U.S. Coast Guard, Commander, Thirteenth Coast Guard District.

[FR Doc. 03–22794 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302 and 303

RIN 0970–AB81

Child Support Enforcement Program; State Plan Requirements, Standards for Program Operations

AGENCY: Office of Child Support Enforcement (OCSE), HHS

ACTION: Final rule; correction.

SUMMARY: This document corrects the final child support enforcement regulations published in the **Federal Register** on May 12, 2003.

The final rule responded to comments on, and made technical corrections to, interim final child support enforcement regulations published in the **Federal Register** on February 9, 1999.

DATES: Effective on June 26, 2003.

FOR FURTHER INFORMATION CONTACT: Eileen Brooks, Deputy Director, Policy Division, OCSE, phone (202) 401–5369; fax (202) 401–4054; E-mail: *ebrooks@acf.hhs.gov*.

Corrections: Vol. 68, No. 91, May 12, 2003 Rules and Regulations.

§ 302.70 [Corrected]

■ 1. On page 25303, column 2, in § 302.70 [Amended], amendment 11.a is corrected to read:

Paragraph (a)(4) is amended by removing ", in accordance with the requirements set forth in § 303.103 of this chapter".

§ 303.72 [Corrected]

■ 2. On page 25304, column 3, in § 303.72 [Amended], amendment 20.b is corrected to read:

Paragraphs (a)(6), (c)(2), (c)(4), (h)(5), and (i)(1) are amended by removing "Secretary of the Treasury" and adding "Secretary of the U.S. Treasury" in its place.

Dated: August 13, 2003.

Melissa Chapman,

Deputy Assistant Secretary, Office of Information Resources Management.

[FR Doc. 03–22905 Filed 9–8–03; 8:45 am]

BILLING CODE 4184–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2761, MB Docket No. 03–118, RM–10585]

Digital Television Broadcast Service; Butte, MT

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KXLF Communications, Inc., substitutes DTV channel 5 for DTV channel 15 at Butte, Montana. *See* 68 FR 27767, May 21, 2003. DTV channel 5 can be allotted to Butte, Montana, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 46–00–27 N. and 112–26–30 W. with a power of 10.7, HAAT of 588 meters and with a DTV service population of 149 thousand. Since the community of Butte is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. With this action, this proceeding is terminated.

DATES: Effective October 20, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MB Docket No. 03–118, adopted August 28, 2003, and released September 4, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Montana, is amended by removing DTV channel 15 and adding DTV channel 5 at Butte.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–22909 Filed 9–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 03–2755, MM Docket No. 01–55, RM–10034]

Digital Television Broadcast Service; Fayetteville, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Arkansas Educational Television Commission, substitutes DTV channel *9 for DTV channel *45 at Fayetteville. *See* 66 FR 12751, February 28, 2001. DTV channel *9 can be allotted to Fayetteville, Arkansas, in compliance with the principal community coverage requirements of Section 73.625(a) at reference coordinates 35–48–53 N. and 94–01–41 W. with a power of 19, HAAT of 509 meters and with a DTV service population of 675,000. With this action, this proceeding is terminated.

DATES: Effective October 20, 2003.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–55, adopted August 27, 2003, and released September 4, 2003. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor,

Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

■ Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

■ 2. Section 73.622(b), the Table of Digital Television Allotments under Arkansas, is amended by removing DTV channel *45 and adding DTV channel *9 at Fayetteville.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 03–22910 Filed 9–8–03; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 0330612150–3214–02; I.D. 082903B]

Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reallocation of Pacific Sardine

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Reallocation of Pacific sardine.

SUMMARY: NMFS announces the reallocation of the remaining Pacific sardine harvest guideline in the exclusive economic zone off the Pacific Coast. On September 1, 2003, 59,508 metric tons (mt) of the 110,908 mt harvest guideline is expected to remain unharvested. The Coastal Pelagics Species Fishery Management Plan (FMP) requires that a review of the fishery be conducted and any uncaught portion of the harvest guideline remaining unharvested in Subarea A (north of Pt. Arena, CA) and Subarea B (south of Pt. Arena, CA) be added together and reallocated, with 20 percent allocated to Subarea A and 80 percent to Subarea B; therefore, 11,902 mt is allocated to Subarea A and 47,600 mt is allocated to Subarea B. The intended effect of this action is to ensure that a sufficient amount of the resource is available to all harvesters on the Pacific Coast and to achieve optimum yield.

DATES: Effective September 5, 2003.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, 562–980–4036.

SUPPLEMENTARY INFORMATION: On December 31, 2002, NMFS published notice of a harvest guideline of 110,908 mt for Pacific sardine in the **Federal Register** (67 FR 79889) for the fishing season January 1, 2003, through December 31, 2003. The harvest guideline was allocated as specified in the FMP at that time, that is, one-third (36,969 mt) for Subarea A, which is north of 35° 40′ N. lat. (Pt. Piedras Blancas, CA) to the Canadian border; and two-thirds (73,939 mt)for Subarea B, which is south of 35° 40′ N. lat. to the Mexican border.

On August 26, 2003, a regulatory amendment to the FMP developed by the Pacific Fishery Management Council (Council) was approved, and a final rule implementing the amendment was published in the **Federal Register** on September 4, 2003 (68 FR 52523). The amendment (1) changed the definition of Subarea A and Subarea B by moving the geographic boundary between the two areas from Pt. Piedras Blancas, CA at 35° 40′ 00″ N. lat. to Pt. Arena, CA at 39° 00′ 00″ N. lat., (2) moved the date when Pacific sardine that remain unharvested are reallocated to Subarea A and Subarea B from October 1 to September 1, (3) changed the percentage of the unharvested sardine that is reallocated to Subarea A and Subarea B from 50 percent to both subareas to 20 percent to Subarea A and 80 percent to Subarea B, and (4) reallocated all unharvested sardine that remain on December 1 coast wide.

Landings in the Pacific Northwest in 2003 have been below the landings for the same period during the 2002 fishing season. Landings by September 1 in Subarea A north of Pt. Arena are expected to be 23,400 mt; therefore, 13,569 mt of the initial allocation to Subarea A of 36,969 mt will remain unharvested. Landings in California have also been below landings for the same period in 2002. Landings by September 1 in Subarea B south of Pt. Arena are expected to be 28,000 mt; therefore, 45,939 mt of the initial allocation to Subarea B of 73,939 will remain unharvested. From the best information available, a total of 59,508 mt of the 110,908 mt harvest guideline is anticipated will remain unharvested on September 1. Therefore, according to the requirements of the FMP, as amended, 20 percent of 59,508 mt (11,902 mt) is allocated to Subarea A, and 80 percent of 59,508 mt (47,606 mt) is allocated to Subarea B.

Any portion of 110,908 mt harvest guideline that remains unharvested in Subarea A and Subarea B on December 1, 2003, will be available for harvest coast-wide until the 110,908 mt harvest guideline is reached and the fishery closed.

Classification

This action is authorized by the FMP in accordance with 50 CFR 660.517 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds for good cause under 5 U.S.C. 553(b)(B) that providing prior notice and an opportunity for public comment on this action is unnecessary because redistribution of the harvest guideline is a ministerial act required by the FMP to ensure that all harvesters have access to the resource. This action relieves potential restrictions on those affected by Federal regulations, and affording additional notice and comment would impede the agency's ability to manage Pacific sardine. Accordingly, providing prior notice and an opportunity for public comment would serve no useful purpose.

Because this rule merely provides a redistribution of a harvest guideline to meet the requirements of the FMP and does not require any participants in the fishery to take action or to come into compliance, the AA finds for good cause under 5 U.S.C. 553(d)(3) to waive the 30–day delay in effectiveness of this rule.

Because prior notice and opportunity for public comment are not required for this action by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 4, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Serevice.

[FR Doc. 03–22920 Filed 9–5–03; 11:09 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 68, No. 174
Tuesday, September 9, 2003

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AK05

Employment (General)

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed regulation regarding the detail of executive branch employees to the legislative branch. The purpose of the revision is to set forth guidelines for executive branch detailees to the legislative branch.

DATES: Comments must be received on or before October 24, 2003.

ADDRESSES: Send or deliver comments to Ms. Leah M. Meisel, Deputy Associate Director for Talent and Capacity Policy, Office of Personnel Management, 1900 E Street, NW., Room 6551, Washington, DC 20415–9700; e-mail *employ@opm.gov*; fax: (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: Mr. Michael J. Mahoney by telephone on 202–606–0960, by FAX 202–606–2329, or by TDD on 202–418–3134, e-mail *mjmahone@opm.gov*.

SUPPLEMENTARY INFORMATION: OPM is issuing proposed regulations under 5 U.S.C. 1103, setting forth guidelines for executive branch detailees to the legislative branch. The purpose of this proposed regulation is to maintain the separation of powers under the Constitution and prevent conflicts of interest among the branches and individuals involved.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 300

Freedom of information, Government employees, Reporting and recordkeeping requirements, Selective Service System.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is proposing to amend part 300 of Title 5 of the Code of Federal Regulations as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation is revised to read as follows:

Authority: 5 U.S.C. 552, 3301, and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 300.101 through 300.104 also issued under 5 U.S.C. 7201, 7204, and 7701; E.O. 11478, 3 CFR 1966–1970 Comp., page 803.

Secs. 300.311 through 300.316 also issued under 5 U.S.C. 1103.

Secs. 300.401 through 300.408 also issued under 5 U.S.C. 1302(c), 2301, and 2302.

Secs. 300.501 through 300.507 also issued under 5 U.S.C. 1103(a)(5).

Sec. 300.603 also issued under 5 U.S.C. 1104.

2. Amend part 300 by adding §§ 300.311 through 300.316 and a new center heading to read as follows:

Detail of Government Employees From the Executive Branch to the Legislative Branch

§ 300.311 Definitions.

In this part: *Agency* means a military department and an executive agency as defined in this section;

Employee has the same meaning as in 5 U.S.C. 2105 and a member of the uniformed services as defined in this section;

Executive agency has the same meaning as in 5 U.S.C. 105, exclusive of the General Accounting Office;

Military department has the same meaning as in 5 U.S.C. 102;

OPM means The United States Office of Personnel Management;

Uniformed Services has the same meaning as in 10 U.S.C. 101.

§ 300.312 Detail of executive branch employees to the legislative branch.

No executive agency (agency) shall detail, assign, or otherwise make available an employee of such agency for the performance of functions within or under the supervision of the legislative branch, without the approval of the Director of the Office of Personnel Management ("Director of OPM"). The Director of OPM shall not approve such detail, assignment, or making available for a period exceeding 180 days, except that, upon request from the office of the legislative branch to which the employee is detailed, assigned, or made available, the Director of OPM may approve one additional period not to exceed 180 days.

§ 300.313 Approval of Details.

The Director of OPM shall not give approval with respect to an employee under § 300.312 unless:

(a) The functions to be performed by the employees within or under the supervision of the legislative branch:

(1) Will not involve;

(i) A conflict with respect to present or potential differing interests of the executive branch and the legislative branch; or

(ii) Any breach of applicable rules of professional conduct, including those governing the conduct of attorneys; and

(2) Will not involve disclosure, or any significant risk of disclosure, of information within the constitutional authority of the Executive to withhold because disclosure could impair foreign relations, the national security, the deliberative processes of the Executive, or the performance of the Executive's constitutional duties; and

(b) The detail, assignment, or making available is consistent with applicable law, including section 1301(a) of title 31, United States Code.

§ 300.314 Termination.

The Director of OPM may direct the head of an agency to, and upon such direction, the head of such agency shall, terminate the detail, assignment, or making available of an employee of such agency for the performance of functions within or under the supervision of the legislative branch, whether made before or after the publication of this regulation in the **Federal Register**, when, in the Director's judgment after consultation with the head of the agency, the continuation of such detail, assignment, or making available would not be consistent with the criteria for approval set forth in § 300.313.

§ 300.315 Reporting.

On a semi-annual basis, heads of agencies shall file a written report with

the Director of OPM describing each detail, assignment, or making available of an agency employee for the performance of functions within or under the supervision of the legislative branch.

§ 300.316 Effect on existing details.

Any detail, assignment, or making available of an employee of an agency for the performance of functions within or under the supervision of the legislative branch that is in effect immediately prior to the publication of this regulation in the **Federal Register** shall terminate not later than January 2, 2004, unless approved by the Director of OPM prior to that date under § 300.313.

[FR Doc. 03–22904 Filed 9–8–03; 8:45 am]
BILLING CODE 6325–38–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–89–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 777–200 and –300 series airplanes. For all airplanes, this proposal would require installation of a placard that advises of weight limits for a certain electrical rack, accomplishment of a one-time inspection and records check to determine the amount of weight currently installed in that rack, and removal of equipment from that rack if necessary. For certain airplanes, this proposal also would require a one-time inspection of the clevis end of the vertical tie rods that support the center stowage bins to measure the exposed thread, installation of placards that advise of weight limits for certain other electrical racks, a one-time inspection and records check to determine the amount of weight currently installed in certain other electrical racks, corrective actions, and replacement of the vertical tie rods for the center stowage bins or electrical racks with new improved tie rods, as applicable. This action is necessary to prevent failure of the tie rods supporting certain electrical racks and the center stowage bins, which could cause the racks or stowage bins to fall onto passenger seats below during an emergency landing, impeding an emergency evacuation or injuring passengers. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 24, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–89–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Robert Kaufman, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6433; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2001–NM–89–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–89–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, under certain conditions on Boeing Model 777–200 and –300 series airplanes, the vertical tie rods that attach the center stowage bins and electrical racks to the airplane structure can break. Multiple broken tie rods could allow the center stowage bins and electrical racks to fall onto the passenger seats below during an emergency landing. This condition, if not corrected, could impede an emergency evacuation or result in injury to passengers.

Explanation of Relevant Service Information

We have reviewed and approved Boeing Service Bulletin 777–25–0144, Revision 1, dated January 10, 2002. For all airplanes, the service bulletin describes procedures for installing a placard showing weight limits for electrical rack E7. For certain airplanes, the service bulletin also describes procedures for additional actions, as follows:

- A one-time inspection of the clevis end of the vertical tie rods that support

the center stowage bins to measure the exposed thread, and installation of a threaded sleeve if necessary.

- Replacement of the vertical tie rods that support the center stowage bins with new improved tie rods (including replacing the existing tie rod with a new improved tie rod, torquing the jam nuts, and inspecting through the witness hole to make sure tie rod threads are visible).
- Replacement of the vertical tie rods that support electrical racks E9, E11, and E13 (including replacing the existing tie rod with a new improved tie rod, replacing an existing tie rod clamp with a new improved tie rod clamp, inspecting certain electrical racks for "free play," adjusting jam nuts if necessary, and inspecting through the witness hole to make sure tie rod threads are visible); as applicable.
- Installation of placards showing weight limits for electrical racks E9, E11, E13, and E15; as applicable.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the applicable actions specified in the service bulletin described previously, except as discussed below under the heading "Differences Between Proposed Rule and Service Bulletin." The proposed AD would also require a one-time records review and inspection to verify that the weight of equipment currently installed in certain electrical racks meets specified weight limits. This records review and inspection would involve determining what extra equipment has been installed in the subject racks of the airplane, performing a detailed inspection to determine that the subject equipment is installed on the airplane, calculating the total weight of the installed equipment, and comparing that total to the weight limit specified on the placard. If the weight of the equipment exceeds the limit specified on the placard, equipment must be removed from the rack to meet the requirement.

In developing an appropriate compliance time for this action, we considered not only the degree of urgency associated with addressing the subject unsafe condition, but the normal maintenance schedules for the majority of affected operators. In consideration of these factors, we have determined that 5 years represents an appropriate interval of time allowable wherein the proposed actions can be accomplished during scheduled maintenance intervals for the majority of affected operators. We find that this will ensure an acceptable level of safety.

Clarification of Inspection Types

The service bulletin refers to an inspection of the clevis end of the vertical support tie rod to determine whether a threaded sleeve is required. We find that, since the inspection involves measuring the length of the exposed thread, the procedures for this inspection constitute a detailed inspection. This type of inspection is defined in Note 1 of this proposed AD.

As part of the procedures for replacing the vertical support tie rods, the service bulletin specifies to inspect through the witness hole to ensure that tie rod threads are visible. We find that this inspection constitutes a general visual inspection. This type of inspection is defined in Note 2 of the proposed AD.

Differences Between Proposed AD and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain conditions, this proposal would require the disposition of those conditions per a method approved by the FAA.

Operators also should note that, as explained previously, this proposed AD would require a one-time records review and an inspection that are not included in the service bulletin. We find that these additional actions are necessary to ensure that the weight of equipment currently installed in certain electrical racks is within the limits specified in the placards to be installed per the service bulletin referenced in this proposed AD.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 282 airplanes of the affected design in the worldwide fleet. The FAA estimates that 84 airplanes of U.S. registry would be affected by this proposed AD.

For all airplanes: The records check and inspection to determine the weight currently installed in electrical rack E7 would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed records check and inspection on U.S. operators is estimated to be $5,460, or $65 per airplane.

For all airplanes; It would take approximately 1 work hour to accomplish the proposed installation of a placard specifying weight limits for electrical rack E7, at an average labor rate of $65 per work hour. Required parts would cost approximately $29. Based on these figures, the cost impact of this proposed placard installation on U.S. operators is estimated to be $7,896, or $94 per electrical rack.

For airplanes subject to the records check and inspection to determine the weight currently installed in electrical rack E9, E11, E13, or E15: It would take approximately 1 work hour per electrical rack to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed records check and inspection is estimated to be as much as $260 per airplane.

For airplanes subject to the installation of a placard specifying weight limits for electrical rack E9, E11, E13, or E15: It would take approximately 1 work hour per electrical rack to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately $29 per electrical rack. Based on these figures, the cost impact of this proposed installation is estimated to be as much as $376 per airplane.

For airplanes subject to the inspection of the clevis end of the vertical support tie rod for the center stowage bin to measure the exposed thread: It would take as much as 3 work hours per airplane (0.25 work hour per tie rod, with up to 12 subject tie rods per airplane) at an average labor rate of $65 per work hour. Based on these figures, the cost impact of this proposed inspection is estimated to be as much as $195 per airplane.

For airplanes subject to the replacement of the vertical tie rods that support the center stowage bins: It would take as much as 6 work hours per airplane (0.5 work hour per tie rod, with up to 12 subject tie rods per airplane) at an average labor rate of $65 per work hour. Required parts would cost as much as $3,020 per airplane. Based on these figures, this proposed replacement is estimated to be as much as $3,410 per airplane.

For airplanes subject to the replacement of the vertical tie rods that support the electrical racks: It would take as much as 2 work hours per airplane (0.5 work hour per tie rod with up to 4 subject tie rods per airplane) at an average labor rate of $65 per work hour. Required parts would cost as much as $3,012 per airplane. Based on these figures, this proposed replacement is estimated to be as much as $3,142 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. The manufacturer may cover the cost of parts associated with certain actions in this proposed AD, subject to warranty conditions. Manufacturer warranty remedies may also be available for labor costs associated with certain actions in this proposed AD. As a result, the costs attributable to the proposed AD may be less than stated above.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2001–NM–89–AD.

Applicability: Model 777–200 and –300 series airplanes; line numbers 002 through 151 inclusive, 153 through 157 inclusive, 159 through 195 inclusive, 197 through 211 inclusive, 213 through 237 inclusive, 239 through 241 inclusive, and 243 through 282 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the vertical tie rods that attach the center stowage bins and electrical racks to the airplane structure, which could cause the center stowage bins and electrical racks to fall onto passenger seats below, impeding an emergency evacuation or injuring passengers, accomplish the following:

Inspection To Determine Weight and Placard Installation

(a) For airplanes in the groups listed in the table under paragraph 3., Part 1, paragraph E., of the Accomplishment Instructions of Boeing Service Bulletin 777–25–0144, Revision 1, dated January 10, 2002: Within 5 years after the effective date of this AD, do the applicable actions in paragraphs (a)(1) and (a)(2) of this AD.

(1) Install placards that show weight limits for electrical racks E7, E11, and E15; as applicable; per the Accomplishment Instructions of the service bulletin.

(2) For each electrical rack on which a placard was installed per paragraph (a)(1) of this AD: Perform a one-time inspection and records check to determine the weight of equipment installed in that electrical rack. This records review and inspection must include determining what extra equipment has been installed, if any, in the subject rack of the airplane, performing a detailed inspection to determine that this equipment is installed on the airplane, calculating the total weight of the installed equipment, and comparing that total to the weight limit specified on the placard installed per paragraph (a)(1) of this AD. If the weight is outside the limits specified in the placard to be installed per the service bulletin, before further flight, remove equipment from the rack to meet the weight limit specified in the placard.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Inspection To Measure Exposed Thread

(b) For airplanes in the groups listed in the table under paragraph 3., Part 1, paragraph C., of the Accomplishment Instructions of Boeing Service Bulletin 777–25–0144, Revision 1, dated January 10, 2002: Within 5 years after the effective date of this AD, perform a detailed inspection of the clevis end of the vertical support tie rod for the center stowage bin to measure the exposed thread, per the Accomplishment Instructions of the service bulletin. If the measurement of the exposed thread is outside the limits specified in Figure 2 of the service bulletin, before further flight, perform all corrective actions specified in steps 2 through 15 inclusive of Figure 2 of the service bulletin. Perform the corrective actions per the Accomplishment Instructions of the service bulletin, except as provided by paragraph (e) of this AD.

Replacement of Tie Rods for Center Stowage Bin

(c) For airplanes in Group 21, as listed in the Airplane Group column of the table under paragraph 3., Part 1, paragraph D., of the Accomplishment Instructions of Boeing Service Bulletin 777–25–0144, Revision 1, dated January 10, 2002: Within 5 years after the effective date of this AD, replace the vertical support tie rods for the center stowage bin with new improved tie rods (including replacing the existing tie rod with a new improved tie rod, torquing the jam nuts, performing a general visual inspection through the witness hole to make sure tie rod threads are visible, and making any applicable adjustment of the clevis) by doing all actions specified in steps 1 through 8 of Figure 3 of the service bulletin. Do these actions per the Accomplishment Instructions of the service bulletin, except as provided by paragraph (e) of this AD. Any required adjustment of the clevis must be done before further flight.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior

area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Inspection To Determine Weight, Tie Rod Replacement, and Placard Installation

(d) For airplanes in the groups listed in the table under paragraph 3., Part 1, paragraph F., of the Accomplishment Instructions of Boeing Service Bulletin 777–25–0144, Revision 1, dated January 10, 2002: Do the actions in paragraphs (d)(1), (d)(2), and (d)(3) of this AD.

(1) Within 5 years after the effective date of this AD, replace the vertical support tie rods for electrical racks E9, E11, and E13 (including replacing the existing tie rods with new improved tie rods, replacing an existing tie rod clamp with a new improved tie rod clamp, performing a free-play inspection of certain electrical racks, adjusting jam nuts as applicable, performing a general visual inspection through the witness hole to make sure tie rod threads are visible, and making any applicable adjustment to ensure tie rod threads are visible) by doing all actions specified in Figures 5, 6, 7, and 9 of the service bulletin; as applicable. Do these actions per the Accomplishment Instructions of the service bulletin. Any required adjustment must be done before further flight.

(2) Before further flight after accomplishing paragraph (d)(1) of this AD, install placards that show weight limits for electrical racks E9, E11, and E13; as applicable; per the Accomplishment Instructions of the service bulletin.

(3) For each electrical rack on which a placard was installed per paragraph (d)(2) of this AD: Before further flight after accomplishing paragraphs (d)(1) and (d)(2) of this AD, perform a one-time inspection and records check to determine the weight of equipment installed in that electrical rack. This records review and inspection must include determining what, if any, extra equipment has been installed in the subject racks of the airplane, performing a detailed inspection to determine that this equipment is installed on the airplane, calculating the total weight of the installed equipment, and comparing that total to the weight limit specified on the placard installed per paragraph (d)(2) of this AD. If the weight is outside the limits specified in the placard, before further flight, remove equipment from the rack to meet the weight limit specified in the placard.

Exception to Service Bulletin Instructions

(e) Where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Seattle ACO, is authorized to approve alternative methods of compliance for this AD.

Issued in Renton, Washington, on September 2, 2003.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22890 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–97–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B4–600R and A300 F4–600R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 B4–600R and A300 F4–600R series airplanes, that currently requires a one-time visual inspection for damage of the center tank fuel pumps and fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. That AD also requires repetitive visual inspections of the fuel pumps and repetitive eddy current inspections of the fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. This action would mandate modification of the canisters of the center tank fuel pumps, which would terminate the repetitive inspections required by the existing AD. The actions specified by the proposed AD are intended to prevent damage to the fuel pump and fuel pump canister, which could result in loss of flame trap capability and could provide a fuel ignition source in the center fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 9, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002-NM–97-AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tim Backman, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2797; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–97–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 23, 1999, the FAA issued AD 99–27–07, amendment 39–11488 (65 FR 213, January 4, 2000), applicable to all Airbus Model A300 B4–600R and A300 F4–600R series airplanes, to require a one-time visual inspection for damage of the center tank fuel pumps and fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. That action also requires repetitive visual inspections of the fuel pumps and repetitive eddy current inspections of the fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. That action also reduces the applicability to include only those airplanes that have a trim tank system installed. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to detect damage to the fuel pump and fuel pump canister, which could result in loss of flame trap capability and could provide a fuel ignition source in the center fuel tank.

Actions Since Issuance of Previous Rule

Since the issuance of AD 99–27–07, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has issued French airworthiness directive 2002–132(B) dated March 20, 2002. The French airworthiness directive continues to require repetitive inspections for damage of the center tank fuel pumps and fuel pump canisters and replacement of any damaged parts, and mandates modification of the canisters of the center tank fuel pumps, which would terminate the repetitive inspections required by AD 99–27–07.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A300–28–6069, Revision 01, dated May 28, 2002, which describes procedures for modification of the canisters of the center tank fuel pumps. The modification includes drilling holes on the doubler for the canister locating pins; installing the locating pins; preparing the fastener holes for electrical bonding; and installing new, improved canisters and canister bonding leads. The service bulletin also describes procedures for an operational test of the center tank fuel pumps after accomplishment of the modification.

Airbus also has issued Service Bulletin A300–28–6061, Revision 04, dated August 1, 2002. The original issue of the service bulletin was referenced in the existing AD for accomplishment of certain inspections and corrective action. Airbus also previously issued Revision 01, dated May 31, 1999; Revision 02, dated October 29, 1999; and Revision 03, dated September 4, 2001. None of these revisions contain substantial changes from the original issue.

The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 2002–132(B), dated March 20, 2002, to ensure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept us informed of the situation described above. We have examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 99–27–07 to continue to require a one-time visual inspection for damage of the center tank fuel pumps and fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. The proposed AD also would continue to require repetitive visual inspections for damage of the fuel pumps and repetitive eddy current inspections of the fuel pump canisters, and replacement of damaged fuel pumps and fuel pump canisters with new or serviceable parts. This new action would mandate modification of the canisters of the center tank fuel pumps, which would terminate the repetitive inspections required by the existing AD. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 84 airplanes of U.S. registry that would be affected by this proposed AD.

The inspections that are required by AD 99–27–07 take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the currently required actions

is estimated to be $130 per airplane, per inspection cycle.

The inspections required by AD 99–27–07 were applicable to approximately 67 airplanes. Based on the figures discussed above, the cost impact of the current requirements of that AD on U.S. operators is estimated to be $8,710.

In this proposed AD, the inspections are applicable to approximately 17 additional airplanes. Based on the figures discussed above, the new costs to U.S. operators that would be imposed by this proposed AD are estimated to be $2,210.

The new modification proposed in this AD action would take approximately 11 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. Required parts would cost approximately $150 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be $72,660, or $865 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11488 (65 FR 213, January 4, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–97–AD. Supersedes AD 99–27–07, amendment 39–11488.

Applicability: Model A300 B4–600R and A300 F4–600R series airplanes, certificated in any category, on which Airbus Modification 4801 (trim tank system) has been accomplished.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the fuel pump and fuel pump canister, which could result in loss of flame trap capability and could provide a fuel ignition source in the center fuel tank, accomplish the following:

Restatement of Requirements of AD 99–27–07

Inspections

(a) Prior to the accumulation of 5,000 total hours, time-in-service, or within 250 hours, time-in-service after February 8, 2000 (the effective date of AD 99–27–07, amendment 39–11488), whichever occurs later, perform a detailed inspection for damage of the center tank fuel pumps and fuel pump canisters, in accordance with Airbus All Operators Telex (AOT) 28–09, dated November 28, 1998. Repeat the inspection prior to the accumulation of 12,000 total hours time-in-service, or within 250 hours time-in-service after accomplishment of the initial inspection, whichever occurs later. Thereafter, repeat the inspection at intervals not to exceed 250 hours time-in-service, until accomplishment of the initial inspection required by paragraph (b) of this AD.

Note 1: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) At the applicable time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD: Perform a detailed inspection to detect damage of the center tank fuel pumps and perform an eddy current inspection to detect damage of the fuel pump canisters, in accordance with Airbus Alert Service Bulletin A300–28A6061, dated February 19, 1999; or Airbus Service Bulletin A300–28–6061, Revision 04, dated August 1, 2002. Repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles, until accomplishment of paragraph (d) of this AD. Accomplishment of the initial inspections required by this paragraph constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) For airplanes that have accumulated 11,000 or more total flight cycles as of February 8, 2000: Inspect within 300 flight cycles after February 8, 2000.

(2) For airplanes that have accumulated 8,500 or more total flight cycles, but fewer than 11,000 total flight cycles, as of February 8, 2000: Inspect within 750 flight cycles after February 8, 2000.

(3) For airplanes that have accumulated fewer than 8,500 total flight cycles as of February 8, 2000: Inspect prior to the accumulation of 7,000 flight cycles, or within 1,500 flight cycles after February 8, 2000, whichever occurs later.

Corrective Action

(c) If any damage is detected during any inspection required by this AD, prior to further flight, replace the damaged fuel pump or fuel pump canister with a new or serviceable part in accordance with Airbus Alert Service Bulletin A300–28A6061, dated February 19, 1999; or Airbus Service Bulletin A300–28–6061, Revision 04, dated August 1, 2002.

Inspections/Corrective Action Accomplished Per Previous Issues of Service Bulletin

(d) Inspections and corrective action accomplished before the effective date of this AD per Airbus Service Bulletin A300–28–6061, Revision 01, dated May 31, 1999; Revision 02, dated October 29, 1999; or Revision 03, dated September 4, 2001; are considered acceptable for compliance with the corresponding actions specified in this AD.

New Requirements of This AD

Modification

(e) Within 18 months after the effective date of this AD: Modify the canisters of the center tank fuel pumps (including an operational test) by doing all the actions per paragraphs 3.A., 3.B., 3.C., and 3.D. of the Accomplishment Instructions of Airbus Service Bulletin A300–28–6069, Revision 01, dated May 28, 2002. Accomplishment of this modification ends the repetitive inspections required by paragraph (b) of this AD.

(f) Accomplishment of the modification before the effective date of this AD per

Airbus Service Bulletin A300–28–6069, dated September 4, 2001, is acceptable for compliance with the modification required by paragraph (d) of this AD.

Alternative Methods of Compliance

(g)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 99–27–07, amendment 39–11488, are approved as alternative methods of compliance with the applicable actions in this AD.

Note 2: The subject of this AD is addressed in French airworthiness directive 2002–132(B), dated March 20, 2002.

Issued in Renton, Washington, on September 3, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22891 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–125–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A319, A320, and A321 series airplanes, that currently requires modifying the fuel pipe couplings and installing bonding leads in specified locations within the fuel tank. This action would continue to require the modification and installation, but would add new modifications of the bonding leads for certain airplanes. This action also would change the applicability in the existing AD. The actions specified by the proposed AD are intended to prevent ignition sources and consequent fire/explosion in the fuel tank. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by October 9, 2003.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–125–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–125–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On July 13, 2000, the FAA issued AD 2000–14–15, amendment 39–11825 (65 FR 45513, July 24, 2000), applicable to certain Airbus Model A319, A320, and A321 series airplanes, to require modifying the fuel pipe couplings and installing bonding leads in specified locations within the fuel tank. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The requirements of that AD are intended to prevent ignition sources and consequent fire/explosion in the fuel tank.

Actions Since Issuance of Previous Rule

Since the issuance of AD 2000–14–15, Airbus has issued Service Bulletin A320–28–1077, Revision 04, dated December 14, 2001; and Revision 05, dated August 27, 2002. The original issue of the service bulletin was referenced as the appropriate source of service information for doing the actions required by that AD. Revisions 01, 02, and 03 of the service bulletin contain revised procedures, which include increasing the quantity of bonding leads installed. Revision 04 adds procedures for airplanes modified per the original issue of the service bulletin. The added procedures in Revision 04 involve installing an additional bonding lead at Rib 15 on the jet pump system for Model A319 and A320 series airplanes, or on the recirculation system for Model A321 series airplanes. Revision 04 also describes procedures for an electrical bonding resistance check upon completion of the modification. Revision 05 adds no additional work for airplanes modified by any of the previous revisions.

Airbus also has issued Service Bulletin A320–28–1079, dated November 30, 1998. The service bulletin describes procedures for modification of the fuel system of the additional center fuel tank. The modification includes cleaning certain bonding point attachments, sealing the bonding point attachments, and installing new bonding leads between the flanges of the fuel and vent pipes. The service bulletin also describes procedures for an electrical bonding resistance check upon completion of the modification.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as mandatory and issued French airworthiness directive 2002–202(B), dated April 17, 2002, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 2000–14–15 to continue to require modifying the fuel pipe couplings and installing bonding leads in specified locations within the fuel tank. The proposed AD also would add new modifications of the bonding lead for certain airplanes, and would change the applicability in the existing AD by excluding airplanes having the new modification. The actions would be required to be accomplished in accordance with the service bulletins described previously.

Changes to 14 CFR Part 39/Effect on the Proposed AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). Because we have now included this material in part 39, only the office authorized to approve AMOCs is identified in each individual AD.

Change to Labor Rate Estimate

We have reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Cost Impact

There are approximately 227 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 2000–14–15 take between 20 and 100 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be between $295,100 and $1,475,500; or between $1,300 and $6,500 per airplane.

Should an operator be required to accomplish the actions specified in Airbus Service Bulletin A320–28–1077, Revision 04, it would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact of these new proposed requirements on U.S. operators is estimated to be $130 per airplane.

Should an operator be required to accomplish the actions specified in Airbus Service Bulletin A320–28–1079, it would take approximately 6 work hours per airplane to accomplish, at an average labor rate of $65 per work hour. The cost of required parts is negligible. Based on these figures, the cost impact of these new proposed requirements on U.S. operators is estimated to be $390 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11825 (65 FR 45513, July 24, 2000), and by adding a new airworthiness directive (AD), to read as follows:

Airbus: Docket 2002–NM–125–AD. Supersedes AD 2000–14–15, amendment 39–11825.

Applicability: Model A319, A320, and A321 series airplanes; certificated in any

category; excluding those on which Airbus Modifications 27150, 27955, and 27472 have been installed.

Compliance: Required as indicated, unless accomplished previously.

To prevent ignition sources and consequent fire/explosion in the fuel tank, accomplish the following:

Restatement of Requirements of AD 2000–14–15

Modification and Installation

(a) Within 36 months after August 28, 2000 (the effective date of AD 2000–14–15, amendment 39–11825), modify the fuel pipe couplings and install bonding leads in the specified locations of the fuel tank, per the Accomplishment Instructions of Airbus Service Bulletin A320–28–1077, dated July 9, 1999; Revision 01, dated April 26, 2000; Revision 02, dated June 28, 2000; Revision 03, dated October 3, 2000; Revision 04, dated December 14, 2001; or Revision 05, dated August 27, 2002. As of the effective date of this AD, only Revisions 01, 02, 03, 04, and 05 may be used.

New Requirements of This AD

Modification and Installation

(b) Do the applicable actions required by paragraphs (b)(1) and (b)(2) of this AD at the times specified.

(1) For airplanes on which the actions required by paragraph (a) of this AD have been done per Airbus Service Bulletin A320–28–1077, dated July 9, 1999: Within 36 months after the effective date of this AD, install an additional bonding lead (including an electrical resistance check) by doing all the actions per paragraphs 3.B.(3) and 3.C. of the Accomplishment Instructions of Airbus Service Bulletin A320–28–1077, Revision 04, dated December 14, 2001; or Revision 05, dated August 27, 2002.

(2) For airplanes on which an additional center fuel tank is installed, as described in Airbus Service Bulletin A320–28–1079, dated November 30, 1998: Within 20 months after the effective date of this AD, modify the fuel system of the additional center fuel tank (including an electrical resistance check) by doing all the actions per paragraphs 2.A. through 2.E. of the Accomplishment Instructions of the service bulletin.

Alternative Methods of Compliance

(c)(1) In accordance with 14 CFR 39.19, the Manager, International Branch, ANM–116, FAA, is authorized to approve alternative methods of compliance for this AD.

(2) Alternative methods of compliance, approved previously in accordance with AD 2000–14–15, amendment 39–11825, are not considered to be approved as alternative methods of compliance with this AD.

Note 1: The subject of this AD is addressed in French airworthiness directive 2002–202(B), dated April 17, 2002.

Issued in Renton, Washington, on September 3, 2003.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22892 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 650

[FHWA Docket No. FHWA–2001–8954]

RIN 2125–AE86

National Bridge Inspection Standards

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FHWA is requesting comments on proposed revisions to its National Bridge Inspection Standards (NBIS). This proposed action is necessary to address perceived ambiguities in the NBIS that have been identified since the last update to the regulation fourteen years ago. The proposed changes would clarify the NBIS language that is vague or ambiguous; reorganize the NBIS into a more logical sequence; and make the regulation easier to read and understand, not only by the inspector in the field, but also by those administering the highway bridge inspection programs at the State and Federal agency level.

DATES: Comments must be received on or before November 10, 2003.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit*. All comments should include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Wade F. Casey, P.E., Federal Lands Highway, HFPD–9, (202) 366–9486, or Mr. Robert Black, Office of the Chief Counsel, HCC–30, (202) 366–1359, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Document Management System (DMS) at: *http://dmses.dot.gov/submit*. Acceptable formats include: MS Word (versions 95 to 97), MS Word for Mac (versions 6 to 8), Rich Text File (RTF), American Standard Code Information Interchange (ASCII)(TXT), Portable Document Format (PDF), and WordPerfect (versions 7 to 8). The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may also reach the Office of the Federal Register's home page at: *http://www.archives.gov* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara*.

Background

The FHWA bridge inspection program regulations were developed as a result of the Federal-Aid Highway Act of 1968 (sec. 26, Public Law 90–495, 82 Stat. 815, at 829) that required the Secretary of Transportation to establish national bridge inspection standards (NBIS). The primary purpose of the NBIS is to locate and evaluate existing bridge deficiencies to ensure the safety of the traveling public.

The 1968 Federal-Aid Highway Act directed the States to maintain an inventory of Federal-aid highway system bridges. The Federal-Aid Highway Act of 1970 (sec. 204, Public Law 91–605, 84 Stat. 1713, at 1741) limited the NBIS to bridges on the Federal-aid highway system. After the Surface Transportation Assistance Act

of 1978 (STAA) (sec. 124, Public Law 95–599, 92 Stat. 2689, at 2702) was passed, NBIS requirements were extended to bridges greater than 20 feet on all public roads. The Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURRA) (sec. 125, Public Law 100–17, 101 Stat. 132, at 166) expanded bridge inspection programs to include special inspection procedures for fracture critical members and underwater inspection.

The condition of our nation's bridges is of paramount importance to the FHWA. In proposing revisions to the NBIS regulations, the FHWA will continue to ensure the "proper safety inspection and evaluation of all highway bridges" for the safety of the traveling public.

Accordingly, a seven-member FHWA team was formed to examine and analyze comments to the ANPRM and write the proposed rule. This team has over 92 years of combined experience working with the NBIS regulations and over 140 years of combined experience working with bridges and structures. Six of the team members are licensed professional engineers (PE).

Discussion of Comments Received to the Advance Notice of Proposed Rulemaking (ANPRM)

The FHWA issued an ANPRM on September 26, 2001, at 66 FR 49154, to solicit comments on whether to revise the NBIS to incorporate current, state-of-the-art bridge inspection practices. The FHWA received 51 sets of comments to the docket. Comments to the ANPRM were submitted by representatives from 30 States, 3 Federal agencies, 2 counties, 5 consulting firms, 7 private citizens, 3 trade associations and 1 public interest group. In summary, the majority of the commenters believed the NBIS should be revised.

Application of Standards

Most commenters believed the present definition of bridge should not be modified and has generally been accepted by most public authorities. In general, commenters felt that the existing bridge definition is well understood and recognized within the bridge community. The New York DOT indicated that its State law defines a bridge the same way and therefore, the current definition should not be changed.

The Advocates for Highway and Auto Safety commented that it would be appropriate for the FHWA to revisit the definition and consider expanding the national bridge inventory (NBI) to include all structures that can reasonably be said to perform bridge functions.

The New Jersey, Delaware, New Hampshire, Florida, and Connecticut DOT's and the American Road and Transportation Builders Association (ARTBA) indicated a preference to maintain the current method of determining bridge length and what minimum length should be used for reporting purposes. The South Dakota DOT and five private citizens indicated that they have concern regarding the definition as it applies to highly skewed, short-span reinforced concrete box culverts. The Minnesota DOT indicated that the State has changed their bridge length definition from 20 to 10 feet. The Maryland DOT recommended an alternative way to measure bridge length from "back of back wall" to "back of back wall" for beam type structures. The Advocates for Highway and Auto Safety (Advocates) commented that there are many bridges that are in all respects similar to bridges that are included in the NBI but are not counted since they are less than 20 feet. Also, the Advocates commented that the FHWA adopted the American Association of State Highway Transportation Officials (AASHTO) bridge definition without serious discussion or debate and without the agency compiling an independent record to support the AASHTO bridge definition.

On the question we posed in the ANPRM regarding the "impact of the possible inclusion of more bridges on public authorities, or on the FHWA that maintains the inventory, or on the highway bridge replacement and rehabilitation program (HBRRP) funds," many commenters felt that doing this would add additional bridges to the inventory, require additional resources to inspect those bridges and place a burden on existing HBRRP funds. The Florida DOT thought the increase in bridges to be inspected would be minimal. The Iowa DOT felt public authorities should use their own expertise and experience in deciding how and when to inspect structures that do not meet the NBIS bridge definition. The Wyoming DOT felt public authorities can elect to inspect structures 20 feet or less in length if they feel it is warranted. The Advocates commented that under an expanded definition there would be improved public safety, the NBI would be an even more comprehensive bridge inventory and it would focus more attention and Federal resources, (*i.e.*, HBRRP funds) on deficient structures.

Inspection Procedures

Most commenters did not want to see the current five-year underwater inspection interval changed. Three private citizens, David Stevens, Mark Bostick and William Hovell commented that they wanted to see the interval reduced to coincide with the two-year biennial above water inspections. The Advocates commented that it felt that the FHWA considers the bridge support above water as separate and distinct from portions of the bridge support below the waterline; it asked the FHWA to include underwater elements of bridge supports in the definition "bridges." The Advocates also commented that until there is a valid basis (*i.e.*, collected information, studies, scientific data) for evaluation of the 5-year cycle, the FHWA should not entertain extending that interval beyond 5 years. The Connecticut DOT indicated that it inspects at a two-year interval. Collins Engineers, Inc. indicated that many agencies schedule underwater inspections to coincide with biennial inspections. The New Jersey DOT and Department of the U.S. Navy recommended a four-year interval to correlate with the regular NBIS inspection. A number of State transportation departments, consulting firms and private citizens wanted the inspection interval tied to materials of the bridge and its environment.

A majority of commenters did not feel that those performing underwater inspections must be qualified licensed professional engineers. Four State transportation departments and the American Road and Transportation Builders Association felt that qualifications should be the same as those performing above water inspections. The California DOT felt that the team leader must be a licensed professional engineer and a qualified diver. The South Dakota DOT, Department of the U.S. Navy, and Collins Engineers, Inc. supported the concept of professional engineer-diver.

Most commenters felt that incorporating the evaluation of scour at bridges criteria within the NBIS regulation would have little impact since most States have scour programs. Regarding incorporation of the scour technical advisory within the NBIS some State transportation departments were in favor and some were not. The North Dakota DOT indicated that local authorities should be performing post storm event inspections and therefore post storm event inspections did not need to be addressed in the regulations. The North Carolina DOT felt that requiring States to have a major storm

event plan of action would be acceptable. The Advocates commented that the FHWA should affirmatively review the need for separate inspections specifically to determine if scour has occurred following floods, storms, earthquakes, etc. and whether scour inspections on certain bridges should be automatically required within a specified period of time.

Frequency of Inspection

Most commenters were not in favor of increasing the maximum inspection interval beyond the current four-year interval. New Jersey, North Carolina, Oregon, Florida and New Hampshire DOT's indicated that they do not use an extended inspection cycle and see no benefit in extending the inspection interval. Florida and New Hampshire DOT's indicated that State statute required a two-year inspection frequency. The Advocates commented that short inspection intervals should be maintained at two years, and that longer inspection intervals (not (to) exceed four years) are permissible as long as decisions for longer inspections are supported by engineering data.

Qualifications of Personnel

Most commenters indicated that the individual in charge of inspection and reporting, who is a Professional Engineer (PE), should be required to have the same training as a bridge inspector and have additional experience in bridge inspection. Three private citizens, Craig Fink, Mathew Farrar, and Gary Doerr along with the Wyoming, Iowa, Tennessee, Illinois, Minnesota, Maine, California and Utah DOT's indicated that having the same training as bridge inspectors was not necessary. Two private citizens, Craig Fink and Gary Doerr, and the Minnesota, Maine, and California DOT's mentioned that the rules and regulations governing professional registration would ensure that the professional engineer be competent in the area of practice. The Michigan DOT indicated that in addition to initial training the individual in charge should have refresher training. The Advocates commented that those overseeing and conducting bridge inspections have adequate experience and appropriate and relevant education.

Commenters were evenly divided as to the need for certification training in proportion to the complexity of the bridge being inspected. The Wyoming and Wisconsin DOT's and 3 private citizens felt that adequate training is fine; however, it should be combined with relevant and verifiable experience. The New Jersey, California and Florida DOT's were strongly opposed to the idea of multi-level certifications and the New Jersey DOT thought that it would be difficult to administer. The Washington, Iowa and New York DOTs thought certification should be established by each agency or State. The Advocates commented that the NBIS should require levels of training appropriate for the complexity of the bridge structure to be inspected.

In the current regulation, the discipline of a professional engineer who is in charge of inspection and reporting is not specified. The majority of commenters thought the professional engineering discipline (*i.e.*, civil, structural, etc) should be specified within the regulation. A private citizen, Gary Doerr, along with the Minnesota, Florida and Illinois DOT's thought this unnecessary since it is adequately addressed within each State's rules and regulations governing professional registration. The Advocates commented that the NBIS should require that the person performing inspections and reporting be either a civil or structural professional engineer, with a minimum of five years experience in bridge inspection, and have periodic refresher training in latest inspection techniques and technologies.

Inspection Report

Most commenters believed that oversight of inspection efforts and quality control/quality assurance procedures, necessitated that inspection reports be changed by management when errors were encountered. Most commenters agreed that changes should be allowed, as long as the field inspector has been notified and concurs with the change. The Wisconsin, Delaware and Massachusetts DOTs indicated that only the inspection team leader should be authorized to make changes to an inspection report.

Inventory

Most commenters felt that the NBIS reporting requirements were reasonable and need not be changed. The Florida DOT indicated that the States should be relieved of the requirement to maintain data on Federal agency bridges since that information is supplied directly to the FHWA.

Reorganization of the Regulation

The Delaware DOT thought the regulations ambiguous and should be refined. The Oregon DOT felt that much upgrading and reorganization is needed. One of the questions posed in the ANPRM was whether the current NBIS correctly addresses the requirements of 23 U.S.C. 151 and the comments indicate that it does.

Recommended Improvements

Eleven State transportation departments recommended improvements to bridge inspection procedures. The Virginia DOT wanted to expand the NBIS to promote both safety inspections and maintenance evaluations. The Minnesota DOT wanted the NBIS to address private bridge ownership compliance with NBIS requirements. National certification standards, was mentioned by the Delaware DOT. The Massachusetts DOT wanted clarification of the term "unique or special feature." The South Dakota DOT suggested "less stringent inspector qualifications for more simple type of structures." The Oregon DOT proposed the incorporation of "element level bridge inspection" data. The Washington DOT suggested that the NBIS include any "structural element that can impact safety," *e.g.*, sign structures, mechanical and electrical components on movable structures, tunnels and retaining walls.

Lastly, nine State transportation departments and a private citizen recommended specific procedures to enhance the NBIS which include the following: Handheld computer data entry in the field; flexibility in minimum inspection intervals for newer or historically stable bridges; flexibility for the States to set qualification standards and certify their inspectors; enhance technology and attract engineers to the bridge inspection field; provide a communication element among the States; establish unambiguous definitions; review the NBIS regulations on a more regular basis; establish a quality control/quality assurance program; use element level inspection data; define arms length inspections; and clarify inspector qualifications.

Summary of the Proposed Revisions to the NBIS

The proposed revisions to the NBIS are based in part on comments received to an advance notice of proposed rulemaking (ANPRM) published on September 26, 2001, at 66 FR 49154. The proposed changes address ambiguous language and clarify the following areas: Purpose; applicability; terminology; bridge inspection organization; qualifications; inspection frequency; inspection procedures; and inventory. The FHWA proposes to reformat the NBIS to place referenced definitions in one section instead of being buried throughout the regulation's narrative. The FHWA proposes to

remove the requirement that States are responsible for Federal bridges. This proposal would require Federal agencies to be directly responsible for inspection of bridges under their jurisdiction. The proposed rule language places emphasis on applicability of the standards pertaining exclusively to "highway" bridges that carry public roads.

This proposed revision would clearly delineate the responsibilities of a bridge inspection organization and define what can and cannot be delegated. This proposal would enhance and clarify the qualifications of personnel as well as inspection frequency. It proposes periodic refresher training for inspection personnel. It includes a provision for lengthening the underwater inspection interval from 60 months to 72 months under certain conditions with FHWA approval. The proposed revision would clearly define the interval for fracture critical member (FCM) inspections. The FHWA proposes to specifically address scour critical bridges, bridges vulnerable to seismic damage, and complex bridges. The FHWA proposes to establish quality control/quality assurance (QC/QA) requirements. The proposed rule also discusses procedures for follow-up on critical findings by the inspection program manager. Lastly, this action proposes to reaffirm inventory and reporting requirements including timeframes for submission of data by both the State and Federal agencies.

Section-by-Section Discussion of the Proposals

Proposed Section 650.301 Purpose

There were no comments on this topic.

The FHWA proposes to replace the section "Application of Standards" with "Purpose." The FHWA proposes to reiterate the purpose of the NBIS as stated in 23 U.S.C. 151 to address the proper safety inspection and evaluation of all highway bridges. The current bridge definition does not differentiate between the types of passageways carried; however, the term "highway" does. The FHWA proposes to re-emphasize that for purposes of the NBIS, a highway bridge is a bridge that carries a public road.

Proposed Section 650.303 Applicability

The FHWA proposes to replace the section "Inspection Procedures" with "Applicability." The FHWA proposes to clarify that the NBIS only applies to highway bridges that carry public roads.

The Minnesota DOT requested discussion about the responsibility of private bridge owners to comply with the NBIS. Collins Engineers, Inc. indicated that the NBIS should be extended to all bridges whether publicly or privately owned.

The FHWA acknowledges that some confusion has existed about the applicability of the NBIS to privately owned highway bridges. While 23 U.S.C. 151 states that the NBIS are for all highway bridges, the FHWA has no legal authority to require privately owned bridge owners to inspect and maintain their bridges. While the FHWA does not have the authority to compel the States to inspect private bridges, the FHWA strongly encourages that private bridge owners follow the NBIS as the standard for inspecting privately owned bridges. Because of the seamless nature of the transportation infrastructure within many States, the motoring public does not know the difference between a privately owned and publicly owned highway bridge. This being the case, it is extremely important that privately owned highway bridges be inspected to a nationally recognized standard. Private bridge owners that do not inspect their highway bridges to the NBIS can open themselves to liability for deaths or injuries because of possible highway bridge failure. State transportation departments that do not cause private bridge owners to inspect their highway bridges to the NBIS can open themselves to liability for deaths or injuries because of possible highway bridge failure. States and Federal Agencies should encourage owners of privately-owned highway bridges to inspect their bridges in accordance with these NBIS or reroute any public highways away from such bridges if NBIS inspections are not conducted.

The National Bridge Inventory (NBI) lists roughly 2,200 privately owned highway bridges in some 41 States and Puerto Rico. However, the total number of privately owned bridges is unknown because the States are not required to report them to the FHWA. Many privately owned bridges can be assumed to carry public roads, some of which are significant highways. The FHWA does not know if privately owned bridges are inspected using the NBIS or other standard and the FHWA does not know the level to which privately owned bridges are maintained. As a result, the FHWA cannot determine whether the public may be at risk when crossing a privately owned bridge.

Public authorities, must follow the NBIS for all highway bridges located on all public roads. The term "public road" is defined in 23 U.S.C. 101(a)(27) as "any road or street under the jurisdiction of and maintained by a public authority and open to public travel." The NBIS applies to seasonally or periodically opened public roads and to limited access public access roads.

Highway bridges owned by Indian tribes are in a separate category. Indian tribes as sovereign nations, have a unique government-to-government relationship with the Federal government. There is no explicit requirement in 23 U.S.C. 144 that requires inventory of tribally owned bridges. Likewise, there is no explicit requirement in 23 U.S.C. 151 that requires inspection of tribally owned bridges. Absent such clear language, the FHWA has no legal authority to require federally recognized Indian tribes to inventory tribally owned bridges or to comply with the NBIS. While the FHWA does not have the authority to compel the federally recognized Indian tribes to inspect tribally owned bridges, the FHWA strongly encourages that Indian tribes follow the NBIS (23 U.S.C. 151), as the standard for inspecting tribally owned bridges, particularly those open to public travel. Indian tribes that do not inspect their bridges to the NBIS can open themselves to liability for deaths or injuries because of bridge failure.

The FHWA recognizes that the NBIS does not apply to federally owned bridges on roads that are used only by public employees and not open to the general public. These bridges and administratively used roads support behind-the-scenes operations, are used by public employees engaged in official business, and are not open to the general public. While the NBIS does not apply to such bridges, these bridges need to be periodically inspected to assure the safety of public employees, contractors, official visitors and the motoring public which may inadvertently use these facilities. The public looks at the transportation infrastructure as seamless and may not know that they have driven on an administratively used road. Furthermore, public authorities could be liable for injuries or death resulting from the use of bridges that are not properly and systematically inspected and maintained.

The Michigan DOT and Collins Engineers, Inc. were concerned about the applicability of the NBIS to railroad and pedestrian bridges over public roads. The Wisconsin DOT thought sign support structures, high mast lighting, retaining walls, and noise barrier structures should be addressed, in the NBIS. Collins Engineers, Inc. thought railroad bridges and overhead traffic signs should be addressed in the NBIS.

The FHWA proposes to clarify that 23 U.S.C. 151 applies only to highway bridges; therefore the NBIS does not apply to bridges that carry only pedestrians, railroad tracks, pipelines, or other types of non-highway passageways. The FHWA would continue to strongly encourage public authorities or bridge owners to inspect these non-highway carrying bridges and other significant structures. Similarly, the FHWA believes that the NBIS does not apply to inspection of sign support structures, high mast lighting, retaining walls, noise barriers structures, railroad bridges and overhead traffic signs. Public authorities have an obligation to the motoring public to periodically inspect and maintain these facilities. Likewise, non-public authorities including utility companies, railroads, and private owners who may own these facilities, must periodically inspect and maintain their structures for the safety of the motoring public.

The FHWA would continue to emphasize some minimal inventory requirements that apply to non-highway bridges over certain highways. These requirements are described in the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges" [1] and need not be mandated in the NBIS.

Proposed Section 650.305 Definitions

The FHWA proposes to replace the section "Frequency of Inspections" with "Definitions." The FHWA proposes to include all definitions that are used within the NBIS in one section at § 650.305. This proposal would add clarity to the regulation and would provide a convenient reference for the commonly used terms.

The following terms used in the current regulation would be relocated to this section: (1) American Association of State Highway Transportation Officials (AASHTO) Manual," [2] (2) bridge, and (3) National Institute for Certification in Engineering Technologies (NICET). The FHWA also proposes to update the address for AASHTO and NICET, to reflect their current addresses.

To ensure that there is a common understanding of bridge inspection terms within the NBIS, the following new terms would be added to this section: (1) Bridge inspection experience; (2) "Bridge Inspector's Reference Manual, 2002", (formerly Bridge Inspector's Training Manual/90); (3) complex bridge; (4) comprehensive bridge inspection training, (5) damage inspection; (6) fracture critical inspection; (7) fracture critical member; (8) hands-on; (9) in-depth inspection; (10) initial inspection; (11) legal load; (12) load rating; (13) operating rating; (14) program manager; (15) routine inspection; (16) routine permit load; (17) scour; (18) scour critical; (19) special inspection; (20) team leader; and (21) underwater inspection.

The Virginia DOT, suggested that changes to the bridge definition might be appropriate to exclude certain minor structures from the inspection requirement. The majority of commenters did not want the definition changed, expressing concerns such as possible adverse economic impacts and conflicts with established State laws. The Advocates wanted to include all structures that can reasonably be said to perform bridge functions and thought that the FHWA adopted the AASHTO bridge definition without serious discussion or debate and without compiling an independent record to support the definition.

The FHWA adopted the AASHTO definition for "bridge" very early on in the National Bridge Inspection Program. The FHWA proposes to continue to adopt the AASHTO definition of a bridge. Title 23, U.S.C., section 151 directed the Secretary to establish national bridge inspection standards in consultation with the State transportation departments and interested and knowledgeable private organizations and individuals. According to the National Bridge Inventory (NBI), roughly 278,000 bridges or 47 percent of the bridge inventory is owned and operated by State transportation departments. Similarly, county governments own approximately 231,000 bridges or 39 percent of the NBI. This makes the States and counties the major stakeholders in the National Bridge Inspection Program. The State transportation departments report on all highway bridges within their State regardless of ownership, except for certain Federal bridges. This data is reported every April to the NBI. Based on 23 U.S.C. 151 direction, the FHWA has developed a close working relationship with the States on bridge related issues. This consultation with the State transportation departments through the AASHTO Highway Subcommittee on Bridges and Structures, convinced the FHWA to adopt the AASHTO definition of bridge that has been used since the NBIS was first drafted. This subcommittee is chaired by a State transportation official with voting representatives from each State, the District of Columbia and Puerto Rico. The subcommittee's Secretary is a FHWA official and the subcommittee has active FHWA participation. The development of the AASHTO Manual for Condition Evaluation of Bridges, which is referenced in the current NBIS, was sponsored by AASHTO, in cooperation with the FHWA.

While we exclude bridges 20 feet and less in length, public authorities and private bridge owners are strongly encouraged to periodically examine and also maintain those bridges less than 20 feet in length to an adequate standard. The existing definition for "bridge" has served the public for over 30 years to identify which structures should be inspected and this definition is well understood and accepted, as evidenced by the statements of a majority of the commenters. There is no compelling reason to change it. To expand the inventory to include a larger number of structures may result in redistributing limited resources from inspection of larger, more critical structures, to inspection of these shorter structures thereby reducing the overall safety of the inventory.

The National Bridge Inspection Program is established to provide safe bridges. The Highway Bridge Replacement and Rehabilitation Program (HBRRP) is established to provide Federal funding to the States for bridges. Congress establishes the total level of HBRRP funding, and adding bridges to the inspection inventory would dilute funds currently available for longer, more critical structures. While the HBRRP primary focus is on bridge rehabilitation and replacement needs, bridge inspection is an eligible activity under this program. For those States that use HBRRP funds to support their bridge inspection programs, any increase in the number of highway bridges to be inspected would further reduce funds available for rehabilitation and replacement needs and thus impact bridge safety. The NBI is one tool used by the HBRRP to apportion funds to the States fairly, and expanding the inventory would have an uncertain effect on the funding apportionment. Though the inspection program provides data for the NBI, and though the NBI is a useful tool for funding purposes and for many other non-safety applications, the FHWA believes that

[1] The "Recording and Coding Guide for Structure Inventory and Appraisal of the Nation's Bridges," December 1995, Report No. FHWA–PD–96–001, is available electronically at the following URL: *http://www.fhwa.dot.gov//bridge/mtguide.doc* and may be inspected and copied as prescribed in 49 CFR part 7.

[2] The AASHTO Manual refers to the Manual for Condition Evaluation of Bridges, 1994, 2nd Edition and is available from the American Association of State Highway and Transportation Officials, 444 North Capitol Street, NW., Suite 249, Washington, DC 20001.

the inspection standards should focus on bridge safety separately without complicated ties to the considerations of the HBRRP.

The proposed definition of "Program Manager" in § 650.305, lists three overall responsibilities (*i.e.*, inspecting, reporting or inventory), which could be supervised by one or more individuals. By using the word "or" connecting those three responsibilities in the definition, the FHWA intends to indicate that each of the individuals who supervise one or more of those overall responsibilities must meet the minimum qualifications of the Program Manager. Therefore, in any organization, there may be several individuals meeting those requirements.

Proposed Section 650.307 Bridge Inspection Organization

There were no comments on this topic.

The FHWA proposes to replace the section "Qualifications of Personnel" with "Bridge Inspection Organization." The FHWA stewardship of the National Bridge Inspection Standards (NBIS) program over the years has shown that some States have not exercised sufficient control over delegated local agencies to assure compliance with the NBIS. The proposal, in general, is intended to clarify and describe bridge inspection program responsibilities, organizational requirements, and delegation requirements as well as expand on what is currently provided in § 650.303(a).

In § 650.307(a), the FHWA proposes to clarify the bridge inspection responsibilities of the States. The State transportation department is responsible for the inspection, reports, load ratings and other requirements of the NBIS for all non-Federal and non-tribal bridges within a State, regardless of public authority ownership. A public authority delegated with the authority by the State to inspect bridges could jeopardize State compliance with the NBIS if it fails to properly comply with the inspection standards. Therefore, although a State may delegate the authority to inspect, it is ultimately the State's responsibility to ensure compliance with the NBIS. As such, the FHWA proposes to clarify that delegation does not relieve the State transportation department of any of its responsibilities under the NBIS.

The FHWA also proposes to relieve States of responsibilities for bridges owned by Federal agencies. This would bring NBIS into line with current procedures followed by the FHWA and other Federal agencies.

Proposed § 650.307(b) lists the bridge inspection responsibilities of Federal agencies. The inspection, reports, load ratings and other requirements of the NBIS for all Federal bridges within the respective Federal agency's jurisdiction is the responsibility of that specific agency.

The inspection of jointly owned State border bridges is the responsibility of all owning bordering States and/or Federal agencies. The FHWA proposes that agreements for the delegation of border bridge inspections, reports, load ratings and other requirements of the NBIS to be in accordance with the requirements of § 650.307(d).

Proposed § 650.307(c) describes basic bridge inspection program organization requirements. State transportation departments and Federal agencies would be required to be organized with a unit or units that are responsible for setting statewide or Federal agency wide bridge inspection program policies and procedures, assuring quality inspections are performed throughout the State or agency, and maintaining the State bridge inventory. Most States, but not all, have such an organizational unit or units, usually located in the central office, that perform some or all of these activities. In order to improve inspection program consistency and uniformity, the FHWA proposes to require that all of these activities be performed at a statewide or Federal agency wide organizational level of the State transportation department or Federal agency. This section does not preclude the activities described from being assigned to a qualified consulting engineering firm.

Proposed § 650.307(d) describes specific requirements for the delegation of bridge inspections, reports, load ratings and other requirements of the NBIS to "public authorities" within the State. The States would continue to be able to delegate the authority to perform bridge inspection activities; however, the overall program responsibility could not be delegated. Some States currently delegate some or all bridge inspections, reports, load ratings and other requirements of the NBIS to local agencies by authority under State law or written agreements that clearly state in writing the roles of all agencies and entities involved. However, other States delegate bridge inspections without any such State laws or agreements. This section proposes to require States that choose to delegate bridge inspections, reports, load ratings and other requirements of the NBIS, to do so by State law or by written agreement. States and delegated agencies will be required to keep these agreements on file.

The FHWA proposes that the requirement to establish a bridge inspection organization responsible for Statewide or Federal agency wide bridge inspection policies and procedures, quality assurance, and bridge inventory activities of proposed § 650.307(c)(1) could not be delegated.

As with other State administered Federal-aid programs under title 23, U.S. Code, delegation of bridge inspections, reports, load ratings and other requirements of the NBIS must be accompanied by appropriate State transportation department oversight.

Proposed § 650.307(e) would clarify that each organizational unit with the responsibilities identified in paragraph (c) of this section must be led by a person meeting the qualifications of a program manager as defined in the proposed § 650.309. The current NBIS is vague about what organizational units this qualification applies to. This clarification pertains to the individual in charge of each organizational unit involved in bridge inspections, reports, load ratings, and other requirements of the NBIS, including organizational units of delegated agencies. For example, the program manager qualifications would apply to a State district that has the organizational responsibility for bridge inspections and reports, as well as to a town with only one bridge that has been delegated the authority for bridge inspections and reports.

Proposed Section 650.309 Qualifications of Personnel

The FHWA proposes to replace the section "Inspection Report" with "Qualifications of Personnel." In this section, the FHWA proposes the minimum qualifications required for a program manager, a team leader, an underwater bridge inspector, and the individual for determining load ratings for bridges. Additionally, this section proposes to require refresher training for program managers and team leaders.

Six commenters to the docket affirmed the need to clarify the phrases "individual in charge," "responsible capacity," and "qualified for registration." The Massachusetts DOT recommended that the term "qualified for registration" be removed from the regulation. The Minnesota DOT stated that the phrase "responsible capacity" did not need further clarification.

The FHWA concurs that the phrases "individual in charge," "responsible capacity," and "qualified for registration" need further clarification. Accordingly, the following changes are proposed in paragraph (a):

1. The individual in charge would be identified as a "program manager" and

a definition of this person provided in § 650.305. The proposed definition was developed to clarify that this individual provides overall supervision and is available to inspection team leaders to provide guidance. A State or Federal organization can have multiple program managers, depending on the organizational structure and delegation of duties.

2. The phrase "responsible capacity" would be clarified as "bridge inspection experience." A definition for "bridge inspection experience" is provided in § 650.305. Emphasis has been placed on active participation in bridge inspection activities. The intent is to ensure that the predominant amount of experience is acquired through direct involvement in bridge inspection activities. States and Federal organizations may choose to develop additional experience criteria that consider aspects, such as, number and types of structures inspected.

3. The criteria to be qualified for registration as a professional engineer (PE) in current § 650.307(a)(1) would be removed. The term "qualified for registration" has been interpreted to mean that an individual satisfies the education and experience requirements for professional registration, but has not obtained the license. Another interpretation has been that an individual has successfully passed the professional engineer's exam and is awaiting issuance of his/her official license. The FHWA proposes in § 650.309(a)(1) that registration as a PE is the necessary requirement for someone with the responsibilities of a "program manager," as an equivalent alternate to ten years of bridge inspection experience.

The majority of commenters were in favor of establishing bridge inspection training and experience requirements for the individual in charge of the bridge inspection and inventory program. Sixteen commenters noted that having a civil or structural related engineering degree, an Engineer-In-Training (EIT) certificate, or a Professional Engineer's (PE) license should count towards an experience requirement. The majority of those in favor of establishing a training requirement recommended that the person in charge be required to complete the same training as regular bridge inspectors. The majority of commenters were in favor of requiring a specific discipline for the PE of the person in charge. Civil/structural were the most commonly recommended disciplines. Many commenters thought that the laws governing professional engineering licensing within each State ensure that PE's only practice engineering in the fields in which they are qualified and experienced. A private citizen, Marc S. Grunnert, noted that years of experience might not be as important as exposure to different types of structures or the number of structures inspected over a given period of time. The ARTBA and the Florida DOT noted that States should be allowed a great deal of latitude in making personnel decisions and judgment calls with respect to qualifications.

The FHWA recognizes the majority of commenters recommended that the NBIS specify the engineering license discipline for the program manager who is a PE, preferably in civil or structural engineering. However, the FHWA concurs with the minority of commenters who indicated that the laws governing licensing within each State or Federal organization ensure that PE's only practice engineering in the fields in which they are qualified and experienced. Furthermore, the FHWA believes that it is the State or Federal organization's responsibility to ensure that those individuals involved in the bridge inspection program meet the minimum qualifications defined in the NBIS. The proposed regulations would not specify the engineering discipline; however, individual States and Federal organizations can adopt requirements that are more specific than the minimum requirements established by the NBIS.

References to the "Bridge Inspector's Training Manual" would be removed in the proposed regulation. A definition of "comprehensive bridge inspection training" which mentions the "Bridge Inspector's Reference Manual (BIRM)" [3] would be added in the proposed § 650.305.

Commenters were almost evenly divided on the need to require certification training in proportion to the complexity of the structure being inspected. Seven of the commenters who were opposed to adding this requirement, supported the idea that both level of training and experience should be considered, particularly for the inspection of complex structures. Several commenters stated that this should be a responsibility of the bridge inspection program manager and does not need to be codified in regulation. The New Jersey, New York, North Carolina and Florida DOT's along with a private citizen, Omaha Greene, noted that it would be very difficult to administer a program where the training and experience requirements varied with the complexity of structures.

The FHWA agrees that program managers must have the same basic level of training as all other bridge inspectors. A requirement is proposed in § 650.309(a)(2) for the program manager to have successfully completed a comprehensive bridge inspection training course. The FHWA proposes to define comprehensive bridge inspection training in § 650.305. This requirement would apply regardless of whether the program manager is a PE or has ten years of bridge inspection experience. The FHWA proposes to allow 12 months for new or current program managers who have not participated in the training to complete the required comprehensive training. In proposed § 650.309(a)(2), States and Federal organizations would be permitted to develop their own comprehensive inspection training programs subject to approval by the FHWA. The FHWA will use the proposed comprehensive bridge inspection training definition and the BIRM as criteria to apply when reviewing these programs.

The "individual in charge" of a bridge inspection team in current § 650.307(b) would be identified as a "team leader" in § 650.309(b) and a definition of this person provided in § 650.305. The California DOT, and two private citizens, Omaha Greene and Rick Jager, recommended that an additional, alternate team leader qualification be added for those who possess an EIT certificate, have two years bridge inspection experience, and have completed an 80-hour training course based on the bridge inspector's training manual (BITM). The FHWA agrees with the comments regarding the consideration of engineering degrees and PE licensing status in evaluating an individual's experience level. Accordingly, the FHWA proposes the addition of an alternate qualification in § 650.309(b) that a "team leader" have a bachelors degree in engineering and have successfully completed the National Council of Examiners for Engineering and Surveying (NCEES) Fundamentals of Engineering examination, and have two years of bridge inspection experience. Additionally, team leaders would also have to complete a comprehensive bridge inspection training course.

There are approximately 84,500 bridges or 14 percent of the NBI that are posted in virtually every State, the District of Columbia and Puerto Rico. Bridge load rating calculations provide the basis for determining the safe load capacity of a bridge and critical load posting and permitting decisions are

[3] The Bridge Inspector's Reference Manual (BIRM), 2003, FHWA–NHI–03–001, may be purchased from the U.S. Government Printing Office bookstore, Room 118, Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

also based on load rating calculations. Therefore, the FHWA would like to ensure that qualified engineers determine these load ratings. The AASHTO "Manual for the Condition Evaluation of Bridges," states that the individual charged with overall responsibility for determining load ratings of bridges should be a PE. Although we did not receive any comments regarding the need to establish qualifications for this individual, the FHWA believes it is important to outline the qualifications. Therefore, consistent with the AASHTO Manual, the FHWA proposes to require that the individual responsible for determining load ratings of bridges shall be a registered PE in § 650.309(c). The FHWA also proposes to define the term "load rating" in § 650.305.

The Bureau of Indian Affairs, the Michigan and Pennsylvania DOT's, and the Advocates recommended that a requirement for periodic bridge inspection refresher training be established and incorporated in the regulation. The recommended frequency of this training varied from one to eight years.

The FHWA concurs with the comments regarding the need for periodic refresher training. A requirement for refresher training every five years for all program managers and team leaders is proposed in § 650.309(d). The refresher training will assist in maintaining the skills and knowledge level needed to perform accurate and thorough bridge inspections in a consistent manner as technology, materials, bridge designs, and available tools change. The National Highway Institute (NHI) currently offers a FHWA approved bridge inspection refresher training course.[4] Other refresher training could be developed by a State or Federal organization, subject to the FHWA approval.

The Michigan DOT stated that specific requirements relative to an inspector's physical characteristics, such as vision and mobility, should not be addressed in the regulation.

The FHWA agrees with the comment that vision, mobility, and other physical characteristic requirements do not need to be addressed within the regulations. As stated above, State and Federal organizations are responsible for evaluating the qualifications of those involved in the bridge inspection program. The need for good vision and physical mobility are important in the performance of many bridge inspection activities, particularly since the most frequent method of nondestructive evaluation is visual and access to elements of most bridges requires climbing and other physical performance. States and Federal organizations are strongly encouraged to consider these characteristics when evaluating qualifications of bridge inspection personnel.

The Massachusetts, Connecticut, and South Dakota DOT's, the Advocates, and Collins Engineers, Inc., stated that minimum training requirements should be established for all bridge inspection team members.

Based on comments from the Massachusetts, Connecticut, and South Dakota DOT's, the Advocates, and Collins Engineers, Inc., the FHWA considered the establishment of minimum qualifications for bridge inspection team members who are not team leaders. Given that a qualified team leader must be on site during the inspection and that many organizations use seasonal helpers, we decided that this is a personnel issue that should be addressed at the State or Federal agency organization level.

The majority of commenters were not in favor of establishing a requirement that those performing underwater bridge inspections be licensed professional engineers (PE). Those who were opposed to this requirement felt that the supply of licensed PE divers would not be sufficient to meet the demand, resulting in significantly higher costs of underwater inspections without a corresponding benefit. Proponents for requiring that underwater bridge inspectors be licensed PEs reasoned that there is a sufficient cadre of licensed PE divers and that costs for such would be competitive with non PE divers and would provide for a much better product. Also, many commenters indicated support for requiring that a PE be present during the underwater inspection. Commenters also stated that the regulation should establish the same qualifications for both above and below water inspectors, noting that diving is merely a means of transportation.

The FHWA concurs with the commenters who were not in favor of requiring that those performing underwater bridge inspections be licensed PEs. Currently, the NBIS does not have a requirement for the qualifications of underwater bridge inspectors. Because the desired qualifications of such personnel vary with the complexity of the bridge, the FHWA proposes § 650.309(e) to require at a minimum that all underwater inspection divers who are not fully qualified as program managers or team leaders must complete a comprehensive bridge inspection training course. This requirement would help to ensure that a properly trained inspector, who does not necessarily have to meet team leader qualifications, performs the inspection in those instances when direct observation by a team leader is not possible. At a minimum, a qualified team leader must be on-site during the underwater inspection. The importance of having a qualified team leader on site during the underwater inspection cannot be overemphasized, and is proposed as a requirement under § 650.313(b).

The Association of Diving Contractors International, Inc. noted that in order to be compliant with the Occupational Safety and Health Administration's (OSHA) regulations contained in 29 CFR part 1910, subpart 7, dive team members must meet qualifications that require appropriate commercial diver training.

The FHWA position on this issue would be that in addition to having appropriate bridge inspection training, those personnel who participate as bridge inspection dive team members must meet minimum diver qualifications that entail training as a professional diver. Those qualifications should meet or exceed OSHA and/or industry safety standards and should be established by the "Bridge inspection organization" and need not be mandated in the NBIS. By giving the "Bridge inspection organization" the latitude to establish diver qualifications including training for its organization, the "Bridge inspection organization" may choose to establish diver qualification and training that exceed OSHA and/or industry standards. States and Federal organizations are strongly encouraged to consider stringent bridge inspection dive team member qualifications for the conduct of safe diving operations in support of bridge underwater inspections.

Proposed Section 650.311 Inspection Frequency

In this section, the FHWA examines inspection frequency and how an NBI of roughly 590,000 bridges should be inspected to assure the safety of the motoring public.

The majority of the commenters thought that the maximum inspection interval of 4 years for certain structures is reasonable and should not be extended; the remaining commenters said that 6 to 10 years may be appropriate for some low-risk structures. The majority of commenters stated that the maximum inspection cycle for most structures should remain at 2 years.

[4] Information regarding NHI training can be obtained at the following URL: *http://www.nhi.fhwa.dot.gov.*

Additional responses included 13 commenters who stated that the FHWA approval process should be revisited to include additional structure types, and/or be made simpler or automatic for certain groups of low-risk structures. Several commenters stated that the 2 year frequency should be clarified. The ARTBA, Florida DOT, National Association of County Engineers (NACE), and Alcona County (Michigan), stated that there should be a grace period (30 to 90 days) for each cycle to account for such things as staffing and weather problems. The Wisconsin DOT suggested a calendar year approach so that inspections may be moved to any time of a calendar year to monitor structures during various weather conditions.

The FHWA proposes to replace the section "Inventory" with "Inspection Frequency." Based on the NBI, there are approximately 561,000 bridges that are inspected on a 2-year cycle (*i.e.*, biennial routine inspections). The FHWA concurs with the majority of commenters, and proposes in paragraph (a) of this section, that the maximum inspection cycle should remain at 4 years (48 months) for certain structures, and that the maximum inspection cycle for most structures should remain at 2 years (24 months). The FHWA also proposes to include a definition for "routine inspection" at § 650.305.

There are roughly 27,000 bridges or 4.7 percent of the NBI that are inspected on a 4-year inspection cycle. According to the NBI, there are 32 States using the 4-year inspection cycle. The FHWA recognizes the concerns of those commenters that suggest there should be a modified approval process and/or automatic approval of some low risk structures for the 4-year inspection cycle. However, the FHWA thinks it remains necessary at this time to retain a central approval process for the 4-year cycle to minimize risk to the traveling public. Subject to bridge safety, approvals will continue to be made on a case-by-case basis, and consideration will be given to unique and specific conditions identified in order to provide maximum flexibility to each requestor.

Regarding the commenters who suggested there should be an inspection "grace period," the FHWA proposes to retain and more clearly define the current 30-day grace period. It is thought that if a longer period were granted, it could be applied for several subsequent cycles, which could have an adverse impact on safety.

The majority of commenters stated that it would be reasonable to increase the underwater inspection interval beyond 4 years for certain structures based on factors such as foundation type and materials, water quality and velocity, substructure material and condition. The majority of commenters also thought the current 5-year interval was appropriate for most structures. The New Jersey DOT, Department of the U.S. Navy and William Hovell, a private citizen, stated that the maximum interval for most structures should be reduced to 4 years to increase safety and to gain efficiency by conducting these inspections on a multiple of the "routine inspection" cycle. Several other commenters suggested that any increase in maximum frequency proposed by the FHWA should be an even-year cycle to coincide with routine inspection cycles.

With the April 1987 collapse of New York's Schoharie Creek bridge, national attention turned to underwater inspection. According to the NBI, there are roughly 47,000 bridges or 8 percent of the inventory that require underwater inspection in some 49 States, the District of Columbia and Puerto Rico. The FHWA concurs with the majority of commenters, and proposes at § 650.311(b), that the current 5-year (60 month) underwater inspection interval be maintained. Some commenters wanted a separate interval for underwater inspections from above water inspections that are conducted biennially. The FHWA continues to believe that the 5-year underwater inspection interval is a valid interval for the underwater inspection of a bridge pier and abutment substructures based on engineering judgment and review of NBI data.

The FHWA proposes to add the option for States to apply for a 72 month underwater inspection interval for certain bridges. In proposing the 72 month interval, the FHWA believes that applying engineering judgment and approval on a case-by-case basis to bridges with little or no change from inspection cycle to cycle in benign environments provides an adequate margin of safety to the motoring public. Industry standards, such as those provided by the American Society of Civil Engineers (ASCE) in their "Underwater Investigations Standard Practice Manual, 2001," [5] promote a degree of latitude in the maximum interval between routine underwater inspections up to 6 years. The guidance they provide is tied to material, environment, scour and condition rating from previous inspections. While we are proposing an additional year beyond the current 60 month underwater inspection interval, we are taking into consideration these same factors of material composition (timber, steel, concrete, protected or unprotected steel or timber, composite), environment (benign or aggressive), scour (susceptibility to scour) and previous condition rating (excellent to failed). Based on our assessment, again on a case-by-case basis, the FHWA may approve requests not to exceed 72 months. This authorization can be rescinded at any time owing to structural degradation, adverse change in environment and presence of localized bridge scour. An example of a situation that may warrant an extended interval may include a highway bridge with concrete piles with no degradation over a lined irrigation canal carrying fresh water. An example of a situation that would not warrant approval would be a highway bridge over a high flow saltwater or brackish water environment, with structural piles showing degradation and subject to localized scour.

Four-year frequencies may be used, if desired, but retention of the 60 month frequencies allows more flexibility to program managers. The FHWA also proposes to include a definition for "underwater inspection" at § 650.305.

Omaha Greene, a private citizen, and the Colorado and Oregon DOTs, stated that a firm inspection interval should be established for fracture critical member (FCM) inspections, and the first two of these three commenters thought the maximum interval should be 2 years.

Based on the NBI, there are approximately 14,000 bridges or 2.4 percent of the bridge inventory that require fracture critical member inspections in some 49 States, the District of Columbia and Puerto Rico. The FHWA agrees with these commenters, and proposes at § 650.311(c) that FCM inspections be conducted at intervals not to exceed 24 months, but that utilization of in-depth inspection and testing methods may exceed 24 months as outlined in an FCM Plan developed by the program manager. The FHWA also proposes to include a definition for "fracture critical inspection" and "fracture critical member" at § 650.305.

Many commenters indicated that the level to which individual bridges should be inspected depends on a variety of factors that should be evaluated by the individual in charge of the inspection program.

The FHWA proposes at § 650.311(d) to provide the program manager with the discretion to determine the level and frequency of these inspections to

[5] This document may be obtained from ASCE, 1801 Alexander Bell Drive, Reston, Virginia 20191–4400.

address damage, in-depth, and special inspections. The FHWA also proposes to define "damage," "in-depth," and "special" inspections in § 650.305.

Proposed Section 650.313 Inspection Procedures

The Oklahoma DOT, and Collins Engineers, Inc., noted that the level to which individual bridges should be inspected needed clarification. They suggested the type/depth of the inspection be determined by the individual in charge of the inspection program based on factors unique to the bridge.

The FHWA proposes to replace section "Inspection Procedures" with a revised section also entitled "Inspection Procedures." The FHWA agrees that the depth to which individual bridges should be inspected depends on such factors as age of the bridge, traffic characteristics, state of maintenance, and known deficiencies. The FHWA proposes in paragraph (a) of this section, that each bridge shall be inspected in accordance with the procedures in the AASHTO Manual. The FHWA determined that there is sufficient guidance in this manual to allow the program manager to establish the depth and type of inspections appropriate for each bridge without further direction in the NBIS.

The FHWA proposes in paragraph (b) of this section, that at least one Team Leader be present at the bridge during inspections. The Team Leader being present is an existing requirement that is being emphasized. The FHWA also proposes to include a definition for "initial inspection" in § 650.305.

The FHWA proposes to replace the current § 650.303(c) with a new paragraph (c) and discuss the requirements for load rating and bridge posting. The FHWA also proposes to include a definition for "legal load," "routine permit load," and "operating rating" at § 650.305.

The FHWA proposes to replace the current § 650.303(d) with a new paragraph (d) that would place greater emphasis on actions taken pursuant to findings during the inspection as well as requiring the State or Federal agency to maintain reports on the results of all highway bridge inspections. We are proposing at § 650.313(d) that records be maintained in the bridge file for the life of the bridge.

The Pennsylvania, Oregon and Kansas DOT's, suggested the NBIS should require element level inspections to be performed and reported. The NBI ratings are thought by some to be too general. Those State transportation department's thought the element level data would be more meaningful to bridge owners for programming work. Those State transportation departments requested the annual submittal of NBI data should be made using element level bridge inspection data.

The FHWA recognizes that element level data is more meaningful to bridge owners for programming work, and that the element level data can be converted for Federal use. The FHWA agrees it would be desirable to work toward that goal for the future. However, a significant amount of additional testing of the conversion program and development of apportionment calculations is needed.

The Virginia DOT suggested the NBIS be expanded to promote both safety and maintenance evaluations. It felt States were already doing this as part of the inspection process, and that it should be a regulatory requirement.

The FHWA agrees that safety and maintenance evaluations should be conducted along with the NBIS inspections. The need for safety and maintenance inspections is already emphasized sufficiently in the AASHTO and the Bridge Inspector's Reference Manuals, and need not be mandated in the NBIS.

The Massachusetts DOT requested the NBIS contain a better definition of what is meant by "unique or special feature." The NBIS requires that master lists of such structures be kept; however, this is difficult to do if it is not clear what falls under this definition. It was also suggested that procedures and manuals be developed for the inspection of segmental, cable-stayed and suspension bridges as well as procedures for underwater inspection of bridges and the creation of a diver's manual, similar to the "Bridge Inspector's Training Manual (BITM)."[6] The Advocates believe the requirements for listing of fracture critical and unique bridge features are appropriate. However, the Advocates believe underwater elements should be considered part of the bridge and also receive similar inspection priority.

The FHWA agrees that the NBIS should define what is required in these master lists. Accordingly, the FHWA proposes at § 650.313(e): to require the program manager to maintain only specific lists of fracture critical bridges, bridges requiring underwater inspection, scour critical bridges, and bridges subject to seismic damage.

In paragraph (f), the FHWA proposes to replace § 650.303(l). This proposed section would require the State or Federal agency to prepare an inspection plan for inspecting the fracture critical bridges.

In paragraph (g), the FHWA proposes to replace § 650.303(l)(2). This proposed section would require the State or Federal agency to prepare an inspection plan for inspecting bridges requiring underwater inspections. The plan would take into account the importance of underwater elements and contain procedures based on the risk of failure, as evaluated in the scour analysis required in paragraph (h).

In paragraph (h), the FHWA proposes to include requirements for action plans and inspection of scour critical bridges. There are roughly 20,600 bridges or 3.5 percent of the NBI that are identified as being scour critical in virtually all States and Puerto Rico. This proposed section would require the State or Federal agency to prepare a plan to monitor and/or correct deficiencies for scour critical bridges. The FHWA also proposes to include a definition for "scour" and "scour critical" at § 650.305.

In paragraph (i), the FHWA proposes to discuss inspection of bridges vulnerable to seismic damage and would require the State or Federal agency to establish a seismic damage vulnerability program as well as a plan to correct deficiencies in the bridge.

The FHWA agrees that the NBIS should contain a better definition of what is meant by "unique or special feature." Accordingly, the following changes are proposed at § 650.313(j):

1. A new category of "complex" bridges would be established with a more specific definition of applicable bridge types.

2. An inspection plan would be required for each of the bridges falling in the "complex" category. Complex bridges would then be inspected in accordance with the plan.

3. The FHWA also proposes to include a definition for "complex bridge" at § 650.305.

The Pennsylvania and Connecticut DOT's suggested a formal quality assurance (QA) program be required to verify inspection findings. The Oregon and South Dakota DOT's suggested that the QA provisions were enforced differently in each State and asked that the QA requirements be clarified. The specific reference to the Federal code requiring performance of the quality assurance/quality control (QA/QC) of the bridge inspection program should be clarified.

The FHWA agrees that the regulation should specifically require QA/QC of the bridge inspection program.

[6] The BITM/90 has been replaced with the Bridge Inspector's Reference Manual (BIRM), 2003, FHWA–NHI–03–001.

Accordingly, the following changes are proposed at § 650.313(k):

1. A new provision would be added to the NBIS that requires States to implement a systematic quality control and quality assurance program;

2. No specific requirements would be given, but general guidelines would be provided to require the program to include periodic field review of inspection teams and their work to ensure uniformity and completeness and to review inspection reports and load rating computations; and

3. The program would be required to be submitted to the FHWA for approval. This would allow the FHWA to work closely with the States to develop and implement these programs.

The Oregon DOT suggested that the FHWA amend the NBIS to strengthen the need for critical follow-up and define what structures are required to be included. Additionally, the commenter requested that the FHWA clearly indicate a requirement for each State to initiate a process to follow-up on critical findings.

The FHWA evaluated the need to strengthen the follow-up on critical findings and specify what structures are required to be included. The following changes are proposed at § 650.313(l):

1. A new provision would be added in the NBIS to require States to establish a critical follow-up program;

2. The FHWA proposes to require that States notify the FHWA of actions taken to assure public safety in response to the critical findings reported by the inspectors; and

3. The FHWA believes it is not appropriate to establish a nationwide definition of the criteria for which bridges should be included in the critical follow-up program. The FHWA proposes to allow the States the discretion, in cooperation with the FHWA, to define the criteria.

Proposed Section 650.315 Inventory

Almost all comments received indicated that the NBIS reporting requirements were reasonable and need not be changed. The Florida DOT indicated that the States should be relieved of the requirement to maintain data on Federal agency bridges in its State. The Delaware DOT commented that the FHWA should not be concerned with the 90 or 180 days requirement that the State, Federal agency or other bridge owner has to enter new or changed data into their inventory.

The FHWA proposes a "§ 650.315 Inventory" to replace the current "§ 650.311 Inventory." In paragraph (a), the FHWA proposes to add language requiring Federal agencies to be responsible for the inspection, inventory and reporting of data regarding bridges under their authority/control. The FHWA feels that this will ensure the best representation of the bridges owned by the Federal agencies. This practice has been in place since 1995 and the language will reflect the current practice. Since the Federal agencies have been inventorying and reporting their own bridges, the number of federally owned bridges has grown from just over 4,000 to over 7,000 bridges. The FHWA also proposes in paragraph (a) to add language that will accommodate future changes/updates to the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges," December 1995 (the Guide). The FHWA feels that this will clarify that the most current version of the Guide is to be used in instances where updates will be made to the Guide.

In paragraphs (b), (c) and (d), the FHWA proposes to add language that will change the time that the Federal agency has to enter new or revised data into the inventory from 180 to 90 days from change in bridge status, bridge load restriction, bridge closure status or bridge inspection. The FHWA feels that this aligns better with the State requirements and is in the best interest of public safety and national security. In the event of a bridge catastrophe or national or statewide emergency, the State would have on hand the most current bridge information available.

Proposed Section 650.317 Reference Manuals

There were no comments on this topic.

The FHWA proposes to create a new section entitled "Reference Manuals" to incorporate a manual, the AASHTO Manual for Condition Evaluation of Bridges (AASHTO Manual) and its 2001 interim revision. The AASHTO Manual is referred to in the current NBIS but not incorporated by reference. This manual is discussed in the proposed NBIS, and provides good guidance for the inspection and evaluation of highway bridges, and for that reason needs to be incorporated by reference.

While we are proposing to incorporate by reference the AASHTO Manual, it is important to note that the regulation on the NBIS, takes precedence over any guidance contained in the AASHTO manual. Where there may be implied or conflicting language between the two documents, the nationwide direction provided by the NBIS will always govern.

Related Rulemakings and Notices

The FHWA is also in the process of reviewing 23 CFR part 650, subpart D, Highway Bridge Replacement and Rehabilitation Program (HBRRP). The FHWA published an advance notice of proposed rulemaking for the HBRRP on September 26, 2001, at 66 FR 49152. Additionally, the FHWA published a final rule for 23 CFR part 650, subpart G, Discretionary Bridge Candidate Rating Factor on October 15, 2002, at 67 FR 63539.

For ease of reference the following distribution table is provided:

Old section	New section
650.301, first sentence	650.303 Revised, purpose added.
650.301, second sentence	650.305 Revised, definition of terms added.
650.303(a), portion of first sentence	650.307(a) and (c)(2) Revised, bridge inspection organization added.
None	650.305 added.
Definitions:	Definitions:
650.303(a) American Association of State Highway Transportation Officials (AASHTO) Manual definition.	Revised.
Bridge	Bridge, revised.
None	Bridge inspection experience, Added.
None	Bridge inspector's reference manual, Added.
None	Complex bridge, Added.
None	Comprehensive bridge inspection training, Added.
None	Damage inspection, Added.
None	Fracture critical inspection, Added.
None	Fracture critical member, Added.
None	Hands-on, Added.

Old section	New section
None	In-depth inspection, Added.
None	Initial inspection, Added.
None	Legal load, Added.
None	Load rating, Added.
None	National Institute for Certification in Engineering Technologies (NICET), Added.
None	Operating rating, Added.
None	Program manager, Added.
None	Routine inspection, Added.
None	Routine permit load, Added.
None	Scour, Added.
None	Scour critical, Added.
None	Special inspection, Added.
None	Team leader, Added.
None	Underwater inspection, Added.
650.303(b)	605.309 Revised.
650.303(c)	650.313(c) Revised.
650.303(d)	650.313(d) Revised.
650.303(e) introduction	650.313(e) Revised.
650.303(e)(1) first sentence	650.313(f) Revised.
650.303(e)(1) second sentence	650.305 Revised.
650.303(e)(2) first sentence	650.305 Revised.
650.303(e)(2) second sentence	650.311(b)(1) Revised.
None	650.313(k) Added.
650.303(e)(4)	650.313(d) and (l) Revised.
650.305(a)	650.311(a)(1) Revised.
650.305(b)	650.311(a)(2) Revised.
650.305(c)	650.311(a)(3) Revised.
650.307(a) introduction	650.307(d) Added; 650.309(a) Revised.
650.307(a)(1)	650.309(a)(1) Revised.
650.307(a)(2) and (a)(3)	650.309(a)(2) Revised.
650.307(a)(3) Bridge Inspector's Training Manual	650.305 Bridge Inspector's Reference Manual.
650.307(b)	650.309(b) Revised.
650.307(b)(1)	650.309(b)(1) Revised.
650.307(b)(2)	650.309(b)(3) Revised.
650.307(b)(3)	650.309(b)(4) Revised.
650.309	650.313(d) Added second sentence.
650.311(a)	650.315(a) Revised.
650.311(b)	650.315(b), (c), (d) Revised.
None	650.307(c) Added.
None	650.307(c)(1) Added.
None	650.307(e) Added.
None	650.309(c) Added.
None	650.309(d) Added.
None	650.309(e) Added.
650.311(a)	650.315(a) Revised.
None	650.311(b)(2) Added.
None	650.311(b)(3) Added.
None	650.311(c) Added.
None	650.311(c)(1) Added.
None	650.311(c)(2) Added.
None	650.311(c)(3) Added.
None	650.311(d) Added.
None	650.313(a) Added.
None	650.313(b) Added.
None	650.313(g) Added.
None	650.313(h) Added.
None	650.313(i) Added.
None	650.313(j) Added.
None	650.313(k) Added.
None	650.313(l) Added.
None.	650.317 Added.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material. A final rule may be published at any time after close of the comment period.

Executive Order 12866 (Regulatory Planning and Review) and U.S. DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that this action would be a significant regulatory action within the meaning of Executive Order 12866 and would be significant within the meaning of the U. S. Department of Transportation regulatory policies and procedures. This action is considered significant because of the substantial public interest in the safety of highway bridges. It is anticipated that the economic impact of this rulemaking would be minimal since funding the inventory of bridges is provided under 23 U.S.C. 144. The Office of Management and Budget (OMB) designated this proposed regulation as a significant regulatory action and has reviewed it under E.O. 12866.

These proposed changes would not adversely affect, in a material way, any sector of the economy. In addition, these changes would not interfere with any action taken or planned by another agency and would not materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. Consequently, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 60 l-612) the FHWA has evaluated the effects of this proposed action on small entities. Since the proposed regulatory changes are primarily directed to the States, which are not considered small entities for the purposes of the Regulatory Flexibility Act, the FHWA is able to preliminarily certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The FHWA welcomes comments on this analysis.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose unfunded mandates as defined by the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, March 22, 1995, 109 Stat. 48). This proposed rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). Funding to inventory highway bridges, as well as inventory of Indian reservation and park road bridges, is currently provided under 23 U.S.C. 144, Highway bridge replacement and rehabilitation program (HBRRP). Bridge inspection is an eligible activity under the HBRRP and Federal funding is available to the States under the HBRRP.

Executive Order 12988 (Civil Justice Reform)

This proposed action meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this proposal under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposal will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and the FHWA has determined that this proposed action would not have sufficient federalism implications to warrant the preparation of a Federalism assessment. The FHWA has also determined that this proposed action would not preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions.

Executive Order 13175 (Tribal Consultation)

The FHWA has analyzed this proposal under Executive Order 13175, dated November 6, 2000. The FHWA believes that this proposal will not have substantial direct effects on one or more Indian tribes; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. Currently, the State reporting requirements related to the National Bridge Inspection Standards are covered by an existing FHWA information collection entitled Structure Inventory and Appraisal (SI&A) Sheet. The SI&A sheets are used by the States to provide to the FHWA the required information on annual bridge inspections. The current annual burden imposed on the States under this information collection is 540,000 hours. The OMB control number for this collection is 2125–0501. OMB clearance will expire on April 30, 2004.

The FHWA has determined that this proposed rulemaking would result in an additional 67,000 burden hours (12 percent increase) on the States. This is based on review of the national bridge inspection data coupled with the additional NBIS requirements this rulemaking action would impose on the States. These additional requirements include development of seismic damage vulnerability and quality control/quality assurance programs; procedures for follow-up on critical findings; State-agency agreements; and comprehensive bridge inspection training. The revised total annual burden on the States would be 607,000 hours.

The FHWA will submit to the OMB the required clearance request documents to cover the additional burden hours at the time this proposed rulemaking is published in the **Federal Register**. The FHWA is required to submit this proposed collection of information to OMB for review and approval, and accordingly seeks public comments. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information would be necessary for the performance of the functions of the FHWA, including whether the information would have practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection of information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The agency has analyzed this proposed action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and has determined that this proposed action would not have any effect on the quality of the environment.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a significant energy action under that order, because although it is a significant regulatory action under Executive Order 12866 it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 650

Bridges, Grant Programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: September 2, 2003.

Mary E. Peters,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend, title 23, Code of Federal Regulations, part 650, subpart C, as set forth below:

PART 650—BRIDGES, STRUCTURES, AND HYDRAULICS

1. The authority citation for part 650 continues to read as follows:

Authority: 23 U.S.C. 109 (a) and (h), 144, 151, 315, and 319; 23 CFR 1.32; 49 CFR 1.48(b), E.O. 11988 (3 CFR, 1977 Comp. p. 117); Department of Transportation Order 5650.2 dated April 23, 1979 (44 FR 24678); section 161 of Public Law 97–424, 96 Stat. 2097, 3135; section 4(b) of Public Law 97–134, 95 Stat. 1699; 33 U.S.C. 401, 491 *et seq.*, 511 *et seq.*; and section 1057 of Public Law 102–240, 105 Stat. 2002.

2. Revise subpart C to read as follows:

Subpart C—National Bridge Inspection Standards

Sec.

650.301 Purpose.
650.303 Applicability.
650.305 Definitions.
650.307 Bridge inspection organization.
650.309 Qualifications of personnel.
650.311 Inspection frequency.
650.313 Inspection procedures.
650.315 Inventory.
650.317 Reference Manuals.

Subpart C—National Bridge Inspection Standards

§ 650.301 Purpose.

This regulation sets the national standards for the proper safety inspection and evaluation of all highway bridges in accordance with 23 U.S.C. 151.

§ 650.303 Applicability.

The National Bridge Inspection Standards (NBIS) in this part apply to all structures defined as highway bridges located on all public roads.

§ 650.305 Definitions.

Terms used in this regulation are defined as follows:

American Association of State Highway Transportation Officials (AASHTO) Manual. "Manual for Condition Evaluation of Bridges," 1994, second edition, published by the American Association of State Highway and Transportation Officials. [A copy of the AASHTO Manual may be obtained upon payment in advance by writing to the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., Suite 249, Washington, DC 20001. The AASHTO Manual may also be ordered via the AASHTO bookstore located at *http://www.aashto.org/aashto/home.nsf/FrontPage.*]

Bridge. A structure including supports erected over a depression or an obstruction, such as water, highway, or railway, and having a track or passageway for carrying vehicular traffic or other moving loads, and having an opening measured along the center of the roadway of more than 20 feet between undercopings of abutments or spring lines of arches, or extreme ends of openings for multiple boxes; it may also include multiple pipes, where the clear distance between openings is less than half of the smaller contiguous opening.

Bridge inspection experience. Active participation in bridge inspections in accordance with the NBIS, in either a field inspection, supervisory, or management role. A combination of bridge design, maintenance, construction and bridge inspection experience, with the predominant amount being bridge inspection, is acceptable.

Bridge Inspector's Reference Manual (BIRM). A comprehensive FHWA manual on programs, procedures and techniques for inspecting and evaluating a variety of in-service highway bridges. This manual may be purchased from the U.S. Government Printing Office bookstore, Room 118, Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

Complex bridge. Movable, suspension, cable stayed, prestressed concrete segmental, long span arches and other bridges with unusual or complex designs.

Comprehensive bridge inspection training. A minimum of 80 hours of training that covers all aspects of bridge inspection and enables inspectors to relate conditions observed on a bridge to established criteria (*see* the Bridge Inspector's Reference Manual for the recommended material to be covered in a comprehensive training course).

Damage inspection. An unscheduled inspection to assess structural damage resulting from environmental factors or human actions.

Fracture critical inspection. A detailed, visual, close-up, hands-on inspection that may include other non-destructive evaluation of fracture critical members.

Fracture critical member. A steel member in tension, or with a tension element, whose failure would probably cause a portion of or the entire bridge to collapse.

Hands-on. Inspection of bridge components conducted with the inspector being within arms length of the component. Inspection is performed using visual techniques that are supplemented by nondestructive testing.

In-depth inspection. A close-up, hands-on inspection of one or more members above or below the water level to identify any deficiencies not readily detectable using routine inspection procedures.

Initial inspection. The first inspection of a bridge as it becomes a part of the bridge file to provide all Structural Inventory and Appraisal (SI&A) data and other relevant data and to determine baseline structural conditions.

Legal load. The maximum legal load for each vehicle configuration permitted by law for the State in which the bridge is located.

Load rating. The determination of the live load carrying capacity of a bridge using bridge plans and supplemented by information gathered from a field inspection.

National Institute for Certification in Engineering Technologies (NICET).

NICET provides nationally applicable voluntary certification programs covering several broad engineering technology fields and a number of specialized subfields. For information on the NICET program certification contact: National Institute for Certification in Engineering Technologies, 1420 King Street, Alexandria, VA 22314–2794.

Operating rating. The maximum permissible live load to which the structure may be subjected for the load configuration used in the rating.

Program Manager. The individual in charge of the unit, that has been assigned or delegated the duties and responsibilities for bridge inspection, reporting, or inventory. The program manager provides overall leadership and is available to inspection team leaders to provide guidance.

Routine inspection. Regularly scheduled inspection consisting of observations and/or measurements needed to determine the physical and functional condition of the bridge, to identify any changes from initial or previously recorded conditions, and to ensure that the structure continues to satisfy present service requirements. Areas of the bridge to be closely monitored based on previous inspection findings or found to be of concern during the current regular inspection must be inspected using in-depth inspection procedures, either during the current regular inspection or as a follow-up in-depth inspection.

Routine permit load. A live load, higher than the legal load, authorized to move along side other heavy vehicles on a regular basis.

Scour. Erosion of streambed or bank material due to flowing water; often considered as being localized around piers and abutments of bridges.

Scour critical. A bridge, whose foundation has been determined to be unstable for the assessed, observed or calculated scour condition.

Special inspection. An inspection scheduled at the discretion of the bridge owner, used to monitor a particular known or suspected deficiency.

Team leader. Individual in charge of an inspection team responsible for planning, preparing, and performing field inspection of the bridge.

Underwater inspection. Inspection of the underwater portion of a bridge substructure and the surrounding channel, which cannot be inspected visually at low water by wading or probing, generally requiring diving or other appropriate techniques.

§ 650.307 Bridge inspection organization.

(a) Each State transportation department must inspect, or cause to be inspected, all highway bridges located on public roads that are fully or partially located within the State's boundaries, except for bridges that are owned by Federal agencies.

(b) Federal agencies must inspect, or cause to be inspected, all highway bridges located on public roads that are fully or partially located within the respective agency responsibility or jurisdiction.

(c) Each State transportation department or Federal agency must include a bridge inspection organization that is responsible for the following:

(1) Statewide or Federal agency wide bridge inspection policies and procedures, quality assurance, and bridge inventory.

(2) Bridge inspections, reports, load ratings and other requirements of these standards.

(d) Each State transportation department may delegate bridge inspections, reports, load ratings and other requirements of these standards to public authorities. Delegation does not relieve the State transportation department of any of its responsibilities under this subpart. Delegation must be made according to State law or a fully executed agreement, which clearly states in writing the roles and responsibilities of all agencies and entities involved.

(e) Each organizational unit with the responsibilities identified in paragraphs (c)(1) or (2) of this section, including each organizational unit of an Agency with delegated authority to perform bridge inspections, reports, load ratings and other requirements of these standards, must be led by a program manager with qualifications defined in § 650.309.

§ 650.309 Qualifications of personnel.

(a) A program manager must possess, at a minimum, the following qualifications:

(1) Be a registered professional engineer, or have ten years bridge inspection experience; and,

(2) Successfully completed a Federal Highway Administration (FHWA) approved comprehensive bridge inspection training course prior to or within 12 months of becoming a Program Manager. Previous FHWA approved comprehensive bridge inspection training is also acceptable.

(b) A team leader must possess, at a minimum, the following qualifications:

(1) Have the qualifications specified in paragraph (a) of this section, or

(2) Have all of the following:

(i) A bachelor's degree in professional engineering from a college or university accredited by the Engineering Accreditation Committee of the Accreditation Board for Engineering and Technology (EAC/ABET);

(ii) Successfully passed the National Council of Examiners for Engineering and Surveying (NCEES) Fundamentals of Engineering examination;

(iii) Two years of bridge inspection experience; and

(iv) Successfully completed a FHWA approved comprehensive bridge inspection training course, or

(3) Have five years bridge inspection experience and have successfully completed a FHWA approved comprehensive bridge inspection training course; or

(4) Be certified as a Level III or IV Bridge Safety Inspector under the National Society of Professional Engineer's program for National Certification in Engineering Technologies (NICET) and have successfully completed a FHWA approved comprehensive bridge inspection training course.

(c) The individual charged with the overall responsibility for determining load ratings of bridges must be a registered professional engineer.

(d) Program managers and team leaders must complete FHWA approved bridge inspection refresher training every five years.

(e) An underwater bridge inspection diver must complete an FHWA approved comprehensive bridge inspection training course or other FHWA approved underwater bridge inspection training course.

§ 650.311 Inspection frequency.

(a) Routine inspections.

(1) Inspect each bridge at regular intervals not to exceed twenty-four months.

(2) Certain bridges require inspection at less than twenty-four month intervals. The program manager determines the level and frequency to which these bridges are inspected considering such factors as age, traffic characteristics, and known deficiencies.

(3) State or Federal agencies may inspect certain types of bridges at greater than twenty-four month intervals, not to exceed forty-eight months, with the FHWA's approval. This may be appropriate when past inspection findings and analysis justifies the increased inspection interval.

(b) Underwater inspections.

(1) Inspect underwater structural members at regular intervals not to exceed sixty months.

(2) Certain underwater structural members require inspection at less than sixty month intervals. The program manager determines the level and frequency to which these members are inspected considering such factors as construction material, environment, age, scour characteristics, condition rating from past inspections and known deficiencies.

(3) State or Federal agencies may inspect some underwater structural members at greater than sixty-month intervals, not to exceed seventy-two months, with the FHWA's approval. This may be appropriate when past inspection findings and analysis justifies the increased inspection interval.

(c) Fracture critical member (FCM) inspections.

(1) Inspect FCMs at intervals not to exceed twenty-four months.

(2) Certain FCMs require inspection at less than twenty-four month intervals. The program manager determines the level and frequency to which these members are inspected considering such factors as age, traffic characteristics, and known deficiencies.

(3) Nondestructive testing or other specialized techniques beyond visual inspection must follow the frequency specified in the FCM inspection plan discussed in § 650.313(f) and may exceed the twenty-four month interval.

(d) Damage, in-depth, and special inspections. The program manager determines the level and frequency of these inspections.

§ 650.313 Inspection procedures.

(a) Inspect each bridge in accordance with the inspection procedures in the AASHTO Manual.

(b) Provide at least one team leader, who meets the minimum qualifications stated in § 650.309, at the bridge at all times during each initial, routine, in-depth, fracture critical, special and underwater inspection.

(c) Rate each highway bridge as to its safe load-carrying capacity in accordance with the AASHTO Manual. Post the bridge in conformity with the AASHTO Manual or in accordance with State law, if the maximum unrestricted legal load or routine permit load under State law exceeds the load allowed under the operating rating or equivalent rating factor.

(d) Prepare bridge files as described in the AASHTO manual. Maintain reports on the results of highway bridge inspections together with notations of any action taken pursuant to the findings of such inspections. Maintain the records in the bridge file for the life of the bridge. Record the findings and results of bridge inspections on standard forms found in the Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges.[1]

(e) The program manager must identify and maintain a list of bridges with FCMs, bridges requiring underwater inspection, bridges that are scour critical, and bridges that are vulnerable to seismic damage.

(f) Fracture critical bridges. For each fracture critical bridge, prepare an FCM inspection plan containing the location and description of FCMs, the inspection frequency, and the inspection procedures. Inspect FCMs according to the FCM inspection plan.

(g) Bridges requiring underwater inspections. Develop a plan containing a description of the underwater elements, the inspection frequency and the procedures. Inspect those bridges requiring underwater inspections according to the plan.

(h) Scour critical bridges. For each scour critical bridge, prepare an action plan to monitor and/or correct deficiencies. Scour critical bridges should be inspected after a major flood event.

(i) Bridges vulnerable to seismic damage. Establish a seismic damage vulnerability program to evaluate the adequacy of existing bridges to resist damage from earthquakes and an action plan to correct deficiencies.

(j) Complex bridges. For each complex bridge prepare an inspection plan that includes specialized inspection needs and additional inspector training and/or experience required. Inspect complex bridges according to the plan.

(k) Quality control/quality assurance program. Provide systematic quality control (QC) and quality assurance (QA) to maintain the accuracy and consistency of the inspection program. Include periodic field review of inspection teams, and the review of reports and computations by a person other than the originating individual. Submit documentation of the QC/QA Program to the FHWA for approval.

(l) Follow-up on critical findings. Establish a Statewide or Federal agency-wide procedure to assure that critical findings are addressed in a timely manner. Notify the FHWA of the actions taken to assure public safety.

[1] The "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges," December 1995, FHWA Report No. FHWA–PD–96–001, is available at *URL:http://www.fhwa.dot.gov/bridge/mtguide.pdf* and may be inspected and copied as prescribed at 49 CFR part 7.

§ 650.315 Inventory.

(a) Each State and Federal agency must prepare and maintain an inventory of all bridges subject to the NBIS. Certain structure inventory and appraisal (SI&A) data must be collected and retained by the State and Federal agency for collection by the FHWA as requested. A tabulation of this data is contained in the SI&A sheet distributed by the FHWA as part of the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges," (December 1995) together with subsequent interim changes or the most recent version. Report the data using FHWA established procedures as outlined in the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges."

(b) For all types of inspection listed in § 650.313(b), enter SI&A data into the State or Federal agency inventory not to exceed 90 days for State and Federal agency bridges and within 180 days for all other bridges after the date of inspection.

(c) For existing bridge modifications that alter previously recorded data and for new bridges, enter SI&A data into the State or Federal agency inventory not to exceed 90 days for State and Federal agency bridges and within 180 days for all other bridges after the completion of the work.

(d) For changes in load restriction or closure status, enter SI&A data into the State or Federal agency inventory not to exceed 90 days for State and Federal agency bridges and within 180 days for all other bridges after the change in status.

§ 650.317 Reference Manuals.

The documents listed in this section are incorporated by reference with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 and are on file at the Office of the Federal Register in Washington, DC. They are available as noted in paragraph (c)(1) of this section.

(a) Manual for Condition Evaluation of Bridges, 1994 second edition, AASHTO. [*See* § 650.317 (c)(1)].

(b) 2001 Interim Revisions to the Manual for Condition Evaluation of Bridges, AASHTO. [*See* § 650.317 (c)(1)].

(c) Availability of documents incorporated by reference. The documents listed in § 650.317 are incorporated by reference and are on file and available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These documents may also be reviewed at the Department of Transportation Library, 400 Seventh

Street, SW., Washington, DC, in Room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7. Copies of these documents may be obtained from the following organization:

(1) American Association of State Highway and Transportation Officials (AASHTO), Suite 249, 444 North Capitol Street, NW., Washington, DC 20001.

(2) [Reserved].

[FR Doc. 03–22807 Filed 9–8–03; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–02–035]

RIN 1626–AA09

Drawbridge Operation Regulation Change, St. Croix River, Minnesota and Wisconsin

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard has revised its proposal to amend the regulations governing the operation of the Burlington Northern Santa Fe Railroad Bridge, mile 0.2, Prescott, Wisconsin; the U.S. 16–61 Bridge, mile 0.3, Prescott, Wisconsin, the Union Pacific Railroad Bridge, mile 17.3, Hudson, Wisconsin across the St. Croix River, and the S36 Highway Bridge at Stillwater, mile 23.4. The revised proposal would modify the dates and hours requiring advanced notice for openings on each of the bridges. This proposed change is intended to reduce the number of hours that a drawtender is required to be on site at each of the bridges while maintaining satisfactory service to vessels navigating the area.

DATES: Comments and related materials must be received by November 10, 2003.

ADDRESSES: Comments and related materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD08–02–035 and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (314) 539–3900, extension 2378. Commander (obr) maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539–3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–02–035), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if it reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On April 16, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation Change, St. Croix River, MN in the **Federal Register** (67 FR 18521). On March 25, 2003, we clarified a statement in the NPRM and reopened the comment period to receive additional comments (68 FR 14364). We received six letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

In accordance with 33 CFR 117.667, the draws of the Burlington Northern Santa Fe Railroad Bridge, Mile 0.2 at Prescott, Wisconsin, the U.S. 16–61 Bridge, Mile 0.3, at Prescott Wisconsin and the Union Pacific Railroad Bridge, Mile 17.3, at Hudson, Wisconsin, currently open on signal; except that, from December 15 through March 31, the draws open on signal if at least 24-hours notice is given. Currently, the S36 Stillwater Highway Bridge, Mile 23.4, opens on signal at various times throughout the day from May 15 through October 15, and on signal from October 16 through May 14. The NPRM proposed to amend the regulations governing drawbridges across the St. Croix River by adding a notice requirement for bridge openings during the summer season. Specifically, the NPRM proposed requiring that advance notice be given prior to 11 p.m. for openings between midnight and 7 a.m. from April 1 to October 15 for three of the four bridges.

The Burlington Northern Santa Fe Railroad, Mile 0.2 at Prescott initially requested a change to the regulation for the Burlington Northern Santa Fe Railroad, to open on signal from 7 a.m. to midnight and to open between midnight and 7 a.m., if the bridge was notified prior to 11 p.m during the summer tourism months. Although the request was submitted by only one bridge owner, the approval would also impact the U.S. 16–61 Bridge and the Union Pacific Railroad Bridge. Therefore, the proposal was expanded to include these two bridges. The S36 Bridge at Stillwater is more remotely located than the other three bridges, and we have proposed a separate opening requirement for the S36 Bridge rather than including it with the other three bridges.

Discussion of Comments and Changes

The rule proposed by the NPRM included two separate changes to the existing regulation that affect the Burlington Northern Santa Fe Bridge, the U.S. 16–61 bridge, and the Union Pacific railroad bridge. The first change would restrict drawbridge openings between midnight and 7 a.m. by requiring that advance notice be made by 11 p.m. the night before. The second change would move up the date when the drawbridges require 24-hour notification for an opening from December 15 to October 16 each year. The Coast Guard received six letters commenting on one or both of the proposed changes.

One letter opposed the proposed requirement allowing the drawbridges to remain in the closed to navigation position between midnight and 7 a.m. except when a request for an opening was received prior to 11 p.m. The letter cited impacts on weekend boaters who may want late night openings, additional openings required by increases in the river level, and the difficulty in amending the bridge operating regulations once they have become effective. A review of the bridge opening data for the period of April 1 to December 14 for the years 1998—

2002 revealed that bridge openings between midnight and 7 a.m. decreased by 87% during that time period. For 2001, there were two openings in this time period, and in 2002 there was one opening. Due to the drastic reduction in requests for openings during the midnight to 7 a.m. time period, including weekends and high river stages, the Coast Guard has determined that impact on vessel traffic in the affected area will be minimal and may be avoided by making a request for an opening prior to 11 p.m. Accordingly, the requirement to give advanced notice for openings between midnight and 7 a.m. will remain in the proposed rule. With regard to the burden of modifying or removing a regulation once in effect, nothing in this proposed rule would create an unusual burden to future amendment in accordance with Administrative Procedures Act.

Three letters proposed changing the time period that requires an advance notice from midnight to 7 a.m. to midnight to 8 a.m. This would allow the drawbridge owners to provide two standard eight-hour work shifts instead of one eight-hour shift and one nine-hour shift during 8 a.m. to midnight time period when the bridges would be required to open on signal. A review of the historical bridge opening data for the affected bridges revealed that the bridges opened on average less than two times per month between the hours of 7 a.m. and 8 a.m. for the period April 1 through October 31. The Coast Guard agrees that changing the end of the time period from 7 a.m. to 8 a.m. would have minimal impact on vessel traffic and facilitate more manageable work shifts for the bridge owner. Additionally, vessels that might be impacted by the change can avoid delays by requesting a bridge opening prior to 11 p.m. the day before. Therefore, we have amended the proposed rule to reflect the time change.

Two letters opposed moving the start of the winter 24-hour notification time period from December 15 to October 16. One of the letters cited that the boating season on the St. Croix River does not traditionally end until late October. The other letter cited a deterrent effect on vacationers wanting to view the fall colors on the river. After reviewing the bridge opening data for October 16 through November 1, the Coast Guard has determined that the amount of vessel traffic on the St. Croix River is sufficient to amend the beginning date for the 24-hour notification period from October 16 to November 1.

In summary, this SNPRM proposes modifying the rule as it was originally proposed in the NPRM by extending the time period requiring advanced notification before 11 p.m. during the summer tourism season by one hour from midnight to 8 a.m. instead of midnight to 7 a.m. This SNPRM also proposes moving the ending date of the summer operating hours from October 15, as it was originally proposed in the NPRM, to October 31.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of the Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Implementing the proposed regulation would allow the owners of drawbridges to reduce the number of hours drawtenders are required to be on site due a reduction in requests to open the drawbridges between midnight and 8 a.m. from 1 April to 31 October. Previously, these advanced notification requirements were temporarily instated to facilitate maintenance on the bridges. During these maintenance periods, the bridge owners received no complaints from commercial or recreational vessel operators. Additionally, this has become the widely accepted method of voluntarily requesting bridge openings from local vessel operators during non-maintenance periods without complaint.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard identified local marinas as small entities that might be affected by this rule due to restricted access to the marinas during periods when drawtenders are not on site. These entities were consulted prior to initiating this rulemaking process to minimize the economic impact that might result from this proposed rule.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the proposed rule so that they could better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or, believes he or she qualifies as a small entity and requires assistance with the provisions of this proposed rule may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Collection of Information

This proposed rule calls for no new collection-of-information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise

have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3 (a) and 3 (b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Promulgation of changes to drawbridge regulations have been found to not have significant effect on the human environment. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.667, paragraph (a) and paragraph (b), introductory text, are revised and a new paragraph (b)(3) is added to read as follows:

§ 117.667 St. Croix River

(a) The draws of the Burlington Northern Railroad Drawbridge, mile 0.2, Prescott Highway Drawbridge, mile 0.3, and the Hudson Railroad Drawbridge, mile 17.3, shall operate as follows:

(1) From April 1 to October 31:

(i) 8 a.m. to midnight, the draws shall open on signal;

(ii) midnight to 8 a.m., the draws shall open on signal if notification is made prior to 11 p.m.,

(2) From November 1 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(b) The draw of the Stillwater Highway Bridge, mile 23.4, shall open on signal as follows:

* * * * *

(3) From October 16 through May 14, if at least 24 hours notice is given.

* * * * *

Dated: August 25, 2003.

J.W. Stark,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 03–22793 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7555–3]

Revisions to the Regional Haze Rule To Correct Mobile Source Provisions in Optional Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area; Notice of Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing.

SUMMARY: Due to a request from a commenter, EPA is holding a public hearing on a notice of proposed rulemaking that was published in the **Federal Register** on July 3, 2003 (68 FR 39888) related to the mobile source provisions in 40 CFR 51.309 of EPA's regional haze rule. The EPA published both a direct final rule and a concurrent notice of proposed rulemaking to amend and revise certain provisions of the regional haze rule in order to address an emissions projection scenario for mobile sources which was not addressed when EPA published the regional haze rule in 1999.

DATES: The public hearing will be held from 9 a.m. to 12 p.m. (MST) on Wednesday, October 8, 2003, at the U.S. EPA–Region 8, 999 18th Street, 2nd Floor Conference Center–Columbine Room, Denver, CO 80202.

ADDRESSES: *Docket.* Materials relevant to this rulemaking are contained in Public Docket Number OAR–2002–0076 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566–1744, and by facsimile at (202) 566–1741. The telephone number for the Air Docket is (202) 566–1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

Electronic Access. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.* An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to view

public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above. Once in the system, select "search," then key in the docket identification number, OAR–2002–0076.

FOR FURTHER INFORMATION CONTACT: If you would like further information about today's action, contact Kathy Kaufman, Integrated Policies and Strategies Group, (919) 541–0102 or by e-mail *kaufman.kathy@epa.gov.*

SUPPLEMENTARY INFORMATION: We have received a request for public hearing on this rulemaking from one commenter, the Center for Energy and Economic Development (CEED). The CEED commented that EPA should not advance either the proposed or direct final rules, and that further opportunity for public comment is needed.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: August 29, 2003.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 03–22932 Filed 9–8–03; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 71

[OST Docket No. OST–2000–8013]

Standard Time Zone Boundary in the State of North Dakota: Denial of Petition to Change Time Zone Boundary

AGENCY: Office of the Secretary, Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: The Chairman of the Board of County Commissioners for Mercer County, North Dakota; petitioned the U.S. Department of Transportation to move Mercer County from the mountain to the central standard time zone. DOT held a hearing in the area and received extensive written public comments. Based on the information in the docket and the strong objections to a change voiced by the vast preponderance of commenters, we are denying the petition.

FOR FURTHER INFORMATION CONTACT: Joanne Petrie, Office of the Assistant General Counsel for Regulation and Enforcement, U.S. Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–4702.

SUPPLEMENTARY INFORMATION: Under the Standard Time Act of 1918, as amended by the Uniform Time Act of 1966 (15 U.S.C. 260–64), the Secretary of Transportation has authority to issue regulations modifying the boundaries between time zones in the United States in order to move an area from one time zone to another. The standard in the statute for such decisions is "regard for the convenience of commerce and the existing junction points and division points of common carriers engaged in interstate or foreign commerce."

In a petition dated August 16, 2000, the Chairman of the Mercer County Board of County Commissioners asked the Department to move the county from the mountain time zone to the central time zone. The Commissioners submitted a memorandum outlining why the change would suit "the convenience of commerce." The petition noted that the issue had been placed on the June 13, 2000, primary election ballot. The results of that election indicated that 1,180 voters favored the change while 1,038 voters opposed the change.

Because of the strong local interest in the proposal, DOT convened a public hearing very early in the process. The hearing took place on September 28, 2000, at the Civic Center in Beulah, ND, and was attended by approximately 100 people. Based on a show of hands conducted several times throughout the evening, approximately one-third of those in attendance supported the change and two-thirds opposed the change. The DOT representative also urged individuals, businesses, and organizations to send written comments to the Department's docket so that all the relevant facts could be collected and considered systematically.

The rulemaking has been extremely controversial in the community. Over 500 written comments were filed in the docket. Some of these comments were petitions signed by hundreds of people. Some people filed more than one comment and signed more than one petition. Even without doing a crosscheck of names, it is clear that the vast majority of people commenting on the issue in this proceeding opposed the proposed change.

Under the Uniform Time Act, as amended, the Secretary of Transportation can only change a time zone boundary if it would suit "the convenience of commerce." Traditionally, we give great deference to community views on the assumption that the people who would be most affected by a proposed change are in the best position to advise us on the impact.

The proponents of central time made many strong arguments, which generally echoed the points made in the petition. Almost all noted the reliance on goods and services coming from the Bismarck-Mandan area, which is on central time. The closest airport is in Bismarck, most television and newspapers come from Bismarck, and many residents go to the central time zone for work, medical services, and recreation. The coal and energy industry, which is a major employer in the area, is closely tied to central time.

Those favoring the current time observance also made many strong arguments. One of the central themes was that observance of mountain time provides important advantages that make life more convenient, productive, and pleasant.

Many opponents of the change argued that the current time observance affirmatively helps business and is more conducive for farmers. Farmers opposed to the change were concerned about getting replacement parts later in the day and that grain elevators would close an hour earlier. Others anticipated a disruption in the farming day by having to attend to errands or engagements in town that would occur an hour earlier under central time. A number of commenters were concerned that a change would put small, local shops out of business, and negatively impact the overall economic growth of the area. Others noted, and appreciated the fact, that the current observance allows mail delivery one hour earlier.

Some commenters noted that they rely on the local radio station and the two weekly newspapers, rather than on media outlets originating in the central time zone. Others liked the time zone difference because they enjoyed viewing network television broadcasts an hour earlier than they would if the change were made.

Many of the strongest comments argued that the current observance benefits children, education, and family life. Many were concerned about children waiting for buses in the dark on icy, rural roads. Others believed that the current observance was more conducive to learning, after-school

supervision of children, and participation in school and community activities.

Many of the proponents of the status quo argued that the current system works well and causes little confusion. Similarly, most appear to believe that a change would inconvenience them personally and make their lives difficult in some way.

Under the law, we are required to balance all the information in the record. Based on the information presented and the overwhelming community sentiment voiced in the record that a change would not "suit the convenience of commerce," I am hereby denying the petition. The Commission is welcome to file another petition if circumstances change in the future.

Issued in Washington, DC on August 29, 2003.

Rosalind Knapp,

Deputy General Counsel.

[FR Doc. 03–22921 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI45

Endangered and Threatened Wildlife and Plants; Withdrawal of the Proposed Rule to List the Mountain Plover as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the Fish and Wildlife Service (Service), determine that the action of listing the mountain plover (*Charadrius montanus*) as threatened, pursuant to the Endangered Species Act of 1973, as amended (Act), is not warranted, and we consequently withdraw our proposed rule and our proposed special rule. We make this determination because threats to the species as identified in the proposed rule are not as significant as earlier believed, and current available data do not indicate that the threats to the species and its habitat, as analyzed under the five listing factors described in section 4(a)(1) of the Act, are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range.

ADDRESSES: The supporting documentation for this rulemaking is available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service Field Office, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506–3946, telephone; 970–243–2778, facsimile 970–245–6933, or e-mail *al_pfister@fws.gov*. Pertinent information also is available at the Web site *http://www.r6.fws.gov/mtnplover/*.

FOR FURTHER INFORMATION CONTACT: Allan Pfister, Assistant Field Supervisor, Grand Junction, Colorado (see **ADDRESSES**), telephone 970–243–2778; facsimile 970–245–6933.

SUPPLEMENTARY INFORMATION:

Background

The mountain plover (*Charadrius montanus*) is a small bird averaging 21 centimeters (8 inches) in body length and is similar in size and appearance to a killdeer (*Charadrius vociferus*). It is light brown above with a lighter colored breast, but lacks the contrasting dark breastbelt common to most other plovers, including the killdeer. Mountain plovers are insectivores; beetles, grasshoppers, crickets, and ants are its principal food items (Stoner 1941, Baldwin 1971, Rosenberg *et al.* 1991, Knopf 1998).

The mountain plover is associated with shortgrass and shrub-steppe landscapes throughout its breeding and wintering range. Historically, on the breeding range, the plover occurred on nearly denuded prairie dog colonies (Knowles *et al.* 1982, Olson-Edge and Edge 1987) and in areas of major bison concentrations where vegetation was clipped short (Knopf 1997). Currently, the mountain plover also is found on human-made landscapes (*e.g.*, sod farms and cultivated fields) that may mimic their natural habitat associations, and on other sites with little vegetative cover (*e.g.*, alkali flats). As mountain plovers are usually associated with sites that are modified by grazing and digging mammals (kangaroo rat (*Dipodomys* sp.) precincts and California ground squirrel (*Spermophilus beecheyi*) colonies on wintering grounds in California, as well as prairie dog colonies on the breeding grounds), Knopf and Miller (1994) suggested classifying the mountain plover as a species more closely associated with disturbed prairie sites, rather than pristine prairie landscapes.

Mountain plovers nest in the Rocky Mountain and Great Plains States from Montana south to Nuevo Leon, Mexico. Most mountain plovers breed in Montana, Wyoming, and Colorado, with substantially fewer breeding birds occurring in Arizona, Kansas, Nebraska, New Mexico, Oklahoma, Texas, and Utah. Breeding was confirmed in 1999 in Mexico on a Mexican prairie dog (*Cynomys mexicanus*) colony in the State of Nuevo Leon (Desmond and Ramirez 2002). Nesting habitat in Canada is restricted to southeastern Alberta and southwestern Saskatchewan. Nesting has not been documented in Canada since 1990.

Breeding adults, nests, and chicks have been observed on cultivated lands in Colorado, Kansas, Nebraska, Oklahoma, and Wyoming (Shackford and Leslie 1995; Shackford *et al.* 1999; V. Dreitz, Colorado Natural Heritage Program, in litt. 2003; Young and Good 2000). The majority of mountain plovers winter in California, where they are found mostly on cultivated fields. However, they also can be found on grasslands or landscapes resembling grasslands (Edson and Hunting 1999, Knopf and Rupert 1995, Wunder and Knopf 2003). Wintering mountain plovers also are reported in Arizona, Texas, and Mexico, but fewer have been documented at these locations than in California.

Historically, the mountain plover has been found in a variety of habitats during winter, including grasslands and agricultural fields in California (Belding 1879 in Grinnell *et al.* 1918; Tyler 1916; Grinnell *et al.* 1918; Preston 1981 in Moore *et al.* 1990; Werschkull *et al.* 1984 in Moore *et al.* 1990). Irrigated farmlands—burned Bermuda grass fields and grazed alfalfa fields—in the Imperial Valley of California, where desert scrub has been converted to agriculture within the past 100 years, have become the predominant winter habitat for mountain plovers (Wunder and Knopf 2003, AMEC Earth and Environmental 2003). There, plovers move onto fields for short periods following harvest, especially where the fields are turned over, burned, or grazed by sheep. Insect availability, furrow depth, size of dirt clods, and the vegetation of contiguous land parcels are believed to influence the suitability of individual cultivated fields (E. Marquis-Brong, in litt. 1999). Therefore, while cultivated lands are abundant throughout the Central and Imperial Valleys, not all of them are suitable wintering habitat. Because annual climatic changes in the Central Valley can greatly influence vegetative structure within a given year, mountain plover observations at traditionally occupied sites decline in years when abundant rainfall causes vegetation to become too tall (E. Marquis-Brong, Bureau of Land Management (BLM), in litt. 1999).

Historically, breeding mountain plovers were reported as locally rare to abundant, and widely distributed in the Great Plains region from Canada south

to Texas (Coues 1878, Knight 1902, McCafferty 1930, Bailey and Neidrach 1965). Knopf (1996b) estimated the North American mountain plover population to be between 8,000 to 10,000 birds. His estimate is based on a 1994 count of mountain plovers on their winter habitat in California. Applying the same assumptions using the more recent 1998–2002 winter counts ranging from 1,372 to 4,037 individuals would yield an estimate ranging from 5,000 to 11,000 (Hunting *et al.*, 2001; Shuford *et al.* 2000; Wunder and Knopf 2003, S. Myers, pers. comm. 2002). The search efforts among years are not comparable, but represent the best available information. We believe the estimates provided are a reasonable approximation of mountain plover total abundance, given recent survey efforts directed at mountain plovers on their winter habitat, the dedicated efforts to locate them in California's Central and Imperial valleys, and their winter flocking behavior that enhances detection.

As discussed by Knopf (1996b), the continental breeding range of the mountain plover has been reduced from its historical extent, especially in the eastern portion of the range. The mountain plover was formerly common in western and central Kansas (Goss 1891), and reported as numerous between Fort Supply, Oklahoma, and Dodge City, Kansas (McCauley 1877). The species was historically numerous in Colorado (Bailey and Niedrach 1965) and Wyoming (Knight 1902). Lower numbers of mountain plovers formerly occupied western South Dakota (South Dakota Ornithologist's Union 1991) and Nebraska (Knopf 1996b), and there is one known breeding reference from North Dakota (Roosevelt 1885). There was a single report of breeding mountain plovers in northern Mexico in 1901 (Sanford *et al.* 1924), and breeding was confirmed in the State of Nuevo Leon in 1999 (Desmond and Ramirez 2002).

Colorado—The Colorado Bird Atlas Partnership estimated a population of 7,200 (range from 3,652 to 12,168) mountain plovers in Colorado, with perhaps 22 percent of these in Weld County (H. Kingery, in litt. 1997; Kingery 1998). However, this population estimate should be considered a "first approximation" and used with caution (Kingery 1998). A more recent effort to estimate mountain plover abundance is the Rocky Mountain Bird Observatory's estimate of 4,850 individual mountain plovers in eastern Colorado (S. Gillihan, in litt. 2003).

Mountain plovers have been studied intensively in Weld County, Colorado, from the late 1960s to the present. Graul and Webster (1976) considered Weld County in northeastern Colorado the breeding stronghold for the mountain plover, a conclusion widely referenced by subsequent authors (*e.g.*, Knopf and Rupert 1996). However, inventories completed by the Colorado Bird Atlas Partnership from 1987 through 1995 found mountain plovers more widely distributed than previously known in many other eastern Colorado counties (Kingery 1998). Based on their inventories, the Bird Atlas Partnership concluded that 75 percent of Colorado's mountain plovers occurred south of Weld County (H. Kingery, Colorado Bird Atlas Partnership, pers. comm. 1994, in litt. 1998).

Breeding mountain plovers also have been reported from southeastern Colorado by others (Chase and Loeffler 1978; Nelson 1993; R. Estelle, Colorado Bird Observatory, in litt. 1994; M. Scott, BLM, in litt. 2000; K. Giesen, Colorado Division of Wildlife (CDOW), in litt. 2001). During a 1996 inventory, Carter *et al.* (1996) concluded that mountain plovers occur at very low densities in 10 eastern Colorado counties, and are most numerous in Kiowa and Park Counties. Mountain plovers also have been seen in Moffat County in northwestern Colorado (Behrends and Atkinson 2000). The Colorado Natural Heritage Program conducted mountain plover surveys in Park County in central Colorado from 1994 through 2002, and currently estimate 2,300 mountain plovers at this location (Pague and Pague 1994, Sherman *et al.* 1996, Hanson 1997, Granau and Wunder 2001, Wunder *et al.* in prep.). South Park appears to currently be the most productive breeding location in Colorado, and probably throughout the entire breeding range. This is clearly the largest breeding population of mountain plovers in Colorado, and perhaps throughout the breeding range.

In Weld County, 60 to 70 percent of the mountain plover habitat occurs on the Pawnee National Grassland, a historically recognized breeding stronghold (F. Knopf, in litt. 1991). Today, nearly all mountain plovers have abandoned the Pawnee National Grassland. During the late 1960s, Graul and Webster (1976) estimated about 69,000 hectares (171,000 acres) of good habitat on the Pawnee National Grassland, with mountain plover densities of at least 10/kilometer^2 (26/mile^2). Based on these estimates, we calculate that at least 7,000 mountain plovers likely occupied the Pawnee in the early 1970s. Knopf (in litt. 1991) estimated about 1,280 individuals in 1991, while presently the Grassland population is about 78 individuals (F. Knopf, pers. comm. 2002).

Graul (1973) hypothesized that mountain plover productivity on the Pawnee is influenced by drought and its corresponding effects on food supply. In 1995, the Pawnee received above-average spring rainfall resulting in lush vegetation growth not suitable as mountain plover nesting habitat. As a result, few birds were found there during the breeding season; conditions continued through 1996 and 1997, with few adult birds and very little reproduction observed through 2002 (Knopf 1996; F. Knopf, in litt. 2003).

Although mountain plovers nest on cultivated fields in southeast Colorado and adjacent States, 1 study (Shackford *et al.*1999) found that of 46 nests monitored on cultivated fields, 31 nests failed and the fate of the remaining 15 nests was unknown. Of the 31 failed nests, 22 nests (48 percent of total nests) were destroyed by farm machinery. Giesen (in litt. 2000) reported a higher nest success on agricultural fields than on native rangeland. As a result of these conflicting findings, research was initiated in five eastern Colorado counties to better describe nest success and productivity, and the implications of cultivated field nesting to mountain plover population recruitment (T. McCoy, Colorado Natural Heritage Program, in litt. 2001). In 2001 and 2002 within the study area, nests on croplands numbered 45 and 85, respectively, with the increase due to a 40 percent increase in area surveyed (V. Dreitz, in litt. 2002). Nest success on cropland and rangeland was equal in 2001, but was about 10 percent higher on range in 2002 (V. Dreitz, in litt. 2002). Predation was the major cause of nest failure on rangelands in 2001 and 2002. Predation and tillage losses were the cause of nest failure on cropland, but the combined losses on cropland were fewer than predation losses on rangeland in either year.

Based on the data presented above, we estimate over 7,000 breeding mountain plovers in Colorado.

Montana—The largest known number of breeding mountain plovers in Montana is found on a large complex of black-tailed prairie dog colonies in the contiguous Phillips and Blaine Counties (Knowles and Knowles 2001, Dinsmore 2001). In Phillips County, nearly all mountain plovers are found on active prairie dog colonies that also are grazed by cattle (Dinsmore 2001).

Although Phillips and Blaine Counties contain a major breeding concentration for the species (Knopf and

Miller 1994, Knowles and Knowles 2001, Dinsmore 2001), small numbers of mountain plovers also breed on BLM lands in Valley County (Little Beaver Creek), and on private land in Wheatland and Golden Valley Counties near the Little Belt and Big Snowy Mountains (Knowles and Knowles 1998). Surveys through 2003 also report mountain plovers in Big Horn, Broadwater, Carbon, Fergus, Jefferson, Hill, Madison, Musselshell, Petroleum, Rosebud, and Treasure Counties (L. Hanebury, Service, pers. comm. 2003; Knowles and Knowles 1996, 1998; J. Grensten, BLM, pers. comm. 1998).

The most recent information documents that the mountain plover population in southern Phillips County increased from about 100 individuals in 1995, to 175 individuals in 2001 (Dinsmore 2001). In 2003, over 150 nests were found on the study site (Dinsmore, pers. comm. 2003). This increase is likely due to the recovery of black-tailed prairie dogs from a recent sylvatic plague epizootic. Mountain plovers at the Fort Belknap Indian Reservation increased from 0 to 20 from 1993 to 1998 following an increase in black-tailed prairie dogs and the introduction of bison grazing, and there may presently be as many as 100 individuals, although the change may be due to more rigorous inventory (Knowles and Knowles 2001; S. Dinsmore, pers. comm. 2003). Mountain plover densities on black-tailed prairie dog colonies at the Charles M. Russell National Wildlife Refuge declined by more than half from 1980 to 1996. Prairie dog numbers at Charles M. Russell National Wildlife Refuge have increased since 1996, and plover numbers have gone up slightly. Knowles and Knowles (2001) report that between 1992 and 2000 mountain plovers declined at their Central and Southwestern study areas, but increased slightly at their Northeastern study area.

Dinsmore (2001) concluded that mountain plovers in southern Phillips County are entirely dependent on an active black-tailed prairie dog population, and that the mountain plover abundance at his study site will likely parallel the population trends of black-tailed prairie dogs.

Knowles and Knowles (1996) estimated less than 2,000 mountain plovers in Phillips and Blaine Counties, and less than 800 additional individuals at the other occupied locations in the State. Based on his 6 years of research, Dinsmore (pers. comm. 2002) provided a rough estimate of 700 mountain plovers throughout all of Phillips and Blaine Counties, and noted that Knowles and Knowles (1996) estimate of 800 mountain plovers at other areas is reasonable. Therefore, we believe the best information currently available indicates the total population in Montana is approximately 1,500 mountain plovers (Knowles and Knowles 1996, Knowles and Knowles 1998, Dinsmore 2001, Dinsmore, pers. comm. 2002).

Wyoming—The mountain plover is classified as common in Wyoming, with breeding known or suspected in 20 of 28 latitude/longitude blocks (latilong blocks) occurring across the entire State (Wyoming Game and Fish Department 1997). The latilong records reviewed included sightings from 1969 to 1996, with the highest number of individual records occurring in the Saratoga, Wapiti, Powell, Casper, Bill, and Laramie blocks. Because the search effort among the blocks is not equal, the number of records reported for each block is not a good indicator of mountain plover abundance within each block. Further, while latilong records may note evidence of breeding, they do not provide information regarding nesting success. Based on these latilong records, the Wyoming Game and Fish Department reports the mountain plover as common in the State, but acknowledges that information is lacking to make any estimate of total population or determine whether it is increasing, stable, or declining (Oakleaf *et al.* 1996).

Additional inventories have been conducted in Wyoming that confirm the presence of mountain plovers at many of the previously reported locations. For example, surveys conducted in the Powder River Basin (Campbell, Converse, Sheridan, Crook, and Weston Counties) in 2001, in preparation for the Powder River Basin Oil and Gas Project, found 15 mountain plovers (Good *et al.* 2002; Keinath and Ehle 2002). Most of the Powder River Basin is private land, and the surveys were conducted from public roads only. Consequently, these surveys may not be a good representation of mountain plover abundance in the Powder River Basin. From 1992 to 2002, nesting was confirmed on the Thunder Basin National Grassland (Thunder Basin) (within the Powder River Basin) in northeast Wyoming in most years (Bartosiak 1992; M. Edwards, Forest Service, in litt. 1994; T. Byer, in litt. 1997; T. Thompson, Forest Service, in litt. 2003).

Knopf (in litt. 2001b) reported that mountain plovers may be more common in Wyoming than previously believed, particularly in Carbon County. In 1999 and 2000, a total of 159 and 105 mountain plover adults were reported from Sweetwater and Carbon Counties, respectively, with many fewer individuals reported from Albany, Bighorn, Fremont, Lincoln, Natrona, Park, Sublette, and Washakie Counties (P. Deibert, in litt. 2002). Surveys near Lysite in Fremont County found 39 mountain plovers on about 530 ha (1,300 ac) of suitable habitat (L. Hayden-Wing, Hayden-Wing Associates, in litt. 2003). Surveys for mountain plovers in south-central Wyoming in 2002 found a total of 50 adults and 11 nests (Hayden-Wing Consultants 2002). As many as 51 mountain plovers likely occurred on Foote Creek Rim in Carbon County in 1994, but the number declined to 26 in 2002 (Young and Erickson 2003). Most plovers have vacated habitat near the wind turbines and congregated on a prairie dog colony on the northern end of the Rim (Young and Erickson 2003). Nine nests were located on Foote Creek Rim in 2000 (Young and Good 2000).

The total number of mountain plovers observed on Thunder Basin National Grasslands declined from 53 to 37 from 1993 to 2002, while the area surveyed during this time quadrupled (T. Thompson, in litt 2003). Black-tailed prairie dog colonies in the area were affected by a significant plague event in 2001 and 2002. Mountain plovers on Thunder Basin nest almost entirely on black-tailed prairie dog colonies (Keinath and Ehlen 2002).

From 1979 to 2002, nesting was confirmed on and near the Antelope Coal Mine in the southern Powder River Basin, and breeding densities were reported to range from 0.9 to 2.4 birds/km^2 (2.3 to 6.2/mi^2) (Oelklaus 1989, Thunderbird Wildlife Consulting, Inc. 2003). From 1982 to 1991, a total of 26 broods were reported on mine permit areas, while only 6 broods have been reported on the same permit areas from 1992 to 2002 (Thunderbird Wildlife Consulting, Inc. 2003). Parrish (1988) inventoried mountain plovers over an extensive area of the southern Powder River Basin, and reported an overall density of about 0.1 mountain plover/km^2 (0.3/m^2). Mountain plovers througnout the southern Powder River Basin are generally thought to be widely scattered at low densities, with a few areas of local concentrations (Oelklaus 1989). Inventories from the Laramie Plains and Cheyenne Plains in the late 1950s report densities ranging from 0.3 to 23.8 mountain plovers/km^2 (0.9 to 61.9/mi^2) (Laun 1957, Finzel 1964). Therefore, densities reported from the southern Powder River Basin in the 1980s are less than those reported from the Laramie and Cheyenne Plains in the 1950s, but it is unknown whether the difference is due to a decline in

mountain plover abundance, inherent differences in habitat quality, or both.

Knopf (in litt. 1991, 2001b) found mountain plovers on the Laramie Plains, in the vicinity of Shirley Basin, on the Chapman Bench (Park County) north of Cody, and on Mexican Flats (Carbon County) northwest of Baggs. Specific surveys of Chapman Bench between 1988 and 1999 found between 7 to 14 adult mountain plovers and some juveniles (P. Deibert, pers. comm. 1999a).

Mountain plovers also breed in shrub-steppe habitat in southwest Wyoming (Oakleaf *et al.* 1982). The BLM estimates 10 to 15 breeding pairs in the Jack Morrow Hills north of Rock Springs in Sweetwater County (L. Keith, BLM, pers. comm. 1999). Mountain plovers reported from Morton Pass in Albany County have declined from about 30 in 1997 to about 5 in 2000 (Young and Erickson 2003).

Based on the best information available from Wyoming, mountain plovers may number from 2,000 to 5,000 individuals (P. Deibert, pers. comm. 2003; F. Knopf, in litt. 2003).

Nebraska—A nesting mountain plover was found in Kimball County in western Nebraska in 1990 (F. Knopf, in litt. 1990), and two mountain plover nests were found in a fallow field in the same vicinity in 1997 (W. Jobman, Service, in litt. 1997). Seventeen mountain plovers were counted on 10 cultivated fields in western Nebraska in 1992 and 1995 (Shackford and Leslie 1995), and 1 nest was found in summer fallow in Kimball County in 1999 (W. Jobman, in litt. 1999).

No mountain plovers were found in 2001, following inventories of 92 sites, including black-tailed prairie dogs colonies, in 8 western Nebraska counties (K. Nelson, Nebraska Game and Parks Commission, in litt. 2003). The lack of mountain plovers may have been due to the survey occurring late in the breeding season. In 2002, a survey occurred in Kimball County exclusively, which is dominated by dry land wheat farming with very little shortgrass prairie. A total of 118 mountain plovers were found at the 66 locations surveyed, and all but 1 individual were in wheat fields. A total of 27 juvenile mountain plovers also were seen, with most of these in tilled, fallow ground. We have no information to assess trends in Nebraska, but the Nebraska Game and Parks Commission is concerned about the bird's viability in the State (K. Nelson, in litt. 2003).

New Mexico—Sager (1996) noted that the mountain plover was reported as "fairly common" in New Mexico in 1928, and recognized that the 152 mountain plovers he surveyed in 1995 would not likely be construed as "fairly common" today. However, he cautioned that mountain plovers may be more numerous than he reports because of their difficulty in detection and clumped distribution. Sager (1996) also reported that New Mexico is likely on the fringe of acceptable mountain plover habitat. We are not aware of a total population estimate or population trend for New Mexico.

Oklahoma—Historic records of mountain plovers east of Cimarron County do not mention breeding behavior, so it is unclear whether the mountain plovers reported were nesting or migrating to other locations. Hence, both the historic and current distribution may be confined to Cimarron County in the panhandle of Oklahoma. In Cimarron County during the nesting seasons of 1986–1990, Shackford (1991) observed 15 mountain plovers in native grassland and 10 in cultivated fields. Ten of the 15 birds observed in native grassland were on prairie dog colonies. The few plovers found, combined with the discovery of one mountain plover nest on a maize field, stimulated searches of cultivated fields in Oklahoma in 1992, 1993, and 1994. Using approximately the same search method and effort each year, 408, 428, and 108 individual mountain plovers were found on cultivated fields in each of these years, respectively, and up to 13 nests were found on the cultivated fields from 1986 through 1995 (Shackford *et al.* 1999, Shackford and Leslie 1995). The plovers reported include both plovers seen during the breeding season as well as mountain plovers in premigratory flocks. The decline in 1994 is attributed to a decline in mountain plovers seen during the nonbreeding season, not necessarily a decline in breeding birds. No other surveys have been completed in Oklahoma, and estimates of the total Statewide population have not been made (S. Harmon, Service, pers. comm. 2002).

Kansas—Counts of breeding mountain plovers on cultivated lands in western Kansas from 1992 through 1995 ranged from 52 (6 counties searched) to 114 (4 counties searched) (Shackford and Leslie 1995). Surveys of cultivated fields and rangelands within the boundary of the Cimarron National Grassland (Cimarron) in Kansas also have been conducted. Counts on the Cimarron in 1994, 1996, and 1997 ranged from 1 to 13, with most of the sightings on plowed fields (J. Chynoweth, Forest Service, in litt. 1997).

Other Breeding Areas—In Utah, the only site known to have breeding mountain plovers is in Duchesne County, south of Myton, in the Uinta Basin. Counts of breeding mountain plovers in this area from 1992 through 2001 ranged from 6 to 29. From 1992 to 2001, broods were found in all years except 1992, 1999, and 2001; six adults and no broods were found in 2001; and no mountain plovers were seen in 2002 (T. Dabbs, BLM, in litt. 1997; F. Knopf, in litt. 1999; B. Stroh, Forest Service, pers. comm. 2002).

Three pairs of nesting mountain plovers were reported near Fort Davis, Texas, in 1992 (K. Brian, Davis Mountain State Park, pers. comm. 1992). More recent breeding in Texas has not been reported due to lack of access to private land (P. Horner, Texas Parks and Wildlife Department, in litt. 1997).

From 1914 to the present, mountain plovers in Arizona have been reported during the breeding season from Apache, LaPaz, Maricopa, and Navajo Counties. A pair was found on Navajo Nation land near Winslow in June 1995, and an adult incubating three eggs was found near Springerville, Apache County, Arizona, in May 1996 (T. Cordery, Service, pers. comm. 1998; D. Shroufe, Arizona Game and Fish Department, in litt. 1999). In May 2002 breeding behavior was observed in three birds west of Springerville, in Apache County (Ted Cordery, BLM, pers. comm. 2003).

The most recent nesting record in Canada was one nest in southeastern Alberta in 1989 (S. Jewell, Service, in litt. 2000). No mountain plovers were found during searches conducted in Alberta and Saskatchewan in 2001 (C. Wershler, Sweetgrass Consultants, pers. comm. 2002).

Mountain plover breeding behavior was observed in 1998 in Nuevo Leon, Mexico, and one nest was found on a Mexican prairie dog colony in 1999 (Knopf and Rupert 1999a, Desmond and Ramirez 2002).

We believe that Montana, Wyoming, and Colorado represent the historic and current core mountain plover breeding range, although additional peripheral locations in Oklahoma and New Mexico may play an important role in the species' conservation.

Historically, mountain plovers have been observed during the winter in California, Arizona, Texas, Nevada, and on the California coastal islands of San Clemente Island, Santa Rosa Island, and the Farallon Islands (Strecker 1912; Swarth 1914; Alcorn 1946; Jurek 1973; Garrett and Dunn 1981; Jorgensen and Ferguson 1984; B. Deuel, American Birds Editor, in litt. 1992; D. Shroufe, in litt. 1999). In Mexico, wintering mountain plovers have been sighted in

Baja California, as well as north-central and north-eastern Mexico, in Sonora, Chihuahua, Coahuila, Durango, Nuevo Leon, and San Luis Potosi (Russell and Lamm 1978; A. Garza de Leon, The Bird Galley, in litt. 1990; L. Stenzel, Point Reyes Bird Observatory, in litt. 1992; Gomez de Silva *et al.*1996; Knopf and Rupert 1999a; Dieni *et al.* 2003, J. Taylor, pers. comm. 2003).

All information we have reviewed indicates that California is the primary wintering ground for mountain plovers, supporting up to 95 percent of the United States' population of mountain plovers (Morey, in litt. 2003). However, recent isotope studies indicate that there may be a disproportionate number of males in the wintering flocks. Seventy-five percent of the feathers sampled from the Imperial Valley in the winter of 2002 were from males, and sixty-two percent were from males in the winter of 2003. This could indicate a slightly higher female mortality, or perhaps differential migration patterns between male and female plovers (*e.g.* females wintering farther south into Mexico). More stable isotope work in the next two years may help answer this question (Knopf, pers. comm. 2003).

Mountain plovers are most frequently reported and found in the greatest numbers in two general locations in California—(1) The western Central Valley from Solano and Yolo Counties to Kern County (primarily the western San Joaquin Valley), and (2) the Imperial Valley in Imperial County. Throughout these areas, sightings occur on agricultural fields and noncultivated sites. Research conducted in the San Joaquin Valley concluded that the noncultivated sites are the preferred habitat there, while cultivated sites are the exclusive habitat in the Imperial Valley (Knopf and Rupert 1995, Wunder and Knopf 2003).

From 1961 to 1968 anywhere from 25 to 10,000 mountain plovers were counted in winter on Kern National Wildlife Refuge in the San Joaquin Valley (J. Engler, Service, in litt. 1992). In January 1994, researchers counted 3,346 mountain plovers during a simultaneous 1-day survey of 25 sites throughout California (B. Barnes, National Audubon Society, in litt. 1994). A similar coordinated survey at 31 sites in the Central and Imperial valleys in January 1998 estimated 2,663 mountain plovers (Hunting *et al.* 2001). In December 1999, two skilled observers were unable to find any mountain plovers in the entire San Joaquin Valley after 2 days searching traditionally occupied sites (Dinsmore, in litt. 2000b), which may have been due to degraded habitat conditions following heavy rains (F. Knopf, pers. comm. 2000). On February 2, 2002, 536 mountain plovers were counted in the entire San Joaquin Valley, which may indicate some recovery of habitat conditions since 1999 (S. Fitton, in litt. 2002). Within the San Joaquin Valley, premigratory flocks of up to 1,100 birds have been seen in Tulare County (Knopf and Rupert 1995). The Carrizo Plain (separated from the San Joaquin Valley by the Tremblor Range) also is recognized as a predictable wintering site, with wintering birds reliably reported from the west side from 1971 to 1998 (S. Fitton, in litt. 1992, *www.birdsource.org* 2000). Solano and Yolo Counties in the Central Valley near Sacramento also provide wintering habitat for mountain plovers, with about 200 being seen in these counties in recent years (K. Hunting, California Department of Fish and Game, in litt. 1998; C. Conard, Sacramento Audubon, in litt. 2003).

Wunder and Knopf (2003) suggested that many mountain plovers have apparently shifted from the Central Valley as a result of habitat loss to southern California and the Imperial Valley. Recent search efforts and records for the Central Valley classify the mountain plover as rare and local, exceedingly rare, or accidental, within individual counties in the San Joaquin Valley (Edson and Hunting 1999; K. Hunting, California Fish and Game, pers. comm. 2003).

In the Imperial Valley, coordinated surveys occurred in February, November, and December 1999. The maximum effort of 26 observers in 15 parties over 2 days located 3,758 mountain plovers in December (Shuford *et al.* 2000). From January 9–19, 2001, 4,037 mountain plovers were counted by 2 observers in the Imperial Valley (Wunder and Knopf 2003), and 3,421 were counted there from January 29 to February 6, 2002, by 4 observers (S. Myers, AMEC Earth and Environmental, pers. comm., 2002). In the 2002 Christmas Bird Count (CBC) for that area only 12 were counted; surveys were abandoned in January 2003 when the birds could not be found following heavy rains (Knopf, pers. comm, 2003).

The only consistently collected information available to judge a population trend are the CBC data. The CBC data from 1955–1999 from all count circles in California reporting mountain plovers indicated a decline in mountain plovers of about 1 percent annually (J. Sauer, U.S. Geological Survey—Biological Resource Division (USGS–BRD), in litt. 2000; Wunder and Knopf 2003). This equates to a 35 percent decline in the population from 1955 to 1999 (J. Sauer, pers. comm. 2003). The CBC numbers fluctuate greatly from year to year based on observer variability, survey intensity, and the spatial and temporal distribution of mountain plovers (AMEC Earth and Environmental 2003).

Arizona, Texas, Nevada, and Mexico—Wintering mountain plovers also are reported from other areas, but in much lower numbers than are reported from California. From 1914 to the present, up to 340 mountain plovers have been reported during the winter from Cochise, Maricopa, Pima, Pinal, and Yuma Counties in Arizona (D. Shroufe, in litt. 1999). In Texas, up to146 mountain plovers were reported from Guadalupe, San Patricio, and Williamson Counties (J. Maresh, no affiliation, pers. comm. 1999; G. Lasley, American Birds, pers. comm. 1992). Mountain plovers also have been sighted throughout the year in Aransas, Concho, Kleberg, Nueces, Schleicher, Tom Green, and Val Verde Counties in Texas (P. Horner, in litt. 1997), and at Laguna Atascosa National Wildlife Refuge on the Texas coast (L. Laack, Service, in litt. 1992). About 400 wintering mountain plovers were reported in west Texas in 2003 (T. Fennell, unaffiliated, in litt. 2003). In Nevada, several mountain plovers were collected in the Lahontan Valley in 1940, and a few have been reported in the Fallon CBC circle in the 1990s (Alcorn 1946, *www.birdsource.org* 2000). In January 1992, researchers counted 148 mountain plovers at the north end of Laguna Figueroa, Baja California, Mexico (L. Stenzel, in litt. 1992). In 1994, mountain plovers were seen on a Mexican prairie dog colony in San Luis Potosi, Mexico (Gomez de Silva *et al.* 1996). In January 2000, 110 mountain plovers were found on black-tailed prairie dog colonies in Chihuahua, Mexico (S. Gillihan, in litt. 2003). Winter surveys for mountain plovers in Mexico completed during the past several years have failed to find any populations that approach the numbers found in California (R. Estelle, pers. comm. 1998).

In summary, with the heightened awareness to wintering mountain plovers during the past decade (including black-footed ferret recovery planning on prairie dog colonies in Mexico), and the mountain plover's winter flocking behavior, we believe it is unlikely that significant numbers of mountain plovers are not being detected. The widespread distribution of the species makes it difficult to obtain comprehensive population counts.

Previous Federal Action

On December 30, 1982, we designated the mountain plover as a category 2 candidate species, meaning that more information was necessary to determine whether the species status was declining, stable, or improving (47 FR 58458). In 1990, we prepared a status report on the mountain plover indicating that Federal listing may be warranted (Leachman and Osmundson 1990). We elevated the mountain plover to a category 1 candidate species in the November 15, 1994, Animal Candidate Notice of Review (59 FR 58982). At that time, category 1 candidate species were defined as those species for which we had sufficient information on biological vulnerability and threats to support issuance of a proposed rule to list. In 1996, we redefined candidate species and eliminated category 2 and 3 candidate designations (61 FR 64481). Candidate species were defined using the old category 1 definition. The mountain plover retained its candidate species designation as reported in the September 19, 1997, Review of Plant and Animal Taxa (62 FR 49398). On July 7, 1997, we received a petition to list the mountain plover as threatened from the Biodiversity Legal Foundation. The Service responded by notifying the petitioner that petitions for candidate species are considered second petitions, because candidate species are species for which we have already decided that listing may be warranted. Therefore, no 90-day finding was required for the Biodiversity Legal Foundation's petition. We published a proposed rule to list the mountain plover as threatened on February 16, 1999 (64 FR 7587), and requested that comments be provided by April 19, 1999. We announced public hearings for the proposal on April 19, 1999, and concurrently extended the comment period to June 21, 1999 (64 FR 19108).

Higher priority listing actions precluded listing work on the mountain plover during Fiscal Years 2000 and 2001. On October 16, 2001, Earthjustice (representing the Biodiversity Legal Foundation, Biodiversity Associates, and Center for Native Ecosystems) submitted a 60-day Notice of Intent to sue to the Secretary of the Department of the Interior and the Service Regional Director for failure to meet listing deadlines for the mountain plover, as required by section 4(b)(6)(A) of the Act. The Service responded to Earthjustice on December 21, 2001, with a commitment to submit an amended listing proposal for the mountain plover by September 30, 2002. On October 7, 2002, we agreed to prepare a document to reopen the public comment period for this listing decision by November 30, 2002; hence, the December 5, 2002, notice to reopen the comment period (67 FR 72396). On February 21, 2003, we extended the comment period to March 21, 2003 (68 FR 8487).

Summary of Comments Received on the Proposed Rules

In both the February 16, 1999, proposed rule (64 FR 7587) and the December 5, 2002, proposed rule (67 FR 72396), all interested parties were requested to submit factual reports or information that might contribute to the development of a final determination. Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. Several newspaper articles appeared in Montana, Wyoming, and Colorado following our distribution of background materials to print media. We also solicited and received the expert opinions of three independent specialists regarding pertinent scientific or commercial data and issues relating to the biological and ecological information for the mountain plover. We received a total of 194 written comments on the 1999 proposed rule.

We distributed a press release to announce the 2002 proposed rule. We again solicited peer review of independent specialists regarding the listing proposal and special rule. We received a total of 65 written, e-mail, or telephone comments on the 2002 proposed rule.

In response to the 1999 proposed rule, public hearings were requested in Nebraska by the Forest Service; in Montana by the Phillips County Prairie Ecosystem Action Council, the Phillips County Board of County Commissioners, and Erin Crowder; and in Wyoming by the Park County Board of County Commissioners, Wheatland Irrigation District, Wyoming Farm Bureau Federation, Laramie County Conservation District, Platte County Resource District, Antelope Grange, Mountain Valley Livestock, Inc., Ultra Resources, and John and Phyllis Thalken.

Public hearings were held at the following locations and dates:

- Billings, Montana, May 26, 1999.
- Malta, Montana, May 25, 1999.
- Greeley, Colorado, May 25, 1999.
- Lamar, Colorado, May 26, 1999.
- Casper, Wyoming, June 2, 1999.

We received written and verbal comments from State and Federal elected officials, State and Federal agencies, nongovernmental organizations, and private citizens. We received a total of 52 comments at the 5 public hearings. Of the total 246 written and verbal comments received on the 1999 proposed rule, 136 opposed, 41 supported, 53 expressed concern about the proposal, and 16 sought a list of the references or requested public hearings.

Following release of the December 5, 2002, proposed rule, we received requests for public meetings from Congressman Bob Filner representing the 50th District of California, the Oklahoma Farm Bureau, the Kansas Farm Bureau, and the Nebraska Farm Bureau. Following discussions with each of these individuals, we held public meetings at the following locations:

- El Centro, California, January 23, 2003.
- Elkhart, Kansas, February 5, 2003.

The Service distributed news releases announcing the meetings in El Centro, California, and Elkhart, Kansas, on January 16, 2003, and January 29, 2003, respectively. Notification of the Elkhart meeting also appeared on the local access television station within the Elkhart, Kansas, viewing area.

We received a total of 11 verbal comments from the 2 public meetings held in 2003. Of the total of 75 verbal and written comments received on the December 5, 2002, proposed rule, 25 comments opposed the listing proposal, 15 supported the proposal, 24 expressed concern, and 11 requested an extension of time or public hearing.

All written and verbal comments presented at the public hearings and received during the public comment period, including peer review comments, were considered in preparing this final determination. Most of the comments opposing the action criticized the quality of the science used to support the proposal, stated that we did not thoroughly address each listing factor, noted the potential for the Federal listing to restrict activities on both public and private lands, and suggested that listing should be delayed to allow other alternatives to work to conserve the species (*e.g.*, conservation agreements). Some comments also challenged the value of listing the species, and argued that listing the mountain plover will conflict with other species' conservation efforts and the implementation of other Federal programs. Other respondents supported listing because of the decline in the distribution and numbers of mountain plovers and the potential future natural or man-caused actions to result in further decline of the species, and also asked that critical habitat be designated. Each of the five peer reviewers (three in

1999, two in 2002) indicated that the proposed rule contained sufficient scientific information to support proposed listing. We have consolidated similar comments, organized them by central themes, and provide our responses below.

Listing Decision Statute Issues

Comment 1: The Service has violated statutory intent by not complying with 'the best information available' standard, has inappropriately 'piggybacked' a new proposal on the 'stale' 1999 proposal, and has shown deferential treatment to environmental organizations, evidenced by the settlement agreement with Earthjustice.

Response 1: This final determination presents a significant amount of new information that has become available since the 1999 proposed rule, including new information that caused us to discount Breeding Bird Survey (BBS) trends as statistically insignificant, and to reconsider what we earlier proposed as threats on agricultural lands on the breeding grounds. The settlement agreement does not reflect preferential treatment, but rather an appropriate means to resolve litigation where the final determination was overdue.

Comment 2: E-mails, personal communications, and letters do not meet the 'best information available' standard as described in Service policy (59 FR 34271).

Response 2: Our policy, as cited above, requires that we evaluate all scientific and other information available, which may include both published and unpublished materials, in the development of a listing action. We review the information, regardless of origin, and determine whether it is reliable, credible, and represents the best information available regarding the species under review. We must document our evaluation of any information we use in reaching our decision, whether it supports or refutes that decision.

Biased Decision Issues

Comment 3: Several commenters stated that our analysis of the mountain plover population trend data, grassland conversion statistics, oil and gas development projections, prairie dog population data, and other issues, are specific examples of the Service's use of 'selective science.' The commenter believe the Service has 'selected science' to defend a listing position in the proposed rules, while ignoring information that defends the withdrawal of the listing proposal.

Response 3: During the two public comment periods in 2002 and 2003, we received numerous comments from affected States and other interested parties. We have based our decision on our review of all the pertinent information we received. This determination includes new and additional information, including research results, that was not available for the proposed rule.

Comment 4: The multiple-clutch breeding system of the mountain plover influences the annual fluctuation in the population, and prepares the mountain plover for a changing environment.

Response 4: Multiple-clutching is believed to be a strategy that allows the mountain plover to respond to abundant prey (Graul 1973) which can, therefore, result in annual fluctuations in mountain plover numbers at individual breeding locations. We agree that annual fluctuations in mountain plovers may be in response to prey, but the affect of multi-clutching on population trends is unknown.

Comment 5: The Service understated the effects of predation on mountain plovers, did not consider the invasion by red fox *(Vulpes vulpes)*, and did not describe what is going to be done to reduce predation effects on mountain plovers. Predation has a much greater effect on the mountain plover population than losses on croplands.

Response 5: We have revised the section on predation to include red fox as a potential predator, and assess the implications of predation to mountain plover conservation. However, red fox are not typically associated with habitats occupied by mountain plovers.

Comment 6: The Service has not identified or quantified actual threats and, therefore, has not shown that mountain plovers have declined or are at risk.

Response 6: The commenter is correct that we have not quantified the threats to the mountain plover or the number of individuals lost as a result of each threat. We have based our determination to withdraw on the wide distribution of the mountain plover and the relative security of the species from present or foreseeable threats across its current range.

Habitat Characteristics Issues

Comment 7: Mountain plovers are not at risk when nesting on croplands. Current agricultural practices are beneficial to the mountain plover.

Response 7: In the 1999 proposed rule, we stated that agricultural practices on cultivated lands may contribute to the decline of mountain plovers. Research has confirmed that some nests are lost to some cultivation practices (Dreitz and Knopf, in litt. 2003). As reported in this final determination, preliminary research findings from Colorado suggest that nesting success on cultivated lands does not differ significantly from nesting success on grassland nesting sites (Dreitz and Knopf, in litt. 2003). We agree that nesting success on some croplands is similar to that found on grasslands, but the relative influence of each landscape on mountain plover population recruitment has not been determined.

Comment 8: Cultivated lands provide habitat where none existed before.

Response 8: Cultivated lands have replaced grasslands within the historic breeding and wintering range of the mountain plover. Hatching success on cultivated lands and grasslands appears to be similar in the southern portion of the breeding range.

Comment 9: Mountain plovers are an adaptable species, and have effectively shifted from grasslands to cultivated lands in many breeding and wintering areas. Cultivated lands, not grasslands, are now the most important habitat for mountain plovers at both breeding and wintering locales.

Response 9: See response to Comments 7, 8, and 21.

Comment 10: The role of insect availability has not been thoroughly evaluated, particularly given that livestock dung is less abundant than bison dung, and the prevalence of dung influences insect abundance. Also, systemic insecticides are used on cattle, which reduces insect availability.

Response 10: We agree that the role of insect availability has not been thoroughly evaluated. However, no information has been provided to show that insect abundance or diversity have been significantly modified by the replacement of bison with domesticated livestock, or that the use of systemic pesticides influences insect abundance or composition.

Comment 11: Mountain-plover habitat is provided by several factors such as low moisture, drought, herbivory, fire, and grazing. In Montana, unique soil types are the key element in defining suitable mountain plover habitat. Prairie dog colonies are not the only suitable habitat.

Response 11: We agree that numerous factors can provide suitable mountain plover habitat. We agree that soils are important to providing the vegetation and bare ground required by nesting mountain plovers. For example, Beauvais and Smith (2003) stated that poor soil, low precipitation, and wind scour help provide the proportion of bare ground needed by nesting mountain plovers in the Jack Morrow

Hills area of southwest Wyoming. However, the literature also is replete with examples documenting the association of mountain plovers with prairie dogs (*e.g.*, Dinsmore 2001, Knowles 1999, Kotliar *et al.* 1999).

Comment 12: Habitat fragmentation and isolation increase the mountain plovers vulnerability to random natural and human-caused events.

Response 12: No scientific information specifically discusses the influence of fragmentation or isolation on the persistence of mountain plovers at currently occupied breeding and wintering sites.

Comment 13: The anticipated growth at South Park will impact mountain plovers and their habitat.

Response 13: Complete development of South Park into private homes would probably adversely impact mountain plover. However, the anticipated growth at South Park will be low-density residential development, and full build-out is not anticipated in the foreseeable future since the current human population in Park County is small (16,000 people). It also is likely that conservation efforts ongoing in South Park will preserve important mountain plover habitat. Consequently, we believe potential threats to mountain plovers that might result with development will be offset by conservation measures implemented at the State and county levels.

Mountain Plover Distribution Issues

Comment 14: All suitable habitat on private and public lands throughout the breeding range of the mountain plover has not been thoroughly inventoried. Additional searching in the breeding range has consistently found more mountain plovers.

Response 14: We have revised the population estimates for individual States based on new information from commenters and literature. We agree that surveys on all private lands in the breeding range could reveal additional birds. For that reason, in addition to the birds' flocking tendencies in winter, and 44 years of CBC data, we base our total population estimate on counts from wintering habitat in California, not on a summation of counts from breeding locales. Mountain plovers occurring at undetected breeding locations would be expected on the winter habitat from October through mid-March. This estimate assumes that most of the birds winter in California.

Comment 15: All wintering areas in the United States or Mexico have not been located. Further searching will yield more wintering sites and more mountain plovers.

Response 15: All historic and current information we have reviewed support California as the key wintering location for mountain plovers, with many fewer numbers occurring elsewhere. Searches for mountain plovers on wintering grounds in Mexico have been ongoing for the past several years. We agree that additional searching is likely to find other sites used by mountain plovers, but we believe that finding large numbers of wintering mountain plovers will be highly unlikely, given the level of effort dedicated in the United States and Mexico over the past decade to locating mountain plovers. We have revised this section of our determination to cite new information provided during the comment period.

Mountain Plover Total Population and Trends Issues

Comment 16: The mountain plover is declining throughout its range, and its current abundance is low compared to other bird species.

Response 16: The CBC data from wintering grounds in California identify a slow decline in mountain plover abundance the last 44 years. However, the numbers vary widely from year to year, and their accuracy cannot be determined with any certainty.

Comment 17: The population estimate in the 1999 and 2002 proposed rules is just "a guess" and is not reliable.

Response 17: The majority of wildlife population numbers are estimates, because it is rarely possible to count all the individuals of a species to develop a precise population number. We have relied on practices accepted in conservation science, using the best information available to us, to provide the public with a total population estimate. The total population estimate of 8,000 to 10,000 individuals was made by Dr. Fritz Knopf, a Senior Scientist with USGS–BRD in Fort Collins, Colorado. Dr. Knopf has been studying mountain plovers since 1986, and has published widely on the mountain plover throughout its range. We believe he is well qualified to make a population estimate. Dr. Stephen Dinsmore, who recently completed his doctoral research on mountain plovers in Montana, agrees with the population estimate. The only other estimates available are those we have developed for individual States in the breeding range based on other sources of information.

The estimate is based on a 1-day coordinated survey on the winter habitat in 1994, which was conducted by 95 observers covering 25 sites in 9 counties. In addition, both planned and incidental searches to locate and report mountain plovers in California have been ongoing for decades.

Many respondents challenged the reliability of the population estimate because of its reliance on a 1-day winter survey, and its failure to include the numerous mountain plovers that they believe occur on private lands throughout the nesting range. Counting animals on their winter habitat is an accepted technique for estimating the abundance of many species, with migratory waterfowl and big game being two examples. The survey coordinated by the National Audubon Society in California was a legitimate approach to monitor a wintering species, and represented a new effort to count mountain plovers.

The commenters are correct in stating that the population estimate alone cannot be used as a basis for listing. We have provided the abundance and distribution information to give the public a better sense of the status of the mountain plover.

Comment 18: How can the Pawnee National Grassland and Charles M. Russell National Wildlife Refuge be important when so few mountain plovers occupy these sites?

Response 18: We emphasized the significance of the Pawnee National Grassland because of its historic importance to the mountain plover, its Federal ownership and management, and its potential contribution to mountain plover conservation. We identified the Charles M. Russell National Wildlife Refuge because of its location in Phillips County, Montana, an area with suitable and potentially suitable habitat and currently one of the largest breeding mountain plover populations. We believe each of these properties, with proper management, can make significant contributions to mountain plover conservation on public lands.

Comment 19: The Service did not acknowledge that Dr. Walter Graul's 1976 population estimate for the Pawnee National Grassland is now considered inaccurate.

Response 19: We discussed this issue with Dr. Graul in preparing this final determination. The commenter correctly notes that subsequent to Dr. Graul's 1976 estimate of 20,000 mountain plovers on the Pawnee National Grassland, he stated that it may have been off by an order of magnitude. Dr. Graul provided the 1976 estimate to satisfy a request of the American Ornithological Union to establish a relative magnitude of abundance for the mountain plover. However, Dr. Graul believes that mountain plovers were much more numerous during his

research than have been noted in recent years by himself or Dr. Fritz Knopf. Consequently, while our use of historic numbers to show a declining trend at the Pawnee National Grassland can be challenged, Dr. Graul and Dr. Knopf both agree that a significant decline has been evident since the late 1960s. We have revised the appropriate section of the final determination.

Comment 20: The present and future change in winter habitat in California is a significant range-wide threat to mountain plovers.

Response 20: As described in this final decision, we do not believe the anticipated conversions of cultivated and noncultivated habitats in California will have an immediate significant impact on wintering mountain plovers throughout California. We discussed this issue with Dr. Fritz Knopf for preparation of this final determination (F. Knopf, pers. comm. 2003). Dr. Knopf agreed that winter habitat does not appear to be limited, but acknowledged that habitat quality may not be similar among all cultivated and noncultivated lands. Mountain plovers are opportunistic foragers while they occupy winter habitat, and have the ability to seek suitable habitats available over a wide area. Knopf and Rupert (1995) determined that mountain plovers prefer noncultivated sites to cultivated lands, and others have observed that mountain plovers appear to select unique characteristics (E. Marquis-Brong, BLM, in litt. 1999). However, given that cultivated habitat is pervasive throughout the Imperial and Central Valleys, we do not believe the current rate of conversion represents an imminent threat to mountain plovers.

Comment 21: Mountain plover numbers are very dynamic, and their current abundance merely reflects a normal fluctuation.

Response 21: We agree that mountain plover abundance at local breeding areas can fluctuate annually based on local environmental conditions.

Comment 22: Population fluctuations due to climatic events should be considered temporary and not a justification for listing.

Response 22: The Service must consider all factors, natural or human-caused, that may contribute to a species' survival and recovery. We agree that climatic events may affect localized populations, either positively or negatively, on a temporary basis. Presently, it is believed that climatic events on the Pawnee National Grassland have negatively influenced mountain plover abundance there.

Comment 23: The BBS data are not reliable. The 2002 proposed rule stated that new BBS information was available, but new BBS information could not be found.

Response 23: The 1999 proposed rule cited literature published by Dr. Fritz Knopf, which used published BBS trend analyses reporting the mountain plover declining throughout its range, and declining more rapidly than other grassland endemic birds. His conclusions were based on the BBS data for the periods from 1966 to 1993. The 1999 proposed rule also cited an analysis by Dr. John Sauer with the USGS–BRD, showing that for the period 1966 to1996, the BBS trend analysis yielded a statistically significant estimated annual rate of decline of 2.7 percent. Because of the numerous comments we received on the 1999 proposed rule regarding the BBS data, we requested a review of the data by the USGS–BRD, which is the Federal agency responsible for administering the BBS program.

According to Sauer (in litt. 1999), the survey-wide trend analysis lacked statistical confidence due to the wide variability in mountain plovers reported from individual routes in each of the years from 1967 to 1998. We concluded that, although the BBS is the only long-term trend information available in the breeding range, it is not a statistically reliable indicator of mountain plover population trends.

Comment 24: A commenter criticized the 30-year-old National Wildlife Refuge records because of a lack of information, the variability in observer experience, and inconsistency in survey routes followed.

Response 24: In 1992, we received a report from the Kern National Wildlife Refuge that consolidated mountain plover observations and discussed their historic and current status on the Kern and Pixley National Wildlife Refuges in California (J. Engler, Service, in litt. 1992). The report included observation records from 1961 to 1991, and lacked data for many years during that period. The records of mountain plover sightings from the refuges were collected during inventories for waterfowl, which included observations of migrating shorebirds and other species. It is common for annual waterfowl surveys to be conducted by different people, given staff turnover and personnel availability. However, refuge biologists are thoroughly trained in bird identification, and, more importantly, because the mountain plover was known as a regular resident of these refuges, we are confident that the biologists completing the survey were able to correctly identify mountain plovers when encountered. We agree that the refuge data provide an approximate estimate rather than a precise number of mountain plovers wintering on the refuge.

Comment 25: The CBC data are unreliable because count circles are not always the same over time, errors have been published by American Birds, the number of individuals reported could be wrong, and the wrong species can be reported.

Response 25: We agree that CBC numbers fluctuate greatly from year to year based on observer variability, survey, intensity, and the spatial and temporal distribution of mountain plovers. We contacted Mr. Geoff LeBaron of the National Audubon Society, who is in charge of the CBC surveys and is responsible for analyzing the data; he is familiar with the suggested limitations (G. LeBaron, National Audubon Society, pers. comm. 1999). Mr. LeBaron agreed that some count circle centers may change over time, due to encroachment of development within the count circle and, therefore, may not be completely "static" over the entire period of record. However, he did not believe this seriously compromises the quality of the data for the geographic area over the long term. He also agreed that the other limitations cited by the commenter can occur when field data are being evaluated for species that occupy similar habitats, or are similar taxonomically. However, because the mountain plover is unique in these respects and, therefore, unlikely to be confused with any other species by experienced observers, he does not believe any of these limitations apply to the mountain plover. The Anadarko Petroleum Corporation retained Dr. Mark Boyce to analyze the CBC data (M. Boyce, University of Alberta, in litt. 2003). Dr. Boyce's analysis did not refute the conclusions of Dr. John Sauer with USGS–BRD (in litt. 2000). We have revised the section in this final determination to report additional information regarding the CBC.

Comment 26: Population trends of the mountain plover at the Pawnee National Grassland are indicative of the total population trend.

Response 26: There is no scientific evidence to support the claim that the precipitous decline documented at the Pawnee National Grassland has influenced the total mountain plover population.

Comment 27: The mountain plover's short lifespan makes the species vulnerable to decline.

Response 27: There is no scientific evidence to support the commenter's claim that the mountain plover's risk of

extinction is exacerbated by a short lifespan.

Grassland Conversion Issues

Comment 28: Grassland conversion has destroyed mountain plover habitat and resulted in a decline in mountain plovers.

Response 28: We are unable to precisely quantify the amount of mountain plover habitat that has been lost due to agricultural conversions and, therefore, are unable to precisely quantify the impact to mountain plovers. We do not believe the present or future conversion of grasslands is an imminent threat to all mountain plover breeding locations, throughout the species' range.

Comment 29: The Service overstated the loss of grasslands as an impact on breeding mountain plovers, because the rangeland loss reported in the 2002 proposed rule is minuscule relative to total rangeland available. This means that the impact to mountain plover habitat is even smaller and, therefore, of no consequence.

Response 29: We agree that most grassland conversion occurred prior to 1982, and that the proportion of rangeland lost to total rangeland from 1992 to 1997 is small. We have revised the section of the final determination addressing grassland conversion.

Comment 30: The Service inappropriately analyzed the National Resource Inventory database in its description of rangeland conversion loss, and the implications to mountain plover habitat.

Response 30: Because we are unable to precisely differentiate mountain plover habitat from among the NRI cover types, the NRI data are of little value in clearly and concisely assessing the degree of threat to mountain plovers or their habitat. We have revised the section of the final determination.

Comment 31: Some commenter stated that the presence of thousands of acres of Conservation Reserve Program (CRP) lands represents a threat to mountain plover habitat. Other commenter complained that the Service has not given credit to the thousands of acres of grassland created by the CRP.

Response 31: The CRP administered by the Department of Agriculture allows producers to retire lands for 10-year periods to remove highly erodible soils from production, thereby benefitting wildlife and other resources. As of 1992, 2,002,000 ha (4,946,000 ac) of land were enrolled in the program in Colorado, Montana, and Wyoming, and most of these lands were planted to grass (Berlinger and Knapp 1991, Lesica 1995). The wildlife that benefit most from these practices (such as ring-necked pheasant, northern bobwhite, and western meadowlarks) are those associated with tall vegetation (Schenck and Williamson 1991), although within each State, the Department of Agriculture has the ability to plant a variety of grass species, including short grasses that benefit mountain plover.

Comment 32: Wintering habitat is becoming a limiting factor. The historic conversion of grassland in California impacted mountain plovers, and future modifications of crop types, agricultural practices, or urbanization will have additional impact.

Response 32: Mountain plovers demonstrate some flexibility on winter habitat. Wunder and Knopf (2003) reported that agricultural practices on croplands in the Imperial Valley are critical to wintering mountain plovers, although Knopf and Rupert (1995) concluded that grasslands were preferred by wintering mountain plovers to agricultural fields in the Central Valley. While not all of the croplands are suitable foraging habitat, and modification of practices on croplands used for foraging could be detrimental to some mountain plovers, we do not believe the rate of conversion occurring now is having a significant influence on the total abundance of mountain plovers throughout California.

Livestock Grazing, Range Management, and Farming Issues

Comment 33: Range management is a factor in the historic decline of mountain plovers, and represents a current threat to existing mountain plover populations. Grazing practices now are very similar to those that were adopted decades ago.

Response 33: The prevailing grazing management standards adopted by Federal agencies and grazing associations tend to maximize forage production and diminish excessive disturbance to grass and soil. Such practices can be detrimental to mountain plovers, although we have no information to indicate this is happening on a broad scale across the species' range.

Comment 34: The Service incorrectly stated that the Forest Service has no schedule for revising grazing management prescriptions on the Pawnee National Grassland.

Response 34: This final determination has been corrected to report our recent coordination with the Forest Service regarding their planned revisions to range allotment management plans on the Pawnee National Grassland, which are designed in part to enhance mountain plover breeding habitat.

Comment 35: Since farming practices have not changed in 50 years how can there be any impact to mountain plovers?

Response 35: We recognize there are numerous small farming and ranching operations that have retained historic practices that may benefit mountain plovers. As a result of a variety of factors, including more advanced technology and more effective agricultural chemicals, the average farm size has increased. As the farms have gotten larger, it is no longer feasible to till and plant a field within a short period of time. Consequently the lands are tilled in early spring when suitable habitat for mountain plover nesting is present. Therefore, some nests are at risk from spring tilling if measures are not taken to avoid nests. This final determination describes the implications of current farming practices to mountain plover conservation.

Issues Related to Prairie Dogs

Comment 36: We received numerous comments on the Service's discussion of mountain plovers and prairie dogs, the abundance and distribution of prairie dogs, and the role of prairie dogs in the historic and current status of the mountain plover.

Response 36: This final determination cites published literature, expert opinion, and other sources of available information to describe the association of mountain plovers and prairie dogs. Of the many comments received addressing prairie dogs, only one provided detailed information to challenge our discussion regarding the distribution of mountain plovers on prairie dog colonies in Montana. Recently, research completed in southern Phillips County, Montana, affirmed a strong association of mountain plovers with prairie dogs (Dinsmore 2001). Therefore, based on our review of the information available, we continue to believe breeding mountain plovers are strongly associated with prairie dogs in Montana. We have revised the section on prairie dogs to report new information.

Comment 37: The Service grossly underestimated the abundance of prairie dogs and, therefore, grossly underestimated the abundance of mountain plovers.

Response 37: The Wyoming Department of Agriculture is correct that the current estimate of black-tailed prairie dogs in Wyoming is greater than earlier Service estimates. However, it does not follow that the mountain plover population is proportionately underestimated. As stated above, we base our total mountain plover

population estimate on winter counts, not availability of breeding habitat. We have revised the final determination to acknowledge the new estimates for prairie dogs, and discuss the implications of prairie dog abundance to mountain plover viability.

Comment 38: Prairie dog poisoning has increased.

Response 38: The Service has new information to suggest that poisoning of black-tailed prairie dogs may have increased in some States in the mountain plover's range (Service 2002.). We have revised this section of the final determination to conclude that while prairie dog poisoning may have increased locally, it does not represent an imminent threat to mountain plovers throughout their breeding range.

Comment 39: Prairie dog shooting is a threat to mountain plovers.

Response 39: We agree that shooting black-tailed prairie dogs has been shown to reduce prairie dog abundance at some locations. However, it has not been shown to be a significant threat to maintenance of black-tailed prairie dog colonies (Service 2002.). While it has the potential to degrade or prevent recovery of habitat and impact mountain plover breeding success, we believe those instances are localized and infrequent. We have no information to indicate that the incidental shooting of mountain plovers is significant.

Mineral Development Issues

Comment 40: Oil and gas development, including coalbed methane, is a potential significant threat to mountain plovers.

Response 40: This final determination provides information describing the potential effects to mountain plovers from oil and gas development. The degree of effect depends on the density of mountain plovers and level of oil and gas development within a project area.

Comment 41: The presence of mountain plovers at the Antelope Coal Mine in Wyoming is evidence that mining does not impact mountain plovers.

Response 41: We have revised the final determination to report new information from the Antelope Coal Mine, including its potential effects on mountain plovers.

Pesticide Issues

Comment 42: Inclusion of grasshopper control as a potential threat is not valid because the rule admits that Federal grasshopper control programs have been abandoned.

Response 42: The Animal and Plant Health Inspection Service (APHIS) has recently authorized rangeland grasshopper control, and control of grasshoppers can occur when they reach economic thresholds. We have revised the final rule to report new information regarding pesticide exposure from grasshopper control and from California wintering habitat.

Regulatory Mechanisms

Comment 43: Existing regulatory mechanisms are inadequate to protect the mountain plover.

Response 43: We have no evidence that the existing regulatory mechanisms have contributed to the decline of the mountain plovers throughout a significant portion of their range. The Forest Service and the BLM routinely include the mountain plover in their planning documents to ensure that activities they authorize do not contribute to the further decline of the species. The NRCS has prepared a fact sheet for the mountain plover to encourage farmland practices beneficial to the mountain plover. The Service is developing a dialogue with all Federal agencies to ensure that measures are included in land management plans to protect and promote the conservation of the mountain plover. Federal listing would not add significant conservation benefit above those efforts presently adopted by Federal agencies.

Peer Review

In compliance with the July 1, 1994, Service Peer Review Policy (59 FR 34270), peer reviews were provided by five specialists. The peer reviewers in 1999 were Dr. Marshall Howe with USGS-Patuxent Wildlife Research Center, Dr. C.R. Preston with the Draper Museum of Natural History in Cody, Wyoming, and Dr. James Dinsmore with Iowa State University in Ames, Iowa. Each of these peer reviewers concluded that there was sufficient information to list the mountain plover as threatened. The reasons cited by the peer reviewers included small population and declining trend of the species, prairie dog distribution and decline, habitat loss to grassland conversion, the influence of cropland nesting efforts on mountain plover conservation, and pesticide exposure.

Two peer reviewers provided comments to the 2002 listing proposal. One peer review was provided by Dr. Peter Paton with the University of Rhode Island in Kingston, and the second peer review was provided by Mr. Steve Forrest with Hyalite Consulting in Bozeman, Montana. Mr. Forrest was selected by Earthjustice following the settlement agreement reached between the Service and Earthjustice to expedite a listing decision for the mountain plover. Both of these peer reviewers also supported the proposal to list the mountain plover. The issues identified by each of them were similar to those received from the peer reviewers in 1999, but also included attention to other specific issues such as declines in Weld County, Colorado, Montana, and Thunder Basin National Grassland in Wyoming, as well as habitat fragmentation, prairie dog shooting, and the proposed special rule.

Since the 1999 listing proposal and following the 2002 re-opening of the comment period, we have acquired additional information regarding the concerns identified by each of the peer reviewers, as disclosed in this final determination.

Summary of Factors Affecting the Species

Section 4 of the Act (16 U.S.C. 1531 *et seq.*) and the regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal list of endangered and threatened species. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to the mountain plover rangewide are discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Historical and Current Conversion of Grassland in Breeding Range

As described in the 1999 and 2002 proposed rules, the historic conversion of grassland to cropland likely contributed to the decline of mountain plovers and their habitat (*e.g.*, Graul and Webster 1976, FaunaWest 1991, Knopf and Rupert 1999b). To assess more recent grassland conversion, we reviewed information available from the National Resources Inventory (NRI) of the U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) between 1982 and 1997. We selected the "rangeland" cover type because "native grassland" is not a type category within the data base specifically, but is represented under the rangeland category. Comprehensive NRI data is only available from 1982 through 1997 (NRCS 1998; K. Musser, NRCS, in litt. 2000; K. Musser, pers. comm 2002). We used only areas occupied by mountain plovers in their breeding range to compare the rangeland conversion statistics (Knowles and Knowles 1998, Shackford and Leslie 1995).

From 1982 to 1997, rangeland decreased in Colorado by 217,200 ha (536,700 ac), in Kansas by 14,852 ha (36,700 ac), in Nebraska by 14,326 ha (35,400 ac), in Oklahoma by 16,512 ha (40,800 ac), in Montana by 59,894 ha (148,000 ac), and in Wyoming by 18,090 ha (44,700 ac). More acres were converted prior to 1992 in all States except Nebraska and Montana, where acres converted after 1992 were about the same or more than doubled, respectively. The total lands converted are a small fraction of the total rangeland. While the best information available does not allow us to quantify the acres of occupied mountain plover habitat converted, using the rate of rangeland conversion, we believe native grassland conversion is small and does not pose a substantial threat to mountain plovers.

The Montana Fish, Wildlife and Parks expressed concern over conversion of native habitat in Montana (P. Graham, Montana Fish, Wildlife and Parks, in litt. 1999). For example, Knowles and Knowles (2001) reported that a total of 13 percent of the land area in their central Montana study area has been converted from native grass from 1991 to 1999, and that mountain plovers have abandoned all but one of the sites that were converted. Mountain plovers in the central Montana study area declined from more than 100 in 1992 to about 70 individuals in 2000, as a result of grassland conversion (Knowles and Knowles 2001; C. Knowles, pers. comm. 2003).

Mountain plovers nest successfully on croplands in Colorado and perhaps contiguous States (V. Dreitz and F. Knopf, in litt. 2003; Shackford *et al.* 1999). While the findings are preliminary and represent a small percentage of total croplands in eastern Colorado, they suggest that existing croplands and grasslands in the southern portion of the breeding range may be of equivalent value to nesting mountain plovers (V. Dreitz and F. Knopf, in litt. 2002). In Montana and northern Wyoming, nesting on cultivated land has not been observed (Knowles and Knowles 2001; Shackford *et al.* 1999). However, since the amount of rangeland converted is small (NRCS 1998), we conclude that the impact to mountain plovers in Montana and northern Wyoming is comparably small, regardless of how cultivated land is used by mountain plovers in those states.

In some areas in the mountain plover breeding range, grasslands are being converted to housing subdivisions. Of some concern is development of nesting habitat in South Park, Park County, Colorado, where the mountain plover population is now estimated to be about 2,300 individuals, which is the largest known remaining concentration of mountain plovers in the breeding range (Wunder *et al.* in prep.). The known breeding sites in South Park are vulnerable to ongoing and proposed future residential development. Full build-out of those sites currently subdivided would be detrimental to mountain plovers (Sherman *et al.* 1996, Granau and Wunder 2001). However, it is unknown how extensive future development will actually be or how fast it will proceed, such that while it is a potential threat we have no reason to believe that it means the species is likely to be in danger of extinction in the foreseeable future. It also is likely that private conservation efforts ongoing in South Park will preserve important mountain plover habitat.

Cultivated Areas in Breeding Range as Potential Population Sinks

In the 1999 proposed rule, we stated that we believed cultivated lands in the southern portion of the breeding range created population sinks for the mountain plover, contributing to species decline. In an effort to better define the implications to mountain plover survival, research was initiated on cultivated fields and rangelands in five counties in eastern Colorado in 2001 (T. McCoy, in litt. 2001). Preliminary data analysis indicates that nest success is comparable between cropland and rangeland (V. Dreitz and F. Knopf, in litt. 2003). Nest failure was attributed principally to tillage and predation on cropland, and to predation on rangeland (V. Dreitz and F. Knopf, in litt. 2002). However, while hatching success on croplands and grasslands is similar in the southern portion of the breeding range, comparable data on juvenile survivorship are not available so mountain plover reproductive success on cropland relative to grasslands is not fully known (V. Dreitz and F. Knopf, in litt. 2002; Knopf, in litt. 2003).

Historical Conversion of Grassland in Wintering Range

Historically, mountain plover habitat in the Central Valley was lost following the decline of grazing elk, pronghorn, burrowing kangaroo rats, ground squirrels, and other mammals. The combined activities of these herbivores maintained suitable habitat conditions for mountain plovers, closely mimicking habitat characteristics found on breeding habitats (Knopf and Rupert 1995). Elk are now extirpated from the Central Valley, and pronghorns, once extirpated, have recently been reintroduced into the Carrizo Plains (BLM *et al.* 1995). The federally-listed giant kangaroo rat (*Dipodomys ingens*) and Tipton kangaroo rat (*Dipodomys nitratoides nitratoides*) have declined to about 2 percent and 1 percent of their former range, respectively, due primarily to conversion of grassland habitat to agriculture and urbanization, and secondarily due to other incidental human activities and control of California ground squirrels (W. White, Service, in litt. 2001a; 52 FR 283; S. Jones, Service, pers. comm. 2003). The occupied range of each of these species in the San Joaquin Valley overlaps the described wintering range of the mountain plover. Currently, it is estimated that giant kangaroo rats may occupy about 11,145 ha (27,540 ac) and the Tipton kangaroo rat may occupy about 25,000 ha (63,000 ac) (Service 1998). While we cannot measure the degree of impact to mountain plovers resulting from the loss of these mammals, we believe any further loss would be detrimental to the species by further reducing natural habitats.

Native grasslands in the San Joaquin Valley have been nearly eliminated. Of nearly 1,800,000 ha (4,400,000 ac) of native grasslands present prior to extensive settlement, no more than 600 ha (1,500 ac) remained in 1972 (Moore *et al.* 1990). This loss of grasslands has been paralleled by a loss of other natural habitats, with the total of all uncultivated lands in the San Joaquin Valley now occupying less than 61,000 ha (150,000 ac) (Service 1998).

Mountain plovers wintering in the San Joaquin Valley prefer native Valley sink scrub and nonnative grasslands over any of the more commonly cultivated land types (Anderson *et al.* 1991; Knopf and Rupert 1995) when the grasslands are grazed or burned (Knopf and Rupert 1995). These preferred habitats occupy less than 26,000 ha (66,000 ac) of the San Joaquin Valley (Anderson *et al.* 1991). Mountain plovers in the San Joaquin Valley depend on these core areas of uncultivated lands in October and November (Engler, in litt. 1992; Knopf and Rupert 1995), and further loss of these areas would be detrimental to the species (Knopf and Rupert 1995).

Mountain plovers use cultivated croplands in the Imperial Valley of California, where in recent years (except the winter of 2002–03 when excessive rain prevented it) greater than 50 percent of all individuals of the species wintered (Wunder and Knopf 2003). Until agricultural development began in the 1940s, this historically desert region was not known to support the species. Here, 37 percent of the mountain

plovers forage and roost on grazed or sprouting alfalfa fields; 34 percent roost on short-term fallowed fields; and 13 percent forage on burned bermuda grass fields, while ungrazed alfalfa, unburned bermuda grass, melon and vegetable fields are rarely or never used (Wunder and Knopf 2003).

Other habitats within the historic wintering range of the mountain plover have been modified by modern livestock grazing practices that maintain grass height that is higher than what mountain plovers can use. This is the situation in the Carrizo Plain, which is recognized as a predictable wintering area and historically may have provided up to 50 percent of suitable plover wintering habitat. No more than 10 percent of the Carrizo Plain's 103,000 ha (254,000 ac) was suitable for mountain plovers in the early 1990s (S. Fitton, in litt. 1992; BLM *et al.* 1995), but that figure has increased in recent years due to lower precipitation (S. Fitton, pers. comm. 2003). Habitat availability there appears to be linked to a combination of livestock grazing management and precipitation.

We were unable to precisely quantify the acres of mountain plover wintering habitat converted to other uses annually because a data base quantifying mountain plover habitat does not exist. However, information from the California Department of Conservation confirms the routine conversion of existing croplands to vineyards, orchards, and other uses. For example, from 1990 to 2000, the acreage of vineyards in California nearly doubled to a total of 230,000 ha (570,000 ac) (M. Penberth, California Department of Conservation, in litt. 2003). In nine counties in the Central Valley where mountain plovers are now reported as "rare and local," the acres in vineyards increased by about 25 percent (31,000 ha (76,000 ac)) from 1990 to 2000 (Edson and Hunting 1999; M. Penberth, California Department of Conservation, in litt. 2003). Conversion to vineyards represents a loss of potential habitat, although the extent of use by plovers prior to conversion is unknown.

Urban development destroyed most noncultivated, historic coastal mountain plover winter habitat (Wunder and Knopf 2003), and anticipated urbanization and water transfers from rural to urban areas may impact the remaining natural habitats, as well as to existing cropland habitats in both the Central and Imperial Valleys. In California, the U.S. Census Bureau (2003) projected a 52 percent (17 million) population increase from 2000 to 2025. Based on past trends, considerable population growth is expected to occur in the Central Valley (American Farmland Trust 2003, Hunting *et al.* 2001). The Imperial County population is expected to nearly double by 2020 (American Farmland Trust 2003). In the Imperial Valley, the North American Free Trade Agreement is expected to generate increased trade growth, and highway projects are now being planned to improve transportation efficiency (California Department of Transportation 2001). As a result of the anticipated population growth, the American Farmland Trust (2003) designated the Imperial and Central Valleys 2 of the top 20 threatened farming regions in the Nation. However, between 1982 and 1992, only 8,000 ha (19,000 ac) of land in Imperial County were converted to urban uses. The present impacts to farm land in Imperial County have had no measurable impact on wintering mountain plovers. For example, the Service completed a draft biological opinion for a proposed transfer of water from the Imperial Valley to southern California coastal communities (P. Sorensen, Service, in litt. 2003). It is presently estimated that if the water transfer occurs, 12,000 to 32,600 ha (30,000 to 80,500 ac) of bermuda grass sod farms and alfalfa could be fallowed each year (C. Roberts, Service, pers. comm. 2002; P. Sorensen, in litt. 2002), which we calculate would be from 15 to 39 percent of the available foraging habitat described by Wunder and Knopf (2003). However, because of the mild winter climate in the Imperial Valley, crops are not fallowed for long periods of time. Land that is fallow 1 month may be tilled the next, presenting a shifting mosaic of foraging habitat for plovers. Because it is unclear whether the water transfer will occur and whether it will reduce foraging habitat for mountain plovers in the Imperial Valley, we cannot conclude that loss of cropland or modification of current practices threatens the species in the foreseeable future.

In summary, although most natural habitat used by mountain plovers in California has been destroyed, some crops that have replaced it provide foraging and roosting habitat (Knopf and Rupert 1995, Wunder and Knopf 2003). Given a high over-wintering survival rate in the San Joaquin Valley and Carrizo Plain and the ability of the plovers to use croplands successfully, Knopf and Rupert (1995) concluded that a loss of a major proportion of native habitats in the wintering range has not limited plover populations.

Mountain plovers have been reported in winter in other States in the United States and Mexico, but in comparison to California their numbers are few, and the threat of habitat destruction, modification, or curtailment is unknown with one exception. In the 1990s, the Ejido San Pedro CBC was initiated on a black-tailed prairie dog complex in northwestern Chihuahua, Mexico (birdsource.org 1992–2002). Mountain plovers have been reported in low numbers in most years, with no birds reported in some years (birdsource.org 1993–2002). Vegetation has been modified by livestock grazing to include woody shrubs, and prairie dog densities are low, which allows for increased vegetation height.

In conclusion, after reviewing the current and anticipated impacts to wintering habitat, we find that they do not pose significant threats to the mountain plover.

Effects of Range Management on Mountain Plover Habitat

Domestic livestock grazing is pervasive throughout the breeding range of the mountain plover. Currently accepted domestic livestock grazing management emphasizes a uniform grass cover to minimize grassland and soil disturbance, whereas the landscape created historically by native herbivores was a mosaic of grasses, forbs, and bare ground that changed frequently in time and location (Knopf 1996a, Knopf and Rupert 1999b). The shift to livestock grazing strategies that favor uniform cover is believed to be partly responsible for the decline of mountain plovers in the peripheral breeding areas of Oklahoma and Canada (Flowers 1985, Wershler 1989), but has only been assessed in limited, localized instances elsewhere within the major portion of the breeding range. Mountain plovers are no longer reported from the Lewis Ranch in central Montana since elimination of grazing there in 1993 (Knowles and Knowles 2001). The decline of mountain plovers on the Pawnee National Grassland in Colorado is due to multiple years of wet spring weather, persistent grazing systems, the apparent difficulty of adjusting domestic livestock stocking rates to accommodate years of increased forage, the lack of infrastructure to modify grazing systems, and the sparse application of grassland burning and mineral block placement to restore nesting habitat (Forest Service 1994; S. Currey, Forest Service, in litt. 2002; F. Knopf, in litt. 2002; R. George, in litt. 2002; E. Humphrey, Forest Service, in litt. 2003). These examples are localized and do not appear to exemplify practices in a substantial portion of the breeding range. If the impacts were significant, we would anticipate being able to detect a declining trend in

abundance on the BBS, which shows a statistically significant decline from 1966 to 2002 only in the extreme southern portion of the breeding range where plover abundance is low and the number of routes detecting the species are few (BBS, *http://www.mbr-pwrc.usgs.gov/bbs/bbs.html*).

Several range management practices conducted throughout the range of the mountain plover enhance the development of taller vegetation, thereby eliminating nesting opportunities (Graul and Webster 1976, Knowles and Knowles 1993). Examples of these practices include "pitting" to increase moisture retention in the soil, introduction of exotic grass species such as crested wheatgrass, watershed improvement projects to retain water, and, in Montana, fire suppression (Graul 1980, FaunaWest 1991, Knowles and Knowles 1993).

Localized range management activities on private and public lands also destroy mountain plover habitat. In 2001, for example, two known mountain plover breeding sites were destroyed in Valley County, Montana, by the construction of stock tanks in an area designated by the BLM as an Area of Critical Environmental Concern for mountain plover (C. Knowles, in litt. 2001).

Although range management activities may adversely affect some habitat for the mountain plover in specific instances, the complete absence of grazing causes mountain plover habitat to deteriorate. Therefore, we see grazing as necessary for the species; and not a threat to the species throughout its range.

Effects of the Decline of Burrowing Mammals on Mountain Plover Habitat

The historic decline in abundance and distribution of prairie dogs likely contributed to the historic decline of the mountain plover (Knowles *et al.* 1982; S. Fitton, in litt. 1992; Knopf 1994). The mountain plover nests on active prairie dog colonies, principally those of the black-tailed prairie dog (*Cynomys ludovicianus*), throughout its breeding range, as prairie dogs maintain their preferred nesting habitat of low vegetation structure and a high percent of bare ground. Preliminary findings from Colorado suggest that mountain plover nesting success is higher on black-tailed prairie dog colonies than sites without prairie dogs (V. Dreitz and F. Knopf, in litt. 2002). Prairie dogs were widespread and numerous throughout the mountain plover's historic breeding range (Service 2002). Mountain plovers presently occupy prairie dog colonies in Colorado, Montana, Wyoming, Oklahoma, and New Mexico (Shackford 1991; Godbey 1992; Nelson 1993; Hawks Aloft 2001b; M. Edwards, in litt. 1994; T. Thompson, in litt. 2003; Dinsmore 2001). Montana, Wyoming, and Colorado likely comprised most of the core mountain plover breeding areas historically, and currently there are more mountain plovers associated with prairie dogs in those States. The suitability of prairie dog colonies as mountain plover habitat appears to be influenced by the individual colony size and prairie dog density (Knowles *et al.* 1982, Olson-Edge and Edge 1987, Dinsmore 2001). Therefore, total prairie dog acres is not a measure of total suitable mountain plover habitat available.

Black-tailed prairie dogs have been reported to currently occupy about 256,000 ha (631,000 ac) in Colorado (Pusateri, CDOW, in litt. 2002), 36,000 ha (90,000 ac) in Montana, and an estimated 50,000 ha (125,000 ac) in Wyoming (Luce 2003). In Phillips County, Montana, 99 percent of the mountain plover nests found on survey transects were located on active prairie dog colonies (Dinsmore 2001). The largest population of mountain plovers in Montana (about 700 individuals) occurs on black-tailed prairie dog colonies in Phillips County, and mountain plover and prairie dog abundance are closely related there (Dinsmore 2001). Mountain plovers seem closely tied to active prairie dog colonies in Wyoming in the Powder River Basin, including Thunder Basin, particularly the Thunder Basin National Grassland. Mountain plovers are associated with black-tailed prairie dog colonies on the Pawnee National Grassland in northern Colorado (Nelson 1993; F. Knopf, in litt. 1999), in the Arkansas River Valley, and on the Comanche National Grassland in southeastern Colorado (K. Geisen, CDOW, in litt 2001). A large population of mountain plovers nest in montane grasslands without prairie dogs in South Park in central Colorado (Wunder *et al.* in prep.). About 50 percent of the black-tailed prairie dog colonies in Colorado occur in nine southeastern counties, which also report numerous mountain plover sightings (Kingery 1998; L. Nelson, CDOW, in litt. 2002).

Mountain plovers sometimes nest on white-tailed prairie dog colonies in Colorado, Wyoming, and Montana (P. Deibert, pers. comm. 2003). Gunnison's prairie dogs occur at the periphery of the mountain plover breeding range in northern New Mexico and southern Colorado, and mountain plovers have been documented to nest on their colonies (5 out of 19 confirmed breeding sites on BLM lands in Taos County were on Gunnison prairie dog colonies (Hawks Aloft 2001b)). The geographic extent of mountain plover use of Gunnison colonies appears to be small, and limited information suggests no close dependence.

Because mountain plovers have no ability to modify their environment to create suitable nesting conditions, the decline of prairie dogs can result in the loss of suitable nesting characteristics in only a few weeks (Dinsmore 2001).

Outbreaks of sylvatic plague occur frequently throughout Montana, Wyoming, and Colorado on prairie dog colonies in the breeding range of the mountain plover. Sylvatic plague is an exotic disease to which prairie dogs have almost no immunity, although recent laboratory research indicates some isolated resistance to plague in black-tailed prairie dogs (Rocke, USGS, pers. comm. 2002). However, recently available population data across a majority of the species' range, that include many smaller populations (which represents the majority of all occupied habitat), indicate that occupied prairie dog habitat is more abundant and more stable than previously thought. The majority of black-tailed prairie dog populations occur in small, isolated complexes where the dynamics of disease appear to be fundamentally different than in larger populations. The reproductive and dispersal capabilities of the species, as indicated by the distribution, abundance, and trends data for the species, may be sufficient to counteract, at least partially, the impacts of a disease that occurs only sporadically in time and space (Service 2002).

Prairie dog control, principally by poisoning, continues to occur on private and public lands throughout the mountain plover's breeding range, although the likelihood of control on public lands is minimized by Federal agency policies (Service 2002). Black-tailed prairie dog populations are capable of recovering rapidly from chemical control efforts that temporarily reduce their numbers (or from other depressant factors such as disease (Knowles 1986) or drought (Hoogland 1995)).

Mountain plovers may vacate prairie dog colonies following plague or poisoning because of the rapid deterioration of habitat conditions (Dinsmore 2001), but we consider plague or prairie dog control to be a temporary impact on mountain plovers. For example, between 1992 and 1996, prairie dog occupation of colonies in Montana's area of greatest prairie dog abundance was reduced by as much as

80 percent as a result of sylvatic plague (J. Grensten, pers. comm. 1998). Mountain plover numbers along prairie dog transects in these colonies declined from 80 in 1991 to 7 in 1999, but have slowly increased since 1996 as prairie dog abundance has increased (S. Dinsmore, in litt. 2000a).

Prairie dog shooting is popular throughout the breeding range of the mountain plover, and intense, persistent shooting of black-tailed prairie dogs has been shown to reduce prairie dog abundance, and perhaps prevent or retard recovery of colonies low in abundance due to sylvatic plague or poisoning (Vosburgh and Irby 1998; Knowles and Vosburgh 2001; L. Hanebury, pers. comm. 2003). We believe prairie dog shooting will continue to occur in areas occupied by mountain plovers. While it has the potential to degrade or prevent recovery of habitat and impact mountain plover breeding success, we believe those instances are localized and infrequent.

New information made available this year from many State and Federal agencies indicates the quantity of occupied black-tailed prairie dog habitat has increased in the last several decades (Luce 2003). Given the above summary of prairie dog habitat abundance, distribution, and threats and the subsequent impact on the mountain plover, we believe modification of prairie dog habitat is not a substantial threat to the mountain plover.

Oil, Gas, and Mineral Development in Mountain Plover Breeding Habitat

The development of oil, gas, coalbed methane, and other mineral resources commonly occurs throughout the breeding range of the mountain plover. Expedited oil and gas development is a national priority, and a new interagency task force has been assembled to assist Federal agencies in their efforts to expedite review and completion of energy-related projects on Federal lands (Executive Order 13212). However, we were able to find little documentation that this mineral resource development poses a current or future threat to mountain plovers.

Numerous current BLM planning documents detail the number of wells, roads, and other facilities required to accommodate development of these mineral resources. A summary of these planning documents for Wyoming shows at least 10 authorized or proposed active natural gas and coalbed methane projects in known or potential mountain plover nesting habitat (*e.g.*, Continental Divide/Wamsutter II Natural Gas Project, Seminoe Road Coal Bed Methane (CBM); Powder River Basin CBM) (P. Deibert, Service, in litt. 2003). Full build-out of these projects would result in over 50,000 individual wells, impacting up to 63,000 ha (155,000 ac), and creating nearly 32,000 km (20,000 mi) of new roads and 37,000 km (23,000 mi) of new pipelines (P. Deibert, in litt. 2002). Of these statistics, development of the Powder River Basin CBM alone will include nearly 40,000 wells and 27,000 km (17,000 mi) of new roads, affecting about 48,000 ha (118,000 ac) of lands (P. Deibert, Service, in litt. 2003). The Powder River Basin CBM project covers much of the black-tailed prairie dog habitat in Wyoming (K. Henke, pers. comm. 2003). In addition, there are about 14,000 coalbed methane wells proposed for the Powder River Basin in Montana (P. Deibert, in litt. 2003). Numerous other projects (*e.g.*, Bighorn Basin bentonite mine, Carbon Basin coal) are proposed or ongoing in Wyoming in areas occupied by mountain plovers (P. Deibert, in litt. 2003). In Wyoming, over 12,000 coalbed methane wells were drilled by 2001, and the current development schedule established will result in nearly 40,000 additional wells by 2011.

Another example of increased energy development is Phase I of the SeaWest Wind Power Project in Wyoming. This wind farm is now operational and has disturbed 30 ha (70 ac) on the Foote Creek Rim Mesa, but final build-out calls for 667 to 1,000 wind turbines, that would permanently occupy 208 ha (515 ac) when complete.

The development of oil, gas, and other energy resources requires construction of individual project pads, access roads, travel corridors, pipelines, power lines, and other facilities (Brockway,1992). The degree of impact on mountain plovers from these activities depends on project size, density, frequency of maintenance and operation, and proximity to mountain plovers. However, the actual impact of this development on mountain plovers is unknown.

Energy development has the potential to modify specific nesting, brood rearing, and foraging habitat characteristics, such as vegetation height, proportion of bare ground, prey density, and predator regimes (S. Dinsmore, Mississippi State University, in litt. 2003). Mountain plovers nest on nearly level ground and often near roads, adults and chicks often feed on or near roads, and roads may be used as travel corridors by mountain plovers, all of which make plovers susceptible to being killed by vehicles (McCafferty 1930, Laun 1957, Godbey 1992, Knowles and Knowles 2001), although we have no evidence that this has had an impact on mountain plover population levels.

Energy development also results in soil disturbance, and because the mountain plover has been described as a "disturbed prairie" species (Knopf and Miller 1994), this disturbance could be inferred as benign or even beneficial to the species. The BLM has standards for revegetation of disturbed sites, and for control of invasive weed species along roads, well pads, and other disturbed sites. In the Powder River Basin of Wyoming, anticipated problems with invasive species induced by coalbed methane mining have not materialized to any significant extent (J. Carroll, pers comm. 2003).

About 150 ha (370 ac) of mountain plover habitat at the Antelope Coal Mine in Converse County, Wyoming, have been affected by mining disturbance since 1982 (P. Deibert, pers. comm. 1999b). Mountain plover inventories conducted from 1982 to 2001 have documented the presence of mountain plovers and broods within and contiguous to the mine permit area. Although the number of broods on the mine permit area has declined since 1993, broods are still reported adjacent to the mine permit area (Thunderbird Wildlife Consulting, Inc. 2003). In Montana, a mountain plover nesting area near the Pryor Mountains in Carbon County was recently lost to bentonite mining (C. Knowles pers. comm. 2003). As many as 51 mountain plovers likely occurred on the Foote Creek Rim wind power project in Carbon County in southeastern Wyoming in 1994. The population there has now declined to about 26 (Johnson *et al.* 2000, Young and Erickson 2003). While we do not believe that mineral resource and wind farm development can be considered beneficial to mountain plovers, their combined impacts do not appear to pose a major threat.

Our consideration of energy development as a listing factor in the proposed rules contributing to the potential decline of the mountain plover was based on the magnitude of anticipated development, as well as on information that existing projects have resulted, or are likely to result, in the modification of habitat required by nesting mountain plovers, and on enhanced opportunities for avian and terrestrial predators. However, because coalbed methane development, although widespread, has not been demonstrated to be detrimental to mountain plovers and because other types of energy development are more limited, we believe the current and anticipated mineral resource development in the

breeding range of the mountain plover is not a major threat to their continued existence.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Prior to the passage of the Migratory Bird Treaty Act in 1918, mountain plovers were commercially hunted for food. However, this no longer occurs. Mountain plovers reside on some prairie dog colonies where recreational prairie dog shooting occurs. Although a few mountain plover mortalities have been attributed to shooting, this loss is not thought to be significant. There is no recent evidence that overutilization is a current threat.

Factor C. Disease or Predation

Disease-related factors are not known to be a direct threat to the species. However, plovers that breed on prairie dog colonies are indirectly affected through a modification of habitat when an epidemic of sylvatic plague reduces numbers of prairie dogs in a colony (*see* discussion under Factor A).

Mountain plovers eggs and chicks are the most vulnerable life stages to terrestrial and avian predation. Potential avian and terrestrial predators include the prairie falcon (*Falco mexicanus*), loggerhead shrike (*Lanius ludovicianus*), ravens (*Corvus corax*), swift fox (*Vulpes velox*), red fox, ground squirrels (*Spermophilus spp.*), and coyote (*Canis latrans*) (Graul 1975). Predation influences the productivity of all ground-nesting birds, and nesting success of less than 50 percent is not unusual. Predation on plover nests on the Pawnee National Grassland has ranged between 15 and 74 percent from 1969 to 1994 (Graul 1975, Miller and Knopf 1993, Knopf and Rupert 1996). A high rate of nest predation by swift fox at the Pawnee National Grassland in 1993 and 1994 may have been due to temporarily reduced alternate prey resources (Knopf and Rupert 1996).

From 1994 to 2003, grasslands on the Pawnee National Grassland have been burned each year to enhance mountain plover nesting habitat (E. Humphrey, in litt. 2003). All eight nests monitored on the burn sites in 1996 were destroyed by swift fox (F. Knopf, in litt. 1996). Increased predation following burning, as indicated on the Pawnee National Grasslands, may affect nesting success locally in some years, but is not a persistent factor throughout the species' range. Nest predation also occurs in Phillips County, Montana, but is probably not a significant influence on nesting success at this location (Dinsmore 2001).

On December 17, 2002, we completed conferencing under the Act with the BLM for proposals to develop oil and gas resources in the Powder River Basin (M. Long, Service, in litt. 2003). We concluded that predation by mammalian and avian predators would increase with the development as proposed, and we recommended conservation measures to minimize adverse effects. Predation on the small number of nests in the Powder River Basin will not have an impact on the species rangewide.

There is no evidence to indicate at this time that mountain plovers are affected by West Nile virus (Knopf pers. comm.).

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Protecting the mountain plover and its habitat is complicated by its wide geographic range, which includes private and public land, and numerous State, Federal, and Tribal Land authorities.

Federal Regulations

One regulatory mechanism that currently protects the mountain plover is the Migratory Bird Treaty Act (MBTA), which prohibits direct mortality or the destruction of active nests. Other Federal laws that currently provide for conservation of mountain plovers include the Federal Land Policy and Management Act of 1976; National Forest Management Act of 1976; Federal Onshore Oil and Gas Leasing Reform Act; Federal Insecticide, Fungicide, and Rodenticide Act; and Federal Agriculture Improvement and Reform Act. Some Federal agencies such as the BLM or the Forest Service also have adopted policies to require that their actions not contribute to the declining status of a species.

While Federal land ownership is not a guarantee of species conservation, Federal jurisdiction over surface resources can make application of conservation practices easier to implement. The BLM administers 13 percent of the mountain plover habitat (13,000 ha (27,000 ac)) in South Park, Park County, Colorado, where 20 percent or more of the entire mountain plover breeding population is estimated to occur. The BLM recently produced a conservation assessment to help guide implementation of future conservation measures for the mountain plover, including land exchange and consolidation (Granau and Wunder 2001). In that assessment, the Reinecker Ridge State Wildlife Area in the central part of the county was identified as having excellent mountain plover breeding habitat and good conservation potential. It is already under public ownership, primarily through the BLM and Colorado State Land Board (Granau and Wunder 2001).

The National Forest Management Act requires the Forest Service to manage habitats for native species. The Service has coordinated with the Forest Service for over a decade regarding the conservation needs of the mountain plover on the Pawnee National Grassland in Colorado. Mountain plovers are now nearly extirpated from this historic stronghold due to climatic events and changes in grazing management, and restoration of habitat has not been immediately forthcoming. Recently, the Forest Service initiated efforts to improve nesting habitat conditions on the Pawnee (Bedwell, in litt. 2003), although some recovery plans and recovery objectives will not be fully realized for several years (S. Currey, in litt. 2002).

The Forest Service has closed the shooting season for black-tailed prairie dogs on the Thunder Basin National Grassland in Wyoming. While the reason for the closure was recovery of the endangered black-footed ferret, the mountain plover stands to gain habitat as prairie dogs there recover from an epizootic of sylvatic plague.

Two small National Wildlife Refuges (Kern and Pixley) in The San Joaquin Valley and Carrizo Plain provide some natural and cropland habitat for wintering mountain plovers (J. Engler, in litt. 1992, 2003; Knopf and Rupert 1995), although they are not managed specifically for mountain plovers and some of the former potentially suitable grassland and shrubland on Kern National Wildlife Refuge has been overwhelmed with exotic grasses and saltcedar (J. Engler, in litt. 2003). The BLM, California Department of Fish and Game, and The Nature Conservancy have developed a management plan for the Carrizo Plain Natural Area that calls for grazing a 1,850-ha (4,640-ac) BLM allotment by sheep in a manner that would encourage use by mountain plover (BLM *et al.* 1995). Prescribed burning also is called for in the plan and has been demonstrated to encourage use by mountain plovers (Knopf and Rupert 1995).

International Mechanisms

The mountain plover is designated as a threatened species by Mexico (S. Jewell, Service, in litt. 2000) a designation that has begun to provide some awareness of the need for the species' conservation. Mexico currently has no regulations to protect the habitat of the mountain plover. The species also

was designated as endangered by Canada in 1987, a status that was confirmed in 2000 (Committee on the Status of Endangered Wildlife in Canada 2000).

A Memorandum of Understanding between Canada, Mexico, and the United States was established to enhance coordination and partnerships regarding conservation of wildlife, plants, biological diversity, and ecosystems of mutual interest. The Memorandum of Understanding established the Trilateral Committee for Wildlife and Ecosystem Conservation and Management to develop and implement cooperative conservation projects within the three countries. This Committee has evaluated opportunities for shared conservation efforts on many species, including the mountain plover.

State Regulations

The mountain plover is now classified as threatened in Nebraska, a "species of special interest or concern" in California, Montana, and Oklahoma, a "species in need of conservation" in Kansas, and a "high priority species of concern" in New Mexico (Flath 1984; Sager 1996; E. Hunt, California Department of Fish and Game, in litt. 1990; Nebraska Game and Parks Commission 1992; Oklahoma Department of Wildlife Conservation 1992; Kansas Department of Wildlife and Parks 1992). States other than those identified above have not given the mountain plover any special designation. State listing can encourage State agencies to use existing authorities to conserve species and habitats, stimulate research, and allow redirection of priorities within State natural resource departments.

State agencies within the range of the mountain plover have recently completed "A Multi-State Conservation Strategy for the Black-tailed Prairie Dog in the U.S." (Luce 2003) to pursue conservation of the black-tailed prairie dog through regulations or provision of incentives to landowners for maintaining prairie dog colonies. The sale of rodenticide within the mountain plover's breeding range has increased in recent years and prairie dog shooting also is popular throughout the range of the mountain plover. No State regulations limit prairie dog poisoning, but prairie dog shooting is regulated in some areas. Colorado has banned prairie dog sport shooting on all public lands and under most circumstances on private lands; Montana has adopted a seasonal closure of prairie dog shooting on public lands, and there are no restrictions on shooting prairie dogs in Wyoming, except on the Thunder Basin National Grassland where shooting is banned.

The State of Colorado, in which a majority of the species' breeding range occurs, has initiated a program to conserve the mountain plover and its habitat, by reducing their vulnerability while they occupy cultivated lands, educating the public, and conserving grasslands that are known or potential breeding habitat (T. Blickensderfer, Colorado Department of Natural Resources, in litt. 2003). In 2003, the CDOW spent $263,000 to conduct research and monitoring on public and private lands occupied by mountain plovers, create an educational video, and implement a "1–877–4PLOVER" number to help reduce the "take" of mountain plovers on cultivated lands in Colorado and contiguous States. The CDOW also has created the Colorado Species Conservation Partnership program. The purpose of the program is to implement conservation actions on private and public lands throughout Colorado to ensure that the status of declining and at-risk species is improved to a level that will prevent their listing under the Act. The CDOW is pursuing mountain plover conservation under this program by recommending that $2 million be dedicated to long-term conservation agreements on private lands that may be occupied by mountain plovers. The initial sign-up for this effort resulted in applications for conservation easements for over 60,704 ha (150,000 ac) of private shortgrass prairie in eastern Colorado that would cost $14,600,000. The CDOW is pursuing partnerships to implement these conservation easements, and is optimistic that more funding will be provided in future years (R. George, in litt. 2003).

The Nebraska Game and Parks Commission working with the Rocky Mountain Bird Observatory has initiated a similar landowner incentive program called the Shortgrass Prairie Partnership (Holliday 2003) and funded in 2003 for over $500,000. It is in the first stages of implementation. While both the Colorado and Nebraska programs are voluntary habitat conservation programs, both wildlife agencies have the authority to initiate, fund, and implement them. These conservation efforts are new but have shown some initial successes and are likely to provide a significant level of protection for the mountain plover, especially in eastern Colorado.

In California, the species is listed as a species of special concern. In the following discussion, we describe the regulatory mechanisms in California on a county-level basis.

Three counties in California are drafting Habitat Conservation Plans (HCPs) with the Service to protect listed and declining species, including the mountain plover. With the development of the Western Riverside County Multiple Species HCP (MSHCP), the County of Riverside and other jurisdictions within Riverside County and California have requested an incidental take permit under section 10(a)(1)(B) under the Act for up to 164 covered species, including the mountain plover. The permit is needed to authorize take of listed species during urban and rural development, and agricultural activities in the approximately 509,904-ha (1.26 million-ac) study area in western Riverside County. The county and other jurisdictions propose in their conservation strategy to conserve, monitor, and manage 85 percent of the potential plover wintering habitat (*i.e.*, 2,715 of 3,185 ha (6,710 of 7,870 ac)) in the county. The Service is now assessing the effect of the MSHCP and the associated incidental take permit on the mountain plover and other species proposed for coverage.

Similarly, a San Joaquin County HCP finalized in November 2000 targets the protection of over 40,469 ha (100,000 ac) of habitat for 92 species, including the mountain plover, following adoption of enabling ordinances and/or resolutions by local agencies. A similar HCP for Solano County, which includes protection of potential mountain plover habitat, is being drafted, but is not yet finalized.

In summary, Federal, State, and county agencies and governments have taken significant proactive steps, in the absence of listing, and have shown progress in the conservation of mountain plovers and their habitat.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Natural Factors

Because mountain plovers congregate in large flocks on the wintering grounds, they may be more vulnerable to local catastrophic events there. For example, winter surveys in the Imperial Valley in February 2003 were cut short when heavy rains fell and the flocks of mountain plovers disappeared. It is speculated that the birds left their wintering grounds early or moved to less suitable habitats in the Central Valley (F. Knopf, in litt., 2003). The former appears more likely since the CBC for the area (Salton Sea South) had a record low number of plovers, while the Panoche Valley count to the north

had far greater numbers than usual (birdsource.org 2003).

Pesticide Application and Exposure

Grasshoppers occur throughout the breeding range of the mountain plover and can reach population levels considered a threat to agriculture. The APHIS (2002) has authorized rangeland grasshopper and Mormon cricket control in areas occupied by mountain plovers. Dimilin, malathion, and carbaryl are the identified chemicals when grasshoppers reach economic thresholds (APHIS 2002). Control on private lands can be undertaken by State agencies or private landowners without participation or oversight by APHIS.

The emphasis of the rangeland grasshopper control program is to reduce rather than eliminate grasshoppers, but effects to nontarget insects also occur. The effects of treatment are immediate, and some treatments can depress insect populations into the second year (APHIS 2003). Grasshoppers and other insects are major prey items of mountain plovers, and control may influence mountain plover productivity (Graul 1973, Knopf 1996b, Knopf and Rupert 1996). In conferring under section 7 of the Act on the effects of treatments on mountain plover, we concluded that the application of rangeland grasshopper control as described by APHIS (2002) on mountain plover breeding habitat could result in reduced prey, greater foraging distances, increased chick predation, and reduced survival (W. Knapp, Service, in litt. 2002; R. Williams, Service, in litt. 2003).

In Montana, grasshopper control is authorized to occur in 2003 on both public and private lands (APHIS 2003). Because APHIS, in conference with the Service, has agreed to treatments that will avoid active black-tailed prairie dog colonies and because mountain plovers in Montana are closely associated with black-tailed prairie dog colonies, we believe that treatments are not likely to threaten the plover there. Similarly, in Wyoming, planning is underway to authorize grasshopper control on BLM lands throughout Wyoming. After conferring with the Service, APHIS has agreed to avoid prairie dog colonies and to avoid known mountain plover nesting sites not associated with prairie dog colonies (K. Dickerson, Service, pers. comm. 2003). Control on private lands can be undertaken by State agencies or private landowners without participation or oversight by APHIS or the Service. While control of grasshoppers and other pests on private lands may pose a threat, we do not believe that it is of a magnitude or immediacy that warrants listing the species.

Mountain plovers may be exposed to pesticides while they occupy winter habitat in California (Knopf 1996). In conferring under section 7 of the Act, we concluded that malathion application to control curly-top virus in the Imperial and San Joaquin Valleys would harass some wintering mountain plovers, but the timing and location of treatment was not likely to result in direct exposure, or significant impacts to mountain plover prey (W. White, Service, in litt. 2001b). More recently, the California Department of Fish and Game conducted an assessment of exposure risk in Imperial County, specifically, by comparing mountain plover presence in the Valley with crop types predominately used by them, and the pesticides typically applied to these crops (B. Hosea, California Department of Fish and Game, in litt. 2003; Wunder and Knopf 2003). This information suggests that direct exposure to mountain plovers is reduced because application of pesticides occurs when plovers are not using the fields. For example, insecticides are usually applied to alfalfa fields when the alfalfa is too high to be attractive to mountain plovers. Also, insecticides are not applied while livestock are grazing fields to minimize pesticide exposure to livestock, and pre-planting herbicides are usually incorporated into the soil as a granular form, thus reducing exposure risk. Potential impacts to the mountain plover prey base on the wintering grounds are not known, but also appear to be minimal for reasons cited above (B. Hosea, in litt. 2003). Pesticide exposure by aerial drift is likely due to mosaic cropping patterns, but effects to mountain plovers are unknown.

A review of exposure to organochlorines, selenium, and heavy metals showed that concentrations in mountain plovers were below thresholds that cause population-level effects (A. Archuleta, Service, in litt. 1997). More recently, the Service analyzed pesticide levels in 20 mountain plover eggs collected from Colorado and 4 from Montana. Dichlorodiphenyldichloroethylene (DDE) levels were detected in all eggs; in four eggs levels were above those known to be detrimental to other bird species (K. Dickerson, Service, in litt. 2002). While the levels detected in the mountain plover eggs may have been influenced by prolonged storage prior to analysis, the results nonetheless suggest that mountain plovers may be at risk from organochlorine pesticide exposure (K. Dickerson, Service, pers. comm. 2003). The DDE is a metabolite of dichlorodiphenyltrichloroethane (DDT), known to be responsible for eggshell thinning, and is extremely persistent in the environment. In addition, a recent investigation found a wide disparity in cholinesterase levels between mountain plovers collected in the Central Valley (pesticide use widespread) compared to those from the Carrizo Plain (pesticide use minimal), but no differences in mountain plover body condition (Iko, *et al.* 2003).

Status Summary

The species was proposed in 1999 and 2002 as threatened because the best information available at that time indicated breeding population declines and loss of habitat due to a variety of factors, including agricultural practices, prairie dog declines, and grassland conversion. Research on some of these issues, reanalysis of old data, and new information obtained in the last year lead us to conclude that the threats to the species are such that listing is not warranted.

There is no information to document that the mountain plover population is declining or will be in danger of extinction in the foreseeable future. The declines apparent in the BBS data turned out to be statistically insignificant. The CBC data in California are tremendously variable, but suggest a slow downward trend, whereas surveys on the wintering grounds by researchers do not demonstrate declines. Although there are many specific instances of grassland conversion destroying plover nesting habitat, nesting habitat does not appear to be limiting. Occupied prairie dog habitat is more abundant and more stable than previously thought, providing breeding and nesting habitat for plovers. Nesting appears to be equally successful on croplands as on native grassland. Distribution of plovers across the wintering range appears to depend more on annual farming practices and weather rather than on permanent habitat destruction.

In the last few years, Federal land management agencies and State and county governments have become more actively involved in mountain plover management. In 1994, the Forest Service developed a "Mountain Plover Management Strategy" for the Pawnee National Grassland in Colorado. We believe formalized conservation efforts by the CDOW will improve the status of the mountain plover in Colorado. Other new conservation efforts within the breeding range include the recently-established Federal, State, and private High Plains Partnership; the Department of Defense's Integrated Natural Resource Management Plan for Fort Carson,

Colorado; the Rocky Mountain Bird Observatory's "Prairie Partners"; The Nature Conservancy's "Prairie Wings"; and private land conservation easement efforts in South Park, Colorado.

Other potential conservation measures for this species include—implementing grazing plans that encourage high grazing intensity in plover nesting areas, revising county bulletins to include specific protective measures for the mountain plover during pesticide application, conducting haying and grazing on existing CRP tracts to manage for the grass height and density required by nesting plovers, providing seeding criteria for new CRP tracts that would encourage establishment of native shortgrass prairie species in preference to taller grasses, and providing incentives to landowners to leave cultivated areas unplanted until plover eggs have hatched and chicks are able to escape from machinery. We have initiated discussions with the NRCS to explore ways, such as through the Conservation Reserve Enhancement Program, that these measures might be implemented on private land.

Following our above analysis and discussion, we have determined that the action of listing the mountain plover as threatened throughout its range as proposed in 1999 and 2002 is not warranted. We have made this determination because the threats to the species, as identified in the previous proposed rules, are not as significant as earlier believed, and current available information does not indicate that the threats to the species and its habitat are likely to endanger the species in the foreseeable future throughout all or a significant portion of its range. Consequently, we withdraw our 1999 and 2002 proposed rules and our 2002 proposed special rule for the mountain plover.

References Cited

You may request a complete list of all references cited in this document, as well as others, from the Assistant Field Supervisor at the Grand Junction, Colorado, Field Office (*see* **ADDRESSES**).

Dated: September 3, 2003.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 03–22860 Filed 9–8–03; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[I.D. 090403B]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting/public hearing.

SUMMARY: The original public meeting document was published in the **Federal Register** on August 27, 2003. Due to the U.S. District Court ruling made by Judge Colleen Kollar-Kotelly, on August 31, 2003, the 2002 Biological Opinion, issued on November 15, 2002, is "vacated and remanded to the National Marine Fisheries Service." Further, Judge Kollar-Kotelly ordered that the regulations issued on June 12, 2002, amending the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (Pelagics FMP), are "vacated and remanded to the National Marine Fisheries Service." The Western Pacific Fishery Management Council (Council) meeting document is republished.

DATES: The Western Pacific Fishery Management Council will meet on September 23, 2003, at 12 noon Hawaii Standard Time.

ADDRESSES: The Council meeting will be held via telephone conference call at the Council offices, 1164 Bishop Street, Suite 1400, Honolulu Hawaii 96813; telephone: 808–522–8220; Call in number: 1–808–527–2929 PIN 5785; FAX: 808–522–8226.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The agenda during the Council meeting will include the following items:

1. Pelagic Fisheries

A. Discuss the implications of the ruling of U.S. District Court Judge Colleen Kollar-Kotelly, which puts aside the 2002 Biological Opinion and 2002 regulations.

B. Review and discuss sea-turtle take mitigation measures for the U.S. pelagic longline fishery in the Western Pacific Region. Topics may include continued operation of the fishery, regulations, and/or possible emergency actions.

In 2002, the Council developed a regulatory framework adjustment to the Pelagics FMP which was intended to minimize interactions with, and harm to, Pacific sea turtles. These measures stemmed from the non-discretionary Reasonable and Prudent Alternative contained in a Biological Opinion issued in 2001 by NMFS under the Endangered Species Act. Among the various measures implemented were a prohibition on shallow-set longline fishing north of the equator, and a seasonal area closure from 15° N. lat. to the equator, and from 145° W. long. to 180° long. to all fishing by pelagic longline vessels during April and May of each year. These measures have contributed to reductions in sea turtle interactions. However, the southern area closure exacts a significant economic burden on the Hawaii-based longline fleet because it is unable to access these fishing grounds when bigeye and yellowfin tuna stocks are seasonally abundant during April and May. At its 118th meeting in June 2003, the Council took initial action to consider modifying the southern area closure to reduce the economic impact on the longline fishery while continuing to conserve turtles. The Council also directed its staff to continue preparation of a regulatory amendment for potential changes to the Pelagics FMP, including a detailed analysis of a range of modifications to the southern area closure and the impacts of those alternatives on sea turtles, fisheries, and the environment. At its 119th meeting, the Council will discuss the ruling by U.S. District Court Judge Colleen Kollar-Kotelly, and consider the implications of that ruling for proposed amendments to the Pelagics FMP. The Council will also review and discuss sea-turtle take mitigation measures for the U.S. pelagic longline fishery in the Western Pacific Region. These may include continuation of the fishery, developing regulations, and/or possible emergency actions.

2. Other Business

Although non-emergency issues not contained in this agenda may come before the Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this document and to any issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided that the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808)522–8220 (voice) or (808)522–8226 (fax), at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 5, 2003.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–23004 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 68, No. 174
Tuesday, September 9, 2003

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

United States Warehouse Act—Official Media for Public Notification

AGENCY: Farm Service Agency, USDA.

ACTION: Notice.

SUMMARY: This notice announces an official media system for all public notification of important amendments, notices, actions, issues, and activities regarding the United States Warehouse Act (USWA). This warehouse information will include the suspension or revocation of warehouse licenses, fees, draft and final documents and other pertinent information that is of public interest. This action is being taken to increase the public's awareness of the ongoing activities and functions under the USWA.

Background

The Secretary of Agriculture has the authority to make available public information as deemed appropriate for interested parties. The FSA is designating a single website for this type of information to enhance the public's awareness of the activities and functions of the USWA. The following site has been designated as the USWA's official website where all USWA public information can be found: *http://www.fsa.usda.gov/daco/uswa.htm*.

Also, starting in April 2003, FSA's Kansas City Commodity Office (KCCO) stopped mailing hard copies of public notices and USWA notices to the warehouse trade. To replace the mailing of hard copies, when notices are posted to USWA's official website KCCO will automatically e-mail them to everyone who has enrolled at *http://www.fsa.usda.gov/daco/subscribe.asp*.

FOR FURTHER INFORMATION CONTACT: Roger Hinkle, United States Warehouse Act Program Manager, Warehouse and Inventory Division, Farm Service Agency (FSA), United States Department of Agriculture, 1400 Independence Avenue, SW., STOP 0553, Washington, DC 20250–0553, telephone (202) 720–7433 FAX: (202) 690–3123, E–Mail: *Roger_Hinkle@wdc.usda.gov*.

Signed at Washington, DC July 30, 2003.

James R. Little,

Administrator, Farm Service Agency.

[FR Doc. 03–22858 Filed 9–8–03; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Transfer of Administrative Jurisdiction, Land Between the Lakes National Recreation Area, Kentucky and Tennessee

AGENCY: Forest Service, USDA.

ACTION: Notice of transfer of land.

SUMMARY: On October 23, 2002, the Deputy Assistant Secretary of the Army, and on November 20, 2002, the Southern Regional Forester of the USDA Forest Service, signed a joint order transferring administrative jurisdiction of certain lands from the Department of the Army to the USDA Forest Service.

The order transfers from the Department of the Army to the Department of Agriculture 7,518 acres, more or less, by virtue of the authority vested in the Secretary of the Army and Secretary of Agriculture by the Land Between the Lakes Protection Act of 1998 (16 U.S.C. 460*lll*).

A copy of the Joint Order, as signed, and Exhibits A and B, which describe the reserved rights and lands being transferred, are set out at the end of this notice.

DATES: This order will be effective on September 9, 2003.

ADDRESSES: A copy of the order of transfer as signed by the Deputy Assistant Secretary of Army and Southern Regional Forester of the USDA Forest Service, is available for public inspection in the Southern Regional Office of the USDA Forest Service, 1720 Peachtree Road, NW., Atlanta, GA 30309.

FOR FURTHER INFORMATION CONTACT: Michael O. Lange, USDA Forest Service, 1720 Peachtree Road, NW., Atlanta, GA. 30309, (404) 347–2990.

Dated: August 25, 2003.

Robert T. Jacobs,

Regional Forester, Southern Region, USDA Forest Service.

Department of the Army and Department of Agriculture; Land Between the Lakes National Recreation Area, Kentucky and Tennessee

Joint Order Transferring Administrative Jurisdiction of Department of the Army Lands to the United States Forest Service

By virtue of the authority vested in the Secretary of the Army and in the Secretary of Agriculture by the Land Between the Lakes Protection Act of 1998 (16 U.S.C. 340*lll*) it is ordered as follows:

(1) The lands under the jurisdiction of the Department of the Army identified in Exhibit A, attached hereto and made a part hereof, are hereby transferred from the jurisdiction of the Secretary of the Army to the jurisdiction of the Department of Agriculture, subject to outstanding rights or interests of record, and flowage easement rights over the portion of the premises below elevation 378 mean sea level, as set out in Exhibit B. These lands were acquired by the United States in connection with the Barkley Dam and Lake Barkley Project and are within the boundary of the Land Between the Lakes National Recreation Area, Kentucky and Tennessee.

(2) Pursuant to section 512(b) of the aforesaid Land Between the Lakes Protection Act, the Department of the Army lands transferred to the Secretary of Agriculture by this order have the status of land acquired under the Act of March 1, 1911 (commonly called the "Weeks Act") (16 U.S.C. 515 *et seq.*).

This order will be effective as of the date of publication in the **Federal Register**.

Dated: October 23, 2002.

Joseph W. Whitaker,

Deputy Assistant Secretary of the Army, Installations and Housing,

Dated: November 20, 2002.

Robert T. Jacobs,

Regional Forester, Southern Region, USDA Forest Service.

Exhibit A—Legal Description

A tract of land lying along the westerly shore of Lake Barkley, situated in Lyon and Trigg Counties, Kentucky, and in Stewart County, Tennessee, the boundary of which is described as follows:

Beginning at a point located on the 378-foot contour (mean sea level) as it lies along the Westerly shore of Lake Barkley. Said point having KY State Plane Coordinates: N 248,750; E 1,282,136 and identified as Corner 2CN–8 on TVA Map titled "Land Between The Lakes Reservation", drawing number 421B511–6, dated December, 1968. Thence leaving said contour and proceeding N 45°E

(grid bearing) approximately 200 feet to the 359-foot contour;

Thence southerly along said 359-foot contour (msl) as it lies along the Westerly shore of Lake Barkley to a point intersecting the easterly edge of an old road (TN State Plane Coordinates: N 782,160; E 1,445,870), said point being along the westerly bank of Rawls Pond and lying approximately 30 feet east of a Sandstone Bluff;

Thence Southerly along the east edge of said road 0.35 mile to a 6" diameter Well Casing (TN SPC: N 780,439; E 1,446,413);

Thence 5 feet east to a fence; thence Southerly along and with said fence 820 feet to a drainage ditch;

Thence N 65°37'E 675 feet to a 26" diameter Red Oak in an existing fence line (TN SPC: N 779,902; E 1,447,025);

Thence Southeasterly along and with said fence approximately 0.6 mile to a point intersecting the South Boundary of Land Between the Lakes (LBL), said point marked by a concrete monument (Corner 10PS–1, TN SPC: N 777,592; E 1,448,808), as shown on TVA Map title "Land Between the Lakes Reservation", drawing number 421B511–1, dated December, 1968;

Thence Westerly along the South Boundary of LBL approximately 30 feet to a point intersecting the 378-foot contour (msl);

Thence along said 378-foot contour (msl) as it meanders in a northerly direction along the westerly shore of Lake Barkley to the Point of Beginning, said tract of land containing 7,518 acres, more or less.

Exhibit B

The right is reserved as may be necessary for the operation of the Barkley Dam and Lake Barkley Project to occasionally overflow, flood, and submerge that portion of the lands described in the attached Exhibit A lying below elevation 378 mean sea level, and to maintain mosquito control in connection with the operation and maintenance of the Barkley Dam and Lake Barkley Project as authorized by the Act of Congress approved 3 September 1954 (Public Law 780, 83rd Congress, 2d Session) and the continuing right to clear and remove any brush, debris, and natural obstruction which, in the opinion of the representative in charge, may be detrimental to the project; provided that no structure for human habitation shall be constructed or maintained on the land, and further provided that no other structure shall be constructed or maintained on the land and no excavation or filling may be performed except as may be approved in writing by said representative of the United States in charge of the project.

[FR Doc. 03–22877 Filed 9–8–03; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection, comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the Rural Cooperative Development Grants program.

DATES: Comments on this notice must be received by November 7, 2003, to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Marc Warman, Program Leader, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3250. Telephone (202) 690–1431.

SUPPLEMENTARY INFORMATION:

Title: Rural Cooperative Development Grants.

OMB Number: 0570–0006.

Expiration Date of Approval: November 30, 2003.

Type of Request: Intent to extend the clearance for collection of information under RD Instruction 4282–F, Rural Cooperative Development Grants.

Abstract: The primary purpose of the Rural Business-Cooperative Service (RBS) is to promote understanding, use, and development of the cooperative form of business as a viable option for enhancing the income of agricultural producers and other rural residents. The primary objective of the Rural Cooperative Development Grants program is to improve the economic condition of rural areas through cooperative development. Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 36 hours per grant application.

Respondents: Nonprofit corporations and institutions of higher education.

Estimated Number of Respondents: 75.

Estimated Number of Responses per Respondent: 1.

Estimated Number of Responses: 75.

Estimated Total Annual Burden on Respondents: 2,675 hours.

Copies of this information collection can be obtained from Brigitte Sumter, Regulations and Paperwork Management Branch, at (202) 692–0042.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of RBS functions, including whether the information will have practical utility; (b) the accuracy of RBS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Brigitte Sumter, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 7, 2003.

John Rosso,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 03–22849 Filed 9–8–03; 8:45 am]

BILLING CODE 3410–XY–U

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Proceedings: Treatment of Section 201 Duties and Countervailing Duties

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Request for public comments.

SUMMARY: The Department of Commerce is requesting comments on the appropriateness of deducting section 201 duties and countervailing duties from gross unit price in order to determine the applicable export price or constructed export price used in antidumping duty calculations.

DATES: To be assured consideration, initial comments must be received no later than thirty days from the date of publication of this notice. Rebuttal comments must be received no later than forty-five days from the date of publication of this notice.

ADDRESSES: Submit comments to James J. Jochum, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room

1870, Pennsylvania Avenue and 14th Street, NW., Washington, DC 20230; Attention: Section 201 Duties.

FOR FURTHER INFORMATION CONTACT: Becky Erkul, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1277.

Background

Several parties have advocated that the Department deduct countervailing duties, as well as duties imposed under section 201 of the Trade Act of 1974 (section 201 duties), from export price (EP) and constructed export price (CEP) in calculations of dumping margins pursuant to sections 772(c)(2)(A) and 772(d) of the Tariff Act of 1930, as amended (the Act).

Section 772(c)(2)(A) of the Act requires that the Department deduct from EP and CEP any United States import duties included in the price. This statutory deduction existed prior to the passage of the Uruguay Round Agreements Act (URAA), and the URAA did not modify it in any respect. In addition, section 772(d) of the Act requires the Department to deduct U.S. selling expenses from CEP. Once again, there was a similar statutory deduction for U.S. selling expenses under the pre-URAA antidumping law.

The Department is seeking comments on the appropriate treatment of section 201 duties and countervailing duties under these provisions in antidumping duty calculations.

Comments—Deadline, Format, and Number of Copies

Parties wishing to comment should file a signed original and six copies of each set of initial and rebuttal comments. All comments will be available for public inspection and photocopying in the Import Administration's Central Records Unit, Room B–099, between the hours of 8:30 a.m. and 5 p.m. on business days. Each person submitting a comment should include the commenter's name and address, and give reasons for any recommendations. In order to ensure timely and complete distribution of comments, the Department recommends the submission of initial and rebuttal comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted on a DOS formatted 3.5″ diskette, Iomega Zip disk, or Compact Disc (CD–R or CD–RW).

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the IA Web site at the following address: *http://ia.ita.doc.gov/*.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482–0866, e-mail address *webmaster_support@ita.doc.gov*.

Hearing

After reviewing all comments and rebuttal comments, the Department will determine if a public hearing is warranted, and, if so, will announce a place and time for that hearing.

Dated: September 3, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22946 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822]

Certain Corrosion Resistant Carbon Steel Flat Products From Canada: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain corrosion resistant carbon steel flat products (CORE) from Canada in response to a request by petitioners, Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation. This review covers shipments of this merchandise to the United States during the period of August 1, 2001, through July 31, 2002.

We have preliminarily determined that U.S. sales have been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess antidumping duties based on the difference between the export price (EP) or constructed export price (CEP) and the NV. Interested parties are invited to comment on these preliminary results. *See Preliminary Results of Review* section of this notice.

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Christian Hughes or Elfi Blum-Page, Office of Antidumping/Countervailing Duty Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0190 or (202) 482–0197, respectively.

Background

The Department published the antidumping duty order on CORE from Canada on August 19, 1993 (58 FR 44162). On August 6, 2002, the Department published a notice of opportunity to request administrative review of the antidumping duty order on CORE from Canada (67 FR 50856). On August 30, 2002, the Department received a timely request for an administrative review of the antidumping duty order on CORE from petitioners. On September 25, 2002, we published a notice initiating an administrative review of CORE for Dofasco Inc. (Dofasco) and Stelco Inc. (Stelco). *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 67 FR 60210 (September 25, 2002).

On February 25, 2003, the Department extended the deadline for the preliminary results of this antidumping duty administrative review from May 3, 2002, until no later than August 31, 2003. Since the 120-day extension falls on a weekend and the next business day is a holiday, the due date is September 2, 2003. *See Notice of Extension of Time Limit for Preliminary Results of the Antidumping Duty Administrative Review: Corrosion-Resistant Carbon Steel Flat Products from Canada*, 68 FR 10204 (March 4, 2003).

On July 3, 2003, the Department rescinded the antidumping duty administrative review with respect to Stelco because petitioners withdrew their request for the review and no other party had requested a review of Stelco. *See Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Rescission, in Part, of Antidumping Duty Administrative Review*, 68 FR 41302 (July 11, 2003). Therefore, this administrative review only covers Dofasco.

Scope of the Antidumping Duty Order

The product covered by this antidumping duty order is certain corrosion-resistant steel, and includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils

(whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are corrosion-resistant, flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this review are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this review are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio.

Verification

Although verification in this administrative review was not required under section 351.307(b)(1)(v) of the Department's regulations, the Department conducted verification of certain sales information provided by Dofasco using standard verification procedures, on-site inspection of the manufacturer's facilities, and the examination of relevant sales and financial records. Our verification results are outlined in the public and proprietary versions of the Memorandum to File: Report on the Verification of Dofasco Inc. in the Ninth (01/02) Antidumping Duty Administrative Review for Certain Corrosion-Resistant Carbon Steel Flat Products from Canada, dated August 27, 2003 (*Verification Report*), which are on file in the Central Records Unit, room B–099 of the main Commerce Building.

Analysis

Collapsing of Dofasco and Sorevco, Inc.

For purposes of this review, we have collapsed Dofasco and Sorevco Inc. (Sorevco) and have treated them as a single respondent, as we have done in prior segments of the proceeding. *See e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Determination of Sales at Less than Fair Value*, 58 FR 37099 (1993); *see also Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews, and Determination Not to Revoke in Part*, 65 FR 9243 (February 24, 2000) (*Canadian Steel 5th*). No new information or evidence of changed circumstances has been obtained in this review to warrant reconsideration of our decision to collapse these two companies.

Product Comparisons

In accordance with section 771(16) of the Tariff Act of 1930, as amended (the Act), we considered all products produced by the respondent that are covered by the description in the *Scope of Antidumping Duty Order* section, above, and sold in the home market during the period of review (POR), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's October 25, 2002 antidumping questionnaire.

Normal Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than NV, we compared the EP or the CEP to NV, as described in the Export Price and *Normal Value* sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Export Price

We used EP when the subject merchandise was sold, directly or indirectly, to the first unaffiliated purchaser in the United States prior to importation, and CEP was not otherwise warranted by facts on the record. Based on evidence on the record, we conclude that the long-term contract sales are made by Dofasco's U.S. affiliate, Dofasco U.S.A. (DUSA), and should be classified as CEP sales.

Dofasco makes certain sales in the United States through DUSA. The sales involving DUSA are either made through long-term contracts or are spot sales. Evidence on the record indicates that, for spot sales, while DUSA is involved, the sales are made by Dofasco. We are treating these sales as EP sales. However, based on evidence on the record, we conclude that the long-term contract sales made by DUSA should be classified as CEP sales. *See* Memorandum to File: Analysis of Dofasco, Inc. and Sorevco, Inc. (Dofasco) for the Preliminary Results of the Ninth Administrative Review of Corrosion-Resistant Carbon Steel Flat Products from Canada, dated September 2, 2003. (*Dofasco Analysis Memo*).

The Department calculated EP and CEP for Dofasco based on packed prices to customers in the United States. We made deductions from the starting price, net of discounts and rebates, for movement expenses (foreign and U.S. movement, U.S. Customs duty and brokerage, and post-sale warehousing) in accordance with section 772(c)(2) of the Act and section 351.401(e) of the Department's regulations. In addition, for CEP sales, in accordance with sections 772(d)(1) and (2) of the Act, we deducted from the starting price credit expenses, indirect selling expenses, including inventory carrying costs, commissions, royalties, and warranty expenses incurred in the United States and Canada associated with economic activities in the United States. As in prior reviews, certain Dofasco sales have undergone minor further processing in the United States as a condition of sale to the customer. The Department has deducted the price charged to Dofasco by the unaffiliated contractor for this minor further processing from gross unit price to determine U.S. price. *See Canadian Steel 5th Review.*

As provided in section 351.401(i) of the Department's regulations, we determined the date of sale based on the date on which the exporter or producer

established the material terms of sale. Dofasco reported that, except for long-term contracts and sales of secondary products, the date on which all material terms of sale are established is the final order acknowledgment date. Therefore, we used this reported date as the date of sale. For Dofasco's sales made pursuant to long-term contracts, we used date of the contract as date of sale. We used shipment date as the date of sale for sales of secondary products for which there is no order acknowledgment.

Normal Value

The Department determines the viability of the home market and the comparison market by comparing the aggregate quantity of home market and U.S. sales. We determined that Dofasco's quantity of sales in its home market exceeded five percent of its sales to the United States of CORE. *See* section 351.404(b) of the Department's regulations. Moreover, there is no evidence on the record supporting a particular market situation in the exporting company's country that would not permit a proper comparison of home market and U.S. prices. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we have based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade (LOT) as the EP or CEP.

We used sales to affiliated customers only where we determined such sales were made at arms-length prices (*i.e.*, at prices comparable to the prices at which the respondent sold identical merchandise to unaffiliated customers).

The Department disregarded sales below cost of production (COP) in the last completed review. *See Notice of Final Results of Antidumping Duty Administrative Reviews and Determination Not to Revoke in Part: Certain Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate From Canada*, 66 FR 3543 (January 16, 2001) (*Canadian Steel 6th*). We therefore have reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below COP. Thus, pursuant to section 773(b)(1) of the Act, we examined whether Dofasco's sales in the home market were made at prices below the COP.

We compared sales of the foreign like product in the home market with model-specific COP figures for the POR. In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus SG&A expenses and all costs and expenses incidental to placing the foreign like product in packed condition and ready for shipment. In our sales-below-cost analysis, we used home market sales and COP information provided by Dofasco in its questionnaire responses.

We made adjustments to COP and CV to reflect appropriately Dofasco's expenses associated with painting services provided by an affiliate. We made further adjustments by using Dofasco's fiscal year 2002 financial statements for general & administrative (G&A) expenses.

We compared the weighted-average COPs to home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade, in accordance with section 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any movement charges, discounts, and direct and indirect selling expenses.

Pursuant to section 773(b)(2)(c) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model were at prices less than COP, we disregarded the below-cost sales because they were made in substantial quantities within an extended period of time, in accordance with sections 773(b)(B) and (c) of the Act. Because we compared prices to POR-average costs, we also determined that the below-cost prices did not permit the recovery of costs within a reasonable period of time.

In accordance with section 773(a)(4) of the Act, we used constructed value (CV) as the basis for NV when there were no above-cost contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, selling, general and administrative expenses (SG&A), and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

In accordance with section 773(a)(1)(B)(i) of the Act, where possible, we based NV on sales at the same LOT as the U.S. price. *See* the *Level of Trade* section below.

For those product comparisons for which there were sales at prices above COP, we based NV on home market prices to affiliated (when made at prices determined to be arms-length) or unaffiliated parties, in accordance with section 351.403 of the Department's regulations. Home market starting prices were based on packed prices to affiliated or unaffiliated purchasers in the home market net of discounts and rebates. We made adjustments, where applicable, for packing and movement expenses, in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for circumstance-of-sales (COS) differences in accordance with 773(a)(6)(C)(iii) of the Act and section 351.410 of the Department's regulations. For comparisons to EP, we made COS adjustments to NV by deducting home market direct selling expenses (credit, warranties, and royalties) and adding U.S. direct selling expenses. For comparison to CEP, we made COS adjustments by deducting home market direct selling expenses pursuant to section 773(a)(6)(C)(iii) of the Act and section 351.410 of the Department's regulations. We offset commissions paid on sales to the United States by the lesser of U.S. commissions or comparison (home) market indirect selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determined NV based on sales in the comparison market at the same LOT as U.S. sales. The NV LOT is the level of the starting-price sale in the comparison market or, when NV is based on CV, the level of the sales from which we derive SG&A and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually

from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997); *see also Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From Italy*, 68 FR 47032 (August 7, 2003).

In the current review, Dofasco claimed that sales in both the home market and the United States market were made at three LOTs. As discussed in detail in *Dofasco Analysis Memo*, to evaluate Dofasco's LOT claims, we examined information regarding the distribution systems in both the U.S. and Canadian markets, including the selling functions, classes of customer, and selling expenses for each respondent. As a result of our analysis, we have preliminarily concluded that Dofasco did sell at three different LOTs based on the selling functions performed. *See Dofasco Analysis Memo*. However, the Department did not find that there existed a pattern of consistent price differences between the three levels of trade. Therefore, we did not make LOT adjustments when comparing sales at different LOTs. For a detailed discussion, *see Dofasco Analysis Memo*.

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations at the rates certified by the Federal Reserve Bank.

Preliminary Results of Review

We preliminarily determine that the following dumping margin exists:

Manufacturer/Exporter	Time period	Margin (percent)
Dofasco Inc	08/01/01–07/31/02.	0.62

Duty Assessment and Cash Deposit Requirements

The Department shall determine, and the BCBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the BCBP within 15 days of publication of the final results of review. Furthermore, the following deposit rates will be effective with respects to all shipments of CORE from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(2)(c) of the Act: (1) For Dofasco, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will be the company-specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the all other rate established in the LTFV investigation, which is 61.88 percent. *See Amended Final Determinations of Sales at Less Than Fair Value and Antidumping Orders: Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada*, 60 FR 49582 (September 26, 1995). These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Pursuant to 19 section 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310 of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days after publication of these preliminary results, unless extended.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22940 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Notice of Preliminary Results and Preliminary Partial Rescission of the Antidumping Administrative Review: Petroleum Wax Candles From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on petroleum wax candles from the People's Republic of China (PRC) in response to requests from Dongguan Fay Candle Co. (Fay Candle), a PRC producer and exporter of subject merchandise, and its U.S. importers, TIJID, Inc. (TIJID) (d/b/a DIJIT Inc.), and Palm Beach Home Accents, Inc. (Palm Beach), Wal-Mart Stores, Inc. (Wal-Mart), Qingdao Kingking Applied Chemistry Co., Ltd. (Qingdao Kingking), and petitioner, the National Candle Association (NCA). The review covers the period August 1, 2001, through July 31, 2002.

We preliminary determine that sales have been made below normal value (NV). The preliminary results are listed below in the section titled "Preliminary Results of Review." If these preliminary results are adopted in our final results, we will instruct the U.S. Bureau of Customs and Border Protection (Customs) to assess antidumping duties on imports into the United States of subject merchandise exported by the respondents. Interested parties are invited to comment on these preliminary results. (See the "Preliminary Results of Review" section of this notice.)

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon or Mark Hoadley, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–0162 or (202) 482–3148, respectively.

Background

The Department published in the **Federal Register** an antidumping duty order on petroleum wax candles from the PRC on August 28, 1986 (51 FR 30686). Pursuant to its *Notice of Opportunity to Request an Administrative Review*, 67 FR 50856 (August 6, 2002), and in accordance with section 751(a)(1)(A) of the Act and section 351.213(b) of the Department's regulations, the Department received timely requests to conduct an administrative review of the antidumping duty order on petroleum wax candles from the PRC for 108 companies.[1] More specifically, the Department received administrative review requests from Fay Candle, Wal-Mart (who requested a review of three Chinese producers), Qingdao Kingking, and petitioner, the NCA. The NCA requested the Department review 104 alleged Chinese candle producers/exporters. On September 25, 2002, the Department published its *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Review*, 67 FR 60210 (September 25, 2002) (*Initiation Notice*), initiating on all 108 candle companies for which an administrative review was requested.[2] On November 18, 2002, the Department received a timely withdrawal from Wal-Mart of its request for an administrative review of the three companies for which it had requested a review (*i.e.*, Generaluxe Factory, Guangdong Xin Hui City Si Qian Art & Craft Factory, and Sincere Factory Company). Pursuant to section 351.213(d)(1) of the Department's regulations, the Department rescinded the review as to Generaluxe Factory, Guangdong Xin Hui City Si Qian Art & Craft Factory, and Sincere Factory Company. *See Notice of Rescission, in Part, of Antidumping Duty Administrative Review, Petroleum Wax Candles from the People's Republic of China*, 68 FR 40906 (July 9, 2003). Therefore, there were 105 candle companies remaining for which an administrative review was requested.

In accordance with section 777A(c)(2) of the Act, the Department determined that it was not practicable to determine individual weighted-average dumping margins for each exporter/producer for which a review was requested. Therefore, on October 11, 2002, the Department requested information concerning the quantity and value (Q&V) of sales to the United States from all 108 companies. The Department received responses to its request from 17 companies, including the two companies that had requested reviews of their own exports.[3] Based on that information, the Department selected five mandatory respondents to examine in this review. *See Memorandum from Jessica Burdick through Sally C. Gannon to Barbara E. Tillman, Regarding 2001–02 Administrative Review of Petroleum Wax Candles from the People's Republic of China: Respondent Selection* (January 29, 2003) (*Respondent Selection Memo*). The five mandatory respondents chosen were: Fay Candle, Qingdao Kingking, Smartcord Int'l Co. Ltd./Rich Talent Trading (Smartcord), Amstar Business Co., Ltd (Amstar), and Jiangsu Holly Corporation (Jiangsu Holly). *See Respondent Selection Memo*. The Department also determined that it would consider requests for separate rates from those companies that were not selected as mandatory respondents, but who provided Q&V information and also submitted a timely response to the Department's section A questionnaire. *See* the Department's March 26, 2003 letter from Barbara E. Tillman, Director, Office of AD/CVD Enforcement VII, Import Administration. Only two companies, Shandong Jiaye General Merchandise Co., Ltd. (Shandong Jiaye) and Shanghai Charming Wax Co., Ltd. (Shanghai Charming), met the criteria and therefore have been considered for a separate rate.

The Department issued complete questionnaires to all five mandatory respondents. On December 18, 2002, the Department received Fay Candle's and Qingdao Kingking's responses to the Department's section A–E questionnaires. On March 24, 2003, the Department received Smartcord's response to the Department's section A questionnaire. Smartcord failed to submit its response to sections B–E of the Department's questionnaire. Amstar and Jiangsu Holly failed to submit responses to any section of the Department's questionnaires.

Due to the complexity of the selection process and of analyzing the numerous questionnaire responses, on March 26, 2003, the Department determined that it was not practicalbe to complete the preliminary results of this review within the statutory time limit. Consequently, in accordance with section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations, the Department extended the deadline for completion of the preliminary results of the administrative review by 120 days,

[1] Although there were 109 actual requests for review, one company (Qingdao Kingking) individually requested a review and was also listed on the NCA's request for review; therefore, there were only 108 companies for which an administrative review was requested.

[2] Although the *Initiation Notice* lists 109 companies, Qingdao Kingking is listed twice since it made its own request for review but was also requested to be reviewed by the NCA.

[3] The Department received Q&V information from an additional three parties to whom the Department had sent the Q&V questionnaire on behalf of parties listed in the initiation notice. These three companies stated that they were unrelated to the parties named in the initiation notice.

to September 2, 2003. *See Notice of Extension of Time Limit of Preliminary Results of Antidumping Duty Administrative Review: Petroleum Wax Candles from the People's Republic of China*, 68 FR 14578 (March 26, 2003).

On June 6, 2003, the Department issued supplemental questionnaires to Fay Candle and Qingdao Kingking. On June 20, 2003, the Department issued its second supplemental questionnaire to Qingdao Kingking. On June 24, 2003, the Department issued its second supplemental questionnaire to Fay Candle. Both Fay Candle and Qingdao Kingking requested an extension of time to respond to the Department's supplemental questionnaires, which the Department granted.

On July 9, 2003, the Department received Fay Candle's response to the Department's first supplemental questionnaire. On July 11, 2003, the Department received Fay Candle's response to the Department's second supplemental questionnaire. On July 11, 2003, the Department received Qingdao Kingking's response to the Department's first and second supplemental questionnaires. On July 29, 2003, the Department issued its third supplemental questionnaire to Qingdao Kingking. On July 30, 2003, the Department issued its third supplemental questionnaire to Fay Candle, and the petitioner submitted publicly available information for consideration in valuing the factors of production for the preliminary calculations.

On August 1, 2003, Qingdao Kingking and Fay Candle submitted publicly available information for consideration in valuing the factors of production for the preliminary calculations. On August 4, 2003, Fay Candle requested an extension of time to respond to the Department's third supplemental questionnaire. On August 11, 2003, the Department granted an extension of time to August 13, 2003, to Fay Candle to respond to question 2 of the Department's third supplemental questionnaire, and to August 14, 2003 for the remaining questions. On August 12, 2003, the Department received Qingdao Kingking's response to the Department's third supplemental questionnaire. On August 13, 2003, the Department received Fay Candle's response to question 2 of the third supplemental questionnaire. On August 14, 2004, the the Department received the response to the remaining questions of the third supplemental questionnaire. On August 21, 2003, the Department received comments from petitioner on the relationship between Fay Candle and its U.S. importers. On August 26, 2003, petitioner submitted information concerning what it termed the "involuntary bankruptcy of TIJID, Inc.," for the Department to consider in examining the relationship between TIJID and Fay Candle.[4]

Scope of the Antidumping Duty Order

The products covered by this order are certain scented or unscented petroleum wax candles made from petroleum wax and having fiber or paper-cored wicks. They are sold in the following shapes: Tapers, spirals, and straight-sided dinner candles; rounds, columns, pillars, votives; and various wax-filled containers. The products were classified under the Tariff Schedules of the United States (TSUS) item 755.25, Candles and Tapers. The products are currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) item 3406.00.00. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding remains dispositive.

Period of Review

The period of review (POR) is August 1, 2001, through July 31, 2002.

Preliminary Partial Rescission of Administrative Review

On September 25, 2002, the Department published its *Initiation Notice*, initiating on all 108 candle companies for which an administrative review was requested. The Department subsequently requested information concerning the quantity and value of sales to the United States from all these companies. The Department received responses to its request from 17 companies, five of which indicated that they had no sales to the United States of subject merchandise during the POR, citing various reasons, including: They were not a producer, exporter, or importer of candles during the POR; they were an importer of candles and not a producer/exporter; and/or they did not have a relationship with the alleged Chinese candle producer/exporter cited in petitioner's request for review. *See Respondent Selection Memo.* These companies included: Dalian Hanbo Lighting Co., Ltd. (Dalian Hanbo); Premier Candle Co., Ltd. (Premier Candle); Zhong Hang-Scanwell International (ZHS); Zen Continental Co., Inc. (Zen Continental); and Li & Fung Trading Ltd. (Li & Fung).

As part of its standard procedure in administrative reviews, the Department reviewed data on entries under the order during the POR from Customs. Our review of this data revealed that one party, Li & Fung, which claimed it was merely a buying agent for the subject merchandise, may have, in fact, exported the subject merchandise to the United States during the POR. On November 22, 2002, the Department issued a letter to Li & Fung, asking it to clarify whether it had exports of petroleum wax candles during the POR. On February 10, 2003, Li & Fung submitted a letter and attachments to the Department stating that it neither produced, sold, nor exported the subject merchandise during the POR, but that it merely acted as a buying agent. *See Memorandum from Javier Barrientos through Sally Gannon to Barbara E. Tillman, Regarding Petroleum Wax Candles from the People's Republic of China: Preliminary Intent to Rescind Antidumping Duty Administrative Review, in Part (POR: August 1, 2001 to July 31, 2002)* (September 2, 2003) (*Intent to Rescind Memo*).

Pursuant to our regulations, the Department may rescind an administrative review if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. *See* 19 CFR 351.213(d)(3). Because we have found no evidence that there were entries, exports, or sales of the subject merchandise by four of the five companies that reported no shipments during the current POR, in accordance with 19 CFR 351.213(d)(3), the Department is preliminarily determining that this administrative review should be rescinded with respect to Dalian Hanbo, Premier Candle, ZHS, and Zen Continental. The Department therefore intends to issue a final notice of rescission of review with the final results of review, and to send appropriate assessment instructions to Customs.

With respect to Li & Fung, information obtained from Customs does not substantiate Li & Fung's claim that it was merely a buying agent during the POR. *See Intent to Rescind Memo*, a business proprietary discussion on Li & Fung. Therefore, we do not intend to rescind the administrative review with respect to this company.

Application of Adverse Facts Available

As further discussed below, pursuant to sections 776(a)(2)(A) and (B) and section 776(b) of the Act, the Department determines that the application of total adverse facts available (AFA) is warranted for the PRC entity, including the following companies: Mandatory respondents

[4] This submission was received too late for the Department to examine it for purposes of the preliminary results.

Smartcord, Amstar, and Jiangsu Holly; Li & Fung; 88 companies that failed to respond to the Department's Q&V letter; and five companies who provided Q&V information to the Department, but did not demonstrate their eligibility for a separate rate.

The latter five companies are: Simon Int'l Ltd.; Taizhou Int'l Trade Corp.; Universal Candle Co., Ltd.; Suzhou Ind'l Park Nam Kwong Imp & Exp Co. Ltd. (Zhongxing City, Conghuan Rd., Suzhou); and Candle World Industrial Co.

Smartcord, Amstar, and Jiangsu Holly, all mandatory respondents, failed to respond to all or part of the Department's questionnaire for this POR. Smartcord responded to section A of the Department's questionnaire, but then failed to submit its response to sections B–E of the Department's questionnaire. Amstar and Jiangsu Holly failed to respond to any section of the Department's initial questionnaire. Li & Fung, who did not provide a Q&V response, reported no shipments, but the Department has been unable to confirm this claim. *See* "Preliminary Partial Rescission of Administrative Review" section above. Another 88 companies failed to respond to the Department's Q&V letter. The five additional companies listed above provided Q&V information but did not demonstrate eligibility for a separate rate. None of these companies qualifies for a separate rate. Therefore, the Department is applying AFA to the PRC entity, of which these companies are a part. The 97 firms (Smartcord, Amstar, Jiangsu Holly, Li & Fung, the 88 who did not respond to the Q&V request, and the five additional companies who did not qualify for a separate rate), named individually in the *Initiation Notice*, who are subject to the PRC-wide rate are listed in Attachment I.

Sections 776(a)(2)(A) and 776(a)(2)(B) of the Act provide for the use of facts available when an interested party withholds information that has been requested by the Department, or when an interested party fails to provide the information requested in a timely manner and in the form required. These 97 companies (listed in Attachment I), for the reasons detailed above, failed to provide information explicitly requested by the Department; therefore, we must resort to the facts otherwise available. Because these companies did not respond to the Department's questionnaire, sections 782(d) and (e) of the Act are not applicable. In addition, section 782(c)(1) does not apply because these parties did not indicate that they were unable to submit the information required by the Department. Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent, if it determines that a party has failed to cooperate to the best of its ability. In applying the facts otherwise available, the Department has determined that an adverse inference is warranted pursuant to section 776(b) of the Act.

The Department finds that, by not providing the necessary responses to the A&V letters or questionnaires issued by the Department, these companies have failed to cooperate to the best of their ability. None of these companies cited any reason for their failure to respond. Neither did they indicate that they were having any difficulties in responding to the questionnaires or request assistance or clarification about the questionnaires. Without this information, the Department cannot calculate margins for these companies nor determine that there was merit for a separate rate. This information was in the sole possession of the respondents, and could not be obtained otherwise. Thus, the Department is precluded from calculating margins for these companies or determining eligibility for separate rates. Therefore, in selecting from the facts available, the Department determines that an adverse inference is warranted. Because the 97 companies listed in Attachment I did not demonstrate their eligibility for a separate rate, we have preliminarily determined that they are subject to the PRC-wide rate. In accordance with sections 776(a)(2)(A) and (B), and section 776(b) of the Act, we are applying total AFA to the PRC entity, which includes Smartcord, Amstar, Jiangsu Holly, and the 94 other non-cooperating companies (*see* Attachment I). As AFA, and as the PRC-wide rate, the Department is assigning these companies the rate of 95.74—the highest rate determined in the current or any previous segment of this proceeding. This is the rate calculated in this review for Fay Candle and, thus, as discussed in the "Corroboration of Information Used As Adverse Facts Available" section below, does not need to be corroborated.

Corroboration of Information Used as Adverse Facts Available

Section 776(c) of the Act provides the following when the Department relies on the facts otherwise available:

> When the administering authority or the Commission relies on secondary information *rather than on information obtained in the course of an investigation or review*, the administering authority or the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

(Emphasis added.)

With respect to Smartcord, Amstar, Jiangsu Holly and the 94 other non-cooperating companies, we are applying the highest calculated rate from the current administrative proceeding as AFA. This rate, the rate calculated for Fay Candle, is also the highest rate from any other segment of this administrative proceeding. Accordingly, we find that it is unnecessary to corroborate the dumping margin calculated for Fay Candle in this administrative review because this rate was based on, and calculated from, information obtained in the course of the administrative review. *See generally* SAA at 870 (stating that information obtained from interested parties during the particular review is an independent course of data used to corroborate secondary information, such as petition information, a determination from a prior review, etc.). *See* also *Notice of Final Determination of Sales at Less Than Fair Value: Solid Agricultural Grade Ammonium Nitrate from Ukraine*, 66 FR 38632, 38634 (July 25, 2001) and *Freshwater Crawfish Tail Meat from the People's Republic of China: Notice of Preliminary Results of Antidumping Duty Administrative Review and Preliminary Partial Rescission of Antidumping Duty Administrative Review*, 66 FR 52100, 52103 (Oct. 12, 2001) (unchanged in the final results).

Furthermore, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for calculated margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total AFA a calculated dumping margin from the current or a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. *See, e.g., Grain-Oriented Electrical Steel From Italy; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 36551, 36552 (July 11, 1996). The information used to determine Fay Candle's margin in this administrative review will be fully verified and has been subject to the comments of both respondent and petitioner throughout this review. Thus, it is based on the analyzed sales and production data of Fay Candle, as well as on the most appropriate surrogate value information available to the Department, chosen from submissions by the parties as well as information

gathered by the a itself. Accordingly, we determine that the Fay Candle's rate is appropriate to be used in this administrative review as AFA in accordance with sections 776(b) and (c) of the Act.

Cooperative Companies That Merit Separate Rates

Two PRC producers/exporters, Shandong, Jiaye and Shanghai charming, responded to the Department's Q&V letter, as well as the Department's Section A questionnaire (which includes eligibility for a separate rate), but were not selected as mandatory respondents. Based on our analysis, these two companies have demonstrated their eligibility for a separate rate (*see* "Separate Rates" section below). Accordingly, for these two companies, we have calculated a weighted-average margin based on the rates calculated for those producers/exporters that were selected as mandatory respondents, excluding any rates that are zero, *de minimis*, or based entirely on AFA. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Freshwater Crawfish Tail Meat From the People's Republic of China*, 62 FR 41347, 41350 (August 1, 1997).

Companies That Claimed No Shipments

With respect to five PRC producers/exporters who responded to the Department's A&V letter claiming that they had no shipments during the POR, the Department is preliminary rescinding this review, in part, with respect to the four producers/exporters for which the Department was able to confirm their claim, as follows: Dalian Hanbo, Premier Candle, ZHS, and Zen Continental (*see* "Preliminary Partial Rescission of Administrative Review" section above). The fifth producer/exporter, Li & Fung, will receive the AFA rate (*see* "Application of Facts Available" section above).

Verification

As provided in section 782(i) of the Act, we intend to verify all company information relied upon in making our final results.

Separate Rates

Fay Candle, Qingdao, Kingking, Shandong Jiaye, and Shanghai Charming have all requested a separate, company-specific rate.[5] It is the Department's policy to assign all exporters of the merchandise subject to review in non-market economy (NME) countries a single rate, unless an exporter can demonstrate an absence of government control, both in law and in fact, with respect to export activities. To establish whether a company operating in an NME country is sufficiently independent to be eligible for a separate rate, the Department analyzes each exporting entity under the test established in *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994). Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors; (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and (4) whether each exporter has autonomy from the government regarding the selection of management.

De Jure Control

With respect to the absence of *de jure* government control over the export activities of the companies reviewed and those how applied for a separate rate, evidence on the record indicates that Fay Candle's, Qingdao Kingking's, Dhandong Jiaye's, and Shanghai Charming's export activities are not controlled by the government. Fay Candle, Qingdao Kingking, Shandong Jiaye, and Shanghai Charming submitted evidence of their legal right to set prices independently of all government oversight. We find no evidence of *de jure* government control restricting Fay Candle's, Qingdao Kingking's, Shandong Jiaye's or Shanghai Charming's exportation of candles.

The following laws, which have been placed on the record of this review, indicate a lack of *de jure* government control over privately-owned companies, such as Shandong Jiaye or Shanghai Charming, and that control over these enterprises rests with the enterprises themselves. Qingdao Kingking, Fay Candle, Shandong Jiaye, and Shanghai Charming submitted the following laws: the Foreign Trade Law of the People's Republic of China, promulgated on May 12, 1994, at the Seventh session of the Standing Committee of the Eighth National People's Congress and effective on July 1, 1994, the Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations, issued on June 3, 1988, by the State Council of the PRC, the Law of the People's Republic of China on Chinese-Foreign Cooperative Joint Ventures, promulgated on April 13, 1998, by Order No. 4 of the President of the People's Republic of China and effective from April 13, 1998. In addition, Qingdao Kingking and Shandong Jiaye submitted the Sino Foreign Equity Joint Venture Law, promulgated on July 1, 1979, by the Fifth National People's Congress. Qingdao Kingking also submitted the Company Law of the People's Republic of China, promulgated on December 29, 1993, at the Fifth Session of the Standing Committee of the Eighth National People's Congress and effective on July 1, 1994. The legislation placed on the record of this review provides that to qualify as legal persons, companies must have the "ability to bear civil liability independently" and the right to control and manage their businesses. These regulations also state that, as an independent legal entity, a company is responsible for its own profits and losses. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Manganese Metal from the People's Republic of China*, 60 FR 56045 (November 6, 1995) (*Manganese Metal*). Therefore, we preliminarily determine that there is an absence of *de jure* government control over export activity with respect to these companies.

De Facto Control

With respect to the absence of *de facto* government control over the export activities of the companies reviewed and those who applied for a separate rate, evidence on the record indicates that the government has no

[5] Although Smartcord, a mandatory respondent, submitted a response to section A of the questionnaire, it did not respond to the remainder of the Department's questionnaire. As a mandatory respondent, Smartcord was required to provide complete questionnaire responses. Therefore, as detailed in the "Application of Adverse Facts Available" section above, adverse facts available have been assigned to Smartcord. As a result, Smartcord will not receive a separate rate for these preliminary results.

involvement in the determination of export prices, profit distribution, marketing strategy, and contract negotiations of Fay Candles, Qingdao Kingking, Shandong Jiaye's, and Shanghai Charming's companies. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for these companies. In addition, we found that the Fay Candle's, Qingdao Kingking, Shandong Jiaye's, and Shanghai Charming's pricing and export strategy decisions are not subject to any governmental review or approval, and that there are no governmental policy directives that affect these decisions.

With regard to Qingdao Kingking, its vice general manager has the right to negotiate prices and enter into contracts on behalf of Qingdao Kingking. There is no evidence that this authority is subject to any level of governmental approval. In addition, there are no restrictions on the use of Qingdao Kingking's export earnings. Qingdao Kingking reported that its general manager is selected by the board of directors, and subordinate management personnel are selected by the general manager. Qingdao Kingking is not required to notify the government about its management selection process.

With regard to Fay Candle, Fay Candle's chief executive officer (CEO) has the authority to enter into contracts on behalf of Fay Candle, and it sets prices pursuant to negotiations with its importers. There is no evidence that this authority is subject to any level of governmental authority. In addition, other than the requirement that hard currency earnings from exports be repatriated through an account in a state bank, there are no restrictions on the use of Fay Candle's export earnings. Fay Candle reported that the entrepreneurial investors who own the company appoint the CEO, and the CEO selects subordinate management personnel. Fay Candle provides identification of company officials to local government authorities for contact purposes only; it is not required to notify the government about its management selection process.

With regard to Shandong Jiaye, its export sales manager has the right to negotiate prices, while the general manager has the authority to enter into contracts on behalf of Shandong Jiaye. There is no evidence that this authority is subject to any level of governmental authority. In addition, there are no restrictions on the use of Shandong Jiaye's export earnings. Shandong Jiaye reported that its board of directors selects its general manager and the general manager selects subordinate management personnel. Shandong Jiaye provides the name of the general manager to the government for purposes of receiving its business license; however, it is not required to notify the government about its management selection process.

With regard to Shanghai Charming, its general manager has the authority to set the price and to enter into contracts on behalf of Shanghai Charming. There is no evidence that this authority is subject to any level of governmental authority. In addition, there are no restrictions on the use of Shanghai Charming's export earnings. Shanghai Charming reported that its management is appointed by its parent company, a non-Chinese company. Shanghai Charming is not required to notify the government about its management selection process.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over Fay Candle's, Qingdao Kingking's, Shandong Jiaye's, and Shanghai Charming's export activities, we preliminarily determine that these companies have met the requirements for receiving a separate rate for purposes of this review.

Quantity and Value Discrepancy for Qingdao Kingking

The Department has identified a significant discrepancy between the quantity and value data Qingdao Kingking reported with the quantity and value information that the Department identified through Customs data queries. The Department requested an explanation from Qingdao Kingking in its June 6, 2003, supplemental and received Qingdao Kingking's response in its July 11, 2003, submission; however, in this response, Qingdao Kingking did not adequately explain why there could be such a significant discrepancy. The Department also contacted Customs about this issue and will be working closely with it to determine the cause of this discrepancy. In addition, the Department will further examine this issue for the final results by requesting additional information from Qingdao Kingking and addressing the issue at verification.

Treatment of Fay Candle and Its U.S. Importers, TIJID and Palm Beach

Respondent Fay Candle claimed in the questionnaire responses that it is affiliated with its U.S. importers, TIJID and Palm Beach. In its section A questionnaire response, Fay Candle submitted evidence to the Department concerning its corporate structure, ownership, and relationship to its U.S. importers, TIJID and Palm Beach. The evidence on the record regarding Fay Candle's relationship with TIJID and Palm Beach does not demonstrate that TIJID and Palm Beach were affiliated with Fay Candle under section 771(33) of the Act during the POR. For a full discussion of this issue (which includes business proprietary details), *see Memorandum from Sebastian G. Wright through Sally C. Gannon to Barbara E. Tillman, Regarding Petroleum Wax Candles from the People's Republic of China for the Period of August 1, 2001 through July 31, 2002: Analysis of the Relationship between Dongguan Fay Candle Co., Ltd., and TIJID, Inc. and Palm Beach Home Accents, Inc.* (September 2, 2003) (*Affiliation Memo*). Therefore, the Department preliminarily finds that Fay Candle is not affiliated with TIJID and Palm Beach for purposes of these preliminary results and is basing its fair value comparisons on export price rather than constructed export price. The Department will continue to examine Fay Candle's relationship with its U.S. importers in the context of verification and for the final results of this administrative review.

Date of Sale

Fay Candle and Qingdao Kingking reported various dates as the basis for their dates of sale. Although the Department maintains a presumption that invoice date is the date of sale (19 CFR 351.401(i)), "[i]f the Department is presented with satisfactory evidence that the material terms of sale are finally established on a date other than the date of invoice, the Department will use that alternative date as the date of sale." *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27349 (May 19, 1997) (*Preamble*).

With regard to Fay Candle, it reported two distinct dates of sale based on the type of sale. According to Fay Candle, the terms of the sales transactions become fixed at different stages based on the type of sale. After examining the documentation placed on the record by Fay Candle, the Department preliminarily determines that the invoice date is the appropriate date of sale to use for Fay's EP sales in these preliminary results. Because the information regarding Fay Candle's dates of sale is mostly business proprietary, the Department's full analysis of Fay Candle's dates of sale can be found in the *Memorandum from Sebastian Wright through Sally C. Gannon to The File, Regarding Petroleum Wax Candles from the People's Republic of China for the Period of August 1, 2001 through July 31, 2002: Analysis of the Sales Date for Dongguan Fay Candle Co., Ltd.*

(September 2, 2003) (*Fay Candle's Date of Sale Memo*). With regard to Qingdao Kingking, its reported date of sale is based upon invoice date because both quantity and price may change up to the date of invoice. Thus, for Qingdao Kingking, the terms of the sales transaction only become fixed once the actual invoice is generated. After examining the sales documentation placed on the record by Qingdao Kingking, the Department preliminarily determines that invoice date is the most appropriate date of sale for all sales by Qingdao Kingking.

Fair Value Comparisons

To determine whether sales of the subject merchandise by Fay Candle and Qingdao Kingking were made at prices below normal value (NV), we compared the export price (EP) to the NV, as described in the "Export Price" and "Normal Value" sections of this notice, below.

Export Price

As discussed above in the "Treatment of Fay Candle and Its U.S. Importers, TIJID and Palm Beach" section, and as discussed in the *Affiliation Memo*, we have preliminarily determined that Fay Candle is not affiliated with its U.S. importers. Therefore, for Fay Candle and Qingdao Kingking, we based United States price on EP in accordance with section 772(a) of the Act, because the first sales to unaffiliated purchasers were made prior to importation, and CEP was not otherwise warranted by the facts on the record. We calculated EP based on packed prices from the exporter to the first unaffiliated purchaser in the United States. Where applicable, we deduct foreign inland freight, inland insurance, brokerage and handling expenses in the PRC, international freight, and marine insurance from the starting price (gross unit price) in accordance with section 772(c) of the Act.

Normal Value

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine NV using a factors-of-production (FOP) methodology if (1) the merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 772(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the companies contested such treatment in these reviews. Accordingly, we have applied surrogate values to the factors of production to determine NV. *See Memorandum from Sebastian Wright through Sally Gannon to The File, Regarding Factor Values Memorandum in the Administrative Review of Petroleum Wax Candles from the People's Republic of China* (September 2, 2003) (*Factor Values Memo*). We calculated NV based on factors of production in accordance with section 773(c)(4) of the Act and section 351.408(c) of our regulations. Consistent with the original investigation and prior administrative reviews of this order, we determined that India (1) is comparable to the PRC in level of economic development, and (2) is a significant producer of comparable merchandise. *See Memorandum from Mark Hoadley through Sally Gannon to The File, Regarding Selection of Surrogate Country in the Administrative Review of Petroleum Wax Candles from the People's Republic of China* (August 13, 2003) (*Surrogate Country Memo*). We valued the factors of production using publicly available information from India. We added freight expenses to these values when necessary to make then delivered prices. All import data were contemporaneous with the POR; therefore, no adjustments for inflation were necessary. For factors valued using other sources, we have noted below when inflation adjustments were made. The calculations for the inflation adjustments can be found in the *Factor Values Memo*.

The Department calculated factors for approximately 100 inputs for this review. Except as noted below, we calculated all raw material inputs and packing using contemporaneous Indian import data obtained from the World Trade Atlas, which notes that its data was obtained from the Ministry of Commerce of India. Consistent with our policy, we excluded from this data imports into India from NME countries and countries providing their exporters with non-specific export subsidies. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002). Also consistent with our policy, we excluded, in a few instances, import data that appeared to be aberrational. *See, e.g., Memorandum to Jeff May, Acting Assistant Secretary for Import Administration, from Barbara Tillman, Acting Deputy Assistant Secretary for Import Administration, Group III, Regarding Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Saccharin from the People's Republic of China*, dated May 20, 2003, at Comment 2, page 5, for a discussion of this issue. Complete data for these calculations, the calculations themselves, and full citations to sources for all inputs, whether based on Indian import data or not, are attached to the *Factor Values Memo*. The *Factor Values Memo* also indicates which import data were excluded, for any of the reasons mentioned above, and the harmonized tariff schedule section selected for each input in collecting Indian import data.

We valued several factors—depending on the respondent—and particular freight items at the average of the market economy prices actually paid, because these were purchased from market economy countries, in market economy currencies, and in meaningful quantities.

Factors valued using sources other than Indian import data or market economy purchases:

- To value wax, we used the average Indian price for paraffin wax derived from rates published in *Chemical Weekly* for the period August 2001–July 2002, as found in petitioner's July 30, 2003, surrogate value submission, and Qingdao Kingking's August 1, 2003 surrogate value submission. Since the petitioner's and Qingdao Kingking's *Chemical Weekly* price quotes are contemporaneous with the POR, we did not adjust for inflation. This price was adjusted on a tax-exclusive basis to account for the Indian excise tax of 16 percent.
- To value diesel oil, we used Indian commercial prices for diesel fuel published in the first quarter 2001 edition of the International Energy Agency's *Energy Prices and Taxes*. This price for diesel oil was provided exclusive of Indian excise tax. Because this data was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Values Memo*.
- To value electricity, we used the annual report of an Indian chemical producer, National Peroxide Ltd. Because this data was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Values Memo*.
- Water was valued using the publicly available water tariff rates reported in the second *Utilities Data Book: Asian and Pacific Region*. This publication provides water tariff rates as of 1995–1996 for three areas in India: Chennai, Delhi and Mumbai. We

averaged the rupee per cubic meter rates applicable to industrial users in Chennai, Delhi, and Mumbai. Because this data was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Values Memo.*

• For labor, consistent with section 351.408(c)(3) of the Department's regulations, we used the PRC regression-based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised September 2002 (see *http://ia.ita.doc.gov/wages*). The source of the wage rate data on the Import Administration's Web site can be found in the Yearbook of Labour Statistics 2001, International Labor Office (Geneva: 2001), Chapter 5B: Wages in Manufacturing, and GNP data as reported in World Development Indicators, The World Bank, (Washington, DC (2002)).

• To value truck freight expenses we used nineteen Indian price quotes as reported in the February 14, 2000 issue of *The Financial Express*, which were used in the antidumping duty investigation of certain circular welded carbon-quality steel pipe from the PRC. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Circular Welded Carbon-Quality Steel Pipe from the People's Republic of China*, 67 FR 36570 (May 24, 2002) (*China Pipe*). Because this data was not contemporaneous with the POI, we adjusted the rate for inflation. *See Factor Values Memo.*

• To value factory overhead, selling, general, and administrative expenses, and profit we used information reported in the January, 2001 *Reserve Bank of India Bulletin*, "Statement 1—Combined Income, Value of Production, Expenditure and Appropriation Accounts, Industry Group-wise" of that report for the Indian metals and chemicals (and products thereof) industries. The Department attempted to find, through Internet searches and contacts with the U.S. Foreign Commercial Service, financial statements for a candle producer in India, but was unable to do so.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank of New York.

Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping margins for the period of August 1, 2001 through July 31, 2002, to be as follows:

Manufacturer/Exporter	Margin (percent)
Dongguan Fay Candle Co., Ltd ...	95.74
Qingdao Kingking Applied Chemistry Co., Ltd	13.64
Shanghai Charming Wax Co., Ltd	86.95
Shandong Jiaye General Merchandise Co., Ltd	86.95
PRC-Wide Rate	95.74

Cash Deposit Requirements

The following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of petroleum wax candles from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates established in the final results of this review; (2) for previously reviewed PRC and non-PRC exporters with separate rates, the cash deposit rates will be the company-specific rates established for the most recent period; (3) for all other PRC exporters, the rate will be the PRC-wide rate, which is now 95.74 percent; and (4) for all other non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that exporter. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Assessment Rates

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we have calculated an exporter/importer-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates, where appropriate, on the entered Customs quantity for the subject merchandise for each of the importer's entries during the review period.

Notification of Interested Parties

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this review in accordance with 19 CFR351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with section 351.310(c) of the Department's regulations. The Department will notify interested parties of the hearing date of this proceeding, if one is requested, and such hearing will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with section 351.309(c)(ii) of the Department's regulations. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, the presentations will be limited only to arguments raised in the case and rebuttal briefs. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the schedule time. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in the briefs, within 120 days from the date of publication of these preliminary results, unless the time limit is extended.

Notification to Importers

This notice also serves as preliminary reminder to importers of their responsibility under 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent

assessment of double antidumping duties.

This administration review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Attachment I

Companies Listed in the *Initiation Notice* that are Subject to the PRC-Wide Rate (97 Companies):

ADP (Ningbo, PRC)
ADP Shanghai
Allock Ltd.
Amstar Business Company Limited
Anyway International Trading & Manufacturing Co., Ltd.
Aroma Consumer Products (Hangzhou) Co., Ltd.
Candle World Industrial Co.
China Hebei Boye Great Nation Candle Co., Ltd.
China Overseas Trading Dalian Corp.
China Packaging Import & Export Liaoning Co.
China Xinxing Zhongyuan (Wuhan) Imp. & Exp.
CNACC (Zhejiang) Imports & Export Co., Ltd.
Cnart China Gifts Import & Export Corp.
Dandong Hengtong Handicraft Article Co., Ltd.
Dandong Hengtong Handicraftarticle Co., Ltd.
DDP Qingdao
Dongijeng Fecund Imp. & Exp. Co., Ltd.
Ever-gain Industrial Co.
Excel Network Limited
Far Going Candle Gifts Co., Ltd.
Fu Kit
Fujian Provincial Arts & Crafts Imp. & Exp. Corp.
Fushun Candle Corporation
Fushun Economy Development Zone Xinyang Candle Factory
Fushun Huaiyuan Wax Products Co., Ltd.
Fushun Yuanhang Paraffin Products Industrial Company
Fushun Yuhua Crafts Factory
Gansu Textiles Imp. & Exp. Corp.
Green Islands Industry Shanghai Co., Ltd.
Huangyan Imp. & Exp. Corp.
Huangyan Imp. & Exp. Corp.
Jason Craft Corp.
Jiangsu Holly Corporation
Jiangsu Yixing Foreign Trade Corp.
Jilin Province Arts and Crafts
Jintan Foreign Trade Corp.
Kingking A.C. Co., Ltd.
Kuehne & Nagel (Hon Kong) Beijing
Kwung's International Trade Co., Ltd.
LI & Fung Trading Ltd.
Liaoning Arts & Crafts Import & Export
Liaoning Light
Liaoning Light Industrial Products Import & Export Corp.
Liaoning Native Product Import & Export Corporation, Ltd.
Liaoning Province Building Materials Industrial Im
Liaoning Xinyuan Textiles Import and Export
Lu Ke Trading Co., Ltd.
Ningbo Free Trade Zone Weicheng Trading Co., Ltd.
Ningbo Free Zone Top Rank Trading Co.
Ningbo Kwung's Giftware Co., Ltd.
Ningbo Kwung's Import & Export Co.
Ningbo Sincere Designers & Manufacturers Ltd.
Qingdao Allite Radiance Candle Co., Ltd.
Qingdao Happy Chemical Products Co., Ltd.
Quanzhou Wenbao Light Industry Co.
Red Sun Arts Manufacture (Yixing) Co., Ltd.
Rich Talent Trading Ltd./Smartcord Int'l Co., Ltd.
Round-the-World (USA) Corp.
Round-the-World International Trade & Trans. Service (Tianjin) Co., Ltd.
Seven Seas Candle Ltd.
Shandong H&T Corp.
Shandong Native Produce International Trading Co., Ltd.
Shanghai Arts and Crafts Company
Shanghai Asian Development Int'l Tr
Shanghai Broad Trading Co., Ltd.
Shanghai Gift & Travel Products Import & Export Corp.
Shanghai Gifts & Travel
Shanghai Jerry Candle Co., Ltd.
Shanghai New Star Im/Ex Co., Ltd.
Shanghai Ornate Candle Art Co., Ltd.
Shanghai Shen Hong Corp.
Shanghai Sincere Gifts Designers & Manufacturers, Ltd.
Shanghai Success Arts & Crafts Factory
Shanghai Xietong Group O/B Asia 2 Trading Company
Shanghai Zhen Hua c/o Shanghai Light Industrial Int'l Corp., Ltd.
Silkroad Gifts
Simon Int'l Ltd.
Suzhou Ind'l Park Nam Kwong Imp & Exp Co. Ltd. (No. 339 East Baodai Road, Suzhou)
Suzhou Ind'l Park Nam Kwong Imp & Exp Co. Ltd. (Zhongxing City, Conghuan Rd., Suzhou)
T.H.I. (HK) Ltd.
Taizhou Int'l Trade Corp.
Taizhou Sungod Gifts Co., Ltd.
THI (HK) Ltd.
Thi Group Ltd. and THI (HK) Ltd.
Tianjin Native Produce Import & Export Group Corp., Ltd.
Tonglu Tiandi
Universal Candle Co., Ltd.
Weltach
World Way International (Xiamen)
World-Green (Shangdong) Corp., Ltd.
Xiamen Aider Import & Export Company
Xiamen C&D Inc.
Xietong (Group) Co., Ltd.
Zhejiang Native Produce & Animal By-Products Import & Export Corp.
Zhong Nam Industrial (International) Co., Ltd.
Zhongnam Candle
Zhongxing Shenyang Commercial Building (Group) Co., Ltd.

[FR Doc. 03–22942 Filed 9–8–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–835]

Preliminary Results of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty (CVD) order on stainless steel sheet and strip in coils from the Republic of Korea for the period January 1, 2001, through December 31, 2001. For information on the net subsidy for the reviewed companies, see the "Preliminary Results of Review" section of this notice. Interested parties are invited to comment on these preliminary results. (*See* the "Public Comment" section of this notice).

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Carrie Farley or Darla Brown, Office of AD/CVD Enforcement VI, Group II, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 6, 1999, the Department published in the **Federal Register** the CVD order on stainless steel sheet and strip in coils from the Republic of Korea. *See Amended Final Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip from France, Italy and the Republic of Korea*, 64 FR 42923 (August 6, 1999) (*Amended Sheet and Strip*) On August 6, 2002, the Department published a notice of opportunity to request an administrative review of this CVD order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 50856 (August 6, 2002). On August 30, 2002, we received a timely request

for review of INI Steel Company (INI)[1] and BNG Steel Co., Ltd. (BNG)[2] from petitioners.[3] Also on August 30, 2002, we received a timely request for review from INI. On September 20, 2002, the Department initiated an administrative review of the CVD order on stainless steel sheet and strip in coils from the Republic of Korea, covering the period of review (POR) January 1, 2001 through December 31, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews*, 67 FR 60210 (September 25, 2002). On February 4, 2003, the Department received questionnaire responses from the Government of Korea (GOK), INI and BNG. On April 10, 2003, the Department published in the **Federal Register** an extension of the preliminary results deadline. *See Stainless Steel Sheet and Strip in Coils from the Republic of Korea: Extension of Preliminary Results of Countervailing Duty Administrative Review*, 68 FR 17604. On May 21, 2003, we received supplemental responses from respondents. On July 3 through July 9, 2003, we conducted verification of the responses of INI, BNG, and the GOK.

In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. The companies subject to this review are INI and BNG. This review covers nine programs.

Scope of Review

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*), provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise subject to this review is classified in the *Harmonized Tariff Schedule of the United States* (HTSUS) at subheadings: 7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise is dispositive.

Excluded from the scope of this order are the following: (1) Sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

The Department has determined that certain specialty stainless steel products are also excluded from the scope of this order. These excluded products are described below:

Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length.

Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of between 0.002 and 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent magnet iron-chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in

[1] Formerly known as Inchon Iron and Steel Co. (Inchon). As of April 2001, Inchon changed its name to INI.

[2] Formerly known as Sammi Steel Co. (Sammi).

[3] Allegheny Ludlum, AK Steel Corporation, J&L Speciality Steel, Inc., Butler-Armco Independent Union, Zanesville Armco Independent Union, and the United Steelworkers of America, AFL–CIO/CLC (collectively petitioners).

electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[4]

Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[5]

Certain martensitic precipitation-hardenable stainless steel is also excluded from the scope of this order. This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500-grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[6]

Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives).[7] This steel is similar to ASTM grade 440F, but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 HI-C." The second excluded stainless steel strip in coils is similar to AISI 420-J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per square micron. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."

[4] "Arnokrome II" is a trademark of the Arnold Engineering Company.

[5] "Gilphy 36" is a trademark of Imphy, S.A.

[6] "Durphynox 17" is a trademark of Imphy, S.A.

[7] This list of uses is illustrative and provided for descriptive purposes only.

Same Person Test for Sammi

In the previous administrative review, covering the period calendar year 2000, we acknowledged that Sammi's name was changed to BNG in March 2002. However, we declared that we were not conducting any type of entity review or successor-in-interest test in that review. We stated that we would examine the facts related to Sammi in the 2001 administrative review (*see Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip from the Republic of Korea*, 68 FR 13267 (March 19, 2003) (2000 Sheet and Strip) and accompanying Issues and Decision Memorandum (*2000 Sheet and Strip* Decision Memo) at page 3 and Comment 2).

On December 6, 2000, Inchon became Sammi's majority shareholder when it completed its purchase of 68.4 percent of Sammi's shares. In the instant administrative review, we are conducting the "same person test" to determine whether Sammi was the same entity before and after Inchon's purchase of the majority of Sammi's shares.[8]

In making the "person" determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. *See Acciai Speciali Terni S.p.A. v. United States*, 206 F.Supp.2d 1344, 1350 (CIT 2002); *Final Negative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From Argentina*, 67 FR 62106 (October 3, 2002) and the accompanying Issues and Decision Memorandum, at Section II, "Change in Ownership." No single factor will necessarily provide a dispositive indication of any change in the entity under analysis.

Regarding the first criterion, after Inchon's majority purchase of Sammi's shares, Sammi's general business operations continued as before. Sammi's name also remained the same.[9] Moreover, Sammi's production facilities remained unchanged. With respect to its assets and liabilities, Sammi experienced no changes after Inchon's December 6, 2000, share purchase. Finally, Sammi's personnel was retained after the share purchase. *See* BNG's August 21, 2003, submission at Attachment 3, pages 7, 8, and 10.

Therefore, we preliminarily determine that Sammi was the same "person" after Inchon became Sammi's majority shareholder. Furthermore, we preliminarily determine that any allocable subsidies received by Sammi prior to Inchon's share acquisition continue to benefit the post-share-acquisition Sammi.

BNG and Cross-Ownership With INI

According to section 351.525(b)(6)(vi) of the Department's regulations, cross-ownership exists between two corporations where one corporation can use or direct the individual assets of the other corporation in essentially the same ways it can use its own assets. Normally, this standard will be met where there is a majority voting ownership interest between two corporations. On December 6, 2000, Inchon became the majority shareholder of Sammi with 68 percent of Sammi's shares. The Department's regulations acknowledge that control can be exercised by one corporation over

[8] On June 23, 2003, the Department published a notice that our practice regarding the "same person test" would be modified. See Notice of Final Modification of Agency Practice Under Section 123 of the Uruguay Round Agreements Act, 68 FR 37125. In that notice, we announced the prospective application of a new privatization methodology that would supercede the "same person test." We further stated that the new methodology would only apply to segments of proceedings initiated on or after June 30, 2003.

[9] Sammi changed its name to BNG in March 2002.

another even when that one corporation does not hold majority voting ownership. *See Countervailing Duties; Final Rule*, 63 FR 65348, 65401 (November 25, 1998), preamble to CVD Regulations. The percentage of shares, therefore, is not a dispositive indicator of cross-ownership between companies. Accordingly, it is also possible, under certain extraordinary circumstances, that a corporation holding majority ownership in another corporation may not be in a position to exercise control over that corporation's assets. From March 19, 1997 until March 23, 2001, Sammi was under court receivership. Thus, Sammi was in receivership throughout the entire POR under examination in the previous administrative review. In the previous review, we therefore examined the circumstances surrounding Sammi's court receivership to determine whether Inchon could use or direct Sammi's assets as its own.

Under Korea's Company Reorganization Act, the authority for management control (*e.g.*, the right to operate the company's business, management, and disposition of the company's property) rests exclusively with the court or with the receiver appointed by the court. The information on the record of the previous review demonstrated that the control of Sammi and the ability to use and direct the company's assets were held by the court and the court-appointed receiver throughout the previous POR. Therefore, we found that while Inchon held 68 percent of Sammi's shares, it was not in the position to control Sammi's assets during the POR and into 2001. *See 2000 Sheet and Strip* Decision Memo at Comment 3. In this review, we examined the relative positions of Sammi and Inchon and found that, after the end of Sammi's court receivership, Inchon was in a position to control Sammi's assets as its own. Therefore, we find preliminarily that cross ownership, as defined under section 351.525(b)(6)(vi) of the CVD Regulations, did exist between INI and Sammi during the instant POR. Consequently, for the purpose of these preliminary results, the Department will calculate one rate for INI/BNG, in accordance with section 351.525(b)(6)(ii).

Subsidies Valuation Information

Benchmarks for Long-term Loans: During the POR, INI and Sammi had both won-denominated and foreign currency-denominated long-term loans outstanding which they received from government-owned banks, Korean commercial banks, overseas banks, and foreign banks with branches in Korea.

With respect to foreign sources of credit, in *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR at 15533 (March 31, 1999) (*Plate in Coils*), and *Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR at 30642 (June 8, 1999) (*Sheet and Strip*), we determined that access to foreign currency loans from Korean branches of foreign banks (*e.g.*, branches of U.S.-owned banks operating in Korea) did not confer countervailable subsidies to the recipient as defined by section 771(5) of Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act), and, as such, credit received by respondents from these sources was found not to be countervailable. We based this decision upon the fact that credit from Korean branches of foreign banks was not subject to the government's control and direction. Thus, in *Plate in Coils* and *Sheet and Strip*, we determined that respondents' loans from these banks could serve as an appropriate benchmark to establish whether access to regulated sources of foreign-denominated credit conferred a benefit on respondents. As such, we preliminarily determine that lending from Korean branches of foreign banks continues to be not countervailable. Consequently, where available, loans from Korean branches of foreign banks continue to serve as an appropriate benchmark to establish whether access to regulated foreign currency loans from domestic banks confers a benefit upon respondents.

Based on our findings on this issue in prior investigations, we are using the following benchmarks to calculate the subsidies attributable to respondent's long-term loans obtained in the years 1991 through 2001:

(1) For countervailable, foreign-currency denominated loans, we used, where available, the company-specific weighted-average U.S. dollar-denominated interest rates on the company's loans from foreign bank branches in Korea.

(2) For countervailable won-denominated long-term loans, where available, we used the company-specific corporate bond rate on the company's public and private bonds. We note that this benchmark is based on the decision in *Plate in Coils*, 64 FR at 15531, in which we determined that the GOK did not control the Korean domestic bond market after 1991, and that domestic bonds may serve as an appropriate benchmark interest rate. Where unavailable, we used a company-specific corporate bond rate from the national average of the yields on three-year corporate bonds, as reported by the Bank of Korea (BOK). We note that the use of the three-year corporate bond rate from the BOK follows the approach taken in *Plate in Coils*, in which we determined that, absent company-specific interest rate information, the corporate bond rate is the best indicator of a market rate for won-denominated long-term loans in Korea. *Id.*

Benchmarks for Short-Term Financing: For those programs that require the application of a short-term won-denominated interest rate benchmark, we used as our benchmark a company-specific weighted-average interest rate for commercial won-denominated loans outstanding during the POR.

Treatment of Subsidies Received by Trading Companies: We required responses from trading companies because the subject merchandise may benefit from subsidies provided to both the producer and the exporter of the subject merchandise. Subsidies conferred on the production and exportation of subject merchandise benefit the subject merchandise even if the merchandise is exported to the United States by a trading company rather than by the producer itself. Therefore, the Department calculates countervailable subsidy rates on the subject merchandise by cumulating subsidies provided to the producer with those provided to the exporter. During the POR, INI exported subject merchandise to the United States through a trading company, Hyosung Corporation (Hyosung). We required the trading company to provide a response to the Department with respect to the export subsidies under review.

Under section 351.107(b)(1) of the Department's regulations, when the subject merchandise is exported to the United States by a company that is not the producer of the merchandise, the Department may establish a "combination" rate for each combination of an exporter and supplying producer. However, as noted in the Preamble to the regulations, there may be situations in which it is not appropriate or practicable to establish combination rates when the subject merchandise is exported by a trading company. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27303 (May 19, 1997). In such situations, the Department will make exceptions to its combination rate approach on a case-by-case basis. *Id.*

We preliminarily determine that it is not appropriate to establish combination rates, with respect to this review. This determination is based on two main facts: first, the majority of the subsidies conferred upon the subject merchandise were received by the producer; second, the level of subsidies conferred upon the individual trading company with regard to the subject merchandise is insignificant.

Instead, we have continued to calculate a rate for the producers of subject merchandise that includes the subsidies received by the trading company. To reflect those subsidies that are received by the exporter of the subject merchandise in the calculated *ad valorem* subsidy rate, we first calculated the benefit attributable to the subject merchandise from subsidies received by the trading company. Next, we factored that amount into the calculated subsidy rate for the relevant producer. We then added these calculated *ad valorem* subsidies to the subsidies calculated for INI/BNG. Thus, for each of the programs below, the listed *ad valorem* subsidy rate includes countervailable subsidies received by both the producer and the trading company.

I. Programs Conferring Subsidies

1. The GOK's Direction of Credit

The Department previously determined in the *Final Affirmative Countervailing Duty Determination: Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000) (*H-beams*), and accompanying Issues and Decision Memorandum (*H-Beams Decision Memo*) at section "The GOK's Credit Policies through 1991," that the provision of long-term loans via the GOK's direction of credit policies was specific to the Korean steel industry through 1991 within the meaning of section 771(5A)(D)(iii) of the Act. Also in *H-Beams*, we determined that the provision of these long-term loans through 1991 provided a financial contribution that resulted in the conferral of a benefit, within the meaning of sections 771(5)(D)(i) and 771(5)(E)(ii) of the Act, respectively. *Id.*

In *Plate in Coils*, 64 FR at 15332, and in *Sheet and Strip*, 64 FR at 30641, the Department examined the GOK's direction of credit policies for the period 1992 through 1997. Based on new information gathered in the course of those investigations, the Department determined that the GOK controlled directly or indirectly the lending practices of most sources of credit in Korea between 1992 and 1997.

In *H-beams*, the Department also determined that the GOK continued to control directly and indirectly the lending practices of most sources of credit in Korea through 1998, and that the GOK's regulated credit from domestic commercial banks and government-controlled banks such as the Korea Development Bank (KDB) was specific to the steel industry. Furthermore, the Department determined in *H-Beams* that these regulated loans conferred a benefit on the producer of the subject merchandise to the extent that the interest rates on these loans were lower than the interest rates on comparable commercial loans, within the meaning of section 771(5)(E)(ii) of the Act. In the *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From the Republic of Korea*, 64 FR 73176 at 73180, (December 29, 1999) (*CTL Plate*) the Department determined that the GOK continued to control, directly and indirectly, the lending practices of sources of credit in Korea in 1998, and the Department made a similar finding for 1999. *See also Final Results and Partial Rescission of Countervailing Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 67 FR 1964 (January 15, 2002) (*1999 Sheet and Strip*) and accompanying Issues and Decision Memorandum (*1999 Sheet and Strip Decision Memo*) at "the GOK's Direction of Credit" section.

In the *1999 Sheet and Strip Decision Memo* at "The GOK's Direction of Credit" section, we found that the GOK had control over the lending institutions during 1999. In the *Notice of Final Affirmative Countervailing Duty Determination: Certain Cold-Rolled Carbon Steel Flat Products From the Republic of Korea*, 67 FR 62102 (October 3, 2002) (*Cold-Rolled*), and accompanying Issues and Decision Memorandum (*Cold-Rolled Decision Memo*) at "The GOK Directed Credit" section, the Department found that the GOK continued to exert control over the lending institutions during 2000.

In the instant proceeding we asked the GOK for information pertaining to the GOK's direction of credit policies for 2001. The GOK did not provide any additional information stating that, "the legal costs to further contest this issue in this review overshadow any possible benefit." *See* the GOK's February 4, 2003, questionnaire response. As such, because the necessary information to determine whether the GOK has continued its direction of credit policies from 2000 through 2001 is not available on the record, the Department must base its determination on facts otherwise available. *See* section 776(a) of the Act. Moreover the GOK's willful refusal to supply this information, which involves the GOK's own policies, demonstrates its failure to cooperate to the best of its ability. *See* section 77b(b) of the Act. Accordingly, the statue authorizes the Department to employ an adverse inference in selecting among facts otherwise available. *See id.* Drawing from our determination on this issue in the previous administrative review, we preliminarily find that the GOK's direction of credit policies continued from 2000 through 2001, the POR. In addition, absent information indicating otherwise, we preliminarily find that lending from domestic banks and from government-owned banks, such as the KDB, continues to be countervailable through 2001.

INI and Sammi received long-term fixed and variable rate loans from GOK owned/controlled institutions that were outstanding during the POR. In order to determine whether these GOK directed loans conferred a benefit, we compared the interest rates on the directed loans to the benchmark interest rates detailed in the "Subsidies Valuation Information" section of this notice.

Won-Denominated Loans: Regarding the calculation of the benefit on countervailable, long-term fixed-rate loans, in past cases the Department has employed the "grant equivalent" methodology, as described in section 351.505(c)(3) of the CVD Regulations, when the government-provided loan and the comparison loan have dissimilar grace periods or maturities, or where the repayment schedules are different (*e.g.*, declining balance versus annuity style).

In *2000 Sheet and Strip* Decision Memo, the Department revised its application of the grant equivalent methodology discussed in 351.505(c)(3) of the CVD Regulations. We note that section 351.505(c)(2) of the CVD Regulations states that the Department "will normally calculate the subsidy amount to be assigned to a particular year by calculating the difference in interest payments for that year (*i.e.*, the difference between the interest paid by the firm in that year on the government-provided loan and the interest the firm would have paid on the comparison loan)." We also note that, in reference to paragraph (c)(2), the Preamble of the Department's CVD Regulations states that in situations where the benefit from a long-term, fixed-rate loan stems solely from a concessionary interest rate, it is not necessary to engage in the grant equivalent methodology. *See* 63 FR at 65369. Thus, the CVD Regulations and

the Preamble direct the Department to default to a simple comparison of interest payments made during the POR when calculating the benefit from a long-term, fixed-rate loan.

The Preamble goes on to describe those situations in which the Department shall deviate from the "simple, default methodology," and instead employ the grant equivalent methodology. The Preamble states that, "[b]ecause a firm may derive a benefit from special repayment terms, in addition to any benefit derived from a concessional interest rate," the Department will calculate the benefit using the grant equivalent methodology. *See* 63 FR at 65369.

There is no information on the record of these preliminary results that indicates that either INI or Sammi derived a benefit from any special repayment terms (*i.e.*, abnormally long grace periods or maturities, etc.) on their long-term, fixed-rate loans. Therefore, in accordance with section 351.505(c)(2) of the CVD Regulations, we are calculating the benefit that INI and Sammi received on their long-term, fixed-rate loans by comparing the amount of interest paid on the loan during the POR to the amount of interest that would have been paid during the POR on a comparable, commercial loan. Thus, to calculate the countervailable subsidy benefit, we first derived the benefit amounts attributable to the POR for each company's fixed and variable rate loans and then summed the benefit amounts from the loans.

Foreign Currency Denominated Loans: Neither INI nor Sammi had foreign currency denominated loans outstanding during this POR which could be used for benchmark purposes. Sammi did provide information pertaining to a foreign currency denominated bond. We have determined that this information may serve as a benchmark for INI's foreign currency denominated loans issued in 2001; however, this information is unsuitable for use as a benchmark for INI's loans received prior to 2001. Therefore, for loans issued before 2001, we have used the same benchmark rates as those applied in *2000 Sheet and Strip*. *See* INI's February 4, 2003 Questionnaire Response, Exhibit A–4.

To determine the total benefit for all directed credit, we added the benefit derived from foreign currency loans to the benefit derived from won denominated loans and divided the total benefit by INI/BNG's total f.o.b. sales value during the POR. On this basis, we preliminarily determine the countervailable subsidy to be 0.24 percent *ad valorem* for INI/BNG.

B. Article 16 of the Tax Exemption and Reduction Control Act (TERCL): Reserve for Export Losses

Under Article 16 of the TERCL, a domestic person engaged in a foreign-currency earning business can establish a reserve amounting to the lesser of one percent of foreign exchange earnings or 50 percent of net income for the respective tax year. Losses accruing from the cancellation of an export contract, or from the execution of a disadvantageous export contract, may be offset by returning an equivalent amount from the reserve fund to the income account. Any amount that is not used to offset a loss must be returned to the income account and taxed over a three-year period, after a one-year grace period. All of the money in the reserve is eventually reported as income and subject to corporate tax either when it is used to offset export losses or when the grace period expires and the funds are returned to taxable income. The deferral of the payment of taxes owed is equivalent to an interest-free loan in the amount of the company's tax savings. This program is only available to exporters. According to information provided by respondents, this program was terminated on April 10, 1998, and no new funds could be placed in this reserve after January 1, 1999. However, INI still had an outstanding balance in this reserve during the POR. Sammi did not use this program.

In *Sheet and Strip*, 64 FR at 30645, we determined that this program was specific as it constituted an export subsidy under section 771(5A)(B) of the Act because the use of the program is contingent upon export performance. We also determined that this program provided a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. *See* 64 FR 30645. No new information or evidence of changed circumstances has been presented to cause us to revisit this determination. Thus, we preliminarily determine that this program constitutes a countervailable export subsidy.

In *2000 Sheet and Strip*, we revised our benefit calculation for this program when a company is in a tax loss position. Previously, the Department had only calculated a benefit based on the deferral of the tax payment; however, when a company returns tax reserves to taxable income while in a tax loss situation, the GOK is forgoing tax revenue. Therefore, the Department now calculates an additional benefit from this program when a company returns tax reserves to taxable income while in a tax loss situation. *See* the *2000 Sheet and Strip* Decision Memo at the "Article 16 of the Tax Exemption and Reduction Control Act (TERCL): Reserve for Export Losses" section. As neither INI nor Sammi was in a tax loss situation during the POR, this methodology is not applicable.

To determine the benefit conferred on INI by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 2000, as filed during the POR, by the corporate tax rate for 2000. We treated the tax savings on these funds as a short-term interest-free loan. *See* 19 CFR 351.509. Accordingly, to determine the benefit, we multiplied the amount of tax savings for INI by the weighted-average interest rate on INI's short-term won-denominated commercial loans for the POR, as described in the "Subsidies Valuation Information" section, above. We then divided the benefit by INI/BNG's total f.o.b. export sales. On this basis, we preliminarily calculated a countervailable subsidy of less than 0.005 percent *ad valorem* for INI/BNG.

3. Article 17 of the TERCL: Reserve for Overseas Market Development

Under Article 17 of the TERCL, a domestic person engaged in a foreign trade business is allowed to establish a reserve fund equal to one percent of its foreign exchange earnings from its export business for the respective tax year. Expenses incurred in developing overseas markets may be offset by returning from the reserve, to the income account, an amount equivalent to the expense. Any part of the fund that is not placed in the income account for the purpose of offsetting overseas market development expenses must be returned to the income account in three yearly installments, after a two-year grace period. The balance of this reserve fund is not subject to corporate income tax during the grace period. However, all of the money in the reserve is eventually reported as income and subject to corporate tax either when it offsets export losses or when the grace period expires. The deferral of tax payment amounts to an interest-free loan equal to the company's tax savings. This program is only available to exporters. Neither INI nor Sammi used this program during the POR; however, INI exported subject merchandise through Hyosung, which used this program during the POR.

In *CTL Plate*, 64 FR at 73181, we determined that the Reserve for Overseas Market Development program is specific under section 771(5A)(B) of the Act because use of the program is contingent upon export performance. We also determined that this program provides a financial contribution within

the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the tax savings enjoyed by the companies. Respondents have not provided any new information to warrant reconsideration of this determination. Therefore, we continue to find this program countervailable.

To determine the benefit conferred by this program, we calculated the tax savings by multiplying the balance amount of the reserve as of December 31, 2000, by the corporate tax rate for 2000. We treated the tax savings on these funds as a short-term interest-free loan. Accordingly, to determine the benefit, we multiplied the amount of tax savings by Hyosung's weighted-average interest rate for short-term won-denominated commercial loans for the POR. Using the methodology for calculating subsidies received by trading companies, which also is detailed in the "Subsidies Valuation Information" section of this notice, we calculate a countervailable subsidy of less than 0.005 percent *ad valorem* for INI/BNG.

4. Technical Development Fund (RSTA Article 9, Formerly TERCL Article 8)

On December 28, 1998, the TERCL was replaced by the Tax Reduction and Exemption Control Act (RSTA). Pursuant to this change in law, TERCL Article 8 is now identified as RSTA Article 9. Apart from the name change, the operation of RSTA Article 9 is the same as the previous TERCL Article 8 and its Enforcement Decree.

This program allows a company operating in manufacturing or mining, or in a business prescribed by the Presidential Decree, to appropriate reserve funds to cover expenses related to the development or innovation of technology. These reserve funds are included in the company's losses and reduce the amount of taxes paid by the company. Under this program, capital goods and capital intensive companies can establish a reserve of five percent of total revenue, while companies in all other industries are only allowed to establish a three percent reserve.

In *CTL Plate*, 64 FR at 73181, we determined that this program is specific because the capital goods industry is allowed to claim a larger tax reserve under this program than all other manufacturers. We also determined that this program provides a financial contribution within the meaning of section 771(5)(D)(i) of the Act in the form of a loan. The benefit provided by this program is the differential tax savings enjoyed by the companies in the capital goods industry, which includes steel manufacturers. *Id.* No new information, or evidence of changed circumstances, were presented in this review to warrant reconsideration of the countervailability of this program. Therefore, we continue to find this program to be countervailable. Sammi did not use this program. Record evidence indicates that INI did not contribute funds to this reserve during the POR, but it did carry a balance. Thus, to calculate the benefit on the balance, we compared the amount of taxes that it would have paid if it had only claimed the three percent tax reserve with the amount of taxes actually paid on tax reserve amount as claimed under the five percent reserve limit. Next, we calculated the amount of the tax savings earned through the use of this tax reserve during the POR and divided that amount by INI/BNG's total f.o.b. sales during the POR. On this basis, we preliminarily determine a net countervailable subsidy of less than 0.005 percent *ad valorem* for INI/BNG.

5. Asset Revaluation: TERCL Article 56(2)

Under Article 56(2) of the TERCL, the GOK permitted companies that made an initial public offering between January 1, 1987, and December 31, 1990, to revalue their assets at a rate higher than the 25 percent required of most other companies under the Asset Revaluation Act. In *CTL Plate*, we found this program countervailable due to the fact that it is specific and provides a financial contribution by allowing companies to reduce their income tax liability. *See* 64 FR at 73183. No new information, or evidence of changed circumstances, were presented in this review to warrant reconsideration of the countervailability of this program.

To calculate the benefit from the program we reviewed the effect that the difference in the revaluation of depreciable assets had on INI's tax liability each year. Sammi did not use this program. We multiplied the additional depreciation in the tax return filed during the POR, which resulted from the company's asset revaluation, by the tax rate applicable to that tax return. We then divided the benefit by INI/BNG's total f.o.b. sales. Accordingly, we preliminarily determine that the net countervailable subsidy for this program is less than 0.005 percent *ad valorem* for INI/BNG.

6. Investment Tax Credits

Under Korean tax laws, companies are allowed to claim investment tax credits for various kinds of investments. If the investment tax credits cannot all be used at the time they are claimed, then the company is authorized to carry them forward for use in subsequent years. Until December 28, 1998, these investment tax credits were provided under the TERCL. On that date, the TERCL was replaced by the Restriction of Special Taxation Act (RSTA). Pursuant to this change in the law, investment tax credits received after December 28, 1998, were provided under the authority of RSTA.

During the POR, INI earned or used tax credits for investments in productivity increasing "facilities" (RSTA Article 24, previously TERCL Article 25) and investments in specific "facilities" (RSTA Article 25, previously TERCL Article 26). Sammi did not use either program. Under these programs, if a company invested in foreign-produced "facilities," the company received a tax credit equal to either three or five percent of its investment. However, if a company invested in domestically-produced "facilities," it received a ten percent tax credit. Under section 771(5A)(C) of the Act, a program that is contingent upon the use of domestic goods over imported goods is specific, within the meaning of the Act. Because Korean companies received a higher tax credit for investments made in domestically-produced "facilities," in *CTL Plate*, 63 FR at 73182, we determined that these investment tax credits constituted import substitution subsidies under section 771(5A)(C) of the Act. In addition, because, under this program, the GOK forewent the collection of tax revenue otherwise due, we determined that a financial contribution is provided under section 771(5)(D)(ii) of the Act. The benefit provided by this program was a reduction in taxes payable. Therefore, we determined that this program was countervailable.

In *Cold-Rolled*, we found that RSTA Article 24 (previously TERCL Article 25) was altered on April 10, 1998, eliminating the distinction between domestic and imported goods; therefore, any credits received after that date were not countervailable. However, we continue to find the use of investment tax credits earned on domestic investments made before April 10, 1998, to be countervailable.

INI claimed tax credits under RSTA Article 24 and RSTA Article 25 for investments that originated when there was a distinction between purchasing domestic "facilities" and imported "facilities." To calculate the benefit from these investment tax credits, we examined the amount of tax credits INI deducted from its taxes payable for the 2000 fiscal year income tax return, which was filed during the POR. We

first determined the amount of the tax credits claimed which were based upon investments in domestically-produced and specific "facilities." We then calculated the additional amount of tax credits received by the company because it earned tax credits of ten percent on such investments instead of a three or five percent tax credit. Next, we calculated the amount of the tax savings earned through the use of these tax credits during the POR and divided that amount by INI/BNG's total f.o.b. sales during the POR. On this basis, we preliminarily determine a net countervailable subsidy of 0.03 percent *ad valorem* for INI/BNG.

7. Electricity Discounts Under the Requested Load Adjustment Program (RLA)

With respect to the Requested Load Adjustment (RLA) program, the GOK introduced this discount in 1990 to address emergencies in the supply of electricity by the government-owned electricity provider, Korea Electric Power Company (KEPCO). Under this program, customers with a contract demand of 5,000 kW or more, who can curtail their maximum demand by 20 percent or suppress their maximum demand by 3,000 kW or more, are eligible to enter into an RLA contract with KEPCO. Customers who choose to participate in this program must reduce their load upon KEPCO's request, or pay a surcharge to KEPCO.

Customers can apply for this program between May 1 and May 15 of each year. If KEPCO finds the application in order, KEPCO and the customer enter into a contract with respect to the RLA discount. The RLA discount is provided based upon a contract for two months, normally July and August. Under this program, a basic discount of 440 won per kW is granted between July 1 and August 31, regardless of whether KEPCO makes a request for a customer to reduce its load. During the POR, KEPCO and INI entered into a contract pursuant to which KEPCO granted INI electricity discounts under this program.

In *Sheet and Strip*, 64 FR at 30646, the Department found this program to be specific under section 771(5A)(D)(iii)(I) of the Act because the discounts were distributed to a limited number of customers. Moreover, we found that a financial contribution was provided within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue forgone by the government.

INI did receive discounts during the POR; therefore, we find that a financial contribution is provided to INI under this program, within the meaning of section 771(5)(D)(ii) of the Act, in the form of revenue foregone by the government. Sammi did not use this program. The benefit provided under this program is a discount on a company's monthly electricity charges. Respondents have not provided any new information to warrant reconsideration of this determination. Therefore, we continue to find this program countervailable.

Because the electricity discounts provide recurring benefits, we have expensed the benefit from this program in the year of receipt. To measure the benefit from this program, we summed the electricity discounts which INI received from KEPCO under the RLA program during the POR. We then divided that amount by INI/BNG's total f.o.b. sales value for 2001. On this basis, we preliminarily determine a net countervailable subsidy of 0.01 percent *ad valorem* for INI/BNG.

8. Purchase of Sammi Specialty Steel Division by POSCO

In *Sheet and Strip*, the Department found that POSCO's 1997 purchase of Sammi's bar and pipe division constituted a countervailable subsidy. We determined that, at the time of the purchase, POSCO's actions were directed by the GOK and that this purchase was not made according to commercial considerations. This decision was based on information from POSCO, the petition, and other publicly available information, as Sammi did not participate in the investigation. *See Sheet and Strip*, 64 FR at 30638 and 30642. Sammi has, however, fully participated in this review and has provided new information that allows us to reexamine our earlier adverse facts available determination.

We previously determined that POSCO was a government-controlled company at the time it purchased Sammi's bar and pipe facility. *See Sheet and Strip* 64 FR 30642. *See also* Section III, Part A of this notice for more information concerning government control of POSCO. No new information has been provided requiring the Department to revisit its prior determination that POSCO was GOK-controlled at the time it purchased Sammi's facility. Therefore, we are considering POSCO's payment for Sammi's bar and pipe facility equivalent to a payment by the government for this facility. This payment by the government constitutes a financial contribution under section 771(5)(D)(iv) of the Act.

During this review, we provided the GOK the opportunity to present information about other similar facility purchases during the time period of POSCO's purchase of Sammi's bar and pipe facility. *See* the May 21, 2003 GOK Supplemental Questionnaire Response (GOK Supplemental), Question E1. The list provided by the GOK in response to the Department's question refers only to purchases of entire steel companies, as opposed to individual assets or facilities. *See* GOK Supplemental, Exhibit O–1. In addition, we note that POSCO was not among the purchasers listed. Thus, we have no record evidence that another purchase of this nature was made by POSCO or any other government entity. Therefore, we preliminarily find that this sale was specific to Sammi within the meaning of section 771(5A)(D)(i) of the Act.

A benefit is conferred where the government purchases goods at more than adequate remuneration. *See* Section 771(5)(E)(iv) of the Act. As used in the Act, the term "good" is expansive, encompassing more than just moveable property. *See Notice of Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination: Certain Softwood Lumber Products From Canada*, 67 FR 15545 (April 2, 2002), and accompanying Issues and Decision Memorandum, at "Financial Contribution" section. The definition of "goods" includes all property or possessions, and saleable commodities. *See id.* Accordingly, we preliminarily determine that Sammi's bar and pipe facility is a "good."

The next issue is whether POSCO purchased Sammi's bar and pipe facility at more than adequate remuneration. The Department is guided by section 351.511(a)(2) of the regulations. Due to the absence of evidence of either a market-determined price for this facility in Korea or a world market-price, we are determining the benefit provided by this program by evaluating whether POSCO's purchase price for this good is consistent with market principles, as described in section 351.511(a)(2)(iii) of the regulations.

In *Sheet and Strip*, we determined that the purchase of Sammi's bar and pipe facility by POSCO conveyed a countervailable benefit to Sammi. *See Sheet and Strip* and accompanying Issues and Decision Memorandum at "Purchase of Sammi Specialty Steel Division". While this decision was based on adverse facts available, the information on the record remains largely the same. In *Sheet and Strip*, we relied heavily on a report issued by the Korean Board of Audit and Inspection (BAI) which criticized POSCO's purchase of the plant. In addition it noted that POSCO did not adhere to its

own internal guidelines when evaluating this purchase, as well as several instances of items for which POSCO overpaid. *See* August 7, 2003, Verification Report for BNG in the Countervailing Duty Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea (BNG Verification Report) at page 3 and Exhibit B–9. What new information we have received merely serves to confirm our earlier finding. In the opinion of the bankers with whom we spoke, the process in which Sammi and POSCO participated for the sale of Sammi's bar and pipe division was dissimilar to the typical sale approach in terms of timing, number of bidders, and internal approval. *See* August 7, 2003, Meeting with Private Bankers in the Countervailing Duty Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea, at page 2. Based on record evidence, we find that POSCO purchased this facility for more than adequate remuneration. Therefore, we preliminarily find that, to the extent that this purchase was made for more than adequate remuneration, it conferred a countervailable benefit to Sammi within the meaning of section 771(5)(E)(iv).

We used record evidence to calculate the amount POSCO overpaid for this facility. The BAI report cites several items which POSCO should have known were worth less than the value attached to them by valuation studies and includes the BAI's valuation of these items. *See* BNG Verification Report, Exhibit B–9. These items include overpayment for technologies which POSCO already possessed, not accounting correctly for certain tax breaks, and the purchase of land not required by the purchase agreement. We are using the sum of these amounts as the benefit for this program. The Department invites parties to comment on the benefit calculation for this program.

Therefore, in accordance with section 771(5)(A) of the Act, we determine that this program conferred a countervailable benefit to Sammi. On this basis, we preliminarily determine a net countervailable subsidy of 0.28 percent *ad valorem* for INI/BNG.

II. Programs Preliminarily Determined To Be Not Used

A. *Investment Tax Credits Under RSTA Articles 11, 30, and 94 and TERCL Articles 24, 27, 71.*

B. *Loans From the National Agricultural Cooperation Federation.*

C. *Tax Incentives for Highly-Advanced Technology Businesses under the Foreign Investment and Foreign Capital Inducement Act.*

D. *Reserve for Investment under Article 43–5 of TERCL.*

E. *Export Insurance Rates Provided by the Korean Export Insurance Corporation.*

F. *Special Depreciation of Assets on Foreign Exchange Earnings.*

G. *Excessive Duty Drawback.*

H. *Short-Term Export Financing.*

I. *Export Industry Facility Loans.*

J. *Research and Development.*

K. *Local Tax Exemption on Land Outside of Metropolitan Area.*

III. Programs Preliminarily Determined To Be Not Countervailable

A. POSCO's Provision of Steel Inputs for Less Than Adequate Remuneration

In *2000 Sheet and Strip*, we found that POSCO's provision of steel inputs for less than adequate remuneration was countervailable on the basis that the GOK, through POSCO, provided a financial contribution. However, we noted at Comments 9 and 10 of the *2000 Sheet and Strip* Decision Memo that we would analyze POSCO's privatization in the course of the instant administrative review.

In the instant review, we preliminarily find that the evidence relied upon in the previous determinations has changed, and, therefore, the Department's earlier finding is no longer applicable. Specifically, in previous determinations, the Department concluded that the GOK controlled POSCO on the basis of a number of factors, including: (1) The GOK was the largest shareholder, (2) the GOK enacted a law that restricted individual shareholders from exercising voting rights in excess of three percent of the company's common share and the inclusion of a similar restriction in POSCO's Articles of Incorporation, (3) POSCO was designated as a "public company," (4) POSCO's chairman and half of POSCO's outside directors were appointed by the GOK, and (5) POSCO's chairman and several of POSCO's appointed directors were former senior government officials.

With respect to the first factor, during the POR, the GOK no longer was the largest owner of POSCO's shares. During 2001, the largest GOK-owned holder of POSCO's shares was the Industrial Bank of Korea (IBK), the only entity with GOK ownership that held more than one percent of POSCO's shares during this period. The IBK held 3.12 percent of POSCO's common shares as of December 31, 2001. The single largest shareholder of POSCO's shares at the end of 2001 was POSTECH, with 3.14 percent. POSTECH is a technical university owned by POSCO. With respect to the second and third factors, POSCO's designation as a "public company" was removed on September 26, 2000, which also removed the restriction on an individual shareholder's voting rights. However, the latter became effective during the POR on March 16, 2001, when the clause included in POSCO "s Articles of Incorporation restricting individual ownership was officially removed at the General Shareholders Meeting.

Regarding the fourth and fifth factors, in March 1999, POSCO revised its Articles of Incorporation, establishing new procedures for selecting members of the Board of Directors (BOD), assuring the independence and transparency of the selection process. During the General Meeting of Shareholders, held on March 17, 2000, two outside directors who were former government employees resigned. During the POR, none of the standing directors on POSCO's BOD were former government employees or officials, while two of eight outside directors were former government employees or officials. Moreover, while POSCO's current chairman is the same individual that was appointed by the President of Korea, he was subsequently reappointed by the shareholders in March 2001.

In light of these changes, we preliminarily determine that the GOK did not control POSCO during the POR. As such, we also preliminarily find that absent GOK control over POSCO, there is no longer a government financial contribution as defined by section 771(D)(iii) of the act, and, therefore, that this program is no longer countervailable.

B. Electricity Discounts Under the Voluntary Electric Power Savings Adjustment Program

We examined at verification the voluntary electric power savings adjustment (VEPS) program, Article 107–2 of the Regulation on Optional Electricity Supply. This program is associated with the VRA program previously examined by the Department and found not countervailable. *See Sheet and Strip* at 30647. The goal of the VEPS program is to reduce customers' electricity usage during the summer months, when demand is normally high. Under this program, KEPCO gives discount incentives to general, industrial, and educational customers with a contract maximum demand per month (MDM) of 1000 kilowatts (kW) or more who reduce their electricity usage during peak season (*i.e.*, summer).

KEPCO forecasts the dates in the peak season, usually July and August, when each participating company could curtail its usage. For a company to receive discounts under this program, the company would have to decrease its usage by 20 percent or more over 30 minutes on the contracted dates. The total average for all of the contracted dates must be 20 percent or more and the curtailed period must be over five days or five 30-minute periods, or units, to receive the discount. The discount amount is calculated on the actual curtailment of power. KEPCO calculates the actual power usage during 10 a.m. to 12 p.m. on the day the reduction is to take place. KEPCO then calculates the actual usage during 2 p.m. to 4 p.m. that same day. By comparing these two measurements, KEPCO is able to determine if the company reduced its power usage by the required amount. If the company curtails its power for at least 5 units, KEPCO will determine the total power reduction and then calculate the discount based on this amount. The discount will then be applied to the following month's electricity bill. If the company determines that it does not want to reduce its power on the dates specified, the company would not receive the discount.

We analyzed whether the VEPS program is specific in law (*de jure* specificity), or in fact (*de facto* specificity), within the meaning of section 771(5A)(D)(i) and (iii) of the Act. First, we examined the eligibility criteria contained in the law. The Regulation on Electricity Supply and KEPCO's Rate Regulations for Electric Service identify companies within a broad range of industries as eligible to participate in the electricity discount programs. With respect to the VEPS, all general, educational, and industrial customers who have the necessary contract demand are eligible to participate in the discount program. Therefore, based on our analysis of the law, we preliminarily determine that the VEPS electricity program is not *de jure* specific under section 771(5A)(D)(i) of the Act.

We also examined evidence regarding the usage of the VEPS program and found no predominant use by the steel industry. The information on the record demonstrates that discounts under the VEPS are distributed to a large number of firms in a wide variety of industries. *See* August 7, 2003, Verification Report for the GOK in the Countervailing Duty Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea (GOK Verification Report) at pages 6–7. Therefore, after analyzing the data with respect to the large number of companies and diverse number of industries which received electricity discounts under this program during the POR, we determine that the VEPS program is not *de facto* specific under section 771(5A)(D)(iii) of the Act. Accordingly, we preliminarily find that the VEPS program is not countervailable.

C. Kangwon's Debt-to-Equity Swap

Petitioners allege that Kangwon Industries Ltd. (Kangwon) received a countervailable benefit through a debt-for-equity swap and that the benefit is attributable to INI. *See* the April 18, 2003, New Subsidy Allegation Memorandum from the team to Melissa Skinner, Director, Office of AD/CVD Enforcement VI, which is on file in the Department's central records unit (CRU). Specifically, petitioners state that on March 15, 2000, Kangwon merged with Inchon. At the same time as the merger, a substantial number of Kangwon's creditors agreed to forgive Kangwon's debt in exchange for shares in Kangwon. Petitioners state that record evidence indicates that the GOK owned or controlled many of the banks that participated in the swap.[10] Furthermore, petitioners allege that Kangwon was unequityworthy in 2000, the year of the debt-for-equity swap. They base their allegation of Kangwon's unequityworthiness on the fact that the company was found uncreditworthy in 1998. *See Final Affirmative Countervailing Duty Determination of Structural Steel Beams from the Republic of Korea*, 65 FR 41051 (July 3, 2000) and accompanying Issues and Decision Memorandum.

Petitioners argue that the GOK-owned banks' decision to participate in the swap was inconsistent with the usual investment practice of private investors, and, therefore, conferred a benefit upon Kangwon and its parent company, Inchon, within the meaning of section 771(5)(E)(i) of the Act, in the form of a government equity infusion, as the equity for which the debt was exchanged was worthless at the time of its issuance. Petitioners further allege that the debt-for-equity swap constitutes a government financial contribution within the meaning of section 771(5)(D)(ii) of the Act in the form of revenue foregone. In addition, they allege that this program is specific under section 771(5A)(D)(iii)(IV) of the Act, as this transaction was limited to Kangwon.

On June 26, 1999, Kangwon and Inchon entered into a memorandum of understanding (MOU) regarding the merger. On July 27, 1999, Kangwon and Inchon established a task force team to carry out the merger. On October 15, 1999, at the 8th Creditor Financial Institutions' Conference (Creditors' Conference) the creditors voted on seven agenda items that detailed the different financial transactions and agreements, as well as Kangwon's merger with Inchon. Five of these seven items passed with the required 75 percent approval of creditors who were signatories to the CRA. On November 1, 1999, at the 9th Creditors' Conference, the final two agenda items were approved. Then, on November 2, 1999, the BOD of both Inchon and Kangwon met to approve the merger, and the two companies entered into the merger agreement. On December 14, 1999, Kangwon's shareholders met and approved the merger, and on January 7, 2000, Inchon's shareholders met and approved the merger. On January 12, 2000, the debt-to-equity swap was made. The financial transactions completing the merger were executed on March 15, 2000, and Kangwon's stocks were swapped for Inchon's stocks. On March 16, 2000, Inchon reported the merger to the Korean Stock Exchange. On July 31, 2000, the companies entered into the supplemental agreement for the merger, which included additional financial guarantees.

We examined this issue at length during verification (*see* GOK Verification Report and the August 7, 2003, Verification Report for INI in the CVD Administrative Review of Stainless Steel Sheet and Strip from the Republic of Korea (INI Verification Report)). We found that the debt-to-equity swap was agreed to by Kangwon's creditors on the condition that the merger was completed, that an interest rate adjustment on Kangwon's outstanding debt would be considered, that the share issuance price should be the market price, and that Inchon could not choose the loan types that would be converted to equity. *See* INI Verification Report at 5. Moreover, we found that the terms of the merger and the swap were part of the same agreement, *i.e.*, the 1999 Merger Agreement was approved by Inchon's and Kangwon's BOD at the same time. Based on record evidence and information collected during verification we preliminarily find that, because the swap took place on the condition of the merger's completion, Kangwon's creditors were effectively exchanging their debt for equity in

[10] *See* the April 19, 2000, Memorandum to Melissa Skinner, Re: Verification Report for Kangwon Industries, Ltd. in the Countervailing Duty Investigation of Structural Steel Beams from the Republic of Korea (Kangwon Verification Report), which is on the record of the instant administrative review.

Inchon, an equityworthy company. Thus, in accordance with Section 771(5)(E)(i) of the Act, we find that this investment decision is not inconsistent with the usual practice of private investors and did not confer a benefit to Kangwon. Therefore, we preliminarily find this program to be not countervailable.

C. Debt Forgiveness Provided to Sammi by KAMCO

Sammi received debt forgiveness as part of a workout plan agreed to by Sammi's creditors while Sammi was under court receivership from March 18, 1997 until March 23, 2001. KAMCO, a government-owned entity, was Sammi's lead creditor during a portion of Sammi's time under court receivership. In the previous review, petitioners argued that even though this debt forgiveness occurred in the context of bankruptcy proceedings, the debt forgiveness was specific. *See 2000 Sheet and Strip* Decision Memo at Comment 7. They cited a newspaper article which stated that the workout plan, in which the debt forgiveness was included, was the first such plan in which KAMCO, acting as the lead creditor, had participated in a merger and acquisition (M&A) agreement.

In *2000 Sheet and Strip*, we did not examine this program as we were not examining information pertaining to Sammi. However, we indicated that we would examine this program in the instant review. At verification we examined KAMCO's actions as Sammi's lead creditor compared with its actions in other similar situations. The typical return that KAMCO generated on its sale of Sammi's non-performing loans (NPLs) was similar to, and even slightly higher, than the typical return that KAMCO generates on its sale of NPLs. *See* GOK Verification Report at 5. Furthermore, the exact amount of debt forgiven was determined by the purchase offers which Sammi received and not by KAMCO. *Id.* The public bidding process was also carried out by Solomon Smith Barney, an independent consultancy.

In addition, we requested information pertaining to KAMCO's participation in M&A agreements while acting as lead creditor for companies under court receivership. See GOK Verification Report, Exhibit KAM–1. Based on this information, the debt forgiveness agreed to by KAMCO with respect to Sammi's workout plan was similar to the debt forgiveness agreed to with respect to other companies in court receivership where KAMCO was the lead creditor. Therefore, we find that KAMCO's debt forgiveness to Sammi is not specific within the meaning of Section 771(5A)(D)(iii) of the Act.

Furthermore, it is the Department's practice to find that debt forgiveness in the context of bankruptcy, is not countervailable. *See Final Affirmative Countervailing Duty Determination and Final Negative Critical Circumstances Determination Carbon and Certain Alloy Steel Wire Rod from Germany*, 67 FR 55808 (August 30, 2002) and accompanying Decision Memo at Comment 6. We find no evidence on the record that Sammi received special or differential treatment in the bankruptcy process. Therefore, we preliminarily find that KAMCO's debt forgiveness to Sammi is not countervailable in accordance with section 771(5)(A) of the Act.

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for the producer/exporter subject to this administrative review. For the period January 1, 2001 through December 31, 2001, we preliminarily determine the net subsidy for INI/BNG to be 0.56 percent *ad valorem*.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Bureau of Customs and Border Protection (BCBP) to assess countervailing duties as indicated above. The Department also intends to instruct BCBP to collect cash deposits of estimated countervailing duties as indicated above as a percentage of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 351.212(c)(ii)(2)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct the BCBP to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 64 FR 30636, at 30664 (June 8, 1999). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 2001 through December 31, 2001, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Upon completion of this administrative review, the Department will determine, and BCBP shall assess, countervailing duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(2), we have calculated a company-specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to the BCBP within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct the BCBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the company's entries during the review period.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations

performed in connection with these preliminary results within five days after the date of the public announcement of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless otherwise indicated by the Department, case briefs must be submitted within 30 days after the publication of these preliminary results. Rebuttal briefs, which are limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs, unless otherwise specified by the Department. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Parties submitting case and/or rebuttal briefs are requested to provide the Department copies of the public version on disk. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs.

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22943 Filed 9–8–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A-489–807]

Certain Steel Concrete Reinforcing Bars From Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination Not To Revoke in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On May 6, 2003, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey (68 FR 23972). This review covers five manufacturers/exporters of the subject merchandise to the United States. The period of review is April 1, 2001, through March 31, 2002. We are rescinding the review with respect to Diler Demir Celik Endustrisi ve Ticaret A.S./Yazici Demir Celik Sanayi ve Ticaret A.S./Diler Dis Ticaret A.S. and Ekinciler Demir Celik A.S. because these companies had no entries of subject merchandise to the United States during the period of review. Finally, we have determined not to revoke the antidumping duty order with respect to ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC, 20230; telephone (202) 482–0656 and (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers the following five manufacturers/exporters: Colakoglu Metalurji A.S. and Colakoglu Dis Ticaret (collectively "Colakoglu"); Diler Demir Celik Endustrisi ve Ticaret A.S., Yazici Demir Celik Sanayi ve Ticaret A.S., and Diler Dis Ticaret A.S. (collectively "Diler"); Ekinciler Demir Celik A.S. (Ekinciler); Habas Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S. (Habas); and ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S. (ICDAS).

On May 6, 2003, the Department published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey. *See Certain Steel Concrete Reinforcing Bars from Turkey; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke in Part*, 68 FR 23972 (May 6, 2003) (*Preliminary Results*). Also in May 2003, at our request we received supplemental cost information from Colakoglu.

On May 13, 2002, Diler and Ekinciler informed the Department that they had no shipments of subject merchandise to the United States during the period of review (POR). We reviewed data from the Bureau of Customs and Border Protection (BCBP) and confirmed that there were no entries of subject merchandise from either company. Consequently, in accordance with 19 CFR 351.213(d)(3) and consistent with our practice, we are rescinding our review for Diler and Ekinciler. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

We invited parties to comment on our preliminary results of review. In June 2003, we received case briefs from the petitioners (Gerdau AmeriSteel Corporation, Commercial Metals Company (SMI Steel Group), and Nucor Corporation) and ICDAS, and rebuttal briefs from the petitioners, Colakoglu, and ICDAS.

The Department held a hearing on July 16, 2002, at the request of ICDAS.

The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The product covered by this order is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written

description of the scope of this proceeding is dispositive.

Period of Review

The POR is April 1, 2001, through March 31, 2002.

Partial Rescission of Review

As noted above, Diler and Ekinciler notified the Department that they had no shipments and/or entries of subject merchandise to the United States during the POR. We have confirmed this with the BCBP. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding our review with respect to Diler and Ekinciler. (*See, e.g., Certain Steel Concrete Reinforcing Bars from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review*, 67 FR 66110, 66111 (Oct. 30, 2002).)

Cost of Production

As discussed in the *Preliminary Results*, we conducted an investigation to determine whether the respondents participating in the review made home market sales of the foreign like product during the POR at prices below their costs of production (COPs) within the meaning of section 773(b)(1) of the Tariff Act of 1930 (the Act). We performed the cost test for these final results following the same methodology as in the *Preliminary Results*, except as discussed in the accompanying "Issues and Decision Memorandum" (Decision Memo) from Jeffrey A. May, Deputy Assistant Secretary, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated September 3, 2003.

We found 20 percent or more of each respondent's sales of a given product during the reporting period were at prices less than the weighted-average COP for this period. Thus, we determined that these below-cost sales were made in "substantial quantities" within an extended period of time and at prices which did not permit the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B), (C), and (D) of the Act.

Therefore, for purposes of these final results, we found that Colakoglu, Habas, and ICDAS made below-cost sales not in the ordinary course of trade. Consequently, we disregarded these sales for each respondent and used the remaining sales as the basis for determining normal value, pursuant to section 773(b)(1) of the Act.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review and to which we have responded are listed in the Appendix to this notice and addressed in the Decision Memorandum, which is adopted by this notice. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit, room B-099, of the main Department building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the Decision Memo are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. These changes are discussed in the relevant sections of the Decision Memo.

Final Results of Review

We determine that the following weighted-average margin percentages exist for the period April 1, 2001, through March 31, 2002:

Manufacturer/producer/exporter	Margin percentage
Colakoglu Metalurji A.S	1.62
HABAS Sinai ve Tibbi Gazlar Istihsal Endustrisi A.S	2.42
ICDAS Celik Enerji Tersane ve Ulasim Sanayi, A.S.	0.10

The Department will determine, and the BCBP shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), for Habas and ICDAS, for those sales with a reported entered value, we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales.

Regarding all of Colakoglu's sales and certain of ICDAS's sales, for assessment purposes, we do not have the information to calculate entered value because these companies were not the importers of record for the subject merchandise. Accordingly, we have calculated importer-specific assessment rates for the merchandise in question by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total quantity of those sales. To determine whether the duty assessment rates were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), we calculated importer-specific ad valorem ratios based on the export prices. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to the BCBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of rebar from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: 1) The cash deposit rates for the reviewed companies will be the rates indicated above; 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.06 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of

antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 3, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix—Issues in Decision Memo

Comments

1. Interest Rate Used to Calculate Home Market Credit
2. Exchange Rates Used for Currency Conversions
3. Errors Discovered at Verification
4. Habas's U.S. Short-term Interest Rate
5. Revocation for ICDAS
6. Level of Trade (LOT) for ICDAS
7. Short-length Rebar Sales for ICDAS
8. Calculation of ICDAS's Home Market Indirect Selling Expense Ratio
9. Home Market Indirect Selling Expenses of ICDAS's Affiliated Parties
10. Credit Expenses Reported by ICDAS's Affiliated Parties
11. Start-up Adjustment for ICDAS
12. Amortization Rate Applied to the Start-Up Adjustment
13. Cost of Sales
14. General and Administrative (G&A) Expenses
15. Foreign Exchange Gains and Losses

[FR Doc. 03–22945 Filed 9–8–03; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–841]

Preliminary Results of Antidumping Duty Administrative Review: Structural Steel Beams From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of the preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from the Committee for Fair Beam Imports, Nucor Corp., Nucor-Yamato Steel Co., TXI-Chaparral Steel Co., ("Petitioners"), INI Steel Company ("INI"), and Dongkuk Steel Mill Co., Ltd. ("DSM"), the Department of Commerce ("Department") is conducting an administrative review of the antidumping duty order on structural steel beams ("SSB") from the Republic of Korea. This review covers INI and DSM, manufacturers and exporters of the subject merchandise. The period of review ("POR") is August 1, 2001 through July 31, 2002.

We preliminarily determined that INI has sold subject merchandise at less than normal value ("NV") during the POR. However, we preliminarily determine that DSM has not sold subject merchandise at less than NV. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Bureau of Customs and Border Protection ("Customs") to assess antidumping duties on entries of INI's merchandise during the POR for which the importer-specific assessment rates are above *de minimis*, in accordance with the Department's regulations (19 CFR 351.106 and 351.212(b)). The preliminary results are listed below in the section titled "Preliminary Results of Review."

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this segment of the proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument.

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Aishe Allen (DSM) or Michael Holton (INI), Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0172 and (202) 482–1324, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 18, 2000, the Department published in the **Federal Register** the antidumping duty order on structural steel beams from the Republic of Korea. *See Notice Amended Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from South Korea*, 65 FR 50501 (August 18, 2000). On August 6, 2002, we published in the **Federal Register** a notice for antidumping or countervailing duty order, finding, or suspended investigation; opportunity to request administrative review on structural steel beams from the Republic of Korea covering the period August 1, 2001 through July 31, 2002. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 67 FR 50856 (August 6, 2002).

On August 30, 2002, respondent DSM, a Korean producer of subject merchandise, requested a review of its sales of subject merchandise during the POR in accordance with 19 CFR 351.213(b)(1). On August 30, 2002, petitioners and INI, in separate requests, requested that the Department conduct an administrative review of INI for the period of August 1, 2001 to July 31, 2002. On September 25, 2002, the Department published a notice of initiation of this antidumping duty administrative review for the period of August 1, 2001 through July 31, 2002. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Requests for Revocation in Part and Deferral of Administrative Reviews* 67 FR 60210 (September 25, 2002).

DSM

On September 30, 2002, the Department issued a questionnaire to DSM. DSM submitted its Section A questionnaire response on November 4, 2002. On November 13, 2002, DSM submitted its Sections B and C questionnaire responses.

On November 14, 2002, Petitioners submitted comments regarding sales below cost of production for DSM and requested that DSM respond to section D of the Department's September 30, 2002 questionnaire. On November 18, 2002, the Department informed petitioners that it would need to file a sales below cost allegation for the Department to consider whether DSM sold below its cost of production during the POR. On December 6, 2002, petitioners submitted an allegation that the home market sales submitted by DSM in its November 13, 2002, section B response were below its cost of production.

On December 20, 2002, the Department issued a supplemental questionnaire covering DSM's November 4, 2002 section A response. On January 13, 2003, DSM submitted its section A supplemental response to the Department's December 20, 2002 supplemental questionnaire.

On January 21, 2003, the Department initiated a sales below cost of production inquiry, and on January 22, 2003, requested DSM to respond to section D of the questionnaire.

On February 4, 2003, DSM requested that the Department allow it to report cost of production and constructed value information based on DSM's fiscal accounting period, which is based upon the calendar year (January 1 to December 31). On February 7, 2003, the Department issued a questionnaire to DSM requesting why it should not report its cost of production and constructed value data based on a fiscal year basis instead of the POR. On February 13, 2003, DSM submitted additional information regarding its cost reporting period. *See DSM's February 13, 2003 submission* at 2. Based on DSM's submission, the Department granted DSM's request that it be allowed to report its cost based on a twelve-month period that includes the second half of its 2001 fiscal year (July 1 to December 31, 2001) and the first half of its 2002 fiscal year (January 1 to June 30, 2002). *See* Memorandum to the File dated February 17, 2003.

On February 19, 2003, DSM submitted its Section D questionnaire response. On February 26, 2003, the Department issued a supplemental questionnaire covering DSM's section B response. On March 7, 2003, the Department issued a supplemental questionnaire covering DSM's November 4, 2002 Section C response. On March 24, 2003, the Department issued a supplemental questionnaire covering DSM's February 19, 2003 section D response. Also, on March 24, 2002, DSM submitted its section B response to the Department's February 26, 2002 supplemental questionnaire. On April 4, 2003, DSM submitted its section C response to the Department's March 7, 2003 supplemental questionnaire. On April 11, 2003, the Department issued a second supplemental questionnaire covering DSM's January 13, 2003 Section A response.

On April 21, 2003, DSM submitted its section D response to the Department's March 24, 2003 supplemental questionnaire. On May 6, 2003, DSM submitted its section A response to the Department's April 11, 2003 second supplemental questionnaire. On May 20, 2003, the Department issued a second supplemental questionnaire covering DSM's Section B response. On June 5, 2003, the Department issued a second supplemental questionnaire covering DSM's Section C response. On June 11, 2003, DSM submitted its section B response to the Department's May 20, 2003 second supplemental questionnaire. On June 24, 2003, DSM submitted its section C response to the Department's June 5, 2003 second supplemental questionnaire.

On June 26, 2003, the Department issued a second supplemental questionnaire covering DSM's Section D response. On July 8, 2003, DSM submitted its section D response to the Department's June 26, 2003 second supplemental questionnaire. On August 11, 2003, the Department determined that DSM and the Korean trading company it used were actually affiliated companies during the POR. *See* Analysis of the Affiliation Dongkuk Steel Company section below and *Antidumping Duty Administrative Review on Structural Steel Beams from South Korea for the Review Period of August 1, 2001 through July 31, 2002; Analysis of the Affiliation for Dongkuk Steel Mill Company, Ltd.*, from Aishe Allen through Robert Bolling to Edward Yang, dated August 11, 2003 ("*Affiliation Memorandum*").

INI

On September 25, 2002, the Department issued its antidumping questionnaire to INI. On November 4, 2002, INI reported that it made sales of subject merchandise to the United States during the POR in its response to Section A of the Department's questionnaire. On November 26, 2002, INI submitted its response to Sections B, C, and D of the Department's questionnaire. On March 14 and 19, 2003, the Department issued supplemental Sections A through C and Section D questionnaires, respectively. INI submitted its response to the Sections A through D supplemental questionnaires on April 11, 2003. On May 28, 2003, the Department issued its second supplemental questionnaires for Sections A through C. On May 30, 2003, the Department issued a third supplemental questionnaire for Section B. On June 9, 2003, INI submitted its response to the Sections A through D second supplemental questionnaires. On June 6, 2003, the Department issued a second supplemental Section D questionnaire. On June 13, 2003, INI submitted its response to the Department's second Section D supplemental questionnaire. On June 13, 2003, the Department issued a third supplemental questionnaire for Sections B through D to INI. On June 18, 2003, INI submitted its response to the third supplemental questionnaire for Sections B through D.

On April 17, 2003, due to the reasons set forth in the *Structural Steel Beams From Korea: Extension of Time Limit for Preliminary results of Antidumping Duty Administration Review*, 68 FR 18947 (April 17, 2003), the Department extended the due date for the preliminary results. In accordance with section 751(a)(3)(A) of the Act, the Department extended the due date for the notice of preliminary results 120 days, from the original due date of May 3, 2003, to August 31, 2002. *See Structural Steel Beams From Korea: Extension of Time Limit for Preliminary results of Antidumping Duty Administration Review*, 68 FR 18947 (April 17, 2003).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Verification

As provided in section 782(i) of the Act, the Department verified sales information of INI on June 23 through 27, 2003, sales information of DSM from July 21 through July 25, 2003, and sales information of DSM's United States affiliate Dongkuk International, Inc. ("DKA"), July 29 through July 31, 2003, using standard verification procedures, including an examination of relevant sales, financial and production records, and selection of original documentation containing relevant information. Our verification results are outlined in the public versions of the verification reports and are on file in the Central Records Unit ("CRU") located in room 1870 of the main Department of Commerce Building, 14th Street and Constitution Avenue, NW., Washington, DC.

Scope of the Review

The products covered by this investigation are doubly-symmetric shapes, whether hot- or cold-rolled, drawn, extruded, formed or finished, having at least one dimension of at least 80 mm (3.2 inches or more), whether of carbon or alloy (other than stainless) steel, and whether or not drilled, punched, notched, painted, coated or clad. These products include, but are not limited to, wide-flange beams ("W" shapes), bearing piles ("HP" shapes), standard beams ("S" or "I" shapes), and M-shapes.

All products that meet the physical and metallurgical descriptions provided above are within the scope of this investigation unless otherwise excluded. The following products, are outside and/or specifically excluded from the scope of this investigation: structural steel beams greater than 400 pounds per linear foot or with a web or section height (also known as depth) over 40 inches.

The merchandise subject to this investigation is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7216.32.0000, 7216.33.0030, 7216.33.0060,

7216.33.0090, 7216.50.0000, 7216.61.0000, 7216.69.0000, 7216.91.0000, 7216.99.0000, 7228.70.3040, 7228.70.6000. Although the HTSUS subheadings are provided for convenience and Customs (as of March 1, 2003, renamed the U.S. Bureau of Customs and Border Protection) purposes, the written description of the merchandise under investigation is dispositive.

Product Comparison

In accordance with section 771(16) of the Act, we considered all SSB produced by DSM and INI covered by the description in the "Scope of Review" section of this notice, *supra*, which were sold in the home market during the POR, to be the foreign like product for the purpose of determining appropriate product comparisons to SSB products sold in the United States. In making the product comparisons, we matched products based on the physical characteristics reported by DSM and INI as follows (listed in order of preference): hot formed or cold formed, shape/size (section depth), strength/grade, whether or not coated. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the antidumping duty questionnaire and instructions, or to constructed value ("CV"), as appropriate.

Affiliation

In order to complete the dumping calculation, the Department must determine whether the Korean trading company that DSM sold subject merchandise through is affiliated. DSM reported that it sold subject merchandise during the POR to an unaffiliated Korean trading company and reseller of the subject merchandise, which, in turn, resold the subject merchandise to DKA, an affiliated U.S. importer. As discussed below, the Department preliminarily determines that the Korean trading company is affiliated with DSM.

Information submitted on the record by DSM in its original Section A response indicates that DSM was not affiliated with the Korean trading company during the POR. In the Section A response, DSM reported that in January of 2001, it sold all of its ownership interest in the Korean trading company and was, therefore, no longer affiliated. *See* DSM's November 4, 2002, Section A questionnaire response. On April 7, 2003, petitioners requested that the Department investigate DSM's continuing relationship with the Korean trading company, based on familial ownership in both companies. In response to the Department's April 11, 2003 second supplemental Section A questionnaire, DSM submitted information which demonstrated that there was a familial relationship between itself and the Korean trading company during the POR. *See* DSM's May 5, 2003 second supplemental Section A response. The information submitted on May 5, 2003, suggested that there was the requisite amount of control for affiliation between DSM and the Korean trading company. Based on record evidence, the Department has determined that DSM and the Korean trading company were affiliated during the POR, according to section 771(33)(A) and (F) of the Act. Due to the proprietary nature of this information and for a complete discussion of this issue, please see the *Affiliation Memorandum*.

Sales Outside the Ordinary Course of Trade

On February 12, 2003, Petitioners alleged that INI made sales outside the ordinary course of trade ("OCT") during the POR. Petitioners alleged that all of INI's home market sales of non-Korean specification ("non-KS") SSBs are outside the OCT based on total volume sold, the customer base, price per shipment and profitability of sales, and should be excluded from the home market database in the margin calculation. Additionally, Petitioners claim that all non-KS sales are overruns. Further, Petitioners stated that if the Department decided not to exclude all of INI's non-KS merchandise, then Petitioners have alleged that certain non-KS home market sales are aberrational and outside the OCT, and should be excluded from the home market database in the calculation of the margin. The Department has determined, based on record evidence, that certain INI home market sales are outside the OCT, and thus have made changes to INI's home market sales database. However, due to the proprietary nature of this information and for a complete discussion of this issue, please see the memorandum of *Analysis of Sales Outside the Ordinary Course of Trade for INI Steel Company* from Stephen Bailey and Michael Holton to Edward Yang dated September 2, 2003 ("*OCT Memorandum*"); and *Analysis Memorandum for INI Steel Company for the Preliminary Results of the Administrative Review on Structural Steel Beams ("SSB") from Korea for the period August 1, 2001 through July 31, 2002*, September 2, 2003 ("*INI Analysis Memorandum*").

Fair Value Comparisons

To determine whether sales of subject merchandise made by DSM and INI to the United States were made at prices below NV, we compared the export price ("EP"), or the constructed export price ("CEP"), to the NV, as described below. Pursuant to section 777A(d)(2) of the Act, we compared the EPs and CEPs of individual U.S. transactions to the monthly weight-averaged NV of the foreign like product where there were sales at prices above the cost of production ("COP"), as discussed in the "Cost of Production Analysis" section below.

Export Price and Constructed Export Price

Section 772(a) of the Act defines EP as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States. . . .," as adjusted under subsection (c). Section 772(b) of the Act defines CEP as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. . . .," as adjusted under subsections (c) and (d). For the purpose of this administrative review DSM classified all of its U.S. sales as CEP, and INI has classified its U.S. sales as either EP or CEP.

DSM

DSM identified one channel of distribution for its U.S. sales. For U.S. sales, DSM sold all subject merchandise to an affiliated trading company in Korea (see affiliation section above), the subject merchandise was then resold by the affiliated trading company in Korea to DSM's U.S. affiliate, DKA, and DKA then resold the subject merchandise to unaffiliated U.S. customers. DSM has reported these sales as CEP sales because the first sale to an unaffiliated party occurred in the United States. Therefore, we based our calculation on CEP, in accordance with subsections 772(b), (c), and (d) of the Act.

We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with

section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the port of export, foreign brokerage and handling expenses (*i.e.*, loading and unloading charges, wharfage and lashing expenses, brokerage fees, and port renovation expenses), international freight, marine insurance, other U.S. transportation expenses (*i.e.*, U.S. wharfage, brokerage, and handling charges), and U.S. customs duty. Also, we made deductions for commissions for selling the subject merchandise in the United States in accordance with section 772(d)(1)(A) of the Act. Additionally, we made deductions for expenses that bear a direct relationship to the sale in the United States (*i.e.*, credit, and other direct selling expenses) pursuant to section 772(d)(1)(B). We added an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. Further, in accordance with section 772(c)(1)(A) of the Act, we added packing expenses.

For CEP sales, we also made an adjustment for profit in accordance with section 772 (d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total, expenses for both the U.S. and home markets.

We changed the U.S. indirect selling expense ratio to correspond to the information contained in the finalized version of DKA's audited financial statements. *See Analysis Memorandum for Dongkuk Steel Mill Company ("DSM") for the Preliminary Results of the Administrative Review on Structural Steel Beams ("SSB") from Korea for the period August 1, 2001 through July 31, 2002*, September 2, 2003 ("*DSM Analysis Memorandum*"); *Sales Verification of Dongkuk International ("DKA") in the Antidumping Administrative Review of Structural Steel Beams ("SSB") from Korea*, August 28, 2003 ("*DKA Verification Report*").

Furthermore, we have included the selling and general administrative ("SG&A") expenses of the affiliated trading company in Korea (*see* section on affiliation above) in the calculation of U.S. net price because all of DSM's U.S. sales pass through the Korean trading company. To account for these SG&A expenses, the Department used financial statements of the affiliated trading company in Korea. Additionally, DSM failed to account for bad debt, interest, currency difference, and loss of sale assets when calculating its indirect selling expense ratio for DKA. For a detailed explanation, *see DSM Analysis Memorandum*.

INI

For this administrative review, INI reported that it sold both EP and CEP sales. EP sales were sold by the producer, INI, to an unaffiliated customer in the United States. The Department has determined that the sales made between INI's U.S. affiliate, Hyundai USA Corporation ("Hyundai USA"), and the first unaffiliated customer in the United States are CEP sales.

Having determined certain sales as EP, we calculated the packed, delivered, tax and duty paid price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight from the plant to the warehouse, foreign warehousing expenses, foreign inland freight from the warehouse to the port of export, foreign wharfage and lashing expenses, international freight, other U.S. transportation expenses (*i.e.*, U.S. brokerage charges), commissions, and U.S. customs duty. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. Where applicable, we made adjustments to gross unit price for billing adjustments.

We calculated the price of INI's sales based on CEP in accordance with section 772(b) of the Act. We calculated CEP based on packed prices to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included where appropriate, foreign inland freight from the plant to the warehouse, foreign warehousing expenses, foreign inland freight from the warehouse to the port of export, foreign wharfage and lashing expenses, international freight, other U.S. transportation expenses (*i.e.*, U.S. brokerage charges), and U.S. customs duty. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. Where applicable, we made a deduction to gross unit price for other discounts. Also, in accordance with section 772(c)(2)(A) of the act, we deducted packing expenses. In accordance with section 772(d)(1) of the Act, we deducted certain selling expenses (*i.e.*, imputed credit expenses and bank expenses) and indirect selling expenses.

For CEP sales, we also made an adjustment for profit in accordance with section 772 (d)(3) of the Act. We deducted the profit allocated to expenses deducted under sections 772(d)(1) and 772(d)(2) in accordance with sections 772(d)(3) and 772(f) of the Act. In accordance with section 772(f) of the Act, we computed profit based on total revenue realized on sales in both the U.S. and home markets, less all expenses associated with those sales. We then allocated profit expenses incurred with respect to U.S. economic activity, based on the ratio of total U.S. expenses to total expenses for both the U.S. and home markets.

For both EP and CEP sales, we made certain changes to INI's packing expenses based on pre-verification corrections. *See INI Steel Company Home Market Sales and United States Sales Verification Report; Antidumping Duty Administrative Review on Structural Steel Beams from Korea*, dated August 20, 2003 ("*INI Verification Report*").

Normal Value

After testing home market viability, we calculated NV as noted in the "Price-to-CV Comparisons" and "Price-to-Price Comparisons" sections of this notice.

1. Home Market Viability

In accordance with section 773(a)(1)(C) of the Act, to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than or equal to five percent of the aggregate volume of U.S. sales), we compared DSM and INI's volume of home market sales of the foreign like product to the volume of each of their U.S. sales of subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, because both DSM and INI's aggregate volume of home market sales of the foreign like product were greater than five percent of their aggregate volume of U.S. sales for the subject merchandise, we determined that sales in the home market provide a viable basis for calculating NV. We therefore based NV on home market sales to unaffiliated purchasers made in the usual commercial quantities and in the ordinary course of trade.

For NV, we used the prices at which the foreign like product was first sold for consumption in Korea, in the usual commercial quantities, in the ordinary

course of trade, and, to the extent possible, at the same level of trade ("LOT") as the EP or CEP as appropriate. After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-Constructed Value Price Comparisons" sections of this notice.

2. Arm's-Length Test

INI reported that it made sales in the home market to affiliated and unaffiliated end users and unaffiliated distributors. Sales to affiliated customers in the home market not made at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the starting prices of sales to affiliated and unaffiliated customers net of all billing adjustments, movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated party, we determined that sales made to the affiliated party were made at arm's length. See 19 CFR 351.403(c).[1] Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. *See e.g., Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model. Certain of INI's affiliated home market customer(s) did not pass the arm's length test. We did not consider the downstream sales from these customers to the first unaffiliated customer because INI's affiliated home market customers further manufactured the subject merchandise into merchandise outside of the scope of the order.

3. Cost of Production Analysis

DSM

Based on the information contained in a timely filed cost allegation by the petitioners on December 6, 2002, the Department found reasonable grounds to believe or suspect that DSM's sales of the foreign like product in their respective comparison market were made at prices below the cost of production, pursuant to section 773(b)(1) of the Act based on allegations made by petitioners in this case. *See Petitioners' Allegation of Sales Below Cost of December 6, 2002*. As a result, the Department initiated a sales below-cost investigation. *See Letter of Initiation of Sales Below Cost Investigation* dated January 22, 2003.

INI

Because the Department disregarded certain INI sales made in the home market at prices below the cost of producing the subject merchandise in the most recently completed segment of this proceeding and excluded such sales from normal value, the Department determined that there are reasonable grounds to believe or suspect that INI made sales in the home market at prices below the cost of producing the merchandise in this review. *See Structural Steel Beams From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 68 FR 2499 (January 17, 2003); and section 773(b)(2)(A)(ii) of the Act. As a result, the Department initiated a cost of production inquiry in this case on September 30, 2002, to determine whether INI made home market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of DSM and INI's respective costs of materials and fabrication for the foreign like product, plus amounts for home market SG&A, including interest expenses, and packing costs. The Department relied on the COP data submitted by DSM and INI in their original and supplemental cost questionnaire responses.

For the purpose of these preliminary results, we did not revise the COP information submitted by DSM or INI.

B. Test of Home Market Prices

We compared the weighted-average COP for DSM's and INI's home market sales of the foreign like product as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. We compared the COP to home market prices, less any applicable billing adjustments, movement charges, discounts, and indirect selling expenses.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of DSM or INI's sales of a given product were, within an extended period of time, at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of DSM or INI's sales of a given product were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time, in accordance with sections 773(b)(2)(B) of the Act and 19 CFR 351.406(b). In such cases, because we used POR average costs, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. We compared the COP for subject merchandise to the reported home market prices less any applicable movement charges. Based on this test, we disregarded below-cost sales. Where all sales of a specific product were at prices below the cost of production, we disregarded all sales of that product.

D. Calculation of CV

In accordance with section 773(e)(1) of the Act, we calculated DSM's and INI's CV based on the sum of their cost of materials, fabrication, SG&A, including interest expenses, and profit. We calculated the COPs included in the calculation of CV as noted above in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by DSM and INI in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and indirect selling expenses.

Price-to-Price Comparisons

DSM

For those product comparisons for which there were sales at prices above the COP, we based NV on the home

[1] Because this review was initiated before November 23, 2002, the 99.5 percent test applies to this review. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 69186, 69197 (November 15, 2002).

market prices to unaffiliated purchasers. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We made adjustments, where applicable, for movement expenses (*i.e.*, inland freight from plant to customer) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for credit and other discounts, where appropriate in accordance with section 773(a)(6)(C) of the Act. In accordance with section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs. We also made adjustments, where applicable, for other discounts, indirect selling expenses and inventory carrying costs in accordance with section 773(a)(6)(C) of the Act. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with 773(a)(1)(B)(i), we based NV on CV.

We made changes to the reported variable cost of manufacturing, total cost of manufacturing and home market inventory carrying costs to account for a change in grade that was reported as a minor correction to the home market database at the start of verification. *See* DSM Analysis Memorandum and DSM Verification Report at page 2.

INI

For those product comparisons for which there were sales at prices above the COP, we based NV on the home market prices to unaffiliated purchasers and those affiliated customer sales which passed the arm's length test. We made adjustments, where appropriate, for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act.

We made adjustments, where applicable, for movement expenses (*i.e.*, inland freight from plant to distribution warehouse, and inland freight from plant/distribution warehouse to customer) in accordance with section 773(a)(6)(B) of the Act. We made circumstance-of-sale adjustments for credit, warranty expense and interest revenue, where appropriate in accordance with section 773(a)(6)(C). In accordance with section 773(a)(6), we deducted home market packing costs and added U.S. packing costs. Where applicable, we modified the gross unit price based on billing adjustments. Finally, in accordance with section 773(a)(4) of the Act, where the Department was unable to determine NV on the basis of contemporaneous matches in accordance with 773(a)(1)(B)(i), we based NV on CV.

For these preliminary results, we excluded certain home market sales from INI's reported home market sales data in the calculation of NV based on these sales being outside the ordinary course of trade. *See OCT Memorandum* and *INI Analysis Memorandum*. We also made certain changes to INI's packing expenses based on pre-verification corrections. *See* ("*INI Verification Report*")

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on DSM's and INI's costs of materials and fabrication employed in producing the subject merchandise, SG&A including interest, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Korea. For selling expenses, we used the actual weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. We deducted from CV the weighted-average home market direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this administrative review, we obtained information from INI about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed for each channel of distribution. In identifying levels of trade for CEP, we considered only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001). Generally, if the reported levels of trade are the same in the home and U.S. markets, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities should be dissimilar.

DSM

In accordance with the principles discussed above, we examined information regarding DSM's distribution systems in both the United States and Korean markets, including selling functions, classes of customers, and selling expenses for DSM.

DSM claimed only one level of trade in the home market. *See* DSM's November 13, 2002 submission at page B–20. Additionally, DSM reported that it sold through two channels of distribution in the home market: directly to unaffiliated customers (distributors and end-users); and government entities. *See* DSM's November 13, 2002 submission at page B–9. DSM reported that it performs the following selling functions in the home market: market research, price negotiations, order processing, sales calls and demonstrations, customer interaction, inventory maintenance, warranty services, and freight and delivery arrangement. *See* DSM's November 4, 2002 submission at Exhibit 6. Because DSM performs the same selling functions for its two channels of distribution in the home market and identical selling functions are performed for all home market sales, we

preliminarily determine that there is one LOT in the home market.

DSM claimed one level of trade in the U.S. market because all of its U.S. sales are CEP sales made through its U.S. affiliate, DKA. *See* DSM's November 4, 2002 submission at page 12. DSM reported that it sold through one channel of distribution in the U.S. market, directly from its production facility to the unaffiliated U.S. customer. However, on paper, the sales process is as follows: DSM sold the merchandise to an affiliated Korean trading company, which then resold the merchandise to its U.S. affiliate, DKA, which resold the merchandise to the unaffiliated U.S. customer. *See* DSM's November 13, 2002 submission at page C–9. We determined the LOT of DSM's CEP sales based on the CEP starting price, and adjusted for selling expenses identified in section 772(d) of the Act. We found that the selling functions (*i.e.*, price negotiations, order processing, sales calls and demonstrations, inland freight arrangement in Korea, and international freight arrangement) DSM performs after the section 772(d) adjustments are the same for all of its U.S. sales. *See* DSM's November 4, 2002 submission at Exhibit 6. Therefore, we preliminarily determine that DSM has one LOT in the U.S. market based on its selling functions to the United States.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between (1) DSM and its home market customers and (2) DSM and its affiliated U.S. reseller, DKA, after deductions for expenses and profits. Specifically, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities which occurred in the United States, pursuant to section 772(d) of the Act, to determine if the home market level of trade constituted a different level of trade than the CEP level of trade. DSM did not request a CEP offset. Nonetheless, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Korean markets, including the selling functions, classes of customer, and selling expenses to determine whether a CEP offset was necessary. For CEP sales, we found that DSM provided many of the same selling functions and expenses for its sale to its affiliated U.S. reseller, DKA, as it provided for its home market sales, including: Price negotiation; order processing; sales calls and demonstrations; warranty services; and freight arrangement. Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that there is not a significant difference in the selling functions performed in the home market and the U.S. market for CEP sales. Thus, we find that DSM's NV and CEP sales were made at the same LOT, and no LOT adjustment or CEP offset need be granted.

INI

To determine whether an LOT adjustment was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and home markets, including the selling functions, classes of customer, and selling expenses.

In both the U.S. and home markets, INI reported one level of trade. *See* INI's November 26, 2002, Sections B–D response, at B–16 and C–16. INI sold through two channels of distribution in the home market: (1) Unaffiliated distributors; and (2) affiliated and unaffiliated end-users. INI claims to have sold through two channels of distribution in the U.S. market: (1) INI sales to unaffiliated U.S. customers; and (2) INI sales through Hyundai U.S.A., a wholly owned U.S. subsidiary of Hyundai Corporation (Hyundai Corporation is INI's affiliated trading company in South Korea), to unaffiliated customers.

For sales in home market channels one and two, INI performed all sales-related activities, including: Inventory maintenance; after sales services/ warranty; freight and delivery arrangement; and credit. INI's home market sales in channels one and two were made from inventory. Because these selling functions are similar for both sales channels, we preliminarily determine that there is one LOT in the home market.

For sales in U.S. channels one and two, INI performed all sales-related activities, including: After sales services/warranty; freight and delivery arrangement; credit and import documents arrangement. Because these selling functions are similar for both sales channels, we preliminarily determine that there is one LOT in the U.S. market.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between INI and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade. In the present review, INI did not request a LOT adjustment or a CEP offset. To determine whether a CEP offset was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Korean markets, including the selling functions, classes of customer, and selling expenses.

Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that INI offered many of the same selling functions in both markets, including: After sales services/ warranties; freight and delivery arrangement; and credit. Accordingly, we determine that there is not a significant difference in the selling functions performed in the home market and U.S. market and that these sales are made at the same LOT. Consequently, we preliminarily determine that a LOT adjustment or CEP offset is not warranted in this case. Furthermore, we find INI's NV and EP sales were made at the same LOT, and thus, no LOT adjustment need be granted.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with Section 773A(a) of the Act.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weight-averaged dumping margin exists for the period August 1, 2001 through July 31, 2002:

STRUCTURAL STEEL BEAMS FROM KOREA

Producer/Manufacturer/Exporter	Weighted-average margin %
DSM	0.04
INI	4.15

The Department will disclose calculations performed, within five days of publication of this notice, to the

parties to this proceeding in accordance with 19 CFR 351.224(b) of the Department's regulations. Any interested party may request a hearing within 30 days of publication. *See* 19 CFR 351.310(c) of the Department's regulations. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication of these preliminary results of review. *See* 19 CFR 351.309(c)(ii) of the Department's regulations. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. *See* 19 CFR 351.309(d) of the Department's regulations. Parties who submit arguments are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with an additional copy of the public version of any such comments on diskette. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice, pursuant to 751(a)(3)(A) of the Act.

Assessment

Upon completion of this administrative review, the Department will determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with section 351.212(b)(1) of the Department's regulations, we will calculate exporter/importer specific assessment rates for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to Customs within 15 days of publication of the final results of review. If these preliminary results are adopted in the final results of review, we will direct Customs to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importers' entries during the review period.

Cash Deposit

The following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided in section 751(a)(1) of the Act: (1) The cash deposit rate for DSM and INI will be that established in the final results of this review; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value ("LTFV") investigation, but the manufacturer is, the cash deposit rate will be the rate established in the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will continue to be the "all other" rate established in the LTFV investigation, which was 37.21 percent.

Notification to Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, that continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 2, 2003.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 03–22941 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-533–502]

Welded Carbon Steel Pipes and Tubes from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty New Shipper Review: Welded Carbon Steel Pipes and Tubes from India.

EFFECTIVE DATE: September 9, 2003.

SUMMARY: On July 3, 2003, the Department of Commerce published in the Federal Register a notice announcing the initiation of a new shipper review of the antidumping duty order on welded carbon steel pipes and tubes from India, covering the period May 1, 2002, through April 30, 2003. The review covered Surya Roshni, Ltd. On August 25, 2003, the request was withdrawn subsequent to the initiation of the new shipper review and, therefore, we are rescinding this review.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Mark Ross at (202) 482–1690 and (202) 482–4794, respectively, AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on welded carbon steel pipes and tubes from India was published on May 12, 1986 (51 FR 17384). On May 30, 2003, we received a request for a new shipper review of the antidumping duty order on welded carbon steel pipes and tubes from India from Surya Roshni Ltd. (Surya). Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(d)(1), we initiated a new shipper review on July 3, 2003, for shipments of welded carbon steel pipes and tubes from India produced and exported by Surya (68 FR 39897). Surya withdrew its request for a new shipper review on August 25, 2003.

Rescission of New Shipper Review

Section 19 CFR 351.214(f)(1) provides that the Department of Commerce may rescind a new shipper review if the party that requested the review withdraws its request for review within sixty days of the date of publication of

the notice of initiation of the requested review. Surya withdrew its request within the 60-day period. Accordingly, we are rescinding this new shipper review.

Notification

Bonding is no longer permitted to fulfill security requirements for shipments of welded carbon steel pipes and tubes from India produced and exported by Surya, entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this rescission notice in the Federal Register.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanctions.

This notice is published in accordance with section 751(a) of the Act and 19 CFR 351.214(f)(3).

September 3, 2003.

Louis Apple,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 03–22944 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or by E-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) (the "Act") authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register**, identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 03–00005." A summary of the application follows.

Summary of the Application

Applicant: American Commodity Company, LLC, 18242 Hwy 113, P.O. Box 224, Robbins, CA 95676.

Contact: Martin S. Simon, Consultant.

Telephone: (908) 604–6768.

Application No.: 03–00005.

Date Deemed Submitted: August 28, 2003.

Members (in addition to applicant): None.

American Commodity Company, LLC seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operation.

Export Trade

1. Products

U.S. rice and rice products (rough rice, brown rice, milled, undermilled or unpolished rice, coated rice, oiled rice, enriched rice, rice bran, rice polish, head rice, broken rice, secondhead rice, brewers rice, screenings, rice flour; and rice hulls).

2. Technology Rights

Technology Rights, including, but not limited to: patents, trademarks, service marks, copyrights, trade secrets and know-how that relate to Products.

3. Export Trade Facilitation Services (As They Relate to the Export of Products and Technology Rights)

Export Trade Facilitation Services, including but not limited to, arranging and coordinating delivery of rice to port of export, arranging for inland and/or ocean transportation, allocating rice to vessel; arranging for storage space at port; arranging for warehousing, stevedoring, wharfage, handling, inspection, fumigation, quality control, financing, freight forwarding, insurance and documentation; reviewing letters of credit; invoicing foreign buyer; collecting payment; and arranging for payment of applicable brokerage fees and commissions.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

With respect to the sale of Products, licensing of Technology Rights, and provisions of Export Trade Facilitation Services, under its proposed Export Trade Certificate of Review, the American Commodity Company, LLC may:

(a) Exchange information with suppliers individually regarding availability of and prices of rice available for sale to export, inventories, production and delivery schedules in order to determine availability of rice for purchase and for export and to coordinate export of U.S. rice;

(b) Solicit offers from suppliers to sell rice to American Commodity Company, LLC for a specific export opportunity;

(c) Obtain agreements from suppliers to offer/sell rice through the certified

activities of American Commodity Company, LLC;

(d) Establish prices, quantities and terms for sales of rice in export markets;

(e) Solicit orders from potential foreign distributors and purchasers of U.S. rice for delivery to export markets;

(f) Submit offers to potential distributors and purchasers for sale of U.S. rice for delivery to export markets;

(g) Negotiate and enter into agreements for sale of U.S. rice in export markets;

(h) Enter into agreements to purchase U.S. rice from one or more suppliers to fulfill a specific sales commitment, which may be agreements whereby suppliers agree to sell exclusively to American Commodity Company, LLC for delivery in a particular export market or markets and/or whereby American Commodity Company, LLC agrees to purchase exclusively from particular supplier(s) for resale of U.S. rice in a particular export market or markets;

(i) Enter into agreements with one or more export trade intermediaries or purchasers for their purchases of U.S. rice which may be agreements whereby American Commodity Company, LLC agrees to deal exclusively with a given customer and/or by which that customer agrees to deal exclusively with American Commodity Company, LLC and/or agrees not to purchase from competitors of the American Commodity Company, LLC unless authorized by American Commodity Company, LLC to do so;

(j) Allocate sales of U.S. rice and/or distribute export orders among suppliers on any basis American Commodity Company, LLC deems appropriate;

(k) Act as broker and/or operate as sub-contractor to suppliers and possibly taking title to U.S. rice;

(l) Utilize applicable export assistance and incentive programs which are available to American Commodity Company, LLC within the government and trade sectors;

(m) Provide and/or arrange for the provision of Export Trade Facilitation Services;

(n) Use its discretion, in good faith, to purchase rice or provide information regarding export sales of rice to any suppliers or other entities of its choosing, for any reason the American Commodity Company, LLC deems appropriate;

(o) Use its discretion, in good faith, to sell rice, quote prices for rice, provide information regarding rice, or to market or sell rice to any distributors or purchasers of its choosing in export markets or in any countries or geographic areas in export markets; and

(p) Meet with suppliers or other entities periodically to discuss general matters specific to exporting U.S. rice (not related to price and supply arrangements between applicant and the individual suppliers) such as relevant facts concerning export markets (*e.g.*, demand conditions, transportation costs and prices) or the possibility of joint marketing, selling or bidding arrangements in the export markets.

Definition

"Supplier" means a person who produces, provides or sells a Product.

Dated: September 3, 2003.

Jeffrey C. Anspacher,

Director, Office of Export Trading, Company Affairs.

[FR Doc. 03–22861 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Thursday, September 18, 2003. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the consensus process, select applicants for site visits, determine possible conflict of interest for site visited companies, review feedback to first stage applicants, begin stage III of the judging process, a debriefing on the State and Local Workshop and a program update. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register 48 hours in advance in order to be admitted. Please submit your name, time of arrival, email address and phone number to Virginia Davis no later than Monday, September 15, 2003, and she will provide you with instructions for admittance. Ms. Davis' e-mail address is *virginia.davis@nist.gov* and her phone number is 301/975–2361.

DATES: The meeting will convene September 18, 2003 at 9 a.m. and adjourn at 3 p.m. on September 18, 2003. It is estimated that the closed portion of the meeting will last from 9 a.m. until 2 p.m. and the open portion of the meeting will last from 2 p.m. until 3 p.m.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 3, 2002, that part of the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: September 2, 2003.

Arden L. Bement, Jr.,

Director.

[FR Doc. 03–22896 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090303A]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings in Anchorage.

DATES: The meetings will be held on October 6 through October 14, 2003. See **SUPPLEMENTARY INFORMATION** for specific dates and times. All meetings are open to the public except executive sessions.

ADDRESSES: The meetings will be held at the Sheraton Hotel, 401 E 6th Avenue, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, telephone: 907–271–2809.

SUPPLEMENTARY INFORMATION: The Council's Advisory Panel will begin at 8 a.m., Monday, October 6 and continue through Saturday, October 11, 2003. The Scientific and Statistical Committee will begin at 8 a.m. on Monday, October 6, and continue through Wednesday, October 11, 2003. The Enforcement Committee will meet Tuesday, October 7, at 6:30 p.m.

The Council will begin its plenary session at 8 a.m. on Wednesday, October 8 continuing through Wednesday October 14.

Council Plenary Session: The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports
(a) Executive Director's Report
(b) NMFS Management/Enforcement Reports
(c) United States Coast Guard Report
(d) Alaska Department Fish & Game Reports
2. Gulf of Alaska Rationalization (GOA): Receive report from Joint Protocol Committee; review discussion paper on GOA crab/salmon bycatch and take action as necessary; review staff discussion paper on alternatives and options, open access fisheries, License Limitation Program transfers and catch history, allocation of community shares, observer issues, and Environmental Impact Statement (EIS) alternatives.
3. Community Development Quota (CDQ) Issues: Review proposed appeals process; review discussion paper on eligible CDQ communities.
4. Essential Fish Habitat (EFH)/ Habitat Areas of Particular Concern (HAPC): Preliminary review of EIS; finalize HAPC process.
5. Improved Retention/Improved Utilization (IR/IU): Receive Committee report and finalize alternatives for Amendment A.
6. Steller Sea Lion (SSL): Receive SSL Mitigation Committee report and discuss next steps.
7. Halibut Subsistence: Discuss subsistence regulations (data collection, sale, gear regulations); finalize action on Ninilchik eligibility; discuss petitions from other communities.
8. Groundfish Management: Discuss Aleutian Island pollock fishery management; receive report on F40 recommendations; receive report from non-target species committee; review preliminary Stock Assessment and Fishery Evaluation (SAFE) report; set initial groundfish specifications for 2004; take final action on Total Allowable Catch (TAC)-setting process; review discussion paper on repeal of Vessel Incentive Program (VIP).
9. Crab Management: Review Bering Sea Aleutian Island Crab SAFE report; take final action on Pribilof blue king crab rebuilding plan.
10. Staff Tasking: Receive report from Individual Fishing Quota (IFQ) Implementation and Cost Recovery Committee, and review IFQ proposals received; review tasking and provide direction to staff, and discuss direction to Committees.
11. Other Business.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, these issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Scientific and Statistical Committee (SSC): The SSC agenda will include the following issues:

1. C–3 Essential Fish Habitat
2. C–5 Steller Sea Lion
3. D–1(b-f) Groundfish Management
4. D–2 Crab Management

Advisory Panel: The Advisory Panel will address the same agenda issues as the Council.

Enforcement Committee: The Enforcement Committee will meet during each meeting of the Council to discuss enforcement issues or concerns related to any subject on the Council agenda.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: September 3, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22915 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090303C]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council's (Council) Non-Target Species Committee will hold a public meeting.

DATES: The meeting will be held on October 9, 2003, at 6 p.m., Ballroom C.

ADDRESSES: The meeting will be held at the Sheraton Hotel, 401 East 6th Avenue, Yukon Room, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Non-Target Species Committee will hold an organizational meeting to review technical recommendations on management of non-target groundfish species by the ad hoc working group and to identify appropriate alternative management approaches. The proposed terms of reference for this committee include identification of efficient methods for monitoring non-target catch, improving abundance estimates of non-target species, and development of harvest recommendations that build sustainable populations of non-target species. Another meeting of the committee will be scheduled before the end of 2003.

Although non-emergency issues not contained in this agenda may come

before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: September 3, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22917 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090303B]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) IFQ Implementation and Cost Recovery Committee will hold a public meeting.

DATES: The meeting will be held on October 5, 2003, 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Sheraton Hotel, 401 East 6th Avenue, Yukon Room, Anchorage, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The meeting will be held to (1) Review commercial IFQ proposals from 1999 and recent proposals; (2) discuss sale of subsistence halibut.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: September 3, 2003.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 03–22916 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082203C]

Endangered Species; File No. 1420, File No. 1444, and File No. 1447

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications.

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of shortnose sturgeon (*Acipenser brevirosturm*) for scientific research:

NMFS has received permit applications from Michael F. Mangold, U.S. Fish and Wildlife Service, Maryland Fisheries Resource Office, 177 Admiral Cochrane Drive, Annapolis, Maryland 21401(File No. 1444); and the South Carolina Department of Natural Resources (Dr. Mark Collins, Principal Investigator), 217 Fort Johnson Road, Charleston, South Carolina 29412 (File No. 1447). NMFS has received a request to modify a permit application from Douglas Peterson, Ph.D, Warnell School of Forest Resources (Fisheries Division), University of Georgia, Athens, Georgia 30602 (File No. 1420).

DATES: Written or telefaxed comments must be received on or before October 9, 2003.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

All documents: Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

For File No. 1444: Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298; phone (978)281–9200; fax (978)281–9371; and

For File No. 1420 and File No. 1447: Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferies or Sarah Wilkin, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Applications for permits

Mr. Mangold (File No. 1444) seeks authorization to sample and track shortnose sturgeon for two projects: one project would be conducted in the Potomac River and the second would be conducted in the Delaware River, the Chesapeake Bay and its tributaries. For the Potomac River project, up to 50 fish would be taken annually via gill, pound, fyke and trammel netting, measured, weighed, PIT tagged, tissue samples will be taken, and the fish subsequently released. A subset of 20 fish annually would also be T-bar and CART tagged and have a temperature/depth datalogger attached. Additionally, Mr. Mangold would also use D-traps to collect up to 2500 shortnose sturgeon eggs annually. This research would be conducted from 2004–2006. For the second project, Mr. Mangold proposes to capture via gill and trammel net, measure, weigh, tag with PIT and T-bar tags, take a tissue and blood sample of, biopsy gonads of and release 50 fish annually. A subset of 10 fish annually would also have sonic transmitters attached before release and subsequently tracked. This project would be conducted from 2004–2009. A total of 5 incidental mortalities between both projects is requested.

The South Carolina Department of Natural Resources (File No. 1447) seeks authorization to sample and track shortnose sturgeon, in South Carolina coastal waters. Annually, up to 100 fish would be taken via gill nets and trawls, measured, weighed, PIT tagged, and the fish subsequently released. A subset of

50 fish annually would also have Dart tags attached, be outfitted with a radio/sonic transmitter and tracked. Additionally, the researchers would also use deployed buffer pads that act as egg mats to collect up to 100 shortnose sturgeon eggs annually. This research would be conducted from 2004–2009. A total of 2 incidental mortalities is requested.

Application to modify existing application

A notice of receipt of an application from Dr. Douglas Peterson (File No. 1420) to take shortnose sturgeon, for scientific research was published on March 11, 2003 (68 FR 11533). Dr. Peterson sought authorization to sample and track shortnose sturgeon in the Altamaha River in Georgia for five years. Annually, up to 200 fish were to be taken via gill and trammel netting, measured, weighed, PIT and Carlin tagged, tissue and pectoral fin ray samples taken, and the fish subsequently released. Additionally, up to 10 of the total fish sampled annually were to also receive an internal radio-sonic transmitter. Dr. Peterson also proposed to deploy artificial substrate samplers from February to mid-March to collect up to 100 shortnose sturgeon eggs annually. Dr. Peterson now proposes to increase the number of fish receiving an internal radio-sonic transmitter from 10 individuals to 30.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

Dated: September 2, 2003.

Jill Lewandowski,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 03–22919 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073103A]

Marine Mammals; File No. 550–1712

AGENCY: National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Bernd Wursig, Ph.D., Professor of Marine Biology, Professor of Wildlife and Fisheries Science, Director, Institute of Marine Life Sciences, Texas A&M University, 4700 Avenue U, Building 303, Galveston, TX 77551 has been issued a permit to take bottlenose dolphins (*Tursiops truncatus*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NOAA Fisheries, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NOAA Fisheries, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432; phone (727)570–5301; fax (727)570–5320.

FOR FURTHER INFORMATION CONTACT: Jill Lewandowski or Carrie Hubard, (301)713–2289.

SUPPLEMENTARY INFORMATION: On June 17, 2003, notice was published in the **Federal Register** (68 FR 35859) that a request for a scientific research permit to take bottlenose dolphins had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The purpose of the authorized research, as stated in the application, is to study the behavioral ecology of bottlenose dolphins in the Gulf of Mexico. Research will occur over a five-year period and focus specifically along the Texas and Louisiana coastlines.

Dated: August 25, 2003.

Stephen L. Leathery,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, NOAA Fisheries.

[FR Doc. 03–22918 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Statutory Invention Registration.

Form Number(s): PTO/SB/94.

Agency Approval Number: 0651–0036.

Type of Request: Revision of a currently approved collection.

Burden: 29 hours annually.

Number of Respondents: 73 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take approximately 24 minutes (0.4 hours) to submit a Statutory Invention Registration request or petition. This includes time to gather the necessary information, prepare the documents, and submit the completed request.

Needs and Uses: Under 35 U.S.C. 157 and 37 CFR 1.293–1.297, the USPTO is authorized to publish a statutory invention registration containing the specifications and drawings of a regularly filed application for a patent without examination, provided the applicant meets all the requirements for printing, waives the right to receive a patent on the invention within a certain period of time prescribed by the USPTO, and pays all application, publication, and other processing fees. This collection includes information needed by the USPTO to review and approve or deny such requests. The applicant may also petition the USPTO to review final refusal to publish or to withdraw a request to publish a statutory invention registration. The USPTO is submitting this collection in support of a proposed rulemaking "Changes to Support Implementation of the USPTO 21st Century Strategic Plan" (RIN 0651–AB64), which would support the use of electronic signatures on documents and increase the filing fees for the petitions that are included in this collection.

Affected Public: Individuals or households, business or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22878 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Secrecy and License to Export.

Form Number(s): None.

Agency Approval Number: 0651–0034.

Type of Request: Revision of a currently approved collection.

Burden: 1,524 hours annually.

Number of Respondents: 2,195 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 30 minutes (0.5 hours) to 4 hours to gather the necessary information, prepare the appropriate petition, and submit the completed request.

Needs and Uses: This collection of information is required by 35 U.S.C. 181–188 and administered through 37 CFR 5.1–5.33. In the interest of national security, patent laws and rules place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications in foreign countries. When disclosure of an invention is determined to be detrimental to national security, the Director of the USPTO must issue a secrecy order and withhold the grant of a patent for such period as the national interest requires. The USPTO collects information to determine whether the patent laws and rules have been complied with, and to grant or revoke licenses to file abroad when appropriate. The USPTO is submitting this collection in support of a proposed rulemaking "Changes to Support Implementation of the USPTO 21st Century Strategic Plan" (RIN 0651–AB64), which would support the use of electronic signatures on documents and increase the filing fees for petitions related to foreign licenses. The Petition for Changing the Scope of a License is also being added to this collection, but no forms are provided for this petition.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and State, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22879 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Post Allowance and Refiling.

Form Number(s): PTO/SB/44/50/51/51S/52/53/56/57/58 and PTOL–85B.

Agency Approval Number: 0651–0033.

Type of Request: Revision of a currently approved collection.

Burden: 63,635 hours annually.

Number of Respondents: 205,385 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 1.8 minutes (0.03 hours) to 2 hours to gather the necessary information, prepare the forms, and submit the completed request.

Needs and Uses: The USPTO is required by 35 U.S.C. 131 and 151 to examine applications and, when appropriate, allow applications and issue them as patents. The USPTO can also correct errors in patents, reissue patents as appropriate, and participate in reexamination proceedings initiated by the patent owner or by third parties. The public uses the information in this collection to request corrections in issued patents, to request reissue patents, to request reexamination proceedings, and to ensure that the necessary information and fees are submitted to the USPTO. The USPTO in turn reissues patents, determines whether the requested corrections can be made, and approves reexaminations. The USPTO is submitting this collection in support of a proposed rulemaking, "Changes to Support Implementation of the USPTO 21st Century Strategic Plan" (RIN 0651–AB64), which would allow the use of electronic signatures on documents and also eliminate the requirement to surrender a copy of the original patent in a reissue application. With the elimination of this requirement, the associated Form PTO/SB/55 is also being deleted.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, farms, the Federal Government, and state, local or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22880 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Initial Patent Applications.

Form Number(s): PTO/SB/01/01A/02A/02B/02LR/03/03A/04/05/06/07/13PCT/16/17/18/19/29/29A/101 through 110/Electronic New Utility and Provisional Application Forms.

Agency Approval Number: 0651–0032.

Type of Request: Revision of a currently approved collection.

Burden: 4,171,568 hours annually.

Number of Respondents: 454,287 responses per year.

Avg. Hours Per Response: The USPTO estimates that it takes between 24 minutes to 10 hours and 45 minutes to gather the information, prepare, and submit the various paper and electronic applications in this collection, depending on the situation and the amount of information that needs to be submitted. Based on estimates of similar petitions, the USPTO believes that it takes 1 hour to gather the information, prepare, and submit the petitions to accept an unintentionally delayed priority claim and to accept non-signing inventors or legal representatives/filing by other than all the inventors or a person not the inventor. The USPTO estimates that it takes 22 minutes to copy an oversized new original utility or provisional application that cannot be submitted electronically through EFS onto a CD–ROM, print the application transmittal, and prepare the cover letter submitting the submission.

Needs and Uses: The USPTO is submitting this information collection in support of a notice of proposed rulemaking, "Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan" (RIN 0651–AB64) which will be forwarded to the **Federal Register** for publication. This proposed rule increases the filing fee for the Petition to Accept Non-Signing Inventors or Legal Representatives/Filing by Other than all the Inventors or a Person not the Inventor from $130 to $200 and adds capital start-up costs for DVD drives, recorders, and media, in addition to DVD and technical drawing software. Capital start-up costs related to the utility, design, and plant drawings have also been added to this collection. The proposed rule does not change the needs and uses currently reported for this collection.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, farms, the Federal Government, and State, Local, or Tribal Governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22881 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Processing (Updating).

Form Number(s): PTO/SB/08a/08b/21/22/23/24/24A/25/26/27/30/31/32/35/36/37/42/43/61/62/63/64/64a/67/68/91/92/96/97, PTO–2053–A/B, PTO–2054–A/B, PTO–2055–A/B, PTOL/413A, eIDS, EFS form.

Agency Approval Number: 0651–0031.

Type of Request: Extension of a currently approved collection.

Burden: 2,724,329 hours annually.

Number of Respondents: 2,215,789 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take anywhere from one hour to four hours, depending on the amount of information that the applicant needs to submit to the USPTO, to complete the requirements associated with this information collection. This includes time to gather the necessary information, create the documents, and submit the completed request.

Needs and Uses: During the pendency of a patent application or the period of enforceability of a patent, situations arise that require collection of information for the USPTO to further process the patented file or the patent application. This information can be used by the USPTO to continue the processing of the patent or application or to ensure that applicants are complying with the patent regulations. The USPTO is submitting this collection in support of a proposed rulemaking, "Changes to Support Implementation of the USPTO's 21st Century Plan" (RIN

0651-AB64) that would allow the use of electronic signatures on documents, require photographs of any exhibit so that the exhibit can be included in the file, and also allow the USPTO to adjust the fees for many petitions in order to more accurately reflect the actual cost to the USPTO of processing these petitions, among other things.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms, the Federal Government, and State, local, or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, (703) 308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313, Attn: CPK 3 Suite 310, or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22882 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Patent Term Extension.

Form Number(s): No forms associated.

Agency Approval Number: 0651–0020.

Type of Request: Revision of a currently approved collection.

Burden: 30,905 hours annually.

Number of Respondents: 26,859 responses per year.

Avg. Hours Per Response: The time needed to respond is estimated to range from 1 to 25 hours, depending upon the complexity of the situation. It is estimated that the time needed to complete the applications, petitions, declarations, and requests associated with the patent term and interim extensions ranges from 1 to 25 hours. This time range also includes the Petition to Accord a Filing Date to an Application under 1.740 for Extension of a Patent Term, which the USPTO estimates will take 2 hours to complete. This includes the time to gather the necessary information, create the documents, and submit the completed requests.

Needs and Uses: The USPTO is submitting this information collection in support of the notice of proposed rulemaking, "Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan" (RIN 0651–AB64), which the USPTO will forward to the **Federal Register** for publication. This proposed rule increases the filing fee from $130 to $400 for the Petition to Accord a Filing Date to an Application under 1.740 for Extension of a Patent Term and adds this petition into the collection. This petition is used by the public to request review of a notice of an incomplete application for extension of a patent term and to request a filing date. The USPTO uses this information to determine the filing date for the application for extension of a patent term.

The United States Patent and Trademark Office (USPTO), together with the Secretary of Health and Human Services and the Department of Agriculture, administers the Federal Food, Drug and Cosmetic Act, 35 U.S.C. 156. This Act permits the USPTO to restore the patent term lost due to certain types of regulatory review by the Federal Food and Drug Administration or the Department of Agriculture. Only patents for drug products, medical devices, food additives, and color additives are eligible for extension. The maximum length that a patent may be extended (the maximum of patent term that may be restored) is five years.

Under 35 U.S.C. 156, the USPTO extends the term of various patents past their original expiration dates, grants interim extensions, reviews applications for patent term extension and final eligibility decisions, obtains additional information from the public that might influence the extension of the patent term, and withdraws applications for patent term extensions. The USPTO administers 35 U.S.C. 156 through 37 CFR 1.705–1.791, which permits the public to submit applications to the USPTO to extend the patent term past its original expiration date; to petition for reviews of informal extensions of applications, final eligibility decisions, and interim extensions; and to withdraw an application requesting a patent term extension after it is submitted.

Use of the USPTO's information allows the Director of the USPTO, the Secretary of Health and Human Services, and the Secretary of Agriculture to access the information required to determine whether the applicant is eligible for a patent term extension or reconsideration of patent term adjustment determination and, if so, the period of the extension or adjustment.

Affected Public: Business or other for-profit; individuals or households; not-for-profit institutions; farms; the Federal Government; and State, local, or tribal government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22883 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has

submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Rules for Patent Maintenance Fees.

Form Number(s): PTO/SB/45/47/65/66.

Agency Approval Number: 0651–0016.

Type of Request: Revision of a currently approved collection.

Burden: 30,735 hours annually.

Number of Respondents: 348,140 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take the public approximately 5 minutes (0.08 hours) to 8 hours to gather the necessary information, prepare the form or petition, and submit the completed request. The USPTO estimates that it will take the public approximately 20 seconds (0.006 hours) to submit the Electronic Maintenance Fee Form.

Needs and Uses: In order to keep utility patents in force, patentees must pay maintenance fees at 3½, 7½, and 11½ years after the date of grant. The public uses this collection to submit a patent maintenance fee payment, to file a petition to accept an unavoidably or unintentionally delayed maintenance fee payment, to file a petition to request acceptance of a maintenance fee payment that was submitted prior to patent expiration but refused by the USPTO, and to designate or change an address to be used for fee-related correspondence with the USPTO. The USPTO uses the information collected from the public to process and record maintenance fee payments, to consider petitions regarding delayed maintenance fee payments or payments that were refused by the USPTO, and to send fee-related correspondence to the correct address. The USPTO is submitting this collection in support of a proposed rulemaking, "Changes to Support Implementation of the USPTO 21st Century Strategic Plan" (RIN 0651-AB64), which would support the use of electronic signatures on documents and increase the filing fees for two petitions under this collection. The Petition for Reconsideration of Decision on Petition Refusing to Accept Delayed Payment of Maintenance Fee in an Expired Patent (37 CFR 1.378(e)) is being added to this collection, but no forms are provided for this petition.

Affected Public: Individuals or households, businesses or other for-profits, not-for-profit institutions, and the Federal Government.

Frequency: On occasion and 3 times at 4-year intervals following the grant of the patent.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, 703–308–7400, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313, Attn: CPK 3 Suite 310; or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed information collection should be sent on or before October 9, 2003, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

Dated: September 2, 2003.

Susan K. Brown,

Records Officer, USPTO, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 03–22884 Filed 9–8–03; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Federative Republic of Brazil

September 3, 2003.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner, Bureau of Customs and Border Protection adjusting limits.

EFFECTIVE DATE: September 9, 2003.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the Bureau of Customs and Border Protection website at http://www.customs.gov. For information on embargoes and quota reopenings, refer to the Office of Textiles and Apparel website at http://www.otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 68 FR 1599, published on January 13, 2003). Also see 67 FR 57406, published on September 10, 2002.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 3, 2003.

Commissioner,
Bureau of Customs and Border Protection,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 3, 2002, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on January 1, 2003 and extends through December 31, 2003.

Effective on September 9, 2003, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Sublevels within the aggregate	
338/339/638/639	3,102,315 dozen.
361	2,123,597 numbers.
363	46,938,492 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2002.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 03–22791 Filed 9–8–03; 8:45 a.m.

BILLING CODE 3510–DR–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 03–C0004]

Blue Coral-Slick-50, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20. Published below is a provisionally-accepted Settlement Agreement with Blue Coral-Slick-50, Inc., containing a civil penalty of $150,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by September 24, 2003.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 03–C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Belinda V. Bell, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7592.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: September 3, 2003.

Todd A. Stevenson,

Secretary.

Settlement Agreement and Order

1. Blue Coral-Slick 50, Inc. (hereinafter, "Blue Coral" or "Respondent"), enters into this Settlement Agreement and Order (hereinafter, "Settlement Agreement" or "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the attached Order incorporated by reference herein. The purpose of the Settlement Agreement is to settle the staff's allegations that Blue Coral knowingly failed to comply with section 3 of the Poison Prevention Packaging Act (PPPA) and violated sections 4(a) and (c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1263(a) and (c).

The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1261–1278, and the Poison Prevention Packaging Act ("PPPA"), 15 U.S.C. 1471–76.

3. Blue Coral is a corporation, organized and existing under the laws of the State of Delaware, with its principal office located at 700 Milam Street, Houston, Texas.

Staff Allegations

4. On numerous occasions between September 1998 and August 2001, Blue Coral introduced or caused the introduction into interstate commerce; and received in interestate commerce and delivered or proffered delivery thereof for pay or otherwise, approximately 1 million Rain-X® brand products containing 6% methanol in non-child resistant containers. These products are described as follows: Rain-X® Super Glass Cleaner Concentrate in 10 oz and 16.9 oz bottles; Rain-X® Washer Fluid Concentrate in 10 oz, 16.9 oz, and 1.2 oz pouches; and Rain-X® Washer Fluid Additive in 2 oz pouches.

5. The products identified in paragraph 4 above failed to comply with the Commission's Poison Prevention Packaging Regulation which requires that household substances in liquid form containing 4 percent or more of methanol must be packaged in child resistant packaging. *See* 16 CFR 1700.14(A)(8).

6. The subject products are misbranded hazardous substances pursuant to section 2(p) of the FHSA, 15 U.S.C. 1261.

7. These misbranded hazardous substances presented in ingesting hazard which could cause blindness, serious illness or death to children.

8. Blue Coral knowingly introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the misbranded hazardous substances, described in paragraph 4 above, as the term knowingly is defined in section 5(c)(5) of the FHSA, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. 1263(a) and (c) and is subject to civil penalties under section 5(c)(1) of the FHSA.

Response of Blue Coral

9. Blue Coral denies the staff allegations in paragraph 4 through 8, above. Blue Coral denies that it violated the FHSA, the PPPA or any other law, regulation or other requirement.

10. Blue Coral states that it notified the Commission and undertook a voluntary recall in this matter, in cooperation with the Commission, promptly upon learning of the alleged failures described in paragraph 4–8, and took action to ensure that the products are packaged in accordance with the PPPA.

Agreement of the Parties

11. The Consumer Product Safety Commission has jurisdiction over Blue Coral and the subject matter of this Settlement Agreement and Order under the FHSA, 15 U.S.C. 1261–1278.

12. This Agreement is entered into for settlement purposes only and does not constitute an admission by Blue Coral or a determination by the Commission that Blue Coral knowingly violated the FHSA or the PPPA.

13. Blue Coral agrees to pay to the U.S. Treasury a civil penalty in the amount of one hundred fifty thousand and 00/100 dollars ($150,000.00), in full settlement of this matter, payable within twenty (20) calendar days of receiving service of the final Settlement Agreement and Order.

14. Blue Coral knowingly, voluntarily and completely waives any rights it may have in the above captioned case (i) to the issuance of a Complaint in this matter; (ii) to an administrative or judicial hearing with respect to the staff allegations cited herein; (iii) to judicial review or other challenge or contest of the validity of the Settlement Agreement or the Commission's Order; (iv) to a determination by the Commission as to whether a violation has occurred with respect to Section 4 of the FHSA, 15 U.S.C. 1263; (v) to a statement of findings of fact and conclusions of law with regard to the staff allegations; and (vi) to any claims under the Equal Access to Justice Act.

15. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed in the public record and shall be published in the **Federal Register** in accordance with 16 CFR 1118.20. If the Commission does not receive any written requests not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order shall be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

16. The Settlement Agreement and Order shall become effective upon its final acceptance by the Commission and service of the final Order upon Blue Coral.

17. Upon provisional acceptance by the Commission, the Commission may publicize the terms of the Settlement Agreement and Order.

18. Blue Coral agrees to the entry of the attached Order, which is incorporated herein by reference, and agrees to be bound by its terms.

19. If, after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Blue Coral determine that severing the provision materially affects the purpose of the Settlement Agreement and Order.

20. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced and approved by the Commission.

21. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations made outside of this Settlement Agreement and Order may not be used to vary or contradict its terms.

22. The provisions of this Agreement and Order shall apply to, and inure to the benefit of, Respondent, its successors and assigns, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other business entity, or through any agency, device or instrumentality.

Dated: August 5, 2003.

Blue Coral-Slick 50, Inc.

Duncan J. Palmer,
Vice President and Chief Financial Officer.

Eric A. Rubel,
Respondent's Attorney.

The Consumer Product Safety Commission.

Alan H. Schoem,
Director, Office of Compliance.

Eric L. Stone,
Director, Legal Division, Office of Compliance.

Dated: August 26, 2003.

Belinda V. Bell,
Trial Attorney, Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement between Respondent Blue Coral-Slick 50 Inc., a corporation, and the staff of the Consumer Products Safety Commission, and the Commission having jurisdiction over the subject matter and over Blue Coral, and it appearing that the Settlement Agreement is in the public interest, it is Ordered that the Settlement Agreement be, and hereby is, accepted and it is Further Ordered that Blue-Coral Slick 50 Inc. shall pay the United States Treasury a civil penalty in the amount of one hundred fifty thousand and 00/100 dollars, ($150,000.00), payable within twenty (20) days of the service of the Final Order upon Blue Coral-Slick 50.

Provisionally accepted and Provisional Order issued on the 3rd day of September, 2003.

By Order of the Commission:

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. 03–22962 Filed 9–8–03; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 10, 2003.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness), ODUSD (PI)/Defense Human Resources Activity, ATTN: Ms. Heidi Boyd, 4040 Fairfax Boulevard, Suite 200, Arlington VA 22203.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 696–0404.

Title, Associated Form and OMB Control Number: Application for Department of Defense Common Access Card—DEERS Enrollment, DD Form 1172–2 OMB Number 0704–0415.

Needs and Uses: This information collection requirement is needed to obtain the necessary data to establish eligibility for the DoD Common Access Card for those individuals not pre-enrolled in the DEERS, and to maintain a centralized database of eligible individuals. This information is used to establish eligibility for the DoD Common Access Card for individuals either employed by or associated with the Department of Defense; is used to control access to DoD facilities and systems; and it provides a source of data for demographic reports and mobilization dependent support.

Affected Public: Individuals or households.

Annual Burden Hours: 100,000.

Number of Respondents: 300,000.

Responses Per Respondent: 1.

Average Burden Per Response: 20 minutes.

Frequency: On occassion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collected

The Department of Defense, over the past three years, has been taking requisite measures to enhance physical and information security and applying prudent countermeasures for all potential vulnerabilities focusing on security actions to address the changes in today's threat environment. The Assistant Secretary of Defense for Command, Control, Communications and Intelligence (C3I) August 12, 2000 memorandum, Subject: Department of Defense (DoD) Public Key Infrastructure (PKI), directed use of a common, integrated, interoperable DoD PKI to enable security services at multiple levels of assurance. PKI is a key and certificate management infrastructure designed to support confidentiality, integrity, availability, authorization, and access control in computer networks. It is imperative to the security of the nation's defense that the systems of the Department of Defense be PKI-enabled as soon as possible. This data collection is essential to the effort to prohibit access to the Departments' systems to those not authorized. Public Law 106–65, Section 373 directed the Department to develop and implement a Smart Card

program for the DoD. The Deputy Secretary of Defense November 10, 1999 memorandum, Subject: Smart Card Adoption and Implementation, directed the Department to implement smart card technology as a Department-wide Common Access Card (CAC) that shall be the standard ID card for active duty Uniformed Services personnel (to include the Selected Reserve), DoD civilian employees, and eligible contractor personnel. The CAC will be the principal card used to (1) enable physical access to buildings and controlled spaces and (2) gain access to the Department's computer networks and systems. Further guidance was provided in the USD (Personnel and Readiness) and DoD CIO April 18, 2002 joint memorandum to allow non-DoD federal employees requiring logical access to become eligible for the CAC. The Deputy Secretary directed the CAC be issued and maintained using the infrastructure provided by the Defense Enrollment Eligibility Reporting System (DEERS) and the Realtime Automated Personnel Identification System (RAPIDS). Initial implementation of the CAC began December 2000 and mass issuance is scheduled to be complete by April 2004.

This information collection is required to obtain the necessary data to establish eligibility for the CAC for those individuals not pre-enrolled in the DEERS, and to maintain a centralized database of eligible individuals.

Dated: September 2, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–22900 Filed 9–8–03; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Military Cancer Institute

Sunshine Act; Meeting Notice

AGENCY HOLDING THE MEETING: United States Military Cancer Institute.

TIME AND DATE: 8:30 a.m. to 3 p.m., November 12, 2003.

PLACE: Eisenhower Suite, WRAMC, 6900 Georgia Ave, NW., Washington DC 20307.

STATUS: Open—under "Government in the Sunshine Act" (5 U.S.C. 552b(e)(3)).

MATTERS TO BE CONSIDERED: USMCI goals and objectives.

8:30 a.m. Meeting—Committee of Scientific Advisors
(1) Welcome
(2) Introduction
(3) Overview of Various Oncology Programs
(4) Committee and Director Executive Session

FOR FURTHER INFORMATION CONTACT: Mr. William Mahr, Associate Director for Administration—USMCI, (202) 782–0552.

Dated: September 5, 2003.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 03–23094 Filed 9–5–03; 3:19 pm]

BILLING CODE 5001–08–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Savannah River

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, September 22, 2003, 12:15 p.m.–5:15 p.m.; Tuesday, September 23, 2003, 8:30 a.m.–4 p.m.

ADDRESSES: Houndslake, 1900 Houndslake Drive, Aiken, SC 29803.

FOR FURTHER INFORMATION CONTACT: deLisa Bratcher, Closure Project Office, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC, 29802; Phone: (803) 952–8607.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Monday, September 22, 2003

12:15 p.m.—Executive Committee Meeting
1 p.m.—Combined Committee Session
5:15 p.m.—Adjourn

Tuesday, September 23, 2003

8:30–9:30 a.m.—Approval of Minutes; Agency Updates; Public Comment Session; Chair and Facilitator Update
9:30–10:15 a.m.—Nuclear Materials Committee Report
10:15–11 a.m.—Waste Management Committee Report
11–12 noon —Facilities Disposition & Site Remediation Committee Report
12 noon—Lunch Break
1–3:30 p.m.—Strategic & Legacy Management Committee Report
3:30–3:45 p.m.—Administrative Committee Report
3:45–4 p.m.—Public Comments
4 p.m.—Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting Monday, September 22, 2003.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make the oral state-ments pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct business. Each individual wishing to make public comment will be provided equal time to present their comments. This **Federal Register** notice is being published less than 15 days prior to the meeting date due to programmatic issues that had to be resolved prior to the meeting date.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to deLisa Bratcher, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling her at (803) 952–8607.

Issued at Washington, DC, on September 3, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–22902 Filed 9–8–03; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Chairs Meeting. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires

that public notice of these meeting be announced in the **Federal Register**.

DATES: September 26–27, 2003.

ADDRESSES: Courtyard Marriott, 3835 Technology Drive, Paducah, KY 42001.

FOR FURTHER INFORMATION CONTACT: Dianna Feireisel, Deputy Designated Federal Officer, Department of Energy Paducah Site Office, Post Office Box 1410, Paducah, Kentucky 42001, (270) 441–6806.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Friday, September 26, 2003
8 a.m.—Registration
8:30 a.m.—Opening Business
- Welcoming Remarks
- Introductions
- Meeting Ground Rules and Agenda Review
- Meeting Objectives and Expectations

9 a.m.—Roundtable presentations focusing on each Board's contribution to its specific site (5 minutes per site)
- Direct effect on cleanup projects (improved priorities, accelerated schedules, reduced cost, enhanced community support, *etc.*)
- Recommendations to DOE and responses
- Overall value
- Roundtable presentations focusing on assessment of semi-annual chairs meetings (5 minutes per site)
- Perceived purpose
- Value to specific sites
- Value to overall complex

10:30 a.m.—Break
10:45 a.m.—Chairs Summary of self-assessment at both local level and national level
- How the work of the CABs, at their individual sites and meeting collectively, have contributed to the mission
- Appropriate criteria for measuring the extent of board effectiveness

11:45 a.m.—Lunch
1 p.m.—DOE Presentations and Discussion
- FY 04 Budget
- Guidance for Site Development of End-State Vision documents
- EM Corporate Strategy
- Response to Recommendations (disposition planning and TRU Waste Workshop)

3 p.m.—Break
3:15 p.m.—Public Comment Period
4 p.m.—Day 1 Wrap-Up and Review of Day 2
4:15 p.m.—Meeting Adjourns

Saturday, September 27, 2003
8:30 a.m.—Review Agenda
8:35 a.m.—Assessment of Workshop (value/contributions)
- Presentation from each host site (5 minutes each)
- Individual site perspectives (5 minutes per site)

Key Questions:
- Intended purpose of workshops
- Who are they aimed at?
- What is their actual value and for whom?
- What has changed, improved because of any workshop?
- If workshops have value, are SSABs the appropriate sponsor?

10 a.m.—Break
10:15 a.m.—Continuation of Discussion
11 a.m.—Next steps for workshops and Chairs meeting
11:30 a.m.—Public Comment Period
11:45 a.m.—Meeting Wrap-Up
- Review of Expectations/Objectives
- Meeting Evaluation

12 noon—Meeting Adjourns

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments at the end of the meeting.

Minutes: Minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday—Friday except Federal holidays. Minutes will also be available by writing or calling David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or phone (270) 441–6819.

Issued at Washington, DC, on September 3, 2003.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 03–22903 Filed 9–8–03; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ENERGY REGULATORY COMMMISSION

[IC03–592–000 FERC Form No. 592]

Commission Collection Activities, Proposed Collection; Comment Request; Extension

September 2, 2003.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments on the collection of information are due by October 31, 2003.

ADDRESSES: Copies of the proposed collection of information can be obtained from Michael Miller, Office of the Executive Director, ED–30, 888 First Street, NE., Washington, DC 20426. Comments on the proposed collection of information may be filed either in paper format or electronically. Those parties filing electronically do not need to make a paper filing. For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 and should refer to Docket No. IC03–592–000.

Documents filed electronically via the Internet can be prepared in a variety of formats, including WordPerfect, MS Word, Portable Document Format, Rich Text Format or ASCII format. To file the document, access the Commission's Web site at *http://www.ferc.gov* and click on "Make an E-filing," and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will end an automatic acknowledgment to the sender's e-mail address upon receipt of comments. User assistance for electronic filings is available at 202–502–8258 or by e-mail to *efiling@ferc.gov*. Comments should not be submitted to this e-mail address.

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the eLibrary link. For user assistance, contact *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676 or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 502–8415, by fax at (202) 273–0873 and by e-mail at *michael.miller@ferc.gov*.

SUPPLEMENTARY INFORMATION:

The information collected under the requirements of FERC Form No. 592, "Marketing Affiliates of Interstate Pipelines" (OMB No. 1902–0157) is used by the Commission to implement the statutory provisions of Sections 4, 5, 7, 8, 10, 14, 16 and 20 of the Natural Gas

Act (NPA), 15 U.S.C. 717–717w and Title II, Section 311 and Sections 501 and 504 of the Natural Gas Policy Act (Pub. L. 95–621)

The information under FERC Form 592 applies only to those major natural gas pipelines involved in transactions with affiliated marketing or brokering companies. In Order No. 497, 53 FR 22161, June 14, 1988, the Commission addressed possible abuses in the relationship between interstate natural gas pipelines and their marketing or brokering entity. The rule established standards of conduct and reporting requirements intended to prevent preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation services. In Order No. 637, 65 FR 10219, February 25, 2000, the Commission in response to growing competition in the natural gas marketplace and to further ensure that it could monitor transactions for the exercise of marketpower revised its reporting requirements. These provisions have improved the availability and usefulness of the information reported. Under these revisions, periodic reporting to the Commission was reduced and instead a greater reliance was placed on Internet posting and information maintenance. Specifically with regard to interstate pipelines and their affiliates, respondents have to post the list of names of operating personnel and facilities shared by the interstate pipeline and its marketing affiliate plus organizational charts and job descriptions were also to be posted with specified information. Respondents also have to file with the Commission a set of procedures to show compliance with the Commission's standards of conduct; maintain books of accounts and records separate from those of its affiliate; contemporaneously inform all potential shippers of information provided to marketing affiliates about the transportation of natural gas; maintain a log of waivers that the pipeline grants with respect to tariff provisions that provide for discretionary waivers and make the log available within a 24-hour period from when a request is made; and contemporaneously provide to similarly situated non-affiliated shippers the same transportation discount that it made to an affiliated marketer.

The information maintained and provided by respondents is used by the Commission to monitor pipelines' transportation and sales activities for their marketing affiliates to deter undue discrimination by pipeline companies in favor of their marketing affiliates. These reporting requirements act to deter undue discrimination and preference, and permit the market to monitor and self-police affiliate transactions. The information is also used by nonaffiliated shippers or others (such as state commissions) to determine whether they have been harmed by affiliate preference and, in some cases, to prepare evidence for formal proceedings following the filing of a complaint. The Commission implements these filings requirements in the Code of Federal Regulations (CFR) under 18 CFR section 161.3 and section 250.16.

Action: The Commission is requesting a three-year extension without any changes to the Reporting requirements.

Burden Statement: Public reporting burden for this information collection is estimated as:

Number of respondents annually (1)	Number of responses per respondent (2)	Average burden (number of hours per response) (3)	Total annual burden (total number of hours) (1)×(2)×(3)
74	2	29.8*	4,409

*Rounded off.

Estimated cost to respondents: 4,409 hours ÷ 2,080 per year x $117,041 = $248,093. The cost per respondent = $3,353. The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purpose of collection, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22852 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–344–000]

Columbia Gas Transmission Corporation; Notice of Application

September 3, 2003.

Take notice that Columbia Gas Transmission Corporation (Columbia), filed on July 30, 2003, an abbreviated application pursuant to Sections 7(b) and 7(c) of the Natural Gas Act, as amended, to abandon its storage injection/withdrawal Well 12028 and associated well line segment SR-W12028 consisting of 0.17 mile of 3-inch and 4-inch pipeline and to construct new injection Well 12422 and

appurtenances including 0.03 mile of 4-inch well line, all located in Columbia's Crawford Storage Field in Hocking County, Ohio, all as more fully set forth in its petition which is on file with the Commission and open to public inspection. This filing may be also viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676 or for TTY, contact (202) 502–8659.

Any questions regarding this application should be directed to Fredric J. George, Esquire, Attorney for Columbia Gas Transmission Corporation, P.O. Box 1273, Charleston, West Virginia 25325–1273, at (304) 357–2359, fax (304) 357–3206.

Columbia states that Well 12028 is experiencing the flooding of salt water into the storage zone reservoir and believes that the abandonment of the well and the construction of a replacement well, Well 12422, will protect the integrity of the reservoir, as well as allow Columbia to continue to meet the deliverability and turnover requirements of the Crawford Storage Field.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date, stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of ll documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Protests, comments, and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22868 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP03–243–003]

Nicole Gas Production Ltd.; Notice of Compliance Filing

September 3, 2003.

Take notice that on August 26, 2003, Columbia Gas Transmission Corporation (Columbia Gas) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Second Revised Sheet No. 410, with a proposed effective date of August 15, 2003.

Columbia Gas states that on July 14, 2003, it filed revised tariff sheets to clarify obligations with respect to the construction and installation of meters and measuring stations and to clarify obligations with respect to the responsibility for payment of the cost of the construction and installation of those facilities. On August 11, 2003, the Commission accepted Columbia Gas' proposed revised tariff sheets subject to conditions (August 11 Order), Nicole Gas Production Ltd., 104 FERC ¶ 61,193 (2003). The Commission required that Columbia Gas make revisions to a tariff sheet within 15 days of the date of issuance of the August 11 Order. As directed by the Commission in the August 11 Order, Columbia Gas submitted the revised tariff sheet identified above. Columbia states that the revised tariff sheet reflects the changes required by the Commission in the August 11 Order.

Columbia Gas states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission Web site under the eLibrary (e-Filing) link.

Protest Date: September 8, 2003.

Linda Mitry,

Acting Secretary.

[FR Doc. 03–22866 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–49–003]

Northwest Pipeline Corporation; Notice of Amendment

September 3, 2003.

Take notice that on August 22, 2003, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP01–49–003, an amendment to the pending application filed June 25, 2003, pursuant to sections 7(b) and (c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to amend the certificate of public convenience and necessity that was issued for its "Everett Delta Lateral Project" project by Commission order dated October 25, 2001 in Docket Nos. CP01–49–000 and CP01–49–001 and to request related permission and approval for pre-granted abandonment, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Northwest states that by this amendment to the pending amended application, Northwest requests that the Commission approve the Holly Lane Reroute between mileposts 1.16 and 1.78 in Snohomish County, Washington of the proposed Everett Delta Lateral in lieu of the originally proposed crossing of Catherine Creek by horizontal directional drill between mileposts 1.2 and 1.52.

Any questions concerning this amendment may be directed to Gary K. Kotter, Manager, Certificates and Tariffs, Northwest Pipeline corporation, P. O. Box 58900, Salt Lake City, Utah 84158–0900, at (801) 584–7117 or fax (801) 584–7764.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 24, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22864 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–57–005]

SCG Pipeline, Inc.; Notice of Amendment

September 3, 2003.

Take notice that on August 26, 2003, SCG Pipeline, Inc. (SCG), P.O. Box 102407, Columbia, South Carolina 29224–2407, filed in Docket No. CP02–57–005, an amendment to its certificate application pursuant to Section 7(c) of the Natural Gas Act (NGA), as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for authorization to amend the certificate of public convenience and necessity issued to SCG on September 20, 2002, approving construction of its proposed facilities, including the Port Wentworth Meter Station, located in Chatham County, Georgia, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the e-Library (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

SCG states that the purpose of this amendment is to request a change in the ownership percentage of the Port Wentworth meter and regulating station to reflect the fact that this meter station is now jointly owned with Southern Natural Gas Company (Southern Natural). As a result of this joint ownership, SCG states that it will have a sixty-one and one-tenth percent (61.1%) ownership interest in the Port Wentworth Meter Station, with Southern Natural owning the remaining thirty-eight and nine-tenths percent (38.9%) ownership interest in the meter station. SCG states that Southern Natural has already filed to amend its certificate in Docket No. CP02–1–000 to reflect this amended ownership in the Port Wentworth Meter Station and this amendment was approved by the Commission on February 28, 2003.

Any questions concerning this amendment may be directed to Troy Blalock, Project Manager, SCG Pipeline, Inc., 105 New Way Road, Columbia, South Carolina 29223, at (803) 217–1811, or fax (803) 217–2104.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10) by the comment date, below. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will

receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Comment Date: September 19, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22867 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–349–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Application

September 3, 2003.

Take notice that on August 26, 2003, Southern Star Central Gas Pipeline, Inc. (Southern Star), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP03–349–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) as amended, and part 157 of the regulations of the Federal Energy Regulatory Commission (Commission), for permission and approval to abandon compression facilities in Johnson County, Missouri, all as more set forth in the application which is on file with the Commission and open to public inspection

Southern Star proposes to abandon five 170 horsepower compressor units and appurtenant facilities, auxiliary equipment at the Knob Noster compressor station in Johnson County. It is stated that the compressor station was constructed in 1949 and utilized to compress gas into the Carrollton/Marshall 8-inch system. It is stated that the facilities are now obsolete due to piping constraints and that the compression is insufficient reliably meet volume demand during peak periods. It is explained that the facilities are no longer needed because the newer, more efficient 800 horsepower unit at the Concordia compressor station now serves the Carrollton/Marshall system and provides adequate compression during peak periods. Southern Star proposes to abandon the facilities by reclaim with the exception of an equipment storage warehouse which would continue to be used. It is asserted that Southern Star would continue to own and operate the property that the compressor station proposed for abandonment stands on.

Any questions concerning this application may be directed to David N. Roberts, Manager, Regulatory Affairs, at (270)852–4654.

This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, please contact FERC Online Support at FERC OnlineSupport@ferc.gov or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages intervenors to file electronically.

Comment Date: September 23, 2003.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22865 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–3760–009, et al.]

California Independent System Operator Corporation, et al.; Electric Rate and Corporate Filings

August 29, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. California Independent System, Operator Corporation, Pacific Gas and Electric Company, San Diego Gas & Electric Company, and Southern California Edison Company

[Docket Nos. ER98–3760–009, EC96–19–060 and ER96–1663–063]

Take notice that on August 25, 2003, the California Independent System Operator Corporation (ISO), submitted a filing in compliance with the Commission's July 25, 2003 Order in Docket No. ER98–3760–008, *et al.*, 104 FERC ¶ 61,129.

The ISO states that this filing has been served upon all parties in the captioned proceeding, and has been posted on the ISO Home Page.

Comment Date: September 15, 2003.

2. Ameren Services Company

[Docket Nos. ER02–2233–010 and EC03–14–005]

Take notice that on August 28, 2003, the GridAmerica Participants and the Midwest Independent Transmission System Operator, Inc. (jointly, the Applicants) filed two Acknowledgements in order to make it possible for GridAmerica to commence operations, if necessary, on a phased basis.

The Applicants state that in addition to serving the filing in accordance with the Commission's Regulations, the Midwest ISO has electronically served a copy of this filing; with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: September 8, 2003.

3. Power Contract Financing II, L.L.C.

[Docket No. ER03–1108–001]

Take notice that on August 26, 2003, Power Contract Financing II, L.L.C. (PCF II), filed an amendment to it application filed July 23, 2003. PCF II states that the amendment corrects a typographical error in the original filing.

Comment Date: September 16, 2003.

4. Power Contract Financing II, Inc.

[Docket No. ER03–1109–001]

Take notice that on August 26, 2003, Power Contract Financing II, Inc. (PCF II, Inc.) filed an amendment to its application filed on July 23, 2003. PCF II, Inc. states that the amendment corrects a typographical error in the original filing.

Comment Date: September 16, 2003.

5. Rail Energy of Montana

[Docket No. ER03–1224–000]

Take notice that on August 18, 2003, Rail Energy of Montana, LLC, tendered for filing a Notice of Cancellation of its Market-based Rate Authority in Docket No. ER01–1557–000. Rail Energy of Montana, LLC is requesting an effective date of June 30, 2001.

Comment Date: September 12, 2003.

6. Wisconsin Electric Power Company

[Docket No. ER03–1240–001]

Take notice that on August 26, 2003, Wisconsin Electric Power Company (Wisconsin Electric) tendered for filing a correction to its filing of August 22, 2003 in Docket No. ER03–1240–000 submitting a revised Power Service Agreement between Wisconsin Electric and the City of Crystal Falls, Michigan. Wisconsin Electric states that this filing is to correct two errors in the transmittal letter filed on August 22, 2003. Wisconsin Electric further states that the remainder of the information contained in the August 22 filing is correct.

Comment Date: September 16, 2003.

7. Northeast Utilities Service Company

[Docket No. ER03–1247–000]

Take notice that on August 26, 2003, Northeast Utilities Service Company (NUSCO) filed on behalf of its affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Power and Electric Company, Holyoke Water Power Company and Public Service Company of New Hampshire (collectively, the NU Companies) and North Atlantic Energy Corporation, Open Access Transmission Tariff, FERC Electric Tariff No. 10 (Tariff No. 10). NUSCO states that Tariff No. 10 reflects revised transmission service rates for open access transmission service over the NU Operating Companies' transmission facilities and is intended fo supersede the existing Open Access Transmission Tariff, FERC Electric Tariff No. 9.

NUSCO requests an effective date of October 27, 2003 for Tariff No. 10. NUSCO states that copies of this filing have been served on all of the NU Operating Companies' transmission customers and to the Connecticut, Massachusetts and New Hampshire state public utility commissions.

Comment Date: September 16, 2003.

8. Puget Sound Energy, Inc.

[Docket No. ER03–1248–000]

Take notice that on August 26, 2003, Puget Sound Energy, Inc. (Puget) submitted for filing the 2003–04 Operating Procedures with respect to the 1997 Pacific Northwest Coordination Agreement (the 1997 PNCA). Puget states that the 2003–04 Operating Procedures amend the 1997 PNCA.

Puget further states that copies of the filing were served on the parties to the 1997 PNCA.

Comment Date: September 16, 2003.

9. Ameren Services Company

[Docket No. ER03–1249–000]

Take notice that on August 26, 2003, Ameren Services Company (ASC) tendered for filing a Service Agreement for Network Integration Transmission Service and a Network Operating Agreement between ASC and Constellation NewEnergy Corporation (Customer). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to the Customer pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: September 16, 2003.

10. Maine Public Service Company

[Docket No. ER03–1250–000]

Take notice that on August 25, 2003, Maine Public Service Company (MPS) submitted for filing an executed Interconnection Agreement Between MPS and PDI New England, Inc. (now known as WPS New England Generation, Inc.). MPS requests an effective date of June 8, 1999, the date on which the agreement was executed.

Comment Date: September 15, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* , using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22870 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG03–97–000, et al.]

Meiya Qujing Power Company Limited., et al.; Electric Rate and Corporate Filings

September 2, 2003.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Meiya Qujing Power Company Limited

[Docket No. EG03–97–000]

Take notice that on August 27, 2003, Meiya Qujing Power Company Limited (MQP), with its principal office at Ugland House, South Church Street, George Town, Grand Cayman, Cayman Islands, filed with the Federal Energy Regulatory Commission (Commission@) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

MQP states it is a company organized under the laws of Cayman Islands. MQP also states that it will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935 (APUHCA@), exclusively in owning, operating, or both owning and operating, a coal-fired electric generating facility with a total output of approximately 600 megawatts consisting of two steam turbines, two 1,025 ton-per-hour coal-fired boilers and certain additional incidental facilities, located in Qujing, Yunnan province, People's Republic of China. MQP explains it will, through an affiliate, sell electric energy at wholesale from the facility and may engage in other incidental activities with respect thereto consistent with PUHCA.

Comment Date: September 23, 2003.

2. Massachusetts Municipal Wholesale Electric Company Complainant, v. Power Authority of the State of New York, Respondent; Power Authority of the State of New York Project No. 2000 (St. Lawrence-FDR)

[Docket No. EL03–224–000]

Take notice that on August 29, 2003, Massachusetts Municipal Wholesale Electric Company (MMWEC), (Complainant), filed a Complaint Requesting Fast Track Processing against the Power Authority of the State of New York (NYPA) pursuant to Sections 206, 207, 306, 307, 20, and 31 of the Federal Power Act and Rules 206, 207, 212 of the Commission's Rules (18 CFR 385.206, 207 and 212). Complainant requests that the Commission take prompt action to extend the current contract between MMWEC and NYPA for power and energy from the St. Lawrence-FDR (Project No. 2000) and the Niagara (Project No. 2216) hydroelectric projects. The current contract, covering sales from both Projects, expires on October 31, 2003. MMWEC states that it is entitled to relief under the Projects' license conditions and pursuant to federal law. Moreover, consumers in Massachusetts will experience irreparable injury, absent an extension of the existing contract. MMWEC further states that its negotiations towards a new replacement contract with NYPA have been fruitless, despite years of effort.

Comment Date: September 17, 2003.

3. Massachusetts Municipal Wholesale Electric Company Complainant, v. Power Authority of the State of New York Respondent; Power Authority of the State of New York, Project No. 2216 (Niagara)

[Docket No. EL03–225–000]

Take notice that on August 29, 2003, Massachusetts Municipal Wholesale Electric Company (MMWEC), (Complainant), filed a Complaint Requesting Fast Track Processing against the Power Authority of the State of New York (NYPA) pursuant to Sections 206, 207, 306, 307, 20, and 31 of the Federal Power Act and Rules 206, 207, 212 of the Commission's Rules (18 CFR 385.206, 207 and 212). Complainant requests that the Commission take prompt action to extend the current contract between MMWEC and NYPA for power and energy from the St. Lawrence-FDR (Project No. 2000) and the Niagara (Project No. 2216) hydroelectric projects. The current contract, covering sales from both Projects, expires on October 31, 2003. MMWEC states that it is entitled to relief under the Projects' license conditions and pursuant to federal law. Moreover, consumers in Massachusetts will experience irreparable injury, absent an extension of the existing contract. MMWEC further states that its negotiations towards a new replacement contract with NYPA have been fruitless, despite years of effort.

Comment Date: September 17, 2003.

4. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–5–002]

Take notice that on August 27, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's regulations, 18 CFR 35.13 (2002), submitted for filing a second revised Interconnection and Operating Agreement among GM Transmission, LLC, the Midwest ISO and Northern States Power Company d/b/a Xcel Energy.

Midwest ISO states that a copy of this filing was served on the GM Transmission, LLC and Northern States Power Company d/b/a Xcel Energy.

Comment Date: September 17, 2003.

5. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–83–004]

Take notice that on August 27, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Section 2.6 of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in compliance with the Commission's July 28, 2003 Order on Rehearing, 104 FERC ¶ 61,148 (2003).

The Midwest ISO has requested the original effective date of December 23, 2002. Midwest has also requested waiver of the service requirements set forth in 18 CFR 385.2010. Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest states that the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

Comment Date: September 17, 2003.

6. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER03–86–005]

Take notice that on August 27, 2003, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted for filing proposed revisions to Section 41.1 of its Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 1, in

compliance with the Commission's July 28, 2003 Order on Rehearing, 104 FERC ¶ 61,148 (2003).

The Midwest ISO has requested the original effective date of December 23, 2002. Midwest ISO has also requested waiver of the service requirements set forth in 18 CFR 385.2010. Midwest ISO states that it has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, as well as all state commissions within the region. In addition, Midwest states that the filing has been electronically posted on the Midwest ISO's Web site at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter. Midwest ISO indicates that it will provide hard copies to any interested parties upon request.

Comment Date: September 17, 2003.

7. PJM Interconnection L.L.C.

[Docket Nos. ER03–194–004 and ER03–309–004]

Take notice that on August 27, 2003, PJM Interconnection, L.L.C. (PJM) submitted a filing to comply with the Ordering Paragraph C of the Commission's Order issued July 29, 2003, 104 FERC ¶ 61,154.

Comment Date: September 17, 2003.

8. New York State Electric & Gas Corporation

[Docket No. ER03–587–001]

Take notice that on August 27, 2003, New York State Electric & Gas Corporation (NYSEG) tendered for filing pursuant to the Commission's April 28, 2003 Order in Docket No. ER03–587–000, FERC Rate Schedule 30 between NYSEG and Rochester Gas and Electric Corporation consistent with Order No. 614.

Comment Date: September 17, 2003.

9. Business Discount Plan, Inc.

[Docket No. ER03–1229–000]

Take notice that on August 18, 2003, Business Discount Plan (BDP) filed a Notice of Cancellation of its market-based rate authority. BDP states that it has never used its market-based rate authority and does not plan to do so in the future.

Comment Date: September 12, 2003.

10. Southern Company Services, Inc.

[Docket No. ER03–1252–000]

Take notice that on August 27, 2003, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively Southern Companies), filed an amendment to the Interchange Contract between Duke Power Company (Duke) and Southern Companies dated December 18, 1991 and designated First Revised Rate Schedule FERC No. 77. SCS states that this revision is made to allow payment for emergency service provided by Southern Companies to Duke under Service Schedule A of that contract to be made pursuant to Southern Companies' market-based rate tariff.

Comment Date: September 17, 2003.

11. Southern California Edison Company

[Docket No. ER03–1253–000]

Take notice that on August 27, 2003, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and the Inland Empire Energy Center, L.L.C (IEEC). SCE states that the purpose of the Letter Agreement is to provide an arrangement pursuant to which SCE will review the California Energy Commission (CEC) Preliminary Staff Assessment (PSA), and later Final Staff Assessment (FSA), of IEEC's application for certification of a 500 kV generation transmission line and associated facilities which would be required to interconnect IEEC's generation project to SCE's electrical system.

SCE states that copies of this filing were served upon the Public Utilities Commission of the State of California and IEEC.

Comment Date: September 17, 2003.

12. Aquila, Inc.

[Docket No. ER03–1254–000]

Take notice that on August 27, 2003, Aquila, Inc. (Aquila), filed with the Commission, pursuant to Section 205 of the Federal Power Act, 16 U.S.C.824d, and part 35 of the Commission's regulations, 18 CFR 35, Amendatory Agreement No. 3 to the Multiple Interconnection & Transmission Contract between Aquila, Inc. d/b/a Aquila Networks—MPS and Kansas City Power & Light Company, designated as Aquila's Rate Schedule FERC No. 20. Aquila states that this amendment clarifies the existing interconnection point at the Duncan Road Substation. Aquila requests that the amendment be made effective August 28, 2003.

Comment Date: September 17, 2003.

13. FirstEnergy Solutions Corp.

[Docket No. ER03–1256–000]

Take notice that on August 27, 2003, FirstEnergy Solutions Corp. (Solutions) tendered for filing a Revised Electric Power Supply Agreement between Solutions, as seller, and The Cleveland Electric Illuminating Company, Ohio Edison Company, Pennsylvania Power Company and The Toledo Edison Company, as buyers (the Agreement). Solutions states that the Agreement has been modified to accommodate a change in the identity of the Transmission Provider that will deliver power being sold pursuant to the Agreement and to implement certain ministerial changes. Solutions has asked for waiver of any applicable requirements in order to make the Agreement effective as of October 1, 2003.

Comment Date: September 17, 2003.

14. Tampa Electric Company

[Docket No. ER03–1257–000]

Take notice that on August 27, 2003, Tampa Electric Company (Tampa Electric) tendered for filing the Operating Agreement between Tampa Electric and Florida Power Corporation (FPC) for the Pebbledale-Barcola Interconnection dated August 14, 2003, designated and formatted as a new Tampa Electric rate schedule. Tampa Electric proposes that the new rate schedule be made effective on August 14, 2003.

Tampa Electric states that copies of the filing have been served on FPC and the Florida Public Service Commission.

Comment Date: September 17, 2003.

15. Niagara Mohawk Power Corporation

[Docket No. ER03–1258–000]

Take notice that on August 27, 2003, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk), tendered for filing a First Revised Service Agreement No. 326 (Service Agreement) between Niagara Mohawk and PSEG Power New York Inc. (PSEG) under the New York Independent System Operator's FERC Electric Tariff, Original Volume No. 1. Niagara Mohawk states that under the Service Agreement, it provides interconnection service to PSEG for the Albany Steam Station generating facility.

Comment Date: September 17, 2003.

16. Kloco Corporation

[Docket No. ER03–1259–000]

Take notice that on August 27, 2003, Kloco Corporation tendered for filing notification that GDK Corporation has changed its name to Kloco Corporation.

Comment Date: September 17, 2003.

Standard Paragraph

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the "FERRIS" link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22869 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–49–002]

Northwest Pipeline Corporation; Notice of Intent To Prepare a Supplemental Environmental Assessment for the Amended Everett Delta Project and Request for Comments on Environmental Issues

September 3, 2003.

On October 25, 2001, the Commission issued Northwest Pipeline Corporation (Northwest) a certificate of public convenience and necessity for the Everett Delta Lateral Project (Order). We[1] prepared an environmental assessment (EA) and on August 10, 2001, we issued a notice of availability for comment on the EA. Comments received on the EA were addressed in the Order authorizing construction and operation of the Everett Delta Project, subject to Northwest's compliance with the environmental conditions. As currently certificated, the Everett Delta Lateral Project in Snohomish County, Washington,[2] includes approximately 9 miles of 20-inch-diameter lateral pipeline, two delivery stations, and related facilities to provide transportation deliveries from Northwest's mainline to serve a planned Northwest Power Company power plant in Everett, Washington, and to provide additional service to a local distribution company, Puget Sound Energy (PSE). After issuance of the Order for the project, the new power plant that was the anchor market for the project was canceled and the facility agreements underlying this project were terminated. Northwest and PSE then negotiated new commercial arrangements for a revised Everett Delta Lateral Project designed to serve only PSE's distribution system.

Northwest now requests the Commission to amend the certificate for the project to authorize Northwest to construct approximately 9.19 miles of 16-inch-diameter pipeline (on the certificated route with some variations), instead of 20-inch-diameter pipeline, one meter station, two delivery taps and related facilities designed to provide approximately 113 million decatherms per day of firm transportation service for PSE. The facility differences in the amendment versus the certificated project are: smaller diameter pipeline; 0.19 miles longer pipeline; one less meter station; and small changes to related facilities. We will study the amendments and determine if they are environmentally preferred over the certificated route.

The primary route change involves the certificated route crossing of Catherine Creek by horizontal directional drill (HDD) between mileposts (MPs) 1.2 and 1.52. Geotechnical investigations and site analysis subsequent to the Order have determined that the route through this area has less than a 25 percent probability of success, due to the amount of subsurface gravels and cobbles that would be encountered along the path of the HDD. Northwest has identified a route that would avoid the use of the Catherine Creek HDD—designated the Holly Lane Reroute. The reroute affects the proposed alignment between MPs 1.16 and 1.78 and crosses Catherine Creek at MP 1.32 where a culvert has already been installed. The majority of the reroute would be within the right-of-way of Callow Road and Holly Lane.

This Notice of Intent is to inform the public that staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare a supplemental EA that will discuss the environmental impacts of the Everett Delta Lateral involving construction and operation of facilities by Northwest in Snohomish County, Washington. The EA will focus on the amendments to determine if they affect our original conclusion that the project does not constitute a major Federal action significantly affecting the quality of the human environment. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice Northwest provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet Web site (*http://www.ferc.gov*).

Summary of the Proposed Project as Amended

Northwest proposes to construct:

- Approximately 9.19 miles of 16-inch-diameter pipeline in Snohomish County, Washington, which would tie-in with Northwest's existing mainline and mainline loop at milepost (MP) 1411.3 north of the City of Lake Stevens. The 16-inch-diameter lateral would extend from the interconnect with Northwest's existing system at MP 0.0 and extend to PSE in Everett, Washington;

[1] "We", "us", and "our" refer to the environmental staff of the Office of Energy Projects (OEP).

[2] (Northwest's) application was filed with the Commission under Section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

- The Everett Delta Meter Station (MP 0.0);
- Two downstream delivery taps: the Soper Hill Tap (MP 4.4) and the Everett Tap (MP 9.19); and
- A pig launcher and two 12-inch mainline taps (MP 0.0), block valve assembly (MP 4.4), and a pig receiver (MP 9.19).

The general location of the project facilities is shown in appendix 1.[3] If you are interested in obtaining detailed maps of a specific portion of the project, send in your request using the form in appendix 3.

Land Requirements for Construction

In total, construction of the project would result in approximately 89 acres of disturbance. Permanent easement for the entire project would result in approximately 50 acres with the remaining 39 acres of land allowed to revert to its former use. A permanent easement is needed for long-term operation and maintenance requirements. Northwest would require a 50-foot-wide permanent easement for the project. The aboveground facilities would need a total of 0.95 acre. The amendments cause an increase in land use of 1.29 acres for construction (temporary) and 0.35 acre for operation (permanent easement) Construction of the lateral would primarily use a 75-foot-wide construction right-of-way. However, a number of areas would require the construction right-of-way to be reduced to less than 75 feet in width. In addition to the typical 75-foot-wide construction right-of-way, additional temporary extra work areas at specific locations such as road and railroad crossings, and waterbody and wetland crossings are required.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Land use
- Water resources, fisheries, and wetlands
- Cultural resources
- Vegetation and wildlife
- Air quality and noise
- Endangered and threatened species
- Hazardous waste
- Public safety

We will also evaluate possible alternatives to the proposed changes in the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission=s official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

The environmental issues for the certificated route were addressed in the August 10, 2001 EA. We have identified several additional issues that we think deserve attention based on a preliminary review of the amended facilities and the environmental information provided by Northwest. This preliminary list of issues may be changed based on your comments and our analysis.

- The project would be within 50 feet of 4 additional residences; and
- The crossing of Catherine Creek in the new proposed location.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the change to the original proposal, alternatives to the proposal (including alternative routes), measures to avoid or lessen environmental impact, and how you believe these changes affect the original analysis. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Branch 2.
- Reference Docket No. CP01–49–002.
- Mail your comments so that they will be received in Washington, DC on or before October 3, 2003.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the Commission strongly encourages electronic filing of any comments or interventions or protests to this proceeding. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created online.

We may mail the EA for comment. If you are interested in receiving it, please return the Information Request (appendix 4). If you do not return the Information Request, you will be taken off the mailing list.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than appendix 1 (maps), are available on the Commission's Web site at the " eLibrary "link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2). [4] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

This notice is being sent to individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. It is also being sent to all identified potential right-of-way grantors.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208-FERC or on the FERC Internet Web site (*http://www.ferc.gov)*using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you too keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Magalie R. Salas,

Secretary.

[FR Doc. 03–22863 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the Internet in lieu of paper. *See* the previous discussion on filing comments electronically.

FEDERAL ENERGY REGULATORY COMMISSION

Notice of Fifth Workshop; Better Stakeholder Involvement: Lessons Learned from Implementing the Commission's National Environmental Policy Act Pre-Filing Process

September 2, 2003.

The Office of Energy Projects will host the fifth workshop in its "Better Stakeholder Involvement Series." This workshop will focus on "lessons learned" from a project where the Commission's National Environmental Policy Act (NEPA) Pre-Filing Process was implemented.[1] It will be held in Roanoke, Virginia, on Thursday, October 2, 2003. We are inviting interstate natural gas companies; Federal, state and local agencies; landowners and other non-governmental organizations to participate.

We will learn from stakeholder and industry experiences with projects, solicit ideas for enhancing communication, and discuss the development of a new brochure to help stakeholders effectively participate in the NEPA Pre-Filing Process.

We will specifically discuss the *facility planning process,* but not the merits of any specific proposed or existing pipeline projects. Participants are asked to speak from experience and be constructive, and bear in mind that the focus of the workshop is on discussing and improving the process of communication between the industry, the stakeholders, and the Federal Energy Regulatory Commission *before* the filing of an application.

The workshop will be held at the Holiday Inn-Tanglewood, 4468 Starkey Road, from 9 a.m. to 4 p.m. The phone number at the hotel is 1–888–228–5040. A preliminary agenda and directions and map to the hotel are enclosed. You may also go to the hotel's Web site for more detailed information and driving directions at *http://www.ichotels.com,* then click "Holiday Inn", and type in "Roanoke, VA."

[1] Information on the Commission's NEPA Pre-Filing Process can be downloaded from our Web site at *http://www.ferc.gov* or requested by e-mail at: *gasoutreach@ferc;gov*.

If you plan to attend or have suggestions for the agenda, please respond by Monday, September 29, 2003 via facsimile to Roberta Coulter at 202–208–0353, or you may e-mail our team at: *gasoutreach@ferc.gov*. Please include in the response the names, addresses, and telephone numbers of all attendees from your organization.

To help us enhance our panel discussions, please consider, and forward to us, issues and/or questions you would like to have addressed at the meetings. If you have any questions, you may contact any of the staff listed below:

Richard Hoffmann 202–502–8066.
Lauren O'Donnell 202–502–8325.
Alisa Lykens 202–502–8766.
Howard Wheeler 202–502–8688.

J. Mark Robinson,

Director, Office of Energy Projects.

Agenda

Better Stakeholder Involvement: Lessons Learned from Implementing the Commission's NEPA Pre-filing Process

Roanoke Workshop—October 2, 2003

9 a.m.—Welcome, Introduction and Objectives—FERC
9:15 a.m.—The NEPA Pre-filing Process—Lauren O'Donnell, FERC
9:30 a.m.—Industry Perspective: Lessons Learned on Greenbrier Pipeline Project—Bob Orndorff and Sean Sleigh, Dominion Transmission, Inc.
10:15 a.m.—Break
10:30 a.m.—Panel Discussion: Perspectives from Local Stakeholders—Ron Meadows, citizen/property owner. Other participants to be confirmed.
11:30 a.m.—Perspective from a Cooperating Agency—Naomi Johnson, Jefferson National Forest
12 p.m.—Lessons Learned by FERC—Lauren O'Donnell, FERC
12:30 p.m.—Lunch (On Your Own)
1:45 p.m.—Landowner "Brochure" Development Workshop—Anne Gunning, Kearns & West
2:45 p.m.—Break
3 p.m.—Summary Discussion, Overall Comments, Next Steps
4 p.m.—Adjourn

[FR Doc. 03–22853 Filed 9–8–03; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice; Sunshine Act Meeting

September 3, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552B:

Agency Holding Meeting: Federal Energy Regulatory Commission.

Date and Time: September 10, 2003; 11 a.m.

Place: Room 2C, 888 First Street, NE., Washington, DC 20426.

Status: Open.

Matters To Be Considered: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

Contact Person for More Information: Magalie R. Salas, Secretary, Telephone (202) 502–8400. For a recording listing items stricken from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

838th Meeting September 10, 2003; Regular Meeting, 11 a.m.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

A–3.
FERC's Strategic Plan for FY 2003–2005

Markets, Tariffs and Rates—Electric

E–1.
Omitted

E–2.
Docket# ER03–552, 000, New York Independent System Operator, Inc.
Other#s ER03–552, 001, New York Independent System Operator, Inc.
ER03–552, 002, New York Independent System Operator, Inc.
ER03–552, 003, New York Independent System Operator, Inc.
ER03–984, 000, New York Independent System Operator, Inc.
ER03–984, 001, New York Independent System Operator, Inc.

E–3.
Docket# PL03–5, 000, Guidance on Regional Transmission Organization and Independent System Operator Filing Requirements Under the Federal Power Act

E–4.
Omitted

E–5.
Docket# ER03–1081, 000, Midwest Independent Transmission System Operator, Inc.

E–6.
Omitted

E–7.
Omitted

E–8.
Docket# ER03–1114, 000, Carville Energy LLC

E–9.
Omitted

E–10.
Omitted

E–11.
Docket# ER03–510, 000, Delta Energy Center, LLC
Other#s ER03–510, 001, Delta Energy Center, LLC

E–12.
Docket# ER03–1038, 000, Florida Power and Light Company
Other#s EC03–104, 000, FPL Energy Seabrook, LLC

E–13.
Docket# ER02–488, 003, Midwest Independent Transmission System Operator, Inc.

E–14.
Omitted

E–15.
Docket# ER01–1807, 011, Carolina Power and Light Company and Florida Power Corporation
Other#s ER01–1807, 012, Carolina Power and Light Company and Florida Power Corporation
ER01–2020, 008, Carolina Power and Light Company and Florida Power Corporation
ER01–2020, 009, Carolina Power and Light Company and Florida Power Corporation

E–16.
Docket# ER02–562, 001, Michigan Electric Transmission Company

E–17.
Docket# TX03–1, 000, Mirant Las Vegas, LLC, Duke Energy Moapa, LLC, Gen West, LLC, Las Vegas Cogeneration II, LLC and Reliant Energy Bighorn LLC
Other#s ER02–1741, 000, Nevada Power Company
ER02–1742, 000, Nevada Power Company
TX03–1, 001, Mirant Las Vegas, LLC, Duke Energy Moapa, LLC, Gen West, LLC, Las Vegas Cogeneration II, LLC and Reliant Energy Bighorn LLC

E–18.
Omitted

E–19.
Docket# EL02–47, 001, Wisconsin Power and Light Company
Other#s EL02–47, 002, Wisconsin Power and Light Company
EL02–52, 001, Wisconsin Power and Light Company

E–20.
Docket# ER99–2854, 003, Entergy Services, Inc.
Other#s ER95–112, 014, Entergy Services, Inc.
ER96–586, 009, Entergy Services, Inc.
EL99–87, 003, Entergy Services, Inc.

E–21.
Docket# RT02–1, 004, Arizona Public Service Company, El Paso Electric Company, Public Service Company of New Mexico and Tucson Electric Power Company
Other#s EL02–9, 002, WestConnect RTO, LLC

E–22.
Omitted

E–23.
Omitted

E–24.
Docket# ER03–367, 001, Soyland Power Cooperative, Inc.

E–25.
Omitted

E–26.
Omitted

E–27.
Omitted

E–28.
Omitted

E–29.
Docket# ER03–574, 001, Midwest Independent Transmission System Operator, Inc.

E–30.
Docket# EL03–9, 001, Alternate Power Source, Inc. v. Western Massachusetts Electric Company and Northeast Utilities System

E–31.
Docket# EL03–127, 001, Commonwealth Edison Company v. Midwest Generation, L.L.C.

E–32.
Omitted

E–33.
Docket# ER03–249, 002, Illinois Power Company

E–34.
Omitted

E–35.
Docket# EL03–16, 001, PPL Electric Utilities Corporation

E–36.
Docket# EL02–122, 001, Sithe Power Marketing, L.P. and Exelon Generation Company, LLC v. ISO New England, Inc.

E–37.
Omitted

E–38.
Docket# ER03–743, 002, Virginia Electric and Power Company
Other#s ER03–743, 001, Virginia Electric and Power Company

E–39.
Docket# EL03–11, 003, Wisvest Connecticut, LLC v. ISO New England, Inc.

E–40.
Docket# EL03–42, 001, Occidental Power Services, Inc. v. PJM Interconnection, L.L.C.

E–41.
Omitted

E–42.
Omitted

E–43.
Docket# EL02–77, 000, Puget Sound Energy, Inc.

E–44.
Docket# EL03–120, 000, Morgan Stanley Capitol Group Inc.

E–45.
Docket# EL03–209, 000, Pinnacle West Energy Corporation v. Nevada Power Company
Other#s EL03–213, 000, Southern Nevada Water Authority v. Nevada Power Company

E–46.
Docket# ER01–1639, 004, Pacific Gas and Electric Company

E–47.
Docket# RT01–1, 000, RTO Informational Filings
Other#s RT01–5, 000, Maine Public Service Company
RT01–11, 000, Baconton Power LLC

RT01–16, 000, SOWEGA Power LLC
RT01–19, 000, Maine Electric Power Company
RT01–30, 000, Florida Keys Electric Cooperative Association, Inc.
RT01–39, 000, Concord Electric Company and Exeter and Hampton Electric Light Company
RT01–61, 000, Northern Maine Independent System Administrator, Inc.
RT01–86, 001, Bangor Hydo-Electric Company, Central Maine Power Company, National Grid USA, Northeast Utilities Services Company, The United Illuminating Company, Vermont Electric Power Company, Inc., and ISO New England Inc.
RT01–89, 000, Citizens Communications Company
RT01–90, 000, Fitchburg Gas and Electric Light Company, Concord Electric Company and Exeter and Hampton Electric Light Company
RT01–94, 001, NSTAR Services Company
RT01–95, 001, New York Independent System Operator, Inc.
RT01–97, 000, Central Vermont Public Service Corporation, Citizens Communications Company, Green Mountain Power Corporation, and Vermont Electric Power Company Inc.
RT01–99, 000, Regional Transmission Organizations
RT01–99, 001, Regional Transmission Organizations
RT02–3, 000, ISO New England Inc. and New York Independent System Operator, Inc.

E–48.
Omitted
E–49.
Docket# PA02–2, 000, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices
E–50.
Docket# PA02–2, 004, Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices
E–51.
Docket# ER03–184, 000 Geysers Power Company, LLC
Other#s ER03–184, 001, Geysers Power Company, LLC
E–52.
Docket# EC03–100, 000, PDI Stoneman, Inc., and Mid-American Power, LLC
E–53.
Docket# ER02–1333, 001, PJM Interconnection, LLC
E–54.
Docket# EL03–28, 000, Town of Wallingford, Connecticut and Connecticut Municipal Electric Energy Cooperative v. Connecticut Light and Power Company, Select Energy, Inc., and Northeast Utilities Service Company

Markets, Tariffs and Rates—GAS

G–1.
Docket# RP96–200, 092, CenterPoint Energy Gas Transmission Company
Other#s RP96–200, 097, CenterPoint Energy Gas Transmission Company
RP96–200, 101, CenterPoint Energy Gas Transmission Company
RP96–200, 102, CenterPoint Energy Gas Transmission Company
RP96–200, 103, CenterPoint Energy Gas Transmission Company
RP96–200, 104, CenterPoint Energy Gas Transmission Company
RP96–200, 105, CenterPoint Energy Gas Transmission Company
RP96–200, 106, CenterPoint Energy Gas Transmission Company
RP96–200, 107, CenterPoint Energy Gas Transmission Company
RP96–200, 108, CenterPoint Energy Gas Transmission Company
RP96–200, 110, CenterPoint Energy Gas Transmission Company
RP96–200, 111, CenterPoint Energy Gas Transmission Company

G–2.
Docket# OR03–4, 000, Plantation Pipe Line Company v. Colonial Pipeline Company
G–3.
Docket# RP03–315, 001, Kern River Gas Transmission Company
G–4.
Omitted
G–5.
Docket# RP98–53, 000, Kinder Morgan Interstate Gas Transmission LLC
Other#s GP98–29, 000, ONEOK Resources Company
G–6.
Docket# RP00–473, 000, Carnegie Interstate Pipeline Company
G–7.
Docket# RP02–393, 000, Columbia Gas Transmission Corporation
G–8.
Omitted
G–9.
Docket# RP00–461, 001, Western Gas Interstate Company
Other#s RP00–461, 002, Western Gas Interstate Company
G–10.
Docket# RP01–503, 003, Natural Gas Pipeline Company of America
Other#s RP01–503, 002, Natural Gas Pipeline Company of America
G–11.
Docket# RP03–258, 003, Iroquois Gas Transmission System, L.P.
G–12.
Omitted
G–13.
Docket# RP00–332, 004, ANR Pipeline Company
Other#s RP00–332, 005, ANR Pipeline Company
RP00–332, 006, ANR Pipeline Company
RP00–597, 003, ANR Pipeline Company
RP03–182, 001, ANR Pipeline Company
G–14.
Docket# GP99–15, 002, Burlington Resources Oil and Gas Company
Other#s RP98–39, 002, Northern Natural Gas Company
SA98–101, 002, Continental Energy
G–15.
Docket# RP03–393, 002, Northern Natural Gas Company
Other#s RP03–393, 003, Northern Natural Gas Company
G–16.
Docket# OR02–6, 001, Sinclair Oil Corporation v. Rocky Mountain Pipeline System, LLC and BP Pipelines (North America), Inc.
G–17.
Docket# RP03–484, 000, The Toca Producers v. Southern Natural Gas Company
Other#s RP01–208, 000, Amoco Production Company, BP Exploration and Oil, Inc., Chevron U.S.A., Inc., Exxon/Mobil Gas Marketing Company and Shell Offshore, Inc.
G–18.
Docket# RP02–23, 000, El Paso Natural Gas Company v. Phelps Dodge Corporation
G–19.
Docket# PR02–14, 001, Bridgeline Gas Distribution LLC
G–20.
Docket# RP03–563, 000, Northern Border Pipeline Company
G–21.
Docket# RP03–564, 000, Dominion Cove Point LNG, LP
RP03–564, 001, Dominion Cove Point LNG, LP

Energy Project—HYDRO

H–1.
Docket# P–460, 021, City of Tacoma, Washington
Other#s P–460, 027, City of Tacoma, Washington
H–2.
Docket# P–2525, 046, Wisconsin Public Service Corporation
Other#s P–2522, 068, Wisconsin Public Service Corporation
P–2560, 042, Wisconsin Public Service Corporation
P–2595, 060, Wisconsin Public Service Corporation
P–2525, 044, Wisconsin Public Service Corporation
P–2525, 051, Wisconsin Public Service Corporation
P–2546, 063, Wisconsin Public Service Corporation
P–2546, 064, Wisconsin Public Service Corporation
P–2546, 068, Wisconsin Public Service Corporation
P–2560, 040, Wisconsin Public Service Corporation
P–2560, 047, Wisconsin Public Service Corporation
P–2522, 066, Wisconsin Public Service Corporation
P–2522, 074, Wisconsin Public Service Corporation
P–2595, 058, Wisconsin Public Service Corporation
P–2595, 065, Wisconsin Public Service Corporation

Energy Projects—Certificates

C–1.
Docket# CP02–430, 001, Saltville Gas Storage Company, L.L.C.
Other#s CP02–430, 002, Saltville Gas Storage Company, L.L.C.
C–2.
Docket# CP03–39 000, Kinder Morgan Interstate Gas Transmission, LLC
C–3.
Docket# CP03–46, 000, Dominion Transmission, Inc. and Texas Eastern Transmission, LP
C–4.

Docket# CP02–4, 005, Northwest Pipeline Corporation
Other#s CP02–4, 006, Northwest Pipeline Corporation

C–5.
Docket# CP03–29, 000, Columbia Gas Transmission Corporation

C–6.
Docket# CP03–41, 000, Dominion Transmission, Inc.
Other#s CP03–43, 000, Texas Eastern Transmission, LP

C–7.
Docket# CP03–57, 000, El Paso Natural Gas Company

C–8.
Docket# CP03–335, 000, Calpine Corporation and Otay Mesa Generating Company, LLC

C–9.
Docket# CP02–374, 000, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
Other#s CP02–374, 001, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
CP02–376, 000, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
CP02–376, 001, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
CP02–377, 000, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
CP02–377, 001, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
CP02–378, 000, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)
CP02–378, 001, Cameron LNG, LLC (formerly d/b/a Hackberry LNG Terminal, L.L.C.)

C–10.
Docket# CP03–65, 000, Columbia Gas Transmission Corporation

C–11.
Docket# CP02–20, 001, Iroquois Gas Transmission System, L.P.

C–12.
Omitted

C–13.
Docket# CP01–153, 005, Tuscarora Gas Transmission Company

C–14.
Docket# CP02–434, 001, ANR Pipeline Company

C–15.
Docket# CP03–295, 000, Clear Fork Pipeline Company

C–16.
Docket# CP01–37, 000, Trans-Union Interstate Pipeline, L.P.
Other#s CP01–37, 001, Trans-Union Interstate Pipeline, L.P.

C–17.
Docket# CP96–248, 011, Portland Natural Gas Transmission System

Magalie R. Salas,

Secretary.

[FR Doc. 03–23117 Filed 9–5–03; 3:59 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons To Attend

September 4, 2003.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 11, 2003; 9:50 a.m.

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries and Enforcement Related Matters.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 502–8400.

Chairman Wood and Commissioners Massey and Brownell voted to hold a closed meeting on September 10, 2003. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public reference Room at 888 First Street, NW., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 03–23118 Filed 9–5–03; 3:59 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7555–8]

Science Advisory Board Staff Office; Announcement of a New Ecological Effects Subcommittee of the Advisory Council on Clean Air Compliance Analysis, a Request for Nominations, and a Request for Comments on the "Short List" Candidates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces the formation of a new subcommittee of the Advisory Council on Clean Air Compliance Analysis (Council), requests nominations of candidates, and requests for comments on the proposed candidates for the "Short List". The Subcommittee will assist the Council in providing advice to the Agency regarding assessments of ecological effects related to the impacts of implementing the Clean Air Act (CAA). The new subcommittee, for which the SAB Staff Office is soliciting nominations, will be called the Ecological Effects Subcommittee (EES).

DATES: Nominations should be submitted no later than September 19, 2003.

Comments on the current or revised "Short List" candidates should be submitted no later than September 29, 2003.

ADDRESSES: Nominations should be submitted in electronic format through the *Form for Nominating Individuals to Panels of the EPA Science Advisory Board* provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar on the SAB Web site, *http://www.epa.gov/sab*. To be considered, all nominations must include the information required on that form. Anyone who is unable to submit nominations via this form may contact Dr. Angela Nugent, Designated Federal Officer (DFO), as indicated below. Information on experts also listed as "Short List" candidates, as described below, should also be submitted to Dr. Nugent.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this notice may contact Dr. Angela Nugent, (DFO), U.S. EPA Science Advisory Board, 1200 Pennsylvania Avenue, NW., (1400A), Washington, DC 20460; by telephone/voice mail at (202) 564–4562, by fax at (202) 501–0323; or via e-mail at *nugent.angela@epa.gov*.

SUPPLEMENTARY INFORMATION: *Summary:* The EPA SAB Staff Office is announcing the formation of a new Subcommittee, the EES of the Council and is soliciting nominations for members. The Subcommittee will assist the Council in providing advice to the Agency on characterizing ecological effects related to the Agency's analyses required under section 312 of the Clean Air Act (CAA) of the impacts of the CAA on the public health, economy, and environment of the United States. The Council is a separately chartered Federal advisory

committee Federal Advisory Committee Act (FACA), as amended (5 U.S.C. App.).

Background: In the past, the Council has relied on a Subcommittee called the Health and Ecological Effects Subcommittee (HEES) to provide advice on assessments of both health and ecological effects used in such analyses. On February 14, 2003, the SAB Staff Office published a **Federal Register** notice (68 FR 7531–7534), requesting nominations for the HEES as well as for another Subcommittee of the Council, the Air Quality Modeling Subcommittee, and for additional expertise needed for the Council itself. Background on the history and mandate given to the Council may be found in the referenced **Federal Register** notice.

On May 29, 2003, the SAB Staff Office published on the SAB website a Memorandum entitled "US EPA Science Advisory Board (SAB) Staff Office's Selection of Experts to Augment the Expertise of the Advisory Council on Clean Air Compliance Analysis to form a Special Council Panel for the Review of the Third 812 Analysis, the Air Quality Modeling Subcommittee, and the Health Effects Subcommittee" (see *http://www.epa.gov/science1/pdf/councilpanelselectionmemo.pdf*) In that memorandum, the Staff Office described its decision to focus the HEES on health effects and to rename it the "Health Effects Subcommittee" (HES).

The SAB Staff Office made the decision regarding the HES and the decision to establish the EES because of the importance of ecological issues to the Council, which noted in its most recent report, *Review of the Draft Analytical Plan for EPA's Second Prospective Analysis—Benefits and Costs of the Clean Air Act 1990–2020,* EPA–SAB–COUNCIL–ADV–01–004, that a "major effort" was needed "to develop credible methods to quantify and monetize the effects of marginal changes in air pollution on ecosystem processes' and to include non-market ecosystem services in future reports.

The general charge to the EES will be to assist the Council in: (a) Reviewing data to be used for any analysis of ecological effects required under section 312 of the CAA; (b) reviewing the methodology used to analyze such data and make recommendations on the use of such methodology; and (c) prior to the issuance of a report to Congress required under section 312 of the CAA, reviewing the findings of the report and make recommendations concerning the validity and utility of such findings. Members of the EES will provide advice to the Agency, through the council, over a two-year period.

The initial charge questions to be addressed by the EES related to the Agency's draft analytical plan are identified below. Expertise needed to address these questions and to meet the general charge to the EES identified in the paragraph immediately above are identified below under the heading "SAB Staff Office Request for Nominations."

Subsequent to the publication of the **Federal Register** notice referenced above, the SAB Staff Office issued another request for nominations on a related but separate advisory topic. This request was entitled "Science Advisory Board; Request for Nominations for Experts for a Panel on Valuing the Protection of Ecological Systems and Services' (68 FR 11082–11084, March 7, 2003). The charge to this new Committee is to assess Agency needs and the state of the art and science of valuing protection of ecological systems and services, and then to identify key areas for improving knowledge, methodologies, practice, and research. This charge includes many of the kinds of issues discussed in the Council Advisory Report for the Agency as a whole. SAB Staff Office decisions relating to the formation of this advisory group, were documented in a memorandum, "US EPA Science Advisory Board (SAB) Committee on Valuing the Protection of Ecological Systems and Services: Description of Process for Forming the Committee," dated August 11, 2003 and posted on the SAB Web site at *http://www.epa.gov/science1/panels/vpesspanel.html*. The Memorandum identifies the members of the Committee, who were selected from a "Short List" of 44 experts chosen from the nearly 150 experts nominated through the SAB Staff Office nomination process announced in the March 7, 2003, **Federal Register** notice.

The SAB Staff Office is issuing this notice in light of three considerations: (1) The February 14, 2003, **Federal Register** Request for Nominations for the Council and its subcommittees already included a request for nominees with expertise in ecosystem effects related to air pollution; (2) the "Short List" of experts resulting from the March 7, 2003, **Federal Register** Request for Nominations that led to the formation of the Committee on Valuing the Protection of Ecological Systems and Services already included ecologists with expertise appropriate for the EES; and (3) the "Short List" of ecological scientists resulting from the March 7, 2003, **Federal Register** notice included the two ecologists identified in response to the February 14, 2003, call. Considering the experts already identified, the SAB Staff Office will derive an initial "Short List" for the EES from the experts in ecology identified from the two previous requests for nominations and is providing the public with a brief final opportunity to provide additional nominations before the EES is formed. The candidates on this initial "Short List" will be posted on the SAB Web site at *http://www.epa.gov/science1/panels/scpanel812heesaqms.htm*.

Initial Charge Questions for the EES: The two initial charge questions to be addressed by the EES relate to the Agency's review document "Benefits and Costs of the Clean Air Act 1990—2020: Revised Analytical Plan For EPA's Second Prospective Analysis' and are identified below:

A. Does the Council support the plans described in chapter 7 for (a) qualitative characterization of the ecological effects of Clean Air Act-related air pollutants, (b) an expanded literature review, and (c) a quantitative, ecosystem-level case study of ecological service flow benefits? If there are particular elements of these plans which the Council does not support, are there alternative data or methods the Council recommends?

2. Initial plans described in chapter 7 reflect a preliminary EPA decision to base the ecological benefits case study on Waquoit Bay in Massachusetts. Does the Council support these plans? If the Council does not support these specific plans, are there alternative case study designs the Council recommends?

Document Availability: Links to EPA's past studies of the costs and benefits of the CAA, and to review material for the Council and its Subcommittees can be found at the following Web site, maintained by EPA's Office of Air and Radiation at: *http://www.epa.gov/oar/sect812/*. A link to the review document "Benefits and Costs of the Clean Air Act 1990–2020: Revised Analytical Plan For EPA's Second Prospective Analysis' can be found at *http://www.epa.gov/air/sect812/mainbody51203.pdf*.

SAB Staff Office Request for Nominations: Any interested person or organization may nominate qualified individuals for membership on the EES. Individuals should have expertise in one or more of the following areas: (a) *Ecosystem Effects Related to Air Pollution,* and (b) *Assessment of Ecological Effects for Benefits Analyses.*

Process and Deadline for Submitting Nominations or for Submitting Information: Any interested person or organization may nominate qualified individuals to serve as subcommittee members in the areas described above. The nominating form requests contact

information about the person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's resume; and a general biosketch of the nominee indicating education, expertise, past research, recent service on other advisory committees or with professional associations, and recent grant and/or contract support.

Anyone who is unable to submit nominations through the SAB website, or has questions concerning any aspect of the nomination process, may contact Dr. Angela Nugent as indicated above in this FR notice. Nominations should be submitted in time to arrive no later than September 19, 2003.

The EPA Science Advisory Board Staff Office will acknowledge receipt of any nominations received. From the nominees identified by respondents to this **Federal Register** notice and through other sources (termed the "Widecast"), SAB Staff Office will determine whether individuals will need to be added to the existing "Short List" of candidates to be considered for the EES. Criteria used by the SAB Staff Office in developing this "Short List" are given at the end of the following paragraph. The SAB Staff Office will contact individuals who are considered for inclusion in the "Short List" to determine whether they are willing to serve on the Subcommittee. Any revisions to the "Short List" will be posted on the SAB Web site at: *http://www.epa.gov/sab,* and will include, for each candidate, the nominee's name and their biosketch. The revised "Short List" also will be available from Dr. Nugent at the address listed above.

The public is requested to provide to the DFO information, documentation, or analysis about individuals listed on the "Short List" of candidates for the EES posted on the SAB Web site. The SAB Staff Office will consider this information in making the selection of subcommittee members. The public is requested also to provide additional nominations for the Subcommittee following the procedures identified below.

For the EPA SAB, a balanced committee, subcommittee, or panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public responses to the "Short List" candidates will be considered in the selection of the Subcommittee members, along with information provided by candidates and information gathered by EPA SAB Staff Office independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating individual nominees include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in committees.

Those "Short List" candidates ultimately chosen to serve on the Subcommittee will be appointed as Special Government Employees. Therefore, all "Short List" candidates will be required to fill out the "Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency" (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities as a Special Government Employee and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.*

Dated: August 27, 2003.

Vanessa T. Vu,

Director, EPA Science Advisory Board Staff Office.

[FR Doc. 03–22933 Filed 9–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7555–4]

National Environmental Justice Advisory Council; Notice of Charter Renewal

AGENCY: Environmental Protection Agency.

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's (EPA) National Environmental Justice Advisory Council (NEJAC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. II section 9(c). The purpose of the NEJAC is to provide advice and recommendations to the Administrator on issues associated with integrating environmental justice concerns into EPA's outreach activities, public policies, science, regulatory, enforcement, and compliance decisions.

It is determined that NEJAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Charles Lee, NEJAC Designated Federal Officer, U.S. EPA, (mail code 2201A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

Dated: August 27, 2003.

Barry E. Hill,

Director, Office of Environmental Justice, Office of Enforcement and Compliance Assurance.

[FR Doc. 03–22931 Filed 9–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7556–9]

Science Advisory Board Staff Office Advisory Council on Clean Air Compliance Analysis; Special Council Panel for the Review of the Third 812 Analysis; Notification of Two Upcoming Public Teleconferences

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Science Advisory Board Staff Office is announcing two public teleconference meetings of the Advisory Council on Clean Air Compliance Analysis Special Council Panel for the Review of the Third 812 Analysis (Panel).

DATES: *September 23, 2003.* A public teleconference meeting for the Council Panel will be held from 12 p.m. on September 23, 2003 to 1:30 p.m.

September 24, 2003. A public teleconference meeting for the Council Panel will be held from 12 p.m. on September 23, 2003 to 1:30 p.m.

ADDRESSES: Participation in the teleconference meeting will be by teleconference only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to obtain the call-in number and access code to participate in the teleconference meeting may contact Ms. Sandra Friedman, EPA Science Advisory Board Staff, at telephone/voice mail: (202) 564–2526; or via e-mail at: *friedman.sandra@epa.gov,* or Ms.

Delores Darden, EPA Science Advisory Board Staff at telephone/voice mail: (202) 564–2282; or via e-mail at *darden.delores@epa.gov*. Any member of the public wishing further information regarding the Council Special Panel may contact Dr. Angela Nugent, Designated Federal Officer (DFO), U.S. EPA Science Advisory Board (1400A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; by telephone/voice mail at (202) 564–4562; or via e-mail at *nugent.angela@epa.gov*. General information about the SAB can be found in the SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, Notice is given that the Council Special Panel will hold two public teleconference meetings, as described above, to advise the Agency on its plan to develop the third in a series of statutorily mandated comprehensive analyses of the total costs and benefits of programs implemented pursuant to the Clean Air Act.

Background on the Council Special Panel and this advisory project was provided in a **Federal Register** notice published on February 14, 2003 (68 FR 7531–7534).

The Council Special Panel will be providing advice on the review document, "Benefits and Costs of the Clean Air Act 1990–2020; Revised Analytical Plan for EPA's Second Prospective Analysis' currently found at the following website, maintained by EPA's Office of Air and Radiation at: *http://www.epa.gov/oar/sect812/* under the link "Study Blueprint and Charge Questions Electronic Copy." This link provides electronic access to the Revised Analytical Plan, the "change pages" given to the Council in July 2003, and the detailed review charge questions.

Procedures for Providing Public Comment. It is the policy of the EPA Science Advisory Board (SAB) Staff Office to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA SAB Staff Office expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For conference call meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Interested parties should contact the Designated Federal Official (DFO) at least one week prior to the meeting in order to be placed on the public speaker list for the meeting. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the participants and public at the meeting.

Written Comments: Although written comments are accepted until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Accommodations: Individuals requiring special accommodation to access these meetings, should contact Dr. Nugent at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: September 5, 2003.

A. Robert Flaak,

Acting Deputy Director for Management, EPA Science Advisory Board Staff Office.

[FR Doc. 03–23052 Filed 9–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. OW–2003–0071; FRL–7555–6]

Availability of Decision on Petition for Rulemaking To Repeal Regulation Related to Ballast Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of EPA decision document.

SUMMARY: This notice announces the availability of EPA's Decision Documenton on a petition for rulemaking seeking repeal of a regulation that excludes vessel ballast water discharges from Clean Water Act permit requirements. Today's notice makes that Decision Document publicly available and announces EPA's denial of the petition.

DATES: EPA's Acting Administrator signed the Decision Document on September 2, 2003. For judicial review purposes, this action is final as of 1 p.m. (eastern time) on Tuesday, September 9, 2003, as provided at 40 CFR 23.2.

ADDRESSES: The administrative record is available for inspection and copying at the Water Docket, located at the EPA Docket Center in the basement of the EPA West Building, Room B–102, at 1301 Constitution Avenue., NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ruby Cooper, U.S. EPA, Office Of Water, by phone at 202–564–0757 or by e-mail at *cooper.ruby@epa.gov*.

SUPPLEMENTARY INFORMATION:

A. How Can I Get Copies of the Document and other Related Information?

1. Electronic Copies : EPA's decision on the petition for rulemaking can be downloaded at *http://www.epa.gov/npdes;* once at this location, click on "Recent Additions'.

2. Docket: EPA has established an official public docket for this action under Docket ID No. OW–00–16. The official public docket consists of the documents specifically referenced in this action, any public comments received and other information related to this action. The official public docket is the collection of materials that is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

3. Electronic Access: You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http:///www.epa.gov/fedrgstr/*. An electronic version of the public docket is available through EPA's electronic public docket and comment system EPA Dockets. You may use EPA Dockets at *http://www.epa.gov.edocket/* to view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search", then key in the appropriate docket identification number, which for this record is OW–2003–0071.

Dated: September 2, 2003.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 03–22935 Filed 9–8–03; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7555–7]

Proposed National Pollutant Discharge Elimination System (NPDES) Storm Water General Permits for Small Municipal Separate Storm Sewer Systems (MS4s) in New Mexico, Indian Country Lands in New Mexico and Indian Country Lands in Oklahoma and Preliminary Designation Decisions for Small MS4s Outside Urbanized Areas in New Mexico; Notice

AGENCY: Environmental Protection Agency (EPA), Region 6.

ACTION: Notice of availability for comment.

SUMMARY: The Director of the EPA Region 6 Water Quality Protection Division is proposing to issue National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges from small municipal separate storm sewer systems (MS4s) located in the State of New Mexico, Indian Country Lands in New Mexico, and Indian Country Lands in Oklahoma. The proposed general permits would authorize the discharge of storm water and certain non-storm water discharges from municipal separate storm sewers. NPDES permit coverage for these discharges is required in accordance with section 402(p) of the 1987 Amendments to the Clean Water Act (CWA) (33 U.S.C. 1342(p)) and EPA regulations. To obtain discharge authorization, operators of MS4s would be required to submit a Notice of Intent (NOI) to be covered by the proposed general permit. The NOI would need to include storm water management program information describing the best management practices (BMPs) which the permittee will implement to control pollutants in the discharges in accordance with the requirements of the CWA and measurable goals for their implementation. In accordance with 40 CFR 122.34(a), the operator would have up to five years to develop and fully implement the storm water management program. The initial storm water management program submittal would likely consist of a combination of ongoing activities and schedules for developing and implementing additional activities to comply with the permit. Annual reporting would also be required to provide information on the status of the implementation of the storm water management program. This Notice announces the availability of the proposed general permits and fact sheet for public comment. Note that while the proposed general permits are structured as a single permit, and may be collectively referred to in the singular as the permit, they are actually three legally distinct permits each covering a different geographical area.

Each of the legally separate and distinctly numbered proposed permits covers one of the areas listed in the table below. Parts 1–7 of the proposed general permit and the Appendices are common to all of the permits, while Part 8 of the permit contains the State, Indian Country Land or other area-specific conditions that make each of the permits unique. The proposed general permits will cover areas within Region 6 where a State or Tribal permitting program has not been authorized under section 402(b) of the CWA. Indian Country includes all lands within Indian reservations, all dependent Indian communities, and Indian allotments. In Oklahoma it also includes lands held in trust for the benefit of Tribes. At this time, no regulated MS4s under EPA jurisdiction are located in Arkansas, Louisiana, or Texas, so permits for these areas are not being proposed by Region 6. Most MS4s in Arkansas, Louisiana, Oklahoma, and Texas are regulated by NPDES-authorized State programs.

PERMIT AREAS

Permit No.	Areas of coverage
OKS040001	Indian Country Lands within the State of Oklahoma.
NMS040001	Indian Country lands within the State of New Mexico, except Navajo Reservation lands and Ute Mountain Ute Reservation lands (permitted by EPA Regions 9 and 8, respectively).
NMS040000	The State of New Mexico, except Indian Country Lands.

This notice also announces the availability for public comment of the preliminary results of the Region's review of those New Mexico small MS4s with a population of between 10,000 and 50,000 and a population density of 1,000 or more per square mile that are located outside a Urbanized Area for possible designation as a regulated small MS4 (see 40 CFR 123.35(b)). Although EPA is not required to do so, EPA is inviting and will consider comments it receives regarding the small MS4 designation review.

DATES: The public comment period for the proposed general permits is 45 days starting from the date of today's notice. Interested parties may submit comments on the proposed general permits to EPA Region 6 at the address below, no later than October 24, 2003. Any comments received by EPA Region 6 and EPA's response to these comments will become part of the administrative record for these general permits. The general permits will be effective on the date specified in the final general permit notice that will be published in the **Federal Register** and will expire five years from the effective date of the final permit.

Comments on the small MS4 designation review process or preliminary decisions must be submitted by October 24, 2003, to the same address.

ADDRESSES: Comments on the proposed general permits should be sent to Docket No. 6WQ–03–SW01, Attn: Ms. Diane Smith, EPA Region 6, Water Quality Protection Division (6WQ–CA), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted in electronic format (Wordperfect 9, MS Word 2000, or ASCII Text formats only, avoiding use of special characters) to the above address or via e-mail to *smith.diane@epa.gov*. No facsimiles (faxes) will be accepted. Comments on the designation review process or preliminary decisions must reference "MS4 Designation Review."

Public Meeting Information

EPA Region 6 will be holding two informal public meetings which will include a presentation on the proposed general permits and a question and answer session. Advance notice of the times and dates for these meetings was provided in the Albuquerque Journal and the Daily Oklahoman newspapers on August 9, 2003, and via EPA's Web site at *http://www.epa.gov/region6/6wq/npdes/sw/hot/index.htm*. Because informal public meetings accommodate group discussion and question and answer sessions, public meetings have been used for many storm water general permits and appear to be more valuable than formalized public hearings in helping the public understand a proposed storm water general permit and in identifying the issues of concern. Written, but not oral, comments for the administrative record will be accepted at the public meetings. Written comments generated from what was learned at a public meeting (or from

discussion with someone who did attend) may also be submitted any time up to the end of the comment period.

Albuquerque, NM—September 11, 2003 @ 1 p.m.

Albuquerque Technical Vocational Institute, Workforce Training Center, Conference Rooms 101 & 103, 5600 Eagle Rock Ave, NE., Albuquerque, NM 87113.

Oklahoma City, OK—September 15, 2003 @ 1 p.m.

Metro Tech Conference Center, Auditorium, 1900 Springlake Drive, Oklahoma City, OK 73111.

Requests for a Public Hearing

Interested persons may also request a public hearing pursuant to 40 CFR 124.11 concerning the proposed general permit. Requests for a public hearing must be sent or delivered in writing to the same address for comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12(a), the Regional Administrator will hold a public hearing if he finds, on the basis of requests, a significant degree of public interest in the proposed permit(s). If the Regional Administrator decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed general permits at the public hearing.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the proposed general permits and preliminary designation decisions may be obtained from Ms. Terry Branch at 214–665–6667 or *branch.terry@epa.gov* or Ms. Diane Smith at 214–665–2145 or *smith.diane@epa.gov*. The mail address for both Ms. Branch and Ms. Smith is EPA Region 6, Customer Assistance Branch (6WQ–CA), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.

SUPPLEMENTARY INFORMATION: The proposed general permits and fact sheet, which also includes information on preliminary small MS4 designation decisions, may be obtained from the Internet via the EPA-Region 6 Web site at *http://www.epa.gov/region6/6wq/npdes/sw/ms4/index.htm*. The proposed general permits are accompanied by a fact sheet which sets forth principal facts and the significant factual, legal, and policy questions considered in the development of the proposed general permits. To obtain a hard copy of these documents or any other information in the administrative record, please contact Ms. Diane Smith or Ms. Terry Branch. Contact information is provided in the **ADDRESSES** section above. A reasonable fee may be charged for copying requests. When the final general permits are issued, notice will be published in the **Federal Register**. The final general permits will be effective on the date specified in the **Federal Register** and will expire five years from that date.

Paperwork Reduction Act: This action does not impose any new information collection burden. These general permits do not impose any information collection requirements beyond those required by EPA regulations (40 CFR 122.26, 122.28, 122.30–.37, 122.41, and 122.48). However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in these regulations under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2040–0211, EPA ICR number 1820.03. A copy of each OMB approved Information Collection Request (ICR) may be obtained from the Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460, (202) 566–1672. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Executive Order 12866: Under Executive Order 12866 (58 FR 51735, October 4, 1993) an agency must determine whether its regulatory action is "significant" and therefore subject to OMB review and the requirements of Executive Order 12866. This Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OMB has waived review of NPDES general permits under the terms of Executive Order 12866.

Regulatory Flexibility Act (RFA): Issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed rulemaking, under 5 U.S.C. 553 (Administrative Procedure Act) or any other law, and is thus not subject to the RFA requirement to prepare a regulatory flexibility analysis. The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *" APA section 551(4). Its definition of "order" is residual: "a final disposition * * * of an agency in a matter other than rule making but including licensing." APA section 551(6). The APA defines "license" to "include * * * an agency permit * * *" APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes "rule making" requirements. The APA defines "rule making" as "the agency process for formulating, amending, or repealing a rule." APA section 551(5). By its terms, then, section 553 applies only to "rules" and not also to "orders," which include permits.

Unfunded Mandates Reform Act: Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, *e.g.*, UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to

the extent that such regulations incorporate requirements specifically set forth in law).") UMRA section 102 defines "regulation" by reference to 2 U.S.C. 658 which in turn defines "regulation" and "rule" by reference to section 601(2) of the RFA. That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the APA], or any other law * * *." As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on proposed general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules."

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: September 2, 2003.

Oscar Ramirez, Jr.,

Acting Director, Water Quality Protection Division, Region 6.

[FR Doc. 03–22934 Filed 9–8–03; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Sunshine Act Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on September 11, 2003, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—August 14, 2003 (Open and Closed)

B. Reports

- Trends in Corporate Governance
- Corporate/Non-corporate Approvals Report
- FCS Building Association Quarterly Report
- Financial Institution Rating System (FIRS)—Earnings Discussion
- FCA's Interagency Agreements with SBA and USDA

C. New Business—Other

- Fall 2003 Unified Agenda/FY 2004 Regulatory Performance Plan Approval
- FY 2004/2005 Budget Approvals

Closed Session *

New Business

- OSMO Quarterly Report

Dated: September 5, 2003.

Jeanette C. Brinkley,

Secretary, Farm Credit Administration Board.

[FR Doc. 03–23013 Filed 9–5–03; 11:10 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

August 26, 2003.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 9, 2003. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kim A. Johnson, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via the Internet at *Kim_A._Johnson@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0748.

Title: Section 64.1504, Disclosure Requirements for Information Services Provided Through Toll-Free Numbers.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 3,750.

Estimated Time per Response: 2–5 hours.

Frequency of Response: Annual and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 10,500 hours.

Total Annual Cost: None.

Needs and Uses: 47 CFR Section 64.1504 incorporates in the Commission's Rules, the requirements of Sections 228(c)(7)–(10) that restrict the manner in which toll-free numbers may be used to charge telephone subscribers for information services. Common carriers must prohibit the use of toll-free numbers in a manner that would result in the calling party being charged for information conveyed during the call, unless the calling party (1) has executed a written agreement that specifies the material terms and conditions under which the information is provided, or (2) pays for the information by means of a prepaid account, credit, debit, charge, or calling card and the information service provider includes in response to each

* Session Closed-Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9).

call an introductory message disclosing specified information detailing the cost and other terms and conditions for the service. The disclosure requirements are intended to ensure that consumers know when charges will be levied for calls to toll-free numbers and are able to obtain information necessary to make informed choices about whether to purchase toll-free information services.

OMB Control No.: 3060–0749.

Title: Section 64.1509, Disclosure and Dissemination of Pay-Per-Call Information.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 25 respondents.

Estimated Time per Response: 410 hours.

Frequency of Responses: Annual and on occasion reporting requirements; Third party disclosure.

Total Annual Burden: 10,250 hours (multiple responses).

Total Annual Cost: None.

Needs and Uses: Common carriers that assign telephone numbers to pay-per-call services must disclose to all interested parties, upon request, a list of all assigned pay-per-call numbers. For each assigned number, carriers must also make available (1) a description of the pay-per-call services; (2) the total cost per minute or other fees associated with the service; and (3) the service provider's name, business address, and telephone number. In addition, carriers handling pay-per-call services must establish a toll-free number that consumers may call to receive information about pay-per-call services. Finally, the Commission requires carriers to provide statements of pay-per-call rights and responsibilities to new telephone subscribers at the time service is established and, although not required by statute, to all subscribers annually.

OMB Control Number: 3060–0752.

Title: Section 64.1510, Billing Disclosure Requirements for Pay-Per-Call and Other Information Services.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,350.

Estimated Time per Response: 10–40 hours.

Frequency of Response: Annual reporting requirement; Third party disclosure.

Total Annual Burden: 27,000 hours.

Total Annual Cost: None.

Needs and Uses: Under 47 CFR Section 64.1510, telephone bills containing charges for interstate pay-per-call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges. Specifically, telephone bills carrying pay-per-call charges must include a consumer notification stating that (1) the charges are for non-communication services; (2) local and long distance telephone services may not be disconnected for failure to pay per-call charges; (3) pay-per-call (900 number) blocking is available upon request; and (4) access to pay-per-call services may be involuntarily blocked for failure to pay per-call charges. In addition, each call billed must show the type of services, the amount of the charge, and the date, time, and duration of the call. Finally, the bill must display a toll-free number which subscribers may call to obtain information about pay-per-call services. Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a collect basis or accessed by subscribers through a toll-free number. The billing disclosure requirements are intended to ensure that telephone subscribers billed for pay-per-call or other information services can understand the charges levied and are informed of their rights and responsibilities with respect to payment of such charges.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 03–22792 Filed 9–8–03; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:18 a.m. on Friday, September 5, 2003, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director James E. Gilleran (Director, Office of Thrift Supervision), seconded by Vice Chairman John M. Reich, concurred in by Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: September 5, 2003.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 03–23088 Filed 9–5–03; 3:09 pm]

BILLING CODE 6714–01–M

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY: Federal Maritime Commission.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 68 FR 52770.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., September 11, 2003.

Correction

The wording of the Title for Item 1 was incorrect it should read:

1. Fact Finding Investigation No. 25—Practices of Transpacific Stabilization Agreement Members Covering the 2002–2003 Service Contract Season and Section 15 Responses from TSA and Carriers Operating in the Inbound Transpacific Trades.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, (202) 523–5725.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 03–23116 Filed 9–5–03; 3:40 pm]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its

approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board– approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–I's and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request For Comment on Information Collection Proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before November 10, 2003.

ADDRESSES: Comments may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e– mail to *regs.comments@federalreserve.gov*, or faxing them to the Office of the Secretary at 202–452–3819 or 202–452–3102. Members of the public may inspect comments in Room MP–500 between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to 261.12, except as provided in 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

A copy of the comments may also be submitted to the OMB desk officer for the Board: Joseph Lackey, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Cindy Ayouch, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Report:

1. Report title: Monthly Report of Traveler's Checks Outstanding

Agency form number: FR 2054

OMB control number: N/A

Frequency: Monthly

Reporters: Nonbank issuers of travelers checks in the United States

Annual reporting hours: 84 hours

Estimated average hours per response: 1 hour

Number of respondents: 7

General description of report: This information collection is voluntary (12 U.S.C. 353 et seq.) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The report collects the month–end total amount outstanding of dollar– denominated traveler's checks issued by seven major nonbank issuers. The Federal Reserve uses these data in the computation of the nonbank traveler's check component of the monetary aggregates.

Proposal to Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Reports:

1. Report title: The Government Securities Dealers Reports: The Weekly Report of Dealer Positions (FR 2004A), The Weekly Report of Cumulative Dealer Transactions (FR 2004B), The Weekly Report of Dealer Financing and Fails (FR 2004C), The Weekly Report of Specific Issues (FR 2004SI), The Daily Report of Specific Issues (FR 2004SD), and The Daily Report of Dealer Activity in Treasury Financing (FR 2004WI).

Agency form number: FR 2004

OMB control number: 7100–0003

Frequency: Weekly, Daily

Reporters: Primary dealers in the U.S. government securities market

Annual reporting hours: 12,342 hours

Estimated average hours per response: FR 2004A, 1.5 hours; FR 2004B, 2 hours; FR 2004C, 1.25 hours; FR 2004SI, 2 hours; FR 2004SD, 2 hours; FR 2004WI, 1 hour.

Number of respondents: 22

General description of report: This information collection is voluntary (12 U.S.C. 248 (a)(2), 353–359, and 461(c)); however, primary dealers are expected to file the report with the Federal Reserve. Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (b)(8)).

Abstract: The FR 2004A collects data as of Wednesday of each week on dealers' outright positions in Treasury and other marketable debt securities. The FR 2004B collects data cumulated for the week ended Wednesday on the volume of transactions made by dealers in the same instruments for which positions are reported on the FR 2004A. The FR 2004C collects data as of Wednesday of each week on the amounts of dealer financing and fails. The FR 2004SI collects data as of Wednesday of each week on outright, financing, and fails positions in current or on–the–run issues. Under certain circumstances the FR 2004SI data can also be collected on a daily basis for on–the–run and off–the–run securities. The FR 2004WI collects daily information on a next–business–day basis on positions in to–be–issued Treasury coupons securities, mainly the trading on a when–issued delivery basis.

Current actions: The Federal Reserve proposes to make the following modifications to the reporting series: 1) delete the columns for cumulative weekly volume and average weekly rates for repurchase agreements on the FR 2004C, 2) include a new column, FRBNY Security ID, on the FR 2004SI,

3) formalize the collection of the FR 2004SI daily data in the new reporting form, FR 2004SD, 4) publish all data collected on the FR 2004C, (5) change the data submission schedule to be uniform across the four weekly reports, and (6) adjust row and column headings to be uniform across reports and to more clearly identify the data to be reported. The revised reporting forms would be implemented as of January 7, 2004.

Board of Governors of the Federal Reserve System, September 3, 2003.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 03–22850 Filed 9–8–03; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Sunshine Meeting; Notice

AGENCY: Board of Governors of the Federal Reserve System.

TIME AND DATE 12 noon, Monday September 15, 2003.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 5, 2003.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 03–23087 Filed 9–5–03; 3:09 pm]

BILLING CODE 6210–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act; Meeting

DATE: Weeks of September 8, 15, 22, 29, October 6, 13, 2003.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 8, 2003

Wednesday, September 10, 2003

1 p.m.—Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: John Zabko, 301–415–2308)

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

3 p.m.—Discussion of Security Issues (Closed—Ex. 1).

Thursday, September 11, 2003

1:30 p.m.—Discussion of Security Issues (Closed—Ex. 1).

Week of September 15, 2003—Tentative

There are no meetings scheduled for the Week of September 15, 2003.

Week of September 22, 2003—Tentative

Wednesday, September 24, 2003

9 a.m.—Briefing on Emergency Preparedness Program Status (Public Meeting) (Contact: Eric Weiss, 301–415–3264).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Thursday, September 25, 2003

9 a.m.—Meeting with Nuclear Reactor Industry on Security Force Work Hour Limitations (Public Meeting).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

9:30 a.m.—Discussion of Security Issues (Closed—Ex. 1).

Week of September 29, 2003—Tentative

Thursday, October 2, 2003

9:30 a.m.—Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) Contact: John Larkins, 301–415–7360).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of October 6, 2003—Tentative

Tuesday, October 7, 2003

1:30 p.m.—Discussion of Management Issues (Closed—Ex. 2).

Week of October 13, 2003—Tentative

Wednesday, October 15, 2003

1:30 p.m.—Briefing on License Renewal Program, Power Update Activities, and High) Priority Activities (Public Meeting) (Contact: Jimi Yerokun, (301) 415–2292).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David louis Gamberoni (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: September 4, 2003.

R. Michelle Schroll,

Information Management Specialist, Office of the Secretary.

[FR Doc. 03–23015 Filed 9–5–03; 11:47 am]

BILLING CODE 7590–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Meeting and Request for Public Comment: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Public Law 92–463, notice is hereby given of the second meeting of the Secretary's Advisory Committee on Genetics, Health, and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 9 a.m. to 5 p.m. on October 22, 2003 and 8:30 a.m. to 5 p.m. on October 23, 2003 at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, Washington, DC. The meeting will be open to the public with attendance limited to space available.

On the first day of the meeting, the Committee will review the roles, activities, and plans of the Federal regulatory agencies with regard to the oversight of genetic technologies, including pharmacogenomic

technologies, to determine whether further study of this area is warranted. Program officials from the Food and Drug Administration, Centers for Medicare & Medicaid Services, Centers for Disease Control and Prevention, and Federal Trade Commission will brief the Committee about current and planned regulatory approaches with respect to genetic technologies. On the second day, the Committee will review Federal efforts to address the adequacy of the genetics workforce and the education and training of health professionals in genetics. Reports will also be provided on the efforts of professional societies and organizations to enhance the preparedness of health professionals in genetics. The Committee will also hold a session on related international activities at which representatives of the Human Genetics Commmission of the United Kingdom and the Australian Law Reform Commission will report on their countries' efforts to address emerging issues by advances in genetic technologies. Under authority of 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic technologies and, as warranted, to provide advice on these issues.

SACGHS welcomes receiving comments from the public on any issues related to its mandate. For the October meeting in particular, the Committee would welcome public comment on: (1) The adequacy of the education and training of health professionals in genetics and the genetics workforce and whether current efforts to prepare health professionals to use genetic technologies are adequate and, if not, what the gaps are and how should they be addressed; and (2) the role, current activities, and plans of the Federal regulatory agencies to assure the safety and appropriate marketing of genetic tests. Written comments submitted to the Committee by October 1, 2003 will be considered part of the Committee's deliberations. Time will also be provided during the meeting for public commentary. Written public commments should be submitted by mail, email, or fax to the following: Edward R.B. McCable, M.D., Ph.D., Chair, Secretary's Advisory Committee on Genetics, Health and Society, c/o NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, (301) 496–9839 (fax), *sell2c@nih.gov*.

Members of the public who wish to make a statement to the Committee during the meeting should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at (301) 496–9838 or e-mail at *sc112c@nih.gov*.

The draft meeting agenda and other information about SACGHS will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm*. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, are asked to notify Ms. Carr in advance of the meeting by contacting her at the phone number or e-mail address listed above.

Dated: August 27, 2003.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22829 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Secretary's Council on Public Health Preparedness; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is given of a meeting of the Secretary's Council on Public Health Preparedness.

The purpose of this public meeting is to convene the Council to discuss issues related to preparing the nation to respond to public health emergencies in general and bioterrorism in particular. Major areas to be considered by the Council at this meeting may include the following: SARS; Smallpox Vaccination Program; Monkeypox; State and Local Programs including Hospital Programs; R&D Initiatives including Bioshield; and Modeling Initiatives.

Name of Committee: Secretary's Council on Public Health Preparedness.

Date: September 22–23, 2003.

Time: September 22 9 a.m.–6 p.m.; September 23 9 a.m.–3 p.m.

Place: Sheraton National Hotel Arlington, Columbia Pike & Washington Blvd., 900 South Orme Street, Arlington, Virginia 22204, Telephone: (703) 521–1900.

Contact Person: Dr. Judy Blumenthal, Executive Director, Secretary's Council on Public Health Preparedness, Office of the Assistant Secretary for Public Health Emergency Preparedness, 200 Independence Avenue, SW., Room 638G, Washington, DC 20201, 202–401–4848.

SUPPLEMENTARY INFORMATION: The Secretary's Council on Public Health Preparedness was established on October 22, 2001, by the Secretary of Health and Human Services under the authorization of section 319 of the Public Health Service Act (42 U.S.C. 247d); section 222 of the Public Health Service Act (42 U.S.C. 217a). The purpose of the Secretary's Council on Public Health Preparedness will be to advise the Secretary on appropriate actions to prepare for and respond to public health emergencies including acts of bioterrorism. The function of the Council is to advise the Secretary regarding steps that the U.S. Department of Health and Human Services can take to (1) improve the public health and health care infrastructure to better enable Federal, State, and local governments to respond to a public health emergency and, specifically, a bio-terrorism event; (2) ensure that there are comprehensive contingency plans in place at the Federal, State, and local levels to respond to a public health emergency and, specifically, a bio-terrorism event; and (3) improve public health preparedness at the Federal, State, and local levels.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first served basis. Members of the public who wish to attend the meeting may register by e-mailing *publichealth@iqsolutions.com* no later than close of business, Monday, September 15, 2003. All requests should include the name, address, telephone number, and business or professional affiliation of those registering.

Opportunities for oral statements by the public will be provided on Tuesday, September 23, 2003, at approximately 11:30 a.m. Oral comments will be limited to 5 minutes, three minutes to make a statement and two minutes to respond to questions from Council members. Due to time constraints, only one representative from each organization will be allotted time for oral testimony. The number of speakers and the time allotment may also be limited by the number of registrants. Members of the public who wish to present oral comments at the meeting may register by e-mailing *publichealth@iqsolutions.com* no later than close of business, Monday, September 15, 2003. All requests to present oral comments should include the name, address, telephone number, and business or professional affiliation of the interested party, and should indicate the areas of interest or issue to be addressed.

Any person attending the meeting who has not registered to speak in advance of the meeting will be allowed to make a brief oral statement during the time set aside for public comment if time permits and at the Chairperson's discretion. Individuals unable to attend the meeting, or any interested parties, may send written comments by e-mail to *publichealth@iqsolutions.com* for inclusion in the public record no later close of business, Monday, September 15, 2003.

When mailing written comments, please provide your comments, if possible, as an electronic version or on a diskette. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact staff at the address and telephone number listed above no later than close of business, Monday, September 15, 2003.

Because of the need to provide advice and recommendations on bioterrorism, this notice is being published at the earliest possible time.

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22830 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS) Board of Scientific Counselors (BSC)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), NCHS announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Health Statistics.

Times and Dates: 2 p.m.–5:40 p.m., October 9, 2003. 8:30 a.m.–5:30 p.m., October 10, 2003.

Place: National Center for Health Statistics, Conference Rooms 1403A and 1405B, 3311 Toledo Road, Hyattsville, Maryland 20782.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Purpose: The committee is charged with providing advice and recommendations to the Secretary, HHS; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

Matters to be Discussed: The meeting on October 9 will be devoted to orientation of new members. The orientation provides background information on procedures for new committee members. Although members of the public may attend, the orientation is not part of the public meeting.

The agenda for the meeting on October 10 will include welcome remarks by the Director, NCHS; introductions of members and key NCHS staff; scientific presentations and discussions; and an open session for comments from the public.

Requests to make an oral presentation should be submitted in writing to the contact person listed below by close of business, October 3, 2003. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and should be received by the contact person listed below by close of business, October 3, 2003.

Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Linda Blankenbaker, Executive Secretary, National Center for Health Statistics, Office of the Director, 3311 Toledo Road, Room 7204, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4020.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 29, 2003.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 03–22885 Filed 9–8–03; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0050]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Investigational Device Exemptions Reports and Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Investigational Device Exemptions Reports and Records" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 16, 2003 (68 FR 35677), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0078. The approval expires on August 31, 2006. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets.*

Dated: September 3, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22901 Filed 9–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0229]

Agency Emergency Processing Under Office of Management and Budget Review; Guidance for Industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under the Prescription Drug User Fee Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by September 15, 2003.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). This information is needed immediately, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry on Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA

FDA is requesting OMB approval under the PRA (44 U.S.C. 3507) for the reporting and recordkeeping requirements contained in the guidance for industry entitled "Continuous Marketing Applications: Pilot 2—Scientific Feedback and Interactions During Development of Fast Track Products Under PDUFA." This guidance discusses how the agency will implement a pilot program for frequent scientific feedback and interactions between FDA and applicants during the investigational phase of the development of certain Fast Track drug and biological products. Applicants are being asked to apply to participate in the Pilot 2 program.

In conjunction with the June 2002 reauthorization of the Prescription Drug User Fee Act of 1992 (PDUFA), FDA agreed to meet specific performance goals (PDUFA Goals). The PDUFA Goals include two pilot programs to explore the continuous marketing application (CMA) concept. The CMA concept builds on the current practice of interaction between FDA and applicants during drug development and application review and proposes opportunities for improvement.

Under the CMA pilot program, Pilot 2, certain drug and biologic products that have been designated as Fast Track (i.e., products intended to treat a serious and/or life-threatening disease for which there is an unmet medical need) are eligible to participate in the program. Pilot 2 is an exploratory program that will allow FDA to evaluate the impact of frequent scientific feedback and interactions with applicants during the investigational new drug application (IND) phase. Under the pilot program, a maximum of one Fast Track product per review division in the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) will be selected to participate. This guidance provides information regarding the selection of participant applications for Pilot 2, the formation of agreements between FDA and applicants on the IND communication process, and other procedural aspects of Pilot 2. FDA will begin accepting applications for participation in Pilot 2 on October 1, 2003.

The guidance describes one collection of information: Applicants who would like to participate in Pilot 2 must submit an application (Pilot 2 application) containing certain information outlined in the guidance. The purpose of the Pilot 2 application is for the applicants to describe how their designated Fast Track product would benefit from enhanced communications between FDA and the applicant during the product development process.

FDA's regulation at § 312.23 (21 CFR 312.23) states that information provided to the agency as part of an IND must be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under INDs. Part 312 and FDA Form 1571 have a valid OMB control number: OMB control number 0910–0014, which expires January 31, 2006.

In the guidance document, CDER and CBER ask that a Pilot 2 application be submitted as an amendment to the application for the underlying product under the requirements of § 312.23; therefore, Pilot 2 applications should be submitted to the agency in triplicate with Form FDA 1571. The agency recommends that a Pilot 2 application be submitted in this manner for two reasons: (1) To ensure that each Pilot 2 application is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the Pilot 2 application is entered into the appropriate tracking databases. Use of the information in the agency's tracking databases enables the agency to monitor progress on activities.

Under the guidance, the agency asks applicants to include the following information in the Pilot 2 application:

- Cover letter prominently labeled "Pilot 2 application;"
- IND number;
- Date of Fast Track designation;
- Date of the end-of-phase 1 meeting, or equivalent meeting, and summary of the outcome;
- A timeline of milestones from the drug or biological product development program, including projected date of new drug applications/biologic licensing applications submissions;
- Overview of the proposed product development program for a specified disease and indication(s), providing information about each of the review disciplines (e.g., chemistry/manufacturing/controls, pharmacology/toxicology, clinical, clinical pharmacology and biopharmaceutics);
- Rationale for interest in participating in Pilot 2, specifying the ways in which development of the subject drug or biological product would be improved by frequent scientific feedback and interactions with FDA and the potential for such communication to benefit public health by improving the efficiency of the product development program; and
- Draft agreement for proposed feedback and interactions with FDA.

This information will be used by the agency to determine which Fast Track products are eligible for participation in Pilot 2. Participation in this pilot program will be voluntary.

Based on the number of approvals for Fast Track designations and data collected from the review divisions and offices within CDER and CBER, FDA

estimates that in fiscal year (FY) 2002, 109 drug product applications and 46 biological products had Fast Track designation. FDA anticipates that approximately 85 drug product applicants (respondents) and approximately 29 biological product applicants (respondents) will submit at least one Pilot 2 application. Based on information collected from offices within CDER and CBER, the agency further anticipates that the total responses, i.e., the total number of applications received for Pilot 2, will be 90 for drug products and 35 for biological products. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted in a Pilot 2 application in accordance with the guidance, is estimated to be approximately 80 hours. Based on FDA's experience, we expect it will take respondents this amount of time to obtain and draft the information to be submitted with a Pilot 2 application. Therefore, the agency estimates that applicants will use approximately 10,000 hours to complete the Pilot 2 applications.

In the **Federal Register** of June 17, 2003 (68 FR 35901), FDA announced the availability of the draft guidance and requested comments for 60 days on the information collection. Four comments were received that did not pertain to the information collection estimates.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Pilot 2 Application	Number of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
CDER	85	1.06	90	80	7,200
CBER	29	1.20	35	80	2,800
Total					10,000

[1]There are no capital costs or operating and maintenance costs associated with this information collection.

Dated: September 4, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–22949 Filed 9–4–03; 3:01 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 3, 2003, from 8:30 a.m. to 4 p.m.

Location: Gaithersburg Marriott, Salons E, F, and G, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, ext. 127, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application (PMA) for an implantable contact lens for the correction of moderate to high myopia between -3.0 diopters (D) to -20D with or without astigmatism up to 2.5D and is intended for placement in the posterior chamber of the phakic eye. Background information, including the attendee list, agenda, and questions for the committee, will be available to the public 1 business day before the meeting, on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 25, 2003. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m. Near the end of the committee deliberations on the PMA, a 30-minute open public session will be conducted for interested persons to address issues specific to the submission before the committee. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 25, 2003, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 2, 2003.

Peter J. Pitts,

Associate Commissioner for External Relations.

[FR Doc. 03–22790 Filed 9–8–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Re-Contacting Participants in the Observing Protein and Energy Nutrition (Re-Open) Study

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH), has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal**

Register on May 6, 2003, page 24007 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB number.

Proposed Collection: Title: Re-contacting Participants in the Observing Protein and Energy Nutrition (Re-OPEN) Study. *Type of Information Collection Request:* Reinstatement with change (OMB #0925–0465, expiration 07/31/02). *Need and Use of Information Collection:* The agency conducts and funds studies examining the relationship between diet and chronic diseases. The study will collect food intake and physical activity data and body weight measurements on a cohort of approximately 482 free-living men and women, 43 to 72 years of age, who have participated in the 1999 Biologic Specimen-Based Study of Dietary Measurement Error for Nutritional Epidemiology and Surveillance. Participants will complete a food frequency questionnaire, two 4-day food intake records, one 7-day food intake checklist, a physical activity questionnaire, and a body weight measurement. The data will be used to assess the magnitude and structure of dietary measurement error in dietary assessment instruments for dietary surveillance and nutritional epidemiologic studies.

Frequency of Response: One-time study. *Affected Public:* Individuals or households. *Type of Respondents:* U.S. adults 43–72 years. The annual reporting burden is as follows:

Data collection task	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total hour burden	Estimated total annual burden hours requested
Enrollment Form	482	1	0.083	40	13
Food frequency questionnaire	482	1	1	482	161
4-Day food record 1	482	1	1.332	642	214
4-Day food record 2	482	1	1.332	642	214
Food Checklist	482	7	.117	395	132
Physical activity questionnaire	482	1	.25	120	40
Weight measurement	482	1	.25	120	40
Total	482	.....	.....	2443	814

The annualized cost to respondents is estimated at $13,024. There are no Capital Costs to report. There are no Operating and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology, and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Amy Subar, Ph.D., Project Officer, National Cancer Institute, EPN 313, 6130 Executive Blvd MSC 7344, Bethesda, MD 20892–7344, or call non-toll-free number (301) 496–8500, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to: *subara@mail.nih.gov*.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: September 2, 2003.

Reesa Nichols,

NCI Project Clearance Liaison.

[FR Doc. 03–22828 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; the National Diabetes Education Program Comprehensive Evaluation Plan

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: The National Diabetes Educations Program Comprehensive Evaluation Plan. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* The National Diabetes Education Program (NDEP) is a partnership of the National Institutes of Health (NIH) and the Centers for Disease Control and Prevention (CDC) and more than 200 public and private organizations. The long-term goals of the NDEP are to improve the treatment and health outcomes of people with diabetes, to promote early diagnosis, and, ultimately, to prevent the onset of diabetes. The NDEP objectives are: (1) To increase awareness of the seriousness of diabetes, its risk factors, and strategies for preventing diabetes and its complications among people at risk for diabetes; (2) to improve understanding about diabetes and its control and to promote better self-management behaviors among people with diabetes; (3) to improve health care providers' understanding of diabetes

and its control and to promote an integrated approach to care; (4) to promote health care policies that improve the quality of and access to diabetes care.

Multiple strategies have been devised to address the NDEP objectives. These have been described in the NDEP Strategic Plan and include: (1) Creating partnerships with other organizations concerned about diabetes; (2) developing and implementing awareness and education activities with special emphasis on reaching the racial and ethnic populations disproportionately affected by diabetes; (3) identifying, developing, and disseminating educational tools and resources for the program's audiences; (4) promoting policies and activities to improve the quality of and access to diabetes care.

The NDEP evaluation will document the extent to which the NDEP program has been implemented, and how successful it has been in meeting program objectives. The evaluation relies heavily on data gathered from existing national surveys such as National Health and Nutrition Examination Survey (NHANES), the National Health Interview Survey (NHIS), the Behavioral Risk Factor Surveillance System (BRFSS), among others for this information. This generic clearance request is for the collection of additional primary data from NDEP target audiences on some key process and impact measures that are necessary to effectively evaluate the program. Approval is requested for up to 4 surveys of audiences targeted by the National Diabetes Education Program including people at risk for diabetes, people with diabetes and their families, health care providers, payers and purchasers of health care and health care system policy makers.

Frequency of Responses: On occasion. *Affected public:* Individuals or households; businesses or other for-profit organizations; not-for-profit institutions; Federal government; and state, local or tribal government. *Type of Respondents:* Adults. The annual reporting burden is as follows: *Estimated Number of Respondents:* 2200, *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .25; and *Estimated Total Annual Burden Hours Requested:* 200. The annualized cost to respondents is estimated at: $5,437.50. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATES OF HOUR BURDEN

Type of respondents	Number of respondents	Frequency of response	Average time per response	Total hour burden
Patients and their family members	1,000	1	.25	250
People at risk for diabetes	600	1	.25	150
Physicians or other health care providers	600	1	.25	150
Health care systems	200	1	.25	50
Total	2,400			600

COST TO RESPONDENTS

Type of respondents	Number of respondents	Frequency of response	Hourly wage rate	Respondent cost
Patients and their family members	1,000	1	$20.00	$5,000.00
People at risk for diabetes	600	1	20.00	3,000.00
Physicians or other health care providers	600	1	75.00	11,250.00
Health care systems	200	1	50.00	2,500.00
Total				21,750.00

Note: On an annual basis, the average number of respondents is 800; the average number of hours is 200 and the average annual respondent cost is $5,437.50.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Joanne Gallivan, M.S., R.D., Director, National Diabetes Education Program, NIDDK, NIH, Building 31, Room 9A04, 31 Center Drive, Bethesda, MD 20892, or call non-toll-free number (301) 494–6110 or E-mail your request, including your address to: *Joanne_Gallivan@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: August 14, 2003.

Barbara Merchant,

Executive Officer, NIDDK, National Institutes of Health.

[FR Doc. 03–22831 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute Proposed Collection; Comment Request Exam 2—The Jackson Heart Study, Annual Follow-Up Component

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of

the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Exam 2—The Jackson Heart Study, Annual Follow-up Component. *Type of Information Collection Request:* Revision (OMB 0925–0491; expiration 07/31/2004). *Need and Use of Information Collection:* The Jackson Heart Study (JHS) Clinical Component will involve 5,500 African-American men and women aged 21–84, representative of African-American residents of Jackson, Mississippi. Family members are included in order to permit future studies of familial and genetic contributions to cardiovascular disease (CVD). The JHS Clinical Component has received Clinical Exemption (CE–99–11–09) from the NIH Clinical Exemption Review Committee. The continuation of the study will allow continued assessment of subclinical coronary disease, left ventricular dysfunction, progression of carotid atherosclerosis and left ventricular hypertrophy, and responses to stress, racism, and discrimination as well as new components such as renal disease, body fat distribution and body composition, and metabolic consequences of obesity. The continuation of the JHS in FY05 is proposed to support 2 clinical examinations 4 years apart and continued cohort follow-up for events. The collection of follow-up information also involves third party individuals (next-of-kin decedents and physicians). This information is necessary for the interpretation and analysis of clinical findings and outcomes to ascertain the relationship between mortality and morbidity in the clinical study cohort. The information collected will be used by the public and private sector for public health planning, medical education, other epidemiologic studies, and biomedical research.

Frequency of Response: One-time. *Affected Public:* Individuals or families; Businesses or other for profit; not-for-profit institutions. *Type of Respondents:* Third party respondents (next-of-kin decedents and physicians). The annual reporting burden is as follows: *Estimated Number of Respondents:* 600; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* 0.50; and *Estimated Total Annual Burden Hours Requested:* 300. *The annualized cost to respondents is estimated at:* $6,500. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Morbidity & Mortality AFU 3rd party next-of-kin decedents	300	1	0.50	150
Morbidity & Mortality AFU 3rd party Physicians	300	1	0.50	150
Total				300

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Cheryl Nelson, Jackson Heart Study Project Officer, 6701 Rockledge Drive, Room 8152, MSC 7934, Rockville, MD 20892–7934, or call non-toll-free number (301) 435–0451 or E-mail your request, including your address to: *cn80n@nih.gov.*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60-days of the date of this publication.

Dated: August 20, 2003.

Peter Savage,

Director, Division of Epidemiology and Clinical Applications, National Heart, Lung, and Blood Institute.

[FR Doc. 03–22832 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: September 16, 2003.

Open: 8:30 am to 12 pm.

Agenda: A Report of the FIC Director on updates and overviews of new FIC initiatives. The main topic of the Board will be "Strategic Planning for Global Health: Proposed Process."

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Closed: 1 pm to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, Lawton Chiles International House, Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301–496–2075.

Information is also available on the Institute's/Center's home page: *http://www.nih.gov/fic/about/advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22825 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Meeting and Request for Public Comment: Secretary's Advisory Committee on Genetics, Health, and Society

Pursuant to Pub. L. 92–463, notice is hereby given of the second meeting of the Secretary's Advisory Committee on Genetics, Health,and Society (SACGHS), U.S. Public Health Service. The meeting will be held from 9 a.m. to 5 p.m. on October 22, 2003 and 8:30 a.m. to 5 p.m. on October 23, 2003 at the Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, Washington, DC. The meeting will be open to the public with attendance limited to space available.

On the first day of the meeting, the Committee will review the roles, activities, and plans of the Federal regulatory agencies with regard to the oversight of genetic technologies, including pharmacogenomic technologies, to determine whether further study of this area is warranted. Program officials from the Food and Drug Administration, Centers for Medicare & Medicaid Services, Centers for Disease Control and Prevention, and Federal Trade Commission will brief the Committee about current and planned regulatory approaches with respect to genetic technologies. On the second day, the Committee will review Federal efforts to address the adequacy of the genetics workforce and the education and training of health professionals in genetics. Reports will also be provided on the efforts of professional societies and organizations to enhance the preparedness of health professionals in genetics. The Committee will also hold a session on related international activities at which representatives of the Human Genetics Commission of the United Kingdom and the Australian Law Reform Commission will report on their countries' efforts to address emerging issues raised by advances in genetic technologies. Under authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established SACGHS to serve as a public forum for deliberations on the broad range of human health and societal issues raised by the development and use of genetic technologies and, as warranted, to provide advice on these issues.

SACGHS welcomes receiving comments from the public on any issues related to its mandate. For the October meeting in particular, the Committee would welcome public comment on: (1) The adequacy of the education and training of health professionals in genetics and the genetics workforce and whether current efforts to prepare health professionals to use genetic technologies are adequate and, if not, what the gaps are and how should they be addressed; and (2) the role, current activities, and plans of the Federal regulatory agencies to assure the safety and appropriate marketing of genetic tests. Written comments submitted to the Committee by October 1, 2003 will be considered part of the Committee's deliberations. Time will also be provided during the meeting for public commentary. Written public comments should be submitted by mail, e-mail, or fax to the following. Edward R.B. McCabe, M.D., PhD., Chair, Secretary's Advisory Committee on Genetics, Health and Society, c/o NIH Office of Biotechnology Activities, 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, 301–496–9839 (fax), *sc112c@nih.gov*.

Members of the public who wish to make a statement to the Committee during the meeting should notify the SACGHS Executive Secretary, Ms. Sarah Carr, by telephone at (301) 496–9838 or e-mail at *sc112c@nih.gov*.

The draft meeting agenda and other information about SACGHS will be available at the following Web site: *http://www4.od.nih.gov/oba/sacghs.htm*. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, are asked to notify Ms. Carr in advance of the meeting by contacting her at the phone number or e-mail address listed above.

Dated: August 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22827 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Mouse Models of Human Cancers Consortium.

Date: October 8–9, 2003.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review And Logistics Branch, Division Of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 7142, Bethesda, MD 20892, 301/594–9582, *vollbert@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22815 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.

Date: September 24, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: Open; Future of DCLG Process; Results of Advocacy Survey; Recommendations for Future of DCLG; Role on Behalf of Advocacy Community; Advocates on Other NCI Advisory Committees; Priority Issues; President's Cancer Panel Model; Function Regarding NCI Priorities; Role of Consumer in Research and Related Activities Program; Membership; Communication/Involvement with Advocacy Community; Summary & Next Steps.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Nancy Caliman, Executive Secretary, Office of Liaison Activities, National Institutes of Health, National Cancer Institute, 6116 Executive Boulevard, Suite 220, MSC 8324, Bethesda, MD 20892, (301) 496–0307, *calimann@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/dclg/dclg.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support, 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22816 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Clinical Scientist Development Award.

Date: November 6–7, 2003.

Time: 7:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Roy L. White, PhD, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7192, MSC 7924, Bethesda, MD 20892, 301–436–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 99.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22813 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Minority Training Grants.

Date: October 22–23, 2003.

Time: 6:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Zoe Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, 301–435–0314.

(Catalogue of Federal Domestic Assistance Program No. 93.233, National Center for Sleep Disorders Research; 93.837, heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22823 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Heart, Lung, and Blood Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Advisory Council.

Date: October 30–31, 2003.

Open: October 30, 2003, 8 a.m. to 3 p.m.

Agenda: For discussion of program policies and issues.

Place: National Institutes of Health, Building 31, C Wing, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20892.

Closed: October 30, 2003, 3 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, C Wing, 9000 Rockville Pike, Conference Room 10, Bethesda, MD 20892.

Contact Person: Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260.

Information is also available on the Institute's/Center's home page: *http://www.nhlbi.nih.gov/meetings/index.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22824 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: September 4, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Westin Grand, 2350 M Street, NW, Washington, DC 20037.

Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A Bethesda, MD 20892; 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22814 Filed 9–08–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Children's Study of Environmental Effects on Health Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Children's Study of Environmental Effects on Health Advisory Committee.

Date: September 15–16, 2003.

Time: September 15, 2003, 8 a.m. to 5 p.m.

Agenda: Members of the public that plan to attend should contact Circle Solutions at (703) 902–1339 or via e-mail ncs@circlesolutions.com. For Agenda updates, please visit the NCS Web site *nationalchildrensstudy.gov*.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Room: Versaille I, Bethesda, MD 20814.

Time: September 15, 2003, 8 a.m. to 5:30 p.m.

Agenda: Discussions will include activities presented at the June 2003 mtg; a review of all existing hypotheses for the purposes of identifying gaps and areas that require more attention; an explicit feedback will be developed on previously submitted hypotheses that will be provided to various Working Groups.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Room Versaille I, Bethesda, MD 20814.

Contact Person: Jan Leahey, Executive Secretary, National Institute of Child Health, and Human Development, NIH, 6100 Executive Boulevard, Room 7A07, Bethesda, MD 20892, (301) 435–8867, *leaheyj@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22817 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel, RFP–2003–10 & RFP–2003–11 "Pediatric Off-Patient Drug Study (PODS) Center".

Date: September 9, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Kishena C. Wadhwani, PhD, Scientific Review Administrator, Division of Scientific review, 9000 Rockville Pike, MSC 7510, Bethesda, MD 20892–7510, (301) 496–1485, *wadhwank@mail.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan repayment Program, National Institutes of Health, HHS)

Dated: August 20, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22818 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Disease Research Opportunities—SARS.

Date: September 19, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2103, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 496–2550, *ar15o@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 25, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22820 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious Disease Research Opportunities—SARS.

Date: September 22, 2003.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2103, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *ar15o@nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Biodefense and Emerging Infectious disease Research Opportunities—SARS.

Date: September 23, 2003

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2103, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496,2550, *ar15o@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22821 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions

set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: September 21–23, 2003.

Closed: September 21, 2003 7 p.m. to 10 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Open: September 22, 2003, 8:30 a.m. to 11:15 a.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20851.

Closed: September 22, 2003, 11:15 a.m. to 1:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Open: September 22, 2003, 1:30 p.m. to 4:55 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: September 22, 2003, 4:55 p.m. to 5:25 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Conference Room A, Rockville, MD 20852.

Closed: September 22, 2003, 6:30 p.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: September 23, 2003, 8:30 a.m. to Adjournment.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Story C. Landis, PhD, Director, Division of Intramural Research, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, 301–435–2232.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: August 26, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22822 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual grant applications conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine, National Center for Biotechnology Information, National Library of Medicine.

Date: October 14, 2003.

Time: 9 a.m. to 12 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 8600 Rockville Pike, Board Room, 2nd Floor, Bethesda, MD 20892.

Closed: 12 p.m. to 2 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, Building 38, 8600 Rockville Pike, Board Room, 2nd Floor, Bethesda, MD 20892.

Open: 2 p.m. to 5 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 8600 Rockville Pike, Board Room, 2nd Floor, Bethesda, MD 20892.

Contact Person: David J. Lipman, MD, Director, Natl Ctr for Biotechnology Information, National Library of Medicine, Department of Health and Human Services, Bethesda, MD 20892.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 27, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22819 Filed 9–8–03; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Molecular Pathobiology Study Section.

Date: September 28–30, 2003.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Elaine Sierra-Rivera, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov*.

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Reproductive Endocrinology Study Section.

Date: October 6–7, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Reproductive Endocrinology, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1042, *shaikha@csr.nih.gov*.

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: October 6–7, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Thomas A.Tatham, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, (301) 594–6836, *tathamt@csr.nih.gov*.

Name of Committee: Oncological Sciences Integrated Review Group, Cancer Etiology Study Section.

Date: October 8–10, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Victor A. Fung, PhD, Scientific Review Administrator, Oncological Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6178, MSC 7804, Bethesda, MD 20814–9692, 301–435–3504, *vf6n@nih.gov*.

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, General Medicine B Study Section.

Date: October 8–9, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (301) 435–1198.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Central Visual Processing Study Section.

Date: October 8–9, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, 301–435–1247, *steinmem@csr.nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Molecular Neuropharmacology and Signaling Study Section.

Date: October 9–10, 2003.

Time: 8 a.m to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison Hotel, 15th & M Street, NW., Washington, DC 20005.

Contact Person: Syed Husain, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7850, Bethesda, MD 20892, (301) 435–1224, *husains@csr.nih.gov*.

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Tropical Medicine and Parasitology Study Section.

Date: October 9–10, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Jean Hickman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3194, MSC 7808, Bethesda, MD 20892, (301) 435–1146, *hickmanj@csr.nih.gov*.

Name of Committee: Immunological Sciences Integrated Review Group, Experimental Immunology Study Section.

Date: October 13–14, 2003.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Adam's Mark Houston, 2900 Briarpark Drive, Houston, TX 77042.

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooperc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 CDF–2–90.

Date: October 13–14, 2003.

Time: 7:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn Hotel, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Sensorimotor Integration Study Section.

Date: October 14, 2003.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Motivated Behavior Study Section.

Date: October 14, 2003–15, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Gamil C Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbasg@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Auditory System Study Section.

Date: October 14–15, 2003.

Time: 8 a.m. to 5 p.m..

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW, Washington, DC 20036.

Contact Person: Joseph Kimm, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Somatosensory and Chemosensory Systems Study Section..

Date: October 15–16, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW, Washington, DC 20037.

Contact Person: Daniel R. Kenshalo, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5176, MSC 7844, Bethesda, MD 20892, 301–435–1255, *kenshalod@csrnih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Biological Rhythms and Sleep Study Section.

Date: October 15, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard Marcus, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, *richard.marcus@.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Community-Level Health Promotion Study Section.

Date: October 15–17, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Ellen K. Schwartz, EDD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7770, Bethesda, MD 20892, 301–435–0681, *schwarte@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Process Initial Review Group, Biobehavioral Regulation, Learning and Ethology Study Section.

Date: October 15–17, 2003.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Governor's House Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Luci Roberts, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, 301–435–0692, *robertlu@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genes in Tumor Pathogenesis.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Elaine Sierra-Rivera, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7804, Bethesda, MD 20892, 301–435–1779, *riverase@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SSSW 10B:Small Business:Cardiovascular Devices.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Berhouz Shabestari, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892, 301–435–2409, *shabestb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1-Bioanalytical Engineering and Chemistry Panel.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Noni Byrnes, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7806, Bethesda, MD 20892, 301–435–1217, *byrnesn@csr.nih.gov.*

Name of Committee: Nutritional and Metabolic Sciences Integrated Review Group, Nutrition Study Section.

Date: October 16–17, 2003.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Sooja K. Kim, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7804, Bethesda, MD 20892, 301–435–1780.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Learning and Memory Study Section.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Imaging Study Section.

Date: October 16–17, 2003.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Diagnostic Radiology Study Section.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1111 30th Street, NW, Washington, DC 20007.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Innate Immunity/Host Defense.

Date: October 16–17, 2003.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: River Inn Hotel, 924 25th Street, NW., Washington, DC 20037.

Contact Person: Tina McIntyre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC7812, Bethesda, MD 20892, (301) 594–6375, *mcintyrt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Nursing Research: Child and Family.

Date: October 16–17, 2003.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Karin F. Helmers, PhD, Scientific Review Administrator, Center for Scientific Review/SNEM IRG, 6701 Rockledge Drive, Room 3166, MSC 7770, Bethesda, MD 20892, (301) 435–1017, *helmersk@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 3.

Date: October 16–17, 2003.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Gerhard Ehrenspeck, PhD, Scientific Review Administrator, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5138, MSC 7840, Bethesda, MD 20892, (301) 435–1022, *ehrenspag@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 4.

Date: October 16–17, 2003.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Alexandra Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 451–3848, *ainsztea@csr.nih.gov.*

Name of Committee: Endocrinology and Reproductive Sciences Integrated Review Group, Endocrinology Study Section.

Date: October 16–17, 2003.

Time: 8:30 a.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Syed M. Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892, (301) 435–1043, *amirs@csr.nih.gov.*

Name of Committee: Cell Development and Function Integrated Review Group, Cell Development and Function 1.

Date: October 16–17, 2003.
Time: 8:30 am to 4 pm.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Michael H. Sayre, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892, (301) 435–1219, *sayrem@csr.nih.gov*.

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Cancer Study Section.
Date: October 16–17, 2003.
Time: 8:30 am to 6 pm.
Agenda: To review and evaluate grant applications.
Place: The Madison Hotel, 1155 15th Street, NW., Washington, DC 20005.
Contact Person: Denise Wiesch, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684.

Name of Committee: Biochemical Sciences Integrated Review Group, Pathobiochemistry Study Section.
Date: October 16–17, 2003.
Time: 8:30 am to 2 pm.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Chronic Diseases Study Section.
Date: October 16–17 2003.
Time: 9 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 NNB (01) Neuroendocrinology, Neuroimmunology, and Behavior.
Date: October 16–17, 2003.
Time: 9 am to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, Room 5168, MCS 7844, 6701 Rockledge Drive, Bethesda, MD 20892, 301–435–1245, *richard.marcus@nih.gov*.

Name of Committee: Molecular, Cellular and Developmental Neurosicience Integrated Review Group, Synapses, Cytoskeleton and Trafficking study Section.
Date: October 16–17 2003.
Time: 9:30 a.m. 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Central 1501 Rhode Island Avenue, NW, Washington DC 20005.
Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4138, MSC 7850, Bethesda, MD 20892, (301) 435–1251, *bannerc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CDF Member Special Panel.
Date: October 16, 2003.
Time: 1 pm to 1:30 pm.
Agenda: To review and evaluate contract proposals.
Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental Therapeutics.
Date: October 19–21, 2003.
Time: 5:30 pm to 5 pm.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites Hotel, 4300 Military Road, Washington, DC 20015.
Contact Person: Sharon K. Gubanich, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)
Dated: August 29, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 03–22826 Filed 9–08–03; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); Notice of a Meeting of the NTP Board of Scientific Counselors; Correction

Please be advised that the **Federal Register** notice (68 FR, No. 165 pp. 51290–51292) published on August 26, 2003 had an errant "URL" in paragraph 5 on the "ICCEC Recommendations for Substances Nominated for Future NTP Studies". The correct URL follows.

Information about substances nominated to the NTP for toxicology and carcinogenesis studies and the ICCEC's recommendations were published in the **Federal Register** on July 16, 2003 (Vol. 68, No. 136, p. 42068–71). This notice is available on the Web along with supporting documents for each nomination (*http://ntp-server.niehs.nih.gov/NomPage/2003Noms.html*), or by contacting the NTP Executive Secretary (Dr. Barbara Shane, NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709; telephone: 919–541–0530; and e-mail: *shane@niehs.nih.gov*).

Plans are underway for making this meeting available for viewing on the Internet at *http://www.niehs.nih.gov/external/video.htm*.

Dated: August 27, 2003.

Samuel Wilson,

Deputy Director, National Toxicology Program.

[FR Doc. 03–22833 Filed 9–8–03; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1481–DR]

Florida; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1481–DR), dated July 29, 2003, and related determinations.

EFFECTIVE DATE: August 29, 2003.
FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.
SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 29, 2003: Hernando County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22872 Filed 9–8–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–3186–EM]

New York; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of New York (FEMA–3186–EM), dated August 23, 2003, and related determinations.

EFFECTIVE DATE: August 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 23, 2003, the President declared an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of New York, resulting from a statewide power outage on August 14–16, 2003, is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such an emergency exists in the State of New York.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide emergency protective measures (Category B) under the Public Assistance program at 75 percent Federal funding. This assistance excludes regular time costs for subgrantees' regular employees. In addition, you are authorized to provide such other forms of assistance under Title V of the Stafford Act as you may deem appropriate.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses. However, pursuant to 42 U.S.C. 5193(b)(1), Federal assistance under this declaration will be limited to up to $5 million.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New York to have been affected adversely by this declared emergency:

Albany, Allegany, Bronx, Broome, Cattaraugus, Cayuga, Chatauqua, Chemung, Chenango, Clinton, Columbia, Cortland, Delaware, Dutchess, Erie, Essex, Franklin, Fulton, Genesee, Greene, Hamilton, Herkimer, Jefferson, Kings, Lewis, Livingston, Madison, Monroe, Montgomery, Nassau, New York, Niagara, Oneida, Onondaga, Ontario, Orange, Orleans, Oswego, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saint Lawrence, Saratoga, Schenectady, Schoharie, Schuyler, Seneca, Steuben, Suffolk, Sullivan, Tioga, Tompkins, Ulster, Warren, Washington, Wayne, Westchester, Wyoming, and Yates Counties for emergency protective measures (Category B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22875 Filed 9–8–03; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1484–DR]

Ohio; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–1484–DR), dated August 1, 2003, and related determinations.

EFFECTIVE DATE: August 6, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 1, 2003:

Columbiana, Mahoning, Medina, Portage, Stark, Summit, and Trumbull Counties for Public Assistance (already designated for Individual Assistance.)

Jefferson County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance

Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22871 Filed 9–8–03; 8:45 am]

BILLING CODE 5718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1484–DR]

Ohio; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1484–DR), dated August 1, 2003, and related determinations.

EFFECTIVE DATE: August 25, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 25, 2003.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 03–22873 Filed 9–8–03; 8:45 am]

BILLING CODE 5718–02–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1485–DR]

Pennsylvania; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Pennsylvania (FEMA–1485–DR), dated August 23, 2003, and related determinations.

EFFECTIVE DATE: August 23, 2003.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 23, 2003, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the Commonwealth of Pennsylvania, resulting from severe storms, tornadoes, and flooding on July 21, 2003, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Pennsylvania.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, and Hazard Mitigation throughout the Commonwealth, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas Davies, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Pennsylvania to have been affected adversely by this declared major disaster:

Crawford, Forest, Mercer, McKean, Venango, and Warren Counties for Public Assistance.

All counties within the Commonwealth of Pennsylvania are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.556, Fire Management Assistance; 83.558, Individual and Household Housing; 83.559, Individual and Household Disaster Housing Operations; 83.560 Individual and Household Program-Other Needs, 83.544, Public Assistance Grants; 83.548, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 03–22874 Filed 9–8–03; 8:45 am]

BILLING CODE 5718–02–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4821–N–04]

Notice of Proposed Information Collection: Comment Request; Ginnie Mae Multiclass Securities Program Documents

AGENCY: Office of the President of Government National Mortgage Association (Ginnie Mae), HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comment Due Date:* November 10, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Sonya Suarez, Office of Program Operations, Department of Housing and Urban Development, 451—7th Street, SW., Room 6206, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Sonya Suarez, Ginnie Mae, (202) 708–2884 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

The Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Ginnie Mae Multiclass Securities Program Documents.

OMB Control Number, if applicable: 2503–0017.

Description of the need for the information and proposed use: This information collection is required in connection with the operation of the Ginnie Mae Multiclass Securities program. Ginnie Mae's authority to guarantee multiclass instruments is contained in 306(g)(1) of the National Housing Act ("NHA") (12 U.S.C. 1721(g)(1)), which authorizes Ginnie Mae to guarantee "securities * * * based on or backed by a trust or pool composed of mortgages. * * * " Multiclass securities are backed by Ginnie Mae Single Class securities, which are backed by government insured or guaranteed mortgages. Ginnie Mae's authority to operate a Multiclass Securities program is recognized in Section 3004 of the Omnibus Budget Reconciliation Act of 1993 ("OBRA"), which amended 306(g)(3) of the NHA (12 U.S.C. 1271(g)(3)) to provide Ginnie Mae with greater flexibility for the Multiclass Securities program regarding fee structure, contracting, industry consultation, and program implementation. Congress annually sets Ginnie Mae's commitment authority to guarantee mortgage-backed securities ("MBS") pursuant to 306(g)(2) of the NHA (12 U.S.C. 1271(g)(2)). Since the multiclass securities are backed by Ginnie Mae Single Class MBS, Ginnie Mae has already guaranteed the collateral for the multiclass instruments.

The Ginnie Mae Multiclass Securities Program consists of Ginnie Mae Real Estate Mortgage Investment Conduit ("REMIC") securities and Platinum securities. The Multiclass Securities program provides an important adjunct to Ginnie Mae's secondary mortgage market activities, allowing the private sector to combine and restructure cash flows from Ginnie Mae Single Class MBS into securities that meet unique investor requirements in connection with yield, maturity, and call-option protection. The intent of the Multiclass Securities program is to increase liquidity in the secondary mortgage market and to attract new sources of capital for federally insured or guaranteed residential loans. Under this program, Ginnie Mae guarantees, with the full faith and credit of the United States, the timely payment of principal and interest on Ginnie Mae REMIC and Platinum securities.

Agency form numbers, if applicable: Not applicable.

Members of affected public: For-profit business (mortgage companies, thrift, savings & loans, *etc.*).

Estimation of the total number of hours needed to prepare the information collection, including number of respondents, frequency of response, and hours of response:

Type of information collection	Type of information collection (prepared by)	Number of participants/respondents	Frequency per year information submitted	Estimated annual frequency	Estimated average time to complete information	Estimated annual burden hours
REMIC Securities:						
Pricing Letter	Sponsor	16	10	160	0.5	50
Structured Term Sheet.	Sponsor	16	10	160	3	300
Trust Agreement	Attorney for Sponsor	16	10	160	1	100
Trust Opinion	Attorney for Sponsor	16	10	160	4	400
MX Trust Agreement	Attorney for Sponsor	16	10	160	0.16	16
MX Trust Opinion	Attorney for Sponsor	16	10	160	4	400
RR Certificate	Attorney for Sponsor	16	10	160	0.08	8
Sponsor Agreement	Attorney for Sponsor	16	10	160	0.05	5
Table of Contents	Attorney for Sponsor	16	10	160	0.33	33
Issuance Statement	Attorney for Sponsor	16	10	160	0.5	50
Tax Opinion	Attorney for Sponsor	16	10	160	4	400
Transfer Affidavit	Attorney for Sponsor	16	10	160	0.08	8
Supplemental Statement.	Attorney for Sponsor	16	10	160	1	100
Final Data Statements (attached to closing letter).	Attorney for Sponsor	16	10	160	32	3200
Accountants' Closing Letter.	Accountant	16	10	160	8	800
Accountants' OSC Letter.	Accountant	16	10	160	8	800
Structuring Data	Accountant	16	10	160	8	800
Financial Statements	Accountant	16	10	160	1	160

Type of information collection	Type of information collection (prepared by)	Number of participants/respondents	Frequency per year information submitted	Estimated annual frequency	Estimated average time to complete information	Estimated annual burden hours
Principal and Interest Factor File Specifications.	Trustee	16	10	160	16	1600
Distribution Dates and Statement.	Trustee	16	10	160	0.42	42
Term Sheet	Trustee	16	10	160	2	200
New Issue File Layout	Trustee	16	10	160	4	400
Flow of Funds	Attorney for Trustee	16	10	160	0.16	16
Trustee Receipt	Trustee Attorney	16	10	160	2	200
Data Verification Form	Trustee	16	10	160	1	160
Total				4000		16057.6
Platinum Securities:						
Deposit Agreement	Depositor	16	10	160	1	100
MBS Schedule	Depositor	16	10	160	0.16	16
New Issue File Layout	Depositor	16	10	160	4	400
Principal and Interest Factor File Specifications.	Trustee	16	10	160	16	2560
Data Verification Form	Trustee	16	10	160	1	160
Total				800		3398.4
Total Burden Hours.				4800		19456

Calculation of Burden Hours:

Participants × Frequency per Year = Estimated Annual Frequency.

Estimated Annual Frequency × Estimated Average Completion Time = Estimated Annual Burden Hours.

Status of the proposed information collection: Reinstatement, with change, of previously approved collection for which approval has expired.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: September 2, 2003.

George S. Anderson,

Executive Vice President, Ginnie Mae.

[FR Doc. 03–22834 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–66–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–68]

Notice of Submission of Proposed Information Collection to OMB: Federally Assisted Low-Income Housing Drug Elimination Grant Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The requested information is for the oversight of existing grants for federally assisted low-income housing owners to combat drug-related criminal activity in and around developments. No funding for new grants has been available since fiscal year 2001.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0476) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Federally Assisted Low-Income Housing Drug Elimination Grant Program.

OMB Approval Number: 2502–0476.

Form Numbers: HUD–50080–DF2B, SF–269, and SF–269–A.

Description of the Need for the Information and Its Proposed Use: The requested information is for the oversight of existing grants for federally assisted low-income housing owners to combat drug-related criminal activity in and around developments. No funding for new grants has been available since fiscal year 2001.

Respondents: Business or other for-profit, Not-for profit institutions.

Frequency of Submission: On occasion, Quarterly, Semi-annually, Annually.

Reporting Burden: Estimated number of respondents 150: Average annual responses per respondent 8; Total annual responses 1,200; Average burden per response 2.1 hours.

Total Estimated Burden Hours: 2,550.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22835 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–69]

Notice of Submission of Proposed Information Collection to OMB: Section Eight Management Assessment Program (SEMAP) Certification

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review for extension of the current approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The requested information is used to assess a Public Housing Authority's (PHA's) management capabilities and performance in administering a housing choice voucher program. Assessment ratings are used as tool in addressing any potential deficiencies.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0215) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Section Eight Management Assessment Program (SEMAP) Certification.

OMB Approval Number: 2577–0215.

Form Numbers: HUD–52648.

Description of the Need for the Information and Its Proposed Use: The requested information is used to assess a Public Housing Authority's (PHA's) management capabilities and performance in administering a housing choice voucher program. Assessment ratings are used as tool in addressing any potential deficiencies.

Respondents: State, Local or Tribal Government.

Frequency of Submission: Annually.

Reporting Burden: Estimated number of respondents 2,437: Average annual responses per respondent 1; Total annual responses 2,437; Average burden per response 24 hours.

Total Estimated Burden Hours: 33,184.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22836 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–70]

Notice of Submission of Proposed Information Collection to OMB: Multifamily Housing Service Coordinator Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The requested information will assist HUD in evaluating grant applicants for the Housing Service Coordinator Program. Information is needed to determine how well grant funds meet stated program goals and how well the public was served.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0447) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Housing Service Coordinator Program.

OMB Approval Number: 2502–0447.

Form Numbers: HUD 92456, HUD 5008–SCMF, SF–269–A, HUD 424, HUD–424B, HUD–2880, SF–LLL, HUD 91186i, and HUD–91186–A.

Description of the Need for the Information and its Proposed Use: The requested information will assist HUD in evaluating grant applicants for the Housing Service Coordinator Program. Information is needed to determine how well grant funds meet stated program goals and how well the public was served.

Respondents: Business or other for-profit, Not-for profit institutions.

Frequency of Submission: On occasion, Quarterly, Semi-annually, Annually.

Reporting Burden: Estimated number of respondents 4,100: Average annual responses per respondent 3.5; Total annual responses 14,400; Average burden per response 3.5 hours.

Total Estimated Burden Hours: 51,100.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22837 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–71]

Notice of Submission of Proposed Information Collection to OMB: Public Housing Homeownership Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Application and progress reporting for the Public Housing HomeOwnership Program: PHAs make public housing units and other housing projects available for purchase by low-income families for use as principal residences.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0233) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Public Housing Homeownership Program.

OMB Approval Number: 2502–0447.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: Description of the need for the information and proposed use: Public Housing Agencies (PHAs) make available public housing units; public housing projects, and other housing units or developments owned, assisted, or operated, or otherwise acquired for purchase by low-income families for use as principal residences by such families. Families who are interested in purchasing a unit must submit applications to the PHA or purchase and resale entities (PREs). A PRE must prepare and submit to the PHA and HUD a homeownership program before the PRE may purchase any public housing units or projects. The PRE must demonstrate legal and practical capability to carry out the program, provide a written agreement that specifies the respective rights and obligations of the PRE and the PRE, the PHA must develop a homeownership program and obtain HUD approval before it can be implemented, provide supporting documentation and

additional supporting documentation for acquisition or non-public housing for homeownership. PHA applications can be submitted electronically via the Internet. PHAs will be required to maintain records and report annually on the public housing homeownership program.

Respondents: State or local government.

Frequency of Submission: On occasion, Quarterly, Semi-annually, Annually.

Reporting Burden: 1,000 respondents, annual submission, 9.7 hours per response.

Total Estimated Burden Hours: 9,720.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 29, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22838 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–67]

Notice of Submission of Proposed Information Collection to OMB: Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This information is collected from mortgagors and contractors to manage and monitor the process of advancing mortgage proceeds for multifamily mortgages on new or rehabilitated housing.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0044) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications.

OMB Approval Number: 2502–0044.

Form Numbers: HUD–2328, HUD–92330–A, and HUD–2205–A.

Description of the Need for the Information and Its Proposed Use: This information is collected from mortgagors and contractors to manage and monitor the process of advancing mortgage proceeds for multifamily mortgages on new or rehabilitated housing.

Respondents: Business or other for-profit, Not-for profit institutions.

Frequency of Submission: On occasion.

Reporting Burden: Estimated number of respondents 500: Average annual responses per respondent 1.8; Total annual responses 925; Average burden per response 5 hours.

Total Estimated Burden Hours: 5,100.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 28, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22839 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–66]

Notice of Submission of Proposed Information Collection to OMB: Homeownership of Single Family Homes Program (HOPE 3)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The information is required to disburse funds and to monitor the performance of grantees in achieving the goals and objectives of the HOPE 3 Program to create homeownership opportunities for low-income families and individuals who are first-time homebuyers.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2506–0128) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-

mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Homeownership of Single Family Homes Program (HOPE 3).

OMB Approval Number: 2506–0128.

Form Numbers: HUD–40102–B, 40103, 40104, and 40105.

Description of the Need for the Information and Its Proposed Use: The information is required to disburse funds and to monitor the performance of grantees in achieving the goals and objectives of the HOPE 3 Program to create homeownership opportunities for low-income families and individuals who are first-time homebuyers. HUD is finalizing all HOPE 3 grants and expects the programs to be fully closed out by the end of calendar year 2005.

Respondents: Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion, Annually.

Reporting Burden: Estimated number of respondents 100: Average annual responses per respondent 21; Total annual responses 2,100; Average burden per response 5 hours.

Total Estimated Burden Hours: 10,058.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 28, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22840 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–65]

Notice of Submission of Proposed Information Collection to OMB: Standardized Form for "Race and Ethnic Data Collection"

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is seeking renewal of the approval to use the standardized form for the Collection of Race and Ethnic Data. OMB issued revised standards for collecting race and ethnicity data for Federal agencies October 30, 1997. The standards apply to HUD program offices and partners that collect, maintain, and report Federal data on race and ethnicity for program administrative reporting, and civil rights compliance reporting to reflect the growing diversity of the U.S. population. The form is designed for reporting aggregate racial and ethnic data by those entities that are required to collect and report such data to HUD.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2535–0113) and should be sent to: Lauren Wittenberg, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Documentation is also available on HUD's Information Collection Budget Tracking System Web site at *http://www5.hud.gov:63001/po/i/icbts/.*

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Standardized form for "Race and Ethnic Data Collection".

OMB Approval Number: 2535–0113.

Form Numbers: HUD–27061.

Description of the Need for the Information and Its Proposed Use: HUD is seeking renewal of the approval to use the standardized form for the Collection of Race and Ethnic Data. OMB issued revised standards for collecting race and ethnicity data for Federal agencies October 30, 1997. The standards apply to HUD program offices and partners that collect, maintain, and report Federal data on race and ethnicity for program administrative reporting, and civil rights compliance reporting to reflect the growing diversity of the U.S. population. The form is designed for reporting aggregate racial and ethnic data by those entities that are required to collect and report such data to HUD.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion, Quarterly, Other (as required by application and award documents).

Reporting Burden: This proposal will result in no significant increase in the current information collection burden. An estimation of the total number of hours needed to provide the information for each grant application is 0.01 hour (approximately one minute), however, the burden will be assessed against each individual grant program submission under the Paperwork Reduction Act; number of respondents is an estimated 11,000; 60% of response will be quarterly and 40% annually.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 28, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22841 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4815–N–64]

Notice of Submission of Proposed Information Collection to OMB: Fair Housing Initiatives Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The Department is seeking renewal of the approval to collect information to select awardees for the Fair Housing Initiatives Program (FHIP) grant. The application requirements contain some changes from those in use since 3/2003.

DATES: *Comments Due Date:* October 9, 2003.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2529–0033) and should be sent to: Lauren Wittenberg,, OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Lauren_Wittenberg@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the relevant documentation are available from Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Fair Housing Initiatives Program.

OMB Approval Number: 2529–0033.

Form Numbers: HUD 424, 424B, 424C, 424CB, 424CBW, HUD 2880, SF LLL, HUD 2990, 2991, 2993, 2994, 40076 FHIP.

Description of the Need for the Information and Its Proposed Use: The Information collected will assist the Department in selecting the highest-ranking applicants for the Fair Housing Initiatives Program (FHIP) grant. Information will also be included to oversee administration of the grant.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Frequency of Submission: On occasion, Quarterly, Other (as required by application and award documents).

Reporting Burden: Estimated number of Respondents 400: Average annual responses per respondent 3; Total annual responses 1,186; Average burden per response 40 hours.

Total Estimated Burden Hours: 48,472.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 27, 2003.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 03–22842 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–16]

Redelegation of Authority With Respect to the Section 184 Indian Housing Loan Guarantee Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Public and Indian Housing redelegates the authority to administer the Section 184 Indian Housing Loan Guarantee Program to the Deputy Assistant Secretary for Native American Programs, and the Director of the Office of Loan Guarantee in the Office of Native American Programs, Office of Public and Indian Housing.

EFFECTIVE DATE: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fagan, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410–5000; telephone (202) 401–7914 (this is not a toll-free number). For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Section 184 Indian Housing Loan Guarantee program is authorized by section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a). The purpose of the program is to provide Indian families, Indian housing authorities and tribes with access to sources of private financing. In a separate notice, the authority to administer the Section 184 Indian Housing Loan Guarantee program was delegated by the Secretary

to the Assistant Secretary for Public and Indian Housing. The Assistant Secretary for Public and Indian Housing redelegates the authority to administer the Section 184 Indian Housing Loan Guarantee Program to the Deputy Assistant Secretary for Native American Programs and the Director of the Office of Loan Guarantee, in the Office of Native American Programs, Office of Public and Indian Housing.

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing redelegates the authority to administer the Section 184 Indian Housing Loan Guarantee program under section 184 of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–13a) to the Deputy Assistant Secretary for Native American Programs and the Director of the Office of Loan Guarantee, in the Office of Native American Programs.

Section B. Authority Excepted

The authority redelegated under Section A does not include: (1) the authority to issue and waive regulations; and (2) the power to sue and be sued.

Section C. Authority Revoked

The Assistant Secretary for Public and Indian Housing revokes all prior delegations pertaining to administration of the Section 184 Indian Housing Loan Guarantee program, including but not limited to the delegation of authority published on September 26, 1994 (59 FR 49124).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: July 18, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–22845 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–30]

Redelegation of Authority for Public and Indian Housing and Supersedure of Prior Redelegation Concerning Native American Housing Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation and supersedure of authority.

SUMMARY: In this notice, the Assistant Secretary for Public and Indian Housing updates the redelegation of authority for administration of Native American housing programs to the Deputy Assistant Secretary for Native American Programs, the Office of Native American Programs (ONAP) Administrators, the Director of the Office of Grants Management, and the Director of the Office of Grants Evaluation, within ONAP, Office of Public and Indian Housing.

EFFECTIVE DATE: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fagan, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington DC 20410–5000; telephone (202) 401–7914 (this is not a toll-free number). For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA) (25 U.S.C. 4101 *et seq.*) provides housing assistance to Native Americans by means of a single block grant program. In a notice published in the **Federal Register** on October 2, 1998 (63 FR 53085), the Assistant Secretary for Public and Indian Housing redelegated, subject to certain exceptions, the authority to administer programs under NAHASDA to the Deputy Assistant Secretary for Native American Programs, the ONAP Administrators, the Director of the Office of Grants Management, and the Director of the Office of Grants Evaluation, within ONAP, Office of Public and Indian Housing. The Department is now in the process of updating its delegations. This updated redelegation supersedes the 1998 redelegation of authority. This updated redelegation also supersedes the redelegations of authority published on March 1, 1994 (59 FR 9764), and May 11, 1994 (59 FR 24463). The 1994 delegations referred to the head of ONAP as the Director and that title was subsequently changed to Deputy Assistant Secretary.

Section A. Authority Redelegated

Subject to authority excepted in section C of this notice, the Assistant Secretary for Public and Indian Housing redelegates to the Deputy Assistant Secretary for Native American Programs all the Assistant Secretary's authority to administer the programs under Titles I through V of the Native American Housing Assistance and Self-Determination Act of 1996, including the authority to review plans submitted in compliance with section 102 of NAHASDA and to notify the Tribe or tribally designated entity whether the plan complies with the statutory requirements, the reasons for noncompliance and the modifications necessary to meet the requirements of section 102 of NAHASDA.

Section B. Authority Further Redelegated

The Assistant Secretary further redelegates to the ONAP Administrators, the Director of the Office of Grants Management, and the Director of the Office of Grants Evaluation the authority to:

1. Conduct environmental reviews in compliance with section 105(b) of NAHASDA (25 U.S.C. 4115);

2. Execute all necessary agreements, including but not limited to grant agreements;

3. Review performance reports submitted by the Tribe or the tribally designated entity and issue reports based on such review; and

4. Any other authority necessary to carry out the purposes of Titles I through V of NAHASDA, which has not been excepted from this delegation.

Section C. Authority Excepted

The authority redelegated under section A and section B does not include (1) the authority to issue and waive regulations; (2) the authority to waive the requirement for submitting the plan as set forth in section 101(b)(2) of NAHASDA (25 U.S.C. 4116); (3) the authority to require replacement of a tribally designated housing entity pursuant to section 402 of NAHASDA (25 U.S.C. 4162); or (4) the authority to effect remedies for noncompliance requiring notice and opportunity for a hearing.

Section D. Authority To Further Redelegate

The authority delegated in section B, subject to the exceptions in section C may be redelegated to employees of the Department in accordance with a written delegation.

Section E. Authority Revoked

This delegation revokes and supersedes the redelegations of authority published on October 2, 1998 (63 FR 53085), March 1, 1994 (59 FR 9764), and May 11, 1994 (59 FR 24463).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 18, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–22846 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–31]

Redelegation of Authority for the Title VI Loan Guarantee Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Public and Indian Housing redelegates the authority to administer the Title VI Loan Guarantee Program to the Director, Office of Loan Guarantee Program in the Office of Native American Programs of the Office of Public and Indian Housing.

EFFECTIVE DATE: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fagan, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington, DC 20410–5000; telephone (202) 401–7914 (this is not a toll-free number). For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Title VI Loan Guarantee Program is authorized under Title VI of the Native American Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). The program seeks to provide innovative ways to enhance economic growth, increase access to private capital, and encourage investment and participation of financial institutions on Indian reservations and other Native American areas. To that end, the Title VI Loan Guarantee program assists Indian Housing Block Grant recipients who want to finance eligible affordable housing activities, but are unable to secure financing without the assistance of a federal guarantee. This notice redelegates the authority to administer the Title VI Loan Guarantee program to the Director of the Office of Loan Guarantee Program in the Office of Native American Programs of the Office of Public and Indian Housing.

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing redelegates authority and power with respect to the Title VI Loan Guarantee program to the Director, Office of Loan Guarantee, in the Office of Native American Programs of the Office of Public and Indian Housing.

Section B. Authority Excepted

The authority redelegated under Section A does not include: (1) The authority to issue or waive regulations; (2) the authority to sue and be sued; or (3) the authority to effect remedies for noncompliance requiring notice and an opportunity for an administrative hearing.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 18, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–22847 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–32]

Notice of Revocation and Redelegation of Authority for Indian and Alaska Native Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of revocation and redelegation of authority.

SUMMARY: This notice revokes prior redelegations of authority from the Assistant Secretary for Public and Indian Housing with respect to the administration of programs, under the authority of the Assistant Secretary, for Indians and Alaska Natives, to the Deputy Director for Headquarters Operations, and the Deputy for Field Operations, Office of Native American Programs (ONAP), within the Office of Public and Indian Housing, and then redelegates this authority to the Director of the Office of Grants Evaluation and the Director of the Office Grants Management, both within ONAP, Office of Public and Indian Housing.

EFFECTIVE DATE: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fagan, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington DC 20410–5000; telephone (202) 401–7914 (this is not a toll-free number). For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** on March 1, 1994 (59 FR 9765), the Assistant Secretary for Public and Indian Housing revoked all authority previously redelegated for the administration of HUD programs for Indians and Alaska Natives, under the jurisdiction of the Assistant Secretary for Public and Indian Housing, and then redelegated that authority to the Deputy Director for Headquarters Operations, and the Deputy for Field Operations, ONAP, within the Office of Public and Indian Housing.

This notice revokes all authority redelegated to the Deputy Director for Headquarters Operations and the Deputy for Field Operations, and redelegates the authority of the Assistant Secretary for Public and Indian Housing to administer HUD programs for Indians and Alaska Natives to the Director of the Office of Grants Evaluation and the Director of the Office of Grants Management, both offices within the Office of Public and Indian Housing.

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing redelegates to the Director of the Office of Grants Evaluation and the Director of the Office Grants Management, within the Office of Public and Indian Housing, all authority to administer HUD programs for Indians and Alaska Natives, under the jurisdiction of the Assistant Secretary.

Section B. Authority Excepted

The authority redelegated under section A does not include: (1) The authority to issue or waive regulations; (2) the authority to sue and be sued; or (3) the authority to effect remedies for noncompliance requiring notice and an opportunity for an administrative hearing.

Section C. Revocation and Supersedure

This redelegation revokes and supersedes all prior redelegations of authority from the Assistant Secretary for Public and Indian Housing with respect to the administration of Indian and Alaska Native programs, under the jurisdiction of the Assistant Secretary for Public and Indian Housing. Among the redelegations revoked, or revoked in part, are:

1. The redelegation of authority published on March 1, 1994 (59 FR 9765);

2. The redelegation of authority published on April 10, 1992 (57 FR 12516), with respect to Indian Housing Authorities only;

3. The redelegation of authority published on November 5, 1991 (56 FR 56524), with respect to Indian Housing Authorities only;

4. The redelegation of authority published on August 1, 1986 (51 FR 27604).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 18, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–22848 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4837–D–11]

Redelegation of Authority for Rural Housing and Economic Development Grants Awarded to Indian Tribes and Tribal Entities

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates to the Deputy Assistant Secretary for Native American Programs in the Office of Native American Programs (ONAP) of the Office of Public and Indian Housing, the Director of the Denver ONAP Office of Grants Management, and the Director of the Denver ONAP Office of Grants Evaluation, the authority to administer Rural Housing and Economic Development grants awarded to Indian Tribes and tribal entities.

EFFECTIVE DATE: July 18, 2003.

FOR FURTHER INFORMATION CONTACT: Edward Fagan, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4126, Washington DC 20410–5000; telephone (202) 401–7914 (this is not a toll-free number). For those needing assistance, this number may be accessed through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Rural Housing and Economic Development (RHED) program provides funding to Indian tribes, state housing finance agencies, state community and/or economic development agencies, local rural nonprofits and community development corporations to support innovative housing and economic development activities in rural areas. The program is authorized in annual HUD appropriations acts and was originally authorized in the Fiscal Year (FY) 1998 HUD Appropriation Act (Pub. L. 105–65, 111 Stat. 1344, 1357, approved October 27, 1997). The RHED program is administered by the Assistant Secretary for Community Planning and Development. However, because of the unique relationship between the Office of Public and Indian Housing and Indian tribes, the Secretary delegated to the Assistant Secretary for Public and Indian Housing the authority to administer RHED grants awarded to Indian tribes and tribal entities by the Assistant Secretary for Community Planning and Development.

This notice redelegates the authority to administer RHED grants from the Assistant Secretary for Public and Indian Housing to the Deputy Assistant Secretary for Native American Programs, the Director of the Denver ONAP Office of Grants Management, and the Director of the Denver ONAP Office of Grants Evaluation.

Section A. Authority Redelegated

The Assistant Secretary for Public and Indian Housing redelegates the authority to administer RHED grants awarded to Indian Tribes and tribal entities to the Deputy Assistant Secretary for Native American Programs, and the Director, Denver ONAP Office of Grants Management, and the Director, Denver ONAP Office of Grants Evaluation in the Office of Native American Programs.

Section B. Authority Excepted

The authority redelegated under Section A does not include: (1) The authority to issue and waive regulations; and (2) the authority to sue and be sued.

Section C. Authority Revoked

The Assistant Secretary for Public and Indian Housing revokes all prior delegations pertaining to RHED grants awarded to Indian Tribes and tribal entities, including but not limited to, the delegation of authority published on September 28, 1999 (64 FR 52340).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: July 18, 2003.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 03–22844 Filed 9–8–03; 8:45 am]

BILLING CODE 4210–33–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–406 (Advisory Opinion Proceedings II)]

In the Matter of Certain Lens-Fitted Film Packages; Notice of Commission Determination To Institute Advisory Opinion Proceedings and To Deny a Request for Institution of Enforcement Proceedings

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to institute advisory opinion proceedings in the above-captioned investigation, and to deny a request for institution of enforcement proceedings.

FOR FURTHER INFORMATION CONTACT: Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3012. Copies of the request for an advisory opinion, and all other nonconfidential documents filed in connection with the request, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on March 25, 1998, based on a complaint by Fuji Photo Film Co., Ltd. ("Fuji") of Tokyo, Japan, alleging unfair acts in violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, by several respondents in the importation and sale of certain lens-fitted film packages (*i.e.*, disposable cameras) (LFFPs) that infringed one or more claims of 15 U.S. patents held by

complainant Fuji. On June 2, 1999, the Commission terminated the investigation, finding a violation of section 337 by 26 respondents by reason of importation or sales after importation of LFFPs that were found to infringe one or more claims of the patents in issue. 64 FR 30,541 (June 8, 1999). The Commission issued a general exclusion order, prohibiting the importation of LFFPs that infringe any of the claims at issue, including claim 1 of U.S. Patent 4,954,857 ("the '857 patent"); claim 1 of U.S. Patent 4,972,649 ("the '649 patent"); claim 25 of U.S. Patent 5,381,200 ("the '200 patent"); and claim 1 of U.S. Patent Re 34,168 ("the '168 reissue patent"). CS Industries Inc. ("CSI") was not a party to the original investigation.

On July 31, 2001, the Commission instituted formal enforcement and advisory opinion proceedings at Fuji's request. 66 FR 40,721 (Aug. 3, 2001). CSI was named as a party respondent to the enforcement proceeding, and was also named as a party to the advisory opinion proceedings. 66 FR 40,721 (Aug. 3, 2001). On May 2, 2002, the presiding administrative law judge ("ALJ") issued his enforcement initial determination ("EID") and his initial advisory opinion ("IAO"). The Commission reviewed the EID and the IAO in part and remanded the issue of infringement of claim 9 of the '649 patent under the doctrine of equivalents to the ALJ in light of Supreme Court precedent handed down after the EID and the IAO were issued. 67 FR 52,741 (Aug. 13, 2002). The Commission also directed interested parties to file comments on the recommended remedy determinations made by the ALJ in the EID. 67 FR 52,741 (Aug. 13, 2002). On May 15, 2003, the Commission determined not to review the ALJ's supplemental IAO and EID, which issued on October 24, 2002. 68 FR 28,254 (May 23, 2003). The Commission also issued cease and desist orders against several respondents, including CSI, that were found to have violated the general exclusion order issued in the original investigation. 68 FR 28,254 (May 23, 2003).

On June 19, 2003, CSI filed a request pursuant to Commission rule 210.79 for an advisory opinion. On June 30, 2003, complainant Fuji and the Commission investigative attorney ("IA") filed responses. Fuji's response included a request for initiation of an enforcement proceeding pursuant to Commission rule 210.75. On July 8, 2003, the IA filed a motion for leave to respond to Fuji's request for an enforcement proceeding with attached response. On July 9, 2003, CSI filed a motion for leave to reply to the responses of Fuji and the IA with attached reply, and a response to Fuji's request for an enforcement proceeding. The Commission granted both motions for leave.

The Commission examined CSI's request for an advisory opinion, and the responses and reply thereto, and determined that the request complies with the requirements for institution of an advisory opinion proceeding under Commission rule 210.79(a). The Commission examined Fuji's request for an enforcement proceeding and the responses thereto, and determined to deny the request. Accordingly, the Commission determined to institute an advisory opinion proceeding and referred CSI's request to the presiding ALJ for issuance of an initial advisory opinion.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission rules 210.75(a) and 210.79(a), 19 CFR 210.75(a), 210.79(a).

Issued: September 3, 2003.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 03–22895 Filed 9–8–03; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Parole Commission

Public Announcement Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY: Parole Commission, Department of Justice.

TIME AND DATE: 9:30 a.m., Thursday, September 11, 2003.

PLACE: 5550 Friendship Blvd., Fourth Floor, Chevy Chase, MD 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of Minutes of Previous Commission Meeting.

2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

FOR FURTHER INFORMATION CONTACT: Thomas W. Hutchison, Chief of Staff, United States Parole Commission, (301) 492–5990.

Dated: September 4, 2003.

Rockne Chickinell,

General Counsel, U.S. Parole Commission.

[FR Doc. 03–22984 Filed 9–5–03; 10:00 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Gamma Radiation Exposure Records

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 57.5047; Gamma Radiation Exposure Records.

DATES: Submit comments on or before November 10, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 103(c) of the Federal Mine Safety and Health Act of 1977, the Mine Safety and Health Administration (MSHA) is required to "* * * issue regulations required operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this Act."

Gamma radiation occurs anywhere that radioactive materials are present, and has been associated with lunch cancer and other debilitating occupational diseases. Gamma radiation hazards may be found near radiation sources at surface operations using X-ray machines, weightometers, nuclear and diffraction units.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "**Federal Register** Documents."

III. Current Actions

Annual gamma radiation surveys are required to be conducted—in all underground mines where radioactive ores are mined. Where the average gamma radiation measurements are in excess of 2.0 milliroentgens per hour in the working place, all persons affected are to be provided with gamma radiation dosimeters and records of cumulative individual gamma radiation exposures be kept.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Gamma Radiation Exposure Records.

OMB Number: 1219–0039.

Recordkeeping: Records of cummulative occupational radiation exposures aid in the protection of workers, in the control of subsequent radiation exposure, and are used by MSHA in evaluation of the effectiveness of the protection program in demonstrating compliance with regulatory requirements.

Frequency: Annually.

Affected Public: Business or other for-profit.

Respondents: 2.

Average Time Per Respondent: 1 hour.

Total Burden Hours: 2 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 2nd day of September, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–22897 Filed 9–8–03; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506 (c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the extension of the information collection related to the 30 CFR Sections 49.2 through 49.4, 49.6 through 49.9, 75.1713–1, and 77.1702; Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons.

DATES: Submit comments on or before November 10, 2003.

ADDRESSES: Send comments to Jane Tarr, Management Analyst, Administration and Management 1100 Wilson Boulevard, Room 2171, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer diskette, or via Internet E-mail to *Tarr-Jane@Msha.Gov*. Ms. Tarr can be reached at (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Jane Tarr, Management Analyst, Records Management Group, U.S. Department of Labor, Mine Safety and Health Administration, Room 2171, 1100 Wilson Boulevard, Arlington, VA 22209–3939. Ms. Tarr can be reached at *Tarr-Jane@Msha.Gov* (Internet E-mail), (202) 693–9824 (voice), or (202) 693–9801 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 115 (e) of the Federal Mine Safety and Health Act of 1977 (Mine Act) required the Secretary of Labor (Secretary) to publish proposed regulations which provide that mine rescue teams be available for rescue and recovery work to each underground mine in the event of an emergency. In addition, the costs of making advance arrangements for such teams are to be borne by the operator of each such mine.

Congress considered the ready availability of mine rescue in the event of an accident to be vital protection for miners. Congress was concerned that too often in the past, rescue efforts at a disaster site have had to await the delayed arrival of skilled mine rescue teams. In responding to Congressional concerns, the Mine Safety and Health Administration (MSHA) promulgated 30 CFR Part 49, Mine Rescue Teams. The regulations set standards related to the

availability of mine rescue teams; alternate mine rescue capability for small and remote mines and mines with special mining conditions; inspection and maintenance records of mine rescue equipment and apparatus; physical requirements for mine rescue team members and alternates; and experience and training requirements for team members and alternates.

II. Desired Focus of Comments

MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the For Further Information Contact section of this notice, or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "**Federal Register** Documents."

III. Current Actions

Under 30 CFR part 49, Mine Rescue Teams, the regulations set standards related to the availability of mine rescue teams; alternate mine rescue capability for small and remote mines and mines with special mining conditions; inspection and maintenance records of mine rescue equipment and apparatus; physical requirements for mine rescue team members and alternates; and experience and training requirements for team members and alternates. Parts 75 and 77 requires that coal mine operators make arrangements with a licensed physician, medical service, medical clinic, or hospital and with an ambulance service to provide 24-hour emergency medical assistance and transportation. That information is to be posted at the mine.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Mine Rescue Teams; Arrangements for Emergency Medical Assistance; and Arrangements for Transportation for Injured Persons.

OMB Number: 1219–0078.

Recordkeeping: Section 49.6 states that rescue apparatus and equipment shall be maintained and that a person trained in the use and care of breathing apparatus shall inspect and test the apparatus at lease every 30 days and shall certify by signature and date that the inspections and tests were done. The certification and the record of corrective action taken, if any, shall be maintained at the mine rescue station for a period of one year. Section 49.7 requires that each team member and alternate be examined within 60 days of the beginning of the initial training, and annually thereafter by a physician who shall certify the physical fitness of the team member to perform mine rescue and recovery work for prolonged periods under strenuous conditions. The operator shall have MSHA Form 5000–3 on file for each team member. These forms shall be kept on file at either the mine or the mine rescue station for a period of one year. Section 49.8 requires that prior to serving on a mine rescue team, each member must complete an initial 20-hour course of instruction and all team members are required to receive 40 hours of refresher training annually. A record of the training received by each mine rescue team member is required to be on file at the mine rescue station for a period of one year.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Average Time Per Respondent: 33 minutes.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $561K.

SUMMARY OF ESTIMATED BURDEN HOURS AND BURDEN COST

Standard	Annual responses	Hour burden	Hour burden cost
49.2:			
Coal	117	117	$6,426
MNM	31	31	1,393
49.3 and 49.4:			
Coal	2	4	220
MNM	11	22	988
49.6:			
Coal	14,868	4,510	187,165
MNM	14,904	4,521	146,345
49.7:			
Coal	826	3,511	148,484
MNM	828	3,519	116,510
49.8:			
Coal	7,694	4,226	232,092
MNM	7,756	4,631	208,071
49.9:			
Coal	117	233	12,796
MNM	31	62	2,786
75.1713–1	117	233	12,796
77.1702	166	332	18,233
Totals	47,468	25,952	$1,094,305

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia this 2nd day of September, 2003.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 03–22898 Filed 9–8–03; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet September 15, 2003 from 1:30 p.m. until conclusion of the Board's agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC 20037.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Board's meeting of June 27 & 28, 2003.
3. Approval of the minutes of the Executive Session of the Board's meeting of June 28, 2003.
4. Approval of the minutes of the Board's Annual Performance Reviews Committee meeting of June 27, 2003.
5. Recognition of the Friends of the Legal Services Corporation's Board of Directors.
6. Chairman's Report.
7. Members' Reports.
8. Acting Inspector General's Report.
9. President's Report.
10. Consider and act on the report of the Board's Provision for the Delivery of Legal Services Committee.
11. Consider and act on the report of the Board's Operations & Regulations Committee.
12. Consider and act on the report of the Board's Finance Committee.
13. Consider and act on the report of the Board's Search Committee for LSC President and Inspector General.
14. Report by Mauricio Vivero, LSC Vice President for Governmental Relations & Public Affairs, on LSC's High-tech Corporate Advisory Board and Corporate Sponsorship.
15. Consider and act on six-month contract extensions for LSC Vice Presidents Randi Youells, Mauricio Vivero, and Victor Fortuno.
16. Consider and act on other business.
17. Public comment.
18. Consider and act on whether to authorize an executive session of the Board to receive a briefing by the Acting Inspector General on the activities of the Office of the Inspector General and to consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Closed Session

19. Briefing [1] by the Acting Inspector General on the activities of the Office of Inspector General.
20. Consider and act on the Office of Legal Affairs' report on potential and pending litigation involving LSC.

Open Session

21. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 295–1500.

Dated: September 5, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–23119 Filed 9–5–03; 4:13 pm]

BILLING CODE 7050–01–P

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b)(a)(2) and (b). See also 45 CFR 1622.2 & 1622.3.

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Finance Committee

Time and Date: The Finance Committee of the Legal Services Corporation Board of Directors will meet on September 15, 2003. The meeting will begin at 9:30 a.m. and continue until the Committee concludes its agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW, Washington, DC 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the minutes of the *Committee's* meeting of June 27, 2003.
3. Report on LSC's *Consolidated Operating Budget (COB), Expenses, and Other Funds Available through July 31, 2003.*
4. Report on LSC's budget projected operating expenses for April 1–June 30, 2003.
5. Consider and act on proposed *Internal Budgetary Adjustments and COB Reallocations for April 1–June 30, 2003.*
6. Report on LSC's budget projected operating expenses for July 1–September 30, 2003.
7. Consider and act on proposed *Internal Budgetary Adjustments and COB Reallocations for July 1–September 30, 2003.*
8. Consider and act on LSC's FY 2004 *Temporary Operating Budget.*
9. Public comment on LSC's FY 2005 Budget Mark.
10. LSC's Management recommendation on LSC's FY 2005 Budget Mark.
11. Consider and act on LSC's FY 2005 Budget Mark.
12. Consider and act on fixing the LSC President's salary to Level V of the Federal Government's Executive Schedule, thereby allowing the President's salary to adjust automatically as Level V adjusts.
13. Consider and act on other business.
14. Public comment.
15. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting

may notify Elizabeth S. Cushing, at (202) 295–1500.

Dated: September 5, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–23120 Filed 9–5–03; 4:13 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Operations & Regulations Committee

TIME AND DATE: The Operations & Regulations Committee of the Legal Services Corporation Board of Directors will meet on September 14, 2003. The meeting will begin at 2:30 p.m. and continue until the Committee concludes its agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of the Committee's meeting minutes of June 27, 2003.
3. Staff report on the responsibilities of LSC's Office of Compliance & Enforcement.
4. Staff reports on:

(a) LSC open rulemakings: 45 CFR parts 1604 (Outside Practice of Law); 1611 (Financial Eligibility); and 1626 (Alien Eligibility);

(b) Potential new rulemakings;

(c) Priorities for rulemakings; and

(d) Timeline for open and proposed rulemakings.

5. Public comment regarding:

(a) Status (as opposed to merits) of open rulemakings;

(b) Potential new rulemakings;

(c) Priorities for rulemakings; and

(d) Timeline for open and potential rulemakings.

6. Consider and act on open rulemakings.
7. Consider and act on potential new rulemakings.
8. Consider and act on priorities for rulemakings.
9. Consider and act on a timeline for open and proposed rulemakings.
10. Consider and act on a new Grant Assurance for 2004 regarding attorneys' fees in property recovery actions.
11. Other public comment.
12. Consider and act on other business.
13. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 295–1500.

Dated: September 5, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–23121 Filed 9–5–03; 4:13 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Committee on Provision for the Delivery of Legal Services

TIME AND DATE: The Committee on Provision for the Delivery of Legal Services of the Legal Services Corporation Board of Directors will meet on September 14, 2003. The meeting will begin at 10:30 a.m. and continue until the Committee concludes its agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of agenda.
2. Approval of minutes of the Committee's meeting of June 27, 2003.
3. Short Presentations on the Critical Issues and Challenges Facing the National Legal Services Delivery System and the Clients Served by Legal Services Programs:

- Alan Houseman, Center for Law & Social Policy (CLASP); Don Saunders and Teresa Cosby, National Legal Aid & Defender Association (NLADA).
- Lisa Oshiro, Native American Indian Legal Services (NAILS).
- Wayne Moore, American Association of Retired Persons (AARP).
- Susan Patnode, Rural Network.
- Sarah Singleton, ABA Standing Committee on Legal Aid & Indigent Defendants (SCLAID).
- Lillian Johnson and Don Isaac, African-American Project Directors Association (AAPDA).
- Faith Rivers, National Association of IOLTA Providers (NAIP).
- Luis Jaramillo, Farmworker Project Group.

4. Consider and act on other business.
5. Public comment.
6. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel & Corporate Secretary, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing, at (202) 295–1500.

Dated: September 5, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–23122 Filed 9–5–03; 4:13 pm]

BILLING CODE 7050–01–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors Search Committee for LSC President and Inspector General

TIME AND DATE: The Search Committee for LSC President and Inspector General of the Legal Services Corporation's Board of Directors will meet on September 15, 2003. The meeting will begin at 11 a.m. and continue until conclusion of the Committee's agenda.

LOCATION: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of the minutes of the Committee's meeting of August 6, 2003.
3. Consider and act on qualifications for the position of LSC President.
4. Consider and act on the process for the selection of an LSC President, including, but not limited to the scheduling of candidate interviews and changes to the Committee's aspirational timeline.
5. Public comment.
6. Consider and act on other business.
7. Consider and act on adjournment of meeting.

FOR FURTHER INFORMATION CONTACT: Victor M. Fortuno, Vice President for Legal Affairs, General Counsel and Corporate Secretary, at (202) 295–1500.

Special Needs: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Elizabeth S. Cushing at (202) 295–1500.

Dated: September 5, 2003.

Victor M. Fortuno,

Vice President for Legal Affairs, General Counsel & Corporate Secretary.

[FR Doc. 03–23123 Filed 9–5–03; 4:13 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–101)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that the Nova-Tech Engineering, Inc., of Mountlake Terrace, Washington, has applied for a co-exclusive license to practice the invention disclosed in NASA Case No. MFS–30122–1 entitled "Auto-Adjustable Pin Tool For Friction Stir Welding." Written objections to the prospective grant of a license should be sent to Mr. James J. McGroary, Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by September 24, 2003.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Department/CD30, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226.

Dated: August 28, 2003.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 03–22906 Filed 9–8–03; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (03–102)]

Performance Review Board, Senior Executive Service (SES)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Membership of SES Performance Review Board.

SUMMARY: The Civil Service Reform Act of 1978, Public Law 95–454 (Section 405) requires that appointments of individual members to a Performance Review Board be published in the **Federal Register**.

The performance review function for the SES in the National Aeronautics and Space Administration is being performed by the NASA Performance Review Board (PRB) and the NASA Senior Executive Committee. The latter performs this function for senior executives who report directly to the Administrator or the Deputy Administrator and members of the PRB. The following individuals are serving on the Board and the Committee:

Performance Review Board

Chairperson, Associate Administrator for Earth Science, NASA Headquarters

Executive Secretary, Senior Executive Advisor, Office of Human Resources, NASA Headquarters

Director, Personnel Division, NASA Headquarters

Deputy General Counsel, NASA Headquarters

Deputy Assistant Administrator for Equal Opportunity Programs, NASA Headquarters

Deputy Associate Administrator for Space Science, NASA Headquarters

Deputy Associate Administrator for Earth Science, NASA Headquarters

Deputy Associate Administrator for Space Flight, NASA Headquarters

Deputy Associate Administrator for Education, NASA Headquarters

Deputy Associate Administrator for Safety and Mission Assurance, NASA Headquarters

Director, Research Support Division, Office of Aerospace Technology, NASA Headquarters

Deputy Associate Administrator (Science) for Biological and Physical Research, NASA Headquarters

Associate Director (Management), NASA Johnson Space Center

Deputy Center Director, NASA Glenn Research Center

Deputy Center Director, NASA Ames Research Center

Deputy Center Director, NASA Kennedy Space Center

Senior Executive Committee

Chairperson, Associate Deputy Administrator for Institutions and Asset Management, NASA Headquarters

Executive Secretary, Director, Personnel Division, NASA Headquarters

Associate Administrator for Biological and Physical Research, NASA Headquarters

Associate Administrator for Earth Science, NASA Headquarters

Assistant Administrator for Human Resources, NASA Headquarters

Sean O'Keefe,

Administrator.

[FR Doc. 03–22939 Filed 9–8–03; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Advanced Computational Infrastructure & Research (1185); Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Proposal Review Panel for Advanced Computational Infrastructure & Research (#1185).

Date & Time:

September 18, 2003; 8 a.m.–5 p.m.

September 19, 2003; 8 a.m.–5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 1150, Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Richard Hilderbrandt, Program Director, Division of Advanced Computational Infrastructure and Research, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Tel: (703) 292–8963, e-mail: *rhilderb@nsf.gov.*

Purpose of Meeting: To perform a reverse site visit to review and provide advice and recommendations on plans and progress reports for NPACI, NCSA and PSC as part of the PACI activity.

Agenda: To review and evaluate annual reports and program plans.

Reason for Late Notice: Unforeseen administrative complications.

Dated: September 3, 2003.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 03–22851 Filed 9–8–03; 8:45 am]

BILLING CODE 7555–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m. (EDT), September 15, 2003.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED

Parts Open to the Public

9 a.m. (EDT) Convene meeting.

1. Approval of minutes of the August 18, 2003, Board meeting.
2. Thrift Savings Plan report by the Executive Director.
a. Loan procedures
b. Lifestyle funds
c. ETAC
d. Investment returns
3. Audits.
4. Approval of the FY 2004 Budget and FY 2005 Estimates.

Parts Closed to the Public

5. Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: September 5, 2003.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 03–23016 Filed 9–5–03; 11:47 am]

BILLING CODE 6760–01–M

NUCLEAR REGULATORY COMMISSION

[NUREG–1748, Final Report]

Environmental Review Guidance for Licensing Actions Associated With NMSS Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability of Final Report.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the final report "Environmental Review Guidance for Licensing Actions Associated with NMSS Programs" (NUREG–1748). This document provides guidance for the planning and implementation of National Environmental Policy Act requirements for activities performed in the Office of Nuclear Materials Safety and Safeguards (NMSS). Public comments were solicited as noticed in the **Federal Register** on October 18, 2001 (66 FR 52951) and again on May 29, 2002 (67 FR 37461).

ADDRESSES: NUREG–1748 is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically from the ADAMS Public Library component on the NRC Web Site, *http://www.nrc.gov* (the Electronic Reading Room). For those without access to the Internet, paper copies of any electronic documents may be obtained for a fee by contacting the NRC's Public Document Room at 301–415–4737 or toll free at 1–800–397–4209.

FOR FURTHER INFORMATION CONTACT: Matthew Blevins, U.S. Nuclear Regulatory Commission, Mail Stop T7–J8, Washington, DC 20555, Phone Number: (301) 415–7684; e-mail: *mxb6@nrc.gov*.

SUPPLEMENTARY INFORMATION: This guidance document, NUREG–1748, provides general procedures for the environmental review of licensing actions regulated by NMSS. Although the main focus of this guidance is the NRC staff's environmental review process, it also contains related information which applicants and licensees may find useful. Chapter 1 provides a summary and overview of the guidance. This chapter briefly discusses the three ways in which an environmental review is performed, either by meeting the criteria for a categorical exclusion or by preparing an environmental assessment (EA) or environmental impact statement (EIS). This chapter also discusses early planning for an EA or EIS and methods of using previous environmental analyses related to the proposed action. Chapter 2 discusses the categorical exclusions and the basis of their use. Chapter 3 discusses the EA process, including preparation and content of the EA, and preparation of the Finding of No Significant Impact. Chapter 4 discusses the process of preparing an EIS, from developing a project plan through scoping, consultations and public meetings, to preparing the Record of Decision. Chapter 5 discusses the technical content of the EIS, and Chapter 6 discusses environmental information that should be considered by applicants and licensees in preparing their environmental report.

Dated at Rockville, Maryland, this 22nd day of August 2003.

For the Nuclear Regulatory Commission.

Scott Flanders,

Chief, Environmental and Low-Level Waste Section, Environmental and Performance Assessment Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 03–22876 Filed 9–8–03; 8:45 am]

BILLING CODE 7590–01–P

PRESIDIO TRUST

Public Health Service Hospital, The Presidio of San Francisco (Presidio), California; Combined Notice To Initiate Public Scoping and Prepare an Environmental Assessment

ACTION: Notice is given, in accordance with the provisions of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*), that the Presidio Trust (Trust) is proposing to rehabilitate and reuse historic buildings in the Public Health Service Hospital district (PHSH district or the district) of the Presidio of San Francisco (project). The project also includes the possibility of demolition and limited new replacement construction to accomplish the rehabilitation and reuse of the district's historic buildings. The Trust is commencing preparation of a project-specific environmental assessment (EA), and is inviting the participation of the public and interested agencies as part of the scoping process for the EA.

SUMMARY: The project is an important component of the Presidio Trust Management Plan (PTMP), the Trust's comprehensive land use plan and policy framework for Area B of the Presidio, adopted in August 2002. In the PTMP, the PHSH district was identified as an area for reuse as a residential and educational community. Its centerpiece would be the rehabilitation and reuse of the historic Public Health Service Hospital (PHSH or Building 1801) and of the other historic structures in the district. Future consideration would be given to demolition and new replacement construction up to specified limits.

The district includes the PHSH and its complex of nearby dormitories, offices, residences and recreational buildings on the lower plateau, possibly Battery Caulfield on the upper plateau at the north end of the district, and several outlying building premises. The project is needed to arrest the physical deterioration of the buildings, protect the National Historic Landmark District and rehabilitate the district's structures consistent with the Secretary of Interior's Standards; improve the appearance and vitality of some or all of the district; reuse the buildings consistently with the PTMP land use options; and generate revenue for the long-term operation and improvement of the Presidio. In connection with the project, the Trust will adopt planning and design guidelines, approve a development agreement and lease for buildings and premises within the district, approve associated building

and district improvements, and make conforming changes to the PTMP, if any are required.

Building space within the district totals approximately 400,000 square feet (sf). Building 1801 includes a historic structure of approximately 173,000 sf and non-historic additions (or "wings") totaling approximately 124,700 sf. Pursuant to draft planning and design guidelines, non-historic portions of the hospital building may be removed. Although not required, replacement construction up to an amount equivalent to the square footage removed, not to exceed 130,000 sf, may be considered within the district.

Proposed Alternatives

The following four project alternatives are being considered for evaluation in the EA. These include a "no action" alternative required by the NEPA, which in this case will constitute the land use scenario analyzed in the PTMP EIS. Three action alternatives, each with differences in the treatment of Building 1801 and in the proposed amount and location of demolition and new replacement construction, will also be evaluated. The Trust's selected action at the conclusion of the environmental review process may combine various elements of the alternatives, or fall within the range they represent.

Alternative 1: Rehabilitation/No New Construction (PTMP or No Action Alternative)—This alternative would rehabilitate buildings within the PHSH district to accommodate residential (*i.e.*, a mix of senior housing/assisted living and market rate housing) and educational uses. No building demolition or replacement construction would occur, and therefore the existing total building area of 400,000 sf would be maintained. The historic concentration of development would be retained on the lower plateau (*i.e.*, the PHSH complex). The three-acre Battery Caulfield site, on the northern end of the district on the upper plateau, would remain in the short term as a Trust maintenance/corporation yard. The historic portion of Building 1801 and its non-historic additions (including the seven-story end wings and large one-story connector in front of the original main entry) would be rehabilitated for residential use (approximately 200 units) together with the historic housing on Wyman Terrace (approximately 11 units). Other ancillary buildings in the district would be rehabilitated for a variety of educational and supporting uses. Outlying buildings (Buildings 1450, 1818 and 1819) would remain as Trust maintenance facilities.

Alternative 2: Rehabilitation/Infill Construction—This alternative would rehabilitate historic buildings within the PHSH district, and would concentrate development on the lower plateau primarily for residential use (between 300 and 390 units total). Both the historic portion and non-historic wings of Building 1801 would be rehabilitated. Approximately 17,000 sf of non-historic buildings, including the front connector and the two-story additions at the rear of Building 1801, would be removed and replaced with an equivalent amount of compatible infill construction at locations on the lower plateau that conform to the draft planning and design guidelines. No new buildings would be constructed on the Battery Caulfield site, which would remain in the short term as a Trust maintenance/corporation yard. This alternative may also include a new underground parking facility beneath Building 1801 to increase landscaped open space on the lower plateau.

Alternative 3: Rehabilitation/Demolition—This alternative would rehabilitate historic buildings within the PHSH district, remove the wings of Building 1801, and provide no replacement construction at Battery Caulfield or elsewhere within the district. Total square footage in the district would decrease to approximately 275,000 sf. Buildings would be rehabilitated primarily for residential use (between 210 and 230 units total). The Battery Caulfield site would remain in the short term as a Trust maintenance/corporation yard, and outlying buildings would remain as Trust maintenance facilities.

Alternative 4: Rehabilitation/Relocated Construction—This alternative would rehabilitate historic buildings within the PHSH district, remove the non-historic wings and provide for replacement construction within the Battery Caulfield site primarily for residential uses. Several non-historic buildings including the wings and connector in front of Building 1801, the addition to Building 1802, and Building 1803 would be removed and replaced with an equivalent amount of compatible new residential construction (up to 125 units, not to exceed approximately 115,000 sf) within the lower plateau and within Battery Caulfield (approximately 90 units) for a total of 300 to 350 residential units.

Proposed Scoping and Environmental Review

The EA will tier from the PTMP Environmental Impact Statement (EIS) by incorporating by reference, as appropriate, the information and analysis in the PTMP EIS, and will focus the EA on issues specific to each proposed project alternative. The Trust encourages all interested individuals, organizations and agencies to provide comments on the nature and extent of issues, potential impacts and alternatives to be addressed in the EA. As part of the scoping process, the Trust will conduct a public Trust Board meeting in October or November, at a time and location to be announced, at which the Trust Board will accept oral scoping comments from the public on the proposed action described herein, the alternatives to be studied under the NEPA, and the scope of the EA. For those unable to attend this meeting, an information packet is available upon request (see Contact information below). The Trust will provide informal information updates and notices concerning the project through postings on its Web site at *www.presidio.gov,* or through its bi-monthly publication, the Presidio Post. The Trust will announce the release of the EA by notice in the Presidio Post, as well as via direct mailing and other means. At this time, it is expected that the EA will be available for public review in January 2004.

Contact

To request the information packet, provide comments or obtain information on meeting locations, please contact John Pelka, NEPA Compliance Coordinator, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052 (fax: 415/561–2790) or *phsh@presidiotrust.gov.* NEPA scoping comments must be postmarked or transmitted not later than November 26, 2003.

Dated: September 2, 2003.

Karen A. Cook,

General Counsel.

[FR Doc. 03–22886 Filed 9–8–03; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48428; File No. SR–CHX–2003–22]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Stock Exchange, Inc., Relating to Membership Dues and Fees

September 2, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 2003, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the CHX has prepared. On August 22, 2003, the CHX filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, has been filed by Phlx under Rule 19b–4(f)(2) under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule (the "Fee Schedule"), effective August 1, 2003, to (1) modify the Fee Schedule by reducing transaction fees for executions through floor brokers (and market makers) that exceed specific thresholds, while eliminating the caps previously associated with those transaction fees; (2) re-bill fees associated with the use of the NYFIX system[5] that exceed $15,000 each month to floor brokers, based on their use of the system; and (3) modify the floor broker earned credit program to permit floor brokers to receive additional earned credits if certain events occur.

The text of the proposed rule change is below. Proposed additions are in *italics* and proposed deletions are in [brackets].

MEMBERSHIP DUES AND FEES

* * * * *

F. Transaction and Order Processing Fees

1.–3. (No change to text)

4. Transaction Fees

a.–d. (No change to text).

e. In Nasdaq/NM securities, agency executions executed through a floor broker and market maker executions. — $.0025 per share (up to a maximum of $100 per side), *subject to the fee reduction described in (i), below.*

f. In Dual Trading System issues, agency executions executed through a floor broker and market maker executions. — $.0035 per share (up to a maximum of $100 per side), *subject to the fee reduction described in (i), below.*

g. (No change to text)

h. [Effective January 1, 2003,] The monthly maximum[s] for *transaction* fees *for orders sent via MAX is $10,000 or, if less, $.40 per 100 average monthly gross round lot shares.*

[(1) Maximum monthly transaction fees for orders via MAX] [$10,000]

[(2) Maximum monthly transaction fee for transactions in NASDAQ/NMS Securities (other than transactions included in (1) above)] [$110,000]

[(3) Maximum monthly transaction fee for transactions in Dual Trading System Securities (other than transactions included in (1) above)] [$110,000]

[(4) Maximum monthly transaction fees shall not exceed the lesser of that specified in (1), (2) or (3) above, or $.40 per 100 average monthly gross round lot shares.]

i. *Effective August 1, 2003, the per-share fees described in (e) and (f) above will be reduced on shares traded above a total monthly charge of $150,000 (within each section) as follows:*

Fees are reduced by 25% on additional shares traded that would otherwise generate a total monthly charge above $150,000 and below $200,000;

Fees are reduced by 50% on additional shares traded that would otherwise generate a total monthly charge at or above $200,000 and below $250,000; and

Fees are reduced by 75% on additional shares traded that would otherwise generate a total monthly charge at or above $250,000.

* * * * * * *

H. EQUIPMENT, INFORMATION SERVICES AND TECHNOLOGY CHARGES

* * * * * * *

NYFIX Network and Connection Charges — *All NYFIX charges above $15,000 per month will be re-billed monthly to member firms that access the NYFIX network, based on the proportion of each firm's use of the network during the month.*

* * * * * * *

M. Credits

1. (No change to text)

2. Floor Broker Credits

a. Earned Credits. Total monthly fees owed by a floor broker to the Exchange will be reduced by the application of the following Earned Credit (and floor brokers will be paid each month for any unused credits):

Earned Credit—Average Daily Billable Shares × Average Rate per Billable Share × Credit Percentage × 8.

In calculating the above Earned Credit, the following definitions shall apply:

"Average Daily Billable Shares" means, for a given month, (i) Total Billable Shares in Month divided by (ii) Total Trading Days in Month.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated August 20, 2003 ("Amendment No. 1"). In Amendment No. 1, the CHX submitted a new Form 19b–4, which replaced the original filing in its entirety.

[4] 17 CFR 240.19b–4(f)(2). For purposes of calculating the sixty-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on August 22, 2003, the date CHX filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[5] NYFIX USA, LLC provides equipment, software and network services that route orders among subscribers to the system and that help subscribers manage the orders they receive.

H. EQUIPMENT, INFORMATION SERVICES AND TECHNOLOGY CHARGES—Continued

"Total Billable Shares in Month" means, for a given month, the total number of shares executed on the Exchange by the floor broker for which the Exchange received a transaction fee. Any share executed for which the Exchange did not receive a transaction fee shall not be considered a billable share.

"Total Trading Days in Month" means, for a given month, the number of business days that the Exchange was open for business during the month. Days in which the Exchange closes early, due to a holiday or otherwise, shall nonetheless be considered a day that the Exchange is open for business.

"Average Rate per Billable Share" means, for a given month, (i) the total dollar amount of transaction fees received by the Exchange for trades executed on the Exchange by the floor broker divided by (ii) Total Billable Shares in Month.

"Credit Percentage" means the applicable percentage taken from the following table:

Average Daily Billable Shares		0–49,999	50,000–99,999	100,000–499,999	500,000 shares or more.
Average Rate per Billable Share	Less than $.0040	20%	30%	40%	50%
	$.0040–$.0055	40%	45%	60%	75%
	Greater than $.0055	40%	60%	80%	100%

In any month that the Exchange's Total Billable Shares in Month for all floor brokers exceeds the Exchange's monthly average billable shares for all floor brokers for the first quarter of 2003, the Exchange will distribute 50% of the incremental transaction fee revenue received by the Exchange resulting from that increase in the number of billable shares (the "Additional Revenue"). The Additional Revenue will be distributed to each floor broker in proportion to the floor broker's share of that month's incremental increase in billable shares. (Effective August 1, 2003)

The Earned Credit *(together with any Additional Revenue)* calculated above for each floor broker shall be decreased by an amount equal to that floor broker's "Credit Reduction Charge," which shall be calculated as follows:

(Floor Broker's Monthly Earned Credit ÷ Total CHX Monthly Earned Credits) × *Exchange Baseline* [$50,000] = Floor Broker's Credit Reduction Charge.

The "Exchange Baseline" means, for a given month, $50,000 less any additional revenues (up to $50,000) realized by the Exchange as a result of the elimination of the monthly caps in August 2003 (SR–CHX–2003–22).

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the CHX Fee Schedule in several ways. First, the proposal revises the Exchange's fees for agency transactions executed through floor brokers in both over-the-counter ("OTC") and listed securities by reducing transaction fees for executions that exceed specific thresholds and eliminating the caps associated with those fees.[6] Specifically, the proposal reduces the per share fees on shares traded above a total monthly charge of $150,000 by the following percentages: (1) 25% on additional shares traded that would otherwise generate a total monthly charge above $150,000 and below $200,000; (2) 50% on additional shares traded that would otherwise generate a total monthly charge at or above $200,000 and below $250,000; and (3) 75% on additional shares traded that would otherwise generate a total monthly charge at or above $250,000. At the same time, the Exchange is eliminating the caps that were previously associated with these transaction fees.[7]

Another change to the Fee Schedule allows the Exchange to re-bill its floor brokers a portion of the network and connection costs associated with providing access to the NYFIX system, which can be used to deliver orders to the trading floor for handling by CHX floor brokers. The Exchange will pay the first $15,000 each month associated with the use of this system. The Exchange's floor brokers will be assessed any remaining costs, based on the proportion of each firm's use of the network during the month.

Finally, the proposal modifies the floor broker earned credit program to permit floor brokers to receive additional earned credits if either (a) the number of overall billable shares executed by floor brokers at the Exchange increases in a month over the average number of billable shares executed in a month by floor brokers at the Exchange in the first quarter of 2003 or (b) the Exchange recognizes additional revenues from the changes it has made to its transaction fee schedule as part of this submission. If the number of overall billable shares executed by floor brokers reaches the threshold described above (*i.e.*, it exceeds the average number of billable shares executed by floor brokers during a month in the first quarter of 2003), the Exchange will distribute 50% of the incremental transaction fee revenue that results from that increase in the number of billable shares.[8] In addition, if the Exchange recognizes additional transaction fee revenues in a particular month as the result of the transaction fee changes it has made in this submission, those revenues will be used to reduce the "credit reduction charge" that now serves to decrease the earned credits available to floor brokers.[9]

All of these fee changes took effect August 1, 2003. Among other things, the fee changes are designed ultimately to increase the Exchange's trading volume in securities traded by its floor brokers and to increase the Exchange's revenues. The Exchange believes that these changes reflect a reasonable allocation of dues, fees and other

[6] This proposed rule change also affects the fees charged to market makers for their executions on the Exchange.

[7] The Exchange previously had separate $110,000 per month caps on transaction fees generated through orders executed, other than through the Midwest Automated Execution System ("MAX") in OTC and listed securities.

[8] This additional revenue will be distributed to each floor broker in proportion to the floor broker's share of that month's incremental increase in billable shares.

[9] The Exchange implemented the credit reduction charge in September 2002. *See* Securities Exchange Act Release No. 46592 (October 2, 2002), 67 FR 62999 (October 9, 2002) (SR–CHX–2002–28).

charges among its members and that they permit the Exchange's floor brokers to participate in an earned credit program that provides increased, but not unlimited, opportunities to share in certain of the Exchange's revenues that arise from their trading activities.

2. Statutory Basis

The CHX believes that its proposal is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(4) of the Act [11] in particular, in that it provides for the equitable allocation of reasonable fees among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The CHX neither solicited nor received written comments concerning the proposed rule change, as amended.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the CHX, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder. At any time within 60 days after the submission of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–2003–22 and should be submitted by September 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22856 Filed 9–8–03; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f(b).
[11] 15 U.S.C. 78f(b)(4).
[12] 15 U.S.C. 78s(b)(3)(A).
[13] 17 CFR 240.19b–4(f)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48413; File No. SR–NASD–2003–127]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Modify the Fees for the Listing of Additional Shares Program and To Institute a Record-Keeping Fee for Certain Changes by Issuers

August 26, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2003, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq has filed with the Commission a proposed rule change to modify the fees for the listing of additional shares program and to institute a record-keeping fee for certain changes by issuers.

The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * * *

4500. Issuer Listing Fees

4510. The Nasdaq National Market

(a) No change.

(b) Additional Shares

(1) No change.

(2) The fee in connection with additional shares shall be *$2,500* [2,000] or $.01 per additional share, whichever is higher, up to [a maximum of $22,500 per quarter and] an annual maximum of $45,000 per issuer. There shall be no fee, however, for issuances of up to 49,999 additional shares per quarter.

(3)–(4) No change.

(c)–(d) No change.

(e) Record-Keeping Fee

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of $2,500 to The Nasdaq Stock Market, Inc.

4520. The Nasdaq SmallCap Market

(a) No change.

(b) Additional Shares

(1) No change.

(2) The fee in connection with additional shares shall be *$2,500* [2,000] or $.01 per additional share, whichever is higher, up to [a maximum of $22,500 per quarter and] an annual maximum of $45,000 per issuer. There shall be no fee, however, for issuances of up to 49,999 additional shares per quarter.

(3)–(4) No change.

(c)–(d) No change.

(e) Record-Keeping Fee

An issuer that makes a change such as a change to its name, the par value or title of its security, or its symbol shall pay a fee of $2,500 to The Nasdaq Stock Market, Inc.

* * * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[14] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to revise the fees for the listing of additional shares ("LAS") program and to institute a record-keeping fee for certain changes by issuers.

The LAS program involves notification and fee requirements for the issuance of additional shares. Specifically, an issuer must notify Nasdaq prior to a transaction that may implicate the corporate governance requirements and thereafter pay a fee that is based on the change in the issuer's total shares outstanding as reported in its periodic reports filed with the SEC. Revenues from the LAS program are used to fund issuer-related operations that include educational initiatives, issuer service initiatives and NASD surveillance measures.[3]

NASD Rules 4510(b) and 4520(b) currently provide that the fee for the listing of additional shares is $2,000 or $0.01 per additional share, whichever is higher, up to a maximum of $22,500 per quarter and an annual maximum of $45,000 per issuer. There is no fee for issuances of up to 49,999 additional shares per quarter.

Nasdaq proposes to modify the LAS program fees in two ways. First, the minimum fee would be increased from $2,000 to $2,500 for issuances of between 50,000 and 250,000 additional shares.[4] Second, the current quarterly cap of $22,500 would be eliminated. The annual cap of $45,000, however, would be retained.

Nasdaq also proposes to institute a $2,500 record-keeping fee for certain changes made by issuers. Such a fee would be used to address the costs associated with revising Nasdaq's records when issuers engage in certain actions, including a change of name, a change in the par value or title of securities, or a voluntary change in trading symbol.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,[5] in general, and with Section 15A(b)(5) of the Act,[6] in particular, in that the proposal provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the NASD operates or controls. Specifically, Nasdaq states that the LAS program fees, which are used to fund issuer-related operations,[7] will be imposed on all issuers equally based on the number of additional shares issued. In addition, the proposed record keeping-fee will be imposed equally on all listed issuers that make the changes described above.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2003–127 and should be submitted by September 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22855 Filed 9–8–03; 8:45 am]

BILLING CODE 8010–01–P

[3] *See* Securities Exchange Act Release No. 31586 (December 11, 1992), 57 FR 60257 (December 18, 1992).

[4] As under the current rules, there would be no fee for issuances of up to 49,999 per quarter.

[5] 15 U.S.C. 78o–3.

[6] 15 U.S.C. 78o–3(b)(5).

[7] *See* Securities Exchange Act Release No. 31586, *supra* note 3.

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48425; File No. SR–Phlx–2003–60]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Extending the Program To Deploy the Options Floor Broker Management System

August 29, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4[2] thereunder, notice is hereby given that on August 29, 2003, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Phlx. The Exchange has designated the proposed rule change as constituting a "non-controversial" rule change under Section 19(b)(3)(A)(iii) of the Act,[3] and paragraph (f)(6) of Rule 19b–4 under the Act,[4] which renders the proposal effective upon receipt of this filing by the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] The Exchange has requested that the Commission waive both the five-day pre-filing notification requirement and the 30-day operative delay, as specified in Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend its pilot program pertaining to the Options Floor Broker Management System (the "System") until September 12, 2003.[6] The System is a new component of the Exchange's Automated Options Market (AUTOM) and Automatic Execution (AUTO–X) System.[7]

The text of the proposal rule change is set forth below. New text is in italics; deletions are in brackets.

* * * * *

Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

Rule 1080. (a)–(j)
No change.
Commentary:
.01–.05 No change.
.06 Options Floor Broker Management System. The Options Floor Broker Management System is a component of AUTOM designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. The Options Floor Broker Management System also is designed to establish an electronic audit trail for options orders represented and executed by Floor Brokers on the Exchange, such that the audit trail provides an accurate, time-sequenced record of electronic and other orders, quotations and transactions on the Exchange, beginning with the receipt of an order by the Exchange, and further documenting the life of the order through the process of execution, partial execution, or cancellation of that order. The Exchange will begin deployment of the Options Floor Broker Management System on July 31, 2003, with floor-wide deployment to be completed not later than [August 29] *September 12,* 2003.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the effectiveness of the rules governing the System beyond the current effective date of August 29, 2003, in order to continue to have rules in place concerning the System and to ensure that Floor Brokers using the System during the continuing deployment will not be in violation of current Exchange rules regarding ticket marking requirements.

The System is designed to enable Floor Brokers and/or their employees to enter, route and report transactions stemming from options orders received on the Exchange. Floor Brokers or their employees access the System through an electronic Exchange-provided handheld device on which they have the ability to enter the required information as set forth in Phlx Rule 1063(e), either from their respective posts on the options trading floor or in the trading crowd. The System will eventually replace the Exchange's current Floor Broker Order Entry System ("FBOE"),[8] as part of a roll-out of the new System floor-wide.

All of the rules pertaining to the System adopted in July and effective through August 29[9] are proposed to be extended until September 12, 2003, including: Phlx Rules 1014(g), 1015, 1051, 1063, 1064, and 1080.06, as well as Option Floor Procedure Advices ("Advice") A–11, B–6, B–8, C–2, C–3, F–1, F–2, and F–4. In addition to extending the effective date of the rules, this proposal also amends Phlx Rule 1080, Commentary .06 to state that the Exchange will complete deployment of the System by September 12, 2003.

The Exchange believes that the System will enable Floor Brokers to handle orders they represent more efficiently, and will further enable the Exchange to comply with the audit trail requirement for non-electronic orders required under the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions.[10]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[11] in general, and furthers the objectives of Section 6(b)(5) of the Act[12] in particular; in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest, by providing a System that enables Floor Brokers to handle orders they represent more efficiently, while enabling the Exchange to comply with the requirement in the Order to provide an electronic audit trail for non-electronic orders entered on the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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[6] On July 31, 2003, the Exchange a filed a proposed rule change to implement a pilot program to deploy the Exchange's new System. This proposed rule change was noticed, and accelerated approval was granted thereto, on July 31, 2003. *See* Securities Exchange Act Release No. 48266 (July 31, 2003), 68 FR 152 (August 7, 2003) (SR–Phlx–2003–56). The pilot is currently scheduled to expire on August 29, 2003. The Exchange has also filed for permanent approval of the proposed rules. *See* Securities Exchange Act Release No. 48265 (July 31, 2003), 68 FR 47137 (August 7, 2003)(SR–Phlx–2003–40). The Exchange acknowledges that SR–Phlx–2003–40 and Amendment No. 1 thereto are subject to public comment, which may result in amendments to the proposed rules.

[7] AUTOM is the Exchange's electronic order delivery, routing, execution and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. *See* Exchange Rule 1080.

[8] *See* Securities Exchange Act Release No. 41524 (June 14, 1999), 64 FR 33127 (June 21, 1999) (SR–Phlx–99–11). The FBOE, a component of AUTOM, currently provides a means for (but does not require) Floor Brokers to route eligible orders to the specialist's post, consistent with the order delivery criteria of the AUTOM System set forth in Exchange Rule 1080(b). The new System would include the same functionality as the FBOE, in addition to providing an electronic audit trail for non-electronic orders received by Floor Brokers by way of the entry of the required information in proposed Rule 1063(e). Telephone call between Edith Hallahan, First Vice President and Deputy General Counsel, Phlx and Jennifer Colihan, Special Counsel, Division of Market Regulation, Commission, on August 29, 2003.

[9] *See* note 6, *supra*.

[10] *See* Securities Exchange Act Release No. 43268 (September 11, 2000) and Administrative Proceeding File 3–10282.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days (or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest) after the date of the filing, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Commission has decided, consistent with the protection of investors and the public interest, to waive the five-day pre-filing notice and 30-day operative date to allow the System and rules to continue on a pilot basis without interruption until September 12, 2003.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2003–60 and should be submitted by September 30, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–22857 Filed 9–8–03; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 4471]

Consular Affairs, Overseas Citizen Services, Office of Children's Issues; 60–Day Notice of Proposed Information Collection: Form DS–3077, The Children's Passport Issuance Alert Program; OMB Control Number 1405–XXXX

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: New Collection.

Originating Office: Bureau of Consular Affairs, Overseas Citizen Services, Office of Children's Issues, CA/OCS/CI.

Title of Information Collection: The Children's Passport Issuance Alert Progam.

Frequency: On occasion.

Form Number: DS–3077.

Respondents: Concerned U.S. parents, or their agents, who believe their child may be abducted.

Estimated Number of Respondents: 2400/year.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 1200 hours/year.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

For Additional Information: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Sandra McNeilly, CA/OCS/CI, U.S. Department of State, Washington, DC 20520–4818, who may be reached on (202) 312–9710.

Dated: August 8, 2003.

Dianne M. Andruch,

Deputy Assistant Secretary, Bureau of Consular Affairs, Overseas Citizens Services, Department of State.

[FR Doc. 03–22911 Filed 9–8–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4472]

30-Day Notice of Proposed Information Collection: Form DS–4024, American Citizens Services Internet Based Registration Service (IBRS); OMB Control Number 1405–XXXX

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. This new Internet Based Information Collection system permits U.S. citizens who travel or reside abroad to register their destination and emergency contacts with the Department of State. This facilitates the provision of emergency assistance to U.S. citizens during crisis or disaster. Comments should be submitted within 30 days of the publication of this notice.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: New Collection.

Originating Office: Bureau of Consular Affairs, Overseas Citizens Services CA/OCS.

Title of Information Collection: American Citizens Services Internet Based Registration Service (IBRS).

Frequency: On ocassion.
Form Number: DS–4024.
Respondents: American citizens traveling and residing overseas.
Estimated Number of Respondents: An estimated 3.2 million.
Average Hours Per Response: 10 minutes.
Total Estimated Burden: 533,333 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Mike Meszaros, Bureau of Consular Affairs, Overseas Citizens Services, Office of Policy Review and Interagency Liaison, 1800 G Street NW., Washington, DC 20006 who may be reached on (202) 312–9750.

Dated: August 12, 2003.

Maura Harty,

Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 03–22912 Filed 9–8–03; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4474]

Culturally Significant Objects Imported for Exhibition Determinations: "Goryeo Dynasty: Korea's Age of Enlightenment"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition, "*Goryeo Dynasty: Korea's Age of Enlightenment,*" imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Asian Art Museum, San Francisco, California, from on or about October 18, 2003, to on or about January 11, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, (202) 619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: September 3, 2003.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 03–22914 Filed 9–8–03; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

Bureau of Nonproliferation; Determination on Export-Import Bank Support for U.S. Exports to Iraq

[Public Notice 4473]

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: Pursuant to section 2(b)(4) of the Export-Import Bank Act of 1945, as amended, the President has determined and certified to Congress that it is in the national interest for the Export-Import Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to Iraq.

EFFECTIVE DATE: October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Caroline R. Russell, Office of Regional Affairs, Bureau of Nonproliferation, Department of State (202–647–9786).

SUPPLEMENTARY INFORMATION: In accordance with section 2(b)(4) of the Export-Import Bank Act of 1945, as amended, the Department of State determined that, based on Iraqi activities first discovered in 1991, Iraq has materially violated a safeguards agreement with the International Atomic Energy Agency (IAEA). The violations occurred under the government of Saddam Hussein, which is no longer in power. As a result of this determination, under section 2(b)(4) of the Export-Import Bank Act of 1945, the Board of Directors of the Export-Import Bank is prohibited from giving "approval to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports" to Iraq.

The President has determined and certified to Congress pursuant to section 2(b)(4) that "it is in the national interest" to waive the restrictions in the law and allow the Export-Import Bank to support United States exports to Iraq. This Presidential determination will enable the Export-Import Bank to approve support for United States exports to Iraq beginning October 17, 2003 (45 days after the date of the President's determination and certification).

Dated: September 3, 2003.

Andrew K. Semmel,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 03–22913 Filed 9–8–03; 8:45 am]

BILLING CODE 4710–27–P

TENNESSEE VALLEY AUTHORITY

Approval of Construction in the Tennessee River System; Regulation of Structures; Residential Related Use on TVA-controlled Residential Access Shoreland; Effective Date of Information Collection Requirements Approved by the Office of Management and Budget

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice.

This notice is provided in accordance with Office of Management and Budget (OMB) regulations governing the approval of information collection requirements contained in a recently published final rule (40 CFR 1320.11). On August 7, 2003, TVA published in the **Federal Register** (68 FR 46930) a final rule amending TVA's regulations under section 26a of the TVA Act governing the construction, operation, or maintenance of any dam, appurtenant works, or other obstructions affecting navigation, flood control, or public lands or reservations along or in the Tennessee River or any of its tributaries. Except for information collection

requirements, which had not yet been approved by OMB, the rule's effective date was established as September 8, 2003. TVA was informed by OMB on August 14, 2003 that the information collection requirements contained in the final rule have been approved. The OMB Control Number is 3316–0060, and the expiration date is August 31, 2006. Accordingly, those requirements are effective together with the other requirements of the final rule on September 8, 2003.

DATES: The information collection requirements contained in the final rule published in the **Federal Register** by TVA on August 7, 2003, are effective September 8, 2003.

FOR FURTHER INFORMATION CONTACT: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B), Chattanooga, Tennessee 37402–2801; (423) 751–2523, *whmccauley@tva.gov*. (SC: 000V7DC).

Jacklyn J. Stephenson,

Senior Manager, Enterprise Operations, Information Services.

[FR Doc. 03–22887 Filed 9–8–03; 8:45 am]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 25.613–1, Material Strength Properties and Material Design Values

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: The Federal Aviation Administration announces the issuance of Advisory Circular (AC) 25.613–1, "Material Strength Properties and Material Design Values." The advisory circular provides guidance related to a recently published amendment concerning material strength properties and material design values for transport category airplanes.

DATES: Advisory Circular 25.613–1 was issued by the FAA Transport Airplane Directorate on August 6, 2003.

How to Obtain Copies: An electronic copy of AC 25.613–1 can be downloaded from the Internet at *http://www.airweb.faa.gov/rgl* by taking the following steps: Click on "Advisory Circulars." Under "Search Help" click on "Current ACs by Number." A paper copy will be available in approximately 6–8 weeks from the U.S. Department of Transportation, subsequent distribution Office, DOT Warehouse, SVC–121.23, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785, telephone 301–322–5377, or by faxing your request to the warehouse at 301–386–5394.

Issued in Renton, Washington, on August 6, 2003.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 03–22923 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Free Flight Steering Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Government/Industry Free Flight Steering Committee Meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Government/Industry Free Flight Steering Committee.

DATES: The meeting will be held September 24, 2003, from 1–3:30 pm.

ADDRESSES: The meeting will be held at FAA Headquarters, 800 Independence Avenue, SW., Bessie Coleman Conference Center (Rm. 2AB), Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW, Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Free Flight Steering Committee meeting.

Note: Non-Government attendees to the meeting must go through security and be escorted to and from the conference room.

The agenda will include:

- September 24:
  - Opening Session (Welcome and Introductory Remarks, Review/Approve Summary of Previous Meeting)
  - Free Flight Select Committee Reports
  - Other Business
  - Free Flight Steering Committee Meeting Dates for the balance of Calendar Year 2003
  - Closing Session (Other Business, Date and Place of Next Meeting)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statemenets at the meeting. Persons wishing to present statement or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 28, 2003.

Robert Zoldos,

FAA Systems Engineer, RTCA Advisory Committee.

[FR Doc. 03–22806 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 03–06–C–00–DSM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Des Moines International Airport, Des Moines, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Des Moines International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 9, 2003.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 901 Locust Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William F. Flannery, Director of Aviation, Des Moines International Airport, at the following address: City of Des Moines, 5800 Fleur Drive, Des Moines, Iowa 50321.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Des Moines International Airport, Des Moines, Iowa, under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Nicoletta S. Oliver, Airports Compliance Specialist, FAA, Central Region, 901

Locust Street, Kansas City, MO 64106, (816) 329–2642. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Des Moines International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 185).

On August 21, 2003, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Des Moines, was substantially complete within the requirements of Section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 13, 2003.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: March, 2005.

Proposed charge expiration date: January, 2008.

Total estimated PFC revenue: $8,543,039.

Brief description of proposed project(s): Provide a passenger terminal paging system; expand the passenger terminal concourse stem; install required sprinkler system in passenger terminal building; modify passenger loading bridges; and construct a glycol tank storage area. Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Des Moines International Airport, Des Moines, Iowa.

Issued in Kansas City, Missouri, on August 25, 2003.

George A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 03–22805 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2003–16095

Notice of Request for the Extension of Currently Approved Information Collection

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to extend the following currently approved information collection: Metropolitan and Statewide Transportation Planning.

DATES: Comments must be submitted before November 10, 2003.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the United States Department of Transportation, Central Dockets Office, PL–401, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 10 a.m. to 5 p.m., e.t., Monday through Friday, except federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Ms. Candace Noonan, Office of Planning, (202) 366–1648.

SUPPLEMENTARY INFORMATION: Interested parties are invited to send comments regarding any aspect of this information collection, including: (1) The necessity and utility of the information collection for the proper performance of the functions of the FTA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB extension of this information collection.

Title: Metropolitan and Statewide Transportation Planning (OMB Number: 2132–0529).

Background: The Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) jointly carry out the federal mandate to improve urban and rural transportation. 49 U.S.C. 5303 and 23 U.S.C 134 and 135 authorize the use of federal funds to assist Metropolitan Planning Organizations (MPOs), states, and local public bodies in developing transportation plans and programs to serve the transportation needs of urbanized areas over 50,000 in population. The information collection activities involved in developing the Unified Planning Work Program (UPWP), the Metropolitan Transportation Plan, the Statewide Transportation Improvement Program (TIP), and the Statewide Transportation Improvement Program (STIP) are necessary to identify and evaluate the transportation issues and needs in each urbanized area and throughout every state. These products of the transportation planning process are essential elements in the reasonable planning and programming of federally funded transportation investments.

In addition to serving as a management tool for MPOs and state DOTs, the UPWP is used by both FTA and FHWA to monitor the transportation planning activities of those agencies. It is also needed to establish national outyear budgets and regional program plans, develop policy on using funds, monitor state and local compliance with national technical emphasis areas, respond to Congressional inquiries, prepare congressional testimony, and ensure efficiency in the use and expenditure of federal funds by determining that planning proposals are both reasonable and cost-effective. 49 U.S.C. 5303 and 23 U.S.C. 134(h) require the development of TIPs for urbanized, STIPs are mandated by 23 U.S.C. 235(f). After approval by the Governor and MPO, metropolitan TIPs in attainment areas are to be incorporated directly into the STIP. For nonattainment areas, FTA/FHWA must make a conformity finding on the TIPs before including them into the STIP. The complete STIP is then jointly reviewed and approved or disapproved by FTA and FHWA. These conformity findings and approval actions constitute the determination that states are complying with the requirements of 23 U.S.C. 235 and 49 U.S.C. Section 5303 as a condition of eligibility for federal-aid funding. Without these documents, approvals and findings, capital and/or operating assistance cannot be provided.

Respondents: State Departments of Transportation (DOTs) and Metropolitan Planning Organizations.

Estimated Annual Burden on Respondents: 634.7 hours for each of the 453 respondents.

Estimated Total Annual Burden: 287,519 hours.

Frequency: Annual.

Issued: September 4, 2003.

Rita L. Wells,

Associate Administrator for Administration.

[FR Doc. 03–22924 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket Number: RSPA–98–4957]

Pipeline Safety: Renewal of Information Collection: Comment Request

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process for the renewal of an existing RSPA information collection. This information collection concerns a pipeline safety regulation that requires hazardous liquid pipeline operators who operate more than 500 miles of pipeline to follow certain protocols in areas designated as high consequence areas (HCAs). RSPA intends to request OMB approval for renewal of this information collection under the Paperwork Reduction Act of 1995 and 5 CFR part 1320. The purpose of this notice is to allow the public 60 days from the date of this notice to send in their comments.

Abstract: RSPA pipeline safety regulation 49 CFR 195.452 designates certain environmentally sensitive areas that are particularly vulnerable to the consequences of hazardous liquid pipeline accidents as high consequence areas (HCAs). The rule was promulgated in on December 1, 2000 (65 FR 75378) to provide for thorough assessment and repair of pipeline segments that, in the event of a leak or failure, could affect populated areas, areas unusually sensitive to environmental damage, and commercially navigable waterways. RSPA now requires hazardous liquid pipeline operators with more than 500 miles of pipeline to develop and follow an integrity management program that provides for continually assessing the integrity of all pipeline segments that could affect these high consequence areas.

DATES: Comments on this notice must be received by November 10, 2003, to be assured of consideration.

ADDRESSES: Interested persons are invited to send comments in duplicate to the Research and Special Programs Administration, U.S. Department of Transportation, Dockets Facility, Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001 or e-mail to dms.dot.gov. Comments can be reviewed at the dockets facility which is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays, when the facility is closed. Comments must identify docket number of this notice. Persons should submit the original documents and one (1) copy. Persons wishing to receive confirmation of receipt of their comments must include a stamped, self-addressed postcard. Please identify the docket number shown in the heading of this notice. Documents pertaining to this notice can be viewed in this docket. The docket can also be viewed electronically at *dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice; or write by e-mail to *marvin.fell@rspa.dot.gov.*

SUPPLEMENTARY INFORMATION:

Abstract: Certain areas are particularly environmentally sensitive from hazardous liquid pipeline failures. These areas are called high consequence areas (HCA's).

Respondents: Gas and hazardous liquid pipeline operators.

Estimated Number of Respondents: 66.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden Hours on Respondents: 54,780.

OMB Control Number: 2137–0604.

Comments are invited on: (a) The need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

All timely written comments to this notice will be summarized and included in the request for OMB approval. All comments will also be available to the public in the docket.

Issued in Washington, DC, on August 29, 2003.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 03–22925 Filed 9–8–03; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–838 and AB–33 (Sub–No. 199)]

East St. Louis Junction Railroad Company—Adverse Abandonment and Union Pacific Railroad Company—Adverse Discontinuance—in St. Clair County, IL

On August 20, 2003, the Illinois Department of Transportation (IDOT) filed with the Surface Transportation Board (Board) an application under 49 U.S.C. 10903 seeking the adverse abandonment of the East St. Louis Junction Railroad Company's (ESLJ) line of railroad between milepost 0.0 and milepost 1.16, plus 6.40 miles of switch track and .34 miles of spur track, a total of 7.90 miles of track, in the National Stock Yards in St. Clair County, IL. IDOT also requests that the Board grant an adverse discontinuance of rail service over the subject rail property provided by ESLJ's lessee, Union Pacific Railroad Company (UP). The line traverses United States Postal Service ZIP Code 62071, and includes the station of National Stock Yards.

Appreciable portions of the land underlying the railroad line proposed for abandonment and discontinuance of service are required for the construction of a relocated Illinois Route 3 and the construction of a connection from Interstate Highway I–64 in Illinois to a proposed New Mississippi River Bridge and relocated Interstate Highway I–70. This abandonment will permit the grade separation of all state highways and railroad lines in this area.

Based on information in IDOT's possession, the line does not contain Federally granted rights-of-way. Any documentation in IDOT's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment and discontinuance was filed with the application.[1]

This line of railroad has not appeared on the railroads' system diagram map in Category 1.

The interests of UP's employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). Employees of ESLJ, however, will not receive such protection, as all

[1] In a decision served in this proceeding on June 30, 2003, IDOT was granted exemptions and waivers, respectively, from several of the applicable statutory provisions governing rail line abandonments, and from several related filing requirements of the Board's regulations at 49 CFR 1152.

of the railroad's line is to be abandoned and it is not part of a system that will benefit from the abandonment. *See Yreka Western Railroad Company—Abandonment Exemption—In Siskiyou County, CA,* STB Docket No. AB–246 (Sub-No. 2X) (STB served May 4, 1999).

In an application by a third party for a determination that the public convenience and necessity permits service over a line to be discontinued and the line itself to be abandoned, the issue before the Board is whether the public interest requires that the line in question be retained as part of the national rail system. By granting a third party (or "adverse") application, the Board withdraws its primary jurisdiction over the line. Questions concerning the disposition of the line, including the adjudication of various claims of ownership or other rights and obligations, are then left to state or local authorities. *See Kansas City Pub. Ser. Frgt. Operations Exempt.—Aban.,* 7 I.C.C.2d 216, 224–26 (1990).

Because IDOT intends to convert the property underlying the subject rail line to highway purposes, conflicting public use requests are not appropriate, and offers of financial assistance to acquire or subsidize service on the line will not be entertained in this proceeding.

Any interested person may file with the Board its protest of, or written comments concerning, the proposed abandonment and discontinuance of service.[2] Written comments and protests must identify the proceeding, *i.e.,* STB Docket No. AB-No. 838, in the case of the abandonment of the ESLJ line, and STB Docket No. AB–33 (Sub-No. 199), in the case of the discontinuance of service by UP, and must be filed by no later than October 6, 2003.

Protests must contain that party's entire case in opposition (case in chief) including the following: (1) Protestant's name, address, and business; (2) a statement describing protestant's interest in the proceeding including: (i) A description of the protestant's use of the line; (ii) if protestant does not use the line, information concerning the group or public interest it represents; and (iii) if protestant's interest is limited to the retention of service over a portion of the line, a description of the portion of the line subject to protestant's interest (with milepost designations if available); (3) specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service (this information must be supported by affidavits of persons with personal knowledge of the fact(s)); and (4) any rebuttal of material submitted by applicant.

In addition, a commenting party or protestant may provide a statement of position and evidence regarding: (i) Environmental impact; (ii) impact on rural and community development; or (iii) recommended provisions for protection of the interests of employees.

All filings in response to this notice must refer to STB Docket No. AB–838 and STB Docket No. AB–33 (Sub-No. 199), and should be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001, and (2) Fritz R. Kahn, Esq., 1920 N Street, NW., (8th floor), Washington, DC 20036–1601. The original and 10 copies of all comments or protests shall be filed with the Board, together with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment and discontinuance proceeding. 49 CFR 1104.12(a).

Persons seeking information concerning the filing of protests may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment and discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in abandonment or discontinuance proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 2, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–22773 Filed 9–8–03; 8:45 am]

BILLING CODE 4915–00–P

[2] Persons opposing the proposed abandonment or discontinuance who wish to participate actively and fully in the process through the submission of their entire opposition case in the form of verified statements and arguments, should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by submitting verified statements of witnesses containing detailed evidence should file comments.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–290 (Sub–No. 238X)]

Norfolk Southern Railway Company—Abandonment Exemption—In Buchanan County, VA

Norfolk Southern Railway Company (NSR) has filed a notice of exemption under 49 CFR 1152 Subpart *F—Exempt Abandonments* to abandon 4.0 miles of its line of railroad between milepost BH–0.0 at Bull Creek and milepost BH–4.0 at Harman. in Buchanan County, VA. The line traverses United States Postal Service Zip Code 24618.

NSR has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on October 9, 2003,[1] unless

[1] In its notice, NSR indicated a proposed consummation date of October 8, 2003. Under 49 CFR 1152.50(d)(2), however, the earliest the exemption could become effective is 50 days after the verified notice of exemption was filed. The notice was filed on August 20, 2003. Therefore, the

Continued

stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 19, 2003. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 29, 2003, with: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

NSR has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by September 12, 2003. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by NSR's filing of a notice of consummation by September 9, 2004, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: August 29, 2003.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 03–22772 Filed 9–8–03; 8:45 am]

BILLING CODE 4915–00–P

effective date of the exemption is October 9, 2003, and consummation may not take place prior to that date. NSR's representative has been notified and has confirmed that consummation will not take place before October 9, 2003.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which currently is set at $1,100. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Office of the General Counsel

Appointment of Members of the Legal Division to the Performance Review Board, Internal Revenue Service

Under the authority granted to me as Chief Counsel of the Internal Revenue Service by the General Counsel of the Department of the Treasury by General Counsel Order No. 21 (Rev. 4), pursuant to the Civil Service Reform Act, I have appointed the following persons to the Legal Division Performance Review Board, Internal Revenue Service Panel:

1. Chairperson, William Fox, Acting Deputy General Counsel.

2 John M. Dalrymple, Deputy Commissioner (Operations Support).

3. Eric Solomon, Deputy Assistant Secretary (Regulatory Affairs).

This publication is required by 5 U.S.C. 4314(c)(4).

Dated: September 4, 2003.

Emily A. Parker,

Acting Chief Counsel, Internal Revenue Service.

[FR Doc. 03–22947 Filed 9–8–03; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Veterans' Advisory Committee on Environmental Hazards will be held on Wednesday and Thursday, October 8–9, 2003, from 9 a.m. to 5 p.m. each day. The meeting will be held at the Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 430, Washington, DC 20420. The meeting is open to the public.

The purpose of the Committee is to provide advice to the Secretary of Veterans Affairs on adverse health effects that may be associated with exposure to ionizing radiation and to make recommendations on proposed standards and guidelines regarding VA benefit claims based upon exposure to ionizing radiation.

The major items on the agenda for both days will be discussions and analyses of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of those analyses and discussions, the Committee may make recommendations to the Secretary concerning diseases that are the result of exposure to ionizing radiation. The agenda for the second day will include planning future Committee activities and assignment of tasks among the members.

Those who wish to attend should contact Ms. Ersie Farber-Collins, of the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, NW., Washington, DC 20420, at (202) 273–7268, or by fax at (202) 275–1728, prior to October 7, 2003. Members of the public may submit written questions or prepared statements for review by the Committee in advance of the meeting. Statements must be received at least five (5) days prior to the meeting and should be sent to Ms. Farber-Collins' attention at the address given above. Those who submit material may be asked to clarify it prior to its consideration by the Committee.

Dated: September 3, 2003.

By Direction of the Secretary:

E. Phillip Riggin,

Committee Management Officer.

[FR Doc. 03–22953 Filed 9–8–03; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 68, No. 174
Tuesday, September 9, 2003

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–38

[FPMR Amendment H–211 and FMR Amendment B–3]

RIN 3090–AH10

Federal Management Regulation; Sale of Personal Property

Correction

In rule document 03–21485 beginning on page 51420 in the issue of Tuesday, August 26, 2003, make the following corrections:

1. On page 51420, in the first column, under the heading **FOR FURTHER INFORMATION CONTACT**, in the last line, "PMR H–211" should read, "FPMR H–211".

PART 102–38—[CORRECTED]

2. On page 51422, in the second column, in the table of contents, the heading "**Subpart D—Completion of Sale Awards**" should read, "**Subpart D—Completion of Sale**".

3. On the same page, in the same column, add the following undesignated center heading directly under the subpart heading:

"**Awards**".

§ 102–38.175 [Corrected]

4. On page 51425, in the second column, in § 102–38.175, in the section heading, in the third line, "**debarred From**" should read, "**debarred from**".

5. On the same page, in the same column, in the same section, in the second line, "From Federal Procurement" should read, "from Federal Procurement".

§ 102–38.325 [Corrected]

6. On page 51427, in the second column, in § 102–38.325, the section should be combined into one paragraph.

[FR Doc. C3–21485 Filed 9–8–03; 8:45 am]
BILLING CODE 1505–01–D

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 416

[Regulation No. 16]

RIN 0960–AF37

Clarification of Rules Involving Residual Functional Capacity Assessments; Clarification of Use of Vocational Experts and Other Sources at Step 4 of the Sequential Evaluation Process; Incorporation of "Special Profile" Into Regulations

Correction

In rule document 03–21610 beginning on page 51153 in the issue of Tuesday, August 26, 2003, make the following correction:

§416.994 [Corrected]

On page 51167, in the first column, in §416.994(b)(5)(vi) in the first line, "your impairment(s)" should read "If your impairment(s)."

[FR Doc. C3–21610 Filed 9–8–03; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9063]

RIN 1545–BB99

Distributions of Interests in a Loss Corporation From Qualified Trusts

Correction

In rule document 03–16229 beginning on page 38177 in the issue of Friday, June 27, 2003 make the following corrections:

1. On page 38178, in the second column, under the heading "**Amendments to the Regulations**", remove the third and fourth lines.

§1.382–1 [Corrected]

2. On the same page, in the same column, in §1.382–1, the regulatory material following **Par. 2** should read as follows:

§ 1.382–1 Table of contents.

* * * * *

§ 1.382–10T Special rules for determining time and manner of acquisition of an interest in a loss corporation (temporary).

* * * * *

§ 1.382–10T [Corrected]

3. On the same page, in the third columnthe section heading number should read "§ 1.382–10T".

[FR Doc. C3–16229 Filed 9–8–03; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Tuesday,
September 9, 2003

Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 413, 482, and 489
Medicare Program; Clarifying Policies Related to the Responsibilities of Medicare-Participating Hospitals in Treating Individuals With Emergency Medical Conditions; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 413, 482, and 489

[CMS–1063–F]

RIN 0938–AM34

Medicare Program; Clarifying Policies Related to the Responsibilities of Medicare-Participating Hospitals in Treating Individuals With Emergency Medical Conditions

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule.

SUMMARY: This final rule clarifies policies relating to the responsibilities of Medicare-participating hospitals in treating individuals with emergency medical conditions who present to a hospital under the provisions of the Emergency Medical Treatment and Labor Act (EMTALA).

The final rule responds to public comments received on a May 9, 2002 proposed rule (67 FR 31404) that both reiterated the agency's interpretations under EMTALA and proposed clarifying changes relating to the implementation of the EMTALA provisions. These reiterations and clarifying changes related to, among other areas, seeking prior authorization from insurers for services, emergency patients presenting at off-campus outpatient clinics that do not routinely provide emergency services, the applicability of the EMTALA provisions to hospital inpatients and outpatients, the circumstances under which physicians must serve on hospital medical staff "on-call" lists, and the responsibilities of hospital-owned ambulances.

These reiterations and clarifying changes are needed to ensure uniform and consistent application of policy and to avoid any misunderstanding of EMTALA requirements by individuals, physicians, or hospital employees.

DATES: The provisions of this final rule are effective on November 10, 2003.

FOR FURTHER INFORMATION CONTACT: Thomas Gustafson, (410) 786–4487.

SUPPLEMENTARY INFORMATION:

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I. Background

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Social Security Act (the Act) impose specific obligations on Medicare-participating hospitals and critical access hospitals (CAHs) that offer emergency services. (Throughout this final rule, when we reference the obligation of a "hospital" under these sections of the Act and in our regulations, we mean to include CAHs as well.) These obligations concern individuals who come to a hospital emergency department and request examination or treatment for medical conditions, and apply to all of these individuals, regardless of whether or not they are beneficiaries of any program under the Act. Section 1867 of the Act sets forth requirements for medical screening examinations for medical conditions, as well as necessary stabilizing treatment or appropriate transfer. In addition, section 1867(h) of the Act specifically prohibits a delay in providing required screening or stabilization services in order to inquire about the individual's payment method or insurance status. Section 1867(d) of the Act provides for the imposition of civil monetary penalties on hospitals and physicians responsible for the following: (a) Negligently failing to appropriately screen an individual seeking medical care; (b) negligently failing to provide stabilizing treatment to an individual with an emergency medical condition; or (c) negligently transferring an individual in an inappropriate manner. (Section 1867(e)(4) of the Act defines "transfer" to include both transfers to other health care facilities and cases in which the individual is released from the care of the hospital without being moved to another health care facility.)

These provisions, taken together, are frequently referred to as the Emergency Medical Treatment and Labor Act (EMTALA), also known as the patient antidumping statute. EMTALA was passed in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). Congress enacted these antidumping provisions in the Social Security Act because of its concern with an "increasing number of reports" that hospital emergency rooms were refusing to accept or treat individuals with emergency conditions if the individuals did not have insurance:

"* * * the Committee is most concerned that medically unstable patients are not being treated appropriately. There have been reports of situations where treatment was simply not provided. In numerous other situations, patients in an unstable condition have been transferred improperly, sometimes without the consent of the receiving hospital.

"There is some belief that this situation has worsened since the prospective payment system for hospitals became effective. The Committee wants to provide a strong assurance that pressures for greater hospital efficiency are not to be construed as license to ignore traditional community responsibilities and loosen historic standards.

"[Under the statute] [a]ll participating hospitals with emergency departments would be required to provide an appropriate medical screening examination for any individual who requests it (or has a request made on his [or her] behalf) to determine whether an emergency medical condition exists or if the patient is in active labor." (H.R. Rept. No. 99–241, Part I, 99th Cong., 1st Sess. (1985), p.27.)

In addition, section 1867(d)(2) of the Act provides for a private right of enforcement for any individual who is harmed as a "direct result" of a violation of the Act. In enacting this section of the law, Congress did not intend for the statute to be used as a Federal malpractice statute. Indeed, many courts are in agreement that EMTALA is not a Federal malpractice statute (for example, *Bryan* v. *Rectors and Visitors of University of Virginia*, 95 F.3d 349, 351 (4th Cir. 1996); *Lopez-Soto* v. *Hawayek*, 175 F.3d 170, 177 (1st Cir. 1999); and *Baker* v. *Adventist Health, Inc.*, 260 F.3d 987, 994 (3rd Cir. 2001).

The regulations implementing section 1867 of the Act are found in 42 CFR 489.24, Special responsibilities of Medicare hospitals in emergency cases. Existing § 489.24 provides for the following:

- Requires that when an individual presents to a hospital's emergency department and a request is made on the individual's behalf for examination or treatment of a medical condition, the hospital must provide for an appropriate medical screening examination to determine whether or not an emergency medical condition exists. (Paragraph (a))
- Defines certain terms, including "comes to the emergency department," "emergency medical condition," "stabilized," and "to stabilize." (Paragraph (b))
- Addresses procedures a hospital must follow when it determines, with respect to a patient, that an emergency medical condition exists. If the hospital determines that an emergency medical condition exists, the hospital must provide for further medical examination and treatment as required to stabilize the individual. If the hospital does not have the capabilities to stabilize the individual, an appropriate transfer to another facility is permitted. (Paragraph (c)) A transfer is appropriate when the medical benefits of the transfer outweigh the medical risks of the transfer and other requirements, specified in the regulations, are met. (Paragraph (d)) In addition, the hospital may transfer an unstable patient who makes an informed written request. A hospital may not delay an appropriate medical screening examination, or further examination or treatment, to inquire about the patient's payment method or insurance status. (Paragraph (c))

In addition, § 489.24 addresses: (a) Restriction of a transfer until the individual is stabilized; (b) the responsibilities of the receiving hospital; (c) termination of the provider agreement for failure to comply with EMTALA requirements; and (d) matters concerning consultation with Quality Improvement Organizations (QIOs). (Paragraphs (d) through (h), respectively)

Some EMTALA-related requirements are implemented under regulations at §§ 489.20(l), (m), (q), and (r)(1), (r)(2), and (r)(3). Those regulations deal with

a hospital's obligations to report the receipt of patients whom it has reason to believe may have been transferred inappropriately; to post signs in the emergency department describing an individual's rights to emergency treatment under section 1867 of the Act; and to maintain patient records, physician on-call lists, and emergency room logs. We are including this brief description for informational purposes but, because we are not changing the regulations in § 489.20, they will not be discussed further in this document.

In promulgating these cited regulatory sections and in enforcing the provisions of EMTALA, we are aware of the necessary balance between the hospital's and a physician's legal duty to provide examination and treatment (both under the statute and under the common law) and the practical realities of the manner in which hospitals and medical staffs are organized and operated on a day-to-day basis, as well as proper mobilization of resources within hospitals in order to comply with these legal duties. Reports of overcrowding are common in many parts of the country. Within the requirements of EMTALA, individuals should be treated at the appropriate site of care.

Hospitals and physicians have now had over 15 years of experience in organizing themselves to comply with the provisions of EMTALA. Therefore, in a proposed rule published in the **Federal Register** on May 9, 2002 as part of the annual proposed rules for the acute care hospital inpatient prospective payment system (67 FR 31469), we solicited comments from hospitals, physicians, patients, and beneficiary groups on certain proposed changes to the EMTALA policies as discussed in sections III. through XIV. of this preamble.

II. Special Advisory Bulletin on EMTALA Obligations

On November 10, 1999, CMS (then HCFA) and the Office of the Inspector General (OIG) published jointly in the **Federal Register** a Special Advisory Bulletin addressing the requirements of the EMTALA statute and the obligations of hospitals to medically screen all individuals seeking emergency services and to provide stabilizing medical treatment as necessary to all individuals, including enrollees of managed care plans, whose conditions warrant it (64 FR 61353). The Special Advisory Bulletin addressed issues of dual staffing of hospital emergency rooms by managed care and nonmanaged care physicians, prior authorization requirements of some managed care plans, use of advance beneficiary notices (ABNs) or other financial responsibility forms, handling of individuals' inquiries about financial liability for emergency services, and voluntary withdrawal of a treatment request. Although it did not amend the Code of Federal Regulations, the Special Advisory Bulletin informs individuals of HHS policy regarding application of the EMTALA statute and offers advice on the best practices to follow to avoid violation of the requirements imposed under that statute.

As discussed further in section V. of this preamble, in the May 9, 2002 proposed rule, we proposed to codify certain policies on prior authorization that are currently stated only in the Special Advisory Bulletin. We believe these changes in the regulations are needed to ensure uniform and consistent application of policy and to avoid any misunderstanding of EMTALA requirements by patients, physicians, or hospital employees.

III. Summary of the Provisions of the May 9, 2002 Proposed Rule Relating to EMTALA and Hospital Responsibility for Communication With Medicare+Choice Organizations Concerning Post-Stabilization Care Services

A. Summary of the Proposed Provisions Relating to EMTALA

Recently, a number of questions have been raised about the applicability of § 489.24 to specific situations. These questions arise in the context of managed care plans' requirements for prior authorization, case experiences involving elective procedures, and situations where individuals have been admitted as inpatients without being stabilized, or patients who had been stabilized later experience a deterioration in their medical condition. Some hospitals are uncertain about whether various conditions of participation (CoPs) found in 42 CFR part 482 apply to these situations or whether the EMTALA requirements included in the provider agreement regulations at § 489.24 apply, or both. Some representatives of the provider community have asked us to reexamine CMS policy on the applicability of EMTALA to physicians who are "on call" and to hospitals that own ambulances when those ambulances operate under communitywide emergency medical services (EMS) protocols.

To help promote consistent application of the regulations concerning the special responsibilities of Medicare-participating hospitals in emergency cases, in the May 9, 2002 proposed rule (67 FR 31469), we proposed changes to § 489.24 to clarify its application in these situations and at the same time address concerns about EMTALA raised by the Secretary's Advisory Committee on Regulatory Reform. These changes are discussed more fully below and include the following:

- We proposed to change the requirements relating to individuals who present with what may be emergency medical conditions at off-campus outpatient clinics and facilities that do not routinely provide emergency medical services. We believe these changes will enhance the quality and promptness of emergency care by permitting individuals to be referred to appropriately equipped emergency facilities close to such clinics, rather than being transported to the main campus emergency department, which may be located at a greater distance from the clinic.
- We proposed to clarify the extent to which EMTALA applies to inpatients and outpatients. We believe these clarifications will enhance understanding for hospitals as to what their obligations are under EMTALA, so that they more clearly understand to whom they are obligated under this provision of the statute, and whose care will be governed by the Medicare hospital CoPs.
- We proposed to clarify the circumstances in which physicians, particularly specialty physicians, must serve on hospital medical staff "on-call" lists. We expect these clarifications will help improve access to physician services for all hospital patients by permitting hospitals local flexibility to determine how best to maximize their available physician resources. We are currently aware of reports of physicians, particularly specialty physicians, severing their relationships with hospitals, especially when those physicians belong to more than one hospital medical staff. Physician attrition from these medical staffs could result in hospitals having no specialty physician service coverage for their patients. We proposed clarification of the on-call list requirements to permit hospitals to continue to attract physicians to serve on their medical staffs and thereby continue to provide services to emergency room patients.
- We proposed to clarify the responsibilities of hospital-owned ambulances so that these ambulances can be more fully integrated with citywide and local community EMS procedures for responding to medical emergencies and thus use these

resources more efficiently for the benefit of these communities.

In the May 9, 2002 proposed rule, we specifically solicited comments on all of these proposed changes. In response to the proposed rule, we received approximately 600 pieces of correspondence, most of which contained multiple comments. A large number of these comments were received on the last day of the comment period for the proposed rule (July 8, 2002). Because of the number and nature of the public comments we received on our proposed clarifications and our limited timeframe for developing the final acute care hospital inpatient prospective payment system regulations for publication by the statutory deadline of August 1, we decided, with one exception (application of the EMTALA provisions to provider-based entities), to address the public comments and finalize the proposed clarifications relating to implementation of EMTALA in a separate document. This final rule is that separate document.

In the next several sections of the preamble of this final rule, we summarize the public comments received on the proposed EMTALA clarifications and present our responses to those comments, including any further revisions that we are making in this final rule to the proposed regulation changes as a result of these comments.

B. Summmary of the Proposed Provisions Relating to Communication with Medicare+Choice Organizations Concerning Post-Stabilization Care Services

In the May 9, 2002 proposed rule (67 FR 31471), we proposed to specify that a hospital must promptly contact the Medicare+Choice organization after a Medicare+Choice enrollee who is treated for an emergency medical condition is stabilized (proposed § 489.24(d)(6)). We received a number of public comments on this proposed provision. However, we are not addressing public comments received on this provision in this final rule but plan to address them in future policy guidance.

IV. General Comments on the Proposed Rule

Comment: Some commenters expressed overall support for our proposed clarifying changes to establish more flexible standards on EMTALA, but did not offer specific recommendations for modifying them. However, one commenter, the administrator of a small rural hospital in the Midwest, expressed concern that our proposals appear to represent a shift from national requirements to community-based standards, under which the level of emergency care available in a community would be determined by the medical staffs of individual hospitals. This commenter stated that, in many cases, it is possible to continue to maintain emergency department services in the local community only because of the pressure exerted on physicians by EMTALA to continue to see patients in the emergency department. Therefore, the commenter recommended that any changes in EMTALA regulatory requirements be directed to making those requirements more stringent and specific and stated that relaxing EMTALA requirements as proposed will only undermine the efforts of small rural hospitals to maintain viable emergency services for their patients.

Response: We appreciate the commenters' support, and have kept their views in mind in considering the comments of those respondents who recommended revisions. In regard to the commenter's recommendations that we make the EMTALA requirements more stringent (rather than relaxing them) for the benefit of small rural hospitals, we note that we received many comments expressing concern that the current requirements may be too burdensome, and therefore, the commenters recommended more flexible EMTALA rules. We considered all of the comments received when finalizing our policy.

V. Prior Authorization (§ 489.24(d)(4))

A. Provisions of the Proposed Rule

Some managed care plans may seek to pay hospitals for services only if the hospitals obtain approval from the plan for the services before providing the services. Requirements for this approval are frequently referred to as "prior authorization" requirements. However, EMTALA (specifically, section 1867(h) of the Act and our existing regulations at § 489.24(c)(3)) explicitly prohibit hospitals from delaying screening or stabilization services in order to inquire about the individual's method of payment or insurance status. Thus, prior authorization requirements are a matter of concern because a hospital's actions in seeking prior authorization from an insurer could result in a delay in the provision of services required by EMTALA. Our existing policy prohibits a participating hospital from seeking authorization from the individual's insurance company for screening services or services required to stabilize an emergency medical condition until after the hospital has provided the appropriate medical screening examination required by EMTALA to the individual and has initiated any further medical examination and treatment that may be required to stabilize the patient's emergency medical condition.

In the May 9, 2002 proposed rule, we solicited public comments as to whether the regulations should be revised to state that the hospital may seek other information (apart from information about payment) from the insurer about the individual, and may seek authorization for all services concurrently with providing any stabilizing treatment, as long as doing so does not delay required screening and stabilization services (67 FR 31471).

In addition, we proposed to clarify that an emergency physician is not precluded from contacting the patient's physician at any time to seek advice or information regarding the patient's medical history and needs that may be relevant to the medical screening and treatment of the patient, as long as this consultation does not inappropriately delay required screening services or stabilizing treatment.

As explained earlier, this policy was stated in a Special Advisory Bulletin published jointly by CMS (then HCFA) and the OIG. We proposed to clarify the existing language at § 489.24(c)(3) (which was proposed to be redesignated as paragraph (d)(4)) in the proposed rule to include this policy in the regulations.

B. Summary of Public Comments and Departmental Responses

1. General Comments

Comment: Several commenters expressed general approval of our proposals without recommending more specific changes.

Response: We appreciate the commenters' support of the proposals and have taken their views into account in considering the comments of those respondents who recommended revisions.

2. Concurrent Authorization and Furnishing of Stabilizing Services

Comment: Two commenters recommended that we delete any reference to seeking authorization for post-stabilization services concurrently with the provision of stabilizing treatment. The commenters believed clinical staff cannot easily distinguish between screening services and stabilizing treatment, and thus may be uncertain as to when stabilizing treatment has begun in order to seek authorization for the services. Another

commenter believed that allowing such concurrent authorization serves no useful purpose and leaves the hospital open to charges that the steps taken to obtain concurrent authorization actually delay stabilization services. This commenter also recommended that the regulations not allow the concurrent authorization of stabilizing treatment and the furnishing of actual stabilizing treatment.

Response: We recognize that the distinction between screening services and stabilizing treatment may be difficult to define outside the context of a specific case. However, we believe clinicians will be able, when dealing with a particular patient or case, to identify clearly when the assessment of an individual has concluded and they have begun stabilizing the patient with an emergency medical condition. We expect that these clinical judgments will be the basis for determining when contact will be appropriate, and that surveyors will use their own clinical training and experience in evaluating clinicians' actions.

Regarding the comment that authorization serves no useful purpose, we note that the regulation merely permits, but does not require, hospitals to seek concurrent authorization with the furnishing of stabilizing treatment. We do not believe it is appropriate to prohibit the practice in all cases and, therefore, are not making any revision to the proposed language, which we are adopting in this final rule, based on this comment.

We would like to clarify again that hospitals that choose to seek concurrent authorization while administering stabilizing treatment must not delay such treatment in order to obtain authorization. Even if the approving insurer or physician denies authorization for the stabilizing treatment, the hospital is *obligated* under EMTALA to provide the necessary stabilizing treatment (if the hospital has such capabilities).

Comment: Some commenters stated that restrictions on contact with a patient's insurer are not appropriate because a hospital's administrative staff might not be fully aware of the status of an individual's treatment (that is, whether a screening has occurred and stabilizing treatment has been initiated) and that a hospital might, therefore, violate this requirement inadvertently by requesting authorization prematurely, even though no delay in the screening or stabilization actually occurs.

Response: We recognize the possibility pointed out by the commenter, but believe that hospitals will be able to develop procedures to alert administrative staff as to when contact may be initiated.

3. Authorization Requests by Nonphysician Practitioners

Comment: Five commenters recommended that we state more specifically that CMS' policies on prior authorization apply to authorization for both hospital and physician (and nonphysician practitioner) services. In addition, the commenters recommended that the regulations be revised to clarify whether EMTALA policies also apply to emergency medical or stabilizing services furnished by nonphysician practitioners.

A number of commenters recommended that the regulations be revised to state that nurse practitioners and all other medical or hospital personnel involved in the individual's treatment, and not just emergency physicians, are permitted to contact the patient's physician for information and advice relevant to the patient's medical history and needs, as long as screening services or stabilizing treatment are not inappropriately delayed.

Another commenter recommended a change in the wording of proposed § 489.24(d)(4)(iii) regarding contacts between emergency physicians and individuals' personal physicians. The commenter believed that the regulations should also allow such contacts with the individual's physician to be initiated by a qualified medical person other than a physician, such as a physician assistant or nurse practitioner.

Response: We agree with the commenters that the prior authorization policies apply equally to hospital services, physician services, and nonphysician practitioner services, and are revising § 489.24(d)(4)(ii) to clarify this point. We also agree that qualified medical personnel other than physicians, such as nonphysician practitioners (physician assistants and nurse practitioners), should be permitted to initiate such contacts, and are revising § 489.24(d)(4)(iii) in this final rule accordingly.

Comment: A number of commenters recommended that the final rule be revised to state that concurrent contact with an individual's insurer (that is, contact undertaken by administrative staff not involved in patient screening or treatment that occurs while clinical staff continue to screen the individual) is not a violation of EMTALA as long as it does not delay screening or stabilization.

Response: We recognize that section 1867(h) of the Act states only that a hospital may not delay an EMTALA screening or stabilization in order to inquire about the individual's method of payment or insurance status, and does not specifically address the issue of when it is appropriate for contact with the individual's insurer to be made. Hospitals have in the past expressed a need for further guidance on the agency's policy in this area and the Special Advisory Bulletin cited earlier was developed to provide guidance on this and other issues. We do not wish to be overly prescriptive on this issue, but do believe that hospitals should have a clear statement of the agency's policy and that the policy should strike a reasonable balance between the need to avoid creating circumstances in which screening or stabilization will be likely to be delayed and the equally important need to protect the individual from avoidable liability for the costs of emergency health care services. We believe the policy in the Special Advisory Bulletin and reiterated in proposed rule strikes that balance. Therefore, we are not adopting the commenters' suggestion.

Further, we note that many insurers now provide a "window" of at least 24 hours following emergency department treatment during which authorization can be obtained. In addition, many States have enacted revisions to their insurance statutes over the past several years that explicitly contemplate the existence of the Federal EMTALA statute. As a practical matter, we believe this feature of private insurance contracts, as well as State laws governing health insurance contracts, will allow screening and stabilization to go forward without compromising the individual's rights to have care covered under his or her health plan.

4. Medical Staff Communications

Comment: Two commenters objected to the proposed language under which contact by an emergency physician with the individual's physician is not prohibited as long as the consultation does not inappropriately delay EMTALA-mandated screening or stabilization. One commenter stated that it is never appropriate for regulations to restrict physicians' communications with one another. The other commenter stated that section 1867(h) of the Act governs only contacts for the purpose of insurance information and does not relate in any way to contact with the individual's physician. The commenter believed the proposed language at § 489.24(d)(4)(iii) should be deleted because, in the commenter's view, it implies that some contacts with individuals' physicians might be

prohibited by EMTALA, and that making such contacts therefore could expose the hospital or the emergency physician to sanctions.

Response: We agree that physician communication regarding patient medical status and information is essential. We expect the regulations will dispel any possible concerns about the appropriateness of this communication. Therefore, we do not believe it is necessary to make any change in the regulations in this final rule based on this comment.

Comment: Two commenters stated that the proposed language regarding contact with the patient's physician not being prohibited as long as the consultation does not inappropriately delay EMTALA-mandated screening or stabilization is unclear, and recommended that it be revised to state that such contact is not inappropriate as long as it does not otherwise delay the start of the medical screening examination.

Response: We do not believe the language as proposed is less clear than the commenters' recommended alternative. The commenters' alternative could suggest instead that delays in stabilizing treatment would be acceptable. Therefore, we are not adopting the recommendation of the commenters.

Comment: One commenter suggested that CMS clarify the proposed regulatory language by citing lists of appropriate referral physicians or participating providers as examples of the types of information that may appropriately be obtained as long as prior authorization is not sought.

Response: We agree that it would not be inappropriate to discuss the types of information the commenter cited with the patient's attending physician. However, we do not believe these types of information are representative samples of the types of information that such contacts should elicit. Therefore, we are not making any change in the final rule based on this comment.

5. Out-of Network Coverage

Comment: Some commenters stated that they understood the need to avoid delaying EMTALA screening or stabilization to obtain prior authorization, but suggested that, if such authorization is not obtained, patients might be left with substantial financial responsibility. The commenters noted that individuals may request information about the costs of services while awaiting a screening examination. They stated that, while it is important to avoid even the appearance of coercion of an individual to leave the emergency department, it is also important to recognize the patient's right to be informed of potential financial liability for services (including increased liability for out-of-network services) before, rather than after, the services are furnished. These commenters recommended that the regulations be revised to state that a hospital may request financial or coverage information as long as doing so does not delay screening or stabilization. The commenters also recommended that we state that there may be discussion of the limits of an individual's health insurance coverage if the individual asks about the charges for the emergency department visit.

Response: As noted in the Special Advisory Bulletin cited earlier (64 FR 61355), current Interpretive Guidelines indicate that hospitals may continue to follow reasonable registration processes for individuals presenting with an emergency medical condition. Reasonable registration processes may include asking whether an individual is insured and, if so, what that insurance is, as long as that inquiry does not delay screening or treatment. Reasonable registration processes should not unduly discourage individuals from remaining for further evaluation. As requested by the commenter, in this final rule, we are revising proposed § 489.24(d)(4) by adding a new paragraph (iv) to clarify this policy. To avoid any misunderstanding of the requirement, we have revised the language of the interpretative guidelines to state that reasonable registration processes must not unduly discourage individuals from remaining for further evaluation.

Regarding a hospital's response to an individual's inquiry about financial liability for emergency services, the Special Advisory Bulletin states that any such inquiry should be answered by a staff member who is well-trained and knowledgeable and that the staff member should explain to the individual that, regardless of the individual's ability to pay, the hospital stands ready and willing to provide any necessary screening or stabilization services or both. Staff should encourage the individual to defer further discussion of financial responsibility issues, if possible, until after any necessary screening has been performed. We do not believe that this explanation needs to be included in the regulations.

Comment: One commenter suggested that, in the interest of avoiding any appearance that an individual's screening or stabilization may have been influenced by the individual's perceived ability or inability to pay, financial information collected by registration or billing staff should not be included in the patient chart that goes back to the clinical staff who are caring for the individual.

Response: We agree that such a procedure could help avoid the perception of improper financially based influences on screening or treatment decisions. We do not believe it is necessary to revise the final rule to require that such information be excluded from the patient's chart.

C. Provisions of the Final Rule on Prior Authorizations

In summary, we are adopting the proposed changes relating to prior authorization for necessary stabilizing treatment for emergency medical conditions under § 489.24(d)(4) as final, with the following modification:

We are revising paragraph (d)(4)(ii) to indicate that prior authorization policies apply to services furnished by a hospital, a physician, or a nonphysician practitioner.

We are revising paragraph (d)(4)(iii) to specify that an emergency physician as well as any nonphysician practitioner involved in the emergency treatment is not precluded from contacting the individual's physician at any time to seek advice regarding the individual's medical history as long as the consultation does not delay screening and stabilizing services.

We are adding a new paragraph (d)(4)(iv) to specify that hospitals may follow reasonable registration processes for individuals for whom examination or treatment is required under EMTALA, as long as the procedures do not result in a delay in screening or treatment.

VI. Clarification of "Comes to the Emergency Department" (§ 489.24(a) and (b))

A. Background

Section 1867(a) of the Act and our existing regulations at § 489.24(a) provide, in part, that if any individual comes to the emergency department of a hospital and a request is made on that individual's behalf for examination or treatment of a medical condition, the hospital must provide an appropriate medical screening examination within the capability of the hospital's emergency department. Section 1867(b) of the Act and our existing regulations at § 489.24(c) provide, in part, that if the hospital determines that such an individual has an emergency medical condition, the hospital is further obligated to provide either necessary

stabilizing treatment or an appropriate transfer. Occasionally, questions have arisen as to whether these EMTALA requirements apply to situations in which an individual comes to a hospital, but does not present to the hospital's emergency department.

B. Provisions of the Proposed Rule

In the May 9, 2002 proposed rule (67 FR 31472), we proposed to consolidate the EMTALA requirements for screening (currently in § 489.24(a)) and for stabilization or appropriate transfer (currently in § 489.24(c)) into a single revised paragraph (a). This consolidation was not intended to change the substance of the requirements, but only to set forth more concisely, in a single opening paragraph, the essential requirements of EMTALA. In proposed paragraph (b), we proposed to clarify the criteria for determining under what conditions a hospital is obligated by EMTALA to screen and, if necessary, stabilize or transfer an individual who comes to a hospital, presenting either at its dedicated emergency department, as we proposed to define, or elsewhere on hospital property, and requests examination or treatment, or has such a request made on his or her behalf.

In developing the proposed criteria, we recognized that sometimes individuals come to hospitals seeking examination or treatment for medical conditions that could be emergency medical conditions, but present for examination or treatment at areas of the hospital other than the emergency department. In recognition of this possibility, and for other reasons explained in the preamble to the proposed rule (including the need to assure that an individual is not denied services simply because he or she failed to actually enter the hospital's designated emergency department), we proposed to clarify under proposed § 489.24(b) that an individual can "come to the emergency department," creating an EMTALA obligation on the part of the hospital, in one of two ways: The individual can present at a hospital's dedicated emergency department (as we proposed to define that term) and request examination or treatment for a medical condition; or the individual can present elsewhere on hospital property in an attempt to gain access to the hospital for emergency care (that is, at a location that is on hospital property but is not part of a dedicated emergency department), and request examination or treatment for what they believe to be an emergency medical condition.

Because of the need to clarify the applicability of EMTALA to a particular individual depending on where he or she presents on hospital property in order to obtain emergency care, we proposed to define "dedicated emergency department." We proposed that "dedicated emergency department" would mean a specially equipped and staffed area of the hospital that is used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions, as defined in § 489.24(b), and is either located: (1) on the main hospital campus; or (2) off the main hospital campus and is treated by Medicare under § 413.65(b) as a department of the hospital.

The EMTALA statute was intended to apply to individuals presenting to a hospital for emergency care services. Accordingly, we believe it is irrelevant whether the dedicated emergency department is located on or off the hospital main campus, as long as the individual is presenting to "a hospital" for those services. Therefore, we proposed in our definition of "dedicated emergency department" that such a department may be located on the main hospital campus, or it may be a department of the hospital located off the main campus. (We note that the proposed definition would encompass not only what is generally thought of as a hospital's "emergency room" but would also include other departments of hospitals, such as labor and delivery departments and psychiatric units of hospitals, if these departments provide emergency psychiatric or labor and delivery services, or both, or other departments that are held out to the public as an appropriate place to come for medical services on an urgent, nonappointment basis.)

In the May 9, 2002 proposed rule, we solicited public comments on whether this proposed definition should more explicitly define what is a "dedicated emergency department" (67 FR 31472). Specifically, we sought comments on whether a "significant portion of time" should be defined more objectively; for example, in terms of some minimum number or minimum percent of patients (20, 30, 40 percent or more of all patients seen) presenting for emergency care at a particular area of the hospital in order for it to qualify as a dedicated emergency department. As an alternative, we proposed considering a qualifying criterion that is based on determining whether the facility is used "regularly" for the evaluation or treatment of emergency medical conditions, and how we could define "regularly." We further sought comments from hospitals, physicians, and others on how hospitals currently organize themselves to react to situations in which individuals come to a hospital requesting a screening examination or medical treatment, or both.

C. Summary of Public Comments and Departmental Responses

1. General Support

Comment: Many commenters supported our proposed revised definition of "dedicated emergency department." The commenters believed the proposed revised definition is clear and did not need to be further revised.

Response: We appreciate the support of the commenters and have taken their views into account in considering the comments of those respondents who recommended revisions.

2. Objective Test of "Significant Portion of the Time"

Comment: Some commenters believed that an objective test (such as a percentage of emergency patients seen or treated for emergency medical conditions) to determine dedicated emergency department status would reduce confusion in the provider industry. Several other commenters stated that while a finite, objective test, such as a standard of 20, 30, 40 percent or more of all patients seen, would be desirable because of the certainty and consistency it would provide in determining a "significant portion of the time" for purposes of "dedicated emergency department" determination, the commenters believed the percentages cited by us are too low.

One commenter asked us to clarify what is meant by patients who "seek emergency care" in our discussion of whether "significant portion of the time" should be defined more objectively. For instance, the commenter stated the view that while many patients present for immediate care of nonemergency problems (and these patients must be screened for an emergency under EMTALA regulations), they should not be counted in determining whether a department is considered a dedicated emergency department.

Response: After consideration of these comments and the following related comments in this section VII.C. of this preamble, we believe that providing an objective criterion as part of the definition of "dedicated emergency department" for purposes of EMTALA will provide predictability and consistency to the health care industry, as the commenters suggest. Therefore, as

one part of the definition of "dedicated emergency department," as described in more detail below, we are specifying in this final rule that a department or facility that does not otherwise qualify as a "dedicated emergency department" based on State licensure or the way it is held out to the public will nevertheless be considered to be a dedicated emergency department if, during the calendar year immediately preceding the calendar year in which a determination is being made, based on a representative sample of patient visits that occurred during that calendar year, the department or facility provided at least one-third of all its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. We adopted this definition because we believe it adds the element of objectivity requested by many commenters and thus enables hospitals to know in advance whether they will be subject to EMTALA. We included a reference to a "representative sample" of visits for two reasons. First, we believe any determination under this definition must be based on information that accurately represents the type and mix of services delivered by the department or facility over a period of time, not merely during certain parts of the year. However, we also recognize that the large number of visits provided by some departments or facilities will make it a practical necessity to sampling techniques to obtain information on the type of care furnished instead of attempting to review all records of all visits by all patients during a year. Therefore, we intend to issue instructions, through interpretative guidelines, to our surveyors on how to determine such a representative sample. In addition, we may develop a series of questions and answers for posting on our website that will provide further clarification and guidance to providers.

In response to the comment regarding visits for the care of nonemergency problems, we agree that such visits should not normally be counted as being for the treatment of emergency medical conditions. However, as discussed in section VIII. of this preamble, individuals who suffer an unexpected emergency medical condition after they arrive at the hospital for an outpatient visit but before they begin an outpatient encounter and individuals whose appearance or behavior would cause a prudent layperson observer to believe they need examination or treatment for an emergency medical condition would be counted toward the "one-third" standard.

Comment: One commenter recommended that we use the term "regularly" instead of "a significant portion of the time" in the definition of dedicated emergency department. The commenter opposed the use of additional qualifying criteria (percentages) to determine whether a facility is used "regularly" for the evaluation and treatment of emergency medical conditions and believed that hospitals should have maximum flexibility to determine which part of their facility is appropriate for the delivery of emergency care.

Response: As explained in the response to the previous comment, we believe that an objective criterion relating to the percentage of visits for the treatment of emergency medical conditions, such as the one we are including in this final rule for purposes of EMTALA, provides needed predictability for those who are determining dedicated emergency department status. In addition, we believe this objective criterion in the definition of dedicated emergency department, along with the other two criteria in the definition in this final rule, provides the most flexibility for determining dedicated emergency department status, as the commenter suggested.

Comment: One commenter suggested that we not include an objective standard of "significant portion of the time" for the determination of a hospital's "dedicated emergency department." The commenter believed that an objective standard for "significant" may have the unintended effect of creating a benchmark that some providers might use to avoid their EMTALA obligations. For example, the commenter stated, if the standard for "significant portion of the time" is set at 30 percent, a hospital's labor and delivery department may determine that its staff spend only 15 percent of their time evaluating and treating outpatients who meet the regulatory definition of emergency medical condition. The commenter stated that if the majority of the staff's time is spent caring for inpatients in active labor, such a hospital may then decide that its labor and delivery department no longer has to provide an emergency medical screening examination to all women who present with contractions, since the department does not meet the objective criteria of being used a significant portion of the time for the initial evaluation and treatment for emergency medical conditions.

Another commenter did not support the percentage-based definition of dedicated emergency department proposed because the commenter believed "it potentially could result in a patient having or not having EMTALA protections based on a fraction of a percentage point and dependent on the accounting method chosen to determine volume." Also, the commenter believed that volumes fluctuate by days, weeks, and months, among other things. The commenter stated that fluctuating volume could potentially cause an area or department to move in and out of EMTALA coverage as the volume fluctuates.

Response: We agree with the commenters that using objective criteria in the determination of a hospital's dedicated emergency department may lead to some cases in which the standard is exceeded or not met by a narrow margin. However, this result is an unavoidable consequence of any objective standard. By assessing a facility's performance over a calendar year, we believe that the effects of seasonal or other variations in utilization will be mitigated.

In response to the comment concerning labor and delivery departments, we would like to clarify that CMS believes that EMTALA requires that a hospital's dedicated emergency department would not only encompass what is generally thought of as a hospital's "emergency room," but would also include other departments of hospitals, such as labor and delivery departments and psychiatric units of hospitals, that provide emergency or labor and delivery services, or both, to individuals who may present as unscheduled ambulatory patients but are routinely admitted to be evaluated and treated. Because labor is a condition defined by statute as one in which EMTALA protections are afforded, any area of the hospital that offers such medical services to treat individuals in labor to at least one-third of the ambulatory individuals who present to the area for care, even if the hospital's practice is to admit such individuals as inpatients rather than treating them on an outpatient basis, *would* be considered a dedicated emergency department under our revised definition in this final rule. In such cases, whether the department of the hospital chooses to directly admit the emergency patient upon presentment is irrelevant to the determination of whether the department is a dedicated emergency department.

3. Nature of Care

Comment: Some commenters believed that the amount of time a facility is used for emergency screening and treatment is not relevant, and that it is the "nature of the care provided" that distinguishes it as a dedicated emergency department.

Response: We appreciate the comment concerning the "nature of the care provided" as determinative of meeting the definition of "dedicated emergency department" rather than the amount of time a facility is used for emergency screening and treatment. However, if we used the suggested language of "nature of the care provided" as the standard for determining "dedicated emergency department" status, we believe that treatment for one emergency case by one hospital clinic would meet the suggested standard. We believe that the suggested standard is too general in its reach and would encompass too many departments of hospitals. Therefore, we are not adopting the commenters' proposed language.

4. State Law Criterion

Comment: Several commenters suggested that "dedicated emergency department" status should be determined by State law in the State in which the hospital is located. Another commenter suggested that we define "dedicated emergency department" as any facility licensed by the State in which it is situated as an emergency department. The commenter stated that this would avoid the confusion as to whether urgent care or walk-in clinics do or do not devote a "significant portion of time" to the provision of emergency services.

Response: As explained under section VII.D. of this preamble, based on consideration of all of the comments received, in this final rule we are revising the proposed definition of "dedicated emergency department" to state that a facility licensed by the State as an emergency department will be recognized as such under Federal EMTALA rules. However, because of the variations in State licensure laws, we do not agree that *only* facilities that are licensed as emergency departments by the State should be considered dedicated emergency departments for purposes of EMTALA, and have therefore included other criteria for dedicated emergency department status, as specified in this final rule.

5. Held Out to the Public Standard

Comment: Many commenters agreed with statements in the preamble of the proposed rule to the effect that a "held out to the public standard" is appropriate for determining "dedicated emergency department" status. One commenter specifically suggested that a "dedicated emergency department" should be defined as "the department of a hospital that is held out to the public as the appropriate place to go for the examination and treatment of emergency medical conditions as defined in this section."

Similarly, another commenter stated that a "24/7" rule with routine emergency care may be more appropriate to designating a "dedicated emergency department" rather than our proposal of tracking patients and developing some minimum percentage of emergency patients. The commenter stated that if the area is not open and staffed on a continuous basis, and it is not held out to the public as such, then it should *not* be considered a dedicated emergency department.

Response: As explained in section VI.D. of this preamble, we are revising the proposed definition of "dedicated emergency department" in several areas. In the revised definition of dedicated emergency department that we are adopting in this final rule, we state that a department or facility that is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment will be considered to be a dedicated emergency department. Consistent with what we have stated above, we believe that most provider-based urgent care centers that are held out to the public as such will meet the revised definition of dedicated emergency department for purposes of EMTALA.

6. Labor and Delivery Departments and Psychiatric Units

Comment: Several commenters addressed our clarification in the preamble of the proposed rule at 67 FR 31472 that other types of hospital departments, such as labor and delivery and psychiatric units, could qualify as a dedicated emergency department for purposes of EMTALA under our proposed definition.

One commenter stated that if a hospital has a department held out to the public as the place to go for a labor or psychiatric emergency medical condition, that department should fall under the definition of "dedicated emergency department" for purposes of EMTALA.

Two commenters stated that it was unclear which of the EMTALA requirements (such as the EMTALA log) would apply to the labor and delivery unit and the psychiatric unit that meet the definition of "dedicated emergency department." In addition, these commenters asked whether EMTALA would apply to all patients who present to these locations or only to obstetrical and psychiatric patients who present under orders of their physicians at the locations.

Response: As explained further below, under the revised definition in this final rule, departments of the hospital will be considered to be "dedicated emergency departments" if they are held out to the public as places that provide care for emergency medical conditions on an urgent, nonappointment basis. These departments will be subject to EMTALA requirements applicable to dedicated emergency departments, including requirements related to maintenance of an emergency department log and on-call requirements. Individuals who present at these locations and request examination or treatment for a medical condition or have such a request made on their behalf must be screened under EMTALA and, if an emergency medical condition is determined to exist, provided necessary stabilizing treatment, because these locations are dedicated emergency departments.

We note that the dedicated emergency department to which an individual presents does not necessarily have to be the one to do EMTALA screening and stabilization. For example, if a man with cold symptoms or another medical condition were to seek treatment in the obstetrics and gynecology department rather than the general emergency department, this presentation would create an EMTALA obligation for the hospital, but the hospital would not be prohibited from transporting the individual to its general emergency department for screening and stabilization if that action were medically indicated.

7. Use of Arizona State Bill Language Defining Freestanding Urgent Care Center

Comment: One commenter cited language of a State bill (Arizona SB1098 (1999)) that, if enacted, would amend the Arizona State statutes to create standards in Arizona for "freestanding urgent care centers." The commenter suggested that we adopt the legislative language for a "freestanding urgent care center" as the Medicare definition of "dedicated emergency department." Specifically, the commenter suggested that the definition state:

An "emergency department" means a medical facility that, regardless of its

posted or advertised name, meets the following requirements:

(a) Is a department of a hospital and is intended to routinely provide unscheduled medical services; or

(b) Meets any one of the following requirements:

(1) Is open 24 hours a day to provide unscheduled medical care, excluding, at its option, weekends or certain holidays;

(2) By its posted or advertised name, give the impression to the public that it provides medical care for urgent, immediate or emergency conditions; or

(3) Routinely provides ongoing unscheduled medical services for more than 8 consecutive hours for an individual patient.

Response: We have considered this suggested Arizona bill language defining urgent care centers for the State and believe it has merits for further revision of the CMS definition of "dedicated emergency department," with some modification.

Under subparagraph (2) of the revised definition in this final rule, we are adopting as one of three options that a "dedicated emergency department" may be any department or facility of a hospital, regardless of whether it is located on or off the main hospital campus, that is held out to the public as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. We have not limited the definition to a hospital "department" because we do not believe it would be appropriate to exclude facilities that otherwise function as dedicated emergency departments from that definition solely because they may not fully meet the requirements for departments of providers in 42 CFR 413.65.

Second, under subparagraph (3) of the revised definition in this final rule, we are adopting the criterion that during the calendar year immediately preceding the calendar year in which a determination is being made, based on a representative sample of patient visits that occurred during that calendar year, the department or facility provided at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. We are not using the Arizona bill 24-hour or 8-hour requirements because we believe an objective measure based on outpatient visits for the treatment of emergency medical conditions will be easier to understand and implement and better reflects the operating patterns of some emergency departments, including those at small or rural hospitals, or both, that may not offer treatment for emergency medical conditions continuously on a 24-hour, 7 days a week basis. (The hospital CoPs governing emergency services of hospitals (§ 482.55) and CAHs (§ 485.618) do not require that emergency departments be operated continuously. Under some circumstances, such as local shortages of emergency care personnel or limited demand for emergency services, hospitals and CAHs may choose to open and staff their emergency departments on less than a 24-hour, 7 days a week basis.)

8. Urgent Care Centers

Comment: Many commenters were concerned that hospital "urgent care centers" or "acute care centers" would be included, inappropriately, as "dedicated emergency departments" for purposes of EMTALA. The commenters stated that urgent care centers "are capable of responding to an urgent need, but not an emergency medical condition."

Several commenters suggested that only those urgent care centers that are functioning and holding themselves out to the public as an emergency department should be considered a dedicated emergency department for purposes of EMTALA.

Response: We believe it would be very difficult for any individual in need of emergency care to distinguish between a hospital department that provides care for an "urgent need" and one that provides care for an "emergency medical condition" need. Indeed, to CMS, both terms seem to demonstrate a similar, if not exact, functionality. Therefore, we are not adopting the commenters' suggestion to except urgent care centers from dedicated emergency department status. As we have discussed above, if the department or facility is held out to the public as a place that provides care for emergency medical conditions, it would meet the definition of dedicated emergency department. An urgent care center of this kind would fall under this criterion for dedicated emergency department status.

Although not specifically stated in a comment, an underlying issue is that urgent care centers, participating in Medicare through a hospital, and which operate as satellite facilities off the main hospital campus, would meet the current definition of a dedicated emergency department, but would generally not have the capacity on site to treat patients who had been screened and determined to have serious emergency conditions. In this situation, some might argue that it would be inappropriate for such a facility to refer a patient in an unstable condition to the main hospital campus (which could be 30 miles or more away and involve a lengthy ambulance ride) rather than to a nearby hospital that would be able to treat a patient.

Both under past and current rules, a transfer from an urgent care center to a nonaffiliated hospital is allowed under EMTALA where the facility at which the individual presented cannot stabilize the individual and the benefits of transfer exceed the risks of transfer and certain other regulatory requirements are met. Thus, our rules permit a satellite facility covered under the definition of dedicated emergency department, in this example, to screen and determine whether the case is too complex to be treated on site, that a lengthy ambulance ride to an affiliated hospital would present an unacceptable risk to the individual, and then conclude that the benefit of transfer exceeds the risk of transfer. In this case, the satellite facility could then transfer the individual to an appropriate nearby medical facility.

9. Evaluation and Treatment Issue

Comment: One commenter was concerned about the "evaluation *and* treatment" aspect of our proposed "dedicated emergency department" definition, and suggested that the reference to evaluation would make the definition overly inclusive, since an ambulatory clinic might have no patients *treated* as emergencies, but many *evaluated* (and ruled out) for emergencies. The commenter believed that part of *any* prudent ambulatory practice is to consider first the possibility of an emergency with *all* patients who are seen. The commenter suggested dropping the "evaluation and" portion of the definition to rely exclusively on an area's treatment of actual emergencies as the criterion.

Response: We agree that reference to evaluation may make the definition of "dedicated emergency department" overly inclusive, in that it would count any individuals coming to emergency rooms who are evaluated but not treated for such conditions to rule out emergency medical conditions. Therefore, we are limiting the objective criterion in the third part of the "dedicated emergency department" definition in this final rule to a department or facility that provides at least one-third of all its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

10. Prudent Layperson Observer Standard

Comment: Two commenters expressed opposing opinions regarding our language at 67 FR 31477 of the preamble portion of the proposed rule that stated that the definition of "dedicated emergency department" would also be interpreted to encompass those off-campus hospital departments that would be perceived by a prudent layperson as appropriate places to go for emergency care. One commenter believed that while the prudent layperson standard makes sense as it relates to the assessment of an individual's *medical condition*, it is less appropriate with respect to an individual's assessment of an appropriate *site of service*. The commenter stated that such assessments would likely vary, depending on factors such as perceived seriousness of the individual's condition, and urged CMS to adopt an objective test to avoid the uncertainty inherent in a "prudent layperson standard" for determinations of dedicated emergency department status.

Another commenter supported our proposed adoption of the "prudent layperson standard" in determining whether a facility is a dedicated emergency department and stated that the prudent layperson standard is preferable to the "significant portion of the time" or "regularly" definitions or standards.

Response: We believe that our revised definition of "dedicated emergency department" specified under section VII.D. of this final rule establishes an objective standard of determination. For instance, we believe it is an objective standard of dedicated emergency department status whether or not an emergency department is licensed by the State. We also believe that it is an objective standard if a hospital department holds itself out to the public as providing emergency care.

We understand the comment concerning an individual's assessment of an appropriate site of service. However, in view of the revised "dedicated emergency department" definition we are adopting in this final rule, we believe the prudent layperson standard is unnecessary for assessment of an area of the hospital as a dedicated emergency department. We believe our revised criteria for such status will permit the status of departments or facilities to be objectively determined.

11. Specially Equipped and Staffed Area

Comment: Several commenters addressed the "specially equipped and staffed area of the hospital" part of the proposed definition of "dedicated emergency department." One commenter, a hospital, stated that it has a main campus and several off-site locations, all of which are considered departments of the hospital and that none of these off-site departments are dedicated to the provision of emergency care. They also indicated that none of the staff at these off-campus departments are qualified to provide such care. One commenter believed our definition of "dedicated emergency department" should incorporate a provision that staff be specially trained in providing emergency medical care.

Another commenter requested that we clarify the terms "specialized staff" and "specialized equipment" in the proposed "dedicated emergency department" definition. The commenter suggested that "true" emergency departments have coding equipment and coding staff who know how to assign appropriate billing codes.

Several commenters believed that we should clarify that CMS will apply EMTALA only if a site is functioning as a dedicated emergency department. Another commenter stated that the obligations of EMTALA should apply to those hospital departments or other off-site locations that provide "traditional" emergency department services.

Response: As we explained earlier, based on our review of comments on the proposed definition of "dedicated emergency department," we are adopting an alternative definition of that term that does not include a reference to special equipment or staffing. Therefore, we have not attempted to further define "specialized staff" or "specialized equipment" in this final rule.

We agree with the latter comments, but the range of comments received on the definition of a dedicated emergency department included in our proposed rule illustrates that there are varying differences in opinion as to what "functioning as a dedicated emergency department" and "traditional emergency department services" mean. Therefore, we do not believe these phrases alone are sufficient to define a dedicated emergency department. EMTALA applies not only to dedicated emergency departments but also to presentments for emergency care anywhere on hospital property.

Comment: One commenter brought to our attention a contradiction in the preamble to the proposed rule when we discuss the definition of "dedicated emergency department" at 67 FR 31472. On the one hand, the commenter recognized that we proposed to define "dedicated emergency department" as an area that is "specially staffed and equipped" for emergency care and that "is used a significant portion of the time" for evaluation of patients for emergency medical conditions. However, the commenter pointed out that, in the same paragraph, CMS proposed that EMTALA applicability also be extended to hospital departments "that are held out to the public as an appropriate place to come for medical services on an urgent, nonappointment basis." Because the "held out to the public" test was not included in the proposed regulation text, the commenter requested clarification on this point.

One commenter believed that only an area of the hospital with an "Emergency" sign or a "well-accepted synonym in its title" should be impacted by the EMTALA regulations.

Response: As noted earlier, and as explained more fully in section VII.D. of this preamble, we are adopting a revised definition of "dedicated emergency department" that does not reference special equipment or staffing, but does recognize departments or facilities that are held out to the public as places that provide care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment. We believe this revised definition will resolve any uncertainty about the "held out to the public" test.

We agree that use of the term "emergency" or a well-recognized synonym in a facility's signage would help to identify how the facility is held out to the public and will keep this comment in mind as we develop interpretative guidelines for EMTALA surveys. However, we are not including the suggested language in the final rule because we are concerned that it could be overly prescriptive.

12. Unscheduled Appointments Criterion

Comment: Several commenters addressed the issue of defining dedicated emergency department as one that accepts unscheduled appointments. One commenter suggested that the definition of "dedicated emergency department" should focus on why the patient is present at the hospital's emergency department. The commenter suggested that the definition should include any location that the hospital holds out as open to evaluate patients seeking unscheduled evaluation or treatment for a medical condition.

Similarly, another commenter recommended that we revise the definition of dedicated emergency department to state that it is a specially

equipped and staffed area of the hospital that is primarily dedicated to "unscheduled" evaluation and treatment of outpatients for emergency medical conditions.

One commenter suggested that our proposed definition of dedicated emergency department be revised to specify that departments of the hospital that accept walk-in or unscheduled patients for assessment are deemed to be dedicated emergency departments for the purposes of EMTALA. The commenter stated that this definition would exempt routine clinics or hospital-based physician offices that function on an appointment-only basis, administrative areas, inpatient units, and laboratory areas that provide testing but do not provide assessment or diagnosis services for patients.

Another commenter asked us to include places that are "held out to the public as an appropriate place to come for medical services on an urgent, nonappointment basis' under the definition of dedicated emergency department. This suggestion would include the labor and delivery department of a hospital, but would exclude outpatient clinics that permit "walk-in patients", according to the commenter.

The commenter suggested that "dedicated emergency department" be defined as any area of the hospital that provides more than 10 percent of its nonscheduled patients treatment for outright emergencies.

Response: We agree that the practice of accepting patients without requiring appointments is an important indicator of emergency department status. After consideration of all of the comments on this issue, we are adopting in this final rule a criterion in the definition of "dedicated emergency department" that permits a department or facility to be considered a dedicated emergency department if it is held out to the public as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

13. Related Definition of "Hospital With an Emergency Department"

Comment: One commenter requested that we amend the proposed regulatory text at § 489.24(a), consistent with our proposed definition of "dedicated emergency department," to state that EMTALA requirements apply to a hospital that has *a dedicated* emergency department. Other commenters suggested that our proposed definition of "hospital with an emergency department" at § 489.24(b) should either be deleted or revised so that it is defined as a "hospital with a dedicated emergency department," to make it consistent with our definition of "dedicated emergency department."

Response: We considered the suggestion that we amend the "Application" paragraph of § 489.24(a) to limit EMTALA applicability to hospitals with dedicated emergency departments. However, "hospital with an emergency department" is a term of art from section 1867 of the Act that we have separately included in the definitions under § 489.24(b) to mean generally "a hospital that offers services for emergency medical conditions." Thus, we believe it would be preferable to keep the statutory language "hospital with an emergency department" in the Application section in the regulation text. To clarify our policy in this area, we are revising the definition of "Hospital with an emergency department" under § 489.24(b) to state that it means a hospital with a dedicated emergency department as defined in § 489.24(b).

14. Other Related Suggested Revisions

Comment: One commenter recommended that the last sentence in proposed paragraph (1) of the definition of "Comes to the emergency department" in § 489.24(b) be revised to read:

"In the absence of such a request by or on behalf of the individual, a request on behalf of the individual will be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for an *emergency* medical condition." [New language is underlined.]

(As proposed, this definition would require only that the prudent layperson observer believe that the individual needs examination or treatment for a *medical* condition.)

Response: Section 1867 of the Act requires a hospital to provide examination and necessary stabilizing treatment to any individual who "comes to the hospital" for emergency care. We are interpreting this statutory requirement to mean that individuals who present to areas of the hospital other than departments that are labeled "Emergency" must receive care from the hospital. We believe we have clarified this requirement in prior rulemakings and in the proposed rule. However, we are including this clarification in this final rule, as well, as part of the revised final definition of dedicated emergency department.

Comment: One commenter stated that if the proposed rules are adopted as final, on-call physicians and hospitals will refuse to accept transfers if the transfers will be received through the hospital dedicated emergency department. The commenter believed that if we apply EMTALA to patients admitted via the dedicated emergency department, it will create "perverse incentives" for hospitals and physicians to avoid admitting patients through the dedicated emergency department. The commenter stated: "On-call physicians will be reluctant to agree to accept patients for admission through the ED because then their stabilizing care of the patient in the hospital will subject them to civil monetary penalties and civil liability under EMTALA."

Response: It is a statutory requirement under section 1867(g) of the Act that receiving hospitals with special capabilities *must* accept the transfer of an individual with an unstable emergency medical condition. The receiving hospitals must accept the patients whether or not they are received through that hospital's dedicated emergency department—the EMTALA obligation for the receiving hospital transfers with the individual until the condition has been stabilized. Therefore, we do not believe on-call physicians and hospitals would refuse to accept transfers if the transfers are being received through the hospital dedicated emergency department, as the commenter believed. In particular, we hold this view because the EMTALA obligation is incurred at the time of arrival of the individual in accordance with an appropriate transfer, regardless of which door the individual enters or whether he or she is admitted immediately to the receiving hospital.

D. Provisions of the Final Rule Regarding Clarification of "Come to the Emergency Department"

For the reasons discussed throughout section VII. of this preamble, and after full consideration of the public comments received—

We are adopting as final the proposed organizational changes to § 489.24(a) on the application of EMTALA to include both the screening and stabilization or transfer requirements. (We note that later in this preamble under section X., we make an additional change to paragraph (a) to clarify that if the hospital admits the individual as an inpatient for further treatment after screening, the hospital's obligation under EMTALA ends.)

We are adopting paragraphs (1) and (2) under the proposed definition of "come to the emergency department" as final without changes.

We are revising the proposed definition of "dedicated emergency department" at § 489.24(b), to read as follows:

"Dedicated emergency department" means any department or facility of the hospital, regardless of whether it is located on or off the main hospital campus, that meets at least one of the following requirements:

(1) It is licensed by the State in which it is located under applicable State law as an emergency room or emergency department;

(2) It is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or

(3) During the calendar year immediately preceding the calendar year in which a determination under § 489.24 is being made, based on a representative sample of patient visits that occurred during that calendar year, it provided at least one-third of all its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

We believe this revised definition of "dedicated emergency department" sufficiently addresses many of the suggested proposals submitted by the commenters on determining what is an emergency department for purposes of EMTALA.

We are revising the proposed definition of "hospital with an emergency department" to make it consistent with our revised definition of "dedicated emergency department."

VII. Applicability of EMTALA: Individuals Come to the Dedicated Emergency Department for Nonemergency Services (§ 489.24(c))

A. Background

We sometimes receive questions whether EMTALA's requirements apply to situations in which an individual comes to a hospital's dedicated emergency department, but no request is made on the individual's behalf for emergency medical evaluation or treatment. In view of the specific language of section 1867 of the Act and the discussion in section VII. of this preamble, which addresses the definition of a hospital's dedicated emergency department, we believe that a hospital must be seen as having an EMTALA obligation with respect to any individual who comes to the dedicated emergency department, if a request is made on the individual's behalf for examination or treatment for a medical condition, whether or not the treatment requested is explicitly for an emergency condition. A request on behalf of the individual would be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for a medical condition.

This does not mean, of course, that all EMTALA screenings must be equally extensive. The statute plainly states that the objective of the appropriate medical screening examination is to determine whether or not an emergency medical condition exists. Therefore, hospitals are not obligated to provide screening services beyond those needed to determine that there is no emergency medical condition.

In general, a medical screening examination is the process required to reach, with reasonable clinical confidence, a determination about whether a medical emergency does or does not exist. We expect that in most cases in which a request is made for medical care that clearly is unlikely to involve an emergency medical condition, an individual's statement that he or she is not seeking emergency care, together with brief questioning by qualified medical personnel, would be sufficient to establish that there is no emergency condition and that the hospital's EMTALA obligation would thereby be satisfied.

B. Provisions of the Proposed Rule

To clarify our policy in this area, in the May 9, 2002 proposed rule (67 FR 31473), we proposed to redesignate paragraphs (c) through (h) of § 489.24 as paragraphs (d) through (i) (we proposed to remove existing paragraph (i)) and to add a new paragraph (c) to state that if an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an "emergency medical condition" as defined in the regulations. (In the May 9, 2002, proposed rule, we included an Example 1 as illustrative of application of this policy (67 FR 31473).)

C. Summary of Public Comments and Departmental Responses

Comment: Many commenters addressed our proposed clarification of presentments of individuals to dedicated emergency departments for nonemergency services at 67 FR 31473. One commenter stated that only those individuals requesting a "medical examination" be required to receive a medical screening examination by a physician or other qualified medical personnel. Another commenter recommended that EMTALA not apply to requests for nonemergency care inside the dedicated emergency department. One commenter believed that EMTALA should not apply to individuals coming to the dedicated emergency department to obtain previously scheduled or followup care.

Response: At 67 FR 31473, *et seq.*, of the preamble to the May 9, 2002 proposed rule, and also above, we explicitly clarified the issue concerning when an individual comes to a hospital's dedicated emergency department but no request is made on the individual's behalf for emergency medical evaluation or treatment. To address this scenario, we stated that hospitals are not obligated to provide screening services beyond those needed to determine whether an emergency medical condition exists. In addition, we proposed regulatory language to address the issue (proposed § 489.24(c)) to specify that if an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition. Therefore, while EMTALA *does* apply to any individual who presents to a hospital's dedicated emergency department with a medical condition, it does so only to the extent that the individual must be screened for emergency medical conditions and supplied necessary stabilizing treatment.

Section 1867(a) of the Act clearly states that a hospital with an emergency department is required to provide an appropriate medical screening examination to every individual who presents at the hospital's emergency department with a medical condition. However, this screening is only necessary to the extent it takes the hospital to determine whether the individual has an emergency medical condition. Once the individual is screened and it is determined the individual has only presented to the dedicated emergency department for a

nonemergency purpose, such as followup care, the hospital's EMTALA obligation ends for that individual at the completion of the medical screening examination.

Comment: One commenter noted that, in many cases, individuals come to the dedicated emergency department of the hospital at which their regular physician practices and ask to be seen for nonemergency medical conditions that could appropriately be treated in the physician's office. The commenter asked whether, in these circumstances, a registered nurse or other qualified medical person on duty at the dedicated emergency department could perform a screening to rule out the presence of an emergency medical condition and, if it is determined that the patient does not have an emergency medical condition, refer the patient to the physician's office for treatment.

Another commenter stated that we should provide more guidance to allow busy emergency departments to refer patients without an "emergency medical condition" to primary care or specialty care clinics, or both.

Response: As stated in proposed § 489.24(c), if an individual comes to a dedicated emergency department and a request is made for examination or treatment of a medical condition, but the nature of the request makes it clear that the condition is not of an emergency nature, the hospital is required to perform only such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition. Under the circumstances described by these commenters, the regulations would not require that such screening be done by a physician. On the contrary, we believe the individual could be screened by the appropriate nonphysician emergency department staff and, if no emergency medical condition is found to exist, referred to his or her physician's office for further treatment. Because we believe that proposed paragraph (c) clearly would permit such a referral, we do not believe a further regulations change is needed in this final rule to clarify this point. We note that while EMTALA does not require that all screenings be performed by an M.D. or D.O., any nonphysician (such as an emergency room registered nurse) who performs such screening should be an individual whom the hospital has designated as a "qualified medical person" for purposes of appropriate transfer certification under § 489.24(d)(1)(ii)(C) (redesignated in this final rule as § 489.24(e)(1)(ii)(C)).

Comment: Many commenters believed that the final rule should make clear that EMTALA does not apply to nonemergency services delivered in a dedicated emergency department and does not apply to a site other than a dedicated emergency department unless emergency services are requested.

Similarly, several commenters requested that we clarify that a hospital has no obligation under EMTALA to an individual who presents at a dedicated emergency department but does not request examination or treatment for a medical condition. Specifically, one commenter believed that we should clarify that hospitals are not required under EMTALA to provide medical screening examinations to individuals who request a medical service that is not examination or treatment for a medical condition, such as preventive care services, pharmaceutical services, or medical clearances for law enforcement purposes (such as blood alcohol tests required by police).

Response: We agree that a hospital has no obligation under EMTALA to an individual who comes to a dedicated emergency department if there is no request made by or on behalf of the individual for examination or treatment for a medical condition, and the individual's appearance or behavior would not cause a prudent layperson observer to believe that examination or treatment for a medical condition is needed and that the individual would request that examination or treatment if he or she were able to do so. We do not agree that a hospital has no obligation under EMTALA to an individual who presents at a dedicated emergency department for "nonemergency purposes" because such a purpose can be a medical one and the statute requires that a hospital perform a medical screening examination to any individual who presents to the emergency department with a medical condition. We agree with another commenter that if an individual presents to a dedicated emergency department and requests services that are not examination or treatment for a medical condition, such as preventive care services, the hospital is not obligated to provide a medical screening examination under EMTALA to this individual.

We note that pharmaceutical services in a dedicated emergency department may be for medical conditions and are, therefore, subject to EMTALA. We also wish to emphasize that the applicable principle is that presentments to a dedicated emergency department that meet other applicable criteria for EMTALA applicability will be considered to be subject to EMTALA if there is a request by or on behalf of the individual for examination or treatment for a medical condition, or the appearance or behavior of the individual would cause a prudent layperson observer to believe that the individual needed such examination or treatment and that the individual would request that examination or treatment if he or she were able to do so. Under this general principle, we will evaluate specific presentments, including requests by law enforcement authorities for medical clearance of persons who are about to be incarcerated or for blood alcohol or other tests to be used as evidence in criminal proceedings, on a case-by-case basis.

For example, an individual being maintained on psychotropic medication may come to an emergency department and complain of experiencing suicidal or homicidal urges because he or she has exhausted his or her supply of medication. If examination of the individual verifies the existence of an emergency medical condition and a supply of the patient's normal medication is required to stabilize that condition, then EMTALA would require that the hospital provide that medication. Of course, this does not mean that hospitals are required by EMTALA to provide medication to patients who do not have an emergency medical condition, simply because the patient is unable to pay or does not wish to purchase the medication from a retail pharmacy. We will address these types of issues in our interpretative guidelines.

Comment: One commenter noted that the issue of nonemergency patient care that takes place in the dedicated emergency department and overcrowding is a significant concern. The commenter stated that education aimed at the public by CMS to help them understand appropriate alternatives could contribute to reducing abuse.

Response: We agree that it is worthwhile to encourage patients to seek more appropriate sources of nonemergency care, and will take this into account as we develop EMTALA-related patient information and education material.

Comment: One commenter described a situation where hospitals use their emergency departments as an access point for registration purposes for the entire hospital after the normal registration area is closed. The commenter asked whether every individual would be covered under EMTALA and would require a medical screening even though not everyone is

coming to the emergency department seeking emergency medical treatment.

Similarly, another commenter stated that some hospitals, particularly rural ones, have found that it is most cost-effective for the hospital if it was configured to have one hospital entrance for patients who present for emergency care and for patients who do not present for emergency care. The commenter requested clarification on whether an EMTALA screening would be required for both types of patients who walk through that one entrance.

One commenter described a situation where a hospital operates ambulatory care centers and other facilities (such as primary care clinics) in tandem with the hospital's dedicated emergency department. The commenter believed the nondedicated emergency department of the hospital should be explicitly excepted from the definition of "dedicated emergency department" to address this "tandem" scenario.

Response: Regarding the first two comments, we agree that EMTALA does not apply to individuals who may pass through a hospital's emergency department but do not request examination or treatment for a medical condition, have such a request made on their behalf, or indicate through their appearance or behavior that examination or treatment for a medical condition would, in the judgment of a prudent layperson, be needed. We have not revised the final rule on this point, but intend to take it into account in developing interpretative guidelines and training materials for EMTALA surveyors. The third comment does not raise an issue of EMTALA policy, but merely shows that it will be necessary in some cases to determine exactly which physical locations constitute a hospital's dedicated emergency department. Such decisions will be made a case-by-case basis by CMS, based on information provided by the State survey agency.

Comment: One commenter suggested that we define whether there has been a request for examination or treatment under EMTALA by the resources that it would take to fulfill the request. The commenter gave an example of a request for unscheduled medical services that would require the service of a "qualified medical provider." The commenter stated that a request to take out stitches does not require a doctor or consultation with a doctor unless there is an additional complaint expressed.

Response: While this is an interesting suggestion, we believe that it is one that would be difficult to implement as an objective standard, because estimates of resources needed will necessarily be subjective. Therefore, we are not revising the final rule based on this comment.

Comment: One commenter believed that the standard stated at proposed § 489.24(c), "the nature of the request makes it clear the medical condition is not of an emergency nature", is too subjective. The commenter believed it would almost certainly invite State surveyors to second guess the determination of the qualified medical person.

Response: The purpose of conducting an EMTALA investigation is to ascertain whether or not the hospital has violated the requirements of § 489.24 or the related requirements of § 489.20. The survey is conducted in accordance with applicable CMS survey procedures and policies. The surveyor's recommendation of a violation determination is based on facts uncovered by the onsite investigation. The CMS regional office will make the final compliance determination with information obtained after the onsite investigation by the State survey agency.

Comment: Several commenters believed that triage of the individual presenting to the dedicated emergency department should be adequate for purposes of fulfilling EMTALA screening obligations. Specifically, one commenter did not believe that EMTALA should apply to individuals who present to the dedicated emergency department with no "significant distress or risk" as determined by triage of vital signs, and "who are comfortable and active" in a waiting area whereby they are well provided for while they are waiting for care or treatment.

Another commenter asked us to clarify whether vital signs must be obtained in every medical screening examination upon presentment to a hospital's dedicated emergency department.

Response: Section 1867(a) of the Act requires that individuals coming to the emergency department be provided a medical screening examination. The statute states:

"In the case of a hospital that has a hospital emergency department, if any individual (whether or not eligible for benefits under this title) comes to the emergency department and a request is made on the individual's behalf for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition (within the meaning of subsection (e)(1)) exists."

Triaging is not equivalent to a medical screening examination. Triaging merely determines the "order" in which patients will be seen, not the presence or absence of an emergency medical condition. If the medical screening examination is appropriate and does not reveal an emergency medical condition, the hospital has no further obligation under § 489.24.

The decision to take vital signs may be required by the qualified medical professional or the hospital's emergency department's policies and procedures, or both. Vital signs are indicators of a patient's level of wellness and are valuable parameters to assist health professionals in making medical decisions concerning a patient's health needs. The patient's medical condition and the discretion of the practitioner will determine the need for monitoring of vital signs.

We do not believe the taking of a patient's vital signs is required for every presentment to a hospital's dedicated emergency department. As we have stated above, we expect that, in most cases in which a request is made for medical care that clearly is unlikely to involve an emergency medical condition, an individual's statement that he or she is not seeking emergency care, together with brief questioning by qualified medical personnel, would be sufficient to establish that there is no emergency medical condition and the hospital's EMTALA obligation would thereby be satisfied.

Comment: One commenter requested that we modify proposed § 489.24(c) to provide that EMTALA imposes no minimum requirements for conducting medical screening examinations for cases falling within this paragraph. The commenter stated that the extent of the necessary examination is within the sole discretion of the qualified medical personnel performing the examination.

Response: As required by statute, we believe that a hospital *must* be seen as having an EMTALA obligation with respect to any individual who comes to the dedicated emergency department for examination or treatment for a medical condition. While we will refrain from dictating what type of medical screening examination is required for each individual who presents to the dedicated emergency department, we believe that such screenings should be provided to each individual commensurate with the condition that is presented. As we have stated previously, this does not mean that all EMTALA screenings must be equally extensive. Hospitals are not obligated to

provide screening services beyond those needed to determine that there is no emergency medical condition.

We agree with the commenter that the extent of the necessary examination is generally within the judgment and discretion of the qualified medical personnel performing the examination. However, we note that the extent and quality of the screening by the qualified medical personnel are subject to review (by QIOs and State surveyors, for example), in the case of a complaint filed in accordance with section 1867 of the Act.

Comment: One commenter expressed concern about enforcement of the standard stated in proposed § 489.24(c). The commenter was concerned with the scenario in which it is later determined that an individual who had presented to the dedicated emergency department for such medical treatment as suture removal (as used in the example at 67 FR 31473) was, in fact, suffering from an emergency medical condition, and this emergency medical condition was not detected during this less extensive examination.

Response: As we stated in the proposed rule, hospitals are not obligated to provide screening services in the dedicated emergency department beyond those needed to determine that there is no emergency medical condition. We assume that qualified medical personnel or physicians will be performing the medical screening examination (however modified for the condition presented) to determine whether the individual is suffering an emergency medical condition. If it is later found that the individual *had* been suffering an emergency medical condition upon presentment to the dedicated emergency department but only asks for examination or treatment for the suture removal, or some lesser medical condition, and a complaint is filed for an alleged dumping in accordance with section 1867 of the Act, as stated above, the extent and quality of the screening by the qualified medical personnel would be subject to review by State surveyors to permit a determination to be made as to whether there was an EMTALA violation. We note that if, upon investigation of the alleged dumping, it is found that an adequate medical screening had been performed, the hospital would not be found liable under EMTALA.

Comment: One commenter asked why CMS needed to add a new § 489.24(c) to reinforce the requirement that all visits to the emergency department triggers EMTALA obligations, whether the individual is requesting emergency services or coming for nonemergency services. The commenter indicated that "any individual" who comes to the emergency department requesting care is already covered by EMTALA.

Another commenter stated that the real issue is when a hospital is required to perform a medical screening examination and when it is *not* required to perform one. The commenter indicated that staff of hospital emergency departments should be able to ask patients why they have come to the emergency department.

Response: In proposed § 489.24(c), and accompanying language in the preamble at 67 FR 31473, we attempted to provide some guidance to hospitals and physicians as to whether EMTALA's requirements apply to situations in which an individual comes to a hospital's dedicated emergency department, but no request is made for emergency medical evaluation or treatment. While we have repeatedly stated that we are refraining from dictating to hospitals standards for medical screening examinations, we hoped to address some concerns in the provider community that all EMTALA screenings must be equally extensive to each individual who presents to the dedicated emergency department. Rather, once an individual states that he or she is not at a hospital's dedicated emergency seeking emergency care as the commenter suggested, some brief questioning by qualified medical personnel of why the individual is there would be adequate to fulfill the requirements of the medical screening examination for purposes of EMTALA.

Comment: One commenter asked for clarification on whether EMTALA applies to individuals who seek outpatient services from the hospital on an unscheduled basis; for example, when an individual's physician directs the individual to go to the hospital to obtain laboratory and x-rays so that the physician may determine whether the individual has pneumonia or another condition.

Response: As explained elsewhere in this preamble, whether EMTALA applies to a specific individual will depend on whether the individual presents to the hospital's dedicated emergency department or to another area of the hospital, and on what type of request for examination or treatment is made. For example, an individual being sent to a hospital for specific diagnostic tests ordered by a physician outside the hospital would normally be directed by that physician to go to the hospital's laboratory and radiology department, not to the dedicated emergency department. In either setting, a simple request for a diagnostic test or image generally would not be considered a request for examination or treatment for what may be an emergency medical condition, so the hospital would have no EMTALA obligation to that individual. However, if the individual were to tell the hospital staff at the laboratory or radiology department that he or she needed emergency care, EMTALA would apply. EMTALA also would apply if, in the absence of a verbal request, the individual's appearance or behavior were such that a prudent layperson observer would believe the individual needed examination or treatment for an emergency medical condition and that the individual would request that examination or treatment if he or she were able to do so. Of course, in any actual complaint investigation, the State survey agency and, where appropriate, the QIO would review all actual relevant facts and circumstances to ensure that the regulations are applied appropriately in that case.

Comment: One commenter was concerned with the example at 67 FR 31473 of the proposed rule of a woman presenting to a hospital's emergency department with a request for suture removal. The commenter asked for information on the location of the outpatient clinic to which the qualified medical nurse refers the woman for the suture removal after the nurse screens the woman for any emergency medical conditions and also the timing of the clinic's evaluation. The commenter also stated that it would be helpful to clarify that "same-day on-campus referral" to another medical facility outside the dedicated emergency department is not mandatory for EMTALA purposes.

Response: By the commenter's request for information about the location of the outpatient clinic to which the patient is referred, we assume the commenter is interested in whether the outpatient clinic in the example is a department of the hospital (that is, provider-based). We do not see this as a particularly relevant fact, nor do we see the issue of timing of that outpatient clinic's evaluation to the issue of the applicability of EMTALA to that patient on the part of the hospital.

However, we do believe that it would not be an *EMTALA* obligation for the qualified medical nurse in the example to make the referral to the outpatient clinic upon finding that the woman does not have an emergency medical condition. Nevertheless, it would appear to us that good standards of practice would dictate that any qualified medical personnel screening the patient would refer the patient elsewhere for treatment of her obvious medical

condition, rather than simply sending her out of the emergency department upon finding that she did not have an emergency medical condition.

D. Provisions of the Final Rule

We are adopting, as final, the proposed provisions under § 489.24(c).

VIII. Applicability of EMTALA: Individual Presents at an Area of the Hospital's Main Campus Other Than the Dedicated Emergency Department (§ 489.24(b))

A. Background

Routinely, individuals come to hospitals as outpatients for many nonemergency medical purposes. If such an individual initially presents at an on-campus area of the hospital other than a dedicated emergency department, we would expect that the individual typically would not be seeking emergency care. Under most of these circumstances, EMTALA would therefore not apply (this concept is further discussed in section IX.B. of this preamble). However, questions have arisen as to whether a hospital would incur an EMTALA obligation with respect to an individual presenting at that area (that is, an on-campus area of the hospital other than a dedicated emergency department) who requests examination or treatment for what is believed to be an emergency medical condition, or had such a request made on his or her behalf.

B. Provisions of the Proposed Rule

In the May 9, 2002 proposed rule (67 FR 31473 and 31506), we proposed to specify in the regulations (§ 489.24(b), definition of "come to the emergency department") that, for an individual who presents on hospital property other than the dedicated emergency department and requests examination or treatment for what may be an emergency medical condition, a request would be considered to exist if the individual requests examination or treatment for what the individual believes to be an emergency medical condition. We further explained that if there is no actual request, for example, if the individual is unaccompanied and is physically incapable of making a request, the request from the individual would be considered to exist if a prudent layperson observer would believe, based upon the individual's appearance or behavior, that the individual needs treatment for an emergency medical condition. We stated that the proposed policy was appropriate because section 1867 protections should not be denied to those individuals whose need for emergency services arises upon arrival on hospital property at the hospital's main campus, but before they have presented to the dedicated emergency department.

Under the proposed policies, a request for examination or treatment by an individual presenting for what is believed to be an emergency medical condition at an on-campus area of the hospital other than the dedicated emergency department would not have to be expressed verbally in all cases. In some cases, the request may be inferred from what a prudent layperson observer would conclude from an individual's appearance or behavior. While there may be a request (either through the individual or a prudent layperson), thereby triggering an EMTALA obligation on the part of the hospital, this policy does not mean that the hospital must maintain emergency medical screening or treatment capabilities in each department or at each door of the hospital, nor anywhere else on hospital property, other than the dedicated emergency department.

Our proposal, and the considerations on which it is based, are further discussed in the preamble to the May 9, 2000 proposed rule (67 FR 31473). We also specifically solicited comments from hospitals and physicians on examples of ways in which hospitals presently react to situations in which individuals request emergency care in areas of the hospital other than the hospital's emergency department.

In the May 9, 2002 proposed rule, we also proposed that EMTALA would not apply to an individual who experiences what may be an emergency medical condition if the individual is an outpatient (as that term is defined in 42 CFR 410.2). We explained that we would consider such an individual to be an outpatient if he or she has begun an encounter (as that term is defined in 42 CFR 410.2) with a health professional at the outpatient department. Because such individuals are patients of the hospital already, we believe it is inappropriate that they be considered to have "come to the hospital" for purposes of EMTALA. However, we note that such an outpatient under our proposal who experiences what may be an emergency medical condition after the start of an encounter with a health professional would have all protections afforded to patients of a hospital under the Medicare hospital CoPs (as discussed in section XIV. of the preamble). Hospitals that fail to provide treatment to these patients could face termination of their Medicare provider agreements for a violation of the CoPs. In addition, as patients of a health care provider, these individuals are accorded protections under State statutes or common law (for example, State malpractice law and patient abandonment torts) as well as under general rules of ethics governing the medical profession. Our proposal, and the considerations on which it is based, are further discussed in the preamble to the May 9, 2002 proposed rule (67 FR 31473 through 31474).

In the proposed rule, we also proposed to retitle the definition of "property" at § 489.24(b) to "hospital property" and relocate it as a separate definition. In addition, we proposed to clarify which areas and facilities are not considered hospital property.

C. Summary of Public Comments and Departmental Responses

1. Presentation Outside the Dedicated Emergency Department

Comment: Regarding our proposed clarifications on the applicability of EMTALA for presentments on hospital property outside the dedicated emergency department, one commenter believed that, while the clarifications were necessary, "it is perhaps a sad indictment of our healthcare system that we actually have to mandate medical providers that someone unconscious must receive immediate medical care. * * * Anyone doing this sort of denial of care deserves more than an EMTALA citation." Many other commenters expressed concern about the absence from the proposed regulatory text of qualifying language that is set forth in the preamble of the proposed rule. Specifically, one commenter cited the proposed preamble language at 67 FR 31473 that states:

"* * * EMTALA is triggered in on-campus areas of the hospital other than a dedicated emergency department where, in an attempt to gain access to the hospital for emergency care, an individual comes to a hospital and requests an examination or treatment for a medical condition that may be an emergency." (Emphasis added.) The commenter further cited the preamble at 67 FR 31474:

"We are proposing that EMTALA would not apply to * * * an individual who * * * experiences what may be an emergency medical condition *if the individual is an outpatient* (as that term is defined at 42 CFR § 410.2) *who has come to the hospital outpatient department for the purpose of keeping a previously scheduled appointment.* We would consider such an individual to be an outpatient if he or she has *begun an encounter* (as that term is

defined at § 410.2) with a health professional at the outpatient department." (Emphasis added.)

The commenter then compared this language in the preamble to the proposed regulatory text at § 489.24(b) that would hold a hospital accountable under EMTALA when an individual has presented on hospital property other than a dedicated emergency department, "and requests examination or treatment for what may be an emergency medical condition, or has such a request made on his or her behalf. * * *" The commenter was concerned that neither of the preamble's purported tests for EMTALA's applicability outside of the dedicated emergency department that are quoted above is referenced in the proposed regulatory text: neither the test of whether the individual came to the hospital in an attempt to gain access to the hospital for emergency care, nor the objective test of whether the patient has begun an encounter with a health professional at the outpatient department. This commenter believed that the regulatory text should be revised to clearly state that EMTALA is not applicable to outpatients who have initiated an encounter with a health professional in a hospital outpatient department other than a dedicated emergency department.

Another commenter suggested that we substitute the term "member of the public" for "outpatients" in the definition of dedicated emergency department ("a dedicated emergency department would mean a specially equipped and staffed area of the hospital that is used a significant portion of the time for the initial evaluation and treatment of *outpatients* for emergency medical conditions"). The commenter believed that the clear implication of the definition is that an outpatient may be covered under EMTALA, a conclusion that is inconsistent with other provisions in the proposed rule.

Other commenters requested that we clarify that EMTALA would not apply when individuals arrive on the orders of their physicians, such as when a pregnant woman or a psychiatric patient arrives upon a physician's order either for testing or because he or she is in need of immediate medical care. In addition, some commenters believed that CMS should clearly state that only the Medicare hospital CoPs and not EMTALA would apply to individuals with scheduled outpatient appointments or procedures.

Another commenter disagreed with the CMS statement in the preamble to the proposed rule that EMTALA does not apply to "established patients" who need emergency care while on hospital property. The commenter stated that it may be impossible to distinguish such a patient from anyone else experiencing a similar emergency also on hospital property, and was concerned that the concept of excluding an established patient from EMTALA will raise many definitional and logistical issues.

One commenter believed that we intended for EMTALA not to apply in situations where the individual has arrived for an appointment, even if they had not yet been assisted. The commenter urged clarification on this issue.

One commenter stated that there may be occasions where individuals present to the hospital for outpatient services where *no* orders are necessary to provide services to the individual, such as annual mammograms or health fairs. The commenter requested that EMTALA should not apply to individuals in these circumstances.

Response: As we describe above, in the preamble to the May 9, 2002 proposed rule, we proposed that EMTALA would *not* apply to an individual who experiences what may be an emergency medical condition if the individual is an outpatient (as that term is defined at 42 CFR 410.2) who has come to a hospital outpatient department for the purpose of keeping a previously scheduled appointment. In response to the comments requesting further clarification of the text of the regulations, and in consideration of the role of the Medicare hospital CoPs in protecting the health and safety of hospital outpatients, we are revising the final rule to state that EMTALA does not apply to any individual who, *before* the individual presents to the hospital for examination or treatment for an emergency medical condition, has begun to receive outpatient services as part of an encounter, as defined in 42 CFR 410.2, other than an encounter that the hospital is obligated by EMTALA to provide. We believe this revised language sufficiently encompasses any individuals who come to a hospital to receive nonemergency services and have begun to receive those services. Such individuals would be included under this policy, regardless of whether or not they began the nonemergency encounter in order to keep a previously scheduled appointment or under orders of a physician or other medical practitioner. We also assume that specific mention of outpatient registration is unnecessary in the revised language because we believe all individuals who have begun an encounter under § 410.2 are registered outpatients in the hospital's records. This change is reflected in the revision of the proposed definition of "patient" under § 489.24(b) in this final rule. As we stated in the preamble to the proposed rule, we believe it is inappropriate to consider such individuals, who are hospital outpatients who have protections under the CoPs, to have "come to the hospital" for purposes of EMTALA as well, even if they subsequently experience an emergency medical condition.

We note that individuals who are already patients of a hospital and who experience emergency medical conditions are protected by existing Medicare hospital CoPs. We discuss these CoPs in greater detail in section XIII. of this final rule. Hospitals that fail to provide treatment to these patients could face termination of their Medicare provider agreements for a violation of the CoPs. In the January 24, 2003 **Federal Register** (68 FR 3435 through 3436), we describe the process by which we enforce compliance with these CoPs. For example, we explained that if our surveyors discover noncompliance with the hospital CoPs, "the hospital will be scheduled for termination from the Medicare and Medicaid programs." Thus, for violations of the CoPs, as well as for violations of EMTALA (compliance with which is a Medicare participation requirement) hospitals face the extreme sanction of termination from the Medicare program. In addition, as patients of a health care provider, these individuals are accorded protections under State statutes or common law as well as under general rules of ethics governing the medical professions.

In response to the comment concerning the individual who comes to the hospital for purposes of an annual mammogram or health fair, with or without an order or referral by a physician, that individual is not presenting to the hospital with a particular emergency medical condition. Therefore, EMTALA would not apply. We believe this is consistent with our policy stated elsewhere in this preamble.

Of course, where EMTALA applies to a particular individual who has presented to the hospital for examination or treatment for an emergency medical condition, EMTALA's application does not end just because the individual has begun an outpatient encounter; *only* screening and, where necessary, stabilization, admission for inpatient services, or appropriate transfer end the hospital's EMTALA obligation to the individual (see section VIII. of this preamble for further discussion of the issue of when an EMTALA obligation ends). The fact

that protections under the CoPs may later be afforded to an outpatient who is already protected by EMTALA does not end the individual's EMTALA protection.

In response to the commenter's concern that we incorporate the language regarding coming to the hospital in order "to gain access to the hospital for emergency care" into the regulation text, while in most emergency cases individuals will come to a hospital in order to gain access to emergency care at the hospital, not all emergency patients start out that way. Some individuals may come to the on-campus hospital property for reasons other than to seek medical services for themselves (examples would include a hospital employee, or a visitor of the hospital). Such individuals would not be protected by the hospital CoPs if they happen to experience what may be an emergency medical condition while on hospital property, since they are not hospital patients. Therefore, we are clarifying here that we consider such individuals to have "come to the emergency department." Under section 1867(a) of the Act, such individuals are protected by EMTALA and hospitals must provide them with screening and necessary stabilizing treatment.

To address the comment concerning the substitution of the term "outpatients" in the proposed definition of "dedicated emergency department", we mention the comment in this section of the preamble of this final rule because, as the commenter pointed out, it would appear to be inconsistent with our policy in our proposed regulations text at § 489.24 that EMTALA would not apply to any *patient*, as defined in proposed § 489.24(b), who would include "outpatients" as defined at § 410.2, and yet we would use the term "outpatients" in our application of EMTALA for individuals that present at dedicated emergency departments. In addition, we also proposed in the preamble to the proposed rule that EMTALA would not apply to outpatients with emergency medical conditions that arise during an encounter. We are clarifying in this final rule that EMTALA *will* apply to any individual who presents to the hospital for examination or treatment for an emergency medical condition, but EMTALA *will not* apply to individuals who have begun to receive outpatient services as part of an encounter, as defined in § 410.2, other than an encounter that the hospital is obligated by EMTALA to provide.

In this final rule, in response to comments, we are revising our definition of "dedicated emergency department" at § 489.24(b) to specify that such a department is a unit in the hospital that meets at least one of three criteria, one of which is that it is any department or facility of the hospital that provides for the examination or treatment of emergency medical conditions for at least one-third of all of its outpatient visits, based on a representative sample of patient visits for the calendar year immediately preceding the calendar year in which a determination is being made. This revised language avoids using the term "individuals" or "member of the public" and would sufficiently encompass any person, including hospital staff who may become ill, who comes to a hospital's emergency department for medical care.

In addition, we are revising the proposed definition of "patient" under § 489.24(b) to indicate that EMTALA does not apply to an individual who has begun to receive outpatient services as part of an encounter, as defined in § 410.2, other than an encounter that the hospital is obligated by EMTALA to provide.

Comment: One commenter asked us to clarify whether EMTALA is triggered for an individual who comes to the hospital as an outpatient for a scheduled appointment and who, after treatment has commenced, experiences an emergency medical condition, and is then moved to the dedicated emergency department for treatment. Similarly, the commenter asked whether an individual transported by the hospital to the dedicated emergency department from an off-campus department that is not a dedicated emergency department is an EMTALA patient upon arrival. The commenter asked whether individuals in these two settings should be handled differently.

Response: As we have described above, in this final rule, we are providing that individuals who have begun to receive outpatient services during an encounter are not protected under EMTALA if they are later found to have an emergency medical condition (even if they are then transported to the hospital's dedicated emergency department). These individuals are considered patients of the hospital and are protected by the Medicare hospital CoPs and relevant State law. In addition, as we describe below, individuals who present to a provider-based, off-campus department that is not a dedicated emergency department with emergency conditions are not protected by EMTALA, but rather by the hospital CoPs as well as relevant State law.

Comment: A number of commenters expressed concern about EMTALA applicability to individuals who present at a hospital for emergency care outside the dedicated emergency department. One commenter stated that establishing a "different set of expectations" for departments that are not dedicated emergency departments when an individual presents for care is likely to cause confusion and is asking potentially nonclinical persons to make clinical judgments they have no training to make. Another commenter stated that medical personnel cannot be at all hospital locations to conduct screening and stabilization services, and believed that we should revise how medical staff are required to respond to medical emergencies in nonemergency department locations.

Response: As we have expressed above, whether an individual presents for care at a hospital's dedicated emergency department, or elsewhere on hospital property, if EMTALA is triggered, the hospital has the same obligations to that individual. It is up to the hospital to determine how best to provide the screening and necessary stabilizing treatment to the individual who presented. In either case, the hospital is responsible for treating the individual within the capabilities of the hospital as a whole, not necessarily in terms of the particular department at which the individual presented. Whether the hospital sets up procedures to immediately transport the individual to the hospital's dedicated emergency department, or whether the hospital sets up procedures to send a "trauma crew" or "crash team" of physicians and nurses out to the individual on site, we do not believe it is appropriate for us to dictate to hospitals how best to treat individuals who present for emergency care in hospital departments other than dedicated emergency department locations.

In addition, we do not believe treatment of an emergency patient would involve having nonclinical hospital staff making determinations about an individual's medical condition; rather, we envision that, as stated above, hospitals would set up procedures to provide for emergency care to individuals who present in hospital departments other than dedicated emergency department locations on the hospital campus.

2. Prudent Layperson Standard

Comment: A number of commenters expressed concern about our proposed "prudent layperson" standard. We stated in the proposed rule that, for both presentments inside the dedicated

emergency department and also elsewhere on hospital property, a request for examination or treatment would be considered to exist if a *prudent layperson observer* would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for an emergency medical condition (or examination or treatment for a medical condition for presentments inside the dedicated emergency department).

Many other commenters supported our proposed prudent layperson standard; they believed that the standard would ensure that the obvious emergency situation would be addressed, even if the individual were unable to verbalize the request.

Several other commenters requested that we substitute the term "obvious implied request" or "implied request," instead of relying on the perceptions of a prudent layperson for individuals who are unable to articulate their needs.

Many commenters believed that hospitals must be on notice of an individual's presentment in order for EMTALA to be triggered to that individual. One commenter stated: "Because an EMTALA obligation is triggered by a patient-generated request, hospital personnel must be made aware of the individual's presence and observe the appearance or behavior or both of that person in order to respond appropriately. Additionally, all hospitals need policies that describe steps to be taken to assure that a person in clear need, for example, a visitor who collapses in the cafeteria, receives medical attention."

Several commenters requested that the final rule make clear that EMTALA does not apply to an individual presenting on on-campus hospital property other than a dedicated emergency department unless emergency services are requested.

Response: First, we agree with the commenters that hospital personnel must be aware of the individual's presence and observe the appearance or behavior, or both, of that person in order for EMTALA to be triggered. Obviously, the hospital must be on notice of the individual's existence and condition for any violation of the statute to take place. This also applies to presentments for off-campus dedicated emergency departments; only if the hospital's staff are aware of an individual's presence in the department for examination or treatment for a medical condition is EMTALA triggered.

We also agree with the commenters that EMTALA does not apply elsewhere on on-campus hospital property other than a dedicated emergency department unless *emergency* services are requested. As we clarified in section V.J.8 of the preamble of the May 9, 2002 proposed rule (67 FR 31473 through 31474), and also as we discuss in section IX. of the preamble, a request for treatment would be considered to exist if the individual requests examination or treatment for what the individual believes to be an emergency medical condition. Where there is no actual request because, for example, the individual is unaccompanied and physically incapable of making the request, the request from the individual will be considered to exist if a prudent layperson observer would believe, based upon the individual's appearance or behavior, that the individual needs examination or treatment for an emergency medical condition.

However, to address the commenters who requested an "obvious implied request standard" instead of the "prudent layperson standard", we believe the prudent layperson standard is necessary for both presentments inside the dedicated emergency department and elsewhere on hospital property. We are concerned about the circumstance where hospital staff observe the appearance or behavior of an individual who clearly has an emergency medical condition, but do nothing to provide treatment for that individual.

In addition, the term "prudent layperson" is consistent with the Medicare and Medicaid programs, in general. We believe it is appropriate and realistic to utilize this objective standard in the EMTALA context as well, because it reflects a standard for judging whether the hospital should have acted—it does not shift control of events to any particular individual layperson.

Comment: One commenter who supported the prudent layperson standard suggested that the proposed regulatory language at paragraphs (1) and (2) under the definition of "comes to the emergency department" under § 489.24(b) is too broad and could encompass situations for which CMS did not intend EMTALA to apply. The commenter recommended that CMS modify the language in those paragraphs to state: "a request on behalf of the individual will be considered to exist if *the individual is unable to make the request and* a prudent layperson observer would believe. * * *" The commenter stated that an individual need not rely on the prudent layperson observer if he or she is able to request examination or treatment for himself or herself.

Another commenter requested that CMS limit application of the prudent layperson language to circumstances where the need for emergency services is clear and the individual cannot make the request and there is no one to make the request on behalf of the individual.

Response: We agree with the commenters that the prudent layperson standard is to be relied upon only in circumstances where the individual is unable to make the request for examination or treatment of himself or herself. However, we do not agree that a change in the regulatory language is needed. We believe that our proposed regulatory language in that section, which states: "*In the absence of such a request by or on behalf of the individual,* a request on behalf of the individual will be considered to exist if a prudent layperson observer * * *" (emphasis added), encompasses any situation in which an individual has come to the hospital and a prudent layperson observer would believe the individual may have an emergency medical condition and that the individual would request examination or treatment if he or she were able to do so, whether or not the individual is unaccompanied.

Comment: One commenter stated that hospital staff do not want to be in the position of interpreting the "prudent layperson" terminology. Another commenter was concerned that some members of a hospital's staff may not be "prudent laypeople" who are in the position of determining whether someone needs emergency care. For example, a hospital may employ a disabled worker to provide basic yard services. A third commenter stated that many hospitals use volunteers to staff courtesy desks to assist patient families and provide directions in and around the hospital. The commenter was concerned that requesting volunteer hospital staff to provide emergency care for individuals presenting at the hospital outside of the dedicated emergency department is "excessive." The commenter stated that if volunteers are assigned this responsibility, they may no longer provide volunteer services and the hospital would need to add paid staff, which would increase the cost of care. The commenter added that these volunteers or other staff would need training to comply with this new definition and responsibility.

Response: Our rationale for the prudent layperson standard is to determine whether an EMTALA obligation has been triggered toward a particular individual. It is a legal standard that would be used to determine whether EMTALA was

triggered—it is not meant for hospital staff, including volunteers, to be "interpreting" the prudent layperson standard. Rather, we foresee that in cases in which hospital staff or other individuals at the hospital have witnessed the behavior of the individual upon his or her presentation to the hospital, the prudent layperson standard will be applied to the facts (the appearance and behavior of the presenting individual) to determine if EMTALA had been triggered.

Comment: One commenter stated that EMTALA should apply only in situations where the prudent layperson believes the individual needs emergency examination or treatment, and not simply examination or treatment at some later date or time.

Response: We proposed the prudent layperson standard to apply to presentments both inside and outside the dedicated emergency department. Therefore, for presentments inside the dedicated emergency department, the proposed standard is that the prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for a *medical condition*. For presentments on hospital property outside the dedicated emergency department, the prudent layperson would believe the individual needs examination or treatment for an *emergency medical condition*. However, we do agree with the commenter that the standard is that the prudent layperson would believe that the individual needs the examination or treatment at the time of the presentment (when the hospital is on notice of the individual's existence on hospital property), and not at a later date or time.

Comment: One commenter describes a scenario where an individual with a bad cough and wheezing visits a family member in the dedicated emergency department. The commenter believed that, even though the individual may need examination or treatment, the hospital should have no duty to offer or provide care unless that individual actually asks for care. The commenter indicated that in such a case it should not matter whether a prudent layperson observer would believe that the individual *needs* care.

Response: We agree with the commenter that the prudent layperson standard should not be applied so broadly as to mandate EMTALA screenings for individuals who are fully capable of making a verbal request for examination or for a medical condition, but elect not to do so. Inherent in such a standard is not only the notion that the individual's appearance or behavior would lead a prudent layperson observer to believe that the individual needs examination or treatment for a medical condition, but a belief by the prudent layperson that there has been no verbal request only because the individual's medical condition, or some other factor beyond the individual's control, such as a language barrier, makes a verbal request impossible. We are not revising the final rule based on this commenter's concern because we believe it is not feasible to attempt to codify all of the various conditions and circumstances under which a verbal request would not be possible. However, we will keep this concern in mind as we develop interpretative guidelines or other instructional material for State surveyors.

3. Determination of "What May Be an Emergency Medical Condition"

Comment: Several commenters did not agree with the language used in the regulatory standard for EMTALA applicability outside the dedicated emergency department that the presenting individual requests examination or treatment for *what may be* an emergency medical condition. One commenter stated that the universe of conditions that may be emergency medical conditions is extraordinarily broad and recommended that this standard be clarified to avoid unnecessary and excessive EMTALA obligations to individuals presenting outside of dedicated emergency departments. The commenter recommended that EMTALA is triggered outside of the dedicated emergency department only when the individual "requests examination or treatment for what more likely than not is an emergency medical condition."

Response: When we proposed the "what may be an emergency medical condition" language in the definition of "come to the emergency department" at § 489.24(b), we did so to clarify that an emergency medical condition would not actually have to *exist* upon examination of such an individual presenting outside the dedicated emergency department. Instead, the individual presenting (or the prudent layperson observer) must believe he or she needs emergency care. We do not believe it is necessary to adopt the commenter's suggested clarifying language. We believe we have provided sufficient explanation about "what may be an emergency medical condition" both in our response above and in the preamble to the proposed rule (67 FR 31473).

Comment: One commenter requested that CMS clarify that the proposed standard language "such a request would be considered to exist if the individual requests examination or treatment *for what the individual believes* to be an emergency condition" (67 FR 31473) (emphasis added), is an objective standard. The commenter was concerned about our enforcement of this standard; specifically, the concern was that the determination as to whether an EMTALA obligation has been triggered would hinge on a subjective belief that an emergency medical condition exists.

Response: EMTALA is triggered when there has been a *request* for medical care inside the dedicated emergency department or for emergency care on hospital property outside the dedicated emergency department. The request can only be made by or on behalf of the individual or the request from the individual would be considered to exist if a prudent layperson would believe the individual needs emergency care. We believe this standard for when EMTALA is triggered is based on objective criteria; that is, the act of the individual or someone acting on his or her behalf requesting medical care for what the individual believes or what the person accompanying the individual believes to be an emergency medical condition. It is also objective when the prudent layperson standard is considered in determining whether, based on the appearance, signs, and symptoms of the individual presenting to the hospital, a prudent layperson would believe that the individual has a medical condition (in the dedicated emergency department) or an emergency medical condition (in a nondedicated emergency department).

4. Other Issues

Comment: One commenter requested that we clarify that, although it may be appropriate for staff of the dedicated emergency department to leave the department in order to provide emergency medical treatment to an individual who has presented on hospital property outside the dedicated emergency department, it is not required that an emergency department "physician" leave to respond and provide treatment to an individual.

Response: Under these circumstances, EMTALA requires that the hospital must provide treatment to the individual within its capabilities; if the hospital lacks, for instance, sufficient specific staff, the hospital should must provide alternative means of treating such an individual, within its capabilities, or provide an appropriate transfer. Or if the hospital decides to send other medical staff rather than physician staff to an emergency patient who has presented on hospital property

outside the dedicated emergency department, that action is within the hospital's discretion. CMS would look to see what type of capabilities the hospital has in responding to such emergency cases and whether the hospital responded appropriately.

Comment: One commenter believed that having different EMTALA policies based on which door of the hospital the individual enters is fundamentally flawed and exacerbates the confusion about when the EMTALA duty has been met. The commenter requested that we simplify the issue by delineating that EMTALA applies in any case of any individual who comes to the dedicated emergency department and for whom a request for emergency care is made, until that individual is stabilized or admitted.

Another commenter found it confusing to have a separate definition of dedicated emergency department. The commenter stated that it is already well-established and accepted that any individual who arrives anywhere on hospital property, whether it is the emergency department or a sidewalk within 250 yards of the main building and requests care for a emergency medical condition triggers EMTALA obligations for the hospital. Therefore, the commenter added, it is immaterial whether or not an individual presents to a "dedicated emergency department," since arrival anywhere on a hospital campus automatically triggers EMTALA.

Response: As we explain in the discussion above regarding clarification of the definition of "dedicated emergency department," and also in the proposed rule, there has been much confusion on the applicability of EMTALA to individuals who present for emergency care, but do not make it to a hospital's emergency department. We have stated previously that an individual may not be denied emergency services simply because a person failed to actually enter a hospital's emergency department. That is, under certain conditions, an individual does not need to present at a hospital's emergency department in order to be protected by EMTALA.

Thus, in clarifying our policy, it is necessary to address *where* and under what conditions the individual is presenting in order to determine whether EMTALA is triggered. EMTALA is not triggered by a request for physical therapy (that is, for a *medical condition*) at the hospital's on-campus physical therapy department. However, EMTALA would be triggered by that same request inside a hospital's dedicated emergency department, since the statute clearly states that requests for examination or treatment of "medical conditions" at emergency departments trigger EMTALA. By the same token, request for treatment of a gunshot wound at the on-campus radiology department would also trigger EMTALA, since a gunshot wound is clearly an "emergency medical condition."

We believe that, in making our clarification of "dedicated emergency department," we are assisting in clarifying a hospital's responsibilities under EMTALA to screen and provide necessary stabilizing treatment to an individual who comes to a hospital, presenting either at its dedicated emergency department or elsewhere on hospital property; that is, we are clarifying at what point EMTALA is *triggered*. The "which door" concept is integral to this analysis. An individual can "come to the emergency department" under the statute creating an EMTALA obligation on the part of the hospital, in one of two ways: The individual can present at a hospital's dedicated emergency department and request examination or treatment for a *medical condition*; or the individual can present elsewhere on hospital property (that is, at a location that is on hospital property but is not part of a dedicated emergency department), and request examination or treatment for an *emergency medical condition*.

D. Provisions of the Final Rule

In summary, in consideration of the comments discussed under this section, in this final rule, we are—

- Adopting as final the proposed definition of hospital property under § 489.24(b) with one clarifying editorial change concerning the language in the proposed definition about excluding other areas or structures that are located within 250 yards of the hospital's main building." We are removing the proposed phrase "located within 250 yards of the hospital's main building" because the phrase is duplicative of the language in the definition of "us" at § 413.65(b). "Campus" includes the 250 yards concept in its definition; therefore, by referencing § 413.65(b) in the definition of "hospital property" under EMTALA, we are already including the concept of 250 yards.
- Adopting as final the proposed definition of patient under § 489.24(b), with a modification to reflect the nonapplicability of EMTALA to an individual who has begun to receive outpatient services at an encounter at the hospital other than an encounter that the hospital is obligated by EMTALA to provide.

IX. Scope of EMTALA Applicability to Hospital Inpatients (§ 489.24(d)(2))

A. Background and Provisions of the Proposed Rule

While most issues regarding EMTALA arise in connection with ambulatory patients, questions have occasionally been raised about whether EMTALA applies to inpatients. In late 1998, the United States Supreme Court considered a case (*Roberts* v. *Galen of Virginia*, 525 U.S. 249 (1999)) that involved, in part, the question of whether EMTALA applies to inpatients in a hospital. In the context of that case, the United States Solicitor General advised the Supreme Court that the Department of Health and Human Services (DHHS) would develop a regulation clarifying its position on that issue. After reviewing the issue in the light of the EMTALA statute, in the May 9, 2002 proposed rule (67 FR 31475), we proposed that EMTALA would apply to admitted emergency patients until they have been stabilized.

As we noted in the proposed rule, once a hospital has incurred an EMTALA obligation with respect to an individual, that obligation continues while the individual remains at the hospital, so that any transfer to another medical facility or discharge of the individual must be in compliance with the rules restricting transfer until the individual is stabilized under existing § 489.24(d). In these cases, we stated that the hospital continues to be obligated under section 1867 of the Act, irrespective of the inpatient admission, and that an individual's emergency medical condition will be considered to have been stabilized only when the criteria in § 489.24(b) are met. That is, the individual's condition must be such that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during a transfer of the individual from the facility or, if the patient is a pregnant woman who is having contractions, that the woman has delivered the child and the placenta. We believed that such a policy would provide protections under the statute to those patient populations that are most vulnerable—individuals who are experiencing emergency medical conditions (including women in labor who are admitted to the hospital).

In addition, we proposed to clarify in the proposed rule that an individual who goes in and out of apparent stability with sufficient rapidity or frequency would not be considered "stabilized" within the meaning of § 489.24; transient stability of such an individual does not relieve the hospital

of its EMTALA obligation (67 FR 31475). We proposed that such an individual would continue to be covered by EMTALA until the individual's overall medical stability with respect to all conditions is achieved.

Based on an analysis of the statute (sections 1867(b)(1)(A), (c)(2), and (e)(1) of the Act) and the legislative history (131 Cong. Rec. 28.587 and 28.586 (1985) and H.R. Rept. No. 241 (I)(1985), reprinted in 1986 U.S.C.C.A.N. 579, 605.), we explained why we believed that EMTALA continued to apply to admitted emergency patients until they have been stabilized or appropriately transferred.

For a detailed discussion of the proposed policy on the applicability of EMTALA to admitted patients with unstabilized emergency medical conditions, see the preamble to the May 9, 2002 proposed rule at 67 FR 31475.

In addition, except for the limited circumstances described above, we proposed to clarify that EMTALA does not apply to nonemergency hospital inpatients. Most hospital admissions do not consist of emergency cases. In most cases, an individual who comes to the hospital and requests admission does so to obtain elective (nonemergency) diagnosis or treatment for a medical condition. We noted that once a hospital admits an individual as a patient, that hospital has a variety of other legal, licensing, and professional obligations with respect to the continued proper care and treatment of such patients.

We proposed to redesignate paragraph (c) of § 489.24 as paragraph (d), and include stabilization requirements under a new proposed § 489.2(d)(2). (Proposed redesignated paragraph (d) was proposed to be revised further as explained in section V.K.9.b. of the preamble of the May 9, 2002 proposed rule (67 FR 31456).) In addition, we proposed to include the requirements for nonapplicability of EMTALA to nonemergency hospital inpatients under proposed redesignated § 489.24(d)(2).

B. Summary of Public Comments and Departmental Responses

1. Applicability of EMTALA to Inpatients

Comment: Many commenters expressed concern about our clarification in the proposed rule on the applicability of EMTALA to hospital inpatients. Some commenters agreed with the entirety of the CMS proposed policy that a hospital's EMTALA stabilization and transfer obligations should continue to apply to an admitted emergency patient. One commenter stated that "this clarification will allow hospitals to find an endpoint to their EMTALA obligations, specifically when the patient's emergency [medical] condition is stabilized."

However, many commenters expressed the view that EMTALA should not apply to any inpatient, even one who was admitted through the dedicated emergency department and for whom the hospital had incurred an EMTALA obligation to stabilize. Several commenters noted that hospitals have extensive CoPs responsibilities with respect to inpatients or State tort law obligations, and argued that the hospital's assumption of responsibility for the individual's care on an inpatient basis should be deemed to meet the hospital's obligation under EMTALA. Many commenters recommended that the regulations be revised to state that a hospital's EMTALA obligation may be met by admitting an individual as an inpatient.

Two commenters stated that CMS has "no evidence there is a current problem" for the dumping of inpatients with emergency medical conditions. Therefore, the commenters believed EMTALA applicability should end upon inpatient admission.

One commenter (a group of neurosurgeons and neurologists) believed that EMTALA was not intended to apply to an inpatient admitted through the dedicated emergency department. Several commenters cited the recent ruling by the Court of Appeals for the Ninth Circuit in *Bryant* v. *Adventist Health System* (289 F.3d 1162 (9th Cir. 2002)) that EMTALA generally ceases to apply once an individual is admitted for inpatient care; these commenters believed we should adopt the opinion for the national policy.

Response: In attempting to resolve the issue about EMTALA applicability to admitted emergency patients, we were assisted by referring to cases in which the courts have had to address the same issue. In several instances, the courts concluded that a hospital's obligations under EMTALA end at the time that a hospital admits an individual to the facility as an inpatient. *See Bryan* v. *Rectors and Visitors of the University of Virginia*, 95 F.3d 349 (4th Cir. 1996); *Bryant* v. *Adventist Health Systems/West*, 289 F.3d 1162 (9th Cir. 2002); and *Harry* v. *Marchant*, 291 F.3d 767 (11th Cir. 2002). In reaching this result, the courts focused on the definition of "to stabilize" set out in the statute at section 1867(e)(3)(A) of the Act. In this definition, the Congress defined this concept by specifically linking the hospital's obligation to provide stabilizing treatment to individuals presenting with emergency medical conditions to the context in which the services are provided.

In particular, the courts found that the statute requires that stabilizing care must be provided in a way that avoids material deterioration of an individual's medical condition if the individual is being transferred from the facility. The courts gave great weight to the fact that hospitals have a discrete obligation to stabilize the condition of an individual when moving that individual out of the hospital to either another facility or to his or her home as part of the discharge process. Thus, should a hospital determine that it would be better to admit the individual as an inpatient, such a decision would not result in either a transfer or a discharge, and, consequently, the hospital would not have an obligation to stabilize under EMTALA. The courts have generally acknowledged that this limitation on the scope of the stabilization requirement does not protect hospitals from challenges to the decisions they make about patient care; only that redress may lie outside EMTALA. For example, a hospital may face liability for negligent behavior that results in harm to persons it treat after they are admitted as inpatients, but such potential liability would flow from medical malpractice principles, not from the hospital's obligations under EMTALA.

As many courts have ruled, EMTALA does not purport to establish a medical malpractice cause of action nor establish a national standard of care. In our view, apart from the possible malpractice implications redressable outside the statute, hospitals that fail to meet their obligations to provide quality care to inpatients may also face consequences affecting their Medicare certification under the applicable CoPs at 42 CFR Part 482. We discuss these CoPs and the process by which we enforce compliance with these CoPs in greater detail in section XIII. of this preamble. In a January 24, 2003 final rule (68 FR 3435), we explained that if our surveyors discover noncompliance with the hospital CoPs, "the hospital will be scheduled for termination from the Medicare and Medicaid programs." Thus, for hospital CoPs violations, as well as for EMTALA violations (compliance with which is a Medicare participation requirement), hospitals face the extreme sanction of termination from the Medicare program.

As a result of these court cases, and because we believe that existing hospital CoPs provide adequate, and in some cases, superior protection to patients, we are interpreting hospital

obligations under EMTALA as ending once the individuals are admitted to the hospital inpatient care. As an example of a case in which the hospital CoPs provide protection superior to that mandated by EMTALA, the discharge planning CoP in 42 CFR 482.43 includes specific procedural requirements that must be satisfied to show that there has been adequate consideration given to a patient's needs for post-discharge care. EMTALA does not include such specific requirements.

We believe that, as the agency charged with enforcement of EMTALA, it is appropriate to pay deference to the numerous Federal courts of appeal that have decided upon this issue. Although the decisions of the courts in these EMTALA private right of action cases are not necessarily binding for our enforcement purposes, we do believe that consistent judicial interpretation of this matter, when combined with the many comments received on this matter, dictate the policy that we articulate in this final rule.

Moreover, given the numerous hospital CoPs that protect inpatients, as well as patients' rights under State law, we believe that patients are sufficiently protected under our policy as we have articulated it in this final rule. However, a hospital cannot escape liability under EMTALA by ostensibly "admitting" a patient, with no intention of treating the patient, and then inappropriately transferring or discharging the patient without having met the stabilization requirement. If it is discovered upon investigation of a specific situation that a hospital did not admit an individual in good faith with the intention of providing treatment (that is, the hospital used the inpatient admission as a means to avoid EMTALA requirements), then liability under EMTALA may attach.

2. Definition of Stability

Comment: One commenter took issue with our proposed regulatory language on when EMTALA ends for hospital inpatients at § 489.24(d)(2)(ii), which states:

"If a hospital admits an individual with an unstable emergency medical condition for stabilizing treatment, as an inpatient, stabilizes that individual's emergency medical condition, and this period of stability is documented by relevant clinical data in the individual's medical record, the hospital has satisfied its special responsibilities under this section with respect to that individual. If the patient is stable for a transfer of the type usually undertaken with respect to patients having the same medical conditions, the hospital's special responsibilities under this section are satisfied * * *."

The commenter believed the proposed standard, "stable for a transfer of the type usually undertaken with respect to patients having the same medical conditions," could undermine both patient safety and the EMTALA statute if hospitals only document that a patient is as stable as similarly situated patients for an appropriate transfer. The commenter requested that the final rule specify that the hospital may satisfy its EMTALA obligations to an admitted patient only by documenting that it has provided stabilizing treatment to the point that the emergency medical condition has been resolved.

Response: As stated earlier in this section of the preamble, in this final rule we have decided not to interpret EMTALA as requiring hospitals to continue to provide stabilizing treatment (as that term is understood under EMTALA) to individuals once the individuals are admitted in good faith to the hospital for inpatient care. Therefore, the above comment on documenting stability for inpatients is no longer an issue that we need to address in the inpatient setting. However, as we have also stated above, a hospital that admits patients but do not so do in good faith may face consequences under both EMTALA and the applicable Medicare CoPs.

Comment: Many commenters asked for clarification of when, how, and if EMTALA applies to transfers from the inpatient care setting (when the individual has not yet been stabilized) to another acute care hospital. In addition, many commenters asked for clarification of the issue of "stability" in the inpatient setting. On the one hand, the commenters stated, we have stated that if the admitted emergency patient could have been transferred as "stable" under the statute, the hospital has satisfied its EMTALA obligation by meeting the statutory requirement of providing stabilizing treatment to the point of stability for transfer, and the hospital's obligation under EMTALA ends (67 FR 31476). However, some commenters pointed out that the statute appears to support a "stable for discharge" standard to end the EMTALA obligation.

Another commenter recommended that we clarify that a hospital inpatient may be stable for transfer or stable for discharge for purposes of EMTALA.

One commenter stated that because of possible confusion on the part of the emergency department staff of what constitutes "stable" under the EMTALA regulations in the inpatient setting, many patients may be identified as stable who are technically medically unstable. The commenter recommended that CMS clarify who the reasonable parties are, to determine whether a patient is stable and can be transported to provide the best outcome for that patient.

Another commenter requested that CMS clarify that once an inpatient has been stabilized for discharge, EMTALA no longer applies, even if the patient requires followup care. The commenter requested guidance on whether, for example, the fact that a patient who is being discharged will eventually need to receive a cast or risk further injury influences the point of stabilization for EMTALA purposes.

One commenter recommended that CMS clarify the EMTALA followup care requirements, for "stable for discharge," until the individual's emergency medical condition is resolved. The commenter suggested that the hospital merely be required to present the individual with a plan for followup care, listing, for example, names of physicians who are qualified to provide the individual's care or who are on the individual's health care plan.

Response: As noted earlier, we are clarifying in this final rule that EMTALA does not apply to individuals who have been admitted in good faith to inpatient sections of the hospital, regardless of whether the individuals are experiencing emergency medical conditions. Therefore, transfer and stability issues for that individual, once he or she is admitted, would be governed by the Medicare hospital CoPs, State law, and professional considerations, not EMTALA requirements. Regarding the situation of an outpatient who is being released from the hospital but is expected to need followup care at a later time, we note that the EMTALA definition of "to stabilize" requires only that such medical treatment of the condition be provided as may be necessary to assure, within reasonable medical probability, that no material deterioration of the individual's condition is likely to result from the transfer (including discharge) of the individual from the facility. Thus, a hospital clearly may stabilize an individual, thereby satisfying its EMTALA obligation to that individual, even though followup care may be needed.

Comment: One commenter asked us to clarify the preamble language at 67 FR 31475 that discusses the provision that a hospital inpatient admitted with an unstabilized emergency medical condition who goes in and out of apparent stability with sufficient rapidity or frequency would not be

considered "stabilized" within the meaning of § 489.24. The commenter requested clarification of the term "medically stable'; that is, whether "stable" in this context refers to the medical definition of "stable."

Response: Again, because we are clarifying in this final rule that, except in limited circumstances, EMTALA does not apply to hospital inpatients, the comment above on stability as an inpatient is not relevant for purposes of EMTALA.

Comment: Several commenters asked us to clarify that EMTALA would not apply to inpatients who are stable but who are scheduled for inpatient surgery for an emergency medical condition, such as patients who need an angiogram or bypass surgery, after seeing their physician for chest pain. One commenter requested clarification on the issue of individuals directly admitted to the hospital for an emergency medical condition, for example, appendicitis, although the individual is not seeking emergency services from the hospital.

Response: As we have clarified above, once an individual has been admitted as an inpatient (including individuals who have been directly admitted as inpatients upon presentation to the hospital), EMTALA no longer applies, except in the limited circumstances discussed above concerning admissions not made in good faith.

3. Logs on EMTALA Patients

Comment: One commenter who supported our proposed policy on the applicability of EMTALA to admitted emergency patients asked whether the hospital inpatient departments would be required to post signs specifying the EMTALA rights of patients and keep a log of patients who are still covered by EMTALA. The commenter also asked whether the inpatient departments would be required to have EMTALA policy and procedure manuals.

Response: Because we have decided in this final rule that EMTALA does not apply to individuals who are admitted as inpatients in good faith, the comment above concerning the posting of signs, maintenance of logs on inpatients covered by EMTALA, and policies and procedures for EMTALA purposes as described by the commenter will not be required.

4. Other Issues

Comment: One commenter believed that the CMS proposed approach of EMTALA nonapplicability to admitted elective inpatients is inappropriate. The commenter gave several reasons for this belief: Every court in the United States that has considered the issue of hospital obligation has concluded that EMTALA application commenced when the hospital or its agents "became aware" that the individual had an emergency medical condition or was unstable as provided by the law; the U.S. Supreme Court case in *Roberts* v. *Galen of Virginia*, 525 U.S. 249 (1999) specifically stated that the obligations to stabilize, provide additional care or provide an appropriate transfer, or both, are completely unrelated to whether or not the patient came to the emergency department under section 1867(a) of the Act; and *Lopez-Soto* v. *Hawayek*, 175 F.3d 170 (1st Cir. 1999), interpreted the *Roberts* case and addressed and rejected the arguments made by CMS in support of the CMS interpretation of the law and held that once the patient was in the hospital, EMTALA attached when the hospital or doctor knew of the unstable condition.

Response: We disagree with the commenter. After reviewing the EMTALA statute and its legislative history, we find no indication that Congress intended EMTALA to apply to hospital inpatients. To the contrary, the legislative history makes several references to individuals who were denied emergency medical care at hospital emergency rooms, but we find no references to similar problems faced by hospital inpatients. (See H.R. Rept. No. 99–241 (I), at 27 (1985), reprinted in 1986 U.S.C.C.A.N. 579, 605.) Therefore, we believe that Congress intended for EMTALA to address the issue of inadequate emergency care for individuals who presented with emergency medical conditions seeking such care from hospital emergency departments. Moreover, while we are not bound by judicial precedent in cases in which we were not a party, we are familiar with the *Roberts* v. *Galen*, 525 U.S. 249 (199), and *Lopez-Soto* v. *Hawayek*, 175 F.3d 170 (1st Cir. 1999) cases and believe that they do not pose any barrier to the position we are taking in this rule.

In *Roberts*, the Court addressed the issue of whether an individual must prove that a hospital acted with an improper motive in failing to stabilize that individual and concluded that the stabilization provision found in the Social Security Act at section 1867(b)(1) contained no such requirement. The Court did not address the issue of when a hospital's EMTALA obligation to stabilize an individual ends. However, the *Lopez-Soto* case did address the stabilization issue, and in that case the court concluded that a hospital has an obligation to stabilize an individual with an emergency medical condition before arranging a transfer of that person to another facility, regardless of whether the individual presented to the emergency department with the emergency medical condition or elsewhere at the hospital.

Because the court in *Lopez-Soto* was not clear about the inpatient status of the individual, a baby, it is not clear to us whether this decision is necessarily inconsistent with the view of the statute we are taking in this final rule. For example, if the baby in *Lopez-Soto* was not an inpatient at the time it presented with an emergency medical condition, then we would agree that the hospital, under this final rule, would be obligated to respond to the baby's condition as if it had been initially presented to the hospital's emergency department. On the other hand, if the baby were, in fact, an inpatient at the time the emergency first presented itself to hospital staff, the court's holding would be inconsistent with the views adopted in this final rule, and, to this extent, we would disagree with the court's conclusion. As we have explained elsewhere in this preamble, we believe such a conclusion oversteps the requirement of the statute that limits its scope to individuals who have presented themselves to a hospital *prior* to the time they become an inpatient of that facility. However, this is not to say that hospitals are without patient obligations in these cases. Hospitals clearly owe a duty to inpatients, but those obligations derive from the Medicare hospital CoPs at section 1861(e) of the Act and the implementing regulations at 42 CFR Part 482, not from EMTALA. In addition, as we have stated, if it is discovered upon investigation of a specific situation that a hospital did not admit an individual in good faith with the intention of providing treatment, but instead used the inpatient admission merely as a means to avoid EMTALA requirements, then liability under EMTALA may attach.

Comment: One commenter who did not support our proposed policy on the nonapplicability of EMTALA to admitted elective patients requested that we clarify the EMTALA obligations to such individuals who experience an emergency after being admitted to the hospital. Specifically, the commenter was concerned about the transfer of such an unstable individual to a hospital that has special capabilities to treat the individual.

Response: Since EMTALA is not triggered for admitted elective patients who experience an emergency during the inpatient admission, (except in limited circumstances), the EMTALA transfer requirements would not apply

to the transfer of such an individual to another hospital.

Comment: One commenter stated that our language in the preamble that discusses the applicability of EMTALA to "admitted emergency patients" (67 FR 31476) appears to apply only to patients admitted via the emergency department, whereas the language in the proposed regulatory text at § 489.24(d)(2)(ii) states that EMTALA applies to inpatient care "if a hospital admits an individual with unstable emergency medical condition for stabilizing treatment." The commenter requested us to clarify whether EMTALA applies in the inpatient setting but only to an individual admitted via the dedicated emergency department or whether it applies to any individual who has an emergency medical condition.

Response: As stated earlier, our decision in this final rule is that EMTALA no longer applies to any individual who is admitted as an inpatient (except in limited circumstances of circumvention.)

Comment: One commenter recommended that the definition of "inpatient" for purposes of EMTALA would specifically include patients who have been admitted to the hospital but, due to bed availability, are being "boarded" and physically located in the dedicated emergency department.

Another commenter asked us to clarify whether EMTALA would apply to the stabilization of individuals with emergency medical conditions while awaiting admission in the dedicated emergency department or to an unstable patient who is being "held" or "boarded" in the operating room or angiography suite prior to movement to an inpatient bed.

Response: As we have stated, EMTALA applies to an individual who presents to the hospital with an emergency medical condition. If such a condition is found when the individual is screened, the hospital must provide stabilizing treatment, even if the individual is awaiting admission in the dedicated emergency department. Once the individual has been stabilized, the EMTALA obligations end.

In response to the issue about the definition of "inpatient" for purposes of EMTALA, we are revising our proposed definition of "patient" under § 489.24(b) that specified that an inpatient is one who is "receiving inpatient hospital services as defined in § 409.10(b)." Upon further consideration, we believe it would be more helpful to adopt the definition of "inpatient" from Section 210 of the Medicare Hospital Manual (CMS Publication Number 10 (1989)), which is a well-utilized definition in the Medicare program for purposes of Medicare payment. Under that section, an "inpatient is a person who has been admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services. Generally a person is considered an inpatient if formally admitted as an inpatient with the expectation that he [or she] will remain at least overnight and occupy a bed even though it later develops that he [or she] can be discharged or transferred to another hospital and does not actually use a hospital bed overnight." We believe adopting such a definition for EMTALA purposes would provide further guidance in determining who is an inpatient.

To respond specifically to the commenter, individuals who are "boarded" and admitted in the dedicated emergency department would be determined to be inpatients for purposes of EMTALA if, generally, they have been admitted by the hospital with the expectation that they will remain at least overnight and occupy beds in the hospital. We believe such an expectation would be documented based on the information in the individual's medical record.

Comment: One commenter compared the proposed regulatory language regarding the application of EMTALA to inpatients in proposed § 489.24(d)(2)(i) to the language in proposed § 489.24(d)(2)(ii). The commenter stated that although paragraph (d)(2)(i) requires the hospital to have *found* the emergency medical condition and have *actual knowledge* that the condition exists, before it can incur a duty to stabilize under EMTALA, paragraph (d)(2)(ii) does not require that the hospital be aware that the individual had an emergency medical condition at the time of admission.

Response: Proposed § 489.24(d)(2) was based on the proposed policy that EMTALA applied to an individual who was admitted as an inpatient. In this final rule, we are revising our policy to state that EMTALA obligations end toward an individual upon inpatient admission, regardless of the stability of the individual (except in limited circumstances of circumvention). Because we are revising the regulation text to reflect this revised policy, the above comment on proposed § 489.24(d)(2) is no longer relevant.

Comment: One commenter suggested that the final rule should clarify the application of the psychiatric specific definitions of "stable for transfer" and "stable for discharge" in the State Operations Manual.

Response: In the 1998 State Operations Manual at Tag A407 on page V–9, we state: "for purposes of transferring a patient from one facility to a second facility for *psychiatric conditions*, the patient is considered to be stable when he/she is protected and prevented from injuring himself/herself or others. For purposes of discharging a patient (other than for the purpose of transfer from one facility to a second facility), for psychiatric conditions, the patient is considered to be stable when he/she is no longer considered to be a threat to him/herself or to others." However, we note that, generally, psychiatric patients with emergency medical conditions are treated no differently for purposes of EMTALA than any other individual who presents to the hospital with an emergency medical condition. We intend to address the issue of treatment of individuals with psychiatric conditions for purposes of EMTALA in future operating instructions for our State surveyors.

Comment: The commenter also suggested that the final rule clarify that any retrospective review of a physician's determination that an individual is stable will only be based upon the information and clinical data readily available at the time of such determination.

Response: We will keep in mind the commenter's suggestion about retrospective review when we develop future operating instructions for our State surveyors. In addition, the commenter has stated our current position as specified in the 1998 State Operations Manual, page V–9: "the purpose of the professional medical review (physician review) is to provide peer review using information available to the hospital at the time the alleged violation took place."

Comment: One commenter asked for clarification on the point of whether EMTALA should apply when an ambulance delivers an individual through the dedicated emergency department as a direct admit.

Response: As we have clarified above, whenever there is a direct admission of a particular individual as an inpatient, EMTALA no longer applies.

C. Provisions of the Final Rule

In this final rule, we are adopting as final the proposed definition of "patient" under § 489.24(b) with modifications. We are further clarifying what "outpatients" are not subject to the EMTALA obligations.

We also are providing that a hospital's obligations under EMTALA end once an individual is admitted for inpatient care. As explained above, we believe

that this is the appropriate policy because existing hospital CoPs provide adequate, and in some cases, superior protection to inpatients. (*See* section XIII. of this preamble for a detailed discussion of regarding the hospital CoPs). In addition, numerous courts have held that EMTALA obligations end upon inpatient admission. At least two courts ruled on the identical issue after we published our May 9, 2002 proposed rule.

We also are adding language to adopt our established definition of "inpatient" in section 210 of the Medicare Hospital Manual (CMS Publication No. 10) who are also not subject to the EMTALA obligations. In addition, we are adopting as final the proposed § 489.24(d)(2) with modifications. We are clarifying that a hospital is required to provide care to its inpatients in accordance with the Medicare hospital CoPs.

X. Applicability of EMTALA to Provider-Based Entities (§§ 413.65(g)(1), 482.12(f), 489.24(b), and 489.24(i))

On April 7, 2000, we published a final rule specifying the criteria that must be met for a determination regarding provider-based status (65 FR 18504). The regulations in that final rule were subsequently revised to incorporate changes mandated by section 404 of Public Law 106–554 (66 FR 59856, November 30, 2001). However, those revisions did not substantively affect hospitals' EMTALA obligations with respect to off-campus departments.

A. Applicability of EMTALA to Off-Campus Hospital Departments (§§ 489.24(b) and (i) and § 413.65(g)(1))

1. Background

In the April 7, 2000 final rule (65 FR 18504), we clarified the applicability of EMTALA to hospital departments not located on the main provider campus. At that time, we revised § 489.24 to include a new paragraph (i) to specify the antidumping obligations of hospitals with respect to individuals who come to off-campus hospital departments for the examination or treatment of a potential emergency medical condition. As explained in the preamble to the April 7, 2000 final rule, we made this change because we believed it was consistent with the intent of section 1867 of the Act to protect individuals who present on hospital property (including off-campus hospital property) for emergency medical treatment. Since publication of the April 7, 2000 final rule, it has become clear that many hospitals and physicians continue to have significant concerns with our policy on the applicability of EMTALA to these off-campus locations.

2. Provisions of the Proposed Rule

After further consideration, in the May 9, 2002 proposed rule (67 FR 31476), we proposed to clarify the scope of EMTALA's applicability in this scenario to those off-campus departments that are treated by Medicare under § 413.65(b) to be departments of the hospital, and that are equipped and staffed areas that are used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions. That is, we proposed to narrow the applicability of EMTALA to only those off-campus departments that are "dedicated emergency departments" as defined in proposed revised § 489.24(b).

As proposed, this definition would include such departments, whether or not the words "emergency room" or "emergency department" were used by the hospital to identify the departments. The definition would also be interpreted to encompass those off-campus hospital departments that would be perceived by an individual as appropriate places to go for emergency care. Therefore, we proposed to revise the definition of "Hospital with an emergency department" at § 489.24(b) to account for these off-campus dedicated emergency departments and also to amend the definition of "Comes to the emergency department" at § 489.24(b) to include this same language. We believe these proposed changes would enhance the quality of emergency care by facilitating the prompt delivery of emergency care in those cases, thus permitting individuals to be referred to nearby facilities with the capacity to offer appropriate emergency care.

In general, we expect that off-campus departments that meet the proposed definitions stated above would in practice be functioning as "off-campus emergency departments." Therefore, we believe it is reasonable to expect the hospital to assume, with respect to these off-campus departments, all EMTALA obligations that the hospital must assume with respect to the main hospital campus emergency department. For instance, the screening and stabilization or transfer requirements described in section V.K.1. of the preamble of the May 9, 2002 proposed rule ("Background") would extend to the off-campus emergency departments, as well as to any such departments on the main hospital campus.

In conjunction with this proposed change in the extent of EMTALA applicability with respect to off-campus facilities, we also proposed to delete all of existing § 489.24(i), which, as noted above, was established in the April 7, 2000 final rule. We proposed to delete this paragraph in its entirety because its primary purpose is to describe a hospital's EMTALA obligations with respect to patients presenting to off-campus departments that do not routinely provide emergency care. Under the proposals outlined above, however, a hospital would have no EMTALA obligation with respect to individuals presenting to such departments. Therefore, it would no longer be necessary to impose the requirements in existing § 489.24(i). Even though off-campus provider-based departments that do not routinely offer services for emergency medical conditions would not be subject to EMTALA, some individuals may occasionally come to them to seek emergency care. Under such circumstances, we believe it would be appropriate for the department to call an emergency medical service (EMS) if it is incapable of treating the patient, and to furnish whatever assistance it can to the individual while awaiting the arrival of EMS personnel. Consistent with the hospital's obligation to the community and similar to the Medicare hospital CoP under § 482.12(f)(2) that apply to hospitals that do not provide emergency services, we would expect the hospital to have appropriate protocols in place for dealing with individuals who come to off-campus nonemergency facilities to seek emergency care.

To clarify a hospital's responsibility in this regard, in the May 9, 2002 proposed rule, we proposed to revise § 482.12(f) by adding a new paragraph (3) to state that if emergency services are provided at the hospital but are not provided at one or more off-campus departments of the hospital, the governing body of the hospital must assure that the medical staff of the hospital has written policies and procedures in effect with respect to the off-campus department(s) for appraisal of emergencies and referral when appropriate. (We note that, in a separate document (62 FR 66758, December 16, 1997), we proposed to relocate the existing § 482.12(f) requirement to a new section of Part 482. The change to § 482.12(f) in this final rule will be taken into account in finalizing the December 16, 1997 proposal.) However, the hospital would not incur an EMTALA obligation with respect to the individual.

In summary, we proposed in existing § 489.24(b) to revise the definitions of "comes to the emergency department" and "hospital with an emergency

department", and to include these off-campus departments in our new definition of "dedicated emergency department." We solicited comments on whether this new term is needed or if the term "emergency department" could be defined more broadly to encompass other departments that provide urgent or emergent care services. We proposed to delete all of existing § 489.24(i) and to make conforming revisions to § 413.65(g)(1).

3. Summary of Public Comments and Departmental Responses

Comment: Numerous commenters expressed strong support for the proposal to limit the applicability of EMTALA, in cases of off-campus departments, to only those departments that qualify as dedicated emergency departments. Some commenters stated that EMTALA should not apply to an off-campus department that does not hold itself out as an emergency department. Other commenters believed this would be appropriate because a prudent layperson would not regard the department as an appropriate place at which to seek emergency care. These commenters stated that an individual with a broken arm might regard the hospital's orthopedic department as an appropriate source of care, but that this should not mean that the orthopedic department should be treated as a dedicated emergency department.

Other commenters stated that EMTALA should not apply to any off-campus department unless CMS provides a narrower definition of "dedicated emergency department" and clarifies whether or under what circumstances EMTALA will apply to urgent care facilities. However, the commenters did not provide any indication of why the definition is believed to be too broad or how they would recommend changing it.

Several commenters stated that EMTALA should not apply to an off-campus urgent care center unless the center is functioning and holding itself out to the public as an emergency department.

Response: We agree that EMTALA should apply to off-campus departments only if they qualify as dedicated emergency departments, and have addressed the commenters' suggestion as part of the revision of the definition of a dedicated emergency department. In addition, we are adopting in this final rule the proposed standard under § 482.12(f)(3) that hospitals have appropriate protocols in place for dealing with individuals who come to off-campus nonemergency facilities to seek emergency care.

Regarding the suggestion that a hospital's orthopedic department might be determined to be a dedicated emergency department because an individual person would look to it for emergency orthopedic care, as we have noted above, the definition of "dedicated emergency department" in section VIII. of this preamble does not include "prudent layperson" standard. Rather, with this final rule, "dedicated emergency department" means any department or facility of the hospital, regardless of whether it is located on or off the main hospital campus, that (1) is licensed by the State in which it is located under applicable State law as an emergency room or emergency department; (2) is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or (3) during the calendar year immediately preceding the calendar year in which a determination under § 489.24 is being made, based on a representative sample of patient visits that occurred during that calendar year, provides at least one-third of all of its outpatient visits for the examination or treatment of emergency medical conditions. If the orthopedic department does not meet any of these three criteria for dedicated emergency department status, it is not a dedicated emergency department for EMTALA purposes, regardless of what the individual may believe as to the status of the department.

4. Provisions of the Final Rule

We are adopting, as final with modifications as discussed in earlier sections of this preamble, the proposed revisions of the definition of "come to the emergency department," "hospital with an emergency department," and "dedicated emergency department" at § 489.24(b), which encompass off-campus hospital departments that would be perceived by individuals as appropriate places to go for emergency care. We also are adopting as final the related proposed deletion of the provisions under § 489.24(i) and the conforming change to § 413.65(g)(1). In addition, we are adopting, as final, the proposed new § 482.12(f)(3) which provides that the governing body of a hospital must assure that the medical staff has written policies and procedures in effect with respect to off-campus departments for appraisal of emergencies and referrals, when appropriate.

B. On-Campus Provider-Based Applicability

1. Background

At existing § 413.65(g)(1), we state, in part, that if any individual comes to any hospital-based entity (including an RHC) located on the main hospital campus, and a request is made on the individual's behalf for examination or treatment of a medical condition, the entity must comply with the antidumping rules at § 489.24. Since provider-based entities, as defined in § 413.65(b), are not under the certification and provider number of the main provider hospital, this language, read literally, would appear to impose EMTALA obligations on providers other than hospitals, a result that would not be consistent with section 1867, which restricts EMTALA applicability to hospitals.

2. Provisions of the Proposed Rule

To avoid confusion on this point and to prevent any inadvertent extension of EMTALA requirements outside the hospital setting, in the May 9, 2002 proposed rule (67 FR 31477), we proposed to clarify that EMTALA applies in this scenario to only those *departments* on the hospital's main campus that are provider-based; EMTALA would not apply to provider-based *entities* (such as RHCs) that are on the hospital campus.

In addition, we proposed in § 489.24(b) to revise the definition of "Comes to the emergency department" to include an individual who presents on hospital property, in which "hospital property" is, in part, defined as "the entire main hospital campus as defined at § 413.65(b) of this chapter, including the parking lot, sidewalk, and driveway, but excluding other areas or structures that may be located within 250 yards of the hospital's main building but are not part of the hospital, such as physician offices, RHCs, SNFs, or other entities that participate separately in Medicare, or restaurants, shops, or other nonmedical facilities." We specifically sought comments on this proposed revised definition. Generally, the proposed language would clarify that EMTALA does not apply to provider-based entities, whether or not they are located on a hospital campus. This language is also consistent with our policy as stated in questions and answers published on the CMS Web site: *http://www.cms.gov* (CMS EMTALA guidance, 7/20/01, Q/A #1) that clarifies that EMTALA does not apply to other areas or structures located on the hospital campus that are not part of the hospital, such as fast food

restaurants or independent medical practices.

We stated that if this proposed change limiting EMTALA applicability to only those on-campus departments of the hospital became final, we believe that if an individual comes to an on-campus provider-based entity or other area or structure on the campus not applicable under the new policy and presents for emergency care, it would be appropriate for the entity to call the emergency medical service if it is incapable of treating the patient, and to furnish whatever assistance it can to the individual while awaiting the arrival of emergency medical service personnel. However, the hospital on whose campus the entity is located would not incur an EMTALA obligation with respect to the individual.

In the May 9, 2002 proposed rule, we solicited comments from providers and other interested parties on the proper or best way to organize hospital resources to react to situations on campus where an individual requires immediate medical attention.

We proposed in § 489.24(b) to revise the definition of "Comes to emergency department" (specifically, under proposed new paragraph (1)) and make conforming changes at § 413.65(g)(1).

In the August 1, 2002 final rule issued following the May 9, 2002 proposed rule (67 FR 50090), we only adopted as final the deletion of the second sentence of the existing § 413.65(g)(1) that address the nonapplicability of EMTALA to provider-based entities. We did not adopt other proposed clarifications concerning application of EMTALA to provider-based departments, on or off the campus, or any other proposals concerning EMTALA.

3. Summary of Public Comments and Departmental Responses

Comment: Several commenters expressed general approval of the proposed clarifications of the definition of "hospital property" for purposes of the EMTALA regulations and stated that the proposals will lead to more precise interpretation of the regulations.

Response: We agree, and are adopting the proposed clarifications as part of this final rule.

Comment: One commenter expressed strong opposition to the proposed clarification under which on-campus provider-based entities would not be subject to EMTALA. The commenter noted that individuals seeking emergency treatment may be severely confused or agitated, so that they would be unable to determine whether a particular area or facility is a dedicated emergency department, and that in some cases such individuals may also be physically unable to proceed to the dedicated emergency department. The commenter also stated that provider-based departments frequently are located close to the main hospital campus, typically receive higher reimbursement from Medicare by virtue of their provider-based status, and may be indistinguishable, especially to an individual in a crisis situation, from areas at which emergency care is provided. The commenter suggested that, in view of this, it is not unreasonable to expect the provider-based entity to assume responsibility for ensuring that individuals who present with emergency care needs receive screening and stabilization. Therefore, the commenter recommended that we require that provider-based entities either ensure that transfer to a dedicated emergency department occurs safely, or provide screening and stabilization at the entity if it is able safely to do so.

Response: We understand and share the commenter's concern for individuals seeking emergency services who come to provider-based entities for assistance, but note that the legislative provision under which EMTALA responsibilities apply (section 1867 of the Act) is specific to hospitals, and does not extend to nonhospital entities (such as rural health clinics or physician offices), even where those entities may be located adjacent to hospital facilities and owned or operated by hospitals, or both. Therefore, we are not making a revision in this final rule based on this comment.

4. Provisions of the Final Rule

We are adopting, as final with minor editorial changes as explained earlier in this preamble, the proposed revision of "come to the emergency department" and "hospital property" in which hospital property is, in part, defined as "the entire main hospital campus as defined at § 413.65(b) of this chapter, including the parking lot, sidewalk, and driveway, but excluding other areas or structures of the hospital's main building that are not part of the hospital, such as physician offices, RHCs, SNFs, or other entities that participate separately in Medicare, or restaurants, shops, or other nonmedical facilities." This will clarify that on-campus provider-based entities would not be subject to EMTALA.

We are also adopting as final without modification the proposed clarifying change to § 413.65(g)(l).

XI. EMTALA and On-Call Requirements (§ 489.24(j))

A. Background

We have frequently received inquiries concerning the statutory requirement that hospitals maintain an "on-call" list of physicians to provide services to patients who seek care in hospital emergency departments. We believe there are a number of misconceptions in the provider industry concerning these on-call requirements. Therefore, as in the May 9, 2002 proposed rule (67 FR 31478), we are including a section that clarifies what kinds of obligations physicians and hospitals have to provide on-call coverage under EMTALA.

Section 1866(a)(1)(I)(iii) of the Act states, as a requirement for participation in the Medicare program, that hospitals must maintain a list of physicians who are on call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition. If a physician on the list is called by a hospital to provide emergency screening or treatment and either fails or refuses to appear within a reasonable period of time, the hospital and that physician may be in violation of EMTALA as provided for under section 1867(d)(1)(C) of the Act.

The CMS State Operations Manual (SOM) further clarifies a hospital's responsibility for the on-call physician. The SOM (Appendix V, page V–15, Tag A404) states:

- Each hospital has the discretion to maintain the on-call list in a manner to best meet the needs of its patients.
- Physicians, including specialists and subspecialists (for example, neurologists), are not required to be on call at all times. The hospital must have policies and procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his or her control.

Thus, hospitals are required to maintain a list of physicians on call at any one time, and physicians or hospitals, or both, may be responsible under the EMTALA statute to provide emergency care if a physician who is on the on-call list fails to or refuses to appear within a reasonable period of time. However, Medicare does not set requirements on how frequently a hospital's staff of on-call physicians are expected to be available to provide on-call coverage; that is a determination to be made between the hospital and the physicians on its on-call roster. We are aware that practice demands in treating other patients, conferences, vacations,

days off, and other similar factors must be considered in determining the availability of staff. We also are aware that some hospitals, particularly those in rural areas, have stated that they incur relatively high costs of compensating physician groups for providing on-call coverage to their emergency departments, and that doing so can strain their already limited financial resources. CMS allows hospitals flexibility to comply with EMTALA obligations by maintaining a level of on-call coverage that is within their capability.

We understand that some hospitals exempt senior medical staff physicians from being on call. This exemption is typically written into the hospital's medical staff bylaws or the hospital's rules and regulations, and recognizes a physician's active years of service (for example, 20 or more years) or age (for example, 60 years of age or older), or a combination of both. We wish to clarify that providing such exemptions to members of hospitals' medical staff does not necessarily violate EMTALA. On the contrary, we believe that a hospital is responsible for maintaining an on-call list in a manner that best meets the needs of its patients as long as the exemption does not affect patient care adversely. Thus, CMS allows hospitals flexibility in the utilization of their emergency personnel.

We also note that there is no predetermined "ratio" that CMS uses to identify how many days a hospital must provide medical staff on-call coverage based on the number of physicians on staff for that particular specialty. In particular, CMS has no rule stating that whenever there are at least three physicians in a specialty, the hospital must provide 24 hour/7 day coverage in that specialty. Generally, in determining EMTALA compliance, CMS will consider all relevant factors, including the number of physicians on staff, other demands on these physicians, the frequency with which the hospital's patients typically require services of on-call physicians, and the provisions the hospital has made for situations in which a physician in the specialty is not available or the on-call physician is unable to respond.

B. Provisions of the Proposed Rule

To clarify our policies on EMTALA requirements regarding the availability of on-call physicians, in the May 9, 2002 proposed rule, we proposed to add to § 489.24 a new paragraph (j) to specify that each hospital has the discretion to maintain the on-call list in a manner to best meet the needs of its patients. This proposed paragraph further specified that physicians, including specialists and subspecialists (for example, neurologists), are not required to be on call at all times, and that the hospital must have policies and procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his or her control.

C. Summary of Public Comments and Departmental Responses

1. General Comments

Comment: Numerous commenters expressed strong support for the proposal to clarify in regulations that physicians are not required to be on call at all times and that a hospital is responsible for maintaining an on-call list in a manner that best meets the needs of its patients.

Response: We appreciate these commenters' support and have kept their views in mind in evaluating the other comments recommending specific changes in the proposed rule for this final rule.

2. Minimal Interpretation of On-Call Responsibility

Comment: One commenter recommended that the requirement for an explicit list of on-call physicians be eliminated because, in the opinion of the commenter, physicians may be less willing to agree to be on call if they are required to commit in advance to be available at specific times. Numerous commenters did not request elimination of the requirement but stated that the requirement should be interpreted narrowly, as meaning only that the list of physicians willing to be on call is to be maintained and available in the emergency department, and that on-call services of those physicians must be available to each patient regardless of ability to pay. The commenters asked that the regulations be revised to specify that the on-call requirement does not require hospitals to maintain any particular level of on-call coverage, since hospitals are not legally authorized or practically empowered to control physician availability for on-call coverage.

Response: We cannot eliminate the requirement for an on-call list from the regulations, as that requirement is mandated by section 1866(a)(1)(I)(iii) of the Act. While we understand the rationale for interpreting section 1866 of the Act as imposing only a minimal on-call requirement, we also note that on-call physician services, like other services for the examination and treatment of emergency medical conditions, must be made available within the capability of the hospital, under sections 1867(a) and (b) of the Act. Therefore, we are not adopting these commenters' recommendations.

Comment: Some commenters expressed concern that the proposed changes allowing hospitals and physicians more flexibility to set on-call policies might actually increase overcrowding in hospital emergency departments. The commenters stated that patients who require specialty physician care often must wait in the emergency department for extended periods, since the physician's presence is needed to authorize either admission or an appropriate transfer.

One commenter suggested that adoption of the more flexible regulations on on-call responsibility would only exacerbate this problem. To prevent that, the commenter recommended that a hospital that is unable to maintain full-time specialty coverage in one or more areas be required to have a transfer agreement with a hospital that has that level of coverage and will accept all patients in that specialty or subspecialty area. The commenter also recommended that we prescribe a maximum time for which patients could be required to wait in the emergency department for specialty care and that provision be made for patients who must be held beyond that time to be admitted either to an inpatient bed or to an outpatient holding area outside the emergency department, to await the arrival of a specialist. The commenter noted that this placement would not end the hospital's EMTALA obligation, but would free emergency department resources to permit more emergency patients to be treated.

Response: We agree that it is appropriate for hospitals to have referral agreements with other hospitals to facilitate appropriate transfers of patients who require specialty physician care that is not available within a reasonable period of time at the hospital to which the patient is first presented. Hospitals that cannot maintain full-time on-call coverage in specific medical specialties should also keep local EMS staff advised of the times during which certain specialties will not be available, thereby minimizing the number of cases in which individuals must be transferred due to lack of complete on-call coverage. However, we are not mandating the maintenance of such agreements in this final rule. Even though such agreements may be desirable, we recognize that hospitals may be unable, despite their best efforts, to secure such advance agreements from specialty hospitals. (We note that, even in the absence of an advance agreement,

a participating hospital with specialized capabilities or facilities that has the capacity to treat an individual but refuses to accept an appropriate transfer would thereby violate the EMTALA requirement on nondiscrimination (section 1867(g) of the Act) and could be liable for termination of its provider agreement or civil money penalties, or both.)

We also agree that it would be appropriate for hospitals to limit individuals' waiting time in the emergency department, and to either admit the individual as an inpatient or move him or her to another appropriate outpatient area for treatment in cases where the arrival of a specialist is unavoidably delayed. However, given the heavy demand on emergency department resources and the variations in numbers of patients needing emergency care, we do not believe it is feasible to mandate uniform national limits on how long patients may be held in emergency departments.

3. Recommended Definition of "Best Meets the Needs of the Hospital's Patients"

Comment: Some commenters recommended that the requirement to maintain an on-call list that best meets the needs of the hospital's patients be revised to specifically recognize potential limits on on-call physician availability, by stating that the list must best meet the needs of patients in accordance with the resources available to the hospital, including the availability of on-call physicians. Another commenter recommended that the regulation be revised to mandate maintenance of an on-call list that meets patient needs to the extent permitted by the physician resources available to the hospital through its organized medical staff. Still another commenter recommended that the list be one that best meets the needs of the hospital's patients in accordance with the resources available to the hospital. Another commenter stated that the language as proposed does not clarify whether the on-call coverage must be determined by the needs of the hospital's inpatients or its outpatients, and suggested that the regulation be clarified to state that the on-call list be maintained in a manner that best meets the needs of the hospital's patients who are receiving services required under EMTALA.

Response: After consideration of these comments, we agree that the regulations should be further revised to explicitly acknowledge the limits on availability of on-call staff in many specialties and geographic areas. Therefore, we are revising proposed § 489.24(j) in this final rule to state that the list must be maintained in a manner that best meets the needs of the hospital's patients who are receiving services required under EMTALA in accordance with the capability of the hospital, including the availability of on-call physicians.

Comment: One commenter recommended that the regulations be revised to state that hospitals are not required to provide on-call physician coverage in specialties not available to the hospital's inpatients. Some commenters also stated that, at a minimum, CMS should require that if a hospital offers a service to the public, the service must be available through on-call coverage at the emergency department. For example, one commenter stated that some hospitals have departments of neurology and may have as many as 10 to 20 board-certified neurologists on its medical staff, but do not offer on-call services of neurologists to emergency patients. This commenter believed further specificity as to on-call obligations would avoid this problem.

Response: We agree that a hospital would not be required to maintain on-call physician coverage for types of services it does not routinely offer, but there are many reasons why a hospital would not have physician specialty care available on an on-call basis, even if such specialty care is above the range of specialty care available to inpatients. Therefore, we are not adopting this comment in this final rule.

Regarding the recommendation that a hospital be required to provide on-call coverage in any specialty offered to the hospital's patients, we agree that this would be a reasonable expectation and note that interpretative guidelines for EMTALA in the Medicare State Operations Manual (CMS Publication No. 7), page V–15, state that if a hospital offers a service to the public, the service should be available through on-call coverage of the emergency department. However, we are concerned that if this expectation were adopted as a requirement for all hospitals with emergency departments as part of this final rule, it might establish an unrealistically high standard that not all hospitals could meet. Therefore, we are not adopting this comment in this final rule.

Comment: One commenter recommended that the regulations be revised to clarify how CMS will deal with situations in which two hospitals with similar numbers of physicians on staff provide widely varying levels of on-call coverage. For example, one hospital with 3 neurosurgeons on staff might be able to provide "24/7" coverage, while another hospital with 3 neurosurgeons on staff might provide coverage only 10 days per month.

Response: We agree that a situation of the type described by the commenter could raise questions regarding the second hospital's commitment to obtaining on-call coverage, but note that many factors, including the overall supply of specialty physicians in an area, the extent to which hospitals offer specialty care through the use of "itinerant" physicians from other areas, and the availability of specialty care at other nearby hospitals, might all influence the hospital's decisions regarding the level of on-call coverage it can reasonably expect to provide. Because we are concerned that establishing overly prescriptive standards might impose an unrealistically high burden for some hospitals, we are not adopting any further regulatory requirements for handling situations in which hospitals' levels of on-call coverage vary significantly. We will continue to investigate such situations in response to complaints and will take appropriate action if the level of on-call coverage is unacceptably low.

4. Physicians' Responsibility for On-Call Coverage

Comment: Some commenters suggested that the proposal to allow hospitals greater flexibility to maintain on-call coverage that best meets the needs of their patients may be more restrictive than necessary to prevent discrimination or may have the unintended effect of reducing access to on-call services. These commenters argued for a more precise description of how patient needs can best be met, or for elimination of the "best meets the needs" clause. Some commenters stated that by allowing a hospital flexibility and declining to adopt any specific standards as to when a hospital may or may not be required to provide on-call coverage, CMS may be placing the EMTALA on-call burden on hospitals with no corresponding responsibility on the part of physicians, whose participation is necessary for the hospital to meet its obligation.

Some commenters recommended that the regulations be further revised to more specifically address the responsibilities of physicians to make themselves available when on call, the accountability of physicians for EMTALA compliance, and the acceptability of transferring patients when specialty physicians are not available. Other commenters recommended that more specific rules

be adopted regarding the times at which physicians are expected to be on call.

Another commenter cited a study by the University of California at Los Angeles titled "A Day in the Life of a California Emergency Department: Waiting Times and Resources, Trends in Use and Capacity, and Perceptions of Emergency Professionals." The commenter stated that the study finding indicated that, during the study period (December 2000 through May 2001), a significant number of on-call physicians either did not respond to call at all or responded only after a delay of at least 20 minutes, and that many took longer than 35 minutes to arrive. The commenter stated that the study documents the refusal of many on-call physicians to fulfill their on-call responsibilities and argued that hospitals should not be held responsible in such cases.

Another commenter also believed the proposed rules unfairly burden hospitals with the responsibility for maintaining on-call coverage but do not provide any guidance on a medical staff member's obligation to participate in on-call panels. The commenter expressed concern that the proposed language would, if adopted, allow physicians to either refuse to be on call, shift their practices to facilities not requiring on-call service, or demand exorbitant payment for on-call service. To avoid these effects, the commenter recommended that CMS either furnish additional detailed guidance on how hospitals can obtain on-call coverage when physicians refuse to provide it, or mandate that participation on on-call panels at hospitals subject to EMTALA is required as a condition of being a Medicare-participating physician.

Response: We understand the commenters' concern, but do not believe it would be practical or equitable to attempt to adopt more prescriptive rules on such matters as the number of hours per week physicians must be on call or the numbers of physicians needed to fulfill on-call responsibilities at particular hospitals. We believe these are local decisions that can be made reasonably only at the individual hospital level through coordination between the hospitals and their staffs of physicians.

Regarding situations in which physicians may irresponsibly refuse to fulfill the on-call responsibilities they have agreed to accept, we note that current law (section 1867(d)(1)(B) of the Act) provides penalties for physicians who negligently violate a requirement of section 1867 of the Act, including on-call physicians who refuse to appear when called. We further note that physicians who practice in hospitals do so under privileges extended to them by those hospitals, and that hospitals facing a refusal by physicians to assume on-call responsibilities or to carry out the responsibilities they have assumed could suspend, curtail, or revoke the offending physician's practice privileges. Moreover, when an EMTALA violation involving on-call coverage is found to have occurred, surveyors and CMS regional office staff will review all facts of the situation carefully to ensure that hospitals that have acted in good faith to ensure on-call coverage are not unfairly penalized for failure by individual physicians to fulfill their obligations.

Therefore, we are not making any change in the final rule based on these comments.

5. Hospital Responsibility for On-Call Coverage

Comment: One commenter stated that when the initial EMTALA legislation was enacted in 1986, emergency physicians were finding it virtually impossible to find specialists willing to come to the emergency department to treat emergency patients, and that the 1988 amendments to the EMTALA statute making it explicit that physicians are covered by on-call requirements have significantly improved the availability of on-call services in hospital emergency departments. Because of this improvement, the commenter stated that CMS should not give credence to allegations that EMTALA is making on-call coverage more difficult to obtain. The commenter further stated that even though the proposed regulatory language is virtually identical to the position CMS has taken in the past regarding on-call responsibilities, in the current climate the language is very likely to be viewed as offering assurances that physicians have no obligation to provide on-call coverage. To avoid this result, which the commenter believed would compromise the quality of patient care and lead to patient deaths, the commenter recommended that CMS clearly state that the proposed regulatory language does not represent a change in policy and that hospitals and physicians that fail to meet their on-call obligations as determined by EMTALA will be cited for noncompliance. The commenter also recommended that a safe harbor be created for EMTALA compliance, but does not describe the specific terms under which the safe harbor should be made available.

Other commenters also expressed concern about diminished access to on-call services as a result of perceptions of the proposals. These commenters stated that, because public hospitals typically are the only hospitals in a community committed to maintaining full-time on-call coverage in many specialties, other hospitals may view flexible requirements in this area as an opportunity to reduce their on-call coverage, thus further unfairly shifting the on-call burden to public hospitals and the physicians who practice in them. The commenters believed CMS should issue guidance stating more specifically how hospitals that maintain less than full-time on-call coverage will be evaluated under EMTALA.

Response: We understand the concerns expressed by the commenters about possible reductions in access to on-call services and wish to emphasize that the proposals are not intended to signal any change in CMS' position regarding hospitals' responsibility to comply with EMTALA. We also understand the desire by some for more specific guidance regarding the level of on-call coverage to be provided and the types of services for which on-call coverage must be available. However, under section 1867(a) of the Act, the EMTALA screening must be provided "within the capability of the hospital's emergency department" and that under section 1867(b) of the Act, further medical screening and stabilizing treatment must be made available only "within the staff and facilities available at the hospital." Given the wide variation in the size, staffing, and capabilities of the institutions that participate in Medicare as hospitals, we do not believe it is feasible for us to mandate any particular minimum level of on-call coverage that must be maintained by all hospitals subject to EMTALA, or to specify that on-call coverage is required for all services offered at the hospital. Therefore, we are not making any changes to our proposal in this final rule based on this comment.

Comment: Several commenters expressed support for the clarification that EMTALA does not require 24/7 on-call coverage at all hospitals, but some of the commenters suggested that the regulations be further strengthened to prohibit hospitals from maintaining such coverage when their capacity does not support it. Another commenter stated that we should not only clarify that EMTALA does not require "24/7" on-call coverage at all hospitals, but should prohibit hospitals from requiring physicians to be on call 24 hours a day, 7 days a week. Another commenter stated that CMS should prohibit hospitals from requiring physicians to be on call at times when they are

already committed to being on call at another hospital. One commenter stated that CMS should at least establish a grievance procedure that would allow physicians to challenge on-call requirements that the physicians believe are unreasonable.

Response: We appreciate the commenters' expression of support for the proposed clarification of our policy in this area, and agree with commenters that EMTALA does not require any physician to be on call at all times. However, we do not believe it would be appropriate for CMS to prescribe levels of on-call coverage; on the contrary, these matters should be worked out between individual hospitals and their medical staff. Therefore, we have not included any provision on the level of on-call coverage hospital may require. Also, we have no statutory authority to mandate the kind of appeals procedure for on-call requirements that was recommended. Therefore, we are not making any change in this final rule based on grievance procedures.

Comment: One commenter suggested that hospitals may be reducing physician staffing in some specialties (below the levels needed to treat all patients, including insured and uninsured patients) and relying on on-call coverage to meet the need to care for indigent patients. The commenter suggested that the regulations be revised to prohibit this practice.

Response: We understand the commenter's concern, but do not believe we can establish realistic objective standards for levels of physician staffing. However, we will keep the comment in mind as we prepare interpretive guidelines and conduct surveyor training, and will review any actual case situations involving understaffing of emergency departments carefully, to determine whether services mandated by EMTALA are, in fact, being provided within the capability of the hospital.

6. Simultaneous Call and Performance of Other Physician Services While on Call

Comment: A number of commenters stated that, because of shortages of physicians in certain specialties (for example, orthopedics or neurosurgery) in some areas, the proposed regulations regarding on-call coverage should be revised to state explicitly that it is not a violation of EMTALA for a physician to be on call simultaneously at two or more hospitals, as long as each hospital has a back-up plan for ensuring that needed care is received from another physician or through an appropriate transfer when the on-call physician is not in fact available. The commenters also recommended that the regulations be revised to clarify that it is not a violation of EMTALA for a physician to schedule and perform elective surgery while he or she is on call, if such a back-up plan is in place at each hospital for which the physician is on call.

Some commenters suggested that the physician's performance of elective surgery that a physician has freely undertaken should be used as an example of a circumstance that is beyond the physician's control. One of these commenters recommended that physicians who have agreed to be on call, but subsequently engage in activities that make it impossible to fulfill their commitment, should be allowed to make alternative arrangements for responding to calls. Another commenter recommended that the regulations be revised to provide specific examples of situations beyond a physician's control.

Still another commenter recommended that proposed paragraph (j) be revised to state that physicians may provide simultaneous call at more than one hospital, provided the number and geographic proximity of the hospitals are such that a single physician can reasonably provide on-call services at each facility. The commenter recommended that further language be added to state that physicians who are on call may schedule office visits or elective surgery without incurring penalties under EMTALA. The commenter believed the policies and procedures of the hospital for responding to situations in which the particular specialty is not available or the on-call physician cannot respond because of circumstances beyond the physician's control should be developed in consultation with the hospital's medical staff and that the examples of situations beyond a physician's control should include situations when the physician is already treating another patient. Some commenters stated that a Program Memorandum issued by CMS on June 13, 2002, stated that when a physician is performing surgery while being on call, having another physician available to respond to calls is an acceptable way to fulfill the physician's on-call responsibility but that having the capability to arrange appropriate transfers is also an acceptable form of compliance. The commenters recommended that CMS revise proposed § 489.24(j) to reflect this policy.

Another commenter stated that the regulation should state more specifically what types of back-up plans would be acceptable when a physician has scheduled elective surgery while on call.

Response: We agree that it is important that policy regarding simultaneous call and scheduling of elective surgery while on call be clearly communicated to, and understood by, affected hospitals and physicians. Therefore, on June 13, 2002, we issued Survey and Certification Letter No. S&C–02–35, to clarify that we believe hospitals should continue to have the flexibility to meet their EMTALA obligations by managing on-call physician coverage in a manner that maximizes patient stabilizing treatment as efficiently and effectively as possible. The letter further states that when the on-call physician is simultaneously on-call at more than one hospital in the geographic area, all hospitals involved must be aware of the on-call schedule, as each hospital independently has an EMTALA obligation.

In addition, the letter clarifies that hospitals must have policies and procedures to follow when an on-call physician is simultaneously on call at another hospital and is not available to respond. Hospital policies may include, but are not limited to, procedures for back-up on-call physicians, or the implementation of an appropriate EMTALA transfer according to § 489.24(d). The letter reaffirms CMS' view that hospitals have flexibility in adopting specific policies and procedures to meet their EMTALA obligations, so long as they meet the needs of the individuals who present for emergency care.

To avoid any misunderstanding of our policies in this area, we are revising proposed § 489.24(j) in this final rule to state the conditions under which simultaneous calls and elective surgery while on call are permitted.

7. Limiting On-Call Responsibility by Subspecialty

Comment: Some commenters stated that physicians' hospital privileges are typically more expansive than their actual scope of practice, in that a physician privileged in a broad specialty might in fact function only within a much narrower subspecialty. For example, a physician privileged by the hospital to treat all orthopedic cases might in fact limit his or her practice to pediatric cases. The commenters expressed concern that such a subspecialty physician might be disadvantaged by agreeing to be on call, since he or she could then be expected to treat types of patients that the physician would not normally see. To prevent this outcome, the commenters recommended that the EMTALA

regulations be revised to authorize such a physician to decline to come in when called if he or she believes that another physician can more competently care for the patient and should be called in.

Another commenter suggested that while subspecialists may be better qualified in their general specialties than emergency physicians, generalists may not necessarily be equally competent for all patients. For example, an ophthalmologist specializing in corneal or retinal surgery may have greater expertise in general ophthalmology than an emergency physician, but a fully competent general surgeon may nevertheless not have the specialized training and experience needed to perform emergency surgery on an infant. The commenter recommended that the regulations be revised to make it clear that, in such cases, the on-call physician is permitted to fulfill his or her on-call obligation by calling in another physician who has the necessary skills to care for the patient. The commenter also recommended formation of a private-public work group, similar to that described in proposed legislation (H.R. 3191, the "Medicare Appeals, Regulatory, and Contracting Improvement Act of 2001") to assist in resolving on-call issues. Another commenter recommended that the regulations be revised to state that physicians are not required to respond to calls for types of care for which they do not hold privileges.

Response: We agree with the commenter who stated the general principle is that patients should receive the best emergency care available. However, as pointed out by another commenter, a physician who is in a narrow subspecialty may, in fact, be medically competent in his or her general specialty, and in particular may be able to promptly contribute to the individual's care by bringing to bear skills and expertise that are not available to the emergency physician or other qualified medical personnel at the hospital. While the emergency physician and the on-call specialist may need to discuss the best way to meet the individual's medical needs, we also believe any disagreement between the two regarding the need for an on-call physician to come to the hospital and examine the individual must be resolved by deferring to the medical judgment of the emergency physician or other practitioner who has personally examined the individual and is currently treating the individual. We understand the concern of the commenter who believed the final rule should state that physicians are not required to respond to calls for types of care for which they do not have privileges. However, we do not agree that a revision to the regulation is needed. On the contrary, we believe that it is the responsibility of the hospital that is maintaining the on-call list to ensure that physicians on the list are granted whatever privileges they would need to furnish care in the facility. Therefore, we are not revising the final rule as recommended by this commenter.

Comment: Some commenters recommended that the EMTALA regulations be revised to state explicitly that there may be situations in which a transfer to another medical facility, which may be either a hospital or a physician office, would be appropriate because the skills and experience of the local on-call physician may not be ideal for a particular individual. One commenter explained that such a clarification would help avoid inconveniencing on-call physicians, who might otherwise be required to come to a hospital to attend to relatively minor needs.

Response: While we agree that there may be some cases in which it is more beneficial to an individual to be transferred to another facility because of the greater availability of specialty physician services, we do not believe any change to the regulations is needed to acknowledge this possibility. On the contrary, existing regulations at § 489.24(c)(1) (now § 489.24(d)(1) in this final rule) make it quite clear that an appropriate transfer is one in which the expected benefits of appropriate medical treatment at another facility outweigh the risks associated with transfer. We also do not believe that individuals being seen in emergency departments would regard their emergency medical conditions as minor needs. Therefore, we are not making any changes in the regulations in this final rule based on these comments.

Comment: One commenter recommended that proposed § 489.24(j) be further revised to state that specialty hospitals, particularly those without dedicated emergency departments, are not required to maintain on-call lists under EMTALA.

Response: Existing regulations at § 489.20(r)(2), which implement the requirement for an on-call list, make it clear that this requirement does not apply to any hospital other than one with a dedicated emergency department. Therefore, we do not believe a change in the regulations is needed to clarify this point.

8. Other On-Call Issues

Comment: Some commenters stated that some physicians may choose to come to a hospital to see private patients at times when they are not shown as being on call under the listing the hospital maintains for EMTALA purposes. The commenters believed such physicians should not be considered to be on call under EMTALA simply because they come to the hospital under these circumstances, and expressed the belief that such a policy would be consistent with EMTALA interpretive guidelines stating that physicians are not expected to be on call whenever they are visiting their own patients in a hospital.

Response: We understand that physicians may sometimes come to a hospital to see their own patients, either as part of regular rounds or in response to requests from the patient or the patient's family, and agree that visits of this type should not necessarily be interpreted as meaning that the physician is on call. On the other hand, some physicians have in the past expressed a desire to refuse to be included on a hospital's on-call list but nevertheless take calls selectively. These physicians might, for example, respond to calls for patients with whom they or a colleague at the hospital have established a doctor-patient relationship, while declining calls from other patients, including those whose ability to pay may be in question. Such a practice would clearly be a violation of EMTALA. Because it may be difficult to distinguish the two practices from one another outside the context of a careful review of patient records, we are not making any revision to this final rule based on this comment. However, we will keep it in mind as we develop the interpretative guidelines and training materials for implementing EMTALA.

Comment: One commenter expressed approval of the preamble statement (67 FR 31478 of the May 9, 2002 proposed rule) that exempting senior medical staff from on-call responsibilities does not necessarily violate EMTALA. However, this commenter believed that statement should also be reflected in the text of the final regulations.

Response: We continue to believe such exemptions are not necessarily inconsistent with EMTALA, but they were mentioned in the preamble to illustrate rather than define the types of flexibility a hospital may exercise in maintaining its on-call list in a way that best meets patient needs. Thus, we do not believe this one example of

flexibility should be singled out for inclusion in the regulations.

Comment: One commenter stated that Federally Qualified Health Centers (FQHCs) are required under policies of the Public Health Service to maintain referral arrangements with hospitals for acceptance of health center patients, and that it is recommended that FQHCs maintain admitting privileges at those hospitals for their patients. However, the commenter was concerned that any monetary penalties for noncompliance with EMTALA on-call responsibilities will have to be paid by the health centers, and that physicians who learn that they will incur an on-call responsibility at a hospital as a cost of being privileged there may choose to stop practicing at the health centers, thereby depriving the health centers' patients of the physicians' services. Therefore, the commenter recommended that CMS provide some safe harbors, such as unspecified personal services or a high volume of patients needing care, that would protect physicians from EMTALA liability if they fail to be on call or are on call but fail to come to the hospital emergency department when called.

Response: As we noted above, this final rule makes explicit provision for two of the occurrences that physicians and other commenters have indicated to us are responsible for physicians' inability to respond to calls even though they have agreed to do so. In addition, we plan to direct State surveyors, in enforcing the EMTALA provisions, to be aware of situations in which circumstances beyond a physician's control may prevent him or her from responding promptly to calls. We believe these actions on our part will ensure sufficient flexibility and, therefore, we are not at this time further defining a set of specific "safe harbors." However, we will continue to monitor the commenter's concerns and will undertake further rulemaking if warranted in the future.

Comment: One commenter stated that some physicians, such as orthopedists, frequently use physician assistants in their practices. The commenter provided a number of examples of how a physician assistant could respond appropriately to a call from an emergency department, participate in the screening of an individual, and either provide the necessary stabilization or post-stabilization services, or arrange for the performance of those services by the physician. The commenter asked us to clarify that, in some instances, physician assistants may appropriately provide on-call coverage, by revising the EMTALA regulations to state that physicians included on a hospital's on-call list may delegate their on-call responsibilities to the physician assistants they supervise, as long as all services provided by the physician assistants are furnished in accordance with State scope of practice laws and with hospital and medical bylaws.

Response: We agree that there may be circumstances in which a physician assistant may be the appropriate practitioner to respond to a call from an emergency department or other hospital department that is providing screening or stabilization mandated by EMTALA. However, any decision as to whether to respond in person or direct the physician assistant to respond should be made by the responsible on-call physician, based on the individual's medical needs and the capabilities of the hospital, and would, of course, be appropriate only if it is consistent with applicable State scope of practice laws and hospital bylaws, rules, and regulations.

D. Provisions of the Final Rule

In this final rule, we are adopting the proposed § 489.24(j) as final with the following modifications: We are specifying that the on-call list must be maintained in a manner that best meets the needs of the hospital's patients who are receiving services required under EMTALA, in accordance with the capability of the hospital, including the availability of on-call physicians. We also are revising paragraph (j) to state the conditions under which simultaneous call and elective surgery while on call are permitted. For editorial reasons, we are revising the language of § 489.24 to state under paragraph (j)(3)(ii) that hospitals must "provide" rather than "insure" that emergency services are available. No change in policy is being made by this editorial change.

XII. EMTALA Applicability to Hospital-Owned Ambulances (§ 489.24(b))

A. Background

We stated in the June 22, 1994 final rule (59 FR 32098) that if an individual is in an ambulance owned and operated by a hospital, the individual is considered to have come to the hospital's emergency department, even if the ambulance is not on hospital property. This policy, currently set forth at § 489.24(b), was necessary because we were concerned that some hospitals that owned and operated ambulances at that time were transporting individuals who had called for an ambulance to other hospitals, thereby evading their EMTALA responsibilities to the individuals.

Concerns have since been raised by the provider industry about applications of this policy to ambulances that are owned by hospitals but are operating under communitywide EMS protocols that may require the hospital-owned and other ambulances to transport individuals to locations other than the hospitals that own the ambulances. For instance, we understand that some community protocols require ambulances to transport individuals to the closest hospital to the individual geographically, whether or not that hospital owns the ambulance.

B. Provisions of the Proposed Rule

To avoid imposing requirements that are inconsistent with local EMS requirements, in the May 9, 2002 proposed rule, we proposed to clarify, at proposed revised § 489.24(b), in paragraph (3) of the definition of "Comes to the emergency department", an exception to our existing rule requiring EMTALA applicability to hospitals that own and operate ambulances. We proposed to account for hospital-owned ambulances operating under communitywide EMS protocols. Under our proposal, the rule on hospital-owned ambulances and EMTALA does not apply if the ambulance is operating under a communitywide EMS protocol that requires it to transport the individual to a hospital other than the hospital that owns the ambulance. In this case, the individual is considered to have come to the emergency department of the hospital to which the individual is transported, at the time the individual is brought onto hospital property.

C. Summary of Public Comments and Departmental Responses

Comment: A number of commenters expressed strong support for the proposal to clarify that EMTALA does not apply to a hospital-owned ambulance when the ambulance is operating under communitywide protocols that require it to transport an individual to a hospital other than the hospital that owns the ambulance. One commenter asked whether a hospital would have any EMTALA obligation with respect to a patient who refuses transport from the planned pickup site (for example, the site of an automobile accident), and whether EMTALA would apply if the physician in the emergency department provides "medical command."

Another commenter recommended that the regulations be further revised to state that individuals presenting to

hospital-owned ambulances are subject to EMTALA and must be transported to the hospital that owns the ambulance, unless the hospital EMS personnel on board the ambulance determine that doing so would put the patient's life or safety at risk. The commenter further recommended that if the on-board hospital EMS personnel believe that transporting the individual to the owner hospital would risk the life or health of the individual, the personnel should be authorized to redirect the ambulance to the closest appropriate hospital without violating EMTALA.

Response: We appreciate the support of those commenters who expressed approval of the proposal and have kept their views in mind in responding to other comments on this issue. In regard to the comment about an individual who refuses transport from a planned pickup site, we believe such cases should be treated as refusals to consent to treatment and should be handled in accordance with the requirements for documenting such refusals in existing § 489.24(c)(2) (redesignated in this final rule as § 489.24(d)(3)).

We understand that the term "hospital-owned ambulances operating under medical command" describes a situation in which the destination of an ambulance is not determined by the ambulance personnel but by a physician in radio contact with ambulances in the community. We believe individuals on board such ambulances would not be considered to have "come to the hospital" for EMTALA purposes if the physician providing the medical command is not employed or otherwise affiliated with the hospital that owns the ambulance. If the physician's direction of the ambulance (medical command) is provided subject to communitywide protocols that require the individual to be transported to a hospital other than the hospital that owns the ambulance, such as the closest appropriate hospital, the hospital would be considered to be operating under communitywide protocols. With respect to situations in which hospital EMS personnel on board the ambulance determine that transporting the individual to the owner hospital would put the patient's life or safety at risk, we recognize that there may be some situations in which redirection of the ambulance is necessary to protect the life or safety of the individual and that under these circumstances it would not be an EMTALA violation to transport the individual to the closest hospital capable of treating his or her condition. However, we believe such cases can best be identified and resolved on a case-by-case basis and, therefore, are not revising the final regulations based on this comment.

Comment: One commenter recommended that the proposed clarification of the nonapplicability of EMTALA to hospital-owned ambulances when the ambulance is operating under communitywide protocols be extended to air ambulances as well as ground ambulances.

Response: We agree and in this final rule are revising § 489.24(b), the definition of "come to the emergency department," accordingly.

Comment: One commenter recommended that guidance provided in the State Operations Manual, to the effect that hospitals have no EMTALA obligation with respect to individuals who are in ambulances that are neither hospital-owned and operated nor on hospital property, be incorporated into the regulatory language.

Response: We agree that this statement of policy is accurate, but believe the proposed regulatory language makes this clear. Therefore, we are not making revision in the final rule based on this comment.

Comment: One commenter referenced the recently issued CMS guidance, in the form of letters to Regional Administrators and State Survey Agencies, regarding EMTALA responsibilities in the event of a bioterrorist attack. The commenter believed this guidance might be viewed as being inconsistent with a hospital's statutory responsibility to provide screening services under EMTALA, and suggested that the regulatory language be revised to reflect the guidance, so that hospitals that follow it are not at risk for a citation of noncompliance with EMTALA.

Response: We agree that hospitals should be informed of their EMTALA responsibilities in the event of a bioterrorist attack or other national emergency. We also believe the commenter's suggestion is consistent with the intent of section 143 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Pub. L. 107–188, enacted June 12, 2002). That legislation amended section 1135 of the Act to authorize the Secretary to temporarily waive or modify the application of certain Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) requirements, including requirements for the imposition of sanctions for the otherwise inappropriate transfer of an unstabilized individual, if the transfer arises out of the circumstances of the emergency.

To help inform hospitals of their responsibilities in such situations, we have added a new paragraph (a)(2) to § 489.24(a). The new paragraph specifies that sanctions under EMTALA for an inappropriate transfer during a national emergency do not apply to a hospital with a dedicated emergency department located in an emergency area, as specified in section 1135(g)(1) of the Act. In the event of such a national emergency, CMS would issue appropriate guidance to hospitals.

Comment: One commenter stated that, in some areas of the country, ambulance protocols requiring emergency patients to be taken to the closest appropriate hospital are not determined on a community-by-community basis. Instead, the protocols apparently are established by individual ambulance service medical directors in conformity with State law and are filed with the State EMS board. The commenter expressed concern that the proposed regulatory language on communitywide EMS protocols would not protect hospitals in such States from inappropriate EMTALA liability, and cited several examples of situations in which a hospital-owned and operated ambulance might be required to bypass appropriate hospitals to reach the owner hospital. To avoid this result, the commenter recommended that the regulations be revised either to state that hospital-owned and operated ambulances are not included in the definition of "hospital property" or to provide an exemption for hospital-owned ambulances operated in accordance with protocols on file with and approved by the State ambulance licensing authority.

Response: We agree that protocols mandated by State law should be given the same deference as those established on a communitywide basis. However, we believe the reference in § 489.24(b)(3)(i) to communitywide EMS protocols which direct that the individual be transported to a hospital other than the hospital that owns the ambulance is broad enough to encompass those communitywide protocols that have been adopted in conformity with State law. Therefore, we are not revising the provision in the final rule based on this comment.

Comment: One commenter stated that most ambulance protocols direct that individuals be taken to the "closest appropriate facility" rather than the "nearest hospital" and suggested that this change in wording of the regulation text would be appropriate because, in some cases, individuals may need to be taken to a freestanding emergency facility or some other location that is not a hospital. The commenter also recommended that hospital-owned and

operated ambulances be given an exemption from the requirements for situations in which the individual or family asks that the individual be transported to another facility other than the hospital that owns the ambulance.

Response: We agree that it would be more appropriate to refer to requirements that the individuals be taken to the "closest appropriate facility" rather than the "nearest hospital", and are including this change in paragraph (3) of the definition of "come to the emergency department" under § 489.24(b) of this final rule.

Regarding the redirection of an ambulance at the request of the individual's family, we believe existing regulations at § 489.24(c)(2) (now § 489.24(d)(3) of this final rule) regarding informed refusals of treatment would permit the ambulance to transport the individual to another facility. A medical record for the individual must be established and the refusal clearly documented in that record, in accordance with these regulatory requirements.

D. Provisions of the Final Rule

We are adopting, as final, the proposed revision to paragraph (3) under the definition of "come to the emergency department" under § 489.24(b) as it related to the applicability to EMTALA to hospital-owned ambulances, with the following modifications:

We are specifying the nonapplicability of EMTALA to hospital-owned "air" ambulances (in addition to ground ambulances), when the ambulance is operating under communitywide protocols.

We are specifying that an individual in an ambulance owned and operated by the hospital is not considered to have "come to the emergency department" if the ambulance is operated under communitywide EMS protocols or EMS protocols "mandated by State law" that direct it to transport the individual to a hospital other than the hospital that owns the ambulance. We also are specifying that an individual in an ambulance owned and operated by the hospital is not considered to have "come to the emergency department" if the ambulance is operated at the direction of a physician who is not employed or otherwise affiliated with the hospital that owns the ambulance or if the physician's direction of the destination of the ambulance is subject to communitywide protocols that require the individual to be transported to a hospital other than the hospital that owns the ambulance.

We are changing the term "closest hospital" to "closest appropriate facility".

In addition, we are adding a new § 489.24(a)(2) to specify EMTALA responsibilities in the event of a bioterrorist attack.

XIII. Conditions of Participation for Hospitals

We are reminding hospitals and others that while these final regulations make it clear that, while stabilizing an individual with an emergency medical condition (or admitting the individual to the hospital as an inpatient) relieves the hospital of its EMTALA obligations, it does not relieve the hospital of all further responsibility for the patient who is admitted. Stabilization or inpatient admission also does not indicate that the hospital is thus free to improperly discharge or transfer the individual to another facility. Inpatients who experience acute medical conditions receive protections under the Medicare hospital CoPs, which are found at 42 CFR part 482. In addition, as noted earlier in this preamble and in the May 9, 2002 proposed rule preamble, we believe that outpatients who experience what may be an emergency medical condition after the start of an encounter with a health professional would have all protections afforded to patients of a hospital under the Medicare hospital CoPs. There are six hospital CoPs that provide these protections: emergency services, governing body, discharge planning, quality assessment and performance improvement, medical staff, and outpatient services. In the May 9, 2002 proposed rule, we proposed to make only one change in these CoPs: one relating to the governing body having written policies and procedures in effect for off-campus departments that do not offer emergency services for appraisal of emergencies and referral when appropriate (§ 482.12(f)(3)).

If a hospital inpatient develops an acute medical condition and the hospital is one that provides emergency services, the hospital is required to ensure that it meets the emergency needs of the patient in accordance with accepted standards of practice. Similarly, regardless of whether the hospital provides emergency services, if an inpatient develops an acute medical condition, the governing body CoP (§ 482.12(f)(2), which applies to all Medicare-participating hospitals) would apply. This CoP requires that the hospital governing body must ensure that the medical staff has written policies and procedures for appraisal of emergencies, initial treatment, and referral when appropriate.

The discharge planning CoP (§ 482.43, which applies to all Medicare-participating hospitals) requires hospitals to have a discharge planning process that applies to all patients. This CoP ensures that patient needs are identified and that transfers and referrals reflecting adequate discharge planning are made by the hospital. If an inpatient develops an acute medical condition and the hospital either does not offer emergency services or does not have the capability to provide necessary treatment, a transfer to another hospital with the capabilities to treat the emergency medical condition could be warranted. Hospitals are required to meet the discharge planning CoP in carrying out such a transfer.

The hospital CoP governing medical staff (§ 482.22) requires that the hospital have an organized medical staff that operates under bylaws approved by the governing body and is responsible to the governing body for the quality of medical care provided to patients by the hospital. Should the medical staff not be held accountable to the governing body for problems regarding a lack of provision of care to an inpatient who develops an emergency medical condition, this lack of accountability may be reviewed under the medical staff CoP, as well, and may result in a citation of noncompliance at the medical staff condition level for the hospital.

Finally, the quality assessment and performance improvement CoP (§ 482.21, which applies to all Medicare-participating hospitals) requires the governing body to ensure that there is an effective, hospital-wide quality assessment and performance improvement program to evaluate the provision of patient care. In order to comply with this CoP, the hospital must evaluate the care it provides hospital-wide. Complaints regarding a lack of provision of care to an inpatient who develops an emergency medical condition must be addressed under the hospital's quality assurance program and may be reviewed under the quality assessment and performance improvement CoP.

A hospital's failure to meet the CoPs requirements cited above may result in a finding of noncompliance at the condition level for the hospital and lead to termination of the hospital's Medicare provider agreement. As we explained in the preamble to the January 24, 2003 final rule (69 FR 3435), the CoPs are the requirements that hospitals must meet to participate in the Medicare and Medicaid programs. The

CoPs are intended to protect patient health and safety and to ensure that high quality care is provided to all patients. The State survey agencies (SA$), in accordance with section 1864 of the Social Security Act (the Act), survey hospitals to assess compliance with the CoPs. The SAs conduct surveys using the instructions in the State Operations Manual (SOM), (Health Care Financing Administration (HCFA) Publication No. 7). The SOM contains the regulatory language of the CoPs as well as interpretive guidelines and survey procedures and probes that elaborate on regulatory intent and give guidance on how to assess provider compliance. Under § 489.10(d), the SAs determine whether hospitals have met the CoPs and report their recommendations to us. The standards, procedures, and SA personnel involved in developing recommendations regarding EMTALA compliance are the same as those for recommendations regarding CoP compliance, since alleged violations of EMTALA are treated as allegations that a hospital has not complied with a requirement for Medicare participation.

Under the authority of section 1865 of the Act and the regulations at § 488.5, hospitals accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) are deemed to meet the requirements in the CoPs, and therefore, are not routinely surveyed for CoP compliance by the SAs. However, all Medicare and Medicaid participating hospitals are required to be in compliance with our CoPs regardless of their accreditation status.

Comment: Some commenters expressed general approval of the proposed revision to § 482.12(f), which is applicable to hospitals that provide emergency services but have departments off campuses that do not provide emergency services.

Response: We appreciate these commenters' support and have kept their views in mind in evaluating the other comments recommending specific changes in this final rule.

Comment: Some commenters stated that the proposed revision to § 482.12(f) seems to imply that hospitals must have staff trained in appraisal of emergencies on duty on a 24-hour per day, 7-day a week basis to comply with the requirement. The commenters believed that this would be an unreasonable requirement.

Response: We agree that such a requirement for off-campus departments would be unreasonably stringent. Therefore, we plan to clarify in the interpretive guidelines or training materials used to implement this requirement that the policies and procedures in place for appraisal of emergencies and referral when appropriate must be implemented only within the hours of operation and normal staffing capability of the facility.

Comment: Some commenters opposed adding a specific CoP provision for off-campus departments of hospitals that have dedicated emergency departments but do not offer emergency services at their off-campus locations. The commenters believed this is an unnecessary burden on hospital governing bodies and medical staffs.

Response: We do not agree that adding this condition will impose an unnecessary burden on hospitals. First, the amount of burden will be minimal, because the regulation does not require that the facilities provide emergency care or add to their existing medical capabilities, but only that appropriate policies and procedures be in place. While developing and implementing these policies and procedures will require some effort from facilities that do not have them in place, the effort involved should be considerably less than that required to comply with current regulations at § 489.24(i) regarding EMTALA compliance by hospitals with off-campus nonemergency departments, which are being replaced by the condition. We also do not agree that any remaining burden associated with the revised requirement is unnecessary. On the contrary, the ability of such an off-campus facility to respond promptly and appropriately to an unexpected request for emergency care can be crucial to the health and safety of the individual with the emergency condition.

Because we believe that the burden of having a plan in place to deal with an occasional emergency is minimal and the potential benefit to the individual of having such a plan is considerable, we are not making changes to the proposed CoP in this final rule in response to this comment.

XIV. Other Issues

A. Editorial/Clarifying Changes

In addition to the changes to § 489.24 discussed in sections V. through XIII. of this preamble, we are revising § 489.24(d)(3) (Refusal to consent to treatment) to refer to an individual or a person acting on the individual's behalf who "does not consent to the examination or treatment," rather than referring to an individual or a person acting on the individual's behalf who "refuses to consent to examination and treatment." We are making a parallel change in § 489.24(d)(5) (Refusal to consent to transfer). We are making these changes only for editorial reasons and in the interest of clarity; these revisions do not represent any change in policy.

B. Out-of-Scope Comments

We received a number of public comments on issues that were not addressed as part of the May 9, 2002 proposed rule. Because the issues addressed in the comments were not part of the proposed rule, we are not providing responses to them in this final rule. We will consider them in the future if we consider changes in related policy areas.

XV. Information Collection Requirements

Under the Paperwork Reduction Act (PRA) of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the PRA of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comments on each of these issues for the information collection requirements discussed below.

§ 482.12 Conditions of Participation: Governing Body

New § 482.12(f)(3) specifies that, if emergency services are provided at the hospital but are not provided at one or more off-campus departments of the hospital, the governing body of the hospital must assure that the medical staff have written policies and procedures in effect with respect to the off-campus department(s) for appraisal of emergencies and referral when appropriate.

While this information collection requirement is subject to the PRA, the fact that this requirement is a usual, customary, and prudent business and

medical practice exempts the burden associated with this requirement from the PRA as stipulated under 5 CFR 1320.3(b)(2). It is standard for medical facilities to have written policies and procedures pertaining to medical emergencies. Having written policies and procedures saves time deciding what to do and thus benefits the patient; it also gives the provider liability protection.

In the May 9, 2002 proposed rule (67 FR 31496), we solicited, public comment on this information collection requirement. However, we did not receive any public comments on this information collection requirement.

§ 489.24 Special responsibilities of Medicare hospitals in emergency cases.

Paragraph (d) of this section requires that, if the hospital offers an individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of the examination and treatment, but the individual (or a person acting on the individual's behalf) does not consent to the examination or treatment: (1) The medical record must contain a description of the examination, treatment, or both if applicable, that was refused by or on behalf of the individual; (2) the hospital must take all reasonable steps to secure the individual's written informed refusal (or that of the person acting on his or her behalf); and (3) the written document should indicate that the person has been informed of the risks and benefits of the examination or treatment, or both.

Paragraph (d) of this section also requires that, if the hospital offers to transfer the individual to another medical facility in accordance with paragraph (e) of this section and informs the individual (or a person acting on his or her behalf) of the risks and benefits to the individual of the transfer, but the individual (or a person acting on the individual's behalf) does not consent to the transfer: (1) The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of a person acting on his or her behalf); (2) the written document must indicate the person has been informed of the risks and benefits of the transfer and state the reasons for the individual's refusal; and (3) the medical record must contain a description of the proposed transfer that was refused by or on behalf of the individual.

The burden associated with these requirements is the time it will take a hospital to secure a written refusal, create a written document containing the information the patient has been given, and describing in the patient's record what was refused. These information collection requirements are currently approved under 0938–0667.

Paragraph (j) of this section requires that each hospital must maintain an on-call list of physicians on its medical staff in a manner that best meets the needs of the hospital's patients who are receiving services required under this section in accordance with the resources available to the hospital, including the availability of on-call physicians. It also requires that the hospital have written policies and procedures in place to respond to situations in which a particular specialty is not available or the on-call physician cannot respond because of circumstances beyond the physician's control and to provide that emergency services are available to meet the needs of patients with emergency medical conditions if it elects to permit on-call physicians to schedule elective surgery during the time that they are on call or to permit on-call physicians to have simultaneous on-call duties.

The burden associated with these requirements is the time it will take to create the list and write down the policies and procedures. We believe that these actions reflect usual, customary, and prudent medical and business practices; the burden is exempt from the PRA under 5 CFR 1320.3(b)(2). We believe that the providers have the necessary written information available to the staff in times of emergencies to reduce the time it takes to contact a doctor or to decide what to do if the doctor is unavailable. These actions benefit the patient and give the provider liability protection.

We note that these requirements in paragraph (j) are revisions of provisions that were included in the May 9, 2002 proposed rule.

We have submitted a copy of this final rule to OMB for its review of the information collection requirements described above. These requirements are not effective until they have been approved by OMB.

If you comment on any of these information collection and record keeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Strategic Operations and Regulatory Affairs, Regulations Development and Issuances Group, Attn: Julie Brown, CMS–1063–F Room C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Brenda Aguilar, CMS Desk Officer.

Comments submitted to OMB may also be e-mailed to the following address: e-mail: *baguilar@omb.eop.gov;* or faxed to OMB at (202) 395–6974.

XVI. Regulatory Impact Analysis

A. Introduction

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

B. Executive Order 12866

Executive Order 12866 (as amended by Executive Order 13258, which merely reassigns responsibility of duties) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year).

We have determined that this final rule is not a major rule as defined in 5 U.S.C. 804(2). As explained below, we do not have sufficient information to estimate the precise economic impact of this final rule. However, in general, this final rule diminishes rather than increases the EMTALA compliance burden on hospitals and physicians as this burden exists under current regulations. In both the previous EMTALA rules, the proposed EMTALA rule published on June 16, 1988 (53 FR 22513) and the preamble to the interim final rule published on June 22, 1994 (59 FR 32120), we explained, and the Secretary certified, that those regulations would not have a significant impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals. As explained above, this final rule further reduces compliance burden and cost. Therefore, we estimate that the total impact of these changes will be less than the threshold for a major rule ($100 million or more in any 1 year).

C. Regulatory Flexibility Act

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity.

In the preamble of the May 9, 2002 proposed rule, we stated that we believed it would be difficult to quantify the impact of the proposed changes and solicited comments on how such an impact estimate could be developed. We did not receive any comments on this point. Neither the proposed EMTALA rule published on June 16, 1988 (53 FR 22513) nor the interim final rule published on June 22, 1994 (50 FR 32086) included a quantitative analysis of the economic impact of the rule. However, in the preamble to each rule, we explained that because the great majority of hospitals do not refuse to treat individuals or transfer patients inappropriately based on their perceived inability to pay, the economic impact of those rules was minimal. Since this rule is only a modification of the previous EMTALA rules, we believe that the impact of this final rule is also minimal. For the reasons explained above, we are confident that the overall effect of this final rule will be to reduce rather than increase the EMTALA compliance burden for hospitals and physicians. For example, the compliance burden for hospitals will be reduced because off-campus provider-based departments that are not dedicated emergency departments will no longer have any EMTALA responsibilities. The burden for physicians should be reduced by the changes that allow them to be on call simultaneously at multiple locations, and to schedule other procedures while they are on call. Because we do not have enough information to precisely predict the dollar amount of the reduced burden, we have not attempted to produce a quantified estimate of the impact of this final rule. However, based on the reduction in burden relative to current regulations, we have determined that this final rule will not have a significant impact on a substantial number of small entities.

D. Effects on Rural Hospitals

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of payments to hospitals, we classify these hospitals as urban hospitals. As explained above, the compliance burden and cost associated with this final rule is expected to be significantly less than the burden associated with existing regulations. Based on the reduction in burden relative to current regulations, we have determined that this final rule will not have a significant impact on the operations of small rural hospitals.

E. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) also requires that agencies assess anticipated costs and benefits before issuing a final rule that has been preceded by a proposed rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This final rule will not mandate any requirements that may result in an expenditure, in any 1 year for State, local, or tribal governments or for the private sector of $110 million.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this final rule in light of Executive Order 13132 and have determined that it will not have any significant impact on the rights, roles, and responsibilities of State, local, or tribal governments.

G. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant program-health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

■ For the reasons set forth in this preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

■ A. Part 413 is amended as follows:

■ 1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

■ 2. Section 413.65 is amended by adding introductory text under paragraph (g) and revising paragraph (g)(1) to read as follows:

§ 413.65 Requirements for a determination that a facility or an organization has provider-based status.

* * * * *

(g) *Obligations of hospital outpatient departments and hospital-based entities.* To qualify for provider-based status in relation to a hospital, a facility or organization must comply with the following requirements:

(1) The following departments must comply with the antidumping rules of § 489.20(l), (m), (q), and (r) and § 489.24 of this chapter:

(i) Any facility or organization that is located on the main hospital campus and is treated by Medicare under this section as a department of the hospital; and

(ii) Any facility or organization that is located off the main hospital campus that is treated by Medicare under this section as a department of the hospital and is a dedicated emergency department, as defined in § 489.24(b) of this chapter.

* * * * *

PART 482—CONDITIONS FOR PARTICIPTION FOR HOSPITALS

■ B. Part 482 is amended as follows:
■ 1. The authority citation for Part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1320 and 1395hh).

■ 2. Section 482.12 is amended by adding a new paragraph (f)(3) to read as follows:

§ 482.12 Condition of participation: Governing body.

* * * * *

(f) *Standard: Emergency services.*

* * *

(3) If emergency services are provided at the hospital but are not provided at one or more off-campus departments of the hospital, the governing body of the hospital must assure that the medical staff has written policies and procedures in effect with respect to the off-campus department(s) for appraisal of emergencies and referral when appropriate.

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

■ C. Part 489 is amended as follows:
■ 1. The authority citation for Part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Act (42 U.S.C. 1302 and 1395hh).

■ 2. Section 489.24 is amended by—
■ A. Revising paragraph (a).
■ B. Republishing the introductory text of paragraph (b) and revising the definitions of "Comes to the emergency department" and "Hospital with an emergency department".
■ C. Adding definitions of "Dedicated emergency department", "Hospital property", "Inpatient", and "Patient" in alphabetical order under paragraph (b).
■ D. Under the definition of "Emergency medical condition" under paragraph (b), redesignating paragraphs (i), (i)(A), (i)(B), (i)(C), (ii), (ii)(A), and (ii)(B) as paragraphs (1), (1)(i), (1)(ii), (1)(iii), (2), (2)(i), and (2)(ii), respectively.
■ E. Under the definition of "Participating hospital" under paragraph (b), redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively.
■ F. Under the definitions of "Stabilized" and "To stabilize" under paragraph (b), "paragraph (i)" is removed and "paragraph (1)" is added in its place; and "paragraph (ii)" is removed and "paragraph (2)" is added in its place.
■ G. Removing paragraph (i); and redesignating paragraph (c) through (h) as paragraphs (d) through (i), respectively.
■ H. Adding new paragraphs (c) and (j).
■ I. Revising newly redesignated paragraph (d).
■ J. Making the following cross-reference changes:
■ i. In redesignated paragraph (e)(1)(i), "paragraph (d)(2)" is removed and "paragraph (e)(2)" is added in its place.
■ ii. In redesignated paragraph (e)(1)(ii)(C), "paragraph (d)(1)(ii)(B)" is removed and "paragraph (e)(1)(ii)(B)" is added in its place.
■ iii. In redesignated paragraph (e)(2)(iii), "paragraph (d)(1)(ii)" is removed and "paragraph (e)(1)(ii)" is added in its place.
■ iv. In redesignated paragraph (e)(2)(iii), "paragraph (f)" is removed and "paragraph (g)" is added in its place.
■ v. In redesignated paragraph (e)(3), "paragraph (d)(1)(ii)(C)" is removed and "paragraph (e)(1)(ii)(C)" is added in its place.
■ vi. In redesignated paragraph (g), "paragraph (a) through (e)" is removed and "paragraphs (a) through (f)" is added in its place.
■ vii. In redesignated paragraph (h)(1), "paragraph (g)(3)" is removed and "paragraph (h)(3)" is added in its place; and "paragraph (g)(2)(iv) and (v)" is removed and "paragraphs (h)(2)(iv) and (v)" is added in its place.
■ viii. In redesignated paragraph (h)(2) introductory text, "paragraph (g)(1)" is removed and "paragraph (h)(1)" is added in its place.
■ ix. In redesignated paragraph (h)(2)(iii)(B), "paragraph (g)(2)(iii)(A)" is removed and "paragraph (h)(2)(iii)(A)" is added in its place.
■ x. In redesignated paragraph (h)(2)(vi), "paragraph (g)(2)(v)" is removed and "paragraph (h)(2)(v)" is added in its place.
■ xi. In redesignated paragraph (h)(4), "paragraph (g)" is removed and "paragraph (h)" is added in its place; and "paragraph (g)(2)(v)" is removed and "paragraph (h)(2)(v)" is added in its place.

The additions and revisions read as follows:

§ 489.24 Special responsibilities of Medicare hospitals in emergency cases.

(a) *Applicability of provisions of this section.* (1) In the case of a hospital that has an emergency department, if an individual (whether or not eligible for Medicare benefits and regardless of ability to pay) "comes to the emergency department", as defined in paragraph (b) of this section, the hospital must—

(i) Provide an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists. The examination must be conducted by an individual(s) who is determined qualified by hospital bylaws or rules and regulations and who meets the requirements of § 482.55 of this chapter concerning emergency services personnel and direction; and

(ii) If an emergency medical condition is determined to exist, provide any necessary stabilizing treatment, as defined in paragraph (d) of this section, or an appropriate transfer as defined in paragraph (e) of this section. If the hospital admits the individual as an inpatient for further treatment, the hospital's obligation under this section ends, as specified in paragraph (d)(2) of this section.

(2) *Nonapplicability of provisions of this section.* Sanctions under this section for inappropriate transfer during a national emergency do not apply to a hospital with a dedicated emergency department located in an emergency area, as specified in section 1135(g)(1) of the Act.

(b) *Definitions.* As used in this section—

* * * * *

Comes to the emergency department means, with respect to an individual who is not a patient (as defined in this section), the individual—

(1) Has presented at a hospital's dedicated emergency department, as defined in this section, and requests examination or treatment for a medical condition, or has such a request made on his or her behalf. In the absence of such a request by or on behalf of the individual, a request on behalf of the individual will be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for a medical condition;

(2) Has presented on hospital property, as defined in this section, other than the dedicated emergency department, and requests examination or treatment for what may be an emergency medical condition, or has such a request made on his or her behalf. In the absence of such a request by or on behalf of the individual, a request on behalf of the individual will be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs emergency examination or treatment;

(3) Is in a ground or air ambulance owned and operated by the hospital for purposes of examination and treatment for a medical condition at a hospital's

dedicated emergency department, even if the ambulance is not on hospital grounds. However, an individual in an ambulance owned and operated by the hospital is not considered to have "come to the hospital's emergency department" if—

(i) The ambulance is operated under communitywide emergency medical service (EMS) protocols that direct it to transport the individual to a hospital other than the hospital that owns the ambulance; for example, to the closest appropriate facility. In this case, the individual is considered to have come to the emergency department of the hospital to which the individual is transported, at the time the individual is brought onto hospital property;

(ii) The ambulance is operated at the direction of a physician who is not employed or otherwise affiliated with the hospital that owns the ambulance; or

(4) Is in a ground or air nonhospital-owned ambulance on hospital property for presentation for examination and treatment for a medical condition at a hospital's dedicated emergency department. However, an individual in a nonhospital-owned ambulance off hospital property is not considered to have come to the hospital's emergency department, even if a member of the ambulance staff contacts the hospital by telephone or telemetry communications and informs the hospital that they want to transport the individual to the hospital for examination and treatment. The hospital may direct the ambulance to another facility if it is in "diversionary status," that is, it does not have the staff or facilities to accept any additional emergency patients. If, however, the ambulance staff disregards the hospital's diversion instructions and transports the individual onto hospital property, the individual is considered to have come to the emergency department.

Dedicated emergency department means any department or facility of the hospital, regardless of whether it is located on or off the main hospital campus, that meets at least one of the following requirements:

(1) It is licensed by the State in which it is located under applicable State law as an emergency room or emergency department;

(2) It is held out to the public (by name, posted signs, advertising, or other means) as a place that provides care for emergency medical conditions on an urgent basis without requiring a previously scheduled appointment; or

(3) During the calendar year immediately preceding the calendar year in which a determination under this section is being made, based on a representative sample of patient visits that occurred during that calendar year, it provides at least one-third of all of its outpatient visits for the treatment of emergency medical conditions on an urgent basis without requiring a previously scheduled appointment.

* * * * *

Hospital property means the entire main hospital campus as defined in § 413.65(b) of this chapter, including the parking lot, sidewalk, and driveway, but excluding other areas or structures of the hospital's main building that are not part of the hospital, such as physician offices, rural health centers, skilled nursing facilities, or other entities that participate separately under Medicare, or restaurants, shops, or other nonmedical facilities.

Hospital with an emergency department means a hospital with a dedicated emergency department as defined in this paragraph (b).

Inpatient means an individual who is admitted to a hospital for bed occupancy for purposes of receiving inpatient hospital services as described in § 409.10(a) of this chapter with the expectation that he or she will remain at least overnight and occupy a bed even though the situation later develops that the individual can be discharged or transferred to another hospital and does not actually use a hospital bed overnight.

* * * * *

Patient means—

(1) An individual who has begun to receive outpatient services as part of an encounter, as defined in § 410.2 of this chapter, other than an encounter that the hospital is obligated by this section to provide;

(2) An individual who has been admitted as an inpatient, as defined in this section.

* * * * *

(c) *Use of dedicated emergency department for nonemergency services.* If an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition.

(d) *Necessary stabilizing treatment for emergency medical conditions.*—(1) *General.* Subject to the provisions of paragraph (d)(2) of this section, if any individual (whether or not eligible for Medicare benefits) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

(i) Within the capabilities of the staff and facilities available at the hospital, for further medical examination and treatment as required to stabilize the medical condition.

(ii) For transfer of the individual to another medical facility in accordance with paragraph (e) of this section.

(2) *Exception: Application to inpatients.* (i) If a hospital has screened an individual under paragraph (a) of this section and found the individual to have an emergency medical condition, and admits that individual as an inpatient in good faith in order to stabilize the emergency medical condition, the hospital has satisfied its special responsibilities under this section with respect to that individual.

(ii) This section is not applicable to an inpatient who was admitted for elective (nonemergency) diagnosis or treatment.

(iii) A hospital is required by the conditions of participation for hospitals under Part 482 of this chapter to provide care to its inpatients in accordance with those conditions of participation.

(3) *Refusal to consent to treatment.* A hospital meets the requirements of paragraph (d)(1)(i) of this section with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of the examination and treatment, but the individual (or a person acting on the individual's behalf) does not consent to the examination or treatment. The medical record must contain a description of the examination, treatment, or both if applicable, that was refused by or on behalf of the individual. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of the person acting on his or her behalf). The written document should indicate that the person has been informed of the risks and benefits of the examination or treatment, or both.

(4) *Delay in examination or treatment.*

(i) A participating hospital may not delay providing an appropriate medical screening examination required under paragraph (a) of this section or further medical examination and treatment required under paragraph (d)(1) of this section in order to inquire about the individual's method of payment or insurance status.

(ii) A participating hospital may not seek, or direct an individual to seek, authorization from the individual's insurance company for screening or stabilization services to be furnished by a hospital, physician, or nonphysician practitioner to an individual until after the hospital has provided the appropriate medical screening examination required under paragraph (a) of this section, and initiated any further medical examination and treatment that may be required to stabilize the emergency medical condition under paragraph (d)(1) of this section.

(iii) An emergency physician or nonphysician practitioner is not precluded from contacting the individual's physician at any time to seek advice regarding the individual's medical history and needs that may be relevant to the medical treatment and screening of the patient, as long as this consultation does not inappropriately delay services required under paragraph (a) or paragraphs (d)(1) and (d)(2) of this section.

(iv) Hospitals may follow reasonable registration processes for individuals for whom examination or treatment is required by this section, including asking whether an individual is insured and, if so, what that insurance is, as long as that inquiry does not delay screening or treatment. Reasonable registration processes may not unduly discourage individuals from remaining for further evaluation.

(5) *Refusal to consent to transfer.* A hospital meets the requirements of paragraph (d)(1)(ii) of this section with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with paragraph (e) of this section and informs the individual (or a person acting on his or her behalf) of the risks and benefits to the individual of the transfer, but the individual (or a person acting on the individual's behalf) does not consent to the transfer. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of a person acting on his or her behalf). The written document must indicate the person has been informed of the risks and benefits of the transfer and state the reasons for the individual's refusal. The medical record must contain a description of the proposed transfer that was refused by or on behalf of the individual.

* * * * *

(j) *Availability of on-call physicians.* (1) Each hospital must maintain an on-call list of physicians on its medical staff in a manner that best meets the needs of the hospital's patients who are receiving services required under this section in accordance with the resources available to the hospital, including the availability of on-call physicians.

(2) The hospital must have written policies and procedures in place—

(i) To respond to situations in which a particular specialty is not available or the on-call physician cannot respond because of circumstances beyond the physician's control; and

(ii) To provide that emergency services are available to meet the needs of patients with emergency medical conditions if it elects to permit on-call physicians to schedule elective surgery during the time that they are on call or to permit on-call physicians to have simultaneous on-call duties.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: April 3, 2003.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: June 27, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–22594 Filed 8–29–03; 4:44 pm]

BILLING CODE 4120–01–P

Federal Register

Tuesday,
September 9, 2003

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

Medicare Program; Changes to the Criteria for Being Classified as an Inpatient Rehabilitation Facility; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 412

[CMS–1262–P]

RIN 0938–AM72

Medicare Program; Changes to the Criteria for Being Classified as an Inpatient Rehabilitation Facility

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the classification criterion, commonly known as the "75 percent rule," used to classify a hospital as an inpatient rehabilitation facility (IRF). This proposed rule would also modify and expand the medical conditions listed in the 75 percent rule regulatory requirements as well as lower the percentage of patients required to fall within one of the specified list of medical criteria.

DATES: We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 3, 2003.

ADDRESSES: In commenting, please refer to file code CMS–1262–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission or e-mail. Mail written comments (one original and two copies) to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1262–P, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be timely received in the event of delivery delays.

If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–14–03, 7500 Security Boulevard, Baltimore, MD 21244–1850. (Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and could be considered late. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Robert Kuhl, (410) 786–4597; or Pete Diaz, (410) 786–1235; or Nora Hoban, (410) 786–0675.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 (or toll-free at 1–888–293–6498) or by faxing to (202) 512–2250. The cost for each copy is $10. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Condition for Classification as an IRF

Background

A. Overview of the Inpatient Rehabilitation Facility Prospective Payment System

Section 1886(j) of the Social Security Act (the Act) provides for the implementation of a prospective payment system (PPS) under Medicare for inpatient hospital services furnished by a rehabilitation hospital or a rehabilitation unit of a hospital (referred to as an inpatient rehabilitation facility (IRF)). Sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act give the Secretary the discretion to define a rehabilitation hospital and unit. The regulations at 42 CFR 412.23(b), 412.25, and 412.29, specify the criteria for a provider to be classified as a rehabilitation hospital or rehabilitation unit. Hospitals and units meeting those criteria are eligible to be paid on a prospective payment basis as an IRF under the IRF PPS.

Payments made under the IRF PPS cover inpatient operating and capital costs of furnishing covered intensive rehabilitation services (that is, routine, ancillary, and capital costs), but do not cover costs of approved educational activities, bad debts, and other services or items outside the scope of the IRF PPS. Covered intensive rehabilitation services include services for which benefits are provided under Medicare Part A (Hospital Insurance).

Payments under the IRF PPS are made on a per discharge basis. A patient classification system is used to assign patients in IRFs into case-mix groups (CMGs). The IRF PPS uses Federal prospective payment rates across distinct CMGs. We construct a majority of the CMGs using rehabilitation impairment categories (RICs), functional status (both motor and cognitive), and age (though some CMGs do not use cognitive status or age in their definition). We construct special CMGs to account for very short stays and for patients who expire during the IRF stay.

For each CMG, we develop relative weighting factors to account for a patient's clinical characteristics and expected resource consumption. Thus, the weighting factors account for the relative difference in resource use across all CMGs. Within each CMG, the weighting factors are "tiered" based on the estimated effect that the comorbidities from appendix C of the August 7, 2001 final rule (66 FR 41414) have on resource use.

The Federal prospective payment rates are established using a standard payment amount (also referred to as the budget neutral conversion factor). For each of the tiers within a CMG, we apply the relative weighting factors to the budget neutral conversion factor to compute the unadjusted Federal prospective payment rates.

Adjustments that account for geographic variations in wages (wage index), for the percentage of low-income patients, and for facilities located in a rural area are applied to the unadjusted Federal prospective payment rates. In addition, adjustments are made for early transfers of patients to other facilities, interrupted stays, and high-cost outliers (cases with usually extraordinarily high costs).

The regulations implementing the IRF PPS provisions are presently in 42 CFR part 412, subpart P. Regulations governing the requirements for classification of hospitals as IRFs are located in § 412.22, § 412.23, § 412.25, and § 412.29. Section 412.23(b)(2) is commonly known as the "75 percent

rule" and specifies one of the criteria Medicare uses for classifying a hospital or unit of a hospital as an IRF. This regulation provides that during its most recent cost reporting period 75 percent of an IRF's total patient population required intensive rehabilitation services for treatment of one or more of the medical conditions specified in § 412.23(b)(2).

For a more complete discussion of the development of the IRF PPS see our August 7, 2001 final rule (66 FR 41316). We also have established a CMS website that contains useful information regarding the IRF PPS. The website URL is *http://www.cms.hhs.gov/providers/irfpps/default.asp* and may be accessed to download or view publications, software, and other information pertinent to the IRF PPS.

B. Recent Developments on the 75 Percent Rule

1. May 2003 Proposed Rule

On May 16, 2003, we published a proposed rule titled "Medicare Program; Changes to the Inpatient Rehabilitation Facility Prospective Payment System and Fiscal Year 2004 Rates" in the **Federal Register** (68 FR 26786) to propose updates to the IRF Federal prospective payment rates for FY 2004, to be effective for discharges occurring on or after October 1, 2003 and before October 1, 2004. We published the final rule on August 1, 2003 (68 FR 45674). The final rule specified the comments we received in response to our proposed policies and the final regulations regarding the proposed update to IRF PPS for FY 2004.

In the May 16, 2003 proposed rule, we solicited public comments on the regulatory requirements in § 412.23(b)(2). As stated previously and discussed more fully in section I.B.2. of this preamble, § 412.23(b)(2) provides that the requirements of 75 percent rule be met for a provider to be classified as an IRF. On May 19, 2003, we held a Town Hall meeting at our headquarters in Baltimore, MD, in which views regarding all aspects of the IRF PPS could be expressed. Hundreds of people participated in the Town Hall meeting either by attending at CMS headquarters or by a conference call. Most of the participants, however, limited their testimony to the 75 percent rule.

In response to the May 16, 2003 proposed rule, we received over 6,000 timely public comments regarding the regulatory requirements in § 412.23(b)(2). The primary issues discussed during the Town Hall meeting and in the public comments are summarized as follows:

- The regulatory requirement specifying the 10 medical conditions contained in § 412.23(b)(2) should be repealed or amended.
- The 10 medical conditions specified in § 412.23(b)(2) do not adequately reflect current care in IRFs.
- The medical conditions specified in § 412.23(b)(2) have not been updated in 20 years and should be revised or re-written to include other diagnoses.
- Some of the medical conditions specified in § 412.23(b)(2) are vague; they have little clinical relevance; and are inconsistently interpreted by our fiscal intermediaries who are charged with enforcing the 75 percent rule.
- CMS administrative data indicate most IRFs are not in compliance with § 412.23(b)(2).
- Classification as an IRF should be based on 20 of the 21 RICs.
- Enforcement of the rule could force many IRFs to close.
- Enforcement of the rule limits access to care.
- Treatment in other rehabilitation treatment settings is inferior to treatment furnished in an IRF.

In the May 16, 2003 proposed rule, we did not propose amending the regulatory requirements in § 412.23(b)(2). In this proposed rule, we are proposing amending the requirements in § 412.23(b)(2) as discussed in section II of the preamble.

2. Classification as an IRF Under the 75 Percent Rule

As stated in the August 7, 2001 final rule, we did not change the survey and certification procedures for classification as an IRF. Currently, a hospital or unit of a hospital must first be deemed excluded from the diagnosis-related group (DRG)-based acute care hospital PPS to be paid under the IRF PPS and must meet the general requirements in subpart B of part 412. Secondly, the excluded hospital or unit of the hospital must meet the conditions for payment under the IRF PPS at § 412.604. As specified at § 412.604(b), a provider, among other things, must be in compliance with all the criteria specified in § 412.23(b) to be classified as an IRF.

Under § 412.23(b)(2) of the existing regulations, a facility may be classified as an IRF if it can show that, during its most recent 12-month cost reporting period, it served an inpatient population of whom at least 75 percent required intensive rehabilitation services for the treatment of one or more of the following conditions:

- Stroke.
- Spinal cord injury.
- Congenital deformity.
- Amputation.
- Major multiple trauma.
- Fracture of femur (hip fracture).
- Brain injury.
- Polyarthritis, including rheumatoid arthritis.
- Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.
- Burns.

C. Statutory and Regulatory Background on the 75 Percent Rule

We initially stipulated the "75 percent" requirement in the September 1, 1983, interim final rule with comment period entitled "Medicare Program; Prospective Payments for Medicare Inpatient Hospital Services" (48 FR 39752). That interim final rule implemented the Social Security Amendments of 1983 (Pub. L. 98–21), changing the method of payment for inpatient hospital services from a cost-based, retrospective reimbursement system to a diagnosis-specific inpatient PPS. However, the rule stipulated that, in accordance with sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act, both a rehabilitation unit, which is a distinct part of a hospital, and a rehabilitation hospital would be excluded from the IPPS. We noted that sections 1886(d)(1)(B) and 1886(d)(1)(B)(ii) of the Act also gave the Secretary broad discretion to define a "rehabilitation unit" and a "rehabilitation hospital."

We consulted with the Joint Commission on Accreditation of Hospitals (JCAH), and other accrediting organizations (JCAH is currently known as the Joint Commission on Accreditation of Healthcare Organizations (JCAHO)) to define a rehabilitation hospital. The criteria we included in our definition of a rehabilitation hospital incorporated some of the accreditation requirements of these organizations. The definition also included other criteria, which we believed distinguished a rehabilitation hospital from a hospital that furnished general medical and surgical services as well as some rehabilitation services. One criterion was that "The hospital must be primarily engaged in furnishing intensive rehabilitation services as demonstrated by patient medical records showing that, during the hospital's most recently completed 12-month cost reporting period, at least 75 percent of the hospital's inpatients were treated for one or more conditions specified in these regulations that typically require intensive inpatient rehabilitation" (48 FR 39756). This requirement was originally specified in

§ 405.471(c)(2)(ii). We included this requirement, as a defining feature of a rehabilitation hospital, because we believed "that examining the types of conditions for which a hospital's inpatients are treated, and the proportion of patients treated for conditions that typically require intensive inpatient rehabilitation, will help distinguish those hospitals in which the provisions of rehabilitation services is a primary, rather than a secondary, goal" (48 FR 39756). Likewise, the 75 percent rule was a criterion for a rehabilitation unit.

The original medical conditions specified in § 405.471(c)(2)(ii) were stroke, spinal cord injury, congenital deformity, amputation, major multiple trauma, fracture of femur (hip fracture), brain injury, and polyarthritis, including rheumatoid arthritis. This list of eight medical conditions was partly based upon the information contained in a document entitled "Sample Screening Criteria for Review of Admissions to Comprehensive Medical Rehabilitation Hospitals/Units." This document was a product of the Committee on Rehabilitation Criteria for the Professional Standards Review Organization of the American Academy of Physical Medicine and Rehabilitation and the American Congress of Rehabilitation Medicine. In addition, we received input from the National Association of Rehabilitation Facilities and the American Hospital Association. The requirement that 75 percent of an IRF's patient population must have one or more of the medical conditions listed in the regulation was due to the finding that the listed medical conditions accounted for approximately 75 percent of the admissions to IRFs at the time.

On January 3, 1984, we published a final rule entitled "Medicare Program; Prospective Payment for Medicare Inpatient Hospital Services" (49 FR 234). On page 240 of that final rule, we summarized comments that requested inclusion of neurological disorders, burns, chronic pain, pulmonary disorders, and cardiac disorders in the list of medical conditions under the 75 percent rule. Our analysis of these comments led us to agree that neurological disorders (including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease) and burns should be added to the original list of eight medical conditions under the 75 percent rule (49 FR 240). We did not agree with comments that we lower from 75 to 60 the percentage of patients that must meet one of the medical conditions. Nor did we agree with comments urging us to use IRF resource consumption, instead of a percentage of patients that must have one or more of the specified medical conditions, to help define what is an IRF (49 FR 239–240). We also rejected suggestions that when an IRF could not meet the 75 percent rule, the facility should still be defined as an IRF based on the types of services it furnished.

On August 31, 1984, we published a final rule entitled "Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1985 Rates" (49 FR 34728). In that rule, we explained how the 75 percent rule applied to a new rehabilitation unit or rehabilitation hospital or to an increase in beds of an existing rehabilitation unit.

On March 29, 1985, we published a final rule entitled "Medicare Program; Prospective Payment System for Hospital Inpatient Services; Redesignation of Rules" (50 FR 12740). That rule redesignated provisions of § 405.471 that addressed the 75 percent rule as provisions under § 412.23.

On August 30, 1991, we published a final rule entitled "Medicare Program; Changes to the Inpatient Hospital Prospective Payment System and Fiscal Year 1992 Rates" (56 FR 43196). Since October 1, 1983, the regulations allowed a new rehabilitation hospital or a new rehabilitation unit, or an existing excluded rehabilitation unit that was to be expanded by the addition of new beds, to be excluded from the hospital inpatient PPS if, in addition to meeting other requirements, it submitted a written certification that during its first cost reporting period it would be in compliance with the 75 percent rule. The August 30, 1991, rule specified that, if these facilities were later found to have not complied with the 75 percent rule, we would determine the amount of actual payment under the exclusion, compute what we would have paid for the facility's services to Medicare patients under the IPPS, and recover any difference in accordance with the rules on the recoupment of overpayments.

On September 1, 1992, we published a final rule entitled "Medicare Program; Changes to Hospital Inpatient Prospective Payment Systems and Fiscal Year 1993 Rates" (57 FR 39746). In the rule, we acknowledged that, for various reasons, a new rehabilitation hospital or a new rehabilitation unit might need to begin operations at some time other than at the start of its regular cost reporting period. Therefore, we specified that an IRF could submit a written certification that it would comply with the 75 percent rule for both a partial cost reporting period of up to 11 months and the subsequent full 12-month cost reporting period.

On September 1, 1994, we published a final rule entitled "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and FY 1995 Rates" (59 FR 45330). In that final rule, we stated that we had miscellaneous comments requesting that oncology cases, pulmonary disorders, cardiac disorders, and chronic pain be added to the list of medical conditions under the 75 percent rule (59 FR 45393). We responded that, although the 75 percent rule had not been addressed in the associated May 27, 1994, proposed rule, we would take these miscellaneous comments into consideration if we decided to make changes to the 75 percent rule.

When we published the August 7, 2001 final rule (66 FR 41316), we acknowledged we had received comments requesting that we update the list of medical conditions specified in § 412.23(b)(2) or eliminate the regulation (66 FR 41321). We responded that in the November 3, 2000 IRF PPS proposed rule, we had not proposed amending the requirements in § 412.23(b)(2), and we believed the existing regulation was appropriate and, therefore, we would not be revising the requirements in § 412.23(b)(2). However, we also stated that data obtained after we implemented the IRF PPS could lead us to reconsider amending the requirements in § 412.23(b)(2).

D. CMS Evaluation of Compliance With the 75 Percent Rule Regulatory Requirements in § 412.23(b)(2)

In the spring of 2002, we surveyed the Medicare fiscal intermediaries (FIs) in order to ascertain what methods were being used to verify whether IRFs were complying with the requirements in § 412.23(b)(2). Analysis of the survey data made us aware that inconsistent methods were being used to determine whether an IRF was in compliance with the regulation. Also, some IRFs were not being reviewed to determine whether they were in compliance with the regulation. These survey results led us to become concerned that some IRFs may be out of compliance with the regulation and inappropriately classified as an IRF. In addition, we were concerned that some FIs might be using different methods to verify compliance with the requirements in § 412.23(b)(2). This practice may have resulted in an IRF being incorrectly considered out of compliance with the regulation. Thus, this practice had the potential to cause an IRF to inappropriately lose its classification as

an IRF. Therefore, on June 7, 2002, we suspended enforcement of the regulatory requirements § 412.23(b)(2) until we conducted a careful examination of this area and determined whether the regulation should be changed and the operating procedures to verify compliance with the regulation.

In addition to our review of the administrative procedures used by our FIs, we conducted an analysis of CMS administrative data to attempt to estimate overall compliance with the regulation. We examined both the inpatient rehabilitation facility-patient assessment instrument (IRF–PAI) data and claims from the years 1998, 1999, and 2002. The patient assessment data was from January to August of 2002. We estimated that the percent of facilities with 75 percent of cases falling into the 10 conditions was 13.35 percent. We note that the analysis has a number of limitations. For example, it is not possible to discern from the diagnosis data on IRF–PAI or the claim whether there was a medical need to furnish the patient "intensive rehabilitation." The diagnosis describes only some aspects of a patient's clinical status, but the diagnosis alone does not determine the medical necessity of treating a patient in an IRF as opposed to another type of treatment setting. In addition, all the information necessary to classify a case under 1 of the 10 conditions may not be present on the claim (for example, polyarthritis).

In the May 16, 2003 proposed rule, we indicated that we would be instructing FIs to re-institute appropriate enforcement action if they were to determine that an IRF has not complied with the requirements in § 412.23(b)(2). We realize that an IRF may need time to come into compliance with the regulation. An IRF's cost reporting period is the time period used to ascertain compliance with the requirements in § 412.23(b)(2). Therefore, we indicated that we were instructing the FIs that they must use cost reporting periods that begin on or after October 1, 2003, as the time period to ascertain an IRF's compliance with the requirements in § 412.23(b)(2). While in the May 16, 2003 proposed rule, we did not propose changes to § 412.23(b)(2), we indicated that we expect that improved enforcement and compliance with the existing rule will have varying impacts on providers and beneficiaries.

In the May 16, 2003 proposed rule, we indicated that while it is difficult to predict the aggregate impact of improved compliance on provider payments, we expect that IRFs or their parent hospitals, or both (80 percent of IRFs are units of acute care hospitals), will change their behavior in a variety of ways. IRFs may change admission practices to alter their case-mix, either Medicare or total patient population, by admitting patients with more intensive rehabilitative needs that fall into the 10 conditions. This practice could have the effect of elevating the facility's revenues because cases requiring more intensive rehabilitation care generally receive higher Medicare payments than less complex cases. On the other hand, enforcement of the 75 percent rule may cause some IRFs to reduce the number of beds and/or reduce the number of admissions that may result in a reduction of the facility's revenues.

The existing regulation reflects the fact that up to 25 percent of medically necessary admissions may fall outside of the 10 conditions. These cases can continue to be admitted and treated under the regulation. Other cases may appropriately receive rehabilitative care in alternative settings. For certain medically complex cases, it may be appropriate to lengthen the patient's stay in an acute care setting in order to stabilize his or her condition to prepare the patient to participate in rehabilitation. Alternative settings for rehabilitative care could include the acute care hospital, skilled nursing facilities, long-term care hospitals, outpatient rehabilitation facilities, and home health care. For this reason, we did not expect to see reduced access to care for Medicare beneficiaries as a result of improved compliance. In addition, because many hospitals having a Medicare certified IRF unit also have one or more other subunits that provide rehabilitation, revenues from these cases may be generated elsewhere within the same hospital.

As noted above, on June 7, 2002, we suspended enforcement of the 75 percent rule under § 412.23(b)(2). We accomplished the suspension of enforcement by the issuance of instructions to the FIs and, therefore, it was a method that was administrative and operational. The suspension of enforcement was communicated to the IRFs by CMS Regional Offices, the FIs, or other means such as regular telephone conferences between CMS and providers. Although the May 16, 2003 proposed rule stated that we would be re-instituting enforcement of § 412.23(b)(2) for cost reporting periods that start on or after October 1, 2003, we decided to revisit this issue due to the extensive public comments received on this issue. We are now proposing to amend § 412.23(b)(2) in this proposed rule. Therefore, we will not be re-instituting enforcement of the regulation for cost reporting periods beginning on or after October 1, 2003 as stated in the May 16, 2003 proposed rule. Instead, we are now proposing that the proposed amendments in § 412.23(b)(2) would be applicable to cost reporting periods that start on or after the effective date specified in the final rule that will be published subsequent to this proposed rule. We anticipate that the effective date of the final rule would be January 1, 2004.

The intent of the policy specified at § 412.23(b)(2), and of other policy criteria for IRFs, is to ensure that these facilities are unique compared to other hospitals in that they provide intensive rehabilitative services in an inpatient setting. The uniqueness of these facilities is the justification for paying them under a separate payment system rather than paying them with the same payment system for acute care inpatient PPS. We believe it is crucial that Medicare maintain criteria to ensure that only facilities providing intensive rehabilitation are identified as IRFs so that services are paid appropriately under the IRF PPS. In addition, we believe it is imperative to identify conditions that would "typically require intensive inpatient rehabilitation" in IRFs because rehabilitation in general can be delivered in a variety of settings such as acute care hospitals, skilled nursing facilities, and outpatient settings.

II. Provisions of the Proposed Rule

For the reasons set forth in the preamble, in section II.A., we are proposing in § 412.23(b)(2) "Excluded hospitals: Classifications," to remove the reference to "75 percent." We are proposing a new § 412.23(b)(2)(i) that specifies for cost reporting periods beginning on or after January 1, 2004 and before January 1, 2007, the hospital has served an inpatient population of whom at least 65 percent required intensive rehabilitative services for treatment of one or more of the conditions specified at paragraph (b)(2)(iii) of this section. A patient with a comorbidity, as defined at § 412.602, may be included in the inpatient population that counts towards the required 65 percent if—

- The patient is admitted for inpatient rehabilitation for a condition that is not one of the conditions specified at paragraph (b)(2)(iii) of this section;
- The patient has a comorbidity that falls in one of the conditions specified at paragraph (b)(2)(iii) of this section; and

• The comorbidity has caused significant functional ability decline in the individual such that, even in the absence of the admitting condition, the individual would require the intensive rehabilitation treatment that is unique to inpatient rehabilitation facilities paid under subpart P of this part and which cannot be appropriately performed in another care setting covered under this title.

We are also proposing a new § 412.23(b)(2)(ii) that specifies for cost reporting periods beginning on or after January 1, 2007, the hospital has served an inpatient population of whom at least 75 percent required intensive rehabilitative services for treatment of one or more of the conditions specified at paragraph (b)(2)(iii) of this section.

In proposed § 412.23(b)(2)(iii), we are proposing to retain the existing conditions except for polyarthritis, which we are proposing to replace with the following three new conditions:

• Active, polyarticular rheumatoid arthritis, psoriatic arthritis, and seronegative arthropathies resulting in significant functional impairment of ambulation and other activities of daily living, which has not improved after an appropriate, aggressive, and sustained course of outpatient therapy services or services in other less intensive rehabilitation settings immediately preceding the inpatient rehabilitation admission or which results from a systemic disease activation immediately before admission, but has the potential to improve with more intensive rehabilitation.

• Systemic vasculidities with joint inflammation, resulting in significant functional impairment of ambulation and other activities of daily living, which has not improved after an appropriate, aggressive, and sustained course of outpatient therapy services or services in other less intensive rehabilitation settings immediately preceding the inpatient rehabilitation admission or which results from a systemic disease activation immediately before admission, but has the potential to improve with more intensive rehabilitation.

• Severe or advanced osteoarthritis (osteoarthrosis or degenerative joint disease) involving three or more major joints (elbow, shoulders, hips, or knees) with joint deformity and substantial loss of range of motion, atrophy, significant functional impairment of ambulation and other activities of daily living, which has not improved after an appropriate, aggressive, and sustained course of outpatient therapy services or services in other less intensive rehabilitation settings immediately preceding the inpatient rehabilitation admission but has the potential to improve with more intensive rehabilitation. (A joint replaced by a prosthesis no longer is considered to have osteoarthritis, or other arthritis, even though this condition was the reason for the joint replacement.)

Furthermore, in section II.C., we are proposing the possible use of comorbidities to verify compliance with proposed § 412.23(b)(2).

We are also proposing to phase-out the reduction from 75 percent to 65 percent and the use of commorbities to verify compliance, as discussed in section II.D., on January 1, 2007 with the intention of using data acquired and analysis performed during this period to revise the rule, if necessary, prior to the phase-out date. Lastly, in section II.E., we are proposing to change the time period used to determine compliance with the proposed 65 percent rule.

A. Change of the Percentage of the Inpatient Population

Under proposed § 412.23(b)(2)(i), we are proposing, starting with the effective date of the final rule and subject to the proposed phase-out provision discussed in section II.D., to change the percentage of the total IRF patient population used as a criterion to distinguish an IRF from an acute care hospital from 75 percent to 65 percent.

We recognize that rehabilitation practice may have changed since we developed the original list of conditions. We are, however, concerned that in some cases, patients may have been transferred inappropriately from the inpatient setting and, thus, these inappropriate responses may be responsible for some of these changes in rehabilitation practice rather than medical advances.

We believe that the list of medical conditions we are proposing in this rule identifies patients who typically can benefit from the type of intensive inpatient rehabilitation services provided by IRFs. We do, however, recognize that there may be certain atypical patients admitted for other conditions who may be appropriate for care in an IRF. As a precaution to mitigate any unintended effects on access to care while we perform the analysis discussed in section II.D, we are proposing to lower the percentage of cases to 65 percent. We welcome the development and presentation of objective evidence that shows the type of patients most appropriately treated in the IRF setting, compared to other settings.

As reflected in both the present and now proposed policies, we do not believe it is necessary that an IRF must treat patients only with the medical conditions listed in proposed § 412.23(b)(2)(iii) to distinguish it from other inpatient settings as an inpatient hospital setting that is primarily engaged in furnishing intensive rehabilitation services. Patients may have a variety of medical conditions that require rehabilitation treatment and the rehabilitation treatment may be furnished by a variety of rehabilitation programs. However, while an IRF is one of the settings that is available to furnish rehabilitation, it may not be the most appropriate setting to treat a medical condition not listed in proposed § 412.23(b)(2)(iii).

Patients with the medical conditions not listed in proposed § 412.23(b)(2)(iii) have always had, and will continue to have, rehabilitation programs in IRFs and other settings available to them that we believe can furnish the type of treatment that is commensurate to the need they have for rehabilitation. While being a prudent purchaser of health care services for Medicare beneficiaries is an important factor, the most important determination is which rehabilitation program is the most appropriate in relation to the patient's medical condition and rehabilitation needs, that is, the rehabilitation services furnished by the most appropriate rehabilitation program.

Although the previous analysis of impairment group and diagnoses data from the IRF–PAI suggests that IRFs are treating a patient population with more than 35 percent of cases with medical conditions other than those specified in proposed § 412.23(b)(2)(iii), this does not in and of itself provide evidence that the IRF is the most appropriate rehabilitation treatment modality for these patients. We welcome evidence or studies demonstrating that patients with medical conditions not included in proposed § 412.23(b)(2)(iii) generally require intensive inpatient rehabilitation and have better outcomes compared to other settings.

Although there may have been "medical advances" in rehabilitation or at least changes in practice patterns since the medical conditions listed at proposed § 412.23(b)(2)(iii) were developed, it is not clear that there is evidence supporting a clinical basis for these changes. Instead, in some cases, patients may have been transferred inappropriately from the inpatient setting which may have played a major role in changing practice patterns and in deciding which patients are admitted to IRFs. We note that the general trend has been the migration of care from the acute inpatient hospital setting to

another treatment setting. However, we recognize that the conditions listed in proposed § 412.23(b)(2)(iii) describe groups of patients who typically require intensive inpatient rehabilitation. To allow IRFs to care for some atypical patients who require intensive inpatient rehabilitation and still maintain their status as an IRF, we would allow the percentage of cases in the conditions specified in proposed § 412.23(b)(2)(iii) to be lowered to 65 percent. As part of our ongoing analysis described in section II.D., we would both periodically monitor the literature and analyze the data obtained from assessments of beneficiaries to, determine whether it would be appropriate to modify any of the conditions that are listed in proposed § 412.23(b)(2)(iii).

Various commenters have suggested that we add cancer, cardiac, pulmonary, and pain to the list of conditions defining IRFs. We note that patients with cancer affecting the brain and spinal cord may be considered under the proposed clarification of the existing conditions to have non-traumatic brain or spinal cord injuries and can be counted in defining IRFs.

As has been commented on in the past, the result of adding cancer, cardiac, pulmonary, and pain conditions would be that almost all patients admitted to acute hospitals would qualify as being the types of patients that would be used to distinguish IRFs from acute care hospitals. Furthermore, we have seen no studies that demonstrate that patients from these categories have improved outcomes when cared for in IRFs as compared to other settings. We have reviewed studies that show that cardiac and pulmonary patients improve when treated in IRFs, but none of the studies provided evidence that the improvement required the unique characteristics of IRFs and compared the improvements of equivalent patients in other settings.

We continue to believe it is the total patient population that should determine whether a facility is classified as an IRF. This is the best indication that a facility (as a whole) is primarily engaged in furnishing intensive rehabilitation services. For a provider to be primarily engaged in furnishing intensive rehabilitation services implies that it is furnishing these services to its entire patient population. Therefore, we believe it is appropriate for Medicare to continue to use the entire IRF patient population as one of the criteria used to classify a facility as an IRF. This approach is part of CMS' existing policy that we plan to maintain.

In proposing 65 percent of an IRF's total patient population to determine compliance with proposed § 412.23(b)(2)(i) we still wanted to find methods of verification for the FIs that were not difficult operationally to automate. RAND's analysis of IRF compliance with existing requirements at § 412.23(b)(2) found that Medicare cases were highly predictive of the percentage of an IRF's total patient population with respect to the medical conditions specified in the regulation. We plan to instruct the FIs to initially utilize a presumptive eligibility test that uses Medicare data to assess compliance with proposed § 412.23(b)(2)(i). However, if an IRF appears to comply with proposed § 412.23(b)(2)(i) using only Medicare data, we may still consider other available information before making a final compliance determination. If the IRF does not comply with proposed § 412.23(b)(2)(i) based on the presumptive eligibility test that uses Medicare data, we would consider the IRF's total case-mix. In any case, we expect individual IRFs to notify their FI if the IRF believes that its Medicare population is not wholly representative of the total facility patient population. We believe that the compliance verification method described above offers Medicare adequate program protection and may reduce the burden on IRFs and the FIs related to enforcement of proposed § 412.23(b)(2)(i).

B. Change in the Medical Conditions

As noted in the May 16, 2003 proposed rule, we were concerned that some FIs inappropriately were using methods to verify compliance with the 75 percent rule. These inappropriate methods included incorrectly interpreting which patient diagnoses met the medical conditions listed in the 75 percent rule.

As in the present policies under the proposed IRF–PPS policies, Medicare will pay for the services an IRF furnishes to some patients who have a medical need for intensive inpatient rehabilitation services but do not have one of the medical conditions specified in proposed § 412.23(b)(2)(iii). The medical conditions specified in proposed § 412.23(b)(2)(iii) are used to determine whether a facility qualifies as an IRF and, thus, may be paid under the IRF PPS. However, the criteria for admission of any individual patient is based upon medical necessity; as a result, some patients with conditions listed in proposed § 412.23(b)(2)(iii) may still not meet the medical necessity criteria. Providers also have discretion over which patients are admitted, so we believe an IRF can manage its case-mix and, thus, ensure that its patient population during a cost reporting period would allow it to achieve compliance with proposed § 412.23(b)(2)(i).

We recognize, however, that one of the listed conditions in the existing regulation at § 412.23(b)(2), specifically polyarthritis, has been a source of confusion and is acknowledged by many not to represent any clearly defined clinical condition. We are proposing to remove this term from the list of 10 conditions and substitute instead 3 more clearly defined arthritis-related conditions, as specified above in the introduction to section II of this preamble, that comprise the range of diagnoses that the term "polyarthritis" was intended to encompass. This clarification was developed in part from information gathered from experts in rheumatology and rehabilitation as well as a review of the literature. We are proposing to adopt in § 412.23(b)(2)(iii) the other conditions currently listed in § 412.23(b)(2) because we believe these other conditions are the most appropriate conditions for treatment in an IRF. We are limiting the conditions to those that are sufficiently severe and in which intensive inpatient rehabilitation may be an appropriate modality of treatment. Although we acknowledge that "arthritis" may affect joints other than those specified (shoulders, elbows, hips and knees), such as those in the hands or spine, we do not believe these conditions require intensive rehabilitation care. Thus, we are limiting the focus to conditions that more commonly require intensive inpatient rehabilitation treatment. For this reason, conditions other than the types specified in this proposed rule are not included in the identified conditions to be listed in proposed § 412.23(b)(2)(iii). If a patient has a type of "arthritis" not included in the proposed conditions that we described earlier in this section then that patient would be included in the percent of cases that IRFs can admit which are not included in the proposed 65 percent of the proposed § 412.23(b)(2)(iii) conditions (assuming the care is medically necessary).

We acknowledge that the industry has interpreted polyarthritis to include hip and knee joint replacement cases and these should be included in the conditions counted in existing § 412.23(b)(2). Although some joint replacement cases are currently being treated in IRFs, we are not aware of any research that identifies the factors determining which patients are more appropriately treated in the intensive

inpatient rehabilitation setting provided in an IRF. Although it has been asserted that patients at risk for thrombosis, pressure ulcers, or infections should be treated in IRFs, all hip and knee joint replacement patients are at risk for those conditions. Likewise the presence of comorbidities such as diabetes and hypertension are common conditions that can generally be managed in the outpatient setting. We believe that there have been strong reimbursement incentives to send patients to IRFs and that these considerations have influenced the choice of setting for patients' care. We welcome data or studies that might provide evidence about whether certain patients had better outcomes as a result of care in IRFs.

We are also aware of proposals from the public that Medicare should count cases with lower functional status in RICs for joint replacement, cardiac, osteoarthritis, and pulmonary as cases that meet proposed § 412.23(b)(2)(iii). We are not proposing such a policy because the lower score of function on admission does not generally reflect a need for intensive inpatient rehabilitation services for patients with these medical conditions. Some patients may improve without rehabilitation, and others may not have the capability to improve even with rehabilitation.

We believe other conditions listed in proposed § 412.23(b)(2)(iii) also need to be clarified. The categories of brain and spinal cord injuries could appropriately be defined to include neoplasms of the brain, spinal cord, or meninges that result in substantial functional deficits as non-traumatic brain injuries and non-traumatic spinal cord injuries, since the course of rehabilitation for these conditions is very similar to the rehabilitation for other brain or spinal cord injuries. Although patients presenting with these conditions are currently paid under RIC 20, we believe that these patients can be counted towards the categories of cases listed in proposed § 412.23(b)(2)(iii) and invite comments of our interpretation.

Another category described in proposed § 412.23(b)(2)(iii) that requires clarification is major multiple trauma. Our contractors have noticed that some patients with relatively minor injuries at times are counted as having this condition. To clarify which patients should be counted, the IRF can determine if the acute care hospital service for a patient at the time of the initial injury was identified by diagnosis-related groups 484, 485, 486, or 487. We recognize that not all patients whose acute hospitalization was classified into DRG 484, 485, 486, or 487 will be admitted to an IRF immediately after the injury, because some may require a period of recuperation and healing before beginning the intensive inpatient rehabilitation care. We are soliciting comments regarding this methodology.

C. Proposal To Consider Using a Comorbidity To Verify Compliance

In this section of the proposed rule, we discuss the possible use of comorbidities to verify compliance with proposed § 412.23(b)(2)(i). Under the IRF PPS, we defined a comorbidity at § 412.602 as a specific patient condition that is secondary to the patient's principal diagnosis that is the primary reason for the inpatient rehabilitation stay.

Section II.C.1 below describes a proposed methodology in which cases other than those admitted with a principal diagnosis matching one or more of the 12 conditions specified in proposed § 412.23(b)(2)(iii) could be considered to satisfy the proposed 65 percent rule if certain additional criteria are met. Section II.C.2 below describes another alternative, in which a case that has a comorbidity that matches one of the conditions in proposed § 412.23(b)(2)(iii) could be considered to satisfy the proposed 65 percent rule only if the patient is admitted to an IRF for postoperative care immediately following a hip or knee replacement. We are soliciting comments on both of these proposed methodologies.

1. Proposed Methodology

Under proposed § 412.23(b)(2)(i), we are proposing that starting with the effective date of the final rule and subject to the proposed phase-out provision discussed in section II.D., a case with a principal diagnosis that does not match one of the proposed 12 conditions be considered as meeting proposed § 412.23(b)(2)(i) if *all* of the following criteria are met: (1) The patient is admitted for rehabilitation for a condition that is not one of the conditions listed in proposed § 412.23(b)(2)(iii); (2) The patient also has a comorbidity that falls in one of the conditions listed in proposed § 412.23(b)(2)(iii); and (3) The comorbidity has caused significant functional ability decline in the individual such that, even in the absence of the admitting condition, the individual would require intensive rehabilitation treatment that is unique to inpatient rehabilitation facilities and which cannot be appropriately performed in another setting, such as inpatient hospital, skilled nursing facility, home health, or outpatient setting.

The following explanation provides guidance regarding classifying the proposed "arthritis-related" conditions as comorbidities which may be counted as complying with proposed § 412.23(b)(2)(i). If the comorbidity is active, polyarticular rheumatoid arthritis, psoriatic arthritis, seronegative arthropathies, or systemic vasculidities with joint replacement, the patient must have undergone an appropriate, aggressive, and sustained course of outpatient therapy immediately preceding the inpatient rehabilitation or have experienced a systemic disease activation immediately before admission in order for the admission to be included in cases complying with proposed § 412.23(b)(2)(i). If the comorbidity is severe or advanced osteoarthritis involving three or more joints, the patient must have undergone an appropriate, aggressive, and sustained course of outpatient therapy immediately preceding the inpatient rehabilitation in order for the admission to be included in cases complying with proposed § 412.23(b)(2)(i).

The following provides clinical examples of diagnoses which indicate when a comorbidity would and would not be considered in determining compliance with the proposed 65 percent rule. These examples are for illustrative purposes only and are not meant to be the only scenarios where comorbidities would or would not be considered in determining compliance with the proposed 65 percent rule. Furthermore, these examples are not intended to represent, define, or establish clinical criteria for benefit coverage determinations.

Examples of Clinical Scenarios That Are Likely To Be Included Under This Policy

(1) A patient who has severe arthritis in both shoulders and in his right knee has his left hip replaced with a non-cemented total hip prosthesis. Although before his joint replacement, he received an aggressive and sustained course of outpatient physical and occupational therapy, at the time of discharge from the acute care hospital, he still has considerable atrophy and weakness in his right quadriceps and hamstring muscles such that he is unable to support his entire weight on his right lower limb. He also has very restricted forward flexion in his right shoulder so that he is limited to 15 degrees of forward flexion. He has severe pain with weight-bearing through his upper limbs in both shoulders. Since after surgery, he can only have partial weight-bearing on his left lower limb, he requires

inpatient rehabilitation for daily occupational and physical therapy sessions to strengthen his right lower limb to bear his entire weight and to improve the function of both shoulders as well as therapy for his joint replacement.

(2) A patient undergoes emergency coronary artery bypass graft surgery for sudden onset of ischemic chest pain (unstable angina) unresponsive to medical management. During the operation she suffers a stroke and wakes up after surgery unable to speak, swallow, or move her right arm and leg. Over the next several days, she regains some partial movements in her leg and arm with minimal speech return. At the time of discharge, she still has significant weakness of the right arm and leg such that she is unable to walk without a walker and therapist by her side and she is unable to make coordinated movements with her right arm to feed and dress herself. She also cannot swallow liquids and solid food without choking spells. She, therefore, requires inpatient rehabilitation of at least 3 hours daily of physical therapy to strengthen her leg and arm, occupational therapy to improve right arm and hand coordination for activities of daily living (that is, eating, dressing, transfer, and bathing), and speech therapy to learn how to swallow her meals without choking.

Examples of Clinical Scenarios That Would Not Be Included Under This Policy

(1) A patient with a motor polyneuropathy who wears an ankle foot orthosis on the right lower limb elects to undergo a knee replacement due to severe osteoarthritis of the knee. Although the rehabilitation of the knee replacement may be complicated by the polyneuropathy, this patient would not be counted as satisfying the proposed change in § 412.23(b)(2)(i) because the comorbidity does not, by itself, require intensive inpatient rehabilitation.

(2) A patient had a stroke 5 years ago with residual weakness and lack of motor control in the left lower leg and that requires the use of a walking cane. She is involved in a car accident and undergoes surgery for a broken bone in her right arm (humerus) and a broken bone in her right ankle. At the time of discharge 2 days later, her dominant arm (right) is immobilized so she still has difficulty feeding herself and transferring from bed to chair. Also, she must learn to use a rolling walker because she cannot bear weight on her right leg and she can't reach the handle on her cane with her immobilized right arm. Although the rehabilitation of the right arm and right foot fracture may be complicated by the stroke, this patient would not be counted as satisfying the proposed change in § 412.23(b)(2)(i) because the comorbidity does not, by itself, require intensive inpatient rehabilitation. She has no caregiver (family or friend) support person at home so she is transferred to a skilled nursing facility where, over the next 5 days, she receives a daily physical therapy session to learn how to ambulate with a rolling walker and she receives a daily occupational therapy session to learn how to feed herself with her non-dominant left hand. She is then discharged home for follow-up with Outpatient Rehabilitation Therapy.

2. Proposed Alternative Methodology

As stated in the May 16, 2003 proposed rule (68 FR 26794), our analysis indicated the largest group of patients treated in IRFs that was not considered as matching one of the 10 conditions in the existing 75 percent rule is patients with major joint replacements, specifically knee and hip replacements. Thus, as an alternative to the proposed methodology above, we are also proposing an approach that would only apply to patients admitted to an IRF after hip or knee replacements. Under this alternative approach, only admissions to an IRF that are post-operative hip or knee joint replacements cases would be considered to count towards meeting the proposed 65 percent rule if the case also had a comorbidity that matches one or more of the 12 proposed conditions in proposed § 412.23(b)(2)(iii). Specifically, under this method we would count a case as meeting the proposed 65 percent rule if the patient matched all of the following criteria:

- Was postoperative following one or more hip or knee joint replacements that immediately preceded the transfer to an IRF.
- Had a condition at time of admission to an IRF that was complicated by an active comorbidity specified in proposed § 412.23(b)(2)(iii).
- Had an active comorbidity that resulted in a decline in the patient's function beyond the decline generally observed for other patients in that impairment category.
- Had an active comorbidity that substantially complicated the patient's rehabilitation to the point that it would improve only with the intensive, multidisciplinary rehabilitation treatment that is unique to inpatient rehabilitation facilities and that could not be performed in another setting (for example, skilled nursing facility, inpatient hospital, home health, or outpatient).

D. Ongoing Assessment of Implementing the Proposed Policies and Potential Scheduled Phase-Out of the Proposed Policies

In proposing these changes to the criteria for classifying hospitals as IRFs, our intent is to clarify the conditions typically requiring intensive inpatient rehabilitation therapy under the IRF PPS. These proposals do not represent an expansion of existing coverage criteria, but provide clear, clinically meaningful guidance on the conditions that are most appropriately treated in IRFs as distinguished from care furnished in other settings.

The policy changes proposed in this rule represent one of the next steps in an ongoing process since the May 16, 2003 proposed rule and the May 19, 2003 Town Hall meeting to identify potential policy changes to enhance the effectiveness of the IRF PPS. We are aware of the intricacies of implementing these changes to the IRF compliance criteria, both in terms of the time needed for providers to make any necessary adjustments to their operations and in the risk of unanticipated changes impacting providers, beneficiaries, and the Medicare program.

Comments received on the proposed change to the compliance percentage and on the proposed clinical criteria to determine compliance will be an important step in our planned ongoing assessment of the effect these proposed changes may have on—

- The IRF industry; and
- The Medicare beneficiaries who require rehabilitative care.

The final rule will reflect all relevant comments received and relevant data obtained through the comment period that may result in us adopting the proposed policies or adopting alternative policies.

As part of the next step in our ongoing assessment, during the 3-year period after the final rule is effective, we intend to closely review both claims and patient assessment data to examine trends in admissions and overall utilization in IRFs. These analyses will allow us to monitor and evaluate the effect the policies adopted in the final rule had on utilization and beneficiary access. Specifically, we will use these data to determine the effectiveness that the adopted final policies had in achieving the objectives stated in this proposed rule, and we will assess the need for any future policy development related to provider compliance. Also, we will review whether the adopted

final policies (including considering comorbidities in determining compliance if we adopt that policy) have led to significant shifts in the site of treatment of beneficiaries with particular conditions, and whether the adopted final policies have led to inadvertent and substantial expansions in either the number of IRFs or in aggregate utilization and expenditures.

In addition, we are encouraging rehabilitation professionals, the rehabilitation industry, researchers, academia, and other relevant sources to consider the 3-year period after the effective date of the final rule as an opportunity to conduct literature reviews, clinical studies, and other objective analyses so that we may be better informed about the situations in which patients require the intensive inpatient rehabilitation treatment available in an IRF compared to other settings. Furthermore, during this 3-year period, we plan to seek information and obtain data from rehabilitation experts, the rehabilitation industry, researchers, academia, and other relevant sources. The data we plan to obtain include clinical data, data from clinical outcomes analyses, and data from well-designed analytical studies specific to rehabilitative care. We believe that significant, objective data obtained from these sources would be informative as we deliberate whether changes to the clinical criteria and/or to the compliance percentage adopted in the final rule are justified.

However, no later than 3 years after the effective date of our final rule, in the absence of any significant, objective data as described above, we are proposing to change the classification criteria under proposed § 412.23(b)(2)(ii) as follows: In place of the proposed 65 percent compliance threshold discussed in section II.A., we would determine compliance by verifying that 75 percent of all inpatients have one of the 12 proposed conditions listed in proposed § 412.23(b)(2)(iii), and we would phase-out the use of the proposed comorbidity compliance policy discussed in section II.C. If, as we anticipate, the effective date of the final rule will apply to cost reporting periods that begin on or after January 1, 2004, this proposed change to the classification criteria, as noted below, would be effective for cost reporting periods beginning on or after January 1, 2007. Accordingly, the proposed changes specified in proposed § 412.23(b)(2)(ii) would occur automatically for cost reporting periods beginning on or after January 1, 2007 unless before that date we propose new criteria to determine compliance or validate the criteria as adopted in our final rule for identifying an IRF based on the data that CMS has obtained over the preceding 3 years including data from rehabilitation experts, the rehabilitation industry, researchers, academia, or other relevant sources.

As a future step in our ongoing assessment, we plan every 3 years after the initial 3 year assessment described above, to obtain objective updated clinical data from relevant sources and, if appropriate and justified, we may propose changes to the clinical criteria and/or the compliance percentage based on that updated data.

E. Proposed Change to the Time Period To Determine Compliance

Except for new IRFs, § 412.23(b)(2) for freestanding IRFs and § 412.30 for IRF converted/expanded units would require the use of the most recent 12-month cost reporting period to determine if the IRF was compliant with existing § 412.23(b)(2). In addition, existing § 412.23(i) and § 412.25(f) state that the classification of a hospital or unit, respectively, is effective for the hospital's or unit's entire cost reporting period and that any changes in the classification of a hospital or unit are made only at the start of a cost reporting period. We believe that the application of both of these regulations has resulted in much confusion as to the data used to determine compliance with existing § 412.23(b)(2). For example, if an IRF's cost reporting period begins January 1, 2005 and ends December 31, 2005, this period would represent the most recent 12-month cost reporting period used to determine if the classification of the IRF is correct for the next cost reporting period that begins on January 1, 2006 in accordance with existing § 412.23(b)(2) and § 412.23(i) or § 412.25(f). However, the process of reviewing the data, making a determination of compliance with existing § 412.23(b)(2), and notifying the IRF of its non-compliance (and de-certification as an IRF) may take at least 3 to 4 months. Therefore, in order to make a determination of compliance and implement any changes before the start of the January 1, 2006 cost reporting period, data for only the first 8 to 9 months from the most recent 12-month cost reporting period would be available.

In order to have the proposed regulation more precisely reflect the necessary operational procedures of our FIs, we are proposing to change § 412.23(b)(2), § 412.30(c), and § 412.30(d)(2)(ii) to specify that data from the most recent, consecutive, and appropriate 12-month period of time be used to determine compliance with the proposed policies set forth in this proposed rule. Accordingly, using the example above, the last 3 to 4 months of data from the cost reporting period ending December 31, 2004, and the first 8 to 9 months of data from the cost reporting period ending December 31, 2005, could be used (for a total of 12-months of data from the most recent, consecutive, and appropriate period of time) to determine compliance with the proposed policies set forth in this proposed rule. These time periods may be different depending on the workload of the FIs and CMS Regional Offices. We believe that this change will give FIs and CMS Regional Offices the flexibility to make a determination and give the IRF sufficient time to adjust to any Medicare de-certification action. We are not proposing to make a similar change to the regulatory policies for new freestanding IRFs or new IRF units, because they can provide written certification for the first full 12-month cost reporting period after Medicare certification that they intend to meet the requirements of proposed § 412.23(b)(2).

The intent of this proposed change is to ensure that the patient data used to determine compliance with the requirements of proposed § 412.23(b)(2) are from the most recent, consecutive, and appropriate 12-month period of time. However, we recognize that 12 months of patient data for the initial cost reporting periods affected by these proposed changes will be from a period that is before the effective date of the final rule. Therefore, it will be necessary to institute a transition period for those cost reporting periods where the most recent 12-month period of time includes admissions that occur before the effective date of the final rule. Accordingly, to ensure that admissions that occur before the effective date of the final rule are not counted in an IRF's compliance percentage, the FIs and affected IRFs will be given the specific procedures regarding what time period the FIs will use to verify compliance during the transition from the existing requirements at § 412.23(b)(2) to the proposed changes specified in proposed § 412.23(b)(2).

F. General FI Operational Instructions

We will take the necessary action to ensure that the proposed compliance policies are consistently enforced on IRFs across all FIs. We will issue instructions to the FIs and provide guidance to the clinical/medical FI personnel responsible for performing the compliance reviews to ensure that they use a method that consistently counts only cases with a diagnosis that both serves as the basis for the intensive rehabilitation services that the IRF

would furnish, and meets one of the medical conditions specified in proposed § 412.23(b)(2)(iii). In addition, as discussed in section II.A, we plan to instruct the FIs in the use of a presumptive eligibility test for verifying compliance with proposed § 412.23(b)(2)(i) that includes only Medicare cases determined to be "reasonable and necessary."

G. Conclusion

We believe that the changes we are proposing to § 412.23(b)(2) will help ensure the following:

- The incentives are appropriate for IRFs to admit patients that need and would benefit the most from intensive inpatient rehabilitation.
- The preservation of access to intensive inpatient rehabilitation services.
- IRFs provide distinct services and continue to be compensated with payment rates appropriate for their type of facility.
- The most prudent use of Medicare funds.
- More consistent implementation and enforcement by specifying more clearly what conditions are included in proposed § 412.23(b)(2).

III. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the major comments in the preamble to that document.

V. Regulatory Impact Analysis

A. Introduction

In this proposed rule, we are proposing changes to the 75 percent rule for IRFs. Specifically, we are proposing that 65 percent of all patients treated in an IRF meet one of the proposed specified conditions, as discussed earlier in this preamble. We are also proposing to count comorbidities under certain conditions, as specified in this preamble, towards meeting the proposed 65 percent rule.

We have examined the impacts of this proposed rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA), (September 16, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

B. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more).

In this proposed rule, we are proposing changes to the 75 percent rule as described above. We estimate the savings to the Medicare program would be greater than $100 million. Therefore, this proposed rule would be considered a major rule.

C. Regulatory Flexibility Act (RFA) and Impact on Small Hospitals

The RFA requires agencies to analyze the economic impact of our regulations on small entities. If we determine that the regulation will impose a significant burden on a substantial number of small entities, we must examine options for reducing the burden. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and governmental agencies. Most hospitals are considered small entities, either by nonprofit status or by having receipts of $6 million to $29 million in any 1 year. (For details, *see* the Small Business Administration's regulation, at 65 FR 69432, that set forth size standards for health care industries.) Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary IRFs. Therefore, we assume that all IRFs are considered small entities for the purpose of the analysis that follows. Medicare fiscal intermediaries and carriers are not considered to be small entities. Individuals and States are not included in the definition of a small entity. Accordingly, we have determined that this proposed rule would have a significant impact on a substantial number of small entities.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any rule that will have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds. This proposed rule would have a significant impact on the operations of small rural hospitals.

D. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of at least $110 million. This proposed rule would not have a substantial effect on the governments mentioned, or on private sector costs.

E. Executive Order 13132

We examined this proposed rule in accordance with Executive Order 13132 and determined that it would not have a substantial impact on the rights, roles, or responsibilities of State, local, or tribal governments.

F. Overall Impact

For the reasons stated above, we have prepared an analysis under the RFA and section 1102(b) of the Act because we have determined that this proposed rule is a major rule and the proposed policies set forth in this proposed rule would have a significant impact on all IRFs (small entities and small rural hospitals).

G. Anticipated Effects of the Proposed Rule

One of the primary purposes of the regulatory impact analysis is to understand the effects policies would have on facilities. As we analyze the impacts of our proposed policies, we assess the extent to which these policies may unduly harm facilities. If there is evidence that we are unduly harming facilities, we make attempts to mitigate these effects, while ensuring that the proposed policies are fair and achieve the intended policy objectives. The intent of the policy objective of proposed § 412.23(b)(2) and of other policy criteria for IRFs is to ensure the distinctiveness of facilities providing intensive rehabilitative services in an inpatient setting. The distinctiveness of these facilities is what justifies paying them under a separate payment system

as opposed to under another payment system, such as the acute care IPPS, which may not adequately compensate these facilities for the intensive rehabilitative services they are to provide. We believe it is crucial to ensure that IRFs are indeed providing intensive rehabilitation so that we pay for these services appropriately under the IRF PPS. In addition, we believe it is imperative to identify conditions that would "typically require intensive inpatient rehabilitation" in IRFs because rehabilitation in general can be delivered in a variety of settings such as acute care hospitals, skilled nursing facilities, outpatient or home health.

This policy objective is not new. However, the manner in which the existing regulations have been implemented and enforced may not have enabled CMS to accomplish these objectives to the extent we hoped. The policies set forth in this proposed rule are intended to accomplish these same policy objectives, clarify interpretational issues that have led to inconsistent implementation, and improve the extent to which IRFs can admit patients that would need and benefit from intensive inpatient rehabilitative services. Therefore, although the impacts of the proposed policy changes shown below illustrate that IRFs may experience reduced Medicare payments from these proposed policies, we believe the impacts would show a greater reduction in Medicare payments to IRFs if the existing policies were more effectively enforced.

We discuss below the Medicare impact of this proposed rule on IRFs. We used the following data and assumptions to estimate the impacts of the proposed policies set forth in this preamble.

- As stated in section I.D. of this proposed rule, we used patient assessment data from January to August 2002 to estimate compliance with the 75 percent rule in the May 16, 2003 proposed rule. We are using the same patient assessment data to construct the impact analysis set forth in this proposed rule.
- We used data described in the report titled Case Mix Certification Rule for Inpatient Rehabilitation Facilities", published in May 2003, developed by the Rand Corporation. This report states, on page XIV, that 70 percent of all cases treated in IRFs are those of Medicare beneficiaries.
- In addition to Medicare patients, this proposed rule may have an effect on the 30 percent, or approximately 200,000, of the cases in IRFS that are non-Medicare. While there are numerous approaches a facility might take, and it is impossible to predict either the specific course of treatment or the financial impact, the facility could change both its Medicare and non-Medicare case mix in order to remain an IRF.
- We used regression results from page 25 of the Rand report to estimate that the percentage of total cases that meet the specified conditions for each IRF will be approximately 5 percent more than the percentage of Medicare cases that meet the specified conditions. However, other than an estimate of the size of the non-Medicare population in this proposed rule may affect, CMS does not have enough information to quantitatively estimate the impact to non-Medicare IRF cases, and encourages comments on this issue.
- 10 percent of the cases that did not meet the proposed criteria would meet the proposed criteria due to more accurate coding and removing the moratorium of the classification rule.
- 10 percent of the cases that did not meet the proposed criteria with the limited Medicare administrative data used in our analysis would meet the proposed criteria using more extensive medical record data.
- The diagnosis listed in Appendix A in the "Case Mix Certification Rule for Inpatient Rehabilitation Facilities" report, published in May 2003, developed by Rand identified cases that would meet the 75 percent rule. The report showed that a large number of cases with possible arthritis-related joint replacements did not meet the 75 percent rule. We believe that the proposed changes to the conditions related to arthritis in this proposed rule may increase the number of these cases that would count towards meeting the proposed 75 percent rule over those cases shown in the RAND report. However, it is difficult to determine the exact number of joint replacement cases that would meet the proposed criteria without extensive medical record data. Therefore, to estimate the impacts on the various classifications of IRFs shown in Chart 1, we chose the assumption that 35 percent of the joint replacement cases would meet the proposed clinical criteria as set forth in this proposed rule.
- We assume that a percentage of Medicare cases being admitted under the current practices would not be admitted to an IRF under the proposed criteria. We believe that these cases would be admitted or treated in extended hospital inpatient stays, outpatient departments, or other post acute care settings. We estimated that it would be equally possible that the cases not admitted to IRFs may be treated in inpatient hospitals, outpatient departments, or home health care settings. We found that approximately 80 percent of IRFs are units within a hospital complex and that approximately 60 percent of these hospital complexes include a skilled nursing facility. Accordingly, we estimated that skilled nursing facilities will have a higher possibility than other settings to absorb the cases not admitted to IRFs. Since long term care hospitals need to meet the average 25-day length of stay requirement and the average IRF length of stay is 14 Days, we estimated that long term care hospitals will absorb a smaller portion of the cases not admitted to IRFs.

Based on the above assumptions and the average payments for their respective settings, we have estimated that the average payment for these hospital inpatient, outpatient, and other post acute care settings to be approximately $7,000 per case. Thus, for Medicare patients, the difference between the IRF standardized payment per case ($12,525) and the estimated average per case amount for hospital inpatient, outpatient, and other post acute care settings ($7,000) results in a net savings to the Medicare program of approximately $5,525 per case.

Note that this result also depends on the assumption that all IRFs will continue to want to be classified as an IRF and admit those patients that will allow them to meet the proposed changes set forth in this proposed rule.

1. Impact Summary

Dependent on the range of assumptions related to joint replacement cases described above, we project a proposed net savings to the Medicare program between $42 million and $161 million. Specifically, the estimated net savings would be $161 million if we assume that 20 percent of joint replacement cases meet the proposed criteria, $98 million if 35 percent of joint replacement cases meet the proposed criteria, and $42 million if 60 percent of joint replacement cases meet the proposed criteria. This net savings to Medicare would be a net loss of Medicare payments to IRFs or facilities that contain both an IRF and an alternative treatment facility. Some alternative treatment facilities, however, would experience an increase in Medicare payments if they experience a net increase in cases.

2. Calculation of Impacts

To determine the estimated effects of implementing the policies in this proposed rule, we have developed Chart 1 to show the estimated impact on the

Medicare program among various classifications of IRFs. Chart 1 assumes the middle estimate that 35 percent of joint replacement cases meet the proposed criteria. The columns in Chart 1—Projected Impact of the Proposed Changes to the 75 percent Rule on the Medicare Program are defined as follows:

- The first column, Facility Classification, identifies the type of facility. Where data were not available to classify an IRF into a category, the IRF was identified as "missing" in the first column.
- The second column identifies the number of facilities for each classification type.
- The third column lists the estimated number of Medicare cases admitted to IRFs under the existing policies. We estimated the number of Medicare cases from 8 months worth of post-IRF PPS data (the available data at the time the analysis was done) to represent an annual number of Medicare cases.
- The fourth column, Ratio of Medicare Cases Not Admitted, represents an estimate of the percentage of Medicare cases that would no longer be treated in an IRF due to the proposed policies set forth in this proposed rule.
- The fifth column represents the Ratio of All Setting Cost/Savings to IRF Medicare Payments. To estimate this amount we divide the All Setting Cost/Saving in Millions in column six by the Current IRF Medicare Payments in Millions in column eight.
- The sixth column, All Setting Cost/Saving in Millions, indicates the savings impact to the Medicare program. To estimate the savings, we consider that some Medicare cases would possibly be treated in other settings and those settings would be paid accordingly. The following steps illustrate how we estimate this amount.
- Step 1—First we estimate the number of Medicare cases that may not be admitted to IRFs by multiplying the percentage in column four, Ratio of Medicare Cases Not Admitted, by the Total Medicare Cases reflected in column three.
- Step 2—We then take the number of cases calculated in the Step 1 and multiply these cases by $12,525 (the standardized FY 2004 payment amount) to determine the estimated Medicare impact to IRFs.
- Step 3—Then we estimate the amount of Medicare payments that these cases may generate in other settings. Specifically, we multiply $7,000 by the number of Medicare cases estimate in the Step 1 (the number of Medicare cases that may not be admitted to IRFs).
- Step 4—Then we subtract the total amount calculated in Step 3 by the total amount calculated in Step 2 in order to estimate the total savings to the Medicare program.
- The seventh column, IRF Medicare Payment Impact in Millions, shows the estimated Medicare impact specific to IRFs. We calculate this estimate by multiplying the percentage of Medicare cases that will not be admitted shown in column four by the Total Medicare Cases shown in Column three and determine the number of Medicare cases that will not be admitted to IRFs. We then take the total number of Medicare cases that will not be admitted to IRFs and multiply it by $12,525 to estimate column seven, IRF Medicare Payment Impact in Millions.
- The eighth column, Current IRF Medicare Payments in Millions, is the number of Medicare cases reflected in column three multiplied by $12,525.
- The ninth column, Projected IRF Medicare Payments in Millions, reflects the estimate of the total Medicare payments IRFs may receive as a result of the policies set forth in this proposed rule. This amount is calculated by subtracting the estimate of the IRF Medicare Payment Impact in Millions (column seven) from the estimate of the Current IRF Medicare Payments in Millions (column eight).

CHART 1.—PROJECTED IMPACT OF THE PROPOSED CHANGES TO THE 75 PERCENT RULE ON THE MEDICARE PROGRAM

Facility classification	Total number of IRF	Total Medicare cases	Ratio of Medicare cases not admitted	Ratio of all setting cost/saving to IRF Medicare payments	In millions			
					All setting cost/saving	IRF Medicare payment impact	Current IRF Medicare payments	Projected IRF Medicare payments
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
Total	1,170	459,682	4%	−2%	−98	−223	5,758	5,534
Census:								
1: New England	38	20,133	6%	−3%	−7	−16	252	236
2: Middle Atlantic	170	87,639	7%	−3%	−35	−80	1,098	1,018
3: South Atlantic	143	75,808	2%	−1%	−10	−23	949	926
4: East North Central	220	74,361	3%	−1%	−13	−29	931	903
5: East South Central	86	35,764	3%	−1%	−6	−13	448	435
6: West North Central	99	26,672	2%	−1%	−2	−6	334	328
7: West South Central	235	87,206	4%	−2%	−17	−39	1,092	1,054
8: Mountain	78	24,522	5%	−2%	−7	−17	307	290
9: Pacific	121	27,577	0%	−0%	0	−1	345	344
Free Standing/Unit Facility:								
Free	214	165,593	5%	−2%	−49	−111	2,074	1,963
Unit	956	294,089	3%	−1%	−50	−113	3,683	3,571
Teaching Status:								
Missing	180	37,039	3%	−2%	−7	−16	464	448
Non-teaching	845	344,216	4%	−2%	−70	−158	4,311	4,154
Teaching	145	78,427	5%	−2%	−22	−50	982	933
DSH:								
<0.05	226	80,921	5%	−2%	−23	−51	1,014	962
>=0.2	145	45,549	2%	−1%	−4	−9	571	562
0.05–0.1	339	161,550	5%	−2%	−41	−92	2,023	1,932
0.1–0.2	313	143,173	3%	−1%	−26	−60	1,793	1,734
Missing	147	28,489	3%	−1%	−5	−12	357	345
Facility Control:								
Government	135	38,942	2%	−1%	−4	−9	488	478
Missing	76	10,264	4%	−2%	−2	−5	128	123
Proprietary	259	140,311	5%	−2%	−40	−90	1,757	1,667
Voluntary	700	270,165	3%	−2%	−52	−118	3,384	3,266

CHART 1.—PROJECTED IMPACT OF THE PROPOSED CHANGES TO THE 75 PERCENT RULE ON THE MEDICARE PROGRAM—Continued

Facility classification	Total number of IRF	Total Medicare cases	Ratio of Medicare cases not admitted	Ratio of all setting cost/saving to IRF Medicare payments	In millions			
					All setting cost/saving	IRF Medicare payment impact	Current IRF Medicare payments	Projected IRF Medicare payments
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8	Column 9
Urban/Rural:								
Large Urban	493	209,489	4%	−2%	−48	−109	2,624	2,515
Missing	103	18,881	4%	−2%	−4	−10	236	227
Other Urban	404	188,494	4%	−2%	−42	−95	2,361	2,266
Rural	170	42,818	2%	−1%	−4	−9	536	527
Size:								
Large	201	172,951	5%	−2%	−43	−99	2,166	2,068
Medium	502	198,451	4%	−2%	−41	−93	2,486	2,393
Missing	158	31,400	3%	−1%	−5	−12	393	381
Small	309	56,880	3%	−1%	−9	−20	712	693
Size by Free Standing/Unit Facility:								
Free:								
Large	74	91,409	6%	−2%	−28	−64	1,145	1,081
Medium	71	53,640	6%	−3%	−17	−38	672	633
Missing	38	10,817	4%	−2%	−3	−6	135	130
Small	31	9,727	2%	−1%	−1	−2	122	120
Unit:								
Large	127	81,542	3%	−1%	−15	−34	1,021	987
Medium	431	144,811	3%	−1%	−24	−54	1,814	1,759
Missing	120	20,583	2%	−1%	−3	−6	258	252
Small	278	47,153	3%	−1%	−8	−18	591	573

Chart 1 breaks down the Medicare impacts into many categories that should serve to inform the public and interested parties of the different types of impacts of the changes in this proposed rule. As column seven in Chart 1 shows, IRFs are expected to experience a reduction in Medicare payments from the proposed rule of approximately $223 million, with a net savings to Medicare of approximately $98 million for all Medicare providers. Applying the different assumptions regarding qualifying joint replacement cases yields a Medicare impact range of $42 million (60 percent qualifying) to $161 million (20 percent qualifying).

For the purposes of the RFA analysis, the next few paragraphs discuss IRF impacts in more detail, and regulatory alternatives considered by CMS to explore the impact of different options on IRFs. There are distributional impacts among various IRFs due to existing levels of compliance. The expected Medicare savings is due to the percentage of patients admitted to IRFs that fall outside the identified conditions in relation to what IRFs would be paid in FY 2004 for all Medicare discharges assuming status quo (varying levels of compliance to the existing 75 percent rule). As we previously stated in this proposed rule, although the impacts of the proposed policy changes illustrate IRFs may experience a reduction in payments, we believe the impacts would show a greater reduction in payments to IRFs if the existing policies were more effectively enforced. Further, we believe this reduction in Medicare payments is appropriate given the existing policy objectives described above.

Because this rule is likely to have a significant impact on all IRFs based on the RFA guidelines, we will discuss the alternative changes to the 75 percent rule that we considered.

One option (Option A) would have been to consider all cases in rehabilitation impairment categories (RICs) 1–19 and 21 as cases that could be counted towards the 75 percent rule. This would leave only miscellaneous cases (RIC 20) as cases that would not be considered to satisfy the requirements in proposed § 412.23(b)(2). The result would have been that all existing IRFs would not only meet the standard, but that they would have almost no restrictions on the type of cases that they would admit. The intent of the policy specified in proposed § 412.23(b)(2) is to ensure that IRFs are unique compared to other hospitals in that they provide intensive rehabilitative services in an inpatient setting. The uniqueness of these facilities justifies paying them under a separate payment system rather than paying them with the same payment system for acute care inpatient PPS. Thus, we believe it is crucial to Medicare to maintain criteria ensuring that only facilities providing intensive rehabilitation are identified as IRFs. In addition, we believe that it is imperative to identify conditions that would typically require intensive inpatient rehabilitation in IRFs because rehabilitation, in general, can be delivered in a variety of other settings.

We have estimated that the average occupancy rate of all IRFs is approximately 70 percent. If we were to implement option A, we believe that IRFs with available capacity would increase their occupancy rate because, as stated above, IRFs would have almost no restrictions on the type of cases that they would admit. The following estimated effects of implementing option A on the Medicare program assumes that IRFs would increase their Medicare cases using the present ratio of 70 percent Medicare beneficiaries to total patients. Thus, we estimate that in the first year of implementing option A it would cause an increase in IRF Medicare payments, and would cost the Medicare program, an additional $2.7 billion dollars if occupancy increased to 100 percent, $1.9 billion if occupancy increased to 90 percent, and $1.2 billion if occupancy increased to 80 percent. This range of additional costs to the Medicare program represents up to 50 percent more than the current total IRF Medicare expenditures.

A variant of option A is option B which would add joint replacements, cardiac, pulmonary, pain, and cancer patients to the list of conditions, as discussed previously in this preamble in section II.A., which would also result in a significant impact on Medicare

expenditures and IRF Medicare payments. If we were to implement option B, using the same assumptions described in option A, we estimate it would have cost the Medicare program approximately $940 million dollars in the first year.

Another option (Option C) would be to retain the compliance percentage requirement at 75 percent, rather than lowering it to 65 percent, but recognize the comorbidities as proposed in section II.C. of this proposed rule. This option is similar to enforcement of the current policy and, thus, would further reduce Medicare payments to all IRFs over the policies proposed in this rule. Specifically, total estimated savings to Medicare from all IRFs would be increased from the range of $42 to $161 million (under the proposed policies) to the range of $154 to $357 million if we proposed 75 percent.

Another option (Option D) that we considered, similar to option C, was to allow a comorbidity to count only for hip and joint replacement patients as discussed previously in section II.C. of this proposed rule. If the compliance requirement were to be held at 75 percent along with this policy, the estimated reduction in Medicare payments for IRFs and savings to Medicare would be approximately the same as in option C.

We believe that the proposed changes to the clinical criteria are adequate to make the distinction of the intensive inpatient rehabilitation provided in IRFs from rehabilitation services provided in other settings, unlike the first alternative described above. In addition, while the proposed changes to the clinical criteria and the reduction in the compliance percentage to 65 percent do have a significant impact on Medicare payments to IRFs ($42 to $161 million), they are not as significant as the impact of the other alternatives described above. It is also important to note, as previously mentioned in section V.G., that approximately 80 percent of IRFs are units within a hospital complex and that approximately 60 percent of these hospital complexes include a skilled nursing facility. Thus, a majority of hospital complexes (including rural hospitals) that maintain an IRF unit may experience an increase in Medicare payments from the proposed changes in this proposed rule in other settings within the complex.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget (OMB).

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR chapter IV, part 412 as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart B—Hospital Services Subject to and Excluded From the Prospective Payment Systems for Inpatient Operating Costs and Inpatient Capital-Related Costs

2. In § 412.23, paragraph (b)(2) is revised to read as follows:

§ 412.23 Excluded hospitals: Classifications.

* * * * *

(b) * * *

(2) Except in the case of a newly participating hospital seeking classification under this paragraph as a rehabilitation hospital for its first 12-month cost reporting period, as described in paragraph (b)(8) of this section, a hospital must show that during its most recent, consecutive, and appropriate 12-month time period (as defined by CMS or the fiscal intermediary), it served an inpatient population that meets the criteria under paragraph (b)(2)(i) or (b)(2)(ii) of this section.

(i) For cost reporting periods beginning on or after January 1, 2004 and before January 1, 2007, the hospital has served an inpatient population of whom at least 65 percent required intensive rehabilitative services for treatment of one or more of the conditions specified at paragraph (b)(2)(iii) of this section. A patient with a comorbidity, as defined at § 412.602, may be included in the inpatient population that counts towards the required 65 percent if—

(A) The patient is admitted for inpatient rehabilitation for a condition that is not one of the conditions specified at paragraph (b)(2)(iii) of this section;

(B) The patient has a comorbidity that falls in one of the conditions specified at paragraph (b)(2)(iii) of this section; and

(C) The comorbidity has caused significant functional ability decline in the individual such that, even in the absence of the admitting condition, the individual would require the intensive rehabilitation treatment that is unique to inpatient rehabilitation facilities paid under subpart P of this part and which cannot be appropriately performed in another care setting covered under this title.

(ii) For cost reporting periods beginning on or after January 1, 2007, the hospital has served an inpatient population of whom at least 75 percent required intensive rehabilitative services for treatment of one or more of the conditions specified at paragraph (b)(2)(iii) of this section.

(iii) List of conditions.

(A) Stroke.

(B) Spinal cord injury.

(C) Congenital deformity.

(D) Amputation.

(E) Major multiple trauma.

(F) Fracture of femur (hip fracture).

(G) Brain injury.

(H) Neurological disorders, including multiple sclerosis, motor neuron diseases, polyneuropathy, muscular dystrophy, and Parkinson's disease.

(I) Burns,

(J) Active, polyarticular rheumatoid arthritis, psoriatic arthritis, and seronegative arthropathies resulting in significant functional impairment of ambulation and other activities of daily living, which have not improved after an appropriate, aggressive, and sustained course of outpatient therapy services or services in other less intensive rehabilitation settings immediately preceding the inpatient rehabilitation admission or which result from a systemic disease activation immediately before admission, but have the potential to improve with more intensive rehabilitation.

(K) Systemic vasculidities with joint inflammation, resulting in significant functional impairment of ambulation and other activities of daily living, which have not improved after an appropriate, aggressive, and sustained course of outpatient therapy services or services in other less intensive rehabilitation settings immediately preceding the inpatient rehabilitation admission or which result from a systemic disease activation immediately before admission, but have the potential to improve with more intensive rehabilitation.

(L) Severe or advanced osteoarthritis (osteoarthrosis or degenerative joint disease) involving three or more major joints (elbow, shoulders, hips, or knees) with joint deformity and substantial loss of range of motion, atrophy, significant

functional impairment of ambulation and other activities of daily living, which have not improved after an appropriate, aggressive, and sustained course of outpatient therapy services or services in other less intensive rehabilitation settings immediately preceding the inpatient rehabilitation admission but have the potential to improve with more intensive rehabilitation. (A joint replaced by a prosthesis no longer is considered to have osteoarthritis, or other arthritis, even though this condition was the reason for the joint replacement.)

* * * * *

3. Section 412.30 is amended by—

A. Revising paragraph (c).

B. Revising paragraph (d)(2)(ii).

The revisions read as follows:

§ 412.30 Exclusion of new rehabilitation units and expansion of units already excluded.

* * * * *

(c) *Converted units.* A hospital unit is considered a converted unit if it does not qualify as a new unit under paragraph (a) of this section. A converted unit must have treated, for the hospital's most recent, consecutive, and appropriate 12-month time period (as defined by CMS or the fiscal intermediary), an inpatient population meeting the requirements of § 412.23(b)(2).

* * * * *

(d) * * *

(2) * * *

(ii) A hospital may increase the size of its excluded rehabilitation unit through the conversion of existing bed capacity only if it shows that, for the hospital's most recent, consecutive, and appropriate 12-month time period (as defined by CMS or the fiscal intermediary), the beds have been used to treat an inpatient population meeting the requirements of § 412.23(b)(2).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: July 16, 2003.

Thomas A Scully,

Administrator, Centers for Medicare & Medicaid Services.

Approved: July 22, 2003.

Tommy G. Thompson,

Secretary.

[FR Doc. 03–22658 Filed 9–2–03; 3:37 pm]

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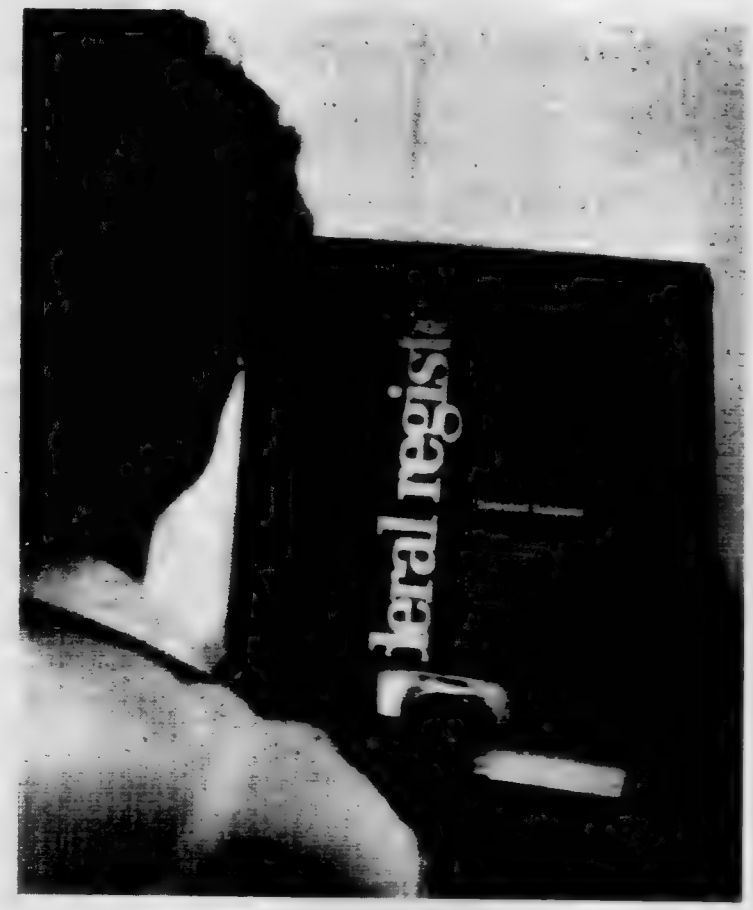

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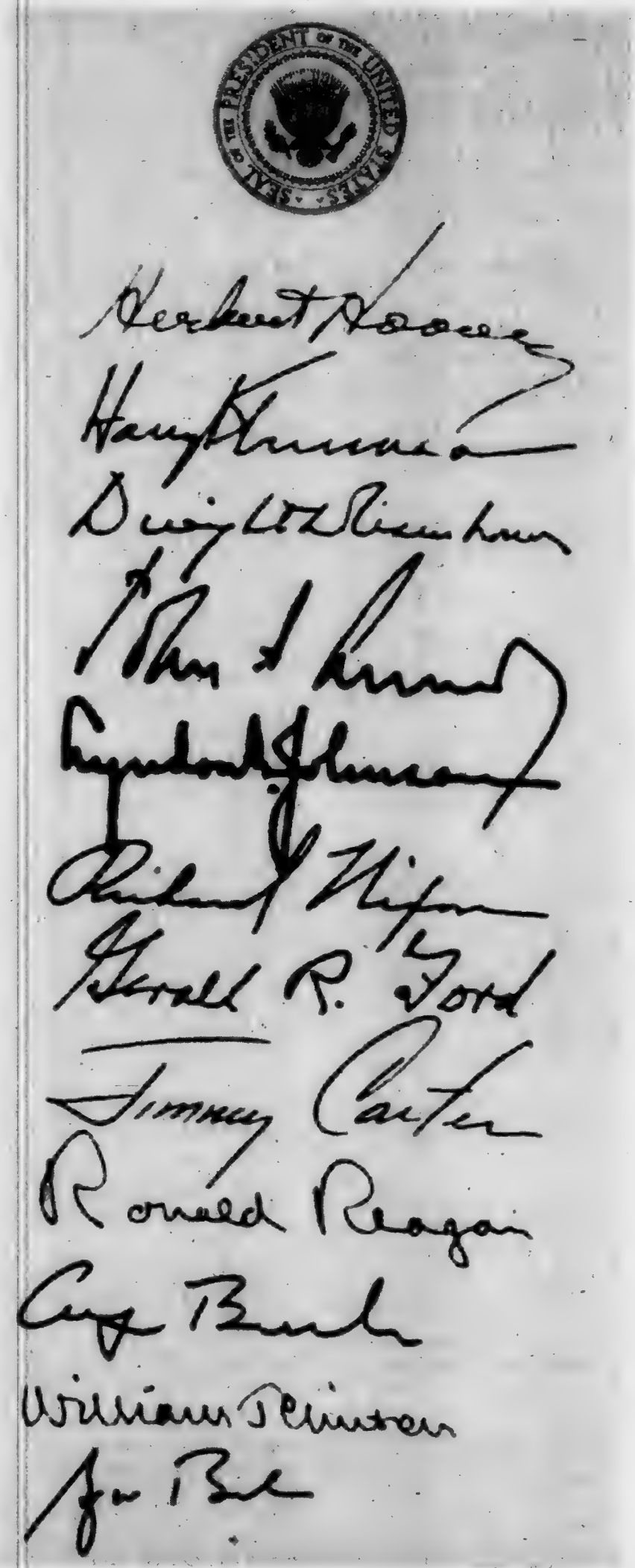

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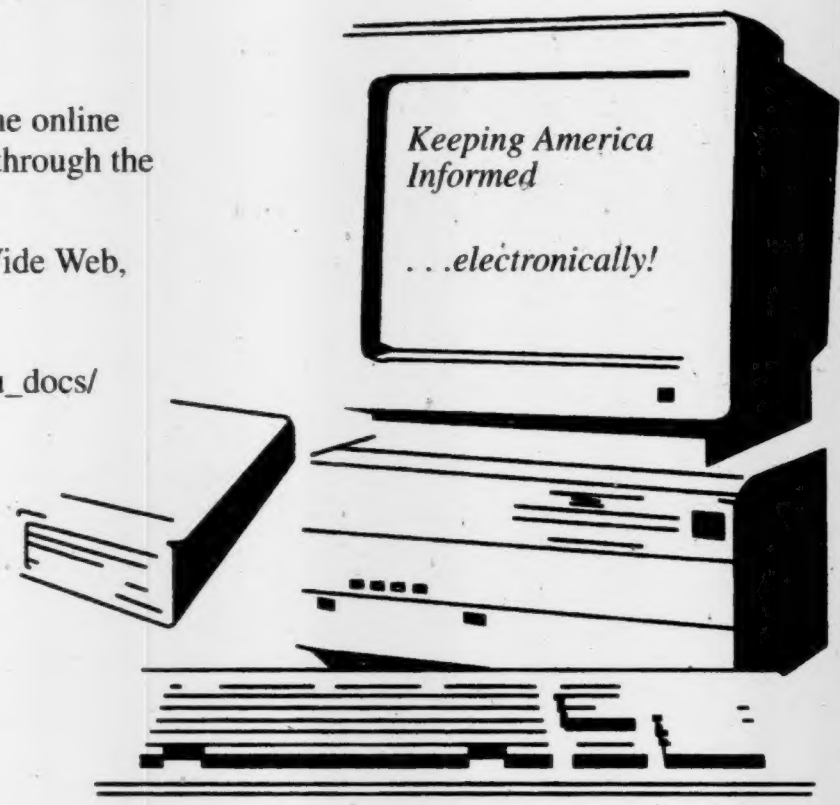

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